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# Rules and Regulations

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**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Parts 959 and 980**

**[FV-89-010]**

## Onions Grown in South Texas and Onions Imported Into the United States; Change in Effective Period of Handling Regulation and Import Regulation

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule changes the effective period of the handling regulation for onions grown in South Texas to March 1 through May 20. The current period is from March 10 through June 15 of each season with all but container requirements terminating on May 31. Earlier maturing varieties have enabled producers and handlers to harvest and ship earlier to take advantage of generally higher prices in early spring. The committee believes changing the effective period of quality requirements will help to maintain the quality of such early shipments. Terminating the handling regulation on May 20 will relieve restrictions on handlers during the latter part of the season. The onion import regulation also will be amended to make appropriate conforming changes.

**EFFECTIVE DATE:** March 1, 1989.

**FOR FURTHER INFORMATION CONTACT:** Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456, telephone: (202) 447-2431.

**SUPPLEMENTARY INFORMATION:** This rule is effective under Marketing Agreement No. 143 and Marketing Order No. 959 (7 CFR Part 959), both as amended, regulating the handling of onions grown in designated counties of South Texas. The marketing agreement and order are authorized by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 35 handlers of South Texas onions subject to regulation under the marketing order, and approximately 75 onion producers in the South Texas production area. Also, there are about 25 onion importers subject to the requirements of the onion import regulation. The Small Business Administration (13 CFR 121.2) has defined small agricultural producers as those having annual gross revenue for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of South Texas onions and importers of onions may be classified as small entities.

The South Texas Onion Committee met on October 19, 1988, and unanimously recommended a change in the effective period of the handling regulation. The regulation currently begins March 10 and ends June 15 of each season, with all but container requirements terminating on May 31.

The committee proposed beginning the effective period 10 days earlier, on March 1 of each season. In recent years, several new varieties of onions have been developed that mature slightly earlier than older varieties in general use. The Texas spring crop provides the first new-crop onions for each season, previous shipments being drawn from storage stocks. Because of this, prices at the beginning of the spring season tend to be higher than later in the season. Thus, earlier maturing varieties can give shippers a competitive advantage by providing them with a product to ship when prices are the highest.

Moreover, because of a university-conducted selective onion breeding program that has been carried on for over a decade, even earlier varieties may soon be developed. Although early March shipments are not usually heavy relative to mid-season volume, they are, nevertheless, significant. The committee believes that the marketing order standards of quality should apply especially to early onions to forestall shipments of poorer quality produce.

The committee also recommended changing the termination date of all provisions of the regulation from June 15 to May 20. This will be of particular benefit to the late shippers, principally those from the Laredo and Winter Garden districts. The early and mid-season crop is produced in the Lower Rio Grande Valley, which generally accounts for about 85 percent of the total. Shipments in the 1987-88 season totaled 5,731,267 fifty-pound equivalent bags. The remaining crop, generally 15 percent, is produced in the Laredo and the Winter Garden districts. Shipments in the 1987-88 season from those districts totaled 915,278 fifty-pound equivalent bags. These are the last regulated shipments to leave the production area each season. Shipments made towards the end of the season tend to bring lower, and sometimes much lower, prices, hence lower returns to growers. Moreover, inspection costs tend to be higher due to the distance of the Laredo and Winter Garden district handlers from Federal-State inspection facilities. Relieving handling restrictions during the latter part of the season when prices are generally low will be of benefit to late producers and handlers and is not expected to adversely affect the overall objectives of the program.

Section 8e of the Agricultural Marketing Agreement Act of 1937 requires that when certain domestically produced commodities, including onions, are regulated under a Federal marketing order, imports of that

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commodity must meet the same or comparable grade, size, quality, or maturity requirements. Section 8e also provides that whenever two or more marketing orders regulating a commodity produced in different areas of the United States are concurrently in effect, the Secretary shall determine which of the areas produces the commodity in most direct competition with the imported commodity. Imports then must meet the quality standards set for that particular area.

In the case of onions, the current onion import regulation (7 CFR 980.117) specifies that import requirements be based on those in effect for onions produced in designated counties in Idaho and Malheur County, Oregon (7 CFR Part 958) during the period June 1 through March 9 and on those produced in South Texas (7 CFR Part 959) during the period March 10 through May 31 of each year.

Changing the beginning date of the South Texas onion handling regulation will have no effect on the import regulation. Although the South Texas handling regulation will begin March 1, it is found that onions from Idaho and Eastern Oregon will continue to be predominant in the marketplace and in direct competition with imported onions, primarily from Mexico, from March 1 through March 9 each season. Accordingly, no change to the import regulation is necessary based upon the earlier beginning of the South Texas handling regulation.

However, the termination of the South Texas handling regulation on May 20 rather than June 1 does affect the import regulation. Since there will be no Texas onion handling regulation in effect during the period May 21 through May 31, the requirements of the Idaho-Oregon program will prevail. Therefore, it is found that imports are in most direct competition with Idaho and Eastern Oregon onions for the period May 21 through March 9 and South Texas onions for the period March 10 through May 20. Accordingly, onion import requirements will change to those grade and size requirements established under the marketing order regulating certain designated counties in Idaho and Malheur County, Oregon, for the period May 21 through March 9 each year, and to those grade and size requirements established under the marketing order regulating onions grown in South Texas for the period March 10 through May 20 each year.

A change is therefore made in the language of § 980.117 and paragraph (h) *Applicability to imports* of § 959.322.

Based on the above, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

Notice of these actions was given in the January 31, 1989, **Federal Register** [54 FR 4828] providing interested persons until February 15, 1989, to file written comments.

Two comments were filed pertaining to the proposed change in the onion import regulation. The comment received from the Idaho-Oregon Fruit and Vegetable Association was in favor of the proposed change.

The other comment, filed on behalf of the South Texas Onion Committee, opposed the proposal that onion import requirements continue to be based on those in effect for onions grown in Idaho and Oregon through March 9. The committee expressed the view that the import requirements should be based on those established for South Texas onions beginning March 1 because onion imports from Mexico are in most direct competition with onions produced in Texas and are intermingled with Texas onions in distribution channels.

An analysis of USDA Market News data reveals that few, if any, South Texas onions are shipped during the first nine days of March. On the other hand, movement of Idaho-Eastern Oregon onions during this period is significant, and onions from this source are prevalent in most major markets including Dallas, Los Angeles, St. Louis, Denver, and Atlanta. These are important markets for Mexican onions as well. Shipments of South Texas onions typically do not begin in volume until mid-March. It is therefore concluded that imported onions are currently in most direct competition with Idaho-Eastern Oregon onions through March 9. However, it is recognized that shipments from South Texas may begin earlier in future seasons, and a change in the import requirements could become necessary.

After consideration of all relevant information, including the proposal set forth in the notice and comments filed with respect thereto, it is hereby found that the rule as hereinafter set forth will tend to effectuate the declared policy of the Act.

It is hereby further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553) in that (1) shipments of onions grown in the production area are expected to begin about March 1, (2) to maximize benefits to the industry this regulation should apply to as many shipments as possible during the marketing season, (3) the action was proposed at an open meeting of onion producers and handlers in the production area, and (4) compliance with this regulation requires no special preparation on the part of handlers.

**List of Subjects**

*7 CFR Part 959*

Marketing agreements and orders, Onions, South Texas.

*7 CFR Part 980*

Vegetables, Import regulations, Onions.

For the reasons set forth in the preamble, 7 CFR Parts 959 and 980 are hereby amended as follows:

1. The authority citation for 7 CFR Parts 959 and 980 continues to read as follows:

**Authority:** Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

**PART 959—ONIONS GROWN IN SOUTH TEXAS**

2. Section 959.322 is amended by revising the introductory paragraph and the first sentence of paragraph (i) up through the second comma to read as follows:

**§ 959.322 Handling regulation.**

During the period beginning March 1 and ending May 20, no handler shall package or load onions on Sunday, or handle any onions, except red varieties, unless they comply with paragraphs (a) through (d) or (e) or (f) of this section.

* * * * *

(i) *Applicability to imports.* During the period beginning March 10 and ending May 20, of each year, * * *

**PART 980—VEGETABLES; IMPORT REGULATIONS**

3. Section 980.117 is amended by revising paragraphs (a)(2) and (b)(1) and (2) to read as follows:

**§ 980.117 Import regulations; onions.**

(a) * * *

(2) Therefore, it is hereby determined that: Imports of onions during the May 21 through March 9 period are in most direct competition with the marketing of onions produced in designated counties of Idaho and Malheur County, Oregon, covered by Marketing Order No. 958, as amended (7 CFR Part 958), and during the March 10 through May 20 period the marketing of imported onions is in most direct competition with onions produced in designated counties in South Texas covered by Marketing Order No. 959, as amended (7 CFR Part 959).

(b) * * *

(1) During the period May 21 through March 9 of each marketing year, whenever onions grown in designated counties in Idaho and Malheur County, Oregon, are regulated under Marketing Order No. 958, imported onions shall comply with the grade, size, quality, and maturity requirements imposed under that order.

(2) During the period March 10 through May 20 of each marketing year, whenever onions grown in designated counties in South Texas are regulated under Marketing Order No. 959, imported onions shall comply with the grade, size, quality, and maturity requirements imposed under that order.

* * * * *

Dated: February 24, 1989.

Robert C. Keeney,

*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 89-4731 Filed 2-28-89; 8:45 am]

BILLING CODE 3410-02-M



**Farmers Home Administration**

**7 CFR Parts 1809, 1922, 1944, 1945 and 1965**

**Appraisal of Single Family Residential Property**

**AGENCY:** Farmers Home Administration, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Farmers Home Administration (FmHA) amends its appraisal regulations to reflect minor changes in appraisal regulation content. The changes enhance and strengthen the Agency's internal appraisal process and improve the overall quality of single family housing appraisals. The intended effect of this action is to improve FmHA appraisal regulations regarding the use of comparable sales data and to adopt a new appraisal format common to the real estate lending industry, including other federal government agencies.

**EFFECTIVE DATE:** March 31, 1989.

**FOR FURTHER INFORMATION CONTACT:** Neal A. Hayes, Jr., Senior Loan Specialist, Home Ownership Branch, Single Family Housing Processing Division, Farmers Home Administration, USDA, Room 5344, South Agriculture Building, 14th Street and Independence Avenue SW., Washington, DC 20250, telephone (202) 382-1474.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed under USDA procedures established in Department Regulation 1512-1 which implements Executive Order 12291, and has been classified as "nonmajor." This action will result in an annual effect on the economy of less than $100 million and will neither result in a major increase in cost or prices, nor adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. There is no impact on proposed budget levels, and funding allocations will not be affected because of this action.

In accordance with the Regulatory Flexibility Act (Pub. L. 96-354), Neal Sox Johnson, Acting Administrator, FmHA, has determined that this action will not have a significant economic impact on a substantial number of small entities because the proposed regulation changes primarily affect residential appraisal processing by FmHA staff appraisers.

Subpart C of Part 1922 is amended to incorporate internal management changes which affect the use of comparable sales data, Marshall and Swift "Square Foot Appraisal Form" form number changed from AP 1007 to 1007, changes incorporated in Form FmHA 1922-8, currently titled "Residential Appraisal Report" and renamed to "Uniform Residential Appraisal Report", and including minor changes in appraisal regulation content.

**Background**

A proposed rule published in the **Federal Register** (53 FR 23406) on June 22, 1988, invited the public to submit written comments for the Agency to consider with regard to the development of the final rule. Eight (8) sets of comments were received from interested persons representing Professional Real Estate Appraiser Organizations, Professional Surveyors and FmHA employees.

**Discussion of Comments**

1. One respondent suggested changes to the provisions of § 1922.101 concerning employee appraisal authorizations versus employee demonstration of skills and training, prior to a State Director review and delegation of appraisal authority to the employee.

The Agency believes that § 1922.101 provides State Directors with the necessary administrative controls and flexibility to institute and establish an on-going appraisal review and training program which meets the overall objectives of the regulation. Therefore, the suggested changes were not adopted by the Agency at this time.

2. One respondent recommended modification to § 1922.101(c) relative to providing photographs of the subject property. Section 1922.101(c) was modified and deletes reference to photographs.

Section 1922.105(c)(6) sets forth the photographic requirements for the completion of all residential appraisals.

3. One respondent expressed concern over dwelling repair policy contained in Subpart C of Part 1965 of this chapter versus § 1922.101(c) requirements on the completion of residential appraisals on an "as developed" basis.

The respondent's concern is a loan processing issue under Subpart A of Part 1944 of this chapter. The comment is appreciated but is beyond the scope of the changes proposed at this time. It is suggested that the respondent provide comment in accordance with the pending major revisions to Subpart A of Part 1944, which will be published in the **Federal Register** as a proposed rule at later date.

4. One respondent suggested changes to the definitions of appraisal terms contained in § 1922.102.

The Agency adopted the suggested change for the definition of depreciated replacement cost and modified § 1922.102(f) by inserting the words "less deductions for depreciation" between the words "cost" and "of" in the text. Suggested definition changes on final reconciliation/estimated value, program definition of dwelling size, highest and best use of the site, including additional definitions presently not contained in § 1922.102, were not adopted by the Agency. The provisions of § 1922.102 will adequately serve the Agency's residential appraisal process and additional modification is not necessary at this time.

5. Two respondents suggested changes to § 1922.105 concerning photographs, inspection and property information gathered in evaluating the subject property.

Photographs of the subject property are adequately addressed in § 1922.105(c)(6) of the regulation. The necessity to require photographs which provide front, rear and side views of the property will enhance the overall quality of the residential appraisal process, including off-site appraisal reviews conducted by the Agency.

Realignment and/or consolidation of § 1922.105(c)(4) with § 1922.105(c)(2) and § 1922.105(c)(3) versus § 1922.105(b)(3), was not adopted by the Agency. These suggestions will be evaluated and considered in the next major rewrite of the regulation.

6. One respondent suggested that § 1922.105(a) be revised to stipulate that information gathered by an appraiser, as defined in § 1922.101(a) for the completion of an appraisal assignment in accordance with the provisions of § 1922.104(a)(10), § 1922.105(1)(ii) and

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§ 1922.105(3)(i–vii), be provided by a licensed or registered professional surveyor in accordance with applicable State law.

Our Agency believes that § 1922.105(a) does not require additional revision at this time. Information required to perform an appropriate evaluation of a residential appraisal assignment is usually provided by the realtor, contractor, seller and/or purchaser involved in the real estate transaction. Expense and procurement of such information is the burden of the parties associated with the real estate transaction who are seeking financial assistance from our Agency.

Legal descriptions (deeds), professional property surveys and additional site information is obtained from official Court House records and or other State and Federal Agencies, to validate the authenticity of the information which is incorporated into the residential appraisal.

FmHA appraisers are not authorized to perform professional property surveys in conjunction with their assigned duties while employed by the Agency. In addition, a potential conflict of interest situation would exist in the event FmHA appraisers were licensed in accordance with applicable State law and permitted to conduct a professional property survey in conjunction with a residential appraisal assignment. Therefore, our Agency believes that the intent of § 1922.105(a) is clear and adequate training has been provided to all FmHA appraisers regarding the compilation of documentation needed to complete residential appraisal assignments.

7. Six respondents recommended changes to § 1922.107(a)(1) concerning short-lived and long-lived depreciation on residential properties.

The Agency has modified its regulation in response to these recommendations to require physical depreciation estimates in structures with an effective age of 5 years in lieu of the proposed effective age of 1 year. In addition, the Agency modified the last sentence in § 1922.107(a)(1) to read as follows:

"Short-lived and long-lived depreciation schedules will be completed on comparable properties, provided the effective age is over 5 years and the appraiser gains access into the property to validate the condition and actual age of the short-lived components. If access to the property cannot be obtained, document accessibility on Form FmHA 1922–12. (Refer to Form FmHA 1922–12, reverse side.)".

8. One respondent recommended changes to § 1922.107(b), relative to depreciation entries in the sales comparison section of Form FmHA 1922–8 and Form 1007.

The Agency adopts the recommendation and modifies all references in § 1922.107(b) which currently read as "will be" to read as "is also".

9. Four respondents recommended that § 1922.109(a) retain the District Director exception authority to grant the use of FmHA comparable sales data. In addition, one respondent expressed concern that the Agency utilize FmHA financed comparable sales provided appropriate adjustments were made to reflect financing terms.

The Agency decision to grant exception authority at the National Office level, as proposed in the regulation, will strengthen the overall internal management of residential appraisals and promote improvement in the management of the comparable sale data base. FmHA financed comparable sales may be authorized in accordance with the provisions of the regulations set forth in the proposed rule.

10. One respondent recommended changes in § 1922.109(a) concerning the sequence of adjustments to comparable sales data.

The Agency adopts the recommendation to reflect initial adjustments for financing concessions, time of sale, location and physical characteristics, in accordance with the chronological order of adjustment categories identified on Form FmHA 1922–8.

11. One respondent expressed concern regarding § 1922.109(c), which introduces the Income Approach used in conjunction with FmHA inventory properties classified as "non-program."

FmHA inventory properties classified as "non-program" are typically sold to investors for rental purposes. Therefore, the Income Approach which is incorporated into the FmHA residential appraisal process, will enable the appraiser to make necessary adjustments for real estate market trends attributed to income producing properties.

12. Two respondents suggested that § 1922.110 accommodate flexibility in the utilizaiton of the income approach to value, including the final reconciliation/estimated market value section, when completing non-program residential appraisals.

The Agency believes that Exhibit B, of this subpart, provides adequate guidance and flexibility on the income approach to value on non-program residential property. § 1922.110(d) was changed to accommodate the reconciliation of the three approaches to value for non-program residential appraisals. Additional language was added to this section which reads as follows:

"Non-program property appraisals, utilizing the income approach to value in accordance with Exhibit B, of this subpart, will have the estimated market value documented in the reconciliation section of Form FmHA 1922–8. Non-program property appraisals which do not utilize the income approach to value due to a lack of comparable sales data will have the final reconciliation/estimated market value derived from the sales comparison and cost approaches to value".

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.410, "Low Income Housing Loans (Section 502 Rural Housing Loans)." For the reasons set forth in the Final Rule related Notice to 7 CFR Part 3015, Subpart V, 48 FR29115, June 24, 1983, this program/activity is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the qualifty of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

**List of Subjects in 7 CFR Parts 1809, 1922, 1944, 1945, and 1965**

Loan programs—Agriculture, Real property—Appraisals, Rural areas, Loan programs—Housing and community development, Low and moderate income housing, Rural housing, Home improvement, Low and moderate income housing—Rental, Mobile homes, Mortgages, Subsidies, Agriculture, Disaster assistance, Administrative practice and procedure and Foreclosure.

Therefore, Chapter XVIII, Title 7 of the Code of Federal Regulations is amended as follows:

1. The authority citations for the Parts 1809, 1944, 1945, and 1965 continue to read as follows:

**PART 1809—[AMENDED]**

**Authority:** 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.



**PART 1944—[AMENDED]**

**Authority:** 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

**PART 1945—[AMENDED]**

**Authority:** 7 U.S.C. 1989; 42 U.S.C. 1980; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

**PART 1965—[AMENDED]**

**Authority:** 7 U.S.C. 1989; 42 U.S.C. 1980; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

**CHAPTER XVIII—[AMENDED]**

2. 7 CFR Chapter XVIII is amended by changing the title of Form FmHA 1922–8 from "Residential Appraisal Report" to read "Uniform Residential Appraisal Report" in the following places:

**§ 1809.1 [Amended]**

(a) Part 1809, Subpart A, § 1809.1(b).

**§ 1944.30 [Amended]**

(b) Part 1944, Subpart A, § 1944.30(a).

**§ 1945.175 [Amended]**

(c) Part 1945, Subpart D, § 1945.175(c)(1).

**§ 1965.12 [Amended]**

(d) Part 1965, Subpart A, § 1965.12(f).

**§ 1965.65 [Amended]**

(e) Part 1965, Subpart B, § 1965.65(f)(12).

**§ 1965.110 [Amended]**

(f) Part 1965, Subpart C, § 1965.110(c).

**PART 1922—GENERAL**

3. The authority citation for Part 1922 is revised to read as follows:

**Authority:** 42 U.S.C. 1480; 7 CFR 2.23; 7 CFR 2.70.

4. Subpart C of Part 1922 is revised to read as follows:

**Subpart C—Appraisal of Single Family Residential Property**

Sec.

1922.101 General.
1922.102 Definition of appraisal terms.
1922.103 [Reserved]
1922.104 Influences on value.
1922.105 Steps preliminary to writing the appraisal.
1922.106 [Reserved]
1922.107 Depreciation.
1922.108 Appraisal of leasehold estate.
1922.109 Writing the appraisal.
1922.110 Final Reconciliation/estimated value.
1922.111 Abbreviated appraisal and revising existing appraisals.
1922.112–1922.150 [Reserved]
Exhibit A—Single Family Residential Appraisal Manual [Note]
Exhibit A–1—Single Family Residential Appraisal Sequential Analysis [Note]
Exhibit B—Single Family Housing Income Approach [Note]

**Supart C—Appraisal of Single Family Residential Property**

**§ 1922.101 General.**

This subpart prescribes the policies and procedure for appraisals in connection with making and servicing Single Family Rural Housing (RH) loans on fee simple owned nonfarm and small farm real properties, and on leaseholds on nonfarm and small farm real properties. Property will be appraised for market value. In no case will an appraisal be made without inspecting the property and, when applicable, reviewing all plans and specifications for proposed improvements to the site.

(a) *Appraiser.* Only an employee designated by the State Director or contract appraiser selected by the State Director as authorized by the National Office may appraise a single family housing property.

(b) *Employees authorized to appraise under this subpart.* Employees whose job descriptions contain appraisal responsibilities, after receiving the required training and written delegation from the State Director, are authorized to make appraisals. The employee's immediate supervisor will recommend the employee designated to make appraisals after determining he or she has:

(1) Inspected at least two properties not previously used by Farmers Home Administration (FmHA) for sales comparison and completed corresponding Forms FmHA 1922–12, "Nonfarm Tract Comparable Sales Data," for those comparables; and

(2) Satisfactorily prepared at least two appraisals on Form FmHA 1922–8, "Uniform Residential Appraisal Report," and Form 1007, "Square Food Appraisal Form."

(c) *Appraisal report.* An appraisal report is a supportable, defensible, written report as of a specific date by an appraiser setting forth an estimate of the value of a property, along with documentation supporting the value estimate. The basic principles and methods of appraising real estate outlined in this subpart, Exhibits A, A–1 and B to this subpart (all available in any FmHA office) will be followed in making appraisals. Use Form FmHA 1922–8 for all appraisals made under this subpart. Attach a cost calculation sheet, Form 1007, to Form FmHA 1922–8. The appraisal report will include market data on comparable sales of similar properties in the sales comparison analysis section. Use three comparable sales if available. A cost calculation based on a residential cost handbook or building valuation manual approved by the National Office is required for all appraisals. Appraisals for loan making purposes will be made on an "as developed" basis. Appraisals for foreclosures, voluntary conveyance, partial release, recapture, etc., will be made on an "as is" basis. Appraisals made in connection with voluntary conveyance and foreclosure may also contain an additional "as developed" value documented in the reconciliation section of Form FmHA 1922–8 if repairs are planned prior to or in connection with sale of the property. When an "as developed" value is documented in the reconciliation section of Form FmHA 1922–8, a list of the repairs and estimated cost of the repairs must be included.

**§ 1922.102 Definition of appraisal terms.**

(a) *Depreciation*—A decline in market value of dwelling and related facilities from the time improvements were constructed to the time an appraisal is made. Depreciation may result from:

(1) Physical deterioration, such as wear and tear, etc., to a structure and other site improvements that are subject to deterioration.

(2) Functional obsolescence, such as inadequacies or overadequacy due to size, design, style, age; changes in taste of the general public; the high cost of heating and cooling dwellings that cannot economically be made energy efficient, etc.

(3) Location/Economic obsolescence is caused by forces external to the property; such as changes in use, or poorly maintained properties in the neighborhood, decline in area employment, noise or other pollution, a decline in the purchasing power of potential buyers, etc.

(b) *Economic life*—When applied to single family dwellings, the normal time a dwelling is expected to remain suitable as a residence, taking into consideration a normal depreciation rate. This may vary significantly from the remaining physical life of the structure. Economic life minus effective age equals remaining economic life.

(c) *Effective age*—The age of the dwelling taking into account any remodeling or refurbishment that has been accomplished or is planned to take place immediately and deterioration or abuse of the property that will not be included in any planned improvements.

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Effective age usually will be less than actual age when significant refurbishment has taken place, or greater than actual age if the property has deteriorated more than typical properties of the same age.

(d) *Final reconciliation/estimated value*—The final estimate of market value after weighing the relative significance, supportability, and reliability of the market data and cost approaches; the most probable price a property should bring, as of a specific date, in a competitive and open market, assuming the buyer and seller are prudent, knowledgeable and the price is not affected by undue stimulus such as forced sale or loan interest subsidy.

(e) *Reproduction cost*—The estimated cost of reproducing an exact duplicate or replica of a structure using the same materials, construction standards, quality of workmanship, layout, design, and incorporating all the deficiencies and superadequacies (functional obsolescence) of the subject structure. Reproduction cost less the sum of physical depreciation, functional and economic/locational absolescence equals depreciated replacement cost.

(f) *Depreciated replacement cost*—The calculated cost less deductions for depreciation of replacing a structure of equal utility that conforms to present day standards. Replacement cost may be significantly less than the cost of reproducing an older outdated structure or a new structure that is overbuilt or does not conform to current market standards.

(g) *Living area.* (1) For appraisal purposes, living area will include only finished area as determined by the exterior dimensions of the dwelling.

(2) For dwelling size eligibility determinations, living area is defined differently and is calculated as prescribed in § 1944.16, Subpart A of Part 1944, of this chapter.

(h) *Leased fee value*—This is the value of the landlord's rights to the property being leased.

(i) *Leasehold value*—This is the value of the tenant's rights under the lease that can be tranferred or sold to another party.

(j) *Residential property*—The site and all improvements to the site, including the dwelling.

(k) *Cost calculation manual*—A manual or handbook published on a national basis, approved by the National Office, that is used to estimate the depreciated replacement cost of single family residential structures and other site improvements.

**§ 1922.103 [Reserved]**

**§ 1922.104 Influences on value.**

(a) *Factors to be considered.* (1) *Location.* Location is one of the greatest influences on real property value. A location near railroads, commercial or industrial plants, landfills, cemeteries, airports, etc., or too distant from employment opportunities may adversely affect a residential property value, whereas a location in a quiet, residential area near good employment, schools, shopping, public services, etc., may enhance property value.

(2) *Supply and demand.* If the market area has an oversupply of residential properties and/or building sites for sale or depressed economic conditions exist, a negative effect on property value will normally be observed. When the supply of residential properties or suitable building sites is short and/or the general economy is good, a positive effect on residential property values may be observed.

(3) *Replacement cost.* Cost does not directly create or maintain value; however, cost does have an influence on value and will be considered when estimating value of improvements to a site.

(4) *Highest and best use of the site.* The site and the improvements to the site will be valued separately. However, for loan making purposes, the value estimate of the site will not exceed its value as a residential site, based on market data on actual sales of similar residential sites in the area. For other than loan making purposes, when an alternate use of the site indicates a site value greater than the value of the improved site, the higher value will be used.

(5) *Accrued depreciation.* This is a combination of physical deterioration, functional and economic/locational obsolescence.

(6) *Use restrictions.* Easements, rights-of-ways, subdivision covenants, zoning, and deed restrictions, etc., affect value.

(7) *Utilities.* Availability, reliability, quality of utility service and cost to obtain suitable water supply, sewer, gas, electrical and other utility services affect value.

(8) *Taxes and assessments.* Tax rates and other public assessments as compared to rates in other similar neighborhoods in the market area affect value.

(9) *Homogeneity.* Similarities to other properties in the neighborhood; for example, a property overbuilt for the neighborhood in an older or deteriorating neighborhood may have a value less than its replacement cost.

(10) *Site.* Topography, size, shape, drainage, general suitability of the site and site view for residential purposes and site development in addition to the dwelling must be considered in estimating the value of the site.

(11) *Financing.* Terms, availability of funds, interest rates and cost of obtaining long-term loans, including but not limited to FmHA RH loans, have an influence on the value of property.

(12) *Construction.* Living area, room arrangement, garages, porches, built-in equipment, storage, parking facilities, basement, quality of construction, and "value in use" of certain energy efficient and/or solar items affect value. Exhibit A of FmHA Instruction 1922–B (available in any FmHA office) will be used when estimating value in use of any component described in § 1944.16(g)(2) of Subpart A, Part 1944 of this chapter.

(13) *Street improvements.* Street improvements adjacent to the property and the type of roads leading to the neighborhood affect value.

(b) *Factors not to be considered.* (1) Amount of existing liens or debts secured by the property;

(2) Proposed sale price or bid amount to build the structure;

(3) Amount of FmHA loan requested;

(4) Sex, age, race, national origin, color, religion or handicap(s) of residents of the neighborhood or community; and

(5) Appraisals for voluntary conveyances and foreclosure will not reflect any consideration of a forced sale, unpaid balance of FmHA loan(s), other liens against the property, or cost of acquisition.

**§ 1922.105 Steps preliminary to writing the appraisal.**

The appraisal will be made only when sufficient information has been developed to enable the appraiser to properly evaluate the property.

(a) *Basic information on property.* As a minimum, the property legal description, address, plat, subdivision and/or neighborhood map, tax information, recording information, and complete plans and specifications of any planned improvements should be obtained by the appraiser prior to beginning the appraisal.

(b) *Analysis information.* The appraiser will consider general economic conditions of the market area and obtain additional information which he or she considers pertinent to the appraisal. The appraiser should examine the community and the neighborhood before inspecting the site.



(1) *Community analysis.* The appraiser needs pertinent information about the history and growth of the community. The collection, analysis and interpretation of community data helps the appraiser to determine the relative competitive positon of a property in the total market. A knowledge of how and why the community grew and an understanding of its economic trends enables the appraiser to better understand the factors influencing the value of real property. The community factors to consider include:

(i) Population—increase or decrease;
(ii) Geography—i.e., topography, etc.;
(iii) Roads and public transportation service;
(iv) Employment wages and other income sources;
(v) Medical facilities;
(vi) Schools;
(vii) Volume of new construction;
(viii) Number of homes (new and old) being offered for sale in the market area;
(ix) Fire and police protection;
(x) Availability of suitable building sites;
(xi) Shopping facilities; and
(xii) Other financing available in the area.

(2) *Neighborhood analysis.* Neighborhoods are divisions or sections of a community or city which are usually homogeneous in some respect. Neighborhoods customarily pass four stages of life: building, static, declining, and rebuilding. In measuring the desirability of neighborhoods, features such as the number of unoccupied homes, age and condition of nearby properties, etc., should be studied and compared.

(3) *Site analysis.* The importance of location cannot be overemphasized. The location of a community, city, or neighborhood to available job opportunities, places of worship, school, medical care, shopping, etc., is as important as the location of the property within its own neighborhood. Other factors to consider about the site are:

(i) Frontage;
(ii) Width;
(iii) Depth;
(iv) Shape;
(v) Total usable area;
(vi) Topography;
(vii) Hazards, such as being located in a flood plain, subject to localized flooding, etc.;
(viii) View from the site; and
(ix) Utilities available.

(c) *Inspection of the property.* An inspection of the site and all improvements to the site will be made at such time and under such conditions that the appraiser can adequately evaluate the entire property. In the case of planned improvements, a thorough evaluation of the plans and specifications of the improvements to be made should be completed to determine if the improvements are suitable for the site and any existing improvements.

(1) The appraiser, after locating and identifying the property, must check boundary lines against the plat and legal description. This is essential in order to be certain the improvements to the site are totally on the site and do not encroach on adjoining property.

(2) When inspecting an existing structure, the appraiser will determine the condition of the structure, and estimate depreciation and cost to repair individual items he or she determines need repair or replacement in order for the structure to meet minimum property requirements and FmHA thermal standards. The appraiser will determine the total living area, storage, basement, and parking area by actual measurements made during the inspection of an existing structure; for proposed construction, measurements will be made from the building plans.

(3) If the house is under construction or less than one year old and an individual water or sewage system is involved, include a certification by the builder that the house and any water and waste disposal systems have been or will be built or installed in accordance with the local building codes, plans and specifications. Evidence of approval by health authorities having jurisdiction in the area also will be included. If the house is one year or more old, the appraiser will require approval of individual water and/or sewage systems by health authorities or, in a case where no State or local health authority exists, by a person or firm qualified to determine the adequacy and safety of such systems.

(4) If the inspection reveals the property cannot be made suitable for the FmHA program, an appraisal will not be made.

(5) The date the real property is inspected will be the date placed in the reconciliation section of Form FmHA 1922–8.

(6) Photographs of the property will be attached to Form FmHA 1922–8. Photographs will provide front, rear and side views of the property, including the "street appeal" aspects of the property.

**§ 1922.106 [Reserved]**

**§ 1922.107 Depreciation.**

Adjustments to reproduction cost and the sales comparison analysis that reflect a decrease in value of a structure or other improvements to the site due to physical deterioration and/or functional and economic obsolescence will be determined. Land and improvements to the site such as wells, etc., do not depreciate but may change in value.

(a) *Adjustments for depreciation.* (1) *Physical deterioration.* Any deterioration to a structure or other improvement to a site which adversely affects the value of the property is physical depreciation. Since all parts of a structure are not expected to have the same life expectancy, it is necessary to determine the age, suitability and condition of certain major components of the existing structure. Physical depreciation estimates in structures with an effective age over 5 years, will be made by estimating depreciation of the short-lived components of the property seperately from the long-lived components of the property. The appraiser, as a minimum, will consider the heating and/or cooling system(s), roof covering, floor covering, and built-in or easily removable appliances as short-lived components and estimate depreciation based on the percent of total economic life which has passed since the component was installed. The appraiser will subtract the replacement cost new of these component items from the replacement cost new of the entire structure; then estimate the physical depreciation of the long lived items in accordance with the depreciation section of the residential cost calculation manual and Exhibit A to this subpart (available in any FmHA office). The total short-lived and long-lived depreciation equals total physical depreciation. Short-lived and long-lived depreciation schedules will be completed on all comparable properties, provided the effective age is over 5 years and the appraiser gains access into the property to validate the condition and actual age of the short-lived components. If access to the property cannot be obtained, document accessibility on Form FmHA 1922–12. (Refer to Form FmHA 1922–12, reverse side.)

(2) *Functional obsolescence.* Any design or feature of a dwelling that is not acceptable to the typical buyer in the market area will be identified by the appraiser on the inspection visit to an existing dwelling or in the review of plans and specifications of a dwelling to be built. All items affecting the livability and marketability of the property will be recorded in the appraisal report. The appraiser will measure the value difference in the subject property caused by functional obsolescence by comparing properties that have sold that do meet the livability and marketability demands of the typical purchaser. The

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appraiser must be familiar with the taste and desires of the typical purchaser in the market area in order to support the estimate of value loss due to functional obsolescence of a property. Exhibit A to this subpart (available in any FmHA Office) outlines the parts of a property and design items to consider when estimating functional obsolescence.

(3) *Economic obsolescence.* Any factor outside the property boundary that causes real property to be worth less because of its location is an economic obsolescence factor. The community, neighborhood and site analysis will form the basis for making this estimate. The actual dollar adjustment estimate for economic obsolescence will be based on a comparison of sales prices of similar properties in similar and nonsimilar locations. Exhibit A to this subpart (available in any FmHA Office) explains market data extraction of economic obsolescence and sources of economic trend data.

(b) *Accrued depreciation.* The sum of physical depreciation, and functional and economic obsolescence equals accrued depreciation. Accrued depreciation is also entered on Line 29 of Form 1007 and is also documented on the reverse of Form 1007. Accrued depreciation is also reflected in the sales comparison section of Form FmHA 1922–8.

**§ 1922.108 Appraisal of leasehold estate.**

Prior to making an appraisal for loan making purposes involving a leasehold, the appraiser must determine if the lease complies with the requirements of § 1944.15(a)(5) of Subpart A of Part 1944 of this chapter. The value of the leased fee will not be estimated under this subpart.

(a) *Property as improved.* Estimate the market value of the property "as improved" as though the property was owned under a good and marketable fee title. Estimate the market value of the site on an "as is" basis as if no improvements exist or are to be made or placed on the site and subtract from "as improved" property value.

(b) *Rent.* Estimate the amount of rent that customarily is paid in the area for similar sites leased under similar terms.

(c) *Lease acquisition cost.* Where a lease acquisition cost is involved, determine the total annual leasehold cost of the site as if vacant. In making this determination the appraiser will consider the amount of annual rent to be paid under the lease plus the annual loan payment required on the portion of the RH loan used to acquire the leasehold site. The sum of these should not exceed the amount an applicant would need to pay on a loan to buy a similar site with fee simple title.

*Example:* Present market value of the site as if owned with fee simple title is $5000. Amortization factor for 33-year loan at 12% interest with monthly payments is .0102 per $1.00 of loan.
$5000 × .0102 = $51/month
$51 × 12 mos. = $612 (annual payment on the site if owned with fee simple title)
Lease acquisition cost is $2000. Amount of annual rent is $300
$2000 × .0102 = $21/mo. (rounded up to nearest dollar)
$21 × 12 = $252 annual payment on leasehold acquisition fee.
$252 plus $300 (annual rent) equals an annual leasehold cost of $552.
Since the total annual cost of the leasehold interest in the site in this example is less than what the annual payment would be on the site as if owned with fee simple title, the $2,000 lease acquisition fee would be reasonable. The lease acquisition "value" will be documented on Form 1007 and would be adjusted downward if the total annual cost of the leasehold exceeded the annual cost of an identical fee simple owned site.

(d) *Security value of leasehold.* The maximum security value of a leasehold interest (recommended market value of the leasehold) which will be documented on Form 1007, including improvements to be made to the leasehold site, will not exceed the market value of the improved property less the "as is" value of the site as if owned with fee simple title, plus the market value of the leasehold site.

*Example:*

| | |
|---|---|
| Market value of the property "as improved" as if owned with fee title | $40,000 |
| Less market value fee title owned site "as is" | 5,000 |
| Market value of improvements | 35,000 |
| Acquisition Cost of leasehold site (unimproved) | 2,000 |
| Maximum security value of leasehold property "as improved" | 37,000 |

Complete Form FmHA 1922–8 with a full explanation as to how the value estimates were arrived at and what factors were considered in estimating the maximum security value for a loan being made on the leasehold.

**§ 1922.109 Writing the appraisal.**

In order to analyze and evaluate the influence on the value of a property by the factors outlined in this subpart and Exhibit A of this subpart (available in any FmHA office), the following steps, as a minimum, will be followed by the appraiser.

(a) *Sales comparison approach.* Collecting, verifying and analyzing sales of comparable properties in the market area will provide a basis for completing the sales comparison section on the residential appraisal resort of Form FmHA 1922–8. Information on each comparable sale will be recorded on Form FmHA 1922–12, after inspecting the property. A photograph of the comparable sale will be attached to Form FmHA 1922–12. Comparable sales less than one year old with nonsubsidized financing from lenders other than FmHA should be used in the market data analysis. A National Office exception may be granted on a quarterly basis, to permit the use of comparable sales financed by FmHA, provided, the State Director certifies in writing that nonsubsidized financed comparable sales are not available within a specific geographic location within the State. Documentation to support a National Office exception request will include a detailed analysis of the real estate market situation from the County Supervisor, District Director and the State Office Single Family Housing Appraisal Trainer. Only "arms length" sales will be used. Market value of the site should be obtained by using comparable sales data for other building sites sold in the area. Dollar adjustments for differences in financing concessions, time of sale, location and physical characteristics will be made in accordance with the chronological order of adjustment categories identified on Form FmHA 1922–8. All adjustments to comparables will be based on paired sales extraction, cost estimates and market surveys of value differences. Written documentation used to support adjustments will be attached to Form FmHA 1922–8. The cost estimates and market survey methods of making adjustments to comparables will be used only when data extracted from paired sales cannot be obtained. Comparable sales closest to the subject are the most desireable and the best indicator of value, but if comparable sales in the immediate area are nonexistent, the distance may be increased to the nearest similar communities where comparable sales have occurred.

(b) *Cost approach.* A residential cost calculation manual approved by the National Office will be used in estimating the replacement cost of the dwelling and improvements to the site. The cost calculation will be made in accordance with instructions furnished in the handbook or manual and recorded on a form furnished by the cost manual supplier or Form 1007. The cost manual contains basic cost adjustment tables for different qualities of houses. The quality description which best describes the house being appraised will be used. Accrued depreciation will be established in accordance with Exhibit A (available in any FmHA office) and 1922.107 of this subpart. Lot or land value will be estimated and added to depreciated replacement cost of improvements.

(c) *Income approach.* To be used in conjunction with inventory property non-program appraisals only. See Exhibit B (available in any FmHA office).

**§ 1922.110 Final reconciliation/estimated value.**

(a) *Indicated value by the sales comparison approach.* The appraiser will make an estimate of value by the sales comparison approach after reviewing the similarity of each comparable sale to the subject. The final indicated value by sales comparison approach on Form FmHA 1922–8, will be tempered by the degree of similarity and reliance placed on each of the different comparable sales and will not be an average of the three indicated values.

(b) *Indicated value by cost approach.* The appraiser will enter the value indicated by the cost approach in the cost approach section of Form 1922–8.

(c) *Indicated value by the income approach.* The appraiser will enter the value indicated by the income approach in the income approach section of Form 1922–8. This approach is to be used in conjunction with inventory property non-program appraisals only. See Exhibit B (available in any FmHA office).

(d) *Final reconciliation/estimated market value.* The estimated market value in the reconciliation section of Form FmHA 1922–8 will never exceed the higher of the values indicated by the sales comparison approach or the cost approach and may exceed the lower of the two indicated values only when the appraiser includes justifying and supporting documentation in the appraisal report. Non-program property appraisals, utilizing the income approach to value in accordance with Exhibit B, of this subpart, will have the estimated market value documented in the reconciliation section of Form FmHA 1922–8. Non-program property appraisals which do not utilize the income approach to value due to the lack of comparable sales data, will have the final reconciliation/estimated market value derived from the sales comparison and cost approaches to value.

(e) *Valuation of buildings for insurance purposes.* The value of buildings for insurance purposes will be the amount indicated on Line 30, Form 1007.



**§ 1922.111 Abbreviated appraisal and revising existing appraisals.**

A complete new appraisal will be made for each property requiring an appraisal except:

(a) *Abbreviated appraisal.* An abbreviated appraisal may be made for property to be built when:

(1) The property being appraised is identical, except for minor differences, with a property appraised not more than 90 days prior to the date of the abbreviated appraisal and is located on an equally desirable site within the same subdivision. A copy of all appraisal documents from the first appraisal, "the master appraisal," will be attached to, and will become a part of Form FmHA 1922–8, for the abbreviated appraisal.

(2) All items on the abbreviated appraisal that differ from the property being appraised, such as property address, legal description, applicant's name and reconciliation/estimated value will be completed along with a narrative explanation of any adjustments made and any differences in final value estimate.

(b) *Revised appraisal.* An existing appraisal may be revised when an accurate estimate of present market value can be determined without making a complete new appraisal and the following conditions exist:

(1) The appraisal being revised is not more than 2 years old;

(2) Adequate narrative documentation is attached to support the revised estimate; and

(3) The appraisal being revised was made using Form FmHA 1922–8 and Form 1007.

**§§ 1922.112–1922.150 [Reserved]**

**Exhibit A—Single Family Residential Appraisal Manual**

**Note:** The Exhibit is not published in the Code of Federal Regulations. It is available in any FmHA office.

**Exhibit A–1—Single Family Residential Appraisal Sequential Analysis**

**Note:** The Exhibit is not published in the Code of Federal Regulations. It is available in any FmHA office.

**Exhibit B—Single Family Housing Income Approach**

**Note:** The Exhibit is not published in the Code of Federal Regulations. It is available in any FmHA office.

Date: January 18, 1989.

**Neal Sox Johnson,**

*Acting Administrator, Farmers Home Administration.*

[FR Doc. 89–4771 Filed 2–28–89; 8:45 am]

BILLING CODE 3410–07–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 88–NM–136–AD; Amdt. 39–6149]**

### Airworthiness Directives; McDonnell Douglas Model DC–10 and KC–10A (Military) Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment revises an existing airworthiness directive, applicable to DC–10 and KC–10A (Military) series airplanes, which currently requires inspection and repair, if necessary, of the horizontal stabilizer rear upper spar cap and/or upper rear skin panel for fatigue cracking. This action would add a requirement to repeat the inspections at intervals not to exceed 2,000 landings. This amendment is necessary to detect cracks that may progress until the spar cap or skin panel is severed, which could result in structural failure.

**DATES:** Effective March 27, 1989.

**ADDRESSES:** The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1–L00 (54–60). This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 3229 East Spring Street, Long Beach, California.

**FOR FURTHER INFORMATION CONTACT:** Mr. Kyle L. Olsen, DC–10/MD–11 Program Manager, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (213) 988–5227.

**SUPPLEMENTARY INFORMATION:** A proposal to amend Part 39 of the Federal Aviation Regulations to amend Airworthiness Directive (AD) 87–06–53–R1, Amendment 39–5694 (52 FR 28133: July 28, 1987), applicable to McDonnell Douglas Model DC–10 and KC–10A (Military) series airplanes, to require repetitive inspections of the horizontal stabilizer rear spar cap and/or upper rear skin panel for fatigue cracking at intervals not to exceed 2,000 landings, was published in the **Federal Register** on November 21, 1988 (53 FR 46877).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due

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consideration has been given to the single comment received.

The Air Transport Association (ATA) of America requested that the proposed repetitive inspection interval be increased from 2,000 landings to 3,000 landings so that all inspections could be accomplished during a main base visit ("C-check"). The FAA does not concur. With the information available at this time, the FAA has determined that repetitive inspection at 2,000 landings represents the maximum interval of time allowable in order to adequately detect fatigue cracking in the horizontal stabilizer, without compromising safety. McDonnell Douglas is currently conducting a fatigue test to verify the appropriateness of the 2,000 landing inspection interval. Once that test is completed and the results analyzed along with the flight test data and actual fleet inspections, the FAA may have sufficient information to adjust the repetitive inspection interval, if necessary.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 423 Model DC-10 series airplanes in the worldwide fleet. It is estimated that 153 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 manhour per airplane to accomplish the required actions, and that average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $6,120 per year.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12812, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities, because few, if any, Model DC-10 series airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

**List of Subjects in 14 CFR Part 39**

Aviation safety, Aircraft.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

**PART 39—[AMENDED]**

1. The authority citation for Part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. By amending Airworthiness Directive (AD) 87-06-53 R1, Amendment 39-5894 (52 FR 28133; July 28, 1987), as follows:

**McDonnell Douglas:** Applies to Model DC-10-10, -10F, -15, -30, -30F, -40 and KC-10A (Military) series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent failure of the horizontal stabilizer rear upper spar cap and/or upper rear skin panel due to fatigue cracking, accomplish the following:

A. Prior to the accumulation of 30,000 flight hours or 7,500 landings, whichever occurs earlier, or within 15 days after August 14, 1987 (the effective date of Amendment 39-5894), whichever occurs later, unless already accomplished within the last 120 days since August 14, 1987, (the effective date of Amendment 39-5894), conduct a dye penetrant or eddy current inspection of horizontal stabilizer upper outer section rear spar cap and a visual inspection of the horizontal stabilizer upper outer rear skin panel, in accordance with McDonnell Douglas Alert Service Bulletin A55-18, dated March 23, 1987, or Revision 1, dated May 21, 1987, or Revision 2, dated February 8, 1988.

B. Prior to the accumulation of 2,000 landings after the inspection required by paragraph A., above, or within 100 landings after the effective date of this amendment, whichever occurs later, and thereafter at intervals not to exceed 2,000 landings, repeat the inspection required by paragraph A., above.

C. If a crack is found as a result of the inspections required by paragraphs A. or B., above, repair before further flight, in a manner approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal maintenance Inspector (PMI), who may add comments and then send it to the Manager, Los Angeles Aircraft Certification Office.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1-L00 (54-60). These documents may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 3229 East Spring, Long Beach, California.

This amendment becomes effective March 27, 1989.

Issued in Seattle, Washington, on February 17, 1989.

**Leroy A. Keith,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 89-4056 Filed 2-28-89; 8:45 am]

BILLING CODE 4910-13-M

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**14 CFR Part 71**

**[Airspace Docket No. 88-ASO-22]**

**Revision of Control Zone, Anderson, S.C.**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment revises the Anderson, South Carolina, Control Zone by changing the hours of operation from part-time to full-time. This action is a result of around-the-clock weather observations now being taken at the Anderson County Airport. Also, this revision corrects the geographic position coordinates of the airport and corrects the arrival area extensions based on the Electric City Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) and the Anderson County Radio Beacon (RBN).

**EFFECTIVE DATE:** 0901 u.t.c., April 6, 1989.

**FOR FURTHER INFORMATION CONTACT:** Melvin Brock, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

**SUPPLEMENTARY INFORMATION:**



**History**

On December 22, 1988, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revise the Anderson, South Carolina, Control Zone (53 FR 51567). The proposed revision would change the control zone hours of operation from part-time to full-time due to availability of 24-hour weather observations at the Anderson County Airport. Also, the proposed action would correct the geographic position coordinates of the airport and correct the arrival area extensions based on the Electric City VORTAC and the Anderson County RBN. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6D dated January 4, 1988.

**The Rule**

This amendment to Part 71 of the Federal Aviation Regulations revises the Anderson, South Carolina, Control Zone by changing the hours of operation from part-time to full-time due to the availability of 24-hour weather observations at the Anderson County Airport. This action also corrects the geographic position coordinates of the Anderson County Airport and corrects the arrival area extensions based on the Electric City VORTAC and the Anderson County RBN.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Aviation safety, Transition area.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

**PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS**

1. The authority citation for Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Public Law 97-449, January 12, 1983); 14 CFR 11.69.

**§ 71.171 [Amended]**

2. Section 71.171 is amended as follows:

**Anderson, SC [Amended]**

By deleting the existing description and adding the following: "Within a 5-mile radius of Anderson County Airport (Lat. 34°29'42" N., Long. 82°42'33" W.); within 1.5 miles each side of Electric City VORTAC 035° radial, extending from the 5-mile radius zone to 1.5 miles NE. of the VORTAC and within 3 miles each side of the 172° bearing from the Anderson County RBN (Lat. 34°29'53" N., Long. 82°42'31" W.), extending from the 5-mile radius zone to 8.5 miles south of the RBN."

Issued in East Point, Georgia, on February 14, 1989.

**William D. Wood,**

*Acting Manager, Air Traffic Division, Southern Region.*

[FR Doc. 89-4065 Filed 2-28-89; 8:45 am]

BILLING CODE 4910-13-M

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**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

**18 CFR Parts 141, 260 and 357**

**[Docket No. RM88-18-000]**

**Statement of Cash Flows To Replace Statement of Changes in Financial Position in FERC Annual Report Forms**

February 23, 1989.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Final rule; notice of OMB control numbers.

**SUMMARY:** The Federal Energy Regulatory Commission, on October 13, 1988, issued a final rule (Order No. 505 in Docket No. RM88-18-000, FR 40,875 (Oct. 19, 1988)). The rule amended the Commission's annual report forms for electric utilities, natural gas companies and oil pipeline companies. This notice states that the Office of Management and Budget has approved the information collection requirements in Order No. 505.

**EFFECTIVE DATE:** February 23, 1989.

**FOR FURTHER INFORMATION CONTACT:** Sandras S. Vincent, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-8530.

**SUPPLEMENTARY INFORMATION:** The Paperwork Reduction Act, 44 U.S.C. 3501-3520 (1982) and the Office of Management and Budget's (OMB) regulations, 5 CFR Part 1320 (1988), require that OMB approve certain information collection requirements imposed by agency rules. On November 18, 1988, OMB approved the revisions to the information collection requirements in 18 CFR Parts 141, 260 and 357. The OMB Control Numbers are: 1902-0021—FERC Form No. 1 (Annual Report for Major Public Utilities and Licensees); 1902-0029—FERC Form No. 1-F (Annual Report of Nonmajor Electric Utilities and Licensees); 1902-0028—FERC Form No. 2 (Annual Report of Major Natural Gas Companies); 1902-0030—FERC Form No. 2-A (Annual Report of Nonmajor Natural Gas Companies); and 1902-0022 FERC Form No. 6 (Annual Report of Oil Pipeline Companies). It is not necessary to amend Part 389 of the Commission's regulations, since these OMB control numbers appear on the forms. The final rule in Docket No. RM88-18-000 is effective as of November 18, 1988.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 89-4757 Filed 2-28-89; 8:45 am]

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**18 CFR Part 277**

**[Docket No. RM89-8-000; Order No. 512]**

**Removal of Contract Duration and Right of First Refusal Regulations for Certain OCS Gas**

Issued February 23, 1989.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Final rule.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) is deleting Part 277 of its regulations in its entirety (18 CFR Part 277 (1988)). Part 277 implemented certain provisions of section 315 of the Natural Gas Policy Act of 1978 (NGPA) that have been repealed by Congress in Pub. L. No. 100-439. Pub. L. No. 100-439 repealed two nonprice marketing restrictions on sales of certain OCS gas in NGPA section 315.

**EFFECTIVE DATE:** This final rule is effective February 23, 1989.

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**FOR FURTHER INFORMATION CONTACT:** Julia Lake White, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357–8530.

**SUPPLEMENTARY INFORMATION:** In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 1000 at the Commission's Headquarters, 825 North Capitol Street NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 357–8997. To access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this final rule will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 1000, 825 North Capitol Street NE., Washington, DC 20426.

Before Commissioners: Martha O. Hesse, Chairman; Charles G. Stalon, Charles A. Trabandt, Elizabeth Anne Moler and Jerry J. Langdon.

## I. Introduction

The Federal Energy Regulatory Commission (Commission) is deleting Part 277 of its regulations in its entirety.[1] Part 277 implemented certain provisions of section 315 of the Natural Gas Policy Act of 1978 (NGPA) that have been repealed by Congress in Pub. L. No. 100–439.[2]

## II. Background and Discussion

On September 22, 1988, Congress enacted Pub. L. No. 100–439, repealing two nonprice marketing restrictions on sales of certain OCS gas in NGPA section 315. Specifically, Congress repealed NGPA section 315(a)(3), which required certain OCS gas to be sold under long-term contracts of up to 15 years, and section 315(b), which provided a right of first refusal for interstate buyers of certain categories of natural gas after the existing contracts run out.

Part 277 of the Commission's regulations implemented the provisions of NGPA section 315 that have been repealed by Pub. L. No. 100–439. Specifically, Subpart A implemented section 315(a)(3) and provides that any new contract for the first sale of OCS gas that is new natural gas or high cost natural gas as defined in NGPA section 107(c) (1)–(4) must be for a duration of not less than 15 years or, if less, the commercially producible life of the reservoir.[3] Subpart B implemented section 315(b) and requires a first seller of gas sold under NGPA sections 102(c), 103(c), and 107(c) (1)–(4) to make a bona fide offer to the original purchaser for the continued sale of the gas before the expiration or termination of the contract covering the gas.[4]

Part 277 is being deleted in its entirety because that part of the regulations applies to the provisions of section 315 of the NGPA repealed by Pub. L. No. 100–439 and is no longer needed.

## III. Environmental Statement

Commission regulations require that an environmental assessment or an environmental impact statement must be prepared for any Commission action that may have a significant adverse effect on the human environment.[5] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment.[6] No environmental consideration is necessary for the promulgation of a rule that is clarifying, corrective, or procedural or that does not substantially change the effect of legislation or regulation being amended.[7] This final rule is corrective in nature. The rule simply deletes provisions from the Commission's regulations in response to a Congressional mandate.

## IV. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) [8] requires rulemakings to either contain a description and analysis of the impact the rule will have on small entities or certify that the rule will not have a significant economic impact on a substantial number of small entities. This final rule may have a significant impact on a substantial number of small entities. In effect, the Commission's rule will make interstate natural gas prices more market responsive by increasing competition and permit producers greater flexibility in selling natural gas supplies. The Commission believes this rule will have a beneficial impact on small entities, rather than a negative impact. The Commission concludes, therefore, that this impact will not be "significant" within the meaning of the RFA. Accordingly, the Commission certifies that this rule will not have a "significant economic impact on a substantial number of small entities."

## V. Paperwork Reduction Act

The Paperwork Reduction Act [9] and the Office of Management and Budget's (OMB) regulations [10] require that OMB approve certain information collection requirements imposed by agency rule. This final rule deletes certain information collection requirements no longer required in light of the Congressional mandate. The Commission is notifying the Office of Management and Budget that this information collection provision is no longer required.

## VI. Administrative Findings and Effective Date

The Administrative Procedure Act (APA) [11] requires rulemakings to be published in the **Federal Register**. The APA also mandates that an opportunity for comment be provided when an agency promulgates regulations. Notice and comment are not required under the APA when the "agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interests."[12] The Commission finds that notice and comment are unnecessary for this rulemaking. The Commission is merely deleting regulations that apply to provisions of the NGPA that have been repealed.

This final rule is procedural in nature. It deletes regulations no longer valid in light of recent Congressional action. The Commission, therefore, finds good cause to make this rule effective immediately upon issuance. This final rule is effective February 23, 1989.

[1] 18 CFR Part 277 (1988).

[2] Act approved September 22, 1988, Pub. L. No. 100–439, 102 Stat. 1720.

[3] *See* Regulation of Natural Gas Sales Under the Natural Gas Policy Act of 1978; High Cost Natural Gas or New Natural Gas Produced from any Reservoir on the Outer Continental Shelf, Order No. 4, 44 FR 46,454 (Aug. 8, 1979); FERC Stats. & Regs. [Regulations Preambles 1977–1981] ¶ 30,070 (Aug. 2, 1979).

[4] *See* Bona Fide Offers, Right of First Refusal, Order No. 95, 45 FR 53,116 (Aug. 11, 1980); FERC Stats. & Regs. [Regulations Preambles 1977–1981] ¶ 30,179 (July 28, 1980) and Order No. 95–A, 51 Fed. Reg. 7923 (Mar. 7, 1986); III FERC Stats. & Regs. ¶ 30,660 (Feb. 28, 1986).

[5] Regulations Implementing National Environmental Policy Act, 52 FR 47,897 (Dec. 17, 1987), FERC Stats. & Regs. ¶ 30,783 (Dec. 10, 1987).

[6] 18 CFR 380.4 (1988).

[7] 18 CFR 380.4(a)(2)(ii) (1988).

[8] 5 U.S.C. 601–612 (1982).

[9] 44 U.S.C. 3501–3520 (1982).

[10] 5 CFR 1320.13 (1988).

[11] 5 U.S.C. 551–559 (1982).

[12] 5 U.S.C. 553(b)(3)(B) (1982).



**List of Subjects in 18 CFR Part 277**

Continental shelf, Natural gas, Price controls, Reporting and recordkeeping requirements.

**PART 277—[REMOVED]**

Accordingly, the Commission under its rulemaking authority in 15 U.S.C. 3411 (1982) and 15 U.S.C. 717(o) (1982) amends Title 18, Chapter I of the Code of Federal Regulations by removing Part 277.

By the Commission.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 89–4756 Filed 2–28–89; 8:45 am]

BILLING CODE 6717-01-M

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## DEPARTMENT OF STATE

**Bureau of Consular Affairs**

**22 CFR Part 51**

**[108.681]**

## Denial of Passports to Certain Convicted Drug Traffickers

**AGENCY:** Department of State.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Department of State is issuing interim regulations to implement provisions of the Anti-Drug Abuse Act of 1988, Pub. L. 100–690. The interim regulations prescribe the conditions governing the issuance, denial or revocation of United States passports to individuals convicted of offenses violating Federal and state drug abuse laws where the individual used a U.S. passport or crossed an international border in committing the offense. The interim rule also makes technical, non-substantive conforming amendments to existing regulations governing the revocation and denial of passports in other cases.

**EFFECTIVE DATE:** March 1, 1989.

**DATE:** Comments must be submitted on or before May 1, 1989.

**ADDRESS:** Written comments may be sent to William B. Wharton, Director, Office of Citizenship Appeals and Legal Assistance, Passport Services, Department of State, Room 300, 1425 K Street, NW., Washington, DC 20524.

**FOR FURTHER INFORMATION CONTACT:** Bonnie Lea-Brown, Office of Citizenship Appeals and Legal Assistance, Telephone (202) 326–6213.

**SUPPLEMENTARY INFORMATION:** The Anti-Drug Abuse Act of 1988, Pub. L. 100–690, provides that a passport shall not be issued to or shall be revoked for an individual convicted of a Federal or state drug offense where the individual used a U.S. passport or crossed an international border in commiting the offense.

As reflected in the interim rule, it is contemplated that passport denial or revocation action shall be taken in all cases, except where the Secretary decides otherwise on emergency or humanitarian grounds, where the offense involved constitutes a felony as defined by section 4603(2)(e)(3) of the Act, and may be taken in all cases where the offense involved constitutes a misdemeanor as defined by state or Federal law. The Department recognizes that the use of a U.S. passport or crossing of an international border may not necessarily constitute an element of a Federal or state drug offense. Nonetheless, the Secretary must receive reliable information about one or both of these circumstances in order to take action under the interim rule. It should be noted, however, that the Department of State has regulations of general applicability that govern limitations on issuance or extension of passports. These existing regulations, which come into play wher. the Department receives a copy of a warrant or is otherwise informed of a warrant by a competent authority, apply to a broader range of criminal activity and do not require a showing that the criminal activity at issue involved the use of a U.S. passport or the crossing of an international border. As a result, denial or revocation of a passport of an individual contemplated by the interim rule may alternatively be taken under existing regulations.

The Department is also making non-substantive conforming amendments to 22 CFR Part 51 to reflect that, in keeping with established policy and procedure, passport denial or revocation action depends upon receipt by the Department from a competent authority of supporting information and documentation establishing to the satisfaction of the Department that an individual is subject to the regulations. This policy reflects the view of the Department that responsible judicial and law enforcement authorities are in the best position to identify individuals who should be subject to passport denial or revocation action. Finally, the interim rule provides that no administrative review shall be taken of a refusal on the part of the Secretary to grant a humanitarian or emergency exception. This approach is consistent with existing passport denial and revocation provisions, which provide for no emergency or humanitarian exceptions. As required by the Regulatory Flexibility Act (5 U.S.C. 301 et seq.), it is hereby certified that the iterim rule will not have a significant impact on small business entities. The provisions of the Paperwork Reduction Act (44 U.S.C. Ch. 35) apply.

**List of Subjects in 22 CFR Part 51**

Passports.

For the reasons set forth in the preamble, 22 CFR Part 51 is amended as follows:

**PART 51—PASSPORTS**

1. The authority citation for Part 51 is revised to read as follows:

**AUTHORITY:** 22 U.S.C. 2658 and 3926; sec. 1, 44 Stat. 887; sec. 1, 41 Stat. 750; sec. 4, 63 Stat. 111, as amended; 22 U.S.C. 211a, as amended, 2658; sec. 122 (d)(3), Pub. L. 98–164, 97 Stat. 1017; E.O. 11295, 36 FR 10603; 3 CFR 1966–70 Comp. p. 507; Pub. L. 100–690.

2. Section 51.70 is revised to read as follows:

**§ 51.70 Denial of passports.**

(a) A passport, except for direct return to the United States, shall not be issued in any case in which the Secretary of State determines or is informed by competent authority that:

(1) The applicant is the subject of an outstanding Federal warrant of arrest for a felony, including a warrant issued under the Federal Fugitive Felon Act (18 U.S.C. 1073); or

(2) The applicant is subject to a criminal court order, condition of probation, or condition of parole, any of which forbids departure from the United States and the violation of which could result in the issuance of a Federal warrant of arrest, including a warrant issued under the Federal Fugitive Felon Act; or

(3) The applicant is subject to a court order committing him or her to a mental institution; or

(4) The applicant is the subject of a request for extradition or provisional arrest for extradition which has been presented to the government of a foreign country; or

(5) The applicant is the subject of a subpoena issued pursuant to section 1783 of Title 28, United States Code, in a matter involving Federal prosecution for, or grand jury investigation of, a felony; or

(6) The applicant has not repaid a loan received from the United States as prescribed under §§ 71.10 and 71.11 of this chapter; or

(7) The applicant is in default on a loan received from the United States to

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effectuate his or her return from a foreign country in the course of travel abroad.

(b) A passport may be refused in any case in which the Secretary of State determines or is informed by competent authority that:

(1) The applicant has not repaid a loan received from the United States to effectuate his or her return from a foreign country in the course of travel abroad; or

(2) The applicant has been legally declared incompetent, unless accompanied on his or her travel abroad by the guardian or other person responsible for the national's custody and well being; or

(3) The applicant is under the age of 18 years, unmarried and not in the military service of the United States unless a person having legal custody of such national authorizes issuance of the passport and agrees to reimburse the United States for any monies advanced by the United States for the minor to return to the United States; or

(4) The Secretary determines that the national's activities abroad are causing or are likely to cause serious damage to the national security or the foreign policy of the United States; or

(5) The applicant has been the subject of a prior adverse action under this section or § 51.71 and has not shown that a change in circumstances since the adverse action warrants issuance of a passport; or

(6) The applicant is subject to an order of restraint or apprehension issued by an appropriate officer of the United States Armed Forces pursuant to Chapter 47 of Title 10 of the United States Code.

(Approved by the Office of Management and Budget under control number 1405-0077)

3. A new § 51.71 is inserted after section 51.70 and reads as follows:

**§ 51.71 Denial of passports to certain convicted drug traffickers.**

(a) A passport shall not be issued in any case in which the Secretary of State determines or is informed by competent authority that the applicant is subject to imprisonment or supervised release as the result of a felony conviction for a Federal or state drug offense if the individual used a U.S. passport or otherwise crossed an international border in committing the offense, including a felony conviction arising under:

(1) The Controlled Substances Act (21 U.S.C. 801 et seq.) or the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.); or

(2) Any Federal law involving controlled substances as defined in section 802 of the Controlled Substances Act (21 U.S.C. 801 et seq.); or

(3) The Bank Secrecy Act (31 U.S.C. 5311 et seq.) or the Money Laundering Act (18 U.S.C. 1956 et seq.) if the Secretary of State is in receipt of information that supports the determination that the violation involved is related to illicit production of or trafficking in a controlled substance; or

(4) Any state law involving the manufacture, distribution, or possession of a controlled substance.

(b) A passport may be refused in any case in which the Secretary of State determines or is informed by competent authority that the applicant is subject to imprisonment or supervised release as the result of a misdemeanor conviction of a Federal or state drug offense if the individual used a U.S. passport or otherwise crossed an international border in committing the offense, other than a first conviction for possession of a controlled substance, including a misdemeanor conviction arising under:

(1) The federal statutes described in section 51.71 (a); or

(2) Any state law involving the manufacture, distribution, or possession of a controlled substance.

(c) Notwithstanding subsections (a) and (b), the Secretary of State may issue a passport when the competent authority confirms, or the Secretary of State otherwise finds, that emergency circumstances or humanitarian reasons exist.

(Approved by the Office of Management and Budget under control number 1405-0077)

**§ 51.71 [Redesignated as § 51.72]**

4. Current § 51.71 is redesignated as § 51.72 and is revised to read as follows:

**§ 51.72 Revocation or restriction of passports.**

A passport may be revoked or restricted or limited where:

(a) The national would not be entitled to issuance of a new passport under § 51.70 or § 51.71; or

(b) The passport has been obtained by fraud, or has been fraudulently altered, or has been fraudulently misused.

**§ 51.72 [Redesignated as § 51.73]**

5. Current section 51.72 is redesignated as section 51.73.

**§ 51.73 [Redesignated as § 51.74]**

6. Current section 51.73 is renumbered as section 51.74.

7. Current section 51.80 is revised to read as follows:

**§ 51.80 Applicability of §§ 51.81 through 51.89.**

The provisions of §§ 51.81 through 51.89 apply to any action of the Secretary taken on an individual basis in denying, restricting, revoking or invalidating a passport or in any other way adversely affecting the ability of a person to receive or use a passport except action taken by reason of noncitizenship, refusal to grant a discretionary exception under the emergency or humanitarian relief provisions of § 51.71(c) or refusal to grant a discretionary exception from geographical limitations of general applicability. The provisions of this subpart shall constitute the administrative remedies provided by the Department to persons who are the subject of adverse action under §§ 51.70, 51.71 or 51.72.

(The information collection implications contained in this rule have been approved by OMB (1405-0077, 6/90))

Joan M. Clark,

*Assistant Secretary for Consular Affairs.*

December 19, 1988.

[FR Doc. 89-4563 Filed 2-28-89; 8:45 am]

BILLING CODE 4710-06-M

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## DEPARTMENT OF THE TREASURY

### Fiscal Service

### 31 CFR Parts 203 and 214

### Treasury Tax and Loan Depositaries, Depositaries for Federal Taxes

**AGENCY:** Financial Management Service, Fiscal Service, Treasury.

**ACTION:** Final rule.

**SUMMARY:** This rule (1) amends the Treasury regulations on paying fees to financial institutions for maintaining Treasury Tax and Loan (TT&L) accounts and processing Federal tax deposit (FTD) payments by removing specific references to the FTD fee structure from 31 CFR Parts 203 and 214 and transferring the fee schedule to the "Treasury Financial Manual" and (2) revises Treasury procedures to reduce the fees paid to depositaries for processing FTD payments. Treasury is reducing the current per-item fee structure for large depositaries that process FTD dollar deposit volumes in excess of $10 million annually. The affected depositaries include depositaries in the remittance option Class 1 category and the note option Class B and Class C categories. Until further evaluation is completed, fee reductions will not be implemented for depositaries that process the smaller FTD dollar deposit volumes (depositaries in the note option Class A category and remittance option Class 2 category) or any depositary that participates in the Federal Government's Minority Bank Deposit Program (MBDP).

Treasury finds, for good cause, that a delay in the rule's effective date would be contrary to the important public interest of meeting budgetary constraints imposed on the Financial Management Service. *See* S. Rep. No. 387, 100th Cong., 2d Sess. 16 (1988). Thus, this rule shall be effective upon publication as a final rule in the **Federal Register**. The fee reduction is effective with the Federal Reserve Banks' March reporting cycle which begins March 2, 1989.

**EFFECTIVE DATE:** March 2, 1989.

**FOR FURTHER INFORMATION CONTACT:** Michael C. Salapka at (202) 287-0590.

**SUPPLEMENTARY INFORMATION:** On January 3, 1989, Treasury published a notice of proposed rulemaking concerning the amendment in the **Federal Register** [54 FR 40]. In the notice of proposed rulemaking, interested persons were given until February 2, 1989, to submit comments.

### Discussion of Final Rule and Comments

In order to achieve budget reductions in Fiscal Year 1989, Treasury is reducing the per-item fee paid to the large note option and remittance option depositaries from the current fifty ($0.50) cents per Federal tax deposit coupon processed to thirty ($0.30) centes for each Federal tax deposit coupon processed. Payment of fees for processing FTD payments is not required by statute. Therefore, Treasury is transferring these administrative procedures to the "Treasury Financial Manual." This manual may be obtained from any Federal Reserve Bank.

Four comments were timely received and a fifth comment was received after the comment period had expired. The first comment was from an association representing the interest of independent banks. The request regarded clarification on the effect of the fee reduction on the note option depositaries. Specifically, the association inquired as to the size of depositaries which would be affected. Treasury responded that fees would not be reduced for the depositaries processing less than $10 million annually in Federal tax deposit volume or any depositary participating in the MBDP.

The second comment was received from an association of banking institutions. It addressed the cost associated with accepting Federal tax deposits. The association suggested that depositaries processing the largest dollar deposit volumes incur increased processing risks. Furthermore, the association requested that depositaries be given the option of recovering their processing costs from their customers by charging a fee for handling Federal tax deposits. The association acknowledged that depositaries receive compensation for handling costs from the Treasury fee paid for each FTD coupon processed and the overnight use of deposited funds.

The intent of Treasury's policy is to reduce fees for the largest depositaries because they are in a more favorable position to accommodate the change in fee structure than the smaller depositaries. The larger depositaries process the largest dollar deposit volumes and generally benefit most from the overnight use of Federal funds. Regarding processing risks it should be noted that current regulations provide that depositaries may at their discretion accept checks drawn on another financial institution, but they do so purely on a voluntary basis. 31 CFR 214.6(a)(1).

Regarding processing costs, the association suggested that depositaries recover processing costs from their customers. This issue was not addressed in the proposed rule. Current regulations forbid depositaries to accept compensation from taxpayers for accepting deposits of Federal taxes and handling them. 31 CFR 214.6(a)(7). Treasury has determined, as a policy matter, that amending this regulation to allow depositaries to charge taxpayers for providing this service is not appropriate at this time: The proposed rule did not speak to this provision of concern to the association and it will be reviewed independently for consideration of its continued validity.

The third comment was from an association representing independent community banks opposing the removal of the fee schedule from the CFR. The association stated that Treasury should be required to consider the bookkeeping and maintenance costs of banks when establishing its fee structure. The association cited results of a survey among community banks with assets ranging from $10 million to $100 million and stated that the costs to process FTD payments ranged from $1.05 to $0.35 per item. The survey indicated that costs declined as the size of the institution increased. The association stressed that current fees do not fully compensate many community banks and that a reduction in fees would be a hardship for smaller institutions.

Treasury has determined, as a policy matter, to transfer the administrative procedures concerning payment of fees for processing FTD payments to the "Treasury Financial Manual." However, this change will not preclude public comment. It is the Department of the Treasury's intent to announce future rate changes prior to their effective date and allow opportunity for public comment.

There are three reasons for Treasury's policy regarding FTD payments. First, budget constraints imposed on the Financial Management Service preclude paying higher fees to depositaries. Second, depositaries that choose to participate in the Treasury Tax and Loan program earn interest on the overnight use of Federal funds deposited as Federal tax payments. Third, Treasury has determined that the larger depositaries are in a better position to accommodate the fee reduction.

The fourth comment was received from an association representing approximately 3,000 savings associations and savings bank businesses. The comment suggested that the Treasury and depositaries should work together to establish a systematic and unbiased method for deriving an annual fee and that a precise formula should be developed and approved through the public comment process. Furthermore, the association suggested that to arrive at an appropriate profit margin, the Treasury should convene a task force comprised of financial industry representatives and others to set the rate and publish it in the **Federal Register** for comment. As stated above, budget constraints preclude Treasury from paying higher fees. In addition, Treasury estimates the earning capacity of depositaries from the overnight use of Federal tax deposit funds during Fiscal Year 1988 was approximately $142 million. This estimate is based on the FY 1988 Federal tax deposit dollar volume cited in the "Daily Treasury Statement" dated September 30, 1988. Furthermore, Treasury estimates that implementing the new fee structure will save the Treasury $6 million in Fiscal Year 1989.

The fifth comment was received from a savings bank. The bank stated that the Treasury proposal to reduce fees ignores the cost of the processing risk associated with accepting Federal tax deposits and the fifth ($.50) cent fee does not cover the bank's actual processing cost. The bank suggested removing the restriction which prohibits depositaries from accepting compensation from taxpayers to allow

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banks to cover their processing costs. These issues were addressed in Treasury's response to the second comment. See discussion above.

There are no substantive differences between the proposed rule and final rule. Subsequent to the publication of the proposed rule, Treasury increased the threshold between the note option Class A and Class B categories to $10 million in annual Federal tax deposit dollar volume. As a consequence of this policy decision, fewer note option depositaries are affected by the fee reduction than originally estimated. The threshold between the remittance option Class 1 and Class 2 categories is also increased to $10 million.

Treasury is reducing fees paid to all depositaries that process over $10 million in Federal tax deposit dollar volume annually, regardless of classification as note option or remittance option depositaries. However, there is an exception for the MBDP participants. MBDP participants are not affected by the fee reduction. Fee reductions for depositaries that process the smaller FTD dollar deposit volumes and depositaries that participate in the MBDP are under review. Treasury will decide at a later date when fee reductions, if any, will be implemented for the smaller depositaries and MBDP depositaries. The new and any subsequent fee schedules will be published in the "Treasury Financial Manual" and an opportunity will be afforded for public comment prior to further reductions becoming final.

**Economic Assessment and Certification**

Approximately 3,400 financial institutions participate as note option depositaries while greater than 11,600 financial institutions participate as remittance option depositaries. Treasury estimates that approximately 4,000 financial institutions will be affected by the fee reduction. The larger financial institutions process the largest dollar deposit volumes and generally benefit most from the overnight use of Federal funds. Therefore, Treasury has determined that the initial fee reduction will be limited to those depositaries that process over $10 million in FTD deposits annually.

Distribution of the revised "Treasury Financial Manual" to the Federal Reserve banks and TT&L depositaries will be coordinated with the regulation revisions.

Treasury has determined that this is not a major rule as defined by Executive Order 12291. Accordingly, a regulatory impact analysis is not required. It is hereby certified pursuant to the Regulatory Flexibility Act that this rule will not have a significant economic impact on a substantial number of small entities. Accordingly, a Regulatory Flexibility Act analysis is not required.

**List of Subjects**

*31 CFR Part 203*

Banks, Banking, Taxes.

*31 CFR Part 214*

Banks, Banking, Taxes.

For the reasons set out in the preamble, Title 31, Part 203 and Part 214 of the Code of Federal Regulations, is amended as set forth below.

**PART 203—[AMENDED]**

1. The authority citation for Part 203 is revised to read as follows:

**Authority:** 31 U.S.C. 3122 and 31 U.S.C. 323.

2. Section 203.10(b)(2)(ii) is revised to read as follows:

**§ 203.10 [Amended]**

* * * * *

(b) * * *

(2) * * *

(ii) Analysis credit. All tax and loan balances which are in excess of a current day's credits will be subject to an analysis credit, as explained in the Procedural Instructions for Treasury Tax and Loan Depositaries.

3. Section 203.14 is revised to read as follows:

**§ 203.14 Compensation for services rendered.**

Except as provided in the Procedural Instructions for Treasury Tax and Loan Depositaries, Depositaries will not be compensated for servicing the tax and loan account or for the bookkeeping costs of maintaining that account.

**PART 214—[AMENDED]**

1. The authority citation for Part 214 is revised to read as follows:

**Authority:** 12 U.S.C. § 265; 12 U.S.C. 391; 31 U.S.C. 3122; 31 U.S.C. 323.

**§ 214.6 [Amended]**

2. Section 214.6 is amended by revising paragraph (b) as follows:

* * * * *

(b) Compensation for services. Except as provided in the Procedural Instructions for Treasury Tax and Loan Depositaries, Depositaries will not be compensated for servicing the tax and loan account or for the bookkeeping costs of maintaining that account.

**W. E. Douglas,**

*Commissioner.*

[FR Doc. 89-4612 Filed 2-28-89; 8:45 am]

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**DEPARTMENT OF DEFENSE**

**Office of the Secretary**

**32 CFR Part 383**

**[DoD Directive 5128.1]**

**Assistant Secretary of Defense (Production and Logistics); Establishment**

**AGENCY:** Department of Defense.

**ACTION:** Final rule.

**SUMMARY:** This part documents the establishment of the Assistant Secretary of Defense (Production and Logistics) and identifies the responsibilities, functions, relationships, and authorities of the Assistant Secretary of Defense (Production and Logistics).

**EFFECTIVE DATE:** February 1, 1989.

**FOR FURTHER INFORMATION CONTACT:** Mr. H. Becker, Office of the Director for Administration and Management, Washington, DC 20301-1155, telephone 202-697-0709.

**SUPPLEMENTARY INFORMATION:**

**List of Subjects in 32 CFR Part 383**

Organization and management.

Accordingly, Title 32, Chapter I, Subchapter R, is amended to add Part 383 as follows:

**PART 383—ASSISTANT SECRETARY OF DEFENSE (PRODUCTION AND LOGISTICS)**

Sec.
383.1 Purpose.
383.2 Definition.
383.3 Responsibilities.
383.4 Functions.
383.5 Relationships.
383.6 Authorities.
Appendix—Delegations of Authority.

**Authority:** 10 U.S.C. 136.

**§ 383.1 Purpose.**

This part is issued pursuant to the authority vested in the Secretary of Defense under 10 U.S.C.

(a) Designates one of the positions of Assistant Secretary of Defense as the Assistant Secretary of Defense (Production and Logistics) (ASD(P&L)) under the direction, authority, and control of the Under Secretary of Defense (Acquisition) (USD(A)).



(b) Assigns responsibilities, functions, relationships, and authorities, as prescribed herein, to the ASD(P&L).

**§ 383.2 Definition.**

*DoD Components.* The Office of the Secretary of Defense (OSD), the Military Departments, the Joints Chiefs of Staff (JCS), the Joint Staff, the Unified and Specified Commands, the Office of the Inspector General of the Department of Defense (OIG, DoD), and the Defense Agencies, and the DoD Field Activities.

**§ 383.3 Responsibilities.**

The *Assistant Secretary of Defense (Production and Logistics)* (ASD(P&L)) is the Principal Staff Assistant and advisor to the USD(A) for management of DoD procurement, production, the National Defense Stockpile, logistics, installations, environmental programs, Total Quality Management, and other related matters. In this capacity, the ASD(P&L) shall:

(a) Develop policies, conduct analyses, provide advice, make recommendations, and issue guidance on DoD plans, programs, and requirements determinations.

(b) Develop systems and standards for the administration and management of approved DoD plans, programs, and policies.

(c) Develop and promulgate plans, programs, actions, and taskings to ensure adherence to DoD policies and national security objectives.

(d) Review and evaluate DoD Component plans and programs to ensure adherence to approved policies and standards.

(e) Participate in all aspects of the Defense Acquisition System.

(f) Participate in planning, programming, budgeting, and followup activities.

(g) Develop functional requirements, plans, and programs to achieve interoperability among modernized DoD production and logistics information systems.

(h) Participate in all aspects of production and logistics automated information system (AIS) life-cycle management, major AIS reviews, and major AIS approval processes.

(i) Promote coordination, cooperation, and mutual understanding, both inside and outside of the Department of Defense, including oversight and policy information for, and implementation of, agreements with allied and other friendly nations in coordination with the Under Secretary of Defense (Policy) (USD(P)).

(j) Serve as primary focal point and principal DoD spokesman for, and serve on, boards, committees, and other groups pertaining to assigned functional areas.

(k) Develop, coordinate, and maintain regulations as necessary and appropriate to implement the acquisition regulatory responsibilities of the Secretary of Defense and the USD(A).

(l) Perform other duties as the Secretary of Defense and the USD(A) prescribe.

**§ 383.4 Functions.**

The ASD(P&L) shall carry out the responsibilities described in § 383.3 for the following functional areas:

(a) Maintenance and administration of the Federal Acquisition Regulation (FAR) and the Defense FAR Supplement (DFARS) and other implementations thereto within the Department of Defense.

(b) Contract policy, administration, cost, pricing, and finance.

(c) Transition to production planning and production management.

(d) Materiel and facilities readiness and sustainability.

(e) Management of the National Defense Stockpile.

(f) Total Quality Management.

(g) Defense Standardization and Specification Program.

(h) Technical data management.

(i) Acquisition logistics, including Integrated Logistics Support, post production support, and weapon support assessment.

(j) Support systems acquisition and technology requirements.

(k) Computer-aided Acquisition and Logistics Support.

(l) International logistics and military construction agreements, in coordination with the USD(P).

(m) Supply, warehousing, and distribution management.

(n) Materiel maintenance management, including repair, overhaul, modification installation, and preventive maintenance of weapon systems, equipment, secondary items, and munitions.

(o) Transportation (including airlift and sealift) and traffic management.

(p) Energy management and petroleum logistics.

(q) Host-nation support.

(r) Mobilization planning guidance for military installations and logistics.

(s) Installation management and real property planning, design, acquisition, maintenance, and disposal.

(t) Military base structure and utilization.

(u) Construction, including construction funded by host nations under the North Atlantic Treaty Organization (NATO) Infrastructure Program.

(v) Commercial activities and Defense Regional Inter-Service Support Programs.

(w) Environmental quality and natural resources management.

(x) Postal services and customs inspection.

(y) Planning and life-cycle management of all technological aspects of modernization within the Department of Defense of automated information systems associated with the preceding functions.

**§ 383.5 Relationships.**

(a) In the performance of assigned functions, the ASD(P&L) shall:

(1) Coordinate and exchange information with other officials in the Department of Defense exercising collateral or related functions.

(2) Use existing systems, facilities, and services of the Department of Defense and other Federal agencies, whenever practicable, to achieve maximum efficiency and economy.

(b) Other OSD officials and heads of DoD Components shall coordinate with the ASD(P&L) on all matters related to the functions cited in § 383.4.

**§ 383.6 Authorities.**

The ASD(P&L) is hereby delegated authority to:

(a) Issue DoD Instructions, DoD publications, and one-time directive-type memoranda, consistent with DoD Directive 5025.1-M, that implement policies approved by the Secretary of Defense in the functions assigned to the ASD(P&L). Instructions to the Military Departments shall be issued through the Secretaries of those Departments or their designees. Instructions to Unified and Specified Commands shall be issued through the Chairman, JCS (CJCS).

(b) Obtain reports, information, advice, and assistance, consistent with DoD Directive 7750.5, as necessary in carrying out assigned functions.

(c) Communicate directly with the heads of DoD Components. Communications to Commanders of the Unified and Specified Commands shall be coordinated with the CJCS.

(d) Establish arrangements for DoD participation in nondefense governmental programs for which the ASD(P&L) is assigned primary DoD cognizance.

(e) Communicate with other Government Agencies, representatives of the legislative branch, and members of the public, as appropriate, in carrying out assigned functions.

(f) Exercise authorities contained in the Appendix to this part.

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**Appendix—Delegations of Authority**

Pursuant to the authority vested in the Secretary of Defense, and subject to his direction, authority, and control of the USD(A), and in accordance with DoD policies, Directives, and Instructions, the ASD(P&L) or, in the absence of the ASD(P&L), the person acting for the ASD(P&L), is hereby delegated authority to:

1. Make determinations and decisions regarding contracts, leases, and sales agreements, and take other appropriate actions in the maintenance and monitoring of DoD procurement regulations as delegated by the Defense Acquisition Executive and/or Procurement Executive.

2. Act for the Secretary of Defense on delegations of authority to him by the U.S. Trade Representative to waive the prohibition against procurement from certain countries, pursuant to Title 3 U.S.C., Pub. L. 96–39, Trade Agreements Act of 1979 (19 U.S.C. 2511 *et seq.*), and E.O. 12260, July 26, 1979.

3. Act for the Secretary of Defense in the establishment and granting of waivers under the Buy American Act (41 U.S.C. 10a–b).

4. Act for the Secretary of Defense in the exercise of extraordinary contractual action authority under Pub. L. 85–804, an act to authorize the making, amendment, and modification of contracts to facilitate the national defense, August 28, 1958, in accordance with E.O. 10789, November 14, 1958, as amended, and Part 50 of the Federal Acquisition Regulation.

5. Act for the Secretary of Defense in managing the Competition Advocate Program throughout the Department of Defense (Pub. L. 98–191, the Office of Federal Procurement Policy Act, December 1, 1983, as amended by Pub. L. 98–369, the Competition in Contracting Act, July 18, 1984).

6. Exercise all responsibilities and authority of the Secretary of Defense under Title 10, United States Code, section 2404, with respect to the acquisition of petroleum (DoD Instruction 4220.8, December 20, 1985).

7. Exercise all responsibilities and authority of the Secretary of Defense under Title 10, United States Code, section 2394, with respect to geothermal resources or contracts for the provision and operation of energy production facilities in accordance with Secretary of Defense Memorandum, December 4, 1982.

8. Exercise all authorities delegated to the Secretary of Defense by E.O. 12626, February 25, 1988, concerning management of the National Defense Stockpile.

9. Act for the Secretary of Defense as the DoD claimant to other designated executive departments and agencies for petroleum requirements and allocations in an emergency (DoD Directive 4140.25, May 15, 1980).

10. Act for the Secretary of Defense regarding implementing the provision of 10 U.S.C. 2325 concerning preference for non-developmental items (DoD Directive 5000.37, September 29, 1978).

11. Establish uniform policies and procedures relating to cataloging and standardization of equipment and supplies under Title 10, United States Code, Chapter 145, and other statutes.

12. Implement the agreement between the General Services Administration and the Department of Defense on supply management relationships under the national supply system (DoD Directive 5030.47, May 27, 1971).

13. Act for the Secretary of Defense in establishing and administering policy guidance for DoD Components concerning the efficient and effective use of DoD storage and warehousing resources (DoD Directive 4145.19, August 13, 1975).

14. Act for the Secretary of Defense in the exercise of authority delegated by the Administrator of General Services to dispose of surplus personal property and to waive prescribed demilitarization requirements under DoD Directive 4160.21 December 5, 1980.

15. Make determinations regarding the donation of suplus personal property to educational activities of special interest to the Armed Forces of the United States, as prescribed in DoD Directive 4160.25, April 30, 1984.

16. Act for the Secretary of Defense to approve the disposal of foreign excess property for substantial benefits or the discharge of claims when it is determined to be in the interest of the United States (DoD Instruction 4160.24, July 24, 1981).

17. Act for the Secretary of Defense in the establishment and administration of policy and guidance governing emergency requirements allocations, priorities, and permits for the use of civil transportation within the continental United States (DoD Directive 3005.7, May 30, 1985).

18. Act for, and exercise the powers of, the Secretary of Defense concerning requests for waiver of the navigation and vessel inspection laws of the United States under Pub. L. 61–801, December 27, 1950 (64 Stat. 1120), except on those matters that have been delegated by the Secretary of Defense to the Secretary of the Army, as prescribed in DoD Directive 5100.21, October 30, 1980.

19. Act for the Secretary of Defense in the field of transportation and traffic management under Title II, section 201(a) of the Federal Property and Administrative Services Act of 1949, June 30, 1949, as amended (40 U.S.C. 481(a)) (DoD Directive 5126.9, June 18, 1979).

20. Act of the Secretary of Defense in establishing policies and providing guidance to DoD Components concerning the efficient and effective use of DoD and commercial transportation resources and the establishment and operation of Transportation Single Manager Agencies (DoD Directive 4500.9, June 26, 1978).

21. Act for the Secretary of Defense regarding DoD participation in, or initiation of, proceedings before transportation regulatory bodies (DoD Instruction 4500.17, January 16, 1969).

22. Serve for the Secretary of Defense as the primary DoD focal point for energy matters and establish an office to discharge this responsibility in accordance with Deputy Secretary of Defense Memorandum, November 17, 1973, as amended by Deputy Secretary of Defense Memorandum, January 21, 1974, as amended by Secretary of Defense Memorandum, August 26, 1974.

Make recommendations to the Department of Energy in connection with facilities for transmission of electric energy and natural gas across borders of the United States, pursuant to the authority given the Secretary of Defense in E.O. 10485, September 5, 1953, as amended by E.O. 12038, February 3, 1978.

24. Pursuant to pertinent provisions of Title 10, United States Code, establish and grant waivers to uniform policies and procedures and review and approve programs and specific projects of DoD Components relating to the design, acquisition, construction, operation, maintenance, and disposal of DoD facilities, and the protection of the natural environment in and around DoD facilities.

25. Act for the Secretary of Defense in managing the execution of all overseas military construction, including the provision of guidance and coordination regarding DoD participation in the NATO Infrastructure Program, as prescribed in DoD Directive 2010.5, March 19, 1965. Establish and chair (a) a permanent European Steering Group whose function is the coordination of all long-range facilities planning and interface of U.S.-funded construction in Europe with the NATO Infrastructure Program, and (b) a Southwest Asia Steering Group in order to resolve major Southwest Asia military construction program planning and execution issues in a rapid and coordinated manner.

26. Act of the Secretary of Defense in the implementation of OMB Circular No. A–76, "Performance of Commercial Activities," as revised, August 4, 1983 (DoD Directive 4100.15, August 12, 1985).

27. Act for, and exercise the powers of, the Secretary of Defense concerning requests for waiver of statutory restrictions on core logistics activities (Section 307, Pub. L. 98–525, October 19, 1984; as amended by section 1231, Pub. L. 99–145, November 8, 1985).

28. Exercise all authorities delegated to the Secretary of Defense by E.O. 12580, January 23, 1987, concerning responses to releases of hazardous substances for DoD facilities and vessels under the Comprehensive Environmental Response Compensation and Liability Act (42 U.S.C. 9601, *et seq.*), as amended by the Superfund Amendments and Reauthorization Act (Pub. L. 99–499, October 17, 1986).

29. Exercise all responsibilities and authority of the Secretary of Defense under Title 10, United States Codes, section 2701, *et seq.*, regarding conduct of the Defense Environmental Restoration Program. The ASD(P&L) may redelegate these authorities, as appropriate, and in writing, except as otherwise specifically indicated above or prohibited by law or regulation.

February 23, 1989.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 89–4707 Filed 2–28–89; 8:45am]

BILLING CODE 3810–01–M



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[FRL–3529–2]**

**Approval and Promulgation of State Implementation Plans; Alaska**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** By this notice, EPA is approving revisions to the State of Alaska Department of Environmental Conservation (ADEC) rules for stack heights and dispersion techniques which were submitted on June 26, 1987, as a revision to the Alaska state implementation plan (SIP). These revisions were submitted to satisfy the requirements of section 123 (Stack Heights) of the Clean Air Act (hereinafter referred to as the Act).

**EFFECTIVE DATE:** May 1, 1989.

**ADDRESSES:** Copies of the materials submitted to EPA may be examined during normal business hours at:

Public Information Reference Unit, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Air Programs Branch, Docket #10A–87–12, Environmental Protection Agency, 1200 Sixth Avenue AT–082, Seattle, Washington 98101.

State of Alaska, Department of Environmental Conservation, 3220 Hospital Drive, Juneau, Alaska 99811.

**FOR FURTHER INFORMATION CONTACT:** David C. Bray, Air Programs Branch AT–082, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101, Telephone: (206) 442–4253, FTS: 399–4253.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On July 5, 1983 (48 FR 30823), EPA approved Alaska Department of Environmental Conservation (ADEC) rules which restricted the use of stack heights and dispersion techniques in accordance with section 123 of the Act. EPA determined that these rules satisfied the requirements of its stack height regulations as promulgated on February 8, 1982 (47 FR 5864). On July 8, 1985 (50 FR 27892) EPA promulgated revisions to its 1983 stack height regulations.

In response to the revised regulations, on June 26, 1987, ADEC submitted revised rules regulating the use of stack heights and dispersion techniques as a revision to the State of Alaska implementation plan (SIP).

On December 28, 1987 (52 FR 48837) and corrected on January 15, 1988 (53 FR 1043), EPA proposed to approve the revisions to ADEC's rules and provided a 30-day public comment period on this proposed approval. No comments were received.

EPA's stack height regulations were challenged in *NRDC v. Thomas*, 838 F.2d 1224 (D.C. Cir. 1988). On January 22, 1988, the U.S. Court of Appeals for the D.C. Circuit issued its decision affirming the regulations in large part, but remanding three provisions of EPA for reconsideration. These are:

1. Grandfathering pre-October 11, 1983, within-formula stack height increases from demonstration requirements [40 CFR 51.100(kk)(2)];

2. Dispersion credit for sources originally designed and constructed with merged or multiflue stacks [40 CFR 51.100(hh)(2)(ii)(A)]; and

3. Grandfathering pre-1979 use of the refined H + 1.5L formula [40 CFR 51.100(ii)(2)].

**II. Final Rulemaking Action**

Today, EPA is approving revisions to the ADEC rules regulating the height of stacks and the use of dispersion techniques as a revision to the Alaska SIP.

Although EPA is generally approving ADEC's stack height rules on the grounds that they satisfy 40 CFR Part 51, EPA is also providing notice that this action may be subject to modification when EPA completes rulemaking to respond to the decision in *NRDC v. Thomas*, 838 F. 2d 1224 (D.C. Cir. 1988). If EPA's response to the *NRDC* remand modifies the July 8, 1985 regulations, EPA will notify the ADEC that its rules must be changed to comport with EPA's modified requirements. This may result in revised emission limitations or may affect other actions taken by ADEC and source owners or operators.

**III. Administrative Review**

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under 5 U.S.C. 605(b) I certify that this revision will not have a significant economic impact on a substantial number of small entities (See 46 FR 8709).

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 1, 1989. This action may not be challenged later in proceedings to enforce its requirements (see 307(b)(2)).

**List of Subjects 40 CFR Part 52**

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by Reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and Recordkeeping requirements, Sulfur oxides.

Date: February 21, 1989.

**William K. Reilly,**

*Administrator.*

**Note:** Incorporation by reference of the State Implementation Plan for the State of Alaska was approved by the Director of the Federal Register on July 1, 1982.

Title 40, Part 52 of the Code of Federal Regulations is amended as follows:

**PART 52—[AMENDED]**

**Subpart C—Alaska**

1. The authority citation for Part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401–7642.

2. Section 52.70 is amended by adding paragraph (c)(14) to read as follows:

**§ 52.70 Identification of plan.**

* * * * *

(c) * * *

(14) On June 26, 1987, the Commissioner of the Alaska Department of Environmental Conservation submitted revised rules regulating the height of stacks and the use of dispersion techniques, specifically revisions to 18 AAC 50.400(a), 18 AAC 50.530(c), 18 AAC 50.900(16), 18 AAC 50.900(20), 18 AAC 50.900(23), and 18 AAC 50.900.(29), and the deletion of 18 AAC 50.900(17).

(i) Incorporation by Reference.

(A) June 26, 1987 letter from the State of Alaska Department of Environmental Conservation to EPA, Region 10.

(B) August 11, 1987 letter from the State of Alaska Department of Environmental Conservation to EPA, Region 10.

(C) 18 AAC 50.400(a) and 18 AAC 50.900 (16), (20), (23), and (29) as adopted by the State of Alaska Department of Environmental Conservation on December 31, 1986.

3. Section 52.75 is revised to read as follows:

**§ 52.75 Contents of the approved State-submitted implementation plan.**

The following sections of the State air quality control plan (as amended on the dates indicated) have been approved and are part of the current State Implementation Plan:

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[FR Doc. 89–4450 Filed 2–28–89; 8:45 am]
BILLING CODE 6560–50–M

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**40 CFR Part 52**

**[FRL 3527–6]**

## Approval and Promulgation of Implementation Plans; Oregon

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** EPA today approves a new section 025 "Conflict of Interest" in Title 12 "Duties and Powers of Board and Director" of the Lane Regional Air Pollution Authority (LRAPA) rules, as a revision to the Oregon state implementation plan (SIP). This revision was adopted by LRAPA and submitted to the Oregon Department of Environmental Quality (ODEQ), which in turn adopted the new section as a revision to the Oregon Administrative Rules, Chapter 340, Division 20, section 047. On September 28, 1988, the ODEQ submitted the new section to EPA as a revision to the Oregon SIP in order to comply with the requirements of section 128 (State Boards) of the federal Clean Air Act (hereinafter the Act).

**EFFECTIVE DATE:** This action will be effective on May 1, 1989 unless notice is received before March 31, 1989 that someone wishes to submit adverse or critical comments. If such notice is received, EPA will open a formal 30-day comment period on this action.

**ADDRESSES:** Copies of material submitted to EPA may be examined during normal business hours at the following locations:

Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.
Air Programs Branch, Environmental Protection Agency, Docket 10A–88–9, 1200 Sixth Avenue AT–082, Seattle, Washington 98101.
State of Oregon, Department of Environmental Quality, 811 SW Sixth Avenue, Portland, Oregon 97204–1390.

Comments should be addressed to: Laurie M. Kral, Air Programs Branch AT–082, Environmental Protection Agency, 1200 Sixth Avenue (Docket #10A–88–9), Seattle, Washington 98101.

**FOR FURTHER INFORMATION CONTACT:** David C. Bray, Air Programs Branch AT–082, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101, Telephone: (206) 442–4253, FTS: 399–4253.

**SUPPLEMENTARY INFORMATION:**

### I. Background

The August 7, 1977, amendments to the Clean Air Act included a new section 128 "State Boards," which requires each SIP to contain provisions which ensure that (1) any board or body which approves permits or enforcement orders under the Act shall have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits or enforcement orders under the Act, and (2) any potential conflicts of interest by members of such board or body, or the head of executive agency with similar powers, be adequately disclosed.

On August 25, 1987 (52 FR 32009), EPA approved State of Oregon rules for conflict of interest of state boards with respect to the ODEQ and the Environmental Quality Commission (EQC). However, on that date, EPA disapproved the Oregon SIP for failing to contain provisions for LRAPA which satisfy the requirements of section 128 of the Act.

On October 23, 1987, the Oregon Environmental Council (OEC) and Kathy Williams, a private citizen, filed suit in the United States Court of Appeals for the Ninth Circuit for review of the August 25, 1987, rulemaking, alleging that EPA had failed to perform a nondiscretionary duty under the Act by not promulgating section 128 provisions applicable to LRAPA.

On August 22, 1988, EPA entered into a stipulated agreement with the OEC et al., for resolution of the civil suit. Specifically, EPA and OEC et al., agreed to allow the State of Oregon an opportunity to prepare and submit a revision to the Oregon SIP addressing the application of section 128 to LRAPA, agreed to a schedule for EPA action on such submittal, and agreed to a schedule for EPA action if the State of Oregon failed to submit a SIP revision. If Oregon submitted its revision to EPA on or before September 30, 1988, EPA agreed to commence review of the submittal and, on or before February 28, 1989, propose approval, disapproval, or other action, and on or before September 30, 1989, take final action on the submittal.

### II. Discussion

On September 28, 1988, ODEQ submitted a new section 025 "Conflict of Interest" in LRAPA Title 12, "Duties and Powers of Board and Director" (incorporated into Oregon Administrative Rules, Chapter 340, Division 20, Section 047) as a revision to the Oregon SIP. This new section incorporates the language of section 128 of the Act into LRAPA Title 12, requiring the Director of LRAPA and the LRAPA Board of Directors to comply with its provisions. After a review of this revision, EPA finds that the new section 025 satisfies the requirements of section 128 of the Act with respect to LRAPA.

Under the terms of the stipulated agreement, EPA is today approving this revision to the Oregon SIP. EPA has chosen to proceed directly to final approval under its new SIP processing procedures (see 54 FR 2214, January 19, 1989) because EPA expects this to be non-controversial action. Such a direct final approval satisfies the terms of the stipulated agreement to propose an action on the submittal before February 28, 1989, and to take final action before September 30, 1989.

### III. EPA Action

EPA is today approving the new section 025 "Conflict of Interest" in LRAPA rule Title 12 "Duties and Powers of Board and Director" (incorporated into OAR 340–20–047) as a revision the Oregon SIP. Additionally, EPA is rescinding its previous disapproval of the Oregon SIP with respect to the requirements of section 128 and LRAPA.

### IV. Administrative Review

The public should be advised that this action will be effective 60 days from the date of this **Federal Register** notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments on any or all of these revisions approve herein, the action on these revisions will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action on those revisions and another will begin a new rulemaking by announcing a proposal of the action on these revisions and establish a comment period.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under 5 U.S.C. section 605(b), I certify that this revision will not have a significant economic impact on a substantial number of small entities (See 46 FR 8709).

Under section 307(b) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 1, 1989. This action may not be challenged later in proceedings to enforce its requirements (See 307(b)(2)).

### List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Date: February 15, 1989.

**Robie G. Russell,**
*Regional Administrator.*

**Note.**—Incorporation by reference of the Implementation Plan for the State of Oregon was approved by the Director of the Office of Federal Register on July 1, 1982.

Title 40, Chapter I of Part 52 of the Code of Federal Regulations is amended as follows:

### PART 52—[AMENDED]

### Subpart MM—Oregon

1. The authority citation of Part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401–7642.

2. Section 52.1970 is amended by adding paragraph (c)(84) to read as follows:

**§ 52.1970 Identification of plan.**

* * * * *

(c) * * *

(84) On September 28, 1988, the Director of the Department of Environmental Quality submitted the Lane Regional Air Pollution Authority Section 12–025 "Conflict of Interest," of Title 12, "Duties and Powers of Board and Director," adopted as Oregon Administrative Rules, Chapter 340, Division 20, Section 047, as a revision to the State implementation plan.

(1) Incorporation By Reference.

(i) September 28, 1988, letter from the Director of the Department of Environmetal Quality to EPA Region 10.

(ii) Lane Regional Air Pollution Authority Section 12–025 "Conflict of Interest," of Title 12, "Duties and Powers of Board and Director," as adopted as Oregon Administrative Rules, Chapter 340, Division 20, Section 047. This rule was adopted by the Environmental Quality Commission on September 9, 1988.

**§ 52.1985 [Amended]**

3. Section 52.1985(b) is removed.

[FR Doc. 89–4451 Filed 2–28–89; 8:45 am]
BILLING CODE 6560–50–M

VOL 54 ISS 39 MR 1 1989 UMI



40 CFR Part 180

[PP 8E3661/R1009; RFL-3530-4]

## Pesticide Tolerance for Fluazifop-Butyl

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This rule establishes a tolerance for residues of the herbicide fluazifop-butyl in or on the raw agricultural commodity coffee. The Interregional Research Project No. 4 (IR-4) petitioned for this tolerance.

**EFFECTIVE DATE:** March 1, 1989.

**ADDRESS:** Written objections, identified by the document control number [PP 8E3661/R1009], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St. SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** By mail: Hoyt Jamerson, Emergency Response and Minor Use Section (TS-767C), Registration Division (TS-767C), Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-2310.

**SUPPLEMENTARY INFORMATION:** EPA issued a proposed rule, published in the **Federal Register** of December 30, 1988 (53 FR 53017), in which it was announced that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petition 8E3661 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR-4 Project, and the Agricultural Experiment Station of Hawaii.

The petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for the residues of the herbicide (R)-2-[4[[5-(trifluoromethyl)-2-pyridinyl] oxy]phenoxy]-propanoic acid (resolved isomer of fluazifop), both free and conjugated, and of butyl (R)-2-[4[[5-(trifluoromethyl)-2-pyridinyl]-oxy]phenoxy]propanoate (resolved isomer of fluazifop-butyl), all expressed as fluazifop, in or on the raw agricultural commodity coffee at 0.10 part per million (ppm).

The petitioner proposed that this use of the commodity be limited to Hawaii based on the geographical representation of the residue data submitted. Additional residue data will be required to expand the area of usage. Persons seeking geographically broader registration should contact the Agency's Registration Division at the address provided above.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and all other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

### List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 15, 1989.

**Douglas D. Campt,**

*Director, Office of Pesticide Programs.*

Therefore, 40 CFR Part 180 is amended as follows:

### PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

**Authority:** 21 U.S.C. 346a.

2. In § 180.411, by adding and alphabetically inserting the raw agricultural commodity coffee, to read as follows:

**§ 180.411 Fluazifop-butyl; tolerances for residues.**

* * * * *

(d) * * *

| Commodity | Parts per million |
|---|---|
| * * * | * * * |
| Coffee | 0.1 |
| * * * | * * * |

[FR Doc. 89-4720 Filed 2-28-89; 8:45 am]

BILLING CODE 6560-50-M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA-6950]

## Changes in Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency.

**ACTION:** Interim rule.

**SUMMARY:** This rule lists those communities where modification of the base (100-year) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) elevations for new buildings and their contents and for second layer insurance on existing buildings and their contents.

**DATES:** These modified elevations are currently in effect and amend the Flood Insurance Rate Map (FIRM) in effect prior to this determination.

From the date of the second publication of notice of these changes in a prominent local newspaper, any person has ninety (90) days in which he can request through the community that the Administrator reconsider the changes. These modified elevations may be changed during the 90-day period.

**ADDRESSES:** The modified base (100-year) flood elevation determinations are available for inspection at the office of the Chief Executive Officer of the community, listed in the fifth column of the table.

Send comments to that address also.

**FOR FURTHER INFORMATION CONTACT:** Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

**SUPPLEMENTARY INFORMATION:** The numerous changes made in the base (100-year) flood elevations on the FIRM(s) make it administratively infeasible to publish in this notice all of the modified base (100-year) flood elevations contained on the map. However, this rule includes the address of the Chief Executive Officer of the community where the modified base (100-year) flood elevation determinations are available for inspection.

Any request for reconsideration must be based on knowledge of changed conditions, or new scientific or technical data.

These modifications are made pursuant to Section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234) and are in accordance with the National Flood Insurance Act of 1968, as amended (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR Part 65.4.

For rating purposes, the revised community number is listed and must be used for all new policies and renewals.



These base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

These elevations, together with the floodplain management measures required by 60.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time, enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entities.

The changes in the base (100-year) flood elevations listed below are in accordance with 44 CFR 65.4.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

### List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains.

1. The authority citation for Part 65 continues to read as follows:

**Authority:** 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 65.4 is amended by adding in alphabetical sequence new entries to the table.

| State | County | Location | Date and name of newspaper where notice was published | Chief executive officer of community | Effective date of modification | Community No. |
|---|---|---|---|---|---|---|
| South Carolina | Orangeburg | City of Orangeburg | February 9, 1989, February 16, 1989, *The Orangeburg Times and Democrat.* | The Hon. E.O. Pendarvis, mayor, city of Orangeburg, P.O. Box 387, Orangeburg, SC 29115. | January 31, 1989. | 450164 |
| Texas | Dallas | City of Garland | February 10, 1989, February 17, 1989, *Garland Daily News.* | The Hon. Ruth Nicholson, mayor of the city of Garland, Dallas County, P.O. Box 469002, Garland, TX 75046-9002. | January 31, 1989. | 485471 |
| Texas | Tarrant and Denton | City of Fort Worth | February 2, 1989, February 9, 1989, *Fort Worth Star Telegram.* | The Hon. Bob Bolen, mayor of the city of Fort Worth, Tarrant and Denton Counties, 1000 Throckmorton Street, Fort Worth, TX 76102. | January 26, 1989. | 480596 |

**Harold T. Duryee,**

*Administrator, Federal Insurance Administration.*

Issued: February 21, 1989.

[FR Doc. 89-4712 Filed 2-28-89; 8:45 am]

BILLING CODE 6718-03-M

## FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 80

[PR Docket No. 88-350; FCC 89-39]

## Amendment of the Maritime Services Rules to Permit Noncommercial Communications on VHF Channels 79 and 80

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document amends the maritime services rules concerning the use of marine VHF frequencies on the Great Lakes. The new rules will relieve congestion on VHF maritime frequencies now assigned for noncommercial use on the Great Lakes by permitting noncommercial vessels to share the use of channels 79 and 80 with commercial vessels on the Great Lakes. The intended effect is to improve marine VHF communications on the Great Lakes.

**EFFECTIVE DATE:** April 3, 1989.

**ADDRESS:** Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Robert P. DeYoung, Private Radio Bureau, Washington, DC 20554, (202) 632-7175.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, PR Docket No. 88-350, adopted February 1, 1989 and released February 17, 1989.

The full text of this Commission decision is available for inspection and copying during normal hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The full text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc. (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

### Summary of Report and Order

These rule amendments are in response to a request from the Michigan Steelhead and Salmon Fisherman's Association to provide additional VHF frequencies for use by noncommercial or recreational vessels on the Great Lakes. These rule amendments will relieve congestion on the Great Lakes on VHF

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frequencies currently assigned for use by noncommercial or recreational vessels. Congestion on those frequencies will be alleviated by permitting noncommercial vessels to share use of VHF channels 79 and 80 with commercial vessels on the Great Lakes.

In accordance with section 605(b) of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354, 5 U.S.C. 605(b)), the Commission certifies that these rules will not have a significant economic impact on a substantial number of small entities. The rules allow noncommercial vessels to use these frequencies voluntarily. The effect on existing users will not be substantial. The use of the frequencies is limited to the Great Lakes where monitoring and licensing data indicate the least potential impact nationwide. The rule amendments herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements; and will not increase burden hours imposed on the public. The authority for this action is contained in 47 U.S.C. 154(i) and 303 (l) and (r).

**Ordering Clauses**

Accordingly, *it is ordered* that Part 80 is amended as shown at the end of this document.

*It is further ordered* that these rule amendments become effective as indicated in the "**EFFECTIVE DATE**" paragraph of this document.

*It is further ordered* that this proceeding is terminated.

A copy of the *Report and Order* will be served on the Chief Counsel for Advocacy of the Small Business Administration.

**List of Subjects in 47 CFR Part 80**

Maritime Radio Services, Great Lakes, Ship stations, Coast stations.

Federal Communications Commission.

**Donna R. Searcy,**

*Secretary.*

**Final Rules**

Part 80 of Chapter 1 of Title 47 of the Code of Federal Regulations is amended as follows:

## PART 80—STATIONS IN THE MARITIME SERVICES

1. The authority citation for Part 80 continues to read as follows:

**Authority:** Secs. 4, 303 48 Stat. 1066, as amended, 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; UST 3450, 3 UST 4726, 12 UST 2377, unless otherwise noted.

2. In § 80.373, paragraph (f) is amended by revising the "Noncommercial" portion of the frequency table to read as follows:

**§ 80.373 Private communications frequencies.**

* * * * *

(f) * * *

* * * * *

NONCOMMERCIAL

| | | | |
|---|---|---|---|
| 68 | 156.425 | 156.425 | |
| 69 | 156.450 | 156.450 | |
| 69 | 156.475 | 156.475 | |
| 71 | 156.575 | 156.575 | |
| 72 | 156.625 | | Intership only. |
| 78 | 156.925 | 156.925 | |
| 79 | 156.975 | 156.975 | Great Lakes only. |
| 80 | 157.025 | 157.025 | Do. |

* * * * *

[FR Doc. 89–4507 Filed 2–28–89; 8:45 am]

BILLING CODE 6712–01–M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 301

**[Docket No. 81270–9036]**

### Pacific Halibut Fisheries

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of approval of a Pacific halibut catch sharing plan.

**SUMMARY:** NOAA announces approval by the Secretary of Commerce (Secretary) of a Catch Sharing Plan developed and adopted by the Pacific Fishery Management Council (Council) to allocate the catch of Pacific halibut in 1989 between treaty Indian and non-Indian commercial and recreational fishermen in International Pacific Halibut Commission (IPHC) statistical Area 2A.

The approved 1989 Catch Sharing Plan (Plan) allocates the total allowable catch of Pacific halibut in Area 2A as established by the IPHC between domestic users in accordance with the Northern Pacific Halibut Act of 1982. The intended effect of the Plan is to ensure the conservation and management of Pacific halibut stocks by limiting the total harvest to the level determined by the IPHC to be biologically acceptable while equitably distributing the allowable harvest among affected user groups in Area 2A. The Plan is for 1989 only and has been forwarded by the Council to the IPHC for adoption and implementation by regulations.

**DATE:** Effective February 28, 1989.

**ADDRESSES:** Copies of the Plan are available from Rolland A. Schmitten, Regional Director, National Marine Fisheries Service, Northwest Region, 7600 Sand Point Way NE., BIN C15700, Bldg. 1, Seattle, WA 98115, or Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, Suite 420, 2000 SW. First Ave., Portland, OR 97201.

**FOR FURTHER INFORMATION CONTACT:** William L. Robinson at 206–526–6140 or Lawrence D. Six at 503–221–6352.

**SUPPLEMENTARY INFORMATION:** The Northern Pacific Halibut Act, Pub. L. 97–176, 16 USC 773c(c) authorizes the Regional Fishery Management Council having authority for the geographic area concerned to develop regulations governing the allocation of Pacific halibut catch in U.S. Convention waters which are in addition to, but not in conflict with, the regulations of the IPHC. The geographic area involved is all U.S. marine waters lying south of the U.S./Canadian border including Puget Sound, known as IPHC statistical Area 2A. The Council's process for developing its proposed and final Plan in Area 2A involved State, Federal and treaty Indian fishery managers, user group representatives and the general public.

The Council adopted a proposed Plan for public review at its November 16–18, 1988 public meeting in Portland, Oregon. The Council distributed the proposed Plan to user groups on the West Coast and submitted it to the Secretary for review and publication in the **Federal Register** for public comment. The proposed Plan, a description of the need for the Plan, and a description of the Council's process for developing the proposed Plan were published in the **Federal Register** with a request for public comments on January 10, 1989 (54 FR 834). No written comments on the proposed plan were received by the Secretary or the Council. However, the Council received eleven written comments on its proposed recommendations to the IPHC on seasons and size/bag limits for the non-Indian recreational fisheries. These comments were considered by the Council separately from the Plan.

At its January 12, 1989 public meeting, the Council reviewed and considered the recommendations of its Halibut Select Group (HSG) and public comments made on the Plan. In addition, the Council considered the written and public comments made at the meeting on its proposed recommendations to the IPHC on recreational seasons and size/bag limits. The Council subsequently adopted a final Plan and final recommendations to the IPHC on non-Indian recreational fisheries. The final Plan was subsequently forwarded to the Secretary for review and approval and to the IPHC for implementation by regulations. In addition, the Council submission to the IPHC included its final recommendations for harvest goals, proposed seasons, and size and bag limits for the non-Indian recreational fisheries in Area 2A.



The final Plan is essentially the same as proposed except for proportionate reductions in the allocations due to an anticipated reduction in the total allowable catch (TAC) in Area 2A from 750,000 to 650,000 pounds. The Council was advised by IPHC staff at the January 12, 1989 public meeting that Pacific halibut stocks had declined coast-wide and therefore the IPHC staff would be recommending a reduced TAC in Area 2A of 650,000 pounds rather than the 750,000 pounds upon which the proposed Plan was based. In addition, in response to HSG recommendations and public comments, the Council made some minor changes to the proposed recreational seasons and bag limits that were recommended to the IPHC.

**1989 Catch Sharing Plan for Area 2A**

The 1989 Plan as approved by the Secretary is for 1989 only and distributes the anticipated TAC in Area 2A as subquotas between the three user groups as follows:

| | Pounds |
|---|---|
| Treaty Indian subquota | 130,000 |
| Reserve | 22,000 |
| Non-Indian commercial subquota | 274,000 |
| Non-Indian recreational subquota | 224,000 |
| Total | 650,000 |

The Plan is based on the 650,000 pound TAC as determined at the IPHC's January 24–27, 1989 annual meeting in Vancouver, B.C., Canada. The approved Plan provides that the subquotas and the reserve will be adjusted upward or downward proportionately with any change in the TAC.

The reserve is set aside for treaty Indian use, although parts or all of the reserve may be released to non-Indian recreational users during the season if it is determined that all or parts of the reserve are surplus to tribal needs. The reserve release would occur no later than July. Further, if it is determined at that time that some portion of the treaty Indian subquota of 130,000 pounds is surplus to tribal needs, then that portion may be released to the non-Indian fisheries. Additional details of the approved Plan are as follows:

1. The treaty Indian subquota will include both commercial and ceremonial and subsistence (C&S) fishing. The treaty Indian commercial fishing season will extend from March 1 through October 31, 1989 and C&S fishing will be permitted all year. The IPHC commercial 32 inch size limit will apply to fish sold by tribal commercial fishermen; however, no size limits will apply to C&S-caught halibut, including C&S fish retained during commercial fishing. Other IPHC regulations on commercial fishing gear and C&S daily bag limits before and after the commercial fishing season will remain the same as in 1988.

2. The allocation of Pacific halibut among non-Indian fisheries will continue to be divided 55 percent to commercial users and 45 percent to recreational users in accordance with the two-year catch sharing plan approved by the Secretary in 1988 (53 FR 7528, March 9, 1988). The 1989 Plan also provides for possible release of unharvested portions of the non-Indian commercial subquota to non-Indian recreational users. The non-Indian recreational fisheries are divided into four geographic areas within Area 2A as follows: (1) Inside waters of Washington State eastward of the Bonilla-Tatoosh line; (2) North coastal Washington waters from the U.S./Canada border to the Queets River; (3) Southern Washington and northern Oregon waters from the Queets River to Cape Falcon; and (4) Oregon and California waters south of Cape Falcon.

Separate from the Plan, the Council developed recommendations for non-Indian recreational seasons and size/bag limits for the non-Indian recreational catch which are designed to achieve the non-Indian recreational allocation. Seasons and size/bag limits recommended by the Council were divided into the four recreational areas described in the Plan.

**Classification**

The approved 1989 Plan is a general statement of agency policy which does not require notice and comment rulemaking under the Administrative Procedure Act at 5 U.S.C. 553(b)(A). Consequently, the Regulatory Flexibility Act does not apply.

Based on the findings of a regulatory impact review prepared for the proposed Plan to fulfill the requirements of E.O. 12291, the Under Secretary for Oceans and Atmosphere has concluded that actions taken under the Plan are not major and a Regulatory Impact Analysis is not required. An Environmental Assessment (EA) was prepared for the 1988 Plan in accordance with the National Environmental Policy Act (NEPA) and the Assistant Administrator for Fisheries, NOAA, determined that any action taken under the Plan would not have any significant adverse impact on the human environment. Because the alternatives and environmental impacts of the 1989 Plan are no different than those evaluated in the EA for the 1988 Plan, the Assistant Administrator for Fisheries, NOAA, has determined that this action is categorically excluded from NEPA requirements to prepare an EA in accordance with paragraph 5a(3) of the NOAA Directives Manual 02–10. Copies of the 1989 regulatory impact review and the 1988 EA and 1989 NEPA analysis are available from the addresses above.

The approved Plan does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612, nor does it contain any collection of information requirement subject to the Paperwork Reduction Act.

As required by Section 307 of the Coastal Zone Management Act, the coastal States of Washington, Oregon and California have been notified of the determination that this action is consistent to the maximum extent practicable with applicable State coastal zone management programs as required.

**List of Subjects in 50 CFR Part 301**

Fisheries, Treaties, Reporting and recordkeeping requirements.

**Authority:** 5 U.S.T. 5; T.I.A.S. 2900; 16 U.S.C. 773–773k.

Dated: February 23, 1989.

**James E. Douglas, Jr.,**

*Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.*

[FR Doc. 89–4748 Filed 2–28–89; 8:45 am]

BILLING CODE 3510–22–M

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# Proposed Rules

Federal Register
Vol. 54, No. 39
Wednesday, March 1, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 927

[Docket No. FV-89-024]

### Winter Pears Grown in Oregon, Washington and California; Proposed Increase in Expenses for 1988-89 Fiscal Period

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would authorize an increase in expenditures for the Winter Pear Control Committee (committee) established under Marketing Order 927 for the 1988-89 fiscal year. The expenses would be increased from $3,354,351 to $3,802,846. The increase is needed to cover additional market promotion and advertising activities needed to market the record large 1988-89 winter pear crop.

**DATE:** Comments must be received by March 13, 1989.

**ADDRESS:** Interested persons are invited to submit written comments concerning this rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456. Three copies of all written materials shall be submitted, and they will be available for public inspection in the Office of the Docket Clerk during regular business hours. All comments should reference the docket number and date and page number of this issue of the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Patrick Packnett, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-So., Washington, DC 20090-6456, telephone (202) 475-3862.

**SUPPLEMENTARY INFORMATION:** This rule is proposed under Marketing Order No. 927 (7 CFR Part 927) regulating the handling of winter pears grown in Oregon, Washington and California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

A final rule establishing expenses in the amount of $3,354,351 for the committee for the fiscal period ending June 30, 1989, was published in the **Federal Register** on August 5, 1988 [53 FR 29441]. Such expenses included $2,774,857 for "paid advertising" as a "contingency" fund of $209,499. The final rule also fixed an assessment rate to be levied on winter pear handlers during the 1988-89 fiscal period.

In a recently conducted mail ballot, the committee voted unanimously to increase its budget of expenses from $3,354,351 to $3,802,846. Of the $448,495 increase in expenditures, $337,803 would be for additional "paid advertising" deemed necessary to market the record large 1988-89 crop. These additional funds are to be allocated among the existing promotional projects which appear to be achieving the best results. The remainder of the proposed increase, $110,692, would be added to the "contingency" expenditures. Contingency funds may be used for emergency spending in any budget category, including promotion and paid advertising.

Because of the unexpected record large crop, additional assessment funds are available to cover the proposed increase in expenses. Hence, no increase in the assessment rate was recommended by the committee.

Therefore, the Administrator of AMS has determined that this action would not have a significant economic impact on the substantial number of small entities.

Based on the foregoing, it is found and determined that a comment period of less than 30 days is appropriate because the budget increase approval needs to be expedited. The committee needs to have authority to pay its expenses which are incurred on the continuous basis and to conduct the additional promotion activities deemed necessary to market the record large crop.

### List of Subjects in 7 CFR Part 927

Marketing agreement and order, Winter pears, Oregon, Washington, California.

For reasons set forth in the preamble, it is proposed that § 927.228 be amended as follows:

### PART 927—WINTER PEARS GROWN IN OREGON, WASHINGTON AND CALIFORNIA

1. The authority citation for 7 CFR Part 927 continues to read as follows:

**Authority:** Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 927.228 is amended as follows:

**§ 927.228 [Amended]**

Section 927.228 is amended by changing "$3,354,351" to "$3,802,846".

Dated: February 24, 1989.

**William J. Doyle,**

*Associate Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 89-4732 Filed 2-28-89; 8:45 am]

BILLING CODE 3410-02-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

[Docket No. 88-NM-202-AD]

### Airworthiness Directives; McDonnell Douglas Model DC-9-81, -82, and -87 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice proposes a new airworthiness directive (AD), applicable to McDonnell Douglas Model DC-9-81, -82, and -87 series airplanes equipped with certain Loral Aircraft Braking Systems main landing gear wheels, which would require inspection of the main landing gear wheels, and modification or replacement of cracked wheels. This proposal is prompted by reports of cracks found in wheels. This condition, if not corrected, could result in wheel failure and potential damage to adjacent tires, engines, or the airplane.



**DATE:** Comments must be received no later than April 24, 1989.

**ADDRESSES:** Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-202-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Loral Aircraft Braking Systems, 1210 Massillon Road, Akron, Ohio 44315-0001. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 3229 East Spring Street, Long Beach, California.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert M. Stacho, Aerospace Engineer, Systems and Equipment Branch, ANM-131L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; telephone (213) 988-5338.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

### Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-202-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

*Discussion:* Approximately forty instances of cracked wheels have been reported by operators of Model DC-9-80 series airplanes equipped with Loral Aircraft Braking Systems main landing gear wheels, part numbers 5004320-2, -3, -4, -5, -6, and -7. The reported cracked wheels had accumulated between 3200 and 8000 landings when discovered. Investigation revealed that the cracking initiates at the inboard wheel subassembly key boss screw holes. (This key boss screw hole area has not been previously inspected by all operators because this area was not specifically addressed in the wheel manufacturer's maintenance manual.) Analyses by the wheel and airframe manufacturers have determined that the cracks are due to fatigue and are attributed to damaged key boss screw threads and/or corrosion. This condition, if not corrected, could result in wheel failure and potential damage to adjacent tires, engines, or the airplane.

The FAA has reviewed and approved Loral Aircraft Braking Systems Service Bulletin MD81-32-1/MD82-32-1/MD87-32-1, dated July 7, 1988, which describes ultrasonic and eddy current inspections of the Loral Aircraft Braking Systems main landing gear wheels, Part Numbers 5004320-2, -3, -4, -5, -6, and -7, for cracks, and replacement of the key boss screws if no cracks are found.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require inspection of the wheel, replacement of the key boss screws, and removal of cracked wheels, if found, in accordance with the service bulletin previously mentioned. Also, this AD proposes to revise the FAA-approved maintenance program to include repetitive inspections of the wheel.

There are approximately 170 Model DC-9-81, -82, and -87 series airplanes in the worldwide fleet that are equipped with this Loral wheel. It is estimated that 32 airplanes of U.S. registry would be affected by this AD, that it would take approximately 10 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $12,800.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 21612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Model DC-9-80 series airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

### List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

### PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. By adding the following new airworthiness directive:

**McDonnell Douglas:** Applies to Model DC-9-81, -82, and -87 series airplanes, equipped with Loral Aircraft Braking Systems main landing gear wheels, Part Number 5004320-2, -3, -4, -5, -6, and -7, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent wheel failure, accomplish the following:

A. Prior to the accumulation of 2,000 landings on the wheel or within the next 350 landings after the effective date of this AD, whichever occurs later, unless the wheel was inspected within the last 700 landings, inspect the wheel assembly for cracks in accordance with Loral Service Bulletin MD 81-32-1, MD-82-32-1, and MD-87-32-1, dated July 7, 1988.

1. If no cracks are found, replace the key boss screws in accordance with the previous Loral Service Bulletin.

2. If crack(s) are found, replace the wheel before further flight.

B. Within 90 days after the effective date of this AD, revise the FAA-approved

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maintenance program to include inspection of the wheel assembly, and replacement, if necessary, as specified in paragraph A., above, at every fourth tire change or every 1,500 landings, whichever occurs first.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Los Angeles Aircraft Certification Office.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with inspection requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Loral Aircraft Braking Systems, 1210 Massillon Road, Akron, Ohio 44315–0001, Attention: Manager of Product Integrity. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

Issued in Seattle, Washington, on February 17, 1989.

**Leroy A. Keith,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 89–4658 Filed 2–28–89; 8:45 am]

BILLING CODE 4910–13–M

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**14 CFR Part 39**

**[Docket No. 88-ASW-37]**

## Airworthiness Directives; Schweizer Aircraft Corporation Model 269A, 269A–1, 269B, and 269C Helicopters

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice proposes to adopt an airworthiness directive (AD) that would require inspection of all throttle cable assemblies for type of construction, removal of throttle cables that incorporate aluminum end fittings, and replacement within 25 hours' time in service of such cable assemblies with swaged steel end fittings on Schweizer Aircraft Corporation Model 269A, 269A–1, 269B, and 269C helicopters. A daily check also would be required on all remaining cable assemblies with threaded steel end fittings until they are replaced by cable assemblies with swaged steel end fittings within 400 hours' time in service or 12 months from the effective date of this AD, whichever occurs first. The proposed AD is needed to prevent throttle cable end fitting separation in flight which could result in loss of throttle control and subsequent damage or loss of the rotorcraft.

**DATES:** Comments must be received on or before April 17, 1989.

**ADDRESSES:** Comments on the proposal may be mailed in duplicate to: Regional Rules Docket, Office of the Assistant Chief Counsel, FAA, Fort Worth, Texas 76193–0007, or delivered in duplicate to: Office of the Assistant Chief Counsel, FAA, Room 158, Building 3B, 4400 Blue Mound Road, Fort Worth, Texas. Comments must be marked: Docket No. 88–ASW–37. Comments may be inspected in Room 158, Building 3B, Office of the Assistant Chief Counsel, between 8 a.m. and 4 p.m. weekdays, except Federal holidays

The applicable service bulletin (Schweizer Service Information Notice (SIN) N–210, dated April 15, 1988) may be obtained from Schweizer Aircraft Corporation, P.O. Box 147, Elmira, New York 14902.

A copy of SIN N–210, dated April 15, 1988, is contained in the Rules Docket, Office of the Assistant Chief Counsel, FAA, 4400 Blue Mound Road, Fort Worth, Texas.

**FOR FURTHER INFORMATION CONTACT:** Mr. Raymond J. O'Neill, ANE–174, New York Aircraft Certification Office, FAA, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581, telephone (516) 791–7421.

**SUPPLEMENTARY INFORMATION:** Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the FAA before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket, Office of Assistant Chief Counsel, 4400 Blue Mound Road, Fort Worth, Texas, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: Comment to Docket No. 88–ASW–37. The postcard will be date/time stamped and returned to the commenter.

The FAA has received a report of an end fitting separating from the throttle cable assembly, resulting in loss of throttle control which prevented an increase of power during the final flare prior to landing. A hard landing ensued, causing damage to the helicopter.

Subsequent investigations revealed that if aluminum fittings (either threaded or swaged) or threaded steel end fittings are installed on throttle cable assemblies, they may loosen in service due to the effects of vibration and improper maintenance and eventually may separate and result in loss of throttle control in flight. Threaded fittings are secured to the cable with locking compound and are not intended to be disassembled or loosened after initial installation. Looseness in the assembly can permit relative motion and consequent thread wear, resulting in cable separation, and loss of throttle control. All aluminum fittings (swaged or threaded) because of their relative softness, are particularly vulnerable to wear, galling, and subsequent failure and require more rapid replacement than their threaded steel counterparts. Nearly one-half of the currently installed cable assemblies are fabricated with either aluminum end fittings or with threaded steel end fittings. Fitting failure can occur during any phase of flight and may lead to subsequent loss of the rotorcraft.

Schweizer issued SIN No. N–210 on April 15, 1988, addressing identification, inspection, and replacement, if necessary, of throttle cable end fittings. Service experience has shown that cable assemblies using swaged steel end fittings correct the problem of end fitting loosening and failure. The Schweizer SIN N–210 specifies replacement end fittings to be swaged steel end fittings.

Since this condition is likely to exist or develop in other helicopters of the same type design, an AD is being issued which requires inspection of throttle cable assemblies and replacement of end fittings, as necessary, on Schweizer Model 269A, 269A–1, 269B, and 269C helicopters.

The regulations proposed herein would not have substantial direct effects



on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this proposed regulation involves a total of 1,000 helicopters; it requires a one-time, 1-hour inspection at a cost of $40 per helicopter. It is estimated that five hundred of the helicopters will require daily inspections and throttle cable replacement at a cost of $2,300 per helicopter. The total fleet cost to comply with the AD is estimated as $1,190,000. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not "a significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979; (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

**PART 39—AIRWORTHINESS DIRECTIVES**

1. The authority citation for Part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.85.

**§ 39.13 [Amended]**

2. By adding the following new AD:

**Schweizer Aircraft Corporation:** Applies to all Schweizer Model 269A, 269A–1, 269B, and 269C helicopters, certificated in any category, with Serial Numbers 0004 through 1347 which have had throttle cables replaced in the field. (Docket No. 88–ASW–37)

Compliance is required as indicated, unless already accomplished.

To prevent loss of throttle control, accomplish the following:

(a) Within the next 25 hours' time in service or within 30 days, whichever occurs first after the effective date of this AD, identify, inspect, and replace as indicated, the throttle cable assembly as follows:

(1) Determine if aluminum fittings are installed as follows:

(i) Check both end fittings of the cable assembly with a magnet to determine whether they are magnetic.

Note.—Cables which incorporate magnetic fittings (magnet adheres to fitting) do not require the hardness test specified by step (a)(1)(ii) below. For these cable assemblies, omit step (a)(1)(ii) and continue inspection with step (2) below.

(ii) If the magnet does not adhere to the fitting, perform a hardness test on the fitting. If Rockwell hardness is less than B–85, remove and replace the cable assembly with a swaged steel cable assembly in accordance with paragraph (c) of this AD before further flight.

Note.—Performance of the hardness test will require removal of the throttle cable assembly from the helicopter in accordance with standard maintenance instructions.

(2) Visually check both ends of the cable to determine whether the cable incorporates swaged or threaded steel and fittings.

Note.—Throttle cables which incorporate swaged end fittings may be identified by six evenly spaced flat spots around the barrel of the fitting just behind the lug. Threaded end fittings incorporate a cylindrical barrel (no flat spots).

(3) If cable incorporates swaged steel end fittings (as determined from steps (a) (1) and (2) above), further compliance is not required. For these cable assemblies, record compliance in the helicopter log book as "THROTTLE CABLE WITH SWAGED STEEL END FITTINGS INSTALLED."

(4) If cable incorporates a threaded steel end fitting (as determined from steps (a) (1) and (2) above), perform an inspection before further flight and perform repetitive daily inspections in accordance with paragraph (b) of this AD until cable is replaced in accordance with paragraph (c) of this AD.

(5) Record compliance with paragraph (a) of this AD in the compliance record of the helicopter log book.

(b) Prior to the first flight of each day, conduct a visual check of throttle cable assemblies with threaded steel end fittings as follows:

(1) Inspect cable end fittings for general condition and security of attachment. If any abnormality or damage is noted, replace cable assembly in accordance with paragraph (c) of this AD.

(2) Using a flashlight, visually inspect cable push rod for exposed threads adjacent to end fitting (both ends of cable assembly).

Note.—The cable push rod is the movable rod that is attached directly to the cable end fitting (lug).

(3) If threads are visible, replace cable assembly before further flight, in accordance with paragraph (c) of this AD.

(4) Record compliance with paragraph (b) of this AD in the compliance record of the helicopter log book.

(c) Within the next 400 hours' time in service from the effective date of this AD, or within 12 months, whichever occurs first, replace with swaged steel end fittings all threaded steel end fittings which were not replaced during the inspections and rework required by paragraphs (a) and (b) of this AD. Replacement parts applicability is as follows:

| Model | Swaged Steel Cable Assembly Part Numbers (P/N) |
|---|---|
| 269A | 269A4683–9 |
| 269A–1 | 269A4683–9 |
| 269B | 269A4683–7 |
| 269C | 269A4683–7 |

(1) Remove throttle control cable in accordance with Basic Helicopter Maintenance Instructions (HMI), paragraph 4–11.

Caution: Do not bend throttle cable support tubes more than 8 degrees from centerline of cable. Doing so could cause deformation of the support tubes, premature failure of the cable, and loss of throttle control.

Note.—The cable support tube is the stationary cylinder on the end of the cable through which the cable push rod slides.

(2) Install P/N 269A4683–7 or –9 throttle control cable assembly in accordance with Basic HMI, paragraph 4–11.

(3) Rig throttle control in accordance with Basic HMI.

(4) Check idle speed and idle mixture in accordance with appropriate maintenance instructions. (Adjust as required.)

Note.—Installation of the upgraded cable assembly, P/N 269A4683–7 or –9, cancels the repetitive inspection required by paragraph (b) of this AD.

(5) Record compliance with paragraph (c) of this AD in the compliance record and in the maintenance record of the helicopter log book.

Note.—The instructions in this AD are similar to those contained in Schweizer SIN N–210, dated April 15, 1988.

(d) Upon the submission of substantiating data by an owner or operator through an FAA maintenance inspector, the Manager, New York Aircraft Certification Office, FAA, New England Region, may adjust the compliance times specified in this AD.

(e) An alternate method of compliance which provides an equivalent level of safety with this AD may be used when approved by the Manager, New York Aircraft Certification Office, 181 South Franklin Avenue, Valley Stream, New York 11581.

(f) In accordance with FAR §§ 21.197 and 21.199, flight is permitted to a base where the requirements of this AD may be accomplished.

Issued in Fort Worth, Texas, on February 14, 1989.

**L.B. Andriesen,**

*Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 89–4657 Filed 2–28–89; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 88-NM-203-AD]

## Airworthiness Directives; Boeing Model 737 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice proposes a new airworthiness directive (AD), applicable to all Boeing Model 737 series airplanes through line number 1581 with a second observer's seat installed, which would require installation of a placard, inspection of the second observer's seat for missing fasteners that may have been omitted during installation, and repair, if necessary. This proposal is prompted by reports of two missing fasteners that were inadvertently omitted on some airplanes during the installation of the second observer's seat, and are required to secure that seat to the forward lavatory. This condition, if not corrected, could result in failure of the attaching hardware to provide adequate strength for the lavatory mounted second observer's seat.

**DATE:** Comments must be received no later than April 24, 1989.

**ADDRESSES:** Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-203-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Pliny Brestel, Airframe Branch, ANM-120S, telephone (206) 431-1931. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

### Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-203-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

### Discussion:

The manufacturer has reported that two fasteners may have been omitted on some Boeing Model 737 series airplanes when installing the second observer's seat on the forward wall of the forward lavatory. The seat installation requires that those fasteners be in place in order to provide adequate strength when the seat is occupied during flight or emergency landing conditions.

The FAA has reviewed and approved Boeing Service Letter 737-SL-25-41, dated October 14, 1988, which describes procedures for inspection of the second observer's seat installation for missing fasteners, and repair, if necessary.

Since this condition is likely to exist on other airplanes of this same type design, an AD is proposed which would require installation of a placard, inspection of the second observer's seat installation, and repair, if necessary, in accordance with the service letter previously mentioned.

There are approximately 1,554 Model 737 series airplanes of the affected design in the worldwide fleet. It is estimated that 722 airplanes of U.S. registry would be affected by this AD, that it would take approximately two manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The placard may be manufactured locally and the cost is expected to be negligible. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $57,760.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Model 737 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

### List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

**PART 39—[AMENDED]**

1. The authority citation for Part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. By adding the following new airworthiness directive:

**Boeing:** Applies to all Model 737 series airplanes through line number 1581, equipped with a second observer's seat, certificated in any category. Compliance required as indicated, unless previously accomplished.

To ensure structural integrity of the second observer's seat, accomplish the following:

A. Within 30 days after the effective date of this AD, install a placard above the second observer's seat, stating: "NO OCCUPANCY." This placard may be removed once the terminating action of paragraph B., below, has been accomplished.



B. Within 6 months after the effective date of this AD, inspect the second observer's seat installation for missing fasteners, in accordance with Boeing Service Letter 737-SL-25-41, dated October 14, 1988. If fasteners are found to be missing, repair prior to further flight, in accordance with the service bulletin.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

**Note.**—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on February 17, 1989.

**Leroy A. Keith,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 89-4660 Filed 2-28-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-NM-218-AD]

## Airworthiness Directives; British Aerospace Model BAC 1-11 200 and 400 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice proposes a new airworthiness directive (AD), applicable to British Aerospace Model BAC 1-11 200 and 400 series airplanes, which would require repetitive visual inspections of the fuselage station 178 frame splice joint, skin, stringers, and connecting structure in the crown area for cracks, and repair of all cracks prior to further flight. This proposal is prompted by reports of fatigue cracks found in the fuselage crown area of the frame joint at Station 178. This condition, if not corrected, could compromise the structural capability of the fuselage.

**DATES:** Comments must be received no later than April 24, 1989.

**ADDRESSES:** Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-218-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from British Aerospace, Inc., Service Bulletin Librarian, P.O. Box 17414, Dulles International Airport, Washington, D.C. 20041. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 431-1565. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

### Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-218-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

### Discussion

The United Kingdom (UK) Civil Aviation Authority (CAA), in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain British Aerospace BAC 1-11 series airplanes. There have been numerous reports of cracks found in the frame splice joint at fuselage Station 178 and associated structure in the fuselage crown area between stringers 2 left and 2 right. The cracking has initiated due to fatigue occurring in areas of stress concentration. This condition, if not corrected, could compromise the structural capability of the fuselage.

British Aerospace has issued Alert Service Bulletin 53-A-PM5964, Issue 2, dated June 1, 1988, which describes procedures for repetitive visual inspections for cracking of the fuselage frame splice joint, skin, stringers, and connecting structure at fuselage station 178 between stringers 2 left and 2 right, and repair, if necessary. The United Kingdom CAA has classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require repetitive visual inspection for fatigue cracking in the area of fuselage joint station 178, and repair, if necessary, in accordance with the service bulletin previously described.

Although the British Aerospace Service Bulletin recommends conducting continued operations with cracks that do not exceed specified limits, the FAA has determined that continued operation of airplanes with damage is unacceptable when undetected multiple site damage may be involved. Therefore, the proposed AD would require repair of damaged parts prior to further flight.

It is estimated that 70 airplanes of U.S. registry would be affected by this AD, that it would take approximately 1 manhour per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $2,800.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and

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the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, British Aerospace Model BAC 1-11 series airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

**List of Subjects in 14 CFR Part 39**

Aviation safety, Aircraft.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

**PART 39—[AMENDED]**

The authority citation for Part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

**British Aerospace:** Applies to all Modal BAC 1-11 200 and 400 series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent structural failure of the fuselage accomplish the following:

A. Prior to the accumulation of 30,000 landings or within 1,000 landings after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 1,000 landings, perform visual inspections of the fuselage frame splice joint, skin, stringers, and connecting structure at fuselage station 178 between stringers 2 left and 2 right, in accordance with British Aerospace Alert Service Bulletin 53-A-PM5064, Issue 2, dated June 1, 1988. Any cracks found must be repaired prior to further flight, in accordance with the service bulletin.

B. If cracks are found during inspections required by paragraph A., perform additional inspections in accordance with paragraph 2.2. of the Accomplishment Instructions, of British Aerospace Alert Service Bulletin 53-A-PM5064, Issue 2, dated June 1, 1988, and repair all cracks, prior to further flight, in accordance with the service bulletin.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note.— The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, Inc., Service Bulletin Librarian, P.O. Box 17414, Dulles International Airport, Washington, D.C. 20041. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on February 17, 1989.

**Leroy A Keith,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 89-4661 Filed 2-28-89; 8:45 am]

BILLING CODE 4910-13-M

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**14 CFR Part 39**

**[Docket No. 89-NM-01-AD]**

**Airworthiness Directives; Lockheed Model 382 Series Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice proposes a new airworthiness directive (AD), applicable to Lockheed Model 382 series airplanes, which would require periodic inspections of the nose landing gear (NLG) strut assemblies to detect corrosion and cracking in the steering collar area. This proposal is prompted by a report of failure of a NLG strut assembly, which resulted in the separation of the NLG from the airplane during landing. This condition, if not corrected, could lead to loss of controllability of the airplane upon landing.

**DATE:** Comments must be received no later than April 24, 1989.

**ADDRESSES:** Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-01-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Lockheed Aeronautical Systems Company, 86 South Cobb Drive, Marietta, Georgia 30063. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Atlanta Aircraft Certification Office, FAA, Central Region, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jack Bentley, Aerospace Engineer, Airframe Branch (ACE-120A), Atlanta Aircraft Certification Office, FAA, Central Region, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349; telephone (404) 991-2910.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

**Availability of NPRM**

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-01-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.



**Discussion**

The FAA has received a report that a Lockheed Model 382G series airplane experienced a separation of the nose landing gear (NLG) during landing of the airplane. The separation occurred as a result of the failure of the NLG strut assembly due to stress corrosion cracking in the steering collar area. This condition, if not corrected, could lead to failure of the NLG, and resulting loss of controllability of the airplane upon landing.

The FAA has reviewed and approved Lockheed Service Bulletin 382-32-21, dated September 5, 1979, which describes procedures for inspection for corrosion and cracking in the NLG strut assembly, part number 388071-3, and rework, if necessary; and Lockheed Service Bulletin 382-32-23, dated March 17, 1978, which describes procedures for installation of an improved NLG strut assembly, part number 3303591-1.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require repetitive inspections and rework or replacement, if necessary, of the NLG strut assembly, in accordance with Lockheed Service Bulletin 382-32-21. Additionally, this proposed AD provides for terminating action for the repetitive inspections by installing the improved NLG strut assembly in accordance with Lockheed Service Bulletin 382-32-23. The improved NLG strut assembly, was installed in production on Model 382 series airplanes beginning with serial number 4638; therefore, those airplanes are not subject to the requirements of this proposed AD.

There are approximately 691 Lockheed Model 382 series airplanes of the affected design in the worldwide fleet. It is estimated that 18 airplanes of U.S. registry would be affected by this AD, that it would take approximately 74 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $53,280.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assesament.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because Lockheed Model 382 series airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

**List of Subjects in 14 CFR Part 39**

Aviation safety, Aircraft.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

**PART 39—[AMENDED]**

1. The authority citation for Part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. By adding the following new airworthiness directive:

**Lockheed:** Applies to Model 382 series airplanes, serial numbers 3946 through 4637, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent failure of the nose landing gear strut assembly, accomplish the following:

A. Within the next 250 hours time-in-service after the effective date of this AD, and thereafter at intervals not to exceed 3,000 hours time-in-service, perform an inspection for corrosion of the nose landing gear strut assembly, part number 388071-3, in accordance with Lockheed Service Bulletin 382-32-31, dated September 5, 1979.

1. If corrosion is detected which is within the limits specified in the service bulletin, rework in accordance with the service bulletin prior to further flight.

2. If corrosion is detected which is outside the limits specified in the service bulletin, prior to further flight, accomplish one of the following:

a. Replace the defective cylinder assembly, part number 371675-1 with a serviceable cylinder assembly; or

b. Modify the nose landing gear strut and components in accordance with Lockheed Service Bulletin 382-32-23, dated March 17, 1978.

B. Modification of the nose landing gear strut and components in accordance with Lockheed Service Bulletin 382-32-23, dated March 17, 1978, constitutes terminating action for the inspection requirements of this AD.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Atlanta Aircraft Certification Office, FAA, Central Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Atlanta Aircraft Certification Office.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Lockheed Aeronautical Systems Company, 86 South Cobb Drive, Marietta, Georgia 30063. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Atlanta Aircraft Certification Office, FAA, Central Region, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia.

Issued in Seattle, Washington, on February 17, 1989.

**Leroy A. Keith,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 89-4659 Filed 2-28-89; 8:45 am]

BILLING CODE 4910-13-M

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**14 CFR Part 71**

**[Airspace Docket No. 89-ASO-5]**

**Proposed Revision of Control Zone, Covington, KY**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to revise the Covington, KY, Control Zone. This action will delete the arrival area extension based on the Runway 36 ILS localizer south course which is no longer required for airspace protection. Also, the geographic position coordinates of the Greater Cincinnati International Airport will be corrected.

**DATE:** Comments must be received on or before: March 30, 1989.

**ADDRESSES:** Send comments on the proposal in triplicate to: Federal Aviation Administration, ASO-530, Manager, Airspace and Procedures

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Branch, Docket No. 89-ASO-6, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763-7646.

**FOR FURTHER INFORMATION CONTACT:** James G. Walters, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of that proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89-ASO-6." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRM's**

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch (ASO-530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

**The Proposal**

The FAA is considering an amendment to § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revise the Covington, KY, Control Zone by deleting the arrival area extension predicated on the Runway 36 ILS localizer south course and correcting the geographic position coordinates of the Greater Cincinnati International Airport. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in FAA Order 7400.6D dated January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Aviation safety, Control zone.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

**PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS**

1. The authority citation for Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g); (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

**§ 71.171 [Amended]**

2. Section 71.171 is amended as follows:

**Covington, KY [Revised]**

Within a 5-mile radius of Greater Cincinnati International Airport (Lat. 39°02'52" N, Long. 84°40'00" W).

Issued in East Point, Georgia, on February 14, 1989.

**William D. Wood,**

*Acting Manager, Air Traffic Division, Southern Region.*

[FR Doc. 89-4464 Filed 2-28-89; 8:45 am]

BILLING CODE 4910-13-M

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**14 CFR Part 71**

**[Airspace Docket No. 89-ASO-10]**

**Proposed Amendment to Transition Area, Springfield, KY**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to amend the Springfield, KY, transition area. An arrival area extension is being added to accommodate a planned Nondirectional Radio Beacon (NDB) Standard Instrument Approach Procedure (SIAP) to Runway 11 at the Lebanon-Springfield Airport. Also, a minor correction is being made to the geographic position coordinates of the airport.

**DATE:** Comments must be received on or before: April 10, 1989.

**ADDRESSES:** Send comments on the proposal in triplicate to: Federal Aviation Administration, ASO-530, Manager, Airspace and Procedures Branch, Docket No. 89-ASO-10, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763-7646.

**FOR FURTHER INFORMATION CONTACT:** James G. Walters, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address

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listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89-ASO-10." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRM's**

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch (ASO-530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

**The Proposal**

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Springfield, KY, transition area. An arrival area extension is necessary to provide additional controlled airspace for protection of aircraft executing a NDB instrument approach procedure planned for Runway 11 at the Lebanon-Springfield Airport. Also, this action would make a minor correction to the latitude/longitude coordinates for the geographic position of the airport. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Aviation safety, Transition area.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

**PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS**

1. The authority citation for Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

**§ 71.181 [Amended]**

2. Section 71.181 is amended as follows:

**Springfield, KY [Amended]**

By amending the Lebanon-Springfield Airport coordinates to read, "(Lat. 37°38'01" N, Long. 85°14'32" W)" and by adding the following statement to the end of the existing description: "and within three miles each side of the 280° bearing from the Springfield NDB (Lat. 37°38'22" N, Long. 85°14'10" W), extending from the 6.5-mile radius area to 9 miles west of the NDB."

Issued in East Point, Georgia, on February 17, 1989.

**William D. Wood,**

*Acting Manager, Air Traffic Division, Southern Region.*

[FR Doc. 89-4663 Filed 2-28-89; 8:45 am]

BILLING CODE 4910-13-M

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**14 CFR Part 71**

**[Airspace Docket No. 89-ASO-4]**

**Proposed Designation of Transition Area, Huntingdon, TN**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to designate the Huntingdon, Tennessee, transition area to accommodate Instrument Flight Rule (IFR) operations at the Carroll County Airport. This action will lower the base of controlled airspace from 1,200 feet to 700 feet above the surface in the vicinity of the airport. A Standard Instrument Approach Procedure (SIAP) is being developed to serve the airport and the controlled airspace is required for protection of IFR aeronautical operations. Concurrent with the publication of the SIAP, the operating status of the airport will change from Visual Flight Rules (VFR) to Instrument Flight Rules (IFR).

**DATE:** Comments must be received on or before: April 21, 1989.

**ADDRESSES:** Send comments on the proposal in triplicate to: Federal Aviation Administration, ASO-530, Manager, Airspace and Procedures Branch, Docket No. 89-ASO-4, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763-7646.

**FOR FURTHER INFORMATION CONTACT:** James G. Walters, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89-ASO-4." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed

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in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRM's**

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch (ASO-530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

**The Proposal**

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to designate the Huntingdon, Tennessee, transition area. This action will provide controlled airspace for aircraft executing a new Standard Instrument Approach Procedure to the Carroll County Airport. If the proposed designation of the transition area is found acceptable, the operating status of the airport will be changed to IFR. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Aviation safety, Transition area.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

**PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS**

1. The authority citation for Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10654; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

**§ 71.181 [Amended]**

2. Section 71.181 is amended as follows:

**Huntingdon, TN [New]**

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Carroll County Airport (Lat. 36°05'23" N, Long. 88°27'45" W); within 3.5 miles each side of the 186° bearing from the Huntingdon RBN. (Lat. 36°05'17" N, Long. 88°28'10" W), extending from the 7-mile radius area to 10 miles south of the RBN."

Issued in East Point, Georgia, on February 14, 1989.

**William D Wood,**

*Acting Manager, Air Traffic Division, Southern Region.*

[FR Doc. 89-4662 Filed 2-28-89; 8:45 am]

BILLING CODE 4910-13-M

**14 CFR Part 71**

**[Airspace Docket No. 88-ASW-63]**

**Proposed Revision of Transition Area; Morrilton, AR**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to revise the transition area located at Morrilton, AR. The development of a new standard instrument approach procedure (SIAP) to Runway 27 at the Morrilton Municipal Airport, utilizing the Bridge Nondirectional Radio Beacon (NDB), has made this proposed revision necessary. The intended effect of the proposal is to provide adequate controlled airspace for aircraft executing the new NDB RWY 27 SIAP to the Morrilton Municipal Airport. Coincident with this action, the status of the Morrilton Municipal Airport will change from visual flight rules (VFR) to instrument flight rules (IFR).

**DATES:** Comments must be received on or before April 7, 1989.

**ADDRESSES:** Send comments on the proposal in triplicate to:

Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Docket No. 88-ASW-63, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

**FOR FURTHER INFORMATION CONTACT:** Bruce C. Beard, Airspace and Procedures Branch, Department of Transportaion, Federal Aviation Administration, Fort Worth, TX 76193-0530; telephone: (817) 624-5561.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88-ASW-63." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRM's**

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Manager, Airspace and Procedures Branch, Department of Transportation, Federal



Aviation Administration, Fort Worth, TX 76193-0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

**The Proposal**

The FAA is considering an amendment to § 71.181 of the Federal Aviation Regulations (14 CFR Part 71) by revising the transition area located at Morrilton, AR. The development of a new SIAP to Runway 27 at the Morrilton Municipal Airport, utilizing the Bridge NDB, has necessitated this proposed revision. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the new NDB RWY 27 SIAP. Coincident with this action is the changing of the status of the Morrilton Municipal Aiport from VFR to IFR. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 1, 1988.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is no minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Aviation safety, Transition areas.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

**PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS**

1. The authority citation for Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10654; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

**§ 71.181 [Amended]**

2. Section 71.181 is amended as follows:

**Morrilton, AR [Amended]**

By adding to the end of the existing legal description: "and within a 10.0-mile radius of the Morrilton Municipal Airport (latitude 35°08' 10"N., longitude 92°42'48"W.); excluding that portion that overlies the Little Rock AR, Transition Area."

Issued in Fort Worth, TX on February 15, 1989.

**Larry L. Craig,**

*Manager, Air Traffic Division, Southwest Region.*

[FR Doc. 89-4667 Filed 2-28-89; 8:45 am]

BILLING CODE 4910-13-M

**14 CFR Part 71**

**[Airspace Docket No. 88-ASW-54]**

**Proposed Revision of Control Zone; Hood Army Airfield (AAF), TX**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to revise the control zone located at Hood Army Airfield (AAF), TX. The existing Hood AAF Control Zone became effective on November 19, 1987, and was described as "within a 3-mile radius of the Hood AAF * * *." This 3-mile radius around the Hood AAF was to be large enough to touch the Robert Gray AAF Control Zone. However, it has been determined that the 3-mile radius is too small to do this and must be enlarged to a 3.5-mile radius around the Hood AAF. This will be the only change to the existing Hood AAF Control Zone. The Robert Gray AAF Control Zone will not be affected by the proposed revision.

**DATE:** Comments must be received on or before April 7, 1989.

**ADDRESSES:** Send comments on the proposed in triplicate to: Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Docket No. 88-ASW-54, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

**FOR FURTHER INFORMATION CONTACT:** Bruce C. Beard, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530; telephone: (817) 624-5561.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88-ASW-54." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRM's**

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Manager, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530; telephone: (817) 624-5561.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88-ASW-54." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRM's**

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Manager, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

**The Proposal**

The FAA is considering an amendment to § 71.171 of the Federal Aviation Regulations (14 CFR Part 71) by revising the control zone located at Hood AAF, TX. The existing part-time Hood AAF Control Zone became effective on November 19, 1987. The

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control zone was described as "within a 3-mile radius of the Hood AAF * * *." This 3-mile radius was to be large enough to touch the Robert Gray AAF Control Zone; however, it has been determined that the 3-mile radius is too small to do this and must be enlarged to a 3.5-mile radius of the Hood AAF. This will be the only change to the Hood AAF Control Zone. The Robert Gray AAF Control Zone will not be affected by this proposed revision. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 1, 1988.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Aviation safety, Transition areas.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

**PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS**

1. The authority citation for Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 108(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

**§ 71.171 [Amended]**

2. Section 71.171 is amended as follows:

**Hood Army Airfield (AAF), TX [Amended]**

By changing the first sentence of the existing legal description to read: "Within a 3.5-mile radius of the Hood AAF (latitude 31°08'13" N., longitude 97°42'48" W.) . . ."
The remainder of the legal description remains unchanged.

Issued in Fort Worth, TX on February 15, 1989.

**Larry L. Craig,**

*Manager, Air Traffic Division, Southwest Region.*

[FR Doc. 89-4668 Filed 2-28-89; 8:45 am]

BILLING CODE 4910-13-M

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**14 CFR Part 71**

**[Airspace Docket No. 89-ASW-01]**

**Proposed Establishment of Transition Area; Spearman, TX**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to establish a new transition area at Spearman, TX. There is an existing standard instrument approach procedure (SIAP) to Runway 2 at the Spearman Municipal Airport, utilizing the Borger Very High Frequency Omnidirectional Radio Range/Tactical Air Navigation (VORTAC), which has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the existing VOR/DME RWY 2 SIAP to the airport.

**DATE:** Comments must be received on or before April 7, 1989.

**ADDRESSES:** Send comments on the proposal in triplicate to: Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Docket No. 89-ASW-01, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

**FOR FURTHER INFORMATION CONTACT:** Bruce C. Beard, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530; telephone: (817) 624-5561.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89-ASW-01." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRM's**

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Manager, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

**The Proposal**

The FAA is considering an amendment to § 71.181 of the Federal Aviation Regulations (14 CFR Part 71) by establishing a new transition area at Spearman, TX. There is an existing VOR/DME RWY 2 SIAP to the Spearman Municipal Airport, utilizing the Borger VORTAC, which has necessitated the proposal. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the existing VOR/DME RWY 2 SIAP. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 1, 1988.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Aviation safety, Transition areas.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

**PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS**

1. The authority citation for Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 108(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

**§ 71.181 [Amended]**

2. Section 71.181 is amended as follows:

**Spearman, TX [New]**

That airspace extending upward from 700 feet above the surface within a 7.0-mile radius of the Spearman Municipal Airport (latitude 36°13'05" N., longitude 101°11'47" W.).

Issued in Fort Worth, TX on February 15, 1989.

**Larry L. Craig,**

*Manager, Air Traffic Division, Southwest Region.*

[FR Doc. 89-4666 Filed 2-28-89; 8:45 am]

BILLING CODE 4910-13-M

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**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

**18 CFR Parts 270 and 271**

**[Docket No. RM89-6-000]**

**Establishment of Deadlines for First Sellers to Make and Report Refunds; Proposed Rulemaking**

February 23, 1989.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) proposes to revise its regulations for carrying out wellhead pricing refund requirements under the Natural Gas Policy Act of 1978 (NGPA) (15 U.S.C. 3301-3432 (1982)). The proposed revisions are in response to an audit of the Commission's wellhead pricing refund program conducted at the Commission's request by the Office of Inspector General, United States Department of Energy.

In this order, the Commission establishes specific time limits by which first sellers must make refunds of overcollections or unauthorized collections of prices and file refund reports.

**DATE:** An original and 14 copies of the written comments on this proposed rule must be filed with the Commission by May 1, 1989.

**ADDRESS:** All filings should refer to Docket No. RM89-6-000 and should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

**FOR FURTHER INFORMATION CONTACT:** Tamera A. Rudd, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357-8530.

**SUPPLEMENTARY INFORMATION:** In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 1000 at the Commission's Headquarters, 825 North Capitol Street NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 357-8997. To access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this proposed rulemaking will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 1000, 825 North Capitol Street NE., Washington, DC 20426.

**I. Introduction**

The Federal Energy Regulatory Commission (Commission) proposes to revise its regulations for carrying out wellhead pricing refund requirements under the Natural Gas Policy Act of 1978 (NGPA).[1] This action is being taken in response to an audit of the Commission's wellhead pricing refund program conducted at the Commission's request by the Office of Inspector General, United States Department of Energy.[2] The proposed revisions establish specific time limits by which first sellers must make refunds of over-collections or unauthorized collections of prices and file refund reports.

**II. Public Reporting Burden**

The Commission estimates that the public reporting burden for the collection of information in this notice of proposed rulemaking to be one hour per response. This estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Interested persons may send comments regarding this burden estimate or any other aspect of this collection of information, including sugestions for reducing this burden, to Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC (Attention: Michael Miller (202) 357-9205); and to the Office of Management and Budget, Washington, DC 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission).

**III. Background and Discussion**

The Commission oversees the maximum lawful price (MLP) for first sales of certain natural gas under the NGPA. The NGPA establishes eight pricing categories, each of which has a different maximum lawful price.[3]

*A. The Refund Obligation*

Producers and other first sellers must refund any collections in excess of the applicable MLP and report the refunds to the Commission. Refunds are made under two provisions of the Commission's regulations: [4] (1)

[1] 15 U.S.C. 3301-3432 (1982)

[2] U.S. Dept. of Energy, Office of Inspector General, The Federal Energy Regulatory Commission's Wellhead Pricing Refund Program, No. 0259 (Sept. 29, 1988).

[3] 15 U.S.C. 3311-3319 (1982).

[4] First sellers are permitted to collect the NGPA section 108 MLP subject to refund provisions of § 271.805(f), but those refund provisions take ther refund authority from § 270.101(e).

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§ 273.302, which applies to the obligation to refund interim collections; [4] and (2) § 270.101, which applies to all other refund obligations. Section 273.302 specifies the timing for making and reporting refunds.[5] Section 270.101(e) does not. It requires only that refunds be made "promptly," and therefore it is the focus of our proposal here.

Section 270.101(e) is a general provision that includes all refund obligations other than interim collection refunds that fall under § 272.302 of the regulations. Most of the refunds under § 270.101(e) involve wells previously determined to be stripper wells under NGPA section 108 but which were subsequently disqualified.[7] Section § 270.101(e) refunds obligations also arise in any sale of gas at a particular NGPA incentive price where the first seller was not eligible, even on an interim basis under Part 273 of the Commission's regulations, to collect a price in excess of the otherwise applicable MLP because the first seller has not yet filed an application with the appropriate jurisdictional agency for a determination of eligibility to charge the incentive price. Not having applied for the necessary NGPA category eligibility determination, the first seller has not interim collection authority under Part 273 to collect that NGPA incentive price and the seller is limited to the otherwise applicable maximum lawful price.

Refund obligations under the § 270.101(e) general refund requirements also include those arising as the result of sales of misvintaged gas. For example, factors such as the date that surface drilling of a well began affect the proper classification for "old" interstate gas (*i.e.*, gas subject to NGPA section 104). If the first seller misvintages gas, a § 270.101(e) refund obligation is triggered.

*B. The Audit and the Need for Revisions to the Refund Regulations.*

The Commission has been and continues to be committed to ensuring that refunds owed by first sellers to their customers are made as expiditiously as possible in order to hasten their ultimate pass-through to residential customers and other end users. To this end, the Inspector General's review was conducted to determine whether the Commission has adequate policies and purchasers and report refunds to the Commission in a timely manner as required by the NGPA.

The audit was performed in accordance with generally accepted government auditing standards. The 60-day and 90-day criteria established for refunds under § 273.302 [6] were applied to randomly selected cases. The audit report found that only six percent of the refunds were paid within 60 days, that only 24 percent of the required refund reports were submitted to the Commission within 90 days, and that, on average, first sellers took a year and a half to make refunds and submit reports. Based on these findings, the audit report concluded that, overall, first sellers did not refund overcharges or file reports in a timely manner, and that as a result an estimated $200 million (or approximately $22 million a year) was not refunded promptly.

The audit report attributed late refunds and reports primarily to, *inter alia*, the lack of specific time limits for first sellers to make refunds and reports for all types of refund actions, and the absence of penalty actions for late refunds or late reports. It recommended that corrective action be taken. The Commission concurs with the Inspector General's findings and conclusions and agrees that remedial action is necessary. Requiring timely refunds should help to ensure that residential customers and other end uses who pay the overcharges are not unreasonably deprived of the use of funds to be refunded.[9]

## IV. The Proposed Rule

*A. Section 270.101(e)*

Section 270.101(e) now provides that refunds shall be made "promptly." The proposed revisions would specify that refunds must be paid within 60 days after a first seller is notified that a refund is due or becomes aware that a refund is due, unless the refund is recovered through a billing adjustment. New provisions would be added to specify that if a refund is made through a billing adjustment, the first seller and purchaser may agree to a reasonable period for completion of the billing adjustment not to exceed 120 days.

A purchaser would not be able to use a billing adjustment prior to expiration of the 60-day period without the first seller's prior approval. After the 60-day period expires, the purchaser would be able to use the billing adjustment to recover the refund without the first seller's prior approval. However, before the billing adjustment could be implemented, the purchaser would have to inform the seller of the amount of the refund and the time period during which the adjustment would be completed.

New provisions would also require the seller to file a refund report, consisting of an original and two copies with a purchaser concurrence, within 90 days of receiving notice of the refund obligation or becoming aware that the refund is due. This report would not be required if a refund is recovered by an interstate pipeline purchaser through a billing adjustment.

*B. Section 271.805(f)*

Under section 108(b) of the NGPA, a well that produces an average of 60 Mcf or less per production day of nonassociated natural gas for a 90-day production period (60 Mcf limit) can qualify as a stripper well. Under 271.805, once a well has been determined to be a stripper well, that status is not forfeited when production exceeds stripper well levels in any 90-day production period; however, the seller is limited to the otherwise applicable MLP, not the stripper well incentive price, until a new 90-day qualifying period is established.[10]

Under § 271.805(f), an operator who files either a petition for a determination under § 271.806, or a motion contesting the disqualification of the stripper well, may collect, subject to refund, the MLP provided in § 271.802. A new paragraph would be added to provide that when the petition for determination under § 271.806 or the motion contesting disqualification is denied or withdrawn, then the operator must comply with § 270.101(e), as it is proposed to be revised.

Now provisions also would require, in the case of refunds due to disqualification, that the seller refund all amounts collected in excess of the ceiling price, with interest, within 180 days after the last day of the disqualifying 90-day or 12-month period,[11] unless the seller files a petition under § 271.806 within 150 days after the last day of the disqualifying period or unless the refund is recovered through a billing adjustment in accordance § 270.101(e) (1) and (2). Compliance with the interim collection refund requirements under § 273.302 would not eliminate this obligation.

Other new provisions would require the seller to file a refund report or statement that no refunds are due, consisting of an original and two copies with a purchaser concurrence, within 210 days after the last day of the disqualifying 90-day or 12-month period.[12] This report would not be required if a refund is recovered by an interstate pipeline through a billing adjustment.

## V. Additional Remedies

By our action in this proceeding, we are seeking to ensure that refunds owed by first sellers are made as quickly as possible and ultimately passed through to residential customers and other end users. There are two provisions presently available to the Commission that should also facilitate the refund and reporting process: (1) § 273.302 of the Commission's regulations, which permits recovery of interim collection refunds through billing adjustments by purchasers;[13] and (2) section 504 of the NGPA, which provides for the assessment of civil penalties for late refunds and late reports.[14]

*A. Order No. 423*

In Order No. 423, the Commission was concerned about delays in refunds of interim collections under § 273.302. At that time, § 273.302 provided that interim collection refunds could be made only by lump sum payments. The Commission concluded that permitting interim collection refunds to be made through billing adjustments as well as through lump sum payments would ensure that refunds owed by producers and other first sellers would be made as quickly as possible. It reasoned that billing adjustments would provide pipeline companies and other first-sale purchasers a positive means of recovering refunds without waiting for producers to make their lump sum payments. It concluded that because many pipeline companies use billing adjustments to recoup most types of overcollections, pipelines would be in a position to use billing adjustments to take the initiative in recovering first sellers' interim collection refunds when sellers fail to make timely lump sum payments. In addition, the Commission stated that § 270.101(e) permits the use of billing adjustments to recover refunds and added § 270.101(f) to require interstate pipelines to report refunds collected through billing adjustments.

Prior to the issuance of Order No. 423, the Commission issued a policy statement on the duty of interstate pipelines to pursue refunds in Order No. 423's notice of proposed rulemaking.[15] The Commission emphasized that even though a seller continues to carry the primary responsibility for its refund obligations, the pipelines also have an obligation, as part of prudent management, to ensure that they recover and pass through refunds owed their customers. The commission notes that most interstate pipelines have not taken advantage of billing adjustments as a remedy to first sellers' almost chronic delays in making refunds. Therefore, the Commission advises interstate pipelines that it intends to pursue corrective action if the billing adjustment provisions continue to be ignored.

*B. Civil penalties.*

Under section 504(b)(6) of the NGPA, the Commission has the authority to assess civil penalties for knowing violations of its regulations. If the problem of delay in refunding persists, the Commission will consider the civil penalty remedy on a case-by-case basis.

## VI. Environmental Statement

Commission regulations require that an environmental assessment or an environmental impact statement must be prepared for any Commission action that may have a significant adverse effect on the human environment.[16] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment.[17] No environmental consideration is necessary for the promulgation of a rule that is clarifying, corrective, or procedural or that does not substantially change the effect of legislation or regulations being amended.[18] This rule is procedural in nature and merely sets time frames for existing refunds and reporting requirements. Consequently, since this rule falls within the categorical exemptions provided in the Commission's regulations, neither an environmental impact statement nor an environmental assessment are required.[19]

## VII. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) [20] requires certain statements, descriptions and analyses of proposed rules that will have "a significant economic impact on a substantial number of small entities." The Commission is not required to make an RFA analysis if it certifies that a proposed rule will not have a "significant economic impact on a substantial number of small entities."

The proposal would, first, revise § 270.101(e) by setting a time limit of 60 days for the seller to refund excess charges and report to the Commission within 90 days. Currently, overcharges must be refunded and reported promptly. Thus, this proposal simply provides time frames for the refund and reporting requirements which are already in place.

The proposal would, secondly, revise § 271.805(f) to specify that refunds due to the disqualification of stripper wells are due within 180 days after the last day of the disqualifying 90-day or 12-month period. A refund report or statement of no refund due for stripper wells would be due within 210 days after the last day of the disqualifying 90-day or 12-month period. The reports

[4] The MLP in any first sale of natural gas depends on the applicable NGPA category of the gas. Sellers must apply to Federal and State jurisdictional agencies for a determination of eligibility to collect the MLP for certain categories of gas. Under section 503 of the NGPA and the Commission's implementing regulations in Part 273 (18 CFR Part 273 (1988)), once a first seller of natural gas has filed an application with a jurisdictional agency, it may collect, on an interim basis, prices up to the MLP for the applied for category of natural gas. However, a first seller must refund these interim collections upon denial or withdrawal of its application.

[5] Section 273.302 requires a seller to refund with interest, within sixty days after either withdrawing its application or receiving a negative determination, any portion of an interim collection that is in excess of the actual maximum lawful price for the correct NGPA category of the gas sold. Within ninety days of either a negative eligibility determination or an application withdrawal, a seller must file either a refund report or a statement with the Commission certifying that no refund is required. If the seller does not make such payment in 60 days, § 273.302 permits the pipeline to make a billing adjustment. If the pipeline makes a billing adjustment, the first seller is not obligated to file a refund report. *See* Purchased Gas Adjustments, Final rule, Order No. 423, 30 Fed. Reg. 23,888 (June 3, 1985); FERC Stats. & Regs. [Regulations Preambles 1982–1985] ¶ 30,665 (May 30, 1985).

[6] Disqualification occurs when production in a 90-day production period exceeds the stripper well qualification level.

[7] *See* note 5.

[8] Competitors that do not promptly refund overcharges have the use of these funds until refunds are made. Although they must may interest on the late refunds, the amount of interest they must pay may not be enough to achieve equity.

[9] *See* Reduction in Filing Requirements for Well Category Applications under Sections 102, 103, 107 and 108 of the Natural Gas Policy Act of 1978; Regulations for Temporary Pressure Buildup Determinations under Section 108 of the Natural Gas Policy Act, Order No. 336, 48 FR 44,508 (Sept. 29, 1983); FERC Stats. & Regs. [Regulations Preambles 1982–1985] ¶ 30,498 (Sept. 27, 1983).

[11] *See* § 271.805 (a) and (b) for explanation of the 90-day and 12-month period.

[12] When no petition is filed under section 271.806 within 150 days from the last day of the disqualifying period the first seller must make refunds within 30 days from that date and file a refund report within 60 days of that date.

[13] *See* note 6.

[14] 15 U.S.C. 3414 (1982).

[15] *See* Obligations of Sellers and Purchasers of First-Sale Natural Gas for Refunds Owed for Collections in Excess of Maximum Lawful Prices Under the Natural Gas Policy Act of 1978, Notice of proposed rulemaking and requests for comments on statement of policy, 49 FR 34233 (Aug. 29, 1984); FERC Stats. & Regs. [Proposed Regulations 1982–1987] ¶ 30,382 (Aug. 23, 1984).

[16] Regulations Implementing National Environmental Policy Act of 1969, 52 Fed. Reg. 47,897 (Dec. 17, 1987), FERC Stats. & Regs., ¶ 30,783 (Dec. 10, 1987).

[17] 18 CFR 380.4 (1988).

[18] 18 CFR 380.4(a)(2)(ii) (1988).

[19] *See* 18 CFR 380.4(a)(1) (1988).

[20] 5 U.S.C. 601–612 (1982).

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required by § 270.101(e)(4) and § 271.805(g)(2) will not include any information regarding a refund recovered by a purchaser through a billing adjustment.

In view of these considerations, the Commission has determined, pursuant to section 605(a) of the RFA, that the proposed filing dates for refunds and reports will not have "a significant economic impact on a substantial number of small entities."

### VIII. Paperwork Reduction Act

The Paperwork Reduction Act [21] and the Office of Management and Budget's (OMB) regulations [22] require that OMB approve certain information collection requirements imposed by agency rule. The information collection provisions in this NOPR are being submitted to OMB for its approval.

The Commission promulgated the information collection provisions of this rule in order to ensure that refunds owed by producers and other first sellers of natural gas are made as quickly as possible and ultimately passed through to residential customers and other end users. These proposals do not change the current requirement to report refunds to the Commission. The provisions clarify the current obligation under §§ 270.101(e) and 271.805 to report refunds, and establish deadlines for first sellers to comply with the existing reporting requirements.

Pursuant to OMB's regulations,[23] the Commission is providing the following information.

(1) The title of the collection of information in this Notice of Proposed Rulemaking is "Establishment of Deadlines for First Sellers to Make and Report Refunds."

(2) The Commission needs to collect this information to ensure that first sellers are making required refunds to their customers for overcollections or unauthorized collections of prices for first sales of natural gas, pursuant to NGPA and Commission regulations.

(3) Respondents that will provide the needed information will be first sellers of natural gas.

(4) The Commission estimates that: (a) The public reporting burden is one hour per response; (b) the frequency of responses is based upon the frequency of occurrence of the refunds per year and can not be projected; and (c) the total annual number of likely respondents is 4,000.

Interested persons can obtain information on the information collection provisions by contacting the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 (Attention: Michael Miller at (202) 357-9205). Comments on the information collection provisions can be sent to the Office of Information and Regulatory Affairs of OMB, New Executive Office Building, Washington, DC 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission).

### IX. Written Comment Procedures

Interested persons are invited to submit written comments, data, views or arguments with respect to this proposal. An original and 14 copies should be filed with the Secretary of the Commission. All comments received on or before May 1, 1989, will be considered by the Commission prior to promulgation of any final regulation issued as a result of this proceeding. All written submissions will be placed in the Commission's public files and will be available for public inspection in the Commission's Office of Public Information, 825 North Capitol Street NE., Washington, DC, during regular business hours. Comments should be submitted to the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, and should refer to Docket No. RM89-6-000.

### List of Subjects

*18 CFR Part 270*

Natural gas, Price controls, Reporting and recordkeeping requirements.

*18 CFR Part 271*

Continental Shelf, Natural Gas, Price controls, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission proposes to amend Parts 270 and 271, Chapter I, Title 18, Code of Federal Regulations as set forth below.

By direction of the Commission.

**Lois D. Cashell,**

*Secretary.*

## PART 270—RULES GENERALLY APPLICABLE TO REGULATED SALES OF NATURAL GAS

1. The authority citation for Part 270 continues to read as follows:

**Authority:** Natural Gas Act, 15 U.S.C. 717-717w (1982); Department of Energy Organization Act, 42 U.S.C. 7101-7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142; Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432 (1982).

2. In § 270.101, paragraph (e) is revised to read as follows:

**§ 270.101 Application of ceiling prices to first-sales of natural gas.**

* * * * *

(e) *General refund obligation and filing requirements for first sellers.* (1) Any price collected with respect to a first sale of natural gas to which Subchapter H applies is collected subject to a general obligation to refund any portion of the price, together with interest determined in accordance with §§ 154.102 (c) and (d) of this chapter, which is in excess of the maximum lawful price or collection of which is not authorized by Subchapter H. The refund, including interest, must be paid within 60 days after the seller is notified that a refund is due or becomes aware that a refund is due unless the refund is recovered through a billing adjustment as provided in paragraph (e)(2) or (e)(3) of this section. Compliance with the specific refund requirements of § 273.302 of this chapter will not terminate the general refund obligation under Subchapter H.

(2) if a refund required by paragraph (e)(1) of this section is made through a billing adjustment, the seller and purchaser may agree that the billing adjustment will be completed in a reasonable period not to exceed one hundred and twenty (120) days.

(3) A purchaser may not use a billing adjustment to recover a refund required by paragraph (e)(1) of this section before the expiration of the 60-day period for the seller to make the refund unless the seller has previously agreed to the billing adjustment. If the seller fails to make a refund within the 60-day period, the purchaser may use a billing adjustment to recover the refund without agreement by the seller. Before making a billing adjustment, the purchaser must provide the seller written notice of the amount of the refund to be recovered and the time period during which the billing adjustment will be completed.

(4) Within 90 days after a seller has been notified that a refund is due or has become aware that a refund is due, the seller must file an original and two copies of a refund report, together with a purchaser concurrence, containing the information specified in § 273.302(f) of this chapter. A seller is not required to include in a report filed under this paragraph any information regarding a refund recovered by a purchaser through a billing adjustment.

* * * * *

## PART 271—CEILING PRICES

3. The authority citation for Part 271 continues to read as follows:

[21] 44 U.S.C. 3501-3520 (1982).

[22] 5 CFR 1320-12 (1988).

[23] 5 CFR 1320.13(a) (1988).



**Authority:** Natural Gas Act, 15 U.S.C. 717-717w (1982); Department of energy Organization Act, 42 U.S.C. 7101-7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142; Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432 (1982).

4. In § 271.805, paragraph (f) is revised, paragraph (g) is redesignated as paragraph (h) and a new paragraph (g) is added.

**§ 271.805 Continuing qualification.**

* * * * *

(f) *Collection subject to refund.* (1) An operator who files a petition or motion under paragraph (e) may collect, subject to refund, the maximum lawful price provided in § 271.802:

(i) From the last day of the 90-day or the 12-month disqualifying period if the petition or motion is filed within 150 days after the last day of the 90-day or the 12-month disqualifying period, or

(ii) In all other cases, after the date the petition is filed.

(2) When the petition or motion filed under paragraph (e) is denied or withdrawn, the operator or purchaser must comply with the provisions of § 270.101(e) of this chapter.

(g) *Refunds due to disqualification.* (1) Unless the seller files a petition under § 271.806 within 150 days after the last day of the disqualifying 90-day or 12-month period, and unless the refund is recovered through a billing adjustment as provided in § 270.101(e) (1) and (2) of this chapter, the seller must refund to the purchaser the amount collected in excess of the maximum lawful price, together with interest determined in accordance with §§ 154.102 (c) and (d) of this chapter, within 180 days after the last day of the disqualifiying 90-day or 12-month period. Compliance with the specific refund requirements of § 273.302 of this chapter will not terminate the general refund obligation under Subpart H.

(2) Within 210 days after the last day of the disqualifying 90-day or 12-month period, the seller must file either: an original and two copies of a refund report, together with a purchaser concurrence, containing the information specified in § 273.302(f) of this chapter; or a statement, including a purchaser concurrence, that no refunds are due. A seller is not required to include in a report filed under this paragraph any information regarding a refund recovered by a purchaser through a billing adjustment.

* * * * *

[FR Doc. 89-4758 Filed 2-28-89; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

### 30 CFR Part 935

### Ohio Permanent Regulatory Program; Liability for Subsidence Damage

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

**ACTION:** Proposed rule.

**SUMMARY:** OSMRE is announcing the receipt of proposed Program Amendment Number 38 to amend the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments are intended to incorporate rule changes initiated by the State. The proposed amendments would delete an existing provision from the Ohio program under which underground mine operators are exempted from repairing or compensating for damage to structures caused by mine subsidence if the operator has been relieved of liability for the damage through an agreement with the owner of the affected structure.

This notice sets forth the times and locations that the Ohio program and proposed amendments to that program will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed regarding the public hearing, if one is requested.

**DATES:** Written comments must be received on or before 4:00 p.m. on March 31, 1989. If requested, a public hearing on the proposed amendments will be held at 1:00 p.m. on March 27, 1989. Requests to present oral testimony at the hearing must be received on or before 4:00 p.m. on March 16, 1989.

**ADDRESSES:** Written comments and requests to testify at the hearing should be mailed or hand-delivered to Ms. Nina Rose Hatfield, Director, Columbus Field Office, at the address listed below. Copies of the Ohio program, the proposed amendments, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendments by contacting OSMRE's Columbus Field Office.

Office of Surface Mining Reclamation Enforcement, Columbus Field Office, 2242 South Hamilton Road, Room 202, Columbus, Ohio 43232, Telephone: (614) 866-0578.

Office of Surface Mining Reclamation and Enforcement, 1100 "L" Street, NW., Room 5131, Washington, DC 20240, Telephone: (202) 343-5492.

Ohio Department of Natural Resources, Division of Reclamation, Fountain Square, Building B-3, Columbus, Ohio 43224, Telephone: (614) 265-6675.

**FOR FURTHER INFORMATION CONTACT:** Ms. Nina Rose Hatfield, Director, Columbus Field Office, (614) 866-0578.

**SUPPLEMENTARY INFORMATION:**

### I. Background

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982 **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

### II. Discussion of the Proposed Amendments

By letter dated February 6, 1989 (Administrative Record No. OH-1142), the Ohio Department of Natural Resources, Division of Reclamation (Ohio) submitted proposed amendments to the Ohio program at Ohio Administrative Code (OAC) Section 1501:13-12-03 (B), (D)(2) (a) and (b), (D)(4)(a)(ii), and (D)(4)(b). The proposed amendments were initiated by the State.

The proposed changes to paragraphs (B), (D)(4)(a)(ii), and (D)(4)(b) are nonsubstantive changes to paragraph letter notations.

The proposed changes to OAC Section 1501:13-12-03(D)(2) (a) and (b) rewrite these paragraphs to delete an existing provision in the Ohio regulations concerning liability for subsidence damage. This existing provision exempts underground mine operators from the liability to repair or compensate for damage to structures from mine subsidence if the mine operator has an agreement with the owner of the affected structure relieving the mine operator of that liability. The proposed amendments would delete this exemption and provide that underground mine operators are relieved of the liability to repair or compensate for subsidence damage only

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if the mine operator is the owner of the affected structure.

**III. Public Comment Procedures**

In accordance with the provisions of 30 CFR 732.17(h), OSMRE is now seeking comment on whether the amendments proposed by Ohio satisfy the applicable program approval criteria of 30 732.15. If the amendments are deemed adequate, they will bcome part of the Ohio program.

*Written Comments*

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Columbus Field Office will not necessary be considered in the final rulemaking or included in the Administrative Record.

*Public Hearing*

Persons wishing to comment at the public hearing should contact the person listed under "**FOR MORE INFORMATION CONTACT**" by 4:00 p.m. on March 16, 1989. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statments in advance of the hearing will allow OSMRE officials to prepare adequate responses and appropriate questions. The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

*Public Meeting*

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSMRE representatives to discuss the proposed amendments may request a meeting at the Columbus Field Office by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT**." All such meetings shall be open to the public and, if possible, notices of the meetings will be posted at the locations listed under "**ADDRESSES**." A written summary of each public meeting will be made a part of the Administrative Record.

**List of Subjects in 30 CFR Part 935**

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Date: February 14, 1989.

**Carl C. Close,**

*Assistant Director Eastern Field Operations.*

[FR Doc. 89-4772 Filed 2-28-89; 8:45 am]

BILLING CODE 4310-05-M

**30 CFR Part 935**

**Ohio Permanent Regulatory Program; Public Comment Period and Opportunity for Public Hearing on Amendments; Crop Yields and Standards for Tree and Shrub Plantings**

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

**ACTION:** Proposed rule.

**SUMMARY:** OSMRE is announcing the receipt of proposed amendments to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments are intended to revise the State program to be consistent with the corresponding Federal regulations and to clarify other provisions of the Ohio program rules. The proposed revisions concern the use of crop yield data in bond release; success standards for tree plantings; approval by other State agencies of tree, shrub, and herbaceous species selection and stocking levels; and the definition of "countable tree."

This notice sets forth the times and locations that the Ohio program and proposed amendments to that program will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed regarding the public hearing, if one is requested.

**DATES:** Written comments must be received on or before 4:00 p.m. on March 31, 1989. If requested, a public hearing on the proposed amendments will be held at 1:00 p.m. on March 27, 1979. Requests to present oral testimony at the hearing must be received on or before 4:00 p.m. on March 16, 1989.

**ADDRESSES:** Written comments and requests to testify at the hearing should be mailed or hand-delivered to Ms. Nina Rose Hatfield, Director, Columbus Field Office, at the address listed below. Copies of the Ohio program, the proposed amendments, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendments by contacting OSMRE's Columbus Field Office.

Office of Surface Mining Reclamation and Enforcement, Columbus Field Office, 2242 South Hamilton Road, Room 202, Columbus, Ohio 43232, Telephone: (614) 866-0578.

Office of Surface Mining Reclamation and Enforcement, 1100 "L" Street, NW., Room 5131, Washington, DC 20240, Telephone: (202) 343-5492.

Ohio Department of Natural Resources, Division of Reclamation, Fountain Square, Building B-3, Columbus, Ohio 43224, Telephone: (614) 265-6675.

**FOR FURTHER INFORMATION CONTACT:** Ms. Nina Rose Hatfield, Director, Columbus Field Office, (614) 866-0578.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982 **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

**II. Discussion of the Proposed Amendments**

By letter dated May 6, 1987 (Administrative Record No. OH-937), the Ohio Department of Natural Resources, Division of Reclamation (Ohio), submitted a proposed amendment to the Ohio program at Ohio Administrative Code (OAC) Section 1501:13-9-15. The proposed revisions concerned revegetation standards and were initiated by Ohio. OSMRE announced receipt of the proposed amendment in the July 7, 1987 **Federal Register** (52 FR 25386), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment.

On July 27, 1987 (52 FR 28012), OSMRE announced a proposed rule to revise the Federal regulations dealing with the same revegetation FCB standards as were proposed for revision



in Ohio's amendment of May 6, 1987. To avoid the need for Ohio to amend its revegetation regulations a second time following approval of the revised Federal rules, OSMRE and Ohio agreed to defer action on the proposed Ohio amendment until the corresponding Federal rules had been finalized. The final Federal rules were adopted by OSMRE on September 7, 1988 (53 FR 34636).

By letter dated January 26, 1989 (Administrative Record No. OH-1135), Ohio resubmitted the proposed amendment to the Ohio program at Ohio Administrative Code (OAC) Section 1501:13-9-15. The resubmitted revisions, along with accompanying administrative record documents, are intended to make the Ohio program consistent with the Federal revegetation rules adopted on September 7, 1988.

The revisions proposed by Ohio to OAC Section 1501:13-9-15 are briefly discussed below:

(1) *Paragraph (A)(1)(a):* This paragraph is being rewritten to reduce from five years to two years the time period for which a tree or shurb must be in place in order to be considered a "countable tree."

(2) *Paragraph (F):* Paragraph (F)(9) of the existing version of OAC Section 1501:13-9-15 is being moved to this new paragraph. The existing text is also being rewritten to require approval by the Ohio Department of Natural Resources, Division of Forestry, of Ohio's determinations of appropriate species of trees and shrubs, appropriate stocking levels of trees and shrubs, and appropriate herbaceous species for areas where the postmining land use is to be recreation, shelter belts, or non-commercial forest land.

(3) *Paragraph (G):* Paragraph (F)(10) of the existing version of OAC Section 1501:13-9-15 is being moved to this new paragraph. The existing text is also being rewritten to require approval by the Ohio Department of Natural Resources, Division of Forestry, of Ohio's determinations of appropriate species of trees and shrubs, appropriate stocking levels of trees and shrubs, and appropriate herbaceous species for areas where the postmining land use is to be commercial forest land.

(4) *Paragraph (H):* Paragraph (F)(11) of the existing version of OAC Section 1501:13-9-15 is being moved to this new paragraph. The existing text is also being rewritten to require approval by the Ohio Department of Natural Resources, Division of Wildlife, of Ohio's determinations of appropriate species of trees and shurbs, appropriate stocking levels of trees and shurbs, and appropriate herbaceous species for areas where the postmining land use is to be fish and wildlife habitat.

(5) *Paragraph (I)(2)(c):* Paragraph (F)(12) of the existing version of OAC Section 1501:13-9-15 is being moved to this new paragraph. The existing text is also being rewritten to specify that the following agronomic practices will not be considered augmentative when the practices and the rates of application are accepted local practices for comparable unmined land and can be expected to continue as postmining practices:

(a) For cropland or pasture land, seeding, fertilizing, irrigating, and other locally accepeted practices;

(b) For cropland or areas for which the approved postmining land use requires woody plants as the primary vegetation, the repair of rills and gullies; and

(c) For areas for which the approved postmining land use requires woody plants as the primary vegetation, the replanting of trees as a reinforcement measure.

(6) *Paragraph (I)(4)(c):* This paragraph is being rewritten to specify that revegetation shall be determined to be successful for Phase III bond release for row and hay crops when the five-year period of extended responsibility has expired and the yield data of crop harvest on the mined area for any two years of the period of extended responsibility, except the first year, equals or exceeds the average county yield for comparable crops.

(7) *Paragraph (I)(8):* This paragraph is being rewritten to delete the phrase "a cover of" from the requirement to establish trees and shrubs after mining where the approved postmining land use requires woody plants as the primary vegetation.

(8) *Paragraph (I)(8)(b):* This paragraph is being rewritten to reiterate that both consultation with and approval by the appropriate State agency must occur as part of Ohio's determination of tree and shrub species compatible with the postmining land use. The phrase "well-distributed acceptable trees" is also being changed to "properly distributed acceptable trees."

(9) *Paragraph (I)(8)(f)(i):* This paragraph is being rewritten to increase the minimum number of countable trees required for Phase III bond release from four hundred per acre to four hundred and fifty per acre, and to add the requirement that eighty percent of the trees must have been in place for at least three years. For areas where the postmining land use is fish and wildlife habitat, the areas must have a minimum of two hundred fifty countable trees per acre, of which eighty percent must have been in place for three years.

(10) *Paragraph (F)(9), (F)(10), (F)(11), and (F)(12):* These paragraphs are being rewritten and moved to paragraphs (F), (G), (H), and (I)(2)(c), respectively. Paragraph notations throughout OAC Section 1501:13-9-15 are being revised to reflect the relocation of these paragraphs.

(11) *Paragraph (I)(9):* This paragraph is being rewritten to specify that permitees shall file planting reports upon completion of planting rather than prior to, or simultaneously with, an application for Phase II bond release of the planted area.

**III. Public Comment Procedures**

In accordance with the provisions of 30 CFR 732.17(h), OSMRE is now seeking comment on whether the amendments proposed by Ohio satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Ohio program.

*Written Comments*

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Columbus Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

*Public Hearing*

Persons wishing to comment at the public hearing should contact the person listed under "**FOR MORE INFORMATION CONTACT**" by 4:00 p.m. on March 16, 1989. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

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*Public Meeting*

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSMRE representatives to discuss the proposed amendments may request a meeting at the Columbus Field Office by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings shall be open to the public and, if possible, notices of the meetings shall be posted at locations listed under "**ADDRESSES.**" A written summary of each public meeting will be made a part of the Administrative Record.

**List of Subjects in 30 CFR Part 935**

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Date: February 10, 1989.

**Carl C. Close,**

*Assistant Director, Eastern Field Operations.*

[FR Doc. 89-4773 Filed 2-28-89; 8:45 am]

BILLING CODE 4310-05-M

## ENVIRONMENTAL PROTECTION AGENCY

**40 CFR Part 60**

**[AD-FRL-3531-4]**

## Standards of Performance for New Stationary Sources; Dry Molecular Weight and Emission Rate Correction Factor or Excess Air

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** This rule proposes to divide Method 3 into Method 3 and Method 3B and amend Subparts D, Da, E, Z, and BB in order to reduce the confusion associated with Method 3. A public hearing will be held, if requested, to provide interested parties an opportunity for oral presentations of data, views, or arguments concerning the proposed rule. Method 3 will be entitled "Gas Analysis for the Determination of Dry Molecular Weight," while Method 3B will be entitled "Gas Analysis for the Determination of Emission Rate Correction Factor or Excess Air."

**DATES:** *Comments.* Comments must be received on or before May 15, 1989.

*Public Hearing.* If anyone contacts EPA requesting to speak at a public hearing by March 22, 1989, a public hearing will be held (April 17, 1989) beginning at 10:00 a.m. Persons interested in attending the hearing should call the contact mentioned under **ADDRESSES** to verify that a hearing will be held.

*Request to Speak at Hearing.* Persons wishing to present oral testimony must contact EPA by March 22, 1989.

**ADDRESSES:** *Comments.* Comments should be submitted (in duplicate if possible) to: Central Docket Section (LE-131), Attention: Docket Number A-88-30, U.S. Environmental Protection Agency, South Conference Center, Room 4, 401 M Street, SW., Washington, DC 20460.

*Public Hearing.* If anyone contacts EPA requesting a public hearing, it will be held at EPA's Emission Measurement Laboratory, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should notify Ms. Candace Sorrell, Emission Measurement Branch (MD-19), Technical Support Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-1064.

*Docket.* Docket No. A-88-30 containing materials relevant to this rulemaking, is available for public inspection and copying between 8:00 a.m. and 3:30 p.m., Monday through Friday, at EPA's Central Docket Section, South Conference Center, Room 4, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

**FOR FURTHER INFORMATION CONTACT:** Ms. Candace Sorrell, Emission Measurement Branch (MD-19), Technical Support Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-1064.

**SUPPLEMENTARY INFORMATION:**

### I. The Rulemaking

At the present, Method 3 has two procedures—one for molecular weight and the other for emission rate and excess air calculations. The two procedures require different degrees of accuracy. This situation is awkward when making references in subparts; therefore, the method is being divided.

This rulemaking does not impose emission measurement requirements beyond those specified in the current regulations, nor does it change any emission standard. Rather, this rulemaking amends test procedures to which the affected facilities are already subject.

### II. Administrative Requirements

*A. Public Hearing*

A public hearing will be held, if requested, to discuss the proposed rulemaking in accordance with section 307(d)(5) of the Clean Air Act. Persons wishing to make oral presentations should contact EPA at the address given in the **ADDRESSES** section of this preamble. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement with EPA before, during, or within 30 days after the hearing. Written statements should be addressed to the Central Docket Section address given in the **ADDRESSES** section of this preamble.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at EPA's Central Docket Section in Washington, DC (see **ADDRESSES** section of this preamble).

*B. Docket.*

The docket is an organized and complete file of all the information submitted to or otherwise considered by EPA in the development of this proposed rulemaking. The principal purposes of the docket are to: (1) allow interested parties to identify and locate documents so that they can effectively participate in the rulemaking process, and (2) serve as the record in case of judicial review except for interagency review materials (Section 307(d)(7)(A)).

*C. Office of Management and Budget Review*

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a regulatory impact analysis. This rulemaking would not result in any of the adverse economic effects set forth in Section 1 of the Order as grounds for finding a "major rule." It will not have an annual effect on the economy of $100 million or more, nor will it result in a major increase in costs or prices. There will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. This rulemaking was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

*D. Regulatory Flexibility Act Compliance*

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this attached rule, if promulgated, will not have any economic impact on small entities because no additional costs will be incurred.

This rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

**List of Subjects in 40 CFR Part 60**

Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Incorporation by reference, Incinerators, Kraft pulp mills.

Date: February 22, 1989.

**Don R. Clay,**

*Acting Assistant Administrator for Air and Radiation.*

It is proposed that 40 CFR Part 60 be amended as follows:



**PART 60—[AMENDED]**

1. The authority for 40 CFR Part 60 continues to read:

**Authority:** Sections 101, 111, 114, 116, and 301 of the Clean Air Act, as amended (42 U.S.C. 7401, 7411, 7414, 7416, and 7601).

**§§ 60.46, 60.47a, 60.48a, 60.54, 60.266, and 60.285 [Amended]**

2. In §§ 60.46(b)(2)(ii), 60.46(b)(4)(ii), 6046(b)(5)(ii), 60.46(d)(1)(ii), 60.47a (h)(3), 6048a(b)(2)(ii), 60.54(b)(3), 60.54(c)(1)(iii), 60.286(c)(5), 60.285(b)(2), and 60.285(d)(2), the words "Method 3" are revised to read "Method 3B".

3. In § 60.46(d)(6), the words "or 3B" is inserted between "Method 3A" and "may" to read "* * * Method 3A or 3B may * * *".

4. Section 60.46(d)(7) is added to read:

* * * * * *

(d) * * *

(7) For Method 3B, Method 3A may be used.

5. In § 60.47a(j)(3) the words "or 3B" is inserted between "Method 3A" and "may" to read "* * * Method 3A or 3B may * * *."

6. Section 60.47a(j)(4) is added to read:

* * * * * *

(j) * * *

(4) For Method 3B, Method 3A may be used.

7. In § 60.54(c)(2)(ii), the words "Equation 3-1 of Method 3" are revised to read "Equation 3B-3 of Method 3B".

8. Appendix A is amended by revising Method 3 to read as follows:

**Appendix A to Part 60—[Amended]**

**Method 3—Gas Analysis for the Determination of Dry Molecular Weight**

*1. Applicability and Principle*

1.1 Applicability. 1.1.1 This method is applicable for determining carbon dioxide ($CO_2$) and oxygen ($O_2$) concentrations and dry molecular weight of a sample from a gas stream of fossil-fuel combustion process. The method may also be applicable to other processes where it has been determined that compounds other than $CO_2$, $O_2$ carbon monoxide (CO), and nitrogen ($N_2$) are not present in concentrations sufficient to affect the results.

1.1.2 Other methods, as well as modifications to the procedure described herein, are also applicable for some or all of the above determinations. Examples of specific methods and modifications include: (1) a multi-point sampling method using an Orsat analyzer to analyze individual grab samples obtained at each point; (2) a method using $CO_2$ or $O_2$ and stoichiometric calculations to determine dry molecular weight; and (3) assigning a value of 30.0 for dry molecular weight, in lieu of actual measurements, for processes burning natural gas, coal, or oil. These methods and modifications may be used, but are subject to the approval of the Administrator, U.S. Environmental Protection Agency (EPA).

1.1.3 *Note:* Mention or trade names ro specific products does not constitute endorsement by EPA.

1.2 Principle. A gas sample is extracted from a stack by one of the following methods: (1) single-point, grab sampling; (2) single-point, integrated sampling; or (3) multi-point, integrated sampling. The gas sample is analyzed for percent $CO_2$, percent $O_2$, and if necessary, for percent CO. For dry molecular weight determination, either an Orsat or a Fyrite analyzer may be used for the analysis.

2. *Apparatus.* As an alternative to the sampling apparatus and systems described herein, other sampling systems (e.g., liquid displacement) may be used, provided such systems are capable of obtaining a representative sample and maintaining a constant sampling rate, and are, otherwise, capable of yielding acceptable results. Use of such systems is subject to the approval of the Administrator.

2.1 Grab Sampling (Figure 3-1).

2.1.1 Probe. Stainless steel or borosilicate glass tubing equipped with an in-stack or out-stack filter to remove particulate matter (a plug of glass wool is satisfactory for this purpose). Any other materials, inert to $O_2$, $CO_2$, CO and $N_2$ and resistant to temperature at sampling conditions, may be used for the probe. Examples of such materials are aluminum, copper, quartz glass, and Teflon.

2.1.2 Pump. A one-way squeeze bulb, or equivalent, to transport the gas sample to the analyzer.

2.2 Integrated Sampling (Figure 3-2).

2.2.1 Probe. Same as in Section 2.1.1.

2.2.2 Condenser. An air-cooled or water-cooled condenser, or other condenser no greater than 250 ml that will not remove $O_2$, $CO_2$, and $N_2$, to remove excess moisture which would interfere with the operation of the pump and flowmeter.

2.2.3 Valve. A needle valve, to adjust sample gas flow rate.

2.2.4 Pump. A leak-free, diaphragm-type pump, or equivalent, to transport sample gas to the flexible bag. Install a small surge tank between the pump and rate meter to eliminate the pulsation effect of the diaphragm pump on the rotameter.

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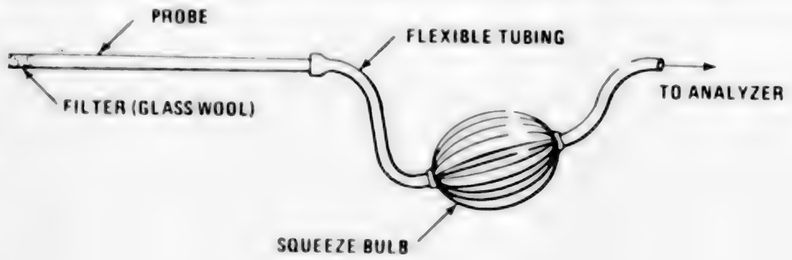



Figure 3-1. Grab sampling train.





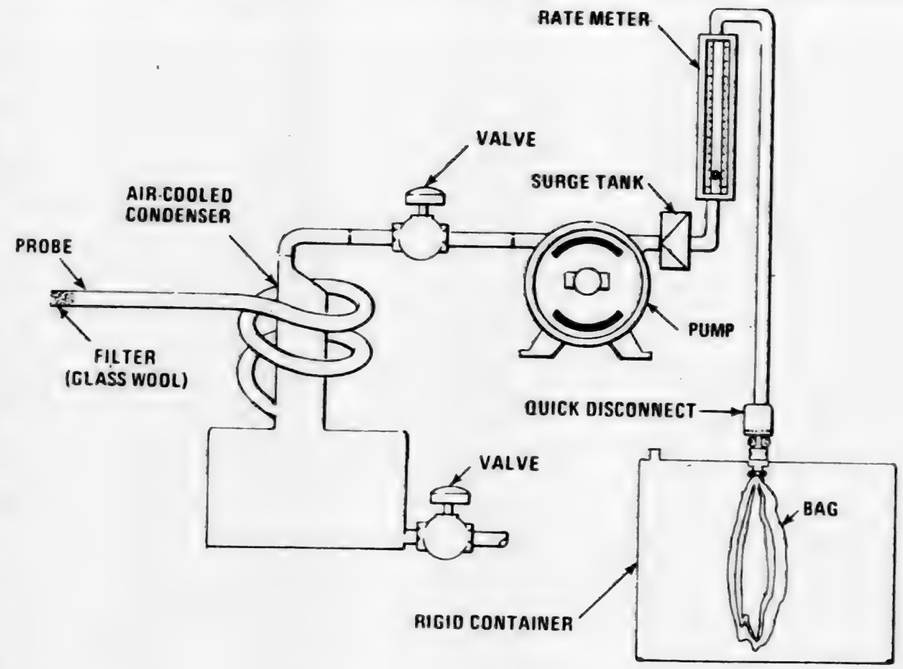



Figure 3-2. Integrated gas sampling train.

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2.2.5 Rate Meter. A rotameter, or equivalent rate meter, capable of measuring flow rate to within 2 percent of the selected flow rate. A flow rate range of 500 to 1000 cc/min is suggested.

2.2.6 Flexible Bag. Any leak-free plastic (e.g., Tedlar, Mylar, Teflon) or plastic-coated aluminum (e.g., aluminized Mylar) bag, or equivalent, having a capacity consistent with the selected flow rate and time length of the test run. A capacity in the range of 55 to 90 liters is suggested. To leak check the bag, connect it to a water manometer, and pressurize the bag to 5 to 10 cm $H_2O$ (2 to 4 in. $H_2O$). Allow to stand for 10 minutes. Any displacement in the water manometer indicates a leak. An alternative leak-check method is to pressurize the bag to 5 to 10 cm (2 to 4 in.) $H_2O$ and allow to stand overnight. A deflated bag indicates a leak.

2.2.7 Pressure Gauge. A water-filled U-tube manometer, or equivalent, of about 30 cm (12 in.), for the flexible bag leak check.

2.2.8 Vacuum Gauge. A mercury manometer, or equivalent, of at least 760 mm (30 in.) Hg, for the sampling train leak check.

2.3 Analysis. An Orsat or Fyrite type combusiton gas analyzer. For Orsat and Fyrite analyzer maintenance and operation procedures, follow the instructions recommended by the manufacturer, unless otherwise specified herein.

3. *Single-Point, Grab Sampling and Analytical Procedure.* 3.1 The sampling point in the duct shall either be at the centroid of the cross section or at a point no closer to the walls than 1.00 m (3.3 ft), unless otherwise specified by the Administrator.

3.2 Set up the equipment as shown in Figure 3–1, making sure all connections ahead of the analyzer are tight. If an Orsat analyzer is used, it is recommended that the analyzer be leak checked by following the procedure in Section 6; however, the lead check is optional.

3.3 Place the probe in the stack, with the tip of the probe positioned at the sampling point; purge the sampling line long enough to allow at least five exchanges. Draw a sample into the analyzer, and immediately analyze it for percent $CO_2$ and percent $O_2$. Determine the percentage of the gas that is $N_2$ and CO by subtracting the sum of the percent $CO_2$ and percent $O_2$ from 100 percent. Calculate the dry molecular weight as indicated in Section 7.2.

3.4 Repeat the sampling, analysis, and calculation procedures until the dry molecular weights of any three grab samples differ from their mean by no more than 0.3 g/g-mole (0.3 lb/lb-mole). Average these three molecular weights, and report the results to the nearest 0.1 g/g-mole (0.1 lb/lb-mole).

4. *Single-Point, Integrated Sampling and Analytical Procedure.* 4.1 The sampling point in the duct shall be located as specified in Section 3.1.

4.2 Leak check (optional) the flexible bag as in Section 2.2.6. Set up the equipment as shown in Figure 3–2. Just before sampling, leak check (optional) the train by placing a vacuum gauge at the condenser inlet, pulling a vacuum of at least 250 mm Hg (10 in. Hg), plugging the outlet at the quick disconnect, and then turning off the pump. The vacuum should remain stable for at least 0.5 minute. Evacutae the flexible bag. Connect the probe, and place it in the stack, with the tip of the probe positioned at the sampling point; purge the sampling line. Next, connect the bag, and make sure that all connections are tight.

4.3 Sample at a constant rate. The sampling run should be simultaneous with, and for the same total length of time as, the pollutant emission rate determination. Collection of at least 30 liters (1.00 $ft_3$) of sample gas is recommended; however, smaller volumes may be collected, if desired.

4.4 Obtain one integrated flue gas sample during each pollutant emission rate determination. Within 8 hours after the sample is taken, analyze it for percent $CO_2$ and percent $O_2$ using either an Orsat analyzer or Fyrite type combustion gas analyzer. If an Orsat analyzer is used, it is recommended that Orsat leak check described in Section 6, be performed before this determination; however, the check is optional. Determine the percentage of the gas that is $N_2$ and CO by subtracting the sum of the percent $CO_2$ and percent $O_2$ from 100 percent. Calculate the dry molecular weight as indicated in Section 7.2.

4.5 Repeat the analysis and calculation procedures until the individual dry molecular weights for any three analyses differ from their mean by no more than 0.3 g/g-mole (0.3 lb/lb-mole). Average these three molecular weights, and report the results to the nearest 0.1 g/g-mole (0.1 lb/lb-mole).

5. *Multi-Point, Integrated Sampling and Analytical Procedure.* 5.1 Unless otherwise specified by the Administrator, a minimum of eight traverse points shall be used for circular stacks having diameters less than 0.61 m (24 in.), a minimum of nine shall be used for rectangular stacks having equivalent diameters less than 0.61 m (24 in.), and a minimum of 12 traverse points shall be used for all other cases. The traverse points shall be located according to Method 1. The use of fewer points is subject to approval of the Administrator.

5.2 Follow the procedures outlined in Sections 4.2 through 4.5, except for the following: Traverse all sampling points, and sample at each point for an equal length of time. Record sampling data as shown in Figure 3–3.

| Time | Traverse pt. | Q, liter/min | Percent dev.* |
|---|---|---|---|
| | | | |
| | | | |
| | | | |
| | | | |
| | Average | | |

* Percent dev. $= (Q\text{-}Q_{avg}/Q_{avg}) \times 100$ (Must be $< 10\%$)

Figure 3–3. Sampling rate data.

6. *Leak-Check Procedure for Orsat Analyzer.* Moving an Orsat analyzer frequently causes it to leak. Therefore, an Orsat analyzer should be thoroughly lead checked on site before the flue gas sample is introduced into it. The procedure for leak checking an Orsat analyzer is as follows:

6.1 Bring the liquid level in each pipette up to the reference mark on the capillary tubing, and then close the pipette stopcock.

6.2 Raise the leveling bulb sufficiently to bring the confining liquid meniscus onto the graduated portion of the burette, and then close the manifold stopcock.

6.3 Record the meniscus position.

6.4 Observe the meniscus in the burette and the liquid level in the pipette for movement over the next 4 minutes.

6.5 For the Orsat analyzer to pass the leak check, two conditions must be met:

6.5.1 The liquid level in each pipette must not fall below the bottom of the capillary tubing during this 4-minute interval.

6.5.2 The meniscus in the burette must not change by more than 0.2 ml during this 4-minute interval.

6.6 If the analyzer fails the leak-check procedure, check all rubber connections and stopcocks to determine whether they might be the cause of the leak. Disassemble, clean, and regrease leaking stopcocks. Replace leaking rubber connections. After the analyzer is reassembled, repeat the leak-check procedure.

7. *Calculations*

7.1 Nomenclature.

$M_d$ = Dry molecluar weight, g/g-mole (1b/1b-mole).

$\%CO_2$ = Percent $CO_2$ by volume, dry basis.

$\%O_2$ = Percent $O_2$ by volume, dry basis.

%CO = Percent CO by volume, dry basis.

$\%N_2$ = Percent $N_2$ by volume, dry basis.

0.280 = Molecular weight of $N_2$ or CO, divided by 100.

0.320 = Molecular weight of $O_2$ divided by 100.

0.440 = Molecular weight of $CO_2$ divided by 100.

7.2 Dry Molecular Weight. Use Equation 3–1 to calculate the dry molecular weight of the stack gas.

$$M_d = 0.440(\%CO_2) + 0.320(\%O_2) + 0.280(\%N_2 + \%CO) \quad \text{Eq. 3–1}$$

**Note:** The above equation does not consider argon in air (about 0.9 percent, molecular weight of 39.9). A negative error of about 0.4 percent is introduced. The tester may choose to include argon in the analysis using procedures subject to approval of the Administrator.

8. *Bibliography*

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4. Mitchell, W.J. and M.R. Midgett. Field Reliability of the Orsat Analyzer. Journal of Air Pollution Control Associaton. *26*:491–495. May 1976.



5. Shigehara, R.T., R.M. Neulicht, and W.S. Smith. Validating Orsat Analysis Data from Fossil Fuel-Fired Units. Stack Sampling News. *4*(2):21–26. August 1976.

9. Appendix A is amended by adding Method 3B to read as follows:

**Method 3B—Gas Analysis for the Determination of Emission Rate Correction Factor or Excess Air**

1. *Applicability and Principle.* 1.1 Applicability.

1.1.1 This method is applicable for determining carbon dioxide ($CO_2$), oxygen ($O_2$), and carbon monoxide (CO) concentrations of a sample from a gas stream of a fossil-fuel combustion process for excess air or emission rate correction factor calculations.

1.1.2 Other methods, as well as modifications to the procedure described herein, are also applicable for all of the above determinations. Examples of specific methods and modifications include: (1) a multi-point sampling method using an Orsat analyzer to analyze individual grab samples obtained at each point, and (2) a method using $CO_2$ or $O_2$ and stoichiometric calculations to determine excess air. These methods and modifications may be used, but are subject to the approval of the Administrator, U.S. Environmental Protection Agency (EPA).

1.1.3 Note: Mention of trade names or specific products does not constitute endorsement by EPA.

1.2 Principle. A gas sample is extracted from a stack by one of the following methods: (1) Single-point, grab sampling; (2) single-point, integrated sampling; or (3) multi-point, integrated sampling. The gas sample is analyzed for percent $CO_2$, percent $O_2$, and, if necessary, percent CO. An Orsat analyzer must be used for excess air or emission rate correction factor determinations.

2. *Apparatus*

The alternative sampling systems are the same as those mentioned in Section 2 of Method 3.

2.1 Grab Sampling and Integrated Sampling. Same as in Sections 2.1 and 2.2, respectively, of Method 3.

2.2 Analysis.

An Orsat analyzer only. For low $CO_2$ (less than 4.0 percent) or high $O_2$ (greater 15.0 percent) concentrations, the measuring burette of the Orsat must have at least 0.1 percent subdivisions. For Orsat maintenance and operation procedures, follow the instructions recommended by the manufacturer, unless otherwise specified herein.

3. *Procedures*

Each of the three procedures below shall be used only when specified in an applicable subpart of the standards. The use of these procedures for other purposes must have specific prior approval of the Administrator.

Note.—A Fyrite-type combustion gas analyzer is not acceptable for excess air or emission rate correction factor determinations, unless approved by the Administrator. If both percent $CO_2$ and percent $O_2$ are measured, the analytical results of any of the three procedures given below may also be used for calculating the dry molecular weight (see Method 3).

3.1 Single-Point, Grab Sampling and Analytical Procedure.

3.1.1 The sampling point in the duct shall be as described in Section 3.1 of Method 3.

3.1.2 Set up the equipment as shown in Figure 3–1 of Method 3, making sure all concentrations ahead of the analyzer are tight. Leak check the Orsat analyzer according to the procedure described in Section 6 of Method 3. this leak check is mandatory.

3.1.3 Place the probe in the stack, with the tip of the probe positioned at the sampling point; purge the sampling line long enough to allow at least five exchanges. Draw a sample into the analyzer. For emission rate correction factor determinations, immediately analyze the sample, as outlined in Sections 3.1.4 and 3.1.5, for percent $CO_2$ or percent $O_2$. If excess air is desired, proceed as follows: (1) Immediately analyze the sample, as in Sections 3.1.4 and 3.1.5, for percent $CO_2$, $O_2$, and CO; (2) determine the percentage of the gas that is $N_2$ by subtracting the sum of the percent $CO_2$, percent $O_2$, and percent CO from 100 percent, and (3) calculate percent excess air as outlined in Section 4.2.

3.1.4 To ensure complete absorption of the $CO_2$, $O_2$, or if applicable, CO, make repeated passes through each absorbing solution until two consecutive readings are the same. Several passes (three or four) should be made between readings. (If constant readings cannot be obtained after three consecutive readings, replace the absorbing solution.)

Note.—Since this single-point, grab sampling and analytical procedure is normally conducted in conjunction with a single-point, grab sampling and analytical procedure for a pollutant, only one analysis is ordinarily conducted. Therefore, great care must be taken to obtain a valid sample and analysis. Although in most cases, only $CO_2$ or $O_2$ is required, it is recommended that both $CO_2$ and $O_2$ be measured, and that Section 3.4 be used to validate the analytical data.

3.1.5 After the analysis is completed, leak check (mandatory) the Orsat analyzer once again, as described in Section 6 of Method 3. For the results of the analysis to be valid, the Orsat anaylzer must pass this leak test before and after the analysis.

3.2 Single-Point, Integrated Sampling and Analytical Procedure.

3.2.1 The sampling point in the duct shall be located as specified in Section 3.1.1.

3.2.2 Leak check (mandatory) the flexible bag as in Section 2.2.6 of Method 3. Set up the equipment as shown in Figure 3–2 of Method 3. Just before sampling, leak check (mandatory) the train as described in Section 4.2 of Method 3.

3.2.3 Sample at a constant rate, or as specified by the Administrator. The sampling run must be simultaneous with, and for the same total length of time as, the pollutant emission rate determination. Collect at least 30 liters (1.00 $ft^3$) of sample gas. Smaller volumes may be collected, subject to approval of the Administrator.

3.2.4 Obtain one integrated flue gas sample during each pollutant emission rate determination. For emission rate correction factor determination, analyze the sample within 4 hours after it is taken for percent $CO_2$ or percent $O_2$ (as outlined in Sections 3.2.5 through 3.2.7). The Orsat analyzer must be leak checked (see Section 6 of Method 3) before the analysis. If excess air is desired, proceed as follows: (1) Within 4 hours after the sample is taken, analyze it (as in Sections 3.2.5 through 3.2.7) for percent $CO_2$, $O_2$, and CO; (2) determine the percentage of the gas that is $N_2$ by subtracting the sum of the percent $CO_2$, percent $O_2$, and percent CO from 100 percent; and (3) calculate percent excess air, as outlined in Section 4.2.

3.2.5 To ensure complete absorption of the $CO_2$, $O_2$, or if applicable, CO, follow the procedure described in Section 3.1.4.

Note.—Although in most instances only $CO_2$ or $O_2$ is required, it is recommended that both $CO_2$ and $O_2$ be measured, and that Section 3.4.1 be used to validate the analytical data.

3.2.6 Repeat the analysis until the following criteria are met:

3.2.6.1 For percent $CO_2$, repeat the analytical procedure until the results of any three analyses differ by no more than (a) 0.3 percent by volume when $CO_2$ is greater than 4.0 percent or (b) 0.2 percent by volume when $CO_2$ is less than or equal to 4.0 percent. Average three acceptable values of percent $CO_2$, and report the results to the nearest 0.1 percent.

3.2.6.2 For percent $O_2$, repeat the analytical procedure until the results of any three analyses differ by no more than (a) 0.3 percent by volume when $O_2$ is less than 15.0 percent or (b) 0.2 percent by volume when $O_2$ is greater than or equal to 15.0 percent. Average the three acceptable values of percent $O_2$, and report the results to the nearest 0.1 percent.

3.2.6.3 For percent CO, repeat the analytical procedure until the results of any three analyses differ by no more than 0.3 percent. Average the three acceptable values of percent CO, and report the results to the nearest 0.1 percent.

3.27 After the analysis is completed, leak check (mandatory) the Orsat analyzer once again, as described in Section 6 of Method 3. For the results of the analysis to be valid, the Orsat analyzer must pass this leak test before and after the analysis.

3.3 Multi-Point, Integrated Sampling and Analytical Procedure.

3.3.1 The sampling points shall be determined as specified in Section 5.3 of Method 3.

3.3.2 Follow the procedures outlined in Sections 3.2.2 through 3.2.7, except for the following: Traverse all sampling points, and sample at each point for an equal length of time. Record sampling data as shown in Figure 3–3 of Method 3.

3.4 Quality Control Procedures.

3.4.1 Data Validation When both $CO_2$ and $O_2$ Are Measures. Although in most instances, only $CO_2$ or $O_2$ measurement is required, it is recommended that both $CO_2$ and $O_2$ be measured to provide a check on the quality of the data. The following quality control procedure is suggested.

Note.—Since the method for validating the $CO_2$ and $O_2$ analyses is based on combustion of organic and fossil fuels and dilution of the gas stream with air, this method does not

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apply to sources that: (1) Remove $CO_2$ or $O_2$ through processes other than combustion, (2) add $O_2$ (e.g., oxygen enrichment) and $N_2$ in proportions different from that of air, (3) add $CO_2$ (e.g., cement or lime kilns), or (4) have on fuel factor, $F_o$, values obtainable (e.g., extremely variable waste mixtures). This method validates the measured proportions of $CO_2$ and $O_2$ for fuel type, but the method does not detect sample dilution resulting from leaks during or after sample collection. The method is applicable for samples collected downstream of most lime or limestone flue-gas desulfurization units as the $CO_2$ added or removed from the gas stream is not significant in relation to the total $CO_2$ concentration. The $CO_2$ concentrations from other types of scrubbers using only water or basic slurry can be significantly affected and would render the $F_o$ check minimally useful.

3.4.1.1 Calculate a fuel factor, $F_o$, using the following equation:

$$F_o = \frac{20.9 - \%O_2}{\%CO_2} \qquad \text{Eq. 3B-1}$$

where:

$\%O_2$ = Percent $O_2$ by volume, dry basis.
$\%CO_2$ = Percent $CO_2$ by volume, dry basis.
20.9 = Percent $O_2$ by volume in ambient air.

If CO is present in quantities measurable by this method, adjust the $O_2$ and $CO_2$ values before performing the calculation for $F_o$ as follows:

$$\%CO_2 = (adj) = \%CO_2 + \%CO$$
$$\%O_2 = (adj) = \%O_2 - 0.5\ \%CO$$

where:

%CO = Percent CO by volume, dry basis.

3.4.1.2 Compare the calculated $F_o$ factor with the expected $F_o$ values. The following table may be used in establishing acceptable ranges for the expected $F_o$ if the fuel being burned is known. When fuels are burned in combinations, calculate the combined fuel $F_d$ and $F_o$ factors (as defined in Method 19) according to the procedure in Method 19, Section 5.2.3. Then calcuate the $F_o$ factor as follows:

$$F_o = \frac{0.209F_d}{F_c} \qquad \text{Eq. 3B-2}$$

| Fuel type | $F_o$ range |
|---|---|
| Coal: | |
| Anthracite and lignite | 1.016–1.130 |
| Bituminous | 1.083–1.230 |
| Oil: | |
| Distillate | 1.260–1.413 |
| Residual | 1.210–1.370 |
| Gas: | |
| Natural | 1.600–1.836 |
| Propane | 1.434–1.586 |
| Butane | 1.405–1.553 |
| Wood | 1.000–1.120 |
| Wood bark | 1.003–1.130 |

3.4.1 Calculated $F_o$ values, beyond the acceptable ranges shown in this table, should be investigated before accepting the test results. For example, the strength of the solutions in the gas analyzer and the analyzing technique should be checked by sampling and analyzing a known concentration, such as air; the fuel factor should be reviewed and verified. An acceptability range of ±12 percent is appropriate for the $F_o$ factor of mixed fuels with variable fuel ratios. The level of the emission rate relative to the compliance level should be considered in determining if a retest is appropriate, i.e.; if the measured emissions are much lower or much greater than the compliance limit, repetition of the test would not significantly change the compliance status of the source and would be unnecessarily time consuming and costly.

4. Calculations

4.1 Nomenclature. Same as Section 5 of Method 3 with the addition of the following:

%EA = Percent excess air.
0.264 = Ratio of $O_2$ to $N_2$ in air, v/v.

4.2 Percent Excess Air. Calculate the present excess air (if applicable) by substituting the appropriate values of percent $O_2$, CO, and $N_2$ (obtained from Section 3.1.3 or 3.2.4) into Equation 3B-3.

$$\%EA = \left[\frac{\%O_2 - 0.5\ CO}{0.264\ \%N_2 - (\%O_2 - 0.5\ \%CO)}\right] \times 100 \qquad \text{Eq. 3B-3}$$

Note.—The equation above assumes that ambient air is used as the source of $O_2$ and that the fuel does not contain appreciable amounts of $N_2$ (as do coke oven or blast furance gases). For those cases when appreciable amounts of $N_2$ are present (coal, oil, and natural gas do not contain appreciable amounts of $N_2$) or when oxygen enrichment is used, alternative methods, subject to approval of the Administrator, are required.

4. *Bibliography*

Same as Method 3.

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**40 CFR Part 60**

[AD-FRL-3530-5]

**Standards of Performance for New Stationary Sources**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule and notice of public hearing.

**SUMMARY:** The purpose of this proposed rule is five-fold: (1) Require (as opposed to being an option) the monitoring of sulfur dioxide ($SO_2$) in gases discharged into the atmosphere from the combustion of fuel gases or, as an alternative, the monitoring of hydrogen sulfide ($H_2S$) in fuel gases; (2) delete the mention of controlling $SO_2$ after combustion of fuel gases; (3) delete the monitoring requirement of $H_2S$ in gases discharged into the atmosphere from Claus sulfur recovery plants, but require the monitoring of total reduced sulfur (TRS) compounds using TRS continuous emission monitoring systems (CEM's) or $SO_2$ CEMS's after oxidizing the TRS compounds to $SO_2$; (4) add Performance Specification (PS) 7 for $H_2S$ CEMS's to Appendix B of this part; and (5) clarify ambiguities in the existing regulations. All affected fuel gas combustion devices and Claus plants in petroleum refineries subject to Subpart J of 40 CFR Part 60 will be required to install and operate CEMS's within 1 year of the promulgation date. These monitoring requirements are not new, but previous $H_2S$ and TRS CEMS installations were contingent upon the Agency's promulgation of PS's.

A public hearing will be held, if requested, to provide interested persons an opportunity for oral presentation of data, views, or arguments concerning the proposed rule.

**DATES:** *Comments.* Comments must be received on or before May 15, 1989.

*Public Hearing.* If anyone contacts EPA requesting to speak at a public hearing by March 22, 1989, a public hearing will be held on April 17, 1989, beginning at 10:00 a.m. Persons interested in attending the hearing should call Foston Curtis at (919) 541-1063 to verify that a hearing will be held.

*Request to Speak at Hearing.* Persons wishing to present oral testimony must contact EPA by March 22, 1989.

**ADDRESSES:** *Comments.* Comments should be submitted (in duplicate if possible) to: Central Docket Section (LE-131), Attention: Docket Number A-88-24, U.S. Environmental Protection Agency, South Conference Center, Room 4, 401 M Street, SW., Washington, DC 20460.

*Public Hearing.* If anyone contacts EPA requesting a public hearing, it will be held at EPA's Emission Measurement Laboratory, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should notify Foston Curtis, Emission Measurement Branch (MD-19), Technical Support Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-1063.

*Docket.* Docket No. A-88-24, containing materials relevant to this rulemaking, is available for public inspection and copying between 8:00 a.m. and 3:30 p.m., Monday through Friday, at EPA's Central Docket Section, South Conference Center, Room 4, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

**FOR FURTHER INFORMATION CONTACT:** Foston Curtis or Roger T. Shigehara, Emission Measurement Branch (MD-19), Technical Support Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-1063.

**SUPPLEMENTARY INFORMATION:**

## I. The Rulemaking

The present monitoring requirements for fuel gas combustion devices under § 60.105(a) (3) and (4) allow the options of monitoring $SO_2$ after fuel gases are combusted or monitoring $H_2S$ in the fuel gases. Since October 6, 1975 (40 FR 46250), affected facilities choosing to monitor $H_2S$ in the fuel gases have been exempted from the monitoring requirements of § 60.105(a)(4) because PS's for $H_2S$ CEMS's had not been established. This rulemaking proposes to amend the emission monitoring requirements to end this exemption. The effect of this rulemaking will be to require affected facilities to monitor $SO_2$ after fuel gas combustion or, as an alternative, $H_2S$ in the fuel gas.

When fuel gases are burned in a combustion device, the $H_2S$ is converted to $SO_2$. The resulting $SO_2$ concentration is substantially less than the corresponding $H_2S$ in the fuel gas due to dilution from added combustion air. The amount of dilution air required for complete fuel gas combustion hinges upon the makeup of fuel gas components (primarily hydrogen and hydrocarbons) and their stochiometric need for oxygen. The EPA investigated a number of typical fuel gas compositions and their combustion products and determined that, at zero percent excess air, the concentration of $SO_2$ formed from combusting fuel gas containing $H_2S$ at the standard level (162 ppm) ranged from 9 to 25 ppm with the majority of values between 15 and 20 ppm. This agrees with the 15- to 20-ppm $SO_2$ level noted in the Background Document to the proposed petroleum refineries standard.

Realizing the complexity of establishing the $SO_2/H_2S$ equivalency on a case-by-case basis, EPA has selected 20 ppm to represent the compliance level for $SO_2$. In addition, rather than requiring monitoring of the effluent after each combustion device, EPA is allowing the monitoring of $SO_2$ after only one of the combustion devices as long as that one location accurately represents the fuel gas being burned by all of the combustion devices.

During 1978 and 1982, EPA conducted evaluations of $H_2S$ CEMS's and concluded that acceptable $H_2S$ CEMS's were not available (see Section 4 of PS 7). However, a State agency and a local agency reported that $H_2S$ CEMS's have been installed under their jurisdiction that are operating satisfactorily. Certification test reports that have been submitted for Agency review indicate that, at least in these cases, acceptable CEMS accuracy and calibration drift are attainable. Other data from regulatory agencies have shown varying degrees of success in certifying and auditing $H_2S$ CEMS's. Most of these data were taken from $H_2S$ CEMS's of the same type, and instrument performance appears to be linked to operator and maintenance proficiency. Thus, EPA had decided to allow the use of $H_2S$ CEMS's for fuel gases as an alternative to $SO_2$ CEMS's for combusted fuel gases. For this purpose, PS 7 is being proposed.

In reviewing the regulations, EPA determined that the option of controlling $SO_2$ after combusting the fuel gases was not being used. Also, this option does not appear to be an economically feasible alternative for future consideration. Therefore, mention of this control option is being deleted from the regulation. This action, however, does not prohibit the use of such control devices. In the future, sources that desire to burn fuel gases containing $H_2S$ in excess of 230 mg/dscm and control the resulting $SO_2$ emissions may petition the Administration for an alternative compliance demonstration.

Hydrogen sulfide and TRS emitted from Claus plants are regulated by standards set at 10 and 300 ppm, respectively. Total reduced sulfur compounds, though determined separately from TRS, are also inclusive of $H_2S$ by definition. The Agency has determined that it is difficult to monitor the disproportionate concentrations of $H_2S$ and TRS on a continual basis, especially at levels near the standards. A separate determination of $H_2S$ apart from TRS will therefore not be required, but only the continuous monitoring of TRS. Performance Specification 5 and Method 15 of 15A are being proposed as the means to evaluate the TRS CEMS performance.

For greater flexibility, EPA is also proposing to allow the use of a CEMS that oxidizes the TRS compounds to $SO_2$ and analyzes the concentration of the resulting $SO_2$. Rather than trying to determine the concentration of $SO_2$ equivalent to the TRS concentration, EPA is proposing to use the level of 250 ppm $SO_2$ (dry basis, zero percent excess air) to represent the $SO_2$ compliance level. This concentration is consistent with the control option of combusting the effluent gases under § 60.102(a)(2)(i).

In addition to the above changes, EPA is proposing to clarify ambiguities in the existing regulations by correcting inconsistencies and by specifying pertinent testing procedures that originally were only implied.

This rulemaking does not impose emission measurement requirements beyond those specified in the current regulations, nor does it change any emission standard or make it more stringent. Rather, the rulemaking will facilitate the use of acceptable CEMS's and allow affected facilities to comply with monitoring requirements to which they are already subject.

## II. Administrative Requirements

### *A. Public Hearing*

A public hearing will be held, if requested, to discuss the proposed revisions in accordance with section 307(d)(5) of the Clean Air Act. Persons wishing to make oral presentations should contract EPA at the address given in the ADDRESSES section of this preamble. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement with EPA before, during, or within 30 days after the hearing. Written statements should be addressed to the Central Docket Section address given in the **ADDRESSES** section of this preamble.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at EPA's Central Docket Section in Washington, DC (see **ADDRESSES** section of this preamble).

### *B. Docket*

The docket is an organized and complete file of all the information



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submitted to or otherwise considered by EPA in the development of this proposed rulemaking. The principal purposes of the docket are to: (1) allow interested parties to identify and locate documents so that they can effectively participate in the rulemaking process, and (2) serve as the record in case of judicial review (except for interagency review materials) (Section 307(d)(7)(A)).

*C. Office of Management and Budget Review*

Executive Order 12291 Review. Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a regulatory impact analysis. This rulemaking would not result in any of the adverse economic effects set forth in section 1 of the Order as grounds for finding a "major rule." It will not have an annual effect on the economy of $100 million or more, nor will it result in a major increase in costs or prices. There will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

*D. Regulatory Flexibility Act Compliance*

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this attached rule, if promulgated, will not have any economic impact on small entities because no additional costs will be incurred.

This rule does not change any information collection requirements currently approved by OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* Information requirements contained in 40 CFR Part 60, Subpart J are cleared under OMB control number 2060-0022.

**List of Subjects in 40 CFR Part 60**

Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Incorporation by reference, and Petroleum refineries.

Date: February 10, 1989.

**Don R. Clay,**

*Acting Assistant Administrator for Air and Radiation.*

It is proposed that 40 CFR Part 60 be amended as follows:

**PART 60—[AMENDED]**

1. The authority for 40 CFR Part 60 continues to read:

Authority: Sections 101, 111, 114, 116, and 301 of the Clean Air Act, as amended (42 U.S.C. 7401, 7411, 7414, 7416, 7601).

**§ 60.103 [Amended]**

2. In § 60.103(a), the phrase "gases which contain carbon monoxide in excess of 0.050 percent by volume." is revised to read "gases that contain carbon monoxide (CO) in excess of 500 ppm by volume (dry basis)."

3. In § 60.104, paragraphs (a)(1), (2)(i), and (2)(ii) are revised to read as follows:

**§ 60.104 Standard for sulfur dioxide.**

(a) * * *

(1) Burn in any fuel gas combustion device any fuel gas that contains hydrogen sulfide ($H_2S$) in excess of 230 mg/dscm (0.10 gr/dscf). Under emergency malfunction situations, the combustion in a flare of process upset gases or fuel gas that is released to the flare as a result of relief valve leakage is exempt from this paragraph.

(2) * * *

(i) For an oxidation control system or a reduction control system followed by incineration, 250 ppm by volume (dry basis) of sulfur dioxide ($SO_2$) at zero percent excess air.

(ii) For a reduction control system not followed by incineration, 300 ppm by volume of total reduced sulfur (TRS) compounds and 10 ppm by volume of hydrogen sulfide ($H_2S$), each calculated as ppm $SO_2$ by volume (dry basis) at zero percent excess air.

4. In § 60.105, paragraphs (a), (d), and (e) are revised to read as follows:

**§ 60.105 Emission monitoring.**

(a) The owner or operator of the affected facility subject to the provisions of this subpart shall install, calibrate, maintain, and operate continuous emission monitoring systems (CEMS's) and continuous opacity monitoring systems (COMS's) as follows:

(1) For fluid catalytic cracking unit catalyst regenerators subject to § 60.102(a)(2), a COMS for continuously measuring and recording the opacity of emissions into the atmosphere. The COMS shall be spanned at 60, 70, or 80 percent opacity.

(2) For fluid catalytic cracking unit catalyst regenerators subject to § 60.103(a), a CEMS for continuously measuring and recording the concentration by volume (dry basis) of CO emissions into the atmosphere, except as provided in paragraph (ii) below.

(i) The span value for this CEMS is 1,000 ppm CO.

(ii) A CO CEMS need not be installed if the owner or operator demonstrates that the average CO emissions are less than 50 ppm (dry basis) and also files a written request for exemption to the Administrator and receives such an exemption. The demonstration shall consist of continuously monitoring CO emissions for 30 days using an instrument that shall meet the requirements of Performance Specification 4 of Appendix B of this part. The span value shall be 100 ppm CO instead of 1,000 ppm, and the relative accuracy limit shall be 10 percent of the average CO emissions or 5 ppm CO, whichever is greater. For CEMS's that are identical to Method 10 and employ the sample conditioning system of Method 10A, the alternative relative accuracy test procedure in Section 10.1 of Performance Specification 2 may be used in place of the relative accuracy test.

(3) For fuel gas combustion devices subject to § 60.104(a)(1), a CEMS for continuously measuring and recording the concentration by volume (dry basis, zero percent excess air) of $SO_2$ emissions into the atmosphere (except where an $H_2S$ CEMS is installed under paragraph (a)(4) of this section). The CEMS shall include an oxygen monitor for correcting the data for excess air.

(i) The span values for this CEMS are 50 ppm $SO_2$ and 10 percent oxygen ($O_2$).

(ii) The $SO_2$ monitoring level equivalent to the $H_2S$ standard under § 60.104(a)(1) shall be 20 ppm (dry basis, zero percent excess air).

(iii) The performance evaluations for this $SO_2$ CEMS under § 60.13(c) shall use Performance Specification 2. Methods 6 and 3 shall be used for conducting the relative accuracy evaluations. Method 6 samples shall be taken at a flow rate of 2 liters/min for at least 30 minutes. The relative accuracy limit shall be 20 percent or 4 ppm, whichever is greater, and the calibration drift limit shall be 5 percent of the established span value.

(iv) Fuel gas combustion devices having a common source of fuel gas may be monitored at only one location (i.e., after one of the combustion devices), if monitoring at this location accurately represents the $SO_2$ emissions into the atmosphere from each of the combustion devices.

(4) In place of the $SO_2$ CEMS in paragraph (a)(3) of this section, a CEMS for continuously measuring and recording the concentration (dry basis) of $H_2S$ in fuel gases before being burned in any fuel gas combustion device.



(i) The span value for this CEMS is 425 mg/dscm $H_2S$.

(ii) Fuel gas combustion devices having a common source of fuel gas may be monitored at only one location, if monitoring at this location accurately represents the concentration of $H_2S$ in the fuel gas being burned.

(iii) The performance evaluations for this $H_2S$ CEMS under § 60.13(c) shall use Performance Specification 7. Method 11 shall be used for conducting the relative accuracy evaluations.

(5) For Claus sulfur recovery plants with oxidation control systems or reduction control systems followed by incineration subject to § 60.104(a)(2)(i), a CEMS for continuously measuring and recording the concentration (dry basis, zero percent excess air) of $SO_2$ emissions into the atmosphere. The CEMS shall include an oxygen monitor for correcting the data for excess air.

(i) The span values for this CEMS are 500 ppm $SO_2$ and 10 percent $O_2$.

(ii) The performance evaluations for this $SO_2$ CEMS under § 60.13(c) shall use Performance Specification 2. Methods 6 and 3 shall be used for conducting the relative accuracy evaluations.

(6) For Claus sulfur recovery plants with reduction control systems not followed by incineration subject to § 60.104(a)(2)(ii), a CEMS for continuously measuring and recording the concentration of TRS and $O_2$ emissions into the atmosphere. The TRS emissions shall be calculated as $SO_2$ (dry basis, zero percent excess air).

(i) The span values for this CEMS are 450 ppm TRS and 10 percent $O_2$.

(ii) The performance evaluations for this TRS (and $O_2$) CEMS under § 60.13(c) shall use Performance Specification 5, except the calibration drift specification is 2.5 percent of the span value rather than 5 percent. Methods 15 or 15A and Method 3 shall be used for conducting the relative accuracy evaluations. If Method 3 yields $O_2$ concentrations below 0.25 percent during the performance specification test, the $O_2$ concentration may be assumed to be zero and the TRS CEMS need not include an $O_2$ monitor.

(7) In place of the TRS CEMS under paragraph (a)(6) of this section, a CEMS using an air or $O_2$ dilution and oxidation system to convert the TRS to $SO_2$ for continuously measuring and recording the concentration (dry basis, zero percent excess air) of the resultant $SO_2$. The CEMS shall include an oxygen monitor for correcting the data for excess oxygen.

(i) The span values for this CEMS are 375 ppm $SO_2$ and 10 percent $O_2$.

(ii) For reporting purposes, the $SO_2$ exceedance level for this CEMS is 250 ppm (dry basis, zero percent excess air).

(iii) The performance evaluations for this $SO_2$ (and $O_2$) CEMS under § 60.13(c) shall use Performance Specification 5. Methods 15 or 15A and Method 3 shall be used for conducting the relative accuracy evaluations.

* * * * *

(d) For any fluid catalytic cracking unit catalyst regenerator under § 60.102 that uses an incinerator-waste heat boiler to combust the exhaust gases from the catalyst regenerator, the owner or operator shall record daily the rate of combustion of liquid or solid fossil-fuels (liters/hr or kg/hr) and the hours of operation during which liquid or solid fossil-fuels are combusted in the incinerator-waste heat boiler.

(e) For the purposes of reports under § 60.7(c), periods of excess emissions that shall be determined and reported are defined as follows (Note: All averages, except for opacity, shall be determined as the arithmetic average of the applicable 1-hour averages, e.g., the rolling 3-hour average shall be determined as the arithmetic average of 3 contiguous 1-hour averages):

(1) *Opacity:* All 1-hour periods that contain two or more 6-minute periods during which the average opacity as measured by the COMS under § 60.105(c)(1) exceeds 30 percent.

(2) *Carbon monoxide.* All 1-hour periods during which the average CO concentration as measured by the CO CEMS under § 60.105(a)(2) exceeds 500 ppm.

(3) *Sulfur dioxide from fuel gas combustion.*

(i) All rolling 3-hour periods during which the average concentration of $SO_2$ as measured by the $SO_2$ CEMS under § 60.105(a)(3) exceeds 20 ppm (dry basis, zero percent excess air); or

(ii) All rolling 3-hour periods during which the average concentration of $H_2S$ as measured by the $H_2S$ CEMS under § 60.105(a)(4) exceeds 230 mg/dscm (0.10 gr/dscf).

(4) *Sulfur dioxide from Claus sulfur recovery plants.*

(i) All 12-hour periods during which the average concentration of $SO_2$ as measured by the $SO_2$ CEMS under § 60.105(a)(5) exceeds 250 ppm (dry basis, zero percent excess air); or

(ii) All 12-hour periods during which the average concentration of TRS (as $SO_2$) as measured by the TRS CEMS under § 60.105(a)(6) exceeds 300 ppm; or

(iii) All 12-hour periods during which the average concentration of $SO_2$ as measured by the $SO_2$ CEMS under § 60.105(a)(7) exceeds 250 ppm (dry basis, zero percent excess air); or

* * * * *

**§ 60.106 Test methods and procedures.**

(a) In conducting the performance tests required in § 60.8, the owner or operator shall use as reference methods and procedures the test methods in Appendix A of this part or other methods and procedures as specified in this section, except as provided in § 60.8(b).

(b) The owner or operator shall determine compliance with the particulate matter (PM) standards in § 60.102(a) as follows:

(1) The emission rate (E) of PM shall be computed for each run using the following equation:

$$E = \frac{K\,(c_s\,Q_{sd})}{R_c}$$

where:

E = Emission rate of PM, kg/1000 kg (lb/1000 lb) of coke burn-off.

$c_s$ = Concentration of PM, g/dscm (lb/dscf).

$Q_{sd}$ = Volumetric flow rate of effluent gas, dscm/hr (dscf/hr).

$R_c$ = Coke burn-off, rate, kg coke/hr (lb coke/hr).

K = Conversion factor, 1.0 $kg^2/g$)/(1000 kg) [$10^3$ lb/(1000 lb)].

(2) Method 5 shall be used to determine the concentation ($c_s$) of PM and volumetric flow rate ($Q_{sd}$) of the effluent gas. The sampling time and sample volume for each run shall be at least 60 minutes and 0.90 dscm (31.8 dscf).

(3) The coke burn-off rate ($R_c$) shall be computed for each run using the following equation:

$$R_c = K_1\,Q_r\,[\%CO_2 + \%CO_2) + K_2\,Q_a - K_3\,Q_r\,[(\%CO/2) + \%CO_2 + \%O_2]$$

where:

$R_c$ = Coke burn-off rate, kg/hr (lb/hr).

$Q_r$ = Volumetric flow rate of exhaust gas from catalyst regenerator before entering the emission control system, dscm/min (dscf/min).

$Q_a$ = Volumetric flow rate of air to FCCU regenerator, as determined from the fluid catalytic cracking unit control room instrumentation, dscm/min (dscf/min).

$\%CO_2$ = Carbon dioxide concentration, percent by volume (dry basis).

%CO = Carbon monoxide concentration, percent by volume (dry basis).

$\%O_2$ = Oxygen concentration, percent by volume (dry basis).

$K_1$ = Material balance and conversion factor, 0.2982 (kg-min)/(hr-dscm-%) [0.0186 (lb-min)/(hr-dscf-%)].

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$K_f$ = Material balance and conversion factor, 2.088 (kg-min)/(hr-dscm-%), [0.1303 (lb-min)/(hr-dscf-%)].

$K_a$ = Material balance and conversion factor, 0.0994 (kg-min)/(hr-dscm-%) [0.0062 (lb-min)/(hr-dscf-%)].

(i) Method 2 shall be used to determine the volumetric flow rate ($Q_s$).

(ii) The emission correction factor, integrated sampling and analysis procedure of Method 3 shall be used to determine $CO_2$, CO, and $O_2$ concentrations.

(4) Method 9 and the procedures of § 60.11 shall be used to determine opacity.

(c) If auxiliary liquid or solid fossil-fuels are burned in an incinerator-waste heat boiler, the owner or operator shall determine the emission rate of PM permitted in § 60.102(b) as follows:

(1) The allowable emission rate ($E_a$) of PM shall be computed for each run using the following equation:

$$E_a = 1.0 + A\,(H/R_c)\,K'$$

where:

$E_a$ = Emission rate of PM allowed, kg/100 kg (lb/1000 lb) of coke burn-off in catalyst regenerator.

1.0 = Emission standard, kg coke/1000 kg (lb coke/1000 lb).

A = Allowable incremental rate of PM emissions, 0.18 g/million cal (0.10 lb/million Btu).

H = Heat input rate from solid or liquid fossil fuel, million cal/hr (million Btu/hr).

$R_c$ = Coke burn-off rate, kg coke/hr (lb coke/hr).

K' = Conversion factor to units of standard, 1.0 ($kg^2/g$)/(1000 kg) ($10^2$ lb/(1000 lb)).

(2) Procedures subject to the approval of the Administrator shall be used to determine the heat input rate.

(3) The procedure in paragraph (b)(3) of this section shall be used to determine the coke burn-off rate ($R_c$).

(d) The owner or operator shall determine compliance with the CO standard in § 60.103(a) by using the integrated sampling technique of Method 10 to determine the CO concentration (dry basis). The sampling time for each run shall be 60 minutes.

(e) The owner or operator shall determine compliance with the $H_2S$ standard in § 60.104(a)(1) as follows: Method 11 shall be used to determine the $H_2S$ concentration. The gases entering the sampling train should be at about atmospheric pressure. If the pressure in the refinery fuel gas lines is relatively high, a flow control valve may be used to reduce the pressure. If the line pressure is high enough to operate the sampling train without a vacuum pump, the pump may be eliminated from the sampling train. The sample shall be drawn from a point near the centroid of the fuel gas line. The sampling time and sample volume shall be at least 10 minutes and 0.010 dscm (0.35 dscf). Two samples of equal sampling times shall be taken at about 1-hour intervals. The arithmetic average of these two samples shall constitute a run. For most fuel gases, sampling times exceeding 20 minutes may result in depletion of the collection solution, although fuel gases containing low concentrations of $H_2S$ may necessitate sampling for longer periods of time.

(f) The owner or operator shall determine compliance with the $SO_2$ and the $H_2S$ and TRS standards in § 60.104(a)(2) as follows:

(1) Method 6 shall be used to determine the $SO_2$ concentration. The concentration in mg/dscm (lb/dscf) obtained by Method 6 is multiplied by 0.3754 to obtain the concentration in ppm. The sampling point in the duct shall be the centroid of the cross section if the cross-sectional area is less than 5.00 $m^2$ (54 $ft^2$) or at a point no closer to the walls than 1.00 m (39 in.) if the cross-sectional area is 5.00 $m^2$ or more and the centroid is more than 1 m from the wall. The sampling time and sample volume shall be at least 10 minutes and 0.010 dscm (0.35 dscf) for each sample. Eight samples of equal sampling times shall be taken at about 30-minute intervals. The arithmetic average of these 8 samples shall constitute a run. Method 4 shall be used to determine the moisture content of the gases. The sampling point for Method 4 shall be adjacent to the sampling point for Method 6. The sampling time for each sample shall be equal to the time it takes for two Method 6 samples. The moisture content from this sample shall be used to correct the corresponding Method 6 samples for moisture. For documenting the oxidation efficiency of the control device for total reduced sulfur compounds, Method 15 shall be used following the procedures of paragraph (f)(2) of this section.

(2) Method 15 shall be used to determine the TRS and $H_2S$ concentrations. Each run shall consists of 16 samples taken over a minimum of 3 hours. The sampling point shall be the same as that described for Method 6 in paragraph (f)(1) of this section. The ensure minimum residence time for the sample inside the sample lines, the sampling rate shall be at least 3.0 lpm (0.10 cfm). The $SO_2$ equivalent for each run shall be calculated after being corrected for moisture and oxygen as the arithmetic average of the $SO_2$ equivalent for each sample during the run. Method 4 shall be used to determine the moisture content of the gases as in paragraph (f)(1) of this section. The sampling time for each sample shall be equal to the time it takes for four Method 15 samples.

(3) The oxygen concentration used to correct the emission rate for excess air shall be obtained by the integrated sampling and analysis procedure of Method 3. The samples shall be taken simultaneously with the $SO_2$, TRS and $H_2S$, or moisture samples. The $SO_2$, TRS, and $H_2S$ samples shall be corrected to zero percent excess air using the following equation:

$$C_c = C\,\frac{(20.9)}{20.9 - \%O_2}$$

where:

$C_c$ = Corrected concentration of pollutant, ppm by volume (dry basis).

C = Measured concentration of pollutant, ppm by volume (dry basis).

$\%O_2$ = Oxygen concentration, percent by volume (dry basis).

[FR Doc. 89-4721 Filed 2-28-89; 8:45 am]

BILLING CODE 6560-50-M

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 17

### Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Queen Alexandra's Birdwing Butterfly

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The Service proposes to determine endangered status for Queen Alexandra's birdwing butterfly (*Troides (=Ornithoptera) alexandrae*). This species, the world's largest butterfly, occurs only in a small part of Papua New Guinea, where it is rare and is losing its restricted forest habitat to logging and agricultural activity. This proposal, if made final, would implement the protection of the Endangered Species Act of 1973, as amended, for this butterfly. The Service seeks relevant data and comments from the public.

**DATES:** Comments must be received by May 1, 1989. Public hearing requests must be received by April 17, 1989.

**ADDRESSES:** Comments and materials concerning this proposal should be sent to Chief, Office of Scientific Authority; Mail Stop: Room 527, Matomic Building; U.S. Fish and Wildlife Service; Washington, DC 20240. Comments and materials received will be available for public inspection from 8:00 a.m. to 4:00 p.m. Monday through Friday, in room 537, 1717 H Street NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Dr. Charles W. Dane at above address or phone (202) 653-5948 or FTS 653-5948.

**SUPPLEMENTARY INFORMATION:**

#### Background

Queen Alexandra's birdwing butterfly was discovered in 1906. Its distribution is restricted to primary and advanced secondary lowland rain forest in or near the Popondetta Plain, a small area in the Northern Province of Papua New Guinea (Collins and Morris 1985). For many years it was known scientifically as *Ornithoptera alexandrae*, but recently Miller (1987) synonymized the genus *Ornithoptera* with *Troides*.

*Troides alexandrae* is the largest butterfly in the world. The females have a wingspan of up to 10 inches (250 millimeters) and are dark brown in color. The males have a wingspan of 6½ to 7½ inches (170 to 190 millimeters) and are light blue, yellow, green, and black (Collins and Morris 1985).

Because of its restricted range, the destruction of much of its habitat by human activity, and its commercial value, *T. alexandrae* has been classified as endangered by the International Union for Conservation of Nature (Collins and Morris 1985; Wells, Pyle, and Collins 1983). The IUCN's Species Survival Commission selected it as one of the 12 most endangered animals in the world (Fitter 1985). It also has been placed on Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora.

On March 30, 1988, the Service received a petition from Ms. Marion Kelly Murphy, requesting that *T. alexandrae* be added to the U.S. List of Endangered and Threatened Wildlife. On July 1, 1988, the Service made a finding that this petition had presented substantial information. The Service also has gathered other information through its own status review of the species. Section 4(b)(3)(B) of the Endangered Species Act requires that, within 12 months after receiving a petition found to present substantial information, a finding be made as to whether the requested action is warranted, not warranted, or warranted but precluded by other listing activity. This proposal incorporates the Service's final finding that listing of *T. alexandrae* is warranted.

#### Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to Queen Alexandra's birdwing butterfly (*Triodes alexandrae*) are as follows (information from Collins and Morris 1985).

*A. The present or threatened destruction, modification, or curtailment of its habitat or range.*

The greatest current danger is the expanding oil palm industry in the Popondetta region of Papua New Guinea, though development of cocoa and rubber plantations has also been a problem. These activities eliminate the natural forest required by *T. alexandrae*, and have already claimed large tracts of its restricted habitat. Local disappearances of the species are occuring because of clearing of forest to make food gardens. Negotiations to exploit reserves of timber in the region are also underway.

*B. Overutilization for commercial, recreational, scientific, or educational purposes.*

*T. alexandrae* is the world's largest butterfly and is aesthetically very attractive. Birdwing butterflies have long been held in high esteem by insect collectors and are in great demand worldwide. Species such as *T. alexandrae*, which are not only impressive, but restricted in range and hard to obtain, realize extremely high prices. Some illegal trade in *T. alexandrae* has undoubtedly occurred.

*C. Disease or predation.*

Adults are subject to little predation, but eggs are attacked by ants and heteropterous bugs. The larvae are preyed upon by toads, lizards, and birds. Parasitism of larvae by unidentified flies, and of pupae by parasitic wasps, has been reported.

*D. The inadequacy of existing regulatory mechanisms.*

*T. alexandrae* is completely protected from collection by the laws of Papua New Guinea, and a large wildlife management area has been established within its range, but it is not yet clear that these measures have helped prevent habitat loss, which is the main threat confronting the species.

*E. Other natural or manmade factors affecting its continued existence.*

None now known.

The decision to propose endangered status for *T. alexandrae* was based on an assessment of the best available scientific and commercial information concerning past, present, and probable future threats to the species. A decision to propose no action would exclude this butterfly from benefits provided by the Endangered Species Act. A decision to propose only threatened status would not adequately reflect the evident rarity and multiplicity of problems confronting the species. Critical habitat is not being proposed, as its designation is not applicable to foreign species.

#### Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages conservation measures by Federal, international, and private agencies, groups, and individuals.

Section 7(a) of the Act, as amended, and as implemented by regulations at 50 CFR Part 402, requires Federal agencies to evaluate their actions that are to be conducted within the United States or on the high seas, with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service. The Service has not identified any ongoing or proposed projects with Federal involvement that may affect Queen Alexandra's birdwing butterfly.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general trade prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part,

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make it illegal for any person subject to the jurisdiction of the United States to take (within the United States or on the high seas), import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce any endangered wildlife species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance propagation or survival, and/or for incidental take in connection with otherwise lawful activities. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered in such relief were not available.

**Public Comments Solicited**

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of endangered or threatened species. Therefore, comments and suggestions concerning any aspect of this proposed rule are hereby solicited from the public, concerned governmental agencies, the scientific community, industry, private interests, and other parties. Comments are particularly sought concerning the following:

(1) Biological, commercial, or other relevant data concerning any threat (or lack thereof) to the subject species;

(2) The location of any additional populations of the subject species;

(3) Additional information concerning the distribution of this species; and

(4) Current or planned activities in the involved areas, and their possible effect on the subject species.

The final decision on this proposed listing will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal, should be in writing, and should be directed to the party named in the above **"ADDRESSES"** section.

**National Environmental Policy Act**

The Service has determined that an Environmental Assessment, as defined under authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** of October 25, 1983 (48 FR 49244).

**References Cite**

Collins, N.M., and M.G. Morris. 1985. Threatened swallowtail butterflies of the world. The IUCN Red Data Book. Gland, Switzerland. 401 pp.

Fitter, M. 1985. Choosing the 24 most endangered species. IUCN Species Survival Commission Newsletter, no. 5, pp. 17–19.

Miller, J.S. 1987. Phylogenetic studies in the Papilioninae (Lepidoptera: Papilionidae). Bull. Amer. Mus. Nat. Hist. 188:365–512.

Wells, S.M., R.M. Pyle, and N.M. Collins. 1983. The IUCN invertebrate Red Data Book. Gland, Switzerland, 632 pp.

**Author**

The primary author of this proposed rule is Ronald M. Nowak, Office of Scientific Authority, U.S. Fish and Wildlife Service, Washington, DC 20240 (202–653–5948 or FTS 653–5948).

**List of Subjects in 50 CFR Part 17**

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

**Proposed Regulation Promulgation**

**PART 17—[AMENDED]**

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 continues to read as follows:

**Authority:** Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411; Pub. L. 100–478, 102 Stat. 2306; Pub. L. 100–653, 102 Stat. 3825 (16 U.S.C. 1531 *et seq.*); Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. It is proposed to amend § 17.11(h) by adding the following, in alphabetical order under "INSECTS," to the List of Endangered and Threatened Wildlife:

**§ 17.11 Endangered and threatened wildlife.**

* * * * *

(h) * * *

| Species | | Historic range | Vertebrate population where endangered or threatened | Status | When listed | Critical habitat | Special rules |
|---|---|---|---|---|---|---|---|
| Common name | Scientific name | | | | | | |
| INSECTS | | | | | | | |
| Butterfly, Queen Alexandra's birdwing | *Troides (-Ornithoptera) alexandrae* | Papua New Guinea | NA | E | | NA | NA |

Dated: January 26, 1989.

**Becky Norton Dunlop,**

*Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 89–4708 Filed 2–28–89; 8:45 am]

BILLING CODE 4310–55–M



# Notices

Federal Register
Vol. 54, No. 39
Wednesday, March 1, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## ACTION

**National Volunteer Advisory Council Meeting**

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given of a meeting of the National Volunteer Advisory Council.

Date, time and place: March 17, 1989, 9:00 a.m., Grand Hyatt Hotel, 100 H Street NW., Washington, DC.

Purpose: To select nominees for the President's Volunteer Action Awards for 1989 and hold the regular Council meeting.

In accordance with the determination of the Director of ACTION, this meeting will be partially closed to the public from 9:00 a.m. until 1:00 p.m., pursuant to subsection (c)(9)(B) of section 552b of Title 5, United States Code. The determination of the Director of ACTION is available for public inspection at 806 Connecticut Avenue, NW., Washington, DC 20525, during regular business hours of 8:30 a.m. to 5:30 p.m.

**FOR FURTHER INFORMATION CONTACT:** Alyse Best, Special Assistant to the Director, at (202) 634–9380.

Signed this 21st day of February 1989, in Washington, DC.

**Donna M. Alvarado,**

*Director of ACTION.*

[FR Doc. 89–4713 Filed 2–28–89; 8:45 am]

BILLING CODE 6050–28–M

## DEPARTMENT OF AGRICULTURE

**Forms Under Review by Office of Management and Budget**

February 24, 1989.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of P.L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 447–2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

**Extension**

- Animal and Plant Health Inspection Service

Certificate for Poultry or Hatching Eggs For Export

VS 17–6

On Occasion

Businesses or other for-profit; Federal agencies or employees; Small businesses or organizations; 16,000 responses; 8,000 hours; not applicable under 3504(h)

George O. Winegar (301) 436–8383.

**Donald E. Hulcher,**

*Acting Departmental Clearance Officer.*

[FR Doc. 89–4774 Filed 2–28–89; 8:45 am]

BILLING CODE 3410–01–M

## Federal Grain Inspection Service

**Designation Renewal of the Ohio Valley (IN) and Quincy (IL) Agencies**

**AGENCY:** Federal Grain Inspection Service (Service).

**ACTION:** Notice.

**SUMMARY:** This notice announces the designation renewal of James L. Goodge, Sr., dba Ohio Valley Grain Inspection (Ohio Valley), and Anthony L. Marquardt dba Quincy Grain Inspection & Weighing Service (Quincy) as official agencies responsible for providing official services under the U.S. Grain Standards Act, as amended (Act).

**EFFECTIVE DATE:** April 1, 1989.

**ADDRESS:** James R. Conrad, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454.

**FOR FURTHER INFORMATION CONTACT:** James R. Conrad, telephone: (202) 447–8525.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to his action.

The Service announced that the Ohio Valley and Quincy designations terminate on March 31, 1989, and requested applications for official agency designation to provide official services within specified geographic areas in the October 5, 1988, **Federal Register** (53 FR 39121). Applications were to be postmarked by November 3, 1988. Ohio Valley and Quincy were the only applicants for designation in their area and each applied for designation renewal in the entire area currently assigned to each agency. The Service announced the applicant names in the December 1, 1988, **Federal Register** (53 FR 48564) and requested comments on the applicants for designation. Comments were to be postmarked by January 17, 1989; no comments were received.

The Service evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act; and in accordance with section 7(f)(1)(B), determined that Ohio Valley

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and Quincy are able to provide official services in the geographic area for which the Service is renewing their designations. Effective April 1, 1989, and terminating March 31, 1992, Ohio Valley and Quincy are designated to provide official inspection functions in their specified geographic areas, as previously described in the October 1 **Federal Register**.

Interested persons my obtain official services by contacting the agencies at the following telephone numbers: Ohio Valley at (812) 858–5444, Quincy at (217) 222–7592.

(Pub. L. 94–582, 90 Stat. as amended (7 U.S.C. 71 *et seq.*))

Date: February 17, 1989.

**J.T. Abshier,**

*Director, Compliance Division.*

[FR Doc. 89–4493 Filed 2–28–89; 8:45 am]

BILLING CODE 3410–EN–M

## Request for Comments on Designation Applicants in the Geographic Area Currently Assigned to the Enid (OK) and Erie (OH) Agencies

**AGENCY:** Federal Grain Inspection Service.

**ACTION:** Notice.

**SUMMARY:** This notice requests comments from interested parties on the applicants for official agency designation in the geographic areas currently assigned to Enid Grain Inspection Company, Inc. (Enid), and Dennis L. Boltenhouse dba Erie Grain Inspection Service (Erie).

**DATE:** Comments must be postmarked on or before April 17, 1989.

**ADDRESS:** Comments must be submitted in writing to Lewis Lebakken, Jr., RM, FGIS, USDA, Room 0628 South Building, P.O. Box 96454, Washington, DC 20090–6454.

*Telemail* users may respond to [LLEBAKKEN/FGIS/USDA] telemail.

*Telex* users may respond as follows:

TO: Lewis Lebakken

TLX:7607351, ANS:FGIS UC.

All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, SW., during regular business hours (7 CFR 1.27(b)).

**FOR FURTHER INFORMATION CONTACT:** Lewis Lebakken, Jr., telephone (202) 475–3428.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed and determined not to be rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service requested applications for official agency designation to provide official services within specified geographic areas in the January 4, 1989, **Federal Register** (54 FR 162). Applications were to be postmarked by February 3, 1989. Enid and Erie were the only applicants for designation in those areas and each applied for designation renewal in the entire area currently assigned to that agency.

This notice provides interested persons the opportunity to present their comments concerning the applicants for designation. Commenters are encouraged to submit reasons for support or objection to these designation actions and include pertinent data to support their views and comments. All comments must be submitted to the Resources Management Division, at the above address.

Comments and other available information will be considered in making a final decision. Notice of the final decision will be published in the **Federal Register**, and the applicants will be informed of the decision in writing.

(Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Date: February 17, 1989.

**J.T. Abshier,**

*Director, Compliance Division.*

[FR Doc. 89–4494 Filed 2–28–89; 8:45 am]

BILLING CODE 3410–EN–M

## Request for Designation Applicants To Provide Official Services in the Geographic Area Currently Assigned to the Fremont (NE) and Titus (IN) Agencies

**AGENCY:** Federal Grain Inspection Service (Service).

**ACTION:** Notice.

**SUMMARY:** Pursuant to the provisions of the U.S. Grain Standards Act, as Amended (Act), official agency designations shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act. This notice announces that the designation of two agencies will terminate, in accordance with the Act, and requests applications from parties interested in being designated as the official agency to provide official services in the geographic area currently assigned to the specified agencies. The official agencies are the Fremont Grain Inspection Department, Inc. (Fremont) and Titus Grain Inspection, Inc. (Titus).

**DATE:** Applications must be postmarked on or before March 31, 1989.

**ADDRESS:** Applications must be submitted to James R. Conrad, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. All applications received will be made available for public inspection at this address located at 1400 Independence Avenue, SW., during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** James R. Conrad, telephone (202) 447–8525.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act specifies that the Administrator of the Service is authorized, upon application by any qualified agency or person, to designate such agency or person to provide official services after a determination is made that the applicant is better able than any other applicant to provide official services in an assigned geographic area.

Fremont, located at 603 East Dodge Street, Fremont, NE 68025 and Titus located at 1111 East 800 North, West Lafayette, IN 47906, each were designated under the Act as an official agency on September 1, 1986, to provide official inspection functions.

The official agencies' designations terminate on August 31, 1989. Section 7(g)(1) of the Act states that designations of official agencies shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act.

The geographic area presently assigned to Fremont, in the States of Iowa and Nebraska, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation is as follows:

In Iowa: Carroll (west of U.S. Route 71); Clay (west of U.S. Route 71); Crawford; Dickinson (west of U. S. Route 71); Harrison (east of State Route 183); O'Brien (north of B24 and east of U.S. Route 59); Osceola (east of U.S. Route 59); and Shelby Counties.

In Nebraska:

Bounded on the North by U.S. Route 20 east to the Pierce County line; the eastern Pierce County line; the northern Wayne, Cuming, and Burt County lines east to the Missouri River;

Bounded on the East by the Missouri River south-southeast to State Route 91; State Route 91 west to the Dodge County line; the eastern and southern Dodge County lines west to U.S. Route 77; U.S. Route 77 south to the Saunders County line;

Bounded on the South by the southern Saunders, Butler, and Polk County lines; and

Bounded on the West by the western Polk County line north to the Platte River; the Platte River northeast to the western Platte County line; the western and northern Platte County lines east to U.S. Route 81; U.S. Route 81 north to U.S. Route 20.

The following locations, outside of the above contiguous geographic area, are part of this geographic area assignment: Juergens Produce and Seed, and Farmers Grain and Lumber Company, both in Carroll, Carroll County, Iowa (located inside Central Iowa Grain Inspection Service, Inc.'s area); and Farmers Cooperative, and Krumel Grain and Storage, both in Wahoo, Saunders County, Nebraska (located inside Omaha Grain Inspection Service, Inc.'s area).

Exceptions to Fremont's assigned geographic area are the following locations inside Fremont's area which have been and will continue to be serviced by the following official agencies:

1. Hastings Grain Inspection, Inc.: Farmers Cooperative Grain Company, and Wagner Mills, Inc., both in Columbus, Platte County, Nebraska;

2. Omaha Grain Inspection Service, Inc.: Farmers Coop Business Assn., Rising City, Butler County, Nebraska, and Farmers Coop Business Assn., Shelby, Polk County, Nebraska; and

3. Sioux City Inspection & Weighing Agency, Inc.: Charter Oak Grain & Seed, and Delanty Grain Company, both in Charter Oak, Crawford County, Iowa.

The geographic area presently assigned to Titus, in the State of Indiana, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation is as follows:

Bounded on the North by the northern Pulaski County line;

Bounded on the East by the eastern and southern Pulaski County lines; the eastern White County line; the eastern Carroll County line south to State Route 25; State Route 25 southwest to Tippecanoe County; the eastern Tippecanoe County line;

Bounded on the South by the southern Tippecanoe County line; the eastern and southern Fountain County lines west to U.S. Route 41; and

Bounded on the West by U.S. Route 41 north to the northern Benton County line; the northern Benton County line east to State Route 55; State Route 55 north to U.S. Route 24; U.S. Route 24 east to the White County line; the western White and Pulaski County lines.

The following locations, outside of the above contiguous geographic area, are part of this geographic area assignment: Boswell Grain Company, Boswell, Benton County; Dunn Grain, Dunn, Benton County; York Richland Grain Elevator, Inc., Earl Park, Benton County; Raub Grain Company, Raub, Benton County (located inside Champaign-Danville Grain Inspection Departments, Inc.'s area); and The Andersons, Delphi, Carroll County; Buckeye Feed and Supply Company, Leiters Ford, Fulton County; and Cargill, Inc., Linden, Montgomery County (located inside Frankfort Grain Inspection, Inc.'s area).

Exceptions to Titus' assigned geographic area are the following locations inside Titus' area which have been and will continue to be serviced by the following official agency:

Schneider Inspection Service, Inc.: Central Soya, and Farmers Grain, both in Winamac, Pulaski County.

Interested parties, including Fremont and Titus, are hereby given opportunity to apply for official agency designation to provide the official services in the geographic area, as specified above, under the provisions of section 7(f) of the Act and § 800.196(d) of the regulations issued thereunder. Designation in each specified geographic area is for the period beginning September 1, 1989, and ending August 31, 1992. Parties wishing to apply for designation should contact the Review Branch, Compliance Division, at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated to provide official services in a geographic area.

(Pub. L. 94–582 90 Stat. 2867, as amended (7 U.S.C..71 *et seq.*))

Date: February 17, 1989.

**J.T. Abshier,**

*Director, Compliance Division.*

[FR Doc. 89–4495 Filed 2–28–89; 8:45 am]

BILLING CODE 3410–EN–M

## Forest Service

## Polk Timber Sale, Lassen National Forest, CA; Intent To Prepare Environmental Impact Statement

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare an environmental impact statement.

**SUMMARY:** The Forest Service will prepare a draft environmental impact statement (DEIS) for a proposal to harvest timber in the Lower Mill Creek, Middle Deer Creek and Lower Deer Creek Management Areas (#'s 40, 41, and 42, respectively) on the Almanor Ranger District, Lassen National Forest, Tehama County, California. The agency has conducted preliminary public scoping on the proposal and has received written comment and suggestions. The agency invites further comments and suggestions on the scope of the analysis. In addition, the agency gives notice of the full environmental analysis and decision-making process that is occurring on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

**DATE:** Comments concerning the scope of the analysis must be received by March 31, 1989.

**FOR FURTHER INFORMATION CONTACT:** Direct comments, suggestions and questions about the proposed action and DEIS to Laurence Crabtree, District Planning Officer, Almanor Ranger District, Lassen National Forest, P.O. Box 767, Chester, California 96020, phone 916–258–2141.

**SUPPLEMENTARY INFORMATION:** The Lassen National Forest Timber Management Plan (1975) and the proposed Lassen National Forest Land and Resources Management Plan (1986) provide guidance for the orderly and sustained development of the timber growing capacity of the Lassen National Forest. Plan direction for Management Areas 40, 41 and 42 includes timber harvest, while also considering visual quality, the proposed Wild and Scenic River corridors along Deer Creek and Mill Creek, the proposed Mill Creek Wilderness Area, the Ishi Wilderness Area, semi-primitive non-motorized and semi-primitive motorized recreation areas, the maintenance of habitat for species that are at least partially dependent on old growth timber stands, and other resources.

In preparing the DEIS, the Forest Service will identify and consider alternatives, including no action.

Richard A. Henry, Forest Supervisor, Lassen National Forest, Susanville, California, is the responsible official.

Public participation will be especially important at several points during the analysis. The first point is during the scoping process (40 CFR 1501.7). In May, 1987, the Forest Service sent a letter of management intent to Federal and State agencies and other individuals or organizations with possible interest in, or who may be affected by, the proposed action. The letter sought

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information, comments, and assistance regarding the proposed timber sale. This input will be used in preparation of the DEIS. The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insigificant issues or those which have been covered by a relevant previous environmental analysis.
4. Exploring additional alternatives.
5. Identifying potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects and connected actions).
6. Determining potential cooperating agencies and task assignments.

Responses to the letter of management intent, and input from Forest Service specialists, have identified several issues and concerns. These are:

1. Approximately one-fourth of the proposed sale area was part of the Polk Springs Roadless Area which the California Wilderness Act of 1984 made available for non-wilderness management.
2. Management activities should maintain the recreational and aesthetic values of the proposed Wild and Scenic River corridors of Mill Creek and Deer Creek.
3. Management activities should not degrade the water quality or the anadromous and resident fisheries habitat of Mill Creek, Deer Creek and their tributaries.
4. The Polk Springs area includes habitat for the East Tehama deer herd.
5. Suitable old growth forests to meet the habitat requirements of cetain wildlife species are limited in the proposed sale area.
6. Several raptor nest sites have been identified in the proposed sale area, including a potential peregrine falcon nest (Federal Endangered species).
7. Slope stability and soil erosion potential is a concern in parts of the sale area.
8. Regeneration may be difficult on some soils.
9. Road construction will be difficult and expensive in some places.
10. The creation of slash accumulations adjacent to either private lands or Wilderness Area boundaries could increase fire risks to these areas.
11. Potential areas for land ownership exchange are within the proposed sale area.

The DEIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review in April, 1989. At that time EPA will publish a notice of availability of the DEIS in the **Federal Register**.

The comment period on the DEIS will be 45 days from the date the EPA's notice of availability appears in the **Federal Register**. It is very important that those interested in the management of the Lower Mill Creek, Middle Deer Creek and Lower Deer Creek areas participate at that time. To be the most helpful, comments on the DEIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed.

Comments on the DEIS will be analyzed and considered by the Forest Service in preparing the final EIS (FEIS), which is scheduled to be completed in June, 1989. In the FEIS the Forest Service is required to respond to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences discussed in the FEIS, and applicable laws, regulations, and policies is making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to appeal under 36 CFR 217.

Date: February 22, 1989.

**H.R. Tatman,**

*Acting Forest Supervisor.*

[FR Doc. 89-4770 Filed 2-28-89; 8:45 am]

BILLING CODE 3410-11-M

## Alder Timber Sale, Lassen National Forest CA; Intent To Prepare Environmental Impact Statement

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare an environmental impact statement.

**SUMMARY:** The Forest Service will prepare a draft environmental impact statement (DEIS) for a proposal to harvest timber in the Middle Deer Creek Management Area (#41) on the Almanor Ranger District, Lassen National Forest, Tehama County, California. The agency has conducted preliminary public scoping on the proposal and has received written comments and suggestions. The agency invites further comments and suggestions on the scope of the analysis. In addition, the agency gives notice of the full environmental analysis and decision-making process that is occurring on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decison.

**DATE:** Comments concerning the scope of the analysis must be received by March 31, 1989.

**FOR FURTHER INFORMATION CONTACT:** Direct comments, suggestions and questions about the proposed action and DEIS to Laurence Crabtree, District Planning Officer, Almanor Ranger District, Lassen National Forest, P.O. Box 767, Chester, California 96020, phone 916-258-2141.

**SUPPLEMENTARY INFORMATION:** The Lassen National Forest Timber Management Plan (1975) and the proposed Lassen National Forest Land and Resource Management Plan (1988) provide guidance for orderly and sustained development of the timber growing capacity of the Lassen National Forest. Plan direction for the Middle Deer Creek Management Area (#41) includes timber harvest, while also considering visual quality, the proposed Wild and Scenic River corridor along Deer Creek, the maintenance of habitat for species that are at least partially dependent on old growth timber stands, and other resources.

In preparing the DEIS, the Forest Service will identify and consider alternatives, including no action.

Richard A. Henry, Forest Supervisor, Lassen National Forest, Susanville, California, is the responsible official.

Public participation will be especially important at several points during the analysis. The first point is during the scoping process (40 CFR 1501.7). In April, 1988, the Forest Service sent a letter of management intent to Federal and State agencies and other individuals or organizations with possible interest in, or who may be affected by, the proposed action. The letter sought information, comments, and assistance regarding the proposed timber sale. This input will be used in preparation of the DEIS. The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Exploring additional alternatives.
5. Identifying potential environmental effects of the proposed action and alternatives (i.e. direct, indirect, and cumulative effects and connected actions).
6. Determining potential cooperating agencies and task assignments.

Responses to the letter of management intent, and input from Forest Service specialists, have identified several issues and concerns. These are:



1. The proposed sale area was part of the Cub Creek Roadless Area which the California Wilderness Act of 1984 made available for non-wilderness management.
2. Management activities should maintain the recreational and aesthetic values of Highway 32 and the proposed Wild and Scenic River corridor of Deer Creek.
3. Management activities should not degrade the water quality or the anadromous and resident fisheries habitat of Deer Creek and its tributaries.
4. The proposed sale area includes habitat for deer and bear, and for wildlife species which are at least partially dependent on old growth forests.
5. Old landslides, rock outcrops, steep slopes and shallow soils could make development of a transportation system expensive.

The DEIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review in April, 1989. At that time EPA will publish a notice of availability of the DEIS in the **Federal Register.**

The comment period on the DEIS will be 45 days from the date the EPA's notice of availability appears in the **Federal Register**. It is very important that those interested in the management of the Middle Deer Creek area participate at that time. To be the most helpful, comments on the DEIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed.

Comments on the DEIS will be analyzed and considered by the Forest Service in preparing the final EIS (FEIS), which is scheduled to be completed in June, 1989. In the FEIS the Forest Service is required to respond to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences discussed in the FEIS, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to appeal under 36 CFR 217.

Date: February 22, 1989.

**H.R. Tatman,**

*Acting Forest Supervisor.*

[FR Doc. 89-4769 Filed 2-28-89; 8:45 am]

BILLING CODE 3410-11-M

## ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

### Meeting

**AGENCY:** The Architectural and Transportation Barriers Compliance Board (ATBCB).

**ACTION:** Notice of ATBCB meeting.

**SUMMARY:** The Architectural and Transportation Barriers Compliance Board (ATBCB) has scheduled a meeting to be held from 1:00 PM to 3:00 PM, on Wednesday, March 15, 1989, in the Department of Transportation Conference Room 2230, 400 7th Street SW. Washington, DC 20590.

Items on the Agenda: Discretionary research projects for FY 1989 funding; public affairs plan; Fiscal Year 1990 budget; Fiscal Year 1989 budget reprogramming; OCE status report; draft plan for compliance and enforcement case resolution; Office of Compliance and Enforcement annual review; review of the results of the management study; confirmation of the selection for the position of General Counsel. Some portions of the Board meeting will be closed.

**DATE:** Wednesday, March 15, 1989—1:00 PM-3:00 PM.

**ADDRESS:** Department of Transportation, 400 7th Street SW., Conference Room 2230, Washington, DC 20590.

The Technical Programs Committee and the Planning and Budget Committee of the ATBCB will meet on Tuesday, March 14, 1989, from 9:00 a.m. to 3:00 p.m. in the ATBCB Offices, 1111 18th Street, NW., Suite 501, Washington, DC 20036-3894.

The Executive Committee will meet from 9:00 a.m. to 11:00 a.m. on Wednesday, March 15, in the Department of Transportation Conference Room 2230, 400 7th Street, SW., Washington, DC 20590. Some portions of the committee meetings will be closed.

**FOR FURTHER INFORMATION CONTACT:** Barbara A. Gilley, Administrative Officer, (202) 653-7834 (voice or TDD).

**Lawrence W. Roffee,**

*Executive Director.*

[FR Doc. 89-4694 Filed 2-28-89; 8:45 am]

BILLING CODE 6820-BP-M

## COMMISSION ON CIVIL RIGHTS

### Missouri Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Missouri Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 4:30 p.m., on Wednesday, March 22, 1989, at the Days Inn-University Center, 1900 I-70 Drive SW., Columbia, Missouri. The purpose of the meeting is to receive information on the nature and extent of bigotry-related crime and harassment on selected college campuses in Missouri.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Joanne M. Collins, or William F. Muldrow, Acting Director of the Central Regional Division (816) 426-5253, (TDD 816/426-5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC., February 21, 1989.

**Melvin L. Jenkins,**

*Acting Staff Director.*

[FR Doc. 89-4700 Filed 2-28-89; 8:45 am]

BILLING CODE 6335-01-M

### Wisconsin Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Wisconsin Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 4:00 p.m., on March 16, 1989, at the Concourse Hotel, One West Dayton Street, Madison, Wisconsin. The purpose of the meeting is to discuss current projects and to plan future activities for FY 1989.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson James L. Baughman, or William F. Muldrow, Acting Director of the Central Regional Division (816) 426-5253, (TTD 816/426-5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

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Dated at Washington, DC, February 15, 1989.

**Melvin L. Jenkins,**

*Acting Staff Director.*

[FR Doc. 89-4701 Filed 2-28-89; 8:45 am]

BILLING CODE 6820-01-M

## DEPARTMENT OF COMMERCE

### Bureau of Export Administration

**[Docket No. 7885-01]**

### Actions Affecting Export Privileges; Andre A. Buccolier

**Summary**

The Decision and Order of the undersigned dated March 2, 1988 is hereby modified to provide that the denial of export privileges set forth in said Order shall not apply to commodities or technical data which may be exported pursuant to General License G-Dest as provided in 14 CFR 771.3.

**Order**

On March 16, 1988 Respondent Andre Buccolier sought relief from the March 2, 1988 Order of the undersigned denying him export privileges for a period of ten years. The relief sought, *inter alia*, was the right to export commodities and technical data from the United States pursuant to General License G-Dest.

Upon consideration of Respondent's request, and the relief sought appearing justified, it is hereby ordered that the Respondent's privileges of participating in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, are hereby reinstated with respect to those commodities and technical data which may be exported pursuant to General License G-Dest as provided in 14 CFR 771.3; provided however, that this reinstatement shall be valid only so long as Respondents, or the Final Order entered in this proceeding.

This constitutes final agency action in this matter.

Date: February 23, 1989.

**Paul Freedenberg,**

*Under Secretary, Bureau of Export Administration.*

[FR Doc. 89-4724 Filed 2-28-89; 8:45 am]

BILLING CODE 3510-DT-M

### Order Denying Permission To Apply For or Use Export Licenses; Peter Walaschek

In the Matter of: Peter Walaschek, Marzellenstrasse, 5000 Cologne, Federal Republic of Germany.

On August 28, 1986, Peter Walaschek (Walaschek) was convicted of violating section 2410(b) of the Export Administration Act of 1979 (50 U.S.C. app. 2401–2420 (1982 and Supp. III 1985), as amended by Pub. L. 100-418, 102 Stat. 1107 (August 23, 1988)) (the Act). As provided in section 11(h) of the Act, no person convicted of a violation of the Act, or certain other provisions of the United States Code, shall be eligible, at the discretion of the Secretary,[1] to apply for or use any export license issued pursuant to the Act or the Export Administration Regulations (15 CFR Parts 768–799) (the Regulations),[2] for a period of up to ten years from the date of conviction. In addition, the Secretary may revoke any export license issued under the Act in which a person convicted of violating the Act has an interest at the time of conviction.

Pursuant to 770.15 and 772.1(h) of the Regulations, as amended, 54 FR 4004–4006 (Jan. 27, 1989), upon notification that a person has been convicted of violating the Act, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, shall determine whether to deny that person permission to apply for or use any export license issued pursuant to the Act and the Regulations and shall also determine whether to revoke any export license previously issued to such a person. Having received notice of Walaschek's conviction for violating the Act, and, following consultations with the Director, Office of Export Enforcement, I have decided that Walaschek may not apply for or use any export license until August 28, 1996, ten years from the date of his conviction.

Accordingly, it is hereby ordered:

I. All outstanding individual validated licenses in which Walaschek appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Walaschek's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, or in any general license are hereby revoked.

II. Until August 28, 1996, Peter Walaschek, Marzellenstrasse, 5000 Cologne, Federal Republic of Germany, is denied the privilege of applying for or using any export license, including, but not limited to, any individual validated license, bulk license or general license, issued under or authorized by the Act and the Regulations. Pursuant to this Order, Walaschek may not participate in any export license-related activity, including any participation: (a) As a party or as a representative of a party to any export license application submitted to the Department, (b) in preparing or filing with the Department any export license application or reexport authorization, or any document to be submitted therewith, (c) in obtaining or using any validated or general export license, or other export control document, (d) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of any commodities or technical data, in whole or in part, exported or to be exported from the United States and subject to the Regulations, and (e) in financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend only to those commodities and technical data which are subject to the Act and the Regulations.

III. After notice and opportunity for comment as provided in § 770.15(b) of the Regulations, any firm, corporation or business organization related to Walaschek by affiliation, ownership, control or position of responsibility may also be subject to the provisions of this Order.

IV. No person, firm, corporation, partnership or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing, shall, with respect to U.S.-origin commodities and technical data which are subject to the denial of export privileges set forth herein, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with Walaschek or whereby Walaschek may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly, in any manner or capacity: (a) Apply for, obtain, transfer, or use any export license, Shipper's Export Declaration, bill of lading or any other export control document relating to any export, reexport, transshipment or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for Walaschek, or (b) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance or otherwise service or participate in any export, reexport, transshipment or diversion of any commodity or technical data exported or to be exported from the United States. These prohibitions apply only to those commodities and technical data which are subject to the Act and the Regulations.

V. This Order is effective immediately and shall remain in effect until August 28, 1996.

A copy of this Order shall be delivered to Walaschek. This Order shall be published in the **Federal Register**.

Dated: February 24, 1989.

**Iain S. Baird,**

*Director, Office of Export Licensing.*

[FR Doc. 89-4747 Filed 2-28-89; 8:45 am]

BILLING CODE 3510-DT-M

[1] Pursuant to the Regulations, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, exercises the authority granted to the Secretary by section 11(h) of the Act.

[2] Effective October 1, 1988, the Export Administration Regulations were redesignated as 15 CFR Parts 768–799 (53 FR 37751, Sept. 28, 1988). The transfer merely changed the first number of each Part from "3" to "7". Until such time as the Code of Federal Regulations is republished, the Regulations may be found in 15 CFR Parts 368–399 (1988).



## International Trade Administration

### Export Trade Certificate of Review; Application

**AGENCY:** International Trade Administration, Commerce.

**ACTION:** Notice of application.

**SUMMARY:** The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

**FOR FURTHER INFORMATION CONTACT:** Thomas H. Stillman, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** Title III of the Export Trading Company Act of 1982 (Pub. L. 97-290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and Federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

**Request for Public Comments**

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. An original and five (5) copies should be submitted not later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1223, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 89-00003." A summary of the application follows:

Applicant: Passport International (PI), 9721 Kempwood Drive, Suite 1005, Houston, Texas 77080, Contact: David N. Williams, President, Telephone: (713) 895-9612

Application No.: 89-00003

Date Deemed Submitted: February 15, 1989

Members (in addition to applicant): None

*Summary of the Application*

Export Trade Products

Process control equipment, computer hardware and software, electronic test and repair equipment, medical equipment, paper and paper products, and consumer products.

*Export Trade Facilitation Services (as they relate to the export of Products)*

Consulting, international market research, financing, insurance, advertising, packing and crating, warehousing, trade documentation and shipping, foreign exhibit marketing, and customs brokerage.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

Under the terms of its Certificate, PI seeks to: 1. Coordinate the participation of various suppliers in foreign trade exhibitions through the sharing of trade information that is generally available to the public,

2. Provide Export Trade Facilitation Services to domestic suppliers for the export of their Products to foreign customers,

3. Enter into exclusive agreements with domestic suppliers to arrange for the export of Products to foreign customers in response to foreign invitations to bid,

4. Enter into exclusive agreements with foreign customers to select domestic suppliers of Products in order to match foreign buyer specifications,

5. Meet and negotiate with domestic suppliers concerning the terms of their participation in each bid, invitation or request to bid, or other sales opportunity in the Export Markets,

6. Establish export prices for domestic suppliers seeking to respond to a foreign bid opportunity, and

7. Contract with other Export Intermediaries for the export of the Products of domestic suppliers to the Export Markets.

Dated: February 24, 1989.

**Thomas H. Stillman,**

*Director, Office of Export Trading Company Affairs.*

[FR Doc. 89-4745 Filed 2-28-89; 8:45 am]

BILLING CODE 3510-DR-M

## National Oceanic and Atmospheric Administration

### Sea Turtle Conservation; Shrimp Trawling Requirements

**AGENCY:** National Marine Fisheries Service (NOAA Fisheries), NOAA, Commerce.

**ACTION:** Notice.

**SUMMARY:** NOAA Fisheries has contracted with the National Academy of Sciences to conduct an independent review of scientific information pertaining to the conservation of sea turtles. The study, mandated in recent amendments to the Endangered Species Act of 1973 (ESA) to be completed by April 1, 1989, will not be completed until January 31, 1990.

**ADDRESS:** Dr. Nancy Foster, Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910.

**FOR FURTHER INFORMATION CONTACT:** Phil Williams (301-427-2322).

**SUPPLEMENTARY INFORMATION:**

**Background**

The Endangered Species Act Amendments of 1988 (Public Law 100-478) includes, among other things, provisions on sea turtle conservation.

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The Amendments require the Secretary of Commerce to contract with the National Academy of Sciences for an independent review of sea turtle biology and conservation. The primary purpose of the review is to further the long-term conservation of sea turtles by reviewing available data to ensure that the Federal government is promoting the conservation of sea turtles in the most effective and comprehensive manner possible. In particular, the review will address whether more or less stringent measures to reduce the drowning of sea turtles in shrimp nets are necessary and advisable to provide for the conservation of sea turtles. Congress directed the Academy to report its finding by April 1, 1989. If the Academy cannot complete its review by April 1, then it should give priority to completing the review of Kemp's Ridley sea turtle, and complete its review of other species as expeditiously as possible.

Shortly after the ESA Amendments were passed, NOAA Fisheries contacted the National Academy of Sciences concerning this study. NOAA has accepted the Academy's proposal dated December 27, 1988, for a one-year study to begin on February 1, 1989, and conclude on January 31, 1990. Prior to the enactment of the Amendments, the Academy informed the Congress that at least a year was needed to complete the study. NOAA has requested the Academy to provide progress reports on April 1 and September 29, 1989.

Dated: February 17, 1989.

**N. Foster,**

*Director, Office of Protected Resources and Habitat Programs.*

[FR Doc. 89-4580 Filed 2-28-89; 8:45 am]

BILLING CODE 3510-22-M

## National Technical Information Service

### Government-Owned Inventions; Availability for Licensing

February 21, 1989.

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

Licensing information and copies of patent applications bearing serial numbers with prefix E may be obtained by writing to: Office of Federal Patent Licensing, U.S. Department of Commerce, P.O. Box 1423, Springfield, Virginia 22151. All other patent applications may be purchased, specifying the serial number listed below, by writing NTIS, 5285 Port Royal Road, Springfield, Virginia 22161 or by telephoning the NTIS Sales Desk at (703) 487-4650. Issued patents may be obtained from the Commissioner of Patents, U.S. Patent and Trademark Office, Washington, DC 20231.

Please cite the number and title of inventions of interest.

**Douglas J. Campion,**

*Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.*

**Department of Agriculture**

SN 6,701,660 (4,797,153)
Method of Increasing Biomass in Plants

SN 7-068,499 (4,795,633)
Vaccine for Swine Trichinosis

SN 7-217,909
Method of Increasing Biomass in Plants

SN 7-228,057
Device for Sustained-Release of a Chemical Onto an Animal and Method of Using the Device

SN 7-251,427
Monoclonal Antibodies Against Chicken T-Lymphocytes

SN 7-261,531
Fatty Glycolic Acid Derivatives as Yarn Lubricants and as Antimicrobial Agents

SN 7-270,808
Hot Air Disinfestation of Fruit and Vegetables

SN 7-274,721
Method for Reduction of Endotoxin in Cotton Lint or Dust

SN 7-281,733
Irrigation Device

SN 7-296,109
Processes and Apparatus for Moving Plant Materials and Containers Useful Therewith

SN 7-299,174
Sequential Oxidative and Reductive Bleaching in a Multicomponent Single Liquor System

**Department of Health and Human Services**

SN 6-778,669 (4,794,074)
Method and Kit for Detecting Human Exposure to Genotoxic Agents

SN 7-129,387 (4,792,689)
Method for Obtaining a Ratio Measurement for Correcting Common Path Variations in Intensity in Fiber Optic Sensors

SN 7-280,363
Antimicrobial Peptides and Processes for Making the Same

SN E-167-88
Method and Composition for Inducing Glycosaminoglycan Accumulation

SN E-47-89
Attenuation of Ethyl Alcohol Intoxication with Alpha-2 Adrenoceptor Antagonists

SN E-70-89
Purification of Human Chorionic Gonadotropin b-Core Molecule and Preparation of Antibodies With Specificity for Same

**Department of the Air Force**

SN 7-241,156
Low Glass Transition Temperature Aromatic Polyamides

**Department of the Army**

SN 7-252,429
Generic Detection With A Receptor-Based Fiber Optic Sensor

SN 7-263,305
Specimen Holder and Rotary Assembly

SN 7-263,306
Thermal Test Chamber Device

SN 7-263,466
Manual Microcircuit Die Test System

SN 7-266,953
Millimeter Wave Microstrip Modulator/Switch

SN 7-270,147
Improved Magnesium/Manganese Dioxide Electrochemical Cell

SN 7-276,981
Phase-Conjugate Resonator

SN 7-280,055
Millimeter Wave Microstrip Nonreciprocal Phase Shifter

SN 7-290-719
Compact Microstrip Latching Reciprocal Phase Shifter

SN 7-295-613
Improved Slotted Microstrip Antenna

**Department of the Interior**

SN 7-059,892 (4,793,710)
Method and Apparatus for Measuring Surface Density of Explosive and Inert Dust in Stratified Layers

[FR Doc. 89-4705 Filed 2-28-89; 8:45 am]

BILLING CODE 3510-04-M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetables Fiber Textile Products Produced or Manufactured in Macau; Correction

February 24, 1989.

On page 47744 in the table of the letter to the Commissioner of Customs published on November 25, 1988 (53 FR 47743), make the following changes:



| Category | Sublevel |
|---|---|
| 333/335/833/835 | Change from 90,047 dozen to 87,277 dozen. |
| 633/634/635 | Change from 316,824 dozen to 332,225 dozen. |

**James H. Babb,**

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 89-4743 Filed 2-28-89; 8:45 am]

BILLING CODE 3510-DR-M

### Amendment of Export Visa and Certification Requirements for Certain Textile Articles Produced, Manufactured or Assembled in the United Mexican States

February 24, 1989.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs amending the existing visa and certification requirements.

**EFFECTIVE DATE:** March 1, 1989.

**FOR FURTHER INFORMATION CONTACT:** Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The existing visa and certification requirements are being amended to include coverage of cotton and man-made fiber textile products in merged Categories 347/348/647/648 and 359-C/659-C, produced, manufactured or assembled in Mexico and exported from Mexico on and after January 1, 1989. Customs is being directed to accept shipments of the above products exported on or after January 1, 1989 which list on the visa or accompanying Shippers Declaration (Form ITA-370P) either the cotton or man-made fiber category numbers.

In addition, the visa and certification requirements are being amended to include coverage of man-made fiber products in merged Categories 645/646.

A copy of the current visa and certification arrangement is available from the Textile Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647-1998.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 53 FR 44937, published on November 7, 1988). Also see 53 FR 15724, published on May 3, 1988; 53 FR 32421, published on August 25, 1988; and 53 FR 52464, published on December 28, 1988.

February 24, 1989.

**James H. Babb,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

February 24, 1989.

Commissioner of Customs,
*Department of the Treasury,*
*Washington, D.C. 20229.*

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of August 22, 1988, as amended, which directed you to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of cotton, wool and man-made fiber textile products in certain specified categories, including any part or merged categories as established in the bilateral agreement, produced, manufactured or assembled in Mexico for which the Government of the United States has not issued an appropriate export visa or exempt certification.

Effective on March 1, 1989, you are directed to permit entry of cotton and man-made fiber textile products visaed as merged Categories 347/348/647/648 and 359-C/659-C [1] which are produced, manufactured or assembled in Mexico and exported from Mexico on and after January 1, 1989 provided the Government of the United Mexican States has issued an appropriate export visa or exempt certification.

You are directed to permit entry of shipments of these products exported from Mexico on or after January 1, 1989 which list on the visa or accompanying Shippers Declaration (Form ITA-370P) either the cotton or man-made fiber category number, i.e. 347/348, 647/648, 359-C or 659-C.

In addition, you are directed to permit entry of man-made fiber textile products visaed as merged Categories 645/646, which are produced, manufactured or assembled in Mexico and exported from Mexico on and after March 1, 1989.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

[1] In Categories 359-C/659-C, only HTS numbers 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010 in Category 359-C; and 6103.23.0055, 6103.43.2020, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.69.1000, 6104.69.3014, 6114.30.3040, 6114.30.3050, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4020, 6211.33.0010, 6211.33.0017 and 6211.43.0010 in Category 659-C.

Sincerely,

James H. Babb,

*Chairman, Committee for the Implementation of Textile agreements.*

[FR Doc. 89-4744 Filed 2-28-89; 8:45 am]

BILLING CODE 3510-DR-M

## DEPARTMENT OF DEFENSE

### Department of the Navy

### Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Naval Research Advisory Committee Panel on Countermine Capabilities for Amphibious Operations will meet on March 13-14, 1989. The meeting will be held at the Center for Naval Analyses, 4401 Ford Avenue, Alexandria, Virginia. The meeting will commence at 8:30 a.m. and terminate at 4:30 p.m. on March 13; and commence at 8:30 a.m. and terminate at 5:00 p.m. on March 14, 1989. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to provide briefings for the panel members related to an assessment of the mine/countermine threat and current capabilities and limitations, and an evaluation of the technological approaches to detection, neutralization, marking and reporting problems. The agenda will include briefings and discussions related to amphibious concepts and doctrine, lessons learned from specific operations, an assessment of the threat, applicable technologies and systems, investment strategy, and highlights of previous studies. These briefings and discussions contain classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and non-classified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander L.W. Snyder, U.S. Navy, Office of Naval Research, 800 North Quincy Street, Arlington, VA 22217-5000, Telephone Number: (202) 696-4870.

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Date: February 24, 1989.

**Sandra M. Kay,**

*Department of the Navy, Alternate Federal Register Liaison Officer.*

[FR Doc. 89-4749 Filed 2-28-89; 8:45 am]

BILLING CODE 3810-AE-M

## Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Naval Research Advisory Committee Panel on Survivability of Navy Tactical Communications in a Hostile Environment will meet on March 14 and 15, 1989. The meeting will be held at the Center for Naval Analyses, 4401 Ford Avenue, Alexandria, Virginia. The meeting will commence at 9:00 A.M. and terminate at 4:00 P.M. on March 14 and 15, 1989. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to provide briefings for the panel members related to the survivability of Navy tactical communications in a hostile environment. The agenda will include briefings and discussions on the connectivity for C¶, Navy tactical command and control, jam resistance and interoperability, AAW C¶, and a JCS C³ assessment. These briefings and discussions will contain classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and non-classified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander L.W. Snyder, U.S. Navy, Office of Naval Research, 800 North Quincy Street, Arlington, VA 22217-5000, Telephone Number: (202) 696-4486.

Date: February 24, 1989.

**Sandra M. Kay,**

*Department of the Navy, Alternate Federal Register Liaison Officer.*

[FR Doc. 89-4750 Filed 2-28-89; 8:45 am]

BILLING CODE 3810-AE-M

## DEPARTMENT OF EDUCATION

### Meeting; Postsecondary Education Improvement Fund National Board

**AGENCY:** National Board of the Fund for the Improvement of Postsecondary Education.

**ACTION:** Notice of closed meeting.

**SUMMARY:** This notice sets forth the proposed agenda of a forthcoming meeting of the National Board of the Fund for the Improvement of Postsecondary Education. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

**DATE:** March 16, 1989 from 5:00 p.m to 7:00 p.m., and on March 17, 1989 from 8:00 a.m. to 7:00 p.m.

**ADDRESS:** Georgetown University Conference Center, The Thomas and Dorothy Leavey Center, 3800 Reservoir Road, NW., Washington, DC 20057.

**FOR FURTHER INFORMATION CONTACT:** Charles Karelis, Director, Fund for the Improvement of Postsecondary Education, 7th & D Streets, SW., Washington, DC 20202 (202) 732-5750.

**SUPPLEMENTAL INFORMATION:** The National Board of the Fund for the Improvement of Postsecondary Education is established under section 1001 of the Higher Education Amendments of 1980, Title X (20 U.S.C. 1135a-1). The National Board of the Fund is authorized to recommend to the Director of the Fund and the Assistant Secretary for Postsecondary Education priorities for funding and approval or disapproval of grants of a given kind.

The meeting of the National Board is closed to the public. The meeting is for the purpose of reviewing and evaluating grant application submitted to the Fund under the Innovative Projects for Community Services and Student Financial Independence Program.

The meeting of the National Board will be closed to the public from March 16, from 5:00 p.m. to 7:00 p.m., and on March 17, from 8:00 a.m. to 7:00 p.m. The meeting will be closed under the authority of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. Appendix 2) and under exemptions (4) and (6) of 5 U.S.C. 552b(c) (Pub. L. 94-409). The review and discussions of the applications and the qualifications of proposed staff may disclose commercial or financial information obtained from a person and privileged or confidential or which would disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session.

A summary of the activities at the closed session and related matters which are informative to the public consistent with the policy of title 5 U.S.C. 552b will be available to the public within fourteen days of the meeting.

Records are kept of all Board proceedings, and are available for public inspection at the office of the Fund for the Improvement of Postsecondary Education, Room 3100, Regional Office Building #3, 7th & D Streets, SW., Washington, DC 20202 from the hours of 8:00 a.m. to 4:30 p.m.

**Kenneth D. Whitehead,**

*Assistant Secretary for Postsecondary Education.*

[FR Doc. 89-4686 Filed 2-28-89; 8:45 am]

BILLING CODE 4000-01-M

## DEPARTMENT OF ENERGY

### Idaho Operations Office; Industrial Drying Concepts Using a Superheated Steam Atmosphere With Exhaust Recompression

**AGENCY:** Department of Energy.

**ACTION:** Solicitation for financial assistance applications No. DE-PS07-89ID12826 for research and development of industrial drying concepts using a superheated steam atmosphere with exhaust recompression.

**SUMMARY:** The U.S. Department of Energy (DOE), Idaho Operations Office, is seeking applications on the basis of open competition, for cost-sharing research and development of industrial drying concepts which utilize a superheated steam atmosphere with exhaust recompression. This announcement is the complete solicitation document and no other document for this work is available. The objective of this program is the execution of one or more cooperative agreements to conduct research and development of this technology leading to improvements in industrial drying efficiencies. Up to three-fourths of the energy used for drying may be saved by recovering the latent heat of vaporization. This technology permits that recovery to be made by compressing the exhaust steam from the dryer to a higher pressure with a mechanically driven compressor. The compressor produces a temperature increase along with the pressure increase. Recovery of the latent heat of vaporization is enhanced by excluding as much air as possible from the dryer,



significantly improving the heat transfer coefficient of the condensing steam. The use of either a reheat boiler or a desuperheater in a proposed concept is acceptable if appropriate for the particular type of application, and if such use has potential for significant nationwide utilization. The applicant should describe the proposed concept thoroughly in the application. The description should present convincing arguments as to the technical feasibility and utility of the concept, and should explain the beneficial and advantageous aspects that will enhance the potential for widespread implementation of the concept. Proposals should focus on a specific product or products, and development should include both overall system concepts and design of individual components. An explanation is required of how this concept is applicable to other processes and products.

Product heat sensitivity in a steam atmosphere is perceived as being different from that in air, and may have a significant effect on actual energy savings. Energy savings may be achieved either by using the compressed exhaust steam to partially power the drying process or by showing where in the overall process of producing the product the energy may be used. A wide variety of dryer types and dried products are considered candidates for this technology.

The allowable research and development activities may be nominally divided into three phases: *Phase I—Feasibility Investigation*—applied research to evaluate industrial applicability, explore system configurations, design system elements, and conduct appropriate laboratory testing to provide technical and economic feasibility confirmation and an updated energy savings estimate.

*Phase II—Engineering Development*—additional laboratory testing, system design, construction, and pilot scale testing/evaluation to document technical performance and predict the energy and economic performance of a full-scale system.

*Phase III—Proof-of-Principle-Testing*—full or major-scale system testing and evaluation to confirm in-service performance and operability and to finalize energy, economic, and environmental analyses. The proposer may initiate activities in any of the above phases provided that completion of any previous phase(s) can be demonstrated.

Funding of subsequent phases will depend on the results of the initial work, the availability of funding, the DOE program requirements, and the ability to reach a mutual agreement on scope and cost-sharing. All projects will be cost-shared by DOE and the Participant, with the Participant's cost-share increasing as the project proceeds through the various phases. No fee or profit will be paid to the Participant.

DOE anticipates that approximately $500,000 will be available for support of initial phase activities, and that this solicitation will result in one or more cooperative agreements. Negotiation, award, and administration will be in accordance with DOE Financial Assistance Regulations (10 CFR Part 600). The Catalog of Federal Domestic Assistance number for this program is 81.078.

Profit making entities, individuals, educational institutions, nonprofit institutions and other entities are eligible to submit applications in response to this solicitation. Federal agencies and/or laboratories owned, operated, or under the cognizance of the Federal Government are not eligible for award and should not submit applications. Applications which anticipate participation of such a laboratory by subcontract, use agreement, or other arrangement must include satisfactory evidence of specific authorization from the cognizant Federal agency.

All proposals received within 10 CFR 600.13 Application Deadlines will be evaluated and point-scored in accordance with the following four evaluation criteria:

*Criterion 1* is the technical viability and applicability of the concept. This criterion is divided into two parts and must include a detailed description of the concept showing innovative aspects, development status, how it will be adopted in industry and the energy savings. The energy value of industrial drying in the U.S. has been estimated to be approximately $1.5 \times 10^{15}$ Btu/year, or about 5.5 percent of U.S. industrial energy consumption. The proposed concept should be shown to have at least a nominal net energy savings potential on a national basis of $10^{12}$ Btu/year, together with attractive economic and environmental features. In this context, net energy savings is defined as energy conserved relative to present drying practices by utilizing superheated steam drying, less any energy expense associated with process modification, expressed in Btu per product unit. The national net energy savings is estimated by multiplying the unit energy savings by the total number of units estimated to be produced annually in the U.S. and by the estimated percent market share where the process innovation may be implemented. (All assumptions should be stated and discussed.)

*Criterion 1a* is technical viability of the proposed technology(s). Factors considered favorable are high feasibility of the technology(s); low development cost and time needed to proceed to a commerical products(s); and high advancement of the technology relative to other systems commercially available or currently under development in terms of the potential for achieving energy savings, product cost reductions, and quality improvements.

*Criterion 1b* is the applicability of the concept. Factors to be considered favorable are the identity of products and specific industrial applications where a high potential for use exists within industry; the estimated number of applications projected; and the market share and associated energy savings based on the proposers projections for implementation on a national basis.

*Criterion 2* is the Statement of Work; it shall be evaluated relative to clarity, completeness, responsiveness, and adequacy to accomplish the project objectives. A description shall be provided for the complete project (all phases). A statement of objectives (what is to be accomplished) and a detailed Statement of Work (specific tasks and subtasks to accomplish the objectives) are required for the proposed initial phase. For subsequent phases, the objectives shall be stated and the work outlined to indicate how the objectives will be accomplished. The work effort may be started in any of the three phases.

Conclusive evidence should be presented showing the conduct and conclusions of the previous phase(s) of work.

*Criterion 3* is the ability of the proposer to successfully complete all phases of the project. Factors to be considered are the proposer's general knowledge of industrial drying technologies plus specific knowledge of the proposed technology for industrial drying; the proposed industrial application; market factors affecting acceptance by industry of an industrial dryer using superheated steam with exhaust recompression; the facilities available for building and testing the proposed concept; qualifications of the key individuals and the percentage of their time devoted to the project; background on the proposer's marketing channels for related lines; and facilities and personnel for production and commercialization.

Annual financial statements (balance sheet and income and expense statements) for the past three years shall

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be attached for the applicant, subcontractors, consulting firms, and other principals composing the project team. Where available, financial statements prepared by certified public accountants should be submitted. If plant owners, or subcontractors, or consultants are not involved in the initial phase, they must submit their annual Financial Statements prior to involvement in later phases.

*Criterion 4* is the project management plan. A project management plan is required that shows how the proposed work is to be managed.

The plan shall be evaluated relative to the completeness and adequacy of the work breakdown structure, the schedule (sequence of project tasks), individual responsibilities and task assignments of each project participant, estimates of personnel effort for each of the tasks, resource and manpower availability to satisfy task requirements, project management methods to complete the project in a timely manner and control over budget, schedule, and product quality shall be described. A more general schedule for future phases is also required.

Applications shall be responsive to all the above criteria. The criteria are listed in descending order of importance. Criterion 1 is approximately four-tenths the total evaluation criteria value. Criterion 1a is about twice the value of Criterion 1b. Criterion 2 is about three-tenths the total value, and Criterion 3 and 4 are of equal value and together are approximately three-tenths the total value.

Cost considerations will not be point-scored or adjectively rated. The proposed cost is a function of the management approach, the technical approach, the manpower, the facilities, the organization, the uncertainties of the work, the proposer's competitive strategy, and the economy. The cost consideration will not be an addition to the cumulative score of ratings resulting from the evaluation. Applicants are advised, however, that notwithstanding the lower relative importance of the cost considerations, the evaluated cost may be the basis for selection.

The initial phase is not expected to exceed 12 months; all applicants are required to submit an annual budget provided in detailed breakdown, as part of the applicant's cost proposal. In making the selection decision, the apparent advantages of individual technical and business applications will be weighed against the evaluated probable cost to determine whether better applications, excluding cost considerations are worth the evaluated probable cost differences. When applications are very closely ranked and the Source Selection Official determines that the superiority in the technical and business aspects of the higher related application(s) is not meaningful when viewed in relationship to lower rated applications, evaluated probable costs to the Government may form the basis for selection.

In conducting the evaluation of applications, the Government may utilize assistance and advice from non-Government personnel. Applicants that do not consent to the use of non-Government personnel in evaluating their proposal(s) are required to make that statement on the cover of their application(s). Applicants are further advised that DOE may be unable to give full consideration to an applicant submitted without such consent. Information contained in the applications shall be treated in accordance with the policies and procedures set forth in 10 CFR 600.18.

DOE reserves the right to reject any and all applications received in response to this solicitation or to select any application as a basis for negotiation. DOE may require applications to be clarified or supplemented either through additional written submissions or oral presentations; however, the award may be made solely on the information contained in the proposal. The Government is not liable for any costs incurred in the preparation of an application. Further, costs incurred prior to the signing of a cooperative agreement are not reimbursable.

**Program Policy and Preference Factors**

The Source Selection official may make selections for negotiations and subsequent awards in a manner that will further the objectives of DOE, considering the following policy factors:

(1) The degree of innovation represented by the concept for utilization of Superheated Steam Drying with Exhaust Recompression. It is desirable to develop either new or creative technologies or to develop unique applications of existing technology in this area. Proposals will not be selected for award which are duplicative of research and development already accomplished or underway in private industry.

(2) The priority of the potential energy savings. Recovery and conversion for material or fuel substitution is of highest priority if the energy savings are from displacement of petroleum; the next highest if from displacement of natural gas; and lowest for displacement of coal or renewable materials by a particular proposal.

(3) Total funds available considering the funds required by a particular proposal; and

(4) The desirability of selecting, for award or support, a group of projects which represents a diversity of methods, approaches, applications, or kinds of work.

(5) The desirability to support development of concepts when the potential benefits are high with relatively little Government expenditure.

Stevens Amendment to the DOD Appropriations Act:

When issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with Federal money, all grantees receiving Federal funds including but not limited to State and local Governments shall clearly state: (1) The percentage of the total cost of the program or project, which will be financed with Federal money, and (2) the dollar amount of Federal funds for the project or program.

*Instructions for Certification*

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

2. The certification set out below is a material representation of Fact upon which reliance was placed when the agency determined to award the grant.

If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government may take action authorized under the Drug-Free Workplace Act.

3. For grantees other than individuals, Alternate I applies.

4. For grantees who are individuals, Alternate II applies.

*Certification Regarding Drug-Free Workplace Requirements*

Alternate I

A. The grantee certifies that it will provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing a drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;



(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement, and

(2) Notify employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such a conviction;

(e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;

(f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee up to and including termination; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee shall insert in the space provided below the site(s) for the performance of work done in connection with the specific grant; Place of Performance (Street address, city, county, state, zip code).

Alternate II

The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance in conducting any activity with the grant.

**Taxpayer Identification Number**

All applicants are required to provide somewhere in their application(s) the nine-digit Taxpayer Identification Number (TIN) assigned by the U.S. Internal Revenue Service.

**Dates**

The closing date will be 4:00 p.m., Mountain Daylight Time, on April 12, 1989. Evaluation of the proposals will commence approximately one week after the closing date. Late applications will be handled in accordance with 10 CFR 600.13. Prospective applicants who intend to submit an application in response to this solicitation should notify the contact above of their intent in writing. Six copies of each application, including the signed original, should be submitted.

Questions regarding this solicitation should also be submitted to the contact above in writing and postmarked prior to March 5, 1989. Questions and answers will be issued in writing by amendment to this solicitation. Copies of all amendments to this solicitation will be sent only to those notifying this office of their intent to submit an application. Selection and award are expected to be made within four months of the closing date of this solicitation.

**Contact**

Six copies of each application, including the signed original, should be submitted to: Dallas L. Hoffer, Contracts Management Division, U.S. Department of Energy, Idaho Operations Office, 785 DOE Place, Idaho Falls, Idaho 83402–1129.

**H. Brent Clark,**

*Director, Contracts Management Division.*

[FR Doc. 89–4767 Filed 2–28–89; 8:45 am]

BILLING CODE 6450–01–M

## Federal Energy Regulatory Commission

**[Docket Nos. CP79–382–011 et al.]**

## South Georgia Natural Gas Company, et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

**1. South Georgia Natural Gas Company**

[Docket No. CP79–382–011]

February 22, 1989.

Take notice that South Georgia Natural Gas Company (South Georgia) on February 16, 1989, tendered for filing Twelfth Revised Sheet Nos. 76 and 106 to the First Revised Volume No. 2 of its FERC Gas Tariff. The proposed revised tariff sheets would flow through to South Georgia's two gas storage customers reduced storage transportation charges billed to South Georgia by Southern Natural Gas Company (Southern).

South Georgia states that the Commission's August 22, 1980 order in the captioned proceeding permits South Georgia to flow through to its two storage customers any changes in the amounts which the Commission authorizes Southern to charge South Georgia for storage transportation services. South Georgia further states that the Commission recently accepted for filing to be effective December 1, 1988, subject to refund, revised tariff sheets filed by Southern which reduced Southern's storage transportation charges to South Georgia.

South Georgia requests waivers of § 154.51 of the Commission's Regulations and any other waivers necessary to make the revised tariff sheets effective as of December 1, 1988, the date of the decrease in Southern's charges to South Georgia.

Copies of this filing were served on the two jurisdictional cutomers affected by the filing, interested State Commissioners and all parties in the captioned proceeding.

*Comment date:* March 2, 1989, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

**2. United Gas Pipe Line Company**

[Docket No. CP89–840–000]

February 22, 1989.

Take notice that on February 16, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77152–1478, filed in Docket No. CP89–840–000 an application pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Eagle Natural Gas Company (Eagle), a marketer of natural gas, under United's blanket certificate issued in Docket No. 88–6–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United proposes to transport, on an interruptible basis, up to 25,750 MMBtu per day for Eagle. United states that construction of facilities would not be required to provide the proposed service.

United further states that the maximum day, average day, and annual transportation volumes would be approximately 25,750 MMBtu, 25,750 MMBtu and 9,398,750 MMBtu respectively.

United advises that service under Section 284.223(a) commenced January 1, 1989, as reported in Docket No. ST89–1872.

*Comment date:* April 10, 1989, in accordance with standard Paragraph G at the end of this notice.

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**3. Texas Gas Transmission Corporation**

[Docket No. CP89-830-000]

February 22, 1989.

Take notice that on February 15, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky, 42301, filed in Docket No. CP89-830-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) and the Natural Gas Policy Act (18 CFR 284.223) for authorization to transport natural gas for Energy Marketing Services, Inc. (Energy Marketing) under Texas Gas' blanket certificate issued in Docket No. CP-88-686-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas Gas proposes to transport on an interruptible basis up to 20,000 MMBtu of natural gas equivalent on behalf of Energy Marketing pursuant to a gas transportation agreement dated October 28, 1988, between Texas Gas and Energy Marketing. Texas Gas would receive the gas at various existing points of receipt on its system in Texas, Indiana, Kentucky, Tennessee, Illinois, Arkansas, Ohio and Louisiana and redeliver equivalent volumes, less fuel and lost and unaccounted for volumes, at existing delivery points in Ohio.

Texas Gas further states that the estimated average daily and annual quantities would be 20,000 MMBtu and 7,300,000 MMBtu, reapectively. Service under Section 284.223(a) commenced on January 1, 1989, as reported in Docket No. ST89-1822-000, it is stated.

*Comment date:* April 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

**4. ANR Pipeline Company**

[Docket No. CP89-832-000]

February 22, 1989.

Take notice that on February 15, 1989, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP89-832-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Coastal Gas Marketing Company (Coastal), a marketer of natural gas, under ANR's blanket certificate issued in Docket No. CP88-532-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

ANR proposes to transport on an interruptible basis up to 150,000 dt equivalent of natural gas on a peak day, 150,000 dt equivalent on an average day and 54,750,000 dt equivalent on an annual basis for Coastal. It is stated that ANR would receive the gas for Coastal's account at existing receipt points on ANR's system in Texas, offshore Texas, Louisiana, offshore Louisiana, Oklahoma, and Kansas, and would redeliver equivalent volumes at existing points on ANR's system in Illinois. It is asserted that the service would be effected using existing facilities and would require no construction of additional facilities. It is explained that the transportation service has commenced under the self-implementing authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89-2097.

*Comment date:* April 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

**United Gas Pipe Line Company**

[Docket No. CP89-841-000]

February 22, 1989.

Take notice that on February 16, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-841-000 a request pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service on behalf of Amoco Production Company (Amoco), a producer of natural gas, under its blanket certificate issued in Docket No. CP88-6-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United states that it proposes to transport natural gas on behalf of Amoco from a point of receipt located in Vermilion Parish, Louisiana to two points of delivery located in Ouachita Parish, Louisiana.

United further states that the maximum daily, average daily and annual quantities that it would transport on behalf of Amoco would be 51,500 MMBtu equivalent, 51,500 MMBtu equivalent and 18,797,500 MMBtu equivalent of natural gas, respectively.

United indicates that in Docket No. ST89-1937, filed with the Commission on January 23, 1989, it reported that transportation service for Amoco had begun under the 120-day automatic authorization provisions of § 284.223(a).

*Comment date:* April 10, 1989 in accordance with Standard Paragraph G at the end of the notice.

**6. Northwest Pipeline Corporation**

[Docket No. CP89-838-000]

February 23, 1989.

Take notice that on February 15, 1989, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89-838-000 a request pursuant to §§ 157.205 and 284.223(2)(b) of the Commission's Regulations under the Natural Gas Act for authorization to transport for Nevada Cement Company (Nevada cement), an end user of natural gas, under Northwest's blanket certificate issued in Docket No. CP86-578-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northwest states that it would transport, on an interruptible basis, up to 7,000 MMBtu per day of natural gas for Nevada Cement. Northwest indicates that vrious receipt points would be located on its pipeline system in Colorado, Oklahoma, Oregon, Utah, Washington, and Wyoming, and the delivery points would be on its pipeline system in Colorado, Idaho, New Mexico, Oklahoma, Oregon, Utah, Washington, and Wyoming. Northwest further states that the maximum day, average day, and annual transportation volumes would be approximately, 7,000 MMBtu, 330 MMBtu and 120,000 MMBtu, respectively. Northwest also states that it would perform the proposed transportation service for Nevada Cement pursuant to a service agreement dated February 24, 1988, as amended, between Northwest and Nevada Cement.

Northwest states that it commenced the transportation service for Nevada Cement on December 20, 1988, at Docket No. ST89-2010-000 for a 120-day period pursuant to § 284.223(a)(1) of the Commission's Regulations and will expire on April 18, 1989. Northwest also states that no construction of new facilities will be required to provide this transportation service.

Northwest states that the natural gas transported under the service agreement dated February 24, 1988, as amended, may be received on behalf of Nevada Cement by any local distribution company or affiliate of Nevada Cement which has and appropriate contractual arrangement with Nevada Cement. Northwest further states that it understands that Nevada Cement has a service agreement with Southwest Gas Corporation, a local distribution company.



*Comment date:* April 10, 1989, in accordance with Standard Pargraph G at the end of this notice.

**Standard Paragraphs**

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its won motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to apear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 89-4766 Filed 2-28-89; 8:45 am]

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**[Docket No. RP89-58-000]**

**Bear Creek Storage Co.; Order Instituting Investigation and Setting Matter for Hearing**

Issued February 23, 1989.

Before Commissioners: Martha O. Hesse, Chairman; Charles G. Stalon, Charles A. Trabandt, Elizabeth Anne Moler and Jerry J. Langdon.

To provide additional storage capacity, subsidiaries of Southern Natural Gas Company (Southern) and Tennessee Gas Pipeline Company (Tennessee), referred to as applicants, formed a partnership under the name Bear Creek Storage Company (Bear Creek) to own and operate a storage facility. Bear Creek is owned in equal shares by subsidiaries of Southern and Tennessee. Southern operates the storage facility. By order of April 3, 1979 [1] in Docket Nos. CP78-266 *et al.*, the Commission issued certificates of public convenience and necessity authorizing Bear Creek to construct and operate facilities for the transportation and storage of natural gas in interstate commerce for resale from the Petit Storage Reservoir of the Bear Creek Field, Bienville Parish, Louisiana. These services are provided to Southern and Tennessee by Bear Creek. The order was issued pursuant to a Stipulation and Agreement (S&A) filed with the Commission by Southern and Tennessee.

**Discussion**

On June 3, 1981, Bear Creek, in compliance with the S&A filed tariff sheets to be effective July 1, 1981, which established a storage demand charge of $2.36 per Mcf of maximum daily withdrawal rate and a storage capacity charge of $.042 per Mcf of maximum storage capacity volume. These currently effective rates were supported by a cost of service of $46.9 million which reflected a rate base of $224.0 million; an overall rate of return of 12 percent consisting of a return on equity of 15 percent and a debt cost of 11 percent; a cash working capital allowance of 12.5 percent of operating and maintenance expenses; and a Federal income tax rate of 46 percent. The cost of service was filed as part of the S&A. Because the two rates are demand charges, Bear Creek is guaranteed recovery of its cost of service.

A preliminary analysis of Bear Creek's 1987 FERC Form No. 2 shows that Bear Creek's total cost of service rate base appears to be $175.0 million, which was derived from actual book balances at December 31, 1986, and December 31, 1987, where applicable, or a decrease of $49.0 million from that contained in the S&A discussed above; no cash working capital allowance, consistent with section 154.63b of the Commission's regulations; [2] and a Federal income tax rate of 34 percent.

Bear Creek's currently effective rates are based on an estimated cost of service made over seven years ago. Because it appears that Bear Creek's current cost of service may be significantly lower than the cost of service reflected in its rates, the Commission finds that Bear Creek's rates may not be just and reasonable. Additionally, Bear Creek's current rates reflect a cash working capital allowance of 12.5 percent of operation and maintenance expenses. Section 154.63b of the Commission's regulations provides that a pipeline will receive a $0 allowance unless supported by a fully developed lead-lag study. Finally, Bear Creek's rates are based on the old 46 percent Federal income tax rate rather than the current 34 percent rate. Accordingly, pursuant to Section 5 of the Natural Gas Act,[3] we shall initiate an investigation to determine whether Bear Creek's rates are unjust and unreasonable or otherwise unlawful.

**The Commission Orders**

(A) Pursuant to the authority of the Natural Gas Act, particularly Section 5 thereof, and the Commission's rules and regulations, a public hearing shall be held in Docket No. RP89-58-000 concerning the lawfulness of Bear Creek Storage Company's rates, and whether the current rates are unjust, unreasonable, or otherwise unlawful.

(B) A Presiding Administrative Law Judge, to be designated by the Chief Administrative Law Judge for that purpose, pursuant to § 375.304 of the Commission's regulations,[4] shall convene a prehearing conference in this proceeding to be held within 60 days of the issuance of this order, in a hearing or conference room of the Federal Energy Regulatory Commission, 825 North

[1] 7 FERC ¶ 61,001 (1979).

[2] 18 CFR 154.63b (1988).

[3] 15 U.S.C. 717d (1981).

[4] 18 CFR 375.304 (1988).

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Capitol Street, NE., Washington, DC 20426. The prehearing conference shall be held for the purpose of clarification of the positions of the participants, and establishment by the Presiding Administrative Law Judge of any necessary procedural dates to ensure that an Initial Decision will be issued not later than six months from the date of this order. The Presiding Administrative Law Judge is authorized to conduct further proceedings in accordance with this order and the rules of practice and procedure.

(C) Bear Creek must file, within 45 days of the issuance of this order, a cost and revenue study showing actual data for the most recently available 12-month period in the form specified by § 154.63 of the Commission's regulations.

(D) Any person desiring to intervene or to protest should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure.[5] All such motions or protests should be filed within 30 days of the date of issuance of this order. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding Any person wishing to become a party must file a motion to intervene.

By the Commission.

**Lois D. Cashell**

*Secretary.*

[FR Doc. 89-4761 Filed 2-28-89; 8:45 am]

BILLING CODE 6717-01-M

[5] 18 CFR 385.211 and 385.214 (1988).

**[Docket No. ER89-98-000]**

## Central Vermont Public Service Corp.; Notice of Filing

February 23, 1989.

Take notice that on January 23, 1989, Central Vermont Public Service Corporation (Central Vermont) filed a letter in response to questions by the Staff concerning the development of the 50 MW sale of Vermont Yankee Nuclear Corporation capacity and energy to New England Power Company.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 9, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 89-4763 Filed 2-28-89; 8:45 am]

BILLING CODE 6717-01-M

**[Docket No. ER89-4-000]**

## Portland General Exchange, Inc.; Notice of Filing

February 24, 1989.

Take notice that on February 8, 1989 Portland General Exchange, Inc. (PGX) tendered for filing a second amendment to its filing of Service Schedule PGX-1 for the sale of nonfirm energy.

PGX states that the reasons for the amendment to be the following:

i. To change the shared saving rate to reflect shared savings rate principles permitted by the Commission.

ii. To provide cost support for a two (2) mill mark-up.

Copies of the amendment to the filing of Schedule PGX-1 have been served on the PGX-1 Distribution List, as included in the filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 10, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 89-4764 Filed 2-28-89; 8:45 am]

BILLING CODE 6717-01-M

**[Docket No. CP89-875-000]**

## Southern Natural Gas Co.; Notice of Request Under Blanket Authorization

February 24, 1989.

Take notice that on February 21, 1989, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202, filed in Docket No. CP89-875-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service for Atlanta Gas Light Company (Atlanta Gas), under Southern's blanket certificate issued in Docket No. CP88-316-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern requests authorization to transport, on an interruptible basis, up to a maximum of 500,000 MMBtu of natural gas per day for Atlanta Gas, a local distribution company, from receipt points located in Louisiana, Offshore Louisiana, Texas, Offshore Texas, Alabama, Mississippi and Georgia to delivery points located in Georgia for Atlanta Gas' system supply. Southern anticipates transporting, on an average day 249,315 MMBtu and an annual volume of 91,000 MMBtu.



Southern states that the transportation of natural gas for Atlanta Gas commenced December 17, 1988, as reported in Docket No. ST89-2147-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to Southern in Docket No. CP88-316-000.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to invervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 89-4765 Filed 2-28-89; 8:45 am]

BILLING CODE 6717-01-M

**[Docket No. RP89-60-000]**

## Southwest Gas Storage Co.; Order Instituting Investigation and Setting Matter for Hearing

Issued February 23, 1989.

Before Commissioners: Martha O. Hesse, Chairman; Charles G. Stalon, Charles A. Trabandt, Elizabeth Anne Moler and Jerry J. Langdon.

### Background

Southwest Gas Storage Company (Southwest Gas Storage) is a Kansas general partnership. The two, equal partners are Pan Gas Storage Company, a wholly-owned subsidiary of Panhandle Eastern Pipe Line Company (Panhandle), and ANR Western Storage Company, a wholly-owned subsidiary of ANR Storage Company. Pursuant to a 15-year gas storage contract, dated June 11, 1979, as amended, Southwest Gas Storage provides storage service to Panhandle, its sole customer and operator of the facility.

On May 7, 1980, the Commission authorized Southwest Gas Storage: (1) To construct and operate a natural gas storage field in Meade County, Kansas; and (2) to store up to 70.1 Bcf of gas with a top working storage of 35 Bcf in the Borchers North Field.[1] Thus, Southwest Gas Storage is authorized to provide storage service under its S-1 rate schedule. Southwest Gas Storage began providing storage service to Panhandle on April 1, 1982.

### Discussion

Panhandle currently pays Southwest Gas Storage a monthly charge of $1,736,875 for contract storage of up to 35,620,000 Mcf, which is the initial rate authorized in the certificate proceeding. The rate for Southwest Gas Storage's S-1 storage service is based on a unit charge of 59.55 cents per Mcf and is supported by an estimated cost of service of $20,844,200 per year, as contained in the 1979 certificate filing.[2]

Southwest Gas Storage's currently effective rates are based on an estimated cost of service made almost 10 years ago. The components of the cost of service include, among other things, an estimated rate base of $70.5 million, a Federal income tax allowance based on the old 46 percent rate; an overall return of 16.09 percent consisting of a return on equity of 14.25 percent and debt cost of 16.70 percent; a depreciation rate of 5.25 percent; and a working capital allowance of 12.5 percent of operating and maintenance expenses. The Commission is concerned that this cost of service may no longer be reflective of Southwest's actual expenses.

In addition, the Commission's initial review of information on file with the Commission indicates that Southwest Gas Storage's investment in gas plant may have depreciated over $28 million during the seven (7) years it has been in operation. It also appears that this reduction in rate base is not reflected in the currently effective S-1 rate. Further, the Commission's Regulations require that the cash working capital allowances included in charged rates filed by a company must be based on a fully developed and reliable lead-lag study.[3] Thus, Southwest Gas Storage's current working capital allowance may no longer be appropriate. Finally, Southwest Gas Storage's current operation and maintenance expenses, as reported in FERC Form 2, appear to be substantially less than the estimated expenses embedded in the S-1 rate.[4]

The current rates authorized by the Commission were designed to recover a total cost of service of $20,844,200. Based upon the Commission's initial review, it appears that Southwest's rates generate revenues significantly in excess of its current cost or providing the storage service to Panhandle. Section 9.3 of the S-1 tariff rate schedule permits Southwest or Panhandle to seek authorization from the Commission to adjust the rates to assure just and reasonable rates; however, neither has sought to change the initial rates authorized in 1980. Hence, the Commission has decided to examine the justness and reasonableness of the rates pursuant to section 5 of the NGA.

Based on the foregoing, the Commission is of the view that the initial rates currently in effect may be unjust and unreasonable. We shall therefore initiate an investigation, pursuant to section 5 of the NGA, to determine whether the rates currently being charged by Southwest Gas Storage are just, reasonable and lawful. Accordingly, Southwest Gas Storage is directed to file within 45 days of the issuance of this order, a cost and

[1] *See* Southwest Gas Storage Company, 11 FERC ¶ 61,145 (1980); *amended*, 19 FERC ¶ 62,299 (1982).

[2] Panhandle's 1987 FERC Form 2 indicates payments of $20,842,500 for storage service in 1987.

[3] 18 CFR 154.63b (1988).

[4] For example, the current rates reflect operation and maintenance expenses of $2,394,600 while the information contained in Southwest's 1987 FERC Form 2 indicate operation and maintenance expenses of $1,194,900. In addition, the current rates include a Federal Income Tax allowance of $2,176,600, based on the old 46 percent rate. Based upon our initial review of this matter, it appears that the tax allowance under the current tax rate of 34 percent may result in a substantial decrease.

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revenue study similar to that required by section 154.63 of the Commission's Regulations.[5] In the cost and revenue study, Southwest Gas Storage shall utilize the most recent 12-month period for which actual data is available.

**The Commission Orders**

(A) Pursuant to the authority of the Natural Gas Act, particularly section 5 thereof, and the Commission's rules and regulations, a public hearing shall be held in Docket No. RP89–60–00 to determine whether the rates currently being charged by Southwest Gas Storage Company are unjust, unreasonable, or otherwise unlawful.

(B) A Presiding Administrative Law Judge, to be designated by the Chief Administrative Law Judge for that purpose, pursuant to § 375.304 of the Commission's Regulations,[6] shall convene a prehearing conference in this proceeding to be held within 60 days of the issuance of this order, in a hearing or conference room of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. The prehearing conference shall be held for the purpose of clarification of the positions of the participants and establishment by the Presiding Administrative Law Judge of any necessary procedural dates to ensure that an Initial Decision will be issued not later than six months from the date of this order. The Presiding Administrative Law Judge is authorized to conduct further proceedings in accordance with this order and the rules of practice and procedure.

(C) Southwest Gas Storage must file, within 45 days of the issuance of this order, a cost and revenue study showing actual data for the most recently available 12-month period in the form specified by § 154.63 of the Commission's Regulations.

(D) Any person desiring to intervene or to protest should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure.[7] All such motions or protests should be filed within 30 days of the issuance of this order. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

[5] 18 CFR 154.63 (1988).
[6] 18 CFR 375.304 (1988).
[7] 18 CFR § 385.211 and 385.214 (1988).

By the Commission.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 89–4762 Filed 2–28–89; 8:45 am]

BILLING CODE 6717–01–M

## ENVIRONMENTAL PROTECTION AGENCY

**[PP 3F2854 and PP 4F3155/PF–512; FRL–3530–9]**

### Amendments to Pesticide Tolerance Petitions; Mobay Corp.

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA announces that Mobay Corp. has filed amendments to pesticide petitions 3F2854 and 4F3155 for the fungicide beta-(4-chlorophenoxy)-alpha-(1,1-dimethylethyl)-1*H*-1,2,4-triazole-1-ethanol and its metabolites containing chlorophenoxy and triazole moieties (expressed as the fungicide).

**DATES:** Written comments, identified by the document control number, [PP 3F2854 and 4F31555], may be submitted by March 16, 1989.

**ADDRESS:**

By mail, submit written comments to: Information Services Section, Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm. 246, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part of all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:**

By mail: Registration Division (TS–767C), Attention: Product Manager 21, Environmental Protection Agency, Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460.

In person, contact: Larry A. Schnaubelt (PM 21), Rm. 237, CM #2, 1921 Jefferson Davis Hwy, Arlington, VA 22202, (703)–557–1900.

**SUPPLEMENTARY INFORMATION:** EPA has received an amendment to pesticide petition 3F2854 from Mobay Corp., P.O. Box 4913, Kansas City, MO 64120–0013, proposing to amend 40 CFR Part 180 by establishing tolerances for the fungicide *beta*-(4-chlorophenoxy)-*alpha*-(1,1-dimethylethyl)-1*H*-1,2,4-triazole-1-ethanol and its metabolites containing chlorophenoxy and triazole moieties (expressed as the fungicide) in or on the raw agricultural commodities grain of wheat, grain of barley, grain of oats, grain of rye, corn forge, fresh corn (including sweet), grain of corn (including field and popcorn) and corn fodder at 0.05 ppm; green forage of wheat, barley, oats, and rye at 2.5 ppm; straw of wheat, barley, oats, and rye and meat, fat, and meat by-products of cattle, goats, hogs, horses, and sheep at 0.1 ppm; and meat, fat, and meat by-products of poultry, milk, and eggs at 0.01 ppm. Notice of the initial filing of PP 3F2854 was published in the **Federal Register** of April 20, 1983 (48 FR 16960) and was amended in the **Federal Register** of September 30, 1983 (48 FR 44905).

EPA also received an amendment to pesticide petition 4F3155 from Mobay Corp., proposing to amend 40 CFR Part 180 by establishing tolerances for *beta*-(4-chlorophenoxy)-*alpha*-(1,1-dimethylethyl)-1*H*-1,2,4-triazole-1 ethanol and its metabolites containing chlorophenoxy and triazole moieties (expressed as the fungicide) in or on the raw agricultural commodities sorghum grain and dry forage at 0.01 ppm and green forage of sorghum at 0.05 ppm. Notice of the initial filing of PP 4F3155 appeared in the **Federal Register** of January 16, 1985 (50 FR 2340).

**Authority:** 21 U.S.C. 346a.

Dated: February 22, 1989.

**Herbert Harrison,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 89–4725 Filed 2–28–89; 8:45 am]

BILLING CODE 6560–50–M

**[OPP–180806; FRL–3530–3]**

### Receipt of Application for Specific Exemption To Use Oxyfluorfen; Solicitation of Public Comment

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.



**SUMMARY:** EPA has received a specific exemption request from the Wisconsion Department of Agriculture, Trade and Consumer Protection (hereafter referred to as "Applicant") for use of the herbicide oxyfluorfen (goal) to control broadleaf weeds in horseradish in Wisconsin. EPA is soliciting comment before making the decision whether or not to grant this specific exemption request.

**DATE:** Comments must be received on or before March 16, 1989.

**ADDRESS:** Three copies of written comments, bearing the identification notation "OPP–180806," should be submitted by mail to: Public Docket and Freedom of Information Section, Field Operations Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street Sw., Washington, DC 20460. In person, bring comments to: Room 236, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for inspection in Room 236 at the address given above from 8 a.m. to 4 p.m., Monday through Friday excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** By mail: Gener Asbury, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Office location and telephone number: Room 716C, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–1806).

**SUPPLEMENTARY INFORMATION:** Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any registration provision of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue a specific exemption to permit the use of the herbicide oxyfluorfen (CAS 42874 03 3) available as Goal 1.6E, EPA Reg. No. 707–174, to control broadleaf weeds in horseradish. Information in accordance with 40 CFR Part 166 was submitted as part of this request.

Wisconsin has requested authorization to apply 2.5 pints of Goal 1.6E herbicide (0.5 pounds active ingredient) per acre as a ground spray application on 700 acres of horseradish. Goal 1.6E is a selective herbicide recommended for preemegenence control of certain broadleaf weeds. Goal 1.6E will be applied in a minimum of 40 gallons of water per acre.

According to the Applicant, weed control in horseradish fields in Wisconsin is mainly limited to mechanical means. The rising costs of fuel and labor in the past years has made the use of cultivation increasingly impractical. Cultivation at $4.50/acre/operation costs the grower $49.50/season for the normal eleven cultivations for between row weeds and $18.64/acre for the one hand-weeding for weed control within the row. In test plots, yields ranged from 1,500 pounds/acre with no weed control to 10,000 pounds/acre with proper weed control.

Oxyfluorfen was referred to Special Review in Janaury 1980 because pesticide products containing oxyfluorfen as an active ingredient were shown to be contaminated with perchloroethylene (PCE), a liver carcinogen in B6C3F1 mice. The Special Review process was completed on June 23, 1982, and the decision was made to continue registration of the herbicide subject to certain restrictions (on PCE) pertaining to formulation of the product (47 FR 27118).

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require publication of a notice in the **Federal Register** of receipt of an application for a specific exemption proposing use of a pesticide which contains an active ingredient which has been the subject of a Special Review and is intended for a use that could pose a risk similar to the risk posed by any use of a pesticide which is or has been the subject of a Special Review (40 CFR 166.24(a)(5)).

Accordingly, interested persons may submit written views on this subject to the Field Operations Division (TS–757C), at the address given above. The Agency will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Wisconsin Department of Agriculture, Trade and Consumer Protection.

Dated February 17, 1989.

**Anne E. Lindsay,**

*Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 89–4719 Filed 2–28–89; 8:46 am]

BILLING CODE 6560–50–M

**[OPP–180805; FRL–3528–5]**

### Receipt of an Application for a Specific Exemption To Use Avermectin $B_1$; Solicitation of Public Comment

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** notice.

**SUMMARY:** EPA has received a specific exemption request from the Washington Department of Agriculture (hereafter referred to as the "Applicant") for use of avermention $B_1$ (AGRI–MEK 0.15 EC Miticide/Inspecticide") to control two-spotted spider mites (*Tetranychus urticae*); European red mites (*Panonychus ulmi*); McDaniel spider mites (*Tetranychus mcdanielii*) and pear psylla (Psylla pyricola) on 19,400 acres of pears in Washington. Avermectin $B_1$ (CAS 63AB) contains a mixture of avermectins containing >80% avermectin $B_{1a}$ (5-0–demethyl avermectin $A_{1a}$) and < 20% avermectin $B_{1b}$ (5-0-demethl-25-de (1-methylpropyl-25-(1-methylethyl) avermectin $A_{1a}$). In accordance with 40 CFR 166.24, EPA is soliciting comment before making the decision whether or not to grant this specific exemption request.

**DATE:** Comments must be received on or before March 16, 1989.

**ADDRESS:** Three copies of written comments, bearing the identification notiation "OPP–180805 "should be submitted by mail to: Public Docket and Freedom of Information Section, Field Operations Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm. 246, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information (CBI)." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written coments will

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be available for inspection in Rm. 246 at the address given above from 8 a.m. to 4 p.m., Monday through Friday, exclusing legal holidays.

**FOR FURTHER INFORMATION CONTACT:** By mail: Libby Pemberton, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. (703-557-1806).

**SUPPLEMENTARY INFORMATION:** Pursuant to section 18 of the Federal Insecticide Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any provisions of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue a specific exemption for the use of avermectin $B_1$ manufactured as AGRI-MEK 0.15 EC Miticide/Insecticide", by MSD AGVET, a division of Merck & Co., Inc., on pears in Washington. No tolerances have been established for avermectin $B_1$ on any raw agricultural commodities.

Information in accordance with 40 CFR Part 166 was submitted as part of this request. The Applicant proposes ground applications applied at a rate of 10 to 20 ounces of product per acre per application. A maximum of two applications will be made per crop season. Applications would be made through September 1, 1989.

The Applicant indicates that with the recent withdrawal of cyhexatin growers are dependent on inferior products with demonstrated problems. Those products include fenbutatin-oxide, superior sprayy oil, oxamyl, formetanate, and propargite.

The Applicant indicates that without adequate control of these pests economic losses expected could total over $14.8 million.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require that the Agency publish notice in the **Federal Register** and solicit public comment on an application involving the first food use of a pesticide. Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above.

The Agency, accordingly, will review and consider all comments received during the comment period.

Dated: February 8, 1989.

**Anne E. Lindsay,**

*Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 89-4305 Filed 2-28-89; 8:45 am]

BILLING CODE 6560-50-M

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**[OPP-50683; FRL-3539-5]**

## Issuance of Experimental Use Permits; Dow Chemical Co. et al.

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

**FOR FURTHER INFORMATION CONTACT:** By mail: Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

In person or by telephone: Contact the product manager at the following address at the office location or telephone number cited in each experimental use permit: 1921 Jefferson Davis Highway, Arlington, VA.

**SUPPLEMENTARY INFORMATION:** EPA has issued the following experimental use permits.

464-EUP-99. Issuance. Dow Chemical Company, P.O. Box 1706, Midland, MI 48640. This experimental use permit allows the use of 45 pounds of the insecticide O-(2(1,1-dimethylethyl)-5-pyrimidinyl) O,O-diethylphosphorothioate on 76 acres of field corn to evaluate the control of rootworms. The program is authorized only in the States of Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Nebraska, New York, Ohio, Pennsylvania, Texas, and Wisconsin. The experimental use permit is effective from December 30, 1988 to December 30, 1989. This permit is issued with the limitation that all treated crops are destroyed or used for research purposes only. (Dennis Edwards, PM-12, Rm. 202, CM#2, (703-557-2386))

352-EUP-146. Issuance. E.I. duPont deNemours & Company, Inc., Agricultural Products Department, Walker's Mill Building, Barley Mill Plaza, Wilmington, DE 19898. This experimental use permit allows the use of 850 pounds of the herbicide methyl 2-[[[[[(4,6-dimethoxypyrimidin-2-yl)amino]carbonyl]amino] sulfonyl]methyl]benzoate for aquatic vegetation management by Federal and State agencies to evaluate the control of aquatic weeds. The program is authorized only in the States of Arizona California, Colorado, Georgia, Florida, Idaho, Texas, and Washington. The experimental use permit is effective from January 6, 1989 to January 6, 1990. A temporary tolerance for residues of the active ingredient in or on fish and an acceptable residue level for potable water has been established. (Richard Mountfort, PM 23, Rm. 237, CM#2, (703-557-1830))

Persons wishing to review these experimental use permits are referred to the designated product managers. Inquiries concerning these permits should be directed to the persons cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136c.

Dated: February 14, 1989.

**Anne E. Lindsay,**

*Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 89-4306 Filed 2-28-89; 8:45 am]

BILLING CODE 6560-50-M

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**[PP 8G3638/T577; FRL-3527-2]**

## E. I. du Pont de Nemours and Co., Inc.; Establishment of Temporary Tolerances

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has established temporary tolerances for residues of the herbicide methyl 2[[[[[(4,6-dimethoxy-pyrimidin-2-yl) amino]carbonyl]amino]sulfonyl]methyl]benzoate, bensulfuron methyl in or on certain raw agricultural commodities. These temporary tolerances were requested by E.I. du Pont de Nemours and Co., Inc.

**DATE:** These temporary tolerances expire January 6, 1990.

**FOR FURTHER INFORMATION CONTACT:** By mail: Richard Mountfort, Product Manager (PM) 23, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 237, CM#2, 1921 Jefferson Davis Highway, Arlington, VA. (703) 557-1830.

**SUPPLEMENTARY INFORMATION:** E.I. du Pont de Nemours and Co., Inc., Agricultural Products Dept., Walker's Mill Building, Barley Mill Plaza, Wilmington, DE 19898, has requested in pesticide petition (PP) 8G3638 the establishment of temporary tolerances for residues of the herbicide methyl 2[[[[[(4,6-dimethoxy-pyrimidin-2-yl) amino]carbonyl]amino]s ulfonyl]methyl]benzoate, bensulfuron methyl in or on the raw agricultural commodities fish at 0.3 part per million (ppm) and water (potable) at 0.1 ppm. These temporary tolerances will permit the marketing of the above raw agricultural commodities when treated in accordance with the provisions of the experimental use permit 352-EUP-146, which is being issued under the the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (Pub. L. 95-396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that establishment of the temporary tolerances will protect the public health. Therefore, the temporary tolerances have been established on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. E.I. du Pont de Nemours and Co., Inc., must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire January 6, 1990. Residues not in excess of these amounts remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Authority: (21 U.S.C. 346a(j)).

Dated: February 3, 1989.

**Anne E. Lindsay,**

*Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 89-4138 Filed 2-28-89; 8:45 am]

BILLING CODE 6560-50-M



## FEDERAL MARITIME COMMISSION

**[Docket No. 89-06]**

## South Florida NVOCC and NAOCC Association, Inc. v. Caribbean Shipowners Association; Filing of Complaint and Assignment

Notice is given that a complaint filed by the South Florida NVOCC and NAOCC Association, Inc. and its members (the "Association") against the Caribbean Shipowners Association and its members ("CSA") was served February 23, 1989.

The Association alleges that CSA has violated sections 10(b)(5) and 10(b)(6) of the Shipping Act of 1984 (the "Act"), 46 U.S.C. app. 1709(b)(5) and (6), by unfairly and unjustly discriminating against the Association members through unreasonable rate reductions in the U.S.—St. Maarten trade and unreasonable rate increases in the U.S.—Barbados trade. CSA has also allegedly violated section 10(b)(12) of the Act, 46 U.S.C. app. 1709(b)(12), by subjecting the Association to undue and unreasonable prejudice and disadvantage, and section 10(c)(3) of the Act, 46 U.S.C. app. 1709(c)(3), by attempting to eliminate Association members from the foreign trade from the South Eastern United States to St. Maarten and Barbados.

This proceeding has been assigned to Administrative Law Judge Joseph N. Ingolia ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by February 26, 1990, and the final decision of the Commission shall be issued by June 26, 1990.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 89-4672 Filed 2-28-89; 8:45 am]

BILLING CODE 6730-01-M

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## FEDERAL RESERVE SYSTEM

## Banc One Corp., et al.; Applications To Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated

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or the offices of the Board of Governors not later than March 24, 1989.

**A. Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Banc One Corporation*, Columbus, Ohio; to engage *de novo* through its subsidiary, Bank One Mezzanine Capital Corporation, in making, acquiring, and servicing loans or other extensions of credit pursuant to § 225.25(b)(1) of the Board's Regulation Y

**B. Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First State Bancorp, Inc.*, Harwood Heights, Illinois; to engage *de novo* in making, acquiring, or servicing loans or other extensions of credit for the company's account or for the account of others pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, February 24, 1989.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 89-4753 Filed 2-28-89; 8:45 am]

BILLING CODE 6210-01-M

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**Carolina First Bancshares, Inc., et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies**

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 20, 1989.

**A. Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Carolina First BancShares, Inc.*, Lincolnton, North Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of Lincoln Bank of North Carolina, Lincolnton, North Carolina.

**B. Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Citizens National Corporation*, Naples, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Citizens National Bank of Naples, Naples, Florida.

2. *First Santa Rosa Banc Shares, Inc.*, Milton, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Santa Rosa County, Milton, Florida.

**C. Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Dearborn Bancorp, Inc.*, Chicago, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Irving Bancorp, Inc., Chicago, Illinois, and thereby indirectly acquire The Irving Bank, Chicago, Illinois.

2. *Western Iowa Consultants*, Council Bluffs, Iowa; to retain control of 93.17 percent of the voting shares of Peoples State Bank, Missouri Valley, Iowa.

**D. Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Commerce Bancshares, Inc.*, Kansas City, Missouri; to acquire 21 percent of the voting shares of First Bankers Trustshares, Inc., Quincy, Illinois, and thereby indirectly acquire First Midwest Bank/M.C., N.A., Quincy, Illinois.

2. *Country Bank Shares, Inc.*, Milford, Nebraska; to acquire 81 percent of the voting shares of Farmers and Merchants Bank, Milford, Nebraska.

Board of Governors of the Federal Reserve System, February 23, 1989.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 89-4678 Filed 2-28-89; 8:45 am]

BILLING CODE 6210-01-M

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**Citizens and Northern Corp., et al.; Applications To Engage de novo in Permissible Nonbanking Activities**

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 20, 1989.

**A. Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President), 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Citizens and Northern Corporation*, Ralston, Pennsylvania; to engage *de novo* through its subsidiary, Bucktail Life Insurance Company, Phoenix, Arizona, in credit life, mortgage life and disability insurance on loans generated by Citizens and Northern Bank, Towanda, Pennsylvania, pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

**B. Federal Reserve Bank of St. Louis** (Randall C. Summer, Vice President), 411 Locust Street, St. Louis, Missouri 63166:

1. *City Bancorp, Inc.*, Murphysboro, Illinois; to engage *de novo* through its subsidiary, Carboro, Ltd., Murphysboro, Illinois, in the re-insurance of credit life insurance policies and credit disability insurance policies pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y. These activities will be conducted in the State of Illinois.

Board of Governors of the Federal Reserve System, February 23, 1989.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 89-4679 Filed 2-28-89; 8:45 am]

BILLING CODE 6210-01-M

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**Franklin Bancorporation, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies**

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 24, 1989.

**A. Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Franklin Bancorporation, Inc.*, Washington, DC; to become a bank holding company by acquiring 100 percent of the voting shares of First Interstate Bank of Washington, DC, N.A., Washington, DC.

2. *New East Bancorp*, Raleigh, North Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of New East Bank of Goldsboro, in organization, Goldsboro, North Carolina, a *de novo* bank.



Board of Governors of the Federal Reserve System, February 24, 1989.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 89-4754 Filed 2-28-89; 8:45 am]

BILLING CODE 6210-01-M

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**Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies**

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 15, 1989.

**A. Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Deloy C. Ross*, Anacoco, Louisiana; to acquire an additional 3.54 percent of the voting shares of Merchants & Farmers Bancshares, Inc., Leesville, Louisiana, and thereby indirectly acquire Merchants & Farmers Bank & Trust Company, Leesville, Louisiana.

**B. Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Robert H. Stratton, Jr.*, Kansas City, Missouri; to acquire an additional 15.56 percent of the voting shares of Pembroke Bancshares, Inc., Kansas City, Missouri, and thereby indirectly acquire Union Bank, Kansas City, Missouri.

**C. Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Gerald Cornwall*, to acquire an additional 16.3 percent of the voting shares of Turtle Bancshares, Incorporated, Turtle Lake, Wisconsin, and thereby indirectly acquire Bank of Turtle Lake, Turtle Lake, Wisconsin.

**D. Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Carl D. Wooldridge*, and Martha L. Wooldridge, Wilburton, Oklahoma; to acquire an additional 85.4 percent of the voting shares of First Latimer Corporation, Inc., Wilburton, Oklahoma, and thereby indirectly acquire Latimer State Bank, Latimer, Oklahoma.

**E. Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Vernon P. Hearn*, Houston, Texas; to acquire 17.26 percent of the voting shares of Houston City Bancshares, Inc., Houston, Texas, and thereby indirectly acquire Houston Community Bank, N.A., Houston, Texas.

2. *John J. Hegi*, Lamesa, Texas; to acquire 12.33 percent of the voting shares of Lamesa National Corporation, Lamesa, Texas, and thereby indirectly acquire The Lamesa National Bank., Lamesa, Texas.

Board of Governors of the Federal Reserve System, February 23, 1989.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 89-4680 Filed 2-28-89; 8:45 am]

BILLING CODE 6210-01-M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

**[HSQ-166-FN]**

**Medicare Program; Peer Review Organizations: Revised Scopes of Work for Maryland; New Jersey; the Virgin Islands; and Guam, American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands**

**AGENCY:** Health Care Financing Administration (HCFA), HHS.

**ACTION:** Final notice.

**SUMMARY:** This notice describes requirements for the third Scope of Work for Utilization and Quality Control Peer Review Organizations (PROs). Specifically, this notice: (a) Identifies the requirements of the third Scopes of Work in Maryland and the Virgin Islands; (b) Recognizes the continuing requirements of the Scope of Work currently in effect in the PRO area of Guam/American Samoa/Northern Mariana Islands/the Trust Territory of the Pacific; and (c) Announces a change in the Scope of Work in effect in New Jersey.

This notice also implements section 4091(b)(1) of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100-203), which requires us to publish a new

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policy or procedure adopted by the Secretary that affects substantially the performance of contract obligations at least 30 days before the date the policy or procedure is to be used. It also implements other provisions of Pub. L. 100–203, as well as requirements of the Omnibus Budget Reconciliation Act of 1986.

**FOR FURTHER INFORMATION CONTACT:**
Patricia Booth, (301) 966–6860.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The Peer Review Improvement Act of 1982 (Title I, Subtitle C of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248) (TEFRA) established the Utilization and Quality Control Peer Review Organization (PRO) program. TEFRA requires the Secretary to enter into contracts with private Peer Review Organizations (PROs) for the review of services furnished under Medicare. In the past, these contracts have been subject to renewal on a biennial basis.

The specific review obligations of PROs are outlined in a document known as the Scope of Work, which defines the duties and functions of Medicare review performed by the PRO. Such duties and functions include the implementation and operation of a review system to assure the quality of services for which payment may be made, in whole or in part, under Title XVIII of the Social Security Act, and to eliminate unreasonable, unnecessary, and inappropriate care provided to Medicare beneficiaries. The first Scope of Work covered the 1984–1986 contract period. On November 12, 1985 (50 FR 46702), we published a notice in the **Federal Register** which announced the availability of the proposed second Scope of Work and solicited comments on its content. We subsequently considered the comments and incorporated them into the final second Scope of Work. The second Scope of Work was effective for the 1986–1988 contract period.

On September 12, 1988, we published a notice in the **Federal Register** (53 FR 35234) which identified the requirements of the third Scope of Work for all States except Maryland; the Virgin Islands; and Guam, American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

**II. Implementation of Recent Legislation**

Section 4091(a) of Pub. L. 100–203, the Omnibus Budget Reconciliation Act of 1987 (OBRA 87), allows a one-time contract extension (of up to 24 months) for existing contracts in order to permit the Secretary to more effectively administer PRO contract renewals and changes the PRO contract period from two to three years. Accordingly, we have developed a schedule for extending the current contracts and an implementation schedule for the third Scope of Work for the new three-year contract period. Hence, on October 1, 1988, approximately one-fourth of the PRO's began a new 3-year contract period under which they must implement the third Scope of Work. The remaining PROs will implement the third Scope of Work on April 1, 1989 (some through new contracts and others through extensions and modifications to their existing contracts).

Section 4091(b) of OBRA 87 requires that we publish, 30 days prior to the effective date, any new policy or procedure adopted by the Secretary which substantially affects the performance of contract obligations under PRO contracts. Therefore, we are publishing this notice to inform the public that the Third Scope of Work contains some new requirements that substantially impact on PRO contract obligations for Maryland; New Jersey; and the Virgin Islands.

**III. Third Scope of Work**

The third Scope of Work, for all geographical areas, was developed following an extensive analysis of the review requirements of the second Scope of Work. In addition, the third Scope of Work incorporates the provisions of three public laws which impact on PRO review that were passed after the development of the second Scope of Work. These laws are: Pub. L. 99–272, the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA); Pub. L. 99–509, the Omnibus Budget Reconciliation Act of 1986 (OBRA 86); and OBRA 87. Relevant provisions of these laws are discussed in section IV of this notice.

In the September 12, 1988 (53 FR 35234), **Federal Register** we indicated that the requirements of the Scope of Work applicable to the PRO areas of Guam/American Samoa/Northern Mariana Islands/Trust Territory of the Pacific Islands might be changed. We, however, are not making changes at this time; hence the PROs in this area will continue to perform review following the requirements of the second Scope of Work.

Until recently, New Jersey received a waiver from Medicare's prospective payment system (PPS). All acute hospital care in New Jersey was under the State's cost control system, a DRG-based system, and accordingly, the New Jersey PRO contracted under a Scope of Work developed specifically to meet the state's review needs. Effective January 1, 1989, New Jersey converted its Medicare reimbursement program to PPS and, thus, the PRO will now perform PPS-based review outlined in the September 12, 1988, (53 FR 35324), **Federal Register.**

The provisions of the third Scope of Work are effective in Maryland and the Virgin Islands on April 1, 1989. Both Maryland and the Virgin Islands are exempt from Medicare's Prospective Payment System. In Maryland, all acute care hospitals and non-State-owned specialty hospitals are subject to regulatory rate review by an independent State agency, the Health Service Cost Review Commission. The Commission reviews all proposed service charges (based on costs) and, where a proposed rate is not appropriate, changes the rate. The Maryland system and Medicare's PPS provide essentially the same incentives to hospitals. The purpose of Maryland's cost control system is to change hospital behavior through financial incentives which encourage efficient medical care management by doctors and hospitals.

An individual or organization interested in obtaining copies of the second and third Scopes of Work for any of these PRO areas should specify the PRO area Scope he or she wishes to receive and address requests to: Health Care Financing Administration, Attention: Bob Lozosky, Office of Budget and Administration, Room 322A East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

**IV. Program Changes and Legal/Administrative Requirements**

In an effort to achieve consistency and be least disruptive to on-going review activities, we attempted to change review activities in the Maryland and Virgin Islands Scopes of Work only where absolutely warranted. Thus, much of the consent of the second Scope of Work remains a part of the Scopes of Work for these areas. Where changes were made, they were done in the interest of creating a more effective review system and making more efficient use of PRO resources. In some cases, the third Scope of Work in Maryland, and the modified second Scope of Work in the Virgin Islands, contain certain types of review required by legislation. To the extent that we have flexibility, we are amending the review requirements in the interest of increasing PRO effectiveness and efficiency. Some existing requirements which have proven inefficient or ineffective are being deleted.



We have, in an effort to achieve consistency among PROs, developed a basic quality intervention plan (QIP). This plan is a prescribed blueprint which requires each PRO to implement specific interventions in response to confirmed quality problems. The QIP mandates a three level severity indexing system to be used in categorizing quality problems. It also requires the PRO to follow a specific process, along with timeframes, for notifying the involved physician and/or provider. This process provides these parties with an opportunity to discuss the problem. The QIP dicatates what profiling and weighting of quality problems must occur to determine the prescribed quality intervention.

We have modified the HCFA quality screens which PROs use. These screens were made more explicit in response to comments and ongoing data analysis, so that "false positives" were significantly reduced.

Sections V and VI contain summaries of the differences and similarities between the second and third Scope of Work applicable in Maryland and, the second modified second Scope of Work in the Virgin Islands. The review requirements are grouped according to whether they are: (1) Continuing requirements; (2) new requirements; (3) requirements which continue with some amendments; or (4) requirements which have been deleted.

**V. Specific Review Requirements in Maryland**

*A. Continuing Requirements—The PRO must*

- On every case selected, review for quality of care (e.g., Using HCFA generic quality of screens), appropriateness of discharge, length of stay, medical necessity, appropriateness of setting and make limitation of liability (i.e., waiver of liability) and coverage determinations.
- Review the following hospital cases without a change in level of effort from the second Scope of Work:
  + Noncovered Admissions which are followed by a period in which the level of care is covered, and
  + HCFA Regional Office and FI Referrals.
- Review freestanding cardiac catheterization facilities, when requested.
- Upon request, reconsider initial determinations and review DRG changes. When an appeal (i.e., hearing) is required, the PRO will prepare the appeals folder.
- When appropriate, initiate sanction recommendations against practitioners and providers.
- Maintain at least one non-physician consumer member on the PRO's governing board.
- Investigate beneficiary complaints about the quality of care.
- Review, upon request, hospital emergency room records to determine if the hospital has complied with the requirement to serve all individuals in need of emergency care (Anti-Dumping).
- Offer the attending physician and provider at least 20 days to discuss the proposed denial or DRG change.
- For cases selected for review, review each day for which payment was made or billed to determine that each day of inpatient care was necessary and appropriate.
- Review all cases with certain principal diagnoses identified by the Medicare Code Editor.

In addition, in accordance with the Health Maintenance Organization/Competitive Medical Plan (HMO/CMP) Scope of Work, the review of inpatient and ambulatory care provided to a sample of all Medicare beneficiaries who have enrolled in a risk-based HMO/CMP will continue. Cases which are reviewed are:

- A random sample of hospital discharge;
- Sample of hospital readmissions within 31 days;
- Sample of non-trauma death;
- All transfers from a hospital with which the HMO does not have an agreement to one with which the HMO has an agreement;
- A sample of hospital discharges for 13 identified conditions (including, based upon the identified condition, post and/or prehospital care); and
- Random sample of enrollees receiving ambulatory care.

*B. New Requirements—The PRO must*

- Conduct a significant amount of review onsite in at least 20 percent of the rural hospitals as required by section 4090(b) of OBRA 87.
- Determine in cases selected for review if an invasive procedure was reasonable and medically necessary. (Originated because of concern that unnecesary procedures might be performed.)
- Develop a quality intervention plan which meets HDFA requirements. (Originated with intention that quality problems be handled with more consistency across the 54 PRO areas.)
- Conduct a review of ambulatory surgery procedures as required by section 9343(d) of OBRA 1986.
- Use (to the extent possible) a physician reviewer who is trained in psychiatry or physical rehabilitation as required by section 4904(c)(2) of OBRA 1987, when a psychiatric or physical rehabilitation case is reviewed.
- Publish (not less than annually) a report that describes the PRO's finding with respect to the types of cases in which the PRO has frequently determined that care or services were necessary, inappropriate, rendered in an inappropriate setting, or did not meet professionally recognized standards. The findings are to be distributed to providers and practitioners whose services are subject to review. (This requirement is mandated by section 4094(c)(1) of OBRA 1987.)
- Review, as required by section 9352 of OBRA 86, post-hospital intervening care (e.g., home health agency, skilled nursing facility), for which Medicare payment could be made, that is delivered between 2 hospital readmissions where the second admission is within 31 days of the discharge from the first admission.
- Conduct intensified reviews of those physicians, providers, or DRGs found to exhibit a pattern of substandard care. As part of the QIP, implement specific interventions to rectify identified patterns of substandard care.

In addition, if the PRO negotiates with the Office of Civilian Health and Medical Programs of the Uniformed Services (CHAMPUS), the PRO may review inpatient care provided to CHAMPUS beneficiaries. The review is basically the same as Medicare's PPS review and it is estimated that it will consist of approximately 17% of CHAMPUS inpatient cases.

*C. Continuing Requirements with Some Amendment*

- The PRO must continue to select a random sample of discharges for review; however, the sample size has been decreased from 6 percent to 3 percent.
- Conduct coding validation for those cases selected in the 3 percent random sample.
- The PRO must continue to propose objectives to HCFA in order to resolve identified utilization and quality problems (i.e., a dynamic process). Objectives are based on confirmed quality problems identified through application of generic quality screens. Objectives may be statewide or focused by physician, provider, DRG, etc.
- Preadmission/Preprocedure Review—Increased from 5 to 10 procedures, and can extend to outpatient procedures as well. The

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mandatory review of pacemaker implants has been changed to a mandatory cataract surgery and carotid endarterectomy review. Therefore, the PRO will choose 8 additional procedures from the following 11 (listed below) or produce evidence why a procedure not on the list should be subjected to 100 percent preadmission review: cholecystectomy, major joint replacement, coronary artery bypass with graft, percutaneous transluminal coronary angioplasty, laminectomy, complex peripheral revascularization, hysterectomy, bunionectomy, inguinal hernia repair, prostatectomy, pacemaker insertion. (HCFA originated this amendment in the interest of efficient and effective review.)

- Community outreach plans for beneficiaries, providers and physicians must meet certain minimal requirements. The plan must provide for:
  - + A toll-free hotline which beneficiaries may use to call the PRO;
  - + Programs to inform beneficiaries about PRO review;
  - + Specific types of informational materials to be developed by the PRO;
  - + Improved educational programs for physicians health care practitioners and providers (including offering to meet with medical and administrative staff at the hospital or at a regional meeting several times a year);
  - + Review by a PRO physicians who practices in a setting similar to that in which the physician whose services are under review practices;
  - + Use, wherever practicable, of board certified or board eligible physicians in the appropriate speciality to make reconsideration determinations.

(Originated with HCFA desire for material consistency and improved relationships with parties affected by PRO review.)

- Review of all requests for use of an assistant at cataract surgery with or without lens insertion, as required by section 9307 of COBRA. Additionally, the PRO will review requests for use of an assistant when an intraocular lens will be implanted after the cataract surgery has been performed. This is required by section 411 of Pub. L. 101-360, the Medicare Catastrophic Coverage Act of 1988, which amended section 1862(a)(15) of the Act.
- Sample the following review categories with new levels of effort:
  - + Readmissions-Reduced from 100 percent of all related readmissions within 15 days of discharge to 25 percent of all readmissions occurring within 31 days from discharge from a hospital.
  - + Focused DRG Review-Seven low volume DRGs related to newborns must be reviewed at 100 percent level of effort, while the requirement to review DRG 462 (Rehabilitation) has been deleted. (HCFA initiated this amendment in the interest of efficient and effective review.)
- Calculate error rates for intensifying utilization review by comparing the number of days denied to the number of days reviewed.

*D. Requirements Which Have Been Deleted*

- The PRO will not review claims for percutaneous lithotripsy.
- For each case reviewed, the PRO is no longer required to perform a review of each ancillary service.

**VI. Specific Review Requirements in the Virgin Islands**

*A. Continuing Requirements—The PRO must*

- On every case selected, review for quality of care (e.g., using HCFA generic quality screens), appropriateness of discharge, medical necessity, appropriateness of setting and make limitation of liability (i.e., waiver of liability) and coverage determinations.
- Review all hospital discharges.

*B. New Requirements—The PRO must*

- Determine in cases selected for review if an invasive procedure was reasonable and medically necessary. (Originated because of concern that unnecessary procedures might be performed.)
- Develop a quality intervention plan which meets HCFA requirements. (Originated with intention that quality problems be handled with more consistency across the 54 PRO areas.)
- Conduct a review of ambulatory surgery procedures as required by section 8343(d) of OBRA 1986.
- Use (to the extent possible) a physician reviewer who is trained in psychiatry or physical rehabilitation as required by section 4094(c)(2) of OBRA 1987, when a psychiatric or physical rehabilitation case is reviewed.
- Published (not less than annually) a report that describes the PRO's findings with respect to the types of cases in which the PRO has frequently determined that care or services were unnecessary, inappropriate, rendered in an inappropriate setting, or did not meet professionally recognized standards. The findings are to be distributed to providers and practitioners whose services are subject to review. This requirement is mandated by section 4094(c)(1) of ORBA 1987.
- Review, as required by section 9352 of OBRA 1986, post-hospital intervening care (e.g., home health agency, skilled nursing facility), for which Medicare payment could be made, that is delivered between 2 hospital readmissions where the second admission is within 31 days of the discharge from the first admission.

In addition, if a PRO negotiates with the Office of Civilian Health and Medical Programs of the Uniformed Services (CHAMPUS), the PRO may review inpatient care provided to CHAMPUS beneficiaries. The review is basically the same as Medicare's PPS review and it is estimated that it will consist of approximately 17% of CHAMPUS inpatient cases.

*C. Continuing Requirements with Some Amendment*

- The PRO must continue to propose objectives to HCFA in order to resolve identified utilization and quality problems (i.e., a dynamic process). Objectives are based on confirmed quality problems identified through application of generic quality screens. Objectives may be statewide or focused by physician, provider, DRG, etc.
- Preadmission/Preprocedure Review—Increased from 5 to 10 procedures, and can extend to outpatient procedures as well. The mandatory review of pacemaker implants has been changed to a mandatory cataract surgery and carotid endarterectomy review. Therefore, the PRO will choose 8 additional procedures from the following II (listed below) or produce evidence why a procedure not on the list should be subjected to 100 percent preadmission review: Cholecystectomy, major joint replacement, coronary artery bypass with graft, percutaneous transluminal coronary angioplasty, laminectomy, complex peripheral revascularization, hysterectomy, bunionectomy, inguinal hernia repair, prostactectomy, pacemaker insertion. (HCFA originated this amendment in the interest of efficient and effective review.)
- Community outreach plans for beneficiaries, providers and physicians must meet certain minimal requirements. The plan must provide for:
  - + A toll-free hotline which beneficiaries may use to call the PRO.
  - + Programs to inform beneficiaries about PRO review.
  - + Specific types of informational materials to be developed by the PRO.
  - + Improved educational programs for physicians, health care practitioners and providers (including offering to meet with medical and administrative staff at the hospital or at a regional meeting several times a year).
  - + Review by a PRO physician who practices in a setting similar to that in which the physician whose services are under review practices.
  - + Use, wherever practicable, of board certified or board eligible physicians in the appropriate speciality to make reconsideration determinations.

(Originated with HCFA desire for national consistency and improved a relationship with parties affected by PRO review.)

- Review all of requests for use of an assistant at cataract surgery with or without lens insertion, as required by section 9307 of COBRA 85. Additionally, the PRO will review requests for use of an assistant when an intraocular lens will be implanted after the cataract surgery has been performed. This is required by section 411 of Pub. L. 101-360, the Medicare Catastrophic Coverage Act of 1988, which amended section 1862(a)(15) of the Act.

**VII. Paperwork Reduction Act**

Provisions of this notice contain information collection requirements which will be implemented with the use of revised PRO reporting forms which are subject to the Office of Management and Budget (OMB) review under authority of the Paperwork Reduction Act of 1980. These forms have been approved under OMB control number 0938-0531.

(1153 of the Social Security Act (42 USC 1320c-2) Catalog of Federal Domestic Assistance Program No. 13.773, Medicare-Hospital Insurance; and No. 13.774, Medicare-Supplementary Medical Insurance.)

Dated: February 13, 1989.

**William L. Roper,**

*Administrator, Health Care Financing Administration.*

[FR Doc. 89-4727 Filed 2-28-89; 8:45 am]

BILLING CODE 4120-03-M



## Health Resources and Services Administration

### Advisory Council Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), announcement is made of the following National Advisory bodies scheduled to meet during the month of March 1989:

*Name:* National Advisory Committee on Rural Health, Health Services Delivery Work Group.

*Date and Time:* March 14, 1989, 1:00 p.m.

*Place:* Room 14-22 Parklawn Building, Office of Rural Health Policy, 5600 Fishers Lane, Rockville, Maryland 20857.

The meeting is open to the public.

*Purpose:* The Committee provides advice and recommendations to the Secretary with respect to the delivery, Financing, research, development and administration of health care service in rural areas. This Work Group is one of three established by the Committee.

*Agenda:* This meeting will be conducted through a telephone conference call. The conference call will be devoted to a discussion of the issues and work plan activities in preparation of the May and September meeting of the full Committee.

* * * * *

*Name:* National Advisory Committee on Rural Health, Health Professions Work Group.

*Date and Time:* March 23, 1989, 10:00 a.m.

*Place:* Room 14-22 Parklawn Building, Office of Rural Health Policy, 5600 Fishers Lane, Rockville, Maryland 20857.

The meeting is open to the public.

*Purpose:* The Committee provides advice and recommendations to the Secretary with respect to the delivery, Financing, research, development and administration of health care service in rural areas. This Work Group is one of three established by the Committee.

*Agenda:* This meeting will be conducted through a telephone conference call. The conference call will be devoted to a continued discussion of information presented and developed at the Second Meeting of the Committee; reports by Work Group members on their respective areas of investigation; a review of the schedule of work plan activities in preparation of the May and September meeting of the full Committee.

Anyone requiring information regarding the subject Committees should contact Mr. Jeffrey Human, Executive Secretary, National Advisory Committee on Rural Health, Health Resources and Service Administration, Room 14-22, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (310) 443-0835.

Persons interested in attending any portion of the above meetings should contact Ms. Arlene Granderson, Program Analyst, Office of Rural Health Policy, Health Resources and Service Administration, Room 14-22, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-0835.

Agenda Items are subject to change as priorities dictate.

Date: February 23, 1989.

**Jackie E. Baum,**

*Advisory Committee Management Officer, HRSA.*

[FR Doc. 89-4683 Filed 2-28-89; 8:45 am]

BILLING CODE 4160-15-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[AZ-027-9-25]**

### Availability of the Goldwater Plan Amendment; Environmental Assessment to the Lower Gila South Resource Management Plan

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of availability of the Goldwater Plan Amendment/ Environmental Assessment to the Lower Gila South Resource Management Plan; Phoenix District.

**SUMMARY:** In compliance with the Federal Land Policy and Management Act of 1976, section 102 (2)(c) of the National Environmental Policy Act of 1969 and the Military Lands Withdrawal Act of 1986 (Pub. L. 96-606), the Bureau of Land Management (BLM) has prepared an amendment and environmental assessment to its Lower Gila South Resource Management Plan. The amendment describes the resource management practices the BLM intends to implement on the Barry M. Goldwater Air Force Range. The amendment involves 1.8 million acres of land in southwest Arizona. The land lies within Maricopa, Pima and Yuma counties. The public review and comment period will end April 7, 1989 after which the Decision will become final.

**SUPPLEMENTARY INFORMATION:** A limited number of copies of the amendment and environmental assessment are available upon request to the Phoenix District Manager, Bureau of Land Management, 2015 W. Deer Valley Road, Phoenix, Arizona 85027. There are also copies available for review at the above location.

**FOR FURTHER INFORMATION CONTACT:** Carole Hamilton, Lower Gila Resource Area Manager, 2015 W. Deer Valley Road, Phoenix, Arizona 85027, telephone (602) 863-4464.

Date: February 21, 1989.

**Henri Bisson,**

*District Manager.*

[FR Doc. 89-4704 Filed 2-28-89; 8:45 am]

BILLING CODE 4310-32-M

**[NM-920-09-4120-10]**

### San Juan River Regional Coal Team (RCT) Meeting; Availability of Draft Data Adequacy Standards; New Mexico and Colorado

**AGENCY:** Bureau of Land Management, Interior.

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**ACTION:** Notice of RCT meeting. Notice of availability.

**SUMMARY:** The San Juan River RCT will meet to consider future development plans for Federal Coal in the region. The public is invited to attend.

The primary purposes of the meeting are to:

1. Update the RCT on the status of current competitive lease applications in the region;
2. Reassess operating in a lease by application mode versus a regional leasing mode;
3. Introduce the new RCT science advisors; and
4. Review the draft Data Adequacy Standards for coal leasing in the San Juan River Region.

Proposed Data Adequacy Standards for the San Juan River Region are available upon request beginning March 3, 1989. The public is invited to comment on these standards.

**DATES:** The RCT will meet at 9 a.m. on Friday, April 28, 1989. Public comments on the draft Data Adequacy Standards are requested by Friday, April 21, 1988. Comments should be sent to Russell Jentgen at the address shown below.

**ADDRESS:** The meeting will be held at the Howard Johnson Plaza Hotel, 4048 Cerrillos Road, Santa Fe, New Mexico 87501, telephone (505) 473–4046. A block of 20 rooms is being held on a first come, first served basis for people wanting a room for the night of April 27, 1989. The single rate is $45 per night including tax. Please make any reservations at least a week before the meeting.

Copies of the draft Data Adequacy Standards may be obtained from either Russell Jentgen or Ed Heffern, Bureau of Land Management, New Mexico State Office, Branch of Solid Minerals, NM (921), P.O. Box 1449, Santa Fe, New Mexico 87504–1449, telephone (505) 988–6109.

**FOR FURTHER INFORMATION CONTACT:** Russell Jentgen or Ed Heffern at the above address or telephone number.

**SUPPLEMENTARY INFORMATION:** At this meeting, the Environmental Impact Statement (EIS) contractor will brief the RCT on progress on the EIS for the Fence Lake Coal Lease Application, as well as on the results of public scoping for that effort.

The RCT will also consider whether to return from a lease by application mode to a regional leasing mode. At its last meeting on August 9, 1988, the RCT decided to reconsider whether to shift back to a regional mode if a threshold of two lease applications were received in a calendar year. This threshold was reached in 1988. Salt River Project submitted its application for 6,800 acres near Fence Lake, New Mexico, on October 14, 1988. Blue Flame Coal Company submitted an incomplete lease application for 200 acres near Hesperus, Colorado, on December 17, 1988.

The RCT appointed three science advisors on January 18, 1989, to help prepare Data Adequacy Standards and review lease applications for technical adequacy. Each advisor is an expert on one of the following: nonrenewable resources, renewable resources, and reclamation. They will be introduced at the meeting.

The draft Data Adequacy Standards contain recommended levels of data to be acquired prior to the competitive leasing of Federal coal tracts, whether in the lease by application or regional leasing mode. Data standards are proposed for geology, paleontology, soils, water, vegetation, wildlife, air, cultural resources, socioeconomics, and land-use disciplines within the San Juan River Region.

The standards are being prepared by a multidisciplinary task force composed of Federal and State resource specialists. The task force was appointed and guided by the San Juan River RCT. The Data Adequacy Standards are being prepared, with public input, at the direction of the Department of the Interior as an outcome of the supplemental EIS to the Federal Coal Management Program.

The RCT welcomes comments on any aspect of these standards.

The RCT will consider information obtained from the public in making decisions at this meeting.

Anyone who wishes to be scheduled to speak at the meeting is requested to provide written copies of their remarks to Russell Jentgen or Ed Heffern, Bureau of Land Management, at the above address by April 21, 1989. Written materials will also be accepted in lieu of or in addition to any oral presentation.

Following is a preliminary agenda for this meeting:

1. Introduction
2. Approval of Minutes of Last Meeting
3. Annual BLM Coal Market Assessment
4. Current Activity and Production on Existing Leases
5. Status of Preference Right Lease Applications
6. Status of Industry Interest in San Juan Region Coal
7. Status of Competitive Lease Applications
   a. Fence Lake Project EIS in New Mexico
   b. Blue Flame Lease Application in Colorado
8. Review of Lease by Application versus Regional Leasing
9. Introduction of New Science Advisors
10. Review of Draft Data Adequacy Standards
11. Public Comment
12. Scheduling of Next Meeting
13. Adjourn.

**Larry L. Woodward,**

*Chairman, San Juan River Regional Coal Team.*

Dated: February 21, 1989.

[FR Doc. 89-4675 Filed 2-28-89; 8:45 am]

BILLING CODE 4310-FB-M

[CA-020-09-4056-09]

### California; Susanville District Advisory Council Meeting

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** Notice is hereby given, in accordance with Pub. L. 94–579 (FLPMA), that a Susanville District Advisory Council meeting has been scheduled for Friday, April 14, 1989. The meeting will begin at 10:00 a.m. at the Susanville District Office of the Bureau of Land Management, 705 Hall Street, Susanville, CA 96130, and end at 4:00 p.m. The agenda will include discussion of Malacha Power Project, an Environmental Assessment recommendation to Washoe County on the Silver State Water Project, modification of wild horse plans and an update on the East Lassen Deer Herd. The meeting is open to the public and interested persons may make oral statements to the Council or file a written statement for the Council's consideration.

Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 705 Hall Street, Susanville, CA 96130, by April 17, 1989. Depending on the number of persons wishing to make oral statements, a per-person limit may be established.

**FOR FURTHER INFORMATION CONTACT:** Jeff Fontana at 916–257–5381.

**C. Rex Cleary,**

*District Manager.*

[FR Doc. 89-4697 Filed 2-28-89; 8:45 am]

BILLING CODE 4310-40-M

[U-58146]

### Utah; Proposed Reinstatement of Terminated Oil and Gas Lease

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97–451), a petition for reinstatement of oil and gas lease U–58146 for lands in Grand County, Utah, was timely filed and required rentals and royalties accruing from June 1, 1988, the date of termination, have been paid.

The lessee has agreed to new lease terms for rentals and royalties at rates of $7 per acre and 16⅔ percent, respectively. The $500 administrative fee has been paid and the lessee has reimbursed the Bureau of Land Management for the cost of publishing this notice.

Having met all the requirements for reinstatement of lease U–58146 as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective June 1, 1988, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

**Robert Lopez,**

*Chief, Minerals Adjudication Section.*

[FR Doc. 89-4673 Filed 2-28-89; 8:45 am]

BILLING CODE 4310-DQ-M



### Resource Management Plan; Glennallen District, Southcentral Planning Area, AK

**AGENCY:** Department of the Interior, Bureau of Land Management (BLM).

**ACTION:** Notice of intent.

**SUMMARY:** The Glennallen District in Glennallen, Alaska will prepare a Resource Management Plan (RMP) with an Environmental Impact Statement (EIS) for the Southcentral Planning Area. The planning area, situated in the southcentral portion of the state of Alaska, contains some of the most scenic lands in Alaska and because of easy access, is heavily used for a multitude of outdoor recreation and subsistence uses. The RMP will seek to optimize tourism and economic opportunities while protecting and enhancing the present resource values. The plan will address approximately 5.3 million acres of BLM administered lands. These lands are clustered in 3 main blocks of land adjoined by other federal, state and private, lands. BLM recognizes the importance of compatibility with adjacent land managers and will maximize opportunities for cooperation with the public and private sectors. The public is invited to participate in the planning process, beginning with identification of the issues and criteria.

**DATE:** Comments on the planning issues and criteria should be received by April 30, 1989.

**ADDRESSES:** Mail comments to the following address: Office of Management, Planning, and Budget, Bureau of Land Management, 222 W. 7th Avenue, Box 13, Anchorage, Alaska 99513.

**FOR FURTHER INFORMATION CONTACT:** Lynette Nakazawa, Southcentral Planning Team Leader, at the Office of Management, Planning, and Budget, (907–271–5546).

**SUPPLEMENTARY INFORMATION:** The anticipated issues for this plan are summarized below:

1. Under what framework should improvement to existing recreational facilities and trails proceed? Which new areas and opportunities should be developed?
2. Can or should resources such as mineral and mineral materials, and timber be developed, and in what manner?
3. What wildlife habitat programs should the BLM undertake to maintain and enhance the high level of fish and wildlife in the area to support commercial and recreational users?
4. Should special management areas, such as, Areas of Critical Environmental Concern and Wild and Scenic Rivers be used to support recreation and wildlife opportunities?
5. Should lands be acquired for or transferred from BLM administration? What are the opportunities for leases, sales, and permits on the public lands?
6. Where and how should access areas be developed?

The preliminary planning criteria are:

1. Opportunities for public participation will be encouraged throughout the planning process.
2. Actions and activities which are potentially adverse to the existing energy right-of-way will be avoided.
3. Valid existing rights will be protected.
4. Subsistence uses and needs will be considered and adverse impacts will be minimized whenever possible in accordance with ANILCA 810.
5. Plans and policies of adjacent land holders, managers, and local governments will be considered. The RMP will be consistent with these policies wherever practical.
6. Wildlife habitat management will be consistent with Alaska Department of Fish and Game objectives.
7. The plan will be compatible with the Gulkana and Delta River National Wild and Scenic River Management Plans.
8. The plan will utilize existing data, information, plans, and land use analyses.
9. Requirement of Sec. 106 of the National Historic Preservation Act will be considered.
10. The plan will make no wilderness suitability recommendation.

These issues and criteria are presented for public comment and are subject to change based on such comment. Comments should be received by April 30, 1989. The planning team will seek public comment throughout the planning process by direct mailings, media coverage, person-to-person contacts, and coordination with local, state, and other federal agencies. Public meetings to gather comments on the preliminary issues and criteria are scheduled for:

April 4, 1989, 3–5 p.m., Mentasta Lodge, Mile 78, Tok Cuttoff Road, Mentasta, Alaska
April 4, 1989, 7–9 p.m., BG's Lodge, Mile 6, Nabesna Road, Slana, Alaska
April 5, 1989, 7–9 p.m. Paxson Lodge, Mile 185, Richardson Highway, Paxson, Alaska
April 6, 1989, 7–9 p.m., Glennallen High School, Aurora Drive, Glennallen, Alaska
April 11, 1989, 7–9 p.m., Z.J. Loussac Library, Public Conference Room, Level 1, 3600 Denali Street, Anchorage, Alaska
April 12, 1989, 7–9 p.m., BLM Office Building, 1150 University Avenue, Fairbanks, Alaska.

The planning effort will follow the Code of Federal Regulations, Title 43, Subpart 1600. The RMP will be prepared by an interdisciplinary team composed of BLM specialists in fish and wildlife, forestry, plant ecology, soil, water, air, minerals, fire management, cultural resources, recreation, visual resources, subsistence, realty, economics, and environmental protection.

Complete records of all phases of the planning process will be available for public review at BLM Office of Management, Planning, and Budget in the Alaska State Office, 222 West 7th Avenue, Anchorage, Alaska, 99513. Draft and final documents of the RMP will be available upon request.

**Lester K. Rosenkrance,**

*State Director.*

[FR Doc. 89-4674 Filed 2-28-89; 8:45 am]

BILLING CODE 4310-JA-M

## Office of Surface Mining Reclamation and Enforcement

### Deep River Basin Lands Unsuitable for Mining Petition

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Notice to terminate the preparation of an environmental impact statement (EIS) for a petition to designate certain lands in the Deep River Basin in Lee and Chatham

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Counties, North Carolina as unsuitable for surface coal mining operations.

**SUMMARY:** Notice is hereby given that the Office of Surface Mining Reclamation and Enforcement (OSMRE) has completed its review of the petition to designate certain private lands in the Deep River Basin, Chatham and Lee Counties, North Carolina, as unsuitable for surface coal mining operations.

The petition allegations were reviewed in accordance with the provisions of § 522(a)(2) of the Surface Mining Control and Reclamation Act and 30 CFR 903.764.13(b)(1)(v). Based on the review, OSMRE notified the petitioners on November 18, 1988 that the petition was being returned because the petition allegations lacked serious merit since they presumed inadequate or no regulation of surface coal mining operations pursuant to the North Carolina Federal Program.

On November 19, 1987, OSMRE published in the **Federal Register** (52 FR 44499) a notice of intent to prepare an EIS, and further stated that should information or analysis show that the proposed action did not require an EIS, OSMRE would terminate the EIS preparation through an appropriate notice in the **Federal Register**.

Since the Deep River Basin lands unsuitable for mining petition process has been concluded, OSMRE is terminating the preparation of an EIS.

**FOR FURTHER INFORMATION CONTACT:** Bruce Klein, Office of Surface Mining Reclamation and Enforcement, 530 Gay Street SW., Suite 500, Knoxville, Tennessee 37902; Telephone: (615) 673-4330.

**Brent Wahlquist,**

*Assistant Director, Program Policy.*

Date: February 21,1989.

[FR Doc. 89-4670 Filed 2-28-89; 8:45 am]

BILLING CODE 4310-05-M

## DEPARTMENT OF JUSTICE

### Lodging of Three Consent Decrees Regarding the Recovery of Response Costs Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Department Policy, 28 CFR 50.7, 38 F.R. 19029, notice is hereby given that three proposed Consent Decrees in *United States* v. *bourdeaudhui*, Civ. Action No. H-88-354, were lodged with the United States District Court for the District of Connecticut on February 16, 1989.The proposed Decrees, if entered, will resolve the liability of three of the seven defendants in this action pursuant to section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9607(a), as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), for more than $710,000 in response costs incurred by EPA during the removal of mercury-contaminated soil at two sites in Wilfington, Connecticut. The Decrees propose settlements with the following defendants for the following amounts: Mrs. Elsie Bourdeaudhui, $40,000; Benco Dental Supply Co., $60,000; A. Leventhal & Sons, Inc., $59,000.

The Department of Justice will receive for a period of thirty (30) days from the date of publication of this notice, written comments relating to the proposed Decrees. Comments should be addressed to the Acting Assistant Attorney General, Land and Natural Resources Division, United States Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Bourdeaudhui*, D.J. Ref. No. 90-11-2-362.

The proposed Decrees may be examined at the office of the United States Attorney, Federal Building, Room 250, 450 Main Street, Hartford, Connecticut 06103; at the Region I office of the United States Environmental Protection Agency, John F. Kennedy Federal Building, Room 2203, Boston, Massachusetts 02203; and at the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Decrees may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, at the above address. In requesting a copy, please enclose a check in the amount of $3.60, payable to the Treasurer of the United States, to cover the costs of reproduction.

**Donald A. Carr,**

*Acting Assistant Attorney General, Land and Natural Resources Division.*

[FR Doc. 89-4697 Filed 2-28-89; 8:45 am]

BILLING CODE 4410-01-M

### Lodging of Settlement Agreement Pursuant to Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on February 8, 1989, a proposed consent decree in *United States* v. *City of Hindman, Kentucky, et al.*, Civil Action No. 89-38, was lodged with the United States District Court for the Eastern District of Kentucky. The complaint filed by the United States alleged violations of the Clean Water Act, and the National Pollutant Discharge Elimination System permit issued to defendant Hindman pursuant to the Clean Water Act. The consent decree requires defendant to pay a civil penalty of $2,500. The consent decree also requires Hindman to follow a schedule for construction and other activities designed to bring Hindman into full compliance with the Clean Water Act and its permit by February 1, 1991.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *City of Hindman, Kentucky*, D.J. Ref. No. 90-5-1-1-2928. The proposed consent decree may be examined at the Office of the United States Attorney, Federal Building, 4th Floor, Limestone and Barr Streets, Lexington, Kentucky and at the Region IV Office of the Environmental Protection Agency, 345 Courtland Street, Atlanta, Georgia. A copy of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1714, Tenth and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy please enclose a check in the amount of $1.90 (10 cents per page reproduction costs), payable to the Treasurer of the United States.

**Roger J. Marzulla,**

*Assistant Attorney General, Land and Natural Resources Division.*

[FR Doc. 89-4699 Filed 2-28-89; 8:45 am]

BILLING CODE 4410-01-M

## Antitrust Division

### Notice Pursuant To the National Cooperative Research Act of 1984; Deepwater, Aramid Mooring Line Joint Industry Project

Notice is hereby given that, on January 25, 1989, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.*, written notice was filed by Omega Marine Services International, Inc. ("OMSI") simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the project and (2) the nature and objectives of the project. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the project, and its general areas of planned activities, are given below.

The project will comprise three phases. The project participants are:

Amoco Production Company
BP-Exploration
Occidental International Exploration & Production Co.
Exxon Production Research Company
Conoco Inc.
Chevron Corporation
Shell Oil Company
Mobil Research & Development Corporation
National Institute of Standards and Technology on behalf of the Naval Civil Engineering Laboratory and the Minerals Management Service

The purpose of the project is to provide an assessment of deep water mooring technology involving a comparison of steel and aramid-fiber rope as high capacity mooring line. The project will include design and testing of mooring systems for floating production platforms in differing water depths. OMSI will evaluate the mooring lines in terms of performance and cost.

The first phase of the project will involve engineering, design and planning and will include developing designs for the various mooring systems to be tested. Phase one will also include plans for testing the systems in the second and third phases of the project.

Phase two of the project will consist of laboratory testing of aramid rope samples. During this phase, OMSI will build a rope for testing and perform laboratory tests on rope samples for strength and breakage. During this phase, OMSI will also finalize plans for at-sea testing.

The third phase of the project will consist of actual at-sea testing of the aramid rope to evaluate the effectiveness of design and installation plans. Progress reports and the results of each phase of the project will be provided to the firms sponsoring the project.

**Joseph H. Widmar,**

*Director of Operations Antitrust Division.*

[FR Doc. 89-4698 Filed 2-28-89; 8:45 am]

BILLING CODE 4410-01-M



### Notice Pursuant to the National Cooperative Research Act of 1984; Petroleum Environmental Research Forum

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* (the "Act"), the Petroleum Environmental Research Forum ("PERF") has filed written notifications on its own behalf and on behalf of the members of PERF simultaneously with the Attorney General and with the Federal Trade Commission disclosing a change in the membership of PERF. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the notifications stated that the membership in PERF of Champlin Petroleum Company and Tenneco Inc. has terminated.

Accordingly, at present the members of PERF are those companies listed below:

Amerada Hess Corporation, 1 Hess Plaza, Woodbridge, New Jersey 07095
Amoco Oil Company, Post Office Box 400, Mail Station H-9, Naperville, Illinois 60566
Ashland Oil Inc., Post Office Box 391, Ashland, Kentucky 41114
Atlantic Richfield Company, 515 South Flower Street, AP 33 Los Angeles, California 90071
Chevron Research Company, Post Office Box 1627, Richmond, California 94802-0627
Conoco Inc., Petroleum R & D, Post Office Box 1267, Ponca City, Oklahoma 74603
Exxon Research and Engineering Company, Route 22 East, Clinton Township, Annadale, New Jersey 08801
Kerr-McGee Corporation, Post Office Box 25861, Oklahoma City, Oklahoma 73125
Koch Refining Company, Post Office Box 64596, St. Paul, Minnesota 55164
Marathon Oil Company, 539 South Main Street, Findlay, Ohio 45840
Mobil Research and Development Corporation, Paulsboro Research Laboratory, Billingsport Road, Paulsboro, New Jersey 08066
Murphy Oil USA, Inc., 200 Peach Street, El Dorado, Arkansas 71730
Occidental Petroleum Corporation, 10889 Wilshire Blvd., Suite 1500, Los Angeles, California 90024
Pennzoil Company, Pennzoil Place, Post Office Box 2967, Houston, Texas 77252-2967
Phillips Petroleum Company, 466 Frank Phillips Building, Bartlesville, Oklahoma 74004
Shell Development Company, Post Office Box 1380, Houston, Texas 77251-1380
Standard Oil Company of Ohio, 4440 Warrensville Center Road, Cleveland, Ohio 44128
Sun Company, Inc., Sun Refining and Marketing Company, Post Office Box 1135, Marcus Hook, Pennsylvania 19061-0835
Texaco Refining & Marketing Inc., Post Arthur Research Laboratories, Post Office Box 1608, Port Arthur, Texas 77641
Union Oil Company of California, 376 South Valencia Avenue, Post Office Box 76, Brea, California 92621

On Feburary 10, 1986, PERF filed its original notification on its own behalf and on behalf of the members of PERF pursuant to section 3(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 14, 1986 (51 FR 8903). On May 6, 1986, May 27, 1986 and June 23, 1986, PERF filed additional written notifications. The Department published notices in the **Federal Register** in response to these additional notifications on June 9, 1986 (51 FR 20897), June 19, 1986 (51 FR 22365), and July 17, 1986 (51 FR 25957), respectively.

**Joseph H. Widmar,**

*Director of Operations Antitrust Division.*

[FR Doc. 89-4695 Filed 2-28-89; 8:45 am]

BILLING CODE 4410-01-M

### Notice Pursuant to the National Cooperative Research Act of 1984; the Importance of Lubricating Oil in Diesel Particulate Emissions Southwest Research Institute

Notice is hereby given that, on February 2, 1989, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Southwest Research Institute ("SwRI") filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing the addition of a party to its group project regarding "The Importance of Lubricating Oil in Diesel Particulate Emissions." The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the SwRI advised that Royal Lubricants Company, Inc. has become a party to the group research project.

No other changes have been made in either the membership or planned activity of the group research project.

On August 21, 1987, SwRI filed its original notification pursuant to section 6(a) of the Act. The Department of Justice (the "Department") published a notice in the **Federal Register** pursuant to section 6(b) of the Act on September 18, 1987, 52 FR 35335. On December 22, 1987, May 20, 1988, August 16, 1988, and October 3, 1988, SwRI filed additional written notifications. The Department published notices in the **Federal Register**

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in response to these additional notifications on January 19, 1988 (53 FR 1418), June 23, 1988 (53 FR 23704), September 15, 1988 (53 FR 35936), and October 27, 1988 (53 FR 43483) respectively.

**Joseph H. Widmar,**

*Director of Operations Antitrust Division.*

[FR Doc. 89-4698 Filed 2-28-89; 8:45 am]

BILLING CODE 4410-01-M

**Notice Pursuant to the National Cooperative Research Act of 1984; Cable Television Laboratories, Inc.**

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("The Act"), Cable Television Laboratories, Inc. ("CableLabs") has filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission on February 3, 1989, disclosing additions to its membership. The additional written notification was filed for the purpose of extending the protections of section 4 of the Act, which limit the recovery of antitrust plaintiffs to actual damages under specified circumstances.

On August 8, 1988, CableLabs filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on September 7, 1988 (53 FR 34593). On November 7, 1988, CableLabs filed a notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) on December 16, 1988 (53 FR 50590).

The identities of the new members of CableLabs are set forth below:

Cablevision Systems Corporation, One Media Crossways, Woodbury, NY 11797
Rogers Cable TV Limited, Commercial Union Tower, P.O. Box 249, Toronto, Canada M5K1J5
Vision Cable Communications, Inc., 270 Sylovan Avenue, Englewood Cliffs, NJ 07632
Cablevision Industries, Inc., P.O. Box 311, Liberty, NY 12754
The Cable Company, 1350 North 200 West, P.O. Box 486, Logan, Utah 84321
Metrovision, Inc., 211 Perimeter Center Parkway, Suite 930, Atlanta, GA 30346
New Channels Corporation, P.O. Box 4872, 112 Northern Concourse, Syracuse, NY 13221.

No other changes have been made in either the membership or planned activity of CableLabs. The membership remains open.

**Joseph H. Widmar,**

*Director of Operations Antitrust Division.*

[FR Doc. 89-4702 Filed 2-28-89; 8:45 am]

BILLING CODE 4410-01-M

**Notice Pursuant to the National Cooperative Research Act of 1984; UNIX International, Inc.**

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), UNIX International, Inc. has filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the venture and its general areas of planned activities, are given below.

The members of UNIX International, Inc. are:

Addamax Corporation
Alcatel-SMH
Altos Computer Systems
Amdahl Corporation
American Telephone & Telegraph Company
Arix Corporation
Computer Consoles
Control Data Corporation
Convergent Technologies
Data General Corporation
Floating Point Systems
Fuji Xerox
Fujitsu, Ltd.
Gould Corporation
HCR Corporation
Hitachi, Ltd.
Intel Corporation
Interactive Systems Corporation
International Computer Limited
Lachman Associates
Motorola
NCR Corporation
NEC Corporation
Nippon Telephone & Telegraph
Nokia, Inc.
OKI Electric
Olivetti & Company
Oracle Corporation
Prime Computer
Pyramid Technology
Relational Technology, Inc.
Ricoh Company, Ltd.
SAS Institute, Inc.,
Siemens
Stratus Computer, Inc.
Sun Microsystems, Inc.
System House Ltd.
T. L M Ericsson
Tolerant Systems, Inc.
Toshiba Corporation
Unisoft
UNISYS Corporation
Ventom Com., Inc.
88open

UNIX International plans to engage in research and development related to the improvement of the UNIX operating system, and to promote and encourage the availability of a variety of "open" and compatible UNIX based products and systems which meet the many and varied needs of the end users of those systems.

**Joseph H. Widmar,**

*Director of Operations Antitrust Division.*

[FR Doc. 89-4703 Filed 2-28-89; 8:45 am]

BILLING CODE 4410-01-M

## Drug Enforcement Administration

**Sajjan Gangappa Chikkannaiah, M.D.; Order to Show Cause/Immediate Suspension of Registration**

The following is an Order to Show Cause and Immediate Suspension of Registration proposing to revoke DEA Certificate of Registration AC7647019, previously issued to Sajjan Gangappa Chikkannaiah, M.D. On November 21, 1988, DEA Investigators went to Dr. Chikkannaiah's office and then to his residence to serve the Order. He was not at either location. Dr. Chikkannaiah's family and office staff were unable to provide any information as to his whereabouts. DEA Investigators returned to Dr. Chikkannaiah's residence on January 9, 1989. His wife was unable to provide any information. Since Dr. Chikkannaiah cannot be located, notice of DEA's proposed action is being given through publication in the **Federal Register.**

Date: February 23, 1989.

**John C. Lawn,**

*Administrator.*

February 23, 1989.

In the Matter of Sajjan Gangappa Chikkannaiah, M.D., 300 Francis Street, Goodlettsville, Tennessee 37072.

**Order to Show Cause; Immediate Suspension of Registration**

Pursuant to sections 303 and 304 of the Controlled Substances Act, Title 21, United States Code, Sections 823 and 824,

Notice is hereby given to afford you an opportunity to Show Cause before the Drug Enforcement Administration, at a place and time to be determined as to why the Drug Enforcement Administration should not revoke your DEA Certificate of Registration, AC7647019, and deny any pending applications for renewal of such registration as a practitioner under 21 U.S.C. 823(f), for reason that:

1. On November 12, 1988, the Tennessee Board of Medical Examiners summarily suspended your license to practice medicine after reviewing numerous documents, the results of two separate drug audits, reports from various hospitals, the findings of investigators and the testimony of witnesses, including an expert consultant in pharmacology. Consequently, you are not currently authorized to handle controlled substances in the State of Tennessee.

2. Your continued registration is inconsistent with the public interest, as that term is used in 21 U.S.C. 823(f) and 824(a)(4), as evidenced by, but not limited to, the following:

a. You prescribed controlled substances to individuals for no legitimate medical purpose and outside the scope of professional practice.

b. You prescribed inappropriate and/or dangerous combinations of controlled substances to individuals. Further, you prescribed controlled substances to individuals even though you knew, or should have known, that these individuals had drug or alcohol abuse problems.

c. Although you were previously charged by the State of Tennessee with overprescribing, your abusive and indiscriminate prescribing practices not only continued but worsened.

d. As a result of your prescribing practices, numerous pharmacies in the Nashville area have refused to fill your prescriptions and all of the Nashville-area hospitals at which you previously had privileges have suspended or revoked your hospital privileges.

In view of the foregoing, and pursuant to 21 U.S.C. 824(d), it is my preliminary finding that your repeated and dangerous prescribing of controlled substances will not be abated by the pendency of this action. Accordingly, it is my preliminary conclusion that your continued registration during the pendency of these proceedings would constitute an imminent danger to the public health and safety. Therefore, pursuant to the provisions of 21 U.S.C. 824(d), and the authority delegated to me under 28 CFR 0.100, DEA Certificate of Registration AC7647019 is hereby suspended, effective immediately, such suspension to remain in effect until a final determination is reached in these proceedings.

Pursuant to 21 U.S.C. 824(f) and 21 CFR 1301.46, the Special Agents and Diversion Investigators of the Drug Enforcement Administration who serve this Order to Show Cause are authorized to place under seal and to remove for safekeeping all controlled substances which you possess pursuant to the registration which I have herein suspended. The said Agents and Investigators are also directed to take into their possession the suspended Certificate of Registration and any unused DEA order forms issued thereunder.

The following procedures are available to you in this matter:

1. Within thirty days after the date on which you receive this Order to Show Cause, you may file with the Administrator of the Drug Enforcement Administration a written request for a hearing in the form set forth in 21 CFR 1316.47. You may request that the Administrator fix a date for such hearing as early as reasonably possible and the Administrator will grant such a request as set forth in 21 CFR 1301.46(c). (See 21 CFR 1301.54(a) and 1301.54(b)).

2. Within thirty days after the date on which you receive this Order to Show Cause, you may file with the Administrator a written waiver of hearing together with a written statement of your position on the matters of fact and law involved herein. (See 21 CFR 1301.54(c)).

3. Should you decline to file a request for a hearing, or should you so file and fail to appear at the hearing, you shall be deemed to have waived your opportunity for a hearing. The Administrator may cancel the hearing, if scheduled, and issue his final order based on the record as it appears, pursuant to 21 CFR 1301.57. (See 21 CFR 1301.54(d) and 1301.54(e)).

Correspondence concerning this matter should be directed to the attention of the Hearing Clerk, Office of the Administrative Law Judge, Drug Enforcement Administration, 1405 I Street, N.W., Washington, D.C. 20537.

**John C. Lawn,**

*Administrator.*

[FR Doc. 89-4690 Filed 2-28-89; 8:45 am]

BILLING CODE 4410-09-M

## LIBRARY OF CONGRESS

### Copyright Office

**Implementation of the Satellite Home Viewer Act of 1988; Statements of Account Public Meeting**

**AGENCY:** Copyright Office, Library of Congress.

**ACTION:** Notice of public meeting.

**SUMMARY:** This notice is issued to inform the public that the Copyright Office of the Library of Congress is preparing a new statement of account form which will be filed semiannually by satellite carriers who make secondary transmissions of "superstation" and network signals to satellite "dish" owners for private home viewing pursuant to section 119 of the Copyright Act, as amended by the Satellite Home Viewer Act of 1988, Pub. L. 100-667. This notice invites participation in a public meeting intended to elicit comments, views, and information which will assist the Office in this review of statement of account procedures. This is to be an informal meeting for exchange of opinions and information among interested parties. Written comments are welcome, but are not required.

**DATE:** The meeting will be held on March 14, 1989 in Washington, DC. Participants need not notify the Office of their plans to attend.

**ADDRESSES:** Meeting location: The meeting will be held on march 14, 1989 in the conference room of the Copyright Office, LM-407 (Green Quadrant) of the James Madison Memorial Building, Library of Congress, First and Independence Ave, SE., Washington, DC, begining at 10:00 a.m.

**FOR FURTHER INFORMATION CONTACT:** Dorothy Schrader, General Counsel, Copyright Office, Library of Congress, Washington, DC 20559, (202) 707-8380.

**SUPPLEMENTARY INFORMATION:** The Satellite Home Viewer Act of 1988, Pub. L. 100-667, 102 Stat. 3949 (November 16, 1988) added a new section 119 to the Copyright Act of 1976, effective January 1, 1989. For a six-year period, the law establishes a statutory license for certain secondary transmissions made by satellite carriers to satellite "dish" owners for private home viewing. The license is subject to various conditions, including the requirements that satellite carriers making secondary transmissions of "superstations" and network signals to "dish" owners file statements of account semi-annually and pay statutory royalty fees in accordance with section 119. The statutory royalty fee will sunset in four years, and will be replaced by privately negotiated licenses or an arbitrated fee established on or before December 31, 1992. The entire Act itself terminates on December 31, 1994.

In accordance with the new section 119, the Copyright Office will maintain three types of public files, including: (1) The Network Name and Address File, (2) the Satellite Carrier Voluntary Agreements File, and (3) the Satellite Carrier Statements of Account File. The

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new statement of account form has been created and is available upon request to those who wish to attend the public meeting. The Copyright Office solicits comments from interested participants as the meeting on the clarity of the form or lack thereof, and suggestions for changes and improvements in the form.

Accordingly, the Copyright Office will hold a public meeting on March 14, 1989, for the purpose of eliciting comment on the statement of account form. Advance copies of the draft statement of account form may be obtained by calling the Office of Copyright General Counsel, (202) 707–8380.

Dated: February 25, 1989.

Dorothy Schrader,

*Associate Register of Copyrights for Legal Affairs.*

[FR Doc. 89-4780 Filed 2-28-89; 8:45 am]

BILLING CODE 1410-08-M

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (89-13)]

### Aerospace Safety Advisory Panel; Meeting.

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the Aerospace Safety Advisory Panel.

**DATE AND TIME:** March 20, 1989, 2 p.m. to 3:30 p.m.

**ADDRESS:** National Aeronautics and Space Administration, 400 Maryland Avenue, SW, Room 7002, Washington, DC 20546.

**FOR FURTHER INFORMATION CONTACT:** Mr. Gilbert L. Roth, Code Q–1, National Aeronautics and Space Administration, Washington, DC 20546 (202/453–8071).

**SUPPLEMENTARY INFORMATION:** The Aerospace Safety Advisory Panel will present its annual report to the NASA Administrator and Deputy Administrator. This is pursuant to carrying out its statutory duties for which the Panel reviews, identifies, evaluates, and advises on those program activities, systems, procedures, and management activities that can contribute to program risk. Priority is given to those programs that involve the safety of manned flight. The major subjects covered will be the National Space Transportation System, Space Station, and Aeronautical Operations. The Aerospace Safety Advisory Panel is chaired by Joseph F. Sutter and composed of 8 members and 5 consultants. The meeting will be open to the public up to the capacity of the room (approximately 50 persons including members of the Panel).

*Type of Meeting:* Open.

*Agenda:* Monday, March 20, 1989.

2 p.m.—Presentation of findings and recommendations of the Aerospace Safety Advisory Panel.

3:30 p.m.—Adjourn.

February 23, 1989.

Ann Bradley,

*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

[FR Doc. 89-4569 Filed 2-28-89; 8:45 am]

BILLING CODE 7510-01-M

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### Agency Information Collection Under OMB Review

**AGENCY:** National Endowment for the Humanities.

**ACTION:** Notice.

**SUMMARY:** The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

**DATE:** Comments on this information collection must be submitted on or before March 31, 1989.

**ADDRESSES:** Send comments to Ms. Ingrid Foreman, Management Assistant, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (202–786–0233) and Mr. Jim Houser, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Room 3208, Washington, DC 20503 (202–395–7316).

**FOR FURTHER INFORMATION CONTACT:** Ms. Ingrid Foreman, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (202) 786–0233 from whom copies of forms and supporting documents are available.

**SUPPLEMENTARY INFORMATION:** All of the entries are grouped into new forms, revisions, or extensions. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what form will be used for; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to fill out the form. None of these entries are subject to 44 U.S.C. 3504(h).

**Category:** Revisions

*Title:* Application Instructions and Forms for the Tools Category.

*Form Number:* Not applicable.

*Frequency of Collection:* Annual.

*Respondents:* Humanities researchers and institutions.

*Use:* Application for funding.

*Estimated Number of Respondents:* 139 per year.

*Frequency of Response:* Once.

*Estimated Hours for Respondents to Provide Information:* 52 per respondent.

*Estimated Total Annual Reporting and Recording Burden:* 16,528.

Susan Metts,

*Assistant Chairman for Administration.*

[FR Doc. 89-4741 Filed 2-28-89; 8:45 am]

BILLING CODE 7536-01-M

## NUCLEAR REGULATORY COMMISSION

[Docket No. 70-1359; License No. SNM-1405]

### Finding of No Significant Impact; Renewal of Special Nuclear Material License for IRT Corp., San Diego, CA

February 22, 1989.

The U.S. Nuclear Regulatory Commission (the Commission) is considering the renewal of Special Nuclear Material License No. SNM–1405 for the continued operation of the IRT Corporation (IRT) at San Diego, California.

**Environmental Assessment**

*Identification of the Proposed Action:* The proposed action is the renewal of the license which allows IRT to continue to possess and store licensed material.

*The Need for the Proposed Action:* IRT must have a license in order to possess material. If license renewal is denied, IRT would have to transfer or dispose of all licensed material.

*Environmental Impacts of the Proposed Action:* The special nuclear material (SNM) at IRT is stored at the Arjons Facility in a vault-type room. The sources are in a non-dispersable form so there will be no effluents. Only a small amount of radioactive waste (e.g., smear papers) is expected to be generated during storage. Any waste that is produced will be properly stored onsite until it is shipped for disposal.

The principal exposure pathway to an individual is via external radiation. The material is in a locked vault and only two people have authorized access; other personnel do not have access to the sources. Because of the limited activities and IRT's radiation protection procedures, staff concluded that storage activities can be carried out without any significant occupational dose to workers or radiological impact to the environment.

The staff has evaluated the nuclear criticality safety limits and controls for the storage area and found them to be adquate to assure safety for all conditions of water moderation and/or reflection. The design of the storage location, combined with facility procedures, will ensure acceptable protection of the general public and plant personnel under either normal or abnormal conditions.

*Conclusion:* Based upon the information presented above, the environmental impacts associated with license renewal are expected to be insignificant. Essentially no effluents, liquid or airborne, will be released, and acceptable controls will be implemented to prevent a radiological accident. Therefore, staff concludes that there will be no significant impacts associated with the proposed action.

*Agencies and Persons Consulted:* Staff utilized the application dated October 14, 1988, in performing this assessment. No other agencies were contacted.

*Alternatives to the Proposed Action:* Alternatives to the proposed action include complete denial of IRT's renewal application. This action would result in IRT transferring all licensed material to another facility. This alternative would be considered only if issues of public health and safety could not be resolved.

*Finding of No Significant Impact:* The Commission has prepared an Environmental Assessment related to the renewal of Special Nuclear Material License No. SNM–1405. On the basis of this assessment, the Commission has concluded that environmental impacts created by the proposed licensing action would not be significant and do not warrant the preparation of an Environment Impact Statement. Accordingly, it has been determined that a Finding of No Significant Impact is appropriate.

The Environmental Assessment and the October 14, 1988, application related to this proposed action are available for public inspection and copying at the Commission's Public Document Room, Gelman Building, 2120 L Street, NW., Washington, DC. Copies of the Environmental Assessment may be obtained by calling (301) 492–3358 or by writing to the Fuel Cycle Safety Branch, Division of Industrial and Medical Nuclear Safety, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Dated at Rockville, Maryland, this 22nd day of February, 1989.

For the Nuclear Regulatory Commission.

Leland C. Rouse,

*Chief, Fuel Cycle Safety Branch, Division of Industrial and Medical Nuclear Safety, NMSS.*

[FR Doc. 89-4730 Filed 2-28-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-443-OL, 50-444-OL; ASLBP No. 82-471-02-OL (Offsite Emergency Planning)]

### Public Service Co. of New Hampshire, et al., Seabrook Station, Units 1 and 2; Hearing

Before Administrative Judges: Iran W. Smith, Chairman Dr. Richard F. Cole, Dr. Kenneth A. McCollom

February 23, 1989.

Notice is hereby given that the evidentiary hearing in this proceeding will resume at 9:00 a.m., March 21, 1989 at Auditorium (main floor), Thomas P. O'Neill Jr. Federal Building, 10 Causeway Street, Boston, Massachusetts.

The Atomic Safety and Licensing Board will receive evidence concerning the offsite radiological emergency plans for the Seabrook Station, a nuclear power facility located in Seabrook, New Hampshire. In particular, the hearing will address the adequacy of the Seabrook plan for the Massachusetts communities lying within the ten-mile emergency planning zone for the Seabrook Station, and the graded exercise of the Seabrook radiological emergency plans conducted by the Federal Emergecy Management Agency in June 1988.

For the Atomic Safety and Licensing Board.

Ivan W. Smith,

*Chairman, Administrative Law Judge.*

Bethesda, Maryland.

February 23, 1989.

[FR Doc. 89-4734 Filed 2-28-89; 8:45 am]

BILLING CODE 7590-01-M



## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-26560; File No. SR-NASD-89-6]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Shareholder Approval

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on February 15, 1989, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD.

The NASD has designated this proposal an interpretation with respect to the enforcement of an existing rule of the NASD which renders the interpretation effective upon the Commission's receipt of this filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Satatement of the Terms of Substance of the Proposed Rule Change**

The proposed rule change defers until March 19, 1989 effectiveness of a rule requiring shareholder approval of the issuance of securities in connection with certain transactions by NASDAQ National Market System issuers.[1]

**II. Self-Regulatory Organization's Statement of the Purpose of, And Statuory Basis for, the Proposed Rule Change**

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The purpose of the delay of effectiveness of the shareholder approval requirements contained in new

[1] *See* Securities Exchange Act Release No. 26433 (January 9, 1989); 54 FR 1403 (January 13, 1989).

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paragraph (j) of Part III, section 5 of Schedule D to the NASD By-Laws is to allow NASDAQ/NMS issuers who will be affected by the rule, sufficient notice of the requirement to permit compliance with the rule. During the time when the rule was pending Commission approval and subsequent to publication of the approval order in the Federal Register, the NASD received a number of inquiries from issuers and their representatives which raised concerns relating to the degree of issuer awareness of the pendency of the rule change. The NASD has therefore determined that it is appropriate to provide issuers with a grace period before the rule becomes effective. Transactions in progress as of the effective date will be reviewed by the NASD on a case-by-case basis.

Statutory basis for the proposed rule change is found in section 15A(b)(6) of the Securities Exchange Act of 1934 which provides that the rules of a registered securities association be designed to facilitate transactions in securities and to remove impediments to imperfect the mechanism of a free and open market at a national market system for securities transactions. The NASD believes that a proposed rule change will eliminate potential problems in trading of NASDAQ National Market System securities which could result from imposition of the requirements of the rule without adequate notice to issuers.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Association does not anticipate that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purpose of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

Comments were neither solicited nor received with respect to the proposed rule changes contained in this filing.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Act and subparagraph (e) of Rule 19b-4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by March 22, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: February 21, 1989.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 89-4709 Filed 2-28-89; 8:45 am]

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**[Rel. No. IC-16831; (812-6908)]**

**EBI Series Trust, et al.; Application**

February 22, 1989.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

*Applicants:* The EBI Flex Fund and EBI International Fund of EBI Series Trust (the "Trust"), EBI Equity, Inc. ("EBI Equity"), EBI Income, Inc. ("EBI Income") and EBI Cash Management, Inc. ("EBI Cash").

*Relevant 1940 Act Sections:* Exemption requested under section 6(c) from the provisions of sections 2(a)(32), 2(a)(35), 22(c) and 22(d) and Rule 22c-1 thereunder; approval requested under section 11(a).

*Summary of Application:* Applicants seek an order amending an existing order (Investment Company Act Release No. 16283, February 23, 1988) ("Existing Order") which permits the assessment and waiver of a contingent deferred sales load ("CDSL"), and approves certain exchange privileges. The amended order would increase the time period during which the CDSL may be imposed from 30 months to 60 months and change the formula of the CDSL to reflect the additional 30 months.

**DATES:** The application was filed on August 30, 1988, and amended on December 19, 1988, and February 3 and 17, 1989.

*Hearing or Notification of Hearing:* If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on March 15, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549; Applicants, Suite 500, 1315 Peachtree Street NE., Atlanta, Georgia 30309.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Heaney, Financial Analyst (202) 272-3420, or Brion R. Thompson, Branch Chief (202) 272-3016 (Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application; the complete application is available for a fee from the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

**Applicants' Representations**

Each of the Applicants is registered under the 1940 Act as an open-end, diversified management investment company. INVESCO Services, Inc. ("Distributor") serves as principal underwriter for each of the Applicants. The Existing Order, which amended two earlier orders (Investment Company Act Release No. 14916, January 27, 1988 and Investment Company Act Release No. 13788, February 24, 1984) was issued on behalf of Applicants and any additional series or classes of shares Applicants may offer in the future on substantially the same basis as Applicants now (other than EBI Cash) offer their shares.

2. Applicants now request that the Existing Order be amended to increase the time period during which an investor is required to pay a CDSL from 30 months to 60 months and change the formula used to calculate the amount of the CDSL to reflect the additional 30 months. Applicants will continue to apply the terms of the CDSL permitted in the Existing Order for those investors who have, or acquired, shares of Applicants prior to the time that the terms of the proposed modifications of the CDSL are set forth in the current prospectuses of the Applicants and mailed to all then current shareholders of the Applicants. In addition, the proposed modifications of the CDSL would not effect the existing exchange privileges of such shareholders. Existing shareholders of Applicants were not notified by way of Applicants' prospectuses that their exchange privileges were subject to change. To ensure that such shareholders would not be harmed by the proposed modification of the CDSL, Applicants agree as a condition to this application, that existing shareholders who were not on notice of the fact that their exchange privilege was subject to change may continue to exchange their shares under the original terms of such exchange privilege.

3. Each of the Applicants (except EBI Cash) distributes its shares pursuant to separate plans of distribution adopted under Rule 12b-1 under the 1940 Act (collectively, "Rule 12b-1 Plans"). EBI Cash does not presently have a Rule 12b-1 Plan and, thus, shares acquired in EBI Cash are not in and of themselves subject to a CDSL.

4. According to the application, no CDSL is charged on exchanges of shares between the Applicants. However, if shares of any of the Applicants are acquired as a result of an exchange of shares from another of the Applicants and the shares tendered ("Exchanged Shares") are subject to a CDSL such charge will carry over to the shares being acquired ("Acquired Shares"). Any CDSL that is carried over to the Acquired Shares is calculated as if the holder of the Acquired Shares has held those shares from the date in which he or she became the holder of the Exchanged Shares. Acquired Shares held in EBI Cash, however, which are subject to a CDSL will not be credited with the time such shares are held in EBI Cash. Applicants represent that in order to effectuate the proposed modification of the CDSL by any of the Applicants it is necessary for EBI Cash to join in this application for an amendment of the Existing Order so that all of the Applicants may be able to collect such a CDSL on behalf of each other.

5. Applicants will institute internal monitoring procedures to insure that exchanges are made at the request of investors and not for any broker's personal gain. Applicants will actively monitor customer complaints and will continue to be alert to possible abuses that might occur regarding the exchange privileges. The Trustees of the Trust and the Board of Directors of EBI Equity and EBI Income, in their periodic review of the Rule 12b-1 Plans, will consider, among other things, the effect of the CDSL and waivers thereof. The Existing Order covers not only the Applicants, but also any additional series or classes of shares the Applicants may offer in the future on substantially the same basis as the Applicants now (other than EBI Cash) offer their shares. Any subsequently created series or classes of shares, the shares of which are issued and sold with a CDSL, on substantially the same basis as the CDSL applicable to the Applicants will utilize distribution plans under Rule 12b-1 comparable to the Rule 12b-1 Plans described in the application. Such distribution plans will comply with the provisions of Rule 12b-1 as they are now in affect and as they may be revised in the future.

6. Applicants will limit any future offers of exchange of any similar series or classes of shares of Applicants, as the case may be, to the terms and conditions described in the application. Applicants will notify their shareholders by means of Applicants' prospectuses of the fact that Applicants reserve the right to modify or terminate the exchange privilege. Applicants will consider, in connection with sales literature and advertising that refer to the Applicants' exchange privilege, the desirability of disclosing that they reserve the right to modify or terminate the exchange privilege. Applicants will notify shareholders in writing at least 60 days prior to any modifications or termination of Applicants' exchange privilege; provided, however, that the temporary cessation of the sale of Applicants' shares under extraordinary circumstances such as when the Applicants are unable to effectively invest amounts in accordance with applicable investment objectives, policies and restrictions, or the suspension of the redemption of Applicants' shares pursuant to section 22(e) of the 1940 Act and the Rules and Regulations thereunder shall not be considered a modification or termination of the Applicants' exchange privilege. Applicants will obtain an amended order from the SEC prior to any modification (*i.e.*, manner, frequency or basis) of the Applicants' exchange privilege in a manner not described in the application; provided, however, that no amended order would be requested by Applicants if they decide to terminate the Applicants' exchange privilege.



**Applicants' Legal Analysis**

1. Applicants assert that the proposed amendment of the CDSL is fair and in the best interests of their shareholders. Applicants have determined that expenditures incurred on their behalf as a result of investors' purchases would be more adequately and fairly recovered among all shareholders when shares are held continuously for at least 60 months. Accordingly, extending the time during which shareholders cannot redeem shares without incurring a CDSL will result in distribution expenses being more adequately allocated among shareholders on a more equitable basis. Under the proposed amendment to the Existing Order, the burden of reimbursing Applicants for distribution expenses would be placed on a more direct basis on those shareholders with respect to which Applicants (other than EBI Cash) incurred distribution expenses.

2. Applicants assert further that granting the amendment to the Existing Order requested is appropriate and in the public interest, consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

**Applicants' Conditions**

If the requested order is granted, Applicants agree to the following conditions:

1. Applicants will comply with provisions of proposed Rule 6c-10 under the 1940 Act as currently stated and as it is adopted.

2. Applicants will comply with the provisions of Rule 12b-1 under the 1940 Act as they are now in effect and as it may be revised in the future.

3. Applicants will comply with the provisions of Rule 22d-1 under the 1940 Act.

4. Applicants will comply with the provisions of revised proposed Rule 11a-3 under the 1940 Act as it is currently stated and as finally adopted.

5. Applicants agree that the exemptive relief requested does not cover any person, or any affiliated person of such person (or any affiliated person of such affiliated person) who holds Applicants out to the public, or who, directly or indirectly, causes Applicants to be held out to the public as being "No Load" or uses, or who, directly or indirectly, causes the use of terminology that, given the context and presentation, is likely to convey to investors the impression that

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no charges for sales or promotional expenses are imposed on shares issued by Applicants.

8. Applicants agree to permit existing shareholders who were not on notice of the fact that the exchange privilege was subject to change to continue to exchange their shares under the original terms of the exchange privilege.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 89-4710 Filed 2-28-89; 8:45 am]

BILLING CODE 8010-01-M

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**[Release No. IC-16833; 811-2161]**

## First Federalist Fund, Inc.; Application

February 23, 1989.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of Application for an Order under the Investment Company Act of 1940 (the "1940 Act").

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*Applicant:* First Federalist Fund, Inc.

*Relevant 1940 Act Sections:* Section 8(f) and Rule 8f-1 thereunder.

*Summary of Application:* Applicant seeks an order declaring that it has ceased to be an investment company.

*Filing Date:* The application was filed on November 8, 1988 and amended on February 2, 1989 and February 15, 1989.

*Hearing or Notification of Hearing:* If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on March 14, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, 2985 Brandywine Street NW., Washington, DC 20008.

**FOR FURTHER INFORMATION CONTACT:** Barbara Chretien-Dar, Staff Attorney, at (202) 272-3022 or Stephanie Monaco, Branch Chief, at (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** Following is a summary of the Application; the complete Application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier at (800) 231-3282 (in Maryland (301) 258-4300).

**Applicant's Representations**

1. Applicant, a Delaware corporation and unit investment trust, filed a Notification of Registration on Form N-8A on April 4, 1971 and a Registration Statement on Form N-8B-1 on February 29, 1972 under the 1940 Act.

2. Applicant has been dissolved under Delaware state law. Applicant has never made a public offering of its securities and does not propose to make a public offering or to engage in business of any kind.

3. Applicant has no shareholders, debts or liabilities as of the time of filing the application.

4. Within the last 18 months, Applicant has not transferred any of its assets to a separate trust, the beneficiaries of which are securityholders of Applicant.

5. Applicant is not a party to any litigation or administrative proceeding.

6. Applicant is neither engaged in nor proposes to engage in any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 89-4711 Filed 2-28-89; 8:45 am]

BILLING CODE 8010-01-M

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**[Rel. No. 34-26566; File No. SR-PHLX-89-02]**

## Self-Regulatory Organizations; Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating To the Responsibility to Make Ten-Up Markets

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 2, 1989, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The PHLX, pursuant to Rule 19b-4 of the Act, proposes to amend PHLX Rule 1033 and amend and restate PHLX Options Floor Procedure Advice A-11. The text of the current Advice A-11 is proposed to be withdrawn and replaced with the text that appears below. The text of PHLX Rule 1033 is proposed to be amended as follows (brackets indicate deletions; italics indicates additions):

*Rule 1033(a).* All bids or offers made on the Floor for option contracts shall be deemed to be for one option contract unless a specific number of option contracts is expressed in the bid or offer. A bid or offer for more than one option contract shall be deemed to be for the amount thereof or a smaller number of option contracts. [The Exchange, in its discretion, may require that when a specialist and/or Registered Options Trader ("ROT") is quoting the best bid or offer in certain options series, the specialist or ROT is responsible for ensuring that public orders in such series are filled to a minimum depth of ten contracts. The Exchange, in its discretion, may further require that a specialist or ROT is responsible for executing public orders in certain options series at prices reflecting the maximum quotation spreads for those series even where the specialist or ROT is not quoting the best bid or offer in those series.] *The Exchange, in its discretion, may require that specialists and ROTs be responsible for ensuring that public orders are filled to a minimum depth of ten (10) contracts at the best quoted bid or offer.*

*Rule 1033 (b) through (d) No Change.*

PHLX Options Floor Procedure Advice A-11: Responsibility to Make Ten-Up Markets:

Non-contingent public customer market or marketable limit orders shall be filled at the best market price to a minimum of ten contracts by floor traders (*i.e.*, specialists and ROTs) in the crowd, as follows:

(i) If only one floor trader is quoting the availed upon best bid or offer, that floor trader is responsible for providing a fill at the minimum ten contracts;

(ii) If more than one floor trader is quoting the availed upon best bid or offer, and their combined quote size is less than ten contracts, participation for the additional contracts needed to meet the minimum ten contract requirement shall be decided upon by agreement of those floor traders or otherwise divided proportionately amongst them;



(iii) If the availed upon best bid or offer is made by someone other than a floor trader and is not for at least ten contracts, participation for the additional contracts needed to meet the minimum ten contract requirement shall be by the floor trader at the next best bid or offer (whichever the case). If more than one floor trader is quoting the next best bid or offer, participation for the additional contracts shall be decided upon agreement by those floor traders or otherwise divided proportionately amongst them.

Under exceptional circumstances or for good cause shown, exemptions from the ten-up requirement may be granted for a trade day in any option or group of options by two floor officials. Any such exemption shall be in writing and shall set forth the basis upon which the exemption is granted.

*Advice A-11 Fine Schedule*

1st Occurrence: Warning
2nd Occurrence: $50.00
3rd Occurrence: $100.00
4th Occurrence and Thereafter: Sanction is discretionary with the Business Conduct Committee

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The responsibility to make ten-up markets means that a specialist or ROT must ensure that public customer orders are filled to a minimum of ten contracts. This requirement is intended to facilitate a more liquid market and to benefit public customers by assuring a minimum size of orders for which they can receive executions. Previously, the Commission approved SR-PHLX-87-09 which first imposed a requirement on specialists and ROTs to make ten-up markets under certain circumstances.[1] Under the current Rules, the responsibility to make ten-up markets is limited in that it applies only (1) to the nearest expiring options that are at, just in and just out-of-the-money, and (2) when the specialist or ROT is quoting the best bid or offer for his or her own account. These limitations have resulted in confusion among PHLX members about when and to which option series Advice A-11 applies. Also, the Advise is incomplete in that it does not assure a ten-up commitment if the best bid or offer is made by a public customer.

While the ten-up requirement has certainly benefitted public customers and fostered enhanced competition in PHLX's option markets due to the aforementioned limitations of the Rule, such benefits have not been fully realized. Accordingly, the PHLX proposes to expand the reach of PHLX Rule 1033 and Advice A-11 to every option series traded at the PHLX, regardless of expiration month or strike price. Also, it is proposed that if the best bid or offer is by a floor trader(s) (*i.e.*, specialist or ROT), then he (they) is (are) responsible for assuring a minimum ten contract execution; and, if the best bid or offer is made by one other than a floor trader for less than ten contracts, then the floor trader(s) at the next best bid or offer must ensure the balance of the ten contract minimum at the best bid or offer. In this regard, if the balance must be filled by several floor traders, it shall be done so as agreed upon by them or otherwise be divided propertionately. In all other respects, including the fine schedule for assessed violations, Advice A-11 is substantively unchanged.

The effect of this proposed rule change would be a rule that is easier to enforce and understand, and that fulfills the purposes delineated above. Particularly, the markets in the out-of-the-money and further out term option series would become significantly more liquid. For these reasons, this rule change has been proposed.

The PHLX believes that the proposed rule change is consistent with section 6(b)(5) of the Act in that it will promote just and equitable principles of trade, protect investors, and promote the public interest by assuring a minimum ten contract execution of public customer orders. Additionally, the PHLX believes that the proposal is consistent with section 11A(a)(1)(C)(ii) and (iv) of the Act in that it will promote "fair competition among brokers and dealers" and "the practicability of brokers executing investors' orders in the best market."

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Station, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by March 22, 1989.

[1] *See* Securities Exchange Act Release No. 24580 (June 11, 1987), 52 FR 23120 (June 17, 1987).

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For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[1]

Jonathan G. Katz,
*Secretary.*

Dated: February 22, 1989.

Shirley E. Hollis,
*Assistant Secretary.*

[FR Doc. 89-4729 Filed 2-28-89; 8:45 am]
BILLING CODE 8010-01-M

[1] 17 CFR 200.30-3(a)(12) (1988).

## SMALL BUSINESS ADMINISTRATION

### Region IX Advisory Council; Public Meeting

The U.S. Small Business Administration, Region IX Advisory Council, located in the geographical area of Honolulu will hold a public meeting at 9:30 a.m. on Thursday, February 23, 1989, at the Prince Kuhio Federal Building, 300 Ala Moana Boulevard, Conference Room 4113A, Honolulu, Hawaii 96850, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Charles T.C. Lum, District Director, U.S. Small Business Administration, 300 Ala Moana Boulevard, Room 2213, Honolulu, Hawaii 96850, 808/541-2990.

February 15, 1989.

Jeannette M. Faull,
*Acting Director, Office of Advisory Councils.*

[FR Doc. 89-4728 Filed 2-28-89; 8:45 am]
BILLING CODE 8025-01-M

### Region VI; Regional Executive Board, Public Meeting

The U.S. Small Business Administration, Region VI Regional Executive Board, will hold a public meeting beginning at 9:00 a.m. on Friday, March 17, 1989, at the World Trade Center, #2 Canal Street, New Orleans, Louisiana 70130, 504/529-1701, to discuss such matters as may be presented by members, staff of the Small Business Administraiton and others present.

For further information, write or call Joseph Pena, Regional Administrator, U.S. Small Business Administration, 8625 King George Drive, Bldg. C, Dallas, Texas 75235-3391, 214/767-7611.

February 16, 1989.

Jeannette M. Faull,
*Acting Director, Office of Advisory Councils.*

[FR Doc. 89-4729 Filed 2-28-89; 8:45 am]
BILLING CODE 8025-01-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

[Summary Notice No. PE-89-7]

### Petition for Exemption; Summary and Disposition

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of petitions for exemption received and of dispositions of prior petitions.

**SUMMARY:** Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**DATE:** Comments on petitions received must identify the petition docket number involved and must be received on or before: March 21, 1989.

**ADDRESS:** Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue SW., Washington, DC 20591.

**FOR FURTHER INFORMATION:** The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on January 21, 1989.

Denise Donohue Hall,
*Manager, Program Management Staff, Office of the Chief Counsel.*

### Petitions for Exemption

*Docket No.:* 25739.
*Petitioner:* Ms. Dorothy Blevins.
*Regulations Affected:* 14 CFR 141.35(e).
*Description of Relief Sought:* To allow petitioner to be designated as a chief instructor for a ground school course without having served for 1 year as an instructor in a certificated pilot school.

*Docket No.:* 25762.
*Petitioner:* General Electric Company.
*Sections of the FAR Affected:* 14 CFR 21.325.
*Description of Relief Sought:* To allow petitioner to use an alternate method to certify the airworthiness of Class III export products.

*Docket No.:* 24427.
*Petitioner:* United States Ultralight Foundation.
*Regulations Affected:* 14 CFR 103.1 (a), (b), and (e)(1).
*Description of Relief Sought/ Disposition:* To extend Exemption No. 4274, as amended, that allows individuals authorized by the petitioner to operate a two-place powered ultralight vehicle of not more than 350 pounds empty weight for the purpose of flight instruction. Exemption No. 4274, as amended, expires on February 28, 1989.
*GRANT, February 10, 1989, Exemption No. 4274B.*

*Docket No.:* 24515.
*Petitioner:* United Airlines, Inc.
*Sections of the FAR Affected:* 14 CFR 121.434(c)(1)(iii).
*Description of Relief Sought/ Disposition:* To allow petitioner to substitute an FAA-designated pilot examiner to complete the observation of an initial operating experience (IOE) flight leg, including takeoff and landing. This substitution would occur *only* when the FAA is unable to schedule one of its own inspectors during IOE.
*DENIAL, February 10, 1989, Exemption No. 5017.*

*Docket No.:* 25643.
*Petitioner:* North American Airline Training Group.
*Sections of the FAR Affected:* Section 63.37(a) and Part 63, Appendix C, paragraphs (a)(3)(i) and (iv)(*a*) and (iv)(*b*).
*Description of Relief Sought/ Disposition:* To allow petitioner to utilize Boeing 727 training vehicle No. 3/023 /24 in its FAA-approved Flight Engineer Training Program.
*DENIAL, February 15, 1989, Exemption No. 5018.*

*Docket No.:* 25794.
*Petitioner:* Mr. Fumio Niwa.
*Sections of the FAR Affected:* 14 CFR 61.3(b), 91.27 (a) and (b), and 91.43(b).
*Description of Relief Sought/ Disposition:* To allow petitioner to enter U.S. airspace and land in the United States after attempting a transpacific solo balloon flight in a helium filled balloon carrying a pressurized gondola.
*GRANT, February 13, 1989, Exemption No. 5016.*

*Docket No.:* 25731.
*Petitioner:* The Experimental Aircraft Association and the Confederate Air Force.
*Sections of the FAR Affected:* 14 CFR Part 45.
*Description of Relief Sought/ Disposition:* To allow aircraft owned and operated by petitioners to operate with 2-inch markings located on the sides of the fuselage under the Horizontal stabilizer or on the sides of the vertical tail surfaces, instead of as is presently provided under §§ 45.25 and 45.29.
*GRANT, February 16, 1989, Exemption No. 5019.*

[FR Doc. 89-4669 Filed 2-28-89; 8:45 am]
BILLING CODE 4910-13-M



### Airway Science Grants; Solicitation for Proposals

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of solicitation for airway science grant proposals.

**SUMMARY:** The Federal Aviation Administration (FAA) is authorized by Pub. L. 100-457 to solicit competitive proposals for Airway Science (AWS) grants from accredited 4-year public or nonprofit private colleges and universities with recognized FAA AWS Curriculum programs. The FAA expects to award most, if not all, of an available $1,000,000 in the form of grants, to a small, select number of these institutions of higher learning. Awards typically will range from $75,000 to $200,000 maximum.

The grant awards are available for the purchase, lease with intent to purchase, or construction of academic buildings and associated facilities to be used in conjunction with an FAA recognized AWS curriculum. In no event shall the total Federal share of any AWS construction project exceed 50% of the cost of the project. In addition, funds may be used for nonexpendable instructional materials or instructional equipment to be used in the actual teaching of the AWS curriculum. No Federal grant funds are to be used for salaries, operating expenses, research and development, travel, consultant fees, indirect costs, office supplies, automobiles, aircraft, maintenance agreements, printing costs, promotional and marketing materials or equipment, general purpose parking lots, land, commercial airport facilities, taxiways, runways, or any project in support of a commercial activity.

**FOR FURTHER INFORMATION:** Virginia Hancock Krohn, Airway Science Grant Manager, Federal Aviation Administration, Office of Training and Higher Education, AHT-30, 400 7th Street SW., NW Plaza, Room PL-100, Washington, DC 20590, telephone: (202) 267-8003.

**DATE:** Closing Deadline: The original and five copies of the Proposal from an interested institution must be received by the FAA by either mail or hand delivery, no later than June 16, 1989 (4:30 p.m. EST).

*Proposals Submitted by Mail:* A proposal submitted by mail must be addressed to: Federal Aviation Administration, Virginia Hancock Krohn, Manager, AWS Grant Program, Office of Training and Higher Education, AHT-30, NW Plaza, Room PL-100, 400 7th Street SW., Washington, DC 20590.

Applicants are encouraged to use registered or, at least, first class mail. Any grant application received after the closing date of June 16, 1989, 4:30 p.m. EST will be treated as a late application and not considered for award of a grant. Each late applicant will be notified if its application was received late.

*Proposals Submitted By Hand Carried Messengers:* A proposal that is hand delivered must be taken to the Federal Aviation Administration at the address listed above. The office of the Manager, AWS Grant program, will accept hand delivered proposals between the hours of 8:30 a.m. and 4:30 p.m. (EST), daily, except Saturdays, Sundays, and Federal holidays. A proposal that is hand delivered will not be accepted after 4:30 p.m. on the closing date.

No supplemental materials received after the application deadline date will be considered unless such material is specifically solicited by the Manager, AWS Grant Program. Questions regarding grant management requirements should be referred to the program manager.

#### Background

The FAA is engaged in a comprehensive program to modernize the Nation's airway system to meet the challenge of aviation growth in the coming decades. The modernization program is reflected in the agency's National Airspace System plan which takes advantage of current technological advances to increase the capacity and efficiency of the Nation's airspace system while reducing relative costs to the Nation's taxpayers.

The FAA recognizes the increasing complexity of technical and managerial skills that will be needed to accommodate the technological advances in equipment, systems and configurations being planned and implemented in the aviation industry. The FAA decision to sponsor an AWS curriculum was a direct result of an FAA assessment of the human resources needed to realize the full benefits of the forthcoming airspace and airway system modernization.

Beginning in 1982, in collaboration with the University Aviation Association, the FAA developed and recommended a specific college-level AWS curriculum. The AWS curriculum was designed to satisfy university academic and accreditation requirements, be easily adaptable to existing aviation-related programs, and yet allow individual educational institutions the option of offering any number of the five areas of concentration according to their individual resources. (48 FR 32490, July 15, 1983).

The five areas of concentration are: (1) airway science management, (2) airway computer science, (3) aircraft systems management, and (4) airway electronics systems, and (5) aviation maintenance management. Graduates of educational institutions offering FAA recognized AWS programs are eligible for recruitment by the FAA in one of four agency career fields: Air traffic control, electronics technology, aviation safety inspection (general aviation operations and maintenance), and computer sciences.

The FAA has recognized 32 institutions with one or more airway science areas of concentration. Their curricula directly support FAA's human resource needs by producing graduates with the necessary knowledge and skills to pursue aviation-related technical careers in the public and private sectors.

#### References

Those parties interested in the FAA's previous AWS activities may refer to the following **Federal Register** Notices: 48 FR 116872, March 18, 1983, (FAA proposed AWS curriculum demonstration project plan); 48 FR 32490, July 15, 1983, (Office of Personnel Management approval of the FAA demonstration project final plan); 49 FR 22903, June 1, 1984; 50 FR 37812, September 16, 1985; and 52 FR 3195, February 2, 1987; (notices announcing the competitive criteria employed by the FAA in selecting the AWS grant recipients under the previous 3 solicitations).

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**The Airway Science Grant**

*Authority*

This solicitation represents a continuation of the FAA's AWS Grant Program. This program funds projects at selected institutions of higher learning which have evidenced a commitment to the agency's AWS curriculum program. The grants are authorized by Pub. L. 100-457. An amount of $1,000,000 is available for grant awards for the purchase, lease with intent to purchase, or construction of academic buildings and associated facilities to be used in conjunction with AWS curricula. In addition, funds may be used for nonexpendable instructional materials or instructional equipment to be used in the actual teaching of the AWS curriculum. Monies are not available for salaries, operating expenses, research and development, travel, consultant fees, indirect costs, office supplies, automobiles, aircraft, maintenance agreements, printing costs, promotional and marketing materials or equipment, general purpose parking lots, land, commercial airport facilities, taxiways, runways, or any project in support of commercial activities.

*Eligibility*

Eligible institutions must be accredited 4-year public and non-profit colleges or universities in the United States and its possessions. To be eligible an applicant institution must have an established FAA-recognized AWS curriculum in place and available to students. The curriculum must have been recognized by the Federal Aviation Administrator no later December 31, 1988.

**Proposal Format and Content**

Each AWS grant proposal is subject to the provisions of applicable FAA regulations and OMB Circulars A-21, A-73, A-88, and A-110. Proposals should contain the following information in the order listed.

*1. Cover Sheet*

Near the top of the Cover Sheet, type the title "Airway Science Grant Proposal". The legal name of the proposed grantee institution, its mailing address, and Employer Identification Number, as assigned by the Internal Revenue Service, should be centered on the Cover Sheet. The names, titles, and telephone numbers of the proposed Project Director and of an official authorized to sign for the proposed grantee institution should be typed on the lower left and right corners, respectively, of the Cover Sheet. The Cover Sheet of one Copy of the proposal must bear the original signature and date of each of the above individuals. The signature of the authorized individual signifies institutional endorsement of the proposal, cognizance of the eligibility and limitation requirements, and a commitment to provide the specific support for the proposed activities in the event the grant is made.

*2. Standard Form 424*

Applicants must submit Standard Form 424 (Rev. 4-88), application for Federal Assistance, with the grant proposal. This form may be obtained by writing to the Manager, AWS Grant Program, at the address listed above. *Applications without this form will be disqualified.*

*3. Table of Contents*

A table of contents with page numbers must be included.

*4. Project Summary*

A concise summary of the proposed project, including a statement of the goals and objectives, the plan to achieve these goals and objectives and the long-term benefits of the project to the institutional and national AWS programs is required. The summary should not exceed two (2) double-spaced typewritten pages, and should be written so that individuals in the aviation community can understand the basis for the use of Federal funds to support the proposed project.

*5. Narrative*

The Narrative should be clearly written and not exceed forty (40) double-spaced typewritten pages in length. The Narrative should contain the following:

(a) Introduction

The introduction should present a brief description of the institution including historical background, full-time graduate and undergraduate student enrollment, student body profile, location (rural, urban, etc.), fields of emphasis and degrees awarded.

(b) Background

The Narrative must describe the evolution of the institution's involvement in the AWS Program. Describe how the program relates to other interdisciplinary programs in mathematics, science and engineering, computers sciences, management, and other aviation science programs.

(c) The Existing AWS Program

The Narrative must include a description of the current AWS program. Information must be given on the recognition dates for each area of concentration, number of full-time and part-time faculty, average teaching loads, the total student enrollment in the AWS Program, the number of AWS declared majors by academic year by AWS concentration area, minority and female statistics by AWS concentration, the number of AWS degrees awarded, and projection of student enrollment and expected degrees to be conferred over the next 5 years. Describe institutional plans to attract students to the AWS program including minority and female recruitment activities.

An institution must enclose, with the proposal, a copy of the official course catalog and/or other brochure(s) showing the AWS course offerings to students during the 1988-1989 academic year. *Institutions which do not submit the above information will be disqualified.*

(d) Other Aviation Programs

The Narrative must include a description of current aviation programs other than the AWS program. Discuss how the AWS program interfaces with the other aviation programs. Explain how the grant project will support the goals and objectives of the entire aviation program at the institution. Provide information on the number of faculty, total student enrollment by aviation major including minority and female statistics, number of degrees awarded, projections of student enrollment and expected degrees to be conferred over the next five (5) years. Discuss activities the institution has pursued outside of AWS in support of aviation education at the collegiate level.

(e) Project Plan

A Project Plan in support of an institution's recognized AWS program must be prepared that sets forth the goals and objectives of the proposed grant project and the various activities and tasks necessary to bring the project to a successful conclusion. (An institution may present only one proposed grant project. *Proposals which present alternative projects or modifications to a basic grant project will be disqualified.* The plan must include time schedules for performance with appropriate and realistic milestones relating to the conduct of the project. The Plan should describe the mechanisms that will be used to manage and monitor the progress of the project. Anticipated progress reports, advisory committee meetings and similar events should be described. Discuss the relationship of the proposed grant project to the goals and objectives of the overall AWS program at the institution. Discuss the impact of the project upon the institution's current AWS program including the students, AWS programs at other institutions, the national AWS program, and the FAA.



(f) Institutional Needs in Airway Science

The Narrative must identify and discuss the institution's needs for funds, faculty, facilities, equipment and other resources in terms of the institution's goals and objectives for the AWS program. This should include a realistic long range AWS program plan and activities the institution will pursue to meet the goals and objectives including funding from sources outside of the FAA. The role of the proposed project should be discussed in this context.

(g) Project Personnel

Identify and describe the relevant skills of those individuals who have major AWS program responsibilities. Information should be provided on the number of full-time and part-time faculty, average teaching loads, and the amount of time each person is required to devote to the AWS program must be stated. The role of the AWS Program Director is particularly critical. The proposal must provide information indicating that the director has well-defined responsibilities, sufficient time, and adequate academic and institutional authority and support to effectively manage the program. The AWS grant project director must be identified with a discussion of relevant skills in relation to the proposed project and the time to be devoted to the project.

(h) Evaluation Plan

As part of the Narrative, a project Evaluation Plan must be outlined. The purpose of the Evaluation Plan, when completed at the close of the project, is to permit FAA officials and other educational and aviation specialists to assess whether the objectives of the project have been achieved and the impact of the project upon the AWS program at the institution, other institutions, and to the FAA. The completed Evaluation Plan should give attention to the enhanced skills and subsequent occupational marketability of those AWS students who have benefitted from the project. The Evaluation Plan may be prepared entirely by institutional staff or in collaboration with outside consultants. The results of the completed evaluation are to be included in the Final Report.

The FAA anticipates that FAA representatives will make site visits to each grant institution during the lifetime of the project.

(i) Budget Plan

The proposal must contain a Budget Plan that includes a *detailed itemization* of proposed expenditures according to the following categories:

| Item | Federal dollars | Percent | Non-Federal dollars | Percent |
|---|---|---|---|---|
| (1) Facilities | | | | |
| (2) Equipment | | | | |
| (3) Materials | | | | |
| (4) Travel [1] | | | | |
| (5) Consultant services [1] | | | | |
| (6) Other direct costs [1] | | | | |
| (7) Indirect costs [1] | | | | |

[1] Costs directly related to grant project even though not qualified for Federal funding. FAA grant funds may only be dedicated to categories a, b, and c. Each line item under each of the above categories must show the allocations of expenditures between the FAA grant funds and matching institutional funds and/or equivalent support services. The source of matching funds must be indicated, such as industry, institutional, or private source. Discuss the circumstances under which the funds are allocated to the grant project. In no event shall the total Federal grant funds provided for an AWS construction project exceed 50% of the construction cost of the project. Matching funds include allowable project costs (categories a, b, and c) which are incurred by the institution or the value of in-kind contributions. *Budgets which do not include an itemization of expenditures will be disqualified.* Budgets including construction activities with a general cost per square foot will not be excepted.

(j) Equipment, Facilities, and Materials

The Narrative should present a detailed discussion of the Facilities, Equipment, and Materials for which grant award funds are proposed to be spent as presented in the budget. This must include a description of the item, an explanation of the need for the item, the tentative source of acquisition, and the time table and method (lease to purchase, purchase, or construction) for acquisition. Applicants may submit photographs, architectural drawings, site plans or other visual representations that would aid the reviewing panel in assessing the relative merits of the proposed facilities.

(k) Other Project Costs

The institution must describe the other costs included in the budget and explain how they directly relate to the grant project.

**Reporting Requirements**

Until the proposed project is completed, the FAA requires that each award institution prepare an annual Project Report, not to exceed twenty (20) double-spaced typewritten pages in length. The annual Project Report shall be submitted to the FAA within 90 days of the close of each fiscal year by the award institution. The report should include a summary of project progress, highlights and accomplishments, personnel changes and a status report on expenditures and account balances for each of the line items presented in the proposed Budget Plan.

In addition, a final Project Report shall be prepared and submitted to the FAA within 90 days of the project completion. The final Project should include summaries of project activities, accomplishments and Budget Plan expenditures. The Report must contain the completed Evaluation Plan described above. "Project completion" will be determined by the FAA in terms of the proposed project goals and objectives and will occur after the principal project objectives have been achieved and the awarded funds have been expended.

**Local Review Statement**

The proposal must have attached to it a statement, signed by an appropriate official of the institution, that contains: (a) An endorsement of the proposed project; (b) a description of how the proposed project supports the larger institutional goals and objectives in AWS; and (c) a commitment to provide the institutional resources necessary to meet matching fund obligations; complete the proposed project, maintain the facilities and equipment to an acceptable standard, and continue financial support for the AWS Curriculum Program after the grant funds have been expended.

**Proposal Review**

Proposals will be reviewed, evaluated, and ranked on the basis of merit by a panel of educational and aviation specialists from the public and private sectors, including academia, private industry and/or the Federal government. This input will be used by the FAA in the selection of applicants for award of the grants. The awards typically will range from $75,000 to $200,000 maximum. The FAA does not intend to fund all proposed projects or necessarily all components of a proposal selected for award. The agency expects to distribute most, if not all of the $1,000,000.

**Evaluation Criteria**

The evaluation criteria are designed to enable the reviewing panel and FAA officials to effectively evaluate the relative merit of proposals submitted in response to this solicitation. Each

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reviewer will evaluate the proposals based on the following factors listed below and rate each proposal on a 100-point scale.

The evaluation criteria are the following:

(a) *Institutional Impact.* Each proposal will be evaluated to determine the extent to which the applicant institution has demonstrated:

(1) The need for funding of its AWS program in terms of the AWS program goals and objectives;

(2) The role grant funding will play in achieving these goals and objectives;

(3) The impact the grant funding will have upon the existing AWS program;

(4) The consequences to the AWS program if the project is not funded.

(10 points maximum)

(b) *Institutional Commitment.* Each proposal will be evaluated as to the extent of the institution's commitment to the AWS Program in particular and aviation education in general. This includes but is not limited to consideration of the following:

(1) Number and qualifications of dedicated AWS faculty;

(2) Number of recognized AWS curriculum options and the number of enrolled students;

(3) The amount of institutional matching funds provided toward the project;

(4) Efforts to obtain other nonfederal sources of funding in support of the grant project and the long range plan for the AWS program;

(5) Demonstrated continued support and growth of the institution's AWS program.

(6) Activities other than AWS in support of aviation education at the collegiate level.

In addition, the Local Review Statement and level of signature will be considered in determining the overall commitment of the institution to the AWS program.

(15 points maximum)

(c) *Project Plan Quality.* The Project Plan for the proposed AWS project will be evaluated in regard to the following:

(1) The appropriateness of the project in terms of the institution's current AWS program;

(2) The relationship between the goals and objectives of the proposed project and those of the overall AWS program at the institution;

(3) The adequacy of the institutional resources for achieving the goals and objectives of the proposed project;

(4) The effectiveness of the proposed mechanism for the management and coordination of the faculty, administrative, facility, and other institutional resources in achieving the goals and objectives of the proposed project;

(5) Project management mechanisms that provide for the effective administration and technical direction of the project, including the establishment of specific project goals and objectives, time-tables for performance and milestones that permit monitoring of the progress of the project and the measurement of its overall effectiveness;

(6) Adequate institutional budgeting and other fiscal controls that allow for periodic review of resource commitments and determinations that expenditures are in accordance with the Project Plan;

(7) The identification of significant educational, technical and administrative innovations as a result of the grant project that would further the attainment of the institutional and national goals and objectives for the AWS program.

(25 points maximum)

(d) *Budget Plan.* The Budget Plan must sufficiently detail proposed expenditures by budget category and line item and show the allocation between grant funds and institutional funds and/or equivalent support services. The budget figures should be appropriate for the goods and services being procured and consistent with the project narrative presented elsewhere in the Project Plan. (15 points maximum)

(e) *Expected benefits.* The benefits of the proposed project to both the institutional and national programs will be evaluated. The reviewers will consider:

(1) The long-term benefits to the institution, including the AWS students;

(2) The applicability and usefulness of educational, technical, and administrative innovations to AWS programs at other institutions and in other instructional and occupational environments;

(3) The benefit to the future employers of AWS program graduates, including academia, private industry and Federal, State and Local governments;

(4) The salient benefits to the FAA as both the AWS program sponsor of the AWS program and as an employer of the graduates.

(15 points maximum)

(f) *Qualifications of Key Personnel.* The reviewing panel will evaluate the professional qualifications and experience of the institution's present AWS personnel and other key officials who will be involved in the proposed AWS grant project. Particular attention will be given to the AWS Program Director. The relationship of the qualifications and past experiences of these individuals to the goals and objectives of the project will be considered.

(10 points maximum)

(g) *Evaluation Plan.* The reviewing panel will consider the adequacy of the proposed Evaluation Plan in assessing project performance and the impact of the project upon the existing institutional AWS program and the quality of the graduating AWS students.

(10 points Maximum)

**Award Date**

The FAA expects to announce the institutional recipients of the AWS grant awards by September 30, 1989.

**Richard E. Cullen,**

*Acting Director, Office of Training and Higher Education.*

Issued in Washington, DC, on February 7,1989.

[FR Doc. 89-4671 Filed 2-28-89; 8:45 am]

BILLING CODE 4910-13-M

## Radio Technical Commission for Aeronautics (RTCA); Executive Committee Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given for the Executive Committee Meeting to be held March 17, 1989, at the NASA Goddard Space Flight Center, Building 12, Room C-206, Greenbelt, Maryland 20771, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Chairman's remarks and introductions; (2) approval of the minutes of meeting held January 27, 1989; (3) Executive Director's Report; (4) Special Committee Activities Report for January-February 1989; (5) Fiscal and Management Subcommittee Report; (6) Search Committee for Executive Director Successor Report; (7) consideration of proposals to establish new Special Committees; (8) approval of Special Committee 142 Report, "Minimum Operational Performance Standards (MOPS) for Mode S Aircraft Data Link Processor"; and (9) other business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street NW., Suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on February 22, 1989.

**Geoffrey R. McIntyre,**

*Acting Designated Officer.*

[FR Doc. 89-4670 Filed 2-28-89; 8:45 am]

BILLING CODE 4910-13-M



## Federal Highway Administration

## National Motor Carrier Advisory Committee

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of public meetings.

**SUMMARY:** The FHWA announces that the National Motor Carrier Advisory Committee will hold a meeting on March 21 and 22, 1989, in Washington, DC, at the U.S. Department of Transportation Headquarters, 400 7th Street, SW., Washington, DC. The meeting will begin at 9:00 a.m. on both days in Room 4200 and it is open to the public.

The agenda will include: a review of initiatives regarding advanced highway/vehicle technologies, activities regarding the study of driver fatigue, programs to address the driver shortage problem, status or various motor carrier safety regulations as well as the reasonable access regulations, implementation of the Commercial Drivers' Licensing program, the progress being made in the review of the future of the highway program, the status of the DOT drug testing program, and the status of legislation affecting the motor carrier industry. Reports and recommendations will also be presented from the Subcommittee Chairmen.

In conjunction with the full Committee meeting, the Subcommittee on Research will meet on March 20, 1989, to discuss priorities for and possible additions to FHWA's motor carrier research programs. This will be the first meeting of this Subcommittee. The Subcommittee meeting will begin at 9:30 a.m. in Room 4200 of the U.S. Department of Transportation Headquarters, 400 7th Street, SW., Washington, DC. This Subcommittee meeting is also open to the public.

A second Subcommittee will also be meeting in conjunction with the full Committee meeting. The Subcommittee on Government and Taxation will be meeting on March 20, 1989, at 1:30 p.m. in Room 4200 of the U.S. Department of Transportation Headquarters, 400 7th Street, SW., Washington, DC. The Subcommittee will be meeting to discuss potential recommendations on four points: (1) The illegal evasion of payments of Federal highway user fees, (2) the diversion of these fees for non-highway purposes, (3) exemptions to these fees, and (4) the desirability of greater uniformity with respect to the various State tax and operating regulations which motor carriers must observe. This Subcommittee meeting is also open to the public.

**FOR FURTHER INFORMATION CONTACT:** Mr. Joseph S. Toole, Executive Director, National Motor Carrier Advisory Committee, Federal Highway Administration, HOA-1, Room 4218, 400 7th Street, SW., Washington, DC 20590, (202) 366-2238, office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

Issued on: February 23, 1989.

**Robert E. Farris,**

*Federal Highway Administrator.*

[FR Doc. 89-4775 Filed 2-28-89; 8:45 am]

BILLING CODE 4910-22-M

## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## Assistant Commissioner (EP/EO) Employee Plans Ad Hoc Group; Open Meeting

The first meeting of the Assistant Commissioner (Employee Plans and Exempt Organizations) Employee Plans Ad Hoc Group will be held on March 22, 1989 at the IRS Atlanta Service Center. The Service Center is located at 4800 Buford Highway, Atlanta, Georgia. The meeting will begin at 8:30 a.m. on Wednesday, March 22. The agenda will include the following topics:

Tour of Facility for Overview of Service Center Operations and Employee Plans Return Processing.

Discussion of Employee Plans Determination and Examination of Programs.

Discussion of Employee Plans Technical Issues.

Due to the Service Center's security requirements and limited conference space, notification of intent to attend the meeting must be made with Jane Baniewicz, Staff Assistant to the Assistant Commissioner, no later than March 13, 1989. Ms. Baniewicz may be reached on (202) 566-9204 (not toll-free).

**FOR FURTHER INFORMATION CONTACT:** Jane Baniewicz, Staff Assistant to Assistant Commissioner (EP/EO), (202) 566-9204 (not toll-free).

**Robert I. Brauer,**

*Assistant Commissioner (E).*

[FR Doc. 89-4746 Filed 2-28-89; 8:45 am]

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# Sunshine Act Meetings

Federal Register
Vol. 54, No. 39
Wednesday, March 1, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**NATIONAL TRANSPORTATION SAFETY BOARD**

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** Vol. 54, No. 35/Thursday, February 23, 1989/7918–7919.

**PREVIOUSLY ANNOUNCED TIME AND DATE:** 9:30 a.m., Tuesday, February 28, 1989.

**CHANGE IN MEETING:** A majority of the Board Members determined by recorded vote that the business of the Board required revising the agenda of this meeting and that no earlier announcement was possible. Response to FAA's proposed airworthiness directive applicable to certain small airplanes concerning flight into known icing conditions (NPRM) was added to the open portion of the meeting.

**FOR MORE INFORMATION, CONTACT:** Bea Hardesty, (202) 382–6525.

**Bea Hardesty,**
*Federal Register Liaison Officer.*
February 27, 1989.

[FR Doc. 89–4865 Filed 2–27–89; 3:45 pm]
BILLING CODE 7533-01-M

**POSTAL SERVICE BOARD OF GOVERNORS**

Amendment to Meeting

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** 54 FR 7919, February 23, 1989.

**PREVIOUSLY ANNOUNCED DATE OF MEETING:** March 7, 1989.

**CHANGE:** Addition of the following item to the open meeting agenda:

Officer Compensation. (Postmaster General Anthony M. Frank)

**CONTACT PERSON FOR MORE INFORMATION:** David F. Harris, (202) 268–4800

**David F. Harris,**
*Secretary.*

**Paul J. Kemp,**
*Certifying Officer.*

[FR Doc. 89–4843 Filed 2–27–89; 12:01 pm]
BILLING CODE 7710-12-M

federal register

Wednesday
March 1, 1989

Part II

## Department of Labor

Pension and Welfare Benefits Administration

## Department of the Treasury

Internal Revenue Service

## Pension Benefit Guaranty Corporation

29 CFR Part 2520

Employee Benefits Reporting and Disclosure; Final Rule and Notice

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**DEPARTMENT OF LABOR**

**Pension and Welfare Benefits Administration**

**29 CFR Part 2520**

**Annual Reporting and Disclosure Requirements**

**AGENCY:** Pension and Welfare Benefits Administration, Department of Labor.

**ACTION:** Final rule.

**SUMMARY:** This document contains amendments to Department of Labor (Department) regulations relating to the annual reporting requirements under Part 1 of Title I of the Employee Retirement Income Security Act of 1974 (ERISA). In part, the amendments contained in this document are necessary to conform to revisions to the annual return/report forms (Form 5500 Series) filed by administrators of employee pension and welfare benefit plans under Part 1 of Title I of ERISA.

Other amendments contained in this document are technical revisions updating the regulations to reflect changes in the annual reporting requirements, simplifying the regulations by deleting certain portions thereof which are duplicative of the instructions to the Form 5500 Series and incorporating address corrections to be used in submitting certain documents filed with the Department.

The amendments will affect the financial and other information required to be reported and disclosed by employee benefit plans filing Form 5500 Series reports under Part 1 of Title I of ERISA.

**DATES:** This regulation is effective January 1, 1988. The amendments are effective for reporting for plan years beginning on or after January 1, 1988.

**FOR FURTHER INFORMATION CONTACT:** Ronald D. Allen, Pension and Welfare Benefits Administration, U.S. Department of Labor, Washington, DC, (202) 523-8515 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** Note: This final regulation imposes no new information collection requirement in addition to the information collection requirement associated with the submission of the Form 5500 Series.

## A. Background

On September 19, 1986, the Department, in conjunction with the Internal Revenue Service and Pension Benefit Guaranty Corporation, published in the **Federal Register** (51 FR 33500) proposed changes to the Form 5500 Series. On January 2, 1987, the Department published in the **Federal Register** (52 FR 84) proposed amendments to the annual reporting regulations (Part 2520 of Chapter XXV of Title 29 of the Code of Federal Regulations) which, in part, were necessary to implement certain of the proposed changes to the Form 5500 Series. A number of technical amendments to the regulations were also proposed in order to update certain of the reporting and disclosure regulations, as well as to eliminate duplication of information also appearing in the instructions to the Form 5500 Series. The Form 5500 Series, as modified by the Agencies, is published in the same separate part of today's **Federal Register**.

The amendments published on January 2, 1987, were proposed to be effective for reporting for plan years beginning on or after January 1, 1987, to coincide with the implementation of revisions to the Form 5500 Series for the 1987 plan year. Subsequent to the publication of the proposed amendments, the Department, in conjunction with the Internal Revenue Service and Pension Benefit Guaranty Corporation, decided to defer forms revisions to the 1988 plan year filing cycle. Accordingly, the amendments contained herein will be effective for reporting for plan years beginning on or after January 1, 1988, to coincide with forms revisions implemented for the 1988 plan year filing cycle.

As discussed in more detail below, the Department received only three comments relating to the proposed amendments to the annual reporting regulations, and the Department has decided to adopt those amendments in the form proposed, except as otherwise noted.

## B. Description of Amendments

*Sections 2520.103-1 and 2520.103-2*

Section 2520.103-1 describes the content of the Form 5500. The Department is adopting the following amendments to § 2520.103-1. (1) Amend paragraph (a)(2) to delete the reference to § 2520.104b-11, which prescribed the summary annual report requirements for plans which constitute a group insurance arrangement. Section 2520.104b-11 was superseded by § 2520.104b-10 pursuant to notice in the **Federal Register** (44 FR 19403) on April 3, 1979. (2) Amend paragraph (b) to delete references to specific line items on the Form 5500 Series in order to avoid future regulation amendments solely to accommodate minor item changes to the forms. (3) Amend paragraphs (b) and (c) to add a reference to Schedule C, the proposed schedule for reporting service provider, trustee, and certain service provider termination information (*see* revised Form 5500 Series in the same separate part of today's **Federal Register**). And, (4) amend paragraphs (c), (d), and (e) to eliminate references to the Form 5500-K, which was eliminated as a reporting form for plan years beginning after December 31, 1983 (*see* Internal Revenue Service Release 84-71, June 18, 1984).[1]

Section 2520.103-2 describes the contents of the Form 5500 for plans which constitute a group insurance arrangement, as defined in § 2520.104-43. Paragraph (b) of § 2520.103-2 is amended to eliminate the references to specific line items on the Form 5500, consistent with the amendments to § 2520.103-1.

*Section 2520.103-6*

Section 2520.103-6 sets forth the definition of reportable transactions for the Form 5500. The Department is amending paragraph (b)(1)(ii) to delete the reference to a specific line item on the Form 5500 Series.

Under paragraph (c) of § 2520.103-6, a reportable transaction is defined as any transaction or series of transactions involving an amount in excess of 3 percent of the current value of a plan's assets.[2] The Department is amending paragraph (c) of § 2520.103-6 by adding a new subparagraph (c)(4) which raises the threshold for reportable transactions from 3 percent to 5 percent for plan years beginning on or after January 1, 1988. This amendment is necessary to implement the increase in the threshold for reportable transactions from 3 percent to 5 percent on the revised Form 5500 Series (*see* in the same separate part of today's **Federal Register**).

The Department also is modifying the examples set forth in paragraph (e) of § 2520.103-6 to reflect the change from 3 percent to 5 percent.

This amendment is being adopted in accordance with the authority granted the Secretary under sections 104(a)(3) and 110, pursuant to which utilization of the Form 5500 under § 2520.103-1 constitutes a limited exemption for welfare plans and an alternative method of compliance for pension plans. The findings required under section 104(a)(3) and section 110 with respect to the use of the Form 5500 as a limited exemption and alternative method of compliance are discussed below.

[1] Form 5500-K was the Return/Report of Employee Benefit Plan for Sole Proprietorships and Partnerships. The Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97-248, 96 Stat. 324 (1982)) repealed most of the special limitations and restrictions on the design and operation of these Keogh plans, resulting in these plans having the same contribution, deduction, and vesting requirements, and similar coverage requirements, as other plans. These plans are now required to file either Form 5500-C or Form 5500-R.

[2] *See* section 103(b)(3)(H) of ERISA.



*Section 2520.103-10*

Section 2520.103-10 describes the format and content of the financial schedules included as part of the Form 5500. The Department is amending § 2520.103-10 as follows: (1) Delete the references to specific line items (e.g., item 22) in order to avoid the necessity of future amendments to the regulations to accommodate minor changes in the forms; and (2) in an effort to eliminate duplication, delete the schedule formats and other general explanatory information appearing in the regulation which also appears in the instructions to the forms.[3]

The Department had proposed an amendment to § 2520.103-10 that would add a reference to the Form 5500-C to accommodate a proposed change to the Form 5500-C requiring plans with 26 to 99 participants to file a schedule of loans and leases in default (*see* proposed revisions to the Form 5500 Series, 51 FR 33500). Under the revised Form 5500 Series being adopted by the Agencies (*see* in the same separate part of today's **Federal Register**), plans filing the Form 5500-C will not be required to file a schedule of loans and leases in default. Accordingly, the Department is not adopting this amendment.

*Section 2520.104-41*

Section 2520.104-41 provides a simplified method of annual reporting for plans with fewer than 100 participants. Paragraph (c)(2) of that section requires administrators of Keogh plans to file the Form 5500-K. Because the Form 5500-K has been eliminated as an annual reporting form, § 2520.104-41 is being amended to delete paragraph (c)(2) in its entirety.

*Section 2520.104b-10*

Section 2520.104b-10 sets forth the requirements for the summary annual report and prescribes the formats for such reports. Included as an appendix to the regulation is a cross-reference guide which corresponds the line items of the summary annual report formats to the line items on the Forms 5500 and 5500-C to facilitate completion. This document includes a revised appendix which takes into account the changes to the revised Form 5500 Series being adopted by the Agencies.

[3] For clarification purposes, the regulation continues to specify certain transactions with a party-in-interest that are not required to be reported on that schedule. In this respect, it should be noted that, although the form does not require the reporting of publicly traded securities transactions involving a party-in-interest, such transactions are not in all cases exempt from the prohibited transaction provisions of section 406 of ERISA.

*Section 2520.104-46*

Section 2520.104-46 provides a waiver of the examination and report of an independent qualified public accountant for employee benefit plans with fewer than 100 participants. This section is being amended to delete the reference to Form 5500-K appearing in paragraph (d).

*Address Corrections to Reporting Regulations*

Since the publication of many of the reporting regulations, the Office of Pension and Welfare Benefit Programs has changed its name to the Pension and Welfare Benefits Administration, pursuant to Secretary of Labor's Order No. 1-86. In addition, the agency has changed the room for receipt of documents required to be filed under Title I of ERISA with the Department. In order to facilitate the filing and receipt of documents, the Department is amending the following sections to provide an updated address: §§ 2520.104-22(c); 2520.104-23(c); 2520.014a-3(d), and 2520.104a-4(c).

## C. Discussion of Comments

The Department received three comment letters concerning the proposed amendments to the annual reporting regulations. Two of the letters contained comments relating to § 2520.103-6. One of the commentators suggested that raising the reportable transaction threshold from 3 percent to 5 percent would permit, in the case of a plan with substantial assets, transactions involving a significant amount of assets to go unreported. The commentator also recommended that the dates of reportable transactions be required to be reported. The Department recognizes that by increasing the reportable transaction threshold from 3 percent to 5 percent, certain transactions heretofore required to be reported will go unreported. However, the Department has concluded, on the basis of its enforcement experience over the past ten years, that the disclosure of 5 percent transactions will enable it to identify transactions that are sufficiently large to suggest that fiduciary misconduct may be involved and, therefore will provide adequate reporting to the Department. For the same reason, the Department believes that the 5 percent threshold will provide adequate disclosure to plan participants and beneficiaries. It is also noted that the 5 percent threshold is consistent with the threshold under generally accepted accounting principles for identifying "significant" investments, which are required to be reported on the financial statements of plans. Accordingly, the Department has decided to adopt the 5 percent threshold criteria for reportable transactions. The Department also has decided not to require the dates of reportable transactions to be reported. The Department believes that sufficient information concerning reportable transactions is required to be reported, without transaction dates, to apprise the Department and plan participants and beneficiaries of potential abuses. Moreover, because the report is required to be filed annually, the specific date of a particular transaction is of less significance.

The other commentator recommended that the definition of a reportable transaction under § 2520.103-6 be amended to exclude the following transactions involving pooled separate accounts maintained by insurance companies: (a) New employer deposits; (b) transfers between pooled separate accounts; and (c) transfers between general assets accounts and pooled separate accounts. The commentator suggests that the reporting of such 5 percent transactions with pooled separate accounts detracts from other transactions that should be reported. As noted by the commentator, a plan meeting the requirements of 29 CFR 2520.103-4 is not required to report on its annual report individual transactions of the pooled separate account; however, such a plan is required to report any plan transactions with the pooled separate account, including certain reportable transactions under § 2520.103-6. In this regard, the Department notes that, while § 2520.103-6 does not exempt all plan transactions with pooled separate accounts, paragraph (b)(2)(ii)(G) of that section relating to transactions which occurred prior or subsequent to a reportable transaction with the same person during the plan year, does significantly reduce the reporting that would otherwise be required. The Department further notes that, pursuant to 29 CFR 2520.103-11(b)(2)(vi), units of participation in a pooled separate account are excluded from the definition of "assets held for investment" for purposes of the asset schedules required to accompany the annual report. In view of the aforementioned reporting exceptions and the adoption herein of an amendment increasing the reportable transaction threshold from 3 percent to 5

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concise reporting of those transactions which because of their size require closer scrutiny.

Further, the Department has determined under section 104(a)(3) that application of the statutory reporting requirements to the extent that the revisions to Form 5500 modify them would be inappropriate in the context of welfare plans for the reasons discussed above.

**Regulatory Flexibility Act**

The Department has determined that this regulation would have no significant economic impact on small entities. In conducting the analysis required under the Regulatory Flexibility Act, it is estimated that adoption of the amendments to the annual reporting regulations—which conform to the changes being made in the annual report forms (Form 5500 Series), make additional technical corrections, and eliminate certain duplicative language—will impose no additional costs on small entities. The purpose of these revisions is to simplify and reduce the burden attributable to the annual reporting requirements.

**Executive Order 12291**

The Department has determined that this regulatory action does not constitute a "major rule" as that term is used in Executive Order 12291 because the action does not result in: an annual effect on the economy of $100 million; a major increase in costs or prices for consumers, individual industries, government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

**Paperwork Reduction Act**

The amendments to the annual reporting regulations include revisions which are necessary to conform the regulations to changes in the annual report form (Form 5500 Series) which have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (P.L. 96–511). The approved information collection for the Form 5500 Series annual report is assigned control number 1210–0016.

**List of Subjects in 29 CFR Part 2520**

Accountants, Actuaries, Disclosure requirements, Employee benefit plans, Employee Retirement Income Security Act, Health insurance, Life insurance, Pensions, Pension and Welfare Benefits Administration, Reporting and recordkeeping requirements.

**Final Regulation**

For the reasons set out in the preamble, Part 2520 of Chapter XXV of Title 29 of the Code of Federal Regulations is hereby amended as follows:

## PART 2520—RULES AND REGULATIONS FOR REPORTING AND DISCLOSURE

1. The authority citation for Part 2520 is revised to read as follows:

**Authority:** Secs. 101, 102, 103, 104, 105, 109, 110, 111(b)(2), 111(c), and 505, Pub. L. 93–406, 88 Stat. 840–52 and 894 (29 U.S.C. 1021–25, 1029–31, and 1135); Secretary of Labor's Order No. 27–74, 13–76, 1–87, and Labor Management Services Administration Order No. 2–6.

2. In § 2520.103–1, paragraphs (b)(1) and (c) are revised to read as follows:

**§ 2520.103–1 Contents of the annual report.**

* * * * *

(b) * * *

(1) A completed Form 5500 "Annual Return/Report of Employee Benefit Plan (with 100 or more participants)" and any statements or schedules required to be attached to the form, including Schedule A "Insurance Information," Schedule B "Actuarial Information," Schedule C "Service Provider/Trustee/Service Provider Termination Information," and the financial schedules described in § 2520.103–10. *See* the instructions ("What to File" and "Specific Instructions") for this form.

* * * * *

(c) *Contents of the annual report for plans with fewer than 100 participants.* Except as provided in paragraph (d) of this section and in §§ 2520.104–43 and 2520.104a–6, the annual report of an employee benefit plan which covers fewer than 100 participants at the beginning of the plan year shall be a completed Form 5500–C "Return/Report of Employee Benefit Plan (with fewer than 100 participants)," or a completed Form 5500–R "Registration Statement of Employee Benefit Plan (with fewer than 100 participants)," and any statements or schedules which are required to be attached to these forms, including Schedule A "Insurance Information," and Schedule B "Actuarial Information." *See* the instructions ("What to File" and "Specific Instructions") for these forms.

* * * * *

3. Section 2520.103–1 is further amended as follows:

a. In paragraph (a)(2), in the second sentence, remove the words "or § 2520.104b–11."

b. In paragraph (b)(2)(i), in the second sentence, remove the words "listed in columns a and b of item 13 of" and insert in their place "required to be reported on the."

c. In paragraph (b)(2)(ii), remove the words "shown in item 14 of" and insert in their place "required to be reported on the."

d. In paragraph (b)(3), remove the words "information contained in items 13 and 14 of" and insert in their place "assets, liabilities, income, expenses and changes in net assets as required to be reported on the."

e. In paragraph (d), remove the words "Forms 5500–C, K, or R" and insert in their place "Forms 5500–C, or R."

f. In paragraph (e), in the first sentence, remove the reference to "5500–K."

4. Section 2520.103–2 is amended by revising paragraph (b)(1) to read as follows:

**§ 2520.103–2 Contents of the annual report for a group insurance arrangement.**

* * * * *

(b) * * *

(1) A completed Form 5500 "Annual Return/Report of Employee Benefit Plan (with 100 or more participants)" and any statements or schedules required to be attached to the form, including Schedule A "Insurance Information," Schedule C "Service Provider/Trustee/Service Provider Termination Information," and the financial schedules described in § 2520.103–10. *See* the instructions ("What to File" and "Specific Instructions") for this form.

* * * * *

5. Section 2520.103–2 is further amended as follows:

a. In paragraph (b)(2)(i), in the second sentence, remove the words "listed in columns a and b of item 13 of" and insert in their place "required to be reported on the."

b. In paragraph (b)(2)(ii), remove the words "shown in item 14 of" and insert in their place "required to be reported on the."

c. In paragraph (b)(3), remove the words "information contained in items 13 and 14 of" and insert in their place "assets, liabilities, income, expenses and changes in net assets as required to be reported on the."

6. Section 2520.103–6 is amended by revising paragraph (c)(1) introductory text, adding paragraph (c)(4), and revising paragraph (e) to read as follows:



percent, the Department believes that the reporting of new employer deposits, transfers between pooled separate accounts, and transfers between general asset accounts and pooled separate accounts does provide useful information concerning basic transactions involving pooled separate accounts, without imposing undue burdens on either plan administrators or insurance companies maintaining such accounts.

The third commentator offered suggested changes to the requirements of § 2520.103–9, relating to the direct filing of common or collective trust and pooled separate account information by banks and insurance carriers with the Department. The Department did not propose any amendments to § 2520.103–9, accordingly, the suggested changes to that section are beyond the scope of the annual reporting amendments being adopted herein.

**D. Departmental Findings**

For purposes of Part 1 of Title I of ERISA, the filing of a completed Form 5500 (including the report of an independent qualified public accountant and any required statements and schedules) by plans with 100 or more participants constitutes compliance with the limited exemption and alternative method of compliance prescribed in paragraph (b) of § 2520.103–1, promulgated in accordance with the authority granted the Secretary of Labor (the Secretary) under sections 104(a)(3) and 110 of ERISA.

Section 104(a)(3) authorizes the Secretary to exempt any welfare plan from all or part of the reporting and disclosure requirements of Title I of ERISA or to provide simplified reporting and disclosure, if the Secretary finds that such requirements are found to be inappropriate. Section 110 permits the Secretary to prescribe for pension plans alternative methods of complying with any of the reporting and disclosure requirements, if the Secretary finds: (1) That the use of the alternative is consistent with the purposes of ERISA and that it provides adequate disclosure to plan participants and beneficiaries and to the Secretary; (2) that application of the statutory reporting and disclosure requirements would increase the costs to the plan or impose unreasonable administrative burdens with respect to the operation of the plan; and (3) that the application of the statutory reporting and disclosure requirements would be adverse to the interests of plan participants in the aggregate.[4]

As reflected in the revised Form 5500 Series (*see* in the same separate part of today's **Federal Register**), and the amendment to § 2520.103–6, raising the threshold of reportable transactions from 3 percent to 5 percent, a number of changes are being adopted which affect the information required to be reported and disclosed on the Form 5500. With regard to these changes, the Department has made the following findings under sections 110 and 104(a)(3) with regard to the utilization of the revised Form 5500 (and statements and schedules required to be attached to the Form 5500) as an alternative method of compliance and limited exemption pursuant to 29 CFR 2520.103–1(b):

1. The use of the revised Form 5500 as an alternative method of compliance is consistent with the purposes of Title I of ERISA and provides adequate disclosure to plan participants and beneficiaries and adequate reporting to the Secretary. While the information required to be reported on or in connection with the revised Form 5500 deviates, in some respects, from that information delineated in section 103 of the Act, the information essential to ensuring adequate disclosure and reporting under Title I of ERISA is required to be included on or as part of the Form 5500, as revised. With regard to the revision to the definition of "reportable transaction" for purposes of the Form 5500 to include only transactions involving amounts in excess of 5 percent of the plan's assets, the Department believes such a change will assure the reporting of significant transactions which may reveal fiduciary misconduct which is the purpose underlying the 3 percent statutory requirement in section 103. The Department, on the basis of its experience with enforcement cases over the past ten years of ERISA, has concluded that disclosure of 5 percent transactions will enable it to identify transactions that are sufficiently large to suggest that fiduciary misconduct may be involved.[5] For the same reason, the Department believes the 5 percent threshold will provide adequate disclosure to plan participants and beneficiaries.

2. The use of Form 5500 as an alternative method of compliance relieves plans subject to the annual reporting requirements from increased costs and unreasonable administrative burdens by providing a standardized format which facilitates reporting, eliminates duplicative reporting requirements, and simplifies the content of the annual report in general. The Form 5500, as revised, is intended to further reduce the administrative burdens and costs attributable to compliance with the annual reporting requirements.

With regard to the change from 3 percent to 5 percent threshold for reportable transactions, the Department's experience has been that a 3 percent threshold has resulted in the reporting of information which is not necessary for the effective administration of ERISA. Therefore, reporting information regarding transactions involving more than 3 percent, but less than 5 percent of a plan's assets, has resulted in additional costs and unreasonable administrative burdens to plans.

3. Finally, taking into account the above, the Department has determined that application of the statutory annual reporting and disclosure requirements without the availability of the Form 5500 would be adverse to the interests of participants in the aggregate. The revised Form 5500 provides for the reporting and disclosure of basic financial and other plan information described in section 103 in a uniform, efficient, and understandable manner; thereby, facilitating the disclosure of such information to plan participants.

With regard to the 5 percent reportable transaction threshold, the Department's experience has been that the 3 percent threshold tended not to reveal abusive cases that would not otherwise have been revealed at a 5 percent threshold. The additional disclosure of information regarding transactions involving more than 3 percent, but less than 5 percent, therefore only provides participants and beneficiaries with information of negligible value and this information is often voluminous, especially in the case of larger plans. The Department believes that the revised 5 percent threshold should provide for clearer and more

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[4] Under the authority of sections 104(a)(2)(A) and 104(a)(3), the Secretary has prescribed by regulation a simplified annual report for pension and welfare plans which cover fewer than 100 participants (Form 5500–C). *See* 29 CFR 2520.104–41. Pursuant to this authority, the Department has made changes to the 1988 Form 5500–C. These changes are described in the preamble accompanying the publication of the 1988 annual report forms. (*See* the "notices" section of today's **Federal Register**.)

[5] In the interest of efficient administration of ERISA, the Department has attempted to align the reporting and disclosure requirements, where possible, with generally accepted accounting principles. Recommendations of the Employee Benefit Plans and ERISA Special Committee of the American Institute of Certified Public Accountants in concert with the Financial Accounting Standards Board's Statement No. 35 indicate that, under generally accepted accounting principles, investments representing 5 percent or more of net assets are treated as "significant," and therefore, must be reported on financial statements.

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**§ 2520.103-6 Definition of reportable transaction for annual return/report.**

* * * * *

(c) *Application.* (1) Except as provided in paragraph (c)(4) of this section, this provision applies to—

* * * * *

(4) For plan years beginning on or after January 1, 1988, 5 percent shall be substituted for 3 percent in paragraphs (c) (1) and (2) of this section for purposes of determining whether a transaction or series of transactions constitutes a reportable transaction under this section.

* * * * *

(e) *Examples.* These examples are effective for reporting for plan years beginning on or after January 1, 1988.

(1) At the beginning of the plan year, XYZ plan has 10 percent of the current value of its plan assets invested in ABC common stock. Halfway through the plan year, XYZ purchases ABC common stock in a single transaction in an amount equal to 6 percent of the current value of plan assets. At about this time, XYZ plan also purchases a commercial development property in an amount equal to 8 percent of the current value of plan assets. Under paragraph (c)(1)(i) of this section, the 8 percent stock transaction is a reportable transaction for the plan year because it exceeds 5 percent of the current value of plan assets. The 8 percent land transaction is also reportable under paragraph (c)(1)(i) of this section because it exceeds 5 percent of the current value of plan assets.

(2) During the plan year, AAA plan purchases a commercial lot from ZZZ corporation at a cost equal to 2 percent of the current value of the plan assets. Two months later, AAA plan loans ZZZ corporation an amount of money equal to 3.5 percent of the current value of plan assets. Under the provisions of paragraph (c)(1)(ii) of this section, the plan has engaged in a reportable series of transactions with or in conjunction with the same person, ZZZ corporation, which when aggregated involves 5.5 percent of plan assets.

(3) During the plan year NMN plan sells to OPO corporation a commercial property that represents 3.5 percent of the current value of plan assets. OPO simultaneously executes a note and mortgage on the purchased property to NMN which represents 3 percent of the current value of plan assets. Under the provisions of paragraph (c)(1)(ii) of this section, NMN has engaged in a reportable series of transactions with or in conjunction with the same person, OPO corporation, consisting of a simultaneous sale of property and a loan, which, when aggregated, involves 6.5 percent of the current value of plan assets.

(4) At the beginning of the plan year, ABC plan has 10 percent of the current value of plan assets invested equally in a combination of XYZ Corporation common stock and XYZ preferred stock. One month into the plan year, ABC sells some of its XYZ common stock in an amount equal to 2 percent of the current value of plan assets.

(i) Six weeks later the plan sells XYZ preferred stock in an amount equal to 4 percent of the current value of plan assets. A reportable series of transactions has not occurred because only transactions involving securities of the same issue are to be aggregated under paragraph (c)(1)(iii) of this section.

(ii) Two weeks later when the ABC plan purchases XYZ common stock in an amount equal to 3.5 percent of the current value of plan assets, a reportable series of transactions under paragraph (c)(1)(iii) of this section has occurred. The sale of XYZ common stock worth 2 percent of plan assets and the purchase of XYZ common stock worth 3.5 percent of plan assets aggregate to exceed 5 percent of the total value of plan assets.

(5) At the beginning of the plan year, Plan X purchases through broker-dealer Y common stock of Able Industries in an amount equal to 6 percent of plan assets. The common stock of Able Industries is not listed on any national securities exchange or quoted on NASDAQ. This purchase is a reportable transaction under paragraph (c)(1)(i) of this section. Three months later, Plan X purchases short term debt obligations of Charley Company through broker-dealer Y in the amount of 0.2 percent of plan assets. This purchase is also a reportable transaction under the provisions of paragraph (c)(1)(iv) of this section.

(6) At the beginning of the plan year, Plan X purchases from Bank B certificates of deposit having a 180 day maturity in an amount equal to 6 percent of plan assets. Bank B is a national bank regulated by the Comptroller of the Currency. This purchase is a reportable transaction under paragraph (c)(1)(i) of this section. Three months later, Plan X purchases through Bank B 91-day Treasury bills in the amount of 0.2 percent of plan assets. This purchase is not a reportable transaction under paragraph (c)(1)(iv) of this section because the purchase of the Treasury bills as well as the purchase of the certificates of deposit are not considered to involve a security under the definition of "securities" in paragraph (b)(2)(ii) of this section.

(7) At the beginning of the plan year, Plan X purchases through broker-dealer Y common stock of Able Industries, a New York Stock Exchange listed security, in an amount equal to 6 percent of plan assets. This purchase is a reportable transaction under paragraph (c)(1)(i) of this section. Three months later, Plan X purchases through broker-dealer Y, acting as agent, common stock of Baker Corporation, also a New York Stock Exchange listed security, in an amount equal to 0.2 percent of plan assets. This latter purchase is not a reportable transaction under paragraph (c)(1)(iv) of this section because it is not a transaction "with or in conjunction with a person" pursuant to paragraph (b)(3)(ii) of this section.

7. Section 2520.103-6 is further amended in paragraph (b)(1)(ii) by removing the words "on line 13(h) of Form 5500 Annual Return/Report" and insert in their place "as total assets on Form 5500 Annual Return/Report."

8. Section 2520.103-10 is revised to read as follows:

**§ 2520.103-10 Annual Report Financial Schedules.**

(a) *General.* The administrator of a plan filing an annual report pursuant to 29 CFR 2520.103-1(a)(2) or the report for a group insurance arrangement pursuant to 29 CFR 2520.103-2, shall, as provided in the instructions to the Form 5500 "Annual Return/Report of Employee Benefit Plan (with 100 or more participants)", include as part of the annual report the separate financial schedules described in paragraph (b) of this section.

(b) *Schedules—(1) Assets held for investment.* A schedule of all assets held for investment purposes at the end of the plan year (see 29 CFR 2520.103-11).

(2) *Assets acquired and disposed within the plan year.* A schedule of all assets acquired and disposed of within the plan year (see 29 CFR 2520.103-11).

(3) *Party in interest transactions.* (i) Except as provided in paragraph (b)(3)(ii) of this section, a schedule of each transaction involving a person known to be a party in interest.

(ii) Do not include—

(A) A transaction to which a statutory exemption under part 4 of Title I applies;

(B) A transaction to which an administrative exemption under section 408(a) of the Act applies; or

(C) A transaction to which the exemptions of section 4975(c) or 4975(d) of the Internal Revenue Code of 1954, as amended, applies.



(4) *Obligations in default.* A schedule of all loans or fixed income obligations which were in default as of the end of the plan year or were classified during the year as uncollectible.

(5) *Leases in default.* A schedule of all leases which were in default or were classified during the year as uncollectible.

(6) *Reportable transactions.* A schedule of all reportable transactions as defined in § 2520.103-6.

9. Section 2520.104-22 is amended by revising paragraph (c) to read as follows:

**§ 2520.104-22 Exemption from reporting and disclosure requirements for apprenticeship and training plans.**

* * * * *

(c) *Filing Address.* The notice referred to in paragraph (a) of this section shall be filed with the Secretary of Labor by mailing it to: Apprenticeship and Training Plan Exemption, Pension and Welfare Benefits Administration, Room N-5644, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, or by delivering it during normal working hours to the Division of Reports, Office of Program Services, Pension and Welfare Benefits Administration, Room N-5644, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC.

10. Section 2520.104-23 is amended by revising paragraph (c) to read as follows:

**§ 2520.104-23 Alternative method of compliance for pension plans for certain selected employees.**

* * * * *

(c) *Filing Address.* Statements may be filed with the Secretary of Labor by mailing them addressed to: Top Hat Plan Exemption, Pension and Welfare Benefits Administration, Room N-5644, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, or by delivering it during normal working hours to the Division of Reports, Office of Program Services, Pension and Welfare Benefits Administration, Room N-5644, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC.

* * * * *

11. Section 2520.104-41 is amended by revising paragraph (c) to read as follows:

**§ 2520.104-41 Simplified annual reporting requirements for plans with fewer than 100 participants.**

* * * * *

(c) *Contents.* The administrator of an employee pension or welfare benefit plan which covers fewer than 100 participants shall file a Form 5500-C "Return-Report of Employee Benefit Plan (with fewer than 100 participants)," or, as appropriate, a Form 5500-R "Registration Statement of Employee Benefit Plan (with fewer than 100 participants)," in the manner prescirbed in § 2520.104a-5.

12. Section 2520.104-46 is amended by revising paragraph (d) to read as follows:

**§ 2520.104-46 Waiver of examination and report of an independent qualified public accountant for employee plans with fewer than 100 participants.**

* * * * *

(d) *Limitations.* (1) The waiver described in this section does not affect the obligation of a plan described in paragraph (b) (1) or (2) of this section to file a Form 5500-C or, as appropriate, Form 5500-R and all schedules called for therein. *See* § 2520.104-41.

(2) This section does not apply to a plan which elects to file an Annual Return/Report Form 5500 pursuant to § 2520.103-1(d).

13. Section 2520.104a-3 is amended by revising paragraph (d) to read as follows:

**§ 2520.104a-3 Summary plan description.**

* * * * *

(d) *Filing Address.* The summary plan description shall be filed with the Secretary of Labor by mailing it to SPD, Pension and Welfare Benefits Administration, Room N-5644, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, or by delivering it during normal working hours to Room N-5644, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC.

* * * * *

14. Section 2520.104a-4 is amended by revising paragraph (c) to read as follows:

**§ 2520.104a-4 Material modifications to the plan and changes in plan description information.**

* * * * *

(c) *Filing Address.* The summary description of material modifications to the plan and changes in the information required by section 102(b) shall be filed with the Secretary of Labor by mailing it to SMM, Pension and Welfare Benefits Administration, Room N-5644, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, or by delivering it during normal working hours to Room N-5644, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC.

**§ 2520.104b-10 [Amended]**

15. Section 2520.104b-10 is amended by revising the Appendix summary annual report cross-reference guide as follows:

APPENDIX—THE SUMMARY ANNUAL REPORT (SAR) UNDER ERISA A CROSS-REFERENCE TO THE ANNUAL REPORT

| SAR item | Form 5500 line items | Form 5500-C line items |
|---|---|---|
| **A. Pension Plan** | | |
| 1. Funding arrangement | 11 & 12 | 11 & 12. |
| 2. Total plan expenses | 35h | 31j. |
| 3. Administrative expenses | 35g col.b | 31h. |
| 4. Benefits paid | 35e(iii) col.b | 31g(ii) col.b. |
| 5. Other expenses | 35f | 31i. |
| 6. Total participants | 7(f) | 7(a)(ii). |
| 7. Value of plan assets (net): | | |
| a. End of plan year | 35l | 30k col.b. |
| b. Beginning of plan year | 35k | 30k col.a. |
| 8. Change in net assets | 35l minus 35k | 30k col.b minus col.a. |
| 9. Total income | 35d | 31f. |
| a. Employer contributions | 35a(i)(A) & 35a(ii) if applicable | 31a(j) & 31(b) if applicable. |
| b. Employee contributions | 35a(i)(B) & 35a(ii) if applicable | 31a(ii) & 31b if applicable. |
| c. Gains (losses) from sale of assets | 35b(iv) col.b | 31d. |
| d. Earnings from investments | 35b(i)G col.b, 35b(ii)B col.b, 35b(iii), 35b(v), & 35b(vi) | 31c. |
| 10. Total insurance premiums | 35e(ii) or total of Schs. A Part II, item 5(b) | Total of Schs. A, Part II, item 5(b). |
| 11. Funding deficiency: | | |
| a. Defined benefit plans | Sch. B, item 9m or 10h | Sch. B, item 9m or 10h. |
| b. Defined contribution plans | 15b(iii) | 15b(iii) |

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APPENDIX—THE SUMMARY ANNUAL REPORT (SAR) UNDER ERISA A CROSS-REFERENCE TO THE ANNUAL REPORT—Continued

| SAR item | Form 5500 line items | Form 5500-C line items |
|---|---|---|
| **B. Welfare Plan** | | |
| 1. Name of insurance carrier | All Schs. A, Part I, item 2a | All Schs. A, Part I, item 2a. |
| 2. Total insurance premiums | All Schs. A, Part III, total of item 8c | All Schs. A, Part III, total of item 8c. |
| 3. Experience-rated premiums | All Schs. A, Part III, item 9a(iv) | All Schs. A, Part III, item 9a(iv). |
| 4. Experience-rated claims | All Schs. A, Part III, item 9b(iv) | All Schs. A, Part III, item 9b(iv). |
| 5. Value of plan assets (net): | | |
| a. End of plan year | 35l | 30k col.b. |
| b. Beginning of plan year | 35k | 30k col.a. |
| 6. Change in net assets | 35l minus 35k | 30k col.b minus col.a. |
| 7. Total income | 35d | 31f. |
| a. Employer contributions | 35a(i)(A) & 35a(ii) if applicable | 31a(i) & 31b if applicable. |
| b. Employee contributions | 35a(i)(B) & 35a(ii) if applicable | 31a(ii) & 31b if applicable. |
| c. Gains (losses) from sale of assets | 35b(iv) col.b | 31d. |
| d. Earnings from investments | 35b(i)(G) col.b, 35b(ii)(E) col.b, 35b(iii), 35b(v), and 35b(vi) | 31c. |
| 8. Total plan expenses | 35h | 31j. |
| 9. Administrative expenses | 35g col.b | 31h. |
| 10. Benefits paid | 35e(iii) col.b | 31g(ii) col.b |

Signed at Washington, DC, this 23rd day of February, 1989.

**David M. Walker,**

*Assistant Secretary for Pension and Welfare Benefits Administration, U.S. Department of Labor.*

[FR Doc. 89-4682 Filed 2-28-89; 8:45 am]

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**DEPARTMENT OF THE TREASURY**

**DEPARTMENT OF LABOR**

**Pension and Welfare Benefits Administration**

**PENSION BENEFIT GUARANTY CORPORATION**

**Revision of Annual Information Return/Reports**

**AGENCIES:** Department of the Treasury, Department of Labor, and Pension Benefit Guaranty Corporation.

**ACTION:** Notice of adoption of revised forms.

**SUMMARY:** This document contains revised annual return/report forms (Form 5500 Series) filed by administrators of employee pension and welfare benefit plans under the Employee Retirement Income Security Act of 1974, as amended (ERISA), and the Internal Revenue Code of 1986 (the Code). The revised forms affect the financial and other information required to be reported and disclosed by employee benefit plans filing the Form 5500 Annual Return/Report of Employee Benefit Plan (with 100 or more participants), Form 5500–C Return/Report of Employee Benefit Plan (with fewer than 100 participants), Form 5500–R Registration Statement of Employee Benefit Plan (with fewer than 100 participants), and the statements and schedules required to accompany the forms (collectively, the Form 5500 Series). The Form 5500–EZ is not included as part of this publication.

**EFFECTIVE DATE:** The revised forms are effective for plan years beginning on or after January 1, 1988.

**FOR FURTHER INFORMATION CONTACT:** George M. Holmes, Jr. or Ronald D. Allen, Pension and Welfare Benefits Administration, U.S. Department of Labor, (202) 523–8515, for questions relating to fiduciary, prohibited transaction, bonding, service provider, financial and insurance information items.

Mark O'Donnell, Employee Plans Technical and Actuarial Division, Internal Revenue Service, (202) 566–6395, or George Basta, Tax Forms, Internal Revenue Service, (202) 566–3895, for questions relating to financial and qualification (e.g., discrimination, participation, vesting, minimum funding standards, distributions) information items.

Emerson Beier, Pension Benefit Guaranty Corporation, (202) 778–8851, for questions relating to information items involving Title IV of ERISA.

The telephone numbers given above are not toll-free numbers.

**SUPPLEMENTARY INFORMATION:**

## I. Background

On September 19, 1986, the Internal Revenue Service, Department of Labor and Pension Benefit Guaranty Corporation (the Agencies) published in the **Federal Register** (51 FR 33500) a notice of proposed revisions to the Form 5500 Series. Written comments were solicited from interested members of the public on the Agencies' proposed revisions to the forms. Pursuant to the same September 19, 1986 notice appearing in the **Federal Register**, the Agencies also held a public hearing on October 22, 1986 for the purpose of allowing interested parties the opportunity to present oral testimony, and written comments, on the proposed forms revisions.

Upon consideration of the written comments and the record of the public hearing, as well as the Agencies' respective administrative and enforcement informational needs, the Agencies have decided to adopt the Form 5500 Series contained in this notice for plan years beginning on or after January 1, 1988.[1]

## II. Overview of Forms Revisions

The following is a summary of the major changes to the 1987 Form 5500 Series which are being adopted by the Agencies for plan years beginning on or after January 1, 1988.

### *A. Form 5500*

The Form 5500 is filed by employee benefit plans with 100 or more participants. In addition to eliminating a number of information items and making certain format and item numbering changes, changes to the Form 5500 include: (1) A request for CUSIP number, if one has been assigned to the sponsor of a single employer plan or plan of a controlled group of corporations or common control employers (item 1e); (2) the expanded utilization of check boxes and identifier codes to allow more specific plan characteristics information (items 6, 11 and 12); (3) with regard to collectively bargained plans, a request for the six digit labor-management disclosure file number(s) utilized by sponsoring labor organization(s) in filing LM–2 or LM–3 (item 13b); (4) modifications to the financial statements, which include a more detailed break-out of administrative expenses, limiting the reporting of party in interest investments by increasing reliance on the disclosures in the accountant's report, consolidated reporting of interests in common/collective trusts, master trusts, pooled separate accounts, registered investment companies, and 103–12 investment entities, and changes which are intended to more closely conform the reporting of financial information with FASB standards (items 34 and 35); (5) raising the payment threshold for the reporting of service provider information to $5,000 in a plan year (item 28a); (6) the reporting of service provider information, trustee information and accountant/actuary termination information on Schedule C (a new schedule for the 1988 plan year); (7) a requirement that a terminated accountant and actuary be furnished a copy of the reported reasons for the termination and a notice of their right to send comments to the Department of Labor (the notice is set forth in the instructions) (item 28f and Schedule C); (8) an increase in the threshold for reportable transactions from 3 percent to 5 percent (item 30d); and (9) a new question, designed to ensure compliance with the required distribution rules, asking if the plan has received transfers or rollovers with respect to a participant who has attained age 70½ (item 17).

### *B. Form 5500–C*

The Form 5500–C is required to be filed, at least every third year, by plans with fewer than 100 participants. In the two intervening years, Form 5500–C filers may file a Form 5500–R in lieu of the Form 5500–C.[2] In addition to eliminating certain information items and making certain numbering and format changes, changes to the Form 5500–C include: (1) A request for the CUSIP number, if one has been assigned to the sponsor of a single employer plan or plan of a controlled group of corporations or common control employers; (2) the expanded utilization of check boxes and identifier codes to allow more specific plan characteristics information (items 6, 11 and 12); (3) changes to the statements of assets, liabilities, income and expense; (4) elimination of service provider termination information (1987 Form 18a,

[1] For purposes of Title I of ERISA, the filing of the Form 5500 Series, in accordance with instructions thereto, by the administrator of the plan constitutes compliance with the limited exemption and alternative method of compliance prescribed in 29 CFR § 2520.103–1, promulgated in accordance with the authority granted the Secretary of Labor under sections 104(a)(3) and 110 of ERISA.

[2] Certain one-participant pension benefit plans required to file annual returns under the Internal Revenue Code, but not under Title I of ERISA, can satisfy the filing requirements by filing the Form 5500–EZ, rather than the Form 5500–C and Form 5500–R.

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b and c); (5) elimination of contract administrator information (1987 Form 18d); (6) elimination of party-in-interest transaction schedule (1987 Form item 19a); and (7) elimination of listing of all fiduciaries (1987 Form 23).

*C. Form 5500–R*

The Form 5500–R may be filed in lieu of the Form 5500–C by plans with fewer than 100 participants for those plan years for which a Form 5500–C is not required to be filed. The major changes to the Form 5500–R include: (1) A requirement that certain basic financial information be reported concerning the plan, i.e., total assets, liabilities, and net assets at the beginning and ending of the plan year, total income and expense for the plan year, net income (loss), plan contributions and total benefits paid during the plan year (items 13 and 14); (2) an increase in the number of yes/no questions and, in cases where a "yes" response is indicated, the entry of the dollars involved may be required (item 15); (3) a request for more specific plan characteristics information (items 4 and 6); and (4) addition of an item concerning PBGC covered plans that have terminated, in order to be consistent with the other forms (item 8c).

*D. Schedules A, B and C*

1. Schedule A (Insurance Information). The Schedule A is required to be filed by plans if any benefits under the plan are provided by an insurance company, insurance service, or other similar organization (such as Blue Cross, Blue Shield, or a health maintenance organization). A notice has been added to the top of the Schedule A referencing the statutory obligation of insurance companies, carriers and services under section 103(a)(2) to provide that information necessary to enable the administrator to comply with the reporting requirements. Section 103(a)(2) provides that such information must be furnished within 120 days after the end of the plan year. The instructions to the Schedule A have been revised to clarify that a policy or contract year cannot exceed 12 months. The instructions also have been revised to clarify that commissions and fees to be reported on the Schedule A include amounts paid by company on the basis of the aggregate value of contracts or policies (or classes thereof) placed or retained by agents and brokers.

2. Schedule B (Actuarial Information). The Schedule B is required to be filed by defined benefit plans subject to the minimum funding standards. Changes to the Schedule B include the requirement that amortization charges be broken out between those attributable to funding waivers (item 9c(i)) and those attributable to other than funding waivers (item 9c(ii)). The unamortized outstanding balance is similarly required to be broken out. There is a new instruction to item 9j to clarify that a funding waiver request(s) pending with the IRS is not to be reported in this item until the waiver(s) is granted.

Lines 6(d) (i) through (iii) are changed to require completion by plans with fewer than 100 participants as well as plans with 100 or more participants. Line 12h has been changed to ask for the rate of return on plan assets for the year ending on the valuation date. The table of codes for mortality tables in the instructions to 12b has been expanded to include additional tables. The instructions for the statement by the enrolled actuary have been revised to provide that the enrolled actuary must sign the Schedule B; however, such signature may be subject to permitted qualifications. Also, the instructions now explicitly state that a stamped or machine-produced signature is not acceptable.

3. Schedule C (Service Provider and Trustee Information). The Schedule C is a new schedule for plan years beginning on or after January 1, 1988. The information required to be reported on the Schedule C includes: service provider information previously required to be reported on the Form 5500 (See: 1987 Form 5500 Item 12), however, the threshold amount for reporting information concerning a service provider has been raised from $600 in a plan year to $5000 in a plan year; trustee information; and information relating to the termination of certain service providers (i.e., accountant, enrolled actuary, insurance carrier, custodian, administrator, investment manager, trustee; See: 1987 Form 5500 items 15a, b and c). The Schedule C is required to be filed only by those plans required to file the Form 5500 (plans with 100 or more participants).

**III. Summary of Comments on Proposed Forms**

The Agencies received a number of comments, suggestions and recommendations concerning the revisions to the Form 5500 Series published in the **Federal Register** on September 19, 1988 (51 FR 33500). In general, most commentators, while supporting the Agencies' efforts to simplify the forms and reduce burden hours, expressed the view that the proposed forms continued to be too detailed and complex and, if implemented, would not result in significant reductions in burden hours or costs. A number of commentators suggested modifications to the reporting requirements which would, in the view of the Agencies, require legislative changes to implement (e.g., increasing the threshold for simplified reporting from 100 participants to 250 or 500 participants, and the elimination of certain schedules required to accompany the annual report, such as the schedule of "assets held for investment") and, accordingly, are beyond the scope of this forms revision initiative. Other commentators questioned, generally and specifically, the need and/or usefulness of the information required to be reported on the forms. Many commentators, recognizing the need for certain information, submitted recommendations and suggestions for simplifying and/or clarifying the forms generally, specific items on the forms, and the instructions to the forms.

As explained in the Supplementary Information section accompanying the Agencies' September 19, 1988 **Federal Register** publication of the proposed revisions to the Form 5500 Series, the Form 5500 Series is the principal source of information and data concerning the operations of 900,000 employee benefit plans, covering an estimated 58 million participants and beneficiaries with assets estimated at $1.4 trillion. Accordingly, the Form 5500 Series information and data necessarily constitute an integral part of each Agency's enforcement, research and policy development programs. The return/reports also serve as the primary means by which the operations of plans can be monitored by participants, beneficiaries and the general public. The ability of the Agencies to effectively and efficiently utilize information reported on the Form 5500 Series, as well as the importance of filers reporting complete and accurate annual report information, will increase significantly with the implementation of a new ERISA database system for processing, analyzing and verifying the Form 5500 Series. While the Agencies were unable to adopt all the submitted suggestions and recommendations for simplification of the forms, the Agencies, in an effort to facilitate both compliance with the annual reporting requirements and the processing of annual reports, have made certain format changes to the forms and, in response to comments, have attempted to clarify the instructions accompanying the forms. In addition, the Agencies are exploring various means by which to provide general information and technical guidance on completing the Form 5500 Series to assist filers in carrying out their statutory annual reporting obligations.

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In addition to a number of general comments relating to the statutory and regulatory annual reporting scheme, the Agencies received a number of comments relating to specific elements of the proposed revisions to the Form 5500 Series. The following is a form by form, subject by subject, summary of the major comments received by the Agencies on the September 19, 1988 proposed revisions. To avoid having to duplicate comments, and discussions thereof, comments relating to items common to more than one form will be addressed only with respect to the first form and/or item to which the comment relates.

*A. Form 5500*

1. Identification, Plan Characteristics, Participant, and Other General Information Items

a. *General.* A few commentators suggested that identification and certain other information which rarely changes from year to year be simplified and, other than basic identification information, should not be required to be reported annually. The Agencies believe that these suggestions have merit and, while it is not administratively possible to implement the suggestions for the 1988 plan year filings, the Agencies are exploring means by which to limit the annual reporting of such information, after the information is on file, to only that information which actually changes in a given year.

A number of commentators suggested that the signature line should remain on the first page of the forms, rather than the last page as contemplated by the proposed revisions to the forms. The commentators believe that including the signature line on the first page of the forms reduces the likelihood of the signature being omitted from the forms. In an effort to reduce the number of forms rejected for a lack of signature, the Agencies decided to adopt this suggestion.

b. *CUSIP number (item 1e).* A number of commentators indicated that while providing the CUSIP number is not complex, obtaining such numbers may be time consuming, particularly for large multiemployer plans. Because the CUSIP number will both facilitate identification of plans sponsored by a controlled group of employers and afford the Agencies ready access to other data base systems containing employer financial information, the Agencies have decided to retain this item on the forms. However, the Agencies are limiting the plans required to respond to this item to single employer plans and plans of a controlled group of corporations or common control employers.

c. *Identifier and plan characteristics codes (items 3c–g of proposed form/ items 4, 6, 11, and 12 of final form).* A number of commentators indicated that the use of identifier and other codes, which require reference to the instructions to the forms, is more complicated than the check box approach utilized in the current forms and, thus does not simplify preparation, particularly for manual filers. Commentators also expressed the view that the utilization of codes adversely affects disclosure of annual report information to participants and beneficiaries who, as a general matter, do not have ready access to the form instructions. Having considered these comments, the Agencies have decided to limit their utilization of identifier and plan characteristics codes at this time. In general, the final forms reflect an expanded utilization of check boxes for purposes of identifying the type of benefits provided (e.g., dental, vision, prepaid legal, severance, uninsured death benefits, etc.) and other plan features (e.g., leveraged ESOP, common/ collective trust, etc.). However, the Agencies have adopted the utilization of identifier codes for purposes of identifying how the plan is funded (e.g., trust, insurance, general assets of employer) and how benefits are provided (e.g., trust, insurance, general assets of employer).

d. *Total participant information (item 5a of proposed form/item 7a–f of final form).* As proposed, this item merely required the reporting of total participants as of the beginning and end of the plan year. Some commentators indicated that a requirement to count participants at the beginning of the plan year would be unduly burdensome for many multiemployer plans. The Agencies, in response, have decided to drop this requirement. Another commentator indicated that the deletion of detailed participant count information, as is currently required, concerning the number of vested, nonvested, etc., participants would result in the loss of valuable information. The Agencies are persuaded that, at least with respect to large plans, the current reporting of participant information does provide valuable information to both participants and beneficiaries and the Agencies. Accordingly, the Agencies have decided not to adopt the proposed change to this information item. Because the information requested should be readily available to plan administrators, not adopting the proposed change should not result in any significant burden increases.

With regard to the same item, one commentator indicated that it was unclear as to whether "alternate payees" entitled to benefits under a qualified domestic relations order should be counted as participants. In response to this comment, the Agencies have modified the instruction to item 7 to make it clear that, for purposes of item 7, alternate payees should not be counted as participants. Another commentator indicated that the participant count for purposes of item 7 should not included non-vested participants who are separated from service. The Agencies disagree and maintain the requirement, revised to reflect statutory changes, that non-vested participants should be counted as participants until after the breaks in service period for purposes of Form 5500 Series and related schedules. PBGC uses a different approach for premium purposes. In response to similar questions concerning individuals entitled to group health continuation coverage benefits, the Agencies have modified the instructions to item 7b, concerning retired or separated participants receiving benefits, to clarify that former employees receiving continuation coverage benefits under a group health plan must be counted as participants.

e. *LM numbers (item 7b of proposed form/item 13b of final form).* Several commentators indicated that for multiemployer plans, particularly national plans which may have a large number of sponsoring labor organizations, obtaining LM numbers for sponsoring labor organizations would be time consuming, costly, and without any apparent use to the Agencies. The furnishing of the LM number on the annual return/report form provides the Agencies with the means to easily access information filed on Forms LM–2 and LM–3 (Labor Organization Annual Report) filed with the Department of Labor. The ability to access such information provides the Agencies with a valuable tool for reviewing the operations and activities of related multiemployer and union affiliated plans. While the Agencies recognize that there may be some burdens attributable to the furnishing of LM numbers, the Agencies believe that the burdens are essentially a one-time burden and, because the information should be readily available from the sponsor labor organizations, any burdens and costs attendant to gathering the information should be relatively small. Accordingly,

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the Agencies have decided to retain this item on the final form.

f. *Summary plan description (SPD) (item 9c and d of proposed form/item 8d and e of final form).* The SPD item is required to be answered where there has been a plan amendment during the plan year. This item inquires whether the amendment changes the information contained in the SPD disclosures and, if so, whether disclosures reflecting the amendment have been furnished to participants and beneficiaries and filed with the Department of Labor. One commentator questioned the need for what appeared to be essentially a remainder question on SPDs. Two commentators recommended that the question be expanded to request the dates on which the SPD disclosures were furnished to participants and beneficiaries. Because of the importance of updated summary plan description information to participants and beneficiaries, the Department of Labor believes that the SPD item is important because, among other things, it does serve to remind plan administrators of their SPD disclosure obligations under ERISA, while imposing virtually no burden on filers. The Department does not believe, however, that expanding the question to include distribution dates is necessary to accomplish the objectives of the question and would result in imposing additional filer burdens. Accordingly, this item is being adopted as proposed.

g. *Number of Schedule A's (item 8 of proposed form/item 14 of final form).* This item requires the entry of the number of Schedule A's accompanying the filing. A number of commentators questioned the need for this item when the answer is easily obtained by counting the number of attachments. This item serves both to provide a means by which the filer can verify that all Schedule A's are being attached and, most importantly, a means by which the Agencies can ensure that all Schedule A's are received, processed and maintained with the appropriate annual return/report. Because such verification information is important, from a processing standpoint, where there is a great likelihood of multiple attachments, a similar question has been added to the final form with respect to Schedule C attachments (See: item 28g).

h. *PBGC coverage information (items 6e–g of proposed form/items 9g and 33a–b of final form).* Plans are required to report (1) whether they are covered under the PBGC termination insurance program, (2) if the plan has terminated and it is covered, whether it is continuing to file a PBGC Form 1 (Form 1–ES, if applicable) and pay premiums until the end of the plan year in which assets are distributed or brought under the control of PBGC, and (3) if the plan is covered or this is "not determined," the employer identification number and plan number used to identify the plan. One comment recommended that the item concerning filing of the PBGC Form 1 and payment of premiums by terminated, covered plans should be eliminated since it is only a reminder item. The Agencies have decided that this reminder is valuable in assuring that these premiums are paid and therefore the item is retained. Two comments recommended that the item requesting the employer identification number and plan number should be eliminated since it would be used infrequently. The Agencies have decided to retain this item, since it provides a valuable way to link Form 5500 and PBGC Form 1 information on covered plans and should not be a significant burden on plans.

2. Financial Statements and Related Items

a. *Statement of assets and liabilities (item 17 of proposed form/item 34 of final form).* A number of commentators questioned the need for the required detailed breakdowns of assets, and the corresponding components of income. One commentator suggested that the requested asset information is available to the Agencies in the schedule of assets held for investment accompanying the Form 5500. Other commentators questioned the absence or elimination of certain asset categories (e.g., options, futures, foreign investments, state and municipal securities). The Agencies have carefully reviewed their information needs with respect to the financial statements and that information necessary to adequately monitor the basic financial condition, investment activity, rates of return on certain investment categories, and diversification of assets of plans. In addition, the Agencies reviewed general accounting standards and practices with respect to the preparation of financial statements. On the basis of these reviews, the Agencies have decided to adopt the statement of assets and liabilities and the income and expense statements, essentially as proposed. As discussed below, however, modifications to certain items and instructional clarifications with respect to others have been adopted in response to public comment on the September 1986 proposed forms revisions.

The Department of Labor notes that the statement of assets held for investment, which is required to accompany the Form 5500, does provide information concerning certain assets held by a plan as of the end of the plan year, and acquisitions and dispositions of certain assets during the plan year; however, not all assets are required to be included as part of that schedule and the reported assets are not required to be aggregated by asset type on the schedule (*See:* 29 CFR 2520.103–11 and instructions to the Form 5500). Accordingly, while the schedule of assets held for investment provides valuable information concerning certain plan investments, it does not serve to provide a complete or consolidated composite of a plan's financial status or investment activity and, therefore, does not, in contrast to the required asset and income statements, lend itself to providing adequate information for analysis by the Agencies or disclosure to participants and beneficiaries.

One commentator indicated that it is not uncommon for a particular plan participating in a master trust to hold 100 percent participation in one particular master trust asset and suggested that a plan holding such an asset should be permitted to report that asset as a line-item asset on the Form 5500, rather than having to treat the asset as a separate master trust investment account. Because it appears that this suggestion would result in simplified reporting without affecting the integrity of the information required to be reported, the Agencies have modified the instructions relating to master trust reporting to permit the reporting of an asset(s) in a master trust which is held solely by a single plan to be reported either as a master trust investment account or as a line-item asset on the plan's Form 5500.

One commentator suggested, by reference to the limited reporting requirements for arrangements covered under sections 403(b)(1) and 403(b)(7) of the Internal Revenue Code and arrangements fully funded with allocated insurance contracts, that similar exemptions should be allowed for profit sharing and money purchase plans where assets are invested in individual, fully vested mutual fund accounts or insurance company contracts where the participant is allowed to select from a group of available investment choices. The commentator indicates that such exemption would reduce administrative burdens and that the confirmation statements provided by the mutual fund/insurance company would serve as adequate disclosure to plan participants. The Agencies have not adopted this suggestion. While the Agencies believe that individual account status statements do provide valuable information to participants and beneficiaries, the Agencies also believe that such disclosure in and of itself does not provide a sufficient basis for exempting individual participant directed-type arrangements from the general financial and other reporting requirements, which, among other things, serve to provide participants, beneficiaries and the Agencies with an overview of operations of such plans.



Other commentators suggested that the instructions be modified and/or clarified with respect to what constitutes an "allocated" insurance contract for annual reporting purposes. The clarification requested by the commentators relates to whether certain insurance contracts issued to individual participant account defined contribution plans, pursuant to which the insurance company guarantees with respect to each participant account amounts contributed, a credited interest rate and the payment of retirement benefits, are allocated or unallocated contracts for purposes of the limited exemption from annual reporting, promulgated by the Department of Labor, at 29 CFR § 2520.104–44. Section 2520.104–44 essentially permits pension plans the benefits of which are provided exclusively through allocated insurance contracts or policies, pursuant to the specific terms of which benefit payments are fully guaranteed, to be treated as fully insured plans for purposes of the annual reporting requirements (*See:* Paragraphs (b)(2) and (c) of § 2520.104–44). Plans meeting the requirements of § 2520.104–44 are, among other things, exempt from the requirements to report certain financial information on the annual report (e.g., assets, liabilities, income and expenses), the requirement to engage an independent qualified public accountant, and the requirement to include the report of such accountant as part of the annual report. It has long been the view of the Department of Labor, in interpreting the application of § 2520.104–44, that, for annual reporting purposes, "allocated" contracts include only those contracts under which an insurance company immediately assumes upon receipt of contributions or premiums fixed dollar obligations to provide the retirement benefit specified in the plan, which is payable without adjustment for fluctuations in the market value of the underlying assets (i.e., an unconditional guarantee by the insurer to provide a retirement benefit of a specified amount) and under which the participant or beneficiary obtains a legal right to such benefits which is enforceable directly against the insurance company. The reporting exemption provided by § 2520.104–44(b)(2) is premised on the fact that under such contracts the plan has effectively transferred the risk for the payment of benefits accrued to that date (i.e., the date of the contribution or premium payment) to the insurer and, accordingly, limited reporting is appropriate. The Department has not changed its views with regard to the term "allocated" contract for purposes of § 2520.104–44(b)(2). In this regard, the Department, in response to the issues raised by the commentators, has added a clarifying "note" to the general instructions (Section 2, Part B "What to File," Subpart 1 "Pension Benefit Plan"). In response to comments, the Agencies also have revised the instructions to the forms to clarify that the method for determining the value of unallocated contracts may be the same method utilized in determining the amount reported in item 6e of the Schedule A (*See:* instructions to item 34c(xiv)).

Also in response to comments, the Agencies have attempted to clarify, by example, investments which might be reported as "other" (*See:* instruction to item 34c(xiii)), and, under the liabilities portion of the statement, what constitutes a "benefit claims payable" (*See:* instruction to item 34g).

In an effort to simplify reporting, certain pooled investment arrangement line items appearing on the proposed Form 5500 (*See:* items 17c(v), re: shares of registered investment companies, and 17c(x)(A), (B), (C), and (D) re: values of interest in common/collective trusts, pooled separate accounts, master trusts and 103–12 investment entities, of the proposal) have been combined into a single line item "value of interest in certain investment arrangements" (*See* item 34c(xi) and instructions thereto of final form). A corresponding change was made to the income statement (*See:* item 35b(vi) "net investment gain (loss) from certain investment arrangements" and instructions thereto of final form). In this regard, the instructions to income item 35b(vi) are intended to clarify the reporting of income with respect to registered investment companies, i.e., registered under the Investment Company Act of 1940, as requested by one of the commentators. Finally, the Agencies have added an instruction to emphasize that the collectibility of receivables must be taken into account in valuing those assets (*See:* instruction to 34b). The value of employer contributions due to be received, for example, should also reflect appropriate allowances for collectibility. This would include such factors as the age of the receivable and the financial status of the employer, including the effect of any bankruptcy proceeding.

b. *Statement of income and expenses (item 18 of proposed form/item 35 of final form).* As explained above with respect to the statement of assets and liabilities, the Agencies have, with minor modifications and some clarifications, adopted the income and expense statements essentially as proposed. Those comments and changes relating to the income and expense statement which were not referenced in the above discussion are discussed below.

Some commentators suggested that, with regard to non-cash contributions, a disclosure be made on the form as to the nature of the contribution. The Agencies have not adopted this suggestion in view of the fact that such information is generally required to be disclosed in the accountant's opinion which is required to accompany the Form 5500 and which is required to be made available or furnished to participants and beneficiaries in response to a request to examine or receive a copy of the latest annual report of the plan (*See:* ERISA sections 104(b)(2) and (4)).

Other commentators suggested with respect to the expense statement that the "benefit payment" item be expanded to include a category for hardship withdrawals and transfers to individual retirement accounts. The Agencies have not adopted this recommendation. The Agencies believe that "benefit payment" expense item "other" (*See:* item 35e(iii)) is at this time sufficient for the reporting of benefit-related payments. However, in response to the suggestion of one commentator, reconciliation item (*See:* item 35j and related instruction) has been added to the form to account for the receipt and disbursement of those amounts which do lend themselves to being characterized as either contributions/investment income or administrative/benefit expenses (e.g., amounts received or disbursed as a result of a plan merger or spin-off, etc.). This item was added to minimize distortions in the benefit payment category and evaluating overall plan performance that might otherwise result from the receipt or disbursement of such amounts.

The majority of comments on the income/expense statement related to the detailed break out of administrative expenses (*See:* item 35g). Some commentators believed that the detailed break out of administrative expenses would be very useful. Other

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commentators felt that such a break out was unnecessary and burdensome. A number of commentators suggested that the information was duplicative of the information required to be reported with respect to service providers on the Schedule C. The Agencies have adopted the administrative expense item (item 35g) as proposed. The Agencies believe that a specific break out of administrative expenses by the category of the expense (e.g., accounting fees, actuarial fees, legal fees, etc.) is critical to determining the overall reasonableness of the amounts paid for specific services. The information required to be reported with respect to service providers on the Schedule C relates only to service providers receiving $5,000 or more during the plan year; accordingly, not all administrative expenses relating to a particular category of expense would be available if the reporting of administrative expenses were limited to that information required to be reported on the Schedule C.

One commentator recommended that an item be added to determine the amount of administrative expenses paid by the plan sponsor, rather than the plan. The Agencies have adopted this suggestion in part by adding a new "yes/no" item (*See:* item 36) which asks whether any administrative expenses were paid by the employer sponsoring the plan. The Agencies believe that this item is sufficient to account for any distortions in administrative expenses that might otherwise result from a plan sponsor's payment of such expenses.

*c. Party-in-interest transactions (items 21 a and b of proposed form/ items 29 c, d and 30 e, f of final form).* As proposed, item 21a asked whether the notes to the financial statements accompanying the accountant's opinion disclose any transactions with parties-in-interest. If the answer to 21a is "yes," the amount involved in the transaction(s) was required to be reported in the appropriate category (e.g., securities other than qualifying employer securities, real estate other than qualifying employer real property, mortgages, etc.). Proposed item 21b asked whether the plan engaged in non-exempt transactions with parties-in-interest not reported in 21a, and if the answer is "yes" a schedule of such non-exempt transactions was required to be completed in accordance with the instructions. One commentator expressed concern that the proposed change resulted in requiring disclosure of only those party-in-interest transactions identified by the accountant. The commentator also indicated that moving the party-in-interest disclosures from the assets and liabilities section of the financial statements should be permitted only if all exempt and non-exempt transactions are required to be reported. Other commentators indicated that the proposed changes in the reporting of party-in-interest transactions might be more burdensome in view of the fact that only non-exempt transactions were required to be reported in prior years by Form 5500 filers and that, if the information was in the accountant's notes, it would be duplicative to also report the information on the forms.

The Agencies believe that the general apppproach proposed with respect to the reporting of party-in-interest transactions does provide for adequate disclosure of such transactions. For instance, as the reporting alternative to the information currently reported in the existing asset column, information about specific party-in-interest transactions is required to be reported on lines 29 and 30 (including addition of 29(d) seeking the amount involved in transactions reported in 29(c), specific reporting of employer related securities and real estate on line 34(d), and identification by asterisk of party-in-interest transactions on the schedules required by lines 30 a, b, c, d, e, and f). Accordingly, the Agencies have, with some modification, adopted the same approach for purposes of the final form. Items 29 c and d of the final form have replaced item 21a(f)–(vii) of the proposed form. Item 29c, which appeared on the 1987 Form 5500 as item 22d, specifically asks for a "yes"/"no" response to whether the financial statements or notes to the financial statements accompanying the report disclose, among other things, significant real estate or other transactions in which the plan and the sponsor, plan administrator, employers or employer organizations are jointly involved, and whether the plan has participated in any related party transactions. This item is intended to conform to those disclosures typically included by the accountant in the financial statements or notes to such statements.

Item 29c provides, through a simple "yes"/"no" question, for the identification of certain significant transactions on the form which have been identified by a source independent of the plan administrator (i.e., the independent qualified public accountant), without imposing any measurable burdens on either the administrator or accountant. In lieu of requiring the detailed break-out of the transactions identified in the accountant's financial statements or notes, as in item 21a(i)–(vii), item 30d of the final form merely requires the reporting of the total amount of the transactions. The Agencies believe that the reporting of the total amount of such transactions will be sufficient to identify potential problems in this area. Item 21b of the proposed form required a schedule of only those non-exempt transactions not reported in the accountant's financial statements and/ or notes. As pointed out by a couple of commentators, it is unlikely that the accountant's financial statements or notes would typically specify whether a party-in-interest transaction is subject to an exemption or not. Accordingly, the form has been modified to require that a schedule be completed by the plan administrator with respect to all non-exempt party-in-interest transactions during the plan year (including those involving publicly traded securities), whether or not such transactions have generally been identified in the accountant's financial statements or notes (*See:* items 30 e and f and related instructions).

The Agencies do not believe that a listing of all exempt transactions is necessarily useful as part of the annual report because the availability of each exemption is conditioned on the satisfaction of those conditions set forth in the exemption, as well as the accuracy of the representations made in connection with the granting of an individual exemption; accordingly, determining compliance with any given exemption would, in the absence of imposing significant reporting burdens on filer, be very difficult to determine through the annual reporting process. The Agencies have other means, which are more efficient and effective, by which to verify compliance with available exemptions.

3. Service Provider Information (Items 19 and 23 of Proposed Form/Item 28 of Final Form)

a. *Service providers receiving $5,000 or more in compensation.* Item 23 of the proposed form reflected the Agencies decision to increase the threshold amount for reporting service provider information from $600 in a plan year to $5,000 in a plan year. Many of the comments relating to the reporting of this information on the Schedule C supported the Agencies' proposed change. On the basis of these comments and the Agencies' continued belief that an increase in the compensation threshold will result in the reporting of more useful information to the Agencies, as well as participants and beneficiaries, the Agencies are adopting this item without change (*See:* item 28a of the final form). The listing of service providers is reported in Part I of the new Schedule C.

b. *General termination in appointment information.* Items 19a–c of the proposed form are identical to the questions which appeared on the Form 5500 in prior years with respect to providing information on the termination of certain service providers to the plan. Items 19a–c specifically ask: whether there has been a termination of a trustee, accountant, insurance carrier, enrolled actuary, administrator, investment manager or custodian; for the identification of the terminated party (i.e., name, address and telephone number); for an explanation of the termination; and whether there are any outstanding material disputes or matters of disagreement concerning the termination. A number of commentators suggested that changes in service providers generally are undertaken for a variety of legitimate reasons in the normal course of plan administration and, therefore, questioned the need for such information. Other commentators indicated there was insufficient space allotted on the form to provide the requested information concerning terminated service providers.

The Agencies have decided to retain these questions without change for Form 5500 filers (*See:* items 28c–e of the final form). First, the Agencies note that section 103(c)(4) specifically mandates that an administrator include as part of the annual report an explanation for the termination of the persons delineated in item 28d. Second, while the Agencies recognize that changes in service providers can take place for a variety of legitimate reasons, the Agencies believe that the requested information, particularly the explanation of the termination, does provide useful information concerning the general practices of a plan and does serve as a means by which to identify those practices which may not be in the best interest of the plan or its participants and beneficiaries. In response to a comment noting insufficient space on the form for the requested termination information, the Agencies, in an effort to provide more space for the requested information, have modified the new Schedule C to accommodate this information (*See:* Part III of Schedule C).

c. *Termination of Accountant/ Actuary (item 19d of proposed form/ item 28f of final form).* Item 19d (and the instructions thereto) of the proposed form required that the plan administrator include as part of the annual report a letter from any accountant or enrolled actuary who had been terminated, stating the reasons for the termination. A number of commentators indicated that the requested letter from the terminated accountant or actuary should not be required as part of the annual report in view of the fact that a terminated accountant or actuary may be uncooperative in providing such a letter or reluctant to state reasons for the termination. The commentators noted that having to obtain such a letter may be very difficult, if not impossible, and may, as a result of delays in receiving such letter, cause delays in the filing of the annual report. One commentator noted that, if a professional believes that a termination was without cause, the terminated professional should be able to notify the Department of Labor directly.

The Department of Labor believes that accountants and actuaries represent a valuable and independent source of information concerning the operations and activities of employee benefit plans. In this regard, it is noted that ERISA sections 103(a)(3)(A) and 103(a)(4)(A) specifically require that, with certain exceptions, the administrator of a plan is to engage an independent qualified public accountant and an enrolled actuary, respectively, on behalf of all plan participants and beneficiaries. Accordingly, the Department believes that the termination of an accountant and/or actuary is a significant event and that the views of the terminated accountant or actuary as to the reasons for their termination will be useful in identifying potential abuses. However, the Department also agrees with those commentators who indicated that requiring administrators to obtain, and include as part of a plan's annual report, a letter from a terminated accountant or actuary stating the reasons for the termination may result in significant burdens on the plan administrator. The Department, therefore, has modified the requirements of the final form (*See:* item 28f) to merely require that the administrator furnish the terminated accountant and/or actuary a copy of the administrator's explanation for the termination, as set forth on Schedule C, along with a notice advising the accountant/actuary of the opportunity to provide comments on the furnished explanation directly to the Department of Labor (*See:* model notice in instructions to item 28f). The Department believes that this change accommodates both the needs of the Department and the concerns expressed by the commentators in this area.

4. *Reportable transactions (item 26a(iv) of proposed form/item 30d of final form).* As proposed, item 26a(iv) required the reporting of any transaction or series of transactions involving in excess of 5 percent (rather than 3 percent) of the current value of plan assets. The Department of Labor has adopted this item as proposed (*See:* item 30d of final form). Comments concerning this item are discussed in connection with the adoption by the Department of Labor of amendments to 29 CFR § 2520.103–6 appearing in today's **Federal Register**.

*B. Form 5500–C/R*

1. Identification, Plan Characteristics, Participant, and Other General Information Items (*See:* Form 5500 Discussion Relating to These General Items)

2. *Financial statements and related items*

As proposed, the Form 5500–C required plans with 25 or fewer participants to report only summary financial information (i.e., total assets, liabilities, net assets, income, expenses, net income (loss) and contributions for the plan year) and plans with 26 to 99 participants to complete the more detailed financial statements (*See:* items 18, 19, 24 and 25 of the proposed form). The proposed Form 5500–R also included a requirement that all plans filing the form report summary financial information identical to that to be reported by plans with 25 or fewer participants on the proposed Form 5500–C.

A number of commentators indicated that the limited financial reporting provided for plans with 25 or fewer participants on the proposed Form 5500–C would result in a reduction of reporting burdens. However, many of the same commentators also indicated that the addition of financial information to Form 5500–R would increase reporting burdens for many small plans and offset any burden reductions that may have resulted from the simplified reporting on the proposed Form 5500–C. Some commentators felt that adding financial information to the Form 5500–R would defeat the intended purpose of the triennial filing scheme. A number of commentators recommended that the limited financial reporting provided on the proposed Form 5500–C for plans with 25 or fewer participants be extended to all plans with fewer than 100 participants. Other commentators indicated that the simplified financial reporting provided for plans with 25 or

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fewer participants would not result in any reductions in burdens because completion of the summary financial information items required virtually the same steps as those that would be required to complete the detailed financial statements.

Taking into consideration the importance of the information contained in the detailed financial statements to assure tax compliance for small plans and what appears, from some comments received on the proposed forms revisions, to be little difference in those burdens attributable to completing the detailed financial statements and those attributable to completing the summary financial statements, the Agencies have decided not to adopt, for purposes of the Form 5500–C, the summary financial statement reporting requirement for plans with 25 or fewer participants.[8] The Agencies, however, have decided to adopt, essentially as proposed, the requirement for the reporting of summary financial information on the Form 5500–R (*See:* items 13 and 14 of the Form 5500–R). The only modification to the proposed summary financial information is the addition of a line item for "total benefits paid" (*See:* item 14e of final Form 5500–R). This modification was adopted to permit the Agencies, and participants and beneficiaries, to distinguish between benefit payment expenses and those expenses related to the actual administration of a plan.

While a number of commentators indicated that the reporting of the proposed summary financial information on the Form 5500–R would increase burdens for small plan filers and, in effect, negate the benefits of the triennial filing system, the Agencies do not agree. First, the absence of any financial information on the Form 5500–R has over the past several years effectively precluded the Agencies, as well as participants and beneficiaries, from undertaking any type of current analysis of the financial condition of those plans filing the Form 5500–R. The Agencies believe that the availability of financial information on the Form 5500–R, albeit summary in nature, will significantly enhance the ability of both the Agencies and the participants and beneficiaries in small plans, to monitor, on a current annual basis, the financial condition and activity of such plans, while imposing little, if any additional burden on small plan filers. Second, the Agencies continue to believe, as indicated in the supplementary information accompanying the September 19, 1988 proposed forms revisions, that the requested financial information is prepared and maintained in the normal course of prudent plan operations and, therefore, the entry of the information on the form should not result in any increase in burdens or costs to affected plans.[8] This conclusion is supported, in part, by the fact that at least 50 percent of small plan filers currently elect to file the Form 5500–C, which requires the completion of detailed financial information, every year, rather than only every third year as permitted under the triennial filing system. The Agencies also believe that, even with the addition to the Form 5500–R of summary financial information, the differences in the information required to be reported on the Form 5500–C and the Form 5500–R is such that reduced reporting burdens will result for many plans electing to take advantage of the Form 5500–C/R triennial reporting system, as opposed to the filing of the Form 5500–C on an annual basis.

Lastly, the Agencies note that the deletion of certain reporting items for 5500–C filers will also reduce reporting burdens. In this regard, the Department of Labor believes that the interests of both the Department and plan participants are protected by section 107 of the Act which requires plans to preserve and make accessible all information which would be reported absent an exemption or simplified reporting requirement.

3. Miscellaneous Items

a. *Service provider information.* Item 28 of the proposed Form 5500–C asked whether, since the end of the plan year covered by the last return/report Form 5500 or 5500–C (or during this plan year, if this is the initial return/report), any person who rendered services to the plan received directly or indirectly more than $2,500 in compensation during the plan year (except for employees of the plan who were paid less than $1,000 per month). This information was required to be reported in the service provider section of the Schedule C. However, upon reevaluating the information needs of the Agencies, as they relate to small plans, and taking into consideration the availability of such information upon examination of such plans, the Agencies have decided not to require Form 5500–C filers to report service provider information at this time.

b. *Service provider termination information.* Item 22 of the proposed Form 5500–C, like item 19 of the proposed Form 5500, asked for information concerning any trustee, administrator, accountant, investment manager, insurance carrier, custodian and enrolled actuary terminated during the plan year, an explanation of reasons for the termination and whether there have been any outstanding material disputes or disagreements concerning the termination, and, in the case of a terminated accountant or actuary, whether a signed letter from the terminated accountant or actuary is attached explaining the reasons for the termination. Taking into consideration the comments received concerning the service provider termination items and a review of the Agencies' informational needs for small plans, the Agencies have decided not to require Form 5500–C/R filers to file information concerning terminated service providers. The Agencies believe that the availability of such information upon examination of the books and records of small plans is adequate at this time.

c. *Party-in-interest transactions.* Item 26e of the proposed Form 5500–C asked whether, except for publicly traded securities, the plan engaged in non-exempt transactions with parties in interest. If the answer is "yes," a schedule of such transactions, prepared in accordance with the instructions, was required to be completed. In an effort to further simplify reporting for small plans, the Agencies have modified this question on the final forms by adding "yes"/"no" questions which ask whether, during the plan year, there has been any sale, exchange, or lease of any property or any loan or extension of credit between the plan and the employer, any fiduciary, any of the five most highly paid employees of the employer, any owner of a 10% or more interest in the employer or relatives of any such persons (*See:* item 29c and d of the final Form 5500–C); As adopted, item 29c and d does not require the administrator to distinguish between exempt and non-exempt party in interest transactions, nor is a schedule of the transactions required to accompany the Form 5500–C filing. However, if a "yes" response is required, the amount of such transaction(s) is also required to be provided.

[8] In addition to the solicitation of comments on the Agencies' forms revisions proposal published in the **Federal Register** and the receipt of testimony at the joint Agency public hearing on the proposed forms revisions, the Internal Revenue Service, with participation by the Office of Management and Budget, conducted a number of public symposia relating to, among other things, the Form 5500 Series. Public comments received at those symposia appeared to support the proposition that essentially the same information and process required to complete the detailed financial statements is necessary to the completion of the proposed summary financial statements. Therefore, it would appear that little, if any, increase in burdens would result from requiring all plans to complete the detailed, rather than the proposed summary, financial statement.

[8] The Department of Labor notes that ERISA section 107, relating to the retention of record, requires "every person subject to a requirement to file any description or report * * * *or who would be subject to such a requirement but for an exemption or simplified reporting reporting requirement under section 104(a)(2) or (3)* of this title [Title I], shall maintain records on matters of which disclosure is required which will provide in sufficient detail the necessary basic information and data from which the documents thus required may be verified, explained, clarified and checked for accuracy and completeness. * * *" (Emphasis supplied). The statutory basis for the prescription of simplified annual reporting for pension plans with fewer than 100 participants and small welfare plans in ERISA section 104(a)(2) and (3). Accordingly, whether or not the detailed financial information required to be included in an annual report pursuant to ERISA section 103 is required to be reported on the Form 5500 Series, records relating to these requirements are required to be maintained in accordance with the record-keeping requirements of section 107.



*C. Schedule A (Insurance Information)*

A number of commentators suggested elimination or modification of the Schedule A on the basis that the plan administrator is dependent on the insurance company to provide the information necessary to complete the Schedule and some insurance companies do not provide the required information in a timely manner and others do not provide it at all, thereby putting the administrator in the difficult position of having position of having to decide whether to file the annual report without the Schedule A information or delay their annual report filing. It is the view of the Agencies that compliance with annual reporting requirements requires the filing of a complete, accurate and timely annual return/report, which includes that information required to be reported on the Schedule A. Accordingly, plan administrators and fiduciaries are obliged to take any and all steps reasonably necessary to secure the Schedule A information. In this regard, it should be noted that, with respect to the obligation of insurance carriers to furnish the Schedule A information, ERISA section 103(a)(2) specifically provides that, if some or all of the information necessary to enable the administrator to comply with the requirements of Title I of ERISA is maintained by an insurance carrier or other organization which provides some or all of the benefits under a plan or holds assets of the plan in a separate account, such carrier is required to transmit and certify the accuracy of such information to the administrator within 120 days after the end of the plan year. Therefore, the failure or refusal by an insurance carrier to provide the required Schedule A information to the plan administrator in a timely manner would constitute a violation of the requirements of Title I of ERISA, with respect to which plan fiduciaries may pursue the statutory remedies provided in section 502(a)(3). Administrators are advised that in no event should annual return/report filings be delayed pending receipt of the Schedule A information beyond the date on which the report is due (including any extensions granted by the Internal Revenue Service). Rather, the administrator should complete the Schedule A, to the extent possible, and file a timely return/report noting any deficiencies in the Schedule A, the carrier and the steps being taken to secure the required information. Upon the receipt of the deficient Schedule A information by the plan administrator, the administrator should file an amended return/report in accordance with the instructions to the forms.

One commentator requested that the Department of Labor reconsider its position, as set forth in Advisory Opinion No. 86–17A, on the reporting of certain "excess commissions" on the Schedule A. Another commentator noted that, if Opinion No. 86–17A is the Department's position on the reporting of "excess commissions", the instructions to the Schedule A should be modified to clearly reflect that position. Opinion No. 86–17A addressed the issue as to whether certain compensation or fees (referred to as "excess commissions") received by insurance brokers, which might be calculated on a percentage of new business and/or renewal business obtained in one year, or on the increase in premiums earned by a broker in one year over a prior year, or on the total business managed by a broker, are required to be reported on the Schedule A, even though such commissions do not compensate the broker for the placement of a particular contract with an employee benefit plan. In Opinion No. 86–17A the Department concluded that, because the "excess commissions" described in the letter would be calculated taking into account contracts with employee benefit plans and such commissions are not paid for managing an agency or for performing other administrative functions (exceptions provided in the instructions to the Schedule A), the excess commissions are required to be reported on a proportionate basis on the Schedule A of a plan's annual return/report. In the course of its review of the annual reporting requirements and the public comments received on the proposed revisions to the Form 5500 Series, the Department did review the extent to which insurance fees and commissions should be required to be reported on the Schedule A. On the basis of this review, the Department has concluded that, consistent with its views expressed in Opinion No. 86–17A, all fees and commissions directly or indirectly attributable to a contract between a plan and an insurance company, insurance service or similar organization should be reported on the Schedule A. Therefore, the Department has retained the requirement that "excess commissions", as described in Opinion No. 86–17A, must be reported on the Schedule A. The instructions to the Schedule A have been revised to clarify the required reporting of such amounts.

*D. Schedule B (Actuarial Information)*

The proposed Schedule B required that certain values, previously reported by all plans as of the beginning of the plan year, would be reported by single employer plans as of the end of the plan year. Multiemployer plans would continue to report these values as of the beginning of the plan year. The items affected were the current value of assets accumulated in the plan (item 6c), the present value of vested benefits (item 6d), and the present value of nonvested accrued benefits (item 6e). Comments stated that end-of-year assets are reported on the main form and therefore requiring this on the Schedule B would be redundant. Comments further stated that requiring the actuary to enter this value on the Schedule B would result in delays and increased requests for filing extensions if the actuary had to wait to obtain this value from the plan administrator in order to complete the Schedule B. Comments indicated that requiring end-of-year valuations, in order to report vested benefits and nonvested accrued benefits as of the end of the year, would result in significant additional costs and burden for many plans, since most plans perform their valuations as of the beginning of the plan year. Several comments requested that projections of actuarial values to the end of the plan year be allowed, and one comment suggested that an end-of-year requirement that allowed projections would not represent a significant burden for many plans. In response to these comments, the Agencies have decided not to require end-of-year reporting of these values at this time. All plans will continue to report these values as of the beginning of the plan year.

Another change to the Schedule B requires plans to separate amortization charges to the funding standard account into those charges due to funding waivers (item 9c(i)) and those charges due to other than funding waivers (item 9c(ii)). Unamortized balances are similarly required to be separated. The response to this item was favorable; no

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one indicated that it would be burdensome to the plans. The Agencies have accordingly decided to adopt this change.

A new instruction was added to item 9j to clarify that a funding waiver request(s) pending with the IRS is not to be reported in this item until the waiver(s) is granted. One comment indicated that the wording of the instruction suggested that only waived minimum funding amounts could be included in this item, and stated that actuaries use this item to report amounts due to other occurrences. The Agencies have changed the instruction to recognize that other credits are reported in this item.

Some comments were focused on the fact that the instructions for item 7 did not reflect the overview. The instructions have been revised to provide that only contributions that have actually been made are to be reported in item 7. The change is being made so that the Schedule B will properly reflect whether a funding deficiency exists. Oftentimes, the Agencies have found that the reported contributions (reported as "to be made by" a specified date) were, in fact, not made. However, by the time this fact is discovered, a significant period of time has elapsed. The revised instructions should enable the Agencies to address in a more timely manner the failure to make contributions to a plan.

Some comments focused on the addition of line 8(c) which asks for the unfunded liability for spread gain methods. This item has been added to test for compliance with the requirements of section 1.412(c)(3)–1(b)(1) of the Income Tax Regulations (relating to the basic funding formula). Prior to the change, the Schedule B did not contain sufficient information to test whether this requirement was met for a plan that was funded using a spread gain method that had an unfunded liability (e.g., the frozen initial liability method).

*E. Schedule C (Service Provider and Trustee Information)*

The Schedule C is essentially a Department of Labor schedule to be used for the reporting of certain service provider and trustee information. As proposed, Part I of the Schedule was, in the case of Form 5500 filers to be used for the reporting of service providers receiving $5,000 or more duiring the plan year and, in the case of Form 5500–C filers, service providers receiving more than $2,500 or more during the plan year. Part II of the proposed Schedule C was to be used for the reporting of the name and address of each plan trustee. In addition to other changes to the Schedule C, the Department of Labor, as indicated above, has, on the basis of a review of its informational needs, decided to limit the reporting of the information required on the Schedule C to only Form 5500 filers. Accordingly, plans with fewer than 100 participants filing the Form 5500–C will not be required to file a Schedule C as part of their return/report. The Department also has decided, with respect to that information required to be reported on the Schedule C, to adopt the proposed increase in the compensation reporting threshold for reporting service provider information from $800 to $5,000 during the plan year (*See:* above discussion of item 28a of the final Form 5500).

With respect to Part I of the proposed Schedule C, a few commentators suggested that the requirement to report service provider information was burdensome and should be eliminated. One commentator suggested that the information should be reported on the form, rather than on a new Schedule. Other commentators indicated that the service provider information provides a useful clarification of the elements comprising the operating costs of plans and should be retained as a reporting requirement.

With the exception of the increase in the threshold amount for reporting service provider information, the service provider information required to be reported on the Schedule C is identical to that information which has, since the inception of the Form 5500 Series, been required to be reported by Form 5500 filers (*See:* item 12 of 1987 Form 5500). Over the past several years, the Department of Labor has identified a number of abuses by employee benefit plan service providers (e.g., excessive and duplicative fees, payment of kickbacks to plan fiduciaries, etc.). As a result of the number of abusive practices identified in the service provider area, the Department of Labor has included service provider investigations as a major component of its ERISA Enforcement Strategy Implementation Plan (December 1988). The abuses in the service provider area and the importance of adequate service provider information as part of the Form 5500 Series was recognized in the report of the President's Commission on Organized Crime (*See:* Report to the President and the Attorney General, *The Edge: Organized Crime, Business, and Labor Unions*). Thus, it is the view of the Department that the service provider information required to be reported on the Schedule C is a valuable source of information to the Department, as well as other Federal agencies and participants and beneficiaries. Moreover, the Agencies continue to believe that utilizing a separate schedule for the reporting of service provider and trustee information will facilitate compliance by plans and data entry of reported information by the Agencies. For these reasons, the Agencies have decided to retain the service provider reporting requirements for Form 5500 filers, with the reporting of such information on the Schedule C (*See:* Part I of Schedule C).

However, in response to various comments suggesting the need for clarifications in the instructions relating to the reporting of service provider information, the Agencies have modified the instructions to Schedule C. Specifically, the instructions to Part I of the Schedule C have been modified to clarify that, in the case of service providers which are business entities (e.g., corporations, partnerships, etc.), information relating to the business entity is to be reported rather than the employees of the business entity who are servicing the plan on behalf of the entity. The instructions also have been modified to clarify that the $5,000 compensation threshold for reporting service provider information is to be determined on the basis of the total aggregate compensation paid to a service provider during the plan year and not on the basis of whether any one service provided by the individual or entity resulted in a payment or payments of $5,000 or more by the plan. The revised instructions further clarify the types of payments which are and are not required to be reported on the Schedule C. For example, the instructions clarify that amounts paid by an employer-plan sponsor to its employees for services provided to the plan are not required to be reported on the Schedule C to the extent that the payment of such amounts do not constitute a direct or indirect expense of the plan. The instructions also clarify that information relating to the payment of certain fees or commissions (such as a "finder" fee) paid by a service provider to an independent agent is required to be reported on the Schedule C, if the amount paid is $5,000 or more during the plan year.

With respect to the reporting of trustee information (i.e., the name and address of each plan trustee), a number of commentators indicated that such reporting was a duplication of that information already required to be reported in the summary plan description and Schedule P and, therefore, should be eliminated or modified. Other commentators felt that the reporting of current trustee information as part of the annual report would provide useful, up-to-date information, particularly, according to one commentator, in view of the turnover of trustees on some funds. The Agencies believe that current trustee information is important to both the Agencies and plan participants and beneficiaries. While the summary plan description is required to contain trustee information, the information included as part of the summary plan description, which principally serves to disclose, in narrative form, plan information to participants and beneficiaries, does not lend itself to computer-entry to the same degree as that information reported on the Form 5500 Series. Accordingly, the access to information through the summary plan description is limited, in addition to being complicated by the fact that summary plan descriptions are being amended on a regular basis and updated summary plan descriptions are not required to be furnished to participants and beneficiaries or filed with the Department of Labor except at five or ten year intervals. However, the reporting of trustee information as part of the annual report, in conjunction with the implementation by the Agencies of a new expanded data base system for the 1988 plan year Form 5500 Series filings, will provide the Agencies with the ability to easily access current trustee information. Other commentators suggested utilization of the Schedule P for trustee information. The Schedule P is an IRS form for the reporting of certain trustee/custodian information. However, because the Schedule P is an optional filing applicable only to trustees and custodians of organizations qualified under Code section 401(a) and exempt from tax under Code section 501(a), the Schedule P would not serve as a complete or reliable source of current trustee information. For these reasons, the Agencies are adopting Part II of the proposed Schedule C without modification. The Agencies, however, will in the future, be reviewing the feasibility of some form of exception reporting in this area (e.g., reporting only changes in the trustee information annually).

As noted earlier, a new Part III has been added to the Schedule C for inclusion of explanations of terminations of certain service providers to plans.



**IV. Regulations Relating to the Final Forms**

In the supplementary information accompanying the September 19, 1986 publication of the proposed forms revisions in the **Federal Register**, the Department of Labor noted (51 FR 33503) that the proposed forms contemplated adoption of a proposed regulation (§ 2520.103–12) providing a limited exemption from, and alternative method of compliance with, the reporting and disclosure requirements of Title I of ERISA for plans which invest in certain entities whose assets would be deemed "plan assets" under the Department's regulation defining "plan assets" (29 CFR 2510.3–101). Regulation § 2520.103–12 was adopted and published in the **Federal Register** on November 13, 1986 (51 FR 41285).

For purposes of Title I of ERISA, the filing of a completed Form 5500 (including the report of an independent qualified public accountant and any required statements and schedules) by plans with 100 or more participants constitutes compliance with the limited exemption and alternative method of compliance prescribed in paragraph (b) of 29 CFR 2520.103–1, promulgated in accordance with the authority granted the Secretary under sections 104(c)(3) and 110 of ERISA. The filing of a completed Form 5500–C or Form 5500–R, as appropriate, constitutes compliance with the simplified annual reporting requirements prescribed at 29 CFR 2520.104–41, adopted pursuant to the authority granted the Secretary under sections 104(a)(2)(A) and 104(a)(3) (*Also see:* 29 CFR 2520.103–1(c)). In the supplementary information accompanying the 1986 proposed forms revisions (51 FR 33503), the Department of Labor also noted that certain amendments to the annual reporting regulations would be necessary to accommodate certain proposed revisions to the forms. These amendments were published in the **Federal Register** for public comment on January 2, 1987 (52 FR 84). A document containing amendments to the annual reporting regulations adopted by the Department of Labor appears in this same separate part of today's **Federal Register**. These amendments are effective for reporting for plan years beginning on or after January 1, 1988.

**Paperwork Reduction Act**

These forms contain information collection requirements. They have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511). The Form 5500 Series Annual Report of Employee Benefit Plans has been assigned Control No. 1210–0016.

**Statutory Authority**

Accordingly, pursuant to the authority in sections 101, 103, 104, 109, 110 and 4065 of ERISA and sections 6039D and 6058 of the Code, the Form 5500 Series Annual Return/Report and the instructions thereto are adopted as set forth below.

Signed at Washington, DC, this 23rd day of February, 1989.

**David M. Walker,**

*Assistant Secretary for Pension and Welfare Benefits, U.S. Department of Labor.*

**Robert I. Brauer,**

*Assistant Commissioner, Employee Plans and Exempt Organizations, Internal Revenue Service.*

**Kathleen P. Utgoff,**

*Executive Director, Pension Benefit Guaranty Corporation.*

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Form **5500**

Department of the Treasury
Internal Revenue Service

Department of Labor
Pension and Welfare Benefits Administration

Pension Benefit Guaranty Corporation

# Annual Return/Report of Employee Benefit Plan (With 100 or more participants)

This form is required to be filed under sections 104 and 4065 of the Employee Retirement Income Security Act of 1974 and sections 6039D, 6057(b), and 6058(a) of the Internal Revenue Code, referred to as the Code.

▶ For Paperwork Reduction Act Notice, see page 1 of the instructions.

OMB No. 1210-0016

**1988**

This form is open to public inspection.

For the calendar plan year 1988 or fiscal plan year beginning , 1988, and ending , 19

If your plan year changed since the last return/report filed, check this box ▶ ☐

Type or print in ink all entries on the form, schedules, and attachments. If an item does not apply, enter "N/A." File the originals.

If *(i)* through *(iii)* do not apply to this year's return/report, leave the boxes unmarked. This return/report is:
*(i)* ☐ the first return/report filed for the plan; (ii) ☐ an amended return/report; or (iii) ☐ the final return/report filed for the plan.

▶ Welfare benefit plans and fringe benefit plans need only complete certain items—see the instructions "What To File."

▶ If you have been granted an extension of time to file this form, you must attach a copy of the approved extension to this form.

Use IRS label. Otherwise, please print or type.

1a Name of plan sponsor (employer if for a single-employer plan) | 1b Employer identification number

Address (number and street) | 1c Telephone number of sponsor ( )

City or town, state, and ZIP code | 1d Business code number

2a Name of plan administrator (if same as plan sponsor, enter "Same") | 1e CUSIP issuer number

Address (number and street) | 2b Administrator's employer identification no.

City or town, state, and ZIP code | 2c Telephone number of administrator ( )

3 Are the name, address, and employer identification number (EIN) of the plan sponsor and/or plan administrator the same as they appeared on the last return/report filed for this plan? ☐ Yes ☐ No. If "No," enter the information from the last return/report in a and/or b, and complete c.

a Sponsor ▶ EIN Plan number

b Administrator ▶ EIN

c If a indicates a change in the sponsor's name and EIN, is this a change in sponsorship only? (See specific instructions for definition of sponsorship.) ☐ Yes ☐ No

4 Check the appropriate box to indicate the type of plan entity (check only one box):

a ☐ Single-employer plan
b ☐ Plan of controlled group of corporations or common control employers
c ☐ Multiemployer plan
d ☐ Multiple-employer collectively-bargained plan
e ☐ Multiple-employer plan (other)
f ☐ Group insurance arrangement (of welfare plans)

5a *(i)* Name of plan ▶ | 5b Effective date of plan ▶

*(ii)* ☐ Check if name of plan changed since last return/report | 5c Enter three-digit plan number ▶

6a ☐ Welfare benefit plan (plan numbers 501 through 999) must check applicable items (A) through (P) and 6c.

*(i)* ☐ Type
(A) ☐ Health (other than dental or vision)
(B) ☐ Life insurance
(C) ☐ Supplemental unemployment
(D) ☐ Dental
(E) ☐ Vision
(F) ☐ Temporary disability (accident & sickness)
(G) ☐ Prepaid legal
(H) ☐ Long-term disability
(I) ☐ Severance pay
(J) ☐ Apprenticeship & training
(K) ☐ Scholarship (funded)
(L) ☐ Death benefits other than life insurance
(M) ☐ Code section 120 (group legal services plan)
(N) ☐ Code section 125 (cafeteria plan)
(O) ☐ Code section 127 (educational assistance program)
(P) ☐ Other (specify) ▶

*(ii)* If you checked (M), (N), or (O), check if plan is: ☐ funded or ☐ unfunded.

6b ☐ Pension benefit plan (plan numbers 001 through 500) must check applicable items in *(i)* through *(vii)* and answer 6c through 6f.

*(i)* ☐ Defined benefit plan
*(ii)* ☐ Defined contribution plan—(indicate type of defined contribution):
(A) ☐ Profit-sharing (B) ☐ Stock bonus
(C) ☐ Target benefit (D) ☐ Other money purchase (E) ☐ Other (specify) ▶
*(iii)* ☐ Defined benefit plan with benefits based partly on balance of separate account of participant (Code section 414(k))
*(iv)* ☐ Annuity arrangement of certain exempt organizations (Code section 403(b)(1))
*(v)* ☐ Custodial account for regulated investment company stock (Code section 403(b)(7))
*(vi)* ☐ Pension plan utilizing individual retirement accounts or annuities (described in Code section 408) as the sole funding vehicle for providing benefits
*(vii)* ☐ Other (specify) ▶

▶ Caution: A penalty for the late or incomplete filing of this return/report will be assessed unless reasonable cause is established.

Under penalties of perjury and other penalties set forth in the instructions, I declare that I have examined this return/report, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete.

Date ▶ Signature of employer/plan sponsor ▶

Date ▶ Signature of plan administrator ▶







6c Other plan features: *(i)* ☐ ESOP *(ii)* ☐ Leveraged ESOP *(iii)* ☐ Participant-directed account plan
*(iv)* ☐ Pension plan maintained outside the United States *(v)* ☐ Master trust (see instructions)
*(vi)* ☐ 103-12 investment entity (see instructions) *(vii)* ☐ Common/collective trust *(viii)* ☐ Pooled separate account

| | | Yes | No |
|---|---|---|---|
| d Single-employer plans enter the tax year end of the employer in which this plan year ends ▶ Month Day Year | | | |
| e Is the employer a member of an affiliated service group? | | | |
| f Does this plan contain a cash or deferred arrangement described in Code section 401(k)? | | | |

7 Number of participants as of the end of the plan year (welfare plans complete only a(iv), b, c, and d):

| | | |
|---|---|---|
| a Active participants: *(i)* Number fully vested | a(I) | |
| *(ii)* Number partially vested | a(II) | |
| *(iii)* Number nonvested | a(III) | |
| *(iv)* Total | a(IV) | |
| b Retired or separated participants receiving benefits | b | |
| c Retired or separated participants entitled to future benefits | c | |
| d Subtotal (add a(iv), b, and c) | d | |
| e Deceased participants whose beneficiaries are receiving or are entitled to receive benefits | e | |
| f Total (add d and e) | f | |

| | | Yes | No |
|---|---|---|---|
| g *(i)* Was any participant(s) separated from service with a deferred vested benefit for which a Schedule SSA (Form 5500) is required to be attached to this form? | g(I) | | |
| *(ii)* If "Yes," enter the number of separated participants required to be reported ▶ | | | |
| 8a Were any plan amendments adopted during the plan year? | 8a | | |
| b Did any amendment result in the retroactive reduction of accrued benefits for any participant? | b | | |
| c Enter the date the most recent amendment was adopted ▶ Month Day Year | | | |
| d If a is "Yes," did any amendment change the information contained in the latest summary plan descriptions or summary description of modifications available at the time of the amendment? | d | | |
| e If d is "Yes," has a summary plan description or summary description of modifications that reflects the plan amendments referred to in d been furnished to participants and filed with the Department of Labor? | e | | |
| 9a Was this plan terminated during this plan year or any prior plan year? If "Yes," enter the year ▶ | 9a | | |
| b Were all plan assets either distributed to participants or beneficiaries, transferred to another plan, or brought under the control of PBGC? | b | | |
| c Was a resolution to terminate this plan adopted during this plan year or any prior plan year? | c | | |
| d If a or c is "Yes," have you received a favorable determination letter from IRS for the termination? | d | | |
| e If d is "No," has a determination letter been requested from IRS? | e | | |
| f If a or c is "Yes," have participants and beneficiaries been notified of the termination or the proposed termination? | f | | |
| g If a is "Yes" and the plan is covered by PBGC, is the plan continuing to file a PBGC Form 1 and pay premiums until the end of the plan year in which assets are distributed or brought under the control of PBGC? | g | | |
| h During this plan year, did any trust assets revert to the employer for which the Code section 4980 excise tax is due? | h | | |
| i If h is "Yes," enter the amount of tax paid with your Form 5330 ▶ | | | |

10a In this plan year, was this plan merged or consolidated into another plan(s), or were assets or liabilities transferred to another plan(s)? ☐ Yes ☐ No

| If "Yes," identify other plan(s) | c Employer identification number(s) | d Plan number(s) |
|---|---|---|
| b Name of plan(s) ▶ | | |

e Has Form 5310 been filed? ☐ Yes ☐ No

| 11 Enter the plan funding arrangement code (see instructions) | 12 Enter the plan benefit arrangement code (see instructions) |
|---|---|
| | |

| | | Yes | No |
|---|---|---|---|
| 13a Is this a plan established or maintained pursuant to one or more collective bargaining agreements? | 13a | | |
| b If a is "Yes," enter the appropriate six-digit LM number(s) of the sponsoring labor organization(s) (see instructions): ▶ *(i)* *(ii)* *(iii)* | | | |
| 14 If any benefits are provided by an insurance company, insurance service, or similar organization, enter the number of Schedules A (Form 5500), Insurance Information, that are attached. If none, enter "-0-." ▶ | | | |

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Form 5500 (1988) Page 3

**WELFARE PLANS DO NOT COMPLETE ITEMS 15 THROUGH 27. GO TO ITEM 28**

| | | Yes | No |
|---|---|---|---|
| 15a | If this is a defined benefit plan, is it subject to the minimum funding standards for this plan year? If "Yes," attach Schedule B (Form 5500). | 15a | |
| b | If this is a defined contribution plan, i.e., money purchase or target benefit, is it subject to the minimum funding standards? (If a waiver was granted, see instructions.) | b | |
| | If "Yes," complete (i), (ii), and (iii) below: | | |
| | (i) Amount of employer contribution required for the plan year under Code section 412 — b(i) $ | | |
| | (ii) Amount of contribution paid by the employer for the plan year — b(ii) $ | | |
| | Enter date of last payment by employer ▶ Month ____ Day ____ Year ____ | | |
| | (iii) If (i) is greater than (ii), subtract (ii) from (i) and enter the funding deficiency here; otherwise, enter zero. (If you have a funding deficiency, file Form 5330.) — b(iii) $ | | |
| 16 | Has the plan been top-heavy at any time beginning with the 1984 plan year? | 16 | |
| 17 | Has the plan accepted any transfers or rollovers with respect to a participant who had attained age 70½? | 17 | |
| 18a | If the plan distributed any annuity contracts this year, did these contracts contain a requirement that the spouse consent before any distributions under the contract are made in a form other than a qualified joint and survivor annuity? | 18a | |
| b | Did the plan make distributions to participants or spouses in a form other than a qualified joint and survivor annuity (a life annuity if a single person) or qualified preretirement survivor annuity (exclude deferred annuity contracts)? | b | |
| c | Did the plan make distributions or loans to married participants and beneficiaries without the required consent of the participant's spouse? | c | |
| d | Upon plan amendment or termination, do the accrued benefits of every participant include the subsidized benefits that the participant may become entitled to receive subsequent to the plan amendment or termination? | d | |
| 19 | Were the spousal consent requirements for distributions under Code section 417(a) complied with? | 19 | |
| 20 | Have any contributions been made or benefits accrued in excess of the Code section 415 limits, as amended by the Tax Reform Act of 1986? | 20 | |
| 21 | Has the plan made the required distributions in 1988 under Code section 401(a)(9)? | 21 | |
| 22a | Does the plan satisfy the percentage test of Code section 410(b)(1)(A)? If a is "Yes," complete b through i. If "No," complete only b and c below and see specific instructions. | 22a | |

| | | Number |
|---|---|---|
| b | (i) Number of employees who are aggregated with employees of the employer as a result of the employer being aggregated with any employer covered by this plan under Code section 414(b), (c), or (m) — b(i) | |
| | (ii) Number of individuals who performed services as leased employees under Code section 414(n) including leased employees of employers in (i) — b(ii) | |
| c | Total number of employees (including any employees aggregated in b) | c |
| d | Number of employees excluded under the plan because of (i) minimum age or years of service, (ii) employees on whose behalf retirement benefits were the subject of collective bargaining, or (iii) nonresident aliens who receive no earned income from United States sources | d |
| e | Total number of employees not excluded (subtract d from c) | e |
| f | Employees ineligible (specify reason) ▶ | f |
| g | Employees eligible to participate (subtract f from e) | g |
| h | Employees eligible but not participating | h |
| i | Employees participating (subtract h from g) | i |

| | | Yes | No |
|---|---|---|---|
| 23a | Is it intended that this plan qualify under Code section 401(a)? If "Yes," complete b and c. | 23a | |
| b | Enter the date of the most recent IRS determination letter ____ Month ____ Year ____ | | |
| c | Is a determination letter request pending with IRS? | c | |
| 24a | If this is a plan with Employee Stock Ownership features, was a current appraisal of the value of the stock made immediately before any contribution of stock or the purchase of the stock by the trust for the plan year covered by this return/report? | 24a | |
| b | If a is "Yes," was the appraisal made by an unrelated third party? | b | |
| 25 | Is this plan integrated with social security or railroad retirement? | 25 | |
| 26 | Does the employer/sponsor listed in 1a of this form maintain other qualified pension benefit plans? If "Yes," enter the total number of plans, including this plan ▶ | 26 | |
| 27 | If this plan is an adoption of a master, prototype, or uniform plan, indicate which type by checking the appropriate box: a ☐ Master b ☐ Prototype c ☐ Uniform | | |



Form 5500 (1988) Page 4

| | | Yes | No |
|---|---|---|---|
| 28a | Did any person who rendered services to the plan receive directly or indirectly $5,000 or more in compensation from the plan during the plan year (except for employees of the plan who were paid less than $1,000 in each month)? If "Yes," complete Part I of Schedule C (Form 5500). | 28a | |
| b | Did the plan have any trustees who must be listed in Part II of Schedule C (Form 5500)? | b | |
| c | Has there been a termination in the appointment of any person listed in d below? | c | |
| d | If c is "Yes," check the appropriate box(es), answer e and f, and complete Part III of Schedule C (Form 5500): (i) ☐ Accountant (ii) ☐ Enrolled actuary (iii) ☐ Insurance carrier (iv) ☐ Custodian (v) ☐ Administrator (vi) ☐ Investment manager (vii) ☐ Trustee | | |
| e | Have there been any outstanding material disputes or matters of disagreement concerning the above termination? | e | |
| f | If an accountant or enrolled actuary has been terminated during the plan year, has the terminated accountant/actuary been provided a copy of the explanation required by Part III of Schedule C (Form 5500) with a notice advising them of their opportunity to submit comments on the explanation directly to DOL? | f | |
| g | Enter the number of Schedules C (Form 5500) that are attached. If none, enter -0- ▶ | | |
| 29a | Is this plan exempt from the requirement to engage an independent qualified public accountant? | 29a | |
| b | If a is "No," attach the accountant's opinion to this return/report and check the appropriate box. This opinion is: (i) ☐ Unqualified (ii) ☐ Qualified/disclaimer per Department of Labor Regulations 29 CFR 2520.103-8 and/or 2520.103-12(d) (iii) ☐ Qualified/disclaimer other (iv) ☐ Adverse (v) ☐ Other (explain) | | |
| c | If a is "No," do the financial statements or notes to the financial statements attached to this return/report disclose (i) a loss contingency indicating that assets are impaired or liability incurred; (ii) significant real estate or other transactions in which the plan and (A) the sponsor, (B) plan administrator, (C) the employer(s), or (D) the employee organization(s) are jointly involved; (iii) that the plan has participated in any related party transactions; or, (iv) any unusual or infrequent events or transactions occurring subsequent to the plan year-end that might significantly affect the usefulness of the financial statements in assessing the plan's present or future ability to pay benefits? | c | |
| d | If c is "Yes," provide the total amount involved in such disclosure ▶ | | |
| 30 | If 29a is "No," during the plan year: | | |
| a | Did the plan have assets held for investment? | 30a | |
| b | Were any loans by the plan or fixed income obligations due the plan in default as of the close of the plan year or classified during the year as uncollectible? | b | |
| c | Were any leases to which the plan was a party in default or classified during the year as uncollectible? | c | |
| d | Were any plan transactions or series of transactions in excess of 5% of the current value of plan assets? | d | |
| e | Do the notes to the financial statements accompanying the accountant's opinion disclose any nonexempt transactions with parties-in-interest? | e | |
| f | Did the plan engage in any nonexempt transactions with parties-in-interest not reported in e? | f | |
| g | Did the plan hold qualifying employer securities that are not publicly traded? | g | |
| h | Did the plan purchase or receive any nonpublicly traded securities that were not appraised in writing by an unrelated third party within 3 months prior to their receipt? | h | |
| i | Did any person manage plan assets who had a financial interest worth more than 10% in any party providing services to the plan or receive anything of value from any party providing services to the plan? If a, b, c, d, e, or f is checked "Yes," schedules of those items in the format set forth in the instructions are required to be attached to this return/report. | i | |
| 31 | Did the plan acquire individual whole life insurance contracts during the plan year? | 31 | |
| 32 | During the plan year: | | |
| a | (i) Was this plan covered by a fidelity bond? | 32a | |
| | (ii) If (i) is "Yes," enter amount of bond ▶ | | |
| b | (i) Was there any loss to the plan, whether or not reimbursed, caused by fraud or dishonesty? | b | |
| | (ii) If (i) is "Yes," enter amount of loss ▶ | | |

33a Is the plan covered under the Pension Benefit Guaranty Corporation termination insurance program?
☐ Yes ☐ No ☐ Not determined

b If a is "Yes" or "Not determined," enter the employer identification number and the plan number used to identify it.
Employer identification number ▶ Plan number ▶

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34 Current value of plan assets and liabilities at the beginning and end of the plan year. Combine the value of plan assets held in more than one trust. Allocate the value of the plan's interest in a commingled trust containing the assets of more than one plan on a line-by-line basis unless the trust meets one of the specific exceptions described in the instructions. Do not enter the value of that portion of an insurance contract which guarantees, during this plan year, to pay a specific dollar benefit at a future date. Round off amounts to the nearest dollar. Plans with no assets at the beginning and the end of the plan year, enter zero on line 34f.

| Assets | | (a) Beginning of year | (b) End of Year |
|---|---|---|---|
| a Total noninterest-bearing cash | a | | |
| b Receivables (net): | | | |
| (i) Employer contributions | b(i) | | |
| (ii) Participant contributions | (ii) | | |
| (iii) Income | (iii) | | |
| (iv) Other | (iv) | | |
| (v) Total | (v) | | |
| c General investments: | | | |
| (i) Interest-bearing cash (including money market funds) | c(i) | | |
| (ii) Certificates of deposit | (ii) | | |
| (iii) U.S. Government securities | (iii) | | |
| (iv) Corporate debt instruments | (iv) | | |
| (v) Corporate stocks: | | | |
| (A) Preferred | (v)(A) | | |
| (B) Common | (B) | | |
| (vi) Partnership/joint venture interests | (vi) | | |
| (vii) Real estate: | | | |
| (A) Income-producing | (vii)(A) | | |
| (B) Nonincome-producing | (B) | | |
| (viii) Loans (other than to participants) secured by mortgages: | | | |
| (A) Residential | (viii)(A) | | |
| (B) Commercial | (B) | | |
| (ix) Loans to participants: | | | |
| (A) Mortgages | (ix)(A) | | |
| (B) Other | (B) | | |
| (x) Other loans | (x) | | |
| (xi) Value of interest in certain investment arrangements (see instructions) | (xi) | | |
| (xii) Value of funds held in insurance company general account (unallocated contracts) | (xii) | | |
| (xiii) Other | (xiii) | | |
| (xiv) Total | (xiv) | | |
| d Employer-related investments: | | | |
| (i) Employer securities | d(i) | | |
| (ii) Employer real property | (ii) | | |
| e Buildings and other property used in plan operation | e | | |
| f Total assets | f | | |
| **Liabilities** | | | |
| g Benefit claims payable | g | | |
| h Operating payables | h | | |
| i Acquisition indebtedness | i | | |
| j Other liabilities | j | | |
| k Total liabilities | k | | |
| **Net Assets** | | | |
| l Line f minus line k | l | | |



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35 Plan income, expenses, and changes in net assets for the plan year.
*Include all income and expenses of the plan, including any trust(s) or separately maintained fund(s), and any payments/receipts to/from insurance carriers.* Round off amounts to the nearest dollar.

| Income | | (a) Amount | (b) Total |
|---|---|---|---|
| a Contributions: | | | |
| (i) Received or receivable from: | | | |
| (A) Employers | a(i)(A) | | |
| (B) Participants | (B) | | |
| (C) Others | (C) | | |
| (ii) Noncash contributions | (ii) | | |
| b Earnings on investments: | | | |
| (i) Interest: | | | |
| (A) Interest-bearing cash (including money market funds) | b(i)(A) | | |
| (B) Certificates of deposit | (B) | | |
| (C) U.S. Government securities | (C) | | |
| (D) Corporate debt instruments | (D) | | |
| (E) Mortgage loans | (E) | | |
| (F) Other loans | (F) | | |
| (G) Other | (G) | | |
| (ii) Dividends: | | | |
| (A) Preferred stock | b(ii)(A) | | |
| (B) Common stock | (B) | | |
| (iii) Rents | (iii) | | |
| (iv) Net gain (loss) on sale of assets: | | | |
| (A) Aggregate proceeds | b(iv)(A) | | |
| (B) Aggregate costs | (B) | | |
| (v) Unrealized appreciation (depreciation) of assets | (v) | | |
| (vi) Net investment gain (loss) from certain investment arrangements—see instructions | (vi) | | |
| c Other income | c | | |
| d Total income (add a, b, and c) | d | | |
| **Expenses** | | | |
| e Benefit payment and payments to provide benefits: | | | |
| (i) Directly to participants or beneficiaries | e(i) | | |
| (ii) To insurance carriers for the provision of benefits | (ii) | | |
| (iii) Other | (iii) | | |
| f Interest expense | f | | |
| g Administrative expenses: | | | |
| (i) Salaries and allowances | g(i) | | |
| (ii) Accounting fees | (ii) | | |
| (iii) Actuarial fees | (iii) | | |
| (iv) Contract administrator fees | (iv) | | |
| (v) Investment advisory and management fees | (v) | | |
| (vi) Legal fees | (vi) | | |
| (vii) Valuation/appraisal fees | (vii) | | |
| (viii) Trustees fees/expenses (including travel, seminars, meetings, etc.) | (viii) | | |
| (ix) Other | (ix) | | |
| h Total expenses (add e, f, and g) | h | | |
| i Net income (loss) (d minus h) | i | | |
| j Transfers to (from) the plan (see instructions) | j | | |
| k Net assets at beginning of year (line 34l, column (a)) | k | | |
| l Net assets at end of year (line 34l, column (b)) | l | | |

| | Yes | No |
|---|---|---|
| 36 Did any employer sponsoring the plan pay any of the administrative expenses of the plan that were not reported in 35g? | | |

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Department of the Treasury
Internal Revenue Service

Department of Labor
Pension and Welfare Benefits Administration

Pension Benefit Guaranty Corporation

# 1988 Instructions for Form 5500

## Annual Return/Report of Employee Benefit Plan (With 100 or more participants)

*(Code references are to the Internal Revenue Code. ERISA refers to the Employee Retirement Income Security Act of 1974.)*

**Paperwork Reduction Act Notice.**—We ask for this information to carry out the law as specified in ERISA and Code section 6039D. We need it to determine whether the plan is operating according to the law. You are required to give us this information.

The time needed to complete and file the forms listed below reflect the combined requirements of the Internal Revenue Service, Department of Labor, Pension Benefit Guaranty Corporation, and the Social Security Administration. These times will vary depending on individual circumstances. The estimated average times are:

| | Recordkeeping | Learning about the law or the form | Preparing the form | Copying, assembling, and sending the form to IRS |
|---|---|---|---|---|
| Form 5500 | 82 hrs., 2 min. | 9 hrs., 3 min. | 13 hrs., 34 min. | 49 min. |
| Schedule A(Form 5500) | 17 hrs., 28 min. | 28 min. | 1 hr., 42 min. | 16 min. |
| Schedule B(Form 5500) | 25 hrs., 50 min. | 1 hr., | 1 hr., 27 min. | |
| Schedule C(Form 5500) | 8 hrs., 1 min. | 6 min. | 11 min. | |
| Schedule R(Form 5500) | 2hrs., 9 min. | 1 hr., 24 min. | 1 hr., 29 min. | |
| Schedule SSA(Form 5500) | 6 hrs., 42 min. | 12 min. | 19 min. | |

If you have comments concerning the accuracy of these time estimates or suggestions for making these forms more simple, we would be happy to hear from you. You can write to the **Internal Revenue Service,** Washington, DC 20224, Attention: IRS Reports Clearance Officer, TR FP; or the **Office of Management and Budget,** Paperwork Reduction Project, Washington, DC 20503.

File 1988 forms for plan years that started in 1988. If the plan year differs from the calendar year, fill in the fiscal year space just under the form title. For a short plan year, see Section 1, instruction B.

***Reminder:*** In addition to filing this form with IRS, plans covered by the Pension Benefit Guaranty Corporation termination insurance program must file their Annual Premium Payment, PBGC Form 1, directly with that agency.

**Penalties.**—ERISA and the Code provide for the assessment or imposition of penalties for not giving complete information and not filing statements and returns/reports. Certain penalties are administrative, that is, they may be imposed or assessed by one of the governmental agencies delegated to administer the collection of Form 5500 series data. Others require a legal conviction.

**A. Administrative Penalties.**—Listed below are various penalties for not meeting the Form 5500 series filing requirements. One or more of the following five penalties may be imposed or assessed in the event of incomplete filings or filings received after the date they are due unless it is determined that your explanation for failure to file properly is for reasonable cause:

1. A penalty of up to $1,000 a day for each day a plan administrator fails or refuses to file a complete return/report. See ERISA section 502(c)(2) and 29 CFR 2560.502c-2.
2. A penalty of $25 a day (up to $15,000) for not filing returns for certain plans of deferred compensation, certain trusts and annuities, and bond purchase plans by the due date(s). See Code section 6652(e). This penalty also applies to returns required to be filed under Code section 6039D.
3. A penalty of $1 a day (up to $5,000) for each participant for whom a registration statement (Schedule SSA (Form 5500)) is required but not filed. See Code section 6652(d)(1).
4. A penalty of $1 a day (up to $1,000) for not filing a notification of change of status of a plan. See Code section 6652(d)(2).
5. A penalty of $1,000 for not filing an actuarial statement. See Code section 6692.

**B. Other Penalties.**—

1. Any individual who willfully violates any provision of Part 1 of Title I of ERISA shall be fined not more than $5,000 or imprisoned not more than 1 year, or both. See ERISA section 501.
2. A penalty of up to $10,000, 5 years imprisonment, or both, for making any false statement or representation of fact, knowing it to be false, or for knowingly concealing or not disclosing any fact required by ERISA. See section 1027, Title 18, U.S. Code, as amended by section 111 of ERISA.

### How To Use This Instruction Booklet

The instructions are divided into four main sections.


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| Section 4 | |
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### Section 1

**A. Who Must File.**—Any administrator or sponsor of an employee benefit plan subject to ERISA must file information about each such plan every year (Code section 6058 and ERISA sections 104 and 4065). Also required to file, for each year, is every employer maintaining a specified fringe benefit plan as described in Code section 6039D. The Internal Revenue Service (IRS), Department of Labor (DOL), and Pension Benefit Guaranty Corporation (PBGC) have consolidated their returns and report forms to minimize the filing burden for plan administrators and employers. The chart on page 7 gives a brief guide to the type of return/report to be filed.

**B. When To File.**—File all required forms and schedules by the last day of the 7th month after the plan year ends. For a short plan year, file the form and applicable schedules by the last day of the 7th month after the short plan year ends. For purposes of this return/report, the short plan year ends upon the date of the change in accounting period or upon the complete distribution of the assets of the plan. (Also see Section 3.) If the current year Form 5500 is not available before the due date of your short plan year return/report, use the latest year form available and change the date printed on the return/report to the current year. Also show the dates your short plan year began and ended.

***Request for Extension of Time To File.***—A one time extension of time up to 2½ months may be granted for filing returns/reports if **Form 5558,** Application for Extension of Time To File Certain Employee Plan Returns, is filed **before the normal due date of the return/report.**

***Exception:*** *Single-employer plans and plans of a controlled group of corporations which file consolidated Federal income tax returns are automatically granted an extension of time to file Form 5500, 5500-C, or 5500-R to the due date of the Federal income tax return of the single employer or controlled group of corporations if all the following conditions are met:*



*1. The plan year and the tax year coincide.*

*2. The single employer or the controlled group has been granted an extension of time to file its Federal income tax return to a date later than the normal due date for filing the Form 5500, 5500-C, or 5500-R.*

*3. A copy of the IRS extension of time to file the Federal income tax return is attached to each Form 5500, 5500-C, or 5500-R filed with IRS.*

***Note:*** *An extension of time to file the return/report does not operate as an extension of time to file the PBGC Form 1.*

**C. Where To File.**—Please file the return/report with the Internal Revenue Service Center indicated below. No street address is needed.

See page 5 for the filing address for investment arrangements filing directly with DOL.

| If the principal office of the plan sponsor or the plan administrator is located in ▼ | Use the following Internal Revenue Service Center address ▼ |
|---|---|
| Connecticut, Delaware, District of Columbia, Foreign Address, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, Vermont, Virginia | Holtsville, NY 00501 |
| Alabama, Alaska, Arkansas, California, Florida, Georgia, Hawaii, Idaho, Louisiana, Mississippi, Nevada, North Carolina, Oregon, South Carolina, Tennessee, Washington | Atlanta, GA 39901 |
| Arizona, Colorado, Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Ohio, Oklahoma, South Dakota, Texas, Utah, West Virginia, Wisconsin, Wyoming | Memphis, TN 37501 |
| All Form 5500EZ filers | Andover, MA 05501 |

### Section 2

**A. Kinds of Plans.**—Employee benefit plans include pension benefit plans and welfare benefit plans. File the applicable return/report for any of the following plans.

*(a) Pension benefit plan.*—This is an employee pension benefit plan covered by ERISA. The return/report is due whether or not the plan is qualified and even if benefits no longer accrue, contributions were not made this plan year, or contributions are no longer made ("frozen plan" or "wasting trust"). See, Section 3 "Final Return/Report" on page 6.

Pension benefit plans required to file include defined benefit plans and defined contribution plans (e.g., profit-sharing, stock bonus, money purchase plans, etc.). The following are among the pension benefit plans for which a return/report must be filed:

(i) Annuity arrangements under Code section 403(b)(1).

(ii) Custodial account established under Code section 403(b)(7) for regulated investment company stock.

(iii) Individual retirement account established by an employer under Code section 408(c).

(iv) Pension benefit plan maintained outside the United States primarily for nonresident aliens if the employer who maintains the plan is:

(A) a domestic employer, or

(B) a foreign employer with income derived from sources within the U.S. (including foreign subsidieries of domestic employers) and deducts contributions to the plan on its U.S. income tax return. See "Plans Excluded From Filing" below.

(v) Church plans electing coverage under Code section 410(d).

(vi) A plan that covers residents of Puerto Rico, the Virgin Islands, Guam, Wake Island, or American Samoa. This includes a plan that elects to have the provisions of section 1022(i)(2) of ERISA apply.

See "Items To Be Completed on Form 5500" on page 4 for more information about what questions need to be completed by pension plans.

*(b) Welfare benefit plan.*—This is an employee welfare benefit plan covered by Part 1 of Title I of ERISA. Welfare plans would provide benefits such as medical, dental, life insurance, apprenticeship training, educational assistance, severance pay, disability, etc.

See "Items To Be Completed on Form 5500" on page 4 for more information about what questions need to be completed for welfare benefit plans.

*(c) Fringe benefit plan.*—Group legal services plans described in Code section 120, cafeteria plans described in Code section 125, and educational assistance programs described in Code section 127 are considered fringe benefit plans and generally are required to file the annual information specified by Code section 6039D. However, Code section 127 educational assistance programs which provide only job-related training which is deductible under Code section 162 do not need to file Form 5500.

See "Items To Be Completed on Form 5500" on page 4 for more information about how to complete this form for a fringe benefit plan.

**B. Plans Excluded From Filing (this does not apply if you are a fringe benefit plan required to file by Code section 6039D).**—Do not file a return/report for an employee benefit plan that is any of the following:

(a) A welfare benefit plan which covered fewer than 100 participants as of the beginning of the plan year and is: (i) fully insured, (ii) unfunded, or (iii) a combination of insured and unfunded.

(1) An unfunded welfare benefit plan has its benefits paid as needed directly from the general assets of the employer or the employee organization that sponsors the plan.

(2) A fully insured welfare benefit plan has its benefits provided exclusively through insurance contracts or policies, the premiums of which must be paid directly by the employer or employee organization from its general assets or partly from its general assets and partly from contributions by its employees or members (which the employer or organization forwards within 3 months of receipt).

(3) A combination unfunded/insured welfare plan has its benefits provided partially as an unfunded plan and partially as a fully insured plan. An example of such a plan is a plan which requires the employer to reimburse an employee for hospital expenses with the first $1,000 per year of benefits paid from the general assets of the employer and any benefits above $1,000 paid from a stop loss insurance contract.

The insurance contracts or policies discussed above must be issued by an insurance company or similar organization (such as Blue Cross, Blue Shield or a health maintenance organization) that can legally do business in any state. A plan meeting (1) cannot have any assets at any time during the plan year.

"Directly," as used in (1) above, means that the plan cannot use a trust or separately maintained fund (including a Code section 501(c)(9) trust) to hold plan assets or to act as a conduit for the transfer of plan assets.

See 29 CFR 2520.104-20.

***Note:*** *An "employees' association" as used in Code section 501(c)(9) should not be confused with the employee organization or employer which establishes and maintains (i.e., sponsors) the welfare benefit plan.*

(b) An unfunded pension benefit plan or an unfunded or combination unfunded and insured welfare benefit plan: (1) whose benefits go only to a select group of management or highly compensated employees, and (2) which meets the terms of Department of Labor Regulations 29 CFR 2520.104-23 (including the requirement that a notification statement be filed with DOL) or 29 CFR 2520.104-24.

(c) Plans maintained only to comply with workers' compensation, unemployment compensation, or disability insurance laws.

(d) An unfunded excess benefit plan.

(e) A welfare benefit plan maintained outside the United States primarily for persons substantially all of whom are nonresident aliens.

(f) A pension benefit plan maintained outside the United States if it is a qualified foreign plan within the meaning of Code section 404A(e) that does not qualify for the treatment provided in Code section 402(c).

(g) An annuity arrangement described in 29 CFR 2510.3-2(f).

(h) A simplified employee pension (SEP) described in Code section 408(k) which conforms to the alternative method of compliance described in 29 CFR 2520.104-48 or 29 CFR 104-49. A SEP is a pension plan which meets certain minimum qualifications regarding eligibility and employer contributions.

(i) A church plan not electing coverage under Code section 410(d) or a governmental plan.

(j) A welfare plan (other than a fringe benefit plan) that participates in a group insurance arrangement that files a return/report Form 5500 on behalf of the welfare plan. See 29 CFR 2520.104-43.

**C. Kinds of Filers.**—Item 4 on the Form 5500, 5500-C and 5500-R lists the different types of entities which file the forms. These entities are described below.

*(a) Single-employer plan.*—If one employer or one employee organization maintains a plan, file a separate return/report for the plan. If the employer

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or employee organization maintains more than one such plan, file a separate return/report for each plan.

If a member of either a controlled group of corporations or a group of trades or businesses under common control maintains a plan that does not involve other group members, file a separate return/report as a single-employer plan.

If several employers participate in a program of benefits wherein the funds attributable to each employer are available only to pay benefits to that employer's employees, each employer must file a separate return/report.

*(b) Plan for controlled group of corporations or group of trades or businesses under common control.*—These groups are defined in Code sections 414(b) and (c), and are referred to as controlled groups.

If the benefits are payable to participants from the plan's total assets without regard to contributions by each participant's employer, file one return/report for the plan. On the return/report for the plan, complete item 22 only for the controlled group's employees.

**Exception:** Employers who participate in a plan of one of the groups listed above but who are not members of the group must file a separate return/report. The return/report should be filed on Form 5500-C or 5500-R, as applicable (see "What To File" on page 4). On Form 5500-C complete only items 1, 2, 3, 4f, 5, 6, 9, and 22. On Form 5500-R complete only items 1 through 3, 4f and 5 through 8b.

If several employers participate in a program of benefits wherein the funds attributable to each employer are available only to pay benefits to that employer's employees, each employer must file a separate return/report as a single employer plan.

*(c) Multiemployer plan.*—Multiemployer plans are plans: (1) to which more than one employer is required to contribute; (2) which are maintained pursuant to one or more collective bargaining agreements, and (3) have not made the election under Code section 414(f)(5) and ERISA section 3(37)(E). File one return/report for each such plan. Contributing employers do not file individually with respect to such plans. See Code section 414 for more information.

*(d) Multiple-employer-collectively-bargained plan.*—A multiple-employer-collectively-bargained plan involves more than one employer, is collectively bargained and collectively funded, and, if covered by PBGC termination insurance, has properly elected before 9-27-81 not to be treated as a multiemployer plan under Code section 414(f)(5) or ERISA sections 3(37)(E) and 4001(a)(3). File one return/report for each such plan. Participating employers do not file individually for these plans.

*(e) Multiple-employer plan (other).*—A multiple-employer plan (other) involves more than one employer and is not one of the plans already described. A multiple-employer plan (other) includes only plans whose contributions from individual employers are available to pay benefits to all participants. File one return/report for each such plan.

In addition, for pension benefit plans, each participating employer files either a Form 5500-C, regardless of the number of participants, or Form 5500-R. On Form 5500-C complete only items 1, 2, 3, 4f, 5, 6, 9, and 22. On Form 5500-R complete only items 1 through 3, 4f, and 5 through 8b.

**Note:** *If a participating employer is also the sponsor of the multiple-employer plan (other), the plan number on the return/report filed for the plan should be 333.*

The Form 5500-C or Form 5500-R filed by the participating employer should list his or her appropriate plan number.

If more than one employer participates in the plan and the plan provides that each employer's contributions are available to pay benefits only for that employer's employees who are covered by the plan, one annual return/report must be filed for each participating employer. These filers will be considered single employers and should complete the entire form.

*(f) Group insurance arrangement.*—A group insurance arrangement is an arrangement which provides benefits to the employees of two or more unaffiliated employers (not in connection with a multi-employer plan or a multiple-employer-collectively-bargained plan), fully insures one or more welfare plans of each participating employer, and uses a trust (or other entity such as a trade association) as the holder of the insurance contracts and the conduit for payment of premiums to the insurance company.

You do not need to file a separate return/report for a welfare benefit plan that is part of a group insurance arrangement if a consolidated return/report for all the plans in the arrangement was filed by the trust or other entity according to 29 CFR 2520.104-43. Form 5500 is required by 29 CFR 2520.103-2 to be part of the consolidated report.

**D. Investment Arrangements Filing Directly With DOL.**—Some plans invest in certain trusts, accounts, and other investment arrangements which may file information concerning itself and its relationship with employee benefit plans (as specified on page 5) directly with DOL. Plans participating in an investment arrangement as described in paragraphs a through c below are required to attach certain additional information to the return/report filed with IRS as specified below.

**a. Common/Collective Trust and Pooled Separate Account**

*(i) Definition.* For reporting purposes, a common/collective trust is a trust maintained by a bank, trust company, or similar institution which is regulated, supervised, and subject to periodic examination by a state or Federal agency for the collective investment and reinvestment of assets contributed thereto from employee benefit plans maintained by more than one employer or controlled group of corporations, as the term is used in Code section 1563. For reporting purposes, a pooled separate account is an account maintained by an insurance carrier which is regulated, supervised, and subject to periodic examination by a state or Federal agency for the collective investment and reinvestment of assets contributed thereto from employee benefit plans maintained by more than one employer or controlled group of corporations, as the term is used in Code section 1563. See 29 CFR sections 2520.103-3, 2520.103-4, 2520.103-5, and 2520.103-9.

**Note:** *For reporting purposes, a separate account which is not considered to be holding plan assets pursuant to 29 CFR 2510.3-101(h)(1)(iii), shall not constitute a pooled separate account.*

*(ii) Additional Information Required To Be Attached to the Form 5500 for Plans Participating in Common/Collective Trusts and Pooled Separate Accounts.* A plan participating in a common/collective trust or pooled separate account must complete the annual return/report and attach either (1) the most recent statement of the assets and liabilities of any common/ collective trust or pooled separate account, or (2) a certification that: (A) the statement of the assets and liabilities of the common/ collective trust or pooled separate account has been submitted directly to DOL by the financial institution or insurance carrier; (B) the plan has received a copy of the statement; and (C) includes the EIN and other numbers used by the financial institution or insurance carrier to identify the trusts or accounts in the direct filing made with DOL.

**b. Master Trust**

*(i) Definition.* For reporting purposes, a master trust is a trust for which a regulated financial institution (as defined below) serves as trustee or custodian (regardless of whether such institution exercises discretionary authority or control with respect to the management of assets held in the trust), and in which assets of more than one plan sponsored by a single employer or by a group of employers under common control are held.

A "regulated financial institution" means a bank, trust company, or similar financial institution which is regulated, supervised, and subject to periodic examination by a state or Federal agency. Common control is determined on the basis of all relevant facts and circumstances (whether or not such employers are incorporated). See 29 CFR 2520.103-1(e).

For reporting purposes, the assets of a master trust are considered to be held in one or more "investment accounts." A master trust investment account may consist of a pool of assets or a single asset.

Each pool of assets held in a master trust must be treated as a separate master trust investment account if each plan which has an interest in the pool has the same fractional interest in each asset in the pool as its fractional interest in the pool, and if each such plan may not dispose of its interest in any asset in the pool without disposing of its interest in the pool. A master trust may also contain assets which are not held in such a pool. Each such asset must be treated as a separate master trust investment account.

Financial information must generally be provided with respect to each master trust investment account as specified on page 5.

*(ii) Additional Information Required To Be Attached to the Form 5500 for Plans Participating in Master Trusts.* A plan participating in a master trust must complete the annual return/report and attach a list of each master trust investment

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account in which the plan has an interest indicating the plan's name, EIN, and plan number and the name of the master trust used in the master trust information filed with DOL (see page 5). In tabular format, show the net value of the plan's interest in each investment account at the beginning and end of the plan year and the net investment gain (or loss) allocated to the plan for the plan year from the investment account (see instructions for item 34c(xi) on page 15).

**Note:** *If a master trust investment account consists solely of one plan's asset(s) during the reporting period, the plan may report the(se) asset(s) either as an investment account to be reported as part of the master trust report filed directly with DOL or as a plan asset(s) which is not part of the master trust (and therefore subject to all instructions pertaining to assets not held in a master trust).*

**c. 103-12 Investment Entities**

*Definition.* 29 CFR 2520.103-12 provides an alternative method of reporting for plans which invest in an entity (other than an investment arrangement filing with DOL described in a or b above), the underlying assets of which include "plan assets" (within the meaning of 29 CFR 2510.3-101) of two or more plans which are not members of a "related group" of employee benefit plans. For reporting purposes, a "related group" consists of each group of two or more employee benefit plans (1) each of which receives 10 percent or more of its aggregate contributions from the same employer or from a member of the same controlled group of corporations (as determined under Code section 1563(a), without regard to Code section 1563(a)(4) thereof); or (2) each of which is either maintained by, or maintained pursuant to a collective bargaining agreement negotiated by, the same employee organization or affiliated employee organizations. For purposes of this paragraph, an "affiliate" of an employee organization means any person controlling, controlled by, or under common control with such organization. See 29 CFR 2520.103-12.

For reporting purposes, the investment entities described above with respect to which the required information is filed directly with DOL constitute "103-12 investment entities" (103-12 IEs).

**E. What To File.**—This section describes the different categories of the 5500 series of forms and schedules. In addition, this section also lists items to be completed by different types of Form 5500 filers. This section also contains a description of the special filing requirements for plans that invest in certain investment arrangements. Finally, a brief guide illustrating which forms and schedules are required by different types of plans and filers may be found on page 7.

## Forms

***Form 5500.***—**File Form 5500,** Annual Return/Report of Employee Benefit Plan, annually for each plan with 100 or more participants at the beginning of the plan year.

***Form 5500-C.***—**File Form 5500-C,** Return/Report of Employee Benefit Plan, for each pension benefit plan, welfare benefit plan, and fringe benefit plan (unless otherwise exempted) with fewer than 100 participants (one-participant plans see "Form 5500EZ" below) at the beginning of the plan year. File Form 5500-C for the first plan year, the year for which the final return/report is due, and for plan years in which a Form 5500-R is not filed as explained below.

***Form 5500-R.***—**Form 5500-R,** Registration Statement of Employee Benefit Plan (with fewer than 100 participants), may be filed instead of a Form 5500-C for this plan year provided: (a) this is not the first plan year, (b) this is not a year for which the final return/report is due, and (c) a Form 5500-C has been filed for one of the prior 2 plan years. The Form 5500-R should not be filed if (a) this plan year is the first plan year, (b) this is the plan year for which a final return/report is due, or (c) the Form 5500-R has been filed for both of the prior 2 plan years.

Any plan may choose not to file the Form 5500-R if the plan files the Form 5500-C instead.

**Note:** *Generally, under the filing requirements explained above, if the number of plan participants increases from under 100 to 100 or more, or decreases from 100 or more to under 100, from one year to the next, you would have to file a different form from that filed the previous year. However, there is an exception to this rule. You may file the same form you filed last year, even if the number of participants changed, provided that at the beginning of this plan year the plan had at least 80 participants, but not more than 120.*

***Form 5500EZ.***—**Form 5500EZ,** Annual Return of One-Participant Pension Benefit Plan, should be filed by most one-participant plans.

A one-participant plan is: (1) a pension benefit plan that covers only an individual or an individual and his or her spouse who wholly own a trade or business, whether incorporated or unincorporated; or (2) a pension benefit plan for a partnership that covers only the partners or the partners and the partners' spouses.

See Form 5500EZ and its instructions to see if the plan meets the requirements for filing the form.

## Items To Be Completed on Form 5500

Certain kinds of plans and certain kinds of filers that are required to submit an annual Form 5500 are not required to complete the entire form. These are described below, by type of plan. Check the list of headings to see if your plan is affected.

**1. Welfare Benefit Plans.**—Welfare benefit plans generally must complete the following items on the Form 5500 : 1 through 6c; 7a(iv), b, c, and d; 8a, c, d, and e; 9a, b, c, and f; 10a through d; 11 through 14; 28 through 32; and 34 through 36.

**Note:** *If one Form 5500 is filed for both a welfare plan and a fringe benefit plan, items 22c, 22g, and 22i must be completed in addition to the items listed above for welfare plans.*

**Exception for unfunded, fully insured and unfunded /insured welfare plans.**—Welfare benefit plans that are unfunded, fully insured or combination unfunded/insured need not complete items 34 and 35 unless the Form 5500 also serves as a return/report under Code section 6039D (fringe benefit plan) in which case items 35g and 35h must be completed. See page 2, Section 2 B(a) for definition of (1) unfunded, (2) fully insured and (3) combination of unfunded/insured.

**2. Fringe Benefit Plans.**—A Form 5500 filed only because of Code section 6039D (i.e., for a fringe benefit plan) need complete only items 1 through 6a, 7a(iv), 7b, 9a, 9b, 22c, 22g, 22i, 35e, 35g, and 35h.

If the annual return/report is also for a welfare benefit plan (see "Who Must File" on page 1), complete the above items and those specified for welfare benefit plans in "1" above.

**3. Pension Plans.**—In general, most pension plans (defined benefit and defined contribution) are required to complete all items on the form. However, some items need not be completed by certain types of pension plans, as described below.

**a.** Plans exclusively using a tax deferred annuity arrangement under Code section 403(b)(1). These plans (see "Who Must File" on page 1), need only complete items 1 through 5, 6b(iv), and 9.

**b.** Plans exclusively using a custodial account for regulated investment company stock under Code section 403(b)(7).These plans need only complete items 1 through 5, 6b(v), and 9.

**c.** Individual Retirement Account Plan.—A pension plan utilizing individual retirement accounts or annuities (as described in Code section 408) as the sole funding vehicle for providing benefits need only complete items 1 through 5, 6b(vi), and 9.

**d.** Fully Insured Pension Plan.—A pension benefit plan providing benefits exclusively through an insurance contract, or contracts that are fully guaranteed, and which meets all of the conditions of 29 CFR 2520.104-44 need only complete items 1 through 29, 32, and 33.

A pension plan which includes both insurance contracts of the type described in 29 CFR 2520.104-44 as well as other assets should limit its reporting in items 34 and 35 to those other assets.

**Note:** *For purposes of the annual return/report and the alternative method of compliance set forth in 29 CFR 2520.104-44, a contract is considered to be "allocated" only if the insurance company or organization that issued the contract unconditionally guarantees, upon receipt of the required premium or consideration, to provide a retirement benefit of a specified amount, without adjustment for fluctuations in the market value of the underlying assets of the company or organization, to each participant, and each participant has a legal right to such benefits which is legally enforceable directly against the insurance company or organization.*

**e.** Nonqualified plans maintained outside the U.S.—Nonqualified pension benefit plans maintained outside the United States primarily for nonresident aliens required to file a return/report (see "Who Must File" on page 1) need only complete items 1 through 8c, 9 through 12, and 15 through 17.

**4. Plans of More Than One Employer.**—All plans of more than one employer (plans of a controlled group, multiemployer plans, multiple-employer-collectively-bargained plans, and multiple-employer-plan (other)) generally should complete all applicable (welfare or pension) items on the form except for item 6d. Only single-employer pension plans must complete this item. In

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addition, multiemployer and multiple-employer collectively-bargained plans need not complete item 22 on the Form 5500.

### Schedules

The various schedules to be attached to the return/report are listed below.

**Note:** *All attachments to the Forms 5500, 5500-C, and 5500-R must include the name of the plan and the EIN and plan number (PN) as found in items 5a, 1b, and 5c, respectively.*

***Attach Schedule A (Form 5500), Insurance Information,*** to Form 5500, 5500-C, or 5500-R if any benefits under the plan are provided by an insurance company, insurance service, or other similar organization (such as Blue Cross, Blue Shield, or a health maintenance organization).

**Exception:** *Schedule A (Form 5500) is not needed if the plan covers (1) only an individual, or an individual and his or her spouse, who wholly owns a trade or business, whether incorporated or unincorporated, or (2) a partner in a partnership, or a partner and his or her spouse.*

Do not file a Schedule A (Form 5500) with a Form 5500EZ.

***Attach Schedule B (Form 5500), Actuarial Information,*** to Forms 5500, 5500-C, 5500-R, or 5500EZ for most defined benefit pension plans. See the instructions for Schedule B.

***Attach Schedule C (Form 5500), Service Provider and Trustee Information,*** to Form 5500. See item 23 and the instructions to Schedule C.

***Schedule SSA (Form 5500), Annual Registration Statement Identifying Separated Participants With Deferred Vested Benefits,*** may be needed for separated participants. See "When To Report Separated Participants" in the instructions for Schedule SSA.

***Schedule P (Form 5500), Annual Return of Fiduciary of Employee Benefit Trust.***—Any fiduciary (trustee or custodian) of an organization that is qualified under Code section 401(a) and exempt from tax under Code section 501(a) who wants to protect the organization under the statute of limitations provided in Code section 6501(a) must file a Schedule P (Form 5500).

File the Schedule P (Form 5500) as an attachment to Form 5500, 5500-C, 5500-R, or 5500EZ for the plan year in which the trust year ends.

### Other Filings

#### Reporting Requirements for Investment Arrangements Filing Directly with DOL

Certain investment arrangements for employee benefit plans file financial information directly with DOL. These arrangements include common/collective trusts, pooled separate accounts, master trusts, and 103-12 IEs. Definitions of these investment arrangements may be found on pages 3 and 4. Their DOL filing requirements are described below.

**1. Common/Collective Trust and Pooled Separate Account Information To Be Filed Directly With DOL**

Financial institutions and insurance carriers filing the statement of the assets and liabilities of a common/collective trust or pooled separate account should identify the trust or account by providing the EIN of the trust or account, or (if more than one trust or account is covered by the same EIN) both the EIN and any additional number assigned by the financial institution or insurance carrier (such as 99-1234567 Trust No. 1); and a list of all plans participating in the trust or account, identified by the plan number, EIN, and name of the plan sponsor. The direct filing should be addressed to:

Common/Collective Trust (OR)
Pooled Separate Account
Pension and Welfare Benefits Administration
U.S. Department of Labor, Room N5644
200 Constitution Avenue, NW.
Washington, DC 20210

**2. Master Trust Information To Be Filed Directly With DOL**

The following information with respect to a master trust must be filed with DOL by the plan administrator or by a designee, such as the administrator of another plan participating in the master trust or the financial institution serving as trustee of the master trust, no later than the date on which the plan's return/report is due. While only one copy of the required information should be filed for all plans participating in the master trust, the information is an integral part of the return/report of each participating plan, and the plan's return/report will not be deemed complete unless all the information is filed within the prescribed time.

**Note:** *If a master trust investment account consists solely of one plan's asset(s) during the reporting period, the plan may report the(se) asset(s) either as an investment account to be reported as part of the master trust report filed directly with DOL or as a plan asset(s) which is not part of the master trust (and therefore subject to all instructions pertaining to assets not held in a master trust).*

Each of the following statements and schedules must indicate the name of the master trust and the name of the master trust investment account. The information shall be filed with DOL by mailing it to:

Master Trust
Pension and Welfare Benefits Administration
U.S. Department of Labor, Room N5644
200 Constitution Avenue, NW.
Washington, DC 20210

a. The name and fiscal year of the master trust and the name and address of the master trustee.

b. A list of all plans participating in the master trust, showing each plan's name, EIN, PN, and its percentage interest in each master trust investment account as of the beginning and end of the fiscal year of the master trust ending with or within the plan year.

c. A statement, in the same format as Part I of Schedule C (Form 5500), for each master trust investment account showing amounts of compensation paid during the fiscal year of the master trust ending with or within the plan year to persons providing services with respect to the investment account and subtracted from the gross income of the investment account in determining the net increase (decrease) in net assets of the investment account.

d. A statement for each master trust investment account showing the assets and liabilities of the investment account at the beginning and end of the fiscal year of the master trust ending with or within the plan year, grouped in the same categories as those specified in item 34 of Form 5500.

e. A statement for each master trust investment account showing the income and expenses, changes in net assets, and net increase (decrease) in net assets of each such investment account during the fiscal year of the master trust ending with or within the plan year, in the categories specified in item 35 of Form 5500. In place of item 35a, show the total of all transfers of assets into the investment account by participating plans. In place of item 35j, show the total of all transfers of assets out of the investment account by participating plans.

f. Schedules, in the format set forth in the instructions for item 30 of Form 5500, of the following items with respect to each master trust investment account for the fiscal year of the master trust ending with or within the plan year: assets held for investment, nonexempt party-in-interest transactions, defaulted or uncollectible loans and leases, and 5% transactions involving assets in the investment account. The 5% figure shall be determined by comparing the current value of the transaction at the transaction date with the current value of the investment account assets at the beginning of the applicable fiscal year of the master trust.

**3. 103-12 IE Information To Be Filed Directly With DOL**

The information described below must be filed with the DOL by the sponsor of the 103-12 IE no later than the date on which the plan's return/report is due before the plan administrator can elect the alternative method of reporting. While only one copy of the required information should be filed for the 103-12 IE, the information is an integral part of the return/report of each plan electing the alternative method of compliance.

The filing address is:

103-12 Investment Entity
Pension and Welfare Benefits Administration
U. S. Department of Labor, Room N5644
200 Constitution Avenue NW.
Washington, DC 20210

a. The name, fiscal year, and EIN of the 103-12 IE and the name and address of the sponsor of the 103-12 IE. If more than one 103-12 IE is covered by the same EIN, they shall be sequentially numbered as follows: 99-1234567 Entity No. 1.

b. A list of all plans participating in the 103-12 IE, showing each plan's name, EIN, PN, and its percentage interest in the 103-12 IE as of the beginning and end of the fiscal year of the 103-12 IE ending with or within the plan year.

c. A statement, in the same format as Part I of Schedule C (Form 5500), for the 103-12 IE showing amounts of compensation paid during the fiscal year of the 103-12 IE ending with or within the plan year to persons providing services to the 103-12 IE.

d. A statement showing the assets and liabilities at the beginning and end of the

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fiscal year of the 103-12 IE ending with or within the plan year, grouped in the same categories as those specified in item 34 of Form 5500.

e. A statement showing the income and expenses, changes in net assets, and net increase (decrease) in net assets during the fiscal year of the 103-12 IE ending with or within the plan year, grouped in the same categories as those specified in item 35 of Form 5500. In place of item 35a, show the total of all transfers of assets into the 103-12 IE by participating plans. In place of item 35j, show the total of all transfers of assets out of the 103-12 IE by participating plans.

f. Schedules, in the format set forth in the instructions for item 30 of Form 5500 (except item 30c) with respect to the 103-12 IE for the fiscal year of the 103-12 IE investment entity ending with or within the plan year. Substitute the term "103-12 IE" in place of the word "plan" when completing the schedules.

g. A report of an independent qualified public accountant regarding the above items and other books and records of the 103-12 IE that meets the requirements of 29 CFR 2520.103-1(b)(5).

### Section 3

### General Information

**Final Return/Report.**—If all assets under the plan (including insurance/annuity contracts) have been distributed to the participants and beneficiaries or distributed to another plan (and when all liabilities for which benefits may be paid under a welfare plan have been satisfied), check the "final return/report" box at the top of the form filed for such plan. The year of complete distribution is the last year a return/report must be filed for the plan. For purposes of this paragraph, a complete distribution will occur in the year in which the assets of a terminated plan are brought under the control of PBGC.

For a defined benefit plan covered by PBGC, a PBGC Form 1 must be filed and a premium must be paid until the end of the plan year in which the assets are distributed or brought under the control of PBGC.

Filing the return/report marked "final return" and indicating that the plan terminated satisfies the notification requirement of Code section 6057(b)(3).

**Signature and Date.**—The plan administrator must sign and date all returns/reports filed. In addition, the employer must sign a return/report filed for a single-employer plan or a plan required to file only because of Code section 6039D.

When a joint employer-union board of trustees or committee is the plan sponsor or plan administrator, at least one employer representative and one union representative must sign and date the return/report.

Participating employers in a multiple-employer plan (other), who are required to file Form 5500-C or 5500-R, are required to sign the return/report. The plan administrator need not sign the Form 5500-C or 5500-R filed by the participating employer.

**Reproductions.**—Original forms are preferable, but a clear reproduction of the completed form is acceptable. Sign the return/report after it is reproduced. All signatures must be original.

**Change In Plan Year.**—Generally only defined contribution pension benefit plans need to get prior approval for a change in plan year. (See Code section 412(c)(5).) Rev. Proc. 87-27, 1987-1 C.B. 769 explains the procedure for automatic approval of a change in plan year. A pension benefit plan that would ordinarily need to obtain approval for a change in plan year under Code section 412(c)(5) is granted an automatic approval for a change in plan year if all the following criteria are met:

1. No plan year is more than 12 months long.

2. The change will not delay the time when the plan would otherwise have been required to conform to the requirements of any statute, regulation, or published position of the IRS.

3. The trust, if any, retains its exempt status for the short period required to effect the change, as well as for the taxable year immediately preceding the short period.

4. All actions necessary to implement the change in plan year, including plan amendment and a resolution of the board of directors (if applicable), have been taken on or before the last day of the short period.

5. No change in plan year has been made for any of the preceding plan years.

6. In the case of a defined benefit plan, deductions are taken in accordance with section 5 of Rev. Proc. 87-27.

For the first return/report that is filed following the change in plan year, check the box indicated on the second line under the title at the top of the form (or item 1d if Form 5500R is being filed).

**Amended Return/Report.**—If you file an amended return/report, check the "(ii) an amended return/report" box at the top of the form. When filing an amended return, be sure to answer all questions and put a circle around the numbers of the items that have been amended.

**How The Annual Return/Report Information May Be Used.**—All Form 5500 series return/reports will be subjected to a computerized review. It is, therefore, in the filer's best interest that the responses accurately reflect the circumstances they were designed to report. Annual reports filed under Title I of ERISA must be made available by plan administrators to plan participants and by the Department of Labor to the public pursuant to ERISA section 104.

### Section 4

### Specific Instructions for Form 5500

**Important:** Answer all items on the Form 5500 with respect to the plan year, unless otherwise explicitly stated in the item-by-item instructions or on the form itself. Therefore, your responses usually apply to the year entered or printed at the top of the first page of the form. Yes and no questions are to be marked either "Yes" or "No" but not both. If neither "Yes" nor "No" applies, enter "NA."

#### Information To Be Completed at the Top of the Form

**First Line** at the top of the form—Complete the space for dates when: (1) the 12-month plan year is not a calendar year, or (2) the plan year is less than 12 months (a short plan year).

**Second Line**— Check the box if the plan year has been changed since the last return/report was filed.

**Fifth Line**—Check box (i) if this is the initial filing for this plan. Do not check this box if you have ever filed for this plan even if it was on a different form (Form 5500 vs. Form 5500-C or Form 5500-R).

Check box (ii) if you have already filed for the 1988 plan year and are now submitting an amended return/report to reflect errors and/or omissions on the previously filed return/report.

Check box (iii) if the plan no longer exists to provide benefits. See section 3 for instructions concerning the requirement to file a final return/report.

**The numbers of the following instructions are the same as the item numbers on the return/report.**

**1a.** If you did not receive a preaddressed mailing label, enter the name and address of the plan sponsor. If the plan covers only the employees of one employer, enter the employer's name.

If you received a Form 5500 with a preaddressed mailing label, please attach it in the name and address area of the form you file. If the name or address on the label is wrong, draw a line through the incorrect part and correct it.

The term "plan sponsor" means—

*(i)* the employer, for an employee benefit plan that a single employer established or maintains;

*(ii)* the employee organization in the case of a plan of an employee organization; or

*(iii)* the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the plan, if the plan is established or maintained jointly by one or more employers and one or more employee organizations, or by two or more employers.

Include enough information in 1(a) to describe the sponsor adequately. For example, "Joint Board of Trustees of Local 187 Machinists" rather than just "Joint Board of Trustees."

For group insurance arrangements, enter the name of the trust or other entity that holds the insurance contracts. In addition, attach a list of all participating employers and their EINs.

A group insurance arrangement is an arrangement which provides benefits to the employees of two or more unaffiliated employers (not in connection with a multiemployer plan or a multiple-employer-collectively-bargained plan), fully insures one or more welfare plans of each participating employer, and uses a trust (or other entity such as a trade association) as the holder of the insurance contracts and the conduit for payment of premiums to the insurance company.

**1b.** Enter the 9-digit employer identification number (EIN) assigned to the plan sponsor/employer. For example, 00-1234567.

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Employers and plan administrators who do not have an EIN should apply for one on Form SS-4, available from most IRS or Social Security Administration offices. Send Form SS-4 to the same Internal Revenue Service Center to which the form will be sent.

Plan sponsors are reminded that they should use the trust EIN when opening a bank account or conducting other transactions for a plan that requires an employer identification number. The trust may apply for an EIN as explained in the preceding paragraph.

A plan of a controlled group of corporations whose sponsor is more than one of the members of the controlled group should insert only the EIN of one of the sponsoring members. This EIN must be used in all subsequent filings of the annual returns/reports for the controlled group unless there is a change in the sponsor.

If the plan administrator is a group of individuals, get a single EIN for the group. When you apply for a number, enter on line 1 of Form SS-4 the name of the group, such as "Joint Board of Trustees of the Local 187 Machinists' Retirement Plan."

*Note: Although Employer Identification Numbers (EINs) for funds (trusts or custodial accounts) associated with plans are not required to be furnished on the Form 5500 series returns/reports, the IRS will issue EINs for such funds for other reporting purposes. EINs may be obtained by filing Form SS-4 as explained above.*

**1d.** From the list of business codes on pages 18 and 19, enter the one that best describes the nature of the employer's business. If more than one employer is involved, enter the business code for the main business activity.

**1e.** Plans checking Item 4a or 4b must enter the first six digits of the CUSIP (Committee on Uniform Securities Identification Procedures) number, "issuer number," if one has been assigned to the plan sponsor for purposes of issuing corporate securities. CUSIP issuer numbers are assigned to corporations and other entities which issue public securities listed on stock exchanges or traded over the counter. The CUSIP issuer number is the first six digits of the number assigned to the individual securities which are traded. If the plan sponsor has no CUSIP issuer number, enter "N/A."

**2a.** If the document constituting the plan appoints or designates a plan administrator other than the sponsor, enter the administrator's name and address. If the plan administrator is also the sponsor, enter "Same." If filing as a group insurance arrangement, enter "Same." If 2a is the "Same," then items 2b and 2c should be left blank.

The term "administrator" means—

*(i)* the person or group of persons specified as the administrator by the instrument under which the plan is operated;

*(ii)* the plan sponsor/employer if an administrator is not so designated; or

*(iii)* any other person prescribed by regulations of the Secretary of Labor if an administrator is not designated and a plan sponsor cannot be identified.

**2b.** A plan administrator must have an EIN for reporting purposes. Enter the plan administrator's 9-digit EIN here. If the plan administrator has no EIN, apply for one as explained in 1b above.

Employees of an employer are not plan administrators unless so designated in the plan document, even though they engage in administrative functions of the plan. If an employee of the employer is designated as the plan administrator, that employee must get an EIN.

**3.** If you answer "Yes," enter the name, address, and EIN of the plan sponsor and/or the plan administrator shown on the prior return/report.

**3c.** Indicate if the change in 3a is only a change in sponsorship. "Change in sponsorship" means the plan's sponsor has been changed but no assets or liabilities have been transferred to another plan(s), the plan has not terminated or merged with any other plan, and so forth.

**4a.** Check for a single-employer plan. See "Kinds of Filers" for what is considered a single-employer plan.

**4b.** Check for a plan in which more than one employer participates, and some of the employers are members of a controlled group of corporations (Code section 414(b)) or members of a group of employers under common control (Code section 414(c)).

**4c.** Check for a multiemployer plan as defined in Code section 414(f) and ERISA sections 3(37) and 4001(a)(3).

**4d.** Check for a multiple-employer collectively-bargained plan as described under "Kinds of Filers."

**5a.** Check for a multiple-employer plan (other) if the plan administrator is filing for the plan as a whole.

**5d.** Check for a consolidated filing (pursuant to 29 CFR 2520.104-43) that a trust or other entity makes on behalf of welfare benefit plans that participate in a group insurance arrangement.

**6a.** Enter the formal name of the plan, group insurance arrangement, or enough information to identify the plan.

**6b.** Enter the date the plan first became effective.

**6c.** Enter the 3-digit number the employer or plan administrator assigned to the plan. All welfare plan numbers and Code section 60390 plan numbers start at 501. All other plans start at 001.

Once you use a plan number, continue to use it for that plan on all future filings with IRS, DOL and PBGC. Do not use it for any other plan even if you terminated the first plan.

*Group Insurance Arrangement.*—For entities filing as a group insurance arrangement, enter the name of the arrangement and enter the next 3-digit plan number available to the plan sponsor in the 500 series (i.e., 501, 502 etc.).

**6a.** Check every box that describes the welfare benefit plan for which this return/report is being filed. Example: If your plan provides health insurance, dental insurance, eye examinations, and life insurance, four boxes should be checked—6a(i)(A), 6a(i)(B), 6a(i)(D), and 6a(i)(E).

If you checked box (M), (N), or (O), you must check one box in 6a(ii). Check unfunded if the plan is (1) unfunded, (2) fully insured, or (3) a combination of unfunded/insured as defined on page 2, Section 2B(a).

**6b(i).** For a defined benefit plan, check the box.

**6b(ii).** Check (C) for a money purchase plan if the contribution is determined by a target benefit calculation. Check (O) for all money purchase plans that do not have a target benefit calculation.

**6c(ii).** Check this box for an ESOP which acquires employer securities with borrowed money or other debt-financed techniques.

**6c(iii).** Check if the plan is a pension plan that provides for individual accounts and permits a participant or beneficiary to exercise independent control over the assets in his or her account (see ERISA section 404(c)).

**6c(iv).** Check this box for pension benefit plans maintained outside the United States primarily for nonresident aliens. See "Kinds of Filers" for more information.

**6c(v).** In the space provided following 6c(viii), enter name of the trust and bank or financial institution. Also enter city and state where the trust is maintained. (See page 3 for master trust instructions.)

**6c(vi).** In the space provided following 6c(viii), enter name and address of the 103-12 IE. (See page 4.)

**6d.** For single-employer plans enter the date the employer's tax year ends. For example, if the tax year is a calendar year, enter 12-31-88. For all plans with more than one employer, enter "N/A."

**6e. Definition of Affiliated Service Group.**—In general, Code section 414(m)(2) defines an affiliated service group as a first service organization (FSO) that has:

(1) a service organization (A-ORG) that is a shareholder or partner in the FSO and that regularly performs services for the FSO, or is regularly associated with the FSO in performing services for third persons, and/or

(2) any other organization (B-ORG) if:

(a) a significant portion of the business of that organization consists of performing services for the FSO or A-ORG of a type historically performed by employees in the service field of the FSO or A-ORG, and

(b) 10% or more of the interest of the B-ORG is held by persons who are highly compensated employees of the FSO or A-ORG.

An affiliated service group also includes a group consisting of an organization whose principal business is performing management functions for another organization (or one organization and other related organizations) on a regular and continuing basis, and the organization for which such functions are so performed by the organization. For a plan maintained by more than one employer, check "Yes" if any such employer is a member of an affiliated service group.

**6f.** A cash or deferred arrangement described in Code section 401(k) is a part of a qualified defined contribution plan which provides for an election by employees to defer part of their compensation or receive these amounts in cash.

**7.** The description of "participant" in the instructions below is only for purposes of item 7 of this form.

For welfare plans, dependents are considered to be neither participants nor beneficiaries. For pension benefit plans, "alternate payees" entitled to benefits under a qualified domestic relations order are not to be counted as participants for this item.

"Participant" means any individual who is included in one of the categories below.

**7a.** Active participants include any individuals who are currently in employment covered by a plan and who are earning or retaining credited service under a plan. This category includes any individuals who are: *(i)* currently below the integration level in a plan that is integrated with social security, and/or *(ii)* eligible to elect to have the employer make payments to a Code section 401(k) qualified cash or deferred arrangement. Active participants also include any nonvested individuals who are earning or retaining credited service under a plan. This category does not include nonvested former employees who have incurred the greater of 5 consecutive one year breaks in service or the break in service period specified in the plan.

For determining if active participants are fully vested, partially vested, or nonvested, consider vesting in employer contributions only.

For purposes of Code section 60390, "participant" means any individual who, for a plan year, has had at least one dollar excluded from income by reason of Code section 120, 125, or 127. If you are filing Form 5500 for a welfare plan that is required to file under Title I of ERISA and under Code section 60390, the preceding sentence does not apply.

**7b.** Inactive participants receiving benefits are any individuals who are retired or separated from employment covered by the plan and who are receiving benefits under the plan. This includes former employees who are receiving group health continuation coverage benefits pursuant to Part 6 of ERISA who are covered by the employee welfare benefit plan. This category does not include any individual to whom an insurance company has made an irrevocable commitment to pay all the benefits to which the individual is entitled under the plan.

**7c.** Inactive participants entitled to future benefits are individuals who are retired or separated from employment covered by the plan and who are entitled to begin receiving benefits under the plan in the future. This category does not include any individual to whom an insurance company has made an irrevocable commitment to pay all the benefits to which the individual is entitled under the plan.

**7e.** Deceased participants are any deceased individuals who have one or more beneficiaries who are receiving or are entitled to receive benefits under the plan. This category does not include an individual if an insurance company has made an irrevocable commitment to pay all the benefits to which the beneficiaries of that individual are entitled under the plan.

**7g(i).** If "Yes," file Schedule SSA (Form 5500) as an attachment to Form 5500. Plan administrators: Code section 6057(e) provides that the plan administrator must give each participant a statement showing the same information for that participant as is reported on Schedule SSA.

**8a.** Check "Yes" if an amendment to the plan was adopted in this plan year, regardless of the effective date of the amendment.

**8b.** Check "Yes" only if the accrued benefits were retroactively reduced. For example, a plan provides a benefit of 2% for each year of service, but the plan is amended to change the benefit to 1½% a year for all years of service under the plan.

**8c.** Enter the date the most recent amendment was adopted regardless of the date of the amendment or the effective date of the amendment.

**8d.** Check "Yes" only if an amendment changed the information previously provided to participants by the summary plan description or summary description of modifications.

**8e.** A revised summary plan description or summary description of modifications must be filed with DOL and distributed to all participants and pension plan beneficiaries no later than 210 days after the close of the plan year in which the amendment(s) was adopted. If the material was distributed and filed since the amendments were adopted (even if after the end of the plan year), check "Yes" to item 8e.

**9a.** Check "Yes" if the plan was terminated or if the plan was merged or consolidated into another plan. Enter year of termination if applicable. If you checked 6a(i)(M), (N), or (O) and indicated that this is an unfunded plan and you also answered 9a "Yes," you must also check 9b "Yes."

**9b.** If the plan was terminated and all plan assets were not distributed, file a return/report for each year the plan has assets. In that case, the return/report must be filed by the plan administrator, if designated, or by the person or persons who actually control the plan's property.

If all plan assets were used to buy individual annuity contracts and the contracts were distributed to the participants, check "Yes."

If all the trust assets were transferred to another plan, check "Yes."

Do not check "Yes" for a welfare plan which is still liable to pay benefits for claims which were incurred prior to the termination date, but not yet paid. See 29 CFR 2520.104b-2(g)(2)(ii).

**9h.** The Code provides for a nondeductible excise tax on a reversion of assets from a qualified plan. The tax is effective for reversions after December 31, 1985, unless the plan termination date is prior to January 1986.

**9i.** The employer must report the reversion by filing Form 5330 and pay any applicable tax. The tax will not be imposed upon employers who are tax-exempt entities under Code section 501(a). See instructions for Form 5330.

**10a.** If this plan was merged or consolidated into another plan(s), or plan assets or liabilities were transferred to another plan(s), indicate which other plan or plans were involved.

**10c.** Enter the EIN of the sponsor (employer, if for a single-employer plan) of the other plan.

**Summary of Filing Requirements for Employers and Plan Administrators**
**(File forms ONLY with IRS)**

| Type of plan | What to file | When to file |
|---|---|---|
| Most pension plans with only one participant or one participant and that participant's spouse | Form 5500EZ | File all required forms and schedules for each plan by the last day of the 7th month after the plan year ends. |
| Pension plan with fewer than 100 participants | Form 5500-C or 5500-R | |
| Pension plan with 100 or more participants | Form 5500 | |
| Annuity under Code section 403(b)(1) or trust under Code section 408(c) | Form 5500, 5500-C, or 5500-R | |
| Custodial account under Code section 403(b)(7) | Form 5500, 5500-C, or 5500-R | |
| Welfare benefit plan with 100 or more participants* | Form 5500 | |
| Welfare benefit plan with fewer than 100 participants (see exception on page 1 of these instructions)* | Form 5500-C or 5500-R | |
| Pension or welfare plan with 100 or more participants (see instructions for Item 29) | Financial statements, schedules, and accountant's opinion | |
| Pension or welfare plan with benefits provided by an insurance company | Schedule A (Form 5500) | |
| Pension plan that requires actuarial information | Schedule B (Form 5500) | |
| Plan with 100 or more participants | Schedule C (Form 5500) | |
| Pension plan filing a registration statement identifying separated participants with deferred vested benefits from a pension plan | Schedule SSA (Form 5500) | |

* This includes Code section 60390 filers.

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**10a.** Pension benefit plans must file Form 5310 at least 30 days before any plan merger or consolidation or any transfer of plan assets or liabilities to another plan. **Caution:** *There is a penalty for not filing Form 5310 on time.*

**11.** Enter the code for the **funding arrangement** used by the plan from the list below.

The "funding arrangement" is the method used for the receipt, holding, investment, and transmittal of plan assets prior to the time the plan actually provides the benefits promised under the plan. For purposes of items 11 and 12, the term "trust" includes any fund or account which receives, holds, transmits, or invests plan assets other than an account or policy of an insurance company.

| | Funding Arrangement Codes |
|---|---|
| Trust | 1 |
| Trust and insurance | 2 |
| Insurance | 3 |
| Exclusively from general assets of sponsor (unfunded) | 4 |
| Partially insured and partially from general assets of sponsor | 5 |
| Other | 6 |

**12.** Enter the code for the **benefit arrangement** used by the plan from the list below.

The "benefit arrangement" is the method by which benefits are actually provided to participants by the plan. For example, when a participant retires, the plan might purchase an annuity from an insurance company for that individual to provide the actual benefits promised by the plan. In this example, the annuity would be the benefit arrangement.

Using the chart below, the plan in the above example would enter a "3" to indicate the benefit arrangement.

| | Benefit Arrangement Codes |
|---|---|
| Trust | 1 |
| Trust and insurance | 2 |
| Insurance | 3 |
| Exclusively from general assets of sponsor (unfunded) | 4 |
| Partially insured and partially from general assets of sponsor | 5 |
| Other | 6 |

**13a.** Enter "Yes," if either the contributions to the plan or the benefits paid by the plan are subject to the collective bargaining process, even if the plan is not established and administered by a joint board of trustees. Enter "Yes" even if only some of those covered by the plan are members of a collective bargaining unit which negotiates benefit levels on its own behalf. The benefit schedules need not be identical for all employees under the plan.

**13b.** All plans checking items 4c or 4d must enter the 6-digit LM number to identify each sponsoring labor organization which is a party to the collective bargaining agreement. Other plans which are maintained pursuant to collective bargaining agreements should enter the appropriate LM number, if available. The "LM number" is the six-digit Labor-Management disclosure number entered by the sponsoring labor organization in item 1 of the Form LM-2 or LM-3 (Labor Organization Annual Report) filed with the Department of Labor. Accordingly, the LM number(s) should be readily available from the sponsoring labor organization(s). If all sponsoring labor organizations' LM numbers cannot be entered in the spaces provided in item 13b on the form, enter the additional LM numbers on a supplemental sheet to accompany the Form 5500.

**14.** If the funding arrangement code (item 11) and/or the benefit arrangement code (item 12) is 2, 3, or 5, at least one Schedule A (Form 5500) must be attached to the Form 5500 filed for pension and welfare plans. The insurance company (or similar organization) which provides benefits is required to provide the plan administrator with the information needed to complete the return/report, pursuant to ERISA section 103 (a)(2). If you do not receive this information in a timely manner, contact the insurance company (or similar organization). If information is missing on Schedule A due to a refusal to provide this information, note this on the Schedule A. If there are no Schedule(s) A attached, enter "0."

**15b.** If a waived funding deficiency is being amortized in the current plan year, do not complete (i), (ii), and (iii), but complete 1, 2, 3, 7, and 9 of Schedule B (Form 5500). An enrolled actuary need not sign Schedule B under these circumstances.

**15b(iii).** File Form 5330 with IRS to pay the excise tax on any funding deficiency. **Caution:** *There is a penalty for not filing Form 5330 on time.*

**16.** A "top-heavy plan" is a plan which during any plan year is:

(1) any defined benefit plan if, as of the determination date, the present value of the cumulative accrued benefits under the plan for key employees exceeds 60% of the present value of the cumulative accrued benefits under the plan for all employees; and

(2) any defined contribution plan if, as of the determination date, the aggregate of the accounts of key employees under the plan exceeds 60% of the aggregate of the accounts of all employees under the plan.

Each plan of an employer included in a required aggregation group is to be treated as a top-heavy plan if such group is a top-heavy group. See definitions of required aggregation group and top-heavy group, below.

*Key Employee* —A key employee is any participant in an employer plan who at any time during the plan year, or any of the 4 preceding years, is:

(1) an officer of the employer having an annual compensation greater than 50% of the amount in effect under Code section 415(c)(1)(A) for any such plan year,

(2) one of the 10 employees having annual compensation from the employer of more than the limitation in effect under Code section 415(c)(1)(A) and owning (or considered as owning within the meaning of Code section 318) both more than ½% interest and the largest interests in the employer,

(3) a 5% owner of the employer, or

(4) a 1% owner of the employer having an annual compensation from the employer of more than $150,000.

In determining whether an individual is an officer of the employer, no more than 50 employees, or, if less, the greater of 3 employees or 10% of the employees, are to be treated as officers. See Code section 416(i) and T-12 of Regulations section 1.416. A key employee will not include any officer or employee of a governmental plan under Code section 414(d).

*Required Aggregation Group*—A required aggregation group consists of:

(1) each plan of the employer in which a key employee is or was a participant, and

(2) each other plan of the employer which enables a plan to meet the requirements for nondiscrimination in contributions or benefits under Code section 401(a)(4), or the participation requirements under Code section 410.

*Top-Heavy Group*—A top-heavy group is an aggregation group if, as of the determination date, the sum of the present value of the cumulative accrued benefits for key employees under all defined benefit plans included in such group and the aggregate of the accounts of key employees under all defined contribution plans in such group exceeds 60% of a similar sum determined for all employees. To determine if a plan is top-heavy, include distributions made in the 5-year period ending on the determination date. However, do not take into account accrued benefits for an individual who hasn't performed services for the employer during the 5-year period ending on the determination date.

**18a.** If the plan distributes an annuity contract, whether or not deferred and whether or not upon termination, that contract must provide that all distributions from it will meet the participant and spousal consent requirements of Code section 417. Consent is not needed for the distribution of the contract itself. Check "No" if the plan did not distribute any annuity contracts.

**18b.** In general, distributions must be made in the form of a qualified joint and survivor annuity for life or a qualified preretirement survivor annuity. An annuity distribution to a single individual is a qualified joint and survivor annuity. Check "Yes" if distributions in other forms were made, even if such distributions were permissible, e.g., because consent was obtained or was not needed.

**18c.** Generally, within the 90 days prior to the date of any benefit payment or the making of a loan to a participant, you must get the spouse's consent to the payment of the benefit or the use of the accrued benefit for the making of the loan. However, there are some circumstances where obtaining this spousal consent is not required. The following is a partial listing of circumstances where spousal consent is not required:

(1) The participant is not married and no spouse is required to be treated as a current spouse under a qualified domestic relations order issued by a court.

(2) The participant's accrued benefit in the plan never had a present value of more than $3,500.

(3) The benefit is paid in the form of a qualified joint and survivor annuity, i.e., an annuity for the life of the participant with a survivor annuity for the life of the spouse which is not less than 50% of (and is not greater than 100% of ) the amount of the

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annuity which is payable during the joint lives of the participant and the spouse. See Code section 417(b).

(4) The payout is from a profit-sharing or stock bonus plan that pays the spouse the participant's full account balance upon the participant's death, an annuity payment is not elected by the participant, and the profit-sharing or stock bonus plan is not a transferee plan with respect to the participant (i.e., had not received a transfer from a plan that was subject to the consent requirements with respect to the participant).

(5) The participant had no service under the plan after August 22, 1984.

**18d.** A plan may not eliminate a subsidized benefit or a retirement option by plan amendment or plan termination.

**19.** For purposes of determining the present value of a participant's accrued benefits and the amount of any distribution, a qualified plan must use a rate no higher than "the applicable interest rate." The "applicable interest rate" means the interest rate which would be used (as of the date of distributions) by the PBGC for determining the present value of a lump sum distribution on termination of the plan.

**a.** If the present value of the vested accrued benefit is no more than $25,000, the amount to be distributed is calculated using the PBGC rate.

**b.** If the present value of the vested accrued benefit exceeds $25,000 (using the PBGC rate), the total amount to be distributed is determined using an interest rate no greater than 120% of the applicable interest rate that would be used by the PBGC upon the plan's termination. In such a case the value will be no less than $25,000.

**20. The Tax Reform Act of 1986** amended Code section 415 to provide that the maximum annual benefit that may be provided under a defined benefit plan may not exceed the lesser of $90,000 or 100% of compensation. However, if benefits begin before the social security retirement age, the $90,000 limit must be reduced as described in Notice 87-21, 1987-1 C.B. 458.

In addition, the dollar limitations will be reduced for participants with fewer than 10 years of participation in a defined benefit plan, i.e., a 10% reduction for each year under 10 years of participation.

For defined contribution plans, Code section 415 now provides that the dollar limit on annual additions to a qualified plan may not exceed the greater of $30,000 or 25% of the defined benefit dollar limit for such limitation year. The defined contribution dollar limit will not be increased until the defined benefit dollar limit, as increased by cost of living adjustments, equals or exceeds $120,000. (For years beginning after December 31, 1987, the $90,000 defined benefit limit will be adjusted to reflect post-1986 cost of living increases.) The defined contribution dollar limit will then be increased to an amount equal to 25% of the defined benefit limit.

Annual additions to a defined contribution plan will, for years beginning after December 31, 1986, include 100% of all after-tax employee contributions. For participants participating in plans of tax-exempt organizations, the pre-Tax Reform Act limits remain in effect.

**The Tax Reform Act of 1986 also provides that a participant's previously accrued benefit won't be reduced merely because of the reduction in dollar limits or increases in required periods of participation.** The transitional rule applies to an individual who was a participant prior to January 1, 1987, in a plan in existence on May 5, 1986. If this participant's current accrued benefit exceeds the dollar limit under the Tax Reform Act of 1986, but complies with prior law, then the applicable dollar limit for the participant is equal to the current accrued benefit. The term "current accrued benefit" is defined as the participant's accrued benefit as of the close of the last limitation year beginning before January 1, 1987, and expressed as an annual benefit. To compute the defined benefit fraction, the current accrued benefit would replace the dollar limit otherwise used in the denominator of the fraction. The current accrued benefit is also reflected in the numerator of the defined benefit fraction.

**21.** In the calendar year in which the employee attains age 70 ½, the employee must begin to receive minimum distributions pursuant to Code section 401(a)(9) by April 1 of the following calendar year. Once begun, minimal distributions must continue each calendar year.

**22.** For purposes of filing required only because of Code section 6039D, complete only items 22c, 22g, and 22i.

**22a.** If you do not claim to meet the percentage tests of Code section 410(b)(1)(A), attach an explanation indicating how your plan meets the coverage requirements of Code section 410(b)(1)(B).

**22b. Provide information for all employers of a controlled group, a group under common control, or an affiliated service group even if they do not participate in the plan.** Also, leased employees (described in Code section 414(n)(2)) of any such employer(s) are to be included as employees unless the leasing organization maintains a "safe harbor" plan described in Code section 414(n)(5) for the leased employees. See below for more information regarding a "safe harbor" plan.

Generally, leased employees are individuals who are employees of a leasing organization, but who during the course of their employment perform services for a trade or business other than the leasing organization on a substantially full-time basis for a period of at least one year.

Service is to include any period during which the employee would have been a leased employee, but for the requirement that substantially full-time service be performed for at least one year. Such leased employees are to be considered employees of their recipient organization at certain times and for certain qualification requirements unless the leasing organization adopts and maintains the type of qualified plan specified in Code section 414(n)(5).

*A safe harbor plan* is a money purchase pension plan maintained by the leasing organization that provides with respect to a leased employee:

(A) a nonintegrated employer contribution rate of at least 10%, and

(B) immediate participation and full and immediate vesting.

The plan must cover all employees of the leasing organization other than those who are not "leased out" and cover those whose compensation from the leasing organization is less than $1,000 per year during a plan year and each of the prior 3 plan years. The safe harbor plan must provide the 10% of compensation allocation regardless of the number of hours of service during the year, age, or whether the employee is employed on a specific date.

In general, if leased employees make up more than 20% of the nonhighly compensated work force of the recipient, such employees must be covered by the recipient's pension plan regardless of the safe harbor plan. Recipient includes employers aggregated under Code section 414(b), (c), or (m). Under the 20% rule, "leased employees" include all persons who performed services as a "nonemployee."

Therefore, the total number of employees entered in 22c, the breakdown of excluded employees shown in 22d, and the ineligible employees shown in 22f should also include the employees of the controlled group, employees of employers under common control, or other employees in the affiliated service group or leased employees as described above.

Do not complete 22 for multiemployer plans described in Code section 414(f) or for multiple-employer-collectively-bargained plans.

**24a.** An independent appraiser must be used to ascertain the value of securities, acquired by a plan after December 31, 1986, if the securities aren't readily tradeable on an established securities market.

**28a.** Check "Yes" if any person (including, when applicable, a corporation or partnership) received, directly or indirectly, $5,000 or more during the plan year for providing services to the plan. For exceptions, see instructions to Part I of Schedule C (Form 5500). If you checked "Yes," complete Part I of Schedule C (Form 5500), which must then be attached to the Form 5500. Include payments from the plan sponsor which are reimbursable by the plan.

**28b.** Include all trustees in office during the plan year. List these trustees on Part II of Schedule C (Form 5500) and attach it to the Form 5500.

**28c.** Check "Yes," if there has been a termination in the appointment of any person for which a box must be checked in item 28d. In the case where the service provider is not an individual (i.e., when the service provider is a legal entity such as a corporation, partnership, etc.), check "Yes" when the service provider (not the individual) has been terminated. If item 28c is checked "Yes," complete Part III of Schedule C (Form 5500) and attach the Schedule C to the Form 5500. Otherwise, check "No" and skip to item 28g.

**28d.** Check all appropriate boxes and complete Part III of Schedule C (Form 5500). At least one box must be checked if 28c is answered "Yes."

**28e.** If item 28c is checked "Yes," check 28e "Yes" if, during the two most recent

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plan years preceding the termination and any subsequent interim period preceding such termination, resignation, or dismissal, there were any disagreements (whether or not the disagreements were a factor in the termination) on any matter of professional judgment that, if not resolved to the satisfaction of the former appointee, would have caused (or did cause) the former appointee to take some action, such as including the subject matter of the disagreement within a written report. For example, check "Yes," if the accountant was terminated as a result of a disagreement over the valuation of plan assets and the accountant would have required that the matter be disclosed in a note to the financial statements. Disagreements not involving a matter of professional judgement, such as the payment or nonpayment of fees, or the amount of the fee charged should not be included.

**28f.** If items 28d(i) or 28d(ii) has been checked, indicating that an independent qualified public accountant or enrolled actuary has been terminated, the plan administrator must provide the terminated accountant or enrolled actuary with a copy of the explanation of the reason for the termination provided in Part III of Schedule C (Form 5500), along with a completed copy of the notice which follows.

### Notice To Terminated Accountant or Enrolled Actuary

An explanation of the reasons for the termination of an accountant or enrolled actuary (terminated party) must be provided as part of the annual report (Part III of Schedule C). The plan administrator of the employee benefit plan is also required to provide the terminated party with a copy of this explanation and a notification that the terminated party has the opportunity to comment directly to the Department of Labor concerning any aspect of this explanation.

In accordance with this requirement, I, as plan administrator, verify that the explanation that is either reproduced below or attached to this notice is the explanation concerning your termination as reported on the Schedule C (Form 5500) attached to the 1988 Annual Return/Report Form 5500 for the (enter name of plan). This return/report is identified in item 1b by the nine-digit EIN – (enter Employer Identification Number) and in item 5c by the three-digit PN (enter plan number).

Signed

Dated

Any comments concerning this explanation should include the name, EIN, and PN of the plan and be submitted directly to:

Office of Enforcement
Pension and Welfare Benefits Administration
U. S. Department of Labor
200 Constitution Avenue, NW.
Washington, DC 20210

**28g.** A Schedule C (Form 5500) must be attached if item 28a, 28b, and/or 28c is checked "Yes." More than one Schedule C may be required if additional space is required to complete any part of the Schedule C. If no Schedule(s) C is required to be attached, enter "0".

**29.** Employee benefit plans filing the Annual Return/Report Form 5500 are generally required to engage an independent qualified public accountant pursuant to ERISA section 103(a)(3)(A). An independent qualified public accountant's opinion must be attached to Form 5500 unless: (i) the plan is an employee welfare benefit plan which is unfunded, fully insured, or a combination of unfunded and insured as described in 29 CFR 2520. 104-44(b)(1); (ii) the plan is an employee pension benefit plan whose sole asset(s) consists of insurance contracts which provide that, upon receipt of the premium payment, the insurance carrier fully guarantees the amount of benefit payments attributable to plan participants for that plan year as specified in 29 CFR 2520.104-44(b)(2); or (iii) the plan has elected to defer attaching the accountant's opinion for the first of two plan years, one of which is a short plan year of 7 months or less as allowed by 29 CFR 2520.104-50. (Also see the instructions for item 29e below.)

Single employer welfare plans using a 501(c)(9) trust are generally not exempt from the requirement of engaging an independent qualified public accountant.

**29a.** Plans meeting (i) or (ii) above should check "Yes" for item 29a and skip to item 31. Plans meeting (iii) must attach the required explanation and statements in lieu of the opinion and should check "No" to item 29a and "Other" to item 29b, and specify, in the space provided, that "the opinion is to be attached to the next Form 5500 pursuant to 29 CFR 2520.104-50." All other plans should check "No." "N/A" is NOT an acceptable response to this item. If the required accountant's opinion is not attached to the Form 5500, the filing is subject to rejection as incomplete and penalties may be imposed (see page 1).

**29b(i).** Generally, an unqualified opinion is issued when the auditor concludes that the plan's financial statements present fairly, in all material respects, the financial status of the plan as of the end of the period audited, and the changes in its financial status for the period under audit in conformity with generally accepted accounting principles. Check this box if the plan received an unqualified opinion.

**29b(ii).** Department of Labor regulations 29 CFR 2520.103-8 and 2520.103-12(d) generally state that the examination and report of an independent qualified public accountant need not extend to: (1) information prepared and certified to by a bank or similar institution or by an insurance carrier which is regulated and supervised and subject to periodic examination by a state or Federal agency, or (2) information concerning a 103-12 IE which is reported directly to the Department of Labor. Check this box if the plan received an accountant's opinion as discussed in 29b(i) above except for the information not audited pursuant to the above regulations.

**29b(iii).** Generally a qualified opinion is issued by an independent qualified public accountant when the plan's financial statements present fairly, in all material respects, the financial position of the plan as of the end of the audit period and the results of its operations for the audit period in conformity with generally accepted accounting principles except for the effects of one or more matters which are described in the opinion. A disclaimer of opinion is issued when the independent qualified public accountant does not express an opinion on the financial statements because he has not performed an audit sufficient in scope to enable him to form an opinion of the financial statements. Check this block if the plan received a qualified opinion or if a disclaimer of opinion was issued. If the audit was of limited scope pursuant to 29 CFR 2520.103-8 and/or 2520.103-12(d), and no other limitations as to scope or procedures were in effect, then check the box in item 29b(ii).

**29b(iv).** Generally an adverse opinion is issued by an independent qualified public accountant when the plan's financial statements do not present fairly, in all material respects, the financial position of the plan as of the end of the audit period and the results of its operations for the audit period in conformity with generally accepted accounting principles. Check this box if the plan received an adverse accountant's opinion.

**29b(v).** Generally, an independent qualified public accountant's opinion will be described by one of the categories in 29b(i)–(iv). Check the box if the accountant's opinion received by the plan is not described by one of the categories in 29b(i)–(iv). Explain the nature of the opinion in the space next to the box. In the event the explanation requires more space, enter "See attached" and on a separate sheet of paper explain in detail the nature of the accountant's opinion. Any attachments should identify the item number and include the plan's name, EIN and PN.

**29c and d.** These items must be answered by all plans required to engage an independent qualified public accountant (item 29a is "No"). The disclosure of the transactions and financial conditions listed in 29c are some of the disclosures required to be made when a plan's financial statements are presented in accordance with generally accepted accounting principles. (Usually these disclosures are contained in the notes to the financial statements.) If you are unsure as to whether the disclosures presented in or accompanying the plans' financial statements fall within one of the disclosures described in 29c, you should consult with the plan's independent qualified public accountant.

Check "Yes" to 29c and provide the amount involved in 29d if the financial statements or the notes to the statements contain any of the disclosures listed in 29c. The amount should be determined by adding the amounts of all of the applicable disclosures. For example, if two significant transactions are disclosed between the plan and the sponsor, the amounts, if any, disclosed in the notes should be added together and the total reported.

If you confirm, through consultation with the accountant, if necessary, that the accountant's report, including any applicable financial statements or notes, does not contain any of the disclosures noted in 29c, check "No" to item 29c and enter "0" in 29d.





**30.** Plans with assets held in a master trust and/or 103-12 IE (see pages 3 and 4 for the definition of these terms) should complete items 30a, b, c, and d to report information relating to assets held and transactions occurring outside the master trust and/or 103-12 IE. In determining the 5% figure for item 30d, subtract the value of plan assets held in the master trust or 103-12 IE from the current value of the plan's total assets at the beginning of the plan year.

Do not complete sub-items 30a through 30f if all plan funds are held in a master trust.

If "Yes" is checked for item(s) 30a, b, c, d, e, and/or f, schedules must be completed and attached to the Form 5500. If the required schedule is not attached to the Form 5500, the filing is subject to rejection as incomplete and penalties may be imposed (see page 1). Any attachments should identify the item number and include the plan's name, EIN, and PN.

**30a–30d.** If the assets or investment interests of two or more plans are maintained in one trust (except investment arrangements reported in 34c(xi) (see page 15)), all entries in the schedules included under items 30a, b, and c which relate to the trust shall be completed by including the plan's allocable portion of the trust. For purposes of item 30d, the plan's allocable portion of the transactions of the trust shall be combined with the other transactions of the plan, if any, to determine which transactions (or series of transactions) are reportable. Do not include individual transactions of investment arrangements reported in 34c(xi).

For purposes of this form, party-in-interest is deemed to include a disqualified person—see Code section 4975(e)(2). The term "party-in-interest" means, as to an employee benefit plan—

(A) any fiduciary (including, but not limited to, any administrator, officer, trustee or custodian), counsel, or employee of the plan;

(B) a person providing services to the plan;

(C) an employer, any of whose employees are covered by the plan;

(D) an employee organization, any of whose members are covered by the plan;

(E) an owner, direct or indirect, of 50% or more of—(i) the combined voting power of all classes of stock entitled to vote, or the total value of shares of all classes of stock of a corporation, (ii) the capital interest or the profits interest of a partnership, or (iii) the beneficial interest of a trust or unincorporated enterprise that is an employer or an employee organization described in (C) or (D);

(F) a relative of any individual described in (A), (B), (C), or (E);

(G) a corporation, partnership, or trust or estate of which (or in which) 50% or more of: (i) the combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of such corporation, (ii) the capital interest or profits interest of such partnership, or (iii) the beneficial interest of such trust or estate is owned directly or indirectly, or held by, persons described in (A), (B), (C), (D) or (E);

(H) an employee, officer, director (or an individual having powers or responsibilities similar to those of officers or directors), or a 10% or more shareholder, directly or indirectly, of a person described in (B), (C), (D), (E), or (G), or of the employee benefit plan; or

(I) a 10% or more (directly or indirectly in capital or profits) partner or joint venturer of a person described in (B), (C), (D), (E), or (G).

**30a.** Check "Yes" and attach one or both of the following two schedules to the Form 5500 if the plan had any assets held for investment purposes at any time during the plan year. Assets held for investment purposes shall include:

1 Any investment asset held by the plan on the last day of the plan year; and

2 Any investment asset purchased during the plan year and sold before the end of the plan year except:

(i) Debt obligations of the U.S. or any U.S. agency.

(ii) Interests issued by a company registered under the Investment Company Act of 1940 (e. g., a mutual fund).

(iii) Bank certificates of deposit with a maturity of one year or less.

(iv) Commercial paper with a maturity of 9 months, or less, if it is valued in the highest rating category by at least two nationally recognized statistical rating services and is issued by a company required to file reports with the Securities and Exchange Commission under section 13 of the Securities Exchange Act of 1934.

(v) Participations in a bank common or collective trust.

(vi) Participations in an insurance company pooled separate account.

(vii) Securities purchased from a broker-dealer registered under the Securities Exchange Act of 1934 and either:

(A) listed on a national securities exchange registered under section 6 of the Securities Exchange Act of 1934, or (B) quoted on NASDAQ.

Assets held for investment purposes shall not include any investment which was not held by the plan on the last day of the plan year if that investment is reported in the annual report for that plan year in any of the following:

1 The schedule of loans or fixed income obligations in default required by item 30b;

2 The schedule of leases in default or classified as uncollectible required by item 30c;

3 The schedule of reportable transactions required by item 30d; and

4 The schedule of party-in-interest transactions required by items 30e and f.

The first schedule required to be attached to the Form 5500 is a schedule of all assets held for investment purposes at the end of the plan year, aggregated and identified by issue, maturity date, rate of interest, collateral, par or maturity value, cost and current value, and, in the case of a loan, the payment schedule. The schedule should use the following or a similar format and the same size paper as the Form 5500.

**Note:** *In column (a), place an asterisk (*) on the line of each identified person known to be a party-in-interest to the plan. In column (c), include any restriction on transferability of corporate securities. (include lending of securities permitted under Prohibited Transactions Exemption 81-6.)*

| (a) | (b) Identity of issue, borrower, lessor, or similar party | (c) Description of investment including maturity date, rate of interest, collateral, par or maturity value | (d) Cost | (e) Current value |
|---|---|---|---|---|
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The second schedule required to be attached to the Form 5500 is a schedule of investment assets which were both acquired and disposed of within the plan year (see 29 CFR 2520.103-11). The schedule should use the following or a similar format and the same size paper as the Form 5500.

| (a) Identity of issue, borrower, lessor, or similar party | (b) Description of investment including maturity date, rate of interest, collateral, par or maturity value | (c) Costs of acquisitions | (d) Proceeds of dispositions |
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**30b.** Check "Yes," and attach the following schedule to the Form 5500 if the plan had any loans or fixed income obligations in default or determined to be uncollectible as of the end of the plan year. Include obligations where the required payments have not been made by the due date. With respect to notes and loans, the due date, payment amount and conditions for default are usually contained in the note or loan documents. Defaults can occur at any time for those obligations which require periodic repayment. Generally loans and fixed income obligations are considered uncollectible when payment has not been made and there is little probability that payment will be made. A loan by the plan is in default when the borrower is unable to pay the obligation upon maturity. A fixed income obligation has a fixed maturity date at a specified interest rate. List any loans by the plan which are in default and any fixed income obligations which have matured, but have not been paid, for which it has been determined that payment will not be made. The schedule should be in the following or similar format, use the same size paper as the Form 5500.

*Note: In column (a), place an asterisk (*) on the line of each identified person known to be a party-in-interest to the plan. Include all loans that were renegotiated during the plan year. Also, explain what steps have been taken or will be taken to collect overdue amounts for each loan listed.*

| (a) | (b) Identity and address of obligor | (c) Original amount of loan | Amount received during reporting year | | (f) Unpaid balance at end of year | (g) Detailed description of loan including dates of making and maturity, interest rate, the type and value of collateral, any renegotiation of the loan and the terms of the renegotiation and other material terms | Amount overdue | |
|---|---|---|---|---|---|---|---|---|
| | | | (d) Principal | (e) Interest | | | (h) Principal | (i) Interest |
| | | | | | | | | |

**30c.** Check "Yes," and attach to the Form 5500 the following schedule if the plan had any leases in default or classified as uncollectible. The schedule should use the following or a similar format and the same size paper as the Form 5500.

A lease is an agreement conveying the right to use property, plant or equipment for a stated period. A lease is in default when the required payment(s) has not been made. An uncollectible lease is one where the required payments have not been made and for which there is little probability that payment will be made. *Also, explain what steps have been taken or will be taken to collect overdue amounts for each lease listed.*

| (a) | (b) Identity of lessor/lessee | (c) Relationship to plan, employer, employee organization or other party-in-interest | (d) Terms and description (type of property, location and date if was purchased, terms regarding rent, taxes, insurance, repairs, expenses, renewal options, date property was leased) | (e) Original cost | (f) Current value at time of lease | (g) Gross rental receipts during the plan year | (h) Expenses paid during the plan year | (i) Net receipts | (j) Amount in arrears |
|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | |

**30d.** Check "Yes" and attach to the Form 5500 the following schedule if the plan had any reportable transactions (see 29 CFR 2520.103-6). The schedule should use the following or a similar format and the same size paper as the Form 5500. A reportable transaction includes:

1. A single transaction within the plan year in excess of 5% of the current value of the plan assets;

2. Any series of transactions with, or in conjunction with, the same person, involving property other than securities, which amount in the aggregate within the plan year (regardless of the category of asset and the gain or loss on any transaction) to more than 5% of the current value of plan assets;

3. Any transaction within the plan year involving securities of the same issue if within the plan year any series of transactions with respect to such securities amount in the aggregate to more than 5% of the current value of the plan assets; and

4. Any transaction within the plan year with respect to securities with, or in conjunction with, a person if any prior or subsequent single transaction within the plan year with such person, with respect to securities, exceeds 5% of the current value of plan assets.

The 5% figure is determined by comparing the current value of the transaction at the transaction date with the current value of the plan assets at the beginning of the plan year.

If the assets of two or more plans are maintained in one trust, the plan's allocable portion of the transactions of the trust shall be combined with the other transactions of the plan, if any, to determine which transactions (or series of transactions) are reportable (5%) transactions. This does not apply to investment arrangements whose current value is reported in 34c(xi). Instead, for investments in common/collective trusts, pooled separate accounts, 103-12 IEs and registered investment companies, determine the 5% figure by comparing the transaction date value of the acquisition and/or disposition of units of participation or shares in the entity with the current value of the plan assets at the beginning of the plan year. Do not complete item 30d if all plan funds are held in a master trust. Plans with assets in a master trust which have other transactions should determine the 5% figure by subtracting the current value of plan assets held in the master trust from the current value of all plan assets at the beginning of the plan year. Do not include individual transactions of investment arrangements reported in 34c(xi).

In the case of a purchase or sale of a security on the market, do not identify the person from whom purchased or to whom sold.

| (a) Identity of party involved | (b) Description of asset (include interest rate and maturity in case of a loan) | (c) Purchase price | (d) Selling price | (e) Lease rental | (f) Expense incurred with transaction | (g) Cost of asset | (h) Current value of asset on transaction date | (i) Net gain or (loss) |
|---|---|---|---|---|---|---|---|---|
| | | | | | | | | |

**30e and f.** Check "Yes," and attach the following schedule to the Form 5500 if the plan had any non-exempt transactions with a party-in-interest. For purposes of this form, party-in-interest is deemed to include a disqualified person (see Code section 4975(e)(2)). The term "party-in-interest" is defined on page 12. Non-exempt transactions with a party-in-interest include any direct or indirect:

1. Sale or exchange, or leasing, of any property between the plan and a party-in-interest.
2. Lending of money or other extension of credit between the plan and party-in-interest.
3. Furnishing of goods, services, or facilities between the plan and a party-in-interest.
4. Transfer to, or use by or for the benefit of, a party-in-interest, of any income or assets of the plan.
5. Acquisition, on behalf of the plan, of any employer security or employer real property in violation of Code section 407(a).
6. Dealing with the assets of the plan for a fiduciary's own interest or own account.
7. Acting in a fiduciary's individual or in any other capacity in any transaction involving the plan on behalf of a party (or represent a party) whose interests are adverse to the interests of the plan or the interests of its participants or beneficiaries.





8. Receipt of any consideration for his or her own personal account by a party-in-interest who is a fiduciary for any party dealing with the plan in connection with a transaction involving the income or assets of the plan.

Do not check "Yes" for items 30e or 30f, or list transactions that are statutorily exempt under Part 4 of Title I of ERISA, or administratively exempt under ERISA section 408(a), or exempt under Code sections 4975(c) and 4975(d), or include transactions of a 103-12 IE with parties other than the plan. You may indicate that an application for an administrative exemption is pending.

If you are unsure as to whether a transaction is exempt or not, you should consult with either the plan's independent qualified public accountant or legal counsel or both.

Set out each transaction with the information set forth below in the following or similar format using the same size paper as the Form 5500.

If a nonexempt prohibited transaction occurred with respect to a disqualified person, file Form 5330 with IRS to pay the excise tax on the transaction.

| (a) Identity of party involved | (b) Relationship to plan, employer or other party-in-interest | (c) Description of transactions including maturity date, rate of interest, collateral, par or maturity value | (d) Purchase price | (e) Selling price | (f) Lease rental | (g) Expenses incurred in connection with transaction | (h) Cost of asset | (i) Current value of asset | (j) Net gain or (loss) on each transaction |
|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | |

**30g. Employer Security.**—An employer security is any security issued by an employer (including affiliates) of employees covered by the plan. These may include common stocks, preferred stocks, bonds, zero coupon bonds, debentures, convertible debentures, notes, and commercial paper. Generally, a publicly traded security is a security which is bought and sold on a recognized market (e.g., NYSE, AMEX, over the counter, etc.) for which there is a pool of willing buyers and sellers. Securities which are listed on a market but for which there does not exist a pool of willing buyers and sellers are not publicly traded.

**Qualifying Employer Security.**—An employer security which is a stock or a "marketable obligation" is considered a qualifying employer security. For purposes of this definition, the term "marketable obligation" means a bond, debenture, note, certificate, or other evidence of indebtedness (obligation) if:

*(i)* such obligation is acquired —

(A) on the market, either: (1) at the price of the obligation prevailing on a national securities exchange which is registered with the Securities and Exchange Commission, or (2) if the obligation is not traded on such a national securities exchange, at a price not less favorable to the plan than the offering price for the obligation as established by current bid and asked prices quoted by persons independent of the issuer;

(B) from an underwriter, at a price: (1) not in excess of the public offering price for the obligation as set forth in a prospectus or offering circular filed with the Securities and Exchange Commission, and (2) at which a substantial portion of the same issue is acquired by persons independent of the issuer; or

(C) directly from the issuer, at a price not less favorable to the plan than the price paid currently for a substantial portion of the same issue by persons independent of the issuer;

*(ii)* immediately following the acquisition of such obligation—

(A) not more than 25% of the aggregate amount of obligations issued in such issue and outstanding at the time of acquisition is held by the plan, and

(B) at least 50% of the aggregate amount referred to in subparagraph (A) is held by persons independent of the issuer; and

*(iii)* immediately following the acquisition of the obligation, not more than 25% of the assets of the plan is invested in obligations of the employer or an affiliate of the employer.

For purposes of the qualifying employer security definition, the term "stock" must meet the following conditions:

1. No more than 25% of the aggregate amount of stock of the same class issued and outstanding at the time of acquisition is held by the plan, and

2. At least 50% of the aggregate amount of stock described in the preceding paragraph is held by persons independent of the issuer.

For exceptions to the above, see ERISA section 407(f).

**30h.** Generally, as it relates to this question, an appraisal by an unrelated third party is an evaluation of the value of a security prepared by an individual or firm who knows how to judge the value of securities and does not have an ongoing relationship with the plan or plan fiduciaries except for preparing the appraisal. Non-publicly traded securities are generally held by few people and not traded on a stock exchange.

**32a(i).** Generally, every plan official of an employee benefit plan who handles funds or other property of such plan must be bonded. A plan administrator, officer, or employee shall be deemed to be handling funds or other property of a plan, so as to require bonding, whenever his or her duties or activities with respect to given funds are such that there is a risk that such funds could be lost in the event of fraud or dishonesty on the part of such person, acting either alone or in collusion with others. Section 412 of ERISA and the regulations found at 29 CFR 2580 provide the bonding requirements, including the definition of "handling" (29 CFR 2580.412-6), the permissible forms of bonds (29 CFR 2580.412-10), and certain exemptions such as the exemption for unfunded plans, certain banks and insurance companies (ERISA section 412), and the exemption allowing plan officials to purchase bonds from surety companies authorized by the Secretary of the Treasury as acceptable reinsurers on Federal bonds (29 CFR 2580.412-23).

Check "Yes" only if the plan itself (as opposed to the plan sponsor) is a named insured under a fidelity bond covering plan officials.

Plans are permitted under certain conditions to purchase fiduciary liability insurance. These policies do not protect the plan from dishonest acts and are not bonds which should be reported in question 32.

**32a(ii).** Indicate the aggregate amount of coverage available for all claims.

**32b(i).** Check "Yes" if the plan has suffered or discovered any loss as the result of a dishonest or fraudulent act(s).

**32b(ii).** If item 32b(i) has been answered "Yes," enter the full amount of the loss. If the full amount of the loss has not yet been determined, provide and disclose that the figure is an estimate, such as "Approximately $1,000."

**Note:** *Willful failure to report is a criminal offense. See ERISA section 501.*

**33a.** If you are uncertain as to whether the plan is covered under the PBGC termination insurance program check the box "Not determined" and contact the PBGC and request a coverage determination. Welfare and fringe benefit plans do not complete this item.

**34 and 35.** You can use either the cash, modified accrual, or accrual basis for recognition of transactions in items 34 and 35, as long as you use one method consistently.

Round off all amounts in items 34 and 35 to the nearest dollar. Be sure to check all sub-totals and totals carefully.

**Caution:** *Do not mark through the printed line descriptions and insert your own description as this may cause additional correspondence due to a new computerized review of the Form 5500.*

"Current value" means fair market value, where available. Otherwise, it means the fair value as determined in good faith under the terms of the plan by a trustee or a named fiduciary, assuming an orderly liquidation at the time of the determination.

If the assets of two or more plans are maintained in one trust, such as when an employer has two plans which are funded through a single trust (except investment arrangements reported in 34c(xi)), complete items 34 and 35 by entering the plan's allocable part of each line item.

If assets of one plan are maintained in two or more trust funds, report the combined financial information in items 34 and 35.

Fully insured, unfunded, and unfunded/insured welfare plans, and fully insured pension plans meeting the conditions of 29 CFR 2520.104-44, need not complete

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items 34 and 35. To determine if your welfare plan is fully insured, unfunded, or unfunded/insured, see page 2.

To determine if your pension plan is fully insured, see page 4.

Exception: *Plans which are both welfare and fringe benefit plans must complete items 35a, 35g and 35h.*

**34.** Column (a) should be used to enter the current value of plan assets and liabilities as of the beginning of the plan year. Column (b) should be used to enter the current value of plan assets and liabilities as of the end of the plan year.

Amounts reported in column (a) must be the same as reported for corresponding line items in column (b) of the return/report for the preceding plan year.

**34a.** Total noninterest-bearing cash includes, among other things, cash on hand or cash in a noninterest-bearing checking account.

**34b.** Subtract any allowance for doubtful accounts from each receivable to obtain the net receivable for that line item.

**34b(i).** Noncash basis filers should include contributions due the plan by the employer but not yet paid. Do not include other amounts due from the employer such as the reimbursement of an expense or the repayment of a loan.

**34b(ii).** Noncash basis filers should include contributions withheld by the employer from participants and amounts due directly from participants which have not yet been received by the plan. Do not include the repayment of participant loans.

**34b(iii).** Noncash basis filers should include income from investment income earned but not yet received by the plan.

**34b(iv).** Noncash basis filers should include amounts due to the plan which are not includable in items 34b(i)–(iii) above. These may include amounts due from the employer or another plan for expense reimbursement or from a participant for the repayment of an overpayment of benefits.

**34b(v).** Add 34b(i), 34b(ii), 34b(iii) and 34b(iv) and enter the total.

**34c(i).** Include all assets which earn interest in a financial institution account or in a money market fund, including, interest bearing checking accounts, passbook savings accounts, et al.

**34c(ii).** Include securities issued or guaranteed by the U.S. Government or its designated agencies such as U.S. Savings Bonds, Treasury bonds, Treasury bills, FNMA, and GNMA.

**34c(iv).** Include investment securities issued by a corporate entity at a stated interest rate repayable on a particular future date such as most bonds, debentures, convertible debentures, commercial paper and zero coupon bonds. Do not include debt securities of Governmental units or municipalities reported under 34c(iii) or 34c(viii).

**34c(v)(A).** Include stock issued by corporations which is accompanied by preferential rights such as the right to share in distributions of earnings at a higher rate or has general priority over the common stock of the same entity. Include the value of warrants convertible into preferred stock.

**34c(v)(B).** Include any stock which represents regular ownership of the corporation and is not accompanied by preferential rights plus the value of warrants convertible into common stock.

**34c(vi).** Include the value of the plan's participation in a partnership or joint venture if the underlying assets of the partnership or joint venture are not considered to be plan assets under 29 CFR 2510.3-101. Do not include the value of a plan's interest in a partnership or joint venture which is a 103-12 IE (see 34c(xi), below).

**34c(vii)(A).** Include the current value of real property owned by the plan which produces income from rentals, etc. This property is not to be included in item 34e, buildings and other property used in plan operations.

**34c(vii)(B).** Include the current value of real property owned by the plan which is not producing income or used in plan operations.

**34c(viii)(A).** Include the current value of all loans made by the plan to provide mortgage financing to purchasers (other than plan participants) of residential dwelling units, either by making or participating in loans directly or by purchasing mortgage loans originated by a third party. (For participant loans, see 34c(ix), below.)

**34c(viii)(B).** Include the current value of all loans made by the plan to provide mortgage financing to purchasers (other than participants) of commercial real estate, either by making or participating in the loans directly or by purchasing mortgage loans originated by a third party. (For participant loans, see 34c(ix), below)

**34c(ix)(A).** Include the current value of all loans to participants which are made by the plan to provide mortgage financing to participants who were purchasers of real property, irrespective of whether the mortgage was for residential, commercial or farm property.

**34c(ix)(B).** Include the balance of any loans made to participants which were not reported in 34c(ix)(A).

**34c(x).** Include all loans made by the plan which are not to be reported elsewhere in item 34 such as loans for construction, securities loans, and other miscellaneous loans.

**34c(xi).** Enter the current value of the sum of the plan's interest in common/collective trusts, pooled separate accounts, master trusts, 103-12 IEs and registered investment companies (registered under the Investment Company Act of 1940) at the beginning and end of the plan year. If some plan funds are held in these investment arrangements, and other plan funds are held in other funding media, complete all applicable sub-items of item 34 with regard to assets held in other funding media.

A plan investing in common/collective trusts or pooled separate accounts should attach to the return/report either the statement of assets and liabilities of the common/collective trust or pooled separate account or the certification discussed on page 3 of these instructions.

The value of the plan's interest in a master trust is the sum of the net values of the plan's interest in master trust investment accounts. The net values of such interests are obtained by multiplying the plan's percentage interest in each master trust investment account by the net assets of the investment account (total assets minus total liabilities) at the beginning and end of the plan year.

**34c(xii).** You can use the same method for determining the value of the insurance contracts reported in 34c(xii) that you used for line 6e of the Schedule A (Form 5500) as long as the contract values are stated as of the beginning and end of the plan year.

**34c(xiii).** Other investments include options, index futures, repurchase agreements, and state and municipal securities among other things.

**34c(xiv).** Add items 34c(i) through 34c(xiii) and enter the total.

**34d.** See 30g on page 14 for the definition of employer security.

**34e.** Include the current (not book) value of the buildings and other property used in the operation of the plan. Buildings or other property held as plan investments should be reported in item 34c(vii)(A) or (B), or 34d(ii).

**34f.** Add items 34a, 34b(v), 34c(xiv), 34d(i), 34d(ii) and 34e and enter the total.

*Do not include the value of future pension payments in 34g, 34h, 34i, 34j or 34k.*

**34g.** Noncash basis plans should include the total amount of benefit claims which have been processed and approved for payment by the plan.

**34h.** Noncash basis plans should include the total amount of obligations owed by the plan which were incurred in the normal operations of the plan and have been approved for payment by the plan but have not been paid.

**34i. Acquisition indebtedness.**—"Acquisition indebtedness," for debt-financed property other than real property, means the outstanding amount of the principal debt incurred:

(1) by the organization in acquiring or improving the property;

(2) before the acquisition or improvement of the property if the debt was incurred only to acquire or improve the property; or

(3) after the acquisition or improvement of the property if the debt was incurred only to acquire or improve the property and was reasonably foreseeable at the time of such acquisition or improvement.

For further explanation, see Code section 514(c).

**34j.** Noncash basis plans should include amounts owed for any liabilities which would not be classified as benefit claims payable, operating payables, or acquisition indebtedness.

**35a(i).** Include the total cash contributions received and/or (for accrual basis plans) due to be received.

**35a(ii).** Use the current value, at date contributed, of securities or other noncash property.

**35b(i)(A).** Include the interest earned on interest bearing cash. This is derived from investments which are includible in 34c(i), including earnings from sweep accounts, STIF accounts, etc.

**35b(i)(B).** Include the interest earned on certificates of deposit. This is the interest earned on the investments which are reported on line 34c(ii).





**35b(i)(C).** Include the interest earned on U.S. Government securities. This is the interest earned on the investments which are reported on line 34c(iii).

**35b(i)(D).** Generally, this is the interest earned on securities which are reported on line(s) 34c(iv) and 34d(i).

**35b(i)(E).** Include the interest earned on the investments which are reported on line(s) 34c(viii)(A) and (B) and 34c(ix)(A).

**35b(i)(F).** Include the interest earned on the investments which are reported on lines(s) 34c(ix)(B) and 34c(x).

**35b(i)(G).** Include any interest not reported in 35b(i)(A)–(F).

**35b(ii) (A) and (B).** Generally, these dividends are from the investments which are reported in items 34c(v)(A) and (B) and 34d(i).

For accrual basis plans, include any dividends declared for stock held on the date of record, but not yet received as of the end of the plan year.

**35b(iii).** Generally, rents represent the income earned on the real property which is reported in items 34c(vii)(A) and 34d(ii). Rents should be entered as a "Net" figure. Net rents are determined by taking the total rent received and subtracting all expenses directly associated with the property. If the real property is jointly used as income producing property and for the operation of the plan, that portion of the expenses attributable to the income producing portion of the property should be netted against the total rents received.

**35b(iv).** Column (b), total of net gain (loss) on sale of assets, should reflect the sum of the net realized gain (or loss) on each asset held at the beginning of the plan year which was sold or exchanged during the plan year and each asset which was both acquired and disposed of within the plan year.

**Note:** *As current value reporting is required for the Form 5500, assets are revalued to current value at the end of the plan year. For the purposes of this form, the increase or decrease in the value of assets since the beginning of the plan year (if held on the first day of the plan year) or their acquisition date (if purchased during the plan year) is reported in item 35b(v) below, with two exceptions: (1) the realized gain (or loss) on each asset which was disposed of during the plan year is reported in 35b(iv) (NOT in 35b(v)), and (2) the net investment gain (or loss) from certain investment arrangements is reported in item 35b(vi).*

The sum of the realized gain (or loss) of all assets sold or exchanged during the plan year is to be calculated by—

(1) entering the sum of the amount received for these former assets in 35b(iv), column (a), line (A),

(2) entering in 35b(iv), column (a), line (B), the sum of the current value of these former assets as of the beginning of the plan year, for those assets on hand at the beginning of the plan year, or the purchase price for those assets acquired during the plan year, and

(3) subtracting (B) from (A) and entering this result in column (b).

A negative figure should be placed in parentheses.

**35b(v).** Subtract the current value of assets at the beginning of the year plus the cost of any assets acquired during the plan year from the current value of assets at the end of the year to obtain this figure. A negative figure should be placed in parentheses. Do not include assets which were disposed of within the plan year (reportable in 35b(iv) above) or certain investment arrangements (reportable in 35b(vi) below).

**35b(vi).** For purposes of this item, investment arrangements include investments includable in 34c(xi). Report all earnings, expenses, gains or losses, and unrealized appreciation or depreciation which were included in computing the net investment gain (or loss) from any such investment arrangement here. If some plan funds are held in any of these investment arrangements and other plan funds are held in other funding media, complete all applicable sub-items of item 35 to report plan earnings, and expenses, relating to the other funding media.

The net investment gain (or loss) allocated to the plan for the plan year from the plan's investment in these investment arrangements is equal to:

(A) the sum of the current value of the plan's interest in each investment arrangement at the end of the plan year,

(B) minus the current value of the plan's interest in each investment arrangement at the beginning of the plan year,

(C) plus any amounts transferred out of each investment arrangement by the plan during the plan year, and

(D) minus any amounts transferred into each investment arrangement by the plan during the plan year.

Enter the net gain as a positive number or the net loss in parentheses on line 35b(vi).

**35c.** Include any other plan income earned that is not included in 35a or 35b. Do not include transfers from other plans which should be reported in item 35j.

**35d.** Add items 35a, 35b, and 35c and enter the total income.

**35e.** If distributions include securities or other property, use the current value at date distributed for this item. See page 14 for the definition of current value. If this return/report is being filed only for a fringe benefit plan (or for both a fringe benefit plan and a welfare benefit plan which is exempt from completing item 35), you must complete items 35g and 35h (reasonable estimates will be acceptable for these figures).

**35e(i).** Include the current value of all cash, securities or other property at the date of distribution.

**35e(ii).** Include payments to insurance companies and similar organizations such as Blue Cross, Blue Shield and health maintenance organizations for the provision of plan benefits, e.g., paid-up annuities, accident insurance, health insurance, vision care, dental coverage, etc.

**35e(iii).** Include payments made to other organizations or individuals providing benefits. Generally, these are individual providers of welfare benefits such as legal services, day care services, training and apprenticeship services.

**35f.** Interest expense is a monetary charge for the use of money borrowed by the plan. This amount should include the total of interest paid or to be paid (for accrual basis plans) during the plan year.

**35g.** Expenses incurred in the general operations of the plan are classified as administrative expenses. Report all administrative expenses (by specified category) paid by or charged to the plan, including those which were not subtracted from the gross income of common/collective trusts, pooled separate accounts, master trust investment accounts, and 103-12 IEs in determining their net investment gain(s) or loss(es). If this return/report is filed only for a fringe benefit plan and NOT for a welfare benefit plan, do not include overhead expenses such as utilities and photocopying expenses. Also, if you are filing for an educational assistance program described in Code section 127, do not include expenses for job-related training which are deductible under Code section 162.

**35g(i).** Include all of the plan's expenditures such as salaries and the payment of premiums to provide benefits to plan employees (e.g., health insurance, life insurance, etc.).

**35g(ii).** Include the total fees paid (or in the case of accrual basis plans, costs incurred during the plan year but not paid as of the end of the plan year) by the plan for outside accounting services. These may include the fee(s) for the annual audit of the plan by an independent qualified public accountant, for payroll audits, and for accounting/bookkeeping services. These do not include amounts paid to plan employees to perform accounting functions.

**35g(iii).** Include the total fees paid (or in the case of accrual basis plans, costs incurred during the plan year but not paid as of the end of the plan year) to an actuary for services rendered to the plan.

**35g(iv).** Include the total fees paid (or in the case of accrual basis plans, costs incurred during the plan year but not paid as of the end of the plan year) to a contract administrator for performing administrative services for the plan. For purposes of the return/report, a contract administrator is any individual, partnership, or corporation, responsible for managing the clerical operations (e.g., handling membership rosters, claims payments, maintaining books and records) of the plan on a contractual basis. Do not include salaried staff or employees of the plan or banks, or insurance carriers.

**35g(v).** Include the total fees paid (or in the case of accrual basis plans, costs incurred during the plan year but not paid as of the end of the plan year) to an individual, partnership or corporation (or other person) for advice to the plan relating to its investment portfolio. These may include fees paid to manage the plan's investments, fees for specific advice on a particular investment, and fees for the evaluation of the plan's investment performance.

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**35g(vi).** Include total fees paid (or in the case of accrual basis plans, costs incurred during the plan year but not paid as of the end of the plan year) to a lawyer for services rendered to the plan. Include fees paid for rendering legal opinions, litigation, and advice but not for providing legal services as a benefit to plan participants.

**35g(vii).** Include the total fees paid (or in the case of accrual basis plans, costs incurred during the plan year but not paid as of the end of the plan year) for valuations or appraisals to determine the cost, quality, or value of an item. These may include the fee(s) paid for appraisals of real property (real estate, gemstones, coins, etc.), and a valuation of closely held securities for which there is no ready market.

**35g(viii).** Include the total fees and expenses paid to or on behalf of plan trustees (or in the case of accrual basis plans, costs incurred during the plan year but not paid as of the end of the plan year). These may include reimbursement of expenses associated with trustees such as lost time, seminars, travel, meetings, etc.

**35g(ix).** Other expenses are those that cannot be associated definitely with items 35g(i) through 35g(viii). All miscellaneous expenses are also included in this figure. These may include expenses for office supplies and equipment, cars, telephone, postage, rent, and expenses associated with the ownership of a building used in the operation of the plan.

**35h.** Add column (b) of items 35e, 35f, and 35g.

**35i.** Subtract item 35h from item 35d.

**35j.** Include in this reconciliation figure any transfers of assets into or out of the plan resulting from mergers and consolidations of plans or associated with benefit liabilities which are also being transferred. A transfer is not a shifting of assets or liabilities from one investment medium to another used for a single plan (e.g., between a trust and an annuity contract). Transfers out should be shown in parentheses.

**35k.** Include amount of net assets at the beginning of the year. This amount must equal item 34i, column (a).

**35l.** Include the amount of net assets at the end of the year. This amount must equal item 34i, column (b).





## Codes for Principal Business Activity and Principal Product or Service

These industry titles and definitions are based, in general, on the Enterprise Standard Industrial Classification System authorized by the Regulatory and Statistical Analysis Division, Office of Information and Regulatory Affairs, Office of Management and Budget, to classify enterprises by type of activity in which they are engaged.

| Code | |
|---|---|
| **AGRICULTURE, FORESTRY, AND FISHING** | |
| 0120 | Field crop. |
| 0150 | Fruit, tree nut, and vegetable |
| 0180 | Horticultural specialty. |
| 0230 | Livestock. |
| 0270 | Animal specialty. |
| **Agricultural services and forestry:** | |
| 0740 | Veterinary services. |
| 0750 | Animal services, except veterinary |
| 0780 | Landscape and horticultural services. |
| 0790 | Other agricultural services. |
| 0800 | Forestry. |
| **Farms:** | |
| **Fishing, hunting, and trapping:** | |
| 0930 | Commercial fishing, hatcheries, and preserves. |
| 0970 | Hunting, trapping, and game propagation. |
| **MINING** | |
| **Metal mining:** | |
| 1010 | Iron ores. |
| 1070 | Copper, lead and zinc, gold and silver ores |
| 1098 | Other metal mining |
| 1150 | Coal mining. |
| **Oil and gas extraction:** | |
| 1330 | Crude petroleum, natural gas, and natural gas liquids. |
| 1380 | Oil and gas field services. |
| **Nonmetallic minerals (except fuels) mining:** | |
| 1430 | Dimension, crushed and broken stone, sand and gravel. |
| 1498 | Other nonmetallic minerals, except fuels. |
| **CONSTRUCTION** | |
| **General building contractors and operative builders:** | |
| 1510 | General building contractors |
| 1531 | Operative builders. |
| **Heavy construction contractors:** | |
| 1611 | Highway and street construction. |
| 1620 | Heavy construction, except highway |
| **Special trade contractors:** | |
| 1711 | Plumbing, heating, and air conditioning |
| 1721 | Painting, paperhanging, and decorating |
| 1731 | Electrical work. |
| 1740 | Masonry, stonework, and plastering. |
| 1750 | Carpentering and flooring. |
| 1761 | Roofing and sheet metal work |
| 1771 | Concrete work. |
| 1781 | Water well drilling. |
| 1790 | Miscellaneous special trade contractors. |
| **MANUFACTURING** | |
| **Food and kindred products:** | |
| 2010 | Meat products. |
| 2020 | Dairy products. |
| 2030 | Preserved fruits and vegetables |
| 2040 | Grain mill products. |
| 2050 | Bakery products. |
| 2060 | Sugar and confectionery products |
| 2081 | Malt liquors and malt. |
| 2088 | Alcoholic beverages, except malt liquors and malt. |
| 2089 | Bottled soft drinks and flavorings. |
| 2096 | Other food and kindred products |
| 2100 | Tobacco manufacturers. |
| **Textile mill products:** | |
| 2228 | Weaving mills and textile finishing |
| 2250 | Knitting mills. |
| 2298 | Other textile mill products. |
| **Apparel and other textile products:** | |
| 2315 | Men's and boys' clothing. |
| 2345 | Women's and children's clothing. |
| 2388 | Hats, caps, millinery, fur goods, and other apparel and accessories |
| 2390 | Misc. fabricated textile products. |
| **Lumber and wood products:** | |
| 2415 | Logging camps and logging contractors, sawmills, and planing mills. |
| 2430 | Millwork, plywood, and related products |
| 2498 | Other wood products, including wood buildings and mobile homes |
| 2500 | Furniture and fixtures. |
| **Paper and allied products:** | |
| 2625 | Pulp, paper, and board mills. |
| 2699 | Other paper products. |
| **Printing, publishing, and allied industries:** | |
| 2710 | Newspapers |
| 2720 | Periodicals. |
| 2735 | Books, greeting cards, and miscellaneous publishing |
| 2799 | Commercial and other printing, and printing trade services |
| **Chemical and allied products:** | |
| 2815 | Industrial chemicals, plastics materials, and synthetics. |
| 2830 | Drugs. |
| 2840 | Soap, cleaners, and toilet goods |
| 2850 | Paints and allied products. |
| 2898 | Agricultural and other chemical products |
| **Petroleum refining and related industries (including those integrated with extraction):** | |
| 2910 | Petroleum refining (including those integrated with extraction). |
| 2998 | Other petroleum and coal products |
| **Rubber and misc. plastics products:** | |
| 3050 | Rubber products, plastics footwear, hose, and belting |
| 3070 | Misc. plastics products |
| **Leather and leather products:** | |
| 3140 | Footwear, except rubber. |
| 3198 | Other leather and leather products. |
| **Stone, clay, glass, and concrete products:** | |
| 3225 | Glass products. |
| 3240 | Cement, hydraulic. |
| 3270 | Concrete, gypsum, and plaster products. |
| 3298 | Other nonmetallic mineral products. |
| **Primary metal industries:** | |
| 3370 | Ferrous metal industries; miscellaneous primary metal products. |
| 3380 | Nonferrous metal industries. |
| **Fabricated metal products, except machinery and transportation equipment:** | |
| 3410 | Metal cans and shipping containers. |
| 3428 | Cutlery, hand tools, and hardware; screw machine products, bolts, and similar products. |
| 3430 | Plumbing and heating, except electric and warm air. |
| 3440 | Fabricated structural metal products. |
| 3460 | Metal forgings and stampings. |
| 3470 | Coating, engraving, and allied services |
| 3480 | Ordnance and accessories, except vehicles and guided missiles. |
| 3490 | Misc. fabricated metal products |
| **Machinery, except electrical:** | |
| 3520 | Farm machinery. |
| 3530 | Construction, mining and materials handling machinery, and equipment. |
| 3540 | Metalworking machinery. |
| 3550 | Special industry machinery, except metalworking machinery. |
| 3560 | General industrial machinery. |
| 3570 | Office, computing, and accounting machines. |
| 3598 | Engines and turbines, service industry machinery, and other machinery, except electrical. |
| **Electrical and electronic machinery, equipment, and supplies:** | |
| 3630 | Household appliances. |
| 3665 | Radio, television, and communication equipment. |
| 3670 | Electronic components and accessories. |
| 3698 | Other electric equipment. |
| **Transportation equipment:** | |
| 3710 | Motor vehicles and equipment. |
| 3725 | Aircraft, guided missiles, and parts |
| 3730 | Ship and boat building and repairing |
| 3798 | Other transportation equipment. |
| **Measuring and controlling instruments; photographic and medical goods, watches and clocks:** | |
| 3815 | Scientific instruments and measuring devices; watches, and clocks. |
| 3845 | Optical, medical, and ophthalmic goods |
| 3860 | Photographic equipment and supplies. |
| 3998 | Other manufacturing products. |
| **TRANSPORTATION, COMMUNICATION, ELECTRIC, GAS, SANITARY SERVICES** | |
| **Transportation:** | |
| 4000 | Railroad transportation |
| **Local and interurban passenger transit:** | |
| 4121 | Taxicabs. |
| 4189 | Other passenger transportation |
| **Trucking and warehousing:** | |
| 4210 | Trucking, local and long distance |
| 4289 | Public warehousing and trucking terminals. |
| **Other transportation including transportation services:** | |
| 4400 | Water transportation. |
| 4500 | Transportation by air |
| 4600 | Pipelines, except natural gas |
| 4722 | Passenger transportation arrangement |
| 4723 | Freight transportation arrangement. |
| 4799 | Other transportation services |
| **Communication:** | |
| 4825 | Telephone, telegraph, and other communication services. |
| 4830 | Radio and television broadcasting |
| **Electric, gas, and sanitary services:** | |
| 4910 | Electric services. |
| 4920 | Gas production and distribution |
| 4930 | Combination utility services |
| 4990 | Water supply and other sanitary services. |
| **WHOLESALE TRADE** | |
| **Durable:** | |
| 5010 | Motor vehicles and automotive equipment. |
| 5020 | Furniture and home furnishings. |
| 5030 | Lumber and construction materials. |
| 5040 | Sporting, recreational, photographic, and hobby goods, toys, and supplies. |
| 5050 | Metals and minerals, except petroleum and scrap. |
| 5060 | Electrical goods. |
| 5070 | Hardware, plumbing, and heating equipment. |
| 5083 | Farm machinery and equipment. |
| 5089 | Other machinery, equipment, and supplies. |
| 5098 | Other durable goods. |
| **Nondurable:** | |
| 5110 | Paper and paper products. |
| 5129 | Drugs, drug proprietaries, and druggists' sundries. |
| 5130 | Apparel, piece goods, and notions. |
| 5140 | Groceries and related products, except meats and meat products. |
| 5147 | Meats and meat products. |
| 5150 | Farm product raw materials. |
| 5160 | Chemicals and allied products. |
| 5170 | Petroleum and petroleum products. |
| 5180 | Alcoholic beverages. |
| 5190 | Miscellaneous nondurable goods. |

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| Code | |
|---|---|
| | **RETAIL TRADE** |
| | **Building materials hardware, garden supply, and mobile home dealers:** |
| 5211 | Lumber and other building materials dealers. |
| 5231 | Paint, glass and wallpaper stores. |
| 5251 | Hardware stores. |
| 5261 | Retail nurseries and garden stores. |
| 5271 | Mobile home dealers. |
| | **General merchandise:** |
| 5331 | Variety stores. |
| 5398 | Other general merchandise stores. |
| | **Food stores:** |
| 5411 | Grocery stores. |
| 5420 | Meat and fish markets and freezer provisioners. |
| 5431 | Fruit stores and vegetable markets. |
| 5441 | Candy, nut, and confectionary stores. |
| 5451 | Dairy products stores. |
| 5460 | Retail bakeries. |
| 5490 | Other food stores. |
| | **Automotive dealers and service stations:** |
| 5511 | New car dealers (franchised). |
| 5521 | Used car dealers. |
| 5531 | Auto and home supply stores. |
| 5541 | Gasoline service stations. |
| 5551 | Boat dealers. |
| 5561 | Recreational vehicle dealers. |
| 5571 | Motorcycle dealers. |
| 5599 | Aircraft and other automotive dealers. |
| | **Apparel and accessory stores:** |
| 5611 | Men's and boys' clothing and furnishings. |
| 5621 | Women's ready-to-wear stores. |
| 5631 | Women's accessory and specialty stores. |
| 5641 | Children's and infants' wear stores. |
| 5651 | Family clothing stores. |
| 5661 | Shoe stores. |
| 5681 | Furriers and fur shops. |
| 5699 | Other apparel and accessory stores. |
| | **Furniture, home furnishings, and equipment stores:** |
| 5712 | Furniture stores. |
| 5713 | Floor covering stores. |
| 5714 | Drapery, curtain, and upholstery stores. |
| 5719 | Home furnishings, except appliances. |
| 5722 | Household appliance stores. |
| 5732 | Radio and television stores. |
| 5733 | Music stores. |
| | **Eating and drinking places:** |
| 5812 | Eating places. |
| 5813 | Drinking places. |
| | **Miscellaneous retail stores:** |
| 5912 | Drug stores and proprietary stores. |
| 5921 | Liquor stores. |
| 5931 | Used merchandise stores. |
| 5941 | Sporting goods stores and bicycle shops. |
| 5942 | Book stores. |
| 5943 | Stationery stores. |
| 5944 | Jewelry stores. |
| 5945 | Hobby, toy, and game shops. |
| 5946 | Camera and photographic supply stores. |
| 5947 | Gift, novelty, and souvenir shops. |
| 5948 | Luggage and leather goods stores. |
| 5949 | Sewing, needlework, and piece goods stores. |
| 5961 | Mail order houses. |
| 5962 | Merchandising machine operators. |
| 5963 | Direct selling organizations. |
| 5982 | Fuel and ice dealers (except fuel oil and bottle gas dealers). |
| 5983 | Fuel oil dealers. |
| 5984 | Liquefied petroleum gas (bottled gas). |
| 5992 | Florists. |
| 5993 | Cigar stores and stands. |
| 5994 | News dealers and newsstands. |
| 5999 | Other miscellaneous retail stores. |

| Code | |
|---|---|
| | **FINANCE, INSURANCE, AND REAL ESTATE** |
| | **Banking:** |
| 6030 | Mutual savings banks. |
| 6060 | Banking holding companies. |
| 6090 | Banks, except mutual savings banks and bank holding companies. |
| | **Credit agencies other than banks:** |
| 6120 | Savings and loan associations. |
| 6140 | Personal credit institutions. |
| 6150 | Business credit institutions. |
| 6199 | Other credit agencies. |
| | **Security, commodity brokers, dealers, exchanges, and services:** |
| 6212 | Security underwriting syndicates. |
| 6218 | Security brokers and dealers, except underwriting syndicates. |
| 6299 | Commodity contracts brokers and dealers, security and commodity exchanges, and allied services. |
| | **Insurance:** |
| 6355 | Life insurance. |
| 6356 | Mutual insurance, except life or marine and certain fire or flood insurance companies. |
| 6359 | Other insurance companies. |
| 6411 | Insurance agents, brokers, and services. |
| | **Real estate:** |
| 6511 | Real estate operators (except developers) and lessors of buildings. |
| 6516 | Lessors of mining, oil, and similar property. |
| 6518 | Lessors of railroad property and other real property. |
| 6531 | Real estate agents, brokers and managers. |
| 6541 | Title abstract offices. |
| 6552 | Subdividers and developers, except cemeteries. |
| 6553 | Cemetery subdividers and developers. |
| 6599 | Other real estate. |
| 6611 | Combined real estate, insurance, loans and law offices. |
| | **Holding and other investment companies:** |
| 6742 | Regulated investment companies. |
| 6743 | Real estate investment trusts. |
| 6744 | Small business investment companies. |
| 6749 | Holding and other investment companies, except bank holding companies. |

| Code | |
|---|---|
| | **SERVICES** |
| | **Hotels and other lodging places:** |
| 7012 | Hotels. |
| 7013 | Motels, motor hotels, and tourist courts. |
| 7021 | Rooming and boarding houses. |
| 7032 | Sporting and recreational camps. |
| 7033 | Trailer parks and camp sites. |
| 7041 | Organizational hotels and lodging houses on a membership basis. |
| | **Personal services:** |
| 7215 | Coin-operated laundries and dry cleaning. |
| 7219 | Other laundry, cleaning and garment services. |
| 7221 | Photographic studios, portrait. |
| 7231 | Beauty shops. |
| 7241 | Barber shops. |
| 7251 | Shoe repair and hat cleaning shops. |
| 7261 | Funeral services and crematories. |
| 7299 | Miscellaneous personal services. |
| | **Business services:** |
| 7310 | Advertising. |
| 7340 | Services to buildings. |
| 7370 | Computer and data processing services. |
| 7392 | Management, consulting, and public relations services. |
| 7394 | Equipment rental and leasing. |
| 7398 | Other business services. |

| Code | |
|---|---|
| | **Automotive repair and services:** |
| 7510 | Automotive rentals and leasing, without drivers. |
| 7520 | Automobile parking. |
| 7531 | Automobile top and body repair shops. |
| 7538 | General automobile repair shops. |
| 7539 | Other automobile repair shops. |
| 7540 | Automobile services, except repair. |
| | **Miscellaneous repair services:** |
| 7622 | Radio and TV repair shops. |
| 7629 | Electrical repair shops, except radio and TV. |
| 7641 | Reupholstery and furniture repair. |
| 7680 | Other miscellaneous repair shops. |
| | **Motion pictures:** |
| 7812 | Motion picture production, distribution, and services. |
| 7830 | Motion picture theaters. |
| | **Amusement and recreation services:** |
| 7920 | Producers, orchestras, and entertainers. |
| 7932 | Billiard and pool establishments. |
| 7933 | Bowling alleys. |
| 7980 | Other amusement and recreation services. |
| | **Medical and health services:** |
| 8011 | Offices of physicians. |
| 8021 | Offices of dentists. |
| 8031 | Offices of osteopathic physicians. |
| 8041 | Offices of chiropractors. |
| 8042 | Offices of optometrists. |
| 8048 | Registered and practical nurses. |
| 8050 | Nursing and personal care facilities. |
| 8060 | Hospitals. |
| 8071 | Medical laboratories. |
| 8072 | Dental laboratories. |
| 8098 | Other medical and health services. |
| | **Other services:** |
| 8111 | Legal services. |
| 8200 | Educational services. |
| 8911 | Engineering and architectural services. |
| 8932 | Certified public accountants. |
| 8933 | Other accounting, auditing, and bookkeeping services. |
| 8999 | Other services, not elsewhere classified. |

| Code | |
|---|---|
| | **TAX-EXEMPT ORGANIZATIONS** |
| 9062 | Church plans making an election under section 410(d) of the Internal Revenue Code. |
| 9319 | Other tax-exempt organizations. |
| 9904 | Governmental instrumentality or agency. |

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Form **5500-C**
Department of the Treasury
Internal Revenue Service
Department of Labor
Pension and Welfare Benefits Administration
Pension Benefit Guaranty Corporation

# Return/Report of Employee Benefit Plan

**(With fewer than 100 participants)**

**This form is required to be filed under sections 104 and 4065 of the Employee Retirement Income Security Act of 1974 and sections 6039D, 6057(b), and 6058(a) of the Internal Revenue Code, referred to as the Code.**

OMB No. 1210-0016

**1988**

**This Form is Open to Public Inspection.**

For the calendar plan year 1988 or fiscal plan year beginning , 1988, and ending , 19

If your plan year changed since the last return/report filed, check this box ▶ ☐

**Type or print in ink all entries on the form, schedules, and attachments. If an item does not apply, enter "N/A." File the originals.**

If *(i)* through *(iii)* do not apply to this year's return/report, leave the boxes unmarked. This return/report is:

*(i)* ☐ the first return/report filed for the plan; *(ii)* ☐ an amended return/report; or *(iii)* ☐ the final return/report filed for the plan.

▶ Welfare benefit plans and fringe benefit plans need only complete certain items or may not be required to file—see instructions "What to File."

▶ One-participant plans file Form 5500EZ for 1988.

▶ If you have been granted an extension of time to file this form, you must attach a copy of the approved extension to this form.

| | | |
|---|---|---|
| Use IRS label. Otherwise, please print or type. | 1a Name of plan sponsor (employer, if for a single-employer plan) | 1b Employer identification number |
| | Address (number and street) | 1c Telephone number of sponsor ( ) |
| | City or town, state, and ZIP code | 1d Business code number |
| 2a Name of plan administrator (if same as plan sponsor, enter "Same") | | 1e CUSIP issuer number |
| Address (number and street) | | 2b Administrator's employer identification no. |
| City or town, state, and ZIP code | | 2c Telephone number of administrator ( ) |

3 Are the name, address, and employer identification number (EIN) of the plan sponsor and/or plan administrator the same as they appeared on the last return/report filed for this plan? ☐ Yes ☐ No If "No," enter the information from the last return/report in a and/or b, and complete c.

a Sponsor ▶ ..... EIN ..... Plan number .....

b Administrator ▶ ..... EIN .....

c If 1a indicates a change in the sponsor's name and EIN, is this a change in sponsorship only? (See specific instructions for definition of sponsorship.) ☐ Yes ☐ No

4 Check box to indicate the type of plan entity (check only one box):

a ☐ Single-employer plan
b ☐ Plan of controlled group of corporations or common control employers
c ☐ Multiemployer plan
d ☐ Multiple-employer-collectively-bargained plan
e ☐ Multiple-employer plan (other)
f ☐ Exceptions to (b) and (e). (See instructions for line 4f.)

5a *(i)* Name of plan ▶ .....

*(ii)* ☐ Check if name of plan changed since the last return/report

*(iii)* ☐ Check this box if this plan covers self-employed participants

5b Effective date of plan

5c Enter three-digit plan number ▶

6a ☐ Welfare benefit plan (plan numbers 501 through 999) must check applicable items A through P and 6c

*(i)* ☐ Type

A ☐ Health (other than dental or vision)
B ☐ Life insurance
C ☐ Supplemental unemployment
D ☐ Dental
E ☐ Vision
F ☐ Temporary disability (accident and sickness)
G ☐ Prepaid legal
H ☐ Long-term disability
I ☐ Severance pay
J ☐ Apprenticeship and training
K ☐ Scholarship (funded)
L ☐ Death benefits other than life insurance
M ☐ Code section 120 (group legal services plan)
N ☐ Code section 125 (cafeteria plan)
O ☐ Code section 127 (educational assistance plan)
P ☐ Other (specify) .....

*(ii)* If you checked M, N, or O, check if plan is: ☐ funded or ☐ unfunded

6b ☐ Pension benefit plan (plan numbers 001 through 500) must check applicable items in (i) through (vii) and answer 6c through 6f.

*(i)* ☐ Defined benefit plan

*(ii)* ☐ Defined contribution plan—(indicate type of defined contribution): (A) ☐ Profit-sharing (B) ☐ Stock bonus (C) ☐ Target benefit (D) ☐ Other money purchase (E) ☐ Other (specify) ▶ .....

*(iii)* ☐ Defined benefit plan with benefits based partly on balance of separate account of participant (Code section 414(k))

*(iv)* ☐ Annuity arrangement of certain exempt organizations (Code section 403(b)(1))

*(v)* ☐ Custodial account for regulated investment company stock (Code section 403(b)(7))

*(vi)* ☐ Pension plan utilizing individual retirement accounts or annuities (described in Code section 408) as the sole funding vehicle for providing benefits

*(vii)* ☐ Other (specify) ▶

Under penalties of perjury and other penalties set forth in the instructions, I declare that I have examined this return/report, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete.

Date ▶ ..... Signature of employer/plan sponsor ▶ .....

Date ▶ Signature of plan administrator ▶

**For Paperwork Reduction Act Notice, see page 1 of the instructions.** Form **5500-C** (1988)

Form 5500-C (1988) Page 2

6c Other plan features: (i) ☐ ESOP (ii) ☐ Leveraged ESOP (iii) ☐ Participant-directed account plan
(iv) ☐ Pension plan maintained outside the United States (v) ☐ Master trust (see instructions)
(vi) ☐ 103-12 investment entity (see instructions) (vii) ☐ Common/Collective trust (viii) ☐ Pooled separate account

d Single-employer plans enter the tax year end of the employer in which this plan year ends ▶ Month ____ Day ____ Year ____

| | | Yes | No |
|---|---|---|---|
| e | Is the employer a member of an affiliated service group? | | |
| f | Does this plan contain a cash or deferred arrangement described in Code section 401(k)? | | |
| 7a | Total participants: (i) Beginning of plan year ____ (ii) End of plan year ____ | | |
| b | (i) Were any participants in the pension benefit plan separated from service with a deferred vested benefit for which a Schedule SSA (Form 5500) is required to be attached? | | |
| | (ii) If "Yes," enter the number of separated participants required to be reported ▶ | | |
| 8a | Were any plan amendments adopted during the plan year? | | |
| b | Did any amendment result in the retroactive reduction of accrued benefits for any participant? | | |
| c | Enter the date the most recent amendment was adopted ▶ Month ____ Day ____ Year ____ | | |
| d | If a is "Yes," did any amendment change the information contained in the latest summary plan descriptions or summary description of modifications available at the time of the amendment? | | |
| e | Has a summary plan description or summary description of modifications that reflects the plan amendments referred to in d been furnished to participants and filed with the Department of Labor? | | |
| 9a | Was this plan terminated during this plan year or any prior plan year? If "Yes," enter year ▶ ____ | | |
| b | Were all plan assets either distributed to participants or beneficiaries, transferred to another plan, or brought under the control of PBGC? | | |
| c | Was a resolution to terminate this plan adopted during this plan year or any prior plan year? | | |
| d | If a or c is "Yes," have you received a favorable determination letter from IRS for the termination? | | |
| e | If d is "No," has a determination letter been requested from IRS? | | |
| f | If a or c is "Yes," have participants and beneficiaries been notified of the termination or the proposed termination? | | |
| g | If a is "Yes" and the plan is covered by PBGC, is the plan continuing to file a PBGC Form 1 and pay premiums until the end of the plan year in which assets are distributed or brought under the control of PBGC? | | |
| h | During this plan year, did any trust assets revert to the employer for which the Code section 4980 excise tax is due? | | |
| i | If h is "Yes," enter the amount of tax paid with your Form 5330 ▶ | | |
| 10a | Was this plan merged or consolidated into another plan(s), or were assets or liabilities transferred to another plan(s) since the end of the plan year covered by the last return/report Form 5500 or 5500-C which was filed for this plan (or during this plan year if this is the initial return/report)? | | |

If "Yes," identify the other plan(s):

| b Name of plan(s) ▶ | c Employer identification number(s) | d Plan number(s) |
|---|---|---|
| | | |

e Has Form 5310 been filed? ☐ Yes ☐ No

| | | Yes | No |
|---|---|---|---|
| 11 | Enter the plan funding arrangement code (see instructions) ▶ | 12 Enter the plan benefit arrangement code (see instructions) ▶ | |
| 13 | Is this a plan established or maintained pursuant to one or more collective bargaining agreements? | | |
| 14 | If any benefits are provided by an insurance company, insurance service, or similar organization, enter the number of Schedules A (Form 5500), Insurance Information, that are attached. If none, enter "-0-" ▶ | | |

**Welfare Plans Do Not Complete Items 15 Through 28. Skip to Item 29.**

| | | Yes | No |
|---|---|---|---|
| 15a | If this is a defined benefit plan, is it subject to the minimum funding standards for this plan year? If "Yes," attach Schedule B (Form 5500). | | |
| b | If this is a defined contribution plan, i.e., money purchase or target benefit, is it subject to the minimum funding standards (If a waiver was granted, see instructions)? | | |

If "Yes," complete (i), (ii), and (iii) below:

| | | |
|---|---|---|
| (i) | Amount of employer contribution required for the plan year under Code section 412 | (i) $ |
| (ii) | Amount of contribution paid by the employer for the plan year | (ii) $ |
| | Enter date of last payment by employer ▶ Month ____ Day ____ Year ____ | |
| (iii) | If (i) is greater than (ii), subtract (ii) from (i) and enter the funding deficiency here. Otherwise, enter zero. (If you have a funding deficiency, file Form 5330.) | (iii) $ |

| | | | |
|---|---|---|---|
| 16 | Has the plan been top-heavy at any time beginning with the 1984 plan year? | 16 | |
| 17 | Has the plan accepted any transfers or rollovers with respect to a participant who has attained age 70½? | 17 | |

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| | | Yes | No |
|---|---|---|---|
| 18a | If the plan distributed any annuity contracts this year, did these contracts contain a requirement that the spouse consent before any distributions under the contract are made in a form other than a qualified joint and survivor annuity? | 18a | |
| b | Did the plan make distributions to participants or beneficiaries in a form other than a qualified joint and survivor annuity (a life annuity if a single person) or qualified preretirement survivor annuity (exclude deferred annuity contracts)? | b | |
| c | Did the plan make distributions or loans to married participants and beneficiaries without the required consent of the participant's spouse? | c | |
| d | Upon plan amendment or termination, do the accrued benefits of every participant include the subsidized benefits that the participant may become entitled to receive subsequent to the plan amendment or termination? | d | |
| 19 | Were distributions made in accordance with the requirements of Code section 417(e)? (See instructions.) | 19 | |
| 20 | Have any contributions been made or benefits accrued in excess of the Code section 415 limits, as amended by the Tax Reform Act of 1986? | 20 | |
| 21 | Has the plan made the required distributions in 1988 under Code section 401(a)(9)? | 21 | |
| 22a | Does the plan satisfy the percentage test of Code section 410(b)(1)(A)? If a is "Yes," complete b through i. If "No," complete only b and c below and see Specific Instructions. | 22a | |

| | | Number |
|---|---|---|
| b | (i) Number of employees who are aggregated with employees of the employer as a result of being an affiliated service group under Code section 414(b), (c), or (m) | (i) |
| | (ii) Number of individuals who performed services as leased employees under Code section 414(n) including leased employees of employers in (i) | (ii) |
| c | Total number of employees (including any employees aggregated in b) | c |
| d | Number of employees excluded under the plan because of (i) minimum age or years of service, (ii) employees on whose behalf retirement benefits were the subject of collective bargaining, or (iii) nonresident aliens who received no earned income from United States sources | d |
| e | Total number of employees not excluded (subtract d from c) | e |
| f | Employees ineligible (specify reason) | f |
| g | Employees eligible to participate (subtract f from e) | g |
| h | Employees eligible but not participating | h |
| i | Employees participating (subtract h from g) | i |

| | | Yes | No |
|---|---|---|---|
| 23a | Is it intended that this plan qualify under Code section 401(a)? If "Yes," complete b and c. | 23a | |
| b | Enter the date of the most recent IRS determination letter—Month ____ Year ____ | | |
| c | Is a determination letter request pending with IRS? | c | |
| 24a | If this is a plan with Employee Stock Ownership features, was a current appraisal of the value of the stock made immediately before any contribution of stock or the purchase of the stock by the trust for the plan year covered by this return/report? | 24a | |
| b | If a is "Yes," was the appraisal made by an unrelated third party? | b | |
| 25 | Is this plan integrated with social security or railroad retirement? | 25 | |
| 26 | Does the employer/sponsor listed in 1a of this form maintain other qualified pension benefit plans? If "Yes," enter the total number of plans including this plan ▶ | 26 | |

27 Is this plan an adoption of a master, prototype or uniform plan? Indicate which type by checking the appropriate box:
a ☐ Master b ☐ Prototype plan c ☐ Uniform plan

28a Is the plan covered under the Pension Benefit Guaranty Corporation termination insurance program? ☐ Yes ☐ No ☐ Not determined

b If a is "Yes" or "Not determined," enter the employer identification number and the plan number used to identify it.
Employer identification number ▶ Plan number ▶

| | | | | |
|---|---|---|---|---|
| 29 | During the plan year: | Yes | No | Amount |
| a | Was this plan covered by a fidelity bond? | 29a | | |
| b | Was there any loss to the plan, whether or not reimbursed, caused by fraud or dishonesty? | b | | |
| c | Was there any sale, exchange, or lease of any property between the plan and the employer, any fiduciary, any of the five most highly paid employees of the employer, any owner of a 10% or more interest in the employer, or relatives of any such persons? | c | | |
| d | Was there any loan or extension of credit by the plan to the employer, any fiduciary, any of the five most highly paid employees of the employer, any owner of a 10% or more interest in the employer, or relatives of any such persons? | d | | |
| e | Did the plan acquire or hold any employer security or employer real property? | e | | |
| f | Has the plan granted an extension on any delinquent loan owed to the plan? | f | | |
| g | Has the employer owed contributions to the plan which are more than 3 months overdue? | g | | |
| h | Were any loans by the plan or fixed income obligations due the plan classified as uncollectible or in default as of the close of the plan year? | h | | |

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| | | Yes | No | Amount |
|---|---|---|---|---|
| i | Has any plan fiduciary had a financial interest in excess of 10% in any party providing services to the plan or received anything of value from any such party? | 29i | | | |
| j | Did the plan at any time hold 20% or more of its assets in any single security, debt, mortgage, parcel of real estate, or partnership/joint venture interests? | j | | | |
| k | Did the plan at any time engage in any transaction or series of related transactions involving 20% or more of the current value of plan assets? | k | | | |
| l | Were there any noncash contributions made to the plan whose value was set without an appraisal by an independent third party? | l | | | |
| m | Were there any purchases of nonpublicly traded securities by the plan whose value was set without an appraisal by an independent third party? | m | | | |
| n | Has the plan failed to provide any benefit when due under the terms of the plan because of insufficient assets? | n | | | |

30 Current value of plan assets and liabilities at the beginning and end of the plan year. Combine the value of plan assets held in more than one trust. Allocate the value of the plan's interest in a commingled trust containing the assets of more than one plan on a line-by-line basis unless the trust meets one of the specific exceptions described in the instructions. Do not enter the value of that portion of an insurance contract which guarantees during this plan year to pay a specific dollar benefit at a future date. Round off amounts to the nearest dollar.

| | | (a) Beginning of year | (b) End of year |
|---|---|---|---|
| **Assets** | | | |
| a | Cash | a | |
| b | Receivables | b | |
| c | Investments: | | |
| | (i) U.S. Government securities | (i) | |
| | (ii) Corporate debt and equity instruments | (ii) | |
| | (iii) Real estate and mortgages (other than to participants) | (iii) | |
| | (iv) Loans to participants: | | |
| | A Mortgages | A | |
| | B Other | B | |
| | (v) Other | (v) | |
| | (vi) Total investments (add (i) through (v)) | (vi) | |
| d | Buildings and other property used in plan operations | d | |
| e | Other assets | e | |
| f | Total assets | f | |
| **Liabilities** | | | |
| g | Payables | g | |
| h | Acquisition indebtedness | h | |
| i | Other liabilities | i | |
| j | Total liabilities | j | |
| k | Net assets (f minus j) | k | |

31 Plan income, expenses, and changes in net assets for the plan year. Include all income and expenses of the plan including any trust(s) or separately maintained fund(s) and payments/receipts to/from insurance carriers.

| | | (a) Amount | (b) Total |
|---|---|---|---|
| **Income** | | | |
| a | Contributions received or receivable in cash from: | | |
| | (i) Employer(s) (including contributions on behalf of self-employed individuals) | (i) | |
| | (ii) Employees | (ii) | |
| | (iii) Others | (iii) | |
| b | Noncash contributions | b | |
| c | Earnings from investments (interest, dividends, rents, royalties) | c | |
| d | Net realized gain (loss) on sale or exchange of assets | d | |
| e | Other income (specify) ▶ | e | |
| f | Total income (add a through e) | f | |
| **Expenses** | | | |
| g | Distribution of benefits and payments to provide benefits: | | |
| | (i) Directly to participants or their beneficiaries | (i) | |
| | (ii) Other | (ii) | |
| h | Administrative expenses (salaries, fees, commissions, insurance premiums) | h | |
| i | Other expenses (specify) ▶ | i | |
| j | Total expenses (add g through i) | j | |
| k | Net income (loss) (subtract j from f) | k | |

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Department of the Treasury
Internal Revenue Service

Department of Labor
Pension and Welfare Benefits Administration

Pension Benefit Guaranty Corporation

# 1988 Instructions for Form 5500-C

## Return/Report of Employee Benefit Plan (With fewer than 100 participants)

*(Code references are to the Internal Revenue Code. ERISA refers to the Employee Retirement Income Security Act of 1974.)*

**Paperwork Reduction Act Notice.**—We ask for this information to carry out the law as specified in ERISA and Code section 6039D. We need it to determine whether the plan is operating according to the law. You are required to give us this information.

The time needed to complete and file the forms listed below reflect the combined requirements of the Internal Revenue Service, Department of Labor, Pension Benefit Guaranty Corporation and the Social Security Administration. These times will vary depending on individual circumstances. The estimated average times are:

| | Recordkeeping | Learning about the law or the form | Preparing the form | Copying, assembling, and sending the form to IRS |
|---|---|---|---|---|
| Form 5500-C | 52 hrs., 37 min. | 7 hrs., 12 min. | 10 hrs., 13 min. | 32 min. |
| Schedule A (Form 5500) | 17 hrs., 28 min. | 28 min. | 1 hr., 42 min. | 16 min. |
| Schedule B (Form 5500) | 25 hrs., 50 min. | 1 hr. | 1 hr., 27 min. | ----- |
| Schedule P (Form 5500) | 2 hrs., 9 min. | 1 hr., 24 min. | 1 hr., 29 min. | ----- |
| Schedule SSA (Form 5500) | 6 hrs., 42 min. | 12 min. | 19 min. | ----- |

If you have comments concerning the accuracy of these time estimates or suggestions for making these forms more simple, we would be happy to hear from you. You can write to the **Internal Revenue Service, Washington, DC 20224, Attention: IRS Reports Clearance Officer, TR:FP;** or the **Office of Management and Budget,** Paperwork Reduction Project, Washington, DC 20503.

File 1988 forms for plan years that started in 1988. If the plan year differs from the calendar year, fill in the fiscal year space just under the form title. For a short plan year, see Section 1, instruction **B**.

***Reminder:*** In addition to filing this form with IRS, plans covered by the Pension Benefit Guaranty Corporation termination insurance program must file their Annual Premium Payment, PBGC Form 1, directly with that agency.

**Penalties.**—ERISA and the Code provide for the assessment or imposition of penalties for not giving complete information and not filing statements and returns/reports. Certain penalties are administrative; that is, they may be imposed or assessed by one of the governmental agencies delegated to administer the collection of Form 5500 series data. Others require a legal conviction.

**A. Administrative Penalties.**—Listed below are various penalties for not meeting the Form 5500 series filing requirements. One or more of the following five penalties may be imposed or assessed in the event of incomplete filings and /or filings received after the date they are due unless it is determined that your explanation for failure to file properly is for reasonable cause:

1. A penalty of up to $1,000 a day for each day a plan administrator fails or refuses to file a complete return/report. See ERISA section 502(c)(2) and 29 CFR 2560.502c-2.
2. A penalty of $25 a day (up to $15,000) for not filing returns for certain plans of deferred compensation, certain trusts and annuities, and bond purchase plans by the due date(s). See Code section 6652(e). This penalty also applies to returns required to be filed under Code section 6039D.
3. A penalty of $1 a day (up to $5,000) for each participant for whom a registration statement (Schedule SSA (Form 5500)) is required but not filed. See Code section 6652(d)(1).
4. A penalty of $1 a day (up to $1,000) for not filing a notification of change of status of a plan. See Code section 6652(d)(2).
5. A penalty of $1,000 for not filing an actuarial statement. See Code section 6692.

**B. Other Penalties.**—

1. Any individual who willfully violates any provision of Part 1 of Title I of ERISA shall be fined not more than $5,000 or imprisoned not more than 1 year, or both. See ERISA section 501.
2. A penalty of up to $10,000, 5 years imprisonment, or both, for making any false statement or representation of fact, knowing it to be false, or for knowingly concealing or not disclosing any fact required by ERISA. See section 1027, Title 18, U.S. Code, as amended by section 111 of ERISA.

### How To Use This Instruction Booklet

The instructions are divided into four main sections.


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## Section 1

**A. Who Must File.**—Any administrator or sponsor of an employee benefit plan subject to ERISA must file information about each such plan every year (Code section 6058 and ERISA sections 104 and 4065). Also required to file, for each year, is every employer maintaining a specified fringe benefit plan as described in Code section 6039D. The Internal Revenue Service (IRS), Department of Labor (DOL), and Pension Benefit Guaranty Corporation (PBGC) have consolidated their returns and report forms to minimize the filing burden for plan administrators and employers. The chart on page 7 gives a brief guide to the type of return/report to be filed.

**B. When To File.**—File all required forms and schedules by the last day of the 7th month after the plan year ends. For a short plan year, file the form and applicable schedules by the last day of the 7th month after the short plan year ends. For purposes of this return/report, the short plan year ends upon the date of the change in accounting period or upon the complete distribution of the assets of the plan. (Also see Section 3.) If the current year Form 5500-C is not available before the due date of your short plan year return/report, use the latest year form available and change the date printed on the return/report to the current year. Also show the dates your short plan year began and ended.

***Request for Extension of Time To File.***—A one time extension of time up to 2½ months may be granted for filing returns/reports if **Form 5558,** Application for Extension of Time to File Certain Employee Plan Returns, is filed **before the normal due date of the return/report.**

**Exception:** *Single-employer plans and plans of a controlled group of corporations which file consolidated Federal income tax returns are automatically granted an extension of time to file Form 5500, 5500-C, or 5500-R to the due date of the Federal income tax return of the single employer or controlled group of corporations if all the following conditions are met:*

*1. The plan year and the tax year coincide.*

*2. The single employer or the controlled group has been granted an extension of time to file its Federal income tax return to a date later than the normal due date for filing the Form 5500, 5500-C, or 5500-R.*

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*3. A copy of the IRS extension of time to file the Federal income tax return is attached to each Form 5500, 5500-C, or 5500-R filed with IRS.*

**Note:** *An extension of time to file the return/report does not operate as an extension of time to file the PBGC Form 1.*

**C. Where To File.**—Please file the return/report with the Internal Revenue Service Center indicated below. No street address is needed.

See page 5 for the filing address for investment arrangements filing directly with DOL.

| If the principal office of the plan sponsor or the plan administrator is located in | Use the following Internal Revenue Service Center address |
|---|---|
| Connecticut, Delaware, District of Columbia, Foreign Address, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, Vermont, Virginia | Holtsville, NY 00501 |
| Alabama, Alaska, Arkansas, California, Florida, Georgia, Hawaii, Idaho, Louisiana, Mississippi, Nevada, North Carolina, Oregon, South Carolina, Tennessee, Washington | Atlanta, GA 39901 |
| Arizona, Colorado, Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Ohio, Oklahoma, South Dakota, Texas, Utah, West Virginia, Wisconsin, Wyoming | Memphis, TN 37501 |
| All Form 5500EZ filers | Andover, MA 05501 |

## Section 2

**A. Kinds of Plans.**—Employee benefit plans include pension benefit plans and welfare benefit plans. File the applicable return/report for any of the following plans.

*(a) Pension benefit plan.*—This is an employee pension benefit plan covered by ERISA. The return/report is due whether or not the plan is qualified and even if benefits no longer accrue, contributions were not made this plan year, or contributions are no longer made ("frozen plan" or "wasting trust"). See Section 3, "Final Return/Report" on page 6.

Pension benefit plans required to file include defined benefit plans and defined contribution plans (e.g., profit-sharing, stock bonus, money purchase plans, etc.). The following are among the pension benefit plans for which a return/report must be filed:

(i) Annuity arrangements under Code section 403(b)(1).

(ii) Custodial account established under Code section 403(b)(7) for regulated investment company stock.

(iii) Individual retirement account established by an employer under Code section 408(c).

(iv) Pension benefit plan maintained outside the United States primarily for nonresident aliens if the employer who maintains the plan is:

(A) a domestic employer, or

(B) a foreign employer with income derived from sources within the U.S. (including foreign subsidiaries of domestic employers) and deducts contributions to the plan on its U.S. income tax return. See "Plans Excluded From Filing" below.

(v) Church plans electing coverage under Code section 410(d).

(vi) A plan that covers residents of Puerto Rico, the Virgin Islands, Guam, Wake Island, or American Samoa. This includes a plan that elects to have the provisions of section 1022(i)(2) of ERISA apply.

See "Items To Be Completed on Form 5500-C" on page 4 for more information about what questions need to be completed by pension plans.

*(b) Welfare benefit plan.*—This is an employee welfare benefit plan covered by Part 1 of Title I of ERISA. Welfare plans would provide benefits such as medical, dental, life insurance, apprenticeship training, educational assistance, severance pay, disability, etc.

See "Items To Be Completed on Form 5500-C" on page 4 for more information about what questions need to be completed for welfare benefit plans.

*(c) Fringe benefit plan.*—Group legal services plans described in Code section 120, cafeteria plans described in Code section 125, and educational assistance programs described in Code section 127 are considered fringe benefit plans and generally are required to file the annual information specified by Code section 6039D. However, Code section 127 educational assistance programs which provide only job-related training which is deductible under Code section 162 do not need to file Form 5500-C.

See "Items To Be Completed on Form 5500-C" on page 4 for more information about how to complete this form for a fringe benefit plan.

**B. Plans Excluded From Filing (this does not apply to a fringe benefit plan required to file by Code section 6039D).**—Do not file a return/report for an employee benefit plan that is any of the following:

(a) A welfare benefit plan which covers fewer than 100 participants as of the beginning of the plan year and is: (i) fully insured, (ii) unfunded, or (iii) a combination of insured and unfunded.

(1) An unfunded welfare benefit plan has its benefits paid as needed directly from the general assets of the employer or the employee organization that sponsors the plan.

(2) A fully insured welfare benefit plan has its benefits provided exclusively through insurance contracts or policies, the premiums of which must be paid directly by the employer or employee organization from its general assets or partly from its general assets and partly from contributions by its employees or members (which the employer or organization forwards within 3 months of receipt).

(3) A combination unfunded/insured welfare plan has its benefits provided partially as an unfunded plan and partially as a fully insured plan. An example of such a plan is a plan which requires the employer to reimburse an employee for hospital expenses with the first $1,000 per year of benefits paid from the general assets of the employer and any benefits above $1,000 paid from a stop loss insurance contract.

The insurance contracts or policies discussed above must be issued by an insurance company or similar organization (such as Blue Cross, Blue Shield or a health maintenance organization) that can legally do business in any state. A plan meeting (1) cannot have any assets at any time during the plan year.

"Directly," as used in (1) above, means that the plan cannot use a trust or separately maintained fund (including a Code section 501(c)(9) trust) to hold plan assets or to act as a conduit for the transfer of plan assets.

See 29 CFR 2520.104-20.

**Note:** *An "employees' association" as used in Code section 501(c)(9) should not be confused with the employee organization or employer which establishes and maintains (i.e., sponsors) the welfare benefit plan.*

(b) An unfunded pension benefit plan or an unfunded or combination unfunded and insured welfare benefit plan: (1) whose benefits go only to a select group of management or highly compensated employees, and (2) which meets the terms of Department of Labor Regulations 29 CFR 2520.104-23 (including the requirement that a notification statement be filed with DOL) or 29 CFR 2520.104-24.

(c) Plans maintained only to comply with workers' compensation, unemployment compensation, or disability insurance laws.

(d) An unfunded excess benefit plan.

(e) A welfare benefit plan maintained outside the United States primarily for persons substantially all of whom are nonresident aliens.

(f) A pension benefit plan maintained outside the United States if it is a qualified foreign plan within the meaning of Code section 404A(e) that does not qualify for the treatment provided in Code section 402(c).

(g) An annuity arrangement described in 29 CFR 2510.3-2(f).

(h) A simplified employee pension (SEP) described in Code section 408(k) which conforms to the alternative method of compliance described in 29 CFR 2520.104-48 or 29 CFR 104-49. A SEP is a pension plan which meets certain minimum qualifications regarding eligibility and employer contributions.

(i) A church plan not electing coverage under Code section 410(d) or a governmental plan.

(j) A welfare plan (other than a fringe benefit plan) that participates in a group insurance arrangement that files a return/report Form 5500 on its behalf. A group insurance arrangement is an arrangement which provides benefits to the employees of two or more unaffiliated employers (not in connection with a multi-employer plan or a multiple-employer-collectively-bargained plan), fully insures one or more welfare plans of each participating employer, and uses a trust (or other entity such as a trade association) as the holder of the insurance contracts and the conduit for payment of premiums to the insurance company. For further details, see 29 CFR 2520.104-43.

**C. Kinds of Filers.**—Item 4 on the Form 5500, 5500-C, and 5500-R lists the different types of entities which file the forms. These entities are described below.

*(a) Single-employer plan.*—If one employer or one employee organization maintains a plan, file a separate return/report for the plan. If the employer or employee organization maintains more than one such plan, file a separate return/report for each plan.

If a member of either a controlled group of corporations or a group of trades or businesses under common control maintains a plan that does not involve other group members, file a separate return/report as a single-employer plan.

If several employers participate in a program of benefits wherein the funds attributable to each employer are available only to pay benefits to that employer's employees, each employer must file a separate return/report.

*(b) Plan for controlled group of corporations or group of trades or businesses under common control.*—These groups are defined in Code sections 414(b) and (c), and are referred to as controlled groups.

If the benefits are payable to participants from the plan's total assets without regard to contributions by each participant's employer, file one return/report for the plan. On the return/report for the plan, complete item 22 only for the controlled group's employees.

**Exception:** Employers who participate in a plan of one of the groups listed above but who are not members of the group must file a separate return/report. The return/report should be filed on Form 5500-C or 5500-R, as applicable (see **"What To File"** on page 4). On the Form 5500-C, complete only items 1, 2, 3, 4f, 5, 6, 9, and 22. On Form 5500-R, complete only items 1 through 3, 4f, and 5 through 8b.

If several employers participate in a program of benefits wherein the funds attributable to each employer are available only to pay benefits to that employer's employees, each employer must file a separate return/report as a single employer plan.

*(c) Multiemployer plan.*— Multiemployer plans are plans: (1) to which more than one employer is required to contribute; (2) which are maintained pursuant to one or more collective bargaining agreements, and (3) have not made the election under Code section 414(f)(5) and ERISA section 3(37)(E). File one return/ report for each such plan. Contributing employers do not file individually with respect to such plans. See Code section 414 for more information.

*(d) Multiple-employer-collectively-bargained plan.*—A multiple-employer-collectively-bargained plan involves more than one employer, is collectively bargained and collectively funded, and, if covered by PBGC termination insurance, has properly elected before 9-27-81 not to be treated as a multiemployer plan under Code section 414(f)(5) or ERISA sections 3(37)(E) and 4001(a)(3). File one return/report for each such plan. Participating employers do not file individually for these plans.

*(e) Multiple-employer plan (other).*—A multiple-employer plan (other) involves more than one employer and is not one of the plans already described. A multiple-employer plan (other) includes only plans whose contributions from individual employers are available to pay benefits to all participants. File one return/report for each such plan.

In addition, for pension benefit plans, each participating employer files either a Form 5500-C, regardless of the number of participants, or Form 5500-R. On Form 5500-C, complete only items 1, 2, 3, 4f, 5, 6, 9, and 22. On Form 5500-R, complete only items 1 through 3, 4f, and 5 through 8b.

**Note:** *If a participating employer is also the sponsor of the multiple-employer plan (other), the plan number on the return/report filed for the plan should be 333. The Form 5500-C or Form 5500-R filed by the participating employer should list his or her appropriate plan number.*

If more than one employer participates in the plan and the plan provides that each employer's contributions are available to pay benefits only for that employer's employees who are covered by the plan, one annual return/report must be filed for each participating employer. These filers will be considered single employers and should complete the entire form.

**D. Investment Arrangements Filing Directly With DOL.**—Some plans invest in certain trusts, accounts, and other investment arrangements which may file information concerning itself and its relationship with employee benefit plans (as specified on page 5) directly with DOL. Plans participating in an investment arrangement as described in paragraphs a through c below are required to attach certain additional information to the return/report filed with IRS as specified below.

**a. Common/Collective Trust and Pooled Separate Account**

*(i) Definition.* For reporting purposes, a common/collective trust is a trust maintained by a bank, trust company, or similar institution which is regulated, supervised, and subject to periodic examination by a state or Federal agency for the collective investment and reinvestment of assets contributed thereto from employee benefit plans maintained by more than one employer or controlled group of corporations, as the term is used in Code section 1563. For reporting purposes, a pooled separate account is an account maintained by an insurance carrier which is regulated, supervised, and subject to periodic examination by a state or Federal agency for the collective investment and reinvestment of assets contributed thereto from employee benefit plans maintained by more than one employer or controlled group of corporations, as the term is used in Code section 1563. See 29 CFR sections 2520.103-3, 2520.103-4, 2520.103-5, and 2520.103-9.

**Note:** *For reporting purposes, a separate account which is not considered to be holding plan assets pursuant to 29 CFR 2510.3-101(h)(1)(iii), shall not constitute a pooled separate account.*

*(ii) Additional Information Required To Be Attached to the Form 5500-C for Plans Participating in Common/Collective Trusts and Pooled Separate Accounts.* A plan participating in a common/collective trust or pooled separate account must complete the annual return/report in accordance with the specific instructions and attach either (1) the most recent statement of the assets and liabilities of any common/collective trust or pooled separate account, or (2) a certification that: (A) the statement of the assets and liabilities of the common/collective trust or pooled separate account has been submitted directly to DOL by the financial institution or insurance carrier; (B) the plan has received a copy of the statement; and (C) includes the EIN and other numbers used by the financial institution or insurance carrier to identify the trusts or accounts in the direct filing made with DOL.

**b. Master Trust**

*(i) Definition.* For reporting purposes, a master trust is a trust for which a regulated financial institution (as defined below) serves as trustee or custodian (regardless of whether such institution exercises discretionary authority or control with respect to the management of assets held in the trust), and in which assets of more than one plan sponsored by a single employer or by a group of employers under common control are held.

A "regulated financial institution" means a bank, trust company, or similar financial institution which is regulated, supervised, and subject to periodic examination by a state or Federal agency. Common control is determined on the basis of all relevant facts and circumstances (whether or not such employers are incorporated). See 29 CFR 2520.103-1(e).

For reporting purposes, the assets of a master trust are considered to be held in one or more "investment accounts." A master trust investment account may consist of a pool of assets or a single asset.

Each pool of assets held in a master trust must be treated as a separate master trust investment account if each plan which has an interest in the pool has the same fractional interest in each asset in the pool as its fractional interest in the pool, and if each such plan may not dispose of its interest in any asset in the pool without disposing of its interest in the pool. A master trust may also contain assets which are not held in such a pool. Each such asset must be treated as a separate master trust investment account.

Financial information must generally be provided with respect to each master trust investment account as specified on page 5.

*(ii) Additional Information Required To Be Attached to the Form 5500-C for Plans Participating in Master Trusts.* A plan participating in a master trust must complete the annual return/report and attach to it a schedule listing each master trust investment account in which the plan has an interest indicating the plan's name, EIN, and plan number and the name of the master trust used in the master trust information filed with DOL (see page 5). For each investment account you must show, in tabular format, the net value of the plan's interest in each investment account at the beginning and end of the plan year, and the net investment gain (or loss) allocated to the plan for the plan year from the investment account.

**Note:** *If a master trust investment account consists solely of one plan's asset(s) during the reporting period, the plan may report*

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*the(se) asset(s) either as an investment account to be reported as part of the master trust report filed directly with DOL or as a plan asset(s) which is not part of the master trust (and therefore subject to all instructions pertaining to assets not held in a master trust).*

**c. 103-12 Investment Entities**

*Definition.* 29 CFR 2520.103-12 provides an alternative method of reporting for plans which invest in an entity (other than an investment arrangement filing with DOL described in a or b above), the underlying assets of which include "plan assets" (within the meaning of 29 CFR 2510.3-101) of two or more plans which are not members of a "related group" of employee benefit plans. For reporting purposes, a "related group" consists of each group of two or more employee benefit plans (1) each of which receives 10 percent or more of its aggregate contributions from the same employer or from a member of the same controlled group of corporations (as determined under Code section 1563(a), without regard to Code section 1563(a)(4) thereof); or (2) each of which is either maintained by, or maintained pursuant to a collective bargaining agreement negotiated by, the same employee organization or affiliated employee organizations. For purposes of this paragraph, an "affiliate" of an employee organization means any person controlling, controlled by, or under common control with such organization. See 29 CFR 2520.103-12.

For reporting purposes, the investment entities described above with respect to which the required information is filed directly with DOL constitute "103-12 investment entities" (103-12 IEs).

**E. What To File.**—The circumstances that dictate which form should be filed are described below. In addition, there are schedules that may need to be attached to the return/report. These are also described below. Finally, this section also contains a description of special filing requirements for plans that invest in certain investment arrangements. A brief guide illustrating which forms and schedules are required by different types of plans and filers may be found on page 7.

**Forms**

***Form 5500.*—File Form 5500,** Annual Return/Report of Employee Benefit Plan, annually for each plan with 100 or more participants at the beginning of the plan year.

***Form 5500-C.*—File Form 5500-C,** Return/Report of Employee Benefit Plan, for each pension benefit plan, welfare benefit plan, and fringe benefit plan (unless otherwise exempted) with fewer than 100 participants (one-participant plans see "Form 5500EZ" below) at the beginning of the plan year. File Form 5500-C for the first plan year, the year for which the final return/report is due, and for plan years in which a Form 5500-R is not filed as explained below.

***Form 5500-R.*—Form 5500-R,** Registration Statement of Employee Benefit Plan (with fewer than 100 participants), may be filed instead of a Form 5500-C for this plan year provided (a) this is not the first plan year, (b) this is not a year for which the final return/report is due, and (c) a Form 5500-C has been filed for one of the

Page 4

prior 2 plan years. The Form 5500-R should not be filed if (a) this plan year is the first plan year, (b) this is the plan year for which a final return/report is due, or (c) the Form 5500-R has been filed for both of the prior 2 plan years.

Any plan may choose not to file the Form 5500-R if the plan files the Form 5500-C instead.

**Note:** *Generally, under the filing requirements explained above, if the number of plan participants increases from under 100 to 100 or more, or decreases from 100 or more to under 100, from one year to the next, you would have to file a different form from that filed the previous year. However, there is an exception to this rule. You may file the same form you filed last year, even if the number of participants changed, provided that at the beginning of this plan year the plan had at least 80 participants, but not more than 120.*

***Form 5500EZ.*—Form 5500EZ,** Annual Return of One-Participant Pension Benefit Plan, should be filed by most one-participant plans.

A one-participant plan is: (1) a pension benefit plan that covers only an individual or an individual and his or her spouse who wholly own a trade or business, whether incorporated or unincorporated, or (2) a pension benefit plan for a partnership that covers only the partners or the partners and the partners' spouses.

See Form 5500EZ and its instructions to see if the plan meets the requirements for filing the form.

**Items To Be Completed on Form 5500-C**

Certain kinds of plans and certain kinds of filers that are required to submit Form 5500-C are not required to complete the entire form. These are described below, by type of plan. Check the list of headings to see if your plan is affected.

**1. Welfare Benefit Plans.—Welfare** benefit plans generally must complete the following items on the Form 5500-C: 1 through 6c; 7a, 8a, c, d, and e; 9a, b, c, and f; 10a through d; 11 through 14; and 29 through 31.

**Note:** *If one Form 5500-C is filed for both a welfare plan and a fringe benefit plan, items 22c, 22g, and 22i must be completed in addition to the items listed above for welfare plans.*

**2. Fringe Benefit Plans.**—A Form 5500-C filed only because of Code section 6039D (i.e., for a fringe benefit plan) need complete only items 1 through 6a, 7a, 9a, 9b, 22c, 22g, 22i, 31h, and 31j.

If the annual return/report is also for a welfare benefit plan (see "Who Must File" on page 1), complete the above items and those specified for welfare benefit plans in "1" above.

**3. Pension Plans.**—In general, most pension plans (defined benefit and defined contribution) are required to complete all items on the form. However, some items need not be completed by certain types of pension plans, as described below.

a. Plans exclusively using a tax deferred annuity arrangement under Code section 403(b)(1). These plans need only complete items 1 through 5, 6b(iv), and 9.

b. Plans exclusively using a custodial account for regulated investment company stock under Code section 403(b)(7). These plans need only complete items 1 through 5, 6b(v), and 9.

c. Individual Retirement Account Plan.—A pension plan utilizing individual retirement accounts or annuities (as described in Code section 408) as the sole funding vehicle for providing benefits need only complete items 1 through 5, 6b(vi), and 9.

d. Fully Insured Pension Plan.—A pension benefit plan providing benefits exclusively through an insurance contract, or contracts that are fully guaranteed, and which meets all of the conditions of 29 CFR 2520.104-44 need only complete items 1 through 29b. A pension plan which includes both insurance contracts of the type described in 29 CFR 2520.104-44 as well as other assets should limit its reporting in items 30 and 31 to those other assets.

**Note:** *For purposes of the annual return/report and the alternative method of compliance set forth in 29 CFR 2520.104-44, a contract is considered to be "allocated" only if the insurance company or organization that issued the contract unconditionally guarantees, upon receipt of the required premium or consideration, to provide a retirement benefit of a specified amount, without adjustment for fluctuations in the market value of the underlying assets of the company or organization, to each participant, and each participant has a legal right to such benefits which is legally enforceable directly against the insurance company or organization.*

e. Nonqualified Plans Maintained Outside the U.S.—Nonqualified pension benefit plans maintained outside the United States primarily for nonresident aliens required to file a return/report (see "Who Must File" on page 1) need only complete items 1 through 8c, 9 through 12, and 15 through 17.

**4. Plans of More Than One Employer.**—All plans of more than one employer (plans of a controlled group, multiemployer plans, multiple-employer-collectively-bargained plans, and multiple-employer-plan (other)) generally should complete all applicable (welfare or pension) items on the form except for item 6d. Only single-employer pension plans must complete this item. In addition, multiemployer and multiple-employer-collectively-bargained plans need not complete item 22 on the Form 5500-C.

**Schedules**

The various schedules to be attached to the return/report are listed below.

**Note:** *All attachments to the Forms 5500, 5500-C, and 5500-R must include the name of the plan and the EIN and plan number (PN) as found in items 5a, 1b, and 5c, respectively.*

***Attach Schedule A (Form 5500), Insurance Information,*** to Form 5500, 5500-C, or 5500-R if any benefits under the plan are provided by an insurance company, insurance service, or other similar organization (such as Blue Cross, Blue Shield, or a health maintenance organization).

**Exception:** *Schedule A (Form 5500) is not needed if the plan covers. (1) only an individual, or an individual and his or her spouse, who wholly owns a trade or business, whether incorporated or unincorporated; or (2) a partner in a partnership, or a partner and his or her spouse.*



Do not file a Schedule A (Form 5500) with a Form 5500EZ.

***Attach Schedule B (Form 5500), Actuarial Information,*** to Forms 5500, 5500-C, 5500-R, or 5500EZ for most defined benefit pension plans. See instructions for Schedule B.

***Schedule SSA (Form 5500), Annual Registration Statement Identifying Separated Participants With Deferred Vested Benefits,*** may be needed for separated participants. See "When To Report Separated Participants" in the instructions for Schedule SSA.

***Schedule P (Form 5500), Annual Return of Fiduciary of Employee Benefit Trust.*—**Any fiduciary (trustee or custodian) of an organization that is qualified under Code section 401(a) and exempt from tax under Code section 501(a) who wants to protect the organization under the statute of limitations provided in Code section 6501(a) must file a Schedule P (Form 5500).

File the Schedule P (Form 5500) as an attachment to Form 5500, 5500-C, 5500-R, or 5500EZ for the plan year in which the trust year ends.

## Other Filings

### Reporting Requirements for Investment Arrangements Filing Directly With DOL

Certain investment arrangements for employee benefit plans file financial information directly with DOL. These arrangements include common/collective trusts, pooled separate accounts, master trusts, and 103-12 IEs. Definitions of these investment arrangements may be found on page 3. Their DOL filing requirements are described below.

**A. Common/Collective Trust and Pooled Separate Account Information To Be Filed Directly With DOL**

Financial institutions and insurance carriers filing the statement of the assets and liabilities of a common/collective trust or pooled separate account should identify the trust or account by providing the EIN of the trust or account, or (if more than one trust or account is covered by the same EIN) both the EIN and any additional number assigned by the financial institution or insurance carrier (such as: 99-1234567 Trust No. 1); and a list of all plans participating in the trust or account, identified by the plan number, EIN, and name of the plan sponsor. The direct filing should be addressed to:

Common/Collective Trust (OR)
Pooled Separate Account
Pension and Welfare Benefits Administration
U.S. Department of Labor, Room N5644
200 Constitution Avenue, NW
Washington, DC 20210

**B. Master Trust Information To Be Filed Directly With DOL**

The following information with respect to a master trust must be filed with DOL by the plan administrator or by a designee, such as the administrator of another plan participating in the master trust or the financial institution serving as trustee of the master trust, no later than the date on which the plan's return/report is due. While only one copy of the required information should be filed for all plans participating in the master trust, the information is an integral part of the return/report of each participating plan, and the plan's return/report will not be deemed complete unless all the information is filed within the prescribed time.

**Note:** *If a master trust investment account consists solely of one plan's asset(s) during the reporting period, the plan may report the(se) asset(s) either as an investment account to be reported as part of the master trust report filed directly with DOL or as a plan asset(s) which is not part of the master trust (and therefore subject to all instructions pertaining to assets not held in a master trust).*

Each of the following statements and schedules must indicate the name of the master trust and the name of the master trust investment account. The information shall be filed with DOL by mailing it to:

Master Trust
Pension and Welfare Benefits Administration
U.S. Department of Labor, Room N5644
200 Constitution Avenue, NW
Washington, DC 20210

1. The name and fiscal year of the master trust and the name and address of the master trustee.

2. A list of all plans participating in the master trust, showing each plan's name, EIN, PN, and its percentage interest in each master trust investment account as of the beginning and end of the fiscal year of the master trust ending with or within the plan year.

3. A statement, in the same format as Part I of Schedule C (Form 5500), for each master trust investment account showing amounts of compensation paid during the fiscal year of the master trust ending with or within the plan year to persons providing services with respect to the investment account and subtracted from the gross income of the investment account in determining the net increase (decrease) in net assets of the investment account.

4. A statement for each master trust investment account showing the assets and liabilities of the investment account at the beginning and end of the fiscal year of the master trust ending with or within the plan year, grouped in the same categories as those specified in item 34 of Form 5500.

5. A statement for each master trust investment account showing the income and expenses, changes in net assets, and net increase (decrease) in net assets of each such investment account during the fiscal year of the master trust ending with or within the plan year, in the categories specified in item 35 of Form 5500. In place of item 35a, show the total of all transfers of assets into the investment account by participating plans. In place of item 35j, show the total of all transfers of assets out of the investment account by participating plans.

6. Schedules, in the format set forth in the instructions for item 30 of Form 5500, of the following items with respect to each master trust investment account for the fiscal year of the master trust ending with or within the plan year: assets held for investment, nonexempt party-in-interest transactions, defaulted or uncollectible loans and leases, and 5% transactions involving assets in the investment account. The 5% figure shall be determined by comparing the current value of the transaction at the transaction date with the current value of the investment account assets at the beginning of the applicable fiscal year of the master trust.

**C. 103-12 IE Information To Be Filed Directly With DOL**

The information described below must be filed with the DOL by the sponsor of the 103-12 IE no later than the date on which the plan's return/report is due before the plan administrator can elect the alternative method of reporting. While only one copy of the required information should be filed for the 103-12 IE, the information is an integral part of the return/report of each plan electing the alternative method of compliance.

The filing address is:
103-12 Investment Entity
Pension and Welfare Benefits Administration
U.S. Department of Labor, Room N5644
200 Constitution Avenue NW
Washington, DC 20210

1. The name, fiscal year, and EIN of the 103-12 IE and the name and address of the sponsor of the 103-12 IE. If more than one 103-12 IE is covered by the same EIN, they shall be sequentially numbered as follows: 99-1234567 Entity No. 1.

2. A list of all plans participating in the 103-12 IE, showing each plan's name, EIN, PN, and its percentage interest in the 103-12 IE as of the beginning and end of the fiscal year of the 103-12 IE ending with or within the plan year.

3. A statement, in the same format as Part I of Schedule C (Form 5500), for the 103-12 IE showing amounts of compensation paid during the fiscal year of the 103-12 IE ending with or within the plan year to persons providing services to the 103-12 IE.

4. A statement showing the assets and liabilities at the beginning and end of the fiscal year of the 103-12 IE ending with or within the plan year, grouped in the same categories as those specified in item 34 of Form 5500.

5. A statement showing the income and expenses, changes in net assets, and net increase (decrease) in net assets during the fiscal year of the 103-12 IE ending with or within the plan year, grouped in the same categories specified in item 35 of Form 5500. In place of item 35a, show the total of all transfers of assets into the 103-12 IE by participating plans. In place of item 35j, show the total of all transfers of assets out of the 103-12 IE by participating plans.

6. Schedules, in the format set forth in the instructions for item 30 of Form 5500 (except item 30c) with respect to the 103-12 IE for the fiscal year of the 103-12 IE investment entity ending with or within the plan year. Substitute the term "103-12 IE" in place of the word "plan" when completing the schedules.

7. A report of an independent qualified public accountant regarding the above items and other books and records of the 103-12 IE which meets the requirements of 29 CFR 2520.103-1(b)(5).

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## Section 3
## General Information

**Final Return/Report.**—If all assets under the plan (including insurance/annuity contracts) have been distributed to the participants and beneficiaries or distributed to another plan (and when all liabilities for which benefits may be paid under a welfare plan have been satisfied), check the "final return/report" box at the top of the form filed for such plan. The year of complete distribution is the last year a return/report must be filed for the plan. For purposes of this paragraph, a complete distribution will occur in the year in which the assets of a terminated plan are brought under the control of PBGC.

For a defined benefit plan covered by PBGC, a PBGC Form 1 must be filed and a premium must be paid until the end of the plan year in which the assets are distributed or brought under the control of PBGC.

Filing the return/report marked "final return" and indicating that the plan terminated satisfies the notification requirement of Code section 6057(b)(3).

**Signature and Date.**—The plan administrator must sign and date all returns/reports filed. In addition the employer must sign a return/report filed for a single-employer plan or a plan required to file only because of Code section 6039D.

When a joint employer-union board of trustees or committee is the plan sponsor or plan administrator, at least one employer representative and one union representative must sign and date the return/report.

Participating employers in a multiple-employer plan (other), who are required to file Form 5500-C or 5500-R, are required to sign the return/report. The plan administrator need not sign the Form 5500-C or 5500-R filed by the participating employer.

**Reproductions.**—Original forms are preferable, but a clear reproduction of the completed form is acceptable. Sign the return/report after it is reproduced. All signatures must be original.

**Change in Plan Year.**—Generally only defined contribution pension benefit plans need to get prior approval for a change in plan year. (See Code section 412(c)(5).) Rev. Proc. 87-27, 1987-1 C.B. 769 explains the procedure for automatic approval of a change in plan year. A pension benefit plan that would ordinarily need to obtain approval for a change in plan year under Code section 412(c)(5) is granted an automatic approval for a change in plan year if all the following criteria are met:

1. No plan year is more than 12 months long.

2. The change will not delay the time when the plan otherwise would have been required to conform to the requirements of any statute, regulation, or published position of the IRS.

3. The trust, if any, retains its exempt status for the short period required to effect the change, as well as for the taxable year immediately preceding the short period.

4. All actions necessary to implement the change in plan year, including plan amendment and a resolution of the board of directors (if applicable), have been taken on or before the last day of the short period.

5. No change in plan year has been made for any of the preceding plan years.

6. In the case of a defined benefit plan, deductions are taken in accordance with section 5 of Rev. Proc. 87-27.

For the first return/report that is filed following the change in plan year, check the box indicated on the second line under the title at the top of the form (or item 1d if Form 5500-R is being filed).

**Amended Return/Report.**—If you file an amended return/report, check the "(ii) and amended return/report" box at the top of the form. When filing an amended return, be sure to answer all questions and put a circle around the numbers of the items that have been amended.

**How the Annual Return/Report Information May Be Used.**—All Form 5500 series return/reports will be subjected to a computerized review. It is, therefore, in the filer's best interest that the responses accurately reflect the circumstances they were designed to report. Annual reports filed under Title I of ERISA must be made available by plan administrators to plan participants and by the Department of Labor to the public pursuant to ERISA section 104.

## Section 4
## Specific Instructions for Form 5500-C

**Important:** Answer all items on the Form 5500-C with respect to the plan year, unless otherwise explicitly stated in the item-by-item instructions or on the form itself. Therefore, your responses usually apply to the year entered or printed at the top of the first page of the form. Yes and no questions are to be marked either "yes" or "no" but not both. If neither "yes" nor "no" apply, enter "N/A."

**Information To Be Completed at the Top of the Form**

**First Line** at the top of the form—Complete the space for dates when: (1) the 12-month plan year is not a calendar year, or (2) the plan year is less than 12 months (a short plan year).

**Second Line**—Check the box if the plan year has been changed since the last return/report was filed.

**Fourth Line**—Check box (i) if this is the initial filing for this plan. Do not check this box if you have ever filed for this plan even if it was on a different form (Form 5500 vs. Form 5500-C or Form 5500-R).

Check box (ii) if you have already filed for the 1988 plan year and are now submitting an amended return/report to reflect errors and/or omissions on the previously filed return/report.

Check box (iii) if the plan no longer exists to provide benefits. See Section 3 for instructions concerning the requirement to file a final return/report.

**The numbers of the following instructions are the same as the item numbers on the return/report.**

**1a.** If you did not receive a preaddressed mailing label, enter the name and address of the plan sponsor. If the plan covers only the employees of one employer, enter the employer's name.

If you received a Form 5500-C with a preaddressed mailing label, please attach it in the name and address area of the form you file. If the name or address on the label is wrong, draw a line through the incorrect part and correct it.

The term "plan sponsor" means—

*(i)* the employer, for an employee benefit plan that a single employer established or maintains;

*(ii)* the employee organization in the case of a plan of an employee organization; or

*(iii)* the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the plan, if the plan is established or maintained jointly by one or more employers and one or more employee organizations, or by two or more employers.

Include enough information in 1(a) to describe the sponsor adequately, for example, "Joint Board of Trustees of Local 187 Machinists" rather than just "Joint Board of Trustees."

**1b.** Enter the 9-digit employer identification number (EIN) assigned to the plan sponsor/employer, i.e., 00-1234567.

Employers and plan administrators who do not have an EIN should apply for one on Form SS-4, available from most IRS or Social Security Administration offices. Send Form SS-4 to the same Internal Revenue Service Center to which this form will be sent.

Plan sponsors are reminded that they should use the trust EIN when opening a bank account or conducting other transactions for a plan that requires an employer identification number. The trust may apply for an EIN as explained in the preceding paragraph.

A plan of a controlled group of corporations whose sponsor is more than one of the members of the controlled group should insert only the EIN of one of the sponsoring members. This EIN must be used in all subsequent filings of the annual returns/reports for the controlled group unless there is a change in the sponsor.

If the plan administrator is a group of individuals, get a single EIN for the group. When you apply for a number, enter on line 1 of Form SS-4 the name of the group, such as "Joint Board of Trustees of the Local 187 Machinists' Retirement Plan."

**Note:** *Although Employer Identification Numbers (EINs) for funds (trusts or custodial accounts) associated with plans are not required to be furnished on the Form 5500 series returns/reports, the IRS will issue EINs for such funds for other reporting purposes. EINs may be obtained by filing Form SS-4 as explained above.*

**1d.** From the list of business codes on pages 13 and 14, enter the one that best describes the nature of the employer's business. If more than one employer is involved, enter the business code for the main business activity.

**1e.** Plans checking item 4a or 4b must enter the first six digits of the CUSIP (Committee on Uniform Securities Identification Procedures) number, "issuer number," if one has been assigned to the plan sponsor for purposes of issuing corporate securities. CUSIP issuer numbers are assigned to corporations and other entities which issue public securities listed on stock exchanges or traded over the counter. The CUSIP issuer number is the first six digits of the number assigned to the





individual securities which are traded. If the plan sponsor has no CUSIP issuer number, enter "N/A."

**2a.** If the document constituting the plan appoints or designates a plan administrator other than the sponsor, enter the administrator's name and address. If the plan administrator is also the sponsor, enter "Same." If 2a is the "Same," then items 2b and 2c should be left blank.

The term "administrator" means—

*(i)* the person or group of persons specified as the administrator by the instrument under which the plan is operated;

*(ii)* the plan sponsor/employer if an administrator is not so designated; or

*(iii)* any other person prescribed by regulations of the Secretary of Labor if an administrator is not designated and a plan sponsor cannot be identified.

**2b.** A plan administrator must have an EIN for reporting purposes. Enter the plan administrator's 9-digit EIN here. If the plan administrator has no EIN, apply for one as explained in 1b above.

Employees of an employer are not plan administrators unless so designated in the plan document, even though they engage in administrative functions of the plan. If an employee of the employer is designated as the plan administrator, that employee must get an EIN.

**3.** If you answer "No," enter the name, address, and EIN of the plan sponsor and/or the plan administrator shown on the prior return/report.

**3c.** Indicate if the change in 3a is only a change in sponsorship. "Change in sponsorship" means the plan's sponsor has been changed but no assets or liabilities have been transferred to another plan(s), the plan has not terminated or merged with any other plan, and so forth.

**4a.** Check for a single-employer plan. See "Kinds of Filers" for what is considered a single-employer plan.

**4b.** Check for a plan in which more than one employer participates, and some of the employers are members of a controlled group of corporations (Code section 414(b)) or a member of a group of employers under common control (Code section 414(c)).

**4c.** Check for a multiemployer plan as defined in Code section 414(f) and ERISA sections 3(37) and 4001(a)(3).

**4d.** Check for a multiple-employer-collectively-bargained plan as described under "Kinds of Filers."

**4e.** Check for a multiple-employer plan (other) if the plan administrator is filing for the plan as a whole.

**4f.** Exceptions to **b** and **e.** Each participating employer in a multiple-employer plan (other) pension benefit plan and nonmember employers participating in a plan of a controlled group of corporations or businesses need to file either the Form 5500-C or Form 5500-R, regardless of the number of participants. Complete items 1, 2, 3, 4f, 5, 6, 9, and 22 on the Form 5500-C, and items 1, 2, 3, 4f, 5, 6, 7, 8a, and 8b on the Form 5500-R.

**5a.** Enter the formal name of the plan or enough information to identify the plan.

**5b.** Enter the date the plan first became effective.

**5c.** Enter the 3-digit number the employer or plan administrator assigned to the plan. All welfare plan numbers and Code section 6039D plan numbers start at 501. All other plans start at 001.

Once you use a plan number, continue to use it for that plan on all future filings with IRS, DOL and PBGC reports. Do not use it for any other plan even if you terminated the first plan.

**6a.** Check every box that describes the welfare benefit plan for which this return/report is being filed. Example: If your plan provides health insurance, dental insurance, eye examinations, and life insurance, four boxes should be checked: 6a(i)(A), 6a(i)(B), 6a(i)(D), and 6a(i)(E).

If you checked box (M), (N), or (O), you must check one box in 6a(ii). Check "unfunded" if the plan is (1) unfunded, (2) fully insured, or (3) a combination of unfunded/insured as defined on page 2, Section 2B(a).

**6b(i).** For a defined benefit plan, check the box.

**6b(ii).** Check (C) for a money purchase plan if the contribution is determined by a target benefit calculation. Check (D) for all money purchase plans that do not have a target benefit calculation.

**6c(ii).** Check for an ESOP which acquires employer securities with borrowed money or other debt-financed techniques.

**6c(iii).** Check if the plan is a pension plan that provides for individual accounts and permits a participant or beneficiary to exercise independent control over the assets in his or her account (see ERISA section 404(c)).

**6c(iv).** Check this box for pension benefit plans maintained outside the United States primarily for nonresident aliens. See "Kinds of Filers" for more information.

**6c(v).** In the space provided following 6c(viii), enter name of the trust and bank or financial institution. Also enter city and state where the trust is maintained. (See page 3 for master trust instructions.)

**6c(vi).** In the space provided following 6c(viii), enter name and address of the 103-12 IE. (See page 5.)

**6d.** For single-employer plans enter the date the employer's tax year ends. For example, if the tax year is a calendar year, enter 12-31-88. For all plans with more than one employer, enter "N/A."

**6e. Definition of Affiliated Service Group.**—In general, Code section 414(m)(2) defines an affiliated service group as a first service organization (FSO) that has:

(1) a service organization (A-ORG) that is a shareholder or partner in the FSO and that regularly performs services for the FSO, or is regularly associated with the FSO in performing services for third persons, and/or

(2) any other organization (B-ORG) if:

(a) a significant portion of the business of that organization consists of performing services for the FSO or A-ORG of a type historically performed by employees in the service field of the FSO or A-ORG, and

(b) 10% or more of the interest of the B-ORG is held by persons who are highly compensated employees of the FSO or A-ORG.

An affiliated service group also includes a group consisting of an organization whose principal business is performing management functions for another organization (or one organization and other related organizations) on a regular and

**Summary of Filing Requirements for Employers and Plan Administrators (File forms ONLY with IRS)**

| Type of plan | What to file | When to file |
|---|---|---|
| Most pension plans with only one participant or one participant and that participant's spouse | Form 5500EZ | File all required forms and schedules for each plan by the last day of the 7th month after the plan year ends. |
| Pension plan with fewer than 100 participants | Form 5500-C or 5500-R | |
| Pension plan with 100 or more participants | Form 5500 | |
| Annuity under Code section 403(b)(1) or trust under Code section 408(c) | Form 5500, 5500-C, or 5500-R | |
| Custodial account under Code section 403(b)(7) | Form 5500, 5500-C, or 5500-R | |
| Welfare benefit plan with 100 or more participants* | Form 5500 | |
| Welfare benefit plan with fewer than 100 participants (see exception on page 1 of these instructions)* | Form 5500-C or 5500-R | |
| Pension or welfare plan with 100 or more participants (see Form 5500 instructions) | Financial statements, schedules, and accountant's opinion | |
| Pension or welfare plan with benefits provided by an insurance company | Schedule A (Form 5500) | |
| Pension plan that requires actuarial information | Schedule B (Form 5500) | |
| Plan with 100 or more participants | Schedule C (Form 5500) | |
| Pension plan filing a registration statement identifying separated participants with deferred vested benefits from a pension plan | Schedule SSA (Form 5500) | |

*This includes Code section 6039D filers.

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continuing basis, and the organization for which such functions are so performed by the organization. For a plan maintained by more than one employer, check "Yes" if any such employer is a member of an affiliated service group.

**6f.** A cash or deferred arrangement described under Code section 401(k) is a part of a qualified defined contribution plan which provides for an election by employees to defer part of their compensation or receive these amounts in cash.

**7.** The description of "participant" in the instructions below is only for purposes of item 7 of this form.

For welfare plans, dependents are considered to be neither participants nor beneficiaries. For pension benefit plans, "alternate payees" entitled to benefits under a qualified domestic relations order are not to be counted as participants for this item.

"Participant" means any individual who is included in one of the categories below.

Active participants include any individuals who are currently in employment covered by a plan and who are earning or retaining credited service under a plan. This category includes any individuals who are: (i) currently below the integration level in a plan that is integrated with social security, and/or (ii) eligible to elect to have the employer make payments to a code section 401(k) qualified cash or deferred arrangement. Active participants also include any nonvested individuals who are earning or retaining credited service under a plan. This category **does not** include nonvested former employees who have incurred the greater of 5 consecutive one year breaks in service or the break in service period specified in the plan.

For determining if active participants are fully vested, partially vested, or nonvested, consider vesting in employer contributions only.

For purposes of Code section 6039D, "participant" means any individual who, for a plan year, has had at least one dollar excluded from income by reason of Code section 120, 125, or 127. If you are filing Form 5500-C for a welfare plan that is required to file under Title I of ERISA and under Code section 6039D, the preceding sentence does not apply.

Inactive participants receiving benefits are any individuals who are retired or separated from employment covered by the plan and who are receiving benefits under the plan. This includes former employees who are receiving group health continuation coverage benefits pursuant to Part 6 of ERISA and who are covered by the employee welfare benefit plan. This category does not include any individual to whom an insurance company has made an irrevocable commitment to pay all the benefits to which the individual is entitled under the plan.

Inactive participants entitled to future benefits are individuals who are retired or separated from employment covered by the plan and who are entitled to begin receiving benefits under the plan in the future. This category does not include any individual to whom an insurance company has made an irrevocable commitment to pay all the benefits to which the individual is entitled under the plan.

Deceased participants are any deceased individuals who have one or more beneficiaries who are receiving or are entitled to receive benefits under the plan. This category does not include an individual if an insurance company has made an irrevocable commitment to pay all the benefits to which the beneficiaries of that individual are entitled under the plan.

**7b(f).** If "Yes," file Schedule SSA (Form 5500) as an attachment to the Form 5500-C. **Plan administrators:** Code section 6057(e) provides that the plan administrator must give each participant a statement showing the same information for that participant as is reported on Schedule SSA.

**8a.** Check "Yes" if an amendment to the plan was adopted in this plan year, regardless of the effective date of the amendment.

**8b.** Check "Yes" only if the accrued benefits were retroactively reduced. For example, a plan provides a benefit of 2% for each year of service, but the plan is amended to change the benefit to 1½% a year for all years of service under the plan.

**8c.** Enter the date the most recent amendment was adopted regardless of the date of the amendent or the effective date of the amendment.

**8d.** Check "Yes" only if an amendment changed the information previously provided to participants by the summary plan description or summary description of modifications.

**8e.** A revised summary plan description or summary description of modifications must be filed with DOL and distributed to all participants and pension plan beneficiaries no later than 210 days after the close of the plan year, in which the amendment(s) was adopted. If the material was distributed and filed since the amendments were adopted (even if after the end of the plan year), check "Yes" to item 8e.

**9a.** Check "Yes" if the plan was terminated or if the plan was merged or consolidated into another plan. Enter year of termination if applicable. If you checked 6e(i)(M), (N), or (O) and indicated that this is an unfunded plan and you also answered 9a "Yes," you must also check 9b "Yes."

**9b.** If the plan was terminated and all plan assets were not distributed, file a return/report for each year the plan has assets. In that case, the return/report must be filed by the plan administrator, if designated, or by the person or persons who actually control the plan's property.

If all assets were used to buy individual annuity contracts and the contracts were distributed to the participants, check "Yes."

If all the trust assets were transferred to another plan, check "Yes."

Do not check "Yes" for a welfare plan which is still liable to pay benefits for claims which were incurred prior to the termination date but not yet paid. See 29 CFR 2520.104b-2(g)(2)(ii).

**9c.** The Code provides for a nondeductible excise tax on a reversion of assets from a qualified plan.

**9d.** The employer must report the reversion by filing Form 5330 and pay any applicable tax. The tax will not be imposed upon employers who are tax-exempt entities under Code section 501(a). See instructions for Form 5330.

**10a.** If this plan was **merged** or **consolidated** into another plan(s), or plan assets or liabilities were transferred to another plan(s), indicate which other plan or plans were involved.

**10c.** Enter the **EIN** of the **sponsor** (employer, if for a **single-employer plan**) of the other plan.

**10a.** Pension benefit plans must file Form 5310 at least 30 days before any plan merger or consolidation or any transfer of plan assets or liabilities to another plan.

**Caution:** *There is a penalty for not filing Form 5310 on time.*

**11.** Enter the code for the **funding arrangement** used by the plan from the list below.

The "funding arrangement" is the method used for the receipt, holding, investment, and transmittal of plan assets prior to the time the plan actually provides the benefits promised under the plan. For purposes of items 11 and 12, the term "trust" includes any fund or account which receives, holds, transmits, or invests plan assets other than an account or policy of an insurance company.

| | Funding Arrangement Codes |
|---|---|
| Trust | 1 |
| Trust and insurance | 2 |
| Insurance | 3 |
| Exclusively from general assets of sponsor (unfunded) | 4 |
| Partially insured and partially from general assets of sponsor | 5 |
| Other | 6 |

**12.** Enter the code for the **benefit arrangement** used by the plan from the list below.

The "benefit arrangement" is the method by which benefits are actually provided to participants by the plan. For example, when a participant retires, the plan might purchase an annuity from an insurance company for that individual to provide the actual benefits promised by the plan. In this example, the annuity would be the benefit arrangement.

Using the chart below, the plan in the above example would enter a "3" to indicate the benefit arrangement.

| | Benefit Arrangement Codes |
|---|---|
| Trust | 1 |
| Trust and insurance | 2 |
| Insurance | 3 |
| Exclusively from general assets of sponsor (unfunded) | 4 |
| Partially insured and partially from general assets of sponsor | 5 |
| Other | 6 |

**13.** Check "Yes" if either the contributions to the plan or the benefits paid by the plan are subject to the collective bargaining process, even if the plan is not established and administered by a joint board of trustees. Check "Yes" even if only some of those covered by the plan are members of a collective bargaining unit which negotiates benefit levels on its own behalf. The benefit schedules need not be identical for all employees under the plan.





**14.** If either the funding arrangement code (item 11) and/or the benefit arrangement code (item 12) is 2, 3, or 5, at least one Schedule A (Form 5500) must be attached to the Form 5500-C filed for pension and welfare plans. The insurance company (or similar organization) which provides benefits is required to provide the plan administrator with the information needed to complete the return/report, pursuant to ERISA section 103 (a)(2). If you do not receive this information in a timely manner, contact the insurance company (or similar organization). If information is missing on Schedule A (Form 5500) due to a refusal to provide this information, note this on the Schedule A. If there are no Schedule(s) A attached, enter "0."

**15b.** If a waived funding deficiency is being amortized in the current plan year, do not complete (i), (ii), and (iii), but complete 1, 2, 3, 7, and 9 of Schedule B (Form 5500). An enrolled actuary need not sign Schedule B under these circumstances.

**15b(iii).** File Form 5330 with IRS to pay the excise tax on the funding deficiency. **Caution:** *There is a penalty for not filing Form 5330 on time.*

**16.** A "top-heavy plan" is a plan which during any plan year is:

(1) any defined benefit plan if, as of the determination date, the present value of the cumulative accrued benefits under the plan for key employees exceeds 60% of the present value of the cumulative accrued benefits under the plan for all employees; and

(2) any defined contribution plan if, as of the determination date, the aggregate of the accounts of key employees under the plan exceeds 60% of the aggregate of the accounts of all employees under the plan.

Each plan of an employer included in a required aggregation group is to be treated as a top-heavy plan if such group is a top-heavy group. See definitions of required aggregation and top-heavy groups below.

*Key Employee* —A key employee is any participant in an employer plan who at any time during the plan year, or any of the 2 preceding years, is:

(1) an officer of the employer having an annual compensation greater than 50% of the amount in effect under Code section 415(c)(1)(A) for any such plan year,

(2) one of the 10 employees having annual compensation from the employer of more than the limitation in effect under Code section 415(c)(1)(A) and owning (or considered as owning within the meaning of Code section 318) both more than ½% interest and the largest interests in the employer,

(3) a 5% owner of the employer, or

(4) a 1% owner of the employer having an annual compensation from the employer of more than $150,000.

In determining whether an individual is an officer of the employer, no more than 50 employees, or, if less, the greater of 3 employees or 10% of the employees, are to be treated as officers. See Code section 416(i) and T-12 of Regulations section 1.416. A key employee will not include any officer or employee of a governmental plan under Code section 414(d).

*Required Aggregation Group*—A required aggregation group consists of:

(1) each plan of the employer in which a key employee is or was a participant, and

(2) each other plan of the employer which enables a plan to meet the requirements for nondiscrimination in contributions or benefits under Code section 401(a)(4), or the participation requirements under Code section 410.

*Top-Heavy Group*—A top-heavy group is an aggregation group if, as of the determination date, the sum of the present value of the cumulative accrued benefits for key employees under all defined benefit plans included in such group and the aggregate of the accounts of key employees under all defined contribution plans in such group exceeds 60% of a similar sum determined for all employees. To determine if a plan is top-heavy, include distributions made in the 5-year period ending on the determination date. However, do not take into account accrued benefits for an individual who hasn't performed services for the employer during the 5-year period ending on the determination date.

**18a.** If the plan distributes an annuity contract, whether or not deferred and whether or not upon termination, that contract must provide that all distributions from it will meet the participant and spousal consent requirements of Code section 417. Consent is not needed for the distribution of the contract itself. Check "No" if the plan did not distribute any annuity contracts.

**18b.** In general, distributions must be made in the form of a qualified joint and survivor annuity for life or a qualified preretirement survivor annuity. An annuity distribution to a single individual is a qualified joint and survivor annuity. Check "Yes" if distributions in other forms were made, even if such distributions were permissible, e.g., because consent was obtained or was not needed.

**18c.** Generally, within the 90 days prior to the date of any benefit payment or the making of a loan to a participant, you must get the spouse's consent to the payment of the benefit or the use of the accrued benefit for the making of the loan. However, there are some circumstances where obtaining this spousal consent is not required. The following is a partial listing of circumstances where spousal consent is not required:

(1) The participant is not married and no spouse is required to be treated as a current spouse under a qualified domestic relations order issued by a court.

(2) The participant's accrued benefit in the plan never had a present value of more than $3,500.

(3) The benefit is paid in the form of a qualified joint and survivor annuity, i.e., an annuity for the life of the participant with a survivor annuity for the life of the spouse which is not less than 50% of (and is not greater than 100% of ) the amount of the annuity which is payable during the joint lives of the participant and the spouse. See Code section 417(b).

(4) The payout is from a profit-sharing or stock bonus plan that pays the spouse the participant's full account balance upon the participant's death, an annuity payment is not elected by the participant, and the profit-sharing or stock bonus plan is not a transferee plan with respect to the participant (i.e., had not received a transfer from a plan that was subject to the consent requirements with respect to the participant).

(5) The participant had no service under the plan after August 22, 1984.

**18d.** A plan may not eliminate a subsidized benefit or a retirement option by plan amendment or plan termination.

**19.** For purposes of determining the present value of a participant's accrued benefits and the amount of any distribution, a qualified plan must use a rate no higher than "the applicable interest rate." The "applicable interest rate" means the interest rate which would be used (as of the date of distributions) by the PBGC for determining the present value of a lump sum distribution on termination of the plan.

**a.** If the present value of the vested accrued benefit is no more than $25,000, the amount to be distributed is calculated using the PBGC rate.

**b.** If the present value of the vested accrued benefit exceeds $25,000 (using the PBGC rate), the total amount to be distributed is determined using an interest rate no greater than 120% of the applicable interest rate that would be used by the PBGC upon the plan's termination. In such a case the value will be no less than $25,000.

**20.** The Tax Reform Act of 1986 amended Code section 415 to provide that the maximum annual benefit that may be provided under a defined benefit plan may not exceed the lesser of $90,000 or 100% of compensation. However, if benefits begin before the social security retirement age, the $90,000 limit must be reduced as described in Notice 87-21, 1987-1 C.B. 458.

In addition, the dollar limitations will be reduced for participants with fewer than 10 years of participation in a defined benefit plan, i.e., a 10% reduction for each year under 10 years of participation.

For defined contribution plans, Code section 415 now provides that the dollar limit on annual additions to a qualified plan may not exceed the greater of $30,000 or 25% of the defined benefit dollar limit for such limitation year. The defined contribution dollar limit will not be increased until the defined benefit dollar limit, as increased by cost of living adjustments, equals or exceeds $120,000. (For years beginning after December 31, 1987, the $90,000 defined benefit limit will be adjusted to reflect post-1986 cost of living increases.) The defined contribution dollar limit will then be increased to an amount equal to 25% of the defined benefit limit.

Annual additions to a defined contribution plan will, for years beginning after December 31, 1986, include 100% of all after-tax employee contributions. For participants in plans of tax-exempt organizations, the pre-Tax Reform Act limits remain in effect.

The Tax Reform Act of 1986 also provides that a participant's previously accrued benefit won't be reduced merely because of the reduction in dollar limits or increases in required periods of participation. The transitional rule applies to an individual who was a participant prior to January 1, 1987, in a plan in existence

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on May 5, 1986. If this participant's current accrued benefit exceeds the dollar limit under the Tax Reform Act of 1986, but complies with prior law, then the applicable dollar limit for the participant is equal to the current accrued benefit. The term "current accrued benefit" is defined as the participant's accrued benefit as of the close of the last limitation year beginning before January 1, 1987, and expressed as an annual benefit. To compute the defined benefit fraction, the current accrued benefit would replace the dollar limit otherwise used in the denominator of the fraction. The current accrued benefit is also reflected in the numerator of the defined benefit fraction.

**21.** In the calendar year in which the employee attains age 70 ½, the employee must begin to receive minimum distributions pursuant to Code section 401(a)(9) by April 1 of the following calendar year. Once begun, minimal distributions must continue each calendar year.

**22.** For purposes of filing required only because of Code section 6039D, complete only items 22c, 22g, and 22i.

**22a.** If you do not claim to meet the percentage tests of Code section 410(b)(1)(A), attach an explanation indicating how your plan meets the coverage requirements of Code section 410(b)(1)(B).

**22b.** Provide information for all employers of a controlled group, a group under common control, or an affiliated service group even if they do not participate in the plan. Also, leased employees (described in Code section 414(n)(2)) of any such employer(s) are to be included as employees unless the leasing organization maintains a "safe harbor" plan described in Code section 414(n)(5) for the leased employees. See below for more information regarding a "safe harbor" plan.

Generally, leased employees are individuals who are employees of a leasing organization, but who during the course of their employment perform services for a trade or business other than the leasing organization on a substantially full-time basis for a period of at least one year.

Service is to include any period during which the employee would have been a leased employee, but for the requirement that substantially full-time service be performed for at least one year. Such leased employees are to be considered employees of their recipient organization at certain times and for certain qualification requirements unless the leasing organization adopts and maintains the type of qualified plan specified in Code section 414(n)(5).

A *safe harbor* plan is a money purchase pension plan maintained by the leasing organization which provides with respect to a leased employee:

(A) a nonintegrated employer contribution rate of at least 10%, and

(B) immediate participation and full and immediate vesting.

The plan must cover all employees of the leasing organization other than those who are not "leased out" and cover those whose compensation from the leasing organization is less than $1,000 per year during a plan year and each of the prior 3 plan years. The safe harbor plan must provide the 10% of compensation allocation regardless of the number of hours of service during the year, age, or whether the employee is employed on a specific date.

In general, if leased employees make up more than 20% of the nonhighly compensated work force of the recipient, such employees must be covered by the recipient's pension plan regardless of the safe harbor plan. Recipient includes employers aggregated under Code section 414(b), (c), or (m). Under the 20% rule, "leased employees" include all persons who performed services as a "nonemployee."

Therefore, the total number of employees entered in 22c, the breakdown of excluded employees shown in 22d, and the ineligible employees shown in 22f should also include the employees of the controlled group, employees of employers under common control, or other employees in the affiliated service group or leased employees as described above.

Do not complete 22 for multiemployer plans described in Code section 414(f) or for multiple-employer-collectively-bargained plans.

**24b.** An independent appraiser must be used to ascertain the value of securities acquired by a plan after December 31, 1986, if the securities aren't readily tradable on an established securities market.

**28a.** If you are uncertain as to whether the plan is covered under the PBGC termination insurance program, check the box "Not determined" and contact the PBGC and request a coverage determination.

**29.** Check "Yes" or "No" and enter the total amount (except 29k) for all "Yes" responses. Round off all amounts to the nearest dollar.

**29a.** Check "Yes" and indicate the aggregate amount of coverage available for all claims if every plan official who handles plan funds is covered by a bond. Otherwise, check "No." Generally, every plan official of an employee benefit plan who "handles" funds or other property of such plan must be bonded. A plan administrator, officer, or employee shall be deemed to be "handling" funds or other property of a plan, so as to require bonding, whenever his or her duties or activities with respect to given funds are such that there is a risk that such funds could be lost in the event of fraud or dishonesty on the part of such person, acting either alone or in collusion with others. Section 412 of ERISA and the regulations found at 29 CFR 2580 provide the bonding requirements including the definition of "handling" (29 CFR 2580.412-6), the permissible forms of bonds (29 CFR 2580.412-10), and certain exemptions such as the exemption for unfunded plans, banks and insurance companies (ERISA section 412) and the exemption allowing plan officials to purchase bonds from surety companies authorized by the Secretary of the Treasury as acceptable reinsurers on Federal bonds (29 CFR 2580.412-23).

Check "Yes" only if the plan itself (as opposed to the plan sponsor) is a named insured under a fidelity bond covering plan officials.

Plans are permitted under certain conditions to purchase fiduciary liability insurance. These policies do not protect the plan from dishonest acts and are not bonds which should be reported in item 29.

**29b.** If item 29a is answered "Yes," this must be answered. Check "Yes" to item 29b if the plan has suffered or discovered any loss as the result of a dishonest or fraudulent act(s). If "Yes," enter the full amount of the loss. If the full amount of the loss has not yet been determined, provide and disclose that the figure is an estimate, such as "approximately $1,000."

**Note:** *Wilful failure to report is a criminal offense. See ERISA section 501.*

**29c.** For purposes of item 29, the term "employer" includes affiliates of the employer. In determining the five most highly paid employees, use all compensation paid including cash, bonuses, and noncash payments (e.g., l. use of a car). A fiduciary is a person with respect to a plan to the extent: (1) he or she exercises any discretionary authority or discretionary control with respect to the management of such plan or exercises any authority or control with respect to the management or disposition of its assets, (2) he or she renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan, or has any authority or responsibility to do so, or (3) he or she has any discretionary authority or discretionary responsibility in the administration of such plan.

**29d.** Relatives include spouses, siblings, ancestors, lineal descendents (e.g., children, grandchildren, etc.) and spouses of lineal descendents. If 29c is answered "Yes," enter the total amount of these transactions.

**29e.** An "employer security" is a security issued by an employer (including affiliates) of employees covered by the plan. These may include common stocks, preferred stocks, bonds, zero coupon bonds, debentures, convertible debentures, notes, and commercial paper.

Employer real property is any real property (and related personal property) owned by the plan and leased to the employer of employees covered by the plan. This may include land, warehouses, office buildings, etc. If item 29e is "Yes," enter the total amount of employer securities and/or employer real property held or acquired.

**29f.** Generally, a loan requires that both the principal and interest be paid according to a pre-established repayment schedule. If the principal and/or interest has not been paid in accordance with the original repayment schedule and the period for repayment of the principal and/or interest has been extended, or the loan has been renegotiated after it has not met the original repayment schedule, a "Yes" must be checked and the total amount of the delinquent loan must be entered. Otherwise check "No."

**29h.** Check "Yes," for obligations where the required payments have not been made by the due date. With respect to notes and loans, the due date, payment amount and conditions for default are usually contained in the note or loan document. Defaults can occur at any time for those obligations that require periodic repayment. Generally, loans and fixed income obligations are considered uncollectible when payment has not been made and there is little probability that payment will be made. A loan by the plan is in default when the borrower is unable to pay the obligation upon maturity. A fixed income obligation has a fixed maturity date at a specified interest rate. If item 29h is "Yes," enter the total amount of loans by the plan or fixed income obligations that are uncollectible or in default as of the plan year end.





**29i.** Consider all fiduciaries and parties providing services to the plan, including: (1) persons who are fiduciaries by reason of their relationship to a master trust investment account or 103-12 IE in which the plan has an interest or the assets in such an investment account or 103-12 IE; and (2) parties providing services rendered with respect to assets held in master trusts and 103-12 IEs.

See item 29c above for the definition of fiduciary.

**29j.** Include as a single security all securities of the same issue. For the purposes of item 29j, do not check "Yes" for securities issued by the U.S. Government or its agencies. If item 29j is "Yes," enter the total.

**29k.** In determining the 20% figure, subtract the current value of plan assets held in any master trust or 103-12 IE from the current value of the plan's total assets at the beginning of the plan year. Check "Yes" if the plan had:

1. A single transaction within the plan year in excess of 20% of the current value of the plan assets;

2. Any series of transactions with, or in conjunction with, the same person, involving property other than securities, which amount in the aggregate within the plan year (regardless of the category of asset and the gain or loss on any transaction) to more than 20% of the current value of plan assets;

3. Any transaction within the plan year involving securities of the same issue if within the plan year any series of transactions with respect to such securities amount in the aggregate to more than 20% of the current value of the plan assets; or

4. Any transaction within the plan year with respect to securities with, or in conjunction with, a person if any prior or subsequent single transaction within the plan year with such person, with respect to securities, exceeds 20% of the current value of plan assets. The 20% figure is determined by comparing the current value of the transaction at the transaction date with the current value of the plan assets at the beginning of the plan year.

If the assets of two or more plans are maintained in one trust, the plan's allocable portion of the transactions of the trust shall be combined with the other transactions of the plan, if any, to determine which transactions (or series of transactions) are reportable (20%) transactions.

**Exception:** For investments in common/collective trusts, pooled separate accounts, 103-12 IEs, and registered investment companies, determine the 20% figure by comparing the transaction date value of the acquisition and/or disposition of units of participation or shares in the entity with the current value of the plan assets at the beginning of the plan year. Check "No" if all plan funds are held in a master trust. Do not include individual transactions of common/collective trusts, pooled separate accounts, 103-12 IEs and registered investment companies.

If item 29k is answered "Yes," enter the amount.

**29l.** Check "No" if the plan received all of its contributions in cash. Generally, as it relates to this question, an appraisal by an unrelated third party is an evaluation of the value of the asset contributed prepared by an individual or firm who knows how to judge the value of the asset and does not have an ongoing relationship with the plan or plan fiduciaries except for preparing the appraisal. If item 29l is checked "Yes," enter the value of the asset as established by the plan.

**29m.** Nonpublicly traded securities are generally held by few people and not traded on a stock exchange. Generally, as it relates to this question, an appraisal by an unrelated third party is an evaluation of the value of the security prepared by an individual or firm who knows how to judge the value of the security and does not have an ongoing relationship with the plan or plan fiduciaries except for preparing the appraisal. If item 29m is answered "Yes," enter the value of the security as established by the plan.

**30 and 31.** You can use either the cash, modified accrual, or accrual basis for recognition of transactions in items 30 and 31, as long as you use one method consistently.

"Current value" means fair market value where available. Otherwise, it means the fair value as determined in good faith under the terms of the plan by a trustee or a named fiduciary, assuming an orderly liquidation at the time of the determination.

If the assets of two or more plans are maintained in one trust, such as when an employer has two plans which are funded through a single trust (except investment arrangements filing with DOL as specified below), complete items 30 and 31 by entering the plan's allocable part of each line item.

If assets of one plan are maintained in two or more trust funds, report the combined financial information in 30 and 31.

A fully insured pension plan meeting the conditions of 29 CFR 2520.104-44 need not complete items 30 and 31. For more details, see page 4 of the instructions under "Items To Be Completed on Form 5500-C."

Plan assets may include, among other things:

(1) Cash both interest and noninterest bearing. This includes all cash on hand or in a financial institution including money market funds.

(2) All contributions due to the plan from the employer and participants, income earned, but not yet received by the plan and receivables from any other source.

(3) Investments securities (stocks, bonds, U. S. Government obligations, municipal obligations, etc.); real property (land, buildings, gold, furniture, equipment, etc.); loans (mortgages, promissory notes, etc.) and all other investments (certificates of deposit, repurchase agreements, land contracts, units of participation in common/collective trusts and pooled separate accounts, shares of registered investment companies (mutual funds), interests in master trusts and 103-12 IE's, etc.).

Plans holding units of participation in common/collective trusts and/or pooled separate accounts must attach to the return/report either the statement of assets and liabilities of the common/collective trust and/or pooled separate account or the certification discussed on page 3 of these instructions. For details, see 29 CFR sections 2520.103-3, 2520.103-4, 2520.103-5, and 2520.103-9.

Plans in a master trust must include the value of the plan's interest in the master trust which is the sum of the net values of the plan's interest in all of the master trust investment accounts (see page 3 for the definition of master trust investment account). The net values of such interests are obtained by multiplying the plan's percentage interest in each master trust investment account by the net assets of the investment account (total assets minus total liabilities) at the beginning and end of the plan year.

**30c.** Investments in securities of the U.S. Government should be included in c(i).

You can use the same method for determining the value of the insurance contracts reported in 30 that you used for line 6e of the Schedule A (Form 5500) as long as the contract values are stated as of the beginning and end of the plan year.

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Liabilities include among other things:

(1) Benefit claims payable—claims that have been processed and approved for payment but have not been paid.

(2) Accounts payable—obligations owed by the plan that were incurred in the normal operations of the plan and have been approved for payment but not been paid.

(3) Other liabilities—such as acquisition indebtedness and any other amount owed by the plan.

*Liabilities.* Do not include the value of future pension payments.

**30g.** Enter total amount of claims which have been processed and approved for payment directly from the trust but have not been paid. Do not include the value of future pension payments.

**30h. Acquisition indebtedness.**—Acquisition indebtedness, for debt-financed property other than real property, means the outstanding amount of the principal debt incurred:

(1) by the organization in acquiring or improving the property;

(2) before the acquisition or improvement of the property if the debt was incurred only to acquire or improve the property; or

(3) after the acquisition or improvement of the property if the debt was incurred only to acquire or improve the property and was reasonably foreseeable at the time of such acquisition or improvement.

For further explanation, see Code section 514(c).

**31a(i).** If the plan is on the accrual basis, enter the amount of contributions received or accrued.

**31b.** Show current value, at date contributed, of securities or other noncash property contributed to the plan.

**31g.** If distributions include securities or other property, show the current value at date distributed in this figure.

**31h.** Report all administrative expenses paid by or charged to the plan, including those which were not subtracted from the gross income of master trust investment accounts and 103-12 IEs in determining their net investment gain(s) or loss(es).

For purposes of a filing required only because of Code section 6039D, do not include overhead expenses such as utilities and photocopying expenses. Also, if filing for an educational assistance program described in Code section 127, do not include expenses for job-related training which are deductible under Code section 162.





## Codes for Principal Business Activity and Principal Product or Service

These industry titles and definitions are based, in general, on the Enterprise Standard Industrial Classification System authorized by the Regulatory and Statistical Analysis Division, Office of Information and Regulatory Affairs, Office of Management and Budget, to classify enterprises by type of activity in which they are engaged.

| Code | |
|---|---|
| | **AGRICULTURE, FORESTRY, AND FISHING** |
| 0120 | Field crop. |
| 0150 | Fruit, tree nut, and vegetable |
| 0180 | Horticultural specialty |
| 0230 | Livestock |
| 0270 | Animal specialty |
| | **Agricultural services and forestry:** |
| 0740 | Veterinary services. |
| 0750 | Animal services, except veterinary |
| 0780 | Landscape and horticultural services |
| 0790 | Other agricultural services. |
| 0800 | Forestry. |
| | **Farms:** |
| | **Fishing, hunting, and trapping:** |
| 0930 | Commercial fishing, hatcheries, and preserves |
| 0970 | Hunting, trapping, and game propagation |
| | **MINING** |
| | **Metal mining:** |
| 1010 | Iron ores. |
| 1070 | Copper, lead and zinc, gold and silver ores. |
| 1098 | Other metal mining. |
| 1150 | Coal mining. |
| | **Oil and gas extraction:** |
| 1330 | Crude petroleum, natural gas, and natural gas liquids |
| 1380 | Oil and gas field services. |
| | **Nonmetallic minerals (except fuels) mining:** |
| 1430 | Dimension, crushed and broken stone; sand and gravel |
| 1498 | Other nonmetallic minerals, except fuels. |
| | **CONSTRUCTION** |
| | **General building contractors and operative builders:** |
| 1510 | General building contractors. |
| 1531 | Operative builders |
| | **Heavy construction contractors:** |
| 1611 | Highway and street construction. |
| 1620 | Heavy construction, except highway |
| | **Special trade contractors:** |
| 1711 | Plumbing, heating, and air conditioning |
| 1721 | Painting, paperhanging, and decorating |
| 1731 | Electrical work |
| 1740 | Masonry, stonework, and plastering |
| 1750 | Carpentering and flooring |
| 1761 | Roofing and sheet metal work. |
| 1771 | Concrete work |
| 1781 | Water well drilling. |
| 1790 | Miscellaneous special trade contractors. |
| | **MANUFACTURING** |
| | **Food and kindred products:** |
| 2010 | Meat products. |
| 2020 | Dairy products. |
| 2030 | Preserved fruits and vegetables. |
| 2040 | Grain mill products. |
| 2050 | Bakery products. |
| 2060 | Sugar and confectionery products. |
| 2081 | Malt liquors and malt |
| 2088 | Alcoholic beverages, except malt liquors and malt |
| 2089 | Bottled soft drinks and flavorings. |
| 2096 | Other food and kindred products. |
| 2100 | Tobacco manufacturers |
| | **Textile mill products:** |
| 2228 | Weaving mills and textile finishing |
| 2250 | Knitting mills. |
| 2298 | Other textile mill products. |
| | **Apparel and other textile products:** |
| 2315 | Men's and boys' clothing. |
| 2345 | Women's and children's clothing. |
| 2388 | Hats, caps, millinery, fur goods, and other apparel and accessories. |
| 2390 | Misc. fabricated textile products. |
| | **Lumber and wood products:** |
| 2415 | Logging camps and logging contractors, sawmills, and planing mills |
| 2430 | Millwork, plywood, and related products. |
| 2498 | Other wood products, including wood buildings and mobile homes |
| 2500 | Furniture and fixtures. |
| | **Paper and allied products:** |
| 2625 | Pulp, paper, and board mills |
| 2699 | Other paper products |
| | **Printing, publishing, and allied industries:** |
| 2710 | Newspapers. |
| 2720 | Periodicals |
| 2735 | Books, greeting cards, and miscellaneous publishing |
| 2799 | Commercial and other printing, and printing trade services. |
| | **Chemical and allied products:** |
| 2815 | Industrial chemicals, plastics materials, and synthetics |
| 2830 | Drugs |
| 2840 | Soap, cleaners, and toilet goods |
| 2850 | Paints and allied products |
| 2898 | Agricultural and other chemical products. |
| | **Petroleum refining and related industries (including those integrated with extraction):** |
| 2910 | Petroleum refining (including those integrated with extraction) |
| 2998 | Other petroleum and coal products. |
| | **Rubber and misc. plastics products:** |
| 3050 | Rubber products, plastics footwear, hose, and belting |
| 3070 | Misc. plastics products. |
| | **Leather and leather products:** |
| 3140 | Footwear, except rubber |
| 3198 | Other leather and leather products |
| | **Stone, clay, glass, and concrete products:** |
| 3225 | Glass products. |
| 3240 | Cement, hydraulic. |
| 3270 | Concrete, gypsum, and plaster products. |
| 3298 | Other nonmetallic mineral products. |
| | **Primary metal industries:** |
| 3370 | Ferrous metal industries, miscellaneous primary metal products. |
| 3380 | Nonferrous metal industries. |
| | **Fabricated metal products, except machinery and transportation equipment:** |
| 3410 | Metal cans and shipping containers. |
| 3428 | Cutlery, hand tools, and hardware; screw machine products, bolts, and similar products. |
| 3430 | Plumbing and heating, except electric and warm air |
| 3440 | Fabricated structural metal products. |
| 3460 | Metal forgings and stampings |
| 3470 | Coating, engraving, and allied services |
| 3480 | Ordnance and accessories, except vehicles and guided missiles. |
| 3490 | Misc. fabricated metal products. |
| | **Machinery, except electrical:** |
| 3520 | Farm machinery |
| 3530 | Construction, mining and materials handling machinery, and equipment. |
| 3540 | Metalworking machinery |
| 3550 | Special industry machinery, except metalworking machinery |
| 3560 | General industrial machinery |
| 3570 | Office, computing, and accounting machines |
| 3598 | Engines and turbines, service industry machinery, and other machinery, except electrical |
| | **Electrical and electronic machinery, equipment, and supplies:** |
| 3630 | Household appliances. |
| 3665 | Radio, television, and communication equipment |
| 3670 | Electronic components and accessories |
| 3698 | Other electric equipment |
| | **Transportation equipment:** |
| 3710 | Motor vehicles and equipment |
| 3725 | Aircraft, guided missiles, and parts. |
| 3730 | Ship and boat building and repairing |
| 3798 | Other transportation equipment |
| | **Measuring and controlling instruments; photographic and medical goods, watches and clocks:** |
| 3815 | Scientific instruments and measuring devices, watches, and clocks |
| 3845 | Optical, medical, and ophthalmic goods |
| 3860 | Photographic equipment and supplies |
| 3998 | Other manufacturing products. |
| | **TRANSPORTATION, COMMUNICATION, ELECTRIC, GAS, SANITARY SERVICES** |
| | **Transportation:** |
| 4000 | Railroad transportation |
| | **Local and interurban passenger transit:** |
| 4121 | Taxicabs |
| 4189 | Other passenger transportation |
| | **Trucking and warehousing:** |
| 4210 | Trucking, local and long distance |
| 4289 | Public warehousing and trucking terminals |
| | **Other transportation including transportation services:** |
| 4400 | Water transportation |
| 4500 | Transportation by air |
| 4600 | Pipelines, except natural gas |
| 4722 | Passenger transportation arrangement. |
| 4723 | Freight transportation arrangement. |
| 4799 | Other transportation services |
| | **Communication:** |
| 4825 | Telephone, telegraph, and other communication services |
| 4830 | Radio and television broadcasting. |
| | **Electric, gas, and sanitary services:** |
| 4910 | Electric services. |
| 4920 | Gas production and distribution |
| 4930 | Combination utility services |
| 4990 | Water supply and other sanitary services. |
| | **WHOLESALE TRADE** |
| | **Durable:** |
| 5010 | Motor vehicles and automotive equipment. |
| 5020 | Furniture and home furnishings |
| 5030 | Lumber and construction materials. |
| 5040 | Sporting, recreational, photographic, and hobby goods, toys, and supplies |
| 5050 | Metals and minerals, except petroleum and scrap |
| 5060 | Electrical goods. |
| 5070 | Hardware, plumbing, and heating equipment |
| 5083 | Farm machinery and equipment. |
| 5089 | Other machinery, equipment, and supplies |
| 5098 | Other durable goods. |
| | **Nondurable:** |
| 5110 | Paper and paper products |
| 5129 | Drugs, drug proprietaries, and druggists' sundries. |
| 5130 | Apparel, piece goods, and notions. |
| 5140 | Groceries and related products, except meats and meat products. |
| 5147 | Meats and meat products. |
| 5150 | Farm product raw materials |
| 5160 | Chemicals and allied products. |
| 5170 | Petroleum and petroleum products. |
| 5180 | Alcoholic beverages. |
| 5190 | Miscellaneous nondurable goods. |



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| Code | |
|---|---|
| | **RETAIL TRADE** |
| | **Building materials, hardware, garden supply, and mobile home dealers:** |
| 5211 | Lumber and other building materials dealers. |
| 5231 | Paint, glass, and wallpaper stores. |
| 5251 | Hardware stores. |
| 5261 | Retail nurseries and garden stores. |
| 5271 | Mobile home dealers. |
| | **General merchandise:** |
| 5331 | Variety stores. |
| 5399 | Other general merchandise stores. |
| | **Food stores:** |
| 5411 | Grocery stores. |
| 5420 | Meat and fish markets and freezer provisioners. |
| 5431 | Fruit stores and vegetable markets. |
| 5441 | Candy, nut, and confectionery stores. |
| 5451 | Dairy products stores. |
| 5460 | Retail bakeries. |
| 5490 | Other food stores. |
| | **Automotive dealers and service stations:** |
| 5511 | New car dealers (franchised). |
| 5521 | Used car dealers. |
| 5531 | Auto and home supply stores. |
| 5541 | Gasoline service stations. |
| 5551 | Boat dealers. |
| 5561 | Recreational vehicle dealers. |
| 5571 | Motorcycle dealers. |
| 5599 | Aircraft and other automotive dealers. |
| | **Apparel and accessory stores:** |
| 5611 | Men's and boys' clothing and furnishings. |
| 5621 | Women's ready-to-wear stores. |
| 5631 | Women's accessory and specialty stores. |
| 5641 | Children's and infants' wear stores. |
| 5651 | Family clothing stores. |
| 5661 | Shoe stores. |
| 5681 | Furriers and fur shops. |
| 5699 | Other apparel and accessory stores. |
| | **Furniture, home furnishings, and equipment stores:** |
| 5712 | Furniture stores. |
| 5713 | Floor covering stores. |
| 5714 | Drapery, curtain, and upholstery stores. |
| 5719 | Home furnishings, except appliances. |
| 5722 | Household appliance stores. |
| 5732 | Radio and television stores. |
| 5733 | Music stores. |
| | **Eating and drinking places:** |
| 5812 | Eating places. |
| 5813 | Drinking places. |
| | **Miscellaneous retail stores:** |
| 5912 | Drug stores and proprietary stores. |
| 5921 | Liquor stores. |
| 5931 | Used merchandise stores. |
| 5941 | Sporting goods stores and bicycle shops. |
| 5942 | Book stores. |
| 5943 | Stationery stores. |
| 5944 | Jewelry stores. |
| 5945 | Hobby, toy, and game shops. |
| 5946 | Camera and photographic supply stores. |
| 5947 | Gift, novelty, and souvenir shops. |
| 5948 | Luggage and leather goods stores. |
| 5949 | Sewing, needlework, and piece goods stores. |
| 5961 | Mail order houses. |
| 5962 | Merchandising machine operators. |
| 5963 | Direct selling organizations. |
| 5982 | Fuel and ice dealers (except fuel oil and bottle gas dealers). |
| 5983 | Fuel oil dealers. |
| 5984 | Liquefied petroleum gas (bottled gas). |
| 5992 | Florists. |
| 5993 | Cigar stores and stands. |
| 5994 | News dealers and newsstands. |
| 5996 | Other miscellaneous retail stores. |

| Code | |
|---|---|
| | **FINANCE, INSURANCE, AND REAL ESTATE** |
| | **Banking:** |
| 6030 | Mutual savings banks. |
| 6060 | Banking holding companies. |
| 6080 | Banks, except mutual savings banks and bank holding companies. |
| | **Credit agencies other than banks:** |
| 6120 | Savings and loan associations. |
| 6140 | Personal credit institutions. |
| 6150 | Business credit institutions. |
| 6199 | Other credit agencies. |
| | **Security, commodity brokers, dealers, exchanges, and services:** |
| 6212 | Security underwriting syndicates. |
| 6218 | Security brokers and dealers, except underwriting syndicates. |
| 6299 | Commodity contracts brokers and dealers, security and commodity exchanges, and allied services. |
| | **Insurance:** |
| 6399 | Life insurance. |
| 6356 | Mutual insurance, except life or marine and certain fire or flood insurance companies. |
| 6359 | Other insurance companies. |
| 6411 | Insurance agents, brokers, and services. |
| | **Real estate:** |
| 6511 | Real estate operators (except developers) and lessors of buildings. |
| 6516 | Lessors of mining, oil, and similar property. |
| 6518 | Lessors of railroad property and other real property. |
| 6531 | Real estate agents, brokers and managers. |
| 6541 | Title abstract offices. |
| 6552 | Subdividers and developers, except cemeteries. |
| 6553 | Cemetery subdividers and developers. |
| 6598 | Other real estate. |
| 6611 | Combined real estate, insurance, loans and law offices. |
| | **Holding and other investment companies:** |
| 6742 | Regulated investment companies. |
| 6743 | Real estate investment trusts. |
| 6744 | Small business investment companies. |
| 6749 | Holding and other investment companies, except bank holding companies. |

| Code | |
|---|---|
| | **SERVICES** |
| | **Hotels and other lodging places:** |
| 7012 | Hotels. |
| 7013 | Motels, motor hotels, and tourist courts. |
| 7021 | Rooming and boarding houses. |
| 7032 | Sporting and recreational camps. |
| 7033 | Trailer parks and camp sites. |
| 7041 | Organization hotels and lodging houses on a membership basis. |
| | **Personal services:** |
| 7218 | Coin-operated laundries and dry cleaning. |
| 7219 | Other laundry, cleaning and garment services. |
| 7221 | Photographic studios, portrait. |
| 7231 | Beauty shops. |
| 7241 | Barber shops. |
| 7251 | Shoe repair and hat cleaning shops. |
| 7261 | Funeral services and crematories. |
| 7299 | Miscellaneous personal services. |
| | **Business services:** |
| 7310 | Advertising. |
| 7340 | Services to buildings. |
| 7370 | Computer and data processing services. |
| 7392 | Management, consulting, and public relations services. |
| 7394 | Equipment rental and leasing. |
| 7398 | Other business services. |

| Code | |
|---|---|
| | **Automotive repair and services:** |
| 7510 | Automotive rentals and leasing, without drivers. |
| 7520 | Automobile parking. |
| 7531 | Automobile top and body repair shops. |
| 7538 | General automobile repair shops. |
| 7539 | Other automobile repair shops. |
| 7540 | Automobile services, except repair. |
| | **Miscellaneous repair services:** |
| 7622 | Radio and TV repair shops. |
| 7628 | Electrical repair shops, except radio and TV. |
| 7641 | Reupholstery and furniture repair. |
| 7680 | Other miscellaneous repair shops. |
| | **Motion pictures:** |
| 7812 | Motion picture production, distribution, and services. |
| 7830 | Motion picture theaters. |
| | **Amusement and recreation services:** |
| 7920 | Producers, orchestras, and entertainers. |
| 7932 | Billiard and pool establishments. |
| 7933 | Bowling alleys. |
| 7980 | Other amusement and recreation services. |
| | **Medical and health services:** |
| 8011 | Offices of physicians. |
| 8021 | Offices of dentists. |
| 8031 | Offices of osteopathic physicians. |
| 8041 | Offices of chiropractors. |
| 8042 | Offices of optometrists. |
| 8049 | Registered and practical nurses. |
| 8050 | Nursing and personal care facilities. |
| 8060 | Hospitals. |
| 8071 | Medical laboratories. |
| 8072 | Dental laboratories. |
| 8099 | Other medical and health services. |
| | **Other services:** |
| 8111 | Legal services. |
| 8200 | Educational services. |
| 8911 | Engineering and architectural services. |
| 8932 | Certified public accountants. |
| 8933 | Other accounting, auditing, and bookkeeping services. |
| 8999 | Other services, not elsewhere classified. |

| Code | |
|---|---|
| | **TAX-EXEMPT ORGANIZATIONS** |
| 9002 | Church plans making an election under section 410(d) of the Internal Revenue Code. |
| 9319 | Other tax exempt organizations. |
| 9804 | Governmental instrumentality or agency. |



* U. S. GOVERNMENT PRINTING OFFICE: 1988 - 208-303



Form **5500-R**
Department of the Treasury
Internal Revenue Service
Department of Labor
Pension and Welfare Benefits Administration
Pension Benefit Guaranty Corporation

# Registration Statement of Employee Benefit Plan

(With fewer than 100 participants)

**This form is required to be filed under sections 104 and 4065 of the Employee Retirement Income Security Act of 1974 and sections 6039D and 6058 of the Internal Revenue Code.**

OMB No. 1210-0016

**1988**

Amended ☐

**This Form is Open to Public Inspection**

For the calendar plan year 1988 or fiscal plan year beginning , 1988, and ending , 19

One-participant plans file Form 5500EZ (see the instructions).
Plans described in Code section 6039D, complete the applicable box 6d, 6e, or 6f, and see the instructions.
Do NOT file this form for the plan's first year or for the plan's final return/report. Instead file Form 5500-C.
Check this box if an extension of time to file this return is attached . . . . . ▶ ☐

▶ **If you have been granted an extension of time to file this form, you must attach a copy of the approved extension to this form.**
▶ **Type or complete in ink and file the original. If any item does not apply, enter "N/A."**

**Use IRS label. Otherwise, please print or type.**

1a Name of plan sponsor (employer, if for a single employer plan) — 1b Employer identification number

Address (number and street) — 1c Sponsor's telephone number ( )

City or town, state, and ZIP code — 1d If plan year changed since last return/report, check here . . ▶ ☐

2a Name of plan administrator (if same as plan sponsor, enter "Same") — 2b Administrator's employer identification number

Address (number and street) — 2c Administrator's telephone number ( )

City or town, state, and ZIP code

3 Are the name, address, and identification number of the plan sponsor and/or plan administrator the same as they appeared on the last return/report filed for this plan? . . . . . ☐ Yes ☐ No
If "No," enter the information from the last return/report in a and/or b, and complete c.
a Sponsor ▶ _____ EIN _____ Plan number _____
b Administrator ▶ _____ EIN _____
c If a is completed, is this a change in sponsorship only? (See specific instructions for definition of sponsorship.) ☐ Yes ☐ No

4 Check appropriate box to indicate the type of plan entity (check only one box):
a ☐ Single-employer plan
b ☐ Plan of controlled group of corporations or common control employers
c ☐ Multiemployer plan
d ☐ Multiple-employer-collectively-bargained plan
e ☐ Multiple-employer plan (other)
f ☐ Exceptions to (b) and (e). (See instructions for line 4f.)

5a(i) Name of plan ▶ _____ — 5b Effective date of plan ▶
(ii) ☐ Check if name of plan changed since last return/report
(iii) ☐ Check this box if this plan covers self-employed participants — 5c Enter three-digit plan number . . . ▶

6 Type of plan (check applicable boxes):
a ☐ Defined benefit
b ☐ Defined contribution (money purchase or profit-sharing)
c ☐ Welfare benefit
d ☐ Code section 120 (group legal services plan)
e ☐ Code section 125 (cafeteria plan)
f ☐ Code section 127 (educational assistance program)
g ☐ Master trust
h ☐ Common/collective trust
i ☐ Pooled separate account
j ☐ Other (specify) ▶ _____
k If you checked d, e, or f, check if plan is: ☐ funded or ☐ unfunded

| | | Yes | No |
|---|---|---|---|
| 7a | Total participants: (i) Beginning of plan year _____ (ii) End of plan year _____ | | |
| b | (i) Was any pension benefit plan participant(s) separated from service with deferred vested benefits for which a Schedule SSA (Form 5500) is required to be attached to this form? . . . . . | 7b(i) | |
| | (ii) If "Yes," enter the number of separated participants required to be reported ▶ | | |

Under penalties of perjury and other penalties set forth in the instructions, I declare that I have examined this return/report, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct and complete.

Date ▶ _____ Signature of employer/plan sponsor ▶ _____

Date ▶ _____ Signature of plan administrator ▶ _____

**For Paperwork Reduction Act Notice, see page 1 of Form 5500-R instructions.** Form **5500-R** (1988)

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Form 5500-R (1988) Page 2

| | | | Yes | No |
|---|---|---|---|---|
| 8a | Was this plan terminated during this plan year or any prior plan year? If "Yes," enter the year | 8a | | |
| b | Were all the plan assets either distributed to participants or beneficiaries, transferred to another plan, or brought under the control of PBGC? | 8b | | |
| c | If a is "Yes" and the plan is covered by PBGC, is the plan continuing to file PBGC Form 1 and pay premiums until the end of the plan year in which assets are distributed or brought under the control of PBGC? | 8c | | |
| 9 | Is this a plan established or maintained pursuant to one or more collective bargaining agreements? | 9 | | |
| 10 | If any benefits are provided by an insurance company, insurance service, or similar organization, enter the number of Schedules A (Form 5500), Insurance Information, that are attached. (If none, enter "-0-") ▶ | | | |
| 11a | Were any plan amendments adopted during the plan year? | 11a | | |
| b | If a is "Yes," did any amendment result in a retroactive reduction of accrued benefits for any participant? | 11b | | |
| c | If a is "Yes," did any amendment change the information contained in the latest summary plan description or summary description of modifications available at the time of the amendment? | 11c | | |
| d | Has a summary plan description or summary description of modifications that reflects the plan amendments referred to in 11c been furnished to participants and filed with the Department of Labor? | 11d | | |
| 12a | If this is a pension benefit plan subject to the minimum funding standards, has the plan experienced a funding deficiency for this plan year (defined benefit plans must answer this question and, attach Schedule B (Form 5500))? | 12a | | |
| b | If a is "Yes," have you filed Form 5330 to pay the excise tax? | 12b | | |

13a Total plan assets as of the beginning _____ and end _____ of the plan year.
b Total liabilities as of the beginning _____ and end _____ of the plan year.
c Net assets as of the beginning _____ and end _____ of the plan year.

14 For this plan year, enter: a Plan income _____
b Expenses _____ c Net income (loss) _____
d Plan contributions e Total benefits paid

| | | | Yes | No | Amount |
|---|---|---|---|---|---|
| 15 | During this plan year: | | | | |
| a | Was this plan covered by a fidelity bond? | 15a | | | |
| b | Was there any loss to the plan, whether or not reimbursed, caused by fraud or dishonesty? | 15b | | | |
| c | Was there any sale, exchange, or lease of any property between the plan and the employer, any fiduciary, any of the five most highly paid employees of the employer, any owner of a 10% or more interest in the employer, or relatives of any such persons? | 15c | | | |
| d | Was there any loan or extension of credit by the plan to the employer, any fiduciary, any of the five most highly paid employees of the employer, any owner of a 10% or more interest in the employer, or relatives of any such persons? | 15d | | | |
| e | Did the plan acquire or hold any employer security or employer real property? | 15e | | | |
| f | Has the plan granted an extension on any delinquent loan owed to the plan? | 15f | | | |
| g | Has the employer owed contributions to the plan which are more than 3 months overdue? | 15g | | | |
| h | Were any loans by the plan or fixed income obligations due the plan classified as uncollectible or in default as of the close of the plan year? | 15h | | | |
| i | Has any plan fiduciary had a financial interest in excess of 10% in any party providing services to the plan or received anything of value from any such party? | 15i | | | |
| j | Did the plan hold at any time 20% or more of its assets in any single security, debt, mortgage, parcel of real estate, or partnership/joint venture interests? | 15j | | | |
| k | Did the plan at any time engage in any transaction or series of related transactions involving 20% or more of the current value of plan assets? | 15k | | | |
| l | Were there any noncash contributions made to the plan the value of which was set without an appraisal by an independent third party? | 15l | | | |
| m | Were there any purchases of nonpublicly traded securities by the plan the value of which was set without an appraisal by an independent third party? | 15m | | | |
| n | Has the plan failed to provide any benefit when due under the terms of the plan because of insufficient assets? | 15n | | | |

16a Is the plan covered under the Pension Benefit Guaranty Corporation termination insurance program?
☐ Yes ☐ No ☐ Not determined

b If a is "Yes" or "Not determined," enter the employer identification number and the plan number used to identify it.
Employer identification number ▶ Plan number ▶

* U.S. GPO: 1988 — 205-306



Department of the Treasury
Internal Revenue Service

Department of Labor
Pension and Welfare Benefits Administration

Pension Benefit Guaranty Corporation

# 1988 Instructions for Form 5500-R

## Registration Statement of Employee Benefit Plan (With fewer than 100 participants)

*(Code references are to the Internal Revenue Code. ERISA refers to the Employee Retirement Income Security Act of 1974.)*

**Paperwork Reduction Act Notice.**—We ask for this information to carry out the law as specified in ERISA and Code section 6039D. We need it to determine whether the plan is operating according to the law. You are required to give us this information.

The time needed to complete and file the forms listed below reflect the combined requirements of the Internal Revenue Service, Department of Labor, Pension Benefit Guaranty Corporation and the Social Security Administration. These times will vary depending on individual circumstances. The estimated average times are:

| | Recordkeeping | Learning about the law or the form | Preparing the form | Copying, assembling, and sending the form to IRS |
|---|---|---|---|---|
| Form 5500-R | 13 hrs., 26 min. | 3 hrs., 37 min. | 5 hrs., 50 min. | 32 min. |
| Schedule A (Form 5500) | 17 hrs., 28 min. | 28 min. | 1 hr., 42 min. | 16 min. |
| Schedule B (Form 5500) | 25 hrs., 50 min. | 1 hr. | 1 hr., 27 min. | ----- |
| Schedule P (Form 5500) | 2 hrs., 9 min. | 1 hr., 24 min. | 1 hr., 29 min. | ----- |
| Schedule SSA (Form 5500) | 6 hrs., 42 min. | 12 min. | 19 min. | ----- |

If you have comments concerning the accuracy of these time estimates or suggestions for making these forms more simple, we would be happy to hear from you. You can write to the **Internal Revenue Service,** Washington, DC 20224, Attention: IRS Reports Clearance Officer, TR:FP; or the **Office of Management and Budget,** Paperwork Reduction Project, Washington, DC 20503.

File 1988 forms for plan years that started in 1988. If the plan year differs from the calendar year, fill in the fiscal year space just under the form title. For a short plan year, see instruction B, Section 1.

***Reminder:*** In addition to filing this form with IRS, plans covered by the Pension Benefit Guaranty Corporation termination insurance must file their Annual Premium Payment, PBGC Form 1, directly with that agency.

**Penalties.**—ERISA and the Code provide for the assessment and imposition of penalties for not giving complete information and not filing statements and returns/reports. Certain penalties are administrative; that is, they may be imposed or assessed by one of the governmental agencies delegated to administer the collection of Form 5500 series data. Others require a legal conviction.

**A. Administrative Penalties.**—Listed below are various penalties for not meeting the Form 5500 series filing requirements. One or more of the following five penalties may be imposed or assessed in the event of incomplete filings and/or filings received after the date they are due unless it is determined that your explanation for failure to file properly is for reasonable cause:

1. A penalty of up to $1,000 a day for each day a plan administrator fails or refuses to file a complete return/report. See ERISA section 502(c)(2) and 29 CFR 2560.502c-2.
2. A penalty of $25 a day (up to $15,000) for not filing returns for certain plans of deferred compensation, certain trusts and annuities, and bond purchase plans by the due date(s). See Code section 6652(e). This penalty also applies to returns required to be filed under Code section 6039D.
3. A penalty of $1 a day (up to $5,000) for each participant for whom a registration statement (Schedule SSA (Form 5500)) is required but not filed. See Code section 6652(d)(1).
4. A penalty of $1 a day (up to $1,000) for not filing a notification of change of status of a plan. See Code section 6652(d)(2).
5. A penalty of $1,000 for not filing an actuarial statement. See Code section 6692.

**B. Other Penalties.**

1. Any individual who willfully violates any provision of Part 1 of Title I of ERISA shall be fined not more than $5,000 or imprisoned not more than 1 year, or both. See ERISA section 501.
2. A penalty up to $10,000, 5 years imprisonment, or both, for making any false statement or representation of fact, knowing it to be false, or for knowingly concealing or not disclosing any fact required by ERISA. See section 1027, Title 18, U.S. Code, as amended by section 111 of ERISA.

### How To Use This Instruction Booklet

The instructions are divided into four main sections.


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|---|---|
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| Due date | 1 |
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| **Section 2** | |
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| Other Filings | 3 |
| **Section 3** | |
| General Information—Final return/report; signature and date; reproductions; change in plan year; and amended return/report | 3 |
| **Section 4** | |
| Specific Instructions for Form 5500-R listed in numerical sequence | 3 |


## Section 1

**A. Who Must File.**—Any administrator or sponsor of an employee benefit plan subject to ERISA must file information about each such plan **every year** (Code section 6058 and ERISA sections 104 and 4065). Also required to file, for each year, is every employer maintaining a specified fringe benefit plan as described in Code section 6039D. The Internal Revenue Service (IRS), Department of Labor (DOL), and Pension Benefit Guaranty Corporation (PBGC) have consolidated their returns and report forms to minimize the filing burden for plan administrators and employers. The chart on page 4 gives a brief guide to the type of return/report to be filed.

**Reminder.** Form 5500-R cannot be filed unless the plan has filed a Form 5500-C for at least one of the two immediately preceding plan years. The exclusions from the filing requirements for Form 5500-R and Form 5500-C are identical. See Form 5500-C instructions.

**B. When To File.**—File all required forms and schedules by the last day of the 7th month after the plan year ends. For a short plan year, file the form and applicable schedules by the last day of the 7th month after the short plan year ends. For purposes of this return/report, the short plan year ends upon the date of the change in accounting period or upon the complete distribution of the assets of the plan. (Also see Section 3.) If the current year Form 5500-R is not available before the due date of your short plan year return/report, use the latest year form available and change the date printed on the return/report to the current year. Also show the dates your short plan year began and ended.

***Request for Extension of Time To File.***—An extension of time up to 2½ months may be granted for filing returns/reports if **Form 5558,** Application for Extension of Time To File Certain Employee Plan Returns, is filed before the normal due date of the return/report.

**Exception.** *Single-employer plans and plans of a controlled group of corporations that file consolidated Federal income tax returns are automatically granted an extension of time to file Form 5500, 5500-C, or 5500-R to the due date of the Federal income tax return of the single employer or controlled group of corporations if all the following conditions are met:*

*1. The plan year and the tax year coincide.*

*2. The single employer or the controlled group has been granted an extension of time to file its Federal income tax return to a date later than the normal due date for filing the Form 5500, 5500-C, or 5500-R.*

*3. A copy of the IRS extension of time to file the Federal income tax return is attached to each Form 5500, 5500-C, or 5500-R filed with IRS.*

**Note:** *An extension of time to file the return/report does not operate as an extension of time to file the PBGC Form 1.*

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**C. Where To File.**—Please file the return/report with the Internal Revenue Service Center indicated below. No street address is needed.

| If the principal office of the plan sponsor or the plan administrator is located in ▼ | Use the following Internal Revenue Service Center address ▼ |
|---|---|
| Connecticut, Delaware, District of Columbia, Foreign Address, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, Vermont, Virginia | Holtsville, NY 00501 |
| Alabama, Alaska, Arkansas, California, Florida, Georgia, Hawaii, Idaho, Louisiana, Mississippi, Nevada, North Carolina, Oregon, South Carolina, Tennessee, Washington | Atlanta, GA 39901 |
| Arizona, Colorado, Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Ohio, Oklahoma, South Dakota, Texas, Utah, West Virginia, Wisconsin, Wyoming | Memphis, TN 37501 |
| All Form 5500EZ filers | Andover, MA 05501 |

Investment arrangements filing directly with DOL should file using the applicable address:

(1) Common/Collective Trust (OR)
Pooled Separate Account
Pension and Welfare Benefits Administration
U. S. Department of Labor
Room N5644
200 Constitution Avenue, NW.
Washington, DC 20210

(2) Master Trust
Pension and Welfare Benefits Administration
U. S. Department of Labor
Room N5644
200 Constitution Avenue, NW.
Washington, DC 20210

(3) 103-12 Investment Entity
Pension and Welfare Benefits Administration
U. S. Department of Labor
Room N5644
200 Constitution Avenue NW.
Washington, DC 20210

## Section 2
## What To File

The circumstances that dictate which form should be filed are described below. In addition, there are schedules that may need to be attached to the return/report. These are also described below. A brief guide illustrating which forms and schedules are required by different types of plans and filers may be found on page 4. Finally, this section also contains a description of special filing requirements for plans that invest in certain investment arrangements.

### Forms

***Form 5500.***—File **Form 5500**, Annual Return/Report of Employee Benefit Plan, annually for each plan with 100 or more participants at the beginning of the plan year.

***Form 5500-C.***—File **Form 5500-C**, Return/Report of Employee Benefit Plan, for each pension benefit plan, welfare benefit plan, and fringe benefit plan (unless otherwise exempted) with fewer than 100 participants (one-participant plans see "Form 5500EZ", below) at the beginning of the plan year. File Form 5500-C for the first plan year, the year for which the final return/report is due, and for plan years in which a Form 5500-R is not filed as explained below.

***Form 5500EZ.***—**Form 5500EZ**, Annual Return of One-Participant Pension Benefit Plan, should be filed by most one-participant plans.

A one-participant plan is: (1) a pension benefit plan that covers only an individual or an individual and his or her spouse who wholly own a trade or business, whether incorporated or unincorporated, or (2) a pension benefit plan for a partnership that covers only the partners or the partners and the partners' spouses.

See Form 5500EZ and its instructions to see if the plan meets the requirements for filing the form.

***Form 5500-R.***—**Form 5500-R**, Registration Statement of Employee Benefit Plan (with fewer than 100 participants), may be filed instead of a Form 5500-C for this plan year provided: (a) this is not the first plan year, (b) this is not a year for which the final return/report is due, and (c) a Form 5500-C has been filed for one of the prior 2 plan years. The Form 5500-R should not be filed if: (a) this plan year is the first plan year, (b) this is the plan year for which a final return/report is due, or (c) the Form 5500-R has been filed for both of the prior 2 plan years.

Any plan may choose not to file Form 5500-R if the plan files the Form 5500-C instead.

**Note:** *Generally, under the filing requirements explained above, if the number of plan participants increases from under 100 to 100 or more, or decreases from 100 or more to under 100, from one year to the next, you would have to file a different form from that filed the previous year. However, there is an exception to this rule. You may file the same form you filed last year, even if the number of participants changed, provided that at the beginning of this plan year the plan had at least 80 participants, but not more than 120.*

### Items To Be Completed on Form 5500-R

Certain kinds of plans and certain kinds of filers that are required to submit Form 5500-R are not required to complete the entire form. These are described below, by type of plan. Check the list of headings to see if your plan is affected.

**1. Welfare Benefit Plans.**—Welfare benefit plans must complete the following items on the Form 5500-R: 1 through 6c; 7a, 8a and b; 9; 10; 11; and 13 through 15.

**2. Fringe Benefit Plans.**—A Form 5500-R filed only because of Code section 6039D (i.e., for a fringe benefit plan) need complete only items 1 through 6, 7a, and 14b.

If the plan is also a welfare benefit plan required to file a Form 5500-R (see "Who Must File" on page 1), complete the above items and those specified for welfare benefit plans in "1" above.

**3. Pension Plans.**—In general, most pension plans (defined benefit and defined contribution) are required to complete all items on the form. However, some items need not be completed by certain types of pension plans, as described below.

a. Plans exclusively using a tax deferred annuity arrangement under Code section 403(b)(1). These plans need only complete items 1 through 5, 6b, and 8.

b. Plans exclusively using a custodial account for regulated investment company stock under Code section 403(b)(7). These plans need only complete items 1 through 5, 6b, and 8.

c. Individual retirement account plan. A pension plan utilizing individual retirement accounts or annuities (as described in Code section 408) as the sole funding vehicle for providing benefits need only complete items 1 through 5, 6b, and 8.

d. Fully insured pension plan. A pension benefit plan providing benefits exclusively through an insurance contract, or contracts that are fully guaranteed, and that meets all of the conditions of 29 CFR 2520.104-44 need only complete items 1 through 12, 14, and 15a and b. A pension plan that includes both insurance contracts of the type described in 29 CFR 2520.104-44 as well as other assets should limit its reporting in item 13 to those other assets.

For purposes of the annual return/report and the alternative method of compliance set forth in 29 CFR 2520.104-44, a contract is considered to be "allocated" only if the insurance company or organization that issued the contract unconditionally guarantees, upon receipt of the required premium or consideration, to provide a retirement benefit of a specified amount, without adjustment for fluctuations in the market value of the underlying assets of the company or organization, to each participant, and each participant has a legal right to such benefits that is legally enforceable directly against the insurance company or organization.

e. Nonqualified plans maintained outside the U.S. — Nonqualified pension benefit plans maintained outside the United States primarily for nonresident aliens required to file a return/report need only complete items 1 through 8 and 11 through 15.

### Schedules

The various schedules to be attached to the return/report are listed below.

**Note:** *All attachments to the Forms 5500, 5500-C, and 5500-R must include the name of the plan and the EIN and plan number as found in items 5a, 1b, and 5c, respectively.*

***Attach Schedule A (Form 5500), Insurance Information,*** to Form 5500, 5500-C, or 5500-R if any benefits under the plan are provided by an insurance company, insurance service, or other similar organization (such as Blue Cross, Blue Shield, or a health maintenance organization).

**Exception.** *Schedule A (Form 5500) is not needed if the plan covers: (1) only an individual, or an individual and his or her spouse, who wholly owns a trade or business, whether incorporated or unincorporated; or (2) a partner in a partnership, or a partner and his or her spouse.*

Do not file a Schedule A (Form 5500) with a Form 5500EZ.

***Attach Schedule B (Form 5500), Actuarial Information,*** to Forms 5500, 5500-C, 5500-R, or 5500EZ for most defined benefit pension plans. See instructions for Schedule B.

***Schedule SSA (Form 5500), Annual Registration Statement Identifying Separated Participants With Deferred Vested Benefits,*** may be needed for separated participants. See "When To Report Separated Participants" in the instructions for Schedule SSA.

***Schedule P (Form 5500), Annual Return of Fiduciary of Employee Benefit Trust,*** Any fiduciary (trustee or custodian) of an organization that is qualified under Code section 401(a) and exempt from tax under Code section 501(a) who wants to protect the organization under the statute of limitations provided in Code section 6501(a) must file a Schedule P (Form 5500).

File the Schedule P (Form 5500) as an attachment to Form 5500, 5500-C, 5500-R, or 5500EZ for the plan year in which the trust year ends.

### Other Filings

Reporting requirements for investment arrangements filing with the Department of Labor (master trusts, common/collective trusts, pooled separate accounts, etc.) are printed in the Form 5500-C instructions under "Other Filings."





## Section 3
## General Information

**Final Return/Report.**—If all assets under the plan (including insurance/annuity contracts) have been distributed to the participants and beneficiaries or distributed to another plan (and when all liabilities for which benefits may be paid under a welfare plan have been satisfied), check the "final return" box at the top of the Form 5500 or Form 5500-C filed for such plan. The year of complete distribution is the last year a return/report must be filed for the plan. For purposes of this paragraph, a complete distribution will occur in the year in which the assets of a terminated plan are brought under the control of PBGC.

For a defined benefit plan covered by PBGC, a PBGC Form 1 must be filed and a premium must be paid until the end of the plan year in which the assets are distributed or brought under the control of PBGC.

Filing the return/report marked "final return" and indicating that the plan terminated satisfies the notification requirement of Code section 6057(b)(3).

**Signature and Date.**—The plan administrator must sign and date all returns/reports filed. In addition the sponsoring employer must sign a return/report filed for a single-employer plan or a plan required to file only because of Code section 6039D.

When a joint employer-union board or committee is the plan sponsor or plan administrator, at least one employer representative and one union representative must sign and date the return/report.

Participating employers in a multiple-employer plan (other), who are required to file Form 5500-C or 5500-R, are required to sign the return/report. The plan administrator need not sign the Form 5500-C or 5500-R filed by the participating employer.

**Reproductions.**—Original forms are preferable, but a clear reproduction of the completed form is acceptable. Sign the return after it is reproduced. All signatures must be original.

**Change in Plan Year.**—Generally only defined benefit pension plans need to get prior approval for a change in plan year. (See Code section 412(c)(5).) Rev. Proc. 87-27, 1987 CB-1 769 explains the procedure for automatic approval of a change in plan year. A pension benefit plan that would ordinarily need to obtain approval for a change in plan year under Code section 412(c)(5) is granted an automatic approval for a change in plan year if all the following criteria are met:

1. No plan year is more than 12 months long.

2. The change will not delay the time when the plan would otherwise have been required to conform to the requirements of any statute, regulation, or published position of the IRS.

3. The trust, if any, retains its exempt status for the short period required to effect the change, as well as for the taxable year immediately preceding the short period.

4. All actions necessary to implement the change in plan year, including plan amendment and a resolution of the board of directors (if applicable), have been taken on or before the last day of the short period.

5. No change in plan year has been made for any of the preceding plan years.

6. In the case of a defined benefit plan, deductions are taken in accordance with section 5 of Rev. Proc. 87-27.

For the first return/report that is filed following the change in plan year, check item 1d if Form 5500-R is being filed.

**Amended Return/Report.**—If you file an amended return/report, check the "amended" box at the top of the form. When filing an amended return, be sure to answer all questions and put a circle around the numbers of the items that have been amended.

**How the Annual Return/Report Information May Be Used.**—All Form 5500 series returns/reports will be subjected to a computerized review. It is, therefore, in the filer's best interest that the responses accurately reflect the circumstances they were designed to report. Annual reports filed under Title I of ERISA must be made available by plan administrators to plan participants and by the Department of Labor to the public pursuant to ERISA section 104.

## Section 4
## Specific Instructions for Form 5500-R

**Important:** Complete all items on the Form 5500-R with respect to the plan year, unless otherwise explicitly stated in these item-by-item instructions or on the form itself. Therefore, your responses usually apply to the year entered or printed at the top of the first page of the form.

**First Item at the Top of the Form.**—Complete the space for dates when:

(1) the 12-month plan year is not a calendar year, or (2) the plan year is less than 12 months (short plan year).

**1a.** If you did not receive a preaddressed mailing label, enter the name and address of the plan sponsor. If the plan covers only the employees of one employer, enter the employer's name.

If you received a Form 5500-R with a preaddressed mailing label, please attach it in the name and address area of the form you file. If the name or address on the label is wrong, draw a line through the incorrect part and correct it.

The term "plan sponsor" means—

*(i)* the employer, for an employee benefit plan that a single employer established or maintains;

*(ii)* the employee organization in the case of a plan of an employee organization; or

*(iii)* the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the plan, if the plan is established or maintained jointly by one or more employers and one or more employee organizations, or by two or more employers.

Include enough information in 1(a) to describe the sponsor adequately. For example, "Joint Board of Trustees of Local 187 Machinists" rather than just "Joint Board of Trustees."

**1b.** Enter the 9-digit employer identification number (EIN) assigned to the plan sponsor/employer. For example, 00-1234567.

Employers and plan administrators who do not have an EIN should apply for one on Form SS-4, available from most IRS or Social Security Administration offices. Send Form SS-4 to the same Internal Revenue Service Center to which this form will be sent.

Plan sponsors are reminded that they should use the trust EIN when opening a bank account or conducting other transactions for a plan that requires an employer identification number. The trust may apply for an EIN as explained in the preceding paragraph.

A plan of a controlled group of corporations whose sponsor is more than one of the members of the controlled group should insert only the EIN of one of the sponsoring members. This EIN must be used in all subsequent filings.

If the plan administrator is a group of individuals, get a single EIN for the group. When you apply for a number, enter on line 1 of Form SS-4 the name of the group, such as "Joint Board of Trustees of the Local 187 Machinists' Retirement Plan."

**Note:** *Although Employer Identification Numbers (EINs) for funds (trusts or custodial accounts) associated with plans are not required to be furnished on the Form 5500 series returns/reports, the IRS will issue EINs for such funds for other reporting purposes. EINs may be obtained by filing Form SS-4 as explained in 1b above.*

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**2a.** If the document constituting the plan appoints or designates a plan administrator other than the sponsor, enter the administrator's name and address. If the plan administrator is also the sponsor, enter "Same." If filing as a group insurance arrangement, enter "Same." If 2a is the "Same," then items 2b and 2c should be left blank.

The term "administrator" means—

*(i)* the person or group of persons specified as the administrator by the instrument under which the plan is operated;

*(ii)* the plan sponsor/employer if an administrator is not so designated; or

*(iii)* any other person prescribed by regulations of the Secretary of Labor if an administrator is not designated and a plan sponsor cannot be identified.

**2b.** A plan administrator must have an EIN for reporting purposes. Enter the plan administrator's 9-digit EIN here. If the plan administrator has no EIN, apply for one as explained in 1b above.

Employees of an employer are not plan administrators unless so designated in the plan document, even though they engage in administrative functions of the plan. If an employee of the employer is designated as the plan administrator, that employee must get an EIN.

**3.** If you answer "No," enter the name, address, and EIN of the plan sponsor and/or the plan administrator shown on the prior return/report.

**3c.** Indicate if the change in 3a is only a change in sponsorship. "Change in sponsorship" means the plan's sponsor has been changed but no assets or liabilities have been transferred to another plan(s), the plan has not terminated or merged with any other plan, and so forth.

**4a.** Check for a plan in which more than one employer participates, and some of the employees are members of a controlled group of corporations (Code section 414(b)) or members of a group of employers under common control (Code section 414(c)).

**4c.** Check for a multiemployer plan as defined in Code section 414(f) and ERISA sections 3(37) and 4001(a)(3).

**4e.** Check for a multiple-employer plan (other) filed by the plan administrator for the plan as a whole.

**4f. Exceptions to b and e.** Each participating employer in a multiple-employer plan (other) pension benefit plan and nonmember employers participating in a plan of a controlled group of corporations or businesses need to file either Form 5500-C or Form 5500-R, regardless of the number of participants. Complete items 1, 2, 3, 4f, 5, 6, 9, and 22 on Form 5500-C, and items 1, 2, 3, 4f, 5, 6, 7, 8a, and 8b on Form 5500-R.

**5a.** Enter the formal name of the plan, or enough information to identify the plan.

**5b.** Enter the date the plan first became effective.

**5c.** Enter the 3-digit number the employer or plan administrator assigned to the plan. All welfare plan numbers and Code section 6039D plan numbers start at 501. All other plans start at 001.

Once you use a plan number, continue to use it for that plan on all future returns/reports. Do not use it for any other plan even if you terminated the first plan.

**6a.** Defined benefit plan means a pension benefit plan other than a defined contribution plan.

**6b.** Defined contribution plan means a plan which provides for an individual account for each participant and for benefits based solely on the amount contributed to the participant's account, and any income, expenses, gains and losses, and any forfeitures of accounts of other participants that may be allocated to such participant's account. Examples of defined contribution plans are profit-sharing, stock bonus, and money purchase plans.

**6d, e, and f.** Plans described in Code section 120 (group legal services plans), check box 6d. Plans described in Code section 125 (cafeteria plans), check box 6e. Programs described in Code section 127 (educational assistance programs), check box 6f.

**6j.** If your pension plan is not included in 6a or b, check j and specify the applicable Code section. For example, Code section 403(b)(1) annuity arrangements and Code section 408(c) individual retirement account trusts of employers, would check j and enter the applicable Code section 403(b)(1) or 408(c).

**6k.** Check "unfunded" if the plan is (1) unfunded, (2) fully insured, or (3) a combination of unfunded/insured. For further information, see page 2, section 2B(a) of the Form 5500-C instructions.

**7.** The definition of "participant" in the instructions below is only for purposes of item 7 of this form.

For welfare plans, dependents are considered to be neither participants nor beneficiaries. For pension benefit plans, "alternate payees" entitled to benefits under a qualified domestic relations order are not to be counted as participants for this item.

"Participant" means any individual who is included in one of the categories below.

(i) Active participants include any individuals who are currently in employment covered by a plan and who are earning or retaining credited service under a plan. This category includes any individuals who are: (A) currently below the integration level in a plan that is integrated with social security, and/or (B) eligible to elect to have the employer make payments to a Code section 401(k) qualified cash or deferred arrangement. Active participants also include any nonvested individuals who are earning or retaining credited service under a plan. This category does not include nonvested former employees who have incurred the greater of 5 consecutive 1 year breaks in service or the break in service period specified in the plan.

For determining if active participants are fully vested, partially vested, or nonvested, consider vesting in employer contributions only.

For purposes of Code section 6039D, "participant" means any individual who, for a plan year, has had at least one dollar excluded from income by reason of Code section 120, 125, or 127. If you are filing Form 5500-R for a plan that is required to file under Title I of ERISA and under Code section 6039D, the preceding sentence does not apply.

**Summary of Filing Requirements for Employers and Plan Administrators**
**(File forms ONLY with IRS)**

| Type of plan | What to file | When to file |
|---|---|---|
| Most pension plans with only one participant or one participant and that participant's spouse | Form 5500EZ | File all required forms and schedules for each plan by the last day of the 7th month after the plan year ends. |
| Pension plan with fewer than 100 participants | Form 5500-C or 5500-R | |
| Pension plan with 100 or more participants | Form 5500 | |
| Annuity under Code section 403(b)(1) or trust under Code section 408(c) | Form 5500, 5500-C, or 5500-R | |
| Custodial account under Code section 403(b)(7) | Form 5500, 5500-C, or 5500-R | |
| Welfare benefit plan with 100 or more participants* | Form 5500 | |
| Welfare benefit plan with fewer than 100 participants* (see exception on page 1 of these instructions)* | Form 5500-C or 5500-R | |
| Pension or welfare plan with 100 or more participants (see Form 5500 instructions) | Financial statements, schedules, and accountant's opinion | |
| Pension or welfare plan with benefits provided by an insurance company | Schedule A (Form 5500) | |
| Pension plan that requires actuarial information | Schedule B (Form 5500) | |
| Plans with 100 or more participants | Schedule C (Form 5500) | |
| Pension plan filing a registration statement identifying separated participants with deferred vested benefits from a pension plan | Schedule SSA (Form 5500) | |

*This includes Code section 6039D filers.





(ii) Inactive participants receiving benefits are any individuals who are retired or separated from employment covered by the plan and who are receiving benefits under the plan. This includes former employees who are receiving group health continuation coverage benefits pursuant to Part 6 of ERISA who are covered by the employee welfare benefit plan. This category does not include any individual to whom an insurance company has made an irrevocable commitment to pay all the benefits to which the individual is entitled under the plan.

(iii) Inactive participants entitled to future benefits are individuals who are retired or separated from employment covered by the plan and who are entitled to begin receiving benefits under the plan in the future. This category does not include any individual to whom an insurance company has made an irrevocable commitment to pay all the benefits to which the individual is entitled under the plan.

(iv) Deceased participants are any deceased individuals who have one or more beneficiaries who are receiving or are entitled to receive benefits under the plan. This category does not include an individual if an insurance company has made an irrevocable commitment to pay all the benefits to which the beneficiaries of that individual are entitled under the plan.

**7b(i).** If "Yes," file Schedule SSA (Form 5500) as an attachment to Form 5500-R.

Plan administrators: Code section 6057(e) provides that the plan administrator must give each participant a statement showing the same information for that participant as is reported on Schedule SSA.

**8a.** Check "Yes" if the plan was terminated or if the plan was merged or consolidated into another plan. Enter year of termination if applicable.

**8b.** If the plan was terminated and all trust assets were not distributed, file a return/report for each year the trust has assets. In that case, the return/report must be filed by the plan administrator, if designated, or by the person or persons who actually control the plan's property.

If all assets were used to buy individual annuity contracts and the contracts were distributed to the participants, check "Yes."

If all the trust assets were transferred to another plan, check "Yes."

**9.** Check "Yes" if either the contributions to the plan or the benefits paid by the plan are subject to the collective bargaining process, even if the plan is not established and administered by a joint board of trustees. Check "Yes" even if only some of those covered by the plan are members of a collective bargaining unit which negotiates benefit levels on its own behalf. The benefit schedules need not be identical for all employees under the plan.

**10.** The insurance company (or similar organization) which provides benefits is required to provide the plan administrator with the information needed to complete the return/report, pursuant to ERISA section 103(a)(2). If you do not receive this information in a timely manner, contact the insurance company (or similar organization). If information is missing on Schedule A due to a refusal to provide this information, note this on Schedule A. If there are no Schedule(s) A attached, enter "0."

**11a.** Check "Yes" if an amendment to the plan was adopted in this plan year, regardless of the effective date of the amendment.

**11b.** Check "Yes" only if the accrued benefits were retroactively reduced. For example, a plan provides a benefit of 2% for each year of service, but the plan is amended to change the benefit to 1½% a year for all years of service under the plan.

**11c.** Check "Yes" only if an amendment changed the information previously provided to participants by the summary plan description or summary description of modifications.

**11d.** A revised summary plan description or summary description of modifications must be filed with DOL and distributed to all plan participants and pension plan beneficiaries no later than 210 days after the close of the plan year in which the amendment(s) was adopted. If the material was distributed and filed since the amendments were adopted (even if after the end of the plan year), check "Yes" to item 11d.

**12a.** Check "Yes" if this is a pension plan subject to minimum funding standards that has experienced a funding deficiency. If item 12a is answered "Yes," and item 6a indicates this is a defined benefit pension plan, complete and attach Schedule B (Form 5500) to this registration statement. All defined benefit plans are subject to minimum funding standards except fully insured plans, church plans, governmental plans, and certain other plans covered by Code section 412(h). Code section 412 describes the minimum funding standards applicable to defined contribution plans qualified under Code section 401(a) or 403(a). A funding deficiency occurs if the amount of required employer contribution for the plan year exceeds the actual contribution paid by the employer for the plan year.

**12b.** If item 12a is answered "Yes," this item must be answered. If a funding deficiency occurs, Form 5330 must be filed with the IRS to pay the excise tax on the amount of the deficiency.

**13 and 14.** Use either the cash, modified accrual, or accrual basis for recognition of transactions in items 13 and 14, as long as one method is used consistently. Round off all amounts in items 13 and 14 to the nearest dollar. Where it is used in these instructions, "current value" means fair market value where available. Otherwise, it means the fair value as determined in good faith under the terms of the plan by a trustee or a named fiduciary, assuming an orderly liquidation at the time of the determination.

If the assets of two or more plans are maintained in one trust, such as when an employer has two plans that are funded through a single trust (except investment arrangements filing directly with DOL), complete items 13 and 14 by entering the plan's allocable part of each line item.

If assets of one plan are maintained in two or more trust funds, report the combined financial information in 13 and 14. Fully insured defined benefit or defined contribution pension plans meeting the conditions of 29 CFR 2520.104-44 need not complete items 13 and 14.

For purposes of the annual return/report and the alternative method of compliance set forth in 29 CFR 2520.104-44, a contract is considered to be "allocated" only if the insurance company or organization that issued the contract unconditionally guarantees, upon receipt of the required premium or consideration, to provide a retirement benefit of a specified amount, without adjustment for fluctuations in the market value of the underlying assets of the company or organization, to each participant, and each participant has a legal right to such benefits which is legally enforceable directly against the insurance company or organization.

**13a.** Enter the total plan assets at the beginning and end of the plan year. Plan assets may include, among other things:

(1) Cash including both interest and noninterest bearing. This includes all cash on hand or in a financial institution including money market funds.

(2) Receivables including all contributions due to the plan from the employer and participants, income earned, but not yet received by the plan and receivables from any other source.

(3) Investments including securities (stocks, bonds, U.S. Government obligations, municipal obligations, etc.); real property (land, buildings, gold, furniture, equipment, etc.); loans (mortgages, promissory notes, etc.); and all other investments (certificates of deposit, repurchase agreements, land contracts, units of participation in common/collective trusts and pooled separate accounts, shares of registered investment companies (mutual funds), interests in master trusts and 103-12 IEs, etc.).

Plans holding units of participation in common/collective trusts and/or pooled separate accounts must attach to the Form 5500-R either the statement of assets and liabilities of the common/collective trust and/or pooled separate account or the required certification. For details, see 29 CFR sections 2520.103-3, 2520.103-4, 2520.103-5, and 2520.103-9.

Plans in a master trust must include the value of the plan's interest in the master trust which is the sum of the net values of the plan's interest in all of the master trust investment accounts. The net values of such interests are obtained by multiplying the plan's percentage interest in each master trust investment account by the net assets of the investment account (total assets minus total liabilities) at the beginning and end of the plan year.

**13b.** Enter the total liabilities at the beginning and end of the plan year. Liabilities to be entered here do not include the value of future pension payments to plan participants; however, the amount to be entered in item 13b for accrual basis filers includes, among other things:

(1) Benefit claims that have been processed but have not been paid,

(2) Accounts payable obligations owed by the plan that were incurred in the normal operations of the plan but have not been paid,



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(3) Other liabilities such as acquisition indebtedness and any other amount owed by the plan.

**13c.** Enter the net assets as of the beginning and end of the plan year. Subtract item 13b from item 13a.

**14a.** Enter all plan income during the year. Plan income received and/or receivable may include, among other things:

(1) Interest on investments (including money market funds, sweep accounts, STIF accounts, etc.)

(2) Dividends. (Accrual basis plans should include dividends declared for all stock held by the plan even if the dividends have not been received as of the end of the plan year.)

(3) Rents from income producing property owned by the plan.

(4) Royalties.

(5) Contributions including securities or other noncash property contributed to the plan.

(6) Net gains or loss from the sale of assets.

(7) Other income such as unrealized appreciation (depreciation) in plan assets. To compute this amount subtract the current value of all assets at the beginning of the year plus the cost of any assets acquired during the plan year from the current value of all assets at the end of the year minus assets disposed of during the plan year. A negative figure should be placed in parentheses.

**14b.** Enter all the expenses of the plan during the year. Expenses (paid and/or payable) may include, among others:

(1) Direct payments made to participants or beneficiaries in cash, securities or other property. If the securities or other property are distributed to plan participants or beneficiaries, include the fair market value (or a good faith estimate if fair market value is not available) on the date the property was distributed.

(2) Payments to insurance carriers and similar organizations (including Blue Cross, Blue Shield and health maintenance organizations).

(3) Payments to provide benefits for such things as legal services, day care services, training and apprenticeship services.

(4) Administrative expenses including:

(A) Salaries to employees of the plan.

(B) Expenses for accounting, actuarial, legal, and investment services.

(C) Fees and expenses for trustees including reimbursement for travel, seminars and meeting expenses.

(D) Fees paid for valuations and appraisals.

If this Form 5500-R is filed only for purposes of fulfilling the requirements of Code section 6039D, i.e., for a fringe benefit plan but not for a welfare benefit plan, do not include overhead expenses such as utilities and photocopying expenses. If this filing is only for an educational assistance program described in Code section 127, do not include expenses for job-related training that are deductible under Code section 162.

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**14c.** Enter the net income (loss). Subtract item 14b from item 14a. If the result is a negative number, enter it in parentheses.

**14d.** Enter the total cash contributions received and (for accrual basis plans) due to be received from the employer, participants and/or any other source.

**14e.** Include payments made (and for accrual basis filers payments due) to participants or beneficiaries in cash, securities or other property and to insurance carriers (or similar organizations such as Blue Cross, Blue Shield, and health maintenance organizations, etc.). If securities or other property are distributed to plan participants or beneficiaries, include the fair market value (or a good faith estimate if fair market value is not available) on the date of distribution.

**15.** Check "Yes" or "No" and enter the total amount (except 15i) for all "Yes" responses. Round off all amounts to the nearest dollar.

**15a.** Check "Yes" and indicate the aggregate amount of coverage available for all claims if every plan official who handles plan funds is covered by a bond. Otherwise, check "No." Generally, every plan official of an employee benefit plan who "handles" funds or other property of such plan must be bonded. A plan administrator, officer, or employee shall be deemed to be "handling" funds or other property of a plan, so as to require bonding, whenever his or her duties or activities with respect to given funds are such that there is a risk that such funds could be lost in the event of fraud or dishonesty on the part of such person, acting either alone or in collusion with others. Section 412 of ERISA and the regulations found at 29 CFR 2580 provide the bonding requirements including the definition of "handling" (29 CFR 2580.412-6), the permissible forms of bonds (29 CFR 2580.412-10), and certain exemptions such as the exemption for unfunded plans, banks and insurance companies (ERISA section 412) and the exemption allowing plan officials to purchase bonds from surety companies authorized by the Secretary of the Treasury as acceptable reinsurers on Federal bonds (29 CFR 2580.412-23).

Check "Yes" only if the plan itself (as opposed to the plan sponsor) is a named insured under a fidelity bond covering plan officials.

Plans are permitted under certain conditions to purchase fiduciary liability insurance. These policies do not protect the plan from dishonest acts and are not bonds which should be reported in item 15.

**15b.** If item 15a is answered "Yes," this must be answered. Check "Yes" to item 15b if the plan has suffered or discovered any loss as the result of a dishonest or fraudulent act(s). If "Yes," enter the full amount of the loss. If the full amount of the loss has not yet been determined, provide and disclose that the figure is an estimate, such as "approximately $1,000."

**Note:** *Willful failure to report is a criminal offense. See ERISA section 501.*

**15c.** For purposes of item 15, the term "employer" includes affiliates of the employer. In determining the five most highly paid employees, use all compensation paid including cash, bonuses, and noncash payments (e.g., the use of a car). A fiduciary is a person with respect to a plan to the extent: (1) he or she exercises any discretionary authority or discretionary control with respect to the management of such plan or exercises any authority or control with respect to the management or disposition of its assets, (2) he or she renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan, or has any authority or responsibility to do so, or (3) he or she has any discretionary authority or discretionary responsibility in the administration of such plan.

**15d.** Relatives include spouses, siblings, ancestors, lineal descendents (e.g., children, grandchildren, etc.) and spouses of lineal descendents. If 15c is answered "Yes," enter the total amount of these transactions.

**15e.** An "employer security" is a security issued by an employer (including affiliates) of employees covered by the plan. These may include common stocks, preferred stocks, bonds, zero coupon bonds, debentures, convertible debentures, notes, and commercial paper.

Employer real property is any real property (and related personal property) owned by the plan and leased to the employer of employees covered by the plan. This may include land, warehouses, office buildings, etc. If item 15e is "Yes," enter the total amount of employer securities and/or employer real property held or acquired.

**15f.** Generally, a loan requires that both the principal and interest be paid according to a pre-established repayment schedule. If the principal and/or interest has not been paid in accordance with the original repayment schedule and the period for repayment of the principal and/or interest has been extended, or the loan has been renegotiated after the original repayment schedule has not been met, a "Yes" must be checked and the total amount of the delinquent loan must be entered. Otherwise check "No."

**15h.** Check "Yes" for obligations where the required payments have not been made by the due date. With respect to notes and loans, the due date, payment amount and conditions for default are usually contained in the note or loan document. Defaults can occur at any time for those obligations that require periodic repayment. Generally, loans and fixed income obligations are considered uncollectible when payment has not been made and there is little probability that payment will be made. A loan by the plan is in default when the borrower is unable to pay the obligation upon maturity. A fixed income obligation has a fixed maturity date at a specified interest rate. If item 15h is "Yes," enter the total amount of loans by the plan or fixed income obligations that are uncollectible or in default as of the plan year end.



**15i.** Consider all fiduciaries and parties providing services to the plan, including (1) persons who are fiduciaries by reason of their relationship to a master trust investment account or 103-12 IE in which the plan has an interest or the assets in such an investment account or 103-12 IE; and (2) parties providing services rendered with respect to assets held in master trusts and 103-12 IEs.

See item 15c above for the definition of fiduciary.

**15j.** Include as a single security all securities of the same issue. For the purposes of item 15j, do not check "Yes" for securities issued by the U.S. Government or its agencies. If item 15j is "Yes," enter the total.

**15k.** In determining the 20% figure, subtract the current value of plan assets held in any master trust or 103-12 IE from the current value of the plan's total assets at the beginning of the plan year. Check "Yes" if the plan had:

1. A single transaction within the plan year in excess of 20% of the current value of the plan assets;

2. Any series of transactions with, or in conjunction with, the same person, involving property other than securities, which amount in the aggregate within the plan year (regardless of the category of asset and the gain or loss on any transaction) to more than 20% of the current value of plan assets;

3. Any transaction within the plan year involving securities of the same issue if within the plan year any series of transactions with respect to such securities amount in the aggregate to more than 20% of the current value of the plan assets; or

4. Any transaction within the plan year with respect to securities with, or in conjunction with, a person if any prior or subsequent single transaction within the plan year with such person, with respect to securities, exceeds 20% of the current value of plan assets. The 20% figure is determined by comparing the current value of the transaction at the transaction date with the current value of the plan assets at the beginning of the plan year.

If the assets of two or more plans are maintained in one trust, the plan's allocable portion of the transactions of the trust shall be combined with the other transactions of the plan, if any, to determine which transactions (or series of transactions) are reportable (20%) transactions.

**Exception.** For investments in common/collective trusts, pooled separate accounts, 103-12 IEs, and registered investment companies, determine the 20% figure by comparing the transaction date value of the acquisition and/or disposition of units of participation or shares in the entity with the current value of the plan assets at the beginning of the plan year. Check "No" if all plan funds are held in a master trust. Do not include individual transactions of common/collective trusts, pooled separate accounts, 103-12 IEs, and registered investment companies.

If item 15k is answered "Yes," enter the amount.

**15l.** Check "No" if the plan received all of its contributions in cash. Generally, as it relates to this question, an appraisal by an unrelated third party is an evaluation of the value of the asset contributed prepared by an individual or firm who knows how to judge the value of the asset and does not have an ongoing relationship with the plan or plan fiduciaries except for preparing the appraisal. If item 15l is checked "Yes," enter the value of the asset as established by the plan.

**15m.** Non-publicly traded securities are generally held by few people and not traded on a stock exchange. Generally, as it relates to this question, an appraisal by an unrelated third party is an evaluation of the value of the security prepared by an individual or firm who knows how to judge the value of the security and does not have an ongoing relationship with the plan or plan fiduciaries except for preparing the appraisal. If item 15m is answered "Yes," enter the value of the security as established by the plan.

**16a.** If you are uncertain as to whether the plan is covered under the PBGC termination insurance program, check the box "Not determined" and contact the PBGC and request a coverage determination. Welfare and fringe benefit plans do not complete this item.

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**SCHEDULE A (Form 5500)**
Department of the Treasury
Internal Revenue Service
Department of Labor
Pension and Welfare Benefits Administration
Pension Benefit Guaranty Corporation

## Insurance Information

This schedule is required to be filed under section 104 of the Employee Retirement Income Security Act of 1974.
▶ File as an Attachment to Forms 5500, 5500-C, or 5500-R.
▶ Insurance companies are required to provide this information as per ERISA section 103(a)(2).

OMB No. 1210-0016
**1988**
This Form Is Open to Public Inspection

For calendar year 1988 or fiscal plan year beginning . 1988 and ending . 19

▶ Part I must be completed for all plans required to file this schedule.
▶ Part II must be completed for all insured pension plans.
▶ Part III must be completed for all insured welfare plans.
▶ Enter master trust or 103-12 IE name in place of "sponsor" and specify investment account or 103-12 IE in place of "plan" in filing with DOL for a master trust or 103-12 IE.

Name of plan sponsor as shown on line 1a of Form 5500, 5500-C, or 5500-R | Employer identification number

Name of plan | Enter three-digit plan number ▶

### Part I Summary of All Insurance Contracts Included in Parts II and III

Group all contracts in the same manner as in Parts II and III.

1 Check appropriate box: a ☐ Welfare plan b ☐ Pension plan c ☐ Combination pension and welfare plan

2 Coverage:

| (a) Name of insurance carrier | (b) Contract or identification number | (c) Approximate number of persons covered at end of policy or contract year | Policy or contract year (d) From | (e) To |
|---|---|---|---|---|
| | | | | |

3 Insurance fees and commissions paid to agents and brokers:

| (a) Contract or identification number | (b) Name and address of the agents or brokers to whom commissions or fees were paid | (c) Amount of commissions paid | (d) Fees paid: Amount | Purpose |
|---|---|---|---|---|
| | | | | |
| Total | | | | |

4 Premiums due and unpaid at end of the plan year ▶ $ : Contract or identification number ▶

### Part II Insured Pension Plans

Provide information for each contract on a separate Part II. Where individual contracts are provided, the entire group of such individual contracts with each carrier may be treated as a unit for purposes of this report.

▶ Contract or identification number ▶

5 Contracts with allocated funds, for example, individual policies or group deferred annuity contracts:
- a State the basis of premium rates ▶
- b Total premiums paid to carrier
- c If the carrier, service, or other organization incurred any specific costs in connection with the acquisition or retention of the contract or policy, other than reported in 3 above, enter amount. Specify nature of costs ▶

6 Contracts with unallocated funds, for example, deposit administration or immediate participation guarantee contracts. Do not include portions of these contracts maintained in separate accounts:
- a Balance at the end of the previous policy year
- b Additions: (i) Contributions deposited during year
  - (ii) Dividends and credits
  - (iii) Interest credited during the year
  - (iv) Transferred from separate account
  - (v) Other (specify) ▶
  - (vi) Total additions
- c Total of balance and additions, add a and b(vi)
- d Deductions:
  - (i) Disbursed from fund to pay benefits or purchase annuities during year
  - (ii) Administration charge made by carrier
  - (iii) Transferred to separate account
  - (iv) Other (specify) ▶
  - (v) Total deductions
- e Balance at end of current policy year, subtract d(v) from c

7 Separate accounts: Current value of plan's interest in separate accounts at year end







### Part III Insured Welfare Plans

Provide information for each contract on a separate Part III. If more than one contract covers the same group of employees of the same employer(s) or members of the same employee organization(s), the information may be combined for reporting purposes if such contracts are experience-rated as a unit. Where individual contracts are provided, the entire group of such individual contracts with each carrier may be treated as a unit for purposes of this report.

| 8 (a) Contract or identification number | (b) Type of benefit | (c) List gross premium for each contract | (d) Premium rate or subscription charge |
|---|---|---|---|
| | | | |

9 Experience-rated contracts: a Premiums: (i) Amount received
- (ii) Increase (decrease) in amount due but unpaid
- (iii) Increase (decrease) in unearned premium reserve
- (iv) Premiums earned, add (i) and (ii), and subtract (iii)

b Benefit charges: (i) Claims paid
- (ii) Increase (decrease) in claim reserves
- (iii) Incurred claims, add (i) and (ii)
- (iv) Claims charged

c Remainder of premium: (i) Retention charges (on an accrual basis)—(A) Commissions
- (B) Administrative service or other fees
- (C) Other specific acquisition costs
- (D) Other expenses
- (E) Taxes
- (F) Charges for risks or contingencies
- (G) Other retention charges
- (H) Total retention

(ii) Dividends or retroactive rate refunds. (These amounts were ☐ paid in cash, or ☐ credited.)

d Status of policyholder reserves at end of year: (i) Amount held to provide benefits after retirement
- (ii) Claim reserves
- (iii) Other reserves

e Dividends or retroactive rate refunds due (do not include amount entered in c(ii))

10 Nonexperience-rated contracts: a Total premiums or subscription charges paid to carrier

b If the carrier, service, or other organization incurred any specific costs in connection with the acquisition or retention of the contract or policy, other than reported in 3 above, report amount. Specify nature of costs ▶

If additional space is required for any item, attach additional sheets the same size as this form.

## General Instructions

This schedule must be attached to Form 5500, 5500-C, or 5500-R for every defined benefit, defined contribution, and welfare benefit plan where any benefits under the plan are provided by an insurance company, insurance service, or other similar organization.

## Specific Instructions

*(References are to the line items on the form.)*

Include only contracts with policy or contract years ending with or within the plan year (for reporting purposes a year cannot exceed 12 months). Data on Schedule A (Form 5500) should be reported only for such policy or contract years. **Exception:** *If the insurance company maintains records on the basis of a plan year rather than policy or contract year, data on Schedule A (Form 5500) may be reported for the plan year.*

Include only the contracts issued to the plan for which this return/report is being filed.

**Plans Participating in Master Trust(s) and 103-12 IEs**—See the Form 5500 or Form 5500-C instructions for "Reporting Requirements for Investment Arrangements Filing With DOL."

**2(c).**—Since the plan coverage may fluctuate during the year, the number of persons entered should be that which the administrator determines will most reasonably reflect the number covered by the plan at the end of the policy or contract year.

Where contracts covering individual employees are grouped, entries should be determined as of the end of the plan year.

**2(d) and (e).**—Enter the beginning and ending dates of the policy year for each contract listed under column (b). Where separate contracts covering individual employees are grouped, enter "N/A" in column (d).

**3.**—All sales commissions are to be reported in column (c) regardless of the identity of the recipient. Override commissions, salaries, bonuses, etc., paid to a general agent or manager for managing an agency, or for performing other administrative functions, are not to be reported.

Fees to be reported in column (d) represent payments by insurance carriers to agents and brokers for items other than commissions (e.g., service fees, consulting fees, and finders fees).

**Note:** *For purposes of this item, commissions and fees include amounts paid by an insurance company on the basis of the aggregate value (e.g., policy amounts, premiums) of contracts or policies (or classes thereof) placed or retained. The amount (or pro rata share of the total) of such commissions or fees attributable to the contract or policy placed with or retained by the plan must be reported in column (c) or (d), as appropriate.*

Fees paid by insurance carriers to persons other than agents and brokers should be reported in Parts II and III on Schedule A (Form 5500) as acquisition costs, administrative charges, etc., as appropriate. For plans with 100 or more participants, fees paid by employee benefit plans to agents, brokers, and other persons are to be reported on Schedule C (Form 5500).

**5a.**—The rate information called for here may be furnished by attachment of appropriate schedules of current rates filed with appropriate state insurance departments or by a statement as to the basis of the rates.

**6.**—Show deposit fund amounts rather than experience credit records when both are maintained.

**8(d).**—The rate information called for here may be furnished by attachment of appropriate schedules of current rates or by a statement as to the basis of the rates.

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**SCHEDULE B (Form 5500)**
Department of the Treasury
Internal Revenue Service
Department of Labor
Pension and Welfare Benefits Administration
Pension Benefit Guaranty Corporation

## Actuarial Information

This schedule is required to be filed under section 104 of the Employee Retirement Income Security Act of 1974, referred to as ERISA, and section 6059(a) of the Internal Revenue Code, referred to as the Code.

▶ **Attach to Forms 5500, 5500-C, 5500-R, or 5500EZ if applicable.**

OMB No. 1210-0016

**1988**

**This Form is Open to Public Inspection**

For calendar plan year 1988 or fiscal plan year beginning , 1988, and ending 19

▶ **Please complete every item on this form. If an item does not apply, enter "N/A."** ▶ **Round off amounts to nearest dollar.**

▶ **Caution:** A penalty of $1,000 will be assessed for late filing of this report unless reasonable cause is established.

Name of plan sponsor as shown on line 1a of Form 5500, 5500-C, 5500-R, or 5500EZ | **Employer identification number**

Name of plan | Enter three-digit plan number ▶ | Yes | No

1 Has a waiver of a funding deficiency for this plan been approved by the IRS?
If "Yes," attach a copy of the IRS approval letter.
2 Is a waived funding deficiency of a prior plan year being amortized in this plan year?
3 Have any of the periods of amortization for charges described in Code section 412(b)(2)(B) been extended by IRS?
If "Yes," attach a copy of the IRS approval letter.
4a Was the shortfall funding method the basis for this plan year's funding standard account computations?
b Is this plan a multiemployer plan which is, for this plan year, in reorganization as described in Code section 418 or ERISA section 4241?
If "Yes," you are required to attach the information described in the instructions.
5 Has a change in funding method for this plan year been made?
If "Yes," attach either a copy of the letter showing IRS approval or state applicable Revenue Procedure authorizing approval if used.

6 Operational information:
a Enter most recent actuarial valuation date ▶
b Enter date(s) and amount of contributions received this plan year for prior plan years and not previously reported:
Date(s) ▶ Amount ▶
c Current value of the assets accumulated in the plan as of the beginning of the plan year
d Present value of vested benefits as of the beginning of the plan year:
(i) For retired participants and beneficiaries receiving payments
(ii) For other participants
(iii) Total
e Present value of nonvested accrued benefits as of the beginning of the plan year
f Number of persons covered (included in the most recent actuarial valuation):
(i) Active participants
(ii) Terminated participants with vested benefits
(iii) Retired participants and beneficiaries of deceased participants

7 Contributions made to the plan for the plan year by employer(s) and employees:

| (a) Month Year | (b) Amount paid by employer | (c) Amount paid by employees | (a) Month Year | (b) Amount paid by employer | (c) Amount paid by employees |
|---|---|---|---|---|---|
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| | | | Total | | |

**Statement by Enrolled Actuary (see instructions before signing):**
To the best of my knowledge, the information supplied in this schedule and on the accompanying statement, if any, is complete and accurate, and in my opinion the assumptions used in the aggregate (a) are reasonably related to the experience of the plan and to reasonable expectations, and (b) represent my best estimate of anticipated experience under the plan.

Signature of actuary — Date
Print or type name of actuary — Enrollment number
Name and address — Telephone number (including area code)







8 Funding standard account and other information:
a Accrued liabilities as determined for funding standard account as of (enter date) ▶
b Value of assets as determined for funding standard account as of (enter date) ▶
c Unfunded liability for spread-gain methods with bases as of (enter date) ▶
d (i) Actuarial gains or (losses) for period ending ▶
(ii) Shortfall gains or (losses) for period ending ▶
e Amount of contribution certified by the actuary as necessary to reduce the funding deficiency to zero, from 9m or 10h (or the attachment for 4b if required)

9 Funding standard account statement for this plan year ending ▶
**Charges to funding standard account:** a Prior year funding deficiency, if any
b Employer's normal cost for plan year as of mo. ____ day ____ yr. ____
c Amortization charges
(i) Funding waivers (outstanding balance as of mo. ____ day ____ yr. ____ ▶ $ ____)
(ii) Other than waivers (outstanding balance as of mo. ____ day ____ yr. ____ ▶ $ ____)
d Interest as applicable to the end of the plan year on a, b, and c
e Total charges (add a through d)
**Credits to funding standard account:**
f Prior year credit balance, if any
g Employer contributions (total from column (b) of item 7)
h Amortization credits (outstanding balance as of mo. ____ day ____ yr. ____ ▶ $ ____)
i Interest as applicable to end of plan year on f, g, and h
j Other (specify) ▶
k Total credits (add f through j)
**Balance:**
l Credit balance: if k is greater than e, enter the difference
m Funding deficiency: if e is greater than k, enter the difference

10 Alternative minimum funding standard account (omit if not used):
a Was the entry age normal cost method used to determine entries in item 9 above? ☐ Yes ☐ No
If "No," do not complete b through h.
b Prior year alternate funding deficiency, if any
c Normal cost
d Excess, if any, of value of accrued benefits over market value of assets
e Interest on b, c, and d
f Employer contributions (total from column (b) of item 7)
g Interest on f
h Funding deficiency: if the sum of b through e is greater than the sum of f and g, enter difference

11 Actuarial cost method used as the basis for this plan year's funding standard account computation:
a ☐ Attained age normal
b ☐ Entry age normal
c ☐ Accrued benefit (unit credit)
d ☐ Aggregate
e ☐ Frozen initial liability
f ☐ Individual level premium
g ☐ Other (specify) ▶

12 Checklist of certain actuarial assumptions:

| | A Used for items 6d and e — value of accrued benefits | | | | B Used for items 8, 9, or 10 — funding standard account | | | |
|---|---|---|---|---|---|---|---|---|
| | Pre-retirement | | Post-retirement | | Pre-retirement | | Post-retirement | |
| | ☐ Yes | ☐ No | ☐ Yes | ☐ No | ☐ Yes | ☐ No | ☐ Yes | ☐ No |
| a Rates specified in insurance or annuity contracts | | | | | | | | |
| b Mortality table code: | | | | | | | | |
| (i) Males | | | | | | | | |
| (ii) Females | | | | | | | | |
| c Interest rate | % | | % | | % | | % | |
| d Retirement age | | | | | | | | |
| e Expense loading | % | | % | | % | | % | |
| f Annual withdrawal rate: | Male | Female | | | Male | Female | | |
| (i) Age 25 | % | % | | | % | % | | |
| (ii) Age 40 | % | % | | | % | % | | |
| (iii) Age 55 | % | % | | | % | % | | |
| g Ratio of salary at normal retirement to salary at: | | | | | | | | |
| (i) Age 25 | | | | | % | % | | |
| (ii) Age 40 | | | | | % | % | | |
| (iii) Age 55 | | | | | % | % | | |

h Investment return on actuarial value of plan assets for the year ending on the valuation date %

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Department of the Treasury
Internal Revenue Service

Department of Labor
Pension and Welfare
Benefits Administration

Pension Benefit
Guaranty Corporation

# 1988 Instructions for Schedule B (Form 5500)

## Actuarial Information

*(Code references are to the Internal Revenue Code. ERISA refers to the Employee Retirement Income Security Act of 1974.)*

## General Instructions

**Who Must File.**—The employer or plan administrator of a defined benefit plan that is subject to the minimum funding standards (see Code section 412 and Part 3 of Title I of ERISA) must file this schedule as an attachment to the return/report filed for this plan year.

For split-funded plans, the costs and contributions reported on Schedule B should include those relating to both trust funds and insurance carriers.

**Statement by Enrolled Actuary.**—An enrolled actuary must sign the Schedule B. The signature of the enrolled actuary may be qualified to state that it is subject to attached qualifications. See Code section 301.6059-1(d) for permitted qualifications. A stamped or machine produced signature is not acceptable. In addition, the actuary may offer any other comments related to the information contained in Schedule B.

## Specific Instructions

*(References are to line items on the form.)*

**4a.** Only certain collectively bargained plans may elect the shortfall funding method (see regulations under Code section 412). Advance approval from the IRS of the election of the shortfall method of funding is NOT required if it is first adopted for the first plan year to which Code section 412 applies. However, advance approval from IRS is required if the shortfall funding method is adopted at a later time, if a specific computation method is changed, or if the shortfall method is discontinued.

**4b.** Attach an explanation of the basis for the determination that the plan is in reorganization for this plan year. Also attach a worksheet showing for this plan year (i) the amounts considered contributed by employers, (ii) any amount waived by IRS, (iii) the development of the minimum contribution requirement (taking into account the applicable overburden credit, cash-flow amount, contribution bases and limitation on required increases on the rate of employer contributions), and (iv) the resulting accumulated funding deficiency, if any, which is to be reported on line 8e in lieu of an amount from line 9m.

**5.** Changes in funding methods include changes in actuarial cost method, changes in asset valuation method, and changes in the valuation date of plan costs and liabilities or of plan assets. Generally, these changes require IRS approval. If approval was granted by an individual ruling letter for this plan, attach a copy of the letter. If approval was granted pursuant to a regulation, class ruling, or revenue procedure, attach a copy of the items required by the applicable regulation, ruling, or procedure.

**6a.** The valuation for a plan year may be as of any date in the year, including the first and last. Valuations must be performed within the period specified by ERISA section 103(d) and Code section 412(c)(9).

**6b.** This item does not apply to the first plan year to which the minimum funding standards apply.

**6c.** Enter the current value of total assets as of the beginning of the plan year, as shown on Form 5500 or Form 5500-C.

**6d and e.** All plans regardless of the number of participants must provide the information indicated in accordance with these instructions. The term "accrued benefit" means the individual's accrued benefit determined under the plan as required by ERISA section 204.

With the exception of the interest rate, each actuarial assumption used in calculating the present value of accrued benefits reported in item 12 should reflect the best estimate of the plan's future experience solely with respect to that assumption applicable to the plan on an ongoing (rather than a terminating) basis. The actuary shall take into account rates of early retirement and the plan's early retirement provisions as they relate to the accrued benefits, where these would significantly affect the results. No salary scale projections should be used in computing the present values. See instructions for item 12 for further requirements concerning actuarial assumptions.

The interest rate used to compute the present values must be within 10 percent of the weighted average of the 30-year Treasury bond rate as published by the IRS.

**Note:** *The above values do not necessarily represent the current liability of the plan as that term is defined in Code section 412(l)(7). Published guidance will specify what benefits are taken into account in determining current liability.*

The present value of accrued benefits for both d and e shall be increased by the present value of any subsidized early retirement benefits, disability benefits, and death benefits which are related to the accrued benefit. The present value of accrued benefits should also be increased by the present value of a cost-of-living clause if such a clause is currently part of the benefit formula. The present value should not include the value of unpredictable contingent event benefits (e.g., plant shutdown benefits) unless the event has occurred.

Omit from items 6d and e liabilities fully funded by annuity and insurance contracts other than any contract funds not allocated to individuals.

**6d.** Include the present value of all vested accrued benefits that are vested as of the beginning of the plan year. Item 6d(i) should include the present value of vested benefits for all retired participants; 6d(ii) should include the present value of vested benefits for other participants; and 6d(iii) is the sum of 6d(i) and (ii). Normally, withdrawal rates would not be used in these calculations.

**6e.** Include the present value of the excess of the accrued benefits over the vested benefits included in 6d.



**7.** Show all employer and employee contributions for the plan year, and employer contributions made not later than 2½ months (or such later date allowed under Code section 412(c)(10) and ERISA section 302(c)(10)) after the end of the plan year. Show only contributions actually made to the plan by the date Schedule B is signed.

**8a.** If the attained age normal, aggregate, or frozen initial liability or other method that does not develop an accrued liability is used, enter "N/A."

**8b.** Enter the value of assets determined in accordance with Code section 412(c)(2) or ERISA section 302(c)(2).

**8d(ii).** For the methods to be used to determine the shortfall gain (loss) see the regulations under Code section 412.

**8e.** Insert amount from item 9m. However, if the alternative method is elected and item 10h is smaller than item 9m, enter the amount from item 10h. Multiemployer plans in reorganization, see instruction 4b. File Form 5330 with the IRS to pay 5% excise tax on the funding deficiency.

**9.** Under the shortfall method of funding, the *normal cost* in the funding standard account is the charge per unit of production (or per unit of service) multiplied by the actual number of units of production (or units of service) which occurred during the plan year. Each amortization installment in the funding standard account is similarly calculated.

**9b.** If no valuation was made for the current year, enter the normal cost calculated in the most recent actuarial valuation or the estimated cost for the current year based on such valuation. If amounts are not as of the date of the most recent actuarial valuation, indicate in the Statement of Actuarial Assumptions how the amounts shown were determined.

**9c and h.** The outstanding balance may be as of any day in this plan year.

**9j.** Report a credit for a waived funding deficiency (Code section 412(d)(3)(C)) or a full funding credit (Code section 412(c)(6)) as a credit to the funding standard account. If a waiver of a funding deficiency is pending, it is not to be reported as a credit but as a funding deficiency. If the waiver is granted, an amended Schedule B (Form 5500) should be filed to report it.

**10a.** If the entry age normal cost method was not used to determine the entries in item 9, the alternative minimum funding standard account may not be used.

**10d.** The value of accrued benefits should exclude benefits accrued for the current plan year. The market value of assets should be reduced by the amount of any contributions for the current plan year.

**11.** Enter only the primary method used. If the plan uses one actuarial cost method in one year as the basis of establishing an accrued liability for use under the frozen initial liability method in subsequent years, answer as if the frozen initial liability method were used in all years.

For a modified individual level premium method for which actuarial gains and losses are spread as a part of future normal cost, check box g and describe the cost method. For the shortfall funding method, check the appropriate box for the underlying actuarial cost method used to determine the annual computation charge.

**12.** If gender-based statistics are used in developing plan costs, enter such rates where appropriate in item 12. Note that requests for gender-based cost information do not suggest that gender-based benefits are legal. Complete all blanks. Enter "N/A" if not applicable. If the assumptions listed under columns A and B differ, explain, in an attached Statement of Actuarial Assumptions, the reasons for the differences.

If unisex tables are used, enter the values in both the male and female columns.

Attach a statement of actuarial assumptions used (if not fully described by item 12), actuarial methods used to calculate (i) the figures shown in items 6, 8, 9, 10 (if not fully described by item 11), and (ii) the value of assets shown on line 8b. The statement is to include a summary of the principal eligibility and benefit provisions upon which the valuation was based, an identification of benefits not included in the calculation, and other facts, such as any change in actuarial assumptions or cost methods and justifications for any such change. Include also such other information, if any, needed to fully and fairly disclose the actuarial position of the plan.

**12a.** Check "Yes" if the rates in the contract were used (e.g., purchase rates at retirement).

**12b.** Enter code as follows:

| Table | Code |
|---|---|
| 1937 Standard Annuity | 1 |
| a-1949 Table | 2 |
| Progressive Annuity Table | 3 |
| 1951 Group Annuity | 4 |
| 1971 Group Annuity Mortality | 5 |
| 1971 Individual Annuity Mortality | 6 |
| UP-1984 | 7 |
| 1983 I.A.M. | 8 |
| 1983 G.A.M. | 9 |
| Other | 10 |
| None | 11 |

Where an indicated table consists of separate tables for males and females, add F to the female table (e.g., 4F). When a projection is used with a table, follow the code with "P" and the year of projection (omit year if the projection is unrelated to a single calendar year); the identity of the projection scale should be omitted. When an age setback or setforward is used, indicate with "–" or "+" and the years. For example, if for females the 1951 Group Annuity Table with Projection C to 1971 is used with a 5-year setback, enter "4P71-5." If the table is not one of those listed, enter "10" with no further notation. If the valuation assumes a maturity value to provide the post-retirement income without separately identifying the mortality, interest and expense elements under "post-retirement," enter on 12b the value of $1.00 of monthly pension beginning at the age shown on 12d, assuming the normal form of annuity for an unmarried person; in this case enter "N/A" on 12c and 12e.

**12c.** For column A enter the interest rate that is within ten percent of the weighted average of the 30-year Treasury Bond rate used to determine the present value in item 6d. For column B enter assumption as to expected interest rate (investment return). If the assumed rate varies with the year, enter the weighted average of the assumed rate for 20 years following the valuation date.

**12d.** If each participant is assumed to retire at his/her normal retirement age, enter the age specified in the plan as normal retirement age; do not enter "NRA." Otherwise, enter the assumed retirement age. If the valuation uses rates of retirement at various ages, enter the estimated average whole age at which participants are assumed to retire.

**12e.** If there is no expense loading, enter "-0-". If there is a single expense loading not separately identified as pre-retirement or post-retirement, enter it under pre-retirement and enter "N/A" under post-retirement. Where expenses are assumed other than as a percent of plan costs or liabilities, enter the assumed expense as a percent of the calculated normal cost.

**12f.** Enter rates to nearest 0.1%. If select and ultimate rates which vary with both age and years of service are used, enter rates for a new participant at the age shown and enter "S" before the rate.

**12g.** Enter salary ratio for the age indicated to the nearest 1%.

**12h.** Enter the rate of return on the actuarial value of plan assets for the one year period ending on the valuation date. For this purpose, the rate of return should be the dollar rate of return using the formula 2I/(A+B–i), where i is the investment return under this asset valuation method used for the plan, A is the actuarial value of the assets one year ago, and B is the actuarial value of the assets on the current valuation date.

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**SCHEDULE C (Form 5500)**
Department of the Treasury
Internal Revenue Service
Department of Labor
Pension and Welfare Benefits Administration
Pension Benefit Guaranty Corporation

## Service Provider and Trustee Information

**This schedule is required to be filed under section 104 of the Employee Retirement Income Security Act of 1974.**
▶ **File as an Attachment to Form 5500.**
Additional Schedules C (Form 5500) may be used, if needed, to provide additional information for Parts I, II, and/or III.

OMB No. 1210-0016
**1988**
**This Form is Open to Public Inspection**

For the calendar year 1988 or fiscal plan year beginning , 1988, and ending , 19

Name of plan sponsor as shown on line 1a of Form 5500 — Employer identification number

Name of plan — Enter three-digit plan number ▶

**Part I Service Provider Information (see instructions)**

| | (a) Name | (b) Employer identification number (see instructions) | (c) Official plan position | (d) Relationship to employer, employee organization, or person known to be a party-in-interest | (e) Gross salary or allowances paid by plan | (f) Fees and commissions paid by plan | (g) Nature of service code (see instructions) |
|---|---|---|---|---|---|---|---|
| (1) | | | Contract Administrator | | | | 13 |
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| (33) | | | | | | | |
| (34) | | | | | | | |
| (35) | | | | | | | |
| (36) | | | | | | | |
| (37) | | | | | | | |
| (38) | | | | | | | |
| (39) | | | | | | | |
| (40) | | | | | | | |







**Part II Trustee Information** Enter the name and address of all trustees who served during the plan year. If more space is required to supply this information, attach additional Schedules C (Form 5500).

| | |
|---|---|
| Name<br>Address | Name<br>Address |
| Name<br>Address | Name<br>Address |
| Name<br>Address | Name<br>Address |
| Name<br>Address | Name<br>Address |
| Name<br>Address | Name<br>Address |
| Name<br>Address | Name<br>Address |
| Name<br>Address | Name<br>Address |
| Name<br>Address | Name<br>Address |

**Part III Termination Information (see instructions)**

| (a) Name | (b) EIN | (c) Position | (d) Address | (e) Telephone No. |
|---|---|---|---|---|
| | | | | |

(1) Explanation:

| (a) Name | (b) EIN | (c) Position | (d) Address | (e) Telephone No. |
|---|---|---|---|---|
| | | | | |

(2) Explanation:

| (a) Name | (b) EIN | (c) Position | (d) Address | (e) Telephone No. |
|---|---|---|---|---|
| | | | | |

(3) Explanation:

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## Part I Instructions—Service Provider Information

### A. General Instructions

Form 5500 filers complete Part I to report all persons receiving, directly or indirectly, $5,000 or more in compensation for all services rendered to the plan during the plan year except:

(1) employees of the plan who were paid less than $1,000 for each month of employment during the plan year,

(2) employees of the plan sponsor who received no direct or indirect compensation from the plan,

(3) employees of a business entity (e.g., corporation, partnership, etc.), other than the plan sponsor, which provided service to the plan, or

(4) persons whose only compensation in relation to the plan consists of insurance fees and commissions listed in Schedule A (Form 5500).

Generally, indirect compensation would not include compensation which would have been received had the service not been rendered and which cannot be reasonably allocated to the services performed. Indirect compensation includes, among other things, the payment of "finders' fees" or other fees and commissions by a service provider to an independent agent or employee for a transaction or service involving the plan.

### B. Specific Instructions

On line (1), include any individual, trade or business, whether incorporated or unincorporated, responsible for managing the clerical operations (e.g., handling membership rosters, claims payments, maintaining books and records) of the plan on a contractual basis that is required to be reported in Part I except for salaried staff or employees of the plan or banks or insurance carriers.

On the remaining lines (2 through 40) and additional Schedules C (Form 5500) if needed, list all other persons required to be reported in Part I who provided services to the plan in the order of compensation received, starting with the most highly compensated and ending with the lowest compensated.

**Column (b).** An EIN must be entered in column (b). If an individual is listed in column (a), the EIN to be entered in column (b) should be the EIN of the individual's employer.

**Column (c).** For example, employee, trustee account, attorney, etc.

**Column (d).** For example, employee, vice-president, union president, etc.

**Columns (e) and (f).**

Include the plan's share of amounts of compensation for services paid during the year to a master trust or 103-12 IE trustee, and to persons providing services to the master trust or 103-12 IE, if such compensation is not subtracted from the gross income of the master trust or 103-12 IE in determining the net investment gain (or loss). Amounts of compensation subtracted from gross income in determining the net investment gain (or loss) of the master trust or 103-12 IE must be reported as part of the report of the master trust or 103-12 IE filed with DOL.

Include brokerage commissions or fees only if the broker is granted some discretion (see 29 CFR 2510.3-21, paragraph (d), regarding "discretion"). Include all other commissions and fees on investments, whether or not they are capitalized as investment costs.

**Column (g).** From the list below, select the code that best describes the nature of services provided to the plan, and enter the number. If more than one service was provided, enter only the code of the primary service.

| Code | Service |
|---|---|
| 10 | Accounting (including auditing) |
| 11 | Actuarial |
| 13 | Administration |
| 14 | Brokerage (real estate) |
| 15 | Brokerage (stocks, bonds, commodities) |
| 16 | Computing, tabulating, ADP, etc. |
| 17 | Consulting (general) |
| 18 | Custodial (securities) |
| 19 | Insurance agents and brokers |
| 20 | Investment advisory |
| 21 | Investment management |
| 22 | Legal |
| 23 | Printing and duplicating |
| 24 | Recordkeeping |
| 25 | Trustee (individual) |
| 26 | Trustee (corporate) |
| 27 | Pension insurance adviser |
| 28 | Valuation services (appraisals, asset valuations, etc.) |
| 29 | Investment evaluations |
| 99 | Other (specify) |

## Part III Instructions.—Termination Information

Explain the reason for the change in appointment and provide the name, EIN, position, address, and telephone number of the person(s) listed in item 28d of Form 5500 whose appointment has been terminated. List them in the order of the boxes which are checked in item 28d, i.e., accountants first, enrolled actuaries next, etc. Include in this explanation a description of any disagreement for which item 28e of the Form 5500 is marked "Yes," even if the disagreement was resolved prior to the termination. If an individual is listed, the EIN to be entered should be the EIN of the individual's employer.

Additional Schedules C (Form 5500) may be used, if needed, to list additional persons.

U.S. Government Printing Office: 1989-262-573/80068



**SCHEDULE P (Form 5500)**
Department of the Treasury
Internal Revenue Service

# Annual Return of Fiduciary of Employee Benefit Trust

▶ File as an attachment to Form 5500, 5500-C, 5500-R, or 5500-EZ.
▶ For the Paperwork Reduction Notice, see page 1 of the Form 5500 instructions.

OMB No. 1210-0016

**1988**

For trust calendar year 1988 or fiscal year beginning , 1988, and ending 19

Please type or print

1 a Name of trustee or custodian

b Address (number and street)

c City or town, state, and ZIP code

2 Name of trust

3 Name of plan if different from name of trust

4 Have you furnished the participating employee benefit plan(s) with the trust financial information required to be reported by the plan(s)? . . . . . ☐ Yes ☐ No

5 Enter the plan sponsor's employer identification number as shown on the form to which this schedule is attached . . . . . ▶

Under penalties of perjury, I declare that I have examined this schedule, and to the best of my knowledge and belief it is true, correct, and complete.

Date ▶ Signature of fiduciary ▶

## Instructions

*(Section references are to the Internal Revenue Code.)*

### A. Purpose of Form

You may use this schedule to satisfy the requirements under section 6033(a) for an annual information return from every section 401(a) organization exempt from tax under section 501(a).

The filing of this form will also start the running of the statute of limitations under section 6501(a) for any trust described in section 401(a) which is exempt from tax under section 501(a).

### B. Who May File

(1) Every trustee of a trust described in section 401(a) which was created as part of an employee benefit plan.

(2) Every custodian of a custodial account described in section 401(f).

### C. How To File

File Schedule P (Form 5500) for the trust year ending with or within any participating plan's plan year as an attachment to the Form 5500, 5500-C, 5500-R, or 5500-EZ filed by the plan for that plan year.

Schedule P (Form 5500) may be filed only as an attachment to a Form 5500, 5500-C, 5500-R, or 5500-EZ. A separately filed Schedule P (Form 5500) will not be accepted.

If the trust or custodial account is used by more than one plan, file only one Schedule P (Form 5500). It must be filed as an attachment to one of the participating plan's returns/reports. If a plan uses more than one trust or custodial account for its funds, file one Schedule P (Form 5500) for each trust or custodial account.

### D. Signature

The fiduciary (trustee or custodian) must sign this schedule. If there is more than one fiduciary, one of them, authorized by the others, may sign.

### E. Other Returns and Forms That May Be Required

**(1) Form 990-T.**—For trusts described in section 401(a), a tax is imposed on income derived from business that is unrelated to the purpose for which the trust received a tax exemption. Report such income and tax on **Form 990-T,** Exempt Organization Business Income Tax Return. (See sections 511 through 514 and related regulations.)

**(2) Forms W-2P and 1099-R.**—If you made payments or distributions to individual beneficiaries of a plan, report these payments on Forms W-2P or 1099-R. (See sections 6041 and 6047 and related regulations.)

**(3) Forms 941 or 941E.**—If you made payments of distributions to individual beneficiaries of a plan, you are required to withhold income tax from those payments unless the payee elects not to have the tax withheld. Report this withholding on Form 941 or 941E. (See Forms 941 or 941E and Circular E, Publication 15.)

U.S. Government Printing Office: 1988-205-300

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**SCHEDULE SSA (Form 5500)**

Department of the Treasury
Internal Revenue Service

# Annual Registration Statement Identifying Separated Participants With Deferred Vested Benefits

Under Section 6057(a) of the Internal Revenue Code

▶ File as an attachment to Form 5500, 5500-C, or 5500-R.

▶ For Paperwork Reduction Act Notice, see page 1 of the instructions for Form 5500 or 5500-C.

OMB No. 1210-0016

**1988**

This Form Is NOT Open to Public Inspection

For the calender year 1988 or fiscal plan year beginning , 1988, and ending 19

▶ This form must be filled for each plan year in which one or more participants with deferred vested benefit rights separated from the service covered by the plan. See instructions on when to report a separated employee.

1a Name of sponsor (employer if for a single employer plan)

1b Sponsor's employer identification number

Address (number and street)

1c Is this a plan to which more than one employer contributes? ☐ Yes ☐ No

City or town, state, and ZIP code

2a Name of plan administrator (if other than sponsor)

2b Administrator's employer identification no.

Address (number and street)

City or town, state, and ZIP code

3a Name of plan

3b Plan number ▶

4 Have you notified each separated participant of his or her deferred benefit? ☐ Yes ☐ No

5 Separated participants with deferred vested benefits (if additional space is required, see instruction, "What To File"):

| (a) Social Security Number | (b) Name of participant | Enter code for nature and form of benefit: (c) Type of annuity | (d) Payment frequency | Amount of vested benefit: (e) Defined benefit plan—periodic payment | Defined contribution plan: (f) Units or shares | (g) Total value of account | (h) Plan year in which participant separated |
|---|---|---|---|---|---|---|---|
| | | | | | | | |

**The Following Information Is Optional (See Specific Instruction 6)**

6 Use this item to report (i) separated participants with deferred vested benefits who were previously reported on Schedule SSA (Form 5500) and who have received part or all of their vested benefits or who have forfeited their benefits during the plan year for which this form is being filed, and (ii) to delete participants erroneously reported on a prior Schedule SSA (Form 5500).
Notes: *Participants listed in this item, because they have received part of their vested benefits, must also be reported in item 5 above listing their remaining vested benefits.*

| (a) Social Security Number | (b) Name of participant | Enter code for nature and form of benefit: (c) Type of annuity | (d) Payment frequency | Amount of vested benefit: (e) Defined benefit plan—periodic payment | Defined contribution plan: (f) Units or shares | (g) Total value of account | (h) Plan year in which participant separated |
|---|---|---|---|---|---|---|---|
| | | | | | | | |

Under penalties of perjury, I declare that I have examined this report, and to the best of my knowledge and belief, it is true, correct, and complete.

Date

Signature of plan administrator





## General Instructions

**Note:** *Please type or print all information and submit original copy only.*

**Who Must File.**—The plan administrator must file this form for any plan year for which a separated plan participant is reported under "When To Report a Separated Participant" below.

**What To File.**—File this schedule and complete all items. If you need more space, use additional copies of Schedule SSA, completing only items 1, 3, 5, and 6 of the additional copies.

A machine-generated computer listing showing the information required in items 5 and 6 may be submitted in lieu of completing items 5 and 6 on the schedule. Complete items 1 through 4 on Schedule SSA and enter in items 5 and 6 a statement that a list is attached. On each page of the computer list, enter the name of the sponsor, the EIN, the plan name, and the plan number. The list must be in the same format as items 5 and 6.

**How To File.**—File as an attachment to Form 5500, 5500-C, or 5500-R.

**When To Report a Separated Participant.**—

In general, *for a plan to which only one employer contributes*, a participant must be reported on Schedule SSA if:

(1) The participant separates from service covered by the plan in a plan year, and

(2) The participant is entitled to a deferred vested benefit under the plan.

The separated part - pant must be reported no later than on the Schedule SSA filed for the plan year following the plan year in which separation occurred. The participant may be reported earlier (i.e., on the Schedule SSA filed for the plan year in which separation occurred). Once separated participants have been reported on a Schedule SSA they should not be reported on a subsequent year's Schedule SSA.

However, a participant is not required to be reported on Schedule SSA if, before the date the Schedule SSA is required to be filed (including any extension of time for filing), the participant:

(1) Is paid some or all of the deferred vested retirement benefit,

(2) Returns to service covered by the plan, or

(3) Forfeits all of the deferred vested retirement benefit.

In general, *for a plan to which more than one employer contributes*, a participant must be reported on Schedule SSA if:

(1) The participant incurs two successive one-year breaks in service (as defined in the plan for vesting purposes) in service computation periods, and

(2) The participant is (or may be) entitled to a deferred vested benefit under the plan.

The participant must be reported no later than on the Schedule SSA filed for the plan year in which the participant completed the second of the two consecutive one-year breaks in service. The participant may be reported earlier (i.e., on the Schedule SSA filed for the plan year in which he or she separated from service or completed the first one-year break in service).

However, a participant is not required to be reported on Schedule SSA if, before the date the Schedule SSA is required to be filed (including any extension of time for filing), the participant:

(1) Is paid some or all of the deferred vested retirement benefit,

(2) Accrues additional retirement benefits under the plan, or

(3) Forfeits all of the deferred vested retirement benefit.

**Cessation of Payment of Benefits.**—As described above in "When To Report a Separated Participant," a participant is not required to be reported on Schedule SSA if, before the date the Schedule SSA is required to be filed, some of the deferred vested benefit to which the participant is entitled is paid to the participant. If payment of the deferred vested benefit ceases before all of the benefit is paid to the participant, the benefit to which the participant remains entitled must be reported on the Schedule SSA filed for the plan year following the last plan year within which any of the benefit was paid to the participant. However, a participant is not required to be reported on Schedule SSA on account of a cessation of payment of benefits if, before the date the schedule is required to be filed (including any extension of time for filing), the participant:

(1) Returns to service covered by the plan,

(2) Accrues additional retirement benefits under the plan, or

(3) Forfeits the remaining benefit.

**Separation of a Re-employed Employee.**—The deferred vested benefit reported on the current Schedule SSA for a re-employed employee who is again separated from service must include only the benefit not previously reported in or for prior years. Generally, the benefit to be shown on the current filing will be the benefit earned during the re-employment period.

**Caution:** *A penalty may be assessed if Schedule SSA (Form 5500) is not timely filed.*

## Specific Instructions

4. Check "Yes" if you have complied with the requirements of Code section 6057(e). The notification to each participant must include the information set forth on this schedule and the information with respect to any contributions made by the participant and not withdrawn by the end of the plan year. Any benefits that are forfeitable if the participant dies before a certain date must be shown on the statement.

5(a). Please be careful to enter the exact social security number of each participant listed.

If the participant is a foreign national employed outside of the United States who does not have a social security number, enter the participant's nationality.

5(b). Enter each participant's name exactly as it appears on the participant's social security card or the employer's payroll records for purposes of reporting to the Social Security Administration.

5(c). From the following list, select the code that describes the type of annuity that will be provided for the participant. The type of annuity to be entered is the type that normally accrues under the plan at the time of the participant's separation from service covered by the plan (or for a plan to which more than one employer contributes at the time the participant incurs the second consecutive one-year break in service under the plan).

A A single sum
B Annuity payable over fixed number of years
C Life annuity
D Life annuity with period certain
E Cash refund life annuity
F Modified cash refund life annuity
G Joint and last survivor life annuity
M Other

5(d). From the following list, select the code that describes the benefit payment frequency during a 12-month period.

A Lump sum
B Annually
C Semiannually
D Quarterly
E Monthly
M Other

5(e). For a defined benefit plan, enter the amount of the periodic payment that a participant would normally be entitled to receive under 5(c), commencing at normal retirement age. However, if it is more expedient to show the amount of periodic payment the participant would be entitled to receive at early retirement date, enter that amount.

*For a plan to which more than one employer contributes*, if the amount of the periodic payment cannot be accurately determined because the plan administrator does not maintain complete records of covered service, enter an estimated amount and add the letter "X" in column 5(c) in addition to the annuity code to indicate that it is an estimate. If, from records maintained by the plan administrator, it cannot be determined whether the participant is entitled to any deferred vested benefit, but there is reason to believe he or she may be entitled, leave column 5(e) blank and enter "Y" in column 5(c) in addition to the annuity code.

5(f). For a defined contribution plan, if the plan states that a participant's share of the fund will be determined on the basis of units, enter the number of units credited to the participant.

If, under the plan, participation is determined on the basis of shares of stock of the employer, enter the number of shares and add the letter "S" to indicate shares. A number without the "S" will be interpreted to mean units.

5(g). For defined contribution plans, enter the value of the participant's account at the time of separation.

6. If, after a participant has been reported on Schedule SSA, the part - pant:

(1) Is paid some or all of the deferred vested retirement benefit, or

(2) forfeits all of the deferred vested retirement benefit,

the plan administrator may, at its option, request that the participant's deferred vested benefit be deleted from Social Security Administration's records. Information reported in item 6, columns (a) through (g), is to be the exact information previously reported on Schedule SSA for the participant.

If this option is chosen because the participant is paid some of the deferred vested benefit, the reporting requirements described in "Cessation of Payment of Benefits" above apply if payment of the benefit ceases before all of the benefit is paid to the participant.

Also, if a person was erroneously reported on a prior Schedule SSA, use item 6 to delete this information from Social Security Administration's records.

**Signature.**—This form must be signed by the plan administrator. If more than one Schedule SSA is filed for one plan, only page one should be signed.

For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

[FR Doc. 89-4681 Filed 2-28-89; 8:45 am]

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Wednesday
March 1, 1989

Part III

# Department of Education

Office of Elementary and Secondary Education

34 CFR Parts 76, 77, and 298

Federal, State, and Local Partnership for Educational Improvement; Notice of Proposed Rulemaking

VOL 54 ISS 39 MR 1 1989 UMI



**DEPARTMENT OF EDUCATION**

**Office of Elementary and Secondary Education**

**34 CFR Parts 76, 77, and 298**

**Federal, State, and Local Partnership for Educational Improvement**

**AGENCY:** Department of Education.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Secretary proposes to issue regulations in Part 298 to implement the program entitled "Federal, State, and Local Partnership for Educational Improvement" in Chapter 2 of Title I of the Elementary and Secondary Education Act of 1965, as amended. This program replaces Chapter 2 of the Education Consolidation and Improvement Act of 1981. The Secretary also proposes to make certain provisions of the Education Department General Administrative Regulations (EDGAR) applicable to these proposed regulations. Accordingly, the Secretary proposes to make conforming changes to several sections in Parts 76 and 77.

**DATES:** Comments must be received on or before May 1, 1989.

**ADDRESSES:** All comments concerning these proposed regulations should be addressed to Alicia Coro, Director, School Improvement Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue SW., Mail Stop 6329, Washington, DC 20202.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

**FOR FURTHER INFORMATION CONTACT:** Zulla Toney, Division of Formula Grants, School Improvement Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue SW. (Room 2040), Washington, DC 20202, (202) 732-4156.

**SUPPLEMENTARY INFORMATION:** On April 28, 1988, the President signed into law the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, Pub. L. 100-297. Title I of that act amends the Elementary and Secondary Education Act of 1965 (ESEA) to include a number of new and reauthorized Federal education programs. Chapter 2 of Title I of the ESEA, entitled "Federal, State, and Local Partnership for Educational Improvement," reauthorizes Chapter 2 of the Education Consolidation and Improvement Act of 1981 (ECIA).

Chapter 2 of the ECIA consolidated over forty Federal education programs into a single authorization of grants to States for the same purposes as the antecedent programs but to be used in accordance with the educational needs and priorities of State and local educational agencies as determined by those agencies. State educational agencies (SEAs) have the basic responsibility for the administration of Chapter 2 funds. Responsibility for the design and implementation of Chapter 2 programs, however, rests mainly with local educational agencies (LEAs), school superintendents and principals, and classroom teachers and supporting personnel.

In reauthorizing Chapter 2, Congress recognized that the program "has been successful in achieving the goals of increasing local flexibility, reducing administrative burden, providing services for private school students, encouraging innovation, and contributing to the improvement of elementary and secondary education programs." 20 U.S.C. 2911(a). As a result, Congress retained the basic framework of Chapter 2, which places decisionmaking at the State and local levels. At the same time, however, Congress responded to criticism that Chapter 2 was unfocused, provided insufficient accountability, and sometimes resulted in funds being used for general education purposes. Accordingly, Congress sought to make Chapter 2 "a better vehicle for school improvement by recasting the uses of funds in general terms, but with an identifiable theme of improving quality and promoting innovation." H.R. Rept. 95, 100th Cong., 1st Sess. 50 (1987). Specifically, Congress identified six broad purposes for which Chapter 2 funds must now be targeted: programs for at-risk students; programs to acquire and use instructional materials to improve the quality of instruction; innovative programs for schoolwide improvements, including effective schools programs; programs of training and professional development; programs to enhance personal excellence of students and student achievement; and other innovative projects to enhance the educational program and climate of the school. Among these areas, however, State and local educational agencies retain the flexibility to decide how to use their Chapter 2 funds.

**Summary of Significant Changes Resulting from Reauthorization Allocation of Chapter 2 Funds to LEAs**

Section 298.7 of the proposed regulations implements a number of changes contained in section 1512 of Chapter 2 concerning how Chapter 2 funds are to be allocated to LEAs. First, an SEA must calculate relative enrollments on the basis of the total number of children enrolled (for the fiscal year preceding the fiscal year in which the calculation is made) in public schools and in private, nonprofit schools that desire that their students participate in Chapter 2 programs. Second, an SEA may provide adjusted allocations for high-cost children only to those LEAs that serve the greatest numbers or prcentages of those children. The SEA may determine, however, which LEAs qualify for adjusted allocations. Third, an SEA may only use the three criteria specified in section 1512(b)(2)(A) to adjust its allocations: children living in areas with high concentrations of low-income families; children from low-income families; and children living in sparsely populated areas. The SEA may decide, however, how these criteria are defined and which criteria to use. The SEA may select one or more of the criteria. In addition, the SEA may continue to determine what percentage of funds is to be allocated on an adjusted basis. In its application to the Secretary, the SEA must include a description of how it adjusted its formula. The Secretary approves the SEA's criteria if the criteria are reasonably calculated to produce an adjusted allocation that reflects the relative needs within the LEAs in the State.

**Targeted Assistance Programs**

Section 298.12 of the proposed regulations implements section 1531 of Chapter 2, which describes six broad categories of programs for which Chapter 2 funds may be used. In reauthorizing Chapter 2, Congress was concerned that Chapter 2 funds not be considered part of the general revenue of an LEA or SEA but, rather, be used to address specific needs that are unmet by State and local expenditures. As a result, Congress sought to enhance the effectiveness of Chapter 2 funds by targeting the use of those funds. As the Senate Report states, "a more targeted definition of permissible use of funds under Chapter 2 will make clear that the goals of Chapter 2 should be consistent with the traditional federal role in education: that of protecting underserved populations and addressing



national priorities, including reform and improvement." S. Rept. 222, 100th Cong., 1st Sess. 25 (1987). Within the broad categories specified in section 1531, however, SEAs and LEAs still have considerable flexibility in deciding what programs would best address their specific educational needs and priorities.

Consistent with section 1531 of the Act, § 298.12(a) requires that Chapter 2 funds be used for targeted assistance *programs*. At both the State and local levels, these programs must be planned in advance. At the State level, for example, a State's applications must contain the planned allocation of funds reserved for the State's use among the targeted assistance programs and must describe the "programs, projects, and activities which are designed to carry out such targeted assistance, together with the reasons for the selection of such programs, projects, and activities." The State advisory committee must review the State's proposed use of funds. An LEA must include similar information in its Chapter 2 application to the SEA, including a description of how its proposed use of Chapter 2 funds will contribute to improving student achievement or improving the quality of education for students. Moreover, the effectiveness of the targeted assistance programs must be measured in accordance with § 298.15.

Section 298.12(b) of the proposed regulations makes clear that, with the exception of using Chapter 2 funds to purchase computer hardware to be used for instructional purposes, the use of Chapter 2 funds to purchase equipment as a program in and of itself is no longer authorized by the Act. Chapter 2 funds, however, may be used to purchase equipment that is used as a part of a targeted assistance program.

**Use of Funds by SEAs**

Section 298.13 of the proposed regulations implements the provisions in section 1521 of Chapter 2 concerning how Chapter 2 funds reserved for State use may be used by SEAs. As indicated in § 298.13(a), section 1521 authorizes three broad categories for using Chapter 2 funds: State administration of Chapter 2 programs; assistance to LEAs with respect to targeted assistance under section 1531; and assistance to LEAs and statewide activities to carry out effective schools programs under sections 1541-1542. Chapter 2 activities at the SEA level must fit into one of these three categories. No longer are "State strengthening" activities allowable merely because they were previously authorized under Part B of Title V of the Elementary and Secondary Education Act of 1965 or section 577(5) of Chapter 2 of the ECIA.

Section 298.13(b) contains two limitations on an SEA's use of Chapter 2 funds. First, an SEA may use no more than 25 percent of the Chapter 2 funds reserved for State use for administration of Chapter 2 programs. Second, an SEA must use at least 20 percent of the Chapter 2 funds reserved for State use in any fiscal year for assistance to LEAs and statewide activities to carry out effective schools programs, unless a waiver is granted.

Section 298.14 of the proposed regulations implements the provisions in sections 1531-1532 of Chapter 2 concerning how Chapter 2 funds may be used by LEAs. In general, § 298.14 provides an LEA broad flexibility in using Chapter 2 funds to support one or more of the targeted assistance programs under § 298.12.

In the case of an LEA that receives additional Chapter 2 funds based on an adjusted allocation under § 298.7(b)(2)(ii), § 298.14(b) describes two options available to the LEA regarding the use of those funds. The LEA may use those funds to provide services to children in public and private, nonprofit schools in accordance with the practice under Chapter 2 of the ECIA—that is, to provide services from the LEA's total allocation that are commensurate with the respective numbers of children within the school district of the LEA, whether in public or private, nonprofit schools, without regard to whether those children generated the additional funds. Under this option, an LEA may not take into account the extent to which children in private schools generated a portion of the LEA's allocation under § 298.7(b)(2)(ii). Rather, the LEA must generally expend equal per pupil amounts for services for public and private school children. However, in accordance with § 298.34(a)(2)(ii), the LEA may take into account differences in the costs per child of meeting the needs of the children to be served and other factors that relate to those expenditures. For example, an LEA may decide to use Chapter 2 funds to meet the remedial reading needs of educationally deprived public school children through small group instruction. If the per pupil costs of providing remedial reading instruction are greater than the per pupil costs of meeting the needs of private school children, established through consultation with private school officials, then the LEA may expend un-equal amounts. Of course, the converse is also allowable. In either case, the services provided to public and private school children must be equitable.

Alternatively, the LEA may use the additional funds it receives to provide services only to children enrolled in schools—both public and private—in which children counted in the adjusted allocation are enrolled. If an LEA elects this second option, the LEA must use all funds received under its adjusted allocation in that manner and must use in each school the amount generated by children counted in the adjusted allocation who are enrolled in that school. However, an LEA is not required to use the additional Chapter 2 funds received under its adjusted allocation to provide services to the children who generated those funds.

**Evaluations and Reports**

Section 298.15 of the proposed regulations implements sections 1522(a)(6) and 1573 of Chapter 2 concerning evaluations and reports. Congress identified the lack of descriptive and evaluative information on how funds were used as one of the shortcomings of Chapter 2 of the ECIA. To remedy this problem and to obtain more uniform accountability, Congress has added several specific evaluation and reporting requirements. As indicated in § 298.15(a), an LEA must report annually to the SEA on the LEA's use of Chapter 2 funds. Further, an SEA is required to submit annually to the Secretary a report covering the use of Chapter 2 funds by the SEA and its LEAs including the types of services provided and the children to whom the services were provided. In addition, in fiscal year 1992, the SEA must evaluate the effectiveness of State and local programs conducted with Chapter 2 funds. The Secretary will work with SEAs to develop nonbinding guidelines for implementing these requirements.

**Participation of Children in Private Schools**

Most provisions to ensure the equitable participation of private school children in programs conducted under Chapter 2 remain the same. Section 298.32(a) of the proposed regulations, however, implements a new provision in section 1512(b)(1) of Chapter 2. This provision makes explicit the practice under Chapter 2 of the ECIA that an LEA must annually contact appropriate officials from private schools within the area served by the LEA to determine whether those officials desire that their students participate in Chapter 2 programs. In addition, the procedures for implementing a bypass have been deleted from these regulations. Instead,

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the Secretary has proposed in another document (53 FR 41466, 41491–92 (Oct. 21, 1988)) that bypass procedures be added to 34 CFR Part 76.

### Applicability of EDGAR

In order to provide additional guidance and to ensure that Chapter 2 funds are spent only for authorized program purposes, the Secretary proposes to make certain provisions of the Education Department General Administrative Regulations (EDGAR) applicable to programs under this part. In determining which of those provisions to apply, the Secretary has carefully balanced the need for basic program accountability with the important principle of minimal Federal interference in State and local affairs.

The Secretary does not propose to make Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments) applicable to programs under this part. Rather, the proposed regulations would require States to adopt their own written fiscal and administrative requirements for expending and accounting for all funds received by SEAs and LEAs under this part. These requirements would have to meet three general criteria, set forth in § 298.2(b)(1)(i)–(iii), that are designed to ensure the minimal standards necessary for proper management of Chapter 2 funds. A State may adopt new procedures, or may adopt accountability procedures applicable to the use of its own funds. In the alternative, as indicated in § 298.2(b)(2), a State may adopt the provisions in Part 80 and certain provisions in Part 75 to satisfy this requirement. A State has complete discretion to choose among these alternatives. A State's procedures would not have to be approved by the Department, but would be available for Federal inspection. In the event a State's requirements are determined to be insufficient, the enforcement provisions in Part E of GEPA would apply, including the due process provisions in that part.

In addition, the Secretary proposes to apply only a limited number of provisions from Part 76 (State-Administered Programs). For the most part, the Secretary proposes to apply sections in Part 76 that are statutorily required. For example, because Chapter 2 contains a supplement-not-supplant requirement, the Secretary proposes to apply § 76.563, which requires an SEA or LEA to use a restricted indirect cost rate, computed in accordance with 34 CFR 75.564–75.566, if the SEA or LEA charges indirect costs to Chapter 2. The Secretary believes that a restricted indirect cost rate is necessary to avoid a violation of the supplement-not-supplant requirement and that there are no alternative ways that a State which chooses to use an indirect cost rate could meet the requirement. The Secretary also proposes to apply § 76.707, which defines when an obligation is made under a number of circumstances. This regulation is needed to determine compliance with the carryover provision in section 412(b) of the General Education Provisions Act. The Secretary believes this provision is neither restrictive nor burdensome.

In addition, the Secretary proposes to apply a few sections that are not required by statute but that provide important rights to SEAs and LEAs that would not be available without the regulations. For example, the Secretary proposes to apply §§ 76.703–76.704, which would permit States and subgrantees, respectively, to begin to obligate Chapter 2 funds on the date their applications are submitted in substantially approvable form.

To facilitate review of this proposal regarding the applicability of Part 76 of EDGAR, the Secretary will provide to SEAs, and make available to other interested parties upon request, a mark-up of Part 76 illustrating those sections he proposes to apply. The Secretary also proposes to apply selected definitions in Part 77 (Definitions That Apply to Department Regulations) and the due process procedures in Part 78 (Education Appeal Board). Regulations implementing the new enforcement provisions in Part E of the General Education Provisions Act (GEPA) would also apply when those regulations are promulgated in final. (See the notice of proposed rulemaking published in the Federal Register on December 2, 1988, 53 FR 48886.)

This proposal to make selected provisions of EDGAR applicable to Chapter 2 responds to a need for additional guidance. During the seven years that EDGAR has not been applicable to Chapter 2 of the ECIA, a number of States have incurred audit exceptions concerning fiscal control and fund accountability. Further, SEAs and LEAs have asked the Department numerous questions that are answered by the provisions of EDGAR. Congress identified lack of accountability as one of the primary deficiencies under Chapter 2 of the ECIA. S. Rept. 222, 100th Cong., 1st Sess. 25 (1987)

The Secretary believes that making selected provisions of EDGAR applicable to programs under this part will address the need for better guidance and accountability. Moreover, the Secretary does not believe this action will create additional burden for SEAs and LEAs. The provisions of EDGAR referenced apply to other State-administered education programs. The EDGAR provisions have been recently reviewed with respect to federalism issues and burden reduction, and unduly burdensome requirements have been revised or removed. The Secretary specifically invites comments on § 298.2(a), including comments on whether any specific sections in EDGAR should or should not be applied to Chapter 2.

### Enforcement Procedures

Section 3501 of the Hawkins-Stafford Act amended Part E of GEPA to provide for new enforcement procedures. The amended Part E requires the Secretary to establish an Office of Administrative Law Judges (OALJ) to replace the existing Education Appeal Board and sets out new hearing procedures. 20 U.S.C. 1234–1234i. With the exception of provisions regarding withholding actions and judicial review of those actions, which are superseded by section 1433 and 1434 of the Act (made applicable to Chapter 2 by section 1574(d) of the Act), Part E applies to the Chapter 2 program. As a result, appeals from cost disallowance decisions, received by an SEA on or after October 25, 1988, as well as most other enforcement proceedings under the Chapter 2 program, will be heard by the OALJ. Future proposed regulations implementing Part E will address whether withholding actions under the Chapter 2 program will also be heard by the OALJ. The Education Appeal Board will continue to hear appeals from determinations under the Chapter 2 program received by an SEA before October 25, 1988.

### Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

### Executive Order 12606

The Secretary certifies that these proposed regulations have been reviewed in accordance with Executive Order 12606 and that they do not have a significant negative impact on family formation, maintenance, and general well-being. To the contrary, the program governed by these regulations supports and strengthens the family by providing for systematic consultation with the parents of children attending elementary and secondary schools in the design, planning, and implementation of the program. Moreover, funds under this program may be used to foster parental involvement through such activities as conducting parent workshops, training parents to work with their children at home, and facilitating parent participation in school activities.



### Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. The small entities that would be affected by these proposed regulations are small LEAs receiving Federal funds under this program. However, the regulations would not have a significant economic impact on the small LEAs affected because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations would impose minimal requirements to ensure the proper expenditure of program funds.

### Paperwork Reduction Act of 1980

Sections 298.5, 298.6, 298.7, 287.15, and 298.22 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h))

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, Room 3002, New Executive Office Building, Washington, DC 20503; Attention: James D. Houser.

### Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 2040, 400 Maryland Avenue SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

### List of Subjects in 34 CFR Part 298

Administrative practice and procedure, education, Elementary and secondary Education, Grant programs—education, Private schools, Reporting and recordkeeping requirements, State-administered programs.

Dated: February 24, 1989.

**Lauro F. Cavazos,**

*Secretary of Education.*

(Catalog of Federal Domestic Assistance Number 84.151, Federal, State, and Local Partnership of Educational Improvement)

The Secretary proposes to amend Parts 76 and 77 and revise 298 of Title 34 of the Code of Federal Regulations as follows:

1. Part 298 is revised to read as follows:

## PART 298—FEDERAL, STATE, AND LOCAL PARTNERSHIP FOR EDUCATIONAL IMPROVEMENT

### Subpart A—How a State or Local Educational Agency Obtains Funds

Sec.
298.1 Purpose.
298.2 Applicable regulations.
298.3 Definitions.
298.4 State advisory committee.
298.5 State applications.
298.6 LEA applications.
298.7 Allocation of Chapter 2 funds to LEAs.
298.8 Reallocation.
298.9–298.10 [Reserved]

### Subpart B—Project Requirements that a State or Local Educational Agency Must Meet

298.11 General responsibilities of State and local educational agencies.
298.12 Targeted assistance programs.
298.13 Use of funds by SEAs.
298.14 Use of funds by LEAs.
298.15 Evaluations and reports.
298.16–298.20 [Reserved]

### Subpart C—Fiscal Requirements that a State or Local Educational Agency Must Meet

298.21 Maintenance of effort.
298.22 Waiver of the maintenance of effort requirement.
298.23 Supplement-not-supplant.
298.24–298.30 [Reserved]

### Subpart D—How Children Enrolled in Private Schools Participate

298.31 Responsibility of SEAs and LEAs.
298.32 Consultation with private school officials.
298.33 Needs, number of children, and types of services.
298.34 Factors used in determining equitable participation.
298.35 Funds not to benefit a private school.
298.36 Equipment and supplies.
298.37 Construction.
298.38 Bypass.
298.39–298.40 [Reserved]

(Authority: 20 U.S.C. 2911–2952, 2971–2976, unless otherwise noted)

### Subpart A—How a State or Local Educational Agency Obtains Funds

#### § 298.1 Purpose.

Under the Federal, State, or Local Partnership for Educational Improvement program (referred to in this part as the Chapter 2 program), the Secretary provides Federal financial assistance to State and local educational agencies to—

(a) Provide the initial funding to implement promising educational programs that can be supported with State and local funds after those programs have been demonstrated to be effective;

(b) Provide a continuing source of innovation, educational improvement, and support for library and instructional materials;

(c) Meet the special educational needs of at-risk and high-cost students;

(d) Enhance the quality of teaching and learning through initiating and expanding effective schools programs; and

(e) Meet their educational needs and priorities for targeted assistance.

(Authority: 20 U.S.C. 2911(b))

#### § 298.2 Applicable regulations.

(a) The following regulations apply to the Chapter 2 program:

(1) The Education Department General Administrative Regulations (EDGAR) as follows:

(i) 34 CFR Part 76 (State-Administered Programs) as follows:

(A) Subpart A (General).

(B) Sections 76.125–76.137 (Consolidated Grant Applications for Insular Areas).

(C) Section 76.401 (Disapproval of an application—opportunity for a hearing).

(D) Subpart F (What Conditions Must Be Met by the State and Its Subgrantees?) as follows:

(*1*) Section 76.500 (Federal statutes and regulations on nondiscrimination).

(*2*) Section 76.532 (Use of funds for religion prohibited).

(*3*) Section 76.533 (Acquisition of real property; construction).

(*4*) Section 76.534 (Use of tuition and fees restricted).

(*5*) Section 76.563 (Restricted indirect cost rate—programs covered).

(*6*) Section 76.592 (Federal evaluation—satisfying requirement for State or subgrantee evaluation).

(*7*) 34 CFR 75.601–75.602, 75.609–75.611, 75.613, and 75.616–75.617 concerning construction, incorporated by reference in § 76.600 (Where to find construction regulations).

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(d) Section 76.662 (Treatment of animals).

(E) Subpart G (What Are the Administrative Responsibilities of the State and Its Subgrantees?) as follows:

(1) Section 76.703 (When a State may begin to obligate funds).

(2) Section 76.704 (When certain subgrantees may begin to obligate funds).

(3) Section 76.705 (Funds may be obligated during a "carryover period").

(4) Section 76.706 (Obligations made during a carryover period are subject to current statutes, regulations, and applications).

(5) Section 76.707 (When obligations are made).

(6) Section 76.730 (Records related to grant funds).

(7) Section 76.734 (Record retention period).

(8) Section 76.740 (Protection of and accessibility to student records).

(9) Section 76.760 (More than one program may assist a single activity).

(10) Section 76.783 (State educational agency action—subgrantee's opportunity for a hearing).

(F) Section 76.901 (Education Appeal Board).

(ii) 34 CFR Part 77 (Definitions that Apply to Department Regulations).

(iii) 34 CFR Part 78 (Education Appeal Board).

(2) The regulations in this Part 298.

(b)(1) A State shall formally adopt fiscal and administrative requirements for expending and accounting for all funds received by SEAs and LEAs under this part. These requirements must be available for Federal inspection and must—

(i) Be sufficiently specific to ensure that funds received under this part are used in compliance with all applicable statutory and regulatory provisions;

(ii) Ensure that funds received under this part are only spent for reasonable and necessary costs of operating programs under this part; and

(iii) Ensure that funds received under this part are not used for general expenses required to carry out other responsibilities of State or local governments.

(2) A State may satisfy this requirement by adopting the provisions in 34 CFR Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments) and in 34 CFR 75.603–75.606, 75.612, and 75.614–75.615 (concerning construction).

(Authority: 20 U.S.C. 2911–2962, 2971–2976)

**§ 298.3 Definitions.**

(a) *Definitions in the Elementary and Secondary Education Act of 1965.* The following terms used in this part are defined in section 1471 of the Act: Construction, Elementary school, Equipment, Free public education, Local educational agency (LEA), Parent, Pupil services, Pupil services personnel, School facilities, Secondary school, Secretary, State, State educational agency (SEA).

(b) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1: Application, EDGAR, Fiscal year, Grant, Minor remodeling, Nonprofit, Private, Public.

(c) *Other definitions.* The following definitions also apply to this part:

"Act" means the Elementary and Secondary Education Act of 1965, as amended (ESEA).

"Chapter 2" means Chapter 2 of Title I of the Act. "Educational personnel" includes, but is not limited to, teachers, librarians, school counselors and other pupil services personnel, and administrators and school board members.

(Authority: 20 U.S.C. 2891, 2911–2962, 2971–2976)

**§ 298.4 State advisory committee.**

(a) Any State that desires to receive a grant under this part shall establish an advisory committee that meets the requirements in section 1522(a)(2) of the Act.

(b) An existing organization, including a State board of education, may be the advisory committee for the purpose of paragraph (a) of this section if the organization—

(1) Is not the SEA under State law;

(2) Is appointed by the Governor to be the advisory committee; and

(3) Meets the representation requirements of section 1522(a)(2) of the Act.

(c) The State advisory committee advises the SEA on—

(1) The allocation among targeted programs under § 298.12 of funds reserved for State use under section 1512(a) of the Act;

(2) The formula for the allocation of funds to LEAs; and

(3) The planning, development, support, implementation, and evaluation of State programs assisted under this part.

(Authority: 20 U.S.C. 2932(a)(2))

**§ 298.5 State applications.**

(a)(1) Any State that desires to receive a grant under this part shall submit an application to the Secretary that meets the requirements in section 1522 of the Act.

(2) The application may be submitted in any form that the State determines is appropriate.

(b)(1) A State shall file its Chapter 2 application for a period not to exceed three years.

(2) If the State that submits an application covering more than one year makes any substantial changes in its application, the State shall—

(i) File a new application; or

(ii) Annually amend its current application to reflect those changes.

(Authority: 20 U.S.C. 2932)

**§ 298.6 LEA applications.**

(a) An LEA may receive its allocation of funds under this part of any year for which—

(1) The LEA has an application on file with the SEA; and

(2) The SEA has certified that the application meets the requirements in section 1533(a) of the Act.

(b)(1) An LEA shall file its application for a period not to exceed three years.

(2) If an LEA that submits an application covering more than one year makes any substantial changes in its application, the LEA shall—

(i) File a new application; or

(ii) Annually amend its current application to reflect those changes.

(c) In addition to the other requirements in section 1533(a) of the Act, an LEA's application must provide for systematic consultation, in the allocation of funds for programs authorized by Chapter 2 and in the design, planning, and implementation of those programs, with—

(1) Parents of children attending elementary and secondary schools in the area served by the LEA;

(2) Teachers and administrative personnel in those schools; and

(3) Other groups involved in the implementation of Chapter 2 (such as librarians, school counselors, and other pupil services personnel) as the LEA deems appropriate.

(d) An LEA may apply for Chapter 2 funds by itself or with a consortium of LEAs.

(Authority: 20 U.S.C. 2943)

**§ 298.7 Allocation of Chapter 2 funds to LEAs.**

(a) An SEA shall distribute to each LEA that has submitted an application as required in § 298.6 the amount of its allocation as determined under paragraph (b) of this section.

(b)(1) From the funds made available to an SEA each year under Chapter 2, the SEA shall distribute not less than 80 percent to LEAs within the State according to the relative enrollments in public and private, nonprofit schools within the school districts of those agencies.

(2) The SEA shall—

(i) Calculate relative enrollments within each LEA on the basis of the total number of children enrolled for the fiscal year preceding the fiscal year in which the determination is made in—

(A) Public schools in the LEA; and

(B) Private, nonprofit schools in the LEA that desire that their students participate in Chapter 2 programs; and

(ii) Adjust those relative enrollments, in accordance with criteria approved by the Secretary under paragraph (d) of this section, to provide higher per pupil allocations only to LEAs that serve the greatest numbers or percentages of—

(A) Children living in areas with high concentrations of low-income families;

(B) Children from low-income families; or

(C) Children living in sparsely populated areas.

(c) The State shall include in the application under § 298.5 the following information concerning adjustments under paragraph (b)(2)(ii) of this section:

(1) How the State adjusted its formula.

(2) How children under paragraph (b)(2)(ii) of this section are defined.

(3) The basis on which the State determined which LEAs serve the greatest numbers or percentages of the children described in paragraph (b)(2)(ii) of this section.

(4) The percentage of the funds for LEAs that the State proposes to allot on an adjusted basis.

(d) The Secretary reviews and approves the State's criteria for adjusting allocations to LEAs if the criteria are reasonably calculated to produce an adjusted allocation that reflects the relative needs within the State's LEAs based on the factors contained in paragraph (b)(2)(ii) of this section.

(Authority: 20 U.S.C. 2922)

**§ 298.8 Reallocation.**

(a) An SEA may reallocate to other LEAs Chapter 2 funds—

(1) From an LEA that—

(i) Does not participate in the Chapter 2 program; or

(ii) Has Chapter 2 funds that exceed the amount required to—

(A) Operate its Chapter 2 projects during the current fiscal year in accordance with its approved application; and

(B) Provide a prudent and justifiable reserve of Chapter 2 funds for operating its Chapter 2 projects effectively during the next fiscal year; or

(2) That are recovered by the State based on a determination by the State that the LEA has failed to spend Chapter 2 funds in accordance with applicable law.

(b) A reallocation of funds under this section—

(1) May be made only during the fiscal year for which the funds were appropriated or during the succeeding fiscal year;

(2) Must be made in accordance with the purposes of Chapter 2; and

(3) Must be spent in accordance with the requirements in Chapter 2 and the regulations in this part.

(Authority: 20 U.S.C. 2922)

**§§ 298.9–298.10 [Reserved]**

## Subpart B—Project Requirements That a State or Local Educational Agency Must Meet

**§ 298.11 General responsibilities of State and local educational agencies.**

(a) *State educational agencies.* (1) (i) Except as provided in paragraph (a) (1) (ii) of this section, an SEA has the basic responsibility for the administration and supervision of programs assisted with Chapter 2 funds. This responsibility must be carried out with a minimum of paperwork.

(ii) Apart from providing technical and advisory assistance and monitoring compliance with Chapter 2, an SEA may not exercise any influence in the decisionmaking processes of an LEA concerning the expenditures described in the LEA's application.

(2) To carry out its responsibilities, an SEA may, in accordance with State law, issue rules, regulations, or policies relating to the administration and operation of programs funded under this part provided that those rules, regulations, or policies do not conflict with the provisions of—

(i) Chapter 2;

(ii) The regulations in this part, including the discretion granted to LEAs under paragraph (b) of this section; or

(iii) Other applicable Federal statutes and regulations.

(b) *Local educational agencies.* (1) An LEA has complete discretion, subject only to the limitations and requirements of Chapter 2, in determining how funds the agency receives under section 1512(a) of the Act are distributed among the areas of targeted assistance in accordance with the LEA's Chapter 2 application.

(2) In exercising this discretion, the LEA shall ensure that each expenditure of Chapter 2 funds—

(i) Carries out the purposes of Chapter 2; and

(ii) Meets the educational needs within the schools of that LEA.

(Authority: 20 U.S.C. 2911(c), 2932, 2943(c))

**§ 298.12 Targeted assistance programs.**

(a) Consistent with paragraphs (b) and (c) of this section, Chapter 2, funds may be used for the planning, development, operation, and expansion of the following:

(1) Programs to meet the educational needs of—

(i) Students at risk of failure in school;

(ii) Students at risk of dropping out of school; and

(iii) Students for whom providing an education entails higher than average costs.

(2) Programs for the acquisition and use of instructional and educational materials.

(3) Innovative programs designed to carry out schoolwide improvements, including effective schools programs under sections 1541–1542 of the Act.

(4) Programs of training and professional development to enhance the knowledge and skills of educational personnel.

(5) Programs designed to enhance personal excellence of students and student achievement.

(6) Innovative projects to enhance the educational program and climate of the school.

(b) Except to purchase computer hardware for instructional purposes under section 1531(b)(2) of the Act, Chapter 2 funds may not be used to purchase equipment unless that equipment is used as a part of a program under paragraph (a) of this section.

(Authority: 20 U.S.C. 2941–2942, 2951–2952)

**§ 298.13 Use of funds by SEAs.**

(a) *Authorized activities.* An SEA may use Chapter 2 funds reserved for State use only for—

(1) State administration of Chapter 2 programs, subject to paragraph (b)(1) of this section, including—

(i) Supervising the allocation of Chapter 2 funds to LEAs;

(ii) Planning, supervising, and processing Chapter 2 funds reserved for State use;

(iii) Monitoring and evaluating Chapter 2 programs and activities; and

(iv) Operating the State advisory committee.

(2) Assistance to LEAs to provide targeted assistance under § 298.12 in the form of—

(i) Direct grants to LEAs;

(ii) Statewide activities; and

(iii) Technical assistance; and

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(3) Assistance to LEAs and statewide activities, in accordance with paragraph (b)(2) of this section, to carry out effective schools programs under sections 1541–1542 of the Act.

(b) *Limitations.* (1) *State administration.* An SEA may not use more than 25 percent of the Chapter 2 funds reserved for State use in any fiscal year for State administration under paragraph (a)(1) of this section.

(2) *Effective schools programs.* (i) Except as provided in paragraph (b)(2)(ii) of this section, an SEA shall use at least 20 percent of the Chapter 2 funds reserved for State use in any fiscal year for effective schools programs under sections 1541–1542 of the Act.

(ii) If an SEA is spending from non-Federal funds an amount equal to twice the amount the SEA is required to use under paragraph (b)(2)(i) of this section, the SEA may request the Secretary to waive the requirement in that paragraph by submitting a written request that includes—

(A) The amount the SEA is spending from non-Federal funds for effective schools programs; and

(B) A description of those effective schools programs that addresses the factors in Section 1542 of the Act.

(Authority: 20 U.S.C. 2931, 2941–2942, 2951–2952; H.R. Rept. 95, 100th Cong., 1st. Sess. 54 (1987))

**§ 298.14 Use of funds by LEAs.**

(a) *General.* An LEA may use Chapter 2 funds to support one or more of the targeted assistance programs under § 298.12.

(b) *Special rules.* (1) If an LEA receives additional Chapter 2 funds as a result of adjusted allocations under § 298.7(b)(2)(ii), the LEA may, at its discretion, use those funds either—

(i) To provide services to children enrolled in public and private, nonprofit schools in accordance with § 298.34(a)(2); or

(ii) To provide services only to children enrolled in schools—both public and private—in which children described in § 298.7(b)(2)(ii) are enrolled.

(2) If, in any fiscal year, an LEA uses Chapter 2 funds under paragraph (b)(1)(ii) of this section, the LEA shall—

(i) Use all funds received as a result of adjusted allocations in that manner; and

(ii) Use in each school with children described in § 298.7(b)(2)(ii) the amount generated by those children who are enrolled in that school.

(3) An LEA is not required to use Chapter 2 funds received under § 298.7(b)(2)(ii) to provide services to the children who generated those funds.

(Authority: 20 U.S.C. 2922(c)(2), 2941–2942, 2951–2952; H.R. Rept. 95, 100th Cong., 1st Sess. 53–54 (1987))

**§ 298.15 Evaluations and reports.**

(a) *LEA responsibilities.* (1) An LEA shall—

(i) Report annually to the SEA on the LEA's use of funds under § 298.14; and

(ii) Make that report available to the public.

(2) The LEA shall provide other information to the SEA as reasonably may be required for program evaluation consistent with the SEA's responsibilities under paragraph (b) of this section.

(b) *SEA responsibilities.* (1) An SEA shall submit annually to the Secretary data on—

(i) The use of Chapter 2 funds by the SEA and LEAs;

(ii) The types of services provided; and

(iii) The children to whom services were provided.

(2) In fiscal year 1992, the SEA shall—

(i) Evaluate the effectiveness of State and local programs conducted under this part;

(ii) Submit the evaluation to the State advisory committee for review and comment;

(iii) Make the evaluation available to the public; and

(iv) Submit a copy of the evaluation and a summary of the LEAs' report under paragraph (a)(1) of this section to the Secretary.

(3) The SEA shall provide other information to the Secretary as may be required for program evaluation.

(Authority: 20 U.S.C 2932(a)(6)–(7), 2943(a)(4), 2973)

**§§ 298.16—298.20 [Reserved]**

## Subpart C—Fiscal Requirements That a State or Local Educational Agency Must Meet

**§ 298.21 Maintenance of effort.**

(a) *Basic standard.* (1) Except as provided in § 298.22, the Secretary pays a State its full allocation of funds under this part if the Secretary finds that either the combined fiscal effort per student or the aggregate expenditures within the State with respect to the provision of free public education for the preceding fiscal year was not less than 90 percent of the combined fiscal effort per student or of the aggregate expenditures for the second preceding fiscal year.

(2) *Meaning of "preceding fiscal year."* For purposes of determining maintenance of effort, the "preceding fiscal year" is the Federal fiscal year or the twelve-month fiscal period most commonly used in a State for official reporting purposes prior to the beginning of the Federal fiscal year in which funds are available.

*Example:* For funds first made available on July 1, 1989, if a State is using the Federal fiscal year, the "preceding fiscal year" is fiscal year 1988 (which began on October 1, 1987) and the "second preceding fiscal year" is fiscal year 1987 (which began on October 1, 1986). If a State is using a fiscal year that begins on July 1, 1989, the "preceding fiscal year" is the twelve-month fiscal period ending on June 30, 1988 and the "second preceding fiscal year" is the period ending on June 30, 1987.

(3)(i) *Expenditures to be considered.* The expenditures the Secretary considers in determining a State's compliance with the maintenance of effort requirement in this paragraph are State and local expenditures for free public education. These include expenditures for administration, instruction, attendance, health services, pupil transportation, plant operation and maintenance, fixed charges, and net expenditures to cover deficits for food services and student body activities.

(ii) *Expenditures not to be considered.* The Secretary does not consider the following expenditures in determining a State's compliance with the maintenance of effort requirement in this paragraph:

(A) Any expenditures for community services, capital outlay, or debt service.

(B) Any expenditures of Federal funds.

(b) *Failure to maintain effort.* (1) If a State fails to maintain effort and a waiver under § 298.22 is not appropriate, the Secretary reduces the State's allocation of funds under this part in the exact proportion by which the State fails to meet 90 percent of both the State's combined fiscal effort per student and aggregate expenditures (using the measure most favorable to the State) for the second preceding fiscal year.

(2) In determining maintenance of effort for the fiscal year immediately following the fiscal year in which the State failed to maintain effort, the Secretary considers the fiscal effort for the second preceding fiscal year to be no less than 90 percent of the combined fiscal effort per student or aggregate expenditures (using the measure most favorable to the State) for the third preceding fiscal year.

*Example:* In Federal fiscal year 1990, a State fails to maintain effort because its fiscal effort in the preceding fiscal year (1988) is less than 90 percent of its fiscal effort in the second preceding fiscal year (1987). In assessing whether the State maintained effort during the next fiscal year (1991), the Secretary considers the State's expenditures for the second preceding fiscal year (1988)



(the year that caused the State's failure to maintain effort) to be no less than 90 percent of the State's expenditures in the prior fiscal year (1987).

(Authority: 20 U.S.C. 2971(a))

**§ 298.22 Waiver of the maintenance of effort requirement**

(a) *Waiver request.* A State that has not maintained its fiscal effort as required in § 298.21(a) may ask the Secretary to grant a waiver of that requirement by submitting a waiver request that includes—

(1) A statement of the combined fiscal effort per student and the aggregate expenditures for the two fiscal years being compared; and

(2) A description of the circumstances that the State considers to be exceptional or uncontrollable.

(b) *Secretary's criteria.* (1) The Secretary may grant a waiver, for one year only, of the maintenance of effort requirement in § 298.21(a) if the Secretary determines that the waiver is equitable due to exceptional or uncontrollable circumstances. Exceptional or uncontrollable circumstances include—

(i) A natural disaster;

(ii) A precipitous and unforeseen decline in the financial resources of the State; or

(iii) Other exceptional or uncontrollable circumstances.

(2) The Secretary does not consider tax initiatives or referenda to be exceptional or uncontrollable circumstances.

(c) *Effect of a waiver.* (1) If the Secretary grants a waiver under paragraph (b) of this section, the Secretary allocates to the affected State its full allocation of Chapter 2 funds.

(2) In determining maintenance of effort for the fiscal year immediately following the fiscal year for which the waiver was granted, the Secretary considers the fiscal effort for the second preceding fiscal year to be no less than 90 percent of the combined fiscal effort per student or aggregate expenditures (using the measure most favorable to the State) for the third preceding fiscal year.

*Example.* In Federal fiscal year 1990, a State secures a waiver because its fiscal effort in the preceding fiscal year (1988) is less than 90 percent of its fiscal effort in the second preceding fiscal year (1987) due to exceptional or uncontrollable circumstances. In assessing whether the State maintained effort during the next fiscal year (1991), the Secretary considers the State's expenditures for the second preceding fiscal year (1988) (the year for which the State needed a waiver) to be no less than 90 percent of the State's expenditures in the prior fiscal year (1987).

(Authority: 20 U.S.C. 2971(a))

**§ 298.23 Supplement-not-supplant.**

An SEA or LEA that receives Chapter 2 funds—

(a) May use and allocate those funds only to supplement and, to the extent practical, increase the level of funds that would, in the absence of Federal funds made available under Chapter 2, be made available from non-Federal sources; and

(b) May not use Chapter 2 funds to supplant funds from non-Federal sources.

(Authority: 20 U.S.C. 2971(b))

**§§ 298.24–298.30 [Reserved]**

## Subpart D—How Children Enrolled in Private Schools Participate

**§ 298.31 Responsibility of SEAs and LEAs.**

(a)(1) An LEA shall provide children enrolled in private schools in that LEA with secular, neutral, and nonideological services, materials, and equipment or other benefits that will ensure equitable (as compared to children enrolled in public schools) participation of private school children in the purposes and benefits of Chapter 2 in accordance with the requirements in §§ 298.32–298.37 and section 1572 of the Act.

(2) The LEA shall provide the opportunity to participate in a manner that is consistent with the number and needs of private school children in the school district of the LEA.

(3) The LEA shall exercise administrative direction and control over Chapter 2 funds and property that benefit children enrolled in private schools.

(4)(i) Provision of services to children enrolled in private schools must be provided by employees of a public agency or through contract by the public agency with a person, association, agency, or corporation that, in the provision of those services, is independent of the private school and of any religious organization.

(ii) This employment or contract must be under the control and supervision of the public agency.

(b)(1) An SEA shall—

(i) Ensure that each LEA complies with the requirements of §§ 298.32–298.37; or

(ii) If no Chapter 2 project is carried out by an LEA, make arrangements—such as through contracts with nonprofit agencies or organizations—under which children in private schools in that LEA are provided with services and materials to the extent that would have occurred if the LEA had received Chapter 2 funds.

(2) If an SEA conducts instructional programs or personnel training programs, it shall comply with these requirements as if it were an LEA.

(c) Under sections 1522(a)(3)(B) and 1533(a)(1)(B) of the Act, an application by an SEA or LEA must contain the planned allocation of funds required to implement section 1572.

(d) In accordance with section 1572(a)(1) of the Act, the regulations in this subpart only apply to children enrolled in private, nonprofit elementary and secondary schools.

(Authority: 20 U.S.C. 2972)

**§ 298.32 Consultation with private school officials.**

In order to receive Chapter 2 funds, an LEA shall—

(a) Contact annually appropriate officials from private schools within the area served by the LEA to determine whether those officials desire that their students participate in the Chapter 2 program; and

(b) With respect to those officials in schools with children who will participate, consult regarding the development and implementation of the Chapter 2 program before the LEA makes any decision that affects the opportunities of private school children to participate in the program.

(Authority: 20 U.S.C. 2922(b)(1), 2972)

**§ 298.33 Needs, number of children, and types of services.**

An LEA shall determine the following matters on a basis comparable to that used by the LEA in providing for participation of public school children:

(a) The needs of children enrolled in private schools.

(b) The number of those children who will participate in the Chapter 2 program.

(c) The Chapter 2 services that the LEA will provide to those children.

(Authority: 20 U.S.C. 2972)

**§ 298.34 Factors used in determining equitable participation.**

(a) *Equal expenditures.* (1) Expenditures for Chapter 2 programs for children enrolled in private schools must be equal (consistent with the number of children to be served) to expenditures for Chapter 2 programs for children enrolled in the public schools of an LEA, taking into account the needs of the individual children and other factors that relate to such expenditures.

(2) Except as provided in § 298.14(b)(1)(ii), in determining whether expenditures are equal under paragraph (a)(1) of this section, an LEA—

(i) May not take into account the extent to which children in private

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schools generated a portion of the LEA's allocation under § 298.7(b)(2)(ii); but

(ii) May take into account differences in the costs per child of meeting the needs of the individual children to be served and other factors that relate to these expenditures, as provided in paragraph (a)(1) of this section.

(b) *Services on an equitable basis.* (1) In addition to meeting the equal expenditures requirement in paragraph (a) of this section, an LEA shall provide for the participation in the Chapter 2 program of children enrolled in private schools on an equitable basis.

(2)(i) In determining whether an LEA is providing for participation on an equitable basis, the services provided to private school children and the services provided to public school children are considered.

(ii) If an LEA uses Chapter 2 funds to concentrate programs for public school children on a particular group, attendance area, or grade or age level, the LEA shall ensure equitable opportunities for participation by children enrolled in private schools who—

(A) Have the same needs as the public school children to be served; and

(B) Are in that group, attendance area, or grade or age level.

(iii) If the needs of children enrolled in private schools are different from the needs of children enrolled in public schools, an LEA shall provide Chapter 2 services for the private school children that address their needs on an equitable basis.

(Authority: 20 U.S.C. 2972)

**§ 298.35 Funds not to benefit a private school.**

(a) An LEA may only use Chapter 2 funds to provide services that supplement the level of services that would, in the absence of Chapter 2 services, be available to children enrolled in a private school.

(b) An LEA shall use Chapter 2 funds to meet the needs of children enrolled in a private school, but not for the purpose of aiding the private school.

(Authority: 20 U.S.C. 2972)

**§ 298.36 Equipment and supplies.**

(a) To meet the requirements of section 1572(c) of the Act, a public agency must keep title to and exercise continuing administrative control of all equipment and supplies that the LEA acquires with Chapter 2 funds.

(b) The public agency may place equipment and supplies in a private school for the period of time needed for the program.

(c) The public agency shall ensure that the equipment or supplies placed in a private school—

(1) Are used for Chapter 2 purposes;

(2) Are used for secular, neutral, and nonideological purposes; and

(3) Can be removed from the private school without remodeling the private school facility.

(d) The public agency shall remove equipment or supplies from a private school if—

(1) The equipment or supplies are no longer needed for Chapter 2 purposes; or

(2) Removal is necessary to avoid unauthorized use of the equipment or supplies for other than Chapter 2 purposes.

(e) For the purpose of this section, the term "public agency" includes the LEA.

(Authority: 20 U.S.C. 2972)

**§ 298.37 Construction.**

(a) No Chapter 2 funds may be used to perform repairs, minor remodeling or construction of private school facilities.

(b) An LEA may use Chapter 2 funds to perform repairs, minor remodeling, or construction of public facilities as may be necessary to carry out its responsibilities under this subpart.

(Authority: 20 U.S.C. 2972)

**§ 298.38 Bypass.**

(a) The Secretary implements a bypass if an SEA or LEA—

(1) Is prohibited by law from providing Chapter 2 services for private school children on an equitable basis; or

(2) Has substantially failed, or is unwilling, to provide services for private school children on an equitable basis.

(b) If the Secretary implements a bypass, the Secretary—

(1) Waives an SEA's or LEA's responsibility for providing Chapter 2 services for private school children and arranges to provide the required services;

(2) Consults with appropriate public and private school officials; and

(3) Deducts the cost of these services, including any administrative costs, from the appropriate allotment of Chapter 2 funds provided to the State.

(c) Pending the final resolution of an investigation or a complaint that could result in a bypass action, the Secretary may withhold from the allocation of the affected SEA or LEA the amount the Secretary estimates is necessary to pay the cost of the services referred to in paragraph (b) of this section.

(Authority: 20 U.S.C. 2972 (d), (e), (g))

**§§ 298.39–298.40 [Reserved]**

**PART 76—STATE-ADMINISTERED PROGRAMS**

2. The authority citation for Part 76 is revised to read as follows:

Authority: 20 U.S.C. 1221e–3(a)(1), 2974(b), and 3474, unless otherwise noted.

**§ 76.1 [Amended]**

3. Section 76.1 is amended by removing paragraph (c) and adding the following authority citation at the end of the section:

(Authority: 20 U.S.C. 1221e–3(a)(1), 2974(b), and 3474)

4. Section 76.401 as set forth at 53 FR 31603, August 18, 1988, is amended by adding, as the second item in the chart in paragraph (a), an entry to read as follows:

**§ 76.401 Disapproval of an application—opportunity for a hearing.**

(a) • • •

| | | |
|---|---|---|
| Federal, State, and local Partnership for Educational Improvement. | Chapter 2 of Title I, Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 2911 *et seq.*). | 298 |

• • • • •

5. Section 76.563 is revised to read as follows:

**§ 76.563 Restricted indirect cost rate—programs covered.**

If a State or a subgrantee decides to charge indirect costs to a program that has a statutory requirement prohibiting the use of Federal funds to supplant non-Federal funds, the State or subgrantee shall use a restricted indirect cost rate computed under 34 CFR 75.564–75.568.

(Authority: 20 U.S.C. 1221e–3(a)(1), 2974(b), 3474)

**§ 76.734 [Amended]**

6. Section 76.734 is amended by removing "Unless a longer period is required under 34 CFR Part 74, a" and adding "A" in its place.

**§§ 76.2, 76.50, 76.51, 76.401, 76.500, 76.532, 76.533, 76.534, 76.592, 76.690, 76.705, 76.704, 76.707, 76.740 and 76.760 [Amended]**

7. The authority citations for the following sections are amended by adding ", 2974(b)" before the final parenthesis: §§ 76.2, 76.50, 76.51, 76.401, 76.500, 76.532, 76.533, 76.534, 76.592, 76.600, 76.703, 76.704, 76.707, 76.740, 76.760.

**§ 76.125 [Amended]**

8. The authority citation for § 76.125 as set forth at 53 FR 31602, August 18, 1988, is amended by removing "and" and adding, in its place, ", 2974(b)".

**§ 76.707 [Amended]**

9. The table in § 76.707 is amended by removing "under the cost principles in appendices C–F to 45 CFR Part 74" in paragraph (h).

**PART 77—[AMENDED]**

10. The following undesignated cross-references are removed from Part 76:

**§§ 76.50, 76.140, 76.305, 76.600 through 76.690, 76.702, 76.730 through 76.734, 76.770 through 76.772 and 76.900 through 76.902 [Amended]**

a. The cross-references following §§ 76.50, 76.305, 76.702, and 76.734.

b. The cross-references preceding §§ 76.140 through 76.142, 76.600, 76.681 through 76.690, 76.730 through 76.734, 76.770 through 76.792, and 76.900 through 76.902 (Subpart H).

**§ 77.1 [Amended]**

11. The authority citation for Part 77 (following § 77.1) is revised to read as follows:

(Authority: 20 U.S.C. 1221e–3(a)(1), 2974(b), and 3474, unless otherwise noted.)

[FR Doc. 89–4777 Filed 2–28–89; 8:45 am]
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Part IV

# Interstate Commerce Commission

49 CFR Part 1135
Railroad Cost Recovery Procedures;
Notice of Interpretation of Rule

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**INTERSTATE COMMERCE COMMISSION**

**49 CFR Part 1135**

**[Ex Parte No. 290 (Sub-No. 2)]**

**Railroad Cost Recovery Procedures**

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of interpretation of rule.

**SUMMARY:** The Commission is adopting an interest element for inclusion in the quarterly rail cost adjustment factor in order to add more accuracy to that calculation. The methodology for calculating the interest element will be based on changes in interest rates. The original proposal was contained in a notice served February 13, 1987, 52 FR 4790 (February 17, 1987). Interest rates will be calculated by dividing interest payments by average total debt. The weight of the interest component will be the percentage of operating expenses, rents, taxes and interest represented by interest payments. Class I railroad Annual Report Form R-1 data will be used for the calculation.

**DATES:** The interest element shall be included beginning with the second quarter 1989 submission.

**FOR FURTHER INFORMATION CONTACT:** William T. Bono, (202) 275-7354 or Robert C. Hasek, (202) 275-0938 or 275-7354. TDD for hearing impaired (202) 275-1721.

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to, call or pick up in person from: Dynamic Concepts Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or telephone (202) 289-4357. Assistance for the hearing impaired is available through TDD services (202) 275-1721 or by pickup from Dynamic Concepts Inc., Room 2229 at Commission headquarters.

This action will not affect either the quality of the human environment or energy conservation. It will not have a significant adverse impact on a substantial number of small entities.

Dated: February 8, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Simmons, Lamboley. Vice Chairman Simmons would have applied the new standard beginning with the second quarter of 1985.

**Noreta R. McGee,**

*Secretary.*

[FR Doc. 89-4742 Filed 2-28-89; 8:45 am]

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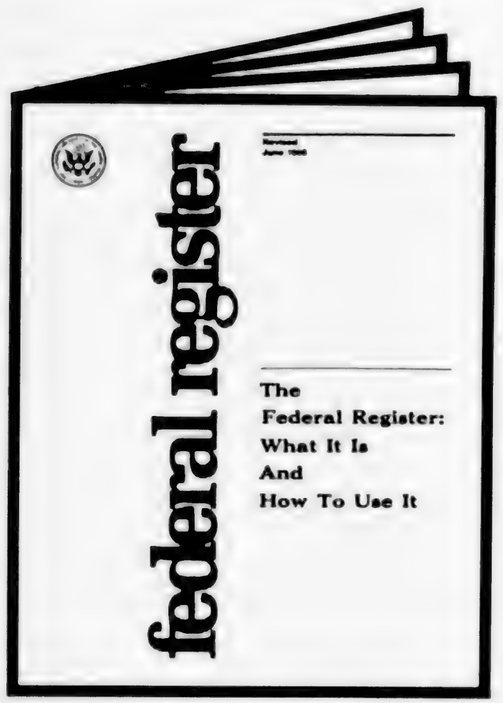
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# Presidential Documents

Title 3—

The President

## Proclamation 5938 of February 28, 1989

## American Red Cross Month, 1989

By the President of the United States of America

A Proclamation

The Red Cross, as a symbol and an ideal, has meant help and reassurance to millions of Americans and people around the world. To Henry Dunant, founder of the International Red Cross 125 years ago, help meant a bright red cross on a white banner, carried onto battlefields by those tending wounded soldiers and civilians innocently caught in conflict. To Clara Barton, founder of the American Red Cross, help meant all that Dunant envisioned plus a system by which people could voluntarily help each other cope during times of disaster, not just during war. Today, we need only look to the success of the American Red Cross to see how both visions have become realities.

Whether it has been in a major emergency like the tornadoes that struck North Carolina last fall or in the aftermath of the terrible death and destruction of the earthquake in Armenia, the Red Cross has been there extending the hand of help. In 1988, 4.2 million people were given emergency food, clothing, and shelter by more than 76 thousand Red Cross disaster volunteers.

Clara Barton's dream of mitigating the suffering of disaster victims also brought an understanding of the need to help the entire population to be better prepared for day-to-day emergencies. This has meant teaching 7.1 million people first aid, Red Cross CPR, swimming, and water and boating safety. Now, perhaps more than ever, we realize how education can mean survival as we and people around the world face the deadly threat of AIDS. The Red Cross has helped us understand this health crisis by disseminating AIDS prevention information.

Thousands of persons needing blood owe a debt of gratitude to the American Red Cross. From recruitment of volunteer donors to collecting and testing that ensures the safest blood possible, last year the Red Cross was able to provide our ill and injured with 6.4 million units of blood.

Our American Red Cross also provides important humanitarian service to our military personnel and their families, including counseling and assistance and referral services for active-duty military, veterans, and their dependents. Our young people, too—more than 3 million of them—have made a valuable commitment to public service through the Red Cross. From organizing high school and college bloodmobiles to visiting patients in hospitals and retirement homes, youth programs are another reason why we should appreciate the work of this remarkable organization.

From the visions of Henry Dunant and Clara Barton have come one of the greatest volunteer movements in history. The strength of the Red Cross can be seen every day, everywhere, through the work of people who believe that a successful life must include serving others. It is through their commitment that a bright red cross on a white banner continues to mean hope, dignity, and compassion to thousands of people in need, both here at home and around the world.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America and Honorary Chairman of the American National Red Cross, by virtue of the authority vested in me by the Constitution and laws of the United

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States, do hereby proclaim the month of March 1989 as American Red Cross Month. I urge all Americans to continue their generous support and ready assistance to the work of the American Red Cross and its nearly 3,000 Chapters and stations on military installations.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of February, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and thirteenth.

George Bush

[FR Doc. 89-5071
Filed 3-1-89; 11:03 am]
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# Rules and Regulations

Federal Register
Vol. 54, No. 40
Thursday, March 2, 1989

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## MERIT SYSTEMS PROTECTION BOARD

### 5 CFR Part 1204

### Availability of Official Information

**AGENCY:** Merit Systems Protection Board.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Merit Systems Protection Board (Board) is amending its regulations at 5 CFR Part 1204 by adding a section on the availability of confidential commercial information. The new section establishes procedures to notify submitters of records containing confidential commercial information when those records are requested under the Freedom of Information Act, 5 U.S.C. 552, as amended, if, after reviewing the request, the responsive records, and any appeal by the requester, the Board may be required to disclose the records. These procedures comply with Executive Order 12600 issued on June 23, 1987, and published in the **Federal Register** on June 25, 1987.

**EFFECTIVE DATE:** March 2, 1989.

**FOR FURTHER INFORMATION CONTACT:** Michael H. Hoxie, (202) 653-7200.

**List of Subjects in 5 CFR Part 1204**

Freedom of Information, Practices and procedures, Privacy.

Accordingly, 5 CFR Part 1204 is amended as follows:

## PART 1204—AVAILABILITY OF OFFICIAL INFORMATION

1. The authority citation for Part 1204 is revised to read as follows:

**Authority:** 5 U.S.C. 552 and 1205, Pub. L. 99-507; Section 1204.14 also issued under E.O. 12600, 52 FR 23781, June 25, 1987.

2. Section 1204.14 is added to read as follows:

**§ 1204.14 Requests for access to confidential commercial information.**

(a) *General.* Confidential commercial information provided to the Board by a business submitter will not be disclosed in response to a Freedom of Information Act request except in accordance with this section.

(b) *Definitions.* (1) The term "confidential commercial information" means records provided to the government by a submitter that arguably contain material exempt from release under Exemption 4 of the Freedom of Information Act, 5 U.S.C. 552(b)(4), because disclosure could reasonably be expected to cause substantial competitive harm.

(2) The term "submitter" means any person or entity who provides confidential commercial information to the government. The term "submitter" includes, but is not limited to, corporations, state governments, and foreign governments.

(c) *Notice to business submitters.* The Board will provide a business submitter with prompt written notice of a request encompassing its confidential commercial information whenever that action is required under paragraph (d) of this section, and except as provided in paragraph (h) of this section. This written notice will either describe the exact nature of the confidential commercial information requested or will provide copies of the records or portions of records containing the commercial information.

(d) *When initial notice is required.* (1) With respect to confidential commercial information submitted to the Board before January 1, 1988, the Board will give the business submitter notice of a request whenever:

(i) The information is less than 10 years old; or

(ii) The Board has reason to believe that disclosure of the information could reasonably be expected to cause substantial competitive harm.

(2) With respect to confidential commercial information submitted to the Board on or after January 1, 1988, the Board will give notice to the business submitter whenever:

(i) The business submitter has designated the information in good faith as commercially or financially sensitive information; or

(ii) The Board has reason to believe that disclosure of the information could reasonably be expected to cause substantial competitive harm.

(3) Notice of a request for commercially confidential information submitted before January 1, 1988, is required for a period of not more than 10 years after the date on which the information is submitted unless the business submitter requests, and provides justification for, a longer specific notice period. Whenever possible, the submitter's claim of confidentiality must be supported by a statement or certification, by an officer or authorized representative of the company, the the information in question is in fact confidential commercial information and has not been disclosed to the public.

(e) *Opportunity to object to disclosure.* Through the notice described in paragraph (c) of this section, the Board will afford a business submitter a reasonable period within which to provide a detailed statement of any objection to disclosure. The statement must specify all grounds for withholding any of the information under any exemption of the Freedom of Information Act. In addition, in the case of Exemption 4, the statement must demonstrate why the information is alleged to be a trade secret, or to be commercial or financial information that is privileged or confidential. Information a business submitter provides under this paragraph may itself be subject to disclosure under the Freedom of Information Act.

(f) *Notice of intent to disclose information.* The Board will consider carefully a business submitter's objections and specific grounds for claiming that the information should not be disclosed before determining whether to disclose confidential commercial information. Whenever the Board decides to disclose confidential commercial information over the objection of a business submitter, it will forward to the business submitter a written notice that includes:

(1) A statement of the reasons for which the business submitter's disclosure objections were not sufficient;

(2) A description of the confidential commercial information to be disclosed; and

(3) A specified disclosure date. The Board will forward the notice of intent to disclose the information a reasonable

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number of days, as circumstances permit, before the specified date upon which disclosure is expected. It will forward a copy of the disclosure notice to the requester at the same time.

(g) *Notice of Freedom of Information Act lawsuit.* Whenever a requester files a lawsuit seeking to compel disclosure of business information covered by paragraph (d) of this section, the Board will notify the business submitter promptly.

(h) *Exceptions to notice requirements.* The notice requirements of this section do not apply when:

(1) The Board determines that the information should not be disclosed;

(2) The information lawfully has been published or otherwise made available to the public;

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552); or

(4) The disclosure is required by an agency rule that:

(i) Was adopted pursuant to notice and public comment;

(ii) Specifies narrow classes of records submitted to the agency that are to be released under the Freedom of Information Act; or

(iii) Provides in exceptional circumstances for notice when the submitter provides written justification, at the time the information is submitted or a reasonable time thereafter, that disclosure of the information could reasonably be expected to cause substantial competitive harm.

(5) The information requested is not designated by the submitter as exempt from disclosure in accordance with agency regulations promulgated pursuant to this section, when the submitter had an opportunity to do so at the time of submission of the information or a reasonable time thereafter, unless the agency has substantial reason to believe that disclosure of the information would result in competitive harm; or

(6) The designation made by the submitter in accordance with Board regulations appears obviously frivolous; except that, in such case, the Board must provide the submitter with written notice of any final administrative disclosure determination within a reasonable period prior to the specified disclosure date.

Date: February 24, 1989.

**Robert E. Taylor,**

*Clerk of the Board.*

[FR Doc. 89-4833 Filed 3-1-89; 8:45 am]

BILLING CODE 7409-01-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Airspace Docket No. 88-ASO-23]**

### Revision of Transition Area, Alabaster, AL

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment revises the Alabaster, AL, Transition Area by adding an arrival area extension. The extension will provide airspace protection for aircraft executing a new Nondirectional Radio Beacon (NDB), Runway 33, Standard Instrument Approach Procedure (SIAP) to the Shelby County Airport. Also, this action corrects the geographic position coordinates for Bessemer Airport.

**EFFECTIVE DATE:** 0901 u.t.c., April 6, 1989.

**FOR FURTHER INFORMATION CONTACT:** James G. Walters, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

**SUPPLEMENTARY INFORMATION:**

**History**

On December 19, 1988, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revise the Alabaster, AL, Transition Area (53 FR 50974). This proposed revision would add an arrival area extension to provide airspace protection for aircraft executing a new NDB SIAP being planned for Runway 33 at the Shelby County Airport. Also, the proposal would correct the geographic position coordinates for the Bessemer Airport. Interested parties were invited to participated in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6D dated January 4, 1988.

**The Rule**

This amendment to Part 71 of the Federal Aviation Regulations revises the Alabaster, AL, Transition Area by adding an arrival area extension to provide additional controlled airspace for aircraft executing a new NDB SIAP to Runway 33 at the Shelby County Airport and corrects the geographic position coordinates for the Bessemer Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Aviation safety, Transition area.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

### PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

**§ 71.181 [Amended]**

2. § 71.181 is amended as follows:

**Alabaster, AL [Amended]**

By deleting the existing description and substituting the following: "That airspace extending upward from 700' above the surface within a 7-mile radius of Shelby County Airport (Lat. 33°10'41"N; Long. 86°47'01"W); within 3.5 miles each side of the 168° bearing of the Calera RBN (Lat. 33°07'06"N; Long. 86°46'02"W), extending from the 7-mile radius area to a point 11 miles south of the RBN; within a 6.5-mile radius of Bessemer Airport (Lat. 33°18'46"N; Long. 86°55'32"W); excluding that portion which coincides with the Birmingham, AL, Transition Area."

Issued in East Point, Georgia, on February 14, 1989.

**William D. Wood,**

*Acting Manager, Air Traffic Division Southern Region.*

[FR Doc. 89-4835 Filed 3-1-89; 8:45 am]

BILLING CODE 4910-13-M



### 14 CFR Part 71

**[Airspace Docket No. 88-ASO-21]**

### Revision to Transition Area, Lake City, SC

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment revises the Lake City, SC, Transition Area. This action deletes an arrival area extension based on the 192° bearing from the Evans RBN and adds a new extension either side of the 288° bearing of the RBN. This amendment is necessary to afford Airspace Protection for aircraft executing a new standard instrument approach procedure (SIAP) to the Lake City Municipal C.J. Evans Field Airport.

**EFFECTIVE DATE:** 0901 u.t.c., August 24, 1989.

**FOR FURTHER INFORMATION CONTACT:** Melvin Brock, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

**SUPPLEMENTARY INFORMATION:**

**History**

On December 19, 1988, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revise the Transition Area, Lake City, SC (53 FR 50974). The nondirectional radio beacon (NDB) standard instrument approach procedure (SIAP) originally proposed based on the 192° bearing from the Evans Radio Beacon (RBN) was never developed. A new NDB SIAP has been developed predicated on the 288° bearing of the Evans NDB. The proposed amendment would delete the arrival area extension along the 192° bearing and add a new extension either side of the 288° bearing of the Evans RBN. This action is necessary to afford airspace protection for aircraft executing the new SIAP. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6D dated January 4, 1988.

**The Rule**

This amendment of Part 71 of the Federal Aviation Regulations revises the Lake City, SC, Transition Area by deleting an arrival area extension and adding a new extension to provide airspace protection for aircraft executing a new SIAP.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Aviation safety, Transition area.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

### PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

**§ 71.181 [Amended]**

2. Section 71.181 is amended as follows:

**Lake City, SC [Amended]**

By removing the existing description and adding the following: "That airspace extending upward from 700' above the surface within a 6.5-mile radius of the Lake City Municipal C.J. Evans Field Airport (Lat. 33°51'14"N; Long. 79°46'08"W); within 3 miles each side of the 283° bearing from the Evans RBN (Lat. 33°51'21"N; Long. 79°45'58"W), extending from the 6.5-mile radius area to 8.5 miles west of the RBN; excluding that portion which coincides with the Kingstree, SC, Transition Area."

Issued in East Point, Georgia, on February 14, 1989.

**William D. Wood,**

*Acting Manager, Air Traffic Division Southern Region.*

[FR Doc. 89-4836 Filed 3-1-89; 8:45 am]

BILLING CODE 4910-13-M

### 14 CFR Part 71

**[Airspace Docket No. 88-ASW-6]**

### Revison of Transition Area; Athens, TX

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Correction to final rule.

**SUMMARY:** This action corrects the latitude and longitude coordinates describing the Athens Municipal Airport. The coordinates of the Athens Municipal Airport were revised after the original final rule Airspace Docket 88-ASW-6 was issued. This action will also change the name of the nondirectional radio beacon (NDB) used to execute the standard instrument approach procedure (SIAP) serving the Lochridge Ranch Airport. In the original final rule Airspace Docket 88-ASW-6, this NDB was incorrectly referred to as the Lochridge Ranch NDB. The correct name of this NDB is the Crossroads NDB.

**EFFECTIVE DATE:** March 2, 1989.

**FOR FURTHER INFORMATION CONTACT:** Bruce C. Beard, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530, telephone (817) 624-5561.

**SUPPLEMENTARY INFORMATION:**

**History**

**Federal Register** Document 88-ASW-6 was published on August 24, 1988, revising the transition area located at Athens, TX. (53 FR 32211). This action will correct the latitude and longitude coordinates of the Athens Municipal Airport and will also change the name of the NDB used to execute SIAP serving the Lochridge Ranch Airport from Lochridge Ranch NDB to Crossroads NDB.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

**PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES CONTROLLED AIRSPACE, AND REPORTING POINTS**

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

**§ 71.181 [Amended]**

2. Section 71.181 is amended as follows:

**Athens, TX [Revised]**

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Athens Municipal Airport (latitude 32°09'45"N., longitude 95°49'40"W.), and within 2 miles each side of the 289° radial of the Frankston VOR (latitude 32°04'28"N., longitude 95°31'50"W.), extending from the 6.5-mile radius area to 9 miles east of the Athens Municipal Airport; and within an 8.5-mile radius of the Lochridge Ranch Airport (latitude 31°59'21"N., longitude 96°57'03"W.), and within 4.5 miles each side of the 356° bearing of the Crossroads NDB (latitude 32°03'48"N., longitude 96°57'27"W.), extending from the 8.5-mile radius area to 10.5 miles north of the Lochridge Ranch NDB.

Issued in Fort Worth, TX, on February 9, 1989.

**Larry L. Craig,**

*Manager, Air Traffic Division Southwest Region.*

[FR Doc. 89-4837 Filed 3-1-89; 8:45 am]

BILLING CODE 4910-13-M

**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

**18 CFR Parts 154, 157, 260, 284, 385 and 388**

**[Docket No. RM87-17-000]**

**Natural Gas Data Collection System; Corrections and Revisions to FERC Form No. 2 Record Formats and Availability of Edit Checks For FERC Form Nos. 2, 2-A, 8, 11, 14 and 16**

Issued February 23, 1989.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Notice of corrections and revisions to FERC Form No. 2 [1] record formats and availability of edit checks for FERC Form Nos. 2, 2-A, 8, 11, 14 and 16.

**SUMMARY:** This notice identifies revisions to the record formats for FERC Form No. 2. The revisions affect Schedule F5, Records 23, 32, 41, 51, 52 and 53. In addition, the notice includes a list of proposed edit checks for FERC Form Nos. 2, 2-A, 8, 11, 14 and 16.

**DATE:** The revisions to the FERC Form No. 2 record formats and the proposed edit checks for forms are available on February 23, 1989.

**FOR FURTHER INFORMATION CONTACT:** Brooks Carter, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Room 7010, Washington, DC 20426, (202) 357-8995 or (202) 357-8844.

**SUPPLEMENTARY INFORMATION:**

The Commission staff is issuing certain revisions to the record formats for FERC Form No. 2 in order to correct certain inconsistencies with the printed version of the form. The revisions affect the following records in Schedule F5:

1. Record 23: Investments in Subsidiary Companies (Account 123.1).
   a. Information Reported Code has been revised: Individual investment, code = 1, Subtotal, code = 2, Grand total, code = 3.
   b. Item 493a, Total Cost Account 123.1, has been revised to include code = 3.
2. Record 32: Accumulated Deferred Income Taxes (Account 190).
   a. Utility Plant Codes have been revised as previously indicated in the January 31, 1989 Notice of Availability of COBOL Source Code.
   b. Utility Plant Code = 7 (other) is now specified in new Item 550a which was omitted in the previous notice. The location of the footnote ID is adjusted accordingly.
3. Record 41: Unamortized Loss and Gain on Reacquired Debt (Accounts 189, 257).
   a. Account Number is a new item located in character positions 11-17. Subsequent character positions are increased by seven.
4. Records 51, 52 and 53: Accumulated Deferred Income Taxes for Accounts 281, 282 and 283.
   a. Items 663, 674 and 685 have been revised from "Credit Account Number" to "Debit Account Number".
   b. Items 665, 676 and 687 have been revised from "Debit Account Number" to "Credit Account Number".

A complete description of the revised record formats is included in Appendix A of this notice. The print software will be revised to reflect these changes and released at a later date.

The Commission staff is also releasing proposed edit checks for FERC Form Nos. 2, 2-A, 8, 11, 14 and 16. The edit checks are listed in Appendices A through G. The Appendices are not being published in the **Federal Register**; copies are available in the Public Reference Room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 89-4901 Filed 3-1-89; 8:45 am]

BILLING CODE 6717-01-M

[1] See Notice of Availability published at 53 FR 44004 November 1, 1988.

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**[T.D. 8242]**

**26 CFR Part 1**

**Income Tax; Diversification Requirements for Variable Annuity, Endowment, and Life Insurance Contracts**

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations relating to the diversification requirements for variable annuity, endowment, and life insurance contracts. Changes to the applicable law were made by the Tax Reform Act of 1984. The regulations affect issuers and policyholders of variable contracts and provide them with guidance concerning the tax treatment of those contracts.

**DATES:** The regulations apply to variable annuity, endowment, and life insurance contracts for taxable years beginning after December 31, 1983, except as follows: See 1.817-5(i)(2).

**FOR FURTHER INFORMATION CONTACT:** Katherine A. Hossofsky, of the Office of the Assistant Chief Counsel (Financial Institutions and Products), Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention: CC:FI&P:4), (202) 566-3458, not a toll-free call.



**SUPPLEMENTARY INFORMATION:**

**Background**

This document amends the Income Tax Regulations (26 CFR Part 1) to provide rules under section 817(h) of the Internal Revenue Code of 1986, relating to diversification requirements for variable annuity, endowment, and life insurance contracts. Section 817(h) was added to the Code by section 211(a) of the Tax Reform Act of 1984 (Pub. L. 98-369, 98 Stat. 750). On September 15, 1986, the **Federal Register** published amendments (T.D. 8101; 51 FR 32633) to the Income Tax Regulations (26 CFR Part 1) to provide temporary regulations under section 817(h). The same issue of the **Federal Register** also published proposed amendments (51 FR 32664) to the Income Tax Regulations and the Table of OMB Control Numbers based on those temporary regulations. This document supersedes the temporary regulations under section 817(h) and adopts final regulations based on the notice of proposed rulemaking published on September 15, 1986.

Before adopting the final regulations, the Internal Revenue Service solicited comments and held a public hearing on the proposed amendments. Fourteen written comments responding to the notice of proposed rulemaking were received. In addition, seven persons provided oral comments at the hearing held on July 1, 1987. After consideration of all comments received, the proposed amendments are adopted as revised by this Treasury decision.

**Public Comments**

Several commentators argued that if a segregated asset account fails the diversification requirements, any contract invested in such account should fail to qualify as an annuity, endowment, or life insurance contract only for the period during which the account was not adequately diversified. The Internal Revenue Service believes that, in general, failing the diversification requirements should result in disqualification of contracts for all periods. Section 817(h) provides that a variable contract shall not be treated as an annuity, endowment, or life insurance contract for purposes of subchapter L, section 72, and section 7702(a) for any period (and any subsequent period) for which the investments made by a segregated asset account underlying the contract are not adequately diversified. The statutory language indicates that contracts should remain disqualified for periods subsequent to the period for which the investments are not adequately diversified. With respect to prior periods, section 7702 requires that, for a life insurance or endowment contract, any income on the contract for all prior taxable years be treated as income received or accrued by the policyholder if the contract ceases to meet the definition of a life insurance contract. An annuity contract is treated in the same manner under these regulations.

Various commentators suggested that if a failure to diversify is inadvertent and the failure is promptly corrected, contracts based on such an account should continue to qualify as life insurance, endowment, or annuity contracts during all periods. The Internal Revenue Service agrees that variable contracts based upon a segregated asset account that inadvertently becomes nondiversified should be treated as remaining qualified, provided that the issuer or holder of the contract agrees to pay such amounts as may be required by the Commissioner. The amounts required by the Commissioner to be paid will be based on the amount of tax the policyholders would have been required to pay if they were treated as receiving the income on the contract during the period of nondiversification. Although based on the amount of tax described in the preceding sentence, it is anticipated that, in determining the amount of the payment, the absence of a policyholder basis adjustment and other relevant factors will be taken into account.

Several commentators disagreed with the treatment in the proposed regulations of all government securities as securities of a single issuer. This rule has been revised to conform to section 817(h)(6), as added by section 6080 of the Technical and Miscellaneous Revenue Act of 1988.

The proposed regulations provide that the members of an affiliated group, within the meaning of section 1504(a), ordinarily are treated as a single issuer. The final regulations delete this provision.

Various comments relating to the start-up period rules under paragraph (c)(2) of the proposed regulations were received. The proposed regulations provide that the start-up period rules apply only if no more than 30 percent of the amount allocated to a segregated asset account as of any date is attributable to premium and investment income received more than one year prior to such date. A commentator suggested that amounts transferred from a previously diversified account and amounts transferred as a result of a tax-free exchange of an unaffiliated company's contract do not constitute an abuse of the start-up period rules, even if such amounts were received more than one year prior to the test date. In addition, the commentator noted that it is burdensome for companies to trace premium and investment income as of any date. Accordingly, the final regulations provide that if more than 30 percent of the amount allocated to a segregated asset account as of the last day of a calendar quarter is attributable to contracts entered into more than one year before such date, the start-up period rules do not apply. Any amount transferred to the account from a diversified account or any amount transferred as a result of an exchange pursuant to section 1035 with an unaffiliated company is not treated as an amount attributable to contracts entered into more than one year before such date.

Several commentators requested clarification of the rules relating to the aggregation of multiple accounts or funds. The final regulations restate these rules and provide additional clarifying examples.

The final regulations extend the look-through rules applicable to underlying investment companies or trusts all of the interests in which (with certain exceptions) are held by segregated asset accounts to underlying partnerships all of the interests in which are held by such persons. The final regulations clarify that this look-through rule is available to a segregated asset account (notwithstanding ownership of interests in the underlying entity by the public) if all the assets of the segregated asset account are attributable to (i) premium payments made by policyholders prior to September 26, 1981, (ii) premium payments made in connection with a qualified pension or retirement plan, or (iii) any combination of such premium payments. Additionally, the final regulations clarify that the return on an interest in an underlying entity held by the general account of a life insurance company must be computed in the same manner as the return for the related variable contracts prior to deducting expenses related to the variable contracts.

The final regulations include an additional look-through rule for trusts, substantially all of the assets of which are Treasury securities. Under this rule, Treasury securities are still treated as such, even though they are held through a custodial arrangement that is treated as a grantor trust.

Several commentators requested that the regulations clarify whether purchased put and call options on Treasury securities, interest rate futures contracts on Treasury securities, and options on such contracts are classified

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as Treasury securities under the regulations. The final regulations clarify that such options and futures contracts are not Treasury securities because their direct obligor is not the U.S. Treasury.

The proposed regulations require that in order to qualify as a real property account, an account must have 40 percent of its assets invested in real property or interests in real property on the first anniversary of the date premium income is first received. A commentator requested that this period be increased to 18 months, because of the extensive time needed to identify and buy real property for investment. Accordingly, the final regulations provide that, if on or before the first anniversary of the account, the issuer has stated an intention to invest the assets of the account primarily in real property or interests in real property, the account will be permitted 18 months to invest at least 40 percent of its assets in such items.

**Special Analyses**

The Commissioner of Internal Revenue has determined that this rule is not a major rule as defined in Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required. Although a notice of proposed rulemaking that solicited public comment was issued, the Internal Revenue Service concluded when the notice was issued that the regulations are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 did not apply. Accordingly, the final regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

**Drafting Information**

The principal author of these regulations is Sharon L. Hall of the Office of Assistant Chief Counsel (Income Tax and Accounting), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations on matters of both substance and style.

**List of Subjects in 26 CFR 1.801-1—1.852-6**

Income taxes, Insurance companies.

**Adoption of Amendments to the Regulations**

For the reasons set out in the preamble, Chapter I Subchapter A, Part I of Title 26 of the Code of Federal Regulations is amended as follows:

**PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 1, 1953**

**Paragraph 1.** The authority for Part 1 is amended by adding the following citation and by removing "Section 1.817-5T also issued under 26 U.S.C. 817(h)."

Authority: 26 U.S.C. 7805. * * * Section 1.817-5 also issued under 26 U.S.C. 817(h).

**§ 1.817-5T [Removed]**

**Par. 2.** 26 CFR Part 1 is amended by removing § 1.817-5T.

**Par. 3.** The following new § 1.817-5 is added to read as follows:

**§ 1.817-5 Diversification requirements for variable annuity, endowment, and life insurance contracts.**

(a) *Consequences of nondiversification*—(1) *In general.* Except as provided in paragraph (a)(2) of this section, for purposes of subchapter L, section 72, and section 7702(a), a variable contract (as defined in section 817(d)), other than a pension plan contract (as defined in section 818(a)), which is based on one or more segregated asset accounts shall not be treated as an annuity, endowment, or life insurance contract for any calendar quarter period for which the investments of any such account are not adequately diversified. For this purpose, a variable contract shall be treated as based on a segregated asset account for a calendar quarter period if amounts received under the contract (or earnings thereon) are allocated to the segregated asset account at any time during the period. In addition, a variable contract that is not treated as an annuity, endowment, or life insurance contract for any period by reason of this paragraph (a)(1) shall not be treated as an annuity, endowment, or life insurance contract for any subsequent period even if the investments are adequately diversified for such subsequent period. If a variable contract which is a life insurance or endowment contract under other applicable (e.g., State or foreign) law is not treated as a life insurance or endowment contract under section 7702(a), the income on the contract for any taxable year of the policyholder is treated as ordinary income received or accrued by the policyholder shall be treated as ordinary income received or accrued by the policyholder during such year in accordance with section 7702 (g) and (h). Likewise, if a variable contract is not treated as an annuity contract under section 72, the income on the contract for any taxable year of the policyholder shall be treated as ordinary income received or accrued by the policyholder during such year in the same manner as a life insurance or endowment contract under section 7702 (g) and (h).

(2) *Inadvertent failure to diversify.* The investments of a segregated asset account shall be treated as satisfying the requirements of paragraph (b) of this section for one or more periods, provided the following conditions are satisfied—

(i) The issuer or holder must show the Commissioner that the failure of the investments to satisfy the requirements of paragraph (b) of this section for such period or periods was inadvertent,

(ii) The investments of the account must satisfy the requirements of paragraph (b) of this section within a reasonable time after the discovery of such failure, and

(iii) The issuer or holder of the variable contract must agree to make such adjustments or pay such amounts as may be required by the Commissioner with respect to the period or periods during which the investments of the account did not satisfy the requirements of paragraph (b) of this section. The amount required by the Commissioner to be paid shall be an amount based upon the tax that would have been owed by the policyholders if they were treated as receiving the income on the contract (as defined in section 7702(g)(1)(B), without regard to section 7702(g)(1)(C)) for such period or periods.

(b) *Diversification of investments*—(1) *In general.* (i) Except as otherwise provided in this paragraph and paragraph (c) of this section, the investments of a segregated asset account shall be considered adequately diversified for purposes of this section and section 817(h) only if—

(A) No more than 55% of the value of the total assets of the account is represented by any one investment;

(B) No more than 70% of the value of the total assets of the account is represented by any two investments;

(C) No more than 80% of the value of the total assets of the account is represented by any three investments; and

(D) No more than 90% of the value of the total assets of the account is represented by any four investments.

(ii) For purposes of this section—

(A) All securities of the same issuer, all interests in the same real property project, and all interests in the same commodity are each treated as a single investment; and

(B) In the case of government securities, each government agency or instrumentality shall be treated as a separate issuer.



(iii) See paragraph (f) of this section for circumstances in which a segregated asset account is treated as the owner of assets held indirectly through certain pass-through entities and corporations taxed under subchapter M, chapter 1 of the Code.

(2) *Safe harbor.* A segregated asset account will be considered adequately diversified for purposes of this section and section 817(h) if—

(i) The account meets the requirements of section 851 (b)(4) and the regulations thereunder; and

(ii) No more than 55% of the value of the total assets of the account is attributable to cash, cash items (including receivables), government securities, and securities of other regulated investment companies.

(3) *Alternative diversification requirements for variable life insurance contracts.* (i) A segregated asset account with respect to variable life insurance contracts will be considered adequately diversified for purposes of this section and section 817(h) if the requirements of paragraph (b)(1) or (b)(2) of this section are satisfied of if the assets of such account, other than Treasury securities, satisfy the percentage limitations prescribed in paragraph (b)(1) of this section increased by the Product of (A) .5 and (B) the percentage of the value of the total assets of the account that is represented by Treasury securities. In determining whether the assets of an account, other than Treasury securities, satisfy the increased percentage limitations, such limitations are applied as if the Treasury securities were not included in the account (*i.e.*, the increased percentage limitations are not applied to Treasury securities and the value of the total assets of the account is reduced by the value of the Treasury securities).

(ii) The provisions of this paragraph (b)(3) may be illustrated by the following examples:

*Example (1).* On the last day of a quarter of a calendar year, a segregated asset account with respect to variable life insurance contracts holds assets having a total value of $100,000. The assets of the account are represented by Treasury securities having a total value of $90,000 and securities of Corporation A having a total value of $10,000. The 55% limit described in paragraph (b)(1)(i) of this section would be increased by 45% (0.5×90%) to 100%, and would then be applied to the assets of the account other than Treasury securities. Because no more than 100% of the value of the assets other than Treasury securities is represented by securities of Corporation A, the investments of the account will be considered adequately diversified.

*Example (2).* On the last day of a quarter of a calendar year, a segregated asset account with respect to variable life insurance contracts holds assets having a total value of $100,000. The assets of the account are represented by Treasury securities having a total value of $60,000, securities of Corporation A having a total value of $30,000, and securities of Corporation B having a total value of $10,000. The 55% and 70% limits described in paragraph (b)(1)(i) of this section would be increased by 30% (0.5×60%) to 85% and 100%, respectively, and would then be applied to the assets of the account other than Treasury securities. Securities of Corporation A represent 75%, and securities of Corporation B represent 25%, of the value of the assets of the account other than Treasury securities. Because no more than 85% of the value of the assets other than Treasury securities is represented by securities of Corporation A or B and no more than 100% of the value of the assets other than Treasury securities is represented by securities of Corporations A and B, the investments of the account will be considered adequately diversified.

(c) *Periods for which an account is adequately diversified*—(1) *In general.* A segregated asset account that satisfies the requirements of paragraph (b) of this section on the last day of a quarter of a calendar year (*i.e.*, March 31, June 30, September 30, and December 31) or within 30 days after such last day shall be considered adequately diversified for such quarter.

(2) *Start-up period.* (i) Except as provided in paragraph (c)(2)(iv) of this section, a segregated asset account that is not a real property account on its first anniversary shall be considered adequately diversified until such first anniversary.

(ii) Except as provided in paragraph (c)(2)(iv) of this section, a segregated asset account that is a real property account on its first anniversary shall be considered adequately diversified until the earlier of its fifth anniversary or the anniversary on which the account ceases to be a real property account.

(iii) For purposes of paragraph (c)(2)(i) and (ii) of this section, the anniversary of a segregated asset account is the anniversary of the date on which any amount received under a life insurance or annuity contract, other than a pension plan contract (as defined in section 818 (a)), is first allocated to the account.

(iv) If more than 30 percent of the amount allocated to a segregated asset account as of the last day of a calendar quarter is attributable to contracts entered into more than one year before such date, paragraph (c)(2)(i) of this section shall not apply to the segregated asset account for any period after such date. Similarly, if more than 30 percent of the amount allocated to a segregated asset account as of the last day of a calendar quarter is attributable to contracts entered into more than 5 years before such date, paragraph (c)(2)(ii) of this section shall not apply to the segregated asset account for any period after such date. For purposes of this paragraph (c)(2), amounts transferred to the account from a diversified account (determined without regard to this paragraph (c)(2)) or as a result of an exchange pursuant to section 1035 in which the issuer of the contract received in the exchange is not related in a manner specified in section 267(b) to the issuer of the contract transferred in the exchange are not treated as—

(A) Amounts attributable to contracts entered into more than one year before such date, in the case of accounts subject to paragraph (c)(2)(i) of this section, or

(B) Amounts attributable to contracts entered into more than five years before such date, in the case of accounts subject to paragraph (c)(2)(ii) of this section.

(3) *Liquidation period.* A segregated asset account that satisfies the requirements of paragraph (b) of this section on the date a plan of liquidation is adopted shall be considered adequately diversified for—

(i) The one-year period beginning on the date the plan of liquidation is adopted if the account is not a real property account on such date; or

(ii) The two-year period beginning on the date the plan of liquidation is adopted if the account is a real property account on such date.

(d) *Market fluctuations.* A segregated asset account that satisfies the requirements of paragraph (b) of this section at the end of any calendar quarter (or within 30 days after the end of such calendar quarter) shall not be considered nondiversified in a subsequent quarter because of a discrepancy between the value of its assets and the diversification requirements unless such discrepancy exists immediately after the acquisition of any asset and such discrepancy is wholly or partly the result of such acquisition.

(e) *Segregated asset account.* For purposes of section 817(h) and this section, a segregated asset account shall consist of all assets the investment return and market value of each of which must be allocated in an identical manner to any variable contract invested in any of such assets. See paragraph (g) for examples illustrating the application of this paragraph (e).

(f) *Look-through rule for assets held through certain investment companies, partnerships, or trusts*—(1) *In general.* If

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this paragraph (f) applies, a beneficial interest in a regulated investment company, a real estate investment trust, a partnership, or a trust that is treated under sections 671 through 679 as owned by the grantor or another person ("investment company, partnership, or trust") shall not be treated as a single investment of a segregated asset account. Instead, a pro rata portion of each asset of the investment company, partnership, or trust shall be treated, for purposes of this section, as an asset of the segregated asset account. For purposes of this section, the ratable interest of a partner in a partnership's assets shall be determined in accordance with the partner's capital interest in the partnership.

(2) *Applicability*—(i) *Certain investment companies, partnerships, and trusts.* This paragraph (f) shall apply to an investment company, partnership, or trust if—

(A) All the beneficial interests in the investment company, partnership, or trust (other than those described in paragraph (f)(3) of this section) are held by one or more segregated asset accounts of one or more insurance companies; and

(B) Public access to such investment company, partnership, or trust is available exclusively (except as otherwise permitted in paragraph (f)(3) of this section) through the purchase of a variable contract. Solely for this purpose, the status of a contract as a variable contract will be determined without regard to section 817(h) and this section.

(ii) *Nonregistered partnerships.* This paragraph (f) shall also apply to a partnership interest if the partnership interest is not registered under a Federal or State law regulating the offering or sale of securities.

(iii) *Trusts holding Treasury securities.* This paragraph (f) shall also apply to a trust that is treated under section 671 through 679 as owned by the grantor or another person if substantially all of the assets of the trust are represented by Treasury securities.

(3) *Interests not held by segregated asset accounts.* Satisfaction of the requirements of paragraph (f)(2)(i) of this section shall not be prevented by reason of beneficial interests in the investment company, partnership, or trust that are—

(i) Held by the general account of a life insurance company or a corporation related in a manner specified in section 267(b) to a life insurance company, but only if the return on such interests is computed in the same manner as the return on an interest held by a segregated asset account is computed (determined without regard to expenses attributable to variable contracts), there is no intent to sell such interests to the public, and a segregated asset account of such life insurance company also holds or will hold a beneficial interest in the investment company, partnership, or trust;

(ii) Held by the manager, or a corporation related in a manner specified in section 267(b) to the manager, of the investment company, partnership, or trust, but only if the holding of the interests is in connection with the creation or management of the investment company, partnership, or trust, the return on such interest is computed in the same manner as the return on an interest held by a segregated asset account is computed (determined without regard to expenses attributable to variable contracts), and there is no intent to sell such interests to the public;

(iii) Held by the trustee of a qualified pension or retirement plan; or

(iv) Held by the public, or treated as owned by policyholders pursuant to Rev. Rul. 81-225, 1981-2 C.B. 12, but only if (A) the investment company, partnership, or trust was closed to the public in accordance with Rev. Rul. 82-55, 1982-1 C.B. 12, or (B) all the assets of the segregated asset account are attributable to premium payments made by policyholders prior to September 26, 1981, to premium payments made in connection with a qualified pension or retirement plan, or to any combination of such premium payments.

(g) *Examples.* The provisions of paragraphs (e) and (f) of this section may be illustrated by the following examples.

*Example (1).* (i) The assets underlying variable contracts issued by a life insurance company consist of two groups of assets: (a) a diversified portfolio of debt securities and (b) interests in P, a partnership that is publicly registered. All of the beneficial interests in P are held by one or more segregated asset accounts of one or more insurance companies and public access to P is available exclusively through the purchase of a variable contract. The variable contracts provide that policyholders may specify which portion of each premium is to be invested in the debt securities and which portion is to be invested in P interests. The portfolio of debt securities and the assets of P, considered separately, each satisfy the diversification requirements of paragraph (b) of this section.

(ii) As a result of the ability of policyholders to allocate premiums among the two groups of assets, the investment return and market value of the interests in P and the debt securities may be allocated to different variable contracts in a non-identical manner. Accordingly, under paragraph (e) of this section, the interests in P are treated as part of a single segregated asset account ("Account 1") and the debt securities are treated as part of a different segregated asset account ("Account 2").

(iii) Since P is described in paragraph (f)(2)(i) of this section, interests in P will not be treated as a single investment of Account 1. Rather, Account 1 is treated as owning a pro rata portion of the assets of P.

(iv) Since Account 1 and Account 2 each satisfy the requirements of paragraph (b) of this section, variable contracts that are based on either or both accounts are treated as annuity, endowment, or life insurance contracts.

*Example (2).* The facts are the same as in example (1) except that some of the beneficial interests in P are held by persons not described in paragraph (f)(3) of this section. Since P is not described in paragraph (f)(2) of this section, interests in P will be treated as a single investment of Account 1. As a result, Account 1 does not satisfy the requirements of paragraph (b) of this section. Variable contracts based in whole or in part on Account 1 are not treated as annuity, endowment, or life insurance contracts. Variable contracts that are not based on Account 1 at any time during the period in which such account fails to satisfy the requirements of paragraph (b) of this section (*i.e.*, contracts based entirely on Account 2), are treated as annuity, endowment, or life insurance contracts. See paragraph (a)(1).

*Example (3).* The facts are the same as in example (2) except that P is not publicly registered. Since P is described in paragraph (e)(2)(ii) of this section, the result is the same as in example (1).

*Example (4).* The facts are the same as in example (2) except that the variable contracts do not permit policyholders to allocate premiums between or among the debt securities and interests in P. Thus, the investment return and market value of the interests in P and the debt securities must be allocated to the same variable contracts and in an identical manner. Under paragraph (e) of this section, the interests in P and the debt securities are treated as part of a single segregated asset account. If the interests in P and the debt securities, considered together, satisfy the requirements of paragraph (b) of this section, contracts based on this segregated asset account will be treated as annuity, endowment, or life insurance contracts.

(h) *Definitions.* The terms defined below shall, for purposes of this section, have the meanings set forth in such definitions:

(1) *Government security*—(i) *General rule.* The term "government security" shall mean any security issued or guaranteed or insured by the United States or an instrumentality of the United States; or any certificate of deposit for any of the foregoing. Any security or certificate or deposit insured or guaranteed only in part by the United States or an instrumentality thereof is treated as issued by the United States or its instrumentality only to the extent so insured or guaranteed, and as issued by the direct obligor to the extent not so insured or guaranteed. For purposes of this paragraph (h)(1), an instrumentality of the United States shall mean any person that is treated for purposes of 15 U.S.C. 80a-2 (16), as amended, as a person controlled or supervised by and acting as an instrumentality of the Government of the United States pursuant to authority granted by the Congress of the United States.

(ii) *Example.* A segregated asset account purchases a certificate of deposit in the amount of $150,000 from bank A. Deposits in bank A are insured by the Federal Deposit Insurance Corporation, an instrumentality of the United States, to the extent of $100,000 per depositor. The certificate of deposit is treated as a government security to the extent of the $100,000 insured amount and is treated as a security issued by bank A to the extent of the $50,000 excess of the value of the certificate of deposit over the insured amount.

(2) *Treasury security*—(i) *General rule.* For purposes of paragraph (b)(3) of this section and section 817(h)(3), the term "Treasury security" shall mean a security the direct obligor of which is the United States Treasury.

(ii) *Example.* A segregated asset account purchases put and call options on U.S. Treasury securities issued by the Options Clearing Corporation. The options are not Treasury securities for purposes of paragraph (b)(3) and section 817(h)(3) because the direct obligor of the options is not the United States Treasury.

(3) *Real property.* The term "real property" shall mean any property that is treated as real property under 1.856-3 (d) except that it shall not include interests in real property.

(4) *Real property account.* A segregated asset account is a real property account on an anniversary of the account (within the meaning of paragraph (c)(2)(iii) of this section) or on the date a plan of liquidation is adopted if not less than the applicable percentage of the total assets of the account is represented by real property or interests in real property on such anniversary or date. For this purpose, the applicable percentage is 40% for the period ending on the first anniversary of the date on which premium income is first received, 50% for the year ending on the second anniversary, 60% for the year ending on the third anniversary, 70% for the year ending on the fourth anniversary, and 80% thereafter. A segregated asset account will also be treated as a real property account on its first anniversary if on or before such first anniversary the issuer has stated in the contract or prospectus or in a submission to a regulatory agency, an intention that the assets of the account will be primarily invested in real property or interests in real property, provided that at least 40% of the total assets of the account are so invested within six months after such first anniversary.

(5) *Commodity.* The term "commodity" shall mean any type of personal property other than a security.

(6) *Security.* The term "security" shall include a cash item and any partnership interest registered under a Federal or State law regulating the offering or sale of securities. The term shall not include any other partnership interest, any interest in real property, or any interest in a commodity.

(7) *Interest in real property.* The term "interest in real property" shall include the ownership and co-ownership of land or improvements thereon and leaseholds of land or improvements thereon. Such term shall not, however, include mineral, oil, or gas royalty interests, such as a retained economic interest in coal or iron ore with respect to which the special provisions of section 631(c) apply. The term "interest in real property" also shall include options to acquire land or improvements thereon, and options to acquire leaseholds of land or improvements thereon.

(8) *Interest in a commodity.* The term "interest in a commodity" shall include the ownership and co-ownership of any type of personal property other than a security, and any leaseholds thereof. Such term shall include mineral, oil, and gas royalty interests, including any fractional undivided interest therein. Such term also shall include any put, call, straddle, option, or privilege on any type of personal property other than a security.

(9) *Value.* The term "value" shall mean, with respect to investments for which market quotations are readily available, the market value of such investments; and with respect to other investments, fair value as determined in good faith by the managers of the segregated asset account.

(10) *Terms used in section 851.* To the extent not inconsistent with this paragraph (h) all terms used in this section shall have the same meaning as when used in section 851.

(i) *Effective date*—(1) *In general.* This section is effective for taxable years beginning after December 31, 1983.

(2) *Exceptions.* (i) If, at all times after December 31, 1983, an insurance company would be considered the owner of the assets of a segregated asset account under the principles of Rev. Rul. 81-225, 1981-2 C.B. 12, this section will not apply to such account until December 15, 1986.

(ii) This section will not apply to any variable contract to which Rev. Rul. 77-85, 1977-1 C.B. 12, or Rev. Rul. 81-225, 1981-2 C.B. 12, did not apply by reason of the limited retroactive effect of such rulings.

(iii) In determining whether a segregated asset account is adequately diversified for any calendar quarter ending before July 1, 1988, debt instruments that are issued, guaranteed, or insured by the United States or an instrumentality of the United States shall not be treated as government securities if such debt instruments are secured by a mortgage on real property (other than real property owned by the United States or an instrumentality of the United States) or represent an interest in a pool of debt instruments secured by such mortgages.

(iv) This section shall not apply until January 1, 1989, with respect to a variable contract (as defined in section 817(d)) that (1) provides for the payment of an immediate annuity (as defined in section 72(u)(4)); (2) was outstanding on September 12, 1986; and (3) the segregated asset account on which it was based was, on September 12, 1986, wholly invested in deposits insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

**Lawrence B. Gibbs,**

*Commissioner of Internal Revenues.*

Approved: January 26, 1989.

**Dennis Earl Roes,**

*Deputy Assistant Secretary of the Treasury.*

[FR Doc. 89-4867 Filed 3-1-89; 8:45 am]

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

### 32 CFR Part 199

**[DoD 6010.8-R]**

### Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Reimbursement of Children's Hospitals and Neonatal Services Under the CHAMPUS DRG-Based Payment System

**AGENCY:** Office of the Secretary, DoD.

**ACTION:** Final rule amendment; change of effective date.

**SUMMARY:** This notice postpones the effective date for inclusion of children's hospitals and neonatal services under

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the CHAMPUS DRG-based payment system until April 1, 1989.

**EFFECTIVE DATE:** The final rule published on December 16, 1988 (53 FR 50515) April 1, 1989 and applies to inpatient hospital admissions occurring on or after April 1, 1989.

**FOR FURTHER INFORMATION CONTACT:** Stephen E. Isaacson, Office of Program Development, Office of Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Aurora, Colorado, 80045-6900, telephone (303) 361-4005.

**SUPPLEMENTARY INFORMATION:** The final rule published on December 16, 1988, (53 FR 50515) provided for inclusion of children's hospitals and neonatal services in the CHAMPUS DRG-based payment system effective for inpatient hospital admissions occurring on or after March 1, 1989. The actual weights and rates were not included in the final rule and will be published in a separate notice. As a result of unexpected delays and complications in calculating the weights and rates, we have decided to postpone implementation of these changes until April 1 so that hospitals can have adequate advance notice of the weights and rates. We expect to publish the weights and rates by the end of February.

**Authority:** 10 U.S.C. 1079; 1086; 5 U.S.C. 301.

**L. M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

February 23, 1989.

[FR Doc. 89-4708 Filed 3-1-89; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 147

[FRL-3504-1]

### Mississippi State Oil & Gas Board; Underground Injection Control ("UIC") Primacy Program Approval

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule; approval of State program.

**SUMMARY:** The State Oil and Gas Board of Mississippi (the "Board") submitted an application under section 1425 of the Safe Drinking Water Act ("SDWA") for the approval of the UIC program governing Class II oil and natural gas related injection wells. After careful review of the application, the Agency has determined that the State's injection well program for Class II wells meets the requirements of the Act, and therefore approves it.

**DATES:** This approval shall become effective on March 2, 1989. The incorporation by reference of certain State statutes and regulations listed in the State Primacy Program is approved by the Director of the Federal Register effective March 2, 1989.

**FOR FURTHER INFORMATION CONTACT:** John K. Mason, Ground-Water Management Unit, Ground-Water Protection Branch, Environmental Protection Agency, Region IV, 345 Courtland Street, Atlanta, Georgia 30365, (404) 347-3866. Copies of the Responsiveness Summary covering the public hearings are available at the above address.

**SUPPLEMENTARY INFORMATION:**

Background

Part C of the SDWA provides for a UIC program. Section 1421 of the SDWA requires the Administrator to promulgate minimum requirements for effective State programs to prevent underground injection which endangers drinking water sources. The Administrator is also to list in the **Federal Register** each State for which, in his judgment, a State UIC program may be necessary. Each State listed shall submit to the Administrator an application which contains a satisfactory demonstration that the State: (i) Has adopted, after reasonable notice and public hearings, an UIC program which meets the requirements of regulations in effect under section 1421 of the SWDA; and (ii) will keep such records and make such reports with respect to its activities under its UIC program as the Administrator may require by regulations. Section 1425 provides that for oil and gas-related injection control programs, the State may, in lieu of meeting the requirements under section 1422(b)(1)(A), demonstrate that the State program meets the requirements of section 1421(b)(1)(A)-(D) and represents an effective program to prevent underground injection which endangers drinking water sources. After reasonable opportunity for public comment, the Administrator shall be rule approve, disapprove or approve in part and disapprove in part, the State's UIC program.

The State of Mississippi was listed by EPA as needing an UIC program. The Board submitted an application under section 1425 on March 2, 1982 for the approval of an UIC program governing Class II oil and natural gas-related injection wells to be administrated by the Board. This application was determined to be inadequate and on December 1, 1983 was returned to the State. Effective December 30, 1984, EPA implemented a Federal UIC program for Class II wells in Mississippi. On December 21, 1987, the Board submitted a primacy application under section 1425 which was determined to be complete. On January 27, 1988, EPA published notice of its receipt of the application, requested public comments, and scheduled public hearings on the Mississippi UIC program submitted by the Board (53 FR 2236). Two public hearings were held on March 8, 1988 in Jackson, Mississippi. No comments were received opposing approval of the State's program.

Summary of Today's Action

After careful review of the application and comments received from the public, I have determined that the portion of the Mississippi UIC program submitted by the Board to regulate Class II injection wells, applicable on all lands in the State other than Indian lands, meets the requirements of section 1425 of the SDWA, and I hereby approve it. The effect of this approval is to establish this program under the SDWA for Class II wells on all non-Indian lands in the State of Mississippi.

This program replaces the existing EPA-administered program for all Class II wells (except on Indian lands). Now that EPA has determined that the State-administered program meets all applicable federal requirements, the Agency is withdrawing the EPA-administered program for Class II wells and establishing the State-administered program as the applicable UIC program in the State, except on Indian lands. EPA will continue to enforce the UIC program on Indian lands in Mississippi. See 53 FR 43080 for details.

This program approval will be codified in 40 CFR 147.1251. State statutes and regulations that contain standards, requirements, and procedures applicable to owners or operators are incorporated by reference. To the extent set forth in 40 CFR Part 144 and 40 CFR Part 146, these provisions incorporated by reference, as well as all permit conditions and permit denials issued pursuant to such provisions, are enforceable by EPA pursuant to section 1423 of the SDWA.

EPA shall continue to handle the enforcement actions on all wells, permitted or otherwise, which were under any active EPA enforcement action as of the date of this delegation. Wells for which a Notice of Violation has been issued will be considered to be under an active enforcement action. EPA shall continue with the enforcement actions on these wells until final resolution or until EPA determines that adequate State enforcement is being taken.



**Effective Date**

Today's program approval is effective March 2, 1989. The State of Mississippi desires to begin issuing Class II UIC permits as soon as possible. EPA has received no comments opposing today's action. EPA does not believe any potential permittees will be prejudiced. Therefore, EPA believes good cause exists to making this rule effective upon publication. 5 U.S.C. 553.

**OMB Review**

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

**Certification Under the Regulatory Flexibility Act**

Pursuant to the provisions of 5 U.S.C. 605(b), I certify that approval by EPA under section 1425 of the SDWA of the application by the Board will not have a significant economic impact on a substantial number of small entities, since this rule only approves State actions. It imposes no new requirements on small entities.

**List of Subjects in 40 CFR Part 147**

Indian lands, Reporting and recordkeeping requirements, Intergovernmental relations, Penalties, Confidential business information, Water supply, Incorporation by reference.

Dated: December 30, 1988.

**John Moore,**

*Acting Administrator.*

As set forth in the preamble, Part 147 of Title 40 of the Code of Federal Regulations is amended as follows:

## PART 147—STATE UNDERGROUND INJECTION CONTROL PROGRAMS

The authority for Part 147 continues to read as follows:

**Authority:** 42 U.S.C. 300h *et seq.* and 42 U.S.C. 6901 *et seq.*

**Supart Z—Mississippi**

1. Section 147.1251 is revised to read as follows:

**§ 147.1251 State—Administered Program—Class II Wells.**

The UIC program for Class II wells in the State of Mississippi, other than those on Indian lands, is the program administered by the State Oil and Gas Board of Mississippi approved by EPA pursuant to section 1425 of the SDWA. Notice of this approval was published in the **Federal Register** on March 2, 1989; the effective date of this program is March 2, 1989. This program consists of the following elements, as submitted to EPA in the State's program application:

(a) Incorporation by reference. The requirements set forth in the State statutes and regulations cited in this paragraph are hereby incorporated by reference and made a part of the applicable UIC program under the SDWA for the State of Mississippi. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a).

(1) Mississippi Code Annotated, section 5-9-9 (Supp. 1988).

(2) Mississippi Code Annotated, sections 53-1-1 through 53-1-47, inclusive and sections 53-1-71 through 53-1-77, inclusive (1972 and Supp. 1988).

(3) Mississippi Code Annotated, sections 53-3-1 through 53-3-165, inclusive (1972 and Supp. 1988).

(4) State Oil and Gas Board Statewide Rules and Regulations, Rules 1 through 65, inclusive (Aug. 1, 1987, as amended, Sept. 17, 1987).

(b) The Memorandum of Agreement between EPA Region IV and the State Oil and Gas Board of Mississippi signed by the Regional Administrator on October 31, 1988.

(c) Statement of legal authority. Statement from the Attorney General signed on October 1, 1987 with amendments to the Statement signed August 5, 1988 and September 15, 1988 by the Special Assistant Attorney General.

(d) The Program Description and any other materials submitted as part of the original application or as supplements thereto.

2. Section 147.1252 is amended by revising the section heading and adding text to read as follows:

**§ 147.1252 EPA-administered program—Indian lands.**

(a) *Contents.* The UIC program for all classes of wells on Indian lands in Mississippi is administered by EPA. The program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program on Indian lands is November 25, 1988.

**§§ 147.1253 and 147.1254 [Removed]**

3. Sections 147.1253 and 147.1254 are removed.

[FR Doc. 89-424 Filed 3-1-89; 8:45 am]

BILLING CODE 6560-50-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Public Health Service

### 42 CFR Part 5

### Criteria for Designation of Health Manpower Shortage Areas

**AGENCY:** Public Health Service, HHS.

**ACTION:** Final regulations.

**SUMMARY:** These final regulations revise the existing regulations governing the criteria for Designation of Health Manpower Shortage Areas, required by section 332 of the Public Health Service Act (the Act). This amendment revises the definition for the term "internees" used in the criteria for designating those Federal and State institutions which have a shortage of primary medical care, dental care, or psychiatric manpower.

**EFFECTIVE DATE:** These regulations are effective March 2, 1989.

**FOR FURTHER INFORMATION CONTACT:** Richard C. Lee, Chief, Shortage Analysis Staff, Bureau of Health Care Delivery and Assistance, Parklawn Building Room 8-57, 5600 Fishers Lane, Rockville, Maryland 20857; telephone 301 443-6932.

**SUPPLEMENTARY INFORMATION:** On October 29, 1987, a Notice of Proposed Rulemaking (NPRM) to amend the existing regulations governing the criteria for Designation of Health Manpower Shortage Areas was published in the **Federal Register** (52 FR 41594) by the Assistant Secretary for Health, Department of Health and Human Services, with the approval of the Secretary. The NPRM revises the definition for the term "internees" used in the criteria for designating medium to maxium security Federal and State correctional institutions and youth detention facilities that have a shortage of primary medical care, dental care, or psychiatric manpower.

The public comment period on the proposed regulations closed on December 28, 1987. The Department received nine letters. Seven of these were from State departments of correction; one was from the provider of medical services to correctional facilities of a major metropolitan area; and one was from a contractor that provides medical services in certain State correctional facilities. The

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comments and the Department's responses to them are discussed below. For clarity, the comments and responses are arranged according to the issues to which they pertain.

**Physician Visits Per Unit Time**

One comment objected to the figure of 100 inmate visits per week as establishing unrealistically high expectation for physicians workload, i.e. underestimating staff needs. Another comment asserted that the proposed standards would generate unrealistically high medical staff requirements, which States would be unable to fund given the growth of prison populations. Other respondents stated that the new criteria are more realistic and equitable than the old.

The Department has retained these figures as proposed. The Secretary notes that the HMSA criteria in general and the correctional facility criteria in particular are not intended to take into account availability of funding; rather, their purpose is to accurately identify and quantify needs and shortages in order that Federal and State programs can target those resources that are available on the neediest areas, population groups and correctional facilities.

**Time Devoted to Take Exams**

One comment questioned the implied assumption that the time required to perform a complete intake examination is equivalent to that for a regular physician visit, stating that, "generally, thorough intake examinations require more time that other patient visits."

The Department does not disagree that the intake examination would require more time than a typical patient visit. However, as discussed in the preamble to the NPRM and acknowledged in some of the other comments received, much of the intake exam is typically performed by non-physician health professionals. The proposed criteria is based on the assumption that the physician's portion of the intake exam requires no more time than a patient visit, thus the Department has made final this criterion as proposed.

**Reexaminations**

One comment noted that "many facilities which house long-term inmates repeat complete examinations at annual or bi-annual intervals," and suggested that this be considered in the formula. The Secretary believes that the proposed criterion of five visits per year on the part of long-term inmates would adequately cover any reexaminations, and, therefore, has not accepted this comment.

**Follow-up Care**

One respondent asserted that the proposed criteria seem to assume higher requirements for health care providers at intake then subsequently, and that this conflicts with the respondent's experience, which indicates higher requirements for follow-up care due to chronic conditions identified in some inmates.

The Department notes that, in the case of primary care, the factors proposed assume that one follow-up visit occurs for every two new inmates. Thus, 100 new inmates will generate 50 follow-up visits. (This could mean that 50 of the new inmates have one follow-up visit each as a result of the intake exam, or that 25 have two follow-up visits each, or that 5 have 10 visits each.) The factors proposed also assume an additional 5 visits per year for long term inmates; clearly, inmates with chronic conditions would have more than 5 visits per year, but other inmates would have less. The factor of 5 visits per year is meant to be an average and has been made final as proposed.

**Ratio for Primary Care Shortage**

One comment specifically supported the use of the ratio 1000:1 for primary medical care, saying that this "has normally worked out in a real situation where 'pre-screening' is performed by another health professional." Another comment generally supported this and the other factors selected for primary medical care, but added "we do have institutions with health service missions where utilization of physicians may run higher," involving inmates with chronic health problems, and recommended a ratio closer to 750:1 for such institutions.

The Department has not developed a revised formula which would take into account the number of patients with chronic conditions, primarily because data were not available upon which to base such a revision but also because it is questionable whether these data would be uniformly available for all correctional institutions.

**Use of Average Length-of-stay (ALOS) Factor**

One comment pointed out that, in the equation defining internees for facilities with average length-of-stay (ALOS) specified as less than one year, ALOS should not be included as a factor modifying the average number of inmates in the equation's first term, since even when one inmate leaves during the year and is replaced by another, one averge inmate's full number of visits per year will still be generated (5 visits in the case of primary care). The Department agrees and will make this correction, deleting the factor ALOS in the first term.

The same respondent also recommended that the factor ALOS not be included in the equation's third term, which estimates the follow-up visits generated by intake exams, because such follow-up visits would occur soon after admission. The Department regards the use of the ALOS factor as appropriate in this third term since some facilities have such rapid turnover that time would not permit all the otherwise-expected follow-up visits to occur. Therefore, the factor ALOS has been retained in the equation's third term.

**Use of Psychologists as Well as Psychiatrists**

One commenter pointed out that psychologists as well as psychiartrists are used to provide mental health services. The Department recognizes this fact and will consider it when making future criteria revisions.

**Dental Care Factors**

One comment stated that the proposed correctional facility dental HMSA criteria understate typical needs, since most new inmates are in need of dental treatment, many having been to a dentist seldom if ever. This commenter proposed revising the factors used for defining internees in the dental care part of the criteria accordingly.

In the process of analyzing and responding to this comment, the Department found that the Proposed Rule had indicated an assumption that a dentist can handle 30 inmate visits or intake exams per week (or 1500 per year), but had used $k = \frac{1}{3}$ to represent this assumption in the formula. In fact, $k = 1$ is the correct factor to represent this assumption. Therefore, k for dental is being changed from $\frac{1}{3}$ to 1 in the final version. This results in increasing the calculated dental needs, as the comments suggested. However, in order to avoid overestimating these needs, a partially compensating reduction in the factors b (intake exams) and c (follow-up exams) is also being made, setting $b = \frac{1}{5}$ and $c = \frac{2}{5}$.

**Intake Psychiatric Exams/Psychological Testing**

One respondent stated that, in his State's correctional facilities, new inmates are given a battery of psychological tests at intake but only those whose test results suggest a problem are seen by a psychiatrist. This might indicate that the factor b could be set to equal to zero in the correctional facility HMSA criteria for psychiatry (i.e., no psychiatrists needed for intake exams), leaving the factor c (follow-up exams) to represent follow-up psychiatric visits based on the results of the testing.

While the Department had decided not to set $b = 0$ in the final regulations, it has reduced b to $\frac{1}{5}$ and c to $\frac{2}{5}$ in the psychiatric internee formula. In addition, the Department has revised the normalization factor k for psychiatry from $k = 2$ to $k = 1$ to avoid overestimating needs.

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**Geographic Location of Prisons**

One comment stated that the proposed criteria "fail to account for geographical location of institutions; their inaccessibility to health care professionals; and the hardship posed by physician coverage at one or more remotely-situated prison facilities providing in- and out-patient health care."

It is true that the correctional facility HMSA criteria do not take into account (and never have) whether the prison is located within a county or city which has an adequate physician supply. This consideration was not included because the HMSA criteria are for medium-to-maximum security prisons, which are thought of as self-contained, not interacting with the rest of the area where they are located. However, clearly prisons located in a well-served area rather than an isolated, remote one should find it easier to recruit physicians on contract. This fact is taken into consideration in making decisions about which HMSA-designated prisons will actually receive the limited number of National Health Service Corps (NHSC) physicians available for service in a given year.

**Other Variables**

One comment noted that the proposed criteria failed to consider specifically a number of different variables which relate to the provision of medical services in correctional facilities, e.g. the percentage of inmates over age 40; the percentage of inmates requiring chronic inpatient or outpatient care; and the percentage of inmates suffering from AIDS or other catastrophic illness. The high percentage of inmates with a history of intravenous drug abuse, leading both to the necessity for drug treatment and to increasing levels of AIDS infection in prisons, was also cited by another commenter. The Department recognizes that these are important variables, but did not have data on which to base their use in any formula, nor a model for relating these factors to the number of physicians or other health professionals required.

**Litigation on Prison Health Care**

One comment stated that "the proposed criteria ignore the frequency of litigation and stipulated settlement agreements at the Federal and State levels," and referred to physician-patient ratios and quality of care required by court rulings in such cases. The Department recognizes that court rulings may mandate a different level of care than that called for by the HMSA criteria. In such cases, the States involved (or the Federal government, if such a case were to involve a Federal prison) clearly will need to obtain the court-ordered number of health professionals. In those cases where the prison involved also meets the HMSA criteria, the Public Health Service may be able to assist in recruiting to the extent of the number needed under the HMSA criteria. However, the Department must continue to base its HMSA designation criteria exclusively upon objective data measuring the supply of health personnel, and will not revise the HMSA designation process based on legal settlements or judgments relating to particular prison health needs.

**Restriction to Federal and State Correctional Facilities Only**

One comment objected to the restriction of these criteria to Federal and State correctional facilities only, given that some such facilities serving major metropolitan areas in fact operate in lieu of State (and perhaps Federal) facilities. The Department recognizes this problem and will consider case-by-case exceptions for large correctional facilities in major metropolitan areas.

**Regulatory Flexibility Act and Executive Order 12291**

The Secretary certifies that this amendment to the regulations does not have a significant economic impact on a substantial number of small entities; it primarily affects the way correctional institution populations are counted to allow more accurate calculation of the need for health care practitioners under the existing HMSA designation process. Therefore, a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980 is not required. Further, this rule will not exceed the threshold level of $100 million established in section (b) of Executive Order 12291. For these reasons, the Secretary has determined that the rule is not a major rule under Executive Order 12291 and a regulatory impact analysis is not required.

**Paperwork Reduction Act of 1980**

There are no information collection requirements in this regulation.

**List of Subjects in 42 CFR Part 5**

Dental health, Health, Health professions, Mental health, Physicians, Public health, Rural areas.

Accordingly, 42 CFR Part 5 is amended as follows.

Dated: November 29, 1988.

**Robert E. Windom,**

*Assistant Secretary for Health.*

Approved: December 30, 1988.

**Otis R. Bowen,**

*Secretary.*

## PART 5—DESIGNATION OF HEALTH MANPOWER SHORTAGE AREAS—[AMENDED]

1. The authority citation for Part 5 continues to read as follows:

**Authority:** Sec. 215 of the Public Health Service Act, 58 Stat. 690 (42 U.S.C. 216); Sec. 332 of the Public Health Service Act, 90 Stat. 2270–72 (42 U.S.C. 254e).

**Appendix A to Part 5—[Amended]**

2. Appendix A (Criteria for Designation of Primary Care HMSAs), Part III (Facilities), paragraph A is revised to read as follows:

A. *Federal and State Correctional Institutions.*

1. *Criteria.*

Medium to maximum security Federal and State correctional institutions and youth detention facilities will be designated as having a shortage of primary medical care manpower if both the following criteria are met:

(a) The institution has at least 250 inmates.

(b) The ratio of the number of internees per year to the number of FTE primary care physicians serving the institution is at least 1,000:1.

Here the number of internees is defined as follows:

(i) If the number of new inmates per year and the average length-of-stay are not specified, or if the information provided does not indicate that intake medical examinations are routinely performed upon entry, then—Number of internees = average number of inmates.

(ii) If the average length-of-stay is specified as one year or more, and intake medical examinations are routinely performed upon entry, then—Number of internees = average number of inmates + (0.3) × number of new inmates per year.

(iii) If the average length-of-stay is specified as less than one year, and intake examinations are routinely performed upon entry, then—Number of internees = average number of inmates + (0.2) × (1 + ALOS/2) × number of new inmates per year where ALOS = average length-of-stay (in fraction of year). (The number of FTE primary care

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physicians is computed as in Part I, Section B, paragraph 3 above.)

1. Determination of Degree of Shortage.

Designated correctional institutions will be assigned to degree-of-shortage groups based on the number of inmates and/or the ratio (R) of internees to primary care physicians, as follows:

Group 1—Institutions with 500 or more inmates and no physicians.

Group 2—Other institutions with no physicians and institutions with R greater than (or equal to) 2,000:1.

Group 3—Institutions with R greater than (or equal to) 1,000:1 but less than 2,000:1.

**Appendix B to Part 5—[Amended]**

3. Appendix B (Criteria for Designation of Dental Care HMSAs), Part III (Facilities), paragraph A is revised to read as follows:

*A. Federal and State Correctional Institutions.*

1. *Criteria*

Medium to maximum security Federal and State correctional institutions and youth detention facilities will be designated as having a shortage of dental manpower if both the following criteria are met:

(a) The institution has at least 250 inmates.

(b) The ratio of the number of internees per year to the number of FTE dentists serving the institution is at least 1,500:1.

Here the number of internees is defined as follows:

(i) If the number of new inmates per year and the average length-of-stay are not specified, or if the information provided does not indicate that intake dental examinations are routinely performed by dentists upon entry, then—Number of internees = average number of inmates.

(ii) If the average length-of-stay is specified as one year or more, and intake dental examinations are routinely performed upon entry, then—Number of internees = average number of inmates + number of new inmates per year.

(iii) If the average length-of-stay is specified as less than one year, and intake dental examinations are routinely performed upon entry, then—Number of internees = average number of inmates + $\frac{1}{2} \times [1 + 2 \times \text{ALOS}] \times$ number of new inmates per year where ALOS = average length-of-stay (in fraction of year).

(The number of FTE dentists is computed as in Part I, Section B, paragraph 3 above.)

2. Determination of Degree of Shortage.

Designated correctional institutions will be assigned to degree-of-shortage groups based on the number of inmates and/or the ratio (R) of internees to dentists, as follows:

Group 1—Institutions with 500 or more inmates and no dentists.

Group 2—Other institutions with no dentists and institutions with R greater than (or equal to) 3,000:1.

Group 3—Institutions with R greater than (or equal to) 1,500:1 but less than 3,000:1.

**Appendix C to Part 5—[Amended]**

4. Appendix C (Criteria for Designation of Psychiatric HMSAs), Part III (Facilities), paragraph A is revised to read as follows:

*A. Federal and State Correctional Institutions*

*1. Criteria.*

Medium to maximum security Federal and State correctional institutions and youth detention facilities will be designated as having a shortage of psychiatric manpower if both of the following criteria are met:

(a) The institution has more than 250 inmates, and

(b) The ratio of the number of internees per year to the number of FTE psychiatrists serving the institution is at least 1,000:1.

Here the number of internees is defined as follows:

(i) If the number of new inmates per year and the average length-of-stay are not specified, or if the information provided does not indicate that intake psychiatric examinations are routinely performed upon entry, then—

Number of internees = average number of inmates

(ii) If the average length-of-stay is specified as one year or more, and intake psychiatric examinations are routinely performed upon entry, then—

Number of internees = average number of inmates + number of new inmates per year

(iii) If the average length-of-stay is specified as less than one year, and intake psychiatric examinations are routinely performed upon entry, then—

Number of internees = average number of inmates + $\frac{1}{2} \times [1 + (2 \times \text{ALOS})] \times$ number of new inmates per year

where ALOS = average length-of-stay (in fraction of year) (The number of FTE psychiatrists is computed as in Part I, Section B, paragraph 3 above.)

2. Determination of Degree of Shortage.

Designated correctional institutions will be assigned to degree-of-shortage groups, based on the number of inmates and/or the ratio (R) of internees to FTE psychiatrists, as follows:

Group 1—Institutions with 500 or more inmates and no psychiatrist.

Group 2—Other institutions with no psychiatrists and institutions with R greater than (or equal to) 3,000:1.

Group 3—Institutions with R greater than (or equal to) 2,000:1 but less than 3,000:1.

[FR Doc. 89-4922 Filed 3-1-89; 8:45 am]

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## Health Care Financing Administration

## 42 CFR Parts 433 and 435

**[BQC-671-IFC]**

## Medicaid Program; Targeting Information for Income and Eligibility Verification Systems

**AGENCY:** Health Care Financing Administration (HCFA), HHS.

**ACTION:** Interim final rule with comment period.

**SUMMARY:** This rule revises regulations text that is now obsolete because of section 9101 of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99-509); this section allows State Medicaid Agencies flexibility to use selectively (target) certain information about a Medicaid recipient's income obtained through their income and eligibility verification systems (IEVS). In addition, this rule implements a congressional directive to revise the timeliness standards for use of IEVS information to grant States more time to obtain and use the data.

**EFFECTIVE DATE:** These regulations are effective April 3, 1989. They are being issued in final for the reasons explained in Waiver of Proposed Rulemaking in the Supplementary Information section below. However, we will consider any comments received by May 1, 1989 and revise the regulations as necessary. In order for comments to be considered, we must receive them at the appropriate address, as provided below, no later than 5:00 p.m. on May 1, 1989. Sections 435.945 and 435.953, however, contain information collection requirements subject to Office of Management and Budget clearance. We will publish a notice in the **Federal Register** after we receive that Office's clearance.

**ADDRESS:** Mail comments to the following address:

Health Care Financing Administration, Department of Health and Human Services, Attention: BQC-671-IFC, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave. SW., Washington, DC, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to file code BQC-671-IFC. Comments received timely will be available for public inspection as they are received, generally beginning approximately three weeks after publication of a document, in Room 309-G of the Department's offices at 200 Independence Ave. SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202-254-7890).

**FOR FURTHER INFORMATION CONTACT:** Elliot Naide, (301) 966-5920.

**SUPPLEMENTARY INFORMATION:**

### A. Background

On April 1, 1985, section 1137 of the Social Security Act (the Act) was established with provisions aimed at ensuring that various Federally-funded welfare agencies, including the Aid to Families with Dependent Children, the Food Stamp and Medicaid programs, furnish benefits to only those individuals who are eligible for them. (Section 2651 of Pub. L. 98-369). Section 1137 requires the agencies administering these programs to have an income and eligibility verification system (IEVS) for exchanging with each other information that may be of use in establishing or verifying eligibility or benefit amounts. The provision mandated that the agencies target the use of the information to the uses most likely to be productive in identifying and preventing ineligibility and incorrect payments.

On February 28, 1986, HCFA, the Food and Nutrition Service and the Family Support Administration published jointly a final rule (51 FR 7178) to implement the IEVS for the Medicaid, Food Stamp and AFDC programs. The rule required agencies that administer these programs to review and compare all information received against the case file to determine whether it affects the applicant's or recipient's eligibility or benefits. The regulations also require the agency to initiate a case action, or make an entry in the case record that no action is necessary, within 30 days of receipt of the infomation for 80 percent of the determinations.

The reasoning behind requiring use of all information was twofold:

(1) The agencies are responsible for ensuring that all determinations are correct and we believed that by requiring the use of the largest number of data items available we might reduce errors; and

(2) We anticipated that under any circumstances an agency would exclude an item of information that was obviously erroneous or useless in the eligibility determination.

HCFA's regulations on IEVS in general are found at 42 CFR Part 435, Subpart J; § 435.952 specifically concerns the use of data.

### B. Legislation

After the three agencies jointly published the final rules, the Budget Committee of the House of Representatives in its report accompanying H.R. 5300 (which was the basis for the Omnibus Reconciliation Act of 1986) noted that the agencies' current rules do not permit targeting in the manner it said it intended to allow in the original statute (H.R. Rep. No. 727, 99th Cong., 2d Sess. 424-425 (1986)). According to this 1986 report, it was the original intent of the House Budget Committee to have States utilize a variety of information sources to verify the eligibility of applicants and recipients of benefit programs, as an effective and efficient tool in preventing benefit payments from being made to individuals who are not eligible. The report states that the Committee believed that for the use of such information to be productive, States must be afforded the discretion to target their efforts in ways they determine most cost-effective. To require a follow up in all cases where any income is indicated "was not what was intended by Congress and would result in an unnecessary and costly administrative burden on the States". (H.R. Rep. No. 727, 99th Cong., 2d Sess. 424 (1986)).

To ensure that the required matches are cost-effective verification processes, the Committee indicated that the States should be allowed to arrange the follow up of case records based on match findings in order of importance. For example, following up on individuals whose unearned income exceeds certain tolerance levels is more efficient than verifying every case with unearned income.

In addition, the Committee stated its belief that requiring States to act upon the information they receive within 30 days, as prescribed in the final rule, is unrealistic. "States have a finite amount of administrative resources, and are dependent upon the actions of others outside the agency as well as the mail system to carry out their duties. For this reason, the Committee believes a 45-day requirement is more reasonable than the 30 days set forth in the final rule. The allowance that action can be delayed further on up to 20 percent of the information items when collateral verification sources are required—as provided in the final rules—should be retained." (H.R. Rep. No. 727, 99th Cong., 2d Sess. 425 (1986)).

In section 9101 of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99-509), Congress amended section 1137 (a)(4) of the Act to prohibit the Secretary from requiring States to use the information they receive because of the IEVS to verify the eligibility of all recipients. The House Budget Committee's directive to allow the public assistance agencies 45 days to act upon information received was not included as a legislative amendment, however.

### C. Revisions to the Regulations

In order to bring the regulations into conformity with the amendment to section 1137 of the Act made by Pub. L. 99-509, and to follow clearly expressed congressional intent on the time period for acting upon information received, we are amending our regulations at 42 CFR Part 435, Subpart J.

*1. Targeting the Use of Information*

We are adding a new § 435.953 to reflect existing law (section 1137(a)(4) of the Act) to provide that all information received through the IEVS on recipients need not be used but that its use may be targeted.

The revised regulations reflect amendments to section 1137(a)(4) of the Act, which permit each State agency to review and compare against the case file (follow up) all information items or to target, for each data source, those information items that are likely to be productive in identifying and preventing ineligibility and incorrect payments.

Any agency that intends to exclude items from follow-up must submit a follow-up plan that specifies the categories to be excluded and provides a description of the criteria defining each category. For each category, the agency must provide a reasonable justification explaining why the follow-up would not be cost-effective. A formal cost-benefit analysis is not required. An agency may find it preferable to base its justifications on the general experience of its program in following up on specific categories of information.

Restriction to recipients

Under our current rules at 42 CFR § 435.948, State agencies were required to use all information concerning both applicants and recipients.

In providing that State agencies are allowed to target information, the amendment to section 1137(a)(4) of the Act refers to "recipients" only. Our current regulations requiring the use of information on all applicants and recipients have thus been superseded with respect to recipients only. Therefore, we are revising the regulations to permit targeting to be used only for recipients. When the agency receives information on applicants whom it has not yet determined eligible, the match data continues to be, as under existing regulations, not subject to targeting.

We carefully considered proposing to revise our existing regulations to permit targeting of applicants, but we have decided at this time simply to revise the regulations to bring the text into conformity with the new statutory language that already legally governs targeting in the case of recipients. We believe it is not in the best interest of the program to revise the existing requirement that information on all applicants be used. The application period is particularly important in that

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the State agency conducts an intensive review of all of the factors of the applicant's eligibility, including the economic circumstances of the household. Following an initial eligibility determination, periodic redeterminations of recipients tend to be somewhat less intensive with questions concentrating on whether a change in circumstances has occurred in the past few months or is expected to occur in the next few months. Moreover, redeterminations may be conducted by telephone or mail or in group interviews. The application process is therefore more crucial to the integrity of the program and all information items must be pursued and resolved to the extent possible before authorization of assistance. However, as currently required by § 435.911, State agencies may not delay a pending application solely to await IEVS information if other evidence establishes the individual's eligibility for assistance. Information the agency requests on an applicant that it receives after it authorizes assistance is considered to be information received on a recipient and may therefore be targeted under section 1137(a)(4) of the Act and under these regulations.

These regulation revisions do not affect the requirement that State agencies request information on all recipients from the required sources but merely concern targeting the use of data received in response to the request.

These changes, as do the current regulations, apply only in those situations for which the Medicaid agency makes the eligibility determination. For Medicaid recipients eligible because they receive AFDC assistance, the AFDC IEVS requirements already apply. For aged, blind or disabled Medicaid recipients receiving SSI payments, the Medicaid IEVS requirements apply only if such recipients' Medicaid eligibility is not determined by the Social Security Administration (SSA) pursuant to section 1634 of the Social Security Act (see § 435.909).

*2. Timeframe for Action on Match Results*

These regulations also provide in § 435.952 a 45-day period for following up on information items, instead of the current 30 days; this policy would implement the directive contained in the report of the House Budget Committee. This is a maximum time period and does not preclude a State agency from setting shorter timeframes for acting on information items from a particular data base. For example, information items showing unreported UIB might be given priority over other information and be looked at immediately.

The provision that allows a 20 percent allowance for action on information items in which third party information is late remains the same as stated in § 435.952(e) and applies also to targeted data since targeting will not have any effect on the responsiveness of third parties.

*3. Quality Control Requirements*

The current rule at § 435.952 clearly states that the requirements of this section do not relieve the agency of its responsibility for determinations of erroneous payments or the agency's liability for those erroneous payments. In order to clarify that the agency is liable even for items not followed up, we are amending § 435.945, General requirements, by adding paragraph (h) to require the State agencies to retain records of all the information items received, including those not followed up. The agency will, as now, have to retain information in a manner that assures that it does not compromise information safeguards; the agency must make this information available to quality control reviewers upon request.

*4. Third Party Liability*

Targeting does not apply to activities for establishing third party liability benefit amounts. Section 1902(a)(25) of the Act requires that State agencies or local Medicaid agencies take all reasonable measures to ascertain the legal liability of third parties to pay for care and services provided to Medicaid recipients. Every employment lead, no matter how small, could potentially be a lead for health insurance.

*5. Technical Changes*

We are making three technical changes to § 435.952. In paragraph (a), by cross reference, we incorporate the change that permits State agencies to limit review and comparison of information to targeted information. In paragraph (c) we reflect the correct order the State agency must follow when processing a recipient's case file under IEVS. Finally, in paragraph (e), we extend to 45 days the timeframe that a State agency may delay action for up to 20 percent of items and limit the items to those on which it requested verification timely, instead of all items of information received.

We are also changing § 433.138(g)(1)(i). We are revising the timeframe for followup for TPL purposes from 30 to 45 days to make it consistent with the timeframe for IEVS followup. We are retaining the provision for delayed action beyond 45 days in 20 percent of the information items when the agency does not receive requested verification.

**D. Impact Analysis**

*1. Executive Order 12291*

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any final rule that meets one of the E.O. criteria for a "major rule"; that is, that would be likely to result in: An annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or, significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

We expect that the net effect of the targeting requirement reflected in these regulations will be to reduce State agency costs since they will not have to follow up on all data. State agencies will be able to target their follow up activities on matched data that, for example, exceed certain tolerance levels because it would not be cost-effective to follow up on matched data below those levels. The extension from 30 to 45 days of the time permitted for follow up also will reduce the pressure placed on State administrative resources. For these reasons, we have determined that no threshold criteria under E.O. 12291 are met. Therefore, a regulatory impact analysis is not required.

*2. Regulatory Flexibility Act*

We generally prepare a final regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a final rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, State agencies are not small entities. We have determined, and the Secretary certifies, that this final rule does not have a significant economic impact on a substantial number of small entities. We have therefore not prepared a regulatory flexibility analysis.

**E. Paperwork Reduction Act**

Sections 435.945 and 435.953 of this rule contain information collection requirements that are subject to the Office of Management and Budget (OMB) review under the Paperwork Reduction Act of 1980. State agencies must be able to document that they received information for data matches from all sources for quality control purposes and, if they do not intend to follow up on a category or categories of information, they must submit a plan to the Secretary justifying the exclusion as cost-effective. The reporting burden for the information collections in § 435.945 is estimated to be 432 hours annually for a maximum of 54 States and jurisdictions. The reporting burden for the information collections in § 435.953 is estimated to be 40 hours per response for a maximum of 54 States and jurisdictions for a one-time total estimated burden of 2,160 hours. (We are assuming a one-time response from all States and jurisdictions for this estimate with no revised follow-up plans. However, some States and jurisdictions may submit no plan; others may revise theirs frequently.)

A notice will be published in the **Federal Register** when the OMB approval is obtained. Organizations and individuals desiring to submit comments on the information collection requirements should follow the directions in the address section within 30 days after publication of this rule.

Section 435.952 of this rule also contains information collection requirements that are subject to the OMB review. These requirements were approved by that Office on April 11, 1986 in accordance with the Paperwork Reduction Act. The approval number is 0938-0467 and the approval expires April 30, 1989. HCFA is requesting an extension of this approval for an additional 3 years.

**F. Waiver of Proposed Rulemaking**

Generally, we publish a notice of proposed rulemaking in the **Federal Register** and afford public comment before issuing a final rule. However, if adherence, to these procedures would be impracticable, unnecessary or contrary to the public interest, we may waive the procedures.

This interim final rule with comment period simply revises the text of existing regulations to bring them into conformity with statutory requirements and clearly expressed congressional intent without interpretation. With respect to the provisions permitting targeting of information on recipients, the revisions in these regulations have no substantive effect, as section 1137(a)(4) already requires that such targeting be permitted, even though the text of the existing regulations provides otherwise.

Therefore, the Secretary finds good cause that issuing a notice of proposed rulemaking before these final rules is unnecessary and contrary to the public interest.

**G. Response to Comments**

Because of the large number of items of correspondence we normally receive on rules requesting public comment, we are not able to acknowledge or respond to them individually.

However, we will consider all comments that we receive by the date and time specified in the "DATE" section of this preamble, and, if we revise this final rule, we will respond to the comments in the preamble of that revised rule.

**H. List of Subjects**

*42 CFR Part 433*

Administrative practice and procedure, Child support, Claims, Grant programs-health, Medicaid, Reporting and recordkeeping requirements.

*42 CFR Part 435*

Aid to Families with Dependent Children, Grant programs-health, Medicaid, Reporting and recordkeeping requirements, Supplemental Security Income (SSI), Wages.

42 CFR Chapter IV, Subchapter C is amended as set forth below:

**CHAPTER IV—HEALTH CARE FINANCING ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES**

* * * * *

**SUBCHAPTER C—MEDICAL ASSISTANCE PROGRAMS**

* * * * *

A. Part 433 is amended as set forth below:

1. The authority citation continues to read as follows:

**Authority:** Secs. 1102, 1137, 1902(a)(4), 1902(a)(25), 1902(a)(45), 1903(a)(3), 1903(d)(2), 1903(d)(5), 1903(o), 1903(p), 1903(r), and 1912 of the Social Security Act; 42 U.S.C. 1302, 1320b-7, 1396a(a)(4), 1396a(a)(25), 1396a(a)(45), 1396b(a)(3), 1396b(d)(2), 1396b(d)(5), 1396b(o), 1396b(p), 1396b(r) and 1396k, unless otherwise noted.

**§ 433.138 [Amended]**

2. In paragraph (g)(1)(i) of § 433.138, "30 days" is revised to read "45 days".

B. Part 435 is amended as follows:

1. The authority citation continues to read as follows:

**Authority:** Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. The table of contents is amended by adding a new § 435.953 to read as follows:

**PART 435—ELIGIBILITY IN THE STATES, DISTRICT OF COLUMBIA, THE NORTHERN MARIANA ISLANDS AND AMERICAN SAMOA**

* * * * *

**Subpart J—Eligibility in the States and District of Columbia**

* * * * *

**§ 435.953 Identifying items of information to use.**

* * * * *

3. In § 435.945, paragraph (a) is revised and paragraph (h) is added as follows:

**§ 435.945 General requirements.**

(a) The agency must request and use information timely in accordance with §§ 435.948, 435.952, and 435.953 of this subpart for verifying Medicaid eligibility and the amount of medical assistance payments.

* * * * *

(h) The agency must retain a record of all information items received, including those not followed up, and make the records available for quality control review purposes.

4. Section 435.952, paragraphs (a) and (c) through (e) are revised to read as follows:

**§ 435.952 Use of information.**

(a) Except as provided under § 435.953 of this subpart, the agency must review and compare against the casefile all information received under §§ 435.940 through 435.960 to determine whether it affects the applicant's or recipient's eligibility or amount of medical assistance payment. The agency must also verify the infomation if determined appropriate by agency experience or if required by § 435.955.

* * * * *

(c) Except as specified in § 435.953 of this subpart and paragraph (d) of this section, for recipients, the agency must, within 45 days of receipt of an item of information, request verification (if appropriate), determine whether the information affects eligibility or the amount of medical assistance payment, and either initiate a notice of case action to advise the recipient of any adverse action the agency intends to take or make an entry in the casefile that no further action is necessary.

(d) Subject to paragraph (e) of this section, if the agency does not receive requested third party verification within the 45-day period after receipt of information, the agency may determine whether the information affects eligibility or correct amount of medical

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assistance payment after the 45-day period. However, the agency must make any delayed determinations permitted under this paragraph—

(1) Promptly, as required by § 435.916, if the verification is received before the next redetermination; or

(2) In conjunction with the next redetermination if no verification is received before that redetermination.

(e) The number of determinations delayed beyond 45 days from receipt of an item of information (as permitted by paragraph (d) of this section) must not exceed twenty percent of the number of items of information for which verification was requested.

* * * * *

5. A new § 435.953 is added to read as follows:

**§ 435.953 Identifying items of information to use.**

(a) With respect to information received on recipients under §§ 435.940 through 435.960, the agency may either review and compare against the case file all items of information received or it may identify (target) separately for each data source the information items that are most likely to be most productive in identifying and preventing ineligibility and incorrect payments.

(b) An agency that wishes to exclude categories of information items must submit for the Secretary's approval a follow-up plan describing the categories that it proposes to exclude. For each category, the agency must provide a reasonable justification that follow-up is not cost-effective; a formal cost/benefit analysis is not required.

(c) If an agency receives an item of unemployment compensation information from the Internal Revenue Service or earnings information from SSA that duplicates an item of information previously received from another source and followed up, the agency may exclude that information item without justification.

(d) An agency may submit a follow-up plan or alter its plan at any time by notifying the Secretary and submitting the necessary justification. The Secretary approves or disapproves categories of items to be excluded under the plan within 60 days of its submission. The categories approved by the Secretary constitute an approved agency follow-up plan for IEVS.

(Catalog of Federal Domestic Assistance Programs No. 13.714, Medical Assistance).

Dated: October 15, 1987.

**William L. Roper,**

*Administrator, Health Care Financing Administration.*

Approved: September 21, 1988.

**Otis R. Bowen,**

*Secretary, Department of Health and Human Services.*

**Note:** This regulation is being submitted to the Office of the Federal Register today February 27, 1989 for publication.

[FR Doc. 89-4804 Filed 3-1-89; 8:45 am]

BILLING CODE 4120-03-M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[MM Docket No. 88-146; RM-6048]**

### Radio Broadcasting Services; Osceola, AR

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document substitutes Channel 251C for Channel 251C2 at Osceola, Arkansas, and modifies the Class C2 license of The Dittman Group, Inc. for Station KMPZ(FM), as requested, to specify operation on the higher class channel, thereby providing that community with its first wide coverage area FM service. Reference coordinates for Channel 251C at Osceola are 35-28-02 and 90-11-27. With this action, the proceeding is terminated.

**EFFECTIVE DATE:** April 10, 1989.

**FOR FURTHER INFORMATION CONTACT:** Nancy Joyner, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 88-146, adopted February 3, 1989, and released February 23, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments for Arkansas, is amended by revising the entry for Osceola by deleting Channel 251C2 and adding Channel 251C.

Federal Communications Commission.

**Steve Kaminer,**

*Deputy Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 89-4880 Filed 3-1-89; 8:45 am]

BILLING CODE 6712-01-M

### 47 CFR Part 73

**[MM Docket No. 88-155; RM-6149]**

### Radio Broadcasting Services; Pentwater, MI

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document allots FM Channel 231A to Pentwater, Michigan, in response to a petition filed by James J. McCluskey. Channel 231A can be allotted to Pentwater consistent with the Commission's spacing requirements. The coordinates for Channel 231A are 43-46-30 and 86-26-24. With this action, this proceeding is terminated.

**DATES:** Effective April 10, 1989; The window period for filing applications will open on April 11, 1989, and close on May 11, 1989.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 88-155, adopted January 31, 1989, and released February 23, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW, Suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio Broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for Part 73 continues to read as follows:



**Authority:** 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. In § 73.202(b), the Table of FM Allotments under Michigan is amended by adding Channel 231A at Pentwater.

Federal Communications Commission.

**Steve Kaminer,**

*Deputy Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 89-4877 Filed 3-1-89; 8:45 am]

BILLING CODE 6712-01-M

### 47 CFR Part 73

**[MM Docket No. 88-166; RM-6287]**

### Radio Broadcasting Services; Lawton, OK

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of Broadco of Texas, Inc., allots Channel 258C2 to Lawton, Oklahoma, and modifies its license for Station KMGZ to specify operation on the higher powered channel. Channel 258C2 can be allotted to Lawton with a site restriction of 13.2 kilometers (8.2 miles) east to avoid a short-spacing to Station KBOG, Channel 257A, Cordell, Oklahoma. The coordinates for the allotment are North Latitude 33-34-43 and West Longitude 98-16-25. At the request of Mark Norman and Cameron University, we are also retaining Channel 237A at Lawton but not reserving it for noncommercial educational use as requested by Cameron. Channel 237A can be allotted to Lawton without the imposition of a site restriction. The coordinates for this allotment are North Latitude 34-36-42 and West Longitude 98-24-42. With this action, this proceeding is terminated.

**DATES:** Effective April 10, 1989. The window period for filing applications for Channel 237A at Lawton will open on April 11, 1989, and close on May 11, 1989.

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 88-188, adopted January 30, 1989, and released February 24, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the FM Table of Allotments for Oklahoma is amended by revising the entry for Lawton by adding Channel 258C2.

Federal Communications Commission.

**Steve Kaminer,**

*Deputy Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 89-4882 Filed 3-1-89; 8:45 am]

BILLING CODE 6712-01-M

### 47 CFR Part 73

**[MM Docket No. 88-33; RM-6156, RM-6428]**

### Radio Broadcasting Services; Austin, TX et al.

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document substitutes Channel 272C2 for Channel 272A at Austin, Texas, and modifies the license of Station KPEZ(FM) to specify operation on the higher class co-channel, at the request of Clear Channel Communications, Inc. In addition, in order to accomplish the Austin substitution, Channel 223A is substituted for Channel 272A at Yoakum, Texas, and the license of Station KYOC(FM) is modified accordingly. In addition, this action allots Channel 260A to Hallettsville, Texas, as a first local FM service at the request of Fred Lundgren. Channel 272C2 at Austin requires a site restriction of 13.0 kilometers (8.1 miles) southwest of the city, at coordinates 30-11-53 and 97-50-06. Channel 223A at Yoakum requires a site restriction of 11.1 kilometers (6.9 miles) northwest of the city, at coordinates 29-20-29 and 97-14-54. A site restriction of 11.5 kilometers (7.2 miles) east of Hallettsville is required for Channel 260A, at coordinates 29-25-46 and 96-49-25. Concurrence of the Mexican government has been obtained. With this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments is amended, under Texas, by adding Channel 272C2 and deleting Channel 272A at Austin; by adding Channel 223A and deleting Channel 272A at Yoakum; and by adding Hallettsville, Channel 260A.

**Steve Kaminer,**

*Deputy Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 89-4881 Filed 3-1-89; 8:45 am]

BILLING CODE 6712-01-M

### 47 CFR Part 73

**[MM Docket No. 88-492; RM-6414]**

### Radio Broadcasting Services; Borger, TX

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document substitutes Channel 282C1 for Channel 282C at Borger, Texas, and modifies the station's license to reflect operation on the new class, at the request of William H. Sanders. A site restriction of 37.1 kilometers (23.0 miles) southwest of the city has been requested utilizing coordinates 35-23-17 and 101-38-10.

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With this action, this proceeding is terminated.

**EFFECTIVE DATE:** April 10, 1989.

**FOR FURTHER INFORMATION CONTACT:** Patricia Rawlings (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 88-492, adopted January 31, 1989, and released February 23, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments is amended, under Texas, by deleting Channel 282C and adding Channel 282C1 at Borger.

**Steve Kaminer,**

*Deputy Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 89-4878 Filed 3-1-89; 8:45 am]

BILLING CODE 6712-01-M

**47 CFR Part 73**

**[MM Docket No. 88-312; RM-6127 & RM-6135**

**Radio Broadcasting Services; Pearl and Magee, MS**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document allots FM Channel 230A to Magee, Mississippi, in response to a petition filed by Airwaves Company. The coordinates for Channel 230A at Magee are 31-52-18 and 89-43-54. Colon Johnson filed a conflicting petition in this proceeding requesting the allotment of Channel 230A to Pearl, Mississippi. However, since no supporting comments have been received for a channel at Pearl, we shall dismiss the petition for lack of interest.

**DATES:** Effective April 10, 1989. The window period for filing applications for Channel 230A at Magee, Mississippi, will open on April 11, 1989, and close on May 11, 1989.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket 88-312, adopted February 3, 1989, and released February 23, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Mississippi is amended by adding Channel 230A at Magee.

Federal Communications Commission.

**Steve Kaminer,**

*Deputy Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 89-4879 Filed 3-1-89; 8:45 am]

BILLING CODE 6712-01-M

**47 CFR Part 73**

**[MM Docket No. 87-7; FCC 88-407]**

**Broadcast Services; Amendment of the Radio-TV Cross-Ownership Rule, Section 73.3555 of the Commission's Rules and Regulations, to Liberalize the Commission's Waiver Policy With Respect to the Common Ownership of a Radio-TV Station Combination in the Same Market**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** On December 12, 1988, the Commission adopted amendments to the radio-TV cross-ownership rule contained in § 73.3555(b) of the Commission's Rules and Regulations. Specifically, the Commission adopted a new waiver policy under which it will look with favor upon waiver applications involving either (1) stations in the top 25 ADI television markets where there will be 30 separate broadcast licensees or "voices" after the combination, or (2) "failed" stations that have not been operated for a substantial period of time or that are involved in bankruptcy proceedings; all other applications will be examined on a more rigorous case-by-case basis. The Commission will not grant any application under this policy, however, if the proposed combination would result in any one entity holding an attributable interest in more than one AM and FM radio station within any single television "metro" market, as defined by Arbitron Ratings Company.

**EFFECTIVE DATE:** March 31, 1989.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Michele Farquhar, Policy and Rules Division, Mass Media Bureau, (202) 632-7792.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's decision in MM Docket No. 87-7, adopted December 12, 1988 and released February 23, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

**Summary of Decision**

1. This decision relaxes one of the Commission's local ownership rules—the radio-TV cross-ownership rule, which prohibits the common ownership of radio and television stations in the same television market. Although the Commission is retaining the rule, it is adopting a waiver policy under which it will look with favor upon waiver requests when certain specific criteria are met. First, the Commission will tend to look favorably upon waiver applications involving radio and television station combinations in the top 25 television markets where there will be at least 30 separately owned, operated and controlled broadcast licensees or "voices" after the proposed merger. Second, it will also look favorably upon requests involving "failed" stations that have not been operated for a substantial period of time or that are involved in bankruptcy proceedings. All other waiver applications will be examined on a more rigorous case-by-case basis which will place particular emphasis on the potential benefits of the combination, the types of facilities involved, the number of stations already owned by the applicant, the financial difficulties of the station(s), and the nature of the market in light of diversity and competition concerns. Under this new waiver policy, however, the Commission will not grant any application if the proposed combination would result in any one entity holding an attributable interest in more than one AM and one FM radio station within any single television "metro" market, as defined by Arbitron Ratings Company.

2. The radio-TV cross-ownership rule was adopted in 1970 in order to promote the dual goals of economic competition and viewpoint diversity in the ownership of broadcast stations. The *Notice of Proposed Rule Making* in this proceeding proposed relaxing both the radio-TV cross-ownership and the radio "duopoly" rules to reflect the tremendous growth in the number and types of media outlets in large and small markets in the 18 years since the rules were last examined by the Commission. Based on the record in this proceeding and the overwhelming support of the comments received, the Commission voted to relax the duopoly rule to a principal-city contour standard on October 27, 1988. The commenters also agreed overwhelmingly with the Commission's initial determination that the radio-TV cross-ownership rule should be liberalized given the increased availability of media outlets in markets of all sizes and the benefits of common station ownerships.

3. In particular, the commenters submitted evidence that substantial economies of scale and cost savings could result from joint station ownership, which in turn would benefit the public by permitting broadcasters to invest more money and other resources into better and more diverse programming. Specifically, many agreed that efficiencies inherent in joint ownership might lead to more news and public affairs programming, a greater diversity of program formats, and better technical facilities, and could enable struggling radio and television stations to remain on the air. Furthermore, data and studies submitted in this proceeding indicated that relaxing the rule is unlikely to affect economic competition adversely.

4. In an abundance of caution, however, the Commission decided to retain the rule for all markets and adopt a new, more relaxed case-by-case waiver policy for all potential radio-TV combinations. Under this policy, the Commission will look with favor upon waiver requests that meet either of two standards and will review all other applications based upon certain specified public interest criteria. These new waiver standards would replace the current exception for radio-UHF television station combinations in Note 4 of § 73.3555, so that these combinations would now be evaluated under the same public interest criteria as all other prospective combinations. These amendments to § 73.3555 will become effective March 31, 1989.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting, Television broadcasting.

**Rule Amendments**

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

**PART 73—[AMENDED]**

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154 and 303.

2. Section 73.3555 is amended by deleting the fifth and sixth sentences of Note 4 which begin with the words "This section" and end with the words "public interest" and adding a new Note 7, which reads as follows:

**§ 73.3555 Multiple ownership.**

* * * * *

**Note 7:** The Commission will entertain requests to waive the restrictions of paragraph (b) of this section on a case-by-case basis. The Commission will look favorably upon waiver applications that meet either of the following two standards: (1) Those involving radio and television station combinations in the top 25 television markets where there will be at least 30 separately owned, operated and controlled broadcast licensees after the proposed combination, as determined by counting television licensees in the relevant ADI television market and radio licensees in the relevant television metropolitan market; or (2) those involving "failed" broadcast stations that have not been operated for a substantial period of time, *e.g.*, four months, or that are involved in bankruptcy proceedings. For the purposes of determining the top 25 ADI television markets, the relevant ADI television market, and the relevant television metropolitan market for each prospective combination, we will use the most recent *Arbitron Ratings Television ADI Market Guide*. We will determine the number of radio stations in the relevant television metropolitan market and the number of television licensees within the relevant ADI television market based on the most recent Commission ownership records. Other waiver requests will be evaluated on a more rigorous case-by-case basis, as set forth in the *Second Report and Order* in MM Docket No. 87-7, FCC 88-407, released February 23, 1989. In implementing this new waiver policy, we will not grant any application if the proposed combination would result in any one entity holding an attributable interest in more than one AM and FM station within any single television metropolitan market.

Federal Communications Commission.

**Donna R. Searcy,**

*Secretary.*

[FR Doc. 89-4883 Filed 3-1-89; 8:45 am]

BILLING CODE 6712-01-M

**47 CFR Part 80**

**[FCC 89-26]**

**Maritime Services; Amendment to Permit Additional Use of VTS Channels in the Port Areas of New York and New Orleans**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This action amends the Commission's rules for Vessel Traffic Services (VTS) systems for the port areas of New York and New Orleans. Effective July 30, 1988, the United States Coast Guard discontinued its VTS operations in these two port areas. This Order permits use of the affected VHF channels in these port areas by eligible users for other than VTS operations, pending possible future use for VTS communications.

**EFFECTIVE DATE:** March 2, 1989.

**ADDRESS:** Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Eric Malinen, Aviation & Marine Branch, Private Radio Bureau, (202) 632-7175.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Order, adopted January 27, 1989, and released February 15, 1989. The complete text of this Commission action, including the rule amendment, is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC 20554. The complete text of this action, including the rule amendment, may also be purchased from the Commission's copy contractor, International Transcription Services,

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(202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

**Summary of Order**

1. The maritime services rules have been amended to allow Vessel Traffic Services (VTS) channels in the port areas of New York and New Orleans, LA, to be used by eligible users for other than VTS operations, pending possible future use for VTS communications.

2. Operated by the United States Coast Guard (Coast Guard), VTS systems are ship movement reporting systems designed to prevent damage to ships, bridges, and other structures in U.S. navigable waters. VTS systems are also used to minimize environmental damage associated with navigational accidents. Effective July 30, 1988, the Coast Guard discontinued its VTS systems for the port areas of New York and New Orleans, leaving VHF marine channels 11 and 14 in New York, and channels 11, 12, and 14 in New Orleans, idle.

3. The Commission noted that allowing the above frequencies to be used for other purposes instead of remaining idle would increase spectrum efficiency and help satisfy the demand for maritime frequencies in these two port areas. The Commission's action allows eligible users in the two port areas to be licensed to use channel 11 for commercial communications and channels 12 and 14 for port operations communications, with one exception: the Coast Guard retains channel 12 in New York for anchorage management services that have continued despite the closing of the New York VTS system.

4. The Commission recognized that the Coast Guard acted due to budgetary constraints, and that re-establishment of one or both of the two VTS systems is a possibility. The Commission therefore ordered that licenses granted under the Order be granted only on a provisional basis, contingent on a continuation of Coast Guard policy. The Commission may thus require operations pursuant to such conditional licenses to cease upon notification to the licensee, or may choose not to renew such licenses, if VTS systems for the port areas of New York and New Orleans are re-established.

5. The amended rule is set forth at the end of this document.

6. The rule amendment contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501-3520, and found to contain no new or modified form, information collection or recordkeeping, labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed on the public.

7. Because the Commission found that the rule amendment contained herein constitutes a minor amendment to the Commission's Rules in which the public is not likely to be interested, the Commission found for good cause that compliance with the notice and comment procedures of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), was unnecessary. Furthermore, in light of the heavy maritime frequency traffic in New York and New Orleans, the Commission found good cause to make the specified VTS channels available immediately. Therefore, the rule amendment is effective immediately upon this publication in the **Federal Register**.

8. The amended rule is issued under the authority contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r). The authority citation for Part 80 continues to read as follows:

**Authority:** Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. 151-155, 301-609; 3 UST 3450, 3 UST 4726, 12 UST 2377, unless otherwise noted.

**List of Subjects in 47 CFR Part 80**

Coast stations, Radio, Ship stations, Telephone.

Federal Communications Commission.

**Donna R. Searcy,**

*Secretary.*

**Amended Rule**

Part 80 of Chapter I of Title 47 of the Code of Federal Regulations is amended, as follows:

1. The authority citation for Part 80 continues to read as follows:

**Authority:** Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. 151-155, 301-609; 3 UST 3450, 3 UST 4726, 12 UST 2377, unless otherwise noted.

2. Section 80.383(a) is revised to read as follows:

**§ 80.383 Vessel Traffic Services (VTS) system frequencies.**

* * * * *

(a) Assigned frequencies:

VESSEL TRAFFIC CONTROL FREQUENCIES

| Carrier frequencies (MHz) | Geographic areas |
|---|---|
| 156.250 | Seattle. |
| 156.550 | New York [1], New Orleans [1], Houston. |
| 156.600 | New York [1], New Orleans [1], Houston. |
| 156.700 | New York [1], New Orleans [1], Seattle. |

[1] Until further notice, this frequency is available for use as permitted by § 80.373(f), notwithstanding the provisions of footnote 3 that are applicable to the VTS system. Availability is a result of the closure of the VTS systems for the port areas of New York and New Orleans. If the United States Coast Guard re-establishes one or both of these systems, the Commission may require operations pursuant to such conditional licenses for this frequency to cease, or may choose not to renew such conditional licenses. All licenses for this frequency will be expressly conditioned upon the continued availability of the frequency for non-VTS use.

* * * * *

[FR Doc. 89-3974 Filed 3-1-89; 8:45 am]

BILLING CODE 6712-01-M

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### 49 CFR Part 1

**[OST Docket No. 1; Amdmt 1-227]**

### Organization and Delegation of Powers and Duties to Administrator of Federal Railroad Administration

**AGENCY:** Office of the Secretary, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment delegates to the Administrator of the Federal Railroad Administration ("FRA") all functions vested in the Secretary of Transportation ("Secretary") by section 18 (g) and (h) of the Rail Safety Improvement Act of 1988 (Pub. L. No. 100-342, 102 Stat. 636) since these functions relate to duties normally carried out by FRA.

**EFFECTIVE DATE:** The effective date of this amendment is February 25, 1989.

**FOR FURTHER INFORMATION CONTACT:** Samuel E. Whitehorn, Esq., Office of the General Counsel, C-50, Department of Transportation, 400—7th Street, SW., Washington, DC 20590 (202) 366-9306.

**SUPPLEMENTARY INFORMATION:** Since this amendment relates to Departmental management, procedures, and practice, notice and comment on it are unnecessary, and it may be made effective in fewer than thirty days after publication in the **Federal Register**.

Section 18 of the Rail Safety Improvement Act of 1988 contains two provisions related to rail passenger service and the operation of such service by the National Railroad Passenger Corporation ("Amtrak"). Section 18(g) provides that Amtrak or the owner of any facility which presents



a danger to the employees, passengers, or property of Amtrak may petition the Secretary of Transportation for assistance to the owner of the facility for relocation or other remedial measures to minimize or eliminate such danger. If the Secretary determines that the facility presents a danger of death or serious injury to any employee or passenger of Amtrak or serious damage to any property of Amtrak and that the owner of the facility should not be expected to bear the cost of the relocation or other remedial measures necessary to minimize or eliminate the danger, then the Secretary is to recommend to Congress that Congress authorize funding, by reimbursement or otherwise, for the relocation or other remedial measures.

Section 18(h) provides that Amtrak may apply to the Secretary of Transportation, alone or in cooperation with the owner or operator of any rail passenger station, for funding appropriated by Congress to correct violations of building, construction, fire, electric, sanitation, mechanical, or plumbing codes, that were the subject of a violation notice received before October 1, 1987, from state or local authorities.

Since both of these statutory provisions involve rail passenger service issues traditionally within the responsibility of the Federal Railroad Administrator, they are being delegated to the Administrator.

**List of Subjects of 49 CFR Part 1**

Authority delegations (government agencies), Organization and functions (government agencies), Transportation Department.

For the reasons set forth in the preamble, Title 49, Part 1, of the Code of Federal Regulations is amended as follows:

**PART 1—[AMENDED]**

1. The authority citation for Part 1 continues to read as follows:

**Authority:** 49 U.S.C. 322.

2. Section 1.49 of Part 1 of Title 49, Code of Federal Regulations, is amended by adding at the end thereof a new paragraph (cc), and the introductory text of § 1.49 is reprinted for the convenience of the reader, as follows:

**§ 1.49 Delegations to Federal Railroad Administrator.**

The Federal Railroad Administrator is delegated authority to—

* * * * *

(cc) Carry out the functions vested in the Secretary by section 18 (g) and (h) of the Rail Safety Improvement Act of 1988 (Pub. L. No. 100-342).

Issued in Washington, DC, on February 25, 1989.

**Samuel K. Skinner,**

*Secretary of Transportation.*

[FR Doc. 89-4892 Filed 3-1-89; 8:45 am]

BILLING CODE 4910-62-M

## National Highway Traffic Safety Administration

### 49 CFR Part 580

**[Docket No. 87-09; Notice 4E]**

### Odometer Disclosure Requirements; Alabama

**AGENCY:** National Highway Traffic Safety Administration.

**ACTION:** Grant of petition for extension of time (Alabama).

**SUMMARY:** This is in response to a petition for an extension of time filed by the Alabama Department of Revenue, Motor Vehicle Division (Alabama). Alabama cannot conform its laws and title documents to meet the requirements of the Truth in Mileage Act and the final rule implementing the Act by April 29, 1989, the effective date of the statutory and regulatory requirements. Therefore, the petition requests that NHTSA grant Alabama an extension of time, until December 31, 1989, to achieve compliance. Because Alabama has made an effort to meet the deadline, sets forth reasons why it has failed to do so, and has included a description of the steps to be taken while the extension is in effect, we have granted Alabama's petition for an extension of time. Alabama has until December 31, 1989 to revise its titles and laws to meet the requirements of the Truth in Mileage Act and the final rule.

**FOR FURTHER INFORMATION CONTACT:** Judith Kaleta, Office of the Chief Counsel, Room 5219, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202-366-1834).

**SUPPLEMENTARY INFORMATION:**

**Background**

Section 2(c) of the Truth in Mileage Act of 1986 authorizes the National Highway Traffic Administration (NHTSA) to provide for an extension of time in the event that any State requires additional time beyond April 29, 1989, in revising its laws to meet the requirements of the Motor Vehicle Information and Cost Savings Act and the implementing regulations set forth in 49 CFR Part 580. It provides that, in granting an extension, NHTSA "shall ensure that the State is making reasonable efforts to such compliance."

To implement the Truth in Mileage Act and to make some needed changes in the Federal odometer laws, the agency published final rules which provide that a State may file a petition for an extension of time. The petition should discuss the efforts the State has taken to meet the deadline, the reasons why it needs additional time, the length of time desired for extension, and a description of the steps to be taken while the extension is in effect. 53 FR 29464 (1988).

**Alabama's Petition**

The Alabama Department of Revenue, Motor Vehicle Division, (Alabama) submitted a petition for an extension of time. In support of its petition, Alabama states that it will require a conforming odometer disclosure statement with every application for title to support the final reassignment to the title applicant. This requirement and computer programming changes, which have been requested, will ensure that Alabama is able to include the odometer reading on the title and whether or not the odometer reading reflects the actual mileage or exceeds the mechanical limits of the odometer. Legislation paralleling the Federal law has been drafted and will be introduced in the Alabama Legislature shortly. Alabama is currently working to develop a conforming title document. Finally, Alabama states that it has a seven month stock of title documents and that issuing conforming title documents prior to exhausting its current supply "will create a severe financial burden on an already tight budget." Therefore, Alabama requests that it be granted an extension of time until December 31, 1989.

**NHTSA's Response to the Petition**

NHTSA finds that Alabama has made reasonable efforts to achieve compliance with the Motor Vehicle Information and Cost Savings Act and the implementing regulations.

Since enactment of the Truth in Mileage Act and the issuance of the implementing regulation, Alabama drafted and introduced legislation to enact odometer statutes which parallel the Federal odometer law. In addition, Alabama has requested computer programming changes and will require, on or before April 29, 1989, that each application for title be accompanied by a conforming odometer disclosure statement. These two actions will ensure that the title documents, issued

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by Alabama, will conform to the Federal requirements by including an odometer reading and a notation of whether or not the odometer reading reflects the actual mileage or whether the reading reflects the mileage in excess of the designed mechanical limits. Alabama is currently developing a conforming title document. Destroying a seven month supply of title documents could result in a severe financial burden to Alabama.

In light of Alabama's past and planned actions, and in order to allow Alabama to expend its current supply of title documents, we grant Alabama's request for an extension of time until December 31, 1989, to revise its title documents and laws to meet the Federal criteria.

**Authority:** 15 U.S.C. 1988 note; delegation of authority at 49 CFR 1.50(f) and 501.8(e)

Issued on February 27, 1989.

**Erika Z. Jones,**

*Chief Counsel, National Highway Traffic Safety Administration.*

[FR Doc. 89-4822 Filed 2-27-89; 1:20 pm]

BILLING CODE 4910-59-M

## 49 CFR Part 580

**[Docket No. 87-08; Notice 4F]**

## Odometer Disclosure Requirements; Delaware

**AGENCY:** National Highway Traffic Safety Administration.

**ACTION:** Grant of petition for extension of time (Delaware).

**SUMMARY:** This is in response to a petition for an extension of time filed by the Delaware Department of Public Safety, Division of Motor Vehicles (Delaware). Delaware cannot conform its title documents and laws to meet the requirements of the Truth in Mileage Act and the final rule implementing the Act by April 29, 1989, the effective date of the statutory and regulatory requirements. Therefore, the petition requests that NHTSA grant Delaware an extension of time, until January 1, 1990, to achieve compliance. Because Delaware has made an effort to meet the deadline, sets forth reasons why it has failed to do so, and has included a description of the steps to be taken while the extension is in effect, we have granted Delaware's petition for an extension of time. Delaware has until January 1, 1990 to revise its title documents and its laws to meet the requirements of the Truth in Mileage Act and the final rule.

**FOR FURTHER INFORMATION CONTACT:** Judith Kaleta, Office of the Chief Counsel, Room 5219, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590 (202-366-1834).

**SUPPLEMENTARY INFORMATION:**

### Background

Section 2(c) of the Truth in Mileage Act of 1986 authorizes the National Highway Traffic Safety Administration (NHTSA) to provide for an extenison of time in the event that any State requires additional time beyond April 29, 1989, in revising its laws to meet the requirements of the Motor Vehicle Information and Cost Savings Act and the implementing regulations set forth in 49 CFR Part 580. It provides that, in granting an extension, NHTSA "shall ensure that the State is making reasonable efforts to such compliance."

To implement the Truth in Mileage Act and to make some needed changes in the Federal odometer laws, the agency published final rules which provide that a State may file a petition for an extension of time. The petition should discuss the efforts the State has taken to meet the deadline, the reasons why it needs additional time, the length of time desired for extension, and a description of the steps to be taken while the extension is in effect. 53 FR 29464 (1988).

### Delaware's Petition

The Delaware Department of Public Safety, Division of Motor Vehicles, (Delaware) submitted a petition for an extension of time. In support of its petition, Delaware states that it drafted legislation to amend its existing odometer mileage law and has requested funds in its budget request to accomplish revisions to the title document and reassignment forms. Although the Delaware General Assembly convened in January, due to recesses, most legislative action will take place after April 15, 1989. Delaware is unable to purchase new title documents until a new budget is enacted and a contract is awarded. Finally, Delaware is planning revisions to its title documents to comply with the Federal law and regulations and computer programming changes. Therefore, Delaware requests that it be granted an extension of time until January 1, 1990.

### NHTSA's Response to the Petition

NHTSA finds that Delaware has made reasonable efforts to achieve compliance with the Motor Vehicle Information and Cost Savings Act and the implementing regulations.

Since the enactment of the Truth in Mileage Act, Delaware has drafted legislation to amend its existing odometer mileage law and requested the necessary funds to accomplish revisions to the title documents and reassignment forms. The Delaware General Assembly convened in January, but due to recesses, the April 29, 1989 effective date of the Federal laws and regulations does not afford the General Assembly sufficient time to consider the proposed legislation.

In light of Delaware's past and planned actions, we grant Delaware's request for an extension of time until January 1, 1990, to revise its titles documents and its laws to meet the Federal criteria.

**Authority:** 15 U.S.C. 1988 note; delegation of authority at 49 CFR 1.50(f) and 501.8(e).

Issued on February 27, 1989.

**Erika Z. Jones,**

*Chief Counsel, National Highway Traffic Safety Administration.*

[FR Doc. 89-4823 Filed 2-27-89; 1:21 pm]

BILLING CODE 4910-59-M

## 49 CFR Part 580

**[Docket No. 87-08; Notice 4G]**

## Odometer Disclosure Requirements; Georgia

**AGENCY:** National Highway Traffic Safety Administration.

**ACTION:** Grant of petition for extension of time (Georgia).

**SUMMARY:** This is in response to a petition for an extension of time filed by the Georgia Department of Revenue, Motor Vehicle Division (Georgia). Georgia cannot conform its laws and title documents to meet the requirements of the Truth in Mileage Act and the final rule implementing the Act by April 29, 1989, the effective date of the statutory and regulatory requirements. Therefore, the petition requests that NHTSA grant Georgia an extension of time, until July 1, 1990, to achieve compliance. Because Georgia has made an effort to meet the deadline, sets forth reasons why it has failed to do so, and intends to take additional action while the extension is in effect, we have granted Georgia's petition for an extension of time until July 1, 1990 to revise its laws and its title documents to meet the requirements of the Truth in Mileage Act and the final rule.

**FOR FURTHER INFORMATION CONTACT:** Judith Kaleta, Office of the Chief Counsel, Room 5219, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590 (202-366-1834).

**SUPPLEMENTARY INFORMATION:**



### Background

Section 2(c) of the Truth in Mileage Act of 1986 authorizes the National Highway Traffic Safety Administration (NHTSA) to provide for an extension of time in the event that any State requires additional time beyond April 29, 1989, in revising its laws to meet the requirements of the Motor Vehicle Information and Cost Savings Act and the implementing regulations set forth in 49 CFR Part 580. It provides that, in granting an extension, NHTSA "shall ensure that the State is making reasonable efforts to such compliance."

To implement the Truth in Mileage Act and to make some needed changes in the Federal odometer rules, the agency published final rules, which provide that a State may file a petition for an extension of time. The petition should discuss the efforts the State has taken to meet the deadline, the reasons why it needs additional time, the length of time desired for extension, and a description of the steps to be taken while the extension is in effect. 53 FR 29464 (1988).

### Georgia's Petition

The Georgia Department of Revenue, Motor Vehicle Division, (Georgia) submitted a petition for an extension of time. In support of its petition, Georgia states that it has been actively implementing the provisions of the Truth in Mileage Act. Georgia's current title was revised in March 1988 (after NHTSA's notice of proposed rulemaking, but prior to the issuance of NHTSA'S final rule). In addition, the Georgia Legislature revised some of the State's laws to conform to the Truth in Mileage Act, however, some additional revisions are needed to conform to NHTSA's August 1988 final rule. Georgia is uncertain whether the current legislature, which meets until March 1989, will enact all of the enabling legislation. Georgia may need to defer to the next legislative session which begins in January 1990. Computer programs at State and county levels must be revised. Therefore, Georgia requests that it be granted an extension of time until July 1, 1990.

### NHTSA's Response to the Petition

NHTSA finds that Georgia has made reasonable efforts to achieve compliance with the Motor Vehicle Information and Cost Savings Act and the implementing regulations.

In March 1988, Georgia redesigned its title document, incorporating several improved features. New security features were used. Georgia added spaces for the printed name of the seller and buyer. These new titles also include a more thorough reference to the Federal law. However, in order to conform with the Federal requirements, as noted in Georgia's petition, Georgia must make additional revisions to the title document. (The State will be notified by letter of the changes needed.) Georgia is also revising its laws to meet the new Federal requirements and expects to make changes to its computer programs.

In light of Georgia's past actions and its expressed intention to make additional changes, and in order to allow Georgia to expend its current supply of title documents which it had ordered prior to the publication of NHTSA's final rule, we grant Georgia's request for an extension of time until July 1, 1990, to revise its title documents and its laws to meet the Federal criteria.

**Authority:** 15 U.S.C. 1988 note; delegation of authority at 49 CFR 1.50(f) and 501.8(e).

Issued on February 27, 1989.

**Erika Z. Jones,**

*Chief Counsel, National Highway Traffic Safety Administration.*

[FR Doc. 89-4824 Filed 2-27-89; 1:22 pm]

BILLING CODE 4910-59-M

## 49 CFR Part 580

**[Docket No. 87-09; Notice 4H]**

## Odometer Disclosure Requirements; Maryland

**AGENCY:** National Highway Traffic Safety Administration.

**ACTION:** Grant of petition for extension of time (Maryland).

**SUMMARY:** This is in response to a petition for an extension of time filed by the Maryland Motor Vehicle Administration (Maryland). Maryland cannot conform its title documents to meet the requirements of the Truth in Mileage Act and the final rule implementing the Act by April 29, 1989, the effective date of the statutory and regulatory requirements. Therefore, the petition requests that NHTSA grant Maryland an extension of time, until April 30, 1990, to achieve compliance. Because Maryland has made an effort to meet the deadline, sets forth reasons why it has failed to do so, and has included a description of the steps to be taken while the extension is in effect, we have granted Maryland's petition for an extension of time. Maryland has until April 30, 1990 to revise its title documents to meet the requirements of the Truth in Mileage Act and the final rule.

**FOR FURTHER INFORMATION CONTACT:** Judith Kaleta, Office of the Chief Counsel, Room 5219, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590 (202-366-1834).

**SUPPLEMENTARY INFORMATION:**

### Background

Section 2(c) of the Truth in Mileage Act of 1986 authorizes the National Highway Traffic Safety Administration (NHTSA) to provide for an extension of time in the event that any State requires additional time beyond April 29, 1989, in revising its laws to meet the requirements of the Motor Vehicle Information and Cost Savings Act and the implementing regulations sets forth in 49 CFR Part 580. It provides that, in granting an extension, NHTSA "shall ensure that the State is making reasonable efforts to achieve such compliance."

To implement the Truth in Mileage Act and to make some needed changes in the Federal odometer laws, the agency published final rules which provide that a State may file a petition for an extension of time. The petition should discuss the efforts the State has taken to meet the deadline, the reasons why it needs additional time, the length of time desired for extension, and a description of the steps to be taken while the extension is in effect. 53 FR 29464 (1988).

### Maryland's Petition

The Maryland Motor Vehicle Administration (Maryland) submitted a petition for an extension of time. In support of its petition, Maryland states that in September 1988, Maryland began to revise its title and reassignment documents to conform to the Truth in Mileage Act and the implementing regulations. Maryland is redesigning the title document to incorporate all the information required including space for the signatures and printed names of the buyers and sellers and mileage disclosures. Once the format is finalized, Maryland will submit it to NHTSA for review and enter into a contract for the printing of the title documents. Maryland estimates that this process will take between eight and ten months. In addition, Maryland is designing an automated titling system that will enable the State to issue a title document within forty-eight hours after it receives an application for title. Therefore, Maryland requests that it be granted an extension of time until April 30, 1990.

### NHTSA's Response to the Petition

NHTSA finds that Maryland has made reasonable efforts to achieve compliance with the Motor Vehicle

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Information and Cost Savings Act and the implementing regulations.

After enactment of the regulation implementing the Truth in Mileage Act, Maryland began to redesign its title documents to incorporate the information required by the Act. Maryland will submit a copy of this title specimen to NHTSA for review. Upon completion of this review, the State will be notified by letter as to the acceptability of the proposed title.

In light of Maryland's past and planned actions, we grant Maryland's request for an extension of time until April 30, 1990, to revise its title documents to meet the Federal criteria.

**Authority:** 15 U.S.C. 1988 note; delegation of authority at 49 CFR 1.50(f) and 501.8(e)

Issued on February 27, 1989.

**Erika Z. Jones,**

*Chief Counsel, National Highway Traffic Safety Administration.*

[FR Doc. 89-4825 filed 2-27-1:23 pm]

BILLING CODE 4910-59-M

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**49 CFR Part 580**

**[Docket No. 87-09; Notice 4]**

## Odometer Disclosure Requirements; New Hampshire

**AGENCY:** National Highway Traffic Safety Administration.

**ACTION:** Grant of petition for extension of time (New Hampshire).

**SUMMARY:** This is in response to a petition for an extension of time filed by the New Hampshire Department of Safety, Division of Motor Vehicles (New Hampshire). New Hampshire cannot conform its title documents to meet the requirements of the Truth in Mileage Act and the final rule implementing the Act by April 29, 1989, the effective date of the statutory and regulatory requirements. Therefore, the petition requests that NHTSA grant New Hampshire an extension of time, until April 29, 1990, to achieve compliance. Because New Hampshire has made an effort to meet the deadline, sets forth reasons why it has failed to do so, and has included a description of the steps to be taken while the extension is in effect, we have granted New Hampshire's petition for an extension of time. New Hampshire has until April 29, 1990 to revise its title documents to meet the requirements of the Truth in Mileage Act and the final rule.

**FOR FURTHER INFORMATION CONTACT:** Judith Kaleta, Office of the Chief Counsel, Room 5219, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202-366-1834).

**SUPPLEMENTARY INFORMATION:**

### Background

Section 2(c) of the Truth in Mileage Act of 1988 authorizes the National Highway Traffic Safety Administration (NHTSA) to provide for an extension of time in the event that any State requires additional time beyond April 29, 1989, in revising its laws to meet the requirements of the Motor Vehicle Information and Cost Savings Act and the implementing regulations set forth in 49 CFR Part 580. It provides that, in granting an extension, NHTSA "shall ensure that the State is making reasonable efforts to such compliance."

To implement the Truth in Mileage Act and to make some needed changes in the Federal odometer laws, the agency published final rules which provide that a State may file a petition for an extension of time. The petition should discuss the efforts the State has taken to meet the deadline, the reasons why it needed additional time, the length of time desired for extension, and a description of the steps to be taken while the extension is in effect. 53 FR 29464 (1988).

### New Hampshire's Petition

The New Hampshire Department of Safety, Division of Motor Vehicles, (New Hampshire) submitted a petition for an extension of time. In support of its petition, New Hampshire states that its title meets the security requirements of the law and the August 1988 regulation. The title is printed on security paper by the intaglio method and includes latent images and micro-line printing. To enable the detection of alterations, the title has erasure sensitive background inks. New Hampshire is actively seeking to secure its separate reassignment documents. New Hampshire is also modifying its title to meet the new requirements and expects to issue a title upon which the owner's and lienholder's names and addresses, vehicle identification information, and date of issue are computer generated. Finally, New Hampshire states that it has a one year supply of titles and that issuing conforming documents on April 29, 1989, "would constitute an undue hardship." Therefore, New Hampshire requests that it be granted an extension of time until April 29, 1990.

### NHTSA's Response to the Petition

NHTSA finds that New Hampshire has made reasonable efforts to achieve compliance with the Motor Vehicle Information and Cost Savings Act and the implementing regulations.

Since 1983, New Hampshire has issued title documents which are set forth by a secure process. After enactment of the Truth in Mileage Act and the implementing regulations, New Hampshire planned changes to their computer system and will be issuing title documents upon which certain information will be computer generated and printed. This action will lessen the likelihood of errors which could result from transposing numbers and/or letters when copying them from a title application. This action will also deter alterations because it is more difficult to alter information that is printed by a computer than to alter information that is handwritten in ink. The compter data and the title information will also be consistent. New Hampshire also began to modify its title to meet the new Federal requirements and destroying a one year supply of titles could result in hardship.

In light of New Hampshire's past and planned actions, and in order to allow New Hampshire to expend its current supply of titles, we grant New Hampshire's request for an extension of time until April 29, 1990, to revise its title documents to meet the Federal criteria.

**Authority:** 15 U.S.C. 1988 note; delegation of authority at 49 CFR 1.50(f) and 501.8(e).

Issued on February 27, 1989.

**Erika Z. Jones,**

*Chief Counsel, National Highway Traffic Safety Administration.*

[FR Doc. 89-4826 Filed 2-27-89; 1:24 pm]

BILLING CODE 4910-59-M

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**49 CFR Part 580**

**[Docket No. 87-09; Notice 4J]**

## Odometer Disclosure Requirements; New York

**AGENCY:** National Highway Traffic Safety Administration.

**ACTION:** Grant of petition for extension of time (New York).

**SUMMARY:** This is in response to a petition for an extension of time filed by the New York Department of Motor Vehicles (New York). New York cannot conform its title documents to meet the requirements of the Truth in Mileage Act and the final rule implementing the Act by April 29, 1989, the effective date of the statutory and regulatory requirements. Therefore, the petition requests that NHTSA grant New York an extension of time, until April 29, 1990, to achieve compliance. Because New York has made an effort to meet the deadline, sets forth reasons why it has failed to do so, and has included a description of the steps to be taken while the extension is in effect, we have granted New York's petition for an extension of time. New York has until April 29, 1990 to revise its title documents to meet the requirements of the Truth in Mileage Act and the final rule.



**FOR FURTHER INFORMATION CONTACT:** Judith Kaleta, Office of the Chief Counsel, Room 5219, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202-366-1834).

**SUPPLEMENTARY INFORMATION:**

### Background

Section 2(c) of the Truth in Mileage Act of 1988 authorizes the National Highway Traffic Safety Administration (NHTSA) to provide for an extension of time in the event that any State requires additional time beyond April 29, 1989, in revising its laws to meet the requirements of the Motor Vehicle Information and Cost Savings Act and the implementing regulations set forth in 49 CFR Part 580. It provides that, in granting an extension, NHTSA "shall ensure that the State is making reasonable efforts to such compliance."

To implement the Truth in Mileage Act and to make some needed changes in the Federal odometer laws, the agency published final rules which provide that a State may file a petition for an extension of time. The petition should discuss the efforts the State has taken to meet the deadline, the reasons why it needs additional time, the length of time desired for extension, and a description of the steps to be taken while the extension is in effect. 53 FR 29464 (1988).

### New York's Petition

The New York Department of Motor Vehicles (New York) submitted a petition for an extension of time. In support of its petition, New York states that by April 29, 1989, it will have amended the Commissioner's Regulations to include the Federal regulatory definitions and it will print the odometer reading on the face of its title documents, with a notation of either actual mileage, not the actual mileage, or exceeds the mechanical limits. New York also states that the three documents that are used in the State to transfer ownership, the Title Document (MV999); Certificate of Sale (MV-50); and the salvage certificate (MV-907A), are set forth by means of a secure process. However, New York cannot conform its title documents to all the other Federal regulatory requirements by April 29, 1989. New York plans to revise the current title documents to meet the Federal requirements and have them printed and distributed within eight to ten months. In addition, New York has a one year supply of the title documents, purchased at a total document cost of $255,600. New York explains that destroying the documents could result in a financial burden to the State. Until the current supply is depleted, New York will issue a supplemental odometer disclosure statement which meets the Federal regulatory requirements. Because the current inventory of title documents will be depleted by April 1990, New York requests that it be granted an extension of time until April 29, 1990.

### NHTSA's Response to the Petition

NHTSA finds that New York has made reasonable efforts to achieve compliance with the Motor Vehicle Information and Cost Savings Act and the implementing regulations.

Since the enactment of the Truth in Mileage Act and the issuance of the implementing Federal regulations, New York has drafted regulations to incorporate the Federal regulatory definitions into the Commissioner's Regulations. In addition, New York has designed, and will be issuing, a supplemental odometer disclosure statement that meets the Federal requirements. It will also be revising its current title documents and expects that they will be ready for distribution within the next eight to ten months.

In light of New York's past and planned actions, and in order to allow New York to expend its current supply of title documents, we grant New York's request for an extension of time until April 29, 1990, to revise its title documents to meet the Federal criteria.

**Authority:** 15 U.S.C. 1988 note; delegation of authority at 49 CFR 1.50(f) and 501.8(e).

Issued on February 27, 1989.

**Erika Z. Jones,**

*Chief Counsel, National Highway Traffic Safety Administration.*

[FR Doc. 89-4827 Filed 2-27-89; 1:25 pm]

BILLING CODE 4910-59-M

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 652**

**[Docket No. 81133-9030]**

## Atlantic Surf Clam and Ocean Quahog Fisheries

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of adjustment of 1989 fishing quotas.

**SUMMARY:** NOAA issues this notice of adjustment of fishing quotas for the surf clam and ocean quahog fisheries for 1989. These quotas were selected from a range defined as optimum yield for each fishery and are adjusted to reflect 1988 fishing activity at the conclusion of the year. The intended effect of this action is to establish adjusted allowable harvests of surf clams and ocean quahogs from the exclusive economic zone in 1989.

**EFFECTIVE DATE:** March 1, 1989.

**FOR FURTHER INFORMATION CONTACT:** Jack Terrill (Resource Policy Analyst), 508-281-3600, ext. 252.

**SUPPLEMENTARY INFORMATION:** The regulations implementing the Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fisheries (FMP) directs the Secretary of Commerce (Secretary), in consultation with the Mid-Atlantic Fishery Management Council (Council), to specify quotas for surf clams and ocean quahogs on an annual basis from within ranges which have been established as the optimum yield for each fishery.

The final 1989 quotas were published on February 10, 1989 (54 FR 6415). The final quotas are adjusted under § 652.21 (a), (b), and (c) to reflect the amount of underharvest or overharvest in each designated surf clam fishery for 1988. The ocean quahog quota is not adjusted unless quarterly quotas have been established, which to date, has not been necessary.

The total harvest at the conclusion of the 1988 fishing season for the Mid-Atlantic surf clam fishery was 2,782,000 bushels out of an adjusted quota of 2,695,000 bushels and a base quota of 2,650,000 bushels. The 1988 Nantucket Shoals surf clam fishery harvest amounted to 205,000 bushels out of an adjusted quota of 205,000 bushels and a base quota of 200,000 bushels. The Georges Bank surf clam fishery harvest for 1988 was 97,000 bushels out of an adjusted quota of 485,000 bushels and a

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base quota of 300,000 bushels. As a result of the final 1988 harvest, the Mid-Atlantic surf clam fishery quota is adjusted downward by 87,000 bushels, the Georges Bank surf clam fishery quota is adjusted upward by 203,000 bushels and the Nantucket Shoals surf clam fishery quota is unchanged. Overages are deducted from the adjusted quota for the fishing year. This is the amount of resource that may be extracted during any one fishing year. Underages or carryovers are the remainder of the base quota which are unharvested by the end of the fishing year. The Council established the base quotas as the legitimate extraction rates from the resource on a yearly basis. The Council did not intend that the adjusted quota be used to calculate carryovers or underages since it could result in a cumulative quota over several years well in excess of the optimum yield for the fishery. This would be contrary to sound management of the resource. The total ocean quahog harvest for 1988 was 4,423,000 bushels from a quota of 6,000,000 bushels.

The final quotes for the surf clam ocean quahog fisheries for 1989 are:

1989 ADJUSTED FINAL SURF CLAM/OCEAN QUAHOG QUOTAS

| Fishery areas | 1989 adjusted final quotas (in bushels) |
|---|---|
| Mid-Atlantic surf clam | 2,563,000 |
| Georges Bank surf clam | 503,000 |
| Nantucket Shoals surf clam | 200,000 |
| Ocean quahog | 5,200,000 |

For the surf clam fisheries, the annual quotas are divided into quarterly quotas under § 652.21 (a), (b) and (c), as follows:

1989 SURF CLAM/OCEAN QUAHOG QUARTERLY QUOTAS

(In bushels)

| Fishery area | Qtr 1 | Qtr 2 | Qtr 3 | Qtr 4 |
|---|---|---|---|---|
| Mid-Atlantic surf clam | 575,500 | 662,500 | 662,500 | 662,500 |
| Georges Bank surf clam | 125,750 | 125,750 | 125,750 | 125,750 |
| Nantucket Shoals surf clam | 40,000 | 60,000 | 60,000 | 40,000 |

**Other Matters**

This action is taken under authority of 50 CFR 652.21 and is taken in compliance with E.O. 12291. The action is covered by the certification for Amendment 3 to the FMP, and under the Regulatory Flexibility Act, that the authorizing regulations do not have a significant economic impact on a substantial number of small entities.

**List of Subjects in 50 CFR Part 652**

Fisheries, Recordkeeping and reporting requirements.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: February 27, 1989.

**Richard H. Schaefer,**

*Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 89-4896 Filed 3-1-89; 8:45 am]

BILLING CODE 3510-22-M



# Proposed Rules

Federal Register
Vol. 54, No. 40
Thursday, March 2, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## MERIT SYSTEMS PROTECTION BOARD

**5 CFR Part 1201**

**Practice and Procedure: Appeal Form (Optional Form 283); Revision**

**AGENCY:** Merit Systems Protection Board.

**ACTION:** Proposed rule; notice of public information collection requirements submitted to OMB for review.

**SUMMARY:** The U.S. Merit Systems Protection Board (MSPB) proposes to revise its appeal form, Optional Form 283 (Rev. 5–85), which currently appears in 5 CFR Part 1201, Appendix I, and is stocked by the General Services Administration. The form is being revised to (1) eliminate reference to the Voluntary Expedited Appeals Procedure (VEAP) as announced in 52 FR 47547, December 15, 1987, (2) explain that disclosure of the Social Security number on the appeal form is voluntary and that failure to provide it will not result in the rejection of an appeal, and (3) make minor revisions in format. Further, the MSPB is submitting the form to the Office of Management and Budget (OMB) for assignment of an OMB control number under section 3504(h) of the Paperwork Reduction Act of 1980, and calling for comments on the public reporting burden.

**DATES:** Send comments concerning the proposed revision of the form before March 15, 1989; send comments concerning the paperwork burden before May 15, 1989.

**ADDRESSES:** Comments concerning the proposed revision of the appeal form should be addressed to Paul D. Mahoney, Director, Office of Management Analysis, Merit Systems Protection Board, 1120 Vermont Ave., NW., Washington, DC 20419. Comments concerning the paperwork burden should be addressed to Paul D. Mahoney, Director, Office of Management Analysis, Merit Systems Protection Board, 1120 Vermont Ave., NW., Washington, DC 20419; and the Office of Management and Budget, Paperwork Reduction Project (Optional Form 283), Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Paul D. Mahoney, Director, Office of Management Analysis; (202) 653–8892.

**SUPPLEMENTARY INFORMATION:** The Merit Systems Protection Board (MSPB) processes appeals from current and former Federal employees and applicants for Federal employment. Through years of experience, the MSPB has determined that certain information will help process these appeals. An optional form for voluntary use by persons appealing to the MSPB has been designed to assist appellants in providing relevant information. The MSPB is submitting the form to the Office of Management and Budget for assignment of an OMB control number under section 3504(h) of the Paperwork Reduction Act of 1980, and calling for comments on the public reporting burden, even though this form is not used by the "public" in the usual sense. Rather, it concerns the employment relationship between an applicant for Federal employment or employees and their agency. With this in mind, the reporting burden for the collection of information on this form is estimated to vary from 20 minutes to one hour per response, with an average of 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the MSPB and OMB at the addresses shown above. The OMB is being asked to approve the form by May 15, 1989.

**Regulatory Flexibility Act**

The Clerk, Merit Systems Protection Board, certifies that the Board is not required to prepare an initial or final regulatory analysis of this proposed rule pursuant to sections 603 or 604 of the Regulatory Flexibility Act, because of the determination that this regulation would not have significant economic impact on a substantial number of small entities, including small businesses, small organizational units and small governmental jurisdictions.

**List of Subjects in 5 CFR Part 1201**

Administrative practice and procedure, Civil rights, Government employees.

Accordingly, the Merit Systems Protection Board proposes to amend Part 1201 as follows:

**PART 1201—[AMENDED]**

1. Authority for Title 5 CFR Part 1201 continues to read:

**Authority:** 5 U.S.C. 1205 and 7701(j).

2. Appendix I to Part 1201 is proposed to be amended by revising MSPB Optional Form 283 (Rev. 5–85) to read as follows:

BILLING CODE 7400-01-M

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Appendix I to Part 1201—Merit Systems Protection Board Appeal Form

# U. S. MERIT SYSTEMS PROTECTION BOARD

## APPEAL FORM

### INSTRUCTIONS

The purpose of this form is to help you provide important information to the U.S. Merit Systems Protection Board ("the Board") when you file an appeal. You are not required to use this form, and you are not limited to answering the questions if you feel there is other information you wish to provide. However, if you do not use the form, your appeal documents must comply with the Board's regulations. Your agency's personnel office will provide you with a copy of these regulations and the Board advises you to review them.

**You may not file your appeal before the effective date of the action you are appealing.**

All persons filing an appeal (appellants) who elect to use this form should complete Parts I through IV. Only those who are appealing reduction-in-force (RIF) actions are required to complete Part V. The information must be typed or printed clearly. Answer all questions and use "N/A" when the question is not applicable to your appeal.

You may supplement your response to any question on separate sheets of paper. **If separate sheets are used, please put your name and Social Security number at the top of each page.** Indicate by number which question you are answering, and attach the extra pages to the form.

### Where To File

You or your representative are required to file one original and one copy of this form, together with its attachments, with the Board's regional office identified in the decision notice provided by the agency. Filing must be made either by personal delivery during normal business hours to the appropriate Board regional office or by mail addressed to that office. The Board recommends but does not require that you use certified mail.

### Important

**YOU MUST SIGN THIS FORM**

Signing this form indicates your approval of the contents of the entire form, and it must be signed in the space provided for it *(Part I, item 6)* to be accepted by the Board.

### Privacy Act Statement

*This form requests personal information which is relevant and necessary to reach a decision in your appeal. The U.S. Merit Systems Protection Board collects this information in order to process appeals under its statutory and regulatory authority. Since your appeal is voluntary action you are not required to provide any personal information in connection with it. However, failure to supply the U.S. Merit Systems Protection Board with all the information essential to reach a decision in your case could result in the rejection of your appeal.*

*The U.S. Merit Systems Protection Board is authorized under provisions of Executive Order 9397, dated November 22, 1943, to request your Social Security number. Providing your Social Security number is voluntary and failure to provide it will not result in the rejection of your appeal. Your Social Security number will only be used for identification purposes in the processing of your appeal.*

*You should know that the decisions of the U.S. Merit Systems Protection Board on appeals are final administrative decisions and, as such, are available to the public under the provisions of the Freedom of Information Act. Additionally, it is possible that information contained in your appeal file may be released as required by the Freedom of Information Act. Some information about your appeal will also be used in depersonalized form as a data base for program statistics.*

### Part I Appellant Identification

| | |
|---|---|
| 1. Name *(last, first, middle initial)* | 2. Social Security Number |
| 3. Present address *(number and street, city, state, and ZIP code)*. **You are required to notify the Board of any address change in order to insure the correct delivery of a decision.** | 4. Home phone *(include area code)*<br>5. Office phone *(include area code)* |
| 6. I certify that all of the statements made in this appeal are true, complete, and correct to the best of my knowledge and belief. | Signature of Appellant — Date signed |

MSPB Optional Form 283 (Rev 1-89)
5 CFR 1201





### Part II Appealed Action

7. Briefly describe the **agency action** you wish to appeal and attach any relevant documents, including the proposal letter, the decision letter, and the relevant SF50 or its equivalent.

| | | | |
|---|---|---|---|
| 8. Name and address of agency *(including bureau or other divisions, as well as street address, city, state and ZIP code)* | | | 9. Your position title and duty station at the time of the action appealed |
| 10. Grade at time of the appealed action | 11. Salary at the time of the appealed action | | 12. Are you a veteran or entitled to the employment rights of a veteran?<br>☐ *Yes* ☐ *No* |
| 13. Employment status at the time of the appealed action<br>☐ *Temporary* ☐ *Permanent* ☐ *Applicant* ☐ *Term* ☐ *Retired* | | | 14. If retired, date of retirement *(month, day, year)* |
| 15. Type of service<br>☐ *Competitive* ☐ *Excepted* | 16. Length of government service | 17. Length of service with acting agency | 18. Were you serving a probationary or trial period at the time the action was taken?<br>☐ *Yes* ☐ *No* |
| 19. Date you received written notice of the proposed action *(month, day, year) (attach a copy)* | 20. Date you received the final decision notice *(month, day, year) (attach a copy)* | | 21. Effective date of the action *(month, day, year)* |

22. Explain briefly why you think the agency was wrong in taking this action:

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23. What action would you like the Board to take on this case?

24. If you believe you were discriminated against by the agency, in connection with the matter appealed, because of either your race, color, religion, sex, national origin, marital status, political affiliation, handicapping condition, or age, indicate so and explain why you believe it to be true. You must indicate, by examples, how you were discriminated against.

Proof of February 1, 1989

25. Have you filed a formal discrimination complaint with your agency or any other agency concerning the matter which you are seeking to appeal? ☐ *Yes (attach a copy)* ☐ *No*

| 26. If yes, place filed *(agency, number and street, city, state, and ZIP code).* | 27. Date filed *(month, day, year)* |
|---|---|
| | 28. Has there been a decision? ☐ *Yes (attach a copy)* ☐ *No* |

29. Have you, or anyone in your behalf, filed a formal grievance with your agency concerning this matter, under a negotiated grievance procedure provided by a collective bargaining agreement? ☐ *Yes (attach a copy)* ☐ *No*

| 30. If yes, place filed *(agency, number and street, city, state, and ZIP code).* | 31. Date filed *(month, day, year)* |
|---|---|
| | 32. Has a decision been issued? ☐ *Yes (attach a copy)* ☐ *No* |

| 33. If yes, date filed *(month, day, year)* | 34. Name of issuing official | 35. Title of issuing official |
|---|---|---|
| | | |

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## Part III Hearing

36. You may have a right to a hearing on this appeal. If you do not want a hearing, the Board will make its decision on the basis of the documents you and the agency submit. If no box is checked, the Board will presume you are waiving a hearing. Do you want a hearing?

**Do you want a hearing?** ☐ *Yes* ☐ *No*

If you choose to have a hearing, the Board will notify you where and when it is to be held.

## Part IV Designation of Representative

37. You have the right to designate someone to represent you on this appeal. If he/she agrees to do so, this person does not have to be an attorney. The agency has a right to challenge your choice of a representative if there is a conflict of interest or position. You may change your designation of a representative at a later date, if you so desire, but must notify the Board promptly of any change.

"I hereby designate _____ to serve as my representative during the course of this appeal. I understand that my representative is authorized to act on my behalf."

| 38. Representative's address | 39. Representative's employer |
|---|---|
| | 40. Representative's telephone number *(include area code)* |
| | 41. Representative's signature Date |

## Part V Reduction-In-Force (RIF)

### Instructions

Fill out this part only if you are appealing from a Reduction-In-Force. Your agency's personnel office can furnish you with most of the information requested below.

| 42. Retention group and sub-group | 43. Service computation date | 44. Has your agency offered you another position rather than separating you? ☐ *Yes* ☐ *No* |
|---|---|---|
| 45. Title of position offered | 46. Grade of position offered | 47. Salary of position offered $ per |
| 48. Location of position offered | | 49. Did you accept this position? ☐ *Yes* ☐ *No* |

50. Explain why you think you should not have been affected by the Reduction-In-Force. *(Explanations could include: you were placed in the wrong retention group or sub-group; an error was made in the computation of your service computation date; competitive area was too narrow; improperly reached for separation from competitive level; an exception was made to the regular order of selection; full 30-day notice was not given; you believe you have assignment [bump or retreat] rights; or any other reasons. Please provide as much information as possible regarding each reason.)*

Proof of February 1, 1989

BILLING CODE 7405-01-C

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Date: February 27, 1989.

**Robert E. Taylor,**

*Clerk of the Board.*

[FR Doc. 89-4689 Filed 3-1-89; 8:45 am]

BILLING CODE 7400-01-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 88-NM-196-AD]**

### Airworthiness Directives: Boeing Model 757 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice proposes a new airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes, equipped with steel brakes or interim carbon brake control systems, which would require the replacement of aluminum brake control shafts with steel brake control shafts. These shafts are part of the brake metering valve control assembly. This proposal is prompted by reports of four brake control shafts failing in service. This condition, if not corrected, could result in the loss of braking to one side of the airplane or, potentially, the complete loss of braking.

**DATE:** Comments must be received no later than April 24, 1989.

**ADDRESSES:** Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-196-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from the Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. David M. Herron, Systems and Equipment Branch, ANM-130S; telephone (206) 431-1949. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

**SUPPLEMENTARY INFORMATION:**

#### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

#### Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-196-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

*Discussion:* Operators of Boeing Model 757 series airplanes have reported four occurrences where the brake metering valve actuation shafts have failed and caused partial loss of braking. Boeing subsequently sent Telex BAB-LHR-88-0898RR, "Brake Metering Valve Actuation Shaft Failure," dated June 22, 1988, to operators, informing them of the problem and requesting expeditious replacement of the aluminum shafts with steel shafts as specified in the telex.

Subsequent investigation by the manufacturer revealed that the aluminum shafts were failing due to fatigue. The manufacturer has initiated a program to replace the aluminum shafts with a steel shaft that has increased strength.

The FAA has reviewed and approved Boeing Service Bulletin number 757-32-0083, dated December 15, 1988, which describes the replacement of the aluminum brake metering valve actuator shafts with steel shafts.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require the replacement of aluminum brake metering valve actuation shafts, in accordance with the service bulletin previously mentioned.

There are approximately 110 Model 757 series airplanes of the affected design in the worldwide fleet. It is estimated that 78 airplanes of U.S. registry would be affected by this AD, that it would take approximately 16 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Required parts would be supplied by the manufacturer at no cost to operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $48,640.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Model 757 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

#### List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

#### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

### PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. By adding the following new airworthiness directive:



**Boeing:** Applies to Model 757 series airplanes, as listed in Boeing Service Bulletin 757-32-0083, dated December 15, 1988, certificated in any category. Compliance required within the next 750 landings after the effective date of this AD or prior to the accumulation of 10,000 landings, whichever occurs later, unless previously accomplished.

To prevent the partial loss of braking and, potentially, the complete loss of braking, accomplish the following:

A. Replace aluminum brake metering valve actuation shafts with steel shafts, in accordance with Boeing Service Bulletin 757-32-0083, dated December 15, 1988.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

**Note.**—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modifications of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on February 17, 1989.

**Leroy A. Keith,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 89-4838 Filed 3-1-89; 8:45 am]

BILLING CODE 4910-13-M

### 14 CFR Part 39

**[Docket No. 88-NM-193-AD]**

### Airworthiness Directives: Boeing Model 767 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice proposes to revise an existing airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes equipped with General Electric CF6 engines, which currently requires replacement of aluminum brackets with inconel brackets at three locations in each engine strut area to support the hydraulic pressure line. That action was prompted by reports of cracks in the aluminum brackets, which allowed the bracket flange and clamp to contact and wear the adjacent fuel line. This proposal is prompted by reports that the manufacturer subsequently delivered six airplanes with aluminum brackets that were not included in the applicability of that AD. This condition, if not corrected, could lead to abrasion of the fuel line wall, creating a fuel leak.

**DATE:** Comments must be received no later than April 24, 1989.

**ADDRESSES:** Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-193-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. David M. Herron, Systems and Equipment Branch, ANM-130S; telephone (206) 431-1949. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

**SUPPLEMENTARY INFORMATION:**

#### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

#### Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-193-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

*Discussion:* On August 28, 1987, the FAA issued AD 87-18-05, Amendment 39-5722 (52 FR 34631; September 14, 1987), applicable to certain Boeing Model 767 series airplanes equipped with General Electric CF6 engines. That AD requires replacement of hydraulic line support brackets in the engine strut with brackets made of inconel. Failure of the aluminum brackets had been reported to allow abrasion of the adjacent fuel line and result in a fuel leak.

Since issuance of that AD the manufacturer delivered six airplanes with aluminum brackets that are not included in the applicability of the AD. The FAA has determined that AD 87-18-05 must be revised to include those six airplanes.

The FAA has reviewed and approved Boeing Service Bulletin 767-29-0032, Revision 1, dated June 16, 1988, which describes the replacement of aluminum brackets with inconel brackets at three locations in each engine strut area. Revision 1 adds six airplanes to the service bulletin effectivity.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would revise AD 87-18-05 and require the installation of inconel brackets in each strut area on six additional Boeing Model 767 airplanes, in accordance with the service bulletin previously mentioned.

There are 6 additional Boeing Model 767 series airplanes of the affected design in the worldwide fleet. It is estimated that 1 airplane of U.S. registry would be affected by this AD, that it would take approximately 16 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Required parts would be supplied by the manufacturer at no cost to operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $640.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and

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the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive, or negative, on a substantial number of small entities because few, if any, Model 767 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

**List of Subjects in 14 CFR Part 39**

Aviation safety, Aircraft.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Section 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

**PART 39—[AMENDED]**

1. The authority citation for Part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. By revising AD 87-18-05, Amendment 39-5722 (52 FR 34631; September 14, 1987), to read as follows:

**Boeing:** Applies to Model 767 series airplanes, equipped with General Electric CF6 engines, listed in Boeing Service Bulletin 767-29-0032 dated January 15, 1987, and airplanes Serial Numbers 22322, 23431, 23432, 23494, 23623, and 23624, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent cracking of the hydraulic pressure line aluminum support brackets in the engine strut, and possible fuel line penetration, accomplish the following:

A. For airplanes listed in Boeing Service Bulletin 767-29-0032, dated January 15, 1987: Within the next 3,000 hours time-in-service after October 7, 1987, (which is the effective date of Amendment 39-5722) replace aluminum brackets with inconel brackets at three locations in each engine strut area to support the hydraulic pressure line, in accordance with that service bulletin.

B. For all other airplanes: Within the next 3,000 hours time-in-service after the effective date of this amendment, replace aluminum brackets with inconel brackets at three locations in each engine strut area to support the hydraulic pressure line in accordance with Boeing Service Bulletin 767-29-0032, Revision 1, dated June 18, 1988.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplane to a base for the accomplishment of the inspections and-or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Transport Airplane Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on February 17, 1989.

**Leroy A. Keith,** *Manager,*
*Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 89-4839 filed 3-1-89; 8:45 am]

BILLING CODE 4910-13-M

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**14 CFR Part 71**

**[Airspace Docket No. 89-AGL-4]**

**Proposed Casey, IL, Transition Area Alteration**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to alter the existing Casey, IL, transition area to accommodate existing Standard Instrument Approach Procedures (SIAPs) to Casey Municipal Airport, Casey, IL. The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument conditions from other aircraft operating under visual weather conditions in controlled airspace.

**DATE:** Comments must be received on or before April 5, 1989.

**ADDRESS:** Send comments on the proposal in triplicate to: Federal Aviation Administration, Regional Counsel, AGL-7, Attn: Rules Docket No. 89-AGL-4, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

**FOR FURTHER INFORMATION CONTACT:** Harold G. Hale, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89-AGL-4". The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.



**Availability of NPRM'S**

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2, which describes the application procedure.

**The Proposal**

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the designated transition area airspace near Casey, IL.

The present transition area is being modified to accommodate existing SIAPs. The only modification to the existing airspace is in the transition area extensions.

The extensions extend from the 5 mile radius area to 8.5 miles southwest and northeast of the airport; and within 4.25 miles each side of the 220° bearing and the 0350° bearing from the airport.

The realignment of existing SIAPs requires that the FAA alter the designated airspace to insure that the procedures will be contained within controlled airspace. The minimum descent altitude for the procedures may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts will reflect the defined areas which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Aviation safety, Transition areas.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

**PART 71—[AMENDED]**

1. The authority citation for Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12,1983); 14 CFR 11.69.

**§ 71.181 [Amended]**

2. Section 71.181 is amended as follows:

**Casey, IL [Revised]**

That airspace extending upward from 700 feet above the surface within a 5 mile radius of Casey Municipal Airport, Casey, IL (lat. 39°18'07"N., long. 88°00'13"W.) and within 4.25 miles each side of the 220° bearing from the airport extending from the 5 mile radius area to 8.5 miles southwest of the airport; and within 4.25 miles each side of the 035° bearing from the airport extending from the 5 mile radius to 8.5 miles northeast of the airport.

Issued in Des Plaines, Illinois, on February 14, 1989.

**Teddy W. Burcham,**
*Manager, Air Traffic Division.*

[FR Doc. 89-4841 Filed 3-1-89; 8:45 am]

BILLING CODE 4910-13-M

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**14 CFR Part 71**

**[Airspace Docket No. 89-ASO-5]**

**Proposed Revision of Transition Area, Laurinburg, NC**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to revise the Laurinburg, NC, transition area. Due to relocation of the Rocky Ford nondirectional radio beacon (NDB) and a planned instrument landing system (ILS) approach to Runway 5, the arrival area extension based on the Rocky Ford 226° bearing is no longer required. Also, this action will correct the description of the arrival area extension based on the Sandhills very high frequency omnidirectional range/tactical air navigation (VORTAC) and corrects the geographic position coordinates of the Laurinburg-Maxton Airport.

**DATE:** Comments must be received on or before March 29, 1989.

**ADDRESSES:** Send comments on the proposal in triplicate to: Federal Aviation Administration, ASO-530, Manager, Airspace and Procedures Branch, Docket No. 89-ASO-5, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763-7646.

**FOR FURTHER INFORMATION CONTACT:** James G. Walters, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89-ASO-5." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

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**Availability of NPRM's**

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch (ASO–530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

**The Proposal**

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revise the Laurenburg, NC, transition area. This action will eliminate the arrival area extension based on the Rocky Ford 226° bearing, revise the description of the arrival area extension based on the Sandhills VORTAC bearing and correct the geographic position coordinates of the Laurenburg-Maxton Airport. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Aviation safety, Transition Area.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

**PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS**

1. The authority citation of Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1345(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Public Law 97–449, January 12, 1983); 14 CFR 11.69.

**§ 71.181 [Amended]**

2. Section 71.181 is amended as follows:

**Laurenburg, NC [Revised]**

That airspace extending upward from 700' above the surface within an 8.5-mile radius of Laurinburg-Maxton Airport (Lat. 34°47'15"N., Long. 79°21'50"W); within 3 miles each side of Sandhills VORTAC 154° radial extending from the 8.5-mile radius area to 19 miles southeast of the VORTAC, excluding that area which coincides with the Mackall AAF, NC, transition area.

Issued in East Point, Georgia, on February 14, 1989.

**William D. Wood,**

*Acting Manager, Air Traffic Division, Southern Region.*

[FR Doc. 89–4840 Filed 3–1–89; 8:45 am]

BILLING CODE 4910-13-M

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[FRL–3531–3]**

**Approval and Promulgation of Implementation Plans; Minnesota**

**AGENCY:** U.S. Environmental Protection Agency (USEPA).

**ACTION:** Proposed rulemaking.

**SUMMARY:** On January 7, 1985, the Minnesota Pollution Control Agency (MPCA) submitted a proposed revision to the Minnesota particulate matter State Implementation Plan (SIP). This proposed revision includes a rule and appendices by which the State of Minnesota will issue equivalent visible emission limits (EVEL) to emission sources. However, under the terms of the rule, these EVELs, in certain cases, would automatically be made part of the SIP without the proper Federal rulemaking.

USEPA is proposing to disapprove this revision because: (1) The proposed procedures to determine EVELs allow the State to make certain discretionary decisions regarding opacity adjustments and therefore, the techniques are not completely replicable [1]; (2) relaxations under the rule do not require the Prevention of Significant Deterioration (PSD—Part C of the Clean Air Act) increments to be protected; and (3) the appendices to the rule have not undergone complete Minnesota rulemaking procedures and, therefore, are unenforceable.

The purpose of this notice is to present a discussion of the material submitted by the State to support the revisions, and to provide an opportunity for public comment on the revisions and on USEPA's proposed action.

**DATE:** Comments on this revision and on USEPA's proposed action must be received by April 3, 1989.

**ADDRESSES:** Copies of the SIP revision are available at the following addresses for review: (It is recommended that you telephone Anne E. Tenner, at (312) 886–6034, before visiting the Region V office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR–26), 230 South Dearborn Street, Chicago, Illinois 60604.

Minnesota Pollution Control Agency, Division of Air Quality, 520 Lafayette Road, St. Paul, Minnesota 55155.

Comments on this proposed rule should be addressed to: (Please submit an original and three copies, if possible.) Gary Gulerian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

**FOR FURTHER INFORMATION CONTACT:** Anne E. Tenner, (312) 886–6034.

**SUPPLEMENTARY INFORMATION:** On January 7, 1985, the MPCA submitted to USEPA a proposed revision to the Minnesota SIP in order to satisfy the requirements of 40 CFR 51.18 (a) through (h) for a general NSR program, as well as the Federal requirements for a Pb NSR program.

USEPA proposed rulemaking action on the majority of this submittal on February 17, 1987 (52 FR 4785). USEPA, at that time, did not propose action on a part of the January 7, 1985, submittal, 6 MCAR § 4.002 Part D, Opacity Standard Adjustment.

Rule C MCAR 4.002 Part D is a proposed revision to former APC–2(e), Variances. It allows an emission facility to apply for an alternative opacity limit

[1] In order for State SIP procedures to be replicable, they must be specific written procedures that apply to all SIP packages the State presents to USEPA for review. The concept of replicability is one of the tests used by USEPA to ensure that the decisions made by the State are sound and not arbitrary.



if (1) the source is in compliance with all other particulate regulations; (2) the total emission facility is in compliance with all applicable standards of performance (except the opacity standard); and, (3) the total emission facility was operated in a manner to minimize the opacity of emissions at the emission source during the performance tests.

Atmospheric modeling is required under Minnesota's proposed SIP revision in those cases where the entire emission facility has particulate emissions equal to or greater than 25 tons per year and the source's application for a permit modification contains data that indicates that an adjustment of the opacity standard may cause, or contribute to, a violation of a national ambient air quality standard. Minnesota intends these "standards" to include both the National Ambient Air Quality Standards (NAAQS) and the Prevention of Significant Deterioration (PSD) increments.

The adjusted opacity standard must be set at the most restrictive attainable level that the required performance tests establish for the emission source. The total emission facility with the adjusted opacity standard must comply with at least one of the following requirements: (a) Not cause or contribute to a violation of an ambient air quality standard, (i.e., NAAQS or PSD increment); (b) have potential emissions of particulate matter of less than 25 tons per year, and less than one ton per day; or (c) contribute less than one microgram per cubic meter to an annual ambient particulate matter standard (i.e., NAAQS or PSD increment) violation and less than five micrograms per cubic meter to a 24-hour ambient total suspended (TSP) particulate matter standard (i.e., NAAQS or PSD increment) violation. However, USEPA is not satisfied that the rule establishes replicable procedures for choosing alternative opacity limits. Therefore, USEPA proposes to disapprove this portion of the rule.

Appendices AA, BB, and CC discussed below, were submitted as technical support documents for the opacity standard adjustment provision of 6 MCAR § 4.0002. These Appendices will not be adopted as rules and regulations by Minnesota, and, therefore, the enforceability of the Appendices is questionable.

**Appendix AA—Procedures for Making an Opacity Standard Adjustment**

These procedures require that the adjusted opacity standard be set using the second high six-minute average of runs, during which no scheduled increased emissions occurred. These procedures also require that during runs when increased emissions occur, the adjusted opacity standard be set using either the high six-minute average which complies with the new adjusted standard, or opacity readings which comply with any exceptions allowed by an applicable rule. Appendix AA also specified that this general procedure for making opacity adjustment may be changed on a case to case basis. Because Appendix AA does not clearly define the deviation from the general procedure USEPA believes that the results may not be reproducible. Therefore, USEPA proposes to disapprove Appendix AA.

**Appendix BB—Opacity Standard Adjustment and USEPA Review**

Appendix BB describes the various levels of State and USEPA review required for opacity standard adjustments.

Nonattainment Areas—Any opacity adjustments to a boiler in a nonattainment area must be submitted to USEPA as a SIP revision. This was done to ensure that Reasonably Available Control Technology (RACT) would still be required (Minnesota's opacity regulations are largely responsible for RACT controls on boilers.) [2] If the opacity adjustment is for a non-boiler source in a nonattainment area, it must be submitted for USEPA review (but not necessarily as a SIP revision).

Opacity standard adjustments in attainment areas can generally be handled solely by MPCA. In those cases where the adjustment might increase emissions in an attainment area, the State would apply a generic screening procedure. USEPA has reviewed this procedure and has determined that it is not approvable because emission increases resulting from the relaxation of the opacity limit may not protect the PSD increment. Therefore, USEPA proposes disapproval of Appendix BB.

**Appendix CC—Screening Methodology for Opacity Standard Adjustment in Attainment Areas**

This Appendix contains a screening model which will be used in assessing the impact of an opacity standard adjustment in an attainment area. This analysis was intended to provide a quick assessment of the anticipated impact of an opacity adjustment and the need for more detailed analysis. USEPA has reviewed this Appendix and determined it is not approvable. Therefore, USEPA proposes the disapproval of Appendix CC.

**Reasons for Proposed Disapproval**

USEPA has reviewed the January 7, 1985, State submittal and determined that it is not approvable for the following reasons: First, the Minnesota rule and appendices do not establish replicable procedures for choosing alternative opacity limit adjustments. Second, neither the State rule nor appendices directly addresses the PSD increments. Finally, the appendices are not considered to be legally enforceable.

Further analysis of these issues is discussed below:

1. The process of adjusting opacity limits to correspond with emission levels that comply with the mass limits involves source specific rulemaking based upon the judgement of the MPCA without specific guidelines. Unless and until the Minnesota rules and appendices prescribe how the State is to exercise its judgement in reviewing an application for an alternative opacity limit, those procedures would not be replicable.

The opacity adjustment rule does not circumscribe the MPCA's discretion in setting testing conditions. The rule requires that the test data needed to calculate alternative opacity limits be collectd pursuant to 6 MCAR § 4.0021. That provision, however, permits the Director of the MPCA to set testing conditions. Furthermore, Appendix AA does not adequately prescribe how the MPCA would exercise its judgement in choosing testing conditions. Instead, it sets forth the "general philosophy" it would use in accounting for variables that present themselves in individual cases.

For all these reasons, the Minnesota procedures for determining opacity adjustment are not replicable. Approving them as generic procedures would create an impermissible delegation of USEPA's responsibility to decide whether the opacity limits provide the necessary guarantee that the SIP mass limits are being met.

Section 110(a) of the Clean Air Act does not authorize such a delegation.

2. Neither the Minnesota rule nor the technical support document ensures that emissions increases resulting from relaxations of the SIP opacity limits would not jeopardize the PSD increments. The rule refers only to "standards", not increments. The state had committed in a letter to interpret "standards" to include the "increments". However, according to USEPA's legal analysis, such a letter would not be

[2] RACT is a requirement for TSP nonattainment areas under section 172 of the Clean Air Act, but it is not required for $PM_{10}$ SIPS.

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legally enforceable and, therefore, would not provide the necessary protection. The State also has not addressed how it would protect visibility in its Class I PSD areas. Any relaxation in its particulate matter SIP, e.g., an EVEL, which triggers the visibility protection provisions of the PSD rules, must be analyzed to determine if visibility in Minnesota's Class I areas are still protected with such a relaxation.

3. Additionally, even if the appendices were replicable and protected the PSD increments (and visibility) and even if they were replicable, they still would be flawed because they are not legally enforceable. The appendices contain important substantive provisions not addressed in the rule itself. However, these provisions have not been adopted as enforceable rules by the State's rulemaking board. On a hypothetical level, even if the rule adopted by the board delegated to MPCA the authority to issue these substantive provisions, it is not likely that such a delegation would be valid, because the rule itself does not circumscribe the MPCA's discretion to decide whether these relaxations would conform to the general principles in the rule.

**Conclusions**

As a result of USEPA's analysis of the January 7, 1985, State submittal which contains a rule and appendices by which the State of Minnesota will issue equivalent visible emission limits (EVEL) to sources, USEPA proposes to disapprove this revision to the Minnesota particulate matter SIP, because: (1) The procedures to determine EVELs allow the State to make certain discretionary decisions in testing a source and, therefore, the techniques are not completely replicable; (2) relaxations under the rule do not require the PSD increments and visibility to be protected; and (3) the appendices to the rule have not gone through complete Minnesota rulemaking procedures.

Notwithstanding the above, the State of Minnesota may still submit site-specific EVELs to USEPA, and the Agency will rulemake on them based on the merits of the individual case.

Under Executive Order 12291, today's action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review.

Under 5 U.S.C. 605(b), I certify that this SIP disapproval will not have a significant economic impact on a substantial number of small entities because there will be no relaxation of the emission limits.

**Authority:** 42 U.S.C. 7401 through 7642.

Dated: June 30, 1987.

**Valdas V. Adamkus,**

*Regional Administrator.*

**Note:** This document was received by the Office of the Federal Register February 27, 1989.

[FR Doc. 89-4853 Filed 3-1-89; 8:45 am]

BILLING CODE 6560-50-M

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**40 CFR Part 52**

**[FRL-3531-2; MS-013]**

**Approval And Promulgation of Implementation Plans; Mississippi; $PM_{10}$ SIP Revisions**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** On July 26, 1988, the State of Mississippi submitted revisions to its State Implementation (SIP) for particulate matter. The revisions became State-effective on June 4, 1988. The revisions were adopted pursuant to the requirements of section 110 of the Clean Air Act to provide for the attainment of EPA's new particulate matter standards, known as "$PM_{10}$" standards.

**DATE:** To be considered, comments must reach us on or before April 3, 1989.

**ADDRESSES:** Written comments should be addressed to Rosalyn D. Hughes of EPA Region IV's Air Programs Branch (see EPA Region IV address below). Copies of the State's submittal are available for review during normal business hours at the following locations:

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365.

Mississippi Department of Natural Resources, Bureau of Pollution Control, Post Office Box 10385, Jackson, Mississippi 39205.

**FOR FURTHER INFORMATION CONTACT:** Ms. Rosalyn D. Hughes, Air Programs Branch, EPA Region IV, at the above address and telephone number (404) 347-2864.

**SUPPLEMENTARY INFORMATION:** Pursuant to the 1977 amendments to the Clean Air Act, EPA, on July 1, 1987 (52 FR 24634), promulgated revised primary and secondary National Ambient Air Quality Standards (NAAQS) for particulate matter by replacing the total suspended particulate matter standard with a standard that included only those particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers. The particles are referred to as $PM_{10}$.

The $PM_{10}$ standards cover a size range of particles that is different than the range of particles covered by the former particulate standard for total suspended particulates (TSP). This means that states must develop and implement $PM_{10}$ control programs. The process being used generally follows the basic approach used in the development and implementation of TSP control programs. First, EPA evaluated the probabilities of $PM_{10}$ air quality levels predicted from actual TSP data and concluded that Mississippi was a Group III area, which means that the existing particulate matter control strategy is believed to be largely adequate to attain and maintain the $PM_{10}$ standards. However, the Mississippi SIP still needs to be revised to address the $PM_{10}$ NAAQS in the following ways:

a. To include State abient air quality standards for $PM_{10}$ at least as stringent as the NAAQS,

b. To trigger preconstruction review for new or modified sources which would emit significant amounts of either PM or $PM_{10}$ emissions,

c. To invoke the emergency episode plan to prevent $PM_{10}$ concentrations from reaching the significant harm level of 600 $\mu g/m^3$,

d. To meet ambient $PM_{10}$ monitoring requirements of 40 CFR Part 58, and

e. To meet the requirements of 40 CFR 51.322 and 51.323 to report actual annual emissions of $PM_{10}$ (beginning with emissions for 1988) for point sources emitting 100 tons per year or more.

Mississippi is proposing to revise its SIP to address the $PM_{10}$ NAAQS. The definitions for "Total suspended particulate," "Particulate matter," "Particulate matter emissions," "$PM_{10}$," and "$PM_{10}$ emissions" are being added or modified to read the same as the federal definitions. The other existing definitions in the SIP are being recodified.

In the new source review permit regulations, the definition of "Offset policy" was modified to identify the version of the federal regulations adopted. Also, definitions for "Significance levels" and "Significant impact" were added. The Redesignated Offset Policy was restructured so that the applicability requirement was recodified with two criteria and a new section was added defining prohibitions, more stringent than the federal conditions, on receiving a construction permit.

In the Emergency Episode Regulations several revisions were made. In the Episode Criteria Section, the paragraphs



for Alert, Warning and Emergency were revised to add the criterion for $PM_{10}$, to delete the criteria for particulates and for particulates and $SO_2$ combined and to add wording which matches the federal definition regarding continuation or recurrence of high pollutant concentration. The state is taking this opportunity to make additional changes unrelated to $PM_{10}$. The paragraph about air pollution forecasts was modified to contain the proper name of the air pollution agency; the criterion for oxidants was changed to ozone in the Alert, Warning and Emergency paragraphs; and the ozone concentration criteria in the Emergency paragraph was modified to match the federal definition.

In the Emergency Orders Section, "Suspended particulate matter" was deleted from the Air Pollution Alert and Air Pollution Warning paragraphs and replaced with $PM_{10}$."

Mississippi updated their Air Quality Surveillance Plan to reflect the addition of $PM_{10}$. EPA updated its delegation of the Prevention of Significant Deterioration program to Mississippi on May 20, 1988. Ambient Air Quality Standards are not included in the federally-approved Mississippi SIP; however, they have been revised to be consistent with the $PM_{10}$ regulations and are referenced only for clarity.

**Proposed Action:**

EPA has reviewed the submitted material and found it to meet the requirements of 40 CFR Part 51. Therefore, EPA is today proposing to approve Mississippi's revisions for $PM_{10}$ and is soliciting public comment.

For further information on EPA's analysis, the reader may consult a Technical Support Document which contains a detailed review of the materials submitted. This is available at the EPA address given above. Interested persons are invited to submit comments on this proposed approval. EPA will consider all comments received within thirty days of the publication of this notice.

Under 5 U.S.C. 605(b), I certify that these revisions will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

**List of Subjects in 40 CFR Part 52**

Air pollution control, Hydrocarbon, Ozone, Particulate matter, Reporting and recordkeeping requirements.

**Authority:** 42 U.S.C. 7401-7642.

Date: February 21, 1989.

**Lee A. DeHihns, III,**

*Acting Regional Administrator.*

[FR Doc. 89-4852 Filed 3-1-89 8:45 am]

BILLING CODE 6560-50-M

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**DEPARTMENT OF TRANSPORTATION**

**Coast Guard**

**46 CFR Ch.1**

**[CGD86-025; CGD88-079]**

**Commercial Fishing Industry Vessel Regulations, Extension of Comment Period**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Advance notice of proposed rulemaking; extension of comment period.

**SUMMARY:** This notice extends the comment period of the advance notice of proposed rulemaking to develop the safety regulations for uninspected fishing, fish processing and fish tender vessels to implement the provisions of the Commercial Fishing Industry Vessel Safety Act of 1988 (Act), Pub. L. 100-424 (53 FR 52735, December 29, 1988). The extension was requested by numerous concerns in the fishing vessel industry. The time period of the fishing season and the publication date of the advance notice created later receipt of the Advance Notice of Proposed Rulemaking. The requesters cited the broad scope of this regulatory initiative and their difficulty in providing meaningful responses within the original 60 day comment period due their personal involvement with the fishing vessel industry. Because of the requests for additional time to comment on the advance notice of proposed rulemaking, the deadline for receipt of comments is extended to April 15, 1989.

**DATE:** The comment period on the advance notice of proposed rulemaking is extended to April 15, 1989.

**ADDRESS:** Comments should be mailed to the Executive Secretary, Marine Safety Council (G-LRA-2/3600)(GCD 88-079), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593-0001. Between the hours of 8 a.m. and 4 p.m. Monday through Friday except holidays, comments may be delivered to, and are available for inspection and copying at, the Marine Safety Council (G-LRA-2), Room 3600, Coast Guard Headquarters, 2100 Second Street SW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Mr. Norman L. Lemley, Office of Marine Safety, Security and Environmental Protection, (202) 267-0001.

**SUPPLEMENTARY INFORMATION:** This advance notice of proposed rulemaking was published on December 29, 1988, in the **Federal Register** (53 FR 52735).

February 27, 1989.

**J.D. Sipes,**

*Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.*

[FR Doc. 89-4883 Filed 3-1-89; 8:45 am]

BILLING CODE 4910-14-M

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**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 73**

**[MM Docket No. 89-41, RM-6550]**

**Radio Broadcasting Services; Oskaloosa and Perry, IA**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition by Jomast Corporation requesting the substitution of Channel 285C2 for Channel 285A at Oskaloosa, Iowa, the modification of its license for Station KOSK(FM) to specify operation on the higher powered channel, the substitution of Channel 287A for Channel 285A at Perry, Iowa, and the modification of Perry Broadcasting Company's license for Station KLDS, to specify operation on the alternate Class A channel. Both channels can be allotted in compliance with the Commission's minimum distance separation requirements and can be used at the present transmitter sites of Stations KOSK(FM) and KLDS, respectively. The coordinates for Channel 285C2 at Oskaloosa are North Latitude 41-19-15 and West Longitude 92-38-44. The coordinates for Channel 287A at Perry are North Latitude 41-49-58 and West Longitude 94-02-15. Both licenses can be modified without considering competing expressions of interest.

**DATES:** Comments must be filed on or before April 17, 1989, and reply comments on or before May 2, 1989.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Gregg P. Skall, Esq., Baker & Hostetler, 1050 Connecticut Avenue NW., Suite 1100, Washington, DC 20036 (Counsel to petitioner).

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**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making and Order to Show Cause, MM Docket No. 89–41, adopted January 30, 1989, and released February 24, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Steve Kaminer,**

*Deputy Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 89–4672 Filed 3–1–89; 8:45 am]

BILLING CODE 6712–01–M

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**47 CFR Part 73**

**[MM Docket No. 89–40, RM–6571]**

**Radio Broadcasting Services; Vinton, IA**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition by Harold A. Jahnke seeking the allotment of Channel 296A to Vinton, Iowa, as the community's first local FM service. Channel 296A can be allotted to Vinton in compliance with the Commission's minimum distance separation requirements with a site restriction of 9.3 kilometers (5.8 miles) south to avoid a short-spacing to Station KROC–FM, Rochester, Minnesota. The coordinates for this allotment are North Latitude 42–04–42 and West Longitude 92–01–18.

**DATES:** Comments must be filed on or before April 17, 1989, and reply comments on or before May 2, 1989.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Harold A. Jahnke, 421 Central Avenue East, Hampton, Iowa 50441 (Petitioner).

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–40, adopted January 30, 1989, and released February 24, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Steve Kaminer,**

*Deputy Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 89–4676 Filed 3–1–89; 8:45 am]

BILLING CODE 6712–01–M

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**47 CFR Part 73**

**[MM Docket No. 89–36, RM–6551]**

**Radio Broadcasting Services; Savannah, MO**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition filed by Columbia FM, Inc., proposing the allotment of FM Channel 224C2 to Savannah, Missouri, as that community's first FM broadcast service. There is a site restriction 8.4 kilometers west of the community. The coordinates for Channel 224C2 are 39–57–35 and 94–54–14.

**DATES:** Comments must be filed on or before April 17, 1989, and reply comments on or before May 2, 1989.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Columbia FM, Inc., 503 Old 63 North, Columbia, Missouri 65201.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–36, adopted February 23, 1989, and released February 23, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contracts. For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Steve Kaminer,**

*Deputy Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 89–4675 Filed 3–1–89; 8:45 am]

BILLING CODE 6712–01–M



**47 CFR Part 73**

**[MM Docket No. 89–42, RM–6508]**

**Radio Broadcasting Services; Bolivar, TN**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition by Opel J. Shaw, proposing the allocation of Channel 234A to Bolivar, Tennessee, as that community's second local FM service. The reference coordinates for the proposal are 35–15–30 and 88–59–30.

**DATES:** Comments must be filed on or before April 17, 1989, and reply comments on or before May 2, 1989.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Opel J. Shaw, P. O. Box 191, Bolivar, Tennessee 38008 (Petitioner).

**FOR FURTHER INFORMATION CONTACT:** Patricia Rawlings, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–42, adopted January 30, 1989, and released February 24, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Steve Kaminer,**

*Deputy Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 89–4673 Filed 3–1–89; 8:45 am]

BILLING CODE 6712–01–M

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**47 CFR Part 73**

**[MM Docket No. 89–43, RM–6549]**

**Radio Broadcasting Services; Aberdeen, WA**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition by Pioneer Broadcasting Company, Inc., licensee of Station KDUX–FM, Channel 284C2, Aberdeen, Washington, proposing the substitution of Channel 284C for Channel 284C2 and Aberdeen and modification of the station's license to specify operation on the higher class co-channel. A site restriction of 7.7 kilometers (4.8 miles) southeast of the city is required, at coordinates 46–54–51 123–47–06. Canadian concurrence must be obtained.

**DATES:** Comments must be filed on or before April 17, 1989, and reply comments on or before May 2, 1989.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554 In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Paul J. Berman, Esquire, Debra Ann Palmer, Esquire, Covington & Burling, 1201 Pennsylvania Avenue, NW., P.O. Box 7566, Washington, DC 20044 (Counsels for petitioner)

**FOR FURTHER INFORMATION CONTACT:** Patricia Rawlings, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–43, adopted January 30, 1989, and released February 24, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding property filing procedures for comments, See 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Steve Kaminer,**

*Deputy Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 89–4674 Filed 3–1–89; 8:45 am]

BILLING CODE 6712–01–M

VOL 54 ISS 40 MR 2 1989 UMI



# Notices

Federal Register
Vol. 54, No. 40
Thursday, March 2, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Human Nutrition Board of Scientific Counselors; Board Meeting

According to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776), the Office of the Secretary announces the following meeting:

*Name:* Human Nutrition Board of Scientific Counselors

*Date:* April 26-27, 1989

*Time and Place:* April 26, 1989, 9 a.m.-5 p.m. and April 27, 1989, 9 a.m.-1 p.m.; Room 104-A, Administration Building on April 26, and on April 27, Room 107-A, Administration Building, United States Department of Agriculture, Independence Avenue, between 12th and 14th Streets, SW., Washington, DC.

*Type of Meeting:* Open to public. Persons may participate in the meeting as time and space permit.

*Comments:* The public may file written comments before or after the meeting with the contact person below.

*Purpose:* To review as appropriate and advise the Department as to the scope and quality of the human nutrition research and education programs carried out in the Department of Agriculture. The board also will prepare a report of its review, including evaluation and recommendations, to be submitted to the Secretary of Agriculture.

*Contact Person:* Gerald F. Combs, Assistant Deputy Administrator for Human Nutrition, Agricultural Research Service, U.S. Department of Agriculture, Room 132, Building 005, Beltsville Agricultural Research Center-West, Beltsville, Maryland 20705, telephone (301) 344-3216.

Done at Washington, DC, this 13th day of February, 1989.

**Orville G. Bentley,**

*Assistant Secretary Science and Education.*

[FR Doc. 89-4924 Filed 3-1-89; 8:45 am]

BILLING CODE 3410-03-M

### Forest Service

### Ward Timber Sale

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare an environmental impact statement.

**SUMMARY:** The Department of Agriculture, Forest Service will prepare an environmental impact statement for the proposed Ward Timber Sale on the Luna Ranger District, Gila National Forest, Luna, New Mexico.

The proposed Ward Timber Sale is included in the Gila Forest Plan. Scoping, data collection and analysis have been in progress for over a year.

The scoping process has included public meetings, on-the-ground reviews, posting of notices, news releases, personal telephone conversations, interviews, and letters. The environmental analysis progressed to the point of identifying alternatives when it was determined that the intensity of the controversy over the effects of the proposal was considered significant. Gila National Forest Supervisor, David Dahl, decided to prepare an environmental impact statement.

A range of alternatives will be considered. A no action alternative will consider no timber harvest. Other alternatives will include management themes emphasizing: spotted owl, bear, and old-growth habitat; emphasis on maintaining primitive, roadless management; obtaining habitat diversity objectives by use of fire without timber harvest; emphasis on timber harvest with minimum wildlife habitat restrictions; emphasis on utilizing conventional tractor skidding logging methods to harvest timber; and other alternatives that may be developed as the process continues.

Federal, State, local agencies, organizations, and individuals have participated in the scoping process. Additional scoping will be conducted so that any additional agencies, organizations, or individuals may participate. This process includes:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a previous environmental review.

The Luna District Ranger will hold an open house in his office at Luna, New Mexico from 8:00 a.m. until 5:00 p.m. on Saturday, March 11, 1989.

The analysis is expected to take about 6 months. The draft environmental impact statement should be available for public review by August, 1989. The final environmental impact statement is scheduled to be completed by November, 1989.

David Dahl, Forest Supervisor, Gila National Forest is the responsible official.

**DATE:** Comments concerning the scope of the analysis should be received by July 1, 1989.

**ADDRESSES:** Written comments and suggestions concerning the analysis should be sent to Jerry Hibbetts, District Ranger, P.O. Box 91, Luna, New Mexico 87824, by July 1, 1989.

**FOR FURTHER INFORMATION CONTACT:** Questions about the proposed action and environmental impact statement should be directed to Brian Ferguson or Jerry Hibbetts, phone 505-547-2611.

Date: February 6, 1989.

**David W. Dahl,**

*Forest Supervisor.*

[FR Doc. 89-4819 Filed 3-1-89; 8:45 am]

BILLING CODE 3410-11-M

## ARCTIC RESEARCH COMMISSION

### Meeting

Notice is hereby given that the United States Arctic Research Commission will hold its 17th Meeting in Washington, DC, on 28-29 March, 1989. The meeting will start at 9:30 a.m. in Hearing Room A of the Interstate Commerce Commission Building at 12th and Constitution Avenue NW., Washington, DC. Agenda items include: (1) Chairman's Report; (2) Comments from the Interagency Arctic Research Policy Committee, the Alaska Congressional Delegation, and the Alaska Governor's Office; (3) Report on "A Strategic Plan for Cold Regions Engineering Research"; (4) Status of the proposed establishment of an International Arctic Science Committee; (5) Ethical principles for the conduct of research; (6) Federal Budget Process for Funding Research; and (7) Arctic Programs of the National Oceanic and Atmospheric Administration, the Department of the Interior, and the National Science Foundation.



On 29 March the Commission will meet starting at 9:00 a.m. in Room 6333 of the Interstate Commerce Commission Building. Matters to be discussed include: (1) Approval of minutes of the 16th Meeting; (2) Resolution on Arctic vessels; (3) Discussion of procedures leading to environmental impact statements; and (4) Consideration of ARC Brochure and logo.

From 1:30 p.m., until 3:00 p.m., on 29 March 1989 the Commission will meet in Executive Session to discuss (1) Commission meeting procedures and responsibilities of Members and Staff; (2) Adoption of an ethics policy; (3) Additions to the Group of Advisors; (4) Budget Request for FY 91; and (5) Plans for Future Meetings.

*Contact Person for More Information:* Philip L. Johnson, Executive Director, U.S. Arctic Research Commission (202) 371-0831.

**Philip L. Johnson,**

*Exective Director, U.S. Arctic Research Commission.*

[FR Doc. 89-4793 Filed 3-1-89; 8:45 am]

BILLING CODE 7555-01-M

## DEPARTMENT OF COMMERCE

### Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for expedited clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* Bureau of Export Administration.

*Title:* Export Administration Focus Group Guide.

*Form Number:* Agency—N/A; OMB—N/A.

*Type of Request:* New Collection—Expedited Review Requested—Within 10 days of OMB's receipt.

*Burden:* 120 respondents; 480 reporting hours. Average Hours Per Response—4 hours.

*Needs and Uses:* The information is needed to conduct an evaluative study of the delivery of export administration services to the public at selected locations in the U.S. The findings will be shared by OMB and the Congress and will be used by the Department as a basis for decisions concerning the future organization and delivery of export administration services outside of Washington, DC.

*Affected Public:* Businesses or other for-profit institutions; small businesses or organizations.

*Frequency:* One-time.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* Francine Picoult, 395-7340.

The information collection instrument follows: If you need additional information, please call or write DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: February 24, 1989.

**Edward Michals,**

*Departmental Clearance Officer, Office of Management and Organization.*

Public reporting for this collection of information is estimated to average four hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of reducing this burden, to Office of Security and Management Support, Bureau of Export Administration, U.S. Department of Commerce, Washington, DC 20230 and the Office of Management and Budget, Paperwork Reduction Project (0694-XXXX), Washington, DC 20503.

*Guide for Conducting Focus Groups*

The Department of Commerce has contracted with Price Waterhouse to conduct an evaluative study of the delivery of export administration services to the public at selected locations around the U.S. The purpose of the study is to (1), assess the quality and quantity of services; (2), assess current and projected demand for services; and (3), make recommendations as to future organization and funding of these services.

To assist in assessing export administration service delivery, Price Waterhouse is conducting a series of ten focus groups with exporters who have received export administration assistance from nine U.S. Department of Commerce District Offices and a recently opened Bureau of Export Administration Office in Newport Beach, CA. Each focus group will be comprised of an average of 12 exporters for a total of approximately 120 companies

This focus group guide is designed to facilitate the conduct of these focus group sessions with exporters in the nine study cities. The guide is divided into six major sections as follows:

- Company Background
- Quality of Export Administration Services
- Demand for Services
- Other Issues
- Conclusion and Summary

Focus Group Guide

It is envisaged that free-form discussion will focus on questions such as those listed in the bullet points under each subject area:

*I. Question 1: Describe the Background of Your Company*

The purpose of this section of the focus group will be to develop an understanding of participants' experience with local delivery of export administration services. Issue areas to be discussed may include the following:

- Has your company requested export administration assistance from a District Office, Commerce Headquarters, or another organization (such as a state or local trade office)?
- If you came to this office to seek advice on export administration, why did you select this office?
- Describe the types of export administration services that your company has used.
- Are you aware of the range of services provided and how they might apply to your company?

*II. Question 2: Quality of Export Administration Services*

During this section of the focus group, exporters will be asked to comment on the equality of services provided in their city. Illustrative questions to be addressed may include the following:

- How would you define the term "quality" with respect to export administration services?
- What are your views on the quality of export administration services provided by the District Offices?
- What is your perception of the knowledge and experience of the persons providing export administration services?
- What strengths of weaknesses do you see in the present system for delivery of export administration services?

*III. Question 3: Demand for Services*

In this session, exporters will be asked to comment on future demand for export administration services. Issue areas may include the following:

- How often do you anticipate that your company will need export administration services in the future?

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Would you use the District Offices for these services?

• For your industry as a whole, what will be the future needs for export administration services?

• What factors will affect your needs for future export administration services?

*IV. Question 4: Delivery of Services*

Exporters will be asked to comment on service delivery issues including organization and level of assistance. Examples of questions to be addressed may include:

• Should there be any change in the way export administration services are currently provided?

• What level of export administration services should be available at this local level (i.e., general advice, commitments on classification, license acceptance)?

• Should there be any change in the way they are provided?

• What organizational alternatives would you suggest for service delivery?

*V. Question 5: Other Issues*

Participants will be asked to comment about the focus group session and about the project. Examples of questions to be asked may include:

• Do you have any general comments about this focus group session or about this U.S. DOC/Price Waterhouse project?

• What advice or suggestions do you have that will help meet the project objectives?

*VI. Conclusion and Summary*

In this final part of the session, the focus group leader will summarize the tentative findings and conclusions of the focus group as well as discuss findings of other sessions. The focus group leader will also describe the next steps to be conducted through completion of the project in mid–June 1989.

[FR Doc. 89–4785 Filed 3–1–89; 8:45 am]

BILLING CODE 3510–DT–M

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**International Trade Administration**

**[A–122–047]**

**Elemental Sulphur From Canada; Preliminary Results of Antidumping Duty Administrative Review, Tentative Determination To Revoke in Part, and Intent To Revoke in Part**

**AGENCY:** International Trade Administration/Import Administration, Commerce.

**ACTION:** Notice of preliminary results of antidumping duty administrative review, tentative determination to revoke in part, and intent to revoke in the part.

**SUMMARY:** In response to requests by the petitioner and eleven respondents, the Department of Commerce has conducted an administrative review of the antidumping finding on elemental sulphur from Canada. The review covers 12 producers and/or exporters of this merchandise and generally the period December 1, 1986 through November 30, 1987. The review indicates the existence of dumping margins for certain firms during the period.

As a result of the review, the Department has tentatively determined to revoke in part the antidumping finding with respect to B.P. Oil, Cornwall Chemicals, Home Oil, and Suncor, and intends to revoke the finding with respect to Cities Service, Imperial Oil, PetroGass Processing, Ltd., and Texaco Canada.

Interested parties are invited to comment on these preliminary results, tentative determination to revoke in part, and intent to revoke in part.

**EFFECTIVE DATE:** March 2, 1989.

**FOR FURTHER INFORMATION CONTACT:** Joseph A. Fargo or Laurie A. Lucksinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–5255.

**SUPPLEMENTARY INFORMATION:**

**Background**

On April 28, 1988, the Department of Commerce ("the Department") published in the **Federal Register** (53 FR 15257) the final results of its last administrative review of the antidumping finding on elemental sulphur from Canada (38 FR 35655, December 17, 1973). The petitioner and eleven respondents requested in accordance with § 353.53a(a) of the Commerce Regulations that we conduct an administrative review. We published a notice of initiation on January 27, 1988 (53 FR 2262). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

**Scope of Review**

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule ("HTS"), as provided for in section 1201 et seq. of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appopriate HTS item number(s).

Imports covered by the review are shipments of elemental sulphur from Canada. During the review period such merchandise was classifiable under item 415.4500 of the Tariff Schedules of the United States Annotated. This merchandise is currently classifiable under HTS item 2503.10.00. The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive. The review covers 12 producers and/or exporters of Canadian elemental sulphur to the United States and generally the period December 1, 1986 through November 30, 1987.

**United States Price**

In calculating United States price the Department used purchase price or exporter's sales price ("ESP"), both as defined in section 772 of the Tariff Act, as appropriate. Purchase price was based on the f.o.b. or delivered price to unrelated purchasers in the United States. ESP was based on the packed, delivered price to the first unrelated purchaser in the United States. We made adjustments, where applicable, for foreign and U.S. inland freight, brokerage and handling charges, and in ESP calculations, the U.S. subsidiary's selling expenses. No other adjustments were claimed or allowed.

**Foreign Market Value**

In calculating foreign market value the Department used home market price and third country price, as defined in section 773 of the Tariff Act. Where there were no home market sales we used sales in a third country. Home market and third country prices were based on f.o.b. prices or delivered prices to unrelated purchasers in the applicable market. We made adjustments, where applicable, for tank car expenses, inland freight, forming, handling charges, and differences in credit expenses. No other adjustments were claimed or allowed.

**Preliminary Results of the Review, Tentative Determination to Revoke in Part, and Intent to Revoke in Part**

Timshel failed to respond to the Department's antidumping questionnaire, and we used the best information otherwise available for purposes of assessment and cash deposit of estimated antidumping duties for the firm. The best information otherwise available was Timshel's most recent rate.

As a result of our review, we preliminarily determine that the following margins exist:



| Manufacturer/Exporter | Period of Review | Margin (Percent) |
|---|---|---|
| BP Resources Canada | 12/01/86–11/30/87 | [1] 5.56 |
| Burza Resources | 12/01/86–11/30/87 | 0 |
| Cities Services Oil & Gas | 12/01/86–07/30/87 | [1] 0 |
| Cornwall Chemicals | 12/01/86–11/30/87 | [1] 3.84 |
| Home Oil | 12/01/86–11/30/87 | 0 |
| Imperial Oil | 12/01/86–07/09/87 | 0 |
| InterRedec | 12/01/86–11/30/87 | 0 |
| Petro-Canada Resources | 12/01/86–11/30/87 | 0 |
| PetroGass Processing | 12/01/86–08/19/86 | [1] 0 |
| Suncor | 12/01/86–11/30/87 | [1] 0 |
| Texaco Canada | 12/01/86–07/09/87 | 0 |
| Timshel | 12/01/86–11/30/87 | 26.90 |

[1] No shipments during the period; margins from last review in which there were shipments.

Parties to the proceeding may request disclosure and/or an administrative protective order within 5 days of the date of publication of this notice and may request a hearing within 8 days of publication. Any hearing, if requested, will be held 35 days after the date of publication or the first workday thereafter. Pre-hearing briefs and/or written comments from interested parties may be submitted not later than 25 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 32 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Furthermore, as provided for by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margins shall be required for these firms. For any shipments of this merchandise produced or exported by the remaining known producers and/or exporters not covered in this review, the cash deposit will continue to be at the rate published in the final results of the last administrative review for these firms (53 FR 15257, April 28, 1988).

For any future entries of this merchandise from a new producer and/or exporter, not covered in this or prior administrative reviews, whose first shipments occurred after November 30, 1987 and who is unrelated to the reviewed firms or any previously reviewed firm, no cash deposit shall be required. These deposit requirements are effective for all shipments of Canadian elemental sulphur entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

Although a review was requested for Koch Sulphur Products Company and we included it in our notice of initiation, we have determined that it is an importer of elemental sulphur from Canada. We conduct administrative reviews of exporters and producers as provided in § 353.53a of the Commerce Regulations. Therefore, we are not proceeding with an administrative review of Koch and will instruct the Customs Service to liquidate entries by Koch at the rates applicable to its suppliers.

On June 19, 1987, we tentatively determined to revoke in part the antidumping finding on elemental sulphur from Canada for PetroGass (53 FR 23327). On July 9, 1987, we tentatively determined to revoke in part the antidumping finding on elemental sulphur from Canada for Cities Services, Imperial, and Texaco Canada (53 FR 25895). PetroGass and Cities Services made no shipments of the subject merchandise to the United States for four years. Imperial and Texaco Canada made sales of the imported merchandise at not less than fair value for two years. As provided for in §353.54(e) of our regulations, these four firms agreed in writing to an immediate suspension of liquidation and reinstatement of the antidumping finding under circumstances specified in the agreements. Therefore, if this partial revocation is made final, it will apply to all unliquidated entries of this merchandise manufactured and exported by these four companies, and entered or withdrawn from warehouse, for consumption on or after the date of publication of our tentative determinations to revoke with respect to these firms

B.P., Cornwall Chemicals, Home Oil, and Suncor requested partial revocation of the antidumping finding on elemental sulphur from Canada. B.P., Cornwall Chemicals, and Suncor made no shipments of the subject merchandise to the United States for four years. Home Oil made sales of the imported merchandise at not less than fair value for two years. These four companies agreed in writing to an immediate suspension of liquidation and reinstatement of the antidumping finding under circumstances specified in the agreements. Therefore, we tentatively determine to revoke in part the antidumping finding on elemental sulphur from Canada with respect to these four companies. If this tentative determination to revoke is made final, it will apply to all unliquidated entries of the subject merchandise manufactured and exported by B.P., Cornwall Chemicals, Home Oil, and Suncor, and entered to withdrawn from warehouse, for consumption on or after the date of publication of this notice.

This administrative review, tentative determination to revoke in part, intent to revoke in part, and notice are in accordance with §51 (a)(1) and (c) of the Tariff Act (19 U.S.C. 1675 (a)(1), (c)) and §§ 353.53a and 353.54 fo the Commerce Regulations (19 CFR 353.53a and 353.54).

**Jan W. Mares,**

*Assistant Secretary for Import Administration.*

Date: February 23, 1989.

[FR Doc. 89–4789 Filed 3–1–89; 8:45 am]

BILLING CODE 3510–DS–M

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**[A–484–801]**

**Final Determination of Sales at Less Than Fair Value; Electrolytic Manganese Dioxide From Greece**

**AGENCY:** International Trade Administration, Import Administration, Commerce.

**ACTION:** Notice.

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**SUMMARY:** We have determined that electrolytic manganese dioxide from Greece is being, or is likely to be, sold in the United States at less than fair value. We also determine that critical circumstances do not exist with respect to imports of electrolytic manganese dioxide from Greece. The U.S. International Trade Commission (ITC) will determine, within 45 days of the publication of this notice, whether these imports are materially injuring, or are threatening material injury to, a United States industry.

**EFFECTIVE DATE:** March 2, 1989.

**FOR FURTHER INFORMATION CONTACT:** Anne D'Alauro (202) 377–1130 or Holly Kuga (202) 377–4733, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC, 20230.

**SUPPLEMENTARY INFORMATION:**

### Final Determination

We have determined that electrolytic manganese dioxide ("EMD") from Greece is being, or is likely to be, sold in the United States at less than fair value as provided in section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)) ("the Act"). The weighted-average margin of sales at less than fair value is shown in the "Suspension of Liquidation" section of this notice.

### Case History

On November 14, 1988, we made an affirmative preliminary determination (53 FR 45793). The following events have occurred since the publication of that notice.

On November 31, 1988, Tosoh Hellas requested that we postpone making our final determination for a period of thirty days pursuant to section 735(a)(2)(A) of the Act. On December 20, 1988, we issued a notice postponing the final determination until February 22, 1989 (53 FR 51129).

Both the cost of production and sales questionnaire responses from Tosoh Hellas were verified in Greece between November 28, and December 2, 1988.

On January 23, 1988, the Department held a public hearing. Petitioners and respondent also submitted comments for the record in prehearing briefs on January 17, 1989, and in posthearing briefs on February 2, 1989.

### Scope of the Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted from the tariff Schedules of the United States Annotated ("TSUSA") to the Harmonized Tariff Schedule ("HTS"), as provided for in section 12101 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS number. As with the TSUSA numbers, the HTS numbers are provided for convenience and customs purposes. The written product description remains dispositive.

The product covered by this investigation is electrolytic manganese dioxide from Greece. During the investigation period, such merchandise was classifiable under item 419.4420 of the TSUSA. This merchandise is currently classifiable under HTS item number 2820.10.0000.

EMD is manganese dioxide ($MnO_2$) that has been refined in an electrolysis process. The subject merchandise is an intermediate product used in the production of dry cell batteries. EMD is sold in three physical forms, powder, chip or plate, and two grades, alkaline and zinc chloride. EMD in all three forms and both grades is included in the scope of the investigation.

### Fair Value Comparisons

To determine whether sales of EMD in the United States were made at less than fair value, we compared the United States price to the foreign market value as specified below. We made comparisons on all sales of the product during the period of investigation December 1, 1987 through May 31, 1988.

### United States Price

As provided in section 772 of the Act, we used the purchase price of the subject merchandise to represent the United States price for the sales by Tosoh Hellas to unrelated customers in the United States, all of which were made through a related trading company. We used purchase price as the basis for determining United States price since the following criteria were met: (1) The merchandise was sold to unrelated purchasers in the U.S. prior to importation; (2) the merchandise in question was shipped directly from the manufacturer to the unrelated buyer, without being introduced into the inventory of the related selling agent; (3) this was the customary commercial channel for sales of this merchandise between the parties involved; (4) the related selling agent acted only as a processor of sales-related documentation and a communication link with the unrelated U.S. buyer.

Purchase price was based on the C.I.F. and F.O.B. (foreign port) price to unrelated purchasers in the United States. Where applicable, we made deductions for foreign inland freight and insurance, brokerage and handling, ocean freight, marine insurance, export licensing fees, U.S. inland freight, as well as additions for import duties, import taxes and value-added taxes not collected on exports of the merchandise.

### Foreign Market Value

In accordance with section 773(a) of the Act, we determined that there were sufficient home market sales of such or similar merchandise by Tosoh Hellas to form the basis for foreign market value. For this reason, we have not applied the special rule for certain multinational corporations contained in section 773(d) of the Act as requested by petitioners (see Petitioners' comment 2 and the Department's response). Petitioners alleged that home market sales were made at less than the cost of production. We compared the home market prices exclusive of value-added tax to the cost of production, which included materials, fabrication costs, and selling, general, and administration expenses. Because all sales were found to be made at or above the cost of production, the Department used all home market sales in its fair value comparison.

Home market price was based on the delivered and "free on truck" price to unrelated purchasers in the home market. We deducted inland freight and home market packing, and added U.S. packing. We made a circumstance of sale adjustment for differences in credit and value-added taxes between the two markets.

### Currency Conversions

We used the exchange rate described in § 353.56(a)(1) of our regulations. All currency conversions were made at the rates certified by the Federal Reserve Bank.

### Negative Determination of Critical Circumstances

Petitioners alleged that imports of EMD from Greece present "critical circumstances." Section 735(a)(3) of the Act provides that critical circumstances exist if we determine that there is a reasonable basis to believe or suspect that:

(A)(i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or



(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than fair value, and

(B) There have been massive imports of the merchandise which is the subject of the investigation over a relatively short period.

Pursuant to section 735(a)(3)(B), we generally consider the following factors in determining whether imports have been massive over a relatively short period of time: (1) The volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports.

For purposes of this finding, we based our analysis on the verified shipment data of the Greek respondent, for equal periods immediately preceding and following the filing of the petition until the month of our preliminary determination. Using this data, we find that there has been a slight decrease in imports of EMD following the initiation of this investigation. Since we do not find that there have been massive imports, we need not consider whether there is a history of dumping or whether importers of this product knew, or should have known, that it was being sold at less than fair value. Therefore, we determine that critical circumstances do not exist with respect to imports of EMD from Greece. We have notified the ITC of this determination.

### Verification

As provided in section 776(b) of the Act, we verified all information used in reaching the final determination in this investigation. We used standard verification procedures, including examination of relevant accounting records and original source documents provided by respondents.

### Petitioners' Comments

*Comment 1.* Because home market sales of alkaline EMD are identical to U.S. sales of alkaline grade EMD and home market sales of zinc chloride grade EMD are identical to U.S. sales of zinc chloride grade EMD, the petitioners contend that alkaline and zinc chloride grades of EMD constitute two separate "such or similar" categories of EMD. Petitioners state that this conclusion is mandated by law since the definition of "such or similar merchandise" under section 771(16) specifically means "merchandise in the first of the following categories," *i.e.*, "merchandise which is identical in physical characteristics." Following this reasoning, since the home market sales of alkaline grade EMD by Tosoh Hellas are, when viewed alone, not viable (and the home market "such or similar" category of identical merchandise to which we are limited has been exhausted), petitioner further argues that the Department is precluded from using home market sales of zinc chloride grade EMD as the basis of comparison with U.S. alkaline sales. Therefore, foreign market value for alkaline grade EMD should be based on the home market selling price of the related Japanese producer according to the multinational provision.

*Department's Position.* We disagree. When analyzing the viability of a foreign market, the Department must determine whether adequate sales of comparable merchandise exist. The Department examines a category of merchandise composed of both such *and* similar merchandise in accordance with section 773(a)(1) because this category represents those sales which can serve as a basis for comparison. When testing market viability, section 771(16) of the Act does not preclude us from using a category containing both such and similar merchandise.

In this case, the Department determined that alkaline and zinc chloride EMD are comparable or "similar" merchandise. Information on the record clearly supports this conclusion since the two types of EMD are produced in the same production process and differ only in their final finishing. This finishing merely establishes the grind and the pH to which the EMD is neutralized. Additionally, there is minimal, if any, cost difference attributed to this finishing step, and these two grades are equal in commercial value. Both grades of EMD are used in the production of dry cell batteries. Accordingly, respondent's combined home market sales of alkaline and zinc chloride grade EMD are adequate as a basis of comparison since these sales exceed five percent of sales of that merchandise to third countries.

*Comment 2.* Petitioners argue that the multinational provision applies in this investigation and requires foreign market value to be determined on the basis of EMD sales in Japanese home market of Tosoh Hellas' parent. Section 773(d) of the Tariff Act provides that the special rule is applicable whenever:

(1) Merchandise exported to the United States is being produced in facilities which are owned or controlled, directly, or indirectly, by a person, firm or corporation which also owns or controls, directly or indirectly, other facilities for the production of such or similar merchandise which are located in another country or countries;

(2) The sales of such or similar merchandise by the company concerned in the home market of the exporting country are nonexistent or inadequate as a basis for comparison with sales of the merchandise to the United States; and

(3) The foreign market value of such or similar merchandise produced in one or more of the facilities outside the country of exportation is higher than the foreign market value of such or similar merchandise produced in the facilities located in the country of exportation (19 U.S.C. section 1677b(d)).

Petitioners maintain that all of the above criteria are satisfied in this case. Regarding the second point, they state that, in determining home market viability, the Department erroneously applied the five percent standard specified in § 353.4. However, § 353.4 is not applicable to a determination of home market sales adequacy for the purpose of application of the multinational rule, which is governed by § 353.9 of the regulations.

*Department's Position.* The Department agrees with the petitioners that the first criterion of the multinational rule applies in this case since the Greek respondent, Tosoh Hellas, is owned by a firm with additional facilities in Japan to manufacture EMD. As for the second criterion, however, the Department disagrees with the petitioners' conclusions as to the viability of the Greek home market. As explained above, the Department has determined that alkaline and zinc chloride EMD comprise one "such or similar" category of merchandise. Sales of this merchandise in the home market are well above the five percent standard for the home market viability test established in § 353.4 of our regulations. Therefore, we determine that the special rule for multinational corporations contained in section 773(d) of the Act does not apply in this investigation.

The Department is not precluded from using the five percent standard when applying the multinational rule as petitioners contend. In our recent preliminary determination concerning *Ball Bearings and Parts Thereof From Thailand*, 53 FR 45334 (1988), the Department determined that the special rule for multinational corporations did not apply where the home market in Thailand was viable based on the criteria set forth in 19 CFR 353.4. In applying the multinational rule, section 773(d)(2) of the Act requires that sales in the home market be inadequate as a

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basis for comparison. The Department has only one viability test for determining the adequacy of a home market, the five percent standard as set out in § 353.4 of the Department's regulations, which it has routinely applied when judging home market viability.

While the language of § 353.4 states, in part, that this section is to be applied to situations "other than that provided for in § 353.9," this language does not affect the application of the five percent test, but rather governs the choice of the appropriate market for determining FMV where sales in the country of exportation are deemed inadequate. Section 353.4 should be read in a manner that applies the five percent benchmark to situations where there is a question concerning home market viability such as where the multinational corporations provision might be applicable. However, unless the five percent test of § 353.4 indicates there is no viable home market, the requirements of the multinational corporations provision have not been met.

*Comment 3.* If the Department bases foreign market value on home market sales in Greece, it should continue to compare the export prices of alkaline EMD and zinc chloride EMD sold to the United States with, respectively, the prices of home market sales of the same grade of EMB.

*Department's Position.* We agree. The Department selects that merchandise which is most appropriate for specific price comparisons in accordance with section 771(16) of the Act. The Department followed its standard methodology in this investigation by first matching identical merchandise sold in both markets. Specifically, the Department matched EMD of the same grade (alkaline or zinc chloride grade) when both were sold in the U.S. and home markets.

*Comment 4.* Petitioners advocate that the respondent's G&A, indirect selling expenses, and financing expenses be allocated over the reported volume of sales during the period of investigation.

*Department's Position.* We see no reason to change the respondent's allocation methodology. The petitioners are advocating the allocation of period expenses on the basis of "sales" as defined by the Department's date of sale methodology, which is used for properly determining those sales subject to the investigation. On its own books and records, a finished good usually is reflected as sold when it is shipped to fill a customer's order. Since, in this case, the allocation by shipment volume during the POI did not prove distortive, we have accepted the respondent's allocation.

*Comment 5.* Petitioners fault the treatment of manganese oxide ("MnO") in the calculation of the cost of production ("COP"). Because of the small volume and low value of MnO sales during the period as well as the fact that it is produced in the same process but only incidentally to the production of EMD, petitioners argue MnO is properly treated as a by-product of EMD production. Therefore, manufacturing costs should not be allocated to MnO, but rather the revenue received from the sale of MnO should be used to offset total production costs during the period.

*Department's Position.* The Department does not agree that MnO should be treated as a by-product in the production of EMD. By-products are basically waste products from the production of the primary product and possess only a residual value. The manufacture of MnO is the first step in the production process of EMD. Manganese ore is converted in this single, distinct production process which yields only one product, MnO. EMD is not produced at this stage. MnO generally continues on in the production process to be further transformed into EMD. Therefore, all costs incurred in the production process of converting manganese ore into MnO should appropriately be allocated to the MnO produced by this initial process.

*Comment 6.* Inventory carrying costs should be inputed for Tosoh Greece's inventories of manganese ore, anodes, and finished goods inventories.

*Department's Position.* When we calculate COP pursuant to section 773(b) of the Act, the Department is only interested in determining the actual costs incurred to produce the merchandise under investigation. The Department is not concerned with imputations necessary for determining differences in selling expenses between markets and, for this reason, does not impute costs in the calculation of cost of production. See *Final Determination of Sales at Less Than Fair Value: Certain All-Terrain Vehicles from Japan*, 54 FR 4804 (1989). Since the respondent included imputed credit expenses for home market sales in its calculation of COP, we have deleted this imputed credit expense from the COP used in our final determination.

*Comment 7.* Petitioners argue that the COP should be adjusted to compensate for certain practices that cannot be continued on a sustained basis. In particular, petitioners question whether the reported level of maintenance can continue to meet the requirements of a plant when operating at high production capacity.

*Department's Position.* We based our COP on the verified actual costs incurred by the respondent during the period of investigation. Since the respondent's accounting practice follows generally accepted accounting principles, which appropriately reflect the company's accounting methods used in the ordinary course of business and which the Department did not find to be distortive, the Department has based its COP on those costs.

*Comment 8.* Petitioners argue that the Department has made an improper adjustment with respect to the Greek value-added tax ("VAT"). The petitioners state that the Department has added an amount for VAT to the U.S. selling price while also adjusting FMV by the absolute difference between the Greek VAT on home market sales and the VAT added to United States sales. Petitioners contend that the adjustment the Department made on the foreign market side is not authorized as an adjustment for "other differences in circumstances of sale" (19 U.S.C. section 1677b(a)(4)(B)). Moreover, the petitioners cite *Zenith Electronics Corp. v. United States*, 633 F. Supp. 1382 (1986), as evidence that the Court of International Trade has specifically rejected this "circumstances of sale" approach to the treatment of VAT.

*Department's Position.* The ruling of the Court of International Trade in *Zenith*, now on appeal, does not bar Commerce from making a circumstance of sale adjustment for the differences in VAT between markets. In practice, the Department has routinely recognized that differences in the tax burden on home market and exported merchandise are properly accounted for by making circumstances of sale adjustments for these differences. See *Television Receivers, Monochrome and Color, from Japan*, 53 FR 4050, 4051 (1988); *Color Television Receivers from Korea*, 53 FR 24975, 25976 (1988).

*Comment 9.* Petitioners argue that home market sales at less than the cost of production should be excluded from the determination of foreign market value.

*Department's Position.* The Department found no home market sales to be below the cost of production.

*Comment 10.* Petitioners contend the Department has incorrectly treated a royalty payment made by the respondent as a direct selling expense rather than as a manufacturing expense. Since the royalty expense is related to certain technical production rights being provided, the expense is more properly recognized as a cost of manufacturing.

*Department's Position.* Having examined the agreement governing the respondent's royalty payment, we agree with the petitioners and have disallowed this adjustment as a direct selling expense in our final determination. We have treated it instead as a cost of manufacturing.

*Comment 11.* The petitioners question the accuracy of the export license fee reported per transaction since this amount does not correlate with the total fee divided by the quantities sold.

*Department's Position.* The total amount reported for each export license fee was verified as was the per kilogram expense listed for several U.S. transactions. The confusion stems from the transportation of two figures in the total export fee reported in the narrative section of the respondent's questionnaire response. Additionally, shipments of smaller quantities were not charged the same fee.

*Comment 12.* The Department incorrectly calculated the amount to be added to United States price for the applicable Greek VAT that was forgiven upon exportation of the merchandise. Petitioners argue that the tax percentage should be applied on the basis of the ex-mill price of the U.S. merchandise.

*Department's Position.* The Department verified that the Greek VAT is applied to the selling price of the merchandise inclusive of transportation expenses when the merchandise is sold on delivered terms. Therefore, the Department has properly calculated the applicable VAT on U.S. sales by multiplying the tax percentage by the same tax base used in the home market, *i.e.*, the selling price.

*Comment 13.* No addition should be made to U.S. price for import duties and taxes rebated or not collected on graphite anodes used in production. Petitioners argue that this adjustment should be denied since the graphite anodes are not raw materials and it is not apparent whether Greek law permits a credit against duties and taxes paid in these circumstances.

*Department's Position.* The Department verified that import duties and taxes are forgiven by the Greek government on graphite anodes consumed in the production of EMD that is exported. For this reason, we have added to U.S. price those import duties and taxes forgiven on graphite anodes when EMD is exported.

*Comment 14.* The Department should compute credit expense using Tosoh Hellas' interest rate rather than it's related trading company's interest rate because it could not verify the latter.



*Department's Position.* We agree and have made the change in our final determination.

**Respondent's Comments**

*Comment 1.* Tosoh Hellas reports the date of sale for one of its home market customers should be changed from the previously reported date of the internal sales "contract" to the date of shipment. Respondent states that sales to this customer were made on a spot basis and the quantity within the sales contract was based simply on an estimate to which the customer was not committed.

*Department's Position.* We accept that the sales "contract" used by the respondent for the home market customer in question is not a contract establishing terms of sale. The "contract" was written by the respondent for its own internal planning purposes and did not commit either party to the terms contained therein. Accordingly, the Department agrees that the appropriate date of sale is the date of shipment for that customer and has made that change in its final determination.

*Comment 2.* Since sales in the home market of alkaline grade EMD are not viable, the Department should use sales of zinc chloride EMD as the basis of FMV.

*Department's Position.* Having determined that the combined sales of alkaline EMD and zinc chloride EMD are viable, the Department compared the same grades of merchandise from within that category of sales to the corresponding grades of U.S. merchandise when this was feasible. See the Department's Response to Petitioners' Comment 3.

*Comment 3.* Respondent argues that since the sales of alkaline grade EMD in the home market were not in the usual commercial quantities, these sales cannot serve as the basis for foreign market value. Respondent cites section 1677b(a)(1), which provides that the foreign market value shall be the price "* * * at which such or similar merchandise is sold * * * in the principal markets of the country from which exported, in the usual commercial quantities * * * for home consumption."

*Department's Position.* During the period under investigation, we note that U.S. sales of similar quantities were also made. For this reason, we do not agree with respondent's argument regarding the referenced home market sales and have used these sales in determining foreign market value.

*Comment 4.* Respondent further argues that sales of EMD to this home market customer were made outside the ordinary course of trade and, therefore, should not be used as the basis for FMV. As support for this argument, respondent states that the terms of sale are not consistent with the terms of other sales made in the home market, that the sales price to this customer differs based on this fact, and sales to this customer were not made under terms similar to those employed in the U.S. market.

*Department's Position.* As stated above, the quantities that were sold to this home market customer are similar in size to sales made to a U.S. customer. Furthermore, in comparing these sales, price appears to vary independently of quantity. Furthermore, the terms of sale for the U.S. sales of similar quantity and those of the home market customer cited differ more because of specific payment terms than for any other reason. Such differences are more reflective of the particular customer's credit history rather than a basis for concluding that sales to that customer are outside the ordinary course of trade. Sales to this home market customer were made at regular intervals throughout the period of investigation and the Department has used these sales in its final determination.

*Comment 5.* Respondent states that the legal prerequisites for a critical circumstance finding have not been met.

*Department's Position.* We agree. See the "Negative Determination of Critical Circumstances" section of this notice.

**Suspension of Liquidation**

Since we have determined that critical circumstances do not exist with regard to this investigation, entries suspended prior to November 14, 1988, the date of publication of the preliminary determination in the **Federal Register**, can now be liquidated and all securities posted as a result of the suspension of liquidation prior to that date will be refunded or cancelled. We are directing the U.S. Customs Service to continue to suspend liquidation of all entries of EMD from Greece that are entered, or withdrawn from warehouse, for consumption on or after November 14, 1988. The Customs Service shall continue to require a cash deposit or posting of bond equal to the estimated amounts by which the foreign market value of the merchandise subject to this investigation exceeds the United States price, as shown below. This suspension of liquidation will remain in effect until further notice.

The weighted-average margins are as follows:

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| Manufacturer/producer/exporter | Weighted-average margin percentage |
|---|---|
| Tosoh Hellas | 36.72 |
| All others | 36.72 |

**ITC Notification**

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all securities posted as a result of suspension of liquidation will be refunded. However, if the ITC determines that such an injury does exist, the Department will issue an antidumping duty order directing Customs officers to assess an antidumping duty on EMD from Greece as defined in the "Scope of Investigation" section of this notice, entered or withdrawn from warehouse, for consumption after the suspension of liquidation, equal to the amount by which the foreign market value exceeds the U.S. price.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

**Jan W. Mares,**

*Assistant Secretary for Import Administration.*

Date: February 22, 1989.

[FR Doc. 89-4766 Filed 3-1-89; 8:45 am]

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[A-419-801]

## Electrolytic Manganese Dioxide From Ireland; Final Determination of No Sales at Less Than Fair Value

**AGENCY:** International Trade Administration, Import Administration, Commerce.

**ACTION:** Notice.

**SUMMARY:** We have determined that electrolytic manganese dioxide from Ireland is neither being, nor is likely to be, sold in the United States at less than fair value. The respondent in this investigation, the sole producer of electroytic manganese dioxide in Ireland, Mitsui Denman Ireland, reported no sales and no outstanding offers for sales during the period of investigation. We have notified the International Trade Commission ("ITC") of our determination.

**EFFECTIVE DATE:** March 2, 1989.

**FOR FURTHER INFORMATION CONTACT:** Anne D'Alauro (202) 377-1130 or Holly Kuga (202) 377-4733, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:**

**Final Determination**

We have determined that electrolytic manganese dioxide ("EMD") from Ireland is not being, nor is likely to be, sold in the United States at less than fair value as provided in section 735 of the Tariff Act of 1930, as amended (19 U.S.C. 1673d) ("the Act"). The Department found no sales, commercial shipments, outstanding contractual obligations for sales, or irrevocable offers for sale to the United States during the period of investigation ("POI") to compare with foreign market value.

**Case History**

On November 14, 1988, we made a negative preliminary determination (53 FR 45795). The following events have occurred since the publication of that notice.

On November 29, 1988, the petitioners, Kerr-McGee Chemical Corporation and Chemetals Inc., requested that we postpone making our final determination for a period of thirty days pursuant to section 735(a)(2)(B) of the Act. On December 20, 1988, we issued a notice postponing the final determination until February 22, 1989 (53 FR 51129).

The Department conducted a verification of respondent, Mitsui Denman Ireland ("MDI") in Ireland on December 5, 1988, and its related trading company, Mitsui & Co., U.S.A., on December 16, 1988.

On January 23, 1989, the Department held a public hearing. Petitioners and respondent submitted comments for the record in prehearing briefs on January 17, 1989, and in posthearing briefs on February 2, 1989. Additional comments were submitted on January 30 and on February 6 and 9, 1989.

**Scope of the Investigation**

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted from the Tariff Schedules of the United States Annotated ("TSUSA") to be Harmonized Tariff Schedule ("HTS"), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS number. As with the TSUSA numbers, the HTS numbers are provided for convenience and customs purposes. The written product description remains dispositive.

The product covered by this investigation is electrolytic manganese dioxide from Ireland. During the investigation period, such merchandise was classifiable under item 419.4420 of the TSUSA. This merchandise is currently classifiable under HTS item number 2820.10.0000.

EMD is manganese dioxide ($MnO_2$) that has been refined in an electrolysis process. The subject merchandise is an intermediate product used in the production of dry cell batteries. EMD is sold in three physical forms, powder, chip or plate, and two grades, alkaline and zinc chloride. EMD in all three forms and both grades is included in the scope of the investigation.

**Period of Investigation**

The petitioners requested the Department to extend the POI because the investigation period initially specified by the Department is not representative of levels of EMD exports to the United States from Ireland. Petitioners request that the Department extend the POI to include those sales made by MDI which correspond to United States entries made in the first half of 1987. They argue that this is the appropriate POI since Irish EMD has been exported to the United States in all of the most recent years except the current one, a fact that reflects a mere depression in current sales activity.

The Department has extended the normal six-month POI where that period did not adequately reflect the sales practices of the firms subject to the investigation. For example, where sales were made pursuant to long term contracts, the Department has extended the period in order to include the date of sale corresponding to shipments during the period. See *Certain Forged Steel Crankshafts from the United Kingdom*, 52 FR 32951 (1987). In instances where distortions would have resulted from using a POI limited to six months, as in the case of seasonally-affected sales, the Department has extended the period to eliminate such distortions. See *Certain Fresh Cut Flowers from Colombia*, 52 FR 6842 (1987). The Department has also extended the period in cases where special order or customized sales are under investigation in order to accommodate the unique circumstances involved in investigating this type of merchandise. See *Offshore Platform Jackets and Piles from Japan*, 51 FR 11788 (1986). Finally, the Department has extended the period in cases where sales activity was unusually depressed



resulting in too few sales for an adequate investigation. See *Certain Iron Metal Castings from India*, 46 FR 39869 (1981).

We have determined that there are no factors in this case that would justify an extension of the POI. No shipments of EMD from MDI were made during the POI which correspond to sales made prior to the period nor were the shipments made during 1987 pursuant to long term contracts with U.S. purchasers. Petitioners argue that sales of EMD are greatest in the fall of the year necessitating the extention of the period to capture this peak sales activitity. The evidence for MDI, however, shows that when it supplied the U.S. market, its monthly shipment volume remained constant. This shipment stability is also evidenced by MDI's related Japanese producer. Even if seasonality were a factor and the POI were extended by an additional six months to capture a full year in our investigation, a sufficient period for eliminating distoritions, no sales would be found within that expanded period.

Finally, the circumstances presented in this case do not support a finding of unusually depressed sales sufficient to warrant extension of the POI. There were no U.S. sales or commercial shipments within the POI. The evidence documents that there had been no commercial sales by the respondent in the U.S. market for an extended period of time which did not coincide with any industry-wide depression in EMD demand. MDI continues to have no current contractual obligation outstanding for EMD of Irish origin (see our response to comment 1). Its product has been disqualified by its primary U.S. purchaser (and remains unqualified by other major U.S. purchasers) and must successfully undergo a considerable qualification process to regain approval. Because of the quality problems that have been experienced with MDI's product, completion of qualification is of particular significance. Since these circumstances go well beyond those that would be present for a firm experiencing only "unusually depressed" sales activity, the Department determines that this reason for expanding the POI does not apply in this case.

**Fair Value Comparisons**

If we were to determine whether sales of EMD in the United States are made at less than fair value, we would have compared the United States price to the foreign market value. However, in the present investigation, we were unable to make this comparison due to the absence of U.S. sales during the period of investigation, December 1, 1987 through May 31, 1988.

**Negative Determination of Critical Circumstances**

Petitioners alleged that "critical circumstances" exists with respect to imports of EMD from Ireland. Section 735(a)(3) of the Act provides that critical circumstances exists if we determine that there is a reasonable to believe or suspect that:

(A)(i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than fair value, and

(B) There have been massive imports of the merchandise which is the subject of the investigation over a relatively short period.

Pursuant to section 735(a)(3)(B), we generally consider the following factors in determining whether imports have been massive over a relatively short period of time: (1) The volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports.

For purposes of this finding, we used company specific shipment data for EMD from Ireland. Since there were no commercial shipments made during 1988, we find that imports of the subject merchandise from Ireland have not been massive over a relatively short period of time.

Since we do not find that there have been massive imports, we need not consider whether there is a history of dumping or whether importers of this product knew or should have known that it was being sold at less than fair value. Therefore, we determine that critical circumstances do not exist with respect to imports of EMD from Ireland.

**Verification**

As provided in section 776(b) of the Act, we verified all information used in reaching the final determination in this investigation. We used standard verification procedures, including examination of relevant sales records and original source documents provided by the respondent.

**Petitioners' Comments**

*Comment 1.* Petitioners contend that MDI's EMD is likely to be sold in the U.S. at less than fair value. In support of this contention, petitioners allege (1) that MDI has made bona fide offers to sell EMD during the POI, and (2) that MDI has been supplying samples for testing and qualification purposes in an attempt to supply the U.S. market.

*Department's Position.* We disagree with petitioners' conclusion. Section 731 of the Act provides, in part, that in order to find that dumping is occurring the Department must determine that the merchandise subject to investigation "is being, or is likely to be, sold in the United States at less than fair value." "More than a speculative potential of future sales for export is necessary to meet the 'likely to be sold' criterion of section 731 of the Act" *Certain Carbon Steel Products from Czechoslovakia*, 50 FR 1912 (1985). The Department looks for evidence of a current offer, the acceptance of which is reasonably expected. See *Dismissal of Antidumping Petitions on Certain Steel Products from Romania*, 47 FR 5752 (1982). At the very least this requires evidence of an irrevocable offer to sell (*Carbon Steel from Czechoslovakia*).

The Department verified that MDI had no contractual obligations outstanding as of the date our verification was completed, December 16, 1988. Information regarding an April 1988 meeting with a potential customer has been carefully evaluated by the Department. There was no signed, written offer by MDI specifying the price and quantity at which it would sell EMD. No promise was made to hold any offer open for a period of time. The evidence is unclear as to whether quantity terms were specified; price was discussed in relation to a competitive level at an unspecified point in time. Moreover, any agreement that might have been made was subject to successful qualification of MDI's EMD, which requires several months of additional testing. We have determined that discussions at that meeting did not reach the level of an irrevocable offer. Even assuming, *arguendo*, that some form of bona fide offer existed at that time, ten months have passed since this meeting without further action by either party. If this were the case, any reasonable time period for holding an offer open would have expired.

Finally, supplying samples of EMD in an attempt to qualify MDI's merchandise does not constitute "likelihood of sales" for purposes of the antidumping law. The qualification process for EMD is complex and time consuming, requiring at minimum a six month testing period. Irish EMD has been and remains disqualified by one major U.S. purchaser and unqualified by other potential major U.S. purchasers; qualification is a necessary requirement

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of battery producers prior to commercial purchase of the subject merchandise. Any likelihood of future sales, pending successful qualification of MDI's EMD, is too speculative for the Department to consider them as sales during the POI.

*Comment 2.* Petitioners contend that the special rule for multinational corporations contained in section 773(d) of the Act should be applied to calculate the foreign market value of MDI's EMD.

*Department's Position.* Since we have determined that MDI did not sell EMD to the United States during the POI, nor was there a likelihood of such sales, we did not calculate foreign market value.

*Comment 3.* Petitioners contend that the Department should determine the appropriate margin based upon the information submitted by petitioners as the best information available.

*Department's Position.* The respondent has furnished, in proper form, all information requested by the Department. Based on the information reported, and which we have deemed adequate, we have determined that MDI did not sell EMD, nor was there a likelihood of such sales, to the U.S. during the POI. For these reasons, the Department has no reason to resort to the use of best information available as suggested by the petitioners.

**ITC Notification**

In accordance with section 735(d) of the Act, we have notified the ITC of our determination.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

Date: February 22, 1989.

**Jan W. Mares,**

*Assistant Secretary for Import Administration.*

[FR Doc. 89-4787 Filed 3-1-89; 8:45 am]

BILLING CODE 3510-DS-M

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**[A-588-806]**

## Final Determination of Sales of Less Than Fair Value: Electrolytic Manganese Dioxide From Japan

**AGENCY:** International Trade Administration, Import Administration, Commerce.

**ACTION:** Notice.

**SUMMARY:** We have determined that electrolytic manganese dioxide from Japan is being, or is likely to be, sold in the United States at less than fair value. We also determine that critical circumstances do not exist with respect to imports of electrolytic manganese dioxide from Japan. The U.S. International Trade Commission (ITC) will determine, within 45 days of the publication of this notice, whether these imports are materially injuring, or are threatening material injury to, a United States industry.

**EFFECTIVE DATE:** March 2, 1989.

**FOR FURTHER INFORMATION CONTACT:** Kelly Parkhill (202) 377-1130 or Holly Kuga (202) 377-4733, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC, 20230.

**SUPPLEMENTARY INFORMATION:**

**Final Determination**

We have determined that electrolytic manganese dioxide ("EMD") from Japan is being, or is likely to be, sold in the United States at less than fair value as provided in section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)) (the Act). The weighted-average margin of sales at less than fair value is shown in the "Suspension of Liquidation" section of this notice.

**Case History**

The petitioners in this investigation, Kerr-McGee Chemical Corporation and Chemetals Incorporated, are manufacturers of EMD. The respondents, who account for virtually all of the exports to the United States, are Mitsui Mining and Smelting ("MMS") and Tosoh Corporation ("Tosoh").

On November 14, 1988, we made an affirmative preliminary determination (53 FR 45796). The following events have occurred since the publication of that notice.

On November 21, 1988, Tosoh requested that we postpone making our final determination for a period of thirty days pursuant to section 735(a)(2)(A) of the Act. On December 20, 1988, we issued a notice postponing the final determination until February 22, 1989 (53 FR 51130).

The questionnaire responses from MMS and Tosoh were verified in Japan between November 28 and December 9, 1988.

Petitioners and respondents submitted written comments for the record on January 25 and 31, 1989.

**Scope of the Investigation**

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted from the Tariff Schedules of the United States Annotated ("TSUSA") to the Harmonized Tariff Schedule ("HTS"), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS number. As with the TSUSA numbers, the HTS numbers are provided for convenience and customs purposes. The written product description remains dispositive.

The product covered by this investigation is electrolytic manganese dioxide from Japan. During the period of investigation ("POI"), such merchandise was classifiable under item 419.4420 of the TSUSA. This merchandise is currently classifiable under HTS item number 2820.10.0000.

EMD is manganese dioxide ($MnO_2$) that has been refined in an electrolysis process. The subject merchandise is an intermediate product used in the production of dry cell batteries. EMD is sold in three physical forms, powder, chip or plate, and two grades, alkaline and zinc chloride. EMD in all three forms and both grades is included in the scope of the investigation.

**Fair Value Comparisons**

To determine whether sales of EMD in the United States were made at less than fair value, we compared the United States price to the foreign market value as specified below. We made comparisons on all sales of the product during the period of investigation December 1, 1987 through May 31, 1988.

**United States Price**

As provided in section 772 of the Act, we used the purchase price of the subject merchandise to represent the United States price for all sales made by MMS and Tosoh. We used purchase price as the basis for determining United States price since the merchandise was sold to an unrelated purchaser in Japan with the knowledge that that purchaser would then export the merchandise to the United States.

Purchase price was based on the F.O.B. (foreign port) and ex-godown price to unrelated purchasers in Japan. Where applicable, we made deductions for foreign inland freight, brokerage and handling, and certain other movement expenses.

**Foreign Market Value**

In accordance with section 773(a) of the Act, we determined that there were sufficient home market sales of such or similar merchandise by both MMS and Tosoh to form the basis for foreign market value.



Home market price was based on the delivered price to unrelated purchasers in the home market. We deducted inland freight and home market packing, and added U.S. packing. We made a circumstance of sale adjustment for differences in credit between the two markets.

**Negative Determination of Critical Circumstances**

Petitioners allege that imports of EMD from Japan present "critical circumstances." Section 735(a)(3) of the Act provides that critical circumstances exist if we determine that there is a reasonable basis to believe or suspect that:

(A) (i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than fair value, and

(B) There have been massive imports of the merchandise which is the subject of the investigation over a relatively short period.

Pursuant to section 735(a)(3)(B), we generally consider the following factors in determining whether imports have been massive over a relatively short period of time: (1) The volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports.

For purposes of this finding, we based our analysis on the verified shipment data of the Japanese respondents, for equal periods immediately preceding and following the filing of the petition until the month of our preliminary determination. In the case of MMS, shipments declined during the five month period between the petition and the preliminary determination. Tosoh's shipments increased less than the 15 percent considered to be indicative of massive imports. Based on the above, we find that there is no reasonable basis to conclude that imports of EMD have been massive over a relatively short period.

Since we do not find that there have been massive imports, we need not consider whether there is a history of dumping or whether importers of this product knew or should have known that it was being sold at less than fair value. Therefore, we determine that critical circumstances do not exist with respect to imports of EMD from Japan.

**Verification**

As provided in section 776(b) of the Act, we verified all information used in reaching the final determination in this investigation. We used standard verification procedures, including examination of relevant accounting records and original source documents provided by respondents.

**Petitioners' Comments**

*Comment 1.* Petitioners state that MMS' foreign market value should be based on its home market sales of both types of alkaline EMD. Petitioners state that the two types of alkaline EMD sold in the home market are identical within the meaning of the antidumping statute.

*Department's Response.* The Department disagrees. MMS provided us with additional information at verification from which we were able to determine that the two types of alkaline EMD are similar, not identical merchandise. One of the two types of EMD sold in the home market was identical to that sold in the U.S. market. We based the foreign market value on sales of that identical merchandise in the home market.

*Comment 2.* Petitioners contend that a rebate granted by MMS in the home market is a quantity discount which should not be allowed as a deduction by Commerce. Alternatively, petitioners contend that if the deduction is granted, the Department should make a circumstance of sale adjustment in order to reflect price differences resulting from the quantities being sold in both markets.

*Department's Response.* We disagree. The Department has verified that the adjustment in question is a rebate, *i.e.*, a pre-established post-sale credit or refund based upon meeting certain conditions established between the buyer and the seller at the time of sale. That the condition for obtaining the rebate in this case is based on the cumulative quantity sold does not alter this fact. Even if this was a quantity-based discount, petitioners have not provided the basis for making their proposed adjustments.

*Comment 3.* Petitioners state that the Department should calculate the dumping margin for MMS based on a dollar denominated U.S. price with any yen denominated adjustments converted at the prevailing exchange rate on the date of sale. To do otherwise, would allow the respondent to artificially reduce the margins by manipulating the exchange rate conversions.

*Department's Response.* MMS is paid in yen by its unrelated Japanese distributor for its U.S. sales. Foreign market value is also yen-denominated. Therefore, there is no need for currency conversions in performing the dumping calculation. The yen amount MMS receives for its U.S. sales does depend on the exchange rate. However, because the trading company is paid in dollars and then pays MMS using the exchange rate in effect on the date of payment, that date of payment, and therefore the exchange rate used, is determined by the trading company, not MMS. Therefore, we do not see how MMS is able to manipulate its margins through currency conversions.

*Comment 4.* Petitioners contend that the date of sale for a certain U.S. customer should be the date of the purchase order rather than the date of the contract which predates the POI. Alternatively, the POI should be extended back to include this sale.

*Department's Response.* The Department determined that the sale terms for the U.S. customer in question were established in a contract which was entered into prior to the date of the POI. This was verified through sales documentation which established a fixed price as well as the specific shipping schedule for each transaction. The Department feels no need to expand the POI to include this transaction since the Department has reviewed 80 percent of Tosoh's shipments and all of their U.S. sales that occurred during the six-month POI.

*Comment 5.* Petitioners state that Tosoh should report its U.S. prices in dollars, not yen.

*Department's Response.* We disagree. Tosoh reported its prices in the currency in which it was paid, as requested by the Department in its questionnaire.

*Comment 6.* Petitioners claim that the Department should not deduct the double payment of rebate incorrectly paid by Tosoh on one of its sales.

*Department's Response.* The Department verified the amount of rebate paid on home market sales. On the sale in question, the Department verified that, due to a billing error, a rebate was paid twice. Since the customer did not return the second, erroneous rebate payment, the Department believes that a deduction, in the full amount of the rebate actually paid on that transaction, should be allowed.

*Comment 7.* Petitioners state that Tosoh's credit expenses must be calculated on the basis of gross price less discount in order to reflect the true

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cost of extending credit to its customers between shipment and final payment.

*Department's Response.* The Department agrees. We have subtracted the discount from the gross price before calculating the credit expense.

*Comment 8.* Petitioners state that the Preliminary Determination of Critical Circumstances must be affirmed in the final determination based upon Tosoh's massive imports during the three month period following the petition and its knowledge of dumping.

*Department's Response.* The Department disagrees. (See the "Negative Determination of Critical Circumstances" section of this notice.) The period for determining massive imports in this investigation is the five month period between the filling of the petition and the preliminary determination not the three month period following the petition. The Department uses this period between the filing of the petition and the preliminary determination to determine whether there are massive imports since this is the period in which respondents could take advantage of their knowledge of the dumping case to increase exports to the United States without being subject to antidumping duties. See *Certain Internal-Combustion, Industrial Forklift Trucks From Japan*, 53 FR 12552, 12566 (1988). During this time, Tosoh's shipments to the United States increased less than the 15 percent increase considered to be indicative of massive imports. Therefore, we have determined that imports durtng the period have not been massive and that the requirements for determining critical circumstances have not been met.

**Respondents' Comments**

*Comment 1.* Tosoh claims that the legal requirements for critical circumstances have not been met. Specifically, Tosoh claims that the increase in its shipments to the U.S. during the five month period between the petition and suspension of liquidation do not meet the Department's definition of "massive imports." Furthermore, Tosoh claims that its increase is overstated because it includes EMD shipped under long-term contracts outside the POI.

*Department's Response.* The Department agrees that the requirements for an affirmative determination of critical circumstances have not been met. (See the "Negative Determination of Critical Circumstances" section of this notice.)

**Suspension of Liquidation**

Since we have determined that critical circumstances do not exist with regard to this investigation, entries suspended prior to November 14, 1988, the date of publication of the preliminary determination in the Federal Register, can now be liquidated and all securities posted as a result of the suspension of liquidation prior to that date will be refunded or cancelled. We are directing the U.S. Customs Service to continue to suspend liquidation of all entries EMD from Japan that are entered or withdrawn from warehouse, for consumption on or after November 14, 1988. The Customs Service shall continue to require a cash deposit or posting of bond equal to the estimated amounts by which the foreign market value of the merchandise subject to this investigation exceeds the United States price, as shown below. This suspension of liquidation will remain in effect until futher notice.

The weighted-average margins are as follows:.

| Manufacturer/producer/exporter | Weighted-average margin percentage |
|---|---|
| Mitsui Mining and Smelting | 77.43 |
| Tosoh Corporation | 71.91 |
| All others | 73.30 |

**ITC Notification**

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all securities posted as a result of suspension of liquidation will be refunded. However, if the ITC determines that such an injury does exist, the Department will issue an antidumping duty order directing Customs officers to assess an antidumping duty order directing Customs officers to assess an antidumping duty on EMD from Japan as defined in the "Scope of Investigation" section of this notice, entered or withdrawn from warehouse, for consumption after the suspension of liquidation, equal to the amount by which the foreign market value exceeds the U.S. price.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

**Jan W. Mares,**

*Assistant Secretary for Import Administration.*

Date: February 22, 1989.

[FR Doc. 89-4788 Filed 3-1-89; 8:45 am]

BILLING CODE 3510-DS-M

**[A-351-601]**

**Preliminary Determination of Sales at Not Less Than Fair Value: Steel Wheels From Brazil**

**AGENCY:** Import Administration, International Trade Administration, Commerce.

**ACTION:** Notice.

**SUMMARY:** We preliminarily determine that steel wheels from Brazil are neither being, nor are likely to be, sold in the United States at less than fair value. We have notified the International Trade Commission of our determination. If this investigation proceeds normally, we will make a final determination by May 10, 1989.

**EFFECTIVE DATE:** March 2, 1989.

**FOR FURTHER INFORMATION:** Contact J. David Dirstine (202) 377-5255 or Anne D'Alauro (202) 377-2923, Office of Antidumping Compliance, Import Administration, International Trade Administraiton, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:**

**Preliminary Determination.**

We preliminarily determine that steel wheels from Brazil are neither being, nor are likely to be, sold in the United States at less than fair value as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the "Act").

**Case History**

Since the notice of initiation, (53 FR 32267, August 24, 1988), the following events have occurred. On September 12, 1988, the International Trade Commission ("ITC") found that there is a reasonable indication that imports of steel wheels from Brazil are materially injuring, or threatening material injury to, a U.S. industry (USUTC Pub. No. 2124, September 1988).

On September 6, 1988, we presented questionnaires to Borlem S.A. Empreendimentos Industriais ("Borlem S.A.") and Rockwell-Fumagalli ("Fumagalli"), manufacturers of steel wheels from Brazil. On September 23, 27, October 24, November 1, 10, and December 1, 6, 1988, we received replies to the questionnaires.

On November 16, 1988, we presented a questionnaire to Borlem do Nordeste S.A. Empreendimentos Industriais ("BNE"), a subsidiary of Borlem S.A. We received replies to the questionnaire on December 1 and 28, 1988.

On December 12, 1988, the petitioner, Kelsey-Hayes Company, requested that the Department extend the period for the preliminary determination until not later than 210 days after receipt of the petition in accordance with section 733(c)(1)(A) of the Act.

Verification of the responses was conducted from January 16 through February 3, 1989 and on February 8, 1989.



**Scope of Investigation**

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 et seq. of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s).

The products covered by this investigation are steel wheels, assembled or unassembled, consisting of a disc and a rim, designed to be mounted with both tube type or tubeless pneumatic tires, in wheel diameter sizes ranging from 13.0 inches to 16.5 inches, inclusive, and generally for use on passenger automobiles, light trucks, and other vehicles. During the period of investigation, such merchandise was classifiable under item under 692.3230 of the Tariff Schedules of the United States Annotated. This merchandise is currently classifiable under HTS item number 8708.70.60. The HTS number is provided for convenience and Customs purposes. The written description remains dispositive.

In a submission dated September 28, 1988, Borlem S.A., a respondent company, argued that rims imported separately are not within the scope of the investigation. In submissions dated October 7, 1988 and October 12, 1988, the petitioner argued that rims imported separately and sold as "distinct articles of commerce" are not within the scope of the investigation, but that rims imported separately as a means of circumvention are within the scope of the investigation. In a submission dated October 21, 1988, the petitioner, as well as NI Industries, a domestic interested party, argued that rims imported separately are within the scope of the investigation.

For purposes of the preliminary determination, we have treated rims or discs, whether imported separately or together, as included in the scope of this investigation.

**Period of Investigation**

Sales of steel wheels to original equipment manufacturers ("OEMs") account for more than 60 percent of imports of the subject merchandise into the United States from Brazil. Steel wheels are normally sold to OEMs in the United States on the basis of long-term requirements contracts. We found that shipments to the United States by Fumagalli during the February 1-July 31, 1988 investigation period were pursuant to agreements executed in November 1986. Therefore, under § 353.38(a) of our regulations, we extended the period of investigation for Fumagalli to seven months by including November 1986 as well. See *Certain Forged Steel Crankshafts from Japan*, 52 FR 17999 (1987) and *Certain Granite Products from Italy*, 53 FR 27187 (1988). The period of investigation for Borlem S.A. and BNE is February 1, 1988 through July 31, 1988.

**Fair Value Comparisons**

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price for sales of wheels to OEMs with foreign market value for sales of wheels to OEMs in Brazil. Since there were no viable rim sales in the home market or third countries, we compared the United States price for rim sales to BNE's sole U.S. rim customer, an unrelated wheel customizer, with a foreign market value based on constructed value.

Although not expressly required by the Act, the Departmet has a long-standing practice of calculating a separate dumping margin for each manufacturer or exporter investigated. We have concluded, however, that, for purposes of this investigation, Borlem S.A. and BNE are not separate, and that it is appropriate to calculate a single, weighted-average margin for Borlem S.A. and BNE.

The administrative record establishes that Borlem S.A. holds over 95 percent of the voting capital and over 73 percent of the total capital of BNE. Since the vice president of Borlem S.A. is the president of BNE and the financial director of Borlem S.A. is financial director of BNE, there is common access to pertinent sales and manufacturing information. Even though each company maintains separate manufacturing facilities and sales operations, the production facilities at both companies consist of similar types of equipment. Therefore, it would not be necessary to retool extensively either plant's facilities before implementing a decision to restructure either company's manufacturing priorities. Given these facts, it would be incorrect to conclude that these entities constitute two separate manufacturers or exporters under the dumping law. See *Certain Granite Products from Spain*, 53 FR 24337 (1988).

**United States Price**

As provided in section 772(b) of the Act, we used purchase price to represent the United States price for sales of steel wheels made by Borlem S.A. to an unrelated purchaser prior to importation of the merchandise into the United States.

The Department also determined that purchase price and not exporter's sales price was the most appropriate indicator of United States price for Fumagalli based on the following elements:

1. The merchandise was purchased or agreed to be purchased prior to the date of importation from the manufacturer or producer of the merchandise for exportation to the United States.

2. The selling agent located in the United States acted only as a processor of sales-related documentation and as a communication link with the unrelated U.S. buyers.

3. The wheels sold to OEMs were made-to-order and not sold through inventory. Although a party related to the seller took title to the wheels and held them in its warehouse after the sale was made, this was only to accommodate the "just-in-time" delivery terms stipulated in the requirements contract negotiated between the Brazilian producer and the U.S. OEM purchaser. All terms of the sale were settled in this contract and were not changed by the related party when it released the wheels to the U.S. OEM purchaser.

4. Warehousing for "just-in-time" delivery was the customary channel of trade for wheels sold by Fumagalli to the U.S. OEM purchaser.

We calculated purchase price based on the packed ex-factory prices to unrelated purchasers in the United States. Where appropriate, we made deductions for brokerage and handling, foreign inland freight, ocean freight, marine insurance, U.S. duty, and U.S. inland freight. In accordance with section 772(d)(1)(C) of the Act, we made additions for indirect taxes not collected by reason of the exportation of the merchandise.

**Foreign Market Value**

We calculated foreign market value for wheel sales by Fumagalli and Borlem S.A. based on home market packed prices to unrelated purchasers in

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accordance with section 773(a) of the Act.

When basing foreign market value on home market prices, we made deductions, where appropriate, for inland freight, and inland insurance. We deducted the home market packing cost and added U.S. packing costs. We made circumstance of sale adjustments for differences in credit, post-sale warehousing expenses, and indirect taxes between the two markets.

In accordance with section 773(a)(4)(C) of the Act, we made adjustments to similar merchandise to account for differences in the physical characteristics of the merchandise where there were no identical products in the home market with which to compare products sold in the United States. These adjustments were based on differences in the costs of materials, direct labor and factory overhead.

In accordance with section 773(a)(2) of the Act, we used the constructed value of the exported merchandise to determine foreign market value for BNE, since no viable home market or third country rim sales were found during the period of investigation. The constructed value was based upon the most recent information submitted by BNE and included adjustments for calculation errors noted by the company prior to the verification.

Section 773(e)(1)(A) of the Act directs that foreign market value shall be constructed as of the date of exportation. At the same time, however, § 353.56(a)(1) of our regulations requires that currency conversions for "purchase price" transactions be made using the exchange rate in effect on the date of the U.S. sale. Previous investigations have shown that in hyperinflationary economies, when the date of sale occurs in a month preceding the date of shipment, application of the earlier date of sale exchange rate may result in distortions. Nominal increases in cost between the date of sale and the date of shipment are accounted for by using monthly replacement costs to construct foreign market value; however, the decreased value of the currency, in which those costs are expressed, remains unadjusted.

In consideration of the above, we calculated foreign market value for BNE using the exchange rate in effect on the date of sale as prescribed in our regulations. In addition, a circumstance of sale adjustment was made prior to currency conversion, eliminating the artificial distortion of value caused by the rapid devaluation of Brazil's currency. See *Tubeless Steel Disc Wheels from Brazil*, 53 FR 34566 (1988).

**Currency Conversion**

When calculating foreign market value, we normally make currency conversions in accordance with § 353.56 of our regulations, using the certified exchange rates furnished by the Federal Reserve Bank of New York. Since the Federal Reserve Bank of New York stopped providing exchange rate information for Brazil prior to the period of this investigation, we used the monthly exchange rates provided by the International Monetary Fund.

**Verification**

The verification was conducted from January 16 through February 3, 1989 and on February 6, 1989, using standard verification procedures, including examination of relevant accounting records and original source documents provided by the respondents. With the exception of BNE, the information used in reaching the preliminary determination in this investigation was based upon data reviewed during our verification.

Our verification of BNE's submitted constructed value data was also conducted during the above stated period. Pending further review of this complex constructed value data, we have based BNE's preliminary determination upon the company's submitted constructed value data. The continuing review of the verification results and constructed value data may lead to decisions which produce results differing from these preliminary results.

Our verification reports will be available to all parties for comment shortly after publication of this preliminary notice.

**Preliminary Results**

We preliminarily determine that steel wheels from Brazil are neither being, nor are likely to be, sold in the United States at less than fair value as provided in section 733 of the Act.

**ITC Notification**

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the consent of the Assistant Secretary for Import Administration.

If our final determination is affirmative, then the ITC will determine no later than 120 days after the date of this preliminary determination or 45 days after the final determination, whichever is later, whether these imports are materially injuring, or threaten material injury to, a United States industry.

**Public Comment**

In accordance with § 353.47 of the Department's regulations, if requested within ten days of publication of this notice, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 1:00 p.m., on April 10, 1989, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Assistant Secretary for Import Administration, Room B-099, at the above address within ten days of the publication of this notice.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed.

In addition, fifteen copies of the business proprietary version and seven copies of the nonproprietary version of the prehearing briefs must be submitted to the Assistant Secretary at least seven days prior to the scheduled date of the public hearing. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, at the above address, and will be considered if received not less than 30 days before the final determination is due or, if a hearing is held, within seven days after the hearing transcript is available.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

**Jan W. Mares,**

*Assistant Secretary for Import Administration.*

Date: February 24, 1989.

[FR Doc. 89-4887 Filed 3-1-89; 8:45 am]

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**[C-201-406]**

## Fabricated Automotive Glass From Mexico; Preliminary Results of Countervailing Duty Administrative Review

**AGENCY:** International Trade Administration/Import Administration, Commerce.



**ACTION:** Notice of preliminary results of Countervailing Duty Administrative Review.

**SUMMARY:** The Department of Commerce has conducted an administrative review of the countervailing duty order on fabricated automotive glass from Mexico. We preliminarily determine the total bounty or grant to be zero for the period January 1, 1988 through December 31, 1988. We invite interested parties to comment on these preliminary results.

**EFFECTIVE DATE:** March 2, 1989.

**FOR FURTHER INFORMATION CONTACT:** Christopher Beach or Bernard Carreau, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

**SUPPLEMENTARY INFORMATION:**

**Background**

On December 11, 1986, the Department of Commerce ("the Department") published in the **Federal Register** (51 FR 44652) the final results of its last administrative review of the countervailing duty order on fabricated automotive glass from Mexico (50 FR 1908; January 14, 1985). On January 28, 1987 and January 30, 1987, PPG Industries and the Government of Mexico, respectively, requested in accordance with 19 CFR 355.10 an administrative review of the order. We published the initiation on February 23, 1987 (52 FR 5479). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

**Scope of Review**

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 et seq. of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s).

Imports covered by this review are shipments of Mexican fabricated automotive glass, including tempered and laminated automotive glass. During the review period, such merchandise was classifiable under items 544.3100 and 544.4120 of the Tariff Schedules of the United States Annotated. This merchandise is currently classifiable under HTS items 7007.11.00, 7007.19.00, 7007.21.00 and 7007.21.50. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period January 1, 1988 through December 31, 1988 and 14 programs.

**Analysis of Programs**

*(1) FOMEX*

The Fund for the Promotion of Exports of Mexican Manufactured Products ("FOMEX") is a trust of the Mexican Treasury Department, with the National Bank of Foreign Trade acting as trustee for the program. The National Bank of Foreign Trade, through financial institutions, makes FOMEX loans available at preferential rates to Mexican exporters and U.S. importers for two purposes: pre-export financing and export financing. We consider both pre-export and export FOMEX loans to confer export bounties or grants since these loans are given at preferential rates only on merchandise destined for export.

The exporters were able to tie both types of FOMEX loans to their exports to specific countries. We verified that the two known exporters of this merchandise did not receive any FOMEX loans on shipments to the United States during the review period. Therefore, we preliminarily determine that there was no benefit from this program during the review period.

*(2) FICORCA*

On December 20, 1982, the Government of Mexico and the Banco de Mexico established the Trust Fund for Coverage of Risks ("FICORCA"), which operates through credit institutions. All Mexican firms with registered long-term debt in foreign currency and payable abroad to foreign financial institutions or suppliers were able to purchase, at a controlled rate, the amount in dollars necessary to pay the principal on that debt.

In *Unprocessed Float Glass from Mexico, Countervailing Duty Determination* (49 FR 23097; June 4, 1984), we determined that the FICORCA program was available to all Mexican firms with foreign indebtedness and that it was not targeted to a specific industry or region, and that it was not tied to exports. During the first administrative review of this countervailing duty order, we reinvestigated the FICORCA program and reaffirmed our determination that it is not countervailable. (*See, Fabricated Automotive Glass from Mexico; Final Results of Countervailing Duty Administrative Review* (51 FR 44652; December 11, 1986)).

The petitioner, PPG Industries, Inc. ("PPG"), requested that the Department reevaluate FICORCA in light of new information and/or changes to existing regulations. PPG asserts that: (1) Capitalization of unpaid interest on FICORCA debt provides a benefit equalling the difference between what the auto glass companies would have paid in the commercial sector and the amounts they actually paid; (2) special permission from the Mexican government is required to enroll nonbank debt, such as commercial paper, in FICORCA; (3) the Mexican government allowed companies in the Vitro group to provisionally enroll unrescheduled debt in the program; (4) companies in the Vitro group converted a portion of the FICORCA debt into floating rate notes to avoid the 15 percent withholding tax levied on interest payments; and (5) Mexican firms with foreign debt enrolled in FICORCA could capitalize this debt and benefit from the sale of their FICORCA contracts.

All FICORCA contracts are structured so that regular, minimum interest payments are required. In the early stages of the loan, the minimum payment is less than the interest payment due. The remaining unpaid interest is capitalized and added to the outstanding principal. As a result, the debt increases and subsequent interest payments are computed based on a larger balance. In the latter stages of repayment, the firm is faced with a balloon payment and higher interest amounts. We find no benefit with this method of payment because the firm is not relieved of any debt obligations. The capitalization of interest is no different from what would happen on a commercial loan.

According to the terms of the FICORCA regulations, there is no special permission required to enroll nonbank debt. Mexican firms with foreign debt payable to banks, finance companies or suppliers, were eligible to participate in the FICORCA program.

When the period for registering debt into FICORCA closed, some companies had not yet concluded their FICORCA negotiations. The creditors issued a "provisional" notice that the debt was in a rescheduling process, which many firms referred to as provisional enrollment in FICORCA. The Vitro group reported long-term foreign debt "provisionally" enrolled in FICORCA in notes to its 1984 financial statements. This merely meant that, until the creditors submitted a written statement

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to FICORCA advising that the debt had been rescheduled, FICORCA contracts would not be issued to the company or group. As stipulated in the FICORCA regulations, foreign debt had to be rescheduled prior to enrollment in the FICORCA program.

On fixed-interest rate notes, the Mexican government taxes the interest income of the foreign bank at the rate of 15 percent, so that 15 percent of the company's interest payment goes to the Government of Mexico and 85 percent goes to the foreign bank. Floating rate notes are exempt from the 15 percent tax on interest income, and all of the interest paid on floating rate notes goes to the foreign bank. In either case, the Mexican firms continue to pay the full amount of the interest. Therefore, we preliminarily determine that there is no benefit to Mexican firms in the conversion of FICORCA debt into floating rate notes.

FICORCA contracts are negotiable instruments. As such, FICORCA does not participate in the transfer or sale of such contracts and only requires that the new firm have foreign debt registered with the Secretaria de Hacienda y Credito Publico. Approval from the foreign creditor must also be obtained. When a FICORCA contract is sold, a new contract is not issued to the new firm, and the terms and conditions on the original contract remain in force.

The information PPG presented on new programs or changes to existing programs contains various features of the FICORCA program that are part of the original regulations. We believe that this information does not change the Department's understanding of the operation of the program or the reasoning that led to our decision in the final determination in float glass and in the final results of the first administrative review of automotive glass. Therefore, we preliminary reaffirm our prior determination that FICORCA is not countervailable.

*(3) Other Programs*

We also examined the following programs and preliminary determine that neither company used them during the review period:

(A) CEPROFI;
(B) Guarantee and Development Fund for Medium and Small Industries ("FOGAIN");
(C) Fund for Industrial Development ("FONEI");
(D) Import duty drawback;
(E) National Development Program preferential discount;
(F) Article 15/94 loans;
(G) Preferential state investment incentives;
(H) State tax incentives;
(I) NAFINSA loans;
(J) BANCOMEXT loans;
(K) Debt/Equity swaps;
(L) CEDI tax certificates; and
(M) CEDI's for foreign trade consortia.

**Preliminary Results of Review**

As a result of our review, we preliminary determine the total bounty or grant to be zero for 1988.

The Department intends to instruct the Customs Service to liquidate, without regard to countervailing duties, all shipments of this merchandise exported on or after January 1, 1988 and on or before December 31, 1988.

Further, the Department intends to instruct the Customs Service to waive deposits of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. This deposit waiver shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 30 days from the date of publication or the following workday. Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.10

Date: February 23, 1989.

Jan W. Mares,

*Assistant Secretary for Import Administration.*

[FR Doc. 89-4899 Filed 3-1-89; 8:45 am]

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[C-122-085]

**Preliminary Affirmative Countervailing Duty Determination: New Steel Rail, Except Light Rail, From Canada**

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to producers, manufacturers or exporters in Canada of new steel rail, except light rail, ("steel rail") as described in the "Scope of Investigation" section of this notice. The estimated net subsidy is 103.55 percent *ad valorem* for all manufacturers, producers or exporters in Canada of steel rail, except the Algoma Steel Corporation Ltd. (Algoma), which is excluded from this preliminary determination. The estimated net subsidy for Algoma is 0.05 percent *ad valorem*, which is *de minimis*. We have calculated a separate estimated net subsidy for Algoma because its rate differs significantly from the country-wide rate. If this investigation proceeds normally, we will make a final determination on or before May 9, 1989.

EFFECTIVE DATE: March 2, 1989.

FOR FURTHER INFORMATION CONTACT: Roy A. Malmrose, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-5414.

SUPPLEMENTARY INFORMATION:

**Preliminary Determination**

Based on our investigation, we preliminarily determine that certain benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers or exporters in Canada of steel rail. For purposes of this investigation, the following programs are preliminarily found to confer subsidies:

*Federal Programs*

- Debenture Guarantees Provided to Sydney Steel Corporation (Sysco).
- Forgiven Wharf Loan.
- Regional Development Incentives Program.
- Certain Investment Tax Credits.

*Joint Federal-Provincial Programs*

- General Development Agreements.
- Economic and Regional Development Agreements.

*Provincial Programs*

- Operating Grants Provided to Sysco.
- Long-Term Loan Guarantees Provided to Sysco.
- Equity Infusions Provided to Sysco.

We preliminarily determine the estimated net subsidy to be 103.55 percent *ad valorem* for all manufacturers, producers or exporters in Canada of steel rail, except Algoma, which is excluded from this preliminary determination.

**Case History**

Since the publication of the Notice of Initiation in the Federal Register (53 FR 41394, October 21, 1988), the following events have occurred. On October 27, 1988, we presented a questionnaire to the Government of Canada in Washington, DC, concerning petitioner's allegations. On November 17, 1988, petitioner filed a request that the preliminary determination be postponed. Pursuant to section 703(c)(1)(A) of the Act, we postponed the preliminary determination to no later than February 23, 1989 (53 FR 49562, December 8, 1988).

On December 8, 1988, we received responses from the Government of Canada (GOC), the Provincial Governments of Nova Scotia (GONS) and Ontario, Sysco and Algoma. The response of the GOC listed five non-producer exporters of steel rail to the United States: Grand Valley Steel Ltd., Nortrack Ltd., Sessenwein Inc., C.P. Rail Ltd. and Bernard Railtrack Export Inc. We requested that these exporters answer the original questionnaire.

On December 23, 1988, we delivered a supplemental/deficiency questionnaire to the GOC. On January 13, 1989, we received responses from the GOC, GONS, and the Government of Ontario to the supplemental/deficiency questionnaires, and responses to the original questionnaire from the following three non-producer exporters: Grand Valley Steel Ltd., Nortrack Ltd. and Sessenwein Inc. On January 18, 1989, we received responses to our supplemental/deficiency questionnaire from Algoma, Sysco and Algoma Central Railway.

On February 10, 1989, we delivered an additional supplemental/deficiency questionnaire to the GOC requesting further information from the GOC, GONS and Sysco. On February 17, 1989, we received responses from the GONS and Sysco to this questionnaire. On February 21, 1989, we received the response from the GOC.

On February 21, 1989, we also received a response to our original questionnaire from C.P. Rail Ltd., the fourth non-producer exporter of steel rail. We have not received a response from Bernard Railtrack Export Inc., the remaining non-producer exporter of steel rail.

On January 17, 1989, we received further subsidy program allegations from petitioner. We declined to initiate an investigation on these additional programs and have informed all interested parties of our decision.

**Scope of Investigation**

The products covered by this investigation are new steel rail, except light rail, currently classifiable under HTS item numbers 7302.10.1020, 7302.101.1040, 7302.10.5000, and 8548.00.0000.

Steel rail, whether of carbon, high carbon, alloy or other quality steel, includes but is not limited to, standard rails, all main line sections (over 60 pounds per yard), heat-treated or head-hardened (premium) rails, transit rails, contact rail (or "third rail") and crane rails. Rails are used by the railroad industry, by rapid transit lines, by subways, in mines and in industrial applications.

Specifically excluded from this investigation are light rails which are 60 pounds or less per yard. Also excluded are relay rails which are used rails taken up from a primary railroad track and relaid in a railroad yard or on a secondary track.

**Analysis of Programs**

For purposes of this preliminary determination, the period for which we are measuring subsidies ("the review period") is calendar year 1987 for Algoma and April 1, 1987–March 30, 1988 for Sysco. These review periods correspond to the respective companies' fiscal years. Normally, we would select the calendar year as the review period for all companies if the companies under investigation had different fiscal years. We have chosen Sysco's fiscal year as that company's review period in order to measure more accurately the subsidies received over time, which have been reported to the Department on a fiscal year basis.

Petitioner alleged that Sysco is unequityworthy and uncreditworthy. We have consistently held that the government provision of equity does not *per se* confer a subsidy. Government equity purchases bestow countervailable benefits only when they occur on terms inconsistent with commercial considerations. When there is no market-determined price for equity, it is necessary to determine whether the company was a reasonable commercial investment or, in other words, whether the company was "equityworthy."

The GONS is the sole owner of Sysco, which it purchased in 1988. Sysco has never issued shares; therefore, we must determine whether Sysco was equityworthy in each instance when the GONS made an equity infusion. We do not reach the question of whether Sysco was equityworthy in 1988. The initial purchase of Sysco by the GONS occurred prior to the 15 year period in which we are examining all the financial assistance received by Sysco which may have benefited the company during the review period. We are using 15 years because it represents the average useful life of assets in the steel industry as determined by the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System. (Use of the IRS tables is in accordance with past practice and is described in detail in the "Subsidies Appendix" attached to the *Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Cold-Rolled Carbon Steel and Flat-Rolled Products from Argentina*, 49 FR 18006, April 26, 1984 (*Subsidies Appendix*).)

Although Sysco's equityworthiness in 1988 and the GONS's equity infusion in 1988 will not be examined, the GONS made additional equity infusions into Sysco in the period 1977–1988. Therefore, we have preliminarily determined Sysco's equityworthiness in each year in which it received equity capital from the GONS.

A company is considered unequityworthy if it is deemed unable to generate a reasonable rate of return within a reasonable period of time. In making our equityworthiness determinations, we assess the company's current and past financial health, as reflected in various financial indicators taken from its financial statements, and where appropriate, internal accounts. The indicators we examine include the following ratios: rate of return on equity, gross margin to sales, financial expenses to sales, the current ratio and debt to equity. We give great weight to the company's recent rate of return on equity as an indication of financial health and prospects. Based on the factors described above, we preliminarily determine that Sysco was unequityworthy in each year in which it received an equity infusion in the period from 1977–1988.

Petitioner's other broad allegation is that Sysco is uncreditworthy. We consider a company creditworthy if it appears that it will have sufficient revenues or resources to meet its costs and fixed financial obligations, absent government intervention. Like our equityworthiness test, to determine the creditworthiness of a company we analyze the company's present and past health, as reflected in various financial

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indicators calculated from its financial statements. We give great weight to the company's recent past and present ability to meet its financial cost obligations with its cash flow. Based on an analysis of the factors described above, we preliminarily determine Sysco to be uncreditworthy for the period from 1973 to 1986.

We have preliminarily determined that Sysco is uncreditworthy despite the fact that it has received financing from private commercial sources. We are discounting the importance of such financing because it appears that Sysco would not have recieved this financing but for the guarantees provided by the GOC and the CONS.

With respect to the calculations of benefits from grants and government loan and debenture guarantees received by Sysco, we used as the discount rate for allocating the benefits over time the benchmark interest rate calculated for purposes of analyzing the interest rate on Sysco's debentures and loans which were guaranteed by either the federal or provincial government (see sections I.A.1. and I.C.2.). We were unable to use Sysco's weighted cost of capital, which is our preferred method of deriving the discount rate, for the following reasons. In the years 1973–1978, we do not have information on the national average rate of return on equity. In the years 1977–1988, either Sysco's equity as a percent of total capitalization was negative or Sysco's capitalization in its entirety was negative. Consequently, we could not meaningfully employ our weighted cost of capital formula.

Sysco received grants or equity infusions, which we are treating as grants (see section I.C.3.), in every year during the period 1974–1988. In accordance with past practice (see *Final Affirmative Countervailing Duty Determination: Oil Country Tubular Goods from Canada*, 51 FR 15037, April 22, 1986 (*OCTG*)), for all the programs which provided non-recurring grants and for all the benefits received by Sysco which we treated as non-recurring grants, we first determined if the benefit amount received by Sysco, in each of the years in which the benefit was received, was more than 0.50 percent of the company's total sales for that year. In every year, the benefit amount exceeded the 0.50 percent rate; therefore, for all of the grants and equity infusions received by Sysco, unless otherwise specified, we allocated the benefit over the average useful life of equipment in the steel industry which is 15 years. Using the above methodology, we also allocated over 15 years, unless otherwise specified, the benefit from the grants received by Algoma.

Consistent with our practice in preliminary determinations, when a response to an allegation denies the existence of a program, receipt of benefits under a program, or eligibility of a company or industry under a program, and the Department has no persuasive evidence showing that the response is incorrect, we accept the response for purposes of the preliminary determination. All such responses, however, are subject to verification. If the response cannot be supported at verification, and a program is otherwise countervailable, the program will be considered a subsidy in the final determination.

As mentioned in the "Case History" section above, we have received questionnaire responses from two producers and four non-producer exporters. Each of the respondent non-producer exporters has denied the direct receipt of benefits from the programs under investigation. Therefore, the steel rail exports of each respondent non-producer exporter will be subject to the estimated net subsidy of the producer from which it purchased the steel rail. As the best information available, we are assigning the estimated net subsidy rate of Sysco to the non-respondent non-producer exporter, Bernard Railtrack Export Inc.

**I. Programs Preliminarily Determined to Confer Subsidies**

We preliminarily determine that subsidies are being provided to manufacturers, producers or exporters in Canada of steel rail under the following programs:

*A. Federal Programs*

1. Debenture Guarantees Provided to Sysco

Petitioner alleged that the federal and provincial governments have provided loan guarantees to Sysco. (Provincial loan guarantees are discussed in sections I.C.2. and II.A.). According to Sysco's questionnaire response and its financial statements, in the years 1974–1978, Sysco issued two debenture series; one was guaranteed by the Cape Breton Development Corporation (Devco), a crown corporation of the GOC, and the other was guaranteed by the GONS. The series guaranteed by Devco was denominated in Canadian dollars; the series guaranteed by the GONS was denominated in U.S. dollars. (Both guarantees will be discussed in this section). No fee was paid for these guarantees.

These guarantees were provided to a specific enterprise, therefore, we preliminarily consider that they are countervailable for the following reasons. According to the questionnaire responses, a fee would not have been charged for a commercial guarantee similar to the guarantees provided by the federal and provincial governments. However, we are skeptical that a firm in the same financial position as Sysco would have been able to obtain such a guarantee. Therefore, for purposes of this preliminary determination, we analyzed the extent to which Sysco was able to issue the debentures on terms more favorable than the benchmark financing.

As described in the "Analysis of Programs" section above, we have preliminarily determined that Sysco has been uncreditworthy throughout the period 1973–1988. In the case of uncreditworthy companies, we assume that private lenders either would not provide loans to such companies or would require a premium interest rate. In selecting an appropriate benchmark, we must formulate an approximation of the premium interest rate a commercial source of financing would charge an uncreditworthy company (see the *Subsidies Appendix*). The first step in the formulation of such an interest rate is to determine the highest commonly-available commercial interest rate a creditworthy borrower would have to pay in order to receive a loan. This interest rate is the rate that would be charged a marginally creditworthy company.

The next step is the calculation of a risk premium. This amount represents the difference in risk between a marginally creditworthy company and an uncreditworthy company. In previous cases (See *Certain Carbon Steel Products from Brazil; Final results of Countervailing Duty Administrative Review*, 52 FR 829, January 9, 1987), we have derived this risk premium by examining the difference between *Moody's* Aaa and Baa corporate bond rates and calculating the percentage this difference represents of the prime interest rate in the United States. We have found that the risk premium as calculated by this approach is 12 percent. If the financing is not in U.S. currency, this percentage is then applied to the prime interest rate in the country concerned to get a comparable measure of the risk premium in the local economy. The final step in our calculation of the appropriate benchmark for an uncreditworthy company is to add the risk premium to the highest long-term commercial interest rate commonly-available to companies in the country in question.

For the debentures denominated in Canadian dollars, we calculated the benchmark interest rate as described below. According to the federal government response, the Canadian government does not maintain statistics on the highest long-term commercial interest rate commonly-available to companies. Therefore, for purposes of the first step of our calculations we chose a surrogate interest rate using the following approach. If the national average short-term interest rate in the year the debenture was issued, as represented by the interest rate on 90-day commercial paper, was greater than the national average long-term interest rate in the year the debenture was issued, as represented by the average yield on long-term corporate bonds, we used the national average short-term rate in 1987. If the national average short-term interest rate in the year the debenture was issued was less than the national average long-term interest rate in the year the debenture was issued, we used the national average long-term interest rate in the year the debenture was issued.

We added to the chosen interest rate the risk premium, which we calculated according to the methodology described above as 12 percent of the Canadian prime rate. We used the resulting interest rate as our benchmark for the debentures denominated in Canadian currency.

With respect to the debentures denominated in U.S. dollars, we followed the same general approach described above in constructing a benchmark. We used the rates on Baa corporate bonds as the highest long-term commercial rate commonly available to companies and 12 percent of the U.S. prime rate for the calculation of the risk premium. Based on this methodology, we derived a benchmark for the debentures denominated in U.S. dollars.

We compared the two benchmarks formulated above to the interest rates received on the two series of debentures issued by Sysco and found that the interest rates on Sysco's debentures were lower than the respective benchmarks. Therefore, we preliminarily determine that the guarantees provided to Sysco by the GOC and the GONS are countervailable.

To determine the benefit, we calculated the payment differential between the benchmark financing and the guaranteed debentures using our loan methodology for long-term loans which is described in the *Subsidies Appendix* and has been described in numerous previous cases (See *Final Affirmative Countervailing Duty Determination; Certain Granite Products from Spain*, 53 FR 24340, June 28, 1988). We allocated the benefit over time using as the discount rate the benchmark interest rates described above. (We were not able to base the discount rate on Sysco's weighted cost of capital for the reasons discussed above in the "Analysis of Programs" section). We then divided the benefit attributable to the review period by Sysco's total sales and calculated an estimated net subsidy of 1.45 percent *ad valorem* for Sysco.

2. Forgiven Wharf Loan

According to Sysco's questionnaire response, in 1974, the federal government provided Sysco with a loan to construct a loading wharf. In 1981, the federal government announced that the loan would be forgiven. In 1982, Sysco removed this loan from its long-term liabilities as shown in its financial statements.

We preliminarily determine that the benefit provided by the loan forgiveness is countervailable because it was provided to a specific enterprise. Furthermore, we preliminarily determine that the outstanding principal and accrued interest as of 1982 should be treated as a grant received in 1982 because the loan has been forgiven.

Using the declining balance methodology and the benchmark interest rate described in the previous section as the discount rate, we allocated the benefit over 20 years, which represents the average useful life of a wharf according to the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System. We then divided the benefit attributable to the review period by Sysco's total sales and calculated an estimated net subsidy rate of 1.16 percent *ad valorem* for Sysco.

3. Regional Development Incentive Program (RDIP)

The RDIP was administered by the Department of Regional Economic Expansion (DREE) until its replacement with the Industrial Regional Development Program (IRDP) in 1983. It was established in 1969 for the purpose of creating stable employment opportunities in areas of Canada where employment and economic opportunities are chronically low, namely the Atlantic provinces. The DREE offered incenties based on a case-by-case evaluation of capital investment projects. Projects that could proceed without RDIP assistance were ineligible. Assistance was provided in the form of grants or loan guarantees.

Although the program was terminated in 1983, RDIP grants were provided to both Sysco and Algoma, prior to its termination. We preliminarily determine that the RDIP grants are countervailable because the benefits are limited to companies located within specific regions.

Sysco received four RDIP grants; Algoma received two RDIP grants. According to Algoma's questionnaire response, one of its grants was specifically tied to the production of products not under investigation. Therefore, consistent with past practice (see *OCTG*), we did not include this grant in our calculations. Algoma's other grant was approved in 1972.

To calculate a benefit we used the declining balance methodology. We used as the discount rate for Algoma the national average long-term interest rate in Canada in 1972. (We were unable to use our weighted cost of capital formula because we do not have information on the rate of return on equity in Canada in 1972). We used as the discount rate for Sysco the interest rate benchmark discussed in section I.A.1. On this basis, we calculated the benefits attributable to the review period and allocated them to the respective total sales of Algoma and Sysco. We calculated the estimated net subsidy to be 0.03 percent *ad valorem* for Algoma and 1.01 percent *ad valorem* for Sysco.

4. Certain Investment Tax Credit (ITCs)

There are a number of categories of ITCs in Canada and varying tax credit percentage levels within some of the categories. Based on our previous examination of all types of ITCs in Canada (see *OCTG* and *Final Affirmative Countervailing Duty Determination: Certain Fresh Atlantic Groundfish from Canada*, 51 FR 10041, March 24, 1986 (*Groundfish*)), we initiated an investigation on the following four types of ITCs: (1) tax credits of three and 13 percent, above the basic seven percent rate which we have previously found non-specific, for investment in "qualified property" located in certain regions of Canada; (2) tax credits for investment in "certified property"; (3) tax credits for large companies of 10 percent above the basic twenty percent for investment in capital equipment used for scientific research; and (4) tax credits for investment in transportation and construction equipment.

Canadian tax law provides that ITCs may be subtracted from taxes owed, but if no taxes are owed (either because a company is initially in a tax loss position or because only some of the

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ITCs have been used to satisfy all tax liability), those excess ITCs earned after April 19, 1983 have a refundable, one-time cash value equal to 20 percent of the initial, face value of the ITC (40 percent for small businesses).

According to its questionnaire response, Sysco, as a provincially-owned corporation, is not liable for federal tax. During and prior to the review period, Sysco made numerous capital investments and experienced large losses. However, because the company is not liable for federal taxes, it was not eligible for a refund of taxes under the ITC law.

Algoma, in its questionnaire response, stated that it benefited from the three percent tax credit, above the basic rate of seven percent, for investment in "qualified property" because it is located in northern Ontario and that it did not use the other ITCs under investigation. Furthermore, because Algoma did not owe taxes on the tax return filed in the review period, it received a refund under the procedures described above.

We preliminarily determine that the three percent tax credit, above the basic rate of seven percent, for investment in "qualified property" is countervailable because it is limited to companies located in certain regions of Canada.

To calculate the benefit from the "qualified property" ITC, we followed our standard tax methodology. Under our tax methodology, we allocate an income tax benefit to the year in which the tax return was filed. Algoma received a refund on the tax return filed during the review period. Therefore, we consider the amount of the refund attributable to the three percent in excess of the basic rate of seven percent, to be the benefit Algoma received during the review period. We divided this benefit amount by Algoma's total sales for the review period and calculated an estimated net subsidy of 0.02 percent *ad valorem*.

*B. Joint Federal-Provincial Programs*

1. General Development Agreements (GDA)

GDAs provided the legal basis for various departments of the federal and provincial governments to cooperate in the establishment of economic development programs. The GDAs were umbrella agreements which stated general economic development goals. Ten-year GDAs were signed with most provinces in 1974.

Subsidiary agreements were signed pursuant to the GDAs. The subsidiary agreements were generally between particular federal and provincial government departments and addressed economic development and infrastructure needs. These agreements established various individuals types of economic development programs, delineated administrative procedures and set out the relative funding commitments of the federal and provincial governments. Subsidiary agreements were typically directed at establishing traditional government economic assistance programs, developing infrastructure, providing for economic development assistance for certain regions within the province, and providing financial assistance to specific regions, industries or enterprises.

Three such subsidiary agreements were signed between the federal government and the government of Nova Scotia. Two agreements were specifically designed to provide assistance to Sysco. The third provided for the funding of industrial development projects throughout the province.

We preliminarily determine that funds provided to Sysco under the first two agreements are countervailable in their entirety because they provided grants to a specific enterprise. With respect to the funds provided under the Industrial Development Subsidiary Agreement, we preliminarily determine that the portion of funds provided by the GONS are not countervailable because the assistance is not limited to a specific enterprise or industry or group of enterprises or industries in Nova Scotia. However, we also preliminarily determine that the portion of funds provided by the GOC are countervailable because they are limited to companies in a particular region of Canada (*i.e.*, the Province of Nova Scotia).

With respect to the Industrial Development Subsidiary Agreement, we note that although the agreement provided benefits to a wide range and number of industries, an amendment was made to the agreement, subsequent to its implementation, providing specific funds for Sysco. We will examine this amendment and whether it constitutes a discretionary governmental action which provided a benefit to a specific enterprise.

No assistance to Algoma was provided under the Canada/Ontario GDA or corresponding subsidiary agreements.

We calculated the benefit conferred by the grants using the discount rate for Sysco referred to above (see section I.A.1.), and our declining balance methodology. We divided the benefit attributable to the review period by Sysco's total sales and calculated an estimated net subsidy of 24.72 percent *ad valorem* for Sysco.

2. Economic and Regional Development Agreements (ERDA)

ERDAs are essentially a continuation of the GDAs. ERDAs were signed with every province and territory in the early 1980's. Similar to GDA subsidiary agreements, ERDA subsidiary agreements establish programs, delineate administrative procedures and set up the relative funding commitments of the federal and provincial governments.

Two subsidiary agreements were signed between the federal government and the province of Nova Scotia which related to Sysco. The first provided for grants to fund the modernization of Sysco's operations. The second provided for the funding of economic planning projects throughout the province.

We preliminarily determine that funds provided to Sysco under the first agreement are countervailable in their entirety because the agreement provides grants to a specific enterprise. With respect to the funds provided under the second agreement, we preliminarily determine that the portion of funds provided by the GONS are not countervailable because the assistance is not limited to a specific enterprise or industry or group of enterprises or industries in Nova Scotia. However, we also preliminarily determine that the portion of funds provided by the GOC are countervailable because they are limited to companies in a particular region of Canada (*i.e.*, the Province of Nova Scotia).

No assistance under the Canada/Ontario ERDA was provided to Algoma.

To calculate the benefit we used the same methodology described in the previous section. We calculated an estimated net subsidy of 4.86 percent *ad valorem* for Sysco.

*C. Provincial Programs—Province of Nova Scotia*

1. Operating Grants to Sysco

The GONS has provided Sysco with "operating grants" to cover interest on long-term debentures and other operating costs.

We preliminarily determine that these operating grants are countervailable because they provide funds to a specific enterprise. We also determine that these grants are non-recurring grants because of their exceptional nature and the uncertainty that they will continue. Furthermore, we note that these operating grants have not been provided under any particular long-standing



provincial program. Instead, it appears from the information in the questionnaire responses that the funds are provided by the GONS to Sysco according to the irregular financial needs of the company in a particular year.

To calculate the benefit, we used the same methodology described in the previous section. The estimated net subsidy is 29.61 percent *ad valorem* for Sysco.

2. Long-Term Loan Guarantees Provided to Sysco

The province of Nova Scotia guarantees all of the long-term loans made to Sysco by banks and trust companies. These guarantees were provided to a specific enterprise; therefore, we preliminarily consider that they are countervailable for the following reasons. According to the questionnaire responses, a fee would not have been charged for a commercial guarantee similar to the guarantees provided by the GONS. However, we are skeptical that a firm in the same financial position as Sysco would have been able to obtain such a guarantee. Therefore, for purposes of this preliminary determination, we analyzed the extent to which Sysco was able to obtain the long-term loans on terms more favorable than the benchmark financing.

We used as our benchmark for the long-term loans guaranteed by the GONS, the benchmark interest rate calculated in section I.A.1. pertaining to the debentures denominated in Canadian dollars guaranteed by the federal government. We compared this benchmark to the interest rates on long-term loans received by Sysco and found that the interest rates on Sysco's long-term loans were lower than the benchmark. Therefore, we preliminarily determine that the guarantees provided to Sysco by the GONS on Sysco's long-term loans are countervailable.

To determine the benefit, we calculated the payment differential between the benchmark financing and the guaranteed long-term loans using our loan methodology for long-term loans described in section I.A.1. We then divided the benefit attributable to the review period by Sysco's total sales and calculated an estimated net subsidy of 14.11 percent *ad valorem* for Sysco.

3. Equity infusions

The province of Nova Scotia has made several equity infusions into Sysco. These equity infusions consisted of the conversion of outstanding debt to equity, and the provision of money for redemption of loans and capital construction. As noted in the "Analysis of Programs" section above, we have preliminarily found Sysco to be unequityworthy.

We normally calculate the benefit conferred by government equity infusions inconsistent with commercial considerations by determining the difference between the national average rate of return on equity and the rate of return on equity of the company under investigation. However, Sysco's financial statements indicate that the entire amount of the GONS's equity capital has been consumed. Therefore, the calculation of any rate of return on equity for Sysco would not be a meaningful measure. Furthermore, we believe that even if we could somehow calculate a rate of return on equity for Sysco, the difference between Sysco's rate of return, presumably a negative value, and the national average rate of return would be so great that the "grant cap" would be exceeded. We therefore treated all the equity infusions received by Sysco as grants.

We calculated the benefit from the equity infusions using the grant methodology described in previous sections (see, for example, section I.B.1.). We divided the benefit attributable to the review period by Sysco's total sales and calculated an estimated net subsidy of 26.63 percent *ad valorem* for Sysco.

**II. Programs Preliminarily Determined Not To Confer Subsidies**

We preliminarily determine that the following programs do not confer subsidies:

*A. Short-Term Loan Guarantees.*

The GONS also guarantees all of the demand loans made to Sysco by banks. We consider these loans to be short-term loans because they are listed under current liabilities in Sysco's financial statements.

The guarantees on these demand loans were provided to a specific enterprise; therefore, we preliminarily consider that they are countervailable for the following reasons. According to the questionnaire responses, a fee would not have been charged for a commercial guarantee similar to the guarantees provided by the GONS. However, we are skeptical that a firm in the same financial position as Sysco would have been able to obtain such a guarantee. Therefore, for purposes of this preliminary determination, we analyzed the extent to which Sysco was able to issue the loans on terms more favorable than the benchmark financing.

We used as our benchmark, the interest rate on 90-day commercial paper in Canada. (According to the GOC questionnaire response, this rate represents the national average short-term interest rate in Canada). We compared this benchmark to the interest rates received on the demand loans received by Sysco and found that the interest rates on Sysco's loans were higher than the benchmark. Therefore, we preliminarily determine that the guarantees provided to Sysco by the GONS on Sysco's demand loans are not countervailable.

*B. Iron Ore Freight Subsidy to Alogoma*

Algoma ships sintered iron ore pellets from its mine in Wawa, Ontario to its steel mill at Sault Ste. Marie by rail on the Algoma Central Railway (ACR). The ACR also operates the Agawa Canyon Tour Train which is an important tourist attraction in Northern Ontario.

In 1986, Algoma reconsidered its use of Wawa iron ore because the delivered cost of Wawa ore was not competitive when compared to the delivered cost of ore from alternative sources. In order to make the delivered cost of Wawa ore competitive, Algoma sought a reduction in ACR's freight rates.

Algoma considered closing its Wawa mine, if ACR did not reduce the freight rate to a competitive level. Such an action would have forced ACR to cease all operations, including its tour train operation.

To preserve the continued operation of ACR, the Ontario and the Federal Governments provided grants to the ACR. The grants were made under a joint federal-provincial program established under the "Canada-Ontario Subsidiary Agreement for Tourism Development" (COTDA), which is a subsidiary agreement under ERDA. The purpose of COTDA is to stimulate the development of tourism in Ontario.

Petitioner alleges that the grants received by ACR confer a benefit to Algoma since ACR reduced the freight rate charged to Algoma after receiving the grants from the two governments. Algoma states in its questionnaire response that since it could have bought iron ore from other sources at a cost lower than mining and transporting its own ore, it did not receive a benefit from the grants received by ACR.

We preliminarily determine that the grants provided to ACR do not confer a countervailable benefit to Algoma. Algoma has provided documentations indicating it was able to purchase iron ore at a cheaper price than the cost of mining its own ore at the Wawa mines and transporting it through ACR. Thus, the grants received by ACR do not

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provide a countervailable benefit to Algoma.

**III. Programs Preliminarily Determined Not to be Used**

We preliminarily determine that the following programs were not used by manufacturers, producers or exporters in Canada of steel rail during the review period:

*A. Federal Programs*

1. Industrial and Regional Development Program (IRDP).

The IRDP was established in 1983, replacing the RDIP. The program was designed to promote indistrial development in all regions of Canada through financial support in the form of grants, loans and loan guarantees. The IRDP program terminated on June 30, 1988. According to the responses, no financial assistance under this program was provided to the respondent companies under this program.

2. Loans under the Enterprise Development Programs (EDP)

The EDP was established in 1977 and terminated in 1983. It was designed to assist individuals, companies and corporations to enhance productivity in the manufacturing and processing sectors of the Canadian economy. According to the responses, the respondent companies did not receive any assistance under this program.

3. Program for Export Market Development (PEMD) and Promotional Projects Program (PPP)

The PEMD was consolidated and restructured in 1987 and now includes the former PPP. Support provided under the new program is either industry-initiated (former PEMD) or government-initiated (former PPP). Under the industry-initiated component, interest-fee loans are provided to industries requesting assistance in export market development. Under the government-initiated component, the GOC organizes and sponsors international trade fairs and missions. According to the responses, the respondent companies did not receive assistance under this program for sales to the United States.

4. Federal Expansion and Development/ Northern Ontario (FEDNOR)

FEDNOR, established in 1987 with a five-year mandate, was designed to promote economic development in Northern Ontario. The CORE Industrial program, as part of FEDNOR, provides assistance through loan insurance and grants for various projects. According to the responses, the respondent companies did not receive assistance under this program.

5. Community-Based Industrial Adjustment Program (CIAP) Grants

CIAP was established in 1981 as part of the Industrial and Labor Adjustment Program. It was terminated in 1984. Assistance under the CIAP was provided for capital projects to commercial enterprises located in areas affected by serious industrial dislocations. According to the responses, no assistance under this program was provided to the respondent companies.

6. Export Credit Financing

The Export Development Council (EDC) was created to facilitate Canada's export trade within the framework of the Canadian Export Development Act. The EDC, a self-sustaining Crown Corporation, insures and finances Canadian export sales. According to the responses, EDC did not finance or insure the sale of steel rail to the United States during the review period.

7. Defense Industry Productivity Program

The DIPP, administered by the Department of Regional and Industrial Expansion (DRIE) has several purposes. Among these purposes is the stimulation of exports of military hardware and the provision of assistance to upgrade equipment processes and facilities to make companies more competitive in bidding for military hardware contracts.

Algoma applied for DIPP grants for the installation of hot metal desulphurization facilities. DIPP funds were paid to Algoma in 1980 and 1981. We examined these grants in *OCTG*. Although the Department may determine that DIPP grants serve as export subsidies in other cases, we determined in *OCTG* that there were no conditions in the Algoma DIPP grant which were tied to export performance or which made the grant contingent on exports. Algoma has a large home market for desulfurized steel and products made from desulfurized steel. This DIPP grant benefits Algoma's entire production, and not exports alone. Thus, we preliminarily determine that this grant was not an export subsidy.

Although we have preliminarily determined that this program is not an export subsidy, we must still determine whether any benefits were received during the review period and if so whether this program is limited to a specific enterprise or industry or group of enterprises or industries. Consistent with the *Subsidies Appendix*, we divide the sum of all grants received in each year by the total sales of the company in the same year. Algoma received no other grants in 1980 and 1981. The calculated benefits in *OCTG* were *de minimis*, i.e., less than 0.50 percent. Therefore, as in *OCTG*, we expensed them in the year of receipt. Because the DIPP grants received by Algoma were expensed prior to the review period and because no DIPP grants were received by Algoma during the review period, we preliminarily determine that Algoma did not use this program. According to its questionnaire response, Sysco did not receive any grants under this program.

*B. Joint Federal-Provincial Programs*

Mineral Development Agreement (MDA) Benefits to Algoma

The MDA agreement is a subsidiary agreement pursuant to the Economic Regional Development Agreement between Canada and the Province of Ontario effective November 2, 1984. The MDA Subsidiary Agreement was implemented on June 17, 1985 with a five-year mandate. Its purpose is to aid and encourage Ontario's mineral industry. According to the responses, Algoma has not received assistance under the MDA subsidiary agreement.

*C. Provincial Programs*

1. Ontario Development Corporation (ODC) Export Support Loans, Other Loans and Loan Guarantees

This program was established to assist in the development and diversification of industries in Ontario. According to the responses, Algoma and Sysco have not received assistance under this program.

2. Provision of Electricity by Ontario Hydro to Algoma

Petitioner alleged that the government-owned power company in Ontario, Ontario Hydro, provides incentive rates for large industrial customers in off-peak hours. According to the response, Algoma did not purchase electricity from Ontario Hydro.

3. Income Tax Exemption for Sysco

As a crown corporation owned by the GONS, Sysco is exempt from the payment of federal taxes. According to Sysco's financial statements, the company has incurred losses throughout the 1980s. As a result, Sysco would have incurred no federal income tax liability before or during the review period. Therefore, Sysco did not benefit from its tax exemption during the review period.



**Verification**

In accordance with section 776(b) of the Act, we will verify the information used in making our final determination.

**Suspension of Liquidation**

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of steel rail from Canada which are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**, and to require a cash deposit or bond for all entries of this merchandise, except entries by Algoma, equal to 103.55 percent *ad valorem*. Algoma is excluded from this preliminary determination. This suspension will remain in effect until further notice.

Entries of the subject merchandise by all non-producer exporters, except Bernard Railtrack Export Inc., will not be subject to suspension of liquidation and a cash deposit or bond equal to the estimated net subsidy if it can be demonstrated to the U.S. Customs Service that the entries of the subject merchandise were produced by and purchased from Algoma. Entries made by Bernard Railtrack Export Inc. will be subject to suspension of liquidation and a cash deposit or bond equal to the estimated net subsidy shown of 103.55 percent *ad valorem*.

**ITC Notification**

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

If our final determination is affirmative, the ITC will make its final determination 45 days after the Department makes its final determination.

**Public Comment**

In accordance with § 355.38 of the Commerce Department's regulations published in the **Federal Register** on December 27, 1988 (53 FR 52306) (to be codified at 19 CFR 355.38), we will hold a public hearing, if requested, on April 21, 1989 at 10:00 a.m. in room 3708, to afford interested parties an opportunity to comment on this preliminary determination. Interested parties who wish to request or to participate in a hearing must submit a request within 10 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B-099, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the arguments to be raised at the hearing. In addition, ten copies of the business proprietary version and five copies of the nonproprietary version of case briefs must be submitted to the Assistant Secretary no later than April 14, 1989. Ten copies of the business proprietary version and five copies of the nonproprietary version of rebuttal briefs must be submitted to the Assistant Secretary no later than April 19, 1989. An interested party may make an affirmative presentation at the public hearing only on arguments included in that party's case brief, and may make a rebuttal presentation only on arguments included in that party's rebuttal brief. Written argument should be submitted in accordance with § 355.38 of the Commerce Department's regulations published in the **Federal Register** on December 27, 1988 (53 FR 52306) (to be codified at 19 CFR 355.38), and will be considered if received within the time limits specified in this notice.

This determination is published pursuant to section 703(f) of the Act (19 U.S.C. 1671b(f)).

**Jan W. Mares,**

*Assistant Secretary for Import Administration.*

[FR Doc. 89-4699 Filed 3-1-89; 8:45 am]

BILLING CODE 3510-DS-M

## Export Trade Certificate of Review

**AGENCY:** International Trade Administration, Commerce.

**ACTION:** Notice of application.

**SUMMARY:** The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevent to whether the Certificate should be issued.

**FOR FURTHER INFORMATION CONTACT:** Thomas H. Stillman, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** Title III of the Export Trading Company Act of 1982 (Pub. L. 97-290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

**Request for Public Comments**

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. An original and five (5) copies should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1223, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 89-00004." A summary of the application follows.

Applicant: KIAD International Trading Company, Inc., 7501 Chesterfield Place, Suite 1424, Dallas, Texas 75237.

Contact: Vuna Adams, II, Chief Executive Officer

Telephone: (214) 780-9818

*Application No.:* 89-00004.

*Dated Deemed Submitted:* February 15, 1989.

*Members (in addition to applicant):* None.

**Summary of the Application**

*Export Trade*

Products

All products.

Export Trade Facilitation Services (as they relate to the export of Products)

All trade-facilitating services in connection with the export of Products, including matching buyer with seller; furnishing financing; placement of marine, casualty, and war risk insurance; coordinating the shipment of

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Products; processing documentation; establishing repayment mechanisms; providing ancillary procurement services; market analysis and research; countertrade services; and consulting.

*Export Markets*

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

*Export Trade Activities and Methods of Operation*

KIAD international seeks certification to:

1. Enter into any number of non-exclusive agreements with individual buyers in the Export Markets or with individual suppliers to act as a sales representative or broker for the export of Products and the provision of Export Trade Facilitation Services.

2. Enter into agreements with individual suppliers for the export of Products and the provision of Export Trade Facilitation Services wherein:

(a) KIAD establishes prices for Products in Export Markets; and/or

(b) KIAD agrees to serve as the exclusive sales representative. "Exclusive" means that KIAD may agree not to represent any competitors of the supplier unless authorized by the supplier; and/or the supplier may agree not to sell, directly or indirectly through any other intermediary, into the Export Markets in which KIAD represents the supplier.

3. Enter into exclusive agreements with persons in the Export Markets (including distributors and sales or marketing agents), wherein KIAD agrees to pay a competitive commission or other compensation. "Exclusive" means:

(a) KIAD may agree to deal in Products in the Export Markets only through that person, and/or

(b) that person agrees not to represent in Export Markets, or purchase Products from, anyone other than KIAD.

4. Establish price, quantity, territorial, and customer restrictions for Products to be sold in the Export Markets for KIAD's own account or on behalf of an individual supplier.

5. Enter into exclusive or non-exclusive agreements with individual buyers to provide Export Trade Facilitation Services and to act as a purchasing agent with respect to a particular transaction involving the export of Products.

6. Upon receiving a request from a buyer in the Export Markets for the price of a particular Product, KIAD may ask one or more U.S. suppliers individually to supply a price quotation to KIAD for that Product, add its own markup to the supplier's price, and transmit a price quotation to the buyer. Upon placement of an order by a buyer, KIAD may purchase Products and ship to the buyer.

7. As KIAD becomes aware of invitations to bid or other sales opportunities in the Export Markets, KIAD may:

(a) Contact individual suppliers of the Products specified in the invitation to bid or the purchase specifications;

(b) Invite the suppliers to provide independent quotations to KIAD for the export of the Products (provided that KIAD does not reveal to any supplier the quotation of any other Supplier), and

(c) Enter into independent, individual agreements with suppliers whereby KIAD will submit a response to the bid invitation or the purchase specifications.

Dated: February 24, 1989.

**Thomas H. Stillman,**

*Director, Office of Export Trading Company Affairs.*

[FR Doc. 89-4791 Filed 3-1-89; 8:45 am]

BILLING CODE 3510-DR-M

## Short-Supply Review on Certain Semi-Finished Steel Slabs; Request for Comments

**AGENCY:** Import Administration/International Trade Administration, Commerce.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of Commerce hereby announces its review of a request for a short-supply determination under Article 8 of the U.S.-Australia, U.S.-Brazil, U.S.-EC, and U.S.-Korea Arrangements Concerning Trade in Certain Steel Products, Article 8 of the U.S.-Mexico Understanding Concerning Trade in Certain Steel Products, and Paragraph 8 of the U.S.-Japan Arrangement Concerning Trade in Certain Steel Products, with respect to certain semi-finished steel slabs.

**DATE:** Comments must be submitted no later than March 13, 1989.

**ADDRESS:** Send all comments to Nicholas C. Tolerico, Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

**FOR FURTHER INFORMATION CONTACT:** Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:** Article 8 of the U.S.-Australia, U.S.-Brazil, U.S.-EC, and U.S.-Korea Arrangements Concerning Trade in Certain Steel Products, Article 8 of the U.S.-Mexico Understanding Concerning Trade in Certain Steel Products, and Paragraph 8 of the U.S.-Japan Arrangement Concerning Trade in Certain Steel Products provides that if the U.S. determines that because of abnormal supply or demand factors, the U.S. steel industry will be unable to meet demand in the USA for a particular product, (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors) an additional tonnage shall be allowed for such product or products.

We have received a short-supply request for various grades of semi-finished steel slabs for use in producing hot-rolled sheet and strip, cold-rolled sheet, galvanized sheet, and electric-resistance/welded pipe. The slabs are in thicknesses ranging from 7.00 inches through 8.81 inches, widths ranging from 28 inches through 61 inches, and lengths ranging from 212 inches through 260 inches.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than March 13, 1989. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly so label the business proprietary portion of the submission and also provide a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Room B-099, Import Administration, U.S. Department of Commerce at the above address.

February 23, 1989.

**Jan W. Mares,**

*Assistant Secretary for Import Administration.*

[FR Doc. 89-4792 Filed 3-1-89; 8:45 am]

BILLING CODE 3510-DS-M



## National Technical Information Service

### Intent To Grant Exclusive Patent License to Catalyst Corporation; Correction

Notice document 89-3116 appearing on page 6315 in the issue of Thursday, February 9, 1989 should be disregarded since it duplicates notice document 89-2913 appearing on page 5996 in the issue of Tuesday, February 7, 1989. Therefore, the 60 day notice period will run from the February 7, 1989 date.

**Douglas J. Campion,**

*Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.*

[FR Doc. 89-4856 Filed 3-1-89; 8:45 am]

BILLING CODE 3510-04-M

## DEPARTMENT OF DEFENSE

### Public Information Collection Requirement Submitted to OMB for Review

**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Title, Applicable Form, and Applicable OMB Control Number:* DoD FAR Supplements, Part 252, Solicitation Provisions and Contract Clause; No Forms; and OMB Control Number 0704-0250.

*Type of Request:* Extension of currently approved collection.

*Average Burden Hours/Minutes Per Response:* .25 Hours.

*Frequency of Response:* Required only when a company offers surplus material.

*Number of Respondents:* 50.

*Annual Burden Hours:* 1,000.

*Annual Responses:* 4,000.

*Needs and Uses:* This request concerns information collection and recordkeeping requirements related to the purchase of surplus material.

*Affected Public:* Businesses or other for-profit.

*Respondent's Obligation:* Mandatory.

*OMB Desk Officer:* Ms. Eyvette R. Flynn.

Written comments and recommendations on the proposed information collection should be sent to Ms. Eyvette R. Flynn at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

*DOD Clearance Officer:* Ms. Pearl Rascoe-Harrison.

Written requests for copies of the information collection proposal should be sent to Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302.

**Patricia H. Means,**

*OSD Federal Register Liaison Officer, Department of Defense.*

February 27, 1989.

[FR Doc. 89-4825 Filed 3-1-89; 8:45 am]

BILLING CODE 3810-01-M

## Office of the Secretary

### Defense Intelligence Agency Advisory Board; Meeting

**AGENCY:** Defense Intelligence Agency Advisory Board.

**ACTION:** Notice of closed meeting.

**SUMMARY:** Pursuant to the provisions of subsection (d) of section 10 of Pub. L. 92-463, as amended by section 5 of Pub. L. 94-409, notice is hereby given that a closed meeting of a panel of the DIA Advisory Board has been relocated as follows:

**DATE:** Tuesday, 28 February 1989.

**ADDRESS:** NSA, Fort George G. Meade, MD.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Colonel John E. Hatlelid, USAF, Executive Secretary, DIA Advisory Board, Washington, DC 20340-1328 (202 373-4930).

**SUPPLEMENTARY INFORMATION:** The entire meeting is devoted to the discussion of classified information as defined in section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on intelligence support systems.

**P.H. Means,**

*OSD Federal Register Liaison Officer, Department of Defense.*

February 27, 1989.

[FR Doc. 89-4825 Filed 3-1-89; 8:45 am]

BILLING CODE 3810-01-M

## Department of the Army

### Board of Visitors, United States Military Academy; Open Meeting

In accordance with section 10(a)(20) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following meeting.

*Name of Committee:* Board of Visitors, United States Military Academy.

*Date of Meeting:* 10 April 1989.

*Place of Meeting:* Washington, DC.

*Start Time of Meeting:* 9:00 a.m.

*Proposed Agenda:* Election of officers; selection of Executive Committee; scheduling of meetings for remainder of year; and identification of areas of interest for 1989.

All proceedings are open. For further information, contact Lieutenant Colonel Michael J. Shestok, United States Military Academy, West Point, NY 10996-5000, (914) 938-3301.

For the Chairman of the Board of Visitors.

**Michael J. Shestok,**

*LTC, GS, Executive Secretary, USMA Board of Visitors.*

[FR Doc. 89-4808 Filed 3-1-89; 8:45 am]

BILLING CODE 3710-08-M

## DEPARTMENT OF EDUCATION

### Office of Elementary and Secondary Education

### Intent To Waive Certain Requirements; Federal States of Micronesia

**AGENCY:** Department of Education.

**ACTION:** Notice of intent.

**SUMMARY:** Notice is given that, under section 8003(a) of the Elementary and Secondary Education Act of 1965 (ESEA), as amended, the Secretary intends to waive certain requirements under Chapter 1 of the Education Consolidation and Improvement Act of 1981 (ECIA) and under Chapter 1 of Title I of the ESEA for the Office of Education (OE) of the Federated States of Micronesia (FSM) (formerly part of the Trust Territory of the Pacific Islands). This notice sets forth the terms and conditions under which the Secretary intends to grant the waiver, and invites public comments.

**DATE:** Comments must be received on or before April 3, 1989.

**ADDRESS:** All written comments concerning this notice should be addressed to Mr. Benjamin Rice, Chief, Grants, Administration, and Support Branch, Compensatory Education Programs, U.S. Department of Education, 400 Maryland Avenue SW. (Room 2043, FOB-6), Washington, DC 20202-6132.

**FOR FURTHER INFORMATION CONTACT:** Mr. Benjamin Rice. Telephone: (202) 732-4692.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

Title V of the Omnibus Territories Act, 48 U.S.C. 1469a, authorizes the Secretary to consolidate Federal education programs for which an Insular Area is eligible to apply. Programs that the Secretary has consolidated include,

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for example, Chapter 1 and Chapter 2 of the ECIA and Chapter 1 and Chapter 2 of Title I of the ESEA, as amended (which supersede Chapters 1 and 2 of the ECIA). From the list of consolidated programs, an Insular Area may apply annually for a consolidated grant for two or more of those programs. The Insular Area may then use its consolidated grant funds to carry out one or more of the programs included in its consolidated grant application. The Insular Area must comply with the statutory and regulatory requirements that apply to each program under which it expends its consolidated grant funds. Since the Compact of Free Association was signed, the OE of the FSM has applied to receive consolidated grant funds, including funds for the 1988–89 school year.

**B. Authority for Granting a Waiver**

Under section 8003(a) of the ESEA, 20 U.S.C. 3383(a), the Secretary is authorized to waive, upon request, any requirements of the ESEA or the ECIA for an Insular Area if the Secretary determines that compliance with those requirements is "impractical or inappropriate because of conditions or circumstances particular to any of such jurisdictions * * *." Any waiver under section 8003(a) is subject to the terms and conditions that the Secretary deems necessary to carry out the purposes of the program whose requirements are being waived.

**C. Waiver Request**

The OE has indicated in its consolidated grant application that it intends to spend a portion of its consolidated grant funds on activities under Chapter 1 of the ECIA. Accordingly, the OE has requested the Secretary to waive the applicability of four Chapter 1 requirements because those requirements are impractical or inappropriate due to conditions or circumstances particular to the FSM. First, the OE has requested a waiver of section 556(b)(2) of the ECIA, 20 U.S.C. 3805(b)(2), which requires an annual assessment of educational needs and inclusion in the Chapter 1 program of those children who have the greatest need for special assistance. Essentially, this same requirement is also contained in section 1014(b) of the ESEA, 20 U.S.C. 2724(b). According to the OE, 90 percent of the elementary and secondary school children in the FSM are educationally deprived and eligible for Chapter 1 services. As a result, selecting children who are in greatest need when all children have great needs is inappropriate. In addition, the requirement to perform an annual needs assessment is impractical. According to the OE, there is no instrument available to assess the educational needs of all children. Moreover, if an instrument were available, there would be no way to collect the data, assemble it, and communicate the results back to the operating schools in time to be used due to the great distances between the islands of the FSM.

Second, the OE has requested a waiver of section 556(e) of the ECIA, 20 U.S.C. 3805(e), which requires, in part, a local educational agency to convene an annual public meeting, to which all parents of eligible students must be invited, to explain to parents the programs and activities provided with Chapter 1 funds. This requirement is also contained in section 1016(c)(2) of the ESEA, 20 U.S.C. 2726(c)(2). According to the OE, it is too costly to bring all parents together for a meeting or to charter ships to go to the outer islands to meet with parents. In addition, there are several languages spoken by the parents, which would require that expensive interpreters be hired for translations. Per diem costs for persons to travel among the islands to attend parent meetings would also be prohibitive. Furthermore, there is no space available on many of the islands to hold such meetings.

Third, the OE has requested a waiver of section 557 of the ECIA, 20 U.S.C. 3806, which requires that eligible students in private schools receive equitable Chapter 1 services. This requirement is also contained in section 1017 of the ESEA, 20 U.S.C. 2727. In *Aguilar* v. *Felton*, the United States Supreme Court held that it was unconstitutional for public school personnel to provide Chapter 1 instructional services to private school children on the premises of religiously affiliated private schools. As a result, Chapter 1 benefits must be provided through instructional services at a neutral site or by certain other means. In the FSM, however, neutral facilities are not available near the private schools to provide Chapter 1 services; public school sites are already overcrowded; and educational radio, television, mobile vans, and computer-assisted instruction are impractical or unavailable. Instead, under its consolidated grant application, the OE would use the funds it would be required to expend on services for eligible private school children under Chapter 1 to provide additional services for those children under Chapter 2.

Finally, the OE has requested a waiver of section 558(c), 20 U.S.C. 3807(c), which requires, in part, that a school district in which all school attendance areas are project areas provide services with State and local funds that are substantially comparable in each area. Comparability is determined by factors such as a districtwide salary schedule, pupil/staff ratios, and expenditures/pupil ratios. This requirement is also contained in section 1018(c) of the ESEA, 20 U.S.C. 2728(c). According to the OE, there are conditions and circumstances in the FSM that make compliance with the requirement impractical. For instance, the local educational agencies do not have sufficient local funds to add personnel to the noncomparable schools to achieve comparability and the tax base is insufficient to generate additional funds. Moreover, the FSM cannot reassign students to other schools, often hundreds of miles away from their homes, to meet comparability requirements. Such reassignment would require setting up boarding schools for very young children that would be neither practical, economical, or socially desirable. In addition, school facilities may not be able to accommodate the additional students that would have to be transferred. For similar reasons, it would be impractical and costly to reassign instructional personnel to schools other than those in their home communities.

**D. Management Plan**

Section 8003(a)(2) of the ESEA provides that any waiver is subject to the terms and conditions that the Secretary deems necessary, including submission of a plan for management of the funds in a manner designed to achieve the purposes of the program whose requirements are being waived. The Secretary has determined that the descriptions in the OE's consolidated grant applications of the Chapter 1 activities the OE plans to conduct are sufficient for purposes of section 8003(a)(2). Under the application for 1988–89, for example, the OE plans to expend approximately $2.6 million for Chapter 1 activities. Of that amount, approximately $11,000 would be used for construction of school facilities for the FSM's educationally deprived school population, and $1.4 million would be used for teachers, aides, and supplies to provide basic skills. The OE also plans, in accordance with its waiver request, to use the consolidated grant funds it would be required to expend on services for eligible private school children under Chapter 1 to provide additional services to those children under Chapter 2.



**E. Notice of the Secretary's Intent to Grant a Waiver**

Section 8003(a)(1) of the ESEA requires that, at least 30 days before approving a request for a waiver, the Secretary must publish in the **Federal Register** a notice of his intent to do so and the terms and conditions under which the waiver will be granted. In accordance with this requirement, notice is hereby given that, subject to the terms and conditions described below, the Secretary intends to waive the applicability to the OE of the requirements in sections 556(b)(2), 556(e), 557, and 558(c) of the ECIA and the comparable requirements in sections 1014(b), 1016(c)(2), 1017, and 1018(c) of the ESEA.

**F. Terms and Conditions Under Which a Waiver Would be Granted**

Under section 8003(a)(2), the OE agrees to comply with the following terms and conditions:

(1) All consolidated grant funds that are expended for Chapter 1 activities by the OE during the period covered by the waiver will be spent in accordance with—

(a) All applicable statutory and regulatory requirements, except those Chapter 1 requirements that are specifically identified in the waiver.

(b) The Chapter 1 activities described in the OE's annual consolidated grant application or amendments to the application;

(c) The budget contained in the OE's annual consolidated grant application; and

(d) These terms and conditions.

(2) Consolidated grant funds that the OE would be required to expend on Chapter 1 services for students in private schools will be used to provide additional services for those students under Chapter 2.

(3) The waiver remains in effect until the OE is able to comply with the waived requirements and/or until the OE ceases to operate Chapter 1 activities; and

(4) If the conditions or circumstances that justified the waiver change, the OE will notify the Department and the terms of the waiver will be adjusted accordingly.

Dated: February 27, 1989.

**Lauro F. Cavazos,**

*Secretary of Education.*

(Catalog of Federal Domestic Assistance No. 84.010, Educationally Deprived Children-Local Educational Agencies.)

[FR Doc. 89-4936 Filed 3-1-89; 8:45 am]

BILLING CODE 4000-01-M

[CFDA No. 84.031A, CFDA No. 84.031Q]

## Applications Under the Strengthening Institutions Program and the Endowment Challenge Grant Program; Extension of Closing Date

**AGENCY:** Department of Education.

**ACTION:** Extension of closing date for transmittal of applications for eligibility under the Strengthening Institutions Program and the Endowment Challenge Grant Program.

The Secretary extends to April 17, 1989, the closing date by which an institution may submit an application for eligibility under the Strengthening Institutions Program and the Endowment Challenge Grant Program. The previous closing date of January 27, 1989, has been extended because the Secretary has identified a problem related to the mail delivery system.

On December 19, 1988, the Secretary published a Notice establishing the closing date for transmittal of eligibility applications for fiscal year 1989 under the Strengthening Institutions Program and the Endowment Challenge Grant Program (53 FR 50989). The purpose of this notice is to extend the closing date for transmittal of applications.

**FOR FURTHER INFORMATION CONTACT:** For further information, contact Dr. Caroline J. Gillin, Director of Institutional Development, U.S. Department of Education, Room 3042, Regional Office Building 3, 400 Maryland Avenue SW., Washington, DC 20202. Telephone (202) 732–3314.

(20 U.S.C. 1057 and 1065a)

Dated: February 23, 1989.

**Kenneth D. Whitehead,**

*Assistant Secretary for Postsecondary Education.*

[FR Doc. 89-4937 Filed 3-1-89; 8:45 am]

BILLING CODE 4000-01-M

## DEPARTMENT OF ENERGY

## Financial Assistance Award; Intention To Award Grant to Princeton University

**AGENCY:** Department of Energy.

**ACTION:** Notice of Noncompetitive Financial Assistance Award.

**SUMMARY:** The Department of Energy announces that pursuant to 10 CFR 600.7(b), it is restricting eligibility for award under Grant Number DE–FC01–89CE21032 to Princeton University.

*Scope:* The funding for this grant will support research in the area of airflow measurements in buildings and will allow Princeton University to improve airflow measurement techniques.

The purpose of this project is to provide further understanding of airflow in various types of buildings, and improve efforts to transfer the airflow measurement technology to the private sector.

*Eligibility:* Eligibility for this award is being limited to Princeton University, because of its high qualifications in the field of airflow measurements in buildings and because the proposed work would be a follow-on to the Office of Buildings and Community Systems supported activities that are necessary for the satisfactory completion of a project presently being funded by DOE.

This project is a research program in Indoor Air Quality, Infiltration and Ventilation. Competition for support would have a significant adverse effect on continuity or completion of this project. This adverse effect would be the loss of opportunity to use the exclusive capabilities available to Princeton at this time. Princeton University's Center for Energy and Environmental Studies has made major contributions to the energy research community's understanding of airflow characteristics in buildings. In addition, Princeton is uniquely suited to carry out the proposed tasks because of the measurement capabilities already developed on site at Princeton.

The term of this grant shall be nine months from the effective date of award.

**FOR FURTHER INFORMATION CONTACT:** U.S. Department of Energy, Office of Procurement Operations, Attn: Phyllis Morgan, MA–453.2, 1000 Independence Avenue, SW., Washington, DC 20585.

**Scott Sheffield,**

*Acting Director, Contract Operations Division "B", Office of Procurement Operations.*

[FR Doc. 89-4931 Filed 3-1-89; 8:45 am]

BILLING CODE 6450-01-M

## Financial Assistance Award; Intent To Award a Grant to the Underground Injection Practices Council

**AGENCY:** Department of Energy.

**ACTION:** Notice of noncompetitive financial assistance.

**SUMMARY:** The Department of Energy announces that pursuant to 10 CFR 600.7(b), it is restricting eligibility for a grant under Bartlesville Project Office procurement request number 19–89BC14331.000 to the Underground Injection Practices Council (UIPC) for an effort entitled, "Study of Oil and Gas Industry Subsurface Water Injection Operations in the Williston Basin".

*Scope:* The purpose of the grant project is to define the data

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requirements and develop the procedures needed to formulate a risk-based regulatory program for consideration by the State and Federal Agencies responsible for administering underground injection control (UIC) programs. The objective will be accomplished by conducting a detailed study of subsurface water injection operations in the Williston Basin. The benefits to be derived include the following:

(1) Develop information which may foster the establishment of more reasonable regulatory requirements applicable to oil and gas subsurface water injection wells.

(2) Obtain data useful in DOE's Tertiary Oil Recovery Information System.

(3) Support efforts established to evaluate federal regulation and guidelines applicable to oil and gas injection wells.

In accordance with 10 CFR 600.7(b)(2)(i)(B), the UIPC has been selected as the grant recipient. This activity is being or would be conducted by the applicant using its own resources or those of a third party; however, DOE support of this activity would enhance the public benefits to be derived and DOE knows of no other entity which is conducting or is planning on conducting such an activity.

The term of the grant is for seven months with a total estimated value of $100,000.00 and DOE sharing 33% and the recipient sharing 67% of this amount.

**FOR FURTHER INFORMATION CONTACT:** U.S. Department of Energy, Pittsburgh Energy Technology Center, Attn: David N. Barnett, P.O. Box 10940, MS 921-165, Pittsburgh, PA 15236, telephone (412) 892-5012.

Date: February 23, 1989.

Gregory J. Kawalkin,

*Director, Acquisition and Assistance Division (Acting).*

[FR Doc. 89-4932 Filed 3-1-89; 8:45 am]

BILLING CODE 6450-01-M

## Office of Fossil Energy

**[ERA Docket No. 89-02-NG]**

### Cornerstone Natural Gas Co.; Application To Import Natural Gas From and Export Natural Gas to Canada and Mexico

**AGENCY:** Office of Fossil Energy, Department of Energy.

**ACTION:** Notice of application for blanket authorization to import natural gas from and export natural gas to Canada and Mexico.

**SUMMARY:** The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on January 19, 1989, of an application filed by Cornerstone Natural Gas Company (Cornerstone) for blanket authorization to import up to 100 Bcf of natural gas from Canada and Mexico and to export up to 100 Bcf of natural gas to Canada and Mexico. The application requests that the authorization be approved for a two-year term beginning on the date of the first delivery. Cornerstone intends to utilize existing pipeline facilities for transportation of the volumes to be imported and exported, and indicates it would submit quarterly reports detailing each transaction.

The application is filed pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111. Protests, motions to intervene, notices of intervention, requests for additional procedures and written comments are invited.

**DATE:** Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed no later than April 3, 1989.

**FOR FURTHER INFORMATION CONTACT:**

Robert M. Stronach, Office of Fuels Programs, Office of Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F-056, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586-9622.

Diane J. Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

**SUPPLEMENTARY INFORMATION:**

Cornerstone, a Delaware corporation, with its principal place of business in Dallas, Texas, proposes to import or export natual gas either for its own account or as agent on behalf of both suppliers and purchasers, including local distribution companies, pipelines, municipalities, and end users. According to the application, the authority requested by Cornerstone contemplates the following types of import and export transactions: (1) Importation of supplies of Canadian and Mexican natural gas for consumption in U.S. markets; (2) importation of Canadian natural gas for eventual return (via export) to Canadian markets; (3) exportation of domestically produced natural gas for consumption in Canadian and Mexican markets; and (4) exportation of domestically produced gas for eventual return (via import) to U.S. markets.

According to Cornerstone, the specific terms of each transaction would be negotiated on an individual basis, including price and volumes, to reflect market conditions.

Cornerstone requests that an authorization be granted on an expedited basis. A decision on Cornerstone's request for expedited treatment will not be made until all responses to this notice have been received and evaluated.

The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In reviewing natual gas export applications, the domestic need for the gas to be exported is considered, and any other issues determined to be appropriate in a particular case, including whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing commerical parties to freely negotiate their own trade arrangements. Parties, expecially those that may oppose this application, should comment in their responses on these matters as they relate to the requested import and export authority. The applicant asserts that this import/export arrangement will be competitive and in the public interest. Parties opposing the arrangement bear the burden of overcoming this assertion.

All parties should be aware that if this blanket import/export application is granted, the authorization may permit the import or export of the gas at any point of entry or exit on the international boundary where existing pipeline facilities are located.

### NEPA Compliance

On August 9, 1988, the DOE published in the **Federal Register** (53 FR 29934) a notice of proposed amendments to its guidelines for compliance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, effective on an interim basis upon publication. In that notice, the DOE proposed to amend the department's NEPA guidelines to add to its list of categorical exclusions the approval or disapproval of an import/export authorization for natural gas in cases not involving new construction. Application of the categorical exclusion in any particular case raises a rebuttable presumption that the action is not a major Federal action under NEPA. Unless comments are received indicating the presumption does not or should not apply in this case, no further NEPA review will be conducted by the DOE.

### Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs, Fossil Energy, Room 3F-056, FE-50, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585. They must be filed no later than 4:30 p.m. e.s.t., April 3, 1989.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial questions of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice to all parties will be provided. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Cornerstone's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, February 24, 1989.

J. E. Walsh, Jr.,

*Acting Principal Deputy Assistant Secretary, Fossil Energy.*

[FR Doc. 89-4929 Filed 3-1-89; 8:45 am]

BILLING CODE 6450-01-M



**[ERA Docket Nos. 88-19-NG, 88-39-NG, & 88-63-NG]**

### Hydro Engineering, Inc., et al; NEPA Compliance For Applications To Import Natural Gas From Canada

**AGENCY:** Office of Fossil Energy, Department of Energy.

**ACTION:** Supplemental notice regarding NEPA compliance for applications for authorization to import natural gas for cogeneration facilities.

**SUMMARY:** The Department of Energy (DOE) previously noticed in the **Federal Register** three publications to import natural gas from Canada to be used to fuel cogeneration facilities. They are: Hydro Engineering, Inc., ERA Docket No. 88-19-NG (53 FR 25203, July 5, 1988); Midland Cogeneration Venture Limited Partnership, ERA Docket No. 88-39-NG (53 FR 34811, September 8, 1988); and, Vector Energy (U.S.A.) Inc., ERA Docket No. 88-63-NG (53 FR 47857, November 28, 1988). This notice supplements those notices with respect to DOE's compliance with the National Environmental Policy Act of 1969 (NEPA).

The DOE has concluded that compliance with the NEPA for the proposed actions to grant or deny these import applications can be achieved by invoking two categorical exclusions in the DOE NEPA Guidelines (52 FR 47662, December 15, 1987). Comments on this procedure may be submitted by any interested person no later than March 17, 1989.

**FOR FURTHER INFORMATION CONTACT:**

William L. Durbin, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F-094, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9616.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

Carol Borgstrom, Director, Office of NEPA Project Assistance, EH-25, U.S. Department of Energy, Forrestal Building, Room 3E-080, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-4600.

**SUPPLEMENTARY INFORMATION:** On August 9, 1988, the DOE published in the **Federal Register** (53 FR 29934) a notice of proposed changes to Section D of its NEPA Guidelines by adding to the list of categorical exclusions in Section D, the approval or disapproval of an import/export authorization for natural gas under section 3 of the Natural Gas Act, in cases not involving new construction. A categorical exclusion is a class of DOE action which normally does not require the preparation of either an environmental impact statement (EIS) or environmental assessment (EA). In addition, the DOE proposed to change the classification in Sectioin D of approval or disapproval of an import/export authorization involving minor new construction from the type of actions normally requiring preparation of an EIS to the type of actions normally requiring preparation of an EA, but not necessarily an EIS. As indicated in the August 9 **Federal Register** notice, the DOE is applying the proposed changes pending a final decision on their adoption.

Under these changes, actions that grant or deny import authorizations where no new pipeline is needed but where new ancillary facilities, such as a cogeneration facility, are to be constructed would normally require the preparation of an EA, because they involved "minor new construction." However, for the reasons stated below, we believe that preparation of an EA for these actions is unnecessary due to the joint application of two other categorical exclusions contained in the DOE NEPA guidelines.

The environmental impacts of constructing and operating new cogeneration facilities have been addressed on numerous occasions by the Economic Regulatory Administration (ERA) in conjunction with processing exemption petitions under the Powerplant and Industrial Fuel Use Act (FUA) (10 U.S.C. 3201 *et seq.*, as

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amended), and as a result, such actions have been granted a categorical exclusion from further NEPA review (52 FR 47670, December 15, 1987). The cogeneration facilities to be constructed in connection with these import applications are identical to those facilities covered by the categorical exclusion for FUA actions. Therefore, it is an appropriate application of another categorical exclusion contained in the DOE guidelines for "actions that are substantially the same as other actions for which the environmental effects have already been assessed in a NEPA document and determined by DOE to be clearly insignificant and where such assessment is currently valid" (52 FR 47668, December 15, 1987) to extend the FUA categorical exclusion for cogeneration facilities to the grant of an authorization to import natural gas under the NGA which results in the construction and operation of a cogeneration facility.

A categorical exclusion raises a rebuttable presumption that the Federal action will not significantly affect the quality of the human environment. Unless it appears during the proceedings on these import applications that the grant or denial of authorization will significantly affect the quality of the human environment, the Office of Fuels Programs expects that no additional environmental review will be required.

A copy of each application is available for inspection and copying in the Office of Fuels Programs Docket Room, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F-056, 1000 Independence Ave., SW., Washington, DC 20585. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, February 24, 1989.

J. E. Walsh, Jr.,

*Acting Principal Deputy Assistant Secretary, Fossil Energy.*

[FR Doc. 89-4927 Filed 3-1-89; 8:45 am]

BILLING CODE 6450-01-M

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[ERA Docket No. 89-03-NG]

**Washington Natural Gas Co.; Application To Import Natural Gas From Canada**

**AGENCY:** Office Of Fossil Energy, Department of Energy.

**ACTION:** Notice of application for blanket authorization to import natural gas from Canada.

**SUMMARY:** The Office of Fossil Energy of the Department of Energy (DOE) gives notice of receipt on January 19, 1989, of an application filed by Washington Natural Gas Company (Washington Natural) for blanket authorization to import up to 50 Bcf of natural gas from Canada over a two-year term beginning on the date of first delivery.

The application is filed pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111. Protests, motions to intervene, notices of intervention, and written comments are invited.

**DATE:** Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed no later than April 3, 1989.

**FOR FURTHER INFORMATION CONTACT:**

Edward J. Peters, Jr., Office of Fuels Programs, Office of Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3H-087, 1000 Independence Avenue, SW. Washington, DC 20585, (202) 586-6162.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW. Washington, DC 20585, (202) 586-6667.

**SUPPLEMENTARY INFORMATION:**

Washington Natural, a Washington State corporation, is a natural gas distribution company serving residential, commercial and industrial customers in 50 cities, towns, and adjacent unincorporated areas within its five-county service area in the State of Washington. Washington Natural purchases a firm supply of natural gas for its distribution operations from Northwest Pipeline Corporation (Northwest). Washington Natural also receives firm and interruptible transportation services from Northwest.

Washington Natural proposes to purchase the imported gas from a variety of Canadian suppliers on an interruptible basis at competitive prices for its system supply. Washington Natural states that the terms of each sales transaction, including price and volume, would be freely negotiated, thus ensuring that the imports will reflect market conditions. The proposed imports will be accomplished using existing pipeline capacity and no new construction will be involved. Washington Natural also states that it would file reports within 30 days of the end of each calendar quarter giving details of individual transactions.

The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts this import arrangement will be competitive and this in the public interest. Parties opposing the arrangement bear the burden of overcoming this assertion.

All parties should be aware that if this request is granted, the import of gas from Canada may be permitted at any existing import point and through any existing transmission system.

**NEPA Compliance**

On August 9, 1988, the DOE published in the **Federal Register** (53 FR 29934) a notice of proposed amendments to its guidelines for compliance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 5321 *et seq.*, effective on an interim basis upon publication. In that notice, the DOE proposed to amend the department's NEPA guidelines to add to its list of categorical exclusions the approval or disapproval of an import/export authorization for natural gas in cases not involving new construction. Application of the categorical exclusions in any particular case raises a rebuttable presumption that the action is not a major Federal action under NEPA. Unless comments are received indicating the presumption does not or should not apply in this case, no further NEPA review will be conducted by the DOE.

**Public Comment Procedures**

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs, Fossil Energy, Room 3F-056, FE-50, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585. They must be filed no later than 4:30 p.m., e.s.t., April 3, 1989.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Washington Natural's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056 at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, February 24, 1989.

J. E. Walsh, Jr.,

*Acting Principal Deputy Assistant Secretary, Fossil Energy.*

[FR Doc. 89-4928 Filed 3-1-89; 8:45 am]

BILLING CODE 6450-01-M



**Energy Information Administration**

**American Statistical Association Committee on Energy Statistics; Open Meeting**

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

*Name:* American Statistical Association's Committee on Energy Statistics, a utilized Federal Advisory Committee

*Date and Time:* Thursday, April 6, 1989, 1:30 p.m.—5:00 p.m. Friday, April 7, 1989, 9:00 a.m.—3:00 p.m.

*Place:* Omni Shoreham Hotel, 2500 Calvert Street, NW., Washington, DC 20008.

*Contact:* Ms. Renee Miller, EIA Committee Liaison, U.S. Department of Energy, Energy Information Administration, EI-72, Washington, DC 20585, Telephone: (202) 586-2068.

*Purpose of Committee:* To advise the Department of Energy, Energy Information Administration (EIA), on EIA technical statistical issues and to enable the EIA to benefit from the Committee's expertise concerning other energy statistical matters.

*Tentative Agenda:*

Thursday, April 6, 1989

A. Opening Remarks

B. Major Topics:

1. Capturing Non-Utility Generation of Electricity
2. Uncertainty Analysis in Forecasting
3. New Confidentiality Legislation (Public Comments)

Friday, April 7, 1989

4. Analysis of Nuclear Capacity Factor Increase
5. Statistical Packages for the PC
6. PC Supply Models: The New Generation
7. Information Resource Management
8. Expert Systems (Public Comments)

C. Topics for Future Meetings

*Public Participation:* The meeting is open to the public. The chairperson of the committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Written statements may be filed with the committee either before or after the meeting. If there are any questions, please contact Ms. Renee Miller, EIA Committee Liaison, at the address or telephone number listed above or Ms. Carole Patton at 202-586-2222.

*Transcripts:* Available for public review and copying at the Public Reading Room, (Room 1E-190), 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6025, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday.

Issued at Washington, DC on February 27, 1989.

J. Robert Franklin,

*Deputy Advisory Committee Management Officer.*

[FR Doc. 89-4933 Filed 3-1-89; 8:45 am]

BILLING CODE 6450-01-M

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**Federal Energy Regulatory Commission**

[Docket Nos. ER89-232-000 et al.]

**Detroit Edison Company et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings**

February 24, 1989.

Take notice that the following filings have been made with the Commission:

**1. Detroit Edison Company**

[Docket No. ER89-232-000]

Take notice that Detroit Edison Company (Detroit Edison) on February 14, 1989, tendered for filing a letter agreement dated January 9, 1989, between Detroit Edison and General Public Utilities which constitutes a redetermination of the fixed charge rate applicable to transactions under Amendment No. 6 among Consumers Power Company, the Detroit Edison Company, and the Toledo Edison Company, dated June 1, 1982, for the sale of Specific Capacity Power to General Public Utilities. This Amendment has been denoted as the Detroit Edison Company Rate Schedule FERC No. 11. Detroit Edison states that the redetermination of the fixed charge rate was made pursuant to the terms of Amendment No. 6.

Detroit Edison states that the letter agreement establishes the fixed charge rate at 13.545% for service rendered on and after January 1, 1989, and is subject to redetermination during the term of Amendment No. 6 in accordance with § 7.12. Detroit Edison stated the redetermination reflects the reduction of its Michigan Public Service Commission authorized return on common equity from 14.5% to 13.0% the effect being a reduction of 2.325% in the fixed charge rate from that used in the initial agreement. This determination will decrease the monthly demand charge to $412,532 in accordance with §§ 7.11 and 7.12 of Service Schedule G.

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Detroit Edison states that copies of the filing were served upon Consumers Power Company, the Cleveland Electric Illuminating Company (Centerior Energy), General Public Utilities Corporation, the Toledo Edison Company, and the Michigan Public Service Commission.

*Comment date:* March 10, 1989, in accordance with Standard Paragraph E at the end of this notice.

**2. New England Power Company**

[Docket No. ER89-233-000]

February 24, 1989.

Take notice that New England Power Company (NEP) on February 16, 1989, tendered for an initial rate schedule a Letter Agreement between NEP and Boston Edison Company (BECO) that provides for the sale by NEP of twenty-five megawatts of capacity and related energy from NEP's purchase from Public Service Electric and Gas Company for the period January 1, 1989 through January 31, 1989.

NEP requests that the notice requirements be waived and that the agreement be permitted to become effective on January 1, 1989.

*Comment date:* March 10, 1989, in accordance with Standard Paragraph E at the end of this notice.

**3. Allegheny Power Service Corporation**

[Docket No. ER89-158-000]

Take notice that on February 7, 1989, Allegheny Power Service Corporation (APS) tendered for filing additional information, at the Commission's request, concerning various modifications of the APS Interconnection Agreement with Baltimore Gas and Electric Company.

*Comment date:* March 10, 1989, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraph**

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

*Secretary.*

[FR Doc. 89-4902 Filed 3-1-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-843-000 et al.]

**Northwest Pipeline Corporation et al.; Natural Gas Certificate Filings**

Take notice that the following filings have been made with the Commission:

**1. Northwest Pipeline Corporation**

[Docket No. CP89-843-000]

February 23, 1989.

Take notice that on February 17, 1989, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89-843-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of Williams Gas Marketing Company (Williams), under Northwest's blanket certificate issued in Docket No. CP86-578-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northwest requests authorization to transport, on an interruptible basis, up to a maximum of 15,000 MMBtu of natural gas per day for Williams, a marketer of natural gas, from receipt points located in Carbon, Fremont and Sweetwater Counties, Wyoming, Daggett County, Utah and Moffat County, Colorado to delivery points also located in Wyoming, Utah and Colorado. Northwest anticipates transporting, on an average day, 260 MMBtu and an annual volume of 95,000 MMBtu.

Northwest states that the transportation of natural gas for Williams commenced December 2, 1988, as reported in Docket No. ST89-2160-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to Northwest in Docket No. CP86-578-000.

*Comment date:* April 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

**2. Northwest Pipeline Corporation**

[Docket No. CP89-844-000]

February 23, 1989.

Take notice that on February 17, 1989, Northwest Pipeline Corporation (Northwest), P.O. Box 8900, Salt Lake City, Utah 84108, filed in Docket No. CP89-844-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Normandy Oil & Gas Company, Inc. (Normandy), a producer of natural gas, under its blanket certificate issued in Docket No. CP86-578-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northwest states that pursuant to an agreement dated September 22, 1988, as amended November 22, 1988, under Rate Schedule TI-1, it would transport up to 1,500 MMBtu per day of natural gas for Normandy for a term continuing on a month-to-month basis, subject to termination upon 30 business days' written notice by either party. Northwest further states that it would transport the natural gas from wells located in La Plata County, Colorado to El Paso Natural Gas Company at the Alkali Gulch delivery point located in La Plata County, Colorado. Northwest indicates that no construction of new facilities would be required to provide the proposed transportation service.

Northwest indicates that the maximum day, average day and annual transportation volumes would be approximately 1,500 MMBtu, 150 MMBtu and 50,000 MMBtu, respectively.

Northwest states that it commenced the transportation of natural gas for Normandy on December 16, 1988, at Docket No. ST89-2093-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations (18 CFR 284.223(a)).

*Comment date:* April 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

**3. Panhandle Eastern Pipe Line Company**

[Docket No. CP89-827-000]

February 23, 1989.

Take notice that on February 15, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-827-000 a request pursuant to §§ 157.205(b) and 284.223 of the Regulations under the Natural Gas Act for authorization to provide a transportation service for Amgas, Inc. (Amgas), under the certificate issued in Docket No. CP88-585-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request with the Commission and open to public inspection.



Panhandle states that it proposes to transport natural gas for Amgas from various receipt points located in Texas, Oklahoma, Kansas, Colorado, Wyoming and Illinois and redeliver subject gas, less fuel used and line loss gas, to Central Illinois Light Company in Tazewell County, Illinois. Panhandle further states that the maximum daily and annual quantities that it would transport for Amgas would be 500 dekatherms and 182,500 dekatherms, respectively.

Panhandle indicates that in a filing made with the Commission in Docket ST89-1927, it reported that transportation service for Amgas commenced on January 1, 1989 under the 120-day automatic authorization provisions of Section 284.233(a).

*Comment date:* April 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

**4. Transcontinental Gas Pipe Line Corporation**

[Docket No. CP89-861-000]

February 23, 1989.

Take notice that on February 21, 1989, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP89-861-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Taylor Energy Company (Taylor), indicated to be a producer, under the blanket certificate issued in Docket No. CP88-328-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Transco states that pursuant to a transportation agreement dated January 5, 1989, under its Rate Schedule IT, it proposes to transport up to 9,500 dt per day equivalent of natural gas for Taylor. Transco states that it would transport the gas from an existing receipt point at Matagorda Island Block 619, offshore Texas, and deliver the gas at an existing point of interconnection between Transco and Natural Gas Pipeline Company of America at Wharton County, Texas.

Transco advises that service under Section 284.223(a) commenced January 28, 1989, as reported in Docket No. ST89-2187. Transco further advises that it would transport 5,700 dt on an average day and 2,080,500 dt annually.

*Comment date:* April 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

**5. Transcontinental Gas Pipe Line Corporation**

[Docket No. CP89-807-000]

February 23, 1989.

Take notice that on February 10, 1989, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas, filed in Docket No. CP89-807-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of Shell Gas Trading Company (Shell Gas), under Transco's blanket certificate issued in Docket No. CP88-328-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transco requests authorization to transport, on an interruptible basis, up to a maximum of 1,450,000 dekatherms (dt) of natural gas per day for Shell Gas from receipt points located in Louisiana, offshore Louisiana, Mississippi, Texas and offshore Texas to delivery points located in Louisiana, offshore Louisiana, Mississippi, Texas and offshore Texas. Transco anticipates transporting, on an average day 750,000 dt and an annual volume of 273,750,000 dt.

Transco advises that the transportation of natural gas for Shell Gas commenced January 1, 1989, as reported in Docket No. ST89-1925-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to Transco in Docket No. CP88-328-000.

*Comment date:* April 10, 1989 in accordance with Standard Paragraph G at the end of the notice.

**6. Texas Gas Transmission Corporation**

[Docket No. CP89-828-000]

February 23, 1989.

Take notice that on February 15, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89-828-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for General Motors Corporation (GM), under its blanket certificate issued in Docket No. CP88-686-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and available for public inspection.

Pursuant to a gas transportation agreement executed on November 15, 1988, Texas Gas requests authorization to transport up to 10,000 MMBtu of natural gas per day for GM from various exiting points of receipt located along its system to a single point of delivery located in Warren County, Ohio. Texas Gas states that the service would be provided on a month-to-month basis and could be terminated upon thirty (30) days written notice by either party. The average day and annual transportation quantities are expected to be 5,360 MMBtu and 1,956,575 MMBtu, respectively. Texas Gas advises that it began transporting gas for FM on January 1, 1989, are reported in Docket No. ST89-1717-000, pursuant to § 284.223(a) of the Commission's Regulations.

*Comment date:* April 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

**7. Panhandle Eastern Pipe Line**

[Docket No. CP89-817-000]

February 24, 1989.

Take notice that on February 14, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas, 77001, filed in Docket No. CP89-817-000 an application pursuant to section 7(b) of the Natural Gas Act requesting an order permitting and approving partial abandonment of sales service to Indiana Gas Company, Inc. (Indiana Gas), an existing jurisdictional sales customer, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Panhandle states that, pursuant to § 284.10 of the Commission's Regulations, Panhandle and Indiana Gas have entered into a Sales Agreement dated January 1, 1989, which provides for a 15% reduction of its sales contract demand (CD) level which was converted to firm transportation service effective on January 1, 1989. Thus, Panhandle seeks authority for partial abandonment of Indiana Gas' daily sales contract quantity. Panhandle further states that it will provide the resulting firm transportation service in accordance with the terms and conditions of Panhandle's Rate Schedule PT-Firm, as such may be amended from time to time, or a successor tariff.

Specifically, Panhandle states that it seeks authority for partial abandonment of Indiana Gas' current sales CD, to be effective January 1, 1989, by the daily amount in Column No. 2, as shown below:

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| Month | Current CD Mcf/d (1) | Reduction Mcf/d (2) | Resulting CD Mcf/d (3) |
|---|---|---|---|
| January | 291,465 | 51,435 | 240,030 |
| February | 291,465 | 51,435 | 240,030 |
| March | 291,465 | 51,435 | 240,030 |
| April | 211,522 | 37,328 | 174,194 |
| May | 183,329 | 28,822 | 134,508 |
| June | 138,847 | 24,502 | 114,345 |
| July | 111,890 | 19,710 | 91,980 |
| August | 122,400 | 21,800 | 100,800 |
| September | 162,945 | 28,756 | 134,189 |
| October | 192,015 | 33,885 | 158,130 |
| November | 291,465 | 51,435 | 240,030 |
| December | 291,466 | 51,435 | 240,030 |

It is stated that this proposed abandonment will reduce the annualized total CD from 77,683,056 Mcf to 63,974,266 Mcf.

*Comment date:* March 17, 1989, in accordance with Standard Paragraph F at the end of this notice.

**8. ANR Pipeline Company**

[Docket No. CP89-833-000]

February 24, 1989.

Take notice that on February 15, 1989, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP89-833-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to perform an interruptible transportation service for Enron Gas Marketing, Inc. (Enron), a marketer, under ANR's blanket certificate issued in Docket No. CP86-532-000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

ANR states that pursuant to a transportation agreement dated September 8, 1988, it proposes to receive up to 200,000 dt equivalent of natural gas per day from specified points located in Oklahoma, Texas, Offshore Texas, Louisiana, Offshore Louisiana and Kansas, and redeliver the gas into the facilities of Northern Illinois Gas Company in Will County, Illinois. ANR states that the peak day and average day volumes would be 200,000 dt equivalent of natural gas per day and annual volumes would be 73,000,000 dt equivalent of natural gas. It is stated that ANR commenced a 120-day transportation service for Enron under § 284.223(a) as reported in Docket No. ST89-2104.

ANR further states that no facilities need be constructed to implement the service. It is indicated that ANR would provide the service for a term expiring September 30, 1990, but would continue the service on a month to month basis until terminated by either party upon thirty days prior written notice to the other specifying a termination date at the end of such period or any successive monthly period thereafter. ANR proposes to charge the rates and abide by the terms and conditions of its Rate Schedule IT.

*Comment date:* April 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

**9. Northwest Pipeline Corporation**

[Docket No. CP89-845-000]

February 24, 1989.

Take notice that on February 17, 1989, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89-845-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of TXO Production Corp. (TXO), a natural gas producer, under its blanket authorization issued in Docket No. CP86-578-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest would perform the proposed interruptible transportation service for TXO, pursuant to an interruptible transportation service agreement dated September 26, 1988, as amended September 26, 1988. The transportation agreement is effective for a term continuing until October 31, 1989, and month to month thereafter until terminated by either party on thirty days written notice. Northwest proposes to transport approximately 8,000 MMBtu on a peak day; 5,600 MMBtu on an average day; and on an annual basis 2,100,000 MMBtu of natural gas for TXO. Northwest proposes to transport the subject gas through its transmission system from wells located in Rio Blanco County, Colorado and Grand and Uintah Counties, Utah, to delivery points located in Grand County, Utah and Mesa County, Colorado.

It is explained that the proposed service is currently being performed pursuant to the 120-day self-implementing provision of § 284.223(a)(1) of the Commission's Regulations. Northwest commenced such self-implementing service on January 4, 1989, as reported in Docket No. ST89-2161-000.

*Comment date:* April 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

**10. Williams Natural Gas Company**

[Docket No. CP89-846-000]

February 24, 1989.

Take notice that on February 17, 1989, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89-846-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for permission and approval to abandon by reclaim measuring and appurtenant facilities serving one industrial customer in Cherokee County, Kansas, under WNG's blanket certificate issue in Docket No. CP82-479-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

WNG proposes to abandon the facilities in response to a request from the customer, Robert H. Case, who was receiving the gas from WNG for his meat packing plant. It is stated that the facilities were installed under Commission authorization in Docket No. CP65-77. It is explained that the customer has requested the abandonment because he plans to switch to an alternate fuel. It is asserted that the proposed abandonment will have no effect on WNG's capacity and no effect on WNG's rate schedules or tariffs on file with the Commission.

*Comment date:* April 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

**11. United Gas Pipe Line Company**

[Docket No. CP89-786-000]

February 24, 1989.

Take notice that on February 8, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-786-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a interruptible transportation service on behalf of Texican Natural Gas Company (Texican), a marketer of natural gas, under its blanket certificate issued in Docket No. CP86-6-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United states that pursuant to an Interruptible Gas Transportation Agreement dated January 1, 1989, it would transport a maximum daily quantity of 20,600 MMBtu. United further states that is would utilize existing facilities to provide the proposed transportation service.

United states that it commenced the transportation of natural gas for Texican on January 4, 1989, as reported in Docket No. ST89-1941-000, for a 120-day period pursuant to § 284-223(a) of the Commission's Regulations (18 CFR 284.223(a)).

*Comment date:* April 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

**12. Northwest Pipeline Corporation**

[Docket No. CP89-843-000]

February 27, 1989.

Take notice that on February 17, 1989, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89-843-000, a request, pursuant to §§ 157.205 and 284.223 of the Commission's Regulations, for authorization to provide a transportation service for Williams Gas Marketing (Williams), a marketer of natural gas, under Northwest's blanket certificate issued in Docket No. CP86-578-000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northwest states that pursuant to an Agreement dated September 28, 1988, as amended September 28, 1988, December 8, 1988, and January 25, 1989, it proposes to transport up to 37,000 MMBtu per day of natural gas for Williams under Rate Schedule TI-1, for a term continuing to September 30, 1989, and month to month thereafter, subject to termination upon 30 business days written notice by either party.

Northwest will transport the subject gas through its transmission system from wells in Lincoln, Sublette and Sweetwater Counties, Wyoming to delivery points located in Lincoln County, Wyoming.

Northwest also states that no construction of new facilities will be required to provide this transportation service.

Northwest further states that the maximum day, average day, and annual transportation volumes would be approximately 37,000 MMBtu, 22,000 MMBtu and 8,000,000 MMBtu, respectively.

Northwest advises that service under § 284.223(a) commenced November 1, 1988, as reported in Docket No. ST89-2206 (filed February 13, 1989).

*Comment date:* April 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

**13. Tennessee Gas Pipeline Company**

[Docket No. CP89-873-000]

February 27, 1989.

Take notice that on February 21, 1989, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89-873-000 a request pursuant to §§ 157.205 and 284.223(2)(b) of the Commission's Regulations under the Natural Gas Act for authorization to provide transportation service for Energy Marketing Exchange, Inc. (Energy Marketing), a marketing company, under Tennessee's blanket certificate issued in Docket No. CP87-115-000 on June 18, 1987, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Tennessee states that it would transport, on an interruptible basis, up to 15,000 dekatherms of natural gas per day for Energy Marketing. Tennessee further states that it proposes to transport natural gas for Energy Marketing from points of receipt located offshore Louisiana, offshore Texas, and in the states of Louisiana, Ohio, Texas, Mississippi, Pennsylvania, New Jersey, Alabama, and New York. The points of delivery and ultimate points of delivery are located in the states of New York and Pennsylvania, it is stated.

Tennessee further states that the total volume of gas to be transported for Energy Marketing would be 15,000 dekatherms on a peak day, 15,000 dekatherms on an average day and 5,475,000 dekatherms on an annual basis. Tennessee also states that it would perform the proposed transportation service for Energy Marketing pursuant to a service agreement dated October 24, 1988, between Tennessee and Energy Marketing.

Tennessee states that it commenced the transportation for Energy Marketing pursuant to § 284.223(a)(1) of the Commission's Regulations on January 6, 1989, at Docket No. ST89-2125 for a 120-day period. Tennessee further states that all facilities are in place to provide for this service.

*Comment date:* April 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

**14. Panhandle Eastern Pipe Line Company**

[Docket No. CP89-847-000]

February 27, 1989.

Take notice that on February 21, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-847-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to transport natural gas for Union Texas Products Corporation (Union Texas or shipper), a shipper and gas processor of natural gas, under Panhandle's blanket certificate issued in Docket No. CP86-585-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Panhandle requests authority to transport up to 80,000 dt equivalent of natural gas per day on an interruptible basis on behalf of Union Texas, pursuant to a transportation agreement dated January 6, 1989, between Panhandle and Union Texas. It is stated that the transportation agreement provides for Panhandle to receive gas from various existing points of receipt on its system in Texas, Oklahoma, Kansas, Colorado, Wyoming and Illinois. It is stated the Panhandle will then transport and redeliver the subject gas, less fuel used and unaccounted for line loss, to Northern Natural Gas Company in Kiowa County, Kansas. Panhandle states that the shipper's estimated average day and annual

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quantities would be 50,000 dt equivalent of natural gas and 18,250,000 dt equivalent of natural gas, respectively. It is stated that the transportation charge for this service is stated that the transportation charge for this service is based upon Panhandle's currently effective Rate Schedule PT. Panhandle further states that service under the 120-day automatic provisions of § 284.223(a) of the Commission's Regulations commenced on January 10, 1989, as reported in Docket No. ST89-2064.

*Comment date:* April 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

**15. Panhandle Eastern Pipe Line Company**

[Docket No. CP89-849-000]

February 27, 1989.

Take notice that on February 21, 1989, Panhandle Eastern Pipe Line Company, (Panhandle) P.O. Box 1642, Houston, Texas, 77251-1642 filed in Docket No. CP89-849-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Amoco Production Company (Amoco), under its blanket authorization issued in Docket No. CP86-585-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Panhandle would perform the proposed interruptible transportation service for Amoco, a shipper and producer of natural gas, pursuant to a transportation agreement Rate Schedule PT dated January 5, 1989 (Contract No. P-PLT-2602). The term of the transportation agreement is for a primary term of one month from the initial date for service, and shall continue in effect month-to-month thereafter until terminated by either party upon at least 30 days' prior notice to the other party. Panhandle proposes to transport on a peak day up to 150,000 dekatherm equivalent; on an average day up to 25,000 dekatherm equivalent; and on an annual basis 9,125,000 dekatherm equivalent of natural gas for Amoco. Panhandle proposes to receive the subject gas from various exiting points of receipt on its system in Texas, Oklahoma, Kansas, Colorado, Wyoming, and Illinois. The volumes would be transported and redelivered. Less fuel used and unaccounted for line loss to Amoco's Wattenburg Plant Inlet in Adams County, Colorado. The gas would be purchased from producers in Texas, Oklahoma, Colorado, Kansas, Louisiana, offshore Louisiana, offshore Texas, Canada, Illinois, and Wyoming. Panhandle proposes to charge the then effective, applicable rates and charges under its PT rate schedule. It is averred that the subject gas would be purchased by local distribution companies, producers and intrastate pipelines. Panhandle avers that no new facilities nor expansion of existing facilities are required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. Panhandle commenced such self-implementing service on January 5, 1989, as reported in Docket No. ST89-2085-000.

*Comment date:* April 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

**16. Panhandle Eastern Pipe Line Company**

[Docket No. CP89-819-000]

February 27, 1989.

Take notice that on February 14, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas, 77251, filed in Docket No. CP89-819-000, an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to partially abandon sales service to a certain existing jurisdictional sales customer, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Panhandle proposes to partially abandon sales service to Citizens Gas Fuel Company (Citizens). Panhandle states that Citizens has elected under § 284.10 of the Commission's Regulations to convert a portion of its daily Contract Demand (CD) to firm transportation effective as of February 1, 1989. Panhandle explains that the firm transportation would be rendered under the terms and conditions of its Rate Schedule PT. Accordingly, Panhandle proposes to reduce Citizens' annualized total CD from 4,115,570 Mcf to 3,369,220 Mcf.

*Comment date:* March 20, 1989 in accordance with Standard Paragraph F at the end of the notice.

**17. Trunkline Gas Company**

[Docket No. CP89-868-000]

February 27, 1989.

Take notice that on February 21, 1989, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-868-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Conoco, Inc. (Conoco), a producer, under the blanket certificate issued in Docket No. CP86-586-000 on April 30, 1987, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Trunkline states that pursuant to a transportation agreement dated January 11, 1989, under its Rate Schedule PT, it proposes to transport up to 50,000 dt per day equivalent of natural gas for Conoco. Trunkline states that it would transport the gas from various existing receipt points on its system, and deliver such gas, less fuel and unaccounted for line loss, at an interconnection with Columbia Gulf Transmission Company in St. Mary Parish, Louisiana.

Trunkline advises that service under § 284.223(a) commenced January 13, 1989, as reported in Docket No. ST89-2174. Trunkline further advises that it would transport 10,000 dt on an average day and 3,650,000 dt annually.

*Comment date:* April 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

**18. Natural Gas Pipeline Company of America**

[Docket No. CP89-835-000]

February 27, 1989.

Take notice that on February 16, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois, 60148, filed in Docket No. CP89-835-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of Archer Daniels Midland Company (Archer), under Natural's blanket certificate issued in Docket No. CP86-582-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Natural requests authorization to transport, on a firm basis, up to a maximum of 15,000 MMBtu of natural gas per day (plus any additional volumes accepted pursuant to the overrun provision's of Natural's Rate Schedule FTS) for Archer from receipt points located in Oklahoma, Kansas and Iowa to a delivery point located in Iowa. Natural anticipates transporting, on an average day 15,000 MMBtu and an annual volume of 5,475,000 MMBtu.

Natural states that the transportation for natural gas for Archer commenced January 1, 1989, as reported in Docket No. ST89-2280-000, for a 120-day period pursuant to Section 284.223(a) of the Commission's Regulations and the blanket certificate issued to Natural in Docket No. CP86-582-000.

*Comment date:* April 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

**19. Trunkline Gas Company**

[Docket No. CP89-872-000]

February 27, 1989.

Take notice that on February 21, 1989, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-872-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide tan interruptible transportation service for TXG Gas Marketing Company (TXG), a marketer, under the blanket certificate issued in Docket No. CP86-586-000 on April 30, 1987, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Trunkline states that pursuant to a transportation agreement dated January 5, 1989, under its Rate Schedule PT, it proposes to transport up to 30,000 dt per day equivalent of natural gas for TXG. Trunkline states that it would transport the gas from various existing receipt points on its system, and deliver such gas, less fuel and unaccounted for line loss, at an interconnection at the Texaco, Inc., Henry Plant in Vermilion Parish, Louisiana.

Trunkline advises that service under Section 284.223(a) commenced January 5, 1989, as reported in Docket No. ST89-2136. Trunkline further advises that it would transport 15,000 dt on an average day and 5,475,000 dt annually.

*Comment date:* April 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

**20. Trunkline Gas Company**

[Docket No. CP89-870-000]

February 27, 1989.

Take notice that on February 21, 1989, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-870-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for ANR Gathering Company (ANR), a marketer, under the blanket certificate issued in Docket No. CP86-586-000 on April 30, 1987, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Trunkline states that pursuant to a transportation agreement dated November 22, 1988, under its Rate Schedule PT, it proposes to transport up to 100,000 dt per day equivalent of natural gas for ANR. Trunkline states that it would transport the gas from various existing receipt points on its system, and deliver such gas, less fuel and unaccounted for line loss, at an interconnection with Tennessee Gas Pipeline Company in Bolivar County, Mississippi.

Trunkline advises that service under § 284.223(a) commenced January 11, 1989, as reported in Docket No. ST89-2171. Trunkline further advises that it would transport 100,000 dt on an average day and 36,500,000 dt annually.

*Comment date:* April 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

**Standard Paragraphs**

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal January Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385-214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed witnin the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 89-4903 Filed 3-1-89; 8:45 am]

BILLING CODE 6717-01-M

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[Project No. 10573-000-New York]

**Trenton Falls Hydroelectric Co.; Surrender of Preliminary Permit**

February 27, 1989.

Take notice that Trenton Falls Hydroelectric Company, permittee for the proposed Fowlerville Hydro Project No. 10573, has requested that its preliminary permit be terminated. The permit was issued on September 9, 1988, and would have expired August 31, 1991. The project would have been located on the Moose River in Lewis County, New York. The permittee cites that the proposed project is not economically feasible as the basis for the surrender request.

The permittee filed the request on January 30, 1989, and the preliminary permit for Project No. 10573 shall remain in affect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 89-4904 Filed 3-1-89; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. RP89-45-014]

### Arkla Energy Resources, a Division of Arkla, Inc.; Proposed Change in FERC Gas Tariff

February 24, 1989.

Take notice that on February 17, 1989, Arkla Energy Resources (AER), a division of Arkla, Inc. tendered for filing certain tariff sheets to its FERC Gas Tariff. AER states that these tariff sheets implement the Stipulation and Agreement Regarding Interim Rates, which was approved by the Commission in an order dated January 23, 1989. AER states in its compliance filing that it reserves the right to seek rehearing of the January 23 order.

Any person desiring to be heard or to protest the subject filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211. All such motions or protests must be filed by March 3, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

*Secretary.*

[FR Doc. 89-4905 Filed 3-1-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA89-3-000]

### Corpus Christi Transmission Co.; Petition For Adjustment

February 27, 1989.

Take notice that on February 3, 1989, Corpus Christi Transmission Company (Corpus Christi) filed pursuant to section 502(c) of the Natural Gas Policy Act of 1978 (NGPA) a petition for adjustment from § 284.123(b)(1)(ii) of the Commission's regulations to permit Corpus Christi to base its rates for NGPA section 311(a) transportation services on the rate contained in Tariff Sheet No. T-01 currently on file with the Railroad Commission of Texas (Texas).

Corpus Christi States that the gas will be transported under transportation agreements providing for rates not greater than comparable intrastate service as reflected in rates filed with Texas. Corpus Christi further states that Tariff Sheet No. T-01 provides for a rate of $0.03 per MMBtu.

Corpus Christi submits that § 284.123(b)(1)(ii) of the Commission's regulations allows an intrastate pipeline to elect to charge a rate filed with the appropriate State agency for section 311(a) transportation if the service is comparable and that the Commission has interpreted comparable service to refer to city gate service. Corpus Christi states that since it does not render city gate service, it is requesting this adjustment to permit it to base its rates on its tariff on file with Texas.

Corpus Christi states that upon issuance of an adjustment it would, within a reasonable time, not to exceed 30 days, make a filing with supporting documents necessary for Texas to make a determination that its rate proposed for section 311(a) service is cost-based and fair and equitable. It agrees to use for its section 311(a) services rates not in excess of the rate found by Texas to be cost-based and fair and equitable. Corpus Christi states that the adjustment it seeks is necessary to prevent special hardship and inequity that would otherwise result from forcing it to submit a § 284.123(b)(2) filing and would avoid unnecessary dual agency review.

The procedures applicable to the conduct of this adjustment proceeding are found in Subpart K of the Commission's Rules of Practice and Procedure. Any person desiring to participate in this adjustment proceeding must file a motion to intervene in accordance with the provisions of such Subpart K. All motions to intervene must be filed within 15 days after publication of this notice in the **Federal Register**. The petition is on file with the Commission and is available for public inspection.

Lois D. Cashell,

*Secretary.*

[FR Doc. 89-4906 Filed 3-1-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2392-004—Vermont, New Hampshire]

### Georgia-Pacific Corp.; Establishing Procedures for Relicensing and a Deadline for Submission of Final Amendments

February 24, 1989.

The license for the Gilman Project No. 2392 located on the Connecticut River in Essex County, Vermont and Coos County, New Hampshire, expires on December 31, 1990. The statutory deadline for filing applications for new license was December 31, 1988. An application for new license has been filed as follows:

| Project No. | Applicant | Contact |
|---|---|---|
| 2392-004 | Georgia-Pacific Corporation, Gilman, VT 05904. | Mr. David G. Stanchette, Georgia-Pacific Corporation, Gilman, VT 05904. |

Pursuant to section 15(c)(1) of the Federal Power Act, the deadline for the applicant to file final amendments, if any, to its application is June 30, 1989.

The following is an approximate schedule and procedures that will be followed in processing the application.

| Date | Action |
|---|---|
| February 21, 1989. | The Commission notified the applicant that its application has been accepted. The notification of acceptance specified the need for additional information and the date the information is due. |
| March 31, 1989. | Commission issues public notice of application that has been accepted describing project and establishing dates for filing motions to intervene, comments, protests, and agency recommendations. |

Upon receipt of all additional information and the information filed in response to the public notice of the acceptance of the application, the Commission will evaluate the application in accordance with applicable statutory requirements and take appropriate action on the application.

Any questions concerning this notice should be directed to Steven H. Rossi at (202) 376-9814.

Lois D. Cashell,

*Secretary.*

[FR Doc. 89-4907 Filed 3-1-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-225-004]

### Inter-City Minnesota Pipelines Ltd., Inc.; Tariff Filing

February 24, 1989.

Take notice that on February 17, 1989, Inter-City Minnesota Pipelines Ltd., Inc. ("Inter-City"), 245 Yorkland Boulevard, North York, Ontario, Canada M2J 1R1, submitted revised tariff sheets:

*Original Volume No. 1*

Second Substitute Thirtieth Revised Sheet No. 4 Alternate Second Substitute Thirtieth Revised Sheet No. 4 Third Substitute Third Revised Sheet No. 61-C.



Copies of this filing were served on Inter-City's jurisdictional customers and interested state commissions.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 3, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

*Secretary.*

[FR Doc. 89-4908 Filed 3-1-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2323 Vermont & Massachusetts]

### New England Power Co.; Intent To File an Application for a New License

February 24, 1989.

Take notice that on December 22, 1988, New England Power Company, the existing licensee for the Deerfield River Hydroelectric Project No. 2323, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99-495. The original license for Project No. 2323 was issued effective April 1, 1982, and expires December 31, 1993.

The project is located on the Deerfield River in Windham & Bennington Counties, Vermont, and Franklin & Berkshire Counties, Massachusetts. The principal works of the Deerfield River Project include eight dam and reservoir developments: Somerset, Searsburg, Harriman, Sherman, Deerfield No. 5, Deerfield No. 4, Deerfield No. 3, and Deerfield No. 2. Somerset is a storage reservoir, and the other seven developments have powerhouses with a total installed capacity of 81,500 kW; all have transmission line connections and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87-7-000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426. The above information as described in the rule is now available from the licensee at 25 Research Drive, Westborough, MA 01582, Attn: L.P. Sicuranza, telephone (508) 366-9011.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Lois D. Cashell,

*Secretary.*

[FR Doc. 89-4909 Filed 3-1-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2315 South Carolina]

### South Carolina Electric & Gas Co. Intent To File an Application for a New License

February 24, 1989

Take notice that on December 29, 1988, South Carolina Electric & Gas Company, the existing licensee for the Neal Shoals Hydroelectric Project No. 2315, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99-495. The original license for Project No. 2315 was issued effective April 1, 1963, and expires December 31, 1993.

The project is located on the Broad River in Union and Chester Counties, South Carolina. The principal works of the Neal Shoals Project include a 1,087-foot-long dam; reservoir of 600 acres; a 141-foot-long powerhouse containing four generating units with a total capacity of 5,200 kW; 14 miles of two-circuit, 13.2-kV, 3-phase transmission line; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87-7-000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426. The above information as described in the rule is now available from the licensee at 1426 Main Street, Columbia, SC 29218.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Lois D. Cashell,

*Secretary.*

[FR Doc. 89-4910 Filed 3-1-89; 8:45 am]

BILLING CODE 6717-01-M

### Office of Hearings and Appeals

### Issuance of Decisions and Orders During the Week of January 2 Through January 6, 1989

During the week of January 2 through January 6, 1989, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

**Appeals**

*Terry J. Fox, 1/5/89, KFA-0248*

Terry J. Fox filed an Appeal from a denial by the Portland Office of the Bonneville Power Administration of a Request for Information which he had submitted under the Freedom of Information Act (the FOIA). In considering the Appeal, the DOE found that the search performed by the BPA's Freedom of Information official was adequate. Important issues that were considered in the Decision and Order were the adequacy of the search performed and whether the requested documents were agency records.

*Tri-City Herald, 1/5/89, KFA-0241*

The Tri-City Herald filed an Appeal from a determination issued to it by the Richland Operations Office concerning a Request for Information which the newspaper had submitted under the Freedom of Information Act (FOIA). The newspaper sought documents relating to the decision of the DOE or its contractor, Westinghouse Hanford Company, to settle litigation involving two former Westinghouse employees. The Operations Office identified a letter from Westinghouse labor counsel to the Operations Office's Chief Counsel as being responsive to the request. The Operations Office withheld the letter on the ground that it was attorney work-product and, therefore, exempt from disclosure under Exemption 5 of the FOIA. In considering the Appeal, the DOE found that the letter was attorney work-product and that the agency could properly assert the attorney work-product privilege with respect to

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contractor documents. Accordingly, the Appeal was denied.

*Walbridge J. Powell, 1/3/89, KFA-0235*

Walbridge J. Powell filed an Appeal from a determination issued to him by the DOE's Richland Operations Office concerning a Request for Information that he had filed under the Freedom of Information Act (FOIA). In his Request for Information, Mr. Powell sought a bibliography of the latest 25 safety studies for the Hanford, Washington nuclear reactor. The Operations Office denied the request on the ground that the requested document did not exist. In considering the Appeal, the DOE found that the Operations Office had made an adequate search for the requested document and, therefore, upheld the denial. In making this determination, the DOE noted that Mr. Powell had failed to cooperate with the DOE in its attempts to help him reformulate his request in a manner that would produce responsive documents.

**Motion for Discovery**

*Tesoro Petroleum Corporation and Kenco Refining, Inc., 1/4/89, KRD-0540 and KRD-0541*

Kenco Refining, Inc. (Kenco) and Tesoro Petroleum Corporation (Tesoro) filed separate Motions for Discovery in connection with their Statements of Objections to the Proposed Remedial Order (PRO) that the Economic Regulatory Administration (ERA) issued to them on November 6, 1986. In the PRO, the ERA alleged that Kenco improperly received small refiner bias entitlements as a result of an April 1977 processing agreement with Tesoro. The ERA also alleged that Kenco and Tesoro improperly reported sales of residual fuel oil into the East Coast Market, thereby permitting Tesoro to avoid entitlements obligations on that fuel oil.

Tesoro sought discovery of (1) certain factual materials in the PRO audit file; and (2) documents which would show the unreasonableness of the ERA's delay in issuing the PRO. With respect to the first request, the DOE found that the ERA had already released the requested factual material to Tesoro in response to a Freedom of Information Act (FOIA) request and, therefore, that the instant request was moot. With respect to the second request, the DOE found that Tesoro had not shown adequate grounds to obtain access to documents in the audit file concerning the timing of the enforcement action. Accordingly, Tesoro's Motion for Discovery was denied.

Kenco sought discovery of (1) all documents in the audit file that concerned Kenco, Tesoro and the purchasers of the petroleum products produced under the processing agreement; (2) depositions and transcripts of all oral interviews conducted by the ERA; and (3) contemporaneous construction discovery of the disputed regulation. Most of the documents responsive to Kenco's first request and all of the documents responsive to Kenco's second request had been released to Tesoro through its FOIA request. The DOE accordingly granted Kenco access to this previously released material. The DOE also granted Kenco discovery of all other factual, non-deliberative materials in the audit file that concerned Kenco, Tesoro and the purchasers of the products produced under the processing agreement. The DOE found that Kenco had not demonstrated that its requested contemporaneous construction discovery would provide relevant and material information. Accordingly, Kenco's Motion for Discovery was granted in part.

**Refund Applications**

*Aminoil U.S.A., Inc./Ellison Enterprises, et al., 1/6/89, RF139-161, et al.*

The DOE issued a Decision and Order concerning Applications for Refund filed by six claimants in the Aminoil U.S.A., Inc. special refund proceeding. The firms submitted cost banks which indicated that they did not recover the full amount of their increased costs during the period of regulation. The firms also submitted market price comparisons upon which the DOE determined the degree that each firm was injured. After examining the firms' applications and supporting documentation, the DOE concluded that the firms should receive refunds totaling $138,574, representing $77,850 in principal and $60,724 in interest.

*Atlantic Richfield Company/Capitol Products Corp., et al., 1/3/89, RF304-1576, et al.*

The DOE issued a Decision and Order concerning 50 Applications for Refund filed in the Atlantic Richfield Company special refund proceeding. All of the applicants documented the volume of their ARCO purchases and were end-users or reseller/retailers requesting refunds of $5,000 or less. Therefore, each applicant was presumed injured. The refunds granted in this decision totalled $67,230, representing $53,017 in principal and $14,213 in interest.

*Atlantic Richfield Company/John B. Fine, et al., 1/3/89, RF304-10106, et al.*

The DOE issued a Decision and Order concerning 45 Applications for Refund filed by 44 applicants in the Atlantic Richfield Company special refund proceeding. All of the applicants were either end-users or reseller/retailers that applied for small claims presumption refunds. In addition, each applicant documented the volume of its purchases from ARCO. The DOE concluded that the applicants should receive refunds totalling $72,253, representing $56,980 in principal and $15,273 in interest.

*Exxon Corporation/Corning Glass Works, et al., 1/6/89, RF307-4464, et al.*

The DOE issued a Decision and Order concerning 45 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the applicants purchased directly from Exxon and was either a reseller whose allocable share is less than $5,000 or an end-user of Exxon products. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $33,094, representing $28,770 in principal and $4,324 in interest.

*Exxon Corporation/Tate Oil Co., Inc., Service Oil Co. and The Carolinas Domestic Gas Co., 1/6/89, RF307-2695; RF307-2755, RF307-2756*

The DOE issued a Decision and Order concerning three Applications for Refund filed in the Exxon Corporation special refund proceeding. Each firm purchased directly from Exxon and was a reseller of Exxon products. Tate Oil's allocable share exceeds $5,000. Instead of making an injury showing to receive its full allocable share, Tate elected to receive either 40 percent of its allocable share or $5,000, whichever is greater. Service Oil's allocable share exceeds $5,000 and, like Tate, it elected to receive either 40 percent of its allocable share or $5,000, whichever is greater. The allocable share of Carolinas is under $5,000, and thus the firm ordinarily would be entitled to receive its full allocable share. However, because Carolinas is a subsidiary of Service Oil, the two applications were combined. Each firm will receive a refund based on 40 percent of its purchase volume. The sum of the refunds granted in this Decision is $15,745, representing $13,667 in principal and $2,058 in interest.

*Exxon Corporation/Tavo Salinas Exxon, et al., 1/6/89, RF307-1823, et al.*

The DOE issued a Decision and Order concerning eight Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the applicants purchased directly from Exxon and was either an end-user or a reseller whose allocable share is less than $5,000. Four of the applicants disagreed with the purchase volumes recorded in their Exxon volume printout, and the DOE approved the gallonage figures they submitted based on purchase invoices. Accordingly, the DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $6,707, representing $5,831 in principal and $876 in interest.

*Gulf Oil Corporation/C T P Petroleum Co., Inc. and Ossipee Oil Co., Inc., 1/6/89, RF300-2616, RF300-2617*

The DOE issued a Decision and Order concerning two Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding by C T P Petroleum Co., Inc., and Ossipee Oil Co., Inc. Because the firms were under common ownership during the consent order period, they could not be considered separately under the small claims presumption of injury. The two companies collectively purchased 10,452,013 gallons of Gulf product, and were granted a refund under the small claims presumption of injury. The amount of the refund granted in this Decision is $6,406, representing $5,000 in principal and $1,406 in interest.

*Gulf Oil Corporation/Columbus Southern Power Company, RF300-4153, Ohio Power Company and RF300-10640, and Appalachian Power Company, 1/5/89, RF300-10641*

The DOE issued a Decision and Order concerning three Applications for Refund filed by the Columbus Southern Power Company, The Ohio Power Company and the Appalachian Power Company, all regulated public utilities, in the Gulf Oil Corporation special refund proceeding. The applicants applied for refunds on a total of 16,666,695 gallons of covered Gulf products. Each applicant documented its purchases and was granted a refund. Appalachian, whose requested refund exceeded $5,000, certified that it will notify its appropriate state regulatory agency of any refund received in the Gulf proceeding and that it will pass through the amount of any refund received to its customers. This Decision granted total refunds of $13,666.

*Gulf Oil Corporation/Edelmiro Lezasvain, et al., 1/6/89, RF300-6691 et al.*

The DOE issued a Decision and Order concerning 74 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $191,700.

*Gulf Oil Corporation/Fiore Bros., Inc., et al., 1/4/89, RF300-1771 et al.*

The DOE issued a Decision and Order concerning nine Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $62,305.

*Gulf Oil Corporation/Henderson County Board of Education, et al., 1/3/89, RF300-5706 et al.*

The DOE issued a Decision and Order concerning 68 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $109,211.

*Gulf Oil Corporation/L.S. Riggins Oil Company, 1/3/89, RF300-10651*

The DOE issued a Supplemental Order rescending a refund granted on December 15, 1988 to L.S. Riggins Oil Company from the Gulf Oil Corporation special refund proceeding (*Gulf Oil Corporation/Dallas Gulf Service, et al.*). The applicant has previously been approved a refund for a virtually identical application (*Gulf Oil Corporation Singing River Electric Power Association, et al.*, issued November 10, 1988). In the Supplemental Order, the DOE added 123,287 gallons to its November 10, 1988 approval to reflect the additional gallonage claimed in the application approved on December 15, 1988. Accordingly, the DOE amended the November 1988 Order to grant a refund to the applicant of $2,321, based on purchases of 2,830,488 gallons.

*Gulf Oil Corporation/Pennsylvania Power & Light Company, 1/5/89 RF300-2042*

The DOE issued a Decision and Order concerning an Application for Refund filed by Pennsylvania Power & Light Company, a regulated public utility, in the Gulf Oil Corporation special refund proceeding. In accordance with the requirements of the Gulf proceeding, Pennsylvania Power & Light has certified that it will notify its appropriate state regulatory agency of any refund received in the Gulf proceeding and that it will pass through the amount of any refund received to its customers. The refund granted in this Decision is $52,472.

*Gulf Oil Corporation/Rite Way Oil & Gas Co., Inc., et al., 1/4/89, RF300-6476 et al.*

The DOE issued a Decision and Order concerning 13 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $140,679.

*Gulf Oil Corporation/Rohrbacher Bros., Inc., et al., 1/4/89, RF300-2075 et al.*

The DOE issued a Decision and Order concerning 12 Applications for Refund filed in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $101,050.

*Gulf Oil Corporation/William Hennis, et al., 1/6/89, RF300-0669 et al.*

The DOE issued a Decision and Order concerning 161 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $257,630.

*Murphy Oil Corporation/Schwegmann Giant Super Markets, et al., 1/4/89, RF309-306 et al.*

The DOE issued a Decision and Order granting Applications for Refund filed by six purchasers of refined petroleum products in the Murphy Oil Corporation special refund proceeding. According to the procedures set forth in *Murphy Oil Corp.*, 17 DOE ¶ 85,782 (1988), each applicant was found to be eligible for a refund based on the volume of products it purchased from Murphy. One applicant received approval for a refund at the 40 percent mid-level presumption while the other five were approved at the $5,000 small-claims presumption level. The total amount of refunds approved in this Decision is $66,705, representing $59,086 in principal and $7,619 in interest.

*Prince George's County Public Schools, 1/6/89 RF272-31507*

The Prince George's County Public Schools (PGCPS), a county school district, filed an Application for Refund in the Subpart V crude oil refund proceedings. An objection was filed by Philip Kalodner, counsel for Utilities, Transporters and Manufacturers, claiming that the school district should not receive a refund on the grounds that

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governmental authorities are ineligible for a refund from the 20 percent reserved for directly injured claimants and the school district passed through all overcharges. The DOE rejected both these arguments. Accordingly, the DOE awarded PGCPS a refund of $15,628.

### Crude Oil End-Users

The Office of Hearings and Appeals granted crude oil overcharge refunds to end-user applicants in the following Decisions and Orders:

| Name | Case No. | Date | No. of applicants | Total refund |
|---|---|---|---|---|
| Chelmsford Public Schools, et al | RF272-18431 | 1/3/89 | 34 | $6,974 |
| Clifford Wagner, et al | RF272-41400 | 1/5/89 | 140 | 3,346 |
| Ervin J. Zeamer, Sr., et al | RF272-41601 | 1/6/89 | 180 | 3,446 |
| Huron Co. Sheriff's Dept., et al | RF272-43603 | 1/5/89 | 125 | 3,238 |
| James W. Stewart, et al | RF272-42400 | 1/5/89 | 146 | 3,662 |
| Mrs. L.S. Covey, et al | RF272-41800 | 1/5/89 | 151 | 3,297 |
| Norbert C. Portratz, et al | RF272-41001 | 1/5/89 | 105 | 2,732 |
| Raymond Griffin, et al | RF272-42800 | 1/6/89 | 161 | 4,123 |
| Roseville Community Schools, et al | RF272-337 | 1/6/89 | 46 | 35,091 |
| William E. Callander, et al | RF272-41200 | 1/5/89 | 131 | 3,814 |

### Dismissals

The following submissions were dismissed:

| Name | Case No. |
|---|---|
| AP Propane, Inc. | RF273-75187 |
| Anderson Propane Service | RF139-194 |
| Ben Ford Grocery | RF300-7367 |
| Best Oil Company | RF309-388 |
| Carberry's Arco | RF304-3724 |
| Collins Park Gulf, Inc. | RF300-8534 |
| Dee-Way Grocery #2 | RF300-7033 |
| Dee-Way Grocery #1 | RF300-7034 |
| Duncan Market | RF300-9990 |
| Enon Stop & Shop | RF300-7041 |
| Fast-Shop Superette | RF300-7056 |
| Floyd Wholesale, Inc. | RF300-180 |
| Gill Community | RF300-7373 |
| H & M Service | RF300-7539 |
| High Point Gulf | RF300-9064 |
| Hoover Garage | RF300-7388 |
| Irby Powell Grocery | RF300-7342 |
| J & J Service Station | RF300-7316 |
| Jack P. Food Mart | RF300-7050 |
| Jay Food Mart | RF300-7540 |
| Jenkin Grevel | RF300-7677 |
| Joes Gas | RF300-9980 |
| King Gas Company | RF139-204 |
| Lake Way Conv | RF300-9883 |
| Lakeland | RF300-9889 |
| Mac Service Station | RF300-7349 |
| Meijer Wholesale | RF300-8648 |
| Murray Gulf | RF300-8892 |
| Murrays Station | RF300-8978 |
| North Penn Gulf #1 | RF300-8530 |
| North Penn Gulf #2 | RF300-8531 |
| Peter Place | RF300-7661 |
| R B M Service | RF300-7338 |
| Raya Roost Truck Stop | RF300-9975 |
| Regional Transit Service, Inc | RF300-9302 |
| Resort International, Inc | RF300-7679 |
| Roadway Gas | RF300-7319 |
| Roberson Gulf Tire Service | RF300-7676 |
| Rocky Mtn. Ent., Inc | RF272-12650 |
| Ronnie Ray | RF300-9966 |
| Ross Gib Gulf Station | RF300-7733 |
| Warren-Munn Gulf | RF300-264 |
| Washington Crossing Exxon | RF307-1829 |

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

February 24, 1989.

George B. Breznay,

*Director, Office of Hearings and Appeals.*

[FR Doc. 89-4934 Filed 3-1-89; 8:45 am]

BILLING CODE 6450-01-M

### Issuance of Decisions and Orders During the Week of January 16 Through January 20, 1989

During the week of January 16 through January 20, 1989, the decisions and orders summarized below were issued with respect to applications for relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

### Refund Applications

*Atlantic Richfield Company/AERNI & Hitzel Fuel, Inc., et al., 1/18/89, RF304-2106 et al.*

The DOE issued a Decision and Order concerning 75 Applications for Refund filed in the Atlantic Richfield Company (ARCO) special refund proceeding. As reseller/retailers claiming refunds of less than $5,000 in principal or end-users, each applicant was presumed to have been injured by ARCO's alleged overcharges. After examining the applications and supporting documentation, the DOE determined that the firms should receive refunds totalling $155,283, representing $122,159 in principal and $33,124 in interest.

*Atlantic Richfield Company/Anthony Spina et al., 1/18/89, RF304-674 et al.*

The DOE issued a Decision and Order concerning eight Applications for Refund filed in the Atlantic Richfield Company (ARCO) special refund proceeding. All of the applicants documented the volume of their ARCO purchases and were end-users or reseller/retailers requesting refunds $5,000 or less. Therefore, each applicant was presumed injured. The refunds granted in this Decision totalled $8,034 ($6,304 in principal and $1,730 in interest).

*Atlantic Richfield Company/Buzz & Tex Service, et al., 1/18/79, RF304-1024 et al.*

The DOE issued a Decision and Order concerning 37 Applications for Refund filed by 35 claimants in the Atlantic Richfield Company (ARCO) special refund proceeding. All of the applicants were either end-users or reseller/retailers that applied for small claims presumption refunds. In addition, each applicant documented the volume of its purchases from ARCO and, therefore, was presumed to have been injured and entitled to a refund. The DOE concluded that the applicants should receive refunds totalling $40,436, representing $31,810 in principal and $8,626 in accrued interest).



*Atlantic Richfield Company/Cole Bros. Harvesting, Inc. et al., 1/18/89, RF304-634 et al.*

The DOE issued a Decision and Order concerning four Applications for Refund filed in the Atlantic Richfield Company (ARCO) special refund proceeding. All of the applicants documented the volume of their ARCO purchases and were end-users or reseller/retailers requesting refunds of less than $5,000. Therefore, each applicant was presumed injured. The refunds granted in this Decision totalled $3,109 ($2,445 in principal and $664 in interest).

*Atlantic Richfield Company/Dave's ARCO, Inc. et al., 1/19/89, RF304-1502 et al.*

The DOE issued a Decision and Order concerning 44 Applications for Refund filed in the Atlantic Richfield Company (ARCO) special refund proceeding. All of the applicants documented the volume of their ARCO purchases and were end-users or reseller/retailers requesting refunds of $5,000 or less. Therefore, each applicant was presumed injured. The refunds granted in this Decision totalled $82,802 ($40,349 in principal and $13,353 in interest).

*Atlantic Richfield Company/Henrickson ARCO, et al., 1/18/89, RF304-3000 et al.*

The DOE issued a Decision and Order concerning 73 Applications for Refund filed in the Atlantic Richfield Company (ARCO) special refund proceeding. As reseller/retailers claiming refunds of less than $5,000 in principal or end-users, each applicant was presumed to have been injured by ARCO's alleged overcharges. After examining the applications and supporting documentation, the DOE determined that the firms should receive refunds totalling $113,380, representing $89,202 in principal and $24,188 in interest.

*Cone Mills Corp., 1/18/89, RF272-21*

Cone Mills filed a Motion for Reconsideration seeking to overturn OHA's denial of its Subpart V crude oil refund application. The DOE denied the Motion, determining that Cone Mills had waived its right to a Subpart V refund when it filed for a refund from the Surface Transporter Escrow in the *Stripper Well* refund proceeding.

*East End Gulf Service, et al., 1/24/89, RF272-84679 et al.*

The DOE issued a Decision and Order denying 27 Applications for Refund filed in the Subpart V crude oil refund proceedings. Each applicant was reseller or retailer during the period August 19, 1973 through January 27, 1981. Because none of the applicants demonstrated that it was injured due to the crude oil overcharges, each applicant was ineligible for a crude oil refund.

*Exxon Corporation/Francis Kocar et al., 1/19/89, RF307-224 et al.*

The DOE issued a Decision and Order concerning five Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the Applicants purchased directly from Exxon and was either a reseller whose allocable share is less than $5,000 or an end-user of Exxon products. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $3,884 ($3,183 principal plus $501 interest).

*Exxon Corporation/Rockwell International Et al., 1/18/89, RF307-4714 et al.*

The Office of Hearings and Appeals of the Department of Energy issued a Decision and Order granting 50 applications for Refund from consent order funds obtained from Exxon Corporation. Each Applicant sought a refund of less then $5,000, and was therefore presumed to have suffered injury as a result of Exxon's alleged overcharges. The sum of the refunds granted is $34,531.

*Gulf Oil Corporation/Army and Air Force Exchange Service, 1/17/89, RF300-4348*

The DOE issued a Decision and Order to the Army and Air Force Exchange Service (AAFES) in the Gulf Oil Corporation special refund proceeding. The AAFES' primary purpose is to provide discount goods and services to military personnel. Any profits generated by its sales operations are used for the benefit of the military personnel who purchase from it. Because the covered products claimed by the AAFES were sold to and consumed by military personnel, and because any refund received by the AAFES will be used for the benefit of military personnel, the DOE granted the AFFES a full volumetric refund totaling $300,374 on 366,309,441 gallons of covered Gulf products.

*Gulf Oil Corporation/Commerce Propane, Greenville Automotic Gas Co., 1/17/89, RF300-4090 and RF300-4091*

The DOE issued a Decision and Order concerning two Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding by Commerce Propane and Greenville Automatic Gas Co. Because the firms were under common ownership during the consent order period, and because their allocable share exceeded $5,000 they could not be considered separately. The two firms collectively purchased 8,936,026 gallons of covered Gulf products, and their Applications were approved under the 40 percent presumption of injury. The refund granted in this Decision, which includes both principal and interest, is $6,406.

*Gulf Oil Corporation/Embassy Gulf, 1/19/89, RF300-1061*

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding by Embassy Gulf. The applicant, a service station owned by Carl Lotto, sought a refund on 11,930,376 gallons of coverd Gulf products. Mr. Lotto also owned another service station for which he filed an Application under the name of Carl L. Lotto (Case No. RF300-1066). Mr. Lotto was previously granted a refund of $765 for 943,902 gallons in Case RF300-1066. Because the firms were under common ownership, they were considered together for purposes of applying the $5,000 presumption of injury. Accordingly, the principal amount previously awarded to Mr. Lotto was subtracted from the $5,000 refund to which he was entitled for both stations. Mr. Lotto was granted a refund of $5,632, which includes both principal and interest, on the Embassy Gulf Applications.

*Gulf Oil Corporation/Farrell Lines Incorporated et al., 1/17/89, RF300-641 et al.*

The DOE issued a Decision and Order concerning 64 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision, which includes both principal and interest, is $389,899.

*Gulf Oil Corporation/Gray's Gulf Service, et al., 1/17/89, RF300-1142 et al.*

The DOE issued a Decision and Order concerning 11 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $32,913.

*Gulf Oil Corporation/Greensboro, North Carolina, 1/17/89, RF300-10654*

On December 20, 1988, the Office of Hearings and Appeals issued a Decision and Order to M & A Petroleum, *et al.* (Case Nos. RF300-2451, *et al.*) in which Greensboro, North Carolina, Case No. RF300-2886, was issued a refund of

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$6,406. In this Decision Greensboro was incorrectly considered as a reseller applicant who wished to elect the 40 percent presumption. Greensboro is not a reseller, however, but an end-user, and is therefore entitled to a full volumetric refund without submitting an injury showing. Accordingly, the DOE issued a Supplemental Order indicating that Greensboro should receive a supplemental refund of $1,007.

*Gulf Oil Corporation/James P. Lowe, et al., 1/17/89, RF300-509 et al.*

The DOE issued a Decision and Order concerning 86 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $149,080.

*Gulf Oil Corporation/Montgomery Mall Gulf Service, et al., 1/17/89, RF300-6453 et al.*

The DOE issued a Decision and Order concerning 34 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $64,543.

*Gulf Oil Corporation/P.D. Humphrey Co., Inc. Mathieu Oil Co., Inc., 1/17/89, RF300-5458 and RF300-6459*

The DOE issued a Decision and Order concerning two Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding by P.D. Humphrey Co., Inc. and Mathieu Oil Co., Inc. Although the two firms have common ownership now, they did not have common ownership during the consent order period. Since the two firms did not have common ownership during the consent order period, the DOE considered the applications separately. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $8,287.

*Gulf Oil Corporation/Walker's Auto Service, et al., 1/17/89, RF300-2277, et al.*

The DOE issued a Decision and Order concerning 63 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $108,416.

*Hanna Nickel Smelting Company, 1/17/89, RF272-10400*

Hanna Nickel Smelting Company (Hanna) filed an Application for Refund in the Subpart V crude oil refund proceeding. A group of states filed on objection to Hanna's application, claiming that the firm should not be eligible to receive a refund because it had not established that it was an injured end-user. The DOE rejected the states' arguments, finding that they had not submitted relevant material sufficient to overcome the presumption of injury available to end-user applicants in this proceeding. The DOE then reviewed the application and found that the information provided therein supported the firm's claim. Accordingly, Hanna was granted a refund of $9,066.

*Johnson Controls Inc., 1/19/89, RC272-18*

On January 5, 1989 the DOE issued a Decision granting 146 Applications for Refund in the crude oil refund proceedings. *James W. Stewart,* (Case Nos. RF272-42400, *et al.*). It has come to the DOE's attention that one of the applicants in that Decision, Johnson Controls Inc. (Case No. RF272-42583) (Johnson) should have been granted a refund based on a much larger gallonage. Accordingly, this Decision rescinds *James W. Stewart,* with respect to Johnson. Johnson's application based on the correct gallonage will be considered at a later date under a new case number.

*Owens-Corning Fiberglas Corporation, 1/19/89, RF272-10027 and RD272-10027*

Owens-Corning Fiberglas Corporation (O-C) filed an Application for Refund from crude oil monies available for disbursement under 10 C.F.R. Part 205, Subpart V, based upon its purchases of refined petroleum products, during the period August 19, 1973 through January 27, 1981. A group of thirty States and two Territories (collectively "the States") filed objections in opposition to the receipt of any refund by O-C on the basis that the firm had suffered no actual injury as a result of crude oil overcharges. In addition, the States filed a Motion for Discovery. In considering O-C's refund application, the DOE determined that the firm had consumed petroleum products, principally asphalt, in the production of fiberglas-based construction materials. Thus, the DOE determined that O-C was presumptively injured by crude oil overcharges based upon the presumption of injury accorded to end-users outside of the petroleum industry. The DOE further determined that the States had failed to rebut the presumption of injury in their objections since the States' general showing with regard to O-C's profitability and industry-wide data pertaining to the construction industry were not sufficiently probative of the extent to which O-C actually passed through increased petroleum product costs. On the same basis, the DOE determined that the States had failed to support adequately their Motion for Discovery. Accordingly, O-C's Application for Refund was approved, and the States' objections and Motion for Discovery were denied. The total refund amount approved in this Decision and Order is $662,319.

*Standard Oil Co. (Indiana)/New York (Saint Regis Mohawk Tribe), 1/17/89, RQ21-492*

The DOE issued a Decision and Order granting the second-stage refund application filed by the State of New York on behalf of the Saint Regis Mohawk Tribe in the Standard Oil Co. (Indiana) (Amoco I) special refund proceeding. The tribe requested permission to use $805 in Amoco I monies to purchase two items, a setback thermostat control device and a battery charger timer. In light of the small sum of money involved, the DOE found the plan to be adequately restitutionary. Accordingly, the tribe's request was granted.

*Total Petroleum/Madden Oil Company, 1/19/89, RF310-337*

The DOE issued a Decision and Order in which it reconsidered an Application for Refund filed by Madden Oil Company, a motor gasoline and diesel fuel reseller, in the Total Petroleum special refund proceeding. After a thorough evaluation of Madden's refund claim and the examination of a separate refund claim advanced by Madden in an earlier refund proceeding, the DOE determined that Madden was granted a refund on December 20, 1988 to which it was not entitled. The $20,935 refund awarded to Madden on that date was therefore rescinded. The DOE also determined that under the standards established in *Total Petroleum Inc.*, 17 DOE ¶ 85,542 (1988), Madden was eligible for a refund of $5,742 ($5,000 of principal and $742 of interest).

**Crude Oil End-Users**

The Office of Hearings and Appeals granted crude oil overcharge refunds to end-user applicants in the following Decision and Orders:



| Name | Case No. | Date | No. of applicants | Refund |
|---|---|---|---|---|
| Flasher Public School District et al | RF272-9389 | 1/17/89 | 83 | $23,950 |
| Greene County et al | RF272-14322 | 1/18/89 | 83 | 27,455 |
| John W. Osborne et al | RF272-46600 | 1/19/89 | 196 | 1,124 |
| Marvin Thon et al | RF272-47801 | 1/19/89 | 143 | 3,974 |
| Robert Donnell et al | RF272-14810 | 1/18/89 | 54 | 18,415 |
| Underbrink Farms et al | RF272-35002 | 1/19/89 | 58 | 10,987 |

**Dismissals**

The following submissions were dismissed:

| | |
|---|---|
| Bruce Caley's Exxon | RF307-236 RF309-237 |
| Cargill, Inc. | RD272-54026 |
| Covelli's A-1 | RF304-3588 |
| D & G Getty | RF265-3767 |
| Frank L. Bordell | KFA-0258 |
| H.B. Spradley | RF272-40321 |
| Hayden-T Exxon | RF307-631 |
| Osborn's Exxon | RF307-3068 |
| Ray E. Temeyer | RF272-80068 |
| Troy's Broadmoor Exxon | RF307-1781 |
| Westshore Exxon | RF307-7010 |
| Witco Corporation | RF272-80165 |

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines,* a commercially published loose leaf reporter system.

February 24, 1989.

George B. Breznay,

*Director, Office of Hearings and Appeals.*

[FR Doc. 89-4936 Filed 3-1-89; 8:45 am]

BILLING CODE 6450-01-M

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-3530-7]

### Agency Information Collection Activities Under OMB Review

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

**FOR FURTHER INFORMATION CONTACT:** Sandy Farmer at EPA, (202 382-2740).

**SUPPLEMENTARY INFORMATION:**

**Office of Air and Radiation**

*Title:* NESHAP for Asbestos (Subpart M)—Information Requirements (EPA ICR #0111.04; OMB #2060-0101). This is a request for reinstatement of an existing collection.

*Abstract:* Demolition and renovation contractors must notify EPA or the State(s) of each demolition and/or renovation operation where the amount of friable asbestos exceeds 80 linear meters (260 linear feet) on pipes or 15 square meters (160 square feet) on other facility components. EPA or the States will use these notifications to ensure proper work practices and to plan and schedule inspections.

*Burden Statement:* The estimated public reporting burden for this collection of information is approximately 4 hours per response per respondent. This estimate includes the time to read instructions, gather necessary data, and complete and review the forms used to notify the proper officials.

*Respondents:* Demolition and renovation contractors.

*Estimated No. of Respondents:* 7,000.

*Estimated Total Annual Burden on Respondents:* 336,000 hours.

*Frequency of Collection:* Each demolition/renovation operation.

Send comments regarding the burden estimate, or any other aspect of these information collections, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223), 401 M Street, SW., Washington, DC 20460

and

Nicolas Garcia, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place, NW., Washington, DC 20530.

**OMB Responses to Agency PRA Clearance Requests**

EPA ICR #1432; Protection of Stratospheric Ozone—Reporting and Recordkeeping Requirements; was approved 01/10/89; OMB #2060-0170; expires 01/31/92.

EPA ICR #1084; NSPS for Nonmetallic Mineral Processing Plants—Reporting and Recordkeeping; was approved 01/13/89; OMB #2060-0050; expires 01/31/92.

EPA ICR #1383; National Sewage Sludge Questionnaire Survey; was approved 01/12/89; OMB #2040-0119; expires 09/30/90.

EPA ICR #1331; Accidental Release Information Program; was approved 01/19/89; OMB #2050-0085; expires 01/31/91.

EPA ICR #1214; Pesticide Product Registration Maintenance Fee; was approved 01/11/89; OMB #2070-0100; expires 01/31/92.

EPA ICR #1486; Superfund Site Evaluation and Hazard Ranking Information Collection; was approved 01/17/89; OMB #2050-0095; expires 01/31/92.

EPA ICR #0012; Motor Vehicle Exclusion Requests; was approved 01/13/89; OMB #2060-0124; expires 01/31/92.

EPA ICR #1349; National Survey of Solid Waste from Mineral Processing; was approved 02/02/89; OMB #2050-0098; expires 12/31/89.

EPA ICR #1463; Revision to the National Oil and Hazardous Substances Pollution Contingency Plan; was approved 01/30/89; OMB #2050-0096; expires 01/31/91.

EPA ICR #1487; Cooperative Agreements and Superfund State Contracts for Superfund Response Actions; was approved 01/30/89; OMB #2010-0020; expires 10/31/91.

EPA ICR #1398; National Residential Radon Survey Pretest; was aproved 01/26/89; OMB #2060-0173; expires 06/30/89.

EPA ICR #1082; NSPS Monitoring Requirements for Coal Preparation Plants Subpart Y; was approved 01/30/89; OMB #2060-0122; expires 01/31/92.

EPA ICR #0002.04; Pretreatment Program Information Requirements; was disapproved 01/26/89.

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Dated: February 17, 1989.

**Paul Lapsley,**

*Director, Information and Regulatory Systems Division.*

[FR Doc. 89-4854 Filed 3-1-89; 8:45 am]

BILLING CODE 6560-50-M

**[OPP-66015; FRL-3531-5]**

## Chapman Chemical Co.; Notice of Intent to Cancel Registration

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of Intent to Cancel and Preliminary Determination Governing Sale and Use of Existing Stocks.

**SUMMARY:** By letter dated February 5, 1988, EPA directed Chapman Chemical Company ("Chapman") to supply to the Agency within 30 days a complete and accurate confidential statement of formula for the company's pesticide product ALDREC, bearing EPA Registration Number 1022-220. As of, February 21, 1989, Chapman has not complied with this directive. The Agency has determined that Chapman's continuing failure to submit a complete and accurate confidential statement of formula is in violation of section 3(c)(1)(E) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and that the appropriate course of action is to cancel Chapman's ALDREC registration pursuant to FIFRA section 6(b). Accordingly, the Agency by this Notice announces its intention to cancel Chapman's registration for ALDREC. The Agency also has preliminarily determined not to permit sale and use of existing stocks of ALDREC if its registration is canceled.

**DATE:** A request for a hearing on cancellation or a request to modify preliminary determination governing existing stocks by a registrant must be received by April 3, 1989 or 30 days from receipt by mail of this Notice, whichever is the later applicable deadline. A request for a cancellation hearing or modification of the existing stocks determination from any other adversely affected person must be received by April 3, 1989. Any other person who wishes to comment on whether the Agency should allow sale or use of existing stocks of ALDREC should provide those comments by April 3, 1989.

**ADDRESS:** Three copies of any request for a hearing must be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** By mail: George LaRocca, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Rm. 204, CM #2, 1921 Jefferson Davis Highway, Arlington, VA (703-557-2400).

Requests for, or comments applicable to, an existing stocks allowance should be submitted to George LaRocca at the address above.

**SUPPLEMENTARY INFORMATION:** ALDREC is a termiticide product containing the active ingredient aldrin (chemical name: 1,2,3,4,10,10-hexachloro-1,4,4a,5,8,8a-hexahydro-exo-1,4-endo-5,8-dimethanonaphthalene; CAS Registry No. 309-00-2). Chapman Chemical Company (Chapman) received a registration from EPA for ALDREC in 1959. It is assumed that Chapman at one time acquired the aldrin for use in ALDREC from Shell Chemical Company, since the companies of the Royal Dutch Shell Group in the United States and Europe have been the sole producers of aldrin in the world from the time of its first registration as a pesticide in the 1950's. In recent years, Shell's pesticide registrations for aldrin products in the United States have been held by the Scallop Corporation (a Shell Group company); Scallop voluntarily canceled all of its aldrin registrations on May 15, 1987. The canceled Scallop registrations included the only aldrin product for manufacturing use (also called a technical grade product), which is used by formulator companies such as Chapman in making their own registered pesticide products. Chapman has never identified a new, registered source of supply of aldrin to the Agency, although required to do so under current law.

This Notice is organized into two parts. Part I describes the background and basis for the cancellation of Chapman's ALDREC registration. Part II describes the procedures which will be followed in implementing the regulatory actions set forth in this Notice.

### I. Basis For Cancellation

Under section 3(c)(1)(E) of FIFRA, applicants for registration are required to submit to EPA the complete formula of their pesticide products. For formulators, such as Chapman, who purchase a pesticidal ingredient from another registered source, EPA requires that the formulator include as part of its complete formula, the identity of the registered source of supply and the EPA registration number of that component of the formulator's product in order that EPA can ascertain the complete composition of the formulated product.

EPA first required an updated confidential statement of formula from Chapman as part of a Data Call-in Notice dated February 23, 1984. Chapman failed to provide the requested information. The Agency again requested by letter dated September 16, 1985, that Chapman provide the Agency with a complete formula for its ALDREC registration; once again, Chapman did not respond, and the registration was subsequently suspended pursuant to FIFRA section 3(c)(2)(B) on July 15, 1987. Finally, the Agency sent Chapman a letter dated February 5, 1988, in which the Agency once again required that Chapman submit, within 30 days, a complete and accurate confidential statement of formula to the Agency. In this last letter, the Agency pointed out that it considers an accurate and current statement of formula to be an important and continuing requirement of registration, and that Chapman's continuing failure to provide a complete and accurate statement of formula would constitute grounds for cancellation. As of February 21, 1989, Chapman has still not submitted an updated confidential statement of formula in response to the Agency's communications.

Under section 6(b) of FIFRA, the Administrator may issue a notice of intent to cancel any pesticide if, among other things, the "labeling or other material required to be submitted does not comply with the provisions of [FIFRA]." As noted, the Agency believes that registrants have a continuing obligation under section 3(c)(1)(E) to provide the Agency with the complete formula of their pesticide products. EPA is mandated by FIFRA to assess the risks and benefits of registered pesticides. EPA's ability to perform this assessment is at least partially dependant upon information being supplied by registrants. Compliance with the requirement to supply the Agency with an up-to-date statement of formula is a basic element of registration support required of registrants; failure to fully identify the ingredients in a pesticide product greatly hampers the Agency's ability to assess the risks and benefits associated with the product.

Chapman has been directed to supply the Agency with the complete formula of its ALDREC registration three times since 1984, and yet the Agency continues to lack a complete and accurate formula for ALDREC. Under the circumstances, cancellation is appropriate because Chapman has failed to provide material required to be submitted pursuant to FIFRA, and because material submitted does not comply with the provisions of the Act (since Chapman's statement of formula has not been properly updated).

Before taking any cancellation action under section 6(b), the Administrator must consider restricting a pesticide's use as an alternative to cancellation, and must further consider the effect of a cancellation upon the agricultural economy. This cancellation action is being taken because of the failure of Chapman to submit a complete and updated confidential statement of formula to the Agency, and not because of specific concerns about the safety of the use of ALDREC. Restricting the use of a pesticide pursuant to section 3(d) of FIFRA is not an appropriate response to the failure to provide the Agency with correct information required to be submitted under the Act.

As to the effect of a cancellation upon the agricultural economy, ALDREC is a termiticide product used for structural pest control; it is not an agricultural product. Further, the registration of ALDREC has been suspended under section 3(c)(2)(B) since July 1987, and it is not believed that there is any appreciable quantity of remaining existing stocks of ALDREC. Thus, cancellation action would not be likely to have any appreciable effect upon any sector of the economy, including the agricultural sector. Finally, it should be noted that the Agency frequently requires information from registrants in order to perform its regulatory responsibilities. Where a registrant fails to provide to the Agency even the most basic of information—the formula of its product—it would in most circumstances be inappropriate for the Agency to allow the registration to continue even if a cancellation would result in some hardship to the agricultural economy.

A draft of this Notice of Intent to Cancel the registration of ALDREC was sent to the Department of Agriculture (USDA) for their review as required by section 6(b) of FIFRA. The USDA had no objection to the proposed cancellation. The draft document was also sent to the FIFRA Scientific Advisory Panel for their review as required by section 25(d) of FIFRA. The Panel was asked to waive its review of the Notice since there was not risk data or scientific procedure at issue. The Panel granted a waiver of its review of the Notice.

Under section 6(a)(1) of FIFRA, the Administrator may permit the continued sale and use of existing stocks of pesticide products whose registrations have been canceled pursuant to section 6(b) to such extent, under such conditions, and for such uses as he or she may specify if he or she determines that such sale or use is not inconsistent with the purposes of FIFRA and will not have unreasonable adverse effects on the environment. EPA is not aware that there are any existing stocks of ALDREC. EPA also has questions concerning the feasibility of making the requisite finding for a pesticide product containing aldrin as the active ingredient (EPA has identified risk concerns associated with exposure to aldrin termiticides). At this time, EPA has not made a finding pursuant to section 6(a)(1) that would allow continued sale and use of ALDREC. Under such circumstances, no further sale nor use of ALDREC would be permitted upon cancellation pursuant to this Notice. It is therefore the Agency's preliminary determination that neither sale nor use of existing stocks of ALDREC will be allowed after cancellation of the ALDREC registration.

### II. Procedures

This Notice announces EPA's intent to cancel Chapman's ALDREC registration, and further provides preliminary notification that if ALDREC is canceled, the Agency proposes not to permit any further sale or use of ALDREC. This part of the Notice explains how the registrant or any other adversely affected person may request a hearing on whether ALDREC should be canceled or may request that the Agency allow the continued sale and use of existing stocks of ALDREC if the registration is canceled. It also invites any interested person to provide comments on whether the Agency should permit the continued sale and use of existing stocks of ALDREC if the registration is canceled.

#### *A. Request For Cancellation Hearing*

Under section 6(b) of FIFRA, registrants and other adversely affected persons are entitled to respond to this Notice by requesting a hearing on whether the registration for ALDREC should be canceled. Unless a hearing is properly requested, the cancellation will become final by operation of law either 30 days after this publication in the **Federal Register** or 30 days after Chapman receives a copy of this Notice, whichever occurs later.

To contest the cancellation action set forth in this Notice, the registrant may request a hearing within 30 days of receipt of this Notice, or within 30 days from publication of this Notice, whichever occurs later. Any other person adversely affected by the cancellation action set forth in this Notice may request a hearing within 30 days of publication of this Notice in the **Federal Register.**

A registrant or other adversely affected party who requests a hearing must file the request in accordance with the procedures established by FIFRA and EPA's Rules of Practice Governing Hearings under 40 CFR Part 164. These procedures require, among other things, that all requests must identify the specific product for which a hearing is requested, and that all requests must be received by the Hearing Cleak within the applicable 30-day period. Failure to comply with these requirements may result in denial of the request for a hearing. Requests for a hearing must also be accompanied by specific objections to the portions of this Notice that a party seeks to challenge.

Requests for a hearing must be submitted to the Hearing Clerk at the address specified earlier in this Notice. If a hearing on the action initiated by this Notice is requested in a timely and effective manner, the hearing will be governed by EPA's Rules of Practice for hearing under FIFRA section 6 (40 CFR Part 164). Any such hearing shall be held in the Washington, DC metropolitan area. If no hearing is requested by the end of the applicable 30-day period, the registration of ALDREC will be canceled by operation of law.

EPA's Rules of Practice forbid anyone who may take part in deciding this case, at any stage of the proceeding, from discussing the merits of the proceeding *ex parte* with any party or with any person who has been connected with the preparation or presentation of the proceeding as an advocate or in any investigative or expert capacity, or with any of their representatives (40 CFR 164.7).

Accordingly, the following EPA offices, and the staffs thereof, are designated as the judicial staff to perform the judicial function of EPA in any administrative hearing arising from this Notice of Intent to Cancel: the Office of the Administrative Law Judge, the Office of the Judicial Officer, the Administrator, and the Deputy Administrator. None of the persons designated as the judicial staff may have any *ex parte* communication on the merits of any of the issues involved in this proceeding with the trial staff or



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any interested person not employed by EPA, without fully complying with the applicable regulations.

*B. Existing Stocks*

As noted above, the Administrator has made a preliminary determination that no sale or use of existing stocks of ALDREC should be permitted if the registration is canceled. If any person would like to challenge this preliminary determination and receive permission to sell or use existing stocks of ALDREC following cancellation, he or she must submit a request within 30 days of publication of this Notice to George LaRocca at the address listed earlier in this Notice under the heading "FOR FURTHER INFORMATION CONTACT."

Any such request should include information concerning the extent of existing stocks of ALDREC and should contain factual information sufficient to support a finding that continued sale or use of such stocks will not be inconsistent with the purposes of FIFRA and will not result in unreasonable adverse effects on the environment. Any person wishing to comment on whether continued sale or use of existing stocks of ALDREC should be permitted may also supply such comments within 30 days of publication of this Notice to the individual identified above.

If a timely request to allow sale or use of existing stocks is received and ALDREC's registration is canceled, the Agency will consider the request and make a final determination as to whether sale or use of existing stocks should be permitted. If no request is received within 30 days from publication of this Notice, the preliminary determination will become final upon cancellation of the registration for ALDREC, and no sale or use of existing stocks of ALDREC will be permitted after cancellation of the registration.

Dated: February 21, 1989.

**Victor J. Kimm,**

*Acting Assistant Administrator for Pesticides and Toxic Substances.*

[FR Doc. 89-4848 Filed 3-1-89; 8:45 am]

BILLING CODE 6560-50-M

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**[OPTS-44526; FRL-3532]**

## TSCA Chemical Testing; Receipt of Test Data

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the receipt of test data on tetrabromobisphenol A (TBBPA) (CAS No. 79-94-7) and hexafluoropropene (CAS No. 139-15-4), submitted pursuant to final test rules under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

**FOR FURTHER INFORMATION CONTACT:** Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M St. SW., Washington, DC 20460 (202) 554-1404, TDD (202) 554-0551.

**SUPPLEMENTARY INFORMATION:** Section 4(d) of TSCA requires EPA to publish a notice in the **Federal Register** reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within 15 days after it is received.

### I. Test Data Submissions

Test data for TBBPA were submitted by Great Lakes Chemical Corporation pursuant to a test rule at 40 CFR 799.4000. It was received by EPA on February 6, 1989. The submissions describe 1) the determination of the biodegradability of TBBPA in soil under aerobic conditions and 2) the determination of the biodegradability of TBBPA in soil under anaerobic conditions. Chemical fate testing is required by this test rule. Tetrabromobisphenol A is used primarily as a reactive flame retardant, and, to a lesser extent, as an additive flame retardant.

Test data for hexafluoropropene was submitted by the Chemical Manufacturers Association on behalf of E.I. du Pont de Nemours and Company pursuant to a test rule at 40 CFR 799.1700. It was received by EPA on January 23, 1989. The submission describes a ninety-day inhalation toxicity study in rats and mice with hexafluoropropene. Subchronic toxicity testing is required by this test rule. Hexafluoropropene is used as a precursor in the manufacture of highly specialized polymers and elastomers.

EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency is unable to provide any determination as to the completeness of the submissions.

### II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPTS-44526). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, Rm. NE-G004, 401 M St. SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

Dated: February 22, 1989.

**Gary E. Timm,**

*Acting Director, Existing Chemical Assessment Division, Office of Toxic Substances.*

[FR Doc. 89-4846 Filed 3-1-89; 8:45 am]

BILLING CODE 6560-50-M

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**[OPTS-59864; FRL-3531]**

## Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984 (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of four such PMN(s) and provides a summary of each.

**DATES:** Close of Review Periods:

Y 89-63, 89-65, 89-66, 89-67, March 6, 1989.

**FOR FURTHER INFORMATION CONTACT:** Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M Street SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

**SUPPLEMENTARY INFORMATION:** The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

*Y 89-63*

*Manufacturer.* Suvar Corporation.

*Chemical.* (G) Copolymer alkyd resin.

*Use/Production.* (G) Used as a vehicle component in "flushed" pigment formulations for use in printing ink. Prod. range: Confidential.

*Y 89-65*

*Manufacturer.* Confidential

*Chemical.* (G) Water reducible acrylic polymer.

*Use/Production.* (S) Water reducible can coating. Prod. range: 160,000 kg/yr.

*Y 89-66*

*Importer.* Confidential.

*Chemical.* (G) Styrene acrylic polymer salt.

*Use/Import.* (G) Paper size, open nondispersive use. Import range: Confidential.

*Y 89-67*

*Importer.* Confidential.

*Chemical.* (G) Styrene acrylic copolymer salt.

*Use/Import.* Paper size, open nondispersive use. Import range: Confidential.

Date: February 22, 1989.

**Steven Newburg-Rinn,**

*Acting Director, Information Management Division, Office of Toxic Substances.*

[FR Doc. 89-4844 Filed 3-1-89; 8:45 am]

BILLING CODE 6560-50-M

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**[OPTS-59863; FRL-3531-9]**

## Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces a receipt of five such PMN(s) and provides a summary of each.

**DATES:** Close of Review Periods:

Y 89-58, February 22, 1989.
Y 89-59, 89-60, February 26, 1989.
Y 89-61, February 27, 1989.
Y 89-62, February 28, 1989.



**FOR FURTHER INFORMATION CONTACT:** Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M Street SW, Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

**SUPPLEMENTARY INFORMATION:** The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays

*Y 89-58*

*Importer.* Kanek Texas Corporation.

*Chemical.* (G) Styrene butadiene acrylic polymer.

*Use/Import.* (S) Heat deflection modifier for plastics. Import range: Confidential.

*Y 89-59*

*Manufacturer.* Mazer Chemicals Div. PPG Industries, Inc.

*Chemical.* (G) Aliphatic polyester.

*Use/Production.* (G) Additive for lubricants. Prod. range: Confidential.

*Y 89-60*

*Manufacturer.* Mazer Chemicals, Div. PPG Industries.

*Chemical.* (G) Aliphatic polyester.

*Use/Production.* (G) Additive for lubricants. Prod. range: Confidential.

*Y 89-61*

*Manufacturer.* Confidential.

*Chemical.* (S) 2,2-dimethyl-1,3-propanediol; 2-ethyl-2(hydroxymethyl)-1,3-propanediol; benzoic acid; 1,3-isobenzofluranedione; 1,3-enzendicarboxylic acid, trans-(butanediol acid; hexanediol acid.

*Use/Production.* (S) Polymer for paint coating. Prod. range: 100,000-250,000 kg/yr.

*Y 89-62*

*Manufacturer.* Confidential.

*Chemical.* (G) Modified hydrocarbon resin.

*Use/Production.* (G) Open, nondispersive use. Prod. range: Confidential.

Date: February 22, 1989.

**Steven Newburg-Rinn,**

*Acting Director, Information Management Division, Office of Toxic Substances.*

[FR Doc. 89-4845 Filed 3-1-89; 8:45 am]

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## FEDERAL COMMUNICATIONS COMMISSION

### Public Information Collection Requirements Submitted to the Office of Management and Budget for Review

February 22, 1989.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. 3507.

Copies of these submissions may be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street, NW., Suite 140, Washington, DC 20037, or telephone (202) 857-3815. Persons wishing to comment on an information collection should contact Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, telephone (202) 395-3785. Copies of these comments should also be sent to the Commission. For further information contact Doris Benz, Federal Communications Commission, telephone (202) 632-7513.

OMB No.: 3060-0040

*Title:* Application for Aircraft Radio Station License and Temporary Aircraft Radio Station Operating Authority

*Form No.:* FCC 404/404-A

*Action:* Extension

*Respondents:* Individuals, State or local governments, Business (including small business), and Non-profit institutions

*Frequency of Response:* On occasion

*Estimated Annual Burden:* 25,668 Respondents, ten minutes each

*Needs and Uses:* Filing is required for a new station license, or renewal or modification of an existing license. Applicants for a new license may operate the aircraft radio station for 90 days under the temporary authority provided for on FCC 404-A. The data on the FCC 404 is used to determine the applicant's eligibility and to issue a license.

*OMB No.:* 3060-0136

*Title:* Temporary Permit to Operate a General Mobile Radio Service System

*Form No.:* FCC 574-T

*Action:* Extension

*Respondents:* Individuals, State or local governments, Business (including small business), and Non-profit institutions

*Frequency of Response:* Recordkeeping requirement

*Estimated Annual Burden:* 1,500 Recordkeepers, six minutes each

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*Needs and Uses:* Eligible applicants for new or modified radio stations in the GMRS complete the form for immediate authorization to operate the radio station (valid for 180 days), and retain it during the processing of an application for license grant.

*OMB No.:* 3060-0139

*Title:* Request for Approval of Proposed Amateur Radio Antenna and Notification of Action

*Form No.:* FCC 854

*Action:* Extension

*Respondents:* Individuals

*Frequency of Response:* On occasion

*Estimated Annual Burden:* 250 Respondents, 30 minutes each

*Needs and Uses:* Submission of the data is necessary to determine whether the antenna height requested would be a hazard to air navigation, and whether painting and/or lighting of the antenna is required.

Federal Communications Commission.

Donna R. Searcy,

*Secretary.*

[FR Doc. 89-4884 Filed 3-1-89; 8:45 am]

BILLING CODE 6712-01-M

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[MM Docket No. 89-27; FCC 89-18]

**Applications, Hearings, Determinations, etc.: Great American Radio Corp.**

**AGENCY:** Federal Communications Commission.

**ACTION:** Order to show cause and notice of apparent liability.

**SUMMARY:** This action is an Order to Show Cause to determine if Great American Radio Corp., licensee of Radio Station KCKO(AM), Spokane, Washington, violated §§ 73.1740(a)(4) and 73.1750 of the Commission's Rules by remaining silent without authority, and if so, whether the license for that station should be revoked.

**EFFECTIVE DATE:** February 15, 1989.

**ADDRESS:** Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Ben Halprin, Enforcement Division, Mass Media Bureau, (202) 632-3660.

### Order to Show Cause and Notice of Apparent Liability

In the Matter of: Great American Radio Corp., Spokane, Washington; Licensee of Radio Station KCKO(AM), Spokane, Washington; Order to Show Cause Why the License of Station KCKO(AM), Spokane, Washington, Should Not Be Revoked.

Adopted: January 19, 1989.

Released: February 15, 1989.

By the Commission:

1. The Commission has before it for consideration: (a) the license of Great American Radio Corp., for Radio Station KCKO(AM), Spokane, Washington; and, (b) the results of the Commission's investigation into KCKO's unauthorized silent status.

2. On May 13, 1985, the Commission granted KCKO permission to remain silent until August 15, 1985. After that permission expired, attempts to contact KCKO by mail resulted in return of Commission correspondence marked "unclaimed." Commission personnel, thereafter, attempted inspection and monitoring to ascertain the station's status. Monitoring during the week of March 23, 1987, revealed that the station was not operating. An attempt to inspect the station at its studio's last known address, N. 2804 Argonne Road in Spokane, WA, on March 23, 1987, was unsuccessful. The studio was vacant and locked, with a "For Rent" sign in front. A visit to the transmitter site did not reveal any evidence of a radio transmitter building or antenna towers. Subsequent to the attempted monitoring and inspection, the Commission sent a letter of inquiry to the licensee. The letter, dated June 13, 1988, was returned stamped: "Return to Sender—Attempted Not Known." [1] Thus, it appears that the station has not resumed operation since August 15, 1985. Furthermore, the licensee has neither requested Commission permission to remain off the air since its silent authority expired on August 15, 1985, nor turned in its license, in apparent violation of §§ 73.1740(a)(4) and 73.1750 of the Commission's Rules.[2]

[1] Section 1.5 of the Commission's Rules requires that the licensee keep the Commission informed of any change in its mailing address.

[2] Section 73.1740(a)(4) provides:

In the event that causes beyond the control of a licensee make it impossible to adhere to the operating schedule of this section or to continue operating, the station may limit or discontinue operation for a period of not more than 30 days without further authority from the FCC. Notification must be sent to the FCC in Washington, DC not later than the 10th day of limited or discontinued operation. During such period, the licensee shall continue to adhere to the requirements in the station license pertaining to the lighting of antenna structures. In the event normal operation is restored prior to the expiration of the 30 day period, the licensee will so notify the FCC of this date. If the causes beyond the control of the licensee make it impossible to comply within the allowed period, informal written request shall be made to the FCC no later than the 30th day for such additional time as may be deemed necessary.

Section 73.1750 provides:

The licensee of each station shall notify the FCC in Washington, DC of permanent discontinuance of operation at least two days before operation is discontinued. Immediately after discontinuance of operation, the licensee shall forward the station license and other instruments of authorization to the FCC, Washington, DC for cancellation.

3. Accordingly, *it is ordered,* That pursuant to section 312(a) (3) and (4) of the Communications Act of 1934, as amended, Great American Radio Corp. is directed to show cause why the license for Radio Station KCKO(AM), Spokane, WA, should not be revoked, at a hearing to be held at a time and location specified in a subsequent Order, upon the following issues:

(a) To determine whether Great American Radio Corp. violated §§ 73.1740(a)(4) and/or 73.1750 of the Commission's Rules.

(b) To determine, in light of the evidence adduced under the foregoing issue, whether Great American Radio Corp. possesses the requisite qualifications to be or remain licensee of the captioned radio station.

4. *It is further ordered,* That the Chief, Mass Media Bureau, is directed to serve upon Great American Radio Corp., within thirty (30) days of the release of this Order, a Bill of Particulars with respect to issues (a) and (b) above.

5. *It is further ordered,* That pursuant to section 312(d) of the Communications Act of 1934, as amended, both the burden of proceeding with the evidence and the burden of proof shall be upon the Mass Media Bureau as to both issues.

6. *It is further ordered,* That to avail itself of the opportunity to be heard, the licensee, pursuant to § 1.91(c) of the Commission's Rules, in person or by attorney, shall file with the Commission within thirty (30) days of the receipt of the Order to Show Cause a written appearance stating that it will appear at the hearing and present evidence on the matters specified in the Order. If the licensee fails to file an appearance within the time specified, the right to a hearing shall be deemed to have been waived. Where a hearing is waived, a written statement in mitigation or justification may be submitted within thirty (30) days of the receipt of the Order to Show Cause. *See* § 1.92(a) of the Commission's Rules. In the event the right to a hearing is waived, the presiding officer, or the Chief Administrative Law Judge if no presiding officer has been designated, will terminate the hearing proceeding and certify the case to the Commission in the regular course of business and an appropriate Order will be entered. *See* § 1.92 (c) and (d) of the Commission's Rules.[3]

[3] The Commission has recently delegated authority for cases such as this to the Mass Media Bureau. *See In the Matter of Radio Northwest Broadcasting Company,* MM Docket 88-107, Adopted December 8, 1988.

7. *It is further ordered,* That if it is determined that the hearing record does not warrant an Order revoking the license for Station KCKO(AM), Spokane, WA, it shall be determined, pursuant to section 503(b) of the Communications Act of 1934, as amended, whether an order for forfeiture shall be issued against Great American Radio Corp. in an amount not exceeding twenty thousand dollars ($20,000) for the willful and repeated violation of §§ 73.1740 and/or 73.1750 of the Commission's Rules.

8. *It is further ordered,* That this document constitutes a notice of apparent liability for willful or repeated violation of §§ 73.1740 and/or 73.1750 of the Commission's Rules. The Commission has determined that in every case designated for hearing involving the potential revocation of a station license, it shall, as a matter of course, include a forfeiture notice so as to maintain the fullest possible flexibility of action. Since the practice of including such forfeiture notice is a routine procedure, such inclusion herein should not be viewed in any manner as suggesting or otherwise indicating what the initial or final disposition of this proceeding should be.

9. *It is further ordered,* That the Chief, Mass Media Bureau, send a copy of this Order by *Certified Mail-Return Receipt Requested,* to: Great American Radio Corp., Radio Station KCKO(AM), N. 2804 Argonne Road, Spokane, WA 99206.

Federal Communications Commission.

Donna R. Searcy,

*Secretary.*

[FR Doc. 89-4870 Filed 3-1-89; 8:45 am]

BILLING CODE 6712-01-M

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[MM Docket No. 89-28; FCC 89-11]

**Applications, Hearings, Determinations, etc.; Mega Broadcasting Corp.**

**AGENCY:** Federal Communications Commission.

**ACTION:** Order to show cause and notice of apparent liability.

**SUMMARY:** This action is an Order to Show Cause to determine if Mega Broadcasting Corp., licensee of Radio Station WRPZ(AM), Paris, Kentucky, violated §§ 73.1740(a)(4) and 73.1750 of the Commission's Rules by remaining silent without authority, and if so, whether the license for that station should be revoked.

**EFFECTIVE DATE:** February 15, 1989.

**ADDRESS:** Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Ben Halprin, Enforcement Division, Mass Media Bureau, (202) 632-3660.

### Order to Show Cause and Notice of Apparent Liability

In the Matter of: Mega Broadcasting Corp., Paris, Kentucky; Licensee of Radio Station WRPZ(AM), Paris, Kentucky; Order to Show Cause Why the License of Station WRPZ(AM), Paris, Kentucky, Should Not Be Revoked.

Adopted: January 19, 1989.

Released: February 15, 1989.

By the Commission:

1. The Commission has before it for consideration: (a) the license of Mega Broadcasting Corp. for Radio Station WRPZ(AM), Paris, Kentucky; and, (b) the results of its investigation into WRPZ's unauthorized silent status.

2. On November 20, 1987, the Commission received a complaint alleging that WRPZ(AM) had not broadcast programming since October 11, 1987. Investigation by Commission personnel determined that the station had definitely ceased operation by the end of November 1987. Monitoring by Commission staff during the week of May 23, 1988, indicated that the station remained non-operational. Subsequent to the attempted monitoring, the Commission sent a letter of inquiry to the licensee at the address that appeared in Commission records. The letter, dated June 17, 1988, was returned stamped: "Return to Sender. No Forwarding Order on File." [1] Thus, it appears that the station has not resumed operation since at least November 1987. Furthermore, the licensee has neither requested Commission permission to remain off the air nor turned in its license, in apparent violation of §§ 73.1740(a)(4) and 73.1750 of the Commission's Rules.[2]

[1] Section 1.5 of the Commission's Rules requires that the licensee keep the Commission informed of any change in its mailing address.

[2] Section 73.1740(a)(4) provides:

In the event that causes beyond the control of a licensee make it impossible to adhere to the operating schedule of this section or to continue operating, the station may limit or discontinue operation for a period of not more than 30 days without further authority from the FCC. Notification must be sent to the FCC in Washington, DC not later than the 10th day of limited or discontinued operation. During such period, the licensee shall continue to adhere to the requirements in the station license pertaining to the lighting of antenna structures. In the event normal operation is restored prior to the expiration of the 30 day period, the licensee will so notify the FCC of this date. If the causes beyond the control of the licensee make it impossible to comply within the allowed period, informal written request shall be made to the FCC no later than the 30th day for such additional time as may be deemed necessary.

Section 73.1750 provides:

The licensee of each station shall notify the FCC in Washington, DC of permanent discontinuance of operation at least two days before operation is discontinued. Immediately after discontinuance of operation, the licensee shall forward the station license and other instruments of authorization to the FCC, Washington, DC for cancellation.

3. Accordingly, *it is ordered,* That pursuant to section 312(a) (3) and (4) of the Communications Act of 1934, as amended, Mega Broadcasting Corp. is directed to show cause why the license for Radio Station WRPZ(AM), Paris, KY, should not be revoked, at a hearing to be held at a time and location specified in a subsequent Order, upon the following issues:

(a) To determine whether Mega Broadcasting Corp. violated §§ 73.1740(a)(4) and/or 73.1750 of the Commission's Rules.

(b) To determine, in light of the evidence adduced under the foregoing issue, whether Mega Broadcasting Corp. possesses the requisite qualifications to be or remain licensee of the captioned radio station.

4. *It is further ordered,* That the Chief, Mass Media Bureau, is directed to serve upon Mega Broadcasting Corp., within thirty (30) days of the release of this Order, a Bill of Particulars with respect to issues (a) and (b) above.

5. *It is further ordered,* That pursuant to section 312(d) of the Communications Act of 1934, as amended, both the burden of proceeding with the evidence and the burden of proof shall be upon the Mass Media Bureau as to both issues.

6. *It is further ordered,* That to avail itself of the opportunity to be heard, the licensee, pursuant to § 1.91(c) of the Commission's Rules, in person or by attorney, shall file with the Commission within thirty (30) days of the receipt of the Order to Show Cause a written appearance stating that it will appear at the hearing and present evidence on the matters specified in the Order. If the licensee fails to file an appearance within the time specified, the right to a hearing shall be deemed to have been waived. Where a hearing is waived, a written statement in mitigation or justification may be submitted within thirty (30) days of the receipt of the Order to Show Cause. *See* §1.92(a) of the Commission's Rules. In the event the right to a hearing is waived, the presiding officer, or the Chief Administrative Law Judge if no presiding officer has been designated, will terminate the hearing proceeding and certify the case to the Commission in the regular course of business and an appropriate Order will be entered. *See*

The licensee of each station shall notify the FCC in Washington, DC of permanent discontinuance of operation at least two days before operation is discontinued. Immediately after discontinuance of operation, the licensee shall forward the station license and other instruments of authorization to the FCC, Washington, DC for cancellation.

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§ 1.92(c) and (d) of the Commission's Rules.

7. *It is further ordered,* That if it is determined that the hearing record does not warrant an Order revoking the license for Station WRPZ(AM), Paris, KY, it shall be determined, pursuant to section 503(b) of the Communications Act of 1934, as amended, whether an Order for Forfeiture shall be issued against Mega Broadcasting Corp. in an amount not exceeding twenty thousand dollars ($20,000.00) for the willful and repeated violation of §§ 73.1740 and/or 73.1750 of the Commission's Rules.

8. *It is further ordered,* That this document constitutes a notice of apparent liability for willful or repeated violation of §§ 73.1740 and/or 73.1750 of the Commission's Rules. The Commission has determined that in every case designated for hearing involving the potential revocation of a station license, it shall, as a matter of course, include a forfeiture notice so as to maintain the fullest possible flexibility of action. Since the practice of including such forfeiture notice is a routine procedure, such inclusion herein should not be viewed in any manner as suggesting or otherwise indicating what the initial or final disposition of this proceeding should be.

9. *It is further ordered,* That the Secretary send a copy of this Order by *Certified Mail-Return Receipt Requested,* to: Mega Broadcasting Corp., Radio Station WRPZ(AM), 525 High Street, No. 204, Paris, KY 40078.

Federal Communications Commission.

**Donna R. Searcy,**

*Secretary.*

[FR Doc. 89-4871 Filed 3-1-89; 8:45 am]

BILLING CODE 6712-01-M

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[MM Docket No. 89-81; FCC 89-304]

## Order to Show Cause; Jack E. Ondracek

**AGENCY:** Federal Communications Commission.

**ACTION:** Order to show cause and notice of apparent liability.

**SUMMARY:** This action is an Order to Show Cause to determine if Jack E. Ondracek, licensee of Radio Station KRGL(AM), Myrtle Creek, Oregon, violated §§ 73.1740(a)(4) and 73.1750 of the Commission's Rules by remaining silent without authority, and if so, whether the license for that station should be revoked.

**EFFECTIVE DATE:** January 25, 1989.

**ADDRESS:** Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Ben Halprin, Enforcement Division, Mass Media Bureau, (202) 632-3660.

### Order to Show Cause and Notice of Apparent Liability

Adopted: December 2, 1988.

Released: January 25, 1989.

By the Commission:

1. The Commission has before it for consideration: (a) The license of Jack E. Ondracek, for Radio Station KRGL(AM), Myrtle Creek, Oregon; and, (b) the results of its investigation into KRGL's unauthorized silent status.

2. In September 1988, the Commission received information indicating that the captioned licensee had ceased operation of KRGL in mid-March 1988. Commission personnel visited the site on November 17, 1988, and found it abandoned. The Commission sent a letter of inquiry to the licensee at the address that appeared in Commission records. The letter, postmarked July 15, 1987, was returned stamped: "Return to Sender-Box Closed." [1] Commission personnel revisited the site on March 10, 1988, and again found it abandoned. Thus, it appears that the station has not resumed operation since it left the air in March 1988. Furthermore, the licensee has neither requested Commission permission to remain off the air nor turned in its license, in apparent violation of §§ 73.1740(a)(4) and 73.1750 of the Commission's Rules.[2]

3. Accordingly, *It Is Ordered,* That pursuant to section 312(a) (3) and (4) of the Communications Act of 1934, as amended, Jack E. Ondracek is *Directed to Show Cause* why the license for Radio Station KRGL(AM) Myrtle Creek, Oregon, should not be *Revoked,* at a hearing to be held at a time and location specified in a subsequent Order, upon the following issue:

(a) To determine whether Jack E. Ondracek violated §§ 73.1740(a)(4) and/or 73.1750 of the Commission's Rules.

(b) To determine, in light of the evidence adduced under the foregoing issue, whether Jack E. Ondracek possesses the requisite qualifications to be or remain licensee of the captioned radio station.

4. *It is Further Ordered,* That the Chief, Mass Media Bureau, is directed to serve upon Jack E. Ondracek, within thirty (30) days of the release of this Order, a Bill of Particulars with respect to issues (a) and (b) above.

5. *It is Further Ordered,* That pursuant to section 312(d) of the Communications Act of 1934, as amended, both the burden of proceeding with the evidence and the burden of proof shall be upon the Mass Media Bureau as to both issues.

6. *It is Further Ordered,* That to avail itself of the opportunity to be heard, the licensee, pursuant to § 1.91(c) of the Commission's Rules, in person or by attorney, shall file with the Commission within thirty (30) days of the receipt of the Order to Show Cause a written appearance stating that it will appear at the hearing and present evidence on the matters specified in the Order. If the licensee fails to file an appearance within the time specified, the right to a hearing shall be deemed to have been waived. Where a hearing is waived, a written statement in mitigation or justification may be submitted within thirty (30) days of the receipt of the Order to Show Cause. *See* § 1.92(a) of the Commission's Rules. In the event the right to a hearing is waived, the presiding officer, or the Chief Administrative Judge if no presiding officer has been designated, will terminate the hearing proceeding and certify the case to the Commission in the regular course of business and an appropriate Order will be entered. *See* § 1.92 (c) and (d) of the Commission's Rules.

7. *It is Further Ordered,* That if it is determined that the hearing record does not warrant an Order revoking the license for Station KRGL(AM), Myrtle Creek, OR, it shall be determined, pursuant to section 503(b) of the Communications Act of 1934, as amended, whether an *Order for Forfeiture* shall be issued against Jack E. Ondracek in an amount not exceeding twenty thousand dollars ($20,000.00) for the willful and repeated violation of Sections 73.1740 and/or 73.1750 of the Commission's Rules.

8. *It is Further Ordered,* That this document constitutes a *Notice of Apparent Liability* for willful or repeated violation of §§ 73.1740 and/or 73.1750 of the Commission's Rules. The Commission has determined that in every case designated for hearing involving the potential revocation of a station license, it shall, as a matter of course, include forfeiture notice so as to maintain the fullest possible flexibility of action. Since the practice of including such forfeiture notice is a routine procedure, such inclusion herein should not be viewed in any manner as suggesting or otherwise indicating what the initial or final disposition of this proceeding should be.

9. *It is Further Ordered,* That the Chief, Mass Media Bureau, send a copy of this Order by *Certified Mail-Return Receipt Requested,* to: Jack E. Ondracek, Radio Station KRGL(AM), P.O. Box 6001, Myrtle Creek, OR 97457.

Federal Communications Commission.

**Donna R. Searcy,**

*Secretary.*

[FR Doc. 89-4869 Filed 3-1-89; 8:45 am]

BILLING CODE 6712-01-M

[1] Section 1.5 of the Commission's Rules requires that the licensee keep the Commission informed of any changes in its mailing address.

[2] Section 73.1740(a)(4) provides:

In the event that causes beyond the control of a licensee make it impossible to adhere to the operating schedule of this section or to continue operating, the station may limit or discontinue operation for a period of not more than 30 days without further authority from the FCC. Notification must be sent to the FCC in Washington, DC not later than the 10th day of limited or discontinued operation. During such period, the licensee shall continue to adhere to the requirements in the station license pertaining to the lighting of antenna structures. In the event normal operation is restored prior to the expiration of the 30 day period, the licensee will so notify the FCC of this date. If the causes beyond the control of the licensee make it impossible to comply within the allowed period, informal written request shall be made to the FCC no later than the 30th day for each additional time as may be deemed necessary.

Section 73.1750 provides:

The licensee of each station shall notify the FCC in Washington, DC of permanent discontinuance of operation at least two days before operation is discontinued. Immediately after discontinuance of operation, the licensee shall forward the station license and other instruments of authorization to the FCC, Washington, DC for cancellation.



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## FEDERAL DEPOSIT INSURANCE CORPORATION

### Information Collection Submitted to OMB for Review

**AGENCY:** Federal Deposit Insurance Corporation.

**ACTION:** Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act.

**SUMMARY:** The submission is summarized as follows.

*Type of Review:* Renewal without any change.

*Title:* Application for a Bank to (1) Establish a Branch, (2) Move its Main Office or Branch, and (3) Establish a Remote Service Facility.

*Form Number:* None (letter application).

*OMB Number:* 3064-0070.

*Expiration Date of Current OMB Clearance:* May 31, 1989.

*Frequency of Response:* On occasion.

*Respondents:* Insured State nonmember banks applying for FDIC consent to establish branches, move main offices or branches, or establish remote service facilities.

*Number of Respondents:* 1,253.

*Number of Responses Per Respondent:* 1.

*Total Annual Responses:* 1,253.

*Average Number of Hours Per Response:* 7.

*Total Annual Burden Hours:* 8,771.

*OMB Reviewer:* Gary Waxmen, (202) 395-7340, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

*FDIC Contact:* John Keiper, (202) 898-3810, Assistant Executive Secretary, Room 6096, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

*Comments:* Comments on this collection of information are welcome and should be submitted on or before May 1, 1989.

**ADDRESSES:** A copy of the submission may be obtained by calling or writing the FDIC contact listed. Comments regarding the submission should be addressed to the OMB reviewer listed. The FDIC would be interested in receiving a copy of the comments.

**SUPPLEMENTARY INFORMATION:** The FDIC is requesting OMB approval to extend the clearance of the information collection pertaining to the application, by insured State nonmember banks, to obtain FDIC's consent to establish branches, move main offices or branches, or establish remote service facilities. The applicant is required to furnish information, in letter form, about the location of the proposed site, the involvement of bank insiders in the proposal, the impact of the proposal on the environment and compliance with local zoning laws, historic preservation considerations, community services considerations, and evidence of public notice of the proposal. The information furnished by the applicant is used by the FDIC as a basis for evaluating the factors required by statute (12 U.S.C. 1828(d) and 1816) before approving the application.

Dated: February 24, 1989.

Federal Deposit Insurance Corporation.

**Hoyle L. Robinson,**

*Executive Secretary.*

[FR Doc. 89-4828 Filed 3-1-89; 8:45 am]

BILLING CODE 6714-01-M

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### Information Collection Submitted to OMB for Review

**AGENCY:** Federal Deposit Insurance Corporation.

**ACTION:** Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act.

**SUMMARY:** The submission is summarized as follows:

*Type of Review:* Renewal without any change.

*Title:* Application for Federal Deposit Insurance By Operating Noninsured Institutions.

*Form Number:* FDIC 6200/07.

*OMB Number:* 3064-0089.

*Expiration Date of Current OMB Clearance:* April 30, 1989.

*Frequency of Response:* On occasion.

*Respondents:* Operating noninsured banks applying for FDIC deposit insurance as State nonmember banks.

*Number of Respondents:* 46.

*Number of Responses Per Respondent:* 1.

*Total Annual Responses:* 46.

*Average Number of Hours Per Response:* 15.

*Total Annual Burden Hours:* 690.

*OMB Reviewer:* Gary Waxman, (202) 395-7340, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

*FDIC Contact:* John Keiper, (202) 898-3810, Assistant Executive Secretary, Room 6096, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

*Comments:* Comments on this collection of information are welcome and should be submitted on or before May 1, 1989.

**ADDRESSES:** A copy of the submission may be obtained by calling or writing the FDIC contact listed. Comments regarding the submission should be addressed to the OMB reviewer listed. The FDIC would be interested in receiving a copy of the comments.

**SUPPLEMENTARY INFORMATION:** The FDIC is requesting OMB approval to extend the use, without change, of application form FDIC 6200/07. The form is used by operating noninsured banks applying for FDIC deposit insurance as State nonmember banks. The form requires the applicant institution to furnish information about its financial history and condition, capital structure, future earnings prospects, the character of its management, and information about the community served. The information collected on the form is used by the FDIC as a basis for evaluating the factors required by

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statute (12 U.S.C. 1815(a) and 1816) before approving the application.

Dated: February 24, 1989.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

*Executive Secretary.*

[FR Doc. 89-4829 Filed 3-1-89; 8:45 am]

BILLING CODE 6714-01-M

## FEDERAL MARITIME COMMISSION

### Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

*Agreement No.:* 202-010987-008

*Title:* United States/Central America Liner Association

*Parties:* Crowley Caribbean Transport, Inc., Sea-Land Service, Inc., Seaboard Marine Ltd., Crowley Trailer Marine Transport, Corp.

*Synopsis:* The proposed modification would permit the parties to charter space to each other on vessels owned or operated by them.

By Order of the Federal Maritime Commission.

Dated: February 27, 1989.

Joseph C. Polking,

*Secretary.*

[FR Doc. 89-4595 Filed 3-1-89; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 89-02]

### Matson Navigation Co., Inc.; Transportation of Cargoes Between Ports and Points Outside Hawaii and Islands Within the State of Hawaii; Enlargement of Time to Reply

This proceeding was initiated by Petition for Declaratory Order ("Petition") filed by Matson Navigation Company, Inc. Replies to the Petition currently are due March 1, 1989.

Young Brothers, Ltd., now has filed a motion for a stay of the proceeding pending a decision by the State of Hawaii Public Utilities Commission regarding a related complaint action brought by Young Brothers against Matson Navigation Company, Inc. In the cover letter accompanying the Motion, Young Brothers requests an extension until May 1, 1989, to file a reply to Matson's Petition should the Commission determine not to grant the request for a stay.

The Commission has determined that in order to allow time for filing of replies to the motion for stay and for Commission consideration of the motion and of the alternative request for extension of time, a short extention of time for filing replies to the Petition for Declaratory Order is appropriate. Accordingly, time for filing such replies is enlarged to March 24, 1989.

By the Commission.

Joseph C. Polking,

*Secretary.*

[FR Doc. 89-4783- Filed 3-1-89; 8:45 am]

BILLING CODE 6730-01-M

## FEDERAL RESERVE SYSTEM

[Docket No. R-0661]

### Risk on Automated Clearing House Transactions

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Request for comment.

**SUMMARY:** The Board of Governors of the Federal Reserve System ("Board") is proposing several changes in the way that Federal Reserve Banks treat automated clearing house ("ACH") transactions. These changes are intended as additional steps in implementing the risk reduction policy adopted by the Board in May, 1985. (*See*, policy statement, "Reducing Risks on Large-Dollar Electronic Funds Transfer Systems," 50 FR 21120, May 22, 1985.) The changes proposed includue:

- Granting finality to receivers of ACH credit transactions at 6:30 p.m. local time on the settlement day;
- Treating credits given to originators of ACH debit transactions as final payments at 10:00 a.m. local time on the business date following the settlement day;
- Advising depository institutions with on-line connections to Fedwire that payments are being reversed by the time set for finality of ACH payments;
- Endeavoring to advise off-line institutions by telephone that payments are being reversed;
- Reserving the right to debit the reserve/clearing accounts of depository institutions originating ACH credit transactions at any time during the settlement day; and
- Granting credit for debit item adjustments only when the Reserve Banks can recover credit from the originating depository institution.

**DATE:** Comments must be received by April 3, 1989.

**ADDRESS:** Comments, which should refer to Docket No. R-0661, may be mailed to the Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551, to the attention of Mr. William W. Wiles, Secretary, or delivered to room B-2223 between 8:45 a.m. and 5:15 p.m. Comments may be inspected in room B-1122 between 9:00 a.m. and 5:00 p.m., except as provided in § 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8.

**FOR FURTHER INFORMATION CONTACT:** Florence Young, Adviser, Division of Federal Reserve Bank Operations (202/452-3955); Oliver I. Ireland, Associate General Counsel (202/452-3625), or Elaine M. Boutilier, Senior Attorney, Legal Division (202/452-2418), Board of Governors of the Federal Reserve System, Washington, DC 20551. For the hearing impaired *only*, Telecommunications Devise for the Deaf ("TDD"), Earnestine Hill or Dorothea Thompson (202/452-3544).

**SUPPLEMENTARY INFORMATION:**

### Background

Two types of payments flow over the ACH mechanism—credit transactions and debit transactions. In the case of ACH credit transactions, funds flow from the originator of the payment to the receiver. The majority of ACH credit payments are payroll, pension, or annuity payments. In the case of ACH debit transactions, funds flow from the receiver to the originator. The majority of ACH debit transactions are used to collect insurance premiums, bill payments, and mortgage loan payments. In addition, ACH debit transactions are used for cash concentration purposes, that is, to draw down balances from the accounts of affiliates or subsidiaries located throughout the country, and they account for the largest proportion of the dollar value of ACH transactions.

The ACH is a value-dated mechanism. Transactions may be originated one or two days before the settlement date and may be processed on one of the two operating cycles—a day or a night cycle. All ACH transactions are provisional



payments. The Reserve Banks currently reserve the right to reverse credits given to receivers of ACH credit transactions until the entries are posted on the settlement day, and credit given for debit transactions may currently be reversed by a Reserve Bank until the opening of business on the day following settlement. In addition, institutions receiving debit transactions have the right to return them.

### Previous Proposal and Comments

In December 1986, the Board requested comments on the following proposals (Docket No. R-0591, 51 FR 45043, December 16, 1986):

- To provide finality to receivers of ACH credit transactions amounting to $5,000 or less at 1:00 p.m. local time on the settlement date;
- To provide finality to receivers of ACH credit transactions amounting to more than $5,000 when the Reserve Banks have received actually and finally collected funds;
- to notify receivers of ACH credit transactions if payments were reversed before the time of finality on a "best efforts" basis; and
- to retain the right to reverse ACH debit transactions at any time until the Reserve Bank has received actually and finally collected funds.

The Board received 112 comments on these proposals. The majority of commenters opposed the proposals. In the case of the proposals concerning ACH credit transactions, commenters stated that there was no good reason to distinguish between small and large-dollar credit transactions, that the dollar amounts proposed were arbitrary, and that finality should be granted at a specific time for all ACH credit transactions. Eighty-five percent of the commenters believed that small-dollar credit transactions should be treated as final at the opening of business on the settlement day. All commenters believed that a specific time should be set for the finality of large-dollar credit transactions, and more than 50 percent believed that all ACH credit transactions should be treated as final at the opening of business on the settlement day.

Commenters believed that delaying finality for ACH credit transactions amounting to $5,000 or more and ACH debit transactions until the Reserve Banks had received actually and finally collected funds would add substantially to the risk of participating institutions and their customers. They indicated that the increased uncertainty resulting from adoption of this proposal would reduce the attractiveness of the ACH mechanism. A majority of commenters argued that finality should be granted at a specific time and indicated that they would prefer that the same time be designated for both debit and credit transactions.

If the Reserve Banks were to grant finality for all ACH credit transactions at the opening of business on the settlement day, as many commenters on the 1986 proposal suggested, the credit exposure currently faced by receiving institutions would be eliminated. The Reserve Banks' risk, however, would be substantially increased because they would not be able to reverse any payments on the settlement day without regard to whether the originating institution had sufficient funds in its account to cover the payments.

The Board believes that no distinction should be made concerning the finality accorded large and small-dollar ACH credit transactions. While commenters would prefer that finality be granted at the opening of business on the settlement day, the Board believes that the risk faced by the Reserve Banks is too great to adopt this proposal. In order to balance the risk faced by the Reserve Banks with that faced by receiving institutions, the Board believes that finality for ACH credit transactions should be granted at 6:30 p.m. local time, a time late enough on the settlement day to permit the Reserve Banks to recover some funds, if it is determined that an originator is unable to cover the payments that it has originated.

With regard to the proposal to treat credits given for ACH debit transactions as final only after they had received actually and finally collected funds, the majority of commenters opposed this proposal. They indicated that a specific time should be adopted after which a Reserve Bank would not reverse credits given for ACH debit transactions.

The Reserve Banks' risk would not differ substantially under the terms of the current operating circular or the proposal published for comment in 1986. To provide greater certainty for depository institutions, the Board proposes to treat credits given to originators of ACH debit transactions as final at 10:00 a.m. local time on the business day following the settlement day.

### Discussion

Three issues have been considered in the timing of finality for ACH credit transactions: (1) Current practices and customs; (2) the credit exposure faced by the Federal Reserve and by depository institutions; and (3) the potential that changes in the treatment of finality for ACH transactions may result in shifts in the use of payment mechanisms.

*Current Practices*—The Reserve Banks' ACH operating circular currently indicates that credit given to receivers of ACH credit transactions is available for use on the settlement day. At the same time, the Reserve Banks reserve the right not to settle for an item after notice of the suspension or closing of the originator or the receiver is received.[1] In addition, the Reserve Banks may cease acting on or settling for a credit item if a Reserve Bank judges that there may not be sufficient funds in the originator's account on the settlement day to cover the item.[2] Based on these provisions, the Reserve Banks have the right to reverse credit transactions until all transactions affecting reserve or clearing accounts have been posted on the settlement day. Further, Reserve Banks are not obligated to notify depository institutions before transactions are reversed although notices would typically be provided the business day following the reversal of transactions.

Other rules and regulations—Regulation CC, Regulation E, and NACHA rules—also influence depository institutions' treatment of ACH credit transactions. The Board's Regulation CC requires depository institutions to make funds received via ACH credit transactions available for withdrawal no later than the opening of business on the business day following the settlement date, but does not preempt existing rules that may require earlier availability (12 CFR 229.10(b)). The Board's Regulation E requires depository institutions to credit consumers' accounts as of the settlement day but does not specify a time of day, and it does not require depository institutions to make funds available for use on the day they are credited (12 CFR 205.10(a)(2) and Official Staff Commentary, Q10-13). NACHA rules, which are incorporated in the Reserve Banks' Uniform ACH Operating Letter, are more stringent and require depository institutions to make funds available for both consumer and corporate payments on the settlement day.[3] Further, NACHA guidelines encourage depository institutions to make funds available to consumers at the opening of business on the settlement day.[4]

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[1] Uniform ACH Operating Letter, paragraphs 24 and 25.

[2] *Ibid.*, paragraph 31.

[3] *Operating rules of the National Automated Clearing House Association*, pages OR 12.

[4] *Operating Guidelines of the National Automated Clearing House Association*, pages OG V-6.

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*Current Practices*—Payroll, pension, and annuity payments are typically processed one or two days before the settlement date, and transaction data are generally provided to receiving institutions before the settlement date. The majority of depository institutions make these payments available to consumers at the opening of business on the settlement day. Larger dollar corporate-to-corporate payments are typically processed at night, with transaction data generally provided to receiving institutions at the opening of business on the settlement date. Funds availability practices vary; funds may be made available to customers on the settlement day, or not until the business day following the settlement day.

*Credit Exposure*—The credit exposure faced by depository institutions and the Federal Reserve varies inversely based on the finality accorded ACH credit transactions. That is, as Federal Reserve risk is reduced, depository institutions' risk tends to rise.

Under the Reserve Banks' current ACH operating circular, receiving depository institutions are generally exposed to some risk of loss on the settlement day as well as the business day following the settlement day. This risk is due to most institutions' practice of making funds available to their customers on the settlement day even though the Reserve Banks reserve the right to reverse transactions until the time all reserve and clearing accounts have been posted. If payments are reversed and customers do not reimburse their depository institution for the funds they have used, the institution would experience a loss. The Reserve Banks' risk is limited to situations in which it is not discovered that an originator is unable to fund its payments until the day following the settlement day.

While receiving institutions are exposed to the risk of financial loss, the Federal Reserve has taken steps to reduce this risk. The Reserve Banks have implemented procedures to monitor ACH credit transactions originated by "problem" institutions, that is institutions in weak financial positions. In addition the Reserve Banks are implementing procedures that permit them to require problem depository institutions to prefund or pledge collateral to cover the value of credit transactions originated at the time they are deposited for processing.

Furthermore, over 90 percent of all ACH credit transactions are payroll, pension, and annuity payments. The median value of these payments is less than $600, and the depository institutions receiving such payments are generally a highly diverse group. As a result, the potential financial loss faced by institutions receiving small-dollar payments is not substantial.

*Changes in the Use of Payment Transactions*—It does not appear that there has been a shift of funds transfers to the ACH. Nevertheless, the Board believes that granting finality for ACH credit transactions at the opening of business on the settlement day could lessen the distinction between the ACH and the funds transfer mechanisms and provide incentives for depository institutions to change their payment practices.

*Proposed Finality Terms*—After review of the current practices, the credit exposure of depository institutions and Reserve Banks, and the potential for shifts in payments transactions, the Board has determined that Federal Reserve policies should provide receivers of ACH credit transactions more certainty regarding the time at which the Reserve Banks grant finality. Accomplishing this objective poses several problems for the Reserve Banks. First, supervisors of depository institutions typically close institutions late in the day. The Reserve Banks, therefore, generally would not be able to begin notifying receiving institutions that an originator is being closed until late in the afternoon. Second, over 20,000 institutions use the ACH mechanism. While all of these institutions ordinarily would not be affected by the closing of one originating institution, a potentially large number of institutions may be affected and a considerable amount of time may be required to notify those institutions that transactions will be reversed.

In order to balance the risks faced by the Reserve Banks and receiving depository institutions, the Board proposes that ACH credit transactions be treated as final payments to the receiver at 6:30 p.m. local time for the receiver on the settlement day. The Reserve Banks will provide receiving institutions the name of the originating institution whose transactions will be reversed by means of a wire notice to institutions with on-line connections to Fedwire before 6:30 p.m. local time. If notice of reversal is not sent to an on-line receiving institution by 6:30 p.m. local time, then the items will be considered to be final. For those institutions that do not have on-line connections to Fedwire, the Reserve Bank will attempt to give notice by telephone by 6:30 p.m. local time. Due to the difficulty of making potentially numerous telephone calls to institutions that have already closed for business for the day, the Board does not believe that it should accept the losses that may accure if notice can not be given by 6:30 p.m. Therefore, the firm 6:30 p.m. finality only applies to on-line institutions. For other institutions, the Reserve Banks will attemp to give notice, but the transactions will not become final if such notice is not given by 6:30 p.m.

The Board requests comments on the proposed 6:30 p.m. finality. The Board also requests comment on whether this notice is useful to the receiving institution without the accompanying transaction data, and how late after 6:30 p.m. this notice may be given and still be useful to the receiving institution. Because timely notice can be best provided through computer connections, the Board requests comments on how the 6:30 p.m. time for notification of reversals should be handled if (1) a Reserve Bank's computer is down; or (2) a receiving institution's computer is down or shut off.

Granting finality at 6:30 p.m. local time exposes the Reserve Banks to some risk of loss. Specifically, losses may be incurred if an originator were closed unexpectedly and had not funded the ACH credit transactions it had originated before it was closed. In addition, losses could be incurred if institutions located in the mid-west and western parts of the country are closed late in the day. For example, if an institution located in California were closed at 5:00 p.m. Pacific Time, the Reserve Banks may be able to notify receiving institutions located in the Mountain and Pacific time zones that transactions originated by the institution would be reversed before 6:30 p.m. local time. Because the time set for finality in the Central and Eastern time zones would have passed before the California institution was closed, the Reserve Banks would not be able to reverse transactions in those regions of the country and would absorb any losses incurred. The Board requests comments on whether it is appropriate for the Federal Reserve to accept such risk of loss and whether commenters believe that a private ACH processor would accept this type of risk.

It is proposed that, after giving a receiving institution notice of the closing of an originator, the Reserve Banks will make available to receiving depository institutions data on the individual transactions that are being reversed. This transaction data will be provided before the opening of business on the business day following the settlement day. In the case of institutions with electronic connections to the Reserve Banks or that pick up their ACH transactions at a Federal Reserve office, reversed transactions would be made available no later than the close of the night cycle. For institutions whose transactions are delivered via courier or mail, the data would be included with transactions delivered on the next delivery to the institution. In addition to comments on this proposal, the Board also requests that commenters give the latest time that a depository institution could receive reversal transactions and still update its accounts before opening for business on the day following the scheduled settlement date.

As an added protection against potential losses, the Board proposes that the Reserve Banks reserve the right to charge the accounts of originating institutions any time during the settlement day for all ACH credit transactions settling on that day. The Reserve Banks would use this right in situations where there were concerns about an originator's ability to fund ACH credit transactions on the settlement day. This change would reduce the probability that the Reserve Banks would need to reverse transactions that had been delivered to receiving institutions. As a result, it would reduce the risk faced by receivers of ACH credit transactions.

*ACH Debit Transactions*—The Reserve Banks' ACH operating circular currently indicates that credits given for ACH debit items will not be reversed after the opening of business on the business day following the settlement day. It also indicates that a Reserve Bank may refuse to permit the use of credit given for a debit item if it judges that there may not be sufficient funds in the originator's account to cover chargeback or return of the item.[5] This finality granted by the Reserve Banks does not change the receiver's right of return.[6]

*Credit Exposure*—The risk faced by institutions originating ACH debit transactions is not affected substantially by the finality granted by the Federal Reserve. In most cases, some portion of debit transactions are returned by receiving institutions, and the return items may not be received by the originating institution until as many as five days following the settlement day. Most depository institutions have agreements with their customers to charge back such items. Alternatively, they place holds on funds collected through the ACH if they are concerned about the financial stability of their corporate customer.

[5] Uniform ACH Operating Letter, paragraph 23.
[6] *Ibid*, paragraph 23.

Because institutions receiving ACH debit transactions are obligated to settle for them by the close of business on the settlement day, the Reserve Banks are able to determine whether debit items have been paid when all transactions have been posted to reserve or clearing accounts. As a result, a Reserve Bank would be able to determine whether payments needed to be reversed in the morning on the business day following the settlement day. To provide greater certainty for depository institutions, the Board proposes to treat credits given to originators of ACH debit transactions as final at 10:00 a.m. local time on the business day following the settlement day. If a receiver of debit transactions fails and the ACH transactions are to be reversed, the Board proposes to advise originators of ACH debit transactions of the name of the receiving institutions whose payments are being reversed by 10:00 a.m. on the business day following the settlement day. Transaction data on these reversals would be made available to institutions with electronic connections to the Reserve Banks or to those that pick up their transactions at a Federal Reserve office no later than the close of the day cycle on the business day following the original settlement date. Reversal transactions would be included on the next delivery to institutions served by couriers or the Postal Service.

*Debit Item Adjustments*—The NACHA rules permit receiving institutions to return consumer debit transactions up to about 45 days after the settlement date, if a consumer provides notice that such debit entry was, in whole or in part, not authorized by the consumer.[7] Such returns are called debit item adjustments and the Reserve Banks process and settle for them. If the originator of the debit item has failed before the item is submitted for processing, the Reserve Banks currently would be obligated to credit the returning institution and would only have a claim against the failed bank or possibly the failed bank's customer. Processing debit item adjustments, therefore, exposes the Reserve Banks to some risk of loss.

This right of a consumer to obtain credit on the basis that an ACH debit transaction was not authorized differs from a customer's right to obtain credit in the case of a forged or altered check. In the case of a forged check, the payor (receiving) bank bears the risk. In the case of a forged indorsement or an altered check, the customer must prove the alteration of forgery, and the receiving bank must claim against prior banks on the basis of breach of warranty.

[7] *Operating Rules of the National Automated Clearing House Association*, page OR 17.

The Board does not believe it is reasonable for an intermediary, such as a Reserve Bank, without any knowledge of the transaction to assume the risk of loss. Rather, this risk should be borne by the parties involved. Therefore, the Board proposes that the Reserve Banks grant credit for debit item adjustments only when they can recover credit from the originating depository institution.

*Proposals*—Based on the preceding discussion, the Board of Governors requests public comment on the following proposals concerning the finality of ACH transactions:

- Granting finality to receivers of ACH credit transactions at 6:30 p.m. local time on the settlement day;
- Treating credits given to originators of ACH debit transactions as final payments at 10:00 a.m. local time on the business day following the settlement date;
- Advising receiving depository institutions with on-line connections to Fedwire that payments are being reversed by the time set for finality of ACH payments;
- Endeavoring to advise off-line institutions by telephone that payments are being reversed;
- Reserving the right to debit the reserve/clearing accounts of institutions originating ACH credit transactions at any time during the settlement day; and
- Granting credit for debit item adjustments only when the Reserve Banks can recover credit from the originating depository institution.

By order of the Board of Governors of the Federal Reserve System, February 23, 1989.
William W. Wiles,
*Secretary of the Board.*

[FR Doc. 89-4677 Filed 3-1-89; 8:45 am]
BILLING CODE 6210-01-M



## Union Colony Bancorp; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

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The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than March 11, 1989.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

*1. Union Colony Bancorp,* Greeley, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of Northern Investment Company, Fort Collins, Colorado, parent of Northern Bank and Trust, Fort Collins, Colorado.

Board of Governors of the Federal Reserve System, February 23, 1989.

Jennifer J. Johnson,

*Associate Secretary of the Board.*

[FR Doc. 89-4085 Filed 3-1-89; 8:50 am]

BILLING CODE 6210-01-M

## FEDERAL TRADE COMMISSION

### Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the Federal Register.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 020689 AND 021789

| Name of acquiring person, name of acquired person, name of acquired entity | PMN No. | Date terminated |
|---|---|---|
| Robert T. Shaw, c/o I.C.H. Corporation, Integrated Resources, Inc., Integrated Resources, Inc. | 89-0827 | 02/06/89 |
| British Telecommunications plc, Affiliated Publications, Inc., McCaw Cellular Communications, Inc. | 89-0822 | 02/06/89 |
| British Telecommunications plc, Craig O. McCaw, McCaw Cellular Communications, Inc. | 89-0823 | 02/06/89 |
| Capital Cities/ABC, Inc., Satellite Music Network, Inc., Satellite Music Network, Inc. | 89-0882 | 02/06/89 |
| Golder, Thoma, Cressey Fund III Limited Partnership, Donald R. Shattuck, Barefoot Grass Lawn Service, Inc. | 89-0965 | 02/06/89 |
| Ford Motor Company, Meritor Savings Bank, Meritor Credit Corporation | 89-0977 | 02/06/89 |
| Kenneth R. Thomas, Keefe, Bruyette & Woods, Inc., Keefe Bank Watch | 89-0980 | 02/06/89 |
| The Chase Manhattan Corporation, Meritor Savings Bank, Meritor Savings, FA | 89-0998 | 02/06/89 |
| Georgia Gulf Corporation, Co-Plas, Inc. Co-Plas Inc. | 89-0828 | 02/08/89 |
| Castle Coal & Oil Co., John CHR. M.A.M. Deure, Atlantic Fuels Marketing Corporation | 89-0856 | 02/09/89 |
| The Passavant Company, TI Group plc, Bennett Plastics, Inc. | 89-0908 | 02/09/89 |
| Lomas Financial Corporation, Union of Arkansas Corp., Union National Bank of Arkansas and Union National Bank | 89-0929 | 02/10/89 |
| Summit Resources, Inc., Stoneridge Resources, Inc., Stoneridge Resources, Inc. | 89-0939 | 02/10/89 |
| Francesco Gabel, Telesphere International, Inc., Telesphere International, Inc. | 89-1003 | 02/10/89 |
| The Honorable Daniel J. Terra, First Illinois Corporation, Mercury Finance Company | 89-1004 | 02/10/89 |
| Gulf + Western Inc., Advanta Corp., Colonial National Bank USA | 89-1005 | 02/10/89 |
| General Motors Corporation, Ford Motor Company, First Nationwide Bank, a Federal Savings Bank | 89-1024 | 02/10/89 |
| Jeffry M. Picower, Fidata Corporation, Fidata Corporation | 89-1025 | 02/10/89 |
| Exxon Corporation, Texaco Inc., Alberta Ltd., Texaco Canada, Inc. | 89-0951 | 02/13/89 |
| Exxon Corporation, Texaco Inc., Texaco Canada Inc. | 89-0953 | 02/13/89 |
| Roy E. Disney and Patricia A. Disney, Sound Warehouse, Inc., Sound Warehouse, Inc. | 89-0968 | 02/13/89 |
| Berkshire Hathaway Inc., Isadore Friedman, Bonshalm Jewelry Company, Inc. | 89-0975 | 02/13/89 |
| Thomas C. Foley, West Point-Pepperell, Inc., assets of Stevens Aviation & Stevens Aviation Ohio | 89-0985 | 02/13/89 |
| Sheldon Gross, The Allen Group Inc., National Rubber Company Ltd. and National Rubber Co | 89-1008 | 02/13/89 |
| Alexander Proudfoot PLC, Philip Crosby Associates, Inc., Philip Crosby Associates, Inc. | 89-1020 | 02/13/89 |
| International Semi-Tech Micro-electronics, Inc., SEMC Inc., SEMC Inc. | 89-1022 | 02/13/89 |
| Alexander Proudfoot PLC, Philip Crosby Associates, Inc., Philip Crosby Associates, Inc. | 89-1026 | 02/13/89 |
| Metex Corporation, General Development Corporation, General Development Corporation | 89-0898 | 02/14/89 |
| Attilio F. Pelosotti, General Development Corporation, General Development Corporation | 89-0899 | 02/14/89 |
| Pearl H. Hack, General Development Corporation, General Development Corporation | 89-0900 | 02/14/89 |
| Big B Inc., Insaco Limited, Read Drug Company | 89-0917 | 02/14/89 |
| Societe Nationale Elf Aquitaine, Thomas G. Schweiker, Quality Plus Exeter Corporation | 89-0935 | 02/14/89 |
| Exxon Corporation, a New Jersey Corporation, Oil Holding, Inc., Oil Holding, Inc. | 89-0954 | 02/14/89 |
| Emerson Electric Co., W.W. Grainger, Inc., W.W. Grainger, Inc. | 89-0964 | 02/14/89 |
| Milton Petrie, Deb Shops, Inc., Deb Shops, Inc. | 89-0971 | 02/14/89 |
| Kane-Miller Corp., Postal Instant Press, Inc., Postal Instant Press, Inc. | 89-0985 | 02/14/89 |
| George T. Vella, The 1964 Simmons Trust, Keystone Consolidated Industries, Inc | 89-0939 | 02/15/89 |
| Canada Malting Co., Ltd., Pernod, Ltd., Pernod Products Co | 89-0940 | 02/15/89 |
| Acadia Partners, L. P., Dennis Sokol, Modcomp Corporation | 89-0982 | 02/15/89 |
| Illinois Tool Works Inc., Ransburg Corporation, Ransburg Corporation | 89-0983 | 02/15/89 |
| Illinois Tool Works Inc., Ransburg Corporation, Ransburg Corporation | 89-0989 | 02/16/89 |
| Value Equity Associates I, L.P., XTRA Corporation, XTRA Corporation | 89-0999 | 02/16/89 |
| AMR Corporation, Texas Air Corporation, Britt Airways, Inc. | 89-0849 | 02/17/89 |
| Stephen Adams, Sterling Recreation Organization Co., Sterling Recreation Organization Co. | 89-0866 | 02/17/89 |



TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 020689 AND 021789—Continued

| Name of acquiring person, name of acquired person, name of acquired entity | PMN No. | Date terminated |
|---|---|---|
| Meadowdale Foods, Inc., Mr. Erlven Karl Haub, The Great Atlantic & Pacific Tea Company, Inc. | 89-0870 | 02/17/89 |
| Harken Energy Corporation, Crystal Oil Company, Crystal Oil Company | 89-1015 | 02/17/89 |
| Psimer Communications, Incorporated, Vanguard Cellular Systems, Inc., Macon Cellular Telephone Corp. | 89-1040 | 02/17/89 |
| James Sowell, Mason Best Company, Plexus Acquisition Company, Inc. (dba Psimer Bus. Form) | 89-1041 | 02/17/89 |
| Embassy Pacific Partners Limited Partnership, Holiday Corporation, Holiday Corporation | 89-1058 | 02/17/89 |
| The Berkshire Fund, A Limited Partnership, Stephen G. Dent, DCI Acquisition Corp. | 89-1059 | 02/17/89 |
| Elders IXL Limited, North Broken Hill Peko Limited, Simemetal USA Corporation | 89-1060 | 02/17/89 |
| Motels of America Inc., Earl F. Slick, Turnpike Properties, Inc. (Cricket Inns) | 89-1067 | 02/17/89 |

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Contact Representative, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, DC 20580, (202) 326-3100.

By Direction of the Commission.

Donald S. Clark,

*Secretary.*

[FR Doc. 89-4842 Filed 3-1-89; 8:45 am]

BILLING CODE 6750-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

### Privacy Act of 1974; Matching Program—Medicare Part A Beneficiary Records/VA Patient Records

**AGENCY:** Department of Health and Human Services.

**ACTION:** Notification of matching program—Medicare Part A beneficiary records/VA patient records.

**SUMMARY:** The Department of Health and Human Services (HHS) is providing notice that the Office of Inspector General (OIG) intends to conduct a match of HHS Medicare Part A Beneficiary records against Veterans Administration (VA) patient treatment records. A matching report is set forth below:

**DATE:** The match will begin in March 1989.

**ADDRESS:** Send all Comments to the Financial and Administrative Management Staff, Administrative Office, OIG, HHS, Room 5246 Cohen Building, 330 Independence Avenue SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Diane Datcher, Financial and Administrative Management Staff, Administrative Office, OIG, HHS, Room 5246 Cohen Building, 330 Independence Avenue SW., Washington, DC 20201.

SUPPLEMENTARY INFORMATION: The HHS OIG, in cooperation with the VA Office of Inspector General, is initiating a computer matching program to identify improper duplicate payments made by Medicare intermediaries where VA was responsible for the payment. The services to be reviewed are services authorized by the VA to be performed in non-VA hospitals to veterans who are also eligible under Part A of Medicare. A duplicate payment could result if a hospital were to bill both the VA and the Medicare program for the same services. The existence of duplicate payments has been detected in past VA audits, but the full extent of such duplicate payments has not been determined. The purpose of this computer matching program is to identify all such duplicate payments. Set forth below is the information required by paragraph 5.f.1. of the Revised Supplemental Guidance for Conducting Computerized Matching Programs issued by the Office of Management and Budget, 47 FR 21656 (May 19, 1982). A copy of this notice has been furnished to both Houses of Congress and the Office of Management and Budget.

Date: February 17, 1989.

Richard P. Kusserow,

*Inspector General.*

**Report of Matching Program: Medicare Part A Beneficary Records/VA Patient Records**

a. *Authority:* Pub. L. 94-505.

b. *Program Description:* The Department of Health and Human Services Office of Inspector General plans to conduct a match of Medicare payment files of Part A beneficiaries, furnished by the Health Care Financing Administration (HCFA), against files of the Veterans Administration (VA) setting out payments for authorized services to veterans in non-VA hospitals. The match will identify duplicate payments for the same services. A sample of duplicate payments will be verified with the appropriate Medicare intermediaries and hospitals to validate the accuracy of the match. The remaining raw hits will be provided to HCFA for verification and resolution.

c. *Records to be Matched:* Records on Medicare Part A beneficiaries from the Intermediary Medicare Claims system (90-70-0503), 53 FR 52801 (Dec. 29, 1988) will be matched against the following VA records systems:

1. Individuals Submitting Invoices-Vouchers for Payment Systems (13VA047), Federal Register Privacy Act Issuances, 1988 Compilation, Vol. 5, p. 763.

2. Patient Medical Records System (24VA136), Federal Register Privacy Act Issuances, 1988 Compilation, Vol. 5, p. 771.

d. *Period of Match:* The match will begin in March 1989 and will be completed within 5 months.

e. *Safeguards:* Records used in this match will be maintained under strict security. Access to the computer files and printed information will be restricted to only those persons having a "need to know" for the purposes of additional review or resolution. The records being matched will be kept in locked file cabinets under control of the Office of Inspector General, or in secured Government computer facilities. We will return all of the VA computer source tapes to the VA upon completion of the match. Computer tapes are protected by the use of passwords to prohibit unauthorized access. All computer files are safeguarded in accordance with the provisions of the National Bureau of Standards Federal Information Processing Standards 41 and HHS ADP Systems Security Manual, Part 6, "ADP Systems Security".

f. *Retention and Disposition of Records:* Only those records produced in the match which meet predetermined criteria will be maintained. All records maintained will be destroyed within 6 months except those which are necessary to the resolution of duplicate payments identified by the matching program. The date will be verified to insure accuracy prior to any dissemination of records on individuals.

[FR Doc. 89-4751 Filed 3-1-89; 8:45 am]

BILLING CODE 4150-04-M

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**Centers for Disease Control**

**[Announcement Number 909]**

**Sexually Transmitted Diseases Research and Demonstrations**

**Introduction**

The Centers for Disease Control (CDC) announces that grant applications are to be accepted for Sexually Transmitted Diseases (STD) Research and Demonstrations.

**Authority**

This program is authorized under section 318(b) of the Public Health Service Act (42 U.S.C. 247c(b)), as amended. Regulations governing programs for preventive health services are codified at 42 CFR Part 51b, Subparts A and P.

**Eligible Applicants**

Eligible applicants are the official public health agencies of State and local governments, including the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Federated States of Micronesia, Guam, the Marshall Islands, the Northern Marianna Islands, Palau, and the Virgin Islands, and any other public or nonprofit private entity. Thus, universities, colleges, research institutions, and hospitals are eligible to apply. In addition, in order to ensure statistically significant results, applicants applying for assistance in the area of syphilis control must be those which reported case rates of primary and secondary syphilis of at least 20 per 100,000 population for 1988.

**Availability of funds**

Approximately $800,000 is available in Fiscal Year 1989 to fund approximately 2 to 4 studies. It is expected that the average award will be $200,000, ranging from $100,000 to $300,000. Awards are expected to begin on or about July 1, 1989, for a 12 month budget period within a project period of 1 to 5 years. Funding estimates may vary and are subject to change. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

**Purpose**

The purpose of this grant program is to develop, improve, and evaluate methods for the prevention and control of STD through demonstrations and applied research. Applied research, as used in the context of this announcement, means the process of developing and evaluating operational approaches and solutions to practical STD control problems by formulating appropriate models and hypotheses and testing them in the field.

**Program Requirements**

Applications adressing the areas listed below will be considered for funding in Fiscal Year 1989:

A. *Syphilis Control, Behavioral Aspects:* Develop, implement, and evaluate strategies for innovative and cost effective interventions for infections syphilis. Applicants should work with community groups, especially those that serve and represent racial and ethnic minority populations, to conduct in-depth studies of the dynamics of sexual behavior in association with drug use.

B. *Primary Prevention:* Study and evaluate the prevalence of and attitudes toward condom use and develop and implement a disease intervention plan with condom use as the primary intervention strategy. Studies should include populations at highest risk of acquiring STD. Applicants should define from their own STD statistics the groups at highest risk of acquiring STD. Evaluation should concentrate on high risk groups. Incidence of disease should be one of the outcome measures of evaluation.

**Evaluation Criteria**

A. Competing application will be reviewed and evaluated by an ad hoc CDC-convened committee according to the following criteria:

1. The applicant's ability to assess the potential impact of long- and short-term objectives as evidenced by decreased reported incidence of sexually transmitted diseases.
2. The degree to which long- and short-term objectives are specific, measurable, and time-phased.
3. The quality of the plan of operation for conducting and monitoring activities designed to meet project objectives.
4. The extent to which the proposed project includes methods that are innovative and do not replicate prior or currently ongoing research.
5. The quality of the evaluation plan which specifies the methods and instruments of measurements to be used.
6. The extent to which qualified and experienced personnel are available, based on previous involvement with projects related to STD prevention and control.
7. The effectiveness of the applicant's collaboration with local or State STD control programs, hospitals, medical schools, laboratories, and any other agencies where joint liaison efforts would enhance the success of the project.
8. The appropriateness and feasibility of the project and the extent to which results may be transferred to other areas.

Consideration will also be given to the extent to which the budget request is reasonable and consistent with the intended use of grant funds.

B. Non-competing applications within an approved project period will be evaluated on satisfactory progress in meeting program objectives as determined by progress reports and the quality of the future plans. Awards will be made based on the availability of funds.

**Executive Order 12372**

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

**Catalog of Federal Domestic Assistance Number**

The Catalog of Federal Domestic Assistance Number is 13.978.

**Application Submission and Deadline**

The original and two copies of the application (Form PHS 5161-1) must be submitted to Nancy Bridger, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE, Room 300, Atlanta, GA 30305, on or before April 28, 1989.

A. *Deadline:* Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date, or
2. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier of U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

B. *Late Applications:* Applications which do not meet the criteria in A.1. or 2. are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

**Where to Obtain Additional Information**

A complete program description, information on application procedures and application package may be obtained from Marsha Driggans, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE, Room 300, Atlanta, GA 30305, (404) 842-6640 or FTS 236-6640.

Please refer to Announcement Number 909, "PROJECT GRANTS FOR SEXUALLY TRANSMITTED DISEASE RESEARCH AND DEMONSTRATIONS" when requesting information and submitting any application on the Request For Assistance. Technical assistance may be obtained from Alfred A Harry, Division of Sexually Transmitted Diseases, Center for Prevention Services, Centers for Disease Control, Atlanta, GA 30333, (404) 639-2584 or FTS 236-2584.

Dated: February 23, 1989.

**Robert L. Foster,**

*Acting Director, Office of Program Support, Centers for Disease Control.*

[FR Doc. 89-4782 Filed 3-1-89; 8:45 am]

BILLING CODE 4160-18-M



**Food and Drug Administration**

**[Docket No. 89N-0069]**

**Drug Export; PROLEUKIN® for Injection 1 MG**

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that Cetus Corp. has filed an application requesting approval for the export of the biological product PROLEUKIN® for Injection 1 mg to Belgium, Denmark, Federal Republic of Germany, Finland, France, Ireland, Italy, The Netherlands, Norway, Spain, Sweden, and The United Kingdom.

**ADDRESS:** Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human biological products under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

**FOR FURTHER INFORMATION CONTACT:** Boyd Fogle, Jr., Center for Biologics Evaluation and Research (HFB-120), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8191.

**SUPPLEMENTARY INFORMATION:** The Drug Export Amendments Act of 1986 (Pub. L. 99-660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Cetus Corp., 1400 53d St., Emeryille, CA 94608, has filed an application requesting approval for the export of the biological product PROLEUKIN® for Injection 1 mg to Belgium, Denmark, Federal Republic of Germany, Finland, France, Ireland, Italy, The Netherlands, Norway, Spain, Sweden, and The United Kingdom. The product PROLEUKIN® for Injection 1 mg is intended for use in the treatment of metastic renal cell carcinoma. The application was received and filed in the Center for Biologics Evaluation and Research on February 3, 1989, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by March 13, 1989, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 99-660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated under 21 CFR 5.44.

Dated: February 16, 1989.

**Madge L. Crouch,**

*Deputy Director, Office of Compliance, Center for Biologics Evaluation and Research.*

[FR Doc. 89-4868 Filed 3-1-89; 8:45 am]

BILLING CODE 4160-01-M

**Public Health Service**

**Office of the Assistant Secretary for Health; National Center for Health Services Research and Health Care Technology Assessment; Assessment of Medical Technology**

The Public Health Service (PHS), through the Office of Health Technology Assessment (OHTA), announces that it is coordinating an assessment of patient criteria for electrostimulation of salivary production in the treatment of xerostomia secondary to Sjogren's Syndrome. In this procedure an electro-stimulation device (salivation electro-stimulator) is used to stimulate salivary production from existing glandular tissue.

This assessment seeks to answer the following questions: (1) Is electrostimulation for salivary production widely accepted as a safe and clinically effective method in the treatment of xerostomia secondary to Sjogren's Syndrome? (2) What patient selection criteria would identify xerostomic patients that would benefit from this procedure? (3) Can specific subgroups of patients be identified? (4) Can guidelines be developed to specify which types of xerostomic patients with which conditions and at what points in their clinical evaluation and/or management would benefit from this type of procedure? If so, please suggest a set of guidelines. (5) At what level of salivary deficiency is therapeutic intervention warranted? (6) If the amount of salivation induced by electrostimulation varies from patient to patient how is successful treatment determined? (7) What would be the cost associated with such treatment, and (8) Are there any disadvantages or limitations associated with the use of this procedure? This assessment also seeks to determine if one procedure for xerostomia is more appropriate for patients with a specific clinical condition as opposed to another.

The PHS assessment consists of a synthesis of information obtained from appropriate organizations in the private sector and from PHS agencies and others in the Federal Government. PHS assessments are based on the most current knowledge concerning the safety and clinical effectiveness of a technology. Based on this assessment, a PHS recommendation will be formulated to assist the Health Care Financing Administration (HCFA) in establishing Medicare coverage policy. The information being sought is a review and assessment of past, current, and planned research related to this

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technology, a bibliography of published, controlled clinical trials and other well-designed clinical studies. Information related to the characterization of the patient population most likely to benefit, as well as on clinical acceptability and the effectiveness of this technology and extent of use are also being sought. Any person or group wishing to provide OHTA with information relevant to this assessment should do so in writing no later than May 1, 1989 or within 90 days from the date of publication of this notice.

Written material should be submitted to: Mr. Martin Erlichman, Health Science Analyst, Office of Health Technology Assessment, 5600 Fishers Lane, Room 18A-27, Rockville, MD 20857, 301-443-4990.

Date: February 1, 1989.

**Donald Goldstone,**

*Acting Director, Office of Health Technology Assessment, National Center for Health Services Research and Health Care Technology Assessment.*

[FR Doc. 89-4923 Filed 3-1-89; 8:45 am]

BILLING CODE 4160-17-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

### Road Closure

**AGENCY:** Bureau of Land Management.

**ACTION:** Road closure and restrictions.

**SUMMARY:** Pursuant to 43 CFR 8364.1(1) the following Bureau of Land Management (BLM) roads in Saguache County will be temporarily closed to protect roads and fragile environment during the spring thaw: Poncha Loop Road, Clover Creek Road, Dorsey Creek Road, Noland Gulch Loop Road, Clayton Cone, Findley Gulch, Poison-Dry Loop, Ford Creek, Cabin Draw Loop, Ward Gulch, Antelope Creek, Trickle Mountain, Big Dry Gulch, Rabbit Mesa, Holey Rock, Lightning Pass, Taylor Canyon, Spanish Creek and Squaw Creek Roads.

BLM roads to be closed in Conejos county include the following: Cumbres-Toltec Road, Bighorn Creek, Los Mesitas, Poso Loop, Rs Jadero, Whippoorwill, Capulin Peak and Cinder Pit Roads.

Approximate road closure dates are March 1, 1989 to May 31, 1989. Roads that are dry prior to May 31, 1989, may be opened for public use. Pursuant to 43 CFR 8364.1(4), the following persons are exempted from this order:

(1) Persons with a permit specifically authorizing the otherwise prohibited act.

(2) Any Federal, State, or local officer, or member of an organized rescue or fire fighting force in the performance of an official duty.

**FOR FURTHER INFORMATION CONTACT:** Dennis Zachman, Area Manager, (719) 589-4975, 1921 State Avenue, Alamosa, Colorado.

**Donnie R. Sparks,**

*District Manager.*

[FR Doc. 89-4813 Filed 3-1-89; 8:45 am]

BILLING CODE 4310-JB-M

[ID-010-09-4410-08]

### Land Use Plan Amendment; Jarbidge RMP and Twin Falls MFP; Boise and Burley Districts, ID

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of action.

**SUMMARY:** The Idaho State Director for the Bureau of Land Management has approved the release of a proposed land use plan amendment that involves (1) designation of the Salmon Falls Creek Canyon Area of Critical Environmental Concern (ACEC) in both the Twin Falls Management Framework Plan (MFP) and the Jarbidge Resource Management Plan (RMP), and (2) providing for additional structural range improvement projects in the Jarbidge RMP.

**DATE:** The amendment is subject to a 30-day protest period beginning Thursday, March 2, 1989, and ending April 3, 1989.

**ADDRESS:** Any protests to the amendment must be submitted in writing to: Director (760), Bureau of Land Management, 18th and C Streets NW., Washington, DC 20240. Protests must comply with the requirements of 43 CFR 1610.5-2 and be filed prior to the end of the protest period as stated above.

**FOR FURTHER INFORMATION CONTACT:** Gary Carson, Jarbidge Area Manager, or Terry Costello, Chief, Planning and Environmental Assistance Staff, at 3948 Development Avenue, Boise, Idaho 83705, or call (208) 334-1582.

**SUPPLEMENTARY INFORMATION:** Approval of the proposed land use plan amendment will constitute formal designation of 30 miles of Salmon Falls Creek Canyon as an ACEC, which will ensure continued protection of the Canyon's unique natural and scenic values. Also, based upon information obtained after the Jarbidge RMP was completed, the amendment will provide for construction of fences, pipelines, and water developments that are necessary to meet the land use objectives in the RMP. No changes are proposed in the level of land treatments identified in the RMP. The miles of fence to be constructed will be increased from 166 to 306, the miles of water pipelines from 131 to 444, and the number of water developments (wells, reservoirs, and springs) from 5 to 19. Analysis of the proposed amendment indicated that these range improvements are needed to improve soil, vegetation, and watershed conditions; provide adequate forage for identified numbers of livestock, wildlife, and wild horses; improve lands in poor ecological condition; maintain existing vegetative improvements; and manage big game habitat to support the populations specified in the RMP.

Date: February 21, 1989.

**J. David Brunner,**

*Boise District Manager.*

[FR Doc. 89-4479 Filed 3-1-89; 8:45 am]

BILLING CODE 4310-GG-M

[OR-050-4320-02-GP9-141]

### Oregon; Prineville District Grazing Advisory Board Meeting, Prineville, Oregon

February 23, 1989.

Notice is hereby given in accordance with Pub. L. 91-463 of a meeting of the Prineville District Grazing Advisory Board to be held April 13, 1989.

The meeting will begin at 10:00 a.m. in the conference room of the Bureau of Land Management office located at 185 East 4th Street, Prineville, Oregon 97754.

The agenda will include the following items:

1. Election of officers.
2. Orientation to District Programs and Organization.
3. Grazing decisions from Brothers-LaPine Resource Management Planning Process.
4. Allotment management planning status.
5. Grazing Evaluations/Decisions status.
6. Review of Geographic Emphasis Areas' major project, implementation program.
7. Disposition of other proposed range improvements.
8. Disposition of County Advisory Board Funds.

The meeting is open to the public. Anyone wishing to attend and/or make written or oral statements to the Board is requested to contact the District Manager at the above address on or prior to April 7, 1989.



Summary minutes of the meeting will be available for review and reproduction within 30 days following the meeting.

Dated: February 23, 1989.

**Donald L. Smith,**

*Acting District Manager.*

[FR Doc. 89-4816 Filed 3-1-89; 8:45 am]

BILLING CODE 4310-33-M

[AZ-040-09-4320-02]

### Safford District Grazing Advisory Board Meeting

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** Notice is hereby given, that a meeting of the Safford District Grazing Advisory Board will be held.

**DATE:** Wednesday, April 5, 1989; 9:00 a.m.

**ADDRESS:** Safford District BLM Office, 425 E. 4th St., Safford, AZ 85546.

**SUPPLEMENTARY INFORMATION:** This meeting is held in accordance with Pub. L. 92-463. The agenda for the meeting will include:

1. Field tour to Bonita Creek to discuss Riparian issues.
2. Discussion of Game Management Practices in Hunt Unit 28.
3. BLM managment Update.
4. Business from the floor.

The meeting will be open to the public. Board members will meet at the BLM Office, 425 E. 4th St., Safford, AZ 85546 at 9:00 a.m. From there they will depart via BLM-provided vehicles for a tour of Bonita Creek, and destination for the Board meeting. Members of the public may accompany the tour, and attend the meeting, but must provide their own transportation. It is expected the Board members will return to Safford by 4:00 p.m.

Interested persons may make oral statements to the Board. A written copy of the oral statement may be required to be provided at the conclusion of the presentation. Written statements may also be filed for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 425 E. 4th St., Safford, AZ 85546, by 4:15 p.m., Tuesday, April 4, 1989.

Summary minutes of the Board meeting will be maintained in the District Office and will be available for public inspection and reproduction (during regular business hours) within thirty (30) days following the meeting.

Date: February 24, 1989.

**Ray A. Brady,**

*District Manager.*

[FR Doc. 89-4810 Filed 3-1-89; 8:45 am]

BILLING CODE 4310-33-M

[NV-930-09-4212-13; N-48281, N-48857, N-48858, N-48859]

### Issuance of Land Exchange Patents, Interim Conveyance and Lease of Public Lands; Nevada

February 16, 1989.

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice identifies, in a general manner, Federal and non-Federal lands involved in a recently completed exchange transaction. All minerals were exchanged.

**FOR FURTHER INFORMATION CONTACT:** Marla B. Bohl, Chief, Branch of Lands and Minerals Operations, Nevada State Office, Bureau of Land Management, P.O. Box 12000, 850 Harvard Way, Reno, NV 89520, (720) 784-5703.

**SUPPLEMENTARY INFORMATION:** The United States issued Patent Nos. 27-88-0012 and 27-88-0013, Interim Conveyance 001 and a lease pursuant to the Nevada-Florida Land Exchange Authorization Act of 1988. Patent No. 27-88-0012 was for the following described land in Mineral County, Nevada:

**Mount Diablo Meridian, Nevada**

T. 6 N., R. 33 E.
Secs. 10-13, all;
Sec. 14, E½;
Sec. 15, W½;
Sec. 21, all;
Sec. 22, W½, S½SE¼;
Sec. 23, E½, S½SW¼;
Sec. 24, E½, W½NW¼, NE¼NW¼, N½SE¼NW¼, SE¼SE¼NW¼, SW¼;
Sec. 25, all;
Sec. 26, NE¼, W½, NE¼SE¼, W½SE¼;
Sec. 27, all;
Sec. 34, all;
Sec. 35, NE¼NE¼, W½, W½SE¼, SE¼SE¼;
Sec. 36, all.
Containing 8,910 acres

Patent No. 27-88-0012 also conveyed the mineral interest underlying the following described land:

T. 6 N., R. 33 E.
Sec. 14, W½;
Sec. 15, E½;
Sec. 22, NE¼, N½SE¼;
Sec. 23, NW¼, N½SW¼;
Sec. 24, SW¼SE¼NW¼.
Containing 1,130 acres.

Patent No. 27-88-0013, Interim Conveyance 001, and the lease were for lands in Lincoln and Clark Counties. The land generally be described as a parcel situated east of U.S. Highway 93 and north of State Highway 168. The townships involved are described as follows:

**Mount Diablo Meridian, Nevada**

T. 11 S., R. 63 E.
T. 12 S., R. 63 E.
T. 13 S., R. 63 E.
T. 12 S., R. 64 E.
T. 13 S., R. 64 E.

The total acreage conveyed by Patent 27-88-0013 and Interim Conveyance 001 totals 29,055.57 acres. The lease included approximately 13,767 acres. Precise legal descriptions can be ascertained from the records at the Bureau of Land Management at the above address.

The United States aquired land in Dade County, Florida in exchange for the above-described land. The exchange was made for the benefit of the U.S. Fish and Wildlife Service and its programs. A more detailed description of the land acquired by the United States is available in the records of the Bureau of Land Management at the above address.

**Edward F. Spang,**

*State Director, Nevada.*

[FR Doc. 89-4809 Filed 3-1-89; 8:45 am]

BILLING CODE 4310-HC-M

### Bureau of Land Management

[NV-930-09-4212-11; N-48049]

### Realty Action in Nevada

**ACTION:** Notice of Realty Action—Direct sale of public lands for waste water disposal ponds to Humboldt County for the Community of Orovada, Nevada. This notice terminates the segregative effect on the public lands involved in the public lands sale application N-48049.

**SUMMARY:** This notice supersedes the Federal Register notice published December 30, 1988 (53 FR 53075). The Bureau of Land Management hereby terminates the segregative effect as it pertains to the following described lands:

**Mount Diablo Meridian, Nevada**

T. 43 N., R. 37 E., Sec. 34, SE¼NE¼.

Analysis of the proposed site and conflicts over the type of use caused the amendment of application N-48049. The above described parcel of land is hereby opened to the public land laws including the mining laws upon publication of this notice in the **Federal Register**.

Notice is hereby given that pursuant to the Act of October 21, 1976, Pub. L.

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94–579, The Federal Land Policy and Management Act, section 203, the Bureau of Land Management will sell to Humboldt County a parcel of public land for the construction and operation of waste water disposal ponds to serve the community of Orovada. The parcel will be located in the following new location:

**Mount Diablo Meridian, Nevada**

T. 43 N., R. 37 E., Sec. 34, NE¼SW¼
40 acres.

For a period of 45 days from the date of publication of this notice, interested parties may submit comments to the District Manager, Bureau of Land Management, 705 East 4th Street, Winnemucca, NV 89445, (702) 623–3676.

**SUPPLEMENTARY INFORMATION:** Publication of this notice in the **Federal Register** shall segregate the public lands to the extent that the land will not be subject to appropriation under the public land laws, including the mining laws. Any subsequent application shall not be considered as filed and shall be returned to the applicant. This segregative effect of the notice of realty action shall terminate upon issuance of the patent or other document of conveyance to Humboldt County or publication of the notice of termination in the **Federal Register** or 270 days from the date of publication of this notice, whichever occurs first.

Dated: February 22, 1989.

**Ronald Wenker,**

*District Manager, Winnemucca.*

[FR Doc. 89–4611 Filed 3–1–89; 8:45 am]

BILLING CODE 4310–HC–M

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[NM–030–4410–06]

## Availability of Resource Management Plan; Socorro Resource Area, NM

**AGENCY:** Bureau of Land Management; Interior.

**ACTION:** Notice of availability.

**SUMMARY:** On January 29, 1989, Larry L. Woodard, New Mexico State Director, BLM, signed the Record of Decision (ROD) for the Socorro Resource Management Plan (RMP). This ROD documents the approval of the plan described in the Socorro Proposed RMP/Final Enviromental Impact Statement (EIS) of September 1988, on the land-use plan for the Socorro Resource Area (SRA).

This RMP will provide the framework to guide management decisions during the next 10 to 20 years on the SRA's 1.5 million surface acres of public land and 2.3 million acres of Federal subsurface.

The goal of this RMP is to provide for a combination of resource uses that will protect important environmental values and sensitive resources and at the same time allow development of resources which produce commercial goods and services.

The RMP also describes how the 7 key resource issues and 2 management concerns that were identified with public involvement early in the planning process will be resolved. These issues are: (1) Land Ownership Adjustments; (2) Vegetative Uses; (3) Off-Road Vehicle (ORV) Use; (4) Access; (5) Special Management Areas; (6) Wild Horse Management; and (7) Coal Leasing Suitability Assessment. The management concerns are: Fluid Mineral Leasing and Right-of-Way Exclusion and Avoidance Areas.

The Bureau has completed decisions to designate 6 Areas of Critical Environmental Concern (ACEC's) as follows:

| | Acres |
|---|---|
| Ladron Mountains | 62,460 |
| Agua Fria | 10,770 |
| Sawtooth | 120 |
| Horse Mountain | 7,720 |
| Tinajas | 3,520 |
| San Pedro | 1,200 |

The Bureau has also designated about 1.5 million acres of public land in Socorro and Catron Counties in central New Mexico as "open," "limited," or "closed" ORV use. Designations are the result of land-use planning decisions made in the RMP. Of the BLM-administered surface acres in the SRA, approximately 785,010 acres are "open"; 666,200 acres are "limited" to existing roads and trails (yearlong); 67,400 acres are "seasonally limited" to existing roads and trails; and 30 miles of trails are "closed" to ORV use.

The authority for the ORV designations is derived from Executive Orders No. 11644 and 11989, and the regulations contained in 43 CFR, Part 8340.

### Open Designations

Of the "open" category, 1,170 acres east of Socorro, New Mexico, are designated as intensive use areas for organized or competitive events. The remaining 783,840 acres are designated "open" for other ORV use.

### Limited to Existing Roads and Trails (Yearlong) Designations

Approximately 666,200 acres are designated "limited" to existing roads and trails. Included in this ORV designation are 12 Wilderness Study Areas (WSA's) and 23 Special Management Areas (SMA's) totalling 582,410 acres. Additionally 6 ACEC's, totalling 85,790 acres, are also designated "limited" to existing roads and trails.

### Limited to Existing Roads and Trails (Seasonally) Designations

Approximately 67,400 acres are "seasonally limited" to existing roads and trails from November through March. These areas are located adjacent to the Eagle Peak and Mesita Blanca WSA in northwestern Catron County.

### Closed Designations

Approximately 36 miles of trails are closed. These include Sierra Ladron ACEC, 18 miles; Tinajas ACEC, 2 miles; Horse Mountain ACEC, 2 miles; Antelope WSA, 4 miles; Continental Divide WSA, 9 miles; Playa Pueblos, 1 mile; and Teypama Site, 17 acres. Motorized access will be allowed in closed areas by administrative personnel and permittees who have specifically requested use consistent with other privileges.

**ADDRESS:** Copies of the Draft RMP/EIS, the Proposed RMP/FEIS, and the ROD are available from: Area Manager, Socorro Resource Area, USDI—Bureau of Land Management, 198 Neel Ave. NW., Socorro, NM 87801.

**FOR FURTHER INFORMATION CONTACT:** Harlen Smith, Area Manager, Socorro Resource Area, at the address above; telephone (505) 835–0412.

**Monte G. Jordan,**

*Associate State Director.*

Dated: February 24, 1989.

[FR Doc. 89–4781 Filed 3–1–89; 8:45 am]

BILLING CODE 4310–FB–M

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[ES–940–09–4520–13; (ES–039872, Group 20]

## Filing of Plat of Dependent Resurvey and Subdivision of Section 19; Michigan

February 24, 1989.

1. The plat of the dependent resurvey of a portion of the south boundary of Township 52 North, Range 32 West, a portion of the south (Fifth Correction Line), east and west boundaries, a portion of the subdivisional lines and the survey of the subdivision of section 19, Township 51 North, Range 32 West, Michigan Meridian, Michigan will be officially filed in the Eastern States Office, Alexandria, Virginia at 7:30 a.m., on April 10, 1989.

2. The dependent resurvey was made upon the request submitted by the Minneapolis Area Office, Bureau of Indian Affairs.

3. All inquiries or protests concerning the technical aspects of the dependent resurvey must be sent to the Deputy State Director for Cadastral Survey and Support Services, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304, prior to 7:30 a.m. April 10, 1989.

4. Copies of the plat will be made available upon request and prepayment of the production fee of $4.00 per copy.

**Corwyn J. Rodine,**

*Acting Deputy State Director for Cadastral Survey and Support Services.*

[FR Doc. 89–4794 Filed 3–1–89; 8:45 am]

BILLING CODE 4310–GJ–M



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[NV–930–09–4212–22]

## Filing of Plats of Survey; Nevada

February 17, 1989.

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The purpose of this notice is to inform the public and interested State and local government officials of the latest filing of a Plat of Survey in Nevada.

**EFFECTIVE DATE:** Filing was effective at 10:00 a.m. on February 1, 1989.

**FOR FURTHER INFORMATION CONTACT:** Lacel Bland, Chief, Branch of Cadastral Survey, Bureau of Land Management (BLM), Nevada State Office, 850 Harvard Way, P.O. Box 12000, Reno, Nevada 89520, 702–784–5484.

**SUPPLEMENTARY INFORMATION:** The Plat of Survey of lands described below was officially filed at the Nevada State Office, Reno, Nevada on February 1, 1989.

**Mount Diablo Meridian, Nevada**

T. 11N., R. 21 E.—Dependent Resurvey

The plat was accepted on July 5, 1984. The dependent resurvey was executed to meet certain administrative needs of the BLM. The above-listed plat is now the basic record for describing the lands for all authorized purposes. The plat will be placed in the open files in the BLM Nevada State Office and will be available to the public as a matter of information. Copies of the plat and related field notes may be furnished to the public upon payment of the appropriate fee.

**Edward F. Spang,**

*State Director, Nevada.*

[FR Doc. 89–4612 Filed 3–1–89; 8:45 am]

BILLING CODE 4310–HC–M

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## Minerals Management Service

### Development Operations Coordination Document; Hall-Houston Oil Co.

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

**SUMMARY:** Notice is hereby given that Hall-Houston Oil Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 5357, Block 628, West Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Cameron, Louisiana.

**DATE:** The subject DOCD was deemed submitted on February 21, 1989. Comments must be received within 15 days of the publication date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

**ADDRESSES:** A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OSC Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

**FOR FURTHER INFORMATION CONTACT:** Ms. Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2876.

**SUPPLEMENTARY INFORMATION:** The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: February 23, 1989.

**J. Rogers Pearcy,**

*Regional Director, Gulf of Mexico OCS Region.*

[FR Doc. 89–4614 Filed 3–1–89; 8:45 am]

BILLING CODE 4310–MR–M

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### Development Operations Coordination Document; McMoRan Oil & Gas Co.

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

**SUMMARY:** Notice is hereby given that McMoRan Oil & Gas Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 1088, Block 80, West Delta Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Venice, Louisiana.

**DATE:** The subject DOCD was deemed submitted on February 22, 1989. Comments must be received within 15 days of the publication date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

**ADDRESSES:** A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge,

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Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70806.

**FOR FURTHER INFORMATION CONTACT:** Mr. W. Williamson; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2874.

**SUPPLEMENTARY INFORMATION:** The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Land Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: February 2, 1989.

J. Rogers Pearcy,

*Regional Director, Gulf of Mexico OCS Region.*

[FR Doc. 89-4815 Filed 3-1-89; 8:45 am]

BILLING CODE 4310-MR-M

## Outer Continental Shelf Operations: Official Protraction Diagrams; Availability

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Publication of revised Outer Continental Shelf Official Protraction Diagrams.

**SUMMARY:** Notice is hereby given that effective with this publication, the following OCS Official Protraction Diagrams, last revised on November 8, 1988, are on file and available for information only, in the Gulf of Mexico OCS Regional Office, New Orleans, Louisiana. In accordance with Title 43, Code of Federal Regulations, these Official Protraction Diagrams are the basic record for the description of mineral and oil and gas lease sales in the geographic areas they represent.

| Description | Revision | Latest revision date |
|---|---|---|
| Mobile, NH 16-4. | Federal/State boundary and 8(g) zone. | Nov. 8, 1988. |
| Pensacola, NH 16-5. | do | Do. |

**ADDRESS:** Copies of these Official Protraction Diagrams may be purchased for $2.00 each from Public Information Unit (OPS-3-4), Minerals Management Service, Gulf of Mexico OCS Regional Office, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123-2394 (504) 736-2519.

Technical comments or questions pertaining to these maps should be directed to Office of Leasing and Environment, Supervisor, Sales and Support Unit (504) 736-2761.

Dated: February 22, 1989.

J. Rogers Pearcy,

*Regional Director, Minerals Management Service, Gulf of Mexico OCS Region.*

[FR Doc. 89-4800 Filed 3-1-89; 8:45 am]

BILLING CODE 4310-MR-M

## National Park Service

### Federal Hall National Memorial, NY; Emergency Closure

In accordance with Title 16 U.S.C. 1, 3, 9a, 460 1-6a(a), 462 (k) 431, note and 463 note, and consistent with 36 CFR 1.5, the National Park Service hereby gives public notice that due to safety concerns, the superintendent of the Manhattan Sites Unit of the National Park System closed Federal Hall National Memorial to general public use on March 1, 1989. The Memorial will be reopened on April 30 or shortly before that date if the Superintendent determines that public safety, due to extensive construction and rehabilitation, is no longer at risk.

Federal Hall National Memorial is located at 26 Wall Street, New York City, NY.

Steven H. Lewis,

*Deputy Regional Director.*

[FR Doc. 89-4920 Filed 3-1-89; 8:45 am]

BILLING CODE 4310-70-M

### Chattahoochee River National Recreation Area; Advisory Commission Meeting

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice of advisory commission meeting.

**SUMMARY:** Notice is hereby given in accordance with the Federal Advisory Commission Act that a meeting of the Chattahoochee River National Recreation Area Advisory Commission will be held at 2:00 p.m. at the following location and date.

**DATE:** March 16, 1989.

**ADDRESS:** The Chattahoochee River National Recreation Area, Headquarters Building, at the Island Ford Unit in North Fulton County.

**FOR FURTHER INFORMATION CONTACT:** Warren D. Beach, Superintendent, Chattahoochee River National Recreation Area, 1978 Island Ford Parkway, Dunwoody, Georgia 30350. Telephone (404) 394-7812.

**SUPPLEMENTARY INFORMATION:** The purpose of the Chattahoochee River National Recreation Area Advisory Commission is to consult and advise the Secretary of the Interior regarding the management and operation of the area, protection of resources within the area, and the priority of lands to be acquired within the area. The members of the Advisory Commission are as follows:

Mr. J. Neal Shepard, Jr.
Mr. Robert A. Meadows
Mrs. Paula S. Hovater
Mr. Benjamin H. West
Mr. Howard D. Zeller
Mr. Larry B. Thompson
Mrs. Lillian Webb
Mr. David O. Eldridge
Mr. Robert Kerr
Mr. H. Edwin Schultz
Ms. Evelyn H. Hopkins
Mr. Michael Bennett
Mr. James O. Watson, Jr.

The meeting will be a forum to share information on the Chattahoochee River National Recreation Area and discuss current issues.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited. Any member of the public may file with the Commission a written statement concerning the matters to be discussed. Written statements may also be submitted to the Superintendent at the address above. Minutes of the meeting will be available at Park Headquarters for public inspection approximately 4 weeks after the meeting.

Date: February 17, 1989.

C. W. Ogle,

*Acting Regional Director, Southeast Region.*

[FR Doc. 89-4921 Filed 3-1-89; 8:45 am]

BILLING CODE 4310-70-M



## INTERNATIONAL TRADE COMMISSION

### Agency Form Submitted for OMB Review

**AGENCY:** United States International Trade Commission.

**ACTION:** In accordance with the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Commission has submitted a request for the extension of approval for questionnaires to the Office of Management and Budget for review.

**PURPOSE OF INFORMATION COLLECTION:** The forms are for use by the Commission in connection with investigation No. 332-209, Competitive Conditions in the Steel Industry and Industry Efforts to Adjust and Modernize, instituted under the authority of section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)).

*Summary of Proposals:*

(1) Number of forms submitted: two.

(2) Title of form: Annual Surveys Concerning Competitive Conditions in the Steel Industry and Industry Efforts to Adjust and Modernize—Questionnaires for U.S. Producers and Importers.

(3) Type of request: extension.

(4) Frequency of use: annual, through 1989.

(5) Description of respondents: firms which produce or import carbon and alloy steel products.

(6) Estimated annual number of respondents: 305.

(7) Estimated total number of hours to complete the forms: 6,800.

(8) Information obtained from the form that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

**ADDITIONAL INFORMATION OR COMMENT:** Copies of the forms and supporting documents may be obtained from Mark Paulson (USITC, tel. no. (202) 252-1432). Comments about the proposals should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503, Attention: Francine Picoult, Desk Officer for the U.S. International Trade Commission. If you anticipate commenting on a form but find that time to prepare comments will prevent you from submitting them promptly you should advise OMB of your intent as soon as possible. Ms. Picoult's telephone number is (202) 395-7340. Copies of any comments should be provided to Charles Ervin (U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436).

Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 252-1810.

By order of the Commission.

Kenneth R. Mason,

*Secretary.*

Issued: February 23, 1989.

[FR Doc. 89-4779 Filed 3-1-89; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 701-TA-298 (Preliminary)]

### Fresh, Chilled, or Frozen Pork From Canada

#### Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines,[2] pursuant to section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)), that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports from Canada of fresh, chilled, or frozen pork, provided for in subheadings 0203.11.00, 0203.12.90, 0203.19.40, 0203.21.00, 0203.22.90, and 0203.29.40 of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized by the Government of Canada.

#### Background

On January 5, 1989, a petition was filed with the Commission and the Department of Commerce by the National Pork Producers Council (NPPC), Des Moines, IA, and others, alleging that an industry in the United States is materially injured by reason of subsidized imports of fresh, chilled, or frozen pork from Canada. Accordingly, effective January 5, 1989, the Commission instituted preliminary countervailing duty investigation No. 701-TA-298 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of January 11, 1989 (54 FR 1014). The conference was held in Washington, DC, on January 26, 1989, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on February 21, 1989. The views of the Commission are contained in USITC Publication 2158 (February 1989), entitled "Fresh, Chilled, or Frozen Pork from Canada: Determination of the Commission in Investigation No. 701-TA-298 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

Issued: February 22, 1989.

By Order of the Commission.

Kenneth R. Mason,

*Secretary.*

[FR Doc. 89-4778 Filed 3-1-89; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 332-270]

### The Effects of the Steel Voluntary Restraint Agreements on U.S. Steel Consuming Industries

**AGENCY:** United States International Trade Commission.

**ACTION:** Institution of investigation, announcement of public hearing, and request for written submissions.

**EFFECTIVE DATE:** February 27, 1989.

**FOR FURTHER INFORMATION CONTACT:** Gerald Berg (202) 252-1233, Research Division, Office of Economics, U.S. International Trade Commission, Washington, DC 20436.

*Background:* Following receipt of a letter on February 13, 1989, from the Chairman of the Subcommittee on Trade of the House Committee on Ways and Means, the Commission instituted investigation No. 332-270 under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) for the purpose of studying and reporting on the effects of the steel voluntary restraint agreements (VRAs) on U.S. steel consuming industries.

As requested by the Subcommittee, the Commission in its report will seek to provide estimates of the effects of these VRAs on exports, imports, and domestic sales of major steel consuming industries for each of the years 1985 through 1988. The Commission will also provide analysis of the likely effects of continuing these restraints in the future. The Commission will provide the

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Acting Chairman Brunsdale and Commissioner Cass determine that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports from Canada of fresh, chilled, or frozen pork that are alleged to be subsidized by the Government of Canada. Commissioner Lodwick did not participate in this investigation.

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estimates using the same approach and product detail as in the Commission's 1985 study (USITC Publication 1786, Report on Investigation No. 332-214, December 1985—copies are available from the Publications Office (202) 253-1807). The Commission will also explore other economic effects of VRAs focusing on the following: the automotive industry, the construction industry, heavy agricultural and construction equipment manufacturers, appliance and household goods producers, forging producerss and metal stampers.

The Subcommittee requested that the final report on this investigation be submitted on or before May 8, 1989.

*Public Hearing and Written Submissions:* Interested persons are invited to present, either at a public hearing or in written statements, information concerning matters to be addressed in this study and to comment on the analytical approach used in the Commission's 1985 study. In addition, interested persons are requested to provide, as appropriate, response to the following questions regarding conditions in steel consuming industries and the effects of VRAs.

Industry conditions:

Please describe the primary market factors that have affected your industry during 1984-88 (i.e., how have supply and demand conditions for your products changed and what have been the principal factors underlying the changes).

What was your company's return on sales in each year during 1984-88?

Steel prices:

How has the price of steel purchased by your firm changed in each year during 1984-88?

How much of the changes, if any, do you attribute to the steel VRAs? (Please explain.)

What other factors (such as changes in exchange rates, raw materials costs, and/or world demand) may have contributed to steel price changes?

Steel supply:

Please describe any difficulties you have experienced in obtaining steel products during 1984-88? Such problems might include inability to purchase a certain product, relatively long lead times, or quality problems.

Please explain the extent to which you attribute these difficulties to the steel VRAs.

What other factors may have contributed to these difficulties?

Effects of the VRAs on competitive conditions:

How have steel price changes affected your unit production costs in each of the years during 1984-88?

Please explain how steel supply problems affected your operations, if at all, during 1984-88 (i.e., discuss the extent to which they may have resulted in lost sales, production bottlenecks, or changes in production schedules).

How do you believe the VRAs have affected your ability to compete with imports?

How do you believe the VRAs have affected your ability to export?

What other effects, if any, have the VRAs had on your company (e.g., have they affected investment decisions, the level of steel inventories held, or other areas of your operations)?

Other:

What positive effects, if any, do you believe the VRAs have had on your operations (such as improved quality or lower prices of domestic steel products)?

Implications:

Please describe the effects that you expect, if any, of continuation of the VRAs on your operations and your ability to compete in the U.S. and foreign markets.

In addition to your oral or written comments, please supply a copy of your most recent annual report and 10K report with your response (if unavailable, comparable reports that supply financial information for the years 1984-88 would be appreciated).

The public hearing on this investigation will be held in the Commission Hearing Room, 500 E Street, SW., Washington, DC 20436, beginning at 9:30 a.m. on March 10, 1989. All persons shall have the right to appear by counsel or in person, to present information and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436, no later than noon, March 8, 1989.

Written statements and post-hearing briefs should be submitted to the Secretary of the Commission at the same address. Commercial or financial information that a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons in the Office of the Secretary to the Commission. To be assured of consideration by the Commission, written submissions should be received no later than March 17, 1989.

Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 252-1810.

By order the Commission.

Issued: February 28, 1989.

**Kenneth R. Mason,**

*Secretary.*

[FR Doc. 89-4976 Filed 3-1-89; 8:45 am]

BILLING CODE 7020-02-M

## DEPARTMENT OF JUSTICE

### Information Collections Under Review

February 27, 1989.

The Office of Management and Budget (OMB) has been sent the following proposals for the collection of information for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories. Each entry contains the following information: (1) The title of the form or collection; (2) the agency form number, if any, and the applicable component of the Department sponsoring the collection; (3) how often the form must be filled out or the information is collected; (4) who will be asked or required to respond, as well as a brief abstract; (5) an estimate of the total number of respondents and the amount of time estimated for an average respondent to respond; (6) an estimate of the total public burden (in hours) associated with the collection; and (7) an indication as to whether Section 3504(h) of Public Law 96-511 applies. Comments and/or suggestions regarding the item(s) contained in this notice, especially those regarding the estimated response time, should be directed to the OMB reviewer, Mr. Edward H. Clarke, on (202) 395-7340 AND to the Department of Justice's Clearance Officer, Mr. Larry E. Miesse, on (202) 633-4312. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should so notify the OMB reviewer AND the DOJ Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, AND to Mr. Larry E. Miesse, DOJ Clearance Officer, SPS/JMD/5031 CAB, Department of Justice, Washington, DC 20530.



**Reinstatement of a Previously Approved Collection for Which Approval has Expired**

(1) Sample Survey of Jails.
(2) CJ5, CJ5A. Bureau of Justice Statistics, Office of Justice Programs.
(3) Annually.
(4) State or local governments. This sample survey of local jails is needed to provide current information on inmate population. The survey updates data from the 1988 Census of Jails. Data is used for program planning and policy making for corrections.
(5) 1,000 respondents at .2 hours per response.
(6) 200 estimated annual burden hours.
(7) Not applicable under 3504(h)

**Extension of the Expiration Date of a Currently Approved Collection Without any Change in the Substance or in the Method of Collection**

(1) Monthly Return of Arson Offenses Known to Law Enforcement.
(2) DO-73. The Federal Bureau of Investigation.
(3) Monthly.
(4) State or local governments. Used to collect the number of arsons and the dollar loss from arson throughout the United States.
(5) 1,716 respondents, 12 responses each annually, at .5 hours per response.
(6) 10,296 estimated annual public burden hours.
(7) Not applicable under 3504(h).
(1) Supplementary Homicide Report.
(2) DO-56. The Federal Bureau of Investigation.
(3) On occasion of a murder.
(4) State or local governments. Needed to collect the age, sex, race, ethnic origin and relationship of murder victims; the weapons and motive. Summary statistics are published in the annual "Crime in the United States."
(5) 929 respondents at .12 hours each.
(6) 110 estimated annual public burden hours.
(7) Not applicable under 3504(h).
(1) Number of Full Time Law Enforcement Employees as of October 31.
(2) DO 52, 52a, 52b. The Federal Bureau of Investigation.
(3) Annually.
(4) State or local governments. Information is needed to determine the number of civilian and sworn male and female law enforcement employees in the United States.
(5) 11,702 respondents at .2 hours each.
(6) 2,340 estimated annual public burden hours.
(7) Not applicable under 3504(h).

**New Collection**

(1) Petition for Temporary Resident Status As a Replentishment Agricultural Worker (RAW).
(2) I-805, Immigration and Naturalization Serice.
(3) Annually.
(4) Individuals or households. Petition to be filed by alien for determination by INS if alien is eligible for RAW status.
(5) 300,000 respondents at .5 hours each.
(6) 150,000 estimated annual burden hours.
(7) Not applicable under 3504(h).
(1) Request for consideration as a Replenishment Agricultural Worker.
(2) I-807, Immigration and Naturalization Service.
(3) Annually.
(4) Individuals or households. Registration card to be filed by am alien if he/she desires to be considered for RAW (Replenishment Agricultural Worker) status.
(5) 2,447,000 respondents at .5 hours each.
(6) 1,223,500 estimated annual burden hours.
(7) Not applicable under 3504(h).

**Larry E. Miesse,**

*Department Clearance Officer, Department of Justice.*

[FR Doc. 89-4983 Filed 3-1-89; 8:45 am]

BILLING CODE 4410-10-M

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**[AAG/A Order No. 31-89]**

### Privacy Act of 1974; New System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), notice is hereby given that the Department of Justice proposes to establish a new system of records to be maintained by the Immigration and Naturalization Service (INS).

The Password Issuance and Control System (PICS), JUSTICE/INS-011, is a new system of records for which no public notice consistent with the provisions of 5 U.S.C. 552a(e)(4) has been published. The purpose of the system is to expedite determinations of eligibility to access INS automated systems and to improve control by ADP Security Officers of ADP password and user ID distribution.

5 U.S.C. 552a(e) (4) and (11) provide that the public be given a 30-day period in which to comment on the new routine uses; the Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 60-day period in which to conclude its review of the system. Therefore, please submit any comments by April 3, 1989. The public, OMB, and the Congress are invited to submit comments to Patricia E. Neely, Staff Assistant, Facilities and Administrative Services Staff, Justice Management Division, Department of Justice, Room 528, 633 Indiana Avenue NW., Washington, DC 20531.

In accordance with 5 U.S.C. 552a(o), the Department has provided a report on this system to OMB and the Congress.

The system description is printed below.

Date: February 14, 1989.

**Harry H. Flickinger,**

*Assistant Attorney General for Administration.*

**JUSTICE/INS-011**

**System Name:**

Password Issuance and Control System (PICS).

**System Location:**

Central, Regional, and District offices of the Immigration and Naturalization Service (INS) as detailed in JUSTICE/INS-999.

**Categories of Individuals Covered by the System:**

Those INS employees, INS contractor employees, and other Federal, State or local government employees for whom authorization to access and use INS automated data processing (ADP) systems has been requested.

**Categories of Records in the System:**

This system of records consists of paper records (INS Form G-872, Request for ADP Password) and an automated data base. INS Form G-872 contains personal identification data such as name, social security number, office location code, organization code, ADP security clearance information, office telephone number, company name of contractor employees, and a statement by the supervisor certifying the official need for access. Upon approval of the request, the user ID code and password issued will be included on the Form. The automated data base may include information extracted from INS Form G-872 and from the Secrutiy Clearance Inforamtion System (SCIS), JUSTICE/JMD-008. The SCIS data is necessary to determine the suitability and trushworthiness to access the information.

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**Authority for Maintenance of the System:**

Section 103 of the Immigration and Nationality Act (8 U.S.C. 1103) as amended by Section 274A of the Immigration Reform and Control Act of 1986 (8 U.S.C. 1324) and Department of Justice Order 2640.2A which delegates ADP security authority to INS for maintaining and operating its systems.

**Purpose(s):**

The purpose of the system is to expedite determinations of eligibility to access INS automated systems and to improve control by ADP Security Officers of ADP password and user ID distribution.

**Routine Uses of Records Maintained in the System Including Categories of Users and Purpose of Such Uses:**

Relevant information contained in this system of records may be disclosed as follows:

A. Where there is an indication of violation or potential violation of law (whether civil, criminal or regulatory in nature), to the appropriate agency (whether Federal, State, local or foreign) charged with the responsibility of investigating or prosecuting such violations, or charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto.

B. To the General Services Administration and the National Archives and Records Administration in records managmenet inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

**Polices and Practices for Storing, Retrieving, Accessing, Retaining, and Disposing of Records in the System:**

**Storage:**

Those records which can be accessed electronically are stored in a database on magnetic disc. Forms G–672, Request for ADP Password, are maintained in file folders at Central, Regional and District ADP Security Offices.

**Retrievability:**

These records are retrieved by social security number.

**Safeguards:**

INS offices are located in buildings under security guard, and access to premises is by official identification. Paper records are stored in locked files during non-duty hours. Access to automated data is obtained through terminals which require the use of restricted passwords and user IDs. Only designated Security Officers have access to PICS for creating and updating records of users within their jurisdiction.

**Retention and Disposal:**

Inactive automated records are retained 10 years after date of last action and then deleted from the system. INS Forms G–672, Request for ADP Password, are retained 3 years after final action and then destroyed by shredding.

**System Manager and Address:**

The Servicewide system manager is the Director, Technical Services Branch, Data Systems Division, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536.

**Notification Procedure:**

Address inquires to the system manager identified above.

**Record Access Procedures:**

Make all requests for access in writing to the Freedom of Information Act/Privacy Act (FOIA/PA) Officer at the address identified above. Clearly mark the envelope and letter "Privacy Act Request." Provide the full name, social security number, user ID, and notarized signature of the individual who is the subject of the record, and a return address.

**Contesting Records Procedures:**

Direct all requests to contest or amend information to the FOIA/PA Officer at the address identified above. State clearly and concisely the information being contested, the reason for contesting it, and the proposed amendment thereof. Clearly mark the envelope "Privacy Act Request." The record must be identified in the same manner as described for making a request for access.

**Record Source Categories:**

INS Form 672, Request for ADP Password, completed by the supervisor or program manager, and security clearance information extracted from SCIS, JUSTICE/JMD–006.

**Systems Exempted from Certain Provisions of the Act:**

None.

[FR Doc. 89–4803 Filed 3–1–89; 8:45 am]

BILLING CODE 4410–10

## Antitrust Division

### Proposed Termination of Final Judgement; F&M Schaefer Brewing Co. and Anheuser-Busch, Inc.

Notice is hereby given that Anheuser-Busch, Inc. ("ABI"), has filed a motion in the United States District Court for the Eastern District of New York to terminate the "Final Judgment" entered against it in *United States* v. *F. & M. Schaefer Brewing Company and Anheuser-Busch, Inc.*, Civil No. 62 C 1421. The Department of Justice ("Department"), in a stipulation also filed with the court has consented to the termination of the judgment, but has reserved the right to withdraw its consent pending receipt of public comments.

The complaint in this case, filed December 20, 1962, alleged that a 1961 agreement between ABI and F. & M. Schaefer Brewing Company ("Schaefer") pursuant to which Schaefer would be the sole distributor of ABI products in the New York City area unlawfully restrained trade. At that time, Schaefer was the largest seller of beer in the New York City area and ABI was the largest seller of beer in the United States.

The Final Judgment entered against ABI upon consent on January 30, 1968 enjoins ABI from entering into any agreement whereby: (1) It would distribute the beer of another brewer; (2) it would distribute its beer through another brewer; (3) it would agree with another brewer to appoint a third person to distribute both their beers; (4) it would distribute its beer through a distributor in which another brewer has a stock interest or a common officer, director or managing agent; or (5) another brewer would distribute beer through a distributor in which ABI has a stock interest or a common officer, director, or managing agent.

The Department has filed with the court a memorandum setting forth the reasons why the Department believes that termination of the judgment would serve the public interest. Copies of the complaint and Final Judgment, ABI's motion papers, the stipulation containing the Government's consent, the Department's memorandum and all further papers filed with the court in connection with this motion will be available for inspection at Room 3233, Antitrust Division, Department of Justice, Tenth Street and Pennsylvania Avenue, NW., Washington, DC 20530 (telephone: 202–633–2481), and at the Office of the Clerk of the United States District Court for the Eastern District of New York, 225 Cadman Plaza East, Brooklyn, New York 11201. Copies of any of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Interested persons may submit comments regarding the proposed termination of the decree to the Department. Such comments must be received within the sixty (60) day period established by court order, and will be filed with the court. Comments should be addressed to Anthony V. Nanni, Chief, Litigation I Section, Antitrust Division, Department of Justice, 555 4th Street, NW., Room 10–102, Washington, DC 20001 (telephone 202–724–6694).

**Joseph H. Widmar,**

*Director of Operations, Antitrust Division.*

[FR Doc. 89–4801 Filed 3–1–89; 8:45 am]

BILLING CODE 4410–01–M



### Proposed Modification of Final Judgment; Time Finance Adjusters

Notice is hereby given that Time Finance Adjusters ("TFA") has filed with the United States District Court for the Middle District of Florida a motion to modify the final judgment in *United States* v. *Time Finance Adjusters*, Civil No. 81–003–Orl–CIV–Y (the "1981 Judgment"); and the Department of Justice ("Department"), in a stipulation also filed with the court, has consented to modification of the judgment, but has reserved the right to withdraw its consent pending receipt of public comments.

The complaint in this case (filed on January 6, 1981) alleged that TFA had combined and conspired to agree on, prepare, publish in its directory, disseminate and encourage members to adhere to fee schedules for repossession services; to restrict membership to one or few members in each designated geographic territory; to restrict the area for which each of defendant's members could advertise its repossession services; and to establish arbitrary and unreasonable membership rules and restrictions.

The 1981 Judgment: (1) Prohibits price fixing and other conduct relating to pricing, such as publishing or recommending prices and communicating with other repossessor organizations about prices; (2) prohibits TFA from imposing advertising and operating restrictions upon its members; (3) prohibits territorial exclusivity; and (4) requires TFA to admit into membership and repossessor who meets certain minimum criteria.

The proposed modification to the 1981 Judgment would allow TFA to exclude or terminate from membership any person that uses as a business name in any aspect of its repossession business a name that identifies any trade association, membership organization, franchise or other association of businesses engaged in the repossession business such as, but not limited to, TFA, National Finance Adjusters, Allied Finance Adjusters, American Recovery Association, American Lenders Service Company, or any variation thereof. The modified decree would expire on November 17, 1991, ten years after the entry of the original decree.

The Department has filed with the court a memorandum setting forth the reasons why the Department believes that modification of the judgment would serve the public interest. Copies of the complaint and final judgment, TFA's motion papers, the stipulation containing the Government's consent, the Department's memorandum and all further papers filed with the court in connection with this motion will be available for inspection at Room 3233, Antitrust Division, United States Department of Justice, 10th Street and Pennsylvania Avenue, NW., Washington, DC 20530 (telephone: 202/633–2481), and at the office of the Clerk of the United States District Court for the Middle District of Florida, Orlando, Florida. Copies of any of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Interested persons may submit comments regarding the proposed modification of the decree to the Department. Such comments must be received within the sixty-day period established by court order and will be filed with the court. Comments should be addressed to Robert E. Bloch, Chief, Professions and Intellectual Property Section, Antitrust Division, United States Department of Justice, Washington, DC 20530. (telephone: 202/724–7425)

**Joseph H. Widmar,**

*Director of Operations, Antitrust Division.*

[FR Doc. 89–4802 Filed 3–1–89; 8:45 am]

BILLING CODE 4401–01–M

### Westinghouse Electric Corp., et al.; Competitive Impact Statements and Proposed Consent Judgments

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16 (b) through (h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the Southern District of New York in *United States v. Westinghouse Electric Corporation, ABB Asea Brown Boveri Ltd., and Asea Brown Boveri Inc.*, Civil Action No. 89–CIV–1032.

The Complaint in this case alleges that the effect of the proposed joint ventures between Westinghouse and ABB may be substantially to lessen competition in the United States markets for power transformers, converter transformers, steam turbine generator equipment and steam turbine generator service, in violation of section 7 of the Clayton Act, 15 U.S.C. 18.

The proposed Final Judgment: (a) Orders and directs ABB to divest any and all interest that it has or shall acquire in all power transformer business and assets of ABB Electric, Inc. in Waukesha, Wisconsin; (b) orders and directs Westinghouse to sell its converter transformer and smoothing reactor technology, or grant the right to use or license that technology; (c) enjoins and restrains Westinghouse and ABB for a period of ten (10) years from the entry of the proposed Final Judgment from any merger, consolidation, acquisition of stock or assets or other combination, or any joint venture, partnership or other agreement, the purpose or effect of which would be to integrate or otherwise combine any of the respective businesses of manufacture or sale of steam turbine generator equipment or steam turbine generator service of Westinghouse and ABB; and (4) orders and directs Westinghouse to abrogate restraints on the manufacture and sale of power transformers by General Electric Company which arose out of General Electric Company's sale of power transformer assets to Westinghouse in 1986.

The proposed Final Judgment requires Westinghouse and ABB to divest and dispose of, respectively, the above-described power transformer assets and converter transformer technology within one hundred eighty (180) days of entry of the proposed Final Judgment. If the divestiture and disposition are not accomplished within the 180-day period, the Court shall, upon application of the United States, appoint a trustee to effect the remaining divestiture or disposition. Under the proposed Final Judgment, Westinghouse and ABB or the trustee, whichever is then responsible for effecting the divestiture or disposition required, shall notify the Department of any proposed divestiture or disposition required by the Final Judgment. The divestiture and disposition are to be made to persons acceptable to the United States in its sole determination.

Public comment is invited within the statutory 60-day comment period. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Ralph T. Giordano, Chief, New York Field Office, Antitrust Division, United States Department of Justice, 26 Federal Plaza, Room 3630,

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New York, New York 10278-0098, (212) 264-0390.

Joseph H. Widmar,

*Director of Operations, Antitrust Division.*

Civil No. 89-CIV-1032
Filed: February 14, 1989
Judge: Robert W. Sweet.

**Stipulation**

It is stipulated by and between the undersigned parties, by their respective attorneys, as follows:

(1) The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the Southern District of New York.

(2) The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

(3) In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Dated:_____

**For Plaintiff United States of America:**

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For Defendant Westinghouse Electric Corporation, Jones, Day, Reavis & Pogue, (by): a Member of the Firm, Metropolitan Square, 1450 G Street, NW., Washington, DC.

For Defendants ABB ASEA Brown Boveri LTD. and ASEA Brown Boveri Inc., Winthrop, Stimson, Putnam, & Roberts, (by) a Member of the Firm, 40 Wall Street, New York, NY 10005.

Stipulation Approved for Filing.

Done this _____ day of February 1989.

*United States District Judge.*

**Final Judgment**

Whereas, plaintiff, United States of America, has filed its Complaint herein on February 14, 1989, and the plaintiff and defendants, by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law and without this Final Judgment constituting any evidence against or an admission by any party with respect to any such issue;

And whereas, defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, defendants' prompt and certain divestiture and disposition of assets and other interests are, among other things, essential to this agreement, and defendants have represented to the plaintiff that the divestiture and disposition required below can and will be made and that defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture or disposition requirements set forth below;

Now, therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby

Ordered, adjudged, and decreed as follows:

*I—Jurisdiction*

This court has jurisdiction over the subject matter of this action and over each of the parties hereto. The Complaint states a claim upon which relief may be granted against defendants under section 7 of the Clayton Act, as amended (15 U.S.C. 18).

*II—Definitions*

As used in this Final Judgment:

A. "Westinghouse" means defendant Westinghouse Electric Corporation; each division, subsidiary, or other person controlled by it; and each officer, director, employee, agent, or other person acting for or on behalf of any of them.

B. "ABB" means defendants ABB Asea Brown Boveri Ltd. and Asea Brown Boveri Inc.; each division, subsidiary, or other person controlled by it; and each officer, director, employee, agent, or other person acting for or on behalf of any of them.

C. "Person" means any individual, corporation, association, firm, partnership, or other business or legal entity.

D. "Transformer" means a static device used to transfer electrical energy from one circuit to another by induction.

E. "Power Transformer" means a transformer with a minimum OA nameplate power rating of 40 megavolt-amperes ("MVA") or higher.

F. "Converter transformer" means a specialized transformer that is a component of a converter unit, which converts alternating electrical current to direct current or vice versa, for use primarily as a component of high voltage direct current systems.

G. "Smoothing reactor" means a device used to introduce reactance into a circuit for the purpose of reducing the alternating current component in a direct current power system.

H. "Steam turbine generator equipment" means steam turbines, 65 megawatts or higher, and/or electric generators, 65 megawatts or higher, used to convert the energy of high temperature pressurized steam to electrical energy.

I. "Steam turbine generator service" means the repair, retrofitting, or modernization of steam turbine generator equipment.

J. "Westinghouse converter transformer and smoothing reactor technology" means all patents, patent applications, trade secrets, confidential technical information, manufacturing instructions, and other intellectual property and property rights owned by, or licensed to, Westinghouse prior to consummation of the electric transmission and distribution equipment joint venture with ABB and used principally in the design or manufacture of converter transformers or smoothing reactors. The term Westinghouse converter transformer and smoothing reactor technology shall also include existing manufacturing drawings employed exclusively in the design or manufacture of converter trnsformers or smoothing reactors. A grantee of rights pursuant to Section VI of this Final Judgment may request within one (1) year of the grant a copy of the existing manufacturing drawings, subject to the requirement that the grantee shall fully reimburse Westinghouse for any reasonable costs associated with the duplication of such drawings.

*III—Application*

A. The provisions of the Final Judgment shall apply to Westinghouse and ABB, each of their successors and assigns, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.



B. The provisions of Sections V through XI of this Final Judgment shall be applicable only upon the consummation of the proposed joint venture between Westinghouse and ABB relating to electrical transmission and distribution equipment.

C. Nothing contained in this Final Judgment shall suggest that any portion of this Final Judgment is or has been created for the benefit of any third party, and nothing herein shall be construed to provide any rights to any third party.

D. Westinghouse and ABB shall require, as a condition of the sale or other disposition of all or substantially all of their assets or stock, that the acquiring party or parties agree to be bound by the provisions of this Final Judgment.

*IV—Injunction*

Westinghouse and ABB are enjoined and restrained for a period of ten (10) years from the entry of this Final Judgment from any merger, consolidation, acquisition of stock or assets or other combination, or any joint venture, partnership or other agreement between them, the purpose or effect of which would be to integrate or otherwise combine any of their respective businesses of the manufacture or sale of steam turbine generator equipment or steam turbine generator service in the United States, without the prior written approval of the Assistant Attorney General in charge of the Antitrust Division or his designee.

*V—Assets To Be Divested by ABB*

A. ABB is hereby ordered and directed to divest, to an eligible purchaser, any and all interest that it has or shall acquire in all transformer businesses of ABB Electric, Inc. located in Waukesha, Wisconsin, including any and all interest in any plants or other real or personal property relating to such businesses, the right to use any relevant technology or known-how, and the right to enter into all relevant licenses.

B. Unless the plaintiff otherwise consents, divestiture under Section V.A., or by the trustee appointed pursuant to Section VII, shall be accomplished in such a way as to satisfy the plaintiff, in its sole determination, that the business and assets to be divested can and will be operated by the purchaser as a viable, ongoing business, engaged in the manufacture and sale of power transformers in the United States. Divestiture under Section V.A., or by the trustee, shall be made to a purchaser for whom it is demonstrated to the plaintiff's sole satisfaction that: (1) The purchase is for the purpose of competing effectively in the manufacture and sale of power transformers in the United States and (2) the purchaser has the managerial, operational, and financial capability to compete effectively in the manufacture and sale of power transformers in the United States.

C. ABB shall take all reasonable steps to accomplish quickly the divestiture of the power transformer business and assets of ABB Electric, Inc. contemplated by this Final Judgment.

*VI—Assets To Be Disposed of by Westinghouse*

Westinghouse is hereby ordered and directed: (1) To sell to an eligible person the Westinghouse converter transformer and smoothing reactor technology; or (2) to grant to an eligible person the right to use and to license said technology. The sale or grant shall be subject to pre-existing rights held by any third party with respect to the relevant technology. The grant shall be subject to the continuing right of defendant Westinghouse or its successors and assigns to use and to license said technology. The sale or grant shall be made to a person for whom it is demonstrated to plaintiff's sole satisfaction that: (a) The sale or grant is for the purpose of enabling the purchaser or grantee to compete effectively in the sale of converter transformers in the United States; and (b) the purchaser or grantee has the managerial, operational and financial capability to compete effectively in the sale of converter transformers in the United States. Westinghouse shall hold separate and not disclose to ABB the Westinghouse converter transformer and smoothing reactor technology until such time as a disposition required under this section is completed.

*VII—Appointment of Trustee*

A. In the event that defendants have not divested or disposed of all of their interests as required by Sections V.A. and VI within 180 days of the entry of this Final Judgment, the Court shall, on application of the plaintiff, appoint a trustee to effect the required divestiture or disposition, provided, however, that plaintiff may, at its sole discretion, extend the time period for an additional period of time not to exceed ninety (90) days if defendants request such an extension and demonstrate to plaintiff's satisfaction that ongoing negotiations are likely to result in the required divestiture or disposition but that the divestiture or disposition cannot be completed within the initially specified period. After the appointment of a trustee becomes effective, only the trustee shall have the right to effect the divestiture or disposition required pursuant to Section V.A. and VI. The trustee shall have the power and authority to accomplish the divestiture or disposition at the best prices then obtainable upon a reasonable effort by the trustee, subject to the provisions of Section VIII of this Final Judgment, and shall have such other powers as the Court shall deem appropriate. Defendants shall not object to a divestiture or disposition by the trustee on any grounds other than the trustee's malfeasance. Any such objections by defendants must be conveyed in writing to the plaintiff and the trustee within 15 days after the trustee has provided the notice required under Section VIII.

B. If defendants have not divested or disposed of all of their interests as required by Section V.A. and VI within 150 days of entry of this Final Judgment, the plaintiff and defendants shall immediately notify each other in writing of the names and qualifications of not more than two (2) nominees for the position of the trustee who shall effect the required divestiture or disposition. The parties shall attempt to agree upon one of the nominees to serve as the trustee. If the parties are able to agree on a trustee within 30 days of the exchange of names, the plaintiff shall notify the Court of the person upon whom the parties agreed, and the Court shall appoint such person as the trustee. If the parties are unable to agree within that time period, the plaintiff shall furnish the Court the names of each party's nominees. The Court may hear the parties as to the qualifications of the nominees and shall appoint one of the nominees as the trustee.

C. The trustee shall serve at the cost and expense of defendants, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services, all remaining monies shall be paid to ABB or Westinghouse, as may be appropriate, and the trust shall then be terminated. The compensation of such trustee shall be based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture or disposition and the speed with which it is accomplished.

D. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestiture or disposition. Upon reasonable notice to defendants, the trustee and any

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consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to personnel, books, records, and facilities as reasonably necessary to accomplish the divestiture or disposition, and defendants shall develop such relevant financial or other information as the trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information. Defendants shall take no action to interfere with or impede the trustee's accomplishment of the divestiture or disposition.

E. After its appointment, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestiture or disposition ordered under this Final Judgment. If the trustee has not accomplished such divestiture or disposition within 180 days after its appointment, the trustee shall thereupon promptly file with the Court a report setting forth: (1) The trustee's efforts to accomplish the required divestiture or disposition, (2) the reasons, in the trustee's judgment, why the required divestiture or disposition has not been accomplished, and (3) the trustee's recommendations. The trustee shall at the same time furnish such report to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall thereafter enter such orders as it shall deem appropriate in order to carry out the purpose of the trust, which may, if necessary, include extending the trust and the term of the trustee's appointment.

*VIII—Notification*

A. Defendants or the trustee, whichever is then responsible for effecting the divestiture or disposition required herein, shall notify the plaintiff of any proposed divestiture or disposition required by Section V.A. or VI of this Final Judgment. If the trustee is responsible, it shall similarly notify defendants. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest or desire to acquire any of the assets or interests to be divested or disposed, together with full details of the same. Within 15 days after receipt of the notice, the plaintiff may request additional information concerning the proposed divestiture or disposition, the proposed purchaser or grantee, and any other potential purchaser or grantee. Defendants or the trustee shall furnish the additional information within 15 days of the receipt of the request unless plaintiff agrees to extend the time. Within 30 days after receipt of the notice or within 30 days after receipt of the additional information, whichever is later, the plaintiff shall notify in writing defendants and the trustee, if there is one, if it objects to the proposed divestiture or disposition. If the plaintiff fails to object within the period specified, or if the plaintiff notifies in writing defendants and the trustee, if there is one, that it does not object, then the divestiture or disposition may be consummated, subject only to defendants' limited right to object to the sale under Section VII.A. Upon objection by defendants under Section VII.A. Upon objection by defendants under Section VII.A., the proposed divestiture or disposition shall not be accomplished unless approved by the Court.

B. Thirty (30) days from the date of entry of this Final Judgment and 30 days thereafter until the divestiture and disposition have been completed, defendants shall deliver to the plaintiff a written report as to the fact and manner of compliance with Sections V and VI of this Final Judgment. Each such report shall include, for each person who during the preceding 30 days made an offer, expressed an interest or desire to acquire, entered into negotiations to acquire, or made an inquiry about acquiring any of the assets or interests to be divested or disposed, the name, address, and telephone number of that person and a detailed description of each contact with that person during that period. Defendants shall maintain full records of all efforts made to accomplish the divestiture or disposition.

*IX—Financing*

Defendants shall not finance all or any part of any purchase made pursuant to sections V or VI of this Final Judgment without the prior consent of the plaintiff.

*X—Preservation of Assets to be Divested by ABB*

A. ABB shall preserve, hold, and continue to operate as a going business the assets to be divested pursuant to Section V, with its assets, management, and operations separate, distinct, and apart from those of defendants, unless the plaintiff otherwise consents. ABB shall use all reasonable efforts to maintain the assets to be divested as a viable and active competitor in the market for power transformers.

B. ABB shall not sell, lease, assign, transfer, or otherwise dispose of, or pledge as collateral for loans (except such loans as are currently outstanding or replacements or substitutes therefore), the assets to be divested, except that any such asset that is replaced in the ordinary course of business with a newly purchased asset may be sold or otherwise disposed of, provided the newly purchased asset is so identified as a replacement for an asset to be divested.

C. The provisions of Sections X.A. and X.B. include but are not limited to: preserving all plants and equipment used for the manufacture or sale of power transformers; preserving all air pollution and operating permits (including proceeding with such application or operation as is necessary to renew such permits or make permanent any temporary permits); and preserving all administrative and support facilities. These provisions do not preclude the sale in the ordinary course of business of the power transformers as may be produced by the assets to be divested.

D. ABB shall provide and maintain sufficient working capital to maintain the assets to be divested as a viable, ongoing business.

E. ABB shall provide and maintain sufficient lines and sources of credit to maintain the assets to be divested as a viable, ongoing business.

F. ABB shall preserve the assets to be divested in a state of repair equal to their state of repair as of the date of defendants' joint venture agreement

G. ABB shall identify separately all major assets or replacements for or proceeds therefrom that were used in the manufacture or sale of power transformers by ABB Electric, Inc. prior to the date on which defendants consummate their joint venture relating to electric transmission and distribution equipment.

H. ABB shall maintain on behalf of the assets to be divested, in accordance with sound accounting practice separate, true and complete financial ledgers, books and records reporting the profit and loss and liabilities of the assets to be divested on a monthly and quarterly basis.

I. ABB shall refrain from terminating or reducing any current employment, salary, or benefit agreements for any management, engineering, or other technical personnel employed in connection with the assets to be divested, except in the ordinary course of business, without the prior approval of plaintiff.



J. Defendants shall refrain from taking any action that would have effect of reducing the scope or level of competition between the assets to be divested and other manufacturers or sellers or power transformers, without the prior approval of the plaintiff.

K. Defendant shall refrain from taking any action that would jeopardize the sale of the assets to be divested as a viable going concern.

*XI—Amendment to General Electric Company and Westinghouse Asset Purchase Agreement*

Westinghouse, having agreed on February 9, 1989 with General Electric Company to amend their November 16, 1988 assest purchase agreement relating to power transformers, which amendment would allow General Electric Company, to the extent provided therein, to resume the manufacture and sale of power transformers and to use intellectual property relating to power transformers, it is hereby ordered and directed to take all reasonable steps to consummate and otherwise give full force and effect to February 9, 1989 amendment.

*XII—Compliance Inspection*

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the Department of Justice, including consultants and other persons retained by the Department, shall, upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants made to their principal offices, be permitted:

1. Access during office hours to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendants, which may have counsel present, relating to any matters contained in this Final Judgment; and

2. Subject to the reasonable convenience of defendants and without restraint or interference from them, to interview their officers, employees, and agents, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to defendants at their principal offices, defendants shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this Section XII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If a time information or documents are furnished by defendants to plaintiff, defendants represent and identify in writing the material in any such information or documents for which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material, "subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then plaintiff shall give ten (10) days notice to defendants prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which defendants are not a party.

*XIII—Retention of Jurisdiction*

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction, implementation, or modification of any of the provisions of this Final Judgment, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

*XIV—Termination*

This Final Judgment will expire on the tenth anniverary of the date of its entry.

*XV—Public Interest*

Entry of this Final Judgment is in the public interest.

Dated: _____

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. 16.

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United States District Judge.

**Competitive Impact Statement**

The United States, pursuant to section 2(b) of the Antitrust Procedures and Penalties Act ("APPA") 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

*I—Nature and Purpose of the Proceeding*

Contemporaneously with this statement, the United States filed a civil antitrust Complaint under Section 15 of the Clayton Act, 15 U.S.C. 25, alleging that two proposed partnership joint ventures between Asea Brown Boveri Inc. and Westinghouse Electric Corporation ("Westinghouse") would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The Complaint names as defendants Westinghouse and Asea Brown Boveri, Inc. and its parent company, ABB Asea Brown Boveri Ltd.[1] The Complaint alleges that the effects of the joint ventures may be substantially to lessen competition in the United States markets for power transformers, converter transformers, steam turbine generator equipment and steam turbine generator service. The Complaint seeks such injunctive relief and relief by way of preservation of assets and divestiture as is appropriate to prevent the anticompetitive effects of the joint ventures and to maintain existing competitive conditions in these markets.

Together with the filing of this Competitive Impact Statement, the United States and defendants have filed a stipulation by which they consent to the entry of a proposed Final Judgment designed to eliminate the anticompetitive effects of the proposed joint ventures. Under the proposed Final Judgment, as explained more fully below, ABB would be required, within six months, to sell any and all interest it has or shall acquire in all the transformer businesses of ABB Electric, Inc. in Waukesha, Wisconsin ("Waukesha business"). If it does not do so, a trustee apponted by the Court would be empowered for an additional six months to sell the Waukesha business. If the trustee is unable to do so, the Court may extend the trustee period or enter such other orders as it shall deem appropriate in order to carry out the purpose of the trust.

The proposed Final Judgment would also require Westinghouse, within six months, to sell its converter transformer and related smoothing reactor technology, or grant the right to use and to license that technology to an eligible person. If it does not do so, the Court would be empowered to appoint a trustee to accomplish such a sale or grant.

Under the proposed Final Judgment, Westinghouse would be further required to release General Electric Company

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[1] Hereinafter, the term "ABB" means ABB Asea Brown Boveri Ltd. and Asea Brown Boveri Inc.

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from its covenant not to compete with Westinghouse in power transformers, which General Electric agreed to in connection with the sale of its power transformer business to Westinghouse in 1986.

The proposed Final Judgment would also enjoin, for a period of 10 years, Westinghouse and ABB from combining their steam turbine generator equipment or steam turbine generator service businesses in the United States.

The United States and defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA, unless the United States withdraws its consent. Entry of the proposed Final Judgment would terminate the action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations of the proposed Final Judgment.

*II—Events Giving Rise to the Alleged Violation*

ABB, with headquarters in Zurich, Switzerland, is the world's largest producer of electric power equipment. Westinghouse, with headquarters in Pittsburgh, Pennsylvania, is also one of the world's leading producers of electric power equipment. ABB and Westinghouse have agreed to form two partnership joint ventures,[3] one relating to electric power transmission and distribution products, and the other relating to electric power generation products. The power transmission and distribution joint venture would combine, among other thing, the companies' respective power transformer and converter transformer businesses in the United States. The power generation joint venture would combine defendants' respective steam turbine generator equipment and steam turbine generator service businesses in the United States. Defendants would transfer certain manufacturing plants, technology, or other assets to the new joint venture companies. ABB also would pay Westinghouse more than $500 million in cash. Each of the joint ventures would be conditioned on the performance of the important terms of the other joint venture.

A. Power Transformers

Power transformers are static devices used to transfer electric energy from one circuit to another by induction.[5] They are used by electric power utilities to convert low voltage electricity produced by a power generating unit to higher voltages that are more efficiently carried over transmission lines, and to reduce voltages between transmission and distribution lines to deliver electricity safely to utility customers. Investor owned utilities and utilities owned and operated by federal, state, county and municipal governments are the principal purchasers of power transformers in the United States.

The Complaint alleges that the sale of power transformers constitutes a line of commerce and a relevant product market, and that the United States is a section of the country and a relevant geographic market in which power transformers are sold within the meaning of Section 7 of the Clayton Act. Successful entry into the power transformer market is difficult because of the cost and time required to develop the necessary technology to produce power transformers, to construct the physical facilities required for production of power transformers, to assemble the necessary technical, sales and service personnel, and to become a qualified source of power transformers for domestic electric utilities.

ABB was the largest seller of power transformers in the United States in 1987. In that same year, Westinghouse was the second leading seller of power transformers in the United States. In terms of unit sales, the 1987 power transformer market shares of ABB and Westinghouse were 27 percent and 26 percent, respectively. The Complaint alleges that the United States market for power transformers is highly concentrated. Based on 1987 units sales, the proposed combination would increase the Herfindahl-Hirschman Index ("HHI") [4] by over 1388 to 3284.

B. Converter Transformers

The manufacture of converter transformers involves a technology different from that used in the manufacture of power transformers. Converter transformers are sold primarily to companies that design high voltage direct current (HVDC) systems, which are used in transmitting electricity over long distance transmission lines. They are also used to connect asynchronous transmission systems. Converter transformers are major cost items in HVDC systems.

The Complaint alleges that sale of converter transformers constitutes a line of commerce and a relevant product market, and that the United States is a section of the country and a relevant geographic market in which converter transformers are sold, within the meaning of section 7 of the Clayton Act.

ABB is the largest seller of converter transformers in the United States and, since 1981, has accounted for more than 50 percent of all converter transformers sold in the United States. General Electric Company was a major competitor of ABB until it sold its converter transformer technology (and related smoothing reactor technology [6]) to Westinghouse in 1988. Westinghouse is one of only a few companies possessing such technology since 1988, Westinghouse has been one of only four companies bidding to supply converter transformers in the United States.

C. Steam Turbine Generator Equipment

Steam turbine generator equipment consists of a turbine and a connecting generator. Steam passes through the turbine causing the generator rotor and an attached electromagnet to rotate within a stator, generating electicity. Steam turbine generator equipment is the principal means by which nuclear and fossil-fueled utility plants generate electricity from steam energy produced by nuclear reactor or conventional boiler operations. The principal purchasers of steam turbine generator equipment are utilities. Steam turbine generator equipment is also sold to cogenerators, independent power producers and industrial customers.

The Complaint alleges that the sale of steam turbine generator equipment constitutes a line of commerce and a relevant product market, and that the United States is a section of the country and a relevant geographic market in which steam turbine generator equipment is sold within the meaning of section 7 of the Clayton Act. Successful entry into the steam turbine generator equipment market in the United States is difficult because of the cost and time required to develop the necessary technology to produce steam turbine generator equipment, to construct the physical facilities required for production and service of steam turbine generator equipment, to assemble the necessary technical, sales and service personnel and to become a qualified source of steam turbine generator equipment for domestic electric utilities.

In the period 1983 through 1987, total sales of steam turbine generator equipment in the United States were approximately $442 million. Westinghouse and ABB were the first and third largest suppliers of steam turbine generator equipment in the United States in that period, with market shares of 43 percent and 19 percent, respectively.

The Complaint alleges that the United States market for steam turbine generator equipment is highly concentrated. The proposed joint venture would create a firm controlling approximately 62 percent of steam turbine generator equipment sold in the United States, based on sales in the period 1983 through 1987. The proposed combination would increase the HHI by 1566 to 4093.

D. Steam Turbine Generator Service

Owners of steam turbine generator equipment may at times require equipment repairs involving the replacement or retrofitting of major components, or equipment modernization efforts aimed at significant efficiency enhancements or life extensions. Such steam turbine generator service is provided principally to private and public utility companies. In the past several years manufacturers of steam turbine generator equipment have begun bidding to provide such service not only for equipment of their own manufacture but also for equipment manufactured by others.

The Complaint alleges that the sale of steam turbine generator service constitutes a line of commerce and a relevant product market, and that the United States is a section of the country and a relevant geographic market in which steam turbine generator service is provided within the meaning of section 7 of the Clayton Act. Successful entry into the steam turbine generator service market is difficult because of the cost and time required to develop the necessary technology to provide steam turbine generator service, to construct the physical facilities required for provision of such service, to assemble the necessary technical, sales and service personnel, and to become a qualified source for steam turbine generator service for domestic electric utilities.

The Complaint alleges that the United States market for steam turbine generator service is highly concentrated. Westinghouse and ABB are leading suppliers of steam turbine generator service in the United States. Only five companies have provided such steam turbine generator service in the United States during the period from 1983 through 1987.

*III—Explanation of the Proposed Final Judgment*

The United States brought this action because the effect of these joint ventures may be substantially to lessen competition in the United States markets for power transformers, converter transformers, steam turbine generator equipment and steam turbine generator service, in violation of section 7 of the Clayton Act. As described in detail below, the provisions of the Final Judgment are designed to eliminate the anticompetitive effects of the proposed joint ventures.

A. Remedy as to Power Transformers

The proposed Final Judgment contains two remedies that will preserve the competition in power transformers that the joint venture of defendants would otherwise eliminate. First, the proposed Final Judgment requires ABB, within six months of its filing, to divest itself of its power transformer plant at Waukesha, Wisconsin, which is its only power transformer facility in the United States.[8] If ABB cannot accomplish the required divestiture within that period, the proposed Final Judgment provides that, upon application by the United States, the Court shall appoint a trustee to effect the divestiture.

The proposed Final Judgment provides that the Waukesha business must be divested in such a way as to satisfy the United States that this business can and will be operated by the purchaser as a viable, ongoing business that can compete effectively in the power transformer market. ABB must take all reasonable steps necessary to accomplish the divestiture and shall cooperate with bona fide prospective purchasers and, if one is appointed, the trustee.

In a trustee is appointed, the proposed Final Judgment provides that defendants will pay all costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which divestiture is accomplished. After the trustee's appointment becomes effective, the trustee will file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish divestiture. At the end of six months, if the trustee has not accomplished the divestiture, the trustee and the parties will make recommendations to the Court and the Court shall thereafter enter such orders as it shall deem appropriate in order to carry out the purpose of the trust, including extending the trust or the term of the trustee's appointment.

The proposed Final Judgment provides the United States an opportunity to review any proposed divestiture before it occurs. If the United States requests information from defendants to assess a proposed sale, the sale may not be consummated until at least 20 days after defendants supplied the information. If the United States objects to a proposed divestiture, the sale may not be completed.

The proposed Final Judgment provides that until the required divestiture has been accomplished, ABB must preserve and maintain the Waukesha business as a viable and active competitor. ABB must hold the Waukesha business, including all books and records, separate and apart from its other assets and businesses, and must maintain the Waukesha business as a saleable and economically viable, ongoing business.

The second element of the power transformer relief in the proposed Final Judgment provides for the restoration of General Electric Company as a competitor in the United States power transformer market. In 1986 General Electric sold most of its power transformer business to Westinghouse; the substantial terms of this transaction are reflected in an agreement between the parties dated November 18, 1986. As a part of that transaction General Electric agreed not to compete for the sale of power transformers of 40 MVA and above for a period of ten years; that period expires in November, 1996.[7] General Electric again desires to compete in the power transformer market. On February 9, 1989, it agreed with Westinghouse to an amendment to the 1986 agreement which abrogates the covenant not to compete and also grants to General Electric a license to use the technology relating to power transformers that General Electric sold to Westinghouse. The amendment will become effective upon the commencement of operations by the Westinghouse-ABB joint venture. The proposed Final Judgment requires

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[3] Defendants agreed to a preliminary Memorandum of Understanding in April of 1988.

[5] As used herein, power transformers refers to transformers with minimum OA power ratings of 60 megavolt-amperes ("MVA") or higher.

[4] The HHI is a measure of market concentration calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. for example, for a market consisting of four firms with shares of 30, 30, 20, and 20 percent, the HHI is 2600 ($30^2 + 30^2 + 20^2 + 20^2 = 2600$). The HHI, which takes into account the relative size and distribution of the firms in a market, ranges from virtually zero to 10,000. The index approaches zero when a market is occupied by a large number of firms of relatively equal size and reaches its maximum of 10,000 when a market is controlled by a single firm. The HHI increases both as the number of firms in the market decreases and as the disparity in size between the leading firms and the remaining firms increases.

[6] A smoothing reactor is a device used to introduce reactance into a circuit for the purpose of reducing the alternating current component in a direct current power system.

[8] ABB also manufactures power transformers at plants in Canada and Europe.

[7] General Electric continues to manufacture power transformers of less than 40 MVA at its plant in Rome, Georgia.

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Westinghouse to consummate that agreement.

Thus, the proposed Final Judgment requires the divestiture of the assets used by ABB in the manufacture of power transformers in the United States. In addition, it will permit General Electric Company, which in years past has been the largest United States manufacturer of electric equipment, again to become a competitor in the power transformer market. The combination of the two elements of relief will restore the competition in power transformers that would otherwise be eliminated by the joint venture of Westinghouse and ABB.

B. Remedy as to Converter Transformers

In its 1986 agreement with General Electric Company, Westinghouse also purchased General Electric's technology relating to converter transformers. That technology enabled Westinghouse to enter the converter transformer market and to begin bidding to supply converter transformers for use in high voltage direct current (HVDC) systems. As alleged in the Complaint, Westinghouse and ABB are two of only a few firms possessing such technology and currently bidding to supply converter transformers in the United States.

The proposed Final Judgment requires Westinghouse to sell or to grant the right to use and license its converter transformer (and related smoothing reactor) technology. The sale or license would be subject to any pre-existing rights held by any third party with respect to the relevant technology. The sale or license is to be made to a person, for whom it is demonstrated to plaintiff's sole satisfaction, that intends to sell and is capable of selling converter transformers in the United States. Westinghouse is to hold separate and not disclose to ABB the technology pending completion of the required disposition.[6]

C. Remedies as to Steam Turbine Generator Equipment and Steam Turbine Generator Service

The proposed Final Judgment enjoins and restrains Westinghouse and ABB, for a period of 10 years, from entering into their proposed joint venture, or any similar agreement, relating to steam turbine generator equipment and steam turbine generator service without the prior written approval of the Antitrust Division.

*IV—Remedies Available to Potential Private Litigants*

Section 4 of the Clayton Act (15 U.S.C. 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of sectdion 5(a) of the Clayton Act (15 U.S.C. 16(a)), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against defendants.

*V—Procedure Available for Modification of the Proposed Final Judgment*

The United States and defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within 60 days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate the comments, determine whether it should withdraw its consent, and respond to comments. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: Ralph T. Giordano, Chief, Antitrust Division, New York Field Office, United States Department of Justice, 26 Federal Plaza, Room 3630, New York, NY 10278–0096.

*VI—Alternatives to the Proposed Final Judgment*

With respect to the power generation joint venture agreement, the injunction in the proposed Final Judgment prohibiting Westinghouse and ABB from combining their respective steam turbine generator equipment and steam turbine generator service businesses provides all the relief that could be obtained by the United States with respect to that joint venture after a full trial on the merits.

With respect to the transmission and distribution joint venture agreement, an alternative to settling this action pursuant to the proposed Final Judgment would be for the United States to seek preliminary and permanent injunctions against consummation of the joint venture agreement that relates to, among other things, the market for power transformers and converter transformers. The United States rejected this alternative because the sale required under the proposed Final Judgment of ABB's Waukesha business will establish a viable, independent competitor in the power transformer market in the United States. The Waukesha plant is ABB's only power transformer facility in the United States and manufactures a substantial range of the sizes of power transformers that sells in the United States. ABB manufactures larger sizes that it sells in the United States at plants in other countries. A buyer which, like ABB, also makes large power transformers at plants in other countries, will assume a similar position in the United States market as that now held by ABB. Whether or not the purchaser of Waukesha produces large power transformers, however, Westinghouse's release of General Electric Company from its covenant not to compete in the United States in the manufacture and sale of power transformers will likely result in General Electric's reentry as a viable, independent competitor in the power transformer market in the United States.

With respect to the converter transformer market, the sale or grant of the right to use and license Westinghouse's converter transformer and smoothing reactor technology will facilitate new entry into that market. That transaction will duplicate the transaction that brought Westinghouse into the converter transformer market.

The United States is therefore satisfied that the proposed Final Judgment fully resolves the anticompetitive effects of the proposed joint ventures alleged in the complaint. Further, although the proposed Final Judgment may not be entered until the criteria established by the Antitrust Procedures and Penalties Act (15 U.S.C. 16(b)-(h)) have been satisfied, the public will benefit immediately from the safeguards in the proposed Final

[6] The February 9, 1989 amendment to the Westinghouse-General Electric agreement also permits General Electric to reenter the converter transformer market and grants to General Electric a license to use the converter transformer technology it sold to Westinghouse in 1986. That transaction is independent of the requirement of the proposed Final Judgment relating to converter transformer technology. Plaintiff takes no position at this time as to whether that transaction satisfies the converter transformer requirement of the proposed Final Judgment.



Judgment because defendants have agreed to comply with the terms of the Judgment pending its entry by the Court.

*VII—Determinative Documents*

Amendment 3 to the 1986 Asset Purchase Agreement between General Electric Company and Westinghouse Electric Corporation, dated February 9, 1989, and the 1986 agreement itself are determinative documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment. Accordingly, these documents are filed with this Competitive Impact Statement. However, insofar as the contracts contain confidential, commercially sensitive information relating to the prices paid for the various transfers of rights, that information has been redacted. The United States is prepared to file unredacted contracts with the Court, under seal, at its request.

Dated:_____

Ralph T. Giordano,
*Chief, New York Office.*
Charles V. Reilly,
Charles R. Schwidde,
Mary Anne F. Carnival,
Patricia L. Jannaco,
*Attorneys, U.S. Department of Justice, Antitrust Division, Room 3630, New York, NY 10278–0096, (212) 264–0390.*

**Certificate of Service**

I hereby certify that I have caused a copy of the foregoing to be served upon ABB Brown Boveri Ltd. and its subsidiary, Asea Brown Boveri Inc., and upon Westinghouse Electric Corporation by delivery to their respective attorneys Jones, Day, Reavis & Pague and Winthrop, Stimson, Putnam & Roberts on this 14th day of February 1989.

Charles V. Reilly,
*Attorney, U.S. Department of Justice, Antitrust Division, Room 3630, New York, NY 10278–0096, (212) 264–0390.*

[FR Doc. 89-4795 Filed 3-1-89; 8:45 am]
BILLING CODE 4410-01-M

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## Drug Enforcement Administration

**[Docket No. 88-58]**

## Leon D. Goggin, M.D.; Revocation of Registration

On June 3, 1988, the Administrator of the Drug Enforcement Administration (DEA), issued an Order to Show Cause to Leon D. Goggin, M.D., (Respondent), of 620 Beaver Avenue, Midland, Pennsylvania, and Westinghouse Electric Corp., Beaver, Pennsylvania, proposing to revoke his two DEA Certificates of Registration, AG1664742 and BG0806377. The Order to Show Cause alleged that the Respondent's continued registration would be inconsistent with the public interest, as set forth in 21 U.S.C. 823(f) and 824(a)(4). Additionally, citing his preliminary finding that Respondent's continued registration posed an imminent danger to the public health and safety, the Administrator ordered the immediate suspension of his Certificates of Registration pending the outcome of these proceedings. 21 U.S.C. 824(d).

Respondent, through counsel, requested a hearing in a letter dated June 20, 1988. The matter was docketed before Administrative Law Judge Francis L. Young. Following prehearing procedures, a hearing was held in Washington, DC on November 22, 1988. Both parties waived the provisions of 21 CFR 1316.64 for the filing of post-hering findings and conclusions and written argument. Instead, at the conclusion of testimony, Judge Young heard oral argument from both sides. The Judge announced his findings, conclusions and decision from the bench immediately thereafter. On December 16, 1988, the Administrative Law Judge issued his written opinion and recommended ruling, findings, conclusions and decision. On January 6, 1989, Respondent filed exceptions to the opinion and recommended ruling of the Administrative Law Judge. On January 17, 1989, the Government filed a response to Respondent's exceptions. On January 24, 1989, Judge Young transmitted the record of these proceedings, including the aforementioned exceptions, to the Administrator. The Administrator has considered the record in its entirety and pursuant to 21 CFR 1316.67, hereby issues his final order in this matter based upon the findings of fact and conclusions of law as hereinafter set forth.

The Administrative Law Judge found that Respondent is a physician licensed to practice in the State of Pennsylania. In January 1988, a cooperating individual was interviewed by DEA Task Force Agents. This individual indicated that he was a patient of Respondent and that he was receiving Percocet, a Schedule II narcotic controlled substance, from Respondent because of his drug addiction. On February 16, 1988, the cooperating individual went to Respondent's medical office under the supervision of DEA Task Force Agents. The cooperating individual was equipped with an electronic recording/transmitting device. The cooperating individual told Respondent that he no longer needed drugs to relieve back pain, but that he was hooked on Percocet. The Respondent then issued the cooperating individual a prescription for 40 Percocet. The Administrative Law Judge found that on the date in question, the preponderance of the evidence established Respondent's prescribing of Schedule II controlled substances for no legitimate medical purpose and outside the scope of professional practice.

The Administrative Law Judge also found that three DEA Task Force Agents posing as patients went to Respondent's office and, on each of six occasions, obtained prescriptions for Percocet from Respondent for no legitimate medical purpose. On March 4, 1988, a DEA Agent conducted surveillance outside the building that houses Respondent's medical office. The Agent observed large numbers of persons known to the police to be drug dependent or drug addicted waiting to see Respondent at his office or emerging therefrom. At the hearing, this DEA Agent testified that he visited Respondent's office on three occasions in an undercover capacity using a fictitious name. On two occasions he received a prescription for 40 dosage units of Percocet. The first visit was on March 18, 1988. The DEA Agent went to Respondent's Midland, Pennsylvania office and told Respondent that he fell off a scaffolding a few years ago and hurt his back. Respondent told the Agent that he knew the Agent was using the story just to get Percocet. Respondent then told the Agent that he was going to treat his codeine abuse, because he did not have a back problem, and that he would try to control the amount he took and decrease it over period. Respondent then wrote the Agent a prescription for 40 dosage units of Percocet.

When the DEA Agent returned to Respondent's office on April 18, 1988, again in an undercover capacity, he observed individuals handing in empty prescription vials and receiving prescriptions in return. The Agent then handed the nurse his empty prescription vial. The nurse returned with a prescription for the Agent for 40 dosage units of Percocet. Thus, the Agent received a prescription for Percocet from Respondent without Respondent's having ever made an examination or even spoken to the Agent, who was supposedly his patient.

The Administrative Law Judge found that an additional DEA Task Force Agent, also operating under an assumed name, went to Respondent's medical office on March 1, 1988, and asked the Respondent for something for pain from a car accident that occurred 18 months previously. Respondent asked the Agent

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how long he had been hooked on Percocets and why he was taking them. The Agent told Respondent that he enjoyed taking them and they made him relax. Respondent then told the Agent that he was strung out and that Respondent was treating him for his drug problem. Resondent then wrote the Agent a prescription for 40 tablets of Percocet and told him to only take three a day.

This DEA Agent returned to Respondent's medical office two more times. Each time Respondent conducted a cursory medical examination and wrote the Agent a prescription for 40 tablets of Percocet. Respondent issued these prescriptions even after the DEA Agent told Respondent that in addition to the Percocet he was receiving from Respondent, he was also getting Percocet on the streets and taking more Percocets than the Respondent had advised him to take.

The Administrative Law Judge concluded that all these prescriptions for Percocet were written by Respondent for no legitimate medical purpose. At the hearing, Respondent stated that he wrote those prescriptions for Percocet to treat the "patients" narcotic addiction or dependency. Respondent maintained that he did not know such conduct was prohibited by law, and that he was trying, in good faith, to treat these individuals for their dependency. The Administrative Law Judge found that such a purpose, even if it had been the true, honest purpose and intent of Respondent, is beyond what the law permits the Respondent to do. The prescribing of a narcotic to a narcotic dependent person for treatment of his dependency or for maintenance is not lawful in any case. Although direct administration or dispensing can be lawful, one must have a special DEA Registration to do so. Respondent does not have such a registration. 21 U.S.C. 823(g); 21 CFR 1306.07(a).

The Administrative Law Judge concluded that Respondent's stated purpose was a sham. Respondent did not prescribe these substances to the DEA Agents in good faith for a legitimate medical purpose. Respondent undertook only the most superficial of medical examinations before issuing his customary 40 Percocet prescriptions. Respondent took extremely skimpy histories from these supposed patient addicts before he began "treating" them for narcotic addiction or dependency by prescribing narcotic substances. The undercover Agents were not, in fact, narcotic dependent individuals, and the Respondent could have verified this if he had conducted any tests of their condition. None of the Agents patently represented to Respondent that they were dependent. Indeed, it was the Respondent who insisted that they were narcotic dependent.

The Administrative Law Judge recommended that the Administrator revoke Respondent's Certificates of Registration. The Administrator may revoke a DEA Certificate of Registration if he determines that such registration is inconsistent with the public interest. Included among the factors to be considered in determining the public interest is an individual's experience in dispensing controlled substances and compliance with applicable State, Federal or local law. 21 U.S.C. 823(f). Respondent's conduct was clearly in violation of Federal law, and his experience with regard to dispensing controlled substances was that he was maintaining narcotic addicts. Respondent's conduct was tantamount to dealing drugs under the guise of medical practice. An armed guard stood close by the receptionist as she collected fees, paid in cash, from so called "patients" when they entered the office and before they ever even saw the doctor. The circumstances surrounding Respondent's practices are indicative that his practice was outside the scope of his professional practice. Respondent's behavior leads to the inescapable conclusion that he cannot be permitted to maintain his DEA Registration.

The Administrator adopts the findings of fact, conclusions of law and decision of the Administrative Law Judge in its entirety. In view of the foregoing facts, it is quite clear that Respondent prescribed Schedule II controlled substances for no legitimate medical purpose and outside the scope of professional practice. Respondent's registration is clearly inconsistent with the public interest. Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificates of Registration AG1684742 and BG0906377, previously issued to Leon D. Goggin, M.D., be, and they hereby are, revoked. It is further ordered that any pending applications for renewal of said registrations be, and they hereby are, denied.

At the time the Order to Show Cause and Immediate Suspension was served on Respondent, all controlled substances possessed by Respondent under the authority of his then-suspended registration were placed under seal and removed for safekeeping. 21 U.S.C. 824(f) provides that no disposition may be made of such controlled substances under seal until the time for taking appeals has elpased. Accordingly, these controlled substances shall remain under seal until April 3, 1989, or until any appeal of this order has been concluded. At that time, all such controlled substances shall be forfeited to the United States and shall be disposed of pursuant to 21 U.S.C. 881(3).

This order is effective immediately.

Dated: February 27, 1989.

**John C. Lawn,**

*Administrator.*

[FR Doc. 89-4864 Filed 3-1-89; 8:45 am]

BILLING CODE 4410-09-M

### Manufacturer of Controlled Substances; Registration; Sterling Drug Inc.

By Notice dated February 17, 1988, and published in the **Federal Register** on February 24, 1988, (53 FR 5480), Sterling Drug Inc., 33 Riverside Avenue, Rensselaer, New York 12144, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of pethidine (meperidine) (9230), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Administrator hereby orders that the application submitted by the above firm for registration as bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: February 24, 1989.

**Gene R. Haislip,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 89-4865 Filed 3-1-89; 8:45 am]

BILLING CODE 4410-09-M

### Controlled Substances; Reestablishment of the 1989 Aggregate Production Quota for Methylphenidate

**AGENCY:** Drug Enforcement Administration (DEA), Justice.

**ACTION:** Notice of an established 1989 aggregate production quota.

**SUMMARY:** This notice reestablishes the 1989 aggregate production quota for methylphenidate taking into consideration the Administrator's order to recalculate the 1988 aggregate production quota.

**DATE:** This order is effective upon publication.

**FOR FURTHER INFORMATION CONTACT:** Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, 1405 I Street, NW., Washington, DC 20537, Telephone: (202) 633-1366.

**SUPPLEMENTARY INFORMATION:** Section 306 of the Controlled Substances Act (21 U.S. Code 828) requires the Attorney General to establish aggregate production quotas for all controlled substances in Schedules I and II each year. This responsibility has been delegated to the Administrator of DEA pursuant to § 0.100 of Title 28 of the Code of Federal Regulations.

On December 16, 1988, a notice was published in the **Federal Register** (53 FR 50591) stating the DEA Administrator's ruling concerning the 1988 quotas for methylphenidate. As stated in this notice, the Administrator has carefully reviewed the entire record, which included the opinion and recommendations of the Administrative Law Judge, the findings of fact and conclusions of law proposed by the parties, the response to those exceptions and motions filed by all counsels, all the exhibits and affidavits and all of the transcripts of the hearing sessions. Based on findings and conclusions stated in the notice, the Administrator has ordered the DEA staff to "redetermine the 1988 aggregate production quota for methylphenidate so as to provide for medical, scientific, research and industrial needs of the United States, for lawful export requirements and for the establishment and maintenance of reserve stock." Therefore, in this notice, DEA reestablishes the aggregate production quota for methylphenidate for 1989 which will permit the bulk manufacturers of methylphenidate to produce additional amounts of this controlled substance.

In determining the below listed reestablished 1989 aggregate production quota, the DEA staff considered the actual 1988 sales and year-end inventory, the amount manufactured by the companies in 1988 and in an inventory allowance of 50 percent of net disposals as per 21 CFR 1303.24(c) for the manufacturers of methylphenidate.

Pursuant to sections 3(c)(3) and 3(e)(2)(C) of Executive Order 12291, the Director of the Office of Management and Budget has been consulted with respect to these proceedings.

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this matter does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The Administrator hereby certifies that this matter will have no significant impact upon small entities within the meaning and intent of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The establishment of annual aggregate production quotas for Schedules I and II controlled substances is mandated by law and by the international commitments of the United States. Such quotas impact predominantly upon major manufacturers of the affected controlled substances.

Therefore, under the authority vested in the Attorney General by section 306 of the Controlled Substances Act of 1970 (21 U.S.C. 828) and delegated to the Administrator of the Drug Enforcement Administration by § 0.100 of Title 28 of the Code of Federal Regulations, the Administrator hereby orders that the 1989 aggregate production quota for methylphenidate, expressed in grams of anhydrous base, be established as follows:

| Basic Class | 1989 reestablished aggregate production quota (grams) |
|---|---|
| Schedule II: Methylphenidate | 2,527,000 |

**John C. Lawn**

*Administrator, Drug Enforcement Administration.*

Dated: February 14, 1989.

[FR Doc. 89-4866 Filed 3-1-89; 8:45 am]

BILLING CODE 4410-09-M



## LIBRARY OF CONGRESS

### American Folklife Center, Board of Trustees Meeting

**AGENCY:** Library of Congress.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice announces a meeting of the Board of Trustees of the American Folklife Center. This notice also describes the functions of the Center. Notice of this meeting is required in accordance with Pub. L. 94-463.

**DATE:** March 3, 1989, 9:00 a.m. to 1:00 p.m.

**ADDRESS:** Whittall Pavilion, Jefferson Building, Library of Congress, 10 First Street, SE., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Raymond L. Dockstader, Deputy Director, American Folklife Center, Washington, DC 20540.

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public. It is suggested that persons planning to attend this meeting as observers contact Raymond Dockstader at (202) 707-6590.

The American Folklife Center was created by the U.S. Congress with passage of Pub. L. 94-201, the American Folklife Preservation Act, in 1976. The Center is directed to "preserve and present American folklife" through programs of research, documentation, archival preservation, live presentation, exhibition, publications, dissemination, training, and other activities involving the many folk cultural traditions of the United States. The Center is under the general guidance of a Board of Trustees composed of members from Federal agencies and private life widely recognized for their interest in American folk traditions and arts.

The Center is structured with a small core group of versatile professionals who both carry out programs themselves and oversee projects done by contract by others. In the brief period of the Center's operation it has energetically carried out its mandate with programs that provide coordination, assistance, and model projects for the field of American folklife.

Dated: February 24, 1989.

**Rhoda W. Canter,**

*Associate Librarian for Management.*

[FR Doc. 89-4900 Filed 3-1-89; 8:45 am]

BILLING CODE 1410-01-M

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (89-14)]

### NASA Advisory Council (NAC), Space Science and Applications Advisory Committee (SSAAC), Space Physics Subcommittee; Meeting

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science and Applications Advisory Committee, Space Physics Subcommittee.

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**DATE AND TIME:** March 15, 1989, 9 a.m. to 5 p.m., and March 16, 1989, 9 a.m. to 5 p.m.

**ADDRESS:** Holiday Inn Capitol, 550 C Street SW., Washington, DC 20024.

**FOR FURTHER INFORMATION CONTACT:** Dr. Stanley Shawhan, Code ES, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-1676).

**SUPPLEMENTARY INFORMATION:** The Space Science and Applications Advisory Committee consults with and advises the NASA Office of Space Science and Applications (OSSA) on long-range plans for, work in progress on, and accomplishments of NASA's Space Science and Applications programs. The Space Physics Subcommittee provides advice to the Space Physics Division and to the SSAAC on operation of the Space Physics Program and on formulation and implementation of the Space Physics research strategy. The Subcommittee will meet to discuss the status of the Results of Fiscal Year 1988 NASA Research Announcements (NRA), Mission Operations and Data Analysis Plans, Strategic Planning, Budget Priorities, and future plans for the Subcommittee. The Subcommittee is chaired by Dr. George Siscoe and is composed of 18 members. The meeting will be open to the public up to the capacity of the room (approximately 35 including Subcommittee members).

*Type of Meeting:* Open.

*Agenda:*

Wednesday, March 15

- 9 a.m.—Introduction and Opening Remarks.
- 11 a.m.—Mission Operations and Data Analysis Plans.
- 1:30 p.m.—US/USSR Joint Working Group Planning.
- 3:30 p.m.—Strategic Plan: Orbiting Solar Laboratory (OSL), future mission candidates, and active space plasma experiments.
- 5 p.m.—Adjourn.

Thursday, March 16

- 9 a.m.—Budget Priorities.
- 1 p.m.—Issues Relating to Health of the Space Physics Community.
- 2 p.m.—Subcommittee Discussion and Future Planning.
- 5 p.m.—Adjourn.

**Ann Bradley,**

*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

[FR Doc. 89-4762 Filed 3-1-89; 8:45 am]

BILLING CODE 7510-01-M

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50-369 and 50-370]**

### Duke Power Co.; Environmental Assessment and Finding of No Significant Impact

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF-9 and NPF-17 issued to Duke Power Company (the licensee), for operation of the McGuire Nuclear Station, Units 1 and 2, located in Mecklenburg County, North Carolina.

**Environmental Assessment**

*Identification of Proposed Action*

The amendments would revise Technical Specification (TS) 3/4.7.13 "Groundwater Level" and referenced Table 3.7-7 "Groundwater Level Monitors." TS 3.7.13 presently requires that groundwater level be maintained at specified levels as determined from eleven interior and exterior groundwater level monitors situated in or near the Reactor Buildings, the Auxiliary Building and the Diesel Generator Buildings. The proposed change would delete the groundwater monitors for the Reactor Buildings and the Diesel Generator Buildings, leaving only the five monitors for the Auxiliary Building. The change would introduce a single alarm level (731 feet MSL) for the Auxiliary Building monitors, and would change the unit shutdown requirements from one alarmed monitor to three alarmed monitors out of a total of five for the Auxiliary Building. Duke Design Engineering has performed analyses which show that the Reactor Buildings and Diesel Generator Buildings can withstand groundwater elevation corresponding to plant grade, 760 feet MSL (which is also the full pond level for Lake Norman) and that, therefore, it is not necessary to continue monitoring the groundwater levels for these particular buildings. Elevation 737 feet MSL was calculated to be the maximum level that groundwater could rise before overturning due to buoyancy would begin for the Auxiliary Building. To avoid reaching this level, the proposed TS would require that if groundwater level exceeds elevation 731 feet MSL as indicated by 3 of 5 monitor alarms, and cannot be reduced in one hour, the McGuire Station (both units) must be in at least hot standby within 6 hours, and hot shutdown within the next 6 hours, and cold shutdown within the following 30 hours. The associated surveillance requirements would be changed to require that: (1) The groundwater level be demonstrated each shift to be below elevation 731 feet MSL and (2) the groundwater level monitor instrument/loop for the specified locations be demonstrated operable annually by loop calibration or operational test.

The proposed action is in accordance with the licensee's application for amendments dated January 27, 1988, which replaced a previous related application dated October 31, 1984.

*The Need for the Proposed Action*

The proposed change is needed to eliminate an inconsistency between the "alert" levels needed to satisfy existing TS 3.7.13 and the detection capabilities of the interior monitoring instruments as actually installed at McGuire. The current TS requires specified action at an "alert" level that is 2 feet above floor level. As installed, the interior monitors are located in the exterior walls at 2 feet 8 inches above floor level and the pressure sensors are at 3 or 4 feet above floor level. Thus, the lowest possible level alarm for these monitors is about 3 or 4 feet above floor level. The proposed action would eliminate the present inconsistency by substituting a new alarm level at 731 MSL as the basis for action. The proposed change would also avoid needless shutdown of the reactor at groundwater levels or localized increases for which licensee's design analysis have demonstrated no adverse effect to structures.

*Environmental Impacts of the Proposed Action*

Since the lower elevations of some Category 1 structures at the McGuire Nuclear Station are below the natural water table, a permanent groundwater dewatering (drainage) system was installed during initial construction to lower the water table. The groundwater system relieves subsurface hydrostatic loadings by collecting groundwater in wall drains, basemat flow channels and sumps, thereby creating a depression in the water table in the vicinity of the powerblock. This protects the structures by limiting structural stresses exerted upon the Auxiliary and Reactor Buildings due to hydrostatic pressures and uplift forces as a result of high groundwater levels. During normal operation of the underdrain system, groundwater level is maintainted at or below elevation 712 feet MSL in the Auxiliary Building areas and elevation 717 feet MSL in the Reactor Building areas. Groundwater collected in the underdrain sumps is pumped to the Yard Storm Drain System or to the Turbine Building sumps via sump pumps located in the Auxiliary Building and is subsequently discharged to the Catawba River by way of the Conventional Waste Water Basin.

The proposed changes do not alter the design of the dewatering system or its function. Therefore, the groundwater levels normally maintained by this system and groundwater hydrology for the site are not changed. Similarly, the quantity and quality of groundwater collected and discharged from the station are not changed.

The purpose of the TS is to ensure that groundwater levels are monitored and preventing from rising to a potential failure to limit for the Auxiliary Building (such as could result from gross failure of the undrain system, followed by prolonged inattention). The potential failure limit is based on engineering calculations indicating that the Auxiliary Building is susceptible to overturning due to buoyancy at elevation 737 feet MSL. Under the requirements of the proposed TS change, if groundwater level at the Auxiliary Building exceeds elevation 731 feet MSL as indicated by 3 of 5 specified groundwater monitor alarms, and cannot be reduced in 1 hour, the McGuire units would be placed in a cold shutdown condition. Other analyses have determined that the Reactor Buildings and the Diesel Generator Buildings are designed to withstand hydrostatic loadings due to groundwater levels up to top of grade (760 feet MSL) which is also the full pond level for nearby Lake Norman. Therefore, no TS requirement is needed regarding groundwater for the Reactor Buildings or Diesel Generator Buildings.

The staff has reviewed the proposed changes and has found them to be based upon conservative analyses of limiting structural concerns due to groundwater, and to provide for reliable and timely indications of the need for actions to place the facility in a safer condition before groundwater levels sufficient to cause these limting structural concerns could be reached. The requirement to be in cold shutdown before groundwater levels at structural limits can be reached is consistent with the existing TS. Thus, the proposed change does not increase the probability or consequences of accidents.

The groundwater system is a non-radiological system. The proposed change involves no adverse change in the types or amounts of radiological (or non-radiological) effluents that may be released offsite, and no increase in allowable individual or cumulative occupational radiation exposure.

Accordingly, the Commission concludes that this proposed action would result in no significant adverse environmental impact.

*Alternative to the Proposed Action*

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendments. This would not reduce environmental impacts of plant operation and could result in reduced operational flexibility and needless shutdowns.

*Alternative Use of Resources*

This action does not involve the use of resources not previously considered in connection with the "Final Environmental Statement Relating to Operation of the William B. McGuire Nuclear Station, Units 1 and 2," dated April 1976 or its addendum dated January 1981.

*Agencies and Persons Consulted*

The NRC staff has reviewed the licensee's request and did not consult other agencies or persons.

**Finding of No Significant Impact**

The Commission has determined not to prepare an environmental impact statement for the proposed license amendments.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant adverse effect on the quality of the human environment.

For further details with respect to this action, see the application for amendments dated January 27, 1988 and a previous application of October 31, 1984, which it replaced. Also see the licensee's letters dated April 26, June 21, and August 25, 1988, which provided revised or supplemental information in support of the January 27, 1988 application. A detailed description of the groundwater system can be found in McGuire FSAR section 2.4.13. These documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Caroline 28223.

Dated at Rockville, Maryland, this 24th day of February 1989.

For the Nuclear Regulatory Commission.

**David B. Matthews,**

*Director, Project Directorate II-3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 89-4850 Filed 3-1-89; 8:45 am]

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## Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on March 9-11, 1989, in Room P-110, 7920 Norfolk Avenue, Bethesda, Md. Notice of this meeting was published in the Federal Register on February 22, 1989.

**Thursday, March 9, 1989**

*8:30 a.m.-8:45 a.m.: Comments by ACRS Chairman* (Open)—The ACRS Chairman will report briefly regarding items of current interest.

*8:45 a.m.-12:00 Noon: Peach Bottom Nuclear Power Station* (Open)—The Committee will review and report on the proposed restart of the Peach Bottom Nuclear Power Station.

*1:00 p.m.-2:30 p.m.: Containment Design Criteria* (Open)—Discuss proposed ACRS activities regarding the development of containment design criteria for future nuclear power plants.

*2:45 p.m.-3:15 p.m.: Future ACRS Activities* (Open)—The membes will discuss anticipated ACRS subcommittee activities and items proposed for consideration by the full Committee.

*3:15 p.m.-3:45 p.m.: ACRS Subcommittee Activities* (Open)—The members will hear and discuss the status of assigned ACRS subcommittee activities by designated subcommittees.

*3:45-5:15 p.m.: Severe Accident Research Program Plan* (Open)—Review and report on proposed NRC Severe Accident Research Program Plan.

*5:15 p.m.-6:00 p.m.: Appointment of ACRS Members* (Open/Closed)—Discuss the status of appointment of ACRS members and proposed plans for selection of future ACRS members.

Portions of this session will be closed as appropriate to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

**Friday, March 10, 1989**

*8:30 a.m.-9:30 a.m.: NRC Safety Goal Policy* (Open)—Discuss proposed ACRS comments/recommendations regarding the use of NRC Safety Goal Policy for evaluating the effectiveness of NRC

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regulations in protecting the public health and safety.

*8:30 a.m.–12:00 noon: Leak-Before-Break Technology* (Open)—Discuss proposed NRC Commission policy statement regarding additional application of the leak-before-break technology to emergency core cooling systems design and environmental qualification of components.

*1:00 p.m.–2:30 p.m. Meeting with the NRC Executive Director for Operations* (Open)—The members will discuss the plans for completion and use of NUREG–1150, Reactor Risk Reference Document, and other matters of mutual interest.

*2:45 p.m.–5:30 p.m.: Preparation of ACRS Reports* (Open)—Discuss proposed ACRS reports to NRC regarding items considered during this meeting.

**Saturday, March 11, 1989**

*8:30 a.m.–12:00 noon: Preparation of ACRS Reports* (Open)—Discuss proposed ACRS reports to NRC regarding items considered during this meeting.

*1:00 p.m.–2:30 p.m.: Miscellaneous* (Open)—Continue discussion of items considered during this meeting.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 27, 1988 (53 FR 43487). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with subsection 10(d) Pub. L. 92–463 that it is necessary to close portions of this meeting as noted above to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 301/492–8049), between 8:15 a.m. and 5:00 p.m.

Date: February 24, 1989.

**John C. Hoyle,**

*Advisory Committee Management Officer.*

[FR Doc. 89–4858 Filed 3–1–89; 8:45 am]

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**[Docket No. 50–425A]**

### Georgia Power Co., et al; No Significant Antitrust Changes and Time for Filing Requests for Reevaluation

The Director of the Office of Nuclear Reactor Regulation has made a finding in accordance with section 105c(2) of the Atomic Energy Act of 1954, as amended, that no significant (antitrust) changes in the licensees' activities or proposed activities have occurred subsequent to the previous antitrust operating license review of Unit 1 of Plant Vogtle by the Attorney General and the Commission. The finding is as follows:

Section 105c(2) of the Atomic Energy Act of 1954, as amended, provides for an antitrust review of an application for an operating license if the Commission determines that significant changes in the licensee's activities or proposed activities have occurred subsequent to the previous construction permit review. The Commission has delegated the authority to make the "significant change" determination to the Director, Office of Nuclear Reactor Regulation. Based upon an examination of the events since the issuance of the Plant Vogtle 1 operating license to Georgia Power Company, *et al.*, the staffs of the Policy Development and Technical Support Branch, Office of Nuclear Reactor Regulation and the Office of the General Counsel, hereafter referred to as "staff," have jointly concluded, after consultation with the Department of Justice, that the changes that have occurred since the Plant Vogtle Unit 1 antitrust operating license review are not of the nature to require a second antitrust review at the operating license stage of the application.

In reaching this conclusion, the staff considered the structure of the electric utility industry in Georgia, the events relevant to the Plant Vogtle Unit 1 operating license review, as well as the events that have occurred subsequent to the Plant Vogtle Unit 1 operating license review.

The conclusion of the staff's analysis is as follows:

Section 105c of the Atomic Energy Act of 1954, as amended, provides for pre-licensing antitrust reviews of commercial power reactors at the construction permit and operating license stages of the licensing process. The antitrust operating license review is not intended as a *de novo* review but is focused only on those activities of the licensee(s) that have occurred since the completion of the construction permit review.

This concept of reviewing only significant *changes* in the licensee's activities at the operating license stage has been applied by the staff to reviews of multiunit plant applications. For those plants with multiple reactor licenses, the staff conducts separate antitrust reviews for each reactor when the reactors are licensed on a delayed or staggered schedule, i.e., when the reactors are scheduled to be licensed eighteen months or more apart.

As indicated *supra*, the antitrust operating license review of Unit 1 of Plant Vogtle was completed in November of 1986 and the reactor was licensed in March of 1987. Unit 2 of Plant Vogtle is scheduled to be licensed in March of 1989 and in light of the two-year lapse since the previous review of the licensees, the staff initiated a separate antitrust review of Unit 2—with the focus of the review on any significant changes in the licensees' activities since the completion of the previous review in 1986.

The changes in the licensees' activities since the previous antitrust review have been largely the result of policies and agreements that were intitiated as a result of license conditions placed upon the principal licensee, Georgia Power Company, during the antitrust construction permit review. The staff noted in its operating license review of Unit 1 of Plant Vogtle, that the competitive process in the Georgia electric bulk power industry had improved markedly. Moreover, the staff attributed this positive change to the successful implementation of the antitrust license conditions imposed by the Commission. It was also noted that power systems throughout Georgia and adjacent states were better able to control their own power supply destinies by taking advantage of new power supply options and alternatives made available by a more competitive bulk power supply system.

The staff's review of changes in the licensees' activities since 1986 indicates that the procompetitive effects identified during the Votgle 1 OL review are continuing. Various energy exchange agreements among industry players have been entered into and activated, thereby stimulating more efficient operations among a wide variety of industry players throughout the southeastern portion of the country. Georgia Power Company is providing power and energy transactions to various power systems in Georgia as well as Florida. The integrated transmission system that emerged from the Commission's antitrust construction permit review of Plant Vogtle in the mid-1970's allows for ownership of portions of the Georgia transmission grid by all power systems in the state and this transmission arrangement has been cited by industry observers as a model for joint transmission agreements in other areas of the country.

The staff believes the competitive stimuli introduced during the antitrust construction permit review are continuing to promote competition and enhance the competitive process throughout the Georgia electric bulk power market. The staff does not believe that there have been any "significant changes" in the licensees' activities since the previous antitrust review and recommends that no affirmative significant change determination be made pursuant to the operating license for Unit 2 of Plant Vogtle.

Based upon the staff's analysis, it is my finding that there have been no "significant changes" in the licensees' activities or proposed activities since the completion of the previous antitrust review.

Signed on February 28, 1989 by Thomas E. Murley, Director of the Office of Nuclear Reactor Regulation.

Although the Atomic Energy Act of 1954, as amended, does not address a specific period for public comments pursuant to reevaluation of the Director's Finding, the Commission has adopted rules that normally allow for a 30 day comment period. The staff has determined that in the instant proceeding an exemption from the comment period from 30 days to 15 days should be granted to avoid delay in the issuance of the operating license for Plant Vogtle Unit 2. Moreover, the staff has determined that this exemption will not present an undue risk to the public health and safety nor adversely affect any potential interested party's ability to provide comments to the Commission.

Any person whose interest may be affected by this finding, my file, with full particulars, a request for reevaluation with the Director of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555 within 15 days of the initial publication of this notice in the **Federal Register**. Requests for a reevaluation of the no significant changes determination shall be accepted after the date when the Director's finding becomes final, but before the issuance of the OL, only if they contain new information, such as information about facts or events antitrust significance that have occurred since that date, or information that could not reasonably have been submitted prior to that date.

Dated at Rockville, Maryland, this 28th day of February 1989.

For the Nuclear Regulatory Commission.

**Cecil O. Thomas,**

*Chief, Policy Development and Technical Support Branch, Program Management, Policy Development and Analysis Staff, Office of Nuclear Reactor Regulation.*

[FR Doc. 89–4864 Filed 3–1–89; 8:45 am]

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**[Docket No. 50–294]**

### Michigan State University; Proposed Issuance of Orders Authorizing Disposition of Component Parts and Terminating Facility License

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of Orders authorizing Michigan State University (the licensee) to dismantle the reactor facility and dispose of the component parts, and termination of Facility License No. R–114, in accordance with the licensee's application dated January 20, 1989.

The first of these Orders would be issued following the Commission's review and approval of the licensee's detailed plan for decontamination of the facility and disposal of the radioactive components, or some alternate disposition plan for the facility. This Order would authorize implementation of the approved plan. Following completion of the authorized activities and verification by the Commission that acceptable radioactive contamination levels have been achieved, the Commission would issue a second Order terminating the facility license and any further NRC jurisdiction over the facility. Prior to issuance of each Order, the Commission will have made the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

By April 3, 1989, the licensee may file a request for a hearing with respect to issuance of the subject Orders and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the action under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the

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petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Charles L. Miller: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Ms. Mary Elizabeth Kurz, General Counsel, Michigan State University, 494 Administration Building, East Lansing, Michigan 48824–1046, attorney for licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petitioner and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the licensee's application dated January 20, 1988, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC.

Dated at Rockville, Maryland, this 23rd day of February 1989.

For The Nuclear Regulatory Commission.

**Charles L. Miller,**

*Director, Standardization and Non-Power Reactor Project Directorate, Division of Reactor Projects III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.*

[FR Doc. 89–4860 Filed 3–1–89; 8:45 am]

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[Docket No. 50–206]

**Southern California Edison Co.; San Diego Gas and Electric Co.; San Onofre Nuclear Generating Station, Unit No. 1 Consideration of Issuance of Amendment to Provisional Operating Licenses and Opportunity for Hearing**

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Provisional Operating License No. DPR–13 issued to Southern California Edison Company, *et al.* (the licensee), for operation of San Onofre Nuclear Generating Station, Unit No. 1, located in San Diego County, California. The request for amendment was submitted by letter dated February 17, 1989.

The proposed amendment seeks approval to operate during Fuel Cycle 10 with degraded fasteners in the reactor vessel thermal shield. The proposed amendment would provide a thermal shield monitoring program to monitor the condition of the thermal shield throughout the fuel cycle (approximately eighteen months).

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By April 3, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject provisional operating license, and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene must set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspects(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such as amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to George W. Knighton: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel-White Flint, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Charles R. Kocher, Assistant General Counsel, and James Beoletto, Esq., Southern California Edison Company, P.O. Box 800, Rosemead, California 91770, attorneys for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the



Commission, the presiding officer of the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed findings of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the General Library, University of California, P.O. Box 19557, Irvine, California 92713.

Dated at Rockville, Maryland, this 23rd day of February 1989.

For the Nuclear Regulatory Commission.

**George W. Knighton,**

*Director, Project Directorate V, Division of Reactor Projects III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.*

[FR Doc. 89–4861 Filed 3–1–89; 8:45 am]

BILLING CODE 7590–01–M

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[Docket No. 50–602]

**University of Texas; Order Extending Construction Completion Date**

The University of Texas is the current holder of Construction Permit No. CPRR–123, issued by the Nuclear Regulatory Commission on June 4, 1985, for construction of the University of Texas TRIGA Mark II research reactor. The reactor facility is presently under construction at the Balcones Research Center in Austin, Texas.

On October 17, 1988, the University of Texas (UT or the applicant) filed a request for an extension of the completion date from December 31, 1988 to April 30, 1989. On November 23, 1988, the applicant requested a revision of the date requested in the earlier submittal to December 31, 1989. The extension has been requested because construction has been delayed by the default of the General Contractor in charge of the project. The General Contractor was found in default because of its inability to meet the construction schedule. The completion of the project is now the responsibility of the bonding company. The facility exclusive of the reactor structural and instrumentation components is estimated to be 95 percent complete.

Good cause has been shown for the delay; the cause is beyond the control of the applicant; and the requested extension is for a reasonable period, the basis for which are set forth in the staff's evaluation of the request for extension.

Pursuant to 10 CFR 51.32, the Commission has determined that extending the construction completion date will have no significant impact on the environment (54 FR 7897, February 23, 1989).

The NRC staff safety evaluation of the request for extension of the construction permit is available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street, NW., Washington, DC 20555.

*It is hereby ordered,* That the latest completion date for Construction Permit No. CPRR–123 is extended from December 31, 1988 to December 31, 1989.

For The Nuclear Regulatory Commission.

Date of Issuance: February 24, 1989.

**Gary M. Holahan,**

*Acting Director, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.*

[FR Doc. 89–4862 Filed 3–1–89; 8:45 am]

BILLING CODE 7590–01–M

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## OFFICE OF PERSONNEL MANAGEMENT

**Excepted Service; Positions Placed or Revoked**

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** This gives notice of positions placed or revoked under Schedules A, B, and C in the excepted service, as required by civil service rule VI, Exceptions from the Competitive Service.

**FOR FURTHER INFORMATION CONTACT:** Leesa Martin, (202) 632–0728.

**SUPPLEMENTARY INFORMATION:** The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR Part 213 on January 25, 1989 (54 FR 15). Individual authorities established or revoked under Schedule A, B, or C between January 1, 1989, and January 31, 1989, appear in a listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities will be published as of June 30 of each year.

**Schedule A**

No Schedule A authorities were established or revoked during January.

**Schedule B**

No Schedule B authorities were established or revoked during January.

**Schedule C**

*Department of Commerce*

One Director, Office of Private Sector Initiatives to the Director for the Office of Business Liaison. Effective January 19, 1989.

*Department of Energy*

One Staff Assistant to the Assistant Secretary for Defense Programs. Effective January 10, 1989.

One Executive Assistant for Business and Education Programs to the Director of Minority Economic Impact. Effective January 18, 1989.

One Staff Assistant to the Assistant Secretary for Fossil Energy. Effective January 18, 1989.

One Confidential Assistant (Secretary) to the Administrator, Economic Regulatory Administration. Effective January 24, 1989.

One Technical Advisor to a Member of the Commission. Effective January 25, 1989.

*Department of the Interior*

One Special Assistant to the Director, National Park Service. Effective January 18, 1989.

One Special Assistant to the Assistant Secretary for Policy, Budget, and Administration. Effective January 19, 1989.

One Deputy to the Director of Security and Drug Enforcement. Effective January 19, 1989.

One Staff Assistant to the Director for Geological Survey. Effective January 25, 1989.

One Confidential Assistant to the Director, Office of Surface Mining Reclamation and Enforcement. Effective January 26, 1989.

*Department of Labor*

One Staff Assistant to the Secretary of Labor. Effective January 18, 1989.

*Department of State*

Three Special Assistants to the Secretary of State. Effective January 23, 1989.

One Staff Assistant to the Secretary of State. Effective January 23, 1989.

One Special Assistant to the Secretary of State. Effective January 27, 1989.

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*Department of the Treasury*

One Confidential Assistant to the Secretary of the Treasury. Effective January 18, 1989.

Two Special Assistants to the Secretary of the Treasury. Effective January 19, 1989.

*Commodity Futures Trading Commission*

One Administrative Assistant to the Chairman. Effective January 19, 1989.

*Federal Maritime Commission*

One Confidential Assistant to the Commissioner. Effective January 10, 1989.

*Interstate Commerce Commission*

One Government Affairs Assistant to the Director, Office of Governmental and Public Affairs. Effective January 25, 1989.

*National Endowment for the Humanities*

One Special Assistant to the Chairman. Effective January 3, 1989.

*Small Business Administration*

One Special Assistant to the Regional Administrator. Effective January 18, 1989.

*Veterans Administration*

One Confidential Assistant to the Administrator of Veterans Affairs. Effective January 26, 1989.

One Confidential Assistant to the Administrator of Veterans Affairs. Effective January 27, 1989.

Authority: 5 U.S.C. 3301, 3302; E.O. 10555, 3 CFR 1954–1958 Comp., P. 218.

U.S. Office of Personnel Management

Constance Horner,
*Director.*

[FR Doc. 89-4784 Filed 3-1-89; 8:45 am]
BILLING CODE 6325-01-M

## PENNSYLVANIA AVENUE DEVELOPMENT CORPORATION

### Board of Directors Meeting

**AGENCY:** Pennsylvania Avenue Development Corporation.

**ACTION:** The Pennsylvania Avenue Development Corporation announces a forthcoming meeting of the Board of Directors.

**DATE:** The meeting will be held Wednesday, March 15, 1989, at 10:00 a.m.

**ADDRESS:** The meeting will be held at the Washington Project for the Arts, Jenifer Building 400 7th Street, NW., Washington, DC.

**SUPPLEMENTARY INFORMATION:** This meeting is held in accordance with 36 Code of Federal Regulations Part 901, and is open to the public.

Date: February 23, 1989.

M. J. Brodie,
*Executive Director.*

[FR Doc. 89-4620 Filed 3-1-89; 8:45 am]
BILLING CODE 7630-01-M

## COMMISSION ON RAILROAD RETIREMENT REFORM

### Meeting

### Background

The Commission on Railroad Retirement Reform was created by Pub. L. 100–203, signed on December 22, 1987. The purpose of the Commission is to conduct a comprehensive study of the issues pertaining to the long-term financing of the railroad retirement system and the system's short-term and long-term solvency. The Commission is to submit a report containing a detailed statement of it findings and conclusions together with recommendations to the Congress not later than October 1, 1990. The Commission is composed of seven members—four appointed by the President, one by the Speaker of the House of Representatives, one by the President pro tempore of the Senate, and one by the Comptroller General.

This notice announces the first meeting of the Commission.

*Time:* 9:00 a.m.–4:00 p.m. March 20, 1989.

*Place:* Railway Labor Executives Association, 400 First Street NW., 8th Floor, Washington, DC.

*Status:* Open meeting except for initial 90 minutes which will be closed to discuss matters exempted from public disclosure pursuant to subsection (c) of section 552b of title 5, United States Code.

*Contact:* Dennis Condie Telephone (202) 472–9068.

Robert J. Myers,
*Chairman, Commission on Railroad Retirement Reform.*

Date: February 21, 1989.

[FR Doc. 89-4821 Filed 3-1-89; 8:45 am]
BILLING CODE 6820-BB-M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34-26586; File No. SR-AMEX-88-21]**

### Self-Regulatory Organization; American Stock Exchange, Inc. Order Partially Approving Proposed Rule Change Relating to Obligation of Registered Option Traders

On August 26, 1988, the American Stock Exchange, Inc. ("AMEX" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to modify certain obligations of Registered Option Traders ("ROTs").

The proposed rule change was noticed in Securities Exchange Act Release No. 26066 (September 7, 1988) 53 FR 35571 (September 14, 1988). No comments were received on the proposed rule change.

The Exchange proposes, among other things, to narrow the maximum permissible spread between bids and offers for any option series and to eliminate the wider spread differentials that currently apply to the longest term options. The present rule requires ROTs to bid or offer for options contracts within certain bid-ask differentials based on the value of the option contract.[3] The maximum allowable differential increases as the dollar value of the bid increases. The Exchange proposes for options, where the underlying security is a stock, to reformulate the permissible bid-ask differentials for those option contracts with a prevailing bid of $10 or less. Specifically, the Exchange proposes to permit bidding and offering so as to create differences of no more than ¼ of $1 between the bid and offer for each option contract for which the prevailing bid is $1 or less, no more than ⅜ of $1 where the prevailing bid is more than $1 but does not exceed $5, and no more than ½ of $1 where the prevailing bid is more than $5 but does not exceed $10. These changes will result in narrower spreads for bids and offers between ½ of $1 and $5.

The Exchange also proposes to clarify and modify certain obligations of ROTs set forth in Exchange Rule 958. First, the Exchange proposes to clarify that ROTs, when in trading crowds in other than a floor brokerage capacity, are required to make competitive bids and offers as reasonably necessary to contribute to the maintenance of fair and orderly markets. Additionally, the Exchange proposes that a ROT, when establishing or increasing an options position for any account in which he has an interest, must initiate such transactions in trading areas [4] for those transactions to be considered registered trader transactions.[5] Moreover, the Exchange proposes to require ROTs, prior to executing an order in an account in which they have an interest, to announce whether the order is a "trader opening" or "trader closing" order.[6]

The Exchange believes that the proposed amendments will improve options price continuity, result in more liquid markets and clarify the obligations of ROTs to maintain a fair and orderly market.

The Commission finds that the above-described portions of the proposed rule change are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of section 6.[7] Specifically, the Commission finds that these proposals are consistent with section 6(b)(5) of the Act because narrowing the maximum allowable bid-ask differentials for options contracts bid between $0.50 and $5 and eliminating the wider spread differentials for the longest term options will result in improved price continuity and tighter, more liquid markets. The Commission also believes that expressly stating the obligation of ROTs to make competitive bids and offers as reasonably necessary to contribute to the maintenance of a fair and orderly market, reinforces the market making responsibilities attendant to ROTs under section 11 of the Act. Moreover, the Commission believes the proposed rule changes regarding the initiation of ROT transactions and the declaration of whether a ROT order is a "trader opening" or "trader closing" order will assist the Exchange in the monitoring and surveillance of its current rules.

The Exchange also proposed, in its rule filing, the establishment of rules regarding the in person trading requirements for ROTs. The Commission is not taking action on these portions of the Exchange proposal at this time.

*It is Therefore Ordered,* Pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change is approved, solely as to the matters specified herein.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Dated: February 23, 1989.

Jonathan G. Katz,
*Secretary.*

[FR Doc. 89-4686 Filed 3-1-89; 8:45 am]
BILLING CODE 8010-01-M

[1] 15 U.S.C. 78s (b)(1) (1982).

[2] 17 CFR 240.19b–4 (1987).

[3] The proposal is based on the prevailing bid, whereas the present rule is based on the last transaction.

[4] A trading area is defined as the areas designated by the Exchange for trading stocks, bonds, options and other securities.

[5] A ROT engaged in a registered trader transaction is designated as a market maker on the Exchange for all purposes under the Securities Exchange Act of 1934 and is entitled to benefits such as specialist margin treatment.

[6] Commentary .07 of AMEX Rule 111 provides that "a Registered Trader, in establishing or increasing a position, may not retain priority over or have parity with an off-Floor order."

[7] 15 U.S.C. 78f (1982).

[8] 15 U.S.C. 78s (b)(2) (1982).

[9] 17 CFR 200.30-3(a)(12) (1988).



**[Release No. 34-26570; File No. SR-CBOE-88-04]**

### Self-Regulatory Organizations; Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating To Bid Ask differentials

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on February 2, 1989, the Chicago Board Options Exchange, Incorporated filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Rule 6.20 (a) through (c) No change.

* * * Interpretations and Policies:

.01 through .03 No change.

.04 The activities which may impair the maintenance of a fair and orderly market or impair public confidence in the operations of the Exchange, include but are not limited to the following:

(i) Effecting or attempting to effect a transaction with no public outcry in violation of Rule 6.43 or 6.74;

(ii) Failure of a Market-Maker to respond to a request for a market by an Order Book Official pursuant to Rule 7.5;

(iii) Failure of a Market-Maker to bid or offer within the ranges specified by Rule 8.7(b);

(iv) Failure to adequately supervise an employee to insure his compliance with Exchange Rule 6.20(c);

(v) Failure to abide by a determination of Floor Officials; [and]

(vi) Refusal to provide information requested by a Floor Official acting in his official capacity; *and*

*(vii) Failure to abide by the provisions of Rule 8.51.*

.05 Two Floor Officials may nullify a transaction or adjust its terms if they determine the transaction to have been in violation of any of the following: (i) Rule 6.43 (manner of bidding and offering), (ii) Rule 6.45 (priority of bids and offers), (iii) Rule 6.46 (transactions outside the book's last quoted range), [or] (iv) Rule 6.47 (priority on split price transactions, *or (v) Rule 8.51 (trading crowd firm disseminated market quotes.*

.06 No change.

Rule 6.73 (a) through (c) No change.

* * * Interpretations and Policies:

.01 No change

.02 No change

*.03 Pursuant to Rule 6.73(a) a Floor Broker's use of due diligence in handling an order is applicable to the provisions of Rule 8.51 in that it includes taking the necessary measures to ensure the proper execution of an order as it pertains to the executable quantity for a trading crowd's firm disseminated market quote. Due diligence also shall apply to the representation in the crowd of an order as described in Rule 8.51 Interpretations and Policies .02.*

*.04 Pursuant to Rule 6.73(a) a Floor Broker's use of due diligence in handling an order shall include the immediate and continuous representation of market or marketable orders at the trading station where the option class represented by the order is traded.*

Chapter VIII

Market-Makers, [and Block Positioners] *Trading Crowds and*

*Modified Trading Systems*

Section A: Market-Makers

Obligations of Market-Makers

Rule 8.7. (a) through (b) (iii) no change.

(iv) To price options contracts fairly by, among other things, *bidding* and/or offering so as to create differences of no more than ¼ of $1 between the bid and offer for each option contract for which the bid [is $1 or less] *is less than $2,* no more than ⅜ of $1 where the bid is [more than $1] *at least $2* but does not exceed $5, no more than ½ of $1 where the bid is more than $5 but does not exceed $10, no more than ¾ of $1 where the bid is more than $10 but does not exceed $20, and no more than $1 where

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the bid is more than $20, provided that the *Market Performance Committee* [Floor Procedure Committee] may establish differences other than the above for one or more options series. The bid/ask differentials stated above shall not apply [to option series which are ten or more points in-the-money] *to in-the-money series where the underlying securities market is wider than the differentials set forth above.* For these series, the bid/ask differential may be as wide as the quotation on the primary market of the underlying security. [During the last week of trading preceding expiration, the bid/ask differentials on expiring in-the-money options may be as wide as the quotation in the primary market of the underlying security.]

Rule 8.7(c) No change.

* * * Interpretations and Policies:

.01 to .04 no change.

.05 Unless an option class is exempted by the Market Performance Committee, under normal market conditions a Market-Maker's bid or offer for a series of options of unspecified size is for five contracts *except that a Market-Maker may be compelled to buy or sell a specific number of contracts at the disseminated bid or offer pursuant to his obligations under Rule 8.51.*

.06 to .07 no change

[Rule 8.12] *Rule 8.60 Renumbered*

[Rule 8.13] *Rule 8.80 Renumbered*

*Section B: Trading Crowds*

*Rule 8.50 Definitions*

*The term "trading crowd" means all market-makers who hold an appointment in the options classes at the trading station where such trading crowd is located and all market-makers who regularly effect transactions in person for their market-maker account at that station, but generally will consist of the individuals present at the trading station.*

*Rule 8.51 Trading Crowd Firm Disseminated Market Quotes*

*The Exchange will pilot a firm disseminated quote program. The pilot will be monitored and enforced by the Market Performance Committee ("MPC"). The expiration months and strikes which shall be subject to the pilot will be determined at the discretion of the MPC.*

*(a) Only non-broker dealer customer orders shall be entitled to an execution pursuant to the provisions of this rule.*

*(b) At all times other than during rotation, a trading crowd is required to sell (buy) at least ten (10) contracts at the offer (bid) which is displayed when a buy (sell) order reaches the trading station where the particular option class is located for trading unless a "fast market", as defined in Rule 8.6, has been declared in a class of options.*

*(c) On a case by case basis, the MPC may grant exemptions to the provisions of this rule for either a class or series within a class if, in their determination, the individual situation warrants such action. Additionally, MPC floor officials may determine that an exception to the rule is warranted, on a case by case basis, upon their determination that an obvious error occurred in the posting of the disseminated market quote.*

* * * Interpretations and Policies:

*.01 If the disseminated bid (offer) is on behalf of an order represented by a Floor Broker or the OBO and is for less than ten contracts the trading crowd is obligated to buy or sell the necessary number of contracts needed to make the disseminated quote firm for ten contracts.*

*.02 Where a Floor Broker or OBO has caused a bid or offer to be disseminated and the order is subsequently filled or cancelled, the Floor Broker or OBO will be responsible for causing such disseminated bid or offer to be removed. Failure to do so will result in the Floor Broker or OBO being responsible for satisfying the firm disseminated quote commitment. A Market-Maker who has caused a bid or offer to be disseminated is equally responsible for removing such bid or offer when he leaves the trading crowd.*

*.03 Market-Maker orders for less than ten contracts that are represented in the crowd by a Floor Broker should not be reflected in the displayed market quote. However, a Floor Broker remains obligated to use due diligence in the representation of an order as set forth in Rule 8.73.*

*.04 The MPC Floor Officials, pursuant to Rule 8.20(b) and Interpretations and Policies .04 thereunder, may impose a fine on members of the trading crowd for violations of this Rule and its Interpretations and Policies.*

*Rule 8.60 See prior rule 8.12*

*Section C: Modified Trading Systems*

*Rule 8.80 See prior rule 8.13*

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

*(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

The rule changes as proposed herein address three different areas. The first involves the tightening of markets for option series where the bid is less than $2 such that the bid/offer differential may not exceed ¼ of $1. As addressed in SR–CBOE–88–15, where the market quote differential was lowered to ⅜ of $1, the Exchange believes that since options in this price range are favored by a significant number of public investors, the narrowing will result in improved price continuity and more liquid markets. The Exchange intends to extend the prior exemption afforded to options which are ten dollars or more in-the-money to all in-the-money options. Therefore, when a market quote differential in the underlying security is wider than those allowed in options, the market differentials in these series can parallel that of the underlying but not exceed it.

To support extending the current exemption to all in-the-money series, the Exchange analyzed the impact of such a proposal. On average, there are 2600 series which would be impacted because they trade below the current 10 or more point in-the-money exemption. The Exchange has prepared a chart (Exhibit A) which reflects the various price ranges of these series and their respective delta values. A minimal number (346 or 13%) of existing series have a delta of less than .50 and, therefore, would be granted an exemption to trade at the same bid-ask differential as their underlying security under the proposed rule changes.

The second area addresses a format change to Chapter VIII of the Exchange Rules. The chapter will be divided into three sections, one each for market makers, trading crowds and modified trading systems. As such, current Rules 8.12 and 8.13 will become Rules 8.60 and 8.80 respectively.

The final area addressed by the proposed rule changes represents the Exchange's intent to create a pilot program whereby a disseminated market quote would become a firm quote for ten contracts by a trading crowd. As a result of the pilot as described in proposed Rules 8.50 and 8.51, the Exchange has imposed upon Floor Brokers in Rule 6.73 Interpretations and Policies .03 and .04 certain obligations relating to due diligence in the handling of orders subject to execution under the pilot. As stated, Floor Brokers can be made responsible for disseminated markets in such instances. The pilot also places additional responsibility on individual market makers who make unspecified bids or offers, as noted in Rule 8.7 Interpretations and Policies .06, when they are the only representative of a trading crowd.

The Exchange believes that the proposed rule changes are consistent with the requirements of the Securities Exchange Act of 1934 and the rules and regulations thereunder. In particular, the proposed rule changes are consistent with section 6(b)(5) of the Exchange Act, such that they promote just and equitable principles of trade and are designed to remove impediments to and perfect the mechanism of a free and open market.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

This proposed rule change will not impose a burden on competition.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and published its reasons forso finding or (ii) as to which the self-regulatory organization consents, the commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other that those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by March 23, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 24, 1989.

Jonathan G. Katz,

*Secretary.*

**Exhibit A**

SERIES PER PRICE RANGE WHICH ARE AT-THE-MONEY OR IN-THE-MONEY

| Price | # Series |
|---|---|
| 1/16 to 1 | 112 |
| 1 1/16 to 1 15/16 | 286 |
| 2 to 4 7/8 | 1200 |
| 5 to 9 7/8 | 936 |

SERIES PER DELTA VALUE AT EACH PRICE RANGE

| Price | Delta | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | 20–29 | 30–39 | 40–49 | 50–59 | 60–69 | 70–79 | 80–89 | 90+ |
| 1/16 to 1 | | 4 | 22 | 45 | 24 | 14 | 4 | |
| 1 1/16 to 1 15/16 | | 4 | 47 | 54 | 101 | 44 | 25 | 10 |
| 2 to 4 7/8 | 6 | 84 | 155 | 254 | 256 | 224 | 239 | 42 |
| 5 to 9 7/8 (Only 23 which were below 50 delta out of 936) | | | | | | | | |
| 10 or more (Only 25 which were below 50 delta out of 464) | | | | | | | | |

[FR Doc. 89–4887 Filed 3–1–89; 8:45 am]

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[Release No. 34-26669; File No. SR-GSCC-88-3]

## Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Government Securities Clearing Corporation Regarding the Submission of Financial Information

On December 22, 1988, the Government Securities Clearing Corporation ("GSCC") filed a proposed rule change (File No. SR-GSCC-88-3) pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] to authorize GSCC to require applicants and members to submit financial information to GSCC. On January 19, 1989, the Commission published notice of the proposed rule change in the **Federal Register** to solicit comments from interested persons.[2] No comments have been received on this proposal. This Order approves the proposal.

### I. Description

The proposal amends GSCC's rules to authorize GSCC to require applicants for membership and current GSCC members to submit certain information that GSCC plans to use to assess each applicant's and member's financial responsibility and operational capacity. Each applicant and member must submit, among other things, the financial statements and the reports filed with its appropriate regulatory agency ("ARA") and a copy of its latest certified financial statement.

Each applicant must submit a copy of its certified financial statement prepared by its independent certified public accountant accompanied by a statement signed by the applicant's chief financial officer or chief executive stating that no material adverse changes have occurred since the date of the most recent report submitted to GSCC. A registered broker-dealer or a government securities broker-dealer applicant, also must submit its three most recent Form X-17A-5 Financial and Operational Combined Uniform Single Reports ("FOCUS") or its three most recent Form G-405 Reports on Finances and Operations ("FOGS"). A bank applicant must submit its three most recent Consolidated Reports of Condition and Income ("Call Reports"). An applicant (other than a broker-dealer or a bank) which is subject to state or federal regulation must submit the three most recent reports submitted to its regulatory authority. An applicant which is not subject to state or federal regulation must submit copies of its three most recent unaudited quarterly financial statements, accompanied by a certificate of the applicant's chief financial officer that the financial statements have been prepared in accordance with generally accepted accounting principles consistently applied and fairly present the financial position of the applicant and the results of its operations for the period covered. An applicant which proposes to satisfy any of GSCC's financial requirements by means of a guaranty of its obligations by its parent company, must submit to GSCC the parent company's financial statements, FOCUS reports, FOGS reports, Call Reports or other comparable reports submitted to its ARA.

The proposal requires each GSCC member to submit to GSCC periodically the same reports (listed above) that each applicant must submit to GSCC. For example, a broker-dealer member must submit FOCUS reports or FOGS reports to GSCC promptly following its filing with its ARA. It also must submit its annual financial statements, certified without qualification by its independent certified public accountant and accompanied by a certificate prepared by its chief financial officer that the member has not guaranteed the obligations of any other person, and is not subject to any other contingent liabilities not set forth in the financial statements.

### II. GSCC's Rationale

GSCC believes the proposal is consistent with section 17A of the Act because it will enable GSCC to require applicants and members to submit financial information to GSCC. GSCC plans to use this information to assess each applicant's and member's financial responsibility and to evaluate potential risks to GSCC. GSCC believes that it needs this information to assure the safeguarding of securities and funds under its control or for which it is responsible and to promote the prompt and accurate clearance and settlement of securities transactions.

### III. Discussion

The Commission believes that the proposal is consistent with section 17A of the Act. Specifically, the Commission agrees with GSCC that the proposed rule change will assist GSCC in fulfilling its responsibility to facilitate the prompt and accurate clearance and settlement of securities and the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. In addition, the Commission believes that the proposal should aid GSCC's efforts in developing appropriate membership and applicant standards.

When the Commission granted GSCC temporary registration as a clearing agency, it exempted GSCC from section 17A(b)(3)(B) and seciton 17A(b)(4)(B) of the Act.[3] Section 17A(b)(4)(B) requires a registered clearing agency to have financial responsibility, operational capability, experience and competency standards that are used to accept, deny, or condition participation of any participant or any category of participants enumerated in section 17A(b)(3)(B). In accordance with the exemption, GSCC's current rules do not set any specific operational capacity, financial responsibility, experience, or competency standards. When GSCC requested its exemption, GSCC represented that it would develop appropriate member financial and operational standards in the near future, before it expanded its range of services, and, in any event, before it offered trade accounting or netting services. The collection and evaluation of such information should provide GSCC with useful information in developing such membership and applicant standards.

The Commission believes it is essential that GSCC obtains from applicants the financial and operational information described above and analyze that information to ensure that applicants without sufficient financial and operational capability are not admitted as members, thus minimizing GSCC's exposure to risk. The Commission believes that it is equally important for GSCC to obtain periodic updated information regarding current financial and operational capabilities of existing members to assess any changes in their financial capabilities. Obtaining this information will allow GSCC to take any appropriate action it deems necessary to protect itself from the risk of change in a member's financial capability.[4] Furthermore, the Commission believes that the periodic filing and review of updated financial information is essential to GSCC as it prepares the policies and procedures necessary to establish a netting service.

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[1] 15 U.S.C. 78s(b)(1)

[2] *See* Securities Exchange Act Release No. 26452 (January 12, 1989), 54 FR 2268.

[3] *See* GSCC's temporary registration order. Securities Exchange Act Release No. 25740 (May 24, 1988), 53 FR 19830.

[4] The Commission notes that GSCC has designed its proposal to minimize the burden on potential applicants and members by only requesting copies of documents which potential applicants and members have already prepared.



### IV. Conclusion

*It is Therefore Ordered*, Pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR-GSCC-88-3) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 23, 1989.

**Shirley E. Hollis,**

*Assistant Secretary.*

[FR Doc. 89-4832 Filed 3-1-89; 8:45 am]

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[Release No. IC-16836; File No. 812-7224]

## Keystone Provident Life Insurance Co., et al.; Application for Exemption

February 24, 1989.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for exemption under the Investment Company Act of 1940 ("Act").

*Applicants:* Keystone Provident Life Insurance Company ("Keystone"); KMA Variable Account (the "Account") and Keystone Provident Financial Services Corp. ("KPFSC") (collectively, the "Applicants").

*Relevant 1940 Act Sections:* Exemption requested under section 6(c) from sections 2(a)(35), 26(a)(2)(C) and 27(c)(2).

*Summary of Application:* Applicants seek an order to the extent necessary to permit the deduction of an asset based sales charge and the mortality and expense risk charge from the assets of the Account.

*Filing Date:* The application was filed on January 24, 1989.

*Hearing or Notification of Hearing:* If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on March 20, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the Commission, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the Commission.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicants, c/o Robert R. Baird, Esq., Keystone Provident Life Insurance Company, 99 High Street, Boston, Massachusetts 02110. Copies to Joan E. Boros, Esq., Freedman, Levy, Kroll & Simonds, 1050 Connecticut Avenue NW., Suite 825, Washington, DC 20036.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey M. Ulness, Attorney, at (202) 272-2028 or Clifford E. Kirsch, Special Counsel, at (202) 272-2061 (Division of Investment Management).

**SUPPLEMENTARY INFORMATION:** Following is a summary of the application; the complete application is available for a fee from either the Public Reference Branch in person or the Commission's commercial copier which may be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

### Applicants' Representations

1. The Account, registered as a unit investment trust under the Act, was established to fund certain variable annuity contracts, including the individual variable annuity contract (the "Contract") to be issued by Keystone. The Account is divided into sub-accounts which invest solely in the shares of one of the several corresponding portfolios of the SteinRoe Variable Investment Trust. Purchase payments under a Contract may be invested in both the Account and in Keystone's general account.

2. KPFSC will serve as principal underwriter for the Contracts. KPFSC is a broker-dealer registered under the Securities Exchange Act of 1934 and is a member of the National Association of Securities Dealers, Inc.

3. Keystone will have responsibility for all administration of the Contract and Account. For such services, the contract maintenance charge is initially set at $30 per year, and may not exceed costs or $100 per year. The full amount of this charge will be deducted, prior to the annuity date, from the Account on the anniversary of the effective date of a Contract and on the date of any total surrender not falling on the anniversary of the effective date of the Contract.

4. No sales charge will be deducted from a Contract's purchase payment when initially received. A contingent deferred sales charge ("CDSC") may be deducted upon a partial or total surrender of a Contract. The first surrender in any Contract year is free of the CDSC to the extent the surrendered amount does not exceed 10% of the account value at the time of surrender. The amount of the surrender will be deducted from the purchase payments in chronological order from the oldest to the most recent until such amount is fully deducted. Any amount deducted in excess of the 10% limit will be subject to CDSC as follows. The CDSC for each purchase payment from which a deduction will be made equal to (x) multiplied by (y), where: (x) is the amount so deducted; and (y) is the applicable percentage from the table below for the number of years that have elapsed from the date of payment to the date of surrender.

| Year from date of payment | Charge, percent |
|---|---|
| 1 | 7 |
| 2 | 6 |
| 3 | 5 |
| 4 | 4 |
| 5 | 3 |
| 6 | 2 |
| 7 | 1 |
| Thereafter | 0 |

No CDSC will be imposed on payments received more than 7 years prior to the surrender.

5. During each year of the accumulation period of a Contract, Keystone will assess each sub-account of the Account with a daily sales charge that will amount to an aggregate of .15% annually of the assets of each sub-account. The asset based sales charge will only be deducted if the sum of such charge plus any previously deducted CDSC, does not exceed 8.5% of the total purchase payments under each Contract. Keystone will establish and apply administrative procedures for monitoring the applicable sales charges. No asset based sales charge will be assessed during a Contract's annuity period.

6. Applicants submit that the asset based sales charge and the CDSC are designed to reimburse Keystone for expenses of selling the Contract, including compensation paid to selling dealers and the costs of sales material. Applicants further submit that the deduction of the sales charges under the Contracts, as an asset based sales charge and as a CDSC, will be more favorable to a Contract Owner than the deduction of the sales charges from purchase payments, for the following reasons: the amount of a Contract Owner's purchase payments that will be allocated to the Variable Account to be invested will be greater than it would be if the sales charge were deducted from such purchase payments; and among other benefits, the death benefit under a Contract may be greater since the death benefit may be based, in part, on a Contract Owner's total accumulation value under his or her Contract as of the seventh policy anniversary. Applicants submit that, although the proposed asset

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based sales charge may not fall within the literal terms of section 2(a)(35), the charge is consistent with the intent and definition of sales load in the Act. Keystone will not impose a front-end sales charge on purchase payments under the Contracts, although Keystone will continue to incur expenses for the sale of the Contract. Applicants submit that such expenses are within the definition of "sales load," and, except for the timing and imposition of the asset based sales charge, would otherwise comply with section 2(a)(35) of the Act.

7. Keystone will deduct from each sub-account of the Variable Account a mortality and expense risk charge equal on an annual basis to 1.25% of the average daily net asset value of each such sub-account (currently estimated to consist of .70% for mortality risks and .55% for expense risks).

8. Variable annuity payments made to annuitants will vary with the investment experience of the Variable Account, but will not be affected by the mortality experience (death-rate) of persons receiving such payments or of the general population. Keystone guarantees a death benefit equal to the surrender value upon the death of Contact Owners and annuitants. Keystone also guarantees a minimum death benefit paid upon the death of certain Contract Owners and annuitants that may exceed purchase payments or the surrender value at the time of death. This payment will not be reduced by any CDSC.

9. Keystone will assume an expense risk because the maintenance responsibilities both before and after the date on which annuity payments begin will be the same and the contract maintenance charge may not be sufficient to reimburse Keystone for its costs. Keystone also assumes the risk that the expenses of administering the Contract after annuity payments begin may exceed the charge in effect at the time or annuitization.

10. Applicants represent that the level of the mortality and expense risk is within the range of industry practice for the comparable variable annuity contracts. Applicants state that they have reviewed publicly available information regarding products of other companies taking into consideration such factors as: guaranteed minimum death benefits; guaranteed annuity purchase rates; minimum initial and subsequent purchase payments; other contract charges; the manner in which charges are imposed; market sector; investment options under the Contract; and availability to fund individual qualified and non-qualified Plans. Applicants represent that they will maintain at their administrative office, and make available to the Commission, a memorandum setting forth in detail the variable annuity products analyzed and the methodology, and results of, Keystone's comparative review.

11. Keystone represents that the asset based sales charge and CDSC may be insufficient to cover all costs related to distribution of the Contracts and that if a contribution to surplus is realized from the mortality and expense risk charge, all or a portion of that charge may be used for distribution expenses. Keystone has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements made with respect to the Contracts will benefit the Account and Contract Owners. The basis for such conclusion is set forth in a memorandum which will be maintained by Keystone at its administrative offices and will be available to the Commission. Moreover, Keystone represents that the Account will invest only in an underlying mutual fund, which undertakes, in the event it should adopt any plan under Rule 12b-1 under the Act to finance distribution expenses, to have such plan formulated and approved by a board of directors, a majority of which are not "interested persons" of such fund within the meaning Section 2(a)(19) of the 1940 Act.

12. Applicants submit, for all the reasons stated herein, that their requests for exemption meet the standards set out in section 6(c) and summarized above and that an order of the Commission, should, therefore, be granted. Accordingly, Applicants request exemption pursuant to section 6(c) from sections 2(a)(35), 26(a)(2)(C) and 27(c)(2) of the Act to the extent necessary to permit the assessment and deduction of the asset based sales charge and the mortality and expense risk charge with respect to the Contracts.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Shirley E. Hollis,**

*Assistant Secretary.*

[FR Doc. 89-4830 Filed 3-1-89; 8:45 am]

BILLING CODE 8010-01-M

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**[Rel. No. IC-16837; 812-7234]**

## Security Mortgage Acceptance Corp. et al.; Application for Exemption

February 24, 1989.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for exemption from all provisions of the Investment Company Act of 1940 ("1940 Act").

*Applicants:* Security Mortgage Acceptance Corporation—1, on behalf of itself and the other entities covered or to be covered by the requested order (the "Applicant") and Bear Stearns & Co. Inc. *Relevant 1940 Act Section:* Exemption requested under section 6(c) from all provisions of the 1940 Act.

*Summary of Application:* Applicant seeks an order amending a previous order (the "Existing Order") issued to Applicant (Investment Company Act Release No. 16715, December 28, 1988) to permit the sale of residual interests in the Old SMAC Companies (as defined in paragraph 2 below under the heading "Applicant's Representations") under the circumstances summarized below and described more fully in the application.

*Filing Date:* The application was filed on February 3, 1989 and an amendment to the application was filed on February 21, 1989.

*Hearing or Notification of Hearing:* If no hearing is ordered, the application will be granted. Any interested person may request a hearing on the application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on March 20, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Security Mortgage Acceptance Corporation—1, 1385 Eaton Center, 1111 Superior Avenue, Cleveland, Ohio 44114.

**FOR FURTHER INFORMATION CONTACT:** H.R. Hallock, Jr., Special Counsel, at (202) 272-3030, Office of Investment Company Regulation, Division of Investment Management.

**SUPPLEMENTARY INFORMATION:** Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

### Applicant's Representations

1. Security Mortgage Acceptance Corporation—1, on its own behalf and on behalf of future corporations



originally sponsored and wholly-owned by Alfred Lerner and organized for the same limited purpose as Security Mortgage Acceptance Corporation—1 (collectively "SMAC"), filed an application on November 20, 1985 (the "First Application"), for an order of the SEC exempting them from all provisions of the 1940 Act to permit SMAC to sell Bonds [1] collateralized by Mortgage Collateral. On July 23, 1986, the SEC granted the requested relief (Investment Company Act Release No. 15220) (the First Order"). On August 22, 1988, Applicant filed an application (the "Second Application") requesting an amendment to the First Order to sell Residual Interests to (i) institutional investors or (ii) non-institutional investors which are "accredited investors" as defined in Rule 501(a) of the Securities Act of 1933, as amended (such Investors being collectively referred to as "Eligible Purchasers"). On December 28, 1988, the SEC granted the Existing Order (Investment Company Act Release No. 16715).

2. To date, Mr. Lerner has sponsored two corporations which are subject to the Existing Order, Security Mortgage Acceptance Corporation—1 and Security Mortgage Acceptance Corporation—2 (the "Old SMAC Companies"), each of which has issued two series of Bonds. The Existing Order currently permits the sale of stock of SMAC, including the old SMAC Companies, or a sale of beneficial interests in the Residual Interest therein. On December 30, 1988, Mr. Lerner sold all the outstanding capital stock in the Old SMAC Companies to Barr, Stearns & Co. Inc. (the "Purchaser"), an Eligible Purchaser, in a transaction consummated in accordance with the terms of the Existing Order. The Purchaser desires to sell the Residual Interest in the Old SMAC Companies as permitted by the Existing Order and/or as contemplated in the application and summarized below.

3. To maximize the value of the Residual Interest,[2] it currently is proposed that the Old SMAC Companies be permitted to reorganize as an owner trust. The Old SMAC Companies as the depositors and an owner trustee, which is unaffiliated with the Applicant, would form an owner trust (the "Trust"), a single purpose entity as defined by the same nationally recognized statistical rating agency or agencies that rated the relevant series of Bonds and would be "bankruptcy remote" to the same extent as the Old SMAC Companies. Its sole purpose would be to hold the Mortgage Collateral and to engage in activities incidental thereto. Unlike the typical owner trust, the Trust would not be permitted to issue any additional series of Bonds in reliance on the requested order.

4. The Old SMAC Companies would sell the Mortgage Collateral securing the Bonds to the Trust in exchange for all of the trust certificates in the Trust (which would constitute the Residual Interest). The Residual Interest than would be sold. The Trust would assume all obligations of each of the Old SMAC Companies under the relevant Indenture and would succeed as issuer of the Bonds, which would remain outstanding. Bondholders would receive notice of the reorganization, and the Old SMAC Companies would be dissolved. The reorganization would not require registration under the Securities Act of 1933, as amended, and would not violate any provisions of the Securities Exchange Act of 1934, as amended, or the Trust Indenture Act of 1939, as amended. The Trust would own the Mortgage Collateral, and the Trustee under the Indenture or its nominee would hold the Mortgage Collateral, in each case subject to the lien of the relevant Indenture, which explicitly permits a reorganization of the character described without the necessity of obtaining Bondholder consent. No payment term of the Bonds would be changed thereby, the Mortgage Collateral would not be adversely impaired or affected as a result thereof, no lien ranking prior to or on a parity with the lien of the related Indenture with respect to the Mortgage Collateral would be created thereby, and nothing in the proposed reorganization would deprive the Bondholders of the security afforded by the lien of the related Indenture or result in the purchasers of the Residual Interest having priority over Bondholders. The rating of the Bonds would be unaffected by the proposed reorganization.

5. As an alternative to the transaction described in paragraph 4 above, one or both of the Old SMAC Companies may desire to transfer Mortgage Collateral securing one (or both) series of Bonds issued by that Old SMAC Company to one or more owner trusts or other entities. It shall be a condition to the requested relief that in no event would a transaction be consummated where the representations made in paragraph 4 above could not be made,[3] except as provided in footnote 3 below, or where the condition set forth below would not be applicable.

### Revised Condition

The condition set forth in the body of the Existing Order regarding the sale or other impairment of the Mortgage Collateral is revised in its entirety to read as follows:

Without the written consent of each Bondholder to be affected, neither the holders of any Residual Interest nor either Old SMAC Company (or the Trust or other entity described in the application) will be able to impair or adversely affect the Mortgage Collateral securing a series of Bonds (including, without limitation, selling the Mortgage Collateral while a series of Bonds remains outstanding), provided that any such entity would be permitted to sell the Mortgage Collateral without Bondholder consent to an owner trust or other entity that would succeed to its obligations under the relevant Indenture in the transaction of the type described in the application. The foregoing does not prohibit substitution of Mortgage Collateral as permitted by the Existing Order.

For the Commission, by the Division of Investment Management, under delegated authority.

**Shirley E. Hollis,**

*Assistant Secretary.*

[FR Doc. 89-4831 Filed 3-1-89; 8:45 am]

BILLING CODE 8010-01-M

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**[Release No. IC-16838; File No. 811-5372]**

## John Hancock Variable Annuity Account F

February 24, 1989.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of Application for an Order under the Investment Company Act of 1940 (the "1940 Act").

*Applicant:* John Hancock Variable Annuity Account F ("Applicant")

*Relevant 1940 Act Sections:* Order requested under section 8(f).

[1] This and all other capitalized terms used herein, and not otherwise defined herein, shall have meanings ascribed to such terms in the First and Second Application.

[2] An election to be treated as a subchapter S corporation under the Internal Revenue Code had been filed in respect of each of the Old SMAC Companies. This advantageous tax treatment was lost when the stock of the Old SMAC Companies was sold to the Purchaser. As a result, a subsequent purchaser of the stock could be subject to tax at two levels: first at the Old SMAC Companies' level and second at its own level. Consequently, the net cash flow from the Residual Interest would be less than if the sale took a form other than a sale of stock.

[3] Where the Mortgage Collateral securing one of the two Series of Bonds issued by an Old SMAC Company is sold and the Mortgage Collateral securing the other Series is not, however, the relevant Old SMAC Company would not be dissolved as described in paragraph 4 above.

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*Summary of Application:* Applicant seeks an order under section 8(f) of the 1940 Act declaring that it has ceased to be an investment company.

*Filing Date:* The application was filed on January 23, 1989.

*Hearing or Notification of Hearing:* If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on March 20, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

**ADDRESS:** Secretary, SEC, 450 5th Street NW., Washington DC 20549. John Hancock Variable Annuity Account F, John Hancock Place, P.O. 111 Boston, Massachusetts 02117.

**FOR FURTHER INFORMATION CONTACT:** Cindy J. Rose, Financial Analyst (202) 272-2058 or Clifford E. Kirsch, Special Counsel (202) 272-2061 (Division of Investment Management).

**SUPPLEMENTARY INFORMATION:** Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

**Applicant's Representations**

1. On October 22, 1987, Applicant, a separate account of John Hancock Mutual Life Insurance Company, filed a Notification of Registration on Form N-8A and a registration statement on Form N-4. The registration statement never became effective and no public offering of the securities of the Applicant was ever made.

2. Applicant represents that it has never had any assets, has no debts or other liabilities outstanding, is not a party to any litigation or administrative proceeding, has no security holders and is not now engaged, nor does it propose to engage, in any business activities.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 89-4688 Filed 3-1-89; 8:45 am]

BILLING CODE 8010-01-M

## SMALL BUSINESS ADMINISTRATION

**[Declaration of Disaster Loan Area #2329]**

**Illinois Declaration of Disaster Loan Area**

The above-numbered Declaration (54 FR 3891) is hereby amended in accordance with the Notice of Amendment to the President's declaration, dated February 13, 1989, to include Hamilton County, in the State of Illinois, due to damages from severe storms and tornadoes beginning on January 7, 1989. In addition, applications from eligible small businesses located in the contiguous county of Franklin, Illinois, may be filed until the specified date. All other information remains the same; i.e., the termination date for filing applications for physical damage is the close of business on March 17, 1989 and for economic injury until the close of business on October 13, 1989.

Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.

Date February 21, 1989.

**Bernard Kulik,**

*Deputy Associate Administrator for Disaster Assistance.*

[FR Doc. 89-4911 Filed 3-1-89; 8:45 am]

BILLING CODE 8025-01-M

**[Declaration of Disaster Loan Area #2334 & #2335]**

**New York; (And Contiguous Counties in the State of Connecticut); Declaration of Disaster Loan Area**

The City of Yonkers, Westchester County, and the contiguous counties of Bronx, Nassau, Putnam, and Rockland, in the State of New York, and Fairfield County, in the State of Connecticut, constitute a disaster area as a result of damages from severe fires which destroyed two apartment buildings located at 100-106 Locust Hill Avenue and 2-10 School Street, in the City of Yonkers, on January 11, 1989. Application for loans for physical damage as a direct result of these fires may be filed until the close of business on April 24, 1989 and for economic injury as a direct result of these fires until the close of business on November 22, 1989 at the address listed below:

Disaster Area 1 Office, Small Business Administration, 15-01 Broadway, Fair Lawn, NJ 07410.

or other locally announced locations.

| The interest rates are: | Percent |
|---|---|
| Homeowners with credit available elsewhere | 8.000 |
| Homeowners without credit available elsewhere | 4.000 |
| Businesses with credit available elsewhere | 8.000 |
| Businesses and non-profit organizations without credit available elsewhere | 4.000 |
| Businesses and non-profit organizations (EIDL) without credit available elsewhere | 4.000 |
| Other (including non-profit organizations) with credit available elsewhere | 8.125 |

The numbers assigned to this disaster for physical damage are 233405 for the State of New York, and 233505 for the State of Connecticut; and for economic injury the numbers are 672200 for the State of New York and 672300 for the State of Connecticut.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Date February 22, 1989.

**James Abdnor**

*Administrator.*

[FR Doc. 89-4912 Filed 3-1-89; 8:45 am]

BILLING CODE 8025-01-M

**[Declaration of Disaster Loan Area #2336]**

**Tennessee; Declaration of Disaster Loan Area**

Wilson County, and the contiguous counties of Cannon, Davidson, Dekalb, Smith, Sumner, Trousdale, and Rutherford, in the State of Tennessee, constitute a disaster area as a result of damages from severe storms and flooding which occurred February 13-14, 1989. Applications for loans for physical damage may be filed until the close of business on April 24, 1989 and for economic injury until the close of business on November 24, 1989 at the address listed below:

Disaster Area 2 Office, Small Business Administration, 120 Ralph McGill Blvd., 14th Fl., Atlanta, GA 30308.

or other locally announced locations.

| The interest rates are: | Percent |
|---|---|
| Homeowners with credit available elsewhere | 8.000 |
| Homeowners without credit available elsewhere | 4.000 |
| Businesses with credit available elsewhere | 8.000 |
| Businesses and non-profit organizations without credit available elsewhere | 4.000 |
| Businesses and non-profit organizations (EIDL) without credit available elsewhere | 4.000 |
| Other (including non-profit organizations) with credit available elsewhere | 9.125 |

The number assigned to this disaster for physical damage is 233606 and for economic injury the number is 672400.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Date February 23, 1989.

**James Abdnor,**

*Administrator.*

[FR Doc. 89-4913 Filed 3-1-89; 8:45 am]

BILLING CODE 8025-01-M



**[Declaration of Disaster Loan Areas #2337 & #2338]**

**Tennessee; (And Contiguous Counties in the State of Kentucky); Declaration of Disaster Loan Area**

Obion County, and the contiguous counties of Dyer, Gibson, Lake, and Weakley, in the State of Tennessee, and Fulton and Hickman Counties, in the State of Kentucky, constitute a disaster area as a result of damages from severe storms and flooding which occurred February 14-15, 1989. Applications for loans for physical damage may be filed until the close of business on April 24, 1989 and for economic injury until the close of business on November 24, 1989 at the address listed below:

Disaster Area 2 Office, Small Business Administration, 120 Ralph McGill Blvd., 14th Fl., Atlanta, GA 30308.

or other locally announced locations.

| The interest rates are: | Percent |
|---|---|
| Homeowners with credit available elsewhere | 8.00 |
| Homeowners without credit available elsewhere | 4.000 |
| Businesses with credit available elsewhere | 8.000 |
| Businesses and non-profit organizations without credit available elsewhere | 4.000 |
| Businesses and non-profit organizations (EIDL) without credit available elsewhere | 4.000 |
| Others (including non-profit organizations) with credit available elsewhere | 9.125 |

The numbers assigned to this disaster for physical damage are 233706 for the State of Tennessee, and 233806 for the State of Kentucky; and for economic injury the numbers are 672500 for the State of Tennessee and 672600 for the State of Kentucky.

[Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.]

Dated: February 23, 1989.

**James Abdnor,**

*Administrator.*

[FR Doc. 89-4914 Filed 3-1-89; 8:45 am]

BILLING CODE 8025-01-M

**Region VI Advisory Council; Public Meeting; Arkansas**

The U.S. Small Business Administration, Region VI Advisory Council, located in the geographical area of Little Rock, will hold a public meeting at 10:00 a.m. on Thursday, April 6, 1989, at the Riverfront Hilton, 2 Riverfront Place, North Little Rock, Arkansas 72114, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Donald L. Libbey, District Director, U.S. Small Business Administration, 320 West Capitol, Suite 601, Little Rock, Arkansas 72201, 501/378-5871.

**Jeannette M. Pauli,**

*Acting Director, Office of Advisory Councils.*

February 23, 1989.

[FR Doc. 89-4915 Filed 3-1-89; 8:45 am]

BILLING CODE 8025-01-M

**Region I Advisory Council; Public Meeting; Maine**

The U.S. Small Business Administration, Region I Advisory Council, located in the geographical area of Augusta will hold a public meeting at 10:00 a.m. on Tuesday, March 28, 1989, at the Branding Iron Restaurant, Route 202, Winthrop, Maine, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Roy Perry, District Director, U.S. Small Business Administration, 40 Western Avenue, Augusta, Maine, 207/622-8362.

**Jeannette M. Pauli,**

*Acting Director, Office of Advisory Councils.*

February 23, 1989.

[FR Doc. 89-4916 Filed 3-1-89; 8:45 am]

BILLING CODE 8025-01-M

**Las Vegas District Council; Public Meeting; Nevada**

The Small Business Administration, Las Vegas District Advisory Council will hold a public meeting Friday, March 31, 1989, at the U.S. Small Business Administration Office, located at 301 E. Stewart Avenue, Downtown Station, Post Office, 3rd Floor Room 301, Las Vegas, Nevada, from 9:00 a.m. to 12:00 Noon to discuss such matters as may be presented by the Advisory Board members, staff of the Small Business Administration, and others present.

For further information, write Elizabeth Sutton, Secretary for the District Advisory Council, U.S. Small Business Administration, 301 E. Stewart, P.O. Box 7527, Las Vegas, Nevada 89125, or call (702) 388-6611.

**Jeannette M. Pauli,**

*Acting Director, Office of Advisory Councils.*

February 23, 1989.

[FR Doc. 89-4917 Filed 3-1-89; 8:45 am]

BILLING CODE 8025-01-M

## DEPARTMENT OF STATE

**[CM-8/1267]**

**Advisory Committee on International Communications and Information Policy; Meeting**

The Department of State announces that the Advisory Committee on International Communications and Information Policy will meet on March 20 in the Lecture Room of the National Academy of Sciences, 22nd and C Streets, NW., Washington, DC, from 9 a.m. until 12:45 p.m.

The Committee serves the Department of State in an advisory capacity concerning major economic, social and legal issues and problems in international communications and information policy, especially as these issues and problems involve users of information and communications services, providers of such services, technology research and development, foreign industrial and regulatory policy and the activities of international organizations with regard to communications and information, and developing country interests.

In view of the regulatory and structural changes taking place in the telecommunications sector, the March 20 meeting will focus on development of U.S. policy toward the International Telecommunication Union (ITU) and review technology transfer issues in the telecommunications sector. The ITU discussion will focus particularly on the upcoming ITU Plenipotentiary Conference which will review the structure, purpose and international regulatory reach of the organization.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating

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available. Prior to the meeting, persons who plan to attend should so advise the office of Mr. Lucy H. Richards, Department of State, Washington, DC, telephone (202) 647–5230.

Dated: February 14, 1989.

**Lucy H. Richards,**

*Director, Office of Industrialized Country Policy, Executive Secretary, Advisory Committee on International Communications and Information Policy.*

[FR Doc. 89–4796 Filed 3–1–89; 8:45 am]

BILLING CODE 4710–07–M

[Public Notice CM–8/1263]

**Advisory Committee on International Investment; Meeting**

The Department of State will hold a meeting of the Advisory Committee on International Investment on March 17, 1989 from 9 a.m. to 1 p.m. The meeting will be held in Room 1912 at the Department of State, 2201 "C" Street, NW., Washington, DC 20520.

The agenda and approximate times topics will be discussed are as follows:

—9:00 Review of agenda and introduction of first speaker by Professor Isaiah Frank of the Johns Hopkins School of Advanced International Studies.

—9:05 Welcoming remarks by Assistant Secretary of State for Economic and Business Affairs Eugene J. McAllister.

—9:20 Commentary on the current status of the U.S. initiative on investment in the OECD, the bilateral investment treaty (BIT) program, and of TRIMs in the GATT by William B. Milam, Deputy Assistant Secretary of State for International Finance and Development and Marilyn A. Meyers, Director of the Office of Investment Affairs at the Department of State. Remarks to be followed by questions and comments by committee members.

—10:00 Coffee.

—10:15 Presentation by Professor John Kline of Georgetown University on the concept of corporate nationality and on recent attempts by the Congress and the Reagan Administration to regulate imports and foreign investment and to establish an industrial policy. Followed by comments and questions by members of the committee.

—11:45 Presentation by Betty L. Barker, Chief, International Investment Division, Bureau of Economic Analysis, Department of Commerce on the data collection activities of the U.S. government with respect to inward investment in the United States. Discussion of what currently available data reveal about the effects and extent of foreign investment in the United States. Followed by comments and questions by members of the committee.

—1:00 Meeting concludes.

Access to the Department of State is controlled. Therefore, members of the public wishing to attend the meeting must notify the Office of Investment Affairs at (202) 647–2585 in order to arrange admittance. Please use the "C" Street entrance.

**Robert C. Hale, Jr.,**

*Executive Secretary.*

February 14, 1989.

[FR Doc. 89–4797 Filed 3–1–89; 8:45 am]

BILLING CODE 4710–07–M

[Public Notice CM–8/1265]

**Shipping Coordinating Committee; Meeting**

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 9:30 a.m. on March 28, 1989, in room 6103, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593.

The purpose of the meeting is to finalize preparations for the 57th Session of the Maritime Safety Committee (MSC) of the International Maritime Organization (IMO) which is scheduled for 3–12 April 1989 in London at the IMO headquarters. The purpose of the meeting is to discuss the papers received and the draft U.S. positions for the 57th Session. Interalia, the items of particular interest on the agenda for this Session are:

—Reports of the various subcommittees

—Outcome of 1988 Global Maritime Distress Safety System (GMDSS) Conference and the GMDSS Protocol Conference

—IMO Guidelines on Management for Safe Ship Operation and Pollution

—Guidelines and Standards for the removal of offshore installations

—Piracy and armed robbery against ships

—Work programme

Members of the public may attend these meetings up to the seating capacity of the room. Interested persons may seek information by writing: Mr. G.P. Yost, U.S. Coast Guard Headquarters (G–CI), 2100 Second Street, SW., Washington, DC 20593 or by Calling: 202–267–2280.

Date: February 21 1989

**Thomas J. Wajda,**

*Chairman, Shipping Coordinating Committee.*

[FR Doc. 89–4798 Filed 3–1–89; 8:45 am]

BILLING CODE 4710–01–M

[Public Notice CM–8/1264]

**Organization for the International Telegraph and Telephone Consultative Committee CCITT Study Group A; Cancellation and Rescheduling Meeting**

The Department of State announces that the meeting previously scheduled for March 9, 1989 is cancelled and has been rescheduled. Study Group A of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) is rescheduled to meet on March 30, 1989 at 9:30 a.m. in Room 1107, Department of State, 2201 C Street, NW., Washington, DC.

Study Group A deals with international telecommunications policy and services.

The purpose of the meeting will be to:

(a) Debrief of relevant Administrative Council meeting issues

(b) Debrief of relevant Study Group XVIII meeting issues (liaisons)

(c) Debrief of CCITT Study Group II issues

(d) Development and/or review of contributions to CCITT Study Group

I. III (April 24–28, 1989)

2. I (May 2–12, 1989)

While it is noted that U.S. Study Group D would normally consider contributions for CCITT Study Group VIII, this meeting may, exceptionally consider possible delayed contributions for the meeting of Study Group VIII, scheduled for 12–20 April, in Geneva.

The meeting may consider other issues concerning CCITT Study Group activity. Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise the office of Mr. Earl S. Barbely, State Department, Washington, DC; telephone 647–5220. All attendees must use the C Street entrance to the building.

Dated: February 17, 1989.

**Earl S. Barbely,**

*Director, Office of Telecommunications and Information Standards; Chairman, U.S. CCITT National Committee.*

[FR Doc. 89–4799 Filed 3–1–89; 8:45 am]

BILLING CODE 4710–07–M



**TENNESSEE VALLEY AUTHORITY**

**Information Collection Under Review by the Office of Management and Budget**

**AGENCY:** Tennessee Valley Authority.

**ACTION:** Information collection under review by the Office of Management and Budget (OMB).

**SUMMARY:** The Tennessee Valley Authority (TVA) has sent to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), as amended by Pub. L. 99–591.

Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Agency Clearance Officer whose name, address, and telephone number appear below. Questions or comments should be directed to the Agency Clearance Officer and also to the Desk Officer for the Tennessee Valley Authority, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; Telephone: (202) 395–3084.

*Agency Clearance Officer:* Mark R. Winter, Tennessee Valley Authority, 100 Lupton Building, Chattanooga, TN 37401; (615) 751–2523.

*Type of Request:* Regular submission.

*Title of Information Collection:* Power Distributors Annual Report to TVA.

*Frequency of Use:* Annually.

*Type of Affected Public:* Business or other for-profit, small businesses or organizations.

*Small Businesses or Organizations Affected:* Yes.

*Federal Budget Functional Category Code:* 271.

*Estimated Number of Annual Responses:* 320.

*Estimated Total Annual Burden Hours:* 3,072.

*Estimated Average Burden Hours Per Response:* 9.6.

*Need For and Use of Information:* This information collection supplies TVA with financial and accounting information to help ensure that electric power produced by TVA is sold to consumers at rates which are as low as feasible.

**John W. Thompson,**

*Vice President, Services, Senior Agency Official.*

[FR Doc. 89–4817 Filed 3–1–89; 8:45 am]

BILLING CODE 8120–01–M

**OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE**

**Identification of Priority Practices; Request for Public Comments**

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Request for written submissions from the public on practices that should be considered with respect to identification of priority practices under section 310 of the Trade Act of 1974, as amended (19 U.S.C. 2420).

**SUMMARY:** Section 310 of the Trade Act requires the United States Trade Representative (USTR) to identify trade liberalization priorities, "including major barriers and trade distorting practices, the elimination of which are likely to have the most significant potential to increase United States exports, either directly or through the establishment of a beneficial precedent." USTR is requesting written submissions from the public concerning foreign countries' practices that should be considered under section 310.

**DATE:** Submissions must be received on or before March 24, 1989.

**FOR FURTHER INFORMATION CONTACT:** A. Jane Bradley, Associate General Counsel and Chairman, Section 301 Committee, or Dorothy Balaban, Staff Assistant to the Section 301 Committee, Office of the United States Trade Representative, 600 17th Street NW., Washington, DC 20506, [202) 395–3432.

**SUPPLEMENTARY INFORMATION:** Section 310 (a) of the Trade Act requires the USTR, no later than May 30, 1989, to identify United States trade liberalization priority practices and countries and submit a report on such priorities to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives, and publish it in the Federal Register. Section 310(b) of the Act requires the Trade Representative to initiate investigations under section 302 of the Act, by June 20, 1989, with respect to priorities identified in said report.

USTR invites submissions on major foreign trade barriers and trade distorting practices that should be considered in identifying priorities. Submissions should: (1) Include information on the nature and significance of the foreign policy or practice, (2) identify the United States product, service, intellectual property right, or foreign direct investment matter which is affected by the foreign practice, (3) indicate the volume of trade in the goods or services involved, and (4) provide any other information considered relevant.

Interested persons must provide twenty copies of the submission to Dorothy Balaban, Section 301 Committee, Room 222, 600 17th Street NW., Washington, DC 20506.

**A. Jane Bradley,**

*Chairman, Section 301 Committee.*

[FR Doc. 89–4956 Filed 3–1–89; 8:45 am]

BILLING CODE 3190–01–M

**Generalized System of Preferences; Information on Imports During First 10 Months of 1988 and Invitation of Comments**

This notice is for information only and has no legal effect. It is provided in order to inform the public of certain import statistics covering the period of January through October 1988 and to afford the public an opportunity to comment on certain discretionary decisions the President must make on or about April 1, 1989 with respect to the GSP program. These decisions concern the GSP "competitive need" limits set forth in section 504(c) and section 504(d)(2) of the Trade Act of 1974 (19 U.S.C. 2464 (c)), and possible redesignation of articles previously graduated from GSP. Presidential decisions concerning the application of competitive need limits and all other product-related decisions stemming from the 1988 Annual Review are expected to be announced on or about April 1, and implemented on July 1, 1989.

Pursuant to section 504(c), any GSP eligible beneficiary country that exported to the United States during the most recent calendar year a quantity of any one GSP eligible article in excess of (1) $25 million indexed to the U.S. Gross National Product since 1974, or (2) 50 percent of the value of total U.S. imports of the article, is to be removed from GSP eligibility not later than July 1 of the next calendar year.

Based on preliminary data and subject to revision, the aforementioned dollar limit is expected to be approximately $82,504,413 million for calendar year 1988.

As a result of the Trade and Tariff Act of 1984, a general review of the GSP was initiated in 1985 and the results of the review announced on January 2, 1987 (52 FR 389). The purpose of the review was to determine whether beneficiary countries have become sufficiently competitive in GSP-eligible products, on a product and country specific basis. For countries found to be sufficiently competitive with respect to a product, the percentage competitive need limit was reduced to 25 percent and the dollar limit was reduced to $25 million indexed

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to the nominal growth of U.S. GNP since 1984. Based on preliminary data and subject to revision, the aforementioned dollar limit for countries found to be sufficiently competitive is expected to be approximately $32,212,635 million for the calendar year 1988.

Section 504 (d)(2) of the Trade Act of 1974, as amended, permits the President to disregard the 50 percent "competitive need" limit with respect to any eligible article if the value of total imports of the article during the most recent calendar year did not exceed $5 million, adjusted annually to reflect changes in the U.S. Gross National Product. This *"de minimis"* level is expected to be approximately $9,669,219 million dollars for calendar year 1988.

A proclamation will be issued to be effective July 1, 1989, making the adjustments that are required by section 504(c) of the Trade Act and announcing the discretionary decisions referred to in this notice, on the basis of official data covering all of calendar year 1988.

It should be emphasized that the information set forth below covers only the first 10 months of 1988. While this is not complete information, it is being published now in order to provide the maximum possible advance indication as to adjustments that may be made to meet the requirements of section 504(c) of the Trade Act and to afford the opportunity for comment in potential discretionary decisions.

List I below shows specific GSP-eligible articles for countries which have already exceeded estimated competitive need limitations (country supplied over $82,504,413 million, or $32,212,635 million in the case where a country has been found sufficiently competitive in the product, during January-October 1988) or have been graduated from the GSP in earlier years pursuant to the President's discretionary authority.

List II below shows countries which are approaching the competitive need limitations (country accounted for over 47 percent of the value of total U.S. imports and/or over $64 million, or for countries found to be sufficiently competitive over 23 percent and/or $26 million during January-October 1988).

List III below shows countries which, despite accounting for more than 50 percent (or 25 percent in the case of a country found sufficiently competitive in a product) of the value of total U.S. imports of an article, may be eligible to receive GSP benefits through the *de minimis waiver* (country accounted for more than applicable percentage limit and the value of total U.S. imports of the item was less than $9,669,219 million during January–October 1988).

List IV below shows countries which are currently ineligible for the GSP but which may be eligible for redesignation to GSP status pursuant to the President's discretionary authority (country accounted for less than 50 percent, or 25 percent in the case if products determined to be sufficiently competitive, of the value of U.S. imports and the value of total U.S. imports was less than the applicable dollar limit during January–October 1988).

As noted above, the decisions that the President will make on whether to waive the percentage limit in cases where trade is *de minimus* and whether to redesignate countries with respect to products are discretionary. In this regard, the GSP Subcommittee of the Trade Policy Staff Committee invites public comment relevant to these potential upcoming decisions.

All written comments with regard to these decisions should be addressed to: GSP Subcommittee, Office of the U.S. Trade Representative, 600 17th Street, NW., Room 517, Washington, DC 20506. All submissions should conform to 15 CFR 2007, particularly §§ 2007.0, 2007.1(a)(1), 2007.1(a)(2) and 2007.1(a)(3). Furthermore, all those parties providing comments should indicate on the first page of the submission the name of the petitioner, HS subheading(s), and beneficiary country(s) of interest, and the type of action (i.e., the use of the President's *de minimus* waiver authority, etc * * *) in which the party is interested.

These statements must be accompanied by twenty copies, in English, of all comments and must be received by the Chairman of the GSP Subcommittee of the Trade Policy Staff Committee no later than 5 p.m. Thursday, March 9 at the address listed above. If the comments contain business confidential information, twenty copies of a nonconfidential version of the comments along with twelve copies of the confidential version must be submitted. A justification as to why the information contained in the submission should be treated confidentially must be included in the submission. In addition, the submission containing confidential information should be clearly marked "confidential" at the top and bottom of each page of the submission. The version that does not contain confidential information should also be clearly marked, at the top and bottom of each page, "public version" or "non confidential."

Written comments submitted in connection with these decisions will be subject to public inspection by appointment only with the staff of the GSP Information Center, except for information granted "business confidential" status pursuant to 15 CFR 2007.7. The GSP Information Center is located at the Office of the United States Trade Representative at the address listed above. The GSP Information Center phone number is (202) 395–6971.

**Sandra J. Kristoff,**

*Chairwoman, Trade Policy Staff Committee.*

BILLING CODE 3190-01-M

LIST I : COUNTRIES GRADUATED OR EXCEEDING COMPETITIVE NEED LIMITS
JAN-OCT 1988

| | HTS | COUNTRY | % OF WORLD | COUNTRY TOTAL | WORLD TOTAL |
|---|---|---|---|---|---|
| R | 0603.10.70 | Colombia | 91.1% | $83,961,884 | $92,189,493 |
| *R | 2203.00.00 | Mexico | 19.5% | $154,288,212 | $791,701,879 |
| * | 2825.90.15 | Brazil | 0.0% | $0 | $0 |
| * | 2827.59.05 | Israel | 85.6% | $1,724,657 | $2,015,789 |
| * | 2903.59.40 | Israel | 51.1% | $202,810 | $396,817 |
| * | 2903.40.00 | Israel | 0.0% | $0 | $0 |
| * | 2918.22.10 | Turkey | 1.7% | $78,558 | $4,541,762 |
| * | 2933.40.10 | Israel | 81.6% | $615,690 | $754,282 |
| * | 4823.20.10 | Brazil | 45.6% | $112,859 | $247,594 |
| *R | 6810.11.00 | Mexico | 16.2% | $303,413 | $1,868,549 |
| * | 7113.11.90 | Thailand | 5.5% | $11,877,614 | $201,681,528 |
| * | 7113.19.50 | Thailand | 5.9% | $35,628,804 | $603,348,091 |
| * | 7113.20.50 | Thailand | 5.9% | $11,877,614 | $201,381,799 |
| * | 7202.21.10 | Brazil | 61.1% | $9,518,293 | $15,577,300 |
| *R | 7202.21.50 | Brazil | 31.0% | $28,805,743 | $90,842,826 |
| *R | 7202.30.00 | Brazil | 11.0% | $8,776,391 | $79,636,095 |
| * | 7307.21.50 | Brazil | 0.2% | $20,726 | $10,134,528 |
| * | 7307.91.50 | Brazil | 7.0% | $2,142,899 | $30,466,117 |
| * | 7323.94.00 | Mexico | 11.3% | $5,771,197 | $50,848,532 |
| * | 7604.10.30 | Venezuela | 66.7% | $11,915,394 | $17,868,040 |
| * | 7604.29.30 | Venezuela | 64.0% | $41,703,884 | $65,199,606 |
| * | 7605.11.00 | Venezuela | 68.5% | $2,978,848 | $4,346,026 |
| * | 7605.21.00 | Venezuela | 68.5% | $2,978,848 | $4,346,026 |
| | 8407.34.20 | Mexico | 21.3% | $420,298,952 | $1,976,092,099 |
| R | 8408.20.20 | Brazil | 78.3% | $141,901,412 | $181,231,452 |
| R | 8409.91.91 | Mexico | 4.4% | $36,988,457 | $846,539,914 |
| R | 8409.91.91 | Brazil | 7.7% | $64,873,769 | $846,939,914 |
| R | 8409.99.99 | Brazil | 17.0% | $45,663,123 | $267,829,671 |
| R | 8415.90.00 | Mexico | 24.4% | $43,919,129 | $179,988,045 |
| | 8471.91.00 | Mexico | 7.1% | $106,947,379 | $1,498,008,222 |
| | 8501.40.40 | Mexico | 75.2% | $88,927,125 | $118,177,703 |
| | 8504.40.00 | Mexico | 13.8% | $149,992,354 | $1,084,525,556 |
| R | 8523.20.00 | Mexico | 16.1% | $42,878,878 | $265,877,975 |
| | 8527.21.10 | Mexico | 31.6% | $348,590,091 | $1,102,009,675 |
| R | 8527.21.10 | Brazil | 7.6% | $83,676,768 | $1,102,009,675 |
| | 8536.50.00 | Mexico | 23.1% | $144,745,082 | $627,534,265 |
| | 8536.69.00 | Mexico | 21.6% | $96,757,587 | $447,147,862 |
| | 8544.30.00 | Mexico | 72.1% | $721,196,541 | $999,864,635 |
| | 8544.51.80 | Mexico | 33.7% | $130,469,806 | $387,618,489 |
| | 8708.21.00 | Mexico | 75.8% | $201,004,467 | $265,161,017 |
| | 8708.99.50 | Mexico | 5.6% | $306,876,438 | $5,500,680,107 |
| | 8708.99.50 | Brazil | 1.8% | $101,404,532 | $5,500,680,107 |
| | 8802.30.00 | Brazil | 9.8% | $107,176,797 | $1,092,953,109 |
| *R | 9401.30.40 | Yugoslavia | 20.0% | $6,735,717 | $33,729,482 |

* = PETITION GRADUATION; R = REDUCED LIMIT APPLIES; + = NEW EXCLUSION

LIST I : COUNTRIES GRADUATED OR EXCEEDING COMPETITIVE NEED LIMITS
JAN-OCT 1988

| | HTS | COUNTRY | % OF WORLD | COUNTRY TOTAL | WORLD TOTAL |
|---|---|---|---|---|---|
| + R | 9401.40.00 | Thailand | 0.9% | $384,911 | $43,115,303 |
| *R | 9401.61.40 | Yugoslavia | 19.8% | $13,535,246 | $68,435,295 |
| + R | 9401.61.60 | Thailand | 2.3% | $371,964 | $16,348,185 |
| *R | 9401.69.60 | Yugoslavia | 19.2% | $47,511,661 | $246,819,766 |
| + R | 9401.69.80 | Thailand | 2.5% | $726,870 | $29,476,316 |
| | 9401.90.10 | Mexico | 42.4% | $162,084,193 | $382,510,364 |
| +* | 9401.90.40 | Yugoslavia | 11.6% | $2,709,913 | $23,461,656 |
| + R | 9403.30.80 | Thailand | 3.4% | $14,442,192 | $430,420,719 |
| + R | 9403.40.90 | Thailand | 3.0% | $7,885,679 | $260,349,356 |
| + R | 9403.50.90 | Thailand | 0.4% | $641,822 | $167,128,683 |
| + R | 9403.60.80 | Thailand | 3.8% | $12,963,277 | $345,358,452 |

* = PETITION GRADUATION; R = REDUCED LIMIT APPLIES; + = NEW EXCLUSION

LIST II : COUNTRIES APPROACHING COMPETITIVE NEED LIMITS
JAN-OCT 1988

| | | HTS | COUNTRY | % OF WORLD | COUNTRY TOTAL | WORLD TOTAL |
|---|---|---|---|---|---|---|
| X | | 0702.00.60 | Mexico | 99.1% | $55,902,441 | $56,407,576 |
| X | | 0703.20.00 | Mexico | 63.8% | $6,796,617 | $10,657,737 |
| X | | 0707.00.20 | Mexico | 95.1% | $17,748,137 | $18,654,882 |
| X | | 0709.60.00 | Mexico | 73.7% | $44,644,829 | $60,575,973 |
| X | | 0709.90.20 | Mexico | 97.1% | $25,071,902 | $25,810,922 |
| X | | 0804.50.40 | Mexico | 80.0% | $10,162,729 | $12,706,194 |
| X | | 0807.10.20 | Mexico | 75.8% | $27,232,676 | $35,923,604 |
| X | R | 0807.10.70 | Mexico | 38.9% | $6,984,021 | $17,949,878 |
| X | | 0811.10.00 | Mexico | 82.6% | $13,792,873 | $16,701,542 |
| X | | 0813.10.00 | Turkey | 64.3% | $6,311,993 | $9,822,332 |
| | | 1102.30.00 | Thailand | 69.6% | $675,048 | $970,475 |
| | | 1103.14.00 | Thailand | 65.1% | $75,010 | $115,278 |
| X | | 1515.30.00 | Brazil | 93.5% | $22,002,740 | $23,535,540 |
| X | | 2001.90.40 | Mexico | 58.0% | $16,977,335 | $29,252,948 |
| X | | 2401.20.40 | Brazil | 51.5% | $57,261,947 | $111,188,312 |
| | | 2402.10.80 | Dominican Republic | 50.8% | $16,547,215 | $32,595,300 |
| | | 2608.00.00 | Peru | 48.9% | $10,503,635 | $21,471,856 |
| XNR | | 2804.69.10 | Brazil | 26.5% | $10,562,666 | $39,894,598 |
| | | 2915.21.00 | Mexico | 53.6% | $24,718,653 | $46,091,728 |
| X | D | 3201.90.50 | Mexico | 73.0% | $9,126,707 | $12,494,477 |
| X | R | 3703.20.30 | Brazil | 18.3% | $31,942,996 | $174,105,896 |
| | | 3903.19.00 | Mexico | 69.1% | $7,063,185 | $10,223,241 |
| X | R | 3904.10.00 | Mexico | 48.7% | $13,821,130 | $28,379,160 |
| X | R | 3904.21.00 | Mexico | 48.7% | $7,371,269 | $15,135,547 |
| X | | 3922.20.00 | Mexico | 74.0% | $8,212,280 | $11,097,058 |
| X | | 3922.90.00 | Mexico | 74.5% | $10,214,554 | $13,703,875 |
| X | | 4011.10.00 | Brazil | 6.8% | $65,467,281 | $956,816,294 |
| X | | 4104.31.80 | Argentina | 52.3% | $40,053,339 | $76,515,116 |
| X | | 4104.39.80 | Argentina | 52.3% | $8,010,664 | $15,303,040 |
| X | | 4105.20.60 | Argentina | 52.2% | $8,010,664 | $15,353,212 |
| | | 4106.20.60 | India | 77.8% | $14,812,194 | $19,030,531 |
| X | | 4107.29.60 | Argentina | 52.3% | $8,010,664 | $15,303,040 |
| X | | 4107.90.60 | Argentina | 52.3% | $8,010,664 | $15,303,040 |
| X | | 4409.10.40 | Mexico | 92.9% | $39,244,553 | $42,230,476 |
| X | R | 4411.21.00 | Brazil | 45.7% | $5,464,700 | $11,948,672 |
| X | R | 4411.29.60 | Brazil | 47.2% | $8,954,629 | $18,969,009 |
| X | | 4412.19.40 | Indonesia | 59.1% | $7,726,183 | $13,065,269 |
| X | | 4818.10.00 | Mexico | 60.9% | $11,446,901 | $18,781,447 |
| X | | 4818.20.00 | Mexico | 60.9% | $15,262,530 | $25,041,862 |
| X | | 4818.30.00 | Mexico | 60.9% | $11,446,901 | $18,781,447 |
| X | | 4818.50.00 | Mexico | 85.3% | $53,143,429 | $62,330,460 |
| X | | 4823.90.65 | Mexico | 83.5% | $49,809,335 | $59,681,428 |
| X | | 6210.10.20 | Mexico | 86.6% | $12,451,159 | $14,378,832 |
| X | | 6307.90.60 | Mexico | 86.6% | $12,451,159 | $14,378,832 |
| | R | 6702.90.60 | Thailand | 30.4% | $13,751,243 | $45,183,639 |
| | R | 6908.10.20 | Thailand | 25.8% | $3,170,880 | $12,312,410 |
| | | 7113.11.20 | Thailand | 61.7% | $4,906,412 | $7,955,466 |
| | | 7413.00.10 | Peru | 57.7% | $9,432,576 | $16,350,326 |

R = REDUCED LIMIT APPLIES; N = NOT REDESIGNATED IN LAST REVIEW
X = COUNTRY CURRENTLY INELIGIBLE FOR GSP UNDER THIS SUBHEADING
D = DENIED de MINIMIS WAIVER IN LAST REVIEW

LIST II : COUNTRIES APPROACHING COMPETITIVE NEED LIMITS
JAN-OCT 1988

| | | HTS | COUNTRY | % OF WORLD | COUNTRY TOTAL | WORLD TOTAL |
|---|---|---|---|---|---|---|
| X | R | 8414.59.80 | Mexico | 16.3% | $31,843,058 | $195,675,473 |
| X | R | 8415.82.00 | Mexico | 32.9% | $27,989,390 | $85,086,707 |
| X | R | 8415.83.00 | Mexico | 22.7% | $26,017,919 | $114,752,795 |
| X | R | 8426.99.00 | Mexico | 23.4% | $2,996,317 | $12,782,323 |
| | | 8443.19.10 | Mexico | 50.1% | $12,232,472 | $24,411,577 |
| | | 8443.19.50 | Mexico | 50.1% | $12,232,472 | $24,411,577 |
| | | 8504.10.00 | Mexico | 75.4% | $25,353,441 | $33,640,484 |
| X | R | 8505.19.00 | Mexico | 38.2% | $11,787,029 | $30,816,475 |
| | R | 8507.90.40 | Mexico | 25.8% | $3,040,147 | $11,776,455 |
| X | | 8509.90.20 | Mexico | 53.4% | $17,437,373 | $32,660,443 |
| X | R | 8523.11.00 | Mexico | 18.6% | $30,356,478 | $162,785,359 |
| X | | 9028.90.00 | Mexico | 58.0% | $5,645,807 | $9,741,541 |
| | R | 9503.90.50 | Mexico | 26.9% | $6,516,389 | $24,206,183 |
| | R | 9503.90.60 | Mexico | 8.8% | $28,883,326 | $326,866,334 |

R = REDUCED LIMIT APPLIES; N = NOT REDESIGNATED IN LAST REVIEW
X = COUNTRY CURRENTLY INELIGIBLE FOR GSP UNDER THIS SUBHEADING
D = DENIED de MINIMIS WAIVER IN LAST REVIEW

LIST III : POSSIBLE de MINIMIS ITEMS
JAN-OCT 1988

| | | HTS | COUNTRY | % OF WORLD | COUNTRY TOTAL | WORLD TOTAL |
|---|---|---|---|---|---|---|
| X | D | 0704.10.40 | Mexico | 92.6% | $867,143 | $936,519 |
| X | D | 0704.10.60 | Mexico | 96.6% | $132,560 | $137,233 |
| X | D | 0704.20.00 | Mexico | 99.2% | $1,727,325 | $1,741,028 |
| X | D | 0705.11.40 | Mexico | 97.6% | $7,734,536 | $7,921,292 |
| X | D | 0705.19.40 | Mexico | 97.6% | $859,394 | $880,146 |
| | | 0706.90.20 | Mexico | 90.6% | $3,876,475 | $4,276,418 |
| X | | 0707.00.40 | Mexico | 89.1% | $7,053,232 | $7,919,395 |
| X | R | 0708.10.40 | Mexico | 46.1% | $3,581,817 | $7,767,801 |
| | | 0708.90.05 | Turkey | 50.6% | $61,757 | $122,108 |
| | | 0708.90.15 | Turkey | 51.3% | $59,539 | $116,118 |
| | | 0708.90.30 | Dominican Republic | 98.2% | $264,713 | $269,541 |
| X | D | 0709.30.20 | Mexico | 99.4% | $2,424,826 | $2,439,712 |
| X | D | 0709.30.40 | Mexico | 98.7% | $4,384,236 | $4,441,198 |
| | | 0709.40.40 | Mexico | 66.8% | $239,301 | $358,060 |
| | | 0709.90.05 | Mexico | 62.0% | $2,250,967 | $3,630,797 |
| X | D | 0709.90.13 | Mexico | 61.7% | $1,995,054 | $3,233,336 |
| | | 0709.90.16 | Mexico | 73.3% | $2,079,472 | $2,837,421 |
| | | 0710.29.15 | Turkey | 51.3% | $14,885 | $29,028 |
| | | 0710.29.30 | Dominican Republic | 94.6% | $1,978,393 | $2,090,350 |
| X | D | 0710.80.50 | Mexico | 99.1% | $564,673 | $569,777 |
| X | D | 0711.90.60 | Mexico | 58.0% | $893,947 | $1,539,672 |
| | | 0712.90.10 | Israel | 72.4% | $898,380 | $1,240,084 |
| | | 0712.90.65 | Israel | 79.3% | $219,708 | $276,920 |
| | | 0713.20.20 | Mexico | 81.4% | $3,852,608 | $4,735,516 |
| | | 0714.20.00 | Dominican Republic | 98.8% | $1,473,338 | $1,490,680 |
| | | 0714.80.10 | Dominican Republic | 67.7% | $4,291,778 | $6,341,917 |
| | | 0714.90.20 | Jamaica | 51.2% | $3,983,695 | $7,773,204 |
| | | 0802.50.20 | Turkey | 67.3% | $2,160,412 | $3,211,696 |
| | | 0802.50.40 | Turkey | 79.8% | $1,225,908 | $1,536,584 |
| | | 0802.90.15 | Mexico | 99.5% | $1,717,820 | $1,726,773 |
| | R | 0804.50.80 | Mexico | 28.8% | $60,792 | $211,049 |
| | | 0805.90.00 | Jamaica | 54.7% | $638,341 | $1,167,235 |
| | | 0807.10.30 | Mexico | 93.0% | $6,880,493 | $7,399,109 |
| X | RD | 0810.90.40 | Mexico | 47.4% | $2,079,582 | $4,388,810 |
| | | 0811.90.55 | Guatemala | 70.5% | $545,979 | $773,997 |
| X | RD | 0813.30.00 | Argentina | 47.5% | $1,675,003 | $3,528,927 |
| | | 0910.99.40 | Mexico | 54.4% | $255,625 | $469,526 |
| X | D | 1005.90.40 | Argentina | 91.4% | $2,334,133 | $2,552,436 |
| | | 1007.00.00 | Mexico | 76.5% | $28,842 | $37,699 |
| | | 1106.30.20 | Ecuador | 97.8% | $815,200 | $833,403 |
| | | 1301.90.40 | Brazil | 99.7% | $840,710 | $843,288 |
| | | 1401.90.40 | Mexico | 52.2% | $1,259,330 | $2,410,464 |
| | | 1403.90.40 | Mexico | 52.2% | $1,259,330 | $2,411,495 |
| | | 1515.60.00 | Mexico | 72.5% | $231,947 | $319,715 |
| | | 1515.90.40 | Mexico | 72.0% | $4,406,974 | $6,119,236 |
| | | 1519.11.00 | Malaysia | 59.6% | $579,461 | $972,012 |
| | | 1521.90.20 | Brazil | 56.2% | $31,739 | $56,468 |

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LIST III : POSSIBLE de MINIMIS ITEMS
JAN-OCT 1988

| | | HTS | COUNTRY | % OF WORLD | COUNTRY TOTAL | WORLD TOTAL |
|---|---|---|---|---|---|---|
| | | 1702.90.30 | Mexico | 76.7% | $48,659 | $63,452 |
| | | 1703.10.30 | Dominican Republic | 48.6% | $2,994,900 | $6,160,365 |
| | | 1703.90.30 | Dominican Republic | 48.6% | $30,251 | $62,226 |
| | | 2005.80.00 | Thailand | 78.0% | $4,270,203 | $5,473,461 |
| X | RD | 2005.90.55 | Mexico | 51.9% | $2,025,567 | $3,903,789 |
| | | 2006.00.90 | Thailand | 47.1% | $223,502 | $474,538 |
| | | 2008.19.25 | Mexico | 99.5% | $1,717,820 | $1,726,773 |
| | | 2008.19.90 | Zimbabwe (Rhodesia | 53.8% | $454,735 | $845,855 |
| | | 2008.99.23 | Dominican Republic | 66.9% | $88,747 | $132,628 |
| | | 2208.90.05 | Trinidad and Tobag | 47.4% | $376,770 | $794,923 |
| | | 2520.20.00 | Mexico | 60.4% | $70,719 | $117,030 |
| | | 2603.00.00 | Mexico | 87.6% | $2,607,185 | $2,977,321 |
| X | D | 2620.19.60 | Mexico | 82.2% | $631,387 | $768,384 |
| X | D | 2620.20.00 | Mexico | 78.6% | $840,113 | $1,068,348 |
| X | D | 2620.30.00 | Mexico | 96.2% | $8,670,935 | $9,011,993 |
| X | | 2824.10.00 | Mexico | 98.0% | $6,464,764 | $6,598,259 |
| X | D | 2824.20.00 | Mexico | 59.7% | $402,913 | $674,390 |
| | | 2825.50.30 | Mexico | 61.2% | $1,001,061 | $1,636,991 |
| | | 2827.41.00 | Mexico | 61.2% | $200,213 | $327,396 |
| | | 2827.51.10 | Israel | 96.6% | $1,592,969 | $1,648,472 |
| | | 2827.51.20 | Israel | 78.3% | $870,416 | $1,112,142 |
| | | 2827.60.20 | India | 80.1% | $473,803 | $591,537 |
| | | 2833.26.00 | Mexico | 67.2% | $962,135 | $1,431,194 |
| | | 2835.21.00 | Mexico | 48.0% | $882,574 | $1,837,901 |
| X | RD | 2843.21.00 | Mexico | 78.1% | $3,549,189 | $4,546,592 |
| X | RD | 2843.29.00 | Mexico | 65.3% | $2,372,116 | $3,632,664 |
| | | 2905.14.00 | Mexico | 79.7% | $2,160,314 | $2,710,497 |
| | XNR | 2905.19.00 | Brazil | 24.8% | $1,696,189 | $6,840,091 |
| | | 2909.11.00 | Mexico | 48.1% | $12,908 | $26,826 |
| | XN | 2909.19.10 | Brazil | 61.4% | $5,870,411 | $9,563,364 |
| | XNR | 2915.31.00 | Brazil | 27.4% | $2,215,506 | $8,074,373 |
| X | D | 2915.39.10 | Mexico | 49.4% | $442,076 | $894,237 |
| | | 2917.35.00 | Mexico | 53.6% | $3,674,174 | $6,859,592 |
| | R | 2917.35.00 | Brazil | 38.6% | $2,645,635 | $6,859,592 |
| | | 2918.16.10 | Yugoslavia | 100.0% | $9,326 | $9,326 |
| | | 2935.00.31 | Yugoslavia | 50.5% | $3,596,664 | $7,117,929 |
| | | 2939.70.00 | India | 62.6% | $38,729 | $61,880 |
| X | D | 3203.00.50 | Mexico | 71.6% | $6,084,473 | $8,501,643 |
| | | 3206.49.30 | Mexico | 93.3% | $5,807,724 | $6,226,696 |
| X | RD | 3207.40.10 | Mexico | 33.9% | $2,726,207 | $8,037,608 |
| X | D | 3301.12.00 | Brazil | 60.8% | $3,670,387 | $6,032,915 |
| | | 3401.11.10 | Philippines | 52.1% | $723,780 | $1,389,853 |
| | | 3402.19.10 | Mexico | 56.8% | $38,863 | $68,477 |
| | | 3604.90.00 | Israel | 55.5% | $1,418,551 | $2,554,542 |
| | | 3802.90.20 | Mexico | 57.8% | $2,048,129 | $3,545,836 |
| | | 3805.10.00 | Brazil | 48.4% | $1,071,267 | $2,213,192 |
| | | 3809.10.00 | Brazil | 80.3% | $918,000 | $1,143,907 |
| | | 3823.20.00 | Trinidad and Tobag | 80.4% | $538,087 | $669,179 |
| | | 3903.11.00 | Mexico | 69.1% | $784,799 | $1,135,919 |

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LIST III : POSSIBLE de MINIMIS ITEMS
JAN-OCT 1988

| | HTS | COUNTRY | % OF WORLD | COUNTRY TOTAL | WORLD TOTAL |
|---|---|---|---|---|---|
| X RD | 3904.22.00 | Mexico | 48.7% | $1,842,818 | $3,783,881 |
| | 3909.10.00 | Israel | 53.5% | $4,910,711 | $9,184,388 |
| X D | 3922.10.00 | Mexico | 74.0% | $6,159,208 | $8,322,822 |
| R | 4409.10.60 | Mexico | 22.7% | $497,841 | $2,197,191 |
| | 4409.10.60 | Honduras | 65.9% | $1,448,703 | $2,197,191 |
| R | 4411.11.00 | Brazil | 44.1% | $694,137 | $1,573,651 |
| X RD | 4411.19.20 | Brazil | 72.4% | $568,187 | $784,504 |
| | 4412.12.15 | Brazil | 81.7% | $4,920,172 | $6,020,750 |
| | 4412.19.10 | Indonesia | 47.2% | $431,448 | $914,958 |
| | 4412.99.10 | Indonesia | 47.1% | $4,357 | $9,242 |
| X D | 4412.99.40 | Indonesia | 59.1% | $78,042 | $131,975 |
| | 4420.90.20 | Honduras | 49.7% | $211,556 | $425,666 |
| R | 4421.90.10 | Mexico | 22.7% | $331,894 | $1,464,792 |
| | 4421.90.10 | Honduras | 65.9% | $965,800 | $1,464,792 |
| | 4809.90.20 | Israel | 50.0% | $54,323 | $108,572 |
| | 4811.90.40 | Brazil | 81.6% | $379,072 | $464,414 |
| | 4816.10.00 | Brazil | 47.5% | $2,538,188 | $5,347,462 |
| | 4816.20.00 | Brazil | 48.1% | $898,853 | $1,869,980 |
| | 4816.30.00 | Brazil | 48.1% | $179,770 | $373,988 |
| X D | 5208.31.20 | India | 99.1% | $1,160,550 | $1,170,952 |
| X D | 5208.32.10 | India | 98.3% | $3,781,098 | $3,847,141 |
| X D | 5208.41.20 | India | 99.1% | $1,160,550 | $1,170,952 |
| X D | 5208.42.10 | India | 98.3% | $3,781,098 | $3,847,141 |
| X D | 5208.51.20 | India | 99.1% | $1,288,514 | $1,299,675 |
| X D | 5208.52.10 | India | 98.3% | $4,618,222 | $4,698,369 |
| | 5209.31.30 | India | 84.0% | $580,163 | $690,512 |
| | 5209.41.30 | India | 84.0% | $580,163 | $690,512 |
| | 5209.51.30 | India | 83.8% | $685,234 | $817,302 |
| | 5308.90.00 | Mexico | 47.3% | $471,972 | $998,224 |
| | 5607.10.00 | Thailand | 48.3% | $741,818 | $1,537,260 |
| | 5607.30.20 | Philippines | 59.9% | $2,919,479 | $4,871,819 |
| | 5702.20.10 | India | 73.1% | $588,000 | $804,751 |
| X D | 6405.90.20 | Mexico | 69.3% | $5,008,194 | $7,222,805 |
| R | 6802.99.00 | Mexico | 24.7% | $2,258,817 | $9,140,069 |
| | 6810.19.10 | Mexico | 84.9% | $667,847 | $787,091 |
| | 6811.10.00 | Mexico | 98.5% | $2,191,865 | $2,224,834 |
| | 6814.90.00 | India | 54.7% | $926,557 | $1,694,669 |
| | 7106.91.50 | Peru | 60.1% | $1,571,630 | $2,616,948 |
| | 7106.92.00 | Peru | 58.3% | $1,571,630 | $2,697,061 |
| | 7109.00.00 | Mexico | 68.2% | $5,938 | $8,708 |
| | 7111.00.00 | Mexico | 76.1% | $5,938 | $7,802 |
| | 7307.91.30 | Mexico | 96.0% | $1,155,268 | $1,202,854 |
| | 7319.20.00 | Malaysia | 50.6% | $1,191,802 | $2,353,866 |
| X | 7401.10.00 | Mexico | 96.2% | $496,050 | $515,728 |
| | 7409.11.10 | Yugoslavia | 73.1% | $267,677 | $366,064 |
| | 7409.19.10 | Mexico | 64.2% | $2,776,266 | $4,324,594 |
| | 7409.19.90 | Mexico | 72.8% | $4,057,820 | $5,572,159 |
| | 7505.11.50 | Mexico | 50.0% | $211,921 | $424,093 |

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LIST III : POSSIBLE de MINIMIS ITEMS
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| | HTS | COUNTRY | % OF WORLD | COUNTRY TOTAL | WORLD TOTAL |
|---|---|---|---|---|---|
| | 7505.12.50 | Mexico | 50.0% | $211,921 | $424,093 |
| | 7614.10.50 | Venezuela | 53.4% | $3,798,195 | $7,113,686 |
| | 7802.00.00 | Mexico | 60.7% | $1,551,189 | $2,555,852 |
| | 7803.00.00 | Mexico | 53.9% | $1,003,752 | $1,860,616 |
| X RD | 7903.10.00 | Mexico | 33.7% | $159,242 | $472,272 |
| X RD | 7903.90.30 | Mexico | 33.7% | $3,025,601 | $8,973,070 |
| | 8301.50.00 | Mexico | 51.1% | $1,903,502 | $3,725,126 |
| | 8302.49.20 | Mexico | 54.2% | $504,[illegible] | $931,000 |
| X D | 8501.40.50 | Mexico | 75.2% | $4,940,398 | $6,565,454 |
| X D | 8501.51.40 | Mexico | 75.2% | $3,952,316 | $5,252,354 |
| X D | 8501.51.50 | Mexico | 75.2% | $988,079 | $1,313,086 |
| X | 8535.10.00 | Mexico | 48.3% | $1,941,488 | $4,015,675 |
| | 8540.12.40 | Israel | 87.4% | $825,565 | $944,084 |
| XNR | 9025.11.20 | Brazil | 38.9% | $2,266,026 | $5,826,030 |
| | 9025.11.20 | India | 51.7% | $3,012,411 | $5,826,030 |
| | 9405.91.40 | Mexico | 70.4% | $1,152,014 | $1,635,319 |
| X RD | 9504.20.60 | Brazil | 26.5% | $1,300,139 | $4,902,709 |
| | 9506.61.00 | Indonesia | 49.6% | $1,073,504 | $2,164,911 |
| | 9603.50.00 | Mexico | 50.9% | $1,167,406 | $2,294,578 |
| | 9614.20.60 | Turkey | 72.4% | $57,949 | $80,006 |
| | 9614.20.80 | Turkey | 83.3% | $212,154 | $254,816 |

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LIST IV : POSSIBLE REDESIGNATION ITEMS
JAN-OCT 1988

| | HTS | COUNTRY | % OF WORLD | COUNTRY TOTAL | WORLD TOTAL |
|---|---|---|---|---|---|
| R | 0710.21.40 | Mexico | 0.2% | $17,483 | $7,318,640 |
| D | 0710.80.65 | Mexico | 0.0% | $0 | $0 |
| D | 0710.80.70 | Mexico | 27.9% | $415,719 | $1,490,074 |
| | 0711.40.00 | Mexico | 23.9% | $9,159 | $38,294 |
| | 1006.30.10 | Mexico | 0.0% | $0 | $0 |
| N | 1007.00.00 | Argentina | 3.4% | $1,280 | $37,699 |
| N | 1701.11.00 | Brazil | 5.4% | $16,937,905 | $313,051,852 |
| N | 1701.12.00 | Brazil | 5.1% | $1,881,989 | $36,855,132 |
| N | 1701.91.20 | Mexico | 0.0% | $0 | $0 |
| N | 1701.99.00 | Mexico | 0.6% | $10,846 | $1,694,943 |
| N | 1806.10.40 | Brazil | 0.0% | $0 | $0 |
| | 1904.90.00 | Mexico | 0.0% | $0 | $0 |
| | 2001.10.00 | Mexico | 23.9% | $906,633 | $3,791,325 |
| R | 2005.10.00 | Mexico | 11.2% | $28,229 | $253,038 |
| R | 2005.90.90 | Mexico | 20.8% | $2,794,567 | $13,465,774 |
| RD | 2007.99.50 | Brazil | 19.7% | $358,294 | $1,819,422 |
| R | 2208.90.45 | Mexico | 4.8% | $8,302,247 | $174,526,871 |
| N | 2529.22.00 | Mexico | 33.3% | $12,878,649 | $38,672,390 |
| NR | 2905.19.00 | Brazil | 24.8% | $1,696,189 | $6,840,091 |
| N | 2906.11.00 | Brazil | 25.3% | $4,349,989 | $17,196,013 |
| D | 2915.39.10 | Mexico | 49.4% | $442,076 | $894,237 |
| N | 2915.70.00 | Brazil | 0.0% | $0 | $0 |
| NR | 2916.15.50 | Brazil | 0.0% | $0 | $0 |
| N | 2916.19.50 | Brazil | 0.0% | $557 | $11,521,853 |
| | 2916.39.15 | Bahamas | 0.0% | $0 | $0 |
| NR | 2917.13.00 | Brazil | 0.0% | $0 | $0 |
| NR | 2917.14.10 | Brazil | 0.0% | $0 | $0 |
| NR | 2917.19.50 | Brazil | 0.0% | $0 | $0 |
| NR | 2918.11.10 | Brazil | 18.2% | $1,433,939 | $7,859,632 |
| | 2918.22.50 | Bahamas | 0.0% | $0 | $0 |
| | 2918.90.30 | Bahamas | 35.3% | $18,986,309 | $53,823,873 |
| | 2924.29.39 | Bahamas | 0.8% | $766,229 | $97,842,694 |
| D | 2933.19.35 | Bahamas | 35.3% | $493,151 | $1,398,023 |
| D | 2933.90.31 | Bahamas | 35.3% | $1,232,877 | $3,495,068 |
| | 3004.90.60 | Bahamas | 1.4% | $2,603,858 | $181,399,997 |
| | 3004.90.60 | Turkey | 0.0% | $8,729 | $181,399,997 |
| R | 3703.10.30 | Brazil | 17.6% | $21,295,330 | $120,993,163 |
| R | 3703.20.30 | Brazil | 18.3% | $31,942,996 | $174,105,896 |
| R | 3703.90.30 | Brazil | 0.0% | $0 | $0 |
| NR | 3823.90.40 | Brazil | 0.0% | $0 | $0 |
| R | 3921.13.50 | Mexico | 17.5% | $2,622,950 | $15,004,079 |
| | 3921.90.50 | Mexico | 3.8% | $903,028 | $23,784,634 |
| | 4011.10.00 | Brazil | 6.8% | $65,467,281 | $956,816,294 |
| | 4011.20.00 | Brazil | 3.4% | $25,638,118 | $745,380,980 |
| | 4011.40.00 | Brazil | 0.1% | $19,777 | $28,495,349 |
| | 4011.91.50 | Brazil | 3.4% | $1,841,746 | $53,838,794 |
| | 4011.99.50 | Brazil | 3.4% | $1,841,746 | $53,838,794 |
| | 4012.10.50 | Brazil | 0.3% | $19,965 | $6,235,116 |
| N | 4104.21.00 | Argentina | 25.8% | $2,635,017 | $10,204,144 |
| N | 4104.22.00 | Argentina | 24.9% | $2,635,934 | $10,593,457 |

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LIST IV : POSSIBLE REDESIGNATION ITEMS
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| | HTS | COUNTRY | % OF WORLD | COUNTRY TOTAL | WORLD TOTAL |
|---|---|---|---|---|---|
| N | 4104.29.50 | Argentina | 0.0% | $0 | $0 |
| N | 4104.29.90 | Argentina | 0.0% | $0 | $0 |
| N | 4104.31.50 | Argentina | 0.0% | $0 | $0 |
| | 4104.31.60 | Argentina | 31.4% | $30,031,711 | $95,653,656 |
| N | 4104.39.50 | Argentina | 0.0% | $0 | $0 |
| | 4104.39.60 | Argentina | 35.8% | $30,714,077 | $85,693,723 |
| D | 4106.12.00 | India | 40.5% | $1,809,000 | $4,471,201 |
| D | 4106.19.00 | India | 40.4% | $1,809,492 | $4,482,619 |
| D | 4106.20.30 | India | 40.3% | $1,863,819 | $4,619,236 |
| | 4109.00.70 | Argentina | 40.5% | $8,683,095 | $21,436,789 |
| N | 4411.19.40 | Brazil | 40.9% | $1,758,265 | $4,295,699 |
| N | 4411.29.90 | Brazil | 44.3% | $2,449,062 | $5,522,799 |
| RD | 5607.30.20 | Mexico | 12.2% | $592,631 | $4,871,819 |
| NR | 6406.10.65 | Brazil | 10.1% | $14,543,517 | $143,928,481 |
| | 6406.99.60 | Argentina | 44.4% | $11,315,238 | $25,489,598 |
| N | 6905.10.00 | Mexico | 32.7% | $2,133,710 | $6,532,976 |
| R | 6909.19.10 | Mexico | 0.1% | $29,175 | $21,140,371 |
| NR | 6910.10.00 | Brazil | 17.1% | $8,017,951 | $46,975,206 |
| N | 6910.10.00 | Mexico | 43.8% | $20,557,402 | $46,975,206 |
| NR | 6910.90.00 | Brazil | 10.0% | $574,044 | $5,742,383 |
| N | 6910.90.00 | Mexico | 18.3% | $1,048,733 | $5,742,383 |
| NR | 6911.90.00 | Brazil | 2.0% | $374,918 | $18,510,596 |
| N | 6911.90.00 | Mexico | 4.5% | $833,762 | $18,510,596 |
| N | 6912.00.44 | Brazil | 8.5% | $7,197,594 | $84,221,883 |
| RD | 7004.10.20 | Mexico | 0.8% | $27,913 | $3,408,348 |
| N | 7113.19.21 | Israel | 1.1% | $105,706 | $9,740,621 |
| N | 7113.20.21 | Israel | 1.1% | $11,746 | $1,082,298 |
| R | 7114.11.70 | Mexico | 1.2% | $90,572 | $7,536,765 |
| R | 7114.20.00 | Mexico | 1.3% | $143,294 | $10,650,901 |
| RD | 7115.90.20 | Mexico | 1.1% | $45,341 | $4,032,801 |
| | 7116.10.10 | Thailand | 25.5% | $51,988,961 | $203,900,597 |
| | 7116.20.10 | Thailand | 25.4% | $51,991,841 | $204,735,000 |
| N | 7202.11.10 | Mexico | 28.6% | $7,632,617 | $26,667,385 |
| N | 7202.19.50 | Mexico | 28.6% | $2,544,206 | $8,889,133 |
| RD | 7314.19.00 | Mexico | 19.1% | $2,140,661 | $11,237,000 |
| N | 7320.10.00 | Mexico | 13.6% | $24,284,265 | $178,804,369 |
| N | 7320.20.10 | Mexico | 13.6% | $1,278,120 | $9,410,787 |
| R | 7402.00.00 | Mexico | 6.3% | $10,960,468 | $174,869,371 |
| N | 7403.11.00 | Peru | 3.6% | $9,678,527 | $270,145,462 |
| N | 7403.11.00 | Zambia | 0.0% | $0 | $0 |
| N | 7403.12.00 | Peru | 3.6% | $7,258,897 | $202,609,115 |
| N | 7403.12.00 | Zambia | 0.0% | $0 | $0 |
| N | 7403.13.00 | Peru | 3.6% | $4,839,264 | $135,072,730 |
| N | 7403.13.00 | Zambia | 0.0% | $0 | $0 |
| N | 7403.19.00 | Peru | 3.6% | $2,419,632 | $67,536,382 |
| N | 7403.19.00 | Zambia | 0.0% | $0 | $0 |
| N | 7403.21.00 | Peru | 28.1% | $1,780,256 | $6,327,772 |

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LIST IV : POSSIBLE REDESIGNATION ITEMS
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| | HTS | COUNTRY | % OF WORLD | COUNTRY TOTAL | WORLD TOTAL |
|---|---|---|---|---|---|
| N | 7403.21.00 | Zambia | 0.0% | $0 | $0 |
| N | 7403.22.00 | Peru | 28.1% | $890,129 | $3,163,888 |
| N | 7403.22.00 | Zambia | 0.0% | $0 | $0 |
| N | 7403.23.00 | Peru | 28.1% | $1,335,193 | $4,745,835 |
| N | 7403.29.00 | Peru | 20.4% | $445,064 | $2,183,607 |
| N | 7403.29.00 | Zambia | 0.0% | $0 | $0 |
| N | 7608.10.00 | Brazil | 0.8% | $24,544 | $2,931,477 |
| N | 7608.20.00 | Brazil | 0.8% | $77,508 | $9,205,286 |
| N | 7609.00.00 | Brazil | 0.8% | $25,836 | $3,092,531 |
| D | 8406.11.90 | Israel | 23.1% | $661,620 | $2,868,787 |
| D | 8406.19.90 | Israel | 23.1% | $661,620 | $2,868,787 |
| D | 8406.90.90 | Israel | 23.1% | $882,160 | $3,825,041 |
| N | 8407.32.20 | Brazil | 1.9% | $299,528 | $15,840,148 |
| | 8407.32.20 | Mexico | 27.1% | $4,289,208 | $15,840,148 |
| N | 8407.33.20 | Brazil | 2.5% | $281,416 | $11,268,739 |
| | 8407.33.20 | Mexico | 38.1% | $4,288,908 | $11,268,739 |
| N | 8407.34.20 | Brazil | 1.4% | $26,745,174 | $1,976,092,099 |
| | 8408.10.00 | Brazil | 0.1% | $36,938 | $50,306,851 |
| R | 8408.20.90 | Brazil | 10.9% | $15,734,183 | $143,741,958 |
| R | 8408.90.90 | Brazil | 10.9% | $15,734,183 | $143,741,958 |
| | 8409.91.92 | Brazil | 0.0% | $0 | $0 |
| R | 8409.91.92 | Mexico | 9.8% | $9,498,768 | $96,784,141 |
| R | 8409.91.99 | Brazil | 0.9% | $1,265,531 | $138,823,699 |
| R | 8409.91.99 | Mexico | 4.4% | $6,086,878 | $138,823,699 |
| R | 8409.99.91 | Brazil | 9.3% | $14,880,646 | $159,969,262 |
| R | 8409.99.92 | Brazil | 0.0% | $0 | $0 |
| | 8430.31.00 | Brazil | 0.0% | $15,888 | $25,336,815 |
| | 8430.39.00 | Brazil | 0.0% | $3,170 | $8,460,764 |
| | 8411.91.90 | Brazil | 0.0% | $97,017 | $952,525,384 |
| R | 8411.99.90 | Brazil | 0.0% | $147,656 | $379,639,298 |
| R | 8414.51.00 | Mexico | 1.6% | $7,786,250 | $479,557,946 |
| R | 8414.59.80 | Mexico | 16.3% | $31,843,058 | $195,675,473 |
| R | 8414.60.00 | Mexico | 20.6% | $674,853 | $3,275,064 |
| R | 8414.90.10 | Mexico | 6.4% | $6,710,660 | $105,299,437 |
| R | 8415.10.00 | Mexico | 2.7% | $5,558,648 | $207,216,730 |
| R | 8415.81.00 | Mexico | 16.9% | $7,400,698 | $43,863,653 |
| R | 8415.83.00 | Mexico | 22.7% | $26,017,919 | $114,752,795 |
| N | 8419.11.00 | Israel | 0.9% | $36,394 | $4,252,760 |
| N | 8419.19.00 | Israel | 3.3% | $912,917 | $27,543,907 |
| N | 8419.90.10 | Israel | 3.4% | $100,087 | $2,902,941 |
| R | 8421.23.00 | Brazil | 1.9% | $1,249,996 | $65,453,110 |
| R | 8421.23.00 | Mexico | 1.0% | $625,634 | $65,453,110 |
| R | 8421.31.00 | Brazil | 2.4% | $1,124,170 | $46,433,224 |
| R | 8421.31.00 | Mexico | 0.9% | $440,575 | $46,433,224 |
| N | 8424.20.10 | Mexico | 38.4% | $8,865,303 | $23,084,533 |
| N | 8424.90.10 | Mexico | 38.4% | $985,036 | $2,564,979 |
| | 8425.20.00 | Mexico | 0.3% | $12,494 | $4,121,867 |
| R | 8425.31.00 | Mexico | 9.4% | $1,641,650 | $17,480,023 |
| R | 8425.41.00 | Mexico | 0.3% | $78,922 | $24,153,038 |
| R | 8425.42.00 | Mexico | 1.6% | $986,236 | $60,357,151 |

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LIST IV : POSSIBLE REDESIGNATION ITEMS
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| | HTS | COUNTRY | % OF WORLD | COUNTRY TOTAL | WORLD TOTAL |
|---|---|---|---|---|---|
| R | 8426.12.00 | Mexico | 18.8% | $3,510,774 | $18,668,783 |
| R | 8426.19.00 | Mexico | 12.2% | $2,194,233 | $18,012,124 |
| R | 8426.20.00 | Mexico | 18.8% | $5,266,158 | $28,003,169 |
| R | 8426.30.00 | Mexico | 18.8% | $4,388,466 | $23,336,047 |
| R | 8426.41.00 | Mexico | 18.8% | $2,194,233 | $11,668,015 |
| R | 8426.49.00 | Mexico | 18.8% | $2,194,233 | $11,668,015 |
| R | 8426.91.00 | Mexico | 18.5% | $4,388,466 | $23,720,822 |
| R | 8426.99.00 | Mexico | 23.4% | $2,996,317 | $12,782,323 |
| R | 8428.10.00 | Mexico | 0.1% | $6,476 | $7,402,543 |
| R | 8428.20.00 | Mexico | 0.0% | $11,162 | $59,296,405 |
| | 8428.31.00 | Mexico | 0.1% | $5,291 | $8,643,293 |
| | 8428.32.00 | Mexico | 0.0% | $1,361 | $4,347,390 |
| | 8428.33.00 | Mexico | 0.2% | $34,758 | $21,214,927 |
| | 8428.39.00 | Mexico | 0.0% | $5,016 | $44,824,496 |
| R | 8428.40.00 | Mexico | 0.1% | $4,317 | $4,935,028 |
| R | 8428.50.00 | Mexico | 18.8% | $4,388,466 | $23,336,047 |
| R | 8428.60.00 | Mexico | 18.8% | $1,316,540 | $7,000,811 |
| R | 8428.90.00 | Mexico | 14.7% | $11,848,861 | $80,834,629 |
| R | 8429.11.00 | Brazil | 6.5% | $5,654,919 | $87,113,394 |
| R | 8429.19.00 | Brazil | 6.5% | $883,584 | $13,611,493 |
| R | 8429.20.00 | Brazil | 6.5% | $2,650,744 | $40,834,421 |
| R | 8429.30.00 | Brazil | 6.5% | $883,584 | $13,611,493 |
| R | 8429.40.00 | Brazil | 6.5% | $1,413,730 | $21,778,342 |
| | 8429.51.50 | Brazil | 1.0% | $1,730,706 | $175,885,601 |
| R | 8429.52.50 | Brazil | 6.5% | $2,120,597 | $32,667,527 |
| R | 8429.59.50 | Brazil | 6.5% | $1,413,730 | $21,778,342 |
| R | 8430.10.00 | Brazil | 6.5% | $353,433 | $5,444,588 |
| R | 8430.20.00 | Brazil | 6.5% | $883,584 | $13,611,493 |
| R | 8430.41.00 | Brazil | 1.3% | $176,713 | $13,561,439 |
| R | 8430.49.80 | Brazil | 2.8% | $176,713 | $6,335,350 |
| R | 8430.50.50 | Brazil | 6.5% | $353,433 | $5,444,588 |
| R | 8430.61.00 | Brazil | 6.5% | $176,713 | $2,722,294 |
| R | 8430.62.00 | Brazil | 6.5% | $176,713 | $2,722,294 |
| R | 8430.69.00 | Brazil | 6.5% | $353,433 | $5,444,588 |
| R | 8431.10.00 | Mexico | 2.8% | $2,519,634 | $89,291,068 |
| R | 8431.31.00 | Mexico | 17.0% | $7,662,774 | $45,164,001 |
| R | 8431.39.00 | Mexico | 2.6% | $3,629,876 | $136,997,265 |
| R | 8431.41.00 | Brazil | 3.6% | $15,277,080 | $425,118,097 |
| R | 8431.42.00 | Brazil | 3.6% | $7,638,545 | $212,559,254 |
| R | 8431.43.80 | Brazil | 3.6% | $1,273,096 | $35,426,620 |
| R | 8431.49.10 | Mexico | 6.1% | $3,343,435 | $54,647,210 |
| R | 8431.49.90 | Brazil | 3.3% | $1,273,096 | $38,430,283 |
| R | 8465.94.00 | Brazil | 0.5% | $241,772 | $50,599,210 |
| | 8465.94.00 | Mexico | 0.3% | $132,023 | $50,599,210 |
| | 8470.40.00 | Mexico | 7.1% | $13,566,207 | $190,287,857 |
| | 8471.20.00 | Mexico | 7.7% | $57,363,428 | $749,190,325 |
| | 8471.99.30 | Mexico | 15.4% | $1,288,875 | $8,380,741 |
| N | 8473.21.00 | Mexico | 1.1% | $641,875 | $59,296,679 |
| N | 8473.29.00 | Mexico | 1.1% | $213,964 | $19,765,663 |
| N | 8473.30.80 | Mexico | 1.2% | $3,446,068 | $279,293,364 |

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| | HTS | COUNTRY | % OF WORLD | COUNTRY TOTAL | WORLD TOTAL |
|---|---|---|---|---|---|
| | 8473.40.20 | Mexico | 0.0% | $0 | $0 |
| | 8473.40.40 | Mexico | 0.0% | $0 | $0 |
| R | 8479.10.00 | Brazil | 0.5% | $1,128,260 | $236,129,427 |
| | 8479.10.00 | Mexico | 0.3% | $616,089 | $236,129,427 |
| R | 8479.30.00 | Brazil | 0.5% | $805,901 | $168,864,154 |
| | 8479.30.00 | Mexico | 0.3% | $440,064 | $168,864,154 |
| R | 8479.81.00 | Brazil | 0.5% | $1,128,260 | $236,129,427 |
| | 8479.81.00 | Mexico | 0.3% | $616,089 | $236,129,427 |
| R | 8479.82.00 | Brazil | 0.5% | $1,208,852 | $252,995,956 |
| | 8479.82.00 | Mexico | 0.3% | $660,099 | $252,995,956 |
| R | 8479.89.70 | Brazil | 0.0% | $0 | $0 |
| | 8479.89.70 | Mexico | 0.0% | $0 | $0 |
| R | 8479.89.90 | Brazil | 0.4% | $1,208,852 | $305,288,480 |
| | 8479.89.90 | Mexico | 0.2% | $660,099 | $305,288,480 |
| R | 8479.90.40 | Brazil | 0.0% | $0 | $0 |
| R | 8479.90.80 | Brazil | 0.0% | $0 | $0 |
| R | 8483.10.10 | Brazil | 7.0% | $8,934,272 | $127,599,572 |
| R | 8483.10.10 | Mexico | 4.3% | $5,548,843 | $127,599,572 |
| R | 8483.10.30 | Brazil | 6.9% | $7,135,906 | $103,900,117 |
| | 8501.20.40 | Mexico | 0.7% | $169,211 | $22,944,434 |
| | 8501.20.50 | Mexico | 0.7% | $8,905 | $1,207,641 |
| | 8501.31.40 | Mexico | 14.9% | $12,563,709 | $84,134,384 |
| | 8501.31.50 | Mexico | 15.1% | $661,251 | $4,377,507 |
| | 8501.31.80 | Mexico | 0.1% | $1,906 | $3,071,992 |
| | 8501.32.60 | Mexico | 0.3% | $9,358 | $3,466,766 |
| | 8501.33.60 | Mexico | 0.3% | $4,738 | $1,623,059 |
| | 8501.34.60 | Mexico | 0.0% | $0 | $0 |
| | 8501.61.00 | Mexico | 0.3% | $14,266 | $5,196,240 |
| | 8501.62.00 | Mexico | 0.3% | $14,370 | $5,128,792 |
| | 8501.63.00 | Mexico | 0.1% | $2,284 | $1,594,113 |
| | 8501.64.00 | Mexico | 0.0% | $14,080 | $81,224,603 |
| | 8502.11.00 | Mexico | 0.0% | $0 | $0 |
| | 8502.12.00 | Mexico | 0.0% | $0 | $0 |
| | 8502.13.00 | Mexico | 0.0% | $0 | $0 |
| | 8502.20.00 | Mexico | 0.0% | $26,367 | $63,473,559 |
| | 8502.30.00 | Mexico | 0.0% | $9,790 | $101,537,134 |
| | 8502.40.00 | Mexico | 26.5% | $9,903,412 | $37,429,076 |
| | 8503.00.60 | Mexico | 17.8% | $45,347,635 | $254,630,228 |
| | 8504.50.00 | Mexico | 45.7% | $60,697,242 | $132,752,746 |
| | 8504.90.00 | Mexico | 16.5% | $30,001,705 | $181,399,848 |
| N | 8507.30.00 | Mexico | 21.9% | $53,499,869 | $244,332,798 |
| N | 8507.40.00 | Mexico | 2.5% | $111,837 | $4,476,039 |
| N | 8507.80.80 | Mexico | 2.6% | $559,194 | $21,880,862 |
| N | 8507.90.80 | Mexico | 2.5% | $447,353 | $17,571,124 |
| | 8511.10.00 | Mexico | 1.5% | $957,492 | $65,422,186 |
| | 8511.20.00 | Mexico | 4.9% | $511,924 | $10,529,046 |
| | 8511.30.00 | Mexico | 3.9% | $1,157,687 | $30,049,131 |
| | 8511.40.00 | Mexico | 2.9% | $4,110,052 | $140,087,487 |
| | 8511.50.00 | Mexico | 19.6% | $29,956,123 | $152,629,730 |
| | 8511.80.60 | Mexico | 5.0% | $2,559,618 | $50,757,796 |

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|---|---|---|---|---|---|
| | 8511.90.60 | Mexico | 5.5% | $7,026,029 | $128,290,781 |
| | 8512.40.40 | Brazil | 0.0% | $0 | $0 |
| N | 8512.90.70 | Mexico | 41.0% | $1,806,205 | $4,401,244 |
| | 8512.90.90 | Brazil | 0.0% | $0 | $0 |
| | 8512.90.90 | Mexico | 0.0% | $0 | $0 |
| N | 8516.90.60 | Mexico | 41.0% | $15,352,716 | $37,410,230 |
| | 8519.91.00 | Brazil | 0.0% | $0 | $0 |
| | 8519.91.00 | Mexico | 0.3% | $267,984 | $94,615,012 |
| | 8519.99.00 | Brazil | 0.0% | $0 | $0 |
| R | 8523.11.00 | Mexico | 18.6% | $30,356,478 | $162,785,359 |
| R | 8523.12.00 | Mexico | 8.7% | $2,672,273 | $30,851,986 |
| R | 8523.13.00 | Mexico | 2.1% | $12,360,008 | $600,106,096 |
| R | 8523.90.00 | Mexico | 16.1% | $4,763,995 | $29,542,037 |
| | 8527.11.11 | Brazil | 0.0% | $0 | $0 |
| | 8527.11.11 | Mexico | 0.0% | $22,750 | $265,487,016 |
| R | 8527.31.40 | Brazil | 0.0% | $90,875 | $685,031,371 |
| | 8527.31.40 | Mexico | 0.6% | $4,093,022 | $685,031,371 |
| | 8534.00.00 | Mexico | 2.5% | $13,336,998 | $538,535,330 |
| | 8535.10.00 | Mexico | 48.3% | $1,941,488 | $4,015,675 |
| | 8535.21.00 | Mexico | 1.6% | $77,841 | $4,904,401 |
| | 8535.29.00 | Mexico | 0.0% | $0 | $0 |
| | 8535.30.00 | Mexico | 17.6% | $3,948,937 | $22,445,693 |
| | 8535.40.00 | Mexico | 18.1% | $8,665,944 | $47,935,943 |
| | 8535.90.00 | Mexico | 17.9% | $11,750,179 | $65,596,625 |
| | 8536.10.00 | Mexico | 28.1% | $11,154,867 | $39,717,865 |
| | 8536.20.00 | Mexico | 18.3% | $14,247,469 | $77,923,337 |
| | 8536.30.00 | Mexico | 16.8% | $8,968,096 | $53,264,513 |
| | 8536.41.00 | Mexico | 19.8% | $31,152,137 | $157,494,736 |
| | 8536.49.00 | Mexico | 15.3% | $8,491,471 | $55,583,591 |
| | 8536.61.00 | Mexico | 38.5% | $6,504,644 | $16,885,299 |
| | 8536.90.00 | Mexico | 12.1% | $22,131,434 | $182,502,250 |
| | 8537.10.00 | Mexico | 15.5% | $43,267,950 | $278,853,832 |
| | 8537.20.00 | Mexico | 16.4% | $35,015,972 | $213,230,014 |
| | 8538.10.00 | Mexico | 18.1% | $25,997,818 | $143,807,378 |
| | 8538.90.00 | Mexico | 18.1% | $25,997,818 | $143,835,416 |
| | 8539.10.00 | Mexico | 35.6% | $13,486,832 | $37,929,863 |
| R | 8539.90.00 | Mexico | 7.0% | $3,480,642 | $49,626,500 |
| | 8543.10.00 | Mexico | 0.0% | $0 | $0 |
| R | 8543.20.00 | Mexico | 7.0% | $6,961,284 | $99,252,975 |
| R | 8543.30.00 | Mexico | 3.6% | $3,612,665 | $100,225,710 |
| R | 8543.80.90 | Mexico | 6.8% | $23,615,872 | $348,586,958 |
| R | 8543.90.80 | Mexico | 7.0% | $19,491,561 | $277,941,106 |
| | 8544.20.00 | Mexico | 19.4% | $8,706,822 | $44,996,241 |
| | 8544.41.00 | Mexico | 29.6% | $26,093,958 | $88,138,512 |
| N | 8544.51.40 | Mexico | 15.6% | $2,809,108 | $17,980,351 |
| | 8544.60.20 | Mexico | 33.7% | $8,697,985 | $25,841,359 |
| N | 8547.90.00 | Brazil | 0.1% | $5,887 | $7,502,828 |
| R | 8548.00.00 | Mexico | 7.0% | $11,834,171 | $169,735,146 |
| N | 8605.00.00 | Mexico | 25.1% | $306,986 | $1,221,027 |
| N | 8606.10.00 | Mexico | 25.1% | $613,970 | $2,442,051 |

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| | HTS | COUNTRY | % OF WORLD | COUNTRY TOTAL | WORLD TOTAL |
|---|---|---|---|---|---|
| N | 8606.20.00 | Mexico | 25.1% | $613,970 | $2,442,051 |
| N | 8606.30.00 | Mexico | 25.1% | $1,227,941 | $4,884,099 |
| N | 8606.91.00 | Mexico | 25.1% | $2,148,897 | $8,547,177 |
| N | 8606.92.00 | Mexico | 25.1% | $613,970 | $2,442,051 |
| N | 8606.99.00 | Mexico | 25.1% | $613,970 | $2,442,051 |
| | 8708.10.00 | Brazil | 0.5% | $1,651,576 | $308,890,269 |
| | 8708.10.00 | Mexico | 0.1% | $204,137 | $308,890,269 |
| | 8708.21.00 | Brazil | 0.0% | $14,721 | $265,161,017 |
| | 8708.29.00 | Brazil | 0.5% | $1,635,756 | $347,455,199 |
| | 8708.29.00 | Mexico | 6.6% | $22,807,094 | $347,455,199 |
| | 8708.31.50 | Brazil | 6.4% | $38,489,311 | $605,322,620 |
| | 8708.31.50 | Mexico | 3.7% | $22,127,343 | $605,322,620 |
| | 8708.39.50 | Brazil | 5.9% | $15,957,817 | $271,823,846 |
| | 8708.39.50 | Mexico | 8.3% | $22,548,415 | $271,823,846 |
| | 8708.40.10 | Brazil | 0.0% | $70,690 | $405,382,763 |
| | 8708.40.10 | Mexico | 0.3% | $1,078,018 | $405,382,763 |
| | 8708.40.20 | Brazil | 0.1% | $982,618 | $781,884,406 |
| | 8708.40.20 | Mexico | 0.1% | $949,147 | $781,884,406 |
| | 8708.40.50 | Brazil | 13.8% | $16,780,748 | $121,395,743 |
| | 8708.40.50 | Mexico | 5.8% | $6,993,872 | $121,395,743 |
| | 8708.50.50 | Brazil | 1.9% | $1,078,163 | $57,345,763 |
| | 8708.50.50 | Mexico | 5.6% | $3,232,863 | $57,345,763 |
| | 8708.50.80 | Brazil | 3.5% | $1,078,163 | $30,457,358 |
| | 8708.50.80 | Mexico | 10.6% | $3,232,863 | $30,457,358 |
| | 8708.60.50 | Brazil | 3.5% | $1,078,163 | $30,457,358 |
| | 8708.60.50 | Mexico | 10.6% | $3,232,863 | $30,457,358 |
| | 8708.60.80 | Brazil | 1.7% | $440,691 | $26,043,113 |
| | 8708.60.80 | Mexico | 0.2% | $51,725 | $26,043,113 |
| | 8708.70.80 | Brazil | 4.2% | $18,328,822 | $436,388,482 |
| | 8708.70.80 | Mexico | 2.4% | $10,518,458 | $436,388,482 |
| | 8708.80.50 | Brazil | 2.9% | $3,402,608 | $116,172,432 |
| | 8708.80.50 | Mexico | 0.5% | $557,837 | $116,172,432 |
| | 8708.91.50 | Brazil | 0.2% | $328,212 | $145,918,886 |
| | 8708.91.50 | Mexico | 21.4% | $31,273,780 | $145,918,886 |
| | 8708.93.50 | Brazil | 1.9% | $1,115,838 | $58,977,365 |
| | 8708.93.50 | Mexico | 6.1% | $3,600,018 | $58,977,365 |
| | 8716.90.50 | Brazil | 4.3% | $2,877,709 | $67,440,073 |
| | 8716.90.50 | Mexico | 6.9% | $4,673,789 | $67,440,073 |
| N | 9008.90.40 | Mexico | 0.6% | $80,434 | $12,432,440 |
| N | 9009.90.00 | Mexico | 0.4% | $2,728,237 | $773,522,053 |
| | 9013.20.00 | Mexico | 0.0% | $0 | $0 |
| N | 9018.39.00 | Mexico | 25.9% | $20,849,442 | $80,510,798 |
| | 9021.90.80 | Mexico | 0.0% | $0 | $0 |
| N | 9025.19.00 | Mexico | 14.1% | $4,184,778 | $29,590,289 |
| | 9113.10.00 | Thailand | 0.0% | $0 | $0 |
| NR | 9303.30.40 | Brazil | 3.1% | $27,720 | $893,039 |
| | 9401.20.00 | Mexico | 23.9% | $41,033,975 | $178,837,642 |
| | 9403.40.60 | Mexico | 0.0% | $0 | $0 |
| | 9403.50.60 | Mexico | 0.0% | $0 | $0 |
| | 9403.90.10 | Mexico | 9.1% | $2,051,701 | $22,518,460 |

R = REDUCED LIMIT APPLIES; N = NOT REDESIGNATED IN LAST REVIEW
W = COMPETITIVE NEED LIMITS WAIVED
D = DENIED de MINIMIS WAIVER IN LAST REVIEW

LIST IV : POSSIBLE REDESIGNATION ITEMS
JAN-OCT 1988

| | HTS | COUNTRY | % OF WORLD | COUNTRY TOTAL | WORLD TOTAL |
|---|---|---|---|---|---|
| R | 9405.10.80 | Mexico | 7.0% | $696,127 | $9,925,292 |
| R | 9405.20.80 | Mexico | 7.0% | $696,127 | $9,925,292 |
| R | 9405.40.80 | Mexico | 7.0% | $696,127 | $9,925,292 |
| N | 9405.91.20 | Mexico | 28.2% | $7,033,363 | $24,914,966 |
| R | 9508.00.00 | Brazil | 0.5% | $80,591 | $16,866,462 |
| | 9508.00.00 | Mexico | 0.3% | $44,008 | $16,866,462 |
| R | 9613.80.20 | Mexico | 7.0% | $696,127 | $9,936,466 |
| R | 9613.90.40 | Mexico | 7.0% | $696,127 | $9,925,292 |

R = REDUCED LIMIT APPLIES; N = NOT REDESIGNATED IN LAST REVIEW
W = COMPETITIVE NEED LIMITS WAIVED
D = DENIED de MINIMIS WAIVER IN LAST REVIEW

[FR Doc. 89-4855 Filed 3-1-89; 8:45 am]
BILLING CODE 3190-01-C

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## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### Applications of Trans Continental Airlines, Inc. for Certificate of Authority Under Subpart Q

**AGENCY:** Department of Transportation.

**ACTION:** Notice of order to show cause, (Order 89-2-46) Dockets 45908 and 45909.

**SUMMARY:** The Department of Transportation is directing all interested persons to show cause why it should not issue orders finding Trans Continental Airlines, Inc. fit, and awarding it certificates of public convenience and necessity to engage in domestic and foreign charter air transportation of persons and property.

**DATE:** Persons wishing to file objections should do so no later than March 14, 1989.

**ADDRESSES:** Objections and answers to objections should be filed in Dockets 45908 and 45909 and addressed to the Documentary Services Division (C-55, Room 4107), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

**FOR FURTHER INFORMATION CONTACT:** Delores King, Air Carrier Fitness Division (P-56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-2343.

Dated: February 27, 1989.

**Patrick V. Murphy, Jr.,**

*Deputy Assistant Secretary for Policy and International Affairs.*

[FR Doc. 89-4890 Filed 3-1-89; 8:45 am]

BILLING CODE 4910-62-M

### Fitness Determination of Pocono Airlines, Inc., Trans World Express

**AGENCY:** Department of Transportation.

**ACTION:** Notice of commuter air carrier fitness determination—order 89-2-47, order to show cause.

**SUMMARY:** The Department of Transportation is proposing to find Pocono Airlines, Inc. d/b/a Trans World Express (as reorganized) fit, willing, and able to provide commuter air service under section 419(d)(2) of the Federal Aviation Act.

Responses: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Air Carrier Fitness Division, P-56, Department of Transportation, 400 Seventh Street, SW., Room 6401, Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than March 6, 1989.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Kathy L. Cooperstein, Air Carrier Fitness Division (P-56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-9721.

Dated: February 27, 1989.

**Patrick V. Murphy, Jr.,**

*Deputy Assistant Secretary for Policy and International Affairs.*

[FR Doc. 89-4891 Filed 3-1-89; 8:45 am]

BILLING CODE 4910-62-M

## Federal Aviation Administration

### Air Traffic Control Tower; Commissioning

Notice is hereby given that on May 15, 1989, through September 30, 1989, the airport traffic control tower at the Martha's Vineyard Airport, Martha's Vineyard, Massachusetts, will be commissioned as a part-time Federal Aviation Administration (FAA) facility. Tower hours of operation will be established in advance by a Notice to Airmen, and thereafter published in the Airman's Information Manual. The designated facility identification for the FAA airport control tower will be: VINEYARD TOWER.

This information will be reflected in the FAA organization statement.

Communications to the tower should be directed to: Mr. Edwin S. Askew, Manager, Cape Hub, Federal Aviation Administration, Airport Traffic Control Tower, RFD, Martha's Vineyard Airport, Box 31, Vineyard Haven, Massachusetts 02568 (Telephone No. (617) 693-1170).

(49 U.S.C. 1348 and 1354(a); 49 USC 106(g) (Revised Pub. L. 97-449 (January 12, 1983)))

**James I. Lucas,**

*Manager, Air Traffic Division, New England Region.*

[FR Doc. 89-4834 Filed 3-1-89; 8:45 am]

BILLING CODE 4910-13-M

## DEPARTMENT OF THE TREASURY

### Public Information Collection Requirements Submitted to OMB for Review

Dated: February 24, 1989.

The Department of Treasuary has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

**Interal Revenue Service**

*OMB Number:* New.
*Form Number:* None.
*Type of Review:* New Collection.
*Title:* Focus Group Interviews Concerning IRS Television Commercials.
*Description:* The group interviews are necessary to evaluate how the television commercials are communicating to the public, assess their effect on IRS image and assess their ability to motivate consumers to file promplty or use the tax assistance program. The results will provide guidance for further development of the commercials. Affected public is 90 participants.
*Respondents:* Individuals or households.
*Estimated Number of Respondents:* 90.
*Estimated Burden Hours Per Response:* 2 hours.
*Frequency of Response:* One-time interviews.
*Estimted Total Recordkeeping/ Reporting Burden:* 180 hours.
*Clearance Officer:* Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
*OMB Reviewer:* Milo Sunderhauf (202) 395-6880, Office of Management and Budget Room 3001, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports, Management Officer.*

[FR Doc. 89-4804 Filed 3-1-89; 8:45 am]

BILLING CODE 4910-25-M

### Public Information Collection Requirements Submitted to OMB for Review

Dated: February 24, 1989.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this

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information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

**Comptroller of the Currency**

*OMB Number:* 1557–0140.
*Form Number:* None.
*Type of Review:* Extension.
*Title:* OCC Salary Survey of National Banks.
*Description:* Two questionnaires are used to solicit pertinent salary program information from national banks who voluntarily participate in the salary survey. The information developed is used to help administer the OCC Compensation Program salary schedule and merit pay plan.
*Respondents:* Businesses or other for-profit.
*Estimated Number of Respondents:* 166.
*Estimated Burden Hours Per Response:* 2 hours.
*Frequency of Response:* Annually.
*Estimated Total Reporting Burden:* 332 hours.
*Clearance Officer:* John Ference, (202) 447–1177, Comptroller of the Currency, 5th Floor, L'Enfant Plaza, Washington, DC 20219.
*OMB Reviewer:* Gary Waxman, (202) 395–7340, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**
*Departmental Reports Management Officer.*
[FR Doc. 4805 Filed 3–1–89; 8:45 am]
BILLING CODE 4810-25-M

**Public Information Collection Requirements Submitted to OMB for Review**

Dated: February 4, 1989.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

**Internal Revenue Service**

*OMB Number:* New.
*Form Number:* None.
*Type of Review:* New Collection.
*Title:* Survey to Evaluate the IRS Understanding Taxes Program.
*Description:* The data collected will be used to evaluate the usefulness and effectiveness of the Teacher's Resource Package requested by teachers to teach students about taxes.
*Respondents:* Individuals or households.
*Estimated Number of Respondents:* 570.
*Estimated Burden Hours Per Response:* 20 minutes.
*Frequency of Response:* One-time survey.
*Estimated Total Recordkeeping/ Reporting Burden:* 190 hours.
*OMB Number:* 1545–0788.
*Form Number:* None.
*Type of Review:* Extension.
*Title:* Employers' Qualified Educational Assistance Programs.
*Description:* The affected public includes employers who maintain educational assistance programs and their employees. The employer must set forth the terms of the program in a separate written plan. Eligible employees must be given notification of the terms and availability of the program. Employees may be required to substantiate eligibility to receive benefits.
*Respondents:* Individuals or households, Businesses or other for-profit, Small businesses or organizations.
*Estimated Number of Respondents:* 200.
*Estimated Burden Hours Per Response/ Recordkeeping:* 1 hour.
*Frequency of Response:* Annually.
*Estimated Total Recordkeeping/ Reporting Burden:* 615 hours.
*Clearance Officer:* Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
*OMB Reviewer:* Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**
*Departmental Reports, Management Officer.*
[FR Doc. 89–4806 Filed 3–1–89; 8:45 am]
BILLING CODE 4810-25-M

**Public Information Collection Requirements Submitted to OMB for Review**

Date: February 24, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

**Bureau of the Public Debt**

*OMB Number:* 1535–0068.
*Form Number:* None.
*Type of Review:* Reinstatement.
*Title:* Regulations Governing Book-Entry Treasury Bonds, Notes and Bills.
*Description:* The information is needed to establish an investor's Treasury security account; to dispose of securities upon the owner's request; and to determine entitlement to securities. The information will be used for those purposes. Respondents will be primarily individuals, although there may be some organizations and public bodies.
*Respondents:* Individuals or households, State or local governments, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations.
*Estimated Number of Respondents:* 75,000.
*Estimated Burden Hours Per Response:* 12 minutes.
*Frequency of Response:* On occasion.
*Estimated Total Reporting Burden:* 15,000.
*Clearance Officer:* Nancy Veret (202) 376–3902, Bureau of the Public Debt, Room 445, 999 E Street NW., Washington, DC 20226.
*OMB Reviewer:* Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**
*Departmental Reports, Management Officer.*
[FR Doc. 89–4807 Filed 3–1–89; 8:45 am]
BILLING CODE 4810-25-M



# Sunshine Act Meetings

Federal Register
Vol. 54, No. 40
Thursday, March 2, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**FEDERAL ELECTION COMMISSION**

**PREVIOUSLY ANNOUNCED DATE AND TIME:** Thursday, March 2, 1989, 10:00 a.m.

By direction of the Federal Election Commission, the Open Meeting scheduled for March 2, 1989 is cancelled.

**DATE AND TIME:** Tuesday, March 7, 1989, 2:00 p.m.

**PLACE:** 999 E. Street, NW., Washington, DC.

**STATUS:** This meeting will be closed to the public.

**ITEMS TO BE DISCUSSED:**

Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

**DATE AND TIME:** Thursday, March 9, 1989, 10:00 a.m.

**PLACE:** 999 E. Street, NW., Washington, DC. (Ninth Floor).

**STATUS:** This meeting will be open to the public.

**MATTERS TO BE DISCUSSED:**

Setting of Dates for Future Meetings.
Correction and Approval of Minutes.
Certification for Payment of 1988 Primary Matching Funds.
Explanation and Justification of the Regulation Governing Trade Association Solicitation of Parent and Subsidiary Corporations: 11 CFR 114.8(f)
Final Audit Report on Pete du Pont for President.
Legislative Recommendations
Administrative Matters

**PERSON TO CONTACT FOR INFORMATION:** Mr. Fred Eiland, Information Officer, Telephone: 202–376–3155.

**Marjorie W. Emmons,**
*Secretary of the Commission.*
[FR Doc. 89–4977 Filed 2–28–89; 12:14 pm]
BILLING CODE 6715-01-M

**FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS**

**TIME AND DATE:** 10:00 a.m., Wednesday, March 8, 1989.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: February 28, 1989.

**Jennifer J. Johnson,**
*Associate Secretary of the Board.*
[FR Doc. 89–5000 Filed 2–28–89; 2:41 p.m.]
BILLING CODE 6210-01-M

**NUCLEAR REGULATORY COMMISSION**

**DATE:** Monday, March 6, 1989.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:**

*Monday, March 6*

10:00 a.m.
Briefing on Operator Training (Public Meeting)
2:30 p.m.
Briefing on Status of Generic Issues (Public Meeting)

Note.—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

**TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING):** (301) 492–0292.

**CONTACT PERSON FOR MORE INFORMATION:** William Hill (301) 492–1661.

**William M. Hill, Jr.,**
*Office of the Secretary.*
[FR Doc. 89–4986 Filed 2–28–89; 2:23 pm]
BILLING CODE 7590-01-M

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# Corrections

Federal Register
Vol. 54, No. 40
Thursday, March 2, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Parts 510 and 520

### Oral Dosage Form New Animal Drugs Not Subject to Certification; Dichlorophene and Toluene Capsules

*Correction*

In rule document 89-3382 beginning on page 6658 in the issue of Tuesday, February 14, 1989, make the following correction:

On page 6658, in the 3rd column, under **SUPPLEMENTARY INFORMATION**, in the 10th and the 11th lines, "21 CFR 250.580(b)(1)" should read "21 CFR 520.580(b)(1)".

BILLING CODE 1505-01-D

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. 89M-0003]

### Collagen Corp.; Premarket Approval of Alveoform™ Biograft

*Correction*

In notice document 89-3493 beginning on page 6967 in the issue of Wednesday, February 15, 1989, make the following correction:

On page 6967, in the third column, under **SUMMARY**, in the sixth line, "Alveoform™" should read "Alveoform™".

BILLING CODE 1505-01-D

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Assistant Secretary for Housing—Federal Housing Commissioner

### 24 CFR Part 840

[Docket No. R-88-1356; FR-2385]

### Supportive Housing Demonstration Program

*Correction*

In rule document 88-14288 beginning on page 23898 in the issue of Friday, June 24, 1988, make the following correction:

**§ 840.5 [Corrected]**

On page 23905, in the third column, in § 840.5, in the definition for "*Operating costs*", under "(d)", in the third line, after "does" insert "not".

BILLING CODE 1505-01-D

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Public Health Service

### National Toxicology Program, Board of Scientific Counselor's Meeting

*Correction*

In notice document 89-4190, appearing on page 7887, in the issue of Thursday, February 23, 1989, make the following correction:

The date that appears in the 9th and 10th lines of the first paragraph should read " March 14, 1989".

BILLING CODE 1505-01-D

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 20

### Migratory Bird Hunting on Federal Indian Reservations and Ceded Lands

*Correction*

In proposed rule document 89-4447 beginning on page 8221 in the issue of Monday, February 27, 1989, make the following correction:

On page 8221, in the third column, under **FOR FURTHER INFORMATION CONTACT**, the sixth line should read, "[Telephone (703) 358-1714]."

BILLING CODE 1505-01-D

federal register

Thursday
March 2, 1989

Part II

# Department of Transportation

### Office of the Secretary

### Federal Highway Administration

### 49 CFR Part 24

### Uniform Relocation Assistance and Real Property Acquisition Regulations for Federal and Federally Assisted Programs; Final Rule and Notice

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 24

[FHWA Docket No. 87-22]

RIN 2125-AB 85

**Uniform Relocation Assistance and Real Property Acquisition Regulations for Federal and Federally Assisted Programs**

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: This regulation establishes a governmentwide single rule for the implementation of statutory amendments to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (the Uniform Act) made by the Uniform Relocation Act Amendments of 1987 Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (1987 Amendments), Pub. L. 100-17, 101 Stat. 246-250. The Uniform Act applies to all Federal or federally assisted activities that involve the acquisition of real property or the displacement of persons, including displacements caused by rehabilitation and demolition activities. This regulation is intended to ensure that the implementation of the Uniform Act by Federal agencies is, in fact, as uniform and consistent as possible, while encouraging State and local discretion in implementing the Uniform Act's provisions.

DATE: This regulation is effective March 2, 1989. Further information concerning agency implementation is provided below.

FOR FURTHER INFORMATION CONTACT: F.D. Luckow, Chief, Program Requirements Division, Office of Right-of-Way, HRW-10, (202) 366-0116; or Reid Alsop, Office of the Chief Counsel, HCC-40, (202) 366-1371. The address is Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

**Background**

This regulation is the final step in the development of a governmentwide single rule for implementing the Uniform Act. The background of this development is described in considerable detail in the preamble to the interim final rule issued on December 17, 1987 (52 FR 47904), and the Notice of Proposed Rulemaking (NPRM), issued on July 21, 1988 (53 FR 27598), and is not repeated here.

On February 27, 1985, a Presidential Memorandum was signed and published in the Federal Register on March 5, 1985 (50 FR 8953), naming the Department of Transportation (DOT) as the agency with lead responsibility for the Uniform Act. This led to the publication of a multi-agency governmentwide common rule on February 27, 1986 (51 FR 7000).

The 1987 Amendments named the DOT as lead agency. The Secretary of the Department of Transportation has delegated this responsibility to the Federal Highway Administration (FHWA). The 1987 Amendments require the lead agency, in coordination with other Federal agencies, to issue rules, establish procedures and make interpretations to implement provisions of the Uniform Act.

**Implementation of the 1987 Amendments**

On Tuesday, May 19, 1987 (52 FR 18768) the FHWA issued a Notice describing significant changes in the law and general plans to implement those changes. On Tuesday, December 1, 1987 (52 FR 45667) the FHWA issued a Notice of Regulatory Intent giving further notice of the specific regulatory actions that it and the other affected Federal agencies would take to implement the 1987 Amendments.

A few provisions of the 1987 Amendments upon which the law is explicit and allows for little, if any, administrative discretion or interpretation, and for which a period of public notice and comment would have been impractical, were implemented in an interim final rule in Part 24 issued by FHWA (52 FR 47904), on December 17, 1987.

On the same day (52 FR 48015) 17 Federal Departments and agencies that administer the Uniform Act, and had adopted the governmentwide common rule, published interim final rules rescinding the governmentwide common rule from the codification of their regulations and adopting in its place a cross-reference to the governmentwide single regulation published by FHWA at 49 CFR Part 24. The effective date for these agency rescissions and cross references varied, however all such actions were to take effect on or before April 2, 1989, the date the 1987 Amendments become mandatory.

An eighteenth Federal Department, the Department of Housing and Urban Development (HUD), was unable to join the other Federal agencies in publishing an interim final rescission and cross referencing action on December 17, 1987, because of its need to first satisfy certain Congressional review obligations. HUD subsequently published such an interim rule on February 19, 1988 (53 FR 4984).

As discussed in the preamble to the NPRM, no comments were received that objected to the use of the rescission and cross-referencing actions by the various Federal agencies concerned to establish a governmentwide single regulation. The only relevant comment objected to the effective date of HUD's rescission and cross-referencing action. HUD considered that comment but does not believe it is feasible to change the date for administrative reasons, in order to best achieve a smooth transition to the new requirements of the 1987 Amendments.

The objective of the February 27, 1985 Presidential memorandum, and one of the primary goals of the 1987 Amendments, was to establish governmentwide uniformity so as to eliminate the differences and inconsistencies among Federal agencies that had plagued Federal implementation of the Uniform Act since its enactment in 1971. These differences and inconsistencies had been particularly burdensome to State and local governments that were administering a variety of Federal programs, and also, in some cases, resulted in differences in the benefits provided to persons in like circumstances.

The 1987 Amendments clearly provide that a single Federal lead agency will promulgate a governmentwide single rule for the Uniform Act's implementation. Accordingly, other Federal agencies covered by the Act no longer have independent statutory authority to promulgate their own separate Uniform Act regulations and, in implementing the Uniform Act, must follow the regulations published by the lead agency. The Uniform Act is unique in that it imposes requirements directly upon a large number of Federal and Federally assisted programs, but assigns the authority for the publication of all necessary implementing regulations to one lead agency. (Of course, such regulations will continue to be developed with the participation of HUD and other Federal agencies).

Accordingly, because a governmentwide single regulation is required by law, because of the unique nature of the Uniform Act, because no comments were received, and because no useful purpose would be served by having 18 Federal agencies take additional regulatory action to formally finalize their rescission and cross-reference actions, the interim rescission and cross-reference actions taken by such agencies should henceforth be considered final, and will remain in effect indefinitely.

Those departments and agencies, and the parts of the Code of Federal Regulations which contain a cross reference to this part, are listed below:

Department of Agriculture, 7 CFR Part 21
Department of Commerce, 15 CFR Part 11
Department of Defense, 32 CFR Part 259
Department of Education, 34 CFR Part 15
Department of Energy, 10 CFR Part 1039
Environmental Protection Agency, 40 CFR Part 4
Federal Emergency Management Agency, 44 CFR Part 25
General Services Administration, 41 CFR Part 105-51
Department of Health and Human Services, 45 CFR Part 15
Department of Housing and Urban Development, 24 CFR Part 42
Department of the Interior, 41 CFR Part 114-50
Department of Justice, 41 CFR Part 128-18
Department of Labor, 29 CFR Part 12
National Aeronautics and Space Administration, 14 CFR Part 1208
Pennsylvania Avenue Development Corporation, 36 CFR Part 904
Tennessee Valley Authority, 18 CFR Part 1306
Veterans Administration, 38 CFR Part 25

The United States Postal Service will incorporate changes in its full-text regulation at 39 CFR Part 777 to make it consistent with this rule and will publish its final rule on or before April 2, 1989 in the Federal Register.

**Implementation Dates**

This final rule replaces the December 17, 1987 interim final rule that was contained in 49 CFR Part 24. As is discussed further below, this final rule is basically the same as the interim final rule except for the addition of provisions implementing those sections of the 1987 Amendments that were not implemented in the interim final rule. This final rule is the last regulatory step in the implementation of the 1987 Amendments. The preamble to the interim final rule noted that "a final rule will replace this interim final rule prior to the date the 1987 Amendments become mandatory".

The rescission and cross reference actions taken by the agencies listed above provided for some differences in the dates when each agency would implement 49 CFR Part 24. (However all the agencies will adopt Part 24 on or before April 2, 1989, the date on which the 1987 Amendments become mandatory). Agency implementation of this final rule is therefore governed by the implementation dates for implementing 49 CFR Part 24 contained in the various agency's December 17, 1987 rescission and cross reference actions. Generally those actions provide that direct Federal projects, undertaken by a Federal agency itself, will comply with Part 24, and that federally assisted projects would comply with Part 24 if the recipient of the Federal financial assistance was able to comply, except that all programs funded by the Department of Housing and Urban Development and the Environmental Protection Agency would not comply with Part 24 until April 2, 1989.

As was the case with the interim final rule, nothing in this rule prohibits the retroactive payment of any additional benefits provided by this rule. Whether to provide any such benefits retroactively depends entirely on an agency's discretion and funding authorities.

**Comments Received in Response to the NPRM**

On Thursday, July 21, 1988 (53 FR 27598) the FHWA issued a NPRM for the purpose of developing a comprehensive, governmentwide single rule for the uniform and consistent implementation of the Uniform Act, as amended.

The major changes made by the 1987 amendments include:

—Expansion of the Uniform Act coverage to include virtually all activities that receive Federal funds, including those undertaken by private entities.

—A moderate increase in benefit levels.

—The establishment of a lead agency to issue a governmentwide single implementing regulation.

—Providing that the computation of certain relocation benefits be done in accordance with the lead agency regulations, rather than prescribing the computation method in the statute.

—Granting States greater flexibility and discretion in implementing the provisions of the Uniform Act.

All members of the public affected by relocation or land acquisition activities undertaken or funded by Federal agencies were encouraged to comment on this NPRM. Comments from interested State and local governments were particularly requested.

The NPRM was a "full text" rule primarily as a convenience to the reader. Comments were specifically requested and desired on changes stemming from the 1987 Amendments. Numerous commenters however took the opportunity to again express an opinion on certain issues that were addressed in the governmentwide common rule or in the governmentwide single interim final rule. As such, comments were exhaustively dealt with in the preambles to those rules (51 FR 7000 and 52 FR 8015) respectively; they are not repeated in this rulemaking.

A description of the regulatory changes proposed for this part were set forth in the NPRM. The only major changes proposed were those required by enactment of the 1987 Amendments. Where no such changes were required, the provisions of the governmentwide common rule, as modified by the December 17, 1987 interim final rule, were generally repeated in the proposed rule. That is, the proposed rule was basically the same as the common interim final rule with the exception of those additional changes that were considered necessary to fully implement the 1987 Amendments. Comments were invited on both those non-discretionary changes that were adopted in the December 17, 1987, interim final rule and the remaining changes proposed in the NPRM.

In furtherance of the statutory objective of securing the views of State and local governments and the public in the promulgation of these regulations, the FHWA conducted three public meetings during the comment period following publication of the proposed rule.

Dates for the meetings were August 17, 1988 in Philadelphia, Pennsylvania, August 22 in Portland, Oregon and August 24 in Chicago, Illinois.

The purpose of these meetings was to receive comments on the proposed rule from interested parties. These comments are entered in FHWA Docket No. 87-22 and have been given full consideration in the development of the final rule.

In response to the July 21, 1988 Federal Register publication, there were a total of 120 comments received at the docket, including those received at the 3 public meetings. These 120 comments represent 101 different organizations or persons: 31 State highway administrations, 4 other State level agencies, 19 local public agencies, 7 private parties, 5 public interest groups, 4 consultants, and 31 associations. Most of the associations represented utilities and were concerned primarily with their new responsibilities as acquiring agencies under the Act or with § 24.307, dealing with discretionary utility relocation payments. Comments received from several organizations involved in the rural electric cooperative industry relating to acquisition activities claimed a significant economic impact on the industry. However, careful analysis of the comments indicates that because of their unfamiliarity with the provisions of the Uniform Act, the

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respondents have misunderstood certain of the requirements of the regulation.

Great care and attention have been given to these comments and as most of the apparent questions concern real property acquisition requirements, these comments have been extensively considered and discussed in § 24.101 (b) and (c) of this preamble.

There is no basis for expecting that reasonable compliance with this regulation as required by the 1987 Amendments will impose exceptional additional expenditures on the part of the members of the rural electric cooperative industry. A number of unnecessary administrative requirements found in earlier regulations have been eliminated with a consequent reduction in the burden on affected entities. Other requirements have been reduced or modified to further the goals of efficient and cost effective implementation of the Uniform Act.

More than 1,200 specific comments were received. Many of the comments were directed at provisions in the current governmentwide common rule, for which no changes were proposed in the NPRM, or provisions which are specifically determined by the statute. A large number of comments were general statements, or questions, regarding a section or subsection which required no change in the regulation but which are addressed in the appropriate section discussion following in this preamble.

A number of respondents had questions about operational details which cannot be addressed in the rule itself. FHWA will, however, respond to these and other concerns in forthcoming technical advisories and similar instructive memoranda.

Except as related to a few specific provisions, which are addressed at the appropriate places in the preamble, the vast majority of the public comments dealt more with clarification of interpretation than with substantive matters.

Some commenters suggested different wording or rearranging certain paragraphs within the rule itself. While a certain amount of such editorial refinement has been done when it was necessary for clarity, the FHWA recognizes that the basic format, as well as most of the specific provisions of this rulemaking were articulated in the governmentwide common rule, and acquiring and displacing agencies have become familiar with the existing format. To avoid confusion, we therefore have not made wholesale changes in format or location of the respective provisions in this rule merely for editorial preference.

Some comments suggested changes that are precluded by statute; however, we are cognizant of the concerns expressed in such comments. We are interested in the experiences gained by persons and agencies as they operate within the framework of this regulation, and will consider legislative changes, if necessary.

In addition, an early draft of the NPRM, the NPRM itself, and a draft of this final rule were each circulated to affected Federal agencies for their review and comment. Further, a number of meetings were held with representatives of interested Federal agencies. Many useful comments were provided during this process. We were particularly assisted by the time and expertise provided by HUD.

All comments were reviewed and appropriate changes to the proposed rule were made. A description of the substantive changes from the proposed rule follows. Other changes not affecting content were made for clarity or readability.

**Section-by-Section Analysis**

Subpart A—General

*Section 24.1 Purpose*

Paragraph (c) was proposed to establish efficient and cost effective implementation as one of the primary purposes of this regulation. Two of the three comments on the paragraph commended the inclusion of the paragraph while the other indicated misgivings that, without a definition or explanation of the intent of the paragraph, it may appear to some agencies that cost savings are more important than providing the assistance or protection due an owner or displaced person. This paragraph has been included in the final regulation to emphasize the Federal concern that State and local agencies not be burdened with unnecessary regulatory requirements in the implementation of the Uniform Act. For this reason, the NPRM preamble discussion of this paragraph called attention to the waiver provision of § 24.7 and its use to avoid unnecessary delay or administrative burdens. The waiver provision, in turn, is explicit regarding two major considerations. The first is that the Federal agency, before waiving any requirement, must determine that the waiver does not reduce any assistance or protection provided to an owner or displaced person under this regulation. The second is that any request for a waiver shall be justified on a case-by-case basis. While FHWA does not interpret case-by-case to mean, necessarily, a parcel-by-parcel basis, neither does it encompass the waiver of a requirement on a program-wide scope. The broader the scope of the waiver, the more carefully the Federal agency must weigh its effect on the assistance and protection to be provided an owner or displaced person.

*Section 24.2 Definitions*

*Section 24.2(a) Agency.* There were several comments on this paragraph and as a result the paragraph on lead agency has been removed and is now a separate paragraph (§ 24.2) within the definitions.

Other respondents suggested deletions, expansions, or other changes in the remaining definitions. However, the definitions are taken from the statute and they remain unchanged. As explained in the preamble of the NPRM published in the **Federal Register** July 21, 1988, the term "Agency" is generally used throughout this part to encompass all entities subject to the Uniform Act.

*Section 24.2(d) Comparable replacement dwelling.* Comments were received from five entities concerning the definition of the term "comparable replacement dwelling." The term and its definition originate in the Uniform Act and the 1987 Amendments, as stated in the preamble of the NPRM. The terms "comparable style of living" and "functionally equivalent," taken together, mean that the comparable replacement dwelling selected for computing the replacement housing payment is located in the same, or same type of, residential development as the acquired dwelling, on a site typical in size for that development; is the same type of dwelling, i.e., single-family for single family, apartment for apartment, etc.; and provides the same or similar amenities within the dwelling. For example, if the displaced person entertains large groups frequently and the acquired dwelling is arranged to accommodate this living style, then the replacement comparable house should also be capable of being arranged in this fashion.

This does not, however, require strict and absolute adherence to an exhaustive, detailed, feature-by-feature comparison. A mechanistic approach is not required. Reasonable trade-offs can be made. These should reflect the range of purposes for which the various features of the replacement dwelling may be used. Additional discussion about this subject can be found in the appendix.

*Section 24.2(d)(8)(i).* A recommendation was received to change the word "paid" to "offered" in describing the replacement housing payment provided to a 180-day owner-occupant. We have retained the current wording because the computation of the full price differential, as described in § 24.401(c), is limited to the lesser of the amount needed for purchase of a comparable replacement dwelling or the actual dwelling purchased.

*Section 24.2(d)(8)(ii).* This section has been revised to clarify that the utility costs for replacement rental housing will be based on estimated average monthly utility costs because the actual utility costs will not be available. For additional clarification of the issue of utility costs refer to the discussion in this preamble for § 24.402(b), Rental assistance payment.

Eight comments were received about the use of 30 percent of the gross monthly income for determining the financial means of displaced tenants. In accordance with the discussion in the preamble of the NPRM, FHWA examined this issue carefully before revising § 24.2(d)(8) and § 24.402 Replacement housing payment for 90-day occupants. The use of 30 percent of gross monthly income for all tenants, to meet the statutory requirement that the income of a low-income tenant be considered when computing a rental assistance payment, is still considered to be the most equitable, practical, and appropriate method. It is similar to the method used by many agencies such as State highway agencies prior to the Common Rule. Additional discussion of this issue is to be found in this preamble for § 24.402(b) Rental assistance payment.

*Section 24.2(d)(8)(iii).* Eleven comments were received about the possible eligibility of a less than 90-day occupant for a replacement housing payment under Housing of last resort. Most objected to this eligibility.

Persons who are in occupancy at the time of the initiation of negotiations, but who do not meet the length of occupancy requirements in §§ 24.401 or 24.402, are displaced persons and are entitled to advisory assistance and moving payments. They may, also, be entitled to rental assistance under housing of last resort provisions if comparable rental replacement housing is not available at a rent not greater than 30 percent of the person's gross monthly household income. This section provides financial means standards for a class of displaced persons heretofore called "subsequent occupants." When section 205 was amended in 1987, section 205(c)(3) was revised to require assurances that a person shall not be required to move from a dwelling unless the person has had a reasonable opportunity to relocate to a comparable replacement dwelling. Since an occupant of less than 90 days is a displaced person, the necessary criteria for providing a comparable replacement dwelling was developed. The use of the financial means criteria assure that the displaced person will participate in the cost of a comparable replacement dwelling to the maximum extent of his or her financial capability. In response to another comment, FHWA also addressed the appropriate use of the income of those receiving public assistance. If they receive an amount designated for shelter and utilities, then that is the amount that should be used in determining the displaced person's financial means.

*Section 24.2(e) Contribute materially.* Four comments were received about this definition. Two recommended that all the criteria would have to be present for the business to contribute materially to the income of a displaced person. This is clearly not the case. One preferred that the displacing agency be authorized to develop alternative criteria. This definition has remained as written. FHWA considers that sufficient flexibility has been permitted in the definition of "contribute materially" to accommodate unusual circumstances.

*Section 24.2(f) Decent, safe, and sanitary dwelling.* Two comments were received concerning the addition of "cooling" to the requirement for heating. If cooling is determined to be as critical as heating for a particular State or area, a displacing agency may, in a uniform manner, require that an adequate cooling system be provided in a comparable replacement dwelling.

*Section 24.2(g)(2)(iv) Persons not displaced.* The NPRM specifically requested comments on § 24.2(g)(2)(iv) as to whether certain tenants who are affected by HUD funded rehabilitation activities should be considered "displaced persons." Such tenants are those who are not required to move permanently because of the federally funded physical alteration of their dwelling units, or a change in the unit's ownership, but whose rents are increased following completion of the rehabilitation activities, resulting in the tenants moving elsewhere. The NPRM proposed that such tenants would not be included in the definition of "displaced person" if the other conditions included in § 24.2(g)(2)(iv) were satisfied. These conditions included the opportunity to lease and occupy another dwelling unit in the same building or complex (without regard to the amount of rent charged) and the payment of any temporary relocation costs.

Twenty-two comments were received on this subject. Seven recommended that these tenants be covered. Eight recommended the addition of a further condition mentioned in the NPRM, to provide that, so long as the tenant is offered an opportunity to rent a decent, safe, and sanitary dwelling for the same amount as the tenant paid before the rehabilitation project, or 30 percent of the household's gross income, whichever is greater, such tenant would not be considered a displaced person. Two commenters recommended retaining the language in the NPRM. Three commenters generally opposed considering such tenants as displaced persons. Finally, two comments concerned technical matters.

HUD recommended that this section be deleted from the regulation, but suggested that it could be covered in HUD's various program regulations so that coverage could be tailored to each affected HUD program. HUD continues to believe that these tenants are not covered by the Uniform Act because the rental increase that prompts their move is, in HUD's view, not a direct result of rehabilitation. However, HUD has indicated its willingness and desire to treat the financial hardship faced by such persons on a program-by-program basis, and to deal specifically with this issue in developing new regulations implementing its several programs assisting residential rehabilitation.

Since this issue affects only HUD funded activities, we believe that HUD's views should be given great weight. Accordingly, this section has been revised to include language similar to that contained in § ____2(f)(2)(iii) of the common governmentwide rule. This would not preclude HUD from providing assistance to such persons in their various program regulations.

*Section 24.2(g)(2)(viii).* At the request of one Federal agency, we have changed the term "sells" to "conveys" in § 24.2(g)(2)(viii). Occasionally, Federal agencies acquire land through exchanges or other agreements that are not technically "sales."

*Section 24.2(k) Initiation of negotiations.* Several respondents commented on this section. Since it is not practical to try to identify what specifically constitutes the initiation of negotiations for each and every Federal, or federally assisted program, the definition must be somewhat generic. Nonetheless, the intent and purpose is reasonably clear. The prefatory paragraph addresses those situations in which specific Federal program regulations define the meaning of initiation of negotiations for that

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program. For the bulk of the acquisition on Federal, or federally assisted programs, projects, or activities, the proposed definition is sufficient. We have added a definition of Notice of intent to acquire or notice of eligibility for relocation assistance, at § 24.2(o), which should help to clarify the meaning of initiation of negotiations and its relationship to entitlements under the Uniform Act. The two controlling points in this set of circumstances are the action or actions of the agency and the action of the displaced person. There must be a clear, legitimate and reasonable causal connection between the two. For example, a tenant moving on the basis of having learned his landlord had applied for a rehabilitation loan would not establish the tenant's eligibility for benefits.

*Section 24.2(l) Lead agency.* The definition of "lead agency" was inserted at this point in the definitions, and the following preamble discussion refers to the new section numbers for the definition in question.

*Section 24.2(n) Nonprofit organization.* The definition was revised to recognize that a non-profit organization must, in addition to having tax-exempt status under the Internal Revenue Code, be appropriately incorporated under the laws of a State as a non-profit organization.

*Section 24.2(o) Notice of intent to acquire or notice of eligibility for relocation assistance.* This added definition was discussed under § 24.2(k). The purpose of a notice of this nature is to clearly establish a displaced person's eligibility for relocation benefits. However, it should be understood that the absence of such a notice does not deprive the person of eligibility for relocation benefits. The Federal funding agency, within its own program or project requirements, should develop a procedure for the timely delivery of such notices to persons to be displaced, including those affected by activities undertaken prior to the commitment of Federal financial assistance to the activity.

*Section 24.2(p) Programs or projects.* In response to comments from two Federal agencies the definition of "project" has been revised. Because of the multiplicity of Federal and federally assisted programs and projects, a single definition must necessarily be extremely general. Each Federal agency will continue to have responsibility for identifying its programs and projects that are covered by the Uniform Act.

*Section 24.2(t) Small business.* A number of respondents commented on the definition of "small business." Specific comment on the 500 employee threshold was solicited and the responses ranged from one recommending a change to a dollar volume criterion; two recommending 20 employees; three recommending 50 employees; four recommending 100 employees; one recommending 250; one respondent recommended the threshold be eliminated and the payment be available to any and all businesses; two indicated concern, but had no threshold number; and ten indicated agreement with the 500 employee threshold. FHWA's use of a 500 employee threshold for a small business is in accordance with the Small Business Administration's current definition of small businesses. Since the purpose of the definition is to facilitate the application of the small business criterion to the eligibility requirements for business re-establishment payments, the definition remains unchanged except for the addition of the requirement that there must be at least one employee at the affected site.

*Section 24.2(y) Unlawful occupancy.* The definition of "unlawful occupancy" has been changed slightly to clarify its applicability. One commenter mentioned that local custom, type of tenancy and type of facility may dictate different practices in terms of dealing with unlawful occupants. This has been addressed in the modified language. The main point of the other substantive comments received on this definition actually dealt with the relationship of this provision to § 24.206, Eviction for cause. As these two provisions deal with basic eligibility issues, displacing agencies should be especially aware of the interrelationship. In response to comments, changes have been made in the eviction for cause provision which is discussed below at § 24.206. While the intent of this provision is to generally proscribe certain types of occupants, such as squatters, from eligibility for relocation payments, displacing agencies are permitted some discretion where specific circumstances may warrant a finding that the occupancy is lawful.

*Section 24.2(z) Utility costs.* There were eight comments on this paragraph, five recommended the addition of the cost of trash removal to utility costs. Due to the wide variance in local practices for trash removal ranging from "haul your own" to free government services, FHWA has not modified the definition of utility costs. All costs now included are generally furnished by public agencies.

*Section 24.4 Assurances, monitoring and corrective action*

*Section 24.4(a) Assurances.* Six comments were received on this section. One comment about the procedures for monitoring local public agencies conducting highway projects is more appropriately considered under the FHWA's program guidance. Two commenters were concerned about the effect of the regulatory language on their current procedures and practices. One agency also asked that the requirement for a "specific reference to any State law which the Agency believes provides an exception to section 301 or 302 of the Uniform Act" be deleted and, in its place, the lead agency request each State Attorney General to provide an opinion as to exceptions permissible under State law. This would, then, be provided to each State agency; presumably by the lead agency.

We believe the section on Assurances reflects the intent of sections 210 and 305 of the Uniform Act; provides reasonable uniformity for all Federal agencies; and should not impose any significant or time-consuming burden on those agencies with respect to the approval of a State agency's assurances. Neither the Uniform Act, nor this regulation, dictates the length (sentence, paragraph, or page) of a State agency's assurances. The Uniform Act requires that assurances be "satisfactory" and this regulation requires that assurances be "appropriate," and in accordance with sections 210 and 305, for displacing and acquiring agencies respectively. The Federal funding agency determines that the assurances meet these requirements.

Since it is likely that some State agencies may operate under statutes which could provide them with exceptions not available to other State agencies, we believe it necessary for the individual State agencies, on their own behalf, to identify any State law which provides them with an exception to section 301 or 302 of the Uniform Act.

One commenter may have misunderstood the relationship between the assurances and Subpart C, Certification, as well as the nature of the assurances. The assurances should not be viewed as an alternative to certification. If anything, it is the other way around and, even then, the certification must address the requirements of the Uniform Act covered by the assurances if the certifying State agency intends to assume those responsibilities. The assurances are, therefore, fundamental and it is anticipated that most State agencies will initially provide



assurances to ensure compliance with the Uniform Act rather than seek approval of a certification application. A State agency must provide these assurances, or obtain a certification, as set forth in both the Act and regulation, as a condition of receiving Federal financial assistance.

However, in response to a concern of the Department of Agriculture, agencies who acquire under the procedures for voluntary transactions, or persons without the power of eminent domain, will not be required to certify under section 305 of the Uniform Act. Any agency that displaces persons will have to provide assurances or be certified for compliance with section 210 of the Act.

The purpose for providing exceptions to the real property acquisition procedures in § 24.101(a) is to make it clear that not all acquisitions are subject to the requirements of Subpart B of this regulation. The section is intended to describe circumstances which would exclude specific acquisitions from the application of the regulation; it is not intended to provide the basis for the exclusion of an entire agency program.

*Section 24.5 Manner of Notice*

Two comments were received on this section, which is unchanged from previous requirements in both the Common and the Interim Final Rules. One comment approved of the requirement and the other comment suggested that the notice to the owner of the Agency's interest in acquiring property described in § 24.102(b) also be personally served or sent by certified or registered first class mail. No change has been made.

*Section 24.6 Administration of Jointly-funded Projects.*

Two comments were received on this section, which is essentially unchanged from previous requirements, except for the addition of the statutory responsibility of the lead agency to designate a cognizant agency in the absence of agreement between Federal agencies. Neither comment addressed this change and no further change has been made.

*Section 24.7 Federal Agency Waiver of Regulations*

Two comments were received which were specifically related to this section. One noted approval of the provisions as written, the second asked for some examples of a proper justification, or some basis upon which to make a decision. This section has already been discussed in general in connection with comments on § 24.1. Because of the great variety of situations which may make seeking a waiver advisable, we do not believe it practical to provide examples. Examples have a tendency to be both limiting and, conversely, to serve as unreliable justifications or precedents for expansive interpretations.

The primary concern is that the waiver of a non-statutory requirement in the regulation does not reduce *any* assistance or protection provided to an owner or displaced person under this part. There is little doubt that requirements imposed by the Uniform Act may, necessarily, create some delay and administrative burden. Therefore, it would be inappropriate to grant a waiver based on the general proposition of delay and administrative burden. The Waiver proposal must be specific and it must protect the rights of owners and displaced persons and not be designed to serve some convenience of the requesting agency.

The proper implementation of this provision of the regulation requires the exercise of good judgement, with proper concern for displaced persons.

*Section 24.8 Compliance with Other Laws and Regulations*

Two comments were received on this section. One said the list of authorities should include a statute which was already included. The second comment suggested the inclusion of Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and this has been done.

This section was also revised to emphasize that there may be other laws and regulations to be complied within implementing this regulation and the list provided is not necessarily all inclusive.

*Section 24.9 Recordkeeping and reports*

*Section 24.9(a) Records.* Four comments were received on this section. One appreciated the provision for confidentiality of records. Another asked for the "established requirements" for "adequate records." The adequacy of an agency's records is determined by the ability of those records to demonstrate compliance with this regulation regarding the agency's acquisition and displacement activities. Two comments were concerned with the 3-year retention period for records. One suggested an extension to 5 years, the other suggested a period of 3 years after the project is completed. There is nothing to prevent an Agency from retaining records for a period longer than 3 years after final payment to a property owner or displaced person. FHWA has amended the regulation to require retention of records for 3 years or in accordance with applicable regulations of the federal funding agency.

*Section 24.9(c) Reports.* Special consideration and comment was requested on the format and timing of this report. Four comments were favorable to both the format and timing of the report. One comment agreed with the format, but claimed the information was needed on an annual basis. Two comments approved of the timing, but wanted the format changed. The final respondent wanted both the timing and the format altered. With the exception of one suggested format change, to lump all non-residential displacements together, the proposed changes are clearly related to the specific program requirements of the respondents. As such, it would be inappropriate to address these concerns with revisions to a report intended to serve, with as little burden as possible, as source material for periodic reports to the Congress on the principal activities conducted under the Uniform Act. The report format and timing remain unchanged.

*Section 24.10 Appeals*

*Section 24.10(b) Actions which may be appealed.* Several comments were received on this section. The principal concern was that the appeal process seemed to extend to the question of just compensation. There are well established procedures in place in every State, and in the Federal government, to handle disagreements involving just compensation. These procedures typically begin with the offer of just compensation and conclude, where necessary, with litigation.

What is appealable is found in the Uniform Act and the regulation where they refer to the aggrieved person's "application." This refers to the application for the benefits of the Uniform Act. The intent of the Act and the regulation is to require that there be a procedure for appeals concerning the benefits or eligibility conferred by the Uniform Act. This provides an administrative remedy for persons aggrieved by an agency determination as to his or her benefits or eligibility. Normally this procedure would have to be completed before such person could seek judicial review.

*Section 24.10(c) Time limit for initiating appeal.* Two commenters suggested extending the time limit for initiating an appeal. The responsibility for setting the time limit rests with the Agency subject only to the constraint that it not be less than 60 days after the person receives written notification of

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the Agency's determination regarding the person's application or claim.

*Section 24.10(h) Agency official to review appeal.* Several comments were received about agency appeal processes, the levels of review, and the official conducting the review, whether from the agency or another appropriate hearing officer.

The appeal process is an entirely internal process of an agency. The decisions by the agency about the process must only conform to these regulations and whatever other administrative rules which the agency must follow. However, as stated in the rule, agencies must advise the person of his or her right to seek judicial review after the administrative hearing procedure is exhausted.

Having considered the comments, FHWA has elected to retain § 24.10 as written.

Subpart B—Real Property Acquisition

*Section 24.101 Applicability of Acquisition Requirements*

*Section 24.101(a).* There were a large number of comments on this section which addresses the applicability of Subpart B and Title III of the Uniform Act. Most of the comments expressed a concern with limited scope of application, and several requested that the voluntary transaction criteria found in Appendix A of the December 17, 1987 interim final rule be included.

FHWA has substantially revised this section based on the comments. Voluntary transaction criteria have been included, and a provision has been added exempting from coverage certain real property transactions between cooperatives and their members. The presence of Federal financial assistance is the basic determinant for applicability, with exceptions provided for those acquisitions listed in § 24.101(a)(1)–(4).

Eminent domain authority is not a determining factor by itself, although any acquisition made under the threat of eminent domain is clearly subject to Subpart B requirements because such an acquisition cannot be a voluntary transaction.

Essential to the voluntary transaction process is the requirement that the owner must be informed in writing that the property will not be acquired unless amicable agreement can be reached. However, even though an acquisition may be excluded as a voluntary transaction, agencies may choose to follow the Subpart B process.

*Section 24.101 (b) and (c).* Certain clarifications have been made in these sections. The change in § 24.101(c), federally-assisted projects, is applicability "to the *greatest* extent practicable under State law" (emphasis supplied), which is the same wording as that found in section 305(a) of the Uniform Act. FHWA interprets this to mean an agency must comply if compliance is legally possible under State law. This should be taken into account in an agency's assurances pursuant to § 24.4(a).

*Utility companies as acquiring agencies.*—When the Congress amended the Uniform Act, it changed the definition of "State agency" to include "any person who has the authority to acquire property by eminent domain under State law." Utility companies are the most common example of non-governmental entities which are granted eminent domain authority. The effect of this change was, for the first time, to bring utility companies under Uniform Act coverage for certain of their projects.

Sixteen comments were submitted by or on behalf of utility companies, representing the views and concerns of many hundreds of individual entities through their associations, cooperatives, and law firms. Almost all of these comments concern the possible impact of Subpart B of these regulations upon rural electric cooperatives that may receive Federal financial assistance from the Rural Electrification Administration (REA) in the Department of Agriculture (USDA).

This section of the preamble is devoted to the comments and concerns of those entities. FHWA believes that compliance with the Uniform Act and these regulations will not be as burdensome as some of the commenters perceive it to be. In addition, as discussed further below, one suggestion, exempting from coverage certain transactions between cooperatives and their members, has been adopted.

Following are the substantive issues raised in the comments, with an FHWA reply.

1. The rule should be amended so it would not apply to electric cooperatives.

*Reply:* FHWA does not have authority to exempt any entity or group of entities from compliance. However, as described in some detail later, the regulations intentionally provide much latitude and discretion in how a particular objective may be accomplished.

2. It would appear that all of our projects and acquisitions are covered by the regulation.

*Reply:* There are certain conditions that must be present before a utility company must comply with Subpart B requirements. Most importantly, there must be Federal financial assistance as defined at § 24.2(j). If Federal involvement is solely the guarantee of a loan from non-Federal sources, for example, the Uniform Act is not applicable.

If an individual acquisition qualifies as a voluntary transaction under § 24.101(a)(1), Subpart B requirements do not apply. This may be important for non-site specific acquisitions.

It was stated in a comment that a condition of membership in a cooperative may include an obligation to contribute power line rights-of-way. A provision has been added in § 24.101(a)(3) to provide that Subpart B requirements do not apply if the contribution of real property to a cooperative is made by a member to meet the requirements of membership agreements, contracts or bylaws. FHWA believes that such cases, where members of cooperatives have agreed to provide real property to the cooperative as necessary to advance the common interest of the members, are similar to voluntary transactions rather than to normal Federal or federally funded acquisition.

3. This regulation appears to replace the State eminent domain law under which we operate.

*Reply:* Both section 305 of the Uniform Act and § 24.101(c) of this part make it clear that the real property acquisition policies in Title III of the Act and Subpart B of this part are applicable "to the greatest extent practicable under State law". This means that while compliance is required if it is not prohibited by State law, these provisions do not supercede or overrule any State law requirements. Accordingly, utility companies must continue to comply with the requirements of State eminent domain law. Section 24.4(a) of this part addresses the assurances of compliance that must be submitted (generally a one-time action) to the Federal agency providing financial assistance. Section 24.101(c) addresses the matter of exceptions to Subpart B provisions because of provisions of State law.

A utility company may wish to contact the highway agency in its State for assistance in preparing its assurances in those situations where the same State eminent domain law applies to both the highway agency and the utility company. The State highway agency should know whether the assurances of compliance need to be qualified because of State law.

4. We understand §§ 24.102(c)(2) and 24.103(a) to require an appraisal report containing all of the information listed in § 24.103(a) when the property value exceeds $2,500.

*Reply:* That is not the intent of these sections. Under the appraisal waiver provisions of § 24.102(c)(2), the utility company has the option of not making an appraisal if the value is estimated to be less than $2,500, and the valuation problem is simple and straight-forward. See the preamble discussion of that section for further information.

Under the appraisal standards in § 24.103(a), the utility company essentially determines its own appraisal documentation standards and policies, particularly with respect to acquisitions which do not require a detailed appraisal. The intent of this provision is to match the extent of the analysis and documentation to the complexity of the appraisal problem.

In difficult, complex valuation situations, § 24.103(a) requires preparation of a "detailed" appraisal, and specifies the minimum content of such appraisals. The minimum content specifications apply only to detailed appraisal reports. Several commenters missed this point.

Finally, there is no necessary connection between the $2,500 appraisal waiver ceiling, and the need to prepare a detailed appraisal report. The decision on when to secure a detailed appraisal lies primarily with the utility company, based on its assessment of the situation.

5. The regulation appears to require that we contract for the services of independent appraisers, even though we have well qualified appraisers on our staff.

*Reply:* This is incorrect. The use of staff or outside personnel for appraisal work is entirely at the discretion of the utility company. The only policy which addresses this issue is § 24.103(d), which essentially states the appraiser must be qualified to perform the work.

6. The regulation appears to require that we give the owner a copy of the appraisal, which will hinder negotiations.

*Reply:* The regulation does not require that the owner be given a copy of the appraisal. In some cases this is a matter of State law, but in the typical situation it is a negotiation policy decision at the discretion of the Agency.

In § 24.102(e), the owner is required to be given a written offer and summary statement which, in very brief terms, amounts to a description of what the offer is for. A utility company may wish to contact the State highway agency and obtain a copy of its summary statement form or format for use as a guide.

7. These regulations are not appropriate for use in acquiring substation sites. Generally there are many alternative locations available, and one of the owners will usually be happy to sell a satisfactory site.

*Reply:* It was this kind of situation FHWA contemplated when it developed the voluntary transaction policy and criteria found at § 24.101(a)(1). If an acquisition meets the criteria, Subpart B requirements do not apply.

8. Section 24.102(j) regarding a deposit with the court is in conflict with our State law on various points. State law specifies a different place for the deposit, and is likewise specific on how the amount of the deposit is to be determined.

*Reply:* The provision comes from section 301(4) of the Uniform Act, and, as noted above, is applicable to the greatest extent practicable under State law on federally assisted projects. If State law prescribes a different process there is no conflict because State eminent domain law prevails. See also § 24.4(a) regarding assurances.

9. Just compensation in our State is based on the before and after rule, rather than the take plus damage rule. If we were to appraise damages separately, as seems to be necessary under § 24.103(a)(5), the appraisal would not be admissable in court.

*Reply:* The language in section 301(3) of the Uniform Act recognizes the differences in State law on what constitutes just compensation. It was not FHWA intent to force a different appraisal process. This oversight has been corrected by the addition of "where appropriate" to § 24.103(a)(5).

10. The requirement for a review appraisal in § 24.104 should be deleted except for high value situations.

*Reply:* FHWA has not adopted this recommendation because of the importance we place on the appraisal review function.

The comment indicates there may be a misunderstanding. Section 24.104 does not require an appraisal by a reviewer (although the reviewer may choose to do so because of an inadequate appraisal report). Rather, this section is intended to require a review of the appraisal or appraisals on a property.

The review is an essential part of the process of establishing the amount of the offer of just compensation to be made to the owner. In simplistic terms, the reviewer checks for errors of fact, consistency of value from property to property, and general adequacy of the appraisal as a basis for the offer of just compensation.

Where there is only one appraisal, the reviewer is that critical second party involved in the process of setting the amount of the offer. The association with § 24.4(c) regarding prevention of fraud, waste, and mismanagement is readily apparent.

The reader is directed to the discussion under § 24.104 in Appendix A for further information. As stated there, in low value, uncomplicated situations a signature may suffice as the reviewer's statement.

The foregoing discussion of issues raised in the comments is intended to assist utility companies and others in the implementation of these regulations and to describe how the impact of these regulations on cooperatives will be limited. However, it is possible that there may be other questions that have not been answered. We encourage any further comments relating to the impact of this regulation on rural electric cooperatives. Any further comments on this subject will be considered and, if warranted the regulation will be amended and/or the discussion in the preamble will be supplemented.

Most, if not all, Federal financial assistance for utility companies comes through the REA of the USDA. FHWA intends to work closely with Departmental officials in effecting smooth implementation.

*Section 24.102 Basic Acquisition Policies*

*Section 24.102(c)(2).* This section addresses waiver of appraisals. One comment said agencies should have the latitude to decide not to obtain an appraisal where property may be donated without first obtaining a release from the owner.

The Agency has that discretion for the under $2,500 value category. A prior release is not necessary. However, the FHWA does not agree with extending that same policy to all donation situations. An owner may want an appraisal and an offer before making a decision to donate, and it is only fair to make the owner aware of this option.

On the matter of establishing the dollar threshold at $2,500, four stated it was too high, seven said it was too low, and ten stated $2,500 was acceptable. FHWA has decided to retain the proposed threshold.

A commenter raised the question of a review where no appraisal has been made. Other comments questioned how an Agency is going to know if an acquisition is worth less than $2,500 in the absence of an appraisal.

Section 24.102(c)(2) contemplates that an informed judgment will be made by a qualified person. While it is not a regulatory requirement, prudence suggests the value calculation be in writing, and be retained.

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On the matter of a review: Under § 24.102(d), the Agency is required to make a written offer. Offer letters are generally signed by someone at the management level. It is general FHWA policy to have not less than two people involved in setting the amount of an offer of just compensation. This process would constitute a review where no appraisal is made. Precisely how such matters will be handled is within Agency discretion.

A few comments objected to waiving an appraisal for any reason. An Agency has no obligation to waive the appraisal of an acquisition if it prefers not to.

*Section 24.103 Criteria for Appraisals*

*Section 24.103(a).* One Agency described how it intended to integrate the appraisal waiver provision in § 24.102(c)(2) with this section on appraisal standards. Many other variations are also possible, but the comment is summarized here for purposes of illustration. In brief, negotiators will be instructed to clearly explain to the owner the right to have an appraisal made and in no way pressure the owner to sign a waiver; acquisitions valued between $500 and $2,500 are to be supported by sales in the project area, and will be approved by a review appraiser prior to negotiations. As described, this Agency intends to do more than the minimum: An appraisal would always be a property owner option; some value documentation will be a requirement; and a reviewer's approval is necessary in certain circumstances. This description is intended to illustrate the latitude an agency has in implementing the provisions of this Subpart.

*Section 24.103(a)(2).* One comment recommended the requirement for a 5-year sales history be cut back to two or three years. This recommendation was not adopted, primarily because it applies only when a detailed appraisal is necessary. When a detailed appraisal is not necessary, the agency may set a different standard.

*Section 24.103(a)(3).* A comment recommended that a statement be added to the effect that the appraiser must explain the absence of more recent sales data when the sales used are over 6 months old. This is viewed as a good business practice on the part of the appraiser, but not as an essential regulatory requirement.

*Section 24.103(e).* Three comments recommended an increase in the dollar threshold from $2,500 to $5,000 where the same person can both appraise and negotiate. The FHWA has not adopted this recommendation because support for the increase is not widespread.

*Section 24.104 Review of appraisals*

*Section 24.104(b).* In response to a comment, a minor editorial clarification has been made to this section regarding the role of the reviewing appraiser in establishment of the Agency's offer of just compensation.

*Section 24.105 Acquisition of Tenant-owned Improvements*

Four comments expressed a concern with the matter of adequately protecting the rights of a tenant owner of improvements. One of these comments recommended specific reference to tenant owners be made at many points within Subpart B.

FHWA has made no change because it believes tenant owner interests are adequately protected. The language of Subpart B is based on the premise that if a tenant can demonstrate an ownership interest in real property, that person is an owner of real property to be acquired for purposes of this regulation, and is to be treated as such.

*Section 24.105(c).* Five comments stated that contributory value or salvage value measures of compensation to a tenant-owner are not fair and equitable when the appraiser finds that all of the value is in the land, with no value attributable to the improvement. As a consequence, they recommended a "value in place" measure of compensation be added to this section.

FHWA appreciates the difficulty this circumstance presents, but the provisions of Section 302 of the Uniform Act do not permit it to accommodate the recommendation. Section 302 specifies contributory value, or value for removal (which has been implemented as salvage value) as the measures of compensation.

However, there is some latitude available under § 24.105(e). Payment under "other applicable law" could include provisions of State law and/or relocation assistance benefits. Also, contributory value can be viewed on a temporary basis in the valuation estimate process. FHWA believes the basic objective is payment of an amount of compensation which is just, reasonable, and fair.

Two comments were received from representatives of the outdoor advertising industry. Both comments focused on the way advertising signs are treated by §§ 24.2(q), 24.105, and 24.303(e) of the regulation. They suggested that, pursuant to section 302 of the Uniform Act, all advertising signs covered by the Uniform Act should be acquired as tenant owned improvements, and that the value of a sign in place before removal should be used in determining the owner's compensation. Neither of these suggestions have been adopted.

Specific language concerning advertising signs in section 101(7)(D) of the Uniform Act makes it clear that some, if not all, signowners should be entitled to moving and related expenses under section 202 of the Uniform Act, rather than to compensation for a sign's acquisition under section 302. Furthermore, that language in section 101(7)(D) was amended in the 1987 Amendments to broaden the benefits available to signowners under section 202. For many years, FHWA has reconciled the specific language in section 101(7)(D) of the Uniform Act and the more general language concerning tenant improvements in section 302 of the Act by providing that an advertising sign considered to be personal property under State law should receive the relocation benefits provided by section 202, and if considered to be real property, it should be acquired in accordance with section 302. FHWA believes this is the most reasonable interpretation of the provisions of the Uniform Act, and it continues to be reflected in this final rule.

When a sign is acquired under section 302, subsection 302(b)(1) provides that its owner should receive the greater of its contributory value to the real property or its "fair market value * * * for removal from the real property."

FHWA interprets this phrase to mean that removal of the sign must be taken into consideration in determining "fair market value for removal," and believes this is done in §§ 24.105 and 24.2(q) of the regulation.

Subpart C—General Relocation Requirements

*Section 24.203 Relocation Notices*

*Section 24.203(a).* A comment was received that the term "as soon as feasible" was not sufficiently specific. FHWA considers this term to mean "as soon as practical" and does not believe that any further elaboration is necessary. This comment and several other similar comments addressed to this section may have merit in individual situations, but do not necessitate changes in the regulations. Displacing agencies may wish to clarify particular matters that are of concern to them in their operating instructions.

*Section 24.203(b).* In response to one comment, a definition of "Notice of intent to acquire or notice of relocation eligibility" has been added at § 24.2(o).



*Section 24.205 Relocation Planning, Advisory Services, and Coordination*

*Section 24.205(a) Relocation planning.* There were 13 comments concerning relocation planning. Most were in favor of the planning concept, but were concerned about how relocation plans could hinder project development. The relocation planning required by this section should be a tool to assist in the orderly development of a project and should be considered in this light by both the displacing agency and the funding agency. FHWA believes that most displacing agencies are well aware of the program or project benefits which can be derived through early and sound relocation planning and many agencies currently use comprehensive planning techniques in project development. We do not view relocation planning as a complicated, time consuming activity. We see relocation planning as a process which provides meaningful information to program and project decision makers. It does not need to result in a detailed document containing unnecessary data and needless problem solving. Instead, it should be a process which is scoped to the complexity and nature of anticipated program or project relocation activity and should not require a burdensome commitment of Agency resources. Language emphasizing this has been added to this section. In response to several comments, there is no requirement that planning documents be submitted for approval to the funding agency at any stage of a project or program. Planning is the responsibility of the displacing agency.

*Section 24.205(c) Relocation assistance advisory services.* Several comments were received concerning relocation assistance advisory services. Three comments objected to the requirement to provide transportation to inspect housing in § 24.205(c)(2)(ii)(D). This provision is not new and has been a part of the common rule for implementation of the Uniform Act since that rule was first promulgated by DOT on March 5, 1985 (50 FR 8955 (1985)). It is the obligation of the displacing agency to assure that both owners and tenants are able to inspect the housing to which they are referred. There is no evidence to suggest that this service has been abused by displaced persons.

*Section 24.205(c)(2)(iii).* At the suggestion of one commenter, the words "comparable and" have been removed from this section. The emphasis is on the identification of suitable property locations for business and farm operations.

*Section 24.205(c)(2)(vi).* The provision of advisory services to a person who initially occupies property after it is acquired by the agency is required by the statute. Therefore, it cannot be deleted as recommended by several commenters. These persons are not displaced persons, but are eligible for advisory services.

*Section 24.206 Eviction for Cause*

In response to comments, this provision has been modified in several respects. HUD, in its program regulations dealing with displacements caused by other than State-agency acquisition, has long recognized eviction for cause as a basis for denying eligibility for relocation benefits. Now that the Uniform Act and these implementing regulations apply to this broader array of displacement activities, it is necessary that valid evictions continue to be recognized as a factor that can extinguish potential rights to relocation payments.

At the same time, it is important that otherwise entitled persons not be denied relocation payments by an eviction undertaken for the purpose of evading an obligation to make relocation assistance available, or for minor violations of a lease.

Accordingly, this final rule retains the major thrust of the eviction for cause section, which has been a part of the governmentwide common rule since 1986, that persons lawfully occupying property at the time of the initiation of negotiations will continue to have a presumptive entitlement to relocation payments.

However, modifications have been included to clarify that payments may be denied in certain circumstances. Thus, a person who is evicted for cause prior to the initiation of negotiations may be denied payment even if that person vacates the premises after the initiation of negotiations. In addition, persons who seriously or repeatedly violate material terms of the lease or occupancy agreement may be evicted even if the eviction proceeding is begun after the initiation of negotiations.

In either case, the Agency must assure itself that the eviction action is not undertaken to evade the protections of the Uniform Act. Such eviction for cause circumstances should arise only infrequently and Federal funding agencies will be expected to ensure that this provision is not misused.

*Section 24.207 General Requirements—Claims for Relocation Payments*

*Section 24.207 (f)* Deductions from relocation payments. This section has remained the same as was published as part of the common rule in the March 5, 1985 Federal Register. Section 24.207 continues to allow agencies to deduct a person's unpaid rent owed to the Agency from the person's relocation payment in cases where it will not prevent the person from obtaining a comparable replacement dwelling. Since the relocation payment is not to be considered income (§ 24.209) and is provided for the particular purpose of obtaining replacement housing for the displaced person, it cannot be released to other creditors without assurances that comparable decent, safe, and sanitary housing will be available to the displaced person.

Subpart D—Payments for Moving and Related Expenses

In addition to comments on proposed rule changes, a number of comments received on this subpart were requests for clarification. Ordinarily, such clarification would be provided by technical advisory guidance. However, to be responsive to the comments, we have summarized the answers to some of these below.

Section 24.306 in the NPRM has been renumbered as § 24.304 and § 24.304 has been renumbered as § 24.306 to provide a better grouping of topics. The numbers used below are those used in this final rule.

*Section 24.301 Payment for Actual Reasonable Moving and Related Expenses—Residential Moves*

Questions were received about payment for the storage of personal property covered in § 24.301(d). As with all other moving expenses, the Agency determines what storage costs are reasonable and necessary for a move to take place. If the Agency determines storage to be necessary, the costs of moving the personal property to and from storage would also be eligible for payment. Boarding of animals is not considered to be storage.

*Section 24.302 Fixed Payment for Moving Expenses— Residential Moves*

There were numerous comments concerning the $50 fixed payment for moving expenses provided in § 24.302. FHWA has clarified the language of this exception to apply only to persons with minimal personal possessions who are in occupancy of a dormitory-style room shared by two or more unrelated persons, or a person whose residential move is performed by an agency at no expense to the person. This language is also reflected in the moving expense schedule which is published by FHWA elsewhere in this Part II of today's Federal Register.

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*Section 24.303 Payment for Actual Reasonable Moving and Related Expenses—Nonresidential Moves*

*Sections 24.303(a)(3) and 24.304(a)(4).* Four comments asked for clarification of the difference in treatment of utilities in these two sections. The expenses for providing utilities under § 24.303(a)(3) are those costs incurred to attach relocated personal property to utility service already provided on-site, such as electrical boxes, gas meters, and water meters. Modifications to the equipment or to the on-site utility service may also be eligible, if necessary. These costs must be necessary to reinstall personal property that has been moved from a displacement site or newly installed at such site and would generally only benefit the relocated business operation. Section 24.304(a)(4) provides for making electrical and other services available to the replacement site. These costs may be necessary to make the real property suitable for the business operation and could generally enhance the value of the real property. Costs under § 24.304(a)(4) are limited by statute to $10,000 for all reestablishment expenses. Costs under § 24.303(a)(3) are limited to what is necessary, without dollar limitation.

*Section 24.303(a)(9).* There were several comments about relettering of signs and replacing stationery made obsolete as a result of a move. This section covers those business items typically used by a business for the purpose of advising its customers and the public of the location of the business. If a displacing agency considers other items appropriate for this category, it may use the waiver procedures in § 24.7 on a case-by-case basis.

*Section 24.303(a)(10).* One commenter suggested that an acquiring agency could become responsible under the requirements of this section for abandoned personal property that could be considered hazardous material. This is not a Uniform Act issue, but an issue typically governed by Federal or State laws governing the proper disposal of hazardous material.

*Section 24.303(a)(13).* Two comments stated that the $1,000 limit on the cost of searching for a replacement location was not adequate for some business and farm operations. The displacing agency may use the waiver procedures in § 24.7 on a case-by-case basis if a displaced business or farm operation has unique requirements or circumstances.

*Section 24.303(c).* Questions were received about self-moves of business or farm operations. This section does not preclude actual cost self-moves supported by records and receipts of the costs incurred. The Agency may use moving costs findings prepared by qualified staff, estimates obtained by the Agency, or if acceptable to the Agency, estimates obtained by the business or farm operator. A single moving cost finding for a low cost or uncomplicated move prepared by qualified staff is a "single bid or estimate" for purposes of this section.

*Section 24.304 Reestablishment Expenses—Nonresidential Moves*

Twenty eight commenters provided comments on this section. While generally in agreement with the list of eligible expenses in § 24.304(a), the majority thought that the dollar limits should be removed from the three categories where limits are imposed. We have elected to retain the dollar limits which serve as cost controls for expenses which we believe to be most vulnerable to abuse. Since it is the Agency's prerogative to determine which reestablishment expenses are reasonable and necessary and since § 24.304(a)(13) allows the Agency to request a waiver from the Federal funding agency within the $10,000 statutory maximum, there is sufficient flexibility provided to the Agency. On the other hand, the stated limits of $5,000 for increased operating costs and $1,500 for exterior signing are considered to be reasonable in most cases, and may assist a business owner in making appropriate decisions about a new business site and the size and type of signing for the new business site. The inclusion of increased costs of operations as an eligible expense in § 24.304(a)(10) was also commented upon. The Uniform Act's legislative history supports the inclusion of these expenses. Since the costs of operation are legitimate reportable business expenses, the income tax records of most businesses should be adequate to provide a record of such costs prior to displacement. The costs at the new location can be established or estimated using such sources as the new leases, utility company projections for utility charges and taxing authority records for tax increases.

*Section 24.304(b)(6).* This section has been deleted. The 1987 Amendments exclude "a person whose sole business at the displacement dwelling is the rental of such property to others . . ." from qualifying for an "in lieu" payment (see § 24.306(a)(4)). This exclusion, however, does not extend to reestablishment expenses.

*Section 24.306 Fixed Payment for Moving Expenses—Nonresidential Moves*

Comments were received from 20 sources on this section. Recommendations were made to pay the fixed payment as an option to a business with no criteria or, conversely, to pay the fixed payment only if the business was discontinued. The additional criteria added in the NPRM were also commented upon. Several wanted to add additional criteria. One commenter wanted different criteria for farm operations than for businesses. A number of comments were received that would make the owners of residential property ineligible for this payment. Others thought that the owners of leased commercial property should also be ineligible.

FHWA has not changed this section. The fixed payment is an alternative to the payments for moving and reestablishing a business, farm, or nonprofit organization. The new criteria are added to either clarify eligibility, correct inequities, or implement new statutory exclusions as explained in the preamble of the NPRM. The displacing agency retains the flexibility to determine the basic eligibility based on the substantial loss of existing patronage criteria and gains criteria that can readily be explained to displaced persons.

There is no requirement now, nor has there ever been such a requirement, that a displaced business must be discontinued to receive this payment. Similarly, this payment has been and continues to be available to otherwise eligible businesses that do discontinue operations. There is also no requirement that a business be without a source of income as suggested by three commenters.

Establishing separate income and payment criteria for farm operations would not be appropriate at this time.

There were several comments concerning the perceived inequity of the ineligibility of owners of rental residential property for a fixed payment while owners of other rental property remained eligible. FHWA has corrected this inequity by, generally, excluding owners of rental property from eligibility for non-residential fixed payment.

*Section 24.306(d) Nonprofit organization.* There were a variety of comments concerning the minimal fixed payment of $2,500 in lieu of actual moving expenses. Most of them favored increasing the payment available to nonprofit organizations. In response, FHWA has revised the payment to nonprofit organizations to range from $1,000 to $20,000 based on criteria similar to businesses, i.e. the average annual revenue for 2 years minus operating expenses. This procedure will be more equitable for nonprofit organizations.



*Section 24.306(e) Average annual net earnings of a business or farm operation.* Several comments were received about the computation of average annual net earnings when business or farm operations suffer a net loss for any year. There are several ways to compute net losses. Some agencies have used "0" if the net earnings result in a net loss. Other agencies use the actual net loss figure. Either method is acceptable if used uniformly by a funding agency.

*Section 24.307 Discretionary Utility Relocation Payments*

A few respondents urged that the reimbursement of extraordinary expenses be made mandatory, while several others indicated the discretion given the displacing agency should be retained. The discretionary language, "the displacing agency may, at its option," has been retained because the 1987 Amendments and the Conference Report accompanying them are quite clear that this payment is intended to be at the discretion, or option, of the displacing agency. It would not be appropriate to make mandatory by regulation that which was left clearly permissive by statute.

*Section 24.307(a)(5).* A number of respondents objected to the language in the NPRM which requires that State or local reimbursement be "permitted by State statute." The principal thrust of the objections was that this language meant that unless there was a specific State statute permitting the payment, no payment could be considered. FHWA agrees that the proposed language could be subject to misinterpretation and have revised the subsection, to provide that reimbursement must be "in accordance with State law." This conforms to the clear intent of Congress, as expressed in the Conference Report that accompanied the 1987 Amendments.

*Section 24.307(b) Extraordinary expenses.* Six comments expressed concern with this section's definition of "extraordinary expenses." Three of the comments recommended changes which would permit certain expenses, even though ordinarily budgeted, to be considered as "not routine or predictable expenses" and, therefore, qualify as "extraordinary expenses." FHWA has not adopted these recommendations. It is the expressed intent of Congress, as found in the Conference Report, that "utilities would continue to pay those ordinary relocation costs within their reasonable contemplation as occupants of local rights-of-way * * *" FHWA believes the language of this section will allow a utility company to present its case for those expenses which it considers to be "not routine or predictable" and not ordinarily budgeted as operating expenses.

Four comments urged removal of the provision which would exclude from extraordinary expenses those expenses which the utility company has explicitly and knowingly agreed to bear as a condition for use of the right-of-way. Again the language of the rule represents the clear intent of Congress as expressed in the Conference Report accompanying the 1987 Amendments.

While we are cognizant of the concerns presented by the public utility industry, we believe this rule clearly expresses the intent of Congress, and, as a consequence, § 24.307(b) is unchanged.

**Subpart E—Replacement housing payments**

*Section 24.401 Replacement Housing Payment for 180-Day Homeowner-Occupants*

*Section 24.401(a)(2).* Several comments were received about the extension of eligibility for a replacement housing payment beyond one year for good cause. In response, the meaning of "for good cause" has been amplified in the appendix.

*Section 24.401(a)(2)(i).* Comments were received about the appropriate "start" date for the one-year eligibility for a replacement housing payment in the case of condemnation. In response FHWA has clarified that the one-year period starts when the full amount of estimated just compensation is deposited in the court. This may be the Agency's proffered amount or a commissioners' award, if appropriate. In either case, the Agency does not need to delay the one-year start date until final adjudication.

*Section 24.401(a)(2)(ii).* This section has been changed to conform with the amendments of section 203(a)(2) of the Uniform Act made by section 408(5) of the 1987 Amendments. Several comments were received about the differences between the criteria for eligibility for 180 day owner-occupants and 90 day owner-occupants and tenants. The change in criteria for 180 day owner-occupants is statutory. There is no requirement that changes be made in criteria for 90 day owner-occupants and tenants. The "date the displaced person moves" is a simpler criterion to use than the "date the displacing agency's obligation under § 24.204 is met" and has been retained where feasible.

*Section 24.401(d).* Thirty-one comments were received concerning the method for computing increased mortgage interest payments. The commenters were about evenly split between preference for the buydown method as presented in the body of the NPRM, and the buydown method presented in the preamble. A few wanted the option of using the former annuity or amortization method if it should prove less expensive for the Agency.

The discussions in favor of the simplified buydown method presented in the preamble emphasized the cost-savings and time-savings to the Agency, and the ability of a displaced person to plan his or her replacement housing purchase knowing the full amount of payments to which such person is entitled. The view of these commenters was that this would not create a windfall because the displaced person still had to acquire a decent, safe, and sanitary replacement dwelling to be eligible; only the financing terms were his or her choice. Several comments were also made that the displaced person could readily understand the concept that an interest rate at less than current market interest rates was an asset and the computed payment was related to this fact.

On the other hand, those comments that favored the language in the body of the NPRM were concerned that a windfall would be created if a person paid cash for the replacement dwelling or assumed an existing mortgage at a lower interest rate than the computed rate. There was also a question of the legality for the preamble alternate, and concern that making the payment available on terms other than those actually used in the purchase of a replacement dwelling would not satisfy the statutory language.

FHWA has elected to retain the procedure in the body of the NPRM. This procedure requires that an estimate of the amount of the payment be provided to the person. Such estimate shall be based on the current prevailing rate for fixed-rate mortgages and subsequent payment based on the actual mortgage terms obtained. This process will require advisory services to the displaced person to enable such person to be prudent in the financing of his or her replacement dwelling.

In response to comments received, FHWA has revised § 24.401(d)(2), by adopting the language in § ____401(d)(3)

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of the common governmentwide rule, to provide that the payment shall be based on the remaining term of the mortgage on the displacement dwelling or the actual term of the new mortgage, whichever is less.

Many of the same commenters who preferred this method did not think that their agency could make the increased mortgage interest payments at the time of closing because of their payment procedures or the loan processing procedures of lending institutions. In response, the final rule has been revised to provide that the payments must be made "at or near" the time of closing. However, the implied purpose of the increased mortgage interest costs payment is to reduce the replacement mortgage; therefore this payment must be available to lower the amount of the mortgage in a timely manner, preferably at the time of the closing on the replacement property. This procedure does require close coordination with the closing agent, but is more cost-effective than the amortization method. The agencies who thought they would be most successful using the buy-down procedure were those who used escrow accounts to make funds available to displaced persons.

There were also several comments about home equity loans and the inclusion of these mortgages in the computation of the increased mortgage interest costs payment. Home equity loans are valid mortgage liens on residential real property regardless of how the proceeds from the loans are used. Therefore, they must be included in the computation.

In answer to another comment, the mortgage rate to be used to compute the increased mortgage interest costs payment when the property is secured with an adjustable rate mortgage is the interest rate that is current on the property as of the date of acquisition.

A sample computation of an increased mortgage interest costs payment is included in Appendix A, as requested by a number of commenters. An IBM PC compatible computer program and financial calculator instructions will be made available as technical guidance as soon as feasible.

*Section 24.402 Replacement Housing Payment for 90-Day Occupants*

*Section 24.402(a)(2)(ii)(A).* The change made in § 24.401(a)(2)(i), concerning the deposit of estimated just compensation, is made here also.

*Section 24.402(b) Rental assistance payment.* There were numerous comments about the changes made in this section.

The first issue was the inclusion of the cost of utilities in the computation of the rental assistance payment. The inclusion of utilities has been an ongoing issue since the Publication of the common rule in 1985. Since that time, utility services have been included in the computation of a rental assistance payment if they were included at the displacement dwelling and/or the comparable dwelling as a part of the rent. FHWA recognizes the concerns of the current 14 commenters about the increased administrative burden for securing information and the variables in utility usage due to differing user lifestyles. These concerns can be addressed in various ways. One commenter suggested that a schedule be devised for utility costs with the input of utility companies in the project area that will reflect actual, reasonable costs. Another agency suggested that if true comparables are used for payment determination, the utility costs should also be comparable and their inclusion should not increase the cost of replacement housing. Relocation from a substandard dwelling to a standard dwelling could, in fact, decrease the cost of utilities, especially the cost of heat unless a larger dwelling is used to meet the needs of a family, or if all utilities were not available in the displacement dwelling, as noted by another commenter.

Agencies may establish their own procedures to be used for determining the cost of utilities if the procedures are used uniformly.

FHWA is continuing to include utilities in the monthly base housing computation because utilities are considered to be an integral part of monthly housing costs and historically have been treated as such by several Federal programs including those administered by HUD as a standard practice. The existance of adequate utilities is a primary requirement for a dwelling to be decent, safe, and sanitary.

The 30 percent figure used in § 24.402(b)(2)(ii) to determine base monthly rental is considered a reasonable percentage of income to be applied to rental housing costs under current market and economic conditions, and is consistent with the percentage of income figures currently being used in other subsidized housing and related programs of HUD and other agencies. Several commenters stated that, in their experience, many tenants are now paying 40 percent or more of their incomes for housing costs. Our concern is that the 40 percent payments primarily reflect the lack of affordable rental housing in the current market. We do agree that some tenants voluntarily elect to spend more than 30 percent of their income for housing when more affordable housing is available. However, FHWA believes these lifestyle choices for convenience, prestige or other reasons to be the exceptions, not the rule. Consideration must also be given to the fact that private lending institution requirements set the limit on the monthly cost of housing after purchase of a dwelling at approximately the same level as the 30 percent of income criteria established for tenants.

The inclusion of a person's income in computing a base monthly rent figure was also opposed by several commenters. The biggest concern was a perceived difficulty in the verification of income and an implied reluctance to accept income information from some displaced persons. FHWA believes that accurate information concerning income can be obtained from most persons. If there is obvious evidence that a person has more income than reported, it is the Agency's prerogative to accept the income as reported, to request additional verification of income, including income tax returns, or to inform the person that there is reasonable doubt that the information is accurate. If the income information is not provided or amplified as requested, the Agency may take such action as it deems necessary to obtain income information under a uniform agency-wide or area-wide policy.

*Section 24.402(b)(3) Manner of disbursement.* Eleven comments were received concerning the vesting of the full amount of the rental assistance payment when the displaced tenant receives the first rental assistance payment, either in lump sum or as an installment. Most of the comments took exception to the idea of vesting.

The vesting of the full amount of the rental assistance payment is intended to establish at a definite point in time, the full amount of the payment for the 42 month period after displacement. Vesting eliminates the red-tape requirements of recordkeeping, re-inspection, and recertification of the replacement dwellings, and continued contacts with the displaced person and the person's landlord that would otherwise be necessary. It also eliminates the potential problem of additional project costs as rents are increased or new DSS dwellings need to be found for those who no longer live in standard housing. FHWA understands that the same commenters are concerned about the diversion of lump sum rental assistance payments for non-housing uses, and a subsequent return of



the displaced person to sub-standard housing. One way to effectively provide installment payments, either to the displaced person or to the person and the person's landlord, without continuing agency supervision, is to place the payment in an escrow account that will be disbursed according to a pre-determined schedule. This method could also serve for disbursement of housing of last resort payments, which are also vested. The method of disbursement remains the Agency's discretion.

It should be understood that, under vesting, the only times a rental assistance payment should change are during the one-year period described in § 24.402(a)(2), and then only if tenant elects to up-grade his or her housing to receive the full amount of the original computed rental assistance payment based on a comparable dwelling, or changes his or her status from tenant to owner and therefore becomes eligible for an additional payment (see § 24.403(e)).

*Section 24.402(c) Downpayment assistance payment.* Twenty-one comments were received concerning downpayment assistance. Only 4 of the 21 commenters believed that the amount available for downpayment assistance should be limited to the computed amount of the rental assistance payment for tenants. The majority stated that agencies should make downpayment assistance payments of up to $5,250, with most recommending that the payment be restricted to the amount necessary to obtain conventional loan financing for purchase of a replacement dwelling. The main concern expressed was that allowing each agency to select a procedure for computing the down payment assistance payment did not promote uniformity.

Since the legislation does not give the lead agency the authority to select a particular procedure, but reserves such authority to the displacing agencies, we have elected to retain the existing language. As several commenters suggested, displacing agencies may want to coordinate with other agencies within the State or jurisdiction where they are located to reach a consensus on the procedure to be followed in that State or jurisdiction. FHWA will appreciate being advised of the experience of the various agencies in the implementation of this procedure. If the experience indicates that a change is needed to affect a more uniform implementation, we will seek a legislative change.

Regardless of the procedure selected, a rental assistance payment will have to be initially computed for tenants. If the computed rental assistance payment is zero, then the downpayment assistance is zero unless the agency has elected to make downpayment assistance payments of up to $5,250. If their eligibility is greater than $5,250 for rental assistance, they will be eligible for housing of last resort for rental assistance or downpayment assistance. As is required by statute, eligibility for owners of more than 90 days but less than 180 days for downpayment assistance will be limited to the amount that would have been computed had they been 180 day owners.

*Section 24.403 Additional Rules Governing Replacement Housing Payments*

Several comments were received concerning the requirement in § 24.403(a)(1) that an adjustment be made to the asking price of any dwelling used to compute the replacement housing payment to the extent justified by local market data. This procedure has been a part of the governmentwide common rule since it was first published in March 1985. It requires that adjustments be made in the asking price of comparable dwellings to the extent that the market demonstrates that expected sale prices will be less than the asking prices. A clarification of the use of this procedure has been added to Appendix A.

In § 24.403(a)(2), for clarity and as suggested by several commenters, FHWA has separated the procedures for major exterior attributes and buildable residential lots into two paragraphs.

*Section 24.403(c)(6).* Several comments were received concerning the use of current fair market value for the acquisition price of a previously owned dwelling when it is used as the replacement dwelling. The current fair market value is used because (1) it is the amount that would have been paid if the dwelling were purchased on the current market as a replacement residence, (2) the displaced owner could have acquired any other dwelling as a replacement and (3) the use of the previously owned dwelling is the conversion of an existing asset to replacement housing purposes. This regulation operates the same whether the previously-owned dwelling is mortgaged or unencumbered. In response to one commenter, the cost of an appraisal of the previously owned dwelling is a reimbursable cost if the agency considers an appraisal to be appropriate and necessary.

*Section 24.404 Replacement Housing of Last Resort*

There were 13 comments on replacement housing of last resort. Several concerned the requirement that the use of housing of last resort be justified. Such justification is considered important for good program management and is consistent with the requirement, added by the 1987 Amendments, that any payment provided for housing of last resort that exceeds the maximum amounts provided to tenants and owners by §§ 24.401 and 24.402 must be justified. A slight modification was made to § 24.404(a)(2)(i) at the recommendation of one commenter to clarify that justification for last resort housing assistance may be for an entire project or program area, if appropriate, without additional case-by-case justification. A number of comments were received about the change in status of a displaced person from a tenant to an owner. FHWA has clarified that such a change in status must be with the concurrence of the displaced person. The concurrence of the displaced person should be received prior to the execution of any of the methods of providing for housing of last resort. Several general comments were received about the concept of replacement housing of last resort. Replacement housing of last resort is a legislatively authorized continuation of the replacement housing assistance provided by §§ 24.401 and 24.402 of this part, and provides for comparable replacement housing for displaced persons not adequately provided for under those sections, or who do not meet the eligibility requirements of those sections. Additional flexibility is provided to displacing agencies for the provision of housing of last resort so that housing needs are met for owners and tenants in the most cost-effective, yet equitable way.

Subpart F—Mobile Homes

*Section 24.502 Moving and Related Expenses—Mobile Homes*

Only one comment was received on this subpart. In response, § 24.502(a) has been modified to state more clearly that, even though an owner-occupant whose mobile home is not acquired may receive replacement housing under § 24.503(a)(3), and therefore is not eligible for payment for moving the mobile home, he may be eligible for payment for moving personal property from the mobile home. Also, the commenter thought that all mobile homes should be treated as real

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property. This may be appropriate in areas where mobile homes are treated as real property under State law or where an agency has the option to consider mobile homes to be either real property or personal property. However, some State laws consider mobile homes to be personal property only, and, therefore, they may not be acquired as realty.

Subpart C—Certification

This subpart implements one of the most significant changes added by the 1987 Amendments. As such, FHWA has a special interest in its implementation and would appreciate receiving further information on its use and effectiveness.

Several respondents commented on Subpart C, however no single comment, or group of comments, was sufficiently persuasive to necessitate a change in the proposed text. However, one comment on § 24.603, Monitoring and corrective action, did draw our attention to the need for a substantive revision of § 24.603(b).

*Section 24.602 Certification Application*

Two commenters recommended that certification applications be made directly from the head of the State agency to the Federal agency providing financial assistance, rather than through the State governor, or the governor's designee. FHWA does not adopt this recommendation. There is a definite need for a focal point within each State for the receipt and screening of certification applications. Consistent with the principles of federalism, the Office of the Governor, as the Chief Executive Officer in any State, is the logical starting point for this process since the governor normally exercises executive authority over the State agencies that are recipients of Federal financial assistance or through which Federal financial assistance is channelled to sub-recipients at the local level, all of whom are subject to the Uniform Act and any of whom could make application for certification approval. The certification process does not alter the existing relationship between local sub-recipients and the State-level recipients of Federal financial assistance. It is expected that any certification application made by a sub-recipient will be made through the State-level agency to the governor, or the governor's designee. In those instances where the local level agency (city, county, etc.) is the direct recipient, and there is no State-level agency authorized to perform such functions, the certification application would be made directly to the governor, or the governor's designee.

The governor, or a State office or agency designated by the governor, will be able to standardize the process and develop an expertise in the processing of applications. Further, the governor or his or her designee will be more able to assess the capabilities of those State agencies seeking to assume Federal agency responsibilities through the certification process. A focal point of this nature will be particularly advantageous in processing certifications from a State agency seeking certification approval from more than one Federal agency.

Two commenters indicated some misunderstanding of the responsibilities of the Federal funding agency.

It is not intended that the Federal funding agency endorse an approved application received from the governor, or the governor's designee, if the Federal funding agency has appropriate indications revealing program deficiencies regarding the certifying State agency. The purpose of having the Federal funding agency accept the approved application without performing an independent review is threefold: first, it emphasizes the role of the governor, or the governor's designee, in evaluating the State agency certifications; second, it will bring into focus the current status of the Federal funding agency's oversight of its State agencies; third, unless there are pre-existing appropriate indications of deficiencies, the certification approval can be handled more expeditiously. The second of the three foregoing points is the basis for the written assessment of the State agency's capabilities to operate under certification which the Federal funding agency must provide when the certification application is transmitted to the Federal lead agency.

*Section 24.603 Monitoring and Corrective action*

One respondent objected to the permissive withholding of Federal financial assistance if a certified State agency failed to comply with applicable State law and regulation serving as the basis of its certification. The respondent perceived this to mean that the authority to withhold approval of Federal financial assistance is available to any Federal agency regardless of the source of the financial assistance. This, of course, is not the case. The authority and the responsibility regarding the withholding of Federal financial assistance rests with each Federal agency regarding its projects, programs, and activities. The respondent's comment did, however, lead us to the recognition of a possible inconsistency between the requirements of § 24.603(b) and the assurances required by § 24.4 and sections 210 and 305 of the Uniform Act. As a consequence, § 24.603(b) is revised and clarified to provide that if a State agency certifies, under State law and regulation, it can and will comply with the provisions of the Uniform Act which would otherwise be covered by the sections 210 and 305 assurances and, then, fails to comply, the Federal agency should withhold Federal financial assistance in that State agency's programs, projects, and activities affected by the Uniform Act.

The certification process does not diminish the State agency's fundamental responsibilities regarding compliance with the Uniform Act, particularly those provisions referred in the sections 210 and 305 assurances. It is clear, from the statute, that compliance with provisions which are the subject of the assurances is of paramount importance to the continued Federal financial assistance of programs, projects, and activities affected by the Uniform Act.

For example, if Uniform Act non-compliance occurred in connection with a federally assisted project the Federal agency should exercise its authority to withhold Federal financial assistance until the state agency is again performing in compliance with the certification.

In order to ensure coordination of information among Federal agencies that may have accepted a certification from the same state agency, language has been added to § 24.603 (b) and (c) to require that the lead agency be consulted by the Federal funding agency before any Federal funds are withheld from a certified state agency or the acceptance of a certification is revoked.

**Appendix A to Part 24—Additional Information**

The appendix has been modified and augmented to provide for better understanding of the sections of the regulations to which it pertains.

*Section 24.2(g)(2)*

*Persons not displaced.* "Permanently" has been added to the first sentence to clarify that some persons may be temporarily displaced but are not displaced persons because they have not been permanently displaced.

*Section 24.102(m)*

*Fair rental.* In response to several comments concerning short-term rent, the modifier, "generally," has been added to the last sentence.

*Section 24.305*

Fixed payment for moving expenses—non-residential moves. FHWA has added clarifying language in Appendix A for non-profit organizations treated under this section.

*Section 24.401*

Replacement housing payment for 180-day homeowner-occupants.

*Section 24.401(a)(2)*

A statement has been added to clarify the phrase "for good cause."

*Section 24.401(d)*

The computation of a "buydown" payment, the factors used in computation, and the agency's obligation to the displaced person are explained. Even though one commenter suggested that adjustment of the buydown payment, when a displaced person elects to mortgage the replacement dwelling for less than the remaining mortgage on the displacement dwelling, penalizes the displaced person for making a larger downpayment, we are retaining this provision. In addition, we have accepted a recommendation that the mortgage with the shortest term be used to compute the payment. FHWA has amended the procedures to reflect this adjustment.

The FHWA is interested in your experience with this new procedure for computing the mortgage interest differential payment.

**Appendix B to Part 24—Statistical Report Form**

The reformatted statistical report form includes a new line item for reporting payments for the statutory business reestablishment expense entitlement. (See line 7A). Several comments were received regarding the information required in Part B, column (A). More accurate statistical analyses can be obtained by changing the requirement for column (A) to displacements instead of number of claims since a displaced person may receive more than one claim in several categories. The heading for column (A) has been changed to number of displacements.

As required by Section 1320.21 of OMB's new paperwork clearance regulation that was published in the Federal Register on May 10, 1988, we have included an agency disclosure notice for public reporting on the STATISTICAL REPORT FORM.

A request was received from HUD to add new items to the statistical report form to collect race, sex, ethnicity, handicap and familial status data. These items were not included in the report form presented in the NPRM and, therefore, FHWA does not have the benefit of public comment on what, if any, paperwork burden such additional information collection would have on agencies or persons carrying out acquisition or displacement activities. Therefore, the report form format remains unchanged at this time except for the minor alteration referred to above.

**Regulatory Impact**

The FHWA has determined that this action does not constitute a major rule under Executive Order 12291 or a significant rule under the regulatory policies and procedures of the Department of Transportation. Executive Order 12291 requires that a regulatory impact analysis be prepared for "major" rules which are defined in the Order as any rule that has an annual effect on the national economy of $100 million or more, or has certain other specified effects.

The economic impacts of this final rule are primarily mandated by the provisions of the 1987 Amendments. However, since some of the statutory changes are administrative or procedural, savings to Federal, State, and local agencies should result in the administration of the Uniform Act. Other statutory changes, which alter benefit levels, and expand the Act's application to include certain private persons who receive Federal financial assistance, and persons displaced by certain nonacquisition activities, should result in a modest increase in amounts paid under the Uniform Act.

However, we do not believe that the proposed regulations will have an annual economic effect of $100 million or more, or the other effects listed in the Executive Order. For this reason, FHWA has determined that this regulation is not a major rule within the meaning of the Order.

Federal agencies administering direct Federal activities, as well as many states, currently have the necessary authority to comply with the additional provisions of the 1987 Amendments implemented in this rule. To delay the promulgation of the amendments made in this rule would deprive many parties of the protections and benefits intended by those provisions of the 1987 Amendments. Accordingly, the FHWA finds good cause to make this regulation effective without the 30-day delay in effective date under the Administrative Procedures Act, 5 U.S.C. 553(b).

**Regulatory Flexibility Act**

The Regulatory Flexibility Act (5 U.S.C. 605(b)) requires that for each rule with a "significant economic impact on a substantial number of small entities" an analysis be prepared describing the rules impact on small entities, and identifying any significant alternatives to the rule that would minimize the economic impacts on small entities.

The provisions of the Uniform Act that are implemented in this final rule have not changed substantially. The primary impact of the 1987 Amendments is expected to be an increase in benefits provided to small businesses, the elimination of unnecessary administrative requirements imposed on State and local agencies, and the consequent reduction of burden on those affected entities, and the expansion of the Act's application to those private entities that seek and receive Federal financial assistance.

In response to comments received from rural electric cooperatives FHWA has considered the impact that this rule would have on such cooperatives. Primarily for the reasons provided elsewhere in the preamble we have concluded that this regulation would not have a significant economic impact on a substantial number of small electric cooperatives.

Based on information available to FHWA at this time and under the criteria of the Regulatory Flexibility Act, the FHWA hereby certifies that this regulation will not have a significant economic impact on a substantial number of small entities.

**Paperwork Reduction Act Requirements**

Today's final rule makes one change to the Uniform Act Report form, which is contained in Appendix B of Part 24. A new item, 7A, is added to obtain information relating to the new business reestablishment payment added by the 1987 Amendments. Several minor editorial changes have also been made in this form. Federal funding agencies which elect to require a report on Uniform Act activities will submit the revised form to the Office of Management and Budget (OMB) for review under 44 U.S.C. 3504(h), the Paperwork Reduction Act, Pub. L. 96-511. Agencies may continue to use the previous report form until OMB approval is granted.

**Federalism Assessment**

As discussed in the Supplementary Information sections of this preamble, this final rule builds upon the positive Federalism accomplishments achieved in the promulgation of the governmentwide common rule on February 27, 1986 (51 FR 7000) which significantly reduced administrative burdens on States and local recipients of Federal financial assistance. The FHWA has determined that the Federalism accomplishments of the common rule are retained in today's rule and the changes which have been made are fully consistent with the principles and criteria contained in Executive Order 12612 and do not have sufficient further Federalism implications to warrant the preparation of a complete Federalism Assessment.

This final rule implements a provision of the 1987 Amendments that gives substantial additional discretion to the States. This is the *certification procedure* which provides an alternative whereby State agencies, with adequate

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authority under State law, can comply with the Uniform Act with a minimum amount of Federal supervision or oversight. This certification procedure would give maximum authority and control to the State governor, or his or her designee, in managing and coordinating the certification procedure in each State.

**List of Subjects in 49 CFR Part 24**

Real property acquisition, Relocation assistance, Reporting and recordkeeping requirements, Transportation.

Accordingly, Title 49 of the Code of Federal Regulations is amended as set forth below.

Issued on: February 22, 1989.

**Robert E. Farris,**

*Federal Highway Administrator.*

Part 24 is revised to read as follows:

## PART 24—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS

**Subpart A—General**

Sec.
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**Subpart E—Replacement Housing Payments**

24.401 Replacement housing payment for 180-day homeowner-occupants.
24.402 Replacement housing payment for 90-day occupants.
24.403 Additional rules governing replacement housing payments.
24.404 Replacement housing of last resort.

**Subpart F—Mobile Homes**

24.501 Applicability.
24.502 Moving and related expenses—mobile homes.
24.503 Replacement housing payment for 180-day mobile homeowner-occupants.
24.504 Replacement housing payment for 90-day mobile home occupants.
24.505 Additional rules governing relocation payments to mobile home occupants.

**Subpart G—Certification**

24.601 Purpose.
24.602 Certification application.
24.603 Monitoring and corrective action.
Appendix A to Part 24—Additional Information
Appendix B to Part 24—Statistical Report Form

**Authority:** Section 213, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 Pub. L. 91-646, 84 Stat. 1894 (42 U.S.C. 4601) as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, Title IV of Pub. L. 100-17, 101 Stat. 246-256 (42 U.S.C. 4601 note); and 49 CFR 1.48(cc).

### Subpart A—General

**§ 24.1 Purpose.**

The purpose of this part is to promulgate rules to implement the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601 *et seq.*), in accordance with the following objectives:

(a) To ensure that owners of real property to be acquired for Federal and federally-assisted projects are treated fairly and consistently, to encourage and expedite acquisition by agreements with such owners, to minimize litigation and relieve congestion in the courts, and to promote public confidence in Federal and federally-assisted land acquisition programs;

(b) To ensure that persons displaced as a direct result of Federal or federally-assisted projects are treated fairly, consistently, and equitably so that such personal will not suffer disproportionate injuries as a result of projects designed for the benefit of the public as a whole; and

(c) To ensure that Agencies implement these regulations in a manner that is efficient and cost effective.

**§ 24.2 Definitions.**

(a) *Agency.* The term "Agency" means the Federal agency, State, State agency, or person that acquires real property or displaces a person.

(1) *Acquiring agency.* The term "acquiring agency" means a State agency, as defined in paragraph (a)(2) of this section, which has the authority to acquire property by eminent domain under State law, and a State agency or person which does not have such authority. Any Agency or person solely acquiring property pursuant to the provisions of § 24.101(a) (1), (2), (3), or (4) need not provide the assurances required by § 24.4(a)(1) or (2).

(2) *Displacing agency.* The term "displacing agency" means any Federal agency carrying out a program or project, and any State, State agency, or person carrying out a program or project with Federal financial assistance, which causes a person to be a displaced person.

(3) *Federal agency.* The term "Federal agency" means any department, Agency, or instrumentality in the executive branch of the Government, any wholly owned Government corporation, the Architect of the Capitol, the Federal Reserve Banks and branches thereof, and any person who has the authority to acquire property by eminent domain under Federal law.

(4) *State agency.* The term "State agency" means any department, Agency or instrumentality of a State or of a political subdivision of a State, any department, Agency, or instrumentality of two or more States or of two or more political subdivisions of a State or States, and any person who has the authority to acquire property by eminent domain under State law.

(b) *Appraisal.* The term "appraisal" means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.

(c) *Business.* The term "business" means any lawful activity, except a farm operation, that is conducted:

(1) Primarily for the purchase, sale, lease and/or rental of personal and/or real property, and/or for the manufacture, processing, and/or marketing of products, commodities, and/or any other personal property; or

(2) Primarily for the sale of services to the public; or

(3) Primarily for outdoor advertising display purposes, when the display must be moved as a result of the project; or

(4) By a nonprofit organization that has established its nonprofit status under applicable Federal or State law.

(d) *Comparable replacement dwelling.* The term "comparable replacement dwelling" means a dwelling which is:

(1) Decent, safe and sanitary as described in paragraph (f) of this section;

(2) Functionally equivalent to the displacement dwelling. The term "functionally equivalent" means that it performs the same function, provides the same utility, and is capable of contributing to a comparable style of living. While a comparable replacement dwelling need not possess every feature of the displacement dwelling, the principal features must be present. Generally, functional equivalency is an objective standard, reflecting the range of purposes for which the various physical features of a dwelling may be used. However, in determining whether a replacement dwelling is functionally equivalent to the displacement dwelling, the Agency may consider reasonable trade-offs for specific features when the replacement unit is "equal to or better than" the displacement dwelling. (See Appendix A of this part);

(3) Adequate in size to accommodate the occupants;

(4) In an area not subject to unreasonable adverse environmental conditions;

(5) In a location generally not less desirable than the location of the displaced person's dwelling with respect to public utilities and commercial and public facilities, and reasonably accessible to the person's place of employment;

(6) On a site that is typical in size for residential development with normal site improvements, including customary landscaping. The site need not include special improvements such as outbuildings, swimming pools, or greenhouses. (See also § 24.403(a)(2).);

(7) Currently available to the displaced person on the private market. However, a comparable replacement dwelling for a person receiving government housing assistance before displacement may reflect similar government housing assistance. (See Appendix A of this part.); and

(8) Within the financial means of the displaced person.

(i) A replacement dwelling purchased by a homeowner in occupancy at the displacement dwelling for at least 180 days prior to initiation of negotiations (180-day homeowner) is considered to be within the homeowner's financial means if the homeowner will receive the full price differential as described in § 24.401(c), all increased mortgage interest costs as described at § 24.401(d) and all incidental expenses as described at § 24.401(e), plus any additional amount required to be paid under § 24.404, Replacement housing of last resort.

(ii) A replacement dwelling rented by an eligible displaced person is considered to be within his or her financial means if, after receiving rental assistance under this part, the person's monthly rent and estimated average monthly utility costs for the replacement dwelling do not exceed the person's base monthly rental for the displacement dwelling as described at § 24.402(b)(2).

(iii) For a displaced person who is not eligible to receive a replacement housing payment because of the person's failure to meet length-of-occupancy requirements, comparable replacement rental housing is considered to be within the person's financial means if an Agency pays that portion of the monthly housing costs of a replacement dwelling which exceeds 30 percent of such person's gross monthly household income or, if receiving a welfare assistance payment from a program that designates amounts for shelter and utilities, the total of the amounts designated for shelter and utilities. Such rental assistance must be paid under § 24.404, Replacement housing of last resort.

(e) *Contribute materially.* The term "contribute materially" means that during the 2 taxable years prior to the taxable year in which displacement occurs, or during such other period as the Agency determines to be more equitable, a business or farm operation:

(1) Had average annual gross receipts of at least $5000; or

(2) Had average annual net earnings of at least $1000; or

(3) Contributed at least 33⅓ percent of the owner's or operator's average annual gross income from all sources.

(4) If the application of the above criteria creates an inequity or hardship in any given case, the Agency may approve the use of other criteria as determined appropriate.

(f) *Decent, safe, and sanitary dwelling.* The term "decent, safe, and sanitary dwelling" means a dwelling which meets applicable housing and occupancy codes. However, any of the following standards which are not met by an applicable code shall apply unless waived for good cause by the Federal agency funding the project. The dwelling shall:

(1) Be structurally sound, weathertight, and in good repair.

(2) Contain a safe electrical wiring system adequate for lighting and other devices.

(3) Contain a heating system capable of sustaining a healthful temperature (of approximately 70 degrees) for a displaced person, except in those areas where local climatic conditions do not require such a system.

(4) Be adequate in size with respect to the number of rooms and area of living space needed to accommodate the displaced person. There shall be a separate, well lighted and ventilated bathroom that provides privacy to the user and contains a sink, bathtub or shower stall, and a toilet, all in good working order and properly connected to appropriate sources of water and to a sewage drainage system. In the case of a housekeeping dwelling, there shall be a kitchen area that contains a fully usable sink, properly connected to potable hot and cold water and to a sewage drainage system, and adequate space and utility service connections for a stove and refrigerator.

(5) Contains unobstructed egress to safe, open space at ground level. If the replacement dwelling unit is on the second story or above, with access directly from or through a common corridor, the common corridor must have at least two means of egress.

(6) For a displaced person who is handicapped, be free of any barriers which would preclude reasonable ingress, egress, or use of the dwelling by such displaced person.

(g) *Displaced person*— (1) *General.* The term "displaced person" means any person who moves from the real property or moves his or her personal property from the real property: [This includes a person who occupies the real property prior to its acquisition, but who does not meet the length of occupancy requirements of the Uniform Act as described at § 24.401(a) and 24.402(a)):

(i) As a direct result of a written notice of intent to acquire, the initiation of negotiations for, or the acquisition of, such real property in whole or in part for a project.

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(ii) As a direct result of rehabilitation or demolition for a project; or

(iii) As a direct result of a written notice of intent to acquire, or the acquisition, rehabilitation or demolition of, in whole or in part, other real property on which the person conducts a business or farm operation, for a project. However, eligibility for such person under this paragraph applies only for purposes of obtaining relocation assistance advisory services under § 24.205(c), and moving expenses under § 24.301, § 24.302 or § 24.303.

(2) *Persons not displaced.* The following is a nonexclusive listing of persons who do not qualify as displaced persons under this part:

(i) A person who moves before the initiation of negotiations (see also § 24.403(e)), unless the Agency determines that the person was displaced as a direct result of the program or project; or

(ii) A person who initially enters into occupancy of the property after the date of its acquisition for the project; or

(iii) A person who has occupied the property for the purpose of obtaining assistance under the Uniform Act;

(iv) A person who is not required to relocate permanently as a direct result of a project. Such determination shall be made by the Agency in accordance with any guidelines established by the Federal agency funding the project (see Also Appendix A of this part); or

(v) An owner-occupant who moves as a result of an acquisition as described at §§ 24.101(a) (1) and (2), or as a result of the rehabilitation or demolition of the real property. (However, the displacement of a tenant as a direct result of any acquisition, rehabilitation or demolition for a Federal or federally-assisted project is subject to this part.); or

(vi) A person whom the Agency determines is not displaced as a direct result of a partial acquisition; or

(vii) A person who, after receiving a notice of relocation eligibility (described at § 24.203(b)), is notified in writing that he or she will not be displaced for a project. Such notice shall not be issued unless the person has not moved and the Agency agrees to reimburse the person for any expenses incurred to satisfy any binding contractual relocation obligations entered into after the effective date of the notice of relocation eligibility; or

(viii) An owner-occupant who voluntarily conveys his or her property, as described at § 24.101(a) (1) and (2), after being informed in writing that if a mutually satisfactory agreement on terms of the conveyance cannot be reached, the Agency will not acquire the property. In such cases, however, any resulting displacement of a tenant is subject to the regulations in this part; or

(ix) A person who retains the right of use and occupancy of the real property for life following its acquisition by the Agency; or

(x) A person who retains the right of use and occupancy of the real property for a fixed term after its acquisition by the Department of Interior under Pub. L. 93-477 or Pub. L. 93-303; or

(xi) A person who is determined to be in unlawful occupancy prior to the initiation of negotiations (see paragraph (y) of this section), or a person who has been evicted for cause, under applicable law, as provided for in § 24.206.

(h) *Dwelling.* The term "dwelling" means the place of permanent or customary and usual residence of a person, according to local custom or law, including a single family house; a single family unit in a two-family, multi-family, or multi-purpose property; a unit of a condominium or cooperative housing project; a non-housekeeping unit; a mobile home; or any other residential unit.

(i) *Farm operation.* The term "farm operation" means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

(j) *Federal financial assistance.* The term "Federal financial assistance" means a grant, loan, or contribution provided by the United States, except any Federal guarantee or insurance and any interest reduction payment to an individual in connection with the purchase and occupancy of a residence by that individual.

(k) *Initiation of negotiations.* Unless a different action is specified in applicable Federal program regulations, the term "initiation of negotiations" means the following:

(1) Whenever the displacement results from the acquisition of the real property by a Federal agency or State agency, the "initiation of negotiations" means the delivery of the initial written offer of just compensation by the Agency to the owner or the owner's representative to purchase the real property for the project. However, if the Federal agency or State agency issues a notice of its intent to acquire the real property, and a person moves after that notice, but before delivery to the initial written purchase offer, the "initiation of negotiations" means the actual move of the person from the property.

(2) Whenever the displacement is caused by rehabilitation, demolition or privately undertaken acquisition of the real property (and there is no related acquisition by a Federal agency or a State agency), the "initiation of negotiations" means the notice to the person that he or she will be displaced by the project or, if there is no notice, the actual move of the person from the property.

(3) In the case of a permanent relocation to protect the public health and welfare, under the Comprehensive Environmental Response Compensation and Liability Act of 1980 (Pub. L. 96-510, or "Superfund") the "initiation of negotiations" means the formal announcement of such relocation or the Federal or federally-coordinated health advisory where the Federal Government later decides to conduct a permanent relocation.

(l) *Lead agency.* The term "lead agency" means the Department of Transportation acting through the Federal Highway Administration.

(m) *Mortgage.* The term "mortgage" means such classes of liens as are commonly given to secure advances on, or the unpaid purchase price of, real property, under the laws of the State in which the real property is located, together with the credit instruments, if any, secured thereby.

(n) *Nonprofit organization.* The term "nonprofit organization" means an organization that is incorporated under the applicable laws of a State as a non-profit organization, and exempt from paying Federal income taxes under section 501 of the Internal Revenue Code (26 U.S.C. 501).

(o) *Notice of intent to acquire or notice of eligibility for relocation assistance.* Written notice furnished to a person to be displaced, including those to be displaced by rehabilitation or demolition activities from property acquired prior to the commitment of Federal financial assistance to the activity, that establishes eligibility for relocation benefits prior to the initiation of negotiation and/or prior to the commitment of Federal financial assistance.

(p) *Owner of a dwelling.* A person is considered to have met the requirement to own a dwelling if the person purchases or holds any of the following interests in real property:

(1) Fee title, a life estate, a land contract, a 99-year lease, or a lease including any options for extension with at least 50 years to run from the date of acquisition; or



(2) An interest in a cooperative housing project which includes the right to occupy a dwelling; or

(3) A contract to purchase any of the interests or estates described in paragraphs (p) (1) or (2) of this section, or

(4) Any other interest, including a partial interest, which in the judgment of the Agency warrants consideration as ownership.

(q) *Person.* The term "person" means any individual, family, partnership, corporation, or association.

(r) *Program or project.* The phrase "program or project" means any activity or series of activities undertaken by a Federal agency or with Federal financial assistance received or anticipated in any phase of an undertaking in accordance with the Federal funding agency guidelines.

(s) *Salvage value.* The term "salvage value" means the probable sale price of an item, if offered for sale on the condition that it will be removed from the property at the buyer's expense, allowing a reasonable period of time to find a person buying with knowledge of the uses and purposes for which it is adaptable and capable of being used, including separate use of serviceable components and scrap when there is no reasonable prospect of sale except on that basis.

(t) *Small business.* A business having at least one, but not more than 500 employees working at the site being acquired or displaced by a program or project.

(u) *State.* Any of the several States of the United States or the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, the Trust Territories of the Pacific Islands or a political subdivision of any of these jurisdictions.

(v) *Tenant.* The term "tenant" means a person who has the temporary use and occupancy of real property owned by another.

(w) *Uneconomic remnant.* The term "uneconomic remnant" means a parcel of real property in which the owner is left with an interest after the partial acquisition of the owner's property, and which the acquiring agency has determined has little or no value or utility to the owner.

(x) *Uniform Act.* The term "Uniform Act" means the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 (84 Stat. 1894; 42 U.S.C. 4601 *et seq.*; Pub. L. 91-646), and amendments thereto.

(y) *Unlawful occupancy.* A person is considered to be in unlawful occupancy if the person has been ordered to move by a court of competent jurisdiction prior to the initiation of negotiations or is determined by the Agency to be a squatter who is occupying the real property without the permission of the owner and otherwise has no legal right to occupy the property under State law. A displacing agency may, at its discretion, consider such a squatter to be in lawful occupancy.

(z) *Utility costs.* The term "utility costs" means expenses for heat, lights, water and sewer.

(aa) *Utility facility.* The term "utility facility" means any electric, gas, water, steampower, or materials transmission or distribution system; any transportation system; any communications system, including cable television; and any fixtures, equipment, or other property associated with the operation, maintenance, or repair of any such system. A utility facility may be publicly, privately, or cooperatively owned.

(bb) *Utility relocation.* The term "utility relocation" means the adjustment of a utility facility required by the program or project undertaken by the displacing agency. It includes removing and reinstalling the facility, including necessary temporary facilities; acquiring necessary right-of-way on new location; moving, rearranging or changing the type of existing facilities; and taking any necessary safety and protective measures. It shall also mean constructing a replacement facility that has the functional equivalency of the existing facility and is necessary for the continued operation of the utility service, the project economy, or sequence of project construction.

### § 24.3 No duplication of payments.

No person shall receive any payment under this part if that person receives a payment under Federal, State, or local law which is determined by the Agency to have the same purpose and effect as such payment under this part. (See Appendix A of this part, § 24.3.)

### § 24.4 Assurances, monitoring and corrective action.

(a) *Assurances*—(1) Before a Federal agency may approve any grant to, or contract, or agreement with, a State agency under which Federal financial assistance will be made available for a project which results in real property acquisition or displacement that is subject to the Uniform Act, the State agency must provide appropriate assurances that it will comply with the Uniform Act and this part. A displacing agency's assurances shall be in accordance with section 210 of the Uniform Act. An acquiring agency's assurances shall be in accordance with section 305 of the Uniform Act and must contain specific reference to any State law which the Agency believes provides an exception to section 301 or 302 of the Uniform Act. If, in the judgment of the Federal agency, Uniform Act compliance will be served, a State agency may provide these assurances at one time to cover all subsequent federally-assisted programs or projects. An Agency which both acquires real property and displaces persons may combine its section 210 and section 305 assurances in one document.

(2) If a Federal agency or State agency provides Federal financial assistance to a "person" causing displacement, such Federal or State agency is responsible for ensuring compliance with the requirements of this part, notwithstanding the person's contractual obligation to the grantee to comply.

(3) As an alternative to the assurance requirement described in paragraph (a)(1) of this section, a Federal agency may provide Federal financial assistance to a State agency after it has accepted a certification by such State agency in accordance with the requirements in Subpart G of this part.

(b) *Monitoring and corrective action.* The Federal agency will monitor compliance with this part, and the State agency shall take whatever corrective action is necessary to comply with the Uniform Act and this part. The Federal agency may also apply sanctions in accordance with applicable program regulations. (Also see § 24.603, Subpart G.)

(c) *Prevention of fraud, waste, and mismanagement.* The Agency shall take appropriate measures to carry out this part in a manner that minimizes fraud, waste, and mismanagement.

### § 24.5 Manner of notices.

Each notice which the Agency is required to provide to a property owner or occupant under this part, except the notice described at § 24.102(b), shall be personally served or sent by certified or registered first-class mail, return receipt requested, and documented in Agency files. Each notice shall be written in plain, understandable language. Persons who are unable to read and understand the notice must be provided with appropriate translation and counseling. Each notice shall indicate the name and telephone number of a person who may be contacted for answers to questions or other needed help.

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**§ 24.6 Administration of jointly-funded projects.**

Whenever two or more Federal agencies provide financial assistance to an Agency or Agencies, other than a Federal agency, to carry out functionally or geographically related activities which will result in the acquisition of property or the displacement of a person, the Federal agencies may by agreement designate one such agency as the cognizant Federal agency. In the unlikely event that agreement among the Agencies cannot be reached as to which agency shall be the cognizant Federal agency, then the lead agency shall designate one of such agencies to assume the cognizant role. At a minimum, the agreement shall set forth the federally assisted activities which are subject to its terms and cite any policies and procedures, in addition to this part, that are applicable to the activities under the agreement. Under the agreement, the cognizant Federal agency shall assure that the project is in compliance with the provisions of the Uniform Act and this part. All federally assisted activities under the agreement shall be deemed a project for the purposes of this part.

**§ 24.7 Federal agency waiver of regulations.**

The Federal agency funding the project may waive any requirement in this part not required by law if it determines that the waiver does not reduce any assistance or protection provided to an owner or displaced person under this part. Any request for a waiver shall be justified on a case-by-case basis.

**§ 24.8 Compliance with other laws and regulations.**

The implementation of this part must be in compliance with other applicable Federal laws and implementing regulations, including, but not limited to, the following:

(a) Section I of the Civil Rights Act of 1866 (42 U.S.C. 1982 *et seq.*).

(b) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*).

(c) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 *et seq.*), as amended.

(d) The National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

(e) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 790 *et seq.*).

(f) The Flood Disaster Protection Act of 1973 (Pub. L. 93–234).

(g) The Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*).

(h) Executive Order 11063—Equal Opportunity and Housing, as amended by Executive Order 12259.

(i) Executive Order 11246—Equal Employment Opportunity.

(j) Executive Order 11625—Minority Business Enterprise.

(k) Executive Orders 11988, Floodplain Management, and 11990, Protection of Wetlands.

(l) Executive Order 12250—Leadership and Coordination of Non-Discrimination Laws.

(m) Executive Order 12259—Leadership and Coordination of Fair Housing in Federal Programs.

(n) Executive Order 12630—Governmental Actions and Interference with Constitutionally Protected Property Rights.

**§ 24.9 Recordkeeping and reports.**

(a) *Records.* The Agency shall maintain adequate records of its acquisition and displacement activities in sufficient detail to demonstrate compliance with this part. These records shall be retained for at least 3 years after each owner of a property and each person displaced from the property receives the final payment to which he or she is entitled under this part, or in accordance with the applicable regulations of the Federal funding agency, whichever is later.

(b) *Confidentiality of records.* Records maintained by an Agency in accordance with this part are confidential regarding their use as public information, unless applicable law provides otherwise.

(c) *Reports.* The Agency shall submit a report of its real property acquisition and displacement activities under this part if required by the Federal agency funding the project. A report will not be required more frequently than every 3 years, or as the Uniform Act provides, unless the Federal funding agency shows good cause. The report shall be prepared and submitted in the format contained in Appendix B of this part.

**§ 24.10 Appeals.**

(a) *General.* The Agency shall promptly review appeals in accordance with the requirements of applicable law and this part.

(b) *Actions which may be appealed.* Any aggrieved person may file a written appeal with the Agency in any case in which the person believes that the Agency has failed to properly consider the person's application for assistance under this part. Such assistance may include, but is not limited to, the person's eligibility for, or the amount of, a payment required under § 24.106 or § 24.107, or a relocation payment required under this part. The Agency shall consider a written appeal regardless of form.

(c) *Time limit for initiating appeal.* The Agency may set a reasonable time limit for a person to file an appeal. The time limit shall not be less than 60 days after the person receives written notification of the Agency's determination on the person's claim.

(d) *Right to representation.* A person has a right to be represented by legal counsel or other representative in connection with his or her appeal, but solely at the person's own expense.

(e) *Review of files by person making appeal.* The Agency shall permit a person to inspect and copy all materials pertinent to his or her appeal, except materials which are classified as confidential by the Agency. The Agency may, however, impose reasonable conditions on the person's right to inspect, consistent with applicable laws.

(f) *Scope of review of appeal.* In deciding an appeal, the Agency shall consider all pertinent justification and other material submitted by the person, and all other available information that is needed to ensure a fair and full review of the appeal.

(g) *Determination and notification after appeal.* Promptly after receipt of all information submitted by a person in support of an appeal, the Agency shall make a written determination on the appeal, including an explanation of the basis on which the decision was made, and furnish the person a copy. If the full relief requested is not granted, the Agency shall advise the person of his or her right to seek judicial review.

(h) *Agency official to review appeal.* The Agency official conducting the review of the appeal shall be either the head of the Agency or his or her authorized designee. However, the official shall not have been directly involved in the action appealed.

## Subpart B—Real Property Acquisition

**§ 24.101 Applicability of acquisition requirements.**

(a) *General.* The requirements of this subpart apply to any acquisition of real property for a Federal program or project, and to programs and projects where there is Federal financial assistance in any part of project costs except for:

(1) Voluntary transactions that meet all of the following conditions:

(i) No specific site or property needs to be acquired, although the Agency may limit its search for alternative sites to a general geographic area. Where an Agency wishes to purchase more than one site within a geographic area on this basis, all owners are to be treated similarly.



(ii) The property to be acquired is not part of an intended, planned, or designated project area where all or substantially all of the property within the area is to be acquired within specific time limits.

(iii) The Agency will not acquire the property in the event negotiations fail to result in an amicable agreement, and the owner is so informed in writing.

(iv) The Agency will inform the owner of what it believes to be the fair market value of the property.

(2) Acquisitions for programs or projects undertaken by an agency or person that receives Federal financial assistance but does not have authority to acquire property by eminent domain, provided that such Agency or person shall:

(i) Prior to making an offer for the property, clearly advise the owner that it is unable to acquire the property in the event negotiations fail to result in an amicable agreement; and

(ii) Inform the owner of what it believes to be fair market value of the property.

(3) The acquisition of real property from a Federal agency, State, or State agency, if the Agency desiring to make the purchase does not have authority to acquire the property through condemnation.

(4) The acquisition of real property by a cooperative from a person who, as a condition of membership in the cooperative, has agreed to provide without charge any real property that is needed by the cooperative.

(b) *Less-than-full-fee interest in real property.* In addition to fee simple title, the provisions of this subpart apply when acquiring fee title subject to retention of a life estate or a life use; to acquisition by leasing where the lease term, including option(s) for extension, is 50 years or more; and to the acquisition of permanent easements. (See Appendix A of this part, § 24.101(b).)

(c) *Federally-assisted projects.* For projects receiving Federal financial assistance, the provisions of §§ 24.102, 24.103, 24.104, and 24.105 apply to the greatest extent practicable under State law. (See § 24.4(a).)

**§ 24.102 Basic acquisition policies.**

(a) *Expeditious acquisition.* The Agency shall make every reasonable effort to acquire the real property expeditiously by negotiation.

(b) *Notice to owner.* As soon as feasible, the owner shall be notified of the Agency's interest in acquiring the real property and the basic protections, including the agency's obligation to secure an appraisal, provided to the owner by law and this part. (See also § 24.203.)

(c) *Appraisal, waiver thereof, and invitation to owner.* (1) Before the initiation of negotiations the real property to be acquired shall be appraised, except as provided in § 24.102(c)(2), and the owner, or the owner's designated representative, shall be given an opportunity to accompany the appraiser during the appraiser's inspection of the property.

(2) An appraisal is not required if the owner is donating the property and releases the Agency from this obligation, or the Agency determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the fair market value is estimated at $2,500 or less, based on a review of available data.

(d) *Establishment and offer of just compensation.* Before the initiation of negotiations, the Agency shall establish an amount which it believes is just compensation for the real property. The amount shall not be less than the approved appraisal of the fair market value of the property, taking into account the value of allowable damages or benefits to any remaining property. (See also § 24.104.) Promptly thereafter, the Agency shall make a written offer to the owner to acquire the property for the full amount believed to be just compensation.

(e) *Summary statement.* Along with the initial written purchase offer, the owner shall be given a written statement of the basis for the offer of just compensation, which shall include:

(1) A statement of the amount offered as just compensation. In the case of a partial acquisition, the compensation for the real property to be acquired and the compensation for damages, if any, to the remaining real property shall be separately stated.

(2) A description and location identification of the real property and the interest in the real property to be acquired.

(3) An identification of the buildings, structures, and other improvements (including removable building equipment and trade fixtures) which are considered to be part of the real property for which the offer of just compensation is made. Where appropriate, the statement shall identify any separately held ownership interest in the property, e.g., a tenant-owned improvement, and indicate that such interest is not covered by the offer.

(f) *Basic negotiation procedures.* The Agency shall make reasonable efforts to contact the owner or the owner's representative and discuss its offer to purchase the property, including the basis for the offer of just compensation; and, explain its acquisition policies and procedures, including its payment of incidental expenses in accordance with § 24.106. The owner shall be given reasonable opportunity to consider the offer and present material which the owner believes is relevant to determining the value of the property and to suggest modification in the proposed terms and conditions of the purchase. The Agency shall consider the owner's presentation.

(g) *Updating offer of just compensation.* If the information presented by the owner, or a material change in the character or condition of the property, indicates the need for new appraisal information, or if a significant delay has occurred since the time of the appraisal(s) of the property, the Agency shall have the appraisal(s) updated or obtain a new appraisal(s). If the latest appraisal information indicates that a change in the purchase offer is warranted, the Agency shall promptly reestablish just compensation and offer that amount to the owner in writing.

(h) *Coercive action.* The Agency shall not advance the time of condemnation, or defer negotiations or condemnation or the deposit of funds with the court, or take any other coercive action in order to induce an agreement on the price to be paid for the property.

(i) *Administrative settlement.* The purchase price for the property may exceed the amount offered as just compensation when reasonable efforts to negotiate an agreement at that amount have failed and an authorized Agency official approves such administrative settlement as being reasonable, prudent, and in the public interest. When Federal funds pay for or participate in acquisition costs, a written justification shall be prepared which indicates that available information (e.g., appraisals, recent court awards, estimated trial costs, or valuation problems) supports such a settlement.

(j) *Payment before taking possession.* Before requiring the owner to surrender possession of the real property, the Agency shall pay the agreed purchase price to the owner, or in the case of a condemnation, deposit with the court, for the benefit of the owner, an amount not less than the Agency's approved appraisal of the fair market value of such property, or the court award of compensation in the condemnation proceeding for the property. In exceptional circumstances, with the prior approval of the owner, the Agency may obtain a right-of-entry for

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construction purposes before making payment available to an owner.

(k) *Uneconomic remnant.* If the acquisition of only a portion of a property would leave the owner with an uneconomic remnant, the Agency shall offer to acquire the uneconomic remnant along with the portion of the property needed for the project. (See § 24.2(w).)

(l) *Inverse condemnation.* If the Agency intends to acquire any interest in real property by exercise of the power of eminent domain, it shall institute formal condemnation proceedings and not intentionally make it necessary for the owner to institute legal proceedings to prove the fact of the taking of the real property.

(m) *Fair rental.* If the Agency permits a former owner or tenant to occupy the real property after acquisition for a short term or a period subject to termination by the Agency on short notice, the rent shall not exceed the fair market rent for such occupancy.

**§ 24.103 Criteria for appraisals.**

(a) *Standards of appraisal.* The format and level of documentation for an appraisal depend on the complexity of the appraisal problem. The Agency shall develop minimum standards for appraisals consistent with established and commonly accepted appraisal practice for those acquisitions which, by virtue of their low value or simplicity, do not require the in-depth analysis and presentation necessary in a detailed appraisal. A detailed appraisal shall be prepared for all other acquisitions. A detailed appraisal shall reflect nationally recognized appraisal standards, including, to the extent appropriate, the Uniform Appraisal Standards for Federal Land Acquisition. An appraisal must contain sufficient documentation, including valuation data and the appraiser's analysis of that data, to support his or her opinion of value. At a minimum, a detailed appraisal shall contain the following items:

(1) The purpose and/or the function of the appraisal, a definition of the estate being appraised, and a statement of the assumptions and limiting conditions affecting the appraisal.

(2) An adequate description of the physical characteristics of the property being appraised (and, in the case of a partial acquisition, an adequate description of the remaining property), a statement of the known and observed encumbrances, if any, title information, location, zoning, present use, an analysis of highest and best use, and at least a 5-year sales history of the property.

(3) All relevant and reliable approaches to value consistent with commonly accepted professional appraisal practices. When sufficient market sales data are available to reliably support the fair market value for the specific appraisal problem encountered, the Agency, at its discretion, may require only the market approach. If more than one approach is utilized, there shall be an analysis and reconciliation of approaches to value that are sufficient to support the appraiser's opinion of value.

(4) A description of comparable sales, including a description of all relevant physical, legal, and economic factors such as parties to the transaction, source and method of financing, and verification by a party involved in the transaction.

(5) A statement of the value of the real property to be acquired and, for a partial acquisition, a statement of the value of the damages and benefits, if any, to the remaining real property, where appropriate.

(6) The effective date of valuation, date of appraisal, signature, and certification of the appraiser.

(b) *Influence of the project on just compensation.* To the extent permitted by applicable law, the appraiser shall disregard any decrease or increase in the fair market value of the real property caused by the project for which the property is to be acquired, or by the likelihood that the property would be acquired for the project, other than that due to physical deterioration within the reasonable control of the owner.

(c) *Owner retention of improvements.* If the owner of a real property improvement is permitted to retain it for removal from the project site, the amount to be offered for the interest in the real property to be acquired shall be not less than the difference between the amount determined to be just compensation for the owner's entire interest in the real property and the salvage value (defined at § 24.2(s)) of the retained improvement.

(d) *Qualifications of appraisers.* The Agency shall establish criteria for determining the minimum qualifications of appraisers. Appraiser qualifications shall be consistent with the level of difficulty of the appraisal assignment. The Agency shall review the experience, education, training, and other qualifications of appraisers, including review appraisers, and utilize only those determined to be qualified.

(e) *Conflict of interest.* No appraiser or review appraiser shall have any interest, direct or indirect, in the real property being appraised for the Agency that would in any way conflict with the preparation or review of the appraisal. Compensation for making an appraisal shall not be based on the amount of the valuation. No appraiser shall act as a negotiator for real property which that person has appraised, except that the Agency may permit the same person to both appraise and negotiate an acquisition where the value of the acquisition is $2,500, or less.

**§ 24.104 Review of appraisals.**

The Agency shall have an appraisal review process and, at a minimum:

(a) A qualified reviewing appraiser shall examine all appraisals to assure that they meet applicable appraisal requirements and shall, prior to acceptance, seek necessary corrections or revisions.

(b) If the reviewing appraiser is unable to approve or recommend approval of an appraisal as an adequate basis for the establishment of the offer of just compensation, and it is determined that it is not practical to obtain an additional appraisal, the reviewing appraiser may develop appraisal documentation in accordance with § 24.103 to support an approved or recommended value.

(c) The review appraiser's certification of the recommended or approved value of the property shall be set forth in a signed statement which identifies the appraisal reports reviewed and explains the basis for such recommendation or approval. Any damages or benefits to any remaining property shall also be identified in the statement.

**§ 24.105 Acquisition of tenant-owned improvements.**

(a) *Acquisition of improvements.* When acquiring any interest in real property, the Agency shall offer to acquire at least an equal interest in all buildings, structures, or other improvements located upon the real property to be acquired, which it requires to be removed or which it determines will be adversely affected by the use to which such real property will be put. This shall include any improvement of a tenant-owner who has the right or obligation to remove the improvement at the expiration of the lease term.

(b) *Improvements considered to be real property.* Any building, structure, or other improvement, which would be considered to be real property if owned by the owner of the real property on which it is located, shall be considered to be real property for purposes of this Subpart.

(c) *Appraisal and establishment of just compensation for tenant-owned improvements.* Just compensation for a tenant-owned improvement is the amount which the improvement contributes to the fair market value of the whole Property or its salvage value, whichever is greater. (Salvage value is defined at § 24.2(s).)

(d) *Special conditions.* No payment shall be made to a tenant-owner for any real property improvement unless:

(1) The tenant-owner, in consideration for the payment, assigns, transfers, and releases to the Agency all of the tenant-owner's right, title, and interest in the improvement; and

(2) The owner of the real Property on which the improvement is located disclaims all interest in the improvement; and

(3) The payment does not result in the duplication of any compensation otherwise authorized by law.

(e) *Alternative compensation.* Nothing in this Subpart shall be construed to deprive the tenant-owner of any right to reject payment under this Subpart and to obtain payment for such property interests in accordance with other applicable law.

**§ 24.106 Expenses incidental to transfer of title to the Agency.**

(a) The owner of the real property shall be reimbursed for all reasonable expenses the owner necessarily incurred for:

(1) Recording fees, transfer taxes, documentary stamps, evidence of title, boundary surveys, legal descriptions of the real property, and similar expenses incidental to conveying the real property to the Agency. However, the Agency is not required to pay costs solely required to perfect the owner's title to the real property; and

(2) Penalty costs and other charges for prepayment of any preexisting recorded mortgage entered into in good faith encumbering the real property; and

(3) The pro rata portion of any prepaid real property taxes which are allocable to the period after the Agency obtains title to the property or effective possession of it, whichever is earlier.

(b) Whenever feasible, the Agency shall pay these costs directly so that the owner will not have to pay such costs and then seek reimbursement from the Agency.

**§ 24.107 Certain litigation expenses.**

The owner of the real property shall be reimbursed for any reasonable expenses, including reasonable attorney, appraisal, and engineering fees, which the owner actually incurred because of a condemnation proceeding, if:

(a) The final judgment of the court is that the Agency cannot acquire the real property by condemnation; or

(b) The condemnation proceeding is abandoned by the Agency other than under an agreed-upon settlement; or

(c) The court having jurisdiction renders a judgment in favor of the owner in an inverse condemnation proceeding or the Agency effects a settlement of such proceeding.

**§ 24.108 Donations.**

An owner whose real property is being acquired may, after being fully informed by the Agency of the right to receive just compensation for such property, donate such property or any part thereof, any interest therein, or any compensation paid therefor, to the Agency as such owner shall determine. The Agency is responsible for assuring that an appraisal of the real property is obtained unless the owner releases the Agency from such obligation, except as provided in § 24.102(c)(2).

## Subpart C—General Relocation Requirements

**§ 24.201 Purpose.**

This Subpart prescribes general requirements governing the provision of relocation payments and other relocation assistance in this part.

**§ 24.202 Applicability.**

These requirements apply to the relocation of any displaced person as defined at § 24.2(g).

**§ 24.203 Relocation notices.**

(a) *General information notice.* As soon as feasible, a person scheduled to be displaced shall be furnished with a general written description of the displacing agency's relocation program which does at least the following:

(1) Informs the person that he or she may be displaced for the project and generally describes the relocation payment(s) for which the person may be eligible, the basic conditions of eligibility, and the procedures for obtaining the payment(s).

(2) Informs the person that he or she will be given reasonable relocation advisory services, including referrals to replacement properties, help in filing payment claims, and other necessary assistance to help the person successfully relocate.

(3) Informs the person that he or she will not be required to move without at least 90 days' advance written notice (see paragraph (c) of this section), and informs any person to be displaced from a dwelling that he or she cannot be required to move permanently unless at least one comparable replacement dwelling has been made available.

(4) Describes the person's right to appeal the Agency's determination as to a person's application for assistance for which a person may be eligible under this part.

(b) *Notice of relocation eligibility.* Eligibility for relocation assistance shall begin on the date of initiation of negotiations (defined in § 24.2(k)) for the occupied property. When this occurs, the Agency shall promptly notify all occupants in writing of their eligibility for applicable relocation assistance.

(c) *Ninety-day notice—(1) General.* No lawful occupant shall be required to move unless he or she has received at least 90 days advance written notice of the earliest date by which he or she may be required to move.

(2) *Timing of notice.* The displacing agency may issue the notice 90 days before it expects the person to be displaced or earlier.

(3) *Content of notice.* The 90-day notice shall either state a specific date as the earliest date by which the occupant may be required to move, or state that the occupant will receive a further notice indicating, at least 30 days in advance, the specific date by which he or she must move. If the 90-day notice is issued before a comparable replacement dwelling is made available, the notice must state clearly that the occupant will not have to move earlier than 90 days after such a dwelling is made available. (See § 24.204(a).)

(4) *Urgent need.* In unusual circumstances, an occupant may be required to vacate the property on less than 90 days advance written notice if the displacing agency determines that a 90-day notice is impracticable, such as when the person's continued occupancy of the property would constitute a substantial danger to health or safety. A copy of the Agency's determination shall be included in the applicable case file.

**§ 24.204 Availability of comparable replacement dwelling before displacement.**

(a) *General.* No person to be displaced shall be required to move from his or her dwelling unless at least one comparable replacement dwelling (defined at § 24.2(d)) has been made available to the person. Where possible, three or more comparable replacement dwellings shall be made available. A comparable replacement dwelling will be considered to have been made available to a person, if:

(1) The person is informed of its location; and

(2) The person has sufficient time to negotiate and enter into a purchase agreement or lease for the property; and

(3) Subject to reasonable safeguards, the person is assured of receiving the

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relocation assistance and acquisition payment to which the person is entitled in sufficient time to complete the purchase or lease of the property.

(b) *Circumstances permitting waiver.* The Federal agency funding the project may grant a waiver of the policy in paragraph (a) of this section in any case where it is demonstrated that a person must move because of:

(1) A major disaster as defined in section 102(c) of the Disaster Relief Act of 1974 (42 U.S.C. 5121); or

(2) A presidentially declared national emergency; or

(3) Another emergency which requires immediate vacation of the real property, such as when continued occupancy of the displacement dwelling constitutes a substantial danger to the health or safety of the occupants or the public.

(c) *Basic conditions of emergency move.* Whenever a person is required to relocate for a temporary period because of an emergency as described in paragraph (b) of this section, the Agency shall:

(1) Take whatever steps are necessary to assure that the person is temporarily relocated to a decent, safe, and sanitary dwelling; and

(2) Pay the actual reasonable out-of-pocket moving expenses and any reasonable increase in rent and utility costs incurred in connection with the temporary relocation; and

(3) Make available to the displaced person as soon as feasible, at least one comparable replacement dwelling. (For purposes of filing a claim and meeting the eligibility requirements for a relocation payment, the date of displacement is the date the person moves from the temporarily occupied dwelling.)

**§ 24.205 Relocation planning, advisory services, and coordination.**

(a) *Relocation planning.* During the early stages of development, Federal and Federal-aid programs or projects shall be planned in such a manner that the problems associated with the displacement of individuals, families, businesses, farms, and nonprofit organizations are recognized and solutions are developed to minimize the adverse impacts of displacement. Such planning, where appropriate, shall precede any action by an Agency which will cause displacement, and should be scoped to the complexity and nature of the anticipated displacing activity including an evaluation of program resources available to carry out timely and orderly relocations. Planning may involve a relocation survey or study which may include the following:

(1) An estimate of the number of households to be displaced including information such as owner/tenant status, estimated value and rental rates of properties to be acquired, family characteristics, and special consideration of the impacts on minorities, the elderly, large families, and the handicapped when applicable.

(2) An estimate of the number of comparable replacement dwellings in the area (including price ranges and rental rates) that are expected to be available to fulfill the needs of those households displaced. When an adequate supply of comparable housing is not expected to be available, consideration of housing of last resort actions should be instituted.

(3) An estimate of the number, type and size of the businesses, farms, and nonprofit organizations to be displaced and the approximate number of employees that may be affected.

(4) Consideration of any special relocation advisory services that may be necessary from the displacing agency and other cooperating agencies.

(b) *Loans for planning and preliminary expenses.* In the event that an Agency elects to consider using the duplicative provision in section 215 of the Uniform Act which permits the use of project funds for loans to cover planning and other preliminary expenses for the development of additional housing, the lead agency will establish criteria and procedures for such use upon the request of the Federal agency funding the program or project.

(c) *Relocation assistance advisory services*—(1) *General.* The Agency shall carry out a relocation assistance advisory program which satisfies the requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 *et seq.*), and Executive Order 11063 (27 FR 11527, November 24, 1962), and offers the services described in paragraph (c)(2) of this section. If the Agency determines that a person occupying property adjacent to the real property acquired for the project is caused substantial economic injury because of such acquisition, it may offer advisory services to such person.

(2) *Services to be provided.* The advisory program shall include such measures, facilities, and services as may be necessary or appropriate in order to:

(i) Determine the relocation needs and preferences of each person to be displaced and explain the relocation payments and other assistance for which the person may be eligible, the related eligibility requirements, and the procedures for obtaining such assistance. This shall include a personal interview with each person.

(ii) Provide current and continuing information on the availability, purchase prices, and rental costs of comparable replacement dwellings, and explain that the person cannot be required to move unless at least one comparable replacement dwelling is made available as set forth in § 24.204(a).

(A) As soon as feasible, the Agency shall inform the person in writing of the specific comparable replacement dwelling and the price or rent used for establishing the upper limit of the replacement housing payment (see § 24.403 (a) and (b)) and the basis for the determination, so that the person is aware of the maximum replacement housing payment for which he or she may qualify.

(B) Where feasible, housing shall be inspected prior to being made available to assure that it meets applicable standards. (See § 24.2 (d) and (f).) If such an inspection is not made, the person to be displaced shall be notified that a replacement housing payment may not be made unless the replacement dwelling is subsequently inspected and determined to be decent, safe, and sanitary.

(C) Whenever possible, minority persons shall be given reasonable opportunities to relocate to decent, safe, and sanitary replacement dwellings, not located in an area of minority concentration, that are within their financial means. This policy, however, does not require an Agency to provide a person a larger payment than is necessary to enable a person to relocate to a comparable replacement dwelling.

(D) All persons, especially the elderly and handicapped, shall be offered transportation to inspect housing to which they are referred.

(iii) Provide current and continuing information on the availability, purchase prices, and rental costs of suitable commercial and farm properties and locations. Assist any person displaced from a business or farm operation to obtain and become established in a suitable replacement location.

(iv) Minimize hardships to persons in adjusting to relocation by providing counseling, advice as to other sources of assistance that may be available, and such other help as may be appropriate.

(v) Supply persons to be displaced with appropriate information concerning Federal and State housing programs, disaster loan and other programs administered by the Small Business Administration, and other Federal and State programs offering assistance to displaced persons, and technical help to persons applying for such assistance.

(vi) Any person who occupies property acquired by an Agency, when such occupancy began subsequent to the acquisition of the property, and the occupancy is permitted by a short term rental agreement or an agreement subject to termination when the property is needed for a program or project, shall be eligible for advisory services, as determined by the Agency.

(d) *Coordination of relocation activities.* Relocation activities shall be coordinated with project work and other displacement-causing activities to ensure that, to the extent feasible, persons displaced receive consistent treatment and the duplication of functions is minimized. (Also see § 24.8, Subpart A.)



**§ 24.206 Eviction for cause.**

Eviction for cause must conform to applicable state and local law. Any person who occupies the real property and is not in unlawful occupancy on the date of the initiation of negotiations, is presumed to be entitled to relocation payments and other assistance set forth in this part unless the Agency determines that:

(a) The person received an eviction notice prior to the initiation of negotiations and, as a result of that notice is later evicted; or

(b) The person is evicted after the initation of negotiations for serious or repeated violation of material terms of the lease or occupancy agreement; and

(c) In either case the eviction was not undertaken for the purpose of evading the obligation to make available the payments and other assistance set forth in this part.

For purposes of determining eligibility for relocation payments, the date of displacement is the date the person moves, or if later, the date a comparable replacement dwelling is made available. This section applies only to persons who would otherwise have been displaced by the project.

**§ 24.207 General requirements—claims for relocation payments.**

(a) *Documentation.* Any claim for a relocation payment shall be supported by such documentation as may be reasonably required to support expenses incurred, such as bills, certified prices, appraisals, or other evidence of such expenses. A displaced person must be provided reasonable assistance necessary to complete and file any required claim for payment.

(b) *Expeditious payments.* The Agency shall review claims in an expeditious manner. The claimant shall be promptly notified as to any additional documentation that is required to support the claim. Payment for a claim shall be made as soon as feasible following receipt of sufficient documentation to support the claim.

(c) *Advance payments.* If a person demonstrates the need for an advance relocation payment in order to avoid or reduce a hardship, the Agency shall issue the payment, subject to such safeguards as are appropriate to ensure that the objective of the payment is accomplished.

(d) *Time for filing*—(1) All claims for a relocation payment shall be filed with the Agency within 18 months after:

(i) For tenants, the date of displacement;

(ii) For owners, the date of displacement or the date of the final payment for the acquisition of the real property, whichever is later.

(2) This time period shall be waived by the Agency for good cause.

(e) *Multiple occupants of one displacement dwelling.* If two or more occupants of the displacement dwelling move to separate replacement dwellings, each occupant is entitled to a reasonable prorated share, as determined by the Agency, of any relocation payments that would have been made if the occupants moved together to a comparable replacement dwelling. However, if the Agency determines that two or more occupants maintained separate households within the same dwelling, such occupants have separate entitlements to relocation payments.

(f) *Deductions from relocation payments.* An Agency shall deduct the amount of any advance relocation payment from the relocation payment(s) to which a displaced person is otherwise entitled. Similarly, a Federal agency shall, and a State agency may, deduct from relocation payments any rent that the displaced person owes the Agency; provided that no deduction shall be made if it would prevent the displaced person from obtaining a comparable replacement dwelling as required by § 24.204. The Agency shall not withhold any part of a relocation payment to a displaced person to satisfy an obligation to any other creditor.

(g) *Notice of denial of claim.* If the Agency disapproves all or part of a payment claimed or refuses to consider the claim on its merits because of untimely filing or other grounds, it shall promptly notify the claimant in writing of its determination, the basis for its determination, and the procedures for appealing that determination.

**§ 24.208 Relocation payments not considered as income.**

No relocation payment received by a displaced person under this part shall be considered as income for the purpose of the Internal Revenue Code of 1954, which has been redesignated as the Internal Revenue Code of 1986 or for the purpose of determining the eligibility or the extent of eligibility of any person for assistance under the Social Security Act or any other Federal law, except for any Federal law providing low-income housing assistance.

## Subpart D—Payments for Moving and Related Expenses

**§ 24.301 Payment for actual reasonable moving and related expenses—residential moves.**

Any displaced owner-occupant or tenant of a dwelling who qualifies as a displaced person (defined at § 24.2(g)) is entitled to payment of his or her actual moving and related expenses, as the Agency determines to be reasonable and necessary, including expenses for:

(a) Transportation of the displaced person and personal property. Transportation costs for a distance beyond 50 miles are not eligible, unless the Agency determines that relocation beyond 50 miles is justified.

(b) Packing, crating, unpacking, and uncrating of the personal property.

(c) Disconnecting, dismantling, removing, reassembling, and reinstalling relocated household appliances, and other personal property.

(d) Storage of the personal property for a period not to exceed 12 months, unless the Agency determines that a longer period is necessary.

(e) Insurance for the replacement value of the property in connection with the move and necessary storage.

(f) The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his or her agent, or employee) where insurance covering such loss, theft, or damage is not reasonably available.

(g) Other moving-related expenses that are not listed as ineligible under § 24.305, as the Agency determines to be reasonable and necessary.

**§ 24.302 Fixed payment for moving expenses—residential moves.**

Any person displaced from a dwelling or a seasonal residence is entitled to receive an expense and dislocation allowance as an alternative to a payment for actual moving and related expenses under § 24.301. This allowance shall be determined according to the applicable schedule approved by the

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Federal Highway Administration. This includes a provision that the expense and dislocation allowance to a person with minimal personal possessions who is in occupancy of a dormitory style room shared by two or more other unrelated persons or a person whose residential move is performed by an agency at no cost to the person shall be limited to $50.

**§ 24.303 Payment for actual reasonable moving and related expenses—nonresidential moves.**

*(a) Eligible costs.* Any business or farm operation which qualifies as a displaced person (defined at § 24.2(g)) is entitled to payment for such actual moving and related expenses, as the Agency determines to be reasonable and necessary, including expenses for:

(1) Transportation of personal property. Transportation costs for a distance beyond 50 miles are not eligible, unless the Agency determines that relocation beyond 50 miles is justified.

(2) Packing, crating, unpacking, and uncrating of the personal property.

(3) Disconnecting, dismantling, removing, reassembling, and reinstalling relocated machinery, equipment, and other personal property, including substitute personal property described at § 24.303(a)(12). This includes connection to utilities available nearby. It also includes modifications to the personal property necessary to adapt it to the replacement structure, the replacement site, or the utilities at the replacement site, and modifications necessary to adapt the utilities at the replacement site to the personal property. (Expenses for providing utilities from the right-of-way to the building or improvement are excluded.)

(4) Storage of the personal property for a period not to exceed 12 months, unless the Agency determines that a longer period is necessary.

(5) Insurance for the replacement value of the personal property in connection with the move and necessary storage.

(6) Any license, permit, or certification required of the displaced person at the replacement location. However, the payment may be based on the remaining useful life of the existing license, permit, or certification.

(7) The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his or her agent, or employee) where insurance covering such loss, theft, or damage is not reasonably available.

(8) Professional services necessary for:

(i) Planning the move of the personal property,

(ii) Moving the personal property, and

(iii) Installing the relocated personal property at the replacement location.

(9) Relettering signs and replacing stationery on hand at the time of displacement that are made obsolete as a result of the move.

(10) Actual direct loss of tangible personal property incurred as a result of moving or discontinuing the business or farm operation. The payment shall consist of the lesser of:

(i) The fair market value of the item for continued use at the displacement site, less the proceeds from its sale. (To be eligible for payment, the claimant must make a good faith effort to sell the personal property, unless the Agency determines that such effort is not necessary. When payment for property loss is claimed for goods held for sale, the fair market value shall be based on the cost of the goods to the business, not the potential selling price.); or

(ii) The estimated cost of moving the item, but with no allowance for storage. (If the business or farm operation is discontinued, the estimated cost shall be based on a moving distance of 50 miles.)

(11) The reasonable cost incurred in attempting to sell an item that is not to be relocated.

(12) Purchase of substitute personal property. If an item of personal property which is used as part of a business or farm operation is not moved but is promptly replaced with a substitute item that performs a comparable function at the replacement site, the displaced person is entitled to payment of the lesser of:

(i) The cost of the substitute item, including installation costs at the replacement site, minus any proceeds from the sale or trade-in of the replaced item; or

(ii) The estimated cost of moving and reinstalling the replaced item but with no allowance for storage. At the Agency's discretion, the estimated cost for a low cost or uncomplicated move may be based on a single bid or estimate.

(13) Searching for a replacement location. A displaced business or farm operation is entitled to reimbursement for actual expenses, not to exceed $1,000, as the Agency determines to be reasonable, which are incurred in searching for a replacement location, including:

(i) Transportation.

(ii) Meals and lodging away from home.

(iii) Time spent searching, based on reasonable salary or earnings.

(iv) Fees paid to a real estate agent or broker to locate a replacement site, exclusive of any fees or commissions related to the purchase of such site.

(14) Other moving-related expenses that are not listed as ineligible under § 24.305, as the Agency determines to be reasonable and necessary.

(b) *Notification and inspection.* The following requirements apply to payments under this section:

(1) The Agency shall inform the displaced person, in writing, of the requirements of paragraphs (b) (2) and (3) of this section as soon as possible after the initiation of negotiations. This information may be included in the relocation information provided to the displaced person as set forth in § 24.203.

(2) The displaced person must provide the Agency reasonable advance written notice of the approximate date of the start of the move or disposition of the personal property and a list of the items to be moved. However, the Agency may waive this notice requirement after documenting its file accordingly.

(3) The displaced person must permit the Agency to make reasonable and timely inspections of the personal property at both the displacement and replacement sites and to monitor the move.

(c) *Self moves.* If the displaced person elects to take full responsibility for the move of the business or farm operation, the Agency may make a payment for the person's moving expenses in an amount not to exceed the lower of two acceptable bids or estimates obtained by the Agency or prepared by qualified staff. At the Agency's discretion, a payment for a low cost or uncomplicated move may be based on a single bid or estimate.

(d) *Transfer of ownership.* Upon request and in accordance with applicable law, the claimant shall transfer to the Agency ownership of any personal property that has not been moved, sold, or traded in.

(e) *Advertising signs.* The amount of a payment for direct loss of an advertising sign which is personal property shall be the lesser of:

(1) The depreciated reproduction cost of the sign, as determined by the Agency, less the proceeds from its sale; or

(2) The estimated cost of moving the sign, but with no allowance for storage.

**§ 24.304 Reestablishment expenses—nonresidential moves.**

In addition to the payments available under § 24.303 of this subpart, a small business, as defined in § 24.2(t), farm or nonprofit organization may be eligible to



receive a payment, not to exceed $10,000, for expenses actually incurred in relocating and reestablishing such small business, farm or nonprofit organization at a replacement site.

(a) *Eligible expenses.* Reestablishment expenses must be reasonable and necessary, as determined by the Agency. They may include, but are not limited to, the following:

(1) Repairs or improvements to the replacement real property as required by Federal, State or local law, code or ordinance.

(2) Modifications to the replacement property to accommodate the business operation or make replacement structures suitable for conducting the business.

(3) Construction and installation costs, not to exceed $1,500 for exterior signing to advertise the business.

(4) Provision of utilities from right-of-way to improvements on the replacement site.

(5) Redecoration or replacement of soiled or worn surfaces at the replacement site, such as paint, panelling, or carpeting.

(6) Licenses, fees and permits when not paid as part of moving expenses.

(7) Feasibility surveys, soil testing and marketing studies.

(8) Advertisement of replacement location, not to exceed $1,500.

(9) Professional services in connection with the purchase or lease of a replacement site.

(10) Estimated increased costs of operation during the first 2 years at the replacement site, not to exceed $5,000, for such items as:

(i) Lease or rental charges,

(ii) Personal or real property taxes,

(iii) Insurance premiums, and

(iv) Utility charges, excluding impact fees.

(11) Impact fees or one-time assessments for anticipated heavy utility usage.

(12) Other items that the Agency considers essential to the reestablishment of the business.

(13) Expenses in excess of the regulatory maximums set forth in paragraphs (a) (3), (8) and (10) of this section may be considered eligible if large and legitimate disparities exist between costs of operation at the displacement site and costs of operation at an otherwise similar replacement site. In such cases the regulatory limitation for reimbursement of such costs may, at the request of the Agency, be waived by the Federal agency funding the program or project, but in no event shall total costs payable under this section exceed the $10,000 statutory maximum.

(b) *Ineligible expenses.* The following is a nonexclusive listing of reestablishment expenditures not considered to be reasonable, necessary, or otherwise eligible:

(1) Purchase of capital assets, such as, office furniture, filing cabinets, machinery, or trade fixtures.

(2) Purchase of manufacturing materials, production supplies, product inventory, or other items used in the normal course of the business operation.

(3) Interior or exterior refurbishments at the replacement site which are for aesthetic purposes, except as provided in paragraph (a)(5) of this section.

(4) Interest on money borrowed to make the move or purchase the replacement property.

(5) Payment to a part-time business in the home which does not contribute materially to the household income.

**§ 24.305 Ineligible moving and related expenses.**

A displaced person is not entitled to payment for:

(a) The cost of moving any structure or other real property improvement in which the displaced person reserved ownership. However, this part does not preclude the computation under § 24.401(c)(4)(iii); or

(b) Interest on a loan to cover moving expenses; or

(c) Loss of goodwill; or

(d) Loss of profits; or

(e) Loss of trained employees; or

(f) Any additional operating expenses of a business or farm operation incurred because of operating in a new location except as provided in § 24.304(a)(10); or

(g) Personal injury; or

(h) Any legal fee or other cost for preparing a claim for a relocation payment or for representing the claimant before the Agency; or

(i) Expenses for searching for a replacement dwelling; or

(j) Physical changes to the real property at the replacement location of a business or farm operation except as provided in §§ 24.303(a)(3) and § 24.304(a); or

(k) Costs for storage of personal property on real property already owned or leased by the displaced person.

**§ 24.306 Fixed payment for moving expenses—nonresidential moves.**

(a) *Business.* A displaced business may be eligible to choose a fixed payment in lieu of the payments for actual moving and related expenses, and actual reasonable reestablishment expenses provided by §§ 24.303 and 24.304. Such fixed payment, except for payment to a nonprofit organization, shall equal the average annual net earnings of the business, as computed in accordance with paragraph (e) of this section, but not less than $1,000 nor more than $20,000. The displaced business is eligible for the payment if the Agency determines that:

(1) The business owns or rents personal property which must be moved in connection with such displacement and for which an expense would be incurred in such move; and, the business vacates or relocates from its displacement site.

(2) The business cannot be relocated without a substantial loss of its existing patronage (clientele or net earnings). A business is assumed to meet this test unless the Agency determines that it will not suffer a substantial loss of its existing patronage; and

(3) The business is not part of a commercial enterprise having more than three other entities which are not being acquired by the Agency, and which are under the same ownership and engaged in the same or similar business activities.

(4) The business is not operated at a displacement dwelling solely for the purpose of renting such dwelling to others.

(5) The business is not operated at the displacement site solely for the purpose of renting the site to others.

(6) The business contributed materially to the income of the displaced person during the 2 taxable years prior to displacement (see § 24.2(e)).

(b) *Determining the number of businesses.* In determining whether two or more displaced legal entities constitute a single business which is entitled to only one fixed payment, all pertinent factors shall be considered, including the extent to which:

(1) The same premises and equipment are shared;

(2) Substantially identical or interrelated business functions are carried out and business and financial affairs are commingled;

(3) The entities are held out to the public, and to those customarily dealing with them, as one business; and

(4) The same person or closely related persons own, control, or manage the affairs of the entities.

(c) *Farm operation.* A displaced farm operation (defined at § 24.2(i)) may choose a fixed payment, in lieu of the payments for actual moving and related expenses and actual reasonable reestablishment expenses, in an amount equal to its average annual net earnings

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as computed in accordance with paragraph (e) of this section, but not less than $1,000 nor more than $20,000. In the case of a partial acquisition of land which was a farm operation before the acquisition, the fixed payment shall be made only if the Agency determines that:

(1) The acquisition of part of the land caused the operator to be displaced from the farm operation on the remaining land; or

(2) The partial acquisition caused a substantial change in the nature of the farm operation.

(d) *Nonprofit organization.* A displaced nonprofit organization may choose a fixed payment of $1,000 to $20,000, in lieu of the payments for actual moving and related expenses and actual reasonable reestablishment expenses, if the Agency determines that it cannot be relocated without a substantial loss of existing patronage (membership or clientele). A nonprofit organization is assumed to meet this test, unless the Agency demonstrates otherwise. Any payment in excess of $1,000 must be supported with financial statements for the two 12-month periods prior to the acquisition. The amount to be used for the payment is the average of 2 years annual gross revenues less administrative expenses. (See Appendix A of this part).

(e) *Average annual net earnings of a business or farm operation.* The average annual net earnings of a business or farm operation are one-half of its net earnings before Federal, State, and local income taxes during the 2 taxable years immediately prior to the taxable year in which it was displaced. If the business or farm was not in operation for the full 2 taxable years prior to displacement, net earnings shall be based on the actual period of operation at the displacement site during the 2 taxable years prior to displacement, projected to an annual rate. Average annual net earnings may be based upon a different period of time when the Agency determines it to be more equitable. Net earnings include any compensation obtained from the business or farm operation by its owner, the owner's spouse, and dependents. The displaced person shall furnish the Agency proof of net earnings through income tax returns, certified financial statements, or other reasonable evidence which the Agency determines is satisfactory.

**§ 24.307 Discretionary utility relocation payments.**

(a) Whenever a program or project undertaken by a displacing agency causes the relocation of a utility facility (see §§ 24.2 (aa) and (bb)) and the relocation of the facility creates extraordinary expenses for its owner, the displacing agency may, at its option, make a relocation payment to the owner for all or part of such expenses, if the following criteria are met:

(1) The utility facility legally occupies State or local government property, or property over which the State or local government has an easement or right-of-way; and

(2) The utility facility's right of occupancy thereon is pursuant to State law or local ordinance specifically authorizing such use, or where such use and occupancy has been granted through a franchise, use and occupancy permit, or other similar agreement; and

(3) Relocation of the utility facility is required by and is incidental to the primary purpose of the project or program undertaken by the displacing agency; and

(4) There is no Federal law, other than the Uniform Act, which clearly establishes a policy for the payment of utility moving costs that is applicable to the displacing agency's program or project; and

(5) State or local government reimbursement for utility moving costs or payment of such costs by the displacing agency is in accordance with State law.

(b) For the purposes of this section, the term "extraordinary expenses" means those expenses which, in the opinion of the displacing agency, are not routine or predictable expenses relating to the utility's occupancy of rights-of-way, and are not ordinarily budgeted as operating expenses, unless the owner of the utility facility has explicitly and knowingly agreed to bear such expenses as a condition for use of the property, or has voluntarily agreed to be responsible for such expenses.

(c) A relocation payment to a utility facility owner for moving costs under this section may not exceed the cost to functionally restore the service disrupted by the federally assisted program or project, less any increase in value of the new facility and salvage value of the old facility. The displacing agency and the utility facility owner shall reach prior agreement on the nature of the utility relocation work to be accomplished, the eligibility of the work for reimbursement, the responsibilities for financing and accomplishing the work, and the method of accumulating costs and making payment. (See Appendix A, of this part, § 24.307.)

## Subpart E—Replacement Housing Payments

**§ 24.401 Replacement housing payment for 180-day homeowner-occupants.**

(a) *Eligibility.* A displaced person is eligible for the replacement housing payment for a 180-day homeowner-occupant if the person:

(1) Has actually owned and occupied the displacement dwelling for not less than 180 days immediately prior to the initiation of negotiations; and

(2) Purchases and occupies a decent, safe, and sanitary replacement dwelling within one year after the later of the following dates (except that the Agency may extend such one year period for good cause):

(i) The date the person receives final payment for the displacement dwelling or, in the case of condemnation, the date the full amount of the estimate of just compensation is deposited in the court, or

(ii) The date the displacing agency's obligation under § 24.204 is met.

(b) *Amount of payment.* The replacement housing payment for an eligible 180-day homeowner-occupant may not exceed $22,500. (See also § 24.404.) The payment under this subpart is limited to the amount necessary to relocate to a comparable replacement dwelling within one year from the date the displaced homeowner-occupant is paid for the displacement dwelling, or the date a comparable replacement dwelling is made available to such person, whichever is later. The payment shall be the sum of:

(1) The amount by which the cost of a replacement dwelling exceeds the acquisition cost of the displacement dwelling, as determined in accordance with paragraph (c) of this section; and

(2) The increased interest costs and other debt service costs which are incurred in connection with the mortgage(s) on the replacement dwelling, as determined in accordance with paragraph (d) of this section; and

(3) The reasonable expenses incidental to the purchase of the replacement dwelling, as determined in accordance with paragraph (e) of this section.

(c) *Price differential*—(1) *Basic computation.* The price differential to be paid under paragraph (b)(1) of this section is the amount which must be added to the acquisition cost of the displacement dwelling to provide a total amount equal to the lesser of:

(i) The reasonable cost of a comparable replacement dwelling as determined in accordance with § 24.403(a); or



(ii) The purchase price of the decent, safe, and sanitary replacement dwelling actually purchased and occupied by the displaced person.

(2) *Mixed-use and multifamily properties.* If the displacement dwelling was part of a property that contained another dwelling unit and/or space used for non-residential purposes, and/or is located on a lot larger than typical for residential purposes, only that portion of the acquisition payment which is actually attributable to the displacement dwelling shall be considered its acquisition cost when computing the price differential.

(3) *Insurance proceeds.* To the extent necessary to avoid duplicate compensation, the amount of any insurance proceeds received by a person in connection with a loss to the displacement dwelling due to a catastrophic occurrence (fire, flood, etc.) shall be included in the acquisition cost of the displacement dwelling when computing the price differential. (Also see § 24.3.)

(4) *Owner retention of displacement dwelling.* If the owner retains ownership of his or her dwelling, moves it from the displacement site, and reoccupies it on a replacement site, the purchase price of the replacement dwelling shall be the sum of:

(i) The cost of moving and restoring the dwelling to a condition comparable to that prior to the move; and

(ii) The cost of making the unit a decent, safe, and sanitary replacement dwelling (defined at § 24.2(f)); and

(iii) The current fair market value for residential use of the replacement site (see Appendix A of this part, § 24.401(c)(4)(iii)), unless the claimant rented the displacement site and there is a reasonable opportunity for the claimant to rent a suitable replacement site; and

(iv) The retention value of the dwelling, if such retention value is reflected in the "acquisition cost" used when computing the replacement housing payment.

(d) *Increased mortgage interest costs.* The displacing agency shall determine the factors to be used in computing the amount to be paid to a displaced person under paragraph (b)(2) of this section. The payment for increased mortgage interest cost shall be the amount which will reduce the mortgage balance on a new mortgage to an amount which could be amortized with the same monthly payment for principal and interest as that for the mortgage(s) on the displacement dwelling. In addition, payments shall include other debt service costs, if not paid as incidental costs, and shall be based only on bona fide mortgages that were valid liens on the displacement dwelling for at least 180 days prior to the initiation of negotiations. Paragraphs (d) (1) through (5) of this section shall apply to the computation of the increased mortgage interest costs payment, which payment shall be contingent upon a mortgage being placed on the replacement dwelling.

(1) The payment shall be based on the unpaid mortgage balance(s) on the displacement dwelling; however, in the event the person obtains a smaller mortgage than the mortgage balance(s) computed in the buydown determination the payment will be prorated and reduced accordingly. (See Appendix A of this part.) In the case of a home equity loan the unpaid balance shall be that balance which existed 180 days prior to the initiation of negotiations or the balance on the date of acquisition, whichever is less.

(2) The payment shall be based on the remaining term of the mortgage(s) on the displacement dwelling or the term of the new mortgage, whichever is shorter.

(3) The interest rate on the new mortgage used in determining the amount of the payment shall not exceed the prevailing fixed interest rate for conventional mortgages currently charged by mortgage lending institutions in the area in which the replacement dwelling is located.

(4) Purchaser's points and loan origination or assumption fees, but not seller's points, shall be paid to the extent:

(i) They are not paid as incidental expenses;

(ii) They do not exceed rates normal to similar real estate transactions in the area;

(iii) The Agency determines them to be necessary; and

(iv) The computation of such points and fees shall be based on the unpaid mortgage balance on the displacement dwelling, less the amount determined for the reduction of such mortgage balance under this section.

(5) The displaced person shall be advised of the approximate amount of this payment and the conditions that must be met to receive the payment as soon as the facts relative to the person's current mortgage (s) are known and the payment shall be made available at or near the time of closing on the replacement dwelling in order to reduce the new mortgage as intended.

(e) *Incidental expenses.* The incidental expenses to be paid under paragraph (b)(3) of this section or § 24.402(c)(1) are those necessary and reasonable costs actually incurred by the displaced person incident to the purchase of a replacement dwelling, and customarily paid by the buyer, including:

(1) Legal, closing, and related costs, including those for title search, preparing conveyance instruments, notary fees, preparing surveys and plats, and recording fees.

(2) Lender, FHA, or VA application and appraisal fees.

(3) Loan origination or assumption fees that do not represent prepaid interest.

(4) Certification of structural soundness and termite inspection when required.

(5) Credit report.

(6) Owner's and mortgagee's evidence of title, e.g., title insurance, not to exceed the costs for a comparable replacement dwelling.

(7) Escrow agent's fee.

(8) State revenue or documentary stamps, sales or transfer taxes (not to exceed the costs for a comparable replacement dwelling).

(9) Such other costs as the Agency determines to be incidental to the purchase.

(f) *Rental assistance payment for 180-day homeowner.* A 180-day homeowner-occupant, who could be eligible for a replacement housing payment under paragraph (a) of this section but elects to rent a replacement dwelling, is eligible for a rental assistance payment not to exceed $5,250, computed and disbursed in accordance with § 24.402(b).

**§ 24.402 Replacement housing payment for 90-day occupants.**

(a) *Eligibility.* A tenant or owner-occupant displaced from a dwelling is entitled to a payment not to exceed $5,250 for rental assistance, as computed in accordance with paragraph (b) of this section, or downpayment assistance, as computed in accordance with paragraph (c) of this section, if such displaced person:

(1) Has actually and lawfully occupied the displacement dwelling for at least 90 days immediately prior to the initiation of negotiations; and

(2) Has rented, or purchased, and occupied a decent, safe, and sanitary replacement dwelling within 1 year (unless the Agency extends this period for good cause) after:

(i) For a tenant, the date he or she moves from the displacement dwelling, or

(ii) For an owner-occupant, the later of:

(A) The date he or she receives final payment for the displacement dwelling, or in the case of condemnation, the date

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the full amount of the estimate of just compensation is deposited with the court; or

(B) The date he or she moves from the displacement dwelling.

(b) *Rental assistance payment*—(1) *Amount of payment.* An eligible displaced person who rents a replacement dwelling is entitled to a payment not to exceed $5,250 for rental assistance. (See also § 24.404.) Such payment shall be 42 times the amount obtained by subtracting the base monthly rental for the displacement dwelling from the lesser of:

(i) The monthly rent and estimated average monthly cost of utilities for a comparable replacement dwelling; or

(ii) The monthly rent and estimated average monthly cost of utilities for the decent, safe, and sanitary replacement dwelling actually occupied by the displaced person.

(2) *Base monthly rental for displacement dwelling.* The base monthly rental for the displacement dwelling is the lesser of:

(i) The average monthly cost for rent and utilities at the displacement dwelling for a reasonable period prior to displacement, as determined by the Agency. (For an owner-occupant, use the fair market rent for the displacement dwelling. For a tenant who paid little or no rent for the displacement dwelling, use the fair market rent, unless its use would result in a hardship because of the person's income or other circumstances); or

(ii) Thirty (30) percent of the person's average gross household income. (If the person refuses to provide appropriate evidence of income or is a dependent, the base monthly rental shall be established solely on the criteria in paragraph (b)(2)(i) of this section. A full time student or resident of an institution may be assumed to be a dependent, unless the person demonstrates otherwise.); or

(iii) The total of the amounts designated for shelter and utilities if receiving a welfare assistance payment from a program that designates the amounts for shelter and utilities.

(3) *Manner of disbursement.* A rental assistance payment may, at the Agency's discretion, be disbursed in either a lump sum or in installments. However, except as limited by § 24.403(f), the full amount vests immediately, whether or not there is any later change in the person's income or rent, or in the condition or location of the person's housing.

(c) *Downpayment assistance payment*—(1) *Amount of payment.* An eligible displaced person who purchases a replacement dwelling is entitled to a downpayment assistance payment in the amount the person would receive under paragraph (b) of this section if the person rented a comparable replacement dwelling. At the discretion of the Agency, a downpayment assistance payment may be increased to any amount not to exceed $5,250. However, the payment to a displaced homeowner shall not exceed the amount the owner would receive under § 24.401(b) if he or she met the 180-day occupancy requirement. An Agency's discretion to provide the maximum payment shall be exercised in a uniform and consistent manner, so that eligible displaced persons in like circumstances are treated equally. A displaced person eligible to receive a payment as a 180-day owner-occupant under § 24.401(a) is not eligible for this payment. (See also Appendix A of this part, § 24.402(c).)

(2) *Application of payment.* The full amount of the replacement housing payment for downpayment assistance must be applied to the purchase price of the replacement dwelling and related incidental expenses.

**§ 24.403 Additional rules governing replacement housing payments.**

(a) *Determining cost of comparable replacement dwelling.* The upper limit of a replacement housing payment shall be based on the cost of a comparable replacement dwelling (defined at § 24.2(d)).

(1) If available, at least three comparable replacement dwellings shall be examined and the payment computed on the basis of the dwelling most nearly representative of, and equal to, or better than, the displacement dwelling. An adjustment shall be made to the asking price of any dwelling, to the extent justified by local market data (see also § 24.205(a)(2) and Appendix A of this part). An obviously overpriced dwelling may be ignored.

(2) If the site of the comparable replacement dwelling lacks a major exterior attribute of the displacement dwelling site, (e.g., the site is significantly smaller or does not contain a swimming pool), the value of such attribute shall be subtracted from the acquisition cost of the displacement dwelling for purposes of computing the payment.

(3) If the acquisition of a portion of a typical residential property causes the displacement of the owner from the dwelling and the remainder is a buildable residential lot, the Agency may offer to purchase the entire property. If the owner refuses to sell the remainder to the Agency, the fair market value of the remainder may be added to the acquisition cost of the displacement dwelling for purposes of computing the replacement housing payment.

(4) To the extent feasible, comparable replacement dwellings shall be selected from the neighborhood in which the displacement dwelling was located or, if that is not possible, in nearby or similar neighborhoods where housing costs are generally the same or higher.

(b) *Inspection of replacement dwelling.* Before making a replacement housing payment or releasing a payment from escrow, the Agency or its designated representative shall inspect the replacement dwelling and determine whether it is a decent, safe, and sanitary dwelling as defined at § 24.2(f).

(c) *Purchase of replacement dwelling.* A displaced person is considered to have met the requirement to purchase a replacement dwelling, if the person:

(1) Purchases a dwelling; or

(2) Purchases and rehabilitates a substandard dwelling; or

(3) Relocates a dwelling which he or she owns or purchases; or

(4) Constructs a dwelling on a site he or she owns or purchases; or

(5) Contracts for the purchase or construction of a dwelling on a site provided by a builder or on a site the person owns or purchases.

(6) Currently owns a previously purchased dwelling and site, valuation of which shall be on the basis of current fair market value.

(d) *Occupancy requirements for displacement or replacement dwelling.* No person shall be denied eligibility for a replacement housing payment solely because the person is unable to meet the occupancy requirements set forth in these regulations for a reason beyond his or her control, including:

(1) A disaster, an emergency, or an imminent threat to the public health or welfare, as determined by the President, the Federal agency funding the project, or the displacing agency; or

(2) Another reason, such as a delay in the construction of the replacement dwelling, military reserve duty, or hospital stay, as determined by the Agency.

(e) *Conversion of payment.* A displaced person who initially rents a replacement dwelling and receives a rental assistance payment under § 24.402(b) is eligible to receive a payment under § 24.401 or § 24.402(c) if he or she meets the eligibility criteria for such payments, including purchase and occupancy within the prescribed 1-year period. Any portion of the rental assistance payment that has been disbursed shall be deducted from the payment computed under § 24.401 or § 24.402(c).



(f) *Payment after death.* A replacement housing payment is personal to the displaced person and upon his or her death the undisbursed portion of any such payment shall not be paid to the heirs or assigns, except that:

(1) The amount attributable to the displaced person's period of actual occupancy of the replacement housing shall be paid.

(2) The full payment shall be disbursed in any case in which a member of a displaced family dies and the other family member(s) continue to occupy a decent, safe, and sanitary replacement dwelling.

(3) Any portion of a replacement housing payment necessary to satisfy the legal obligation of an estate in connection with the selection of a replacement dwelling by or on behalf of a deceased person shall be disbursed to the estate.

**§ 24.404 Replacement housing of last resort.**

(a) *Determination to provide replacement housing of last resort.* Whenever a program or project cannot proceed on a timely basis because comparable replacement dwellings are not available within the monetary limits for owners or tenants, as specified in § 24.401 or § 24.402, as appropriate, the Agency shall provide additional or alternative assistance under the provisions of this subpart. Any decision to provide last resort housing assistance must be adequately justified either:

(1) On a case-by-case basis, for good cause, which means that appropriate consideration has been given to:

(i) The availability of comparable replacement housing in the program or project area; and

(ii) The resources available to provide comparable replacement housing; and

(iii) The individual circumstances of the displaced person; or

(2) By a determination that:

(i) There is little, if any, comparable replacement housing available to displaced persons within an entire program or project area; and, therefore, last resort housing assistance is necessary for the area as a whole; and

(ii) A program or project cannot be advanced to completion in a timely manner without last resort housing assistance; and

(iii) The method selected for providing last resort housing assistance is cost effective, considering all elements which contribute to total program or project costs. (Will project delay justify waiting for less expensive comparable replacement housing to become available?)

(b) *Basic rights of persons to be displaced.* Notwithstanding any provision of this subpart, no person shall be required to move from a displacement dwelling unless comparable replacement housing is available to such person. No person may be deprived of any rights the person may have under the Uniform Act or this part. The Agency shall not require any displaced person to accept a dwelling provided by the Agency under these procedures (unless the Agency and the displaced person have entered into a contract to do so) in lieu of any acquisition payment or any relocation payment for which the person may otherwise be eligible.

(c) *Methods of providing comparable replacement housing.* Agencies shall have broad latitude in implementing this subpart, but implementation shall be for reasonable cost, on a case-by-case basis unless an exception to case-by-case analysis is justified for an entire project.

(1) The methods of providing replacement housing of last resort include, but are not limited to:

(i) A replacement housing payment in excess of the limits set forth in § 24.401 or § 24.402. A rental assistance subsidy under this section may be provided in installments or in a lump sum at the Agency's discretion.

(ii) Rehabilitation of and/or additions to an existing replacement dwelling.

(iii) The construction of a new replacement dwelling.

(iv) The provision of a direct loan, which requires regular amortization or deferred repayment. The loan may be unsecured or secured by the real property. The loan may bear interest or be interest-free.

(v) The relocation and, if necessary, rehabilitation of a dwelling.

(vi) The purchase of land and/or a replacement dwelling by the displacing agency and subsequent sale or lease to, or exchange with a displaced person.

(vii) The removal of barriers to the handicapped.

(viii) The change in status of the displaced person with his or her concurrence from tenant to homeowner when it is more cost effective to do so, as in cases where a downpayment may be less expensive than a last resort rental assistance payment.

(2) Under special circumstances, consistent with the definition of a comparable replacement dwelling, modified methods of providing replacement housing of last resort permit consideration of replacement housing based on space and physical characteristics different from those in the displacement dwelling (see Appendix A, of this part, § 24.404), including upgraded, but smaller replacement housing that is decent, safe, and sanitary and adequate to accommodate individuals or families displaced from marginal or substandard housing with probable functional obsolescence. In no event, however, shall a displaced person be required to move into a dwelling that is not functionally equivalent in accordance with § 24.2(d)(2).

(3) The agency shall provide assistance under this subpart to a displaced person who is not eligible to receive a replacement housing payment under §§ 24.401 and 24.402 because of failure to meet the length of occupancy requirement when comparable replacement rental housing is not available at rental rates within the person's financial means, which is 30 percent of the person's gross monthly household income. Such assistance shall cover a period of 42 months.

**Subpart F—Mobile Homes**

**§ 24.501 Applicability.**

This subpart describes the requirements governing the provision of relocation payments to a person displaced from a mobile home and/or mobile home site who meets the basic eligibility requirements of this part. Except as modified by this subpart, such a displaced person is entitled to a moving expense payment in accordance with Subpart D and a replacement housing payment in accordance with Subpart E to the same extent and subject to the same requirements as persons displaced from conventional dwellings.

**§ 24.502 Moving and related expenses—mobile homes.**

(a) A homeowner-occupant displaced from a mobile home or mobile homesite is entitled to a payment for the cost of moving his or her mobile home on an actual cost basis in accordance with § 24.301. A non-occupant owner of a rented mobile home is eligible for actual cost reimbursement under § 24.303. However, if the mobile home is not acquired, but the homeowner-occupant obtains a replacement housing payment under one of the circumstances described at § 24.503(a)(3), the owner is not eligible for payment for moving the mobile home, but may be eligible for a payment for moving personal property from the mobile home.

(b) The following rules apply to payments for actual moving expenses under § 24.301:

(1) A displaced mobile homeowner, who moves the mobile home to a

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replacement site, is eligible for the reasonable cost of disassembling, moving, and reassembling any attached appurtenances, such as porches, decks, skirting, and awnings, which were not acquired, anchoring of the unit, and utility "hook-up" charges.

(2) If a mobile home requires repairs and/or modifications so that it can be moved and/or made decent, safe, and sanitary, and the Agency determines that it would be economically feasible to incur the additional expense, the reasonable cost of such repairs and/or modifications is reimbursable.

(3) A nonreturnable mobile home park entrance fee is reimbursable to the extent it does not exceed the fee at a comparable mobile home park, if the person is displaced from a mobile home park or the Agency determines that payment of the fee is necessary to effect relocation.

**§ 24.503 Replacement housing payment for 180-day mobile homeowner-occupants.**

(a) A displaced owner-occupant of a mobile home is entitled to a replacement housing payment, not to exceed $22,500, under § 24.401 if:

(1) The person both owned the displacement mobile home and occupied it on the displacement site for at least 180 days immediately prior to the initiation of negotiations;

(2) The person meets the other basic eligibility requirements at § 24.401(a); and

(3) The Agency acquires the mobile home and/or mobile home site, or the mobile home is not acquired by the Agency but the owner is displaced from the mobile home because the Agency determines that the mobile home:

(i) Is not and cannot economically be made decent, safe, and sanitary; or

(ii) Cannot be relocated without substantial damage or unreasonable cost; or

(iii) Cannot be relocated because there is no available comparable replacement site; or

(iv) Cannot be relocated because it does not meet mobile home park entrance requirements.

(b) If the mobile home is not acquired, and the Agency determines that it is not practical to relocate it, the acquisition cost of the displacement dwelling used when computing the price differential amount, described at § 24.401(c), shall include the salvage value or trade-in value of the mobile home, whichever is higher.

**§ 24.504 Replacement housing payment for 90-day mobile home occupants.**

A displaced tenant or owner-occupant of a mobile home is eligible for a replacement housing payment, not to exceed $5,250, under § 24.402 if:

(a) The person actually occupied the displacement mobile home on the displacement site for at least 90 days immediately prior to the initiation of negotiations;

(b) The person meets the other basic eligibility requirements at § 24.402(a); and

(c) The Agency acquires the mobile home and/or mobile home site, or the mobile home is not acquired by the Agency but the owner or tenant is displaced from the mobile home because of one of the circumstances described at § 24.503(a)(3).

**§ 24.505 Additional rules governing relocation payments to mobile home occupants.**

(a) *Replacement housing payment based on dwelling and site.* Both the mobile home and mobile home site must be considered when computing a replacement housing payment. For example, a displaced mobile home occupant may have owned the displacement mobile home and rented the site or may have rented the displacement mobile home and owned the site. Also, a person may elect to purchase a replacement mobile home and rent a replacement site, or rent a replacement mobile home and purchase a replacement site. In such cases, the total replacement housing payment shall consist of a payment for a dwelling and a payment for a site, each computed under the applicable section in Subpart E. However, the total replacement housing payment under Subpart E shall not exceed the maximum payment (either $22,500 or $5,250) permitted under the section that governs the computation for the dwelling. (See also § 24.403(b).)

(b) *Cost of comparable replacement dwelling*—(1) If a comparable replacement mobile home is not available, the replacement housing payment shall be computed on the basis of the reasonable cost of a conventional comparable replacement dwelling.

(2) If the Agency determines that it would be practical to relocate the mobile home, but the owner-occupant elects not to do so, the Agency may determine that, for purposes of computing the price differential under § 24.401(c), the cost of a comparable replacement dwelling is the sum of:

(i) The value of the mobile home,

(ii) The cost of any necessary repairs or modifications, and

(iii) The estimated cost of moving the mobile home to a replacement site.

(c) *Initiation of negotiations.* If the mobile home is not actually acquired, but the occupant is considered displaced under this part, the "initiation of negotiations" is the initiation of negotiations to acquire the land, or, if the land is not acquired, the written notification that he or she is a displaced person under this part.

(d) *Person moves mobile home.* If the owner is reimbursed for the cost of moving the mobile home under this part, he or she is not eligible to receive a replacement housing payment to assist in purchasing or renting a replacement mobile home. The person may, however, be eligible for assistance in purchasing or renting a replacement site.

(e) *Partial acquisition of mobile home park.* The acquisition of a portion of a mobile home park property may leave a remaining part of the property that is not adequate to continue the operation of the park. If the Agency determines that a mobile home located in the remaining part of the property must be moved as a direct result of the project, the owner and any tenant shall be considered a displaced person who is entitled to relocation payments and other assistance under this part.

## Subpart G—Certification

**§ 24.601 Purpose.**

This subpart permits a State Agency to fulfill its responsibilities under the Uniform Act by certifying that it shall operate in accordance with State laws and regulations which shall accomplish the purpose and effect of the Uniform Act, in lieu of providing the assurances required by § 24.4 of this part.

**§ 24.602 Certification application.**

(a) *General.* (1) The State governor, or his or her designee, on behalf of any State agency or agencies may apply for certification in accordance with this section.

(2) The governor may designate a lead agency to administer certification in accordance with this section.

(b) *Responsibilities of State agency*—(1) The State agency's application shall be submitted to the governor, or his or her designee, for approval or disapproval.

(2) The State agency application shall contain a statement that the State agency shall carry out the responsibilities imposed by the Uniform Act. The State agency application shall include a copy of the State laws and regulations which shall accomplish the purpose and effect of the Uniform Act.

(c) *Responsibilities of governor or his or her designee.* (1) The governor, or his or her designee, shall approve or disapprove the State agency's application.

(2) The governor, or his or her designee, shall have discretion to disapprove any State agency application.

(3) The governor, or his or her designee, shall analyze State law and regulations and shall certify that they accomplish the purpose and effect of the Uniform Act.

(4) The governor, or his or her designee, shall determine in writing whether the State agency's professional staffing is adequate to fully implement the State law and regulations.

(5) If the State agency's application is approved by the governor, or his or her designee, it shall be transmitted to the Federal agency providing financial assistance to the State agency, with an information copy to the Federal lead agency.

(6) When a determination is received from the Federal funding agency, the governor, or his or her designee, shall notify the State agency.

(d) *Responsibilities of Federal funding agency.* (1) The Federal funding agency shall accept the approved application for certification provided by the governor or his or her designee and shall not conduct an independent review unless or until future monitoring or other appropriate indicators reveal program deficiencies originating therefrom.

(2) The Federal funding agency shall transmit all complete, approved applications, for certification to the Federal lead agency.

(3) At the same time as transmission to the Federal lead agency or during the public comment period, the Federal funding agency shall provide to the lead agency its written assessment of the State agency's capabilities to operate under certification.

(4) The Federal funding agency shall promptly notify the governor, or his or her designee, of the Federal lead agency's determination described in paragraph (e)(2) of this section.

(5) The Federal funding agency shall recognize the State agency's certification within 30 days of the Federal lead agency's finding.

(e) *Responsibilities of Federal lead agency.* (1) The lead agency shall:

(i) Accept the approval provided by the governor, or his or her designee, and shall not conduct an independent review, except as provided for in paragraphs (e)(1)(ii), (iii) and (iv) of this section, unless future monitoring or other appropriate indicators reveal program deficiencies originating therefrom;

(ii) Analyze the extent to which the provisions of the applicable State laws and regulations accomplish the purpose and effect of the Uniform Act, with particular emphasis on the definition of a displaced person, the categories of assistance required, and the levels of assistance provided to persons in such categories;

(iii) Provide a 60-day period of public review and comment, and solicit and consider the views of interested general purpose local governments within the State, as well as the views of interested Federal and State agencies and consider all comments received as a result; and

(iv) Consider any extraordinary information it believes to be relevant.

(2) After considering all the information provided, the lead agency shall either make a finding that the State agency will carry out the Federal agency's Uniform Act responsibility in accordance with State laws and regulations which shall accomplish the same purpose and effect as the Uniform Act, or shall make a determination that a finding cannot be made; and shall so inform the Federal funding agency.

**§ 24.603 Monitoring and corrective action.**

(a) The Federal lead agency shall, in coordination with other Federal agencies, monitor from time to time State agency implementation of programs or projects conducted under the certification process and the State agency shall make available any information required for this purpose.

(b) A Federal agency that has accepted a State Agency's certification pursuant to this subpart should withhold its approval of any of its Federal financial assistance to any project, program, or activity, in progress or to be undertaken by such State agency, if it is found by the Federal agency that the State agency has failed to comply with the applicable State law and regulations implementing those provisions of the Uniform Act for which the State agency would otherwise have provided the assurances required by sections 210 and 305 of the Uniform Act. The Federal agency may withhold Federal financial assistance if the certifying State agency fails to comply with the applicable State law and regulations implementing other provisions of the Uniform Act. The Federal agency shall notify the lead agency at least 15 days prior to any decision to withhold funds under this subpart. The lead agency may consult with the Federal agency upon receiving such notification. The lead agency will also inform other Federal agencies which have accepted certification under this subpart from the same State agency of the pending action.

(c) A Federal agency may, after consultation with the lead agency, and notice to and consultation with the governor, or his or her designee, rescind any previous approval provided under this subpart if the certifying State agency fails to comply with its certification or with applicable State law and regulations. The Federal agency shall initiate consultation with the lead agency at least 30 days prior to any decision to rescind approval of a certification under this subpart. The lead agency will also inform other Federal agencies which have accepted a certification under this subpart from the same State agency, and will take whatever other action that may be appropriate.

(d) Section 103(b)(2) of the Uniform Act, as amended, requires that the head of the lead agency report biennially to the Congress on State agency implementation of section 103. To enable adequate preparation of the prescribed biennial report, the lead agency may require periodic information or data from affected Federal or State agencies.

## Appendix A to Part 24—Additional Information

This appendix provides additional information to explain the intent of certain provisions of this part.

### Subpart A—General

*Section 24.2 Definitions*

*Section 24.2(d)(2) Definition of comparable replacement dwelling.* The requirement in § 24.2(d)(2) that a comparable replacement dwelling be "functionally equivalent" to the displacement dwelling means that it must perform the same function, provide the same utility, and be capable of contributing to a comparable style of living as the displacement dwelling. While it need not possess every feature of the displacement dwelling, the principal features must be present.

For example, if the displacement dwelling contains a pantry and a similar dwelling is not available, a replacement dwelling with ample kitchen cupboards may be acceptable. Insulated and heated space in a garage might prove an adequate substitute for basement workshop space. A dining area may substitute for a separate dining room. Under some circumstances, attic space could substitute for basement space for storage purposes, and vice versa.

Only in unusual circumstances may a comparable replacement dwelling contain fewer rooms or, consequentially, less living space than the displacement dwelling. Such may be the case when a decent, safe, and sanitary replacement



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dwelling (which by definition is "adequate to accommodate" the displaced person) may be found to be "functionally equivalent" to a larger but very run-down substandard displacement dwelling.

Section 24.2(d)(7) requires that a comparable replacement dwelling for a person who is not receiving assistance under any government housing program before displacement must be currently available on the private market without any subsidy under a government housing program.

A public housing unit may qualify as a comparable replacement dwelling only for a person displaced from a public housing unit; a privately-owned dwelling with a housing program subsidy tied to the unit may qualify as a comparable replacement dwelling only for a person displaced from a similarly subsidized unit or public housing; a housing program subsidy to a person (not tied to the building), such as a HU Section 8 Existing Housing Program Certificate or a Housing Voucher, may be reflected in an offer of a comparable replacement dwelling to a person receiving a similar subsidy or occupying a privately-owned subsidized unit or public housing unit before displacement.

However, nothing in this part prohibits an Agency from offering, or precludes a person from accepting, assistance under a government housing program, even if the person did not receive similar assistance before displacement. However, the Agency is obligated to inform the person of his or her options under this part. (If a person accepts assistance under a government housing program, the rental assistance payment under § 24.402 would be computed on the basis of the person's actual out-of-pocket cost for the replacement housing.)

*Section 24.2(g)(2) Persons not displaced.* Section 24.2(g)(2)(iv) recognizes that there are circumstances where the acquisition of real property takes place without the intent or necessity that an occupant of the property be permanently displaced. Because such occupants are not considered "displaced persons" under this part, great care must be exercised to ensure that they are treated fairly and equitably. For example, if the tenant-occupant of a dwelling will not be displaced, but is required to relocate temporarily in connection with the project, the temporarily-occupied housing must be decent, safe, and sanitary and the tenant must be reimbursed for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including moving expenses and increased housing costs during the temporary relocation.

It is also noted that any person who disagrees with the Agency's determination that he or she is not a displaced person under this part may file an appeal in accordance with § 24.10.

*Section 24.2(k) Initiation of negotiations.* This section of the part; provides a special definition for acquisitions and displacements under Pub. L. 96-510 or Superfund. These activities differ under Superfund in that relocation may precede acquisition, the reverse of the normal sequence. Superfund is a program designed to clean up hazardous waste sites. When such a site is discovered, it may be necessary, in certain limited circumstances, to alert the public to the danger and to the advisability of moving immediately. If a decision is made later to permanently relocate such persons, those who had moved earlier would no longer be on site when a formal, written offer to acquire the property was made and thus would lose their eligibility for a replacement housing payment. In order to prevent this unfair outcome, we have provided a definition which is based on the public health advisory or announcement of permanent relocation.

*Section 24.3 No Duplication of Payments*

This section prohibits an Agency from making a payment to a person under these regulations that would duplicate another payment the person receives under Federal, State, or local law. The Agency is not required to conduct an exhaustive search for such other payments; it is only required to avoid creating a duplication based on the Agency's knowledge at the time a payment under these regulations is computed.

*Section 24.9 Recordkeeping and Reports*

*Section 24.9(c) Reports.* This paragraph allows Federal agencies to require the submission of a report on activities under the Uniform Act no more frequently than once every three years. The report, if required, will cover activities during the Federal fiscal year immediately prior to the submission date. In order to minimize the administrative burden on Agencies implementing this part, a basic report form (see Appendix B of this part) has been developed which, with only minor modifications, would be used in all Federal and federally-assisted programs or projects.

Subpart B—Real Property Acquisition

*Section 24.101 Applicability of Acquisition Requirements*

*Section 24.101(b) Less-than-full-fee interest in real property.* This provision provides a benchmark beyond which the requirements of the subpart clearly apply to leases. However, the Agency may apply the regulations to any less-than-full-fee acquisition which is short of 50 years but which in its judgment should be covered.

*Section 24.102 Basic Acquisition Policies*

*Section 24.102(d) Establishment of offer of just compensation.* The initial offer to the property owner may not be less than the amount of the Agency's approved appraisal, but may exceed that amount if the Agency determines that a greater amount reflects just compensation for the property.

*Section 24.102(f) Basic negotiation procedures.* It is intended that an offer to an owner be adequately presented, and that the owner be properly informed. Personal, face-to-face contact should take place, if feasible, but this section is not intended to require such contact in all cases.

*Section 24.102(i) Administrative settlement.* This section provides guidance on administrative settlement as an alternative to judicial resolution of a difference of opinion on the value of a property, in order to avoid unnecessary litigation and congestion in the courts.

All relevant facts and circumstances should be considered by an Agency official delegated this authority. Appraisers, including reviewing appraisers, must not be pressured to adjust their estimate of value for the purpose of justifying such settlements. Such action would invalidate the appraisal process.

*Section 24.102(j) Payment before taking possession.* It is intended that a right-of-entry for construction purposes be obtained only in the exceptional case, such as an emergency project, when there is no time to make an appraisal and purchase offer and the property owner is agreeable to the process.

*Section 24.102(m) Fair rental.* Section 301(6) of the Uniform Act limits what an Agency may charge when a former owner or previous occupant of a property is permitted to rent the property for a short term or when occupancy is subject to termination by the Agency on short notice. Such rent may not exceed "the fair rental value * * * to a short-term occupier." Generally, the Agency's right to terminate occupancy on short notice (whether or not the renter also has that right) supports the establishment of a lesser rental than might be found in a longer, fixed-term situation.



*Section 24.103 Criteria for Appraisals*

*Section 24.103(a) Standards of appraisal.* In paragraph (a)(3) of this section, it is intended that all relevant and reliable approaches to value be utilized. However, where an Agency determines that the market approach will be adequate by itself because of the type of property being appraised and the availability of sales data, it may limit the appraisal assignment to the market approach.

*Section 24.103(b) Influence of the project on just compensation.* As used in this section, the term "project" is intended to mean an undertaking which is planned, designed, and intended to operate as a unit.

Because of the public knowledge of the proposed project, property values may be affected. A property owner should not be penalized because of a decrease in value caused by the proposed project nor reap a windfall at public expense because of increased value created by the proposed project.

*Section 24.103(e) Conflict of interest.* The overall objective is to minimize the risk of fraud and mismanagement and to promote public confidence in Federal and federally-assisted land acquisition practices. Recognizing that the costs may outweigh the benefits in some circumstances, § 24.103(e) provides that the same person may both appraise and negotiate an acquisition, if the value is $2,500 or less. However, it should be noted that all appraisals must be reviewed in accordance with § 24.104. This includes appraisals of real property valued at $2,500, or less.

*Section 24.104 Review of appraisals*

This section recognizes that Agencies differ in the authority delegated to the review appraiser. In some cases the reviewer establishes the amount of the offer to the owner and in other cases the reviewer makes a recommendation which is acted on at a higher level. It is also within Agency discretion to decide whether a second review is needed if the first review appraiser establishes a value different from that in the appraisal report or reports on a property.

Before acceptance of an appraisal, the review appraiser must determine that the appraiser's documentation, including valuation data and the analyses of that data, demonstrates the soundness of the appraiser's opinion of value. The qualifications of the review appraiser and the level of explanation of the basis for the reviewer's recommended or approved value depend on the complexity of the appraisal problem. For a low value property requiring an uncomplicated valuation process, the reviewer's approval, endorsing the appraiser's report, may satisfy the requirement for the reviewer's statement.

*Section 24.106 Expenses Incidental to Transfer of Title to the Agency*

Generally, the Agency is able to pay such incidental costs directly and, where feasible, is required to do so. In order to prevent the property owner from making unnecessary out-of-pocket expenditures and to avoid duplication of expenses, the property owner should be informed early in the acquisition process of the Agency's intent to make such arrangements. In addition, it is emphasized that such expenses must be reasonable and necessary.

Subpart C—General Relocation Requirements

*Section 24.204 Availability of Comparable Replacement Dwelling Before Displacement*

*Section 24.204 (a) General.* This provision requires that no one may be required to move from a dwelling without one comparable replacement dwelling having been made available. In addition, § 24.204(a) requires that, "Where possible, three or more comparable replacement dwellings shall be made available." Thus the basic standard for the number of referrals required under this section is three. Only in situations where three comparable replacement dwellings are not available (e.g., when the local housing market does not contain three comparable dwellings) may the Agency make fewer than three referrals.

*Section 24.205 Relocation Assistance Advisory Services*

Section 24.205(c)(2)(ii)(C) is intended to emphasize that if the comparable replacement dwellings are located in areas of minority concentration, minority persons should, if possible, also be given opportunities to relocate to replacement dwellings not located in such areas.

*Section 24.207 General Requirements—Claims for Relocation Payments*

Section 24.207(a) allows an Agency to make a payment for low cost or uncomplicated moves without additional documentation, as long as the payment is limited to the amount of the lowest acceptable bid or estimate, as provided for in § 24.303(c).

Subpart D—Payment for Moving and Related Expenses

*Section 24.306 Fixed Payment for Moving Expenses—Nonresidential Moves*

*Section 24.306(d) Nonprofit organizations.* Gross revenues may include membership fees, class fees, cash donations, tithes, receipts from sales or other forms of fund collection that enables the non-profit organization to operate. Administrative expenses are those for administrative support such as rent, utilities, salaries, advertising and other like items as well as fund raising expenses. Operating expenses for carrying out the purposes of the non-profit organization are not included in administrative expenses. The monetary receipts and expense amounts may be verified with certified financial statements or financial documents required by public agencies.

*Section 24.307 Discretionary Utility Relocation Payments*

Section 24.307(c) describes the issues which must be agreed to between the displacing agency and the utility facility owner in determining the amount of the relocation payment. To facilitate and aid in reaching such agreement, the practices in the Federal Highway Administration regulation, 23 CFR 645, Subpart A, Utility Relocations, Adjustments and Reimbursement, should be followed.

Subpart E—Replacement Housing Payments

*Section 24.401 Replacement Housing Payment for 180-Day Homeowner-Occupants*

*Section 24.401(a)(2).* The provision for extending eligibility for a replacement housing payment beyond the one year period for good cause means that an extension may be granted if some event beyond the control of the displaced person such as acute or life threatening illness, bad weather preventing the completion of construction of a replacement dwelling or other like circumstances should cause delays in occupying a decent, safe, and sanitary replacement dwelling.

*Section 24.401(c)* Price differential. The provision in § 24.401(c)(4)(iii) to use the current fair market value for residential use does not mean the Agency must have the property appraised. Any reasonable method for arriving at the fair market value may be used.

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*Section 24.401(d) Increased mortgage interest costs.* The provision in § 24.401(d) set forth the factors to be used in computing the payment that will be required to reduce a person's replacement mortgage (added to the downpayment) to an amount which can be amortized at the same monthly payment for principal and interest over the same period of time as the remaining term on the displacement mortgages. This payment is commonly known as the "buydown."

The remaining principal balance, the interest rate, and monthly principal and interest payments for the old mortgage aa well as the interest rate, points and term for the new mortgage must be known to compute the increased mortgage interest costs. If the combination of interest and points for the new mortgage exceeds the current prevailing fixed interest rate and points for conventional mortgages and there is no justification for the excessive rate, then the current prevailing fixed interest rate and points shall be used in the computations. Justification may be the unavailability of the current prevailing rate due to the amount of the new mortgage, credit difficulties, or other similar reasons.

**Sample Computation**

| | |
|---|---|
| Old Mortgage: | |
| Remaining Principal Balance | $50,000 |
| Monthly Payment (principal and interest) | 458.22 |
| Interest rate (percent) | 7 |
| New Mortgage: | |
| Interest rate (percent) | 10 |
| Points | 3 |
| Term (years) | 15 |

Remaining term of the old mortgage is determined to be 174 months. (Determining, or computing, the actual remaining term is more reliable than using the data supplied by the mortgagee). However, if it is shorter, use the term of the new mortgage and compute the needed monthly payment.

Amount to be financed to maintain monthly payments of $458.22 at 10%—$42,010.18

| | |
|---|---|
| | $50,000.00 |
| | −42,010.18 |
| Increased mortgage interest costs | 7,989.82 |
| 3 points on $42,010.50 | 1,260.31 |
| Total buydown necessary to maintain payments at $458.22/month | 9,250.13 |

If the new mortgage actually obtained is less than the computed amount for a new mortgage ($42,010.18), the buydown shall be prorated accordingly. If the actual mortgage obtained in our example were $35,000, the buydown payment would be $7,706.57 ($35,000 ÷ by $42,010.18 = .83 $9,250.13 × .83 = $7,706.57).

The Agency is obligated to inform the person of the approximate amount of this payment and that he or she must obtain a mortgage of at least the same amount as the old mortgage and for at least the same term in order to receive the full amount of this payment. The displacee is also to be advised of the interest rate and points used to calculate the payment.

*Section 24.402 Replacement Housing Payment for 90-Day Occupants*

The downpayment assistance provisions in § 24.402(c) are intended to limit such assistance to the amount of the computed rental assistance payment for a tenant or an eligible homeowner. It does, however, provide the latitude for Agency discretion in offering downpayment assistance which exceeds the computed rental assistance payment, up to the $5,250 statutory maximum. This does not mean, however, that such Agency discretion may be exercised in a selective or discriminatory fashion. The displacing agency should develop a policy which affords equal treatment for persons in like circumstances and this policy should be applied uniformly throughout the Agency's programs or projects. It is recommended that displacing agencies coordinate with each other to reach a consensus on a uniform procedure for the State and/or the local jurisdiction.

For purposes of this section, the term downpayment means the downpayment ordinarily required to obtain conventional loan financing for the decent, safe, and sanitary dwelling actually purchased and occupied. However, if the downpayment actually required of a displaced person for the purchase of the replacement dwelling exceeds the amount ordinarily required, the amount of the downpayment may be the amount which the Agency determines is necessary.

*Section 24.403 Additional Rules Governing Replacement Housing Payments*

*Section 24.403(a)(1).* The procedure for adjusting the asking price of comparable replacement dwellings requires that the agency provide advisory assistance to the displaced person concerning negotiations so that he or she may enter the market as a knowledgeable buyer. If a displaced person elects to buy one of the selected comparables, but cannot acquire the property for the adjusted price, it is appropriate to increase the replacement housing payment to the actual purchase amount.

*Section 24.404 Replacement Housing of Last Resort*

*Section 24.404(b) Basic rights of persons to be displaced.* This paragraph affirms the right of a 180-day homeowner-occupant, who is eligible for a replacement housing payment under § 24.401, to a reasonable opportunity to purchase a comparable replacement dwelling. However, it should be read in conjunction with the definition of "owner of a dwelling" at § 24.2(p). The Agency is not required to provide persons owning only a fractional interest in the displacement dwelling a greater level of assistance to purchase a replacement dwelling than the Agency would be required to provide such persons if they owned fee simple title to the displacement dwelling. If such assistance is not sufficient to buy a replacement dwelling, the Agency may provide additional purchase assistance or rental assistance.

*Section 24.404(c) Methods of providing comparable replacement housing.* The use of cost effective means of providing comparable replacement housing is implied throughout the subpart. The term "reasonable cost" is used here to underline the fact that while innovative means to provide housing are encouraged, they should be cost-effective.

Section 24.404(c)(2) permits the use of last resort housing, in special cases, which may involve variations from the usual methods of obtaining comparability. However, it should be specially noted that such variation should never result in a lowering of housing standards nor should it ever result in a lower quality of living style for the displaced person. The physical characteristics of the comparable replacement dwelling may be dissimilar to those of the displacement dwelling but they may never be inferior.

One example might be the use of a new mobile home to replace a very substandard conventional dwelling in an area where comparable conventional dwellings are not available.

Another example could be the use of a superior, but smaller decent, safe and sanitary dwelling to replace a large, old substandard dwelling, only a portion of which is being used as living quarters by the occupants and no other large comparable dwellings are available in the area.



**Subpart F—Mobile Homes**

*Section 24.503 Replacement Housing Payment for 180-Day Mobile Homeowner-Occupants*

A 180-day owner-occupant who is displaced from a mobile home on a rented site may be eligible for a replacement housing payment for a dwelling computed under § 24.401 and a replacement housing payment for a site computed under § 24.402. A 180-day owner-occupant of both the mobile home and the site, who relocates the mobile home, may be eligible for a replacement housing payment under § 24.401 to assist in the purchase of a replacement site or, under § 24.402, to assist in renting a replacement site.

**Appendix B to Part 24—Statistical Report Form**

This appendix sets forth the statistical information collected from Agencies in accordance with § 24.9(c).

*General*

1. *Report coverage.* This report covers all relocation and real property acquisition activities under a Federal or a federally assisted project or program subject to the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended by Pub. L. 100-17, 101 Stat. 132.

2. *Report period.* Activities shall be reported on a Federal Fiscal Year basis, i.e., October 1 through September 30.

3. *Where and when to submit report.* Submit an original and two copies of this report to (*Name and Address of Federal Agency*) as soon as possible after September 30, but NOT LATER THAN NOVEMBER 15.

4. *How to report relocation payments.* The full amount of a relocation payment shall be reported as if disbursed in the year during which the claim was approved, regardless of whether the payment is to be paid in installments.

5. *How to report dollar amounts.* Round off all money entries in Parts B and C to the nearest dollar.

6. *Statutory references.* The references in Part B indicate the section of the Uniform Act that authorizes the cost.

*Part A. Persons displaced*

Report in Part A the number of persons ("households," "businesses, including nonprofit organizations," and "farms") who were permanently displaced during the fiscal year by project or program activities and moved to their replacement dwelling or location. This includes businesses, nonprofit organizations and farms which, upon displacement, discontinued operations. The category "households" includes all families and individuals. A family shall be reported as "one" household, *not* by the number of people in the family unit. Persons shall be reported according to their status as "owners" or "tenants" of the property from which displaced.

*Part B. Relocation payments and expenses*

*Columns (A) and (B).* Report in Column (A) the number of displacements during the report year. Report in Column (B) the total amount represented by the displacements reported in Column (A).

*Line 7A* is a new line item for reporting the business reestablishment expense payment.

*Lines 7A and 8, Column (B).* Report in Column (B) the amount of costs that were included in the total amount approved on Lines 6 and 8, Column (B).

*Lines 12 A and B.* Report in Column (A) the number of households displaced by project or program activities which were provided assistance in accordance with section 206(a) of the Uniform Act. Report in Column (B) the total financial assistance under section 20; (a) allocable to the households reported in Column (A). (If a household received financial assistance under section 203 or section 204 as well as under section 20; (a) of the Uniform Act, report the household as a displacement in Column (A), but in Column (B) report *only* the amount of financial assistance allocable to section 206(a). For example, if a tenant-household receives a payment of $7,000 to rent a replacement dwelling, the sum of $5,250 shall be included on Line 10, Column (B), and $1,750 shall be included on Line 12B, Column (B).)

*Line 13.* Report on Line 13 all administrative costs incurred during the report year in connection with providing relocation advisory assistance and services under section 205 of the Uniform Act.

*Line 15.* Report on Line 15 the total number of relocation appeals filed during the fiscal year by aggrieved persons.

*Part C. Real property acquisition subject to Uniform Act*

*Line 16, Columns (A) and (B).* Report in Column (A) all parcels acquired during the report year where title or possession was vested in the acquiring agency during the reporting period. (Include parcels acquired without Federal financial assistance, if there was or will be Federal financial assistance in other phases of the project or program.) Report in Column (B) the total of the amounts paid, deposited in court, or otherwise made available to a property owner pursuant to applicable law in order to vest title or possession in the acquiring agency.

*Line 17.* Report on Line 17 the number of parcels reported on Line 16 that were acquired by condemnation where price disagreement was involved.

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UNIFORM RELOCATION ASSISTANCE
AND REAL PROPERTY ACQUISITION
STATISTICAL REPORT FORM

Form Approved
OMB No:
Exp. Date:
Attachment - Appendix B

FEDERAL FISCAL YEAR ENDING SEPT. 30, 19__

REPORTING AGENCY _____

CITY/COUNTY/STATE _____

FEDERAL FUNDING AGENCY _____

The burden for this report is estimated to average hours per response, including reviewing instructions, searching data sources, gathering/maintaining data, and completing/reviewing the report. Send comments to: Federal Highway Administration, Office of Right-of-Way, Washington, D.C. 20590 and to: Office of Management and Budget, Paperwork Reduction Project (2105-0508), Washington, D.C. 20503.

PART A. PERSONS DISPLACED BY ACTIVITIES SUBJECT TO THE UNIFORM ACT DURING THE FISCAL YEAR

| ITEM | TOTAL(A) | OWNERS (B) | TENANTS(C) |
|---|---|---|---|
| 1. HOUSEHOLDS (FAMILIES & INDIVIDUALS) | | | |
| 2. BUSINESSES & NONPROFIT ORGANIZATIONS | | | |
| 3. FARMS | | | |

PART B. RELOCATION PAYMENTS & EXPENSES UNDER THE UNIFORM ACT DURING THE FISCAL YEAR

| ITEM | | NO. OF DISPLACEMENTS | AMOUNT(B) |
|---|---|---|---|
| 4. PAYMENTS FOR MOVING HOUSEHOLDS | ACTUAL EXPENSES-SEC. 202(A) | | |
| 5. PAYMENTS FOR MOVING HOUSEHOLDS | SCHEDULE PAYMENT/DISLOCATION ALLOWANCE-SEC. 202(B) | | |
| 6. PAYMENTS FOR MOVING BUSINESSES/FARMS/NPO | ACTUAL EXPENSES-SEC 202(A) | | |
| 7. PAYMENTS FOR MOVING BUSINESSES/FARMS/NPO | IN LIEU PAYMENTS-SEC. 202(C) | | |
| 7A. NO. OF CLAIMS AND AMOUNT ON LINE 6 ATTRIBUTABLE TO REESTABLISHMENT EXPENSES | | | |
| 8. REPLACEMENT HOUSING PAYMENTS FOR 180-DAY HOMEOWNERS-SEC. 203(A) | | | |
| 9. NO. OF CLAIMS AND AMOUNT ON LINE 8 ATTRIBUTABLE TO INCREASED MORTGAGE INTEREST COSTS | | | |
| 10. RENTAL ASSISTANCE PAYMENTS (TENANTS & CERTAIN OTHERS)-SEC. 204(1) | | | |
| 11. DOWNPAYMENT ASSISTANCE PAYMENTS (TENANTS & CERTAIN OTHERS)-SEC. 204(2) | | | |
| 12A. HOUSING ASSISTANCE AS LAST RESORT-SEC. 206(A) | OWNERS | | |
| 12B. HOUSING ASSISTANCE AS LAST RESORT-SEC. 206(A) | TENANTS | | |
| 13. RELOCATION ADVISORY SERVICES COSTS-SEC. 205 | | [redacted] | |
| 14. TOTAL (SUM OF LINES 4(B) THROUGH 13(B)), EXCLUDING LINES 7A AND 9 | | [redacted] | |
| 15. RELOCATION GRIEVANCES FILED DURING THE FISCAL YEAR IN CONNECTION WITH PROJECT/PROGRAM | | | [redacted] |

PART C. REAL PROPERTY ACQUISITION SUBJECT TO THE UNIFORM ACT DURING THE FISCAL YEAR

| ITEM | NO. OF PARCELS (A) | COMPENSATION(B) |
|---|---|---|
| 16. TOTAL PARCELS ACQUIRED | | |
| 17. TOTAL PARCELS ACQUIRED BY CONDEMNATION INCLUDED ON LINE 16 WHERE PRICE DISAGREEMENT WAS INVOLVED | | [redacted] |

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## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Uniform Relocation and Real Property Acquisition for Federal and Federally-Assisted Programs; Fixed Payment for Moving Expenses; Residential Moves

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice.

**SUMMARY:** The purpose of this notice is to publish the alternative moving expense and dislocation allowance schedule for persons displaced from dwellings in each State, the District of Columbia, Puerto Rico, and the Virgin Islands as required by section 405(b) of the Surface Transportation and Uniform Relocation Assistance Act of 1987, Pub. L. 100-17, 101 Stat. 132 (1987 Amendments).

**EFFECTIVE DATE:** The provisions of this Notice are effective March 2, 1989. For further information about implementation dates, see the discussion in the supplementary information section below.

**FOR FURTHER INFORMATION CONTACT:** Barbara J. Satorius, Policy Development Branch, Office of Right-of-Way (202-366-2043); or Reid Alsop, Office of the Chief Counsel (202-366-1371), Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours, Monday-Friday are from 7:30 a.m. to 4:00 p.m., e.t.

**SUPPLEMENTARY INFORMATION:** Section 202(b) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91-646, 84 Stat. 1894 (Uniform Act), as amended by section 405(b) of the 1987 Amendments, provides that a displaced individual or family may elect to be paid for moving expenses on the basis of a moving expense and dislocation allowance schedule established by the head of the lead agency as an alternative to being paid for moving and related expenses actually incurred. Section 405(b) eliminated statutory limitations on the amounts that could be paid pursuant to such a schedule. Implementing regulations at 49 CFR 24.302 provide that the FHWA will develop and approve this schedule.

The purpose of this notice is to publish the schedule approved by the FHWA for use in payment determinations by all Federal, State and local governments, and persons affected by the Uniform Act, as amended. It has been developed from data provided by State highway agencies, and incorporates the dislocation allowance within the schedule's payment amounts. The exceptions and limitations are as follows:

1. The expense and dislocation allowance to a person whose residential move is performed by an agency at no cost to the person shall be limited to $50.00.

2. An occupant will be paid on an actual cost basis for moving his or her mobile home from the displacement site. In addition, a reasonable payment to the occupant for packing and securing personal property for the move may be paid at the agency's discretion.

3. The expense and dislocation allowance to a person with minimal personal possessions who is in occupancy of a dormitory style room shared by two or more other unrelated persons shall be limited to $50.00.

An occupant who moves from a mobile home may be paid for the removal of personal property from the mobile home in accordance with the moving and dislocation allowance payment schedule.

Any government, agency or person that is in compliance with 49 CFR Part 24 may implement the schedule being published today. Any government, agency or person that is unable to comply with 49 CFR Part 24 at this time may continue to use the moving expense schedule published in the **Federal Register** on December 30, 1986, until the schedule published here becomes mandatory on April 2, 1989, the date that the 1987 Amendments and 49 CFR Part 24 become fully applicable.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

(42 U.S.C. 4601; 49 CFR 24.302(a)).

Issued on February 24, 1989.

**Robert E. Farris,**

*Federal Highway Administrator.*

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RESIDENTIAL MOVING EXPENSE & DISLOCATION ALLOWANCE PAYMENT SCHEDULE

| STATE | OCCUPANT OWNS FURNITURE (1) & (2) | | | | | | | | | OCCUPANT DOES NOT OWN FURNITURE (3) | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | NUMBER OF ROOMS OF FURNITURE | | | | | | | | EACH ADD. ROOM | FIRST ROOM | EACH ADD. ROOM |
| | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | | | |
| ALABAMA | 250 | 350 | 450 | 550 | 625 | 700 | 775 | 850 | 75 | 200 | 25 |
| ALASKA | 350 | 500 | 650 | 800 | 925 | 1050 | 1175 | 1300 | 100 | 225 | 35 |
| ARIZONA | 250 | 400 | 550 | 650 | 750 | 850 | 950 | 1050 | 100 | 225 | 35 |
| ARKANSAS | 250 | 350 | 450 | 550 | 625 | 700 | 775 | 850 | 75 | 200 | 25 |
| CALIFORNIA | 250 | 400 | 550 | 650 | 750 | 850 | 950 | 1050 | 100 | 225 | 35 |
| COLORADO | 250 | 400 | 550 | 650 | 750 | 850 | 950 | 1050 | 100 | 225 | 35 |
| CONNECTICUT | 250 | 400 | 550 | 650 | 750 | 850 | 950 | 1050 | 100 | 225 | 35 |
| DELAWARE | 250 | 350 | 450 | 550 | 625 | 700 | 775 | 850 | 75 | 200 | 25 |
| D. C. | 250 | 400 | 550 | 650 | 750 | 850 | 950 | 1050 | 100 | 225 | 35 |
| FLORIDA | 250 | 350 | 450 | 550 | 625 | 700 | 775 | 850 | 75 | 200 | 25 |
| GEORGIA | 250 | 350 | 450 | 550 | 625 | 700 | 775 | 850 | 75 | 200 | 25 |
| HAWAII | 250 | 400 | 550 | 650 | 750 | 850 | 950 | 1050 | 100 | 225 | 35 |
| IDAHO | 250 | 350 | 450 | 550 | 625 | 700 | 775 | 850 | 75 | 200 | 25 |
| ILLINOIS | 250 | 400 | 550 | 650 | 750 | 850 | 950 | 1050 | 100 | 225 | 35 |
| INDIANA | 250 | 400 | 550 | 650 | 750 | 850 | 950 | 1050 | 100 | 225 | 35 |
| IOWA | 250 | 350 | 450 | 550 | 625 | 700 | 775 | 850 | 75 | 200 | 25 |
| KANSAS | 250 | 350 | 450 | 550 | 625 | 700 | 775 | 850 | 75 | 200 | 25 |
| KENTUCKY | 250 | 400 | 550 | 650 | 750 | 850 | 950 | 1050 | 100 | 225 | 35 |
| LOUISIANA | 250 | 350 | 450 | 550 | 625 | 700 | 775 | 850 | 75 | 200 | 25 |
| MAINE | 250 | 350 | 450 | 550 | 625 | 700 | 775 | 850 | 75 | 200 | 25 |
| MARYLAND | 250 | 400 | 550 | 650 | 750 | 850 | 950 | 1050 | 100 | 225 | 35 |
| MASSACHUSETTS | 250 | 400 | 550 | 650 | 750 | 850 | 950 | 1050 | 100 | 225 | 35 |
| MICHIGAN | 250 | 400 | 550 | 650 | 750 | 850 | 950 | 1050 | 100 | 225 | 35 |
| MINNESOTA | 250 | 400 | 550 | 650 | 750 | 850 | 950 | 1050 | 100 | 225 | 35 |
| MISSISSIPPI | 250 | 350 | 450 | 550 | 625 | 700 | 775 | 850 | 75 | 200 | 25 |
| MISSOURI | 250 | 350 | 450 | 550 | 625 | 700 | 775 | 850 | 75 | 200 | 25 |
| MONTANA | 250 | 350 | 450 | 550 | 625 | 700 | 775 | 850 | 75 | 200 | 25 |
| NEBRASKA | 250 | 350 | 450 | 550 | 625 | 700 | 775 | 850 | 75 | 200 | 25 |
| NEVADA | 250 | 400 | 550 | 650 | 750 | 850 | 950 | 1050 | 100 | 225 | 35 |
| NEW HAMPSHIRE | 250 | 350 | 450 | 550 | 625 | 700 | 775 | 850 | 75 | 200 | 25 |
| NEW JERSEY | 250 | 400 | 550 | 650 | 750 | 850 | 950 | 1050 | 100 | 225 | 35 |
| NEW MEXICO | 250 | 400 | 550 | 650 | 750 | 850 | 950 | 1050 | 100 | 225 | 35 |
| NEW YORK | 250 | 400 | 550 | 650 | 750 | 850 | 950 | 1050 | 100 | 225 | 35 |
| NORTH CAROLINA | 250 | 350 | 450 | 550 | 625 | 700 | 775 | 850 | 75 | 200 | 25 |
| NORTH DAKOTA | 250 | 350 | 450 | 550 | 625 | 700 | 775 | 850 | 75 | 200 | 25 |
| OHIO | 250 | 400 | 550 | 650 | 750 | 850 | 950 | 1050 | 100 | 225 | 35 |
| OKLAHOMA | 250 | 350 | 450 | 550 | 625 | 700 | 775 | 850 | 75 | 200 | 25 |
| OREGON | 250 | 400 | 550 | 650 | 750 | 850 | 950 | 1050 | 100 | 225 | 35 |
| PENNSYLVANIA | 250 | 400 | 550 | 650 | 750 | 850 | 950 | 1050 | 100 | 225 | 35 |
| PUERTO RICO | 250 | 350 | 450 | 550 | 625 | 700 | 775 | 850 | 75 | 200 | 25 |
| RHODE ISLAND | 250 | 350 | 450 | 550 | 625 | 700 | 775 | 850 | 75 | 200 | 25 |
| SOUTH CAROLINA | 250 | 350 | 450 | 550 | 625 | 700 | 775 | 850 | 75 | 200 | 25 |
| SOUTH DAKOTA | 250 | 350 | 450 | 550 | 625 | 700 | 775 | 850 | 75 | 200 | 25 |
| TENNESSEE | 250 | 350 | 450 | 550 | 625 | 700 | 775 | 850 | 75 | 200 | 25 |
| TEXAS | 250 | 350 | 450 | 550 | 625 | 700 | 775 | 850 | 75 | 200 | 25 |
| UTAH | 250 | 350 | 450 | 550 | 625 | 700 | 775 | 850 | 75 | 200 | 25 |
| VERMONT | 250 | 350 | 450 | 550 | 625 | 700 | 775 | 850 | 75 | 200 | 25 |
| VIRGIN ISLANDS | 250 | 350 | 450 | 550 | 625 | 700 | 775 | 850 | 75 | 200 | 25 |
| VIRGINIA | 250 | 400 | 550 | 650 | 750 | 850 | 950 | 1050 | 100 | 225 | 35 |
| WASHINGTON | 250 | 400 | 550 | 650 | 750 | 850 | 950 | 1050 | 100 | 225 | 35 |
| WEST VIRGINIA | 250 | 400 | 550 | 650 | 750 | 850 | 950 | 1050 | 100 | 225 | 35 |
| WISCONSIN | 250 | 400 | 550 | 650 | 750 | 850 | 950 | 1050 | 100 | 225 | 35 |
| WYOMING | 250 | 350 | 450 | 550 | 625 | 700 | 775 | 850 | 75 | 200 | 25 |

Exceptions: See supplementary information.

(1) Person whose residential move is performed by agency, $50.
(2) Move of a mobile home from site, actual cost; reasonable amount may be added for packing and securing personal property for the move at agency discretion.
(3) Occupant of dormitory, $50.

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March 2, 1989

Part III

# Department of Health and Human Services

**Food and Drug Administration**

**21 CFR Part 291**
**Methadone; Rule, Proposed Rules, and Notice**

VOL 54 ISS 40 MR 2 1989 UMI



**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**21 CFR Part 291**

**[Docket No. 83N-0249]**

## National Institute on Drug Abuse; Methadone in Maintenance and Detoxification; Joint Revision of Conditions for Use

**AGENCIES:** Food and Drug Administration and National Institute on Drug Abuse.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) and the National Institute on Drug Abuse (NIDA) are issuing a final rule to revise the conditions for the use of methadone in maintenance and detoxification treatment. Among other changes, the rule provides standards for long-term detoxification, as required by Pub. L. 98-509, which revised the statutory definition of detoxification treatment from 21 days to 180 days. Other revisions are designed to streamline the regulation, to delete the requirement that treatment programs using methadone submit annual reports to FDA, and to promote more efficient operation of narcotic treatment programs.

**EFFECTIVE DATE:** April 3, 1989.

**FOR FURTHER INFORMATION CONTACT:** Robert J. Meyer, or Wayne H. Mitchell, Center for Drug Evaluation and Research (HFD-362), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8046.

**SUPPLEMENTARY INFORMATION:**

### Introduction

The conditions for the use of methadone in the maintenance and detoxification treatment of narcotic addicts are provided for in 21 CFR Part 291 (the methadone regulation). The methadone regulation also delineates the appropriate methods of professional practice for medical treatment of the narcotic addiction of various categories of addicts. (See 21 CFR 291.505.)

In the **Federal Register** of October 2, 1987 (52 FR 37046), FDA and NIDA jointly published a proposed regulation to revise the conditions for the use of methadone in maintenance and detoxification treatment. The proposal was generally based upon the comments received in response to a notice of intent to propose revisions to the methadone regulation published in the **Federal Register** of September 13, 1983 (48 FR 41049). As discussed in the preamble to the proposal, most comments received on the September 1983 notice argued that the methadone regulation not be substantially revised and that the requirements of the methadone regulation are generally neither unreasonable nor burdensome. FDA and NIDA agreed with these comments and proposed revisions that did not involve major substantive changes, but instead were designed to streamline the regulation and to promote more efficient operation of narcotic treatment programs. The most significant of the proposed revisions would allow for extended detoxification treatment, up to 180 days, to conform to a recent amendment to the Controlled Substances Act (CSA) (21 U.S.C. 801 *et seq.*) and proposed the development of a separate guideline consisting of those provisions of the methadone regulation that were not legal requirements. Elsewhere in this issue of the **Federal Register**, FDA and NIDA are publishing a notice of the availability of a separate guidance document consisting of recommended practices in the maintenance and detoxification treatment of narcotic addicts. As was proposed in the October 2, 1987, **Federal Register**, this guidance document is based upon those provisions of the prior methadone regulation that were not legal requirements.

Also in this issue of the **Federal Register**, FDA and NIDA are publishing a proposed rule to provide minimum service maintenance treatment to patients awaiting placement in comprehensive maintenance treatment. The proposal is in response to the human immunodeficiency virus (HIV) epidemic and is intended to allow programs additional flexibility to admit more narcotic addicts into treatment as quickly as possible and to assure the availability of counseling on avoiding transmission of the HIV.

In addition, elsewhere in this issue of the **Federal Register**, FDA and NIDA are publishing an advance notice of proposed rulemaking soliciting comments on a pilot study designed to help identify improved measures of methadone program performance and thus enhance the quality of treatment.

### Comments

In response to the proposal, FDA and NIDA received 42 comments. These comments represented many interests—concerned citizens; members of Congress; Federal, State, and local government authorities; narcotic treatment programs and counseling services; the medical community as represented by the American Medical Association and the American Psychiatric Association; a pharmaceutical manufacturer; and a drug testing laboratory. A section-by-section analysis of the comments and the agencies' responses to them are set out below.

*Definitions*

1. One comment questioned why the proposed definition of "maintenance treatment" under § 291.505(a)(2) did not specifically state that it was longer than 180 days. Another comment characterized the proposed definition as inadequate because it lacks the concepts of dosage stabilization, rehabilitative services, and a treatment goal of an eventual drug-free state.

In the preamble to the proposed rule (52 FR 37046), FDA and NIDA stated that it had as one of its goals the streamlining of the current regulation. The agencies believe that including the concepts stated by the comments and a time in treatment period is not appropriate for definitional purposes because the definition of "maintenance treatment" is not dependent upon or limited by such concepts or time period. The agencies note, however, that for the purpose of establishing the conditions for use of narcotic drugs in hospitals for detoxification treatment (see § 291.505(f)(2) of the final rule), if a narcotic drug is administered to a patient for treatment of narcotic dependence for more than 180 days, the procedure is no longer considered detoxification but is, instead, considered maintenance treatment.

2. One comment read the proposed definition of "medication unit" under § 291.505(a)(4)(ii) as authorizing private practitioners and local pharmacists to conduct drug testing or analyses. The comment recommended that only approved analytical laboratories be authorized to conduct drug testing or analyses.

FDA and NIDA agree that the wording of proposed § 291.505(a)(4)(ii) could be construed as the comment has suggested. As set forth in § 291.505(d)(2)(i) of the final rule, each testing laboratory selected by a program that performs the testing required under this regulation must be in compliance with all applicable Federal proficiency testing and licensing standards and applicable State standards. It is not the agencies' intention to authorize, without an application for separate approval, licensed private practitioners and community pharmacists to provide services at medication units other than administering or dispensing methadone and collecting samples for drug testing or analysis for narcotic drugs. (See § 291.505(b)(3)(v) of the final rule.) Thus, for the sake of clarity, the definition in § 291.505(a)(4)(ii) of the final rule states that a medication unit is a facility from which licensed private practitioners and community pharmacists are authorized to collect samples for drug testing or analysis for narcotic drugs.

3. One comment disagreed with the proposed rule's definition of "narcotic treatment program" under § 291.505(a)(6) in that it does not incorporate concepts of counseling and medical treatment.

FDA and NIDA disagree with this comment. The definition states that a "narcotic treatment program" must provide, when appropriate or necessary, a comprehensive range of medical and rehabilitative services.

*Minimum Testing or Analysis for Drugs: Uses and Frequency*

4. One comment stated that the proposed probation scheme under § 291.505(d)(6)(v)(B)(*2*) seemingly places too strong a reliance on the accuracy and utility of urine testing to ensure that take-home patients were ingesting their methadone. The comment noted that some sensitive drug testing methods can detect methadone several days after consumption while some drug screening methods do not always indicate the presence of methadone 24 hours after supervised administration. It suggested that a negative result on a drug test for the presence of methadone not result in automatic action being taken in regards to probation, but that the program physician be given flexibility in interpreting the result.

FDA and NIDA recognize that test methods utilized for drug screening tests or analyses (e.g., immunoassay) do not, in general, provide the same level of analytical accuracy as would be obtained with test methods used for confirmation tests or analyses (e.g., gas chromatography/mass spectrometry). Thus, under the probationary scheme for take-home medication, a drug test result utilized by a program physician as the sole basis for placing a patient on probation is required to be a confirmed test result. FDA and NIDA believe that confirmed test results are accurate and reliable indicators of a patient's drug use and that a program physician can rely on them for probationary purposes. Also, the probation scheme does not preclude a program physician from placing a patient on probation based solely upon his or her clinical judgment (see § 291.505(d)(6)(v) of the final rule).

5. One comment said that including amphetamines and barbiturates in the list of mandatorily tested drugs under proposed § 291.505(d)(2) does not reflect the current patterns of illicit drug use. The comment stated that benzodiazepines have now largely replaced barbiturates as drugs of abuse, and that amphetamine abuse is now rare in many parts of the country. In order to provide for the most efficient allocation of resources, the comment suggested that opiates, methadone, and cocaine continue to be retained in the list of mandatorily tested drugs as well as two or three other drugs that would be most likely to be abused in a program's locality.

The current list of mandatorily tested drugs was adopted based on evidence of increased abuse of the listed drugs in the addict population. Screening for the listed drugs was intended to help the program physician to qualitatively distinguish the listed drugs of abuse and to confirm his or her clinical impression of a patient. Current information available to the agencies regarding the patterns of illicit drug use of amphetamines and barbiturates demonstrates a significant increase in the manufacture of illicit amphetamines and a continued, albeit sporadic, use of barbiturates. Thus, the agencies are not persuaded that any of the listed drugs should be deleted at this time. Because of this comment and other anecdotal reports regarding changing patterns of illicit drug use, the agencies are soliciting information and supportive data concerning the need to maintain or revise the list of mandatorily tested drugs in an advance notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**.

FDA and NIDA agree that there may be drugs of abuse in addition to those listed and that drugs that would be most likely to be abused in a program's locality should also be tested for. Accordingly, § 291.505(d)(2)(i) of the final rule states that if any other drug or drugs have been determined by a program to be abused in that program's locality, or as otherwise indicated, each test or analysis must be analyzed for any of those drugs as well.

6. Two comments expressed concern that the laboratory standards for methadone testing under proposed § 291.505(d)(2) would be confused with laboratory standards for employee drug testing for Federal employees set forth in "Mandatory Guidelines for Federal Workplace Drug Testing Programs" published in the **Federal Register** of April 11, 1988 (53 FR 11970). The comments recommended that the regulation should clearly differentiate between the two laboratory standards.

The mandatory guidelines referenced in the comment were developed to establish comprehensive standards for all aspects of laboratory drug testing and laboratory procedures to be applied in carrying out Executive Order (E.O.) 12564 dated September 15, 1986, and section 503 of Pub. L. 100-71, the Supplemental Appropriations Act for fiscal year 1987 dated July 11, 1987. In section 1-1 entitled "Applicability" under Subpart A of these guidelines, it clearly states that they only apply to any laboratory that has or seeks a contract to perform, or otherwise performs urine drug testing for Federal agencies under a drug testing program conducted under E.O. 12564. Therefore, because these guidelines make clear that they do not apply to drug testing under any legal authority other than E.O. 12564, FDA and NIDA do not believe that it is necessary to revise the regulation as recommended.

7. One comment noted that the proposed laboratory examination for the serological test for syphilis under § 291.505(d)(3)(i) did not take into account the severely damaged state of some patients' veins. The comment recommended that the final rule allow program physicians some latitude in dealing with patients from whom it is impractical to draw blood. The comment noted that this revision would relieve the agency of the paperwork burden in granting individual exceptions to this requirement.

FDA and NIDA agree with this comment. Accordingly, § 291.505(d)(3)(i) of the final rule states that if, in the reasonable clinical judgment of the program physician, a patient's subcutaneous veins are severely damaged to the extent that a blood specimen cannot be obtained, the serological test for syphilis may be omitted. As with all findings from the admission medical evaluation, this finding must be recorded in the patient's record. (See § 291.505(d)(3)(ii) of the final rule.)

*Minimum Staffing Patterns*

8. Many comments supported the proposed elimination of minimum staffing ratio of 1 counselor to 50 patients. (See § 291.505(d)(7)(iii) of the former regulation.) The comments argued that many methadone clinics are fully enrolled and many narcotic addicts desiring treatment are currently placed on lengthy waiting lists because the current minimum staffing requirement requires a program to add a counselor in order to expand its capacity. One comment stated that the minimum staffing requirement should be included in the guideline and left up to States to enforce. In contrast, many comments objected to the elimination of this

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minimum staffing requirement. One comment asserted that the current minimum counselor/patient ratio is already too low to ensure effective counseling. The general consensus of these comments was that inadequate staffing would compromise both treatment and patient care.

FDA and NIDA believe that it is inappropriate for this regulation to prescribe a minimum counselor/patient ratio that cannot take into account the specific needs of an individual program's patient population. Such an inflexible ratio could lead to misallocation of scarce treatment resources. The agencies recognize that a large number of programs require more than 1 counselor for every 50 patients to provide adequate care for their patients, and these programs will, under the requirement of § 291.505(d)(5) of the final rule, continue to find it necessary to have more than 1 counselor for every 50 patients. The former mandatory counselor/patient ratio of 1:50 is now stated as a recommended practice in the FDA and NIDA guidance document to reflect the agencies' belief that for a program with a patient population with typical counseling needs, a 1:50 counselor/patient ratio represents a minimum appropriate ratio to provide adequate counseling services. However, it would be a disservice to require programs to expend scarce resources to meet inflexible Federal requirements that do not take into account their individual patient population needs.

9. One comment objected to the proposed deletion of the former requirement (see § 291.505(b)(2)(i) of the former regulation) that the number of patients treated as a narcotic treatment medication unit not exceed 30 patients. The comment argued that without a numerical basis for the medication unit, there could be potential problems regarding treatment efficiency and recordkeeping.

The agencies believe that the maximum number of patients to be treated at a medication unit is an issue that is properly left to the judgment of the program. However, local health and planning agencies may wish to limit enrollment in the program, prescribe locations of medication units to ensure the availability of services throughout an area, and limit the environmental impact which such units may have on a community. Decisions about the size of a medication unit should be made on a case-by-case basis, taking into account many factors of a peculiarly local nature, and are, therefore, properly decided at a State or local level rather than by the Federal government. Whatever the enrollment at a medication unit, it will still be required to be adequately staffed to comply with all recordkeeping and other requirements of this regulation.

*Rehabilitative Services*

10. Three comments objected to the wording of the requirement under proposed § 291.505(b)(2)(iii) in that it did not incorporate the phrase "are being utilized." (See § 291.505(b)(1)(ii) of the former regulation.) The comments stated that the elimination of the former requirement that rehabilitative services must be utilized will de-emphasize the importance of rehabilitative services in narcotic treatment programs. One comment objected to the absence of minimum counseling and rehabilitative requirements and suggested that proposed § 291.55(d)(3)(iv)(A)(*1*) be amended to require that counseling and rehabilitative services be provided at least monthly during the first 2 years of treatment.

FDA and NIDA continue to believe that rehabilitative services are of key importance in the treatment of individuals for drug dependence and the final regulation requires that these services be made available. However, the agencies also believe that a program's staff is in the best position to determine what services are needed. The agencies recognize that in some cases a patient may not be ready for some rehabilitative services when he or she first enters treatment and other patients need for rehabilitative services may decrease the longer they are in a program. Therefore, the agencies believe that any attempt to mandate use of rehabilitative services is counter-productive and in certain situations could result in misallocation of treatment resources.

11. Two comments objected to changing from mandatory to suggestive the language in proposed § 291.505(d)(4)(iv)(B) regarding evaluation and recording of patients' needs and readiness for vocational counseling, education, and employment. The comments stated that without such evaluations, appropriate treatment plans cannot be developed and updated.

The agencies agree that a patient's needs for education, vocational rehabilitation, and employment need to be considered in preparing and updating a treatment plan. However, the agencies recognize that these needs vary on a case-by-case basis and want to ensure that this requirement is not perceived as a significant paperwork burden. If a particular patient's circumstance does not warrant certain rehabilitative services a simple notation will satisfy the assessment requirement. For example, if a patient is gainfully employed a note of that fact would suffice for the initial employment assessment. The agencies also believe that describing the contents of the initial treatment plan in two separate paragraphs in the regulation may be confusing. Accordingly, the agencies are deleting proposed paragraph (d)(4)(iv)(B), redesignating proposed paragraph (d)(4)(iv)(A) as paragraph (d)(4)(iv), and amending paragraph (d)(3)(iv)(A)(*1*) to remove any ambiguities that may exist.

12. One comment stated that the word "physician" is used in the proposed regulation in contexts that often imply physician responsibility for counseling and other nonmedical functions. The comment suggested that appropriate language be used in the regulation to delineate clearly the areas of responsibility for physicians, counseling directors, and counselors.

The purpose of this regulation, as described by the statute, is to develop "appropriate methods of professional practice in the *medical* treatment of * * * narcotic addiction" (emphasis added). (Section 4 of the Comprehensive Drug Abuse Prevention and Control Act of 1970, Pub. L. 91-513.) Narcotic drug addiction is a condition with physiological, psychological, and other behavioral aspects. The physician bears primary responsibility for the medical treatment of this condition in his or her patient. Counseling and rehabilitative services are component parts of the medical treatment and are generally necessary for the most effective treatment of narcotic addiction. Although these services are normally provided by health-care professionals, a physician may not ignore these areas of treatment nor divest himself or herself of responsibility for them. The agencies believe that it would be a mistake to conceive of this treatment as being somehow divisible into drug therapy for which the physician is responsible and other areas of treatment for which other individuals have exclusive responsibility. Therefore, the agencies feel that any changes from the proposed regulation in this area would be inappropriate.

13. Two comments stated that proposed § 291.505(d)(3)(v)(D) did not include the revision to the current requirements as discussed in comment 8 in the preamble to the proposal; i.e., that rehabilitation services would be discretionary for patients who are not ready for such services or who show substantial progress in rehabilitation based upon the discretion of the



program's physician. The comments recommended that this revision be clearly stated in the regulation.

The general requirement that counseling and rehabilitative services be made available to all patients, but that programs not be required to provide every patient with a set minimum amount of counseling or rehabilitative services, is contained in several places in the methadone regulation. (See § 291.505 (b)(2)(iii), (d)(3)(iv)(B), (d)(4)(i)(A), and (d)(4)(iv) of the final rule.) The agencies believe that these provisions sufficiently delineate the requirement.

*Pregnant Patients*

14. Several comments addressed the proposed provisions on prenatal care (see § 291.505(d) (1)(iii)(B) and (4)(i)(A) of the proposed regulation). One comment noted inconsistent terminology between these provisions and asked if a treatment program is required to establish a system for "informing" or for "referring" a pregnant patient to outside prenatal services. Another comment recommended that the prenatal care provision under proposed § 291.505(d)(1)(iii)(B)(*2*) be revised to state that a treatment program is responsible for coordinating prenatal care whether it is provided directly or by referral to outside prenatal services.

FDA and NIDA do not see any inconsistency between "informing that patients of publicly or privately funded prenatal care opportunities available" and "referring" a patient to those prenatal care providers. A referral in normal medical practice entails the practitioner giving his or her patient the name of a second practitioner who is able to provide desired services. Coordination of prenatal care is provided for in § 291.505 (d)(1)(iii)(B)(*3*) and (d)(4)(i)(B) of the final rule.

15. One comment recommended that the proposed requirement under § 291.505(d)(4)(iii) retain the former requirement (see 21 CFR 291.505(d)(6)(iii)(*c*) of the former regulation) that the admitting program physician date and sign the comments and evaluations made by the health-care professional in a pregnant patient's record within 72 hours of administration of the initial methadone dose.

This former requirement was inadvertently omitted from the proposed rule. Accordingly, § 291.505(d)(1)(iii)(B) of the final rule requires that the physician review, sign, and date records made by a health-care professional within 72 hours of the administration of the initial dose of methadone given a pregnant patient. This makes the regulation consistent with other special categories of patients (see § 291.505(d)(1)(iii) (A) and (C) of the final rule) and provides protection for the health of pregnant patients.

In addition, the informational requirement to explain the possible risks of a narcotic drug administered or dispensed by the program to a pregnant woman and her unborn child under § 291.505(d) (1)(iii)(B)(*5*) and (4)(i)(B)(*3*) has been revised to also include a requirement to explain the possible risks from continued used of illicit drugs and of withdrawal from the narcotic drug administered or dispensed by the program. This amendment makes the regulation more closely consistent with the informational statement for female patients of child-bearing age contained in Form FDA-2835 "Consent to Methadone Treatment."

16. One comment contended that the health care needs of female patients are not adequately addressed in the proposed rule. The comment suggested that a system for screening for pregnancy be established so that prenatal services can be provided to female patients as early as possible. This comment also suggested that (1) addicted pregnant women be given the highest priority in admission to both drug treatment programs and prenatal care programs; (2) the initial medical evaluation include a Pap test and tests for sexually transmitted diseases, namely syphilis, gonorrhea, and chlamydia; and (3) the physical examination be given annually for long-term female patients.

The agencies do not agree with the basic premise of this comment. This final rule specifies minimum requirements specifically tailored to the needs of female patients in general and pregnant patients in particular, and its companion guidance document now covers many of the specific points raised in this comment. For example, the final regulation requires the serological test for syphilis, while the guidance document recommends a Pap test and pregnancy testing, where appropriate. The guidance document also states that other tests should be given as clinically indicated. Although this regulation does delineate appropriate minimum standards for the medical treatment of narcotic addiction, it is not intended to set general standards of care for the medical profession for specific classes of patients. That is left to State governments, which regulate medical practices, noting standards developed by the profession and stated by professional societies.

17. One comment recommended that the provisions in the regulation regarding pregnant patients be revised to reflect a recent World Health Organization methadone study group's opinion that pregnant patients be withdrawn from methadone in the weeks prior to birth so that the infant does not go into sudden withdrawal shortly after birth. This comment also stated that the proposed rule provides no guidance regarding methadone patients who are nursing mothers.

The agencies are unable to evaluate this comment properly because it did not provide either a citation for or a copy of the study referred to in the comment. Requests made by FDA to the commentor for more information on the study were unsuccessful. Because there is no evidence to support requiring detoxification in this instance, FDA and NIDA cannot respond to this comment, except to note that FDA Form FDA-2835 "Consent to Methadone Treatment" advises mothers not to nurse their babies while taking methadone.

*Admission and Readmission Requirements*

18. One comment objected to the proposed provision in §291.505(d)(7)(ii) and (d)(8)(ii) requiring a 7-day waiting period between concluding a short-term or long-term detoxification episode and beginning another. The comment stated that this requirement could increase the likelihood of a patient returning to illicit drug use during this waiting period with the concomitant risk of HIV infection. The comment recommended that detoxification treatment be extended if it is determined to be necessary in the judgment of the program physician.

The regulation as written affords clinicians the flexibility necessary to adapt repeated detoxification treatment to a particular patient's needs. At the same time, it establishes a minimum standard to preclude removing all the incentive to succeed in detoxification treatment that a waiting period of less than a week would involve. Further, the agencies believe that to allow programs to offer and unlimited number of detoxification attempts with no break between attempts would result in detoxification treatment being indistinguishable from maintenance treatment. However, programs are free to offer treatment, which medically might be considered detoxification treatment but legally would be defined as maintenance treatment, as long as the patient meets the maintenance treatment criteria. An example of that situation would be a "detoxification" treatment lasting 1 year, which under the statute and under the regulation would be considered maintenance treatment. The agencies recommend that

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a patient who requires continuous and repeated detoxification should be given a treatment plan that meets the requirements of maintenance treatment.

19. Several comments stated that the maintenance treatment admission criteria under proposed § 291.505(d)(1)(i)(A) regarding a person's history of addiction and current physiologic dependence are overly restrictive. One comment suggested that any physiologically dependent person who is not suitable for detoxification treatment may be admitted to maintenance treatment. Another comment suggested that any person with a long history of heroin addiction and/or methadone treatment be allowed into maintenance treatment without a showing of current physiological dependency. The comments expressed concerns that overly restrictive admission criteria could possibly force persons to continue to seek illegal drugs for a period of time to be eligible for admission into maintenance treatment.

The agencies do not agree that the admission criteria are too strict. The minimum standards for maintenance treatment admission (including the 1-year history and current dependence requirements) and the exceptions to the minimum admission criteria taken together are flexible enough not to unduly restrict a physician's clinical judgment. The agencies advise that individuals who do not meet the 1-year history requirement should not be presumed to be incapable of attaining a drug-free state in a relatively short period of time. The self-destructive behavior patterns that characterize the narcotic addict's life have not been reinforced to the same degree as in a patient who has a 1-year history of dependence. Long-term and short-term detoxification are available to patients without a history of 1-year physiological dependence. In addition, FDA and NIDA strongly disagree with the suggestion that current physiological dependence should not be a prerequisite for methadone treatment. In the setting of drug abuse treatment, it would be highly inappropriate to place an individual who is not currently physiologically dependent on a course of drug therapy that could easily lead to that individual becoming physiologically dependent on methadone.

20. One comment recommended that the final rule make eligible for maintenance treatment only persons who have had at least two documented attempts at short-term detoxification or drug-free treatment. Another comment expressed a similar, but less specific, recommendation that all persons be able to document previous drug-free treatment initiatives to be eligible for maintenance treatment.

The regulation does not preclude a program from requiring these attempts for patients who satisfy the minimum standards for admission to maintenance treatment but who would benefit more from other kinds of treatment. Thus, for patients who could detoxify easily and patients who are not truly addicted, treatment other than maintenance treatment may and should be employed. While FDA and NIDA agree that detoxification or drug-free treatment is generally preferable to maintenance treatment, the agencies cannot state that detoxification or drug-free treatment is for all patients and that maintenance treatment should only be considered a fallback treatment in all cases. Some patients may not be suitable for detoxification or drug-free treatment. Such a patient may require medical treatment and vocational and educational assistance in order to become a more highly motivated patient for whom any treatment has the highest probability of success. FDA and NIDA are unable to conclude that maintenance treatment is never an appropriate first-line treatment.

21. One comment stated that the proposed 2-year interval before a patient in maintenance treatment could have his or her clinic attendance for observation decreased from 3 days to 2 days is excessive. The comment recommended that the program physician should be allowed more discretion in determining the clinic attendance schedule.

FDA and NIDA must be concerned about problems of drug diversion as well as the effective medical treatment of drug addiction. While the agencies recognize that a burden is being placed on a patient who cannot obtain additional take-home privileges, that burden is outweighed by the decrease in the opportunity for diversion. In extraordinary circumstances, programs may ask for an exemption from the required clinic attendance schedule for a patient (see § 291.505(d)(11) of the final rule).

22. One comment observed that the proposed rule makes no specific provision for official holidays and recommended that all patients be allowed one take-home dose of medication on official Federal and State holidays.

FDA and NIDA agree with the basic principles of this comment and have implemented it in § 291.505(d)(6)(vii) of the final rule. The new provision is limited to State holidays, based on the presumption that a significant number of program employees are State or municipal employees, and would normally be entitled to a day off on State holidays. Federal holidays were not included in the regulation because they could permit programs to be closed for two observances of the same holiday. However, programs which would normally close on a Federal holiday could apply for an exemption under § 291.505(d)(11) of the final rule.

*Receipt of Narcotic Drugs*

23. One comment objected to proposed § 291.505(j)(3), which would permit only a licensed practitioner employed at the facility receiving shipment to accept delivery of narcotic drugs for narcotic addiction treatment. The comment recommended that the requirement also include the program pharmacist because he or she will be the ultimate custodian.

FDA and NIDA agree with this comment and have incorporated the recommendation in § 291.505(j)(3) of the final rule.

*Detoxification Treatment*

24. The agencies' proposed revision to provide for short-term and long-term detoxification treatment under § 291.505(d) (7) and (8) was uniformly commented upon favorably. However, several comments expressed concerns about how the availability of public funding could affect which detoxification treatment program a patient would be assigned to. One comment stated that no criteria were given to govern admission to either detoxification program.

FDA and NIDA do not have the authority to prescribe the allocation of resources to individual programs. In addition, the agencies have not established any differential admission criteria for short-term or long-term detoxification treatment because the decision as to the treatment course must be left to the clinical judgment of the treating program physician.

*Methadone Dosage Levels*

25. One comment recommended that the medical director approve those patients who are to receive daily doses of methadone greater than 100 milligrams. This comment stated that a requirement for a de facto second opinion would be advisable because a possibility of overdosage exists if methadone is taken in conjunction with illicit drugs.

The agencies believe that the provisions of § 291.505(d)(6)(i)(A) of the final rule, which allow only a 30-milligram initial dose and a total dose of not more than 40 milligrams the first day (unless the medical director documents the need for a larger dose), provide adequate protection against overdosage. FDA and NIDA also believe that the provision of § 291.505(d)(6)(i)(C) of the final rule, which requires a physician to justify in the patient's record a daily dose of over 100 milligrams, provides adequate protection against overdosage, while at the same time requiring only minimal interference with the professional judgment of the physician.



26. Several comments opposed the proposed requirement under § 291.505(d)(6)(v)(D) that each patient whose daily dose of methadone is above 100 milligrams be required to take the drug under observation at least 6 days a week irrespective of the length of time in treatment, unless the program has received prior approval from the State authority and FDA. The comment stated that there is no medical justification for the requirement and that it interferes with the professional judgment of the program physician.

Daily doses of over 100 milligrams present a high risk of diversion. A patient may take only a portion of his or her prescribed dose, leaving what methadone remains to be sold on the illicit drug market. Alternatively, a patient who is diverting all of his or her 100-milligram dose would be placing that much more methadone on the illicit drug market until the diversion is detected and stopped. The agencies believe that, in this case, concerns about the possibility of diversion must outweigh concerns about infringing on the clinical judgment of the program's physician. FDA and NIDA are aware that some patients are taking other medication that reduces the blood concentration of methadone to a degree sufficient to produce withdrawal symptoms which may necessitate methadone doses above 100 milligrams. The agencies believe that this situation is not common enough, at this time, to provide a specific provision dealing with this situation in the regulation. Such cases may be handled individually under the provisions of § 291.505(d)(6)(v)(D) of the final rule.

*Laboratory Examinations*

27. A large number of comments mentioned the existence of the HIV epidemic and the need for strengthening treatment programs that will reduce intravenous drug abuse. These comments suggested that narcotic treatment programs be required to conduct HIV testing of patients and provide appropriate counseling services at the narcotic treatment program or by referral to appropriate health-care providers.

The agencies are actively considering this point and, elsewhere in this issue of the Federal Register, are proposing to require that HIV counseling be provided to patients entering treatment programs and are soliciting comments on the issue of HIV testing. Comments on the potential impact of mandatory HIV testing on a patient's willingness to enter treatment, cost, availability, frequency of testing, and what treatment decisions may be made based on the results of HIV testing would be particularly welcome.

*Treatment of Patients Under 18 Years of Age*

28. One comment recommended retention of the former requirement (see § 291.505(d)(3)(iv) of the former regulation) that a treatment program obtain prior approval by FDA and the State methadone authority to place a person under 18 years of age on maintenance treatment. The comment said that the effects of the extended use of methadone on a youth's physiological and psychological development are unknown.

FDA and NIDA do not disagree with the comment's assertion regarding the unknown effects of the extended use of methadone in younger patients. Indeed, the final regulation has retained all the former limitations regarding maintenance treatment of patients under 18 years of age (see § 291.505(d)(1)(iv) of the final rule). However, FDA and NIDA consider the cited provisions for patients under 18 years of age as unnecessary because they are already included under the limitations for patients under 18 years of age. The agencies believe that the limitations regarding maintenance treatment for younger patients in the final rule coupled with the additional requirement for a parent, legal guardian, or responsible adult designated by the State authority to complete and sign a consent form prior to admission of a person under 18 years of age into maintenance treatment are adequate safeguards to preclude indiscriminate admission of younger patients to maintenance treatment.

*Treatment Plans*

29. One comment stated that the proposed requirement under § 291.505(d)(8)(i)(F) for monthly periodic treatment plan evaluations for long-term detoxification patients is unnecessary and recommended that an initial treatment plan with periodic treatment plan evaluations occurring as needed would be sufficient.

FDA and NIDA do not agree. Because detoxification patients are at a greater risk of reverting to illicit narcotic use, the agencies believe it necessary to require, at a minimum, monthly periodic treatment plan evaluations so that the program physician can closely monitor and reassess such patient's progress in detoxification and can implement alternate treatment strategies if needed.

30. One comment suggested that jail programs and jail dispensing units should be considered for incorporation into the regulation.

Jail programs and jail dispensing units are governed by this regulation. FDA's and NIDA's experience with jail programs indicates that this regulation and use of the exemption provided in § 291.505(d)(11) of the final rule to relax or eliminate provisions not applicable in a particular penal or detention setting provides a successful regulatory scheme for jail programs.

*Health-Care Professionals*

31. One comment recommended the retention of the former provision requiring that, if a physician is not available, on site, to review the initial evaluation of the patient made by a health-care professional and the physician's review is performed over the telephone, the physician sign the evaluation within 72 hours of the telephone procedure. (See 21 CFR 291.505(d)(6)(iii)(*c*) of the former regulation.) The comment stated that health-care professionals are often not properly utilized by treatment programs and oral orders from physicians are not being properly documented.

FDA and NIDA do not agree with this recommendation. The agencies do not believe that the regulation should outline or elaborate on the use of health-care professionals and the recording of oral orders by a program physician. As now stated under § 291.505(d)(4)(iii) of the final rule, licensed or certified health-care professionals in accordance with Federal, State, and local law are not prohibited from performing certain functions (e.g., administering or dispensing certain medications on a physician's oral order) delegated to them by the medical director, and records are required to be properly countersigned by the medical director or licensed physician. Further elaboration on this requirement will not prevent the problems cited in the comment.

**Environmental Impact**

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on

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the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

**Economic Impact**

The agency has examined the regulatory impact and regulatory flexibility implications of the final rule in accordance with Executive Order 12291 and the Regulatory Flexibility Act (Pub. L. 96-354). The agency finds that the final rule is not a major rule inasmuch as these revisions would not result in any increase in cost (significant or otherwise) to narcotic treatment programs or to the State and local authorities that would enforce the final rule. Moreover, this final rule provides treatment programs with more flexibility than exists under the current regulation and thus allows such programs alternative and presumably more cost efficient means to comply with the requirements. For these reasons, therefore, the agency has determined that the final rule is not a major rule as defined in Executive Order 12291. Further, FDA certifies that the final rule will not have a significant impact on a substantial number of small entities as defined by the Regulatory Flexibility Act.

**Paperwork Reduction Act of 1980**

This final rule contains information collections which require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. The title, description, and respondent description of the information collection are shown below with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

*Title:* Required Application for Treatment Program Dispensing Methadone for Detoxification and Maintenance

*Description:* FDA requires this information to assure individual program's and hospital's compliance with 21 CFR 291.505. This information will be used in evaluating programs and hospitals that apply for FDA approval under 21 CFR 291.505. The information required under § 291.505 is submitted by completing three FDA-supplied forms: FDA-2632 "Application for Approval of Use of Methadone in a Treatment Program," FDA-2633 "Medical Responsibility Statement for Use of Methadone in a Treatment Program," and FDA-2636 "Hospital Request for Methadone Detoxification Treatment." In addition, Form FDA-2635 "Consent to Methadone Treatment," a recordkeeping form, is also required by § 291.505. These forms are completed occasionally as programs apply to FDA for approval to dispense methadone, and in the case of Form FDA-2633, as new medical staff join the program. There are no periodic reporting requirements under this regulation.

*Description of Respondents:* State or local governments; businesses or other for-profit organizations; non-profit institutions.

*Estimated Annual Reporting and Recordkeeping Burden:*

| Section | Annual number of respondents | Annual frequency | Average burden per response | Annual burden hours |
|---|---|---|---|---|
| § 291.505(c)(4)(i) (Form FDA-2636) | 65 | 1 | 2 hours | 130 hours. |
| § 291.505(c)(4)(ii) (Form FDA-2633) | 65 | 1 | 2 hours | 130 hours. |
| § 291.505(f)(2)(viii) (Form FDA-2636) | 40 | 1 | 10 minutes | 7 hours. |
| Total | | | | 137 hours. |

This regulation amending § 291.505 contains recordkeeping and reporting requirements that are subject to OMB approval. Comments on the content and burden of the information collection requirement would be directed to FDA's Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the Office of Information and Regulatory Affairs, OMB, Rm. 3208, New Executive Office Bldg., Washington, DC 20503, Attn: Allison Herron.

**List of Subjects in 21 CFR Part 291**

Health professions, Methadone, Reporting and recordkeeping requirements.

Therefore, under the Comprehensive Drug Abuse Prevention and Control Act of 1970, the Narcotic Addict Treatment Act of 1974, and applicable delegations of authority thereunder, and under authority delegated to the Commissioner of Food and Drugs, Part 291 is amended as follows:

## PART 291—DRUGS USED FOR TREATMENT OF NARCOTIC ADDICTS

1. The authority citation for 21 CFR Part 291 is revised to read as follows and the authority citations following all of the sections in Part 291 are removed:

Authority: Secs. 3, 505, 701(a) (21 U.S.C. 823(g), 355, 371(a)); secs. 4, 548 (42 U.S.C. 257a, 290ee-3).

2. Section 291.505 is revised to read as follows:

**§ 291.505 Conditions for the use of narcotic drugs; appropriate methods of professional practice for medical treatment of the narcotic addiction of various classes of narcotic addicts under section 4 of the Comprehensive Drug Abuse Prevention and Control Act of 1970.**

(a) *Definitions.* As used in this part:

(1) "Detoxification treatment" means the dispensing of a narcotic drug in decreasing doses to an individual to alleviate adverse physiological or psychological effects incident to withdrawal from the continuous or sustained use of a narcotic drug and as a method of bringing the individual to a narcotic drug-free state within such period. There are two types of detoxification treatment: short-term detoxification treatment and long-term detoxification treatment.

(i) "Short-term detoxification treatment" is for a period not in excess of 30 days.

(ii) "Long-term detoxification treatment" is for a period more than 30 days but not in excess of 180 days.

(2) "Maintenance treatment" means the dispensing of a narcotic drug in the treatment of an individual for dependence on heroin or other morphine-like drug.

(3) A "medical director" is a physician, licensed to practice medicine in the jurisdiction in which the program is located, who assumes responsibility for the administration of all medical services performed by the narcotic treatment program including ensuring that the program is in compliance with all Federal, State, and local laws and regulations regarding the medical treatment of narcotic addiction with a narcotic drug.



(4) A "medication unit" is a facility established as part of, but geographically dispersed, i.e., separate from a narcotic treatment program from which licensed private practitioners and community pharmacists—

(i) Are permitted to administer and dispense a narcotic drug, and

(ii) Are authorized to collect samples for drug testing or analysis for narcotic drugs.

(5) "Narcotic dependent" means an individual who physiologically needs heroin or a morphine-like drug to prevent the onset of signs of withdrawal.

(6) A "narcotic treatment program" is an organization (or a person, including a private physician) that administers or dispenses a narcotic drug to a narcotic addict for maintenance or detoxification treatment, provides, when appropriate or necessary, a comprehensive range of medical and rehabilitative services, is approved by the State authority and the Food and Drug Administration, and that is registered with the Drug Enforcement Administration to use a narcotic drug for the treatment of narcotic addiction.

(7) A "program sponsor" is a person (or representative of an organization) who is responsible for the operation of a narcotic treatment program and who assumes responsibility for all its employees including any practitioners, agents, or other persons providing services at the program (including its medication units).

(8) The term "services," as used in this part, includes medical evaluations, counseling, rehabilitative and other social programs (e.g., vocational and educational guidance, employment placement), which will help the patient become a productive member of society.

(9) A "State authority" is the agency designated by the Governor or other appropriate official to exercise the responsibility and authority within the State or Territory for governing the treatment of narcotic addiction with a narcotic drug.

(b) *Organizational structure and approval requirements—*

(1) *Organizational structure.* (i) A narcotic treatment program may be an independent organization or part of a centralized organization. For example, if a centralized organizational structure consists of a primary facility and other outpatient facilities, all of which conduct initial evaluation of patients and administer or dispense medication, the primary facility and each outpatient facility are separate programs, even though some services (e.g., the same hospital or rehabilitative services) are shared.

(ii) The program sponsor shall submit to the Food and Drug Administration and the State authority a description of the organizational structure of the program, the name of the persons responsible for the program, the address of the program, and the responsibilities of each facility or medication unit. The sources of funding for each program shall be listed and the name and address of each governmental agency providing funding shall be stated.

(iii) Where two or more programs share a central administration (e.g., a city or State-wide organization), the person responsible for the organization (administrator or program sponsor) is required to be listed as the program sponsor for each separate participating program. An individual program shall indicate its participation in the central organization at the time of its application. The administrator or sponsor may fulfill all recordkeeping and reporting requirements for these programs, but each program must continue to receive separate approval.

(iv) One physician may assume primary medical responsibility for more than one program and be listed as medical director. If a physician assumes medical responsibility for more than one program, a statement documenting the feasibility of the arrangement is required to be attached to the application.

(v) [Reserved]

(2)(i) *Program approval.* Before a narcotic treatment program may be lawfully operated, the program, whether an outpatient facility or a private practitioner, shall submit the applications specified in this section simultaneously to the Food and Drug Administration and the State authority and must receive the approval of both, except as provided for in paragraph (h)(5) of this section. Before granting approval, the Food and Drug Administration will consult with the Drug Enforcement Administration, Department of Justice, to ascertain if the program is in compliance with Federal controlled substances laws. Each physical location within any program is required to be identified and listed in the approval application. At the time of application for approval, the program sponsor shall indicate whether medication will be administered or dispensed at a location not previously approved for this purpose, the program is required to obtain approval from FDA and the State agency. However, no approval is necessary, but notification is required when a facility in which medication is administered or dispensed is deleted by a program. In that event, the program shall notify the Food and Drug Administration and the State authority within weeks of the deletion. Similarly, addition or deletion of facilities which provide services other than administering or dispensing medication is also permitted without approval, but notification must be made within 3 weeks to the Food and Drug Administration and the State authority about the addition and/or deletion.

(ii) *Exemption of Federal programs.* The provisions of this section requiring approval (or permitting disapproval or revocation of approval) by the State authority, compliance with requirements imposed by State law, or the submission of applications or reports required by the State authority do not apply to programs operated directly by the Veterans' Administration or any other department or agency of the United States. Federal agencies operating narcotic treatment programs have agreed to cooperate voluntarily with State agencies by granting permission on an informal basis for designated State representatives to visit Federal narcotic treatment programs and by furnishing a copy of Federal reports to the State authority, including the reports required under this section.

(iii) *Services.* Each narcotic treatment program shall provide medical and rehabilitative services and programs. (See paragraph (d)(4) of this section.) These services should normally be made available at the primary facility, but the program sponsor may enter into a formal documented agreement with private or public agencies, organizations, or institutions for these services if they are available elsewhere. The program sponsor, in any event, must be able to document that medical and rehabilitative services are fully available to patients.

(iv) *Prohibition against unapproved use of narcotic drugs.* No prescribing, administering, or dispensing of a narcotic drug for the treatment of narcotic addiction may occur without prior approval by the Food and Drug Administration and the State authority, except as provided for in paragraph (h)(5) of this section, unless specifically exempted by this section.

(v) *Approved narcotic drugs for use in treatment programs.* The following narcotic drug has been approved for use in the treatment of narcotic addiction: Methadone.

(3)(i) *Medication unit.* A program may establish a medication unit to facilitate the needs of patients who are stabilized on an optimal dosage level. To lawfully operate a medication unit, the program shall, for each separate unit, obtain approval from the Food and Drug Administration, the Drug Enforcement

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Administration, and the State authority, except as provided for in paragraph (h)(5) of this section. The Food and Drug Administration, in determining whether to approve a medication unit, will consider the distribution of units within a particular geographic area. Any new medication unit is required to receive approval before it may lawfully commence operation.

(ii) *Revocation of approval.* If the Food and Drug Administration revokes the primary program's approval, the approval for any medication unit associated with the program is deemed to be automatically revoked. The Food and Drug Administration's revocation of the approval of a particular medication unit, will not, in and of itself, affect the approval of the primary program.

(iii) *Narcotic drug supply.* A medication unit must receive its supply of the narcotic drug directly from the stocks of the primary facility. Only persons permitted to administer or dispense the drug or security personnel licensed or otherwise authorized by State law to do so may deliver the drug to a medication unit.

(iv) *Referral.* (A) The patient shall be stabilized at his or her optimal dosage level before he or she may be referred to a medication unit.

(B) Since the medication unit does not provide a range of services, the program sponsor shall determine that the patient to be referred is not in need of frequent counseling, rehabilitative, and other services which are only available at the primary program facility.

(v) *Services.* A medication unit is limited to administering or dispensing a narcotic drug and collecting samples for drug testing or analysis for narcotic drugs in accordance with paragraph (d)(2) of this section. If a private practitioner wishes to provide other services besides administering or dispensing a narcotic drug and collecting samples for drug testing or analysis for narcotic drugs, he or she must submit an application for separate approval.

(vi) *Responsibility for patient.* After a patient is referred to a medication unit, the program sponsor retains continuing responsibility for the patient's care. The program sponsor shall ensure that the patient receives needed medical and rehabilitative services at the primary facility.

(c) *Conditions for approval of the use of a narcotic drug in a treatment program*—(1) *Applicants.* An individual listed as program sponsor for a treatment program using a narcotic drug need not personally be a licensed practitioner but shall employ a licensed physician for the position of medical director. Persons responsible for administering or dispensing the narcotic drug shall be practitioners as defined by section 102(21) of the Controlled Substances Act (21 U.S.C. 802(21)) and licensed to practice by the State in which the program is to be established.

(2)(i) *Assent to regulation.* A person who sponsors a narcotic treatment program, and any persons responsible for a particular program, shall agree to adhere to all the rules, directives, and procedures, set forth in this section, and any regulation regarding the use of narcotic drugs in the treatment of narcotic addiction which may be promulgated in the future. The program sponsor has responsibility for all personnel and individuals providing services, who work in the program at the primary facility or at other facilities or medication units. The program sponsors shall agree to inform all personnel and individuals providing services of the provisions of this section and to monitor their activities to assure compliance with the provisions.

(ii) The Food and Drug Administration and the State authority are required to be notified within 3 weeks of any replacement of the program sponsor or medical director. Activities in violation of this regulation may give rise to the sanctions set forth in paragraph (i) of this section.

(3) *Description of facilities.* Only program site(s) approved by Federal, State, and local authorities may treat narcotic addicts with a narcotic drug. To obtain program approval, the applicant shall demonstrate that he or she will have access to adequate physical facilities to provide all necessary services. A program must have ready access to a comprehensive range of medical and rehabilitative services so that the services may be provided when necessary. The name, address, and description of each hospital, institution, clinical laboratory, or other facility available to provide the necessary services are required to be included in the application submitted to the Food and Drug Administration and the State authority. The application is also required to include the name and address of each medication unit.

(4) *Submission of proper applications.* The following applications shall be filed simultaneously with both the Food and Drug Administration and the State authority:

(i) Form FDA-2632 "Application for Approval of Use of Methadone in a Treatment Program." This form, required by paragraph (k) of this section, shall be completed and signed by the program sponsor and submitted in duplicate to the Food and Drug Administration and the State authority.

(ii) Form FDA-2633 "Medical Responsibility Statement for Use of Methadone in a Treatment Program." This form, required by paragraph (k) of this section, shall be completed and signed by each licensed physician authorized to administer or dispense narcotic drugs and submitted in duplicate to the Food and Drug Administration and the State authority. The names of any other persons licensed by law to administer or dispense narcotic drugs working in the program shall be listed even if they are not responsible for administering or dispensing the drug at the time the application is submitted.

(5) *State and Federal approval, denial, and revocation of approval of narcotic treatment programs.* (i) The Food and Drug Administration may grant approval to a program only after FDA has received notification from both the State authority and the Drug Enforcement Administration that the program conforms to all pertinent State and Federal requirements.

(ii) The Food and Drug Administration will revoke the approval of a narcotic treatment program if so requested by the State authority or the Drug Enforcement Administration. If approval of a program is denied or revoked, the program shall have a right to appeal to the Commissioner, as provided for in paragraph (h)(5) of this section.

(iii) No shipment of a narcotic drug may lawfully be made to any program which does not have current approval from the Food and Drug Administration. Within 60 days after receipt of the application from the program sponsor for approval, the Food and Drug Administration will notify the sponsor whether the application is approved or denied.

(d)(1) *Minimum standards for admission—(i) History of addiction and current physiologic dependence.* (A) A person may be admitted as a patient for a maintenance program only if a program physician determines that the person is currently physiologically dependent upon a narcotic drug and became physiologically dependent at least 1 year before admission for maintenance treatment. A 1-year history of addiction means that an applicant for admission to a maintenance program was physiologically addicted to a narcotic at a time at least 1 year before admission to a program and was addicted, continuously or episodically, for most of the year immediately before admission to a program. In the case of a person for whom the exact date on which physiological addiction began cannot be ascertained, the admitting program physician may, in his or her reasonable clinical judgment, admit the person to maintenance treatment, if from the evidence presented, observed, and recorded in the patient's record, it is reasonable to conclude that there was physiologic dependence at a time approximately 1 year before admission.

(B) Although daily use of a narcotic for an entire year could satisfy the regulatory definition of a 1-year history of addiction, operationally one might be physiologically dependent without daily use during the entire 1-year period and still satisfy the definition. The following, although not exhaustive, are examples of applicants who would meet the minimum standard of a 1-year history of addiction and who, if currently physiologically dependent on the date of application for admission, would be eligible for admission to a maintenance program:

(*1*) Physiologic addiction began in August 1987 and continued to the date of application for admission in August 1988.

(*2*) Physiologic addiction began in January 1988 and continued until April 1988. Physiologic addiction began again in July 1988 and continued until the application for admission in January 1989.

(*3*) Physiologic addiction began in January 1987 and continued until October 1987. The date of application for admission was January 1988, at which time the patient had been readdicted for 1 month preceding his or her admission.

(*4*) Physiologic addiction consisted of four episodes in the last year, each episode lasting 2½ months.

(C) The program physician or an appropriately trained staff member designated and supervised by the physician shall record in the patient's record the criteria used to determine the patient's current physiologic dependence and history of addiction. In the latter circumstance, the program physician shall review, date, and countersign the supervised staff member's evaluation to demonstrate his or her agreement with the evaluation. The program physician shall make the final determination concerning a patient's physiologic dependence and history of addiction. The program physician shall sign, date, and record a statement that he or she has reviewed all the documented evidence to support a 1-year history of addiction and the current physiologic dependence and that in his or her reasonable clinical judgment the patient fulfills the requirements for admission to maintenance treatment. The program physician shall complete and record the statement before the program administers any methadone to the patient.

(ii) *Voluntary participation, informed consent.* The person responsible for the program shall ensure that: A patient voluntarily chooses to participate in a program; all relevant facts concerning the use of the narcotic drug used by the program are clearly and adequately explained to the patient; all patients, with full knowledge and understanding of its contents, sign the "Consent to Methadone Treatment" Form FDA-2635 (see paragraph (k) of this section); a parent, legal guardian, or responsible adult designated by the State authority (e.g., "emancipated minor" laws) sign for patients under the age of 18 the second part of Form FDA-2635 "Consent to Methadone Treatment."

(iii) *Exceptions to minimum admission criteria*—(A) *Penal or chronic care.* A person who has resided in a penal or chronic care institution for 1 month or longer may be admitted to maintenance treatment within 14 days before release or discharge, or within 6 months after release from such an institution without documented evidence to support findings of physiological dependence, provided the person would have been eligible for admission before he or she was incarcerated or institutionalized and, in the reasonable clinical judgment of a program physician, treatment is medically justified. Documented evidence of the prior residence in a penal or chronic care institution and evidence of all other findings and the criteria used to determine the findings are required to be recorded in the patient's record by the admitting program physician, or by program personnel supervised by the admitting program physician. The admitting program physician shall date and sign these recordings or review the health-care professional's recordings before the initial dose is administered to the patient. In the latter case, the admitting program physician shall date and sign the recordings in the patient's record made by the health-care professional within 72 hours of administration of the initial dose to the patient.

(B) *Pregnant patients.* (*1*) Pregnant patients, regardless of age, who have had a documented narcotic dependency in the past and who may return to narcotic dependency, with all its attendant dangers during pregnancy, may be placed on a maintenance regimen. For such patients, evidence of current physiological dependence on narcotic drugs is not needed if a program physician certifies the pregnancy and, in his or her reasonable clinical judgment, finds treatment to be medically justified. Evidence of all findings and the criteria used to determine the findings are required to be recorded in the patient's record by the admitting program physician, or by program personnel supervised by the admitting program physician. The admitting program physician shall date and sign these recordings or review the health-care professional's recordings before the initial methadone dose is administered to the patient. In the latter case, the admitting program physician shall date and sign the recordings in the patient's record made by the health-care professional within 72 hours of administration of the initial methadone dose to the patient. Pregnant patients are required to be given the opportunity for prenatal care either by the program or by referral to appropriate health-care providers.

(*2*) If a program cannot provide direct prenatal care for pregnant patients in treatment, the program shall establish a system for informing the patients of the publicly or privately funded prenatal care opportunities available. If there are no publicly funded prenatal referral opportunities and the program cannot provide such services or the patient cannot afford them or refuses them, then the treatment program shall, at a minimum, offer her basic prenatal instruction on maternal, physical, and dietary care as part of its counseling service.

(*3*) Counseling records and/or other appropriate patient records are required to reflect the nature of prenatal support provided by the program. If the patient is referred for prenatal services, the physician to whom she is referred is required to be notified that she is in maintenance treatment, provided that notification is in accordance with the Department of Health and Human Services' confidentiality regulations (42 CFR Part 2). If a pregnant patient refuses direct treatment or appropriate referral for treatment, the treating program physician should consider using informed consent procedures; e.g., to have the patient acknowledge in writing that she had the opportunity for this treatment but refuses it. The program physician, consistent with the confidentiality regulations, shall request the physician or the hospital to which a patient is referred to provide, following birth, a summary of the delivery and treatment outcome for the patient and offspring. If the program physician does not receive a response to the request, he or she shall document in the record that such a request was made.

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(4) Within 3 months after termination of pregnancy, the program physician shall enter an evaluation of the patient's treatment state into her record and state whether she should remain in the maintenance program or be detoxified.

(5) Caution should be taken in the maintenance treatment of pregnant patients. Dosage levels should be maintained at the lowest effective dose if treatment is deemed necessary. The program sponsor shall ensure that each female patient is fully informed of the possible risks to her or to her unborn child from continued use of illicit drugs and from the use of, or withdrawal from, a narcotic drug administered or dispensed by the program in maintenance or detoxification treatment.

(C) *Previously treated patients.* Under certain circumstances a patient who has been treated and later voluntarily detoxified from maintenance treatment may be readmitted to maintenance treatment, without evidence to support findings of current physiologic dependence, up to 2 years after discharge, if the program attended is able to document prior narcotic drug maintenance treatment of 6 months or more, and the admitting program physician, in his or her reasonable clinical judgment, finds readmission to maintenance treatment to be medically justified. For patients meeting these criteria, the quantity of take-home medication will be determined in the reasonable clinical judgment of the program physician, but in no case may the quantity of take-home medication be greater than would have been allowed at the time the patient voluntarily terminated previous treatment. The admitting program physician or a program employee under supervision of the admitting program physician must enter in the patient's record documented evidence of the patient's prior treatment and evidence of all decisions and criteria used relating to the admission of the patient and the quantity of take-home medication permitted. The admitting program physician shall date and sign these entries in the patient's record or review the health-care professional's entries therein before the program administers any medication to the patient. In the latter case, the admitting program physician shall date and sign the entries in the patient's record made by the health-care professional within 72 hours of administration of the initial dose to the patient.

(iv) *Special limitation; treatment of patients under 18 years of age.* A person under 18 is required to have had two documented attempts at short-term detoxification or drug-free treatment to be eligible for maintenance treatment. A 1-week waiting period is required after such a detoxification attempt, however, before an attempt is repeated. The program physician shall document in the patient's record that the patient continues to be or is again physiologically dependent on narcotic drugs. No person under 18 years of age may be admitted to a maintenance treatment program unless a patient, legal guardian, or responsible adult designated by the State authority (e.g., "emancipated minor" laws) completes and signs consent form, Form FDA-2635 "Consent to Methadone Treatment."

(v) *Denial of admission.* If in the reasonable clinical judgment of the medical director a particular patient would not benefit from treatment with a narcotic drug, the patient may be refused such treatment even if the patient meets the admission standards.

(2) *Minimum testing or analysis for drugs: Uses and frequency.* (i) The person(s) responsible for a program shall ensure that: An initial drug-screening test or analysis is completed for each prospective patient; at least eight additional random tests or analyses are performed on each patient during the first year in maintenance treatment; and at least quarterly random tests or analyses are performed on each patient in maintenance treatment for each subsequent year, except that a random test or analysis is performed monthly on each patient who receives a 6-day supply of take-home medication. When a sample is collected from each patient for such test or analysis, it must be done in a manner that minimizes opportunity for falsification. Each test or analysis must be analyzed for opiates, methadone, amphetamines, cocaine, and barbiturates. In addition, if any other drug or drugs have been determined by a program to be abused in that program's locality, or as otherwise indicated, each test or analysis must be analyzed for any of those drugs as well. Any laboratory that performs the testing required under this regulation shall be in compliance with all applicable Federal proficiency testing and licensing standards and all applicable State standards. If a program proposes to change a laboratory used for such testing or analysis, the program shall have the change approved by the Food and Drug Administration.

(ii) The person responsible for a program shall ensure that test results are not used as the sole criterion to force a patient out of treatment but are used as a guide to change treatment approaches. The person responsible for a program shall also ensure that when test results are used, presumptive laboratory results are distinguished from results that are definitive.

(3) *Patient evaluation; minimum admission and periodic requirements—*(i) *Minimum contents of medical evaluation.* Each patient is required to have a medical evaluation by a program physician or an authorized health-care professional under the supervision of a program physician on admission to a program. At a minimum, this evaluation is required to consist of a medical history which includes the required history of narcotic dependence, evidence of current physiologic dependence unless excepted by the regulations, and a physical examination, and includes the following laboratory examinations: serological test for syphilis, a tuberculin skin test, and a test or analysis for drug determination. If in the reasonable clinical judgment of the program physician, a patient's subcutaneous veins are severely damaged to the extent that a blood specimen cannot be obtained, the serological test for syphilis may be omitted. The physical examination is required to consist of an investigation of the organ systems for possibilities of infectious disease, pulmonary, liver, and cardiac abnormalities, and dermatologic sequelae of addiction. In addition, the physical examination is required to include a determination of the patient's vital signs (temperature, pulse, and blood pressure and respiratory rate); an examination of the patient's general appearance, head, ears, eyes, nose, throat (thyroid), chest (including heart, lungs, and breasts), abdomen, extremities, skin, and neurological assessment; and the program physician's overall impression of the patient.

(ii) *Recordings of findings.* The admitting program physician or an appropriately trained health care professional supervised by the admitting program physician shall record in the patient's record all findings from the admission medical evaluation. In each case the admitting program physician shall date and sign these entries, or date, review, and countersign these recordings in the patient's record to signify his or her review of and concurrence with the history and physical findings.

(iii) *Admission evaluation.* (A) Each patient seeking admission or readmission for treatment services is required to be interviewed by a well-trained program counselor, qualified by virtue of education, training, or experience to assess the psychological and sociological background of drug abusers, to determine the appropriate treatment plan for the patient. To determine the most appropriate treatment plan for a patient, the interviewer shall obtain and document in the patient's record the patient's history.

(B) A patient's history includes information relating to his or her educational and vocational achievements. If a patient has no such history; i.e., he or she has no formal education or has never had an occupation, this requirement is met by writing this information in the patient's history.

(iv) *Initial treatment plan.* (A)(1) The initial treatment plan is required to contain a statement that outlines realistic short-term treatment goals which are mutually acceptable to the patient and the program. The initial treatment plan is also required to spell out the behavioral tasks a patient must perform to complete each short-term goal; the patient's requirements for education, vocational rehabilitation, and employment; and the medical, psychosocial, economic, legal, or other supportive services that a patient needs. The plan is also required to identify the frequency with which these services are likely to be provided. Prior to developing a treatment plan, the patient's needs for medical, social, and psychological services; education; vocational rehabilitation; and employment must be assessed, and the needs reflected, when clinically appropriate, in the treatment plan.

(2) A primary counselor is one who is assigned by the program to develop, implement, and evaluate the patient's initial and periodic treatment plan and to monitor a patient's progress in treatment. The primary counselor shall enter in the patient's record the counselor's name, the contents of a patient's initial assessment, and the initial treatment plan. The primary counselor shall make these entries immediately after the patient is stabilized on a dose or within 4 weeks after admission, whichever is sooner.

(B) It is recognized that patients need varying degrees of treatment and rehabilitative services which are often dependent on or limited by a number of variables; e.g., patient resources, available program, and community services. It is not the intent of this regulation to prescribe a particular treatment and rehabilitative service or the frequency at which a service should be offered.

(C) The program supervisory counselor or other appropriate program personnel so designated by the program physician shall review and countersign all the information and findings required to be recorded in each patient's record under paragraph (d)(3)(iv) of this section.

(v) *Periodic treatment plan evaluation.* (A) The program physician or the primary counselor shall review, reevaluate, and alter where necessary each patient's treatment plan at least once each 90 days during the first year of treatment, and then at least twice a year after the first year of continuous treatment.

(B) The program physician shall ensure that the periodic treatment plan becomes part of each patient's record and that it is signed and dated in the patient's record by the primary counselor and is countersigned and dated by the supervisory counselor.

(C) At least once a year, the program physician shall date, review, and countersign the treatment plan recorded in each patient's record and ensure that each patient's progress or lack of progress in achieving the treatment goals is entered in the patient's record by the primary counselor. When appropriate, the treatment plan and progress notes should deal with the patient's mental and physical problems, apart from drug abuse. The treatment plan is required to include the name of and the reasons for prescribing any medication for emotional or physical problems.

(D) The requirement for annual physician review and signature by the program physician in paragraph (d)(3)(v)(C) of this section is discretionary, however, as it applies to a patient who has satisfactorily adhered to program rules for at least 3 consecutive years from his or her entrance into the maintenance treatment program and who has made substantial progress in rehabilitation.

(4) *Minimum program services*—(i)(A) *Access to a range of services.* A treatment program shall provide a comprehensive range of medical and rehabilitative services to its patients especially during the first 3 years of treatment.

(B) *Pregnant patients.* (1) For pregnant patients in a treatment program who were not admitted under paragraph (d)(1)(iii)(B) of this section, a treatment program shall give them the opportunity for prenatal care either by the narcotic treatment program or by referral to appropriate health care providers. If a program cannot provide direct prenatal care for pregnant patients in treatment, it shall establish a system of referring them for prenatal care which may be either publicly or privately funded. If there is no publicly funded prenatal care available to which a patient may be referred, and the program cannot provide such services, or the patient cannot afford or refuses prenatal care services, then the treatment program shall, at a minimum, offer her basic prenatal instruction on maternal, physical, and dietary care as a part of its counseling service.

(2) Counseling records and other appropriate patient records are required to reflect the nature of prenatal support provided by the program. If the program refers a patient for prenatal services, it shall inform the physician to whom she is referred that the patient is in maintenance treatment, provided such notification is in accordance with the Department of Health and Human Services' confidentiality regulations (42 CFR Part 2). If a pregnant patient refuses direct prenatal services or appropriate referral for prenatal services, the treating program physician should consider using informed consent procedures; i.e., to have the patient acknowledge in writing that she has the opportunity for this treatment but refuses it. The program physician shall request the physician or the hospital to which a patient is referred to provide, following birth, a summary of the delivery and treatment outcome for the patient and offspring. The information should be obtained in accordance with the Department of Health and Human Services' confidentiality regulations (42 CFR Part 2). If no response is received, the program physician shall document in the record that such a request was made and no response was received.

(3) Caution should be taken in the maintenance treatment of pregnant patients. Dosage levels should be maintained at the lowest effective dose if continued treatment is deemed necessary. It is the responsibility of the program sponsor to ensure that each female patient is fully informed of the possible risks to a pregnant woman and her unborn child from continued use of illicit drugs and from the use of, or withdrawal from, a narcotic drug administered or dispensed by the program in maintenance or detoxification treatment.

(C) [Reserved]

(D) *Off-site services.* Any service not furnished at the primary facility is required to be listed in any application for approval submitted to the Food and Drug Administration or to the State authority. The addition, modification, or deletion of any program service is required to be reported immediately to the Food and Drug Administration.



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(ii) *Minimum medical services; designation of medical director and responsibilities.* Each program shall have a designated medical director who assumes responsibility for administering all medical services performed by the program. The medical director and other authorized program physicians are required to be licensed to practice medicine in the jurisdiction in which the program is located. The medical director is responsible for ensuring that the program is in compliance with all Federal, State, and local laws and regulations regarding medical treatment of narcotic addiction. In addition, the medical director or other authorized physicians shall:

(A) Ensure that evidence of current physiologic dependence, length of history of addiction, or exceptions to criteria for admission are documented in the patient's record before the patient receives the initial dose.

(B) Ensure that a medical evaluation including a medical history has been taken, and physical examination has been done before the patient receives the initial dose (except that in an emergency situation, the initial dose may be given before the physical examination).

(C) Ensure that appropriate laboratory studies have been performed and reviewed.

(D) Sign or countersign all medical orders as required by Federal or State law. (Such medical orders include but are not limited to the initial medication orders and all subsequent medication order changes, all changes in the frequency of take-home medication, and prescribing additional take-home medication for an emergency situation.)

(E) Review and countersign treatment plans at least annually as qualified by paragraph (d)(3)(v)(D) of this section.

(F) Ensure that justification is recorded in the patient's record for reducing the frequency of clinic visits for observed drug ingesting, providing additional take-home medication under exceptional circumstances or when there is physical disability, or prescribing any medication for physical or emotional problems.

(iii) *Use of health-care professionals.* Although the final decision to accept a patient for treatment may be made only by the medical director or other designated program physician, it is recognized that physicians can train program personnel to detect and document narcotic abstinence symptons and that some jurisdictions allow State-licensed or certified health-care professionals; e.g., physician's assistants, nurse practitioners, to perform certain functions—record medical histories, perform physical examinations, and prescribe, administer, or dispense certain medications—that are ordinarily performed by a licensed physician. These regulations do not prohibit licensed or certified health-care professionals from performing those functions in narcotic treatment programs if it is authorized by Federal, State, and local laws and regulations, and if those functions are delegated to them by the medical director, and records are properly countersigned by the medical director or a licensed physician.

(iv) *Vocational rehabilitation, education, and employment.* Each program shall provide opportunities directly, or through referral to community resources, for patients who either desire or have been deemed by the program staff to be ready to participate in educational job training programs or to obtain gainful employment as soon as possible.

(5) *Staffing patterns*—(i) *Program personnel.* The person(s) responsible for a program shall determine program personnel requirements after considering the number of patients who are vocationally and educationally impaired; the number of patients with significant psychopathology; the number of patients who are also nonnarcotic drug or alcohol abusers; the number of patients with behavioral problems in the program; and the number of patients with serious medical problems.

(ii) *Supportive services.* The person(s) responsible for the program shall take notice, when considering the staffing pattern, that maintenance treatment programs need to establish supportive services in accordance with the varying characteristics and needs of their patient populations. The person(s) responsible for a program shall also take notice of the availability of existing community resources which may complement or enhance the program's delivery of supportive services and then establish a staffing pattern based on a combination of patient needs and available, accessible community resources.

(6) *Frequency of attendance; quantity of take-home medication; dosage of methadone; initial and stabilization—(i) Dosage and responsibility for administration.* (A) The person(s) responsible for the program shall ensure that the initial dose of methadone does not exceed 30 milligrams and that the total dose for the first day does not exceed 40 milligrams, unless the program medical director documents in the patient's record that 40 milligrams did not suppress opiate abstinence symptoms.

(B) A licensed physician shall assume responsibility for the amount of the narcotic drug administered or dispensed and shall record, date, and sign in each patient's record each change in the dosage schedule.

(C) The administering licensed physician shall ensure that a daily dose greater than 100 milligrams is justified in the patient's record.

(ii) *Authorized dispensers of narcotic drugs; responsibility.* A narcotic drug may be administered or dispensed only by a practitioner licensed under the apporpriate State law and registered under the appropriate State and Federal laws to order narcotic drugs for patients, or by an agent of such a practitioner, supervised by and under the order of the practitioner. This agent is required to be a pharmacist, registered nurse, or licensed practical nurse, or any other health care professional authorized by federal and State law to administer or dispense narcotic drugs. The licensed practitioner assumes responsibility for the amounts of narcotic drugs administered or dispensed and shall record and countersign all changes in dosage schedule.

(iii) *Form.* Methadone may be administered or dispensed in oral form only when used in a treatment program. Hospitalized patients under care for a medical or surgical condition are permitted to receive methadone in parenteral form when the attending physician judges it advisable. Although tablet, syrup concentrate, or other formulations may be distributed to the program, all oral medication is required to be administered or dispensed in a liquid formulation. The oral dosage form is required to be formulated in such a way as to reduce its potential for parenteral abuse. Take-home medication is required to be labeled with the treatment center's name, address, and telephone number and must be packaged in special packaging as required by 16 CFR 1700.14 in accordance with the Poison Prevention Packaging Act (Pub. L. 91-601, 15 U.S.C. 1471 *et seq.*) to reduce the chances of accidental ingestion. Exceptions may be granted when these provisions conflict with State law with regard to the administering or dispensing of drugs.

(iv) *Take-home medication.* (A) Take-home medication may be given only to a patient who, in the reasonable clinical judgment of the program physician, is responsible in handling narcotic drugs. Before the program physician reduces the frequency of a patient's clinical visits, she or he or a designated staff member shall record the rationale for the decision in the patient's clinical record. If this is done by a designated staff member, a program physician shall review, countersign, and date the patient's record where this information is recorded.

(B) The program physician shall consider the following in determining whether, in his or her reasonable clinical judgment, a patient is responsible in handling narcotic drugs:

(*1*) Absence of recent abuse of drugs (narcotic or nonnarcotic), including alcohol;

(*2*) Regularity of clinic attendance;

(*3*) Absence of serious behavioral problems at the clinic;

(*4*) Absence of known recent criminal activity, e.g., drug dealing;

(*5*) Stability of the patient's home environment and social relationships;

(*6*) Length of time in maintenance treatment;

(*7*) Assurance that take-home medication can be safely stored within the patient's home; and

(*8*) Whether the rehabilitative benefit to the patient derived from decreasing the frequency of clinic attendance outweighs the potential risks of diversion.

(v) *Take-home requirements.* The requirement of time in treatment is a minimum reference point after which a patient may be eligible for take-home privileges. The time reference is not intended to mean that a patient in treatment for a particular time has a specific right to take-home medication. Thus, regardless of time in treatment, a program physician may, in his or her reasonable judgment, deny or rescind the take-home medication privileges of a patient.

(A)(*1*) In maintenance treatment it is required that a patient come to the clinic for observation daily or at least 6 days a week. If, in the reasonable clinical judgment of the program physician, a patient demonstrates that he or she has satisfactorily adhered to program rules for at least 3 months, has made substantial progress in rehabilitation and responsibility in handling narcotic drugs (see paragraphs (d)(6)(iv)(B) (*1*) through (*8*) of this section, and would improve his or her rehabilitative progress by decreasing the frequency of attendance at the clinic for observation, the patient may be permitted to reduce his or her attendance at the clinic for observation to three times weekly. The patient may receive no more than a 2-day take-home supply of medication.

(*2*) If, in the reasonable clinical judgment of the program physician, a patient demonstrates that he or she has satisfactorily ahered to program rules for at least 2 years from his or her entrance into the program, has made substantial progress in rehabilitation and responsibility in handling narcotic drugs (see paragraphs (d)(6)(iv)(B) (*1*) through (*8*) of this section), and would improve his or her rehabilitative progress by decreasing the frequency of attendance at the clinic for observation, the patient may be permitted to reduce his or her clinic attendance at the clinic for observation to twice weekly. Such a patient may receive no more than a 3-day take-home supply of medication.

(*3*) If, in the reasonable clinical judgment of the program physician, a patient demonstrates that he or she has satisfactorily adhered to program rules for at least 3 consecutive years from his or her entrance into the maintenance treatment program, has made substantial progress in rehabilitation, has no major behavioral problems, is responsible in handling narcotic drugs (see paragraphs (d)(6)(iv)(B) (*1*) through (*8*) of this section), and would improve his or her rehabilitative progress by decreasing the frequency of his or her clinic attendance for observation, the patient may be permitted to reduce clinic attendance for observation to once weekly, provided that the following additional criteria are met: The program physician has written into the patient's record an evaluation that the patient is responsible in handling narcotic drugs (paragraphs (d)(6)(iv)(B)(*1*) through (*8*) of this section); the patient is employed (or actively seeking employment), attends school, is a homemaker, or is considered unemployable for mental or physical reasons by a program physician; the patient is not known to have abused drugs including alcohol in the last year; and the patient is not known to have engaged in criminal activity; e.g., drug dealing, in the last year. A patient permitted to reduce clinic attendance for observation to once weekly may receive no more than a 6-day take-home supply of medication.

(B)(*1*) If a patient, after receiving a supply of take-home medication, is inexcusably absent from or misses a scheduled appointment with a treatment program without authorization from the program staff, the program physician shall increase the frequency of the patient's clinic attendance for drug ingestion under observation. For such a patient, the program physician shall not reduce the frequency of the patient's clinic attendance for drug ingestion under observation until she or he has had at least three consecutive monthly tests or analyses that are neither positive for morphine-like drugs (except from the narcotic drug administered or dispensed by the program) or other drugs of abuse, nor negative for the narcotic drug administered or dispensed by the program, and until she or he is again determined by a program physician to be responsible in handling narcotic drugs (see paragraphs (d)(6)(iv)(B) (*1*) through (*8*) of this section) and to meet criteria in paragraph (d)(6)(v)(A) of this section.

(*2*) If a patient, after receiving a 6-day supply of take-home medication, has a test or analysis which is confirmed to be positive for morphine-like drugs (except for the narcotic drug administered or dispensed by the program) or other drugs of abuse, or negative for the narcotic drug administered or dispensed by the program, the program physician shall place the patient on probation for 3 months. If, during this probation, the patient has a test or analysis either positive for morphine-like drugs (except for the narcotic drug administered or dispensed by the program) or other drugs of abuse, or negative for the narcotic drug administered or dispensed by the program, the program physician shall increase the frequency of the patient's clinic attendance for observation to at least twice weekly. Such a patient may receive no more than a 3-day take-home supply of medication until she or he has had at least three consecutive monthly tests or analyses which are neither positive for morphine-like drugs (except for the narcotic drug administered or dispensed by the program) or other drugs of abuse, nor negative for the narcotic drug administered or dispensed by the program, and the program physician again determines that the patient is responsible in handling narcotic drugs (see paragraphs (d)(6)(iv)(B)(*1*) through (*8*) of this section) and meets the criteria contained in paragraph (d)(6)(v)(A) of this section.

(C) In calculating the number of years of maintenance treatment, the period is considered to begin on the first day the medication is administered, or on readmission if a patient has had a continuous absence of 90 days or more. Cumulative time spent by the patient in more than one program is counted toward the number of years of treatment, provided there has not been a continuous absence of 90 days or more.

(D) Each patient whose daily dose is above 100 milligrams is required to be under observation while ingesting the drug at least 6 days per week irrespective of the length of time in treatment, unless the program has received prior approval from the Food and Drug Administration with the concurrence of the State authority.

(vi) *Exceptions to take-home requirements.* If, in the reasonable

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clinical judgment of the program physician:

(A) A patient is found to have a physical disability which interferes with his or her ability to conform to the applicable mandatory schedule, she or he may be permitted a temporarily or permanently reduced schedule, provided she or he is also found to be responsible in handling narcotic drugs.

(B) A patient, because of exceptional circumstances such as illness, personal or family crises, travel, or other hardship, is unable to conform to the applicable mandatory schedule, she or he may be permitted a temporarily reduced schedule, provided she or he is also found to be responsible in handling narcotic drugs. The rationale for an exception to a mandatory schedule is to be based on the reasonable clinical judgment of the program physician and shall be recorded in the patient's record by the program physician or by program personnel supervised by the program physician. In the latter situation, the physician shall review, countersign, and date the patient's record where this rationale is recorded. In any event, a patient may not be given more than a 2-week supply of narcotic drugs at one time.

(vii) *Official State holidays.* If a treatment center program is not in operation due to the observance of an official State holiday, patients may be permitted one extra take-home dose per visit and one fewer clinic visit per week to allow patients not to have to attend the clinic on an official State holiday. An official State holiday is a holiday on which most State offices are usually closed and routine State government business is not conducted.

(7) [Reserved]

(8) *Minimum standards for short-term detoxification treatment.* (i) For short-term detoxification from narcotic drugs, the narcotic drug is required to be administered by the program physician or by an authorized agent of the physician, supervised by and under the order of the physician. The narcotic drug is required to be administered daily, under close observation, in reducing dosages over a period not to exceed 30 days. All requirements for maintenance treatment apply to short-term detoxification treatment with the following exceptions:

(A) Take-home medication is not allowed during short-term detoxification.

(B) A history of 1 year physiologic dependence is not required for admission to short-term detoxification.

(C) Patients who have been determined by the program physician to be currently physiologically narcotic dependent may be placed in short-term detoxification treatment, regardless of age.

(D) No test or analysis is required except for the initial drug screening test or analysis.

(E) The initial treatment plan and periodic treatment plan evaluation required for maintenance patients are not necessary for short-term detoxification patients. However, a primary counselor must be assigned by the program to monitor a patient's progress toward the goal of short-term detoxification and possible drug-free treatment referral.

(F) The requirements of paragraph (d)(4) of this section, except paragraphs (d)(4)(ii) (A) through (D) and (d)(4)(iii) of this section, do not apply to short-term detoxification treatment.

(ii) A patient is required to wait at least 7 days between concluding a short-term detoxification treatment episode and beginning another. Before a short-term detoxification attempt is repeated, the program physician shall document in the patient's record that the patient continues to be, or is again, physiologically dependent on narcotic drugs. The provisions of these requirements, except as noted in paragraph (d)(8)(i) of this section, apply to both inpatient and ambulatory short-term detoxification treatment.

(iii) Short-term detoxification treatment is not recommended for a pregnant patient.

(9) *Minimum standards for long-term detoxification treatment.* (i) For long-term detoxification from narcotic drugs, the narcotic drug is required to be administered by the program physician or by an authorized agent of the physician, supervised by and under the order of the physician. The narcotic drug is required to be administered on a regimen designed to reach a drug-free state and to make progress in rehabilitation in 180 days or less. All requirements for maintenance treatment apply to long-term detoxification treatment with the following exceptions.

(A) In long-term detoxification treatment it is required that the patient be under observation while ingesting the drug daily or at least 6 days a week, for the duration of the long-term detoxification treatment.

(B) A history of 1 year physiologic dependence is not required for admission to long-term detoxification.

(C) The program physician shall document in the patient's record that short-term detoxification is not a sufficiently long enough treatment course to provide the patient with the additional program services he or she deems necessary for the patient's rehabilitation. The program physician shall document this information in the patient's record before long-term detoxification may begin.

(D) Patients who have been determined by the program physician to be currently physiologically dependent on narcotics may be placed in long-term detoxification treatment, regardless of age.

(E) An initial drug screening test or analysis is required for each patient. And at least one additional random test or analysis must be performed monthly on each patient during long-term detoxification.

(F) The initial treatment plan and periodic treatment plan evaluation required for maintenance patients are also required for long-term detoxification patients, except that the required periodic treatment plan evaluation is required to occur monthly.

(ii) A patient is required to wait at least 7 days between concluding a long-term treatment episode and beginning another. Before a long-term detoxification attempt is repeated, the program physician shall document in the patient's record that the patient continues to be or is again physicologically dependent on narcotic drugs. The provisions of these requirements apply to both inpatient and ambulatory long-term detoxification treatment.

(iii) Long-term detoxification is not recommended for a pregnant patient.

(10) *Inspections of programs; patient confidentiality.* A program shall allow inspections by duly authorized employees of the State authority, and in accordance with Federal controlled substances laws and Federal confidentiality laws, by duly authorized employees of the Food and Drug Administration, the Drug Enforcement Administration of the Department of Justice, and the National Institute on Drug Abuse.

(11) *Exemptions from specific program standards.* (i) A program is permitted, at the time of application or any time thereafter, to request exemption from specific program standards. The rationale for an exemption shall be thoroughly documented in an appendix to be submitted with the application or at some later time. The Food and Drug Administration will approve such exemptions of program standards at the time of application, or any time thereafter, with the concurrence of the State authority. An example of a case in which an exemption might be granted would be for a private practitioner who wishes to treat a limited number of patients in a nonmetropolitan area with few physicians and no rehabilitative services geographically accessible and requests exemption from some of the staffing and service standards.

(ii) The Food and Drug Administration has the right to withhold the granting of an exemption requested at the time of application until a program is in actual operation in order to assess if the exemption is necessary. If periodic inspections of the progam reveal that discrepancies or adverse conditions exist, the Food and Drug Administration shall reserve the right to revoke any or all exemptions previously granted.

(12) *Research.* When a program conducts research on human subjects or provides subjects for research, there must be written policies and written review to assure the rights of the patients involved. Appropriate informed consent forms are required to be signed by the patient and to be retained in his or her patient record at the program. All research, development, and related activities which involve human subjects and which are funded by grants from or contracts with the Department of Health and Human Services are required to comply with the Department of Health and Human Services' regulations on the protection of human subjects, 45 CFR Part 46, and confidentiality of information, 42 CFR Part 2. All investigational research involving human subjects conducted for submission to the Food and Drug Administration must be conducted in compliance with Part 312 of this chapter.

(13) *Patient record system*—(i) *Patient care.* The person(s) responsible for a program shall establish a record system to document and monitor patient care. This system is required to comply with all Federal and State reporting requirements relevant to methadone. All records are required to be kept confidential and in accordance with all applicable Federal and State regulations regarding confidentiality.

(ii) *Drug dispensing.* The person(s) responsible for a program shall ensure that accurate records traceable to specific patients are maintained showing dates, quantity, and batch or code marks of the drug dispensed. These records must be retained for a period of 3 years from the date of dispensing.

(iii) *Patient's record.* An adequate record must be maintained for each patient. The record is required to contain a copy of the signed consent form(s), the date of each visit, the amount of drug administered or dispensed, the results of each test or analysis for drugs, any significant physical or psychological disability, the type of rehabilitative and counseling efforts employed, an account of the patient's progress, and other relevant aspects of the treatment program. For recordkeeping purposes, if a patient misses appointments for 2 weeks or more without notifying the program, the episode of care is considered terminated and is to be so noted in the patient's record. This does not mean that the patient cannot return for care. If the patient does return for care and is accepted into the program, this is considered a readmission and is to be so noted in the patient's record. This method of recordkeeping helps assure the easy detection of sporadic attendance and decreases the possibility of administering inappropriate doses of narcotic drugs (e.g., the patient who has received no medication for several days or more and upon return receives the usual stabilization dose). An annual evaluation of the patient's progress must be entered in the patient's record.

(14) *Security of drug stocks.* adequate security is required to be maintained over drug stocks, over the manner in which it is administered or dispensed, over the manner in which it is distributed to medication units, and over the manner in which it is stored to guard against theft and diversion of the drug. The program is required to meet the security standards for the distribution and storage of controlled substances as required by the Drug Enforcement Administration, Department of Justice (21 CFR 1301.72–1301.76).

(e) *Multiple enrollments*—(1) *Administering or dispensing to patients enrolled in other programs.* There is a danger of drug dependent persons attempting to enroll in more than one narcotic treatment program to obtain quantities of drugs for the purpose of self-administration or illicit marketing. Therefore, except in an emergency situation, drugs shall not be provided to a patient who is known to be currently receiving drugs from another treatment program

(2) *Patient attendance requirements.* The patient shall always report to the same treatment facility unless prior approval is obtained from the program sponsor for treatment at another program. Permission to report for treatment at the facility of another program shall be granted only in exceptional circumstances and shall be noted on the patient's clinical record.

(f) *Conditions for use of narcotic drugs in hospitals for detoxification treatment*—(1) *Form.* The drug may be administered or dispensed in either oral or parenteral form. (See paragraph (d)(6)(iii) of this section.)

(2) *Use of narcotic drugs in hospitals*—(1) *Approved uses.* For hospitalized patients, the use of a narcotic drug for narcotic addict treatment may be administered or dispensed only for detoxification treatment. If a narcotic drug is administered for treatment of narcotic dependence for more than 180 days, the procedure is no longer considered detoxification but is, rather, considered maintenance treatment. Only approved narcotic treatment programs may undertake maintenance treatment. This does not preclude the maintenance treatment of a patient who is hospitalized for treatment of medical conditions other than addiction and who requires temporary maintenance treatment during the critical period of his or her stay or whose enrollment in a program which has approval for maintenance treatment using narcotic drugs has been verified. (See 21 CFR 1306.07(c).) Any hospital which already has received approval under this paragraph (f) may serve as a temporary narcotic treatment program when an approved treatment program has been terminated and there is no other facility immediately available in the area to provide narcotic drug treatment for the patients. The Food and Drug Administration may give this approval upon the request of the State authority or the hospital, When no State authority has been established.

(ii) *Individuals responsible for supplies.* Hospitals shall submit to the Food and Drug Administration and the State authority the name of the individual (e.g., pharmacist) responsible for receiving and securing supplies of narcotic drugs for the treatment of narcotic addicts. The individual responsible for supplies shall ensure that the only persons who receive supplies of narcotic drugs are those who are authorized to do so by Federal or State law.

(iii) *General description.* The hospital shall submit to the Food and Drug Administration and the State authority a general description of the hospital including the number of beds, specialized treatment facilities for drug dependence, and nature of patient care undertaken.

(iv) *Anticipated quantity of drug needed.* The hospital shall submit to the Food and Drug Administration and the State authority the anticipated quantity of narcotic drugs for narcotic addict treatment needed per year.

(v) *Records.* The hospital shall maintain accurate records showing dates, quantity, and batch or code marks of the drug used for inpatient treatment. The hospital shall retain the records for at least a period of 3 years.

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(vi) *Inspection.* The hospital shall permit the Food and Drug Administration and the State authority to inspect supplies of the drug at the hospital and evaluate the uses to which the drug is being put. The Food and Drug Administration and the State authority will keep the identity of the patients confidential in accordance with confidentiality requirements of 42 CFR Part 2. Records on the receipt, storage, and distribution of narcotic medication are subject to inspection under Federal controlled substances laws; but use or disclosure of records identifying patients will, in any case, be limited to actions involving the program or its personnel.

(vii) *Approval of hospital pharmacy.* Application for a hospital pharmacy to provide narcotic drugs for detoxification treatment must be submitted to the Food and Drug Administration and the State authority and approval from both is required, except as provided for in paragraph (h)(5) of this section. Within 60 days after the Food and Drug Administration receives the application, it will notify the applicant of approval or denial or will request additional information, when necessary.

(viii) *Approval of shipments to hospital pharmacies.* Before a hospital pharmacy may lawfully receive shipments of narcotic drugs for detoxification treatment, a responsible official shall complete, sign, and file in duplicate with the Food and Drug Administration and the State authority Form FDA–2636 "Hospital Request for Methadone Detoxification Treatment" (see paragraph (k) of this section) and must have received from the Food and Drug Administration a notice that the request has been approved.

(ix) *Sanctions.* Failure to abide by the requirements described in this section may result in revocation of approval to receive shipments of narcotic drugs for narcotic addict treatment, seizure of the drug supply on hand, injunction, and criminal prosecution.

(g) *Confidentiality of patient records.* (1) Except as provided in paragraph (g)(2) of this section, disclosure of patient records maintained by any program is governed by the provisions of 42 CFR Part 2, and every program must comply with that part. Records on the receipt, storage, and distribution of narcotic medication are also subject to inspection under Federal controlled substances laws: But use or disclosure of records identifying patients will, in any case, be limited to actions involving the program or its personnel.

(2) A treatment program or medication unit or any part thereof, including any facility or any individual, shall permit a duly authorized employee of the Food and Drug Administration to have access to and to copy all records on the use of narcotic drugs in accordance with the provisions of 42 CFR Part 2. A treatment program may reveal such records only when necessary in a related administrative or court proceeding.

(h) *Denial or revocation of approval.* (1) Complete or partial denial or revocation of approval of an application to receive shipments of narcotic drugs (Forms FDA–2632 "Application for Approval of Use of Methadone in a Treatment Program" and FDA–2636 "Hospital Request for Methadone Detoxification Treatment") may be proposed to the Commissioner of Food and Drugs by the Director of the Food and Drug Administration's Center for Drug Evaluation and Research, on his or her own initiative or at the request of representatives of the Drug Enforcement Administration, Department of Justice, National Institute of Drug Abuse, the State authority, or any other interested person.

(2) Before presenting such a proposal to the Commissioner, the Director of the Center for Drug Evaluation and Research, or his or her representative, will notify the applicant in writing of the proposed action and the reasons therefor and will offer the applicant an opportunity to explain the matters in question in an informal conference and/or in writing within 10 days after receipt of such notification. The applicant shall have the right to hear and to question the information on which the proposal to deny or revoke approval is based, and may present any oral or written information and views.

(3) If the explanation offered by the applicant is not accepted by the Center for Drug Evaluation and Research as sufficient to justify approval of the application, and denial or revocation of approval is therefore proposed, the Commissioner will evaluate information obtained in the informal conference and/or in writing before the Director of the Center for Drug Evaluation and Research. If the Commissioner finds that the applicant has failed to submit adequate assurance justifying approval of the application, the Commissioner shall issue a notice of opportunity for hearing with respect to the matter pursuant to § 314.200 of this chapter and the matter shall thereafter be handled in accordance with established procedures for denial or revocation of approval of a new drug application. If the Secretary determines that there is an imminent hazard to health, revocation of approval will become effective immediately and any administrative procedure will be expedited. Upon revocation of approval of an application, the Commissioner will notify the applicant, the State authority, the Drug Enforcement Administration, Department of Justice, and all other appropriate persons that the applicant may no longer receive shipments of narcotic drugs, and will require the recall of all of the drugs from the applicant. Revocation of approval may also result in criminal prosecution.

(4) Denial or revocation of approval may be reversed when the Commissioner determines that the applicant has justified approval of the application.

(5) A treatment program or medication unit or any part thereof, including any facility or any individual, may appeal to the Food and Drug Administration a complete or partial denial or revocation of approval by the State authority unless the denial or revocation is based upon a State law or regulation. The appeal shall first be made to the Director of the Center for Drug Evaluation and Research, who shall hold an informal conference on the matter in accordance with paragraph (h)(2) of this section. The State authority may participate in the conference. The appellant or the State authority may appeal the Director's decision to the Commissioner, who shall decide the matter in accordance with paragraph (h)(3) of this section. If the Commissioner denies or revokes approval, such action shall be handled in accordance with paragraph (h)(3) of this section. The Commissioner may not grant or retain Food and Drug Administration approval if the Commissioner finds that the appellant is not in compliance with all applicable State laws and regulations and with this section.

(i) *Sanctions*—(1) *Program sponsor or individual responsible for a particular program.* If the program sponsor or the person responsible for a particular program fails to abide by all the requirements set forth in this regulation, or fails to adequately monitor the activities of those employed in the program, he or she may have the approval of his or her application revoked, his or her narcotic drug supply seized, an injunction granted precluding operation of his or her program, and criminal prosecution instituted against him or her.

(2) *Persons responsible for administering or dispensing narcotic drugs.* If a person responsible for administering or dispensing narcotic drugs for narcotic addict treatment fails to abide by all the requirements set forth in this regulation, criminal prosecution may be instituted against him or her, his or her drug supply may be seized, the approval of the program may be revoked, and an injunction may be granted precluding operation of the program.



(j) *Requirements for distribution by manufacturers of narcotic drugs for narcotic addict treatment*—(1) *Distribution requirements.* Shipments of narcotic drugs for narcotic addict treatment are restricted to direct shipments by manufacturers of the drugs to approved treatment programs using the narcotic drugs and to approved hospital pharmacies. If requested by a manufacturer or State authority, wholesale pharmacy outlets in some regions or States may be authorized to stock narcotic drugs for narcotic addict treatment for that area and then transship the drug to approved narcotic treatment programs and approved hospital pharmacies. Alternative methods of distribution will be permitted if they are approved by the Food and Drug Administration and the State authority. Prior to any approval of an alternative method of distribution there will be consultation with the Drug Enforcement Administration, Department of Justice, to assure compliance with its regulations regarding controlled substance distribution.

(2) *Information regarding approved programs and hospitals.* The Food and Drug Administration will provide manufacturers and the public with names and locations of programs and hospitals that have been approved to receive shipments of narcotic drugs for narcotic addiction treatment. All information contained in the forms required by paragraph (k) of this section is available for public disclosure, except the names or other identifying information with respect to patients.

(3) *Acceptance of delivery.* Delivery shall only be made to a licensed practitioner or a licensed pharmacist employed at the facility. At the time of delivery the licensed practitioner or licensed pharmacist shall sign for the drugs and place his or her specific title and identification number on any invoice. Copies of these signed invoices shall be kept by the manufacturer.

(k) *Program forms.* The program sponsor must ensure that the following forms are completed by the proper program staff and submitted to the appropriate State authority and the Division of Scientific Investigations, Regulatory Management Branch (HFD–342), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Forms are available upon request from the Regulatory Management Branch (HFD–342), at the same address.

Form

FDA 2632—Application for Approval of Use of Methadone in a Treatment Program.
FDA–2633—Medical Responsibility Statement for Use of Methadone in a Treatment Program.
FDA–2635—Consent to Methadone Treatment.
FDA–2636—Hospital Request for Methadone Detoxification Treatment.

(Collection of information requirements approved by the Office of Management and Budget under number 0910–0140.)

Charles R. Schuster,
*Director, National Institute on Drug Abuse.*
Frank E. Young,
*Commissioner of Food and Drugs.*
Dated: January 9, 1989.

FR Doc. 89–4684 Filed 3–1–89; 8:45 am]
BILLING CODE 4160–01–M

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88D-0445]

**National Institute on Drug Abuse; Guidance on the Use of Methadone in Maintenance and Detoxification Treatment; Availability**

**AGENCIES:** Food and Drug Administration and National Institute on Drug Abuse.

**ACTION:** Notice of availability.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a guidance document entitled "Guidance on the Use of Methadone in Maintenance and Detoxification Treatment of Narcotic Addicts." This guidance document consists of recommended practices in the maintenance and detoxification of narcotic addicts. The guidance document is intended to be used in conjunction with the final regulation on methadone in maintenance and detoxification treatment, which is published elsewhere in this issue of the **Federal Register**.

**ADDRESSES:** The guidance document is available for review at, and written comments are to be submitted to, the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. Copies of the guidance document are available from the Legislative, Professional, and Consumer Affairs Branch (HFD-365), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. (Send a self-addressed adhesive label to assist the Branch in processing your request.)

**FOR FURTHER INFORMATION CONTACT:** Robert J. Meyer, or Wayne H. Mitchell, Center for Drug Evaluation and Research (HFD-362), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8049.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of October 2, 1987 (52 FR 37046), FDA and the National Institute on Drug Abuse (NIDA) jointly published a proposed rule to revise the regulation on the conditions for the use of methadone in maintenance and detoxification treatment (21 CFR 291.505). The agencies proposed a number of revisions, which were designed to streamline the regulation and to promote more efficient operation of narcotic treatment programs. A significant revision involved the development of a separate guidance document consisting of those provisions of § 291.505 that were not legal requirements. Although these provisions are, in effect, already guidance, their inclusion in § 291.505 made it difficult to distinguish them from other provisions that are legal requirements. Therefore, FDA has incorporated those provisions into a guidance document entitled "Guidance on the Use of Methadone in Maintenance and Detoxification Treatment of Narcotic Addicts." This document announces the availability of the guidance document.

Elsewhere in this issue of the **Federal Register**, FDA and NIDA are publishing the final regulation based on the October 2, 1987, proposal. Also in this issue of the **Federal Register**, the agencies are publishing a proposed rule to provide minimum service maintenance treatment to patients awaiting placement in comprehensive maintenance treatment, and an advance notice of proposed rulemaking soliciting comments on a pilot study designed to help identify improved measures of methadone program performance and thus enhance the quality of treatment.

This guidance document is not legally binding on FDA, NIDA, or any individual or organization, and it does not represent the formal legal opinion of either FDA or NIDA. The recommendations contained in the guidance document are intended to give guidance to programs that want to provide more and better services than the minimum required by the regulation. States may also wish to consider the guidance document when developing requirements for using methadone in the treatment of narcotic addiction.

Interested persons may submit written comments on the guidance document to the Dockets Management Branch (address above). FDA will consider these comments to determine whether any future revisions to the guidance document are warranted. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance document and all comments received on it may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Requests for copies of the guidance document should be submitted to the Legislative, Professional, and Consumer Affffairs Branch (address above).

**Charles E. Schuster,**

*Director, National Institute on Drug Abuse.*

**Frank E. Young,**

*Commissioner of Food and Drugs.*

Dated: January 9, 1989.

[FR Doc. 89-4665 Filed 3-1-89; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 291

[Docket No. 88N-0444]

**National Institute on Drug Abuse; Methadone in Maintenance Treatment of Narcotic Addicts; Joint Proposed Revision of Conditions for Use**

**AGENCIES:** Food and Drug Administration and National Institute on Drug Abuse.

**ACTION:** Proposed rule.

**SUMMARY:** The Food and Drug Administration (FDA) and the National Institute on Drug Abuse (NIDA) are proposing to revise the conditions for the use of methadone in the maintenance treatment of narcotic addicts. The proposal would allow programs to provide minimum service (interim) maintenance treatment to patients awaiting placement in comprehensive maintenance treatment and require programs to provide counseling on avoidance of human immunodeficiency virus (HIV) transmission. These requirements are being proposed in response to the HIV epidemic and are intended to allow more narcotic addicts into treatment more quickly, thereby decreasing the incidence of intravenous drug abuse and the transmission of HIV.

**DATE:** Comments by April 3, 1989.

**ADDRESS:** Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Wayne H. Mitchell, or Robert J. Meyer, Center for Drug Evaluation and Research (HFD-362), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8046.

**SUPPLEMENTARY INFORMATION:**

## I. Background

Elsewhere in this issue of the **Federal Register**, FDA and NIDA have published a final rule revising the conditions for the use of methadone in maintenance and detoxification treatment. Among other changes, the final rule provides for long-term (180-day) detoxification treatment and eliminates the mandatory patient/counselor ratio. Elsewhere in this issue of the **Federal Register**, the agencies are also publishing a notice of availability of a guidance document which sets out recommended practices, as opposed to the requirements contained in the regulation, in the methadone treatment of narcotic addiction.

In addition, elsewhere in this issue of the **Federal Register**, FDA and NIDA are publishing an advance notice of proposed rulemaking soliciting comments on a pilot study designed to help identify improved measures of methadone program performance and thus enhance the quality of treatment.

FDA and NIDA are now proposing to revise the methadone regulation to provide programs with the additional flexibility that may be required to facilitate admission of narcotic addicts into methadone treatment programs. Under these proposed interim maintenance treatment provisions, methadone treatment programs will be allowed to dispense methadone to medically evaluated narcotic addicts who are awaiting placement in comprehensive maintenance treatment. The programs would be required to provide these patients only a limited range of services until they are transferred to comprehensive maintenance treatment, which provides a full range of services. This initiative is being undertaken by FDA and NIDA in response to the HIV epidemic in the intravenous (IV) drug abusing population and is intended to help reduce the spread of HIV infection.

## II. Basis for Action

Acquired immune deficiency syndrome (AIDS) is making massive inroads into the IV drug abuser population (Ref. 1), and increasing access to methadone treatment is one action that should be taken to help reduce the spread of HIV infection. Methadone treatment should decrease an individual's use of IV narcotic drugs, therefore decreasing the use of hypodermic needles and curtailing the spread of HIV, which is known to be transmitted by sharing contaminated hypodermic needles. Studies support this thesis and indicate that methadone treatment is, in fact, an effective method of limiting the transmission of HIV and that drug addicts in methadone treatment have a lower incidence of HIV positive test results and less frequent use of needles than addicts outside of programs (Refs. 2 and 3). A recent study conducted by a methadone treatment program under an investigational new drug application (IND) showed that minimum service maintenance treatment, similar to the interim maintenance treatment provided for in this proposal, significantly reduced needle use among the program's patients (Ref. 4).

FDA and NIDA recognize that shortages of funds, facilities, and trained personnel limit the immediate expansion of narcotic treatment programs. The agencies are also aware of the waiting lists for methadone treatment that are currently present in a number of cities across the nation. Accordingly, FDA and NIDA are proposing changes in the methadone regulation that will permit programs to provide interim maintenance treatment to help alleviate the human suffering of addicted individuals and reduce the abuse of IV drugs. The title "interim maintenance treatment" is doubly appropriate, because the treatment is an interim treatment for the patient until he or she can be admitted to comprehensive maintenance treatment and, at the same time, the treatment modality itself is intended to be an interim response to an emergency situation until the expansion of the capacity of comprehensive maintenance and detoxification treatment programs can be implemented. The Presidential HIV Epidemic Commission report (Ref. 5) also acknowledged the existence of this emergency situation, and further stated that:

> The National Institute on Drug Abuse (NIDA) estimates that 6.5 million people are now using drugs in a manner which significantly impairs their health and ability to function. Of these, 1.2 to 1.3 million are intravenous drug abusers. At any given time there are probably not more than 250,000 drug abusers in treatment, of whom 148,000 are intravenous drug abusers. The lack of treatment capacity has produced long waiting lists for treatment, in some cases up to six months, in three out of four cities in the United States. During this waiting period many intravenous drug abusers continue to use drugs intravenously several times each day, increasing their risk of contracting and spreading HIV, and in many cases diminishing their resolve to enter treatment.

FDA and NIDA believe that it is a necessary response to the HIV epidemic to allow programs to establish interim maintenance treatment. The agencies do not intend interim maintenance to become an alternative to comprehensive maintenance, with patients placed in interim treatment for extended periods of time. Patients would be placed in interim maintenance only when there are no openings available, and there should be a real expectation of their being transferred to comprehensive treatment at the end of a finite and relatively short period of time. The agencies intend that interim

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maintenance treatment be an adjunct to comprehensive maintenance treatment rather than a substitute for it. The proposed regulation would not, however, compel programs to transfer patients from interim maintenance treatment to comprehensive maintenance treatment within any fixed period of time. The agencies considered, but rejected, proposing additional limitations on admission to interim maintenance and mandatory transfer criteria, because these limitations would excessively interfere with the exercise of sound medical judgment by a program's medical staff. Instead, the proposal would require that interim maintenance be offered only by programs also offering comprehensive maintenance and that programs formally evaluate patients at 6-month intervals to determine whether patients meet transfer criteria set by the program. The agencies specifically solicit comments on the adequacy of this approach to prevent inappropriate long-term interim maintenance, and solicits comments on other means to encourage timely transfer from interim to comprehensive maintenance treatment. One approach under consideration is a requirement that programs maintain a certain minimum ratio between the number of comprehensive maintenance treatment slots and interim maintenance treatment slots.

The agencies also solicit comments on (1) whether the approach set forth in this proposal, of totally prohibiting stand-alone interim maintenance programs, should be implemented; or (2) whether, and under what circumstances, referral arrangements should be allowed between stand-alone interim and comprehensive maintenance programs.

The proposal would require programs to counsel patients on reducing the risk of HIV transmission. The incidence of HIV infection among IV drug abusers in some cities is close to 50 percent, and the situation is worsening across the country (Ref. 1).

RDA and NIDA have considered requiring HIV testing as part of the pre-admission physical examination, but have tentatively decided not to make testing mandatory. The agencies encourage programs to provide access to HIV testing services for patients entering interim and comprehensive maintenance and detoxification treatment. FDA and NIDA request comments on the question of requiring HIV testing in methadone treatment programs. Issues of particular interest to the agencies include the availability, cost (including internal cost), and frequency of testing; the impact of testing on an addict's decision to enter treatment; and what treatment decisions are made based on the results of HIV testing.

### III. Summary of the Proposal

"Interim maintenance treatment," which is defined in proposed § 291.505(a)(2)(ii) and the requirements for which are set out in proposed § 291.505(d)(7), would allow programs to provide methadone to narcotic addicts awaiting admission to comprehensive maintenance treatment. To distinguish between this new treatment modality and the current maintenance treatment modality, the pre-existing maintenance treatment would be referred to as "comprehensive maintenance treatment." (See proposed § 291.505(a)(2)(i).) Programs offering interim maintenance treatment would be required to provide a medical examination and services, but rehabilitative services will not be required. Programs would, of course, be encouraged to provide counseling or other services beyond the minimum requirements of the regulation. No take-home medication would be allowed, and clinics offering interim maintenance treatment will be required to be open 7 days a week to dispense medication. No random drug screening tests would be required to be performed on patients in interim maintenance treatment, because all methadone would be ingested under observation. The agencies believe that this approach would provide adequate protection against diversion, and solicit comments as to the utility of random urine testing of interim-care patients.

Under the proposal, programs would be required to establish and follow reasonable written priorities, which may take into account medical and rehabilitative factors, for transferring patients from interim maintenance treatment to comprehensive maintenance treatment. Programs may wish to consider such factors as pregnancy, HIV positive blood tests, and the presence of clinical AIDS, in setting priority criteria for transferring a patient to comprehensive maintenance. Programs would also be free to transfer patients on a "first come, first serve" basis, as long as the "chronological" system of priority was documented. The agencies anticipate that patients will be transferred to comprehensive maintenance treatment after a relatively brief period in interim maintenance; however, if a patient is in interim maintenance treatment for 6 months, the program would be required to formally evaluate the patient to determine how the patient meets transfer priority criteria. This evaluation would be repeated, at 6-month intervals, until the patient leaves interim maintenance either by transfer to comprehensive maintenance or by leaving the program. The results of this evaluation would have to be noted in the patient's record.

The proposal would prohibit separate interim maintenance treatment programs requiring that interim maintenance treatment be offered only by programs offering comprehensive maintenance (proposed § 291.505(b)(1)(v)).

Under the proposal, methadone for interim maintenance treatment may be dispensed at either a medication unit or the program's primary facility. For methadone to be dispensed at a medication unit for interim maintenance treatment, all provisions in § 291.505(b)(3) on medication units must be met, with the exception of the provisions on counseling and rehabilitative service, which expressly do not apply to interim maintenance treatment. (See paragraphs (b)(2)(iii) and (3)(iv)(B) of § 291.505 of the final rule as they relate to proposed § 291.505(d)(7)(vi).)

Counseling on avoidance and transmission of HIV would be required under proposed § 291.505(d)(4)(i)(C). This counseling would be offered upon entrance to both detoxification and maintenance treatment. Counseling should be repeated as the program determines it to be necessary.

### IV. References

The following information has been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Dondero, T., et al., "Human Immunodeficiency Virus in the United States: A Review of Current Knowledge," *Morbidity and Mortality Weekly Report*, Supplement, 38:S-6, Table 2, December 16, 1987.

2. "Report on Effectiveness of Drug Abuse Treatment as an AIDS Prevention Strategy," Unpublished NIDA Report, July 29, 1988.

3. Ball, J.C., et al, "Reducing the Risk of AIDS through Methadone Treatment," *Journal of Health and Social Behavior*, 29:214–226, 1988.

4. Yancovitz, S., et al., "Innovative AIDS Risk Reduction Project: Interim Methadone Clinic," paper presented at the IV International AIDS meeting, Stockholm, 1988.

5. "Report of the Presidential Commission on the Human Immunodeficiency Virus Epidemic," p. 90, June 1988.

### V. Environmental Impact

FDA has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

### VI. Economic Impact

FDA and NIDA have examined the regulatory impact and regulatory flexibility implications of the proposed rule in accordance with Executive Order 12291 and the Regulatory Flexibility Act (Pub. L. 96–354). The agencies find that the proposed rule is not a major rule inasmuch as the revisions proposed would not result in any significant increase in cost to narcotic treatment programs or to the State and local authorities that would enforce the proposed rule. In fact, this proposal would allow maintenance treatment of narcotic drug addicts at a lower-per-patient cost. For these reasons, therefore, the agencies have determined that the proposed rule is not a major rule as defined in Executive Order 12291. Further, FDA and NIDA certify that the proposed rule will not have a significant impact on a substantial number of small entities as defined by the Regulatory Flexibility Act.

### VII. Paperwork Reduction Act of 1980

This proposed rule contains information collections which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. The title, description, and respondent description of the information collection are shown below with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

*Title:* Transfer Priority Criteria Evaluation Notation.

*Description:* FDA and NIDA are requiring this notation to ensure that a record exists of the transfer criteria evaluation, which is designed to help prevent interim maintenance treatment from becoming a long-term treatment modality for any patient.

*Description of Respondents:* State or local governments, businesses or other for-profit organizations; nonprofit institutions.

ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN

| Section | Annual number of respondents | Annual frequency | Average burden per response |
|---|---|---|---|
| § 291.505(d)(7) | 20 | 200 | 5 minutes<br>annual burden hours 333 |

The agencies have submitted a copy of this proposed rule to OMB for its review of these information collections. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to FDA's Dockets Management Branch (address above), and to the Office of Information and Regulatory Affairs, OMB, Washington, DC 20503.

### VIII. Request for Comments

The agencies are requesting that all comments on this proposed rule be submitted within 30 days after publication, rather than the customary 60 days, due to the imminent threat to the public health posed by the HIV epidemic, as is discussed above. FDA and NIDA will be mailing copies of this proposal to all approved treatment programs, to State regulatory agencies (including State drug abuse authorities), to individuals and organizations who have submitted comments on methadone-related documents in the past, and to other individuals and organizations that are likely to be concerned with the proposal, so they may comment within the 30-day period.

Interested persons may, on or before April 3, 1989, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

### List of Subjects in 21 CFR Part 291

Health professions, Methadone, Reporting and recordkeeping requirements.

Therefore, under the Comprehensive Drug Abuse Prevention and Control Act of 1970, the Narcotic Addict Treatment Act of 1974, and applicable delegations of authority thereunder, and under authority delegated to the Commissioner of Food and Drugs, it is proposed that Part 291 be amended as follows:

## PART 291—DRUGS USED FOR TREATMENT OF NARCOTIC ADDICTS

1. The authority citation for Part 291 continues to read as follows:

Authority: Secs. 3, 505, 701(a) (21 U.S.C. 823(g), 355, 371(a)); secs. 4, 548 (42 U.S.C. 257a, 290ee–3).

2. Section 291.505 is amended by inserting the word "comprehensive" before the word "maintenance" everywhere it appears in paragraphs (d)(1)(i), (d)(1)(iii), (d)(1)(iv), (d)(2)(i), (d)(3)(v)(D), (d)(4)(i)(B)(*2*), (d)(5)(ii), (d)(6)(iv)(B)(*6*), (d)(6)(v)(A)(*1*) and (*3*), (d)(6)(v)(C), (d)(8)(i) introductory text and (d)(8)(i)(E), (d)(9)(i) introductory text and (d)(9)(i)(F), and by revising paragraph (a)(2), and by adding paragraphs (b)(1)(v), (d)(4)(i)(C), and (d)(7) to read as follows:

**§ 291.505 Conditions for the use of narcotic drugs; appropriate methods of professional practice for medical treatment of the narcotic addiction of various classes of narcotic addicts under section 4 of the Comprehensive Drug Abuse Prevention and Control Act of 1970.**

(a) * * *

(2) "Maintenance treatment" means the dispensing of a narcotic drug, at relatively stable dosage levels, in the treatment of an individual for dependence on heroin or other morphine-like drug. There are two types of maintenance treatment: comprehensive maintenance treatment and interim maintenance treatment.

(i) "Comprehensive maintenance treatment" is maintenance treatment provided in conjunction with a comprehensive range of appropriate medical and rehabilitative services.

(ii) "Interim maintenance treatment" is maintenance treatment provided solely in conjunction with appropriate medical services while a patient is

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awaiting transfer to comprehensive maintenance treatment.

* * * * *

(b) * * *

(1) * * *

(v) *Interim maintenance treatment.* A narcotic treatment program may provide interim maintenance treatment only if the program also provides comprehensive maintenance treatment to which interim maintenance treatment patients may be transferred.

* * * * *

(d) * * *

(4) * * *

(i) * * *

(C) *Human immunodeficiency virus (HIV) education.* For each patient seeking admission or readmission to a treatment program, the program shall provide counseling on HIV transmission and avoidance.

* * * * *

(7) *Minimum standards for interim maintenance treatment.* The person(s) responsible for a program may place a patient, otherwise eligible for admission to comprehensive maintenance treatment, in interim maintenance treatment if the program does not have open treatment slots available in comprehensive maintenance treatment. A program shall establish and follow reasonable criteria for establishing priorities for transferring patients from interim maintenance to comprehensive maintenance treatment. These transfer criteria shall be in writing and available for inspection. If a patient is transferred from interim maintenance treatment to comprehensive maintenance treatment other than in accordance with the written criteria, a justification for the transfer shall be entered in the patient's record. Six months after a patient has entered interim maintenance treatment, the program shall evaluate that patient to determine if the patient meets transfer priority criteria. The evaluation shall be repeated every 6 months until the patient leaves interim maintenance treatment, either by transferring to comprehensive maintenance treatment or by leaving the program. The results of all such evaluations shall be recorded in the patient's record. All requirements for comprehensive maintenance treatment apply to interim maintenance treatment with the following exceptions:

(i) The narcotic drug is required to be administered daily under observation;

(ii) Take-home medication is not allowed;

(iii) Drug-screening tests are not required except for the initial drug-screening test required to be given each prospective patient;

(iv) The initial treatment plan and periodic treatment plan evaluation are not required;

(v) A primary counselor is not required to be assigned to a patient; and

(vi) The requirements and exceptions in paragraphs (b)(2)(iii), (b)(3)(iv)(B), (d)(4)(i)(A) and (B), (d)(4)(ii)(E) and (F), (d)(4)(iv), and (d)(6)(iv), (v), (vi), and (vii) of this section do not apply.

Charles R. Schuster,

*Director, National Institute on Drug Abuse.*

Frank E. Young,

*Commissioner of Food and Drugs.*

Otis R. Bowen,

*Secretary of Health and Human Services.*

Dated: January 18, 1989.

[FR Doc. 89-4588 Filed 3-1-89; 8:45 am]

BILLING CODE 4160-01-M

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## 21 CFR Part 291

[Docket No. 89N-0434]

## Conditions for the Use of Methadone; Advance Notice of Proposed Rulemaking; Request for Comments

**AGENCIES:** National Institute on Drug Abuse and Food and Drug Administration.

**ACTION:** Advance notice of proposed rulemaking; request for comments.

**SUMMARY:** The National Institute on Drug Abuse (NIDA) and the Food and Drug Administration (FDA) want to develop a method for evaluating the effectiveness of methadone treatment programs. The long-term goal of this effort is to develop performance standards for programs, based upon treatment outcome. Such standards could serve as an alternative to the detailed requirements currently contained in the Federal methadone regulation (21 CFRA Part 291). Ideally, if acceptable standards could be developed, then a treatment program would simply have to demonstrate that it meets the standards; i.e., that it is above the threshold for acceptable treatment. To move toward this goal, NIDA and FDA believe the first step is to conduct a feasibility study designed to identify the practical problems inherent in such a system, the costs, and the benefits. The appendix to this advance notice contains one proposal for a pilot feasibility study. This advance notice solicits public comment on the potential value of performance-based evaluation standards as a means of evaluating treatment programs, on the proposed pilot study contained in the appendix, and recommendations for other approaches that would achieve the same objective.

**DATE:** Comments by May 1, 1989.

**ADDRESS:** Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Stephen P. Molinari, Office of Medical and International Affairs, Rm. 8A-54, National Institute on Drug Abuse, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4577.

**SUPPLEMENTARY INFORMATION:**

### I. Authority

Legislative authority for involvement by the Department of Health and Human Services in the treatment of narcotic addiction is included in section 4 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (Pub. L. 91-513) which requires the Secretary of Health and Human Services (the Secretary) to determine the appropriate methods of professional practice for the medical treatment of narcotic addiction. In addition, the Narcotic Addict Treatment Act of 1974 (Pub. L. 93-281) was enacted by Congress as a means to ensure that only confirmed narcotic addicts are admitted to treatment, that they receive quality care, and that illicit diversion is limited. Specifically, Pub. L. 93-281 amended the Controlled Substances Act (21 U.S.C. 823) to require that practitioners who wish to dispense narcotic drugs to individuals for the maintenance treatment or detoxification treatment of narcotic addiction must be registered annually with the Department of Justice, Drug Enforcement Administration (DEA). Registration depends, in part, upon a determination by the Secretary that the applicant is qualified, under treatment standards established by the Secretary, to engage in such treatment. In addition, the applicant must comply with standards established by the Secretary (after consultation with DEA) respecting the quantities of narcotic drugs that may be provided for unsupervised use by individuals in such treatment. Finally, the applicant must comply with standards established by DEA respecting security of stocks of narcotic drugs used for such treatment and maintenance of records on such drugs. The Secretary has delegated the authority to establish treatment standards to NIDA and the authority to evaluate the safety and effectiveness of drugs for use in the treatment of narcotic addiction to FDA.



### II. Background

Although the national concern about levels of illicit drug use in this country has led to increased Federal funding for treatment programs, resources are limited and must be directed to those drug abuse control activities found to be most effective. Several recent reports acknowledge the need to increase the effectiveness of treatment programs, and make specific recommendations. The White House Conference for a Drug Free America, among its treatment recommendations, recommended an increase in treatment slots, the development of a standardized, objective method for determining drug treatment outcome and treatment effectiveness, and more treatment program accountability so that Federal funds may be distributed based on effectiveness (Ref. 1). The National Drug Policy Board, established by Executive Order 12590 on March 26, 1987, to centralize oversight for all aspects of the Federal anti-drug effort, set an objective to direct Federal research to improve quality and efficiency of treatment (Ref. 2). The General Accounting Office, in a report on managing the Federal drug control efforts, stated that measures of program effectiveness are needed and should be developed by the Federal government (Ref. 3). The report of the Presidential Commission on the Human Immunodeficiency Virus Epidemic recommended that NIDA, in conjunction with State and local agencies and treatment providers, develop a plan for increasing the capacity of the drug treatment system. It further recommended that the plan include elements to ensure quality of care and mechanisms to evaluate progress. In addition, the Commission recommended that the Federal government develop scientifically based quality assurance mechanisms for evaluating quality of care (Ref. 4). Finally, the Anti-Drug Abuse Act of 1988 (Pub. L. 100-690) authorizes the use of certain funds for data collection, and requires an evaluation of treatment program quality. These various sources have all clearly recognized the need for monitoring and evaluating treatment programs to improve the quality of care.

### III. A Pilot Study

NIDA and FDA believe that before a full-scale effort to collect information for the evaluation of methadone treatment programs and the development of performance standards is initiated, a pilot study will be necessary. The pilot study will help to assess the appropriateness of the data and the methodology used to collect that data. The appendix to this notice details a proposal for such a study. The agencies seek comments on this approach, names of treatment programs, and State and local agencies that would be interested in participating in the pilot study.

### IV. Request for Comments

FDA and NIDA request comments on all aspects of this notice and on alternative means of achieving these objectives. The agencies are particularly interested in data and information relevant to the following specific questions:

1. In developing a method for undertaking an ongoing treatment program evaluation, such as is being proposed, perhaps the most significant question is what mechanism can be used to assure that there is a fair comparison among treatment programs. The agencies realize that treatment programs do not necessarily serve the same types of individuals. Some programs may admit a large proportion of individuals who are unemployed, have little education, have long histories of chronic drug use, and suffer from severe physical or psychiatric problems. In contrast, other programs may be selective and limit their admissions to individuals who have greater financial, social, and psychological assets. NIDA and FDA believe these concerns may be answered by using the Addiction Severity Index (ASI), developed by McClellan et al. (Ref. 5), as an admission diagnostic instrument to categorize programs into one of several problem severity categories. (The ASI is discussed in the appendix to this notice.) However, the agencies also realize that other important factors may involve matters such as program philosophies and funding. In addition, programs themselves vary in terms of resources and staffing. Therefore, should programs be categorized based on these parameters, the ASI, or should even other factors be used to categorize programs?

2. Another significant question to which the agencies are soliciting opinion in what are the appropriate treatment measures that should be considered. NIDA and FDA believe that some important treatment performance measures include illicit drug use, medication noncompliance, retention of patients in treatment, and types of patient discharge; e.g., successful completion of treatment, left against advice of the program, or arrested. The agencies are also seeking comments on how to measure patient movement between programs and/or recidivism.

3. The agencies also invite comments on whether the data should be required for patients in comprehensive maintenance treatment only, or whether it would also be useful and appropriate to require the same or some other types of data for patients in detoxification (both short-term and long-term) treatment, and for patients in interim-care treatment. The proposal for the interim-care treatment modality is contained elsewhere in this issue of the Federal Register.

4. The agencies believe information to be collected should include reporting positive urine test results for those drugs for which the methadone regulation currently requires testing; i.e., opiates, cocaine, barbiturates, and amphetamines, and negative results for methadone. The agencies are aware that some have questioned the need to continue to test for amphetamines and barbiturates, arguing that there is no longer widespread abuse of these drugs among patients in methadone treatment programs. Others have asserted that marijuana use and benzodiazepine abuse are more of a problem and testing should be required for these substances. The agencies welcome any information including supporting data addressing the need to maintain or change the drugs for which testing is required.

5. Related questions with regard to urine testing are which analytical test procedures should be used and the laboratories that should perform the tests. The agencies recommend only using urine test results obtained by the immunoassay procedure when measuring drug use. This method was chosen because many programs now use this method, and, for comparison purposes, it is important that the test procedures be consistent. More specificity is obtained by using chromatographic test methods. However, some methods, e.g., gas chromatography/mass spectrometry which is now required as the confirmatory test procedure to be used in the Federal workplace drug testing programs (Ref. 6), are more expensive to perform than the immunoassay. Comments are requested on the adequacy of the immunoassay method for this purpose or, in the alternative, whether a chromatographic procedure should be required instead of the immunoassay, or in addition to the immunoassay, as a confirmation test. With regard to which laboratories should perform the testing, the pilot study proposes that urine testing be performed by those laboratories which currently perform the analytical testing or treatment programs. The agencies solicit comments on the adequacy of this procedure or whether the urine

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specimens should be sent to designated laboratories to assure uniform proficiency testing.

## V. References

The following information has been placed on display in FDA's Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. The White House Conference for a Drug Free America, Final Report, June 1988.

2. Report from the National Drug Policy Board: "Toward a Drug-Free America: The National Strategy and Implementation Plan," 1988.

3. Special Report from the Comptroller General of the United States, "Controlling Drug Abuse: A Status Report," GAO/GGD-88-39.

4. Report of the Presidential Commission on the Human Immunodeficiency Virus Epidemic, June 1988.

5. NIDA Treatment Research Report, "Guide to the Addiction Severity Index: Background, Administration, and Field Testing Results," DHHS Publication No. (ADM) 88-1419, 1988.

6. "Mandatory Guidelines for Federal Workplace Drug Testing Programs," 53 FR 11970-11989; April 11, 1988.

## Appendix: Pilot Study Proposal

### *A. Overview*

To develop appropriate performance standards, extensive data on treatment populations, treatment characteristics, and patient outcomes need to be gathered. NIDA and FDA have developed a draft proposal for a pilot study on methadone treatment program effectiveness. Under the proposal a representative sample of treatment programs would voluntarily join in an effort to collect needed data. Under this voluntary pilot study methadone treatment programs would submit demographic and diagnostic data on every patient currently in treatment and every new admission. These data would be used to categorize programs along a continuum of patient problem severity. Quarterly, each program would collect urine specimens following a standardized procedure and submit the results along with patient discharge data to NIDA.

The aggregate results of the urine tests as well as patient retention rates (for each patient problem severity category) would be compiled quarterly by NIDA and would serve as a benchmark against which programs may be compared.

### *B. Admission Data*

The agencies are considering to propose that the ASI be used as the admission diagnostic instrument. The ASI is a structured, 45-minute interview that assesses patient problems in seven areas: medical condition, psychiatric condition, drug use, alcohol use, family relations, employment, and illegal activity. The interview necessary to complete the ASI can be given by a trained technician. The ASI has the advantage of covering a range of problems commonly manifested in drug abusers, having a standardized content and evaluation method, and demonstrated reliability and validity. The instrument permits reporting objective data on the number, intensity, and duration of problem symptoms; subjective information based upon the interviewee's rating of the severity of his or her problems and need for treatment; the interviewer's estimate of problem severity; and a composite score.

NIDA and FDA believe that the ASI would be the most appropriate instrument for providing admission information for several reasons. First, most treatment program personnel are familiar with the ASI, since it has been used for over 10 years. Moreover, it is estimated that almost half of the treatment programs use the ASI as an admission interview, including those programs administered by the Veterans' Administration. In addition, some States already require the ASI as part of the admission process.

### *C. Problem Severity Category*

Each program would be placed into one of several program categories on the basis of the types of patients in treatment during a reporting period. The categories would be a composite of the seven ASI factors. The categories would ensure that only programs with like characteristics in terms of severity of client problems are compared.

### *D. Urine Tests*

Each day, except Sunday, a random sample of treatment programs would be selected to collect urine specimens. The sampling would be designed to ensure that each program is selected once each quarter. NIDA would notify a selected program, no earlier than 24 hours before the program opens for business, that urine must be collected that day. Selected programs would collect specimens on every patient seen that day prior to the administration of methadone. Each program would assure that appropriate chain-of-custody procedures are used for urine collection to minimize falsification and collection errors. The program would send the urine specimens to a laboratory which is in compliance with all Federal proficiency testing and licensing standards. The laboratory would perform an immunoassay on all specimens to determine the presence of opiates, cocaine, amphetamines, barbiturates, and methadone. Unannounced on-site audits, including urine collection, may be performed from time-to-time to assess validity in reporting and in collecting urine specimens.

### *E. Initial Treatment Program Submission*

Initially, those participating treatment programs would submit the following information: (1) A list of all patients in maintenance treatment, identified by number only; (2) the date of admission for each patient; (3) methadone dose of each patient; (4) number of take-home doses of methadone, if any, that each patient receives; (5) other treatment services, e.g., counseling, rehabilitative, vocational, or educational services, each patient is receiving; and (6) a copy of the results of the ASI administered to each patient.

### *F. Quarterly Treatment Program Log*

On the urine collection day, the program would complete a quarterly log containing the following information: (1) All active patient identification numbers; (2) patients scheduled to be seen that day; (3) patients from whom urine specimens were collected; (4) patients discharged since the last reporting period, and the date and reason for discharge; (5) methadone dose by patient; and (6) number of take-home doses of methadone, if any, that each patient receives.

Programs would submit their quarterly logs and the results of the urine tests within 21 days of the urine collection date.

Admission information on patients who have entered into treatment since the last reporting date would be submitted with the quarterly log.

### *G. Quarterly Report*

Each quarter, NIDA would tabulate the urine test and retention data in two formats. The first format would present urine test and retention results for the previous eight reporting quarters for programs falling into each of the several problem severity categories. The measures to be reported would include, at a minimum:

*Drug use:* The percentage of collected urine specimens found positive for each illicit drug or found negative for methadone;

*Retention:* The average length of time active patients have been in treatment;



*Participating patients:* The number and percentage of active patients on whom urine tests were collected;

*Discharge:* The percentage of patients who were discharged from the program each quarter reported by type of discharge (successfully completed treatment, left against program advice, transferred to another program, died, arrested, etc.).

The second format would also present the urine and retention results by problem severity category, but it would aggregate the data by length of time in treatment rather than by calendar period. For this purpose, patients would be compared by weekly cohorts; i.e., each cohort of patients would consist of those patients first admitted to treatment during any 1 week. The following measures would be reported:

*Drug use:* The percentage of the cohort of patients in each week of treatment (up to the 104th week) whose urine specimens were found to be positive for each illicit drug or negative for methadone;

*Retention:* The percentage of the cohort of patients that actually remain in treatment;

*Participating patients:* The number and percentage of active patients in a given week of treatment from whom urine tests were collected.

In addition to this information, from time-to-time other parameters might be included in the quarterly reports or in special reports. Each participating treatment program would be provided with results for the patients in its program.

### *H. Patient Confidentiality*

In order to comply with the Federal regulation relating to confidentiality of patient records (42 CFR Part 2), programs would supply data relating to patient enrollment, urine test results and discharge data, by patient identification number only.

### *I. Cost*

The pilot study would be funded by NIDA and operated by an independent contractor. Nonetheless, the agencies are particularly interested in comments from treatment programs and other interested parties concerning the anticipated costs that would be incurred with these data collection and reporting procedures and recommendations for mechanisms that might be implemented to maximize cost-effectiveness.

Interested persons may, on or before May 1, 1989, submit to the Dockets Management Branch (address above) written comments regarding this advance notice of proposed rulemaking. Three copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

**Charles R. Schuster,**

*Director, National Institute on Drug Abuse.*

**Frank E. Young,**

*Commissioner of Food and Drugs.*

Dated: January 9, 1989.

[FR Doc. 89-4667 Filed 3-1-89; 8:45 am]

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Part IV

# Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 773, 778, and 843

**Requirements for Surface Coal Mining and Reclamation Permit Approval; Ownership and Control Information; Reporting of Violations; Final Rule**

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DEPARTMENT OF THE INTERIOR

**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Parts 773, 778, and 843**

**Requirements for Surface Coal Mining and Reclamation Permit Approval; Ownership and Control Information; Reporting of Violations**

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Final rule.

**SUMMARY:** The Office of Surface Mining Reclamation and Enforcement (OSMRE) of the U.S. Department of the Interior (DOI) is revising its regulations governing the requirements for an application for a permit to conduct surface coal mining operations. This rule will require a permit applicant to submit more detailed information on persons who own or control it, and will revise the requirements for reporting violations. The rule also will require a regulatory authority to make its decision to approve or disapprove a permit application on the basis of up-to-date information concerning the compliance record of the applicant and related persons. The revisions are needed to conform the permit application requirements with changes in the permitting process and to insure that permits are issued based on current compliance review information.

**EFFECTIVE DATE:** April 3, 1989.

**FOR FURTHER INFORMATION CONTACT:** Andrew F. DeVito, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue NW., Washington, DC 20240; telephone (202) 343-5241 (Commercial or FTS).

**SUPPLEMENTARY INFORMATION:**

I. Background
II. Discussion of the Rule
III. Discussion of Public Comments
IV. Procedural Matters

## I. Background

This rule conforms the requirements for an application for a permit to conduct surface coal mining operations with related changes in the permit review process. On October 3, 1988 (53 FR 38868) OSMRE published a final rule which amended its regulations dealing with the review and approval of permit applications. That rule added a definition of the terms "owned or controlled" and "owns or controls" as these concepts are used in section 510(c) of the Surface Mining Control and Reclamation Act of 1977 (the Act or SMCRA), 30 U.S.C. 1201 et seq., and expanded the scope of the compliance review which a regulatory authority is required to make prior to the approval of a permit application.

This rule will require a permit applicant to include in his or her application detailed information on the owners and controllers of related operations, and to update that information immediately prior to the issuance of a permit. The rule also will require a regulatory authority to use the updated information in making a final decision to approve or disapprove the application.

The information reported under this rule will provide an essential part of the data contained in OSMRE's computer-based Applicant/Violator System, which processes multiple sources of applicant and violation information to match applicants and their owners and controllers to violators of the Act and its implementing regulatory programs. It is important that the information submitted pursuant to this rule be as complete and up-to-date as is reasonably possible to insure a thorough and accurate review of the compliance record of the permit applicant and related persons prior to making a decision on whether to issue a permit.

The proposed rule to amend 30 CFR 773.15(e) was published on July 16, 1986 (51 FR 25822). The proposed rule to amend 30 CFR 773.17, 778.13 and 778.14 was published on May 28, 1987 (52 FR 20032). No request was received for a public hearing and none was held. The two proposals are being adopted together because their information reporting requirements are interrelated.

## II. Discussion of the Rule

The rule language in the proposed rule published on May 28, 1987 has been modified to clarify the reporting requirements in response to comments and to break them into logical components. Any substantive changes from the proposed rule are noted in the preamble discussions of the various sections.

*Section 773.15(e)—Final Compliance Review*

Under 30 CFR 773.15(b)(1), a regulatory authority may not issue a permit to an applicant if any surface coal mining and reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant is currently in violation of the Act or certain other environmental laws and regulations. Experience has shown that the time that elapses between the submission of an application and the issuance of the permit typically is several months at a minimum. Information submitted with the application may become dated by the time of permit issuance, thus making it impossible for the regulatory authority to make an accurate compliance review under § 773.15(b)(1).

This rule adds to § 773.15 a new paragraph (e) to require that before a permit is issued the regulatory authority reconsider its initial § 773.15(b)(1) compliance review in light of any new information submitted pursuant to §§ 778.13(i) and 778.14(d) of this rule, which are discussed subsequently. If the applicant fails or refuses to respond as required, the regulatory authority will be unable to make the final compliance review required by § 773.15(e) and a permit will not be issued. The final compliance review based on this updated information will insure that the regulatory authority makes an accurate permitting decision under § 773.15(b)(1). Authority for this section is contained in sections 101, 102, 201(c)(1), 201(c)(2), 412(a), 501(b), 504, 505, 507(b)(4), 510 (a), (b) and (c), 511, 518, 701(16) and 701(19) of the Act.

The proposed rule, published on July 16, 1986, would have added paragraphs (e)(1)(i), (e)(1)(ii) and (e)(2) to § 773.15. Proposed paragraphs (e)(1)(i) and (e)(1)(ii) have been adopted in this rule as §§ 778.13(i) and 778.14(d), respectively, and are discussed later in this preamble. Proposed § 773.15(e)(2) has been adopted in this rule as § 773.15(e).

*Section 773.17(i)—Permit Condition*

Section 773.17(i) is a new permit condition requiring the submission, correction or update of certain information after the issuance of a cessation order. It applies to all permits to conduct surface coal mining operations, including those issued prior to the adoption of this rule.

Section 773.17(i) will require that within thirty days of the issuance of a cessation order under 30 CFR 843.11, or the State program equivalent, the permittee of the surface coal mining and reclamation operation for which the cessation order was issued shall either submit, correct or update and furnish to the regulatory authority that issued the permit, the information required by § 778.13(c) of this rule concerning the identity of persons who own or control the permittee. The information must be current to the date the cessation order was issued. If there has been no change in the information previously submitted, the permittee must notify the regulatory authority of that fact in writing. The regulatory authority will enter any new information into the Applicant/Violator System, which will insure that the data in the System is current.

A permittee's failure to comply with this permit condition will result in appropriate enforcement action by the regulatory authority. The obligation to furnish the updated information applies even if the cessation order is under appeal. This obligation is consistent with 43 CFR 4.1116, which states that except where temporary relief is granted pursuant to section 525(c) or 526(c) of the Act, cessation orders issued under the Act shall remain in effect during the pendency of review before an administrative law judge or the Interior Board of Land Appeals. If temporary relief from a cessation order is granted, the permittee need not comply with the permit condition as long as the temporary relief is in effect.

The proposed rule would have required that this information be updated and furnished to the regulatory authority on an annual basis. However, once a permit is issued the updated information is needed only if a violation which would require that a new permit be denied occurs and remains uncorrected. In response to comments objecting to the burden of information submittal, OSMRE has decided to require the information update at the issuance of a cessation order, which is such a violation. This will eliminate a superfluous reporting obligation for the majority of permittees who operate in accordance with their permits. If a notice of violation is issued, timely abatement of the violation will avoid not only the issuance of a failure-to-abate cessation order, but also the obligation to submit updated information on owners and controllers. In this manner, the commenters' concern over the amount of information that must be submitted is partially alleviated. The rule will insure that the regulatory authority obtains the names of the owners and controllers of the permittee at the time a cessation order is issued in order to withhold the issuance of new permits to such persons if the underlying violation remains unabated.

*Section 778.10—Information collection*

Section 778.10 of the rule concerns the information collection requirements in 30 CFR Part 778 including approval by the Office of Management and Budget (OMB) to collect the information and the clearance number assigned by OMB. This rule revises § 778.10 by deleting the reference to clearance number 1029-0037. As stated in § 778.10, the clearance number assigned by OMB to the information collection requirements in Part 778 is 1029-0034.



*Section 778.13—Identification of Interests*

As stated in the May 28, 1987 proposed rule, the information reporting requirements in this final rule have been conformed as necessary to the recently promulgated final definition of "owned or controlled" and "owns or controls" at 30 CFR 773.5.

Section 778.13(b) of the rule will require each applicant for a permit to conduct surface coal mining operations to include in his or her application the name, address, telephone number, and, as applicable, the employer identification number of the applicant, the applicant's resident agent who will accept service of process and the person who will pay the abandoned mine land reclamation fee. Section 778.13(b) also requests the social security numbers of the above persons, but indicates that the disclosure of any social security number is voluntary.

Section 7(a) of the Privacy Act of 1974, 88 Stat. 1896, specifies that it shall be unlawful for any Federal, State or local government agency to deny to any individual any right, benefit or privilege provided by law because of such individual's refusal to disclose his or her social security number unless the disclosure is required by Federal law or was required under statute or regulation prior to January 1, 1975. Since SMCRA does not specifically require the disclosure of an individual's social security number, and since the information was not required prior to January 1, 1975, no benefit, right or privilege, including a permit to conduct a surface coal mining operation, may be denied for failure to disclose a social security number under this rule.

Section 7(b) specifies that when an individual is asked to disclose his or her social security number, the individual shall be told whether the requirement is mandatory or voluntary. OSMRE is requesting the voluntary disclosure of an individual's social security number pursuant to the authority granted under sections 201 (c)(1) and (c)(2) of the Act. The information will be used to process permit applications and to perform the compliance review required by section 510(c) of the Act and 30 CFR 773.15(b)(1). This exemption from mandatory disclosure applies only to a social security number and not to an employer identification number, which is the taxpayer identification number for business entities such as corporations and partnerships, and for sole proprietors if they pay wages to one or more employees. The submission of the employer identification number is mandatory under this rule.

The requirement in § 778.13(b) of this rule to supply the name of the person who will pay the abandoned mine land reclamation fee is in addition to the requirement in § 778.13(c) to list the operator. Section 402(a) of the Act requires that an operator of a surface coal mining and reclamation operation pay the reclamation fee required by the Act. Experience has shown that often the reclamation fee is paid for the operator by agents such as attorneys, trustees, accounting firms, banks or other companies, or by the permittee if different from the operator. Furnishing the name of the person paying the reclamation fee will assist OSMRE in collecting the money and arranging for audits when necessary. Supplying the name of the person who will actually pay the reclamation fee does not in any way alter the legal obligation of other persons responsible for its payment.

As originally proposed, paragraph (b) requested the social security number *or* taxpayer identification number of the applicant, the operator, the applicant's resident agent, the person who will pay the abandoned mine land reclamation fee, and any contractor who will conduct the surface coal mining and reclamation operation. Since a taxpayer identification number can be either a social security number or an employer identification number, OSMRE has substituted the term "employer identification number" for the term "taxpayer identification number" in order to eliminate any confusion.

The final rule requests the disclosure of both a social security number *and* an employer identification number. OSMRE is requesting both numbers because of the possibility that a person may have used a social security number on some occasions and an employer identification number on others. Requesting both numbers will help to insure that the data in the Applicant/Violater System is complete. A similar change has been made in paragraph (c).

The reference in proposed § 778.13(b) to the operator, and the requirement to furnish information concerning the operator, have been transferred to paragraph (c) of the final rule.

Proposed § 778.13(b) also requested the name of any contractor who will conduct the surface coal mining and reclamation operation. In the final rule, the requirement to furnish information concerning contract mining operations has been transferred to paragraph (c).

Final § 778.13(c) will require the applicant to submit the following information, as applicable, for any person who owns or controls the applicant under the definition of "owned

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or controlled" and "owns or controls" in 30 CFR 773.5:

(1) The person's name, address, social security number, and employer identification number;

(2) The person's ownership or control relationship to the applicant, including the percentage of ownership and location in the organizational structure;

(3) The title of the person's position, date position was assumed, and when submitted under § 773.17(i) of this rule, the date of departure from the position;

(4) Each additional name and identifying number, including, employer identification number, Federal or State permit number and MSHA number with date of issuance, under which the person owns or controls, or previously owned or controlled, a surface coal mining and reclamation operation in the United States within the five years preceding the date of the application; and

(5) The application number or other identifier of, and the regulatory authority for, any other pending surface coal mining operation permit application filed by the person in any State in the United States.

Under the referenced definition in 30 CFR 773.5 the permit applicant must furnish the above information for all: (1) Operators; (2) officers, directors, and any other persons who perform a function similar to an officer or director; (3) persons having the ability to commit the financial or real property assets or working resources of an entity; (4) general partners; (5) shareholders owning of record a ten percent or greater interest; (6) persons owning or controlling the coal to be mined under the proposed permit under a lease, sublease or other contract, and having the right to receive such coal after mining or having authority to determine the manner in which the proposed surface coal mining and reclamation operation is to be conducted; (7) persons who have any other relationship with the permit applicant which gives them authority directly or indirectly to determine the manner in which the proposed surface coal mining operation is to be conducted; and (8) persons who own or control the persons specified in paragraphs (1) through (7), either directly or indirectly through intermediary entities.

The requirements to list "persons having the ability to commit the financial or real property assets or working resources of an entity," and "persons owning or controlling the coal to be mined * * *" have been added to the final rule because under the definition of "owned or controlled" and "owns or controls" at 30 CFR 773.5 those persons are presumed to own or control the permit applicant. The addition was necessary in order to conform these information reporting requirements with the definition.

Like the proposed rule, the final rule requires a permit applicant to report both direct and indirect ownership and control relationships. As explained in the October 3, 1988 final rule (53 FR 38868) defining "owned or controlled" and "owns or controls," the ten percent ownership presumption applies at each level of a business structure. If a ten percent or greater ownership interest exists at any level, that interest must be reported along with the controllers at that level. For example, if company "A" owned ten percent of company "B," and company "B" owned ten percent of company "C," and company "C" owned ten percent of the applicant, the permit application must list companies "A," "B" and "C" along with the controllers of companies "A," "B" and "C." However, if company "A" owned ten percent of company "B", and company "B" owned nine percent of company "C," and company "C" owned ten percent of the applicant, the permit application would be required to list only company "C" and its controllers. The permit applicant would not be required to list company "A" or company "B" because the ownership interest between company "B" and company "C" was less than ten percent.

If the operator is a business entity and a subsidiary of another corporation, then the operator, its owners and controllers and the owners and controllers of the parent corporation must be reported by the permit applicant. The same also applies to anyone owning or controlling the coal to be mined by another person under a lease, sublease or other contract and having the right to receive such coal after mining or having authority to determine the manner in which that person or another person conducts a surface coal mining and reclamation operation. If that person is a business entity and a subsidiary of another corporation, then the owners and controllers of the parent corporation must be reported by the permit applicant, along with an explanation of how each person is linked in the chain of ownership or control.

The requirement of § 778.13(c) to furnish information on anyone owning or controlling the coal to be mined by another person under a lease, sublease or other contract and having the right to receive such coal after mining or having authority to determine the manner in which that person or another person conducts a surface coal mining and reclamation operation does not apply to persons who receive coal as an in-kind royalty payment. However, simply labeling the receipt of coal as in-kind royalty payments will not automatically exempt a person or operation from the reporting requirements of this section if the in-kind payment is more than a simple royalty or if the recipient otherwise controls the conduct of the surface coal mining operation.

Under final § 778.13(c)(2), the permit applicant must explain each identified person's ownership or control relationships to the applicant, including the percentage of ownership and the location of the owner or controller in the organizational structure. In the example given above, if company "A" owns ten percent of company "B," and company "B" owns ten percent of company "C," and company "C" owns ten percent of the applicant, the permit application must list companies "A," "B" and "C" along with the controllers of "A," "B" and "C", and must clearly indicate that "A" owns "B," and that "B" owns "C". The applicant must also furnish the percentage of ownership at each level, and when listing officers, directors, general partners, and other persons required to be reported, indicate the business entity they work for. All of the information must be furnished in a manner that will enable the regulatory authority to precisely determine the organizational structure of the applicant and its owners and controllers.

In the proposed rule at § 778.13(d), OSMRE requested the "permit or application numbers or other identifiers" for all current and previous coal mining permits in the United States during the five year period preceding the date of the application. In the final rule, OSMRE has reworded this requirement to "Federal or State permit number, and MSHA number with date of issuance." OSMRE has specifically included the MSHA number here and elsewhere in the final rule so that there is no doubt the number must be included in the permit application. The date of issuance of the MSHA number is being asked for because MSHA reassigns previously issued numbers. If a violation is linked to a particular MSHA number and the number is later reassigned, the date the number was reassigned will allow the regulatory authority to determine that the current site should not be associated with the prior violation.

Final § 778.13(d) will require for any surface coal mining operation owned or controlled by either the applicant or by any person who owns or controls the applicant under the definition of "owned or controlled" and "owns or controls" in 30 CFR 773.5, the operation's:

(1) Name, address, identifying numbers, including employer identification number, the Federal or State permit number and MSHA number, the date of issuance of the MSHA number, and the regulatory authority; and

(2) Ownership or control relationship to the applicant, including the percentage of ownership and the location in the organizational structure.

Section 778.13(i) of the final rule requires that after an application has been approved but before the permit to conduct a surface coal mining operation is issued, the applicant shall, as applicable, bring up to date, correct, or indicate that no change has occurred in the information previously submitted under paragraphs (a) through (d). If the applicant fails or refuses to submit the information required under § 778.13(i), the regulatory authority will not issue the permit. The updated information will enable the regulatory authority to make an accurate § 773.15(b)(1) compliance review and to take appropriate action.

This provision was proposed on July 18, 1988 (51 FR 25828) as § 773.15(e)(1)(i). It has been codified in the final rule in § 778.13(i) so that the obligation to update information will be located with the requirement for the information that must be updated.

Under § 778.13(j), a permit applicant will be required to submit the information required by §§ 778.13 and 778.14 in any prescribed format that is issued by OSMRE. In the final rule, OSMRE has substituted the term "format" for the term "form." OSMRE has made the substitution to allow for the electronic transfer of data if that can be done in a manner compatible with the operation of the Applicant/Violator System.

For the present OSMRE contemplates use of a standard form as the prescribed format. If a standard form is issued, use of the form will be required by all permit applicants when submitting the information regardless of whether the permit application is filed with OSMRE or a State regulatory authority. The form will cover only the information required by §§ 778.13 and 778.14, and will be in addition to any permit application forms required by any of the State regulatory authorities.

Use of a standard form should facilitate the imput of legal, financial and compliance data into the Applicant/Violator System and help reduce errors when that data is transferred from a permit application to the computer. It should also prove helpful to those applying for permits because it will indicate what information must be furnished pursuant to the regulations. OSMRE will state on any forms requesting a social security number that the submission of a social security number is voluntary. Development and use of any such form will not limit any additional information collection requirements of any approved program.

*Section 778.14—Violation Information*

Section 778.14(c) will require a permit applicant to submit a list of all violation notices received by the applicant and a list of all cessation orders and air and water quality violation notices received by any surface coal mining operation owned or controlled by either the applicant, or by any person who owns or controls the applicant, during the three year period preceding the application date. The list must cover violations of any provision of the Act, or of any law, rule or regulation of the United States, or of any State law, rule or regulation enacted pursuant to Federal law, rule or regulation pertaining to air or water environmental protection. The lists also must contain any identifying numbers for the operation, including the Federal or State permit number and MSHA number, the date of issuance of the violation notice and MSHA number, the name of the person to whom the violation notice was issued, and the name of the issuing regulatory authority, department or agency. The purpose of this information is to provide the data necessary to perform the compliance review required by section 510(c) of the Act and 30 CFR 773.15(b)(1) prior to making a final decision on whether to issue a permit.

A *violation notice*, as defined in 30 CFR 701.5, includes any written notification from a governmental entity of a violation of law, whether by letter, memorandum, legal or administrative pleading, or other written communication. While all notices of violation (NOV's) are violation notices, not all violation notices are NOV's. For example, a violation notice may also be a cessation order issued by a regulatory authority or a notice of noncompliance issued by the Environmental Protection Agency. Under § 778.14(c), the permit applicant must list all violation notices, including NOV's, cessation orders, notices of noncompliance, and other citations, regardless of terminology, for any violation of any provision of the Act, or of any law, rule or regulation of the United States, or of any State law, rule or regulation enacted pursuant to Federal law, rule or regulation pertaining to air or water environmental protection in connection with any surface coal mining operation. For any surface coal mining operation owned or controlled by either the applicant or by any person who owns or controls the applicant only cessation orders and air and water quality violation notices must be reported.

The proposed rule would have required the date of issuance of the violation notice, the name of the person to whom the violation notice was issued, and the issuing regulatory authority department or agency. In the final rule, OSMRE is also requesting any identifying numbers, including the Federal or State permit number and MSHA number associated with the operation, and the dates of issuance of the violation notice and MSHA number. This additional information will assist the regulatory authority in linking a violation notice to a particular mine site and its owners and controllers.

The requirement in the prior regulations to list violation notices, including NOV's, received by any subsidiary, affiliate, or persons controlled by or under the common control with the applicant has been deleted for two reasons. First, the information concerning NOV's incurred by any subsidiary, affiliate, or persons controlled by or under common control with the applicant is not required by the Act and is not needed in view of a presumption contained in revised 30 CFR 773.15(b)(1). That presumption holds that in the absence of a failure-to-abate cessation order an NOV is presumed to be in the process of being corrected to the satisfaction of the agency that has jurisdiction over the violation. It is because of the presumption that cessation orders but not NOV's must be reported for any surface coal mining operation owned or controlled by the applicant or by any person who owns or controls the applicant. In spite of the presumption, all NOV's received directly by the applicant must still be reported under revised § 778.14(c) because section 510(c) of the Act requires that an application list all NOV's incurred directly by the applicant.

The second reason for revising the previous requirement to list violation notices "received by any subsidiary, affiliate, or persons controlled by or under the common control with the applicant" was the desire of OSMRE to eliminate confusion and conform the scope and language of the persons about whom information must be submitted with the coverage of the compliance review requirements of 30 CFR 773.15 (b)(1) and (b)(3). As revised on October 3, 1988 (53 FR 38868), those sections do not use the terms "subsidiary,"



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"affiliate" or "common control." Instead they refer to operations "owned or controlled by either the applicant or by any person who owns or controls the applicant."

Section 778.14(d) of the rule requires that after a surface coal mining and reclamation permit application has been approved, but before the permit is issued, the applicant shall, as applicable, bring up to date, correct or indicate that no change has occurred in the information previously submitted under § 778.14(c). If the applicant fails or refuses to submit the information required under § 778.14(d), the regulatory authority will not issue the permit. The updated information will enable the regulatory authority to make an accurate § 773.15(b)(1) compliance review.

Section 778.14(d) was proposed on July 18, 1986 (51 FR 25828) as § 773.15(e)(1)(ii). It has been codified in the final rule in § 778.14(d) so that the requirement to update information will be located with the requirement to provide the information that must be updated.

*Section 843.11—Cessation Orders*

Section 843.11(g) required that where OSMRE is the regulatory authority, within sixty days of the issuance of a cessation order, OSMRE must notify all owners and controllers identified pursuant to 30 CFR 778.13(c) that the cessation order has been issued and that they have been identified as owners or controllers of the violator.

As described earlier in this preamble, § 773.17(i) of the rule requires a permittee to submit to the regulatory authority within thirty days after a cessation order is issued, updated information on its owners and controllers. Upon receipt of this information, OSMRE will send the notification required by § 843.11(g). If updated information is not received, OSMRE will send the notice to the persons currently in its records as owners or controllers.

OSMRE has added this provision to the final rule for three reasons. First, notification to the owners and controllers will insure that they are aware of the violation, and that unless the violation is abated their names will be linked to the violation in the Applicant/Violator System. Second, where the person notified of the violation is no longer linked with the violator, notification will allow the person to immediately notify the regulatory authority that a link no longer exists. This will help prevent any problems in the future for that person should the permittee fail to submit the update information required by § 773.17(i) indicating that the link no longer exists or if it submits erroneous information. Third, where the violator is a corporation, the notification to the individual owners and controllers will also provide a basis for the assessment of an individual civil penalty under section 518(f) of the Act and 30 CFR Part 846 or the State program equivalent.

Since this section contains a procedural requirement relating to enforcement sanctions, pursuant to § 840.13(c) each state regulatory authority must adopt the same or similar requirements.

## III. Discussion of Public Comments

One commenter objected to the rule on procedural grounds. The commenter said that the proposed rule was based on the April 16, 1986 (51 FR 12879) option for defining ownership and control, and not on the option published for comment on May 4, 1987 (52 FR 16275). The commenter said that the data collection requirements varied dramatically between the two proposed definitions of ownership and control, and that it was not possible for the public to comment intelligently on the agency's approach to data collection. The commenter said that this failure violated the basic tenets of the Administrative Procedure Act (APA).

OSMRE disagrees. The APA requires that an agency publish "either the terms or substance of the proposed rule or a description of the subjects and issues involved." 5 U.S.C. 553(b)(3). OSMRE complied with this requirement on May 28, 1987 (52 FR 20032) when it published proposed rule language which would conform the permit application requirement in §§ 778.13 and 778.14 with the April 16, 1986 option for the definition for "owned or controlled" and "owns or controls." The requirements adopted in this rule are substantially similar to those published on May 28, 1987. The requirements published on May 28, 1987 were based on the April 16, 1986 option because the definitions discussed in that option were more inclusive than the option published on April 5, 1985 (50 FR 13724).

In the May 28, 1987 notice, OSMRE also stated that if the May 4, 1987 option for the definition were selected rather than the April 16 option, the information reporting requirements might be changed, and indicated the nature of the change and specifically requested comments on alternative reporting requirements. Thus, this rule complies with the requirements of the APA.

One commenter objected to including in the rule any provision which would require an applicant to submit any information other than that specifically required by section 507(b) of the Act. The commenter argued that since the Congress articulated, with specificity, precise permit information requirements with respect to the applicant's corporate officers and owners, it was arbitrary and capricious for OSMRE to impose more expansive information reporting requirements. In support for this position, the commenter cited In re: Permanent Surface Mining Regulation Litigation, 14 E.R.C. 1083, 1097 (D.D.C. February 26, 1980).

OSMRE disagrees. The case cited by the commenter dealt with the narrow issue of whether the Secretary of the Interior could require the submission of hydrologic information for areas outside a permit area. In its decision the court concluded that the Congress articulated, with specificity, those instances in which hydrologic information outside the permit area was necessary, and consequently the Secretary's requirements which went beyond those instances specified by the Congress were arbitrary and capricious. *Id.*

In the case of In re: Permanent Surface Mining Regulation Litigation, 653 F.2d 514 (D.C. Cir. 1981), cert. denied, 454 U.S. 822 (1981), the U.S. Court of Appeals for the District of Columbia Circuit decided the question of whether the Secretary had rulemaking authority to require a permit applicant to submit any items of information beyond those enumerated in the Act. The court held that the Act's explicit listings of permit information were not exhaustive and did not preclude the Secretary from requiring additional information needed to ensure compliance with the Act. *Id.* at 527. The court held that both sections 201(c)(2) and 501(b) of the Act provide adequate authority for the Secretary to require the submission of additional information.

Section 201(c)(2) authorizes the Secretary to "publish and promulgate such rules and regulations as may be necessary to carry out the purposes and provisions of this Act." Section 501(b) directs the Secretary to promulgate regulations "establishing procedures and requirements for preparation, submission and approval of State programs."

In addition to the two sections cited by the court, support for the rule may also be found in sections 201(c)(1), 507(b), 510(c) and 517(b)(1)(E) of the Act. The rule aids implementing the section 102(c)(1) requirement that permits be withheld for noncompliance with the Act. Section 507(b) requires the identification of owners and controllers,



and also requests information on any suspension, revocation or bond forfeiture incurred by the applicant or any subsidiary, affiliate or person controlled by or under common control with the applicant in the five years preceding the date of the application. Section 510(c) requires a listing of all notices of violation incurred by the applicant during the three year period preceding the date of the application. Section 517(b)(1)(E) authorizes the regulatory authority to require any permittee to provide such other information relative to surface coal mining and reclamation operations as the regulatory authority deems necessary for purposes of developing or assisting in the development, administration and enforcement of any approved State or Federal program, or of determining whether any person is in violation of any requirement of any such State or Federal program. It is evident, therefore, that the Secretary has ample authority to adopt the information reporting requirements contained in this rule.

One commenter said that the final § 733.15(b)(1) compliance review required by § 773.15(e) should be limited to any new information received in the information update required by §§ 778.13(i) and 778.14(d). Presumably the comment was made out of concern that the final compliance review could delay the issuance of the permit.

OSMRE believes that the final compliance review will not be a time-consuming process. When the updated information is submitted by the applicant pursuant to §§ 778.13(i) and 778.14(d) of this rule, OSMRE or the appropriate State regulatory authority will enter the information into the Applicant/Violator System. Both the initial and the second § 773.15(b)(1) compliance review may be made using the Applicant/Violator System. Use of the computer-based system to make the review will take very little time and should not result in a delay in the issuance of the permit if the updated information does not result in a match between the applicant and a violator.

One commenter stated that a permit should be rescinded if the permittee failed to comply with the requirement of § 773.17(i) to update certain information on its owners and controllers on an annual basis. In the proposed rule OSMRE stated that failure to submit the information could result in rescission of the permit.

As previously discussed, the updating requirement in § 773.17(i) has been changed in the final rule to make it contingent upon the issuance of a cessation order. Once such a provision is incorporated into a regulatory program, if the permittee fails to furnish the required information, the permittee will have violated a permit condition and be subject to appropriate enforcement measures under the applicable regulatory program.

One commenter requested clarification concerning the requirement in § 778.13(b) to furnish the name, address and telephone number of the person who will pay the abandoned mine land reclamation fee. The commenter wanted to know if the regulation required the submission of an organization such as a bank, or the name of a particular person at the bank who would make the payments on behalf of the operator.

The term person is defined in section 701(19) of the Act to mean an individual, partnership, association, society or joint stock company, firm company, corporation or other business organization. Consequently, if a financial institution makes the required payment for the operator the name of the institution would suffice. The name of the person actually paying the abandoned mine land reclamation fee on behalf of the operator is being requested in order to facilitate requests for audits and financial information.

Several commenters objected to the requirement in § 778.13(i) and 778.14(d) of the rule for an applicant to submit updated information at the time a permit is approved but before it is issued. One commenter objected on the grounds that the Act requires that the information be submitted only once, and that the requirement to update the permit application information immediately prior to the issuance of the permit would be burdensome.

OSMRE disagrees. The commenter submitted no evidence to support the assertion that the requirement would be burdensome. The requirement could be burdensome only if numerous changes had occurred since the permit application was submitted. Where such changes have occurred in the ownership or control of the proposed mining operation or in the type and number of outstanding violations, it is only appropriate that the compliance history of the permit applicant and its owners and controllers be reviewed to insure that the permit is not issued in violation of section 510(c) of the Act.

Another commenter said that the proposed requirement to update the information in the permit application at the time of the submission of the bond would destroy the two-step process envisioned by the Act for permit issuance. The commenter stated that the decision to issue the permit should be based on the material submitted with the permit application, and the decision to accept the bond should be based on satisfaction of the bonding requirements in section 509 of the Act.

OSMRE disagrees. There is nothing in the Act to prevent the Secretary from requiring that the permit application be complete and accurate at the time of permit issuance. Clearly, it is the intent of the Congress that the permit be issued based on accurate information contained in the permit application.

Another commenter said that any delays between the submission of the permit application and the issuance of the permit were caused by the regulatory authority. Therefore, the commenter concluded, the applicant should not be required to update the information in the application.

OSMRE disagrees. Very often the delay between the time when a permit application is submitted and when the permit is issued is the result of factors such as the large size of the planned mining operation, the extent of the mining plan, requests for clarification concerning information in the permit application, or the need to prepare environmental documents. The lapse of time caused by such factors can be minimized but not entirely avoided. The only way of insuring that the permit is approved based on current information is to require that the information be updated. It is to the advantage of the permit applicant to update the information in the application in order to insure that the permit is issued based on accurate information.

One commenter suggested that the entire package of compliance information should be required only once at the time of bond submittal.

The suggestion to have the compliance information submitted only at the time the bond is submitted could delay the issuance of a permit. If the compliance information is submitted only at the time the bond is submitted, OSMRE or a State regulatory authority would not be able to conduct a compliance review until the very end of the permit application review process. By requiring the information to be submitted in the beginning, the regulatory authority is able to make an initial compliance review of the application and alert the applicant to any potential problem early enough to give the applicant sufficient time to correct it or to submit information indicating that the results of the initial compliance review were erroneous. This process should reduce or eliminate delays in the issuance of a permit. In addition, the regulatory authority's

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communication with the applicant at the outset concerning any problem that could preclude permit issuance will allow the regulatory authority to avoid expending resources on technical review of a permit application until a substantial likelihood exists that withholding of the permit will not be required.

One commenter suggested that OSMRE should have the responsibility to update that information at the time of permit issuance, based upon the information contained in the original application and OSMRE records.

OSMRE disagrees. The regulatory authority cannot totally update information without assistance from the applicant because it would have no way of knowing who any new owners or controllers of the applicant may be or what new violations may exist, but have not yet been entered into the Applicant/Violator System.

One commenter objected to the rule on the grounds that it did not require sufficient information concerning the rebuttable presumptions contained in the definition of "owned or controlled" and "owns or controls". The commenter argued that the rule should require the submission of information describing the role of each officer in a company, and the legal authority and duties of each director. In effect, the commenter wanted a permit applicant to submit sufficient information to either rebut or confirm the presumptions contained in the definition of ownership and control. The commenter was concerned that if the information were submitted at the time of a permit block, the individuals linked to a violator would "come forth on a piece-meal basis with self-selected information" to rebut the presumption.

OSMRE did not adopt the commenter's suggestion. Under the definition at 30 CFR 773.5 certain relations create a presumption of ownership or control. For example, owning at least ten percent of the applicant, or being an officer, director, general partner, or operator of the applicant results in a presumption of control. However, for the purpose of processing permit applications a presumption of control is important only if there is an outstanding violation to which a shareholder, officer, director, general partner, operator or other person covered by the definition is linked. If there is a violation, then it becomes important to determine if the control presumed by the rule does not in fact exist. OSMRE believes that it would result in an unreasonable expenditure of time, effort and resources by both the regulatory authority and the permit applicant if the regulations were to require all permit applicants to submit the information needed to rebut a presumption of control if no link to a violation existed and therefore there was no reason to rebut the presumption. An applicant can always submit the information if the compliance review indicates a link between an applicant and a violator. Once the link is discovered, both the applicant and the regulatory authority can focus their attention on the specific relationship in question and will know what information is actually needed to rebut the presumption.

One commenter objected to the exception in § 778.14(c) of the rule, which does not require the permit applicant to report all notices of violation (NOV's). Section 778.14(c) requires that only NOV's incurred directly by the applicant be reported. NOV's incurred to surface coal mining and reclamation operations owned or controlled by the applicant or by anyone who owns or controls the applicant need not be reported. The commenter argued that all NOV's should be listed and that they should be taken into consideration during the compliance review because the absence of a cessation order does not indicate the absence of a violation. The commenter further argued that the receipt of an NOV serves as an important indicator of an applicant's willingness and ability to comply with necessary legal restrictions and permit requirements.

OSMRE did not adopt the commenter's suggestion that NOV's incurred by operations owned or controlled by the applicant or by anyone who owns or controls the applicant be reported. Section 778.14(c) as adopted complies with the requirements of section 510(c) of the Act. That section requires that notices of violations incurred "by the applicant" be listed. The Act does not require that notices of violations incurred at surface coal mining operations owned or controlled by the applicant or by any person who owns or controls the applicant be reported. OSMRE believes that the exception to reporting NOV's incurred by operations owned or controlled by the applicant or by any person who owns or controls the applicant is reasonable in view of the Secretary's revision of the scope of the compliance review in § 773.15(b)(1) and the presumption contained in that section that "in the absence of a failure-to-abate cessation order, the regulatory authority may presume that a notice of violation has been or is in the process of being corrected to the satisfaction of the agency with jurisdiction over the violation, except where evidence to the contrary is set forth in the permit application."

In addition to the above, the Secretary is adding to the regulations in § 778.14(d) a new requirement. That section requires that after the approval of the permit, but before its issuance, the permit applicant must bring up to date, correct, or indicate no change has occurred in the violation information previously submitted pursuant to § 778.14(c). Consequently, any unreported NOV's which were outstanding at the time the permit application was filed, and for which a cessation order was subsequently issued prior to the issuance of the permit, would have to be reported in the information update required immediately prior to the issuance of the permit, and would result in the permit being blocked unless the violation was in the process of being abated or else was the subject of a good faith appeal, in which case the permit would be conditionally issued.

Several commenters said that the information reporting requirements of the rule would be very burdensome. As an example, one commenter said that an existing company might be required to list on a permit application the names and addresses of one direct parent company, five second generation parent corporations (none of whom were primarily engaged in coal production), and an unknown number of third generation owners holding ten percent or more of the stock of the five second generation owners; three affiliates which are coal producing companies and ten affiliates which are not; in addition to officers, directors and violations of all of the above. By the commenter's calculations, the permit applicant would be required to list information for forty-three surface coal mining operations in ten States.

OSMRE is aware that for some large corporations the reporting requirements of this rule could be extensive. After the initial compilation of such material, however the incremental amount of effort to maintain and update the data for future applications would be less than the initial effort. These requirements are well within the discretion granted to the Secretary by the Act and are necessitated by the complex business structures created by companies mining coal.

One commenter disagreed with OSMRE's determination that the time and effort required to fulfill the data collection requirements of this rule would be minimal. The commenter said that the operating costs, time and effort involved in complying with the rule would have a substantial impact on all companies regardles of size. The commenter said that the annual updating of permit information could easily require an additional man-year or more to track all corporate personnel changes and violations and their ultimate resolution.

OSMRE's determination of the impact of the rule was based on calculations contained in its Determination of Effects, which indicates that in 1985, 73.4% of all operations could be classified as small operations. The result would be that most operations would not need much time to gather, organize and mail information required under the rule. The commenter did not submit any evidence to support the assertion that one man-year or more would be required. Moreover, the commenter said that many companies have already developed their own computerized data processing systems to track some of the required information. This should minimize any increase in burden that might result. Also, in order to address concerns about the information reporting requirements, OSMRE did not adopt an annual update. Instead, updated information is required only after a cessation order is issued. Thus companies acting in compliance with their permits, or who abate violations within the time specified in a notice of violation can avoid having to submit updates of ownership and control information.

One commenter said that the regulatory authority should collect ownership information up and down the corporate chain. The commenter stated that requiring such information will not place a burden on coal companies because this data should be readily available in coal company records.

OSMRE agrees that such information must be submitted in a permit application. The rule requires the submission of information on owners and controllers of the permit applicant as well as mining operations owned or controlled by the applicant. See § 778.13 (c) and (d) of the rule and the preamble discussion of those two sections.

One commenter asked for clarification of how OSMRE would determine control based on indirect ownership. For an example and discussion of indirect ownership, see the OSMRE final rule defining "owned or controlled" and "owns or controls," published on October 3, 1988 (53 FR 38868) at page 38874.

One commenter objected to the requirement in § 778.13(j) for the use of a standard form to report the information required by this rule because it could cause additional burdens for the many companies that have already developed their own data processing systems to track some of the required information.

OSMRE believes that use of a standard form to report the information required by this rule can assist those applying for a permit application by indicating on the face of the form what information they must submit with regard to the identification of interests and violation history. Also, the use of a standard form can assist OSMRE and the State regulatory authorities in entering the information from the permit application into the Applicant/Violator System and minimize the amount of data entry error that might result. Any additional burden the use of a standard form might impose would be offset by these important advantages.

One commenter said that a permit applicant should be required to list all violations for which a permit block can be imposed.

OSMRE disagrees. While it is true a permit block can be imposed for violations an applicant is not required to list, OSMRE does not believe that it is necessary for the permit applicant to submit all of the information for which a permit block may be imposed because much of the information already is available to OSMRE and the State regulatory authorities. Final § 778.14(c) and the existing regulations in § 778.13 (a) and (b) together require the submission of most of the information suggested by the commenter, with the exception of outstanding Federal and State civil penalties and delinquent AML fees.

With regard to outstanding Federal civil penalties and delinquent AML fees, OSMRE has two computer-based systems which supply Federal violation data to the Applicant/Violator System. One is the Collection Management Information System (CMIS), and the other is the Abandoned Mine Land Fee Collection System (AML System). CMIS contains information on all delinquent Federal civil penalties while the AML System contains information on delinquent AML fees. With regard to delinquent State civil penalties, OSMRE intends to collect the relevant data and add it to the Applicant/Violator System at a later date after the quality of the data has been checked.

One commenter suggested that the rule should include a general provision which requires ownership and control information for anyone in an ownership or control relationship with the applicant or operator. For example, the commenter said, family members are frequently used as shams or fronts by irresponsible coal operators, and it would be a minimal burden to the applicant and the operator to list immediate family members who have mined in the past five years. The commenter also suggested that information be requested on mine managers, subcontractors and mine foremen.

OSMRE did not adopt the commenter's suggestion. The final rule at § 778.13(c) requests information for any person who owns or controls the applicant under the definition of "owned or controlled" and "owns or controls" at 30 CFR 773.5. Under § 778.13(c) the permit applicant is required to list the operator and those who own or control the operator.

If a family member, mine manager or subcontractor controls the applicant, there is an obligation under §§ 778.13(c) and 773.5(a)(3) to list that person in the permit application. However, the rule does not specifically require information when control does not exist. First, the Act does not require OSMRE to collect such information, and second, the Congress has imposed limitations on information collection. OSMRE, like all other Federal agencies, is required by the Congress to reduce where possible the information collection burden it imposes on the public. In order to do this OSMRE has limited the information reporting requirements of this rule to those specifically required by the Act or clearly necessary for the compliance review required by 30 CFR 773.15(b). There has to be some reasonable limit on the information collected for the compliance review. If OSMRE were to request all data which may be useful but not essential for performing the compliance review, the data when added to that already required by other sections of the Act and regulations would be difficult and expensive to process for both the permit applicant and the regulatory authority.

The regulations at 30 CFR 773.13(b) allow for public participation in the permitting process. Through that process, the regulatory authority can receive, and often does receive, pertinent information about the permit applicant and its owners and controllers, which may affect the permitting decision.

One commenter said that there should be a specific requirement for the applicant to state whether the proposed operation is a contract mine, and if so, the applicant should be required to list the entity or entities involved in that relationship. The commenter stated that ownership and control information should be required for both parties to the contract, and a copy of the contract should be required as part of the permit

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application, if the contract is oral, its basic provisions should be described in the application.

OSMRE agrees in part. The rule in § 778.13(c) requires that the permit application contain the name of any person owning or controlling coal to be mined under the proposed permit under a lease, sublease or other contract, and having the right to receive such coal after mining or having authority to determine the manner in which the proposed surface coal mining operation is to be conducted. Section 778.13(e) requires that the permit application contain the name and address of each legal or equitable owner of record of the mineral property to be mined and each leaseholder of record of any leasehold interest in the property to be mined. Consequently, with the exception of the terms of the contract, information concerning the parties to a contract mining operation, where control is presumed, is required by the rule. Information on the contracts of other mines is not needed unless the contracts result in control over the mines. Although the submittal of every contract would reduce the likelihood of the regulatory authority not discovering control relationships, a requirement for applicants to submit and regulatory authorities to review such information appears overly burdensome.

Under the definition of "owned or controlled" and "owns or controls" at 30 CFR 773.5, there is a presumption of control for any person who owns or controls coal to be mined by another person under a lease, sublease or other contract and has the right to receive this coal after mining or has authority to determine the manner in which the other person mines the coal. If a presumption of control exists in a particular permitting situation, the permit applicant may rebut the presumption if the compliance review indicates a link between the applicant and the violator. In order to rebut the presumption in a contract mining situation, the applicant would be required, at a minimum, to submit the terms of the contract for examination. OSMRE does not believe that it should require the submission of the contract until such time as there is a need to rebut the presumption of control because of a potential permit block.

The same commenter also wanted the permit application to contain information on past contract mining operations of the applicant and operator along with the permit number, Mine Safety Health Administration (MSHA) number, and any outstanding violations.

OSMRE agrees in part with the commenter. This information with regard to past contract mining operations owned or controlled by the applicant is required by the rules in §§ 778.13(c)(4) and 778.14(c)(1).

One commenter suggested that previous § 778.14(c) should be retained without change. Prior to revision, § 778.14(c) required information on violation notices received by the applicant or any subsidiary, affiliate or persons controlled by or under common control with the applicant. As revised, § 778.14(c) requires information on violation notices received by the applicant or any surface coal mining operation owned or controlled by the applicant or by anyone who owns or controls the applicant.

OSMRE declined to adopt the commenter's suggestion. The language adopted in § 778.14(c) mirrors the language in 30 CFR 773.15(b)(1) governing compliance review. The language is no less inclusive than the compliance review required by section 773.15(b)(1), and in fact results in a review of companies under common control with the applicant. Use of this same terminology in both §§ 778.14(c) and 773.15(b)(1) will eliminate confusion.

One commenter stated that § 778.14(c) of the rule should require the applicant to include the status of any violation. This information is already required by § 778.14(c)(4) of the existing regulations.

One commenter also suggested that the permittee be required to submit updated information on an annual basis concerning all outstanding violations previously reported pursuant to § 778.14(c).

OSMRE disagrees. The violation information submitted with the permit application is needed for the compliance review required by § 773.15(b)(1). Once that review has been completed and the permit issued an update is not needed because any violation which occurs after the issuance of a permit will not affect the validity of the permit, and any violation which has already been reported pursuant to § 778.14(c) will remain in the records of the regulatory authority until the violation is abated.

One commenter requested clarification of the responsibility of the regulatory authority with regard to verifying the information supplied by the permit applicant or challenging any information the regulatory authority has reason to believe may be incorrect.

The regulatory authority may independently verify the information contained in a permit application if it has reason to believe that the information is either inaccurate or incomplete. If the regulatory authority determines that the permit application is inaccurate or incomplete it may refuse to process the application until the missing information is submitted, or it may block the permit because of a violation or an ownership or control relationship discovered as a result of its own investigation. In either event, the regulatory authority should notify the permit applicant to submit additional information, which may indicate that the application is in fact accurate and complete or that a permit should be issued because there is no ownership or control link between the applicant and the violator. After such notice, the burden to respond is on the applicant.

One commenter suggested that the permittee be required to update the information at midterm review rather than on an annual basis, and to make any other updates only if changes occur. Another commenter suggested that updates be made only at the time of permit revision.

OSMRE did not adopt these suggestions. As previously discussed, the final rule requires a permittee to update the information contained in the permit application within thirty days of the issuance of a cessation order for the permitted site. OSMRE believes that it will be more advantageous to request the information at the time of a violation rather than on an annual basis. If no violation has occurred at midterm, there is no need for an information update. If a violation has occurred prior to an application for a permit revision, then the updated information is needed so that appropriate alternative enforcement action may be taken if necessary.

## IV. Procedural Matters

### *Effect in Federal Program States and on Indian Lands*

The rule will apply through cross-referencing to the following Federal program States: California, Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee and Washington. The Federal programs for these States appear at 30 CFR Parts 905, 910, 912, 921, 922, 933, 937, 939, 941, 942 and 947, respectively. Comments were specifically solicited in the proposed rule as to whether unique conditions existed in any of these States relating to the proposal which should be reflected in the final rule either as changes to the national rules or as State-specific amendments to any or all of the Federal programs. No comments were received.



The rule also applies through cross-referencing to Indian lands under the Federal program for Indian lands as provided in 30 CFR Part 750.

### *Effect on State Programs*

Following promulgation of the final rule, OSMRE will evaluate permanent State regulatory programs approved under section 503 of the Act to determine any changes in these programs that will be necessary. When the director determines that certain State program provisions should be amended in order to be made no less effective than the revised Federal rules, the individual States will be notified in accordance with the provision of 30 CFR 732.17.

### *Paperwork Reduction Act*

The information collection requirements contained in this rule have been approved by the Office of Management and Budget as required by 44 U.S.C. 3501 *et seq.*, and assigned clearance numbers 1029–0034 and 1029–0041.

The public reporting burden for this information is estimated to average one hour per response for § 773.17(i), and 13.5 hours per response for the sections located in Part 778 amended by this rule. The estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. You may send comments regarding these burden estimates or any other aspect of this collection of information, including suggestions for reducing the burden, to Information Collection Clearance Officer, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW., Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project (1029–0034), Washington, DC 20503.

The information is needed to meet the requirements of sections 201, 507 and 510 of Pub. L. 95–87. The information will be used by OSMRE in reviewing and approving permit applications. Except for the disclosure of a social security number, the obligation to respond is mandatory in accordance with sections 201(c)(1), 201(c)(2), 501(b), 507(b), 510(c) and 517(b)(1)(E).

### *Executive Order 12291*

The Department of the Interior has examined the rule according to the criteria of Executive Order 12291 (February 17, 1981) and has determined that it is not major and does not require a regulatory impact analysis. This determination is based on the findings that the regulatory revisions and additions of this rule will cause very little increase in the costs of operating a mine in a manner that meets the requirements of the Act. Further, there will be no significant impacts on competition, employment, productivity, innovation or on the ability of U.S.-based enterprises to compete with foreign-based enterprises.

### *Regulatory Flexibility Act*

The Department of the Interior has also determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that the proposed rule will not have a significant economic impact on a substantial number of small entities because although the rule will impose new regulatory burdens on small entities, the time and effort required for a small entity to fulfill the additional data collection requirements will be minimal.

### *National Environmental Policy Act*

The rule has been reviewed by OSMRE and it has been determined to be categorically excluded from the National Environmental Policy Act (NEPA) process in accordance with the Department of the Interior Manual (516 DM 2, Appendix 1.10) and the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR 1507.3).

### *Author*

The principal author of this rule is Andrew F. DeVito, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone: 202–343–5241 (Commercial or FTS).

### List of Subjects

*30 CFR Part 773*

Administrative practice and procedure, Reporting and recordkeeping requirements, Surface mining, Underground mining.

*30 CFR Part 778*

Reporting and recordkeeping requirements, Surface mining, Underground mining.

*30 CFR Part 843*

Administrative practice and procedure, Law enforcement, Reporting and recordkeeping requirements, Surface mining, Underground mining.

Accordingly, 30 CFR Parts 773, 778 and 843 are amended as set forth below.

Date: December 8, 1988.

**James E. Cason,**

*Deputy Assistant Secretary—Land and Minerals Management.*

## PART 773—REQUIREMENTS FOR PERMITS AND PERMIT PROCESSING

1. The authority citation for Part 773 continues to read as follows:

**Authority:** 30 U.S.C. 1201 *et seq.*, 16 U.S.C. 470 *et seq.*, 16 U.S.C. 1531 *et seq.*, 16 U.S.C. 661 *et seq.*, 16 U.S.C. 703 *et seq.*, 16 U.S.C. 668a *et seq.*, 16 U.S.C. 469 *et seq.*, 16 U.S.C. 470aa *et seq.*, and Pub. L. 100–34.

2. Section 773.15 is amended by adding paragraph (e) to read as follows:

**§ 773.15 Review of permit applications.**

* * * * *

(e) *Final compliance review.* After an application is approved, but before the permit is issued, the regulatory authority shall reconsider its decision to approve the application, based on the compliance review required by paragraph (b)(1) of this section in light of any new information submitted under §§ 778.13(i) and 778.14(d) of this chapter.

3. Section 773.17 is amended by adding paragraph (i) to read as follows:

**§ 773.17 Permit conditions.**

* * * * *

(i) Within thirty days after a cessation order is issued under § 843.11 of this chapter, or the State program equivalent, for operations conducted under the permit, except where a stay of the cessation order is granted and remains in effect the permittee shall either submit to the regulatory authority the following information, current to the date the cessation order was issued, or notify the regulatory authority in writing that there has been no change since the immediately preceding submittal of such information:

(1) Any new information needed to correct or update the information previously submitted to the regulatory authority by the permittee under § 778.13(c) of this chapter; or

(2) If not previously submitted, the information required from a permit applicant by § 778.13(c) of this chapter.

## PART 778—PERMIT APPLICATIONS—MINIMUM REQUIREMENTS FOR LEGAL, FINANCIAL, COMPLIANCE AND RELATED INFORMATION

4. The authority citation for Part 778 is revised to read as follows:

**Authority:** Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*, and Pub. L. 100–34.

5. Section 778.10 is revised to read as follows:

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**§ 778.10 Information collection.**

The information collection requirements contained in Part 778 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1029–0034. The information is being used to meet the requirements of sections 201, 507(b), 508(a), and 510(c) of the Act, which require that persons conducting surface coal mining operations submit to the regulatory authority relevant information regarding ownership and control of the property to be affected by such operations, compliance status and history. This information will be used by the regulatory authority to insure that all legal, financial and compliance requirements are satisfied prior to making a decision to issue or deny a permit under the permanent regulatory program. Except where specifically noted, the obligation to respond is mandatory in accordance with sections 201(c)(1), 201(c)(2), 501(b), 507(b), 510(c), and 571(b)(1)(E).

8. Section 778.13 is amended by revising the introductory text and paragraphs (b), (c) and (d), and by adding paragraphs (i) and (j) to read as follows:

**§ 778.13 Identification of interests.**

An application shall contain the following information, except that the submission of a social security number is voluntary:

* * * * *

(b) The name, address, telephone number and, as applicable, social security number and employer identification number of the:

(1) Applicant;

(2) Applicant's resident agent; and

(3) Person who will pay the abandoned mine land reclamation fee.

(c) For each person who owns or controls the applicant under the definition of "owned or controlled" and "owns or controls" in § 773.5 of this chapter, as applicable:

(1) The person's name, address, social security number and employer identification number;

(2) The person's ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure;

(3) The title of the person's position, date position was assumed, and when submitted under § 773.17(i) of this chapter, date of departure from the position;

(4) Each additional name and identifying number, including employer identification number, Federal or State permit number, and MSHA number with date of issuance, under which the person owns or controls, or previously owned or controlled, a surface coal mining and reclamation operation in the United States within the five years preceding the date of the application; and

(5) The application number or other identifier of, and the regulatory authority for, any other pending surface coal mining operation permit application filed by the person in any State in the United States.

(d) For any surface coal mining operation owned or controlled by either the applicant or by any person who owns or controls the applicant under the definition of "owned or controlled" and "owns or controls" in § 773.5 of this chapter, the operation's:

(1) Name, address, identifying numbers, including employer identification number, Federal or State permit number and MSHA number, the date of issuance of the MSHA number, and the regulatory authority; and

(2) Ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure.

* * * * *

(i) After an applicant is notified that his or her application is approved, but before the permit is issued, the applicant shall, as applicable, update, correct or indicate that no change has occurred in the information previously submitted under paragraphs (a) through (d) of this section.

(j) The applicant shall submit the information required by this section and by § 778.14 of this part in any prescribed OSMRE format that is issued.

7. Section 778.14 is amended by revising the introductory text, the introductory text to paragraph (c), and paragraph (c)(1) and by adding paragraph (d) to read as follows:

**§ 778.14 Violation information.**

Each application shall contain the following information:

* * * * *

(c) For any violation of a provision of the Act, or of any law, rule or regulation of the United States, or of any State law, rule or regulation enacted pursuant to Federal law, rule or regulation pertaining to air or water environmental protection incurred in connection with any surface coal mining operation, a list of all violation notices received by the applicant during the three year period preceding the application date, and a list of all unabated cessation orders and unabated air and water quality violation notices received prior to the date of the application by any surface coal mining and reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant. For each violation notice or cessation order reported, the lists shall include the following information, as applicable:

(1) Any identifying numbers for the operation, including the Federal or State permit number and MSHA number, the dates of issuance of the violation notice and MSHA number, the name of the person to whom the violation notice was issued, and the name of the issuing regulatory authority, department or agency;

* * * * *

(d) After an applicant is notified that his or her application is approved, but before the permit is issued, the applicant shall, as applicable, update, correct or indicate that no change has occurred in the information previously submitted under this section.

## PART 843—FEDERAL ENFORCEMENT

7. The authority citation for Part 843 continues to read as follows:

**Authority:** Pub. L. 95–87, 30 U.S.C. 1201 et seq., and Pub. L. 100–34.

8. Section 843.11 is amended by adding paragraph (g) to read as follows:

**§ 843.11 Cessation orders.**

* * * * *

(g) Where OSMRE is the regulatory authority, within sixty days after issuing a cessation order, OSMRE shall notify in writing any person who has been identified under §§ 773.17(i) and 778.13 (c) and (d) of this chapter as owning or controlling the permittee, that the cessation order was issued and that the person has been identified as an owner or controller.

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Part V

# Department of Health and Human Services

**Health Care Financing Administration**

**42 CFR Part 405**

**Medicare Program; Fee Schedules for Radiologist Services; Interim Rule with Comment Period**

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**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Health Care Financing Administration**

**42 CFR Part 405**

**[BERC-478-IFC]**

## Medicare Program; Fee Schedules for Radiologist Services

**AGENCY:** Health Care Financing Administration (HCFA), HHS.

**ACTION:** Interim rule with comment period.

**SUMMARY:** As required by section 4049 of the Omnibus Budget Reconciliation Act of 1987, this interim rule with comment period sets forth the relative value scale and the methodology for determining fee schedules upon which Medicare Part B payment for radiologist services will be determined. This method of payment will be implemented for services furnished on or after April 1, 1989.

**DATES:** Effective Date: The amendments to the Code of Federal Regulations are effective April 1, 1989. By statute, the fee schedules (which are not published in the Code of Federal Regulations) are effective for services furnished on or after January 1, 1989. Initial implementation of the fee schedules will be for services furnished on or after April 1, 1989.

*Comment Date:* Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5:00 p.m. on May 1, 1989.

**ADDRESS:** Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BERC-478-IFC, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave. SW., Washington, DC.

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to file code BERC-478-IFC. Comments received timely will be available for public inspection as they are received, beginning approximately three weeks after publication of this document, in Room 309-G of the Department's offices at 200 Independence Ave. SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202-245-7890).

**FOR FURTHER INFORMATION CONTACT:** William Morse, (301) 966-4520.

**SUPPLEMENTARY INFORMATION:**

### I. Background

Currently, under the provisions of sections 1833 and 1842 of the Social Security Act (the Act), payment for most physician and other medical and health services furnished under Part B of the Medicare program (Supplementary Medical Insurance) is made on a reasonable charge basis through contractors known as carriers. There are some exceptions to the rule of Part B payments made on a reasonable charge basis such as hospital outpatient services, which are usually reimbursed on a reasonable cost basis, and diagnostic laboratory services, which are reimbursed on a fee schedule basis.

In accordance with section 1842(b)(3) of the Act, when payment is made on a charge basis, the charge must be reasonable. In determining the reasonableness of a physician's charge for Medicare purposes, carriers are required to consider the following factors and, in general, payment for the physician services is to be based on the lowest of these factors:

- The actual billed charge for the service.
- The customary charge for similar services generally made by the physician for the service.
- The prevailing charge in the locality for similar services.

After adjustment for the annual deductible amount, Medicare pays 80 percent of the reasonable charge. The rules governing payment of reasonable charges for Medicare Part B services are set forth in Part 405, Subpart E (§§ 405.501 through 405.580).

### II. Summary of New Legislation

Section 4049(a)(1) of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100-203), which was enacted on December 22, 1987, amended section 1833(a)(1) of the Act by adding a new subparagraph (J) to require that, effective with services furnished on or after January 1, 1989, radiologist services are reimbursed at 80 percent of the lesser of the actual charge for the services or the amount set under a radiology fee schedule. Section 4049(a)(2) of Pub. L. 100-203 added a new section 1834(b) to the Act to provide for the development of a fee schedule for radiologist services. Section 411(f)(8) of the Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100-360) enacted on July 1, 1988, made several amendments to section 4049(a)(2) of Pub. L. 100-203, and those changes are incorporated in our discussion below. Section 1834(b) of the Act provides for the following:

- Section 1834(b)(1)(A) of the Act requires the Secretary to develop a relative value scale to serve as the basis for payment for radiologist services. Using this relative value scale and appropriate conversion factors, the Secretary is required under section 1834(b)(1)(B) of the Act to develop fee schedules (on either a regional, statewide, or carrier service area basis) for payment for radiologist services under Medicare Part B. The fee schedules are to be implemented for those services furnished during 1989.
- Section 1834(b)(2) of the Act requires the Secretary, in developing the relative value scale and fee schedules, to consult closely and regularly with the Physician Payment Review Commission, the American College of Radiology (ACR), and other organizations representing physicians and suppliers who furnish radiologist services. The Secretary is required to share with these organizations the data and data analysis being used to make the determinations in developing the relative value scale and fee schedules, including data on variations in current Medicare payments by geographic area and by service and physician specialty.
- Under section 1834(b)(3) of the Act, the Secretary must, in developing the relative value scale and fee schedules, consider variations in the cost of furnishing radiologist services among geographic areas and any different sites of service. The Secretary may also consider other factors concerning the manner in which physicians in different specialties furnish these services to ensure equitable payment amounts and to promote effective and efficient provision of radiologist services by physicians in different specialties.
- Section 1834(b)(4) of the Act requires that the Secretary develop preliminary fee schedules for 1989 that are budget neutral; that is, the preliminary fee schedules are designed to result in the same amount of aggregate payment (net of coinsurance and deductible amounts) for radiologist services in calendar year 1989 as would have been made absent the enactment of section 4049 of Pub. L. 100-203. However, the fee schedules that are established for actual payment purposes for radiologist services furnished in 1989 must be 97 percent of the amounts established in the preliminary fee schedules. The fee schedules that will be effective in years subsequent to 1989 will be equal to the previous year's fee schedule updated by the percentage increase in the Medicare Economic Index (MEI). In addition, each fee schedule is required to provide that the payment rate for nonparticipating physicians and suppliers is equal to the appropriate percent (as defined in section 1842(b)(6)(A)(iv) of the Act) of the payment rate recognized for participating physicians and suppliers.
- Section 1834(b)(5) of the Act requires that the actual charge made by a nonparticipating physician or supplier for a radiology service that is paid on the basis of a radiology fee schedule be limited as follows:
  - —In 1989, the charge must be no more than 125 percent of the applicable fee schedule amount for the service.
  - —In 1990, the charge must be no more than 120 percent of the applicable fee schedule amount for the service.
  - —In years subsequent to 1990, the charge must be no more than 115 percent of the applicable fee schedule amount for the service.

If a physician or supplier knowingly and willfully bills in excess of these amounts, the Secretary may impose sanctions against the physician or supplier in accordance with section 1842(j)(2) of the Act, with the sanctions set forth in that section applying to suppliers in the same manner as those sanctions apply to a physician. (A separate rulemaking document addressing these sanction and penalty provisions will be developed by the Office of Inspector General.)

- Section 1834(b)(6) of the Act defines radiologist services as radiology services performed by, or under the direction or supervision of, a physician who is certified or eligible to be certified by the American Board of Radiology, or for whom radiology services account for at least 50 percent of the total amount of charges made by the physician for Medicare Part B services.

### III. Consultation Requirements

In accordance with the provisions of section 1834(b)(2) of the Act, we have consulted with interested organizations in the preparation in this interim rule. As a part of this process, we shared data on draft conversion factors and a national relative value scale with the American College of Radiology (ACR), the Physician Payment Review Commission, the American Osteopathic Association, and other interested organizations. The ACR developed its own relative value scale, which it shared with us. As discussed below in more detail, we have decided to adopt the ACR's relative value scale for determining the radiology fee schedules.

### IV. System of Coding

To facilitate the reporting of items and services provided to Medicare beneficiaries and the processing of claims for those items and services, codes are used in lieu of narrative descriptions. For purposes of the radiology fee schedules, radiology services will be defined by codes contained in the HCFA Common Procedure Coding System (HCPCS). HCPCS was developed to satisfy the operational needs of the Medicare and Medicaid fee-for-service reimbursement programs and to ease communication between them by replacing various uncoordinated systems with a single national coding system. HCPCS is based upon the American Medical Association's (AMA) *Physicians' Current Procedure Terminology, Fourth Edition* (commonly referred to as CPT-4). In addition to CPT-4, HCPCS contains codes and modifiers developed by other professionals and insurers to meet their reporting needs as well as the codes developed by HCFA, State agencies, and Medicare contractors to meet the claims processing needs of the Medicare and Medicaid programs. While the coding system is designed to improve the ability of the physicians and suppliers to communicate the services they furnish, more importantly, the codes offer a degree of specificity and uniformity that permits a uniform application of HCFA coverage and payment policies.

HCPCS is designed with three levels of codes and modifiers. There is an upward progression of these codes from the lowest level (local assignment) to the highest level (national assignment) with HCFA and other third parties monitoring the entire system to ensure uniformity. The first level (national assignment) contains only the AMA's CPT-4 codes. These codes are all five-digit numeric. The AMA maintains responsibility for this level of codes. The second level contains the codes for physician and nonphysician services that are not included in CPT-4, (for example, ambulance, durable medical equipment, orthotics and prosthetics). These codes are alpha-numeric and are maintained jointly by HCFA, the Blue Cross and Blue Shield Association, and the Health Insurance Association of America. The third level (local assignment) contains the codes for services needed by the individual carrier or State agency to process Medicare and Medicaid claims. These codes are used for services that are not contained in either of the first two levels. The local codes are also alpha-numeric, but are restricted to the code ranges beginning with W, X, Y, and Z. These codes are used for items and services not having the frequency of use, geographic distribution, or general applicability to justify a code assignment at a higher level.

### V. Provisions of the Interim Rule

In order to implement the provisions of section 4049 of Pub. L. 100-203, we are adding new §§ 405.530 through 405.533 to the regulations to provide for the following:

#### *A. Effective Date*

Initially we have decided to implement this interim rule for services furnished on or after April 1, 1989, instead of the statutory effective date of January 1, 1989. This delay is necessary because of unexpected problems in calculating budget neutral conversion factors, which prevented publication of this rule before January 1, 1989. If the statutory effective date remains unchanged, we plan eventually to apply the fee schedule to services between January 1 and March 31, 1989. We will announce such a plan in the Federal Register.

#### *B. Applicability*

Effective with services furnished on or after April 1, 1989, Medicare Part B payment for radiologist services will be equal to 80 percent of the lesser of—

- The actual charge for the service; or
- The amount set under the applicable radiology fee schedule.

In accordance with section 1834(b)(6) of the Act, radiologist services are defined as radiology services performed by or furnished under the supervision of a physician who—

- Is certified by or eligible to be certified by the American Board of Radiology (ABR); or
- Bills at least 50 percent of his or her total amount of charges for Medicare Part B services for radiology services.

If a radiology service is performed by or under the supervision of a physician who does not meet either of these two requirements, the usual Medicare reasonable charge method of payment will apply. Thus, in order for the fee schedule to apply to a service, the service must meet both the following criteria: (1) The service must be a radiology service; and (2) the service must be provided by or supervised by an ABR-certified or ABR-eligible physician or by a physician with at least 50 percent radiology service charges.

#### *C. Definition of Radiology Services*

For purposes of the radiology fee schedules, the following services are defined as radiology services:

- Services represented by level 1 HCPCS "Radiology procedure codes

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(that is, codes beginning with the number 7) from CPT–4.

• Services represented by level II HCPCS codes that begin with "R", including R0070—Transporting of portable X-ray equipment.

• Services represented by level III (local assignment) HCPCS radiology codes.

In defining radiology services, we considered prohibiting the use of any level III (local assignment) HCPCS codes by the carriers. In fact, carriers were advised in September, 1988 to convert any of their level III codes for radiology services to CPT–4 or level II alpha-numeric codes by January 1, 1989 so that the services requested by those codes would be subject to national relative values. However, many of the carriers objected to the total elimination of all local radiology codes and requested that we reconsider our decision. In support of their request, the carriers identified a number of local codes for which there are no appropriate CPT–4 or level II alpha-numeric codes.

We have accepted the carriers' recommendation and will include level III (local assignment) HCPCS codes in our definition of radiology services. These codes will be paid based on local relative values as described below in section V.E.1 of this preamble. We expect that the number of local codes will be small and that those carriers that were able to convert many of their local codes to CPT–4 or level II alpha-numeric codes, will leave those conversions in place. we have begun to review all of the remaining local codes in use by the carriers and hope to further reduce their use through the conversion to an existing code or the assignment of a national CPT–4 or alpha-numeric code where appropriate.

*D. Services Not Included in the Fee Schedule*

1. Visit and Consultation Services

We are not including the visit and consultation services defined by the codes in the Medicare section of CPT–4 on the radiology fee schedule. We considered including these services when they are performed by radiologists because, in those cases, the services would often be related to the performance of radiology procedures. However, if we were to consider visits and consultations to be "radiology services," it could result in many internists and family practitioners being included as "radiologists" because of the "at least 50 percent of charges" criterion. Although these visits and consultations would not usually be related to radiology, if we were to view visits and consultations to be radiology services, then these physicians and our payment to them for visits and consultations would be subject to the radiology fee schedule. We do not believe that this result was intended by Congress in enacting section 4049 of Pub. L. 100–203. In 1985, radiologists performed less than 1 percent of the total number of any single visit code and no more than five percent of any single consultation service.

Moreover, when ranked by allowed charges, only one visit or consultation service falls within the top 100 services furnished by radiologists. That service is comprehensive consultation (CPT–4 code 90620) and its 1985 allowed charges were $4.7 million. The top 100 services represent approximately 80 percent of the $1.6 billion in allowed charges for radiologists in 1985. Therefore, only a small percentage of dollars paid to radiologists are for visit and consultation services. For these reasons, we are providing that visit and consultation services performed by radiologists continue to be paid for on a reasonable charge basis.

2. Codes for Injection Procedures

We are not including the codes for injection procedures associated with interventional radiology procedures or diagnostic studies as radiology services on the radiology fee schedule. We do not consider "injection-only" codes to be radiology services since they generally describe services performed by physicians other than the radiologists performing the associated radiology service. Further, codes for these separate injection procedures are not listed in the "Radiology" section but rather in the "Surgery," section of CPT–4. The performance of a given diagnostic radiology study may be coded with either a single code from the Radiology section for the complete procedure or with two codes—one for "injection only" from the Surgery section and one for "supervision and interpretation only" from Radiology section. The CPT–4 definitions for "complete" and "supervision and interpretation only" services are as follows:

• Complete Procedures: If a single physician performs an international radiology procedure or diagnostic study involving injection of contract media and all usual preinjection and postinjection services are included, then the service is designated as a "complete procedure." A complete procedure includes injection of the necessary local anesthesia, placement of needle or catheter, injection of contrast media, supervision of the study, and interpretation of results.

• Supervision and Interpretation Only: If an interventional radiology procedure or diagnostic study is performed by a radiologist-clinician team, the study service is designated as "supervision and interpretation only" code. This supervision and interpretation only code is used only when a procedure is performed by more than one physician, for example, a radiologist-clinician team.

Numerous CPT–4 codes in the Surgery section describe only the injection of contrast media, or the introduction of a catheter. For example, the narrative for CPT–4 code 21116 is "injection procedure for temperomandibular joint arthrography." The narrative for CPT–4 code 36100 is "introduction of needle or intracatheter, carotid or vertebral artery." These codes generally describe the services of a surgeon assisting a radiologist in the performance of an arthrogram and artheriogram respectively. If the "complete" radiology service is billed, no payment for the injection-only procedure code is made, because payment for the complete procedure includes payment for the injection procedure.

Both the "supervision and interpretation only" and "complete" radiology services will be included on the radiology fee schedule. Thus, to the extent that injections are included in the complete procedure, they are encompassed in payment for the complete procedure under the fee schedule.

3. Procedures Requiring Radiologic Guidance

Some CPT–4 codes in the Radiology section represent the performance of surgical procedures under radiologic guidance; that is, they include both the radiologic guidance as well as the performance of the actual procedure. These radiology codes are generally listed as "complete procedure". Other radiologic guidance procedure codes involve only radiologic guidance, and the procedure for which the guidance is provided is coded and billed separately (usually by a surgeon). These radiology codes are generally listed as "supervision and interpretation only".

When a surgical procedure is performed under radiologic guidance by a radiologist-clinician team, the surgical procedure itself is not considered to be a radiology service and is therefore not included on the radiology fee schedule. Only the radiologic guidance itself (as described by the appropriate "supervision and interpretation" code is included on the fee schedule. However, if the surgical procedure is performed under radiologic guidance by a single physician, then it is coded as a "complete procedure" and is included on the fee schedule. For example, if fluid is removed by a surgeon from a patient's chest cavity through a needle inserted under ultrasonic guidance provided by a radiologist, the surgeon bills for his service under code 32000, "Thoracentesis, puncture of pleural cavity for aspiration" and the radiologist bills under code 76934, "Ultrasonic guidance for thoracentesis; supervision and interpretation only". Code 32000 will not be on the radiology fee schedule because it is considered to be a surgical procedure. Code 76934 will be on the radiology fee schedule because it is a radiology service. If, however, the radiologist performs the thoracentesis alone under radiologic guidance then he would bill under code 76935, "Ultrasonic guidance for thoracentesis; complete procedure." Code 76935 will also be on the radiology fee schedule because it too is a radiology service.

We note, however, that there are some procedures in CPT–4 that include radiology services that will not be included as radiology services on the fee schedule because they are frequently performed by nonradiologists and they are listed outside of the Radiology section of CPT–4 (for example, codes 43260 through 43272). We invite public comment on the appropriateness of excluding these codes from the fee schedule.

*E. Physicians and Suppliers Subject to the Fee Schedule*

We will apply the fee schedule when paying any claim for radiology services submitted by the following:

• Physicians who have identified themselves as radiologists to Medicare carriers.

• Physicians whose charges for radiology services are at least 50 percent of their total charges for Medicare Part B services.

• Hospitals billing for the services of hospital-based physicians.

• Multispecialty clinics listed under the HCFA Part B Medicare Annual Data System (BMAD) specialty 70.

• Portable x-ray suppliers listed under HCFA BMAD specialty 63.

• Any other supplier or nonphysician entity.

A physician has identified himself or herself as a radiologist if the carrier reports that physician's charges in the BMAD system under specialty 30 (radiology), specialty 31 (roentgenology, radiology—osteopaths only), specialty 32 (radiation therapy—osteopaths only), or specialty 36 (nuclear medicine).

Carriers will be required to review the bills submitted by all physicians in their areas for the 1989 charge year (that is, July 1, 1987 through June 31, 1988) in order to determine which of them meet the "at least 50 percent of charges" criterion.

A physician or other entity may rebut the application of the fee schedule. For example, a physician may demonstrate that although he or she is a radiologist on the carrier's file, he or she is not ABR-certified or ABR-eligible. Similarly, a clinic or portable x-ray supplier billing for a technical component radiology service may demonstrate that the physician who furnished or supervised the service was not ABR-certified, ABR-eligible, or did not meet the at least 50 percent of charges criterion. (In order to be covered by Medicare, such technical component services must be furnished under the supervision of a physician (section 2070 of the Medicare Carriers Manual (HCFA Pub. 14)).)

A BMAD specialty 70 clinic or a hospital may demonstrate that a physician other than an ABR-certified, ABR-eligible, or at least 50 percent radiology-billing physician furnished or supervised a radiology service for which the clinic or hospital is billing and thereby exempt the claim from the fee schedule.

Carriers will be required to review the status of physicians for the purpose of determining whether they are subject to the radiology fee schedule only at the time of the annual fee screen update. (Update screens are prepared in the fall of each year and are effective on the following January 1.) At that time, carriers will determine which physicians continue to identify themselves as radiologists or specialty 70 clinics and which physicians continue to meet the at least 50 percent of charges criterion.

Carriers will make their determinations based on the most recent charge year data. The carrier will then decide whether the physician will be paid under the fee schedule for the upcoming calendar year. Carriers will make this determination for any entity that receives payment for services under Medicare Part B at the time of the update. Both in the initial year and in subsequent years, physicians and suppliers whose bills are to be subject to the fee schedule will be permitted to rebut the carrier's assumption that the radiology services being billed were furnished directly or under the supervision of an ABR-certified or ABR-eligible physician or a physician that meets the at least 50 percent of charges criterion.

A new physician who identifies himself or herself to the carrier as a radiologist and who begins practice after an annual fee screen update and, thus, after the latest radiology status review, will, from the outset, be paid under the fee schedule. The status of these physicians will be reviewed with the status of other physicians at the time of the next fee screen update. A new physician who does not identify himself or herself as a radiologist will be paid on a reasonable charge basis and the physician's status will be subject to review at the time of the next annual fee screen update.

As is true for other physicians, a new physician may rebut the carrier's determination that the physician's billings are subject to the fee schedule. For example, a new physician filing as a radiologist may indicate to the carrier that he or she furnishes the radiology services for which he or she bills but that he or she is not certified or eligible to be certified by the ABR.

Any physician not subject to the fee schedule because of not being identified as a "radiologist" or not meeting the at least 50 percent of charges criterion may nevertheless demonstrate to the carrier that he or she should be subject to the fee schedule. For example, such a physician may be an ABR-certified physician who is not listed as a radiologist with the carrier.

*F. Development of the Fee Schedules for Radiologist Services*

As required by section 1834(b)(1) of the Act, the fee schedule for radiologist services will be based on a relative value scale and appropriate conversion factors.

1. Development of a Relative Value Scale

Section 1834(b)(1)(A) of the Act requires that, as a first step in developing radiology fee schedules, we develop a relative value scale for radiologist services. In accordance with Congressional intent, we are providing a national relative value scale that will be uniform across the country. (See H.R. Rep. No. 391, 100th Cong., 1st Sess. 397 (1987).)

We had developed, based on 1986 BMAD data, a charge-based national relative value scale. It established relative values for professional services by computing the national average submitted charge for each service and weighting the services in relation to each other, based on those national average charges. Consistent with our regulations (§ 405.555(c)(2)), our charge-based relative value scale valued the professional service at 40 percent of the global service. This was accomplished

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by making the global value 2.5 times the professional value.

However, the national relative value scale that we have adopted, and that is published as Appendix A of this interim rule, was developed by the ACR. It is based on extensive data, including the following:

- A national charge survey sent to more than 3,000 radiology practices.
- A "magnitude estimation" survey sent to more than 2,000 radiologists. (Magnitude estimation is a technique for providing comparisons about a subjective dimension, such as the level of technical skill needed to perform a procedure.)
- A survey of technical component costs.
- Meetings of consensus panels that used the survey results and judgments of the survey results in arriving at the values proposed by ACR.

According to ACR, its panels were composed of members from academic and nonacademic settings, geographic areas throughout the country, all radiology specialty organizations, and all subspecialties of radiology, as well as representatives from the College of Nuclear Physicians, the Society of Nuclear Medicine, and the American Osteopathic College of Radiology.

We believe it is appropriate to adopt the ACR relative value scale, rather than the charge-based scale that we developed. As noted above, the ACR methodology appeared to be thorough and inclusive of a wide range of interests and views and represents a refinement to the charge-based relative value scale. Appendix C of this interim rule compares the separate sets of values for certain high-volume procedures.

We have accepted ACR's relative values for all services except angiography and interventional radiology. ACR's recommendations for global values for most angiography and interventional radiology codes exceeds ACR's charge-based values for these two types of codes by more than two to one. For all other categories of services, this is not the case. Because of this apparent discrepancy, and because of the low volume of office-based or global angiography, we are not adopting ACR's global relative values for any angiography and interventional radiology. Instead, these services will be paid for under locally-established global relative values. The angiography and interventional codes to be paid based on local global relative values are listed in Appendix B to this interim rule.

Additional services, such as the level II "RHCPCS" codes, level III local codes and services described by any new CTP–4 codes will also be paid based on local relative values. This is because there are no current national relative values for those services. (See Appendix B.) Carriers will establish local values based on advice from their medical directors and the relationships between charges and allowances for various services. We will review the local relative values established by carriers to ensure that those values are reasonable.

We are aware that another recently released study establishes resources based values for certain radiology services. The study by William C. Hsiao, Ph.D., et al., "A National Study of Resource-Based Relative Value Scales for Physician Services", *The New England Journal of Medicine*, 319 (1988), 835, was conducted by the Harvard School of Public Health and its subcontractor, the American Medical Association, and funded by HCFA. We intend to review that analysis or other available data that are brought to our attention and, if appropriate, may propose revisions to the radiology relative value scale. Such revisions may be made effective at times other than the three-year update intervals discussed below.

Currently, in some carrier areas, three aspects of radiology services have been or can be billed. The physician can bill for the "professional only" aspects of a service, such as reading an X-ray. This is a professional component billing. An entity can also bill for only the technical component of a radiology service, such as the taking of an X-ray. Finally, there can also be a bill for the complete or global service (that is, both the professional and the technical components). Therefore, a radiology service may technically be three services. Only a small amount of technical component billing is actually done under the reasonable charge methodology. Most radiology service billings are on a global or professional only basis.

The relative value scale in Appendix A has a global, professional, and technical component breakdown for each radiology service listed. The base procedure on that relative value scale is the professional component of code 71010, single view chest x-ray; that service has been given a value of one (1.00).

Some CPT–4 radiology codes have payment-related modifiers representing something other than global, professional, or technical services. For example, some may have a modifier of "22", which means that the procedure involved unusual circumstances. Others may have a modifier of "52", which means reduced services. In carrier areas where prevailing charge screens have not been established for claims with payment-related modifiers other than blank (global service), "26" (professional service), or "TC" (technical service) and those claims are instead paid on a case-by-case or individual consideration basis, this practice will be continued during 1989. If a carrier currently establishes screens for radiology codes with other than blank, "26" or "TC" modifiers, the carrier will establish a local relative value for the service, as modified. (See Appendix B.) Effective for services furnished on or after January 1, 1990, no payment-related unusual modifiers will be recognized for fee schedule payment purposes. We are recognizing them for one year to give carriers sufficient time to phase out their use. We do not believe that these modifiers should continue to be recognized since the values established in the fee schedule are intended to represent the correct value for the HCPCS identified code, regardless of whether or not unusual circumstances were associated with furnishing the services.

Also, in the relative value scales, values are established for only weekly management radiation therapy codes. No values are established for daily management. This is because, effective April 1, 1989, payment will be made on only a weekly management basis. Weekly management services will include most covered services furnished by radiation therapists or in conjunction with radiation therapy. Daily management services will no longer be recognized for a Medicare payment because of the difficulty of obtaining documentation showing that daily physician services were provided to a patient. Weekly management, on the other hand, can be payable even if a covered physician service is not furnished at the time of each individual treatment. By paying a "global" weekly treatment fee, fragmentation of services, which occurs with daily fees, will be reduced.

2. Development of Conversion Factors

As required by section 1834(b)(1)(B) of the Act, we must develop appropriate conversion factors to be used in determining the fee schedules for radiologist services. The conversion factor is the dollar value used as a multiplier with the service's relative value in order to determine the fee schedule amount for the radiology service.

The requirement under section 1834(b)(4) of the Act that the fee schedules developed for 1989 be budget neutral was a significant consideration in our development of appropriate conversion factors. Budget neutral means that the application of the fee schedule is to result in outlays for radiologist services that are no greater nor any less than would have occurred in 1989 had the fee schedules not been implemented.

Another issue that we considered was the geographic basis for which conversion factors should be computed, that is, at the locality, the carrier area, or the national level. The computation of one conversion factor for the entire nation would have the effect of creating one fee schedule applicable nationwide. We decided against this approach in favor of locality conversion factors, because of the provision in section 1834(b)(3)(A) of the Act that we take geographic cost variations into consideration when developing the fee schedules.

Locality-specific conversion factors will result in each locality's keeping the same amount of aggregate payment for radiology services furnished by radiology providers as would have resulted if these services continued to be paid under the usual reasonable charge methodology. Therefore, to the extent that geographic variations in our Medicare allowed charges reflect geographic cost variations, those cost variations have been considered in the calculation of the conversion factor. The result will be a fee schedule for each locality in the carrier's service area.

We are planning, however, to have carriers compute a carrierwide conversion factor to be available for fee schedule pricing in localities where no current locality conversion factor can be computed. This could occur in localities where there are currently no portable x-ray suppliers or no radiologists. (See subsequent discussion regarding separate conversion factors for these two groups). A carrierwide factor would be available to be applied in such localities if a physician or supplier covered by the fee schedule were to move into the area.

The conversion factors (CF) will be computed by dividing the estimated total Medicare charges that would have been allowed in 1989 under the reasonable charge methodology for physicians and suppliers subject to the fee schedule by the sum of each radiology service's relative value (RV) times the frequency (Freq) that the service (Proc) was performed by the individuals in the year ending June 30, 1988. The estimated total Medicare charges are determined by multiplying the lowest of the 1989 reasonable charge screen (RCS) that would have gone into effect absent the fee schedule under the provisions of § 405.502 and § 405.555(c)(2) for each physician or supplier (MD), by the frequency (Freq) with which the service (Proc) was performed in the year ending June 30, 1988. The quotient is then multiplied by .97 to yield the three percent savings required by law.

Thus,

$$CF = 0.97\left[\frac{(\text{Freq MD}_1\text{Proc}_1)(\text{RCS})+\ldots+(\text{Freq MD}_1\text{Proc}_n)(\text{RCS})+(\text{Freq MD}_2\text{Proc}_1)(\text{RCS})+\ldots+(\text{Freq MD}_n\text{Proc}_n)(\text{RCS})}{(\text{Freq Proc}_1)(\text{RV Proc}_1)+(\text{Freq Proc}_2)(\text{RV Proc}_2)+\ldots+(\text{Freq Proc}_n)(\text{RV Proc}_n)}\right]$$

The conversion factors will be computed by each carrier and will be subject to HCFA regional office approval.

Thus, as required by the statute, we have set the fee schedule payment amounts at 97 percent of the amounts, in the aggregate, that would have been paid in the absence of the fee schedule. To the extent the implementation of the fee schedule results in behavioral changes in the provision of radiology services, the fee schedule may not result in a three percent reduction in aggregate Medicare payments. We intend to monitor the aggregate amounts being paid under the fee schedule to determine how closely they approximate 97 percent of the amounts that would have been payable on a reasonable charge basis.

One aspect that we will specifically evaluate will be the relationship of actual charges to the fee schedule amount, compared with the relationship of actual charges to the reasonable charge screens used prior to the fee schedule. Generally, under the reasonable charge system, Medicare payment is based on the lower of the actual charge or the applicable reasonable charge screen. In establishing the conversion factor, we used the applicable reasonable charge screen; however, we did not factor into the conversion factor computation the effect of actual charges lower than the reasonable charge screen. Our reasons for not doing this are that—

- Situations in which physicians charge less than the reasonable charge screen are relatively rare and insignificant when they do occur; and
- The degree to which radiologists occasionally charged less than the reasonable charge screen in the past will likely be the same under the fee schedule.

Thus, our assumption is that the resultant conversion factors under the fee schedule are budget neutral (minus three percent) compared to what would have been paid under the reasonable charge system. During 1989 we intend to closely review both our experience under the fee schedule and historic charging practices of radiologists, to evaluate the validity of our assumptions. If they prove to be incorrect, we will propose an appropriate downward adjustment in the conversion of factor at the time of a subsequent update.

Section 1834(b)(3)(B) provides that we may consider specialty differentials in developing the relative value scale and fee schedules. We have decided that carriers should establish conversion factors for portable x-ray suppliers separate from those applicable to all other entities. Although portable x-ray suppliers are paid under the same codes as others, the technical component x-ray services that they furnish are generally different from the x-ray services furnished by others. Portable x-ray services tend to involve special equipment requiring extra time for assembling and dismantling. Also, the patients are often elderly nursing home or homebound patients requiring extra time and care for the set-up of the x-ray. Therefore, to the extent that the experience of nonportable x-ray suppliers has influenced the relative value amounts of the "common" codes, portable x-ray suppliers could be disadvantaged. A separate conversion factor accommodates for this and the ultimate payment outcome amounts to a separate relative value scale for portable x-ray suppliers. Other categories of radiology supplier, on the other hand, do not often share their high-volume codes with other types of suppliers. For example, radiation therapy codes are generally billed by only radiation oncologists. Therefore, generally, no other category of supplier has influenced the relative values established for these codes. As a consequence, no separate relative value scale or conversion factor is needed to limit the influence of one type of supplier on the most pertinent relative values of another.

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3. Code Collapsing

There are over 700 codes that we are considering to represent radiology services. We receive very few bills for many of those codes. Although we are not deleting or revising any of the radiology codes as a part of this interim rule, we are soliciting suggestions for radiology code deletions or revisions. Any comments we receive concerning the revision or deletion of radiology codes will be considered as a part of any future changes HCFA may recommend as a part of the CPT–4 procedure code update process.

*F. Method of Payment Under the Radiology Fee Schedules*

As discussed above in section IV.A. of this preamble, section 1833(a)(1)(J) of the Act requires that Medicare's payment for radiologist services is 80 percent of the lesser of the actual charge or the radiology fee schedule amount. However, section 1834(b)(4)(D) of the Act requires that the same payment distinctions between participating and nonparticipating physicians that apply to prevailing charges as set forth in section 1842(b)(4)(A)(iv) of the Act also apply to radiology fee schedule payments. Section 4042(c) of Pub. L. 100–203, as amended by 411(f)(2) of Pub. L. 100–360, amended section 1842(b)(4)(A)(iv) of the Act to provide that the prevailing charge level for nonparticipating physicians is 95 percent of the level for participating physicians. Therefore, nonparticipating physicians' and suppliers' fee schedule amounts are equal to 95 percent of the fee schedule amount applicable to participating physicians and suppliers.

In addition, sections 1834(b)(5)(A) and (B) of the Act place a limit on the amount a nonparticipating physician or supplier can charge a Medicare beneficiary for a service for which payment is made under a radiology fee schedule. In 1989 (that is, April 1, 1989 through December 31, 1989), the nonparticipating physician or supplier can charge no more than 125 percent of the fee schedule amount applicable to the service. In 1990, the limit on charges is 120 percent of the fee schedule amount and after 1990, the limit on charges is 115 percent of the fee schedule amount. (Since a nonparticipating physician's or supplier's fee schedule amount is 95 percent of a participating physician's or supplier's fee schedule amount, the limit on the charge made to the beneficiary in 1989 on or after April 1, 1989, for example, is 125 percent of the 95 percent.) When the charge limit specified by section 1834(b)(5)(A) and (B) applies, the maximum allowable actual charges (MAACs), established under section 1842(j)(1)(B) of the Act, do not apply.

Under section 1834(b)(5)(C) of the Act, if a physician or supplier knowingly or willfully imposes a charge in violation of the limit on charges, the Secretary may apply sanctions against the physician or supplier (that is, excluding the physician or the supplier from the program or imposing civil money penalties, or both). These regulations do not include details regarding the sanctions process. Regulations now being developed by the Department's Office of Inspector General will include details on this provision.

*G. Updating the Relative Value Scale and Conversion Factors*

As required in section 1834(b)(4)(C) of the Act, fee schedule values will be updated annually by the percentage increase in the MEI.

We will also revise the radiology fee schedules at least every three years, primarily for the purpose of adding new services or new procedure codes. Until these revisions are made, carriers will pay for any new services or new codes under a local fee schedule (that is, on the basis of a local relative value scale and the locality's conversion factor). (See Appendix B.) New services will be added to the national relative value scale fee schedules after we have had the opportunity to consult with the American College of Radiology and other interested organizations regarding appropriate values for the new services.

At the time of the revisions, new national relative values and conversion factors will be established.

If, after a fee schedule is effective, there is deletion of a CPT–4 code with a cross-referral to a different current code, we will implement that change in the fee schedules when HCPCS changes in the reasonable charge system are being made. This will not involve the establishment of new fee schedule values.

When there is merely a deletion of a code from HCPCS and no cross-referral to another code, there is no need to develop a new fee schedule value. Implementation of the deletion will occur when HCPCS changes are made in the reasonable charge system.

If there is a fragmentation of a current code and the new codes are not components of the old (for example, procedure code X represents a procedure done on either the right or the left side and that code is fragmented into two—one for the procedure on the left side and the other for the procedure on the right side), each of the one or more new codes will receive the fee schedule value of the predecessor code. Again, there will be no new fee schedule values involved and we will implement the change when the HCPCS changes are made in the reasonable charge system. If the new codes were components of the old, the relative value of the old code will be divided evenly among the new codes unless we instruct otherwise.

If two or more "component" codes are collapsed, into a single new code, the fee schedule values for the resulting codes will be the sum of the values of the component services. The change will be implemented when HCPCS changes are made in reasonable charge.

When language revisions are made in the description of a given code, we will make any appropriate changes in the code's relative value at HCPCS conversion time.

*H. Continuation of Reasonable Charge Screens*

Since the radiology services furnished by physicians and suppliers who are not subject to the fee schedule continue to be paid under the general reasonable charge rules, we will continue to compute reasonable charge screens for radiology services.

Customary charges for radiology services will continue to be computed for all physicians and suppliers, including physicians and suppliers who are subject to the fee schedule. Physicians and suppliers not subject to the fee schedule must continue to have customary charges computed for them because they will continue to receive payment for radiology services on a reasonable charge basis. Fee schedule physicians and suppliers also must continue to have customary charges computed for their radiology services because, as is discussed below, those customary charges will be used to compute prevailing charges.

Carriers will have to continue to compute area prevailing charges for radiology services.

In carrier areas where radiologists' charges are merged with those of other physicians to compute prevailing charges (that is, where there is no unique radiology prevailing charge), prevailing charges must be computed—to be applicable to any physician not subject to the fee schedule—and those prevailing charges must be based on the customary charges of both physicians subject to the fee schedule and those who are not.

In computing prevailing charges for radiology services, we will include in the array the customary charges of physicians and suppliers who are subject to the fee schedule. This is because the concept of a prevailing charge (that is, not the MEI-adjusted prevailing charge) is that it is a measure of how physicians in the area have been charging, not a measure of how they have been or will be paid. It is therefore irrelevant how Medicare pays physicians (on a reasonable charge or a fee schedule basis) when determining whether their charges, if available in our data system, should be used in computing customary and prevailing charges. All actual charges, regardless of our method of payment to the physicians, will be used. This is consistent with our regulations at § 405.504, which discuss how prevailing charges are to be determined. That section does not indicate that only customary charges of physicians under the reasonable charge system are to be used.



**VI. Regulatory Impact Statement and Flexibility Analysis**

*A. Executive Order 12291*

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any interim rule that meets one of the E.O. criteria for a "major rule"; that is, that will be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

According to data from HCFA's BMAD system, allowed charges for radiology procedures performed by radiologists in calendar year 1986 were approximately $2.6 billion. Section 1834(b)(4) of the Act requires that the Secretary develop preliminary fee schedules for 1989 that are budget neutral. However, the fee schedules that are established for actual payment purposes for radiologist services furnished in 1989 must be 97 percent of the amounts established in the preliminary fee schedules.

We anticipate that this interim rule will result in the following savings:

TABLE 1.—PROJECTED MEDICARE SAVINGS AS A RESULT OF FEE SCHEDULES FOR RADIOLOGIST SERVICES [1]

| FY 1989 | FY 1990 | FY 1991 | FY 1992 | FY 1993 | FY 1994 |
|---|---|---|---|---|---|
| $15 | $35 | $40 | $50 | $55 | $60 |

[1] Rounded to the nearest $5 million.

Although we have reduced the fee schedule amounts by three percent, our estimates do not reflect a three-percent savings. This is due to the effects of rounding to the nearest five million dollars, anticipated changes in the behavior patterns of physicians, savings not being realized in the year in which the service is furnished due to a time lag in billing, and the regulation's implementation date of April 1, 1989 (which means that only six months of savings are realized).

In addition, we anticipate that physicians, in response to this fee schedule, may change their behavioral patterns. These changes may include increased utilization or increased intensity of services, in order for them to maintain current levels of Medicare reimbursement.

This interim rule does not meet the $100 million criterion nor do we believe that it meets the other E.O. 12291 criteria. Therefore, this interim rule is not a major rule under E.O. 12291, and an interim regulatory impact analysis is not required.

*B. Regulatory Flexibility Act*

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that an interim rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all physicians are treated as small entities.

This interim rule implements sections 1833(a)(1)(J) and 1834(b) of the Act as amended by section 4049 of Pub. L. 100–203 and section 411(f)(8) of Pub. L. 100–360. We are preparing a regulatory flexibility analysis for this interim rule because of the large number of physicians who will be affected and the significance and potential controversy of these provisions.

Section 1102(b) of the Social Security Act requires the Secretary to prepare a regulatory impact analysis if an interim rule may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds located outside of a Metropolitan Statistical Area.

We are not preparing a rural hospital impact statement since we have determined, and the Secretary certifies, that this interim rule will not have a significant economic impact on the operations of a substantial number of small rural hospitals.

1. Impact on Physicians

It is clear that the fee schedule established by this regulation will affect a substantial number of physicians. These physicians can be divided into three categories. Those who are American Board of Radiology (ABR)-certified, ABR-eligible, or physicians for whom at least 50 percent of their total Medicare Part B charges are for radiology services. As of December 31, 1986, there were 6,345 radiologists practicing in the United States with 6,365 being certified by their corresponding board (Physician Characteristics and Distribution in the U.S., 1986. Department of Data Release Services, Division of Survey and Data Resources, American Medical Association, 1987). We expect that most of these physicians will be subject to the fee schedules.

In order for the fee schedule to apply to a radiology service, the service has to meet the following criteria: (1) The service must be a radiology service; and (2) the service must be performed by or under the supervision of an ABR-certified or ABR-eligible physician or by a physician with at least 50 percent radiology service charges. Radiologists as a group had a Medicare participation rate of 40 percent in 1987 and a Medicare assignment rate of 73 percent in 1988.

As added, section 1834(b)(4)(A) of the Act provides that the Secretary will develop preliminary fee schedules for 1989, that are designed to result in the same amount of aggregate payments (less any coinsurance and deductibles under sections 1833(a)(1)(J) and 1833(b) of the Act) for radiologist services furnished in 1989 as would have been made if this section had not been enacted. Section 1834(b)(4)(B) of the Act requires that the fee schedules established under this paragraph for radiologist services furnished in 1989 be 97 percent of the amounts permitted under the preliminary fee schedules developed under 1834(b)(4)(A) of the Act. Consequently, the overall impact of the fee schedules on the radiology industry as a whole in 1989 will be an average three-percent reduction in Medicare fee levels. For those years after 1989, fee schedule values will be

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updated annually by the Medicare Economic Index. At least every three years, new services will be added as appropriate and the fee schedule system will be rebased using a new relative value scale and new conversion factors.

a. *Participating Physicians.* The three percent reduction in the fee schedule amounts will not necessarily result in a three percent reduction in Medicare payments to an individual physician. First, there may be redistributions involved in the shift from the reasonable charge payment methodology to the fee schedule. Payment for an individual service and for the particular mix of services furnished by a physician may be more or less than 97 percent of the amount the physician currently receives on a reasonable charge basis for the same services. Second, there may be behavioral changes, for example, changes in the volume or mix of services a physician provides, in response to the different amounts received under the fee schedule that would affect the total payments received from Medicare. Finally, payments for any nonradiologic services furnished by the physician are unaffected by the fee schedule.

b. *Nonparticipating Physicians.* Nonparticipating physicians will also be affected by this interim rule to the extent that their covered services will be subject to the fee schedule. Section 1834(b)(5)(B) of the Act places an upper limit on the amount that a nonparticipating physician or supplier can charge beneficiaries. In 1989, the first year of implementation, the maximum allowable actual charge will be 125 percent of the fee schedule amount. In the second year, it will be 120 percent of the fee schedule amount, and, in the third and subsequent years, it will be 115 percent of the fee schedule amount. A nonparticipating physician's fee schedule amount will be 95 percent of a participating physician's fee schedule amount. Therefore, in 1989, for example, the nonparticipating physician's upper charge limit will be 125 percent of 95 percent of the amount allowed for participating physicians.

2. Impact on Portable X-ray Suppliers

Portable X-ray suppliers bill using specialty code 63 under the HCFA BMAD system. As of April 1988, there were approximately 440 portable X-ray suppliers in the United States. These suppliers account for slightly less than two percent of all total allowed charges for radiology services.

We are using a separate conversion factor for portable X-ray suppliers because if we were to use a combined conversions factor (that is, one that includes both portable X-ray suppliers and physicians furnishing radiology services) payments would be redistributed between portable X-ray suppliers and other physicians furnishing radiology services.

We believe that the impact on these suppliers will be similar to the one experienced by physicians. Our rationale is the same as the one advanced above for participating physicians.

3. Impact on Beneficiaries

We believe that this interim rule will have a negligible effect upon beneficiaries out-of-pocket expenses. Our main concern is the effect on Medicare beneficiaries out-of-pocket expenes on nonassigned claims. Congress has addressed this concern by placing an upper limit on the amount which a nonparticipating physician could charge beneficiaries. In 1989, the upper limit will be 125 percent of the fee schedule, in 1990 it will be 120 percent of the fee schedule, and in 1991 and subsequent years it will be 115 percent of the fee schedule.

*C. Alternatives Considered*

Our consideration of alternatives is limited because of the provisions set forth in section 4049 of Pub. L. 100-203. However, within this overall constraint, we have latitude in establishing the relative value scale, and the conversion factors. In section V of this preamble, we discuss the methodologies that we considered for each of these policy issues and our rationale for choosing a particular methodology.

*D. Conclusion*

Medicare payment for radiologist services will vary among individual participating and nonparticipating physicians to the extent that there are differences in the particular mix of covered radiology services they furnish to Medicare patients and in the amount physicians charge for covered services prior to the implementation of this fee schedule.

Similarly, Medicare payment for radiologist services provided by portable X-ray suppliers will vary among individual suppliers depending on how much of their business is Medicare derived, and the amounts they charge for their services.

## VII. Other Required Information

*A. Interim Rule With Comment Period*

Section 4049(b)(2) of Pub. L.100-203 established January 1, 1989, as the effective date for the implementation of the radiology fee schedule. However, for the reasons discussed below, we have been unable to meet that deadline. In order to achieve the objectives of section 4049 within a timeframe as close as possible to the Congressionally-prescribed effective date, we have determined that it is necessary to publish this regulation as an interim rule pursuant to the authority granted in section 4039(g) of Pub. L. 100-203. This regulation will be implemented April 1, 1989.

The development of a new relative value scale and fee schedule for radiologist services that meets the standards prescribed by Congress has proved to be an exceedingly complex task. Congress directed that the fee schedule be based on a variety of factors respecting the manner in which physicians furnish radiology services and that the fee schedule be equitable and promote efficient and effective provision of those services. Congress also directed that, in developing the schedule, we consult closely with the Physician Payment Review commission, the American College of Radiology, and other affected organizations. We have acted as expeditiously as possible to gather data, to meet with affected parties, to solicit their input on the design of the relative value scale and to discuss with them the numerous options that have come under consideration. We have also sought to expedite the process through shortened timeframes. Despite these efforts, publication by the January 1, 1989 effective date has eluded us.

We had expected to publish an interim rule before January 1, 1989. However, shortly before publication, we discovered several methodological problems with the computation of the conversion factors necessary for translating the relative values of the relative value scale into the payment amounts found on the fee schedule. These methodological errors had the effect of lowering the payment for all services. After consulting with American College of Radiology and other interested groups we determined that it was necessary to delay implementation of the fees schedule until April 1, 1989 in order to correct those methodological errors.

Section 4039(g) of Pub. L. 100-203 provides that, if necessary, we may issue regulations to implement certain provisions of that law, including the radiology fee schedule and other Medicare reforms, on an interim basis. Congress, in Pub. L. 100-203, charged the agency with developing and implementing several significant and complex payment reforms. Congress recognized, however, that the agency may not be able to both develop the regulations necessary to implement these reforms and engage in the time-consuming and resource-consuming process entailed by the notice and comment procedure before the affective dates which it prescribed. At the same time, Congress recognized that interested parties should be given an opportunity to comment on implementing regulations. Therefore, it authorized the Secretary to provide a comment period after implementation of the regulation and, in the case of the radiology fee schedule, specified that there be close consultation between the agency and affected groups. For reasons explained below, we believe that this procedure is a particularly appropriate means of accommodating the interests and needs of all parties—the agency, the affected groups, and the public at large—in this case.



Publication of an interim rule is necessary in order for us to realize the objectives that Congress intended the radiology fee schedule to achieve. Congress intended the radiology fee schedule to provide for an equitable method of radiology payment under which payment for those radiology procedures determined to be overvalued would be reduced and payment for hitherto undervalued procedures would be increased. The fee schedule was also intended to achieve a three percent budgetary savings. Congress, moreover, believed that the public interest would be served best if this new payment policy were put in place on January 1, 1989. The methodological errors in the conversion factors would have resulted in the underpayment of all procedures, thereby frustrating the goal of equitable payment among radiologists. Therefore, in order to achieve this goal, we felt it necessary to delay implementation of the fee schedule until the errors were corrected. Now that the errors have been corrected, however, we feel it necessary to proceed as promptly as possible.

Were we to go through the traditional notice and comment process, we would have to leave the current radiology payment policy in place for an extended period of time subsequent to the date Congress intended the new payment policy to go into effect. This would make realization of the three percent savings more difficult. It would also be contrary to Congress's admonition that we put the fee schedule in place by January 1, 1989. We believe that our delay to correct the erroneous methodology coupled with publication of this regulation in interim form is necessary to preserve the objectives of equitable payment, cost-savings, fee schedule integrity, and timely implementation to the maximum extent possible.

In addition, the process we have employed in the development of this rule and the process we will employ in the interim between publication of this interim rule and publication of a final rule are more than adequate to ensure that all interested parties have an opportunity to voice their ideas and concerns and have them considered by the agency. As already noted, we have consulted closely and extensively with the American College of Radiology and a variety of other groups through each step of the regulation development process. Nevertheless, we are interested in comments and advice regarding changes that should be made to this interim rule. Therefore, we are providing a 60-day comment period for public comments.

Because of the large number of items of correspondence we normally receive concerning regulations, we cannot acknowledge or respond to the comments individually. However, in preparing the final rule, we will consider all comments that we receive by the date and time specified in the "Dates" section of this preamble, and we will respond to the comments in the preamble of that rule.

*B. Paperwork Reduction Act*

This interim rule does not impose information collection requirements. Consequently, it need not be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3511).

**List of Subjects in 42 CFR Part 405**

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Nursing homes, Reporting and recordkeeping requirements, Rural areas, X-rays.

We are amending 42 CFR Part 405, Subpart E as set forth below:

**CHAPTER IV—HEALTH CARE FINANCING ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Subchapter B—Medicare Program**

**PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED**

1. The authority citation for Part 405, Subpart E is revised to read as follows:

Authority: Secs. 1102, 1814(b), 1832, 1833(a), 1834(b), 1842 (b) and (h), 1861 (b) and (v), 1862(a)(14), 1866(a), 1871, 1881, 1886, 1887, and 1889 of the Social Security Act as amended (42 U.S.C. 1302, 1395f(b), 1395k, 1395l(a), 1395m(b), 1395u (b) and (h), 1395x (b) and (v), 1395y(a)(14), 1395cc(a), 1395hh, 1395rr, 1395ww, 1395xx, and 1395zz).

2. The table of contents for Part 405 Subpart E is amended by revising the title of the subpart, adding the titles for new §§ 405.530 through 405.533, and revising the titles for §§ 405.551 and 405.555, to read as follows:

**Subpart E—Criteria for Determination of Reasonable Charges; Radiology Fee Schedules; and Reimbursement for Services of Hospital Interns, Residents, and Supervising Physicians**

* * * * *

Sec.

405.530 Payment of radiologist services under a fee schedule.

405.531 Basic methodology for calculating radiology fee schedules for calendar year 1989.

405.532 Calculating radiology fee schedules for calendar years after 1989.

405.533 Special rules for nonparticipating physicians furnishing radiology services.

* * * * *

405.551 Payment of charges for physician services in providers: General provisions.

* * * * *

405.555 Payment of charges for radiology services.

* * * * *

3. Section 405.501 is amended by revising paragraph (a), redesignating paragraph (c) as paragraph (d), and adding a new paragraph (c) to read as follows:

**§ 405.501 Determination of reasonable charges.**

(a) Except as specified in paragraphs (b) and (c) of this section, Medicare pays no more for Part B medical and other health services than the "reasonable charge" for such service. The reasonable charge is determined by the carriers (subject to any deductible and co-insurance amounts as specified in §§ 410.152 and 410.160 of this chapter.)

* * * * *

(c) For services furnished on or after April 1, 1989, payment under Medicare Part B for radiologist services is governed by radiology fee schedules that are determined in accordance with the provisions of §§ 405.530 through 405.533.

* * * * *

4. New §§ 405.530 through 405.533 are added to read as follows:

**§ 405.530 Payment of radiologist services under a fee schedule.**

(a) *Purpose.* This section and §§ 405.531 through 405.533 implement sections 1833(a)(1)(J) and 1834(b) of the Act by establishing fee schedules for radiologist services.

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(b) *Method of payment.* For services furnished on or after April 1, 1989, the amount paid under Medicare Part B for radiologist services is 80 percent of the lesser of—

(1) The actual charge; or

(2) The amount provided under the radiology fee schedules.

(c) *Definitions.* For purposes of this subpart, the following definitions apply:

*"Radiology services"* means services represented by—

(1) Level I HCFA Common Procedure Coding System (HCPCS) radiology procedure codes (that is, all codes beginning with the number 7) from the Physicians' Current Procedural Terminology, Fourth Edition (commonly referred to as CPT–4);

(2) Level II HCPCS alpha-numeric "R" codes, including R0070—Transporting of portable x-ray equipment; and

(3) Level III (local assignment) HCPCS radiology codes.

*"Radiologist services"* means radiology services furnished by or under the direct supervision of a physician—

(1) Who is certified, or eligible to be certified, by the American Board of Radiology; or

(2) For whom radiology services account for at least 50 percent of the physician's total amount of charges made under Medicare Part B.

**§ 405.531 Basic methodology for calculating radiology fee schedules for calendar year 1989.**

(a) *General rule.* For services furnished on or after April 1, 1989 and before January 1, 1990, each carrier establishes a radiology fee schedule for each locality in its service area based on a national relative value scale and any appropriate local relative value scale multiplied by locality-specific conversion factors computed as described in paragraphs (b) through (d) of this section.

(b) *Relative value scales.*

(1) *National relative value scale.* HCFA establishes a national scale.

(2) *Local relative value scale.* Each carrier establishes a local scale (at the carrier service area level) for radiology services that are not included in the national scale and that are not reimbursed on an individual or case-by-case basis.

(c) *Conversion factors.* After separating the portable x-ray data from all other data, each carrier establishes two conversion factors for each locality (one for portable x-ray suppliers and another for all other radiology physicians and suppliers) by—

(1) Computing the locality's total Medicare reasonable charges that would have been recognized during 1989 under the reasonable charge methodology (see §§ 405.502 and 405.555(c)(2));

(2) Dividing that amount by the sum of each radiologist service's relative value, multiplied by the 1989 charge year (that is, July 1, 1987 through June 30, 1988) frequency in the locality; and

(3) Multiplying that amount by 97 percent.

**§ 405.532 Calculating radiology fee schedules for calendar years after 1989.**

(a) *Annual update.* Radiology fee schedules for services furnished in a calendar year after 1989 are established by updating the previous calendar year's fee schedules by the percentage increase in the Medicare economic index as described in § 405.504(a)(3)(i).

(b) *Revisions.* Using the methodology set forth in § 405.531, at least every three years—

(1) HCFA establishes new relative values; and

(2) Carriers established new conversion factors.

(c) *New radiology services.* New radiology services are added to the national relative value scale at the time of a revision under the provisions of paragraph (b) of this section. Until they are included on the national relative value scale, these services are paid on the basis of local relative value scales, established by the carriers.

**§ 405.533 Special rules for nonparticipating physicians furnishing radiology services.**

(a) *Fee schedule amounts.* The payment amount recognized under the radiology fee schedules for a nonparticipating physician or a nonparticipating supplier is limited to the applicable percent (as set forth in section 1842(b)(4)(A)(iv) of the Act) of the fee schedule amount.

(b) *Limit on actual charge.* The charge made to a beneficiary by a nonparticipating physician or a nonparticipating supplier for a radiology service for which payment is made under a radiology fee schedule is limited as follows:

(1) In 1989, the charge may not exceed 125 percent of the fee schedule amount applicable to the service.

(2) In 1990, the charge may not exceed 120 percent of the fee schedule amount applicable to the service.

(3) For years after 1990, the charge may not exceed 115 percent of the fee schedule amount applicable to the service.

5. In § 405.550, the introductory text of paragraph (b) is revised, the introductory text of paragraph (e) is republished, and paragraph (e)(1) is revised to read as follows:

**§ 405.550 Conditions for payment of charges for physician services to patients in providers: General provisions.**

* * * * *

(b) *Conditions for payment for services of physicians to provider patients.* The carrier pays for services of physicians to patients of providers on a reasonable charge basis or, for radiologist services, under a fee schedule only if the following requirements are met:

* * * * *

(e) *Effect of physician's assumption of operating costs.* If a physician or other entity enters into an agreement (such as a lease or concession) with a provider, under which the physician (or entity) assumes some or all of the operating costs of the provider department in which the physician furnishes physician services in the provider, the following rules apply:

(1) The carrier makes payment under a radiology fee schedule or on a reasonable charge basis only for a physician's services to an individual patient.

* * * * *

6. Section 405.551 is amended by revising the heading and paragraphs (a) and (f) to read as follows:

**§ 405.551 Payment of charges for physician services in providers: General provisions.**

(a) *Scope.* The carrier determines payment of charges for physician services to patients in providers in accordance with the general rules governing reasonable charge payment in §§ 405.501 through 405.508, except as provided in paragraphs (b) through (f) of this section.

(f) *Rules for certain specialties.* In determining the amount of payment for anesthesiology or radiology services furnished by a physician to an individual patient, the carrier applies the rules in this section and in §§ 405.553 and 405.555 in addition to the general rules governing reasonable charges at §§ 405.501 through 405.508 and the rules concerning payment of radiologist services on a fee schedule basis at §§ 405.530 through 405.533.

7. Section 405.554 is revised to read as follows:

**§ 405.554 Conditions for payment of charges: Radiology services.**

(a) *Services to patients.* The carrier reimburses radiology services furnished by a physician to an individual patient on a radiology fee schedule or reasonable charge basis only if the services meet the conditions for reasonable charge payment in



§ 405.550(b) and are identifiable, direct, and discrete diagnostic or therapeutic services to an individual patient, such as interpretation of X-ray plates, angiograms, myelograms, pyelograms, or ultrasound procedures.

(b) *Services to providers.* The carrier does not pay on a radiology fee schedule or reasonable charge basis for physician services to the provider (for example, administrative or supervisory services) or for provider services needed to produce the X-ray films or other items that are interpreted by the radiologist. However, allowable costs for such services will be paid to the provider by the intermediary. (See § 405.480 for provider costs, and § 405.550(e)(2) for costs borne by a physician, such as under a lease or concession agreement.)

8. In § 405.555, the heading and paragraph (b) are revised, the introductory text of paragraph (c) is republished, and paragraph (c)(1) is revised to read as follows:

**§ 405.555 Payment of charges for radiology services.**

* * * * *

(b) *Services not furnished in providers.* If the services are furnished in a radiologist's office, a freestanding radiology clinic, or any other setting that is not part of a provider, the carrier determines the amount of payment for the services under the general reasonable charge rules in §§ 405.501 through 405.508 or the rules governing payment under a radiology fee schedule in §§ 405.530 through 405.533.

(c) *Services furnished in providers.* If the services are furnished in a hospital radiology department or any other setting that is part of a provider, the following rules apply:

(1) The carrier determines the amount of payment under the payment of charges rules for physician services in providers in § 405.551 and the general reasonable charge rules in §§ 405.501 through 405.508 or the radiology fee schedule rules in §§ 405.30 through 405.533.

* * * * *

(Catalogue for Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance Program)

Dated: February 16, 1989.

**Terry Coleman,**

*Acting Administrator, Health Care Financing Administration.*

Approved: February 24, 1989.

**Don M. Newman,**

*Acting Secretary.*

**Note:** Appendices A, B, and C will not appear in the Code of Federal Regulations.

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APPENDIX A

RADIOLOGY NATIONAL RELATIVE VALUE SCALE

| Proc Code | Description | GLOBAL RVS | PROFESSIONAL RVS | TECHNICAL RVS |
|---|---|---|---|---|
| 70030 | eye for f.b. detect | 2.18 | 0.97 | 1.21 |
| 70100 | mandible,partial,<4 views | 2.56 | 1.02 | 1.52 |
| 70110 | mandible,compl,min 4 views | 3.20 | 1.38 | 1.82 |
| 70120 | mastoids,<3 views per side | 2.86 | 1.02 | 1.82 |
| 70130 | mastoids,compl,>2 views per side | 4.13 | 1.85 | 2.28 |
| 70134 | internal auditory meati, compl | 3.98 | 1.85 | 2.12 |
| 70140 | facial bones,<3 views | 2.87 | 1.05 | 1.82 |
| 70150 | facial bones,compl,>2 views | 3.73 | 1.45 | 2.28 |
| 70160 | nasal bones,compl,>2 views | 2.47 | 0.95 | 1.52 |
| 70170 | dacryocystography,naso-lac duct,s&i | 4.36 | 1.63 | 2.73 |
| 70171 | dacryocystography,naso-lac dt,compl | 7.79 | 5.06 | 2.73 |
| 70190 | optic foramina | 3.01 | 1.19 | 1.82 |
| 70200 | orbits,compl,>3 views | 3.82 | 1.55 | 2.28 |
| 70210 | sinuses, paranasal,up to 2 vws | 2.77 | 0.95 | 1.82 |
| 70220 | sinuses, paranas,compl,3 or more views | 3.66 | 1.38 | 2.28 |
| 70240 | sella turcica | 2.29 | 1.08 | 1.21 |
| 70250 | skull,<4 views, w/wo stereo | 3.18 | 1.35 | 1.82 |
| 70260 | skull,compl,>3 views,w/wo stereo | 4.43 | 1.85 | 2.58 |
| 70300 | teeth,single view | 1.31 | 0.55 | 0.76 |
| 70310 | teeth,part,less than full mouth | 2.07 | 0.86 | 1.21 |
| 70320 | teeth,compl,full mouth | 3.52 | 1.24 | 2.28 |
| 70328 | tmj,open&closed mouth,unilat | 2.46 | 1.02 | 1.44 |
| 70330 | tmj,open&closed mouth,bil | 3.78 | 1.35 | 2.43 |
| 70332 | tmj arthrography,s&i | 9.17 | 3.10 | 6.07 |
| 70333 | tmj arthrography,compl | 14.48 | 8.40 | 6.07 |
| 70350 | cephalogram,orthodontic | 1.97 | 0.91 | 1.06 |
| 70355 | orthopantogram | 2.78 | 1.11 | 1.67 |
| 70360 | neck,soft tissue | 2.15 | 0.94 | 1.21 |
| 70370 | pharynx/larynx,w/fluoro and magnif | 5.56 | 1.77 | 3.79 |
| 70371 | pharynx,/speech eval,cine/video | 10.77 | 4.70 | 6.07 |
| 70373 | laryngography,contrast,s&i | 7.62 | 2.46 | 5.16 |
| 70374 | laryngography,contrast,compl | 11.44 | 6.28 | 5.16 |
| 70380 | salivary gland for calculus | 2.93 | 0.95 | 1.97 |
| 70390 | sialography,s&i | 7.23 | 2.07 | 5.16 |
| 70391 | sialography,compl | 10.66 | 5.50 | 5.16 |
| 70450 | CT,head/brain;w/o contrast material | 19.96 | 4.78 | 15.18 |
| 70460 | CT,head/brain;w/contrast materials | 24.52 | 6.30 | 18.21 |
| 70470 | CT,head/brain;wo/contr,then contr | 29.90 | 7.13 | 22.76 |
| 70480 | CT,orbit,sella,pos fossa/ear;wo/con | 22.36 | 7.19 | 15.18 |
| 70481 | CT,orbit,sella,pos fossa/ear;w/con | 25.95 | 7.74 | 18.21 |
| 70482 | CT,orb,sella,p.fossa,ear;wo/then w/c | 30.89 | 8.13 | 22.76 |
| 70486 | CT maxillofacial,wo/contrast | 21.54 | 6.36 | 15.18 |
| 70487 | CT maxillofacial,w/contrast | 25.48 | 7.27 | 18.21 |
| 70488 | CT face;wo/,then w/contr&other sects. | 30.75 | 7.99 | 22.76 |
| 70490 | CT neck;wo/contrast | 22.36 | 7.19 | 15.18 |

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APPENDIX A

RADIOLOGY NATIONAL RELATIVE VALUE SCALE

| Proc Code | Description | GLOBAL RVS | PROFESSIONAL RVS | TECHNICAL RVS |
|---|---|---|---|---|
| 70491 | CT neck;w/contrast | 25.95 | 7.74 | 18.21 |
| 70492 | CT neck;wo/,then w/contr&furth sec | 30.89 | 8.13 | 22.76 |
| 70540 | MR;orbit,face and neck | 44.34 | 8.29 | 36.04 |
| 70551 | MR;brain (including brain stem) | 44.34 | 8.29 | 36.04 |
| 71010 | chest,single view, frontal | 2.36 | 1.00 | 1.37 |
| 71015 | chest,stereo,frontal | 2.68 | 1.16 | 1.52 |
| 71020 | chest,2 views,frontal and lat | 3.04 | 1.22 | 1.82 |
| 71021 | chest,2 vws,frlat,w/ap lord proc | 3.59 | 1.47 | 2.12 |
| 71022 | chest,2 vws,frlat,w/obl proj | 3.84 | 1.71 | 2.12 |
| 71023 | chest,2 vws,frlat,w/fluor | 4.38 | 2.10 | 2.28 |
| 71030 | chest,compl,min 4 views | 3.99 | 1.71 | 2.28 |
| 71034 | chest,compl,min 4 views, w/fluor | 6.77 | 2.60 | 4.17 |
| 71035 | chest,spec vws,(eg lat decub,Bucky) | 2.51 | 1.00 | 1.52 |
| 71036 | rr-bx intrath les w/fu;fl loc only | 7.65 | 3.10 | 4.55 |
| 71037 | rr-bx intrath les w/fu fils;compl | 19.54 | 14.98 | 4.55 |
| 71038 | fluoro loc transbronch bx/brush | 7.95 | 3.10 | 4.86 |
| 71040 | bronchography,unilat,s&i | 7.54 | 3.29 | 4.25 |
| 71041 | bronchography,unilat,compl | 13.12 | 8.87 | 4.25 |
| 71060 | bronchography,bil,s&i | 10.52 | 4.15 | 6.37 |
| 71061 | bronchography,bil,compl | 16.11 | 9.73 | 6.37 |
| 71090 | insert pacemaker,fluor&rad,s&i | 7.95 | 3.10 | 4.86 |
| 71100 | ribs,unilat,2 views | 2.91 | 1.24 | 1.67 |
| 71101 | ribs,unilat,w/post/ant chest,>2 vws | 3.47 | 1.49 | 1.97 |
| 71110 | ribs,bil,3 views | 3.77 | 1.49 | 2.28 |
| 71111 | ribs,bil;w/p-a/p chest,min 4 views | 4.32 | 1.74 | 2.58 |
| 71120 | sternum,min 2 views | 3.00 | 1.11 | 1.90 |
| 71130 | sternoclav jt/s,min 3 vws | 3.27 | 1.22 | 2.05 |
| 71250 | CT,thorax;wo/contrast | 25.47 | 6.50 | 18.97 |
| 71260 | CT,thorax;w/contrast | 29.73 | 6.97 | 22.76 |
| 71270 | CT,thorax;wo/,then w/contr&sections | 36.20 | 7.74 | 28.46 |
| 71550 | MR;chest | 45.03 | 8.99 | 36.04 |
| 72010 | spine,entire,survey,a/p and lat | 5.44 | 2.48 | 2.96 |
| 72020 | spine,single vw, specify level | 2.03 | 0.82 | 1.21 |
| 72040 | spine,cx, a/p and lat | 2.96 | 1.22 | 1.75 |
| 72050 | spine,cx; min 4 vws | 4.29 | 1.71 | 2.58 |
| 72052 | spine,cx,compl,w/obl&flex,&/ext st | 5.23 | 1.96 | 3.26 |
| 72070 | spine,thor,a/p and lat | 3.11 | 1.22 | 1.90 |
| 72072 | spine,thor,a/p &lat,w/swim cx/th jx | 3.34 | 1.22 | 2.12 |
| 72074 | spine,thor,compl,w/obl,min 4 vws | 3.87 | 1.22 | 2.66 |
| 72080 | spine,thor-lumb,a/p and lat | 3.19 | 1.22 | 1.97 |
| 72090 | spine,scoliosis st/ w/sup & erect | 3.49 | 1.52 | 1.97 |
| 72100 | spine,ls,a/p and lat | 3.19 | 1.22 | 1.97 |
| 72110 | spine, ls,compl w/obl vws | 4.37 | 1.71 | 2.66 |
| 72114 | spine,ls,compl w/ bending vws | 5.38 | 1.96 | 3.41 |
| 72120 | spine,ls,bending vws only,min 4 | 3.80 | 1.22 | 2.58 |

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RADIOLOGY NATIONAL RELATIVE VALUE SCALE

| Proc Code | Description | GLOBAL RVS | PROFESSIONAL RVS | TECHNICAL RVS |
|---|---|---|---|---|
| 72125 | CT,cervical spine;wo/contrast | 25.47 | 6.50 | 18.97 |
| 72126 | CT,cervical spine;w/contrast | 29.59 | 6.83 | 22.76 |
| 72127 | CT,cerv.spine;wo/,then w/contr&sections | 35.59 | 7.13 | 28.46 |
| 72128 | CT,thoracic spine;wo/contrast | 25.47 | 6.50 | 18.97 |
| 72129 | CT,thoracic spine;w/contrast | 29.59 | 6.83 | 22.76 |
| 72130 | CT,thor.spine;wo/ then w/contr&sections | 35.59 | 7.13 | 28.46 |
| 72131 | CT,lumbar spine; wo/contrast | 25.47 | 6.50 | 18.97 |
| 72132 | CT,lumbar spine;w/contrast | 29.59 | 6.83 | 22.76 |
| 72133 | CT,lum.spine;wo/ then w/contr&sect | 35.59 | 7.13 | 28.46 |
| 72141 | MR,spinal canal and contents;cerv. | 45.03 | 8.99 | 36.04 |
| 72143 | MR,spinal canal and contents;thor. | 45.03 | 8.99 | 36.04 |
| 72144 | MR;spinal canal and contents;lum. | 44.34 | 8.29 | 36.04 |
| 72170 | pelvis, a/p only | 2.41 | 0.89 | 1.52 |
| 72180 | pelvis,stereo | 2.55 | 1.03 | 1.52 |
| 72190 | pelvis,compl,min 3 vws | 3.14 | 1.17 | 1.97 |
| 72192 | CT,pelvis;wo/contrast | 25.03 | 6.05 | 18.97 |
| 72193 | CT,pelvis;w/contrast | 28.50 | 6.50 | 22.01 |
| 72194 | CT,pelvis;wo/ then w/contr&sections | 34.15 | 6.83 | 27.32 |
| 72196 | MR;pelvis | 45.03 | 8.99 | 36.04 |
| 72200 | sacroiliac jts, <3 views | 2.50 | 0.98 | 1.52 |
| 72202 | sacroiliac jts,3 or more vws | 2.90 | 1.08 | 1.82 |
| 72220 | sacrum&coccyx,min 2 views | 2.64 | 0.97 | 1.67 |
| 72285 | diskography,cx,s&i | 28.90 | 4.62 | 24.28 |
| 72286 | diskography,cx,compl | 39.65 | 15.37 | 24.28 |
| 72295 | diskography,lumbar,s&i | 27.38 | 4.62 | 22.76 |
| 72296 | diskography,lumbar,compl | 38.14 | 15.37 | 22.76 |
| 73000 | clavicle,compl | 2.36 | 0.85 | 1.52 |
| 73010 | scapula,compl | 2.46 | 0.94 | 1.52 |
| 73020 | shoulder, 1 view | 2.16 | 0.88 | 1.37 |
| 73030 | shoulder,compl, min 2 views | 2.66 | 0.99 | 1.67 |
| 73040 | shoulder,arthrography,s&i | 9.17 | 3.10 | 6.07 |
| 73041 | shoulder,arthrography,compl | 13.07 | 6.99 | 6.07 |
| 73050 | acromioclav jt,bil,w/wo wgted distr | 3.86 | 1.89 | 1.97 |
| 73060 | humerus,min 2 views | 2.56 | 0.90 | 1.67 |
| 73070 | elbow, a/p and lat | 2.34 | 0.82 | 1.52 |
| 73080 | elbow,compl, min 3 views | 2.64 | 0.97 | 1.67 |
| 73085 | elbow,arthrography,s&i | 9.17 | 3.10 | 6.07 |
| 73086 | elbow,arthrography,compl | 13.07 | 6.99 | 6.07 |
| 73090 | forearm, a/p and lat | 2.39 | 0.87 | 1.52 |
| 73092 | upper ext, infant, min 2 views | 2.27 | 0.83 | 1.44 |
| 73100 | wrist, a/p and lat | 2.27 | 0.83 | 1.44 |
| 73110 | wrist, compl, min 3 views | 2.56 | 0.97 | 1.59 |
| 73115 | wrist,arthrography,s&i | 7.65 | 3.10 | 4.55 |
| 73116 | wrist,arthrography,compl | 11.55 | 6.99 | 4.55 |
| 73120 | hand, 2 views | 2.27 | 0.83 | 1.44 |





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RADIOLOGY NATIONAL RELATIVE VALUE SCALE

| Proc Code | Description | GLOBAL RVS | PROFESSIONAL RVS | TECHNICAL RVS |
|---|---|---|---|---|
| 73130 | hand, min 3 views | 2.56 | 0.97 | 1.59 |
| 73140 | finger or fingers, min 2 views | 1.91 | 0.69 | 1.21 |
| 73200 | CT,upper extremity;wo/contrast | 21.99 | 6.05 | 15.94 |
| 73201 | CT,upper extremity;w/contrast | 25.47 | 6.50 | 18.97 |
| 73202 | CT,upp ext;wo/ then w/contr&sections | 30.73 | 6.83 | 23.90 |
| 73220 | MR,upper-extremity | 44.34 | 8.29 | 36.04 |
| 73500 | hip, unilat, one view | 2.28 | 0.91 | 1.37 |
| 73510 | hip,compl,min 2 views | 2.83 | 1.16 | 1.67 |
| 73520 | hips,bil,min 2vws each hip,w/ap pelv | 3.41 | 1.44 | 1.97 |
| 73525 | hip,arthrography,s&i | 9.17 | 3.10 | 6.07 |
| 73526 | hip,arthrography,compl | 13.07 | 6.99 | 6.07 |
| 73530 | hip, during OR proc | 3.12 | 1.60 | 1.52 |
| 73540 | pelvis &hips,infant/child,min 2 vws | 2.80 | 1.13 | 1.67 |
| 73550 | femur,a/p and lat | 2.62 | 0.95 | 1.67 |
| 73560 | knee,a/p and lat | 2.40 | 0.88 | 1.52 |
| 73562 | knee,a/p and lat, w/obl(s),min 3vws | 2.69 | 1.02 | 1.67 |
| 73564 | knee,compl,w/obl(s),&/tun,pat,stndg | 3.07 | 1.24 | 1.82 |
| 73580 | knee,arthrography,s&i | 10.68 | 3.10 | 7.59 |
| 73581 | knee,arthrography,compl | 15.33 | 7.74 | 7.59 |
| 73590 | tibia and fibula, a/p and lat | 2.40 | 0.88 | 1.52 |
| 73592 | lower ext,infant, min 2 views | 2.27 | 0.83 | 1.44 |
| 73600 | ankle, a/p and lat | 2.27 | 0.83 | 1.44 |
| 73610 | ankle, compl, min 3 views | 2.56 | 0.97 | 1.59 |
| 73615 | ankle,arthrography,s&i | 9.17 | 3.10 | 6.07 |
| 73616 | ankle,arthrography,compl | 13.07 | 6.99 | 6.07 |
| 73620 | foot, a/p and lat | 2.27 | 0.83 | 1.44 |
| 73630 | foot, compl, min 3 views | 2.56 | 0.97 | 1.59 |
| 73650 | calcaneus, min 2 views | 2.20 | 0.83 | 1.37 |
| 73660 | toe/toes, min 2 views | 1.91 | 0.69 | 1.21 |
| 73700 | CT,lower extremity;wo/contrast | 21.99 | 6.05 | 15.94 |
| 73701 | CT, lower extremity, w/contrast | 25.47 | 6.50 | 18.97 |
| 73702 | CT,low ext;wo/ then w/contr&sections | 30.73 | 6.83 | 23.90 |
| 73720 | MR,lower extremity | 44.34 | 8.29 | 36.04 |
| 74000 | abdomen, single a/p | 2.51 | 1.00 | 1.52 |
| 74010 | abdomen, a/p and add obl & cone vws | 2.93 | 1.26 | 1.67 |
| 74020 | abdomen,compl,w/decub &/ erect | 3.31 | 1.49 | 1.82 |
| 74022 | abd;compl ac abd w/sup,erct,&/dec | 3.87 | 1.74 | 2.12 |
| 74150 | CT,abdomen;wo/ contrast | 24.85 | 6.64 | 18.21 |
| 74160 | CT,abdomen;w/ contrast | 29.14 | 7.13 | 22.01 |
| 74170 | CT,abdomen;wo/ then w/contr&sections | 35.17 | 7.85 | 27.32 |
| 74181 | MR,abdomen | 45.03 | 8.99 | 36.04 |
| 74210 | pharynx &/cx esoph | 5.35 | 1.94 | 3.41 |
| 74220 | esophagus | 6.04 | 2.63 | 3.41 |
| 74230 | swallow fxn,phar&/esop,w/cine&/vid | 6.84 | 3.04 | 3.79 |
| 74235 | rem fb esoph w/ball cath w/fluoro | 14.22 | 6.64 | 7.59 |

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| Proc Code | Description | GLOBAL RVS | PROFESSIONAL RVS | TECHNICAL RVS |
|---|---|---|---|---|
| 74240 | UGI;w/wo delay film,wo/KUB | 8.12 | 3.87 | 4.25 |
| 74241 | UGI;w/wo delay film,w/KUB | 8.20 | 3.87 | 4.33 |
| 74245 | UGI;w/sm bowel,w/mult series | 12.02 | 5.11 | 6.91 |
| 74246 | UGI,aircont w/wo gluc/delay,wo/KUB | 8.65 | 3.87 | 4.78 |
| 74247 | UGI,aircont w/wo gluc/delay,w/KUB | 8.73 | 3.87 | 4.86 |
| 74249 | ugi,aircon,w/wo gluc;w/sm b follow | 12.55 | 5.11 | 7.44 |
| 74250 | small bowel,w/mult serial vws | 6.44 | 2.64 | 3.79 |
| 74260 | duodenography, hypotonic | 7.17 | 2.85 | 4.33 |
| 74270 | colon, barium enema | 8.80 | 3.87 | 4.93 |
| 74280 | colon;air contr w/hi dens,w/wo glu | 11.98 | 5.53 | 6.45 |
| 74290 | cholecystography,oral contrast | 3.87 | 1.74 | 2.12 |
| 74291 | cholcystog,or con;add/rpt/mult day | 2.32 | 1.11 | 1.21 |
| 74305 | cholangiogr&/pancreatog,post-op | 4.63 | 2.35 | 2.28 |
| 74310 | cholangiogr&/pancreatog,iv | 6.72 | 2.93 | 3.79 |
| 74315 | cholangiogr&/pancreatog,oral contr | 5.76 | 1.96 | 3.79 |
| 74320 | cholangiogram, percu, transhep, s&i | 12.20 | 3.10 | 9.11 |
| 74321 | cholangiogram,percu,transhep,compl | 24.09 | 14.98 | 9.11 |
| 74328 | endocath bil ductal sys,fl mon&rad | 13.03 | 3.93 | 9.11 |
| 74329 | endocath pancr duct sys,fl mon&rad | 13.03 | 3.93 | 9.11 |
| 74330 | endocath bil/pancr duct ,fl mon&rad | 13.03 | 3.93 | 9.11 |
| 74340 | intro long gi tube, rad guide only | 10.68 | 3.10 | 7.59 |
| 74350 | percu place g-tube,rad guide only | 13.36 | 4.26 | 9.11 |
| 74351 | percu place g-tube,complete | 30.65 | 23.06 | 7.59 |
| 74355 | percu pl enterocly tube,rad guid only | 11.85 | 4.26 | 7.59 |
| 74356 | percu pl enterocly tube;compl | 30.65 | 23.06 | 7.59 |
| 74360 | intralum dil strct&/obs;radguid only | 12.20 | 3.10 | 9.11 |
| 74361 | intralum dil strct&/obs;compl | 31.91 | 22.81 | 9.11 |
| 74400 | IVP w/wo KUB | 7.62 | 2.76 | 4.86 |
| 74405 | IVP, w/wo KUB,w/htn contr&/clear st | 8.53 | 2.76 | 5.77 |
| 74410 | urography,infusion, drip &/bolus | 8.38 | 2.76 | 5.62 |
| 74415 | urography,infus,drip&/bol,w/nephrot | 8.91 | 2.76 | 6.15 |
| 74420 | urography,retro,w/wo kub | 9.52 | 1.94 | 7.59 |
| 74425 | urography, antegr, s&i | 5.73 | 1.94 | 3.79 |
| 74426 | urography,antegr,compl | 7.80 | 4.01 | 3.79 |
| 74430 | cystography, min 3 views, s&i | 4.78 | 1.74 | 3.04 |
| 74431 | cystography,min 3 views, compl | 6.30 | 3.26 | 3.04 |
| 74440 | vaso,vesiculo,/epididymography,s&i | 5.34 | 2.07 | 3.26 |
| 74441 | vaso,vesiculo,/epididymography,compl | 7.41 | 4.15 | 3.26 |
| 74445 | corpora cavernosography,s&i | 9.65 | 6.39 | 3.26 |
| 74446 | corpora cavernosography,compl | 25.82 | 22.56 | 3.26 |
| 74450 | urethrocystography, retro, s&i only | 6.05 | 1.80 | 4.25 |
| 74451 | urethrocystography,retro, compl | 7.71 | 3.46 | 4.25 |
| 74455 | urethrocystography, voiding, s&i only | 6.35 | 1.80 | 4.55 |
| 74456 | urethrocystography,voiding, compl | 8.42 | 3.87 | 4.55 |
| 74470 | renal cyst st, translum,cont vis, s&i | 6.74 | 3.10 | 3.64 |





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| Proc Code | Description | GLOBAL RVS | PROFESSIONAL RVS | TECHNICAL RVS |
|---|---|---|---|---|
| 74471 | renalcyst st,translum,cont vis,compl | 18.60 | 14.96 | 3.64 |
| 74485 | dil nephrostomy/uret w/mon&rad,s&i | 12.20 | 3.10 | 9.11 |
| 74486 | dil nephrostomy,uret w/mon&rad,compl | 38.11 | 29.00 | 9.11 |
| 74710 | pelvimetry,w/wo placental local | 4.92 | 1.88 | 3.04 |
| 74720 | abd,fet age,pos&/plac loc;single vw | 2.59 | 1.07 | 1.52 |
| 74725 | abd,fetal age,pos&/plac loc,mult | 3.33 | 1.36 | 1.97 |
| 74740 | hysterosalpingography;s&i | 5.87 | 2.07 | 3.79 |
| 74741 | hysterosalpingography;compl | 9.63 | 5.83 | 3.79 |
| 74775 | perineogram(eg vaginogram for anom) | 7.76 | 3.51 | 4.25 |
| 75552 | MR,myocardium | 45.03 | 8.99 | 36.04 |
| 75898 | angio thr exist cth,f/u tx/emb/inf | 12.30 | 9.26 | 3.04 |
| 75984 | change percu cath w/contr mon,s&i | 9.68 | 4.06 | 5.62 |
| 75985 | change percu cath w/contr mon;compl | 16.43 | 10.81 | 5.62 |
| 75990 | drain abscess,percu,w/rad,w/wo cath | 38.25 | 29.14 | 9.11 |
| 76000 | fluoro,to 1hr nd time(not chest) | 4.68 | 0.88 | 3.79 |
| 76001 | fluoro,nd time >1 hr,asst nonrad nd | 11.38 | 3.79 | 7.59 |
| 76003 | fluoro loc needle bx/nab | 6.89 | 3.10 | 3.79 |
| 76010 | nose to rectum,fb, 1 film,child | 2.51 | 1.00 | 1.52 |
| 76020 | bone age studies | 2.60 | 1.08 | 1.52 |
| 76040 | bone length studies | 3.77 | 1.49 | 2.28 |
| 76061 | osseous survey,limited | 5.40 | 2.52 | 2.88 |
| 76062 | osseous survey;complete [illegible] | 7.27 | 3.10 | 4.17 |
| 76065 | osseous survey,infant | 3.65 | 1.52 | 2.12 |
| 76066 | joint sur,1 vw,1/more jt,(specify) | 4.90 | 1.71 | 3.19 |
| 76070 | CT,bone dens[illegible] | 10.87 | 1.38 | 9.49 |
| 76080 | fistula/sinus tract;s&i | 6.13 | 3.10 | 3.04 |
| 76081 | fistula/sinus tract;compl | 8.21 | 5.17 | 3.04 |
| 76086 | mammary duct/galactogram,single,s&i | 9.58 | 1.99 | 7.59 |
| 76087 | mammary duct/galactogram,single,comp | 12.56 | 4.98 | 7.59 |
| 76088 | mammary duct/galactogr,mult duc,s&i | 13.14 | 2.52 | 10.62 |
| 76089 | mammary duct/galactogr,mult,compl | 16.93 | 6.30 | 10.62 |
| 76090 | mammography,unilateral | 4.42 | 1.38 | 3.04 |
| 76091 | mammography,bilateral | 6.06 | 2.27 | 3.79 |
| 76096 | loc breast mass,pre-op,w/rad/US | 13.09 | 5.50 | 7.59 |
| 76097 | loc breast mass,pre-op,each add loc | 6.16 | 3.12 | 3.04 |
| 76098 | breast, surgical specimen | 2.04 | 0.83 | 1.21 |
| 76100 | single plane body sect exc kidney | 6.96 | 3.32 | 3.64 |
| 76101 | complex motion body exc kidney; unil | 7.42 | 3.32 | 4.10 |
| 76102 | complx motion body exc kidney;bil | 8.33 | 3.32 | 5.01 |
| 76120 | cinerad,except where spec included | 5.14 | 2.10 | 3.04 |
| 76125 | cinerad to complem routine exam | 3.74 | 1.47 | 2.28 |
| 76150 | xeroradiography | 1.21 | NO PC | 1.21 |
| 76355 | ct guide stereotactic loc | 33.36 | 6.80 | 26.56 |
| 76360 | ct guide needle bx,s&i | 33.03 | 6.47 | 26.56 |
| 76361 | ct guide needle bx,compl | 44.92 | 18.36 | 26.56 |

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| Proc Code | Description | GLOBAL RVS | PROFESSIONAL RVS | TECHNICAL RVS |
|---|---|---|---|---|
| 76365 | ct guide cyst aspir, s&i | 33.03 | 6.47 | 26.56 |
| 76366 | ct guide cyst aspir, compl | 44.92 | 18.36 | 26.56 |
| 76370 | ct guide place of rad tx flds | 14.27 | 4.78 | 9.49 |
| 76375 | CT coron,sagit,mltpl,obl&/3d recon | 12.21 | 0.83 | 11.38 |
| 76400 | MR,bone marrow blood supply | 45.03 | 8.99 | 36.04 |
| 76506 | echoencephalogr,Bscan&/rl t,w/imdoc | 7.66 | 3.57 | 4.10 |
| 76511 | ophthal US,echo;Amode,sp an w/wrp q | 6.74 | 3.10 | 3.64 |
| 76512 | ophthal US,echo;Bscan | 8.13 | 3.73 | 4.40 |
| 76513 | opthal US;immersion Bscan | 8.13 | 3.73 | 4.40 |
| 76516 | ophthal. biometry by U/S echo,Amode | 6.71 | 3.07 | 3.64 |
| 76519 | ophthal.bio.w/intraoc lens pwr calc | 6.71 | 3.07 | 3.64 |
| 76529 | ophthal.U/S foreign body local | 7.21 | 3.26 | 3.95 |
| 76536 | echo,head&neck,Bscan&/rl t,w/im doc | 7.28 | 3.18 | 4.10 |
| 76604 | echo,chest,Bscan w/medi&/rl t w/im doc | 6.95 | 3.15 | 3.79 |
| 76620 | echocardiography,Mmode,complete | 6.71 | 2.76 | 3.95 |
| 76625 | echocardiography,limited | 4.40 | 1.52 | 2.88 |
| 76627 | echocardiogr,rl t w/im doc(2D);comp | 9.76 | 4.45 | 5.31 |
| 76628 | echocardiogr,rl t w/im doc(2D);ltd | 7.21 | 3.26 | 3.95 |
| 76629 | echocardiogr,Mmode&rl t w/im doc(2D) | 11.10 | 5.34 | 5.77 |
| 76632 | echocardiography,doppler | 7.21 | 3.26 | 3.95 |
| 76645 | echo,breast(s),Bscan&/rl t w/im doc | 6.10 | 3.07 | 3.04 |
| 76700 | echo abd,Bscan&/rl t w/im doc;compl | 10.20 | 4.51 | 5.69 |
| 76705 | echo,abd,Bscan&/rl t w/im doc;ltd | 7.44 | 3.35 | 4.10 |
| 76770 | echo,retroper,Bscn&/rl t w/im d;comp | 9.84 | 4.15 | 5.69 |
| 76775 | echo,retroper,Bscn&/rl t w/im d;ltd | 7.42 | 3.32 | 4.10 |
| 76805 | echo,preg ut,Bscn&/rl t w/im d;compl | 11.60 | 5.53 | 6.07 |
| 76815 | echo,preg ut,Bscn&/rl t w/im d;ltd | 7.75 | 3.65 | 4.10 |
| 76816 | echo,preg ut,Bscn&/rl w/im;F/U /rpt | 6.45 | 3.26 | 3.19 |
| 76818 | fetal biophysical profile | 8.99 | 4.29 | 4.70 |
| 76825 | echocardiog,fetal heart in utero | 9.95 | 4.26 | 5.69 |
| 76855 | echography,pelvic area(Doppler) | 7.53 | 3.43 | 4.10 |
| 76856 | echo,pelv(non-OB),Bscn&/rl t;compl | 8.30 | 3.90 | 4.40 |
| 76857 | echo,pelv(n-OB),Bscn&/rl t;ltd/F/U | 5.11 | 2.07 | 3.04 |
| 76870 | echography,scrotum and contents | 8.00 | 3.59 | 4.40 |
| 76880 | echography,extrem,Bscn&/rl t w/im doc | 7.44 | 3.35 | 4.10 |
| 76925 | imaging,periph.(Bscan/Dop/rl t scan) | 8.88 | 4.17 | 4.70 |
| 76926 | imaging,head&trunk(eg dupl Doppler) | 8.88 | 4.17 | 4.70 |
| 76930 | U/S guide pericardiocentesis;s&i | 8.16 | 3.76 | 4.40 |
| 76931 | U/S guide pericardiocentesis;compl | 16.46 | 12.05 | 4.40 |
| 76934 | U/S guide thoracentesis;s&i | 8.16 | 3.76 | 4.40 |
| 76935 | U/S guide thoracentesis;compl | 13.41 | 9.01 | 4.40 |
| 76938 | U/S guide cyst(any)/renpel asp;s&i | 8.16 | 3.76 | 4.40 |
| 76939 | U/S guide cyst(any)/renpl asp;compl | 20.05 | 15.65 | 4.40 |
| 76942 | U/S guide needle bx;s&i | 8.16 | 3.76 | 4.40 |
| 76943 | U/S guide needle bx;compl | 20.05 | 15.65 | 4.40 |





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RADIOLOGY NATIONAL RELATIVE VALUE SCALE

| Proc Code | Description | GLOBAL RVS | PROFESSIONAL RVS | TECHNICAL RVS |
|---|---|---|---|---|
| 76944 | U/S guide abscess/collect dr;s&i | 8.16 | 3.76 | 4.40 |
| 76945 | U/S guide abscess/collect dr;compl | 29.73 | 25.32 | 4.40 |
| 76946 | U/S guide amniocentesis;s&i | 6.47 | 2.07 | 4.40 |
| 76947 | U/S guide amniocentesis;compl | 14.58 | 10.17 | 4.40 |
| 76948 | U/S guide aspirate ova;s&i | 6.47 | 2.07 | 4.40 |
| 76949 | U/S guide aspirate ova;compl | 14.58 | 10.17 | 4.40 |
| 76950 | echo,place rad tx flds,Bscan | 7.11 | 3.32 | 3.79 |
| 76960 | U/S guid pl radtx fld(exc Bscn echo) | 7.11 | 3.32 | 3.79 |
| 76970 | U/S study follow-up(specify) | 5.25 | 2.21 | 3.04 |
| 76986 | echo, intraoperative | 14.36 | 6.77 | 7.59 |
| 76991 | U/S,intraluminal,(eg transrect/vag) | 8.30 | 3.90 | 4.40 |
| 77261 | th rad tx planning;simple | 7.82 | 7.82 | 0.00 |
| 77262 | th rad tx planning;intermed | 11.78 | 11.78 | 0.00 |
| 77263 | th rad tx planning;complex | 17.56 | 17.56 | 0.00 |
| 77280 | th rad simul-aid fld setting;simple | 12.73 | 3.91 | 8.82 |
| 77285 | th rad simul-aid fld setting;interm | 19.96 | 5.83 | 14.13 |
| 77290 | th rad simul-aid fld setting;cmplx | 25.23 | 8.75 | 16.48 |
| 77300 | rad dosim calcul,as req during tx | 6.90 | 3.50 | 3.40 |
| 77305 | teletx,isodose plan;simple(1-2 prt) | 8.61 | 3.91 | 4.70 |
| 77310 | teletx,isodose plan;interm(>2prts) | 11.72 | 5.83 | 5.89 |
| 77315 | teletx,isod pl;cmplx(mant,tang/etc) | 15.47 | 8.75 | 6.72 |
| 77321 | spec teletx port pl,partic/hemi/tot | 15.54 | 5.31 | 10.23 |
| 77326 | brachyth isodose calcul,simple | 11.19 | 5.19 | 6.00 |
| 77327 | brachyth isodose calcul,intermed | 16.64 | 7.82 | 8.82 |
| 77328 | brachyth isodose calcul,complex | 24.25 | 11.67 | 12.58 |
| 77331 | spec dosimetry(Specify)(TLD,micro) | 6.20 | 4.90 | 1.30 |
| 77332 | tx devices,design&constr,simple | 6.49 | 3.09 | 3.40 |
| 77333 | tx devices,design&constr,intermed | 9.48 | 4.67 | 4.81 |
| 77334 | tx devices,design&constr,complex | 15.18 | 6.94 | 8.24 |
| 77336 | cont rad phys cons sup th rad w/QA | 7.56 | 4.96 | 2.60 |
| 77370 | special med rad physics consult | 8.87 | 6.88 | 1.99 |
| 77420 | weekly megavolt tx manage,simple | 31.42 | 9.01 | 22.41 |
| 77425 | weekly megavolt tx manage,intermed | 40.21 | 13.66 | 26.55 |
| 77430 | weekly megavolt tx manage,complex | 49.62 | 20.18 | 29.44 |
| 77465 | daily k-volt tx mgmt | 6.36 | 1.88 | 4.48 |
| 77470 | spec tx proc(tot/hemibod/p-os/vag) | 39.92 | 11.67 | 28.25 |
| 77600 | hyperthermia,ext gen,superf(4/less) | 17.57 | 8.75 | 8.82 |
| 77605 | hyperthermia,ext gen, deep(>4cm) | 23.42 | 11.67 | 11.75 |
| 77610 | hyperthermia interstit probe;5/less | 17.57 | 8.75 | 8.82 |
| 77615 | hyperthermia interstit probe;>5appl | 23.42 | 11.67 | 11.75 |
| 77620 | hypertherm gen by intracav probe(s) | 17.57 | 8.75 | 8.82 |
| 77750 | infusion/instill radioelem sol | 29.54 | 25.67 | 3.87 |
| 77761 | intracav radioelem applic;simple | 26.31 | 19.95 | 6.36 |
| 77762 | intracav radioelem applic;interm | 39.16 | 29.98 | 9.18 |
| 77763 | intracav radioelem applic;complex | 56.28 | 44.86 | 11.42 |

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RADIOLOGY NATIONAL RELATIVE VALUE SCALE

| Proc Code | Description | GLOBAL RVS | PROFESSIONAL RVS | TECHNICAL RVS |
|---|---|---|---|---|
| 77776 | interstit radioelem appl;simple | 32.38 | 26.08 | 6.30 |
| 77777 | interstit radioelem appl;interm | 59.39 | 39.14 | 12.25 |
| 77778 | interstit radioelem appl;complex | 73.45 | 58.63 | 14.82 |
| 77789 | surface application radioelement | 7.13 | 5.83 | 1.30 |
| 77790 | supervision,handling load radioelem | 7.13 | 5.83 | 1.30 |
| 78000 | thyroid uptake;single determination | 3.86 | 1.05 | 2.81 |
| 78001 | thyroid uptake;mult. determination | 5.23 | 1.44 | 3.79 |
| 78003 | thyr uptake;stim/supp/disc(wo/init) | 4.63 | 1.82 | 2.81 |
| 78006 | thyroid imag w/uptake,single deter. | 9.67 | 2.76 | 6.91 |
| 78007 | thyroid imag w/uptake,mult.deters | 10.31 | 2.88 | 7.44 |
| 78010 | thyroid imaging;only | 7.42 | 2.18 | 5.24 |
| 78011 | thyroid imaging w/vascular flow | 9.55 | 2.57 | 6.98 |
| 78015 | thyr ca met imaging;ltd(eg nk&chst) | 11.22 | 3.79 | 7.44 |
| 78016 | thyr ca met imag;w/add st(eg ur reg) | 16.68 | 6.59 | 10.09 |
| 78017 | thyr ca met imaging;mult areas | 15.64 | 6.87 | 10.78 |
| 78018 | thyr ca met imaging;whole body | 21.82 | 5.31 | 15.71 |
| 78075 | adrenal imaging;cortical | 19.88 | 4.17 | 15.71 |
| 78102 | bone marrow imag.;ltd area | 9.04 | 3.12 | 5.92 |
| 78103 | bone marrow imag.;mult. areas | 13.38 | 4.20 | 9.18 |
| 78104 | bone marrow imag.;whole body | 16.24 | 4.48 | 11.76 |
| 78110 | plasma vol,RN vol dil tech(sep);1 samp | 3.78 | 1.05 | 2.73 |
| 78111 | plasma vol,RN vol dil tech;mult samp | 8.68 | 1.24 | 7.44 |
| 78120 | red cell vl determ.(sep proc);1 samp | 6.28 | 1.27 | 5.01 |
| 78121 | red cell vl deter.;mult. sampl | 10.19 | 1.77 | 8.42 |
| 78122 | wh bld vol dtm,w/sep plasma&RBC vol | 15.84 | 2.49 | 13.36 |
| 78130 | red cell survival study | 11.73 | 3.46 | 8.27 |
| 78135 | red cell surv;w/spleen&/hep seques | 17.71 | 3.59 | 14.11 |
| 78140 | red cell spleen&/hepatic sequestration | 14.84 | 3.46 | 11.38 |
| 78160 | plasma iron disapp. | 12.42 | 1.80 | 10.62 |
| 78162 | iron oral absorp | 11.75 | 2.49 | 9.26 |
| 78170 | iron red cell util. | 17.70 | 2.29 | 15.40 |
| 78185 | spleen imaging only | 9.06 | 2.21 | 6.83 |
| 78186 | spleen imag. only w/vascular flow | 10.97 | 2.63 | 8.35 |
| 78191 | platelet survival | 24.70 | 3.66 | 21.25 |
| 78192 | WBC localization,tim area | 16.32 | 6.45 | 9.86 |
| 78193 | WBC localization;whole body | 33.15 | 4.92 | 28.23 |
| 78195 | lymphatics & lymph glands imaging | 15.72 | 3.95 | 11.76 |
| 78201 | liver imaging;static only | 9.26 | 2.43 | 6.83 |
| 78202 | liver imaging w/ vascular flow | 11.25 | 2.90 | 8.35 |
| 78205 | liver imaging SPECT | 21.08 | 4.01 | 17.07 |
| 78215 | liver & spleen imaging;static only | 11.26 | 2.78 | 8.50 |
| 78216 | liver&spleen imag;w/vascular flow | 13.33 | 3.23 | 10.09 |
| 78220 | liver fxn w/hep-bil ag,w/serial im | 13.57 | 2.79 | 10.78 |
| 78223 | hep-bil duct syst imag w/gallbl | 15.38 | 4.67 | 10.62 |
| 78225 | liver-lung imag(eg subphr absc) | 14.50 | 3.04 | 11.46 |





APPENDIX A

RADIOLOGY NATIONAL RELATIVE VALUE SCALE

| Proc Code | Description | GLOBAL RVS | PROFESSIONAL RVS | TECHNICAL RVS |
|---|---|---|---|---|
| 78230 | salivary gland imaging | 8.87 | 2.57 | 6.30 |
| 78231 | salivary gland imag;w/serial imag | 12.14 | 2.96 | 9.18 |
| 78232 | salivary gland fun study | 12.93 | 2.68 | 10.24 |
| 78258 | esophageal motility | 12.49 | 4.15 | 8.35 |
| 78261 | gastric mucosa imaging | 15.71 | 3.87 | 11.84 |
| 78262 | gastroesophageal reflux study | 16.11 | 3.82 | 12.29 |
| 78264 | gastric emptying study | 16.28 | 4.37 | 11.91 |
| 78270 | vit.B12 absorp(eg Schill.);wo/int f | 5.61 | 1.13 | 4.48 |
| 78271 | vit.B12 absorp(eg Schill);w/int f | 5.91 | 1.13 | 4.78 |
| 78272 | vit.B12 absorp.w/&w/o intrinsic fact | 8.17 | 1.49 | 6.68 |
| 78276 | GI esp. blood loss loc. | 13.27 | 4.01 | 9.26 |
| 78278 | acute GI blood loss imaging | 19.64 | 5.53 | 14.11 |
| 78280 | GI blood loss study(eg stool ct) | 11.51 | 2.10 | 9.41 |
| 78290 | bowel imag(eg ect gast muc/Meckels) | 12.65 | 3.84 | 8.80 |
| 78291 | perit-venous shnt patency(egLeVeen) | 13.80 | 4.92 | 8.88 |
| 78300 | bone imaging;ltd area(eg skull,pel) | 10.69 | 3.48 | 7.21 |
| 78305 | bone imaging; mult. areas | 15.19 | 4.56 | 10.62 |
| 78306 | bone imaging; whole body | 16.93 | 4.56 | 12.37 |
| 78310 | bone imaging;vascular flow only | 6.18 | 2.76 | 3.41 |
| 78315 | bone imaging;3 phase technique | 18.79 | 4.98 | 13.81 |
| 78320 | bone imaging, tomographic SPECT | 22.88 | 5.81 | 17.07 |
| 78350 | bone density, single phot | 3.44 | 1.24 | 2.20 |
| 78351 | bone density;dual photon absor | 6.54 | 1.38 | 5.16 |
| 78380 | joint imaging;ltd area | 11.10 | 2.90 | 8.20 |
| 78381 | joint imaging;mult. areas | 14.57 | 4.17 | 10.40 |
| 78415 | card blood pool imag,fxn imaging | 10.41 | 2.60 | 7.82 |
| 78425 | cardiac regurgitant index | 4.46 | 2.18 | 2.28 |
| 78428 | cardiac shunt detection | 10.89 | 4.37 | 6.53 |
| 78435 | cardiac flow imag(ie angiocardiog) | 13.24 | 2.76 | 10.47 |
| 78445 | vasc flow imag(ie angio,venography) | 8.23 | 2.76 | 5.46 |
| 78455 | ven thrombosis st(eg radact fibrin) | 15.63 | 4.09 | 11.53 |
| 78457 | ven thrombosis imag(eg venogr);unil | 11.95 | 4.29 | 7.66 |
| 78458 | ven thrombosis imag(eg venogr);bil | 16.64 | 5.03 | 11.61 |
| 78460 | reg.myocard perf;qual,at rest | 11.67 | 4.84 | 6.83 |
| 78461 | reg.myocard perf;qual,at rest+ex/pharm | 20.57 | 6.91 | 13.66 |
| 78462 | reg.myocard perf;quant,at rest only | 14.83 | 5.11 | 9.71 |
| 78463 | reg.myocard perf;quant,at rest+ex/pharm | 24.26 | 7.19 | 17.07 |
| 78464 | reg.myocard perf;tomogr(SPECT),rest | 26.57 | 6.08 | 20.49 |
| 78465 | reg.myocar prf;tomo(SPECT),rest,ex/phar | 42.30 | 8.16 | 34.15 |
| 78466 | myocard img,infarct avid,rest;qual | 11.49 | 3.90 | 7.59 |
| 78467 | myocard img,infarct avid,rest;quant | 13.28 | 4.17 | 9.11 |
| 78468 | myocard img,infrct avid,rest;1pass tech | 15.07 | 4.45 | 10.62 |
| 78469 | myocard img,infrct avid,rest;emis.tomo | 20.32 | 5.14 | 15.18 |
| 78470 | cardiac output | 13.19 | 2.49 | 10.70 |
| 78471 | card BPl,gtd eq,rst;wll mtn&ej frac | 20.43 | 5.25 | 15.18 |

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RADIOLOGY NATIONAL RELATIVE VALUE SCALE

| Proc Code | Description | GLOBAL RVS | PROFESSIONAL RVS | TECHNICAL RVS |
|---|---|---|---|---|
| 78472 | card BPI,gtd eq,rst;wll mtn&rg ejfr | 21.44 | 5.50 | 15.94 |
| 78474 | card BPI,gtd eq,rst;wll mtn&rg ejfr&vwd | 23.23 | 5.78 | 17.45 |
| 78475 | card BPI,gtd eq,rst;qnt wll mtn&ex/pharm | 33.95 | 6.64 | 27.32 |
| 78476 | card BPI,gtd eq,rst;qn wmb ejfr,ex/pharm | 35.32 | 6.64 | 28.68 |
| 78477 | card BPI,gtd eq,rst;qwmb ejf,vwd,ex/pharm | 38.33 | 6.91 | 31.42 |
| 78479 | card BPI,gtd eq,rst;ser st,any comb | 5.92 | 5.92 | NO TC |
| 78481 | card BPI,1-pass tech;wll mtn& ejfr | 20.68 | 5.50 | 15.18 |
| 78484 | card BPI,1-pass,rst;qnt wl mtn&ejfr&vwd | 25.23 | 5.78 | 17.45 |
| 78485 | card BPI,1-pass;qnt wll mtn&ex/pharm | 35.95 | 6.64 | 27.32 |
| 78486 | card BPI,1-pass,rst;qn wmb ejfr,ex/pharm | 35.32 | 6.64 | 28.68 |
| 78487 | card BPI,1-pass,rst;qwmb ejf,vwd,ex/pharm | 38.33 | 6.91 | 31.42 |
| 78489 | card BPI,1-pass,rst;ser st,any comb | 5.92 | 5.92 | NO TC |
| 78580 | pulmonary perf.imag;particulate | 16.06 | 4.12 | 9.94 |
| 78581 | pulmonary perf.imag;gaseous | 10.78 | 3.87 | 6.91 |
| 78582 | pul.perf.imag;gas w/vent,rebr&wash | 16.04 | 5.11 | 10.93 |
| 78584 | pul.perf.imag,parti.w/vent;1 breath | 14.79 | 5.53 | 9.26 |
| 78585 | pul.perf.im,par.w/vent;r&w,w/w/o1b | 22.40 | 6.08 | 16.31 |
| 78586 | pul.vent.imag;aerosol;1 projection | 9.72 | 2.21 | 7.51 |
| 78587 | pul.vent.imag aerosol;mult(eg A/P&L) | 10.88 | 2.76 | 8.12 |
| 78591 | pul.vent.imag;gaseous,1breath,1proj | 10.48 | 2.21 | 8.27 |
| 78593 | pul.vent.im;gas,w/r&w,w/w/o1br;1pro | 12.78 | 2.76 | 10.02 |
| 78594 | pul.vent.im;gas,r&w,w/w/o1br;mult | 17.46 | 3.04 | 14.42 |
| 78600 | brain imaging,ltd;static | 10.81 | 2.46 | 8.35 |
| 78601 | brain imaging,ltd;w/vascular flow | 12.80 | 2.95 | 9.86 |
| 78605 | brain imaging,compl;static | 12.91 | 3.04 | 9.86 |
| 78606 | brain imaging,compl;w/vascular flow | 14.82 | 3.59 | 11.23 |
| 78607 | brain imaging,compl;tomograph (ECT) | 25.88 | 6.91 | 18.97 |
| 78610 | brain imaging,vascular flow only | 6.18 | 1.63 | 4.55 |
| 78615 | cerebral blood flow | 13.50 | 2.35 | 11.15 |
| 78630 | CSF flow,imag(wo/intro);cisternog | 18.38 | 3.82 | 14.57 |
| 78635 | CSF flow,imaging;ventriculography | 10.82 | 3.46 | 7.36 |
| 78645 | CSF flow,imaging;shunt evaluation | 13.20 | 3.26 | 9.94 |
| 78650 | CSF flow,imaging;leak detect&locate | 16.86 | 3.43 | 13.43 |
| 78652 | CSF flow imaging, tomographic (ECT) | 22.13 | 5.05 | 17.07 |
| 78655 | radionuclide ID of eye tumor | 17.60 | 3.18 | 14.42 |
| 78660 | dacryocystography | 9.19 | 3.04 | 6.15 |
| 78700 | kidney imaging;static only | 11.29 | 2.49 | 8.80 |
| 78701 | kidney imaging;w/vascular flow | 13.08 | 2.76 | 10.32 |
| 78704 | kidney imaging;w/fxn st(eg im reno) | 15.61 | 4.15 | 11.46 |
| 78707 | kidney imag;w/vasc.flow&func study | 18.23 | 5.25 | 12.98 |
| 78710 | kidney imaging (SPECT) | 20.81 | 3.73 | 17.07 |
| 78715 | kidney vascular flow only | 6.21 | 1.66 | 4.55 |
| 78725 | kidney fnx study only | 7.23 | 2.07 | 5.16 |
| 78726 | kidney fxn st only;w/pharm interv | 13.47 | 6.89 | 8.57 |
| 78727 | kidney transplant evaluation | 17.06 | 5.53 | 11.53 |





APPENDIX A

RADIOLOGY NATIONAL RELATIVE VALUE SCALE

| Proc Code | Description | GLOBAL RVS | PROFESSIONAL RVS | TECHNICAL RVS |
|---|---|---|---|---|
| 78730 | urinary bladder residual study | 6.18 | 1.94 | 4.25 |
| 78740 | ureter reflux st(RN V-cystogr) | 9.41 | 3.26 | 6.15 |
| 78760 | testicular imaging | 11.44 | 3.70 | 7.74 |
| 78761 | testicular imaging;w/vascular flow | 13.27 | 4.01 | 9.26 |
| 78800 | RN local of tumor;ltd | 13.51 | 3.65 | 9.86 |
| 78801 | RN local of tumor;mult areas | 16.61 | 4.40 | 12.22 |
| 78802 | RN local of tumor;whole body | 20.85 | 4.84 | 16.01 |
| 78803 | tumor localization (SPECT) | 25.05 | 6.08 | 18.97 |
| 78805 | RN local of abscess;ltd area | 13.68 | 3.82 | 9.86 |
| 78806 | RN local of abscess;whole body | 20.77 | 4.76 | 16.01 |
| 78890 | gen auto data,interdisc;simp,<30min | 4.07 | 0.28 | 3.79 |
| 78891 | gen auto data,interdisc;cmplx,>30mn | 8.14 | 0.55 | 7.59 |
| 79000 | RN tx,hyperthyroid;init w/eval pt | 17.62 | 10.04 | 7.59 |
| 79001 | RN tx,hyperthyroid;subseq,each vst | 9.63 | 5.83 | 3.79 |
| 79020 | RN tx,thyr sup(euthyr card d)w/eval | 17.68 | 10.09 | 7.59 |
| 79030 | RN ablation gland for thyroid ca | 19.34 | 11.75 | 7.59 |
| 79035 | RN for metastases of thyroid ca | 21.66 | 14.07 | 7.59 |
| 79100 | RN tx polycyth vera,chr leuk,q tx | 14.97 | 7.38 | 7.59 |
| 79200 | intracavity radioactive colloid th | 18.73 | 11.14 | 7.59 |
| 79400 | RN,nonthyroid,nonhemat(eg met bone) | 18.56 | 10.98 | 7.59 |
| 79440 | intra-articular RN therapy | 18.73 | 11.14 | 7.59 |

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APPENDIX B

RADIOLOGY LOCAL RELATIVE VALUE SCALE

CODES TO BE PRICED BY THE CARRIER

| CPT-4 PROCEDURE CODE | DESCRIPTION | GLOBAL RVS | PROFESSIONAL COMPONENT (PC) RVS | TECHNICAL COMPONENT RVS |
|---|---|---|---|---|
| 70010 | myelography,post fossa,s&i | LOCAL | 6.64 | GLOBAL - PC |
| 70011 | myelography,post fossa,compl | LOCAL | 13.35 | GLOBAL - PC |
| 70015 | cisternography,pos contr,s&i | LOCAL | 6.64 | GLOBAL - PC |
| 70016 | cisternography,pos contr,compl | LOCAL | 13.35 | GLOBAL - PC |
| 72240 | myelography,cx,s&i | LOCAL | 5.09 | GLOBAL - PC |
| 72241 | myelography,cx,compl | LOCAL | 11.81 | GLOBAL - PC |
| 72255 | myelography,thoracic,s&i | LOCAL | 5.09 | GLOBAL - PC |
| 72256 | myelography,thoracic,compl | LOCAL | 11.81 | GLOBAL - PC |
| 72265 | myelography,lumbarsacral,s&i | LOCAL | 4.62 | GLOBAL - PC |
| 72266 | myelography,lumbarsacral,compl | LOCAL | 11.34 | GLOBAL - PC |
| 72270 | myelography,entire spinal canal,s&i | LOCAL | 7.44 | GLOBAL - PC |
| 72271 | myelography,compl spinal canal,compl | LOCAL | 14.16 | GLOBAL - PC |
| 74300 | cholangiography &/pancreatogr, OR | LOCAL | 1.99 | GLOBAL - PC |
| 74301 | cholangiogr&/pancreatog,add set, OR | LOCAL | 1.16 | GLOBAL - PC |
| 74327 | po bildct st rem,percu,fl mon & rad | LOCAL | 3.93 | GLOBAL - PC |
| 74475 | int cath ren pel,percu,mon&rad,s&i | LOCAL | 3.10 | GLOBAL - PC |
| 74476 | int cath ren pel,percu,mon&rad,comp | LOCAL | 22.31 | GLOBAL - PC |
| 74480 | int cath uret fr r-pelv,mon&rad,s&i | LOCAL | 3.10 | GLOBAL - PC |
| 74481 | int cath uret fr r-pelv,mon&rad,com | LOCAL | 29.00 | GLOBAL - PC |
| 75500 | angiocardiography by cine,s&i | LOCAL | 6.39 | GLOBAL - PC |
| 75501 | angiocardiography by cine,compl | LOCAL | 22.56 | GLOBAL - PC |
| 75505 | angiocardiography,serial,1 pl;s&i | LOCAL | 6.39 | GLOBAL - PC |
| 75506 | angiocardiography,serial,1 pl;comp | LOCAL | 22.56 | GLOBAL - PC |
| 75507 | angiocardiography,ser,mult-pl,s&i | LOCAL | 7.35 | GLOBAL - PC |
| 75509 | angiocardiogr,ser,multpl,com,w/cath | LOCAL | 23.53 | GLOBAL - PC |
| 75519 | select cardiac cat,right,s&i | LOCAL | 4.70 | GLOBAL - PC |
| 75520 | select cardiac cat,right,comp | LOCAL | 16.17 | GLOBAL - PC |
| 75523 | select cardiac cath,left,s&i | LOCAL | 4.70 | GLOBAL - PC |
| 75524 | select cardiac cath,left,comp | LOCAL | 16.17 | GLOBAL - PC |
| 75527 | select cardiac cath,r&l,s&i, | LOCAL | 8.38 | GLOBAL - PC |
| 75528 | select cardiac cath,r&l,compl | LOCAL | 24.27 | GLOBAL - PC |
| 75600 | aortography, thor,wo/serial,s&i | LOCAL | 2.76 | GLOBAL - PC |
| 75601 | aortography,thor,wo/serial,compl | LOCAL | 18.94 | GLOBAL - PC |
| 75605 | aortography,thor,serial,s&i | LOCAL | 6.39 | GLOBAL - PC |
| 75606 | aortography, thor,serial,compl | LOCAL | 22.56 | GLOBAL - PC |
| 75620 | aortography abd-translum,wo/ser,s&i | LOCAL | 2.76 | GLOBAL - PC |
| 75621 | aortography,abd-translum,wo/ser,comp | LOCAL | 18.94 | GLOBAL - PC |
| 75622 | aortography,abd,cath,wo/serial,s&i | LOCAL | 2.76 | GLOBAL - PC |
| 75623 | aortography,abd,cath,wo/serial,compl | LOCAL | 18.94 | GLOBAL - PC |
| 75625 | aortography,abd translum,w/ser,s&i | LOCAL | 6.39 | GLOBAL - PC |



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APPENDIX B

RADIOLOGY LOCAL RELATIVE VALUE SCALE

CODES TO BE PRICED BY THE CARRIER

| CPT-4 PROCEDURE CODE | DESCRIPTION | GLOBAL RVS | PROFESSIONAL COMPONENT (PC) RVS | TECHNICAL COMPONENT RVS |
|---|---|---|---|---|
| 75626 | aortography,abd-translum,w/ser,compl | LOCAL | 22.56 | GLOBAL - PC |
| 75627 | aortography,abd,cath,w/serial,s&i | LOCAL | 6.39 | GLOBAL - PC |
| 75628 | aortography,abd,cath,w/serial,compl | LOCAL | 22.56 | GLOBAL - PC |
| 75630 | aortgr abd&bil ilfem,cath,w/ser;s&i | LOCAL | 7.35 | GLOBAL - PC |
| 75631 | aortgr abd&bil ilfem,cath,w/ser,comp | LOCAL | 23.53 | GLOBAL - PC |
| 75650 | angiography,cx-cerebr,cath w/vo,s&i | LOCAL | 8.32 | GLOBAL - PC |
| 75651 | angiogr,cx-cerebr,cath,w/vo;compl | LOCAL | 28.50 | GLOBAL - PC |
| 75652 | angio,cx-cereb,sel cath,1v,w/vo;s&i | LOCAL | 8.32 | GLOBAL - PC |
| 75653 | angio,cx-cereb,sel cth,1v,w/vo;comp | LOCAL | 28.50 | GLOBAL - PC |
| 75654 | angio,cx-cereb.sel cath,2v,w/vo,s&i | LOCAL | 11.22 | GLOBAL - PC |
| 75655 | angio,cx-cereb,sel cath,2v,w/vo,comp | LOCAL | 36.38 | GLOBAL - PC |
| 75656 | angio,cxcereb,selcth,3-4v,w/vo;s&i | LOCAL | 14.13 | GLOBAL - PC |
| 75657 | angio,cxcereb,selcth,3-4v,w/vo;compl | LOCAL | 42.33 | GLOBAL - PC |
| 75658 | angiography,brachial,retro,s&i | LOCAL | 7.35 | GLOBAL - PC |
| 75659 | angiography,brachial,retro,compl | LOCAL | 23.53 | GLOBAL - PC |
| 75660 | angio extcarot,cereb,unil,sel;s&i | LOCAL | 7.35 | GLOBAL - PC |
| 75661 | angio,extcarot,cereb,unil,sel;compl | LOCAL | 23.53 | GLOBAL - PC |
| 75662 | angio,ext carot,cereb,bil,s&i | LOCAL | 9.29 | GLOBAL - PC |
| 75663 | angio,ext carot,cereb,bil,compl | LOCAL | 29.47 | GLOBAL - PC |
| 75665 | angio,carotid,cereb,unil,s&i | LOCAL | 7.35 | GLOBAL - PC |
| 75667 | angio,carot,cereb,unil,dir punc,comp | LOCAL | 23.53 | GLOBAL - PC |
| 75669 | angio,carot,cereb,unil,cath,compl | LOCAL | 23.53 | GLOBAL - PC |
| 75671 | angio,carot,cereb,bil;s&i | LOCAL | 9.29 | GLOBAL - PC |
| 75672 | angio,carot,cereb,bil;compl | LOCAL | 33.56 | GLOBAL - PC |
| 75673 | angio,carot,cereb,bil;cath, compl | LOCAL | 36.38 | GLOBAL - PC |
| 75676 | angiography,carotid,cx,unil,s&i | LOCAL | 7.35 | GLOBAL - PC |
| 75677 | angio carot,cx,unil,dir punc,compl | LOCAL | 23.53 | GLOBAL - PC |
| 75678 | angio,carot,cx,unil,cath,compl | LOCAL | 23.53 | GLOBAL - PC |
| 75680 | angio carotid,cx,bil,s&i | LOCAL | 9.29 | GLOBAL - PC |
| 75681 | angio carotid,cx,bil,dir punc,comp | LOCAL | 33.56 | GLOBAL - PC |
| 75682 | angio,carotid,cx,bil,cath,compl | LOCAL | 36.38 | GLOBAL - PC |
| 75685 | angiography,vertebral,s&i | LOCAL | 7.35 | GLOBAL - PC |
| 75686 | angiography,vertebral,dir punc,comp | LOCAL | 23.53 | GLOBAL - PC |
| 75687 | angiography,vertebral,cath,compl | LOCAL | 23.53 | GLOBAL - PC |
| 75690 | angiography,vertebral,cx,unil,s&i | LOCAL | 7.35 | GLOBAL - PC |
| 75692 | angiography,vertebral,cx,unil,comp | LOCAL | 23.53 | GLOBAL - PC |
| 75695 | angiography,vertebral,cx,bil,s&i | LOCAL | 9.29 | GLOBAL - PC |
| 75697 | angiography,vertebral,cx,bil,compl | LOCAL | 28.50 | GLOBAL - PC |
| 75705 | angiography,spinal,select,s&i | LOCAL | 12.19 | GLOBAL - PC |
| 75706 | angiography,spinal,select,compl | LOCAL | 52.42 | GLOBAL - PC |

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APPENDIX B

RADIOLOGY LOCAL RELATIVE VALUE SCALE

CODES TO BE PRICED BY THE CARRIER

| CPT-4 PROCEDURE CODE | DESCRIPTION | GLOBAL RVS | PROFESSIONAL COMPONENT (PC) RVS | TECHNICAL COMPONENT RVS |
|---|---|---|---|---|
| 75710 | anglography,extrem,unil;s&i | LOCAL | 6.39 | GLOBAL - PC |
| 75711 | angiography,extrem,unil,wo/ser;comp | LOCAL | 17.14 | GLOBAL - PC |
| 75712 | angiography,extrem,unil;byser;compl | LOCAL | 23.53 | GLOBAL - PC |
| 75716 | angiography,extremity,bil,s&i | LOCAL | 7.35 | GLOBAL - PC |
| 75717 | angiography,extrem bil,wo/ser,comp | LOCAL | 17.14 | GLOBAL - PC |
| 75718 | angiography,extrem,bil,w/ser,s&i | LOCAL | 23.53 | GLOBAL - PC |
| 75722 | angio,renal,unil,sel w/a-gram,s&i | LOCAL | 6.39 | GLOBAL - PC |
| 75723 | angio,renal,unil,selw/a-gram,compl | LOCAL | 27.54 | GLOBAL - PC |
| 75724 | angio,renal,bil,sel w/a-gram,s&i | LOCAL | 8.32 | GLOBAL - PC |
| 75725 | angio,renal,bil,sel w/a-gram,compl | LOCAL | 32.51 | GLOBAL - PC |
| 75726 | angio,visceral,sel/supsel,s&i | LOCAL | 6.39 | GLOBAL - PC |
| 75727 | angio,visceral,sel w/wo a-gram,comp | LOCAL | 27.51 | GLOBAL - PC |
| 75728 | angio,visceral,sup select,compl | LOCAL | 32.51 | GLOBAL - PC |
| 75731 | angio,adrenal,unil,select,s&i | LOCAL | 6.39 | GLOBAL - PC |
| 75732 | angio,adrenal,unil,select,compl | LOCAL | 22.56 | GLOBAL - PC |
| 75733 | angio,adrenal,bil,select,s&i | LOCAL | 7.35 | GLOBAL - PC |
| 75734 | angio,adrenal,bil,select,compl | LOCAL | 32.51 | GLOBAL - PC |
| 75736 | angio,pelvic,sel/suprasel,s&i | LOCAL | 6.39 | GLOBAL - PC |
| 75737 | angio,pelvic,select,compl | LOCAL | 22.56 | GLOBAL - PC |
| 75738 | angio,pelvic,supraselect,compl | LOCAL | 27.54 | GLOBAL - PC |
| 75741 | angio,pulmonary,unil,select,s&i | LOCAL | 7.35 | GLOBAL - PC |
| 75742 | angio,pulmonary,unil,select,compl | LOCAL | 22.56 | GLOBAL - PC |
| 75743 | angio,pulmonary,bil,select,s&i | LOCAL | 9.29 | GLOBAL - PC |
| 75744 | angio,pulmonary,bil,select;compl | LOCAL | 29.47 | GLOBAL - PC |
| 75746 | angio,pulmonary,nonsel cath/inj,s&i | LOCAL | 6.39 | GLOBAL - PC |
| 75747 | angio,pulmonary,cath,nonselect,comp | LOCAL | 16.81 | GLOBAL - PC |
| 75748 | angio,pulmonary,venous inj,compl | LOCAL | 12.14 | GLOBAL - PC |
| 75750 | angio,coronary,root inj,s&i | LOCAL | 6.39 | GLOBAL - PC |
| 75751 | angio,coronary,root inj, compl | LOCAL | 22.56 | GLOBAL - PC |
| 75752 | angio,cor,unil inj,w/l ventr;s&i | LOCAL | 6.39 | GLOBAL - PC |
| 75753 | angio,cor,unil inj,w/l ventr,comp | LOCAL | 28.56 | GLOBAL - PC |
| 75754 | angio,cor,bil inj,w/l vent&val;s&i | LOCAL | 7.38 | GLOBAL - PC |
| 75755 | angio,cor,bil inj,w/l vent&val;comp | LOCAL | 33.54 | GLOBAL - PC |
| 75756 | angio,int mammary,s&i | LOCAL | 6.39 | GLOBAL - PC |
| 75757 | angio,int mammary,compl | LOCAL | 22.56 | GLOBAL - PC |
| 75762 | angio,CAB,unil,sel inj;s&i | LOCAL | 6.39 | GLOBAL - PC |
| 75764 | angio,CAB,unil sel inj;compl | LOCAL | 28.50 | GLOBAL - PC |
| 75766 | angio,CAB,mult sel inj;s&i | LOCAL | 7.35 | GLOBAL - PC |
| 75767 | angio,CAB,mult sel inj;compl | LOCAL | 33.54 | GLOBAL - PC |
| 75774 | angio,sel ea add vess p basic,s&i | LOCAL | 1.94 | GLOBAL - PC |





APPENDIX B

RADIOLOGY LOCAL RELATIVE VALUE SCALE

CODES TO BE PRICED BY THE CARRIER

| CPT-4 PROCEDURE CODE | DESCRIPTION | GLOBAL RVS | PROFESSIONAL COMPONENT (PC) RVS | TECHNICAL COMPONENT RVS |
|---|---|---|---|---|
| 75775 | angio,sel,ea add vess p basic,compl | LOCAL | 5.94 | GLOBAL - PC |
| 75790 | angio,a-v shunt | LOCAL | 10.28 | GLOBAL - PC |
| 75801 | lymphangio,extremity only,unil,s&i | LOCAL | 4.53 | GLOBAL - PC |
| 75802 | lymphangio,extremity only,unil,comp | LOCAL | 16.64 | GLOBAL - PC |
| 75803 | lymphangio,extremity only,bil,s&i | LOCAL | 6.52 | GLOBAL - PC |
| 75804 | lymphangio,extremity only,bil,compl | LOCAL | 24.69 | GLOBAL - PC |
| 75805 | lymphangio,pelvic/abd,unil,s&i | LOCAL | 4.53 | GLOBAL - PC |
| 75806 | lymphangio,pelvic/abd,unil,compl | LOCAL | 16.64 | GLOBAL - PC |
| 75807 | lymphangio,pelvic/abd,bil,s&i | LOCAL | 6.52 | GLOBAL - PC |
| 75808 | lymphangio,pelvic/abd,bil,compl | LOCAL | 24.69 | GLOBAL - PC |
| 75810 | splenoportography,s&i | LOCAL | 6.39 | GLOBAL - PC |
| 75811 | splenoportography,compl | LOCAL | 19.80 | GLOBAL - PC |
| 75820 | venography,ext,unilat,s&i only | LOCAL | 3.93 | GLOBAL - PC |
| 75821 | venography,ext,unil,compl | LOCAL | 6.80 | GLOBAL - PC |
| 75822 | venography,extr,bil,s&i only | LOCAL | 5.89 | GLOBAL - PC |
| 75823 | venography,extr,bil,compl | LOCAL | 9.79 | GLOBAL - PC |
| 75825 | venography,inf cav,w/serial,s&i | LOCAL | 6.39 | GLOBAL - PC |
| 75826 | venography,inf cav,w/serial,compl | LOCAL | 16.81 | GLOBAL - PC |
| 75827 | venography,sup cav,with serial,s&i | LOCAL | 6.39 | GLOBAL - PC |
| 75828 | venography,sup cav,w/serial,compl | LOCAL | 16.81 | GLOBAL - PC |
| 75831 | venography,renal,unil,select;s&i | LOCAL | 6.39 | GLOBAL - PC |
| 75832 | venography,renal,unil,select,compl | LOCAL | 19.30 | GLOBAL - PC |
| 75833 | venography,renal,bil,select,s&i | LOCAL | 8.32 | GLOBAL - PC |
| 75834 | venography,renal,bil,select,compl | LOCAL | 23.83 | GLOBAL - PC |
| 75840 | venography,adrenal,unil,select,s&i | LOCAL | 6.39 | GLOBAL - PC |
| 75841 | venography,adrenal,unil,sel,compl | LOCAL | 19.30 | GLOBAL - PC |
| 75842 | venography,adrenal,bil,sel,s&i | LOCAL | 8.32 | GLOBAL - PC |
| 75843 | venography,adrenal,bil,select,compl | LOCAL | 23.83 | GLOBAL - PC |
| 75845 | venography,azygos,sel/nonsel,s&i | LOCAL | 6.39 | GLOBAL - PC |
| 75846 | venography,azygos,select,compl | LOCAL | 19.30 | GLOBAL - PC |
| 75847 | venography,azygos,nonsel,compl | LOCAL | 16.70 | GLOBAL - PC |
| 75850 | venography,intraosseous,s&i | LOCAL | 3.93 | GLOBAL - PC |
| 75851 | venography,intraosseous,comp | LOCAL | 10.84 | GLOBAL - PC |
| 75860 | venography, sinus/jug,cath;s&i | LOCAL | 6.39 | GLOBAL - PC |
| 75861 | venography, sinus/jug,cath;compl | LOCAL | 19.30 | GLOBAL - PC |
| 75870 | venography,sup sag sinus;s&i | LOCAL | 6.39 | GLOBAL - PC |
| 75871 | venography,sup sag sinus;compl | LOCAL | 13.30 | GLOBAL - PC |
| 75872 | venography,epidural,s&i | LOCAL | 6.39 | GLOBAL - PC |
| 75873 | venography,epidual,compl | LOCAL | 19.30 | GLOBAL - PC |
| 75880 | venography,orbital,s&i | LOCAL | 3.93 | GLOBAL - PC |

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RADIOLOGY LOCAL RELATIVE VALUE SCALE

CODES TO BE PRICED BY THE CARRIER

| CPT-4 PROCEDURE CODE | DESCRIPTION | GLOBAL RVS | PROFESSIONAL COMPONENT (PC) RVS | TECHNICAL COMPONENT RVS |
|---|---|---|---|---|
| 75881 | venography,orbital,compl | LOCAL | 6.80 | GLOBAL - PC |
| 75885 | percu transhep porto w/hemody;s&i | LOCAL | 8.07 | GLOBAL - PC |
| 75886 | percu transhep porto w/hemody;compl | LOCAL | 27.45 | GLOBAL - PC |
| 75887 | percu transhep porto wo/hemody,s&i | LOCAL | 8.07 | GLOBAL - PC |
| 75888 | percu transhep porto wo/hemody;compl | LOCAL | 27.45 | GLOBAL - PC |
| 75889 | hepat veno,wed/free,w/hemody,s&i | LOCAL | 6.39 | GLOBAL - PC |
| 75890 | hepat veno,wed/free,w/hemody,compl | LOCAL | 19.30 | GLOBAL - PC |
| 75891 | hepat veno,wed/free,wo/hemody,s&i | LOCAL | 6.39 | GLOBAL - PC |
| 75892 | hepat veno,wed/free,wo/hemody,compl | LOCAL | 19.30 | GLOBAL - PC |
| 75893 | venous sampling thru cath wo/angio | LOCAL | 3.10 | GLOBAL - PC |
| 75894 | trans cath tx,emboliz w/angio,s&i | LOCAL | 7.35 | GLOBAL - PC |
| 75895 | transcath tx,emboliz w/angio,compl | LOCAL | 40.53 | GLOBAL - PC |
| 75896 | transcath tx,infus w/angio,s&i | LOCAL | 7.35 | GLOBAL - PC |
| 75897 | transcath tx,infus w/angio,compl | LOCAL | 40.53 | GLOBAL - PC |
| 75940 | percu place ivc filter,s&i | LOCAL | 3.10 | GLOBAL - PC |
| 75941 | percu place ivc filter,compl | LOCAL | 44.24 | GLOBAL - PC |
| 75950 | transcath intrav occ,temp,w/ang,s&i | LOCAL | 7.35 | GLOBAL - PC |
| 75951 | transcath intrav occ,temp,w/ang,com | LOCAL | 40.53 | GLOBAL - PC |
| 75955 | transcath intrav occ,perm,w/ang,s&i | LOCAL | 7.35 | GLOBAL - PC |
| 75956 | transcath intrav occ,perm,w/ang,com | LOCAL | 40.53 | GLOBAL - PC |
| 75961 | transcath retriev,percu,fx v/s cath | LOCAL | 23.83 | GLOBAL - PC |
| 75962 | percu translum angio,perip art,s&i | LOCAL | 3.10 | GLOBAL - PC |
| 75963 | percu translum angio,perip art,compl | LOCAL | 40.53 | GLOBAL - PC |
| 75964 | percu translum angio q ad per a,s&i | LOCAL | 1.94 | GLOBAL - PC |
| 75965 | percu translum angio q ad per a,com | LOCAL | 27.65 | GLOBAL - PC |
| 75966 | percu translum angio,viscer a,s&i | LOCAL | 7.35 | GLOBAL - PC |
| 75967 | percu translum angio,viscer a,comp | LOCAL | 48.82 | GLOBAL - PC |
| 75968 | percu translum angio,q ad visc a,s&i | LOCAL | 1.94 | GLOBAL - PC |
| 75969 | percu translum angio,q ad visc a,com | LOCAL | 32.07 | GLOBAL - PC |
| 75970 | transcath bx,s&i | LOCAL | 4.62 | GLOBAL - PC |
| 75971 | transcath bx,compl | LOCAL | 16.51 | GLOBAL - PC |
| 75980 | percu transhep bil drain w/cont,s&i | LOCAL | 8.07 | GLOBAL - PC |
| 75981 | percu transhep bil drain w/cont,com | LOCAL | 27.45 | GLOBAL - PC |
| 75982 | percu pl cath for inop bil obs;s&i | LOCAL | 8.07 | GLOBAL - PC |
| 75983 | percu pl cath for inop bil obs;compl | LOCAL | 34.25 | GLOBAL - PC |
| 76140 | consult on x-ray made elsewhere | LOCAL | LOCAL | GLOBAL - PC |
| 76350 | subtraction in conjunction | LOCAL | LOCAL | GLOBAL - PC |
| 76499 | unlisted diagnostic radiology proc | LOCAL | LOCAL | GLOBAL - PC |
| 76999 | U/S unlisted proc | LOCAL | LOCAL | GLOBAL - PC |
| 77299 | unlist proc,th rad clin tx planning | LOCAL | LOCAL | GLOBAL - PC |



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APPENDIX B

RADIOLOGY LOCAL RELATIVE VALUE SCALE

CODES TO BE PRICED BY THE CARRIER

| CPT-4 PROCEDURE CODE | DESCRIPTION | GLOBAL RVS | PROFESSIONAL COMPONENT (PC) RVS | TECHNICAL COMPONENT RVS |
|---|---|---|---|---|
| 77399 | unlist proc,med rad phys,dosim&dev | LOCAL | LOCAL | GLOBAL - PC |
| 77499 | unlist proc,ther rad clin tx manage | LOCAL | LOCAL | GLOBAL - PC |
| 77799 | unlist proc,clinical brachytherapy | LOCAL | LOCAL | GLOBAL - PC |
| 78099 | unlisted endocrine;diag.nuc.med. | LOCAL | LOCAL | GLOBAL - PC |
| 78172 | chelatable iron | LOCAL | 3.04 | GLOBAL - PC |
| 78199 | unl hemat,retic,&lymph pr,dx nuc med | LOCAL | LOCAL | GLOBAL - PC |
| 78282 | GI protein loss | LOCAL | 2.10 | GLOBAL - PC |
| 78299 | unl GI procedure;dx nuc med | LOCAL | LOCAL | GLOBAL - PC |
| 78399 | unl musculoskel proc,dx NM | LOCAL | LOCAL | GLOBAL - PC |
| 78414 | ventricle eject frac w/probe tech | LOCAL | 2.49 | GLOBAL - PC |
| 78499 | unl CV procedure;dx NM | LOCAL | LOCAL | GLOBAL - PC |
| 78599 | unl resp proc;dx NM | LOCAL | LOCAL | GLOBAL - PC |
| 78699 | unl nervous system;dx NM | LOCAL | LOCAL | GLOBAL - PC |
| 78799 | unl genitourinary,dx NM | LOCAL | LOCAL | GLOBAL - PC |
| 78990 | provision of diag. radionuclide(s) | LOCAL | LOCAL | GLOBAL - PC |
| 78999 | unl misc.procedure;dx NM | LOCAL | LOCAL | GLOBAL - PC |
| 79300 | interstitial radioactive colloid tx | LOCAL | 8.96 | GLOBAL - PC |
| 79420 | intra vasc RN tx,particulate | LOCAL | 8.43 | GLOBAL - PC |
| 79900 | provis therapeutic radionuclide(s) | LOCAL | LOCAL | GLOBAL - PC |
| 79999 | unl RN therapeutic procedure | LOCAL | LOCAL | GLOBAL - PC |

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Local Codes

HCPCS R Codes

HCPCS Codes with modifiers other than blank (Global), Professional (26) or Technical.

New technology or new services

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Appendix C

HCFA Charge-Based Relative Value Scale Compared with ACR Relative Value Scale

| Procedure | | Professional Component HCFA | Professional Component ACR | Global Service HCFA | Global Service ACR |
|---|---|---|---|---|---|
| 71010 | Chest X-Ray | 1.00 | 1.00 | 2.50 | 2.35 |
| 71020 | Chest X-Ray | 1.24 | 1.21 | 3.10 | 3.04 |
| 70470 | Brain CT | 8.10 | 7.13 | 20.45 | 22.39 |
| 70450 | Brain CT | 6.3 | 4.78 | 15.7 | 19.9 |
| 74160 | CT Abdomen w/contrast | 7.8 | 7.1 | 19.6 | 29.1 |
| 76700 | Echocardiography | 4.5 | 4.4 | 11.2 | 10.1 |
| 76091 | Mammography | 2.47 | 2.2 | 6.17 | 6.0 |
| 78306 | Nuclear Bone Imaging | 5.27 | 4.5 | 13.0 | 16.9 |
| 74270 | Diagnostic Barium Enema | 2.8 | 3.8 | 7.0 | 8.8 |
| 74170 | CT Abdomen w/contrast | 9.3 | 7.8 | 23.25 | 35.1 |
| 74240 | Upper GI | 2.9 | 3.8 | 7.25 | 8.1 |
| 70460 | CT Head | 7.1 | 6.3 | 17.8 | 24.5 |
| 74280 | Barium Enema | 3.5 | 5.5 | 8.9 | 11.9 |
| 72110 | Spine X-Ray | 2.04 | 1.75 | 5.0 | 4.4 |
| 72131 | CT Spine | 7.4 | 6.5 | 18.6 | 25.5 |
| 74150 | CT Abdomen | 7.1 | 6.6 | 17.8 | 24.8 |
| 74241 | Upper GI | 3.16 | 3.87 | 7.8 | 8.2 |
| 70551 | Brain MRI | 11.8 | 8.2 | 29.5 | 44.3 |
| 73510 | Hip X-Ray | 1.35 | 1.14 | 3.37 | 2.8 |

[FR Doc. 89-4939 Filed 3-1-89; 8:45 am]
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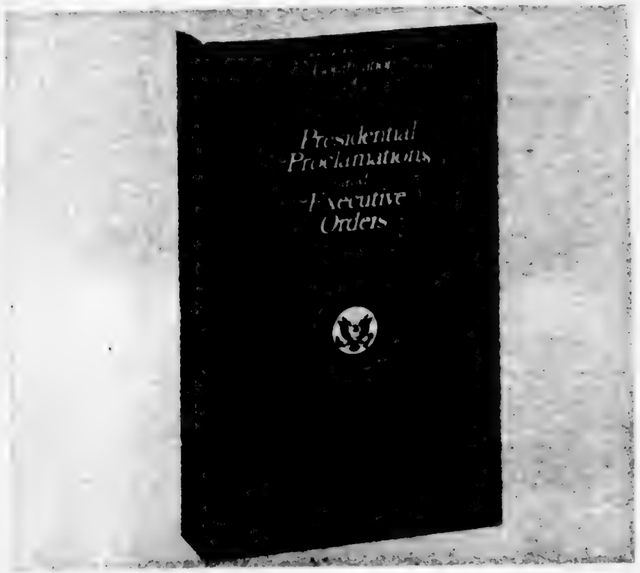
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**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 907**

**[Navel Orange Reg. 690]**

## Navel Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** Regulation 690 establishes the quantity of California-Arizona navel oranges that may be shipped to market during the period March 3 through March 9, 1989. Such action is needed to balance the supply of fresh navel oranges with the demand for such oranges during the period specified due to the marketing situation confronting the orange industry.

**DATES:** Regulation 690 (§ 907.990) is effective for the period March 3, 1989, through March 9, 1989.

**FOR FURTHER INFORMATION CONTACT:** Jacquelyn R. Schlatter, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2528–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5120.

**SUPPLEMENTARY INFORMATION:** This final rule is issued under Marketing Order 907 [7 CFR Part 907], as amended, regulating the handling of navel oranges grown in Arizona and designated part of California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of the use of volume regulations on small entities as well as larger ones.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 125 handlers of California-Arizona navel oranges subject to regulation under the navel orange marketing order, and approximately 4,065 producers in California and Arizona. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and produces of California-Arizona navel oranges may be classified as small entities.

This action is consistent with the marketing policy for 1988–89 adopted by the Navel Orange Administrative Committee (Committee). The Committee met publicly on February 28, 1989, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended by a seven to three vote a quantity of navel oranges deemed advisable to be handled during the specified week. The Committee reports that the market for navel oranges is weaker.

Based on consideration of supply and market conditions, and the evaluation of alternatives to the implementation of prorate regulations, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. To effectuate the declared purposes of the Act, it is necessary to make this regulatory provision effective as specified, and handlers have been apprised of such provision and the effective time.

**List of Subjects in 7 CFR Part 907**

Arizona, California, Marketing agreements and orders, Navel oranges.

For the reasons set forth in the preamble, 7 CFR part 907 is amended as follows:

## PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

1. The authority citation for 7 CFR Part 907 continues to read as follows:

**Authority:** Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 907.990 is added to read as follows: [This section will not appear in the Code of Federal Regulations.]

**§ 907.990 Navel Orange Regulation 690.**

The quantity of navel oranges grown in California and Arizona which may be handled during the period March 3, 1989, through March 9, 1989, are established as follows:

(a) District 1: 1,216,000 cartons;
(b) District 2: 234,000 cartons;
(c) District 3: unlimited cartons;
(d) District 4: unlimited cartons.

Dated: March 1, 1989.

**Eric M. Forman,**
*Acting Director, Fruit and Vegetable Division.*

[FR Doc. 89–5109 Filed 3–2–89; 8:45 am]
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**7 CFR Part 910**

**[Lemon Reg. 655]**

**Lemons Grown in California and Arizona; Limitation of Handling**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** Regulation 655 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 375,126 cartons during the period March 5 through March 11, 1989. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

**DATES:** Regulation 655 (§ 910.955) is effective for the period March 5 through March 11, 1989.

**FOR FURTHER INFORMATION CONTACT:** Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, D.C. 20090-6456; telephone: (202) 447-5697.

**SUPPLEMENTARY INFORMATION:** This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 85 handlers of lemons grown in California and Arizona subject to regulation under the lemon marketing order and approximately 2,500 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona lemons may be classified as small entities.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601-674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee (Committee) and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1988-89. The Committee met publicly on February 28, 1989, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and unanimously recommended a quantity of lemons deemed advisable to be handled during the specified week. The Committee reports that demand for lemons is good.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

**List of Subjects in 7 CFR Part 910**

Marketing agreements and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

**PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA**

1. The authority citation for 7 CFR Part 910 continues to read as follows:

**Authority:** Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 910.955 is added to read as follows: [This section will not appear in the Code of Federal Regulations.]

**§ 910.955 Lemon Regulation 655.**

The quantity of lemons grown in California and Arizona which may be handled during the period March 5, 1989, through March 11, 1989, is established at 375,126 cartons.

Dated: March 1, 1989.

**Eric M. Forman,**

*Acting Director, Fruit and Vegetable Division.*

[FR Doc. 89-5108 Filed 3-2-89; 8:45 am]

BILLING CODE 3410-02-M

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. 88-ANE-05; Amdt. 39-6075]**

**Airworthiness Directives; Switlik Parachute Co., Inc. TSO-C13 Life Preservers and TSO-C72 Individual Flotation Devices**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) which requires inspection for cracks and, if needed, replacement of carbon dioxide ($CO_2$) inflators on Switlik TSO-C13 Life Preservers and TSO-C72 Individual Flotation Devices. The AD is needed to prevent the malfunctioning of the $CO_2$ inflators on TSO-C13 Life Preservers and TSO-C72 Individual Flotation Devices which could result in inadequate inflation of the devices when operated during emergency conditions.

**DATES:** Effective April 3, 1989. Compliance—As required in the body of the AD. Incorporation by Reference—Approved by the Director of the Federal Register as of April 3, 1989.

**ADDRESSES:** The applicable service bulletin (SB) may be obtained from Switlik Parachute Co., Inc., 1325 East State Street, P.O. Box 1328, Trenton, New Jersey 08607.

A copy of Switlik SB No. 25-00-19, dated September 8, 1987, is contained in the Rules Docket, Docket No. 88-ANE-05, Office of the Assistant Chief Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, and may be examined between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.



**FOR FURTHER INFORMATION CONTACT:** Adrew Gfrerer, Systems and Equipment Branch, ANE-173, New York Aircraft Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 181 South Franklin Avenue, Room 202, Valley Stream, New York NY 11581; telephone (516) 791-6427.

**SUPPLEMENTARY INFORMATION:** A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD which requires inspection for cracks and, if needed, replacement of $CO_2$ inflators on certain Switlik TSO-C13 Life Preservers and TSO-C72 Individual Flotation Devices was published in the **Federal Register** on March 18, 1988 (53 FR 8926).

The proposal was prompted by reports of cracked $CO_2$ inflators on Switlik TSO-C13 Life Preservers and TSO-C72 Individual Flotation Devices which could result in inadequate inflation of the devices when operated during emergency conditions.

Interested persons have been afforded an opportunity to participate in the making of this amendment and due consideration has been given to all the comments received.

A total of nine comments were received, two of which concurred with the AD as proposed, and seven proposed that changes be made by extending the compliance time. Following consideration of those comments, it was determined that the proposal would be changed by extending the compliance period to one year.

Three commenters proposed that the compliance time should follow the requirements set forth in Switlik Service Bulletin No. 25-00-19, dated September 8, 1987, which sets compliance time at the next regularly scheduled service. The FAA disagrees. A compliance time set at the next regularly scheduled service could occur at 24, 36 or as much as 48 months from the effective date of the AD depending on the airline. The proposed interval is not adequately defined, does not provide an adequate level of safety during the inspection/retrofit program due to the lengthy proposed compliance interval and would increase the chance for malfunction of the $CO_2$ inflator when it would be needed.

Another commenter mentioned that its life vests do not have manufacture dates on the life vest package and they must open and unfold all vests to checks for date, which would take extra time. The FAA requires all operators to carry out their inspections by looking for dates that are printed on the life vest and not on the life vest package. The reason for this is that the life vest might have been taken out of the package and repackaged in a different package. This procedure will take longer and the compliance time has been extended as mentioned above.

Another commenter feels that they must reinspect all its life preservers because of AD documentation requirements in the proposed AD. The FAA has determined that reinspection of the life preservers is not necessary if satisfactory documentation is available to show that the inspections have previously been accomplished. This is pointed out in the compliance statement in the AD, "Compliance Is Required As Indicated, Unless Already Accomplished."

Some commenters mentioned that every life preserver and individual flotation device must be first checked for date of manufacture, which would take extra time and expense. The FAA agrees that additional labor is involved in determining whether the life preservers and the individual flotation devices were manufactured during the time interval stated in the AD and has extended the compliance time so that this can be accomplished during normal aircraft maintenance periods. The labor expended for inspection, and replacement if necessary, of inflators in the life preservers and the individual flotation devices which were manufactured within the time period stated in the AD is less than 3 (three) minutes per unit according to the manufacturer, Switlik Parachute Company. The FAA has reviewed the manufacturer's estimate and has increased the time to inspect, and replace if necessary, to 5 (five) minutes per inflator. Although the FAA is unable to specifically identify all costs associated with determining manufacture date, the increase in the manufacturer's time assessment to complete compliance, from less than 3 (three) minutes to 5 (five) minutes, is considered a proper assessment of the time required to comply with the AD. Further, the FAA has determined that the cost associated with this estimated time is realistic.

Another commenter also mentions that the FAA used a very general term, "service", in the compliance statement, "At next regularly scheduled service * * *". Since "service" is not defined, the compliance period is open for interpretation, for example, Preserver/Flotation Device Service, or does it mean the next scheduled A, B, or C check? The commenter suggests that we remove "At next regularly scheduled service" from the compliance statement.

The FAA agrees, and the following changes have been made to the compliance statement. The text in the AD will change from, "At the next regularly scheduled service or within six (6) months after the effective date of this AD, whichever comes first, visually inspect * * *" to, "Within one year after the effective date of this AD, visually inspect * * *".

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of governments. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

*Conclusion:* The FAA has determined that this regulation involves approximately 69,220 inflators, and will cost approximately $3.50 labor for both inspection and replacement, if replacement is required. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT"**.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me the Federal Aviation Administration (FAA) amends Part 39 of the Federal Aviation Regulations (FAR) as follows:

1. The authority citation for Part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding to § 39.13 the following new airworthiness directive (AD):

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**Switlik Parachute Company, Inc.:** Applies to Switlik TSO–C13 Life Preservers and TSO–C72 Individual Flotation Devices: all models and all part numbers manufactured from September 1, 1984, through January 30, 1985, and June 1, 1985, through October 30, 1985 (date located on identification label on front surface).

Compliance is required within one year after the effective date of this AD, unless already accomplished.

To prevent the improper functioning of the carbon dioxide ($CO_2$) inflators on TSO–C13 Life Preservers and TSO–C72 Individual Flotation Devices, accomplish the following:

(a) Visually inspect the $CO_2$ inflators for cracks and chipping and, if necessary, replace $CO_2$ inflators with serviceable parts in accordance with Paragraph 2, Accomplishment Instructions of Switlik Parachute Company, Inc., Service Bulletin No. 25–00–19, dated September 8, 1987.

(b) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(c) Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, New York Aircraft Certification Office, Federal Aviation Administration, Engine and Propeller Directorate, Aircraft Certification Service, 181 South Franklin Avenue, Valley Stream, New York 11581.

(d) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, the Manager, New York Aircraft Certification Office, Federal Aviation Administration, Engine and Propeller Directorate, Aircraft Certification Service, 181 South Franklin Avenue, Valley Stream, New York 11581, may adjust the compliance time specified in this AD.

Switlik Service Bulletin No. 25–00–19, dated September 8, 1987, identified and described in this document, is incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received this document from the manufacturer may obtain copies upon request to Switlik Parachute Co., Inc., 1325 East State Street, P.O. Box 1328, Trenton, New Jersey 08607.

This document may also be examined at the Office of the Assistant Chief Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, Room 311, Rules Docket No. 88–ANE–05.

This amendment becomes effective on April 3, 1989.

Issued in Burlington, Massachusetts, on November 9, 1988.

**Arthur J. Pidgeon,**

*Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 89–4960 Filed 3–2–89; 8:45 am],

BILLING CODE 4910–13–M

**14 CFR Part 71**

**[Airspace Docket No. 87–AWA–54]**

## Alteration of Airport Radar Service Area; Metropolitan Oakland International, CA

**AGENCY:** Federal Aviation Administration (FAA) DOT.

**ACTION:** Final rule.

**SUMMARY:** This action modifies the Airport Radar Service Area (ARSA) at Metropolitan Oakland International Airport, CA. This modification adjusts the lateral limits of the ARSA to exclude that airspace that is within the outer core of the ARSA, north of Interstate 580. This airspace is being excluded so that the heavily used visual flight rules (VFR) route, north of Interstate 580, will not be compressed below 2,100 feet mean sea level (MSL).

**EFFECTIVE DATE:** 0901 U.T.C. April 6, 1989.

**FOR FURTHER INFORMATION CONTACT:** Betty Harrison, Airspace Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9254.

**SUPPLEMENTARY INFORMATION:**

### History

On September 30, 1985, the FAA proposed to designate an ARSA at the Metropolitan Oakland International Airport, CA (50 FR 39822) The FAA, after carefully considering all comments received and making alterations where appropriate, adopted the proposal and published the final rule in the March 10, 1988, issue of the **Federal Register** (51 FR 8284) with an effective date of April 9, 1987.

On October 21, 1988, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to modify the Metropolitan Oakland International Airport, ARSA (53 FR 41512). This rule modifies the ARSA at the Metropolitan Oakland International Airport. Interested parties were invited to partcipate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. Additionally, the FAA held informal airspace meetings for this proposal on July 6, 11, 12 and 13, 1988. Section 71.501 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6D dated January 4, 1988.

The only comment received concerning the Oakland ARSA alteration was from the Department of the Army. The Army wrote in approval of the alteration stating that army aviation operations in the Livermore/Parks Range area would be facilitated.

### The Rule

This action modifies the ARSA at Metropolitan Oakland International Airport, CA. The lateral limits of the ARSA will be reduced to exclude airspace that is within the outer core of the ARSA, north of Interstate 580. This airspace is being excluded so that the heavily used VFR route, north of Interstate 580, will not be compressed below 2,100 feet MSL.

### Regulatory Evaluation Summary

The following is a summary of the cost impact and benefit assessment of the final rule to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71). A more detailed regulatory evaluation has been placed in the docket (87–AWA–54). The objective of this rule is to modify the Metropolitan Oakland International Airport Radar Service Area (ARSA) as follows:

Eliminate the area within the outer core, north of Interstate 580. Interstate 580 is a well known, easily recognizable landmark for VFR aircraft. During user forums and feedback sessions since the original implementation of this ARSA, substantial comments have been received supporting the exclusion of this area so that the heavily used VFR route north of Interstate 580 is not compressed below 2,100 feet MSL.

*Summary of Costs*

The FAA estimates the costs associated with this rule to be very minimal. The rationale for this determination is based upon two factors:

1. The cost evaluation for the final rule ("Establishment of Airport Radar Service Areas" 51 FR 8284, March 10, 1986) determined that potential costs would not materialize to any appreciable degree, and when they do occur, they would be transitional, relatively low in magnitude, or attributable to specific implementation problems that have been experienced at a very small minority of ARSA sites.

2. Since this rule seeks to reduce ARSA controlled airspace, there should be little or no costs to the aviation public. Costs associated with a reduction in safety are not expected because the rule will reduce congestion in the affected airspace, and the final approach to Metropolitan Oakland International's Runway 27 is still protected by the ARSA's outer core.



Sectional charts will continue to be updated during the regular chart cycle.

*Summary of Benefits*

The FAA expects that the benefits of this rule will accrue in three areas. First, controllers will have less airspace to monitor thereby enabling them to better concentrate on traffic in and around Metropolitan Oakland traffic patterns. Second, increased airspace in the Lake Chabot area outside the ARSA will reduce congestion and provide users more freedom while maintaining existing levels of safety within and around the Oakland ARSA. Finally, aircraft noise will be reduced considerably by allowing nonparticipating aircraft to cross Castro Valley at a higher altitude.

*Conclusion*

On balance, the FAA believes that this airspace modification will benefit various users at a near zero cost and expects that the establishment of this rule will produce long term, ongoing benefits that will far exceed any costs which may be incurred.

### Regulatory Flexibility Determination

The Regulatory Flexibility Act (RFA) of 1980 requires agencies to identify rules that will have a significant economic impact on small entities, including small businesses.

This action to reduce the ARSA area north of Interstate 580 will release airspace not required for safety reasons. The establishment of this rule will, in effect, increase public airspace outside of ARSA control and, thus, will not pose an economic burden upon independently owned and operated small businesses and small not-for-profit organizations.

### Trade Impact Statement

This regulation will only impact the Metropolitan Oakland International ARSA. As such, it will have no effect on the sale of foreign aviation products or services in the United States, nor will it affect the sale of United States products or services in foreign countries.

For these reasons, the FAA certifies that this amendment will not result in a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required under the terms of the RFA.

### Federalism Implications

This regulation will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, preparation of a Federalism assessment is not warranted.

For the reasons discussed above, the FAA has determined that this regulation (1) is not a "major rule" under Executive Order 12291; and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

### List of Subjects in 14 CFR Part 71

Aviation safety, Airport radar service areas.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

## PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

**§ 71.501 [Amended]**

2. § 71.501 is amended as follows:

**Metropolitan Oakland International Airport, CA [Revised]**

That airspace extending upward from the surface to and including 4,000 feet MSL within a 5-mile radius of the Metropolitan Oakland International Airport (lat. 37°43'17" N., long. 122°13'11" W.), excluding that airspace contained within the San Francisco, CA, Terminal Control Area (TCA); and that airspace extending upward from 1,500 feet MSL to and including 4,000 feet MSL within a 10-mile radius of the Metropolitan Oakland International Airport, excluding that airspace contained within the San Francisco TCA, and that airspace beyond a 5-mile radius from the Metropolitan Oakland International Airport from the Oakland VORTAC 004° radial clockwise to the northern edge of U.S. Interstate 580, and that airspace beyond the 15-mile radius of the San Francisco TCA.

Issued in Washington, DC, February 16, 1989.

**Harold W. Becker,**

*Manager, Airspace-Rules and Aeronautical Information Division.*

[FR Doc. 89–4961 Filed 3–2–89; 8:45 am]

BILLING CODE 4910–13–M

**14 CFR Part 71**

**[Airspace Docket No. 88–AGL–26]**

## Alteration of Transition Area—Macomb, IL

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The nature of this action is to alter the Macomb, IL, transition area to accommodate new NDB RWY 26 and LOC RWY 26 Standard Instrument Approach Procedures (SIAPs) to Macomb Municipal Airport, Macomb, IL. The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument conditions from other aircraft operating under visual weather conditions in controlled airspace.

**EFFECTIVE DATE:** 0901 u.t.c., June 1, 1989.

**FOR FURTHER INFORMATION CONTACT:** Harold G. Hale, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694–7360.

**SUPPLEMENTARY INFORMATION:**

### History

On Monday, January 9, 1989, the Federal Aviation Administration (FAA) proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the transition area airspace near Macomb, IL (54 FR 626). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

### The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the transition area airspace near Macomb, IL. The present transition area is being modified to accommodate new NDB RWY 26 and LOC RWY 26 SIAPs. The only modification to the existing airspace is in the transition area extension and the extension consists of an additional 4.5 miles to the east and an additional 1.5 mile width each side of the 090° bearing from Macomb Municipal Airport.

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The development of these procedures requires that the FAA alter the designated airspace to insure that the procedures will be contained within controlled airspace. The minimum descent altitude for the procedures may be established below the floor of the 700-foot controlled airspace. Aeronautical maps and charts will reflect the defined areas which will enable other aircraft to circumnavigate the area in order to comply with applicable visual fight rule requirements.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Aviation safety, Transition areas.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

**PART 71—[AMENDED]**

1. The authority citation for Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

**§ 71.181 [Amended]**

2. Section 71.181 is amended as follows:

**Macomb, IL [Revised]**

That airspace extending upward from 700 feet above the surface within a 6-mile radius of Macomb Municipal Airport (lat. 40° 31' 11" N., long. 90° 39' 17" W.); and within 4.5 miles each side of the 090° bearing from Macomb Municipal Airport extending from the 6-mile radius area to 12.5 miles east of the airport.

Issued in Des Plaines, Illinois on February 21, 1989.

**Teddy W. Burcham,**

*Manager, Air Traffic Division.*

[FR Doc. 89-4962 Filed 3-2-89; 8:45 am]

BILLING CODE 4910-13-M

**14 CFR Part 97**

**[Docket No. 25803; Amdt. No. 1394]**

## Standard Instrument Approach Procedures; Miscellaneous Amendments

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

*Incorporation by reference:* Approved by the Director of the **Federal Register** on December 31, 1980, and reapproved as of January 1, 1982.

**ADDRESSES:** Availability of matters incorporated by reference in the amendment is as follows:

*For Examination—*

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

*For Purchase—*

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

*By Subscription—*

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Best, Flight Procedures Standards Branch (AFS-420), Air Transportation Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8277.

**SUPPLEMENTARY INFORMATION:** This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The Complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.



Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 97**

Approaches, Standard instrument, Incorporation by reference.

Issued in Washington, DC on February 17, 1989.

**Robert L. Goodrich,**

*Acting Director, Flight Standards Service.*

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.M.T. on the dates specified, as follows:

**PART 97—[AMENDED]**

1. The authority citation for Part 97 continues to read as follows:

**Authority:** 49 U.S.C. 1348, 1354(a), 1421, and 1510; 49 U.S.C. 106(g) (revised, Pub. L. 97-449, January 12, 1983; and 14 CFR 11.49(b)(2)).

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective May 4, 1989*

Casey, IL—Casey Muni, NDB RWY 04, Amdt. 5
Casey, IL—Casey Muni, NDB RWY 22, Amdt. 3
Iron Mountain/Kingsford, MI—Ford, LOC/DME BC RWY 19, Amdt. 10
Plymouth, MI—Mettetal-Canton, VOR-A, Amdt. 8
Wildwood, NJ—Cape May County, VOR RWY 23, Amdt. 9
Wildwood, NJ—Cape May County, LOC RWY 19, Amdt. 2
Wildwood, NJ—Cape May County, RNAV RWY 19, Amdt. 4
Akron, NY—Akron, VOR RWY 6, Amdt. 2
Akron, NY—Akron, VOR/DME 24, Amdt. 3
Harrisburg, PA—Capital City, RADAR-1, Amdt. 12, CANCELLED
Middletown, PA—Harrisburg Intl Arpt-Olmsted Fld, RADAR-1, Amdt. 6, CANCELLED

** * * Effective April 6, 1989*

Alexander City, AL—Thomas C. Russell Fld, NDB-A, Orig
Alexander City, AL—Thomas C. Russell Fld, NDB-A, Amdt. 7, CANCELLED
Huntsville, AL—Huntsville Intl-Carl T. Jones Field, ILS RWY 36L, Amdt. 7
Mobile, AL—Bates Filed, VOR OR TACAN-A, Orig
Monte Vista, CO—Monte Vista Muni, VOR/DME-A Amdt. 2
Monte Vista, CO—Monte Vista Muni, VOR/DME-A, Amdt. 2
Monte Vista, CO—Monte Vista Muni, NDB RWY 20, Orig
Bedford, MA—Laurence G. Hanscom Fld, ILS RWY 29, Amdt. 2
Obyan, N Mariana Islands—Saipan Intl, NBD/DME RWY 7, Amdt. 3
Obyan, N Mariana Islands—Saipan Intl, ILS/DME RWY 7, Amdt. 4
Ainsworth, NE—Ainsworth Muni, VOR RWY 17, Amdt. 1
Ainsworth, NE—Ainsworth Muni, VOR RWY 35, Amdt. 2
Valentine, NE—Miller Field, NDB RWY 31, Amdt. 5
North Platte, NE—Lee Bird Field, VOR RWY 35, Amdt. 16
North Platte, NE—Lee Bird Field, NDB RWY 30L, Amdt. 8
North Platte, NE—Lee Bird Field, NDB RWY 30R, Amdt. 2
North Platte, NE—Lee Bird Field, ILS RWY 30R, Amdt. 4
North Platte, NE—Lee Bird Field, RNAV RWY 12L, Amdt. 2
Lebanon, NH—Lebanon Muni, ILS RWY 18, Amdt. 1
New York, NY—John F. Kennedy Intl, ILS RWY 31R, Amdt. 13
Greenville, SC—Donaldson Center, NDB RWY 4, Amdt. 3
Greenville, SC—Donaldson Center, ILS RWY 4, Amdt. 1
Brenham TX—Brenham Muni, VOR/DME RWY 16, Orig
Brenham TX—Brenham Muni, NDB RWY 16, Amdt. 4
Barre-Montpelier, VT—Edward F. Knapp State, LOC RWY 17, Amdt. 5
Barre-Montpelier, VT—Edward F. Knapp State, ILS RWY 17, Amdt. 3

** * * Effective March 9, 1989*

Boston, MA—General Edward Lawrence Logan Intl, ILS RWY 4R, Amdt. 6
Bassett, NE—Rock County, NDB RWY 31 Amdt. 2
Tekamah, NE—Tekamah Muni, VOR RWY 32, Amdt. 3

** * * Effective February 10, 1989*

Fort Lauderdale, FL—Fort Lauderdale/Hollywood Intl, ILS RWY 9L, Amdt. 14
Dublin, GA—W.H. "Bud" Barron, LOC RWY 2, Amdt. 2
Dublin, GA—W.H. "Bud" Barron, NDB RWY 2, Amdt. 1
Dublin, GA—W.H. "Bud" Barron, RNAV RWY 20, Amdt. 2

** * * Effective February 9, 1989*

Windsor Locks, CT—Bradley Intl, VOR RWY 15, Amdt. 1
Baltimore, MD—Martin State, ILS RWY 32, Amdt. 3

** * * Effective February 7, 1989*

West Union, IA—George L. Scott Muni, NDB RWY 35, Amdt. 3
Elmira, NY—Elmira/Corning Regional, ILS RWY 6, Amdt. 2
Elmira, NY—Elmira/Corning Regional, ILS RWY 24, Amdt. 16

[FR Doc. 89-4963 Filed 3-2-89; 8:45 am]

BILLING CODE 4910-13-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**18 CFR Ch. I**

**[Docket No. RM89-9-000; Order No. 511]**

## Statement of Policy Permitting Limited Intervention by Fish and Wildlife Agencies at the Appeal Stage of a Licensing Proceeding

Issued February 17, 1989.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Statement of policy.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) is establishing a policy permitting limited intervention by fish and wildlife agencies at the appeal stage of a licensing proceeding.

Until a rule is adopted addressing mechanisms for fish and wildlife agencies to appeal license orders when they have not previously intervened in the proceeding, it will be the Commission's policy to allow a fish and

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wildlife agency to intervene in a licensing proceeding within 30 days after Commission staff has issued an order rejecting or materially modifying any of the fish and wildlife agency's recommendations submitted pursuant to the Fish and Wildlife Coordination Act, for the limited purpose of appealing such rejection or material modification. The intervention petition must be accompanied by the appeal. This policy will provide fish and wildlife agencies a chance to participate at the appeal stage of a proceeding without requiring them to intervene in those proceedings where a reason to appeal may never arise.

**EFFECTIVE DATE:** This statement of policy is effective February 17, 1989.

**FOR FURTHER INFORMATION CONTACT:** Jessica Seigel, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357–5775.

**SUPPLEMENTARY INFORMATION:** In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 1000 at the Commission's Headquarters, 825 North Capitol Street NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 357–8997. To access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this statement of policy will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 1000, 825 North Capitol Street NE., Washington, DC 20426.

### Statement of Policy

Before Commissioners: Martha O. Hesse, Chairman; Charles G. Stalon, Charles A. Trabandt, Elizabeth Anne Moler and Jerry J. Langdon.

The Federal Energy Regulatory Commission (Commission) has instructed staff to prepare a notice of proposed rulemaking (NOPR) on the conflict resolution procedures prescribed by section 10(j) of the Federal Power Act (FPA), as amended by section 3(a) of the Electric Consumers Protection Act of 1986 (ECPA).[1] One of the matters that the NOPR will address is mechanisms for fish and wildlife agencies to appeal license orders when they have not previously intervened in the proceeding. Until a rule resolving this matter is adopted, the Commission is establishing a policy to permit certain appeals by fish and wildlife agencies that have not previously intervened a proceeding.

Section 10(j) of the FPA requires hydroelectric licenses issued under the FPA to include conditions, based on recommendations submitted pursuant to the Fish and Wildlife Coordination Act by state and federal fish and wildlife agencies, for the protection, mitigation, and enhancement of fish and wildlife (including related spawning grounds and habitat). Whenever the Commission believes that a fish and wildlife agency's recommendations may be inconsistent with the purposes and requirements of applicable law, section 10(j)(2) requires that it attempt to resolve such inconsistency. If the inconsistency cannot be resolved and the Commission does not adopt the agency's recommendation, section 10(j)(2) requires it to publish findings that adoption of such recommendation is inconsistent with the purposes and requirements of applicable law and that the conditions selected by the Commission will adequately and equitably protect, mitigate damage to, and enhance fish and wildlife affected by the project. This is done in the licensing order.

The percentage of proceedings in which an agency's recommendations are held to be inconsistent with applicable law is exceedingly small. However, where a license is issued by the staff pursuant to delegated authority and a fish and wildlife agency is not a party, it will not be able to ensure that the Commission itself will review rejection of one or more of its recommendations. In order that the agencies will not have to intervene in every licensing proceeding so as to preserve their right of appeal to the Commission itself in such an instance, it will be the Commission's policy to allow a fish and wildlife agency to intervene in such a proceeding within 30 days after the issuance by staff pursuant to delegated authority of an order rejecting or materially modifying any of its fish and wildlife recommendations, for the limited purpose of permitting that agency to appeal such action to the Commission itself. The agency's intervention and appeal must be filed simultaneously.

We believe the establishment of this policy provides a practical way to allow fish and wildlife agencies, who have an important statutory role in the licensing process, to participate at the appeal stage of a proceeding, without requiring them to intervene in a large number of proceedings where the necessity for appeal may never arise.

### Effective Date

The Administrative Procedure Act exempts statements of policy from both the notice and comment requirements of section 4(b) of the Administrative Procedure Act [2] and the requirement that publication be made 30 days before the effective date of the rule.[3] Therefore, this statement of policy is effective February 17, 1989.

By the Commission. Commissioner Trabandt concurred with a separate statement attached.

**Lois D. Cashell,**

*Secretary.*

TRABANDT, Commissioner, *Concurring:*

I have publicly stated that a proposed rulemaking on the conflict resolution procedures prescribed by § 10(j) of the Federal Power Act, and the instant policy statement are both unnecessary and inappropriate, because current Commission practice (1) is completely consistent with the legislative history of the Conference Report enacted by Congress, and (2) implements dispute resolution in an effective and efficient manner for the mutual benefit of license applicants and fish and wildlife resources. However, my colleagues have decided to instruct staff to prepare a notice of proposed rulemaking on the conflict resolution procedures prescribed by § 10(j), and address in that proposed rule mechanisms for fish and wildlife agencies to appeal license orders when they have not previously intervened in the proceeding.

I remain seriously concerned that any parties be granted special administrative procedural rights not established expressly by statute, as would be the case here. I do not consider the enactment of § 10(j) by the Electric Consumers Protection Act of 1986, Pub. L. No. 99–495, 100 Stat. 1243 (Oct. 16, 1986) to constitute express statutory direction that fish and wildlife agencies be granted automatically late intervention, particularly after a license has been issued. A better course of action would be to require the Commission staff to notify such agencies of any decision to modify their recommendations in the 10(j) process and provide a period of 30 days thereafter for late intervention before a license issued. The majority here has created inadvertently a conditional license whenever a recommendation of a fish or wildlife agency is not adopted without modification in the 10(j) process. In my judgment, that result is not consistent with the Federal Power Act nor the Congressional intent of ECPA.

Nevertheless, the majority deems it important to ensure the right of intervention under such circumstances and, in any event, this issue will be considered further in the rulemaking process. Therefore, as an interim measure, I reluctantly concur with this policy determination.

Charles A. Trabandt,

*Commissioner.*

[FR Doc. 89–5003 Filed 3–2–89; 8:45 am]

BILLING CODE 6717–01–M

[1] 16 U.S.C. 803(j) (1982).

[2] 5 U.S.C. 553(b) (1982).

[3] 5 U.S.C. 553(d) (1982).



## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Parts 1, 2, 5, 7, 10, 12, 13, 14, 16, 20, 21, 25, 50, 56, and 58

**[Docket No. 88N–0002]**

### Certain Regulations; Editorial Amendments

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending certain of its regulations to correct cross-references and typographical errors, to update the titles and mailing symbols of certain organizational units, and to make technical revisions of, and renumber certain paragraphs in, the agency's list of standing advisory committees to reflect recent changes in the committee charters and a recent agency reorganization. This action will improve the accuracy and clarity of the regulations.

**EFFECTIVE DATE:** March 3, 1989.

**FOR FURTHER INFORMATION CONTACT:** T. Rada Proehl, Regulations Editorial Staff (HFC–222), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2994.

**SUPPLEMENTARY INFORMATION:** FDA is revising certain of its regulations in Subchapter A of Title 21 of the Code of Federal Regulations to correct cross-references and typographical errors and to update the titles and mailing symbols of certain organizational units. The affected regulations are 21 CFR 1.24(a)(6) (i), (ii) and (iii), 1.96(a)(3), 2.19, 2.125 (d), (g), (h)(1), (h)(2), the introductory text, and (i), 5.10(a)(7), 5.30(c), the introductory text, 5.45(c), the introductory text, 5.63(b), 5.110(c), 7.73, the introductory text, 10.1(a), 10.3 (a) and (b), 10.20(c)(1)(v), 10.25(a), 10.30 (b) and (h)(4), 10.35(d), 10.40(b)(1)(ix) and (i)(1), 10.45(f), 10.50(a)(2), 10.55(c), 10.80(d)(2)(iii)(*b*), 10.90(b) (4) and (5), 10.95(d)(1), the introductory text, and (d)(2), 10.100(b)(3)(v), 10.203(b), 10.206(a), 12.21(a)(2), 12.22(a)(5) (i)(*c*) and (b), the introductory text, 12.24 (b)(6) and (c), 12.50(a), 12.85(a), the introductory text, and (a)(2), 13.15(a), 13.25(b), 14.1(a)(2)(ix), 14.20(b)(9), 14.22(a)(1), 14.75(a) (6) (i) and (ii), 14.80(d), 14.84(c)(1), 14.100, 14.125(d), 14.171(d), (e), and (f), 16.1(b)(2), 16.24(c), 16.40, 16.42(c)(1), 16.119, 20.21(b), 20.42(c), 20.50, 20.81(a)(3), 20.100(c)(3), (13), (14), (15), (16), (17), and (21), 20.103(b), 20.112(a), 20.117(a)(3) and (b), 21.45(c), 21.71 (e)(4), 25.15(c)(18), 25.22(a)(14), 25.24(c)(4), 50.3(b) (6) and (11), 56.102(b) (6) and (10), 58.3(e) (5) and (9), and 58.195(b)(1).

Because these amendments are nonsubstantive notice and public procedures and delayed effective date are unnecessary (5 U.S.C. 553 (b)(B) and (d)).

### List of Subjects

*21 CFR Part 1*

Cosmetics, Drugs, Exports, Food labeling, Imports, Labeling, Reporting and recordkeeping requirements.

*21 CFR Part 2*

Administrative practice and procedure, Cosmetics, Drugs, Foods.

*21 CFR Part 5*

Authority delegations (Government agencies), Imports, Organization and functions (Government agencies).

*21 CFR Part 7*

Administrative practice and procedure, Consumer protection, Infants and children, Reporting and recordkeeping requirements.

*21 CFR Part 10*

Administrative practice and procedure, News media.

*21 CFR Part 12*

Administrative practice and procedure.

*21 CFR Part 13*

Administrative practice and procedure.

*21 CFR Part 14*

Administrative practice and procedure, Advisory committees, Color additives, Drugs, Radiation protection.

*21 CFR Part 16*

Administrative practice and procedure.

*21 CFR Part 20*

Confidential business information, Courts, Freedom of information, Government employees.

*21 CFR Part 21*

Privacy.

*21 CFR Part 25*

Environmental impact statements, Foreign relations, Reporting and recordkeeping requirements.

*21 CFR Part 50*

Prisoners, Reporting and recordkeeping requirements, Research, Safety.

*21 CFR Part 56*

Reporting and recordkeeping requirements, Research, Safety.

*21 CFR Part 58*

Laboratories, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Parts 1, 2, 5, 7, 10, 12, 13, 14, 16, 20, 21 25, 50, 56, and 58 are revised as follows:

## PART 1—GENERAL REGULATIONS FOR THE ENFORCEMENT OF THE FEDERAL FOOD, DRUG, AND COSMETIC ACT AND THE FAIR PACKAGING AND LABELING ACT

1. The authority citation for 21 CFR Part 1 continues to read as follows:

**Authority:** Secs. 4, 5, 6 (15 U.S.C. 1453, 1454, 1455); secs. 201, 403, 502, 505, 512, 602, 701 (21 U.S.C. 321, 343, 352, 355, 360b, 362, 371).

**§ 1.24 [Amended]**

2. Section 1.24 *Exemptions from required label statements* is amended in paragraphs (a)(6) (i), (ii), and (iii) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition".

**§ 1.96 [Amended]**

3. Section 1.96 *Granting of authorization to relabel and recondition* is amended in paragraph (a)(3) by removing "Bureau of Customs" and replacing it with "U.S. Customs Service".

## PART 2—GENERAL ADMINISTRATIVE RULINGS AND DECISIONS

4. The authority citation for 21 CFR Part 2 continues to read as follows:

**Authority:** Sec. 701, 52 Stat. 1055–1056 as amended (21 U.S.C. 371).

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**§ 2.19 [Amended]**

5. Section 2.19 *Methods of analysis* is amended by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201–3301".

6. Section 2.125 is amended in paragraph (d) by removing "Antibiotic Form 5 or 6" and replacing it with "antibiotic application", in paragraph (g) by removing "§ 314.8" and replacing it with "§ 314.70", in paragraph (h)(1) by removing "§ 314.1" and replacing it with "§ 314.50", by revising the introductory text of paragraph (h)(2), and in paragraph (i) by removing " 'Notice of Claimed Investigational New Drug' " and replacing it with " 'Investigational New Drug Application' " to read as follows:

**§ 2.125 Use of chlorofluorocarbon propellants in self-pressurized containers.**

* * * * *

(h) * * *

(2) The Food and Drug Administration may find that an abbreviated new drug application conforming to § 314.55 of this chapter is acceptable in lieu of a full new drug application for any product included in the classes of products in paragraph (e) of this section. A finding has been made that an ANDA may be submitted for the following products included in the classes of products listed in paragraph (e) of this section:

* * * * *

## PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

7. The authority citation for 21 CFR Part 5 continues to read as follows:

**Authority:** 5 U.S.C. 504, 552; 7 U.S.C. 2217; 15 U.S.C. 638, 1451 *et seq.*; 3701 *et seq.*; 21 U.S.C. 41 *et seq.*, 61–63, 141 *et seq.*, 301–392, 467f(b), 679(b), 801 *et seq.*, 823(f), 1031 *et seq.*; 35 U.S.C. 156; 42 U.S.C. 219, 241, 242(a), 242a, 242l, 242o, 243, 262, 263, 263b through 263m, 264, 265, 300u *et seq.*, 1395y and 1395y note, 3246b(b)(3), 4831(a), 10007, and 10008; Federal Caustic Poison Act (44 Stat. 1406); Federal Advisory Committee Act (Pub. L. 92–463); E.O. 11490, 11921, 12591.

**§ 5.10 [Amended]**

8. Section 5.10 *Delegations from the Secretary, the Assistant Secretary for Health, and Public Health Service Officials* is amended in paragraph (a)(7) by removing "notice of claimed exemption for an investigational new drug" and replacing it with "investigational new drug application".

**§ 5.30 [Amended]**

9. Section 5.30 *Hearings* is amended in the introductory text of paragraph (c) by removing "§ 16.40(b)" and replacing it with "§ 16.42(b)".

**§ 5.45 [Amended]**

10. Section 5.45 *Imports and exports* is amended in the introductory text of paragraph (c) by removing "Bureau of Customs" " and replacing it with "U.S. Customs Service's".

**§ 5.63 [Amended]**

11. Section 5.63 *Detention of meat, poultry, eggs, and related products* is amended in paragraph (b) by removing "467(b)" and replacing it with "467f(b)".

**§ 5.110 [Amended]**

12. Section 5.110 *FDA Public Information Offices* is amended in paragraph (c) by removing "15B–42" and replacing it with "15–05".

## PART 7—ENFORCEMENT POLICY

13. The authority citation for 21 CFR Part 7 continues to read as follows:

**Authority:** Secs. 305, 701(a), 52 Stat. 1045, 1055 (21 U.S.C. 335, 371(a)).

**§ 7.73 [Amended]**

14. Section 7.73 *Termination of recall* is amended in the introductory text by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition" everywhere that it appears.

## PART 10—ADMINISTRATIVE PRACTICES AND PROCEDURES

15. The authority citation for 21 CFR Part 10 continues to read as follows:

**Authority:** Sec. 201 *et seq.*, Pub. L. 717, 52 Stat. 1040 as amended (21 U.S.C. 321 *et seq.*); sec. 1 *et seq.*, Pub. L. 410, 58 Stat. 682 as amended (42 U.S.C. 201 *et seq.*); sec. 4, Pub. L. 91–513, 84 Stat. 1241 (42 U.S.C. 257a); sec. 301 *et seq.*, Pub. L. 91–513, 84 Stat. 1253 (21 U.S.C. 821 *et seq.*); sec. 409(b), Pub. L. 242, 81 Stat. 600 (21 U.S.C. 679(b)); sec. 24(b), Pub. L. 85–172, 82 Stat. 807 (21 U.S.C. 467f(b)); sec. 2 *et seq.*, Pub. L. 91–597, 84 Stat. 1620 (21 U.S.C. 1031 *et seq.*); secs. 1–9, Pub. L. 625, 44 Stat. 1101–1103 as amended (21 U.S.C. 141–149); secs. 1–10, Ch. 358, 29 Stat. 604–607 as amended (21 U.S.C. 41–50); sec. 2 *et seq.*, Pub. L. 783, 44 Stat. 1406 as amended (15 U.S.C. 401 *et seq.*); sec. 1 *et seq.*, Pub. L. 89–755, 80 Stat. 1296 as amended (15 U.S.C. 1451 *et seq.*); Pub. L. 100–236, 101 Stat. 1731 (28 U.S.C. 2112).

**§ 10.1 [Amended]**

16. Section 10.1 *Scope* is amended in paragraph (ar by removing "§ 5.1" and replacing it with "§ 5.10".

17. Section 10.3 is amended in paragraph (a) by revising the definition for "Office of the Commissioner," in the definition for "Party" by removing "bureau" and replacing it with "center", in the definition for "The laws administered by the Commissioner" by removing "§ 5.1" and replacing it with "§ 5.10", and in paragraph (b) by removing "of Part 1" and replacing it with "or Part 1" to read as follows:

**§ 10.3 Definitions.**

(a) * * *

"Office of the Commissioner" includes the offices of the Associate Commissioners but not the centers or the regional or district offices.

* * * * *

**§ 10.20 [Amended]**

18. Section 10.20 *Submission of documents to Dockets Management Branch; computation of time; availability for public disclosure* is amended in paragraph (c)(1)(v) by removing "§ 310.9 or".

**§ 10.25 [Amended]**

19. Section 10.25 *Initiation of administrative proceedings* is amended in paragraph (a) by removing "§ 314.1" and replacing it with "§ 314.50".

**§ 10.30 [Amended]**

20. Section 10.30 *Citizen petition* is amended in paragraph (b) under the heading "CITIZEN PETITION" by removing "5.1" and replacing it with "5.10" and in paragraph (h)(4) by removing "§ 12.5" and replacing it with "§ 12.20".

**§ 10.35 [Amended]**

21. Section 10.35 *Administrative stay of action* is amended in paragraph (d) by removing "§ 10.80" and replacing it with "§ 10.85".

**§ 10.40 [Amended]**

22. Section 10.40 *Promulgation of regulations for the efficient enforcement of the law* is amended in paragraph (b)(1)(ix) by removing "§ 25.25(a)(3) (ii) or (iii)", and replacing it with "§ 25.42(b)(3) (ii) or (iii)"', and in paragraph (i)(1) "bureau" is removed and replaced with "center" everywhere that it appears.

**§ 10.45 [Amended]**

23. Section 10.45 *Court review of final administrative action; exhaustion of administrative remedies* is amended in paragraph (f) by removing "16.80(c)" and replacing it with "16.80(a)".

**§ 10.50 [Amended]**

24. Section 10.50 *Promulgation of regulations and orders after an opportunity for a formal evidentiary public hearing* is amended in paragraph (a)(2) by removing "430.20(b)" and replacing it with "314.300".



**§ 10.55 [Amended]**

25. Section 10.55 *Separation of functions; ex parte communications* is amended in paragraph (c) by removing "430.20(b)(7)" and replacing it with "314.300".

**§ 10.80 [Amended]**

26. Section 10.80 *Dissemination of draft Federal Register notices and regulations* is amended in paragraph (d)(2)(iii)(*b*) by removing "§ 10.40(f)(9)" and replacing it with "§ 10.40(f)(6)".

**§ 10.90 [Amended]**

27. Section 10.90 *Food and Drug Administration regulations, guidelines, recommendations, and agreements* is amended in paragraphs (b) (4) and (5) by removing "bureau" and replacing it with "center".

**§ 10.95 [Amended]**

28. Section 10.95 *Participation in outside standard-setting activities* is amended in paragraph (d)(1), the introductory text, and in paragraph (d)(2) by removing "bureau" and replacing it with "center".

**§ 10.100 [Amended]**

29. Section 10.100 *Public calendars* is amended by removing and reserving paragraph (b)(3)(v).

**§ 10.203 [Amended]**

30. Section 10.203 *Definitions* is amended in paragraph (b) by removing "Office of Legislation and Information" and replacing it with "Office of Public Affairs".

**§ 10.206 [Amended]**

31. Section 10.206 *Procedures for electronic media coverage of agency public administrative proceedings* is amended in paragraph (a) by removing "(HFW–20), Office of Legislation and Information" and replacing it with "(HFI–20), Office of Public Affairs".

## PART 12—FORMAL EVIDENTIARY PUBLIC HEARING

32. The authority citation for 21 CFR Part 12 continues to read as follows:

**Authority:** Sec. 201 *et seq.*, Pub. L. 717, 52 Stat. 1040 as amended (21 U.S.C. 321 *et seq.* ); sec. 1 *et seq.*, Pub. L. 410, 58 Stat. 682 as amended (42 U.S.C. 201 *et seq.* ); sec. 4, Pub. L. 91–513, 84 Stat. 1241 (42 U.S.C. 257a); sec. 301 *et seq.*, Pub. L. 91–513, 84 Stat. 1253 (21 U.S.C. 821 *et seq.* ); sec. 409(b), Pub. L. 242, 81 Stat. 600 (21 U.S.C. 679(b)); sec. 24(b), Pub. L. 85–172, 82 Stat. 807 (21 U.S.C. 467f(b)); sec. 2 *et seq.*, Pub. L. 91–597, 84 Stat. 1620 (21 U.S.C. 1031 *et seq.* ); secs. 1–9, Pub. L. 625, 44 Stat. 1101–1103 as amended (21 U.S.C. 141–149); secs. 1–10, Ch. 358, 29 Stat. 604–607 as amended (21 U.S.C. 41–50); sec. 2 *et seq.*, Pub. L. 783, 44 Stat. 1406 as amended (15 U.S.C. 401 *et seq.* ); sec. 1 *et seq.*, Pub. L. 89–755, 80 Stat. 1296 as amended (15 U.S.C. 1451 *et seq.*).

**§ 12.21 [Amended]**

33. Section 12.21 *Initiation of a hearing involving the issuance, amendment, or revocation of an order* is amended in paragraph (a)(2) by removing "§ 314.1(c)" and replacing it with "§ 314.50".

**§ 12.22 [Amended]**

34. Section 12.22 *Filing objections and requests for a hearing on a regulation or order* is amended in paragraph (a)(5)(i)(*c*) by removing "§ 310.9 or", and in paragraph (b), the introductory text, by removing "hearing clerk" and replacing it with "Dockets Management Branch".

**§ 12.24 [Amended]**

35. Section 12.24 *Ruling on objections and requests for hearing* is amended in paragraphs (b)(6) and (c) by removing "430.20(b)" and replacing it with "314.300".

**§ 12.50 [Amended]**

36. Section 12.50 *Advice on public participation in hearings* is amended in paragraph (a) by removing "(HFC–10)" and replacing it with "(HFC–220)".

**§ 12.85 [Amended]**

37. Section 12.85 *Disclosure of data and information by the participants* is amended in paragraph (a), the introductory text, and in paragraph (a)(2) by removing "bureau" and replacing it with "center".

## PART 13—PUBLIC HEARING BEFORE A PUBLIC BOARD OF INQUIRY

38. The authority citation for 21 CFR Part 13 is revised to read as follows:

**Authority:** Sec. 201 *et seq.*, Pub. L. 717, 52 Stat. 1040 (21 U.S.C. 321 *et seq.* ); sec. 1 *et seq.*, Pub. L. 410, 58 Stat. 682 as amended (42 U.S.C. 201 *et seq.* ); sec. 4, Pub. L. 91–513, 84 Stat. 1241 (42 U.S.C. 257a); sec. 301 *et seq.*, Pub. L. 91–513, 84 Stat. 1253 (21 U.S.C. 821 *et seq.* ); sec. 409(b), Pub. L. 242, 81 Stat. 600 (21 U.S.C. 679(b)); sec. 24(b), Pub. L. 85–172, 82 Stat. 807 (21 U.S.C. 467f(b)); sec. 2 *et seq.*, Pub. L. 91–597, 84 Stat. 1620 (21 U.S.C. 1031 *et seq.* ); secs. 1–9, Pub. L. 625, 44 Stat. 1101–1103 as amended (21 U.S.C. 141–149); secs. 1–10, Ch. 358, 29 Stat. 604–609 as amended (21 U.S.C. 41–50); sec. 2 *et seq.*, Pub. L. 783, 44 Stat. 1406 as amended (15 U.S.C. 401–411 notes); sec. 1 *et seq.*, Pub. L. 89–755, 80 Stat. 1296 as amended (15 U.S.C. 1451 *et seq.* ).

**§ 13.15 [Amended]**

39. Section 13.15 *Separation of functions; ex parte communications; administrative support* is amended in paragraph (a) by removing "bureau" and replacing it with "center".

**§ 13.25 [Amended]**

40. Section 13.25 *Disclosure of data and information by the participants* is amended in paragraph (b) by removing the word "under" the second time it appears and replacing it with "that".

## PART 14—PUBLIC HEARING BEFORE A PUBLIC ADVISORY COMMITTEE

41. The authority citation for 21 CFR Part 14 continues to read as follows:

**Authority:** 5 U.S.C. 5332 note; 15 U.S.C. 1451 *et seq.*; 21 U.S.C. 41 *et seq.*; 141 *et seq.*, 321–371, 467f(b), 679(b), 821, 1031 *et seq.*; 42 U.S.C. 201 *et seq.*; 257a; 21 CFR 5.10.

**§ 14.1 [Amended]**

42. Section 14.1 *Scope* is amended in paragraph (a)(2)(ix) by removing "520(1)" and replacing it with "520(f)".

**§ 14.20 [Amended]**

43. Section 14.20 *Notice of hearing before an advisory committee* is amended in paragraph (b)(9) by removing "§ 14.35(c)(2)" and replacing it with "§ 14.35(d)(2)".

**§ 14.22 [Amended]**

44. Section 14.22 *Meetings of an advisory committee* is amended in paragraph (a)(1) by removing "§ 14.5(b)(4)" and replacing it with "§ 14.20(b)(4)".

**§ 14.75 [Amended]**

45. Section 14.75 *Examination of administrative record and other advisory committee records* is amended in paragraph (a)(6)(i) and (ii) by removing "§ 14.22(h)(2)" and replacing it with "§ 14.22(i)(2)".

**§ 14.80 [Amended]**

46. Section 14.80 *Qualifications for members of standing policy and technical advisory committees* is amended in paragraph (d) by removing "14.86" and replacing it with "14.84".

47. Section 14.84 is amended by revising the last sentence in paragraph (c)(1) to read as follows:

**§ 14.84. Nominations and selection of nonvoting members of standing technical advisory committees.**

* * * * *

(c) * * *

(1) * * * All nominations are to be submitted in writing to the Office of Consumer Affairs (HFE–40), Food and Drug Administration, Rm. 16–85, 5600 Fishers Lane, Rockville, MD 20857.

* * * * *

48. Section 14.100 is revised to read as follows:

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**§ 14.100 List of standing advisory committees.**

Standing advisory committees and the dates of their establishment are as follows:

(a) *Office of the Commissioner—Board of Tea Experts.*

(1) Date established: March 2, 1897.

(2) Function: Advises on establishment of uniform standards of purity, quality, and fitness for consumption of all tea imported into the United States under 21 U.S.C. 42.

(b) *Center for Biologics Evaluation and Research—*

(1) *Allergenic Products Advisory Committee.*

(i) Date established: July 9, 1984.

(ii) Function: Reviews and evaluates data on the safety and effectiveness of allergenic biological products intended for use in the diagnosis, prevention, or treatment of human disease.

(2) *Biological Response Modifiers Advisory Committee.*

(i) Date established: October 28, 1988.

(ii) Function: Reviews and evaluates data relating to the safety, effectiveness, and appropriate use of biological response modifiers which are intended for use in the prevention and treatment of a broad spectrum of human diseases.The committee will also consider the quality and relevance of FDA's research program which provides scientific support for the regulation of these products, and advise the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Commissioner of Food and Drugs of its findings.

(3) *Blood Products Advisory Committee.*

(i) Date established: May 13, 1980.

(ii) Function: Reviews and evaluates data on the safety and effectiveness, and appropriate use of blood products intended for use in the diagnosis, prevention, or treatment of human diseases.

(4) [Reserved]

(5) *Vaccines and Related Biological Products Advisory Committee.*

(i) Date established: December 31, 1979.

(ii) Function: Reviews and evaluates data on the safety and effectiveness of vaccines intended for use in the diagnosis, prevention, or treatment of human diseases.

(c) *Center for Drug Evaluation and Research*—(1) *Anesthetic and Life Support Drugs Advisory Committee.*

(i) Date established: May 1, 1978.

(ii) Function: Reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in the field of anethesiology and surgery.

(2) *Anti-Infective Drugs Advisory Committee.*

(i) Date established: October 7, 1980.

(ii) Function: Reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in infectious diseases.

(3) [Reserved]

(4) *Arthritis Advisory Committee.*

(i) Date established: April 5, 1974.

(ii) Function: Reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in arthritic conditions.

(5) *Cardiovascular and Renal Drugs Advisory Committee.*

(i) Date established: August 27, 1970.

(ii) Function: Reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in cardiovascular and renal disorders.

(6) *Dermatologic Drugs Advisory Committee.*

(i) Date established: October 7, 1980.

(ii) Function: Reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in the treatment of dermatologic diseases.

(7) *Drug Abuse Advisory Committee.*

(i) Date established: May 31, 1978.

(ii) Function: Advises on the scientific and medical evaluation of information gathered by the Department of Health and Human Services and the Department of Justice on the safety, efficacy, and abuse potential of drugs and recommends actions to be taken on the marketing, investigation, and control of such drugs.

(8) *Endocrinologic and Metabolic Drugs Advisory Committee.*

(i) Date established: August 27, 1970.

(ii) Function: Reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in endocrine and metabolic disorders.

(9) *Fertility and Maternal Health Drugs Advisory Committee.*

(i) Date established: March 23, 1978.

(ii) Function: Reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in the practice of obstetrics and gynecology.

(10) *Gastrointestinal Drugs Advisory Committee.*

(i) Date established: March 3, 1978.

(ii) Function: Reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in gastrointestinal diseases.

(11) *Oncologic Drugs Advisory Committee.*

(i) Date established: September 21, 1978.

(ii) Function: Reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in treatment of cancer.

(12) *Peripheral and Central Nervous System Drugs Advisory Committee.*

(i) Date established: June 4, 1974.

(ii) Function: Reviews and evaluates data on the safeety and effectiveness of marketed and investigational human drugs for use in neurological disease.

(13) *Psychopharmacologic Drugs Advisory Committee.*

(i) Date established: June 4, 1974.

(ii) Function: Reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in the practice of psychiatry and related fields.

(14) *Pulmonary-Allergy Drugs Advisory Committee.*

(i) Date established: February 17, 1972.

(ii) Function: Reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in the treatment of pulmonary disease and diseases with allergic and/or immunologic mechanisms.

(15) *Radiopharmaceutical Drugs Advisory Committee.*

(i) Date established: August 30, 1967.

(ii) Function: Reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in the practice of nuclear medicine.

(d) *Center for Devices and Radiological Health—*

(1) Advisory panels and the dates of their establishments are as follows:

(i) *Anesthesiology and Respiratory Therapy Devices Panel.*

(A) Date established: April 14, 1984.

(B) Function: Reviews and evaluates data on the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

(ii) *Circulatory System Devices Panel.*

(A) Date established: April 14, 1984.

(B) Function: Reviews and evaluates data on the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

(iii) *Clinical Chemistry and Clinical Toxicology Devices Panel.*

(A) Date established: April 14, 1984.

(B) Function: Reviews and evaluates data on the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

(iv) *Dental Products Panel.*

(A) Date established: March 5, 1988.

(B) Function: Reviews and evaluates data on the safety and effectiveness of devices currently in use and makes recommendations for their regulation. Reviews and evaluates data concerning the safety and effectiveness of over-the-counter (OTC) drug products for human use and makes appropriate recommendations to the Commissioner of Food and Drugs.

(v) *Ear, Nose, and Throat Devices Panel.*

(A) Date established: April 14, 1984.

(B) Function: Reviews and evaluates data on the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

(vi) *Gastroenterology-Urology Devices Panel.*

(A) Date established: April 14, 1984.

(B) Function: Reviews and evaluates data on the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

(vii) *General and Plastic Surgery Devices Panel.*

(A) Date established: April 14, 1984.

(B) Function: Reviews and evaluates data on the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

(viii) *General Hospital and Personal Use Devices Panel.*

(A) Date established: April 14, 1984.

(B) Function: Reviews and evaluates data on the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

(ix) *Hematology and Pathology Devices Panel.*

(A) Date established: April 14, 1984.

(B) Function: Reviews and evaluates data on the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

(x) *Immunology Devices Panel.*

(A) Date established: April 14, 1984.

(B) Function: Reviews and evaluates data on the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

(xi) *Microbiology Devices Panel.*

(A) Date established: April 14, 1984.

(B) Function: Reviews and evaluates data on the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

(xii) *Neurological Devices Panel.*

(A) Date established: April 14, 1984.

(B) Function: Reviews and evaluates data on the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

(xiii) *Obstetrics-Gynecology Devices Panel.*

(A) Date established: April 14, 1984.

(B) Function: Reviews and evaluates data on the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

(xiv) *Ophthalmic Devices Panel.*

(A) Date established: April 14, 1984.

(B) Function: Reviews and evaluates data on the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

(xv) *Orthopedic and Rehabilitation Devices Panel.*

(A) Date established: April 14, 1984.

(B) Function: Reviews and evaluates data on the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

(xvi) *Radiologic Devices Panel.*

(A) Date established: April 14, 1984.

(B) Function: Reviews and evaluates data on the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

(2) *Device Good Manufacturing Practice Advisory Committee.*

(i) Date established: August 12, 1976.

(ii) Function: Reviews proposed regulations for good manufacturing practices governing the methods used in, and the facilities and controls used for, the manufacture, packing, storage, and installation of devices, and makes recommendations on the feasibility and reasonableness of the proposed regulations.

(3) *Technical Electronic Product Radiation Safety Standards Committee.*

(i) Date established: October 18, 1968.

(ii) Function: Advises on technical feasibility, reasonableness, and practicability of performance standards for electronic products to control the emission of radiation under 42 U.S.C. 263f(f)(1)(A).

(e) *National Center for Toxicological Research—Science Advisory Board.*

(1) Date established: June 2, 1973.

(2) Function: Advises on establishment and implementation of a research program that will assist the Commissioner of Food and Drugs and the Administrator, Environmental Protection Agency, in fulfilling their regulatory responsibilities.

(f) *Center for Veterinary Medicine—Veterinary Medicine Advisory Committee.*

(1) Date established: April 24, 1984.

(2) Function: Reviews and evaluates available data concerning safety and effectiveness of marketed and investigational new animal drugs, feeds, and devices for use in the treatment and prevention of animal disease and increased animal production.



**§ 14.125 [Amended]**

49. Section 14.125 *Procedures of TEPRSSC* is amended in paragraph (d) by removing "Bureau of Radiological Health" and replacing it with "Center for Devices and Radiological Health".

**§ 14.171 [Amended]**

50. Section 14.171 *Utilization of an advisory committee on the initiative of FDA* is amended in paragraphs (d) and (e) by removing "bureau" and replacing it with "center" and in paragraph (f) by removing "314.14, 431.71," and replacing it with "314.430".

## PART 16—REGULATORY HEARING BEFORE THE FOOD AND DRUG ADMINISTRATION

51. The authority citation for 21 CFR Part 16 continues to read as follows:

**Authority:** Secs. 1 *et seq.*, 2 *et seq.*; 15 U.S.C. 401 *et seq.*, 1451 *et seq.*; secs. 1–10, 1–9, 201 *et seq.*, 24(b), 409(b), 100 *et seq.*, 2 *et seq.*; 21 U.S.C. 41–50, 141–149, 321 *et seq.*, 467f(b), 679(b), 821 *et seq.*, 1031 *et seq.*; secs. 1 *et seq.*, 4; 42 U.S.C. 201 *et seq.*, 257a; 21 CFR 5.10.

**§ 16.1 [Amended]**

52. Section 16.1 *Scope* is amended in the listings in paragraph (b)(2) by removing "§ 312.1(c)(1)", "§ 312.1(c)(4) and (d)" and "§ 312.9(c)" and replacing it with "§ 312.70", "§§ 312.70(d) and 312.44", and "§ 312.160(b)", respectively.

**§ 16.24 [Amended]**

53. Section 16.24 *Regulatory hearing required by the act or a regulation* is amended in paragraph (c) by removing "paragraph (c)" and replacing it with "paragraph (d)".

**§ 16.40 [Amended]**

54. Section 16.40 *Commissioner* is amended by removing "bureau" and replacing it with "center".

**§ 16.42 [Amended]**

55. Section 16.42 *Presiding officer* is amended in paragraph (c)(1) by removing "bureau" and replacing it with "center" everywhere that it appears.

**§ 16.119 [Amended]**

56. Section 16.119 *Reconsideration and stay of action* is amended by removing "§ 10.39" and replacing it with "§ 10.35".

## PART 20—PUBLIC INFORMATION

57. The authority citation for 21 CFR Part 20 is revised to read as follows:

**Authority:** Sec. 201 *et seq.*, Pub. L. 717, 52 Stat. 1040 *et seq.*, as amended (21 U.S.C. 321 *et seq.*); sec. 1 *et seq.*, Pub. L. 410, 58 Stat. 682 *et seq.*, as amended (42 U.S.C. 201 *et seq.*); Pub. L. 90–23, 81 Stat. 54–56 as amended by 88 Stat. 1561–1565 (5 U.S.C. 552); 21 CFR 5.10, 5.11.

**§ 20.21 [Amended]**

58. Section 20.21 *Uniform access to records* is amended in paragraph (b) by removing "§ 7.87(c)(1)" and replacing it with "§ 7.87(c)".

**§ 20.42 [Amended]**

59. Section 20.42 *Fees* is amended in paragraph (c) by removing "Accounting

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Operations Branch" and replacing it with "Accounting Branch".

**§ 20.50 [Amended]**

60. Section 20.50 *Availability of records at National Technical Information Service* is amended by removing "22152" and replacing it with "22162".

**§ 20.81 [Amended]**

61. Section 20.81 *Data and information previously disclosed to the public* is amended in paragraph (a)(3) by removing "§ 312.1(a)(3)" and replacing it with "Part 312".

62. Section 20.100 is amended in paragraph (c)(13) by removing "§ 310.505(g)" and replacing it with "§ 291.505(g)", and by revising paragraphs (c)(3), (14), (15), (16), (17), and (21) to read as follows:

**§ 20.100 Applicability; cross reference to other regulations.**

* * * * *

(c) * * *

(3) Environmental assessments; finding of no significant impact, in § 25.41 of this chapter, or draft and final environmental impact statements, in § 25.42 of this chapter.

* * * * *

(14) Investigational new drug notice, in Part 312 of this chapter.

(15) Labeling for and lists of approved new drug applications, in § 314.430 of this chapter.

(16) Master files for new drug applications, in § 314.420 of this chapter.

(17) New drug application file, in § 314.430 of this chapter.

* * * * *

(21) Antibiotic drug file, in § 314.430 of this chapter.

* * * * *

**§ 20.103 [Amended]**

63. Section 20.103 *Correspondence* is amended in paragraph (b) by removing "§ 314.14(e)(7)" and replacing it with "§ 314.430".

**§ 20.112 [Amended]**

64. Section 20.112 *Voluntary drug experience reports submitted by physicians and hospitals* is amended in paragraph (a) by removing "FD-1639" and replacing it with "FDA-1639".

**§ 20.117 [Amended]**

65. Section 20.117 *New drug information* is amended in paragraph (a)(3) by removing "antibiotic Form 5's, or antibiotic Form 6's" and replacing it with "antibiotic applications" and in paragraph (b) by removing "312.5, and 314.14" and replacing it with "312.130, and 314.430", respectively.

## PART 21—PROTECTION OF PRIVACY

66. The authority citation for 21 CFR Part 21 continues to read as follows:

**Authority:** Sec. 701(a), 52 Stat. 1055 (21 U.S.C. 371(a)); 5 U.S.C. 552a; 21 CFR 5.10.

**§ 21.45 [Amended]**

67. Section 21.45 *Fees* is amended in paragraph (c) by removing "Accounting Operations Branch (HFA-210)" and replacing it with "Accounting Branch (HFA-120)".

**§ 21.71 [Amended]**

68. Section 21.71 *Disclosure of records in Privacy Act Record Systems; accounting required* is amended in paragraph (e)(4) by removing "(a)(5)" and replacing it with "(a)(7)".

## PART 25—ENVIRONMENTAL IMPACT CONSIDERATIONS

69. The authority citation for 21 CFR Part 25 continues to read as follows:

**Authority:** Sec. 701, 52 Stat. 1055–1056 as amended (21 U.S.C. 371); secs. 351, 354–361, 58 Stat. 702 as amended (42 U.S.C. 262, 263b–264); sec. 102(2)(C), 83 Stat. 853 (42 U.S.C. 4332); 40 CFR Parts 1500–1508; Executive Order 11514 as amended by E.O. 11991; E.O. 12114.

70. Section 25.15 is amended by revising paragraph (c)(18) to read as follows:

**§ 25.15 Terminology.**

* * * * *

(c) * * *

(18) IND—Investigational New Drug Application.

* * * * *

**§ 25.22 [Amended]**

71. Section 25.22 *Actions requiring preparation of an environmental assessment* is amended in paragraph (a)(14) by removing "notices of claimed investigational exemption for new drugs" and replacing it with "investigational new drug applications".

**§ 25.24 [Amended]**

72. Section 25.24 *Categorical exclusions* is amended in paragraph (c)(4) by removing "Notice of Claimed Investigational Exemption for New Drug" and replacing it with "Investigational New Drug Application".

## PART 50—PROTECTION OF HUMAN SUBJECTS

73. The authority citation for 21 CFR Part 50 is revised to read as follows:

**Authority:** Secs. 201, 408, 409, 502, 503, 505, 506, 507, 510, 513–516, 518–520, 701(a), 706, and 801, Pub. L. 717, 52 Stat. 1040–1042 as amended, 1049–1054 as amended, 1055, 1058 as amended, 55 Stat. 851 as amended, 59 Stat. 463 as amended, 72 Stat. 1785–1788 as amended, 74 Stat. 399–407 as amended, 76 Stat. 794–795 as amended, 90 Stat. 540–560, 562–574 (21 U.S.C. 321, 346, 348, 352, 353, 355, 350, 357, 360, 360c–360f, 360b–360j, 371(a), 376, and 381); secs. 215, 351, 354–360F, Pub. L. 410, 58 Stat. 690, 702 as amended, 82 Stat. 1173–1186 as amended (42 U.S.C. 216, 282, 263b–263n); 21 CFR 5.10.

74. Section 50.3 is amended by revising paragraph (b)(6) and in paragraph (b)(11) by removing "Part 430" and replacing it with "§ 314.300 of this chapter" to read as follows:

**§ 50.3 Definitions.**

* * * * *

(b) * * *

(6) An investigational new drug application, described in Part 312 of this chapter.

* * * * *

## PART 56—INSTITUTIONAL REVIEW BOARDS

75. The authority citation for 21 CFR Part 56 is revised to read as follows:

**Authority:** Secs. 201, 406, 408, 409, 501, 502, 503, 505, 506, 507, 510, 513–516, 518–520, 701(a), 706, and 801, Pub. L. 717, 52 Stat. 1040–1042 as amended, 1049–1054 as amended, 1055, 1058 as amended, 55 Stat. 851 as amended, 59 Stat. 463 as amended, 68 Stat. 511–518 as amended, 72 Stat. 1785–1788 as amended, 74 Stat. 399–407 as amended, 76 Stat. 794–795 as amended, 90 Stat. 540–560, 562–574 (21 U.S.C. 321, 346, 348, 352, 353, 355, 356, 357, 360, 360b–360f, 360b–360j, 371(a), 376, and 381); secs. 215, 301, 351, 354–360F, Pub. L. 410, 58 Stat. 690, 702 as amended, 82 Stat. 1173–1186 as amended (42 U.S.C. 216, 241, 262, 263b–263n); 21 CFR 5.10.

76. Section 56.102 is amended by revising paragraph (b)(6) and in paragraph (b)(10) by removing "Part 430" and replacing it with "§ 314.300 of this chapter" to read as follows:

**§ 56.102 Definitions.**

* * * * *

(b) * * *

(6) An investigational new drug application, described in Part 312 of this chapter.

* * * * *

## PART 58—GOOD LABORATORY PRACTICE FOR NONCLINICAL LABORATORY STUDIES

77. The authority citation for 21 CFR Part 58 is revised to read as follows:

**Authority:** Secs. 306, 402(a), 406, 408, 409, 502, 503, 505, 506, 507, 510, 512–516, 518–520, 701(a), 706, 801, Pub. L. 717, 52 Stat. 1045–1046 as amended, 1049–1063 as amended, 1055, 1058 as amended, 55 Stat. 851 as amended, 59 Stat. 463 as amended, 68 Stat. 511–517 as amended, 72 Stat. 1785–1788 as amended, 76 Stat. 794 as amended, 82 Stat. 343–351, 90 Stat. 539–574 (21 U.S.C. 336, 342(a), 346, 346a, 348, 352, 353, 355, 356, 357, 360, 360b–360f, 360h–360j, 371(a), 381); secs. 215, 351, 354–360F, Pub. L. 410, 58 Stat. 690, 702 as amended, 82 Stat. 1173–1186 as amended (42 U.S.C. 216, 262, 263b–263n); 21 CFR 5.11.

78. Section 58.3 is amended by revising paragraph (e)(5) and in paragraph (e)(9) by removing "Part 430" and replacing it with "§ 314.300 of this chapter" to read as follows:

**§ 58.3 Definitions.**

* * * * *

(e) * * *

(5) An "investigational new drug application," described in Part 312 of this chapter.

* * * * *

**§ 58.195 [Amended]**

79. Section 58.195 *Retention of records* is amended in paragraph (b)(1) by removing "notices of claimed investigational exemption for new drugs" and replacing it with "investigational new drug applications".

Dated: February 23, 1989.

**John M. Taylor,**

*Associate Commissioner for Regulatory Affairs.*

[FR Doc. 89-4959 Filed 3-2-89; 8:45 am]

BILLING CODE 4160-01-M



## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### 23 CFR 646

### Railroads; Technical Amendment

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Final rule; technical amendment.

**SUMMARY:** This document centralizes the authority at the part level in Part 646 rather than disperse the authority citations at the subpart level.

**EFFECTIVE DATE:** March 3, 1989.

**FOR FURTHER INFORMATION CONTACT:** Michael J. Laska, Office of the Chief Counsel, 202-366-1383. Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday.

**SUPPLEMENTARY INFORMATION:** The FHWA hereby amends Part 646 of Title 23, Code of Federal Regulations, by revising the authority citation to read as follows and all other authority citations which appear throughout Part 646 are removed:

**Authority:** 23 U.S.C. 109(e), 120(d), 130, 315 and 405; 49 CFR 1.48(b).

Issued on: February 28, 1989.

**Michael J. Laska,**

*Deputy Assistant Chief Counsel for Legislation and Regulations, Federal Highway Administration.*

[FR Doc. 89-4966 Filed 3-2-89; 8:45 am]

BILLING CODE 4910-22-M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Assistant Secretary for Public and Indian Housing

### 24 CFR Part 968

**[Docket No. R-89-1422; FR -2545]**

### Comprehensive Improvement Assistance Program

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Final rule.

**SUMMARY:** This final rule makes changes in the "special purpose modernization" provisions of the existing Comprehensive Improvement Assistance Program (CIAP) regulation (24 CFR Part 968) to implement statutory amendments contained in section 120 of the Housing and Community Development Act of 1987 (1987 Act), along with certain funding provisions to back up the statutory policy, as follows:

- Revision of the definition of "special purpose modernization" to expand the types of physical improvements which may be funded under a special purpose modernization program, subject to a HUD determination that the improvements are necessary and sufficient to extend substantially the useful life of the project, beyond that which it would have if such improvements were not made;
- Revision of certain public housing agency (PHA) planning provisions (five-year plan and project needs assessments), as appropriate to accommodate changes in special purpose modernization;
- Authority for HUD to establish annual funding set-asides for special purpose modernization, to assure that special purpose needs are appropriately addressed;
- Where a project has not been comprehensively modernized, a one-time limitation on use of the special purpose approach for work related to major equipment systems or structural elements, upgrading security, and reduction of vacant, substandard units; and
- For work related to the reduction of vacant, substandard units, limitations on the extent of the physical improvements that may be funded under the special modernization approach.

**EFFECTIVE DATE:** April 17, 1989.

**FOR FURTHER INFORMATION CONTACT:** Nancy S. Chisholm, Director, Policy Staff, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755-6640. A telecommunications device for deaf persons (TDD) is available at (202) 245-0850. (These are not toll-feee telephone numbers.)

**SUPPLEMENTARY INFORMATION:** On October 19, 1988, the Department published a notice of proposed rulemaking (53 FR 40903) to amend the "special purpose modernization" provisions of its existing regulation (24 CFR Part 968) governing the Comprehensive Improvement Assistance Program (CIAP) for public housing. After a 30-day comment period and review of the public comments received, the Department is now issuing a final rule that incorporates certain revisions in response to the public comments.

These regulatory changes reflect amendments to section 14 of the United States Housing Act of 1937 (1937 Act), as made by section 120 of the Housing and Community Development Act of 1987 (1987 Act). The changes are limited to provisions on special purpose modernization and do not modify the essential structure or objectives of the CIAP regulation. All other program requirements continue to apply to special purpose modernization, except as stated in the amended regulation. For example, special purpose modernization continues to be limited to physical improvements, and such improvements are subject to the existing *Public Housing Modernization Standards Handbook*, 7485.2 REV-1.

The Department wishes to emphasize its support for all forms of tenant involvement in the modernization process. Those forms may range from tenant participation and consultation in the development of a modernization application to actual resident management of a project. This involvement allows residents to have a voice in improving the livability of their environment. Encouraging resident management and homeownership, wherever possible, gives residents the ability to make decisions about their own lives, and to secure a better life for themselves and their families.

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The Department received 10 comments on the proposed rule. Seven of these were from PHAs, two from national public housing associations, and one from an association representing retired people. Below is a discussion of each of the issues raised by the commenters, indicating the changes made in the final rule as a result of the public comments.

**1. Definition of Special Purpose Modernization (Section 968.3)**

Although none of the commenters expressed substantive objections to the revised definition of "special purpose modernization", under § 968.3, several recommended clarifying changes. The final rule adopts some of these recommendations, by revisions to the introductory clause of the definition.

In response to recommendations from several commenters, the "necessary and sufficient" condition has been revised to read as follows: "subject to a HUD determination that the physical improvements are necessary and sufficient to extend substantially the useful life of the project, *beyond that which it would have if such improvements did not occur* * * *" (emphasis supplied). The quoted language before the comma is the same as in the proposed rule, the key phrase—"necessary and sufficient to extend substantially the useful life of the project"—being the *verbatim* statutory condition. The emphasized language has been added for the sake of clarification, using the wording of identical recommendations from several commenters.

One commenter suggested that, although there should be room for judgment in implementing the "necessary and sufficient" condition, the term "extend substantially" should be defined. The Department believes that the added phrase quoted above provides appropriate guidance for the kind of judgment which the statute requires on this point.

Another clarification is the parenthetical phrase "(examples cited in each category are for illustration only)", which has been inserted at the end of the introductory clause of the § 968.3 definition. While approving of the examples of special purpose work items cited in paragraphs (1) and (2) of the proposed definition, some commenters expressed concern that the examples might be construed as being the only eligible improvements permitted under those two paragraphs. As the quoted insertion makes clear, these examples do not exclude any other work items that meet the primary definitional terms.

One commenter recommended that paragraph (3) of the definition—regarding work items to increase accessibility for elderly and handicapped families—be revised to state that the addition, replacement or rehabilition of facilities necessary for the provision of supportive special services are eligible work items. Accessibility needs for non-dwelling as well as dwelling facilities may be addressed by a special purpose program, but the Department believes that no change from the proposed rule is required to make that clear.

The 1987 Act speaks of "physical improvements to increase *accessibility* for elderly and handicapped families" (emphasis supplied). Consequently, improvements to tenant services facilities, or to other dwelling or non-dwelling facilities, could be funded under this type of special purpose modernization only if justified on grounds of accessibility. The Department believes that, with regard to tenant services facilities or other dwelling or non-dwelling facilities, the primary intent of the statute is the retrofitting of existing facilities to "increase accessibility", and not to add major facilities to accommodate tenant services. (If justified on the basis of project needs and applicable modernization standards, new tenanat services facilities that are not required for accessibility might be added with funding provided under a comprehensive program.)

Accessibility needs, including those related to facilities for tenant services or other non-dwelling facilities, are subject to the same standards under either comprehensive or special purpose modernization, and the changes made by this final rule are not intended to imply any change in those standards. The final rule refers to the general standards for accessibility for programs administered by HUD (24 CFR Part 8; see especially 24 CFR 8.21, Non-housing facilities. See also the *Public Housing Modernization Standards Handbook*, 7485.2 REV-1, paragraph 2-8B, Community Services Facilities.)

One commenter recommended that the proposed definition be revised to state that conditions which qualify work for emergency modernization must govern over categorical definitions. The commenter pointed out that, while the repair of an elevator might come within the category of "major systems" under the special purpose definition, the elevator's condition at the time of application may require that its repair be classified and funded as emergency modernization, rather than as special purpose.

The Department believes that this point is already covered by the § 968.3 definition of "emergency modernization" and by the emphasis, in the application processing procedures of § 968.5, on consideration of the relative urgency of needed improvements. The same types of work items now eligible for special purpose modernization under the various categories listed in § 968.3 could possibly be funded under the emergency—rather than the special purpose—category, where it can be shown that the situation poses a genuine emergency. The amendments to the special purpose provisions are not intended to change the priorities and procedures for addressing emergency needs.

**2. Special Purpose Funding Set-Aside (Section 968.5(h)(4))**

All comments on the proposed authorization for HUD to establish annual set-asides for special purpose funding (§ 968.5(h)(4)) expressed approval of the general set-aside concept, including the fact that special purpose applications would be ranked separately, so that they would not have to compete with comprehensive modernization for the set-aside funds. The final rule makes no change in this section. The regulation does not specify any fixed amount; it merely authorizes HUD to establish special purpose set-asides, leaving the amounts to be determined and announced by HUD on a year-to-year basis, in the Department's annual CIAP processing notices.

While endorsing the concept of annual set-asides, several commenters objected to the statement, in the preamble of the proposed rule, that for Federal Fiscal Year (FFY) 1989 HUD intended to establish Regional set-asides for special purpose modernization at 20 percent of total funds available. These commenters were of the opinion that a 20 percent set-aside would be insufficient to address special purpose needs.

Subsequent to publication of the proposed rule, the Department issued the FFY 1989 processing notice (PIH 88-45 (PHA), dated December 2, 1988), as necessitated by the time constraints for processing PHA applications for CIAP funds available for the current year. That notice set the FFY 1989 special purpose set-aside at 20 percent of total CIAP funds.

The Department believes that the 20 percent level is appropriate for first-year implemention of the new special purpose provisions, but emphasizes that the percentage in subject to change for subsequent FFYs, if found justified on the basis of experience in administering the amended regulation. If the full 20 percent is used for special purpose needs, that will leave 80 percent for all other categories—comprehensive, emergency, homeownership and lead-based paint removal modernization. Looking to subsequent years, implementation of the Comprehensive Grant Program (see proposed rule, 53 FR 43648, October 27, 1988) would have a major impact, making the issue irrelevant for PHAs with more than 500 units.



The Department believes this initial set-aside is a reasonable response to the Congressional mandate, considering the 1987 Act's special purpose amendments in the proper perspective of the whole of section 14 of the 1937 Act, as amended. The Department believes that Congress intended that comprehensive modernization remain the primary agenda for the CIAP, subject to greater flexibility to address certain types of physical improvement needs through special purpose modernization. While the congressional directive substantially expands the scope of special purpose modernization, it still characterizes it in terms of exception, limited to physical improvements that are "necessary and sufficient to extend substantially the useful life of the project". As discussed at some length in the preamble to the proposed rule, the intent was to allow special purpose modernization to be used only when there is good reason to proceed with limited physical improvements rather than with a comprehensive program.

While supporting the set-aside concept, two commenters recommended that the Department devise a mechanism to assure that the full amount of the set-aside funding be used for special purpose programs. These commenters recommended that, if the special purpose demands in a particular region should not require the full amount of the Regional Office set-aside, the remaining funds be redistributed for special-purpose use in other high-demand regions.

The final rule does not adopt this recommendation. The total Regional fund allocations are based on relative need, taking account of all modernization categories. The fact that a proposed physical improvement may be eligible for funding under the special purpose category does not necessarily mean that it is more urgent than improvements proposed under other categories. It is likely that the full amounts of all of the FY 1989 Regional set-asides will be required to fund special purpose improvements. If, however, a particular Region should have insufficient special purpose applications of good quality, the remainder of the set-aside funds may be used in the same Region for higher priority applications in other categories.

**3. Special Limitations and Project Needs Assessments (Sections 968.10 and 968.5(h)(5))**

Most of the commenters objected to the limitations on certain types of special purpose modernization, as stated in § 968.10 of the proposed rule. For improvements related to major equipment systems or structural elements, security, and reduction of vacant, substandard units, it was proposed that a PHA be permitted to obtain special purpose funding only once for a project that has not been comprehensively modernized. PHA eligibility for special purpose modernization funds to reduce the number of vacant, substandard units was limited to work necessary to meet local code requirements and return the units to a condition comparable to that of the occupied units in the same project. In addition, eligibility for special purpose funds to reduce the number of vacant, substandard units would have been limited to PHAs with no more than 30 average turnover vacancy days for units on the market.

The one-time funding limitation (§ 968.10(a)) has been retained, but with a revision to make it clear that it applies only to projects that have not been comprehensively modernized. There is no limit on the number of times special purpose modernization may be used for the same project, after the project has been comprehensively modernized. In any event, this limitation applies only to the three types of improvements specified, and not to the other two types of eligible special purpose improvements—work related to accessibility and energy efficiency.

This one-time limitation reflects the Department's concern about the possible over-use of special purpose modernization, especially for projects that are in need of comprehensive modernization. In the past, so-called "piecemeal" modernization has sometimes made small improvements in projects where comprehensive modernization was needed, and the improvements were quickly overwhelmed by the project's management and social problems, along with unmet needs for more extensive physical improvements.

After the first year of experience in administering the special purpose changes, the Department will review this issue and consider whether any changes might be merited, through a further rulemaking proposal. One possibility would be to exempt from the one-time funding limitation those PHAs which meet the performance standards that have been developed jointly by the Department and the PHAs under the Decontrol Initiative. A major consideration will be the implementation of the Comprehensive Grant Program, which will make this and all other special purpose issues irrelevant for PHAs with more than 500 units.

With regard to the second of the limitations contained in the proposed rule (§ 968.10(b)), the Department has responded to the public comments by removing the language that would have barred a PHA from using the special purpose approach to vacancy reduction if its average turnover vacancy period for units on the market exceeded 30 days. The language limiting the scope of the improvements to vacant, substandard units has been retained.

As a related matter, one commenter objected to the proposed revision on PHA assessment of project needs, under § 968.5(e)(2). This provision requires a comprehensive needs assessment for special purpose applications, except that a specialized needs assessment will suffice where special purpose funding for a particular project is limited to accessibility or energy improvements and there is no evidence of major problems that justify a more thorough examination of total project needs. The commenter recommended that a specialized assessment be permitted for all special purpose applications, even if not limited to accessiblity or energy improvements.

The final rule makes no change in the proposed § 968.5(e)(2). The three types of physical improvements which necessitate a comprehensive needs assessment (improvements related to major equipment systems or structural elements, upgrading security, and reduction of the number of vacant, substandard units) are the same as those which are subject to the one-time funding limitation of § 968.10(a). On the same rationale discussed above in reference to § 968.10(a), needs for these three types of improvements tend to raise the issue of whether they will be sufficient of themselves to "extend substantially the useful life of the project", so that the safeguard of a comprehensive needs assessment is justified whenever a special purpose application involves any of the three.

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**Other Matters**

A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations at 24 CFR Part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, DC 20410.

This rule does not constitute a "major rule", as that term is defined in section 1(b) of Executive Order 12291 issued by the President on February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under the Regulatory Flexibility Act (5 U.S.C. 601), the undersigned hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities. The rule expands the definition of special purpose modernization, to permit CIAP funding to be used under special purpose modernization programs for the four additional types of physical improvements now authorized by statute, and prescribes certain conditions and procedures for such funding. It will thus tend to give PHAs more flexibility and tend to make their modernization efforts less burdensome.

The rule applies to all PHAs, large and small, which apply for special purpose modernization funds. It will not have a significant economic impact on any HUD assistance recipients, including small PHAs or any other small entities.

This rule was listed as sequence number 1060 under the Office of Public and Indian Housing in the Department's semiannual agenda of regulations published on October 24, 1988 (53 FR 42010) under Executive Order 12291 and the Regulatory Flexibility Act.

Information collection requirements under Part 968, as amended by this rule, are no more burdensome than those contained in the provisions of the regulation that were in effect prior to these special purpose amendments.

This rule has been developed in accordance with Executive Order 12612, Federalism, and determined not to have substantial direct effects on the States (including their political subdivisions), or on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of governments. The changes are consistent with federalism principles because they afford PHAs greater flexibility in their local modernization programs.

This rule has been developed in accordance with Executive Order 12606, The Family. It does not have a potentially significant impact on family formation, maintenance and general well-being. Wise use by the PHAs of the added flexibility afforded them by this rule will have a beneficial effect on the availability of public housing for lower-income families.

(The Catalog of Domestic Assistance numbers for the programs affected by this rule are 14.850, 14.851, and 14.852.)

**List of Subjects in 24 CFR Part 968**

Loan programs: housing and community development, Public housing, Reporting and recordkeeping requirements, Grant programs: housing and community development, Indians.

Accordingly, 24 CFR Part 968 is amended as follows:

## PART 968—COMPREHENSIVE IMPROVEMENT ASSISTANCE PROGRAM

1. The authority citation for Part 968 continues to read as follows:

**Authority:** Secs. 6 and 14, United States Housing Act of 1937 (42 U.S.C. 1437d, 1437l); sec. 7(d) Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. In § 968.3, the definition of "Special purpose modernization" is revised to read as follows:

**§ 968.3 Definitions.**

* * * * *

"Special purpose modernization" means a modernization program for a project that is limited to any one or more of the following types of physical improvements otherwise eligible for CIAP funding under this part, subject to a HUD determination that the physical improvements are necessary and sufficient to extend substantially the useful life of the project, beyond that which it would have if such improvements were not made (examples cited in each category are for illustration only):

(1) Physical improvements to replace or repair major equipment systems (such as elevators and heating, cooling, electrical, and water and sewer systems) or structural elements (such as roofs, walls and foundations);

(2) Physical improvements to upgrade security, such as installation of additional lighting, security screens on windows, better locks, or design changes to enhance security (excluding non-physical improvements, such as security staffing and services);

(3) Physical improvements to increase accessibility for elderly and handicapped families, according to the applicable standards of 24 CFR Part 8;

(4) Physical improvements to reduce the number of units which are vacant and substandard, including any improvements necessary to meet local code requirements and return the units to occupancy; and

(5) Cost-effective physical improvements to increase the energy efficiency of the project.

3. In § 968.5, the references in paragraphs (h)(2)(iii) and (h)(3) to "special purpose" and the commas immediately preceding those words are removed, paragraphs (c)(1) and (e)(2) are revised, and a new paragraph (h)(4) is added as follows:

**§ 968.5 Procedures for obtaining approval of a modernization program.**

* * * * *

(c) * * *

(1) A five-year plan, which is the PHA's initial comprehensive assessment of the modernization funds to be requested over a five-year period to meet the total physical and management improvement needs of its projects for all categories of modernization authorized by this part. The plan shall include a gross estimate of the modernization funds to be requested for each project.

* * * * *

(e) * * *

(2) Completing an assessment of the needs of each project for which the PHA is requesting funds in the current FFY. The PHA will complete a detailed, comprehensive assessment, in a form prescribed by HUD, of the total physical and management needs of each project for which the PHA is requesting comprehensive or special purpose modernization; except that if the request for a particular project is limited to physical improvements to increase accessibility for elderly and handicapped families and to increase energy efficiency, a specialized assessment will be completed unless HUD determines that there is evidence indicating that the project has major problems that justify a comprehensive assessment. An assessment of specialized physical improvement needs will be completed for each project for which the PHA is requesting emergency, homeownership or lead-based paint modernization.

* * * * *

(h) * * *

(4) HUD may set aside for special purpose modernization a portion of the total modernization funds available for any FFY, as determined by HUD to be necessary to assure that special purpose needs are appropriately addressed.

* * * * *

**§ 968.9 [Amended]**

4. In § 968.9, paragraph (h)(4) is amended by revising the reference to "§ 968.19" to read "§ 968.20".

**§§ 968.10 through 968.19 [Redesignated as §§ 968.11 through 968.20]**

5. Sections 968.10 through 968.19 are redesignated as §§ 968.11 through 968.20, respectively, and a new § 968.10 is added, to read as follows:

**§ 968.10 Additional limitations for special purpose modernization.**

(a) For each of the three types of special purpose modernization relating to major equipment systems or structural elements, security, and reduction of vacant, substandard units, a PHA may obtain special purpose modernization funding only once for a project that has not been comprehensively modernized. Subsequent funding for the same project for any additional physical improvements of these types may be provided only as a part of a program which addresses all of the physical and management improvement needs of the project under a comprehensive modernization program. This limitation does not apply to a project which has been comprehensively modernized.

(b) Special purpose modernization to reduce the number of vacant, substandard units will be limited to physical improvements which are necessary to meet local code requirements and return such units to a condition that is comparable to the condition of occupied units in the same project.

**§ 968.14 [Amended]**

6. In § 968.4(a), the reference to "§ 968.18" is revised to refer to "§ 968.19".

**§ 968.8 [Amended]**

7. In § 968.8(b)(3), the reference to "§ 968.10" is revised to refer to "§ 968.11".

**§ 968.14 [Amended]**

8. In newly redesignated § 968.14 the reference in paragraph (b) to "§ 968.14" is revised to refer to "§ 968.15".

Dated: February 21, 1989.

**Thomas Sherman,**

*Acting General Deputy Assistant Secretary for Public and Indian Housing.*

[FR Doc. 89-4483 Filed 3-2-89; 8:45 am]

BILLING CODE 4210-33-M



## DEPARTMENT OF JUSTICE

### Office of the Attorney General

### 28 CFR Part 64

**[Order No. 1328-89]**

### Judicial Administration; Designation of Officers and Employees of The United States for Coverage Under Section 1114 of Title 18 of the United States Code

**AGENCY:** U.S. Department of Justice.

**ACTION:** Final rule.

**SUMMARY:** Part 64 of Title 28, Code of Federal Regulations, designates categories of federal officers and employees who, in addition to those already designated by statute, warrant the protective coverage of federal criminal law. This assures federal jurisdiction to prosecute the killing, attempted killing, kidnapping, forcible assault, intimidation or interference with any of the federal officers or employees designated by this regulation while they are engaged in or on account of the performance of their official duties. This order amends 28 CFR Part 64 by adding employees of the Social Security Administration assigned to Administration field offices, hearing offices, and field assessment offices; United States Information Agency Security Office Special Agents; and employees of the United States Nuclear Regulatory Commission who are engaged in activities related to the review of license applications and license amendments to the list of covered federal officers and employees set forth in 28 CFR 64.2.

**EFFECTIVE DATE:** February 24, 1989.

**FOR FURTHER INFORMATION CONTACT:** Roger B. Cubbage, Deputy Chief, Martin C. Carlson, Senior Legal Advisor, or Donald B. Nicholson, Attorney, General Litigation and Legal Advice Section, Criminal Division, Department of Justice, Washington, DC. 20530 (202-786-4827).

**SUPPLEMENTARY INFORMATION:** Part K of Chapter X of the Comprehensive Crime Control Act of 1984, Pub. L. 98-473, Title II, section 1012, 98 Stat. 1976, 2142 (1984) amended 18 U.S.C. 1114, which prohibits the killing of designated federal employees, to authorize the Attorney General to add by regulation other federal personnel who will be protected by this section. The categories of federal officers and employees covered by section 1114 are, by incorporation, also protected, while engaged in or on account of the performance of their official duties, from a conspiracy to kill, 18 U.S.C. 1117; kidnapping, 18 U.S.C. 1201(a)(5); forcible assault, interference, or intimidation, 18 U.S.C. 111; and threat of assault, kidnap or murder with intent to impede or intimidate, 18 U.S.C. 115. Consistent with the legislative history and purpose of section 1114, this protective coverage has been extended by 28 CFR Part 64 to those federal officers and employees whose jobs involve inspection, investigative or other law enforcement responsibilities or whose work involves a substantial degree of physical danger from the public that may not be adequately addressed by available state or local law enforcement resources.

Field employees of the Social Security Administration have been assaulted and threatened by visitors to field offices, and a number of Nuclear Regulatory Commission personnel involved in license hearings and adjudications have received threats. Therefore, their coverage under these regulations is appropriate. The former are added as new subsection (v) of 28 CFR 64.2, and the latter by amendment of subsection (m). United States Information Agency Security Officer Special Agents perform a wide variety of investigative and law enforcement functions and have on occasion been threatened. Their inclusion within these regulations is appropriate, and they have been added as new subsection (w).

Because the material contained herein involves only three federal agencies and is thus of limited and not general effect, the Department of Justice finds inapplicable the provision of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date.

The Department of Justice has determined that this Order is not a major rule for purposes of either Executive Order 12291, or the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*

**List of Subjects in 28 CFR Part 64**

Crime, Government employees, and Law enforcement officers.

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By virtue of the authority vested in me by 28 U.S.C. 509, 5 U.S.C. 301, and 18 U.S.C. 1114, Part 64 of Chapter I of Title 28, Code of Federal Regulations, is hereby amended as follows:

1. The authority for Part 64 continues to read as follows:

**Authority:** 18 U.S.C. 1114, 28 U.S.C. 509, 5 U.S.C. 301.

**§ 64.2 [Amended]**

2. Section 64.2 is amended by revising paragraph (m), to read as follows:

(m) Officers and employees of the United States Nuclear Regulatory Commission assigned to perform or to assist in performing investigative, inspection, or law enforcement functions; or who are engaged in activities related to the review of license applications and license amendments;

3. Section 64.2 is amended by adding a new paragraph (v), to read as follows:

(v) Employees of the Social Security Administration assigned to Administration field offices, hearing officers, and field assessment officers; and

4. Section 64.2 is amended by adding a new paragraph (w), to read as follows:

(w) United States Information Agency Security Office Special Agents.

5. Section 64.2 is amended by removing the final word, "and", from paragraph (t) and by removing the period at the end of paragraph (u) and inserting in its place a semicolon.

Date: February 24, 1989.

**Dick Thornburgh,**

*Attorney General.*

[FR Doc. 89-5044 Filed 3-2-89; 8:45 am]

BILLING CODE 4410-01-M

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

### 29 CFR Part 1952

### Approved State Plans for Enforcement of State Standards; Approval of Supplements to the Wyoming State Plan

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Approval of supplements to the Wyoming State Plan.

**SUMMARY:** This document gives notice of Federal approval of amendments to the Wyoming Occupational Health and Safety Act and to the Wyoming Rules of Practice and Procedure. The amendments to the Act and rules involve contested cases, hearings, discrimination, petitions for modification of abatement, and other technical changes.

**EFFECTIVE DATE:** March 3, 1989.

**FOR FURTHER INFORMATION CONTACT:** James F. Foster, Director, Office of Information and Consumer affairs, Occupational Safety and Health Administration, Room N3647, 200 Constitution Avenue NW., Washington, DC 20210. Telephone (202) 523-8148.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Wyoming Occupational Health and Safety (WOHS) Plan was approved under section 18(c) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667(c)) (hereinafter referred to as the Act) and Part 1902 of this chapter on May 3, 1974 (39 FR 15394). A determination of final approval was made under section 18(e) of the Act on June 27, 1985 (50 FR 28770). Part 1953 of this chapter provides procedures for the review and approval of State plan change supplements by the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter referred to as the Assistant Secretary).

**Description of Supplements**

*Wyoming Occupational Health and Safety Act*

The State submitted a State plan change supplement concerning amendments to its Occupational Health and Safety Act (Laws 1983, Ch. 172) in April 1984. The amendments to the Wyoming Act are as follows: modifying the powers and duties of the Occupational Health and Safety Commission; abolishing the power of the review board and the Commission to hear contested cases and providing for an independent hearing officer; providing a procedure for hearings and appeals whereby the Commission makes final administrative decisions in contested cases and the party adversely affected may appeal to the District Court in the county where the violation allegedly occurred; providing for enforcement of the commission's decisions; requiring written notification to employers of their right to refuse entry; creating the Department of Occupational Health and Safety; and, making penalties for posting violations discretionary.

The amendment to the State law which clarifies that penalties for posting violations are discretionary differs from the Federal law in that the Federal law provides mandatory penalties for posting violations. However, the State's guidelines on exercising discretion in proposing penalties for posting violations, as set forth in the Wyoming Operations Manual, require mandatory penalties to be calculated and assessed for the same categories of posting violations as are required pursuant to OSHA policy and procedures. This State provision is being approved subject to continued monitoring and if monitoring reveals less effective application of penalties for posting violations, the State will be required to seek a legislative change.

*Wyoming Rules of Practice and Procedure*

The State submitted amendments to its Rules of Practice and Procedure (Laws 1969, ch. 199, 1.) on May 17, 1983, and subsequent revisions on October 27, 1983, December 13, 1983, and May 22, 1984. The Rules of Practice and Procedure (change 1) were revised because of changes made to the Wyoming Occupational Health and Safety Act in the areas of contested cases, hearings, discrimination, petitions for modification of abatement, and other technical changes. The amendments are as follows:

(1) Chapters I—Introduction, II—Safety Rules and Regulations and III—Variances, have been revised to make them consistent with technical statutory changes made in the Act such as: statutory recodification; clarification of definitions for deminimis violation and party; changing terminology ("failure to abate" to "failure to correct"); changing "Assistant Administrator" to "Department" to more appropriately assign the responsibility for research to the Department of Occupational Health and Safety rather than a position; and, clarifying the requirements for temporary and permanent variances.

(2) Chapter IV—Enforcement, Sections 2.h.(1) through (3) and 2M. and N., have been revised to clarify the Administrator's authority to approve petitions for modification of abatement. A new section was added providing affected employers, and employees or employee representatives who have filed objections, the right to contest the decision of the Chairman.

(3) Chapter IV—Enforcement, Section 4.a.(5), has been revised to eliminate the Review Board and to provide for a hearing officer to hear contested cases. The hearing officer recommends a decision to the Commission for a final administrative decision.

(4) Chapter IV—Enforcement, Section 7.b.(1)(c), has been revised to clarify the Agency's procedure for processing allegations of discrimination, including compensation for the employees for actual harm suffered as a result of discrimination and the Administrator's responsibility to issue a notice of violation when discrimination is found.

(5) Chapter IX—Hearings has been revised to clarify the Agency's burden of proof in contested cases by stating that "The Department shall have the burden of proof in all cases in which Department action is contested" and "the employer shall have the burden to produce evidence of any affirmative defense it may have to any Department action"; to extend authority for all types of hearings allowed by the Act; and, to make the sections consistent with other technical statutory changes made to its Occupational Health and Safety Act.



**Location of Plan Supplement for Inspection and Copying**

A copy of the plan and its supplements may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, Room 1554, Federal Building, 1961 Stout Street, Denver, Colorado 80202; Wyoming Department of Occupational Health and Safety, 604 East 25 Street, Cheyenne, Wyoming 82002; and the OSHA Office of the Director of Federal-State Operations, Room N3700, 200 Constitution Avenue NW., Washington, DC 20210.

**Public Participation**

Under § 1953.2(c) of this chapter the Assistant Secretary may prescribe alternative procedures to expedite the review process or for any other good cause which may be consistent with law. The Assistant Secretary finds that the State amendments to its Occupational Health and Safety Act and to its Rules of Practice and Procedure were adopted in accordance with procedural requirements of State law, which included the opportunity for public participation. Good cause is therefore found for approval of this supplement and further public participation would be unnecessary.

**Decision**

After careful consideration and extensive review by the Regional and National Offices, the Wyoming plan supplements described above are found to be at least as effective as comparable Federal provisions and are hereby approved under Part 1953 of this chapter. However, the amendment to the State law which clarifies that penalties for posting violations are discretionary is approved subject to continued monitoring and if monitoring reveals less effective application of penalties for posting violations, the State will be required to seek a legislative change. This decision incorporates the requirements of the Act and implementing regulations applicable to State plans generally.

**List of Subjects in 29 CFR Part 1952**

Intergovernmental relations, law enforcement, Occupational Safety and Health.

Signed at Washington, DC this 27th day of February, 1989.

**John A. Pendergrass,**

*Assistant Secretary.*

Accordingly, 29 CFR Part 1952 is hereby amended as follows:

**PART 1952—[AMENDED]**

The authority citation for Part 1952 continues to read:

**Authority:** Secs. 8, 18, Pub. L. 91-596, 84 Stat. 1608 Occupational Safety and Health Act of 1970 (29 U.S.C. 657, 667); Secretary of Labor's Order No. 12-71 (36 FR 8754), 8-76 (41 FR 25059), or 9-83 (48 FR 35736), as applicable.

2. A new § 1952.347 is added to Subpart BB to read as follows:

**§ 1952.347 Changes to approved plans.**

In accordance with part 1953 of this chapter, the following Wyoming plan changes were approved by the Assistant Secretary:

(a) *Legislation.* (1) The State submitted amendments to its Occupational Health and Safety Act (Laws 1983, Ch. 172), which became effective on May 27, 1983, modifying the powers and duties of the Occupational Health and Safety Commission, abolishing the powers of the review board and Commission to hear contested cases and establishing an independent hearing officer to hear contested cases, providing procedures for hearings and appeals whereby the Commission makes final administrative decisions in contested cases and the party adversely affected may appeal to the District Court, making penalties for posting violations discretionary (although the State guidelines on penalties for posting violations parallel OSHA's and are set forth in the Wyoming Operations Manual), requiring written notification to employers of their right to refuse entry, and creating the Department of Occupational Health and Safety. The Assistant Secretary approved these amendments on February 27, 1989.

(b) *Regulations.* (1) The State submitted amendments to its Rules of Practice and Procedure pertaining to contested cases, hearings, discrimination, and petitions for modification of abatement; and making the regulations consistent with other statutory changes made to its Occupational Health and Safety Act which became effective on September 6, 1984, except amendment to Chapter IV, Enforcement which became effective on March 28, 1985. The Assistant Secretary approved these amendments on February 27, 1989.

[FR Doc. 89-4972 Filed 3-2-89; 8:45 am]

BILLING CODE 4510-26-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 62

**[A-1-FRL-3531-1]**

### Approval and Promulgation of State Air Quality Implementation Plans for Designated Facilities and Pollutants; Negatives Declarations; Connecticut et al.

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** Regulations promulgated under the provisions of Section 111(d) of the Clean Air Act require states to submit plans to EPA to control emissions of designated pollutants from designated facilities. Section 62.06 of 40 CFR Part 62 provides that when no such designated facilities exist within a state's boundaries, a letter of "negative declaration" may be submitted in lieu of a control plan. The States of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont have submitted negative declarations certifying that certain types of designated facilities are not located within their States. EPA is approving negative declarations of fluoride emissions from primary aluminum reduction plants submitted by the States of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont, and negative declarations of total reduced sulfur from kraft pulp mills submitted by the States of Connecticut, Massachusetts, Rhode Island and Vermont.

**EFFECTIVE DATE:** This action will become effective May 2, 1989, unless notice is received within 30 days of publication that adverse or critical comments will be submitted.

**ADDRESSES:** Comments may be mailed to Louis F. Gitto, Director, Air Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Room 2313, Boston, MA 02203. Copies of the

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documents relevant to this action are available for public inspection during normal business hours at the Air Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Room 2313, Boston, MA 02203.

**FOR FURTHER INFORMATION CONTACT:** David B. Conroy, (617) 565-3252; FTS 835-3252.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 111(d) of the Clean Air Act, EPA promulgated regulations at 40 CFR Part 60, Subpart B, which require States to submit control plans to control emissions of designated pollutants from designated facilities. In the event that a State does not have a particular designated facility located within its boundaries, EPA requires that a negative declaration be submitted.

On December 28, 1988, the Connecticut Department of Environmental Protection submitted a letter certifying that there are no existing kraft pulp mills or existing primary aluminum reduction plants in the State subject to 40 CFR Part 60, Subpart B. EPA is codifying these negative declarations in 40 CFR 62.1650 and 62.1700, respectively.

On October 3, 1988, the Maine Department of Environmental Protection submitted a letter certifying that there are no existing primary aluminum reduction plants in the State subject to 40 CFR Part 60, Subpart B. EPA is codifying this negative declaration in 40 CFR 62.4875.

On July 31, 1979, the Massachusetts Department of Environmental Quality Engineering (DEQE) submitted a letter certifying that there are no existing kraft pulp mills in the State subject to 40 CFR Part 60, Subpart B, and on January 18, 1989, the Massachusetts DEQE submitted a letter certifying that there are no existing primary aluminum reduction plants in the State subject to 40 CFR Part 60, Subpart B. EPA is codifying these negative declarations in 40 CFR 62.5375 and 62.5400, respectively.

On January 3, 1989, the New Hampshire Air Resources Division submitted a letter certifying that there are no existing primary aluminum reduction plants in the State subject to 40 CFR Part 60, Subpart B. EPA is codifying this negative declaration in 40 CFR 62.7400.

On July 26, 1979, the Rhode Island Department of Environmental Management (DEM) submitted a letter certifying that there are no existing kraft pulp mills in the State subject to 40 CFR Part 60, Subpart B, and on December 8, 1988, the Rhode Island DEM submitted a letter certifying that there are no existing primary aluminum reduction plants in the State subject to 40 CFR Part 60, Subpart B. EPA is codifying these negative declarations in 40 CFR 62.9900 and 62.9950, respectively.

On August 2, 1979, the Vermont Department of Environmental Conservation submitted a letter certifying that there are no existing kraft pulp mills in the State subject to 40 CFR Part 60, Subpart B, and on January 4, 1989, the Vermont Agency of Environmental Conservation submitted a letter certifying that there are no existing primary aluminum reduction plants in the State subject to 40 CFR Part 60, Subpart B. EPA is codifying these negative declarations in 40 CFR 62.11400 and 62.11425, respectively.

EPA is codifying these negative declarations without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective 60 days from the date of this **Federal Register** notice unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted. If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective on May 2, 1989.

## Final Action

EPA is approving negative declarations of fluoride emissions from primary aluminum reduction plants submitted by the States of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont, and negative declarations of total reduced sulfur from kraft pulp mills submitted by the States of Connecticut, Massachusetts, Rhode Island and Vermont.

Under 5 U.S.C. section 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 2, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

## List of Subjects in 40 CFR Part 62

Administrative practice and procedure, Air pollution control, Aluminum, Fluoride, Intergovernmental relations, Paper and paper products industry, Reporting and recordkeeping requirements.

Date: February 15, 1989.

**Michael R. Deland,**

*Regional Administrator, Region I.*

Title 40 of the Code of Federal Regulations, Part 62, Subparts H, U, W, EE, OO, and UU are amended as follows:

## PART 62—[AMENDED]

1. The authority citation for Part 62 continues to read as follows:

**Authority:** 42 U.S.C. 7401–7642

2. Subpart H is amended by adding an undesignated center headings and §§ 62.1650 and 62.1700 to read as follows:

### Subpart H—Connecticut

### Total Reduced Sulfur Emissions From Existing Kraft Pulp Mills

**§ 62.1650 Identification of plan—negative declaration.**

The State Department of Environmental Protection submitted on December 28, 1988, a letter certifying that there are no existing kraft pulp mills in the State subject to Part 60, Subpart B of this chapter.

### Fluoride Emissions From Existing Primary Aluminum Plants

**§ 62.1700 Identification of plan—negative declaration.**

The State Department of Environmental Protection submitted on December 28, 1988, a letter certifying that there are no existing primary aluminum reduction plants in the State subject to Part 60, Subpart B of this chapter.

3. Subpart U is amended by adding an undesignated center heading and § 62.4875 to read as follows:

### Subpart U—Maine

### Fluoride Emissions From Existing Primary Aluminum Plants

**§ 62.4875 Identification of sources—negative declaration.**

The State Department of Environmental Protection submitted on October 3, 1988, a letter certifying that there are no existing primary aluminum reduction plants in the State subject to Part 60, Subpart B of this chapter.



4. Subpart W is amended by adding an undesignated center headings and §§ 62.5375 and 62.5400 to read as follows:

### Subpart W—Massachusetts

### Total Reduced Sulfur Emissions From Existing Kraft Pulp Mills

**§ 62.5375 Identification of plan—negative declaration.**

The State Department of Environmental Quality Engineering submitted on July 31, 1979, a letter certifying that there are no existing kraft pulp mills in the State subject to Part 60, Subpart B of this chapter.

### Fluoride Emissions From Existing Primary Aluminum Plants

**§ 62.5400 Identification of plan—negative declaration.**

The State Department of Environmental Quality Engineering submitted on January 18, 1989, a letter certifying that there are no existing primary aluminum reduction plants in the State subject to Part 60, Subpart B of this chapter.

5. Subpart EE is amended by adding an undesignated center heading and § 62.7400 to read as follows:

### Subpart EE—New Hampshire

### Fluoride Emissions From Existing Primary Aluminum Plants

**§ 62.7400 Identification of sources—negative declaration.**

The State Air Pollution Control Agency submitted on January 3, 1989, a letter certifying that there are no existing primary aluminum reduction plants in the State subject to Part 60, Subpart B of this chapter.

6. Subpart OO is amended by adding an undesignated center headings and §§ 62.9900 and 62.9950 to read as follows:

### Subpart OO—Rhode Island

### Total Reduced Sulfur Emissions From Existing Kraft Pulp Mills

**§ 62.9900 Identification of plan—negative declaration.**

The State Department of Environmental Management submitted on July 26, 1979, a letter certifying that there are no existing kraft pulp mills in the State subject to Part 60, Subpart B of this chapter.

### Fluoride Emissions From Existing Primary Aluminum Plants

**§ 62.9950 Identification of plan—negative declaration.**

The State Department of Environmental Management submitted on December 8, 1988, a letter certifying that there are no existing primary aluminum reduction plants in the State subject to Part 60, Subpart B of this chapter.

7. Subpart UU is amended by adding an undesignated center headings and §§ 62.11400 and 62.11425 to read as follows:

### Subpart UU—Vermont

### Total Reduced Sulfur Emissions From Existing Kraft Pulp Mills

**§ 62.11400 Identification of plan—negative declaration.**

The State Agency of Environmental Conservation submitted on August 2, 1979, a letter certifying that there are no existing kraft pulp mills in the State subject to Part 60, Subject B of this chapter.

### Fluoride Emissions From Existing Primary Aluminum Plants

**§ 62.11425 Identification of plan—negative declaration.**

The State Agency of Environmental Conservation submitted on January 4, 1989, a letter certifying that there are no existing primary aluminum reduction plants in the State subject to Part 60, Subpart B of this chapter.

[FR Doc. 89-4851 Filed 3-2-89; 8:45 am]

BILLING CODE 6560-50-M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 65

**[CC Docket 86-497; FCC 89-30]**

### Common Carrier Services; Amendment of Part 65 to Prescribe Components of the Rate Base and Net Income of Dominant Carriers

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission has adopted an Order on Reconsideration which amends §§ 65.820 and 65.830 of the Rules to: (1) Modify the requirements for the calculation of cash working capital; (2) eliminate the requirement to reduce the rate base for compensated absences; (3) permit the inclusion of the full material and supplies inventory in the rate base; (4) specifically provide for the inclusion of Rural Telephone Bank Stock in the rate base; and (5) make certain minor changes to Part 65. The Commission made these changes because of the need to simplify the rate base and net income determination procedures and to provide clarification as requested in various petitions for reconsideration.

**EFFECTIVE DATE:** August 28, 1989.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Ken Ackerman or John T. Curry, Accounting Systems Branch, Accounting and Audits Division, Common Carrier Bureau, (202) 634-1861.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Order on Reconsideration* adopted January 30, 1989, and released February 22, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

## Summary of Order On Reconsideration

Ten parties filed petitions for reconsideration and/or clarification of the Commission's *Report and Order*, released on December 24, 1987, which prescribed rate base and net income determination principles for all dominant carriers in Part 65 of the Commission's rules. In this *Reconsideration Order* the Commission generally affirms its regulatory procedures. However, the Commission modifies the rate base treatment of certain items and provides clarification for others.

In this *Reconsideration Order* the Commission has modified the requirements for the calculation of cash working capital (CWC). The Commission has decided to permit all Class A carriers to compute their CWC by use of either full lead-lag studies or the Simplified Formula Method outlined in § 65.820(d) of the Commission's rules. For Class B carriers the Commission has decided to permit three options. Class B carriers may elect to follow the Simplified Formula Method, perform a full lead-lag study or determine their CWC using an industry "standard time period" of lead or lag referred to as the Standard Allowance Method. The Standard Allowance Method, as currently set, permits a Class B carrier

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to include in the rate base a standard cash working capital allowance equal to 15 days of its cash operating expenses. The Commission has delegated the task of periodically reviewing and revising the standard allowance to the Chief of the Common Carrier Bureau. Although the Commission is permitting carriers the flexibility to choose between methods, carriers must advise the Commission of changes in CWC methods in future tariff filings and their reasons for such change.

The Commission has decided that it will continue the long-standing policy of allowing carriers to add minimum bank balances and working cash advances to their CWC determination. However, the Commission rejected the arguments of those parties who wished to include "non-cash" items, such as depreciation and deferred taxes, in lead-lag studies. This *Reconsideration Order* reaffirms the Commission's *Docket 19129 Phase II Initial Decision* in which the Commission decided that non-cash items such as depreciation and deferred taxes should be excluded from lead-lag studies.

On reconsideration, the Commission agreed with those parties that suggested it would be appropriate and less burdensome to include compensated absences (employee time off with pay, such as vacations and sick leave) in lead-lag studies rather than deducting a portion of accrued compensated absences from the rate base as the Commission's *Report and Order* required. Since compensated absences are analogous to other operating expenses, the Commission decided to allow compensated absences to be included in lead-lag studies.

The Commission decided to permit the inclusion of the full material and supplies inventory in the rate base. Although this approach is a departure from the Commission's previous position, it resolves the inequity of not allowing the carrier to earn a return on the portion of material and supplies that will ultimately be issued for use on long-term construction projects. Since the material and supplies account represents only about 1% of the rate base (based on 1988 Tariff Review Plan Data), the impact of this change on the revenue requirement is approximately four-tenths of one percent.

In this *Reconsideration Order* the Commission also amends Part 65 to make specific reference to the inclusion of Rural Telephone Bank Stock in the rate base and to eliminate any instructions which conflict with the Commission's Part 36 Separations procedures.

The Commission was not convinced by arguments to change the rate base treatment of deferred charges, other deferred credits and deferred taxes. Thus, the rate base treatment for these items remains the same as specified in the *Report and Order*. The Commission also did not agree with BellSouth and Southwestern Bell which sought reconsideration of the use of the prime rate, rather than the overall rate of return, for accruing AFUDC. The Commission did not propose in this proceeding to reconsider the allowable rate to be applied in determining AFUDC and accordingly, did not consider further the carriers' arguments on this issue. Thus, the Commission did not change the current requirement that the compound prime rate of interest be used for accruing AFUDC.

Finally, while the Commission did not change its historically held policy of excluding telecommunications plant adjustments from the rate base unless a carrier can specifically justify the amounts, this *Reconsideration Order* provides clarification as to what is required in seeking approval of plant acquisition adjustments. The Commission has also provided for the grandfathering of existing book acquisition adjustments as suggested by both CP National and the United States Telephone Association. Grandfathering existing acquisition adjustments means that the Commission will continue to recognize within the interstate rate base the interstate portion of plant adjustments that have already been included in the calculation of interstate revenue requirements by the National Exchange Carrier Association or by individual local exchange carriers. Since these existing acquisition adjustments have already been included in earlier rate filings, this process should not have an adverse impact on rates.

### Ordering Clauses

Accordingly, it is ordered, pursuant to section 405 of the Communications Act of 1934, as amended, 47 U.S.C. 405, that the petitions filed by BellSouth, Contel, CP National, GTE, NTCA, OPASTCO, SNET, Southwestern Bell, United and USTA are granted to the extent discussed herein, and otherwise are denied.

It is further ordered, that under the authority contained in sections 4(i), 4(j) 201–205 and 220 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j) 201–205 and 220, Part 65, Interstate Rate of Return Prescription Procedures and Methodologies, is amended as shown in the Appendix effective six months from publication of the text of the rules in the **Federal Register**, and the rules and policies adopted in this proceeding are prescribed for all dominant carriers.

It is further ordered that the petitions for partial waiver filed by Rochester Telephone on September 21, 1988, the United Telephone System Companies on June 20, 1988 and by Lincoln Telephone and Telegraph Company on May 20, 1988 are dismissed.

### List of Subjects in 47 CFR Part 65

Administrative practice and procedure, Communications common carriers, Reporting and recordkeeping requirements, Telephone, Interstate rate of return prescription procedures and methodologies.

Federal Communications Commission.

**Donna R. Searcy,**

*Secretary.*

Part 65 of Title 47 of the CFR is amended as follows:

## PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read:

**Authority:** Secs. 4, 201, 202, 203, 205, 218, 403, 48 Stat. 1066, 1072, 1077, 1094, as amended, 47 U.S.C. 154, 201, 202, 203, 205, 218, and 403.

2. Section 65.820 is revised to read as follows:

**§ 65.820 Included items.**

(a) *Telecommunications Plant.* The interstate portion of all assets summarized in Account 2001 (Telecommunications Plant in Service) and Account 2002 (Property Held for Future Use), net of accumulated depreciation and amortization, and Account 2003 (Telecommunications Plant Under Construction-Short Term), and, to the extent such inclusions are allowed by this Commission, Account 2005 (Telecommunications Plant Adjustment), net of accumulated amortization.

(b) *Material and Supplies.* The interstate portion of assets summarized in Account 1220.1 (Material and Supplies).

(c) *Noncurrent Assets.* The interstate portion of Class B Rural Telephone Bank stock contained in Account 1402 (Investment in Nonaffiliated Companies) and the interstate portion of assets summarized in Account 1410 (Other Noncurrent Assets), Account 1438 (Deferred Maintenance and Retirements), and Account 1439 (Deferred Charges) only to the extent that they have been specifically approved by this Commission for inclusion. Otherwise, the amounts in accounts 1401–1500 shall not be included.

(d) *Cash Working Capital.* The average amount of investor-supplied capital needed to provide funds for a carrier's day-to-day interstate operations. Class A carriers may calculate a cash working capital allowance either by performing a lead-lag study of interstate revenue and expense items or by using the formula set forth in paragraph (e) of this section. Class B carriers, in lieu of performing a lead-lag study or using the formula in paragraph (e) of this section, may calculate the cash working capital allowance using a standard allowance which will be established annually by the Chief, Common Carrier Bureau. When either the lead-lag study or formula method is used to calculate cash working capital, the amount calculated under the study or formula may be increased by minimum bank balances and working cash advances to determine the cash working capital allowance. Once a carrier has selected a method of determining its cash working capital allowance, it shall not change to an optional method from one year to the next without Commission approval.

(e) In lieu of a full lead-lag study, carriers may calculate the cash working capital allowance using the following formula.

(1) Compute the weighted average revenue lag days as follows:

(i) Multiply the average revenue lag days for interstate revenues billed in arrears by the percentage of interstate revenues billed in arrears.

(ii) Multiply the average revenue lag days for interstate revenues billed in advance by the percentage of interstate revenues billed in advance. (Note: a revenue lead should be shown as a negative lag.)

(iii) Add the results of paragraphs (e)(1) (i) and (ii) of this section to determine the weighted average revenue lag days.

(2) Compute the weighted average expense lag days as follows:

(i) Multiply the average lag days for interstate expenses (*i.e.*, cash operating expenses plus interest) paid in arrears by the percentage of interstate expenses paid in arrears.

(ii) Multiply the average lag days for interstate expenses paid in advance by the percentage of interstate expenses paid in advance. (Note: an expense lead should be shown as a negative lag.)

(iii) Add the results of paragraphs (e)(2) (i) and (ii) of this section to determine the weighted average expense lag days.

(3) Compute the weighted net lag days by deducting the weighted average expense lag days from the weighted average revenue lag days.

(4) Compute the percentage of a year represented by the weighted net lag days by dividing the days computed in paragraph (e)(3) of this section by 365 days.

(5) Compute the cash working capital allowance by multiplying the interstate cash operating expenses (*i.e.*, operating expenses minus depreciation and amortization) plus interest by the percentage computed in paragraph (e)(4) of this section.

3. Section 65.830 is revised to read as follows:

**§ 65.830 Deducted items.**

(a) The following items shall be deducted from the interstate rate base.

(1) The interstate portion of deferred taxes (Accounts 4100 and 4340).

(2) The interstate portion of customer deposits (Account 4040).

(3) The interstate portion of unfunded accrued pension costs (Account 4310).

(4) The interstate portion of other deferred credits (Account 4360) to the extent they arise from the provision of regulated telecommunications services. This shall include deferred gains related to sale-leaseback arrangements.

(b) The interstate portion of deferred taxes, customer deposits and other deferred credits shall be determined as prescribed by 47 CFR Part 36.

(c) The interstate portion of unfunded accrued pension costs shall bear the same proportionate relationship as the interstate/intrastate expenses which give rise to the liability.

[FR Doc. 89-4504 Filed 3-2-89; 8:45 am]

BILLING CODE 6712-01-M



## GENERAL SERVICES ADMINISTRATION

### 48 CFR Parts 501, 514, 532, and 552

**[APD 2800.12 CHGE 62]**

### Prompt Payment Act

**AGENCY:** Office of Acquisition Policy, GSA.

**ACTION:** Final rule.

**SUMMARY:** The General Services Administration Acquisition Regulation (GSAR), Chapter 5 (APD 2800.12), is amended to add section 501.602–3 to implement and supplement the FAR requirements on the ratification of unauthorized commitments; to delete sections 501.675, 501.675–1, 501.675–2 and 501.675–3; to revise section 514.201–2 to refer to the Prompt Payment clause instead of the Payment Due Date clause; to revise part 532 to delete Payment Due Date, Interest on Overdue Payments, and Method of Payment clauses, to add material to supplement the Federal Acquisition Regulation by establishing parameters for modifying constructive acceptance periods in the FAR Prompt Payment clause; to add a Payments by Electronic Funds Transfer clause for contracts when payments may be made by GSA and other agencies and a Prompt Payment clause for acquisitions of leasehold interests in real property and to delete material that is inconsistent with the FAR and OMB Circular A–125; to revise part 552 to delete the existing Payment Due Date clause and provide a new Payments by Electronic Funds Transfer clause for use when payments may be made by GSA and other agencies, to delete the existing Interest on Overdue Payments clause and provide a new Prompt Payment clause for acquisition of leasehold interests in real property, to add an Invoice Requirements clause, and to make other miscellaneous changes for clarity. Acquisition Circular, AC–88–1 is canceled.

**EFFECTIVE DATE:** March 14, 1989.

**FOR FURTHER INFORMATION CONTACT:** Ms. Shirley Scott, Office of GSA Acquisition Policy and Regulations on (202) 523–4765.

**SUPPLEMENTARY INFORMATION:**

### Background

This rule was not published for public comment prior to issuance because it merely implements and supplements a higher level issuance (The Federal Acquisition Regulation) that has previously undergone the public comment process.

### Impact

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this rule. The rule simply amends the GSAR as necessary to conform to the FAR as amended by FAC 84–33. Therefore, no regulatory flexibility analysis has been prepared. The rule does not contain information collection requirements that require the approval of OMB under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

### List of Subjects in 48 CFR Parts 501, 514, 532 and 552

Government procurement.

1. The authority citation for 48 CFR Parts 501, 514, 532 and 552 continues to read as follows:

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Authority: 40 U.S.C. 486(c).

## PART 501—GENERAL SERVICES ADMINISTRATION ACQUISITION REGULATIONS SYSTEM

2. Section 501.602–3 is added to read as follows:

**501.602–3 Ratification of unauthorized commitments.**

(a) *Authority.* Subject to the limitations and in accordance with the procedures prescribed in FAR 1.602–3, contracting officers may ratify contractual commitments made by employees who do not have the requisite authority to enter into contracts on the Government's behalf if the head of the contracting activity (HCA) has approved the ratification action. The authority to approve ratification actions may not be redelegated.

(b) *Procedures.* (1) Generally, the Government is not bound by agreements or contractual commitments made by persons to whom contracting authority has not been delegated. Such unauthorized acts may be in violation of the Federal Property and Administrative Services Act, other Federal laws, the FAR, the GSAR, and good acquisition practice. Therefore, such unauthorized contractual commitments should be considered as serious deviations from authorized conduct and consideration given to initiating disciplinary action in appropriate cases. In any instances where suspected irregularities may involve fraud against the Government, or any type of misconduct that might be punishable as a criminal offense, either the employee's supervisor or the contracting officer should immediately report the matter to the Office of the Inspector General with a request for a complete investigation.

(2) The individual who made the unauthorized commitment shall furnish the appropriate contracting director all records and documents concerning the commitment and a complete written statement of facts, including, but not limited to, a statement as to why normal acquisition procedures were not followed, why the contractor was selected and a list of other sources considered, description of work or products, estimated or agreed upon contract price, citation of appropriation available, and a statement regarding the status of the performance. Under exceptional circumstances, such as when the person who made the unauthorized commitment is no longer available to attest to the circumstances of the unauthorized commitment, the contracting director may waive the requirement that the responsible employee initiate and document the request for ratification, provided that a written determination is made stating that a commitment was in fact made by an employee who shall be identified in the determination.

(3) The appropriate contracting director will assign the request for ratification action to an individual contracting officer for processing. The contracting officer assigned the action will be responsible for preparing a summary statement of facts addressing the limitations in FAR 1.602–3(c) and making a recommendation as to whether the transaction should be ratified and stating the reasons therefore. Advice against express ratification should include a recommendation for other appropriate disposition. When ratification is not permissible due to legal improprieties in the procurement, the contracting officer may recommend that payment be made for services rendered on a quantum meruit basis (the reasonable value of work or labor) or for goods furnished on a quantum valebant basis (the reasonable value of goods sold and delivered) provided there is a showing that the Government has received a benefit. (See FAR 1.602–3(d).)

(4) The request for ratification, the information required by paragraph 3, above, and a recommendation for corrective action to preclude recurrence, must be forwarded, through appropriate channels, to the HCA for consideration.

(5) The HCA, upon receipt and review of the complete file, may approve the ratification if determined to be in the Government's best interest, or direct other disposition as appropriate. Acquisitions that have been approved for ratification shall be forwarded to the appropriate contracting officer for issuance of the necessary contractual documents. If the request for ratification is not justified, the HCA shall return the request without approval and provide an explanation for the decision not to approve ratification.

(6) Each HCA shall maintain a separate file containing a copy of each request for approval to ratify an unauthorized contractual commitment. This file shall be made available for review by the Office of Acquisition Policy and the Inspector General.

**501.675, 501.675–1, 501.675–2 and 501.674–3 [Removed]**

3. Sections 501.675, 501.675–1, 501.675–2 and 501.675–3 are removed.

## PART 514—SEALED BIDDING

4. Section 514.201–2 is revised to read as follows:

**514.201–2 Part I—The schedule.**

All solicitations that contain the Standard Form 33, Solicitation, Offer and Award, should include the following cautionary notice:

"Offerors are reminded that block 13 of the Standard Form 33, Solicitation, Offer and Award, is to be used to offer prompt payment discounts. Payment terms are set forth in the Prompt Payment clause of this solicitation. Offerors are cautioned against inserting any statement in block 13 that indicates that payment is due sooner than the time stipulated in the Prompt Payment clause. **Example:** Inserting "NET 20" in block 13 will cause the offer to be rejected as nonresponsive, because the entry would be contrary to the 30-day payment terms specified in the Prompt Payment clause.

## PART 532—CONTRACT FINANCING

5. The table of contents for Part 532 is amended by adding Subpart 532.9.

**Subpart 532.9—Prompt Payment**

Sec.

532.905 Invoice payments.
532.906 Contract clause.

6. Section 532.111 is amended by deleting paragraphs (b), (c), (d)(2), (d)(3) and (e), redesignating paragraphs (d)(1), (f) and (g) as paragraphs (b), (c) and (d) and by revising the redesignated paragraph (b) to read as follows:

**532.111 Contract clauses.**

* * * * *

(b) *Invoice requirements.* The contracting officer shall insert a clause substantially the same as the clause at § 552.232–72, Invoice Requirements, in all solicitations and contracts for supplies, services or the acquisition of leasehold interests in real property that require the submission of invoices for payment.

(c) *Adjusting payments.* The contracting officer shall insert the clause at § 552.232–78, Adjusting Payments, in all solicitations and contracts for recurring building services expected to exceed the small purchase limitation.

(d) *Final payment.* The contracting officer shall insert the clause at § 552.232–79, Final Payment, in all solicitations and contracts for recurring building services expected to exceed the small purchase limitation.

7. Subpart 532.9 is added to read as follows:

**Subpart 532.9—Prompt Payment**

**532.905 Invoice payments.**

(a) Before exercising the authority to modify the date for constructive acceptance in subdivision (a)(6)(i) of the basic clause at FAR 52.232–25, Prompt Payment, the contracting officer shall prepare a justification explaining the reason why it is necessary to specify a longer period. The written justification must be prepared on a case-by-case basis and must be approved by the contracting director. A contracting officer may not specify a constructive acceptance period that exceeds 30 days.

(b) The time specified for constructive acceptance or approval in subdivision (a)(5)(i)(A) and (B) of Alternate I to FAR clause 52.232–25 will be determined by the contracting officer on a case-by-case basis but may not exceed 7 days for construction or architect engineer services, unless a longer period is justified (in writing) and approved by the contracting director. Under no circumstances may a period of more than 30 days be specified.

**532.906 Contract clause.**

(a) The contracting officer shall insert the clause at § 552.232–70 in solicitations and contracts that include the FAR clause 52.232–25, Alternate II, when payments may be made by GSA and other agencies (e.g., multiple award schedule contracts).

(b) The contracting officer shall insert the clause at § 552.232–71 in solicitations and contracts for the acquisition of leasehold interests in real property. The contracting officer may modify the date for constructive acceptance in subdivision (b)(2) of the basic clause to specify a period longer than 7 calendar days (but not to exceed 30 days) for constructive acceptance, if necessary due to the nature of the services to be received, inspected or accepted by the Government. A written justification for specifying the longer period must be prepared and approved by the contracting director. The contracting officer shall use Alternate I instead of the basic clause if the lease contract does not contain provisions for ordering alterations or overtime utility services. If payment may be made by electronic funds transfer, the contracting officer shall use Alternate II with the basic clause or Alternate I.

**532.7000 [Removed]**

8. Section 532.7000 is removed.

**532.7002 [Removed]**

9. Section 532.7002 is removed.

**532.7004 [Removed]**

10. Section 532.7004 is removed.

## PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

11. Section 552.232–70 is retitled and revised to read as follows:



**552.232–70 Payments by Electronic Funds Transfer.**

As prescribed in § 532.908(a), insert the following clause:

**Payments by Electronic Funds Transfer (Aug. 1988)**

The requirement for submission of a designation of financial institution for receipt of electronic funds transfer payments in paragraph (c) of the "Prompt Payment" clause at (FAR 52.232–25, Alternate II) does not apply to this contract. Instead, the Contractor shall submit its designation of a financial institution for receipt of electronic funds transfer payments with each invoice requesting payment of $25,000 or more (exclusive of any discount for prompt payment). The information for electronic funds transfer is not required by the Department of Defense, the United States Postal Service, or the Tennessee Valley Authority. Information required for electronic funds transfer payments shall be furnished to the Veterans' Administration in accordance with instructions provided by the agency. Other agencies and departments thereof may waive the requirement for designation of a financial institution for receipt of electronic funds transfer payments and for submission of information required to make such payments by including a notice on delivery orders or otherwise notifying the Contractor. (End of Clause)

12. Section 552.232–71 is retitled and revised to read as follows:

**552.232–71 Prompt Payment.**

As prescribed in § 532.908(b), insert the following clause:

**Prompt Payment (Jan. 1989)**

The Government will make payments under the terms and conditions specified in this clause. Payment shall be considered as being made on the day a check is dated or an electronic funds transfer is made.

(a) *Payment due date.*

(1) *Rental payments.* Rent shall be paid monthly in arrears and will be due on the first workday of each month, and only as provided for by the lease.

(i) When the date for commencement of rent falls on the 15th day of the month or earlier, the initial monthly rental payment under this contract shall become due on the first workday of the month following the month in which the commencement of the rent is effective.

(ii) When the date for commencement of rent falls after the 15th day of the month, the initial monthly rental payment under this contract shall become due on the first workday of the second month following the month in which the commencement of the rent is effective.

(2) *Other payments.* The due date for making payments other than rent shall be the later of the following two events:

(i) The 30th day after the designated billing office has received a proper invoice from the Contractor.

(ii) The 30th day after Government acceptance of the work or service.

(b) *Invoice and inspection requirements for payments other than rent.*

(1) The Contractor shall prepare and submit an invoice to the designated billing office after completion of the work. A proper invoice shall include the following items:

(i) Name and address of the Contractor.

(ii) Invoice date.

(iii) Lease number.

(iv) Government's order number or other authorization.

(v) Description, price, and quantity of work or services delivered.

(vi) Name and address of Contractor official to whom payment is to be sent (must be the same as that in the remittance address in the lease or the order).

(vii) Name (where practicable), title, phone number, and mailing address of person to be notified in the event of a defective invoice.

(2) The Government will inspect and determine the acceptability of the work performed or services delivered within 7 calendar days after the receipt of a proper invoice or notification of completion of the work or services unless a different period is specified at the time the order is placed. If actual acceptance occurs later, for the purpose of determining the payment due date and calculation of interest, acceptance will be deemed to occur on the last day of the 7-day inspection period. If the work or service is rejected for failure to conform to the technical requirements of the contract, the 7 days will be counted beginning with receipt of a new invoice or notification. In either case, the Contractor is not entitled to any payment or interest unless and until actual acceptance by the Government occurs.

(c) *Interest penalty.*

(1) An interest penalty shall be paid automatically by the Government, without request from the Contractor, if payment is not made within 15 days after the due date.

(2) The interest penalty shall be at the rate established by the Secretary of the Treasury under Section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the payment date. This rate is referred to as the "Renegotiation Board Interest Rate," and it is published in the **Federal Register** semiannually on or about January 1, and July 1. The interest penalty shall accrue daily on the payment amount approved by the Government and be compounded in 30-day increments inclusive from the first day after the due date through the payment date.

(3) Interest penalties will not continue to accrue after the filing of a claim for such penalties under the Disputes clause or for more than 1 year. Interest penalties of less than $1.00 need not be paid.

(4) Interest penalties are not required on payment delays due to disagreement between the Government and Contractor over the payment amount or other issues involving contract compliance or on amounts temporarily withheld or retained in accordance with the terms of the contract. Claims involving disputes, and any interest that may be payable, will be resolved in accordance with the Disputes clause. (End of Clause)

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**Alternate I (Jan. 1989)**

If Alternate I is used, subparagraph (a)(1) of the basic clause should be designated as paragraph (a) and subparagraph (a)(2) and paragraph (b) should be deleted. Paragraph (c) of the basic clause should be redesignated (b).

**Alternate II (Jan. 1989)**

If Alternate II is used with the basic clause, add the following paragraph (d). When Alternate I is used this paragraph should be designated (c).

(d) *Electronic funds transfer.* Payments under this contract will be made by the Government either by check or electronic funds transfer (through the Treasury Financial Communications System (TFCS) or the Automated Clearing House (ACH), at the option of the Government. Not later than 14 calendar days after receipt of a notice of award or request from the Contracting Officer or other Government official, the Contractor shall provide information necessary for check payment and/or designate a financial institution for receipt of electronic funds transfer payments. The Contractor shall submit this information to the Contracting Officer or other Government official, as directed.

(1) For payment by check, the Contractor shall provide the full name (where practicable), title, phone number, and complete mailing address of the responsible official(s) to whom check payments are to be sent (must be the same as the remittance address in the lease or the order).

(2) For payment through TFCS, the Contractor shall provide the following information:

(i) Name, address, and telegraphic abbreviation of the financial institution receiving payment (must be the same as the remittance address in the lease or the order).

(ii) The American Bankers Association 9-digit identifying number of the financial institution receiving payment if the institution has access to the Federal Reserve Communications System.

(iii) Payee's account number at the financial institution where funds are to be transferred.

(iv) If the financial institution does not have access to the Federal Reserve Communications System, name, address, and telegraphic abbreviation of the correspondent financial institution through which the financial institution receiving payment obtains electronic funds transfer messages. Provide the telegraphic abbreviation and American Bankers Association identifying number for the correspondent institution.

(3) For payment through ACH, the Contractor shall provide the following information:

(i) Routing transit number of the financial institution receiving payment (same as American Bankers Association identifying number used for TFCS).

(ii) Number of account to which funds are to be deposited.

(iii) Type of depositor account ("C" for checking, "S" for savings).

(iv) If the Contractor is a new enrollee to the ACH system, a "Payment Information Form," TFS 3881, must be completed before payment can be processed.

(4) In the event the Contractor, during the performance of this contract, elects to designate a different financial institution for the receipt of any payment made using electronic funds transfer procedures, notification of such change and the required information specified above must be received by the appropriate Government official 30 days prior to the date such change is to become effective.

(5) The document furnishing the information required by this paragraph must be dated and contain the signature, title, and telephone number of the Contractor official authorized to provide it, as well as the Contractor's name and contract number.

(6) Contractor failure to properly designate a financial institution or to provide appropriate payee bank account information may delay payments of amount otherwise properly due. (End of Clause)

13. Section 552.232-72 is retitled and revised to read as follows:

**552.232-72 Invoice requirements.**

As prescribed in § 532.111(b), insert the following clause:

**Invoice Requirements (Jan 1989)**

(a) Invoices shall be submitted in an original only, unless otherwise specified, to the designated billing office specified in this contract or purchase/delivery order.

(b) Invoices must include the Accounting Control Transaction (ACT) number provided below or on the purchase/delivery order.

**Act Number (Contracting Officer Insert Number)**

(c) In addition to the requirement for a proper invoice specified in the Prompt Payment clause of this contract or purchase/delivery order, the following information or documentation must be submitted with each invoice:

**(Contracting Office List Additional Requirements)**

(End of Clause)

**552.232-73 [Reserved]**

14. Section 552.232-73 is deleted and reserved.

15. Section 552.232-75 is amended by revising the introductory paragraph to read as follows:

**552.232-75 Payments to contractor.**

As prescribed in § 532.7003(a), insert the following clause:

* * * * *

16. Section 552.232-76 is amended by revising the introductory paragraph to read as follows:

**552.232-76 Certification of payment.**

As prescribed in § 552.7003(b), insert the following clause:

* * * * *

17. Section 552.232-78 is amended by revising the introductory paragraph to read as follows:

**§552.232-78 Adjusting payments.**

As prescribed in § 532.111(c), insert the following clause:

* * * * *

18. Section 552.232-79 is amended by revising the introductory paragraph to read as follows:

**552.232-79 Final payments.**

As prescribed in § 532.111(d), insert the following clause:

* * * * *

Dated: February 14, 1989.

**Richard H. Hopp, III,**

*Associate Administrator for Acquisition Policy.*

[FR Doc. 89-4944 Filed 3-2-89; 8:45 am]

BILLING CODE 6820-61-M

## INTERSTATE COMMERCE COMMISSION

**49 CFR Part 1314**

**[Ex Parte No. 444]**

## Electronic Filing of Tariffs; Correction

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Final rules; correction.

**SUMMARY:** The Commission is adopting regulations that allow electronic tariff filing as an alternative to printed tariffs. To accomplish this, the Commission is replacing its current regulations, which were drafted with only paper tariffs in mind, with regulations that are neutral with regard to the medium by which tariff information is transmitted both to the Commission and to the public. The detailed instructions of the former regulations will be replaced with brief tariff standards that require that tariffs be filed in such a way that rate and service information is described accurately and fully for use both at the time of filing and in the future. The Commission's final rule was published in the **Federal Register** on February 10, 1989 at 54 FR 6403. This notice makes certain editorial corrections to Part 1314 of the final rule.

**DATE:** The rule will become effective March 13, 1989.

**FOR FURTHER INFORMATION CONTACT:** Charles E. Langyher, (202) 275-7739, or Lawrence C. Herzig, (202) 275-7358 (TDD for hearing impaired: (202) 275-1721).



**SUPPLEMENTARY INFORMATION:**

**List of Subjects in 49 CFR Part 1314**

Freight forwarders, Maritime carriers, Motor carriers, Pipelines, Railroads, Tariffs.

**PART 1314—REGULATIONS FOR THE PUBLICATION, POSTING AND FILING OF TARIFFS AND RELATED DOCUMENTS**

1. The authority citation for 49 CFR Part 1314 continues to read as follows:

**Authority:** 49 U.S.C. 10321, 10708, 10761 and 10762; 5 U.S.C. 553.

**§ 1314.5 [Corrected]**

2. In § 1314.5(b), in the chart under Water—Passenger, the figure in the Reduced column is correctly added to read "30" not "3".

**§ 1314.6 [Corrected]**

3. In § 1314.6(b) the name of the Tariff Publishing Officer listed for Railroads is correctly added to read: "Mr. S.R. Rodgers" not "W.J. Hardin".

**§ 1314.8 [Corrected]**

4. In § 1314.8(b) number two under Examples is correctly added to read as follows:

(2) Joint motor/water commodity rates in containerized service between interior points in the United States and ports in Puerto Rico and Hawaii; and governing rules.

**Noreta R. McGee,**

*Secretary.*

[FR Doc. 89-5015 Filed 3-2-89; 8:45 am]

BILLING CODE 7035-01-M

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# Proposed Rules

Federal Register
Vol. 54, No. 41
Friday, March 3, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Federal Grain Inspection Service

### 7 CFR Part 800

### Shiplot Inspection Plan (Cu-Sum)

**AGENCY:** Federal Grain Inspection Service, USDA.

**ACTION:** Proposed rule; extension of comment period.

**SUMMARY:** The Federal Grain Inspection Service (FGIS) published in the **Federal Register** on Monday, January 23, 1989, as corrected on Friday, January 27, 1989, a proposed rule on revising the Shiplot Inspection Plan (Cu-Sum). FGIS is extending the comment period to provide interested persons with additional time in which to prepare comments on the proposed rule.

**DATE:** Comments must be submitted on or before May 23, 1989.

**ADDRESS:** Comments must be submitted in writing to Lewis Lebakken, Jr., Resources Management Division, USDA, FGIS, Room 0628 South Building, P.O. Box 96454, Washington, DC 20090–6454. Alternatively, telemail users may respond to [IRSTAFF/FGIS/USDA] telemail; telex users may respond to Lewis Lebakken, Jr., TLX: 7607351, ANS:FGIS UC; and telecopy users may send responses to the automatic telecopier machine at (202) 447–4628.

All comments received will be made available for public inspection at room 0628 South Building, 1400 Independence Avenue, SW., Washington, DC 20250, during regular business hours (7 CFR 1.27(b)).

**FOR FURTHER INFORMATION CONTACT:** Lewis Lebakken, Jr., address as above, telephone (202) 475–3428.

**SUPPLEMENTARY INFORMATION:** FGIS published in the **Federal Register** on January 23, 1989 (54 FR 3050, FR Doc. 89–1194) as corrected on January 27, 1989 (54 FR 4109) a proposal to revise the current shiplot inspection plan (Cu-Sum). The proposed rule was to revise §§ 800.86, 800.129, and 800.139 of the regulations concerning the inspection of shiplot, unit train, and lash barge grain in single lots; and to organize the sections into a more logical order, clarify and remove unnecessary language, and remove provisions that are no longer needed.

The proposed rule provided for a comment period to obtain public views and comments on the revisions. Comments were to be submitted on or before March 24, 1989. The Grain Elevator and Processing Society (GEAPS), North American Export Grain Association (NAEGA), Bunge Corporation, Archer Daniels Midland Company and Union Equity Co-operative Exchange submitted written requests to extend the comment period. They indicated additional time is needed to review the proposal. GEAPS, NAEGA, and the Bunge Corporation further indicated the grain quality report being developed by the Office of Technology Assessment (OTA) should be considered after it is released to the public before commenting on the proposed rule because the final report may influence their comments.

The intent of the proposed rule was to obtain public views and comments on the revisions. It has been determined that an extension of time to allow additional public input will prove beneficial. Commentors will have additional time to consider the OTA report; foreign buyers will have more time to respond; and additional time may facilitate the development of effective alternative recommendations by industry. Therefore, the comment period is hereby extended until May 23, 1989.

(Pub. L. 94–582, 90 Stat. 2867, as amended, (7 U.S.C. 71 *et seq.*))

Dated: March 1, 1989.

**W. Kirk Miller,**

*Administrator.*

[FR Doc. 89–5076 Filed 3–2–89; 8:45 am]

BILLING CODE 3410-EN-M

## DEPARTMENT OF JUSTICE

### Immigration And Naturalization Service

### 8 CFR Part 210a

**[INS No. 1201–89]**

### Admission or Adjustment of Status of Replenishment Agricultural Workers

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** This rule adds a new Part 210a of 8 CFR, to conform with the new section 210A of the Immigration and Nationality Act, established by the Immigration Reform and Congrol Act of 1986 (IRCA), Pub. L. 99–603. The purpose of this proposed rule is to set forth the criteria and procedures to be used to admit or adjust the status of replenishment agricultural workers for temporary residence, and to address the rights and obligations of aliens admitted or adjusted under this section.

**DATES:** Comments must be received on or before April 3, 1989.

**ADDRESSES:** Written comments should be mailed in triplicate to the Deputy Assistant Commissioner, Special Agricultural Worker Programs, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536, or delivered to Room 5250 at the same address.

**FOR FURTHER INFORMATION CONTACT:** Aaron Bodin, Deputy Assistant Commissioner, Special Agricultural Worker Programs (SAW), 202–786–3658.

**SUPPLEMENTARY INFORMATION:** Section 210 of the Immigration and Nationality Act, added by section 302 of the Immigration Reform and Control Act of 1986 (IRCA), Pub. L. 99–603, provides lawful residence in the United States for "special agricultural workers" (SAWs). Aliens adjusted under this section are not required to remain in agricultural work upon acquiring lawful status. To address the concerns of growers that labor shortages might result as alien farm workers granted status under the SAW program retired or left to go into non-agricultural work, Congress also added section 210A to the Act. Unlike SAWs, these replenishment agricultural workers (RAWs) are obligated to perform seasonal agricultural services in each of the first three years after having been accorded temporary residence. RAWs who fulfill this condition may be given the status of permanent resident. A RAW who fails to perform the requisite seasonal agricultural services is deportable. RAWs who desire to become citizens of the United States are obligated to perform seasonal agricultural services in each of two additional years.

Section 210A(c) of the Act directs the Attorney General to provide for the admission or adjustment of aliens to lawful temporary resident status in order to meet a shortage of workers to perform seasonal agricultural services. The number of aliens admitted or adjusted each fiscal year under the provisions of section 210A(c), which is referred to as the "shortage number", is determined jointly by the Secretaries of Labor and Agriculture with the Bureau of the Census from data collected during the prior fiscal year. If the determination is made that there will be no shortage of workers in any year, no RAW shall be admitted or adjusted in that year unless the Emergency Procedure for Increase in Shortage Number at section 210A(a)(7) is implemented.

On August 15, 1988, a notice of availability for public comment of a preliminary working draft of regulations to implement section 210A(c) was published in the **Federal Register** at 53 FR 30685. The Service gratefully acknowledges the many comments it received from farm worker and grower representatives, members of Congress and others. The knowlege and expertise imparted by the commentors were of considerable help to the Service in refining its views and many of the suggestions were adopted in drafting thir proposal.

These proposed regulations describe a procedure to be employed for the admission or adjustment of RAWs during fiscal year 1990, if required, and the standards and procedures governing all other aspects of the RAW program. Procedures for the admission or adjustment of RAWs during fiscal years 1991 through 1993 will be promulgated by regulation at a later date.

The basic eligibility criteria for RAW status for fiscal year 1990 shall be: (1) A minimum age of 18 by October 1, 1989; (2) the performance of at least 20 man days of agricultural work in the United States in any 12 consecutive months during the period May 1, 1985 through November 30, 1988; (3) admissibility to the United States as an immigrant; and (4) certification of ability and intent to perform the seasonal agricultural services required to maintain RAW status. Aliens who have entered the United States illegally subsequent to November 6, 1986, will not be eligible. Priority consideration shall be given to aliens who meet these criteria and who are spouses or unmarried sons or daughters of aliens legalized under IRCA.

The selection process shall proceed in two stages: (1) The establishment of a list of potentially eligible aliens who will be invited to petition for RAW status; and (2) the petition process during which eligibility will be determined and the admission or adjustment of the alien accomplished.

The shortage number for fiscal year 1990 may not be known until late in fiscal year 1989 and it is possible that there will be no shortage number. The regulations are designed, therefore, to minimize the expenditure of public funds in preparation for the admission or adjustment of RAWs prior to information that there will be a shortage number. In order that registration procedures may proceed prior to the beginning of fiscal year 1990, the Service may commence action based on a formal estimate from the Departments of Agriculture and Labor as to the probable size of a shortage number, including a reasonable margin for a possible emergency increase prior to October 1, 1989.

For reasons of economy and to avoid the creation of unwarranted expectations that would result from a registration out of proportion to the shortage number, registration standards will be variable and geared to the size of the shortage number as follows: (1) Immediately after the announcement or preliminary estimate of a shortage number by the Secretaries of the Departments of Agriculture and Labor, the INS will establish a list of aliens whose applications for SAW status were denied but who meet the eligibility criteria for RAW status. Age and qualifying work experience will be determined from information already in possession of INS. Qualified registrants from this list will be the first to be admitted or adjusted to RAW status. If the number of persons on this list is larger than the shortage number, there may be no need to activate additional procedures for the admission or adjustment of RAWs. If, however, it appears likely that the number of aliens on this list will not meet the shortage number, then the INS will implement a procedure in which additional eligible aliens may register their interest in petitioning for RAW status. (2) if the difference between the anticipated number of aliens in the first group and the shortage number is less than 50,000, registration will be limited to eligible aliens residing in the United States whose qualifying work was in seasonal agricultural services; (3) if the difference is between 50,000 and 200,000, registration will be limited to eligible aliens residing in the United States whose qualifying experience was in any agricultural employment; and (4) if the difference is greater than 200,000, registration will be open to any eligible alien, including aliens outside the United States, whose qualifying work in the United States was in any agricultural employment.

All timely received registration forms will be randomly ordered, with aliens claiming priority consideration based on family relationship to an IRCA legalized alien placed first on the registration list. If a shortage number is determined, aliens in the first group will be invited to petition for admission or adjustment to RAW status in the order that they appear on the registration list until the shortage number is met. If the shortage number is not met by the first group, the appropriate additional registration procedure will be implemented. All registrants will mail their registration forms (I–807) to an INS Central Processing Facility (CPF). Aliens claiming immediate family relationship to an alien legalized under IRCA will be given priority consideration. Registered aliens will be invited to petition for RAW status until the shortage number is met. Additional registrants will be invited to petition as necessary to meet any emergency increase in the shortage number.

It is in the interest of agricultural employers to remain in contact with undocumented former workers so that they may contact these workers with necessary information in the event that there is a registration.

The Service also wishes to note here that it is important for employers to understand that SAWs and RAWs are legal resident aliens and are to be treated as such for tax purposes. They should not be confused with nonimmigrant temporary workers admitted under the H–2A program.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have federalism implications warranting the preparation of a Federal

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Assessment in accordance with Executive Order 12612.

This rule contains information collection requirements that have been submitted to the Office of Management and Budget for clearance under the provisions of the Paperwork Reduction Act.

**List of Subjects in 8 CFR Part 210a**

Aliens, Temporary resident status, Reporting and recordkeeping requirements, Permanent resident status.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended by adding a new Part 210a to read as follows:

## PART 210a—REPLENISHMENT AGRICULTURAL WORKERS

Sec.

210a.1 Definition of terms used in this part.
210a.2 Registration process.
210a.3 Eligibility.
210a.4 Admissibility.
210a.5 Petition for temporary resident status.
210a.6 Status, benefits and obligations.
210a.7 Adjustment to permanent resident status.

Authority: 8 U.S.C. 1103; 8 CFR Part 2.

### § 210a.1 Definition of terms used in this part.

(a) *Act.* The Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986, Pub. L. 99-603.

(b) *ADIT.* Alien Documentation, Identification and Telecommunications card, Form I-89. Used to collect key data concerning an alien. When processed together with an alien's photographs, fingerprints and signature, this form becomes the source document for generation of Form I-551 Alien Registration Receipt Card.

(c) *Agricultural employment.* The term "agricultural employment" includes any employment:

(1) On a farm in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife;

(2) By a farm operator in connection with operating or maintaining the farm and its tools and equipment, or with salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm;

(3) In connection with the production or harvest of any agricultural commodity or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes;

(4) By the operator(s) of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity, but does not include service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption or service not in the course of the employer's trade or business or domestic service in a private home of the employer.

(d) *Farm.* The term "farm" includes stock, dairy, poultry, fruit, fur-bearing animals, and truck farms, plantations, ranches, nurseries, ranges, greenhouses, or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards.

(e) *Agriculture.* The term "agriculture" includes farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities as defined as agricultural commodities in section 1141j(g) of Title 12), the raising of livestock, bees, fur-bearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.

(f) *Application under IRCA.* The term "application under IRCA" means an application filed by any alien with the Immigration and Naturalization Service under sections 245a (general amnesty) and 210 (SAWs) of the Immigration and Nationality Act and section 202 (Cuban/Haitian adjustees) of the Immigration Reform and Control Act of 1986 (IRCA) which has been approved.

(g) *Man-day.* The term "man-day" is used to quantify work performed for the purpose of establishing eligibility under § 210a.3(a)(1)(iii) of this part and means the performance during any day of not less than one (1) hour of agricultural employment or seasonal agricultural services for wages paid or any day in which piece rate work was performed. Work for more than one employer in a single day shall be counted as no more than one man-day for purpose of this part.

(h) *Public cash assistance.* Public cash assistance means income or needs-based monetary assistance, to include but not limited to supplemental security income, received by the alien or his or her immediate family members through federal, state or local programs designed to meet subsistence levels. It does not include assistance in kind, such as food stamps, public housing, or other non-cash benefits, nor does it include work-related compensation or certain types of medical assistance (Medicare, Medicaid, emergency treatment, services to pregnant women or children under 18 years of age, or treatment in the interest of public health).

(i) *Replenishment Agricultural Worker (RAW).* Any individual granted temporary resident status or permanent resident status under section 210A(c) of the Act.

(j) *Seasonal Agricultural Services.* Defined in Section 210(h) of the Act as the performance of field work related to planting, cultural practices, cultivating, growing and harvesting of fruits and vegetables of every kind and other perishable commodities, as defined in regulations by the Secretary of Agriculture. The regulations further defining these terms can be found at 7 CFR Part 1d.

(k) *Secretaries.* The term "Secretaries" means the Secretaries of Labor and Agriculture.

(l) *Shortage number.* The number, if any, or replenishment agricultural workers to be adjusted or admitted to the United States during a fiscal year as determined by the Department of Labor and the Department of Agriculture under the provisions of section 210A (a) and (b) of the Act. The numerical limitations of sections 201 and 202 of the Act do not apply to the admission or adjustment of aliens for lawful temporary or permanent resident status under section 210A(c) of the Act.

(m) *Special Agricultural Worker (SAW).* Any individual granted temporary or permanent resident status under § 210.(a) of the Act.

(n) *Work-day.* The term "work-day" quantifies the work required of RAWs in order to maintain temporary resident status as described in § 210a.6 of this part and means a calendar day during which at least four (4) hours of work in seasonal agricultural services is performed.

Note.—The term "work-day" is used here in lieu of the statutory term "man-day" to conform with its usage in Department of Labor regulations at 29 CFR Part 502 and to distinguish between the term "man-day" as defined elsewhere in this section.



### § 210a.2 Registration process.

(a) *General.* The decision to conduct the registration described in this section will be made following the determination of a shortage number or a formal estimate by the Secretaries prior to October 1, 1989, as to the probable size of a shortage number. This number shall include a reasonable margin for a possible emergency increase during the fiscal year.

(b) *Registration standards.* (1) The INS will first establish a list of aliens whose applications for temporary resident status under section 210 (SAW) had been denied. To be on this list there must be credible documentation in the file that the alien meets the RAW eligibility requirements with respect to age and prior agricultural employment. SAW applicants whose applications were denied for fraud or a ground of exclusion under section 212(a) of the Act which cannot be waived shall not be included. After announcement of a shortage number or a preliminary estimate by the Secretaries, aliens who meet the criteria set forth in this sub-paragraph will be furnished a registration form (I-807) to be completed and returned if they desire to be considered for RAW status.

(2) If the difference between the number of persons registered pursuant to paragraph (b)(1) of this section and the shortage number will likely be less than 50,000, registration will be announced only for eligible aliens in the United States who have performed 20 man-days of qualifying work in seasonal agricultural services in the United States during the period beginning May 1, 1985 and ending on November 30, 1988, provided that no person entering the United States illegally after November 6, 1986, shall be eligible.

(3) If the difference between the number of persons registered pursuant to paragraph (b)(1) of this section and the shortage number will likely be greater than 50,000 but less than 200,000, registration will be announced only for eligible aliens in the United States who have performed 20 man-days of any type of agricultural employment in the United States during the period beginning May 1, 1985 and ending on November 30, 1988, provided that no person entering the United States illegally after November 6, 1986, shall be eligible.

(4) If the difference between the number of persons registered pursuant to paragraph (b)(1) of this section and the shortage number is greater than 200,000, and it appears that the number of eligible aliens in the United States will not be sufficient to meet the shortage number, registration will be expanded to include eligible aliens outside the United States who can document 20 man-days of any type of agricultural employment in the United States during the period beginning May 1, 1985 and ending on November 30, 1988, provided that no person entering the United States illegally after November 6, 1986, shall be eligible.

(c) *Registration period.* If a registration is to be conducted, the Service will announce it in the Federal Register and publicize the dates for the beginning and end of the registration period.

(d) *Filing of registration form (I-807).* (1) Registration forms will be available from all Service district, legalization and sub-offices. Should it become necessary to expand the scope of registration as provided in paragraph (b)(4) of this section, registration forms will be available from American Embassies and consular posts as required. Any alien who believes that he or she is eligible for temporary resident status as a Replenishment Agricultural Worker (RAW) and who meets the registration standard may register with the INS Central Processing Facility (CPF) (location to be announced at a later date).

(2) All registration forms shall be submitted by regular domestic or international surface or airmail. Registration forms will not be accepted by any means other than by mail, nor at any address other than the one specified in § 210a.2(d)(1). Registration forms submitted by any means requiring any form of written acknowledgement or confirmation of receipt will be rejected.

(3) A registration form (Form I-807) may not be submitted in person. A separate registration form must be filed by each eligible registrant. Only one registration form per registrant will be accepted. If multiple registration forms are submitted by an alien, all of that person's registration forms will be rejected.

(4) Registration forms (Form I-807) containing information which is incomplete or which cannot be read will be discarded. No registration form will be return. The Service will not respond to status inquiries concerning the registration process.

(5) No registration fee will be collected.

(e) *Priority consideration.* Priority consideration will be given to the qualified spouses and unmarried sons or daughters (18 years of age or older) of aliens who have filed an application under IRCA which has been approved.

(f) *Random selection.* (1) Registration forms timely received at the CPF will be ordered at random.

(2) Registrants claiming priority consideration based on a family relationship to an IRCA legalized alien shall be randomly ordered separately from registrants not claiming this priority.

(g) *Fraud or willful misrepresentation.* If fraud or willful misrepresentation of a material fact is found in the registration process, the registration form (Form I-807) will be rejected or the subsequent petition will be denied. Such fraud or willful misrepresentation will subject the person to deportation under section 241 of the Act and referral to a U.S. Attorney for possible prosecution.

(h) *Appeal.* No appeal shall lie from failure to be placed on the list of registrants or to be given priority consideration.

(i) *No benefit for registration.* Neither employment authorization nor any other benefit shall derive from filing a registration form (Form I-807), being placed on the register, or being invited to petition for RAW status.

(j) *Invitation to petition.* (1) Persons registered pursuant to paragraph (b)(1) of this section will first be invited to petition for admission or adjustment in the order on the register, beginning with the highest ranked registrant in the group claiming family relationship to IRCA legalized aliens, and continuing through the remainder of the register by rank order until the shortage number for that year is reached, or until this supply of registrants is exhausted.

(2) If there are insufficient registrants, as provided in paragraph (j)(1) of this section, to meet the shortage number, then registrants will be invited to petition for admission or adjustment in the order on the register, beginning with the highest ranked registrant in the group claiming family relationship to IRCA legalized aliens, and continuing through the remainder of the register by rank order until the shortage number for that year is reached.

### § 210a.3 Eligibility.

(a) *Eligibility*—(1) *General.* An alien eligible for status as an alien lawfully admitted for temporary residence under section 210A(c) of the Act is one who:

(i) Will be eighteen (18) years of age or older by October 1, 1989;

(ii) Is admissible to the United States as an immigrant, or if inadmissible, may have the grounds of excludability waived in accordance with the provisions of section 210(c)(2)(B)(i) of the Act;

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(iii) Has performed at least 20 man-days of agricultural employment in the United States during any 12 consecutive months during the period beginning May 1, 1985 and ending on November 30, 1986; and

(iv)( Certifies that he or she is able and intends to perform seasonal agricultural services as required under § 210a.6(b) of this part.

(2) An alien who entered the United States illegally after November 6, 1986, is not eligible for RAW status.

(b) *Proof of eligibility*—(1) *General.* All documentation required to prove age, identity, admissibility, agricultural employment and family relationship must be presented during the petitioning process at the interview as set forth in § 210a.5 of this part.

(2) *Burden of proof.* An alien seeking admission or adjustment of status under this part has the burden of proof in establishing each of the eligibility requirements set forth in paragraph (a) of this section, including family relationship or performance of seasonal agricultural services if claimed on the registration form.

(c) *Proof of identity and age.* (1) Evidence to establish identity and age:

(i) Passport;

(ii) Birth Certificate;

(iii) Any national identity document from the alien's country of origin bearing a photograph and/or fingerprint (e.g. "cedula", "cartilla", "carte d'identite", etc.);

(iv) Driver's license or similar document issued by the state, if it contains a photograph;

(v) Baptismal record or marriage certificate;

(vi) Affidavits; or,

(vii) Such other documentation which may establish the identity and age of the petitioner.

(2) *Assumed names.* (i) In cases where a petitioner claims to have met any of the eligibility criteria under an assumed name, the petitioner has the burden of proving the petitioner was, in fact, the person who used that name. The petitioner's true identity is established pursuant to the requirements of paragraph (c)(1) of this section. The assumed name must appear in documents provided by the petitioner to establish eligibility. To meet the requirements of this paragraph, documentation must be submitted to prove that the assumed name was, in fact, used by the petitioner.

(ii) *Proof of common identity.* The most persuasive proof of common identity is a document issued in the assumed name which identifies the petitioner by photograph, fingerprint or detailed physical description. Other evidence which will be considered are affidavit(s) by a person or persons other than the petitioner, made under oath, which identify the affiant by name and address, state the affiant's relationship to the petitioner and the basis of the affiant's knowledge of the petitioner's use of the assumed name. Affidavits accompanied by a photograph which has been identified by the affiant as the individual known to affiant under the assumed name in question will carry greater weight.

(d) *Evidence of family relationship*—(1) *Spouse of legalized alien.* If the petitioner is the spouse of a legalized alien, then a certificate of marriage between the petitioner and legalized alien is required. If either the husband or wife was married before, then documents must be submitted to show that all previous marriages were legally ended (e.g., divorce decree, death certificate).

(2) *Unmarried son or daughter of a legalized alien.*

(i) If the legalized alien is the mother, then the birth certificate of the child showing the name of the mother is required.

(ii) If the legalized alien is the father, a certificate of marriage of the parents and the child's birth certificate showing the names of the parents must be provided.

(iii) If the legalized alien is the stepparent, the child's birth certicate showing the names of both natural parents, the marriage certificate of the parent to the stepparent, and proof of legal termination of their prior marriages must be provided.

(iv) If the child was born out of wedlock, and the father is the legalized alien, evidence must be provided that a parent/child relationship exists or existed. For example, the child's birth certificate showing the father's name and evidence that he supported the child.

(v) If the child is the adoptive child of a legalized alien, a certified copy of the adoption decree, the legal custody decree if the custody of the child was obtained before adoption, and a statement showing the dates and places the child and adoptive parent lived together must be submitted.

(3) *Documents not available.* If the documents listed in this section are not available, the following evidence may be submitted. The Service may require a statement from the appropriate authority certifying that the needed document is not available:

(i) *Church record.* A certificate under the seal of the church of baptism, dedication, or comparable rite showing the date and place of the child's birth, date of the religious ceremony, and the names of the child's parents;

(ii) *School record.* A letter from the authorities of the first school attended showing the date of admission to the school, the child's date and place of birth, and the names and places of birth of the parents, if shown in the school records;

(iii) *Census record.* State or federal census record showing the name, place of birth, and date of birth or the age of the person listed;

(iv) *Affidavits.* Written statements sworn to or affirmed by two persons who were living at the time who have personal knowledge of the event the petitioner is trying to prove. The affidavit must include the affiant's full name, address, date and place of birth, and his or her relationship to the petitioner, if any; full information concerning the event; and complete details concening how the person acquired knowledge of the event.

(e) *Employment documentation*—(1) *Types of documents.* Aliens petitioning for temporary resident status as a replenishment agricultural worker (RAW) must establish qualifying employment by submitting:

(i) Government employment records; or,

(ii) Records maintained by agricultural producers, farm labor contractors, collective bargining organizations and other groups of organizations which maintain records of employment;

(iii) Worker identification issued by employers or collective bargaining organizations;

(iv) Union membership cards or other union records such as dues receipts;

(v) Other records of the applicant's involvement with organizations providing services to farm workers;

(vi) Work records such as pay stubs, piece work receipts, W–2 forms;

(vii) Certification of filing income tax returns on IRS form 6166; or,

(viii) State verification of the filing of state income tax returns.

(2) *Affidavits.* Affidavits shall not be acceptable to document work performed to qualify for temporary residence as a replenishment agricultural worker (RAW) under this part.

(3) *Non-applicability to certain registrants.* The documentation requirements set forth in this paragraph shall not apply persons registered pursuant to § 210a.2(b)(1) of this part.

(f) *Documents.*—(1) *Original documents.* Original documents must be presented at the time of the interview wherever possible. Copies of records maintained by parties other than the petitioner which are presented in



evidence must be certified as true and complete by such parties and must bear their seal or signature or the signature and title of persons authorized to act in their behalf. If at the time of the interview the return of original documents is desired by the petitioner, then they must be accompanied by notarized copies or copies certified true and complete by the petitioner's representative in the format prescribed at § 204.2(j) (1) or (2) of this chapter. At the discretion of the district director or consular officer, original documents, even if accompanied by certified copies, may be temporarily retained for further examination.

(2) *Documents in a foreign language.* Documents in a language other than English must be accompanied by a complete English translation. The translator must certify that the translation is accurate and that he or she is competent to translate.

(g) *Confidentiality of information.* No information furnished pursuant to registration or a petition under this part, including documentary evidence furnished by third parties, shall be used to identify or locate aliens for the purpose of removing them from the United States unless the Service has information that the alien entered the United States illegally subsequent to November 6, 1986; nor will any such information be provided to any other agency of government for the purpose of identifying or penalizing persons for violation of law. The only exceptions shall be to enforce section 210(b)(7) of the Act, and this part.

**§ 210a.4 Admissibility.**

(a) *General.* An alien seeking temporary resident status as a replenishment agricultural worker must be admissible to the United States as an immigrant. This means that the alien must not be excludable under the provisions of section 212(a) of the Act. However, section 210A(e) of the Act provides that certain grounds of excludability are not applicable, that certain grounds may be waived, and that other grounds cannot be waived.

(b) *Grounds of exclusion not to be applied.* The following paragraphs of section 212(a) of the Act shall not apply to petitioners for temporary resident status: (14), workers entering without Labor Certification; (20), immigrants not in possession of a valid entry document; (21), visas issued without compliance with section 203; (25), illiterates; and (32), graduates of non-accredited medical schools.

(c) *Special rule for determination of public charge.* Section 212(a)(15) of the Act shall not apply to an alien who demonstrates a history of employment in the United States evidencing self-support without reliance on public cash assistance.

(d) *Waiver of grounds for exclusion.* Except as provided in paragraph (e) of this section, the Service may waive any other provision of section 212(a) of the Act only in the case of individual aliens for humanitarian purposes, to assure family unity, or when the granting of such a waiver is in the public interest. If an alien is excludable on grounds which may be waived as set forth in this paragraph, then he or she shall be advised of the procedures for applying for a waiver of grounds of excludability on Form I–690 (procedures to be determined).

(e) *Grounds of exclusion that may not be waived.* The following provisions of 212(a) of the Act may not be waived:

(1) Paragraphs (9) and (10) (relating to criminals);

(2) Paragraph (23) (relating to narcotics), except for a single offense of simple possession of thirty grams or less of marijuana;

(3) Paragraphs (27), (28), and (29) (relating to national security and members of certain organizations);

(4) Paragraph (33) (relating to those who assisted in the Nazi persecutions).

(f) *Exchange visitors.* An alien who was at any time a nonimmigrant exchange visitor (as defined in section 101(a)(15)(J) of the Act), must establish that he or she was not subject to the two-year foreign residence requirement of section 212(e) of the Act or has fulfilled that requirement or has received a waiver of such requirement.

(g) *Entry to U.S. without inspection.* An alien who entered the United States without immigration inspection after Novermber 6, 1986 is not eligible for temporary resident status as a replenishment agricultural worker (RAW) under this part.

**§ 210a.5 Petition for temporary resident status.**

(a) Selected registrants will be sent petition materials consisting of:

(1) Instructions for completing all required forms;

(2) Petition for Temporary Resident Status as a Replenishment Agricultural Worker (RAW) section 210A of the Immigration and Nationality Act, Form I–805;

(3) Change of Address Card for Replenishment Agricultural Workers (RAW), Form I–897A;

(4) Fingerprint card, Form FD–258;

(5) Medical Examination of Aliens Seeking Adjustment of Status (Pub. L. 99–603), Form I–693; and

(6) ADIT photo instruction sheet.

(b) *Changes to petitioner's address.* The petition package will be mailed to the address supplied on the registration form. If a registrant changes address prior to an invitation to petition, it is his or her responsibility to file a notice of a change of address with the postal service so that the petition package may be forwarded to the current address. If a petition package is returned as undeliverable by the postal service because of an insufficient address or because the registrant has moved and left no forwarding address, he or she will be placed at the end of the list and the next registrant on the register will be selected in his or her place.

(c) *Interview.* (1) Registrants will be invited to appear for an interview at an INS office, American Embassy or Consulate for the purpose of petitioning for admission or adjustment to temporary resident status under this part.

(2) At the time of the interview the petitioner must submit the required fee, proof of identity and age, evidence of admissibility and eligibility, the results of the medical examination on Form I–693, and photographs.

(3) The immigration or consular officer shall judge the sufficiency of the documents submitted and may require additional documentation needed to establish eligibility under this part.

(4) All information and evidence of identity, age, admissibility and family relationship and prior agricultural employment will be subject to verification by the Service or by the American Consulate or Embassy abroad at the time of personal interview.

(d) *Securing petitioner employment records.* (1) When a RAW petitioner alleges that an employer refuses to provide him or her with records relating to his or her employment and the petitioner has reason to believe such records exist, the Service shall attempt to secure such records.

(2) Prior to any attempt by the Service to secure the employment records, the following conditions must be met:

(i) A RAW petition must have been filed;

(ii) An interview must have been conducted;

(iii) The petitioner must have made a good faith effort to obtain the necessary documentation;

(iv) The petitioner's testimony must support credibly his or her claim; and

(v) The Service must determine that the petition cannot be approved in the absence of the employment records.

(3) Provided each of the conditions in paragraph (d)(2) of this section have been met, district directors may issue a

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subpoena in accordance with 8 CFR 287.4, for the purpose of obtaining the needed employment records.

(3) *Information that cannot be verified.* (i) Registrants who claim a priority based on a family relationship that cannot be verified by the Service or by the American Consulate or Embassy abroad will be randomly ranked within that portion of the register established for qualifying aliens not claiming a priority based on family relationship.

(ii) If any material fact required by the announced registration standard and necessary to establish eligibility or a claim to seasonal agricultural services cannot be verified, the petition will be denied.

(f) *Filing of fee.* The required fee of one hundred and eighty five dollars ($185.00) shall be submitted at the time of the interview at the INS office, American Embassy or Consulate. All fees for petitions where the interview is conducted in the United States shall be in the form of a money order, cashier's check, or bank check made payable to the Immigration and Naturalization Service. No personal checks or currency will be accepted. All fees for petitions where the interview is conducted at an American Consulate or Embassy abroad shall be submitted in United States currency, or in the currency of the country in which the consulate or embassy is located. Fees will not be waived or refunded under any circumstances.

(g) *Medical examination.* If the petitioner is an alien who registered pursuant to § 210a.2 (b)(1) of this part, this paragraph applies only if they have not had a diagnostic test for the presence of the HIV antibody as part of their application for temporary resident status as a special agricultural worker (SAW). This paragraph applies to all other aliens who petition under section 210A(c) of the Act. A petitioner under this part must be examined at no expense to the government by a designated civil surgeon or, in the case of an applicant abroad, by a panel physician designated to perform medical examinations of immigrant visa applicants. The medical report setting forth the findings concerning the mental and physical condition of the applicant shall be incorporated into the record on Form I–693, Medical Examination of Aliens Seeking Adjustment of Status (P.L. 99–603). This form will be sent to the petitioner with the interview notice. The results of the medical examination on Form I–693 must be submitted at the time of the interview. Any petitioner certified under paragraphs (1), (2), (3), (4), or (5) of section 212(a) of the Act may appeal to a Board of Medical Officers of the U.S. Public Health Service as provided in section 234 of the Act and Part 235 of this chapter.

(h) *Decision.* (1) A decision to deny or to recommend approval of the petition for RAW status will be made by a Service district director or consular officer, based on all information provided at the interview in support of claims made to eligibility, agricultural employment experience and family relationship to an IRCA legalized alien.

(2) Where a petitioner is unable to substantiate a claim to family preference and fraud has not been established, the petitioner will be randomly re-ranked within that portion of the register established for qualifying aliens not claiming family preference. In this case, the petition will be held in abeyance until such time as the petitioner may again be invited to petition.

(i) *Approval.* (1) If the petitioner was interviewed at a Service office in the United States or at a designated port of entry and approval is recommended at the interview, the Service will conduct record checks to verify the admissibility of the petitioner.

(i) During the period of pendency of the petition, the alien will receive work authorization and permission to travel abroad on Form I–668A, Employment Authorization Card, for a period not to exceed six months from the date of filing.

(ii) If the record check is returned without adverse information concerning the petitioner, the petitioner will be issued Form I–688, Temporary Resident Card, valid for a period of 18 months from the filing date of the petition. This card may be renewed, extended or reissued for the remainder of the three year period of temporary residence upon a finding by the Service that the alien has completed the first required 90 man-days of employment in seasonal agricultural services as provided in § 210a.8 of this part.

(2) Where a petitioner is interviewed and the petition is approved at an embassy or consular post outside of the United States, the petitioner will be provided with an entry document to enable admission to the United States. The petitioner must appear at any Service office within 30 calendar days of admission to the United States to be processed for a Temporary Resident Card (Form I–688). The petitioner will be issued Form I–688, Temporary Resident Card, valid for a period of 18 months from the filing date of the petition. This card may be renewed, extended or reissued for the remainder of the three year period of temporary residence upon a finding by the Service that the alien has completed the required 90 man-days of employment each year in seasonal agricultural services as provided in § 210a.8 of this part.

(j) *Denial.* If the petitioner fails to meet his or her burden of proof at the interview, or if record checks are returned with adverse information that renders the petitioner ineligible for temporary resident status as a replenishment agricultural worker (RAW), the petition will be denied. No appeal shall lie from a decision to deny a petitioner temporary resident status under this part.

(k) *Date of adjustment.* The status of an alien whose petition for temporary resident status is approved by the Service shall be adjusted to that of a lawful temporary resident as of the date on which the petition was filed. An alien whose petition for temporary resident status is approved at an American Consulate or Embassy abroad shall be issued a visa and admitted to the United States for lawful temporary residence.

(l) *Fraud or willful misrepresentation.* If fraud or willful misrepresentation of a material fact is found in the petition process, the petition will be denied. If the petitioner is in the United States, he or she will be subject to deportation under section 241 of the Act and/or referral to the United States Attorney for possible prosecution.

**§ 210a.6 Status, benefits and obligations.**

(a) *Employment and travel authorization.* An alien who has been lawfully admitted to the United States for temporary residence or whose status has been adjusted to that of a person lawfully admitted for temporary residence under section 210A(c) of the Act has the right to reside in the United States, to travel abroad (including commuting from a residence abroad), and to accept employment in the United States in the same manner as aliens lawfully admitted for permanent residence. Employment and travel abroad will be authorized on Employment Authorization Card (Form I–668A) or Temporary Resident Card (Form I–688).

(B) *Obligation to perform seasonal agricultural services.* (1) An alien who has obtained temporary resident status as a replenishment agricultural worker must establish to the Service as set forth in this section that he or she has performed ninety (90) work-days of seasonal agricultural services in each of three successive twelve (12) month periods following the date of filing the petition.

(2) An alien granted lawful permanent residence on the basis of temporary



residence under section 210A(c) of the Act may not be naturalized as a citizen of the United States under any provision in Title III of the Act unless the alien has performed ninety (90) work-days of seasonal agricultural service in any two (2) twelve (12) month periods prior to naturalization in addition to the three (3) twleve (12) month periods required by section 210A(d)(5)(A) of the Act.

(3) A replenishment agricultural worker who fails to establish to the Attorney General that he or she has fulfilled the requiremnts of section 210A(d)(5)(A) of the Act to perform seasonal agricultural services in any one of the twelve (12) month periods shall be subject to deportation proceedings under section 241(a)(20) of the Act.

(c) *Adjustment of required work-days.* The number of work-days of required employment in seasonal agricultural services specified in this part is subject to adjustment by the Department of Labor and the Department of Agriculture under section 210A(a)(8) of the Act. A notice of any such adjustment will be published in the **Federal Register.**

(d) *Proof of performance of seasonal agricultural services.* (1) The burden is on the RAW temporary resident or permanent resident to collect, maintain, and have available for inspection evidence that he or she has performed the requisite number of work-days of seasonal agricultural services for each year as described in this section.

(2) Such evidence may consist of certificates provided to employees by employers as required in section 210A(b)(2) of the Act or the same type of documentation as may be submitted under section 210(b)(3) of the Act. (Certificates required by section 210A(b)(2) are also required by Department of Labor regulations located at 29 CFR 502.13. The Department of Labor may impose civil monetary penalties upon employers that fail to comply with those regulations.)

(e) *Securing RAW employment records.* (1) When a RAW temporary resident or permanent resident alleges that an employer refuses to provide him or her with records relating to his or her employment and the petitioner has reason to believe such records exist, the Service shall attempt to secure such records.

(2) Prior to any attempt by the Service to secure the employment records, the following conditions must be met:

(i) The alien must be in approved temporary resident status as a Replenishment Agricultural Worker;

(ii) Must have made reasonable attempts to secure the documentation from the employer;

(iii) The alien's testimony must credibly his or her claim;

(iv) The Service must determine that temporary resident status is in jeopardy in the absence of the employer records.

(3) Provided each of the conditions in paragraph (e)(2) of this section have been met, district directors may issue a subpoena in accordance with 8 CFR 287.4, for the purpose of obtaining the needed employment records.

(f) *Reissuance of Temporary Resident Card (Form I–688).* (1) Upon a finding by the Service that the 90 work-days in seasonal agricultural services required during the first twelve (12) month period have been completed, a second Temporary Resident Card (Form I–688) shall be issued and will be valid through the end of the required thirty six (36) month period of temporary residence.

(2) Form I–688 shall not be issued, reissued or extended and shall lose its validity if the temporary resident status of the alien has been terminated as provided in paragraph (h) of this section.

(g) *Ineligibility for immigration benefits.* An alien who is admitted for or whose status is adjusted to that of a lawful temporary resident under section 210A(c) of the Act is not entitled to submit a petition pursuant to section 203(a)(2) of the Act and cannot receive any other benefit or consideration accorded under the Act to aliens lawfully admitted for lawful permanent residence, except as provided in paragraph (a) of this section.

(h) *Termination of temporary resident status.* (1) The temporary resident status of a replenishment agricultural worker shall be terminated under section 210A(d)(2) of the Act upon a finding by the Service that the alien is deportable under sections 235, 236, 237 and 241 of the Act as amended to include failure to meet the work-day requirements of section 210A(d)(5)(A) of the Act.

(2) *Surrender of Form I–688A or Form I–688.* An alien whose status as a temporary resident has been terminated under this section shall, upon demand, promptly surrender Form I–688a, Employment Authorization Card or Form I–688, Temporary Resident Card, to the district director having jurisdiction over the alien's place of residence, or, in the case of a commuter, employment.

**§ 210a.7 Adjustment to permanent resident status.**

The status of an alien lawfully admitted to the United States for temporary residence under section 210A(c) of the Act (if the alien has otherwise maintained such status as required by the Act) shall be adjusted to that of an alien lawfully admitted to the United States for permanent residence as of the end of the three (3) year period that begins on the date the alien was granted such temporary resident status. Procedures for the adjustment process will be published at a later date.

Dated: February 15, 1989.

**Alan C. Nelson,**

*Commissioner, Immigration and Naturalization Service.*

[FR Doc. 89–5050 Filed 3–2–89; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Airspace Docket No. 89–AWA–2]**

### Proposed Alteration of VOR Federal Airways

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to alter the descriptions of several Federal Airways located in the Detroit metropolitan area. These airway changes are the result of the reorganization of the Detroit metropolitan air traffic control tower's (ATCT) and Cleveland air route traffic control center's (ARTCC) airspace. The traffic growth at the Detroit Metropolitan Airport and the intermix with the Chicago area traffic mandates these changes at this time. This action would improve traffic flow in the area and reduce controller workload.

**DATES:** Comments must be received on or before April 17, 1989..

**ADDRESSES:** Send comments on the proposal in triplicate to: Director, FAA, Great Lakes Region, Attention: Manager, Air Traffic Division, Docket No. 89–AWA–2, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Il 60018.

The official docket may be examined in the Rule Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

**FOR FURTHER INFORMATION CONTACT:** Lewis W. Still, Airspace Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic

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Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9250.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89–AWA–2." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comment received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRM's**

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

**The Proposal**

The FAA is considering and amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the descriptions of fifteen airways located in the Detroit, MI, area. The Detroit metropolitan air traffic airspace area is being reorganized. The traffic growth at the Detroit Metroplitan Airport has been increasing each year and this growth is forecasted to continue. This action woud provide airways for departures and arrival at the Detroit Metroplitan Airport, Wayne County Airport and the satellite airports. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Aviation Safety, VOR Federal Airways.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

## PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

**§ 71.123 [Amended]**

2. § 71.123 is amended as follows:

**V–2 [Amended]**

By removing the words "INT Salem 083° and Aylmer, ON, Canada, 260° radials;" and substituting the words "INT Salem 093°T(096°M) and Aylmer, ON, Canada, 254°T(262°M) radials;"

**V–6 [Amended]**

By removing the words "Waterville; DRYER, OH;" and substituting the words "Waterville; INT Waterville 091°T(093°M) and DRYER, OH, 282°T(287°M) radials; DRYER;"

**V–30 [Amended]**

By removing the words "Waterville, OH; DRYER, OH;" and substituting the words "Waterville, OH; INT Waterville 091°T(093°M) and DRYER, OH, 282°T(287°M) radials; DRYER;"

**V–126 [Amended]**

By removing the words "Waterville, OH; DRYER, OH;" and substituting the words "Waterville–42e, OH; INT Waterville 091°T(093°M) and DRYER, OH, 282°T(287°M) radials; DRYER;"

**V–10 [Amended]**

By removing the words "Litchfield, MI; Carleton, MI;" and substituting the words "Litchfield, MI; INT Litchfield 101°T(102°M) and Carleton, MI, 262°T(265°M) radials; Carleton;"

**V–11 [Amended]**

By removing the words "Salem, MI; 6 miles wide to INT Salem 052° and Windsor, ON, Canada, 335° radials." and substituting the words "INT Fort Wayne 039°T(039°M) and Pontiac, MI, 212°T(215°M) radials; to INT Pontiac 212°T(215°M) and Carleton, MI, 262°T(265°M) radials."

**V–28 [Amended]**

By removing the words "INT Salem 139° and DRYER, OH, 309° radials;" and substituting the words "INT Salem 140°T(143°M) and DRYER, OH, 305°T(310°M) radials;"

**V–42 [Revised]**

From Waterville, OH; INT Waterville 064°T(066°M) and Akron, OH, 297°T(301°M) radials; INT Akron 297°T(301°M) and Youngstown, OH, 272°T(277°M) radials; Youngstown.

**V–45 [Amended]**

By removing the words "Appleton, OH. From Youngstown, OH; INT Youngstown 272° and Akron, OH, 298° radials; INT Akron 298° and Waterville, OH, 085° radials; Waterville; Jackson, MI;" and substituting the words "Appleton, OH; Waterville, OH; INT Waterville 308°T(308°M) and Jackson, MI, 164°T(169°M) radials; Jackson;"

**V–75 [Amended]**

By removing the words "DRYER, OH." and substituting the words "DRYER, OH; to INT DRYER 321°T(326°M) and Salem, MI, 130°T(133°M) radials."

**V–90 [Amended]**

By removing the words "From Windsor, ON, Canada, via INT Windsor 083° and Dunkirk, NY, 286° radials; Dunkirk." and substituting the words "From Windsor, ON, Canada; INT Windsor 092°T(096°M) and Dunkirk, NY, 262°T(269°M) radials; Dunkirk."



**V–96 [Amended]**

By removing the words "Waterville; Windsor, ON, Canada, excluding the portion within Canada." and substituting the words "Waterville."

**V–98 [Amended]**

By removing the words "From Carleton, MI, Windsor, ON, Canada;" and substituting the words "From Dayton, OH; INT Dayton 360°T(001°M) and Carleton, MI, 243°T(246°M) radials; to INT Carleton 243°T(246°M) and Waterville, OH, 321°T(323°M) radials. From Windsor, ON, Canada;"

**V–100 [Amended]**

By removing the words "Litchfield, MI; INT Litchfield 104° and Carleton, MI, 258° radials; Carleton." and substituting the words "to Litchfield, MI."

**V–103 [Amended]**

By removing the words "INT Akron 312° and Windsor, ON, Canada, 134° radials; INT Windsor 134° and Salem, MI, 117° radials; Salem; INT Salem 308° and Lansing, MI, 103° radials; to Lansing." and substituting the words "INT Akron 319°T(323°M) and Windsor, ON, Canada, 125°T(131°M) radials; Windsor; INT Windsor 292°T(298°M) and Lansing, MI, 091°T(093°M) radials; to Lansing."

Issued in Washington, DC, on February 23, 1989.

**William C. Davis,**

*Manager, Airspace-Rules and Aeronautical Information Division.*

[FR Doc. 89–4964 Field 3–2–89; 8:45 am]

**BILLING CODE 4910–13–M**

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**14 CFR Parts 71 and 75**

**[Airspace Docket No. 89–AWA–3]**

## Proposed Alteration of VOR Federal Airways and Jet Routes; MI

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to alter the descriptions of several Federal Airways and Jet Routes located in the Detroit metropolitan area. These airway and jet route changes are the result of the reorganization of the Detroit metropolitan air traffic control tower's (ATCT) and Cleveland air route traffic control center's (ARTCC) airspace. The traffic growth at the Detroit Metropolitan Airport and the intermix with the Chicago area traffic mandates these changes at this time. These actions would improve traffic flow in the area and reduce controller workload.

**DATES:** Comments must be received on or before April 17, 1989.

**ADDRESSES:** Send comments on the proposal in triplicate to: Director, FAA, Great Lakes Region, Attention: Manager, Air Traffic Division, Docket No. 89–AWA–3, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

**FOR FURTHER INFORMATION CONTACT:** Lewis W. Still, Airspace Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9250.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposals. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposals. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89–AWA–3." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRM's**

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

**The Proposals**

The FAA is considering amendments to Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) to alter the descriptions of thirteen airways and two jet routes located in the Detroit, MI, area. The Detroit metropolitan air traffic airspace area is being reorganized. The traffic growth at the Detroit Metropolitan Airport has been increasing each year and this growth is forecasted to continue. These actions would improve traffic flow in the area and reduce controller workload. Sections 71.123 and 75.100 of Parts 71 and 75 of the Federal Aviation Regulations were republished in Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evalaution as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Parts 71 and 75**

Aviation Safety, VOR Federal airways and jet routes.

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) as follows:

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**PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS**

1. The authority citation for Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

**§ 71.123 [Amended]**

2. § 71.123 is amended as follows:

**V-116 [Amended]**

By removing the words "INT Jackson 084° and Salem, MI. 254° radials; Salem; Windsor, ON, Canada; INT Windsor 100° and Erie, PA. 275° radials; Erie;" and substituting the words "INT Jackson 089°T(094°M) and Salem, MI. 251°T(254°M) radials; Salem; INT Windsor, ON, Canada; INT Windsor 092°T(096°M) and Erie, PA. 281°T(287°M) radials; Erie

**V-133 [Amended]**

By removing the words "INT Mansfield 346° and Salem, MI. 139° radials;" and substituting the words "INT Mansfield 349°T(352°M) and Salem, MI. 140°T(143°M) radials;"

**V-178 [Removed]**

**V-218 [Amended]**

By removing the words", via Lansing, MI; Pontiac, MI; INT Pontiac 112° and Windsor, ON, Canada, 320° radials; Windsor; INT Windsor 134° and Akron, OH, 312° radials; to Akron. The airspace within Canada is excluded." and substituting the words: "to Lansing, MI."

**V-221 [Amended]**

By removing the words "INT Jackson 084° and Salem, MI. 254° radials; Salem; INT Salem 083° and Erie, PA. 290° radials;" and substituting the words "INT Jackson 089°T(094°TM) and Salem, MI. 251°T(254°M) radials; Salem; INT Salem 082°T(085°M) and Aylmer, Canada, 281°T(289°M) radials; INT Aylmer 280°T(289°M) and Erie, PA. 303°T(309°M) radials;"

**V-232 [Amended]**

By removing the words "From INT of the Cleveland, OH, 024° and the Chardon, OH. 281° radials, via Chardon;" and substituting the words "From Chardon, OH;"

**V-273 [Amended]**

By removing the words "INT Dayton 007° and Salem, MI. 202° radials; Salem." and substituting the words "to INT Dayton 007°T(008°M) and Waterville, OH. 246°T(248°M) radials."

**V-287 [Amended]**

By removing the words "INT Akron 298° and Carleton, MI. 120°; radials to Carleton." and substituting the words "INT Akron 303°T(307°M) and Salem, MI. 130°T(133°M) radials."

**V-337 [Amended]**

By removing the words "INT Akron 326° and Windsor, ON, Canada, 116° radials; Windsor; 29 miles 7 miles wide (3 miles east and 4 miles west of centerline), INT Windsor 335° and Saginaw, MI, 131° radials; Saginaw;" and substituting the words "INT Akron 343°T(347°M) and Peck, MI, 143°T(150°M) radials; Peck; Saginaw, MI;"

**V-458 [Amended]**

By removing the words "INT Flint 088° and Peck, MI, 237° radials;" and substituting the words "INT Flint 091°T(094°M) and London, ON, Canada, 263°T(271°M) radials; to London, excluding the airspace within Canada."

**V-464 [Amended]**

By removing the words "From the INT of Windsor, ON, Canada, 083° and Aylmer, ON, Canada, 235° radials, via Aylmer;" and substituting the words "From Salem, MI; via INT Salem 082°T(085°M) and Aylmer, ON, Canada, 261°T(269°M) radials; Aylmer;"

**V-528 [Amended]**

By removing the words "INT Waterville 108° and DRYER, OH, 252°, radials;" and substituting the words "INT Waterville 113°T(115°M) and DRYER, OH, 252°T(257°M) radials;"

**V-31 [Amended]**

By removing the words "INT Rochester 279° and Geneseo, NY, 305° radials; INT Geneseo 305° and Kleinburg, ON, Canada, 133° radials; Kleinburg;" and substituting the words "INT Rochester 279°T(288°M) and Toronto, Canada, 151°T(160°M) radials; Toronto."

**PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES**

3. The authority citation for Part 75 continues to read as follows:

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

**§ 75.100 [Amended]**

4. § 75.100 is amended as follows:

**J-83 [Amended]**

By removing the words "to Syracuse." and substituting the words "Syracuse; INT Syracuse 270°T(281°M) and Ash, ON, Canada 098°T(107°M) radials; Ash; to Green Bay, WI. The portion within Canada is excluded."

**J-547 [Amended]**

By removing the words "Flint, MI; Peck, MI; London, ON;" and substituting the words "Flint, MI; London, ON, Canada;"

Issued in Washington, DC, on February 23, 1989.

**William C. Davis,**

*Manager, Airspace-Rules and Aeronautical Information Division.*

[FR Doc. 89-4985 Filed 3-2-89; 8:45 am]

BILLING CODE 4910-13-M

**14 CFR Part 75**

**[Airspace Docket No. 88-AWA-4]**

**Proposed Establishment of Jet Route J-596; ME**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Withdrawal of notice of proposed rulemaking.

**SUMMARY:** This notice withdraws the Notice of Proposed Rulemaking (NPRM), Airspace Docket No. 88-AWA-4, which was published in the **Federal Register** on June 21, 1988. That NPRM proposed to establish a new Jet Route/High Level Route HL/J-596 between Sherbrooke, PQ, Canada and Halifax, NS, Canada, via Bangor, ME. The Canadian Government requested this route to provide efficient routing for traffic en route to Canadian destinations.

**EFFECTIVE DATE:** February 24, 1989.

**FOR FURTHER INFORMATION CONTACT:** Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9250.

**The Proposed Rule**

On June 21, 1988, a Notice of Proposed Rulemaking was published in the **Federal Register** to establish new Jet Route/High Level Route J-596 from Sherbrooke, PQ, Canada, via Bangor, ME, to Halifax, NS, Canada (53 FR 23258). Transport Canada requested this route to provide an efficient routing for traffic between Canadian points which cross a segment of the New England area.

**Summary of Comments**

Comments were received from the Boston Air Route Traffic Control Center (ARTCC) and the Department of Defense (DOD). The objections to the proposed J-596 were as follows:

J-596 would be located within airspace that has high density military activity and training. Also involved are the Air Refueling Tracks AR 212, AR 204 and AR 205. Therefore, the Boston ARTCC and the DOD stated they consider that the route would serve no beneficial purpose to the public or the National Airspace System.

**Conclusions**

**The FAA has decided not to implement the proposed J-596 segment between Sherbrook, PQ, Canada and Bangor, ME, because of the military activity and the limited time of use available for civil traffic.**

**List of Subjects in 14 CFR Part 75**

Aviation safety, Jet routes.

**The Withdrawal**

Accordingly, pursuant to the authority delegated to me, the Notice of Proposed Rulemaking, Airspace Docket No. 88-AWA-4, as published in the **Federal Register** on June 21, 1988 (53 FR 23258) is hereby withdrawn.

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

Issued in Washington, DC, on February 16, 1989.

**Harold W. Becker,**

*Manager, Airspace-Rules and Aeronautical Information Division.*

[FR Doc. 89-4966 Filed 3-2-89; 8:45 am]

BILLING CODE 4910-13-M



**14 CFR Part 75**

**[Airspace Docket No. 88-AWP-20]**

**Proposed Alteration of Jet Route; AZ**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to alter the description of Jet Route J-212 between Buckeye, AZ, and Palm Springs, CA. The current minimum en route altitude (MEA) northwest of Buckeye is 31,000 feet mean sea level (MSL). This action would aid in improving the flow of traffic to Palm Springs and the Los Angeles Basin Airports by lowering the MEA to 26,000 feet.

**DATES:** Comments must be received on or before April 10, 1989.

**ADDRESSES:** Send comments on the proposal in triplicate to: Director, FAA, Western-Pacific Region, Attention: Manager, Air Traffic Division, Docket No. 88-AWP-20, Federal Aviation Administration, P.O. Box 92007, Worldway Postal Center, Los Angeles, CA 90009.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

**FOR FURTHER INFORMATION CONTACT:** Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9250.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88-AWP-20." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRM's**

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

**The Proposal**

The FAA is considering an amendment to Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to alter the description of Jet Route J-212 between Buckeye and Palm Springs. Currently the MEA between Buckeye and Palm Springs is 31,000 feet MSL which has created air traffic control problems for aircraft arriving at Palm Springs and the Los Angeles Basin Airports. Flight inspection data indicates the MEA could be lowered to 26,000 feet MSL if the route alignment is changed. This action would improve the flow of traffic into Palm Springs and the Los Angeles Basin area. Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 75**

Aviation safety, Jet routes.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 75 of the Federal Aviation Regulations (14 CFR Part 75) as follows:

**PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES**

1. The authority citation for Part 75 continues to read as follows:

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

**§ 75.100 [Amended]**

2. Section 75.100 is amended as follows:

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J-212 [Revised]

From Stanfield, AZ; Buckeye, AZ; INT Buckeye 283°T(269°M) and Palm Springs, CA, 093°T(080°M) radials; to Palm Springs.

Issued in Washington, DC, on February 16, 1989.

Harold W. Becker,

*Manager, Airspace-Rules and Aeronautical Information Division.*

[FR Doc. 89-4067 Filed 3-2-89; 8:45 am]

BILLING CODE 4910-13-M

## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

### 30 CFR Parts 202, 206, 210, and 212

### Revision of Geothermal Resources Valuation Regulations and Related Topics

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Notice of extension of public comment period and public hearing.

**SUMMARY:** The Minerals Management Service (MMS) hereby gives notice that it is extending the public comment period on its Notice of Proposed Rulemaking, which was published in the **Federal Register** on January 5, 1989 (54 FR 354), proposing to amend and clarify existing regulations to define the value for royalty purposes of geothermal resources produced from Federal lands administered by the Department of the Interior and the Department of Agriculture. In response to requests for additional time, MMS is extending the comment period from March 6, 1989, to April 17, 1989.

**DATE:** Written comments must be received on or before April 17, 1989. A hearing will be held on March 28, 1989, 8:30 a.m. to 4 p.m. in Lakewood, Colorado.

**ADDRESS:** Written comments may be mailed to Minerals Management Service, Royalty Management Program, Rules and Procedures Branch, Denver Federal Center, Building 85, P.O. Box 25165, Mail Stop 662, Denver, Colorado 80225, Attention: Dennis C. Whitcomb.

The hearing will be held in the auditorium, building 25, Denver Federal Center, 6th and Kipling Streets, Lakewood, Colorado.

**FOR FURTHER INFORMATION CONTACT:** Dennis C. Whitcomb, Chief, Rules and Procedures Branch, (303) 231-3432, (FTS) 326-3432.

Date: February 28, 1989.

Thomas M. Gernhofer,

*Acting Director, Minerals Management Service.*

[FR Doc. 89-5053 Filed 3-2-89; 8:45 am]

BILLING CODE 4310-MR-M

## DEPARTMENT OF AGRICULTURE

### Forest Service

### 36 CFR Part 290

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

### 43 CFR Part 8360

[AA-340-89-4332-02]

### Cave Resources Management

**AGENCY:** Forest Service, Agriculture; Bureau of Land Management, Interior.

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** The Federal Cave Resources Protection Act of 1988 (Pub. L. 100-691) (the Act) requires the protection and maintenance, to the extent practical, of significant caves on Federal lands administered by the Secretaries of Agriculture and the Interior. The Act requires the Secretaries of Agriculture and the Interior to issue regulations to achieve the purposes of the Act. The regulations promulgated by the respective Secretaries are to be developed cooperatively, and to the extent practical the regulations are to be similar. The regulations are to include, but not be limited to, criteria for the identification of significant caves. The Department of the Interior and the Department of Agriculture have formed an interagency team to prepare the regulations, and request suggestions from the public on the content of the rules, and particularly suggestions as to criteria for determining what constitutes a significant cave.

**DATE:** Comments should be submitted by April 3, 1989. Comments received or postmarked after this date may not be considered in developing the proposed rulemaking. This limitation of time to comment is essential because the Act requires final regulations to be issued by August 18, 1989.

**ADDRESS:** Comments should be sent to the interagency team at the following address: Director (140), Bureau of Land Management, Room 5555, Main Interior Building, 1800 C Street NW., Washington, DC 20240. Comments will be available for public review at the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Robert Hellie, (202) 343-6064, Delmar Price, (202) 343-9353, or Tom Lennon, (202) 447-7754.

**SUPPLEMENTARY INFORMATION:** To assist persons providing suggestions on the regulations, the following is a brief summary of the major provisions of the Federal Cave Resources Protection Act, contained mainly in sections 4, 5, and 6 of the Act, the sections guiding Federal agencies in the administration of cave resources.

Regulations are to be issued by both the Secretary of Agriculture and the Secretary of the Interior not later than 9 months after enactment of the Act. The regulations shall include, but not be limited to, criteria for the identification of significant caves.

The Secretary of Agriculture and the Secretary of the Interior are to take such actions as may be necessary to further the purposes of the Act, which shall include, but not be limited to, preparation of an initial list of significant caves for lands under their respective jurisdictions. The initial list is required to be prepared not later than 1 year after publication of the final regulations and to apply the significance criteria defined in the regulations. The list is to be developed after consultation with appropriate private sector interests, including cavers. The initial list of significant caves is also required to be updated, again after consultation, on a periodic basis. The updating process is required to be described by policy or regulation and include management measures to assure that caves under consideration for the list are protected during the period of consideration. Caves recommended to the respective Secretaries for possible inclusion on the list shall be added to the list if the respective Secretaries determine that they meet the criteria for significance as defined in the regulations.

Actions to be taken by the respective Secretaries are also to provide for the regulation or restriction of use of significant caves as are considered appropriate, entering into management agreements with persons of the scientific and recreational caving community, and the appointment of appropriate advisory committees.

The respective Secretaries are to insure that significant caves are considered in the preparation of any land management plan, if the preparation or revision of the plan begins after the date of enactment of the Act. Both Secretaries are also required to foster communication, cooperation, and the exchange of information between their respective agency land managers, those who utilize caves, and the public.



The Act also provides the respective Secretaries authority to issue permits for the collection and removal of cave resources, including the posting of bonds to insure compliance with the provisions of any issued permit. The Act also provides for the revocation of permits for violations of the Act or the permit. Special provisions for the regulation of cave resources located on Indian lands are also contained in the Act.

Sections 7 and 8 of the Act contain provisions pertaining to prohibited acts with respect to cave resources and the criminal and civil penalties which may be imposed for violation of the Act, the regulations, or any permit issued under them.

Comments and suggestions are invited on how the regulations might address the requirements of the Act. Because the Act applies to lands administered by both the Department of Agriculture and the Department of the Interior, a joint interagency team has been established to develop the regulations called for by the Act. Representatives on the interagency team include specialists from: Forest Service (Department of Agriculture); Bureau of Land Management, National Park Service, Fish and Wildlife Service, Bureau of Indian Affairs, and Bureau of Reclamation (Department of the Interior).

To simplify coordination requirements and to facilitate public submittal of comments, they should be sent to the address given. Copies of the comments will then be distributed to the other Federal agencies involved.

George S. Dunlop,

*Assistant Secretary, Natural Resources and Environment.*

James E. Cason,

*Acting Assistant Secretary of the Interior.*

[FR Doc. 89-4066 Filed 3-2-89; 8:45 am]

BILLING CODE 3410-11-M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 68

[CC Docket No. 87-124; FCC 89-55]

### Telephone Hearing Aid Compatibility

**AGENCY:** Federal Communications Commission (Commission).

**ACTION:** Proposed rules.

**SUMMARY:** The Commission proposes to amend Part 68 of its rules to require nearly all telephones manufactured in or imported into the United States after August 16, 1989, to be hearing aid compatible. These rule modifications are being made to ensure that hearing impaired persons have reasonable access to telecommunications services and equipment and to comply with the Hearing Aid Compatibility Act of 1988.

**DATES:** Comments must be received on or before March 9, 1989, and reply comments on or before March 20, 1989.

**ADDRESS:** Comments shall be filed with the Federal Communications Commission, Washington, DC 20554 as prescribed in §§ 1.415 through 1.419 of the Commission's Rules.

**FOR FURTHER INFORMATION CONTACT:** Robert James, (202) 634-1831.

**SUPPLEMENTARY INFORMATION:** This is a summary of a FNPRM in CC Docket No. 87-124 adopted by the Commission on February 13, 1989, and released on February 16, 1989. The full text of the item may be examined in the Commission's Docket Branch, Room 230, 1919 M Street NW., Washington, DC, during regular business hours or purchased from the Commission's duplicating contractor, International Transcription Services, 2100 M Street NW., Suite 140, Washington, DC 20037, telephone (202) 857-3800.

#### FNPRM

The Commission's current rules require telephones classified as "essential"—meaning telephones provided for emergency use, coin telephones and other telephones frequently used by the hearing impaired—be internally compatible with hearing aids. A number of parties have presented arguments to us suggesting that these rules may not be enough. In response, the Commission initiated CC Docket No. 87-124, to gather information on what, if any, additional rules or rule revisions are needed to assure that the disabled of America have reasonable access to telecommunications services. In the NPRM phase of this proceeding, the Commission proposed that the definition of "essential telephones" be expanded to include all credit card telephones and workplace telephones located in common areas likely to be used by hearing impaired employees.

On August 17, 1988, the "Hearing Aid Compatibility Act of 1988" (HAC Act) was enacted. This law amends section 710(b) of the Communications Act of 1934. It requires almost all telephones manufactured in or imported into this country more than one year after its enactment to be hearing aid compatible. The new law exempts refurbished, repaired or resold telephones, telephones used with public and private mobile radio services, and secure telephones used for classified communications. The HAC Act provides a three year grace period for cordless telephones before they must comply with the requirement. It directs the Commission to review the exceptions for public and private mobile telephones periodically and to rescind them if they are no longer warranted. Also, the HAC Act grants the Commission authority to waive the hearing aid compatibility requirement with respect to new telephones if telephone manufacturers can demonstrate it is infeasible or too costly to meet this standard. In this FNPRM, the Commission proposes to amend Part 68 of its rules to comply with the HAC Act.

In accordance with 5 U.S.C. 603(a), the Federal Communications Commission concludes that the proposed rules will not have a significant adverse economic impact on small entities.

Comments on the proposed rules are sought.

#### List of Subjects in 47 CFR Part 68

Hearing aid compatible telephones, Notice, Technical standards.

#### Legal Basis

This FNPRM seeking to amend Part 68 of the Commission's rules is issued pursuant to authority contained in sections 1 and 4(i) of the Communications Act of 1934, as amended, and the Hearing Aid Compatibility Act of 1988.

Federal Communications Commission.

Donna R. Searcy,

*Secretary.*

[FR Doc. 89-4403 Filed 3-2-89; 8:45 am]

BILLING CODE 6712-01-M

## GENERAL SERVICES ADMINISTRATION

### 48 CFR Parts 525, 546, and 552

[GSAR Notices 5-242 and 5-256]

### General Services Administration Acquisition Regulation; Foreign Acquisition and Quality Assurance

**AGENCY:** Office of Acquisition Policy, GSA.

**ACTION:** Proposed rule.

**SUMMARY:** This notice invites comments on a proposed change to the General Services Administration Acquisition Regulation (GSAR), Chapter 5 (APD 2800.12), that would: (1) amend sections

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525.105, 525.105–70, and 525.105–71 to simplify regulatory coverage and prescribe an amended Buy American Act—Hand or Measuring Tools or Stainless Steel Flatware provision and a Notice of Procurement Restriction—Hand or Measuring Tools or Stainless Steel Flatware clause; (2) add section 525.302 to provide policy applicable when contracting under the Balance of Payments Program; (3) retitle and revise section 525.407 to simplify regulatory coverage and prescribe the renumbered Eligible Products from Nondesignated Countries—Waiver clause; (4) revise section 546.710 to prescribe three new warranty clauses; (5) revise sections 552.225–70 and 552.225–71 to include stainless steel flatware in the provision and clause; (6) delete sections 552.225–72 and 552.225–73; (7) renumber and revise section 552.225–74 to clarify regulatory coverage; (8) add section 552.246–17 to provide the text for the Warranty of Supplies of a Noncomplex Nature clause with an Alternate I to be used for commercial items; and (9) add sections 552.246–73 and 552.246–74 to provide the text of the Warranty—Multiple Award Schedule and Warranty—International Multiple Award Schedule clauses.

**DATE:** Comments are due in writing on or before April 3,1989.

**ADDRESS:** Comments should be addressed to Ms. Marjorie Ashby, Office of GSA Acquisition Policy and Regulations (VP), 18th and F Streets, NW, Room 4028, Washington, DC 20405.

**FOR FURTHER INFORMATION CONTACT:** Mr. Paul Linfield, Office of GSA Acquisition Policy and Regulations, (202) 566–1224.

**SUPPLEMENTARY INFORMATION:** The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain procurement regulations from Executive Order 12291. The exemption applies to this proposed rule. The General Services Administration (GSA) certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The number of small entities to which the restrictions in Part 525 would apply is considered not significant in relation to the total number of small entities that do business with the General Services Administration. To the extent that the warranty clauses prescribed in section 546.710 rely on the contractor's standard commercial warranty, the regulatory impact on small entities is also considered insignificant. Therefore, no regulatory flexibility analysis has been prepared. The Buy American Act—Hand or Measuring Tools or Stainless Steel Flatware clause at 552.255–70 contains an information collection requirement which requires the approval of OMB under section 3504(h) of the Paperwork Reduction Act. The collection requirement in section 552.225–70 has previously been approved by OMB and assigned Control No. 3090–0196. Since the collection requirement is being amended to include stainless steel flatware, this proposed rule has been submitted to OMB for approval. Comments on the information collection requirement in GSAR 552.225–70 may be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for GSA, Washington, DC 20503. The title of the collection is "General Services Administration Acquisition Regulation (GSAR), Part 525, Foreign Acquisition." The provision at GSAR 552.225–70 requires offerors to identify items that are foreign end products and the amount of import duty applicable to each item. The information is needed by the contracting office to comply with procurement restrictions for hand or measuring tools and stainless steel flatware contained in GSA and DOD Appropriation Acts. The respondents are offerors on GSA acquisitions for hand or measuring tools and stainless steel flatware. The estimated annual burden for this collection is 6.7 hours. This is based on an estimated average burden hour per response of 0.16, a proposed frequency of 1 response per respondent, and an estimated number of respondents of 40.

**List of Subjects in 48 CFR Parts 525, 546, 552.**

Government procurement.

1. The authority citation for 48 CFR Parts 525, 546, and 552 continues to read as follows:

**Authority:** 40 U.S.C. 486(c).)

## PART 525—FOREIGN ACQUISITIONS

2. Sections 525.105, 525.105–70, and 525.107–71 are revised to read as follows:

**525.105 Evaluating offers.**

(a) Proposed awards, under FAR 25.105, must be submitted to the HCA or a designee for approval. A statement of facts containing the following information should be submitted for approval.

(1) Description of the item(s), including unit and quantity.

(2) Estimated cost.

(3) Statement as to whether duty is included in the estimate cost and, if not, the reasons for exclusion.

(4) Transportation costs for delivery to destination if the item is to be procured f.o.b. origin.

(5) Country of origin.

(6) Name and address of proposed contractor(s).

(7) Brief statement as to necessity for procurement.

(8) Reasons supporting request for approval explaining—

(i) Why the cost would not be unreasonable or inconsistent with the public interest when award to a domestic concern for more than $250,000 would be made to a small business or labor surplus area concern after the 12 percent factor is applied, but not to a firm after the 6 percent is applied.

(ii) Any proposed rejection of an acceptable low foreign offer to protect essential national security interests or rejection of any offer for other reasons of national interest, when the Trade Agreements Act of 1979 is not applicable.

(b) A determination to reject a foreign offer using differentials greater than those provided at FAR 25.105 may be made—

(1) If necessary to protect national security interests; and

(2) After the HCA or a designee obtains advice from the Director, Federal Emergency Management Agency. The Executive Office of the President, Office of Management and Budget, must be apprised of the facts of each case where such a determination is made.

**525.105–70 Evaluating offers—hand or measuring tools or stainless steel flatware for other than the Department of Defense (DOD).**

(a) *Definitions.* "Hand or mesuring tool," as used in this section, means Groups 51 and 52 in Cataloging Handbook H2–1, Federal Supply Classification Part I, Groups and Classes, published by the Defense Logistics Agency, Defense Logistics Services Center, Battle Creek, Michigan.

(b) *GSA Appropriation Act restrictions.* (1) The current GSA Appropriation Act restricts the acquisition of any hand or measuring tool and stainles steel flatware to domestic end products, except to the extent the Administrator of General Services or a designee determines that a satisfactory quality and sufficient quantity are unavailable from sources in the United States or its possessions or except as prescribed by section 6–104.4(b) of the Armed Services Procurement Regulations (ASPR) in effect on June 15, 1970.



(2) For hand or measuring tools, the GSA Appropriation Act further provides that a factor of 75 percent is to be used in evaluating foreign end products in lieu of the 50 percent in ASPR 6–104.4(b).

(c) *Evaluation procedures.* Offers for hand or measuring tools or stainless steel flatware must be evaluated using the following procedures adapted from ASPR 6–104.4(b).

(1) An offer of an end product manufactured in Canada will be evaluated on the same basis as a domestic end product after applicable duty, determined under 19 U.S.C. 1201 is included, irrespective of whether or not a duty-free entry certificate will be issued.

(2) Any other offer of a foreign end product must be evaluated at the greater evaluated price determined by increasing either (i) the net value of the offer (exclusive of duty) by 50 percent (75 percent for hand or measuring tools) or (ii) the gross value of the offer (inclusive of duty) by 6 percent.

(3) A 12 percent factor must be used in (c)(2)(ii) above, when (i) a small business or any labor surplus area concern submits the low acceptable domestic offer or (ii) an otherwise low acceptable domestic offer would result in a contract not to exceed $100,000 based on its application, but not on the application of the factors in (c)(2)(i) and (ii).

(4) If a contract exceeding $100,000 to a small business or labor surplus area concern would result under the circumstances in (c)(3)(ii), the matter must be submitted to the HCA for a decision whether such award would involve unreasonable cost or be inconsistent with the public interest.

(5) The above evaluation must be applied on an item-by-item basis or to any group of items on which award may be made as specifically provided by the solicitation. Award on the domestic offer will be made when any tie results from the foregoing procedures.

(d) *Solicitation provision.* The contracting officer shall insert the provision at 552.225–70, Buy American Act—Hand or Measuring Tools or Stainless Steel Flatware, in solicitations for the acquisition of hand or measuring tools or stainless steel flatware for other than Department of Defense requirements.

**525.105–71 Procurement of hand or measuring tools or stainless steel flatware for DOD.**

(a) *Definitions.* "Domestic end product," as used in this section, means a hand or measuring tool, other than an electric or air-motor driven hand tool, or stainless steel flatware, that is wholly produced or manufactured, including all components, in the United States or its possessions.

"Electric or air-motor driven hand tool," as used in this section, means a domestic end product if the cost of components produced or manufactured in the United States exceeds 75 percent of the cost of all components in the end product.

"Stainless steel flatware," as used in this section, means nonstock items of stainless steel flatware purchased for DOD and items with the following National Stock Numbers (NSN): 7340–00–060–6057; 7340–00–205–3340; 7340–00–205–3341; 7340–00–241–8169; 7340–00–241–8170; 7340–00–241–8171; 7340–00–559–8357; 7340–00–888–1055; 7340–00–721–6316; 7340–00–721–8971.

(b) *DOD Appropriation Act restrictions.* (1) Except for purchases of $25,000 or less, DOD is prohibited from acquiring hand or measuring tools or stainless steel flatware (see 525.105–71(a)), that are not domestic end products, except in the case of stainless steel flatware, when the Secretary of the department concerned determines that a satisfactory quality and quantity produced or manufactured in the United States or its possessions are not available when needed at domestic market prices.

(2) In GSA procurements of such tools or flatware, a determination must be made by the appropriate Commodity Center Director whenever GSA applies the current DOD Appropriation Act restrictions. This determination must be made on a case-by-case basis, whenever (i) DOD requirements are included in the solication and (ii) the hand or measuring tools or stainless steel flatware are available from domestic sources.

(3) The basis for applying the DOD Appropriation Act restrictions to GSA acquisitions is the—

(i) Statutory prohibition on DOD, which applies when DOD requisitions such items, regardless of whether or not it is from the GSA stock program;

(ii) Impracticality of establishing a dual supply system to satisfy the requirements of civilian and military agencies; and

(iii) Language in the GSA Appropriation Act, which provides for the rejection of any offer when it is considered necessary for reasons of national interest under ASPR 6–104.4(d)(3)(ii).

(c) *Contract clause.* The contracting officer shall insert the clause at 552.225–71, Notice of Procurement Restriction—Hand or Measuring Tools or Stainless Steel Flatware, in solicitations and contracts for the acquisition of hand or measuring tools or stainless steel flatware when the Commodity Center Director makes a determination under 525.105–71(b).

3. Section 525.302 is added to read as follows:

**525.302 Policy.**

(a) Decisions under FAR 25.302(b)(3) must be supported as provided in 525.108–70(a).

(b) Use of a greater differential than provided in FAR 25.302(c) may be authorized by the HCA or a designee.

**525.370 [Removed]**

4. Section 525.370 is removed.

5. Section 525.407 is retitled and revised to read as follows:

**525.407 Solicitation provision and contract clause.**

The contracting officer shall insert the clause at 552.225–72, Eligible Products from Nondesignated Countries—Waiver, in solicitations and contracts subject to the Trade Agreements Act.

**546.470–3 and 546.470–4 [Removed]**

6. Sections 546.470–3 and 546.470–4 are removed.

7. Section 5456.710 is revised to read as follows:

**546.710 Contract Clauses.**

(a) The contracting officer shall insert the clause at 552.246–17, Warranty of Supplies of a Noncomplex Nature, in solicitations and contracts instead of FAR 52.246–17. If commercial items are to be acquired, the clause at 552.246–17 must be used with Alternate I instead of FAR 52.246–17 with its Alternate I.

(b) The contracting officer shall insert the clause at 552.246–73, Warranty-Multiple Award Schedule, in solicitations and multiple award schedule (except international schedule) contracts.

(c) The contracting officer shall insert the clause at 552.246–74, Warranty-International Multiple Award Schedule, in solicitations and international multiple award schedule contracts.

(d) The contracting officer shall insert the clause at 552.246–76, Warranty of Pesticides, in solicitations and contracts involving the procurement of pesticides.

(e) The contracting officer shall insert the clause at 552.246–75, Guarantees, in solicitations and contracts for construction when the contract amount is expected to exceed the small purchase limitation.

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## PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

8. Sections 552.225–70 and 552.225–71 are revised to read as follows:

**552.225–70 Buy American Act—Hand or Measuring Tools or Stainless Steel Flatware.**

As prescribed in 525.105–70(D), insert the following provision:

**Buy American Act—Hand or Measuring Tools or Stainless Steel Flatware (XXX 1989)**

Offers of foreign end products will be evaluated in accordance with GSAR 525.105–70(c) (48 CFR 525.105–70(c)). Offerors that intend to supply foreign end products must specify below or on an attachment to this offer the amount of duty (i) applicable if a duty-free entry certificate was *not* issued (for Canadian end products only) or (ii) included in each offered price (for all other offers of foreign end products). If no duty is specified, the differential in GSAR 525.105–70(c)(2)(i) will be applied to the offered price.

| Item No. | Unit | Amount of duty (in dollars and cents) |
|---|---|---|
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |

(End of Provision)

**552.225–71 Notice of Procurement Restriction—Hand or Measuring Tools or Stainless Steel Flatware.**

As prescribed in 525.105–71(c), insert the following clause:

**Notice of Procurement Restriction—Hand or Measuring Tools or Stainless Steel Flatware (XXX 1989)**

(a) Awards under this solicitation will only be made to offerors that will furnish hand or measuring tools or stainless steel flatware that are domestic end products. Pursuant to the requirements of the current Department of Defense Appropriations Act, GSA has determined, in accordance with Section 6–104.4 of the Armed Services Procurement Regulation (6/15/70, that it is in the national interest to reject foreign products. As used in this clause—

(1) A "domestic end product" is any hand or measuring tool, except for an electric or air-motor driven hand tool, or stainless steel flatware, wholly produced or manufactured, including all components, in the United States or its possessions; or

(2) Any electric or air-motor driven hand tool if the cost of its components produced or manufactured in the United States exceeds 75 percent of the cost of all its components.

(b) Tool kits or sets, being procured under this solicitation, will not be considered domestic end products if any individual tool classified in FSC Group 51 or 52 and included in a tool kit or set is not a domestic end product as defined in paragraph (a) of this clause. The restrictions of this clause do not apply to individual hand or measuring tools that are contained in the tool kit or set but are not classified in FSC Group 51 or 52.

9. Section 552.225–72 is revised to read as follows:

**552.225–72 Eligible products from nondesignated countries.**

As prescribed in 525.407, insert the following clause:

**Eligible Products From Nondesignated Countries Waiver (XXX 1989)**

(a) In accordance with the Trade Agreements Act of 1979 and 48 CFR 25.402(b), no eligible product which originates in a nondesignated country may be purchased by a Federal agency. However, this restriction may be waived before award when it is determined to be in the national interest. Accordingly, offers to furnish products originating in a nondesignated country may be submitted in response to this solicitation and will be considered for award if a waiver is obtained from the U.S. Trade Representative or a designee (19 U.S.C. 2512) on the basis that:

(1) No responsive bid or technically acceptable offer from a responsible offeror is received offering U.S. or designated country end products (48 CFR 52.225–8 and 52.225–9); or

(2) Responsible offerors do not offer a sufficient quantity to meet the Government's requirements.

(b) The determination to seek a waiver is at the sole discretion of the acquiring activity, and the granting of such waiver will be at the sole discretion of the U.S. Trade Representative or designee. (48 CFR 525.402.)

(End of Clause)

**552.225–73 and 552.225–74 [Removed]**

10. Sections 552.225–73 and 552.225–74 are removed.

11. Section 552.246–17 is added to read as follows:

**552.246–17 Warranty of supplies of a noncomplex nature.**

As prescribed in 546.710(a), insert the following clause:

**Warranty of Supplies of a Noncomplex Nature (XXX 1989) (DEVIATION FAR 52.246–17)**

(a) Definitions. "Acceptance," as used in this clause, means the act of an authorized representative of the Government by which the Government assumes for itself, or as an agent of another, ownership of existing supplies, or approves specific services as partial or complete performance of the contract.

"Correction," as used in this clause, means the elimination of a defect.

"Supplies," as used in this clause, means the end item furnished by the Contractor and related services required under the contract. The word does not include "data."

(b) *Contractor's obligations.* (1) Notwithstanding inspection and acceptance by the Government of supplies furnished under this contract, or any condition of this contract concerning the conclusiveness thereof, the Contractor warrants that for _____[1]—

(i) All supplies furnished under this contract will be free from defects in material or workmanship and will conform with all requirements for this contract; and

(ii) The preservation, packaging, packing, and marking, and the preparation for, and method of, shipment of such supplies will conform with the requirements of this contract.

(2) When return, correction, or replacement is required, transportation charges and responsibility for the supplies while in transit shall be borne by the Contractor. However, the Contractor's liability for the transportation charges shall not exceed an amount equal to the cost of transportation by the usual commercial method of shipment between the place of delivery specified in the contract and the Contractor's plant, and return.

(3) Any supplies or parts thereof, corrected or furnished in replacement under this clause, shall also be subject to the terms of this clause to the same extent as supplies initially delivered. The warranty, with respect to supplies or parts thereof, shall be equal in duration to that in paragraph (b)(1) of this clause and shall run from the date of delivery of the corrected or replaced supplies.

(4) All implied warranties of merchantability and "fitness for a particular purpose" are excluded from any obligation contained in this contract.

(c) *Remedies available to the Government.* (1) The Contracting Officer shall give written notice to the Contractor of any breach of warranties in paragraph (b)(1) of this clause within _____[2]

(2) Within a reasonable time after the notice, the Contracting Officer may either—

(i) Require, by written notice, the prompt correction or replacement of any supplies or parts thereof (including preservation, packaging, packing, and marking) that do not conform with the requirements, of this contract within the meaning of paragraph (b)(1) of this clause; or

(ii) Retain such supplies and reduce the contract price by an amount equitable under the circumstances. When the nature of the defect in the nonconforming item is such that the defect affects an entire batch or lot of material, then the equitable price adjustment shall apply to the entire batch or lot of material from which the nonconforming item was taken.

[1] Contracting Officer shall state the specific period of time after delivery, or the specified event whose occurrence will terminate the warranty period; e.g., the number of miles or hours of use, or combination of any applicable event or periods of time.

[2] Contracting Officer shall insert specific period of time; e.g. "45 days of the last delivery under this contract," or "45 days after discovery of the defect"). The number of days specified shall be no less than 30.



(3)(i) If the contract provides for inspection of supplies by sampling procedures, conformance of supplies or components subject to warranty action shall be determined by the applicable sampling procedures in the contract. The Contracting Officer—

(A) May, for sampling purposes, group any supplies delivered under this contract;

(B) Shall require the size of the sample to be that required by sampling procedures specified in the contract for the quantity of supplies on which warranty action is proposed;

(C) May project warranty sampling results over supplies in the same shipment or other supplies contained in other shipments even though all of such supplies are not present at the point of reinspection; *provided,* that the supplies remaining are reasonably representative of the quantity on which warranty action is proposed; and

(D) Need not use the same lot size as on original inspection or reconstitute the original inspection lots.

(ii) Within a reasonable time after notice of any breach of the warranties specified in paragraph (b)(1) of this clause, the Contracting Officer may exercise one or more of the following options:

(A) Require an equitable adjustment in the contract price for any group of supplies.

(B) Screen the supplies grouped for warranty action under the clause at the Contractor's expense and return all nonconforming supplies to the Contractor for correction or replacement.

(C) Require the Contractor to screen the supplies at locations designated by the Government within the continental United States and to correct or replace all nonconforming supplies.

(D) Return the supplies grouped for warranty action under this clause to the Contractor (irrespective of the f.o.b. point or the point of acceptance) for screening and correction or replacement.

(4)(i) The Contracting Officer may, by contract or otherwise, correct or replace the nonconforming supplies with similar supplies from another source and charge to the Contractor the cost occasioned to the Government thereby if the Contractor—

(A) Fails to make redelivery of the corrected or replaced supplies within the time established for their return; or

(B) Fails either to accept return of the nonconforming supplies or fails to make progress after their return to correct or replace them so as to endanger performance of the delivery schedule, and in either of these circumstances does not cure such failure within a period of 10 days (or such longer period as the Contracting Officer may authorize in writing) after receipt of the notice from the Contracting Officer specifying such failure.

(ii) Instead of correction or replacement by the Government, the Contracting Officer may require an equitable adjustment of the contract price for all nonconforming supplies, including batch or lot materials which have either been consumed or other disposition has been made. In addition, if the Contractor fails to furnish timely disposition instructions, the Contracting Officer may dispose of the nonconforming supplies for the Contractor's account in a reasonable manner. The Government is entitled to reimbursement from the Contractor, or from the proceeds of such disposal, for the reasonable expenses of the care and disposition of the nonconforming supplies, as well as for excess costs incurred or to be incurred.

(5) The rights and remedies of the Government provided in this clause are in addition to and do not limit any rights afforded to the Government by any other clause of this contract.

(6) Unless otherwise provided, this warranty is applicable both within and outside the continental limits of the United States.

(7) In addition to other marking requirements of this contract, the Contractor shall stamp or mark the supplies delivered or otherwise furnish notice with the supplies of the existence of the warranty. The marking should briefly include (i) a statement that the warranty exists, (ii) the substance of the warranty, (iii) its duration, and (iv) who to notify if the supplies are found to be defective.

(End of Clause)

**Alternate I (XXX 1989)**

If commercial items are to be acquired, substitute the following for paragraph (b)(1) of the basic clause and delete paragraph (b)(4) of the basic clause.

(1) Notwithstanding inspection and acceptance by the Government of supplies furnished under this contract, or any condition of this contract concerning the conclusiveness thereof, the Contractor warrants for _____ all supplies furnished—

(i) Are of a quality to pass without objection in the trade under the contract description;

(ii) Are fit for the ordinary purposes for which the supplies are used;

(iii) Are within the variations permitted by the contract, and are of an even kind, quality, and quantity within each unit and among all units;

(iv) Are adequately contained, packaged, and marked as the contract may require; and

(v) Conform to the promises or affirmations of fact made on the container.

12. Sections 552.246–73 and 552.246–74 are added to read as follows:

**552.246–73 Warranty—multiple award schedule.**

As prescribed in 546.710(b), insert the following clause:

**Warranty—Multiple Award Schedule (XXX 1989)**

The Contractor's standard commercial warranty as stated in the Contractor's commercial pricelist will apply to this contract if its warranty is equal to or better than the warranty required by 552.246–17 (Alternate I).

(End of clause)

**552.246–74 Warranty—international multiple award schedule.**

As prescribed in 546.710(c), insert the following clause:

**Warranty—International Multiple Award Schedule (XXX 1989)**

Unless specified otherwise in this contract, the Contractor's standard commercial warranty as stated in the commercial pricelist applies to this contract, except: (a) the Contractor shall provide, at a minimum, a warranty on all nonconsumable parts for a period of 90 days from the date that the Government accepts the product; (b) parts and labor required under the warranty provisions shall be supplied free of charge; (c) transportation costs of returning the products to and from the repair facility, or the costs involved with contractor personnel traveling to the Government facility for the purpose of repairing the product onsite shall be borne by the Contractor during the 90 day warranty period.

(End of Clause)

Dated: February 14, 1989.

**Richard H. Hopf, III**

*Associate Administrator for Acquisition Policy.*

[FR Doc. 89–4943 Filed 2–3–89; 8:45 am]

BILLING CODE 6820–61–M

## INTERSTATE COMMERCE COMMISSION

**49 CFR Part 1016**

**[Ex Parte No. 55 (Sub No. 52)]**

## Special Procedures Governing The Recovery of Expenses by Parties to Commission Adjudicatory Proceedings

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Extension of comment period.

**SUMMARY:** On February 21, 1989, at 54 FR 7454, the Commission issued proposed rules to reflect the recodification and amendment of the Equal Access to Justice Act Pub. L. No. 99–80. 99 Stat. 183). The Commission also served a corresponding decision on February 17, 1989. Inadvertently the Commission's decision was issued without the text of the proposed rules. A notice to the parties has been issued which contains the text of the proposed rules. The comment period of this proceeding will be extended to provide sufficient time for interested persons to submit comments on our proposal.

**DATE:** Comments are due April 3, 1989.

**ADDRESS:** Send an original and 10 copies of comments referring to: Ex Parte No. 55 (Sub-No. 52) to: Case Control Branch, Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423.

**FOR FURTHER INFORMATION CONTACT:** Richard R. Hartley, 202–275–7786
or
Richard B. Felder, 202–275–7691

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[TDO for hearing impaired: (202) 275–1721].

**List of Subjects in 49 CFR Part 1016:**

Claims, Equal access to justice, and Lawyers.

Decided: February 24, 1989.

By the Commission.

Noreta R. McGee,

*Secretary.*

[FR Doc. 89–5014 Filed 3–2–89; 8:45 am]

BILLING CODE 7035–01–M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 671

### Bering Sea/Aleutian Islands King and Tanner Crab Fisheries

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of availability of a fishery management plan and request for comments.

**SUMMARY:** NOAA issues this notice that the North Pacific Fishery Management Council (Council) has submitted a Fishery Management Plan for the commercial king and Tanner crab fisheries in the Bering Sea/Aleutian Islands (FMP) for Secretarial review and is requesting comments from the public. Copies of the FMP may be obtained from the address below.

**DATE:** Comments on the FMP should be submitted on or before May 2, 1989.

**ADDRESS:** All comments should be sent to Steven Pennoyer, Director, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802. Copies of the FMP and the environmental assessment are available upon request from the North Pacific Fishery Management Council, P.O. Box 103136 Anchorage, AK 99510.

**FOR FURTHER INFORMATION CONTACT:** Raymond F. Baglin (National Marine Fisheries Service, Alaska Region), 907–586–7229.

**SUPPLEMENTARY INFORMATION:** The Magnuson Fishery Conservation and Management Act (Magnuson Act, 16 U.S.C. 1801 *et seq.*) requires that each Regional Fishery Management Council submit any FMP it prepares to the Secretary of Commerce (Secretary) for review and approval or disapproval. The Magnuson Act also requires that the Secretary, upon receiving the FMP, immediately publish a notice that the FMP is available for public review and comment. The Secretary will consider the public comments in determining whether to approve the FMP.

The FMP for the commercial king and Tanner crab fisheries in the Bering Sea/Aleutian Islands culminates a 10-year effort by the Council to address the concerns of various user groups while at the same time acknowledging over 20 years of management of crab by the State of Alaska. The FMP provides the State of Alaska with the lead management role for the king and Tanner crab fisheries. Also, the FMP provides for Secretarial oversight of State preseason and inseason actions through a review and appeal procedure to ensure that State management of king crab and Tanner crab is consistent with the FMP, the Magnuson Act, and other applicable Federal law.

No Federal regulatory action is necessary to implement this FMP. The Secretary has preliminarily determined that existing State laws appear to be consistent with the FMP, the Magnuson Act, and other applicable Federal law. If the Secretary later finds that a State regulation or statute governing king or Tanner crab in the Bering Sea/Aleutian Islands is inconsistent with the FMP, the Magnuson Act, or other applicable Federal law, either as the result of an appeal or the mandatory review of measures adopted by the State Board of fisheries provided for in the FMP, he may publish a regulation in the **Federal Register** that supersedes such State regulation or statute as it applies in the EEZ.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: February 28, 1989.

**Alan Dean Parsons,**

*Acting Director, Office of Fisheries Conservation and Management.*

[FR Doc. 89–5016 Filed 2–28–89; 4:50 pm]

BILLING CODE 3510–22–M



# Notices

Federal Register
Vol. 54, No. 41
Friday, March 3, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Forest Service

### National Environmental Policy Act; Revised Policy and Procedures

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of interim policy and procedures.

**SUMMARY:** On January 23, 1989, the Secretary of Agriculture gave notice of adoption of final rules revising administrative appeal procedures for National Forest Service System plan and project decisions. The new rules at 36 CFR Part 217 introduce a new type of environmental document—a Decision Memo. In order to implement the new appeal procedures, the Forest Service must issue direction immediately to its field officers on when and how to prepare a Decision Memo. This direction is being issued as an Interim Directive to Forest Service Handbook 1909.15, Environmental Policy and Procedures Handbook, and is effective February 22, 1989, to coincide with the effective date of new rules at 36 CFR Part 217.

**EFFECTIVE DATE:** February 22, 1989.

**FOR FURTHER INFORMATION CONTACT:** Questions and comments about this policy should be addressed to David E. Ketcham, Director of Environmental Coordination, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090, phone (202) 447–4708.

**SUPPLEMENTARY INFORMATION:** As noted in the summary, new rules governing administrative appeal of National Forest System plan and project decisions were published January 23, 1989, at 54 FR 3342–3370, and became effective February 22, 1989. The rules at 36 CFR 217.3 establish a new type of environmental document called a "Decision Memo," which is defined as a document in which a forest officer records a decision to categorically exclude a proposed action from documentation in an environmental impact statement or environmental assessment.

In order to implement the new appeal rule in a timely fashion, the Forest Service must issue direction to its employees on how and when to prepare a Decision Memo. These instructions are being issued as an Interim Directive (ID) to FSH 1909.15, Environmental Policy and Procedures Handbook, which contains the detailed guidance needed by Forest Service employees to comply with the National Environmental Policy Act (NEPA) and Council on Environmental Quality implementing regulations at 40 CFR Parts 1500–1508. As required by those rules, the Forest Service hereby given notice of the interim procedures.

Prior to issuance of the interim directive, the agency had begun a comprehensive review and revision of its NEPA policy and procedures and is in the final stages of preparing those revisions for publication in the Federal Register. Upon publication, the public will be invited to submit comments on the proposed revisions. The Decision Memo procedures now being issued as an interim directive will be included in the more comprehensive proposed revision of the agency's policy and procedure. Therefore, the agency is not requesting public comment on the interim directive at this time.

A copy of the interim directive as it is being issued in the Forest Service directive system appears at the end of this notice. In accordance with Forest Service policy, the interim directive will stay in effect up to one year unless removed.

**George M. Leonard,**

*Associate Chief*

Date: February 24, 1989.

## FOREST SERVICE HANDBOOK

Washington, DC

### FSH 1909.15—Environmental Policy and Procedures Handbook

Interim Directive No. 2.

February 28, 1989.

Duration: One year.

Chapter: 20—Environmental Analysis.

Posting Notice: Last ID was No. 1, which has expired.

On February 22, 1989, the new administrative appeal procedures at 36 CFR Part 217 becamse effective. Section 217.3 of the new rules proivdes that decisions documented in a Decision Memo, Decision Notice, or Record of Decision may be appealed under the rules in Part 217. A Decision Memo is a new type of environmental document to be prepared by Forest Service employees. In order to implement the new appeal rules, it is necessary to provide interim direction on when a Decision Memo should be prepared and on the format and content of this type of decision document.

For ease of use and consistency of implementation, this interim directive (ID) also integrates guidance on categorical exlcusions with the guidance on how and when to prepare a Decision Memo. Specifically, this ID (1) enumerates the categories established by the Department of Agriculture at 7 CFR 1b.3 as categorically excluded from documentation in an EIS or EA; (2) identifies the categories of actions for which a project file and Decision Memo must be prepared; (3) defines the content of a project file; and (4) requires notice of a decision to proceed with an action that has been categorically excluded from documentation. The direction on categorical exclusions is identical to that issued in ID No. 16 to FSM 1950, dated August, 1988, which is being removed by separate posting notice.

*26—Categories of Actions Excluded From Documentation in an EIS or EA.* (40 CFR 1508.4)

*26.1—Categories for Whcih a Project File and a Decision Memo Are Not Required.* A project file is not required for the categories of actions listed in sections 26.1a and 26.1b. However, a project file may be established for such an action at the discretion of the responsible official.

*26.1a—Categories Established by the Secretary.* The rules at 7 CFR 1b.3 exclude from documentation in an environmental impact statement (EIS) or an environmental assessment (EA) the following categories of actions:

§ 1b.3 Categorical exclusions.

(a) The following are categories of activities which have been determined not to have a significant effect on the human environment and are excluded from the preparation of environmental assessments (EA's) or environmental impact statements (EIS's), unless

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individual agency procedures prescribe otherwise.

(1) Policy development, planning and implementation which relate to routine activities, such as personnel, organizational changes, or similar administrative functions;

(2) Activities which deal solely with the funding of programs, such as program budget proposals, disbursements, and transfer or reprogramming of funds;

(3) Inventories, research activities, and studies, such as resource inventories and routine data collection when such actions are clearly limited in context and intensity;

(4) Educational and informational programs and activities;

(5) Civil and criminal law enforcement and investigative activities;

(6) Activities which are advisory and consultative to other agencies and public and private entities, such as legal counseling and representation;

(7) Activities related to trade representation and market development activities abroad.

*26.1b—Categories Established by the Chief.* The following categories of routine administrative and maintenance actions normally do not individually or cumulatively have a significant effect (40 CFR 1508.22) on the quality of the human environment and, therefore, may be categorically excluded from documentation in an environmental impact statement (EIS) or environmental assessment (EA):

1. Administrative actions, such as road and area closures; restrictions on travel or use, such as camping, boating, or hunting; and posting signs and markers.

2. Construction of low-impact facilities or improvements, such as auxiliary support buildings or other structures; picnic areas and campgrounds; temporary and other low-standard roads, such as traffic service level "D" roads (FSH 7709.56); and trails.

3. Repair and maintenance activities, such as on buildings, grounds, trails, rights-of-way, and range improvements.

*26.2—Categories of Actions for Which a Project File and a Decision Memo Are Required.* Maintain a project file and prepare a Decision Memo for the following categories of proposed actions:

1. Low-impact silvicultural activities that are limited in size and duration and that primarily use existing roads and facilities, such as firewood and miscellaneous forest product sales; salvage, thinning, and small harvest cuts of less than 100,000 board feet or less than 10 acres; site preparation; and planting and seeding.

2. Low-impact range management activities, such as fencing, seeding, and installing water facilities.

3. Issuance or modification of authorizations or agreements for such uses of lands or facilities as road maintenance and additional use of existing roads, rights-of-way, and easements.

4. Low-impact pest management activities, such as suppressing nuisance insects and poisonous plants in campgrounds and picnic areas; controlling cone and seed insects in seed orchards; and fumigating to control weeds in nurseries.

5. Mineral and energy activities of limited size, duration, and degree of disturbance, such as preliminary exploration and removal of small mineral samples.

6. Fish and wildlife management activities, such as improving habitat, installing fish ladders, and stocking native or established species.

7. Transfer of interests in land, such as sales, exchanges, or interchanges pursuant to the Small Tracts Act; purchases and gifts; and small transfers and trades with other Federal agencies.

*26.2a—Content of Project File.* As a minimum, a project file on a proposed action as listed in sec. 26.2 should include:

1. A list of the names of interested and affected people, groups, and agencies contacted during scoping;

2. The results of scoping and the subsequent environmental analysis;

3. A copy of the Decision Memo (sec. 27);

4. A list of the people, agencies, and groups notified of the decision;

5. Other notice used to inform interested and affected persons of the decision to proceed with or to implement an action that has been categorically excluded.

*27—Documentation of Decisions in a Decision Memo*

A Decision Memo is not required if a proposed action has been categorically excluded from documentation in an environmental impact statement or an environmental assessment under categories in sections 26.1a (7 CFR 1b.3) or section 26.1b of this chapter. However, interested and affected persons must be informed in an appropriate manner (sec. 11.5).

A Decision Memo is required if the proposed action has been categorically excluded from documentation in an EIS or EA under the categories listed in section 26.2. These decisions are subject to review under 36 CFR 217.6.

*27.1—Format and Content.* The format of the Decision Memo is not intended to replicate the format of a correspondence memorandum (FSH 6209.12). Generally, Decision Memos should conform to the following format and content although sections may be combined or rearranged in the interest of clarity and brevity.

1. *Heading.* The heading consists of the following elements:

(a) Title of document—"Decision Memo."

(b) The title of the proposed action.

(c) The location of the proposed action (including the Forest Service administrative unit, county, and state). In some cases, including the legal land description is appropriate.

2. *Proposed action.* Describe the proposed action, the decision to be implemented, and reasons for making the decision.

3. *Scoping and public involvement.* Describe the scoping process used and the issues identified. It may be appropriate to identify or refer to the interested and affected agencies, organizations, and persons contacted.

4. *Reasons for categorically excluding the proposed action.* This section includes:

(a) Identification of the category (sec. 26) into which the proposed action falls.

(b) Finding that no extraordinary circumstances exist that might cause the action to have significant effects.

5. *Finding required by other laws.* Include any findings required by any other laws. For example, findings of consistency with the forest plan, suitability, and vegetation management required by the National Forest Management Act (FSM 1922.41 and FSH 1909.12, sec. 5.3).

6. *Implementation date.* Include the date when the responsible official intends to implement the decision (sec. 51).

7. *Administrative review or appeal opportunities.* State whether the decision is subject to review or appeal, cite the applicable regulations (36 CFR Part 217), and identify when and where to file a request for review or appeal.

8. *Contact person.* Include the name, address, and phone number of the Forest Service employee who can supply further information about the decision.

9. *Signature and date.* The responsible official must sign and date the Decision Memo on the date the date the decision is made.

*27.2—Notice and Distribution of Decision Memo.* Distribute the Decision Memo in a manner designed to inform agencies, organizations, and persons interested in or affected by the proposed action.

1. For decisions subject to appeal under 36 CFR Part 217, the responsible official shall promptly mail the Decision Memo to those who, in writing, have requested it, and to those who are known to have participated in the decisionmaking process.

2. The responsible official may provide other forms of notice, including legal notice in newspapers of general circulation in the area where the proposed action is to be implemented

When required by E.O. 12372, send copies to the State Single Point of Contact or, in cases where a State has elected not to establish a Single Point of Contact, the State official(s) involved.

[FR Doc. 89-4971 Filed 3-2-89; 8:45 am]

BILLING CODE 3410-71-M



## COMMISSION ON CIVIL RIGHTS

### Kansas Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Kansas Advisory Committee to the Commission will convene at 9:30 a.m. and adjourn at 12:30 p.m., on March 9, 1989 at the Ramada Inn-Downtown, 420 East 6th Street, Topeka, Kansas. The purpose of the meeting is to review the status of current Committee projects and discuss issues which are possible subjects for future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Burdett A. Loomis, or William F. Muldrow, Acting Director of the Central Regional Division (816) 426-5253, (TDD 816/426-5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 7, 1989.

**Melvia L. Jenkins,**

*Acting Staff Director.*

[FR Doc. 89-5040 Filed 3-2-89; 8:45 am]

BILLING CODE 6335-01-M

## DEPARTMENT OF COMMERCE

### International Trade Administration

**(A-570-007)**

### Barium Chloride from the People's Republic of China; Termination of Antidumping Duty Administrative Reviews

**AGENCY:** International Trade Administration/Import Administration, Department of Commerce.

**ACTION:** Notice of termination of antidumping duty administrative reviews.

**SUMMARY:** On November 18, 1987 and December 5, 1988, the Department of Commerce initiated administrative reviews of the antidumping duty order on barium chloride from the People's Republic of China. The Department has now determined to terminate those reviews

**EFFECTIVE DATE:** March 3, 1989.

**FOR FURTHER INFORMATION CONTACT:** Michael Rill or Maureen Flannery, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-3601/2923

**SUPPLEMENTARY INFORMATION:**

**Background**

On November 18, 1987 and December 5, 1988, in response to requests received from the petitioner in this case, the Department of Commerce published notices of initiation of administrative review of the antidumping duty order on barium chloride from the People's Republic of China (52 FR 44161 and 53 FR 48951). Those notices stated that we would review entries from Sinochem during the periods October 1, 1986 through September 30, 1987 and October 1, 1987 through September 30, 1988, respectively

The petitioner subsequently withdrew its requests for review on January 5, 1989. Accordingly, the Department has determined to terminate the reviews.

This notice is in accordance with section 751(a)(1) of the Tariff Act of 1930 (19 U.S.C. 1675(a)(1)) and section 353.53a of the Commerce Regulations (19 CFR 353.53a).

Dated: February 27, 1989.

**Jan W. Mares,**

*Assistant Secretary for Import Administration.*

[FR Doc. 89-5013 Filed 3-2-89; 8:45 am]

BILLING CODE 3510-DS-M

### University of Kentucky, et al.; Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 2841, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

*Docket Number:* 88-228. University of Kentucky, Lexington, KY 40536-0203. *Instrument:* Electron Microscope with Accessories, Model EM 902PC. *Manufacturer:* Carl Zeiss, West Germany. *Intended Use:* See notice at 53 FR 30084, August 10, 1988. *Instrument Ordered:* April 15, 1988.

*Docket Number:* 88-229. *Applicant:* University of Virginia, Charlottesville, VA 22908. *Instrument:* Electron Microscope with Accessories, Model CEM 902. *Manufacturer:* Carl Zeiss, West Germany. *Intended Use:* See notice at 53 FR 30084, August 10, 1988. *Instrument Ordered:* April 12, 1988.

*Docket Numbers:* 88-230 and 88-232. *Applicant:* University of Kentucky, Lexington, KY 40536-0084. *Instrument:* Electron Microscope, Models H-7000-3T and H-7000. *Manufacturer:* Hitachi Scientific, Japan. *Intended Use:* See notices at 53 FR 30084, August 10, 1988. *Instruments Ordered:* December 23, 1987.

*Docket Number:* 88-233. *Applicant:* Carnegie Mellon University, Pittsburgh, PA 15213. *Instrument:* Electron Microscope, Model HB501. *Manufacturer:* VG Microscopes, Ltd., United Kingdom. *Intended Use:* See notice at 53 FR 31077, August 17, 1988. *Instrument Ordered:* September 29, 1987

*Docket Number:* 88-235. *Applicant:* University of Pennsylvania, Philadelphia, PA 19104-6058. *Instrument:* Electron Microscope, Model JEM-1200/EX/SEG/DP/DP. *Manufacturer:* JEOL, Ltd., Japan. *Intended Use:* See notice at 53 FR 31077, August 17, 1988. *Instrument Ordered:* January 15, 1988.

*Docket Number:* 88-236. *Applicant:* Baylor College of Medicine, Houston, TX 77030. *Instrument:* Electron Microscope, Model JEM-1200/EX/SEG/DP/DP. *Manufacturer:* JEOL, Ltd., Japan. *Intended Use:* See notice at 53 FR 31077, August 17, 1988. *Instrument Ordered:* April 21, 1988.

*Docket Number:* 88-239. *Applicant:* Occidental College, Los Angeles, CA 90041. *Instrument:* Electron Microscope, Model EM 109. *Manufacturer:* Carl

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Zeiss, West Germany. *Intended Use:* See notice at 53 FR 32419, August 25, 1988. *Instrument Ordered:* May 23, 1988.

*Docket Number:* 88-243. *Applicant:* Walter Reed Army Institute of Research, Washington, DC 20307-5100. *Instrument:* Electron Microscope, Model CM-12. *Manufacturer:* N.V. Philips, The Netherlands. *Intended Use:* See notice at 53 FR 32420, August 25, 1988. *Instrument Ordered:* March 18, 1988.

*Comments:* None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. *Reasons:* Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States either at the time of order of each instrument or at the time of receipt of application by the U.S. Customs Service.

**Frank W. Creel,**

*Director, Statutory Import Programs Staff.*

[FR Doc. 89-5010 Filed 3-2-89; 8:45 am]

BILLING CODE 3510-DS-M

### Carleton College et al.; Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Material Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 2841, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

*Docket Number:* 89-053. *Applicant:* Carleton College, One North College Street, Northfield, MN 55057. *Instrument:* Laser System (Excimer Laser and Excimer-pumped Dye Laser). *manufacturer:* Lumonics Inc., Canada. *Intended Use:* The instrument will be used for studies of metal carbonyls and related organo-metallic compounds. These studies will involve investigations of the fundamental dissociation patterns and spectroscopic levels of these compounds when subjected to intense laser light in the visible and ultraviolet regions of the spectrum. In addition, the instrument will be used to demonstrate modern instrumentation in physical chemistry in the course Chemistry 47, Advanced Lab III. *Application Received by Commissioner of Customs:* January 6, 1989.

*Docket Number:* 89-054. *Applicant:* Pennsylvania State University Department of Geosciences, 242 Deike Building, University Park, PA 16802. *Instrument:* Mass Spectrometer. *Manufacturer:* VG Isogas Limited, United Kingdom. *Intended Use:* The instrument will be used for studies of minerals, rocks, waters, solutions, gases, and organic compounds from a variety of geologic environments, and solids, solutions and gaseous materials synthesized in the laboratory. Experiments will be conducted with the objective of unraveling the laws governing the variation of isotopic compositions of H, C, O, S, and N in nature, and to understand the details of various geological processes (such as the formation of precious metal ore deposits, formation and migration of oils and natural gasses, evolution of the Earth's atmosphere and oceans, generation and evolution of magmas). In addition the instrument will be used in Geoscience courses to teach students to understand the concepts and materials discussed in the course. *Application Received by Commissioner of Customs:* January 9, 1989.

*Docket Number:* 89-055. *Applicant:* University of Nebraska Medical Center, Meyer Children's Rehabilitation Institute, 444 South 44th Street, Omaha, NE 68131. *Instrument:* Computerized Videographic Movement Analysis System, Model WATSMART. *Manufacturer:* Northern Digital, Canada. *Intended Use:* The instrument will be used for the study of human movement with primary application for walking. The objective of the experiments will be to examine treatment effects and develop alternatives such as changing types of braces a child or adult may wear during walking or provide input to orthopedic surgeons to develop a surgery plan. The instrument will also be used for educational purposes in a physical therapy curriculum. *Application Received by Commissioner of Customs:* January 10, 1989.

*Docket Number:* 89-056. *Applicant:* U.S. Department of Energy, Argonne National Laboratory, 9700 South Cass Avenue, Argonne, IL 60439-4812. *Instrument:* Mass Spectrometer, Model, Series 800. *Manufacturer:* Kratos, United Kingdom. *Intended Use:* The instrument will be used to study the reaction between water and nuclear waste glasses and to monitor the behavior of actinide elements during the reaction process. *Application Received by Commissioner of Customs:* January 10, 1989.

*Docket Number:* 89-057 *Applicant:* U.S. Department of Energy, Argonne National Laboratory, 9700 South Cass Avenue, Argonne, IL 60439-4812. *Instrument:* Raman Spectrometer with Microscope Attachment. *Manufacturer:* Jobin-Yvon, France. *Intended Use:* The instrument will be used for investigations of ceramic thin films grown with the MOCVD technique. Many of these materials will have structural phase transformations. *Application Received by Commissioner of Customs:* January 11, 1989.

**Frank W. Creel,**

*Director, Statutory Import Programs Staff.*

[FR Doc. 89-5011 Filed 3-2-89; 8:45 am]

BILLING CODE 3510-DS-M

### Virginia Military Institute, et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 2841, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

*Docket Number:* 88-253. *Applicant:* Virginia Military Institute, Lexington, VA 24450. *Instrument:* Terrain Conductivity Meter, Model EM-34-3-DL. *Manufacturer:* Geonics, Ltd., Canada.

*Docket Number:* 88-254. *Applicant:* U.S. Geological Survey, Columbus, OH 43212. *Instrument:* Ground Conductivity Electromagnetic System and Data Logger, Model EM-34-2-DL and EM-55. *Manufacturer:* GISCO, Canada. *Intended Use:* See notice at 53 FR 37017, September 23, 1988. *Reasons for this Decision:* The foreign instrument provides for in situ measurement of ground conductivity in milli-ohms per meter.

*Docket Number:* 88-237. *Applicant:* Arizona State University, Tempe, AZ 85287. *Instrument:* Optical Microscope Stage System. *Manufacturer:* Autoscan Systems Pty. Ltd., Australia. *Intended Use:* See notice at 53 FR 31077, August 17, 1988. *Reasons for this Decision:* The foreign instrument is an automated microscope stage (accessory) providing automatic location of corresponding points from either samples or replica sites.

*Comments:* None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each is intended to be used, is being manufactured in the United States. The capability of each of the foreign instruments described above is pertinent to each applicant's intended purposes.

**Frank W. Creel,**

*Director, Statutory Import Programs Staff.*

[FR Doc. 89-5012 Filed 3-2-89; 8:45 am]

BILLING CODE 3510-DS-M



## COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

### Procurement List 1989; Proposed Addition

**AGENCY:** Committee for Purchase from the Blind and Other Severely Handicapped.

**ACTION:** Proposed addition to Procurement List.

**SUMMARY:** The Committee has received a proposal to add to Procurement List 1989 commodities to be produced by a workshop for the blind or other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: April 3, 1989.

**ADDRESS:** Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

**FOR FURTHER INFORMATION CONTACT:** Beverly Milkman, (703) 557-1145.

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed action. On February 17, 1989, (54 FR 7248) these commodities were published with incorrect national stock numbers. The commodities are republished by this action. If the Committee approves the proposed addition, all entities of the Federal Government will be required to procure the commodities listed below from a workshop for the blind or other severely handicapped.

It is proposed to add the following commodities to Procurement List 1989, which was published on November 15, 1988 (53 FR 46018):

Strap, Webbing
5340-00-477-3700
5340-00-494-8238
5340-00-494-8239

**Beverly L. Milkman,**

*Executive Director.*

[FR Doc. 89-4979 Filed 3-2-89; 8:45 am]

BILLING CODE 6820-33-M

### Procurement List 1989; Addition and Deletion

**AGENCY:** Committee for Purchase from the Blind and Other Severely Handicapped.

**ACTION:** Addition to and deletion from Procurement List.

**SUMMARY:** This action adds to and deletes from Procurement List 1989 commodities to be produced by workshops for the blind or other severely handicapped.

**EFFECTIVE DATE:** April 3, 1989.

**ADDRESS:** Committee for Purchase From the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

**FOR FURTHER INFORMATION CONTACT:** Beverly Milkman, (703) 557-1145.

**SUPPLEMENTARY INFORMATION:** On November 4, 1988, and January 6, 1989, the Committee for Purchase From the Blind and Other Severely Handicapped published notices (53 FR 44646 and 54 FR 458) of proposed addition to and deletion from Procurement List 1989, which was published on November 15, 1988 (53 FR 46018).

**Addition**

No comments were received concerning the proposed addition to the Procurement List. After consideration of the material presented to it concerning capability of qualified workshops to produce the commodity at a fair market price and impact of the addition on the current or most recent contractors, the Committee has determined that the commodity listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodity listed.

c. The actions will result in authorizing small entities to produce the commodities and provide the services procured by the Government.

**Addition**

Accordingly, the following commodity is hereby added to Procurement List 1989:

Index, Elevation
1005-01-134-3621

**Deletion**

After consideration of the relevant matter presented, the Committee has determined that the commodity listed below is no longer suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6.

Accordingly, the following commodity is hereby deleted from Procurement List 1989:

Pin, Tent, Wood
8340-00-261-9752

**Beverly L. Milkman,**

*Executive Director.*

[FR Doc. 89-4980 Filed 3-2-89; 8:45 am]

BILLING CODE 6820-33-M

### Procurement List 1989 Proposed Additions and Deletions

**AGENCY:** Committee for Purchase from the Blind and Other Severely Handicapped.

**ACTION:** Proposed additions to and a deletion from Procurement List.

**SUMMARY:** The Committee has received proposals to add to and delete from Procurement List 1989 commodities to be produced and a service to be provided by workshops for the blind and other severely handicapped.

COMMENTS MUST BE RECEIVED ON ON BEFORE: April 3, 1989.

**ADDRESS:** Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

**FOR FURTHER INFORMATION CONTACT:** B.L. Milkman, (703) 557-1145.

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

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**Additions**

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and service listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and service to Procurement List 1989, which was published November 15, 1988 (53 FR 46018):

Commodities

Dressing, First Aid, Field, Camouflaged

6510-00-201-7425

6510-00-201-7430

**Deletion**

It is proposed to delete the following service from Procurement List 1989, which was published November 15, 1988 (53 FR 46018):

Furniture Rehabilitation (Metal)

Naval Ordnance Station

Louisville, Kentucky

**Beverly L. Milkman,**

*Executive Director.*

[FR Doc. 89-4981 Filed 3-2-89; 8:45 am]

BILLING CODE 6820-33-M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Defense Science Board Task Force on Army Subgroup on Low Observable Technologies

**ACTION:** Notice of advisory committee meeting.

**SUMMARY:** The Defense Science Board Task Force on Army Subgroup on Low Observable Technologies will meet in closed session on April 26-27, 1989 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will examine and provide advice regarding Army activities in the area.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

February 28, 1989.

**P. H. Means,**

*OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 89-5018 Filed 3-2-89; 8:45 am]

BILLING CODE 3810-01-M

### Department of the Army

### Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

*Name of the Committee:* Army Science Board (ASB).

*Date of Meeting:* March 20, 1989.

*Time of Meeting:* 0900-1700 hours.

*Place:* Aberdeen Proving Ground, Maryland.

*Agenda:* The Army Science Board Ad Hoc Subgroup for Space Systems will meet for classified briefings and discussions reviewing matters that are an integral part of or related to the issue of the study effort. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. Contact the Army Science Board Administrative Officer, Sally Warner, for further information at (202) 695-3039 or 695-7046.

**Sally A. Warner,**

*Administrative Officer, Army Science Board.*

[FR Doc. 89-4996 Filed 3-2-89; 8:45 am]

BILLING CODE 3710-08-M

### Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

*Name of The Committee:* Army Science Board (ASB).

*Date of Meeting:* March 23-24, 1989.

*Time of Meeting:* 0900-1630 hours each day.

*Place:* Aberdeen Proving Ground, MD.

*Agenda:* The Army Science Board Subgroup on Toxic and Hazardous Waste Management will conduct its third meeting. Briefings will be conducted by various members of DOD and EPA in respect to the Terms of Reference. Past, current, and planned actions will be discussed as they relate to the Terms of Reference. This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039/7046.

**Sally A. Warner,**

*Administrative Officer, Army Science Board.*

[FR Doc. 89-4997 Filed 3-2-89; 8:45 am]

BILLING CODE 3710-08-M

## DEPARTMENT OF DEFENSE
## GENERAL SERVICES ADMINISTRATION
## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection concerning the Make or Buy Program.

**ADDRESS:** Send comments to Ms. Eyvette Flynn, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jeremy Olson, Office of Federal Acquisition and Regulatory Policy, (202) 523-3781.

**SUPPLEMENTARY INFORMATION:**

**a. Purpose**

Price, performance, and/or implementation of socioeconomic policies may be affected by make-or-buy decisions under certain Government prime contracts.

Accordingly,Subpart 15.7, Make-or-Buy Programs, of the Federal Acquisition Regulation (FAR)—

(a) Sets forth circumstances under which a Government contractor must submit for approval by the contracting officer a make-or-buy program, i.e., a written plan identifying major items to be produced or work efforts to be performed in the prime contractor's facilities and those to be subcontracted;

(b) Provides guidance to contracting officers concerning the review and approval of the make-or-buy programs; and



(c) Prescribes the contract clause at FAR 52.215-21, Changes or Additions to Make-or-Buy Programs, which specifies the circumstances under which the contractor is required to submit for the contracting officer's advance approval a notification and justification of any proposed change in the approved make-or-buy programs.

The information is used to assure the lowest overall cost to the Government for required supplies and services.

**b. Annual Reporting Burden**

The annual reporting burden is estimated as follows: Respondents, *200;* responses per respondent, *3;* total annual responses, *600;* hours per response, *8;* and total response burden hours, *4,800.*

Obtaining Copies of Proposals: Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523-4755. Please cite OMB Control No. 9000-0078, Make or Buy Programs.

Dated: February 24, 1989.

**Margaret A. Willis,**

*FAR Secretariat.*

[FR Doc. 89-4945 Filed 3-2-89; 8:45 am]

BILLING CODE 6820-JC-M

## DEPARTMENT OF EDUCATION

### Office of Special Education and Rehabilitative Services

**[CFDA No. 84.026]**

### New Award for Government Subsidization for the Manufacture and Distribution of a Line 21 Decoder Under the Educational Media Research, Production, Distribution, and Training Program for Fiscal Year 1989

*Purpose of Program:* Provides Federal financial assistance for projects designed to promote the educational advancement of persons who are handicapped by providing assistance for: (1) Conducting research in the use of education media and technology for persons with handicaps; (b) producing and distributing educational media for use of persons with handicaps, their parents, their actual and potential employers, and other persons directly involved in work for the advancement of person with handicaps; and (c) training persons in the use of educational media for the instruction of persons with handicaps. Awards under this program are authorized under Part F of the Education of the Handicapped Act, as amended.

*Deadline for Transmittal of Applications:* 4/19/89.

*Deadline for Intergovernmental Review:* 6/19/89.

*Applications Available:* 3/6/89.

*Available Funds:* $1,000,000.

*Estimated Number of Awards:* 1.

**Note.—The Department of Education is not bound by any estimates in this notice, except as otherwise provided by statute.**

*Project Period:* Up to 12 months.

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74, 75, 77, 79, 80 and 85, and (b) the Educational Media Research, Production, Distribution, and Training Program, 34 CFR 332.

It is the policy of the Department of Education not to solicit applications before the production of a notice of final priority. However, in this case it is essential to solicit applications for this competition on the basis of the notice of proposed funding priority published in the **Federal Register** on January 5, 1989 at 54 FR 375 because it is necessary to maintain a continuing supply of Line 21 decoders.

Further, the Secretary has not received any substantive comments on the notice of final funding priority and does not anticipate making any substantive changes in the final priority. If significant changes are made in the notice of final funding priority, applicants will be given an opportunity to revise or resubmit their applications.

*For Applications or Information Contact:* Joseph Clair, Division of Educational Services, Office of Special Education Programs, Department of Education, 400 Maryland Avenue SW., (Switzer Building, Room 4622—M/S 2466), Washington, DC 20202.

**Program Authority:** 20 U.S.C. 1451, 1452.

Dated: February 28, 1989.

**Madeleine Will,**

*Assistant Secretary, Office of Special Education and Rehabilitive Services.*

(Catalog of Federal Domestic Assistance No. 84.026, Educational Media Research, Production, Distribution, and Training.)

[FR Doc. 89-5051 Filed 3-2-89; 8:45 am]

BILLING CODE 4000-01-M

**(CFDA NO. 84.097)**

### Law School Clinical Experience Program; New Awards for Fiscal Year 1989

*Purpose of Program:* Provides grants to accredited law schools to establish or expand programs of clinical experience for students in the practice of law.

*Deadline for transmittal of Applications:* April 21, 1989

*Applications Available:* March 13, 1989

*Available Funds:* $3,952,000—The program legislation would permit the Secretary to pay up to 90 percent of the cost of projects at law schools. (20 U.S.C. 1134s(a)). The program regulations at 34 CFR 639.40(a)(2) permit the Secretary to establish annually a lower maximum Federal share. The maximum Federal share will be set at 50 percent for Fiscal Year 1989.

*Estimated Range of Awards:* $26,520—$99,840

*Estimated Average Size of Awards:* $76,000

*Estimated Number of Awards:* 52

*Project Period:* 12 months

*Applicable Regulations:* (a) The Law School Clinical Experience Program Regulations, 34 CFR Part 639. (b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, and 85.

*Priorities:* Under the Education Department General Administration Regulations (EDGAR) in 34 CFR 75.105(c)(3) and as described in 34 CFR 639.11, the Secretary gives an absolute preference to the following priorities.

1. Provide legal experience in the preparation and trial of actual cases, including administrative cases and the settlement of controversies outside the courtroom; and

2. Provide service to persons who have difficulty in gaining access to legal representation.

*For Applications or Information Contact:* Dr. Charles H. Miller on (202) 732-4395 or Mrs. Barbara J. Harvey on (202) 732-4863, U.S. Department of Education, Division of Higher Education Incentive Programs, 400 Maryland Avenue, SW, ROB-3, Washington, DC 20202-5251.

*Program Authority:* 20 U.S.C. 1134s-1134t

Dated: February 28, 1989.

**Kenneth D. Whitehead,**

*Assistant Secretary for Postsecondary Education.*

[FR Doc. 89-5052 Filed 3-2-89; 8:45 am]

BILLING CODE 4000-01-M

## DEPARTMENT OF ENERGY

### Coordinating Subcommittee on Petroleum Storage & Transportation Committee on Petroleum Storage & Transportation National Petroleum Council; Open Meeting

Notice is hereby given of the following meeting:

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*Name:* Coordinating Subcommittee on Petroleum Storage and Transportation of the Committee on Petroleum Storage & Transportation of the National Petroleum Council.

*Date and Time:* Friday, March 10, 1989, 8:00 a.m.

*Place:* Hyatt Regency DFW, Universe Room, International Parkway, Dallas/Fort Worth Airport, TX.

*Contact:* Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE–1), Washington, DC 20585, Telephone: 202/586–4695.

*Purpose of the Parent Council:* To provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industries.

*Purpose of the meeting:* Review the draft of Volume I, *Summary.*

*Tentative Agenda:*

—Opening remarks by the Chairman and Government Cochairman.

—Review the draft of Volume I, *Summary.*

—Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

*Public participation:* The meeting is open to the public. The Chairman of the Subcommittee on Petroleum Storage & Transportation is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Subcommittee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Ms. Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least 5-days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E–190, DOE Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

**Jeremiah E. Walsh, Jr.,**

*Acting Principal Deputy Assistant Secretary Fossil Energy.*

[FR Doc. 89–5045 Filed 3–2–89; 8:45 am]

BILLING CODE 6450–01–M

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**[ERA Docket No. 88–70–NG]**

## Atlantic Richfield Co.; Conditional Order Granting Blanket Authorization to Import Natural Gas

**AGENCY:** Department of Energy.

**ACTION:** Notice of a conditional order granting blanket authorization to import natural gas.

**SUMMARY:** The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that it has issued a conditional order granting Atlantic Richfield Company (ARCO) blanket authorization to import natural gas from Canada. The order issued in ERA Docket No. 88–70–NG conditionally authorizes ARCO to import up to 25 Bcf per year of Canadian natural gas over a two-year period for use as fuel in its oil refinery located in Ferndale, Washington.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, February 27, 1989.

**J. Allen Wampler,**

*Assistant Secretary Fossil Energy.*

[FR Doc. 89–5046 Filed 3–2–89; 8:45 am]

BILLING CODE 6450–01–M

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## Federal Energy Regulatory Commission

**[Docket Nos. CP89–867–000, et al.]**

## Trunkline Gas Co., et al.; Natural gas certificate filings

February 27, 1989.

Take notice that the following filings have been made with the Commission:

### 1. Trunkline Gas Company

[Docket No. CP89–867–000]

Take notice that on February 21, 1989, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP89–867–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) and the Natural Gas Policy Act (18 CFR 284.223) for authorization to transport natural gas for CSX NGL Corporation (CSX), a shipper and end user of natural gas, under Trunkline's blanket certificate issued in Docket No. CP86–586–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Trunkline proposes to transport up to 50,000 dekatherms (dkt) of natural gas equivalent per day on an interruptible basis on behalf of CSX pursuant to a transportation agreement dated November 23, 1988, between Trunkline and CSX. Trunkline would receive the gas at various existing points of receipt on its system in Texas, offshore Texas, Louisiana, offshore Louisiana, Tennessee and Illinois and deliver equivalent volumes, less fuel used and unaccounted for line loss, to CSX, Unocal in Vermilion Parish, Louisiana.

Trunkline states that the estimated daily and annual quantities would be 10,000 dkt and 3,650,000 dkt, respectively. Service under § 284.223(a) commenced on January 13, 1988, as reported in Docket No. ST89–2169–000, it is stated.

*Comment date:* April 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

### 2. United Gas Pipe Line Company

[Docket No. CP89–864–000]

Take notice that on February 21, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478 filed in Docket No. CP89–864–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide interruptible transportation service on behalf of Texaco Gas marketing (Texaco), a marketer of natural gas, under United's blanket certificate issued in Docket No. CP88–6–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Pursuant to an interruptible gas transportation agreement dated July 25, 1988, as amended December 16, 1988, United proposes to transport up to 103,000 MMBtu of natural gas per day from thirty-five (35) existing points of receipt located in Texas to fifteen (15) existing points of delivery located in Louisiana, Mississippi and Texas. Texaco has informed United that it expects to have the full 103,000 MMBtu transported on an average day and, based thereon, estimates that the annual transportation quantity would be 37,595,000 MMBtu. United advises that the transportation service commenced on December 21, 1988, as reported in Docket No. ST89–2165, pursuant to § 284.223(a) of the Commission's Regulations.

*Comment date:* April 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

### 3. United Gas Pipe Line Company

[Docket No. CP89–839–000]

Take notice that on February 16, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas, 77251–1478, filed in Docket No. CP89–839–000, a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP88–6–000, pursuant to section 7 of the Natural Gas Act, for Enron Gas Marketing, Inc. (Enron), a marketer, all as more fully set forth in the request on file with the Commission and open to public inspection.

United proposes to transport up to a maximum of 103,000 MMBtu of natural gas per day for Enron from an existing interconnection between United and Sea Robin Pipeline Company near Erath, Vermilion Parish, Louisiana to the existing interconnection between United and Florida Gas Transmission Company at Arnaudville, St. Landry Parish, Louisiana. United anticipates transporting up to 103,000 MMBtu on a peak day and average day, and 37,595,000 MMBtu annually for Enron. United explains that service commenced January 1, 1989, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–1873.

*Comment date:* April 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

### 4. Trunkline Gas Company

[Docket No. CP89–871–000]

Take notice that on February 21, 1989, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas, 77251–1642, filed in Docket No. CP89–871–000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of Anadarko Trading Company (Anadarko), under Trunkline's blanket certificate issued in Docket No. CP86–586–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Trunkline requests authorization to transport, on an interruptible basis, up to a maximum of 100,000 dt of natural gas per day for Anadarko from receipt points located in Illinois, Louisiana, Tennessee and Texas to a delivery point of Bridgeline Gas located in St. Mary Parish, Louisiana. Trunkline anticipates transporting, on an average day 100,000 dt and an annual volume of 36,500,000 dt.

Trunkline states that the transportation of natural gas for Anadarko commenced January 6, 1989, as reported in Docket No. ST89–2134–000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to Trunkline in Docket No. CP86–586–000.

*Comment date:* April 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

### 5. Natural Gas Pipeline Company of America

[Docket No. CP89–715–001]

Take notice that on January 30, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89–715–000, as supplemented on February 21, 1989, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a firm transportation service for LTV Steel Company, Inc. (LTV), an end-user, under the blanket certificate issued in Docket No. CP86–582–000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Notice of the instant proposal was issued on February 3, 1989. By its filing received on February 21, 1989, Natural has amended its request in accordance with a contract amendment dated February 6, 1989, to provide for:

(1) An increase in its firm transportation service to a maximum of 25,000 MMBtu equivalent of natural gas per day (plus any additional volumes accepted pursuant to the overrun provisions of Natural's Rate Schedule FTS) for LTV.

(2)(a) The replacement of the secondary receipt point in Cameron Parish, Louisiana, with one in Jefferson County, Texas,

(b) Adding a primary delivery point located on the border of Kankakee County, Illinois, and Lake County, Indiana, and

(c) Adding a secondary delivery point in Bureau County, Illinois.

*Comment date:* April 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

### 6. Natural Gas Pipeline Company of America

[Docket No. CP89–878–000]

Take notice that on February 22, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89–878–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Natural Gas Clearinghouse Inc. (NGC), a marketer, under the blanket certificate issued in Docket No. CP86–582–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Natural states that pursuant to a transportation agreement dated January 13, 1989, under its Rate Schedule ITS, it proposes to transport up to 50,000 MMBtu per day equivalent of natural gas (plus any additional volumes accepted pursuant to the overrun provisions of Natural's Rate Schedule ITS) for NGC. Natural states that it would transport the gas from an existing interconnection between Natural and Colorado Interstate Gas Company in Beaver County, Oklahoma, and deliver such gas to an existing interconnection with Northern Natural Gas Company in Iowa.

Natural advises that service under § 284.223(a) commenced January 14, 1989, as reported in Docket No. ST89–2316. Natural further advises that it would transport 7,500 MMBtu on an average day and 2,737,500 MMBtu annually.

*Comment date:* April 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

### Standard Paragraph

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 89–5008 Filed 3–2–89; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. ER89–222–000]**

## Gulf Power Co.; Filing

February 27, 1989.

Take notice that on January 17, 1989, Gulf Power Company (Gulf Power) tendered for filing Gulf Power's 1989 Informational Filing of the

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Interconnection Agreement and Transmission Service Agreement between Gulf Power and Bay Resources Management, Inc. (BRMI).

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell**

*Secretary.*

[FR Doc. 89-5004 Filed 3-2-89; 8:45 am]

BILLING CODE 6717-01-M

**[Docket No. CI89-295-000, et al.]**

**Kimball Resources, Inc., et al., Applications for Blanket Certificates With Pregranted Abandonment [1]**

February 28, 1989.

Take notice that each Applicant listed herein has filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for an unlimited-term blanket certificate with pregranted abandonment authorization, all as more fully set forth in the applications which are on file with the Commission and open for public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before March 15, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

**Lois D. Cashell,**

*Secretary.*

| Docket No. | Date filed | Applicant |
|---|---|---|
| CI89-295-000 | 2-6-89 | Kimbal Resources, Inc., Metropolitan Plaza 1, 10370 Richmond Avenue, Suit 500, Houston, Texas 77042 |
| CI89-302-000 | 2-13-89 | Chevron U.S.A. Inc., P.O. Box 3725, Houston, Texas 77253-3725. |

[FR Doc. 89-5005 Filed 3-2-89; 8:45 am]

BILLING CODE 6717-01-M

**[Docket No. SA89-5-000]**

**Omni Exploration, Inc. and Omni Drilling Partnership No. 1978-2; Petition for Adjustment**

February 27, 1989.

Take notice that on February 13, 1989, Omni Exploration Inc. and Omni Drilling Partnership No. 1978-2 (Omni) filed a motion for reconsideration of the December 21, 1988 order issued by the Director of the Office of Pipeline and Producer Regulation (Director) in *Palmco Management Co.*, Docket No. SA88-14-000, 45 FERC ¶ 62,255 (1988). Omni claims that the Director's order requires it to pay amounts in addition to those already paid pursuant to Order Nos. 399, 399-A, and 399-B or which have been waived and discharged by order to the United States Bankruptcy Court for the Eastern District of Pennsylvania. Omni seeks adjustment from the Director's order holding Omni responsible for the Btu refunds.

The procedures applicable to the conduct of this adjustment proceeding are found in subpart K of the Commission's rules of practice and procedure. Any person desiring to participate in this adjustment proceeding must file a motion to intervene in accordance with the provisions of Rule 214. All motions to intervene must be filed within 15 days after publication of this notice in the **Federal Register**.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 89-5006 Filed 3-2-89; 8:45 am]

BILLING CODE 6717-01-M

**[Docket No. SA88-14-001 and Docket No. SA89-5-000]**

**Palmco Management Co., Omni Exploration, Inc. and Omni Drilling Partnership No. 1978-2; Assignment of New Docket Number**

February 27, 1989

Take notice that on January 27, 1989, Omni Exploration, Inc., and Omni Drilling Partnership No. 1978-2 (Omni) filed with the Commission pursuant to Rule 1110 of the Commission's rules of practice and procedure, 18 CFR 385.1110 (1988), a letter-petition requesting review of the order issued by the Director of the Office of Pipeline and Producer Regulation on December 21, 1988, granting Palmco's petition for adjustment relief in Docket No. SA88-14-000, 45 FERC ¶ 62,255 (1988). On February 6, 1989, the Commission designated a presiding officer, who stayed certain procedural requirements until after Omni submitted further information in support of its letter-petition.

On February 13, 1989, the Commission received Omni's motion for reconsideration of the Director's December 21 order. In view of the new facts and arguments set forth in the motion and for administrative convenience, the Commission will treat Omni's filing as a separate petition for adjustment and assign it Docket No. SA89-5-000. The merits of Omni's motion will be fully addressed in the new docket. The Commission will provide notice of Omni's request for adjustment and subsequently issue an order addressing the merits.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 89-5007 Filed 3-2-89; 8:45 am]

BILLING CODE 6717-01-M

## ENVIRONMENTAL PROTECTION AGENCY

**[ER-FRL-3532-4]**

**Environmental Impact Statements and Regulations; Availability of EPA Comments**

Availability of EPA comments prepared February 13, 1989 through February 17, 1989 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5074.



An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 22, 1988 (53 FR 13318).

**Draft EISs**

*ERP No.:* D-AFS-E65037, Rating EC2, Appalachian Mountains National Forests Vegetation Management Plan, Implementation, AL, GA, KY, NC, SC, TN, VA and WV.

*Summary:* EPA agrees environmental concerns has been identified which should be addressed in the final EIS. Due to the evolving nature of groundwater protection and endangered species guidelines, EPA recommends establishment of a process for ongoing consultation with the states, U.S. EPA and the U.S. Fish and Wildlife Service to ensure the regulatory consistency of the selected management measures.

*ERP No.:* D-BLM-G67000-NM, Rating EC2, Molycorp Guadulupe Mountain Tailings Disposal Facility, Construction, Operation and Closure, Plan of Operation Approval, Tasco County, NM.

*Summary:* EPA expressed environmental concerns with the proposed action in the areas of air and water quality impact and is requesting additional information on windblown tailings dust stabilization, water quality impact assessment and alternative analysis.

*ERP No.:* DS-COE-C32008-NJ, Rating EC2, Great Egg Harbor Inlet and Peck Beach Erosion Control and Flood Protection, Implementation, Updated Information and Detailed Analysis, Ocean City, Cape May County, NJ.

*Summary:* EPA has concerns regarding potential impacts to water quality and benthos. The results of the planned test sampling should be included in the final EIS. The results of the sampling should provide the additional information necessary to resolve EPA's concerns.

*ERP No.:* D-NAS-E12004-00, Rating EC2, Galileo Mission Project, Galileo Spacecraft Preparation and Operation Plan, Implementation, Solar System Exploration Program (Tier 2).

*Summary:* EPA has some environmental concerns about certain procedural aspects of the emergency response and clean-up measures.

**Final EISs**

*ERP No.:* F-AFS-H67001-MO, Mark Twain National Forest, Hardrock Mineral Leasing, Approval and Issuance of Leases, Oregon, Carter and Shannon Counties, MO.

*Summary:* EPA does not object to the proposed project provided that the Forest Service or the Bureau of Land Management will prepare site-specific EISs at such time as mining in the subject area is proposed.

**Other Reviews**

*ERP No.:* A-IBR-A31048-00, Proposed Renewal of Water Contracts for the Friant Unit of the Central Valley Project; Predecision Referral Statement.

*Summary:* EPA has referred to the Council on Environmental Quality the Bureau of Reclamation's proposed renewal of the Orange Cove, California water contract. The contract renewal would have commited to existing uses 1.5 million acre-feet of Central Valley Project water for the next forty years. The referral expressed the belief that unsatisfactory environmental results might occur if the long-term commitment of water is made and that assessment of environmental effects and the implementation of measures to avoid or mitigate those effects is required both by the National Environmental Policy Act (NEPA) and sound public policy. The referral concluded that the Bureau of Reclamation water contract renewal would result in an irretrievable long-term commitment of water use without benefit of an EIS which would be a violation of the purposes and intent of NEPA.

Dated: February 28, 1989.

**William D. Dickerson,**

*Deputy Director, Office of Federal Activities.*

[FR Doc. 89-5047 Filed 3-2-89; 8:45 am]

BILLING CODE 6560-50-M

**[ER-FRL-3532-3]**

**Environmental Impact Statements; Availability**

*Responsible Agency:* Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

Availability of Environmental Impact Statements Filed February 20, 1989 Through February 24, 1989 Pursuant to 40 CFR 1506.9.

EIS No. 890042, Final, EPA, AS, Tutuila Island Offshore Ocean Disposal Site Designation for Fish Cannery Waste, AS, Due: April 3, 1989, Contact: Patrick Cotter (415) 974-0257.

EIS No. 890043, Draft, AFS, OR, Mount Hood Meadows Ski Area Additional Development and Expansion, Master Plan Approval, Special Use Permits and 404 Permit, Mount Hood National Forest, Hood River County, OR, Due: April 21, 1989, Contact: Douglas E. Gochnour (503) 666-0700.

**Amended Notices**

EIS No. 880430, Draft, IBR, CA, American River Service Area Water Contracting Program, Water Supply Project for Agricultural Municipal and Industrial Uses, Long-Term Contracting, San Joaquin, Sacramento and Placer Counties, CA, Due: April 3, 1989, Contact: Bill Payne (916) 978-5488.

Published FR 01-06-89—Review period extended.

EIS No. 880431, Draft, IBR, CA, Sacramento River Water Service Area Contracting Program, Water Supply Project for Municipal and Industrial, Wildlife Refuge and Agricultural Uses, Long-Term Contracting, Shasta, Tehama, Yolo, Solano, Colusa and Solano Counties, CA, Due: April 3, 1989, Contact: Bill Payne (916) 978-5488.

Published FR 01-06-89—Review period extended.

EIS No. 880432, Draft, IBR, CA, Delta Export Service Area Water Contracting Program, Water Supply Project for Agricultural, Municipal and Industrial and Wildlife Refuge Uses, Long-Term Contracting, Fresno, Kern, Kings, Madera, Merced, San Joaquin, Tulare, Monterey, San Benito, Santa Clara and Santa Cruz Cos., CA, Due: April 3, 1989, Contact: Bill Payne (916) 978-5488.

Published FR 1-6-89—Review period extended.

Dated: February 28, 1989.

**William D. Dickerson,**

*Deputy Director, Office of Federal Activities.*

[FR Doc. 89-5048 Filed 3-2-89; 8:45 am]

BILLING CODE 6560-50-M

**[ER-FRL-3529-1]**

**Intent To Prepare a Draft Enviromental Impact Statement (EIS); City of San Diego Wastewater Treatment Facilities, CA**

**AGENCY:** U.S. Environmental Protection Agency (EPA) Region IX.

**ACTION:** Preparation of a Draft Environmental Impact Statement.

*Purpose:* In accordance with section 511(c) of the Clean Water Act (CWA) and Section 102(2)(c) of the National Environmental Policy Act (NEPA), EPA has identified a need to prepare an EIS and therefore issues this Notice of Intent pursuant to 40 CFR 1501.7.

For further information and to be placed on the project mailing list contact: Mr. Enio Sebastiani, Construction Grants Branch, U.S. EPA, (W-2-2), 215 Fremont St., San Francisco, CA 94105, Telephone: (415) 974-8316.

**SUMMARY:** The City of San Diego has initiated a new program, the Clean Water Program for Greater San Diego, with a goal of attaining full compliance with the CWA and NEPA. The program is currently in the facilities planning

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stage. The resulting plan will recommend both secondary treatment and water reclamation facilities of sufficient size to serve the San Diego metropolitan area through the middle of the twenty-first century. Facilities covered by the plan will include an upgrade of the City's Point Loma wastewater treatment plant, one or two other secondary treatment plants, a number of water reclamation plants, sludge handling and disposal facilities, and associated pump stations and pipelines.

*Need for Action:* On September 30, 1988, EPA announced its decision to tentatively deny the City of San Diego's 1979 and 1983 applications for a waiver under Section 301(h) of the CWA. On November 3, 1988, the City Council authorized the City Manager to send EPA a letter of intent to file a revised waiver application. On February 17, 1987, the City Council decided to discontinue waiver efforts and to pursue secondary treatment.

*Alternatives:* Six alternatives are presently under consideration for siting secondary treatment plants in the San Diego area. The alternatives involve variations in the size and extent of treatment facilities in and around Sorrento Valley, at the existing Point Loma treatment site, at locations near Lindbergh Field, and at sites along the U.S./Mexico border. Alternative sites are also being considered for a number of water reclamation plants throughout the San Diego metropolitan area. The City of San Diego is not making any major decisions at the meetings itemized below with regard to the rejection or adoption of sites. The City is seeking public input which will be used to analyze the alternatives. Subsequent public meetings in the spring of 1989 will address the selection of an alternative.

*Scoping:* The City of San Diego will hold three initial public scoping meetings. Each meeting will be held in a different location within the greater San Diego area: (1) Monday, February 27, 1989, at 7:30 p.m. at University Towne Centre Forum Hall, Great American Building J–1, 4315 La Jolla Village Drive, La Jolla, CA; (2) Tuesday, February 28, 1989, at 7:30 p.m. at Point Loma High School Auditorium, 2335 Chatsworth Blvd., San Diego, CA; and (3) Wednesday, March 1, 1989, at 7:30 p.m. at Southwest High School, 1685 Hollister St., San Diego, CA. The public is encourage to attend, to provide their views on the proposed site alternatives for secondary wastewater treatment and water reclamation, and to assist in the identification of environmental issues.

*Estimated Date of Draft EIS Release:* June 15, 1990.

*Responsible Official:* Daniel W. McGovern, Regional Administrator.

Dated: February 28, 1989.

**Richard E. Sanderson,**

*Director, Office of Federal Activities.*

[FR Doc. 89–5049 Filed 3–2–89; 8:45 am]

BILLING CODE 6560–50–M

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[OPTS–140113; FRL–3532–5]

## Access to Confidential Business Information by CRC Systems

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has authorized its subcontractor, CRC Systems (CRC) of Fairfax, VA for access to information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

**FOR FURTHER INFORMATION CONTACT:** Michael M. Stahl, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB–44, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551.

**SUPPLEMENTARY INFORMATION:** Under contract no. 68–01–7176, subcontractor CRC, 11242 Waples Mill Road, Fairfax, VA will assist the Office of Toxic Substances' Information Management Division in performing modifications and enhancements to EPA data base systems containing TSCA CBI. CRC employees will require access to TSCA CBI on computer screens in order to perform the contract tasks. In addition, CRC employees will occasionally be required to review CBI documents to compare hard copy data to those data elements contained in the systems.

CRC is working as a subcontractor under the Computer Sciences Corporation. Access to TSCA CBI by CSC was previously announced in the **Federal Register** of October 31, 1985 (50 FR 45483).

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA may provide CRC access to these CBI materials on a need-to-know basis. All access to TSCA CBI under this contract will take place at EPA Headquarters facilities.

Clearance for access to TSCA CBI under this contract is scheduled to expire on September 30, 1989.

CRC personnel will be required to sign non-disclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

Dated: February 24, 1989.

**Linda A. Travers,**

*Director, Information Management Division, Office of Toxic Substances.*

[FR Doc. 89–4991 Filed 3–2–89; 8:45 am]

BILLING CODE 6560–50–M

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## FEDERAL EMERGENCY MANAGEMENT AGENCY

## Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44) U.S.C. Chapter 35).

*Type:* New Collection.

*Title:* National Fire Academy Course Monitoring System—National Fire Academy Course Evaluation.

*Abstract:* The National Fire Academy Course Evaluation form will be used to evaluate all on-campus and off-campus NMFA courses and to assess the effectiveness of the course materials and instructor performance.

*Type of Respondents:* Individuals or households.

*Estimate of Total Annual Reporting and Recordkeeping Burden:* 2,640.

*Number of Respondents:* 8,000.

*Estimated Average Burden Hours Per Response:* 33.

*Frequency of Response:* One-Time.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646–2624, 500 C Street, SW., Washington, DC 20472.

Direct comments regarding the burden estimate or any aspect of this information collection, including suggestings for reducing this burden, to the FEMA Clearance Officer at the above address; and to Francine Picoult, (202) 395–7231, Office of Management and Budget, 3235 NEOB, Washington, DC 20503 within two weeks of this notice.

Date: February 27, 1989.

**Wesley C. Moore,**

*Director, Office of Administrative Support.*

[FR Doc. 89–4973 Filed 3–2–89; 8:45 am]

BILLING CODE 6718–01–M



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[FEMA–821–DR]

## Major Disaster and Related Determinations; Kentucky

**AGENCY:** Federal Emergency Management Agency.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Kentucky (FEMA–821–DR), dated February 24, 1989, and related determinations.

**DATED:** February 24, 1989.

**FOR FURTHER INFORMATION CONTACT:** Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3614.

NOTICE: Notice is hereby given that, in a letter dated February 24, 1989, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*, Pub. L. 93–288, as amended by Pub. L. 100–707), as follows:

I have determined that the damage in certain areas of the Commonwealth of Kentucky, resulting from severe storms and flooding beginning on or about February 13, 1989, is of sufficient severity and magnitude to warrant a major disaster declaration under Public Law 93–288, as amended by Public Law 100–707. I, therefore, declare that such a major disaster exists in the Commonwealth of Kentucky.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under PL 93–288, as amended by PL 100–707, for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Paul E. Hall of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the Commonwealth of Kentucky to have been affected adversely by this declared major disaster: The counties of Anderson, Bourbon, Bullitt, Butler, Casey, Franklin, Hardin, Harrison, Henry, Jessamine, Larue, Mercer, Nelson, Owen, Pendleton, Trimble, Washington, and Woodford for Individual Assistance and Public Assistance.

**Julius W. Becton, Jr.,**

*Director, Federal Emergency Management Agency.*

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

[FR Doc. 89–4974 Filed 3–2–89; 8:45 am]

BILLING CODE 6718–02–M

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## Office of Training; Board of Visitors for the National Fire Academy; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following committee meeting:

*Name:* Board of Visitors for the National Fire Academy.

*Dates of Meeting:* April 11–12, 1989.

*Place:* National Emergency Training Center, G Bldg., 2nd Floor Conference Room, Emmitsburg, MD 21727.

*Time:* April 11—8:30 a.m. to 5:00 p.m., April 12—8:30 a.m. to Agenda Completion.

*Proposed Agenda:* Old Business, New Business; Briefing of FY90 Operating Plan.

The meeting will be open to the public with seating available on a first-come, first-serve basis. Members of the general public who plan to attend the meeting should contact the Office of the Superintendent, National Fire Academy, Office of Training, 16825 South Seton Avenue, Emmitsburg, Maryland, 21727 (telephone number, 301–447–1123) on or before April 3, 1989.

Minutes of the meeting will be prepared by the Board and will be available for public viewing in the Director's Office, Office of Training, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472. Copies of the minutes will be available upon request 30 days after the meeting.

**Dave McLoughlin,**

*Director, Office of Training.*

Dated: February 21, 1989.

[FR Doc. 89–4975 Filed 3–2–89; 8:45 am]

BILLING CODE 6718–01–M

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## FEDERAL MARITIME COMMISSION

## Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, The Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

*Agreement No.:* 203–011198–001.

*Title:* Puerto Rico/Caribbean Discussion Agreement.

*Parties:* Hapag-Lloyd Ag, Thos. & Jas. Harrison Ltd., Nedlloyd Lines, B.V., Compagnie Generale Maritime, Sea-Land Service, Inc.

*Synopsis:* The proposed modification would add Crowley Caribbean Transport and Trailer Marine Transport as parties to the Agreement.

By Order of the The Federal Maritime Commission.

**Joseph C. Polking,**

*Secretary.*

Dated: February 28, 1989.

[FR Doc. 89–4953 Filed 3–2–89; 8:45 am]

BILLING CODE 6730–01–M

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## FEDERAL RESERVE SYSTEM

## Compagnie Financiere de Suez; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may

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express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 24, 1989.

**A. Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Compagnie Financiere de Suez*, Paris, France,and Banque Indosuez, Paris, France; to acquire Daniel Breen & Co. L.P. and Breen Trust Company, and thereby engage in providing portfolio investment advice pursuant to § 225.25(b)(4); and performing trust company services pursuant to § 225.25(b)(3) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, February 27, 1989.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 89-4954 Filed 3-2-89; 8:45 am]

BILLING CODE 6210-01-M

**Orrstown Financial Services, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies**

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act Y (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 23, 1989.

**A. Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Orrstown Financial Services, Inc.*, Orrstown, Pennsylvania; to acquire 18.39 percent of the voting shares of Farmers National Bank of Newville, Newville, Pennsylvania.

**B. Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *People Banchshares of Gambier Incorporated*, Gambier, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of The People Bank Gambier, Ohio.

**C. Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *F.B.H. Corp.*, Fayette, Alabama; to become a bank holding company by acquiring 100 percent of the voting shares of The Citizens Bank of Fayette, Fayette, Alabama.

2. *Fayette County Bancshares, Inc.*, Peachtree City, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Fayette County Bank, Peachtree City, Georgia, a *de novo* bank.

**D. Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *JDOB, Inc.*, Naples, Florida; to acquire 100 percent of the voting shares of First State Bank of New Germany, New Germany, Minnesota.

**E. Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Farmers Banchshares, Inc.*, Maysville, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of The Farmers Bank of Maysville, Maysville, Missouri. Comments on the application must be received by March 17, 1989.

2. *NorCentral Bancshares, Inc.*, Portis, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of The First State Bank, Portis, Kansas.

Board of Governors of the Federal Reserve System, February 27, 1989.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 89-4955 Filed 3-2-89; 8:45 am]

BILLING CODE 6210-01-M

**Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies; Philip Rocco; correction**

This notice corrects a previous **Federal Register** notice (FR Doc. 89-3150) published at page 6450 of the issue for Friday, February 10, 1989.

Under the Federal Reserve Bank of San Francisco, the entry for Philip J. Rocco amended to read as follows:

1. *Philip J. Rocco*, Santa Ana, California; to acquire 13.82 percent of the voting shares of California City Bancorp, Orange, California, and thereby indirectly acquire California City Bank, N.A., Orange, California.

Comments on this application must be received by March 17, 1989.

Board of Governors of the Federal Reserve System, February 27, 1989.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 89-4956 Filed 3-2-89; 8:45 am]

BILLING CODE 6210-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 88M-0447]**

**CIBA Vision Corp.; Premarket Approval of CIBA Vision Sterile Saline Solution and CIBA Vision Sterile Buffered Saline Solution**

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing its approval of the application by CIBA Vision Corp., Atlanta, GA, for premarket approval, under the Medical Device Amendments of 1976, of the CIBA Vision Saline Solution and CIBA Vision Sterile Buffered Saline Solution. The devices are to be manufactured under an agreement with Armstrong Laboratories, Inc., West Roxbury, MA, which has authorized CIBA Vision Corp. to incorporate information contained in its approved premarket approval applications for the Armstrong Sterile Saline Solution and the Armstrong Sterile Buffered Saline Solution. FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of December 23, 1988, of the approval of the application.

**DATE:** Petitions for administrative review by April 3, 1989.

**ADDRESS:** Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** David M. Whipple, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 6757 Georgia Ave., Silver Spring, MD 20910, 301-427-7940.

**SUPPLEMENTARY INFORMATION:** On October 27, 1988, CIBA Vision Corp., Atlanta, GA 30360, submitted to CDRH an application for premarket approval of the CIBA Vision Sterile Saline Solution and the CIBA Vision Sterile Buffered Saline Solution. The devices are sterile physiological saline solutions (0.9 percent salt in water) in pressurized containers with a nitrogen propellant and are indicated for use in the rinsing, heat disinfection, and storage of soft (hydrophilic) contact lenses. The application includes authorization from Armstrong Laboratories, Inc., West Roxbury, MA 02132, to incorporate information contained in its approved premarket approval applications for the Armstrong Sterile Saline Solution and the Armstrong Sterile Buffered Saline Solution.

On December 23, 1988, CDRH approved the application by a letter to the applicant from the Acting Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact David M. Whipple (HFZ-460), address above.

**Opportunity for Administrative Review**

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before April 3, 1989, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554-555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: February 22, 1989.

**Walter E. Gundaker,**

*Acting Deputy Director Center for Devices and Radiological Health.*

[FR Doc. 89-4957 Filed 3-2-89; 8:45 am]

BILLING CODE 4160-01-M

**[Docket No. 88M-0024]**

**Advanced Cardiovascular Systems, Inc.; Premarket Approval of the ACS® Stack Perfusion™ Coronary Dilatation Catheter**

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing its approval of the supplemental application by Advanced Cardiovascular Systems, Inc., Mountain View, CA, for premarket approval, under the Medical Device Amendments of 1976, of the ACS® Stack Perfusion™ Coronary Dilatation Catheter. After reviewing the recommendation of the Circulatory System Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of January 11, 1989, of the approval of the application.

**DATE:** Petitions for administrative review by April 3, 1989.

**ADDRESS:** Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Shang W. Hwang, Center for Devices and Radiological Health (HFZ-450), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7371.

**SUPPLEMENTARY INFORMATION:** On May 3, 1988, Advanced Cardiovascular Systems, Inc., Mountain View, CA 94039-7101, submitted to CDRH a supplemental application for premarket approval of the ACS® Stack Perfusion™ Coronary Dilatation Catheter. The catheter is intended for use during percutaneous transluminal coronary angioplasty (PTCA) where the physician desires distal blood perfusion during prolonged balloon inflations. The catheter is intended for use in patients with coronary artery disease, who are acceptable candidates for coronary artery bypass graft surgery, and who meet one of the following selection criteria:

1. Single vessel artherosclerotic coronary artery disease that is discrete, subtotal, noncalcified, and accessible to a dilatation catheter.

2. Multiple vessel coronary artery disease under certain circumstances.

3. Coronary artery disease of the native coronary arteries and/or coronary artery bypass grafts of some patients who have previously undergone coronary artery bypass graft surgery and who have recurrence of symptoms and (a) progression of disease or (b) stenosis and closure of the grafts.

On September 16, 1988, the Circulatory System Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On January 11, 1989, CDRH approved the application by a letter to the applicant from the Acting Director of the Office of Device Evaluation, CDRH.

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A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from the office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Shang W. Hwang (HFZ-450), address above.

**Opportunity For Administrative Review**

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before April 3, 1989, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: February 22, 1989.

**Walter E. Gundaker,**

*Acting Deputy Director, Center for Devices and Radiological Health.*

[FR Doc. 89-4958 Filed 3-2-89; 8:45 am]

BILLING CODE 4160-01-M

## Health Resources and Services Administration

### Final Funding Priorities for Grants for Residency Training and Advanced Education in the General Practice of Dentistry

The Health Resources and Services Administration announces the final funding priorities for Fiscal Year 1989 which will be used in making grant awards for Grants for Residency Training and Advanced Education in the General Practice of Dentistry, section 786(b) of the PHS Act which has been redesignated section 785 by Pub. L. 100-607, of the Health Professions Reauthorization Act of 1988.

Section 785 of the Act authorizes the Secretary to make grants to any public or nonprofit private school of dentistry or accredited postgraduate dental training institution (e.g., hospitals and medical centers) to plan, develop, and operate an approved residency or advanced educational program in the general practice of dentistry and to provide financial assistance to participants in such a program who are in need of financial assistance and who plan to specialize in the practice of general dentistry.

To receive support, programs must meet the requirements of final regulations at 42 CFR Part 57, Subpart L.

**Review Criteria**

The review of applications will take into consideration the following criteria:

(a) The potential effectiveness of the proposed project in carrying out the training purposes of section 785 of the Act;

(b) The degree to which the proposed project adequately provides for meeting the project requirements;

(c) The administrative and managerial capability of the applicant to carry out the proposed project in a cost-effective manner;

(d) The qualifications of proposed staff and faculty;

(e) The potential of the project to continue on a self-sustaining basis after the period of grant support; and

(f) The degree to which the proposed project proposes to attract, maintain and graduate minority and disadvantaged students.

The following established preferences will be used in making grant awards in Fiscal Year 1989:

New programs (Category 1), followed by expanding programs (Category 2), and then program improvements (Category 3), and within Category 1), first funding will be for approved applications designed to establish programs in States in which no non-Federal supported residency or advanced educational programs in general dentistry are currently in operation.

There is no funding preference between residency training programs and advanced educational programs in general dentistry.

In accordance with section 785 of the Act, three distinct categories of program development can be supported. Applications must address at least one of these categories.

*Category 1: Program Initiation*

An applicant may request support for up to one year of program planning and development, followed by two years of program operation. For this purpose an applicant must show, at a minimum, preliminary provisional approval from the Commission on Dental Accreditation before the initial grant award date (grants will be effective July 1 of the current fiscal year). Before a second year grant award will be made, the grantee must show an accreditation classification of accreditation eligible.

*Category 2: Program Expansion*

An applicant may request support for an existing program which has full approval accreditation classification to fund the cost of a first-year enrollment increase in the program.

*Category 3: Program Improvement*

An applicant may request support for an existing program which has conditional approval or provisional approval accreditation to correct deficiencies or weaknesses in order to gain full approval accreditation status. Support is also available for an existing program which has full approval accreditation for changes or additions in faculty, curriculum and/or facilities to enhance the quality of the program.

Proposed funding priorities were published in the **Federal Register** of November 14, 1988 (FR 45822) for public comment. Three comments were received during the 30-day comment period. Two of the comments were in support of the proposed priorities.

A third respondent, while also supporting the proposed funding priorities, did have questions regarding the application of some of the priorities. Specifically there was concern that Category 1 applicants can not meet the underrepresented minorities enrollment funding priority since such applicants have on enrollment history, whereas Categories 2 and 3 applicants can address the requirements. That is the case. However, since approved Category 1 applicants are funded before approved Categories 2 and 3 applicants, the awarding of points to approved Categories 2 and 3 applicants will not affect the funding or order of funding of approved Category 1 applicants.

In developing the underrepresented minorities enrollment funding priority, consideration was given to awarding points to applicants who submitted plans to attempt to increase minority enrollment. However, it was determined more appropriate to award points to approved applicants who had already initiated a minority enrollment effort and could demonstrate success. As indicated under the Review Criteria section of the Program Announcement, consideration is already being given to: (f) The degree to which the proposed project proposes to attract, maintain and graduate minority and disadvantaged students.

Therefore in conducting the Fiscal Year 1989 grant cycle, the underrepresented minorities enrollment funding priority will be retained as stated, since it has been determined that the funding priority will not adversely affect the funding of approved Category 1 applicants; it will reward approved applicants who have on their own initiated and been successful with their minority enrollment efforts; and it will serve as a stimulus to other programs to initiate minority enrollment efforts.

In discussing the funding priorities regarding specific areas of curricular content, the third respondent had concern with terms as "new offerings" and "innovative approaches," and it was urged that existing and traditional materials and methods be also considered in determining whether the funding priorities are met. While terms as "new offerings" and "innovative approaches" are used in describing the curricular content funding priorities, what is new or innovative curricula in one institution may be extant, traditional or lacking in another. The curricular content funding priorities are designed to stimulate the development, expansion or implementation of curricula in specified areas in the content and manner determined by the needs of each applicant. All proposed efforts to offer or improve educational content and experiences in the funding priority areas will be considered in determining whether the funding priorities are met.

Therefore, as proposed the final funding priorities will be retained as follows:

A funding priority will be given to:

(1) Projects which satisfactorily document enrollment of underrepresented minorities in proportion or more to their numbers in the general population or can document a net increase of underrepresented minorities (i.e., Black, Hispanic and American Indian/Alaskan Native or Pacific Islanders) over average enrollment of the past three years in the project's postgraduate year (PGY) trainees.

(2) Projects in which substantial training experience is in a PHS 332 health manpower shortage area and/or PHS 329 migrant health center, PHS 330 community health center or PHS 781 funded Area Health Education Center or State designated clinic/center serving an underserved population.

(3) Applications proposing to develop, expand or implement curricula concerning ambulatory and inpatient case management of HIV/AIDS patients

(4) Applications which are innovative in their educational approaches to quality assurance/risk management activities, monitoring and evaluation of dental services and utilization of peer developed guidelines and standards.

(5) Applications proposing to provide substantial multidisciplinary geriatric training experiences in multiple ambulatory settings and inpatient and extended care facilities.

This program is listed at 13.897 in the *Catalog of Federal Domestic Assistance*. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR Part 100).

Dated: February 28, 1989.

**John H. Kelso,**

*Acting Administrator.*

[FR Doc. 89-4999 Filed 3-2-89; 8:45 am]

BILLING CODE 4160-15-M

## Public Health Service

### Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on February 17, 1989.

(Call Reports Clearance Officer on 202-245-2100 for copies of package)

1. Secondary School Student Survey of Behaviors and Behavioral Determinants Related to AIDS/HIV Infection—NEW—The primary objectives of this study are to estimate the extent to which students in grades 9–12 engage in behaviors placing them at high risk of acquiring AIDS/HIV infection, and to survey the knowledge and beliefs among these students of high risk behaviors. Respondents: Individuals or households; Number of Respondents: 6,527; Responses Per Respondent: 1; Average Burden Per Response: .5 hours; Estimated Annual Burden: 4,264 hours.

2. Statement in Support of Application for Waiver of Excludability Under Sections 212(a)(1) and (3) of Immigration and Nationality Act—0920-0006—Aliens who are mentally retarded or who have had one or more attacks of insanity are eligible to apply for waiver of excludability under Section 212(a)(1) and (3) of the Immigration and Nationality Act. If accepted, the applicant's sponsor must locate a medical facility or specialist in the U.S. that agrees to examine the applicant on arrival in the U.S. and provide a report of the examination to the Centers for Disease Control. Respondents: Individuals or Households, Businesses or other for-profit, Small businesses or organizations; Number of Respondents: 500; Responses Per Respondent: 1; Average Burden Per Response: .166 hours; Estimated Annual Burden: 83 hours.

3. Periodic Survey of Health Status, Minnesota Colon Cancer Control Study—0925-0275—Screening for occult blood in the stool is being recommended by many health professionals as a method for early detection of colorectal cancer. The information collection requested in this study is necessary to determine whether such screening is reliable and decreases mortality for colorectal cancer. Respondents: Individuals, Small businesses or organizations, Businesses or other for-profit; Number of Respondents: 35,656; Responses Per Respondent: 1; Average Burden Per Response: .17 hours; Estimated Annual Burden: 5,992 hours.

4. Survey of Physician Practice Behaviors Related to the Treatment of People with Diabetes Mellitus—NEW—Data will be collected on a representative sample of 1,600 general and family practitioners, pediatricians and internists to provide information on their attitudes and practice behaviors

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related to the treatment of people with diabetes mellitus. Information will be used to describe conventional treatment and assist in developing more effective information dissemination.
Respondents: Small businesses or organizations, Businesses or other for-profit; Number of Respondents: 2,091; Number of Responses Per Respondent: 1; Average Burden Per Response: .274 hours; Estimated Annual Burden: 574 hours.

5. National Sexually Transmitted Diseases Morbidity Program—0920-0011—This clearance allows the collection of STD morbidity data from State and local health departments. The data are used to evaluate progress relative to STD control efforts as well as assisting State/local health managers to standardize collection procedures.
Respondents: State or local governments; Number of Respondents: 60; Number of Responses Per Respondent: 1,577; Average Burden Per Response: .962 hours; Estimated Annual Burden: 1,517 hours.

6. National Sexually Transmitted Diseases Epidemiology Program—0920-0001—This information collection provides data used in the public health community to assist in the control and prevention of STD's. Through outreach programs, individuals infected with STD's are contacted and directed to treatment centers. Respondents: State or local governments; Number of Respondents: 60; Number of Responses Per Respondent: 15.7; Average Burden Per Response: 6.38 hours; Estimated Annual Burden: 5,993 hours.

*OMB Desk Officer:* Shannah Koss-McCallum

Written comments and recommendations for the proposed information collections should be sent directly to the OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Date: February 27, 1989.

**Steven A. Grossman,**

*Deputy Assistant Secretary for Health (Planning and Evaluation).*

[FR Doc. 89-4969 Filed 3-2-89; 8:45 am]

BILLING CODE 4160-17-M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. N-89-1947]**

### Submission of Proposed Information Collection to OMB

**AGENCY:** Office of Administration, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**ADDRESS:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451, 7th Street, Southwest, Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

**Authority:** Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: February 24, 1989.

**John T. Murphy,**

*Director, Information Policy and Management Division.*

*Proposal:* Application for Funding or Refunding the Community Housing Resource Board (CHRB) program.

*Office:* Fair Housing and Equal Opportunity.

*Description of the Need for the Information and its Proposed Use:* The purpose of the narrative is to provide current information on CHRB activity to enable HUD to evaluate this information and make a determination on the equitable distribution of program funds.

*Form Number:* None.

*Respondents:* Individuals or Households and Small Businesses or Organizations.

*Frequency of Submission:* One-Time Only.

*Estimated Burden Hours:*

| | Number of Respondents | x | Frequency of Response | x | Hours per Response | = | Burden Hours |
|---|---|---|---|---|---|---|---|
| Grant application | 110 | | 1 | | 180 | | 19,800 |

*Total estimated Burden Hours:* 19,800.

*Status:* Extension

*Contact:* Florence L. Multaby, HUD, (202) 755-7007; John Allison, OMB, (202) 395-6880.

Date: February 24, 1989.

[FR Doc. 89-5020 Filed 3-2-89; 8:45 am]

BILLING CODE 4210-01-M



### Office of Assistant Secretary for Community Planning and Development

**[Docket No. N-89-1946; FR-2617]**

### Application Submission Dates for HUD-Administered Small Cities Program for Fiscal Year 1989

**AGENCY:** Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** This Notice advises prospective applicants of the date for submission of applications to the HUD office for the HUD-Administered Small Cities Program in New York under the Community Development Block Grant Program for Fiscal Year 1989.

**FOR FURTHER INFORMATION CONTACT:** Jeannine Jacokes, State and Small Cities Division, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Telephone (202) 755-6322. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** In accordance with 24 CFR 570.420(h)(3), the Department of Housing and Urban Development (HUD) has established the date for submission of applications for Small Cities grants in the State of New York for Fiscal Year 1989. Applications for funding under the Single Purpose and Comprehensive Grant provisions of the HUD-Administered Small Cities Program must be postmarked no later than April 17, 1989. Applications postmarked after that date are unacceptable and will be returned.

Applications for Single Purpose grants under 24 CFR 570.430, or applications for Comprehensive Grants under 24 CFR 570.428 for the State of New York are required to be submitted no later than April 17, 1989. Applicants in New York in the Counties of Sullivan Ulster and Putnam and nonparticipating jurisdictions in the Urban Counties of Dutchess, Orange, Rockland, Westchester, Nassau, and Suffolk should submit applications to the New York Regional Office. All other nonentitled communities in the State of New York should submit their applications to the Buffalo Field Office.

The Application requirements related to this program have been approved by the Office of Management and Budget (OMB) and assigned approval number 2506-0060.

This action is exempt from the provisions of the National Environmental Policy Act under 24 CFR 50.20(k).

Dated: February 9, 1989.

**Jack R. Stokvis,**

*Assistant Secretary for Community Planning and Development.*

[FR Doc. 89-5019 Filed 3-2-89; 8:45 am]

BILLING CODE 4210-29-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[CA-050-09-4333-12]**

### Closure Order for Off-Road Vehicle Use

**ACTION:** Closure Order for Off-Road Vehicle Use.

**SUMMARY:** Notice is hereby given related to the closure of public land to off-road vehicle (ORV) use in accordance with regulations contained in 43 CFR 8341.2. Approximately 135 acres of wetlands and 35 acres of rare plant habitat located in portions of Section 31, T. 5 N., R. 1 W. and Section 6, T. 4 N., H. M., commonly referred to as the "North Jetty," will be temporarily closed to ORV use. This closure order will remain in effect until the *Arcata Area Resource Management Plan* is formally approved and the entire 300-acre area officially designated as open, limited or closed.

**DATE:** This closure order is effective March 15, 1989.

**FOR FURTHER INFORMATION CONTACT:** John Lloyd, Arcata Resource area Manager, 1125 16th Street, Room 219, P.O. Box 1112, Arcata, California 95521 [Telephone: (707) 822-7648] or District Manager, Ukiah District Office, 555 Leslie Street, Ukiah, California 95482 [Telephone: (707) 462-3872].

**SUPPLEMENTARY INFORMATION:** The purpose of closing the affected lands to vehicle use is to protect the Menzies' Wallflower *(Erysimum menziessi)* and its habitat, listed as "endangered" by the California Department of Fish and Game (DFG), and a scarce wetland habitat area which is an important roosting and feeding ground for Shorebirds, Herons, Hawks, Kingfishers, Swallows and Wrens. According to the DFG, and "estimated" 90% of California's wetlands have been highly disturbed and no longer productive. Menzies' Wallflower habitat has undergone even more distrubance—only two other locations exist along the California coast (Monterey and Fort Bragg).

Habitat restoration plans and research studies are currently being conducted within the 35-acre rare plant area which is delineated by a perimeter fence constructed in 1986. The wetland area fence will be completed by January 31, 1989. Information and regulatory signs are posted and BLM Ranger patrols have helped to inform and educate the visting public of the resource values that require protection.

The remaining public lands (approximately 130 acres) that surround these two sensitive areas will remain available for vehicle use and recreational facilities developed to expand ORV opportunities pursuant to the prescriptions outlined in the approved *Samoa Dunes Off-Road Vehicle Activity Plan* (1982).

Maps showing these open and closed areas are on file at the Bureau of Land Management's Arcata Resource Area Office, Arcata, California.

**John Lloyd,**

*Arcata Area Manager.*

[FR Doc. 89-4048 Filed 3-2-89; 8:45 am]

BILLING CODE 4310-40-M

**[CA-060-89-4130-12]**

### Availability of Draft Environmental Impact Statement/Environmental Impact Report; Hart Mining District, CA

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of the availability of the Draft Environmental Impact Statement/Environmental Impact Report (DEIS/EIR) prepared to assess a new mining project proposed by the Viceroy Gold Corporation for the historic Hart Mining District of the Castle Mountain region of Southern California.

**SUMMARY:** Viceroy Gold Corporation has proposed development and operation of an open pit, cyanide heap leach gold mine in the historic Hart Mining District of the Castle Mountain region of San Bernardino County, California. The region has a long history of mining and lies within the California Desert Conservation Area, near the state border between California and Nevada.

The Bureau of Land Management and the County of San Bernardino have prepared a joint Environmental Impact Statement/Environmental Impact Report

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under the requirements of the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA) to analyze any probable environmental impacts the undertaking might create. The Corporation proposes to process ore from the mine at a rate of about three million tons per year, for approximately 10 years. Primary public issues of concern, which surfaced during the public scoping process in early 1988, include water resources, wildlife, land use, vegetation, access, health, safety and visual resources. Potential adverse impacts, according to the Draft EIS/EIR now available to the public would be mitigated by implementation of measures incorporated in project planning and design, including reclamation.

Copies of the Draft EIS/EIR on the proposed Castle Mountain Mine Project are available from the Bureau of Land Management, Needles Resource Area, 101 Spike's Road, P.O. Box 888, Needles, CA 92363 or from the San Bernardino County Office of Planning, 385 North Arrowhead, 3rd Floor, San Bernardino, CA 92415-0182.

A public review and comment period had been established from March 8 through May 8, 1989. Written comments should be addressed to John Bailey, Bureau of Land management, Needles Resource Area, 101 Spike's Road, P.O. Box 888, Needles, CA 92363-0888 and must arrive prior to close of business May 8, 1989.

An Administrative Law Judge will preside at three public hearings to allow the public an opportunity to provide oral comments on the adequacy and accuracy of the Draft EIS/EIR. These formal public hearings will be attended by a court reporter who will record comments and testimony for the record. Each of the public hearings will begin at 7 p.m. on the following dates and locations:

| DATE | LOCATION |
|---|---|
| Tuesday, April 18, 1989 | SAN BERNARDINO, CALIFORNIA, San Bernardino County Government Center, 385 N. Arrowhead, 1st Floor Hearing Room. |
| Wednesday, April 19, 1989. | BARSTOW, CALIFORNIA, Barstow Station Inn 1511 E. Main Street. |
| Thursday, April 20, 1989 | LAS VEGAS, NEVADA, Clark County, Education Center 2832 Flamingo Road |

A Final EIS/EIR will be prepared in response to the comments received during the public review period and will describe any changes, deletions or additions made to the Draft document. A Record of Decision will be issued by the Bureau of Land Management and the County of San Bernardino after a 30-day public review of the Final EIS/EIR.

**FOR FURTHER INFORMATION CONTACT:** John Bailey, Bureau of Land Management Project Manager, Needless Resource Area, 101 Spike's Road, P.O. Box 888, Needles, CA 92363 (619) 326-3896.

Date: February 16, 1989.

**Gerald E. Hillier,**

*District Manager.*

[FR Doc. 89-4460 Filed 3-2-89; 8:45 am]

BILLING CODE 4310-84-M

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[ID-020-41-5101-09-XDBJ]

## Idaho Power's Southwest Intertie 500kV Electrical transmission Line Project; Intent To Prepare an Environmental Impact Statement/Plan Amendment

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of intent to prepare an Environmental Impact Statement/Plan Amendment (EIS/PA).

**SUMMARY:** Notice is hereby given that the Bureau of Land Management in cooperation with the United States Forest Service and the Bureau of Reclamation is proposing to prepare an EIS/PA for Idaho Power's Southwest Intertie 500kV electrical transmission line project running from Midpoint, Idaho, south to near Ely, Nevada, and then east to near Delta, Utah.

**DATES:** The public, state and local governments and other Federal agencies are asked to participate in the EIS process. Written comments will be accepted until April 28, 1989.

In addition to written comments, the following public scoping meetings will be held.

Twin Falls, Idaho. Where: Holiday Inn, 1350 Blue Lakes Blvd. N., Twin Falls, Idaho.

Date: March 27, 1989.

Time: 7:00 pm to 9:00 pm.

Wells, Nevada. Where: Wells High School, 115 Lake Avenue, Wells, Nevada.

Date: March 28, 1989.

Time: 7:00 pm. to 9:00 pm.

Ely, Nevada. Where: Bristlecone Convention Center, 150 6th Street, Ely, Nevada.

Date: March 29, 1989.

Time: 7:00 pm to 9:00 pm.

Delta, Utah. Where: Delta City Council Chambers, 76 North 200 West, Delta, Utah.

Date: March 30, 1989.

Time: 7:00 pm to 9:00 pm.

**ADDRESS:** Written comments should be addressed to: Gerald Quinn, District Manager, Bureau of Land Management, Burley District Office, Route 3, Box 1, Burley, Idaho, 83318.

**FOR FURTHER INFORMATION CONTACT:** Mr. Karl Simonson, Project Manager, Burley District Office, Route 3, Box 1, Burley, Idaho, 83318; phone (208) 678-5514.

**SUPPLEMENTARY INFORMATION:** The Idaho Power Company plans to construct and operate a 500kV transmission line from its existing Midpoint substation near Shoshone, Idaho, south approximately 400 miles to a point in the vicinity of the Intermountain Power Plant near Delta, Utah. The proposed project would interconnect with facilities jointly developed and owned by Los Angeles Department of Water and Power, Nevada Power, Utah Power and Light, the Utah Associated Municipal Power System and Deseret G&T.

The additional transmission capacity provided by the project would enable Northwest Utilities to market non-firm hydroelectric power in excess of regional needs to markets not presently accessible over existing transmission lines. The project would also allow Northwest utilities to receive energy from the Southwest during periods of high demand such as severe climatic conditions, or in periods of drought, where hydro generation is reduced or interrupted. The project would also enhance the reliability of the interconnected transmission in the Western United States.

Construction is proposed to start in 1991 and end in 1993. The desired in-service date is 1994.

The Bureau of Land Management's scoping process for the EIS/PA will include: (1) Identification of significant issues; (2) identifications of sensitive or critical environmental impacts; (3) identification of reasonable alternative transmission line routes; and (4) notifying groups, individuals and agencies so that additional information concerning these issues and concerns can be obtained.

Should a proposed powerline route lay outside any existing BLM right-of-way (R/W) corridor or a designated R/W corridor, the following land use plans may be amended:

Idaho: Monument Resource Management Plan (RMP), Twin Falls Management Framework Plan (MFP).
Nevada: Wells RMP, Egan RMP, Shell RMP, Humbolt National Forest Plan.
Utah: Box Elder RMP, Warm Springs RMP, House Range RMP.

Issues that have been identified to date include, but are not limited to:

—Utilizing transmission line routes that may lay outside of BLM designated or existing corridors.
—Capacity of existing or designated corridors to handle additional power lines or other utilities.
—Powerline locations that may conflict with military aircraft uses.
—Visual impacts of transmission lines for highly sensitive visual resource management areas.
—Impacts to cultural resources lying within utility corridors.

**Martin J. Zimmer,**

*Acting State Director, Idaho.*

[FR Doc. 89-4042 Filed 3-2-89; 8:45 am]

BILLING CODE 4310-GG-M



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[UT-020-09-4333-08]

## Salt Lake District; Intent To Prepare Off-Highway Vehicle Plan and Conduct Scoping Meetings; Pony Express Resource Management Area

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of intent to prepare off-highway vehicle plan and conduct scoping meetings.

**SUMMARY:** The Bureau of Land Management (BLM) intends to prepare a plan to address Off-Highway Vehicle (OHV) use on 2,032,899 acres of public lands in the Pony Express Resource Management Area (Salt Lake, Tooele and Utah counties). The plan will analyze the need for a revision of current OHV designations, and once enacted, would constitute a formal redesignation of lands as either "open", "limited", or "closed" to OHV use.

The purpose of these designations is to provide for the management and protection of public land resources, persons and property using the public lands, and to minimize conflicts among the various uses of those lands. Resource considerations such as wildlife, threatened and endangered species, wildlife habitat, minerals, cultural resources, soils, watershed, forestry, range, visual resources, recreation, and others will be examined by an interdisciplinary team of BLM specialists who will prepare an environmental assessment of the OHV plan.

The Salt Lake District will conduct four public scoping meetings to receive input to be used in the preparation of the plan: March 21—State Line Hotel and Convention Center (Cobb Room), Wendover, Nevada; March 22—Department of Natural Resources auditorium, 1636 West North Temple, Salt Lake City, Utah; March 28—Payson City Council Chambers, 439 West Utah Ave., Payson, Utah; March 30—Tooele Junior High School cafeteria, 411 West Vine Street, Tooele, Utah. All four public meetings will begin at 7 p.m. Written comments should be sent to the Salt Lake District Office and received by April 14 for consideration during the preparation of the draft OHV plan. Detailed maps of the planning area are available for inspection and review at the district office.

**FOR FURTHER INFORMATION CONTACT:** Gregg Morgan, Pony Express Resource Area Outdoor Recreation Planner, BLM, 2370 South 2300 West, Salt Lake City, Utah 84119; (801) 524-5348.

**SUPPLEMENTARY INFORMATION:** General areas to be studied include the northern Deep Creek Mountains, Bonneville Salt Flats, Knolls, Puddle Valley, Cedar Mountains, Skull Valley, north Stansbury Mountains, Stansbury Island, Silver Island Mountains, Onaqui Mountains Rush Valley, Tintic Mountains, Simpson Mountains West Mountain and others.

When completed areas will be redesignated into one of three different categories:

"Open areas" where all types of vehicle use is permitted at all times, anywhere in the area, subject to applicable regulations and vehicle standards.

"Limited areas" where OHV use is restricted to meet specific resource management objectives. Examples of limitations include: numbers or types of vehicles; time or season of use; permitted or licensed use only; use on existing roads and trails; use on designated roads and trails; or other restrictions.

"Closed areas" are areas where off-road vehicles use is prohibited. Use of off-road vehicles in closed areas may be allowed for certain reasons; however, such use shall be made only with the approval of the authorized officer.

**James M. Parker,**

*Utah State Director.*

[FR Doc. 89-4041 Filed 3-2-89; 8:45 am]

BILLING CODE 4310-DQ-M

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[NM-010-09-4320-12/GP9-0111]

## Albuquerque, NM; District Grazing Advisory Board Meeting

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Albuquerque District Advisory Board Meeting.

**SUMMARY:** The BLM's Albuquerque District Grazing Advisory Board will meet on Thursday, April 13, 1989, at 10:00 a.m., in the BLM District Office located at 435 Montano NE., in Albuquerque, New Mexico.

The agenda for the meeting will include:

1. Introduction and opening remarks.
2. Election of a Chairman and Vice Chairman.
3. Range improvements progress report for FY 89 (8100 funds).
4. Range Improvement proposals for review and ranking for FY 90.
5. Status of grazing in the El Malpais National Monument and Conservation Area.
6. Progress on Range Improvement Maintenance Plans.

The meeting is open to the public. Anyone interested in attending this meeting to make a presentation must notify the District Manager by April 10, 1989. Written statements may also be filed for the Board's consideration.

Summary minutes of the meeting will be on file in the Albuquerque District Office and available for public inspection during business hours within 30 days of the meeting.

For further information contact: Gary Wood, District Range Conservationist, BLM, 435 Montano NE., Albuquerque, New Mexico 87107.

**Robert T. Dale,**

*District Manager.*

[FR Doc. 89-4947 Filed 3-2-89; 8:45 am]

BILLING CODE 4310-FB-M

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[NM-010-09-4111-16; NM-010-GP9-0108]

## Albuquerque District, NM; Oil and Gas Management, Delegation of Authority

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Change of Delegation of Authority for Oil and Gas Operations in Albuquerque District.

**SUMMARY:** The reservoir management function of Albuquerque District is being transferred from Albuquerque to Farmington, New Mexico. Included in the reservoir management function

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transfer are the unit agreement, drainage and diligence functions. This function transfer applies to the entire Albuquerque District which includes Farmington, Rio Puerco and Taos Resource Areas. However, the office location of functions relating to applications for permit to drill, sundry well notices and reports remains at the individual Resource Area Offices. Also, the Albuquerque Office remains responsible for Natural Gas Policy Act determinations and communitization agreements for Rio Puerco and Taos Resource Areas. Communitization agreements for Farmington Resource Area will be processed at Farmington.

All lessees, operators and other parties are advised to direct all correspondence relating to the above identified reservoir management functions for Albuquerque District and communitization agreements in Farmington Resource Area, subsequent to the effective date, to the Farmington Resource Area at the following address or phone number: Bureau of Land Management, Farmington Resource Area, 1235 La Plata Highway, Farmington, New Mexico 87401. Telephone (505) 327-5340.

**EFFECTIVE DATE:** April 17, 1989.

**FOR FURTHER INFORMATION CONTACT:** Sid Vogelpohl, Albuquerque District, 435 Montano NE., Albuquerque, New Mexico 87107, (Telephone Number 505-761-4503).

**Patricia E. McLean,**

*Associate District Manager.*

[FR Doc. 89-4946 Filed 3-3-89; 8:45 am]

BILLING CODE 4310-FB-M

## INTERSTATE COMMERCE COMMISSION

### Intent To Engage In Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524 (b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524 (b).

A1. Parent corporation and address of principal office: Elswood Investment Corporation, P.O. Box 49100, Four Bentall Centre, Vancouver, BC, Canada V7X 1H3.

2. Wholly-owned subsidiaries which will participate in the operations, and State(s) of incorporation:

(i) General Hardwood Company, d/b/a Hardwoods, Inc., incorporated in the State of Washington;

(ii) Hardwoods, Inc., Alaska, incorporated in the State of Alaska;

(iii) Hardwoods, Inc., California, incorporated in the State of California;

(iv) Hardwoods, Inc., Colorado, incorporated in the State of Colorado;

(v) Hardwoods, Inc., Utah, incorporated in the State of Utah;

(vi) Sauder Exterior Building Products Inc., incorporated in the State of Washington;

(vii) Siteline Exterior Corporation, incorporated in the State of Washington;

(viii) American Maywood Corporation, incorporated in the State of Washington;

(ix) Seattle Gypsum, Inc., incorporated in the State of Washington;

(x) Seacom Investment Corp., incorporated in the State of Washington;

(xi) Wellington Investment Corporation, incorporated in the State of Washington;

(xii) Takahashi Industries Limited, incorporated in the Province of British Columbia, Canada;

(xiii) Sauder Industries Limited, incorporated in the Province of British Columbia.

B1. Parent corporation and address of principal office: Glasstream Boats, Inc., Hwy 129S, P.O. Box 943, Nashville, Georgia 31639.

2. Wholly-owned subsidiaries which will participate in the operations, and State(s) of incorporation:

(i) Starline Boats, Inc. Incorporated—State of Georgia

(ii) Century Boat Company, a division of Glasstream Boats, Inc., Incorporated—State of Georgia

(iii) Arrowglass Boat Company, a division of Glasstream Boats, Inc. Incorporated—State of Georgia

C1. Parent corporation and address of principal office: Maytag Corporation, 403 W. 4th St. N., Newton, IA 50208.

2. Wholly-owned subsidiaries which will participate in the operations, and states of incorporation:

(i) Ardac, Inc.—Ohio.

(ii) Dixie-Narco, Inc.—West Virginia.

(iii) Holland Distributors, Inc.—Delaware.

(iv) Hoover Company—Delaware.

**Noreta R. McGee,**

*Secretary.*

[FR Doc. 89-4970 Filed 3-2-89; 8:45 am]

BILLING CODE 7035-01-M

## DEPARTMENT OF JUSTICE

### Lodging of Consent Decree Pursuant to the Clean Air Act; Moore Development Co., Inc.

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on February 21, 1989, a proposed consent decree in *United States of America* v. *Moore Development Company, Inc.* No. 86-C-80, was lodged with the United States District Court for the District of Colorado.

The proposed consent decree resolves a judicial enforcement action brought by the United States, on behalf of the Environmental Protection Agency ("EPA"), against defendants Moore Development Company, Inc., F.E. Murphy Construction Company, Inc., Wayne Gomez Demolition and Excavation, Inc., and Asbesco, Inc., for violations of the Clean Air Act. The complaint filed by the United States alleged that defendants violated the National Emission Standard for Hazardous Air Pollutants ("NESHAP") for asbestos, promulgated pursuant to section 112 of the Act, in connection with the demolition of a facility in Lakewood, Colorado.

The proposed consent decree enjoins defendants (except Asbesco, Inc., which has been dismissed from the case) from violating the asbestos NESHAP in the future and provides that any such violation occurring during the one-year life of the decree will result in the imposition of a stipulated penalty of $25,000 in addition to any other penalties available under applicable federal law. The proposed consent decree also requires defendants to pay a total civil penalty of $12,000 to the United States Treasury.

The Department of Justice will receive for a period of thrity (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Box 7611 Ben Franklin Station, Washington, DC 20044, and should refer to *United States of America* v. *Moore Development Company, Inc.*, D.O.J. Ref. 90-5-2-1-879.

The proposed consent decree may be examined at the Office of the United States Attorney, District of Colorado, 1200 Federal Office Building, Drawer 3615, 1961 Stout Street, Denver, Colorado 80294, and at the Region VIII office of the Environmental Protection Agency, Office of Regional Counsel, Attention: Thomas A. Speicher, 999 18th Street, Suite 500, Denver, Colorado 80202. A copy of the proposed consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, U.S. Department of Justice, Room 1521, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land & Natural Resources Division, Department of Justice.

**Donald A. Carr,**

*Acting Assistant Attorney General, Land and Natural Resources Division, U.S. Department of Justice.*

[FR Doc. 89-5043 Filed 3-2-89; 8:45 am]

BILLING CODE 4410-01-M



## DEPARTMENT OF LABOR

### Office of the Assistant Secretary for Veterans' Employment and Training

### Solicitation for Grant Application: Job Training Partnership Act, Title IV, Part C, Program Year 1989

**AGENCY:** Office of the Assistant Secretary for Veterans' Employment and Training, Labor.

**ACTION:** Notice.

**SUMMARY:** On January 6, 1989 an early announcement was made in the **Federal Register** (54 FR 497) that a Solicitation For Grant Application (SGA) for JTPA Title IV, Part C (JTPA IVC) funds for Program Year 1989 would be made available on or about February 3, 1989. Additionally, this announcement enumerated many of the changes being made in the JTPA IVC program by the forthcoming SGA.

**DATE:** An application package and instructions for completion will not be made available for issuance on or about March 3, 1989. The closing date for receipt of a completed application in response to the SGA, or a letter of intent to make a subsequent application, will be no later than 4:30 pm, May 1, 1989.

**ADDRESS:** A copy of the application package and instructions will be mailed to all State entities which presently administer JTPA Title IVC grants and to the Employment Security Agency of each State.

Signed at Washington, DC, this 28th day February 1989.

**Donald E. Shasteen,**

*Assistant Secretary for Veterans' Employment and Training.*

[FR Doc. 89-5024 Filed 3-2-89; 8:45 am]

BILLING CODE 4510-79-M

### Employment and Training Administration

**[TA-W-21,391]**

### A.K. Guthrie Drilling, Big Spring, TX; Affirmative Determination Regarding Application for Reconsideration

By applications dated January 13, 14, and 27, 1989 the petitioners and a former company official requested administrative reconsideration of the Departmentof Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance on behalf of former workers of A.K. Guthrie Drilling, Big Spring, Texas. The negative determination will soon be published in the **Federal Register.**

The petitioners claim, among other things, that they should be covered under the retroactive provisions of the 1988 amendments to the Trade Act since they were employed by an independent firm providing services to the oil and gas industry. Also, a former company official claims that A.K. Guthrie Drilling is an appropriate subdivision (Drilling Department) of the family trust which produces the oil and should be certified. It is also claimed that the workers filed under the wrong name—they should have filed their petition under Guthrie Oil and Gas Properties.

**Conclusion**

After careful review of the application, I conclude that the claims are of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 3rd day of February, 1989.

**Barbara Ann Farmer,**

*Director, Office of Program Management, UIS.*

[FR Doc. 89-5026 Filed 3-2-89; 8:45 am]

BILLING CODE 4510-30-M

**[TA-W-21,702]**

### Charles E. Hynek, Inc.; Dallas, TX; Negative Determination Regarding Application for Reconsideration

By an application dated January 22, 1989, the company requested administraive reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on January 12, 1989 and will be published in the **Federal Register** soon.

Pusuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) It it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a mistake interpretation of facts or of the law justified reconsideration of the decision.

The company states that it composes and provides crude oil and natural gas prospects to attract potential investors for unaffiliated firms in the oil and gas industry. The company claims that oil and gas prospects are a visible and tangible product.

The Department of Labor has consistently determined that the performance of services does not constitute the production of an article as required by section 222 of of the Trade Act of 1974. The 1988 amendments to the Trade Act, in the Omnibus Trade and Competitiveness Act, extended coverage to workers in indpendent firms in the oil and gas industry engaged in exploration or drilling. The amended Act provides that independent firms engaged in exploration or drilling shall be considered to be producing oil and natural gas. Services involving the development of oil and gas prospects are not directly related to exploration or drilling, as provided for in section 222 (b)(2)(A) of the Act, and therefore are not covered under Act.

Further, in its initial determination, the Department addressed at length the manner in which workers of firms providing services could be certified for adjustment assistance. Those conditions have not been met.

**Conclusion**

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 22nd day of February 1989.

**Robert O. Deslongchamps,**

*Director, Office of Legislation and Actuarial Services, UIS.*

[FR Doc. 89-5027 Filed 3-2-89; 8:45 am]

BILLING CODE 4510-30-M

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[TA-W-22,318]

**Fitkin Petroleum Corp.; Oklahoma City, OK: Termination of Investigation**

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on November 18, 1988 in response to a worker petition received on November 18, 1988 and filed on behalf of workers at Fitkin Petroleum Corporation, Oklahoma City, Oklahoma.

Fitkin Petroleum Corporation is a firm consisting of a single employee. Section 222 of the Trade Act specifies the group eligibility requirements for trade adjustment assistance benefits; the definition of "group," according to § 90.1 of the Rules and Regulations for administering the Trade Act, is three or more workers in a firm or an appropriate subdivision thereof. Since Fitkin Petroleum Corporation did not employ three workers, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 15th day of February 1989.

**Marvin M. Fooks,**

*Director, Office of Trade Adjustment Assistance.*

[FR Doc. 89-5032 Filed 3-2-89; 8:45 am]

BILLING CODE 4510-30-M

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[TA-W-21,347A PLANT #15; TA-W-21,347B PLANT #52; TA-W-21,347C PLANT #56; TA-W-21,347D PLANT #21; TA-W-21,347E PLANT #23; TA-W-21,347F PLANT #16; TA-W-21,347G PLANT #28; TA-W-21,347H PLANT #3626]

**General Motors Corp. Pontiac Motor Division Pontiac, MI; Affirmative Determination Regarding Application for Reconsideration**

By an application dated January 19, 1989 the United Auto Workers and the company requested administrative reconsideration of the Department of Labor's Notice of Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance on behalf of workers and former workers of General Motors Corporation's Pontiac Motor Division, Pontiac, Michigan. The notice will be published in the **Federal Register** soon.

The union claims that integrated production occurred between Pontiac Motor Division Plants whose workers are under a certification and 18 other plants in Pontiac. The company states that the Pontiac complex is made up of numerous manufacturing and support service operations at plants in Pontiac, Michigan.

**Conclusion**

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 22nd day of February 1989.

**Robert O. Deslongchamps,**

*Director, Office of Legislation and Actuarial Services, UIS.*

[FR Doc. 89-5025 Filed 3-2-89; 8:45 am]

BILLING CODE 4510-30-M

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[TA-W-22,151]

**Holmes & Narver Services, Inc., Prudhoe Bay, AK; Termination of Investigation**

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on November 18, 1988 in response to a petition which was filed by Teamsters Local 959 on behalf of workers and former workers at Holmes & Narver Services, Incorporated, Prudhoe Bay, Alaska.

A negative determination applicable to the petitioning group of workers was issued on January 24, 1989 (TA-W-21,865). No new information is evident which would result in a reversal of the Department's previous determination. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC this 15th day of February 1989.

**Marvin M. Fooks,**

*Director, Office of Trade Adjustment Assistance.*

[FR Doc. 89-5031 Filed 3-2-89; 8:45 am]

BILLING CODE 4510-30-M

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[TA-W-21, 739]

**Myers Drilling Co., Midland, TX; Termination of Investigation**

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on November 18, 1988 in response to a worker petition which was filed on behalf of workers at Myers Drilling Company, Midland, Texas.

An active certification covering the petitioning group of workers remains in effect (TA-W-21, 739). Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC this 6th day of February 1989.

**Marvin M. Fooks,**

*Director, Office of Trade Adjustment Assistance.*

[FR Doc. 89-5029 Filed 3-2-89; 8:45 am]

BILLING CODE 4510-30-M

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[TA-W-22, 166]

**Northland Maintenance Co., Prudhoe Bay, AK; Termination of Investigation**

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on November 18, 1988 in response to a petition which was filed by Teamsters Local 959 on behalf of workers and former workers at Holmes & Narver Services, Incorporated, Prudhoe Bay, Alaska.

A negative determination applicable to the petitioning group of workers was issued on January 31, 1989 (TA-W-21,916), No new information is evident which would result in a reversal of the Department's previous determination. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC, this 15th day of February 1989.

**Marvin M. Fooks,**

*Director, Office of Trade Adjustment Assistance.*

[FR Doc. 89-5030 Filed 3-2-89; 8:45 am]

BILLING CODE 4510-30-M

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[TA-W-21.125 Harahan, LA; TA-W-21.125A Houston, TX]

**Offshore Navigation, Inc.; Negative Determination Regarding Application for Reconsideration**

By an application dated January 10, 1989, a company official requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on November 25, 1988 and will be published in the **Federal Register** soon.

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or



(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The company official claims that its services are an inseparable component of a joint marine petroleum exploration effort for crude oil. In its search for oil in the Gulf of Mexico, ONI would direct research vessels via a radiopositioning system to predetermined interest points where geophysical data would be obtained.

Investigation findings show that geophysical companies hire ONI to direct seismic vessels in the Gulf to locations here seismic readings are taken. In addition, if the oil company decides to drill for oil in the Gulf, ONI will direct the vessels to the drilling site.

The Department's denial was based on the fact that section 1421 (a)(1)(B) of the Omnibus Trade and Competitiveness Act of 1988 does not apply to workers of the subject firm, since the preponderance of activities performed by workers of ONI consist of navigational services and not drilling or exploration.

Further, investigation findings show that off-shore producers of crude oil contract with geophysical companies to provide seismic data who in turn hire firms like ONI to provide navigational services. Independent firms providing navigational services to other firms providing services to oil producers would only be indirectly related to the exploration and drilling of crude oil. Accordingly, the causal nexus for which a basis for certification could be established is not present.

Further, in its initial denial, the Department addressed at length the only way service workers, outside the oil and gas industry, could be certified for worker adjustment assistance. Those conditions have not been met.

**Conclusion**

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 22nd day of February 1989.

**Robert O. Deslongchamps,**

*Director, Office of Legislation and Actuarial Services, UIS.*

[FR Doc. 89-5028 Filed 3-2-89; 8:45 am]

BILLING CODE 4510-30-M

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[TA-W-22, 940]

**Range Oil Co., Inc. Wichita, KS; Termination of Investigation**

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated in response to a worker petition received on November 18, 1988 and filed on behalf of workers at Range Oil Company, Incorporated, Wichita, Kansas.

The subject petition was not signed by employees of Range Oil Company nor by an authorized representative of Range Oil Company. The three workers signing the petition were employed by Range Drilling Company, Incorporated; an investigation is currently ongoing for Range Drilling Company (TA-W-21,940). Consequently, further investigation of Range Oil Company would serve no purpose, and this investigation has been terminated.

Signed at Washington, DC, this 15th day of February, 1989.

**Marvin M. Fooks,**

*Director, Office of Trade Adjustment Assistance.*

[FR Doc. 89-5033 Filed 3-2-89; 8:45 am]

BILLING CODE 4510-30-M

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[TA-W-22,072]

**Stellum Oilfield Supply, Inc., Olney, IL; Termination of Investigation**

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated in response to a worker petition received on November 18, 1988 and filed on behalf of workers at Stellum Oilfield Supply, Incorporated, Olney, Illinois.

The subject petition was not signed by employees of Stellum Oilfield Supply, Incorporated nor by an authorized representative of Stellum Oilfield Supply, Incorporated. The three workers signing the petition were employed by Trident Drilling Completion and Service, Incorporated. Workers at Trident Drilling Completion and Service, Incorporated are currently certified as eligible to apply for trade adjustment assistance benefits (TA-W-22,086). Consequently, further investigation of Stellum Oilfield Supply, Incorporated would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 17th day of February 1989.

**Marvin M. Fooks,**

*Director, Office of Trade Adjustment Assistance.*

[FR Doc. 89-5034 Filed 3-2-89; 8:45 am]

BILLING CODE 4510-30-M

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[TA-W-21,328; Clodine, Texas TA-W-21,328A; Williston, ND]

**Buford Drilling Co.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance**

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 16, 1988 applicable to all workers of Buford Drilling Company in Clodine, Texas.

Based on new information from the company, additional workers were separated from Buford Drilling Company, in Williston, North Dakota during the period applicable to the petition. The notice, therefore is amended by including the Williston, North Dakota location.

The amended notice applicable to TA-W-21,328 is hereby issued as follows:

"All workers of Buford Drilling Company in Clodine, Texas and Williston, North Dakota who became totally or partially separated from employment on or after October 1, 1985 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC., this February 22, 1989.

**Stephen A. Wandner,**

*Deputy Director, Office of Legislation and Actuarial Services, UIS.*

[FR Doc. 89-5037 Filed 3-2-89; 8:45 am]

BILLING CODE 4510-30-M

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**Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance**

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period December 1988 and January 1989.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

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(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

**Negative Determinations**

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

*TA-W-21,123; Neumin Production Co., Point Comfort, TX*
*TA-W-21,071; Compo Chemical Co., Mansfield, MA*
*TA-W-21,108; House Gloss Corp., Point Maron, PA*
*TA-W-21,047; Acco Babcock, Inc., Warren, MI*
*TA-W-21,211; Ontario Forge Corp., Muncie, IN*
*TA-W-21,156; Airlanta Co., Gloucester City, NJ*
*TA-W-21,227; Sigri Carbon Corp., Hickman, KY*
*TA-W-21,241; Transamerican Natural Gas Corp., Laredo, TX*
*TA-W-21,263; Dyne Oil and Gas, Inc., Borger, TX*
*TA-W-21,344; General Motors Corp., New Departure Hyatt, Bristol, CT*
*TA-W-21,183; Garden State Knitting Mills, Linden, NJ*
*TA-W-21,036; Town & Country Shoes, Inc., Sedalia, MO*
*TA-W-21,403; Century Data, Inc., Anaheim, CA*
*TA-W-21,896; Coleco Industries, Inc., Mayfield, NY*
*TA-W-21,474; Roth American Co., Wilkes Barre, PA*
*TA-W-21,462; Newmont Oil Co., Houston, TX*
*TA-W-21,435; Hughes Texas Petroleum, Beeville, TX*
*TA-W-21,348; General Motors Corp., Hydramatic Div., Willow Run Plant, Ypsilanti, MI*
*TA-W-21,240; Texas Pipe and Coupling, Hughes Springs TX*
*TA-W-21,318; Uber Glove Co., Inc., Owatonna, MN*
*TA-W-21,224; Sarita Energy, Austin, TX*
*TA-W-21,349; General Hose Products, Inc., Fairfield, NJ*
*TA-W-21,420; Fiberglass Systems, Inc., Big Spring, TX*
*TA-W-21,457; Minard Run Oil Co., Bradford, PA*
*TA-W-21,548; Artel Chemical Corp., Nitro, WV*
*TA-W-21,586; Stone Safety Corp., Wallingford, CT*
*TA-W-21,933; Quanico Oil and Gas, Inc., El Dorado, AZ*
*TA-W-21,567; Hrubetz Operating Co., Forsan, TX*
*TA-W-21,572; Lafarge Corp., Dallas, TX*
*TA-W-21,591; Vanguard Oil Co., Inc., Mt Carmel, IL*
*TA-W-21,498; Ware-Knitters, Inc., Calais, ME*
*TA-W-21,335; Denton Mills, Inc., Centreville, MI*
*TA-W-21,736; May Energy, Inc., Oil City, PA*
*TA-W-21,610; Crystal Oil Co., Shreveport, LA*
*TA-W-21,461; Navarro Waterflood Co., Corsicana, TX*
*TA-W-21,479; Stroube Oil Co., Coricana, TX*
*TA-W-21,598; Aqua Chem, Inc., Milwaukee, WI*
*TA-W-21,668; Struthers Dunn, Pitman, NJ*
*TA-W-21,880; J. David Reynolds Co., Camden, AR*
*TA-W-21,761; Sherman Drilling, Mineral City, OH*
*TA-W-21,155; J.C. Langley Oil Co. Smackover, AR*
*TA-W-21,740; The Narrotex Corp., Passaic, NJ*
*TA-W-21,746; Petro-Tech, Inc., Seneca, PA*
*TA-W-21,568; Joy Technologies, Inc., Wheeling Fittings Div., Cambridge, OH*
*TA-W-21,569; Joy Technologies Wheeling Fittings Div., Woodlake, CA*
*TA-W-21,480; Sturgis Newport, Business Forms, Sturgis, MI*
*TA-W-21,185; Gibson Associates, Inc., Cranford, NJ*
*TA-W-21,805; Challenger Circle F, Trenton, NJ*
*TA-W-21,863; SIA America, Inc., Alliance, OH*
*TA-W-21,339; Ethly Corp., Oil and Gas Div., Baton Rouge, LA*

In the following cases, the investigation revealed that criterion (3) has not been met for the reasons specified.

*TA-W-21,120; Milprint, Inc., Milwaukee, WI*

U.S. imports of sanitary food containers are negligible.

*TA-W-21,154; Abex, Mahwah, NJ*

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

*TA-W-21,158; BHP Engineering, Inc., Corpus Christi, TX*

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

*TA-W-21,242; Transwestern Mining Co., Claremore, OK*

Increased imports did not contribute importantly to workers separations at the firm.

*TA-W-21,194; Hinkle Oil Co., Wichita, KS*

Increased imports did not contribute importantly to workers separations at the firm.

*TA-W-21,164; Celeron Oil and Gas Englewood, CO*

Increased imports did not contribute importantly to workers separations at the firm.

*TA-W-21,173; Diamond Tool and Horseshoe Co., Duluth, MN*

Increased imports did not contribute importantly to workers separations at the firm.

*TA-W-21,044; Woods Petroleum Corp., Denver, CO*

Workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

*TA-W-21,074; Cooper Industries, Marshall, TX*

U.S. imports of oilfield machinery are negligible.

*TA-W-21,204; Merritt Trucking Co., Tye, TX*

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

*TA-W-21,351; Gruss Petroleum Management, Midland, TX*

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

*TA-W-21,048; Alliance Machine Co., Alliance, OH*

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

*TA-W-21,163; Caren Lynn, New York, NY*

Investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

*TA-W-21,171; Courtland Manufacturing, New York, NY*

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

*TA-W-21,197; J & C Manufacturing, New York, NY*

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

*TA-W-21,202; Manhattan Plaza, New York, NY*

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

*TA-W-21,570; KRW Energy Systems, Inc., Madison, PA*

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

*TA-W-21,730; Kirwood Oil and Gas, Casper, WY*

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

*TA-W-21,245; United Technologies Automotive, Inc., Dearborn, MI*

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

*TA-W-22,156; Jennings Hellms Trucking, Inc., Indiana, PA*

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

*TA-W-22,001; Wintershall Oil and Gas Corp., Englewood, CO*

Increased imports did not contribute importantly to workers separations at the firm.

*TA-W-21,843; Magnum Marine Limited II, Conroe, TX*

Increased imports did not contribute importantly to workers separations at the firm.

*TA-W-21,397; Arco Oil and Gas Co., Houston, TX*

Increased imports did not contribute importantly to workers separations at the firm.

*TA-W-21,604; Coronado Transmission Co/Energy Gathering, Inc., Houston, TX*

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

*TA-W-22,159; Lamb Enterprises, Lone Star, TX*

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

*TA-W-22,107; Armco, Inc., Gainesville, TX*

U.S. imports of oilfield machinery are negligible.

*TA-W-22,232; Homco International, Williston, ND and Dickinson, ND*

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

*TA-W-22,135; Exxon Production Research Co., Houston, TX*

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

*TA-W-22,214; Conoco, Inc., Production Engineering and Research, Denver, CO*

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

*TA-W-21,431; Harold Krueger Co., Natoma, KS*

Increased imports did not contribute importantly to workers separations at the firm.

*TA-W-21,524; Manley Performance Products, Bloomfield, NJ*

Increased imports did not contribute importantly to workers separations at the firm.

*TA-W-21,410; Dranetz Technologies, Inc., Edison, NJ*

Increased imports did not contribute importantly to workers separations at the firm.

*TA-W-21,639; Lone Star Steel Co., Lone Star, TX*

The investigation revealed that criterion (2) has not been met. Sales of production did not decline during the relevant period as required for certification.

*TA-W-21,125; Offshore Navigation, Inc., Harahan, LA*

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

*TA-W-20,979; Offshore Exploration & Production, Houston, TX*

Increased imports did not contribute importantly to workers separations at the firm.

*TA-W-21,049; Amerada Hess Corp., Southeast Production Region, Lafayette, LA*

Increased imports did not contribute importantly to workers separations at the firm.

*TA-W-21,050; Amerada Hess Corp., Gulf Coast Exploration, Lafayette, LA*

Increased imports did not contribute importantly to workers separations at the firm.

*TA-W-21,253; Amerada Hess Corp., Northern Production Region, Williston, ND*

Increased imports did not contribute importantly to workers separations at the firm.

*TA-W-21,321; Amerada Hess Corp., Onshore Exploration, Houston, TX*

The investigation revealed that criterion (2) has not been met. Sales of production did not decline during the relevant period as required for certification.

*TA-W-21,322; Amerada Hess Corp., Onshore Exploration Administration, Houston, TX*

The investigation revealed that criterion (2) has not been met. Sales of production did not decline during the relevant period as required for certification.

*TA-W-21,418; Exeter Drilling Co., Midland, TX*

Increased imports did not contribute importantly to workers separations at the firm.

I hereby certify that the aforementioned determinations were issued during the months of December 1988 and January 1989. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213 during normal business hours or will be mailed to persons who write to the above address.

**Marvin M. Fooks,**
*Director, Office of Trade Adjustment Assistance.*

Dated: February 17, 1989.

[FR Doc. 89-5035 Filed 3-2-89; 8:45 am]

BILLING CODE 4510-30-M

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**[TA-W-21,592]**

**W.E. Myers Drilling Co., Midland, TX; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance**

In accordance with Section 223 of the Trade Act of 1974, the Department of Labor issued a Certification of Eligibility to Apply for Workers Adjustment Assistance on January 4, 1989. The

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Certification will be published in the Federal Register soon.

The company provided new information to the Department which shows that Myers Drilling Company of Midland, Texas purchased the subject company on July 1, 1986. Myers Drilling Company meets the requirements for a successor-in-interest firm. Investigation findings show that additional worker separations occurred at the successor-in-interest firm.

Accordingly, the termination date of September 1, 1986 in the subject certification is deleted so as to include worker separations of Myers Drilling Company, Midland, Texas, the successor-in-interest firm.

The amended notice applicable to TA-W-21,592 is hereby issued as follows:

"All workers of W. E. Myers Drilling Company, Midland, Texas who became totally or partially separated from employment on or after October 1, 1985 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974."

Signed at Washington, DC., this 6th day of February 1989.

**Barbara Ann Farmer,**

*Director, Office of Program Management, UIS*

[FR Doc. 89-5036 Filed 3-2-89; 8:45 am]

BILLING CODE 4510-30-M

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[SGA-DAA-89-101]

## Senior Community Service Employment Program; Solicitation for Grant Applications From American Indian and Pacific Island/Asian American National Aging Organizations

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Notice; solicitation for grant applications.

**SUMMARY:** The Employment and Training Administration announces a Solicitation for Grant Applications from public or nonprofit national Indian aging organizations and from public or nonprofit national Pacific Island/Asian American aging organizations to provide employment services on a nationwide basis to older Indians and older Pacific Island/Asian Americans who have low incomes and are 55 years of age or older. Grant awards will be part of the Senior Community Service Employment Program, and operations will begin on July 1, 1989.

**DATES:** No exceptions to the mailing and hand-delivery conditions set forth in this Notice will be granted. *Applications not meeting the conditions set forth in this Notice will not be accepted.* To receive consideration, applications must be submitted at the address, dates and times listed below:

*Applications Mailed:* Applications submitted by mail must be certified or registered mail, return receipt requested, and must be postmarked no later than April 17, 1989. The term "postmark" means a printed, stamped or otherwise placed impression (exclusive of postage meter machine impression) that is readily identifiable without further action as having been supplied or affixed on the date of mailing by employees of the U.S. Postal Service.

*Applications Hand-Delivered:* Applications will be accepted daily between the hours of 8:15 A.M. and 4:45 P.M., Eastern Standard Time, but no later than 4:45 P.M., Eastern Standard Time on the working day after the closing date, i.e., April 18, 1989.

**ADDRESS:** Mail or hand-deliver three (3) copies of the complete application to: James C. DeLuca, Grant Officer, Division of Acquisition and Assistance, Office of Financial and Administrative Management, Employment and Training Administration, U.S. Department of Labor, Room C-4305, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Ms. Doris W. Smith. Reference: SGA-DAA-89-101.

**FOR FURTHER INFORMATION CONTACT:** Ms. Doris W. Smith, Division of Acquisition and Assistance, Telephone: (202) 535-8702.

**SUPPLEMENTARY INFORMATION:** The Older American Community Service Employment Program Act, Title V of the Older Americans Act of 1965, as amended, establishes a program of community service employment and other services for older Americans, 42 U.S.C. 3056 *et seq.* The program, the Senior Community Service Employment Program (SCSEP), is operated through grants made by the Employment and Training Administration (ETA) of the Department of Labor (DOL). The Older Americans Act Amendments of 1987 amended Section 506(a)(1)(A) of the Older Americans Act of 1965 to require the DOL to fund national aging organizations representing Indians and Pacific Island/Asian Americans. Efforts will be made to fund two organizations, one for each of the two groups, to begin operations in Program Year (PY) 1989 (July 1, 1989—June 30, 1990). This Notice makes known the laws, guidelines, specifications and schedules which define the eligibility and other requirements with which national Indian and Pacific Island/Asian American aging organizations must comply for the preparation and submission of a funding application to the DOL.

This Notice consists of: Part I—Introduction, Part II—Solicitation for Grant Application (SGA) and Part III—Submission of Funding Applications. Part II constitutes an invitation from DOL for public or nonprofit national Indian and Pacific Island/Asian American aging organizations with the demonstrated ability to provide employment services to older Indians and older Pacific Island/Asian Americans to submit applications for the PY 1989 Older Americans Act, Title V SCSEP program.

Part III provides information on the submission of applications and the notification of selection.

### Part I—Introduction

The DOL announces competitive application instructions only for public and nonprofit national Indian and Pacific Island/Asian American aging organizations having the demonstrated ability to provide employment services on a nation-wide basis to older Indians and older Pacific Island/Asian Americans. Efforts will be made to fund two such organizations, one for each group, for PY 1989 (July 1, 1989—June 30, 1990). Applicants selected for funding will be designated as grantees for a one-year period, PY 1989, if applicable statutory, regulatory and guideline requirements are met, an acceptable application in response to the SGA (Part II of this Notice) is submitted, and funds are available.

There are three considerations involved in setting the general parameters for this competitive effort. They are:

(1) *Site Selection.* The DOL considered three factors in identifying the States in which the two new sponsors selected will implement their SCSEP projects:

(a) *The amount of PY 1989 funds allocated to each State which is in excess of the 1988 level.* Section 506(a) of the Older Americans Act, in conjunction with any governing language in each fiscal year's appropriation Act, provides the formula which determines the distribution of SCSEP funds among the States. The formula determines the amount of funds allotted to each State and thereby the number of SCSEP positions available in each State. For this reason, the new projects will be in States which will receive the largest proportionate increase in PY 1989 funds over PY 1988 in order to minimize any adverse effect on the already established projects of the current SCSEP sponsors. For example, funding projects in States with small funding increases would require eliminating already established projects with the attendant enrollee disruption.

(b) *Addressing the statutory equitable distribution requirement.* Section 506(c) of the Older Americans Act requires the equitable distribution of resources among all areas in each State, including the balance between rural and urban areas. This requirement further supports the establishment of the new projects in those States having a larger proportionate increase in PY 1989 funds since new positions can be placed in under-served areas without disrupting existing projects.

(c) *Presence of the Population Groups.* The final site selection consideration was the existence within a State of adequate numbers of the target population to warrant placing a project there.

After weighing all of the above considerations, DOL has determined that the new national Indian aging organization should establish its projects in the States of Texas and Oklahoma. The new national Pacific Island/Asian American organization should establish its projects in the States of California and Oregon. These States were selected because they meet the site selection criteria. The particular State combinations were also based on geographic proximity to provide a greater opportunity for administrative efficiency.

(2) *Funding Level.* The Department has established the PY 1989 funding level for the two new aging organizations at $1 million each. This amount will provide each organization with 193 positions and will allow each to develop their programs in an orderly fashion without the administrative problems associated with establishing larger programs. Another factor considered in determining the funding level was the general incidence of the two new groups in the total eligible population.

*Background*

The SCSEP fosters and promotes useful part-time opportunities in community service activities for persons with low incomes who are fifty-five years old or older. The Employment and Training Administration (ETA) of DOL operates the program by means of grants with eligible organizations, such as governmental entities and eligible public and private nonprofit agencies and organizations. Those entities which are eligible to respond to this SGA are encouraged to study the Act.

*Summary of Eligibility Requirements*

Agencies and organizations eligible to respond to this SGA are those that are:

1. Public or nonprofit national Indian and Pacific Island/Asian American aging organizations, other than political parties, and incorporated as such, and

2. National in scope with the ability to provide employment services to the eligible clientele on a nation-wide basis. National is defined as having, either directly or through local chapters or affiliates, conducted substantial business in at least five different States. While DOL reserves the right to determine what constitutes "substantial business," the meaning of the term does include government-assisted or privately-financed programs conducted for the community welfare. The term does not mean attendance or representation at meetings, conferences, conventions, seminars or the like, and

3. Are able to meet the requirements of sections 502(b) and 506(a) of the Act.

Since the SCSEP is a part-time employment and training program for low income persons who are 55 or older, organizations which have not operated employment and training programs should consider the cost of preparing an application against the low potential for successfully competing under the provisions of this SGA. (See Part II—Solicitation for Grant Applications for the specific rating criteria against which all applications will be rated).

### Part II—Solicitation for Grant Application (SGA)

The DOL is soliciting applications for grants under the provisions of Title V of the Older Americans Act of 1965, as amended, to provide part-time employment services to eligible older individuals. The geographic areas for which the national Indian and Pacific Island/Asian American aging organizations can apply are limited under this SGA. The States and the resources available for those States are:

NATIONAL INDIAN AGING ORGANIZATIONS

| State | Funds | SCSEP positions |
|---|---|---|
| 1. Texas | $804,841 | 154 |
| 2. Oklahoma | 204,261 | 39 |
| Total | 1,009,102 | 193 |

NATIONAL PACIFIC ISLAND/ASIAN AMERICAN AGING ORGANIZATIONS

| State | Funds | SCSEP positions |
|---|---|---|
| 1. California | $867,350 | 166 |
| 2. Oregon | 139,877 | 27 |
| Total | 1,007,227 | 193 |

*Review and Funding of Applications*

Applications will be reviewed and rated by a competitive review panel, using the specific review standards cited in this Part II. Panel results are advisory in nature and are not binding on the Grant Officer. In addition, prior to the final selection of an applicant as a potential grantee, the DOL will conduct a responsibility review of the available records to establish the applicant's ability to administer Federal funds. The review will consider previous debts, evidence of fraud, if any, within the organization, previous audit findings, etc. This review is intended to establish overall responsibility to administer Federal funds and is independent of the competitive process. Applicants failing to meet this responsibility review will not be selected as potential grantees regardless of their standing in the competition.

*Specific Rating Criteria*

The rating criteria and the weights assigned to each are described below:

1. *Prior experience. 0–25 points.* The applicant's prior experience in conducting programs for older workers will be assessed.

Applicants who have demonstrated through prior experience the ability to effectively serve the older workers will be given the highest rating.

To assist the panel, applicants should describe in detail their past organizational experience. Emphasis should be placed on services to the older worker and prior experience with employment and training programs. Names, addresses and telephone numbers of individuals with other agencies who can provide factual information on the offeror's experience must be included.

2. *Administrative Capability.* (Organizational Capability) *0–20 points.* The applicant's apparent ability—based upon an assessment of the organizational structure, the resources of the applicant, and other available information, to undertake a project of the size and difficulty that the SCSEP poses.

3. *Staff Capability. 0–5 points.* The applicant should describe the qualifications of persons who will be employed should their organization be the successful applicant. Applicants are to provide job descriptions and selection criteria for all key professional positions, i.e., project director, program assistant, technical staff.

4. *Cost. 0–10 points.* This criteria will include consideration of the applicant's ability to meet program objectives

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within the proposed geographic and administrative arrangement. It will also include an analysis of the budget information including the statutory 10-percent non-Federal share of the project.

5. *Potential Program Effectiveness. 0–40 points.* The narrative portion of each proposal will be assessed with regard to its consistency with the Act; the completeness and detail with which it has been prepared; the potential effectiveness; the provision of useful part-time employment for older low income persons; and the provision of training in comparison with competing grant applications. In this regard, the panel will consider such things as:

(1) Number and type of subsidized positions
(2) Enrollee wages and benefits
(3) Plans for permanent unsubsidized employment
(4) Proposed administrative structure
(5) Plans and procedures for subgranting and contracting, if any
(6) Coordination and cooperation with existing SCSEP projects within the proposed States
(7) Plans for enrollee recruitment and placement (job matching)
(8) Plans for enrollee training

*Negotiation*

At its discretion, the Department may negotiate cost, program matters and sub-State geographic locations with applicants. However, the government reserves the right to make an award without further discussion of proposals. Therefore, proposals should be submitted on the most favorable terms from both price and technical standpoints that the applicant can propose. The Department reserves the right to reject any and all proposals. Also, applicants are reminded that any proposal received will become part of the official file on the solicitation. Proposals which are accepted for consideration will not routinely be returned to the applicant. However, any unsuccessful applicant wishing to have its proposal returned may so request in writing within 30 dasys after grant award. All excess copies will be destroyed.

*Limitations on Subgrantees and Contracts*

Subgranting or contracting is permitted but: (1) Individual subgrants or contracts shall be confined to a single State, metropolitan, or rural area within a State; (2) National program administration cannot be delegated to another agency; and (3) Subsponsors must meet the requirements of the applicable administrative regulations. In addition, applicants which would use subgrants or contracts must define the standards against which possible subgrantees-contractors will be assessed prior to their selection as subsponsors.

*Areas to be Served*

Although applicants are limited in the States which they may serve, there are no limitations on the areas which they may propose to serve within the selected States. However, before a grant award is made, the DOL, ETA, reserves the right to specify which areas will be served. In preparing its proposal, applicants should identify the criteria which it will use in selecting its proposed project sites.

*Single Point of Contact Clearance Procedures*

Those organizations selected to act as national SCSEP sponsoring organizations will be required to follow Executive Order 12372 which implements the Single Point of Contact (SPOC) clearance procedures. However, those organizations submitting grant applications should not take steps to comply with these requirements until after they have been notified of their selection as a national SCSEP sponsor. In addition, selected sponsors will be required to coordinate with the State and Area Agencies on the Aging.

*Content and Format of the Application*

Exclusive of charts or graphs, letters of support, certifications, and other required papers, the application should not exceed 75 pages of unreduced double-spaced type.

A detailed budget is not required for this application. However, applicants must complete a planning budget, which consists of three cost categories; Administration, Enrollee Wages and Fringe Benefits and Other Enrollee Cost. A final budget will be negotiated later with the successful applicants selected for grant awards.

In preparing their applications and program approach, applicants must be aware of the SESEP's budgetary limits, including Administrative Cost that cannot exceed 13.5 percent, although a waiver up to a 15 percent cap is possible with an appropriate and compelling justification. See Section 502(c)(3) of the Act as amended. Enrollee Wages and Fringe Benefits can be no less than 75 percent of the Federal share, and the contribution of a non-Federal share of at least 10 percent of the total project cost is required.

Application Narrative

The application narrative format, which follows, must be utilized by the applicants. The application must contain the sections listed below. These sections relate to the rating criteria, and the review panel members will assess the proposed narrative portions of the application in making their ratings.

*Section I—Needs and Objectives.* Describe the need for the project and state its principal objectives. Supporting documentation from knowledgeable interests other than the applicant may be used to demonstrate the need. Any relevant data based on planning studies should be included or footnoted.

Generally, the project should be described in terms of the economic and employment needs of the target: low-income population (primarily Indian or Asian-Pacific Islanders), aged 55 and above. This eligible population should be further defined by the applicant. For example, the applicant should indicate what percentage of the eligible population is female, male, economically disadvantaged (below 100 percent of poverty), etc., the community service needs which enrollees can help meet, especially those which are of particularly high priority in the target group's community should be mentioned.

*Section II—Results or Benefits Expected.* Describe the results or benefits to be derived from the project, with particular regard to the benefits accruing to project enrollees. These include: (1) the enhancement of enrollees' income and employability; (2) the creation of employment opportunities for older, low-income persons; (3) the assistance to participants to become economically self-sufficient through unsubsidized employment; and (4) the provision of opportunities for participants which would not otherwise be available.

Describe the other benefits to be derived from the project. These will include: (1) the elimination of artificial barriers to employment; (2) the general economic or social betterment of the community or communities in which the project is conducted; and (3) the enhancement of public or community services.

*Section III—Approach.* Section III requires information about the operations of the proposed project and the procedures the applicant will use to implement it. This section must consist of three subsections, each of which is discussed separately below:

a. *Plan of Action.* Provide a description of each project function or activity and the manner in which it will be carried out. The description must assure adherence to the guidelines for project operations found in the regulations. Applicants must provide adequate descriptions for the DOL to clearly ascertain how the applicant will implement the project. The following functions or activities should be discussed separately:

(1) *Recruitment and selection of enrollees.* Indicate the methods and resources that will be used to recruit enrollees. Describe efforts to be used to assure priority enrollment for those most in need over 60.

(2) *Eligibility for Enrollment in SCSEP—Special Responsibilities of Project Sponsor.* All sponsors shall be required to certify the income of each enrollee. Indicate how the age and income of enrollees will be certified.

(3) *Physical examinations.* Describe the arrangements which will be made to provide initial physical examinations and periodic annual physical examinations for enrollees.

(4) *Orientation.* Describe enrollee and host agency orientation procedures, including enrollee and agency responsibilities, permissible political activities, etc.

(5) *Assessment.* Describe the procedures to be followed in assessing the job aptitudes, job readiness, and job preferences of enrollees, as well as their potential for transition into private or unsubsidized employment. Supportive service needs of enrollees should also be addressed. Such assessments should be made no less frequently than once a year.

(6) *Training in Preparation for Community Service Employment.* Describe how job-related training prior to community service employment, if any, will be provided to enrollees.

(7) *Placement into Subsidized Employment.* Describe efforts to place enrollees into subsidized employment. Include the following: (i) the types of community service activities which will be emphasized in assigning enrollees to subsidized jobs; (ii) methods used to match enrollees with subsidized jobs; (iii) the extent to which enrollees will be placed in work assignments involving the administration of the project itself; (iv) the types of host agencies to be used, if any, and the procedures and criteria for selecting work assignments; (v) average number of hours in enrollee work week; (vi) the average enrollee wage rate; (vii) enrollee fringe benefits; and (viii) the procedures for assuring enrollees are given adequate worksite supervision.

(8) *Training during community service employment and for other employment.* Describe the training for enrollees after they have been placed into subsidized jobs. (It should not exceed 260 hours of training during the grant period.) Training may be related to the SCSEP job duties or it may be developmental, i.e., the skills developed will enhance the enrollee's unsubsidized employment opportunities.

(9) *Supportive services.* Describe the supportive services to be provided enrollees.

(10) *Enrollee transportation.* Describe the arrangements which will be made to provide transportation assistance to enrollees and the reimbursement rate for transportation, if any.

(11) *Placement into private or other unsubsidized employment.* Describe in detail the steps which will be taken to move or place enrollees into unsubsidized employment and subsequent followup efforts. Include cooperative measures that will be taken with the Job Training Partnership Act (JTPA) sponsors to place enrollees.

(12) *Enrollee Complaint Resolution.* Describe fully the system of due process which will be used in cases in which an adverse action is contemplated against an enrollee, or in cases in which an applicant for enrollment wishes to dispute an unfavorable determination of eligibility.

(13) *Temporary enrollees.* Describe utilization of temporary enrollees, if any, and the anticipated number of temporary enrollees to be hired. Indicate the following:

a. How enrollees will be notified of temporary status.

b. How temporary status of enrollees will be designated in enrollee records.

(14) *Maintenance of Effort (MOE).* Describe steps to be taken to assure that program enrollees will not be used to replace other employed workers or workers on layoff. Section 502(b)(1)(G) of the Older Americans Act.

b. *Performance Goals.* Specify the following: (1) the number of authorized community service employment positions under the project; and (2) the number of enrollee unsubsidized placements to be achieved during the funding period. The goal for unsubsidized placements, 20 percent, shall be based on the number of authorized positions in the project. (3) *Indicate the projected date by which the new positions will be filled.*

c. *Coordination and Cooperation.* Describe the cooperative relationships and working linkages which have been, or will be established with other employment related programs and agencies (including other SCSEP projects, JTPA sponsors, Job Corps Centers and State Employment Security Agencies), and with agencies concerned with or experienced in the problems of the aging (including State and Area Agencies on Aging). Also, describe the plans to work with any labor organization which is necessarily connected with the project. Indicate any other cooperative or coordinative relationships that will assist program performance, and assure equitable access to the program among cities, counties or other appropriate jurisdictions.

*Section IV—Geographic Areas to be Served.* List the States, cities and counties (including rationale for selection of the sub-State locations), where the project or its subprojects will be conducted. Include the number of SCSEP authorized part-time positions to be established in each of the jurisdictions. For multi-State projects, the distribution of authorized positions should be listed for each State along with the geographic area (generally counties) served within the State. For those applicants with a project located in a city but also serving surrounding counties (or other jurisdictions), the surrounding counties (or jurisdictions) should be listed with the number of proposed positions in each. Only those States specified previously will be available for the new sponsors.

*Section V—Program Administration.*

a. *Organizational Structure:* Describe the organizational structure of the project, including a description of the mission and function of each organizational unit connected with the project. Identify and include brief and relevant job descriptions and qualifications for all administrative and professional technical staff.

b. *Subproject Management:* Identify all subprojects to be carried out under contract or subgrant, and provide justification for the use of these organizations.

Describe the administrative mechanisms of subprojects including: (1) the organizational structure and function of subproject organizations; (2) the staff assigned to work on the subprojects; and (3) the amount of time designated for the staff to work on the subproject.

c. *Training of subproject (local) staff:* Describe the training which will be used to improve the knowledge, skills, and abilities of subproject (local) staff. Include where applicable a chart describing the proposed training with dates, content, and potential participation.

d. *Project Monitoring:* Explain fully the internal procedures to be used by the sponsoring organization in monitoring and assessing project activities to determine if the project is being adminstered in accordance with federal guidelines and regulations, and if project goals and timetables are being met.

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Include in this explanation: (1) *how* frequently monitoring/evaluation visits will be made to local projects; (2) *who* will be responsible for monitoring/evaluation; (3) *what* criteria will be used to monitor and evaluate project activities; (4) *what* methods will be used for prescribing remedial action when necessary; and, (5) *what* followup procedures will be used to ensure that any problem identified has been remedied. Please indicate that all *written* monitoring reports and subsequent *followup actions* will be made a part of the permanent files.

e. *Financial monitoring:* Describe how the financial management system of local subprojects will be monitored. Included in this explanation should be: (1) *who* will be responsible for monitoring subsponsor expenditures; (2) *how* frequently monitoring of expenditures will be done; (3) *what* followup procedures will be used.

Describe audit procedures, including plans to audit local projects as well as plans to audit the project headquarters.

f. *Reports:* Upon grant award, successful applicants will be required to submit quarterly program and financial reports. In general, describe how this collection of information will be achieved and what organizational units will be involved.

*Section VI—Additional Cost Considerations.* All SCSEP funds must be spent on behalf of the State for which they are obligated. However, an appropriate protion of the administrative cost may be charged for the operations of the national headquarters and staff. Such cost must benefit the individual States.

Budget Information

The applicant must prepare a proposed budget using the forms prescribed by the Office of Management and Budget Circular A–102. (A copy of the SF 424A form is attached).

Sections A and B of the Budget Information form should be completed and include budget estimates for the entire grant period. In Section A and B, *three* basic grant functional areas must be identified. They are (1) Administration; (2) Enrollee Wages and Fringe Benefits; and (3) Other Enrollee Costs. Costs attributable to these functional areas are described as follows:

*Administration:* The cost category of administration shall include, but shall not be limited to, costs of providing and costs associated with providing:

- Administration, management and direction of a project or subproject;
- Reports on evaluation, management, community benefits, and other aspects of project or subproject activity;
- Accounting and management information systems;
- Training and technical assistance for project or subproject sponsor staff;
- Bonding;
- Audits; and
- Services or other benefits accruing to a project or subproject as a result of allowable indirect cost charges.

*Enrollee wages and fringe benefits:* The cost category of enrollee wages and fringe benefits shall include wages paid to enrollees for hours of community service employment and the costs of fringe benefits actually provided.

*Other enrollee costs:* The cost category of other enrollee costs shall include the costs of providing and the costs associated with providing those functions, services, and benefits not categorized as administration or enrollee wages and fringe benefits. Other enrollee costs shall include, but shall not be limited to, the costs of providing and the costs associated with providing:

- Recruitment and selection of eligible enrollees as provided in this part;
- Physical examinations for enrollees and eligible applicants who are being selected for enrollment;
- Orientation of enrollees and host agencies;
- Assessment of enrollees for participation in community service employment, and evalution of enrollees for continued participation or transition to unsubsidized employment;
- Development of appropriate community service employment assignments;
- Supportive services for enrollees including transportation, provided that when enrollee transportation is by privately-owned vehicle, reimbursement from Title V funds shall not exceed the current mileage rate established by Federal travel regulations;
- Training for enrollees; and
- Development of unsubsidized employment opportunities for enrollees.

Applicants should ensure that the proportional distribution of the requested Federal funds among these three functional areas meet the program requirements.

*Instructions for Completing the Budget Form.* The following are specific instructions for completing Sections A and B of the budget form which is the Standard Form (SF–424–A). It is not necessary to complete the other sections of the form.

*"Budget Information Form" (SF–424–A)—"Section A—Budget Summary"—Lines 1–4, Column (a) and (b).*

Under Column (a), enter the following: Line 1–"Administration", Line 2–the letters "EW/FB" (which refers to Enrollee Wages and Fringe Benefits); Line 3–"OEC" (which refers to Other Enrollee Costs). Under Column (b) on Line 1, enter "17.235" which is the Domestic Assistance Catalogue number.

*Line 1–4, Column (c) through (g).* Leave Columns (c) and (d) blank. For each line entry under Column (a), enter in Columns (e), (f), and (g) the appropriate amount of funds needed to support the project for the grant period. Entries in Column (e) are Federal, in Column (f) show only the non-Federal share. Column (g) reflects the total of (e) and (f).

*Line 5.* Show totals for all columns used. Applicants are reminded that the non-Federal share must be no less than 10 percent of the total cost of the project.

*"Section B—Budget Categories".* In the column headings at Line 6 titled "Object Class Categories" (1) through (3), enter the titles of the grant functional areas (i.e., Administration, EW/FB, and OEC) shown on Lines 1–4, Column (a), Section A. For each functional area fill in the total requirements for funds (Federal plus non-Federal) by object class categories.

*Lines 6a through 6h.* Show the estimated amount (include the Federal and non-Federal share) for each direct object class category under each column used. All costs to be incurred under contracts or subgrants should be reflected in line 6f (Contractual). It should be noted that the costs to be incurred under individual contracts or subgrants must be properly attributed among the three basic functional areas (i.e., Administration, EW/FB, and OEC). It should be further noted that under the EW/FB column (Enrollee Wages and Fringe Benefits), entries may be made only against three object class categories: Personnel (Enrollee Wages), Fringe Benefits (Enrollee Fringe Benefits), or Contractual when funds for enrollee wages and fringe benefits are to be included in contracts or subgrants.

*Line 6i.* Show the total of entries made for lines 6a through 6h in each column.

*Line 6j.* Show the amount of indirect costs. All indirect costs must be attributed to the column headed "Administration."

*Line 6k.* Enter the totals of the amounts indicated on lines 6i and 6j. For all applications, the total amount in Column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5.



*Line 7.* Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Under the project narrative statement identify the nature and source of such income.

*Section VI—Other Accompanying Documents.* The application should also be accompanied by the following:

(1) A certificate from a Certified Public Accounting firm attesting to the adequacy of the applicant's financial system.

(2) If available, a recent annual report.

(3) A brief description of the applicant's organizational structure including an organization chart.

(4) A brief statement (1 or 2 pages) of the applicant's own organizational resources which can be used to support the SCSEP.

(5) A brief statement describing the applicant's relationship to the minority groups which it proposes to serve.

(6) A statement from the U.S. Internal Revenue Service certifying the applicant's status as a non-profit entity.

(7) Documentation to support the requirement that the applicant is an organization with the ability to provide employment and training services. This should include identification of specific prior projects, contacts and telephone numbers which indicate the applicant's capacity to operate an employment and training program.

(8) *Qualifications Statement.* The application must be accompanied by a signed statement from the applicant indicating that it has conducted substantial business in at least five different States. This statement must identify the States and provide a brief description of the projects, programs or other activities carried out in those States. The names, titles and phone numbers of persons with direct knowledge of the applicant's activities should also be provided with the statement.

A completed application shall consist of a narrative, an estimated budget and the various certifications and documents mentioned above.

*Part III—Submission of Funding Application.* Three copies of the complete application shall be submitted either by mail or hand-delivery. As noted earlier in this announcement, mailings must be posted by registered or certified mail, return receipt requested, no later than April 17, 1989. All hand-delivered applications will be accepted daily between the hours of 8:15 a.m. and 4:45 p.m., Eastern Standard Time. A receipt will be provided bearing the time and date of delivery. No hand-deliveries will be accepted after 4:45 p.m., Eastern Standard Time on the working day after the closing date, i.e., April 18, 1989. No exceptions to these mailing and hand-delivery conditions will be granted. Applications not meeting these conditions, including the provision of attachments, will not be accepted.

Funding applications must be mailed or hand-delivered to: James C. DeLuca, Division of Acquisition and Assistance, Office of Financial and Administrative Management, Employment and Training Administration, U.S. Department of Labor, Room C–4305, 200 Constitution Avenue NW., Washington, DC 20210. Attention: Doris W. Smith, Reference: SGA–DAA–89–101.

*Notification of Selection*

The following conditions are applicable:

(a) Respondents to this SGA which are selected as potential grantees will be notified by the DOL. The notification will invite each potential grantee to negotiate the final terms and conditions of the grant. It will establish a reasonable time and place for the negotiation and will indicate the State(s) or area(s) to be covered by the grant. Grants will be awarded for the period July 1, 1989 to June 30, 1990.

(b) In the event that no grant applications are received or those received are deemed to be unacceptable, or if a grant agreement is not successfully negotiated, the DOL may: (1) designate another organization or organizations or (2) reopen the area for competitive bidding.

(c) An applicant whose grant application is not selected by the DOL to receive funds will be so notified in writing.

Signed at Washington, DC this 28th day of February 1989.

**Paul A. Mayrand,**

*Director, Office of Special Targeted Programs.*

**Wilbert F. Solomon,**

*Chief, Division of Older Worker Programs.*

**James C. DeLuca,**

*Grant Officer, Division of Acquisition and Assistance.*

**Roberts T. Jones,**

*Assistant Secretary of Labor.*

BILLING CODE 4510–30–M

## BUDGET INFORMATION — Non-Construction Programs

OMB Approval No. 0348-0044

**SECTION A - BUDGET SUMMARY**

| Grant Program Function or Activity (a) | Catalog of Federal Domestic Assistance Number (b) | Estimated Unobligated Funds | | New or Revised Budget | | |
|---|---|---|---|---|---|---|
| | | Federal (c) | Non-Federal (d) | Federal (e) | Non-Federal (f) | Total (g) |
| 1. | | $ | $ | $ | $ | $ |
| 2. | | | | | | |
| 3. | | | | | | |
| 4. | | | | | | |
| 5. TOTALS | | $ | $ | $ | $ | $ |

**SECTION B - BUDGET CATEGORIES**

| 6 Object Class Categories | GRANT PROGRAM, FUNCTION OR ACTIVITY | | | | Total (5) |
|---|---|---|---|---|---|
| | (1) | (2) | (3) | (4) | |
| a. Personnel | $ | $ | $ | $ | $ |
| b. Fringe Benefits | | | | | |
| c. Travel | | | | | |
| d. Equipment | | | | | |
| e. Supplies | | | | | |
| f. Contractual | | | | | |
| g. Construction | | | | | |
| h. Other | | | | | |
| i. Total Direct Charges (sum of 6a - 6h) | | | | | |
| j. Indirect Charges | | | | | |
| k. TOTALS (sum of 6i and 6j) | $ | $ | $ | $ | $ |
| 7. Program Income | $ | $ | $ | $ | $ |

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Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

[FR Doc. 89-5022 Filed 3-2-89; 8:45 am]
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**Labor Certification Process for the Temporary Employment of Aliens in Agriculture and Logging in the United States: 1989 Agricultural Adverse Effect Wage Rates; and Allowable Charges for Agricultural and Logging Workers' Meals**

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Notice of adverse effect wage rates (AEWRs) and allowable charges for meals for 1989.

**SUMMARY:** The Director, U.S. Employment Service, announces 1989 adverse effect wage rates (AEWRs) for employers seeking nonimmigrant alien (H–2A) workers for temporary or seasonal agricultural labor or services and the allowable charges employers seeking nonimmigrant alien workers for temporary or seasonal agricultural labor or services and logging work may levy upon their workers when they provide three meals per day. AEWRs are the minimum wage rates which the Department of Labor has determined must be offered and paid to U.S. and alien workers by employers of nonimmigrant alien agricultural workers (H–2A visaholders). AEWRs are established to prevent the employment of these aliens from adversely affecting wages of similarly employed U.S. workers.

Although the Department's justification for its methodology for computing AEWRs is presently being litigated in the U.S. Court of Appeals for the District of Columbia Circuit, the Department considers itself compelled to publish these AEWRs at the present time on the basis of the currently applicable methodology. The Director also announces the new rates which covered agricultural and logging employers may charge their workers for three daily meals.

**EFFECTIVE DATE:** March 3, 1989.

**FOR FURTHER INFORMATION CONTACT:** Mr. Thomas M. Bruening, Chief, Division of Foreign Labor Certifications, U.S. Employment Service, Employment and Training Administration, U.S. Department of Labor, Room N–4456, 200 Constitution Avenue NW., Washington, DC 20210. Telephone: 202–535–0163 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** The Attorney General may not approve an employer's petition for admission of temporary alien agricultural (H–2A) workers to perform agricultural labor or services of a temporary or seasonal nature in the United States, unless the petitioner has applied to the Department of Labor (Department) for an H–2A labor certification showing that: (1) There are not sufficient U.S. workers who are able, willing, and qualified and who will be available at the time and place needed to perform the labor or services involved in the petition; and (2) the employment of the alien in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed. 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(c), and 1186.

On June 1, 1987, the Department published an interim final rule at 20 CFR Part 655, Subpart B, 52 FR 20496, for the H–2A program. The interim final rule requires that covered employers offer and pay their U.S. and H–2A workers no less than the applicable hourly adverse effect wage rate (AEWR). 20 CFR 655.102(b)(9) (1988). Reference should be made to the preamble to the interim final rule, which explains in great depth the purpose and history of AEWRs, the Department's discretion in setting AEWRs, and the new AEWR computation methodology at 20 CFR 655.107(a) (1988). 52 FR at 20502–20505.

The AFL–CIO subsequently sued the Department to invalidate the interim final 20 CFR 655.107(a). On December 22, 1987, in that case, the United States Court of Appeals for the District of Columbia Circuit reversed a lower court decision that had invalidated the interim final 20 CFR 655.107(a). *American Federation of Labor and Congress of Industrial Organizations* v. *Brock*, 835 F. 2d 912 (D.C. Cir. 1987), *rev'g*, 668 F. Supp. 31 (D.D.C. 1987). Also vacated was that portion of the lower court decision that had stayed implementation of the June 1, 1987, interim final AEWR methodology in 20 CFR 655.107(a). 835 F. 2d at 913 n. 2.

However, the D.C. Circuit held that the interim final rule did not contain information sufficient for the court to "discern the reasonableness of the action without further explanation" and remanded the matter "to the Department for a more adequate explanation of its actions * * *." 835 F. 2d at 913 n. 2, 919, and 920. The D.C. Circuit, therefore, remanded the rulemaking for DOL to provide a more reasoned explanation for why it chose in the June 1, 1987, methodology to discontinue what the Court of Appeals viewed as the prior practice of providing for an enhancement to correct for the past employment of legal and undocumented aliens.

Upon remand, the U.S. District Court for the District of Columbia ordered DOL's "reasoned explanation" to be issued on or before April 30, 1988, unless otherwise ordered. *AFL–CIO* v. *Brock*, Civil Action No. 87–1683 (Order, D.D.C. March 25, 1988). DOL submitted the expanded explanation to the District Court in April 1988.

Additionally, DOL published the expanded explanation in the **Federal Register** as a new Notice of Proposed Rulemaking (NPRM). 52 FR 43722 (October 28, 1988). Interested parties were invited to submit written comments on the NPRM through November 28, 1988. *Id.*

On December 20, 1988, the U.S. District Court for the District of Columbia filed an opinion and order, finding that the April 1988 submission to it from DOL was invalid and again enjoined the June 1, 1987, interim final 20 CFR 655.107. The court did not rule on the October 28, 1988, NPRM.[1]

The December 20, 1988, order of the U.S. District Court regarding the June 1, 1987, AEWR methodology and the April 1988 submission has been stayed indefinitely by the U.S. Court of Appeals for the District of Columbia Circuit. *AFL-CIO* v. *McLaughlin*, Case No. 89–5001 (D.C. Cir. January 13, 1989) (Order granting stay pending appeal).

Despite this litigation, the Department is still faced with the responsibility to continue to administer the H–2A program. Inasmuch as the U.S. Court of Appeals stayed the U.S. District Court injunction of the AEWR computation methodology in 20 CFR 655.107(a), 52 FR 20496, 20515 (June 1, 1987), that methodology remains in effect at the present time.

The Department has received H–2A labor certification requests for 1989, and some have been granted for work beginning as early as mid-March and the Department has received requests to publish 1989 AEWRs. The Department believes that the sound administration of the program requires the use of the current Department of Agriculture data as they become available. For this reason, the Department is establishing 1989 AEWRs.

Regulations require the Director of the U.S. Employment Service to publish USDA wage data as AEWRs and publish allowable charges logging employers and H–2A agricultural employers may levy upon their workers for the provision of three meals per day. 20 CFR 655.107(a); 20 CFR 655.102(b)(4);

[1] In a separate opinion, the District Court on the same date remanded to DOL the H–2A program's "piece-rate regulation", 20 CFR 655.102(b)(9)(ii). *AFL-CIO* v. *McLaughlin*, Civil Action No. 87–1683 (Opinion and Order, filed December 20, 1988). That order has been stayed indefinitely by the U.S. Court of Appeals for the District of Columbia Circuit. *AFL-CIO* v. *McLaughlin*, Case No. 89–5001 (D.C. Cir. February 6, 1989) (Order granting motion to enlarge stay pending appeal).

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20 CFR 655.111(a); 20 CFR 655.202(b)(4); and 20 CFR 655.211(a). The U.S. Department of Agriculture recently announced its wage data in the publication *Farm Labor*; these data produce higher AEWRs for the majority of States. The Department recognizes that the AEWRs published in this notice may be affected by the U.S. Court of Appeals' decision on the merits of the above-referenced litigation. However, in light of the above, the Department believes that sound administration of the H–2A program requires the publication of the 1989 AEWRs at this time.

**A. Adverse Effect Wage Rates (AEWRs) for 1989**

Adverse effect wage rates (AEWRs) are the minimum wage rates which the Department has determined must be offered and paid to U.S. and alien workers by employers of non-immigrant (H–2A) agricultural workers. The Department emphasizes, however, that such employers must pay the highest of the AEWR, the applicable prevailing wage or the statutory minimum wage, as specified in the regulations. 20 CFR 655.102(b)(9). Except as otherwise provided in 20 CFR Part 655, Subpart B, the regionwide AEWR for all agricultural employment (except those occupations deemed inappropriate under the special circumstances provisions of 20 CFR 655.93) for which temporary alien agricultural labor (H–2A) certification is being sought, is equal to annual weighted average hourly wage rate for field and livestock workers (combined) for the region as published annually by the U.S. Department of Agriculture (USDA) based on the USDA quarterly wage survey (USDA does not provide data on Alaska). 20 CFR 655.107(a) (1988), 52 FR 20496, 20515 (June 1, 1987).

The regulation at 20 CFR 655.107(a) requires the Director, U.S. Employment Service, to publish USDA field and livestock worker (combined) wage data as AEWRs in a **Federal Register** notice. Accordingly, the 1989 AEWRs for work performed on or after the effective date of this notice, are set forth in the table below:

TABLE—1989 ADVERSE EFFECT WAGE RATES (AEWRs)

| State | 1989 AEWR |
|---|---|
| Alabama | $4.12 |
| Arizona | 4.61 |
| Arkansas | 3.91 |
| California | 5.57 |
| Colorado | 4.49 |

TABLE—1989 ADVERSE EFFECT WAGE RATES (AEWRs)—Continued

| State | 1989 AEWR |
|---|---|
| Connecticut | 4.73 |
| Delaware | 4.73 |
| Florida | 5.26 |
| Georgia | 4.12 |
| Hawaii | 7.37 |
| Idaho | 4.05 |
| Illinois | 4.79 |
| Indiana | 4.79 |
| Iowa | 4.50 |
| Kansas | 4.72 |
| Kentucky | 4.22 |
| Louisiana | 3.91 |
| Maine | 4.73 |
| Maryland | 4.73 |
| Massachusetts | 4.73 |
| Michigan | 4.24 |
| Minnesota | 4.24 |
| Mississippi | 3.91 |
| Missouri | 4.50 |
| Montana | 4.06 |
| Nebraska | 4.72 |
| Nevada | 4.49 |
| New Hampshire | 4.73 |
| New Jersey | 4.73 |
| New Mexico | 4.61 |
| New York | 4.73 |
| North Carolina | 4.27 |
| North Dakota | 4.72 |
| Ohio | 4.79 |
| Oklahoma | 4.45 |
| Oregon | 5.09 |
| Pennsylvania | 4.73 |
| Rhode Island | 4.73 |
| South Carolina | 4.12 |
| South Dakota | 4.72 |
| Tennessee | 4.22 |
| Texas | 4.45 |
| Utah | 4.49 |
| Vermont | 4.73 |
| Virginia | 4.27 |
| Washington | 5.09 |
| West Virginia | 4.22 |
| Wisconsin | 4.24 |
| Wyoming | 4.05 |

**B. Allowable Meal Charges**

Among the minimum benefits and working conditions which DOL requires employers to offer their alien and U.S. workers in their applications for temporary logging and H–2A agricultural labor certification is the provision of three meals per day or free and convenient cooking and kitchen facilities. 20 CFR 655.102(b)(4); 20 CFR 655.202(b)(4). Where the employer provides meals, the job offer must state the charge, if any, to the worker for meals.

DOL has published at 20 CFR 655.102(b)(4) and 655.111(a) (1988) the methodology for determining the maximum amounts covered H–2A agricultural employers may charge their U.S. and foreign workers for meals. The same methodology is applied at 20 CFR 655.202(b)(4) and 655.211(a) (1988) to covered H–2 logging employers. These rules provide for annual adjustments of the previous year's allowable charges based upon Consumer Price Index (CPI) data.

Each year the maximum charges allowed by 20 CFR 655.102(b)(4) and 655.202(b)(4) are changed by the same percentage as the 12-month percent change in the CPI for All Urban Consumers for Food (CPI–U for Food) between December of the year just past and December of the year prior to that. Those regulations and 20 CFR 655.111(a) and 655.211(a) provide that the appropriate Regional Administrator (RA), Employment and Training Administration, may permit an employer to charge workers no more than a higher maximum amount for providing them with three meals a day, if justified and sufficiently documented. Each year, the higher maximum amounts permitted by 20 CFR 655.111(a) and 655.211(a) are changed by the same percentage as the 12-month percent change in the CPI–U for Food between December of the year just past and December of the year prior to that.

The regulations require the Director, U.S. Employment Service, to make the annual adjustments and to cause a notice to be published in the **Federal Register** each calendar year, announcing annual adjustments in allowable charges that may be made by covered agricultural and logging employers for providing three meals daily to their U.S. and alien workers. The 1988 rates were published in a notice on March 15, 1988, at 53 FR 8517.

DOL has determined the percentage change between December of 1987 and December of 1988 for the CPI–U for Food was 5.2%. Accordingly, the maximum allowable charges under 20 CFR 655.102(b)(4), 655.202(b)(4), 655.111, and 655.211 were adjusted using this percentage change, and the new permissible charges for 1989 are as follows: (1) for 20 CFR 655.102(b)(4) and 655.202(b)(4), the charge, if any, shall be no more than $5.72 per day, unless the RA has approved a higher charge pursuant to 20 CFR 655.111 or 655.211(b); for 20 CFR 655.111 and 655.211, the RA may permit an employer to charge workers up to $7.16 per day for providing them with three meals per day, if the employer justifies the charge and submits to the RA the documentation required to support the higher charge.

Signed at Washington, DC, this 23rd day of February, 1989.

**Robert A. Schaerfl,**

*Director, U.S. Employment Service.*

[FR Doc. 89–5023 Filed 3–2–89; 8:45 am]

BILLING CODE 4510–30–M



**Employment Standards Administration; Wage and Hour Division**

**Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions**

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3504, Washington, DC 20210.

**Modifications to General Wage Determination Decisions**

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

*Volume I*

NEW JERSEY:
NJ89–2 (Jan. 6, 1989) ..... p.617.

*Volume II*

ILLINOIS
IL89–1 (Jan. 6, 1989) ..... pp. 70–73, pp. 76–78, 82.
IL89–2 (Jan. 6, 1989) ..... pp. 98–103.
IL89–3 (Jan. 6, 1989) ..... pp. 116–117.
IL89–4 (Jan. 6, 1989) ..... pp. 122.
IL89–5 (Jan. 6, 1989) ..... pp. 128.
IL89–6 (Jan. 6, 1989) ..... pp. 134.
IL89–7 (Jan. 6, 1989) ..... pp. 138–140.
IL89–8 (Jan. 6, 1989) ..... pp. 146–148.
IL89–9 (Jan. 6, 1989) ..... pp. 152–153.
IL89–11 (Jan. 6, 1989) ..... pp. 162, 164.
IL89–12 (Jan. 6, 1989) ..... pp. 168–169.
IL89–13 (Jan. 6, 1989) ..... pp. 180–182.
IL89–14 (Jan. 6, 1989) ..... pp. 192, 194.
IL89–15 (Jan. 6, 1989) ..... pp. 202–204.
IL89–16 (Jan. 6, 1989) ..... pp. 212–214.
IL89–17 (Jan. 6, 1989) ..... pp. 222–228, pp. 230–232.

MISSOURI:
MO89–2 (Jan. 6, 1989) ..... pp. 648–651.

*Volume III*

UTAH:
UT89–1 (Jan. 6, 1989) ..... pp. 342, 350–350c.

**General Wage Determination Publication**

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from:

Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC., this 27th day of February 1989.

**Robert V. Setera,**

*Acting Director, Division of Wage Determinations.*

[FR Doc. 89–4936 Filed 3–2–89; 8:45 am]

BILLING CODE 4510–27–M

**Occupational Safety and Health Administration**

**Alaska State Standards; Approval**

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to the State plan which has

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been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On August 10, 1973, notice was published in the **Federal Register** (38 FR 21628) of the approval of the Alaska plan and the adoption of Subpart R to Part 1952 containing the decision.

The Alaska plan provides for the adoption of the State standards which are at least as effective as comparable Federal standards promulgated under section 6 of the Act. Section 1953.20 provides that where any alteration in the Federal program could have an adverse impact on the at least as effective status of the State program, a program change supplement to a State plan shall be required.

In response to Federal standards changes, the State has submitted by letter dated October 26, 1987 from Jim Sampson, Commissioner, to James W. Lake, Regional Administrator, and incorporated as part of the plan, State standards amendments comparable to 29 CFR 1928.110, Field Sanitation, as published in the **Federal Register** (52 FR 16095) on May 1, 1987.

The amendment of Title 8 of the Alaska Agricultural Code 81.010(a) adds requirements for Field Sanitation wherever employees are required to perform agricultural activities or operations by hand or with hand tools; and (b) revokes a section which stated that the sanitation requirements in Alaska's occupational and industrial structures code also apply to all agricultural operations, including those where no industrial structures or employment-related housing exists.

This State standard, which is contained in Subchapter 14, was adopted on September 1, 1987, and became effective October 14, 1987. Notices of the State rulemaking were published in statewide media on July 24, 1987 and July 31, 1987. The public comment period was open for 32 days. Comments were not received.

2. *Decision.* Having reviewed the State submission in comparison with the Federal standard, it has been determined that the State standard is substantially identical to the Federal standard. Other than minor editorial changes, the only differences is that the Alaska Code includes farms with less than 11 employees. Alaska will use "State only" monies to inspect these establishments, which are not covered Federally because of a congressional appropriations rider. OSHA therefore approves the standard.

3. *Location of supplement for inspection and copying.* A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, Room 6003, Federal Office Building, 909 First Avenue, Seattle, Washington 98174; State of Alaska, Department of Labor, Office of the Commissioner, Juneau, Alaska 99802; and the Office of State Programs, Occupational Safety and Health Administration, Room N-3476, 200 Constitution Avenue NW., Washington, DC 20210.

4. *Public participation.* Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Alaska State plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standards are at least as effective as the Federal standards which were promulgated in accordance with Federal law including meeting requirements for public participation.

2. The standards were adopted in accordance with the procedural requirements of State law and further public participation would be repetitious.

This decision is effective March 3, 1989. (Section 18, Pub. L. 91-596, 84 STAT. 6108 [29 U.S.C. 677])

Signed at Seattle, Washington this 24th day of November, 1987.

**James W. Lake,**

*Regional Administrator.*

[FR Doc. 89-5038 Filed 3-2-89; 8:45 am]

BILLING CODE 4510-26-M

## Alaska State Standards; Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On August 10, 1973, notice was published in the **Federal Register** (38 FR 21628) of the approval of the Alaska plan and the adoption of Subpart R to Part 1952 containing the decision.

The Alaska plan provides for the adoption of State standards which are at least as effective as comparable Federal standards promulgated under Section 6 of the Act. Section 1953.20 provides that where any alteration in the Federal program could have an adverse impact on the at least as effective status of the State program, a program change supplement to a State plan shall be required.

In response to Federal standards changes, the State has submitted by letter dated May 2, 1988 from Jim Sampson, Commissioner, to James W. Lake, Regional Administrator, and incorporated as part of the plan, State standards amendments comparable to 29 CFR 1910.1028, Benzene, and 1910.1000, Table Z-2, as published in the **Federal Register** (52 FR 34562) on September 11, 1987.

This State standard, which is contained in Subchapter 04, was adopted on February 16, 1988, and became effective April 21, 1988. Notices of the State Rulemaking were published in statewide media on December 30, 1987 and January 6, 1988. The public comment period was open for 30 days. Written comments were not received. Public hearings were held February 1, 2, 3, 1988.

2. *Decision.* Having reviewed the State submission in comparison with the Federal standards, it has been determined that the State standards are identical to the Federal standards. OSHA therefore approves these standards.

3. *Location of supplement for inspection and copying.* A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, Room 6003, Federal Office Building, 909 First Avenue, Seattle, Washington 98174; State of Alaska, Department of Labor, Office of the Commissioner, Juneau, Alaska 99802; and the Office of State Programs, Occupational Safety and Health Administration, Room N-3476, 200 Constitution Avenue NW., Washington 20210.

4. *Public participation.* Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good causes which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Alaska State plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standards are identical to the Federal standards which were promulgated in accordance with Federal law including meeting requirements for public participation.

2. The standards were adopted in accordance with the procedural requirements of State law and further public participation would be repetitious.

This decision is effective March 3, 1989. (Section 18, Pub. L. 91-596, 84 STAT. 6108 [19 U.S.C. 677])

Signed at Seattle, Washington this 31st day of May, 1988.

**Ryan E. Kushmichel,**

*Acting Regional Administrator.*

[FR Doc. 89-5039 Filed 3-2-89; 8:45 am]

BILLING CODE 4510-26-M



## NUCLEAR REGULATORY COMMISSION

### Abnormal Occurrence Report; Section 208 Report Submitted to the Congress

Notice is hereby given that pursuant to the requirements of Section 208 of the Energy Reorganization Act of 1974, as amended, the Nuclear Regulatory Commission (NRC) has published and issued another periodic report to Congress on abnormal occurrences (NUREG-0090, Vol. 11, No. 3).

Under the Energy Reorganization Act of 1974, which created the NRC, an abnormal occurrence is defined as "an unscheduled incident or event which the Commission (NRC) determines is significant from the standpoint of public health or safety." The NRC has made a determination, based on criteria published in the **Federal Register** (42 FR 10950) on February 24, 1977, that events involving an actual loss or significant reduction in the degree of protection against radioactive properties of source, special nuclear, and byproduct material are abnormal occurrences.

The report to Congress is for the third calendar quarter of 1988. The report identifies the occurrences or events that the Commission determiend to be significant and reportable; the remedial actions that were undertaken are also described. For the reporting period, there were no abnormal occurrences at nuclear power plants licensed to operate. There were two abnormal occurrences under other NRC-issued licenses: multiple medical therapy misadministrations at a single hospital and a medical diagnostic misadministration.

There was one abnormal occurrence reported by an Agreement State (Texas) involving a medical diagnostic misadministration.

The report also contains information updating some previously reported abnormal occurrences.

A copy of the report is available for public inspection and/or copying at the NRC Public Document Room, 2120 L Street NW., (Lower Level), Washington DC 20555, or at any of the nuclear power plant Local Public Document Rooms throughout the country.

Copies of NUREG-0090, Vol. 11, No. 3 (or any of the previous reports in this series), may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013-7082. A year's subscription to the NUREG-0090 series publication, which consists of four issues, is also available.

Copies of the report may also be purchased from the National Technical Information Service, 5825 Port Royal Road, Springfield, VA 22161.

Dated at Rockville, MD this 28th day of February 1989.

For the Nuclear Regulatory Commission.

**Samuel J. Chilk,**

*Secretary of the Commission.*

[FR Doc. 89-4985 Filed 3-2-89; 8:45 am]

BILLING CODE 7590-01-M

### Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

**AGENCY:** U.S. Nuclear Regulatory Commission (NRC).

**ACTION:** Notice of the Office of Management and Budget (OMB) review of information collection.

**SUMMARY:** The U.S. Nuclear Regulatory Commission has recently submitted to the OMB for review the following for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*1. Type of submission, new, revision, or extension:* Extension.

*2. The title of the information collection:* 10 CFR Part 21, "Reporting of Defects and Noncompliance."

*3. The form number if applicable:* N/A.

*4. How often the collection is required:* As necessary in order to maintain the NRC informed of defects and noncompliances that may create a substantial safety hazard at facilities or activities licensed by the NRC.

*5. Who will be required or asked to report:* All directors and responsible officers of firms and organizations building, operating, or owning NRC licensed facilities as well as directors and responsible officers of firms and organizations supplying safety-related components and safety-related design, testing, inspection, and consulting services to NRC licensed facilities or activities.

*6. An estimate of the number of responses:* 300 annually.

*7. An estimate of the average burden hours per response:* 81 hours.

*8. An estimate of the total number of hours needed to complete the requirement or request:* 27,988 hours (300 reports at an average of 81 hours per response).

*9. An indication of whether section 3504 (h), Pub. L. 9696-511 applies:* Not applicable.

*10. Abstract:* 10 CFR Part 21 implements section 206 of the Energy Reorganization Act of 1974, as amended. It requires directors and responsible officers of firms and organizations building, operating, owning, or supplying safety-related components to NRC licensed facilities or activities to report defects and noncompliances that could create a substantial safety hazard at NRC licensed facilities or activities. Organizations subject to 10 CFR Part 21 are also required to maintain such records as may be required to assure compliance with this regulation.

**ADDRESSES:** Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street NW., Washington, DC 20555.

**FOR FURTHER INFORMATION:** Comments and questions should be directed to the OMB reviewer, Nicolas B. Garcia, Paperwork Reduction Project (3150-0035), Office of Management and Budget, Washington, DC 20503. Comments can also be submitted by telephone (202) 395-3084.

NRC Clearance Officer is Brenda J. Shelton, (301) 492-8132.

Dated at Bethesda, Maryland, this 24th day of February 1989.

For the Nuclear Regulatory Commission.

**Joyce A. Amenta,**

*Designated Senior Official for Information Resources Management.*

[FR Doc. 89-4982 Filed 3-2-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-344]

### Portland General Electric Co. Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-1

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issued to Portland General Electric Company (the licensee), for operation of the Trojan Nuclear Plant, located in Columbia County, Oregon. The request for amendment was submitted by letter dated September 9, 1988.

The proposed amendment would revise the pressurizer low-pressure safety injection setpoint from greater than or equal to 1765 psig to greater than or equal to 1807 psig. The licensee states that this new setpoint is necessary to accommodate a change to a different transmitter design used to measure narrow-range pressurizer pressure. The related allowable value would be changed from 1755 psig to 1799 psig. The proposed changes would modify Table 3.3–4, Engineered Safety Features Actuation System Instrumentation Trip Setpoints," of the technical specifications for Trojan.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By April 3, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license, and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules and Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board Panel will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene must set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. A person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555 by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call of Western Union at 1–(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to George W. Kinghton: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Leonard A. Girard, Esq., Portland General Electric Company, 121 SW. Salmon Street, Portland, Oregon 97204, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714 (a)(1)(i)–(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the Portland State University Library, 731 SW. Harrison Street, Portland, Oregon 97207.

Dated at Rovkville, Maryland, this 22nd day of February 1989.

For the Nuclear Regulatory Commission.

**George W. Knighton,**

*Director Project Directorate V Division of Reactor Projects—III, IV, V and Special Projects Office of Nuclear Reactor Regulation.*

[FR Doc. 89-4983 Filed 3-2-89; 8:45 am]

BILLING CODE 7590-01-M

## OFFICE OF MANAGEMENT AND BUDGET

### Federal Procurement Policy Office

### Issuance of Policy Guidance on the Buy American Act of 1988

**AGENCY:** Office of Federal Procurement Policy, OMB.

**ACTION:** Notice of Issuance of Policy Guidance on the Buy American Act of 1988.

#### Background

The Buy American Act (the Act) was enacted in 1933 to ensure that Federal agencies gave domestic products priority in purchasing decisions. Over the years the determination of what constitutes a domestic unmanufactured product has been based simply on the geographic origin of the product. Determining what constitutes a domestic manufactured product has been more difficult, however, and has ultimately come to be based on where the final manufacturing occurred and where the cost of mining, producing, or manufacturing the components of such a product was incurred. Depending on the method of acquisition and the agency involved, domestic products are given 6, 12, or 50 percent price evaluation preferences over foreign products in the award of Federal procurement contracts. Such price evaluation preferences are waived under certain conditions for signatory countries of the GATT Agreement on Government Procurement (the Agreement) and they do not apply to procurements conducted in accordance with Defense Department Memoranda of Understanding.

In 1988, the Act was amended by several sections of Title VII of Pub. L. 100–418 to include provisions prohibiting Federal agencies from purchasing products and services from individuals or organizations of (1) countries that signed but have not abided by the Agreement; (2) countries that signed and have abided by the Agreement, but which discriminate against U.S. products and services not covered by the Agreement in their government procurements (Note: The prohibition here only covers products and services not covered by the Agreement); and (3) countries that have not signed the Agreement and which discriminate against U.S. products and services in their government procurements. To fall into these latter two categories, the country's services and products must be acquired in significant amounts by the U.S. Government and it must maintain, in its government procurements, a significant and persistent pattern or practice of discrimination against U.S. products which results in identifiable harm to U.S. businesses. Identification of countries that are determined to discriminate within the meaning of the Act will be made no later than April 30, 1990. Enactment of these provisions marks the first time that the Act proscribes as well as prescribes Federal agency behavior and pertains to services as well as products.

In bringing services in the above described circumstances within the purview of the Act, the 1988 amendments also provided a rule for determining what constitutes foreign constuction services. They did not, however, define "construction services." Nor did they define "services other than construction services". The Administrator for Federal Procurement Policy was given the task of developing policy guidance on determining whether a contractor or subcontractor is a citizen or national of a foreign country or is owned or controlled directly or indirectly by citizens or nationals of a foreign country, for the purposes of the Act. The policy guidance is required to be issued not later than February 19, 1989 (i.e., 180 days after enactment of Public Law 100–418).

The Administrator therefore convened a public hearing on December 15, 1988. At this hearing, two witnesses presented views, ideas, and suggestions on the proposed policy guidance. Written statements of four others who were unable to speak at this public hearing were submitted for inclusion in the record.

Most comments focused on ways in which the illustrative list of what constitutes a "service other than a construction service" might be improved. As a result of these suggestions, several changes were made in the policy guidance. In addition, several of the commentators suggested that, as a matter of trade policy, it would be preferable to craft an exception to the proposed guidance on ownership or control where the foreign contractor or subcontractor would employ a majority of U.S. workers in the performance of the contract. It was concluded that, although the citizenship or nationality of a contractor's workers may be one of the factors considered in determining whether an exception to the statutory restrictions should be granted under sections 4(c) of 4(d) of the Act, it could not properly be used as a basis for determining that a contractor is not foreign owned or controlled and thus not subject to the Act at all.

After careful consideration of all comments duly received, the following policy guidance is hereby issued to Federal departments and agencies by the Office of Federal Procurement Policy.

#### Policy Guidance

1. *Question*—Do the amendments made to the Buy American Act of 1933 (the Act) by Section 7002 of Pub. L. 100–418 require Federal agencies to give preferences to domestic services in procurements?

*Answer*—No, the amendments made to the Act by Section 7002 of Pub. L. 100–418 do not extend the preferential purchase requirements of the Act to services. Instead, the amendments prohibit Federal agencies from procuring services as well as products from individuals or organizations of (1) countries that signed but have not abided by the Gatt Agreement on Government Procurement (the Agreement); (2) countries that signed and have abided by the Agreement, but which discriminate against U.S. products and services not covered by the Agreement in their government procurements. (Note: The prohibition here only covers products and services not covered by the Agreement); and (3) countries that have not signed the Agreement and which have been identified by the U.S. Trade Representative in the annual report on foreign discrimination pursuant to section 7003(d)(2)(C) of Pub. L. 100–418 and determined by the President to be subject to sanctions because of discrimination against U.S. products and services in their government procurements. To fall into categories 2 and 3 above, the country's services and products must be acquired in significant amounts by the U.S. Government and it must maintain, in its government procurements, a significant and persistent pattern or practice of discrimination against U.S. products which results in identifiable harm to U.S. businesses. Identification of countries within all three categories above is to be made annually no later than April 30 beginning in 1990. In summary, the Act as amended prohibits Federal agencies under certain conditions from procuring either services or products from individuals or organizations of countries subject to sanctions for discriminating against U.S. products and services in making their government procurements.

2. *Question*—Are there exceptions to the prohibitions on the procurement of services set forth in Section 7002 of Pub. L. 100–418?

*Answer*—Yes, the prohibitions do not apply to: (1) services procured and used outside the United States and its territories; and (2) services of least developed countries. Also, the President or the head of a Federal agency may exempt procurements from these prohibitions upon a determination that such action is necessary in the public interest, or to ensure adequate competition.

3. *Question*—When do the prohibitions on procurement by Federal agencies of services from individuals or organizations of specified countries go into effect?

*Answer*—The prohibitions on the procurement of services by Federal agencies from individuals or organizations of specified countries will not take effect until 60 days after the first annual report mandated by Section 7003 of Pub. L. 100–418 is submitted to Congress. This annually produced report will list the countries that discriminate against U.S. products and services in making their government procurements. For some specified countries that are signatories of the Gatt Agreement on Government Procurement, prohibitions imposed by the President would go into

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effect only after dispute resolution procedures had failed to produce a settlement within one year of their initiation.

4. *Question*—Do the prohibitions on the procurement of services from individuals or organizations of specified countries apply to grants? Do the prohibitions apply to contracts awarded by grantees using grant funds?

*Answer*—No, the prohibitions pertain only to services provided by contractor and subcontractors under procurement contracts. They do not pertain to services provided by grantees, contractors, or subcontractors using grant funds.

5. *Question*—What constitute "construction services" for purposes of implementing the Act as amended by Section 7002 of Pub. L. 100-418?

*Answer*—"construction services" means construction, alteration, or repair as defined in Subpart 22.4 of the Federal Acquisition Regulation (FAR), 48 CFR 1, 22.41. "construction services" do not include services provided incidental to the supply of a product, provided that the value of the incidental services does not exceed the value of the product being delivered.

6. *Question*—What constitute "foreign" construction services under the provisions of the Act as amended by Section 7002 of Pub. L. 100-418?

*Answer*—"Foreign" construction services are those services described in the answer to Question 5 above that are provided by an individual acting as a contractor or subcontractor who is a citizen or national of a country subject to sanctions, or an organization acting as a contractor or subcontractor where—

(A) 50 percent or more of the voting stock is owned by one or more citizens or nationals of a country subject to sanctions;

(B) The title to 50 percent or more of the stock is held subject to trust or fiduciary obligations in favor of one or more citizens or nationals of a country subject to sanctions;

(C) 50 percent or more of the voting stock is vested in or exercisable on behalf of one or more citizens or nationals of a country subject to sanctions;

(D) In the case of a corporation—

(i) The number of its directors necessary to constitute a quorum are citizens or nationals of a country subject to sanctions; or

(ii) The corporation is organized under the laws of a country or any subdivision, territory, or possession thereof that is subject to sanctions; or

(E) In the case of an individual or organization who is a participant in a joint venture or a member of a partnership, any participant of the joint venture or partner meets any of the criteria in subparagraphs (A) through (D) of this paragraph.

7. *Question*—What constitute "services other than construction services" for purposes of implementing the Act as amended by section 7002 of Pub. L. 100-418?

*Answer*—"Services other than construction services" include all services other than those described in the answer to Question 5 above where work is performed by manual, clerical, technical, or professional labor whose primary purpose is to perform an identifiable task rather than to furnish an end item of supply. This includes, but is not limited to, the following:

1. Research and development (R&D) as defined in the Federal Procurement Data System Product and Service Codes, Section I, Part A;
2. Special studies and analyses—Not R&D;
3. Architect and Engineering Services;
4. Surveying and mapping services;
5. Automatic data processing and telecommunication services;
6. Brokering and appraising services;
7. Natural resources and conservation services;
8. Environmental systems protection;
9. Social services;
10. Quality control, testing, and inspection services;
11. Maintenance, repair, and rebuilding of equipment;
12. Modification of equipment;
13. Technical representative services;
14. Operation of government-owned facilities;
15. Installation of equipment;
16. Salvage service;
17. Medical service;
18. Legal service;
19. Professional, administrative, and management services;
20. Utilities and housekeeping services;
21. Photographic, printing, and publication services;
22. Education and training services;
23. Transportation, travel, and relocation services;

Further subject matter examples of "services other than construction services" also include:

24. Services covered by the Service Contract Act as determined by the U.S. Department of Labor (see 29 CFR 4.130);
25. Advisory and assistance services as defined in OMB Circular A-120; and
26. Federal information processing services and federal information processing support services as defined in the notice of proposed rulemaking that would amend Part 201-2 of the Federal Information Resources Management Regulation (see 53 FR 32085, August 23, 1988).

"Services other than construction services" do not include services provided incidental to the supply of a product, provided that the value of the incidental services does not exceed the value of the product being delivered.

8. *Question*—What constitute "foreign" services other than construction services for purposes of implementing the Act as amended by section 7002 of Pub. L. 100-418?

*Answer*—"Foreign" services other than construction services are those services described in the answer to Question 7 above that are provided by an individual acting as a contractor or subcontractor who is a citizen or national of a country subject to sanctions, or an organization acting as a contractor or subcontractor where—

(A) 50 percent or more of the voting stock is owned by one or more citizens or nationals of a country subject to sanctions;

(B) The title to 50 percent or more of the stock is held subject to trust or fiduciary obligations in favor of one or more citizens or nationals of a country subject of sanctions;

(C) 50 percent or more of the voting stock is vested in or exercisable on behalf of one or more citizens or nationals of a country subject to sanctions;

(D) In the case of a corporation—

(i) The number of its directors necessary to constitute a quorum are citizens or nationals of a country subject to sanctions; or

(ii) The corporation is organized under the laws of a country or any subdivision, territory, or possession thereof that is subject to sanctions; or

(E) In the case of an individual or organization who is a participant in a joint venture or a member of a partnership, any participant of the joint venture or partner meets any of the criteria in subparagraphs (A) through (D) of this paragraph.

9. *Question*—Are Federal agencies prohibited from procuring services from all foreign countries?

*Answer*—No, Federal agencies are only prohibited from procuring services and products from individuals or organizations of "foreign" countries that have been specifically identified by the U.S. Trade Representative in the annual report on foreign discrimination and determined by the President to be subject to sanctions (See answer to Question 1). The President may decide to modify or restrict the application of the prohibitions pursuant to section 7003(g)(2) of Pub. L. 100-418.

10. *Question*—How long are the provisions of Title VII of Pub. L. 100-418 in effect?

*Answer*—The provisions of Title VII of Pub. L. 100-418 are in effect until April 30, 1996.

**Allan V. Burman,**

*Deputy Administrator and Acting Administrator.*

[FR Doc. 89-4998 Filed 3-2-89; 8:45 am]

BILLING CODE 3110-01-M



## PHYSICIAN PAYMENT REVIEW COMMISSION

### Commission Meeting

**AGENCY:** Physician Payment Review Commission.

**ACTION:** Notice of public meeting.

**SUMMARY:** The Physician Payment Review Commission will hold a public meeting on Thursday, March 9, 1989, from 9:00 a.m. to 5:30 p.m. and on Friday, March 10, 1989, beginning at 8:30 a.m. The meeting will be held at the Dupont Plaza Hotel, 1500 New Hampshire Avenue NW. (at Dupont Circle), in the Embassy Hall (A). The agenda for the meeting will be devoted to developing the recommendations to be included in the Commission's upcoming report to Congress.

**ADDRESS:** The Commission office is located in Suite 510, 2120 L Street NW., Washington, DC. The telephone number is 202/653-7220.

**FOR FURTHER INFORMATION CONTACT:** Lauren LeRoy, Deputy Director, 202/653-7220.

**Paul B. Ginsburg,**

*Executive Director.*

[FR Doc. 89-4989 Filed 3-2-89; 8:45 am]

BILLING CODE 6820-SE-M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34-26573; File No. SR-CBOE-87-22 Amendment No. 2]**

### Self-Regulatory Organizations; Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Eligibility Requirements for Participation on RAES in OEX

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on Feb. 2, 1989, the Chicago Board Options Exchange, Inc. filed with the Securities and Exchange Commission Amendment No. 2 to the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change form interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The following describes eligibility criteria for individuals and groups to participate as contra-brokers on RAES in options on the Standard & Poor's 100 Index ("OEX") for a six month pilot program:

RAES Eligibility [for Individuals and Groups]—OEX

*A. Individuals*

1. Any Exchange member who is registered as a market maker, who has signed the RAES Participation Agreement applicable to individuals, and who has completed the RAES instructional program is eligible to sign onto RAES, so long as the member meets the OEX/SPX market-maker requirements set forth in A(6) below.

2. The market maker must log onto the system using his own acronym and individual password. All RAES trades to which the market maker is a party will be assigned to and will clear into his market maker account.

3. Once a market maker logs onto RAES, he becomes obligated to sign-on to RAES on the next Friday prior to expiration, to the extent that he is in the OEX pit on that day. If he wishes, a market-maker may avail himself of the automatic sign-on feature that will be in place for groups. *See* B(4) and C(4) below.

4. A member's failure to meet his RAES obligations will disqualify him from signing onto RAES for such time period as the Index Floor Procedure Committee ("IFPC") determines. Prospectively, a member may apply to the IFPC to be relieved of RAES obligations. In deciding such applications, IFPC may condition the granting of relief from obligations with imposition of time periods during which the applicant is not eligible to participate in RAES.

5. An individual member who is logged onto RAES may log off the system whenever he leaves the trading crowd.

6. RAES participation in OEX is limited to OEX/SPX market makers. To qualify, a market maker must: (a) Be approved under Exchange rules as a market maker with a letter of guarantee, (b) maintain his [principle] principal business on the CBOE as a market maker, (c) execute fifty percent of his market maker contracts for the preceding quarter in OEX or SPX, and (d) execute twenty-five percent of his market maker trades for the preceding quarter in OEX or SPX in person. SPX includes NSX. In making these calculations, RAES trades will not be considered. *Members currently using OEX RAES will be given a period of at least two months but no more than three months from the effective date of the rule to meet the standards as described above. It is probable that the final implementation date will be the Monday following expiration.*

*B. Joint Accounts*

1. Exchange-approved joint accounts [1] may use RAES once all the members of the joint account have executed the RAES Participation Agreement applicable to joint accounts and have satisfactorily completed the RAES instructional program. Thereafter, the members of the joint account may use RAES only as members of such account, and not as individuals or nominees of a member organization. No member or member organization may participate directly or indirectly in more than one joint account. Members of the joint account will be jointly and severally liable for each of the joint account's trades. Members of joint accounts must all have letters of guarantee from the clearing firm in which the trades will clear. Members of joint accounts must each meet the OEX/SPX market-maker obligations set forth in A(6), above.

2. Any member of the joint account may log the other members of the joint account onto RAES, using their individual acronyms and passwords. The system already will have been programmed to recognize that all such members are trading "for the account of" [2] the joint account. The trades of each joint account member will be assigned to and will clear into the joint account.

3. Whenever any member of the joint account is logged onto RAES, all account members must be. Once the joint account has been logged onto RAES by one of the account's members, all members of the joint account will

[1] To establish a joint account, members must submit an application to the Membership Department and furnish any additional information requested by the Surveillance and/or Financial Compliance Departments. *See generally* Exchange Rule 8.9(c) and the Interpretation and Policies thereunder.

[2] The joint account will incur the usual trade match and processing fees for each RAES trade executed "for the account of" the joint account.

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automatically remain on the system until the next monthly expiration.

4. Unlike members trading on RAES for their own individual accounts, members of a joint account will not be able to log off RAES at will during a trading day. The system itself will log the joint account off after the close of trading on the last business day before the next expiration.

5. To obtain relief from the obligations set forth in paragraphs 3 and 4 above, and/or to reduce the number of participants in the joint account, a representative of the joint account must make application to the IFPC. The IFPC may, in its sole discretion, condition the granting of relief from the obligations with imposition of time periods during which applicants (including all members of the joint account) for relief will be precluded from participating in the RAES system.

6. The IFPC may bar, restrict or condition a joint account's participation in RAES if any member thereof fails to meet the OEX/SPX market-maker requirements.

*7. The IFPC will determine the sign off fee which shall be at least $500.00 per member, to be paid whenever a member of the joint account has failed to adhere to the provisions of paragraphs 3 or 4 above by signing off RAES.*

*C. Member Organizations with Multiple Nominees*

1. A member organization with multiple market maker/nominees on the floor may arrange to have the RAES trades of all its nominees assigned to a single market maker account, provided that an officer of the firm and the firm's participating nominees have first executed the RAES Participation Agreement applicable to firms and have satisfactorily completed the RAES instructional program. Thereafter, each of the participating nominees will be able to trade through RAES only in the manner described below, and not as a member of a joint account or as an individual. Each eligible nominee must meet the OEX/SPX market-maker requirements. Members of a multiple nominee RAES account may only participate in that one account and may not participate directly or indirectly in any other RAES account, nor may a member organization participate directly or indirectly in more than one account in RAES in OEX.

2. Any of the organization's nominees may log all such nominees onto the RAES system, using their acronyms and passwords. As with joint accounts, the system will have been programmed to treat such nominees' RAES trades as trades "for the account of" the designated nominee.[3] Any of the nominees may log onto RAES on behalf of the other nominees. All RAES trades will clear into the account of the designated nominee.

3. Whenever any of the participating nominees is logged onto the system, all must be.

4. Like a joint account, once a group consisting of nominees of a member organization logs onto the system, it will automatically be logged onto the system until the next monthly expiration. The system will log the account off after the close of trading on the last business day before the next expiration.

5. To obtain relief from the obligations set forth in 2, 3 and 4 above, and/or to reduce the number of its participating nominees, a member organization must make application to the IFPC. The IFPC may, in its sole discretion, condition the granting of relief from the obligations with imposition of time periods during which applicants (including all nominees of the member organization) for relief will be precluded from participating in the RAES system.

6. The IFPC may bar, restrict or condition a member organization's participation in RAES if any nominee thereof on RAES in OEX fails to meet the OEX/SPX market-maker requirements.

*7. The IFPC will determine the sign off fee which shall be at least $500.00 per member, to be paid whenever a nominee has failed to adhere to the provisions of paragraphs 3 or 4 above by signing off RAES.*

*D. Authority to Disapprove*

1. No person or entity may participate directly or indirectly in RAES, or share in the profits, directly or indirectly, with more than one RAES group, which may not exceed the maximum number of RAES participants set by the IFPC from time to time. In no event may IFPC set a maximum number higher than 50 RAES participants or 25% of the average number of RAES participants for the prior quarter, whichever is smaller. The IFPC will give groups one month notice if a reduction in group size becomes necessary due to application of this size limit. The IFPC reserves the authority to establish lower limits on the size of groups eligible to use RAES. Such limits may be imposed by the Committee at any time.

2. The IFPC also retains the right to disallow any group from participating in RAES where it appears to the Committee that such group:

a. Has "purchased" RAES rights from members of the group;

b. Does not afford each group participant a reasonable participation in profits and losses (as a guideline: no RAES participant may receive a flat fee, and a minimum participation level of any group member is ¼ of equal distribution to all group members, with responsibility for losses equivalent to share of profits); [4]

c. Is managed by a person who is not a member of the group; or

d. Is managed by a person who has a financial interest in another group.

*E. Authority to Require RAES Participation*

*1. Notwithstanding the limitatins in paragraph A–6 (c) and (d), if there is inadequate RAES participation in OEX, the Exchange's IFPC may require market-makers who are members of the trading crowd, as defined in Rule 8.50 to log on to RAES absent reasonable justification or excuse for non-participation. If there continues to be inadequate RAES participation, the IFPC may request participation of all market-makers whether or not they are members of the OEX crowd.*

*2. Members who fail to abide by the foregoing eligibility provision and requirements may be subjet to disciplinary action under, among others, Rule 6.20 and Chapter XVII of the Exchange Rules. Such failure may also be the subject of remedial action by the IFPC, including, but not limited, to suspending a member's eligibility for participation on RAES and such other remedies as may be appropriate and allowed under Chapter VIII of the Exchange Rules.*

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

[3] The designated nominee will incur the usual trade match and processing fees for all RAES trades executed "for the account of" such nominee.

[4] For example, if there are ten group participants, a minimum participation level would be a 2.5% share in profits and losses.



*(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

The additions to the prior amendment reflect two additional powers given to the Exchanges' Index Floor Procedure Committee ("IFPC"). The first allows the IFPC to determine the sign off fee to be paid by members who fail to adhere to the RAES participation requirements by improperly signing off the system. The IFPC also has the power, whenever it deems participation to be inadequate, to require all members of the trading crowd to participate on RAES and, if necessary, to request that members from other trading crowds participate by signing on RAES. As such, the Exchange believes the system will be available to the public during all market conditions.

The other addition to the prior amendment provides for an implementation period of between 60 and 90 days for members currently on RAES to satisfy and become qualified to participate on RAES as detailed in paragraph A–6. The Exchange believes by enacting this gradual phase in period, no unnecessary burdens will be imposed on members or the public by drastically decreasing the number of member participants using RAES. In fact, recent statistics show that if the eligibility standards were enacted using trading data from the last quarter of 1988, only 192 out of the 449 RAES participants would be affected, thus leaving 257 members on RAES. Regarding customer usage of OEX RAES, current statistics reveal that 7% of the OEX customer volume and 25% of the OEX customer orders are transacted via RAES.

The Exchange believes that this amendment to the proposed rule change is consistent with the provisions of the Exchange Act and the rules and regulations thereunder, in particular, section 6(b)(5) thereof, in that the proposed rule change is designed to promote just and equitable principles of trade and are not designed to regulate by virtue of any authority conferred by this title matters not related to the purposes of this title or the administration of the Exchange.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

This proposed rule change will not impose a burden on competition.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

Comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and published its reasons forso finding or (ii) as to which the self-regulatory organization consents, the commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inpsection and copying the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by insert date March 24, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 24, 1989.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 89–4978 Filed 3–2–89; 8:45 am]

BILLING CODE 8010–01–M

## SMALL BUSINESS ADMINISTRATION

### Region II Advisory Council; Public Meeting

The U.S. Small Business Administration, Region II Advisory Council, located in the geographical area of Syracuse, will hold a public meeting at 9:00 a.m. on Wednesday, March 29, 1989, at Giovanni's Ristorante, 2062 Erie Boulevard East, Syracuse, New York 13224, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call J. Wilson Harrison, District Director, U.S. Small Business Administration, 100 South Clinton Street, Room 1071, Syracuse, New York, 315/423–5371.

**Jeannette M. Pauli,**

*Acting Director, Office of Advisory Councils.*

February 27, 1989.

[FR Doc. 89–4919 Filed 3–2–89; 8:45 am]

BILLING CODE 8025–01–M

## DEPARTMENT OF STATE

**[CM–8/1268]**

### Legal Panel on International Telecommunications Law of the U.S. Organization for the International Telegraph And Telephone Consultative Committee and International Radio Consultative Committee; Meeting

The Department of State announces the fifth meeting of the Panel on International Telecommunications Law, which is under the auspices and authority of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) and International Radio Consultative Committee (CCIR). The Panel's meeting will convene on Wednesday, March 17, 1989 in Room 1205, Department of State, 2201 C. Street NW., Washington, DC.

The meeting is scheduled for 1:30 to 4 p.m. and the draft agenda is as follows:

1. Report of Panel Activities
2. Briefings on ITU Plenipotentiary Conference Issues
3. Consideration of Future Panel Activities

Members of the general public may attend the meeting and join in the discussion. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise the office of the Deputy U.S. Coordinator for International Communications and Information Policy, Mr. Parker Borg, State Department, Washington, DC; telephone (202) 647–5889. All attendees must use the C entrance to the building.

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February 15, 1989.

**Earl S. Barbely,**

*Chairman, U.S. CCITT National Committee.*

[FR Doc. 89-4818 Filed 3-2-89; 8:45 am]

BILLING CODE 4710-07-M

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### Application of Kitty Hawk Air Cargo, Inc., For a Section 418 Domestic All-Cargo Air Service Certificate

**AGENCY:** Department of Transportation.

**ACTION:** Notice of application for a Section 418 Domestic All-Cargo Air Service Certificate, Docket 46039.

**SUMMARY:** The Department of Transportation is notifying all interested parties that Kitty Hawk Air Cargo, Inc., of Greeneville Municipal Airport, Route 1, Box 419B, Whitehouse Rd., Greeneville, TN 37743, has applied in Docket 46039 for an All-Cargo Air Service Certificate authorizing it engage in interstate and overseas air transportation of property and mail pursuant to section 418 of the Federal Aviation Act.

**DATES:** Persons wishing to file objections should do so no later than March 24, 1989.

**ADDRESSES:** Objections and answers to objections should be filed in Docket 46039 and addressed to the Documentary Services Division [C-55, Room 4107], U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, and should be served upon the applicant.

**FOR FURTHER INFORMATION CONTACT:** Ms. Carol A. Woods, Air Carrier Fitness Division (P-56, Room 6401), U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, (202) 366-2340.

Dated: February 27, 1989.

**Patrick V. Murphy, Jr.,**

*Deputy Assistant Secretary for Policy and International Affairs.*

[FR Doc. 89-4887 Filed 3-2-89; 8:45 am]

BILLING CODE 4910-62-M

## DEPARTMENT OF THE TREASURY

**[Supplement to Department Circular—Public Debt Series—No. 6-89]**

### Treasury Notes, Series W-1991

Washington, February 23, 1989.

The Secretary announced on February 22, 1989, that the interest rate on the notes designated Series W-1991, described in Department Circular—Public Debt Series—No. 6-89 dated February 16, 1989, will be 8⅝ percent. Interest on the notes will be payable at the rate of 9⅜ percent per annum.

**Marcus W. Page,**

*Acting Fiscal Assistant Secretary.*

[FR Doc. 89-5001 Filed 3-2-89; 8:45 am]

BILLING CODE 4810-40-M

**[Supplement to Department Circular—Public Debt Series—No. 7-89]**

### Treasury Notes, Series J-1994

Washington, February 24, 1989.

The Secretary announced on February 23, 1989, that the interest rate on the notes designated Series J-1994, described in Department Circular—Public Debt Series—No. 7-89 dated February 16, 1989, will be 9⅛ percent. Interest on the notes will be payable at the rate of 9⅛ percent per annum.

**Marcus W. Page,**

*Acting Fiscal Assistant Secretary.*

[FR Doc. 89-5002 Filed 3-2-89; 8:45 am]

BILLING CODE 4810-40-M

## Internal Revenue Service

**[Delegation Order No. 97]**

### Delegation of Authority

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Delegation of Authority.

**SUMMARY:** Delegation Order 97 is revised to delegate to the Assistant Commissioner (International) the authority to act as the Competent Authority under the tax conventions of the United States. The text of the delegation order appears below.

**EFFECTIVE DATE:** March 2, 1989.

**FOR FURTHER INFORMATION CONTACT:** Richard Rio, Office of Tax Treaty and Technical Services, IN:T:3, P.O. Box 44374, Washington, DC 20026-4374, telephone 202-287-4752 (not a toll-free call).

**Order No. 97(Rev. 28)**

Effective date: March 2, 1989.

### Closing Agreements Concerning Internal Revenue Tax Liability

[Amended and Supplemented by Delegation Order No. 225]

Pursuant to authority granted to the Commissioner of Internal Revenue by 26 CFR 301.7121-1(a); Treasury Order No. 150-07; Treasury Order No. 150-09; and Treasury Order No. 150-17, subject to the transfer of authority covered in Treasury Order No. 120-01, as modified by Treasury Order No 150-27, as revised, this authority is hereinafter delegated.

1. The Chief Counsel is hereby authorized in cases under his/her jurisdiction to enter into and approve a written agreement with any person relating to the Internal Revenue tax liability of such person (or of the person or estate for whome he/she acts) in respect to any prospective transactions or completed transactions if the request to the Chief Counsel for determination or ruling was made before any affected returns have been filed.

2. The Associates Chief Counsel, and the Assistant Commissioners (Examination) and (International) are hereby authorized to enter into and approve a written agreement with any person relating to the Internal Revenue tax liability of such person (or of the person or estate for whom he/she acts) for a taxable period or periods ended prior to the date of agreement and related specific items affecting other taxable periods. The Assistant Commissioner (International) is also authorized to enter into and approve a written agreement with any person relating to the Internal Revenue tax liability of such person (or of the person or state for whom he/she acts) with respect to the performance of his/her functions as the competent authority under the tax conventions of the United States.

3. The Assistant Commissioner (Employee Plans and Exempt Organizations) is hereby authorized to enter into and approve a written agreement with any person relating to the Internal Revenue tax liability of such person (or of the person or estate for whom he/she acts) in cases under his/her jurisdiction, that is, in respect of any transaction concerning employee plans or exempt organizations.

4. The Assistant Commissioner (International); Regional Commissioners; Regional Counsel; Assistant Regional Commissioners (Examination); Service Center Directors; District Directors; Chiefs and Associate Chiefs of Appeals Offices; and Appeals Team Chiefs with respect to his/her team cases, are hereby authorized in cases under their jurisdiction (but excluding cases docketed before the United States Tax Court) to enter into and approve a written agreement with any person relating to the Internal Revenue tax liability of such person (or of the person or estate for whom he/she acts) for a taxable period or periods ended prior to the date of agreement and related specific items affecting other taxable periods.



5. The Associates Chief Counsel; the Assistant Commissioners (Employee Plans and Exempt Organizations) and (International); Regional Commissioners; Regional Counsel; Chiefs and Associates Chiefs of Appeals Offices; and Appeals Team Chiefs with respect to his/her team cases, are hereby authorized in cases under their jurisdiction docketed in the United States Tax Court and in other Tax Court cases upon the request of Chief Counsel or his/her delegate to enter into and approve a written agreement with any person relating to the Internal Revenue tax liability of such person (or of the person or estate for whom he/she acts) but only in respect to related specific items affecting other taxable periods.

6. The Assistant Commissioner (International) is hereby authorized to enter into and approve a written agreement with any person relating to the Internal Revenue tax liability of such person (or of the person or estate for whom he/she acts) in cases under his/her jurisdiction, and to provide for the mitigation of economic double taxation udner section 3 of Revenue Procedure 64-54, C.B. 1964-2, 1008, under Revenue Procedure 72-22, C.B. 1972-1, 747, and under Revenue Procedure 69-13, C.B. 1969-1, 402, and to enter into and approve a written agreement providing the treatment available under Revenue Procedure 65-17, C.B. 1965-1, 833.

7. The authority delegated herein does not include the authority to set aside any closing agreement.

8. Authority delegated in this Order may not be redelegated, except that the Chief Counsel may redelegate the authority contained in paragraph 1 to the Associates Chief Counsel, the Deputy Associate Chief Counsel (International), and to the technical advisors on the staff of the Associate Chief Counsel (Technical and International) for cases that do not involve precedent issues; the Assistant Commissioners (Examination) and (International) may redelegate the authority contained in paragraph 2 of this order to the Deputy Assistant Commissioners (Examination) and (International); the Deputies Chief Counsel may redelegate the authority in paragraph 2 of this Order but not lower than the Deputies Associate Chief Counsel; and the Assistant Commissioner (Employee Plans and Exempt Organizations) may redelegate the authority contained in paragraph 3 of this Order to the Deputy Assistant Commissioner (Employee Plans and Exempt Organizations) and to the Technical Advisors on the Staff of the Assistant Commissioner (Employee Plans and Exempt Organizations) for cases that do not involve precedent issues; Service Center Directors and Director, Austin Compliance Center may redelegate the authority contained in paragraph 4 of this Order but not below the Chief, Examination Support Unit with respect to agreements concerning the administrative disposition of certain tax shelter cases; and not below the Chief, Windfall Profit Tax Staff, Austin Service Center or Austin Compliance Center with respect to entering into and approving a written agreement with the Tax Matters Partner/Person (TMP) and one or more partners or shareholders with respect to whether the partnership or S corporation, acting through its TMP, is duly authorized to act on behalf of the partners or shareholders in the determination of partnership or S corporation items for purposes of the tax imposed by Chapter 45, and for purposes of assessment and collection of the windfall profit tax for such partnership or S corporation taxable year. The Assistant Commissioner (International) and District Directors may redelegate the authority contained in paragraph 4 of this Order but not below the Chief, Quality Review Staff/Section with respect to all matters, and not below the Chief, Examination Support Staff/Section, or Chief, Planning and Special Programs Branch/Section, with respect to agreements concerning the administrative disposition of certain tax shelter cases, or Chief, Special Procedures function, with respect to the waiver of right to claim refunds for those responsible officers who pay the corporate liability in lieu of a 100-percent penalty assessment under IRC 6672. To the extent that the authority previously exercised consistent with this Order may require ratification, it is hereby affirmed and ratified.

9. Delegation Order No. 97 (Rev. 27), effective October 31, 1987, is hereby superseded.

Approved:

**Charles H. Brennan,**

*Deputy Commissioner (Operations).*

Date: February 14, 1989.

[FR Doc. 89-4995 Filed 3-2-89; 8:45 am]

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# Sunshine Act Meetings

Federal Register
Vol. 54, No. 41
Friday, March 3, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**COMMODITY FUTURES TRADING COMMISSION**

TIME AND DATE: 10:00 a.m., Tuesday, March 21, 1989.

**PLACE:** 2033 K St. NW., Washington, DC 8th Floor Hearing Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Enforcement matters.

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 254-6314.

Jean A. Webb,
*Secretary of the Commission.*

[FR Doc. 89-5095 Filed 3-1-89 12:35 pm]

BILLING CODE 6351-01-M

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

February 27, 1989

**TIME AND DATE:** 10:00 a.m., Wednesday, March 1, 1989.

**PLACE:** Room 600, 1730 K Street, NW., Washington, DC.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** The Commission will hear oral argument on the following:

1. *Florence Mining Company, Inc.*, Docket No. PENN 88-287-R. (Issues include whether the administrative law judge erred in concluding that the operator violated 30 CFR 75.1704, a mandatory safety standard dealing with escapeways and escape facilities.)

Any person intending to attend this hearing who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

**TIME AND DATE:** Immediately following oral argument.

**STATUS:** Closed (Pursuant to 5 U.S.C. 552b(c)(10))

**MATTERS TO BE CONSIDERED:** The Commission will consider the following:

1. *Florence Mining Company, Inc.*, Docket No. PENN 88-287-R. (See above)
2. *Westwood Energy properties*, Docket Nos. PENN 88-42-R, etc. (Issues include consideration of the operator's Petition for Discretionary Review.)

It was determined by a unanimous vote of Commissioners that these issues be considered in closed session and that no earlier announcement of the meeting was possible.

**CONTACT PERSON FOR MORE INFO:** Jean Ellen, (202) 653-5629/(202) 566-2673 for TDD Relay.

Jean M. Ellen,
*Agenda Clerk.*

**NATIONAL MEDIATION BOARD**

**TIME AND DATE:** 2:00 p.m., Wednesday, March 8, 1989.

**PLACE:** Board Hearing Room 8th Floor, 1425 K. Street, NW., Washington, DC.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:**

1. Ratification of the Board actions taken by notation voting during February 1989.
2. Other priority matters which may come before the Board for which notice will be given at the earliest practicable time.

**SUPPLEMENTARY INFORMATION:** Copies of the monthly report of the Board's notation voting actions will be available from the Executive Director's office following the meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Charles R. Barnes, Executive Director, Tel: (202) 523-5920.

Date of Notice: February 28, 1989.

**William A. Gill,**
*Assistant Executive Director, National Mediation Board.*

[FR Doc. 89-5122 Filed 3-1-89; 3:46 pm]

BILLING CODE 7550-01-M

**NATIONAL SCIENCE BOARD**

**DATE AND TIME:** March 17, 1989—
8:30 a.m. Closed Session
9:00 a.m. Open Session

**PLACE:** National Science Foundation, 1800 G Street, NW., Room 540, Washington, DC 20550.

**STATUS:**

Most of this meeting will be open to the public.
Part of this meeting will be closed to the public.

**MATTERS TO BE CONSIDERED MARCH 17:**

*Closed Session (8:30 a.m. to 9:00 a.m.)*

1. Minutes—February 1989 Meeting
2. NSB and NSF Staff Nominees
3. Alan T. Waterman Award
4. Grants and Contracts

*Open Session (9:00 a.m. to 11:30 a.m.)*

5. Chairman's Report
6. Minutes—February 1989 Meeting
7. Director's Report: (a) Annual Report on NSF Use of Peer Review; (b) Report on National Science & Technology Week
8. Presentation by Dr. Shirley McBay: "Recruitment and Retention of Minorities, Women, and Persons with Disabilities into Science and Engineering Fields"
9. Other Business

**Thomas Ubois,**
*Executive Officer.*

[FR Doc. 89-5135 Filed 3-1-89; 4:02 p.m.]

BILLING CODE 7555-01-M

federal register

Friday
March 3, 1989

Part II

# United States Sentencing Commission

**Sentencing Guidelines for United States Courts; Notice of Proposed Amendments and Additions; Hearing and Request for Public Comment**

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**UNITED STATES SENTENCING COMMISSION**

**Sentencing Guidelines for United States Courts**

**AGENCY:** United States Sentencing Commission.

**ACTION:** Notice of proposed amendments and additions to sentencing guidelines, policy statements and commentary. Request for public comment. Notice of hearing.

**SUMMARY:** By vote of 6–0 on February 14, 1989, the Commission voted to promulgate and submit to the Congress as regular, permanent amendments the group of temporary amendments that took effect June 25, 1988. See 53 FR 15532–36 (April 29, 1988). The Commission is now considering a number of further amendments and additions to the sentencing guidelines, policy statements and commentary. These proposals, or a synopsis of issues to be addressed, are set forth below. The Commission may report these and other regular amendments to the Congress on or before May 1, 1989. Alternatively, or additionally, the Commission may elect to promulgate as temporary amendments certain of these proposals pertaining to changes in law enacted by the 100th Congress. Public comment is sought on all proposals, alternative proposals, and any other aspect of the sentencing guidelines, policy statements and commentary.

**DATES:** Public comment should be received by the Commission no later than April 14, 1989, in order for it to be considered by the Commission in the promulgation of the next set of regular amendments due to the Congress by May 1, 1989. The Commission plans to hold a public hearing on April 7, 1989 in the Ceremonial Courtroom of the United States Courthouse in Washington, DC, on these and any other proposed amendments.

**ADDRESS:** Comments should be sent to: United States Sentencing Commission, 1331 Pennsylvania Avenue, NW., Suite 1400, Washington, DC 20004, Attn: Public Comment.

**FOR FURTHER INFORMATION CONTACT:** Paul K. Martin, Communications Director, Telephone: (202) 662–8800.

**SUPPLEMENTARY INFORMATION:** The United States Sentencing Commission is an independent agency in the judicial branch of the U.S. Government. The Commission is empowered by 28 U.S.C. 994(a) to promulgate sentencing guidelines and policy statements for Federal sentencing courts. The statute further directs the Commission to periodically review and revise guidelines previously promulgated and authorizes it to submit guideline amendments to the Congress no later than the first day of May each year. See 28 U.S.C. 994 (o), (p).

Ordinarily, the Administrative Procedure Act rulemaking requirements are inapplicable to judicial agencies; however, 28 U.S.C. 994(x) makes the Administrative Procedure Act rulemaking provisions of 5 U.S.C. 553 applicable to the promulgation of sentencing guidelines by the Commission.

**Consideration of Promulgation of Certain Amendments as Temporary**

The Commission has limited authority under section 21(a) of the Sentencing Act of 1987 (Pub. L. 100–182, Dec. 7, 1987) to adopt temporary guidelines or amendments when the Congress creates new offenses or amends existing criminal statutes. A number of the amendments proposed below are in response to enactments of the 100th Congress, such as the Anti-Drug Abuse Act of 1988 (Pub. L. 100–690, Nov. 18, 1988). If the Commission elects to exercise its section 21(a) temporary guideline promulgation authority, it could put into effect some or all amendments implementing recently enacted legislation prior to the expiration of the 180-day period of Congressional review that applies to all regular amendments promulgated under 28 U.S.C. 994(p). If it follows that course of action, the Commission could simultaneously submit the amendments to the Congress as regular amendments. The Commission specifically invites comment on which, if any, of the proposals below should be promulgated as temporary guidelines under the authority of section 21(a) of the 1987 Sentencing Reform Act.

**Format of Proposed Amendments**

Proposed amendments are presented sequentially by section of the Guidelines Manual to which they pertain. A cross reference note is provided for amendments that affect more than one section of the Guidelines. Each amendment is followed by a statement explaining the reason for the amendment. For some proposals, additional explanatory material is provided immediately following the statement of purpose.

The proposed amendments are presented in three formats. First, the majority of the amendments are proposed as specific changes in a guideline, policy statement or commentary. Secondly, for some amendments the Commission has published alternative means of addressing an issue. Commentators are encouraged to state their preference among listed alternatives or to suggest a new alternative. Thirdly, the Commission has highlighted certain issues (generally relating to recently enacted legislation) and invites suggestions for specific amendment language. To help focus comment, one or more proposals are presented as examples for some of these issues.

**Amendments of Special Note**

The Commission has not attempted to categorize proposed amendments as substantive changes in policy or merely technical or clarifying in nature. Certain amendments, however, are in the Commission's opinion of particular significance in terms of their potential policy impact and/or because of the Commission's desire for public comment on identified issues, alternative proposals, or illustrative solutions. These amendments of special note are: 50 (Robbery), 96 (Continuing Criminal Enterprise), 119 (Fraud and Deceit), 243 (Career Offender), 247 (Chapter Five, Part A—Sentencing Table), and 260 (Home Detention).

**Availability of Supporting Data**

With respect to proposed amendment 50, pertaining to the guideline for robbery, amendment 119, pertaining to the guideline for certain fraud offenses, and amendment 243, pertaining to the "career offender" guidelines, the Commission is preparing reports summarizing and analyzing pertinent sentencing data. Prior to the April 7, 1989, public hearing, the Commission expects to have these reports available in preliminary form at its offices for review by interested persons.

**Scope of Public Comment**

While the amendments below are specifically proposed for public comment and possible submission to the Congress by May 1, 1989, the Commission emphasizes that it welcomes comment on any aspect of the sentencing guidelines, policy statements, and commentary, whether or not the subject of a proposed amendment. Pursuant to 28 U.S.C. 994(o), the Commission is directed to periodically "review and revise (the Guidelines), in consideration of comments and data coming to its attention." The same statutory provision further directs specific institutional representatives and groups within the Federal criminal justice system to submit to the Commission at least annually a written report that may suggest "changes in the guidelines that appear to be warranted." The Commission invites any of the institutional groups listed in section 994(o) who have not previously submitted a report to the Commission to make such a report in conjunction with this solicitation of public comment.



**Authority:** 28 U.S.C. 994 (a), (o), (p), (x); section 21(a) of the Sentencing Act of 1987 (Pub. L. 100–182).

**William W. Wilkins, Jr.,**
*Chairman.*

**Chapter One, Part A, Section 4(b) Departures**

1. *Proposed Amendment:* Chapter 1, Part A (4)(b) is amended in the first sentence by deleting "* * * that was" and inserting in lieu thereof "of a kind, or to a degree,".

*Reason for Amendment:* The purpose of this amendment is to conform the quotation to the statute, as amended by section 3 of the Sentencing Act of 1987.

2. *Proposed Amendment:* Chapter One, Part A, section 4(b) is amended in the second sentence of the last paragraph by deleting "Part H" and inserting in lieu thereof "Part K (Departures)", and in the third sentence of the last paragraph by deleting "Part H" and inserting in lieu thereof "Part K".

*Reason for Amendment:* The purpose of this amendment is to correct a clerical error.

3. *Proposed Amendment:* Chapter One, Part A, section 4(b) is amended in the first sentence of the fourth paragraph by deleting "three" and inserting in lieu thereof "two"; in the fourth paragraph by deleting: "The first kind, which will most frequently be used, is in effect an interpolation between two adjacent, numerically oriented guideline rules. A specific offense characteristic, for example, might require an increase of four levels for serious bodily injury but two levels for bodily injury. Rather than requiring a court to force middle instances into either the "serious" or the "simple" category, the guideline commentary suggests that the court may interpolate and select a midpoint increase of three levels. The Commission has decided to call such an interpolation a "departure" in light of the legal views that a guideline providing for a range of increases in offense levels may violate the statute's 25 percent rule (though other have presented contrary legal arguments). Since interpolations are technically departures, the courts will have to provide reasons for their selection, and it will be subject to review for "reasonableness" on appeal. The Commission believes, however, that a simple reference by the court to the "mid-category" nature of the facts will typically provide sufficient reason. It does not foresee serious practical problems arising out of the application of the appeal provisions to this form of departure."; in the first sentence of the fifth paragraph by deleting "second" and inserting in lieu thereof "first"; and, in the first sentence of the sixth paragraph by deleting "third" and inserting in lieu thereof "second".

*Reason for Amendment:* This amendment eliminates references to departure by interpolation from Chapter One of the Guidelines Manual. Related amendments: 17 (§ 2A2.1); 19 (§ 2A2.2); 25 (§ 2A3.1); 29 (§ 2A4.1); 51 (§ 2B3.1); 54 (§ 2B3.2); and 106 (§ 2E2.1).

*Additional Explanatory Statement:* The Commission has reviewed the discussion of interpolation in Chapter One, which has been read as describing "interpolation" as a departure from an offense level rather from the guideline range established after the determination of an offense level. The Commission concluded that it is simpler to add intermediate offense level adjustments to the guidelines in the cases where interpolation is most likely to be considered (i.e., degree of bodily injury). This amendment is not intended to preclude interpolation in other cases; where appropriate, the court will be able to achieve the same result by use of the regular departure provisions.

*§ 1B1.1 Application Instructions*

4. *Proposed Amendment:* Section 1B1.1(a) is amended by deleting "guideline section in Chapter Two most applicable to the statute of conviction" and inserting in lieu thereof "applicable offense guideline section from Chapter Two", and by deleting: "If more than one guideline is referenced for the particular statute, select the guideline most appropriate for the conduct of which the defendant was convicted.".

*Reason for Amendment:* The purpose of this amendment is to clarify the guideline and conform the language to § 1B1.2.

5. *Proposed Amendment:* Section 1B1.1(e) is amended by deleting immediately following the period at the end of the first sentence: "The resulting offense level is the total offense level.".

Section 1B1.1(g) is amended by deleting "total", and by inserting "determined above" immediately following "category".

*Reason for Amendment:* The purpose of this amendment is to clarify the guideline. The last sentence of § 1B1.1(e) and the use of "total offense level" in § 1B1.1(g) combine to produce a technically inaccurate instruction. It is not the total offense level of subsection (e), but rather that level as adjusted by any offense level adjustments from Chapter Four, Part B (see subsection (f)) that is used in subsection (g).

6. *Proposed Amendment:* The Commentary to § 1B1.1 captioned "Application Notes" is amended in Note l(c) by deleting "firearm or other dangerous weapon" and inserting in lieu thereof "dangerous weapon (including a firearm)".

The Commentary to § 1B1.1 captioned "Application Notes" is amended in Note 1(g) is amended by deleting "firearm or other dangerous weapon" wherever it appears and inserting in lieu thereof "dangerous weapon (including a firearm)".

*Reason for Amendment:* The purpose of this amendment is to clarify the Commentary. Related amendment: 16 (§ 2A2.1).

7. *Proposed Amendment:* The Commentary to § 1B1.1 captioned "Application Notes" is amended by inserting as an additional note the following:

"5. In the case of a defendant subject to a sentence enhancement under 18 U.S.C. 3147 (Penalty for an Offense Committed While on Release), see § 2J1.7 (Commission of Offense While on Release).".

*Reason for Amendment:* To clarify the treatment of a specific enhancement provision.

*§ 1B1.2 Applicable Guidelines*

8. *Proposed Amendment:* Section 1B1.2(a) is amended in the first sentence by deleting "The court shall apply" and inserting in lieu thereof "Determine"; and in the second sentence by deleting "the court shall apply" and inserting in lieu thereof "determine", and by deleting "guideline in such chapter" and inserting in lieu thereof "offense guideline section in Chapter Two".

*Reason for Amendment:* The purposes of this amendment are to clarify the guideline and to make the phraseology of this subsection more consistent with that of §§ 1B1.1 and 1B1.2(b).

9. *Proposed Amendment:* Section 1B1.2(a) is amended in the first sentence by inserting immediately before the period "(i.e., the offense conduct charged in the count of the indictment or information of which the defendant was convicted)".

The Commentary to § 1B1.2 captioned "Application Notes" is amended in Note 1 by deleting the second and third sentences of the first paragraph and inserting in lieu thereof the following:

"As a general rule, the court is to use the guideline section from Chapter Two most applicable to the offense of conviction. The Statutory Index (Appendix A) provides a listing to assist in this determination. When a particular statute proscribes only a single

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type of criminal conduct, the offense of conviction and the conduct proscribed by the statute will coincide, and there will be only one offense guideline referenced. When a particular statute proscribes a variety of conduct that might constitute the subject of different offense guidelines, the court will determine which guideline section applies based upon the nature of the offense conduct charged in the count of which the defendant was convicted.".

*Reason for Amendment:* The purpose of this amendment is to clarify the guideline and Commentary.

10. *Proposed Amendment:* Section 1B1.2(a) is amended by deleting:

"Similarly, stipulations to additional offenses are treated as if the defendant had been convicted of separate counts charging those offenses.",

and by inserting the following additional subsections:

"(c) A conviction by a plea of guilty or nolo contendere containing a stipulation that specifically establishes the commission of additional offense(s) shall be treated as if the defendant had been convicted of additional count(s) charging those offense(s).

"(d) A conviction on a count charging a conspiracy to commit more than one offense shall be treated as if the defendant had been convicted on a separate count of conspiracy for each offense that the defendant conspired to commit.".

The Commentary to § 1B1.2 captioned "Application Notes" is amended in the second paragraph of Note 1 by deleting:

"Similarly, if the defendant pleads guilty to one robbery but admits the elements of two additional robberies as part of a plea agreement, the guideline applicable to three robberies is to be applied.",

and by inserting as additional Notes the following:

"4. Subsections (c) and (d) address circumstances in which the provisions of Chapter Three, Part D (Multiple Counts) are to be applied although there may be only one count of conviction. Subsection (c) provides that in the case of a stipulation to the commission of additional offense(s), the guidelines are to be applied as if the defendant had been convicted of an additional count for each of the offenses stipulated. For example, if the defendant is convicted of one count of robbery but, as part of a plea agreement, admits to having committed two additional robberies, the guidelines are to be applied as if the defendant had been convicted of three counts of robbery. Subsection (d) provides that a conviction on a conspiracy count charging conspiracy to commit more than one offense is treated as if the defendant had been convicted of a separate conspiracy count for each offense that he conspired to commit. For example, where a conviction on a single count of conspiracy establishes that the defendant conspired to commit three robberies, the guidelines are to be applied as if the defendant had been convicted on one count of conspiracy to commit the first robbery, one count of conspiracy to commit the second robbery, and one count of conspiracy to commit the third robbery.

5. Particular care must be taken in applying subsection (d) because there are cases in which the jury's verdict does not establish which offense(s) was the object of the conspiracy. In such cases, subsection (d) should only be applied with respect to an object offense alleged in the conspiracy count if the court, were it sitting as a trier of fact, would convict the defendant of conspiring to commit that object offense. For example, if the defendant is convicted of a conspiracy count alleging that he conspired to commit two bank robberies, but there is insufficient evidence to support a separate conviction for conspiracy to commit one of the robberies, the court shall apply the guidelines as though the defendant had been convicted of a single count of conspiracy to commit one bank robbery. Note, however, if the object offenses specified in the conspiracy count would be grouped together under § 3D1.2(d) (e.g., a conspiracy to steal three government checks) it is not necessary to engage in the foregoing analysis, because § 1B1.3(a)(2) governs consideration of the defendant's conduct.".

*Reason for Amendment:* This amendment creates a new subsection (subsection (d)) to specify that a conviction of conspiracy to commit more than one offense is treated as if the defendant had been convicted of a separate conspiracy count for each offense that the defendant conspired to commit. The current instruction found only at Application Note 9 of § 3D1.2 is inadequate. For consistency, material now contained at § 1B1.2 (a) concerning stipulations to having committed additional offenses is moved to a new subsection (subsection (c)).

There are cases in which the jury's verdict does not specify how many or which offenses were the object of the conspiracy of which the defendant was convicted. Additional commentary (Application Note 5) is provided to address cases in which the jury's verdict does not specify how many or which offenses were the object of the conspiracy of which the defendant was convicted. Compare *U.S. v. Johnson*, 713 F.2d 633, 645–46 (11th Cir. 1983) (conviction stands if there is sufficient proof with respect to any one of the objectives), with *U.S. v. Tarnopol*, 561 F.2d 466 (3d Cir. 1977) (failure of proof with respect to any one of the objectives renders the conspiracy conviction invalid).

*Additional Explanatory Statement:* In general, the offense level for conspiracy is determined by reference to the offense that was the object of the conspiracy. See § 2D1.4; § 2X1.1. A complication arises if a single conspiracy count alleges more than one object offense.

Currently, the only guidance for this situation is found at Application Note 9 of § 3D1.2. That commentary instructs the court to "treat the conspiracy count as if it were several counts, each charging conspiracy to commit one of the substantive offenses." This amendment upgrades that instruction from commentary to a guideline and places it in a more prominent position in the guidelines. For consistency, material now contained at § 1B1.2(a) concerning stipulations is moved to new subsection (c).

In a circuit in which a multiple-objective conspiracy conviction does not constitute a finding that the defendant conspired to commit each objective, a guideline requiring courts to treat a multiple-objective conspiracy conviction as though the defendant had been convicted of separate conspiracies to commit each objective is unreasonable. In such cases, courts may choose to employ a special verdict procedure to ascertain the basis of the conviction. Alternatively, judicial fact-finding must be employed when the jury's verdict does not determine which objectives the defendant conspired to commit.

In order to maintain consistency with other § 1B1.2(a) determinations, it appears that this decision should be governed by a reasonable doubt standard. The determination that a defendant conspired to accomplish a particular criminal objective is unlike the mere enhancement of a sentence because of the presence of a sentencing factor. Rather, it is the equivalent of a jury's determination that the defendant engaged in a separate crime for which he may be punished. A higher standard of proof should govern the creation of what is, in effect, a new count of conviction.

Because the guidelines do not explicitly establish standards of proof, the proposed new application note calls upon the court to determine which offense[s] was the object of the conspiracy as if it were "sitting as a trier of fact."

*§ 1B1.3 Relevant Conduct (Factors that Determine the Guideline Range)*

11. *Proposed Amendment:* Section 1B1.3 is amended by deleting:

"The conduct that is relevant to determining the applicable guideline range includes that set forth below."



Section 1B1.3(b) is amended by deleting:

"(b) Chapter Four (Criminal History and Criminal Livelihood). To determine the criminal history category and the applicability of the career offender and criminal livelihood guidelines, the court shall consider all conduct relevant to a determination of the factors enumerated in the respective guidelines in Chapter Four.",

and inserting in lieu thereof the following:

"(b) Chapters Four (Criminal History and Criminal Livelihood) and Five (Determining the Sentence). Factors in Chapters Four and Five that establish the guideline range shall be determined on the basis of the conduct and information specified in the respective guidelines.".

The Commentary to § 1B1.3 captioned "Background" is amended in the second paragraph by deleting "Chapter Four" and inserting in lieu thereof "Chapters Four and Five", and by deleting "that Chapter" and inserting in lieu thereof "those Chapters".

*Reason for Amendment:* The purpose of this amendment is to clarify the guideline.

12. *Proposed Amendment:* The Commentary to § 1B1.3 captioned "Application Notes" is amended in Note 1 by deleting:

"If the conviction is for conspiracy, it includes conduct in furtherance of the conspiracy that was known to or was reasonably foreseeable by the defendant. If the conviction is for solicitation, misprision or accessory after the fact, it includes all conduct relevant to determining the offense level for the underlying offense that was known to or reasonably should have been known by the defendant.",

and inserting in lieu thereof:

"If the offense was undertaken in concert with others, whether or not charged as a conspiracy, it includes conduct of others in furtherance of the execution of the offense that was reasonably foreseeable by the defendant. For example, where Defendants A, B, and C engaged in a robbery, Defendant A is accountable under this guideline for an injury inflicted on a teller by Defendant B or C during the course of the robbery, even if Defendant A did not enter the bank, because such an injury is a reasonably foreseeable result of the commission of a bank robbery. A conspiracy count, however, may be broadly worded and include the conduct of many participants over a substantial period of time. In such cases, the scope of the offense, for the purposes of this guideline, is not necessarily the same for every participant. For example, where Defendants A and B engaged in an ongoing marihuana importation conspiracy in which Defendant C was hired to off-load a single shipment, Defendants A, B, and C may be included in a single count charging conspiracy to import marihuana. For the purposes of determining the offense level under this guideline, Defendant C is accountable for the shipment of marihuana he conspired to import and any acts or omissions in furtherance of the importation that were reasonably foreseeable. He is not accountable for prior or subsequent shipments of marihuana imported by Defendants A or B in which he played no part and from which he was to receive no benefit because those acts were not in furtherance of the execution of the offense that he undertook with Defendants A and B. In contrast, Defendants A and B are accountable for the marihuana imported during the entire conspiracy (which was reasonably foreseeable to them) and any other acts or omissions in furtherance of the execution of that conspiracy that were reasonably foreseeable.

"If the offense was a solicitation, misprision, or accessory after the fact, conduct 'for which the defendant would be otherwise accountable' includes all conduct relevant to determining the offense level for the underlying offense that was known to, or reasonably should have been known by, the defendant.".

*Reason for Amendment:* The purpose of this amendment is to clarify that the definition of relevant conduct excludes the conduct of other participants that was beyond the scope of (not in furtherance of) the jointly undertaken offense engaged in by the defendant. At the same time, the amendment clarifies that this definition covers conduct of others in furtherance of a jointly undertaken offense that was reasonably foreseeable, where the conviction is for the underlying offense.

*§ 1B1.5 Interpretation of References to Other Offense Guidelines*

13. *Proposed Amendment:* § 1B1.5 is amended by deleting "adjustments for", and by inserting "and cross references" immediately before the period at the end of the sentence.

The Commentary to § 1B1.5 captioned "Application Note" is amended in Note 1 by inserting "and cross references" immediately before "as well as the base offense level". Reason for Amendment: The purpose of this amendment is to clarify the guideline and Commentary.

14. *Proposed Amendment:* The Commentary to § 1B1.5 captioned "Application Note" is amended in Note 1 by deleting: "If the victim was vulnerable, the adjustment from § 3A1.1 Vulnerable Victim) also would apply.".

*Reason for Amendment:* The purpose of this amendment is to delete an unnecessary sentence. No substantive change is made.

*§ 1B1.9 Petty Offenses*

15. *Proposed Amendment:* Section 1B1.9 is amended in the title by deleting "Petty Offenses" and inserting in lieu thereof "Class B or C Misdemeanors and Infractions".

Section 1B1.9 is amended by deleting "(petty offense)".

The Commentary to § 1B1.9 captioned "Application Notes is amended in the first sentence of Note 1 by deleting "petty offense" and inserting in lieu thereof: "Class B or C misdemeanor or an infraction", in the second sentence of Note 1 by deleting "A petty offense is any offense for which the maximum sentence that may be imposed does not exceed six months' imprisonment." and inserting in lieu thereof "A Class B misdemeanor is any offense for which the maximum authorized term of imprisonment is more than thirty days but not more than six months; a Class C misdemeanor is any offense for which the maximum term of imprisonment is more than five days but not more than thirty days; an infraction is any offense for which the maximum authorized term of imprisonment is not more than five days.", in the first sentence of Note 2 by deleting "petty offenses" and inserting in lieu thereof "Class B or C misdemeanors or infractions", in the second sentence of Note 2 by deleting "petty" and inserting in lieu thereof "such", in the third sentence of Note 2 by deleting "petty offense" and inserting in lieu thereof "Class B or C misdemeanor or infraction" and, in Note 3 by deleting:

"3. All other provisions of the guidelines should be disregarded to the extent that they purport to cover petty offenses.".

The Commentary to § 1B1.9 captioned "Background" is amended by deleting:

"voted to adopt a temporary amendment to exempt all petty offenses from the coverage of the guidelines. Consequently, to the extent that some published guidelines may appear to cover petty offenses, they should be disregarded even if they appear in the Statutory Index",

and inserting in lieu thereof:

"exempted all Class B and C misdemeanors and infractions from the coverage of the guidelines".

*Reason for Amendment:* Section 7089 of the Omnibus Anti-Drug Abuse Act of 1988 revises the definition of a petty offense so that it no longer exactly corresponds with a Class B or C misdemeanor or infraction. Under the revised definition, a Class B or C misdemeanor or infraction that has an authorized fine of more than $5,000 for an individual (or more than $10,000 for an organization) will not be a petty offense. This legislative revision does not affect the maximum terms of imprisonment authorized. The maximum authorized term of imprisonment remains controlled by the grade of the offense (i.e., the maximum term of

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imprisonment remains five days for an infraction, thirty days for a Class C misdemeanor, and six months for a Class B misdemeanor). Because the statutory grade of the offense (i.e., a Class B or C misdemeanor or an infraction) is the more relevant definition for guideline purposes, this amendment deletes the references in § 1B1.9 to "petty offenses" and in lieu thereof inserts references to "Class B and C misdemeanors and infractions."

In addition, this amendment converts the Commission's emergency amendment at § 1B1.9 (effective June 15, 1988) into a permanent amendment. Related amendments: 21 (§ 2A2.3); 28 (§ 2A3.4); 45 (§ 2B2.3); 22 (§ 2G3.2); 135 (§ 2J1.1); 137 (§ 2J1.2); 161 (§ 2L1.3); 172 (§ 2P1.4); 173 (§ 2Q1.3); 278 (Appendix A).

*§ 2A2.1 Assault With Intent to Commit Murder; Conspiracy or Solicitation to Commit Murder; Attempted Murder*

16. *Proposed Amendment:* Section 2A2.1 is amended in subsection (b)(2)(B) by deleting "a firearm or a dangerous weapon" and inserting in lieu thereof "any dangerous weapon (including a firearm)", and in subsection (b)(2)(C) by deleting "a firearm or other dangerous weapon" and inserting in lieu thereof "any dangerous weapon (including a firearm)".

*Reason for Amendment:* The purposes of this amendment are to clarify that a firearm is a type of dangerous weapon and to remove the inconsistency in the language between specific offense characteristic subdivisions (b)(2)(B) and (b)(2)(C).

17. *Proposed Amendment:* Section 2A2.1(b)(3) is amended by inserting at the end:

"(D) If the degree of injury is between that specified in subdivisions (A) and (B), increase by 3 levels; or

(E) If the degree of injury is between that specified in subdivisions (B) and (C), increase by 5 levels.".

The Commentary to § 2A2.1 captioned "Application Notes" is amended by deleting "Notes" from the caption and inserting in lieu thereof "Note" and by deleting the following:

"2. If the degree of bodily injury falls between two injury categories, use of the intervening level (i.e., interpolation) is appropriate."

*Reason for Amendment:* The purpose of this amendment is to provide intermediate adjustment levels for the degree of bodily injury. Related amendment: 3 [Amendment to Chapter One, Part A, section 4(b)].

*§ 2A2.2 Aggravated Assault*

18. *Proposed Amendment:* Section 2A2.2 is amended in subsection (b)(2)(B) by deleting "a firearm or a dangerous weapon" and inserting in lieu thereof "any dangerous weapon (including a firearm)", and in subsection (b)(2)(C) by deleting "a firearm or other dangerous weapon" and inserting in lieu thereof "any dangerous weapon (including a firearm)".

*Reason for Amendment:* The purposes of this amendment are to clarify that a firearm is a type of dangerous weapon and to remove the inconsistency in language between specific offense characteristic subdivisions (b)(2)(B) and (b)(2)(C). Related amendment: 16 (§ 2A2.1).

19. *Proposed Amendment:* Section 2A2.2(b)(3) is amended by inserting at the end:

"(D) If the degree of injury is between that specified in subdivisions (A) and (B), increase by 3 levels; or

(E) If the degree of injury is between that specified in subdivisions (B) and (C), increase by 5 levels.".

The Commentary to § 2A2.2 captioned "Application Notes" is amended by deleting:

"3. If the degree of bodily injury falls between two injury categories, use of the intervening level (i.e., interpolation) is appropriate.".

and by renumbering Note 4 as Note 3.

*Reason for Amendment:* The purpose of this amendment is to provide intermediate adjustment levels for the degree of bodily injury. Related amendment: 3 (Amendment to Chapter One, Part A, section 4(b)).

*§ 2A2.3 Minor Assault*

20. *Proposed Amendment:* Section 2A2.3(a)(1) is amended by deleting "striking, beating, or wounding" and inserting in lieu thereof "physical contact or if a dangerous weapon (including a firearm) was possessed and its use was threatened".

The Commentary to § 2A2.3 captioned "Application Notes" is amended by deleting:

"2. Striking, beating, or wounding" means conduct sufficient to violate 18 U.S.C. 113(d).".

and inserting in lieu thereof:

"2. Definitions of "firearm" and "dangerous weapon" are found in the Commentary to § 1B1.1 (Application Instructions)."

The Commentary to § 2A2.3 captioned "Background" is amended by deleting "The distinction for striking, beating, or wounding reflects the statutory distinction found in 18 U.S.C. 113 (d) and (e).".

*Reason for Amendment:* This amendment revises the criteria for application of subsection (a)(1). Related amendment: 23 (§ 2A2.4).

*Additional Explanatory Statement:* The amendment makes two changes in the Minor Assault guideline (§ 2A2.3) and Obstructing or Impeding Officers guideline (§ 2A2.4). First it eliminates the phrase "striking, wounding, or beating" (a statutory phrase dealing with a petty offense) in favor of "physical contact." This change clarifies the guidelines and eliminates any question concerning their applicability to a wide variety of assault statutes. Commentary language concerning the phrase "striking, wounding, or beating" is also deleted.

Second, the revision provides for a specific offense characteristic covering the case in which a weapon is possessed and its use is threatened. Note that where a weapon is used with intent to injure, § 2A2.2 (Aggravated Assault) rather than these guidelines apply.

21. *Proposed Amendment:* The Commentary to § 2A2.3 captioned "Statutory Provisions" is amended by deleting "113(d), 113(e),".

*Reason for Amendment:* The purpose of this amendment is to delete references to petty offenses. Related amendment: 15 (§ 1B1.9).

*§ 2A2.4 Obstructing or Impeding Officers*

22. *Proposed Amendment:* The Commentary to § 2A2.4 captioned "Application Notes" is amended in Note 1 by deleting: "Do not apply § 3A1.2 (Official Victim).", and by inserting as the last sentence: "Therefore, do not apply § 3A1.2 (Official Victim) unless subsection (c) requires the offense level to be determined under § 2A2.2 (Aggravated Assault).".

*Reason for Amendment:* The purpose of this amendment is to clarify the Commentary.

23. *Proposed Amendment:* Section 2A2.4(b)(1) is amended by deleting "involved striking, beating, or wounding", and inserting in lieu thereof "involved physical contact or if a dangerous weapon (including a firearm) was possessed and its use was threatened".

The Commentary to § 2A2.4 is amended by deleting:

"2. Striking, beating, or wounding" is discussed in the Commentary to § 2A2.3 (Minor Assault).".

and inserting in lieu thereof:

"2. Definitions of "firearm" and "dangerous weapon," are found in the Commentary to § 1B1.1 (Application Instructions)."



*Reason for Amendment:* This amendment revises the criteria for application of subsection (b)(1). Related amendment: 20 (§ 2A2.3).

*§ 2A3.1 Criminal Sexual Abuse; Attempt or Assault with the Intent to Commit Criminal Sexual Abuse*

24. *Proposed Amendment:* Section 2A3.1(b)(1) is amended by deleting:

"criminal sexual abuse was accomplished as defined in 18 U.S.C. 2241",

and inserting in lieu thereof:

"offense was committed by the means set forth in 18 U.S.C. 2241(a) or (b)".

The Commentary to § 2A3.1 captioned "Application Notes" is amended in Note 2 by deleting:

" 'Accomplished as defined in 18 U.S.C. 2241' means accomplished by force, threat, or other means as defined in 18 U.S.C. 2241 (a) or (b) (i.e., by using force against that person; by threatening or placing that other person",

and inserting in lieu thereof the following:

" 'The means set forth in 18 U.S.C. 2241 (a) or (b)' are: (by using force against the victim; by threatening or placing the victim",

and by inserting at the end of the note the following additional sentence:

"This provision would apply, for example, where any dangerous weapon was used, brandished, or displayed to intimidate the victim.".

The Commentary to § 2A3.1 captioned "Background" is amended in the second sentence by deleting the comma immediately following "force" and inserting in lieu thereof a semicolon, and by deleting "kidnaping," and inserting in lieu thereof "or kidnaping;", and in the last sentence of the last paragraph by deleting "serious physical" and inserting in lieu thereof "permanent, life-threatening, or serious bodily".

*Reason for Amendment:* The purpose of this amendment is to clarify the guideline and Commentary.

25. *Proposed Amendment:* Section 2A3.1(b)(4) is amended by inserting immediately before the period at the end of the sentence:

"; or (C) if the degree of injury is between that specified in subdivisions (A) and (B), increase by 3 levels".

*Reason for Amendment:* The purpose of this amendment is to provide an intermediate adjustment level for degree of bodily injury. Related amendment: 3 (Amendment to Chapter One, Part A, Section 4(b)).

*§ 2A3.2 Criminal Sexual Abuse of a Minor (Statutory Rape) or Attempt to Commit Such Acts*

26. *Proposed Amendment:* The Commentary to § 2A3.2 captioned "Statutory Provision" and "Background" is amended by deleting "2243" wherever it appears and inserting in lieu thereof "2243(a)".

The Commentary to § 2A3.2 captioned "Background" is amended by deleting "statutory rape, i.e.,", and by deleting "victim's incapacity to give lawful consent" and inserting in lieu thereof "age of the victim".

*Reason for Amendment:* The purposes of this amendment are to clarify that the relevant issue is the age of the victim, and to provide a more specific reference to the underlying statute.

*§ 2A3.3 Criminal Sexual Abuse of a Ward (Statutory Rape) or Attempt to Commit Such Acts*

27. *Proposed Amendment:* Section 2A3.3 is amended in the title by deleting "(Statutory Rape)".

The Commentary to § 2A3.3 captioned "Statutory Provision" is amended by deleting "§ 2243" and inserting in lieu thereof "§ 2243(b)".

*Reason for Amendment:* The purposes of this amendment are to delete inapt language from the title, and to provide a more specific reference to the underlying statute.

*§ 2A3.4 Abusive Sexual Contact or Attempt to Commit Abusive Sexual Contact*

28. *Proposed Amendment:* Section 2A3.4 and the accompanying commentary is amended by deleting:

*"§ 2A3.4. Abusive Sexual Contact or Attempt to Commit Abusive Sexual Contact*

(a) Base Offense Level: 6

(b) Specific Offense Characteristics

(1) If the abusive sexual contact was accomplished as defined in 18 U.S.C. 2241 (including, but not limited to, the use or display of any dangerous weapon), increase by 9 levels.

(2) If the abusive sexual contact was accomplished as defined in 18 U.S.C. 2242, increase by 4 levels.

**Commentary**

*Statutory Provisions:* 18 U.S.C. 2244, 2245.

*Application Notes:*

"Accomplished as defined in 18 U.S.C. 2241" means accomplished by force, threat, or other means as defined in 18 U.S.C. 2241 (a) or (b) (i.e., by using force against that person; by threatening or placing that other person in fear that any person will be subject to death, serious bodily injury, or kidnapping; by rendering the victim unconscious; or by administering by force or threat of force, or without the knowledge or permission of the victim, a drug, intoxicant, or other similar substance and thereby substantially impairing the ability of the victim to appraise or control conduct).

2. "Accomplished as defined in 18 U.S.C. 2242" means accomplished by threatening or placing the victim in fear (other than by threatening or placing the victim in fear that any person will be subjected to death, serious bodily injury, or kidnapping); or when the victim is incapable of appraising the nature of the conduct or physically incapable of declining participation in, or communicating unwillingness to engage in, that sexual act.

*Background:* This section covers abusive sexual contact not amounting to criminal sexual abuse (criminal sexual abuse is covered under § 2A3.1–3.3). Enhancements are provided for the use of force or threats. The maximum term of imprisonment authorized by statute for offenses covered in this section is five years (if accomplished as defined in 18 U.S.C. 2241), three years (if accomplished as defined in 18 U.S.C. 2242), and six months otherwise. The base offense level applies to conduct that is consensual.", and inserting in lieu thereof:

*"§ 2A3.4 Abusive Sexual Contact or Attempt to Commit Abusive Sexual Contact*

(a) Base Offense Level:

(1) 14, if the offense was committed by the means set forth in 18 U.S.C. 2241 (a) or (b);

(2) 10, if the offense was committed by the means set forth in 18 U.S.C. 2242;

(3) 6, otherwise.

(b) Specific Offense Characteristics:

(1) If the victim had not attained the age of twelve years, increase by 4 levels; but if the resulting offense level is less than 14, increase to level 14.

(2) If the base offense level is determined under subsection (a) (1) or (2), and the victim had attained the age of twelve years but had not attained the age of sixteen years, increase by 2 levels.

**Commentary**

*Statutory Provision:* 18 U.S.C. 2244(a) (1), (2), (3).

*Application Notes:*

1. 'The means set forth in 18 U.S.C. 2241 (a) or (b)' are: By using force against the victim; by threatening or placing the victim in fear that any person will be subjected to death, serious bodily injury, or kidnapping; by rendering the victim unconscious; or by administering by force or threat of force, or without the knowledge or permission of the victim, a drug, intoxicant, or other similar substance and thereby substantially impairing the ability of the victim to appraise or control conduct.

2. 'The means set forth in 18 U.S.C. 2242' are: By threatening or placing the victim in fear (other than by threatening or placing the victim in fear that any person will be subjected to death, serious bodily injury, or kidnapping); or by victimizing an individual who is incapable of appraising the nature of the conduct or physically incapable of declining participation in, or communicating unwillingness to engage in, that sexual act.

*Background:* This section covers abusive sexual contact not amounting to criminal sexual abuse (criminal sexual abuse is covered under § 2A3.1–3.3). Alternative base

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offense levels are provided to take account of the different means used to commit the offense. Enhancements are provided for victimizing children or minors. The enhancement under subsection (b)(2) does not apply, however, where the base offense level is determined under subsection (a)(3) because an element of the offense to which that offense level applies is that the victim had attained the age of twelve years but had not attained the age of sixteen years.".

*Reason for Amendment:* The purpose of this amendment is to provide enhanced punishment for the victimization of minors and children and to conform the structure of the guideline to that of § 2A3.1 (Criminal Sexual Abuse).

*Additional Explanatory Statement:* The offense levels set forth in the amended Abusive Sexual Contact guideline (§ 2A3.4) are derived from the original abusive sexual contact guideline and from analogous guidelines such as Criminal Sexual Abuse (§ 2A3.1), Criminal Sexual Abuse of a Minor (§ 2A3.2), and the Exploitation of a Minor guidelines in Part G (§§ 2G1.2, 2G2.1, 2G2.2).

As stated in the accompanying commentary, the base offense level of six in the original abusive sexual contact guideline "applied to conduct that is consensual." This refers to sexual conduct with a minor accomplished without resort to the means set forth in 18 U.S.C. 2241(a), 2241(b) and 2242. A nine level enhancement is provided for sexual contact committed by the means set forth in § 2241 (a) or (b) (generally force) and a four level enhancement is provided for sexual contact committed by the means set forth in § 2242 (generally fear). No enhancements are provided based upon the age of the victim.

The amended guideline retains the ascending order of offense levels based upon the means used to commit the crime, but adds enhancements based upon the age of the victim. There is a two level enhancement if the victim is a minor (12 to 15 years old) and a four level enhancement if the victim is a child (11 years old or younger). These enhancements parallel the enhancements for minor and children victims in § 2A3.1 (Criminal Sexual Abuse) and § 2G1.2 (Transportation of a Minor for the Purpose of Prostitution). In addition, § 2G2.1 (Sexually Exploiting a Minor by Production of Sexually Explicit Visual or Printed Material) and § 2G2.2 (Transporting, Receiving, or Trafficking in Material Involving the Sexual Exploitation of a Minor) provide a two level enhancement for child victims. In those two guidelines, the base offense level already encompasses victimization of a minor.

After incorporating ascending offense levels based upon the means used to commit the crime and enhancements based upon the age of the victim, the offense levels set forth in the amended Abusive Sexual Contact guideline have been adjusted to insure that the same offense level (14) will result in each of the following cases: Sexual contact with an adult committed by force, sexual contact with a child committed by fear and sexual contact with a child committed without force or fear. In the parallel sexual abuse guideline (§ 2A3.1), the Commission has already determined that these three cases are of equal severity and therefore has assigned the same offense level (31) to each.

Recent legislation increased the maximum penalty for a violation of 18 U.S.C. 2244 (a)(1) and (a)(3). [cite]. The Commission solicits public comment on whether the offense levels in § 2A3.4 should be increased because the authorized maximum sentences for certain conduct covered by this guideline have been raised.

*§ 2A4.1 Kidnapping, Abduction, Unlawful Restraint*

*29. Proposed Amendment:* Section 2A4.1(b)(2) is amended by inserting immediately before the period at the end of the sentence: "; or (C) if the degree of injury is between that specified in subdivisions (A) and (B), increase by 3 levels".

*Reason for Amendment:* The purpose of this amendment is to provide intermediate adjustment level for degree of bodily injury. Related amendment: 3 (Amendment to Chapter One, Part A, section 4(b)).

*§ 2A5.2 Interference with Flight Crew Member or Flight Attendant*

*30. Proposed Amendment:* The Commentary to § 2A5.2 captioned "Application Note" is amended by deleting:

"*Application Note:*
If an assault occurred, apply the most analogous guideline from Part A, Subpart 2 (Assault) if the offense level under that guideline is greater.".

*Reason for Amendment:* The purpose of this amendment is to simplify the guideline by deleting redundant material.

*§ 2A5.3 Committing Certain Crimes Aboard Aircraft*

*31. Proposed Amendment:* The Commentary to § 2A5.3 captioned "Application Notes" is amended in Note 1 by deleting "that the defendant is convicted of violating" and inserting in lieu thereof "of which the defendant is convicted".

*Reason for Amendment:* The purpose of this amendment is to clarify the Commentary.

*§ 2B1.1 Larceny, Embezzlement, and Other Forms of Theft*

32. *Proposed Amendment:* Section 2B1.1(b)(1) is amended by deleting:

| | "Loss | Increase in level |
|---|---|---|
| (A) | $100 or less | No increase. |
| (B) | $101 to $1,000 | Add 1. |
| (C) | $1,001 to $2,000 | Add 2. |
| (D) | $2,001 to $5,000 | Add 3. |
| (E) | $5,001 to $10,000 | Add 4. |
| (F) | $10,001 to $20,000 | Add 5. |
| (G) | $20,001 to $50,000 | Add 6. |
| (H) | $50,001 to $100,000 | Add 7. |
| (I) | $100,001 to $200,000 | Add 8. |
| (J) | $200,001 to $500,000 | Add 9. |
| (K) | $500,001 to $1,000,000 | Add 10. |
| (L) | $1,000,001 to $2,000,000 | Add 11. |
| (M) | $2,000,001 to $5,000,000 | Add 12. |
| (N) | Over $5,000,000 | Add 13", |

And inserting in lieu thereof:

| | "Loss (apply the greatest) | Increase in level |
|---|---|---|
| (A) | $100 or less | No increase. |
| (B) | More than $100 | Add 1. |
| (C) | More than $1,000 | Add 2. |
| (D) | More than $2,000 | Add 3. |
| (E) | More than $5,000 | Add 4. |
| (F) | More than $10,000 | Add 5. |
| (G) | More than $20,000 | Add 6. |
| (H) | More than $40,000 | Add 7. |
| (I) | More than $80,000 | Add 8. |
| (J) | More than $150,000 | Add 9. |
| (K) | More than $300,000 | Add 10. |
| (L) | More than $500,000 | Add 11. |
| (M) | More than $1,000,000 | Add 12. |
| (N) | More than $2,000,000 | Add 13. |
| (O) | More than $5,000,000 | Add 14". |

*Reason for Amendment:* The purpose of this amendment is to conform the theft and fraud loss table to the tax loss table in order to remove an unintended inconsistency between these tables in cases where the loss is greater than $40,000. Both tables increase the offense level when the loss exceeds $2,000, but the Tax Loss Table provides a maximum 12 level difference while the Fraud Loss Table has a maximum 11 level difference. Up to $40,000 the tables are identical. Above $40,000 there are minor differences (e.g., from $40,001–$50,000 the Tax Loss Table provides a 1 level higher offense level; from $50,001–$80,000 the offense levels are identical; from $80,001–$100,000 the Tax Loss Table again provides a 1 level higher offense level; from $100,001–$150,000 the offense levels are again identical; from $150,001–$200,000 Tax Loss Table again provides a 1 level higher offense level). Because the tax loss table contains one additional level, this amendment will increase the offense level by one level in cases involving large losses.

*Related amendment:* 115 (§ 2F1.1). This amendment also eliminates minor gaps in the loss table. Related amendments: 39 (§ 2B2.1); 47 (§ 2B3.1); 180 (§ 2R1.1); 181 (§ 2S1.1); 209 (§ 2T4.1).

33. *Proposed Amendment:* Section 2B1.1(b)(1), as amended by proposed Amendment 32, is further amended by deleting:

| | | |
|---|---|---|
| "(I) | More than $80,000 | Add 8. |
| (J) | More than $150,000 | Add 9. |
| (K) | More than $300,000 | Add 10. |
| (L) | More than $500,000 | Add 11. |
| (M) | More than $1,000,000 | Add 12. |
| (N) | More than $2,000,000 | Add 13. |
| (O) | More than $5,000,000 | Add 14". |

And inserting in lieu thereof:

| | | |
|---|---|---|
| "(I) | More than $70,000 | Add 8. |
| (J) | More than $120,000 | Add 9. |
| (K) | More than $200,000 | Add 10. |
| (L) | More than $350,000 | Add 11. |
| (M) | More than $500,000 | Add 12. |
| (N) | More than $800,000 | Add 13. |
| (O) | More than $1,500,000 | Add 14. |
| (P) | More than $2,500,000 | Add 15. |
| (Q) | More than $5,000,000 | Add 16". |

*Reason for Amendment:* The purpose of this amendment is to increase the offense levels for offenses with larger loss values to better reflect the seriousness of the conduct. Related amendments: 116 (§ 2F1.1); 210 (§ 2T4.1); 39 (§ 2B2.1); 48 (§ 2B3.1).

34. *Proposed Amendment:* Section 2B1.1(b)(6) is amended by deleting "organized criminal activity" and inserting in lieu thereof "an organized scheme to steal vehicles or vehicle parts".

The commentary accompanying § 2B1.1 is amended by deleting:

"6. 'Organized criminal activity' refers to operations such as car theft rings or 'chop shops,' where the scope of the activity is clearly significant.",

And inserting in lieu thereof the following:

"6. Subsection (b)(6) referring to an 'organized scheme to steal vehicles or vehicle parts' provides an alternative minimum measure of loss in the case of an ongoing, sophisticated operation such as an auto theft ring or 'chop shop'. 'Vehicles' refers to all forms of vehicles, including aircraft and watercraft."

The commentary accompanying § 2B1.1 is further amended by deleting:

"A minimum offense level of 14 is provided for organized criminal activity, i.e., operations such as car theft rings or 'chop shops,' where the scope of the activity is clearly significant but difficult to estimate. The guideline is structured so that if reliable information enables the court to estimate a volume of property loss that would result in a higher offense level, the higher offense level would govern.",

and inserting in lieu thereof the following:

"A minimum offense level of 14 is provided for offenses involving an organized scheme to steal vehicles or vehicle parts. Typically, the scope of such activity is substantial (i.e., the value of the stolen property, combined with an enhancement for 'more than minimal planning' would itself result in an offense level of at least 14), but the value of the property is particularly difficult to ascertain in individual cases because the stolen property is rapidly resold or otherwise disposed of in the course of the offense. Therefore, the specific offense characteristic of 'organized scheme' is used as an alternative to 'loss' in setting the offense level.".

*Reason for Amendment:* The purpose of this amendment is to clarify the coverage of a specific offense characteristic. Related amendments: 38 (§ 2B1.2); 59 (§ 2B6.1).

35. *Proposed Amendment:* The Commentary to § 2B1.1 captioned "Background" is amended in the first paragraph by deleting "§ 5A1.1" and inserting in lieu thereof "Chapter Five, Part A".

*Reason for Amendment:* The purpose of this amendment is to correct a clerical error.

*§ 2B1.2 Receiving Stolen Property*

36. *Proposed Amendment:* Section 2B1.2 is amended in the title by inserting ", Transporting, Transferring, Transmitting, or Possessing" immediately after "Receiving".

Section 2B1.2(b)(3)(A) is amended by inserting "receiving and" immediately before "selling".

The Commentary to § 2B1.2 captioned "Application Notes" is amended by deleting Note 1 as follows:

"1. If the defendant is convicted of transporting stolen property, either § 2B1.1 or this guideline would apply, depending upon whether the defendant stole the property.",

and by renumbering Notes 2 and 3 as Notes 1 and 2 respectively.

*Reason for Amendment:* The purpose of this amendment is to clarify the nature of the cases to which this guideline applies.

37. *Proposed Amendment:* Section 2B1.2 is amended by renumbering subsection (b)(4) as (b)(5), and by inserting a new subsection (b)(4) as follows:

"(4) If the property included undelivered United States mail and the offense level as determined above is less than level 6, increase to level 6.".

The Commentary to § 2B1.2 captioned "Application Notes" is amended by inserting the following additional application note:

"3. 'Undelivered United States mail' means mail that has not actually been received by the addressee or his agent (e.g., it includes mail that is in the addressee's mail box).".

*Reason for Amendment:* The purpose of this amendment is to add a specific offense characteristic where stolen property involved "undelivered mail" to conform to § 2B1.1.

Note.—The current Applicaton Note 3 to § 2B1.2 is renumbered as Note 2 by amendment 36.

38. *Proposed Amendment:* Section 2B1.2(b)(4) is amended by deleting "organized criminal activity" and inserting in lieu thereof "an organized scheme to receive stolen vehicles or vehicle parts".

The Commentary accompanying § 2B1.2 is amended by inserting the following new Application Note:

"4. Subsection (b)(4) referring to an 'organized scheme to receive stolen vehicles or vehicle parts' provides an alternative minimum measure of loss in the case of an ongoing, sophisticated operation such as an auto theft ring or 'chop shop.' 'Vehicles' refers to all forms of vehicles, including aircraft and watercraft. See Commentary to § 2B1.1 (Larceny, Embezzlement, and other Forms of Theft).".

*Reason for Amendment:* The purpose of this amendment is to clarify the coverage of a specific offense characteristic. Related amendments: 34 (§ 2B1.1); 59 (§ 2B6.1).

* * * * *

*§ 2B2.1 Burglary of Residence*

39. *Proposed Amendment:* Section 2B2.1(b)(2) is amended in the first column of the table by deleting:

"Loss
(A) $2,500 or less
(B) $2,501–$10,000
(C) $10,001–$50,000
(D) $50,001–$250,000
(E) $250,001–$1,000,000
(F) $1,000,001–$5,000,000
(G) more than $5,000,000",

And inserting in lieu thereof:

"Loss (apply the greatest)
(A) $2,500 or less
(B) More than $2,500
(C) More than $10,000

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(D) More than $50,000
(E) More than $250,000
(F) More than $1,000,000
(G) More than $5,000,000".

*Reason for Amendment:* The purpose of this amendment is to eliminate minor gaps in the loss table. Related amendments: 32 (§ 2B1.1); 47 (§ 2B3.1); 115 (§ 2F1.1); 180 (§ 2R1.1); 181 (§ 2S1.1); 209 (§ 2T4.1).

* * * * *

40. *Proposed Amendment:* Section 2B2.1(b)(1), as amended by proposed amendment 39, is further amended by deleting:

"(F) ..... More than $1,000,000..... Add 5.
(G)..... More than $5,000,000..... Add 6".

and inserting in lieu thereof:

"(F) ..... More than $800,000..... Add 5.
(G)..... More than $1,500,000..... Add 6.
(H)..... More than $2,500,000..... Add 7.
(I) ..... More than $5,000,000..... Add 8".

*Reason for Amendment:* The purpose of this amendment is to conform this loss table to the proposed amendment to § 2B1.1 (Amendment 33).

41. *Proposed Amendment:* Section 2B2.1(b)(4) is amended by deleting "a firearm or other dangerous weapon" and inserting in lieu thereof "any dangerous weapon (including a firearm)".

The Commentary to § 2B2.1 captioned "Application Notes" is amended in Note 4 by deleting "with respect to a firearm or other dangerous weapon" and inserting in lieu thereof "to possession of any dangerous weapon (including a firearm) that was".

*Reason for Amendment:* The purpose of this amendment is to clarify the guideline and Commentary. Related amendment: 18 (§ 2A2.1).

*§ 2B2.2 Burglary of Other Structures*

42. *Proposed Amendment:* Section 2B2.2(b)(4) is amended by deleting "a firearm or other dangerous weapon" and inserting in lieu thereof "any dangerous weapon (including a firearm)".

The Commentary to § 2B2.2 captioned "Application Notes" is amended in Note 4 by deleting "with respect to a firearm", and inserting in lieu thereof "to possession of any dangerous weapon (including a firearm) that was".

*Reason for Amendment:* The purposes of this amendment are to clarify the guideline and Commentary and to correct a clerical error. Related amendment: 18 (§ 2A2.1).

*§ 2B2.3 Trespass*

43. *Proposed Amendment:* Section 2B2.3(b) is amended by deleting "Characteristic" and inserting in lieu thereof "Characteristics".

*Reason for Amendment:* The purpose of this amendment is to correct a clerical error.

44. *Proposed Amendment:* Section 2B2.3(b)(2) is amended by deleting "a firearm or other dangerous weapon" and inserting in lieu thereof "any dangerous weapon (including a firearm)".

*Reason for Amendment:* The purpose of this amendment is to clarify the guideline. Related amendment: 16 (§ 2A2.1).

45. *Proposed Amendment:* The Commentary to § 2B2.3 captioned "Statutory Provisions" is amended by deleting "Provisions" and inserting in lieu thereof "Provision", and by deleting "§ 1382,".

*Reason for Amendment:* The purpose of this amendment is to delete a reference to a petty offense. Related amendment: 15 (§ 1B1.9).

46. *Proposed Amendment:* The Commentary to § 2B2.3 captioned "Statutory Provisions" is further amended by deleting "18 U.S.C. 1854" and inserting in lieu thereof "42 U.S.C. 7202b".

*Reason for Amendment:* The purpose of this amendment is to delete an incorrect statutory reference and to add a correct one.

*§ 2B3.1 Robbery*

47. *Proposed Amendment:* Section 2B3.1(b)(1) is amended in the first column of the table by deleting:

"Loss
(A) $2,500 or less
(B) $2,501–$10,000
(C) $10,001–$50,000
(D) $50,001–$250,000
(E) $250,001–$1,000,000
(F) $1,000,001–$5,000,000
(G) more than $5,000,000",

And inserting in lieu thereof:

"Loss (Apply the Greatest)
(A) $2,500 or less
(B) More than $2,500
(C) More than $10,000
(D) More than $50,000
(E) More than $250,000
(F) More than $1,000,000
(G) More than $5,000,000".

*Reason for Amendment:* The purpose of this amendment is to eliminate minor gaps in the loss table. Related amendments: 32 (§ 2B1.1); 39 (§ 2B2.1); 115 (§ 2F1.1); 180 (§ 2R1.1); 181 (§ 2S1.1); 209 (§ 2T4.1).

48. *Proposed Amendment:* Section 2B3.1(b)(1), as amended by proposed Amendment 47, is further amended by deleting:

"(F) ..... More than $1,000,000..... Add 5.
(G)..... More than $5,000,000..... Add 6".

and inserting in lieu thereof:

"(F) ..... More than $800,000..... Add 5.
(G)..... More than $1,500,000..... Add 6.
(H)..... More than $2,500,000..... Add 7.
(I) ..... More than $5,000,000..... Add 8".

*Reason for Amendment:* The purpose of this amendment is to conform this loss table to the proposed amendments to § 2B1.1 (Amendment 33).

49. *Proposed Amendment:* Section 2B3.1 is amended in subsection (b)(2)(B) by deleting "a firearm or a dangerous weapon" and inserting in lieu thereof "any dangerous weapon (including a firearm)", and in subsection (b)(2)(C) by deleting "a firearm or other dangerous weapon" and inserting in lieu thereof "any dangerous weapon (including a firearm)".

*Reason for Amendment:* The purposes of this amendment are to clarify that a firearm is a type of dangerous weapon and to remove the inconsistency in language between specific offense characteristic subdivisions (b)(2)(B) and (b)(2)(C). Related amendment: 16 (§ 2A2.1).

50. *The Offense Level for Robbery:* The Commission has received comments from several sources, primarily Assistant United States Attorneys and certain District Judges, to the effect that the guideline for robbery, § 2B3.1, results in sentences that are too low, especially for first offenders.[1]

The guideline was drafted in the expectation that it would result in sentences that, on average, would approximate past sentencing practices for bank robbery,[2] in terms of average time served.[3] It was recognized, however, that for certain offenders with very serious criminal records, the guideline sentences would greatly exceed those served under past practice, because of the manner in which the Commission implemented the directive contained in 28 U.S.C. 994(h). See § 4B1.1 (Career Offender). Revision of § 4B1.1, discussed below (Amendment 243) is a related issue as to which the Commission expressly solicits comment.

Data collected by the Commission suggest that, under the guidelines, the average sentences for bank robbery may in fact be lower than in past practice, at least for certain classes of offenders. However, because the guidelines have been in effect only since November 1, 1987 (for crimes committed on or after that date), and because a number of judges did not begin applying them until after the Supreme Court's decision in Mistretta, the Commission's data on practice under the guidelines are very preliminary, and do not yet provide a reliable basis for evaluating the workings of the current guideline. The Commission is continuing to collect and analyze pertinent data. The Commission will make reports summarizing and analyzing the data available at the Commission's offices to those who are interested.

Regardless of whether the current guideline accurately reflects past practice, it may be appropriate to raise (or lower) the guideline for other reasons. For example, sentences under the current guideline may not adequately reflect the seriousness of the offense. Or it might be appropriate to incarcerate the offender for a longer period of time in order to protect the public from offenses that he might otherwise commit.

The typical bank robbery encountered in the federal system, whether armed or unarmed, involves the theft of less than $10,000, and no injuries or unlawful restraint. For such offenses, the guideline sentences (in months) are as follows:

CRIMINAL HISTORY CATEGORY

| | I | II | III | IV | V | VI | Career offender |
|---|---|---|---|---|---|---|---|
| Unarmed | 30–37 | 33–41 | 37–46 | 46–57 | 57–71 | 63–78 | 210–262 |
| Armed | 41–51 | 46–57 | 51–63 | 63–78 | 77–96 | 84–105 | 262–327 |

Actual time served usually will be approximately 15% lower because of "good time" credits. Aggravating factors, such as discharge of a weapon, injury to or restraint of a victim, or the theft of a larger sum of money, result in longer sentences, except for career offenders. These sentences may be reduced by a guilty plea, in which event, except for career offenders, there usually is a decrease of 2 levels (approximately 20%). On the other hand, these sentences could be increased by 2 levels (approximately 25%) if § 3C1.1 (Obstruction of Justice) applies, or by 2 or more levels if the defendant is also convicted of other offenses (see Chapter 3, Part D). Lower or higher sentences also may result though departure from the guidelines.

As one possible response to the comments that the sentences under the current guideline are too low, it has been proposed that the base offense level in § 2B3.1 be increased by six levels (from level 18 to level 24). This would result in the following guideline sentences for the typical bank robbery:

CRIMINAL HISTORY CATEGORY

| | I | II | III | IV | V | VI | Career offender |
|---|---|---|---|---|---|---|---|
| Unarmed | 57–71 | 63–78 | 70–87 | 84–105 | 100–125 | 110–137 | 210–262 |
| Armed | 78–97 | 87–108 | 97–121 | 110–137 | 130–162 | 140–175 | 262–327 |

The Commission solicits comment on whether the sentences produced by the robbery guideline are appropriate, and if not, in what respects the guideline should be changed.[4] Comments need not be limited to the approach described above.

Concern also has been expressed that the guideline sentence may be unduly limited by the number of counts of conviction. (See Chapter 3, Part D, for guidelines dealing with multiple counts of conviction.) Under the guidelines, the offense level is not increased by offenses that are uncharged or counts that are dismissed; the sentencing judge may consider them only within the guideline range or as a basis for departure. Under past practice, the sentencing judge was unconstrained in his consideration of offenses. The parole guidelines took them into account regardless of whether there was a conviction.

This facet of the guidelines may result in lower sentences than under past practice if the prosecutor accepts a plea to one count of robbery when the defendant in fact has committed several robberies. It has been proposed that the Commission amend the robbery guideline to explicitly take into account other robberies of which the defendant has been not convicted. The following two amendments have been proposed as ways to accomplish this.

[Option 1: Insert as an additional specific offense characteristic at § 2B3.1(b):

"(6) If, as part of the same course of conduct or common scheme or plan as the offense of conviction, the defendant committed one or more additional robberies, increase by 2 levels. Do not, however, apply this adjustment if the application defendant is convicted of multiple counts of robbery.".]

[Option 2: Insert as an additional specific offense characteristic at § 2B3.1(b):

[1] Although § 2B3.1 relates to robbery in general, the comments received so far have been confined to bank robbery. The vast majority of all federal robbery prosecutions are for bank robbery.

[2] Past practice showed that the average sentence for non-bank robbery was substantially less than that for bank robbery (up to 5 offense levels less, but the number of cases was quite small). The guidelines reduced that difference to 0 or 1 level by raising the offense level for non-bank robbery cases. Comment is solicited on whether there is a sufficient distinction between bank robberies and other robberies to warrant a greater difference in offense level.

[3] As a result of the Sentencing Reform Act, parole was abolished and "good time" credits were reduced to 54 days per year (15%). Thus, to produce the same time served, a sentence under the guidelines necessarily would be much shorter than the sentence pronounced under the old law.

[4] A change in the sentences could be effected through changes in other guidelines, such as criminal livelihood or career offender. Comment may be addressed to these or other issues.

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"(6) If, as part of the same course of conduct or common scheme or plan as the offense of conviction, the defendant committed (A) one additional robbery, increase by 2 levels; (B) two additional robberies, increase by 3 levels; (C) three or four additional robberies, increase by 4 levels; or (D) five or more additional robberies, increase by 5 levels.".

The following additional Application Note would be inserted as Note 9:

"9. Multiple robberies are not grouped under § 3D1.2(d). Where specific offense characteristic (b)(6) applies, multiple counts will be grouped under § 3D1.2(c).".]

The Commission solicits comment on whether either of these approaches should be followed.

51. *Proposed Amendment:* Section 2B3.1(b)(3) is amended by inserting at the end:

"(D) If the degree of injury is between that specified in subdivisions (A) and (B), increase by 3 levels; or

(E) If the degree of injury is between that specified in subdivisions (B) and (C), increase by 5 levels.".

The Commentary to § 2B3.1 captioned "Application Notes" is amended by deleting:

"4. If the degree of bodily injury falls between two injury categories, use of the intervening level (i.e., interpolation) is appropriate.";

and by renumbering Notes 5–8 as 4–7 respectively.

*Reason for Amendment:* The purpose of this amendment is to provide intermediate adjustment levels for the degree of bodily injury specific offense characteristic. Related amendment: 3 (Amendment to Chapter One, Part A, section 4(b)).

52. *Proposed Amendment:* Section 2B3.1(b)(1) is amended by deleting "Treat the loss for a financial institution or post office as at least $5,000." and inserting in lieu thereof

"(H) If the offense involved the robbery of a financial institution or post office, and no increase from subdivisions (B–G) above applies, increase by 1 level.".

The Commentary to § 2B3.1 captioned "Application Notes" is amended in Note 2 by deleting "robbery or attempted robbery of a bank or post office results in a minimum one-level enhancement. There is no special enhancement for banks and post offices if the loss exceeds $10,000, however" and inserting in lieu thereof "there is a one level enhancement if the offense involved robbery or attempted robbery of a financial institution or post office and there was no loss or the loss did not exceed $2,500. If the loss exceeded $2,500, the applicable enhancement from subsection (b)(1)(B)–(G) is used instead".

*Reasons for Amendment:* The purpose of this amendment is to clarify the application of the guideline. No substantive change is made.

*§ 2B3.2 Extortion by Force or Threat of Injury or Serious Damages*

53. *Proposed Amendment:* Section 2B3.2 is amended in subsection (b)(2)(B) by deleting "a firearm or a dangerous weapon" and inserting in lieu thereof "any dangerous weapon (including a firearm)", and in subsection (b)(2)(C) by deleting "a firearm or other dangerous weapon" and inserting in lieu thereof "any dangerous weapon (including a firearm)".

*Reason for Amendment:* The purposes of this amendment are to clarify that a firearm is a type of dangerous weapon and to remove the inconsistency in language between specific offense characteristic subdivisions (b)(2)(B) and (b)(2)(C). Related amendment: 16 (§ 2A2.1).

54. *Proposed Amendment:* Section 2B3.2(b)(3) is amended by inserting at the end:

"(D) If the degree of injury is between that specified in subdivisions (A) and (B), increase by 3 levels; or

(E) If the degree of injury is between that specified in subdivisions (B) and (C), increase by 5 levels.".

The Commentary to § 2B3.2 captioned "Application Notes"is amended by deleting:

"4. If the degree of bodily injury falls between two injury categories, use of the intervening level (i.e., interpolation) is appropriate.";

and by renumbering Notes 5 and 6 as 4 and 5 respectively.

*Reason for Amendment:* The purpose of this amendment is to provide intermediate adjustment levels for the degree of bodily injury. Related amendment: 3 (Amendment to Chapter One, Part A, Section 4(b)).

*§ 2B3.3 Blackmail and Similar Forms of Extortion*

55. *Proposed Amendment:* Section 2B3.3(b) is amended by deleting "Characteristics" and inserting in lieu thereof "Characteristic".

*Reason for Amendment:* The purpose of this amendment is to correct a clerical error.

*§ 2B5.1 Offenses Involving Counterfeit Obligations of the United States*

56. *Proposed Amendments:* Section 2B5.1 is amended in the title by inserting "Bearer" immediately before "Obligations".

The Commentary to § 2B5.1 captioned "Application Notes" is amended by renumbering Note 2 as Note 3, and by inserting the following as Note 2:

"2. 'Counterfeit', as used in this section, means an instrument that purports to be genuine but is not, because it has been falsely made or manufactured in its entirety. Offenses involving genuine instruments that have been altered are covered under § 2B5.2.".

The Commentary to § 2B5.1 captioned "Application Notes" is amended in the renumbered Note 3 by deleting ", paste corners of notes on notes of a different denomination,".

The Commentary to § 2B5.1 captioned "Application Notes" is amended by inserting the following additional Note:

"4. For the purposes of subsection (b)(1), do not count items that obviously were not intended for circulation (e.g., discarded defective items).".

*Reason for Amendment:* The purpose of this amendment is to clarify the coverage and operation of this guideline. Related Amendment: 57 (§ 2B5.2).

*Additional Explanatory Statement:* The proposed amendment revises the titles of §§ 2B5.1 and 2B5.2 to make the coverage of each guideline clear from the title. Presently, the coverage of § 2B5.1 is specified in Application Note 1 of the Commentary to this guideline. For § 2B5.1, the proposed amendment adopts the definition of "counterfeit" used in 18 U.S.C. 513. "Altered" obligations (e.g., the corner of a note of one denomination pasted on a note of a different denomination) are covered under § 2B5.2. The proposed amendment also adds an application note providing that items obviously not intended for circulation (e.g. discarded defective items) are not to be counted under subsection (b)(1).

*§ 2B5.2 Forgery; Offenses Involving Counterfeit Instruments Other than Obligations of the United States*

57. *Proposed Amendment:* Section 2B5.2 is amended in the title by inserting "Altered or" immediately following "Involving" and by inserting "Counterfeit Bearer" immediately following "Other than".

*Reason for Amendment:* The purpose of this amendment is to clarify the coverage of this guideline. Related amendment: 56 (§ 2B5.1).



*§ 2B6.1 Altering or Removing Motor Vehicle Identification Numbers, or Trafficking in Motor Vehicles or Parts with Altered or Obliterated Identification Numbers*

58. *Proposed Amendment:* Section 2B6.1(b) is amended by renumbering subsection (b)(2) as (b)(3) and inserting the following as subsection (b)(2):

"(2) If the defendant was in the business of receiving and selling stolen property, increase by 2 levels.".

*Reason for Amendment:* The purpose of this amendment is to resolve an inconsistency between this section and § 2B1.2 created by the lack of an enhancement in this section for a person in the business of selling stolen property. Currently, a defendant convicted under the statutes covered by this section, which are expressly designed to cover trafficking in motor vehicles or parts with altered or obliterated identification numbers, could receive a lower offense level than if convicted of transportation or receipt of stolen property. This amendment eliminates this inconsistency by adding a 2 level increase if the defendant was in the business of selling stolen property. Two levels rather than four levels is the applicable increase to conform to § 2B1.2 because the base offense level of § 2B6.1 already incorporates the adjustment for more than minimal planning.

59. *Proposed Amendment:* Section 2B6.1(b)(2) is amended by deleting "organized criminal activity" and inserting in lieu thereof "an organized scheme to steal vehicles or vehicle parts, or to receive stolen vehicles or vehicle parts".

The Commentary accompanying § 2B6.1 is amended by deleting:

"1. See Commentary to § 2B1.1 (Larceny, Embezzlement, and other Forms of Theft) regarding the adjustment in subsection (b)(2) for organized criminal activity, such as car theft rings and 'chop shop' operations.",

and inserting in lieu thereof the following:

"1. Subsection (b)(2) referring to an 'organized scheme to steal vehicles or vehicle parts, or to receive stolen vehicles or vehicle parts' provides an alternative minimum measure of loss in the case of an ongoing, sophisticated operation such as an auto theft ring or 'chop shop.' 'Vehicles' refers to all forms of vehicles, including aircraft and watercraft. See Commentary to § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft).".

*Reason for Amendment:* The purpose of this amendment is to clarify the coverage of a specific offense characteristic. Related amendments: 34 (§ 2B1.1); 38 (§ 2B1.2).

60. *Proposed Amendment:* The Commentary to § 2B6.1 captioned "Statutory Provisions" and "Background" is amended by deleting "2320" wherever it appears and inserting in lieu thereof in each instance "2321".

*Reason for Amendment:* The purpose of this amendment is to correct a clerical error.

61. *Proposed Amendment:* Section 2B6.1(b) is amended by deleting "Characteristic" and inserting in lieu thereof "Characteristics".

*Reason for Amendment:* The purpose of this amendment is to correct a clerical error.

*§ 2C1.1 Offering, Giving, Soliciting, or Receiving a Bribe; Extortion Under Color of Official Right*

62. *Proposed Amendment:* Section 2C1.1(b) is amended by deleting "Apply" and inserting in lieu thereof "If more than one applies, use".

*Reason for Amendment:* The purpose of this amendment is to standardize the terminology used in the guidelines.

63. *Proposed Amendment:* Section 2C1.1(b)(1) is amended by deleting "action received" and inserting in lieu thereof "benefit received, or to be received,".

The Commentary to § 2C1.1 captioned "Application Notes" is amended in Note 2 in the first sentence by deleting "action received" and inserting in lieu thereof "benefit received, or to be received,", and by deleting "action (i.e., benefit or favor)" and inserting in lieu thereof "benefit"; in the second sentence by deleting "action received in return" and inserting in lieu thereof "benefit received or to be received,", and by deleting "such action" and inserting in lieu thereof "such benefit"; and in the third sentence by deleting "action" and inserting in lieu thereof "benefit".

*Reason for Amendment:* The purpose of this amendment is to clarify the guideline and commentary.

64. *Proposed Amendment:* The Commentary to § 2C1.1 captioned "Application Notes" is amended in Note 6 by deleting:

"When multiple counts are involved, each bribe is to be treated as a separate, unrelated offense not subject to § 3D1.2(d) or § 3D1.3(b). Instead, apply § 3D1.4. However, if a defendant makes several payments as part of a single bribe, that is to be treated as a single bribery offense involving the total amount of the bribe.",

and inserting in lieu thereof:

"In the case of multiple counts, treat each bribe as a separate, unrelated offense not subject to § 3D1.2(d); except, if the counts involved several related payments as part of a single bribe, treat the conduct as a single offense involving the total amount of the bribe (i.e., the counts are to be grouped under § 3D1.2(d)).".

*Reason for Amendment:* The purpose of this amendment is to clarify the Commentary.

65. *Proposed Amendment:* The Commentary to § 2C1.1 captioned "Background" is amended in the eighth paragraph by deleting "extortions, conspiracies, and attempts" and inserting in lieu thereof "extortion, or attempted extortion,".

*Reason for Amendment:* This amendment corrects a minor technical error. This section expressly covers extortion and attempted extortion; conspiracy is covered through the operation of § 2X1.1. The present phraseology could be misread as overriding the application of § 2X1.1 in conspiracy cases.

66. *Issues concerning § 2C1.1 (Offering, Giving, Soliciting, or Receiving a Bribe; Extortion Under Color of Official Right) and § 2C1.2 (Offering, Giving, Soliciting, or Receiving a Gratuity):* For the purposes of this analysis, examples from § 2C1.1 (Bribery) are used. However, the analysis is equally applicable to § 2C1.2 (Gratuity).

Under the current bribery guideline, there is no enhancement for repeated instances of bribery if the conduct involves the same course of conduct or common scheme or plan and the same victim (as frequently is the case where the government is the victim) because such cases are grouped under § 3D1.2(b). In contrast, the fraud and theft guidelines provide a 2-level increase in cases of repeated instances under the second prong of the "more than minimal planning" definition.

Unlike the theft and fraud guidelines, it is arguable that the value of any bribe that was part of the same course of conduct or a common scheme or plan as the offense of conviction, but not included in the count of conviction, is excluded from consideration. This is because § 1B1.3(a)(2), which authorizes consideration of conduct not expressly included in the offense of conviction but part of the same course of conduct or common scheme or plan, applies only to offenses grouped under § 3D1.2(d). Thus, if the defendant pleads to one count of a bribery offense involving one $10,000 bribe in satisfaction of a 15 count indictment involving an additional $80,000 in separate bribes that were part of the same course of conduct, the current bribery guideline, unlike the theft and fraud guidelines, would not take into account the additional $80,000, and there would be no increase for repeated instances.

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The current guideline may also create various anomalies because the multiple count rule (which applies only where the offenses are not grouped under § 3D1.2(b)) increases the offense level much faster than the monetary table. For example, an elected public official who takes three unrelated $200 bribes has an offense level of 21; the same defendant who took two unrelated $500,000 bribes would have an offense level of 20.

The Commission seeks comment and suggestions on whether and how the guidelines should be amended to address these issues. One possible way to address these issues is presented below, but the Commission seeks recommendations as to any other appropriate solutions. In the example shown below, an enhancement of 2 levels is added for repeated instances (similar to the second prong of "more than minimal planning" in the theft and fraud guidelines) and § 2D1.2(d) is amended to include bribery offenses.

An illustration of one possible way of addressing these issues follows:

Section 2C1.1(b) is amended by deleting "(1)" and "(2)" and inserting in lieu thereof "(A)" and "(B)" respectively; and by deleting "Apply the greater" and inserting in lieu thereof:

"(1) If the offense involved more than one bribe, increase by 2 levels.

(2) If more than one of the following applies, use the greater:".

The Commentary to § 2C1.1 captioned "Application Notes" is amended by deleting the text of Note 6 and inserting in lieu thereof:

"Related payments that, in essence, constitute a single bribe (e.g., a number of installment payments for a single action) are to be treated as a single bribe, even if charged in separate counts.".

Section 2C1.2(b) is amended by deleting "(1)" and "(2)" and inserting in lieu thereof "(A)" and "(B)" respectively; and by deleting "Apply the greater" and inserting in lieu thereof:

"(1) If the offense involved more than one gratuity, increase by 2 levels.

(2) If more than one of the following applies, use the greater:".

The Commentary to § 2C1.2 captioned "Application Notes" is amended by deleting the text of Note 4 and inserting in lieu thereof:

"Related payments that, in essence, constitute a single gratuity (e.g., separate payments for airfare and hotel for a single vacation trip) are to be treated as a single gratuity, even if charged in separate counts.".

Section 3D1.2(d) is amended in the listing of offense sections in the third paragraph by deleting "§ 2C1.1", and in the listing of offense sections in the second paragraph by inserting in order by section number "§§ 2C1.1, 2C1.2,".

Section 3D1.5 is amended in the Illustrations following the Commentary by deleting Illustration 2 and renumbering Illustrations 3, 4, and 5 as 2, 3 and 4 respectively.

*§ 2C1.2 Offering, Giving, Soliciting, or Receiving a Gratuity*

67. *Proposed Amendment:* Section 2C1.2(b) is amended by deleting "Apply" and inserting in lieu thereof "If more than one applies, use".

*Reason for Amendment:* The purpose of this amendment is to standardize the terminology used in the guidelines.

68. *Proposed Amendment:* The Commentary to § 2C1.2 captioned "Application Notes" is amended in Note 4 by deleting:

"When multiple counts of receiving a gratuity are involved, each count is to be treated as a separate, unrelated offense not subject to § 3D1.2(d) or § 3D1.3(b). Instead, apply § 3D1.4.".

and inserting in lieu thereof the following:

"In the case of multiple counts, treat each gratuity as a separate, unrelated offense not subject to § 3D1.2(d); except, if the counts involved several related payments as part of a single gratuity, treat the conduct as a single offense involving the total amount of the gratuity (i.e., the counts are to be grouped under § 3D1.2(d)).".

*Reason for Amendment:* The purpose of this amendment is to clarify the Commentary and to specify how multiple counts that involve several related payments as part of a single gratuity are to be treated.

*§ 2D1.1 Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession With Intent To Commit These Offenses)*

69. *Proposed Amendment:* Section 2D1.1(a) is amended by deleting:

"(a) Base Offense Level:

(1) 43, for an offense that results in death or serious bodily injury with a prior conviction for a similar drug offense; or

(2) 38, for an offense that results in death or serious bodily injury and involved controlled substances (except Schedule III, IV, and V controlled substances and less than: (A) Fifty kilograms of marihuana, (B) ten kilograms of hashish, and (C) one kilogram of hashish oil); or

(3) For any other offense, the base offense level is the level specified in the Drug Quantity Table below.",

and inserting in lieu thereof:

"(a) Base Offense Level:

(1) 43, if the defendant is convicted under 21 U.S.C. 841 (b)(1)(A), (b)(1)(B), or (b)(1)(C), or 21 U.S.C. 960 (b)(1), (b)(2), or (b)(3), and the offense of conviction establishes that death or serious bodily injury resulted from the use of the substance and that the defendant committed the offense after one or more prior convictions for a similar offense; or

(2) 38, if the defendant is convicted under 21 U.S.C. 841(b)(1)(A), (b)(1)(B), or (b)(1)(C), or 21 U.S.C. 960 (b)(1), (b)(2), or (b)(3), and the offense of conviction establishes that death or serious bodily injury resulted from use of the substance; or

(3) The offense level specified in the Drug Quantity Table set forth in subsection (c) below.".

Section 2D1.1 captioned "DRUG QUANTITY TABLE" is amended by deleting "DRUG QUANTITY TABLE" and inserting in lieu thereof "(c) DRUG QUANTITY TABLE".

*Reason for Amendment:* The purpose of this amendment is to provide that subsections (a) and (b) apply only in the case of a conviction under circumstances specified in the statutes cited.

70. *Proposed Amendment:* Section 2D1.1(b) is amended by deleting "a firearm or other dangerous weapon" and inserting in lieu thereof "any dangerous weapon (including a firearm)".

*Reason for Amendment:* The purpose of the amendment is to clarify the guideline. Related amendment: 16 (§ 2A2.1).

71. *Proposed Amendment:* Section 2D1.1(b) is amended by adding the following new Specific Offense Characteristic:

"(2) If the defendant is convicted of violating 21 U.S.C. 960(a) under circumstances in which (A) an aircraft other than a regularly scheduled commercial air carrier was used to import the controlled substance, or (B) the defendant acted as a pilot, copilot, captain, navigator, flight officer, or any other operation officer aboard any craft or vessel carrying a controlled substance, increase by 2 levels, but if the resulting offense level is less than level 26, increase to level 26.";

The Commentary to § 2D1.1 captioned "Application Notes" is amended by inserting the following new Application Note:

"(14) If subsection (b)(2)(B) applies, do not apply § 3B1.3 (Abuse of Position of Trust or Use of Special Skill).";

The Commentary to § 2D1.1 captioned "Background" is amended by inserting the following new paragraph between the third and fourth paragraphs:



"Specific Offense Characteristic (b)(2) is mandated by section 6453 of the Omnibus Anti-Drug Abuse Act of 1988 (Pub. L. 100-690).".

*Reason for Amendment:* The purpose of this amendment is to implement the directive to the Commission in section 6453 of the Omnibus Anti-Drug Abuse Act of 1988 (Pub L. 100-690).

72. *Proposed Amendment:* The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 10 by adding in the appropriate place (by alphabetical order) the following new subdivisions—

(1) In the listing captioned "Schedule III Substances":

"1 gm of Benzphetamine = 4 mg of heroin/4 gm of marihuana",

(2) In the listing captioned "Cocaine and Other Schedule I and II Stimulants":

"1 gm of 4-Methyl-aminorex ('Euphoria') = 0.5 gm of cocaine/0.1 gm of heroin".

*Reason for Amendment:* The purpose of this amendment is to make the Drug Equivalency Table more comprehensive.

73. *Proposed Amendment:* The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 10 immediately following the caption "Cocaine and Other Schedule I and II Stimulants" and the caption "LSD, PCP, and Other Hallucinogens" by inserting in each instance "(and their immediate precursors)".

*Reason for Amendment:* The purpose of this amendment is to clarify the Commentary.

74. *Proposed Amendment:* The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 10 by deleting:

"1 gm of Phenylacetone/$P_2P$ (amphetamine precursor) = 0.375 gm of cocaine/0.075 gm of heroin

1 gm of Phenylacetone/$P_2P$ (methamphetamine precursor) = 0.833 gm of cocaine/0.167 gm of heroin"

and inserting in lieu thereof:

"1 gm Phenylacetone/$P_2P$ (when possessed for the purpose of manufacturing methamphetamine) = 0.833 gm of cocaine/0.167 gm of heroin

1 gm Phenylacetone/$P_2P$ (in any other case) = 0.375 gm of cocaine/0.075 gm of heroin".

*Reason for Amendment:* The purpose of this amendment is to clarify the Commentary and correct a typographical error.

75. *Proposed Amendment:* The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 10 by deleting: "The following dosage equivalents for certain common drugs are provided by the Drug Enforcement Administration to facilitate the application of § 2D1.1 of the guidelines in cases where the number of doses, but not the weight of the controlled substances are known. The dosage equivalents provided in these tables reflect the amount of the pure drug contained in an average dose. Dosage Equivalency Table",

and inserting in lieu thereof the following:

"11. If the number of doses, pills, or capsules but not the weight of the controlled substance is known, multiply the number of doses, pills, or capsules by the typical weight per dose to estimate the total weight of the controlled substance (e.g., 100 doses of Bufotenine at 1 mg per dose = 100 mg of Bufotenine). The Typical Weight Per Unit Table, prepared from information provided by the Drug Enforcement Administration, displays the typical weight per dose, pill, or capsule for common controlled substances.—Typical Weight Per Unit (Dose, Pill, or Capsule) Table".

The Commentary to § 2D1.1 captioned "Application Notes" is amended by renumbering the current Note 11 as Note 12.

*Reason for Amendment:* The purpose of this amendment is to clarify the Commentary.

76. *Proposed Amendment:* The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 10 by adding the following section immediately after the section captioned "Depressants":

"Marihuana

1 marihuana cigarette = 0.5 gm".

*Reason for Amendment:* The purpose of this amendment is to make the listing more comprehensive.

77. *Proposed Amendment:* The Commentary to § 2D1.1 captioned "Application Notes" is amended by inserting the following as an additional note:

"13. If the quantity of drugs substantially exceeds that required for level 36, an upward departure may be warranted.".

*Reason for Amendment:* The purpose of this amendment is to add an Application Note to the Commentary of § 2D1.1 concerning possible departure in the case of an extremely large quantity of drugs.

78. *Proposed Amendment:* The Drug Quantity Table to § 2D1.1 is amended by inserting "Methamphetamine," immediately following "PCP or" wherever it appears and by inserting "or Pure Methamphetamine" following "Pure PCP" wherever it appears.

The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 9 by inserting "and methamphetamine" immediately following "phencyclidine (PCP)", by inserting ", pure methamphetamine" immediately following "amounts of pure PCP" wherever it appears, and by inserting "or methamphetamine" following "appropriate for PCP".

The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 10, in the Drug Equivalency Table, Cocaine and Other Schedule I and II Stimulants by deleting "2.0 gm of cocaine/0.4 gm of heroin" immediately following "1 gm of Methamphetamine =" and inserting in lieu thereof "5.0 gm of cocaine/1.0 gm of heroin" and by deleting "0.833 gm of cocaine/0.167 gm of heroin" immediately following "(methamphetamine precursor)" and inserting in lieu thereof "2.08 gm of cocaine/0.418 gm of heroin".

The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 10 by inserting "methamphetamine, fentanyl," immediately following "i.e., heroin, cocaine, PCP," and by deleting:

"one gram of a substance containing methamphetamine, a Schedule I stimulant, is to be treated as the equivalent of two grams of a substance containing cocaine in applying the Drug Quantity Table.",

and inserting in lieu thereof:

"one gram of a substance containing oxymorphone, a Schedule I opiate, is to be treated as the equivalent of five grams of a substance containing heroin in applying the Drug Quantity Table.".

*Reason for Amendment:* The purpose of this amendment is to reflect statutory changes with respect to the drug methamphetamine.

79. *Proposed Amendment:* The Drug Quantity Table in § 2D1.1 is amended by deleting, "or other Schedule I or II controlled" wherever it appears and inserting "Schedule I or II Depressants or" immediately before "Schedule III", wherever it appears, and by inserting "substances" immediately after "Schedule IV" and immediately after "Schedule V" wherever they appear.

The Drug Quantity Table in § 2D1.1 is amended by deleting "equivalent" wherever it appears and inserting in lieu thereof "the equivalent amount of other".

The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 10, in the tables captioned Drug Equivalency Tables, by deleting "Other Schedule I or II Substances" and inserting in lieu thereof "Schedule I and II Depressants".

*Reason for Amendment:* The purpose of this amendment is to clarify the guideline and Commentary.

80. *Elimination of Minor Gaps in the Drug Quantity Table:* There are minor

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gaps in the drug quantity table (e.g., Level 24 applies to 80–99 kg of Marihuana; Level 26 applies to 100–399 kg of Marihuana). Questions have repeatedly been raised as to what is proper offense level for a quantity falling between the stated levels (e.g., 99.4 kg of Marihuana). Because the "base offense levels in § 2D1.1 are either provided directly by the Anti-Drug Abuse Act of 1986 or are proportional to the levels established by statute" (Guidelines Manual p. 2.46), the correct interpretation is that at least 100 kg is required for Level 26.

The Commission seeks comment on eliminating these gaps by revising the second through the fifteenth paragraph of the Table to read "At least—but less than—" for each controlled substance (e.g., Level 24 would include "At least 80 kg but less than 100 kg of Marihuana"; Level 26 would include "At least 100 kg but less than 400 kg of Marihuana").

81. *Proposed Amendment:* Section 2D1.1 is amended in the table captioned "Drug Quantity Table" by deleting "**" immediately following "Level 32" and immediately following "Level 26", and by deleting "** Statute specifies a mandatory minimum sentence.".

The footnote marked "*" to the Drug Equivalency Table in § 2D1.1 is amended by deleting the text of the footnote in its entirety as follows:

"The scale amounts for all controlled substances refer to the total weight of the controlled substance. Consistent with the provisions of the Anti-Drug Abuse Act, if any mixture of a compound contains any detectable amount of a controlled substance, the entire amount of the mixture or compound shall be considered in measuring the quantity. If a mixture or compound contains a detectable amount of more than one controlled substance, the most serious controlled substance shall determine the categorization of the entire quantity.",

and inserting in lieu thereof:

"Unless otherwise specified, the weight of a controlled substance set forth in the table refers to the entire weight of any compound or mixture containing a detectable amount of the controlled substance. If a mixture or compound contains more than one controlled substance, the weight of the entire mixture or compound is assigned to the controlled substance that results in the greater offense level. In the case of a mixture or compound containing PCP or methamphetamine, use the offense level determined by the entire weight of the mixture or compound, or the offense level determined by the weight of the pure PCP or methamphetamine, whichever is greater.".

The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 9 by inserting immediately before the period at the end of the first sentence:

", except in the case of PCP or methamphetamine for which the guideline itself provides for the consideration of purity (see the footnote to the Drug Quantity Table)".

and by deleting:

"Congress provided an exception to purity considerations in the case of phencyclidine (PCP). 21 U.S.C. 841(b)(1)(A). The legislation designates amounts of pure PCP and mixtures in establishing mandatory sentences. The first row of the table illustrates this distinction as one kilogram of PCP or 100 grams of pure PCP. Allowance for higher sentences based on purity is not appropriate for PCP.".

The Commentary to 2D1.1 captioned "Background" is amended in the third paragraph by deleting "with two asterisks represent mandatory minimum sentences established by the Anti-Drug Abuse Act of 1986. These levels reflect sentences" and inserting in lieu thereof "at levels 32 and 36 establish guideline ranges", and by deleting "requirement" and inserting in lieu thereof "minimum".

*Reason for Amendment:* The purposes of this amendment are to clarify the operation of the guideline, and to delete an unecessary footnote.

82. *Calculation of the Weight of LSD for Guideline Purposes:* The question has repeatedly arisen as to whether the carrier on which D-lysergic acid diethylamide (LSD) is placed should be considered as part of the mixture and therefore weighed.

LSD may be sold on various carriers such as a sugar cube or on blotter paper. A sugar cube weighs approximately 2,270 mg., a piece of blotter paper the size used to hold one dose weighs about 14 mg., and a dose of LSD weighs about .05 mg. Therefore, if the carrier was weighed as part of the mixture, a person selling 100 doses of LSD would have an offense level of 32, or 26, or 12 depending on whether the LSD was on a sugar cube, blotter paper, or in a liquid form.

The Commission seeks comment on the most appropriate response to this situation (i.e., should or should not the Commission amend the guidelines or Commentary to exclude the weight of the "carrier" in LSD cases for guideline purposes?).

83. *Relationship of Marihuana Plants to Marihuana:* Section 6479 of the Omnibus Anti-Drug Abuse Act of 1988 alters the manner in which the offense level for marihuana plants is calculated under 21 U.S.C. 841. Under 21 U.S.C. 841, as amended, an offense involving 100 marihuana plants is treated as equivalent to an offense involving 100 kilograms of marihuana, and an offense involving 1,000 marihuana plants is treated as equivalent to an offense involving 1,000 kilograms of marihuana. From the legislative history, it appears that this change was directed primarily towards large scale marihuana growers. The statutory authorized maximum for an offense involving fewer than 50 plants (five years) remains unchanged.

This statutory revision requires revision of the relationship of marihuana plants to marihuana in the guidelines for offense levels 26 and above (currently 100 marihuana plants is treated as the equivalent of 10 kilograms of marihuana; 1000 marihuana plants is treated as the equivalent of 100 kilograms of marihuana).

A more difficult question is how to treat this relationship when there are fewer than 100 marihuana plants. Information from the Drug Enforcement Administration indicates that the yield from a marihuana plant varies but the average yield is about 0.4 kilogram. A plant could be expected to yield 1 kilogram only with sophisticated growing methods.

The Commission seeks comment on how this statutory revision should be addressed. Specifically, should or should not the Commission use a lower ratio of marihuana plants to marihuana if there are fewer than 100 plants; and, if so, at which point or points should a lower ratio be used?

84. *Proposed Amendment:* The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 10 in the section of the "Drug Equivalency Tables" captioned "Schedule I or II Opiates" on the line beginning "(piperidinyl] Propanamide) =" by deleting "31.25 gm" and inserting in lieu thereof "2.5 gm".

*Reason for Amendment:* The purpose of this amendment is to conform the equivalency for fentanyl to that set forth in the Drug Quantity Table and statute.

85. *Proposed Amendment:* The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 10 in the section of "Dosage Equivalency Table" captioned "Hallucinogens" by deleting "STP (DOM) Dimethoxyamphetamine" and inserting in lieu thereof "2, 5-Dimethoxy-4-methylamphetamine (STP, DOM)".

The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 10 in the section of the "Dosage Equivalency Table" in the section captioned "Stimulants" by deleting



"Preludin 25 mg" and inserting in lieu thereof "Phenmetrazine (Preludin) 75 mg".

*Reason for Amendment:* The purpose of this amendment is to substitute generic names for the two substances and to conform the dosage of Phenmetrazine currently being manufactured.

*Additional Explanatory Statement:* This amendment was recommended by the Drug Control Section of the Drug Enforcement Administration.

86. *Proposed Amendment:* The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 10 in the "Drug Equivalency Tables" in the section captioned "Schedule III Substances" by deleting:

"1 gm of Thiohexethal = 2 mg of heroin/2 gm of marihuana",

in the "Dosage Equivalency Table" in the section captioned "Hallucinogens" by deleting:

"Anhalamine—300 mg",
"Anhalonide—300 mg",
"Anhalonine—300 mg",
"Lophophorine—300 mg",
"Pellotine—300 mg",

and in the Dosage Equivalency Table in the section captioned "Depressants" by deleting:

"Bralloberbital—30 mg",
"Eldoral—100 mg",
"Eunarcon—100 mg",
"Hexethel—100 mg",
"Thiohexethal—60 mg".

*Reason for Amendment:* The purpose of this amendment is to delete substances that either are not controlled substances or are no longer manufactured.

*Additional Explanatory Statement:* This amendment was recommended by the Drug Control Section of the Drug Enforcement Administration.

87. *Proposed Amendment:* The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 10 in the "Drug Equivalency Tables" in the section captioned "Cocaine and Other Schedule I and II Stimulants" by inserting in the appropriate place in alphabetical order:

"1 gm of Methylphenidate (Ritalin) = 0.5gm of cocaine/0.1 gm of heroin",

and in the section captioned "LSD, PCP, and Other Schedule I and II Hallucinogens" by inserting in the appropriate place in alphabetical order:

"1 gm of 3, 4-Methylenedioxy-N-ethylamphetamine/MDEA = .03 gm of heroin or PCP",

and in the Dosage Equivalency Table in the section captioned "Depressants" by inserting in the appropriate place in alphabetical order:

"Glutethimide (Doriden) = 500 mg".

*Reason for Amendment:* The purpose of this amendment is to make the Drug Equivalency Tables and Dosage Equivalency Table more comprehensive.

*Additional Explanatory Statement:* This amendment was recommended by the Drug Control Section of the Drug Enforcement Administration.

88. *Proposed Amendment:* The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 10 in the "Dosage Equivalency Table" in the section captioned "Hallucinogens" by deleting ".1 mg" in the line beginning "LSD (Lysergic acid diethylamide)" and inserting in lieu thereof ".05 mg", by deleting "LSD tartrate .05 mg", by deleting "Peyote 12 mg", and by inserting in the appropriate place in alphabetical order:

"Peyote (dry)—12 gm",
"Peyote (wet)—120 gm",
"Psilocybe mushrooms (dry)—5 gm",
"Psilocybe mushrooms (wet)—50 gm".

The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 10 in the "Dosage Equivalency Table" in the section captioned "Stimulants" by deleting "Ethylamphetamine HCL 12 mg" and "Ethylamphetamine $SO_4$ 12 mg", by deleting "Amphetamines" and inserting in lieu thereof "Amphetamine", by deleting "Methamphetamines" and inserting in lieu thereof "Methamphetamine", and by deleting "Methamphetamine combinations 5 mg".

*Reason for Amendment:* The purposes of this amendment are to provide more accurate approximations of the dosage for certain controlled substances, and to eliminate unnecessary references.

*Additional Explanatory Statement:* This amendment was recommended by the Drug Control Section of the Drug Enforcement Administration.

89. *Proposed Amendment:* The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 10 in "Drug Equivalency Tables" in the section captioned "Schedule III Substances" by deleting "2 mg of heroin/2 gm of marihuana" immediately following "1 gm of Glutethimide =" and inserting in lieu thereof "0.4 mg of heroin/0.4 gm of marihuana",

and by deleting:

"1 gm of Paregoric = 2 mg of heroin/2 gm of marihuana.

1 gm of Hydrocodone Cough Syrups = 2 mg of heroin/2 gm marihuana",

and inserting in lieu thereof:

"1 ml of Paregoric = 0.25 mg of heroin/0.25 gm of marihuana.

1 ml of Hydrocodone Cough Syrup = 1 mg of heroin/1 gm of marihuana".

*Reason for Amendment:* The purpose of this amendment is to provide more accurate approximations of the equivalencies for certain controlled substances.

*Additional Explanatory Statement:* This amendment was recommended by the Drug Control Section of the Drug Enforcement Administration.

90. *Proposed Amendment:* The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 10 in the section of the "Drug Equivalency Tables" captioned "LSD, PCP, and Other Schedule I and II Hallucinogens" by deleting:

"1 gm of Liquid phencyclidine = 0.1 gm of heroin or PCP".

*Reason for Amendment:* The purpose of this amendment is to delete an incorrect equivalency.

*§ 2D1.2 Involving Juveniles in the Trafficking of Controlled Substances*

91. *Proposed Amendment:* The Commentary to § 2D1.2 captioned "Application Notes" is amended in Note 1 by deleting "amount from the first and second offense" and inserting in lieu thereof "amounts from the two offenses not involving juveniles".

*Reason for Amendment:* The purpose of this amendment is to correct a clerical error.

92. *Sections 6454, 6458, and 6459 of the Omnibus Anti-Drug Abuse Act of 1988:* Section 6458 expands the coverage of 21 U.S.C. 845(a) to include playgrounds, youth centers, swimming pools, and video arcades. Section 6459 amends 21 U.S.C. 845(a) to include "receiving a controlled substance from a person under 18 years of age, other than an immediate family member, in violation of this title or title III." Section 6454 contains the following direction to the Sentencing Commission:

"(a) In General–Pursuant to its authority under section 994(p) of title 28, United States Code, and section 21 of the Sentencing Act of 1987, the United States Sentencing Commission shall promulgate guidelines, or shall amend existing guidelines to provide that a defendant convicted of violating section 405, 405A, or 405B of the Controlled Substances Act (21 U.S.C. 845, 845a or 845b) involving a person under 18 years of age shall be assigned an offense level under chapter 2 of the sentencing guidelines that is—

(1) Two levels greater than the level that would have been assigned for the underlying controlled substance offense; and

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(2) In no event less than level 26.

(b) Effects of Amendment—If the sentencing guidelines are amended after the effective date of this section, the Sentencing Commission shall implement the instruction set forth in subsection (a) so as to achieve a comparable result.

(c) Multiple Enhancements—The guidelines referred to in subsection (a), as promulgated or amended under such subsection, shall provide that an offense that could be subject to multiple enhancements pursuant to such subsection is subject to not more than one such enhancement."

The Commission seeks comment on the most appropriate method of responding to these statutory provisions. One possible approach follows, but suggestions for alternative approaches are also invited. For example, §§ 2D1.2 and 2D1.3 could be amended by deleting the guidelines and accompanying Commentary in their entirety and inserting in lieu thereof:

*"§ 2D1.2 Drug Offenses Occurring Near Protected Locations or Involving Underage or Pregnant Individuals*

(a) Base offense level:

(1) 2 plus the offense level from § 2D1.1, but in no event less than level 26, if the offense involved a person less than 18 years of age; or

(2) 1 plus the offense level from § 2D1.1, but in no event less than level 13, in any other case.

**Commentary**

*Statutory Provisions:* 18 U.S.C. 845, 845a, 845b.

*Background:* This section implements the direction to the Commission in section 6454 of the Omnibus Anti-Drug Abuse Act of 1988.".

This approach would implement the directive in section 6454, expand the coverage of the guideline to include the provision of sections 6458 and 6459, and provide an intermediate enhancement for the portions of 21 U.S.C. 845, 845a, and 845b not included in the statutory direction to the Commission.

*§ 2D1.4 Attempts and Conspiracies*

93. *Proposed Amendment:* The Commentary to § 2D1.4 captioned "Application Notes" is amended in Note 1 by deleting:

"Where the defendant was not reasonably capable of producing the negotiated amount, the court may depart and impose a sentence lower than the sentence that would otherwise result",

and inserting in lieu thereof:

"However, where the court finds that the defendant did not intend to produce and was not reasonably capable of producing the negotiated amount, the court shall exclude from the guideline calculation the amount that it finds the defendant did not intend to produce and was not reasonably capable of producing.".

*Reason for Amendment:* Application Note 1 currently provides that the "weight under negotiation in an uncompleted distribution shall be used to calculate the applicable amount." The instruction then provides "Where the defendant was not reasonably capable of producing the negotiated amount the court may depart and impose a sentence lower than the sentence that would otherwise result." This provision may result in inflated offense levels in uncompleted offenses where a defendant is merely "puffing," even though the court is then authorized to address the situation by a downward departure. This amendment provides a more direct procedure for calculating the offense level where the court finds that the defendant did not intend to produce and was not reasonably capable of producing the negotiated amount.

94. *Proposed Amendment:* The Commentary to § 2D1.4 captioned "Application Notes" is amended in Note 1 by deleting "the sentence should be imposed only on the basis of the defendant's conduct or the conduct of co-conspirators in furtherance of the conspiracy that was known to the defendant or was reasonably foreseeable" and inserting in lieu thereof "see Application Note 1 to § 1B1.3 (Relevant Conduct).".

*Reason for Amendment:* The purpose of this amendment is to conform this Commentary to the revision of § 1B1.3 (amendment 12).

95. *Proposed Amendment:* Section 2D1.4(a) is amended by deleting "participating in an incomplete" and inserting in lieu thereof "a".

*Reason for Amendment:* The purpose of this amendment is to clarify the guideline.

*§ 2D1.5 Continuing Criminal Enterprise*

96. *Proposed Amendment:* Section 2D1.5 is amended by deleting: "(a) Base Offense Level: 36" and inserting in lieu thereof the following:

"(a) Base Offense Level (Apply the greater):

(1) 4 plus the offense level from § 2D1.1 applicable to the underlying offense; or

(2) [37][38].".

The Commentary to § 2D1.5 captioned "Background" is amended in the first paragraph by deleting "base offense level of 36" and inserting in lieu thereof "minimum base offense level of [37][38]", and in the second paragraph by deleting "for second convictions" and inserting in lieu thereof "for the first conviction, a 30 year mandatory minimum penalty for a second conviction,".

*Reason for Amendment:* The purpose of this amendment is to reflect the increased mandatory minimum penalty for this offense pursuant to section 6461 of the Omnibus Anti-Drug Abuse Act of 1988 (Pub. L. 100-690).

*Additional Explanatory Statement:* The Omnibus Anti-Drug Abuse Act of 1988 (Pub. L. 100-690) creates an increased mandatory minimum penalty for violations of 21 U.S.C. 848. The Commission seeks public comment on the general question of how the guidelines should incorporate mandatory minimum penalties. Specifically, if the Commission chooses to reflect the minimum penalty in the base offense level, what principles should govern the selection of the offense level? In this instance, the mandatory minimum penalty (240 months) is approximately the midpoint of the sentencing range for a defendant in Criminal History Category I if level 37 is chosen, but it is close to the low end of the range if level 38 is chosen. Which of these approaches, or what other approach, is most appropriate?

*§ 2D1.6 (Use of a Communications Facility in Committing Drug Offense)*

97. *Proposed Amendment:* Section 2D1.6 is amended by deleting "12" and inserting in lieu thereof: "(Apply the greater):

(1) [3 levels less than the][The] offense level from § 2D1.1 applicable to the controlled substance offense committed, caused, or facilitated; or

(2) 12.".

The Commentary to § 2D1.6 is amended by inserting immediately before "Background" the following:

"*Application Note:*

1. It is expected that, in the vast majority of cases, the offense level for the underlying offense (the controlled substance offense committed, caused, or facilitated) will be level 12 or greater. An alternative base offense level of 12 is provided under subsection (a)(2) because it may not always be possible to determine the offense level for the underlying offense. In the rare case in which it can be determined that the offense level for the underlying offense is less than level 12, a downward departure may be warranted.".

*Reason for Amendment:* The purpose of this amendment is to reduce unwarranted disparity by requiring consideration of the amount of the controlled substance involved in the offense, thus conforming this guideline to analogous guidelines.

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*Additional Explanatory Statement:* The statute to which this guideline applies (21 U.S.C. 843(b)) prohibits the use of a communications facility to commit, cause, or facilitate a felony drug offense. Frequently, a conviction under this statute is the result of a plea bargain because the statute has a low maximum (four years with no prior felony drug conviction; eight years with a prior felony drug conviction) and no mandatory minimum.

The current guideline has base offense level of 12 and no specific offense characteristics. Therefore, the scale of the underlying drug offense does not affect the guideline. This results in a departure being warranted in the vast majority of cases if the scale of the underlying drug offense is a permissible grounds for departure. A recent Second Circuit decision (U.S. v. Correa-Vargas, CA 2, No. 88-1167, 10/18/88), for example, upheld a lower court decision for a substantial departure based upon the quantity of the controlled substance involved in the underlying offense.

Without guidance as to whether how far to depart, the potential for unwarranted disparity is substantial. Under the proposed amendment, the guideline would take into account the scale of the underlying offense.

The Commission seeks comment on whether the base offense level in subsection (a)(1) should be set at the offense level from § 2D1.1 for the underlying offense; or whether it should be set at 3-levels less than that for the underlying offense, which would be comparable to the treatment of certain uncompleted conspiracies and attempts under § 2X1.1

*§ 2D1.10 Endangering Human Life While Illegally Manufacturing a Controlled Substance*

98. *Proposed Amendment:* Chapter Two, Part D is amended by inserting as an additional guideline the following:

*"§ 2D1.10 Endangering Human Life While Illegally Manufacturing a Controlled Substance*

(a) Base Offense Level: 3 plus the offense level from the Drug Quantity Table in § 2D1.1, but in no event less than 20.

**Commentary**

*Statutory Provision:* 21 U.S.C. _____".

*Reason for Amendment:* The purpose of this amendment is to create a new guideline covering the new offense in section 6301 of the Omnibus Anti-Drug Abuse Act of 1988.

*Additional Explanatory Statement:* Under the proposed guideline, the offense level would vary with the type and quantity of drug manufactured plus a 3 level enhancement for the risk created, with a minimum offense level of 20.

**Chapter Two Part D, Subpart I**

99. *Chapter Two Part D, Subpart I:* Sections 6053, 6055, and 6057 of the Omnibus Anti-Drug Abuse Act of 1988: Sections 6053, 6055, and 6057 of the Omnibus Anti-Drug Abuse Act of 1988 concern the chemicals and equipment used to manufacture controlled substances. Section 6053 creates recordkeeping requirements for "listed precursor chemicals" and "listed essential chemicals." Section 6055 makes it unlawful to (1) possess a listed chemical with intent to manufacture a controlled substance, (2) possess or distribute a listed chemical knowing or having reasonable cause to believe it will be used to manufacture a controlled substance, and (3) import or export such chemicals. Section 6057 makes it unlawful to possess, manufacture, distribute, or import certain laboratory equipment and supplies with intent to manufacture a controlled substance. The Commission intends to promulgate guidelines to cover these statutes based upon the type and quantity of the listed substance and equipment, and the potential amount of the controlled substance that could be produced. The Commission seeks public comment on how to structure a guideline that will best accomplish this result.

100. *Section 6254 (h) of the Omnibus Anti-Drug Abuse Act of 1988:* Section 6254(h) of the Omnibus Anti-Drug Abuse Act of 1988 creates a new offense of polluting Federal lands in the course of committing a substantive violation of 21 U.S.C. § 841(a) (knowing and intentional manufacture, distribution, or dispensing, or possession with intent to manufacture, distribute, or dispense a controlled or counterfeit substance). The statute provides a maximum of 5 years imprisonment for any person "who violates [21 U.S.C. 841](a)" and:

knowingly or intentionally uses a poison, chemical, or other hazardous substance on Federal land and by such use—

(A) Creates a serious hazard to humans, wildlife, or domestic animal,

(B) Degrades or harms the environment or natural resources or

(C) Pollutes an aquifer, spring, stream, river, or body of water[.]

The Commission intends to add a guideline to cover this offense. The Commission seeks comment as to the appropriate base offense level and specific offense characteristics for this guideline, and whether this guideline should be incorporated in Part D or in Part Q of this Chapter.

*§ 2D2.1 Unlawful Possession*

101. *Proposed Amendment:* Section 2D2.1 is amended by inserting the following as a new subsection:

"(b) Cross Reference

(1) If the defendant is subject to the penalties pertaining to possession of cocaine base set forth in the third sentence of 18 U.S.C. 844(a), apply § 2D1.1 as though the defendant had been convicted of possession with intent to distribute the cocaine base.";

The Commentary to § 2D2.1 captioned "Background" is amended by deleting:

*"Background:* Absent a prior drug related conviction, the maximum term of imprisonment authorized by statute is one year. With a single prior drug related conviction, a mandatory minimum term of imprisonment of fifteen days is required by statute and the maximum term of imprisonment authorized is increased to two years. With two or more prior drug related convictions, a mandatory minimum term of imprisonment of ninety days is required by statute and the maximum term of imprisonment authorized is increased to three years.",

and inserting in lieu thereof the following:

"*Background:* 21 U.S.C. 844(a) sets forth mandatory minimum penalties for several categories of simple possession cases. When a mandatory minimum penalty is higher than the guideline sentence, the statutory minimum becomes the guideline sentence. § 5G1.1(b). The cross-reference to § 2D1.1 accommodates the mandatory minimum penalty for possession of cocaine base.".

*Reason for Amendment:* The purpose of this amendment is to reflect the mandatory minimum penalty created by section 6371 of the Omnibus Anti-Drug Abuse Act of 1988.

*§ 2D2.3 Operating or Directing the Operation of a Common Carrier Under the Influence of Alcohol or Drugs*

102. *Proposed Amendment:* Section 2D2.3 is amended by deleting: "(a) Base Offense Level: 6", and inserting in lieu thereof the following:

"(a) Base Offense Level:

(1) [26][28], if death resulted; or

(2) 21, if serious bodily injury resulted; or

(3) 8, otherwise.

[(b) Note:

If the defendant is convicted of a single count involving the death or serious bodily injury of more than one person, apply Chapter Three, Part D (Multiple Counts) as if the defendant had been convicted of a separate count for each such victim.]".

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The Commentary to § 2D2.3 is amended by adding, as an additional section:

"Background: This guideline implements the specific directions to the Commission in section 6482 of the Omnibus Anti-Drug Abuse Act of 1988 (Pub. L. 100-690).".

*Reason for Amendment:* The purpose of this amendment is to implement the directive to the Commission in section 6482 of the Omnibus Anti-Drug Abuse Act of 1988 (Pub. L. 100-690).

*Additional Explanatory Statement:* Section 6482 of the Omnibus Anti-Drug Abuse Act of 1988 directs the Commission to set an offense level "that is not less than level 26" if death results from a violation of 18 U.S.C. 342 and "not less than level 21" if serious bodily injury results. The Commission seeks public comment on the appropriate means of implementing with this directive. Specifically, should the Commission choose offense level 26 or a higher offense level, such as level 28, when Congress directs the use of a level "not less than" level 26. If a level 26 is chosen, is the note in proposed subsection (b) a suitable device to take account of multiple deaths or injury resulting from this offense.

*§ 2E1.1 Unlawful Conduct Relating to Racketeer Influenced and Corrupt Organizations*

103. *Proposed Amendment:* The Commentary to § 2E1.1 captioned "Application Notes" is amended by inserting the following note:

"4. Certain conduct may be charged in the count of conviction as part of a "pattern of racketeering activity" even though the defendant has previously been sentenced for that conduct. Where such previously imposed sentence resulted from a conviction sustained prior to the last overt act of the instant offense, treat as a prior sentence under § 4A1.2(a)(1) and not as part of the instant offense. This treatment is designed to produce a result consistent with the distinction between the instant offense and criminal history found throughout the guidelines. If this treatment produces an anomalous result in a particular case, a guideline departure may be warranted.".

*Reason for Amendment:* This amendment adds an application note to clarify the treatment of certain conduct for which the defendant previously has been sentenced as either part of the instant offense or prior criminal record. The amendment treats such conduct consistently with the treatment of similar conduct in § 2D1.5 (Continuing Criminal Enterprise) as amended effective 10/15/88.

*§ 2E1.3 Violent Crimes in Aid of Racketeering Activity*

104. *Proposed Amendment:* The Commentary to § 2E1.3 captioned "Statutory Provision" is amended by deleting "1952B" and inserting in lieu thereof "1959 (formerly 18 U.S.C. 1952B)".

*Reason for Amendment:* The purpose of this amendment is to reflect the redesignation of this statute.

* * * * *

*§ 2E1.4 Use of Interstate Commerce Facilities in the Commission of Murder-For-Hire*

105. *Proposed Amendment:* The Commentary to § 2E1.4 captioned "Statutory Provision" is amended by deleting "1952A" and inserting in lieu thereof "1958 (formerly 18 U.S.C. 1952A)".

*Reason for Amendment:* The purpose of this amendment is to reflect redesignation of this statute.

* * * * *

*§ 2E1.5 Hobbs Act Extortion or Robbery*

106. *Proposed Amendment:* Section 2E1.5 is amended by deleting "the guideline provision for extortion or robbery" and inserting in lieu thereof "§ 2B3.1 (Robbery), § 2B3.2 (Extortion by Force or Threat of Injury or Serious Damage), § 2B3.3 (Blackmail and Similar Forms of Extortion), or § 2C1.1 (Offering, Giving, Soliciting, or Receiving a Bribe; Extortion Under Color of Official Right)".

The Commentary to § 2E1.5 captioned "Application Notes" is amended by deleting the entire text thereof, including the caption "Application Note:".

*Reason for Amendment:* The purpose of this amendment is to move material from the commentary to the guideline where it more appropriately belongs.

*§ 2E2.1 Making, Financing, or Collecting an Extortionate Extension of Credit*

107. *Proposed Amendment:* Section 2E2.1 is amended in subsection (b)(1)(B) by deleting "a firearm or a dangerous weapon" and inserting in lieu thereof "any dangerous weapon (including a firearm)", and in subsection (b)(1)(C) by deleting "a firearm or other dangerous weapon" and inserting in lieu thereof "any dangerous weapon (including a firearm)".

*Reason for Amendment:* The purposes of this amendment are to clarify that a firearm is a type of dangerous weapon and to remove the inconsistency in language between specific offense characteristic subdivisions (b)(1)(B) and (b)(1)(C). Related amendment: 16 (§ 2A2.1).

108. *Proposed Amendment:* Section 2E2.1(b)(2) is amended by inserting at the end:

"(D) If the degree of injury is between that specified in subdivisions (A) and (B), increase by 3 levels; or

(E) If the degree of injury is between that specified in subdivisions (B) and (C), increase by 5 levels.".

*Reason for Amendment:* The purpose of this amendment is to provide intermediate adjustment levels for the degree of bodily injury. Related amendment: 3 (Amendment to Chapter One, Part A, Section 4(b)).

109. *Proposed Amendment:* Section 2E2.1(b)(3)(A) is amended by inserting "or" immediately following "4 levels;".

*Reason for Amendment:* The purpose of this amendment is to correct a clerical error.

*§ 2E5.1 Bribery or Gratuity Affecting the Operation of an Employee Welfare or Pension Benefit Plan*

110. *Proposed Amendment:* Section 2E5.1 is amended in the title by deleting "Bribery or Gratuity" and inserting in lieu thereof "Offering, Accepting, or Soliciting a Bribe or Gratuity".

*Reason for Amendment:* The purpose of amending the title of this section is to ensure that attempts and solicitations are expressly covered for purposes of 2X1.1.

*§ 2E5.2 Theft or Embezzlement From Employee Pension and Welfare Benefit Plans*

111. *Proposed Amendment:* Section 2E5.2 is amended by deleting:

"(a) Base Offense Level: 4

(b) Specific Offense Characteristics

(1) If the offense involved more than minimal planning, increase by 2 levels.

(2) If the defendant had a fiduciary obligation under the Employee Retirement Income Security Act, increase by 2 levels.

(3) Increase by corresponding number of levels from the table in § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft) according to the loss.",

and inserting in lieu thereof the following:

"Apply § 2B1.1.".

The Commentary to § 2E5.2 captioned "Application Notes" is amended by deleting:

"1. 'More than minimal planning' is defined in the Commentary to § 1B1.1 (Application Instructions). Valuation of loss is discussed in the Commentary to § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft)." and



"3. If the adjustment for a fiduciary obligation at § 2E5.2(b)(2) is applied, do not apply the adjustment at § 3B1.3 (Abuse of a Position of Trust or Use of a Special Skill).",

and inserting in lieu of Note 1 the following:

"1. In the case of a defendant who had a fiduciary obligation under the Employee Retirement Income Security Act, an adjustment under § 3B1.3 (Abuse of Position of Trust or Use of Special Skill) would apply.".

The Commentary to § 2E5.2 captioned "Background" is amended by deleting:

"The base offense level corresponds to the base offense level for other forms of theft. Specific offense characteristics address whether a defendant has a fiduciary relationship to the benefit plan, the sophistication of the offense, and the scale of the offense.".

*Reason for Amendment:* The purpose of this amendment is to simplify application of the guidelines. Related amendment: 113 (§ 2E5.4).

Additional Explanatory Statement: The offense guideline at § 2E5.2 covers theft and embezzlement from employee pension and welfare benefit plans. Basically, the guideline copies the theft guideline. However, it contains its own enhancement for an abuse of trust (§ 2E5.2(b)(2)) that is written more narrowly than the general abuse of trust provision in § 3B1.3. Commentary indicates that when this specific offense characteristic applies, § 3B1.3 is not to be applied. However, applying § 2E5.2(b)(2) for one type of abuse of trust (and then not applying § 3B1.3) and applying § 3B1.3 for all other abuse of trust appears an unnecessary complication when § 3B1.3 already includes the abuse of trust covered in § 2E5.2(b)(2). This situation may have come about simply because the guidelines in Chapter Two, Part E were written before the abuse of trust provision in § 3B1.3 was added. The same issue occurs in § 2E5.4 which covers theft and embezzlement from labor unions in the private sector.

*§ 2E5.3 False Statements and Concealment of Facts in Relation to Documents Required by the Employee Retirement Income Security Act*

112. *Proposed Amendment:* § 2E5.3(a)(2) is amended by deleting "false records were used for criminal conversion of funds or a scheme" and inserting in lieu thereof "the offense was committed to facilitate or conceal a theft or embezzlement, or an offense".

The Commentary to § 2E5.3 captioned "Application Note" is amended by deleting:

"Application Note:

1. 'Criminal conversion' means embezzlement.".

*Reason for Amendment:* The purpose of this amendment is to ensure that subsection (b)(2) covers any conduct engaged in for the purpose of facilitating or concealing a theft or embezzlement, or an offense involving a bribe or gratuity.

*§ 2E5.4 Embezzlement of Theft From Labor Unions in the Private Sector*

113. *Proposed Amendment:* Section 2E5.4 is amended by deleting:

"(a) Base Offense Level: 4

(b) Specific Offense Characteristics

(1) If the offense involved more than minimal planning, increase by 2 levels.

(2) If the defendant was a union officer or occupied a position of trust in the union, as set forth in 29 U.S.C. 501(a), increase by 2 levels.

(3) Increase by the number of levels from the table in § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft) corresponding to the loss.",

and inserting in lieu thereof the following:

"Apply § 2B1.1.".

The Commentary to § 2E5.4 captioned "Application Notes" is amended by deleting

"1. 'More than minimal planning' is defined in the Commentary to § 1B1.1 (Applicable Instructions). Valuation of loss is discussed in the Commentary to § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft).

2. If the adjustment for being a union officer or occupying a position of trust in a union at § 2E5.4(b)(2) is applied, do not apply the adjustment at § 3B1.3 (Abuse of a Position of Trust or Use of a Special Skill).",

and inserting in lieu thereof the following:

"1. In the case of a defendant was a union officer or occupied a position of trust in the union, as set forth in 29 U.S.C. 501(a), an adjustment under § 3B1.3 (Abuse of Position of Trust or Use of Special Skill) would apply.";

and by deleting in the caption "Notes" and inserting in lieu thereof "Note".

The Commentary to § 2E5.4 captioned "Background" is amended by deleting:

"The seriousness of this offense is determined by the amount of money taken, the sophistication of the offense, and the nature of the defendant's position in the union.".

*Reason for Amendment:* The purpose of this amendment is to simplify application of the guidelines. Related amendment: 111 (§ 2E5.2).

*Additional Explanatory Statement:* See the discussion at the related amendment to § 2E5.2 (amendment 111).

*§ 2E5.5 Failure to Maintain and Falsification of Records Required by the Labor Management Reporting and Disclosure Act*

114. *Proposed Amendment:* § 2E5.5(a)(2) is amended by deleting "false records were used for criminal conversion of funds or a scheme" and inserting in lieu thereof "the offense was committed to facilitate or conceal a theft or embezzlement, or an offense".

*Reason for Amendment:* The purpose of this amendment is to ensure that subsection (b)(2) covers any conduct engaged in for the purpose of facilitating or concealing a theft or embezzlement, or an offense involving a bribe or gratuity.

*§ 2F1.1 Fraud and Deceit*

115. *Proposed Amendment:* Section 2F1.1(b)(1) is amended by deleting:

| | "Loss | Increase in level |
|---|---|---|
| (A) | $2,000 or less | No increase. |
| (B) | $2,001–$5,000 | Add 1. |
| (C) | $5,001–$10,000 | Add 2. |
| (D) | $10,001–$20,000 | Add 3. |
| (E) | $20,001–$50,000 | Add 4. |
| (F) | $50,001–$100,000 | Add 5. |
| (G) | $100,001–$200,000 | Add 6. |
| (H) | $200,001–$500,000 | Add 7. |
| (I) | $500,001–$1,000,000 | Add 8. |
| (J) | $1,000,001–$2,000,000 | Add 9. |
| (K) | $2,000,001–$5,000,000 | Add 10. |
| (L) | Over $5,000,000 | Add 11". |

And inserting in lieu thereof:

| | "Loss (Apply the greatest) | Increase in level |
|---|---|---|
| (A) | $2,000 or less | No increase |
| (B) | More than $2,000 | Add 1. |
| (C) | More than $5,000 | Add 2. |
| (D) | More than $10,000 | Add 3. |
| (E) | More than $20,000 | Add 4. |
| (F) | More than $40,000 | Add 5. |
| (G) | More than $80,000 | Add 6. |
| (H) | More than $150,000 | Add 7. |
| (I) | More than $300,000 | Add 8. |
| (J) | More than $500,000 | Add 9. |
| (K) | More than $1,000,000 | Add 10. |
| (L) | More than $2,000,000 | Add 11. |
| (M) | More than $5,000,000 | Add 12". |

*Reason for Amendment:* The purpose of this amendment is to conform the theft and fraud loss table to the tax loss table in order to remove an unintended inconsistency between these tables in cases where the loss is greater than $40,000. Both tables increase the offense level when the loss exceeds $2,000, but the Tax Loss Table provides a maximum 12 level difference while the Fraud Loss Table has a maximum 11 level difference. Up to $40,000 the tables are identical. Above $40,000 there are minor differences (e.g., from $40,001–$50,000

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the Tax Loss Table provides a 1 level higher offense level; from $50,001–$80,000 the offense levels are identical; from $80,001 $100,000 the Tax Loss Table again provides a 1 level higher offense level; from $100,001–$150,000 the offense levels are again identical; from $150,001–$200,000 Tax Loss Table again provides a 1 level higher offense level). Because the tax loss table contains one additional level, this amendment will increase the offense level by one level in some cases. Related amendment: 32 (§ 2B1.1). This amendment also eliminates minor gaps in the loss table. Related amendments: 39 (§ 2B2.1); 47 (§ 2B3.1); 180 (§ 2R1.1); 181 (§ 2S1.1); 209 (§ 2T6.1).

116. *Proposed Amendment:* Section 2F1.1(b)(1), as amended by proposed amendment 115, is further amended by deleting:

| | | |
|---|---|---|
| "(G) | More than $80,000 | Add 6. |
| (H) | More than $150,000 | Add 7 |
| (I) | More than $300,000 | Add 8. |
| (J) | More than $500,000 | Add 9 |
| (K) | More than $1,000,000 | Add 10. |
| (L) | More than $2,000,000 | Add 11. |
| (M) | More than $5,000,000 | Add 12" |

And inserting in lieu thereof:

| | | |
|---|---|---|
| "(G) | More than $70,000 | Add 6. |
| (H) | More than $120,000 | Add 7. |
| (I) | More than $200,000 | Add 8. |
| (J) | More than $350,000 | Add 9. |
| (K) | More than $500,000 | Add 10. |
| (L) | More than $800,000 | Add 11. |
| (M) | More than $1,500,000 | Add 12. |
| (N) | More than $2,500,000 | Add 13. |
| (O) | More than $5,000,000 | Add 14" |

*Reason for Amendment:* The purpose of this amendment is to increase the offense levels for offenses with larger loss values to better reflect the seriousness of the conduct. Related amendments: 33 (§ 2B1.1); 210 (§ 2T4.1); 39 (§ 2B2.1); 48 (§ 2B3.1).

117. *Proposed Amendment:* Section 2F1.1(b)(2) is amended by inserting "subdivision (C) or (D) applies and" immediately before "the result".

The Commentary to § 2F1.1 captioned "Background" is amended in the fourth sentence of the third paragraph by deleting "not only", and by deleting ", but also specifies that the minimum offense level in such cases shall be 10."

*Reason for Amendment:* The purpose of this amendment is to limit the applicability of the minimum offense level of 10 in specific offense characteristic (b)(2) to cases under subdivision (c) or (d).

*Additional Explanatory Statement:* Under § 2F1.1 there is a two level adjustment for more than minimal planning (§ 2F1.1(b)(2)(A)) or a scheme to defraud more than one victim (§ 2F1.1(b)(2)(B)), but if the resulting offense level is less than 10, the offense level is increased to 10. The comparable adjustment from § 2B1.1 is also 2 levels but no minimum level of 10 is specified. Because there is substantial overlap in the conduct covered by the forgery/fraud guideline (§ 2F1.1) on the one hand and the theft/embezzlement guideline (§ 2B1.1) on the other (e.g., mail theft generally involves the theft of checks which are then forged), this difference may result in significant anomalies due to charging decisions unrelated to the conduct or culpability of the offender. Furthermore, this offense level produces a result that is anomalous with the counterfeiting guidelines (§§ 2B5.1 and 5.2) in that passing less than $2,000 in counterfeit bills over a period of time results in an offense level of 9 under § 2B5.1, but passing several forged checks of less than $2,000 over the same period of time produces an offense level of 10 under § 2B5.2 because of the reference to § 2F1.1. The original reason for inserting the minimum level of 10 in 2F1.1 was that FPSSIS data showed an increased level for cases with more than minimal planning but no specified loss. This, however, has been addressed by the Commission's having adopted a definition of loss that includes intended loss (FPSSIS data included only actual loss). The proposed amendment conforms the "more than minimal planning" adjustment in fraud (§ 2F1.1) and theft (§ 2B1.1).

118. *Proposed Amendment:* The Commentary to § 2F1.1 captioned "Application Notes" is amended beginning in Note 14 by deleting:

"In such instances, although § 2F1.1 applies, a departure may be warranted.

15. In certain other cases, the mail or wire fraud statutes, or other relatively broad statutes, are used primarily as jurisdictional bases for the prosecution of other offenses. For example, a state law arson where a fraudulent insurance claim was mailed might be prosecuted as mail fraud. In such cases the most analogous guideline (in the above case, § 2K1.4) is to be applied.",

and by inserting at the end of Note 14:

"In certain other cases, the mail or wire fraud statutes, or other relatively broad statutes, are used primarily as jurisdictional bases for the prosecution of other offenses. For example, a state law arson where a fraudulent insurance claim was mailed might be prosecuted as mail fraud. Where the indictment or information setting forth the count of conviction (or a stipulation as described in § 1B1.2(a)) establishes an offense more aptly covered by another guideline, apply that guideline rather than § 2F1.1. Otherwise, in such cases, § 2F1.1 is to be applied, but a departure from the guidelines may be considered.".

*Reason for Amendment:* The purpose of this amendment is to ensure that this guideline is interpreted in a manner consistent with § 1B1.2.

119. *Issues Related to Specific Forms of Fraud:* Congress has recently passed the Major Fraud Act of 1988 and the Insider Trading and Securities Fraud Enforcement Act of 1988. Section 2(b) of the Major Fraud Act of 1988 (pertaining to certain large scale procurement frauds against the government) requires that the Commission promulgate a new guideline or amend an existing guideline to provide an enhanced penalty "where conscious or reckless risk of serious personal injury resulting from the fraud has occurred" and that the Commission consider the appropriateness of assigning a 2-level enhancement in such cases. The Commission seeks comment on the most appropriate way of responding to this instruction. For example, should the Commission provide an enhancement only for the cases covered by the Major Fraud Act or should the Commission provide such an enhancement for all types of fraud? Should a specific offense characteristic also provide a minimum offense level (i.e., an offense level of not less than) to address cases in which a risk of serious injury was created but there was no monetary loss or little monetary loss.

Both the Major Fraud Act of 1988 and the Insider Trading and Securities Fraud Enforcement Act of 1988 provide a maximum penalty of ten years' imprisonment. The Commission seeks comment on whether these should be a higher offense level for insider trading or procurement fraud than for other frauds. Similarly, should there be a higher offense level for fraud involving a federally chartered or insured financial institution? Or, should additional levels for monetary loss be added instead to the loss table for such offenses to take into account the greater losses that are associated with such offenses? If so, what additional distinctions are appropriate? Presently, losses substantially in excess of $5 million are addressed as a departure consideration in Application Note 10 of the Commentary to § 2F1.1. Another way to respond, for example, would be to add additional levels to the loss table in § 2F1.1 (as amended by proposed amendments 115 and 116). For example, under the mathematical progression used in the guidelines, the guidelines could be amended to add 15 levels for frauds of more than $10 million, and 16 levels for frauds of more than $20 million.

A related issue is whether the loss table in § 2F1.1 (as amended by proposed amendments 115 and 116) provides the appropriate adjustment for monetary loss or whether it should be revised in some other way (upward or downward).

The Commission also seeks comment on whether the specific offense characteristic at § 2F1.1(b)(3) (pertaining to the use of foreign bank accounts or transactions to conceal the nature or extent of the offense) should also be applied to § 2F1.2 (Insider Trading), and on whether additional modifications to the guidelines are appropriate to respond to the above noted legislation.

*§ 2G1.1 Transportation for the Purpose of Prostitution or Prohibited Sexual Conduct.*

120. *Proposed Amendment:* Section 2G1.1(b)(1) is amended by deleting "defendant used" and inserting in lieu thereof "offense involved the use of", and by deleting "drugs or otherwise" and inserting in lieu thereof "threats or drugs or in any manner".

The Commentary to § 2G1.1 captioned "Application Notes" is amended in Note 2 by deleting "by drugs or otherwise," immediately following "coercion".

*Reason for Amendment:* The purpose of this amendment is to clarify the guideline and commentary.

121. Proposed Amendment: Section 2G1.1 is amended by inserting the following additional subsection:

"(c) Special Instruction.

(1) If the offense involves the transportation of more than one person, Chapter Three, Part D (Multiple Counts) shall be applied as if the transportation of each person had been contained in a separate count of conviction.".

*Reason for Amendment:* The purpose of this amendment is to provide a special instruction for the application of the multiple count rule in cases involving the transportation of more than one person. Related amendment: 123 (§ 2G1.2).

*§ 2G1.2 Transportation of a Minor for the Purpose of Prostitution or Prohibited Sexual Conduct.*

122. *Proposed Amendment:* Section 2G1.2(b)(1) is amended by deleting "drugs or otherwise" and inserting in lieu thereof "threats or drugs or in any manner".

Section 2G1.2(b)(2) and (3) is amended by deleting "conduct" whenever it appears and inserting in lieu thereof in each instance "offense".

The Commentary to § 2G1.2 captioned "Application Notes" is amended in Note 2 by deleting "by drugs or otherwise" immediately following "coercion".

*Reason for Amendment:* The purpose of this amendment is to clarify the guideline and Commentary.

123. *Proposed Amendment:* Section 2G1.2 is amended by inserting the following additional subsection:

"(c) Special Instruction.

(1) If the offense involves the transportation of more than one person, Chapter Three, Part D (Multiple Counts) shall be applied as if the transportation of each person had been contained in a separate count of conviction.".

*Reason for Amendment:* The purpose of this amendment is to provide a special instruction for the application of the multiple count rule in cases involving the transportation of more than one person. Related amendment: 121 (§ 2G1.1).

*§ 2G2.1 Sexually Exploiting a Minor by Production of Sexually Explicit Visual or Printed Material.*

124. *Proposed Amendment:* The Commentary to § 2G2.1 captioned "Application Notes" is amended in Note 1 by deleting ", distinct offense, even if several are exploited simultaneously" and inserting in lieu thereof "victim. Consequently, multiple counts involving the exploitation of different minors are not to be grouped together under § 3D1.2 (Groups of Closely-Related Counts).".

*Reason for Amendment:* The purpose of this amendment is to clarify that multiple counts involving different minors are not grouped under § 3D1.2.

*§ 2G2.3 Selling or Buying of Children for Use in the Production of Pornography*

125. *Proposed Amendment:* Chapter Two, Part G, is amended by inserting as an additional guideline:

*"§ 2G2.3. Selling or Buying of Children for Use in the Production of Pornography*

(a) Base Offense Level: [37][38]

**Commentary**

*Statutory Provision:* 18 U.S.C. 2251A.

*Background:* The statutory minimum sentence for a defendant convicted under 18 U.S.C. 2251A is twenty years imprisonment.".

*Reason for Amendment:* The purpose of this amendment is to create a guideline covering the new offense in section 7512 of the Omnibus Anti-Drug Abuse Act of 1988. Additional Explanatory Statement: The Commission seeks public comment on whether the offense level for this new guideline should be 37 or 38.

*§ 2G3.1 Importing, Mailing, or Transporting Obscene Matter*

126. *Proposed Amendment:* Section 2G3.1 is amended by deleting:

*"§ 2G3.1. Importing, Mailing, or Transporting Obscene Matter*

(a) Base Offense Level: 6.

(b) Specific Offense Characteristics.

(1) If the offense involved an act related to distribution for pecuniary gain, increase by the number of levels from the table in § 2F1.1 corresponding to the retail value of the material, but in no event by less than 5 levels.

(2) If the offense involved material that portrays sadomasochistic conduct or other depictions of violence, increase by 4 levels.

(c) Cross Reference.

(1) If the offense involved a criminal enterprise, apply the appropriate guideline from Chapter Two, Part E (Offenses Involving Criminal Enterprises and Racketeering) if the resulting offense level is greater than that determined above.

**Commentary**

*Statutory Provisions:* 18 U.S.C. 1461–1465.

*Application Note:* 1. "Act related to distribution" as used in this guideline is to be construed broadly and includes production, transportation, and possession with intent to distribute.",

and inserting in lieu thereof:

"§ 2G3.1 Importing, Transporting, Mailing, or Distributing (Including Possessing With Intent to Distribute) Obscene Matter.

Base Offense Level: 6.

*Specific Offense Characteristics:* (1) If the defendant was engaged in the business of selling or distributing obscene matter, increase by the number of levels from the table in § 2F1.1 corresponding to the retail value of the material, but in no event by less than 5 levels.

(2) If the defendant distributed or possessed with intent to distribute material that portrays sadomasochistic or other violent conduct, increase by 4 levels.

**Commentary**

*Statutory Provisions:* 18 U.S.C. 1460–1463, 1465–1466.

*Application Note:* 1. "Engaged in the business of selling or distributing obscene matter" means that the person who sells or distributes or offers to sell or distribute obscene matter devotes time, attention, or labor to such activities, as a regular course of trade or business, with the objective of earning a profit, although it is not necessary that the person make a profit or that the selling or distributing or offering to sell or distribute such material be the person's sole or principal business or source of income. See 18 U.S.C. 1466.".

*Reason for Amendment:* The purpose of this amendment is to incorporate the new offenses created by sections 7521 and 7526 of the Omnibus Anti-Drug Abuse Act of 1988, to delete an inapt cross reference, and to make clarifying changes.

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*§ 2G3.2 Obscene or Indecent Telephone Communications*

127. *Proposed Amendment:* Section 2G3.2 and the Commentary thereto are amended by deleting the entire text thereof, including the title, as follows:

"*§ 2G3.2. Obscene or Indecent Telephone Communications*

(a) Base Offense Level: 6.

**Commentary**

*Statutory Provision:* 47 U.S.C. 223.

*Background:* This offense is a misdemeanor for which the maximum term of imprisonment authorized by statute is six months.".

and inserting in lieu thereof:

"*§ 2G3.2 Obscene Telephone Communications for a Commercial Purpose*

(a) Base Offense Level: 6.

(b) Specific Offense Characteristics.

(1) If the offense involved material that describes sadomasochistic or other violent conduct, increase by 4 levels.

(2) If a person who received the communication was less than 18 years of age, increase by 2 levels unless the defendant took reasonable action to prevent access by persons less than 18 years of age or relied on such action by a telephone company.

**Commentary**

*Statutory Provision:* 47 U.S.C. 223(b)(1)(A).

*Application Note:* 1. 'Reasonable action to prevent access by persons less than 18 years of age' would include, for example, requiring payment by credit card before transmission of the message, requiring use of an access code before transmission of the message, or scrambling the messages so that they can be received intelligibly only by using a descrambling device. See Carlin Communications, Inc. v. Federal Communications Commission, 837 F.2d 546 (2d Cir. 1988).

*Background:* This offense is a felony for which the maximum term of imprisonment authorized by statute is two years.".

*Reason for Amendment:* The purpose of this amendment is to delete a petty offense no longer covered by the guidelines (Related amendment: 15 (§ 1B1.9)), and to insert a guideline for a felony created by section 7524 of the Omnibus Anti-Drug Abuse Act of 1988.

* * * * *

*§ 2G3.3 Broadcasting Obscene Material.*

128. *Proposed Amendment:* Chapter Two, Part G is amended by inserting as an additional guideline:

"*§ 2G3.3 Broadcasting Obscene Material*

(a) Base Offense Level: 6

(b) Specific Offense Characteristic:

(1) If the offense involved the broadcast of material that portrays sadomasochistic or other violent conduct, increase by 4 levels.

**Commentary**

*Statutory Provisions:* 18 U.S.C. 1464, 1468.".

*Reason for Amendment:* The purpose of this amendment is to create a guideline corresponding to the new offense in section 7523 of the Omnibus Anti-Drug Abuse Act of 1988.

*§ 2H1.3 Use of Force or Threat of Force to Deny Benefits or Rights in Furtherance of Discrimination.*

129. *Proposed Amendment:* The title to § 2H1.3 is amended by adding at the end "; Damage to Religious Real Property".

The Commentary to § 2H1.3 is amended by deleting "18 U.S.C. 245" and inserting in lieu thereof "18 U.S.C. 245, 247".

*Reason for Amendment:* The purpose of this amendment is to include a recently enacted offense (18 U.S.C. 247) expressly in the title of this guideline.

*Additional Explanatory Statement:* This amendment revises the title of § 2H1.3 and the statutory provisions to include a new offense (18 U.S.C. 247) prohibiting the obstruction, by force or threat of force, of an individual's right to the free exercise of religion; and prohibiting the destruction of religious real property. The offense and statutory penalties are comparable to those offenses covered by the current § 2H1.3.

*§ 2H1.4 Interference With Civil Rights Under Color of Law*

130. *Proposed Amendment:* Section 2H1.4(a)(2) is amended by deleting "2 plus" and inserting in lieu thereof "8 plus".

The Commentary to § 2H1.4 captioned "Application Notes" is amended in Note 1 by deleting "2 plus" and inserting in lieu thereof "8 plus", and by deleting "is defined" and inserting in lieu thereof "means 8 levels above the offense level for any underlying criminal conduct. See the discussion".

The Commentary to § 2H1.4 captioned "Background" is amended by deleting ", except where death results, in which case the maximum term of imprisonment authorized is life imprisonment" and inserting in lieu there of "if no bodily injury results, ten years if bodily injury results, and life imprisonment if death results", by deleting "Given this one-year statutory maximum" and inserting in lieu thereof "A", by inserting "one year" immediately following "near the", and by inserting "or bodily" immediately following "resulting in death".

The Commentary to § 2H1.4 captioned "Background" is amended by inserting at the end of the first paragraph:

"The 8-level increase under subsection (a)(2) reflects the 2-level increase that is applied to other offenses covered in this Part plus a 6-level increase for the commission of the offense under actual or purported legal authority. This 6-level increase is inherent in the base offense level of 10 under subsection (a)(1).".

*Reason for Amendment:* The proposed amendment corrects an anomaly between the offense level under this section and § 2H1.5 when the offense level is determined under subsection (a)(2).

*Additional Explanatory Statement:* Section 2H1.4 is similar to § 2H1.5 in that it may or may not involve the use of force. Under § 2H1.4, however, the offense must involve the abuse of actual or purported legal authority. The base offense level of 10 used in § 2H1.4(a)(1) has a built-in 6-level enhancement (which corresponds to the base offense level of 8 under § 2H1.5(a)(1) plus the 4-level increase for a public official). There is an anomaly, however, when the base offense level from (a)(2) is used. In such cases, § 2H1.4 results in an offense level that is 4 levels less than § 2H1.5 when the offense is committed by a public official. The proposed amendment recommended addresses this issue. The proposed amendment also amends the Commentary to § 2H1.4 to reflect the recent increase in the maximum authorized sentence from one to ten years when bodily injury results.

*§ 2H1.5 Other Deprivations of Rights or Benefits in Furtherance of Discrimination*

131. *Proposed Amendment:* The Commentary to § 2H1.5 captioned "Application Notes" is amended in Note 2 by deleting "§ 2H1.4(b)(1)" and inserting in lieu thereof "§ 2H1.5(b)(1)". Reason for Amendment: The purpose of this amendment is to correct a clerical error.

*§ 2H2.1 Obstructing an Election or Registration*

132. *Proposed Amendment:* Section 2H2.1(a)(1) is amended by deleting "persons" and inserting in lieu thereof "person(s)".

The Commentary to § 2H2.1 captioned "Background" is amended by deleting "Specific offense characteristics" and inserting in lieu thereof "Alternative base offense levels".

*Reason for Amendment:* The purpose of this amendment is to correct two clerical errors. First, the use of the plural "persons" in current subsection (a)(1) could be read to mean this subsection does not apply if the force or threat was applied only to one person, a result that was not intended. Second, the reference to "Specific offense characteristics" in the current Background is inaccurate; it should read "Alternative base offense levels".



*§ 2H3.1 Interception of Communications or Eavesdropping*

133. *Proposed Amendment:* Section 2H3.1 is amended by deleting:

"(a) Base Offense Level (Apply the greater):

(1) 9; or

(2) If the purpose of the conduct was to facilitate another offense, apply the guideline applicable to an attempt to commit that offense.

(b) Specific Offense Characteristic.

(1) If the purpose of the conduct was to obtain direct or indirect commercial advantage or economic gain not covered by § 2H3.1(a)(2) above, increase by 3 levels.",

and inserting in lieu thereof:

"(a) Base Offense Level: 9.

(b) Specific Offense Characteristic.

(1) If the purpose of the conduct was to obtain direct or indirect commercial advantage or economic gain, increase by 3 levels.

(c) Cross Reference.

(1) If the purpose of the conduct was to facilitate another offense, apply the guideline applicable to an attempt to commit that offense, if the resulting offense level is greater than that determined above.".

*Reason for Amendment:* This amendment corrects an anomaly in § 2H3.1. Currently, specific offense characteristic (b)(1) applies only to base offense level (a)(1). Consequently, conduct facilitating an offense for economic gain of level 8 or 9 would result in a greater offense level (11 or 12) than conduct facilitating a more serious (level 10 or 11) offense.

*§ 2J1.1 Contempt*

134. *Proposed Amendment:* Section 2J1.1 is amended by deleting: "If the defendant was adjudged guilty of contempt, the court shall impose a sentence based on stated reasons and the purposes of sentencing set forth in 18 U.S.C. 3553(a)(2).",

and inserting in lieu thereof:

"Apply § 2X5.1 (Other Offenses).".

The Commentary to § 2J1.1 captioned "Application Note" is amended in Note 1 by deleting "See, however, § 2X5.1 (Other Offenses)." and inserting in lieu thereof "In certain cases, the offense conduct will be sufficiently analogous to § 2J1.2 (Obstruction of Justice) for that guideline to apply.".

*Reason for Amendment:* This section is designated as a guideline, but it is not a guideline contemplated by the Sentencing Reform Act. This amendment clarifies the Commission's original intent by referencing this section to § 2X5.1 (Other Offenses).

135. *Proposed Amendment:* The Commentary to § 2J1.1 captioned "Statutory Provisions" is amended by deleting "Provisions" and inserting in lieu thereof "Provision", and by deleting "§" and ", 402".

*Reason for Amendment:* The purpose of this amendment is to delete a reference to a petty offense. Related amendment: 15 (§ 1B1.9).

*§ 2J1.2 Obstruction of Justice*

136. *Proposed Amendment:* Section 2J1.2(b)(1) is amended by deleting "defendant obstructed or attempted to obstruct the administration of justice by" and inserting in lieu thereof "offense involved", and by deleting "or property," and inserting in lieu thereof ", or property damage, in order to obstruct the administration of justice".

Section 2J1.2(b)(2) is amended by deleting "defendant substantially interfered" and inserting in lieu thereof "offense resulted in substantial interference".

Section 2J1.2(c)(1) is amended by deleting "conduct was" and inserting in lieu thereof "offense involved", and by deleting "such" and inserting in lieu thereof "that".

The Commentary to § 2J1.2 captioned "Application Notes" is amended in Note 1 by deleting " 'Substantially interfered" and inserting in lieu thereof " 'Substantial interference", and by deleting "offense conduct resulting in".

*Reason for Amendment:* The purpose of this amendment is to conform the language of the subsections and insure that an attempted obstruction is not excluded from subsection (c) because of the non-parallel language between (b)(1) and (c)(1).

137. *Proposed Amendment:* The Commentary to § 2J1.2 captioned "Statutory Provisions" is amended by inserting ", 1505" immediately following "1503".

*Reason for Amendment:* The purpose of this amendment is to delete a reference to a petty offense. Related amendment: 15 (§ 1B1.9).

138. *Proposed Amendment:* The Commentary to § 2J1.2 captioned "Statutory Provisions" is amended by inserting ", 1516" immediately following "1513".

*Reason for Amendment:* The purpose of this amendment is to expand the coverage of an existing guideline to include a new offense (Obstruction of a Federal Audit) created by section 7078 of the Omnibus Anti-Drug Abuse Act of 1988.

*§ 2J1.3 Perjury*

139. *Proposed Amendment:* Section 2J1.3 is amended in the caption by inserting "or Subornation of Perjury" immediately following "Perjury".

Section 2J1.3(b)(1) is amended by deleting "defendant suborned perjury by" and inserting in lieu thereof "offense involved", and by deleting "or property" and inserting in lieu thereof ", or property damage, in order to suborn perjury".

Section 2J1.3(b)(2) is amended by deleting "defendant's", and by deleting "substantially interfered" and inserting in lieu thereof "resulted in substantial interference".

Section 2J1.3(c)(1) is amended by deleting "conduct was perjury" and inserting in lieu thereof "offense involved perjury or subornation of perjury", and by deleting "such" and inserting in lieu thereof "that".

The Commentary to § 2J1.3 captioned "Application Notes" is amended in Note 1 by deleting " 'Substantially interfered" and inserting in lieu thereof " 'Substantial interference", and by deleting "offense conduct resulting in".

*Reason for Amendment:* The purposes of this amendment are to clarify the guideline, and to ensure that subornation of perjury is not excluded from subsection (c) due to a lack of parallel wording in the subsections.

*§ 2J1.4 Impersonation.*

140. *Proposed Amendment:* Section 2J1.4(b)(1) is amended by deleting:

"If the defendant falsely represented himself as a federal officer, agent or employee to demand or obtain any money, paper, document, or other thing of value or to conduct an unlawful arrest or search, increase by 6 levels.",

and inserting in lieu thereof:

"If the impersonation was committed for the purpose of conducting an unlawful arrest, detention, or search, increase by 6 levels.".

Section 2J1.4 is amended by inserting the following additional subsection:

(c) Cross Reference. (1) If the impersonation was to facilitate another offense, apply the guideline for an attempt to commit that offense, if the resulting offense level is greater than the offense level determined above.".

*Reason for Amendment:* The purpose of this amendment is to relate the offense levels more directly to the underlying offense where the impersonation is committed for the purpose of facilitating another offense.

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*Additional Explanatory Statement:* The statutes covered by § 2J1.4 are sometimes used as jurisdictional statutes to prosecute fraud or forgery cases where the defendant pretends to be a federal employee (showing false or stolen federal identification) to cash a check. The current guideline will produce a result lower than the fraud/forgery guideline if the amount is extremely large and higher than that guideline if the amount is small. This result seems anomalous, particularly as the statutory maximum for the offenses covered by § 2J1.4 is only 3 years, lower than that generally provided in fraud/forgery statutes.

In addition, the proposed amendment deletes unnecessary and technically inaccurate language.

*§ 2J1.5 Failure to Appear by Material Witness.*

141. *Proposed Amendment:* Section 2J1.5(b)(1) is amended by deleting "substantially interfered" and inserting in lieu thereof "resulted in substantial interference".

The Commentary to § 2J1.5 captioned "Application Notes" is amended in Note 1 by deleting "'Substantially interfered" and inserting in lieu thereof "'Substantial interference", and by deleting "offense conduct resulting in".

*Reason for Amendment:* The purpose of this amendment is to clarify the intent of the guideline.

*§ 2J1.7 Commission of Offense While on Release.*

142. *Proposed Amendment:* Section 2J1.7 is amended by deleting:

*"§ 2J1.7. Commission of Offense While on Release*

(a) Base Offense Level: 6.

(b) Specific Offense Characteristics.

(1) If the offense committed while on release is punishable by death or imprisonment for a term of fifteen years or more, increase by 6 levels.

(2) If the offense committed while on release is punishable by a term of imprisonment of five or more years, but less than fifteen years, increase by 4 levels.

(3) If the offense committed while on release is a felony punishable by a maximum term of less than five years, increase by 2 levels.

**Commentary**

*Statutory Provision:* 18 U.S.C. 3147. *Application Notes:* 1. This guideline applies whenever a sentence pursuant to 18 U.S.C. 3147 is imposed.

2. By statute, a term of imprisonment imposed for a violation of 18 U.S.C. 3147 runs consecutively to any other term of imprisonment. Consequently, a sentence for such a violation is exempt from grouping under the multiple count rules. See § 3D1.2.

*Background:* Because defendants convicted under this section will generally have a prior criminal history, the guideline sentences provided are greater than they otherwise might appear.",

and inserting in lieu thereof:

*"§ 2J1.7 Commission of Offense While on Release.*

If an enhancement under 18 U.S.C. 3147 applies, add [2][3][4] levels to the offense level for the offense committed while on release as if this section were a specific offense characteristic contained in the offense guideline for the offense committed while on release.

**Commentary**

*Statutory Provision:* 18 U.S.C. 3147.

*Application Notes:* 1. Because 18 U.S.C. 3147 is an enhancement provision, rather than an offense, this section provides a specific offense characteristic to increase the offense level for the offense committed while on release.

2. Under 18 U.S.C. 3147, a sentence of imprisonment must be imposed in addition to the sentence for the underlying offense, and the sentence of imprisonment imposed under 18 U.S.C. 3147 must run consecutively to any other sentence of imprisonment. In order to avoid 'double counting', the court will have to ensure that the 'total punishment' (i.e., the sentence for the offense committed while on release plus the sentence enhancement under 18 U.S.C. 3147) is in accord with the guideline range for the offense committed while on release, as adjusted by the enhancement in this section, e.g., if the applicable guideline range is 30–37 months and the court determines 'total punishment' of 36 months is appropriate, a sentence of 30 months for the underlying offense plus 6 months under 18 U.S.C. 3147 would satisfy this requirement.

*Background:* An enhancement under 18 U.S.C. 3147 may be imposed only upon application of the government; it cannot be imposed on the court's own motion. In this respect, it is similar to a separate count of conviction and, for this reason, is placed in Chapter Two of the guidelines.

Legislative history indicates that, the mandatory nature of the penalties required by 18 U.S.C. 3147 was to be eliminated upon the implementation of the sentencing guidelines. 'Section 213(h) [renumbered as section 200(g) in the Crime Control Act of 1984] amends the new provision in title I of this Act relating to consecutive enhanced penalties for committing an offense on release (new 18 U.S.C. 3147) by eliminating the mandatory nature of the penalties in favor of utilizing sentencing guidelines.' (Senate Report 98–225 at 186). Not all of the phraseology relating to the requirement of a mandatory sentence, however, was actually deleted from the statute. Consequently, it appears the court is required to impose a consecutive sentence of imprisonment under this provision, but there is no requirement as to any minimum term. This guideline is drafted to enable the court to determine and implement a combined 'total punishment' consistent with the overall structure of the guidelines, while at the same time complying with the statutory requirement. Guideline provisions that prohibit the grouping of counts of conviction requiring consecutive sentences (e.g., the introductory paragraph of § 3D1.2; § 5G1.2(a)) do not apply to this section because 18 U.S.C. 3147 is an enhancement, not a count of conviction.".

*Reason for Amendment:* The purpose of this amendment is to reflect the fact that 18 U.S.C. 3147 is an enhancement provision, not a distinct offense.

*Additional Explanatory Statement:* During the development of the original set of guidelines, there was some confusion as to whether 18 U.S.C. 3147 was a criminal offense or an enhancement provision. It turns out it is an enhancement provision. To complicate matters, the statute and legislative history do not match exactly. Created in 1984 as part of the Comprehensive Crime Control Act, the statute contained interim provisions (mandatory consecutive sentences that were subject to the parole and good time provisions of prior law) that were to be in effect until the sentencing guidelines took effect. The Senate Report to S.1762 indicates that the mandatory nature of the interim provisions was to be eliminated when the sentencing guidelines took effect ("Section 213(h) [section 220(g) of the CCCA of 1984] amends the new provision in title I of this Act relating to consecutive enhanced penalties for committing an offense while on release (new 18 U.S.C. 3147)) by eliminating the mandatory nature of the penalties in favor of utilizing sentencing guidelines" (Senate Report 98–225 at 186). The statute, as amended, however, did not actually eliminate all language referring to mandatory penalties. A mandatory consecutive term of imprisonment is required but, unlike other mandatory provisions, there is no minimum required. Consequently, no real restriction is placed on the court; i.e., a consecutive sentence of 1 day's imprisonment is not prohibited.

The Commission attempted to deal with the mandatory consecutive requirement of this provision by treating it as if it constituted a separate offense, but this treatment has caused several problems.

Treating this provision as if it were a separate offense engenders a variety of questions, including whether and how victim adjustments, obstruction, and acceptance of responsibility apply to this provision, whether a term of supervised release can be imposed if no term of imprisonment is imposed on the underlying offense, whether a fine can be imposed; and how the cost of supervision on the consecutive part of



the term is to be considered. Moreover, while other enhancements vary with the offense level for the underlying offense, this enhancement varies with the much cruder measure of the statutory maximum penalty for the underlying offense (e.g., under the current guideline, possessing a counterfeit ten dollar bill would result in a greater enhancement than interstate or foreign travel or transportation in aid of racketeering activity).

The amendment recommended below converts this section into an offense level adjustment for the offense committed while on release, a treatment that is considerably more consistent with the treatment of other offense/offender characteristics.

The Commission seeks public comment as to whether 2, 3, or 4 level enhancement is appropriate.

*§ 2J1.8 Bribery of a Witness*

143. *Proposed Amendment:* Section 2J1.8(b)(1) is amended by deleting "substantially interfered" and inserting in lieu thereof "resulted in substantial interference".

Section 2J1.8(c)(1) is amended by deleting "conduct was" and inserting in lieu thereof "offense involved", and by deleting "such" and inserting in lieu thereof "that".

The Commentary to § 2J1.8 captioned "Application Notes" is amended in Note 1 by deleting "Substantially interfered" and inserting in lieu thereof "Substantial interference", and by deleting "offense conduct resulting in".

The Commentary to § 2J1.8 captioned "Application Notes" is amended in Note 2 by deleting "This section applies only in the case of a conviction under the above referenced (or equivalent) statute." immediately before "For offenses".

*Reason for Amendment:* The purposes of this amendment are to clarify the guideline and to delete surplus language in the Commentary. Retention of this surplus language could create the impression that a different result was intended in other similar guidelines not containing such language.

*§ 2J1.9 Payment to Witness*

144. *Proposed Amendment:* Section 2J1.9(b)(1) is amended by deleting "for refusing to testify" and inserting in lieu thereof "made or offered for refusing to testify or for the witness absenting himself to avoid testifying".

The Commentary to § 2J1.9 captioned "Application Notes" is amended by deleting:

"1. 'Refusing to testify' includes absenting oneself for the purpose of avoiding testifying.",

and by renumbering Notes 2 and 3 as 1 and 2 respectively.

*Reason for Amendment:* The purpose of this amendment is to move material from the Commentary to the guideline itself where it more properly belongs.

145. *Proposed Amendment:* The Commentary to § 2J1.9 captioned Application Notes is amended in the renumbered Note 1 by deleting "This section applies only in the case of a conviction under the above referenced (or equivalent) statute." immediately before "For offenses".

*Reason for Amendment:* The purpose of this amendment is to delete surplus language from the Commentary. Retention of this surplus language could create the impression that a different result was intended in other similar guidelines not containing this language.

**Chapter Two, Part K, Offenses Involving Public Safety**

146. *Proposed Amendment:* Sections 2K1.4(c), 2K1.5(c), 2K2.1(c), 2K2.2(c), and 2K2.3(c) are amended by deleting "higher" whenever it appears and inserting in lieu thereof "greater".

*Reason for Amendment:* The purpose of this amendment is to correct a clerical error.

*§ 2K1.3 Unlawfully Trafficking In, Receiving, or Transporting Explosives*

147. *Proposed Amendment:* Section 2K1.3(b) is amended by deleting "any of the following" and inserting in lieu thereof "more than one".

Section 2K1.3(b)(5) is amended by deleting "firearm offense" and inserting in lieu thereof "offense involving explosives".

*Reason for Amendment:* The purpose of this amendment is to clarify the guideline.

*§ 2K1.4 Arson; Property Damage By Use of Explosives*

148. *Proposed Amendment:* Section 2K1.4(b) is amended by deleting "any of the following" and inserting in lieu thereof "more than one".

*Reason for Amendment:* The purpose of this amendment is to clarify the guideline.

149. *Proposed Amendment:* Section 2K1.4 is amended by inserting as an additional subsection the following:

"(d) Note: The specific offense characteristic in subsection (b)(4) applies only in the case of an offense committed prior to November 18, 1988.";

The Commentary to § 2K1.4 captioned "Statutory Provisions" is amended by inserting "(only in the case of an offense committed prior to November 18, 1988)" immediately following "(h)";

The Commentary to § 2K1.4 captioned "Background", is amended by deleting "used fire or an explosive in the commission of a felony," and by inserting at the end of the paragraph the following new sentence: "As amended by section 6474(b) of the Omnibus Anti-Drug Abuse Act of 1988 (effective November 18, 1988), 18 U.S.C. 844(h) sets forth a mandatory sentencing enhancement of five years for the first offense and ten years for subsequent offenses if the defendant was convicted of using fire or an explosive to commit a felony or of carrying an explosive during the commission of a felony. See § 2K1.7.

*Reason for Amendment:* The purpose of this amendment is to conform the guidelines to a statutory revision to 18 U.S.C. 844(h). Related amendments: 152 (§ 2K1.7); 286 (Appendix A).

*§ 2K1.5 Possessing Dangerous Weapons or Materials While Boarding or Aboard an Aircraft*

150. *Proposed Amendment:* Section 2K1.5(b) is amended by deleting "any of the following" and inserting in lieu thereof "more than one".

*Reason for Amendment:* The purpose of this amendment is to clarify the guideline.

151. *Proposed Amendment:* Section 2K1.5(b)(1) is amended by deleting "(i.e., the defendant is convicted under 49 U.S.C. 1472(1)(2)", and by inserting "is convicted under 49 U.S.C. 1472(1)(2) (i.e., the defendant" immediately before "acted".

*Reason for Amendment:* The purpose of this amendment is to clarify the guideline.

152. *Proposed Amendment:* Chapter Two, Part K is amended by inserting as an additional guideline the following:

*"§ 2K1.7 Use of Fire or Explosive to Commit a Federal Felony*

If the defendant, whether or not convicted of another crime, was convicted under 18 U.S.C. 844(h), the term of imprisonment is that required by statute.

**Commentary**

*Statutory Provision:* 18 U.S.C. 844(h).

*Application Notes:*

1. The statute requires a term of imprisonment imposed under this section to run consecutively to any other term of imprisonment.

2. Imposition of a term of supervised release is governed by the provisions of § 5D1.1 (Imposition of a Team of Supervised Release).".

*Reason for Amendment:* The purpose of this amendment is to conform the guidelines to a statutory revision of the meaning of 18 U.S.C. 844(h). Related

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amendments: 149 (§ 2K1.4); 186 (Appendix A).

**Chapter Two, Part K, Subpart 1**

153. Section 6474(a) of the Omnibus Anti-Drug Abuse Act of 1988: Section 6474(a) of the Omnibus Anti-Drug Abuse Act of 1988 increases the statutory maximum sentence for possession of an explosive in a federal building (18 U.S.C. 844(g)) from one to five years and expands coverage of the offense to include an airport that is subject to the regulatory authority of the Federal Aviation Administration. Currently, there is no guideline for 18 U.S.C. 844(g). The Commission intends to promulgate a guideline to cover this offense and seeks comment on the appropriate base offense level and specific offense characteristics for this guideline.

**Chapter Two Part K, Subpart 2**

154. *Revision of Chapter Two, Part K, Subpart 2:* The Commission seeks comment on a revision of Chapter Two, Part K, Subpart 2, to address a number of diverse substantive and technical issues, as well as the creation of several new offenses, and increased statutory maximum penalties for certain other offenses. Various issues concerning the current guidelines are discussed and an example of an approach to address these issues is shown in amendment form. The Commission seeks comment on this approach as well as any recommendations for alternative approaches to address these issues.

A significant problem with the present guideline is that there are a large number of overlapping statutory provisions so that the three basic guidelines, § 2K2.1 (Possession by a prohibited person), § 2K2.2 (Possession of certain types of weapons), and § 2K2.3 (Unlawful trafficking), are not closely tied to the actual conduct. For example, possession of a machine gun might be prosecuted under 18 U.S.C. 922(o) or 26 U.S.C. 5861(a). Prosecution under the first listed statute results in an offense level of 6; prosecution under the second results in an offense level of 12. In other cases, offenses involving trafficking in multiple firearms are referenced by the offense of conviction to § 2K2.1 or § 2K2.2 where there is no table to take into account multiple firearms. The amendment shown below addresses this issue by consolidating the current three guidelines into two guidelines: (1) Unlawful possession, receipt, or transportation, and (2) unlawful trafficking; and by more carefully drawing the distinctions between the base offense levels provided. The third guideline shown in this amendment is a new guideline to address transfer of a weapon with intent or knowledge that it will be used to commit another offense (formerly covered in a cross reference) and a new offense added by the Omnibus Anti-Drug Abuse Act of 1988 (section 6211) (interstate travel to acquire a firearm for a criminal purpose).

In addition, it is not clear that "used" in the cross-reference in § 2K2.1 will be consistently read as including "possessed in connection with". The amendment shown below addresses this issue. Other cross-references are provided to ensure that if both the amended §§ 2K2.1 and 2K2.2 are applicable, the guideline having the greater offense level will apply.

The current guideline uses the term "Firearms or Other Weapons" because the term "firearm" used in the underlying statutes is broader than the usual definition of firearm found in § 1B1.1. However, the undefined term "other weapons" is confusing, and ammunition, which is covered by the statute, is omitted from the guideline title. The amendment shown below uses the term "Firearms or Ammunition" in § 2K2.1 and provides an Application Note in both § 2K2.1 and § 2K2.2 to indicate that the definition of firearm is different from that used in the general definitions in § 1B1.1.

The base offense level for conduct covered by the current § 2K2.1 is increased in the amendment shown below from 9 to 12 (the same base offense level as the current § 2K2.2). The statutorily authorized maximum sentence for the conduct covered under § 2K2.1 was increased from five to ten years by the Omnibus Anti-Drug Abuse Act of 1988 (section 6462). Note, however, that the most aggravated conduct under § 2K2.1 (possession of a weapon during commission of another offense) is handled by the cross-reference at subsection (c) and is based upon the offense level for an attempt to commit the underlying offense. See Background Commentary to current § 2K2.1. In addition, the amendment shown below raises the enhancement for stolen weapons or obliterated serial numbers from 1 to 2 levels to better reflect the seriousness of this conduct. The numbers currently used in the table for the distribution of multiple weapons in § 2K2.2 are shown [Option 1] as well as an option that would increase the offense level increases somewhat more rapidly for sale of multiple weapons [Option 2]. The example shown below retains the offense level of 12 for unlawful possession of a machine gun, sawed off shotgun, or destructive device; and level 16 for a firearm silencer or muffler. All of these weapons are prohibited under 18 U.S.C. 5861. Comment is sought as to whether the Commission should provide the same offense level for all such weapons, and if so, a recommendation as to the appropriate offense level.

Section 2K2.1 and accompanying Commentary, except for Commentary captioned "Background", are deleted and the following inserted in lieu thereof:

*"§ 2K2.1 Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition*

(a) Base Offense Level (Apply the Greater): (1) 12, if the defendant is convicted under 18 U.S.C. 922 (g), (h), (n), or (o), or 26 U.S.C. 5861; or if the defendant, at the time of the offense, had been convicted in any court of an offense punishable by imprisonment for a term exceeding one year; or

(2) 6, otherwise.

(b) Specific Offense Characteristics.

(1) If the defendant obtained or possessed the firearm or ammunition solely for lawful sporting purposes or collection, reduce the offense level determined above to level 6;

(2) If the firearm was stolen or had an altered or obliterated serial number, increase by 2 levels;

(3) If the offense involved a firearm silencer or firearm muffler, increase by 4 levels.

(c) Cross References.

(1) If the offense involved the distribution of a firearm or possession with intent to distribute, apply § 2K2.2 (Unlawful Trafficking and Other Prohibited Transactions Involving a Firearm) if the resulting offense level is greater than that determined above;

(2) If the defendant used or possessed the firearm in connection with commission or attempted commission of another offense, apply § 2X1.1 (Attempt, Solicitation, or Conspiracy) in respect to that other offense, if the resulting offense level is greater than that determined above.

*Statutory Provisions:* 18 U.S.C. 922 (a)(1), (a)(3), (a)(4), (a)(6), (e), (f), (g), (h), (i), (j), (k), (l), (n), and (o); 26 U.S.C. 5861 (b), (c), (d), (h), (i), (j), and (k).

*Application Notes:*

1. The definition of 'firearm' used in this section is that set forth in 18 U.S.C. 921(a)(3) (if the defendant is convicted under 18 U.S.C. 922) and 26 U.S.C. 5845(a) (if the defendant is convicted under 26 U.S.C. 5861). These definitions are somewhat broader than that used in Application Note 1(e) of the Commentary to § 1B1.1 (Application Instructions). Under 18 U.S.C. 921(a)(3), the term 'firearm' means (A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device. Under 26 U.S.C. 5845(a), the term 'firearm' includes a shotgun, or a weapon made from a shotgun, with a barrel or barrels of less than 18 inches in length; a weapon made from a shotgun or rifle with an overall length of less than 26 inches; a rifle, or weapon from a rifle, with a barrel or barrels less than 16 inches in length; a machine gun; a muffler or silencer for a firearm; a destructive device; and certain other large bore weapons.

2. Under § 2K2.1(b)(1), intended lawful use, as determined by the surrounding circumstances, provides a decrease in offense level. Relevant circumstances include, among others, the number and type of firearms (sawed-off shotguns, for example, have few legitimate uses) and ammunition, the location and circumstances of possession, the nature of the defendant's criminal history (e.g., whether involving firearms), and the extent to which possession was restricted by local law.".

Sections 2K2.2 and 2K2.3, including titles and accompanying Commentary, are deleted in their entirety and the following substituted in lieu thereof:

*"§ 2K2.2 Unlawful Trafficking and Other Prohibited Transactions Involving Firearms*

(a) Base Offense Level (1) 12, if the defendant is convicted under 18 U.S.C. 922(o) or 26 U.S.C. 5861;

(2) 6, otherwise.

(b) Specific Offense Characteristics

(1) If the offense involved distribution of a firearm, or possession with intent to distribute, and the number of firearms unlawfully distributed, or to be distributed, exceeded [two][five], increase as follows:

| | Number of firearms | Increase in level |
|---|---|---|
| | **Option 1** | |
| (A) | 6 to 10 | Add 1. |
| (B) | 11 to 20 | Add 2. |
| (C) | 21 to 50 | Add 3. |
| (D) | 51 to 100 | Add 4. |
| (E) | 101 to 200 | Add 5. |
| (F) | More than 200 | Add 6. |
| | **Option 2** | |
| (A) | 3 to 5 | Add 2. |
| (B) | 6 to 11 | Add 3. |
| (C) | 12 to 24 | Add 4. |
| (D) | 25 to 49 | Add 5. |
| (E) | 50 or more | Add 6. |

(2) If any of the firearms was stolen or had an altered or obliterated serial number, increase by 2 levels

(3) If the offense involved a firearm silencer or firearm muffler, increase by 4 levels.

(4) If more than one of the following applies, use the greater:

(A) If the defendant is convicted under 18 U.S.C. 922(d), increase by 2 levels; or

(B) If the defendant is convicted under 18 U.S.C. 922 (b)(1) or (b)(2), increase by 1 level.

(C) Cross Reference

(1) If the defendant, at the time of the offense, had been convicted in any court of a crime punishable by imprisonment for a term exceeding one year, apply § 2K2.1 (Unlawful Possession, Receipt, or Transportation of a Firearm or Ammunition) if the resulting offense level is greater than that determined above.

**Commentary**

*Statutory Provisions:* 18 U.S.C. 922 (a)(1), (a)(2), (a)(5), (b), (c), (d), (e), (f), (i), (j), (k), (l), (m), (o); 26 U.S.C. 5861 (a), (e), (f), (g), (j), and (l).

*Application Notes:*

1. The definition of firearm used in this section is that set forth in 18 U.S.C. 921(a)(3) (if the defendant is convicted under 18 U.S.C. 922) and 26 U.S.C. 5845(a) (if the defendant is convicted under 26 U.S.C. 5861). These definitions are somewhat broader than that used in Application Note 1(e) of the Commentary to § 1B1.1 (Application Instructions). Under 18 U.S.C. 921(a)(3), the term 'firearm' means (A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device. Under 26 U.S.C. 5845(a), the term 'firearm' includes a shotgun, or a weapon made from a shotgun, with a barrel or barrels of less than 18 inches in length; a weapon made from a shotgun or rifle with an overall length of less than 26 inches; a rifle, or weapon from a rifle, with a barrel or barrels less than 16 inches in length; a machine gun; a muffler or silencer for a firearm; a destructive device; and certain other large bore weapons.

2. If the number of weapons involved substantially exceeded [fifty][two hundred], an upward departure may be warranted.

*Background:* This guideline applies to a variety of offenses involving firearms, ranging from unlawful distribution of silencers, machine guns, sawed-off shotguns, and destructive devices, to essentially technical violations.".

*"§ 2K2.3 Receiving, Transporting, Shipping or Transferring a Firearm or Ammunition With Intent to Commit Another Offense, or With Knowledge that It Will Be Used in Committing Another Offense*

(a) Base Offense Level (Apply the Greater) (1) The offense level from § 2X1.1 (Attempt, Solicitation, or Conspiracy) in respect to the offense that the defendant intended or knew was to be committed with the firearm.

(2) The offense level from § 2K2.1 (Unlawful Receipt, Possession, or Transportation of a Firearm), or § 2K2.2 (Unlawful Trafficking and Other Prohibited Transactions Involving a Firearm), as applicable.

**Commentary**

*Statutory Provisions:* 18 U.S.C. 924 (b), (f), (g).".

*§ 2K2.3 Prohibited Transactions in or Shipment of Firearms and Other Weapons*

155. *Proposed Amendment:* Section 2K2.3(b) is amended by deleting "dealt in" and inserting in lieu thereof "involved in the offense", and by deleting "purchaser" wherever it appears and inserting in lieu thereof "recipient".

*Reason for Amendment:* The purpose of this amendment is to replace the awkward term "dealt in" with clearer terminology, and to clarify that application of subsection (b)(2) (A) and (B) includes "distribution" rather than only "sale".

156. *Proposed Amendment:* Section 2K2.3(b)(2) is amended by deleting "any of the following" and inserting in lieu thereof "more than one".

*Reason for Amendment:* The purpose of this amendment is to clarify the guideline.

*§ 2K2.4 Use of Firearms or Armor-Piercing Ammunition During or in Relation to Certain Crimes*

157. *Proposed Amendment:* Section 2K2.4 is amended by deleting "penalties are those" and inserting in lieu thereof "term of imprisonment is that".

The Commentary to § 2K2.4 captioned "Application Notes" is amended by inserting the following additional Note:

"3. Imposition of a term of supervised release is governed by the provisions of § 5D1.1 (Imposition of a Term of Supervised Release).".

Section 2K2.4 is amended by inserting "(a)" immediately before "If", and by inserting as an additional subsection the following:

"(b) Special Instructions for Fines:

(1) Where there is a federal conviction for the underlying offense, the fine guideline shall be the fine guideline that would have been applicable had there only been a conviction for the underlying offense. This guideline shall be used as a consolidated fine guideline for both the underlying offense and the conviction underlying this section.".

The Commentary to § 2K2.4 captioned "Application Notes" is amended by inserting the following as an additional Note:

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"4. Subsection (b) sets forth special provisions concerning the imposition of fines. Where there is also a conviction for the underlying offense, a consolidated fine guideline is determined by the offense level that would have applied to the underlying offense absent a conviction under 18 U.S.C. 924(c) or 929(a). This is because the offense level for the underlying offense may be reduced when there is also a conviction under 18 U.S.C. 924(c) or 929(a) in that any specific offense characteristic for possession, use, or discharge of a firearm is not applied (see Application Note 2). The Commission has not established a fine guideline range for the unusual case in which there is no conviction for the underlying offense.".

*Reason for Amendment:* The purpose of this amendment is to address the imposition of a fine or term of supervised release when this guideline applies.

158. *Proposed Amendment:* Chapter Two, Part K is amended by adding the following new guideline and accompanying commentary:

*"§ 2K2.5 Possession of Firearms and Dangerous Weapons in Federal Facilities*

(a) Base Offense Level: 6

(b) Cross Reference

(1) If the defendant possessed the firearm or other dangerous weapon with intent to use it in the commission of another offense, apply § 2X1.1 (Attempt, Solicitation or Conspiracy) in respect to that other offense if the resulting offense level is greater than that determined above.

Commentary

Statutory Provision: 18 U.S.C. 930.".

*Reason for Amendment:* This amendment adds a guideline to cover a new offense enacted by section 6215 of the Omnibus Anti-Drug Abuse Act of 1988.

*Additional Explanatory Statement:* Section 6215 of the Omnibus Anti-Drug Abuse Act of 1988 creates a new offense: "Possession of firearms and dangerous weapons in Federal facilities." The offense carries a maximum penalty of one year for simple possession and five years for possession with intent to use the weapon in the commission of a crime. A federal facility is defined as a building where federal employees are regularly present for the purpose of performing their official duties.

A base offense level of 6 is provided for the misdemeanor portion of this statute. The felony portion of this statute (possession with intent to commit another offense) is treated as if an attempt to commit that other offense.

*§ 2L1.1 Smuggling, Transporting, or Harboring an Unlawful Alien*

159. *Proposed Amendment:* Section 2L1.1(b) is amended by inserting as a new subsection the following:

"(3) In the case of a defendant who is an unlawful alien and has been deported (voluntarily or involuntarily) on one or more occasions prior to the instant offense, if the offense level determined above is less than level 8, increase to level 8.".

The Commentary to § 2L1.1 captioned "Application Notes" is amended in Note 6 by deleting "enhancement at § 2L1.1(b)(1) does not apply" and inserting in lieu thereof "reduction at § 2L1.1(b)(1) applies".

*Reason for Amendment:* The purposes of this amendment are to provide an offense level that is no less than that provided under § 2L1.2 in the case of a defendant who is a previously deported alien, and to conform Application Note 6 of the Commentary to § 2L1.1 to the January 1988 revision of § 2L1.1.

*§ 2L1.2 Unlawfully Entering or Remaining in the United States*

160. *Aliens Previously Deported After Conviction of a Felony:* Section 7345 of the Omnibus Anti-Drug Abuse Act of 1988 provides a maximum penalty of five years' imprisonment if the defendant was deported after conviction of a felony, and a maximum term of fifteen years' imprisonment if the defendant was deported after conviction of an aggravated felony (defined as murder, any drug trafficking crime, or any illicit trafficking in firearms or destructive devices, or any attempt or conspiracy to commit any such act, committed within the United States). Otherwise, the maximum penalty is two years' imprisonment.

The Commission seeks public comment on whether and how § 2L1.2 should be amended to address the distinctions added by this statute. One way might be to add a specific offense characteristic to provide an increase in the case of an alien previously deported after conviction of a felony other than an immigration law violation, and to allow an upward departure in the case of an "aggravated felony" due to the wide range of conduct within the definition of an aggravated felony (e.g., from first degree murder to sale of a small quantity of a controlled substance). This specific offense characteristic would be in addition to, and not in lieu of, criminal history points added for the prior sentence. The issue of the appropriate enhancement for an aggravated felony would be deferred until the Commission can analyze current practice data through its case monitoring system.

For example, § 2L1.2 might be amended by inserting the following additional specific offense characteristic:

"(b) Specific Offense Characteristic

(1) If the defendant previously was deported after sustaining a conviction for a felony, other than a felony involving violation of the immigration laws, increase by [2][3][4] levels.",

and the Commentary to § 2L1.2 captioned "Application Notes" might be amended by adding the following additional Note:

"3. A [2][3][4] level increase is provided when the defendant was previously deported after sustaining a conviction for a felony, other than a felony involving a violation of the immigration laws. In the case of a defendant previously deported after sustaining conviction for an aggravated felony as defined in 8 U.S.C. 1101(a), or an offense of comparable seriousness, an upward departure should be considered.".

The Commission seeks comment on the appropriateness of an amendment such as shown above, and welcomes other proposals for addressing this issue.

*§ 2L1.3 Engaging in a Pattern of Unlawful Employment of Aliens*

161. *Proposed Amendment:* Section 2L1.3 and the Commentary thereto are amended by deleting the entire text thereof, including the title, as follows:

*"§ 2L1.3. Engaging in a Pattern of Unlawful Employment of Aliens*

(a) Base Offense Level: 6

Commentary

*Statutory Provision:* 8 U.S.C. 1324a(f)(1).

Background: The offense covered under this section is a misdemeanor for which the maximum term of imprisonment authorized by statute is six months.".

*Reason for Amendment:* The purpose of this amendment is to delete a guideline applying only to a petty offense. Petty offenses were deleted from coverage of the guidelines by the adoption of § 1B1.9 (effective June 15, 1988). Related amendment: 15 (§ 1B1.9).

*§ 2L2.1 Trafficking in Evidence of Citizenship or Documents Authorizing Entry*

162. *Proposed Amendment:* Section 2L2.1(a) is amended by deleting "6" and inserting in lieu thereof "9".

Section 2L2.1(b)(1) is amended by deleting "for profit, increase by 3 levels" and inserting in lieu thereof "other than for profit, decrease by 3 levels".



*Reason for Amendment:* The purpose of this amendment is to conform the structure of this guideline to that of § 2L1.1.

Related amendment: 164 (§ 2L2.3).

*§ 2L2.2 Fraudulently Acquiring Evidence of Citizenship or Documents Authorizing Entry for Own Use*

163. Section 2L2.2 is amended by inserting as a new subsection the following:

"(b) Specific Offense Characteristic

(1) If the defendant is an unlawful alien who has been deported (voluntarily or involuntarily) on one or more occasions prior to the instant offense, increase by 2 levels.".

The Commentary to § 2L2.2 captioned "Application Notes" is amended by deleting:

"1. In the case of a defendant who is an unlawful alien and has been deported (voluntarily or involuntarily) on one or more occasions prior to the instant offense, the Commission recommends an upward departure of 2 levels in order to provide a result equivalent to § 2L1.2.",

by renumbering Note 2 as Note 1, and by deleting "Notes" and inserting in lieu thereof "Note".

*Reason for Amendment:* The purpose of this amendment is to convert a departure recommendation into a specific offense characteristic. Related amendment: 165 (§ 2L2.4).

*§ 2L2.3 Trafficking in a United States Passport*

164. *Proposed Amendment:* Section 2L2.3(a) is amended by deleting "6" and inserting in lieu thereof "9".

Section 2L2.3(b)(1) is amended by deleting "for profit, increase by 3 levels" and inserting in lieu thereof "other than for profit, decrease by 3 levels".

*Reason for Amendment:* The purpose of this amendment is to conform the structure of this guideline to that of § 2L1.1. Related amendment: 162 (§ 2L2.1).

*§ 2L2.4 Fraudulently Acquiring or Improperly Using a United States Passport*

165. Section 2L2.4 is amended by inserting as a new subsection the following:

"(b) Specific Offense Characteristic

(1) If the defendant is an unlawful alien who has been deported (voluntarily or involuntarily) on one or more occasions prior to the instant offense, increase by 2 levels.".

The Commentary to § 2L2.4 captioned "Application Notes" is amended by deleting:

"1. In the case of a defendant who is an unlawful alien and has been deported (voluntarily or involuntarily) on one or more occasions prior to the instant offense, the Commission recommends an upward departure of 2 levels in order to provide a result equivalent to § 2L1.2.",

by renumbering Note 2 as Note 1, and by deleting "Notes" and inserting in lieu thereof "Note".

*Reason for this Amendment:* The purpose of this amendment is to convert a departure recommendation into a specific offense characteristic. Related amendment: 163 (§ 2L2.2).

*§ 2N3.1 Odometer Laws and Regulations*

166. *Proposed Amendment:* Section 2N3.1(b) is amended by deleting:

"If more than one vehicle was involved, apply § 2F1.1 (Offenses Involving Fraud or Deceit).", and inserting in lieu thereof:

"(b) Cross Reference

(1) If the offense involved more than one vehicle, apply § 2F1.1 (Fraud and Deceit)."

*Reason for Amendment:* The purpose of this amendment is to correct a clerical error, and to conform the phraseology of this subsection to that used elsewhere in the guidelines. The caption "Cross reference" and "(1)" are added, and the cross reference to "Offenses Involving Fraud or Deceit" is corrected to read "Fraud and Deceit".

*§ 2P1.1 Escape, Instigating or Assisting Escape*

167. *Proposed Amendment:* Section 2P1.1(a) is amended by deleting:

"(1) 13, if from lawful custody resulting from a conviction or as a result of a lawful arrest for a felony;

(2) 8, if from lawful custody awaiting extradition, pursuant to designation as a recalcitrant witness or as a result of a lawful arrest for a misdemeanor.",

and inserting in lieu thereof:

"(1) 13, if the custody or confinement is by virtue of an arrest on a charge of felony, or conviction of any offense;

(2) 8, otherwise.".

*Reason for Amendment:* The purpose of this amendment is to clarify the language of the guideline by making it conform more closely to that used in 18 U.S.C. 751, the statute from which it was derived.

168. *Proposed Amendment:* Section 2P1.1(b)(3) is amended by deleting:

"If the defendant committed the offense while a correctional officer or other employee of the Department of Justice, increase by 2 levels.",

and inserting in lieu thereof:

"If the defendant was a law enforcement or correctional officer or employee, or an employee of the Department of Justice, at the time of the offense, increase by 2 levels.".

*Reason for Amendment:* The current specific offense characteristic (b)(3) applies only to correctional officers or Justice Department employees, and not to local or state law enforcement officers who might have custody of a federal prisoner, or even to federal law enforcement officers who are not employed by the Department of Justice (e.g., Secret Service agents are employed by the Treasury Department). It also does not appear to apply to law enforcement or correctional employees who are not sworn officers unless they are Justice Department employees. The purpose of this amendment is to correct this error.

169. *Offense Levels for Certain Escapes:* Under the current guidelines, an escape from custody resulting from a conviction or a lawful arrest for a felony has a base offense level of 13. If, however, the escape is from non-secure custody and the defendant returns voluntarily within 96 hours, the base offense level is reduced by 7 levels to level 6. If the defendant does not return voluntarily within 96 hours, there is no difference in offense level between an escape from secure or non-secure custody.

The Commission seeks comment on whether an additional distinction should be made between escape from secure and non-secure custody for cases not covered by the 7 level reduction for voluntary return from an escape from non-secure secure custody within 96 hours. Some practitioners have reported that the guidelines have drastically increased the sanctions for escapes from non-secure custody not eligible for the 7-level reduction as contrasted to past practice. Most such defendants will have a criminal history score of at least five (at least 2 points from § 4A1.1(b); 2 points from § 4A1.1(d); and 1 point from § 4A1.1(e)). The Bureau of Prisons has recommended an offense level of 10 (3-levels less than base offense level 13) for an escape from non-secure custody not qualifying for the reduction for voluntary return within 96 hours).

The Commission also seeks comment on whether there should be any reduction for voluntary return and, if such a reduction is appropriate, whether the 96 hours distinction currently used is appropriate. Comment is also sought on whether any distinction between escape from secure and non-secure custody should take into account the nature of the offense for which he is confined, or the security level of the institution in which the defendant is confined. If a distinction between escape from secure

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and non-secure custody is appropriate, should or should not this distinction apply in the case of all offenders or should such a distinction not apply to certain offenders such as drug traffickers or violent offenders? Should a failure to return from a furlough from a secure institution be treated differently than a failure to return from a furlough from a non-secure institution? Where a defendant is returned to custody following an arrest for a new crime while on escape status, such return does not constitute a voluntary return for guideline purposes. Should the guidelines, however, provide an additional distinction to cover cases in which the defendant returns voluntarily from an escape and is later discovered to have committed a new offense while on escape status? If additional distinctions to the guidelines are believed warranted, comments are sought as to the most appropriate structure to accommodate such distinctions.

*§ 2P1.2 Providing or Possessing Contraband in Prison*

170. *Proposed Amendment:* Section 2P1.2(b)(1) is amended by deleting:

"If the defendant committed the offense while a correctional officer or other employee of the Department of Justice, increase by 2 levels.",

and inserting in lieu thereof:

"If the defendant was a law enforcement or correctional officer or employee, or an employee of the Department of Justice, at the time of the offense, increase by 2 levels.".

*Reason for Amendment:* The current specific offense characteristic (b)(3) applies only to correctional officers or Justice Department employees, and not to local or state law enforcement officers who might have custody of a federal prisoner, or even to federal law enforcement officers who are not employed by the Department of Justice (e.g., Secret Service agents are employed by the Treasury Department). It also does not appear to apply to law enforcement or correctional employees who are not sworn officers unless they are Justice Department employees. The purpose of this amendment is to correct this anomaly.

171. *Proposed Amendment:* Section 2P1.2 is amended by inserting the following cross reference:

"(c) Cross Reference

(1) If the defendant is convicted under 18 U.S.C. 1791(a)(1) and is punishable under 18 U.S.C. 1791(b)(1), the offense level is 2 plus the offense level from § 2D1.1, but in no event less than level 26.".

The Commentary to § 2P1.2 captioned "Application Note" is amended by deleting the "Note" and inserting in lieu thereof "Notes", and inserting the following additional Note:

"2. Pursuant to 18 U.S.C. 1791(c), a sentence imposed upon an inmate for a violation of 18 U.S.C. 1791 shall be consecutive to the sentence being served at the time of the violation.".

*Reason for Amendment:* This amendment implements the direction to the Commission in Section 6466 of the Omnibus Anti-Drug Abuse Act of 1988.

*Additional Explanatory Statement:* Section 6466 of the Omnibus Anti-Drug Abuse Act of 1988 contains a direction to the Commission to establish an offense level for the offense of providing certain controlled substances to an inmate that is 2 levels greater than the offense level for the underlying offense, but in no event less than level 26. The proposed amendment implements this direction to the Commission.

*§ 2P1.4 Trespass on Bureau of Prisons Facilities*

172. *Proposed Amendment:* Section 2P1.4 and the Commentary thereto are amended by deleting the entire text, including the title, as follows:

*"§ 2P1.4. Trespass on Bureau of Prisons Facilities*

(a) Base Offense Level: 6

Commentary

*Statutory Provision:* 18 U.S.C. 1793.".

*Reason for Amendment:* The purpose of this amendment is to delete a guideline applying only to a petty offense. Petty offenses were deleted from coverage of the guidelines by the adoption of § 1B1.9 (effective June 15, 1988). Related amendment: 15 (§ 1B1.9).

*§ 2Q1.3 Mishandling of Other Environmental Pollutants; Recordkeeping, Tampering and Falsification*

173. *Proposed Amendment:* The Commentary to § 2Q1.3 captioned "Statutory provisions" is amended by deleting "§ 4912,".

*Reason for Amendment:* The purpose of this amendment is to delete a reference to a petty offense. Related amendment: 15 (§ 1B1.9).

*§ 2Q1.4 Tampering or Attempted Tampering With Public Water System*

174. *Proposed Amendment:* Section 2Q1.4(b)(1) is amended by inserting "bodily" immediately preceding "injury".

The Commentary to § 2Q1.4 captioned "Application Note" is amended by deleting Note 1 and inserting in lieu thereof:

"1. 'Serious bodily injury' is defined in the Commentary to § 1B1.1 (Application Instructions).".

*Reason for Amendment:* The purpose of this amendment is to correct a clerical error.

*§ 2Q1.5 Threatened Tampering With Public Water System*

175. *Proposed Amendment:* Section 2Q1.5(b) is amended by deleting:

"(2) If the purpose of the offense was to influence government action or to extort money, increase by 8 levels.";

and by inserting as a new subsection:

"(c) Cross Reference

(1) If the purpose of the offense was to influence government action or to extort money, apply § 2B3.2 (Extortion by Force or Threat of Injury or Serious Damage).".

Section 2Q1.5(b) is amended by deleting "Characteristics" and inserting in lieu thereof "Characteristic".

*Reason for Amendment:* The purposes of this amendment are to convert a specific offense characteristic to a cross-reference and make the guidelines internally more consistent.

*§ 2Q1.6 Hazardous or Injurious Devices on Federal Lands*

176. *Proposed Amendment:* Chapter Two, Part Q, Subpart 1, is amended by inserting the following additional guideline and accompanying Commentary:

*"§ 2Q1.6 Hazardous or Injurious Devices on Federal Lands*

(a) Base Offense Level (Apply the Greatest)

(1) If the intent was to violate the Controlled Substance Act, apply § 2D1.9 (Placing or Maintaining Dangerous Devices on Federal Property to Protect the Unlawful Production of Controlled Substances);

(2) If the intent was to obstruct the harvesting of timber, and property destruction resulted, apply § 2B1.3 (Property Damage or Destruction (Other Than by Arson or Explosives));

(3) If the offense involved reckless disregard to the risk that another person would be placed in danger of death or serious bodily injury under circumstances manifesting extreme indifference to such risk, [2 levels less than the offense level] [1 level less than the offense level] [the offense level] from § 2A2.2 (Aggravated Assault);

(4) Otherwise, 6.

*Statutory Provision:* 16 U.S.C. 1864.

*Background:* The statute covered by this guideline proscribes a wide variety of conduct, ranging from placing nails in trees to interfere with harvesting equipment to placing anti-personnel devices capable of causing death or serious bodily injury to protect the unlawful production of a controlled substance. Subsections (a)(1)–(a)(3) cover the more serious forms of this offense. Subsection (a)(4) provides a minimum offense level of 6 where the intent was to obstruct the harvesting of timber and little or no property damage resulted.".



*Reason for Amendment:* The proposed amendment adds a guideline to cover an offense created by section 6254(f) of the Omnibus Anti-Drug Abuse Act of 1988.

*Additional Explanatory Statement:* Section 6254(f) of the Omnibus Anti-Drug Abuse Act of 1988 prohibits the placing of hazardous or injurious devices on federal land with intent (1) to violate the Controlled Substance Act, (2) to obstruct or harass the harvesting of timber, or (3) with reckless disregard to the risk that another person will be placed in danger of death or bodily injury and under circumstances manifesting extreme indifference to such risk.

The alternative base offense levels cover the various forms of conduct covered by this statute. Three options for subsection (a)(3) are shown. The Commission seeks comment on whether an offense level less than that provided under § 2A2.2 (Aggravated Assault) should be used because the offense covered by this guideline does not require a specific intent to injure.

*§ 2Q2.1 Specially Protected Fish, Wildlife, and Plants*

177. *Proposed Amendment:* Section 2Q2.1(b)(3) is amended by deleting "Apply" and inserting in lieu thereof "If more than one applies, use".

*Reason for Amendment:* The purpose of this amendment is to conform to the style of other guidelines.

178. *Proposed Amendment:* Section 2Q2.1 is amended in the title by inserting at the end "; Smuggling and Otherwise Unlawfully Dealing in Fish, Wildlife, and Plants"

The Commentary to § 2Q2.1 captioned "Statutory Provisions" is amended by inserting immediately before the period at the end", 3373(d); 18 U.S.C. 545".

The Commentary to § 2Q2.1 captioned "Background" is amended in the first sentence by deleting "and the Fur Seal Act. These statutes provide special protection to particular species of fish, wildlife and plants." and inserting in lieu thereof "the Fur Seal Act, the Lacey Act, and to violations of 18 U.S.C. 545 where the smuggling activity involved fish, wildlife, or plants.".

*Reasons for Amendment:* The purpose of this amendment is to consolidate two guidelines that cover similar offenses.

*Additional Explanatory Statement:* §§ 2Q2.1 and 2Q2.2 are virtually identical. Accordingly, the amendment would combine them into a single guideline by deleting § 2Q2.2 and incorporating the material it covers into § 2Q2.1. The base offense level for the combined guidelines is level 6. Throughout the guidelines generally a base offense level of 6 is assigned to misdemeanors and, specifically, a base offense level of 6 is provided for misdemeanors under § 2Q1.1. Thus, the alternate base offense level of 4 from § 2Q2.2 is eliminated as anomalous.

*§ 2Q2.2 Lacey Act: Smuggling and Otherwise Unlawfully Dealing in Fish, Wildlife, and Plants*

179. *Proposed Amendment:* Section § 2Q2.2 is amended by deleting the guideline and the Commentary thereto, including the title, in its entirety, as follows:

*"§ 2Q2.2. Lacey Act; Smuggling and Otherwise Unlawfully Dealing in Fish, Wildlife, and Plants*

(a) Base Offense Level:

(1) 6, if the defendant knowingly imported or exported fish, wildlife, or plants, or knowingly engaged in conduct involving the sale or purchase of fish, wildlife, or plants with a market value greater than $350; or

(2) 4.

(b) Specific Offense Characteristics

(1) If the offense involved a commercial purpose, increase by 2 levels.

(2) If the offense involved fish, wildlife, or plants that were not quarantined as required by law, increase by 2 levels.

(3) Apply the greater:

(A) If the market value of the fish, wildlife, or plants exceeded $2,000, increase the offense level by the corresponding number of levels from the table in § 2F1.1 (Fraud and Deceit); or

(B) If the offense involved a quantity of fish, wildlife, or plants that was substantial in relation either to the overall population of the species or to a discrete subpopulation, increase by 4 levels.

Commentary

*Statutory Provisions:* 16 U.S.C. 3372(d); 18 U.S.C. 545.

*Application Note:*

1. This section applies to violations of 18 U.S.C. 545 where the smuggling activity involved fish, wildlife, or plants. In other cases, see §§ 2T3.1 and 2T3.2.

*Background:* This section applies to violations of the Lacey Act Amendments of 1981, 16 U.S.C. 3373(d), and to violations of 18 U.S.C. 545 where the smuggling activity involved fish, wildlife, or plants. These are the principal enforcement statutes utilized to combat interstate and foreign commerce in unlawfully taken fish, wildlife, and plants. The adjustments for specific offense characteristics are identical to those in § 2Q2.1.".

*Reason for Amendment:* The purpose of this amendment is to consolidate this guideline with § 2Q2.1. See explanation at Amendment 178.

*§ 2R1.1 Bid-Rigging, Price-Fixing or Market-Allocation Agreements Among Competitors*

180. *Proposed Amendment:* Section 2R1.1(b)(2) is amended in the first column of the table by deleting:

"Volume of Commerce

(A) Less than $1,000,000.
(B) $1,000,000–$4,000,000.
(C) $4,000,001–$15,000,000.
(D) $15,000,001–$50,000,000.
(E) over $50,000,000".

and inserting in lieu thereof:

"Volume of Commerce (Apply the Greatest)

(A) Less than $1,000,000.
(B) $1,000,000–$4,000,000.
(C) More than $4,000,000.
(D) More than $15,000,000.
(E) More than $50,000,000".

*Reason for Amendment:* The purpose of this amendment is to eliminate minor gaps in the loss table. Related amendments: 32 (§ 2B1.1); 39 (§ 2B2.1); 47 (§ 2B3.1); 115 (§ 2F1.1); 181 (§ 2S1.1); 209 (§ 2T4.1).

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*§ 2S1.1 Laundering of Monetary Instruments*

181. *Proposed Amendment:* Section 2S1.1(b)(2) is amended in the first column of the table by deleting:

"Value

(A) $100,000 or less.
(B) $100,001–$200,000.
(C) $200,001–$350,000.
(D) $350,001–$800,000.
(E) $800,001–$1,000,000.
(F) $1,000,001–$2,000,000.
(G) $2,000,001–$3,500,000.
(H) $3,500,001–$6,000,000.
(I) $6,000,001–$10,000,000.
(J) $10,000,001–$20,000,000.
(K) $20,000,001–$35,000,000.
(L) $35,000,001–$60,000,000.
(M) $60,000,001–$100,000,000.
(N) more than $100,000,000".

and inserting in lieu thereof:

"Value (Apply the Greatest)

(A) $100,000 or less.
(B) More than $100,000.
(C) More than $200,000.
(D) More than $350,000.
(E) More than $800,000.
(F) More than $1,000,000.
(G) More than $2,000,000.
(H) More than $3,500,000.
(I) More than $6,000,000.
(J) More than $10,000,000.
(K) More than $20,000,000.
(L) More than $35,000,000.
(M) More than $60,000,000.

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(N) More than $100,000,000".

*Reason for Amendment:* The purpose of this amendment is to eliminate minor gaps in the value table. Related amendments: 32 (§ 2B1.1); 39 (§ 2B2.1); 47 (§ 2B3.1); 115 (§ 2F1.1); 180 (§ 2R1.1); 209 (§ 2T4.1).

182. *Proposed Amendment:*

[OPTION 1: The Commentary to § 2S1.1 captioned "Background" is amended in the third paragraph by adding the following new sentence at the end thereof: "Effective November 18, 1988, 18 U.S.C. 1956(a)(1)(A) contains two subsections. The base offense level of 23 applies to § 1956(a)(1)(A) (i) and (ii).".]

[OPTION 2: Section 2S1.1 is amended by inserting the following new subsection:

"(c) Cross Reference:

If the defendant is convicted of violating 18 U.S.C. 1956(a)(1)(A)(ii), apply § 2T1.1 (Tax Evasion) as if the defendant had been convicted of violating 26 U.S.C. 7201.

(d) Note:

In the case of an offense committed prior to November 18, 1988, the base offense level from subsection (a)(1) applies to any conviction under 18 U.S.C. 1956(a)(1)(A).".

The Commentary to § 2S1.1 captioned "Background" is amended in the third paragraph by deleting "(a)(1)(A)", and inserting in lieu thereof "(a)(1)(A)(i)".]

*Reason for Amendment:* The purpose of this amendment is to reflect a newly created means of violating 18 U.S.C. 1956. Additional Explanatory Statement: Section 6471 of the Omnibus Anti-Drug Abuse Act of 1988 creates a new subsection in 18 U.S.C. 1956(a)(1)(A) proscribing money laundering for the purpose of evading taxes. Two options for incorporating this statutory amendment in the guidelines appear above. First, the Commission could treat a conviction under section 1956(a)(1)(A)(ii) the same as a conviction under section 1956(a)(1)(A)(i). Second, the Commission could treat a violation of section 1956(a)(1)(A)(ii) the same as a conviction for tax evasion. The Commission seeks public comment with respect to these options.

183. *Proposed Amendment:* The Commentary to § 2S1.1 captioned "Background" is amended in the fourth paragraph by deleting "involvement" and inserting in lieu thereof "support thereof".

*Reason for Amendment:* The purpose of this amendment is to clarify the Commentary.

*§ 2S1.2 Engaging in Monetary Transactions in Property Derived From Specified Unlawful Activity*

184. *Proposed Amendment:* Section 2S1.2(b)(1)(A) is amended by adding at the end "or".

*Reason for Amendment:* The purpose of this amendment is to correct a clerical error.

*§ 2S1.3 Failure to Report Monetary Transactions; Structuring Transactions to Evade Reporting Requirements*

185. *Proposed Amendment:* Section 2S1.3(a)(1)(C) is amended by deleting "the proceeds of criminal activity" and inserting in lieu thereof "criminally derived property", and in subsection (b)(1) by inserting "property" immediately following "criminally derived".

The Commentary to § 2S1.3 captioned "Application Note" is amended by deleting:

"1. As used in this guideline, funds or other property are the 'proceeds of criminal activity' or 'criminally derived' if they are 'criminally derived property,' within the meaning of 18 U.S.C. 1957.".

and inserting in lieu thereof:

"1. 'Criminally derived property' means any property constituting, or derived from, proceeds obtained from a criminal offense. See 18 U.S.C. 1957(f)(2).".

*Reason for Amendment:* The purpose of this amendment is to clarify the guideline.

186. *Proposed Amendment:* The Commentary to § 2S1.3 captioned "Statutory Provisions" is amended by inserting immediately before "31 U.S.C." "26 U.S.C. 7203 (if a willful violation of 26 U.S.C. 6050I);".

*Reason for Amendment:* The purpose of this amendment is to conform the guideline to a revision of the relevant statute. Related amendment: 194 (§ 2T1.2); 287 (Appendix A).

187. *Proposed Amendment:* The Commentary to § 2S1.3 captioned "Application Note" is amended in the captioned by deleting "Note" and inserting in lieu thereof "Notes", and by inserting the following additional Note:

"2. Subsection (a)(1)(C) applies in circumstances that would have led a reasonable person to believe that the funds were criminally derived property. Subsection (b)(1) applies if the defendant knew or believed the funds were criminally derived property. Subsection (b)(1) applies in addition to, and not in lieu of, subsection (a)(1)(C). It is possible that a defendant 'believed' or 'reasonably should have believed' that the funds were criminally derived property even if, in fact, the funds were not so derived (e.g., in a 'sting' operation where the defendant is told the funds were derived from the unlawful sale of controlled substances).".

The Commentary to § 2S1.3 captioned "Background" is amended by deleting:

"The base offense level is set at 13 for the great majority of cases. However, the base offense level is set at 5 for those cases in which these offenses may be committed with innocent motives and the defendant reasonably believed that the funds were from legitimate sources. The higher base offense level applies in all other cases. The offense level is increased by 5 levels if the defendant knew that the funds were criminally derived.".

and inserting in lieu thereof the following:

"A base offense level of 13 is provided for those offenses where the defendant either structured the transaction to evade reporting requirements, made false statements to conceal or disguise the activity, or reasonably should have believed that the funds were the proceeds of criminal activity. A lower alternative base offense level of 5 is provided in all other cases. The Commission anticipates that such cases will involve simple recordkeeping or other more minor technical violations of the regulatory scheme governing certain monetary transactions committed by defendants who reasonably believe that the funds at issue emanated from legitimate sources. Where the defendant actually knew or believed that the funds were criminally derived, subsection (b)(1) provides for a 5 level increase in the offense level.".

The Commentary to § 2S1.3 captioned "Statutory Provisions" is amended by inserting "18 U.S.C. 1005;" immediately following "Provisions". Section 2S1.3(a)(1)(A) is amended by adding "or" immediately following "requirements;"

*Reason for Amendment:* The purposes of this amendment are to clarify the Commentary, to provide more complete statutory references, and to conform the format of the guideline to that used in other guidelines.

* * * * *

*§ 2T1.1 Tax Evasion*

188. *Proposed Amendment:* Section 2T1.1(a) is amended by deleting "When more than one year is involved, the tax losses are to be added.".

The Commentary to § 2T1.1 captioned "Application Notes" is amended in Note 2 by deleting "The court is to determine this amount as it would any other guideline factor." and inserting in lieu thereof "Although the definition of tax loss corresponds to what is commonly called the 'criminal deficiency,' its amount is to be determined by the same rules applicable in determining any other sentencing factor.".

The Commentary to § 2T1.1 captioned "Application Notes" is amended in Note 3 by deleting:



"Although the definition of tax loss corresponds to what is commonly called the 'criminal deficiency,' its amount is to be determined by the same rules applicable in determining any other sentencing factor. In accordance with the 'relevant conduct' approach adopted by the guidelines, tax losses resulting from more than one year are to be added whether or not the defendant is convicted of multiple counts.",

and by inserting in lieu thereof:

"In determining the total tax loss attributable to the offense (see § 1B1.3(a)(2)), all conduct violating the tax laws should be considered as part of the same course of conduct or common scheme or plan unless the evidence demonstrates that the conduct is clearly unrelated.".

*Reason for Amendment:* The purpose of this amendment is to clarify the determination of tax loss and to make this instruction consistent among §§ 2T1.1–2T1.3. Related amendments: 196 (§ 2T1.2); 199 (§ 2T1.3).

* * * * *

189. *Proposed Amendment:* Section 2T1.1(a) is amended by deleting ", including interest to the date of filing an indictment or information". The Commentary to § 2T1.1 captioned "Application Notes" is amended in Note 2 by deleting ", plus interest to the date of the filing of an indictment or information" and by inserting "interest or" immediately before "penalties.".

*Reason for Amendment:* The purpose of this amendment is to delete interest from the calculation of tax loss.

*Additional Explanatory Statement:* Inclusion of interest in determining total "tax loss" or criminal deficiency increases the complexity of guideline calculations, especially if the amount evaded is in dispute and thus must be determined at the sentencing hearing. Because interest accumulates, the amount of tax evaded would have to be determined year by year, frequently at different interest rates. The interest also accrues until the date of filing of an indictment or information. Thus, another complicating factor is that charges are sometimes withdrawn and refiled; in such cases it is not clear which cut-off date controls. Where multiple years of evasion are involved (which is normally the case), these calculations must be done separately for each year that taxes were evaded. This complexity is inconsistent with the spirit of the Commentary in § 2T1.1 which describes how the overlapping guideline ranges are designed to minimize the significance of disputes about tax loss. In addition, the inclusion of interest appears inconsistent with all other property offense guidelines and even some tax offense guidelines. When the individual is a victim in a theft or fraud case, lost interest does not increase the penalty for the defendant. Adoption of the proposed amendment should not result in significant changes in sentences; in most cases the deletion of interest will not affect the offense level by more than one level, if at all. It is also to be noted that the Commission is proposing an increase in the offense levels for various portions of the Tax Loss Table (Amendment 210). Related amendment: 202 (§ 2T1.6).

190. *Proposed Amendment:* Section 2T1.1(b)(1) is amended by deleting "(A)" and ", or (B) the offense concealed or furthered criminal activity from which the defendant derived a substantial portion of his income", by inserting "or to correctly identify the source of" immediately after "report", and by deleting "per" and inserting in lieu thereof "in any".

*Reason for Amendment:* The purposes of this amendment are to provide a more objective test for application of this enhancement, and to make clear that this enhancement applies if the defendant fails to report or disguises income exceeding $10,000 from criminal activity in any year. Related amendments: 193 (§ 2T1.2); 197 (§ 2T1.3).

191. *Proposed Amendment:* The Commentary to § 2T1.1 captioned "Application Notes" is amended in Note 6 by deleting "Whether 'sophisticated means' were employed (§ 2T1.1(b)(2)) requires a subjective determination similar to that in § 2F1.1(b)(2)." and inserting in lieu thereof:

" 'Sophisticated means,' as used in § 2T1.1(b)(2), includes conduct that is more complex or demonstrates greater intricacy or planning than a routine tax-evasion case.".

*Reason for Amendment:* The purpose of this amendment is to clarify the Commentary. Related amendments: 195 (§ 2T1.2); 198 (§ 2T1.3); 201 (§ 2T1.4).

* * * * *

192. *Proposed Amendment:* The Commentary to § 2T1.1 captioned "Background" is amended in the second paragraph by deleting "Tax Table" wherever it appears and inserting in lieu thereof in each instance "Sentencing Table".

*Reason for Amendment:* The purpose of this amendment is to correct a clerical error.

* * * * *

*§ 2T1.2 Willful Failure to File Return, Supply Information, or Pay Tax*

193. *Proposed Amendment:* Section 2T1.2(b)(1) is amended by deleting "(A)" and ", or (B) the offense concealed or furthered criminal activity from which the defendant derived a substantial portion of his income", by inserting "or to correctly identify the source of" immediately after "report", and by deleting "per" and inserting in lieu thereof "in any".

*Reason for Amendment:* The purposes of this amendment are to provide a more objective test for application of enhancement, and to make clear that this enhancement applies if the defendant fails to report or disguises income exceeding $10,000 from criminal activity in any year. Related amendments: 190 (§ 2T1.1); 197 (§ 2T1.3).

194. *Proposed Amendment:* Section 2T1.2 is amended by adding the following additional subsection:

"(c) Cross Reference

(1) If the defendant is convicted of a willful violation of 26 U.S.C. 6050I, apply § 2S1.3 (Failure to Report Monetary Transactions) in lieu of this guideline."

The Commentary to § 2T1.2 captioned "Statutory Provision" is amended by inserting immediately before the period at the end of the sentence "(other than a willful violation of 26 U.S.C. 6050I)".

*Reason for Amendment:* The purpose of this amendment is to conform the guideline to a revision of the relevant statute. Related amendments: 186 (§ 2S1.3); 287 (Appendix A).

*Additional Explanatory Statement:* Section 7601 of the Omnibus Anti-Drug Abuse Act of 1988 revises 26 U.S.C. 6050I so that willful violations of that tax law are now analogous to money laundering statutes. As a result, § 2S1.3 should now cover willful violations of § 6050I.

195. *Proposed Amendment:* The Commentary to § 2T1.2 captioned "Application Notes" is amended in Note 2 by deleting "Whether 'sophisticated means' were employed (§ 2T1.2(b)(2)) requires a determination similar to that in § 2F1.1(b)(2)." and inserting in lieu thereof: " 'Sophisticated means,' as used in § 2T1.2(b)(2), includes conduct that is more complex or demonstrates greater intricacy or planning than a routine tax-evasion case.".

*Reason for Amendment:* The purpose of this amendment is to clarify the Commentary. Related amendments: 191 (§ 2T1.1); 198 (§ 2T1.3); 201 (§ 2T1.4).

196. *Proposed Amendment:* The Commentary to § 2T1.2 captioned "Application Note" is amended in the caption by deleting "Note" and inserting in lieu thereof "Notes", and by inserting the following additional Note:

"3. In determining the total tax loss attributable to the offense (see § 1B1.3(a)(2)), all conduct violating the tax laws should be considered as part of the same course of conduct or common scheme or plan unless the evidence demonstrates that the conduct is clearly unrelated.".

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*Reason for Amendment:* The purpose of this amendment is to clarify the determination of tax loss. Related amendments: 188 (§ 2T1.1); 199 (§ 2T1.3).

*§ 2T1.3 Fraud and False Statements Under Penalty of Perjury*

197. *Proposed Amendment:* Section 2T1.3(b)(1) is amended by deleting "(A)" and ", or (B) the offense concealed or furthered criminal activity from which the defendant derived a substantial portion of his income", by inserting "or to correctly identify the source of" immediately after "report", and by deleting "per" and inserting in lieu thereof "in any".

*Reason for Amendment:* The purposes of this amendment are to provide a more objective test for application of enhancement, and to make clear that this enhancement applies if the defendant fails to report or disguises income exceeding $10,000 from criminal activity in any year. Related amendments: 190 (§ 2T1.1); 193 (§ 2T1.2).

* * * * *

198. *Proposed Amendment:* The Commentary to § 2T1.3 captioned "Application Notes" is amended in Note 2 by deleting "Whether 'sophisticated means' were employed (§ 2T1.3(b)(2)) requires a determination similar to that in § 2F1.1(b)(2)." and inserting in lieu thereof: " 'Sophisticated means,' as used in § 2T1.3(b)(2), includes conduct that is more complex or demonstrates greater intricacy or planning than a routine tax-evasion case.".

*Reason for Amendment:* The purpose of this amendment is to clarify the Commentary. Related amendments: 191 (§ 2T1.1); 195 (§ 2T1.2); 201 (§ 2T1.4).

199. *Proposed Amendment:* The Commentary to § 2T1.3 captioned "Application Notes" is amended by inserting the following additional Note:

"3. In determining the total tax loss attributable to the offense (see § 1B1.3(a)(2)), all conduct violating the tax laws should be considered as part of the same course of conduct or common scheme or plan unless the evidence demonstrates that the conduct is clearly unrelated.".

*Reason for Amendment:* The purpose of this amendment is to clarify the determination of tax loss. Related amendments: 190 (§ 2T1.1); 196 (§ 2T1.2).

*§ 2T1.4 Aiding, Assisting, Procuring, Counseling, or Advising Tax Fraud*

200. *Proposed Amendment:* The Commentary to § 2T1.4 captioned "Application Notes" is amended in Note 2 by deleting "§ 2T1.1(b)(2)" and inserting in lieu thereof "§ 2T1.4(b)(2)".

*Reason for Amendment:* The purpose of this amendment is to correct a clerical error. If proposed amendment 199 is adopted, this proposed amendment is withdrawn as unnecessary.

201. *Proposed Amendment:* The Commentary to § 2T1.4 captioned "Application Notes" is amended in Note 2 by deleting "Whether 'sophisticated means' were employed (§ 2T1.1(b)(2)) requires a determination similar to that in § 2F1.1(b)(2)." and inserting in lieu thereof: " 'Sophisticated means,' as used in § 2T1.4(b)(2), includes conduct that is more complex or demonstrates greater intricacy or planning than a routine tax-evasion case.".

*Reason for Amendment:* The purpose of this amendment is to clarify the Commentary. Related amendments: 195 (§ 2T1.2); 198 (§ 2T1.3).

*§ 2T1.6 Failing to Collect or Truthfully Account for and Pay Over Tax*

202. *Proposed Amendment:* Section 2T1.6(a) is amended by deleting ", plus interest".

*Reason for Amendment:* The purpose of this amendment is to delete interest from the calculation of tax loss. Related amendment: 189 (§ 2T1.1).

*§ 2T1.9 Conspiracy to Impair, Impede or Defeat Tax*

203. *Proposed Amendment:* Section 2T1.9(b) is amended by deleting "either of the following adjustments" and inserting in lieu thereof "more than one".

*Reason for Amendment:* The purpose of this amendment is to correct a clerical error.

204. *Proposed Amendment:* The Commentary to section 2T1.9 captioned "Application Notes" is amended by deleting:

"2. The minimum base offense level is 10. If a tax loss from the conspiracy can be established under either §§ 2T1.1 or 2T1.3 (whichever applies to the underlying conduct), and that tax loss corresponds to a higher offense level in the Tax Table (§ 2T4.1), use that higher base offense level.

3. The specific offense characteristics are in addition to those specified in § 2T1.1 and § 2T1.3.

4. Because the offense is a conspiracy, adjustments from Chapter Three, Part B (Role in the Offense) usually will apply.",

and inserting in lieu thereof:

"2. The base offense level is the offense level (base offense level plus any applicable specific offense characteristics) from §§ 2T1.1 or 2T1.3 (whichever is applicable to the underlying conduct) if that offense level is greater than 10. Otherwise, the base offense level is 10.

3. Specific offense characteristics from § 2T1.9(b) are to be applied to the base offense level determined under § 2T1.9(a)(1) or (2).".

*Reason for Amendment:* The purpose of this amendment is to clarify Application Notes 2 and 3. Application Note 4 (the content of which does not appear in any of the other guidelines covering conspiracy) is deleted as unnecessary.

**Chapter Two, Part T, Subpart I**

205. If the calculation of interest is deleted from § 2T1.1 (amendment 189), the offense levels for §§ 2T1.1, 2T1.3, and 2T1.4 will be similar and will all depend upon the level of the "tax loss." The Commission seeks comment on whether the term "tax loss" should be standarized and, if so, on how this might best be accomplished. The Commission also seeks comment on how this term might be clarified. In addition, the Commission seeks comment on whether the offense level for § 2T1.2 should be more similar to, or the same as, § 2T1.1.

*§ 2T3.1 Evading Import Duties or Restrictions (Smuggling)*

206. *Proposed Amendment:* The Commentary to § 2T3.1 captioned "Application Notes" is amended in Note 2 by inserting "if the increase in market value due to importation is not readily ascertainable" immediately following "United States".

*Reason for Amendment:* The purpose of this amendment is to clarify the Commentary. Related amendment: 207 (§ 2T3.2).

*§ 2T3.2 Receiving or Trafficking in Smuggled Property*

207. *Proposed Amendment:* The Commentary to § 2T3.2 is amended by inserting, at the end, the following caption and note:

"Application Note:

1. Particular attention should be given to those items for which entry is prohibited, limited, or restricted. Especially when such items are harmful or protective quotas are in effect, the duties evaded on such items may not adequately reflect the harm to society or protected industries resulting from their importation. In such instances, the court should impose a sentence above the guideline. A sentence based upon an alternative measure of the "duty" evaded, such as the increase in market value due to importation, or 25 percent of the items' fair market value in the United States, might be considered.".

*Reason for Amendment:* The purpose of this amendment is to clarify the application of the guideline by adding the text from Application Note 2 of the Commentary to § 2T3.1, which applies equally to this guideline section.

208. *Proposed Amendment:* The Commentary to § 2T3.2 captioned "Application Notes" (added by Amendment 206) is amended in Note 1 by inserting "if the increase in market value due to importation is not readily ascertainable" immediately following "United States".

*Reason for Amendment:* The purpose of this amendment is to clarify the Commentary. Related amendment: 206 (§ 2T3.1).



*§ 2T4.1 Tax Table*

209. *Proposed Amendment:* Section 2T4.1 is amended in the first column of the tax table by deleting:

"Tax Loss

(A) less than $2,000.
(B) $2,000–$5,000.
(C) $5,001–$10,000.
(D) $10,001–$20,000.
(E) $20,001–$40,000.
(F) $40,001–$80,000.
(G) $80,001–$150,000.
(H) $150,001–$300,000.
(I) $300,001–$500,000.
(J) $500,001–$1,000,000.
(K) $1,000,001–$2,000,000.
(L) $2,000,001–$5,000,000.
(M) more than $5,000,000".

and inserting in lieu thereof:

"Tax Loss (Apply the Greatest)

(A) $2,000 or less.
(B) More than $2,000.
(C) More than $5,000.
(D) More than $10,000.
(E) More than $20,000.
(F) More than $40,000.
(G) More than $80,000.
(H) More than $150,000.
(I) More than $300,000.
(J) More than $500,000.
(K) More than $1,000,000.
(L) More than $2,000,000.
(M) More than $5,000,000".

*Reason for Amendment:* The purpose of this amendment is to eliminate minor gaps in the tax table. Related amendments: 32 (§ 2B1.1); 39 (§ 2B2.1); 47 (§ 2B3.1); 115 (§ 2F1.1); 180 (§ 2R1.1); 1B1 (§ 2S1.1).

210. *Proposed Amendment:* Section 2T4.1, as amended by proposed amendment 209, is further amended by deleting:

| | | |
|---|---|---|
| "(G) | More than $80,000 | 12 |
| (H) | More than $150,000 | 13 |
| (I) | More than $300,000 | 14 |
| (J) | More than $500,000 | 15 |
| (K) | More than $1,000,000 | 16 |
| (L) | More than $2,000,000 | 17 |
| (M) | More than $5,000,000 | 18" |

and inserting in lieu thereof:

| | | |
|---|---|---|
| "(G) | More than $70,000 | 12 |
| (H) | More than $120,000 | 13 |
| (I) | More than $200,000 | 14 |
| (J) | More than $350,000 | 15 |
| (K) | More than $500,000 | 16 |
| (L) | More than $800,000 | 17 |
| (M) | More than $1,500,000 | 18 |
| (N) | More than $2,500,000 | 19 |
| (O) | More than $5,000,000 | 20". |

*Reason for Amendment:* The purpose of this amendment is to increase the offense levels for offenses with larger loss values to better reflect the seriousness of the conduct. Related amendments: 33 (§ 2B1.1); 116 (§ 2F1.1); 40 (§ 2B2.1); 48 (§ 2B3.1).

*§ 2X1.1 Attempt, Solicitation, or Conspiracy Not Covered by a Specific Guideline*

211. *Proposed Amendment:* Section 2X1.1(b)(1) is amended by deleting "or solicitation".

Section 2X1.1(b) is amended by deleting:

"(3) If a solicitation, and the statute treats solicitation identically with the object of the offense, do not apply § 2X1.1(b)(1); i.e., the offense level for solicitation is the same as that for the object offense.",

and inserting in lieu thereof:

"(3)(A) If a solicitation, decrease by 3 levels unless the person solicited to commit the offense completed all the acts he believed necessary for successful completion of the object offense or the circumstances demonstrate that the person was about to complete all such acts but for apprehension or interruption by some similar event beyond such person's control.

(B) If the statute treats solicitation of the offense identically with the object offense, do not apply subdivision (A) above; i.e., the offense level for solicitation is the same as that for the object offense.".

*Reason for Amendment:* The current subsection (b)(1) does not clearly address how a solicitation is to be treated where the person solicited to commit the offense completes all the acts necessary for the successful completion of the offense. The purpose of this amendment is to clarify the treatment of such cases in a manner consistent with the treatment of attempts and conspiracies.

212. *Proposed Amendment:* Section 2X1.1 is amended in the title by deleting "Not Covered by a Specific Guideline" and inserting in lieu thereof "(Not Covered by a Specific Offense Guideline)". Section 2X1.1 is amended by inserting the following additional subsection:

"(c) Cross Reference.

(1) When an attempt, solicitation, or conspiracy is expressly covered by another offense guideline section, apply that guideline section.".

The Commentary to § 2X1.1 captioned Application Notes is amended by deleting Note 1 as follows:

"1. Certain attempts, conspiracies, and solicitations are covered by specific guidelines (e.g., § 2A2.1 includes attempt, conspiracy, or solicitation to commit murder; § 2A3.1 includes attempted criminal sexual abuse; and § 2D1.4 includes attempts and conspiracies to commit controlled substance offenses). Section 2X1.1 applies only in the absence of a more specific guideline.",

and inserting in lieu thereof:

"1. Certain attempts, conspiracies, and solicitations are expressly covered by other offense guidelines.

Offense guidelines that expressly cover attempts include: § 2A2.1 (Assault With Intent to Commit Murder; Conspiracy or Solicitation to Commit Murder; Attempted Murder); § 2A3.1 (Criminal Sexual Abuse; Attempt or Assault with the Intent to Commit Criminal Sexual Abuse); § 2A3.2 (Criminal Sexual Abuse of a Minor (Statutory Rape) or Attempt to Commit Such Acts); § 2A3.3 (Criminal Sexual Abuse of a Ward (Statutory Rape) or Attempt to Commit Such Acts); § 2A3.4 (Abusive Sexual Contact or Attempt to Commit Abusive Sexual Contact); § 2A4.2 (Demanding or Receiving Ransom Money); § 2A5.1 (Aircraft Piracy or Attempted Aircraft Piracy); § 2C1.1 (Offering, Giving, Soliciting, or Receiving a Bribe; Extortion Under Color of Official Right); § 2C1.2 (Offering, Giving, Soliciting, or Receiving a Gratuity); § 2D1.4 (Attempts and Conspiracies (in drug offenses)); § 2E5.1 (Bribery or Gratuity Affecting the Operation of an Employee Welfare or Pension Benefit Plan); § 2N1.1 (Tampering or Attempting to Tamper Involving Risk of Death or Serious Injury (consumer products)); § 2Q1.4 (Tampering or Attempted Tampering with Public Water System).". Offense guidelines that expressly cover conspiracies include: § 2A2.1 (Assault With Intent to Commit Murder;

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Conspiracy or Solicitation to Commit Murder; Attempted Murder); § 2D1.4 (Attempts and Conspiracies (in drug offenses)); § 2T1.9 (Conspiracy to Impair, Impede or Defeat Tax). Offense guidelines that expressly cover solicitations include: § 2A2.1 (Assault with Intent to Commit Murder; Conspiracy or Solicitation to Commit Murder; Attempted Murder); § 2C1.1 (Offering, Giving, Soliciting, or Receiving a Bribe; Extortion Under Color of Official Right); § 2C1.2 (Offering, Giving, Soliciting, or Receiving a Gratuity); § 2E5.1 (Bribery or Gratuity Affecting the Operation of an Employee Welfare or Pension Benefit Plan); § 2H1.2 (Conspiracy to Interfere with Civil Rights); § 2T1.9 (Conspiracy to Impair, Impede or Defeat Tax).".

*Reason for Amendment:* The purpose of this amendment is to clarify the guideline.

213. *Proposed Amendment:* The Commentary to § 2X1.1 captioned "Application Notes" is amended by deleting:

"4. If the defendant was convicted of conspiracy or solicitation and also for the completed offense, the conviction for the conspiracy or solicitation shall be imposed to run concurrently with the sentence for the object offense, except in cases where it is otherwise specifically provided for by the guidelines or by law. 28 U.S.C. 994(1)(2).".

*Reason for Amendment:* The purpose of this amendment is to delete an Application Note that does not apply to any determination under this section. The material in this application note is already covered under Chapter Three, Part D and Chapter Five, Part G.

214. *Proposed Amendment:* The Commentary to § 2X1.1 is amended by inserting the following additional application note:

"4. In certain cases, the participants may have completed (or have been about to complete but for apprehension or interruption) all of the acts necessary for the successful completion of part, but not all, of the intended offense. In such cases, the offense level for the count (or group of closely-related multiple counts) is the offense level for the intended offense less 3 levels (under § 2X1.1(b)(1) or (2)) or the offense level for the part of the offense for which the necessary acts were completed (or about to be completed but for apprehension or interruption), whichever is greater. For example, where the intended offense was the theft of $800,000 but the participants completed (or were about to complete) only the acts necessary to steal $30,000, the offense level is the offense level for the theft of $800,000 less 3 levels, or the offense level for the theft of $80,000, whichever is greater. In the case of multiple counts that are not closely-related, whether the 3-level reduction under § 2X1.1(b)(1) or (2) applies is determined separately for each count.".

*Reason for Amendment:* The purpose of this amendment is to clarify how the guidelines are to be applied to partially completed offenses.

215. *Proposed Amendment:* The Commentary to § 2X1.1 captioned "Application Notes" is amended in the last sentence of Note 2 by deleting "intended" and inserting in lieu thereof "attempted".

*Reason for Amendment:* The purpose of this amendment is to clarify the Commentary.

*§ 2X3.1 Accessory After the Fact*

216. *Proposed Amendment:* The Commentary to § 2X3.1 captioned "Application Notes" is amended in Note 1 by deleting:

" 'Underlying offense' means the offense as to which the defendant was an accessory.";

and inserting in lieu thereof:

" 'Underlying offense' means the offense as to which the defendant is convicted of being an accessory. Apply the base offense level plus any applicable specific offense characteristics that were known or should have been known by the defendant; see Application Note 1 of the Commentary to § 1B1.3 (Relevant Conduct).".

*Reason for Amendment:* The purpose of this amendment is to clarify the Commentary.

*§ 2X4.1 Misprision of Felony*

217. *Proposed Amendment:* The Commentary to § 2X4.1 captioned "Application Notes" is amended in Note 1 by deleting:

" 'Underlying offense' means the offense as to which the misprision was committed.",

and inserting in lieu thereof:

" 'Underlying offense' means the offense as to which the defendant is convicted of committing the misprision. Apply the base offense level plus any applicable specific offense characteristics that were known or should have been known by the defendant; see Application Note 1 of the Commentary to § 1B1.3 (Relevant Conduct).".

*Reason for Amendment:* The purpose of this amendment is to clarify the Commentary.

*§ 3A1.1 Vulnerable Victim*

218. *Proposed Amendment:* Section 3A1.1 is amended by deleting "the victim" wherever it appears and inserting in lieu thereof in each instance "a victim", and by inserting "otherwise" immediately before "particularly".

The Commentary to § 3A1.1 captioned Application Notes is amended in Note 1 by deleting:

"any offense where the victim's vulnerability played any part in the defendant's decision to commit the offense",

and inserting in lieu thereof the following:

"offenses where an unusually vulnerable victim is made a target of criminal activity by the defendant",

and by deleting:

"sold fraudulent securities to the general public and one of the purchasers",

and inserting in lieu thereof:

"engaged in a fraudulent mail-order scheme and one of the respondents from the general public".

*Reason for Amendment:* The purpose of the amendment is to clarify the guideline and Commentary.

*§ 3A1.2 Official Victim*

219. *Proposed Amendment:* Section 3A1.2 is amended by deleting "official as defined" and inserting in lieu thereof "person included".

*Reason for Amendment:* The purpose of this amendment is to clarify that this guideline applies to all persons listed in the referenced statute, 18 U.S.C. 1114.

220. *Proposed Amendment:* Section 3A1.2 (as amended by amendment 219) is further amended by deleting "If the victim" and inserting in lieu thereof:

"If—

(a) the victim",

and by deleting "crime was motivated by such status, increase by 3 levels." and inserting in lieu thereof: "offense of conviction was motivated by such status; or

(b) during the course of the offense or immediate flight therefrom, the defendant or a person for whose conduct the defendant is otherwise accountable, knowing or having reasonable cause to believe that a person was a law enforcement or corrections officer, assaulted such officer in a manner creating a substantial risk of serious bodily injury, increase by 3 levels.".

The Commentary to § 3A1.2 captioned "Application Notes" is amended by adding at the end the following:

"4. 'Motivated by such status' in subdivision (a) means that the offense of conviction was motivated by the fact that the victim was a law enforcement or corrections officer or other person covered under 18 U.S.C. 1114, or a member of the immediate family thereof. This adjustment would not apply, for example, where both the defendant and victim were employed by the same government agency and the offense was motivated by a personal dispute.

5. Subdivison (b) applies in circumstances tantamount to aggravated assault against a law enforcement or corrections officer, committed in the course of, or in immediate flight following, another offense, such as bank robbery. While this subsection may



apply in connection with a variety of offenses that are not by nature targeted against official victims, its applicability is limited to assaultive conduct against law enforcement or corrections officers that is sufficiently serious to create at least a 'substantial risk of serious bodily injury' and that is proximate in time to the commission of the offense. Thus, the adjustment in subsection (b) would not apply to a convicted bank robber who knocked down a police officer in a minor scuffle while attempting to escape from the bank, nor would it apply to an assault against a police officer attempting an arrest several months following a bank robbery.

6. The phrase 'substantial risk of serious bodily injury' in subsection (b) is a threshold level of harm that includes any more serious injury that was risked, as well as actual serious bodily injury (or more serious harm) if it occurs.".

*Reason for Amendment:* The purpose of the amendment is to set forth more clearly the categories of cases to which this adjustment is intended to apply.

221. *Proposed Amendment:* The Commentary to § 3A1.2 captioned "Application Notes" is amended in Note 3 by inserting the following as an additional sentence:

"In most cases, the offenses to which subdivision (a) will apply will be from Chapter Two, Part A (Offenses Against the Person). The only offense guideline in Chapter Two, Part A that specifically incorporates this factor is § 2A2.4 (Obstructing or Impeding Officers).".

*Reason for Amendment:* The purpose of this amendment is to clarify the application of the guideline.

222. *Proposed Amendment:* The Commentary to section 3A1.2 captioned "Application Notes" is amended by inserting, as an additional application note, the following:

"4. 'Motivated by such status' means motivated by the fact that the victim was a law enforcement or corrections officer or other person covered under 18 U.S.C. 1114, or a member of the immediate family thereof. This adjustment would not apply, for example, where both the defendant and victim were employed by the same government agency and the offense was motivated by a personal dispute.".

*Reason for Amendment:* The purpose of this amendment is to clarify the application of the guideline. If amendment 220 is adopted, this amendment is withdrawn as unnecessary.

223. *Proposed Amendment:* Section 3A1.2 is amended by deleting "the victim was any law-enforcement or corrections officer, any other official as defined in 18 U.S.C. 1114, or a member of the immediate family thereof, and" and inserting in lieu thereof "(A) the victim was a law-enforcement or corrections officer; a former law-enforcement or corrections officer; an officer or employee included in 18 U.S.C. 1114; a former officer or employee included in 18 U.S.C. 1114; or a member of the immediate family of any of the above, and (B)".

*Reason for Amendment:* The purpose of this amendment is to expand the coverage of this provision to reflect a statutory revision effected by section 6487 of the Omnibus Anti-Drug Abuse Act of 1988.

*§ 3A1.3 Restraint of Victim*

224. *Proposed Amendment:* Section 3A1.3 is amended by deleting "the victim of a crime" and inserting in lieu thereof "a victim".

The Commentary to § 3A1.3 captioned "Application Notes" is amended in Note 2 by deleting "the victim" and inserting in lieu thereof "a victim".

*Reason for Amendment:* The purpose of this amendment is to clarify the guideline.

225. *Proposed Amendment:* The Commentary to § 3A1.3 captioned "Application Notes" is amended by inserting the following additional Note:

"3. If the restraint was sufficiently egregious, an upward departure may be warranted. See § 5K2.4 (Abduction or Unlawful Restraint).".

*Reason for Amendment:* The purpose of this amendment is to clarify the relationship between §§ 3A1.3 and 5K2.4.

*§ 3C1.1 Willfully Obstructing or Impeding Proceedings*

226. *Proposed Amendment:* Section 3C1.1 is amended by deleting "from Chapter Two".

*Reason for Amendment:* The purpose of this amendment is to delete an incorrect reference.

227. *Proposed Amendment:* The Commentary to § 3C1.1 captioned "Application Notes" is amended in Note 4 by deleting:

", except in determining the combined offense level as specified in Chapter Three, Part D (Multiple Counts). Under § 3D1.2(e), a count for obstruction will be grouped with the count for the underlying offense. Ordinarily, the offense level for that Group of Closely Related Counts will be the offense level for the underlying offense, as increased by the 2-level adjustment specified by this section. In some instances, however, the offense level for the obstruction offense may be higher, in which case that will be the offense level for the Group. See § 3D1.3(a). In cases in which a significant further obstruction occurred during the investigation or prosecution of an obstruction offense itself (one of the above listed offenses), an upward departure may be warranted (e.g., where a witness to an obstruction offense is threatened during the course of the prosecution for the obstruction offense).".

and inserting in lieu thereof:

"To the offense level for that offense except where a significant further obstruction occurred during the investigation or prosecution of the obstruction offense itself (e.g., where the defendant threatened a witness during the course of the prosecution for the obstruction offense). Where the defendant is convicted both of the obstruction offense and the underlying offense, the count for the obstruction offense will be grouped with the count for the underlying offense under subsection (c) of § 3D1.2 (Groups of Closely-Related Counts). The offense level for that Group of Closely-Related Counts will be the offense level for the underlying offense increased by the 2-level adjustment specified by this section, or the offense level for the obstruction offense, whichever is greater.".

*Reason for Amendment:* The purpose of this amendment is to resolve an inconsistency between the Commentary in this section and the Commentaries in Chapter Two, Part J.

*§ 3D1.2 Groups of Closely Related Counts*

228. *Proposed Amendment:* Section 3D1.2(b)(3) is amended by deleting "§ 994(u)" and inserting in lieu thereof "§ 994(v)".

*Reason for Amendment:* This amendment corrects an erroneous reference.

229. *Proposed Amendment:* The Commentary to § 3D1.2 captioned "Application Notes" is amended in Note 3 by deleting "(6)", "(7)", and "(8)" and inserting in lieu thereof "(5)", "(6)", and "(7)" respectively.

*Reason for Amendment:* The purpose of this amendment is to correct a clerical error.

230. *Proposed Amendment:* The Commentary to § 3D1.2 captioned "Application Notes" is amended in Note 9 by inserting after the second sentence:

"See § 1B1.2(d) and accompanying commentary.".

*Reason for Amendment:* The purpose of this amendment is to cross reference the newly created guideline subsection dealing with a multiple object conspiracy. Related amendment: 10 (§ 1B1.2).

231. *Proposed Amendment:* The Commentary to § 3D1.2 captioned "Background" is amended by deleting:

"In general, counts are grouped together only when they involve both the same victim (or societal harm in "victimless" offenses) and the same or contemporaneous transactions, except as provided in § 3D1.2 (c) or (d).",

and inserting in lieu thereof:

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"Counts involving different victims (or societal harms in the case of "victimless" crimes) are grouped together only as provided in subsection (c) or (d).".

*Reason for Amendment:* The last sentence of the second paragraph of Background commentary fails to indicate that cases grouped under § 3D1.2(b) involve the same victim but do not require contemporaneous transactions. This amendment restates this sentence to clarify its meaning.

*§ 3D1.3 Offense Level Applicable to Each Group of Closely-Related Counts*

232. *Proposed Amendment:* Section 3D1.3(b) is amended in the second sentence by deleting "varying", and by inserting "of the same general type to which different guidelines apply (e.g., theft and fraud)" immediately following "offenses".

*Reason for Amendment:* The purpose of this amendment is to enhance the clarity of the guideline.

*§ 3D1.5 Determining the Total Punishment*

233. *Proposed Amendment:* The Commentary captioned "Illustrations of the Operation of the Multiple-Count Rules" following § 3D1.5 is amended in the last 2 sentences of example 3 by deleting "10" wherever it appears and inserting in lieu thereof in each instance "8".

*Reason for Amendment:* The amendment conforms to proposed amendment 117 to § 2F1.1.

*§ 3E1.1 Acceptance of Responsibility*

234. *Proposed Amendment:* The Commentary to § 3E1.1 captioned "Application Notes" is amended by deleting:

"4. An adjustment under this section is not warranted where a defendant perjures himself, suborns perjury, or otherwise obstructs the trial or the administration of justice (see § 3C1.1), regardless of other factors.",

and inserting in lieu thereof:

"4. Conduct resulting in an enhancement under § 3C1.1 (Willfully Obstructing or Impeding Proceedings) ordinarily indicates that the defendant has not accepted responsibility for his criminal conduct. There may, however, be extraordinary cases in which adjustments under both §§ 3C1.1 and 3E1.1 may apply.".

*Reason for Amendment:* The purposes of this amendment are to provide for extraordinary cases in which adjustments under both § 3C1.1 and § 3E1.1 are appropriate, and to clarify the reference to obstructive conduct under § 3C1.1.

*§ 4A1.1 Criminal History Category*

235. *Proposed Amendment:* Section 4A1.1(e) is amended by inserting "or while in imprisonment or escape status on such a sentence" immediately before the period at the end of the first sentence.

The Commentary to § 4A1.1 captioned "Application Notes" is amended in the second sentence of Note 5 by deleting "still in confinement" and inserting in lieu thereof "in imprisonment or escape status".

*Reason for Amendment:* The purpose of this amendment is to clarify that subsection (e) applies to defendants who are still in confinement status at the time of the instant offense (e.g., a defendant who commits the instant offense while in prison or on escape status).

236. *Proposed Amendment:* The Commentary to § 4A1.1 captioned "Application Notes" is amended in Note 4 by inserting at the end the following additional sentence: "For the purposes of this item, a 'criminal justice sentence' means a sentence countable under § 4A1.2 (Definitions and Instructions for Computing Criminal History).".

*Reason for Amendment:* The purpose of this amendment is to clarify the application of the guideline.

237. *Proposed Amendment:* The Commentary to § 4A1.1 captioned "Background" is amended in the third paragraph by inserting "a" immediately before "criminal", and by deleting "control" and inserting in lieu thereof "sentence".

*Reason for Amendment:* The purpose of this amendment is to conform the commentary to the guideline.

*§ 4A1.2 Definitions and Instructions for Computing Criminal History*

238. *Proposed Amendment:* Section 4A1.2(e)(1) is amended by inserting ", whenever imposed," immediately preceding "that resulted", and deleting "defendant's incarceration" and inserting in lieu thereof "defendant being incarcerated".

*Reason for Amendment:* The purpose of this amendment is to make clear that "resulted in the defendant's incarceration" applies to any part of the defendant's imprisonment and not only to the commencement of the defendant's imprisonment.

239. *Proposed Amendment:* Section 4A1.2(e) is amended by inserting, as an additional subsection, the following:

"(4) The applicable time period for certain sentences resulting from offenses committed prior to age eighteen is governed by § 4A1.2(d)(2).".

*Reason for Amendment:* The purpose of this amendment is to clarify the relationship between § 4A1.2 (d)(2) and (e).

240. Proposed Amendment: Section 4A1.2(f) is amended by inserting ", or a plea of nolo contendere," immediately following "admission of guilt".

*Reason for Amendment:* The purpose of this amendment is to clarify that a plea of nolo contendere is equivalent to finding of guilt for the purpose of § 4A1.2(f).

241. Proposed Amendment: The Commentary to § 4A1.2 captioned "Application Notes" is amended in Note 8 by deleting "4A1.2(e)" and inserting in lieu thereof "4A1.2 (d)(2) and (e)" and by inserting the following new sentence immediately after the first sentence:

"As used in § 4A1.2 (d) and (e), the term 'commencement of the instant offense' includes any relevant conduct. See § 1B1.3 (Relevant Conduct).".

*Reason for Amendment:* The purposes of this amendment are to correct a clerical error by inserting a reference to § 4A1.2(d)(2), and to clarify that "commencement of the instant offense" includes any relevant conduct.

242. Clarification of Definitions: The Commission has received feedback from probation officers and others that certain definitions in this section (particularly the definition of "Sentence of Imprisonment" in Application Note 2 and "Related Offenses" in Application Note 3) are difficult to apply in certain cases. The Commission seeks comment on how these definitions, or any other of the other definitions or instructions in this section can be improved.

*§ 4B1.1 Career Offender*

243. *The Career Offender Guideline:* In 28 U.S.C. 994(h), the Commission was directed to "assure that the guidelines specify a sentence to a term of imprisonment at or near the maximum term authorized for categories of defendants" if the defendant is convicted of a felony that is a "crime of violence" or a drug trafficking offense and has two such prior convictions. In the initial guidelines, the Commission interpreted this directive literally. Section 4B1.1 (Career Offender) currently specifies in essence that a defendant who is a career offender (as defined in 28 U.S.C. 994(h)) be sentenced to a term of imprisonment of from about 12% below the statutory maximum to about 10% above the statutory maximum[5] for the "crime of violence" or

[5] The term of imprisonment could exceed the statutory maximum for a single count in the event of convictions on multiple counts.



drug trafficking offense of which he is convicted. For example, for an armed robbery conviction, the defendant would be sentenced to approximately 22 to 27 years in prison; for unarmed robbery, 17.5 to 22 years; and, for selling ten grams of heroin, approximately 22 to 27 years. If the defendant is convicted of more than one count of a crime of violence or drug trafficking offense, the count having the highest maximum is used to determine the sentence.

This guideline has been criticized on a number of grounds, including: (1) Sentences based only on the statutory maximum ignore significant variations in the seriousness of the actual offense conduct and therefore (a) are unjust and (b) provide no marginal deterrence; (2) the sentence is frequently excessive in relation to the seriousness of the actual offense conduct; (3) the sentence is too heavily dependent on the charge of conviction for the instant offense and prior offenses (e.g., a prior robbery offense resulting in a state robbery conviction pursuant to a plea agreement for a sentence of probation counts as a prior conviction of a crime of violence, but a prior robbery offense resulting in negotiated plea to a grand larceny charge and imposition of a ten year prison term does not count as a prior conviction of a crime of violence. Thus, differences in plea negotiation practices among state courts can affect whether the career offender provision applies and result in a very large difference in the guideline range); (4) the distinction between the criminal records of offenders with a criminal history Category VI and those who are career offenders is insufficient to warrant such large differences in the resulting sentence; (5) the sentences are longer than are needed for incapacitation, and therefore waste prison space, which is in short supply and could be better used for other offenders; (6) prisons are not equipped to house the aged offenders who will be incarcerated as a result of this guideline; and (7) acceptance of responsibility has no impact on the guideline range, thus discouraging guilty pleas.

Critics assert that the flaw in the current guideline is that it embodies an overly literal reading of 28 U.S.C. 994(h). Senator Kennedy, the original author of this statutory directive, has recently observed that specific directions to the Commission must be read in conjunction with the general instructions to the Commission in the Sentencing Reform Act in order to avoid unjust results. The Senator singled out 28 U.S.C. 994(h) as one provision susceptible to producing inadvertently unjust or anomalous results.

The Commission is considering whether and, if so, how to revise the Career Offender guideline. Three options have been preliminarily proposed. The first two would create a new criminal history category, Category VII, for career offenders; the sentence would be tied to the offense level for the underlying offense. The third is similar to the current approach, but would eliminate all judicial discretion.

Under option 1, the sentences would start out 5 levels higher than for Criminal History Category VI, and generally would be about 2 to 4 years longer than for Category VI. However, at high offense levels, where sentences exceed 10 years, category VII would gradually merge with Category VI. In addition, Category VII would not apply if Category VI would suffice to incarcerate the defendant beyond the age of 50, because (1) criminal careers generally do not extend beyond the age of 50, but if they do, the offenses committed tend to be less serious than those committed by younger offenders; and (2) criminality is not a good predictor of future criminality beyond 10–15 years. This proposal represents a first attempt to make more efficient use of the career offender provision for incapacitation, while giving considerable weight to the seriousness of the crime(s) committed.

Under option 2, the sentences would simply be approximately double those for criminal history Category VI. Thus, the sentences for career offenders would depend only on the seriousness of the underlying offense conduct. At high offense levels, the sentences quickly reach 30 years to life. The sentencing ranges for options 1 and 2 would be as follows:

Category VII

| | Option 1 | Option 2 |
|---|---|---|
| 1 | 9–15 | 15–21. |
| 2 | 12–18 | 18–24. |
| 3 | 15–22 | 21–27. |
| 4 | 20–26 | 24–30. |
| 5 | 24–30 | 27–33. |
| 6 | 28–35 | 30–37. |
| 7 | 32–40 | 33–41. |
| 8 | 36–45 | 37–46. |
| 9 | 40–50 | 41–51. |
| 10 | 44–55 | 46–57. |
| 11 | 48–60 | 51–63. |
| 12 | 52–65 | 57–71. |
| 13 | 56–70 | 63–78. |
| 14 | 61–76 | 70–87. |
| 15 | 66–82 | 77–96. |
| 16 | 72–90 | 84–105. |
| 17 | 80–100 | 92–115. |
| 18 | 88–110 | 105–125. |
| 19 | 98–120 | 110–127. |
| 20 | 104–130 | 120–150. |
| 21 | 112–140 | 130–162. |
| 22 | 120–150 | 140–175. |
| 23 | 130–162 | 151–188. |
| 24 | 140–175 | 165–205. |
| 25 | 150–187 | 180–220. |
| 26 | 160–200 | 195–245. |
| 27 | 170–212 | 210–262. |
| 28 | 180–225 | 235–293. |
| 29 | 190–237 | 262–327. |
| 30 | 200–250 | 292–365. |
| 31 | 212–265 | 324–405. |
| 32 | 224–280 | 360–life. |
| 33 | 240–300 | 360–life. |
| 34 | 262–327 | 360–life. |
| 35 | 292–365 | 360–life. |
| 36 | 324–405 | 360–life. |
| 37 | 360–life | 360–life. |
| 38 | 360–life | 360–life. |
| 39 | 360–life | 360–life. |
| 40 | 360–life | 360–life. |
| 41 | 360–life | 360–life. |
| 42 | 360–life | 360–life. |
| 43 | life | life. |

Option 3 would be like the current guideline, except that the sentence would always be set at the statutory maximum.

Illustrations of the effect of the current guideline and of these three options follow:

| | Current career offender | Current category VI | Option 1 | Option 2 | Option 3 |
|---|---|---|---|---|---|
| One unarmed bank robbery | [1] 210–262 | 63–78 | 95–120 | 110–127 | 240. |
| Two unarmed bank robberies | 210–262 | 77–96 | 112–140 | 130–162 | 240. |
| One unarmed bank robbery, with serious injury | 210–262 | 92–115 | 130–162 | 151–188 | 240. |
| One armed bank robbery | [1] 262–327 | 84–105 | 120–150 | 140–175 | 300. |
| Two armed bank robberies | 262–327 | 100–125 | 140–175 | 165–205 | 300. |
| One armed bank robbery, with serious injury | [1] 262–327 | 130–162 | 160–200 | 195–245 | 300. |
| Assault fed ofcr (wpn, no inj) | [1] 100–125 | 77–96 | [1] 112–140 | [1] 130–162 | 120. |
| Robbery, U.S. Prop. (armed) | [1] 151–188 | 77–96 | 112–140 | 130–162 | 180. |
| Sale of heroin [2] (10 grams) | 262–327 | 46–57 | 72–90 | 80–104 | 360. |
| Sale of heroin [2] (100 grams) | 360–life | 120–150 | 160–200 | 195–245 | life. |

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| | Current career offender | Current category VI | Option 1 | Option 2 | Option 3 |
|---|---|---|---|---|---|
| Sale of heroin [2] (1 kilogram) | 360-life | 210–262 | 224–280 | 360-life | life. |
| Sale of heroin [2] (100 kilograms) | 360-life | 324–405 | 324–405 | 360-life | life. |

[1] Indicates sentences that exceed the statutory maximum.
[2] Assumes at least one prior drug trafficking conviction; otherwise statutory maximums (and hence first and last columns) are lower.

These options merely illustrate possible approaches that could be employed, and are published to help focus comment. The Commission solicits comment addressing the purposes underlying 28 U.S.C. 994(h), the extent of the Commission's authority in implementing it, whether this guideline should be revised at this time, and how best to do so.

244. *Proposed Amendment:* The Commentary to § 4B1.1 captioned "Application Note" is amended by inserting as a new Note:

"2. 'Offense Statutory Maximum' refers to the maximum term of imprisonment authorized for the offense of conviction that is a crime of violence or serious drug offense. If more than one count of conviction is of a crime of violence or controlled substance offense, use the maximum authorized term of imprisonment for the count that authorizes the greatest maximum term of imprisonment.",

and in the caption by deleting "Note" and inserting in lieu thereof "Notes".

The Commentary to § 4B1.1 captioned "Background" is amended by deleting "128 Cong. Rec. 12792, 97th Cong., 2d Sess. (1982) ('Career Criminals' amendment No. 13 by Senator Kennedy), 12798 (explanation of amendment), and 129798 (remarks by Senator Kennedy)" and inserting in lieu thereof: "128 Cong. Rec. 26, 511–12 (1982) (text of 'Career Criminals' amendment by Senator Kennedy), 26, 515 (brief summary of amendment), 26, 517–18 (statement of Senator Kennedy)".

*Reason for Amendment:* The purposes of this amendment are to clarify the operation of the guideline, and to provide a citation to the more readily available edition of the Congressional Record.

*§ 4B1.2 Definitions.*

245. *Proposed Amendment:* Section 4B1.2 is amended by deleting "is defined under 18 U.S.C. 16" and inserting in lieu thereof:

"means any offense under federal or state law punishable by imprisonment for a term exceeding one year that—

(i) has as an element the use, attempted use, or threatened use of physical force against the person of another, or

(ii) is burglary of a dwelling, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another.".

Section 4B1.2 is amended by deleting "identified in 21 U.S.C. 841, 845(b), 856, 952(a), 955, 955(a), 956; and similar offenses" and inserting in lieu thereof:

"under a federal or state law prohibiting the manufacture, import, export, or distribution of a controlled substance (or a counterfeit substance) or the possession of a controlled substance (or a counterfeit substance) with intent to manufacture, import, export, or distribute.".

The Commentary to § 4B1.2 captioned "Application Notes" is amended by deleting:

"1. 'Crime of violence' is defined in 18 U.S.C. 16 to mean an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or any other offense that is a felony and that by its nature involves a substantial risk that physical force against the person or property of another may be used in committing the offense. The Commission interprets this as follows: murder, manslaughter, kidnapping, aggravated assault, extortionate extension of credit, forcible sex offenses, arson, or robbery are covered by this provision. Other offenses are covered only if the conduct for which the defendant was specifically convicted meets the above definition. For example, conviction for an escape accomplished by force or threat of injury would be covered; conviction for an escape by stealth would not be covered. Conviction for burglary of a dwelling would be covered; conviction for burglary of other structures would not be covered.

2. 'Controlled substance offense' includes any federal or state offense that is substantially similar to any of those listed in subsection (2) of the guideline. These offenses include manufacturing, importing, distributing, dispensing, or possessing with intent to manufacture, import, distribute, or dispense, a controlled substance (or a counterfeit substance). This definition also includes aiding and abetting, conspiring, or attempting to commit such offenses, and other offenses that are substantially equivalent to the offenses listed.",

and inserting in lieu thereof the following:

"1. The terms 'crime of violence' and 'controlled substance offense' include aiding and abetting, conspiring, and attempting to commit such offenses.

2. 'Crime of violence' includes murder, manslaughter, kidnapping, aggravated assault, forcible sex offenses, robbery, arson, extortion, extortionate extension of credit, and burglary of a dwelling. Other offenses are included where (A) that offense has as an element the use, attempted use, or threatened use, of physical force against the person of another, or (B) the conduct set forth in the count of which the defendant was convicted included use of explosives or, by its nature, presented a serious potential risk of physical injury to another.".

The Commentary to § 4B1.2 captioned "Application Notes" is amended in Note 4 by deleting "§ 4A1.2(e) (Applicable Time Period), § 4A1.2(h) (Foreign Sentences), and § 4A1.2(j) (Expunged Convictions)" and inserting in lieu thereof "§ 4A1.2 (Definitions and Instructions for Computing Criminal History)", and by deleting "Also applicable is the Commentary to § 4A1.2 pertaining to invalid convictions.".

*Reason for Amendment:* The purpose of this amendment is to clarify the coverage of this guideline.

*Additional Explanatory Statement:* Experience has demonstrated a need to clarify the definitions of a crime of violence and controlled substance offense used in this guideline. The proposed amendment substitutes comparable but clearer definitions of crime of violence and controlled substance offense. The definition of crime of violence is derived from 18 U.S.C. 924(e). In addition, the proposed amendment clarifies that all pertinent definitions and instructions in § 4B1.2 apply to this section.

* * * * *

*§ 4B1.3 Criminal Livelihood*

246. *Proposed Amendment:* Section 4B1.3 is amended by deleting "from which he derived a substantial portion of his income" and inserting in lieu thereof "engaged in as a livelihood".

The Commentary to § 4B1.3 captioned "Application Note" is amended by deleting "Note" and inserting in lieu thereof "Notes", and by inserting as an additional Note:

"2. 'Engaged in as a livelihood' means that (1) the defendant derived income from the pattern of criminal conduct that in any twelve-month period exceeded 2,000 times the hourly minimum wage under federal law (currently 2,000 × the hourly minimum wage under Federal law is $6,700); and (2) the totality of circumstances shows that such criminal conduct was the defendant's primary occupation in that twelve-month period (e.g., the defendant engaged in criminal conduct rather than regular, legitimate employment; or the defendant's legitimate employment was merely a front for his criminal conduct).".

The Commentary to § 4B1.3 captioned "Application Notes" is amended in Note 1 by deleting "This guideline is not intended to apply to minor offenses.".

The Commentary to § 4B1.3 captioned "Background" is amended by deleting "proportion" and inserting in lieu thereof "portion".

*Reason for Amendment:* The purpose of this amendment is to provide a better definition of the intended scope of this enhancement.

*Additional Explanatory Statement:* Feedback from probation officers and others has pointed out that the current guideline is subject to varying interpretation. Compare, for example, U.S. v. Kerr, 686 F. Supp. 1174 (W.D. Penn. 1988) with U.S. v. Rivera, 694 F. Supp. 1105 (S.D. NY 1988). The first prong of the proposed definition in application Note 2 above is derived from former 18 U.S.C. 3575, the provision from which the statutory instruction underlying this guideline [28 U.S.C. 994(i)(2)] was itself derived.

**Chapter Five, Part A—Sentencing Table**

247. *Proposed Amendment:* Chapter 5, Part A is amended in the Sentencing Table by deleting "0–1, 0–2, 0–3, 0–4, and 0–5" wherever it appears, and inserting in each instance "0–6".

*Reason for Amendment:* This amendment provides that the maximum of the guideline range is six months wherever the minimum of the guideline range is zero months. Related amendment: 257 (§ 5E4.2).

*Additional Explanatory Statement:* The court has discretion to impose a sentence of up to 6 months or a $5,000 fine for a Class B misdemeanor (Class B or C misdemeanors and infractions are not covered by the guidelines; see § 1B1.9). It appears anomalous that the Commission guidelines allow less discretion for certain felonies and Class A misdemeanors. In fact, in certain cases, a plea to a reduced charge of a Class B misdemeanor could result in a higher potential sentence because the sentence for the felony or Class A misdemeanor might be restricted to less than 6 months by the guidelines. This can happen when the Sentencing Table provides a guideline range of 0–1 month, 0–2 months, 0–3, 0–4, or 0–5 months. These very narrow ranges are not required by statute, which allows a 6 month guideline range in such cases.

The Commission proposes to remove this anomaly by amending the guideline table to provide that whenever the lower limit of the guideline range is 0 months, the upper limit of the guideline range is six months.

There is a similar anomaly in the Fine Table at § 5E4.2, in that the maximum of the fine table is, in certain cases, less than the $5,000 authorized for petty offenses. Providing a fine range of $100–$5,000 for an offense level of 3 or less, and $250–$5,000 for an offense level of 4 or 5, would remove this anomaly. Moreover, because the guidelines now cover only Class A misdemeanors and felonies, an increase in the minimum fine guideline to $100 is proposed.

*§ 5B1.3 Conditions of Probation*

248. *Proposed Amendment:* Section 5B1.3(c) is amended by inserting immediately before the period at the end of the first sentence the following:

", unless the court finds on the record that extraordinary circumstances exist that would make such a condition plainly unreasonable, in which event the court shall impose one or more of the other conditions set forth under 18 U.S.C. 3563(b)".

*Reason for Amendment:* The purpose of this amendment is to conform the guideline to a statutory revision.

249. *Proposed Amendment:* Section 5B1.3(a) is amended by inserting at the end "The court shall also impose a condition that the defendant not possess illegal controlled substances. 18 U.S.C. 3563(a)(3).".

Section 5B1.3 is amended by inserting the following as Commentary:

"Commentary

A broader form of the condition required under 18 U.S.C. 3563(a)(3) (pertaining to possession of controlled substances is set forth as recommended condition (7) at Section 5B1.4 (Recommended Conditions of Probation and Supervised Release).".

*Reason for Amendment:* This amendment references a mandatory condition of probation added by section 7307 of the Omnibus Anti-Drug Abuse Act. Related amendment: 253 (§ 5D3.3).

*§ 5C2.1 Imposition of a Term of Imprisonment*

250. *Proposed Amendment:* Section 5C2.1(e) is amended by deleting "Thirty days" and inserting in lieu thereof "One day", by deleting "one month" wherever it appears and inserting in lieu thereof in each instance "one day", and by deleting "One month" and inserting in lieu thereof "One day".

*Reason for Amendment:* The purpose of this amendment is to enhance the internal consistency of the guidelines.

**Chapter Five, Parts C, D, E, and F**

251. *Proposed Amendment:* Sections 5C2.1, 5D3.1, 5D3.2, 5D3.3, 5E4.1, 5E4.2, 5E4.3, 5E4.4, 5F5.1, 5F5.2, 5F5.3, 5F5.4, and 5F5.5 are amended by deleting the number immediately following each letter in the section and inserting in lieu thereof "1" in each instance.

*Reason for Amendment:* The purpose of this amendment is to correct a clerical error.

*§ 5D3.3 Conditions of Supervised Release*

252. *Proposed Amendment:* Section 5D3.3 is amended by deleting subsection (b) and inserting in lieu thereof the following:

"(b) The court may impose other conditions of supervised release, to the extent that such conditions are reasonably related to (1) the nature and circumstances of the offense and the history and characteristics of the defendant, and (2) the need for the sentence imposed to afford adequate deterrence to criminal conduct; to protect the public from further crimes of the defendant; and to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner. 18 U.S.C. 3553(a)(2) and 3563(d).".

*Reason for Amendment:* The purposes of this amendment are to clarify the guideline and conform it to the statute as amended by Section 7106 of the Omnibus Anti-Drug Abuse Act of 1988.

253. *Proposed Amendment:* Section 5D3.3(a) is amended by inserting at the end "The court shall also impose a condition that the defendant not possess illegal controlled substances. 18 U.S.C. 3563(a)(3).".

The Commentary to 5D3.3 captioned "Background" is amended by inserting as the last sentence: "A broader form of the condition required under 18 U.S.C. 3563(a)(3) (pertaining to possession of controlled substances) is set forth as recommended condition (7) at Section 5B1.4 (Recommended Conditions of Probation and Supervised Release).".

*Reason for Amendment:* This amendment references a mandatory condition of supervised release added by section 7307 of the Omnibus Anti-Drug Abuse Act of 1988. Related amendment: 249 (§ 5B1.3).

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*§ 5E4.1 Restitution*

254. *Proposed Amendment:* Section 5E4.1 is amended by inserting the following as an additional subsection:

"(c) With the consent of the victim of the offense, the court may order a defendant to perform services for the benefit of the victim in lieu of monetary restitution. 18 U.S.C. 3663(b)(4).".

*Reason for Amendment:* The purpose of this amendment is to insert language previously contained in § 5F5.3(b) where it had been erroneously placed. Related amendment: 261 (§ 5F5.3).

255. *Proposed Amendment:* Section 5E4.1 is amended in the Commentary entitled "Background" by deleting:

"See S. Rep. No. 225, 98th Cong., 1st Sess. 95–96.", and inserting in lieu thereof:

"See 18 U.S.C. 3563(b)(3) as amended by Section 7110 of Pub. L. No. 100–690 (1988).".

*Reason for Amendment:* This amendment replaces a reference to legislative history with a citation to a revised statute. Section 7110 of the Omnibus Anti-Drug Abuse Act of 1988 confirms the authority of a sentencing court to impose restitution as a condition of probation. Previously, such authority was inferred from 18 U.S.C. 3563(b)(20) (defendant may be ordered to "satisfy such other conditions as the court may impose") and from legislative history.

*§ 5E4.2 Fines for Individual Defendants*

256. *Proposed Amendment:* Section 5E4.2(a) is amended by deleting:

"If the guideline for the offense in Chapter Two prescribes a different rule for imposing fines, that rule takes precedence over this subsection.".

Section 5E4.2(b) is amended by inserting at the end the following additional sentence:

"If, however, the guideline for the offense in Chapter Two provides a specific rule for imposing a fine, that rule takes precedence over subsection (c) of this section.".

*Reason for Amendment:* The purpose of this amendment is to clarify the guideline. The last sentence of current § 5E4.2(a) is in the wrong place. This amendment moves the content of this sentence to subsection (b) where it belongs.

257. *Proposed Amendment:* Section 5E4.2(c)(3) is amended by deleting:

| | | |
|---|---|---|
| "1 | $25 | $250 |
| 2–3 | $100 | $1,000 |
| 4–5 | $250 | $2,500." |

and inserting in lieu thereof:

"3 and below ..... $100–$5,000
4–5 ..... $250–$5,000".

*Reason for Amendment:* This amendment revises the fine table for offense levels 5 and below. Related amendment: 247 (Chapter Five, Part A).

*Additional Explanatory Statement:* See additional explanatory statement at the proposed amendment to Chapter Five, Part A (amendment 247).

258. *Fines and Cost of Imprisonment:* The guidelines require the court to impose a fine on every defendant who possesses the ability to pay or is likely to become able to pay. The court is required to impose an additional fine sufficient to reimburse the government for the cost of imprisonment, probation or supervised release. The Commission solicits public comment concerning the appropriateness of these provisions. Of particular interest is the manner in which the fine guidelines have been applied during the year that the guidelines have been in effect. Public comment on these subjects will also assist the Commission to fulfill its statutory mandate to study the feasibility of requiring defendants to pay for the cost of punishment. (Section 7301 of the Omnibus Anti-Drug Abuse Act of 1988).

*§ 5E4.3 Special Assessments*

259. *Proposed Amendment:* The Commentary to Section 5E4.3 captioned "Background" is amended in the first paragraph by inserting at the end:

"Under the Victims of Crime Act, as amended by section 7085 of the Omnibus Anti-Drug Abuse Act of 1988, the court is required to impose assessments in the following amounts with respect to offenses committed on or after November 18, 1988.

Individuals:

$5, if the defendant is an individual convicted of an infraction or a Class C misdemeanor;

$10, if the defendant is an individual convicted of a Class B misdemeanor;

$25, if the defendant is an individual convicted of a Class A misdemeanor;

$50, if the defendant is an individual convicted of a felony.

Organizations:

$50, if the defendant is an organization convicted of a Class B misdemeanor;

$125, if the defendant is an organization convicted of a Class A misdemeanor; and

$200, if the defendant is an organization convicted of a felony. 18 U.S.C. 3013.",

and in the second paragraph by deleting "The Act requires the court" and inserting in lieu thereof "With respect to offenses committed prior to November 18, 1988, the court is required".

*Reason for Amendment:* The purpose of this amendment is to conform the commentary to the statute as amended by Section 7085 of the Omnibus Anti-Drug Abuse Act of 1988.

*§ 5F5.2 Home Detention*

260. *Use of Home Dentention as an Alternative to Imprisonment:* Section 7305 of the Omnibus Anti-Drug Abuse Act of 1988 provides that home detention may be imposed as a condition of probation, parole and supervised release, but only as an alternative to incarceration. The guidelines do not permit home detention to be imposed as a substitute for imprisonment (see § 5C2.1(e) and Application Note 5 of the Commentary to § 5C2.1). The Commission seeks public comment on the question of whether the policy reflected in the existing guidelines should or should not be revised to accomodate the provision in § 7305 in light of the existing guideline distinction between home detention, community or intermittent confinement, and imprisonment. Comment would also be welcomed on the question of whether home detention, if substituted for imprisonment, should be done so as an exact equivalent (i.e., one day for one day), or if some different ratio is appropriate, and whether electronic monitoring should be required to supplement probation officer enforcement of this condition. Finally, comment is invited on the question of whether home confinement should be limited to certain categories of offenses and offenders.

*§ 5F5.3 Community Service*

261. *Proposed Amendment:* Section 5F5.3(a) is amended by deleting "(a)", and by inserting "and sentenced to probation" immediately following "felony".

Section 5F5.3(b) is amended by deleting:

"(b) With the consent of the victim of the offense, the court may order a defendant to perform services for the benefit of the victim in lieu of monetary restitution. 18 U.S.C. 3663(b)(4).".

*Reason for Amendment:* The purpose of this amendment is to correct an erroneous statement in § 5F5.3(a) and to remove § 5F5.3(b) which deals with restitution and not community service and, thus, should appear at § 5E4.1. A related amendment inserts the deleted language at § 5E4.1 (Restitution). Related amendment: 254 (§ 5E4.1).



*§ 5F5.4 Order of Notice to Victims*

262. *Proposed Amendment:* The Commentary to § 5F5.4 captioned "Background" is amended by deleting:

"The legislative history indicates that, although the sanction was designed to provide actual notice to victims, a court might properly limit notice to only those victims who could be most readily identified, if to do otherwise would unduly prolong or complicate the sentencing process.".

*Reason for Amendment:* The purpose of this amendment is to delete an unnecessary statement that could be subject to misinterpretation.

*§ 5F5.5 Occupational Restrictions*

263. *Proposed Amendment:* Section 5F5.5(a) is amended by deleting:

"(2) there is a risk that, absent such restriction, the defendant will continue to engage in unlawful conduct similar to that for which the defendant was convicted; and

(3) imposition of such a restriction is reasonably necessary to protect the public.",

and inserting in lieu thereof:

"(2) imposition of such a restriction is reasonably necessary to protect the public because there is reason to believe that, absent such restriction, the defendant will continue to engage in unlawful conduct similar to that for which the defendant was convicted.",

and by inserting "and" at the end of subsection (a)(1).

*Reason for Amendment:* The purpose of this amendment is to clarify the guideline.

*§ 5G1.1 Sentencing on a Single Count of Conviction*

264. *Proposed Amendment:* Section 5G1. 1 and the accompanying Commentary are amended by deleting:

"(a) If application of the guidelines results in a sentence above the maximum authorized by statute for the offense of conviction, the statutory maximum shall be the guideline sentence.

(b) If application of the guidelines results in a sentence below the minimum sentence required by statute, the statutory minimum shall be the guideline sentence.

(c) In any other case, the sentence imposed shall be the sentence as determined from application of the guidelines.

**Commentary**

If the statute requires imposition of a sentence other than that required by the guidelines, the statute shall control. The sentence imposed should be consistent with the statute but as close as possible to the guidelines.", and inserting in lieu thereof:

"(a) Where the statutorily authorized maximum sentence is less than the minimum of the applicable guideline range, the statutorily authorized maximum sentence shall be the guideline sentence.

(b) Where a statutorily required minimum sentence is greater than the maximum of the applicable guideline range, the statutorily required minimum sentence shall be the guideline sentence.

(c) In any other case, the sentence may be imposed at any point within the applicable guideline range, provided that the sentence—

(1) is not greater than the statutorily authorized maximum sentence, and

(2) is not less than any statutorily required minimum sentence.

**Commentary**

This section describes how the statutorily authorized maximum sentence, or a statutorily required minimum sentence, may affect the determination of a sentence under the guidelines. For example, if the applicable guideline range is 51–63 months and the maximum sentence authorized by statute for the offense of conviction is 48 months, the sentence required by the guidelines under subsection (a) is 48 months; a sentence of less than 48 months would be a guideline departure. If the applicable guideline range is 41–51 months and there is a statutorily required minimum sentence of 60 months, the sentence required by the guidelines under subsection (b) is 60 months; a sentence of more than 60 months would be a guideline departure. If the applicable guideline range is 51–63 months and the maximum sentence authorized by statute for the offense of conviction is 60 months, the guideline range is restricted to 51–60 months under subsection (c).".

*Reason for Amendment:* The purpose of this amendment is to clarify the guideline.

*§ 5G1.2 Sentencing on Multiple Counts of Conviction*

265. *Proposed Amendment:* The Commentary to § 5G1.2 is amended by inserting the following as an additional paragraph immediately following the first paragraph:

"This section applies to multiple counts of conviction (1) contained in the same indictment or information, or (2) contained in different indictments or informations for which sentences are to be imposed at the same time or in a consolidated proceeding.".

*Reason for Amendment:* The purpose of this amendment is to clarify that this guideline applies in the case of separate indictments that are consolidated for purposes of sentencing.

266. *Proposed Amendment:* The Commentary to § 5G1.2 is amended in the second paragraph by deleting "any combination of concurrent and consecutive sentences that produces the total punishment may be imposed" and inserting in lieu thereof "consecutive sentences are to be imposed to the extent necessary to achieve the total punishment.".

*Reason for Amendment:* The purpose of this amendment is to clarify the Commentary.

*§ 5G1.3 Convictions on Counts Related to Unexpired Sentences*

267. *Proposed Amendment:* Section 5G1.3, and the Commentary thereto, is deleted in its entirety as follows:

*"§ 5G1.3 Convictions on Counts Related to Unexpired Sentences*

If at the time of sentencing, the defendant is already serving one or more unexpired sentences, then the sentences for the instant offense(s) shall run consecutively to such unexpired sentences, unless one or more of the instant offenses(s) arose out of the same transactions or occurrences as the unexpired sentences. In the latter case, such instant sentences and the unexpired sentences shall run concurrently, except to the extent otherwise required by law.

**Commentary**

This section reflects the statutory presumption that sentences imposed at different times ordinarily run consecutively. See 18 U.S.C. 3584(a). This presumption does not apply when the new counts arise out of the same transaction or occurrence as a prior conviction.

Departure would be warranted when independent prosecutions produce anomalous results that circumvent or defeat the intent of the guidelines.",

and the following inserted in lieu thereof:

*"§ 5G1.3 Imposition of a Sentence on a Defendant Serving an Unexpired Term of Imprisonment*

If the instant offense was committed while the defendant was serving a term of imprisonment (including work release, furlough, or escape status), the sentence for the instant offense shall be imposed to run consecutively to the unexpired term of imprisonment.

**Commentary**

Under this guideline, the court shall impose a consecutive sentence where the instant offense (or any part thereof) was committed while the defendant was serving an unexpired term of imprisonment.".

*Reason for Amendment:* This amendment provides a requirement for a consecutive sentence for the instant offense when the instant offense was committed while the defendant was serving a term of imprisonment.

*Additional Explanatory Statement:* This amendment specifies circumstances in which a consecutive sentence is required. Erroneous language in the Commentary to this guideline concerning 18 U.S.C. 3584(a) is deleted. The Commission seeks comment as to what approach should be taken concerning sentences imposed at different times not covered by the revised provision.

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*§ 5K1.1 Substantial Assistance to Authorities (Policy Statement)*

268. *Proposed Amendment:* Section 5K1.1 is amended by deleting "made a good faith effort to provide" and inserting in lieu thereof "provided".

*Reason for Amendment:* The purpose of this amendment is to clarify this policy statement.

*Additional Explanatory Statement:* The purpose of this amendment is to clarify the Commission's intent that departures under this policy statement be based upon the provision substantial assistance. The existing policy statement could be interpreted requiring only a willingness to provide such assistance.

269. *Proposed Amendment:* Section 5K1.1(a) is amended in the first sentence by deleting "conduct".

*Reason for Amendment:* The purpose of this amendment is to make an editorial correction.

*§ 5K1.2 Refusal to Assist (Policy Statement)*

270. *Proposed Amendment:* The Commentary to § 5K1.2 captioned "Background" is amended by deleting "Refusal to assist authorities based upon continued involvement in criminal activities and association with accomplices" and inserting in lieu thereof "A defendant's motives for refusing to assist authorities".

*Reason for Amendment:* The purpose of this amendment is to clarify the Commentary.

**Chapter Five, Part K, Subpart 2 (General Provisions)**

271. *Proposed Amendment:* Chapter Five, Part K is amended by adding at the end:

*"§ 5K2.15 Terrorism (Policy Statement)*

If the defendant committed the offense in furtherance of a terroristic action, the court may increase the sentence above the authorized guideline range.".

*Reason for Amendment:* This amendment adds a specific policy statement concerning consideration of an upward departure when the offense is committed for a terroristic purpose. This amendment does not make a substantive change. Such conduct is currently included in the broader policy statement at § 2K2.9 (Criminal Purpose).

*§ 6A1.1. Presentence Report*

272. *Proposed Amendment:* Section 6A1.1 is amended in the title by inserting at the end "(Policy Statement)".

*Reason for Amendment:* The purpose of this amendment is to designate § 6A1.1 as a policy statement.

*Additional Explanatory Statement:* Designation of this section as a policy statement is more consistent with the nature of the subject matter. Related amendment: 274 (§ 6A1.3).

*§ 6B1.2 Standards for Acceptance of Plea Agreements (Policy Statement)*

273. *Proposed Amendment:* The Commentary to § 6B1.2 is amended in the second paragraph by deleting "and does not undermine the basic purposes of sentencing.", and inserting in lieu thereof "(i.e., that such departure is authorized by 18 U.S.C. 3553(b)). See generally Chapter 1, Part A (4)(b) (Departures).".

*Reason for Amendment:* The purpose of this amendment is to clarify the Commentary.

*§ 6A1.3 Resolution of Disputed Factors*

274. *Proposed Amendment:* Section 6A1.3 is amended in the title by inserting at the end "(Policy Statement)".

*Reason for Amendment:* The purpose of this amendment is to designate § 6A1.3 as a policy statement.

*Additional Explanatory Statement:* Designation of this section as a policy statement is more consistent with the nature of the subject matter. Related amendment: 272 (§ 6A1.1).

**Appendix A—Statutory Index**

275. *Proposed Amendment:* Appendix A (Statutory Index) is amended in the second sentence of the "Introduction" by deleting "conduct" and inserting in lieu thereof "nature of the offense conduct charged in the count", and by deleting "select" and inserting in lieu thereof "use"; and in the third sentence of the "Introduction" by deleting "the court is to apply" and inserting in lieu thereof "use", by deleting "which is", and by deleting "conduct for" and inserting in lieu thereof "nature of the offense conduct charged in the count of".

*Reason for Amendment:* The purpose of this amendment is to clarify the operation of the Statutory Index in relation to §§ 1B1.1 and 1B1.2(a).

276. *Proposed Amendment:* Appendix A is amended on the line beginning "18 U.S.C. 371" by inserting "2A2.1, 2D1.4," immediately before "2T1.9".

*Reason for Amendment:* The purpose of this amendment is to make the Statutory Index more comprehensive.

277. *Proposed Amendment:* Appendix A is amended by deleting ", 2A3.1" from the line beginning with "18 U.S.C. 113(a)".

*Reason for Amendment:* The purpose of this amendment is to correct a clerical error.

278. *Proposed Amendment:* Appendix A is amended by inserting as an additional paragraph at the end of the Introduction:

"The guidelines do not apply to any count of conviction that is a Class B or C misdemeanor or an infraction. (See § 1B1.9.)".

Appendix A is amended by deleting:

| | |
|---|---|
| "7 U.S.C. 52 | 2N2.1", |
| "7 U.S.C. 60 | 2N2.1", |
| "10 U.S.C. 847 | 2J1.1, 2J1.5", |
| "16 U.S.C. 198c | 2B1.1, 2B1.3, 2B2.3", |
| "16 U.S.C. 204c | 2B1.1, 2B1.3", |
| "16 U.S.C. 604 | 2B1.3", |
| "16 U.S.C. 606 | 2B1.1, 2B1.3", |
| "16 U.S.C. 668dd | 2Q2.1", |
| "16 U.S.C. 670j(a)(1) | 2B2.3", |
| "16 U.S.C. 676 | 2B2.3", |
| "16 U.S.C. 682 | 2B2.3", |
| "16 U.S.C. 683 | 2B2.3", |
| "16 U.S.C. 685 | 2B2.3", |
| "16 U.S.C. 689b | 2B2.3", |
| "16 U.S.C. 692a | 2B2.3", |
| "16 U.S.C. 694a | 2B2.3", |
| "18 U.S.C. 113(d) | 2A2.3", |
| "18 U.S.C. 113(e) | 2A2.3", |
| "18 U.S.C. 290 | 2F1.1", |
| "18 U.S.C. 402 | 2J1.1", |
| "18 U.S.C. 437 | 2C1.3", |
| "18 U.S.C. 1164 | 2B1.3", |
| "18 U.S.C. 1165 | 2B2.3", |
| "18 U.S.C. 1382 | 2B2.3", |
| "18 U.S.C. 1504 | 2J1.2", |
| "18 U.S.C. 1728 | 2F1.1", |
| "18 U.S.C. 1752 | 2B2.3", |
| "18 U.S.C. 1793 | 2P1.4", |
| "18 U.S.C. 1856 | 2B1.3", |
| "18 U.S.C. 1863 | 2B2.3", |
| "40 U.S.C. 193e | 2B1.1, 2B1.3", |
| "42 U.S.C. 1995 | 2J1.1", |
| "42 U.S.C. 2000b | 2J1.1", |
| "42 U.S.C. 4912 | 2Q1.3", |
| "47 U.S.C. 223 | 2G3.2". |

*Reason for Amendment:* The purposes of this amendment are to clarify that the guidelines do not apply to any count of conviction that is a Class B or C misdemeanor or an infraction, and to delete references to statutes that apply solely to such offenses. Related amendment: 15 (§ 1B1.9).

279. *Proposed Amendment:* Appendix A is amended by deleting:

| | |
|---|---|
| "18 U.S.C. 1512 | 2J1.2", |

And inserting in lieu thereof:

| | |
|---|---|
| "18 U.S.C. 1512(a) | 2A1.1, 2A1.2, 2A2.1, |
| 18 U.S.C. 1512(b) | 2A2.2, 2J1.2, |
| 18 U.S.C. 1512(c) | 2J1.2". |

Appendix A is amended by inserting the following statutes in the appropriate place according to statutory title and section number:

| | |
|---|---|
| "18 U.S.C. 844(e) | 2A8.2", |
| "18 U.S.C. 1716C | 2B5.2", |
| "42 U.S.C. 7270b | 2B2.3", |
| "49 U.S.C. 1773(e) | |
| (43 CFR 4140.1(b)(1)(i)). | 2B2.3". |



Appendix A is amended in the line beginning "18 U.S.C. 1028" by inserting "2L1.2, 2L2.1, 2L2.3 immediately following "2F2.2".

*Reason for Amendment:* The purpose of this amendment is to make the statutory index more comprehensive.

280. *Proposed Amendment:* Appendix A is amended in the line beginning "18 U.S.C. 1854" by deleting ", 2B2.3".

*Reason for Amendment:* The purpose of this amendment is to delete an incorrect reference.

281. *Proposed Amendment:* Appendix A is amended by inserting the following statute in the appropriate place according to statutory title and section number:

"21 U.S.C. 2D1.10".

*Reason for Amendment:* The purpose of this amendment is to make the Statutory Index more comprehensive. Related amendment: 98 (§ 2D1.10).

282. *Proposed Amendment:* Appendix A is amended on the line beginning "18 U.S.C. 1464" by deleting "§ 2G3.1" and inserting in lieu thereof "§ 2G3.3" and by inserting the following statute in the appropriate place according to statutory title and section number:

"18 U.S.C. 1468 and 2G3.3".

*Reason for Amendment:* The purpose of this amendment is to reflect the creation of a new guideline. Related amendment: 128 (§ 2G3.3).

283. *Proposed Amendment:* Appendix A is amended by inserting the following statute in the appropriate place according to statutory title and section number:

*Comment date:* April 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

"18 U.S.C. 2251A 2G2.3".

*Explanation:* The purpose of this amendment is to reflect the creation of a new offense guideline. Related amendment: 125 (§ 2G2.3).

284. *Proposed Amendment:* Appendix A is amended in the line beginning "47 U.S.C. 223" by deleting "47 U.S.C. 223" and inserting in lieu thereof "47 U.S.C. 223(b)(1)(A)".

*Reason for Amendment:* The purpose of this amendment is to conform the Statutory Index to the amendment to § 2G3.2 (Amendment 127).

285. *Proposed Amendment:* Appendix A is amended by inserting the following statutes in the appropriate place according to statutory title and section number:

| | |
|---|---|
| "18 U.S.C. 709 | 2F1.1", |
| "18 U.S.C. 1460 | 2G3.1", |
| "18 U.S.C. 1466 | 2G3.1", |
| "18 U.S.C. 1516 | 2J1.2", |
| "18 U.S.C. 1958 | 2A2.1, 2E1.4", |
| "18 U.S.C. 1959 | 2E1.3", |
| "49 U.S.C. 1472(c) | 2A5.2". |

*Reason for Amendment:* The purpose of this amendment is to make the Statutory Index more comprehensive.

286. *Proposed Amendment:* Appendix A is amended on the line beginning "18 U.S.C. 844(h)" by inserting "(offenses committed prior to November 18, 1988), 2K1.7" immediately following "2K1.4".

*Reason for Amendment:* The purpose of this amendment is to reflect revision in the offense covered by 18 U.S.C. 844(h). Related amendments: 149 (§ 2K1.4); 152 (§ 2K1.7).

287. *Proposed Amendment:* Appendix A is amended in the line beginning "26 U.S.C. 7203" by inserting "2S1.3," immediately before "2T1.2".

*Reason for Amendment:* The purpose of this amendment is to make the Statutory Index more comprehensive. Related amendments: 186 (§ 2S1.3); 194 (§ 2T1.2).

288. *Proposed Amendment:* Appendix A is amended in the line beginning "18 U.S.C. 1005" by inserting ", § 2S1.3" immediately following "2F1.1".

*Reason for Amendment:* The purpose of this amendment is to make the statutory index more comphrehensive.

289. *Proposed Amendment:* Appendix A is amended by inserting the following statute in the appropriate place according to statutory title and section number:

| | |
|---|---|
| "18 U.S.C. 247 | 2H1.3", |
| "18 U.S.C. 930 | 2K2.5". |

*Reason for Amendment:* The purpose of this amendment is to make the statutory index more comprehensive. Related amendments: 129 (§ 2H1.3); 158 (§ 2K2.5).

**Clerical Errors in References**

290. *Proposed Amendment:* The Commentary to § 1B1.2 captioned "Application Notes" is amended in Note 3 by deleting "at sentencing)" and inserting in lieu thereof "in Imposing Sentence)".

The Commentary to § 1B1.3 captioned "Application Notes" is amended in Note 4 by deleting "(Assault)" and inserting in lieu thereof "(Aggravated Assault)".

The Commentary to § 2A5.2 captioned "Background" is amended by inserting "or Aboard" immediately following "Materials While Boarding".

The Introductory Commentary to Chapter 2, Part B is amended by deleting "Order and".

The Commentary to § 2R1.1 captioned "Application Notes" is amended in Note 7 by inserting "Category" immediately following "Criminal History".

The Commentary to § 2T1.4 captioned "Application Notes" is amended in Note 3 by inserting "Use of" immediately before "Special Skill".

The Commentary to § 3B1.4 is amended by deleting "(Role in the Offense)" the first time it appears and inserting in lieu thereof "(Aggravating Role)", and by deleting "(Role in the Offense)" the second time it appears and inserting in lieu thereof "(Mitigating Role)".

The Commentary to § 3D1.3 captioned "Application Notes" is amended in the last sentence of Note 4 by deleting "Loss or Damage" and inserting in lieu thereof "Damage or loss".

*Reason for Amendment:* The purpose of this amendment is to correct clerical errors in various cross-references.

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Part III

# Environmental Protection Agency

**Premanufacture Notices; Monthly Status Report for December 1988**

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## ENVIRONMENTAL PROTECTION AGENCY

[OPTS-63113; FRL-3525-2]

### Premanufacture Notices; Monthly Status Report for December 1988

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** Section 5(d)(3) of the Toxic Substance Control Act (TSCA) requires EPA to issue a list in the **Federal Register** each month reporting the premanufacture notices (PMNs) and exemption request pending before the Agency and the PMNs and exemption requests for which the review period has expired since publication of the last monthly summary. This is the report for December 1988.

Nonconfidential portions of the PMNs and exemption request may be seen in the Public Reading Room NE–G004 at the address below between 8:00 a.m. and 4:00 p.m., Monday thru Friday, excluding legal holidays.

**ADDRESS:** Written comments, identified with the document control number "[OPTS–63113]" and the specific PMN and exemption request number should be sent to: Document Control Office (TS–790), Office of Toxic Substances, Environmental Protection Agency, 401 M Street, SW., Room 201 East Tower, Washington, DC 20460, (202) 382–3532.

**FOR FURTHER INFORMATION CONTACT:** Lawrence Culleen, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M Street SW., Washington, DC 20460 (202) 382–3725.

**SUPPLEMENTARY INFORMATION:** The monthly status report published in the **Federal Register** as required under section 5(d)(3) of TSCA (90 Stat. 2012 (15 U.S.C. 2504)), will identify: (a) PMNs received during December; (b) PMNs received previous and still under review at the end of December; (c) PMNs for which the notice review period has ended during December; (d) chemical substances for which EPA has received a notice of commencement to manufacture during December; and (e) PMNs for which the review period has been suspended. Therefore, the December 1988 PMN Status Report is being published.

Date: February 13, 1989.

**Steven Newburg-Rinn,**

*Acting Director, Information Management Division, Office of Toxic Substances.*

### Premanufacture Notice Monthly Status Report December 1988

I. 64 PREMANUFACTURE NOTICES AND EXEMPTION REQUESTS RECEIVED DURING THE MONTH:

PMN No.

| | | | |
|---|---|---|---|
| P 89-0166 | P 89-0168 | P 89-0169 | P 89-0170 |
| P 89-0171 | P 89-0172 | P 89-0173 | P 89-0174 |
| P 89-0175 | P 89-0176 | P 89-0177 | P 89-0178 |
| P 89-0179 | P 89-0180 | P 89-0181 | P 89-0182 |
| P 89-0183 | P 89-0184 | P 89-0185 | P 89-0186 |
| P 89-0187 | P 89-0188 | P 89-0189 | P 89-0190 |
| P 89-0191 | P 89-0192 | P 89-0193 | P 89-0194 |
| P 89-0195 | P 89-0196 | P 89-0197 | P 87-0198 |
| P 89-0204 | P 89-0205 | P 89-0208 | P 89-0207 |
| P 89-0208 | P 89-0209 | P 89-0210 | P 89-0211 |
| P 89-0214 | P 89-0215 | P 89-0216 | P 89-0217 |
| P 89-0218 | P 89-0219 | P 89-0220 | P 89-0221 |
| P 89-0222 | P 89-0223 | P 89-0224 | P 89-0225 |
| P 89-0227 | P 89-0228 | P 89-0229 | P 89-0230 |
| Y 89-0037 | Y 89-0038 | Y 89-0039 | Y 89-0040 |
| Y 89-0041 | Y 89-0042 | Y 89-0043 | Y 89-0044 |
| Y 89-0045 | | | |

II. 488 PREMANUFACTURE NOTICES RECEIVED PREVIOUSLY AND STILL UNDER REVIEW AT THE END OF THE MONTH:

PMN No.

| | | | |
|---|---|---|---|
| P 83-0669 | P 85-0316 | P 85-0535 | P 86-0636 |
| P 85-0819 | P 85-0718 | P 85-0941 | P 86-0065 |
| P 85-0066 | P 86-0067 | P 86-0294 | P 86-0295 |
| P 85-0502 | P 85-1078 | P 86-1189 | P 86-1235 |
| P 85-1602 | P 86-1603 | P 86-1604 | P 86-1607 |
| P 87-0057 | P 87-0058 | P 87-0059 | P 87-0068 |
| P 87-0105 | P 87-0197 | P 87-0198 | P 87-0199 |
| P 87-0200 | P 87-0201 | P 87-0323 | P 87-0770 |
| P 87-0794 | P 87-0930 | P 87-0931 | P 87-0960 |
| P 87-1028 | P 87-1066 | P 87-1104 | P 87-1192 |
| P 87-1226 | P 87-1227 | P 87-1273 | P 87-1337 |
| P 87-1379 | P 87-1417 | P 87-1436 | P 87-1437 |
| P 87-1542 | P 87-1546 | P 87-1547 | P 87-1548 |
| P 87-1549 | P 87-1558 | P 87-1673 | P 87-1676 |
| P 87-1677 | P 87-1679 | P 87-1680 | P 87-1684 |
| P 87-1759 | P 87-1769 | P 87-1770 | P 87-1872 |
| P 87-1881 | P 87-1882 | P 88-0049 | P 88-0063 |
| P 88-0156 | P 88-0157 | P 88-0195 | P 88-0225 |
| P 88-0275 | P 88-0319 | P 88-0320 | P 88-0353 |
| P 88-0367 | P 88-0393 | P 88-0436 | P 88-0468 |
| P 88-0515 | P 88-0522 | P 88-0576 | P 88-0598 |
| P 88-0602 | P 88-0606 | P 88-0622 | P 88-0658 |
| P 88-0671 | P 88-0701 | P 88-0726 | P 88-0831 |
| P 88-0836 | P 88-0837 | P 88-0862 | P 88-0864 |
| P 88-0875 | P 88-0884 | P 88-0888 | P 88-0889 |
| P 88-0890 | P 88-0894 | P 88-0898 | P 88-0900 |
| P 88-0918 | P 88-0972 | P 88-0981 | P 88-0985 |
| P 88-0997 | P 88-0998 | P 88-0999 | P 88-1005 |
| P 88-1020 | P 88-1021 | P 88-1035 | P 88-1063 |
| P 88-1069 | P 88-1070 | P 88-1071 | P 88-1109 |
| P 88-1115 | P 88-1116 | P 88-1117 | P 88-1118 |
| P 88-1120 | P 88-1168 | P 88-1169 | P 88-1170 |
| P 88-1189 | P 88-1205 | P 88-1208 | P 88-1211 |
| P 88-1212 | P 88-1220 | P 88-1221 | P 88-1235 |
| P 88-1236 | P 88-1240 | P 88-1243 | P 88-1244 |
| P 88-1250 | P 88-1267 | P 88-1271 | P 88-1272 |
| P 88-1273 | P 88-1274 | P 88-1275 | P 88-1276 |
| P 88-1277 | P 88-1278 | P 88-1293 | P 88-1303 |
| P 88-1304 | P 88-1367 | P 88-1377 | P 88-1403 |
| P 88-1425 | P 88-1426 | P 88-1439 | P 88-1440 |
| P 88-1443 | P 88-1446 | P 88-1460 | P 88-1473 |
| P 88-1514 | P 88-1529 | P 88-1543 | P 88-1559 |
| P 88-1564 | P 88-1567 | P 88-1568 | P 88-1616 |
| P 88-1617 | P 88-1618 | P 88-1619 | P 88-1620 |
| P 88-1621 | P 88-1622 | P 88-1623 | P 88-1630 |
| P 88-1631 | P 88-1632 | P 88-1647 | P 88-1648 |
| P 88-1653 | P 88-1657 | P 88-1658 | P 88-1682 |
| P 88-1686 | P 88-1690 | P 88-1691 | P 88-1697 |
| P 88-1698 | P 88-1718 | P 88-1730 | P 88-1732 |
| P 88-1735 | P 88-1739 | P 88-1740 | P 88-1742 |
| P 88-1748 | P 88-1751 | P 88-1753 | P 88-1761 |
| P 88-1763 | P 88-1774 | P 88-1783 | P 88-1786 |
| P 88-1801 | P 88-1802 | P 88-1805 | P 88-1807 |
| P 88-1809 | P 88-1811 | P 88-1813 | P 88-1816 |
| P 88-1823 | P 88-1831 | P 88-1832 | P 88-1839 |
| P 88-1844 | P 88-1850 | P 88-1856 | P 88-1857 |
| P 88-1889 | P 88-1896 | P 88-1922 | P 88-1937 |
| P 88-1938 | P 88-1940 | P 88-1945 | P 88-1958 |
| P 88-1958 | P 88-1960 | P 88-1971 | P 88-1980 |
| P 88-1982 | P 88-1984 | P 88-1985 | P 88-1995 |
| P 88-1999 | P 88-2000 | P 88-2001 | P 88-2002 |
| P 88-2009 | P 88-2013 | P 88-2022 | P 88-2043 |
| P 88-2069 | P 88-2077 | P 88-2093 | P 88-2094 |
| P 88-2100 | P 88-2107 | P 88-2108 | P 88-2110 |
| P 88-2112 | P 88-2116 | P 88-2132 | P 88-2133 |
| P 88-2139 | P 88-2145 | P 88-2148 | P 88-2159 |
| P 88-2180 | P 88-2169 | P 88-2174 | P 88-2175 |
| P 88-2177 | P 88-2179 | P 88-2180 | P 88-2181 |
| P 88-2188 | P 88-2191 | P 88-2195 | P 88-2196 |
| P 88-2204 | P 88-2210 | P 88-2212 | P 88-2213 |
| P 88-2228 | P 88-2229 | P 88-2230 | P 88-2231 |
| P 88-2236 | P 88-2237 | P 88-2271 | P 88-2273 |
| P 88-2275 | P 88-2285 | P 88-2286 | P 88-2293 |
| P 88-2294 | P 88-2295 | P 88-2296 | P 88-2297 |
| P 88-2298 | P 88-2313 | P 88-2328 | P 88-2330 |
| P 88-2331 | P 88-2332 | P 88-2333 | P 88-2334 |
| P 88-2341 | P 88-2343 | P 88-2344 | P 88-2349 |
| P 88-2351 | P 88-2359 | P 88-2364 | P 88-2365 |
| P 88-2367 | P 88-2380 | P 88-2389 | P 88-2398 |
| P 88-2399 | P 88-2403 | P 88-2404 | P 88-2405 |
| P 88-2407 | P 88-2417 | P 88-2418 | P 88-2419 |
| P 88-2420 | P 88-2422 | P 88-2434 | P 88-2435 |
| P 88-2436 | P 88-2437 | P 88-2458 | P 88-2463 |
| P 88-2469 | P 88-2470 | P 88-2473 | P 88-2481 |
| P 88-2484 | P 88-2487 | P 88-2505 | P 88-2515 |
| P 88-2518 | P 88-2529 | P 88-2530 | P 88-2531 |
| P 88-2536 | P 88-2540 | P 88-2561 | P 88-2562 |
| P 88-2563 | P 88-2564 | P 88-2566 | P 88-2567 |
| P 88-2568 | P 88-2571 | P 88-2575 | P 88-2576 |
| P 88-2578 | P 88-2582 | P 88-2587 | P 88-2597 |
| P 88-2598 | P 88-2599 | P 88-2608 | P 88-2613 |
| P 88-2614 | P 88-2617 | P 88-2620 | P 88-2627 |
| P 88-2631 | P 88-2632 | P 88-2633 | P 89-0030 |
| P 89-0031 | P 89-0038 | P 89-0039 | P 89-0044 |
| P 89-0049 | P 89-0050 | P 89-0051 | P 89-0054 |
| P 89-0061 | P 89-0066 | P 89-0069 | P 89-0070 |
| P 89-0071 | P 89-0072 | P 89-0073 | P 89-0076 |
| P 89-0077 | P 89-0078 | P 89-0084 | P 89-0085 |
| P 89-0089 | P 89-0090 | P 89-0091 | P 89-0092 |
| P 89-0097 | P 89-0098 | P 89-0099 | P 89-0101 |
| P 89-0102 | P 89-0103 | P 89-0105 | P 89-0106 |
| P 89-0108 | P 89-0109 | P 89-0112 | P 89-0113 |
| P 89-0114 | P 89-0115 | P 89-0116 | P 89-0117 |
| P 89-0122 | P 89-0123 | P 89-0129 | P 89-0133 |
| P 89-0134 | P 89-0136 | P 89-0137 | P 89-0138 |
| P 89-0139 | P 89-0140 | P 89-0141 | P 89-0142 |
| P 89-0143 | P 89-0144 | P 89-0145 | P 89-0146 |
| P 89-0147 | P 89-0148 | P 89-0149 | P 89-0150 |
| P 89-0151 | P 89-0152 | P 89-0153 | P 89-0154 |
| P 89-0155 | P 89-0156 | P 89-0157 | P 89-0158 |
| P 89-0159 | P 89-0160 | P 89-0161 | P 89-0162 |
| P 89-0163 | P 89-0164 | P 89-0165 | P 89-0167 |
| P 89-0196 | P 89-0199 | P 89-0200 | P 89-0201 |
| P 89-0212 | P 89-0213 | Y 88-0286 | Y 88-0287 |
| Y 88-0288 | Y 88-0289 | Y 88-0301 | Y 88-0313 |



| | | | |
|---|---|---|---|
| Y 88-0315 | Y 88-0316 | Y 88-0319 | Y 88-0320 |
| Y 88-0321 | Y 88-0322 | Y 88-0323 | Y 88-0324 |
| Y 88-0325 | Y 88-0326 | Y 88-0353 | Y 88-0353 |
| Y 88-0354 | Y 89-0011 | Y 89-0012 | Y 89-0016 |
| Y 89-0017 | Y 89-0018 | Y 89-0019 | Y 89-0020 |
| Y 89-0024 | Y 89-0026 | Y 89-0027 | Y 89-0028 |
| Y 89-0029 | Y 89-0030 | Y 89-0031 | Y 89-0032 |

III. 664 PREMANUFACTURE NOTICES AND EXEMPTION REQUEST FOR WHICH THE NOTICE REVIEW PERIOD HAS ENDED DURING THE MONTH. (EXPIRATION OF THE NOTICE REVIEW PERIOD DOES NOT SIGNIFY THAT THE CHEMICAL HAS BEEN ADDED TO THE INVENTORY).

PMN No.

| | | | |
|---|---|---|---|
| P 87-0090 | P 87-0326 | P 87-0830 | P 87-0831 |
| P 88-0388 | P 88-0715 | P 88-1109 | P 88-1205 |
| P 88-1219 | P 88-1283 | P 88-1387 | P 88-1611 |
| P 88-1677 | P 88-1700 | P 88-1727 | P 88-1928 |
| P 88-1929 | P 88-1930 | P 88-1932 | P 88-1933 |
| P 88-1934 | P 88-1935 | P 88-1936 | P 88-1939 |
| P 88-1941 | P 88-1942 | P 88-1943 | P 88-1944 |
| P 88-1945 | P 88-1946 | P 88-1947 | P 88-1948 |
| P 88-1949 | P 88-1950 | P 88-1951 | P 88-1952 |
| P 88-1953 | P 88-1954 | P 88-1955 | P 88-1957 |
| P 88-1959 | P 88-1960 | P 88-1961 | P 88-1962 |
| P 88-1963 | P 88-1964 | P 88-1965 | P 88-1966 |
| P 88-1967 | P 88-1968 | P 88-1969 | P 88-1970 |
| P 88-1971 | P 88-1972 | P 88-1973 | P 88-1974 |
| P 88-1976 | P 88-1977 | P 88-1978 | P 88-1979 |
| P 88-1981 | P 88-1983 | P 88-1986 | P 88-1987 |
| P 88-1988 | P 88-1989 | P 88-1990 | P 88-1991 |
| P 88-1992 | P 88-1993 | P 88-1994 | P 88-1996 |
| P 88-1997 | P 88-1998 | P 88-2003 | P 88-2004 |
| P 88-2005 | P 88-2006 | P 88-2007 | P 88-2006 |
| P 88-2010 | P 88-2011 | P 88-2012 | P 88-2013 |
| P 88-2014 | P 88-2015 | P 88-2016 | P 88-2017 |
| P 88-2018 | P 88-2019 | P 88-2020 | P 88-2021 |
| P 88-2023 | P 88-2024 | P 88-2025 | P 88-2026 |
| P 88-2027 | P 88-2028 | P 88-2029 | P 88-2030 |
| P 88-2031 | P 88-2032 | P 88-2033 | P 88-2034 |
| P 88-2035 | P 88-2036 | P 88-2037 | P 88-2038 |
| P 88-2039 | P 88-2040 | P 88-2041 | P 88-2042 |
| P 88-2043 | P 88-2044 | P 88-2045 | P 88-2046 |
| P 88-2047 | P 88-2048 | P 88-2049 | P 88-2050 |
| P 88-2051 | P 88-2052 | P 88-2053 | P 88-2054 |
| P 88-2055 | P 88-2056 | P 88-2057 | P 88-2058 |
| P 88-2059 | P 88-2060 | P 88-2061 | P 88-2062 |
| P 88-2063 | P 88-2064 | P 88-2065 | P 88-2066 |
| P 88-2067 | P 88-2068 | P 88-2070 | P 88-2071 |
| P 88-2072 | P 88-2073 | P 88-2074 | P 88-2075 |
| P 88-2076 | P 88-2077 | P 88-2078 | P 88-2079 |
| P 88-2080 | P 88-2081 | P 88-2082 | P 88-2083 |
| P 88-2084 | P 88-2085 | P 88-2086 | P 88-2087 |
| P 88-2088 | P 88-2089 | P 88-2090 | P 88-2091 |
| P 88-2092 | P 88-2093 | P 88-2094 | P 88-2095 |
| P 88-2096 | P 88-2097 | P 88-2098 | P 88-2099 |
| P 88-2101 | P 88-2102 | P 88-2103 | P 88-2104 |
| P 88-2105 | P 88-2106 | P 88-2107 | P 88-2108 |
| P 88-2109 | P 88-2111 | P 88-2113 | P 88-2114 |
| P 88-2115 | P 88-2116 | P 88-2117 | P 88-2118 |
| P 88-2119 | P 88-2120 | P 88-2121 | P 88-2122 |
| P 88-2123 | P 88-2124 | P 88-2125 | P 88-2126 |
| P 88-2127 | P 88-2128 | P 88-2129 | P 88-2130 |
| P 88-2131 | P 88-2134 | P 88-2135 | P 88-2136 |
| P 88-2137 | P 88-2138 | P 88-2140 | P 88-2141 |
| P 88-2142 | P 88-2143 | P 88-2144 | P 88-2146 |
| P 88-2147 | P 88-2149 | P 88-2150 | P 88-2151 |
| P 88-2152 | P 88-2153 | P 88-2154 | P 88-2155 |
| P 88-2156 | P 88-2157 | P 88-2158 | P 88-2159 |
| P 88-2161 | P 88-2162 | P 88-2163 | P 88-2164 |
| P 88-2165 | P 88-2166 | P 88-2167 | P 88-2168 |
| P 88-2170 | P 88-2171 | P 88-2172 | P 88-2173 |
| P 88-2174 | P 88-2176 | P 88-2178 | P 88-2182 |
| P 88-2183 | P 88-2184 | P 88-2185 | P 88-2186 |
| P 88-2187 | P 88-2189 | P 88-2190 | P 88-2191 |
| P 88-2192 | P 88-2193 | P 88-2194 | P 88-2195 |
| P 88-2197 | P 88-2198 | P 88-2199 | P 88-2200 |
| P 88-2201 | P 88-2202 | P 88-2203 | P 88-2205 |
| P 88-2206 | P 88-2207 | P 88-2208 | P 88-2209 |
| P 88-2211 | P 88-2214 | P 88-2216 | P 88-2218 |
| P 88-2219 | P 88-2220 | P 88-2222 | P 88-2223 |
| P 88-2224 | P 88-2225 | P 88-2226 | P 88-2227 |
| P 88-2232 | P 88-2233 | P 88-2234 | P 88-2235 |
| P 88-2238 | P 88-2239 | P 88-2240 | P 88-2241 |
| P 88-2242 | P 88-2243 | P 88-2244 | P 88-2245 |
| P 88-2246 | P 88-2247 | P 88-2248 | P 88-2249 |
| P 88-2250 | P 88-2251 | P 88-2252 | P 88-2253 |
| P 88-2254 | P 88-2255 | P 88-2256 | P 88-2257 |
| P 88-2258 | P 88-2259 | P 88-2260 | P 88-2261 |
| P 88-2262 | P 88-2263 | P 88-2264 | P 88-2265 |
| P 88-2266 | P 88-2267 | P 88-2268 | P 88-2269 |
| P 88-2270 | P 88-2272 | P 88-2274 | P 88-2276 |
| P 88-2277 | P 88-2278 | P 88-2279 | P 88-2280 |
| P 88-2281 | P 88-2282 | P 88-2283 | P 88-2284 |
| P 88-2287 | P 88-2288 | P 88-2289 | P 88-2290 |
| P 88-2291 | P 88-2292 | P 88-2299 | P 88-2300 |
| P 88-2301 | P 88-2302 | P 88-2303 | P 88-2304 |
| P 88-2305 | P 88-2306 | P 88-2307 | P 88-2308 |
| P 88-2309 | P 88-2310 | P 88-2311 | P 88-2312 |
| P 88-2313 | P 88-2314 | P 88-2315 | P 88-2316 |
| P 88-2317 | P 88-2318 | P 88-2319 | P 88-2320 |
| P 88-2321 | P 88-2322 | P 88-2323 | P 88-2324 |
| P 88-2325 | P 88-2326 | P 88-2327 | P 88-2329 |
| P 88-2335 | P 88-2336 | P 88-2337 | P 88-2338 |
| P 88-2339 | P 88-2340 | P 88-2342 | P 88-2344 |
| P 88-2345 | P 88-2346 | P 88-2347 | P 88-2348 |
| P 88-2350 | P 88-2351 | P 88-2352 | P 88-2353 |
| P 88-2354 | P 88-2355 | P 88-2356 | P 88-2357 |
| P 88-2358 | P 88-2360 | P 88-2361 | P 88-2362 |
| P 88-2363 | P 88-2364 | P 88-2366 | P 88-2368 |
| P 88-2369 | P 88-2370 | P 88-2371 | P 88-2372 |
| P 88-2373 | P 88-2374 | P 88-2375 | P 88-2376 |
| P 88-2377 | P 88-2378 | P 88-2379 | P 88-2381 |
| P 88-2382 | P 88-2383 | P 88-2384 | P 88-2385 |
| P 88-2386 | P 88-2387 | P 88-2388 | P 88-2390 |
| P 88-2391 | P 88-2392 | P 88-2393 | P 88-2394 |
| P 88-2395 | P 88-2396 | P 88-2397 | P 88-2400 |
| P 88-2401 | P 88-2402 | P 88-2403 | P 88-2404 |
| P 88-2406 | P 88-2408 | P 88-2409 | P 88-2410 |
| P 88-2411 | P 88-2412 | P 88-2413 | P 88-2414 |
| P 88-2415 | P 88-2416 | P 88-2417 | P 88-2418 |
| P 88-2419 | P 88-2420 | P 88-2421 | P 88-2423 |
| P 88-2424 | P 88-2425 | P 88-2426 | P 88-2427 |
| P 88-2428 | P 88-2429 | P 88-2430 | P 88-2431 |
| P 88-2432 | P 88-2433 | P 88-2438 | P 88-2439 |
| P 88-2440 | P 88-2441 | P 88-2442 | P 88-2443 |
| P 88-2444 | P 88-2445 | P 88-2446 | P 88-2447 |
| P 88-2448 | P 88-2449 | P 88-2450 | P 88-2451 |
| P 88-2452 | P 88-2453 | P 88-2454 | P 88-2455 |
| P 88-2456 | P 88-2457 | P 88-2458 | P 88-2459 |
| P 88-2460 | P 88-2461 | P 88-2462 | P 88-2464 |
| P 88-2465 | P 88-2466 | P 88-2467 | P 88-2466 |
| P 88-2471 | P 88-2472 | P 88-2474 | P 88-2475 |
| P 88-2476 | P 88-2477 | P 88-2478 | P 88-2479 |
| P 88-2480 | P 88-2481 | P 88-2482 | P 88-2483 |
| P 88-2485 | P 88-2486 | P 88-2486 | P 88-2489 |
| P 88-2490 | P 88-2491 | P 88-2492 | P 88-2493 |
| P 88-2494 | P 88-2495 | P 88-2496 | P 88-2497 |
| P 88-2498 | P 88-2499 | P 88-2500 | P 88-2501 |
| P 88-2502 | P 88-2503 | P 88-2504 | P 88-2505 |
| P 88-2506 | P 88-2507 | P 88-2508 | P 88-2509 |
| P 88-2510 | P 88-2511 | P 88-2512 | P 88-2513 |
| P 88-2514 | P 88-2516 | P 88-2517 | P 88-2519 |
| P 88-2520 | P 88-2521 | P 88-2522 | P 88-2523 |
| P 88-2524 | P 88-2525 | P 88-2526 | P 88-2527 |
| P 88-2528 | P 88-2531 | P 88-2532 | P 88-2533 |
| P 88-2534 | P 88-2535 | P 88-2537 | P 88-2538 |
| P 88-2539 | P 88-2541 | P 88-2542 | P 88-2543 |
| P 88-2544 | P 88-2545 | P 88-2546 | P 88-2547 |
| P 88-2548 | P 88-2549 | P 88-2550 | P 88-2551 |
| P 88-2552 | P 88-2553 | P 88-2554 | P 88-2555 |
| P 88-2556 | P 88-2557 | P 88-2558 | P 88-2559 |
| P 88-2560 | P 88-2565 | P 88-2567 | P 88-2569 |
| P 88-2570 | P 88-2572 | P 88-2573 | P 88-2574 |
| P 88-2577 | P 88-2578 | P 88-2579 | P 88-2580 |
| P 88-2581 | P 88-2583 | P 88-2584 | P 88-2585 |
| P 88-2586 | P 88-2588 | P 88-2589 | P 88-2590 |
| P 88-2591 | P 88-2592 | P 88-2593 | P 88-2594 |
| P 88-2595 | P 88-2596 | P 88-2600 | P 88-2601 |
| P 88-2602 | P 88-2603 | P 88-2604 | P 88-2605 |
| P 88-2606 | P 88-2607 | P 88-2609 | P 88-2610 |
| P 88-2611 | P 88-2612 | P 88-2613 | P 88-2615 |
| P 88-2616 | P 88-2617 | P 88-2618 | P 88-2619 |
| P 88-2621 | P 88-2622 | P 88-2623 | P 88-2624 |
| P 88-2625 | P 88-2626 | P 88-2627 | P 88-2628 |
| P 88-2629 | P 88-2630 | P 88-2634 | P 88-2635 |
| P 88-2636 | P 88-2637 | P 88-2638 | P 88-2639 |
| P 88-2640 | P 88-2641 | P 88-2642 | P 88-2643 |
| P 88-2644 | P 88-2645 | P 89-0001 | P 89-0012 |
| P 89-0016 | P 89-0019 | P 89-0026 | P 89-0027 |
| P 89-0028 | P 89-0029 | P 89-0032 | P 89-0136 |
| P 89-0137 | P 89-0138 | P 89-0139 | P 89-0140 |
| P 89-0141 | P 89-0142 | P 89-0143 | P 89-0144 |
| P 89-0145 | P 89-0146 | P 89-0147 | P 89-0148 |
| P 89-0149 | P 89-0150 | P 89-0151 | P 89-0152 |
| P 89-0153 | P 89-0154 | P 89-0155 | P 89-0156 |
| P 89-0157 | P 89-0158 | P 89-0159 | P 89-0160 |
| P 89-0161 | P 89-0162 | P 89-0163 | P 89-0164 |
| P 89-0165 | P 89-0212 | P 89-0213 | Y 88-0030 |
| Y 89-0033 | Y 89-0034 | Y 89-0035 | Y 89-0036 |

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IV. 37 Chemical Substances for Which EPA Has Received Notices of Commencement To Manufacture

| PMN No. | Identity/generic name | Date of commencement |
|---|---|---|
| P 85-0356 | G Alcohol sulfate, lithium salt | Apr. 15, 1985. |
| P 85-0910 | G Aliphatic, aromatic copolyester | Oct. 5, 1985. |
| P 86-0411 | G Substituted alkyl benzotriazole | Nov. 17, 1986. |
| P 86-0412 | G Substituted alkyl benzotriazole | Nov. 17, 1986. |
| P 86-1138 | Substituted naphthalene disazo dye | Jan. 23, 1987. |
| P 86-1139 | G Substituted naphthalene trisazo dye | Jan. 23, 1987. |
| P 86-1191 | G 5-acetyl-1,2,3,4-tetrahydronaphthalene | Oct. 13, 1988. |
| P 86-1319 | G (Halo substituted phenol) substituted aryl)-butan amide | Nov. 18, 1988. |
| P 86-1440 | G C.I. disperse yellow 149 | Nov. 2, 1988. |
| P 86-1739 | G Acrylylalkyl substituted benzenepolyolcarboxylic acid derivative | Dec. 11, 1987. |
| P 87-0212 | G Amine functional poly dimethyl siloxane | May 27, 1987. |
| P 87-0448 | G Polyether polyurethane | Apr. 20, 1988 |
| P 87-1010 | G Substituted diphenyl pyrazoline | Dec. 6, 1988. |
| P 88-0526 | G Polyarylphenol ethoxylate | Nov. 1, 1988. |
| P 88-0529 | G Polyarylphenol ethoxylate | Nov. 1, 1988. |
| P 88-0531 | G Polyarylphenol ethoxylate | Nov. 1, 1988. |
| P 88-0579 | G Calcium salt of glycine derivative | Nov. 10, 1988. |
| P 88-1027 | G Polyester of neopentyl glycol | Nov. 18, 1988. |
| P 88-1050 | G Alkenyl dicarboxylic acid monoester, zinc salt | Nov. 15, 1988. |
| P 88-1213 | G Bisphenol A glycidyl ether, polyglycol reaction product | Nov. 14, 1988. |
| P 88-1247 | 3-(Methoxyphenol)-3-oxopropanoic acid, methyl ester | July 26, 1988. |
| P 88-1248 | G Substituted-alkylamino substituted-benzoic acid derivative | Aug. 15, 1988. |
| P 88-1546 | Xylene-formaldehyde polymer, reaction with rosin | Sept. 10, 1988. |
| P 88-1637 | G (Heteropolycyclic)heteropo ycyclic sulfonamide, potassium salt | Nov. 23, 1988. |
| P 88-1639 | G (Heteropolycyclic)heteropo ycyclic sulfonamide | Nov. 10, 1988. |
| P 88-1720 | G Sulfurized polyolefin | Nov. 22, 1988. |
| P 88-1745 | G Alkoxylated dialkyl-diethylene triamine,alkyl sulfate salt | Dec. 2, 1988. |
| P 88-1770 | G Polysulfide phenolic resin adduct | Nov. 16, 1988. |
| P 88-1784 | G Isocyanate reaction with cyclic primary amines and alkylamines | Nov. 15, 1988. |
| P 88-1834 | G Bisphenol A polycarbonate aryl end capped | Nov. 14, 1988. |
| P 88-1852 | G Polymer of polyalkyleneamine and acrylamide acid salt | Nov. 21, 1988. |
| P 88-1876 | G Ester imide-aldehyde | Nov. 22, 1988. |
| P 88-1916 | G Polyurethane resin | Dec. 13, 1988. |
| P 88-1943 | G Ester-aldehyde | Dec. 7, 1988. |
| Y 87-0086 | G Water-reducible methacryl-styrene copolymer | Apr. 20, 1987. |
| Y 88-0326 | G Organopolysiloxane copolymer | Nov. 27, 1988. |
| Y 88-0355 | G Polyester polyol | Nov. 4, 1988. |

V. 124 Premanufacture Notices for Which the Period Has Been Suspended

| PMN No. | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| P 86-0065 | P 86-0066 | P 86-0067 | P 86-0225 | P 88-2179 | P 88-2180 | P 88-2181 | P 88-2186 | P 88-2436 | P 88-2437 | P 88-2463 | P 88-2469 |
| P 88-0900 | P 88-1006 | P 88-1221 | P 88-1303 | P 88-2198 | P 88-2204 | P 88-2210 | P 88-2212 | P 88-2470 | P 88-2473 | P 88-2484 | P 88-2487 |
| P 88-1425 | P 88-1426 | P 88-1446 | P 88-1460 | P 88-2213 | P 88-2228 | P 88-2229 | P 88-2230 | P 88-2529 | P 88-2530 | P 88-2536 | P 88-2540 |
| P 88-1617 | P 88-1623 | P 88-1753 | P 88-1761 | P 88-2236 | P 88-2271 | P 88-2275 | P 88-2285 | P 88-2561 | P 88-2562 | P 88-2563 | P 88-2564 |
| P 88-1763 | P 88-1896 | P 88-1937 | P 88-1938 | P 88-2288 | P 88-2293 | P 88-2294 | P 88-2295 | P 88-2566 | P 88-2568 | P 88-2571 | P 88-2575 |
| P 88-1940 | P 88-1958 | P 88-1980 | P 88-1982 | P 88-2296 | P 88-2297 | P 88-2298 | P 88-2328 | P 88-2576 | P 88-2582 | P 88-2587 | P 88-2808 |
| P 88-1984 | P 88-1985 | P 88-1996 | P 88-2002 | P 88-2330 | P 88-2331 | P 88-2332 | P 88-2333 | P 88-2614 | P 88-2620 | P 88-2631 | P 88-2632 |
| P 88-2008 | P 88-2009 | P 88-2013 | P 88-2022 | P 88-2334 | P 88-2341 | P 88-2343 | P 88-2349 | P 88-2633 | P 89-0090 | P 89-0091 | P 89-0181 |
| P 88-2069 | P 88-2100 | P 88-2110 | P 88-2112 | P 88-2359 | P 88-2365 | P 88-2367 | P 88-2380 | P 89-0196 | P 89-0199 | P 89-0200 | P 89-0201 |
| P 88-2132 | P 88-2133 | P 88-2145 | P 88-2146 | P 88-2389 | P 88-2396 | P 88-2399 | P 88-2405 | | | | |
| P 88-2160 | P 88-2169 | P 88-2175 | P 88-2177 | P 88-2407 | P 88-2422 | P 88-2434 | P 88-2435 | | | | |

[FR Doc. 89-3998 Filed 3-2-89; 8:45am]
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federal register

Friday
March 3, 1989

Part IV

# Office of Management and Budget

**Cumulative Report on Rescissions and Deferrals; Notice**

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**OFFICE OF MANAGEMENT AND BUDGET**

**Cumulative Report on Rescissions and Deferrals**

February 1, 1989.

This report is submitted in fulfillment of the requirements of section 1014(e) of the Impoundment Control Act of 1974 (Pub. L. 93-344). Section 1014(e) provides for a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to the Congress.

This report gives the status as of February 1, 1989 of six rescission proposals and 14 deferrals contained in the first three special messages of FY 1989. These messages were transmitted to the Congress by President Ronald Reagan on September 30 and November 29, 1988, and January 9, 1989.

**Rescissions (Table A and Attachment A)**

As of February 1, 1989, there were six rescission proposals transmitted by President Reagan and totaling $143.1 million pending before the Congress.

**Deferrals (Table B and Attachment B)**

As of February 1, 1989, $7,670.7 million in budget authority was being deferred from obligation. Attachment B shows the history and status of each deferral reported during FY 1989.

**Information From Special Messages**

The special messages containing information on the rescission proposals and deferrals covered by this cumulative report are printed in the **Federal Registers** listed below:

Vol. 53, FR p. 39879, Wednesday, October 12, 1988
Vol. 53, FR p. 49530, Wednesday, December 7, 1988
Vol. 54, FR p. 1650, Friday, January 13, 1989

Richard G. Darman,
*Director.*

BILLING CODE 3110-01-M



TABLE A

STATUS OF 1989 RESCISSIONS

| | Amount (In millions of dollars) |
|---|---|
| Rescissions proposed by President Reagan..... | 143.1 |
| Accepted by the Congress..... | 0 |
| Rejected by the Congress..... | 0 |
| Pending before the Congress..... | 143.1 |

**********

TABLE B

STATUS OF 1989 DEFERRALS

| | Amount (In millions of dollars) |
|---|---|
| Deferrals proposed by President Reagan..... | 8,942.5 |
| Routine Executive releases through February 1, 1989 (OMB/Agency releases of $1,277.9 million and cumulative adjustments of $6.0 million) | -1,271.9 |
| Overturned by the Congress..... | 0 |
| Currently before the Congress..... | 7,670.7 |

Attachments

Attachment A - Status of Rescissions - Fiscal Year 1989

| As of February 1, 1989<br>Amounts in Thousands of Dollars<br>Agency/Bureau/Account | Rescission Number | Amount Previously Considered by Congress | Amount Currently before Congress | Date of Message | Amount Rescinded | Amount Made Available | Date Made Available | Congression Action |
|---|---|---|---|---|---|---|---|---|
| DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT | | | | | | | | |
| Housing Programs: | | | | | | | | |
| Subsidized housing programs | R89-1 | | 20,000 | 1-9-89 | | | | |
| Community Planning and Development: | | | | | | | | |
| Urban development action grants | R89-2 | | 51,651 | 1-9-89 | | | | |
| DEPARTMENT OF THE INTERIOR | | | | | | | | |
| Fish and Wildlife Service: | | | | | | | | |
| Land acquisition | R89-3 | | 30,000 | 1-9-89 | | | | |
| National Park Service: | | | | | | | | |
| Land acquisition and State assistance | R89-4 | | 35,000 | 1-9-89 | | | | |
| DEPARTMENT OF JUSTICE | | | | | | | | |
| Office of Justice Programs: | | | | | | | | |
| Justice assistance | R89-5 | | 5,000 | 1-9-89 | | | | |
| DEPARTMENT OF LABOR | | | | | | | | |
| Employment Standards Administration: | | | | | | | | |
| Black lung disability trust fund | R89-6 | | 1,445 | 1-9-89 | | | | |
| TOTAL, RESCISSIONS | | | 143,096 | | | | | |

Attachment B - Status of Deferrals - Fiscal Year 1989

| As of February 1, 1989<br>Amounts in Thousands of Dollars<br>Agency/Bureau/Account | Deferral Number | Amount Transmitted Original Request | Amount Transmitted Subsequent Change (+) | Date of Message | Cumulative OMB/Agency Releases (-) | Congressionally Required Releases (-) | Congressional Action | Cumulative Adjustments (+) | Amount Deferred as of 2-1-89 |
|---|---|---|---|---|---|---|---|---|---|
| FUNDS APPROPRIATED TO THE PRESIDENT | | | | | | | | | |
| International Security Assistance | | | | | | | | | |
| Foreign military sales credit | D89-11 | 4,122,750 | | 11-29-88 | 750,000 | | | | 3,372,750 |
| Economic support fund | D89-01 | 592,760 | | 09-30-88 | | | | | |
| | D89-01A | | 2,054,000 | 11-29-88 | 469,913 | | | | 2,176,847 |
| Military assistance | D89-12 | 457,000 | | 11-29-88 | 9,000 | | | | 448,000 |
| International military education and training | D89-13 | 37,400 | | 11-29-88 | 37,400 | | | | 0 |
| Agency for International Development | | | | | | | | | |
| International disaster assistance | D89-14 | 18,125 | | 11-29-88 | 4,796 | | | | 13,329 |
| Special Assistance for Central America | | | | | | | | | |
| Promotion of stability and security in Central America | D89-2 | 1,000 | | 09-30-88 | | | | | 1,000 |
| DEPARTMENT OF AGRICULTURE | | | | | | | | | |
| Forest Service | | | | | | | | | |
| Expenses, brush disposal | D89-3 | 144,649 | | 09-30-88 | | 751 | | | 143,898 |
| Cooperative work | D89-4 | 335,263 | | 09-30-88 | | | | | 335,263 |
| DEPARTMENT OF DEFENSE - CIVIL | | | | | | | | | |
| Wildlife Conservation, Military Reservations | | | | | | | | | |
| Wildlife conservation, Defense | D89-5 | 1,212 | | 09-30-88 | | | | | 1,212 |
| DEPARTMENT OF ENERGY | | | | | | | | | |
| Power Marketing Administration | | | | | | | | | |
| Southwestern Power Administration, | | | | | | | | | |
| Operation and maintenance | D89-6 | 2,800 | | 09-30-88 | | | | | 2,800 |



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Attachment B - Status of Deferrals - Fiscal Year 1989

| As of February 1, 1989<br>Amounts in Thousands of Dollars<br>Agency/Bureau/Account | Deferral Number | Amount Transmitted Original Request | Amount Transmitted Subsequent Change (+) | Date of Message | Cumulative OMB/Agency Releases (-) | Congressionally Required Releases (-) | Congressional Action | Cumulative Adjustments (+) | Amount Deferred as of 2-1-89 |
|---|---|---|---|---|---|---|---|---|---|
| DEPARTMENT OF HEALTH AND HUMAN SERVICES | | | | | | | | | |
| Social Security Administration<br>Limitation on administrative expenses (construction) | D89-7 | 6,745 | | 09-30-88 | | | | | 6,745 |
| DEPARTMENT OF JUSTICE | | | | | | | | | |
| Office of Justice Programs<br>Crime victims fund | D89-8 | 90,000 | | 09-30-88 | | | | | 90,000 |
| DEPARTMENT OF STATE | | | | | | | | | |
| Bureau for Refugee Programs<br>United States emergency refugee and migration assistance fund, executive | D89-9<br>D89-9A | 26,135 | 27,000 | 09-30-88<br>11-29-88 | 6,001 | | | 6,001 | 53,135 |
| DEPARTMENT OF TRANSPORTATION | | | | | | | | | |
| Federal Aviation Administration<br>Facilities and equipment (Airport and airway trust fund) | D89-10<br>D89-10A | 823,608 | 202,084 | 09-30-88<br>11-29-88 | | | | | 1,025,692 |
| TOTAL, DEFERRALS | | 6,659,446 | 2,283,084 | | 1,277,860 | 0 | | 6,001 | 7,670,671 |

[FR Doc.89-4857 Filed 3-2-89; 8:45 am]

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Part V

# Department of Health and Human Services

Public Health Service

42 CFR Part 110

Vaccine Information Materials; Notice of Proposed Rulemaking

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**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Public Health Service**

**42 CFR Part 110**

**Vaccine Information Materials**

**AGENCY:** Public Health Service, Department of Health and Human Services.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Public Health Service is proposing a regulation to require vaccine information materials to be distributed by each health care provider who administers vaccine set forth in the Vaccine Injury table contained in Title XXI, section 2114 (42 U.S.C. 300aa–14) of the Public Health Service Act. The proposed regulation would constitute a new subpart A of 42 CFR Part 110—Vaccine Information Materials and would implement section 2126 of the Public Health Service Act which requires development and dissemination of such materials. The materials health care providers must distribute would be included as an appendix to Subpart A; drafts of these materials are attached.

**DATES:** Written comments are invited and must be received on or before May 31, 1989. Plans for a public hearing, to be held in Atlanta, Ga., will be announced through a notice in a subsequent issue of the **Federal Register**.

**ADDRESS:** Written comments should be addressed to the Director, Division of Immunization, Center for Prevention Services, Centers for Disease Control, Atlanta, Georgia 30333. Comments received will be available for public inspection between 8 a.m. and 4:30 p.m., Monday through Friday (except holidays) in Room 314, 1600 Tullie Circle, Atlanta, Georgia. All comments received during the comment period, both in written form and during the public hearing, will be considered in developing the final rule and vaccine information materials.

**FOR FURTHER INFORMATION CONTACT:** Walter A. Orenstein, M.D., Director, Division of Immunization, Center for Prevention Services, Centers for Disease Control, Atlanta, Georgia 30333.

**SUPPLEMENTARY INFORMATION:** This NPRM and the appended vaccine information materials implement Title XXI, section 2126 (42 U.S.C. 300aa–26). Title XXI was amended by Pub. L. 100–203, approved December 22, 1987. Section 2126 requires the Secretary to develop and disseminate information materials on the vaccines included in the Vaccine Injury Table. These vaccines include those which immunize against diphtheria, tetanus, and pertussis; measles, mumps, and rubella; and poliomyelitis. Health care providers must distribute these materials to adults about to receive any of the covered vaccines and to the legal representatives of any child about to receive a vaccine. This section requires that the materials be published in the **Federal Register**, and specifically requires that the materials be developed or revised by rule. During the past five months, CDC in consultation with the National Institutes of Health and the Food and Drug Administration, has developed the proposed draft materials. We invite comments on the proposal from health care providers, parent organizations, and other interested parties.

Section 2126 requires that information contained in the materials be presented in understandable terms and must include:

(1) The frequency, severity, and potential long-term effects of the disease to be prevented by the vaccine.

(2) The symptoms or reactions to the vaccine which, if they occur, should be brought to the immediate attention of the health care provider.

(3) Precautionary measures legal representatives should take to reduce the risk of any major adverse reactions to the vaccine that may occur.

(4) Early warning signs or symptoms to which legal representatives should be alert as possible precursors to such major adverse reactions.

(5) A description of the manner in which legal representatives should monitor such major adverse reactions, including a form on which reactions can be recorded to assist legal representatives in reporting information to appropriate authorities.

(6) A specification of when, how, and to whom legal representatives should report any major adverse reaction.

(7) The contraindications to (and bases for delay of) the administration of the vaccine.

(8) An identification of the groups, categories, or characteristics of potential recipients of the vaccine who may be at significantly higher risk of major adverse reaction to the vaccine than the general population.

(9) A summary of relevant State and Federal laws concerning the vaccine, including information on—

(A) The number of vaccinations required for school attendance and the schedule recommended for such vaccinations, and

(B) The availability of the Program, and

(10) such other relevant information as may be determined by the Secretary.

The contents of the appended material meets these requirements. It should be noted that numbers (6) and (9) above require input by each State on its (1) respective vaccine laws and regulation requirements, and (2) procedures for reporting of adverse reactions, both of which vary considerably from State to State. Since CDC plans to furnish States with a camera-ready copy of the final materials, current plans are to leave space in appropriate areas of the materials for insertion of the required State information.

After inserting State specific information, each State would then print and disseminate sufficient quantities of the materials to public health clinics and other health care providers for distribution with each dose of vaccine purchased under a consolidated Federal contract. The cost of printing and disseminating these information materials would be paid for using the funds appropriated specifically for patient/parent notification activities.

Health care providers using privately purchased vaccine will be expected to pay the printing costs for the vaccine information materials which they must distribute in accordance with the Act. However, the States would distribute single camera-ready copies of the materials to these providers to facilitate the distribution of the information materials with the privately purchased vaccine. This cost would also be paid for using the funds appropriated specifically for patient/parent notification activities.

CDC anticipates that the information materials will be presented in printed booklets to the legal representatives or those about to be immunized. Comment is invited on the format, comprehensibility, and length of materials, and particularly on the amount of time required for vaccine recipients, or their legal representatives, to read the materials before the vaccine can be administered. In addition, comment is invited on alternative means for meeting these requirements.

Future revisions in the information materials would be published as an amendment to this subpart A. CDC proposes to publish technical amendments by notice in the **Federal Register**, to be effective immediately. Substantive changes would be published as a final rule subject to comment.

The Secretary has determined that this proposed rule is not a "major rule" under Executive Order 12291. Thus, a regulatory impact analysis is not required because it will not:

(1) Have an annual effect on the economy of $100 million or more;



(2) Impose a major increase in costs or prices for consumers; individual industries; Federal, State or local government agencies; or geographic regions; or

(3) Result in significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The proposed regulation does not contain information collection requirements which would have to be approved by the Office of Management and Budget under the Paperwork Reduction Act. Section 321 of Pub. L. 99–660 waives the Paperwork Reduction Act for information required for the purpose of carrying out Title III of Pub. L. 99–660, The National Childhood Vaccine Injury Act of 1986 as amended (42 U.S.C. 300aa–1 et sec).

**List of Subjects in 42 CFR Part 110**

Child health, Compensation, Immunization, Vaccines, Vaccine compensation, and Vaccine information requirements.

For reasons stated in the preamble, Subchapter J, Part 110, Subpart A of Title 42 of the Code of Federal Regulations, is proposed to be added as set forth below.

Dated: September 23, 1988.
**Robert E. Windom,**
*Assistant Secretary for Health.*

Approved: November 7, 1988.
**Otis R. Bowen,**
*Secretary.*

**SUBCHAPTER J—NATIONAL VACCINE PROGRAM**

**PART 110—INFORMATION AND EDUCATION**

**Subpart A—Vaccine Information Materials**

Sec.
110.101 Applicability and purpose
110.102 Definitions
110.103 Provision of vaccine information materials
110.104 Revisions of vaccine information materials—Appendix A

**Appendices to Subpart A**

Appendix A (1)—Important Information About Diphtheria, Tetanus, and Pertussis and the Shots to Protect Against These Diseases
Appendix A (2)—Important Information About Measles, Mumps, and Rubella and the Shots to Protect Against These Diseases
Appendix A (3)—Important Information About Poliomyelitis (Polio) and the Vaccine Drops or Shots to Protect Against This Disease

**Authority:** Title XXI, section 2126 of the Public Health Service Act, as added November 14, 1986, P.L. 99–660, Title III, section 311(a), 100 Stat. 3775, and amended December 22, 1987, P.L. 100–203, Title IV, section 4302(b)(1), 101 Stat. 1330–221 (42 U.S.C. 300aa–26).

**Subpart A—Vaccine Information Materials**

**§ 110.101 Applicability and purpose.**

These regulations require health care providers to furnish vaccine information before administering a particular vaccine set forth in the Vaccine Injury Table. Section 2126 of the Act requires publication in the **Federal Register** of the vaccine information materials, the content of which is hereby attached at Appendix A.

**§ 110.102 Definitions.**

As used in this subpart:

"Act" means the Public Health Service Act as amended.

"Advisory Commission on Childhood Vaccine" means the Commission established under section 2119 of the Act.

"Health Care Provider" means any licensed health care professional, organization, or institution, whether public or private (including Federal, State, and local departments, agencies and instrumentalities) under whose authority a vaccine set forth in the Vaccine Injury Table is administered.

"Legal Representative" means a parent or an individual who qualifies as a legal guardian under State law.

"Manufacturer" means any corporation, organization, or institution, whether public or private (including Federal, State, and local departments, agencies, and instrumentalities), which manufactures, imports, processes, or distributes under its label any vaccine set forth in the Vaccine Injury Table. The term "manufacture" means to manufacture, import, process, or distribute a vaccine.

"Secretary" means the Secretary of Health and Human Services or any other officer or employee to whom the Secretary's authority has been delegated.

"Significant aggravation" means any change for the worse in a pre-existing condition which results in markedly greater disability, pain, or illness accompanied by substantial deterioration of health.

"State" means, in addition to the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, territories and possessions.

"Vaccine Injury Table" means the table set out in Section 2114 of the Act.

"Vaccine-related injury or death" means an illness, injury, condition, or death associated with one or more of the vaccines set forth in the Vaccine Injury Table, except that the term does not include an illness, injury, condition, or death associated with an adulterant or contaminant intentionally added to such a vaccine.

**§ 110.103 Provision of vaccine information materials.**

Vaccine information appearing at the end of this subpart, designated as Appendix A, has been developed in accordance with the requirements of section 2126 of the Act. Effective 6 months after the date of publication of this subpart as a final rule, each health care provider who administers a particular vaccine set forth in the Vaccine Injury Table shall provide a copy of the relevant information materials the contents of which appear in Appendix A to any adult to whom such provider intends to administer such vaccine and to the legal representative of any child to whom such provider intends to administer such vaccine. As an alternative, health care providers may provide other written materials meeting the information requirements of the law and accompanying regulations. Such materials shall be provided prior to the administration of such vaccine.

**§ 110.104 Revisions of vaccine information materials—Appendix A.**

(a) Technical revisions to Appendix A shall be made from time to time by the Secretary by publication of a notice in the **Federal Register**, and will be effective immediately.

(b) Substantive revisions and amendments shall be made by notice published in the **Federal Register** as a final rule subject to a 60 day comment period.

**Appendices to Subpart A**

**Appendix A(1)—Important Information About Diphtheria, Tetanus, and Pertussis and the Shots to Protect Against These Diseases**

This booklet gives information about:

- The diseases diphtheria, tetanus (lockjaw), and pertussis (whooping cough)
- Shots (vaccines) to keep people from catching these diseases
- Problems (reactions) that can follow a shot

—ways to try to prevent these problems
—problems that should be seen by a doctor at once

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—a way to help you record information about these problems
—how and where to report serious problems

• When certain shots should be delayed or not given

• Your State immunization requirements and laws

• A National program for claiming compensation for injuries or deaths caused by a vaccine

*What is Diphtheria?*

Diphtheria is a very serious disease that causes a sore throat, a low fever, chills, and a grayish film in the throat. The film can make it hard to swallow and breathe, and may cause suffocation.

If diphtheria is not treated soon enough, the diphtheria germs make a poison that can cause serious problems such as a paralysis and heart failure. About 1 out of every 10 people who get diphtheria dies of it. People who are sick with diphtheria or those with the diphtheria germ in the nose or throat pass the germ to others, by coughing and sneezing. Only a few cases of diphtheria have occurred in the United States over the past few years. This is because people have been given shots to protect them against this terrible disease.

*What is Tetanus?*

Tetanus (lockjaw) is a serious disease caused by a poison from the tetanus germ. It starts with a headache and having trouble opening the mouth and swallowing. Tetanus poison causes painful convulsions (fits, seizures).

Tetanus germs can be found just about everywhere; in dirt, dust, and animal droppings. Tetanus is not passed from one person to another. Tetanus germs get into the body through cuts or scratches, and, if these are not treated, the germs grow and make the poison.

Doctors must use powerful drugs and medicines to treat the disease. Tetanus lasts for weeks and those sick with it must stay in a hospital. There are about 70 cases of tetanus in the U.S. each year. Almost no cases occur in children or young adults. This is because most children and young adults are protected by shots. Most tetanus occurs in older adults because many older adults have not gotten the shots that they need to protect them from the disease. In the U.S. tetanus kills 3 out of every 10 people who get the disease.

*What is Pertussis?*

Pertussis (whooping cough) is a disease of the lungs. It is caused by a germ that is easily passed by those sick with the disease to others by coughing or sneezing. Pertussis causes spells of coughing that make it hard to eat, drink, or breathe. Many children with pertussis get pneumonia (as many as 1 out of every 6 with pertussis). As many as 1 out of every 50 children with pertussis may have convulsions (fits, seizures); and as many as 1 out of every 200 may have brain problems (encephalopathy).

In the U.S., 1,000 to 4,000 cases of pertussis are reported each year. Sixty percent of children 6 months to 4 years of age who catch pertussis have received fewer than 3 shots of pertussis vaccine that are recommended (see Pertussis Vaccine on page ——). Most cases of pertussis occur in children under 5 years old. This disease is most dangerous for young children, especially babies. Most babies with pertussis are so sick that they must go into the hospital. One out of every 100 babies with pertussis may die.

*Vaccines to Keep People from Getting Sick With Diphtheria, Tetanus, and Pertussis*

The best way to be protected against getting any of these 3 diseases is to get certain shots (vaccines).

*Diphtheria Vaccine* (also called Diphtheria Toxoid)—Provides substances (antitoxins) in the blood that are considered to provide protection in at least 95 percent of people who get 3 or more vaccine shots. After children get the first 3 shots, experts believe that 1 or 2 more shots before the 7th birthday will provide better and longer lasting protection. Adults should get a shot every 10 years after the first 3 shots.

*Tetanus Vaccine* (also called Tetanus Toxoid)—As used in the childhood vaccines, DTP (diphtheria, tetanus, and pertussis) and DT/Td (diphtheria and tetanus) provides substances (antitoxins) in the blood that are considered to provide protection in at least 95 percent of people who get 3 or more vaccine shots. Another type of tetanus vaccine ("fluid") may protect fewer people. After children get the first 3 shots, experts believe that 1 or 2 more shots before the 7th birthday will provide better and longer lasting protection. Adults should get a shot every 10 years after the first 3 shots.

*Pertussis Vaccine*—Protects 75 to 85 percent of children who get at least 3 shots. Because pertussis (whooping cough) is most common and most serious in babies, the 3 shots are best given in the first 6 months of life. Some states require a total of more than 3 shots. Experts believe that 1 or 2 more shots given by the 7th birthday will provide better and longer lasting protection. Children up to 7 years old should get the vaccine. People 7 years old and older should NOT get pertussis shots.

These vaccines are usually mixed together as DTP (diphtheria, tetanus, and pertussis), or DT/Td (diphtheria and tetanus). The usual shots given to babies and children up to 7 years old is DTP. A series of DTP shots provides good protection against diphtheria, tetanus, and pertussis.

Some children should delay getting the DTP shots (see When Should a Shot Be Delayed on page ——) or should not get the pertussis part of DTP (see When Should a Shot Not be Given on page ——). Those children who should not get the pertussis part need to get shots known as DT (diphtheria and tetanus) to protect them against diphtheria and tetanus (lockjaw) disease.

Children 7 years old and all older persons cannot get DTP or DT. Persons in these age groups who need protection against diphtheria and tetanus should receive shots known as Td (tetanus and diphtheria). The diphtheria (d) part of Td is specially made for older children and adults. The combined (Td) shot is recommended by experts, but some doctors still use a shot which has only tetanus vaccine.

*Problems Caused by Diphtheria, Tetanus, and Pertussis Vaccines*

Experts agree that the benefits of shots against diphtheria, tetanus, and pertussis are much greater than the problems from the shots.

• Diphtheria and Tetanus Vaccine(s) (DT, Td, Tetanus)

DT, Td, or tetanus shots cause few problems. They may cause some soreness, swelling, and redness where the shot was given and a little fever.

As with any drug or shot, there is a rare chance that a serious problem (serious allergic or nerve problem) or even death could occur. If a serious problem occurs, a doctor should be seen as soon as possible.

• Pertussis Vaccine (DTP, Pertussis

Most children will have a little fever, soreness and redness at the shot site, and will act cranky (upset) following a DTP or pertussis shot. This is usually caused by the pertussis part of the shot.

Much less often, a child may have a serious problem following a DTP shot. Some children may have a fever with a temperature of 105 °F or higher (1 in every 330 DTP shots). Some children will cry without stopping for 3 hours or longer (1 in every 100 DTP shots). A child may have an odd high-sounding cry (1 in every 900 DTP shots). Even less often, a child may have a convulsion (fit, seizure) (1 in every 1,750 DTP shots) or have an episode of shock-collapse (become blue, pale, limp and not responsive) (1 in every 1,750 DTP shots).



Very rarely, a child may have brain damage that lasts the rest of his or her life (1 in every 340,000 DTP shots). Anyone who has one of these serious problems after a DTP shot should NOT get another pertussis shot but may get the diphtheria and tetanus shots.

As with any drug or shot there is a rare chance that other serious problems (serious allergic or nerve problem) or even death could occur. If a serious problem occurs, a doctor should be seen as soon as possible. Most of the information about the cause of Sudden Infant Death Syndrome (SIDS) shows that DTP shots do not cause SIDS.

*When to Get Vaccine Shots and How Many a Child Should Get*

Experts recommend that children should get 5 shots of DTP by the time the child first goes to school. Usually the 1st shot is given when the baby is about 2 months old, the 2nd shot at about 4 months, the 3rd at about 6 months, the 4th when the baby is 15 to 18 months, and the 5th shot is given when the child is 4 to 6 years old. Those children who should not get DTP (see When Should a Shot Not Be Given on page——) should get DT instead. Children 7 years old and older who never had DTP or DT should get three shots of Td.

*When Should a Shot be Delayed?*

Any of these vaccine shots—

• *Should* be delayed for anyone who is sick with something more serious than a common cold, until that person is better or the doctor okays the shot.

• *Should* be delayed for anyone who has ever had a convulsion (fit, seizure) or other problem of the brain or nervous system until fully examined by a doctor. (see Other Things You Should Know or Do on page——)

• *May* be delayed for anyone taking a special treatment for cancer (x-ray or cancer drugs) or special drugs that make it hard for the body to fight infection (prednisone or steroids). A doctor needs to decide when and which shots to give.

*When Should a Shot Not Be Given?*

Children 7 years old and older and all adults should NOT get DTP, pertussis, or DT shots, but they may get Td or tetanus shots.

Some shots (vaccines) may cause serious problems in certain people. *If any of the problems listed below occurred after a shot, you should tell the person who is going to give the next vaccine shot.* Usually, one of the other vaccine shots (one without the part that may have caused the problem) can be given. These problems may occur especially after a shot with pertussis vaccine.

• An allergy problem within 24 hours after getting the shot, where there was a problem with breathing; swelling in the mouth, throat, or face; or hives (a skin rash).

• A temperature of 105°F or higher within 48 hours after getting the shot.

• An episode of shock-collapse (becoming blue or pale, limp and not responsive) within 48 hours after getting the shot.

• Crying for more than 3 hours without being able to stop the crying by feeding or holding the child, occurring within 48 hours after getting the shot.

• A high-sounding cry that is unusual for the child, within 48 hours after getting the shot.

• A convulsion (fit, seizure) or other serious problem of the brain or nervous system within 7 days after getting the shot.

*Other Things You Should Know or Do*

1. For children who are to get DTP or pertussis shots—The doctor or other person who is going to give a shot should be told about a *personal* or *family history* of convulsions (fits, seizures). If the child who is to get a DTP or pertussis shot has ever had a convulsion (fit, seizure) or has a close family member (brother, sister, or parent) who has ever had a convulsion, the chance that this child might have a convulsion after a DTP or pertussis shot goes up.

A doctor should fully examine any child who has had a convulsion and then decide which shot this child is to get. Because there is still some chance of getting pertussis and because the chance of a convulsion is very low, ALMOST ALL children who have had a convulsion unrelated to receipt of DTP or pertussis shots and ALL children with a history of convulsion in close family members should get DTP or pertussis shots.

You should talk with the doctor or other person who is going to give a shot about using medicines or other measures to stop fever from the shots. If a serious problem occurs, a doctor should be seen as soon as possible.

2. What are your State laws for these shots? (See State Immunization Requirements on page——)

3. Do you have any questions about the diseases and shots after reading or being told about the information in this booklet? You need to ask any questions you have! Ask these questions NOW, either of the doctor or of the person who is going to give the shot. Only after all questions are answered to your satisfaction should you decide whether to get the shot.

4. You should sign the form below (or a similar one) before receiving a shot. The people who give shots will keep the form that you sign or they will write in your record or their office record what shot was given, when the shot was given, the name of the company that made the vaccine, and the vaccine's special lot number.

I have read or have had explained to me the information in this booklet about diphtheria, tetanus (lockjaw), and pertussis (whooping cough) disease and DTP, Pertussis, DT, Td, and Tetanus vaccine shots. I have had a chance to ask questions which were answered to my satisfaction. I believe I understand the benefits and risks of the DTP, Pertussis, DT, Td, and Tetanus vaccine shots and ask that the vaccine checked below be given to me or to the person named below for whom I am authorized to make this request.

Vaccine to be given: DTP ——, Pertussis ——, DT ——, Td ——, Tetanus ——

*Information About Person to Receive Vaccine (Please Print)*

| Last Name | First Name | MI | Birthdate | Age |
|---|---|---|---|---|
| | | | | |

| Address: Street | City | County | State | Zip |
|---|---|---|---|---|
| | | | | |

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*Signature of person to receive vaccine or person authorized to make the request (parent or guardian):*
*Date*

X _____

*What to Do After Getting the Shot and if a Serious Problem Occurs After Getting the Shot*

• Most problems that occur after a DTP shot occur during the first few days. Therefore, the person getting the shot should be watched closely for at least 3 days.

• This form should be used to write down information about these and any other serious problems if they occur. It helps to get together the information you may need to report to a doctor.

Name of shot received _____
Date and time shot received _____

| PROBLEM | DATE | TIME | HOW LONG | DESCRIBE |
|---|---|---|---|---|
| Measured fever 105° or higher | | | | |
| Odd, high-sounding cry (squeal) | | | | |
| Crying without stopping for 3 hours or more | | | | |
| Shock-collapse (blue, pale, limp and not responsive) | | | | |
| Loss of consciousness (coma), paralysis, brain problem | | | | |
| Stopped breathing | | | | |
| Sudden problem with breathing or swallowing; swollen mouth or face; or hives (skin rash) | | | | |
| Any other serious problem | | | | |

• *If any of the problems listed on the form on page ____ occurs*, you should see a doctor as soon as possible. You should tell the doctor everything about the shot and describe the problem. Continue to write down information on the form.

• You also should call and report all the information you have written on the form to the doctor, person, or telephone number listed (see Information for Reporting of Problems Occurring After the Shot on page ____).

*What Else to do if You Believe that the Person Who Received the Vaccine Shot was Injured (Made Seriously Ill) or Died Because of Receiving the Vaccine*

The National Vaccine Injury Compensation Program provides a way for compensation of people who were injured (made seriously ill) or died because of receiving the vaccines you have just read or been told about. All claims for injuries (serious illnesses) or deaths related to the administration of these vaccines must be filed with the United States Claims Court. Information about the Compensation Program and about how to file a claim may be obtained from the

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(shown below is an example of how State immunization requirements and schedule may be written by each state)

**(State Seal/Name or Other Identification)**

*"State Name" Immunization Requirements*

STATE X law requires almost all children to get certain vaccines before they enter school. Before a child can attend school, proof that the child got the required vaccines must be shown. This proof must be a written record showing the month, day, and year of each shot, and the signature of the doctor or other person who gave each shot. Some children may not need to get certain shots.

*Vaccines Which are Now Required by State X Law*

• *Diphtheria, Tetanus, and Pertussis (DTP)*—4 vaccine shots for children under 7 years old

• *Tetanus and Diphtheria (Td)*—3 vaccine shots for children 7 years old and older

• *Polio*—3 doses of vaccine drops or shots for children under 18 years old

• *Measles*—1 shot of live virus vaccine given on or after the 1st birthday, or a blood titer of at least 1:8 (may be given with mumps and rubella vaccines as MMR vaccine)

• *Mumps*—1 shot of mumps vaccine given on or after the 1st birthday or a doctor's diagnosis of disease history (may be given with measles and rubella vaccines as MMR vaccine)

• *Rubella*—1 shot of rubella (German measles) vaccine given on or after the 1st birthday, or a blood titer of at least 1:8 (may be given with measles and mumps vaccine as MMR vaccine)

*Who May be Exempted from Getting Vaccines Required by State X:*

The following reasons may exempt some children from having to get certain vaccines that are usually required by State X immunization law.
(enter summary of exemptions allowed by State X e.g., medical, religious, and philosophical.)

*Information for Reporting of Problems Occurring After a Shot*

If the person who got a vaccine shot has a serious problem after the shot, you should report the problem to the doctor or other person who gave the shot, in addition to seeing a doctor.

Report the problem to:

**Appendix A (2)—Important Information About Measles, Mumps, and Rubella and the Shots to Protect Against These Diseases**

This booklet gives information about:
• The diseases measles, mumps, and rubella (German measles)
• Shots (vaccines) to keep people from catching these diseases
• Problems (reactions) that can follow a shot
—ways to try to prevent these problems,
—problems that should be seen by a doctor at once
—a way to help you record information about these problems
—how and where to report serious problems
• When certain shots should not be given until you check with a doctor
• Your State immunization requirements and laws
• A National program of compensation for injuries or deaths caused by a vaccine

*What is Measles?*

Measles is the most serious of the common childhood diseases. Usually it causes a rash, high fever, cough, runny nose, and watery eyes lasting 1 to 2 weeks. Sometimes it is more serious. It causes an ear infection or pneumonia in nearly 1 out of every 10 children who catch it. About 1 out of every 1,000 children who catch measles will have an inflammation of the brain (encephalitis).

This problem can cause convulsions (fits, seizures), loss of hearing, or mental retardation. About 1 out of every 10,000 children who catch measles dies from it. Measles can also cause a pregnant woman to lose her baby or have it born too early.

People catch measles by breathing in the measles germs. These germs are passed on to others by people who have measles when they cough, sneeze, or just talk. Measles is so easy to catch that before measles vaccine was available, almost all children caught this disease by the time they were 15 years old.

Before measles shots were available, there were hundreds of thousands of measles cases and hundreds of deaths caused by measles in the United States every year. Now, wide use of the measles vaccine has almost caused measles to disappear from the United States. However, if children don't get the measles vaccine, they have a good chance of catching measles when they are still children or when they are older, when it might be even more serious.



*What is Mumps?*

Mumps is a common disease of children. Most of the time it causes a child who catches it to have a fever and headaches. It also causes a swelling of the salivary glands in the jaw, which then makes the cheeks swell. Sometimes mumps can be more serious. About 1 out of every 10 persons who catch mumps has a problem with the coverings of the brain and the spinal cord (meningitis). Even less often, persons with mumps can have a problem (inflammation) of the brain itself (encephalitis) which usually goes away without leaving a lifelong problem. Mumps can also cause people to lose their hearing. About 1 out of every 4 teenage boys or adult men who catch mumps gets a swelling of his testicles. Although this is painful, it rarely keeps them from being able to father a child.

People catch mumps by breathing in the mumps germs. These germs are passed on to others by people who have mumps when they cough, sneeze, or just talk.

Before mumps shots were available, almost all children caught mumps before they were grown. Now, because of the wide use of mumps vaccine, there are a lot fewer cases. However, if children don't get the mumps vaccine, they have a good chance of catching mumps when they are still children or when they are older. When teenagers and adults have mumps their illness is usually more serious and causes more complications than when children have it.

*What is Rubella?*

Rubella, also called German measles, is a common disease of children. But, it can also be caught by adults. Most of the time, rubella is a mild disease that causes a low fever, rash, and a swelling of glands in the neck. The sickness lasts for about 3 days. Sometimes, mostly in adult women, rubella may cause a swelling and soreness of the joints for a week or two. Very rarely, rubella can cause a problem (inflammation) of the brain (encephalitis) or cause a problem of bleeding under the skin (purpura) which usually lasts for only a few days.

The worst problem with rubella is when women who are pregnant get this disease. As many as one half of these women may lose their babies or have babies that are born crippled, blind, or with other serious health problems. The last big outbreak of rubella in the United States was in 1964. This was before there was a shot against rubella. Because of that outbreak, about 20,000 babies were born with serious health problems. Many were born deaf or blind, had heart damage, or had lifelong brain problems. These terrible health problems occurred because the mothers of these babies caught rubella during their pregnancy.

Rubella is very easy to catch. People catch rubella by breathing in the rubella germs. These germs are passed on to others by people who have rubella when they cough, sneeze, or just talk.

Before we had rubella shots, there was so much rubella around that most children caught the disease by the time they were 15 years old. Now, because of the wide use of rubella vaccine, there are fewer cases of the disease. However, if children don't get the rubella vaccine, they have a very good chance of catching rubella and maybe even passing it on to a pregnant women. Also, girls could catch it after they grow up and are pregnant themselves.

Since rubella is a mild disease, many adult women don't remember if they had a case of rubella when they were younger. About 1 out of every 5 women who are at an age to have children are still not protected against rubella.

*Vaccines To Keep People From Getting Sick With Measles, Mumps, and Rubella*

The best way to be protected against getting any of these 3 diseases is to get certain shots (vaccines).

*Measles Vaccine*—Protects at least 90 out of every 100 people who get the shot if they are at least 1 year old when they get the vaccine. This protection against measles is probably lifelong. Experts believe measles vaccine will protect even better if it is given when a child is 15 months old or older.

*Mumps Vaccine*—Protects at least 90 out of every 100 people who get the shot if they are at least 1 year old when they get the vaccine. This protection against mumps is probably lifelong.

*Rubella Vaccine*—Protects at least 90 out of every 100 people who get the shot if they are at least 1 year old when they get the vaccine. This protection against rubella is probably lifelong.

Only one shot of each of these vaccines is needed to give good protection. These vaccines are usually mixed together as MMR (measles, mumps, and rubella). But they also are available mixed as MR (measles and rubella) and RM (rubella and mumps), or as separate shots of measles or mumps or rubella.

Experts agree that these shots are safe for people who are already protected against measles, mumps, or rubella but who do not know it. Blood tests to measure protection are not necessary before any of the shots are given.

*Problems Caused by Measles, Mumps, and Rubella Vaccines*

Experts agree that the benefits of shots against measles, mumps, and rubella are much greater then the problems from the shots.

Local or Mild Problems

• *Measles Vaccine(s) (Measles, MMR, MR).* Measles vaccine, alone or mixed with rubella or mumps vaccine, will cause about 1 in every 5 children to have a rash or low fever. This usually begins 1 to 2 weeks after getting a measles shot and lasts for just a few days.

• *Mumps Vaccine(s) (Mumps, MMR, RM).* Sometimes there will be a little swelling of the salivary glands. This may happen 1 to 2 weeks afer getting a mumps shot.

• *Rubella Vaccine(s) (Rubella, MMR, MR, RM).* About 1 in every 7 children will have a rash or some swelling in the lymph glands 1 to 2 weeks after getting a rubella shot. This minor problem usually lasts for a day or two. About 1 in every 20 children and as many as 4 out of every 10 adults who get a rubella shot will have some pain and stiffness in the joints. Painful swelling of the joints happens to fewer than 1 out of 50 adults who get a rubella shot. Problems with joints occur from 1 to 3 weeks after a rubella shot. They are usually mild and last for only 2 or 3 days and rarely return. Other temporary problems caused by the shot are pain, numbness, or tingling in the hands and feet, but they are uncommon.

More Serious Problems

• *Measles, Mumps, and Rubella Vaccine(s) (Measles, Mumps, Rubella, MMR, MR, RM).* Experts are not sure why, but very rarely, children who get these vaccines (measles, mumps, and rubella) may have a convulsion(s) (fit, seizure), loss of hearing, or other problem of the brain (encephalitis).

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As with any drug or shot, there is a rare chance that other serious problems (serious allergic or nerve problems) or even death could occur. If a serious problem occurs, a doctor should be seen as soon as possible.

*When To Get Vaccine Shots and How Many Are Needed*

Experts recommend that children should get the MMR shot when they are 15 months old or older. Anyone who is not known to be protected against measles, mumps, or rubella should receive a shot. It is important that teenagers and adults—especially women who can have babies—who may not be protected against rubella receive a rubella shot. They can get the MMR shot if they might also not be protected against measles or mumps.

*When Should a Shot Not Be Given Until You Check With a Doctor?*

You should tell the person who is going to give the shot if the person who is going to get the shot:

- Is sick with something more serious than a common cold.
- Has an allergy problem that occurred after eating eggs and was so serious that it required medical treatment (does not apply to the rubella shot given alone).
- Had an allergy problem that occured after using an antibiotic called neomycin and was so serious that it required medical treatment.
- Has cancer, leukemia, or lymphoma (cancer of the lymph glands).
- Has any other disease that makes it hard for the body to fight infection (for example AIDS or HIV infection).
- Is taking special treatment for cancer (X-ray or cancer drugs) or special drugs that make it hard for the body to fight infection (prednisone or steroids).
- Is pregnant or thinks she may be pregnant.
- Has received a shot of gamma globulin during the past 3 months.

Finally, shots should be delayed for anyone who is sick with something more serious than a cold until that person is better or a doctor okays the shot.

*Other Things You Should Know or Do*

1. For children who are to get the measles shot—

If the child who is to get a shot for measles has ever had a convulsion (fit, seizure) or has a close family member (brother, sister, or parent) who has ever had a convulsion, the chance that this child might have a convulsion after a measles shot is higher. Because there is still some chance of getting measles, and because the chance of a convulsion after getting a shot of measles vaccine is very low, all children who have had convulsions and all children with a history of convulsions in close family members should get a shot against measles.

The doctor or other person who is going to give the shot should be told about a personal or family history of convulsions. You should talk with them about using medicines or other measures to stop fever from shots. If a serious problem occurs, a doctor should be seen as soon as possible.

2. Measles, mumps, and rubella shots are not known to cause special problems for pregnant women or their unborn babies. However, doctors usually do not like to give any drugs or shots to pregnant women unless they have to. To be safe, pregnant women should not get these shots. Also, a woman who gets any of these shots should not get pregnant for 3 months following the shot.

3. If you cannot get these shots because you are pregnant, you should discuss this with the doctor who is caring for your pregnancy. It is very important for a pregnant woman to know for sure if she is protected against rubella.

4. Giving a shot to a child whose mother is pregnant is not dangerous to the unborn baby.

5. What are your State laws for these shots? (see State Immunization Requirements on page ____)

6. Do you have any questions about the diseases and shots after reading or being told about the information in this booklet? You need to ask any questions you have! Ask these questions *NOW*, either of the doctor of the person who is going to give the shot. Only after all questions are answered to your satisfaction should you decide whether to get the shot.

7. You should sign the form below (or a similar one) before receiving a shot. The people who give shots will keep the form that you sign or they will write in your record or their office record what shot was given, when the shot was given, the name of the company that made the vaccine, and the vaccine's special lot number.

I have read or have had explained to me the information in this booklet about measles, mumps, and rubella (German measles) and measles, mumps, and rubella vaccines. I have had a chance to ask questions which were answered to my satisfaction. I believe I understand the benefits and risks of the measles, mumps, and rubella vaccines and ask that the vaccine checked below be given to me to the person named below for whom I am authorized to make this request.

Vaccine to be given: Measles ____, Mumps ____, Rubella ____, Measles-Mumps-Rubella ____, Measles-Rubella ____, Rubella-Mumps ____

*Information About Person To Receive Vaccine (Please Print)*

Last Name First Name MI Birthdate Age

Address Street City County State Zip

*Signature of person to receive vaccine or person authorized to make this request (parent or guardian)*
*Date*

_____

*What To Do After Getting the Shot and if a Serious Problem Occurs After Getting the Shot*

- Most problems that occur after a measles, mumps, or rubella shot occur within 15 days after getting the shot. However, you should report to the person who gave the shot any serious problem that occurs within 4 weeks after getting the shot.
- This form should be used to write down information about these and any other serious problems if they occur. It helps to get together the information you may need to report to a doctor.

Name of shot received _____
Date and time shot received _____



| Problem | Date | Time | How Long | Describe |
|---|---|---|---|---|
| Swollen mouth or face; hard to breathe or swallow | | | | |
| Stopped breathing | | | | |
| Loss of consciousness (coma) or other brain problem | | | | |
| Convulsion (fit, seizure) | | | | |
| Any other serious problem | | | | |

- *If any of the problems listed on the form on page ____ occurs*, you should see a doctor as soon as possible. You should tell the doctor everything about the shot and describe the problem. Continue to write down information on the form.
- You *also* should call and report all the information you have written on the form to the doctor, person, or telephone number listed (see Information for Reporting of Problems Occurring After the Shot on page ____)

*What Else to do if you believe that the Person Who Received the Vaccine Shot Was Injured (Made Seriously Ill) or Died Because of Receiving the Vaccine*

The National Vaccine Injury Compensation Program provides a way for compensation of people who were injured (made seriously ill) or died because of receiving the vaccines you have just read about. All claims for injuries (serious illnesses) or deaths related to the administration of these vaccines must be filed with the United States Claims Court. Information about the Compensation Program and about how to file a claim may be obtained from the _____

(shown below is an example of how State immunization requirements and schedule may be written by each state)

**(State Seal/Name or Other Identification)**

*"State Name" Immunization Requirements*

STATE X law requires almost all children to get certain vaccines before they enter school. Before a child can attend school, proof that the child got the required vaccines must be shown. This proof must be a written record showing the month, day, and year of each dose of vaccine drops or shot of vaccine, and the signature of the doctor or other person who gave each dose of vaccine drops or shot of vaccine. Some children may not need to get certain vaccines.

*Vaccines Which are Now Required by State X Law*

- *Measles*—1 shot of live virus vaccine given on or after the 1st birthday, or a blood titer of at least 1:8 (may be given with mumps and rubella vaccines as MMR vaccine).
- *Mumps*—1 shot of vaccine given on or after the 1st birthday, or a doctor's diagnosis of disease history (may be given with measles and rubella vaccines as MMR vaccine).
- *Rubella*—1 shot of vaccine given on or after the 1st birthday, or a blood titer of at least 1:8 (may be given with measles and mumps vaccine as MMR vaccine).
- *Diphtheria, Tetanus, and Pertussis (DTP)*—4 shots of vaccine for children under 7 years old.
- *Tetanus and Diphtheria (Td)*—3 shots of vaccine for children under 18 years old.
- *Polio*—3 doses of vaccine drops or shots of vaccine for children under 18 years old.

*Who May be Exempted from Getting Vaccines Required by State X*

The following reasons may exempt some children from having to get certain vaccines that are usually required by State X immunization law.

(Enter summary of exemption allowed by State X e.g., medical, religious and philosophical.)

*Information for Reporting of Problems Occurring After a Shot*

If the person who got a vaccine shot has a serious problem after the shot, you should report the problem to the doctor or other person who gave the shot, in addition to seeing a doctor.

Report the problem to:

**Appendix A (3)—Important Information About Poliomyelitis (Polio) and the Vaccine Drops or Shots to Protect Against this Disease**

This booklet gives information about:

- The disease poliomyelitis (polio).
- Vaccines (drops or shots) to keep people from catching this disease.
- Problems (reactions) that can follow drops or a shot:

—ways to try to prevent these problems.
—problems that should be seen by a doctor at once.
—a way to help you record information about these problems.
—how and where to report serious problems.

- When polio vaccine (drops or shots) should be delayed or not given.
- Your State immunization requirements and laws.
- A National program of compensation for injuries or deaths caused by a vaccine.

*What Is Polio?*

Polio is a very serious disease and it can cause lifelong paralysis (crippling) of arms and legs and sometimes death. Most people who have the polio germ in their body only have a mild fever, headache, sore throat, or upset stomach. The polio germ lives in the intestines and passes from one person to another, usually by hands dirty with feces, and, rarely, from mouth to mouth.

Most people who get crippled by polio will have some weakness in an arm or leg for the rest of their lives. Many of these people will be badly crippled and unable to work.

In the United States, thousands of people used to be crippled by polio every year, and many died. Now, because people get polio vaccine which gives protection against this terrible disease, polio is very rare in the U.S. But there are still many thousands of polio cases in other parts of the world. So we must make sure that our children get all the polio vaccine they need to protect them if they travel outside the United States and to protect them in case polio germs get into the United States.

*Vaccines to Keep People From Getting Sick With Polio*

The best way to be protected against getting polio is to get at least 3 doses of polio vaccine as drops in the mouth (oral [live] polio vaccine-OPV) or as shots (inactivated [killed] polio vaccine-IPV). All healthy babies, children, and young people between the ages of 6 weeks and 18 years need to get at least 3 doses of polio vaccine (OPV drops or IPV shots) to protect them. Adults who plan to travel to areas of the world where there is polio also should have had polio vaccine.

More than 90 out of every 100 people who get at least 3 doses of OPV drops or IPV shots are protected against polio. Drops or shots should be given early in life. Some states require more than 3 doses of polio vaccine (drops or shots). Experts believe that 1 more dose of polio vaccine (drops or shot) given by the 7th birthday will provide better protection against polio.

Experts from government and doctors' groups recommend OPV drops rather than IPV shots as the preferred polio vaccine for healthy people up to the 18th birthday (see When Should OPV Drops Not Be Given? on page ____).

Although OPV drops and IPV shots are both very good in preventing polio,

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the OPV is the type of polio vaccine most doctors give to children in the United States. The OPV is easier to take, works in the intestines (where the polio germs first start to grow), and gives protection for a long time, probably for life.

People 18 years old and older who are going to a country where there is polio should get polio vaccine (see When To Get Vaccine Drops or Shots and How Many are Needed on page ——).

*Problems Caused by Polio Vaccine*

• Oral Polio Vaccine (OPV) Drops

OPV drops cause few problems. But you should know that very rarely (one time for every 8 million doses of drops) the drops can cause crippling (paralytic polio) in the person who gets the drops. The chance of paralysis is highest after the 1st dose of drops (one time for every 1 to 2 million doses of drops). There is also a very small risk of crippling among people who have close contact with someone who got OPV drops within the previous 60 days (one time for every 5 to 6 million doses of drops). Good personal hygiene (hand washing) will make the risk even smaller. Anyone who has close contact with a person seriously ill with diseases such as cancer or leukemia, or with a person taking medicines (such as steroids or prednisone) that lower that person's resistance to infection should *NOT* get OPV drops.

• Inactivated Polio Vaccine (IPV) Shots

Serious illnesses are very rare after IPV shots. IPV shots can cause a little soreness and redness where the shot was given. As with any drug or shot, there is a rare chance that a serious allergic problem or even death could occur. If a serious problem occurs, a doctor should be seen as soon as possible.

*When To Get Vaccine Drops or Shots and How Many Are Needed*

Every child should get 4 doses of polio vaccine (OPV drops or IPV shots) by the time he or she first goes to school. Usually, the 1st dose of OPV or shot of IPV is given when the baby is about 2 months old, the 2nd at about 4 months, the 3rd when the baby is 15 to 18 months old, and the 4th dose of OPV drops or IPV shot when the child is 4 to 6 years old.

Adults who have had some OPV drops before and are going to a country where there is polio need at least 1 dose of OPV drops or 1 IPV shot. If these adults have never had OPV drops or IPV shots, they should get, if there is enough time, 2 or 3 IPV shots before going. If there is less than one month before they leave, they should get at least 1 dose of either OPV or IPV. If they get only one dose of OPV or IPV, it should be given a minimum of 1 to 2 days before they leave.

*When Should Drops or Shot Be Delayed?*

Oral Polio Vaccine (OPV) Drops

Should be delayed for anyone who is sick with something more serious than a common cold, until that person is better or a doctor okays the dose of OPV drops or a doctor decides the IPV shots should be used instead.

Inactivated Polio Vaccine (IPV) Shots

Should be delayed for anyone who is sick with something more serious than a common cold, until that person is better or the doctor okays the shot of IPV.

*When Should Polio Vaccine Not Be Given?*

Oral Polio Vaccine (OPV) Drops

OPV drops should not be given to anyone who:

• Has cancer, leukemia, or lymphoma (cancer of the lymph glands), or has close contact with such a seriously ill person.

• Has any other disease that makes it hard for the body to fight infection (for example AIDS or HIV infection).

• Is taking special treatment for cancer (X-ray or cancer drugs) or taking drugs that make it hard for the body to fight infection (prednisone or steroids), or has close contact with such a person.

You should talk to a doctor about *which* polio vaccine should be given.

Inactivated Polio Vaccine (IPV) Shots

IPV shots should not be given to a person who:

• Has a serious allergy problem with certain antibiotics. For people with allergies to antibiotics, a doctor should decide if the shot can be given.

Other Things You Should Know or Do

1. What are your State laws for polio drops or shots? (see State Immunization Requirements on page —)

2. Do you have any questions about polio and OPV and IPV vaccines after reading or hearing the information in this booklet? You need to ask any questions you have! Ask these questions *NOW*, either of the doctor or of the person who is going to give the vaccine drops or shot. Only after all questions are answered to your satisfaction should you decide whether to get the vaccine.

3. You should sign the form below (or a similar one) before receiving the vaccine. The people who give the vaccine will keep the form that you sign or they will write in your record or their office record what type of vaccine was given, when the vaccine was given, the name of the company that made the vaccine, and the vaccine's special lot number.

"I have read or have had explained to me the information in this booklet about polio disease and OPV and IPV vaccines. I have had a chance to ask questions which were answered to my satisfaction. I believe I understand the benefits and risks of the OPV and IPV vaccines and ask that the vaccine checked below be given to me or to the person named below for whom I am authorized to make this request."

Vaccine to be given: OPV____, IPV____

Information About Person To Receive Vaccine (Please Print)

| Last Name | First Name | MI | Birthdate | Age |
|---|---|---|---|---|
| | | | | |

| Address: Street | City | County | State | Zip |
|---|---|---|---|---|
| | | | | |

*Signature of person to receive vaccine or person authorized to make this request (parent or guardian):*
*Date*
X _____

*What to Do After Getting the Vaccine and if a Serious Problem Occurs After Getting the Vaccine*

• Problems are very rare. Serious crippling or paralysis within 30 days after getting OPV drops may be caused by the drops. Rarely, crippling may occur in a person who has had close contact with a person who got drops up to 75 days before.



• This form should be used to write down information about these and any other serious problems if they occur. It helps to put down the information you may need to report to a doctor.

Name of vaccine received (OPV drops or IPV shot) _____
Date and time vaccine received _____

| Problem | Date | Time | How Long | Describe |
|---|---|---|---|---|
| Weakness of arm or leg (crippling, paralysis) | | | | |
| Sudden problem with breathing or swallowing and/or swollen mouth or face | | | | |
| Any other serious problem | | | | |

• *If any of the problems listed on the form on page——occurs, you should see a doctor as soon as possible.* You should tell the doctor everything about the problem. You should continue to write down information on the form.

• You *also* should call and report all of the information you have written on the form to the doctor, person, or telephone number listed (see Information for Reporting of Problems Occurring After Vaccine Drops or Shot on page——).

*What else to do if you believe that the person who received the Vaccine Drops or Shot was Injured (Made Seriously Ill) or Died Because of Receiving the Vaccine*

The National Vaccine Injury Compensation Program provides a way to compensate people who were injured (made seriously ill) or died as a result of the vaccines you have just read or been told about. All claims for injuries (serious illnesses) or deaths related to these vaccines must be filed with the United States Claims Court. Information about the Compensation Program and about how to file a claim may be obtained from the_____.

(Shown below is an example of how State immunization requirements and schedule may be written by each state)

**(State Seal/Name or Other Identification)**

*"State Name" Immunization Requirements*

STATE X law requires almost all children to get certain vaccines before they enter school. Before a child can attend school, proof that the child got the required vaccines must be shown. This proof must be a written record showing the month, day, and year of each dose of vaccine (drops or shot), and the signature of the doctor or other person who gave each dose of vaccine (drops or shot). Some children may not need to get certain vaccines.

*Vaccines Which are Required by State X Law*

• Polio—3 doses of vaccine drops or shots of vaccine for children under 18 years old

• Diphtheria, Tetanus, and Pertussis (DTP)—4 shots of vaccine for children under 7 years old

• Tetanus and Diphtheria (Td)—3 shots of vaccine for children under 18 years old

• Measles—1 shot of live virus vaccine given on or after the 1st birthday, or a blood titer of at least 1:8 (may be given with mumps and rubella vaccines as MMR vaccine)

• Mumps—1 shot of vaccine given on or after the 1st birthday, or a doctor's diagnosis of disease history (may be given with measles and rubella vaccines as MMR vaccine)

• Rubella—1 shot of vaccine given on or after the 1st birthday, or a blood titer of at least 1:8 (may be given with measles and mumps vaccine as MMR vaccine)

*Who may be Exempted from Getting Vaccines Required by State X*

The following reasons may exempt some children from having to get certain vaccines that are usually required by State X immunization law.

(enter summary of exemptions allowed by State X e.g., medical, religious, and philosophical.)

*Information for Reporting of Problems Occurring After Vaccine Drops or Shot*

If the person who got vaccine drops or shot has a serious problem after the drops or shot, you should report the problem to the doctor or other person who gave the vaccine, in addition to seeing a doctor.

Report the problem to:

[FR Doc. 89-4940 Filed 3-2-89; 8:45 am]
BILLING CODE 4160-18-M

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Part VI

## The President

Proclamation 5939—Save Your Vision Week, 1989

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# Presidential Documents

Title 3—
The President

## Proclamation 5939 of March 1, 1989

## Save Your Vision Week, 1989

By the President of the United States of America

A Proclamation

Vision is a precious gift—one we too often take for granted until it is impaired or lost entirely. For thousands of Americans, this is a needless loss because sight-saving treatments are now available for many disorders that once caused blindness. Generally, the earlier a disease is detected, the better the chance of interrupting its destructive process. Therefore, if we take some simple precautions, most of us can expect to enjoy good vision all of our lives.

A periodic examination by an eye-care professional is the best way to detect an eye problem before it impairs or destroys vision. This is especially important for young children; diabetics, who are at increased risk for several eye diseases; and older Americans, who are at higher risk for glaucoma, aging-related retinal degeneration, and cataracts.

Because visual problems in young children are often difficult to detect, a professional eye examination is vital. An untreated eye problem in a child may needlessly interfere with learning or play or lead to permanent visual loss. At a minimum, children should have their vision checked by their pediatrician, family physician, or an eye specialist at or before age four.

For the more than 11 million Americans who have diabetes, regular eye checkups are especially important for preventing loss of vision. For years, diabetic retinopathy has been the leading cause of new cases of blindness among middle-aged Americans. Now, however, improved treatments for this disease can save many thousands from blindness—if treatment is begun early.

Because many aging-related eye diseases begin in the middle years, periodic eye examinations are important for everyone older than 40. For example, glaucoma can begin unnoticed in middle age and gradually progress to blindness. A simple, painless test to measure pressure within the eye is used to screen for possible glaucoma. If the disease is suspected, other tests are used to confirm the diagnosis. Detected early, glaucoma usually can be controlled by medications before serious damage is done to the optic nerve.

Early detection of aging-related retinal disease is also important. Thanks to research supported by the Federal Government's National Eye Institute, laser treatment has been shown to be effective in preserving the reading vision of those with an advanced form of this disease.

The old adage about "an ounce of prevention" is certainly true for eye injuries. Of the estimated 1.6 million eye injuries that occur each year, 90 percent are preventable—by learning and following simple rules of eye safety in the workplace, athletic arena, home, or garden, we can prevent serious visual loss due to accident. For example, safety glasses worn while working with chemicals, or protective headgear while playing a contact sport, can mean the difference between a lifetime of good vision and permanently limited or lost eyesight.

To remind all Americans of the importance of proper eye care, the Congress, by joint resolution approved December 30, 1963 (77 Stat. 629, 36 U.S.C. 169a), has requested the President to proclaim the first week in March of each year as "Save Your Vision Week."

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NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby designate the week of March 5 through March 11, 1989, as "Save Your Vision Week." I urge all Americans to participate in this observance by making eye care and eye safety an important part of their lives. I also invite eye-care professionals, the media, and all public and private organizations committed to public health to join in activities that will make Americans more aware of the steps they can take to protect their vision.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of March, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and thirteenth.

George Bush

[FR Doc. 89-5170
Filed 3-2-89; 10:35 am]
Billing code 3195-01-M



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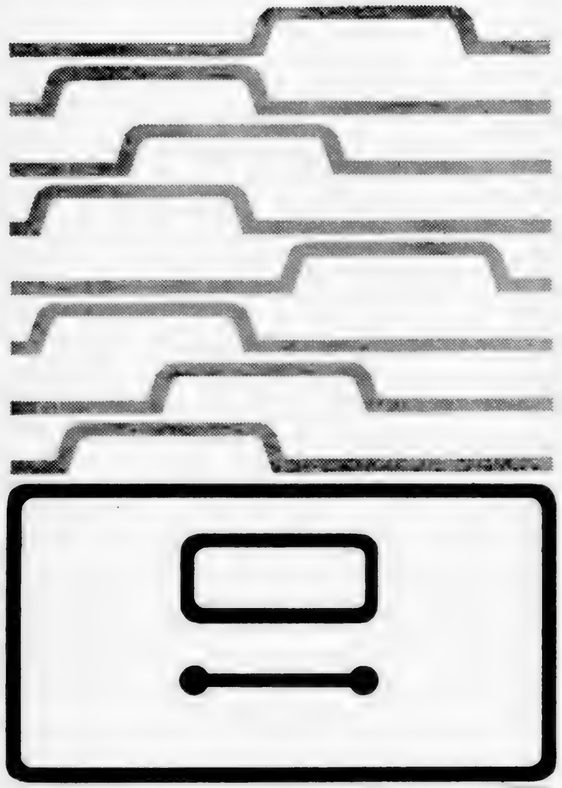
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# Guide to Record Retention Requirements

## in the Code of Federal Regulations (CFR)

**GUIDE:** Revised January 1, 1986
**SUPPLEMENT:** Revised January 1, 1988

The GUIDE and the SUPPLEMENT should be used together. This useful reference tool, compiled from agency regulations, is designed to assist anyone with Federal recordkeeping obligations.

The various abstracts in the GUIDE tell the user (1) what records must be kept, (2) who must keep them, and (3) how long they must be kept.

The GUIDE is formatted and numbered to parallel the CODE OF FEDERAL REGULATIONS (CFR) for uniformity of citation and easy reference to the source document.

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# Presidential Documents

Title 3—

The President

## Proclamation 5940 of March 2, 1989

## National Poison Prevention Week, 1989

By the President of the United States of America

A Proclamation

Since the first National Poison Prevention Week, in 1962, thousands of American children under age five have been saved from accidental poisonings, thanks to the combined efforts of consumers, health professionals, government, and industry. Each year, the distribution of printed materials, activities at State and local levels, and media broadcasting all remind consumers to use child-resistant packaging and to store medicines and household chemicals out of the reach of young children.

Data compiled annually by the U.S. Consumer Product Safety Commission show that the number of child poisonings has decreased by more than 70 percent since 1972, when the first drugs were required to have child-resistant packaging. Life-saving treatment advice by poison control centers when a poisoning does occur has also been a valuable factor.

Many lives have been saved, but there is more to do. We must continue to instruct new parents and grandparents on the need to use child-resistant packaging and to keep medicines and household chemicals out of the reach of children. Underlying our poison prevention program is the assumption that virtually all childhood poisonings are preventable.

To encourage the American people to learn more about the dangers of accidental poisonings and to take more preventive measures, the Congress, by joint resolution approved September 26, 1961 (75 Stat. 681), has authorized and requested the President to issue a proclamation designating the third week of March of each year as "National Poison Prevention Week."

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the week beginning March 19, 1989, as National Poison Prevention Week. I call upon all Americans to observe this week by participating in appropriate ceremonies and events and by learning how to prevent childhood poisonings.

IN WITNESS WHEREOF, I have hereunto set my hand this second day of March, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and thirteenth.

George Bush

[FR Doc. 89-5271
Filed 3-3-89; 10:31 am]
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# Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF AGRICULTURE

### Federal Grain Inspection Service

### 7 CFR Part 800

### Grain Standards; Revision of Agency Mission Statement

**AGENCY:** Federal Grain Inspection Service.

**ACTION:** Final rule.

**SUMMARY:** The Federal Grain Inspection Service (FGIS) is revising its mission statement for clarity of language, to reflect additional congressional policy declarations as stated in the Grain Quality Improvement Act of 1986, and to incorporate recommendations made by the FGIS Advisory Committee.

**EFFECTIVE DATE:** April 5, 1989.

**FOR FURTHER INFORMATION CONTACT:** Lewis Lebakken, Jr., RM, USDA, FGIS, Room 0628, South Building, P.O. Box 96454, Washington, DC 20090-6454, telephone (202) 475-3428.

**SUPPLEMENTARY INFORMATION:** In the Grain Quality Improvement Act of 1986, Congress amended section 2 of the United States Grain Standards Act (Act) (7 U.S.C. 74) to include additional congressional policy declarations concerning the Official United States Standards for Grain. Further, the FGIS Advisory Committee has made recommendations to revise the FGIS mission statement that appears in § 800.1 of the regulations (7 CFR 800.1). This section also references the responsibilities delegated to the Administrator of FGIS under section 3A of the Act. Those responsibilities include activities under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*) concerning rice, pulses, and related commodities.

Pursuant to § 553(b)(3)(A) of the Administrative Procedures Act (5 U.S.C. 553(b)(3)(A)) (APA), the requirements of general notice of proposed rulemaking do not apply to interpretive rules, general policy statements, or rules regarding agency organization, procedure, or practice. Since this rule relates to a general policy statement the requirements regarding general notice of rulemaking under the APA do not apply. For the same reasons, the relevant provisions of Departmental Regulation 1512-1, Executive Order 12291, and the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are also not applicable and, upon good cause the provisions of section 553(d) of the APA (5 U.S.C. 553(d)) concerning postponing the effective date of a substantive rule 30 days after publication in the **Federal Register** do not apply to this action.

**List of Subjects in 7 CFR Part 800**

Administrative practice and procedure, Export, Grain.

### PART 800—GENERAL REGULATIONS

For the reasons set out in the preamble, 7 CFR Part 800 of the regulations is amended as follows:

1. The authority citation for Part 800 continues to read as follows:

Authority: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

2. Title 7 CFR Part 800 is amended by revising § 800.1 to read as follows:

**§ 800.1 Mission.**

The mission of the Federal Grain Inspection Service is to facilitate the marketing of grain, oilseeds, pulses, rice, and related commodities by:

(a) Establishing descriptive standards and terms,

(b) Accurately and consistently certifying quality,

(c) Providing for uniform official inspection and weighing,

(d) Carrying out assigned regulatory and service responsibilities, and

(e) Providing the framework for commodity quality improvement incentives to both domestic and foreign buyers.

Dated: March 1, 1989.

**W. Kirk Miller,**

*Administrator.*

[FR Doc. 89-5079 Filed 3-3-89; 8:45 am]
BILLING CODE 3410-EN-M

## Farmers Home Administration

### 7 CFR Part 1930

### Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients

**AGENCY:** Farmers Home Administration, USDA.

**ACTION:** Final rule; correction.

**SUMMARY:** The Farmers Home Administration (FmHA) corrects a final rule published January 26, 1989 (54 FR 377) in Amendment No. 7. In this rule, several words were omitted from the text of 7 CFR 1930, Subpart C, Exhibit E, paragraph XV B 5 c. The intent of this action is to insert the missing portion.

**EFFECTIVE DATE:** March 6, 1989.

**FOR FURTHER INFORMATION CONTACT:** Ernest W. Harris, Loan Officer, Multiple Housing Servicing and Property Management Division, Farmers Home Administration, USDA, Room 5321-S, Washington, DC 20250, Telephone: (202) 382-1613.

### PART 1930—[AMENDED]

### Subpart C—Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients

### Exhibit E of Subpart C—[Amended]

Exhibit E is correctly amended by adding paragraph XV B 5 c (2), (3) and (4) to read as follows:

*XV. Suspending or Transferring Existing Rental Assistance Agreements*

B. • • •
5. • • •
c. • • •

(2) The District Director has reviewed the project occupancy list, waiting list, and any other data available and verified that there is no apparent RA needed in the project.

(3) The State Director has notified the borrower at least 30 days in advance of FmHA's intent to transfer the RA units and has given the borrower appropriate appeal rights in accordance with Subpart B of Part 1900 of this Chapter.

(4) If the borrower appeals this decision, the appeal is resolved in accordance with Subpart B of Part 1900 of this Chapter, before any transfer action is taken.

• • • • •

2. Exhibit E is amended by correcting the first sentence of the introductory text of paragraph XV B 5 c by adding the

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words "least one to" following the word "at."

Date: February 14, 1989.

**Neal Sox Johnson,**

*Acting Administrator, Farmers Home Administration.*

[FR Doc. 89-5082 Filed 3-3-89; 8:45 am]

BILLING CODE 3410-07-M

## Food Safety and Inspection Service

### 9 CFR Part 313

**[Docket No. 88-027F]**

### Removal of Obsolete Provision—"Extension of Implementation Date"

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Humane Methods of Slaughter Act of 1978 requires that all meat inspected under the Federal Meat Inspection Act be produced from livestock slaughtered in accordance with humane methods. Section 313.90 of the Federal meat inspection regulations states that an extension may be granted to delay the implementation of this Act, but the delay shall not extend beyond April 11, 1981. Because this date has passed, this section is obsolete and, therefore, is being removed from the regulations.

**EFFECTIVE DATE:** March 6, 1989.

**FOR FURTHER INFORMATION CONTACT:** Ralph E. Stafko, Director, Policy Office, Policy and Planning Staff, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-8168.

**SUPPLEMENTARY INFORMATION:**

### Executive Order 12291

The Administrator has determined that this final rule is not a "major rule" within the scope of Executive Order 12291. It would not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises or export markets. This action only serves to remove an obsolete provision.

### Effect on Small Entities

The Administrator has determined that this action will not have a significant economic impact upon a substantial number of small entities as defined by the Regulatory Flexibility Act, (5 U.S.C. 601 *et seq.*) because it only serves to remove an obsolete provision, which has no effect on domestic producers.

### Background

Section 313.90 of the Federal meat inspection regulations (9 CFR 313.90) permits a delay in the application of the humane slaughtering and handling provisions of the Humane Methods of Slaughter Act of 1978 (21 U.S.C. 603). The section details how a person, firm, or corporation may request a delay in the application of the Act and how such a request will be evaluated. The section does not allow the delay of implementation to extend beyond April 11, 1981. The entire section is obsolete and is being removed from the regulations.

Because this amendment removes an obsolete provision and is, therefore, only an administrative action, it is found upon good cause that public participation in this rulemaking procedure is impracticable and unnecessary, and good cause is found for making the amendment effective less than 30 days after publication in the **Federal Register** (5 U.S.C. 553).

### Final Rule

For reasons set forth in the preamble, Part 313 of the Federal meat inspection regulations is amended as set forth below.

## PART 313—HUMANE SLAUGHTER OF LIVESTOCK

1. The authority citation for Part 313 continues to read as follows:

**Authority:** 92 Stat. 1069, 72 Stat. 862, 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 91, 438; 21 U.S.C. 71 *et seq.*; 601 *et seq.*; 7 U.S.C. 1906–1909.

### § 313.90 [Removed and reserved]

2. Section 313.90 is removed and reserved. The table of contents is amended accordingly.

Done at Washington, DC, on March 1, 1989.

**Lester M. Crawford,**

*Administrator, Food Safety and Inspection Service.*

[FR Doc. 89-5068 Filed 3-3-89; 8:45 am]

BILLING CODE 3410-DM-M

## FEDERAL TRADE COMMISSION

### 16 CFR Part 13

**[Dkt. 9175]**

### General Nutrition, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

**AGENCY:** Federal Trade Commission.

**ACTION:** Consent order.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, a Pittsburgh, Pa. corporation, that manufactures and sells food supplements, to pay a total of $600,000 for research, and prohibits respondent from making false and unsubstantiated claims for products. The order also requires respondent to divide the $600,000 equally among certain organizations for research in nutrition, obesity, or physical fitness.

**DATES:** Complaint issued March 20, 1984. Order issued February 2, 1989.[1]

**FOR FURTHER INFORMATION CONTACT:** Robert C. Cheeks, FTC/S-4002, Washington, DC 20580. (202) 326-3045.

**SUPPLEMENTARY INFORMATION:** On Thursday, March 24, 1988, there was published in the **Federal Register**, 53 FR 9666, *correction*, 53 FR 22022, a proposed consent agreement with analysis In the Matter of General Nutrition, Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

Comments were filed and considered by the Commission. The Commission made its jurisdictional findings and entered an order to cease and desist in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Advertising Falsely Or Misleadingly: § 13.10 Advertising falsely or misleadingly; § 13.170 Qualities or properties of product or service; § 13.170–52 Medicinal, therapeutic, healthful, etc.; § 13.170–70 Preventive or protective; § 13.190 Results; § 13.205 Scientific or other relevant facts. Subpart—Corrective Actions And/Or Requirements: § 13.533 Corrective actions and/or requirements; § 13.533–10 Corrective Advertising; § 13.533–20 Disclosures; § 13.533–45 Maintain records; § 13.533–45(a) Advertising substantiation; § 13.533–50 Maintain means of communication; § 13.533–60 Research programs. Subpart—Misrepresenting Oneself And Goods—Goods: § 13.1590–20 Federal Trade Commission Act; § 13.1710 Qualities or properties; § 13.1730 Results; § 13.1740 Scientific or other relevant facts.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.



### List of Subjects in 16 CFR Part 13

Food supplements, Trade practices.

**(Authority:** Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52)

**Benjamin I. Berman,**

*Acting Secretary.*

[FR Doc. 89-5077 Filed 3-3-89; 8:45 am]

BILLING CODE 6750-01-M

### 16 CFR Part 13

**[Dkt. C-2929]**

### Interco Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

**AGENCY:** Federal Trade Commission.

**ACTION:** Set aside order.

**SUMMARY:** The Federal Trade Commission has set aside a portion of the 1978 consent order with Interco Incorporated by setting aside a sentence in the consent order regarding the preticketing provision.

**DATES:** Consent Order issued September 26, 1978. Set Aside Order issued April 22, 1988.

**FOR FURTHER INFORMATION CONTACT:** Gerald T. Gregory, FTC/S-2115, Washington, DC 20580. (202) 326-2687.

**SUPPLEMENTARY INFORMATION:** In the Matter of Interco Incorporated, et al. Portions of the prohibited trade practices and/or corrective actions, as set forth at 43 FR 48991, are deleted.

### List of Subjects in 16 CFR Part 13

Outerwear, Raincoats, Trade practices.

**(Authority:** Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply Sec. 5, 38 Stat. 719, as amended; Sec. 2, 49 Stat. 1526; 15 U.S.C. 45, 13)

Commissioners: Daniel Oliver, Chairman, Patricia P. Bailey, Terry Calvani, Mary L. Azcuenaga, and Andrew J. Strenio, Jr.

In the Matter of Interco Incorporated, a corporation, Londontown Corporation, a corporation, and Queen Casuals, Inc., a corporation.

### Order Reopening and Setting Aside a Portion of Order Issued September 26, 1978

On October 26, 1987, respondents Interco Incorporated ("Interco"), Londontown Corporation ("Londontown") and Queen Casuals, Inc. ("Queen Casuals") filed a "Request As Supplemented To Reopen And Set Aside A Portion Of Order" ("Request"), pursuant to section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), and § 2.51 of the Commission's Rules of Practice.

The Request asked that, with respect to raincoats and outerwear sold by Londontown, the Commission reopen the consent order issued on September 26, 1978, and set aside the following sentence in paragraph 4 of Part I of that order:

> A respondent shall not, however, suggest resale prices on any tag, ticket or other marking affixed or to be affixed to any product shipped to a reseller.

On February 23, 1988, the Commission issued its "Order Reopening And Modifying Order Issued September 26, 1978, And Order To Show Cause." The Commission's February 23, 1988, Order modified the order of September 26, 1978, in the manner requested by respondents and, in addition, ordered that respondents show cause within 30 days why the provision in question should not be set aside with respect to all other products covered by the order.

On March 14, 1988, respondents filed their "Answer To Order To Show Cause" with the Commission, requesting that the provision "be deleted in its entirety."

Accordingly, *It is Ordered*, That this matter be and it hereby is reopened and that the last sentence in paragraph 4 of Part I of the Commission's Decision and Order issued on September 26, 1978, shall be set aside as of the effective date of this order.

By the Commission. Commissioner Bailey not participating.

**Benjamin I. Berman,**

*Acting Secretary.*

[FR Doc. 89-5078 Filed 3-3-89; 8:45 am]

BILLING CODE 6750-01-M

## DELAWARE RIVER BASIN COMMISSION

### 18 CFR Part 410

### Amendment of Comprehensive Plan and Water Code of the Delaware River Basin

**AGENCY:** Delaware River Basin Commission.

**ACTION:** Final rule.

**SUMMARY:** At its February 22, 1989 business meeting the Delaware River Basin Commission amended its Comprehensive Plan and Water Code by modifying the provisions of Resolution No. 83-13, relating to diversions, releases and flow objectives during the drought period of 1989.

Resolution No. 83-13, adopted on June 29, 1983 and noticed in the July 21, 1983 issue of the **Federal Register** (48 FR 33253), established a schedule of phased reductions and diversions, releases and flow objectives during periods of drought warning and drought conditions. On January 16, 1989 the Delaware River Basin entered a drought warning, upper half, based upon storage conditions in the Basin's reservoirs. Drought warning, lower half, was triggered on February 5, 1989 as storage conditions worsened. In order to maximize storage in the New York City Delaware Basin reservoirs, the Parties to the U.S. Supreme Court Decree of 1954 unanimously requested that the Commission grant emergency approval to modify Resolution No. 83-13.

On February 8, 1989 the Executive Director, pursuant to Section 2-3.9 of the Commission's Administrative Manual, Part II, Rules of Practice and Procedure, issued an Emergency Certificate temporarily modifying Resolution No. 83-13, pending further review, public hearing and determination by the Commission at its next meeting.

On February 22, 1989, as noticed in the February 15, 1989 issue of the **Federal Register** (54 FR 6942), the Commission held a public hearing to receive comments on a proposed amendment to its Comprehensive Plan and Water Code to temporarily revise streamflow objectives at the Montague, New Jersey, USGS gaging station, and release and diversion requirements from the New York City Delaware Basin reservoirs.

The amendment, adopted in response to continuing declines in storage, lack of snowpack above the reservoirs and a long-range weather forecast predicting below normal precipitation, is expected to achieve considerable savings in storage in an effort to defer the time at which drought emergency could occur.

**EFFECTIVE DATE:** February 22, 1989.

**ADDRESS:** Copies of the Commission's Water Code and Resolution Nos. 83-13 and 89-5 are available from the Delaware River Basin Commission, P.O. Box 7360, West Trenton, New Jersey 08628.

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**FOR FURTHER INFORMATION CONTACT:** Susan M. Weisman, Commission Secretary, Delaware River Basin Commission: Telephone (609) 883-9500.

**List of Subjects in 18 CFR Part 410**

Water pollution control.

The Commission's Comprehensive Plan and Article 2 of the Water Code of the Delaware River Basin are amended by the following addition:

1. The schedule of phased reductions, diversions, and releases and flow objectives set forth in Resolution No. 83-13, during periods of drought warning, are modified as follows:

a. Diversions from the New York City reservoirs to the City of New York shall be limited to a running average of 500 mgd, minus an amount equivalent to the amount that would normally be released to meet the Montague flow objective set forth in Resolution No. 83-13, above and beyond the basic conservation releases.

b. The obligation of the City of New York to release from the three New York City reservoirs to meet the Montague flow objective shall be suspended during the present period of drought warning but the City of New York shall continue to make basic conservation releases as required.

c. During the present period of drought warning, releases to meet the Trenton flow objective shall be made from down basin reservoirs as required by the Executive Director.

d. The provisions concerning out-of-basin diversions to New Jersey during this period of drought warning shall remain at the present 70 mgd level.

2. Except as modified herein, the provisions of Resolution No. 83-13 shall remain in full force and effect.

3. The modified schedule of diversions, releases and flow objectives set forth in this resolution shall remain in effect during the current period of drought warning and shall terminate at such time as the Basin shall enter a drought condition as defined in Resolution No. 83-13, at the termination of the existing drought warning condition as provided in Resolution No. 83-13 or on April 30, 1989, whichever comes first, or by further order of the Commission.

4. When and if the Basin enters a drought condition, the Parties will meet to review the possibility of continuing a similar savings program. Delaware River Basin Compact, 75 Stat. 688.

**Susan M. Weisman,**

*Secretary.*

**February 27, 1989.**

[FR Doc. 89-5058 Filed 3-3-89; 8:45 am]

BILLING CODE 6360-01-M

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**21 CFR Part 74**

**[Docket No. 87N-0162]**

**Confirmation of Effective Date for D&C Red No. 36 Amendment**

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule; confirmation of effective date.

**SUMMARY:** The Food and Drug Administration (FDA) is confirming the effective date of January 27, 1989, for the final rule that amended the color additive regulations to modify a limitation on use in ingested drugs.

**EFFECTIVE DATE:** Effective date confirmed: January 27, 1989.

**FOR FURTHER INFORMATION CONTACT:** Patricia J. McLaughlin, Center for Food Safety and Applied Nutrition (HFF-330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5740.

**SUPPLEMENTARY INFORMATION:** In the Federal Register of December 27, 1988 (53 FR 52129), FDA amended 21 CFR 74.1336(c) to provide for a higher limit on the amount of color additive that may be consumed in drugs that are taken for less than 1 year.

FDA gave interested persons until January 26, 1989, to file objections or requests for a hearing on this amendment. The agency received no objections or requests for a hearing. Therefore, FDA concludes that the final rule published in the Federal Register of December 27, 1988, should be confirmed.

**List of Subjects in 21 CFR Part 74**

Color additives, Cosmetics, Drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 701, 706, 52 Stat. 1055-1056 as amended, 74 Stat. 399-407 as amended (21 U.S.C. 371, 376)), and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), notice is given that no objections or requests for a hearing were filed in response to the December 27, 1988, final rule. Accordingly, the amendment promulgated thereby became effective January 27, 1989.

Dated: February 28, 1989.

**Alan L. Hoeting,**

*Acting Associate Commissioner for Regulatory Affairs.*

[FR Doc. 89-5062 Filed 3-3-89; 8:45 am]

BILLING CODE 4160-01-M

**DEPARTMENT OF TREASURY**

**Internal Revenue Service**

**26 CFR Part 7**

**[T.D. 8243]**

**Temporary Income Tax Regulations; Requirements Relating to Certain Exchanges Involving a Foreign Corporation**

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Temporary regulations.

**SUMMARY:** This document provides temporary Income Tax Regulations concerning requirements relating to certain exchanges involving a foreign corporation as required by section 367 (b) of the Internal Revenue Code as enacted by the Tax Reform Act of 1976. These regulations would provide guidance needed to comply with these requirements. The text of the temporary regulations set forth in this document also serves as the text of proposed regulations that are cross-referenced in the proposed rules section of this issue of the Federal Register.

**DATES:** Section 7.367 (b)-2 (d) and (f) are effective on January 1, 1978, and applies to exchanges beginning on or after that date. Sections 7.367 (b)-7 (c) (1) and 7.367 (b)-9 (b) (4) are effective on March 3, 1989 and apply to transactions beginning on or after that date.

**FOR FURTHER INFORMATION CONTACT:** Richard Chewning of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 [Attention: CC:CORP:T:R (INTL-988-86) (202-566-6384, not a toll-free call).

**SUPPLEMENTARY INFORMATION:**

**Background**

This document contains amendments to §§ 7.367 (b)-2 (d) and (f), 7.367 (b)-7 (c) (1) and 7.367 (b)-9 (b) of 26 CFR Part 7. Temporary regulations under those sections with cross-reference notice were originally published on December 20, 1977 (42 FR 65152, 65204).

**Need for Temporary Regulations**

This Treasury decision with respect to § 7.367 (b)-2 (d) and (f) merely clarifies existing rules in the section 367 (b) temporary regulations. With respect to §§ 7.367 (b)-7 (c) (1) and 7.367 (b)-9 (b) (4), this Treasury decision eliminates unintended opportunities available under the existing section 367 (b) temporary regulations to avoid liability for income tax. For these reasons, it is found impractical to issue this Treasury decision with notice and public procedure either under section 553 (b) of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section. In addition, in order to prevent avoidance by taxpayers of the changes made to §§ 7.367 (b)-7 (c) (1) and 7.367 (b)-9 (b) (4), it is provided that those changes will be effective on March 3, 1989.



**Explanation of Provisions**

Section 7.367 (b)-2 (d) defines the term "section 1248 amount" to mean the earnings and profits or deficit in earnings and profits which would have been attributed under section 1248 to the stock of the foreign corporation exchanged if the stock had been sold in a transaction to which section 1248 (a) applied. Section 7.367 (b)-2 (f) defines the term "all earnings and profits amount" to mean the earnings and profits or deficit in earnings and profits for all taxable years which are attributable to the stock of the foreign corporation exchanged under the principles of section 1246 or 1248. This section is amended by these regulations to clarify that for purposes of exchanges of stock in a first-tier foreign corporation described by § 7.367 (b)-7 (c) (1) (i) or distributions by a foreign corporation covered by § 7.367 (b)-10 (i) in which an inclusion determined by reference to the "section 1248 amount" is required, the term "section 1248 amount" means only the net positive earnings and profits attributable to stock. For purposes of asset repatriations covered by §§ 7.367 (b)-5 (b), 7.367 (b)-6 (c), 7.367 (b)-7 (c) (2) and 7.367 (b)-10 (j), the term "all earnings and profits amount" means only the net positive earnings and profits. This amendment applies to exchanges beginning on or after January 1, 1978. For all other purposes, the terms "section 1248 amount" and "all earnings and profits amount" mean earnings and profits or deficits for all taxable years attributable to stock. Section 7.367 (b)-7 (c)(1) is amended by these regulations to provide that the addition procedure of paragraph (c)(1) (ii) will not apply if the stock received is of a domestic corporation which is a member of the affiliated group as defined in section 1504(a) (without application of section 1504(b)(3)) that also includes the exchanging foreign corporation. This amendment applies to exchanges beginning on or after March 3, 1989.

Section 7.367(b)-9 is amended by these regulations to provide that a foreign corporation will not succeed to the earnings and profits or deficit in earnings and profits of another foreign corporation except to the extent provided in section 381(a) and the regulations under that section if the stock of such corporation is received in an exchange subject to section 7.367(b)-9, and a U.S. shareholder described in section 7.367(b)-7(b) or section 7.367(b)-8(c)(1) owns (applying the attribution rules of section 958) more than 50 percent of either the total voting power or the total value of the stock of both the corporation whose stock is received in the exchange and the corporation whose stock is exchanged. This amendment is effective on or after March 3, 1989. Under these regulations, the foreign corporation whose stock is received in the exchange will only succeed to the earnings and profits or deficit in earnings and profits of the acquired corporation and lower-tier subsidiaries of the acquired corporation as provided in section 381(a) and the regulations thereunder.

Post-exchange distributions of earnings and profits and sales of stock may in some circumstances result in double counting of section 1248 earnings. Regulations which will finalize the temporary regulations under section 367(b) will be issued to prevent this double counting of earnings and profits. The regulations with regard to this issue, when finalized, will be retroactive to the effective date of the above amendment.

**Special Analyses**

These rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. A general notice of proposed rulemaking is not required by 5 U.S.C. 553 for temporary regulations. Therefore, these rules do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6) and a Regulatory Flexibility Analysis is not required.

**Drafting Information**

The principal author of these regulations is Richard Chewning of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. Other personnel from the Internal Revenue Service and Treasury Department participated in developing these regulations.

**List of Subjects in 26 CFR Part 7**

Income taxes, Tax Reform Act of 1976.

**Adoption of Amendments to the Regulations**

Accordingly, 26 CFR Part 7 is amended as follows:

**PART 7—TEMPORARY INCOME TAX REGULATIONS UNDER THE TAX REFORM ACT OF 1976**

**Paragraph 1.** The authority for Part 7 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805. * * * § 7.367(b)-2 (d) and (f) also issued under 26 U.S.C. 367(b)(2). * * * § 7.367(b)-7(c)(1) also issued under 26 U.S.C. 367(b)(2). * * * § 7.367(b)-9(b)(4) also issued under 26 U.S.C. 367(b)(2). * * *

**Par. 2.** Section 7.367(b)-2 is amended by revising paragraphs (d) and (f) to read as set forth below:

**§ 7.367(b)-2 Definitions.**

* * * * *

(d) *Section 1248 amount.* In the case of an exchange of stock in a first-tier foreign corporation described in § 7.367(b)-7(c)(1)(i) or a distribution by a foreign corporation described in § 7.367(b)-10(i) in which an inclusion in gross income determined by reference to the "section 1248 amount" is required by those provisions, the term "section 1248 amount" means the net positive earnings and profits which would have been attributable under section 1248 and the regulations under that section to the stock of the foreign corporation exchanged if the stock had been sold in a transaction to which section 1248(a) applied. For all other purposes of this section, in the case of an exchange of stock in a first-tier foreign corporation to which section 367(b) applies, the term "section 1248 amount" means the earnings and profits or deficit in earnings and profits which would have been attributable under section 1248 and the regulations under that section to the stock of the foreign corporation exchanged if the stock had been sold in a transaction to which section 1248(a) applied.

* * * * *

(f) *All earnings and profits amount.* For purposes of asset repatriations covered by §§ 7.367(b)-5(b), 7.367(b)-6(c), 7.367(b)-7(c)(2) and 7.367(b)-10(j), the term "all earnings and profits amount" means the net positive earnings and profits, if any, for all taxable years which are attributable to the stock of the foreign corporation exchanged under the principles of section 1246 or 1248 (whichever is applicable) and the regulations under that section. For all other purposes, the term "all earnings and profits amount" means the earnings and profits or deficit in earnings and profits for all taxable years which are attributable to the stock of the foreign corporation exchanged under the principles of section 1246 or 1248 (whichever is applicable) and the

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regulations under that section. The determination shall be made by applying section 1248 or 1248 as modified by §§ 7.367(b)–2 through 7.367(b)–12 as if there were no distinction in those sections between earnings and profits accumulated before or after December 31, 1962.

* * * * *

**Par. 3.** Section 7.367(b)–7(c)(1) is amended as follows:

1. Subdivision (ii) is amended by adding after the second sentence the following sentence: "Subdivision (iii) of this paragraph, and not this subdivision (ii), applies if the stock received (A) is of a domestic corporation which is a member of an affiliated group (as defined in section 1504(a), without application of section 1504(b)(3)) that also includes the exchanging foreign corporation as a member, and (B) is not received in an exchange pursuant to which the foreign corporation whose stock is exchanged transfers its assets to a domestic corporation."

2. Subdivision (iii) is redesignated as subdivision (iv) and a new subdivision (iii) is added immediately after subdivision (ii) and before subdivision (iv) to read as follows:

**§ 7.367 (b)–7 Exchange of stock described in section 354.**

* * * * *

(c) *Receipt of other stock*—(1) *General rule.*

* * * * *

(iii) For exchanges beginning after March 3, 1989, if the stock received is described in the last sentence of subdivision (ii), then the foreign corporation whose stock is exchanged will be considered to be a foreign corporation for purposes of section 354 or 356. This subdivision (iii) may be illustrated by the following examples:

*Example (1).* A U.S. parent corporation (USP) owns all of the stock of a foreign corporation (CFC1), which in turn owns all of the stock of a second foreign corporation (CFC2), which in turn owns all of the stock of a third foreign corporation (CFC3). USP also owns all of the stock of U.S. subsidiary (Subsidiary). CFC2 and CFC3 have accumulated earnings and profits or accumulated deficits in earnings and profits. Subsidiary acquires all of the stock of CFC2 from CFC1 in exchange for stock of Subsidiary in a reorganization described in section 368 (a) (1) (B). CFC1 will not recognize gain on the exchange. Moreover, CFC2's and CFC3's accumulated earnings and profits or accumulated deficits in earnings and profits will remain in CFC2 and CFC3, respectively, and will not be added to the earnings and profits or deficit in earnings and profits account of CFC1.

*Example (2).* USP owns all of the stock of CFC1, which in turn owns all of the stock of CFC2. USP also owns all of the stock of a U.S. subsidiary (Subsidiary), which in turn owns all of the stock of CFC3. CFC3 acquires the assets of CFC2 in exchange for voting stock of Subsidiary in a reorganization described in section 368 (a) (1) (C). Pursuant to the reorganization, CFC2 distributes the stock of Subsidiary to CFC1. CFC1 will not recognize gain on the exchange. In addition, CFC2's accumulated earnings and profits or accumulated deficit in earnings and profits will be added to CFC3's earnings and profits account under section 381 (c) (2), subject to the limitations contained in section 381 and in the regulations under that section.

**Par. 4.** Section 7.367 (b)–9 is amended by adding a new paragraph (b) (4) immediately after paragraph (b) (3) to read as follows:

**§ 7.367 (b)–9 Attribution of earnings and profits on an exchange described in section 351, 354, or 356.**

* * * * *

(b) *General rule.* * * *

(4) For exchanges beginning on or after March 3, 1989, paragraph (b) (2) and (3) of this section will not apply if a U.S. shareholder described in § 7.367 (b)–7 (b) or § 7.367 (b)–8 (c) (1) owns (applying the attribution rules of section 958) more than 50 percent of either the total voting power or the total value of the stock of both the corporation whose stock is received in the exchange and the corporation whose stock is exchanged. If this paragraph (b) (4) applies, the rules of section 381 (a) and the regulations under that section will determine the extent to which the corporation whose stock is received in the exchange (or other acquiring corporation) will succeed to the earnings and profits or a deficit in earnings and profits of the corporation whose stock is exchanged and of lower-tier corporations. This paragraph (b) (4) may be illustrated by the following examples:

*Example (1).* A U.S. parent owns all of the stock of CFC1 and CFC2. CFC1 has accumulated earnings and profits or an accumulated deficit in earnings and profits. CFC2 acquires all of the stock of CFC1 from the U.S. parent in a reorganization described in section 368 (a) (1) (B). CFC2 will not succeed to the earnings and profits or the accumulated deficit in earnings and profits of CFC1.

*Example (2).* A U.S. parent owns all of the stock of CFC1, which in turn owns all of the stock of CFC2. The U.S. parent also owns all of the stock of CFC3. CFC2 has accumulated earnings and profits or an accumulated deficit in earnings and profits. CFC3 acquires all of the assets of CFC1, including the stock of CFC2, in a reorganization described in section 368 (a) (1) (D). CFC3 will not succeed to the earnings and profits or the accumulated deficit in earnings and profits of CFC2.

**Lawrence B. Gibbs,**

*Commissioner of Internal Revenue.*

Approved: January 30, 1989.

**O. Donaldson Chapoton,**

*Assistant Secretary of the Treasury.*

[FR Doc. 89–4993 Filed 3–3–89; 11:08 am]

BILLING CODE 4830–01–M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### 32 CFR Part 199

**[DoD Regulation 6010.8–R, Amdt. No. 20]**

### Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); CHAMPUS Peer Review Organization (PRO) Program

**AGENCY:** Office of the Secretary, DoD.

**ACTION:** Final rule.

**SUMMARY:** This final rule supplements rules and procedures currently applicable to the CHAMPUS Peer Review Organization program with a number of additions and clarifications. Major provisions are: Establishment of special payment and financial liability rules relating to certain PRO determinations of medically unnecessary care; quality of care reviews of proposed hospital discharges; and clarifications to follow the procedures of the Medicare PRO program.

**EFFECTIVE DATE:** This final rule is effective for hospital admissions that occur on or after April 8, 1989.

**ADDRESS:** Office of the Assistant Secretary of Defense (Health Affairs), Health Program Management, The Pentagon, Room 1B657, Washington, DC 20301.

For copies of the **Federal Register** containing this notice, contact the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

The charge for the **Federal Register** is $1.50 for each issue payable by check or money order to the Superintendent of Documents.

**FOR FURTHER INFORMATION CONTACT:** Nancy Gidley or LCDR A.R. Miller, MSC, USN, Office of the Assistant Secretary of Defense (Health Affairs), telephone (202) 697–8975.

**SUPPLEMENTARY INFORMATION**

## I. Synopsis

On October 1, 1987, CHAMPUS adopted a DRG-based payment system for inpatient care. Under this system, which Congress had adopted for Medicare several years earlier, payments for the costs of most inpatient hospital services are made on the basis of prospectively determined rates, applied on a per-discharge basis. This payment system created needed incentives for efficiency in hospital services, but also surfaced concerns that a system that pays hospitals a fixed amount per admission, regardless of length of stay, might compromise the delivery of appropriate services or result in premature hospital discharges. When the Medicare prospective payment system was implemented, these concerns prompted Congress to establish Peer Review Organizations (PROs) to assure the continuing provision of adequate and appropriate care to Medicare beneficiaries.

Recognizing the need for a similar mechanism to protect CHAMPUS beneficiaries, the Department of Defense (DoD) and the Department of Health and Human Services, Health Care Financing Administration (HCFA), entered into an Interagency Agreement to include CHAMPUS review in the Medicare PRO contracts. A joint collaborative effort between these two agencies is a sound, fiscally responsible approach to providing peer review of CHAMPUS inpatient care.

This final rule supplements the existing regulation applicable to services covered by the CHAMPUS DRG-based payment system with a series of additions and clarifications that essentially fall into three broad categories. The first is a set of rules, very similar to those applicable to Medicare, allowing payment or limiting financial liability under certain circumstances for services determined by the PRO to be potentially excludable. Those circumstances relate to cases in which the provider and/or beneficiary did not know and could not reasonably have been expected to know that the services were excludable by the PRO.

The second category also addresses the matter of limiting beneficiary responsibility for charges, this time in the context of proposed discharges of patients still hospitalized. In cases in which the patient believes the discharge would be premature, the rule establishes a procedure to assure a reasonable opportunity for PRO review. This is an important quality of care protection for beneficiaries.

The third broad category of provisions included in this final rule is a set of procedures that are necessary and appropriate to augment the existing requirements and facilitate successful implementation of the PRO program. These procedures are generally modeled after those applicable to the Medicare PRO program.

A general theme underlying most of our existing PRO program rule, our proposed rule and this final rule is that successful and smooth implementation of the CHAMPUS PRO program, from the perspectives of beneficiaries, hospitals, the PROs, and the Government, will be facilitated to the extent we follow the path already established by the Medicare program.

DoD believes the PRO program is a vitally important effort in assuring that CHAMPUS beneficiaries receive medically necessary, quality care.

## II. Background

We published a proposed rule for public comment on December 28, 1988, 53 FR 52433, *et seq.* Under 10 U.S.C. 1079(j)(2)(A) CHAMPUS is authorized to use a diagnosis-related group (DRG) based payment system, similar to that used for Medicare, for institutional providers. The Comprehensive Omnibus Budget Reconciliation Act of 1985, Pub. L. 99–272, established the "Medicare link" that requires hospitals participating in the Medicare program to also participate in the CHAMPUS program. Consistent with Congressional intent, the CHAMPUS DRG-based payment system, implemented October 1, 1987, is modeled after the Medicare prospective payment system (PPS).

The CHAMPUS peer review program is established as a collateral program to the CHAMPUS DRG-based payment system. As the CHAMPUS DRG-based payment system is modeled after the Medicare PPS, the CHAMPUS PRO program is modeled after the Medicare PRO program. Through an Interagency Agreement between the Department of Defense (DoD) and the Department of Health and Human Services (DHHS), the CHAMPUS PRO program quality assurance and utilization review are being conducted by the same Peer Review Organizations (PROs) that also conduct review for Medicare. The Medicare PRO program is the Federal Government's primary program of medical peer review, operating under the careful oversight of Congress.

Under the CHAMPUS PRO program, the PROs are reviewing care provided in hospitals for which payment is made under the CHAMPUS DRG-based payment system. PROs are conducting both quality assurance and utilization review, specifically focusing on determining if the care met professionally recognized standards of care, if the admission was medically necessary, if the services were appropriate, and if the care was provided in the most appropriate setting. Cases reimbursed under the DRG system are subject to varied reviews, including generic quality screen reviews, admission and discharge reviews, and DRG validation. A major objective of these multiple types of review is to guard against premature discharge or inappropriate admission. The peer review system uses criteria which have been developed on both national and local levels to determine the adequacy and appropriateness of care and are specific to the CHAMPUS population.

While review is currently being conducted only in acute care facilities for services initially covered under the CHAMPUS DRG program, we expect, where appropriate, that other institutions and services later reimbursed under the CHAMPUS DRG-based payment system will be brought under PRO review in the future.

On December 28, 1988, we published for public comment the proposed rule on which this final rule is based. In the preamble to that rule, we explained that the existing CHAMPUS regulation, specifically 32 CFR 199.14(a)(1)(iv), prescribes the basic rules and procedures applicable to what is referred to in the regulation as "quality of care reviews," which we now refer to as the PRO program.

## III. General Comments on Proposed Rule

### *A. Number and Types of Public Comment*

We received a total of 13 individual written comments addressing a variety of issues. The types and volume of commenters were as follows:

| | |
|---|---|
| Hospital Associations | 2 |
| Medical Associations | 4 |
| Health Care Groups | 2 |
| Hospitals | 3 |
| Peer Review Organizations | 2 |

In general, we view the public reaction as generally positive. In accordance with our usual procedures, we also obtained the concurrence of the Department of Health and Human Services, Department of Transportation, the military services and several DoD offices. Based on comments, we have made a few clarifying revisions to the rule, which are described below. In addition, by way of discussion in this preamble, we hope to clarify some other issues that arose.

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*B. General Comments*

1. Photocopying costs

One commenter stated that the HCFA reimbursement amount for photocopying medical records is insufficient.

Although the photocopying cost reimbursement amount is not a subject addressed in this rule, DoD's position is that we will follow the Medicare program in so far as it appears reasonable and appropriate to the CHAMPUS PRO Program. We have adopted the Medicare reimbursement amount for copying costs and will follow this policy. We are aware that the issue of photocopy costs is very controversial among hospital associations and is currently the subject of litigation. Although DoD is not presently a party to this litigation, it is our intent to continue to follow the lead of the Medicare program, including any revisions that might be made to Medicare's policy as a result of the litigation. In the meantime, we believe that the Medicare photocopying cost reimbursement amount is reasonable and that any independent recalculation by DoD would be inappropriate.

2. Legal Authority

In the preamble to the proposed rule, we included a note about legal authority, in which we attempted to explain the absence of legislative specificity underlying the CHAMPUS PRO Program to those accustomed to the Medicare model of very detailed Congressional management of many aspects of that program. We indicated that this is the norm for CHAMPUS, which has for years operated with very detailed regulations covering the whole range of program operations, promulgated under the authority of very broad and general statutory provisions. We also pointed out that included in our general legislative authorities are provisions, including 10 U.S.C. 1079(a)(13), prohibiting payment for services not medically necessary.

One commenter took issue with the adequacy of our legal authority absent the same kind of statutory specificity that controls the Medicare PRO program. This commenter called our proposed rule "an illegal circumvention" of the Administrative Procedure Act's requirement, in 5 U.S.C. 553(b), that notices of proposed rulemaking include "reference to the legal authority under which the rule is proposed." The commenter further argued that our references to several statutory provisions we believe clearly authorize our PRO program activities were not sufficient because these provisions merely allow "claims auditing" and "simple review procedures," and do not "authorize DoD to implement a sanctioning mechanism, limit beneficiary liability, or saddle providers with" photocopying costs.

In response to this comment, we have re-reviewed our legal authority for the PRO program and this regulation and have reaffirmed its adequacy. Recognizing that CHAMPUS is different from Medicare in this regard, the fact is that most of some 125 pages of CHAMPUS rules in the *Code of Federal Regulations*, as well as many other program procedures, have been promulgated under the authority of very general statutory provisions, including our basic legislative charge, at 10 U.S.C. 1079(a), that the Secretary of Defense shall establish CHAMPUS "under such insurance, medical service or health plans as he considers appropriate." The Secretary has considered it necessary and appropriate to establish numerous rules and procedures to assure that the medical care provided under the authority of that statute meets reasonable standards of quality and medical necessity. Examples include many provider certification standards, under 32 CFR 199.6, to assure that only qualified providers are allowed to participate and scores of benefit restrictions, under 32 CFR 199.4, many of which are designed to assure that only medically necessary care is provided. The PRO program and this regulation supplement previously operating practices with more refined and efficacious review methods, rights, responsibilities and compliance procedures necessary to help meet those reasonable standards of quality and medical necessity.

Guided by this long-standing construction of the statute, it is our conclusion that our legal authority to administer CHAMPUS is not limited to some narrow definition of "claims auditing" or "simple review procedures." Rather, we believe it supports all provisions of this final rule.

3. Coordination between DoD and the Health Care Financing Administration

One commenter emphasized the need for close coordination of CHAMPUS PRO program policy with the Health Care Financing Administration (HCFA), which administers Medicare. We strongly agree. An Interagency Agreement between the Department of Defense (DoD) and the Department of Health and Human Services (DHHS), delineates a close working relationship between the DoD CHAMPUS PRO Program Office and HCFA. Consistent with this policy, this final rule follows Medicare procedures very closely.

Related to this issue of following Medicare's PRO procedures, some commenters reported that they had difficulty understanding exactly what the proposed rule was proposing due to its numerous incorporations by reference to Medicare regulations, to understand the proposed CHAMPUS rule, one had to have available various parts of Medicare's rules. This point is well taken. All things considered, we see it as an advantage to hospitals and the PROs to incorporate by reference in our regulation whole parts of the Medicare rules with which they are already well familiar. However, we recognize that for other readers, this is not necessarily advantageous. Therefore, it is our intention in the very near future to compile excerpts of the Medicare regulations we are incorporating by reference, and to make those available to any interested parties, along with a reprint of the full CHAMPUS PRO program regulation (as amended by this final rule). This should alleviate the confusion.

4. Relationship to other programs

Some commenters stated that the proposed rule failed to take into account the review process of the existing CHAMPUS Reform Initiative (CRI) and that PRO review would duplicate the monitoring of care already provided to CHAMPUS beneficiaries under CRI. The proposed and final rule do not include any specific provisions regarding CRI. The Government's intent, as specified in the CRI contract, is for an *external* peer review program applicable to all hospitals treating CHAMPUS patients. In the CRI States, the PRO program is an important supplement to any internal review; it will monitor, among other things, the impact of the internal review system on the quality of care. In order to maintain consistency and comparability, the use of the CHAMPUS PRO program within the CRI States is most appropriate.

Regarding the PRO program relationship to another recent CHAMPUS initiative, several comments addressed the timing for implementation of PRO review in children's hospitals and of neonatal services, which will begin to be included in the CHAMPUS DRG payment system effective April 1, 1989. They also expressed a need for sensitivity in the development of review criteria for these areas of review. We agree with these comments. Following the inclusion of children's hospitals and neonatal services into the CHAMPUS DRG-based payment system, we anticipate beginning to phase in PRO review within approximately six months. We encourage affected providers to participate in the development of PRO criteria in their local areas.



5. Administrative costs

One commenter stated that providers should receive an increase in their DRG-based payment rates to offset the administrative costs of these proposed regulations. In response, the CHAMPUS DRG-based payment rates were derived by applying the Medicare cost-to-charge ratio to CHAMPUS charges. To the extent that Medicare *costs* include the administrative costs to hospitals of Medicare PRO review, the derived CHAMPUS costs would include them as well.

**IV. Specific Provisions of Final Rule**

*A. Payment and Liability for Certain Potentially Excludable Services (§ 199.4(h))*

The Conference Report on the Fiscal Year 1989 Department of Defense Appropriations Act (H. Conf. Rept. No. 100-1002, 100th Cong., 2d. Session 34, called for the Department to "issue directives/ regulations governing cases in which the PRO determines that medically unnecessary or inappropriate care has been provided." Specifically, the conferees said "the Department should provide a waiver of liability, especially for beneficiaries, similar to that provided under the Medicare program."

Our proposed rule included a provision to provide relief for both a provider and beneficiary providing or accepting services potentially excludable on the grounds of being not medically necessary or provided at an inappropriate level.

1. Institutional responsibility

We received several comments suggesting that institutional providers could not reasonably be expected to know that services provided could be considered to be not medically necessary, since all services are ordered by a physician, and thus institutional providers should never be held liable. We disagree. Hospitals, through their utilization review and quality assurance committees, continually make decisions about medical necessity and appropriateness. The PRO criteria are developed by area physicians and are disseminated to all hospitals and physicians prior to the start of review. The hospital is, and always has been, held responsible for care provided in its facility. The PRO review is an adjunct to the responsible hospital committees and should help to assure CHAMPUS beneficiaries receive the most appropriate and highest quality of medical care. In addition, hospital liability as defined here, is similar to that under the Medicare program.

2. Presumptive status

Another comment expressed concern regarding our lack of a favorable presumptive status for hospitals under the CHAMPUS limitation of liability provision. Although the Medicare PRO program originally contained a favorable presumptive status for hospitals, Medicare found it to be ineffective and has discontinued it. We will follow the current Medicare policy and make decisions as to whether a beneficiary or provider had reason to know services were excludable by reason of not being medically necessary on a case-by-case basis. Again this consistency with the established and experienced Medicare peer review system results in minimal disruptive impact on providers and peer review organizations.

Consistent with the proposed rule, under the final rule, where both the provider and the beneficiary did not know, and had no reason to know, that the services would be considered to be not medically necessary, CHAMPUS payment would be made. However, in making such a payment the provider and patient will be put on notice that the type of service under those circumstances is excludable. In subsequent cases involving similar situations, no payment will be made.

In cases in which the provider, but not the beneficiary, knew or could reasonably have been expected to know that the services were excludable, CHAMPUS will not pay and the provider may not require the beneficiary to pay either the amount CHAMPUS disallowed or the usual beneficiary cost share amount. In such cases, the provider would be told that the provider could seek reconsideration of the PRO's decision both as to the medical necessity of the services and the provider's knowledge.

3. Criteria for determining knowledge

The final rule is consistent with the proposed rule in adopting a set of criteria for determining whether beneficiaries and providers know or should have known that services were excludable. These criteria are substantially the same as those applicable to Medicare under 42 CFR 405.334 and 405.336, and are intended to establish the same substantive standards as are followed under Medicare.

The limitation of liability only applies to cases in which the hospital services portion is covered by the CHAMPUS DRG-based payment system (although the payment and liability rules apply to both institutional and individual providers involved in care) and in which a determination was made by the PRO that the care rendered was not medically necessary.

*B. Limitation on Charges to Beneficiaries for Continued Hospital Stays (§ 199.14 (a)(1)(iv)(B)(4))*

Consistent with the proposed rule, the final rule establishes a limitation on charges (other than the normal cost sharing amount) to beneficiaries for continued hospital stays. These provisions are part of a process to assure that patients are not prematurely discharged and that providers are making appropriate discharge decisions.

Under this process, if the hospital determines that a patient no longer needs inpatient hospital care, the hospital will seek the agreement of the patient's attending physician. If the attending physician does not agree, the hospital may request immediate review by the PRO. If the hospital obtains the agreement of either the attending physician or the PRO, the hospital will then give the beneficiary written notice of the hospital's intention to proceed with the discharge and that if the patient prefers to remain in the hospital, the patient will be responsible for the charges for continued care beyond the second day following the date of the notice.

This two-day period is intended to give the beneficiary the opportunity to request immediate PRO review without risk of financial responsibility for those two days of care. If the PRO review determines that continued inpatient services are needed, the beneficiary will not be charged for those additional services. It is only in cases in which the PRO agrees with the hospital determination that the further hospitalization is not necessary that the beneficiary can be charged for the continued services, and then only beginning the third day after the required notice.

One commenter stated that the two-day period would not provide the PRO enough time to complete the review requested by the beneficiary, thus placing the beneficiary at financial risk. In response to this, we have added a provision to the final rule to clarify the hospital's responsibility to facilitate very prompt PRO review in cases in which a beneficiary who is still an inpatient requests a review. If the

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patient's request is made prior to noon of the first working day after the date of receipt of the notice, the hospital is required to provide the records necessary for the PRO review by the close of business that day. If the hospital fails to do this, then that day, and any subsequent days in which the hospital continues to fail to provide the records, will not count against the patient's two-day period. This clarification in our final rule is to make our procedures similar to those of the Medicare PRO program, including the requirements of 42 U.S.C. 1320C–3(e).

*C. Pro Procedures*

Consistent with the proposed rule, the final rule includes a set of procedures for the PRO program and a number of clarifications to our existing regulations. These are summarized below.

1. "Peer Review Organization program" (§ 199.14(a)(1)(iv))

The "Peer Review Organization program" is adopted as the title for the program.

2. Beneficiary information (§ 199.14(a)(1)(iv)(B)(*1*))

This clarifies that Medicare's documentation requirements regarding the PRO program information that hospitals must provide to beneficiaries also applies to CHAMPUS. The information hospitals must give beneficiaries informs them of their rights in connection with the PRO program, including the procedure to seek PRO review of any quality problems.

One commenter suggested that the proposed rule was unclear regarding the hospital's administrative process for the "Important Message from CHAMPUS." In response, we will follow the Medicare requirements related to the hospital's responsibility to assure that each CHAMPUS beneficiary receives the "Message" at or shortly after admission. PROs will review for compliance with this requirement based on Medicare's review procedure.

3. Physician attestation and acknowledgement (§ 199.14(a)(1)(iv)(B)(*2*))

The final rule clarifies that the attestation and acknowledgment statement requirements for Medicare also apply to CHAMPUS and that the same statements may be used. This provision clarifies the reference to these statements in the current CHAMPUS regulation at § 199.14(a)(1)(iv)(C)(*2*)(*iii*).

One commenter suggested that providers must be given ample time to obtain CHAMPUS specific physician attestation and acknowledgement forms. The requirements for attestation and acknowledgement statements were implemented as part of the CHAMPUS DRG-based payment system effective with publication of the final rule September 1, 1987. As a follow-up, we are systematically distributing further instructions to providers regarding this requirement.

4. M.O.U. required (§ 199.14(a)(1)(iv)(B)(*3*))

This clarifies that, as under Medicare, hospitals must execute a memorandum of understanding with the PRO providing appropriate procedures for the PRO program.

5. Authority to deny payment (§ 199.14(a)(1)(iv)(D)(*1*)(*i*))

This clarifies the authority to deny payment for unnecessary services.

6. DRG validation (§ 199.14(a)(1)(iv)(D)(*3*))

This clarifies authority to correct coding errors and make appropriate payment adjustments in connection with DRG validation activities of the PRO.

7. Procedures for initial determinations and reconsiderations (§ 199.14(a)(1)(iv)(E) and (F))

Consistent with the proposed rule, the final rule adopts procedures for initial determinations and reconsiderations by PROs identical to those that apply under Medicare. These procedures provide fair process for both beneficiaries and providers and are most appropriate for the CHAMPUS PRO program. Also following the Medicare example, PRO reconsidered determinations are final for providers but generally appealable for beneficiaries.

One commenter stated that providers should be able to appeal PRO denial determinations to OCHAMPUS.

We believe it more appropriate to follow the model Congress established for Medicare regarding the finality of PRO reconsidered determinations for providers. As under the Medicare PRO program, the procedures give providers ample opportunity to participate in the decisionmaking process and confidence in the accuracy of the fact finding. These procedures include an opportunity to discuss the matter with the PRO physician advisor prior to the initial determination and a full reconsideration.

8. Appeals and hearings (§ 199.14(a)(1)(iv)(G))

This provision clarifies that beneficiary appeals and hearings when a PRO upholds an adverse determination on reconsideration is handled in the same manner beneficiary appeals and hearings are generally handled under existing CHAMPUS procedures, which are at § 199.10 of the CHAMPUS regulation. It further clarifies that PRO reconsiderations will be treated as the procedural equivalent to a formal review determination under the normal CHAMPUS appeals and hearings procedures.

9. Acquisition, protection and disclosure of peer review information (§ 199.14(a)(1)(iv)(H))

Consistent with the proposed rule, the final rule adopts for the CHAMPUS PRO program the same rules and procedures for acquisition, protection and disclosure of peer review information as the PROs are currently following for Medicare. The only exception is the Medicare PRO provision for penalties, which is dependent upon a Medicare specific statutory provision that cannot be adopted for CHAMPUS without a specific statutory basis. We believe in this regard that our existing contractual authority over the PROs provides a sufficient deterrent to abuses.

One commenter felt it would be a "gross error" to adopt Medicare policy on the disclosure to institutional providers of quality problems and potential quality problems involving individual providers. The Medicare procedures for disclosing individual practitioners' quality problems to an institutional provider are based on the general notion that hospitals have a keen responsibility regarding the quality of care provided in their facilities. If an individual practitioner provides inadequate care, the hospital should be aware of that and should take appropriate corrective steps.

10. Additional provisions regarding confidentiality of records and limitations on liability of participants (§ 199.14(a)(1)(iv)(I))

Consistent with the proposed rule, the final rule sets forth our interpretation that 10 U.S.C. 1102 applies to the CHAMPUS PRO program as it does to the external peer review activity that reviews medical care provided in military hospitals. This section of law, enacted as part of the National Defense Authorization Act for Fiscal Year 1987, Pub. L. 99–661, section 705(a), assures the confidentiality of medical quality assurance records created by or for the Department of Defense for the purpose of assessing the quality of medical care and limits the civil liability of participants in quality assurance activities. Although CHAMPUS had not, at the time this provision was enacted, yet announced plans to implement an external civilian peer review program, the external civilian peer review program for military hospitals was then being developed. It is DoD's interpretation that 10 U.S.C. 1102 applies to both external civilian PRO programs (in addition to its application to internal quality assurance programs of military hospitals).



Some commenters expressed a bit of confusion regarding the interaction of these section 1102 provisions and the confidentiality requirements of 42 CFR Part 476, which we are also adopting. Although the two sets of provisions are extremely similar in purpose, thrust and underlying policy, there are some differences that make a degree of confusion understandable. Therefore, we have revised the final rule to characterize the statement of section 1102 applicability to the CHAMPUS PRO program, as it appeared in the proposed rule, as the "general rule". We then added several "specific applications" we hope will clarify the interaction.

The first specific application focuses on the PRO deliberative process which is the core thesis of both sets of confidentiality protections. It states that PRO deliberations are generally nondisclosable under section 1102. The second specific application clarifies that with respect to administrative determinations by PROs regarding medical necessity, DRG validation, and similar utilization review functions, the section 1102 protections for quality assurance deliberations and related activities do not apply. Thus, providers or beneficiaries seeking reconsideration of these PRO determinations will receive a full statement of reasons for the PRO action; this reconsideration/appeal process is not affected by section 1102. Finally, the third specific application we added to the final rule clarifies that section 1102 is not violated by release of information that is the subject of mandatory PRO disclosure under 42 CFR Part 476. Because the purposes and terms of section 1102 are fully compatable with those of 42 CFR Part 476, it is our interpretation that the normal PRO disclosures, that have been carefully crafted to fit the specific day-to day operations of the PRO program for civilian hospitals, are all authorized by section 1102.

11. Obligations, sanctions and procedures (§ 199.14(a)(1)(iv)(J))

Consistent with the proposed rule, the final rule establishes a process for making sanction recommendations to OCHAMPUS for cases identified under the CHAMPUS PRO program. This sanction process adopts the substantive standards and PRO procedures applicable to Medicare. Thus, the final rule incorporates by reference obligations of providers to provide and document medically necessary, quality care as required under Medicare. Further, it adopts the same substantive grounds for sanctions as Congress has adopted for Medicare. Additionally, PROs will, as they do for Medicare, give providers the opportunity for discussions and make sanctions recommendations. However, whereas under Medicare such recommendations are made to the HHS Inspector General, Sanctions recommendations under CHAMPUS will be made to OCHAMPUS and will be handled in accordance with normally applicable sanction case hearings procedures under the CHAMPUS program. In considering our sanction process, we are mindful of the much more limited size of our PRO program, the likely low number of sanctions cases and the current expansive role of HHS in identifying providers that should be excluded from Federal reimbursement programs. We expect to confer with HHS, as appropriate, to avoid duplication of effort in connection with potentially sanctionable matters of interest to both Medicare and CHAMPUS.

*D. Effective Date*

We included in the proposed rule a special provision regarding the effective date of the final rule. We said we intended for the final rule to take effect April 1, 1989, insofar as it established any new requirements on providers, beneficiaries or the public. We noted, however, that because the PRO program was already operational (under our September 1, 1987 final rule), we should reassure all interested parties that insofar as the proposed rule set forth practices of the Department or our PROs, these practices were in effect since the program became operational.

Some commenters indicated confusion about the effective date of the final rule and requested clarification. For example, the proposed rule confused some commenters on whether the rules on limiting liability for certain potentially excludable services were to apply to care provided prior to April 1 if the PRO review takes place after April 1.

The suggestions for clarification are well taken. We are revising the final rule to establish a simple effective date: The final rule becomes effective for hospital admissions that occur on or after April 8, 1989. To clarify the application of this effective date, PROs will not make any formal initial determinations that services provided prior to April 8 were not medically necessary. Regarding such services provided prior to April 8, PROs will issue notices that are purely advisory. These advisory notices will alert hospitals that the services provided in that case, were they provided after April 8, would be subject to exclusion. In addition, PRO sanctions will not be based on services provided prior to April 8.

It should be understood, however, that pre-existing PRO procedures are not affected by the new rule's effective date. For example, although this rule includes provisions protecting the confidentiality of records, PROs will protect the confidentiality of records regarding all reviews, including those which took place prior to April 8. This is because the PROs were obliged under their contractual relationship (prior to April 8) with DoD to assure confidentiality. As another example, PRO authorities, such as performing DRG validations, that were established by the final rule of September 1, 1987, continue in effect. Thus, the April 8 effective date is only with respect to new authorities and requirements.

We think this should clear up the confusion regarding the effective date of this final rule. To recap, the requirements of this rule apply only to activities that occur after April 8. Activities that occurred prior to April 8, 1989, are governed by the rules, procedures and authorities which were in effect prior to April 8.

One final clarification regarding this issue is necessary. We indicated in the proposed rule that, pending a final rule that would limit beneficiaries' liability when they did not know or have reason to know that a service would be found by the PROs to be not medically necessary, we wanted to assure that beneficiaries not be held liable for any services determined by the PRO prior to April 1 to have been not medically necessary. In order to have this assurance, we proposed to deem all such services as qualifying for payment during an interim period. We stated that "this is similar to the approach initially taken by PROs under Medicare." This statement was not correct. In fact, under the Medicare program, PROs were able to apply the Medicare limitation of liability provisions at the start of the program. Therefore, Medicare beneficiaries and providers were protected if they did not know or have reason to know that services would be found to be not medically necessary.

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**V. Regulatory Procedures**

*A. Paperwork Reduction Act*

This notice does not impose new information collection requirements. Therefore, it does not need to be reviewed pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3511).

*B. E.O. 12291 and the Regulation Flexibility Act*

This final rule is not a major rule for the purposes of Executive Order 12291. As required by the Regulatory Flexibility Act, it is hereby certified that this final rule will not have a significant impact on small business entities.

In the proposed rule, we indicated that this rule will not have a significant impact on small business entities since it does not establish new coverage rules or payment methods, but merely establishes procedures for effectuating basic requirements of quality care and medical necessity. Further, the procedures are very similar to procedures providers are currently following under Medicare. We, therefore concluded that the rule does not involve significant impact on providers.

One commenter suggested that for some small hospitals, the disallowance of a single hospital claim can produce a major impact, and thus our Regulatory Flexibility Act conclusions should be revised. In response, the Regulatory Flexibility Act does not address itself to every regulatory effect on every small entity. In any event, because these requirements already apply to the Medicare program, which is much larger than CHAMPUS, and because these reasonable requirements establish no significant burdens, we continue to believe we are imposing no substantial impacts.

In an effort to roughly quantify the potential impact on providers of our PRO program, of which this proposed rule is a part, we took note of the Medicare experience regarding the number of cases for which the PROs denied payment. On the basis of these denial rates and the projected percentage of CHAMPUS claims the PROs will review, we anticipate a CHAMPUS revenue impact arising from the PRO program to be well under $10 million per year. Thus, we conclude that this final rule does not involve significant impacts on providers.

**VI. Conclusions**

This final rule, refined as a result of a number of valuable comments, establishes what we believe are reasonable and appropriate requirements and procedures for assuring the quality and appropriateness of health care services under CHAMPUS. These requirements and procedures, modeled closely after those applicable to Medicare, supplement the established rules for the CHAMPUS PRO program, promulgated in 1987. By "piggy-backing" on Medicare, we believe we are maximizing effectiveness and minimizing disruption and burden on hospitals. The CHAMPUS PRO program, as invigorated by this final rule, is a critically important component of DoD's strong commitment to improve CHAMPUS.

**List of Subjects in 32 CFR Part 199**

Claims, Handicapped, Health insurance, Military personnel.

**PART 199—[AMENDED]**

Accordingly, 32 CFR Part 199 is amended as follows:

The authority citation continues to read as follows:

**Authority:** 10 U.S.C. 1079, 1086, 1102, 5 U.S.C. 301.

1. Section 199.4 is amended by removing paragraph (f)(6) and adding a new paragraph (h), as follows:

**§ 199.4 Basic program benefits.**

* * * * *

(h) *Payment and liability for certain potentially excludable services under the Peer Review Organization program*—(1) *Applicability.* This subsection provides special rules that apply only to services retrospectively determined under the Peer Review Organization (PRO) program (see § 199.14 (a)(1)(iv)) to be potentially excludable (in whole or in part) from the basic program under paragraph (g) of this section. Services may be excluded by reason of being not medically necessary (paragraph (g)(1) of this section), at an inappropriate level (paragraph (g)(3) of this section), custodial care (paragraph (g)(7) of this section) or other reason relative to reasonableness, necessity or appropriateness (which services shall throughout the remainder of this subsection, be referred to as "not medically necessary"). (Also throughout the remainder of the subsection, "services" includes items and "provider" includes supplier).

(2) *Payment for certain potentially excludable expenses.* Services determined under the PRO program to be potentially excludable by reason of the exclusions in paragraph (g) of this section for not medically necessary services will not be determined to be excludable if neither the beneficiary to whom the services were provided nor the provider (institutional or individual) who furnished the services knew, or could reasonably have been expected to know, that the services were subject to those exclusions. Payment may be made for such services as if the exclusions did not apply.

(3) *Liability for certain excludable services.* In any case in which items or services are determined excludable by the PRO program by reason of being not medically necessary and payment may not be made under paragraph (h)(2) of this section because the requirements of paragraph (h)(2) of this section are not met, the beneficiary may not be held liable (and shall be entitled to a full refund from the provider of the amount excluded and any cost share amount already paid) if:

(i) The beneficiary did not know and could not reasonably have been expected to know that the services were excludable by reason of being not medically necessary; and

(ii) The provider knew or could reasonably have been expected to know that the items or services were excludable by reason of being not medically necessary.

(4) *Criteria for determining that beneficiary knew or could reasonably have been expected to have known that services were excludable.* A beneficiary who receives services excludable by reason of being not medically necessary will be found to have known that the services were excludable if the beneficiary has been given written notice that the services were excludable or that similar or comparable services provided on a previous occasion were excludable and that notice was given by the OCHAMPUS, CHAMPUS PRO or fiscal intermediary, a group or committee responsible for utilization review for the provider, or the provider who provided the services.

(5) *Criteria for determining that provider knew or could reasonably have been expected to have known that services were excludable.* An institutional or individual provider will be found to have known or been reasonably expected to have known that services were excludable under this subsection under any one of the following circumstances:

(i) The PRO or fiscal intermediary had informed the provider that the services provided were excludable or that similar or reasonably comparable services were excludable.

(ii) The utilization review group or committee for an institutional provider or the beneficiary's attending physician had informed the provider that the services provided were excludable.



(iii) The provider had informed the beneficiary that the services were excludable.

(iv) The provider had received written materials, including notices, manual issuances, bulletins, guides, directives or other materials, providing notification of PRO screening criteria specific to the condition of the beneficiary. Attending physicians who are members of the medical staff of an institutional provider will be found to have also received written materials provided to the institutional provider.

(v) The services that are at issue are the subject of what are generally considered acceptable standards of practice by the local medical community.

2. Section 199.14 is amended by revising paragraph (a)(1)(iv), by adding new paragraphs (a)(1)(iv)(B) (*1*), (*2*), (*3*), and (*4*), by revising paragraph (a)(1)(iv)(D)(*1*)(*i*), by adding new paragraph (a)(1)(iv)(D)(*3*), and by adding new paragraphs (a)(1)(iv) (E) through (J), as follows:

**§ 199.14 Provider reimbursement methods.**

(a) * * *

(1) * * *

(iv) *Peer Review Organization program.* This paragraph establishes rules and procedures applicable to the CHAMPUS Peer Review Organization (PRO) program for utilization and quality review of services provided in hospitals for which the hospital care is covered by the CHAMPUS DRG-based payment system.

(A) * * *

(B) *Hospital cooperation.* * * *

(*1*) Documentation that the beneficiary has received the required information about the CHAMPUS PRO program must be maintained in the same manner as is the notice required for the Medicare program by 42 CFR 466.78(c).

(*2*) The physician attestation and physician acknowledgment required for Medicare under 42 CFR 412.40 and 412.46 is also required for CHAMPUS as a condition for payment and may be satisfied by the same statements as required for Medicare, with substitution or addition of "CHAMPUS" when the word "Medicare" is used.

(*3*) Participating hospitals must execute a memorandum of understanding with the PRO providing appropriate procedures for implementation of the PRO program.

(*4*) Participating hospitals may not charge a CHAMPUS beneficiary for inpatient hospital services excluded on the basis of §§ 199.4(g)(1) (not medically necessary), 199.4(g)(3) (inappropriate level), or § 199.4(g)(7) (custodial care) unless all of the conditions established by 42 CFR 412.42(c) with respect to Medicare beneficiaries have been met with respect to the CHAMPUS beneficiary. In such cases in which the patient requests a PRO review while the patient is still an inpatient in the hospital, the hospital shall provide to the PRO the records required for the review by the close of business of the day the patient requests review, if such request was made before noon. If the hospital fails to provide the records by the close of business, that day and any subsequent working day during which the hospital continues to fail to provide the records shall not be counted for purposes of the two day period of 42 CFR 412.42(c)(3)(ii). * * *

(D) *Actions as a result of review*—(*1*) *Findings related to individual claims.* * * *

(*i*) Deny payment for or recoup (in whole or in part) any amount claimed or paid for the inpatient hospital and professional services related to such determination.

* * * * *

(*3*) *Revision of coding relating to DRG validation.* The following provisions apply in connection with the DRG validation process set forth in paragraph (a)(1)(iv)(C)(*2*) of this section.

(*i*) If the diagnostic and procedural information attested to by the attending physician is found to be inconsistent with the hospital's coding or DRG assignment, the hospital's coding on the CHAMPUS claim will be appropriately changed and payments recalculated on the basis of the appropriate DRG assignment.

(*ii*) If the information attested to by the physician as stipulated under paragraph (a)(1)(iv)(B)(*2*) of this section is found not to be correct, the PRO will change the coding and assign the appropriate DRG on the basis of the changed coding.

(E) *Procedures regarding initial determinations.* The CHAMPUS PROs shall establish and follow procedures for initial determinations that are substantively the same or comparable to the procedures applicable to Medicare under 42 CFR 466.83 to 466.104. In addition, these procedures shall provide that a PRO's determination that an admission is medically necessary is not a guarantee of payment by CHAMPUS; normal CHAMPUS benefit and procedural coverage requirements must also be applied.

(F) *Procedures regarding reconsiderations.* The CHAMPUS PROs shall establish and follow procedures for reconsiderations that are substantively the same or comparable to the procedures applicable to reconsiderations under Medicare pursuant to 42 CFR 473.15 to 473.34, except that the time limit for requesting reconsideration (see 42 CFR 473.20(a)(1)) shall be 90 days. A PRO reconsidered determination is final and binding upon all parties to the reconsideration except to the extent of any further appeal for beneficiaries pursuant to paragraph (a)(1)(iv)(G) of this section. A PRO reconsidered determination may not be further appealed by a provider.

(G) *Appeals and hearings.* Beneficiaries may appeal a PRO reconsideration determination to OCHAMPUS and obtain a hearing on such appeal to the extent allowed and under the procedures set forth in § 199.10(d). For purposes of the hearing process, a PRO reconsidered determination shall be considered as the procedural equivalent of a formal review determination under § 199.10. The provisions of § 199.10(e) concerning final action shall apply to hearings cases.

(H) *Acquisition, protection and disclosure of peer review information.* The provisions of 42 CFR Part 476, except § 476.108, shall be applicable to the CHAMPUS PRO program as they are to the Medicare PRO program.

(I) *Additional provision regarding confidentiality of records and limitation on liability of participants*— (*1*) *General rule.* The provisions of 10 U.S.C. 1102 regarding the confidentiality of medical quality assurance records and the qualified immunity for participants shall apply to the activities of the CHAMPUS PRO program as they do to the activities of the external civilian PRO program that reviews medical care provided in military hospitals.

(*2*) *Specific applications.* (*i*) Records concerning PRO deliberations are generally nondisclosable quality assurance records under 10 U.S.C. 1102.

(*ii*) Initial denial determinations by PROs pursuant to paragraph (a)(1)(iv)(E) (concerning medical necessity determinations, DRG validation actions, etc.) and subsequent decisions regarding those determinations are not nondisclosable quality assurance records under 10 U.S.C. 1102.

(*iii*) Information the subject of mandatory PRO disclosure under 42 CFR Part 476 is not a nondisclosure quality assurance record under 10 U.S.C. 1102.

(J) *Obligations, sanctions and procedures.* (*1*) The obligations of health care practitioners and providers set forth in section 1156(a) of the Social Security Act (42 U.S.C. 1320C–5(a)) shall apply to providers of care that is the

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subject of review under the CHAMPUS PRO program.

(2) It shall be a basis for suspension or exclusion from CHAMPUS if a provider has failed in a substantial number of cases substantially to comply with any obligation arising from paragraph (a)(1)(iv)(J)(1) of this section or has grossly and flagrantly violated any such obligation in one or more instances, and it is determined that the provider has demonstrated an unwillingness or lack of ability substantially to comply with such obligations.

(3) In any case in which the PRO determines, after having provided reasonable notice and opportunity for discussion, that a provider should be subject to a sanction under paragraph (a)(1)(iv)(J)(2) of this section, the PRO shall forward to the Director, OCHAMPUS (or designee) a recommendation to that effect, supported by information and documentation pertinent to the matter.

(4) The Director of CHAMPUS shall determine whether to impose a sanction pursuant to paragraph (a)(1)(iv)(J)(2) of this section. Providers may appeal adverse sanctions decisions under the procedures set forth in § 199.10(d).

* * * * *

F.H. Means,

*OSD Federal Register Liaison Officer, Department of Defense.*

February 28, 1989.

[FR Doc. 89-5017 Filed 3-3-89; 8:45 am]

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## POSTAL SERVICE

**39 CFR Part 111**

**Domestic Mail Manual; Miscellaneous Amendments**

**AGENCY:** Postal Service.

**ACTION:** Final rule.

**SUMMARY:** The Postal Service hereby describes the numerous miscellaneous revisions consolidated in the Transmittal Letter for issue 30 of the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations, see 39 CFR 111.1.

Most of the revisions are minor, editorial, or clarifying. Substantive changes, such as the revised regulations on mailing of supplements and third-class enclosures with second-class publications, the new Manifest Mailing System program, and the revised regulations requiring all single-piece third-class mail to be endorsed *Third Class*, have previously been published in the Federal Register.

**EFFECTIVE DATE:** March 19, 1989.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Kemp, (202) 268-2960.

**SUPPLEMENTARY INFORMATION:** The Domestic Mail Manual has been amended by the publication of a transmittal letter for issue 30, dated March 19, 1989. The text of all published changes is filed with the Director of the Federal Register. Subscribers to the Domestic Mail Manual receive these amendments automatically from the Government Printing Office.

The following excerpt from the Summary of Changes section of the transmittal letter for issue 30 covers the minor changes not previously described in interim or final rules published in the Federal Register.

**Summary of Changes**

In Chapter 1, Domestic Mail Services, the following Exhibits in 122.63 are updated:

122.63c, Sectional Center Facilities Serving a Single Three-Digit ZIP Code Area;

122.63d, Sectional Center Facilities Serving More Than One Three-Digit ZIP Code Prefix Area;

122.63e, Optional Area Distribution Center (ADC) Labeling List for Use with Presort First-Class Mailings Only;

122.63f, Optional State Distribution Center (SDC) Labeling List for Mailer Prepared Second-Class Publications;

122.63g, Optional State Distribution Center (SDC) Labeling List for Mailer Prepared Third- and Fourth-Class Letter and Flat-Size Mail;

122.63h, Optional State Distribution Center (SDC) Labeling List for Mailer Prepared Third- and Fourth-Class Irregular Parcels;

122.63i, State Labeling List for Mailer Prepared Second-Class Publications;

122.63j, State Labeling List for Mailer-Prepared Third- and Fourth-Class Letter and Flat-Size Mail;

122.63k, State Labeling List for Mailer Prepared Third- and Fourth-Class Irregular Parcels;

122.63l, Bulk Mail Center (BMC) Labeling List for Mailer-Prepared Bulk Rate Third- and Fourth-Class Machinable Parcel Mailings;

122.63m, 3-Digit Labeling List for Optional Combined ZIP + 4 and Presorted First-Class Mail;

122.63n, Sectional Center Facility (SCF) Labeling List for Optional Combined ZIP + 4 and Presorted First-Class Mail;

122.63o, Area Distribution Center (ADC) Labeling List for Optional Combined ZIP + 4 and Presorted First-Class Mail;

122.63p, Originating Mixed States Labeling List for Mailer Prepared Second-Class Publications;

122.63q, Originating Mixed States Labeling List for Mailer Prepared Third-Class Letter and Third- and Fourth-Class Flat Size Mail;

122.63r, Originating Mixed States Labeling List for Mailer Prepared Third-Class and Fourth-Class Irregular Parcels (References: Postal Bulletins (PB) 21702, 12-8-88, and 21705, 12-29-88).

Section 122.422, *Exceptional Address Format*, is revised to make use of the word. CURRENT, optional for mailers using this format. Mailers who may use the exceptional address format on all classes of mail except Express Mail must include these delivery instructions within or immediately above the address block (PB 21711, 2-9-89).

Section 122.7, *Postal Zones*, is revised to define a local zone more precisely. Specifically, 122.71a is revised to make it easier for mailers to determine the local zone for any post office (PB 21703, 12-15-88).

Section 123.42, *Lottery Matter*, is revised by the addition of subsection 123.425 to comply with the Indian Gaming Regulatory Act, Public Law 100-497, 102 Stat. 2467 (1988) (codified at 25 U.S.C. section 2701-2721). Section 21 of this Act provides that Title 18, U.S. Code Section 1302—the criminal lottery statute whose prohibitions are reflected in DMM 123.422—does not apply to any gaming conducted by an Indian tribe pursuant to the Act (PB 21702, 12-8-88).

Section 136, *Mixed Classes of Mail*, is revised to comply with revisions regarding the mailing of supplements and third-class enclosures with second-class publications. See revisions to sections 425, 452, and 453.

In section 141, *Endorsements on Stamped Envelopes*, subsections 141.254 (a) through (e) concerning permissible printed endorsements on stamped envelopes are revised to comply with recent changes in the authorized endorsements for the forwarding and return of mail contained in DMM Exhibits 159.151 (a) through (f), (PB 21707, 1-12-89).

Part 143, *Precanceled Stamps*, is reformatted. Some new text appears in addition to other changes to enhance clarity. Although no substantive changes have been made, some of the more notable changes are:

*a.* Precanceled stamps affixed on single-piece rate mail will be canceled or postmarked at mail processing units in accordance with the *Postal Operations Manual* 423.2, 423.31, and 423.32.



*b.* Uses of stamps precanceled with the rate designation have been clarified.

*c.* Text has been added in 143.31, *Nonpermit Holders*, specifying for clarity that precanceled postage bought for philatelic purposes includes collecting and the exchange of collection items.

*d.* Since stamp collectors may also be permit holders, the prohibition in former DMM 143.22, constraining permit holders from selling unused precanceled stamps obtained under their permit, has been determined to be unnecessary. It has been deleted.

*e.* DMM 122.15c has been revised to reflect the return address requirements in former 143.421, new 143.177 (PB 21706, 1-5-89).

Section 144.394, *Drop Shipment Mailing Procedures*, is revised regarding drop shipment meters to (1) require printing of the state, in addition to the city, of the entry post office in the ad plate area, and (2) delete the requirement that mailers use private containers to ship matter to the entry post office for drop shipment (PB 21702, 12-8-88).

* * * * *

In section 154, *Plant-Load Operations*, 154.734, *Liability*, is revised and new section 154.738, *Refunds*, is incorporated. The changes specify that although mailers do not have a right to a refund under the plant-verified drop shipment regulations or agreements, they may apply for refunds of postage under 147.2, *Refunds* (PB 21705, 12-29-88).

In section 159, *Undeliverable Mail*, sections 159.44 and 159.48 are revised to (1) emphasize that dead foreign letters are to be sent to foreign exchange offices, and (2) clarify that unpaid mail, unmailable letters, and undeliverable mail must be in separate bundles when sent to dead mail branches (PB 21711, 2-9-89).

Section 164.8, *Philatelic Cover Services and Dealers*, is revised to clarify that cover servicers and dealers must submit 50 or more envelopes or other items for identical cancellations, whether presented in one or more packages, and request return in bulk.

In Chapter 2, *Express Mail*, section 281.1, *Meter Relay Express Mail*, is revised to allow mailers to use meter stamps to prepay reply postage on Express Mail service shipments of up to 70 pounds because Express Mail rates are now unzoned.

In Chapter 3, *First-Class Mail*, sections 324, *ZIP + 4 First-Class Mail*, and 324.7, *Prebarcoded Mail at ZIP + 4 Rates*, are revised. Specifically, sections 324.2 and 324.71 are revised to clarify that for the purpose of meeting the requirements for the First-Class ZIP + 4 Presort rates and the Nonpresorted ZIP + 4 rates, a ZIP + 4 barcode is equivalent to a numeric ZIP + 4 code, and may be used in its place. (PB 21705, 12-29-88); Special Postal Bulletin 21746, 1-18-89).

Sections 324, *ZIP + 4 First-Class Mail*, 325, *ZIP + 4 Barcoded Rate*, 364, *ZIP + 4 Barcoded First-Class Mail*, are revised to enable more mailers to prepare ZIP + 4 barcoded mailings by removing the prohibitions against pieces prepared with 5-digit barcoded and bank barcode windows within First-Class ZIP + 4 Barcoded rate mailings. The prohibitions against these types of pieces are also eliminated for ZIP + 4 Presort, Basic ZIP + 4, and 5-Digit ZIP + 4 rate mailings that mailers choose to prepare with barcodes. Additional language is also provided describing applicable rate eligibility and documentation requirements (Special Bulletin 21746, 1-18-89).

Chapter 4 *Second-Class Mail*, is completely revised. See cross reference table at the end of this summary of changes. Please note that revised Chapter 4 reflects that as of January 1, 1989, the 10 percent allowance for nonsubscriber/nonrequester copies is based on the total number of copies mailed to subscribers/requesters during the calendar year (PB 21711, 2-9-89).

* * * * *

In Chapter 6, *Third-Class Mail*, and 7, *Fourth-Class Mail*, a number of sections are revised to standardize requirements for the preparation of sack labels and to clarify existing regulations concerning the location of the top or destination line on sack labels that must be completely visible and legible. The revised regulations also include a Postal Service recommendation that mailers print the top line so that it is no less than ⅛ inch below the top of the label after the label has been cut and is ready for use. Specific sections are 667.13; 667.224; 667.3; 667.4; 667.7; 764.2; 764.3; 767.2; 767.3; 767.23; 767.33, and 767.8.

In Chapter 6, *Third-Class Mail*, section 622, *Third-Class Bulk Mail*, is revised to enable more mailers to prepare ZIP + 4 barcoded mailings by removing the prohibitions against pieces prepared with 5-digit barcodes within third-class ZIP + 4 Barcoded rate mailings. The regulations also remove the prohibition against use of blank barcode windows for nonqualifying pieces in such mailings. The prohibitions against these types of pieces are also eliminated for ZIP + 4 Presort. Basic ZIP + 4, and 5-Digit ZIP + 4 rate mailings that mailers choose to prepare with barcodes. Additional language is also provided describing applicable rate eligibility and documentation requirements (Special Bulletin 21746, 1-18-89).

* * * * *

In section 667.13, *Sacking Requirements*, section 667.132d is revised to allow mailers to prepare optional sectional center facility (SCF) sacks containing less than 125 pieces or 15 pounds of mail. The minimum is removed to alleviate service problems mailers have experienced and to reduce postal handlings (PB 21707, 1-12-89).

In 667.91, *Exemptions From Packaging Requirements*, section 667.911 is amended to restore the last sentence to language similar to that used in DMM Issue 28, requiring each separate mailing of irregular parcels to meet the minimum volume requirements for mailing at the bulk third-class rates.

Section 681.23, *Single-Piece Weight*, is revised to specify that the mailer must enter the appropriate number of pieces and/or pounds, and the corresponding postage amount(s), in the "Postage Computation" section of Form 3602. *Statement of Mailing with Permit Imprints*, or Form 3602-PC, *Statement of Mailing Bulk Rates* (PB 21709, 1-26-89).

In Chapter 7, *Fourth-Class Mail*, section 767, *Preparation of Bound Printed Matter*, is revised to facilitate mailer use of pallets for bound printed matter or machinable parcel mailings. The Postal Service now allows mailers to commingle fourth-class bound printed matter mail for different zones on sectional center facility (SCF) and optional bulk mail center (BMC) pallets and fourth-class machinable parcels for different zones on destination and origin BMC pallets, *provided* the mailer produces documentation necessary to enable the Postal Service to properly verify piece counts and postage payment. The change also makes the preparation of origin BMC pallets for machinable mailings optional. (PB 21705, 12-29-89).

Exhibit 772.1, *Within BMC (Intra-BMC/ASF) rate ZIP Code Service Areas*, is revised to show the following change: Jacksonville....299, 313-316, 320-342, 346-347, 349 (PB 21704, 12-22-88).

In Chapter 9, *Special Services*, section 945, *Mailing List Services*, is revised to clarify requirements and standardize format and terminology. Section 945.5, *Furnishing Address Changes to Election Boards and Voter Registration Commissions*, is revised to specify that when agencies request change-of-address information on Form 3575, they must submit requests to the management sectional center (MSC)/

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division office where the Address Information Systems Office coordinates list correction activities. The Manager, Address Information Systems, or the Manager, Address Programs Support, at the MSC/division must provide instructions to post offices and manage the implementation of this service (PB 21705, 12–29–88).

In part 940, *Money Orders*, section 941.62 is updated (PB 21704, 12–22–88).

Minor, nonsubstantive changes include: 324.3; 352.22; 353.1; 622.144; 651.22; 652.1; 722.1, 912.45, and 912.0.

**List of Subjects in 39 CFR Part 111**

Postal Service.

**PART 111—GENERAL INFORMATION ON POSTAL SERVICE**

1. The authority citation for 39 CFR Part 111 continues to read as follows:

**Authority:** 5 U.S.C. 552(a): 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

2. In consideration of the foregoing, the table at the end of § 111.3(e) is amended by adding at the end thereof the following:

**§ 111.3 Amendments to the Domestic Mail Manual.**

* * * * *

| Transmittal letter for issue | Dated | "Federal Register" publication |
|---|---|---|
| 90 | Mar. 16, 1989 | 54 FR * * * |

**Fred Eggleston,**

*Assistant General Counsel, Legislative Division.*

[FR Doc. 89–4949 Filed 3–3–89; 8:45 am]

BILLING CODE 7710–12–M

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[A–1–FRL–3523–5]**

**Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Amendments to Air Pollution Control Regulations Regarding Testing Requirements**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is approving State Implementation Plan (SIP) revisions submitted by the Commonwealth of Massachusetts on September 20, 1988. These revisions involve amendments to the SIP regulations for volatile organic compound (VOC) emitting sources. The revisions require the use of EPA-approved test methods when compliance testing is performed for non-Control Technique Guideline (CTG) VOC sources subject to reasonably available control technology (RACT). The Massachusetts' SIP has a non-CTG regulation imposing RACT on all VOC sources with emissions greater than 100 tons per year not otherwise subject to RACT under a regulation developed pursuant to a CTG. The intended effect of this action is to approve this regulation adopted by Massachusetts in accordance with commitments made in its federally-approved ozone attainment plan. This action is being taken under Section 110 of the Clean Air Act.

**EFFECTIVE DATE:** This rule will become effective on April 5, 1989.

**ADDRESSES:** Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Room 2313, Boston, MA 02203; the Department of Environmental Quality Engineering, Division of Air Quality Control, One Winter Street, 6th Floor, Boston, MA 02108; and Public Information Reference Unit, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Lorenzo Thantu (617) 565–3250; FTS 835–3250.

**SUPPLEMENTARY INFORMATION:** On December 10, 1987 (52 FR 46786), EPA published a Notice of Proposed Rulemaking (NPR) for the Commonwealth of Massachusetts. The NPR proposed to approve revisions to SIP regulation 310 CMR 7.18 for VOC emitting sources. The proposed amendments to Regulation 310 CMR 7.18, Volatile Organic Compounds, are described below:

(1) Subsection 310 CMR 7.18(2) which sets forth the testing requirements for VOC emitting sources is being amended by expanding the source testing requirements to include non-CTG sources subject to RACT under subsection 310 CMR 7.18(17) and by requiring that the use of any alternative test method to EPA methods 24 and 25 be EPA approved.

(2) Subsection 310 CMR 7.18(17) which sets forth procedures for issuance of plan approvals imposing RACT on non-CTG sources is being amended by including language which references SIP Regulation 310 CMR 7.02(2). Subsection 310 CMR 7.18(17)(d) references 310 CMR 7.02(2) to clarify certain procedures related to plan approvals. Subsection 310 7.02(2) requires that sources operate in conformance with plan approvals issued by the DEQE.

(3) Subection 310 CMR 7.18(17)(d) is also being amended to include language stating that non-CTG VOC sources subject to RACT under plan approvals issued pursuant to 310 CMR 7.18(17) would be subject to enforcement action by both the DEQE and EPA should they violate provisions of those plan approvals.

A more detailed description of these revisions and EPA's rationale for approving them were provided in the NPR and will not be restated here. No public comments were received on the NPR.

**Final Action**

EPA is approving revisions to the Massachusetts SIP which amended Regulation 310 CMR 7.18 as outlined in this notice.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 5, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

**Note:** Incorporation by reference of the State Implementation Plan for the Commonwealth of Massachusetts was approved by the Director of the Federal Register on July 1, 1982.

Date: February 10, 1989.

**Jack Moore,**

*Acting Administrator.*

Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

**PART 52—[AMENDED]**

**Subpart W—Massachusetts**

1. The authority citation for Part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401–7642.

2. Section 52.1120 is amended by adding paragraph (c)(76) to read as follows:

**§ 52.1120 Identification of Plan.**

* * * * *

(c) * * *



**(76) Revisions involving regulations 310 CMR 7.18(2)(e) and 7.18(17) submitted by the Department of Environmental Quality Engineering on September 20, 1988.**

**(i) Incorporation by Reference.**

**(A) Amendment to Regulation 310 CMR 7.18(2)(e)—effective July 22, 1988.**

**(B) Amendments to Regulation 310 CMR 7.18(17)(d)—effective July 22, 1988.**

**(C) A Regulation Filing and Publication document from the Commonwealth of Massachusetts Department of Environmental Quality Engineering dated July 5, 1988 which states that the effective date of the regulatory amendments to 310 CMR 7.18(2)(e) and 310 CMR 7.18(17)(d), incorporated above, is July 22, 1988.**

**(ii) Additional Materials**

**(A) Nonregulatory portions of the state submittal.**

**§ 52.1167 [Amended]**

3. In § 52.1167, Table 52.1167 is amended by adding the following entries in numerical order to read as follows:

TABLE 52.1167—EPA-APPROVED RULES AND REGULATIONS

| State citation | Title/Subject | Date submitted by State | Date approved by EPA | FEDERAL REGISTER citation | Section 52.1120 (c) | Comments/Unapproved sections |
|---|---|---|---|---|---|---|
| * | * | * | * | * | * | * |
| 310 CMR 7.18 (2)(e). | Compliance with emission limitations. | | March 6, 1989 | 5 FR | | Testing requirements for plan approvals issued under 310 CMR 7.18 (17). |
| * | * | * | * | * | * | * |
| 310 CMR 7.18(17)... | RACT | | March 6, 1989 | 54 FR | | Enforceability of plan approvals issued under 310 CMR 7.18 (17). |
| * | * | * | * | * | * | * |

[FR Doc. 89–3991 Filed 3–3–89; 8:45 am]

BILLING CODE 6560–50–M

**GENERAL SERVICES ADMINISTRATION**

**41 CFR Part 101–6**

**[FPMR Temp. Reg. A–27, Rev. 1, Supp. 1]**

**Civilian Executive Agency Aircraft Information System (AIS)**

**AGENCY:** Federal Supply Service, GSA.

**ACTION:** Temporary regulation.

**SUMMARY:** This supplement extends the expiration date of FPMR Temporary Regulation A–27, Revision 1, to January 31, 1991. This extension is necessary to allow additional time to adequately coordinate the reporting system with affected agencies before the policy is codified in the Code of Federal Regulations.

**DATES:** *Effective date:* March 6, 1989. *Expiration date:* January 31, 1991.

**FOR FURTHER INFORMATION CONTACT:** Mr. Lawrence Godwin, Transportation Systems Staff (202–566–1013).

**SUPPLEMENTARY INFORMATION:** GSA has determined that this is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

**List of Subjects in 41 CFR Part 101–6**

**Authority:** Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

In 41 CFR Chapter 101, the following temporary regulation is added to the appendix at the end of Subchapter A to read as follows:

**Federal Property Management Regulations Temporary Regulation A–27 Revision 1, Supplement 1**

*To:* Heads of Federal agencies

*Subject:* Civilian Executive Agency Aircraft Information System (AIS)

1. *Purpose.* This supplement extends the expiration date of FPMR Temporary Regulation A–27, Revision 1.

2. *Effective date.* This supplement is effective upon publication in the **Federal Register**.

3. *Expiration date.* This supplement expires on January 31, 1991, unless sooner superseded or canceled.

4. *Background.*

a. The Aircraft Information System (AIS) went into effect on January 11, 1985, with the promulgation of FPMR Temporary Regulation A–27 by the Administrator of General Services. In addition to providing the AIS policy, the regulation provided guidelines for preparation, definitions, and instructions for completion of the required reports.

b. The Administrator promulgated FPMR Temporary Regulation A–27, Revision 1, on February 24, 1987, which, among other things, provided for improvements in the reporting system by establishing the use of preprinted forms rather than report formats.

c. The complexities involved in the development and refinement of a major reporting system such as the AIS, will require additional time for GSA to adequately coordinate with the affected agencies and ensure that the system being developed is sufficiently refined before the policy is codified in the Code of Federal Regulations.

5. *Explanation of change.* The expiration date in par. 3 of FPMR Temporary Regulation A–27, Revision 1, is revised to January 31, 1991.

**Richard G. Austin,**

*Acting Administrator of General Services.*

[FR Doc. 89–5096 Filed 3–3–89; 8:45 am]

BILLING CODE 6820–24–M

**DEPARTMENT OF THE INTERIOR**

**Bureau of Land Management**

**43 CFR Public Land Order 6710**

**[CA–940–09–4214–10; CACA 17091]**

**Modification of Public Land Order No. 2693; California**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public land order.

**SUMMARY:** This order modifies a public land order insofar as it affects 160 acres of public land withdrawn for the Otay National Cooperative Land and Wildlife Management Area. This action will open 160 acres to allow an exchange of public and private lands that will benefit the Otay National Cooperative Land and Wildlife Management Area, but the land

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will remain closed to all other forms of surface entry under the public land laws. All of the land has been and will remain open to mining and mineral leasing.

**EFFECTIVE DATE:** April 5, 1989.

**FOR FURTHER INFORMATION CONTACT:** Viola Andrade, BLM California State Office, 2800 Cottage Way, Sacramento, California 95825, 916–978–4815.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Public Land Order No. 2963 is hereby modified as stated in paragraph 2 of this order, as to the following described land:

**San Bernardino Meridian**

T. 18 S., R. 1 E.,

Sec. 29, NW¼.

The area described contains 160 acres in San Diego County.

2. At 10 a.m. on (insert date 30 days after date of publication), the land will be opened to disposition under the authority of section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716), subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. The land remains closed to all other forms of surface entry under the public land laws, but remains open to the mining and mineral leasing laws.

**Earl Gjelde,**

*Under Secretary of the Interior.*

February 22, 1989.

[FR Doc. 89–5098 Filed 3–3–89; 8:45 am]

BILLING CODE 4310–40–M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[MM Docket No. 88–231; RM–6131]**

### Radio Broadcasting Services; Mecca, CA

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document allots FM Channel 249A to Mecca, California, as that community's first local broadcast service, in response to a petition for rule making filed by Craig L. Fox. Coordinates utilized for Channel 249A at Mecca are the city reference point at 33–34–18 and 116–05–06. With this action, the proceeding is terminated.

**DATES:** Effective March 31, 1989. The window period for filing applications on Channel 249A at Mecca, California, will open on April 3, 1989, and close on May 3, 1989.

**FOR FURTHER INFORMATION CONTACT:** Nancy Joyner, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 88–231, adopted January 30, 1989, and released March 1, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments is amended under California, by adding Mecca, Channel 249A.

Federal Communications Commission.

**Steve Kaminer,**

*Deputy Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 89–5127 Filed 3–3–89; 8:45 am]

BILLING CODE 6712–01–M

### 47 CFR Part 73

**[MM Docket No. 88–316; RM–6269]**

### Radio Broadcasting Services; Lanai City, HI

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission at the request of Timothy D. Martz allots Channel 284A to Lanai City, Hawaii, as that community's first local FM service. Channel 284A can be allotted to Lanai City, Hawaii in compliance with the Commission's minimum distance separation requirements with a site restriction. The coordinates for this allotment are 20–49–06 and 156–54–22. With this action, this proceeding is terminated.

**DATES:** Effective March 31, 1989. The window period for filing applications will open on April 3, 1989, and close on May 3, 1989.

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 88–316, adopted January 30, 1989, and released March 1, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b) the Table of FM Allotments is amended under Hawaii by adding Lanai City, Channel 284A.

**Steve Kaminer,**

*Deputy Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 89–5126 Filed 3–3–89; 8:45 am]

BILLING CODE 6712–01–M

### 47 CFR Part 73

**[MM Docket No. 88–322; RM–6267]**

### Radio Broadcasting Services; Hali'imaile, Hawaii

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document allots Channel 288A to Hali'imaile, Hawaii, at the request of Timothy D. Martz, as the community's first local FM service. Channel 288A can be allotted to Hali'imaile in compliance with the Commission's minimum distance separation requirements. The coordinates for this allotment are 20–52–16 and 156–20–38. With this action, this proceeding is terminated.

**DATES:** Effective March 31, 1989. The window period for filing applications will open on April 3, 1989, and close on May 3, 1989.



**FOR FURTHER INFORMATION CONTACT:** Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order MM Docket No. 88–322, adopted January 30, 1989, and released March 1, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

1. The authority citation for Part 73 continues to read as follows:

**PART 73—[AMENDED]**

**Authority:** 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Hawaii is amended by adding Hali'imaile, Channel 288A.

**Steve Kaminer,**

*Deputy Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 89–5130 Filed 3–3–89; 8:45 am]

BILLING CODE 6712–01–M

## ENVIRONMENTAL PROTECTION AGENCY

### 48 CFR Parts 1532 and 1552

**[FRL–3533–1]**

### Acquisition Regulation Concerning the Prompt Payment Act

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This document amends the EPA Acquisition Regulation (EPAAR) to revise EPAAR coverage on the Prompt Payment Act. The EPAAR coverage has been superseded by an amendment to the Federal Acquisition Regulation (FAR). The intended effect of this action is to delete EPAAR coverage on the Prompt Payment Act that is duplicate of the FAR.

**EFFECTIVE DATE:** March 6, 1989.

**FOR FURTHER INFORMATION CONTACT:** Joseph Nemargut, Jr. at (202) 475–9790 (FTS 475–9790), Environmental Protection Agency, Procurement and Contracts Management Division (PM 214F), 401 M Street SW., Washington, DC 20460.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

When the Office of Management and Budget (OMB) issued Circular A–125, "Prompt Payment," the Environmental Protection Agency (EPA) provided implementing instructions through its procurement regulations.

Federal Acquisition Circular 84–33 was published on February 8, 1988, amending the FAR by adding Subpart 32.9 and a contract clause to implement OMB Circular A–125. The new FAR coverage supersedes most of the coverage on prompt payment currently contained in the EPAAR.

This rule deletes from the EPAAR regulatory material and contract clauses superseded by FAC 84–33. The rule retains only unique EPA invoice submission requirements. These requirements have been incorporated in a new EPAAR subpart for consistency with the FAR structure.

On October 17, 1988, the President signed Public Law 100–496, amending the Prompt Payment Act. This rule does not implement any provisions of that law.

**B. Executive Order 12291**

OMB Bulletin No. 85–7, dated December 14, 1984, establishes the requirements for Office of Management and Budget (OMB) review of agency procurement regulations. This regulation does not fall within any of the categories cited in this Bulletin requiring OMB review.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because this rule does not propose any information collection requirements, which would require the approval of OMB under 44 U.S.C. 3501, et seq.

**D. Regulatory Flexibility Act**

The EPA certifies this rule does not exert a significant economic impact on a substantial number of small entities. The rule essentially deletes existing material from the EPAAR that is duplicative of FAR coverage on the Prompt Payment Act.

**E. Public Comments.**

The EPA has not solicited public comments on this final rule since it does not have a significant cost or administrative impact on contractors or offerors. The rule essentially deletes existing material from the EPAAR that is duplicative of FAR coverage on the Prompt Payment Act.

**List of Subjects in 48 CFR Parts 1532 and 1552**

Government procurement, Contract financing, Solicitation provisions, Contract clauses.

For the reasons set out in the preamble, Chapter 15 of Title 48 Code of Federal Regulations is amended as set forth below:

**PART 1532—[AMENDED]**

1. The authority citation for Part 1532 continues to read as follows:

**Authority:** Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

2. Subpart 1532.9 is added to read as follows:

**Subpart 1532.9—Prompt Payment**

**1532.908 Contract clauses.**

The clause at 1552.232–70 shall be included in all solicitations and contracts.

**Subpart 1532.70—[Removed]**

3. Subpart 1532.70 is removed.

**PART 1552—[AMENDED]**

4. The authority citation for Part 1552 continues to read as follows:

**Authority:** Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

5. Section 1552.232–70 is revised to read as follows:

**1552.232–70 Submission of invoices.**

As prescribed in 1532.908, insert the following clause:

SUBMISSION OF INVOICES (MAR 1988)

In order to be considered properly submitted, an invoice or request for contract financing payment must meet the following requirements in addition to the requirements of FAR 52.232–25:

(a) The invoice or request for contract financing payment shall be prepared and submitted in quadruplicate (one copy shall be marked "original"), unless otherwise specified, to the accounting operations office designated in this contract.

(b) If this is a cost-reimbursement contract, the contractor shall prepare the invoice or request for contract financing payment in accordance with EPA Form 1900–34, "Guide for the Preparation of Contractor's Claim for Reimbursement of Costs and Fees Under Cost Reimbursement Type Contacts" or EPA Form 1900–34A, "Guide for the Preparation of Contractor's Claims for Reimbursement of Costs and Fees Under Cost-Plus-Award-Fee (CPAF) Type Contracts." If the contract is a cost-reimbursement term-form contract under which contract work is authorized by individual work assignments, the invoice or request for contract financing payment shall include a summary of amounts claimed against each work assignment.

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(c) If this is an indefinite delivery/indefinite quantity contract, the invoice or request for contract financing payment shall include a summary of amounts claimed against each delivery order, unless otherwise specified. (End of clause)

**1552.232-71 [Removed and Reserved]**

8. Section 1552.232-71 is removed and reserved.

**1552.232-72 [Removed and Reserved]**

7. Section 1552.232-72 is removed and reserved.

Date: February 22, 1989.

John C. Chamberlin,

*Director, Office of Administration.*

[FR Doc. 89-5087 Filed 3-3-89; 8:45 am]

BILLING CODE 6560-50-M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 675

**[Docket No. 81151-8019]**

### Groundfish of the Bering Sea and Aleutian Islands Area

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of prohibition of receipt of groundfish.

**SUMMARY:** NOAA announces prohibition of receipt by foreign processors in the exclusive economic zone (EEZ) of yellowfin sole taken in directed fisheries for yellowfin sole in the Bering Sea and Aleutian Islands Management Area (BSAI). This action, taken under provisions of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP), limits joint venture processing (JVP) to the amount of yellowfin sole specified for JVP, assures optimum use of groundfish, and promotes orderly conduct of the groundfish fisheries.

**DATES:** Effective March 1, 1989. Comments will be accepted through March 16, 1989.

**ADDRESS:** Comments should be mailed to Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802, or be delivered to Room 453, Federal Building, 709 West Ninth Street, Juneau, Alaska.

**FOR FURTHER INFORMATION CONTACT:** Pat Peacock, Fishery Management Specialist, NMFS, 907-586-7654.

**SUPPLEMENTARY INFORMATION:** The FMP, which governs the groundfish fishery in the EEZ of the BSAI under the Magnuson Fishery Conservation and Management Act, is implemented by rules appearing at 50 CFR 611.93 and Part 675. For other actions in 1989 concerning JVP yellowfin sole in the BSAI, see 54 FR 3805, January 25, 1989.

### Notice of Closure to Directed Fishing

Under § 675.20(a)(7), the Regional Director has determined that 6,000 metric tons (mt) of the total 110,000 mt of yellowfin sole allocated to JVP will be needed after the closure of the directed fishery for bycatch in the JVP fishery for "other flatfish." To preserve this bycatch amount, foreign processors must cease receiving yellowfin sole caught by U.S. fishermen in directed fisheries for yellowfin sole, effective 2100 g.m.t., March 1, 1989. Directed fishing is defined at § 675.2.

### Classification

This action is taken under the authority of 50 CFR 675.20(a)(7) and complies with Executive Order 12291.

The Assistant Administrator for Fisheries finds for good cause that it is impractical and contrary to the public interest to provide prior notice and opportunity for comment. Immediate effectiveness of this notice is necessary to prevent the harvest of yellowfin sole from exceeding the JVP amount.

Interested persons are invited to submit comments in writing to the address above for 15 days after the effective date of this notice.

### List of Subjects in 50 CFR Part 675

Fish, Fisheries, Reporting and recordkeeping requirements.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: February 28, 1989.

**Richard H. Schaefer,**

*Director of Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 89-5091 Filed 3-1-89; 12:37 pm]

BILLING CODE 3510-22-M



# Proposed Rules

Federal Register
Vol. 54, No. 42
Monday, March 6, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Farmers Home Administration

### 7 CFR Part 1951

### Loan and Grant Programs; Servicing and Collections

**AGENCY:** Farmers Home Administration, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Farmers Home Administration (FmHA) proposes to amend its Community Facilities loan and grant servicing regulations. This action is being taken to clarify various sections of the regulation. The intended effect is to provide more comprehensive and straightforward guidance to FmHA staff and recipients of assistance relating to the servicing of the affected loans and grants.

**DATE:** Comments must be received on or before April 5, 1989.

**ADDRESSES:** Submit written comments in duplicate to the Office of the Chief, Directives and Forms Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6348, South Agriculture Building, Washington, DC 20250. All written comments made pursuant to this notice will be available for public inspection during regular work hours at the above address. The collection of information requirements contained in this rule have been submitted to OMB for review under Section 3504(h) of the Paperwork Reduction Act of 1980. Submit comments to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for the Farmers Home Administration, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Richard Kelly, Loan Specialist, Water and Waste Disposal Division, Farmers Home Administration, USDA, South Agriculture Building, Room 6334, Washington, DC 20250, telephone: (202) 382-9589 or Bonnie Justice, Loan Specialist, Community Facilities Division, Farmers Home Administration, USDA, South Agriculture Building, Room 6314, Washington, DC 20250, telephone: (202) 382-1490.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed under USDA procedures established in Departmental Regulation 1512-1, which implements Executive Order 12291, and has been determined to be "nonmajor" since the annual effect on the economy is less than $100 million and their will be no significant increase in cost or prices for consumers; individual industries; Federal, State, or Local government agencies; or geographic regions.

In compliance with the Regulatory Flexibility Act, the Administrator has determined that this action will not have a significant economic impact on a substantial number of small entities because it contains normal business recordkeeping requirements and minimal reporting requirements. Furthermore, there will be no adverse effects on competition, employment investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This action is not expected to substantially affect budget outlay or to affect more than one agency or to be controversial. The net result is expected to provide better service to rural communities. These programs/activities are listed in the Catalog of Federal Domestic Assistance under Nos. 10.418, Water and Waste Disposal Systems for Rural Communities, and 10.423, Community Facilities Loans, and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and Local officials. (7 CFR Part 3015, Subpart V, 48 FR 29112, June 24, 1983, and 7 CFR Part 1940, Subpart J, "Intergovernmental Review of Farmers Home Administration Programs and Activities").

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Programs." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 92-190, and Environmental Impact Statement is not required.

### Background

This package is primarily to incorporate a number of minor changes to the regulations, and to clarify a number of matters which are frequent sources of confusion to field personnel and others. The alternatives are to do nothing or to proceed with revision of the regulation. FmHA believes that rewriting the regulation while incorporating the various changes will result in the most efficient conduct of internal Agency administrative activities and provisions of service to the public.

The primary changes include the following:

1. Two new programs, grants under the National Nonprofit Corporations and Technical Assistance and Training programs, are added to those covered, and Loans to Timber Development Organizations is deleted because the program is no longer funded and no loans were ever made under the program.

2. A more detailed explanation of activities covered by the regulation is provided.

3. Definitions for the CONACT and nonprogram loans are added.

4. Clarification is provided that requests for actions involving parity position are considered to be subordinations.

5. Provisions is made for use of a rescheduling agreement for certain reamortizations.

6. Clarification is provided that deferment of principal and/or interest is not allowable in connection with a reamortization.

7. Clarification is provided that a separate new instrument is required for each loan being reamortized when new instruments are required.

8. All third-party agreements are covered in one section and clarification is provided to describe conditions that must exist before third-party agreements will be permitted by FmHA.

9. The State Director is given authority to determine the amount of royalty payments to be assigned to the government from mineral leases.

10. A section is added to clearly indicate that environmental review in accordance with FmHA Instruction 1940-G is required for most servicing activities.

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11. A provision is included which allows the release of liability in certain circumstances when the FmHA debt is not paid in full but all security property has been disposed of, and clarifies circumstances when the release of liability must be approved by the Administrator.

12. A requirement for an appraisal when the full amount of the FmHA debt is not assumed is added.

13. Provision is made for use of a new form appropriate for Community Programs for certain assumptions.

14. Clarification is provided that a loan made in conjunction with a transfer and assumption must be treated as a separate loan.

15. Clarification is provided that loans transferred to ineligibles will be classified as nonprogram loans.

16. A requirement is added that a letter of conditions be issued to and agreed to by prospective transferees.

17. It is clarified that transferees must agree to abide by the covenants of an FmHA grant if one was made in conjunction with the loan being transferred.

18. A section is added to emphasize that defeasance of FmHA loans is not permissible.

19. A requirement for National Office approval of variations from the provisions of the regulation for servicing public bodies is added.

20. A summary of policies for the servicing of nonprogram loans is added.

21. Clarification of servicing actions for borrowers changing legal organizational structure is provided.

22. A provision is added to allow protective advances to be amortized in certain cases.

23. A provision is added to allow the FmHA servicing office to retain certain original debt instruments and provide copies to the Finance Office.

24. Language is added clarifying the applicability of 7 CFR Part 3015 to grants covered by the subsection.

**List of Subjects in 7 CFR Part 1951**

Account servicing; Grant programs-Housing and community development; Loan programs-Housing and community development; Reporting requirements; Rural areas.

Therefore, as proposed, Chapter XVIII, Title 7, Code of Federal Regulations, is amended as follows:

## PART 1951—SERVICING AND COLLECTIONS

1. The authority citation for Part 1951 continues to read as follows:

**Authority:** 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

2. Subpart E of Part 1951 is revised to read as follows:

### Subpart E—Servicing of Community and Insured Business Programs Loans and Grants

Sec.


1951.201 Purpose.
1951.202 Objectives.
1951.203 Definitions.
1951.204 Nondiscrimination.
1951.205 Present market value determination.
1951.206 Redelegation of authority.
1951.207 General servicing actions.
1951.208 Liquidation of security.
1951.209 Sale or exchange of security property.
1951.210 Transfer of security and assumption of loans.
1951.211 Special provisions applicable to Economic Opportunity (EO) Cooperative loans.
1951.212 Water and waste disposal systems which have become part of an urban area.
1951.213 Care, management, and disposal of acquired property.
1951.214 Grants.
1951.215 State Director's additional authorizations and guidance.
1951.216 Payment in full.
1951.217 State supplements.
1951.218 Forms.
1951.219 Public bodies.
1951.220 Special provision for interest rate change.
1955.221 Servicing of nonprogram (NP) loans.
1951.222–1951.249 [Reserved].
1951.250 OMB control number.


### Subpart E—Servicing of Community and Insured Business Programs Loans and Grants

**§ 1951.201 Purpose.**

This Subpart prescribes the Farmers Home Administration's (FmHA) policies, authorizations and procedures for servicing Water and Waste Disposal System loans and grants; Community Facility loans; Industrial Development grants; loans for Grazing and other shift-in-land-use projects; Association Recreation loans; Association Irrigation and Drainage loans; Watershed loans and advances; Resource Conservation and Development loans; Insured Business loans; Economic Opportunity Cooperative loans; loans to Indian Tribes and Tribal Corporations; Rural Renewal loans; Energy Impacted Area Development Assistance Program grants; National Nonprofit Corporation grants; and Water and Waste Disposal Technical Assistance and Training grants. Loans sold without insurance by FmHA to the private sector will be serviced in the private sector and will not be serviced under this subpart. The provisions of this subpart are not applicable to such loans. Future changes to this subpart will not be made applicable to such loans.

**§ 1951.202 Objectives.**

The purpose of loan and grant servicing functions is to assist recipients to meet the objectives of loans and grants, repay loans on schedule, comply with agreements, and protect FmHA's financial interest. Supervision by FmHA includes, but is not limited to, review of budgets, management reports, audits and financial statements; performing security inspections and providing, arranging for, or recommending technical assistance; evaluating environmental impacts of proposed actions by the borrower; and performing civil rights compliance reviews, in accordance with the requirements of Subpart A of Part 1942, Subpart G of Part 1940, and Subpart E of Part 1901 of this chapter.

**§ 1951.203 Definitions.**

(a) *Approval official.* An official who has been delegated loan and/or grant approval authorities within applicable programs, subject to the dollar limitations of Exhibits A, B, and C of Subpart A of Part 1901 of this chapter (available in any FmHA office).

(b) *Assumption of debt.* The agreement by one party to legally bind itself to pay the debt incurred by another.

(c) *CONACT.* The Consolidated Farm and Rural Development Act, as amended.

(d) *Eligible applicant.* An entity that would be legally qualified for financial assistance under the loan or grant program involved in the servicing action.

(e) *Ineligible applicant.* An entity or individual that would not be considered eligible for financial assistance under the loan or grant program involved in the servicing action.

(f) *Nonprogram (NP) Loan.* An NP loan exists when credit is extended to an ineligible applicant and/or transferee in connection with loan assumptions or sale of inventory property; any recipient in cases of unauthorized assistance; or a recipient whose legal organization has changed as set forth in § 1951.207(i) of this subpart resulting in the borrower being ineligible for program benefits.

(g) *Servicing office.* The State, District, or County Office responsible for immediate servicing functions for the borrower or grantee.

(h) *Transfer fee.* A one-time nonrefundable application fee, charged to ineligible applicants for FmHA services rendered in the processing of a transfer and assumption.



**§ 1951.204 Nondiscrimination.**

Each instrument of conveyance required for a transfer, assumption, or other servicing action under this subpart will contain the following covenant:

The property described herein was obtained or improved through Federal financial assistance. This property is subject to the provisions of title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, as amended, and the regulations issued pursuant thereto for so long as the property continues to be used for the same or similar purposes for which the Federal financial assistance was extended.

**§ 1951.205 Present market value determination.**

For purpose of this subpart, the value of security is determined by the approval official as follows:

(a) *Security representing a relatively small portion of the total value of the security property.* The approval official will determine that the real estate and chattels are disposed of at a reasonable price. A current appraisal report may be required.

(b) *Security representing a relatively large portion of the total value of the security property.* The approval official will require a current appraisal report, and the sale prices of the real estate and chattels disposed of will at least equal the present market value as determined by this appraisal.

(c) *Appraisal report.* If required, a current appraisal report will be completed in accordance with § 1942.3 of Subpart A of Part 1942 of this chapter. The appraisal will be completed by a qualified FmHA employee or an independent appraiser as determined appropriate by the approval official.

**§ 1951.206 Redelegation of authority.**

Servicing functions under this subpart which are specifically assigned to the State Director may be redelegated in writing to an appropriate sufficiently trained designee.

**§ 1951.207 General servicing actions.**

(a) *Collections, payments and refunds.* Collections are processed in accordance with Subpart B of Part 1951. Payments and refunds are handled in accordance with the following:

(1) Field offices can obtain data on principal installments due for Community Programs loans with unamortized installments using the borrower status screen option in the Automated Discrepancy Processing System (ADPS).

(2) Grazing Association Loans, Irrigation, Drainage and other Soil and Water Conservation Loans, and Indian Tribes and Tribal Corporation Loans.

(i) Regular payments for such loans are defined in § 1951.8(a) of Subpart A of this Part 1951, and are distributed according to § 1951.9(a) of that subpart unless otherwise established by the note or bond.

(ii) Extra payments are defined in § 1951.8(b) of Subpart A of this Part 1951, and are distributed according to § 1951.9(b) of that subpart.

(3) *Community and Insured Business Programs.*

(i) Regular payments for Community and Insured Business Programs borrowers are all payments other than extra payments and refunds. Such payments are usually derived from facility revenues, and do not include proceeds from the sale of security. They also include payments derived from sources which do not decrease the value of FmHA's security.

(A) Distribution of such payments is made as follows:

(*1*) First, to the FmHA loan(s) in proportion to the delinquency existing on each. Any excess will be distributed in accordance with paragraphs (a)(3)(i)(A)(*2*) and (*3*) of this section.

(*2*) Second, to the FmHA loan or loans in proportion to the approximate amounts due on each. Any excess will be distributed according to paragraph (a)(3)(i)(A)(*3*) of this section.

(*3*) Third, as advance payments on FmHA loans. In making such distributions, consider the principal balance outstanding on each loan, the security position of the liens securing each loan, the borrower's request, and related circumstances.

(B) Unless otherwise established by the debt instrument, regular payments for amorized loans will be applied first to interest accrued as of the date of receipt of the payment, with any excess being applied to principal. For debt instruments with installments of principal plus interest, regular payments will be applied first to the interest due through the date of the next scheduled installment of principal and interest and then to principal due, with any balance applied to the next scheduled principal installment.

(ii) Extra payments are derived from sale of basic chattel or real estate security; refund of unused loan funds; cash proceeds of property insurance as provided in § 1806.5(b) of Subpart A of Part 1806 (paragraph V B of FmHA Instruction 426.1); and similar actions which reduce the value of basic security. At the option of the borrower, regular facility revenue may also be used as extra payments when regular payments are current. Unless otherwise established in the note or bond, extra payments will be applied as follows:

(A) First to the account secured by the lowest priority of lien on the property from which the extra payment was obtained. Any balance will be applied to other FmHA loans in ascending order of priority.

(B) For amortized loans, extra payments will be applied first to interest accrued to the date payment is received, and then to principal. For debt instruments with installments of principal plus interest, such payments will be applied to the final unpaid principal installment.

(b) *Loan summary statements.* Upon request of a borrower, FmHA will issue a loan summary statement showing account activity for each loan made or insured under the CONACT. Field offices will post a notice informing borrowers of the availability of loan summary statements. See Exhibit A of Subpart A of this part for a sample of the required notice.

(1) The loan summary statement period is from January 1 through December 31. The Finance Office forwards annual statements to field offices for all loans made or insured under the CONACT. The forms are to be retained in borrower files as a permanent record of account activity.

(2) Quarterly loan summary statements are retained in the Finance Office on microfiche. These statements reflect cumulative data from the beginning of the current year through the end of the most recent quarter. Servicing offices may request copies of these quarterly or annual statements by sending FmHA 1951–57, "Request for Loan Summary Statement," to the Finance Office.

(3) The servicing office will provide a copy of the applicable loan summary statement to the borrower on request. If requested, the servicing office will also provide an explanation of the application of payments.

(4) When a copy of the form is requested, borrowers will be provided with copies of the applicable form(s). A printout obtained through ADPS reflecting all future installments owed will be attached. These two documents will constitute the loan summary statement to be provided to the borrower.

(c) *Insurance.* FmHA borrowers shall maintain insurance coverage as follows:

(1) Community and Insured Business Programs borrowers shall continuously maintain adequate insurance coverage as required by the loan agreement and § 1942.17(j)(3) of Subpart A of Part 1942 of this chapter. Insurance coverage must be monitored in accordance with the above-referenced section to determine

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that adequate policies and bonds are in force.

(2) For all other types of loans covered by this subpart, property insurance will be serviced according to Subpart A of Part 1806 of this chapter (FmHA Instruction 426.1) in real estate mortgage cases, and according to the loan agreement in other cases.

(d) *Property taxes.* Real property taxes are serviced accordingly to Part 1863 of this chapter. (FmHA Instruction 425.1). If State statutes permit a personal property tax lien to have priority over FmHA's lien, such taxes are serviced according to § 1863.3 and § 1863.4 (paragraphs III and IV) of that instruction.

(e) *Protective advances.* (1) The State Director is authorized to approve, without regard to any loan or total indebtedness limitations, vouchers to pay costs, including insurance and real estate taxes, to preserve and protect the security, the lien, or the priority of the lien securing the debt owed to or insured by FmHA if the debt instrument provides that FmHA may voucher the account to protect its lien or security. The State Director must determine that authorizing a protective advance is in the best interest of the government. For insurance, factors such as the amount of advance, occupancy of the structure, vulnerability to damage and present value of the structure and contents will be considered.

(2) Protective advances are considered due and payable when advanced. Advances bear interest at the rate specified in the most recent debt instrument authorizing such an advance.

(3) Protective advances are not to be used as a substitute for a loan.

(4) Vouchers are prepared in accordance with applicable procedures set forth in FmHA Instructions 2024–A and 2024–P (available in any FmHA office).

(f) *Subordination of security.* When a borrower requests FmHA to subordinate a security instrument so that another creditor or lender can refinance, extend, reamortize, or increase the amount of a prior lien; be on parity with; or place a lien ahead of the FmHA lien, it will submit a written request to the servicing office as provided below. For purposes of this subpart, subordination is defined to include cases where a parity security position is being considered.

(1) *General.* The following requirements must normally be met:

(i) The request must be for subordination of a specific amount of the FmHA indebtedness, and the amount must be within the approval official's authority as set forth in Exhibits A, B, and C of Subpart A of Part 1901 of this chapter (available in any FmHA office).

(ii) It must be determined that the borrower cannot refinance its FmHA debt in accordance with Subpart F of Part 1951 of this chapter.

(iii) The transaction will further the purposes for which the FmHA loan was made, not adversely affect the borrower's debt-paying ability, and result in the FmHA debt being adequately secured.

(iv) The terms and conditions of the prior lien will be such that the borrower can reasonably be expected to meet them as well as the requirements of all other debts.

(v) Any proposed development work will be planned and performed according to § 1942.18 of Subpart A of Part 1942 of this chapter or in a manner directed by the creditor which reasonably attains the objectives of that section.

(vi) All contracts, pay estimates, and change orders will be reviewed and concurred in by the State Director.

(vii) In cases involving land purchase, the FmHA will obtain a mortgage on the purchased land.

(viii) When the transaction involves more than $10,000 or the approval official considers it necessary, a present market value appraisal report will be obtained. However, a new report need not be obtained if there is an appraisal report not over one year old which permits a proper determination of the present market value of the total property after the transaction.

(ix) The proposed action must not change the nature of the borrower's activities so as to make it ineligible for FmHA loan assistance.

(x) Necessary consent and subordination of all other outstanding security interests must be obtained.

(xi) For Indian Tribes and Tribal Corporations, loan funds will not be used for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity as further explained in Exhibit M of Subpart G of Part 1940 of this chapter. This requirement will be monitored throughout the term of the loan.

(2) *Authorities.* Proposals not meeting one or more of the above requirements will be submitted to the Administrator, Attention (appropriate program division) for prior concurrence. All other proposals may be approved by the official with loan approval authority under Subpart A of Part 1901 of this chapter.

(3) *Processing.* The case file is to include:

(i) The borrower's written request on Form FmHA 465–1, "Application for Partial Release, Subordination or Consent," if appropriate, or in other acceptable format. The request must contain the purpose of the subordination; exact amount of money or property involved; description of security property involved; type of security instrument; name, address, line of business and other general information pertaining to the party in favor of which the request is made; and other pertinent information to evaluate the need for the request;

(ii) Current balance sheet;

(iii) If development work is involved, an operating budget on Form FmHA 442–7, "Operating Budget," or similar form which projects income and expenses through the first full year of operation following completion of planned improvements; or if no development work is involved, an income statement and budget on Form FmHA 442–2, "Statement of Budget, Income, and Equity," schedules 1 and 2, or similar form;

(iv) Copy of proposed security instrument;

(v) Appraisal report, when applicable;

(vi) OGC opinion on the request;

(vii) Exhibit A of this subpart (available in any FmHA office), appropriately completed;

(viii) Appropriate environmental review; and

(ix) Any other necessary supporting information.

(4) *Closing.* All requests for subordination will be closed according to instructions from the Office of the General Counsel (OGC) except those which affect only chattel liens other than pledges of revenue. FmHA's consent on Form FmHA 465–1 will be signed concurrently with Form FmHA 460–2, "Subordination by the Government," when applicable.

(g) *Reamortization*—(1) *State Director Authorization.* The State Director is authorized to approve reamortization of deliquent loans which cannot be brought current within one year while maintaining a reasonable reserve when all of the following conditions exist:

(i) The debt to be reamortized does not exceed the State Director's loan approval authorization;

(ii) The borrower has demonstrated for at least one year by actual performance or has presented a budget which clearly indicates that it is able to meet the proposed payment schedule; and

(iii) There is no extension of the final maturity date.



(2) *Requests Requiring National Office Approval.* Reamortization requests not meeting the above requirements may be reamortized with prior approval of the National Office. Requests forwarded to the National Office will contain the case file, including:

(i) Current budget and cash flow prepared on Form FmHA 442–2, schedules 1 and 2, or similar form;

(ii) Current balance sheet;

(iii) Current income statement;

(iv) Exhibit A of this subpart, appropriately completed;

(v) form FmHA 1951–33, "Reamortization Request," completed in accordance with § 1951.207(g)(3)(i) of this subpart, when applicable; and

(vi) Any other necessary supporting information.

(3) *Processing.* (i) Reamortization of loans secured by notes and mortgages will be accomplished through the use of a new evidence of debt unless OGC recommends that the terms of the existing document be modified through the use of Form FmHA 1951–33, if legally adequate, or otherwise through the use of another appropriate form. Ordinarily the entire note, including principal and interest, is reamortized. Accrued interest will be at the original rate.

(ii) Loans secured by bonds or notes with other than real or chattel security pledged to FmHA may be reamortized using procedures which are acceptable to the State Director and legally permissible under State statutes in the opinion of the borrower's counsel and the OGC. The procedure may include a new debt instrument or agreement for the total FmHA indebtedness including the delinquency, or a new debt instrument or agreement whereby the borrower agrees to repay the delinquency plus interest at the original bond rate over an established period. When reamortization of a delinquent or problem loan secured by a bond cannot be perfected by issuing a new debt instrument due to State statutes, or the cost of preparation and closing is prohibitive, a rescheduling agreement, Exhibit H of this subpart (available in any FmHA office), may be used. When legally permissible and administratively acceptable, the total outstanding principal and interest balances should be reamortized rather than only the delinquent amount.

(iii) When a new debt instrument or agreement for only the delinquency is used, a copy will be sent to the Finance Office after execution. In cases where serial bonds are used as evidence of security, the original serial bond(s) will be submitted to the Finance Office. A new loan number will be assigned to the amortized delinquent amount. The borrower will be required to pay the amount due on the amortized delinquent amount plus regular scheduled installments on the loan. Section 1942.19 of subpart A of Part 1942 of this chapter applies to any new bonds issued unless precluded by State statutes or an exception is approved by the National Office. The agreement will contain:

(A) The amount delinquent, which must equal the total delinquency on the account, the unpaid principal on any advance, and the accrued interest on any advance through the date of reamortization, less interest payments credited on the advance account;

(B) The effective date of the reamortization;

(C) The number of years over which the delinquency will be amortized;

(D) The repayment schedule; and

(E) The interest rate.

(iv) When a new instrument or endorsement is executed, an amortized payment or principal and interest payment closely approximating equal installments of principal and interest will be due on the next scheduled due date. Deferment of interest and/or principal payments is not authorized. New instruments or endorsements are handled as follows:

(A) *Notes and endorsements.* The original of a new note, or any endorsement required by OGC, is to be attached to the existing note, filed in the servicing office, and retained by FmHA until the account is paid in full or otherwise satisfied. A copy will be forwarded to the Finance Office.

(B) *Bonds.* Since State statutes vary regarding reamortization of bonds, each State Office will work closely with OGC when bonds are involved. If State statutes do not require the release of existing bonds, they will be retained with the new bond instrument or agreement in the FmHA office authorized to store such documents. If State statutes require release of existing bonds, the exchange will be accomplished by the District Director, and the new bond and/or agreement will be retained in the appropriate office.

(v) When a new debt instrument or agreement is required, a separate new instrument will be required for each loan being reamortized.

(vi) Reamortizations will be perfected in accordance with OGC closing instructions.

(vii) When debt instruments are being modified or new debt instruments executed, bond counsel or local counsel, as appropriate, must provide an opinion indicating any effect on FmHA's security position. The FmHA approval official must determine that the government's interest will remain adequately protected if the security position will be affected.

(h) *Third party agreements.* The State Director may authorize all or part of a facility to be operated, maintained or managed by a third party under a contract, management agreement, written lease, or other third party agreement as follows:

(1) *Leases*—(i) *Lease of all or part of a facility (except when liquidation action is pending).* The State Director may consent to the leasing of all or a portion of security property when the loan is not a problem loan and when:

(A) Leasing is the only feasible way to provide the service and is the customary practice as required under § 1942.17(b)(3) of Subpart A of Part 1942 of this chapter.

(B) The borrower retains ultimate responsibility for operating, maintaining, and managing the facility and for its continued availability and use at reasonable rates and terms as required under § 1942.17(b)(3) of Subpart A of Part 1942 of this chapter. The lease agreement must clearly reflect sufficient control by the borrower over the operation, maintenance, and management of the facility to assure that the borrower maintains this responsibility;

(C) The lease agreement should contain provisions prohibiting any amendments to the lease or any subleasing arrangements without prior written approval from FmHA;

(D) Nondiscrimination requirements must be contained in the lease document as set forth in § 1951.204 of this subpart; and

(E) The lease should contain a provision which recognizes FmHA as lienholder on the subject facility and as such the lease is subordinate to the rights and claims of FmHA as lienholder.

(F) Lease/purchase arrangements are not permissible except as set forth in § 1951.212 of this subpart.

(ii) *Lease of all or part of a facility (pending liquidation action).* The State Director may consent to the leasing of all or a portion of security property when:

(A) The lease will not adversely affect the repayment of the loan or the Government's rights under the security or other instruments;

(B) The State Director has determined that liquidation will likely be necessary and the lease is necessary until liquidation can be accomplished;

(C) Leasing is not an alternative to, or means of delaying, liquidation action;

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(D) The lease and use of any proceeds from the lease will further the objective of the loan;

(E) Rental income is assigned to FmHA in an amount sufficient to make regular payments on the loan and operate and maintain the facility unless such payments are otherwise adequately secured; and

(F) The lease is advantageous to the borrower and is not disadvantageous to the Government.

(G) If foreclosure action has been approved and the case has been submitted to OGC, consent to lease and use of proceeds will be granted only with OGC's concurrence.

(H) The lease shall not exceed a one-year period. The property may not be under lease more than two consecutive years without authorization from the National Office. Long-term leases may be approved, with prior authorization from the National Office, if necessary to ensure the continuation of services for which the loan was made and if other servicing options contained in this subpart have been determined inappropriate for servicing the loan.

(iii) *Mineral leases.* Unless liquidation is pending, the State Director is authorized to approve mineral leases when:

(A) The lessee agrees, or is liable without any agreement, to pay adequate compensation for any damage to the real estate surface and improvements. Damage compensation will be assigned to FmHA or the prior lienholder by the use of Form FmHA 443–10, "Assignment of Income from Real Estate Security," or other appropriate instrument;

(B) Royalty payments are adequate and are assigned to FmHA on Form FmHA 443–16 in an amount determined by the State Director to be adequate to protect the government's interest;

(C) All or a portion of delay rentals and bonus payments may be assigned on Form FmHA 443–16 if needed for protection of the Government's interest;

(D) The lease, subordination, or consent form is acceptable to OGC; and

(E) The lease will not interfere with the purpose for which the loan or grant was made.

(F) When FmHA consent is required, the borrower will complete and submit Form FmHA 465–1. The form will include the terms of the proposed agreement and specify the use of all proceeds, including any to be released to the borrower.

(2) *Management Agreements.* Management agreements should contain the minimum suggested contents contained in Guide 24 of Part 1942, Subpart A of this chapter (available in any FmHA office).

(3) *Affiliation Agreements.* An affiliation agreement between the borrower and a third party may be approved by the State Director, with OGC concurrence, if it provides for shared services between the parties and does not result in changes to the borrower's legal organizational structure which would result in its loss of control over its assets and/or over the operation, management, and maintenance of the facility to the extent that it cannot carry out its responsibilities as set forth in § 1942.17(b)(3) of Subpart A of Part 1942 of this chapter. However, affiliation agreements which result in a loss of borrower control may be approved with prior concurrence of the Administrator if the loan is reclassified as a nonprogram loan and the borrower is notified that it is no longer eligible for any program benefit. Requests forwarded to the Administrator will contain the case file, the proposed affiliation agreement, and necessary supporting information.

(4) *Processing.* The consent of other lienholders will be obtained when required. When National Office approval is required, or if the State Director wishes to have a transaction reviewed prior to approval, the case file will be forwarded to the National Office and will include:

(i) A copy of the proposed agreement;

(ii) Exhibit A of this subpart (available in any FmHA office), appropriately completed.

(iii) Any other necessary supporting information.

(l) *Changes in Borrower's Legal Organization.* (1) The State Director may approve, with OGC's concurrence, changes in a recipient's legal organization, including revisions of articles of incorporation or charter and bylaws, when:

(i) The change does not provide for a sole member type of organization;

(ii) The borrower retains control over its assets and over the operation, management, and maintenance of the facility, and continues to carry out its responsibilities as set forth in § 1942.17(b)(3) of Subpart A of Part 1942 of this chapter; and

(iii) The borrower retains significant local ties with the rural community.

(2) The State Director may approve, with prior concurrence of the Administrator, changes in a recipient's legal organization which result in a sole member type of organization, or any other change which results in a recipient's loss of control over its assets and/or the operation, management and maintenance of the facility, provided all of the following have been or will be met:

(i) The change is in the best interest of the Government;

(ii) The State Director determines and documents that other servicing options under this subpart, such as sale or transfer and assumption, have been explored and are not feasible;

(iii) The loan is classified as a nonprogram loan;

(iv) The borrower is notified that it is no longer eligible for any program benefits, but will remain responsible under the loan agreement; and

(v) Prior concurrence of the Administrator is obtained. Requests will be forwarded to the Administrator: Attention (appropriate program division), and will include the case file; Exhibit A of this subpart (available in any FmHA office), appropriately completed; the proposed changes; OGC comments; and any other necessary supporting information.

(j) *Membership liability.* As a loan approval requirement, some borrowers may have special agreements with members for the purchase of shares of stock or for payment of a pro rata share of the loan in the event of default, or they may have authority in their corporate instruments to make special assessments in that event. Such agreements may be referred to as individual liability agreements and may be assigned to and held by FmHA as additional security. In other cases the borrower's note may be endorsed by individuals. The liability instruments will be serviced in a manner indicated by their contents and the advice of OGC to adequately protect FmHA's interest. Servicing actions necessary due to such provisions will be noted on Form FmHA 1905–10, "Management System Card—Association."

(k) *Other security.* Other security such as collateral assignments, water stock certificates, notices of lienholder interest (Bureau of Land Management grazing permits) and waivers of grazing privileges (Forest Service grazing permits) will be serviced to protect the interest of FmHA, and in compliance with any special servicing actions developed by the State Director with OGC assistance. Evidence of the security will be filed in the servicing office case file. Necessary servicing actions will be noted on Form FmHA 1905–10.

(l) *Correcting errors in security instruments.* Land, buildings, or chattels included in a mortgage through mutual mistake may be released from the mortgage by the State Director when substantiated by the factual situation. The release is contingent on the State Director determining, with OGC advice, that the property was included due to mutual error.

(m) *Environmental requirements.* Servicing activities such as transfers, assumptions, subordinations, sale or exchange of security property, and leasing of security will be reviewed for compliance with Subpart G of Part 1940 of this chapter. The appropriate environmental review will be completed prior to approval of the servicing action. When National Office approval is required, the completed environmental review will be included with other information submitted.

(n) *Refinancing requirements.* In accordance with the CONACT, FmHA requires that if at any time it shall appear to the Government that a borrower is able to refinance the amount of the indebtedness then outstanding, in whole or in part, by obtaining a loan for such purposes from responsible cooperative or private credit sources, at reasonable rates and terms for loans for similar purposes and periods of time, the borrower will, upon request of the Government, apply for and accept such loan in sufficient amount to repay the Government and will take all such actions as may be required in connection with such loan. Applicable requirements are set forth in Subpart F of this Part 1951.

(o) *Unauthorized financial assistance.* Subpart O of Part 1951 of this chapter prescribes policies for servicing the loans and grants covered under this subpart when it is determined that a borrower or grantee was not eligible for all or part of the financial assistance received in the form of a loan, grant, subsidy, or any other direct financial assistance.

### § 1951.208 Liquidation of security.

When the District Director believes that continued servicing will not accomplish the objectives of the loan, he or she will complete Exhibit A of this subpart, and submit it with the District Office file to the State Office. If the State Director determines the account should be liquidated, he or she will encourage the borrower to dispose of the FmHA security voluntarily through a sale or transfer and assumption, and establish a specified period, not to exceed 180 days, to accomplish the action. If a transfer or voluntary sale is not carried out, the loan will be liquidated according to Subpart A of Part 1955 of this chapter.

### § 1951.209 Sale or exchange of security property.

A cash sale of all or a portion of a borrower's assets or an exchange of security property may be approved subject to the conditions set forth below.

(a) *Authorities.* (1) The District Director is authorized to approve actions under this section involving only chattels.

(2) The State Director is authorized to approve real estate transactions except as noted in the following paragraph.

(3) Approval of the Administrator must be obtained when a substantial loss to the Government will result from a sale, one or more members of the borrower's organization proposes to purchase the property, it is proposed to sell the property for less than the appraised value, or the buyer refuses to assume all the terms of the Grant Agreement. It is not FmHA policy to sell security property to one or more members of the borrower's organization at a price which will result in a loss to the Government.

(b) *General.* Approval may be given when the approval official determines and documents that:

(1) The consideration is adequate;

(2) The release will not prevent carrying out the purpose of the loan;

(3) The remaining property is adequate security for the loan or the transaction will not adversely affect FmHA's security position;

(4) If the property to be sold or exchanged is to be used for the same or similar purposes for which the loan or grant was made, the purchaser will:

(i) Execute Form FmHA 400–4, "Assurance Agreement." The covenants involved will remain in effect as long as the property continues to be used for the same or similar purposes for which the loan or grant was made. The instrument of conveyance will contain the covenant referenced in § 1951.204 of this subpart; and

(ii) Provide to FmHA a written agreement assuming all rights and obligations of the original grantee. See § 1951.214 below for additional guidance on grant agreements.

(5) The proceeds remaining after paying any reasonable and necessary selling expenses are used for one or more of the following purposes:

(i) To pay on FmHA debts according to § 1951.207(a) of this subpart; on debts secured by a prior lien; and on debts secured by a subsequent lien if it is to FmHA's advantage.

(ii) To purchase or to acquire through exchange property more suitable to the borrower's needs, if the FmHA-secured debt will be as well secured after the transaction as before.

(iii) To develop or enlarge the facility if necessary to improve the borrower's debt-paying ability; place the operation on a sounder basis; or otherwise further the loan objectives and purposes.

(6) Disposition of property acquired in whole or part with FmHA grant funds will be handled in accordance with the grant agreement.

(c) *Processing.* (1) The case file will contain the following:

(i) Exhibit A of this subpart, appropriately completed, except for actions approved by the District Director;

(ii) The appraisal report, if appropriate;

(iii) Name of purchaser, anticipated sales price, and proposed terms and conditions;

(iv) Form FmHA 1965–8, "Release from Personal Liability," including the County Committee memorandum and the State Director's recommendation, when a loss to the Government will result and the Administrator must approve the release from liability as provided for in § 1951.209(d)(3) of this subpart. If the request is favorably considered, Form FmHA 1965–8 will be retained in the National Office until the sale is closed. When the State Director notifies the National Office that the sale has been completed, the form will be executed and returned to the State Director for further distribution in accordance with the Forms Manual Insert.

(v) An executed Form FmHA 400–4, if applicable;

(vi) An executed Form FmHA 465–1, if applicable; and

(vii) Form FmHA 460–4, "Satisfaction," if a debt has been paid in full or satisfied by debt settlement action. For cases involving real estate, a similar form may be used if approved by OGC.

(2) Releasing security:

(i) The District Director is authorized to satisfy or terminate chattel security instruments when § 1951.209(b) of this subpart and §§ 1962.17 and 1962.27 of Subpart A of Part 1962 of this chapter have been complied with. Partial release may be made by using Form FmHA 460–1, "Partial Release," or Form FmHA 462–12, "Statements of Continuation, Partial Release, Assignment, etc.

(ii) Subject to § 1951.209(b) of this subpart, the State Director is authorized to release part or all of an interest in real estate security by approving Form FmHA 465–1. Partial release of real estate security may be made by use of Form FmHA 460–1 or other form approved by OGC.

(3) FmHA liens will not be released until the appropriate sale proceeds are received for application on the Government's claim. In states where it is

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necessary to obtain the insured note from the lender to present to the recorder before releasing a portion of the land from the mortgage, the borrower must pay any cost for postage and insurance of the note while in transit. The District Director will advise the borrower when it requests a partial release that it must pay these costs. If the borrower is unable to pay the costs from its own funds, they may be deducted from the sale proceeds. The amount of the charge will be based on the statement of actual costs furnished by the insured lender.

(d) *Release from liability.* (1) When an FmHA debt is paid in full from the proceeds of a sale, the borrower will be released from liability by use of Form FmHA 1965–8.

(2) When sale proceeds are not sufficient to pay the FmHA debt in full and all security property has been disposed of, the borrower may be released from liability, except for nonprogram and Economic Opportunity Cooperative loans, by use of Form FmHA 1965–8 if the State Director determines that the borrower does not have reasonable debt-paying ability considering its assets and income at the time of the sale, and the County Committee recommends release from liability by executing a memorandum containing the following statement:

_____ in our opinion does not have reasonable debt-paying ability to pay the balance of the debt after considering its assets and income at the time of the sale. The borrower has cooperated in good faith, used due diligence to maintain the security against loss, and otherwise fulfilled the covenants incident to the loan to the best of its ability. Therefore, we recommend that the borrower be released from liability upon the completion of the sale.

(3) Subject to the policies, procedures, and limitations set forth in § 1951.209(d)(2) of this subpart, the release from liability may be approved:

(i) By the State Director when the balance of the indebtedness not paid, including principal, interest, and other charges, is less than $50,000, and when the indebtedness is paid in full.

(ii) By the Administrator when the balance of the indebtedness not paid, including principal, interest and other charges, is $50,000 or more.

**§ 1951.210 Transfer of security and assumption of loans.**

(a) *General.* It is FmHA policy to approve transfers and assumptions to transferees which will continue the original purpose of the loan in accordance with the following and specific requirements relating to eligible and ineligible borrowers set forth below:

(1) The present borrower is unable or unwilling to accomplish the objectives of the loan.

(2) The transfer will not be disadvantageous to the Government or adversely affect either FmHA's security position or the FmHA program in the area.

(3) Transfers to eligible applicants will receive preference over transfers to ineligible applicants if recovery to FmHA is not less than it would be if the transfer were to an ineligible applicant.

(4) If the FmHA debt(s) exceed the present market value of the security as determined by the State Director, the transferee will assume an amount at least equal to the present market value.

(5) If the transfer and assumption is to one or more members of the borrower's organization, there must not be a loss to the government.

(6) FmHA concurs in plans for disposition of funds in the transferor's debt service, reserve, operation and maintenance, and any other project account, including supervised bank accounts.

(7) When the property to be transferred is to be used for the same or similar purposes for which the loan was made, the transferee will execute Form FmHA 400–4 to continue nondiscrimination covenants and provide to FmHA a written certification assuming all terms of the Grant Agreement executed by the transferor. All instruments of conveyance will contain the covenant referenced in § 1951.204 of this subpart.

(8) This subpart does not preclude the transferor from receiving equity payments when the full amount of the FmHA debt is assumed. However, equity payments will not be made on more favorable terms than those on which the balance of the FmHA debt will be paid.

(9) Transferees must have the ability to pay the FmHA debt as provided in the assumption agreement and the legal capacity to enter into the contract. The applicant will submit a current balance sheet using Form FmHA 442–3, "Balance Sheet," and budget and cash flow information using Form FmHA 442–2, "Statement of Budget, Income, and Equity," or similar forms. For ineligible applicants, such information may be supplemented by a credit report from an independent source or verified by an independent certified public accountant.

(10) For purposes of this subpart, transfers to eligible applicants will include mergers and consolidations. Mergers occur when two or more corporations combine in such a manner that only one remains in existence. In a consolidation, two or more corporations combine to form a new, consolidated corporation, with all of the original corporations ceasing to exist. In both mergers and consolidations, the surviving or emerging corporation takes the assets and assumes the liabilities of the corporation(s) which ceased to exist. Such transactions must be distinguished from transfers and assumptions, in which a transferor will not necessarily go out of existence and the transferee will not always take all assets or assume all liabilities of the transferor.

(11) A current appraisal report to establish the present market value of the security will be completed in accordance with § 1951.205(c) of this subpart when the full debt is not being assumed.

(12) There must be no lien, judgement, or similar claims of other parties against the FmHA security being transferred unless the transferee is willing to accept such claims and the FmHA approval official determines that they will not prevent the transferee from repaying the FmHA debt, meeting all operating and maintenance costs, and maintaining required reserves. The written consent of any other lienholder will be obtained where required.

(b) *Authorities.* The State Director is authorized to approve transfers and assumptions of FmHA loans in accordance with the provisions of paragraphs (c) and (d) of this section, except for the following, which require prior approval of the Administrator:

(1) Proposals which will involve a loss to the Government;

(2) Proposals involving a transfer to one or more members of the present borrower's organization;

(3) Proposals involving rates and terms which are more liberal than those set forth in §1951.210(c) of this subpart;

(4) Proposals involving a cash payment to the present borrower which exceeds the actual sales expenses;

(5) The transferee refuses to assume all terms of the Grant Agreement for a project financed in part by FmHA grant funds;

(6) Proposed transfers to ineligible applicants when there is no significant downpayment and/or the repayment period is to exceed 25 years.

(7) For Indian Tribes and Tribal Corporations, the requirements found in Exhibit M of Subpart G of Part 1940 of this chapter are not met.

(c) *Eligible applicants.* Except as noted in § 1951.210(b) of this subpart, the State Director is authorized to approve transfers of security property to and assumptions of FmHA debts by transferees who would be eligible for financial assistance under the loan program involved for the type of loan being transferred. The State Director must determine and document that eligibility requirements have been satisified.

(1) If a loan is evidenced and secured by a note and lien on real or chattel property, Form FmHA 1951–15, "Community Programs Assumption Agreement," will be executed by the transferee. When the terms of the loan are changed, the new repayment period may not exceed the lesser of the repayment period for a new loan of the type involved or the expected life of the facility. The interest rate will be the rate specified in the note(s) being assumed.

(2) If the loan is evidenced and secured by a bond, procedures will be followed which are acceptable to the State Department and legally permissible under State law in the opinion of the borrower's counsel and OGC. The interest rate will be the rate specified in the outstanding bond(s). Any new repayment period provided may not exceed the lesser of the repayment period for a new loan of the type involved or the expected life of the facility.

(3) Loans being transferred and assumed may be conbined when a new debt instrument will be issued and the loans have the same interest rate and are for the same purpose.

(4) A loan may be made in connection with a transfer if the transferee meets all eligibility and other requirements for the kind of loan being made. Such a loan will be considered as a separate loan, and must be evidenced by a separate debt instrument. However, it is permissible to have one authorizing loan resolution or ordinance if permitted by State statutes.

(5) Any depelopment funds remaining is a supervised bank account which are not to be refunded to FmHA will be transferred to a supervised bank account for the transferee simultaneously with the closing of the transfer for use in completing planned development.

(d) *Ineligible applicants.* Except as noted in § 1951.210(b) of this subpart, the State Director is authorized to approve transfer and assumption to transferees who would not be eligible for financial assistance under the loan program involved for the type of loan being transferred. Such transfers are considered only when an eligible transferee is not available or when the recovery to FmHA from a transfer to an available eligible transferee would be less. Transfers are not to be considered as a means by which members of the transferor's governing body can obtain an equity or as a method of providng a source of easy credit for pruchasers.

(1) Ineligible applicants must pay a one-time non-refundable transfer fee when they submit an application or proposal.

(i) The National Office will issue a directive annually advising the field of the amount of the fee. Any cost for appraisals performed by nonFmHA personnel will be handled in accordance with FmHA Instruction 2024–P (available in any FmHA office), and will be added to the basic fee.

(ii) Transfer fees will be deposited in accordance with current instructions governing the handling of collections. The fees will be identified as transfer fees of Form FmHA 451–2, "Schedule of Remittances," and will be included on the Daily Activity Report. The amount will be credited to the Rural Development Insurance Fund.

(iii) If the State Director determines waiver of the transfer fee is in the best interest of the government, he or she will request prior approval by submitting the transfer case file established in accordance with processing requirements set forth below to the National Office, Attention (appropriate program division).

(2) Any funds remaining in a supervised bank account will be refunded to FmHA and applied to the debt as a condition of transfer.

(3) The interest rate will be the greater of the rate specified in the transferor's note or the market rate for Community Programs as of the transfer closing date.

(4) The transferred loan will be identified as a nonprogram (NP) loan and serviced in accordance with § 1951.221 of this subpart.

(5) Form FmHA 465–5, "Transfer of Real Estate Security," will be used, and will be modified as appropriate before execution.

(6) Consideration will be given to obtaining individual liability agreements from members of the transferee organization.

(e) *Release from liability.* Except when nonprogram loans or Economic Opportunity Cooperative loans are involved, transferors may be released from liability in accordance with the following:

(1) If the full amount of the debt is assumed, the State Director may approve the release from liability.

(2) If less than the full amount of the debt is assumed, release from liability may be approved by the State Director if the balance unpaid, including principal, interest, and all other charges, is less than $50,000, and by the Administrator when the balance is $50,000 or more, provided:

(i) The FmHA approval official determines that the transferor does not have reasonable debt-paying ability considering its assets and income at the time of the transfer;

(ii) The County Committee executes a memorandum containing the following statement:

_____ in our opinion does not have reasonable debt-paying ability to pay the balance of the debt after considering its assets and income at the time of the sale. The borrower has cooperated in good faith, used due diligence to maintain the security against loss, and otherwise fulfilled the covenants incident to the loan to the best of its ability. Therefore, we recommend that the borrower be released from liability upon the completion of the sale.

(3) When the Administrator's approval is required, Form FmHA 1965–8 will be forwarded to the Administrator, Attention: (appropriate program division), prior to closing. When notified of the closing, the Administrator will execute the form and forward it to the State Director for distribution in accordance with the Forms Manual Insert.

(f) *Processing.* Transfers and assumptions will be processed in accordance with the following:

(1) A transfer case file organized in accordance with FmHA Instruction 2033–A (available in any FmHA office) will be established, and will contain all documents and correspondence relating to the transfer. The forms utilized for transfers and assumptions are listed in Exhibit D (available in any FmHA office). All forms listed must be completed and included in the case file unless inappropriate for the particular situation.

(2) A letter of conditions establishing requirements to be met in connection with the transfer and assumption will be issued, and the transferee will be required to execute Form FmHA 442–46, "Letter of Intent to Meet Conditions," prior to the closing of the transfer.

(3) Both the transferee and transferor are responsible for obtaining the legal services necessary to accomplish the transfer.

(4) Transfers will be closed in accordance with instructions provided by OGC.

(5) When the transferee is a public body and Form FmHA 1951–15 is not suitable, the transferee's attorney will prepare the documents necessary to effect the transfer and assumption and submit them for approval by FmHA and OGC.

(6) Accrued interest to be entered in either Table 1 of Form FmHA 1951–15 or other appropriate assumption agreement

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is to be obtained using the status screen option in ADPS.

(7) The following forms, if utilized, will be sent immediately to the Finance Office:

(i) Form FmHA 1951–15 or other appropriate assumption agreement;

(ii) A conformed copy of Form FmHA 1965–8. When the Administrator must execute the form in accordance with § 1951.210(e)(3), a conformed copy will be sent to the Finance Office upon receipt by the State Director.

(8) If an FmHA grant was made in conjunction with the loan being transferred, the transferee must provide to FmHA a written agreement assuming all rights and obligations of the original grantee. See § 1951.214 below for additional guidance on grant agreements.

(9) The transferee will obtain insurance according to requirements for the loan(s) being transferred unless the approval official requires additional insurance. When the entire FmHA debt is being assumed and an amount has been advanced for insurance premiums or any other purposes, the transfer will not be completed until the Finance Office has charged the advance to the transferor's account.

(10) Rates and terms. (i) If the transfer will be closed at the same rates and terms, the transferee will be informed of the amount needed to be on schedule by the next installment due date.

(ii) If the transfer will be closed at new rates and terms, the transferee will be informed of the amount of principal and interest owed based on information obtained using the ADPS status screen option.

(11) The effective date of a transfer is the actual date the transfer is closed, which is the same date Form FmHA 1951–15 or other appropriate assumption agreement is signed.

(12) Title to all assets will be conveyed from the transferor to the transferee unless other arrangements are agreed upon by all parties concerned, including FmHA. All instruments of conveyance will contain the covenant referenced in § 1951.204 of this subpart.

(13) If an insured loan being held by an investor is involved, the Finance Office will have to repurchase the note prior to processing the assumption agreement.

(14) When National Office approval is required, the transfer case file will be submitted to the Administrator, Attention: (appropriate program division), with Exhibit A (available in any FmHA office), appropriately completed, and a cover memorandum which denotes any unusual circumstances.

**§ 1951.211 Special provisions applicable to Economic Opportunity (EO) Cooperative loans.**

(a) *Withdrawal of member and transfer to and assumption by new members of Unincorporated Cooperatives.* (1) Withdrawal of a member who is no longer utilizing the services of an association and transfer of withdrawing member interest in the association to a new member who will assume the entire unpaid balance of the indebtedness of the withdrawing member may be permitted, if the remaining members agree to accept the new member and the transfer will not adversely affect collection of the loan. The servicing office will submit to the State Office the borrower case file and the following:

(i) Form FmHA 1951–15 executed by the proposed new member;

(ii) Statement of the current amount of the indebtedness involved;

(iii) A description and statement of the value of the security property;

(iv) A memorandum to justify the transaction;

(v) Form FmHA 440–2, "County Committee Certification or Recommendation";

(vi) Exhibit B of this subpart, "Agreement for New Member (With or Without Withdrawing Member)," (available in any FmHA Office) executed by the remaining members of the association, the proposed new member, and the withdrawing member; and

(vii) Form FmHA 450–12, "Bill of Sale (Transfer by Withdrawing Member)," executed by the withdrawing member.

(2) If the State Director determines after review of the above information that the proposed new member is eligible and the transfer is justified, the State Director may approve the transfer and assumption by executing Form FmHA 1951–15.

(3) Upon completion of the above actions, the State Director may release the outgoing member from personal liability using Form FmHA 1965–8.

(4) If Finance Office records must be changed due to changes in borrower name, address and/or case number, necessary documents, including Form FmHA 1951–15 and, if applicable, Form FmHA 1965–8, will be forwarded to the Finance Office immediately with a memorandum indicating that the purpose of the submission is only to establish liability for a new member and release an old member from liability.

(b) *Withdrawal of members from Unincorporated Cooperatives when new member not available.* Withdrawal of a member who no longer utilizes the services of an association may be permitted even though a new member is not available, provided:

(1) The State Director determines that the remaining members have sufficient need for the property, and that the withdrawal of the member will not adversely affect collection of the loan.

(2) The remaining members obtain from the outgoing member an agreement conveying his or her interest in the cooperative property to them. They may also wish to agree to protect the outgoing member against liability on the debt owed to FmHA as well as any other debts. Exhibit C of this subpart, "Agreement for Withdrawal of Member (Without New Member)," (available in any FmHA office) may be used by the cooperative. FmHA will not be a party to the agreement.

(c) *Addition of new members (no withdrawing member or transfer involved) for both Incorporated and Unincorporated Cooperatives.* (1) A new member may be admitted to the association even though there is no withdrawing member, if:

(i) The members of the association agree to accept the proposed new member, and

(ii) The State Director determines that the association owns adequate facilities to provide service to the new member.

(2) The servicing office will submit to the State Office the case file and items in § 1951.211(a)(1) (i) through (vi).

(3) If the State Director determines after the review of the above information that the proposed new member is eligible and the transaction is justified, the State Director may approve the transaction by executing Form FmHA 1952–15.

(4) Form FmHA 1951–15 will be forwarded immediately to the Finance Office and the Finance Office advised by memorandum that the form is intended only to establish liability for a new member.

(d) *Deceased members of Unincorporated Cooperatives.* Form FmHA 442–24, "Operating Agreement," (now obsolete) was executed by recipients of these loans. Paragraph 10 of that form provides that in case of the death of any member, the heirs or personal representative of the deceased member shall take the deceased member's place in the association. This provision also covers sale of the decedent's interest in the association if the sale is necessary to pay debts of the estate.

(1) If the heirs or personal representative do not wish to continue



membership in the association, the remaining members may be permitted to continue to operate the property if FmHA's financial interest will not be jeopardized. The remaining members should obtain from the deceased member's estate an agreement conveying the estate's interest in the cooperative property to them. The remaining members may wish to agree to protect the estate against liability on the debt to FmHA as well as any other debts of the cooperative.

(2) The requirement of § 1962.46(h) of Subpart A of Part 1962 of this chapter will also be followed:

(e) *Action which affects individual members of Unincorporated EO Cooperative security.* The borrower will be expected to protect its own interest in condemnation, trespass, quiet title, and other cases affecting the security. The servicing office will immediately furnish the complete facts concerning any action taken against individual members of Unincorporated Cooperatives to the State Director together with the case file.

(f) *Transfers of Incorporated Economic Opportunity Cooperative loans to ineligible applicants.* The State Director is authorized to approve all transfers of incorporated Economic Opportunity Cooperative loans to ineligible applicants without regard to the requirements set forth in § 1951.210 above.

(g) *Debt Settlement.* Debt settlement actions for Economic Opportunity Cooperative loans must be handled under the Federal Claims Collection Act; proposals will be submitted to the National Office for review and approval.

**§ 1951.212 Water and waste disposal systems which have become part of an urban area.**

A water and/or waste disposal system serving an area which was formerly a rural area as defined in § 1942.17(b) of Subpart A of Part 1942 of this Chapter, but which has become in its entirety part of an urban area, will be serviced in accordance with this section.

(a) *Curtailment or limitation of service.* Service may not be curtailed or limited by the inclusion of a system within an urban area.

(b) *Sale or transfer and assumption.* (1) The urban community or another entity may purchase the facility involved and immediately pay the FmHA debt in full; or

(2) The urban community or another entity may accept a transfer of the FmHA debt on an ineligible applicant basis.

(3) When a grant is involved, the entity will provide to FmHA a written agreement assuming all rights and obligations of the original grantee. See § 1951.214 below for additional guidance on grant agreements.

(c) *Lease-purchase arrangement.* If paragraphs (b) (1) and (2) of this section are not practicable, the urban community may, with prior approval of the National Office, operate and maintain the system under a lease-purchase arrangement which provides that:

(1) The urban community will:

(i) Assume responsibility for operation and maintenance of the facility, subject to nondiscrimination and all other requirements which are applicable to the borrower, which are to be specified in the agreement between the parties; and

(ii) Pay the association annually an amount sufficient to enable it to meet all its obligations, including reserve account requirements.

(2) The FmHA borrower will:

(i) Meet its debt service and reserve account requirements to FmHA;

(ii) Retain its corporate existence until FmHA has been paid in full; and

(iii) If agreed upon by both parties, convey title to the facility to the urban community when the FmHA debt has been paid in full;

(d) *Processing.* (1) Sale of a borrower's assets will be handled in accordance with § 1951.209 of this subpart.

(2) Transfer and assumption of a borrower's assets and indebtedness will be handled in accordance with § 1951.210.

(3) lease-option-to-purchase arrangements are not permitted.

(4) When a lease-purchase arrangement is proposed, the State Director will obtain a proposed agreement drafted by either the borrower or the urban community. The following will be forwarded to the Administrator, Attention: Water and Waste Disposal Division, for review and approval authorization:

(i) A copy of the proposed agreement;

(ii) Exhibit A (available in any FmHA office), appropriately completed;

(iii) OGC comments;

(iv) The case file, including all documentation appropriate for the type of servicing action involved.

**§ 1951.213 Care, management, and disposal of acquired property.**

Property acquired by FmHA will be handled according to Subparts B and C of Part 1955 of this chapter.

**§ 1951.214 Grants.**

No monitoring action by FmHA is required after grant closeout. Grant closeout is when all required work is completed, administrative actions relating to the completion of work and expenditure of funds have been accomplished, and FmHA accepts final expenditure information. However, grantees remain responsible in accordance with the terms of the grant for property acquired with grant funds.

(a) *Applicability of requirements.* Servicing actions relating to FmHA grants are governed by the terms of the Grant Agreement and this subpart. The provisions of 7 CFR Part 3015 first became effective on November 10, 1981.

Grants made on or after November 10, 1981, are subject to the provisions of 7 CFR Part 3015 except to the extent of the express provisions of the Grant Agreement.

(b) *Authorities.* (1) For Water and Waste Disposal grants, the State Director is authorized to approve any servicing actions needed in accordance with the above, except that prior approval of the Administrator is required when property acquired with grant funds is disposed of in accordance with §§ 1951.209, 1951.210, or § 1951.212 of this subpart and the buyer or transferee refuses to assume all terms of the grant agreement.

(2) All other grants will be serviced in accordance with the Grant Agreement and this subpart. Prior approval of the Administrator is required except for actions covered in the preceding paragraph.

**§ 1951.215 State Director's additional authorizations and guidance.**

(a) *Promote financing purposes and improve or maintain collectibility.* The State Director is authorized to perform the following functions when the action is determined likely to promote the loan or grant purposes without jeopardizing collectibility of the loan or impairing the adequacy of the security; will strengthen the security; or will facilitate, improve, or maintain the orderly collection of the loan:

(1) Approve requests for permission to modify bylaws, articles of incorporation, or other rules and regulations of recipients, including changes in rate or fee schedules. Changes affecting the recipient's legal organizational structure must be approved by OGC.

(2) Consent to requests by the recipient to incur additional indebtedness, subject to applicable FmHA instructions and covenants in the loan or grant agreement.

(3) Renew existing security instruments.

(4) Approve the extension or expansion of facilities and services.

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(5) Require additional security when:

(i) Existing security is inadequate and the loan or security instruments obligate the borrower to give additional security; or

(ii) The loan is in default and additional security is acceptable in lieu of other servicing actions.

(b) *Referrals to National Office.* All proposed servicing actions which the State Director is not authorized by this subpart to approve will be referred to the National Office.

(c) *Defeasance of FmHA Indebtedness.* Defeasance is the use of invested proceeds from a new bond issue to repay outstanding bonds in accordance with the repayment schedule of the outstanding bonds. The new issue supersedes the contractual agreements the borrower agreed to in the prior issue. Defeasance, or amending outstanding loan instruments and agreements to permit defeasance, of FmHA debt instruments is not authorized, since defeasance limits, or eliminates entirely, the borrower's ability to comply with statutory refinancing requirements implemented by Subpart F of this Part 1951.

**§ 1951.216 Payment in full.**

Payment in full of a loan is handled according to Part 1866 of this Chapter (FmHA Instruction 451.4). When a loan is paid in full, the servicing official will:

(a) Notify the company providing fidelity bond coverage in writing that the Government no longer has an interest in the fidelity bond.

(b) Release FmHA's interest in insurance policies according to applicable provisions of Subpart A of Part 1806 (FmHA Instruction 426.1).

(c) Release FmHA's interest in any other security as appropriate, consulting with OGC if necessary.

**§ 1951.217 State supplements.**

Any State supplements developed to carry out the provisions of this subpart will be prepared in accordance with Subpart B of Part 2006 of this chapter (available in any FmHA office) and applicable State laws and regulations. State supplements are to be used only when required by National Instructions or necessary to clarify the impact of State laws or regulations; they are not to be used to restate the provisions of National Instructions. OGC advice and guidance will be obtained as needed.

**§ 1951.218 Forms.**

Forms utilized for actions under this subpart are to be modified appropriately where necessary to adapt the forms for use by corporate recipients rather than individuals.

**§ 1951.219 Public bodies.**

Servicing actions involving public bodies will be carried out to the extent feasible according to the provisions of this subpart. With prior National Office approval, the State Director is authorized to vary from such provisions if necessary and approved by OGC, provided such variation will not violate other regulatory or statutory provisions. To request approval, the case file, including copies of applicable documents, recommendations, and OGC comments, will be forwarded to the Administrator, Attention: (appropriate program division).

**§ 1951.220 Special provision for interest rate change.**

(a) *General.* Effective October 1, 1981, and thereafter, upon request of the borrower, the interest rate charged by FmHA to water and waste disposal and community facility borrowers shall be the lower of the rates in effect at either the time of loan approval or loan closing. Pub. L. 99–88 provides that any FmHA grant funds associated with such loans shall be set in the amount based on the interest rate in effect at the time of loan approval. Loans closed October 1, 1981, through October 25, 1985, were closed at the interest rate in effect at the time of loan approval and that interest rate is reflected in the borrower's debt instrument. For community facility and water and waste disposal loans closed on or after October 1, 1981, and for which the interest rate in effect at the time of loan closing is lower than the interest rate in effect at the time of loan approval, the borrower may request to be charged the lower interest rate. The loan closing interest rate will be determined by FmHA based upon requirements in effect at the date of loan closing. Exhibit E of this subpart (available in any FmHA office) contains a summary of interest rate requirements for specific time periods. Exhibit C of Subpart O of this Part (available in any FmHA office) will be used to determine the interest rate and effective dates by category of poverty, intermediate, and market rates. Exhibit F of this subpart (available in any FmHA office) contains the instructions on how to process a change of interest rate. Loans meeting the criteria of this section that have been paid in full are eligible for the borrower to request the lower interest rate. For loan(s) that involved multiple advances of FmHA funds using temporary debt instruments, wherein the borrower requests the interest rate in effect at loan closing, the interest rate charged shall be the rate in effect on the date when the first temporary debt instrument was issued.

(b) *Notification to borrower and borrower selection of interest rate.* (1) FmHA servicing officials will notify each borrower meeting the provisions of this section of the availability of a choice of interest rate. The notification will be made in writing at the earliest possible date, utilizing Exhibit G of this subpart (available in any FmHA office), and sent by certified mail, return receipt requested. Borrowers will be advised at the time of notification that is a change of interest rate is requested, the change will be accomplished administratively by FmHA. The effect of the change on the loan account will also be fully explained to the borrower.

(2) Borrowers must notify FmHA within 90 calendar days of the date of FmHA notification indicating their election to retain the rate in effect at loan approval or to change the rate to the rate in effect at the time of loan closing. If the borrower does not respond within the 90-day period, FmHA will not consider a future request for a lower interest rate under the provisions of this subpart.

(3) The borrower is responsible to assure that the borrower official executing the letter requesting the change of interest rate is duly authorized and any action(s) necessary for this authorization have been taken as required. Any costs associated with a change of interest rate will be the responsibility of the borrower

(c) *Processing loan interest rate change.* The State Director is authorized to approve loan interest rate changes which meet the requirements of this section. Loan interest rate changes will be accomplished as follows:

(1) All loan payments already applied to the account(s) will be reversed and reapplied by FmHA utilizing the changed interest rate. The balance remaining after the completion of the reversal and reapplication procedures will be applied first to any delinquency on the account and then to principal.

(2) For paid-in-full accounts which meet the criteria of § 1951.220(a) of this subpart, the balance of loan payments after completion of the reversal and reapplication procedures will be returned to the borrower as a refund unless the borrower is delinquent on another FmHA loan of the same type, in which case the refund will be applied first to the delinquent account and any balance refunded to the borrower.



(3) The Finance Office will administratively change the interest rate on a borrower's account in accordance with notification from the servicing official. The installment schedule set forth in each borrower's debt instrument will not change. The original principal schedule for principal-plus-interest accounts where principal *only* is stipulated will continue to be used for payment calculation by the Finance Office. Amortized accounts will adhere to the original payment schedule and amount. The last scheduled principal installment will be reduced by the amount of the balance previously generated by the reversal and reapplication of payments.

(4) When FmHA has processed a change of interest rate for an amortized loan and a reduction in installment amounts is needed to provide for a sound operation, the borrower may request reamortization in accordance with § 1951.207(g) of this subpart.

(5) The borrower will be notified in writing of the new interest rate as changed.

**§ 1951.221 Servicing of nonprogram (NP) loans.**

Borrowers with NP loans are not eligible for any program benefits, including appeal rights. However, FmHA may use any servicing tool under this subpart necessary to protect the Government's security interest, including reamortization or rescheduling. The refinancing requirements of Subpart F of this Part 1951 do not apply to NP loans. Debt settlement actions relating to NP loans must be handled under the Federal Claims Collection Act; proposals will be submitted to the National Office for review and approval. Any exception to the servicing requirements of NP loans under this subpart must have prior concurrence of the National Office.

**§ 1951.222–1951.249 [Reserved]**

**§ 1951.250 OMB control number.**

Collection of information requirements contained in this subpart have been approved by the Office of Management and Budget and have been assigned OMB Control Number 0575–0066.

Dated: January 27, 1989.

**Neal Sox Johnson,**

*Acting Administrator, Farmers Home Administration.*

[FR Doc. 89–5081 Filed 3–3–89; 8:45 am]

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## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 50

### Acceptance of Products Purchased for Use in Nuclear Power Plant Structures, Systems and Components

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** The Nuclear Regulatory Commission (Commission) is proposing to develop regulations requiring enhanced acceptance procedures including, but not limited to, receipt inspection and testing of products purchased for use in nuclear power plant structures, systems and components. This Advance Notice of Proposed Rulemaking (ANPR) is intended to solicit comments on the need for additional regulatory requirements and to obtain an improved understanding of alternatives to regulatory requirements that could provide assurance that structures, systems and components procured for use in nuclear power plants will perform as expected to protect public health and safety.

**DATE:** The comment period expires July 5, 1989. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

**ADDRESSES:** Mail comments to: The Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

Deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. Federal workdays.

Examine copies of comments received at: The NRC Public Document Room, Gelman Building, 2120 L Street NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Max J. Clausen, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 492–0969.

**SUPPLEMENTARY INFORMATION:**

### Background

Appendix B to 10 CFR Part 50 of the Commission's regulations adopted in 1970 (35 FR 10498) establishes the quality assurance criteria for safety-related structures, systems and components for nuclear power plants. The purpose of the quality assurance criteria in Appendix B is to provide requirements for the design, procurement, receipt inspection and testing, construction and operation of nuclear power plant structures, systems and components. The criteria are generally structured to confirm the quality of products designed, purchased, inspected, tested and installed for use in nuclear power plant structures, systems and components. The criteria apply to all activities conducted during the design, construction and operating phases of nuclear power plants that affect the safety-related functions of structures, systems and components. Procedures and actions by licensees and their representatives conforming to these criteria are expected to detect substandard and poor quality products but may not necessarily detect counterfeit or fraudulently marketed products. Recent cases involving apparently substandard, counterfeit and fraudulently marketed products for nuclear power plant structures, systems and components have prompted the Commission to reconsider the adequacy of current regulations for detecting substandard, counterfeit and fraudulently marketed products and for assuring that such products are not used in nuclear power plant structures, systems and components.

Criteria III, IV, VII, VIII, and XV of Appendix B to 10 CFR Part 50 provide the criteria for the control of purchased structures, systems and components for nuclear power plants. Historically, licensees and their representatives have purchased products with certifications attesting to the quality of the products and have depended to varying degrees on the certifications as one basis for accepting the products. However, recent discoveries of substandard, counterfeit and fraudulently marketed products furnished to nuclear power plants by contractors and subcontractors demonstrate that current product acceptance practices, particularly those based heavily on certifications and stated catalog specifications, have not been sufficient in all cases. Additional details of apparently substandard, counterfeit, and fraudulently marketed products are contained in NRC Compliance Bulletin No. 87–02 and Supplements 1 and 2, NRC Bulletin No. 88–05 and Supplements 1 and 2, NRC Bulletin No. 88–10, NRC Information Notice No. 88–19, NRC Information Notice No. 88–35, NRC Information Notice No. 88–46 and Supplement 1, NRC Information Notice No. 88–48, and NRC Information Notice No. 88–97.[1]

[1] These documents are available for inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street, NW., Washington, DC.

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In many cases, as in part discussed in the referenced bulletins and information notices, product acceptance practices have failed to detect such substandard, counterfeit or fraudulently marked products. Therefore, the Commission is considering the need for additional regulations or other methods to provide additional assurance that products purchased for use in nuclear power plant structures, systems and components satisfy requirements and specifications that are imposed to provide confidence that these items will perform as required to protect the public health and safety.

The Commissions's regulations provide two alternative approaches to assure that structures, systems and components satisfy requirements for safety-related applications. A licensee may procure products to the requirements of the applicable code or standard for the safety-related structure, system or component. Alternatively, the licensee may purchase a commercial grade product and then, using the appropriate procedures and satisfying the Commission's requirements, dedicate the commercial grade product for the safety-related application. The experiences that have been discussed in the bulletins and information notices previously referenced apply to products that were obtained using both of these approaches.

The Commission has concluded that significant engineering involvement is required during the procurement process for products used in nuclear power plants and during any testing of these products. It is the Commission's view that, in the past, inadequate engineering involvement has been a common weakness in licensees' procurement programs, particularly when commercial grade procurements were involved. It is the Commission's position that involvement of a licensee's engineering staff in the procurement process should include (1) selection of products to be used in the plant, (2) determination of the critical characteristics of the selected products that are to be verified during product acceptance, (3) determination of specific testing requirements applicable to the selected products, and (4) evaluation of test results. This involvement should be applicable to products initially procured as safety-related as well as commercial grade products procured for dedication and upgrading for use in safety-related applications. The extent of this engineering involvement will be highly dependent on the nature and use of the products involved.

The Commission is concerned about the quality of commercial grade products that are used throughout the nuclear plant, including applications in the "balance of plant" structures, sytems and components. This concern stems from a recognition that structures, sytems and components utilizing substandard products may not function as designed and may challenge safety-related systems unnecessarily or complicate the response to off-normal events. Commenters are requested to consider the issues and questions of this ANPR as they may relate to the need or desirability for either more prescriptive regulations or, alternatively, a performance-based requirement. Comments are also requested on the desirability of any such requirement for safety-related applications, as well as for applications throughout the plant.

A broad spectrum of issues needs to be considered before the Commission decides on the scope and content of any proposed new regulatory requirements addressing the concerns raised by the experience of licensees placing essentially complete reliance on certificates, such as Certificates of Compliance, and the evidence that some contractors are misrepresenting products. This experience is discussed in the referenced bulletins and information notices. The following questions are posed to raise the issues that the Commission has identified and are not to be considered complete nor are they intended to bound the scope of public comment on this ANPR. The questions are structured in two categories: (1) Products Procured for Use in Safety-Related Structure, System and Component Applications, and (2) Dedication of Commercial Grade Products for Use in Safety-Related Structure, System and Component Applications.

Public comments are invited on each of these questions. The comment resolution process will be improved if each comment is identified to the question to which it responds. Commenters may submit, in addition to the original paper copy, a copy of the letter in an electronic format on IBM PC-DOS compatible 3.5 or 5.25 inch double sided double density (DS/DD) diskettes. Data files should be provided in ASCII code or, if formatted text is required, data files should be provided in IBM Revisable-Form Text Document Content Architecture (RFT/DCA) format.

1. Products Procured for Use in Safety-Related Structure, System and Component Applications.

The questions in this section are categorized in four subsections: General, Metallic Products, Nonmetallic Products, and Components.

1.1 General

1.1.1a In view of the problems that have been detected with substandard, counterfeit, or fraudulently marketed products, do the Commission's current regulations provide adequate criteria for ensuring the acceptability of purchased products?

1.1.1b If the current regulations are considered to provide adequate criteria, how should they be applied to ensure that substandard, counterfeit, and fraudulently marketed products are detected and precluded from use in nuclear power plants?

1.1.1c If the current regulations do not provide adequate criteria, should the Commission establish specific requirements or performance-based requirements to ensure that products purchased for use in nuclear power plant structures, systems and components satisfy the operational requirements necessary to protect public health safety?

1.1.2a What traceability requirements should be imposed for all products to be used in safety-related structures, systems and components?

1.1.2b Should material traceability through all intermediary contractors, subcontractors and processors be required?

1.1.2c Should all critical characteristics, for example, materials, operations, functions, etc., be traceable?

1.1.2d Should there be any exceptions to the traceability requirements?

1.1.2e What should the identification requirements be for traceability, for example, uniquely marking each part whenever possible, bagging, records, etc.?

1.1.3 Should product acceptances be restricted to inspections and tests or should product acceptances include, on a sample basis, destructive inspections and tests to verify chemical and physical characteristics?

1.1.4 What types of inspections and tests (appropriate for the various types of products) should be required?

1.1.5 Should licensees, contractors and subcontractors be encouraged to perform joint testing?

1.1.6 If destructive inspections and tests are determined necessary, what should be the sampling basis (per vendor, per purchase order, per shipment, per lot, per container, etc.)?

1.1.7 Should sample plan testing be permitted for testing or should such testing be on a 100 percent basis?



1.1.8 What sort of statistical sampling during product inspection is adequate to provide confidence that the product has the requisite assurance of quality?

1.1.9 What criteria should be used for allowing sample plan testing during product acceptance?

1.1.10 Should the shelf life of appropriate types of structures, systems and components be inspected and verified as acceptable during product acceptances?

1.1.11 To what extent will an effective vendor audit program and maintenance of a qualified vendor list reduce the likelihood of questionable products being used in nuclear power plants?

1.1.12 What are the essential elements, for example, team composition, depth of audits, and approach, that must be included in an effective vendor audit program?

1.1.13 What reinspection or reaudit frequency is appropriate to maintain confidence in those vendors on a qualified vendor list?

1.1.14 How do licensees ensure that Code Certificate holders and "N" stamp vendors are current?

1.1.15 Is there an auditable method to demonstrate that licensees actually purchased the product from a qualified vendor, for example, the holder of an ASME Code stamp holder certification?

1.1.16a Should negative inspection, testing and audit results be shared with other parties?

1.1.16b Is a Federal requirement necessary to permit this sharing of information?

1.1.16c Should procurement contracts be required to include a provision for public release of the results of audits of the vendor?

1.1.16d Are there restraint of trade, antitrust concerns or liabilities associated with these actions?

1.1.17 Should licensees, contractors and subcontractors be encouraged to make joint procurements and to share inspection/audit results of joint procurements to enhance the effectiveness of inspections/audits?

1.1.18 If joint procurements and inspections/audits are encouraged, should controls be imposed and, if so, what and how should these controls be imposed?

1.1.19 What audit and testing documentation should be required to provide traceability and give confidence to all participants in joint product acceptances?

1.1.20a Should the NRC establish and publish a list of approved vendors for various products?

1.1.20b If a list of approved vendors is established, how should vendors be selected?

1.1.20c If a list of approved vendors is established, who should be responsible for maintaining this list?

1.1.20d Should licensees be restricted to making procurements from this list of approved vendors?

1.1.21 Should the use of a certificate, such as a Certificate of Conformance, in the procurement process be prohibited or, if allowed, be restricted to issue by the original equipment manufacturer for items that have remained under his direct control?

1.1.22 Should the furnishing of the original manufacturer's certificate, such as a Certified Material Test Report, be made mandatory for procurement of materials from intermediate vendors?

1.1.23 Should the transcribing of an original manufacturer's test data by intermediate vendors onto the vendor's certification, for example, Certified Material Test Report, be forbidden?

1.1.24 To what extent should licensees or their representatives be required to inspect the implementation of contractor product acceptance programs?

1.1.25 Should licensees be required to audit implementation of 10 CFR Part 21 by suppliers and vendors?

1.1.26 In addition to the requirements of 10 CFR Part 21, should licensees be required to notify manufacturers, suppliers and vendors of licensee-identified problems with vendor-provided nonconforming products or programs?

1.1.27 Should licensee participation in a national data system for reporting equipment/component failures by manufacturer and application be required?

1.1.28 Is there specific data that should be included in a national data system that would significantly enhance its usefulness in establishing equipment performance history?

1.1.29 What are the implications of any new Commission requirements on the Commission's endorsement of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code in 10 CFR 50.55a?

1.1.30 What is the best way to coordinate any new requirements with the ASME Boiler and Pressure Vessel Code?

1.1.31 Should the new requirements that relate to areas covered by the ASME Boiler and Pressure Vessel Code (e.g., SA material specifications) be handled through the code committee system?

1.1.32 To what extent should items 1.1.1a through 1.1.31 be required for other than safety-related components?

1.2 Metallic Products (e.g., fasteners, piping, pipe fittings, weld rod, castings, forgings, bar stock, plate material, stampings, wire, cable, etc.).

1.2.1a Should chemical analyses of the products be required as part of product acceptances?

1.2.1b Should these analyses of the products be performed by destructive or by nondestructive means?

1.2.2a Should tests of mechanical properties (e.g., hardness, tensile strength, impact, etc.) of the products be required as part of product acceptances?

1.2.2b Should tests of mechanical properties of the products be performed by destructive or by nondestructive means?

1.2.3 When destructive tests are required, are test coupons (when applicable) an acceptable source of test materials for the tests of chemical and mechanical properties or should material samples be removed from actual products?

1.3 Nonmetallic Products (e.g., lubricants, tape, elastomers, seals, paints, filters, etc.)

1.3.1a Should chemical analyses be required for lubricants, tape, elastomers, etc., during product acceptances?

1.3.1b Should these analyses be performed by destructive or by nondestructive means?

1.3.2 Should physical property tests (e.g., viscosity for lubricants, hardness for elastomers, efficiency for filters, etc.) be required during product acceptances?

1.4 Components (e.g., pumps, valves, circuit breakers, controllers and electronic parts/assemblies and their replacement parts)

1.4.1 Should components be subjected to functional tests during product acceptance?

1.4.2a Should components be disassembled, if necessary during product acceptance, to verify dimensional characteristics?

1.4.2b If the components are not disassembled, what methods should be utilized to verify critical characteristics?

1.4.3a Should the chemical and physical properties of component materials be analyzed during product acceptance inspections?

1.4.3b If the chemical and physical properties of component materials are to be analyzed during product acceptance inspections, what means should be utilized?

2. Dedication of Commercial Grade Products for Use in Safety-Related

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Structure, System and component Applications.

The questions in this section are categorized in five subsections: General, Metallic Products, Nonmetallic Products, Components, and Others Questions.

2.1 General

2.1.1 Should the Commission establish specific requirements or performance-based requirements to ensure that commercial grade products being dedicated for use in safety-related nuclear power plant structures, systems and components satisfy the operational requirements necessary to protect public health and safety?

2.1.2 Should NRC regulations be revised to endorse and incorporate by reference, the industry codes, standards, or guidance documents for dedication programs of commercial grade products for use in safety-related structure, system and component applications?

2.1.3a What should the traceability requirements be for all commercial products being upgraded for use in safety-related structures, systems and components?

2.1.3b If upgrading traceability provisions are necessary, what should these provisions include?

2.1.3c Should material traceability through all intermediary contracts, subcontractors and processors be required?

2.1.3d If item traceability is necessary, should there be any provisions for upgrading products whose traceability cannot be established?

2.1.3e Should the upgrading traceability provisions be any different if the products are heat/lot identified or not?

2.1.3f What should the identification requirements be for traceability, for example, marking, bagging and records?

2.1.4 How should products intended for use in applications in which products are normally required to meet specific standards be inspected to verify that all critical characteristics are satisfied?

2.1.5 Should the shelf life of appropriate types of products be inspected and verified as acceptance as part of the upgrade inspection process?

2.1.6 What types of shelf life controls should be imposed on products that are being upgraded for use in safety-related structures, systems and components?

2.1.7 Should all upgrade inspections be restricted to inspections and tests or should they include, on a sample basis, destructive inspections and tests to verify chemical and physical characteristics?

2.1.8 What types of inspections and tests (appropriate for the various types of products) should be required?

2.1.9 How should inspections verify all critical characteristics (for example, chemistry, physical properties, dimensions, special processes, etc.)?

2.1.10a If destructive inspections and tests are determined to be necessary, how should samples be selected if products are heat/lot identified?

2.1.10b How should samples be selected if products are not heat/lot identified?

2.1.11 Should sample plan testing be permitted for nondestructive testing or should such testing be on a 100 percent basis?

2.1.12 What criteria are appropriate for allowing sample plan testing during upgrade inspections?

2.2 Metallic Products

2.2.1a Are chemical analyses of the products appropriate as part of upgrade inspections?

2.2.1b Should these analyses be performed by destructive or by nondestructive means?

2.2.2a Are tests of mechanical properties (e.g., hardness, tensile strength, impact etc.) appropriate as part of upgrade inspections?

2.2.2b Should these tests be performed by destructive or by non-destructive means?

2.2.3 If the product is heat/lot traceable, is sample inspection (destructive and nondestructive) adequate for confirmation of critical characteristics?

2.2.4 If the product is not heat/lot traceable, is it necessary to either sample or 100 percent test, for example, hardness, to establish uniformity and then destructively analyze them (for example, chemical analyses, tensile tested, impact tested, etc.) to determine acceptability?

2.2.5 Should requirements in addition to those included in industry standards (e.g., additional samples, etc.) be required?

2.2.6 When destructive tests are required, are test coupons (when available) an acceptable source of test materials for chemical and mechanical properties tests or should material samples be removed from actual products?

2.3 Nonmetallic Products

2.3.1a Are chemical analyses necessary to establish critical characteristics for lubricants, tape, elastomers, etc., proposed for upgrading for use in safety-related systems?

2.3.1b Should these analyses be performed by destructive or by non-destructive means?

2.3.2 Are physical property tests (e.g., viscosity for lubricants, hardness for elastomers, efficiency for filters, etc.) necessary for upgrading these products?

2.3.3 May critical characteristics be inspected by samples or is 100 percent inspection necessary to verify these characteristics?

2.4 Components

2.4.1 Must each critical characteristic be inspected before the component is acceptable for use in safety-related systems?

2.4.2 How should the chemical and physical properties of component materials be analyzed during upgrade inspections?

2.4.3 If critical characteristics cannot be inspected on each component piece, should it be acceptable to establish heat/lot traceability, establish uniformity of lot by sample inspection and thereby accept the lot?

2.4.4a Must components be 100 percent functionally tested or may they be subjected to functional tests on a sampling basis?

2.4.4b Inspected by sample, what is the basis for performing only sample inspection?

2.4.5a Should disassembly of components be required to verify critical characteristics?

2.4.5b May verification of critical characteristics be done on a sampling basis or are 100 percent inspections necessary?

2.4.5c What is the basis for performing only sample inspections?

2.4.5d If components are not disassembled to verify dimensions, what methods can be utilized to verify dimensions?

2.5 Other Questions

2.5.1a Are there any other agency/organization standards or programs that should be adopted for use in upgrading commercial grade products for use in safety-related systems?

2.5.1b Should these standards or programs be endorsed by NRC regulations?

2.5.2 Are there other alternatives that could provide the necessary assurances?

2.5.3 To what extent should any existing controls or any additional controls being contemplated in the ANPR be extended to nonsafety-related applications in "balance of plant" structures, systems and components?

**List of Subjects in 10 CFR Part 50**

Antitrust, Classified information, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Penalty, Radiation protection, Reactor siting criteria, and Reporting and recordkeeping requirements.

The authority citation for this document is:

**Authority:** Sec. 161, Pub. L. 83-703, 68 Stat. 948, as amended (42 U.S.C. 2201); and Sec. 201, Pub. L. 93-438, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Dated at Rockville, Maryland, this 28th day of February, 1989.

For the Nuclear Regulatory Commission.

**Samuel J. Chilk,**

*Secretary of the Commission.*

[FR Doc. 89-5101 Filed 3-3-89; 8:45 am]

BILLING CODE 7590-01-M



## SMALL BUSINESS ADMINISTRATION

### 13 CFR Part 120

### Business Loan Policy

**AGENCY:** Small Business Administration.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** Section 102 of the Small Business Administration Reauthorization and Amendment Act of 1988, Pub. L. 100-590 (102 Stat. 2989), enacted November 3, 1988, amends the Small Business Act (15 U.S.C. 636) with respect to guaranty fees on loans of $50,000 or less by Certified or Preferred Lenders. This proposed rule would implement such amendment.

**DATE:** Comments must be received on or before April 5, 1989.

**ADDRESS:** Comments may be mailed to: Allan Mandel, Small Business Administration, 1441 L Street NW., Washington, DC 20416.

**FOR FURTHER INFORMATION CONTACT:** Allan Mandel, 202-653-6696.

**SUPPLEMENTARY INFORMATION:** The Small Business Administration (SBA) charges a guaranty fee for a participating lender to obtain the SBA guaranty with respect to a percentage of a qualified loan. On loans with maturities in excess of twelve months, the guaranty fee is two percent. Such fee is paid by the lender to SBA, but the lender may pass that charge on to the small business concern borrower. This is true whether the loan being guaranteed by SBA is a regular loan, a loan made under the Certified Lenders Program (CLP) (under which a lender is promised a three-day turnaround review by SBA), or a loan made under the Preferred Lenders Program (PLP) (under which the loan does not get any processing review by SBA). Congress wants to encourage lenders to make smaller loans which are less profitable for lenders. Public Law 100-590 authorizes a Certified or Preferred Lender (which are SBA participating lenders who have exemplary records in making guaranteed loans) to keep one half of the guaranty fee for a CLP or regularly processed loan of $50,000 or less and a maturity in excess of twelve months. The proposed amendment of the regulation would implement this statutory provision.

Public Law 100-590 also refers to the use of a simplified loan form for these small loans. SBA periodically reviews its loan forms and the current version was revised in the last several years. SBA considers that the information requested on the present forms is the minimum necessary in order to make an informed decision on the creditworthiness of a borrower, regardless of the amount of the loan. Accordingly, SBA is not at this time making any changes to its loan forms to accommodate this small loan proposal.

For purposes of the Regulatory Flexibility Act (5 U.S.C. 605(b)), SBA certifies that this proposed rule will not, if promulgated in final form, have a significant impact on a substantial number of small entities because recent history indicates to SBA that there will not be made a large number of loans $50,000 or less.

SBA certifies that this proposed rule does not constitute a major rule for the purposes of Executive Order 12291, since the change is not likely to result in an annual effect on the economy of $100 million or more because it is not anticipated that such a large number of $50,000 loans will be made. In 1986, the average SBA loan was $150,000, for 1987 it was $160,000, and for 1988 it was $161,000.

The proposed rule, if promulgated in final form, would not impose additional reporting or recordkeeping requirements which would be subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

This proposed rule would not have federalism implications warranting the preparation of a Federal Assessment in accordance with Executive Order 12612.

List of subjects in 13 CFR Part 120: Loan Programs/Business.

Pursuant to the authority contained in section 5(b)(6) of the Small Business Act (15 U.S.C. 634(b)(6)) and Section 136 of Pub. L. 100-590 (102 Stat. 2989), SBA proposes to amend Part 120, Chapter I, Title 13, Code of Federal Regulations, as follows:

## PART 120—BUSINESS LOAN POLICY

1. The authority citation for Part 120 continues to read as follows:

**Authority:** 15 U.S.C. 634(b)(6) and 636 (a) and (h).

2. Section 120.104-1 is amended by adding a new paragraph (f) to read as follows:

**§ 120.104-1 Guaranty fees.**

* * * * *

(f) *Retention of Guaranty Fee.* Except for loans made under the Preferred Lenders Program in Subpart D of this Part, when a Certified Lender or Preferred Lender makes a loan of $50,000 or less, with a maturity in excess of twelve months, it may retain one-half of the guaranty fee charged to the borrower.

Dated: January 26, 1989.

**James Abdnor,**

*Administrator.*

[FR Doc. 89-5118 Filed 3-3-89; 8:45 am]

BILLING CODE 8025-01-M

## DEPARTMENT OF COMMERCE

### Bureau of Export Administration

### 15 CFR Part 787

**[Docket No. 81147-8247]**

### Voluntary Self-Disclosures

**AGENCY:** Bureau of Export Administration, Commerce.

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** The Bureau of Export Administration proposes to amend the Export Administration Regulations to set forth procedures for dealing with voluntary self-disclosures of violations of the Export Administration Act, as amended, and the Export Administration Regulations. There have been inquiries from the public which suggest that there are uncertainties with respect to the effect that a voluntary self-disclosure may have on the treatment of violations. By publishing the practice of the Bureau of Export Administration with respect to voluntary self-disclosures, this rule will reduce that uncertainty.

Depending on the facts and circumstances of each case, the voluntary self-disclosure of a violation will ordinarily be a mitigating factor which the Bureau of Export Administration will consider, along with other aggravating and mitigating factors, when determining the appropriate administration sanction, if any, to be imposed.

**DATE:** Comments should be received by April 5, 1989.

**ADDRESS:** Written comments (six copies) should be sent to: William H. Arvin,

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Office of Export Enforcement, Room H-4616, Bureau of Export Administration, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, Telephone: (202) 377-8252.

**FOR FURTHER INFORMATION CONTACT:** Anthony K. Hicks, Office of the Chief Counsel for Export Administration, Room H-3329, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, Telephone: (202) 377-5311; or

Thomas Andrukonis, Office of Export Intelligence, Room H-6087B, Bureau of Export Administration, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, Telephone: (202) 377-8208.

**SUPPLEMENTARY INFORMATION:**

**Rulemaking Requirements and Invitation to Comment**

1. This rule is consistent with Executive Order 12291 and 12661.

2. This rule contains a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h) *et seq.*) and has been submitted to the Office of Management and Budget for review. The public reporting burden for this collection of information is estimated to average 10 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Office of Security and Management Support, Bureau of Export Administration, U.S. Department of Commerce, Washington, DC 20230, and to the Office of Management and Budget, Paperwork Reduction Project (0694-xxxx), Washington, DC 20503. This rule will not be published in final form until and unless the Department of Commerce has obtained the approval to do so from the Office of Management and Budget. Further, in accordance with 5 CFR 1320.13 and 1320.15:

a. The title for this collection of information is "the procedure for the voluntary self-disclosure of violations of the Export Administration Regulations".

b. The information is needed to detect violations of the Export Administration Act and Regulations. It will be used to determine whether an investigation or prosecution is necessary and to reach settlements with violators.

c. The likely respondents will be export-related businesses.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)), no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. Section 13(b) of the Export Administration Act does not require that this rule be published in proposed form because this rule does not impose a control on exports. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

However, consistent with the intent of Congress set forth in section 13(b) of the Export Administration Act to provide public participation in rulemaking, these regulations are issued in proposed form and comments will be considered in developing final regulations.

The period for submission of comments will close April 5, 1989. The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept public comments accompanied by a request that part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the person submitting the comments and will not consider them in the development of final regulations. All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires comments in written form. Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record concerning these regulations will be maintained in the Bureau of Export Administration Freedom of Information Records Inspection Facility, Room H-4886, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with the regulations published in Part 4 of Title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Margaret Cornejo, Bureau of Export Administration, Freedom of Information Officer, at the above address or by calling (202) 377-2593.

5. This proposed rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

**List of Subjects in 15 CFR Part 787**

Exports, Enforcement, Criminal and administrative sanctions, Penalties, Violations, Reporting and recordkeeping requirements.

**PART 787—[AMENDED]**

Accordingly, Part 787 of the Export Administration Regulations (15 CFR Parts 700-799) is proposed to be amended as follows:

1. The authority citation for 15 CFR Part 787 continues to read as follows:

**Authority:** Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97-145 of December 29, 1981, by Pub. L. 100-418 of August 23, 1988, and by Pub. L. 99-64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95-223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99-440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*) and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

2. A new § 787.15 is added to read as follows:

**§ 787.15 Voluntary self-discipline.**

(a) *General policy.* Because it is in the national interest, the Department strongly encourages the disclosure of information to the Office of Export Intelligence by persons who believe that they may have violated the export control provisions of the Act or any regulation, order, license or other authorization issued under the Act. Depending on the facts and circumstances of each case, a voluntary



self-disclosure will ordinarily be a mitigating factor with respect to the administrative sanctions, if any, imposed by the Office of Export Enforcement.

(b) *Limitations.* (1) The provisions of this section apply only to information provided to the Office of Export Intelligence for review by either the Office of Export Enforcement or the Office of Export Intelligence and use by the Office of Export Enforcement in determining whether to take administrative action under Part 788 for violations of the export control provisions of the Act and the Regulations.

(2) The provisions of this section apply only when information is provided to the Office of Export Intelligence for review prior to the time that either the Office of Export Enforcement or the Office of Export Intelligence or another agency, bureau or department of the United States Government has learned of the same or substantially similar information from another source.

(c) *Information to be provided to the Office of Export Enforcement in connection with a voluntary self-disclosure—(1) General.* Any person wanting to disclose information which constitutes a voluntary self-disclosure should, in the manner outlined below, initially notify the Office of Export Intelligence as soon as possible after violations are discovered and then conduct a thorough review of all export-related transactions where violations are suspected. Upon completion of the review, the person should prepare and submit to the Office of Export Intelligence a detailed narrative account, supported by appropriate documentation, of all the suspected violations.

(2) *Initial notification.* (i) Ordinarily, the initial notification should be in writing and sent to the address set forth in § 787.15(c)(7). The notification should include the name of the person making the disclosure and a brief description of the suspected violations.

(ii) The Office of Export Intelligence recognizes that there will be situations where it will not be practical to make the initial notification in writing. For example, this could occur if a shipment leaves the United States without the required export license and there may still be an opportunity to prevent acquisition of the commodities or technical data by unauthorized persons. In these situations, the Office of Export Intelligence should be contacted promptly at (202) 377-8208.

(3) *Narrative account.* After the initial notification, a thorough review should be conducted of all export-related transactions where possible violations are suspected. The Office of Export Intelligence suggests that the review cover a period of five years prior to the date of the initial notification. Upon completion of the review, the Office of Export Intelligence should be furnished with a narrative account that sufficiently describes the suspected violations so that the Office of Export Enforcement and the Office of Export Intelligence can assess their nature and gravity. The narrative account should also describe the nature of the review conducted and measures which may have been taken to minimize the likelihood that violations will occur in the future. Where appropriate, the narrative acount should include, but is not limited to:

(i) The kind of violation involved, *e.g.*, an unlicensed shipment, dealing with a party denied U.S. export privileges;

(ii) An explanation of when and how the violations occurred;

(iii) The complete identities and addresses of all individuals and organizations, whether foreign or domestic, involved in the activities giving rise to the violations;

(iv) Export license numbers;

(v) Commodity classification numbers, product descriptions and quantities, and value in U.S. dollars of the commodities or technical data involved; and

(vi) A description of any mitigating circumstances.

(4) *Supporting documentation.* (i) The narrative account should be accompanied by copies of those documents which explain and support it. Where appropriate, the documentation should include, but is not limited to:

(A) Licensing documents such as export licenses, license applications, import certificates and end-user statements;

(B) Shipping documents such as Shipper's Export Declarations, air waybills and bills of lading; and

(C) Other documents such as telexes and other evidence of written or oral communications, internal memoranda, purchase orders, invoices, letters of credit and brochures.

(ii) Any other relevant documents must be retained by the person making the disclosure until the Office of Export Intelligence or the Office of Export Enforcement requests them or until a final decision with respect to the disclosed information has been made. After a final decision, the documents should be handled in accordance with the recordkeeping rules set forth in § 787.13.

(5) *Certification.* A certification must be submitted stating that all of the representations made in connection with the voluntary self-disclosure are true and correct. Certifications made by a corporation or other organization should be made by someone with the authority to do so. In connection with the disclosure of information under this section, § 787.5, relating to false or misleading representations, applies.

(6) *Oral presentations.* The Office of Export Intelligence believes that oral presentations are generally not necessary to augment the narrative account and supporting documentation. Therefore, if the person making the disclosure believes a meeting is desirable, a request for one should be included with the disclosure.

(7) *Where to make voluntary self-disclosures.* The information constituting a voluntary self-disclosure or any other correspondence pertaining to a voluntary self-disclosure should be mailed to:

Office of Export Intelligence, U.S. Department of Commerce, Ben Franklin Station, P.O. Box 7138, Washington, DC 20044.

or delivered to:

Office of Export Intelligence, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Room H-6087 B, Washington, DC 20230.

(d) *Action by the Offices of Export Intelligence and Export Enforcement.* After the Office of Intelligence has been provided with the required narrative and supporting documentation, it will acknowledge the disclosure by letter, provide the person making the disclosure with a point of contact and take whatever additional action it deems appropriate. As quickly as the facts and circumstances of a given case permit, the Office of Export Enforcement, after consultation with the Office of Export Intelligence, may then take any of the following actions:

(1) Inform the person making the disclosure that no action is warranted;

(2) Issue a warning letter;

(3) Issue a proposed charging letter pursuant to § 788.17(b) and attempt to settle the matter;

(4) Issue a charging letter pursuant to § 788.4 if a settlement is not reached; or

(5) Refer the matter to the United States Department of Justice for possible prosecution.

(e) *Criteria.* For purposes of determining what action to take and what sanctions, if any, to impose, the fact that a voluntary self-disclosure has been made will be a mitigating factor which will be taken into account along with other mitigating and aggravating factors that may exist. The factors

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which the Office of Export Enforcement will consider are in its sole discretion. Some of the factors are:

(1) Whether the goods involved in the violation are of significant strategic importance;

(2) Whether a license would have been granted for the goods had one been applied for;

(3) The quantity and value in U.S. dollars of the commodities or technical data involved;

(4) The reasons why the violations occurred. For example, OEE may consider whether the violations were intentional or inadvertent; the degree to which the person making the disclosure was familiar with the Regulations and whether the person who committed the violations was the subject of some prior administrative or criminal action for violating the Act of any regulation, order, license or other authorization issued under the Act;

(5) Whether as a result of the information provided, the Office of Export Enforcement is able to prevent any commodities or technical data exported contrary to the Act or any regulation, order, license or other authorization issued under the Act, from reaching unauthorized persons or destinations;

(6) Whether the information provided to the Office of Export Intelligence includes information about other possible violations of the Act or any regulation, order, license or other authorization issued under the Act; and

(7) The degree of cooperation with the ensuing investigation.

(f) *Treatment of unlawfully exported commodities after voluntary self-disclosure.* (1) In accordance with § 772.7(b), of commodities or technical data which are the subject of a voluntary self-disclosure were exported without the required license, no such license will be issued after the fact.

(2) Reexport authorization for commodities or technical data which are the subject of a voluntary self-disclosure and which have been exported contrary to the provisions of the Act or the regulations may be requested from the Office of Export Licensing in accordance with the provisions of Part 774. The request should state that a voluntary self-disclosure was made in connection with the export of the commodities for which reexport authorization is sought.

(3) Section 787.4(a) prhibits any person from taking certain actions with knowledge or reason to know that a violation of the Act the the Regulations has occurred. Any person who has made a voluntary self-disclosure at least has reason to believe that a violation may have occurred. However, with respect to the commodities or technical data which are the subject of a voluntary self-disclosure, permission to take any of the actions set forth in § 787.4(a), which may otherwise be prohibited, may be requested from the Office of Export Licensing. The Office of Export Licensing's decision with regard to any such request will be made after consultation with the Office of Export Enforcement. Requests for permission should be sent of the Office of Export Licensing at the following address: Office of Export Licensing, P.O. Box 273, Washington, DC 20044.

Dated: March 1, 1989.

**William V. Skidmore,**

*Acting Assistant Secretary for Export Enforcement.*

[FR Doc. 89-5115 Filed 3-1-89; 3:57 pm]

BILLING CODE 3510-DT-M

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Parts 1 and 7

**[INTL-966-86]**

### Requirements Relating to Certain Exchanges Involving a Foreign Corporation; Proposed Rulemaking

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Notice of proposed rulemaking by cross-reference to temporary regulations.

**SUMMARY:** This document provides proposed Income Tax Regulations concerning requirements relating to certain exchanges involving a foreign corporation. In the rules and regulations portion of this **Federal Register**, the Internal Revenue Service is issuing temporary regulations relating to these matters. The portions of the text of those temporary regulations that amend Part 7 of 26 CFR also serve as the comment document for this proposed rulemaking. When the regulations are made final, Part 7 will be amended by removing the temporary regulations and Part 1 will be amended by adding the final regulations to that part.

**DATES:** Written comments and requests for a public hearing must be delivered or mailed before May 5, 1989.

**ADDRESS:** Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:CORP:T:R (INTL-966-86), Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Richard Chewning of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Ave., NW., Washington, DC 20224 (Attention: CC:CORP:T:R (INTL-966-86)) (202-566-6384, not a toll-free call).

**SUPPLEMENTARY INFORMATION:**

#### Background

The temporary regulations published in the Rules and Regulations portion of this issue of the **Federal Register** amend, in part §§ 7.367 (b)-2 (d) and (f), 7.367 (b)-7 (c)(1) and 7.367 (b)-9(b) of 26 CFR Part 7. The final regulations that are proposed to be based on the temporary regulations would amend 26 CFR Parts 1 and 7. For the text of the temporary regulations, see paragraphs 2 through 4 of Treasury decision [T.D. 8243] published in the Rules and Regulations portion of this issue of the **Federal Register.**

Temporary regulations under §§ 7.367 (b)-2, 7.367 (b)-7 and 7.367 (b)-9 with cross-reference notice were originally published on December 20, 1977 (42 FR 65152, 65204). This document, therefore, also serves to amend that notice of proposed rulemaking.

#### Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291, and a Regulatory Impact Analysis is therefore not required. Although this document is a notice of proposed rulemaking which solicits public comment, it has been concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

#### Comments and Requests for a Public Hearing

Before adopting these proposed regulations as final, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register.**

#### Drafting Information

The principal author of these regulations is Richard Chewning, of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. Personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations.

#### List of Subjects

*26 CFR Part 1*

Income taxes, Corporations, Corporate distributions, Corporate adjustments, Reorganizations.

*26 CFR Part 7*

Income taxes, Tax Reform Act of 1976.

#### Proposal of Regulations

Paragraphs 2 through 4 of the temporary regulations [T.D. 8243] published in the rules and regulations portion of this issue of the **Federal Register** are hereby also proposed as final regulations under section 367(b) of the Internal Revenue Code.

**Lawrence B. Gibbs,**

*Commissioner of Internal Revenue.*

[FR Doc. 89-4994 Filed 3-3-89; 11:08 am]

BILLING CODE 4830-01-M



## VETERANS ADMINISTRATION

### 38 CFR Part 21

### Vocational Rehabilitation Panel

**AGENCY:** Veterans Administration.

**ACTION:** Proposed regulatory amendment.

**SUMMARY:** The Veterans Administration (VA) is proposing to change the rules under which the cases of seriously disabled veterans are referred to the Vocational Rehabilitation Panel (VRP). Under the new procedure VA staff members may refer cases to the Panel on a voluntary basis. The requirement that certain cases be referred to the VRP is eliminated. This change should enable VA staff to focus their attention on cases in which their professional judgment indicates that consideration by the VRP is necessary.

**DATES:** Comments must be received on or before April 5, 1989. Comments will be available for public inspection until April 17, 1989. These amendments are proposed to be effective 30 days after publication of the final regulations.

**ADDRESS:** Send written comments to: Administrator of Veterans' Affairs, Veterans Administration, 810 Vermont Avenue NW., Washington DC, 20420. All written comments received will be available for public inspection only in the Veterans' Services Unit, room 132 of the above address, between the hours of 8 a.m. to 4:30 p.m., Monday through Friday (except holidays) until April 17, 1989.

**FOR FURTHER INFORMATION CONTACT:** Morris Triestman, Rehabilitation Consultant, Policy and Program Development, Vocational Rehabilitation and Education Service, Department of Veterans' Benefits, (202)-233-2886.

**SUPPLEMENTARY INFORMATION:** The VRP is a multidisciplinary group of professional staff of the Veterans Administration. The VRP furnishes technical assistance in cases involving seriously disabled veterans and dependents. Under current provisions the VRP reviews each case in which an extended evaluation of more than 12 months is being requested, a finding of infeasibility for vocational rehabilitation is being considered, or a finding of serious employment handicap for a veteran with a service-connected disability which is rated as less than 30 percent disabling is recommended. Placing the use of the VRP on a discretionary basis will allow the VRP to focus its efforts on those cases in which the professional judgment indicates such consideration is needed. The resulting conservation of staff time resulting from discretionary use of the VRP should improve administrative efficiency.

The proposed regulatory amendments contained herein will better acquaint eligible veterans, vocational training and rehabilitation facilities, and the public at large with the way these provisions will be implemented.

These proposed amendments do not meet the criteria for major rules as contained in Executive Order, 12291, Federal Regulation. The proposed changes will not have a $100 million annual effect on the economy, will not cause a major increase in costs or prices, and will not have any other significant adverse effects on the economy.

The Administrator certifies that these proposed regulatory amendments will not, if promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), these proposed rules are therefore exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reason for this certification is that these proposed regulatory amendments concern only the internal agency procedures for reviewing the eligibility and participation of individual veterans under this program.

The Catalog of Federal Domestic Assistance Number is 64.116.

#### List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs, Loan programs, Reporting requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: February 10, 1989.

**Thomas E. Harvey,**

*Acting Administrator.*

38 CFR Part 21, Vocational Rehabilitation and Education, is proposed to be amended as follows:

#### PART 21—[AMENDED]

**§ 21.52 [Amended]**

1. In § 21.52 paragraph (e)(3) is removed.

2. In § 21.53, paragraph (f) is redesignated as paragraph (g), paragraph (e)(2) is revised and new paragraph (f) is added to read as follows:

**§ 21.53 Reasonable feasibility of achieving a vocational goal.**

* * * * *

(e) *Criteria for reasonable facility not met.*

(2) A finding that achievement of a vocational goal is infeasible without a period of extended evaluation requires compelling evidence which establishes infeasibility beyond any reasonable doubt.

(Authority: 38 U.S.C. 1504(a)(1), 1506(b))

(f) *Independent living services.* The counseling psychologist shall determine the current reasonable feasibility of a program of independent living services in each case in which a vocational rehabilitation program is not found reasonably feasible. The concurrence of the Vocational Rehabilitation and Counseling (VR&C) Officer is required in any case in which the counseling psychologist does not approve a program of independent living services.

(Authority: 38 U.S.C. 1500)

3. In § 21.57 paragraph (c) is revised to read as follows:

**§ 21.57 Extended evaluation.**

* * * * *

(c) *Determination.* (1) The determination of the reasonable feasibility of a veteran achieving a vocational goal will be made at the earliest time possible during an extended evaluation, but not later than the end of the period of evaluation, or an extension of that period. Any reasonable doubt as to feasibility will be resolved in the veteran's favor;

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(2) When it is reasonably feasible for the veteran to achieve a vocational goal, an individualized written rehabilitation plan (IWRP) will be developed as indicated in § 21.84 of this part.

(Authority: 38 U.S.C. 1506(b))

* * * * *

4. Section 21.62 is revised to read as follows:

**§ 21.62 Duties of the Vocational Rehabilitation Panel.**

(a) *Consultation requested.* The panel shall provide technical and consultative services when requested by professional staff of the Vocational Rehabilitation and Counseling (VR&C) Division to:

(1) Assist staff members in planning and carrying out a rehabilitation plan for seriously disabled veterans and their dependents; and

(2) Consider other cases of individuals eligible for, or being provided assistance under chapter 31 and other programs of education and training administered by the Veterans Administration.

(Authority: 38 U.S.C. 1504(a))

(b) *Independent living services.* The Panel has a key responsibility to assure that seriously disabled service-connected veterans who need independent living services to increase their independence in daily living are provided necessary services. In carrying out this responsibility the Panel shall review all cases which come before it to assure that the proposed program of vocational rehabilitation or independent living services includes those services necessary to enable the veteran to achieve the goals of the program.

(Authority: 38 U.S.C. 1500)

(c) *Dependents.* The specific duties of the Panel with respect to dependents are more fully described in §§ 21.3300, 21.3301, 21.3304, 21.4105, and 21.4276 of this part.

(Authority: 38 U.S.C. 1736, 1740, 1741, 1742, 1743)

5. In § 21.74 paragraph (c)(2) is revised to read as follows:

**§ 21.74 Extended evaluation.**

* * * * *

(c) * * *

(2) An additional period of extended evaluation of up to 6 months may be approved by the counseling psychologist, if there is reasonable certainty that the feasibility of achieving a vocational goal can be determined during the additional period. The counseling psychologist will obtain the concurrence of the Vocational Rehabilitation and Counseling Officer before approving the extension of a period of extended evaluation.

* * * * *

6. In § 21.76 paragraph (b) is revised to read as follows:

**§ 21.76 Independent living.**

* * * * *

(b) *Period of independent living services.* The duration of an independent living services program may not exceed 24 months unless the counseling psychologist finds that an additional period of up to 6 months would enable the veteran to substantially increase his or her level of independence in daily living. The concurrence of the Vocational Counseling and Rehabilitation Officer in this finding is required.

(Authority: 38 U.S.C. 1505(d))

[FR Doc. 89-5072 Filed 3-3-89; 8:45 am]

BILLING CODE 8320-01-M



# Notices

Federal Register
Vol. 54, No. 42
Monday, March 6, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

### Committee on Governmental Processes, Committee on Judicial Review, and Working Group on Model Rules; Public Meetings

Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92-463), notice is hereby given of meetings of the Committee on Governmental Processes, the Committee on Judicial Review, and the Working Group on Model Rules of the Administrative Conference of the United States.

**Committee on Governmental Processes**

*Date:* Thursday, March 16, 1989
*Time:* 12:15 p.m.-2:30 p.m.
*Location:* Covington and Burling, 1201 Pennsylvania Avenue, NW., Washington, DC (Lawyers' Dining Room, 12th floor).
*Agenda:* The committee will meet to discuss a study of the Federal personnel complaint, appeal, and grievance process, conducted by Professor William V. Luneburg of the University of Pittsburgh School of Law.
*Contact:* David M. Pritzker, 202-254-7065

**Committee on Judicial Review**

*Date:* Friday, March 31, 1989
*Time:* 10:00 a.m.
*Location:* Administrative Conference of the United States Library, 2120 L Street, NW., Suite 500, Washington, DC.
*Agenda:* The committee will meet to discuss a proposed statement based on Professor Robert Anthony's study of judicial deference to agency statutory interpretations expressed in various formats.
*Contact:* Mary Candace Fowler, 202-254-7020

**Working Group on Model Rules**

*Date:* Friday, March 31, 1989
*Time:* 1:00 p.m.
*Location:* Administrative Conference of the United States Library, 2120 L Street, NW., Suite 500, Washington, DC.
*Agenda:* The committee will meet as part of an ongoing effort to develop model rules of practice and procedure which can be used by Federal agencies in formal adjudications.
*Contact:* Gary J. Edles, 202-254-7020

**Public Participation**

Attendance at the committee meetings is open to the public, but limited to the space available. Persons wishing to attend should notify the contact person at least one day in advance of the meeting. The committee chairmen may permit members of the public to present oral statements at meetings. Any member of the public may file a written statement with a committee before, during, or after a meeting. Minutes of the meetings will be available on request to the contact persons. The contact persons' mailing address is: Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, DC 20037.

**Jeffrey S. Lubbers,**
*Research Director.*
March 2, 1989.

[FR Doc. 89-5211 Filed 3-3-89; 8:45 am]

BILLING CODE 6110-01-M

## DEPARTMENT OF AGRICULTURE

### Office Of The Secretary

### State of Ohio Agricultural Pollution Abatement Program

**AGENCY:** Office of the Secretary, USDA.

**ACTION:** Notice of determination.

**SUMMARY:** The Secretary of Agriculture has determined that all State cost-share payments made under the Ohio Agricultural Pollution Abatement Program are made primarily for the purpose of soil and water conservation, and protecting or restoring the environment. This determination is in accordance with section 126 (a) and (b) of the Internal Revenue Code of 1954, as amended. The determination permits recipients of these payments to exclude them from gross income to the extent allowed by the Internal Revenue Service.

**FOR FURTHER INFORMATION CONTACT:** Lawrence G. Vance, Chief, Division of Soil and Water Conservation, Ohio Department of Natural Resources, Fountain Square, Columbus, Ohio 43224; or Director, Land Treatment Program Division, Soil Conservation Service, USDA, P.O. Box 2890, Washington, DC 20013, (202) 382-1870.

**SUPPLEMENTARY INFORMATION:** Section 126 of the Internal Revenue Code of 1954, as amended 26 U.S.C. 126, provides that certain payments made to persons under state conservation programs may be excluded from the recipient's gross income for federal income tax purposes if the Secretary of Agriculture determines that payments are made "primarily for the purpose of soil and water conservation, protecting or restoring the environment, improving forests, or providing a habitat for wildlife * * *" The Secretary of Agriculture evaluates these conservation programs on the basis of criteria set forth in 7 CFR Part 14, and makes a "primary purpose" determination for the payments made under each program. Before there may be an exclusion, the Secretary of the Treasury must determine that the payments made to a person under these conservation programs do not substantially increase the annual income derived from the property benefited by the payments.

The Ohio Pollution Abatement Program is authorized by Ohio Revised Code Chapter 1511. It is funded by annual state appropriations to provide financial assistance to owners of agricultural land to help them install various conservation practices on their land. Cost-share payments accomplish one or more of the following purposes:

(1) Properly conserve and utilize the water and related land resources;

(2) Assist in maintaining water quality;

(3) Prevent erosion and degradation of agricultural land.

**Procedural Matters**

The USDA has classified this determination as "not major" in accordance with Executive Order 12291 and Secretary's Memorandum No. 1512-1. The Secretary has determined that this determination will not result in an annual effect on the economy of $100 million or more; will not cause a major

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increase in cost to consumers, individuals, industries, government agencies, or geographic regions; and will not cause significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to complete with foreign-based enterprises in domestic or export markets. An Ohio Agricultural Pollution Abatement Program Primary Purpose Determination for Federal Tax Purposes, Record of Decision, has been prepared and is available upon request from the Director, Land Treatment Program Division, Soil Conservation Service, P.O. Box 2890, Washington, DC 20013, or the Ohio Department of Natural Resources, Division of Soil and Water Conservation, Fountain Square, Columbus, Ohio 43224.

**Determination**

As authorized by section 126 (a) and (b) of the Internal Revenue Code of 1954, as amended, I have examined the authorizing legislation, regulations, and operating procedures of the Ohio Agricultural Pollution Abatement Program. In accordance with the criteria set out in 7 CFR Part 14, I have determined that all cost-share payments made under this program are primarily for soil and water conservation and protecting or restoring the environment. Subject to further determination by the Secretary of the Treasury, this determination permits payment recipients to exclude from gross income, for federal income tax purposes, all or part of such payments made under the Ohio Agricultural Pollution Abatement Program.

Signed at Washington, DC, on February 23, 1989.

**Peter Myers,**

*Deputy Secretary.*

[FR Doc. 89-5060 Filed 3-3-89; 8:45 am]

BILLING CODE 3410-01-M

**Office of the Secretary**

**State of Virginia Agricultural Best Management Practice Cost-Share Program; Determination of Primary Purpose of Program Payments and Benefits for Consideration as Excludable From Income**

**AGENCY:** Office of the Secretary, USDA.

**ACTION:** Notice of determination.

**SUMMARY:** The Secretary of Agriculture has determined that certain payments made and benefits that results under the Virginia Agricultural Best Management Cost-Share Program, as authorized by sections 10.1-505 and 10.1-542 of the Code of Virginia, are made primarily for the purpose of improving water quality by conserving soil and water, protecting or restoring the environment, and providing a habitat for wildlife. The determination permits recipients of these payments and benefits to exclude them from gross income to the extent allowed by the Internal Revenue Service. This determination is in accordance with section 126 of the Internal Revenue Code of 1954, as amended.

**FOR FURTHER INFORMATION CONTACT:** Roland B. Geddes, Director, Department of Conservation and Historic Resources, Division of Soil and Water Conservation, 203 Governor Street, Suite 206, Richmond, Virginia 23229; or Director, Land Treatment Program Division, Soil Conservation Service, USDA, P.O. Box 2890, Washington, DC 20013, (202) 382-1870.

**SUPPLEMENTARY INFORMATION:** Section 126 of the Internal Revenue Code of 1954, as amended 26 U.S.C. 126, provides that certain payments made to persons under state conservation programs may be excluded from the recipient's gross income for federal income tax purposes if the Secretary of Agriculture determines that payments are made "primarily for the purpose of soil and water conservation, protecting or restoring the environment, improving forests, or providing a habitat for wildlife." * * *" The Secretary of Agriculture evaluates these conservation programs on the basis of criteria set forth in 7 CFR Part 14, and makes a "primary purpose" determination for the payments made under each program. Before there may be an exclusion, the Secretary of the Treasury must determine that the payments made to a person under these conservation programs do not substantially increase the annual income derived from the property benefited by the payments.

The Virginia Agricultural Best Management Cost-Share Program is a Virginia Soil and Water Conservation Board project to improve water quality in the state's streams, rivers, and the Chesapeake Bay. The program is funded with state and federal monies and administered through local soil and water conservation districts. State appropriations are funded on a bi-annual basis through the Virginia General Assembly. Federal funds are obtained from a grant from the U.S. Environmental Protection Agency.

The districts, in turn, use this funding to administer a cost-share and incentive program in accordance with the Virginia Agricultural Best Management Cost-Share Program manual to encourage farmers and landowners to apply needed best management practices (BMPs) to their land to control sediment, and to reduce nutrient loss and the transportation of pollutants into the waters of Virginia casued by excessive surface flow, erosion, and inadequate animal waste management.

The districts receive their funding allocation based on need as determined from analysis of major agricultural factors that influence water quality, such as intensive cropland cultivation, erosive soil conditions, and animal unit numbers. The districts then distribute assistance to applicants whose requests have been evaluated to have the highest cost-effectiveness potential for water quality improvement. Although resource based problems affecting water quality occur on all land uses, this program emphasizes efforts for corrective action on agricultural and forested lands only, and offers cost-share assistance as an incentive to carry out construction or implementation of selected BMPs.

**Procedural Matters**

The Department of Agriculture (USDA) has classified this determination as "not major" in accordance with Executive Order 12291 and Secretary's Memorandum No. 1512-1. The Secretary has determined that these program provisions will not result in an annual effect of the economy of $100 million or more; will not cause a major increase in cost to consumers, individuals, industries, government agencies, or geographic regions; and will not cause significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States based enterprises to compete with foreign-based enterprises in domestic or export markets. A Virginia Agricultural Best Management Practice Cost-Share Program Primary Purpose Determination for Federal Tax Purposes Record of Decision, has been prepared and is available upon request from the Director, Land Treatment Program Division, Soil Conservation Service, P.O. Box 2890, Washington, DC 20013, or the Director, Department of Conservation and Historic Resources, Division of Soil and Water Conservation, 203 Governor Street, Suite 2906, Richmond, Virginia 23229.

**Determination**

As required by section 126(b) of the Internal Revenue Code of 1954, as amended, I have examined the authorizing legislation, regulations and operating procedures of the Virginia Agricultural Best Management Cost-Share Program. In accordance with the criteria set out in 7 CFR Part 14, I have determined that payments made and benefits provided under this program are primarily for soil and water conservation, protecting or restoring the environment, and providing wildlife habitat. Subject to further determination by the Secretary of the Treasury, this determination permits authorized participants to exclude from gross income, for federal income tax purposes, all or part of such payments made and benefits resulting from the Virginia Agricultural Best Management Cost-Share Program.

Signed at Washington, DC, on February 23, 1989.

**Peter Myers,**

*Deputy Secretary.*

[FR Doc. 89-5059 Filed 3-3-89; 8:45 am]

BILLING CODE 3410-01-M



**Animal and Plant Health Inspection Service**

**[Docket No. 89-024]**

**Public Meeting; Availability of Environmental Assessment and Preliminary Finding of No Significant Impact for Field Testing a Genetically Engineered Vaccinia Vectored Rabies Vaccine**

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice.

**SUMMARY:** We are advising the public that we are holding a public meeting of a select group of experts to discuss an environmental assessment and preliminary finding of no significant impact that have been prepared by the Animal and Plant Health Inspection Service concerning the field testing of a genetically engineered vaccinia vectored rabies vaccine, that expresses the rabies virus surface glycoprotein. The assessment indicates that the field testing of rabies vaccine will not cause any significant impact on the human environment. Based upon this preliminary finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

**DATE:** The public meeting will be held on March 30, 1989.

**ADDRESSES:** The public meeting will be held at the Holiday Inn-Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

A copy of the environmental assessment and preliminary finding of no significant impact is available for public inspection at the United States Department of Agriculture, 14th and Independence Avenue, SW., Washington, DC 20250 between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. A copy may also be obtained from the person listed under "FOR FURTHER INFORMATION CONTACT."

**FOR FURTHER INFORMATION CONTACT:** Dr. David Espeseth, Deputy Director, Veterinary Biologics, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8245.

**SUPPLEMENTARY INFORMATION:**

**Notice of Public Meeting/Scope of Issues**

The Animal and Plant Health Inspection Service (APHIS) has prepared an environmental assessment and preliminary finding of no significant impact relative to a request for authorization to conduct a limited field trial using an experimental live vaccinia vectored rabies vaccine that expresses the rabies virus surface glycoprotein. The sponsor of the field trial is the Wistar Institute of Anatomy and Biology, Philadelphia, Pennsylvania.

Prior to the issuance of the environmental assessment and the preliminary finding of no significant impact (hereinafter "the document") the document was reviewed by APHIS' Veterinary Biologics Biotechnology Committee, an interagency advisory group. This interagency group includes select experts from the U.S. Department of Agriculture's Agricultural Research Service, the Food Safety and Inspection Service, the Animal and Plant Health Inspection Service's National Veterinary Services Laboratories, the Food and Drug Administration, and the Office of Recombinant DNA Activities at the National Institutes of Health. Because of the special scientific issues raised by this request for field testing, the document was also reviewed by the National Vaccine Program Interagency Group of the Public Health Service, which includes members from the Centers for Disease Control.

At the request of an animal rights/environmental interest organization APHIS is convening a public meeting of experts from the interagency committee that reviewed the document. The purpose of the meeting is to provide a forum in which the public may participate, in an open discussion of the issues raised in the document. APHIS is considering convening a separate public meeting in the future for the purpose of discussing the broader issue of use of vaccinia as a vector for veterinary biological products.

**Procedures for public meeting**

The meeting will begin at 10:00 a.m., and is scheduled to end at 4:30 p.m., local time. However, the meeting may end earlier if the expert panel has concluded its discussion and all persons who are present and who have requested an opportunity to speak have been heard. Persons who wish to deliver a statement that has been prepared in advance of the meeting, should register at the meeting location with the presiding officer, before the meeting. Pre-meeting registration will be conducted at the meeting location from 9:30 a.m., to 10:00 a.m., local time, on the meeting date. Registered persons will be heard in the order of their registration. However, other persons who wish to speak at the meeting will be afforded the opportunity after the registered persons have been heard. It is requested that two copies of any written statements that are presented be provided to the presiding officer at the meeting. If the number of preregistered persons and other participants at the meeting warrants, the presiding officer may limit the time for each presentation in order to allow everyone wishing to speak an opportunity to be heard. Interested persons may appear and be heard in person, or by attorney or by other representative.

**Environmental Assessment and Preliminary Finding of No Significant Impact**

Before a veterinary biological product can be licensed under the Virus-Serum-Toxin Act (VSTA) (21 U.S.C. 151 *et seq.*), it must be shown to be pure, safe, potent, and efficacious. Field testing is necessary in order to satisfy vaccine safety requirements as a prerequisite to licensing vaccines under the VSTA. In the course of reviewing the field testing protocol for the vaccinia vectored rabies vaccine, APHIS assessed the impact on the human environment of authorizing the sponsor to conduct a limited field test of the product on three offshore islands, one off the coast of Virginia and two off the coast of South Carolina.

The environmental assessment and preliminary finding of no significant impact provide the public with documentation of APHIS' review and analysis of environmental effects which would be associated with the gathering of information in this limited field trial.

The facts that support a preliminary finding of no significant impact are

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summarized below and are contained in the environmental assessment.

1. Genetic engineering procedures were employed to incorporate only the rabies glycoprotein gene within the Thymidine Kinase (TK) locus of vaccinia virus. The recombinant vaccine virus cannot induce rabies.

2. The vaccinia rabies glycoprotein (V-RG) recombinant vaccine has been shown to cause no adverse clinical signs or gross or histopathological lesions, yet is fully capable of eliciting an immune response that protects a variety of species from virulent rabies virus challenge. Although virus was isolated from tissues in two of ten immune deficient mice, this is not considered significant under the conditions of this field trial. The V-RG recombinant virus is unable to evoke antibodies to the remaining rabies viral structural proteins. This allows differentiation between unvaccinated rabies-exposed animals and vaccinated animals.

3. Biological transmission of the V-RG recombinant virus cold not be demonstrated with rodents, foxes, cats, swine, cattle, ferrets or badgers in that rabies virus neutralizing antibody was not elicited from sentinel animals which were held as nonvaccinated contact controls. All control animals remained fully susceptible to challenge with wild-type rabies virus. Contact transmission (mechanical) of the V-RG recombinant virus was observed between two of five vaccinated male-female paired raccoons, a vaccinated lactating female raccoon and her kits, and between two foxes when an orally vaccinated fox immediately bit its cage mate.

4. The TK gene inserting is a stable characteristic of the V-RG recombinant virus vaccine with a probability of loss or reversion being low.

5. The V-RG recombinant virus does not contain an oncogene or cancer causing substance. The recombinant-derived virus does not contain any new genetic information to enhance the likelihood of it being oncogenic.

6. In the proposed field trial, deliberate human exposure would be limited to individuals protected against vaccinia in accordance with Public Health Service guidelines.

7. Laboratory containment experiments demonstrate that the vaccine is non-pathogenic, safe, and efficacious in a variety of laboratory animal model systems, e.g., mice, hamsters, rats, and a number of target and non-target species, including the major terrestrial wildlife reservoirs of rabies and domestic animal species.

Based on the foregoing, APHIS has made a preliminary determination that the field testing of the vaccinia vectored rabies vaccine that expresses the rabies virus surface glycoprotein would have no significant impact on the human environment.

The environmental assessment and preliminary finding of no significant impact have been prepared in accordance with (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*); (2) regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (Title 40, Code of Federal Regulations (CFR) Parts 1500–1508); (3) USDA regulations implementing NEPA (7 CFR Part 1b); and (4) APHIS guidelines implementing NEPA (44 FR 50381–50384 and 44 FR 51272–51274).

Done at Washington, DC, this 1st day of March 1989.

**James W. Glosser,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 89-5123 Filed 3-3-89; 8:45 am]

BILLING CODE 3410-34-M

**[Docket No. 89-030]**

## Receipt of Permit Applications for Release into the Environment of Genetically Engineered Organisms

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice.

**SUMMARY:** We are advising the public that six applications for permits to release genetically engineered organisms into the environment are being reviewed by the Animal and Plant Health Inspection Service. The applications have been submitted in accordance with 7 CFR Part 340, which regulates the introduction of certain genetically engineered organisms and products.

**FOR FURTHER INFORMATION CONTACT:** Mary Petrie, Document Control Officer, Biotechnology, Biologics, and Environmental Protection, Biotechnology Permit Unit, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 847, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7612.

**SUPPLEMENTARY INFORMATION:** The regulations in 7 CFR Part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) in the United States, certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, APHIS has received and is reviewing the following applications to release genetically engineered organisms into the environment:

| Application No. | Applicant | Date received | Organism | Field test location |
|---|---|---|---|---|
| 89-034-10 | Monsanto Co | 2-3-89 | Genetically engineered cotton plants for glyphosate herbicide tolerance | Alabama. |
| 89-034-11 | do | 2-3-89 | Genetically engineered soybean plants for glyphosate herbicide tolerance | Illinois. |
| 89-034-12 | do | 2-3-89 | do | Arkansas. |
| 89-034-15 | do | 2-3-89 | do | Alabama. |
| 89-038-01 | Northrup King Co | 2-7-89 | Genetically engineered alfalfa plants for glyphosate herbicide tolerance | Minnesota. |
| 89-038-03 | do | 2-7-89 | do | California. |



Done at Washington, DC, this 28th day of February 1989.

**James W. Glosser,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 89-5083 Filed 3-3-89; 8:45 am]

BILLING CODE 3410-34-M

**[Docket No. 89-007]**

## Veterinary Biological Product and Establishment Licenses; Issuances and Terminations

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice.

**SUMMARY:** The purpose of this notice is to advise the public of the issuance and termination of veterinary biological product and establishment licenses by the Animal and Plant Health Inspection Service during the month of December 1988. The licenses have been issued or terminated in accordance with the regulations issued pursuant to the Virus-Serum-Toxin Act governing the licensing of veterinary biological products and establishments producing such products.

**FOR FURTHER INFORMATION CONTACT:** Dr. Peter L. Joseph, Senior Staff Veterinarian, Veterinary Biologics Staff, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–6332.

**SUPPLEMENTARY INFORMATION:** The regulations in 9 CFR Part 102, "Licenses For Biological Products," require that every person who prepares certain biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*) shall hold an unexpired, unsuspended, and unrevoked U.S. Veterinary Biological Product License. The regulations set forth the procedures for applying for a license, the criteria for determining whether a license shall be issued, and the form of the license.

Pursuant to these regulations, APHIS issued the following U.S. Veterinary Biological Product Licenses during the month of December 1988:

| Product license code | Date issued | Product | Establishment | Establishment license No. |
|---|---|---|---|---|
| 1015.10 | 12-27-88 | Autogenous Vaccine, Killed Virus | Biomune, Inc | 368 |
| 1585.20 | 12-21-88 | Feline Leukemia-Rhinotracheitis-Calici-Panleukopenia Vaccine | Agrion Corporation | 213 |
| 1885.10 | 12-23-88 | Psittacine Pox Vaccine, Killed Virus | Maine Biological Laboratories, Inc | 240 |
| 2051.00 | 12-22-88 | Autogenous Bacterin | CAVL | 364 |
| 2880.00 | 12-23-88 | Leptospira Bratislava-Canicola-Grippotyphosa-Hardjo-Icterohaemorrhagiae-Pomona Bacterin. | Nordan Laboratories | 189 |
| 3605.01 | 12-23-88 | Normal Colostral Whey, Bovine Origin | Cuprem, Inc | 363 |
| 3870.00 | 12-02-88 | Streptococcus Suis Antiserum, Equine Origin | Midcon Labs, Inc | 328 |
| 9350.00 | 12-21-88 | Propionibacterium Acnes Immuno-stimulant | ImmunoVet, Inc | 302A |
| B68A.00 | 12-02-88 | Pasteurella Haemolytica Bacterin | American Home Products Corporation | 112-A |
| I350.00 | 12-21-88 | Propionibacterium Acnes Immuno-stimulant | ImmunoMed Corporation | 302 |

The regulations in 9 CFR Part 105 provide for the termination of U.S. Veterinary Biological Product Licenses if the licensed product has not been prepared by the licensee for 5 years and the licensee has failed to show intent to resume production within 6 months. Pursuant to these regulations, APHIS terminated the following Veterinary Biological Product Licenses during the month of December 1988:

| Product license code | Date terminated | Product | Establishment | Establishment license No. |
|---|---|---|---|---|
| 5018.00 | 12-06-88 | Canine Heartworm Antigen Test Kit | Mallinckrodt, Inc | 295 |
| 1695.50 | 12-20-88 | Pseudorabies Vaccine | Molecular Genetics, Inc | 284 |
| 3525.00 | 12-20-88 | Escherichia Coli Monoclonal Antibody | Molecular Genetics, Inc | 284 |
| 3800.00 | 12-20-88 | Pseudorabies Virus Monoclonal Antibody | Molecular Genetics, Inc | 284 |
| 5032.00 | 12-20-88 | Escherichia Coli Antigen Test Kit | Molecular Genetics, Inc | 284 |
| 1945.10 | 12-21-88 | Sendai Vaccine Killed Virus | Whittaker M.A. Bioproducts, Inc | 278 |
| 5029.00 | 12-21-88 | Feline Infectious Peritonitis Antibody Test Kit | Whittaker M.A. Bioproducts, Inc | 278 |
| 5030.00 | 12-21-88 | Infectious Bronchitis Virus Antibody Test Kit | Whittaker M.A. Bioproducts, Inc | 278 |
| 5040.00 | 12-21-88 | Infectious Bursal Disease Antibody Test Kit | Whittaker M.A. Bioproducts, Inc | 278 |
| 5070.00 | 12-21-88 | Mycoplasma Gallisepticum Antibody Test Kit | Whittaker M.A. Bioproducts, Inc | 278 |
| 5080.00 | 12-21-88 | Newcastle Disease Antibody Test Kit | Whittaker M.A. Bioproducts, Inc | 278 |
| 5285.00 | 12-21-88 | Toxoplasma Gondii Antibody Test Kit | Whittaker M.A. Bioproducts, Inc | 278 |

The regulations in 9 CFR Part 102 also require that each person who prepares biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*) shall hold a U.S. Veterinary Biological Establishment License. The regulations set forth the procedures for applying for a license, the criteria for determining whether a license shall be issued, and the form of the license.

Pursuant to these regulations, APHIS issued the following U.S. Veterinary Biological Establishment Licenses during the month of December 1988:

| Establishment | Establishment license No. | Date issued |
|---|---|---|
| CAVL, 9602 South Washington, Rt. 7, Box 594, Amarillo, Texas 79118 | 364 | 12-22-88 |

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| Establishment | Establishment license No. | Date issued |
|---|---|---|
| Cuprem, Inc., 202 North Smith Avenue, P.O. Box 147, Keneesw, Nebraska 68956 | 363 | 12-23-88 |
| Biomune, Inc., 8906 Rosehill Road, Lenexa, Kansas 66215 | 366 | 12-23-88 |

Also, the regulations in 9 CFR 102.4 provide that when a licensee no longer holds an unexpired, unsuspended, or unrevoked product license authorizing the preparation of a biological product, the establishment license shall be submitted to the Deputy Administrator for termination. The following establishments submitted U.S. Veterinary Bilogical Establishment Licenses to the Deputy Administrator for termination and APHIS terminated their licenses without prejudice during the month of December 1988:

| Establishment | Establishment license No. | Date terminated |
|---|---|---|
| Mallinckrodt, Inc. | 295 | 12-06-88 |
| Molecular Genetics, Inc | 284 | 12-20-88 |
| Whittaker M.A. Bioproducts, Inc. | 278 | 12-21-88 |

Done at Washington, DC, this 28th day of February 1989.

**James W. Glosser,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 89-5084 Filed 3-3-89; 8:45 am]

BILLING CODE 3410-34-M

## DEPARTMENT OF COMMERCE

### Bureau of Export Administration

### Electronic Instrumentation Technical Advisory Committee; Partially Closed Meeting

A meeting of the Electronic Instrumentation Technical Advisory Committee will be held March 29 and 30, 1989, in the Herbert C. Hoover Building, 14th Street and Constitution Avenue NW., Washington, DC. On March 29 the meeting will convene in Executive Session at 9:00 a.m. in Room 1617F. On March 30 the meeting will reconvene in Open Session at 9:00 a.m. in Room 1617F.

The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to electonics and related equipment and technology.

**Agenda**

*March 29, 1989*

Executive Session

1. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

*March 30, 1989*

General Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Presentation of ECCN 1537A.

Executive Session

4. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The general session of the meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting and can be directed to: Betty Anne Ferrell, Director, Technical Advisory Committee Unit, Office of Technology & Policy Analysis, Room 4086, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittee thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or protions of meeting of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes please call Betty Ferrell, 202-377-2583.

Date: March 1, 1989.

**Betty Anne Ferrell,**

*Director, Technical Advisory Committee Unit, Office of Technology & Policy Analysis.*

[FR Doc. 89-5102 Filed 3-3-89; 8:45 am]

BILLING CODE 3510-DT-M

### Laser and Opto-Electronic Subcommittee of the Electronic Instrumentation Technical Advisory Committee; Partially Closed Meeting

A meeting of the Laser and Opto-Electronic Subcommittee of the Electronic Instrumentation Technical Advisory Committee will be held March 28, 1989, 9:00 a.m. in Room 1617F, Herbert C. Hoover Building, 14th Street and Constitution Avenue, NW., Washington, DC. The Subcommittee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to lasers and related equipment and technology.

**General Session**

1. Opening Remarks by the Chairman.
2. Presentation of papers or comments by the public.

**Executive Session**

3. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting and can be directed to: Betty Anne Ferrell, Director, Technical Advisory Committee Unit, Office of Technology & Policy Analysis, Room 4086, 14th Street & Constitution Avenue, NW., Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittee thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes please call Betty Ferrell, 202-377-2583.

Date: March 1, 1989.

**Betty Anne Ferrell,**

*Director, Technical Advisory Committee Unit, Office of Technology & Policy Analysis.*

[FR Doc. 89-5103 Filed 3-3-89; 8:45 am]

BILLING CODE 3510-DT-M



### Semiconductor Technical Advisory Committee; Partially Closed Meeting

A meeting of the Semiconductor Technical Advisory Committee will be held March 29, 1989, 9:00 a.m., Herbert C. Hoover Building, Room 1092, 14th Street and Constitution Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to semiconductors or technology.

**Agenda**

*General Session*

1. Opening Remarks by the Chairman & Commerce Representative.
2. Introduction of Members and Visitors.
3. Presentation of Papers or Comments by the Public.
4. Discussion on Status of Committee Tasks.

*Executive Session*

5. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the occurrence of the delegate of the General Counsel, formally determined on Janaury 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes call Ruth D. Fitts, 202-377-4959.

March 1, 1989.

**Betty A. Ferrell,**

*Director, Technical Advisory Committee Unit, Office of Technology and Policy Analysis.*

[FR Doc. 89-5104 Filed 3-3-89; 8:45 am]

BILLING CODE 3510-DT-M

## National Oceanic and Atmospheric Administration

### Evaluation of State/Territorial Coastal Management Program, Coastal Energy Impact Program and National Estuarine Research Reserves

**AGENCY:** National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management.

**ACTION:** Notice of availability of evaluation findings.

**SUMMARY:** Notice is hereby given of the availability of the evaluation findings for the New Jersey, Michigan, Puerto Rico, Northern Mariana Islands, and Guam Coastal Management Programs, and the California (Elkhorn) National Estuarine Research Reserve. Section 312 of the Coastal Zone Management Act of 1972, as amended, (CZMA) requires a continuing review of the performance of each coastal state with respect to funds authorized under the CZMA and to the implementation of its federally approved Coastal Management Program. Section 315(f) of the CZMA requires a periodic review of the performance of each reserve with respect to its operation and management. The states/territories evaluated were found to be adhering to the programmatic terms of their financial assistance and/or to their approved coastal management programs; and to be making progress on award tasks, special award conditions, and significant improvement tasks aimed at program implementation and enforcement, as appropriate. Accomplishments in implementing Coastal Management Programs were occurring with respect to the national coastal management objectives identified in section 303(2)(A)-(I) of the CZMA. A copy of the assessment an detailed findings for these programs may be obtained on request from: John H. McLeod, Evaluation Officer, Policy Coordination Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, 1825 Connecticut Avenue NW., Washington, DC 20235 (telephone 202/673-5104).

**DATE:** February 27, 1989.

**Thomas J. Maginnis,**

*Assistant Administrator for Ocean Services and Coastal Zone Management.*

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

[FR Doc. 89-5085 Filed 3-3-89; 8:45 am]

BILLING CODE 3510-08-M

### Gulf of Mexico Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council's Reef Fish Advisory Panel (AP) will meet on April 11-12, 1989, at the Howard Johnson Plaza Hotel, 700 N. Westshore Boulevard, Tampa, FL. The AP will meet from 8 a.m. to 6 p.m., on Apirl 11 to review draft Amendment #1 for the Reef Fish Fishery Management Plan which addresses bag, size, and quota limits for the various reef fish species. The meeting will reconvene at 8 a.m., on April 12 and will adjourn at 3 p.m.

**FOR FURTHER INFORMATION CONTACT:** Douglas R. Gregory, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 881, Tampa, FL 33609; telephone: (813) 228-2815.

Dated: February 28, 1989.

**Richard H. Schaefer,**

*Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 89-5092 Filed 3-3-89; 8:45 am]

BILLING CODE 3510-22-M

### Gulf of Mexico Fishery Management Council; Public Meetings

**AGENCY:** National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council and its Committees will met on March 13-16, 1989, at the Omni Hotel, Biscayne

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Boulevard at 16th Street, Miami, FL. Except for the sessions noted, the meetings are open to the public. The schedule is as follows:

*Council*—On March 15, 1989, the Council will meet at 10:30 a.m., to hear a shark presentation, and from 1:30 p.m., to 2 p.m., to hear public comments on Amendment #4 to the Coastal Pelagic Fishery Management Plan (FMP). The Council will then review Spiny Lobster, Shark, and Shrimp Management Committee reports from 2 p.m., to 3:30 p.m. At 3:30 p.m., the Council will meet in a closed session to appoint economists/sociologists to the Stock Assessment Group, and to make selections for the Scientific and Statistical Committee (SSC), the Advisory Panel (AP), and the Personnel Committee. This session will be closed to allow discussion of the backgrounds of the candidates. The Council will recess at 5 p.m., and reconvene the public meeting on March 16 at 8:30 a.m., to review the Law Enforcement Committee report, to appoint a Butterfish Management Committee, to hear a summary of the Council Chairmen's meeting, the South Atlantic Fishery Management Council's meeting, the South Atlantic Fishery Management Council's Liaison Report, the Directors' Reports, and enforcement reports. The Council will also discuss conditional fisheries. It will adjourn at 11 a.m., on March 16.

*Committees*—On March 13, 1989, at 10 a.m., the Habitat Protection Committee will meet to host a Mosquito Control Workshop, and recess at 6 p.m. On the same day, the Law Enforcement Committee will meet from 1 p.m. to 5 p.m. The Shark Management Committee will meet on March 14 at 8 a.m., and be followed by a meeting of the Shrimp Management Committee. At 11:30 a.m., the Red Drum Management, SSC Selection, AP Selection, and Personnel Committee also will meet in closed sessions to review the appointments and selections mentioned above (under Council). On March 15 the Mackerel Management Committee will meet at 8 a.m., in open session and adjourn at 10 a.m.

For further information contact: Wayne E. Swingle, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 881, Tampa, FL; telephone: (813) 228–2815.

Date: February 28, 1989.

**Richard H. Schaefer,**

*Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 89–5003 Filed 3–3–89; 8:45 am]

BILLING CODE 3510-22-M

## COMMISSION FOR THE IMPROVEMENT OF THE FEDERAL CROP INSURANCE PROGRAM

### Hearings

Under the Federal Crop Insurance Commission Act of 1988 (7 U.S.C. 1508 note), the Commission for the Improvement of the Federal Crop Insurance Program announces the following public hearings to receive testimony from farmers, insurers, and other interested persons on recommendations for the improvement of the Federal crop insurance program:

*March 7, 1989—10:00 a.m.–5:00 p.m.*

Lubbock Plaza, Arlington Room, 3201 S. Loop 289, Lubbock, TX 79423

Rural Development Center Auditorium, Hwy. 41 North & Interstate 75 (Exit 21), Tifton, GA 31793

*March 9, 1989—10:00 a.m.–5:00 p.m.*

Memphis Cook Convention Center, 255 N. Main, Memphis, TN 38103

North Raleigh Hilton, 3415 Old Wake Forest Road, Raleigh, NC 37608

*March 14, 1989—10:00 a.m.–5:00 p.m.*

Kenwood Hall, 300 West Ash, Kenwood Park, Salina, KS 67401

Airport Hilton, 4411 Peoria, Denver, CO 80239

*March 16, 1989—10:00 a.m.–5:00 p.m.*

Best Western Frontier Motor Lodge, 2216 27th Avenue, Council Bluffs, IA 51501

Bone Student Center, BBC Activity Room, Illinois State University, Normal, IL 61761

Additional hearings have been scheduled by the Commission for March 21 (Harrisburg, Pennsylvania, and Baton Rouge, Louisiana), April 11 (Fresno, California, and Fargo, North Dakota), April 13 (Spokane, Washington), and April 18 (Great Falls, Montana). When the meeting places for the additional hearings are determined, they will be announced in the **Federal Register.**

The Commission was established by Congress to ensure a thorough review of the Federal crop insurance program and the development of recommendations for such changes as are needed to improve the program so as to lessen, if not eliminate, the need for additional disaster payment programs while providing to producers of agricultural commodities more equitable, efficient, and predictable protection from natural disasters.

Persons interested in testifying at a particular Commission hearing are requested to write or call the Commission at least one week prior to the date of the hearing. The address and telephone number of the Commission are as follows: Commission for the Improvement of the Federal Crop Insurance Program, 1255 23rd Street NW., Suite 880, Washington, DC 20037. Telephone: (202) 887–6700.

Done at Washington, DC, this 1st day of March 1989.

**Kellye A. Eversole,**

*Executive Director.*

[FR Doc. 89–5185 Filed 3–3–89; 8:45 am]

BILLING CODE 3410-01-M

## COMMISSION OF FINE ARTS

### Meeting

The Commission of Fine Arts' next scheduled meeting is Wednesday, 22 March 1989 at 10:00 a.m. at the Commission's offices at 708 Jackson Place, NW., Washington, DC 20006 to discuss various projects affecting the appearance of Washington, DC, including buildings, memorials, parks, etc; also matters of design referred by other agencies of the government. Handicapped persons should call the offices (566–1066) for details concerning access to meetings.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Mr. Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call the above number.

Dated in Washington, DC 27 February 1989.

**Charles H. Atherton,**

*Secretary.*

[FR Doc. 89–5907 Filed 3–3–89; 8:45 am]

BILLING CODE 6330-01-M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Turkey

March 1, 1989.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs adjusting limits.

**EFFECTIVE DATE:** March 7, 1989.

**FOR FURTHER INFORMATION CONTACT:** Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343–6582. For information on embargoes and quota re-openings, call (202) 377–3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854)

The current limits for certain cotton textile products are being increased by application of swing. The fabric group limit is being reduced to account for the swing being applied.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 53 FR 25526, published on July 7, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreements, but are designed to assist only in the implementation of certain of its provisions.

**Ronald I. Levin,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

March 1, 1989.

Commissioner of Customs,
*Department of the Treasury,*
*Washington, DC 20229.*

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on June 30, 1988 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Turkey and exported during the period which began on July 1, 1988 and extends through June 30, 1989.

Effective on March 7, 1989, the directive of June 30, 1988 is being amended to adjust the current limits for cotton and man-made fiber textile products in the following categories, as provided under the terms of the current bilateral textile agreement between the Governments of the United States and Turkey:

| Category | Adjusted twelve-month limit [1] |
|---|---|
| FABRIC GROUP | |
| 219, 313, 314, 315, 317, 326, 617, 625, 626, 627 and 628, as a group | 77,177,714 square meters. |
| LIMITS NOT IN A GROUP | |
| 335 | 99,510 dozen. |
| 338/339 | 1,391,000 dozen of which not more than 973,700 dozen shall be in Categories 338-S/339-S.[2] |
| 341 | 561,750 dozen. |
| 342/642 | 300,563 dozen. |
| 347/348 | 1,417,750 dozen of which not more than 708,875 dozen shall be in Categories 347-T/348-T.[3] |
| 350 | 148,780 dozen. |
| 361 | 535,000 numbers. |
| 369-S [4] | 791,111 kilograms. |

[1] The limits have not been adjusted to account for any imports exported after June 30, 1988.

[2] In Categories 338-S/339-S, only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.3010, 6106.10.0035, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.0068, 6112.11.0030 and 6114.20.0005 in Category 338-S; and 6104.22.0060, 6104.29.2046, 6106.10.0010, 6106.10.0030, 6106.90.2010, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.0070, 6112.11.0040, 6114.20.0010 and 6117.90.0022 in Category 339-S.

[3] In Categories 347-T/348-T, only HTS numbers 6103.19.2015, 6103.19.4020, 6103.22.0030, 6103.42.1020, 6103.42.1040, 6103.49.3010, 6103.49.1020, 6112.11.0050, 6113.00.0035, 6203.19.1020, 6203.19.4020, 6203.22.3020, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.49.3020, 6210.40.2030, 6211.20.1520, 6211.20.3010 and 6211.32.0040 in Category 347-T; and 6104.12.0030, 6104.19.2030, 6104.22.0040, 6104.29.2034, 6104.62.2010, 6104.62.2025, 6104.69.3022, 6112.11.0060, 6113.00.0040, 6117.90.0042, 6204.12.0030, 6204.19.2030, 6204.22.3040, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.69.3010, 6204.69.9010, 6210.50.2030, 6211.20.1550, 6211.20.6010, 6211.42.0030 and 6217.90.0050 in Category 348-T.

[4] In Category 369-S, only HTS number 6307.10.2005.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 89–5134 Filed 3–3–89; 8:45 am]

BILLING CODE 3510-DR-M

## DEPARTMENT OF DEFENSE

### Department of the Army

### Army Science Board; Partially Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

*Name of the Committee:* Army Science Board (ASB).

*Dates of Meeting:* March 21–22, 1989.

**Note:** All sessions are open except: 0645–1145, 21 March 1989, CSTA Facility Tour (Closed/Classified); 1300–1645, 21 March 1989, BRL Facility Tour (Closed/Classified).

*Place:* Aberdeen Proving Ground, MD.

*Agenda:* The 1989 Army Science Board Spring General Membership Meeting will include briefings by the Ad Hoc Subgroups, and will also include five Functional Subgroup meetings. The open portions of the meeting are open to the public. Any person may attend, appear before or file statements with the committee at the time and in the manner permitted by the committee. The closed portions of the meeting are closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d).

Contact the Army Science Board Administrative Officer, Sally Warner, for further information at (202) 695–3039 or 695–7046.

**Sally A. Warner,**

*Administrative Officer, Army Science Board.*

[FR Doc. 89–5116 Filed 3–3–89; 8:45 am]

BILLING CODE 3710-08-M

### Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

*Name of the Committee:* Army Science Board (ASB).

*Date of Meeting:* March 23, 1989.

*Time of Meeting:* 0900–1500 hours.

*Place:* Aberdeen Proving Ground, MD.

*Agenda:* The Army Science Board Subgroup for Army Analysis will meet. A presentation on Army activities will be given by the Logistics Management Institute. Group discussion of the subject will follow. Also, a report on the recent visit to the TRADOC Analysis Center at White Sands will be given by two panel members. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. Contact the Army Science Board Administrative Officer, Sally Warner, for further information at (202) 695–3039 or 695–7046.

**Sally A. Warner,**

*Administrative Officer, Army Science Board.*

[FR Doc. 89–5117 Filed 3–3–89; 8:45 am]

BILLING CODE 3710-08-M



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**Department of the Navy**

**Chief of Naval Operations Executive Panel Advisory Committee; Closed Meeting**

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Navy Strategy Formation Task Force will meet March 16–17, 1989 from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to discuss the Formation of Navy Strategy. The entire agenda for the meeting will consist of discussions of key issues regarding formation of Navy Strategy in support of U.S. national security and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

This notice is being published late because of a time sensitive topic of critical interest to the Chief of Naval Operations, thereby constituting an exceptional circumstance, not permitting 15 days' notice.

For further information concerning this meeting, contact Faye Buckman, Secretary to the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302–0268. Phone (703) 756–1205.

Date: March 2, 1989.

**Sandra M. Kay,**

*Department of the Navy, Alternate Federal Register Liaison Officer.*

[FR Doc. 89–5162 Filed 3–3–89; 8:45 am]

BILLING CODE 3810–AE–M

**DEPARTMENT OF EDUCATION**

**[CFDA No.: 84.168D]**

**Invitation for Applications for New Awards Under the Secretary's Discretionary Program for Mathematics, Science, Computer Learning, and Critical Foreign Languages for Fiscal Year 1989**

*Purpose:* To provide assistance to State and local educational agencies, institutions of higher education, and nonprofit organizations for nationally significant projects designed to improve the quality of instruction in mathematics and science.

*Deadline for Transmittal of Applications:* April 28, 1989.

*Deadline for Intergovernmental Review:* June 28, 1989.

*Applications Available:* March 14, 1989.

*Estimated Range of Awards:* $200,000—$600,000.

*Estimated Average Size of Awards:* $400,000.

*Estimated Number of Awards:* 10.

*Project Period:* Up to 24 months.

*Applicable Regulations:* (a) Secretary's Discretionary Program for Mathematics, Science, Computer Learning, and Critical Foreign Languages, 34 CFR Part 755, and (b) the Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, 79, 80 and 85. The Department expects to propose regulations applying 34 CFR Part 79, Intergovernmental Review of Department of Education Programs and Activities, to this program. When the proposed regulations become final, the Department expects that Part 79 will apply to this program. The Department published proposed regulations implementing the amended Part E of the General Provisions Act on December 2, 1988 at 53 FR 48886, and those regulations, when final, will apply to this program.

*Important Note to Applicants:* Applicants should note that this competition will be conducted under the regulations for this program in 34 CFR Part 755. Although a separate notice of proposed rulemaking amending these regulations will be published in the **Federal Register**, the changes will not affect this competition.

*Absolute Priority:* In accordance with 34 CFR 755.11(b)(3), 755.13(b), 755.13(c), and 75.105(c)(3), the Secretary has chosen as an absolute priority projects that improve curricula in mathematics and science, including the use of new technologies, at the secondary school level. Only applications proposing activities under this priority will be considered.

Within this absolute priority and in accordance with 34 CFR 75.105(c)(1), the Secretary encourages applications for the establishment of secondary schools that offer specialized and intensive programs in mathematics and science for students from a broad geographic area. These schools may include those serving an entire State, a region within a State, or large school district.

The Secretary urges applicants to:

• Propose full year academic programs in mathematics and science rather than short term programs, such as summer institutes.

• Demonstrate a substantial financial commitment to the proposed project and show evidence of plans to continue the project upon termination of the Federal grant.

• Involve partnerships with business/industry and/or institutions of higher education.

Applicants meeting this invitational priority will not receive an absolute or competitive preference over applications that do not meet the invitational priority.

*Selection Criteria:* The program regulations at § 755.30(b) and (d) authorize the Secretary to distribute an additional 15 points among the criteria described in the regulations at § 755.32 to bring the total to maximum of 100 points. For the purposes of this competition, the Secretary will distribute the additional points as follows:

National significance. (§ 755.32(g)) Five (5) additional points will be added for a possible total of 25 points for this criterion.

Applicant's commitment and capacity. (§755.32(h)) Ten (10) additional points will be added for a possible total of 20 points for this criterion.

*For Applications or Information:* Fund for the Improvement and Reform of Schools and Teaching, U.S. Department of Education, 555 New Jersey Avenue, NW., Room 522, Washington, DC 20208–5524. Telephone (202) 357–6496.

*Program Authority:* 20 U.S.C. 2992.

(Catalog of Federal Domestic Assistance No. 84.168, Mathematics and Science)

Dated: March 1, 1989.

**Patricia Hines,**

*Assistant Secretary for Educational Research and Improvement.*

[FR Doc. 89–5147 Filed 3–3–89; 8:45 am]

BILLING CODE 4000–01–M

**[CFDA No.: 84.168A]**

**Invitation for Applications for New Awards Under the Secretary's Discretionary Program for Mathematics, Science, Computer Learning, and Critical Foreign Languages for Fiscal Year 1989**

*Purpose:* To provide assistance to State and local educational agencies, institutions of higher education, and nonprofit organizations for nationally significant projects designed to improve the quality of instruction in mathematics and science.



*Deadline for Transmittal of Applications:* April 28, 1989.

*Deadline for Intergovernmental Review:* June 28, 1989.

*Applications Available:* March 14, 1989.

*Available Funds:* $2,000,000.

*Estimated Range of Awards:* $50,000—$200,000.

*Estimated Average Size of Awards:* $100,000.

*Estimated Number of Awards:* 20.

*Project Period:* Up to 36 months.

*Budget Period:* 12 months.

*Applicable Regulations:* (a) Secretary's Discretionary Program for Mathematics, Science, Computer Learning, and Critical Foreign Languages, 34 CFR Part 755, and (b) the Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, 79, 80 and 85. The Department expects to propose regulations applying 34 CFR Part 79, Intergovernmental Review of Department of Education Programs and Activities, to this program. When the proposed regulations become final, the Department expects that Part 79 will apply to this program. The Department published proposed regulations implementing the amended Part E of the General Provisions Act on December 2, 1988 at 53 FR 48886, and those regulations, when final, will apply to this program.

*Important Note to Applicants:* Applicants should note that this competition will be conducted under the regulations for this program in 34 CFR Part 755. Although a separate notice of proposed rulemaking amending these regulations will be published in the **Federal Register**, the changes will not affect this competition.

*Absolute Priorities:* In accordance with 34 CFR 755.11(b)(2), 755.11(b)(3), 755.13(b), 755.13(c), and 75.105(c)(3), the Secretary has chosen two absolute priorities for this competition. Applications for this competition must propose projects that either:

(1) Improve the qualifications and skills of elementary school teachers in mathematics and/or science; or

(2) Improve curricula in mathematics and/or science at the elementary school level.

*Selection Criteria:* The program regulations at § 755.30(b) and (d) authorize the Secretary to distribute an additional 15 points among the criteria described in the regulations at § 755.32 to bring the total to a maximum of 100 points. For the purposes of this competition, the Secretary will distribute the additional points as follows:

Plan of operation. (§ 755.32(a)) Ten (10) additional points will be added for a possible total of 20 points for this criterion.

Evaluation plan. (§ 755.32(d)) Five (5) additional points will be added for a possible total of 10 points for this criterion.

*For Applications or Information Contact:* Fund for the Improvement and Reform of Schools and Teaching, U.S. Department of Education, 555 New Jersey Avenue, NW., Room 522, Washington, DC 20208–5524. Telephone (202) 357–6496.

*Program Authority:* 20 U.S.C. 2992.

(Catalog of Federal Domestic Assistance No. 84.168, Mathematics and Science)

Dated: March 1, 1989.

**Patricia Hines,**

*Assistant Secretary for Educational Research and Improvement.*

[FR Doc. 89–5148 Filed 3–3–89; 8:45 am]

BILLING CODE 4000–01–M

**DEPARTMENT OF ENERGY**

**Financial Assistant Award Intent To Award Grant Agreement to East-West Center**

**AGENCY:** U.S. Department of Energy (DOE).

**ACTION:** Notice of Intent to make a Financial Assistance Award to the East-West Center on a sole source basis.

**SUMMARY:** Pursuant to 10 CFR 600.7(b), The U.S. DOE announces that it is restricting eligibility for award of DE–FG03–89SFE61811 to the East-West Center, Resource Systems Institute, to conduct a study and workshops on the Potential for Thermal Coal and Clean Coal Technology Export in the Asia-Pacific Region.

The study and the workshops are to address thermal coal trade and clean coal technology requirements in the Asia-Pacific region within the scope of the "Asia-Pacific Coal Project," an ongoing research project at the Resource Systems Institute. Senior government and industry officials from the U.S. and many of the Asia-Pacific countries are to be brought together to strengthen their relationship through cooperation and dialogue over the issues associated with the expansion of thermal coal trade and regional energy interdependence. Options and opportunities for both thermal coal and clean coal technology trade for U.S. industry will be identified. The East-West Center's Coal Trade model will enable its users to quickly and easily project the potential reaction of the international market to shifts in the supply or demand for thermal coal and/or from changes in the capacity of the logistical system to handle the anticipated coal export level.

This noncompetitive financial assistance award is necessary to enhance the public benefits by increasing the cooperative information exchange among key DOE and industry officials from the U.S. and their counterparts in Asia-Pacific countries. There is no known other entity which is conducting or is planning to conduct a study of such magnitude and detail on thermal coal trade and clean coal technology requirements in the Asia-Pacific region.

**FOR FURTHER INFORMATION CONTACT:** Bettyanne Moore, U.S. Department of Energy, San Francisco Operations Office, 1333 Broadway, Oakland, CA 94612.

Issued in Oakland, California, February 2, 1989.

**David J. Tenca,**

*Acting Director, Contracts Management Division.*

[FR Doc. 89–5149 Filed 3–3–89; 8:45 am]

BILLING CODE 6450–01–M

**Noncompetitive Grant Award to the State of Utah**

**AGENCY:** Department of Energy.

**ACTION:** Notice of Noncompetitive Grant Award to the State of Utah.

**SUMMARY:** The Department of Energy, Idaho Operations Office, announces that it intends to issue a grant award to the state of Utah for reimbursement of CERCLA costs.

*Grant Award Number:* DE–FG07–89ID12849.

*Scope of Work:* The Congress provided, through the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), a provision in section 107, that the Government and states were entitled to recover funds related to the cost of removal of remedial action taken to clean up hazardous substances as long as such costs are not inconsistent with the national contingency plan. Further, through an October 31, 1988 memorandum, the Deputy Secretary for Environmental, Safety and Health, Department of Energy, determined it was in the Government's best interest to pay states reasonable costs incurred under Interagency Agreement for environmental cleanup. Pursuant to DOE policy, only CERCLA response costs are recoverable. The state of Utah is eligible for such costs in relation to work performed in the three-party Monticello Federal Facilities Agreement (dated December 19, 1988) with DOE and EPA. The

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types of activities the state will pursue include reviewing documents and preparation of technical comments, monitoring grant progress, participating in the public process, conducting split sampling and analyses, oversight of DOE field work/investigations as directed by EPA, attending meetings, and interfacing with state contractors to perform technical review of documents and/or sampling analyses. Travel should be kept to a minimum. It is anticipated that total funding for this grant will be approximately $800,000, with an estimated 10-year project period. The award will be made during FY 1989.

**FOR FURTHER INFORMATION CONTACT:** Dallas L. Hoffer, U.S. Department of Energy, Idaho Operations Office, 785 Doe Place, Idaho Falls, Idaho 83402, or call (208) 526-0114.

Issued in Idaho Falls, Idaho.
Date: February 27, 1989.

**H. Brent Clark,**
*Director, Contracts Management Division.*

[FR Doc. 89-5146 Filed 3-3-89; 8:45 am]
BILLING CODE 6450-01-M

## Clean Coal Technology Program

**AGENCY:** Department of Energy (DOE).

**ACTION:** Notice of availability of a draft Program Opportunity Notice (PON) for the Clean Coal Technology Program, and request for public comments.

**SUMMARY:** DOE is issuing a draft Program Opportunity Notice (PON), No. DE-PS01-89FE61825, for public comment. The draft PON solicits proposals for cost-shared projects to demonstrate clean coal technologies that could be commercialized in the 1990's. A total of $575 million dollars (less approximately $30 million for DOE's administrative expenses) has been appropriated for financial assistance awards under this solicitation.

**DATE:** The deadline for receipt of comments on the draft PON is March 31, 1989 at 4:30 p.m. e.s.t.

**ADDRESS FOR PUBLIC COMMENTS:** Written comments must be delivered or mailed to the U.S. Department of Energy, Office of Procurement Operations, Attn: Herbert D. Watkins, MA-452.1, Room 1I-065, 1000 Independence Avenue SW., Washington, DC 20585.

**ADDRESSES FOR OBTAINING DRAFT PON:** Written requests must be sent to U.S. Department of Energy, P.O. Box 2500, Attn: Document Control Specialist, MA-451.1, Washington, DC 20013. Written requests to be placed on the mailing list for the draft PON should be received by March 15, 1989. Also, copies of the draft PON may be picked up at the U.S. Department of Energy, Office of Procurement Operations, Document Control Specialist, Forrestal Building, Room 1J-005, 1000 Independence Avenue, SW., Washington, DC between the hours of 9 a.m. and 3 p.m., e.s.t., Monday through Friday except Federal holidays. The draft PON is anticipated to be available on or after March 15, 1989. If you have received past solicitations and/or attended the 1988/1989 Clean Coal Technology public meetings you need not submit a written request for the draft PON.

**SUPPLEMENTARY INFORMATION:** On September 27, 1988, the President signed Pub. L. 100-446, "An Act Making Appropriations for the Department of Interior and Related Agencies for the Fiscal Year Ending September 30, 1989, and for Other Purposes." The Act appropriates $575 million for DOE to conduct and make cost-shared financial assistance awards under a third competitive solicitation for clean coal technology demonstration projects. As recommended by the Congress, DOE plans to issue a final PON on May 1, 1989. A preproposal conference will be announced in the final PON. The preproposal conference is presently scheduled to occur at 10:00 a.m. on May 16, 1989 in the Thomas Jefferson Auditorium, U.S. Department of Agriculture (South Building between the 5th and 6th wings), 14th and Independence Avenue, SW., Washington, DC. The final PON will establish a 120-day deadline for the submission of proposals. The evaluation and selection of proposals is expected to be completed 120 days later, by approximately December 27, 1989.

**FOR FURTHER INFORMATION CONTACT:** Mr. Herbert D. Watkins, Tel. (202) 586-1026.

Signed in Washington, DC, this 28 day of February, 1989 for the United States Department of Energy.

**Jeffrey Rubenstein,**
*Director of Contract Operation "A", Office of Procurement Operations.*

[FR Doc. 89-5145 Filed 3-3-89; 8:45 am]
BILLING CODE 6450-01-M

## FEDERAL COMMUNICATIONS COMMISSION

**[Gen. Docket 88-351; FCC 88-386]**

## The Plenipotentiary Conference of the International Telecommunication Union, Nice, France (1989)

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** On November 22, 1988, the Commission adopted a Report and Order in Gen. Docket No. 88-351, FCC 88-386, that summarized the comments received in this proceeding, provided a brief explanation of the ITU Plenipotentiary Conference (PLENIPOT) and determined that U.S. participation in the ITU and its telecom purposes should be fully supported. Noting that this proceeding was instituted to provide information concerning the ITU and the Nice PLENIPOT to the American public, that the ITU PLENIPOT is a government-to-government process, and that the information assembled via public comments would be used by the U.S. Delegation preparatory process in developing U.S. proposals and positions, the Commission determined that specific conclusions from the comments received would not be elaborated in its Report and Order. In order to provide this public input to the U.S. Delegation preparatory process as rapidly as possible and to preserve the full range of options in developing the U.S. positions for this important conference, the Commission stated its intent to provide this Report and Order, along with complete copies of all comments received, to the Head of the U.S. Delegation to the Nice Plenipot and to the U.S. State Department's Executive Director of the U.S. Delegation. With this action, the proceeding was terminated.

**ADDRESS:** Federal Communications Commission, 1919 M. Street, NW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Douglas V. Davis, International Policy Division, Common Carrier Bureau, (202) 632-3214.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, Gen. Docket 88-351, adopted November 22, 1988, and Released December 16, 1988.

The full text of this Report and Order is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M. Street, NW., Washington, DC. It may also be purchased from the Commission's copy contractors, International Transcription Service, 2100 M. Street, NW., Suite 140, Washington, DC 20037, (202) 857-3800.

On July 8, 1988, the Commission released a Notice of Inquiry (Notice) [1] in this proceeding, Gen. Docket 88-351, FCC 88-223, in order to inform the general public, particularly the U.S. telecommunications community of users and companies interested in the provision of international telecommunications facilities, services and related equipment, of the ITU's 13th Plenipotentiary Conference (PLENIPOT) scheduled to be held in Nice, France, during the period 23 May through 29 June 1989. The Notice provided extensive background information on the ITU, a brief summary of the previous PLENIPOT (Nairobi, 1982) and a listing of the agenda for the Nice PLENIPOT. The Notice stated that this would be basically an information providing and gathering proceeding, as opposed to a preparatory effort for a specific technical conference, and that the information developed within this proceeding would be made available to the preparatory process of the U.S. ITU PLENIPOT Delegation. The Notice identified ten topic areas that potentially could have a significant impact on U.S. telecommunications policy and/or on U.S. companies and individuals involved with international telecommunications and requested comments on these particular areas while generally calling for public comment on the totality of the agenda for the Nice PLENIPOT.

[1] Not published in the Federal Register.



The Report and Order provides a brief description of the ITU and the PLENIPOT and a complete summary of the public comments submitted in this proceeding. The commenting parties fell broadly within the categories of large users, broadcasting interests, satellite interests, international common carriers and the RBOCS (Regional Bell Operating Companies. Most Commenters did not address all ten potential significant issues, but rather limited their comments to selected areas, some not listed in the Notice. Of those commenting in a particlar area, the following observations apply: (1) Role of the ITU, most commenting parties support continuation of the existing ITU telecommunications role within the UN family of agencies of harmonizing international telecommunications between and among nations; (2) Election of ITU officials, most commenters supported the election of Directors of the two CCIs by their respective Plenary Assemblies, while one commenter cautioned that attempts to move such elections back from the PLENIPOT at Nice might unnecessarily alienate the developing countries who had pushed for these elections at the PLENIPOT at Nairobi; (3) Principle of Rotation, there was unanimous opposition against applying this principle to the election of ITU officials and to membership of countries on the ITU Administrative Council; (4) ITU Headquarters Structure, there was a general consensus that the ITU federal structure should not be changed, since it generally reflected a balance of interests within the ITU and among its Member countries; (5) Future program of Conferences and Meetings, there was a general view that no conference or meeting should be held unless there was a demonstrated need for it, but some individual commenters argued for and against specific conferences to be held in the 1992-1995 time frame; (6) IFRB Technical Standards, of those commenting, there was unanimity that the IFRB should consult with Administrations when it is developing technical standards; (7) Status of Final Acts of Regional Conferences, there were few commenters, but the general view was that this topic should receive further sutdy as to its potential ramifications; (8) Basic instrument of the Union, most commenters supported the objectives of Resolution 62 of the Nairobi PLENIPOT which would bifurcate the existing ITU Convention into a "permanent" Constitution and a "Less permanent" Convention; (9) Reservations, most commenters were of the opinion that the issue of the status of reservations required clarification at the Nice PLENIPOT, while several urged that the U.S. should reiterate its reservations to final acts and regulations of prior conferences, out of an abundance of caution, until the matter is definitively clarified; and (10) Financing Technical Cooperation and Assistance, most commenters favored support of ITU technical assistance activities as well as funding for such from traditional sources—government support and voluntary private contributions, while there was strong opposition to funding from portions of international telecommunications accounts settlements (but one commenter suggesting further exploration of this potential source for funding) and one commenter strongly opposing any form of international access charge for this purpose. Additional comments, not raised in the Notice included: an urging that the U.S. Delegation seek changes in the ITU basic documents that would recognize the increasingly important role played by private entities in the provision of international telecommunications; proposals by one commenter that would create standing working groups to carry on ITU Administrative Council business between sessions, open ITU conferences and meetings to the press and the public, and revise the definition of "administrations" contained in the ITU Convention so as to account for modern approaches in many countries toward provision of telecom services; and a proposal by one commenter to allow Scientific and Industrial Organizations (SIOs) to participate fully in the work of the CCIs on a par with Recognized Private Operating Agencies (RPOAs).

The Commission concluded that that it would not draw specific conclusions from the comments submitted in this proceeding, since this was an information providing and gathering proceeding. In order to protect the full range of options in developing U.S. positions and proposals for the PLENIPOT and to provide the information to the U.S. Delegation preparatory process as rapidly as possible. The commission ordered that this Report and Order, together with complete copies of all comments received, be sent to the Head of the U.S. Delegation to the Nice PLENIPOT and to the U.S. State Department's Executive Director of the U.S. Delegation to the Nice PLENIPOT. The Commission further ordered that the motion to accept late-filed pleadings in this proceeding be granted and that this proceeding is terminated.

Federal Communications Commission.
**Donna R. Searcy,**
*Secretary.*

[FR Doc. 89-4501 Filed 3-3-89; 8:45 am]
BILLING CODE 6712-01-M

## FEDERAL MARITIME COMMISSION

### Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW, Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

*Agreement No.:* 224-010639-003.

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*Title:* Port of Seattle Terminal Agreement.
*Parties:* Port of Seattle; American President Lines, Ltd.
*Synopsis:* The Agreement amends the basic lease agreement (Agreement No. 224–010839) by providing for the addition of approximately six (6) acres of improved terminal area upon completion of certain construction of the premises, a change in rent to reflect the additional area and appropriate substitution of lease exhibits.
*Agreement No.:* 224–200221.
*Title:* City of Salem Municipal Port Authority Terminal Agreement.
*Parties:* City of Salem Municipal Port Authority (Authority); Mid-Atlantic Shipping and Stevedoring, Inc. (MSS).
*Synopsis:* The Agreement provides for MSS's ten (10) year sublease from the Authority of certain port facilities. It also provides for MSS to pay a specified annual rental for the subleased premises and further to make certain improvements to those premises.

By Order of the Federal Maritime Commission.

Dated: February 28, 1989.

Joseph C. Polking,
*Secretary.*

[FR Doc. 89–5056 Filed 3–3–89; 8:45 am]
BILLING CODE 6730-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Public Health Service

### Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HF (Food and Drug Administration) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (35 FR 3685, February 25, 1970, as amended most recently in pertinent part at 53 FR 8979, March 18, 1988) is amended to reflect an organization change in the Food and Drug Administration (FDA).

FDA is proposing to centralize the management of FOI requests, legislative correspondence, and professional and consumer affair activities in the Office of Compliance within the Center for Biologics Evaluation and Research to coordinate similar functions. The functions relating to FOI requests and professional and consumer affairs will accordingly be deleted from the Office of Biological Product Review.

*Section HF-B, Organization and Functions* is amended as follows:

1. Delete subparagraphs p–2 and p–3, Office of Compliance (HFBC) and Office of Biological Product Review (HFBD).

2. Insert new subparagraphs p–2 and p–3, Office of Compliance (HFBC) and Office of Biological Product Review (HFBC) to read as follows:

(p–2) *Office of Compliance* (HFBC). Monitors the quality of marketed biological products through surveillance, inspections, and compliance programs and coordinates testing of marketed products with other parts of FDA.

Advises the Center Director and other Agency officials on FDA's regulatory responsibilities for biological products.

Directs and coordinates Center regulation-writing activities.

Directs the Headquarters' biologics inspection program and training of Headquarters' inspectors of biological products.

Develops standards for biological product industry practices, including Current Good Manufacturing Practice (CGMP) regulations, and ensures their uniform interpretation.

Directs the Center's bioresearch monitoring program for biological products.

Identifies problems in biological product regulation, manufacturing, and quality assurance and conducts voluntary compliance programs and studies.

Develops biological product quality assurance compliance and surveillance programs; coordinates and directs their field implementation; and advises other Center components on these programs.

Coordinates Center-field relations, provides support and guidance to the field on legal actions, case development and contested cases, and reviews and decides disposition of field and Headquarters' submissions involving deviations from standards.

Evaluates, in coordination with appropriate Agency regulatory affairs officials, a firm's conformance with CGMP in producing biological products for procurement by Federal and State agencies.

Evaluates, classifies, and recommends biological product recalls and provides Center coordination with field recall activities.

Coordinates Center inspectional programs including providing appropriate training opportunities for Center inspectors.

Initiates Center-field surveillance assignments to monitor pivitol research data submitted as part of pre-marketing applications.

Directs and controls development and coordination of important and sensitive Center responses to Congressional requests, including proposed legislation. Serves as Center liaison with the Office of Legislative Affairs.

Directs and implements Center consumer and professional informational activities and coordinates these activities with other Agency components.

Identifies, plans, and develops informational and educational programs and materials on the prevention, identification, and treatment of AIDS and on biological products and their use for consumers and health professionals.

Prepares, develops, and coordinates Center and Agency responses to inquiries on AIDS and biological products from health professionals, consumers, and others, including requests under the Freedom of Information Act, the Privacy Act, and other statutes.

Serves as Center liaison with the National Technical Information Service and serves as Center small business and small manufacturing assistance program liaison.

Serves as Center focal point for developing and maintaining international communications, policies, and programs.

Coordinates the development of annual field workplans in conjunction with other Center components and ORA.

(p–3) *Office of Biological Product Review (HFBD).* Reviews, evaluates, and takes appropriate action on establishment and product licenses and other marketing applications submitted by manufacturers, tests products submitted for release in coordination with other Center components, as appropriate, and establishes written and physical standards for biological products regulated by the Office.

Develops policy and procedures on and reviews, evaluates, and takes appropriate action on biological product investigations and biological product licenses.

Administers applicable provisions of the FD&C Act as they pertain to investigational products and to certain devices and drugs that are related to biological products.

Evaluates and takes appropriate action, in coordination with other Agency components, on the results of continuing surveillance and medical evaluation of the labeling, advertising, clinical experience, and reports submitted by manufacturers and sponsors of products regulated by the Center.

Reviews, evaluates, and takes appropriate action on recommendations concerning withdrawal of approval of license applications for products regulated by the Center.

Date: February 7, 1989.

Wilford J. Forbush,
*Director, Office of Management, PHS.*

[FR Doc. 89–5114 Filed 3–3–89; 8:45 am]
BILLING CODE 4160-1-M



### Office of the Assistant Secretary for Health Rural Health Medical Education Demonstration Project; Delegation of Authority

Notice is hereby given that in furtherance of the delegation of authority of January 27, 1989, from the Secretary of Health and Human Services to the Assistant Secretary for Health, the Assistant Secretary for Health has redelegated the authorities delegated to him under section 4038 to the Administrator, Health Resources and Services Administration, except Section 4038(d) which was delegated to the Administrator, Health Care Financing Administration.

**Redelegation**

This authority may be redelegated.

*Effective Date:* This delegation became effective on February 23, 1989.

Robert E. Windom,
*Assistant Secretary for Health.*

Date: February 23, 1989.

[FR Doc. 89–5066 Filed 3–3–89; 8:45 am]
BILLING CODE 4160-15-M

### Office of the Assistant Secretary for Health

### Privacy Act of 1974; New System of Records

**AGENCY:** Public Health Service, HHS.

**ACTION:** Notification of new system of records.

**SUMMARY:** In accordance with the requirements of the Privacy Act, the Public Health Service (PHS) is publishing a notice of a proposal to establish a new Privacy Act system of records 09–37–0021, "AIDS Cost and Service Utilization Survey (ACSUS), HHS/OASH/NCHSR." This system will be used solely to support health services research. We are proposing one routine use for this system.

**DATES:** PHS invites interested parties to submit comments on the proposed new routine use on or before April 5, 1989. PHS has sent a Report of New System to the Congress and to the Office of Management and Budget (OMB) on February 13, 1989. The system of records will be effective 60 days from the date submitted to OMB unless PHS receives comments on the routine use which would result in a contrary determination.

**ADDRESS:** Comments should be addressed to the National Center for Health Services Research and Health Care Technology Assessment Privacy Act Coordinator at Room 18–23, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Comments received will be available for inspection from 9 a.m. to 3 p.m., Monday through Friday in Room 18–23, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

**FOR FURTHER INFORMATION CONTACT:** Cluster Chief, Cost and Financing Cluster, Division of Extramural Research, National Center for Health Services Research and Health Care Technology Assessment, Room 18A19, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857 or call 301/443–6990. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** The National Center for Health Services Research and Health Care Technology Assessment (NCHSR) proposes to establish a new system of records 09–37–0021, "AIDS Cost and Service Utilization Survey (ACSUS), HHS/OASH/NCHSR".

This proposed system of records will consist of records generated by the AIDS Cost and Service Utilization Survey (ACSUS). NCHSR will use a contractor to survey a representative sample of patients with Acquired Immunity Deficiency Syndrome (AIDS) and HIV-related illnesses and the providers of services to these patients. The purpose of the survey will be to obtain data which will allow for making informed national estimates of the use, costs, and financing of health services for patients with AIDS and other HIV-related illnesses and to examine variations in resource use across geographic areas, risk groups, and stages of illness. Records will be obtained solely to support the congressionally-mandated responsibility for the conduct of health services research activities by NCHSR. Participation in the survey subject individuals will be strictly voluntary.

The records in this system will be maintained in a secure manner compatible with their content and use. The contractor will be required to adhere to the provisions of the Privacy Act and the HHS Privacy Act Regulations. The System Manager and the Contract Project Director will control access to the data. Only contractor personnel whose duties require the use of such information will have regular access to the identifiers of the records in this system. Records will be stored in locked files or safes, in secured areas. Computer terminals will be located in secured areas. Data stored in computers will be accessed through the use of passwords known only to authorized contractor personnel. These passwords will be changed frequently. Names and other identifying particulars will be deleted when data from original records are encoded on data files for delivery to the Government. Once the Government has received and accepted all servies and deliverables called for delivery under the terms of the contract, the contractor will destroy all individual respondent identifiers and maintain no copies.

The data collection activities of NCHSR are governed by 42 U.S.C. 242m(d), section 308(d) of the PHS Act. Under this provision, information collected which can be identified with an individual may not be used for any purpose other than the purpose for which it was collected, i.e., health services research, unless that individual has given specific consent for such release. No data will be used to affect the subjects individually; there will be no use of the data to make determinations about individual's rights, benefits, or privileges. NCHSR proposes to use a contractor to collect and process the ACSUS data as NCHSR lacks the internal resources to conduct the survey and process the data. Contracted services will include data collection, collation, analysis, and computer input. The contractor is subject to the Privacy Act and the confidentiality provisions of 42 U.S.C. 242m(d), and HHS contract officials and the ACSUS project officer will monitor contractor compliance.

NCHSR is proposing only one routine use which will permit the disclosure of records to the Department of Justice should the Department of Health and Human Services become a defendant in litigation in which the system records could become evidence.

The following notice is written in the present, rather than the future tense, in order to avoid the unnecessary expenditure of public funds to republish the notice after the system has become effective.

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Dated: February 22, 1989.

**Wilford J. Forbush,**

*Deputy Assistant Secretary for Health Operations and Director, Office of Management, Public Health Service.*

**09-37-0021**

**SYSTEM NAME:**

AIDS Cost and Service Utilization Survey (ACSUS), HHS/OASH/NCHSR.

**SYSTEM CLASSIFICATION:**

None.

**SYSTEM LOCATION:**

At selected contractor locations. A current list of contractor sites is available by writing the System Manager at the address below.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Individuals with HIV-related illnesses and Acquired Immunity Deficiency Syndrome (AIDS) and providers of services to these individuals.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

(1) Names, respondent identification numbers, demographic and socioeconomic characteristics such as age, marital status, education, occupation, and income; (2) quality of life and functional status data; (3) medical data on presenting diagnosis; (4) current medical insurance data; (5) names of providers from whom respondents have received services; and (6) the costs of these services, and the costs of drugs or other therapies.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Section 304 of the Public Health Service Act as amended (42 U.S.C. Section 242b) Research, Evaluations, and Demonstrations in Health Statistics, Health Services and Health Care Technology Assessment.

**PURPOSE OF THE SYSTEM:**

The data are to be used in aggregated form for health services research purposes, i.e., analysis and evaluation of the cost and financing of AIDS and other HIV-related illnesses and service utilization by individuals with these illnesses.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

The Department has contracted with a organization for the purpose of collecting, aggregating, or otherwise refining records in this system. The contractor maintains all individually identifiable records and is required to maintain Privacy Act safeguards with respect to such records.

In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example in defending against a claim based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Justice Department to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

**Policies and Practices for Storing, Retrieving, Accessing, Retaining, and Disposing of Records in the System:**

*Storage.* File folders and magnetic tapes or computer disks.

*Retrievability.* Information is retrieved by name and/or patient identification number.

*Safeguards.* NCHSR and its contractors implement personnel, physical, and procedural safeguards as follows:

1. Authorized Users—Access is limited to persons authorized and needing to use the records, including the project director, interviewers, analysts, statisticians, statistical clerks, and data entry clerks on the project staff of the contractor.

2. Physical Safeguards.—The hard-copy records are stored in locked safes, locked files, and locked offices when not in use. Computer terminals used to process identifiable data are located in secured areas and are accessible only to authorized users. Automated backup files are maintained.

3. Procedural Safeguards.—All contractor personnel will access to NCHSR records are required, as a condition of employment, to sign an affidavit binding them to nondisclosure of individually identifiable information.

An identifying number is given by the contractor to each individual from whom information is obtained. The file is maintained by the contractor and the data accessed only to update information on each individual over the course of the data collection period. At the end of the data collection period when the files have been completely updated, names and any other identifying information will be removed from the files with each individual file being identified only by a numeric code. Only information in unidentifiable form will be delivered to the Government.

The contract contains provisions that preclude the release or use of the information in the records system. Privacy Act requirements and the restrictions of 42 U.S.C. 242m(d) are included in this contract. The project director, contracting officer, and the project officer oversee compliance with these requirements.

**RETENTION AND DISPOSAL:**

After NCHSR has received and accepted the final data tape and all other contract deliverables the contractor will destroy all information linking the numeric codes with the names of the individuals who supplied the data. Hard-copy records will be burned or shredded following verification that such data were correctly keyed into a machine readable format.

**SYSTEM MANAGER AND ADDRESS:**

Chief, Cost and Financing Cluster, Division of Extramural Research, National Center for Health Services Research and Health Care Technology Assessment, Mail Stop 18A19, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

**NOTIFICATION PROCEDURE:**

See Record Access Procedure.

**RECORD ACCESS PROCEDURE:**

To determine if a record exists, write to the contractor, giving your full name and address. To receive a copy of any record the written request must have a notarized signature. Photo identification will be required for system access in person. Willful misrepresentation to obtain access to the system is subject to a $5,000 fine.

In the case of a parent or guardian seeking access to a minor's or incompetent person's record, this individual must verify the relationship to the minor/incompetent person as well as provide appropriate identification.

**CONTESTING RECORD PROCEDURES:**

Contact the System Manager and reasonable identify the record, specify the information being contested, and state the corrective action sought, with supporting information to show how the record is inaccurate, incomplete, or untimely.



**RECORD SOURCE CATEGORIES:**

Respondents in the survey include: persons with AIDS and HIV-related illnesses, next of kin of these persons, and the providers of services to these persons including hospitals, physicians, pharmacists, staff of nursing and personal care homes.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE PRIVACY ACT:**

None.

[FR Doc. 89-5067 Filed 3-3-89; 8:45 am]

**BILLING CODE 4160-17-M**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Assistant Secretary for Housing-Federal Housing Commissioner

**[Docket No. N-89-1917; FR-2606]**

### Unutilized and Underutilized Federal Buildings and Real Property Determined by HUD To Be Suitable for Use for Facilities To Assist the Homeless

**AGENCY:** Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

**ACTION:** Notice.

**SUMMARY:** This Notice identifies Federal property determined by HUD to be suitable for possible use for facilities to assist the homeless.

**DATE:** March 6, 1989.

**ADDRESS:** For further information, contact Morris Bourne, Director, Transitional Housing Development Staff, Room 9140, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 755-9075; TDD number for the hearing- and speech-impaired (202) 426-0015. (These telephone numbers are not toll-free.)

**SUPPLEMENTARY INFORMATION:** In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, D.C.D.C. No. 88-2503-OG, HUD is publishing this Notice to identify Federal buildings and real property that HUD has determined are suitable for use for facilities to assist the homeless. The properties were identified from information provided to HUD by Federal landholding agencies regarding unutilized and underutilized property controlled by such agencies and by the General Services Administration (GSA) from its current inventory of excess and surplus property.

The court order requires HUD to take certain steps to implement section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), which sets out a process by which Federal properties may be made available to the homeless. Under section 501(a), HUD is to collect information from Federal landholding agencies about unutilized and underutilized properties and then to determine, under criteria developed in consultation with the Department of Health and Human Services (HHS) and GSA, which of those properties are suitable for use for facilities to assist the homeless. The court order requires HUD to publish, on a weekly basis, a Notice in the **Federal Register** identifying property determined suitable. HUD published the first Notice on January 9, 1989 (54 FR 667).

HUD's responsibility under section 501 is to determine the suitability of the properties for use as facilities to assist the homeless. It is important to note that, because HUD's determination of suitability is made without a specific proposal for use, approval for use is conditioned upon a number of factors, including the suitability of the property or any portion of the property for the type of activity planned, as well as the user's compliance with applicable federal, state, and local requirements that may govern the proposed use of the property. Property may also be found suitable even though the property may be currently occupied or in use. Under section 501, the issue of availability is the responsibility of GSA and HHS.

Unutilized and underutilized properties identified in this Notice may ultimately be available for use by the homeless, but they are first subject to review by the controlling agencies, pursuant to the court's Memorandum opinion of December 14, 1988 and section 501(b) of the McKinney Act. Section 501(b) requires HUD to notify each Federal agency with respect to any property of such agency that has been identified as suitable. Within 30 days from receipt of the notice from HUD, the agency must transmit to HUD its intention to: (1) Declare the property excess to the agency's need, or to make the property available on an interim basis for use for facilities to assist the homeless; or (2) state the reasons that the property cannot be declared excess or made available for such use on an interim basis.

First, if the controlling agency decides that the property cannot be declared excess or made available to the homeless for use on an interim basis, the property will no longer be available.

Second, if the controlling agency declares the property excess to the agency's need, that property may be made available for use by the homeless in accordance with applicable law and the court's order of December 12, 1988 and Memorandum of December 14, 1988, subject to screening by other Federal agencies that may wish to make use of the property. In accordance with its normal procedures, GSA will notify the public when properties that HUD has determined suitable are declared excess to the controlling agency's needs. The properties identified by GSA will be held available for expressions of interest for 30 days following GSA's notification to the public. Thus, applicants will have 30 days after the notification by GSA that the properties have been declared excess to submit an application or written expression of interest in a property to Judy Brietman, Division of Health Facilities Planning, Public Health Services, HHS, Room 17A-10 Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-2265. (This is not a toll-free number.)

Finally, in lieu of declaring any particular property as excess, the controlling agency may decide to make the property available to the homeless for use on an interim basis. Public bodies and private nonprofit organizations wishing more information about a particular property identified as suitable in this Notice or wishing to make application for use of a particular property on an interim basis should contact the appropriate landholding agency at the following addresses: U.S. Army: (military facilities) HQ-DA, Attn: DAEN-ZCI-P-Robert Conte, Room 1E671, Pentagon, Washington, DC 20360-2600 (202) 693-4583; (civil works projects) Bob Swieconek, HQ-US Army Corps of Engineers, Attn: CERE-MM, 20 Massachusetts Ave. NW., Washington, DC 20314-1000 (202) 272-1750; U.S. Air Force; Bill Kimball, HQ-USAF/LEER, Washington, DC 20332-0500 (202) 767-4384; Veterans Administration: Linda Tribby, 084A, Real Property Program Management, Veterans Administration, 810 Vermont Ave. NW., Washington, DC 20420 (202) 233-5026; GSA: James Folliard, Federal Property Resources Services, GSA, 18th and F Streets, NW, Washington, DC 20405, (202) 535-7067; U.S. Department of Transportation: Angelo Picillo, Deputy Director, Administrative Services & Property Management, DOT, 400 Seventh St. SW., Room 10319D, Washington, DC 20590 (202) 366-4246. (These are not toll-free telephone numbers.)

Detailed information about the properties identified in today's Notice from the current excess and surplus inventory of GSA may be obtained from

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James Folliard or Richard Stinson, Federal Property Resources Services, GSA, 18th and F Streets NW., Washington, DC 20405, (202) 535–7067. (This is not a toll-free telephone number.) Please refer to the GSA identification number given with each property. Public bodies and private nonprofit organizations wishing to apply for use of a property from the GSA excess and surplus inventory should submit a written expression of interest and a request for the necessary application forms, within 30 days from the date of this publication, to the HHS address given above.

Although not required to do so by either section 501 or the court order, HUD is identifying property, from the information furnished by landholding agencies or GSA, determined unsuitable for use for facilities to assist the homeless, along with the reason for the finding. The court order prohibits the sale, transfer, or other disposition of property found unsuitable for a period of two weeks following the determination.

Dated: February 27, 1989.

James E. Schoenberger,

*General Deputy Assistant Secretary for Housing-Federal Housing Commissioner.*

**Excess and Surplus Property in GSA Inventory**

*Suitable Buildings*

Number of Properties ( )

Portion, Former Brookhaven National Lab (1), Brookhaven, NY
Location: Property 01–GR–NY–429X

*Unsuitable Land*

Portion, Allatoona Lake Project (1), Sewage Treatment Plant, Canton, GA
Reason: Contamination
Location: Property GA–0424B

**Unutilized and Underutilized Property**

*Suitable Buildings (by agency)*

Number of Properties ( )

U.S. Air Force

Wurtsmith AFB (2), Bayshore, MI 49711–
Location: Buildings 5043, 7357
Wurtsmith AFB (2), 379 CSG, Wurtsmith, MI 48753–5000
Location: Buildings 55,2295
Calumet Air Force Station (93), 23 Mile North of Calument, MI, Keweenaw County, MI
Location: Eagle Harbor Township, 93 Buildings 1, 3, 5–13, 14–16, 20, 21, 23, 24, 30–37, 39–68, 70, 72–89, 168, 211–224.
Wurtsmith AFB (1), 379th CSG, Wurtsmith, MI 48750–5000
Location: Property 201
Port Austin Air Force Station (47), Port Austin, Huron County, MI
Location: One mile south of Port Austin Township and Lake Huron—17 Mile North of Bad Axe
Comment: Site consists of 57 acres and has 47 bldgs—all suitable either occupancy/storage
Camp Kohler Annex (2), 6 miles NE of Sacramento, Sacramento, CA
Location: Buildings 4000, 4004
Barksdale AFB (139), Wherry Housing, Barksdale, LA 71110–5000
Location: 139 residential units are outside of secured area—contact Berry McKinney, (318) 456–4824.
Pease AFB (1), Pease, NH
Location: Building 94
Brooks AFB (1), San Antonio, TX 78235–5000
Location: Building 653
Brooks AFB (1), San Antonio, TX 78235–5000
Location: Building 658

Army

Yuma Proving Ground (2), Yuma, AZ 85365–9102
Location: Buildings S–105, S–309
Comment: Friable asbestos to be abated as of 6/89
Fort Gordon (3), August, GA 30905–5000
Location: Buildings 505, 521, 15301
US Army Reserve Training Bldg. and Shop (2), 1700 Carswell Avenue, Waycross, GA
Mountain Home Installation (1), Mountain Home, ID
Comment: National Guard will occupy building in Spring 1989
US Army Garrison (2), Ft. Sheridan, IL
Location: Buildings 62, 575
Cagles Mill Lake (1), Rt. 2 Box 469, Poland, IN
Location: Midway between Indianapolis and Terre Haute
Kentucky River Lock & Dam No. 3 (1), Adjacent to Highway 561, Henry County, KY
Ft. Knox (43), Ft. Knox, KY
Location: Buildings T00247–248, T00252, T00253–258, T00837, T01058, T01060, T01081, T01311, T01312, T01505, T01519, T01520, T02831, T02834, T02838, T02842, T02851, T02857, T02863, T02868, T02869, T02872, T02873, T02880, T02882, T02884, T02885, T02899, T02900, T02901, T02902, T02908, T02914, T02925, T02926, T02927, T02928, T02929, T02935
Fort Knox (17), Ft. Knox, KY
Location: T02937, T04243, T05006, T07060, T07315, T07317, T07319, T07320, T07322, T07323, T07325, T07327, T07328, T0347, T07362, T07363, T07366
Ft. Missoula (3), Missoula, MT
Location: Buildings T–310, T–312, T–316
Ft. Monmouth (Evans Area) (3), Ft. Monmouth, NJ
Location: Buildings 9005, 9004, 2524
Comment: With cleanup of asbestos
Ft. Monmouth (Evans Area) (1), Ft. Monmouth, NJ
Location: Buildings 401
White Sands Missile Range (14), White Sands, NM
Location: 213 and 105 Rossford; 603 Seirra; 417, 416, and 412 Pershing; 436, 434, 430, and 408 Thor; 429 Zuni; 315 and 313 Twin Cities; 311 Watervliet
Comment: May be security problem—Army must verify
Hawthorne Army Ammunition Plant (1), Hawthorne, NV 89415–5000
Location: Building 00359
Woodcock Creek Lake (1), Saegertown, PA
Location: Downstream, below the dam
New Cumerland Army Depot (1), Mifflard Avenue, New Cumerland, PA 17070–5001
Location: Building Building 505
Comment: Because of large maintenance costs, demolitions is being scheduled
Tobyhanna Village Apartments (248), Rte. 423, Tobyhanna, PA
South Nike Education Annex (2), Ellsworth, SD
Location: Buildings 204, 205
Comment: Currently used as an education center
Volunteer Army Ammunition Plant (13), Chattanooga, TN 34701–
Location: Buildings 200–1, 200–3, 200–2A, 200–2B, 333–1, 411, 714, 767, 820–1, 820–2, 820–3, 821–1, 821–3
Saginaw Army Aircraft Plant (1), Tarrant County, TX
Comment: Available 2–89 after tenant vacates property
Ft. Sam Houston (10), San Antonio, TX
Location: Buildings P–626, T–1179, T–1183, T–1188, T–1192, T–1193, T–4001, T–4004, T–4013, T–227
Midway Family Housing Site (32), 240th Military Road, King County, WA
Comment: 31 3 bedroom units 1 2 bedroom unit
Youngs Lake Family Housing Site (28), 116th Avenue SE 192nd Street, King County, WA
Comment: 24 3 bedroom units 4 2 bedroom units

Department of Transportation

Tibbits Point Light (1), Tibbits Point, NY
Location: USCG Property

GSA

Warehouse (1), 49 L. Street SE, Washington, DC



Federal Building (1), Sunset & Church Streets, Asheboro, NC 27203–
Comment: Building presently being repaired
Warwick Mill Annex (1), Brookside Avenue, West Warwick, RI

Veterans Administration

VA Medical Center (1), 1900 East Main Street, Danville, IL 61832–
Location: Building 11
Comment: Occupied by local Community College

*Suitable Land*

Army

Portion, North Little Rock AFRC (1), Arkansas Avenue, Little Rock, AR
Location: 10 acres
Portion, Buffalo Soldier Trail (1), Kayetan Drive, Fort Huachuca, AZ 85613–6000
Portion, Parcel 1 (1), Kayetan Drive/Fort Avenue, Fort Huachuca, AZ 85613–6000
Portion, Parcel 2 (1), Highway 90/Airport Road, Fort Huachuca, AZ 85613–6000
Parks Reserve Forces Training Area (1), Dublin, CA
Stoneridge Drive (2), Santa Rita Road, Pleasanton, CA
Isabella Lake (1), Kern County, CA
Location: 63 acres
New Hogan Lake (1), 229 acres, Valley Spring, CA
Lake Mendocino (1), 12 acres, Ukiah, CA
Pinon Canyon Maneuver Site (1), Pinon Canyon, CO
Location: 16,707 acres
Portion, Army Reserve Facilities (2), West Palm Beach, FL
Location: Two parcels (1.15 and 3.1 acres) adjacent to southern boundary of International Airport
Fort Gillen (1), Forest Part, GA 30050–7000
Location: 17.75 acres
J. Strom Thurmond Dam Reservoir Project (6), Columbia County, GA
Location: Tracts B, C, F, G, H, I
Joliet Army Ammunition plant (5), Joliet, IL 60436–5000
Location: Parcels 1, 3, 5, 6, 7
Fort Benjamin Harrison (1), East 56th Street, Lawrence Township, IN 46216–5450
Location: 3.23 acres at SW corner of installation and E. 56th Street
John Redmond Dam & Reservoir (1), Coffey County, KS
Location: Parcel 3
Fall River Lake (11), Greenwood County, KS
Location: Parcels 1–11 (155 acres)
Barkley Lake (1), Grand Rivers, Lyon County, KY
Location: 233 acres
Fort George C. Meade (1), Fort Meade, MD 20755–5155
Location: 191 acres
Leech Lake (2), Federal Dam, MN
Location: Tract B, Parcel 6
Portion, Fort Missoula (1), Missoula, MT
Location: 6.82 acres
Portion, Phillips Memorial ARC (1), Between Silver and Swan Streets, Silver City, NM
Location: 1 acre
Portion, Hannibal L/D Ohio River (1), P.O. Box 8, Hannibal, OH
Portion, Optima Lake (1), Texas County, OK
Location: Parcel 4
Portions, Fort Gibson Lake (5), Mayes County, OK
Location: Property 71, 72, 75, 76, 78
Portions, Fort Gibson Lake (11) Wagoner, OK
Location: Property 85, 86, 87, 89, 91, 93, 94, 99, 100, 102, 105
Portion, Sardis Lake (2), Latimer County, OK
Location: Property 3, 4
Portion, Pine Creek (4), McCurtain, OK
Location: Property 1, 3, 6, 7
Portion, Tenkiller Ferry Lake (30), Cherokee, OK
Location: Property 8, 10, 12, 14, 15, 18, 19, 20, 21, 22, 26, 28, 29, 34, 35, 36, 39, 41, 42, 43, 44, 45, 47, 49, 50, 51, 53, 55, 1, 3
Portion, Kaw Lake (1), Kay County, OK
Location: Parcel 1
Portion, Webbers Falls (1), Property 4, Wagoner County, OK
Portions, Hugo Lake (4), Choctaw County, OK
Location: Properties 1, 2, 3, 4
Lock & Dam No. 7 (1), Monongahela River, Greensboro, PA
Portion, Loyalhanna Lake (1), Road 2, Saltsburg, PA 15681–
Portion of Conemaugh River Lake (1), Rd. 1 Box 702, Saltsburg, PA 15681–
J. Strom Thurmond Dam/Reservoir Project (1), McCormick County, SC
Location: Tract J
Portion, J. Percy Priest (1), Tract 2319, Davidson County, TN
Portion, Milan Army Ammunition Plant (2), Highway 45E/N. of Graball Gate, Milan, TN 38358–5000
Portion, Pat Mayse Lake (3), Lamar County, TX
Location: Property 8, 10, 15
Portion, Lake Texoma (4), Cooke County, TX
Location: Property 170, 172, 174, 186
Lake Texoma (1), Grayson County, TX
Location: Property 201
Saginaw Army Aircraft Plant (1), Tarrant County, TX
Ft. Bliss (1), Area East of Dyer, Ft. Bliss, TX
Ft. Bliss (1), Area North of 3300 area, Ft. Bliss, TX
Portion, Pike Island Lock & Dam (1), Indian Short Creek, Wheeling, WV
Portion, Pike Island Lock & Dam (1), Buffalo Creek Public Access, Wellsburg, WV

Veterans' Administration

VA Medical Center (1), Wilshire and Swatello Blvds., West Los Angeles, CA 90073–
Location: 80 acres
VA Medical Center (1), 12th & 9th Avenue NW, Minot, ND 58701–
VA Medical Center (1), Tomah, WI

*Unsuitable buildings (by agency)*

Air Force

South Nike Education Annex (2), Ellsworth, SD
Reason: Structurally unsound—needs rehab; friable asbestos
Location: Buildings 200, 201

Army

Fort Chaffee (F3), Fort Chaffee, AR
Reason: Friable asbestos
Location: Buildings 1025, 1027–1032, 1037, 1039, 1044, 1062, 1077–1080, 1083–1085, 1075, 1023, 1037, 1038, 1040, 1043, 1045, 1046, 1049, 1024, 1026, 1028, 1031, 1034, 1041, 1042, 1047, 1076, 1081, 1086, 1092, 1094, 1095, 1010–1021, 1050–1060, 1063–1073
Yuma Proving Ground (3), Yuma, AZ 85365–9102
Reason: Other environmental: Friable asbestos
Location: Buildings S–1003, S–6076, S–6078
Yuma Proving Ground (1), Yuma, AZ 85365–9102
Reason: Friable asbestos
Location: Building S–425
Oakland Army Base (8), Oakland, CA 94626–5000
Reason: Within 2000 ft. from flammable or explosive material; Security area
Sierra Army Depot (1), 5th & G Street, Herlong, CA
Reason: Within 2000 ft. from flammable or explosive material; Secured area, public access denied structurally unsound building
Location: Building T–368
Sierra Army Depot (125), Susanville Rd. & Flagler Blvd., Herlong, CA
Reason: Other environmental: Secured area, buildings structurally unsound, asbestos
Rocky Mountain Arsenal (4), Commerce City, CO 90022–2180
Reason: All buildings are in a secured area, public access denied
Location: Buildings 522B, 831, T–1619, 1710

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Former Nike Battery Barracks (3), Eagle Drive, Shelton, CT
Reason: Friable asbestos
Fort Gordon (13), Augusta, GA 30905–5000
Reason: Structurally unsound
Location: Buildings 970, 2203, D2030, 8030, 14303, 33802, 15707, 51319, 81201, R–0011, R–0012, R–0013, 0021
Ft. Shafter (1), Kilauea Mil Res; Honolulu, HI
Reason: Isolated area; near an active volcano
Location: Buildings T–58, T–82, T–93
Fort Sheridan (6), Ft. Sheridan, IL
Reason: Structurally unsound
Location: Buildings 360, 363, 724, 725, 726, 452
Jefferson Proving Ground (3), Jefferson County, IN
Reason: Within 2000 ft. from flammable or explosive material; Secured area, public access denied
Location: Buildings 150, 152, 154
Louisiana Army Ammunition Plant (8), Patton Drive/Eisenhower Avenue; Shreveport, LA 71130–0060
Reason: Contamination; within 2000 ft. from flammable or explosive material; High Security Area
Location: Property A108, Y2629, L–22453, E1702, K1104, A111, A110, A112
Aberdeen Proving Ground Installation (1), Aberdeen, MD
Reason: Contamination
Ft. Monmouth (Evans Area) (17), Ft. Monmouth, NJ
Reason: Secured facility, public access denied
Location: Building 9379, 9359, 9342, 9347, 9334, 9315, 9154, 9126, 9124, 9119, 9117, 9095, 9094, 9087, 9061, 9034, 9049
Fort Dix (24), Clementon Family Housing Annex, Sickerville, NJ
Reason: Asbestos, PCBs Structurally unsound buildings
Watervliet Arsenal (3), Watervliet, NY 12189–4050
Reason: Contamination; Within 2000 ft. from flammable or explosive material; Secure facility
Location: Buildings 25, 20, 10
Watervliet Arsenal (1), Watervliet, NY 12189–4050
Reason: Within 2000 ft. from flammable or explosive material; Secure facility
Location: Building 40
Ravenna Army Ammunition Plant (8), 8451 State Route 5, Ravenna, OH 44266–9297
Reason: Friable asbestos
Location: Buildings 1030, 151A, 251A, 351A, 7088, 4741, F–1, 8–5
New Cumberland Army Depot (1), Miffland Avenue, New Cumberland, PA 17070–5001
Reason: Building structurally unsound
Location: Building 501
New Cumberland Army Depot (2), Mifflend Avenue, New Cumberland, PA 17070–5001
Reason: Secured area
Location: Building 276
Hayes Army Ammunition Plant (1), Pittsburgh, PA
Reason: Building structurally unsound; secured area
Location: Building 1
New Cumberland Army Depot (1), Mifflend Avenue, New Cumberland, PA 17070–5001
Reason: Within 2000 ft. from flammable or explosive material
Location: Building 279
J. Strom Thurmond Dam and Reservoir (5), McCormick County, SC
Reason: Friable asbestos
Longhorn Army Ammunition Plant (1), Marshall, TX
Reason: Within 2000 ft. from flammable or explosive material; Secured area, public access denied
Location: Building 27A
Lone Star Army Ammunition Plant (156), Texoma, TX 75505–9101
Reason: Not accessible by road; Contamination; Within 2000 ft. from flammable or explosive material; Secured area
Green River Test Complex (38), Green River, UT
Reason: Contamination
Radford Ammunition Plant (5), Radford, VA
Reason: Within 2000 ft. from flammable or explosive material

Air Force

Composite Medical Facility (11), Malmstorm, MT 59402–
Reason: Secured facility, general public access denied
Location: Buildings 2055, 1502, 1500, 1445, 1444, 1443, 1441, 821, 439, 280, 140
Pease AFB (3), Weapons Storage Area, Pease, NH
Reason: Within 2000 ft. from flammable or explosive material; Secured area, public access denied
Location: Buildings 439, 317, 343
Pease AFB, Dormitory Building 6 (1), Pease, NH
Reason: Within 2000 ft. from flammable or explosive material
Reese Air Force Base (2), 64th Flying Training Wing, Reese, TX 79489–
Reason: Other environmental; Secured area, public access denied building structurally unsound
Location: Buildings Nr 3104, Nr26

Veterans Administration

VA Medical Center (1), 1900 East Main Street, Danville, IL 61832–
Reason: Asbestos extensive interior renovation would cost $2,000,000
Location: Building 12
VA Medical Center (1), 5000 West National Center, Milwaukee, WI
Reason: Friable asbestos; structurally unsound
Location: Building 45

*Unsuitable Land (by agency)*

Army

Glacier Training Site (1), Eklutna, AK
Reason: Not accessibly by road; Contamination
Location: Eklutna Mountain
Oakland Army Base (1), Wake Avenue/ West Grand Avenue, Oakland, CA
Reason: Within 2000 ft. from flammable or explosive material
Riverbank Army Ammunition Plant (1), Claus & Claribel Roads, Riverbank, CA 95367–0670
Reason: Within 2000 ft. from flammable or explosive material; Soil contamination
Oakland Army Base (1), Wake Ave./ Baldwin yard, Oakland, CA
Reason: Within 2000 ft. from flammable or explosive material
J. Strom Thurmond Dam Reservoir Project (2), Columbia County, GA
Reason: Not accessibly by road
Location: Tracts A, E
Ft. Shafter (1), Kipapa Ammunition Storage Area, Ft. Shafter, HI 96858–5100
Reason: Contamination
Fort Shafter (1), Fort Shafter Flats, Ft. Shafter, HI 96858–5100
Reason: Part of public street
Location: Middle Street right-of-way
Joliet Army Ammunition Plant (1) Joliet, IL 60436–5000
Reason: Within 2000 ft. from flammable or explosive material
Location: Parcel 2
Joliet Army Ammunition Plant (1), Joliet, IL 60436–5000
Reason: Not accessible by road
Location: Parcel 4
Fall River Lake (1), Greenwood County, KS
Reason: Not accessible by road
Location: Parcel 12
Barkley Lake (1) Lyon County, KY
Reason: Not accessible by road
Location: Property 2403
Barkley Lake (1), Tract 11503, Barkley Lake, KY
Reason: Not accessible by road
Pine River (1), Crosslake, MN
Reason: Not accessible by road
Location: Parcel D
Sandy Lake (1), McGreagor, MN
Reason: Not accessible by road
Location: Tract 92
Leech Lake (1), Benedict, MN
Reason: Not accessible by road
Location: Tract 98
Fort Monmouth (Evans Area) (2), Fort Monmouth, JN
Reason: Secured area, public access denied
Location: 5 and 91 acre parcels
Fort Monmouth (Charle Wood Area) (1), Ft. Monmouth, NJ
Reason: Not acessible by road
Location: 15.56 acre parcel
Fort Dix (1), Clementon Family Housing Annex, Sickerville, NJ
Reason: Not accessible by road
Location: Crosskeys and Williamstown Roads
Hawthorne Army Ammunition Plant (1), County of Mineral, NV
Reason: Within airport runway clear zone
Hawthorne Army Ammunition Plant (1), Hawthorne, NV
Reason: Contamination
Location: Parcel B
New Cumberland L/D Ohio River (1), Stratton, OH 43952–
Reason: Secure facility
Lake Texoma (2); Bryan County, OK
Reason: Not accessible by road
Location: Property 42, 45
Pine Creek (1), Choctaw County, OK
Reason: Not accessible by road
Location: Parcel 4
Lake Texoma (1), Bryan County, OK
Reason: Not accessible by road
Location: Property 15
Lake Texoma (10), Lake Texoma, OK
Reason: Not accessible by road
Location: Parcels 91, 92, 93, 95, 97, 98, 99, 101, 102, 103
Waurika Lake (1), Parcel 9 (5 acres), Jefferson, OK
Reason: Not accessible by road
Lake Texoma (1), Lake Texoma, OK
Reason: Within 2000 ft. from flammable or explosive material
Location: Parcel 94
Umatilla Depot Activity (7), Hermiston, OR
Reason: Secured area, public access denied
Location: Fixed wing runway
J. Percy Priest (1), Cumberland River, Davidson County, TN
Reason: Not accessible by road
Location: Tract 2107
J. Percy Priest (3), Cumberland River, Davidson County, TN
Reason: Not accessible by road
Location: Tracts 1011, 2227, 2321
Portion, Lock and Dam, Ohio River, Wheeling, WV
Location: Abutment Site of Old Lock & Dam #10

Department of Transportation

Cold Bay, Cold Bay, AK
Reason: Within airport runway clear zone
Location: FAA Property
Comment: Swampland

Air Force

Fairchild AFB, Fairchild, WA 99011–
Land Holding Agency: USAF
Number of Properties: 2
Reason: Within 2000 ft. from flammable or explosive material; Periodically covered with water

Veterans Administration

VA Medical Center (1), Ft. Snelling, St. Paul, MN
Reason: Friable asbestos

[FR Doc. 89–5021 Filed 3–3–89; 8:45 am]
BILLING CODE 4310–07–M

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

### Memorandum of Agreement Between Bureau of Indian Affairs, (Interior) and Indian Health Service (IHS), To Implement a Program for Services to Handicapped Indian Infants, Children and Youth From Birth Through 21 Years of Age

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Memorandum of Agreement Between The Department of the Interior Bureau of Indian Affairs and The Department of Health and Human Services Indian Health Services to implement a coordinated, multidisciplinary, interagency program for services to handicapped Indian infants, children and youth from birth through twenty-one years of age in accordance with Pub. L. 94–142 as amended by Pub. L. 99–457, the 1986 Technical Amendments to the Education of the Handicapped Act. Notice: Request for Comments.

**SUMMARY:** Notice is hereby given that the Bureau of Indian Affairs (BIA) and the Indian Health Service (IHS) have completed a Memorandum of Agreement (MOA) regarding the implementation of a coordinated, multidisciplinary, interagency program for services to handicapped Indian infants, children and youth from birth through twenty-one years of age. This agreement provides for the development and implementation of joint policies and procedures and a method to establish program priorities for the education and treatment of identified handicapped Indian children within the joint jurisdictions of the BIA and IHS.

**DATES:** Comments shall be submitted no later than 30 days from the date of publication.

**ADDRESSES:** All comments concerning this Memorandum of Agreement should be addressed to Goodwin K. Cobb, Acting Chief, Branch of Exceptional Education, Office of Indian Education Programs, Bureau of Indian Affairs, 1951 Constitution Avenue NW. (MS 3512 MIB, Code 523), Washington, DC 20245.

**FOR FURTHER INFORMATION CONTACT:** Carol L. Zilka, Education Specialist, Early Childhood Program, Telephone: (202) 343–3559.

**SUPPLEMENTARY INFORMATION:** The authority for this Memorandum of Agreement is the Snyder Act (25 U.S.C. 13), Pub. L. 94–142, Education of the Handicapped Act (EHA) (20 U.S.C. secs. 1400–1485), as amended by the Education of the Handicapped Amendments of 1986 (Pub. L. 99–457), and the Economy Act (31 U.S.C. 1535).

Pub. L. 99–457 (The Education of the Handicapped Act Amendments of 1986) amended the Education of the Handicapped Act (Pub. L. 94–142), reauthorized the discretionary programs under the Act, and authorized a new early intervention program for handicapped infants and toddlers and their families.

Under existing regulations (34 CFR 300.600), a State Education Agency (SEA) may utilize interagency agreements as a means of implementing its general supervision requirements. The 1986 Amendments require that State plans include policies and procedures for developing and implementing interagency agreements between the State and "other appropriate State and local agencies." The BIA, while not a State, is required to submit a State plan that meets the requirements of Pub. L. 99–457 sec. 1413 and an application which meets the requirements of sec. 1414, as well as, sec. 1484 of Part H (Infants and Toddlers Program).

This Memorandum of Agreement reflects the BIA's understanding of section 613(a)(13) of the statute that "other appropriate" agencies are those Federal, State, and local agencies other than the BIA that provide or pay for special education or related services for Indian children with handicapping conditions. The MOA describes the role that the BIA and IHS have in providing or paying for those services. The MOA also describes the responsibilities of each agency and establishes a mechanism for resolving interagency disputes.

The 1986 Amendments state that Part B shall not be construed to limit the responsibilities of agencies other than educational agencies for providing or paying for services provided to children under Part B. The 1986 Amendments

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also state that Part B shall not be construed to permit a State to reduce assistance or alter eligibility under programs supported by Federal Medicaid and Maternal and Child Health Programs. This is intended to ensure that no child is treated differently under those two programs because the child is receiving services under an individual Education Plan (IEP), or for any other reason related to the existence or applicability of Part B.

While States have until 1990–1991 to provide services for handicapped children, ages three through five, the BIA was mandated under Pub. L. 99–457 to begin providing services for these children during the 1987–1988 school year.

The Education of the Handicapped Act Amendments of 1986 (Pub. L. 99–457) added a new State formula grant program to assist States in establishing a statewide system of early intervention services for infants and toddlers with handicaps and their families. This new program (designated as Part H of the EHA) replaces, and substantially expands, the State grant provisions established in 1983 under the Handicapped Children's Early Education Program (HCEEP). Part H focuses on similar activities, but limits the age range to children from birth through two years of age.

Part H is the only program administered by the Department of Education (DOE) that focuses exclusively on meeting the needs of infants and toddlers with handicaps. Children in this age group have been traditionally served through programs administered by the Department of Health and Human Services. The BIA has been designated as the Lead Agency under Part H. The Lead Agency is responsible for: (a) Submitting applications for, and receiving funds under this program, and (b) serving as the lead agency responsible for the general administration of program and activities carried out under Part H. The BIA is mandated under Part H to develop a comprehensive system of early interventio services for handicapped Indian infants and toddlers by 1990–1991 that fits the individual characteristics of the BIA.

Each comprehensive system of early intervention is to be planned and carried out as a coordinated, interagency, multidisciplinary program. Generally, no one agency has the funding resources, services, or authority to provide all appropriate early intervention services for all infants and toddlers with handicaps. The legislative history of Pub. L. 99–457 emphasizes the concept of interagency coordination, by acknowledging that even in States requiring a free appropriate public education from birth, no single agency provides all services to all children with handicaps. Rather, existing service delivery systems represent interdependence among public and private agencies and organizations at the State and local levels.

While the BIA is the Lead Agency under Part H, it does not have available within its system, the full complement of services needed by handicapped infants and toddlers and their families, e.g., developmental disability programs, health services, education, social services, and mental health. Currently, the BIA has available special education, related services, and social services. The IHS provides, within the scope of its health program, direct medical, social, and mental health services to handicapped Indian infants and toddlers, children, and youth.

This MOA provides the mechanism for the development of a coordinated, multidisciplinary, interagency program between the Bureau of Indian Affairs and the Indian Health Service for the provision of services for handicapped Indian infants, toddlers, children, and youth. The MOA will remain in effect until such time as agreed upon by both parties. The MOA will be reviewed annually and modified as needed for compliance with law and regulation. A BIA and IHS Task Group will develop an Action Plan which will include: goals, objectives, related activities or products, names of responsible agency/person, timelines, and evaluation criteria for each objective. The Action Plan will be reviewed quarterly by the task group of appropriate BIA/IHS representatives and the Plan will be revised annually. This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

**Wilson T. Babby,**

*Deputy to the Assistant Secretary, Indian Affairs/Director (Indian Education Programs).*

**Memorandum of Agreement (MOA)**

This memorandum provides the terms of agreement for services to be shared by the Bureau of Indian Affairs (BIA) and the Indian Health Service (IHS) in fulfilling each agency's individual responsibilities and identified areas of joint cooperative needs for handicapped Indian children and youth.

*I. PURPOSE*

The purpose of this agreement is to provide for the development and implementation of joint policies and procedures and to establish program priorities for the education and treatment of handicapped Indian children identified in the statute within our joint jurisdictions.

*II. AUTHORITY*

Snyder Act (25 U.S.C. 13) and 20 U.S.C. Secs. 1400–1485, Pub. L. 94–142, the Education of the Handicapped Act (EHA), as amended by the Education of the Handicapped Amendments of 1986 (Pub. L. 99–457), and the Economy Act, 31 U.S.C. 1535.

*III. INTRODUCTION*

The Assistant Secretary of the Interior—Indian Affairs (BIA) and the Director of Indian Health Service (IHS) as administrators of agencies responsible to serve Indian children and youth recognize that:

A. The BIA has responsibilities to the extent it receives set-aside funding under the EHA:

(1) To provide special education and related services to handicapped Indian children attending BIA schools;

a. *Related services* include diagnostic, developmental, corrective and supportive services such as (1) speech pathology and audiology, (2) psychological services, (3) physical and occupational therapy, (4) recreation, (5) counseling, and (6) medical diagnosis and evaluation but *not* other medical services (20 U.S.C. 1401(a)(17)).

(2) Within a statewide system, to coordinate with State agencies for the provision of special education and related services to preschool aged Indian handicapped children, ages three through five, on reservations serviced by BIA schools;

(3) Within a statewide system, to coordinate with State agencies for the provision of early intervention services to handicapped Indian infants and toddlers, ages birth through two, on reservations serviced by BIA schools.

a. *Early intervention services* include *related services* plus family training, counseling and home visits, case management services, and "health services necessary to enable the infant and toddlers to benefit from the other early intervention services" (20 U.S.C. 1472).

With respect to infants and toddlers, ages birth through two, EHA requires that the State Lead Agency ensure that each handicapped infant and toddler in the State (including Indian children) shall receive a multidisciplinary assessment of a child's unique needs and identification of service to meet those needs, a written Individualized Family Service Plan (IFSP), and case management services to implement the IFSP. The House Report (Report 99–860) at page 11 states:

> In State's serving significant numbers of Indian handicapped infants and toddlers, the lead agency must consult with and obtain input from Tribal education offices/committees, BIA schools, tribal schools, head start programs and other providers of service at the local and State level to ensure that the needs of these infants and toddlers are considered and accounted for in the statewide system.

Handicapped Indian infants and toddlers are clearly included within the intended statewide system of services and in carrying out its responsibilities the BIA is acting as part of the statewide system.

B. The IHS provides health services to Indians under the discretionary authority of the Snyder Act, some of which overlap with *related services* and *early intervention services* as defined in the EHA. The IHS has no responsibilities as such under the EHA. It is not an education agency funded under said act.

The BIA and IHS in recognizing that neither agency can provide a comprehensive program that would satisfy all the needs and services for different age groups and handicapping conditions further confirms their respective belief that services within their jurisdictions require a comprehensive, multidisciplinary, interagency approach to meet the needs of handicapped Indian infants and toddlers, children and youth.

In keeping with the intent to provide appropriate services and to extend present collaborative efforts, the purpose of this MOA is to identify areas of national and local cooperation needed to serve the needs of handicapped Indian children and youth within our joint jurisdictions. Local BIA/IHS agreements are to be developed based on the identified areas of this MOA to ensure the purpose of the MOA is fulfilled.

Tribal organizations, other Federal and State agencies providing services are to be included in agreements for handicapped services.

*IV. SUBSTANCE OF AGREEMENT*

**Areas of Collaboration.** The BIA and IHS recognize that the provision of services to handicapped Indian infants and toddlers, children and youth will require a comprehensive, interagency program which includes components for:

a. Prevention, early recognition and intervention activities to provide medical, mental health, dental, education, social and family support services for handicapped Indian infants and toddlers from birth to two years of age and their families.

b. Education, medical, dental, mental health, social and family support services for handicapped Indian children and youth from three through twenty-one years of age.

c. Transition, tracking and educational placement services for handicapped Indian children and youth.

The BIA will establish, on an as needed basis, task force groups to review programs and services under this agreement which will include appropriate representatives from the Indian Health Service. These groups will meet as needs arise to develop procedures, guidelines and service priorities for coordination with statewide systems. Major areas of focus are:

A. The development of administrative policies, procedures, and guidelines consistent with applicable Federal regulations which reflect program, staff and funding responsibilities needed for interagency cooperation and services for handicapped Indian infants and toddlers (birth to two years of age, inclusive) and children and youth (three through twenty-one years of age) including:

(1) Eligibility and placement criteria for "at risk" and developmentally delayed infants and toddlers.

(2) Coordinate agency efforts regarding Child Find and screening.

(3) Registry, tracking, and referral.

(4) Multidisciplinary team evaluation and assessment.

(5) Multidisciplinary team formulated Individual Education Plan (IEP) and Individualized Family Service Plan (IFSP), which give attention to education, medical, mental health and social needs for:

a. Special Education.
b. Related Services.
c. Medical Services.
d. Social Services.
e. Mental Health Services.
f. Communication and Audiological Services.
g. Physical and Occupational Therapy Services.
h. Nutrition Services.
i. Home Nursing Services.
j. Dental Services.
k. Vocational Services.
l. Parent and Family Training.

(6) Family involvement in formulating and implementing the IEP and IFSP.

(7) Follow-up and non-BIA/IHS referrals.

(8) Transition Services.

(9) Institutional Care.

(10) Program Evaluation.

B. As funds become available under EHA, the BIA and IHS will delineate responsibility within statewide systems for specific professional services and financial resources for providing comprehensive handicapped care which includes:

(1) Guidance and consultation for determination of staffing and program needs to provide services at local levels.

(2) Determination of program cost and funding responsibilities for services.

3. Establishing policy, procedures and accountability for interagency transfer of funds under the Economy Act.

4. Establishing and publishing policies and guidelines for distribution to each Agency's programs and staff regarding program requirements and responsibilities.

5. Guidance and consultation for establishing local procedures to ensure service delivery through interagency coordination, e.g., model agreements.

C. Develop an interagency, confidential system of data collection and tracking of those Indian individuals (ages birth through twenty-one) within joint jurisdictions in need of and/or receiving handicapped services in each area and for information exchange for program services which includes:

1. Development of a computerized program which will be used locally to track Indian infants and toddlers, children and youth in need of handicapped services.

2. Informing health, education and social service professionals about the handicapped registry and tracking system.

(3) Developing guidelines and procedures for the exchange and transfer of client/student information within statewide systems.

(4) Developing data reporting formats which will provide statistical information which can be used for epidemiologic study, funding justification and program evaluation.

D. Subject to the availability of funds, the development and provision of educational programs, materials and equipment to raise awareness and improve services to handicapped children which includes:

(1) Training and technical assistance for education, medical, dental and social services staff and related services workers.

(2) Community education.

(3) Child, family, and extended family training to meet general and specific needs of handicapped Indian children.

(4) Training, technical assistance, and education for other Federal agencies regarding the general and unique needs of handicapped Indian children.

(5) Health Promotion/Disease Prevention.

E. Developing procedures to resolve interagency differences and disputes for meaningful cooperation and coordination.

*V. RESPONSIBILITIES*

The following areas of responsibilities are agreed to by the BIA and IHS.

A. Responsibility of the BIA. The BIA is responsible for serving handicapped Indian children on reservations serviced by BIA operated elementary and secondary schools. The BIA will assist individual States in the coordination of State services for handicapped children, ages birth through five, who live on reservations that are serviced by BIA elementary and secondary schools. The BIA will develop within the state-wide system a comprehensive, multidisciplinary, interagency program of services for exceptional education and related services as specified in Pub. L. 94–142 as amended by Pub. L. 99–457.

The BIA will submit an Annual Application to the Department of Education for funding of the handicapped infants and toddlers program (Part H) and for Part B services under Pub. L. 94–142 as amended by Pub. L. 99–457 and Department of Education Regulations 34 CFR Parts 300, 301 and 303.

Provide task groups and provide for representation of members from IHS on these groups.

Provide staff to develop an interagency program to respond to the major focus of this MOA and to provide management of this MOA.

B. Responsibility of the IHS. The IHS will assist in the development of a systemwide, comprehensive, multidisciplinary, interagency program including identification and intervention services for handicapped infants and toddlers and their families by providing services consistent with the scope of IHS health care and within the limitations of available IHS resources and by coordinating services with other agencies responsible under 20 U.S.C. Subchapter VII.

The IHS will participate in the development of an action plan as specified in Section IV, Terms of Agreement and will include the following elements:

a. The IHS will assist in the development and implementation of a handicapped Indian children's registry and tracking system that will efficiently and effectively facilitate provisions of education and health care needs of handicapped Indian children, ages birth through twenty-one. Components of this system will include: definitions of "at risk" and handicapping conditions, computer

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hardware and software needs, and registry and tracking formats.

b. The IHS will coordinate, in cooperation with existing state and federal coordination activities, multidisciplinary activities necessary to meet the comprehensive needs of handicapped Indian infants and toddlers and children through age twenty-one living on reservations where BIA operated or funded schools exist. As funds become available, IHS area coordination will be established in consultation with the BIA to initiate and maintain local registries and tracking systems, to develop and strengthen communication linkages between the IHS and BIA and other federal agencies, to facilitate information exchange between the IHS and other agencies, as required to serve the needs of handicapped Indian children, and, by regulation and policy, establish services ensuring efficient transition of handicapped Indian children from one jurisdiction of responsibility to another.

c. This MOA focuses on the needs of handicapped Indian children who live on reservations served by BIA funded schools, however, this does not preclude the IHS from meeting its legal service mandates.

Such funds that may become available to the IHS during the first two years of this MOA will be used in program development. Based on the specifics of the Action Plan, the IHS is responsible to submit a plan detailing program actions including any plan to contract activities before any funds will be transferred and to provide quarterly written progress reports to the BIA indicating program status.

If the specifics of the Action Plan requires the transfer of any portion of the BIA's Pub. L. 99-457, Part H funds to the IHS, the IHS agrees to maintain these funds separately and will account for these funds quarterly and will meet any applicable requirements of the Economy Act.

The IHS is currently providing within its health program, direct medical, social, and mental health services to handicapped Indian children. As program development progresses, and children are served, it is expected that additional special consultation, evaluation and intervention services will be necessary. The IHS has inadequate resources to meet all these health needs. However, the IHS is responsible to assist in arranging for the comprehensive health care needs of handicapped Indian children and is committed to meet the needs of handicapped Indian children and to collaborate with the BIA and other responsible agencies, to identify needs and funding sources to meet the needs of handicapped Indian children.

*VI. TERMS OF AGREEMENT*

This MOA will remain in effect until such time as agreed upon by both parties. This MOA will be reviewed annually and modified as needed for compliance with law and regulation.

Within 45 days of the effective date of this agreement and thereafter, within 45 days of the beginning of each fiscal year (FY) beginning with 1990, a BIA and IHS Task Group will develop an Action Plan which will include the following:

a. Goals.

b. Specific objectives to be accomplished.

c. Related activities or products.

d. Names of responsible agency/person.

e. Timelines (beginning and ending) and.

f. Evaluation criteria for each objective.

This Action Plan will be reviewed quarterly by the Task Group of appropriate BIA/IHS representatives. The Action Plan will be revised annually.

[FR Doc. 89-5057 Filed 3-3-89; 8:45 am]

BILLING CODE 4310-02-M

## Bureau of Land Management

[UT-040-09-4322-02]

### Cedar City District Grazing Advisory Board Meeting

Notice is hereby given in accordance with Pub. L. 92-463 that a meeting of the Cedar City District Grazing Advisory Board will be held on Thursday, April 13, 1989. The meeting will begin at 9:30 a.m. in the Bureau of Land Management Cedar City District Office located at 1767 E. DL Sargent Drive, Cedar City, Utah.

The agenda is as follows: (1) Public Comments; (2) APHIS report on Animal Damage Control Program; (3) status report on Animal Damage Control Environmental Assessment; (4) construction standards for Range improvement projects; (5) Escalante Recreation Area Management plan; (6) briefing on June 1988 GAO Report on Rangland Management; (7) distribution of 8100 Funds; (8) project ranking for FY90; (9) Advisory Board Business.

Grazing Advisory Board meetings are open to the public. Interested persons may make oral statements or file written statements for the Board's consideration. Oral statements will be received at 9:30 a.m. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 176 East DL Sargent Drive, Cedar City, Utah 84720, phone (801) 586-2401, by April 10, 1989. Depending on the number of persons wishing to make statements, a per person time limit may be established by the District Manager.

Summary minutes of the Board meetings will be maintained in the District Office and be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

February 23, 1989.

**Gordon R. Staker,**

*District Manager.*

[FR Doc. 89-5061 Filed 3-3-89; 8:45 am]

BILLING CODE 4310-DQ-M

## Fish and Wildlife Service

### Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

*Applicant:* Mark Itson, Las Vegas, NV, PRT-734052

The applicant requests a permit to purchase one female tiger (*Panthera tigris*) from Jan Giacinto of Tarzana, California. The tiger will perform in applicant's illusionist show and will be displayed in a manner designed to educate the public with regard to this species' ecological role and conservation needs. Applicant also intends to export and reimport this tiger and a male tiger for similar displays in the future.

*Applicant:* Honolulu Zoo, Honolulu, HI, PRT-735380

The applicant requests a permit to export five pairs of captive-hatched Hawaiian (=nene) geese (*Nesochen (=Branta) sandvicensis*) to the Kaohsiung City Government, Wan-Sou San Park, Kaohsiung, Taiwan, for purposes of captive propagation and zoological display.

*Applicant:* Dr. Michael Baden Thompson, Gainesville, FL, PRT-735365

The applicant requests a permit to import fixed whole eggs and histological sections of tuataras (*Sphendon punctatus*), taken from wild individuals between the years of 1980 and 1983, from the Department of Zoology, Victoria University of Wellington, New Zealand. The specimens will be used for embryological and histological studies of the species. They will then be returned to the Victoria University of Wellington.

*Applicant:* Detroit Zoological Parks, Royal Oak, Michigan, PRT-735319

The applicant requests a permit to import three captive-born female chimpanzees (*Pan troglodytes*) from the Ruhr Zoo, West Germany, for purposes of propagation and public display.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 403, 1375 K. Street NW., Washington DC 20005, or by writting to the Director, U.S. Office of Management Authority, P.O. Box 27329, Central Station, Washington, DC 20038-7329.

Interested person may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Date: February 28, 1989.

**R. K. Robinson,**

*Chief, Branch of Permits, U.S. Office of Management Authority.*

[FR Doc. 89-5151 Filed 3-3-89; 8:45 am]

BILLING CODE 4310-AN-M



## INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31298]

### Chicago, Missouri & Western Railway Co.; Trackage Rights Exemption; Burlington Northern Railroad Co.

Burlington Northern Railroad Company (BN) has agreed to grant overhead trackage rights to Chicago, Missouri & Western Railway Company (CM&W) between BN milepost 43.41 at Girard, IL, and BN milepost 10.24 at Jacksonville, IL, a distance of approximately 33.17 miles.[1] The trackage rights were to have become effective when CM&W commenced operations over the joint trackage, which was scheduled for February 23, 1989.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Any comments must be filed with the Commission and served on: John H. Broadley, Jenner & Block, 21 Dupont Circle, NW., Washington, DC 20036, and Peter M. Lee, 777 Main Street, Fort Worth, TX 76102.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

[1] As part of the Agreement, the parties constructed new connector track on their respective portions of the connection at Girard. This construction is outside the jurisdiction of the Commission. *See* Finance Docket No. 31290, *Burlington Northern Railroad Company—Trackage Rights—Union Pacific Railroad Company* and Finance Docket No. 31290 (Sub-No. 1), *Burlington Northern Railroad Company—Construction and Operation Exemption* (not printed), served October 21, 1988.

Dated: March 1, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

**Noreta R. McGee,**

*Secretary.*

[FR Doc. 89-5143 Filed 3-3-89; 8:45 am]

BILLING CODE 7035-01-M

## DEPARTMENT OF JUSTICE

### Office of Juvenile Justice and Delinquency Prevention

### Coordinating Council on Juvenile Justice and Delinquency Prevention; Meeting

**ACTION:** Notice of meeting.

The first quarterly meeting for the 1989 calendar year of the Coordinating Council on Juvenile Justice and Delinquency Prevention will be held on April 16, 1989, from 9:00 a.m. until 3:00 p.m. Because of difficulty in locating appropriate meeting space, the meeting is being held six days into the second quarter of the year. There will be, however, four quarterly meetings held during the 1989 calendar year. This meeting of the Council will take place in the Great Hall of the Charles Sumner School Museum and Archives, 1201 17th Street NW., Washington, DC 20032.

On April 16, 1989, the Coordinating Council will address the topic "Missing and Exploited Children." The agenda will include presentations on parental abductions, nonfamily abductions, multiple child victimizations, child exploitation including child prostitution and pornography, and effective community responses to these serious child safety issues.

Individuals and organizations concerned with these issues are encouraged to attend this meeting. Because of limited seating, please contact Roberta Dorn, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue NW., Washington, DC., (202) 724-7655 to reserve seating. Requests will be received until space is filled, or until 4:00 p.m. on March 28, 1989, whichever occurs first.

Dated: February 23, 1989.

**Diane M. Munson,**

*Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.*

[FR Doc. 89-5155 Filed 3-3-89; 8:45 am]

BILLING CODE 4410-18-M

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### Records Schedules; Availability and Request for Comments

**AGENCY:** National Archives and Records Administration.

**ACTION:** Notice of availability of proposed records schedules; request for comments.

**SUMMARY:** The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C. 3303a(a).

**DATE:** Requests for copies must be received in writing on or before April 20, 1989. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

**ADDRESS:** Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in parentheses immediately after the name of the requesting agency.

**SUPPLEMENTARY INFORMATION:** Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other

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records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights and interests of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

**Schedules Pending**

1. Department of the Air Force (N1-AFU-89-12). Routine library service records relating to audio-visual information.

2. Department of Commerce, National Oceanic and Atmospheric Administration (N1-370-88-3). Radar Weather Observations Files.

3. Farm Credit Administration (N1-103-88-2). Various financial reporting forms retained by the agency for administrative use or used as input documents for an electronic system.

4. Farm Credit Administration (N1-103-88-4). Retired and cancelled stock, meeting minutes, loan files of individual borrowers, and general correspondence created by Farm Credit System financial institutions prior to 1957.

5. Farm Credit Administration (N1-103-89-2). Administrative records relating to the commissioning of examiners.

6. General Accounting Office (N1-411-89-2). Case files maintained by the Legal Support Services Branch in which no digest was prepared and which were not signed by the Comptroller General, Deputy Comptroller General, Special Assistant to the Comptroller General, General Counsel, or Deputy General Counsel.

7. Department of Labor, Pension and Welfare Benefits Administration (N1-174-89-1). Routine administrative records created in the Office of the Assistant and Deputy Assistant Secretary for Pension and Welfare Benefits.

8. National Aeronautics and Space Administration, Planetary Geoscience Program (N1-255-89-3). Program files consisting of copies of contracts, procurement requests and grant correspondence with principal investigators.

9. Railroad Retirement Board (N1-184-89-2). Part three of a four part comprehensive schedule covering administrative, operational and program records.

10. Tennessee Valley Authority, Division of Personnel (N1-142-88-16). Report of distribution of annual salary policy employees by schedule, title, grade, step and salary.

11. Department of the Treasury, Internal Revenue Service, Collection Activity (N1-58-88-6). Additions to Records Control Schedule 204.

12. Department of the Treasury, Internal Revenue Service (N1-58-89-1). Order processing records generated during the sale of Eisenhower silver dollars, 1971.

13. Department of the Treasury, Internal Revenue Service, Service Centers (N1-58-89-2). Additions and changes to Records Control Schedule 206.

Dated: February 28, 1989.

**Don W. Wilson,**

*Archivist of the United States.*

[FR Doc. 89-5159 Filed 3-3-89; 8:45 am]

BILLING CODE 7515-01-M

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice 89-15]**

### NASA Advisory Council (NAC), Space Systems and Technology Advisory Committee (SSTAC); Meeting

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of Meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Systems and Technology Advisory Committee Ad Hoc Review Team on Low-Cost Expendable Launch Vehicles.

**DATE AND TIME:** March 21, 1989, 8 a.m. to 4 p.m., and March 22, 1989, 8 a.m. to 4 p.m.

**ADDRESS:** Martin Marietta Deer Creek Facility, Monarch Room, 12999 Deer Creek Canyon Road, Littleton, CO 80127.

**FOR FURTHER INFORMATION CONTACT:** Mr. David Stone, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-3654.

**SUPPLEMENTARY INFORMATION:** The NAC Space Systems and Technology Advisory Committee (SSTAC) was established to provide overall guidance to the Office of Aeronautics and Space Technology (OAST) on space systems and technology programs. Special ad hoc review teams are formed to address specific topics. The Ad Hoc Review Team on Low-Cost Expendable Launch Vehicles, chaired by Mr. Marc Constantine, is comprised of nine members. The meeting will be open to the public up to the seating capacity of the room (approximately 20 persons including the team members and other participants).

*Type of Meeting:* Open.

*Agenda:*

March 21, 1989

8 a.m.—Summary of Expendable Launch Vehicle Industry Technology Needs.

11 a.m.—Presentation on Preliminary Technology Program Planning.

4 p.m.—Adjourn.

March 22, 1989

8 a.m.—Discussion of Preliminary Technology Program Plan.

1 p.m.—General Discussion.

4 p.m.—Adjourn.

February 27, 1989.

**Ann Bradley,**

*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

[FR Doc. 89-5089 Filed 3-3-89; 8:45 am]

BILLING CODE 7510-01-M

**[Notice 89-16]**

### NASA Advisory Council (NAC), Space Systems and Technology Advisory Committee (SSTAC); Meeting

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of Meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Systems and Technology Advisory Committee, Ad Hoc Review Team on Planet Earth Technologies.

**DATE AND TIME:** March 30, 1989, 9 a.m. to 4:30 p.m., and March 31, 1989, 9 a.m. to 3:30 p.m.

**ADDRESS:** National Aeronautics and Space Administration, Langley Research Center, Building 1219, Room 225, Hampton, VA 23665.



**FOR FURTHER INFORMATION CONTACT:** Mr. Wayne R. Hudson, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-2740.

**SUPPLEMENTARY INFORMATION:** The NAC Space Systems and Technology Advisory Committee (SSTAC) was established to provide overall guidance to the Office of Aeronautics and Space Technology (OSAST) on space systems and technology programs. Special ad hoc review teams are formed to address specific topics. The Ad Hoc Review Team on Planet Earth Technologies, chaired by Dr. Paul W. Mayhew, is comprised of eight members. The meeting will be open to the public up to the seating capacity of the room (approximately 75 persons including the team members and other participants).

*Type of Meeting:* Open.

*Agenda:*

March 30, 1989

9 a.m.—Introduction.

9:10 a.m.—Key Questions From the OAST Perspective.

9:20 a.m.—Office of Space Science and Applications, Earth Science and Appications Division Program and Mission Plans—an Update.

10 a.m.—Geostationary Platform Earth Science Steering Committee.

10:30 a.m.—Global Change Overview.

11 a.m.—Sensors Working Group Report.

1 p.m.—Data Systems Technology Working Group Report.

2 p.m.—Global Change Technology Steering Committee Report.

4 p.m.—Discussion.

4:30 p.m.—Adjourn.

March 31, 1989

9 a.m.—Discussion Continued.

2:30 p.m.—Critical Issues and Actions Summary.

3:30 p.m.—Adjourn.

February 27, 1989.

**Ann Bradley,**

*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

[FR Doc. 89-5070 Filed 3-3-89; 8:45 am]

BILLING CODE 7510-01-M

## NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

### Agency Information Collection Activities Under OMB Review

**AGENCY:** National Endowment for the Arts.

**ACTION:** Notice.

**SUMMARY:** The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

**DATE:** Comments on this information collection must be submitted by April 5, 1989.

**ADDRESSES:** Send Comments to Mr. Jim Houser, Office of Management and Budget, New Executive Office Building, 728 Jackson Place, NW., Room 3002, Washington, DC 20503; (202-395-7316). In addition, copies of such comments may be sent to Mrs. Anne C. Doyle, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202-682-5401).

**FOR FURTHER INFORMATION CONTACT:** Mrs. Anne C. Doyle, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202-682-5401) from whom copies of the documents are available.

**SUPPLEMENTARY INFORMATION:** The Endowment requests a review of the revision of a currently approved collection. This entry is issued by the Endowment and contains the following information (1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

*Title:* Basic State Grant Application Narrative Format.

*Fequency of Collection:* Biennially; Triennially.

*Respondents:* State or local governments.

*Use:* Requested information is needed to enable the Endowment to determine whether applicants meet eligibility requirements and criteria and to provide the Endowment with information on past performance of applicant agencies.

*Estimated Number of Respondents:* 25.

*Average Burden Hours per Response:* 13.75.

*Total Estimated Burden:* 342.

**Anne C. Doyle,**

*Administrative Services Division, National Endowment for the Arts.*

[FR Doc. 89-5113 Filed 3-3-89; 8:45 am]

BILLING CODE 7537-01-M

### Agency Information Collection Activities Under OMB Review

**AGENCY:** National Endowment for the Humanities.

**ACTION:** Notice.

**SUMMARY:** The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

**DATES:** Comments on this information collection must be submitted on or before April 5, 1989.

**ADDRESSES:** Send comments to Mrs. Ingrid Reyes, Management Assistant, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (202-786-0233) and Mr. Jim Houser, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Room 3208, Washington, DC 20503 (202-395-7316).

**FOR FURTHER INFORMATION CONTACT:** Ms. Ingrid Reyes, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (202) 786-0233 from whom copies of forms and support documents are available.

**SUPPLEMENTARY INFORMATION:** All of the entries are grouped into new forms, revision, or extensions. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what form will be used for; (6) an estimate of the number of hours needed to fill out the form. None of the entries are subject to 44 U.S.C. 3504(h).

**Category: Extension**

*Title:* Negotiation of Indirect Cost Rate Information Needed

*Form Number:* 3136-0055

*Frequency of collection:* One per year from each respondent.

*Respondents:* Not-For-Profit Institutions.

*Use:* Evaluation of Indirect Cost Rate.

*Estimated Number of Respondents:* 75.

*Frequency of Response:* Depending on type of rate provisional-annually, predetermined-biannually.

*Estimated Hours for Respondents to Provide Information:* 20 hours per respondent or 1500 total hours for all respondents.

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*Estimated Total Annual Reporting and Recording Burden:* 1650 hours.

Susan H. Metts,

*Assistant Chairman for Administration.*

[FR Doc. 89-5133 Filed 3-3-89; 8:45 am]

BILLING CODE 7535-01-M

## NUCLEAR REGULATORY COMMISSION

### Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of the Office of Management and Budget review of information collection.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* NRC Form 314—Certificate of Disposition of Materials.

3. *The form number if applicable:* NRC Form 314.

4. *How often the collection is required:* The form is submitted once, when a licensee terminates its license.

5. *Who will be required or asked to report:* Persons holding an NRC license for the possession and use of radioactive byproduct, source, or special nuclear material who are ceasing licensed activities and terminating the license.

6. *An estimate of the number of responses:* 400.

7. *An estimate of the total number of hours needed to complete the requirement or request:* An average of 0.5 hours per response, for a total of 200 hours.

8. *An indication of whether section 3504(h), Pub. L. 96-511 applies:* Not applicable.

9. *Abstract.* NRC Form 314 furnishes information to NRC regarding transfer or other disposition of radioactive material by licensees who wish to terminate their licenses. The information is used by NRC as part of the basis for its determination that the facility has been cleared of radioactive material before the facility is released for unrestricted use.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street NW., Washington, DC.

Comments and questions may be directed by mail to the OMB reviewer, Nicolas B. Garcia, Paperwork Reduction Project (3150-0028), Office of Management and Budget, Washington, DC 20503.

Comments may also be communicated by telephone at (202) 395-3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 492-8132.

Dated at Bethesda, Maryland, this 28th day of February 1989.

For the Nuclear Regulatory Commission.

Joyce A. Amenta,

*Designated Senior Official for Information Resources Management.*

[FR Doc. 89-5100 Filed 3-3-89 8:45 am]

BILLING CODE

## SECURITIES AND EXCHANGE COMMISSION

**[Rel. No. IC-16839; 812-6840]**

### ML Venture Partners II, L.P., et al.; Application

February 27, 1989.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

*Applicants:* ML Venture Partners II, L.P. ("MLVP II"), Merrill Lynch Venture Capital Inc. (the "Management Company") and ML Technology Ventures, L.P. ("ML Technology").

*Relevant 1940 Act Sections:* Exemption requested under section 57(c) from the provisions of section 57(a)(1) and under section 17(d) and Rule 17d-1 thereunder authorizing a transaction prohibited under section 57(a)(4).

*Summary of Application:* Applicants seek an order granting an exemption (1) under section 57(c) from the provisions of section 57(a)(1) to permit MLVP II to acquire certain securities from the Management Company and (2) under section 17(d) and Rule 17d-1 thereunder to permit MLVP II and ML Technology to participate in a joint arrangement relating to such securities which would otherwise be prohibited under section 57(a)(4).

*Filing Date:* The application was filed on August 19, 1987 and amended on September 1, 1988, October 20, 1988 and February 16, 1989.

*Hearing or Notification of Hearing:* An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on the application, or ask to be notified if a hearing is ordered. Any request should be in writing and should be received by the SEC by 5:30 p.m., on March 20, 1989. A request for a hearing should state the nature of the requestor's interest, the reason for the request, and the issues contested. Any person requesting a hearing should serve the Applicants with a copy of the request, either personally or by mail, and should send the request to the Secretary of the SEC, along with proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. A request for notification of the date of a hearing may be made by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, SEC, 450 5th Street, NW., Washington, DC 20459. MLVP II and the Management Company, 717 Fifth Avenue, New York, New York 10022. ML Technology, World Financial Center, North Tower, 18th Floor, New York, New York 10281.

**FOR FURTHER INFORMATION CONTACT:** Jeremy N. Rubenstein, Staff Attorney, at (202) 272-2847, or H.R. Hallock, Jr., Special Counsel, at (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commerical copier who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

### Applicants' Representations

1. MLVP II, a Delaware limited partnership, is a business development company under the 1940 Act. The investment objective of MLVP II is to seek long-term capital appreciation by making venture capital investments.

2. The General Partners of MLVP II consist of the MLVP II Individual General Partners and MLVP II Co., L.P., (the "MLVP II Managing General Partner"). The MLVP II Individual General Partners include the three MLVP II Independent General Partners (defined to be individuals who are not "interested persons" of MLVP II) and one General Partner who is an individual and who is an affiliated person of the MLVP II Managing General Partner. The MVLP II Managing General Partner is the managing general partner of MLMP II and is responsible for its venture capital investments. The MLVP II Managing General Partner is a limited partnership controlled by its general partner, the Management Company, which performs the management and administrative services necessary for the operation of MLVP II. The MLVP II Managing General Partner and the Management Company are both registered investment advisers under the Investment advisers Act of 1940. The Management Company is an indirect subsidiary of Merrill Lynch & Co., Inc. ("ML & Co."), a holding company which, through its subsidiaries, provides investment, financing, real estate, insurance and related services.



3. ML Technology is a limited partnership which has the investment objectives of seeking cash flow from, *inter alia*, investments in portfolio limited partnerships or warrants to purchase common stock of companies that sponsor portfolio limited partnerships. ML R&D Co., L.P. (the "ML Technology General Partner") is the general partner of ML Technology and is responsible for selecting ventures. The general partner of the ML Technology General Partner is an indirect wholly-owned subsidiary of ML & Co.

4. BBN Advanced Computer Partners, L.P. ("BBN Computer"), a Delaware limited partnership, intends to develop, produce, and derive income from the sale of a high performance general purpose computer system in the industrial, technical and engineering markets. The General Partner of BBN Computer is BBN Advanced Computer Development Corporation, which is a Delaware corporation and a wholly-owned subsidiary of Bolt, Beranek and Newman, Inc. ("BBN"), a diversified high technology corporation.

5. Applicants seek an order of the SEC relating to the acquisition by MLVP II from the Management Company of 22 Class A limited partnership interests (the "Class A Interests") in BBN Computer and warrants to purchase 16,500 shares of common stock of BBN. The investment opportunity was brought to the attention of the ML Technology General Partner during February of 1987, and was subsequently brought to the attention of MLVP II. The MLVP II Managing General Partner and the ML Technology General Partner conducted separate evaluations of the proposed investment and independently determined to approve investments of up to $1,000,000 and $2,500,000, respectively, for MLVP II and ML Technology.

6. On April 2, 1987, ML Technology acquired 55 BBN Computer Class A Interests. The purchase was $45,500, per Class A Interest, for an aggregate purchase price of $2,502,500. On April 2, 1987, ML Technology made a cash payment of $550,440 to BBN Computer for the Class A Interests (representing $10,008 per Class A Interest purchased) and delivered a non-interest bearing promissory note (the "Investor Note") payable to BBN Computer in the aggregate principal amount of $1,952,060 (equal to $35,492 per Class A Interest purchased) evidencing ML Technology's obligation to make three annual installment payments commencing May 15, 1988 to BBN Computer with respect to the purchase price of the Class A Interests. Also on April 2, 1987, pursuant to a Partnership Purchase Option Agreement among BBN Computer, BBN Advanced Computer Development Corporation and the limited partners of BBN Computer (the "Option Agreement"), each limited partner, including ML Technology, granted to BBN an irrevocable option (the "Purchase Option") to purchase its Class A Interests. As consideration for the grant to BBN of the option to purchase the Class A Interests, BBN issued warrants the holder to purchase 750 shares of Common Stock, $1.00 par value, of BBN per Class A Interest. As consideration for the grant to BBN of an option to purchase its 55 Class A Interests, ML Technology acquired 41,250 BBN Warrants.

7. MLVP II's investment in BBN Computer Class A Interests could not be made concurrently with ML Technology because of the need for the requested relief. Accordingly, the Management Company agreed to purchase 22 BBN Computer Class A Interests on behalf of MLVP II and to sell such Class A Interests to MLVP II following receipt of the requested order. On April 2, 1987, the Management Company acquired 22 BBN Computer Class A Interests on behalf of MLVP II, which represents approximately 3.6% of the BBN Computer Class A Interests presently outstanding, for an aggregate purchase price of $1,001,000. On April 2, 1987, the Management Company made a cash payment of $220,176 for the Class A Interests (representing $10,008 per Class A Interest purchased) and delivered an Investor Note payable to BBN Computer in the aggregate principal amount of $780,824 (equal to $35,492 per Class A Interest purchased) evidencing the Management Company's obligation to make three annual installment payments commencing May 15, 1988 to BBN Computer with respect to the purchase price of the Class A Interests. The terms of the purchase of BBN Computer Class A Interests by the Management Company and ML Technology are identical in all respects other than the number of Class A Interests purchased. On April 2, 1987, pursuant to the Option Agreement, the Management Company granted a Purchase Option to BBN to purchase its 22 Class A Interests, and in consideration therefor acquired 16,500 BBN Warrants on behalf of MLVP II.

8. The purchase price to be paid by MLVP II to the Management Company for the BBN Computer Class A Interests and accompanying BBN Warrants proposed to be acquired by MLVP II will be the lower of (i) the fair value of the investment on the date MLVP II acquires the BBN Computer Class A Interests and accompanying BBN Warrants (as determined in good faith by the MLVP II Independent General Partners in accordance with paragraph 9, below) ("Value") or (ii) the cost to the Management Company of purchasing and holding the investment (determined in accordance with paragraph 10, below) ("Cost"). If the Value is greater than the balance remaining under the Investor Note, MLVP II will assume the obligation to make any remaining payments evidenced by the Investor Note, and will simultaneously make a cash payment to the Management Company equal to the difference between the lesser of the Cost or Value and the balance remaining under the Investor Note. If the Value is less than the balance remaining under the Investor Note, MLVP II will still assume the obligation to make any remaining payments evidenced by the Investor Note; however, the Management Company will simultaneously make a cash payment to MLVP II equal to the difference between the balance remaining under the Investor Note and the Value. If the Value is equal to the balance remaining under the Investor Note, MLVP II will assume the obligation to make any remaining payments evidenced by the Investor Note, and neither MLVP II nor the Management Company will make a cash payment.

9. The Managing General Partner of MLVP II will render its written opinion as to the fair value of the BBN Computer Class A Interests and accompanying BBN Warrants on the date the investment is proposed to be acquired by MLVP II, which opinion shall discuss each of the factors, assumptions, estimates and projections (collectively, "Factors") considered in determining fair value. The Managing General Partner will make a presentation to the Independent General Partners of MLVP II as to the basis for its opinion, which presentation will include detailed information as to each Factor considered. The Managing General Partner's opinion and each Factor considered therein will then be independently reviewed by the Independent General Partners of MLVP

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II, at least a majority of whom shall have extensive knowledge in financial and business matters. Based upon their review of the opinion and presentation of the Managing General Partner and upon such other information as they deem necessary and appropriate, the Independent General Partners of MLVP II shall determine the fair value of the BBN Computer Class A Interests and accompanying BBN Warrants on the date the investment is proposed to be acquired by MLVP II. Detailed minutes, which shall at a minimum specifically discuss each of the Factors considered and the basis for any action taken, shall be kept of the Managing General Partner's presentation, the review of the Managing General Partner's opinion, and the determination of fair value by the Independent General Partners of MLVP II. All such minutes, the Managing General Partner's opinion, and any documents considered or reviewed by the Independent General Partners of MLVP II, shall be available for inspection by the Commission or its staff.

10. Cost shall be the original purchase price of $1,001,000 for the 22 BBN Computer Class A Interests paid by the Management Company on April 2, 1987, plus carrying costs related to such investments. The Cost shall therefore equal all cash payments made by the Management to BBN Computer, the balance remaining under the Investor Note, and carrying costs assessed as discussed below. MLVP II will pay no carrying costs with respect to the period prior to April 2, 1987, the acquisition date of the purchase by the Management Company, which was subsequent to the authorization of the investment by the Independent General Partners of MLVP II. The carrying costs will be assessed only with respect to the intitial cash payment made to BBN Computer by the Management Company and any payments made by the Management Company under the Investor Note. Such carrying costs will accrue with respect to each payment from the date such payment is made. For purposes of this transaction, carrying costs consist of interest charges computed at the lower of (i) the prime commercial lending rate charged by Citibank, N.A. during the period for which carrying costs are being paid or (ii) the effective cost of borrowing by ML & Co. during such period. The effective cost of borrowings by ML & Co. is its actual "Average Cost of Funds," which it calculates on a monthly basis by dividing its consolidated financing expenses by the total amount of borrowings during the period.

11. The purchase will not be consummated unless the Independent General Partners of MLVP II determine, following the issuance of the order requested in the application and prior to the acquisition of the BBN Computer Class A Interests and the accompanying BBN Warrants from the Management Company, that the investment continues to be appropriate for MLVP II.

**Applicants' Legal Analysis**

*A. Relief under Section 57(c)*

1. The relief requested under section 57(c) is justified by both the terms of the transaction and the fact that the proposed investment is not otherwise available to MLVP II. The MLVP II Managing General Partner is sophisticated and experienced in valuing securities and evaluating financial transactions generally, and has reviewed the proposed investment in detail. In this regard, the MLVP II Managing General Partner considered all information deemed relevant, including the nature of the investment, the nature of the investment by affiliates of ML & Co. in BBN Computer, and the fairness of the purchase price proposed to be paid by MLVP II. The MLVP II Managing General Partner determined that the proposed investment by MLVP II will not directly or indirectly benefit entities affiliated with ML & Co.

2. At a meeting of the Independent General Partners of MLVP II held on March 30, 1987, MLVP II's investment was approved after consideration of each of the factors set forth in section 57(c). The MLVP II Independent General Partners have such knowledge in financial and business matters as to be capable of determining whether the investment is appropriate for MLVP II. As stated above, the purchase will not be consummated unless the Independent General Partners of MLVP II make an additional determination that the investment continues to be appropriate for MLVP II.

3. MLVP II's Independent General Partners considered the fact that the proposed purchase price to be paid by MLVP II will include carrying costs incurred by an affiliated person (i.e., the Management Company) if the fair value of the investment at the time of the acquisition by MLVP II is determined to be more than the sum of the purchase price plus the affiliates's carrying costs. MLVP II believes that it is appropriate for it to reimburse an affiliate for carrying costs in a situation where an affiliate purchased an investment as, in effect, its nominee and where MLVP II would have purchased such investment directly if it had not been necessary to obtain the requested relief.

4. The investment is not otherwise available for purchase by MLVP II. the MLVP II Managing General Partner has approved the investment after review of a considerable number of possible investments for MLVP II. The proposed transaction is consistent with MLVP II's investment objective and is the kind of transaction in which it was contemplated that MLVP II would participate.

*B. Relief under Section 17(d) and Rule 17d–1*

1. The MLVP II Managing General Partner and the ML Technology General Partner reviewed the proposed investments and determined, repectively, that the investments were consistent with MLVP II's and ML Technology's investment objectives and would not disadvantage either MLVP II or ML Technology in making, maintaining or disposing of the investments. In reaching such determinations, the MLVP II Managing General Partner and ML Technology General Partner recognized that although the purchase price per Class A Interest would be the same, MLVP II and ML Technology would each acquire a different number of Class A Interests. However, MLVP II and ML Technology are at different points in their investments programs, and do not believe that the different number of Class A Interests acquired makes MLVP II's proposed investment in BBN Computer any more or less advantageous than ML Technology's investment. To the extent that the investments prove to be successful, MLVP II and ML Technology will profit equally in proportion to their respective investments.

2. The prospectus of MLVP II indicated that MLVP II may be a co-investor in portfolio companies with affiliates of management. Similarly, the prospectus of ML Technology indicated that ML Technology may co-invest in research and development partnerships with affiliates of management. MLVP II and ML Technology thus submit that the relief requested is consistent with the purposes of ML Technology and MLVP II, their stated policies and the disclosure made to prospective investors. Applicants also believe that the proposed investments are in the best interest of ML Technology and MLVP II.

**Applicants' Conditions**

If the requested order is granted, Applicants agree to the following conditions:



1. The BBN Computer Class A Interests and BBN Warrants will be acquired by MLVP II in the manner and on the terms described above.

2. In connection with the deliberations and determinations by the Independent General Partners of MLVP II, appropriate record-keeping will be maintained and made available for inspection by the Commission upon request.

3. MLVP II will not have more than 45% of its assets invested jointly with all affiliates, except as a higher percentage may result from appreciation rather than acquisition of assets.

For the Commission, by the Division of Investment Management, under delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 89–5105 Filed 3–3–89; 8:45 am]

BILLING CODE 8010–01–M

## DEPARTMENT OF STATE

### Advisory Committee on Oceans and International Environmental and Scientific Affairs, Partially Closed Meeting

Department of State officials responsible for the foreign policy aspects of chemical weapons, nuclear non-proliferation, toxic waste disposal, ocean dumping, and global warming and climate change issues will be present at 9:00 a.m. Thursday, April 13 in Room 1205 of the Department of State at 2201 C Street, NW., Washington, DC, to discuss key issues and problems concerning the above matters. This session, which is being convened by the Department's Advisory Committee on Oceans and International Environmental and Scientific Affairs, will be open to the public and will last until 11:00 a.m. Members of the general public will be admitted to the session to the limits of seating capacity and will be given the opportunity to participate in discussions according to the instructions of the Chairperson. In that regard, entrance to the Department of State building is controlled, and entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise the Office of Advanced Technology by contacting William Moody, telephone (202) 647–4923. All attendees must use the C Street entrance to the building.

Officers of the Bureau of Oceans and International Environmental and Scientific Affairs, along with the Department of State's Advisory Committee on Oceans and International Environmental and Scientific Affairs, will meet at 9:00 a.m. on Wednesday, April 12 in a session which will not be open to the public. This session will include discussion of classified material under 5 U.S.C. 552b(c)(1) and U.S.C. 552b(c)(9)(b). The disclosure of classified material and revelation of considerations which go into policy development could adversely affect the ability of the United States to achieve its foreign policy objectives. The purpose of these discussions will be to elicit views and discuss issues relating to chemical weapons, nuclear non-proliferation, toxic waste disposal, ocean dumping, and global warming and climate change. This portion of the meeting will include classified briefings and discussion of classified documents pursuant to Executive Order 12356.

Requests for further information should be directed to William Moody of the Office of Advanced Technology, of the Department of State's Bureau of Oceans and International Environmental and Scientific Affairs. He may be reached at telephone (202) 647–4923.

**Frederick M. Bernthal,**

*Chairman, Advisory Committee on Oceans and International Environmental and Scientific Affairs.*

February 9, 1989.

[FR Doc. 89–5099 Filed 3–3–89; 8:45 am]

BILLING CODE 4710–08–M

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### Reports, Forms, and Recordkeeping Requirements; Submittals to OMB on February 27, 1989

**AGENCY:** Department of Transportation (DOT), Office of the Secretary.

**ACTION:** Notice.

**SUMMARY:** This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation on February 27, 1989, to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

**FOR FURTHER INFORMATION CONTACT:** John Chandler, Annette Wilson, or Cordelia Shepherd, Information Requirements Division, M–34, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20590, telephone, (202) 366–4735, or Gary Waxman, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503, (202) 395–7340.

**SUPPLEMENTARY INFORMATION:**

**Background**

Section 3507 of Title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the **Federal Register**, listing those information collection requests submitted to the Office of Management and Budget (OMB) for initial, approval, or for renewal under that Act. OMB reviews and approves agency submittals in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms, reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

**Information Availability and Comments**

Copies of the DOT information collection requests submitted to OMB may be obtained from the DOT officials listed in the **"FOR FURTHER INFORMATION CONTACT"** paragraph set forth above. Comments on the requests should be forwarded, as quickly as possible, directly to the OMB officials listed in the "For Further Information Contact" paragraph set forth above. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB officials of your intent immediately.

**Items Submitted for Review by OMB**

The following information collection requests were submitted to OMB on February 27, 1989.

*DOT No:* 3177
*OMB No:* 2106–0036
*Administration:* DOT/Office of the Secretary
*Title:* Part 204—Data to Support Fitness Determinations
*Need for Information:* To establish the fitness of carriers seeking certificate or commuter authority.
*Proposed Use of Information:* To determine whether carriers are "fit" to engage in their proposed air transportation operations.
*Frequency:* On occasion when seeking authority under sections 401 or 419 of the Federal Aviation Act.
*Burden Estimate:* 7,800
*Respondents:* U.S. air carriers
*Form(s):* None
*Average Burden Hours Per Respondent:* 39.0.

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*DOT No:* 3178
*OMB No:* 2133–0005
*Administration:* Maritime Administration
*Title:* Uniform Financial Reporting Requirements
*Need for Information:* To prepare and file periodic financial statements.
*Proposed Use of Information:* To determine compliance with legal and contractual requirements.
*Frequency:* Semi-annually, annually
*Burden Estimate:* 7,440
*Respondents:* Shipowners, ship operators
*Form(s):* MA–172
*Average Burden Hours Per Respondent:* 15 hours reporting and 1 hour recordkeeping.
*DOT No:* 3179
*OMB No:* 2133–0501
*Administration:* Maritime Administration
*Title:* Records Retention Schedule
*Need for Information:* To ascertain if financial assistance has been properly used.
*Proposed Use of Information:* To permit proper audit of pertinent financial records at the end of an ODS or CDS contract.
*Frequency:* Quarterly, Semi-annually, annually
*Total Estimated Burden:* 3,914 hours
*Respondents:* Ship operators, ship owners
*Form(s):* None
*Estimated Average Per Response:* 78 hours reporting and 50 hours recordkeeping.
*DOT No:* 3180
*OMB No:* 2138–0023
*Administration:* Research and Special Programs Administration
*Title:* Part 291 Domestic Cargo Transportation
*Need for Information:* Information database for all cargo air carriers.
*Proposed Use of Information:* The data from Form 291–A is used to monitor the domestic all-cargo industry and the individual carriers continuing fitness.
*Frequency:* Annual
*Burden Estimate:* 76 hours
*Respondents:* Domestic all-cargo air carriers
*Form(s):* 291A
*Average Burden Hours Per Respondent:* 4 hours.
*DOT No:* 3181
*OMB No:* 2138–0013
*Administration:* Research and Special Programs Administration
*Title:* Report of Financial and Operating Statistics for Large Certified Air Carriers
*Need for Information:* To provide basic financial and traffic data which are used extensively by DOT in its ongoing programs i.e., international negotiations, fitness, safety, airport planning, etc.
*Proposed Use of Information:* To accomplish program and policy objectives also to fulfill an international Treaty obligation.
*Frequency:* Monthly, quarterly, semi-annually and annually
*Burden Estimate:* 35,308 hours
*Respondents:* Large air carriers
*Form(s):* Form 41
*Average Burden Hours Per Respondent:* 3.7 hours per schedule.
*DOT No:* 3182
*OMB No:* New
*Administration:* U.S. Coast Guard
*Title:* Instructional material for lifesaving, fire protection and emergency equipment
*Need for Information:* The requirements contained herein are needed to make sure that vessel crew members have the necessary information to properly use the equipment.
*Proposed Use of Information:* Merchant vessel crew members use this information during training sessions held on board the vessel and during emergencies.
*Frequency:* On occasion
*Burden Estimate:* 27,500
*Respondents:* Manufacturers and vessel operators
*Form(s):* N/A
*Average Burden Hours Per Respondent:* .25 for reporting; 1 hour for recordkeeping.
*DOT No:* 3138
*OMB No:* 2105–0506
*Administration:* Department of Transportation
*Title:* Uniform Relocation Assistance and Real Property acquisition Regulations for Federal and Federally Assisted Programs.
*Need for Information:* Compliance and program management.
*Proposed Use of Information:* Proper expenditure of Federal funds; owners/occupants get the protections of law.
*Frequency:* Report once each 3 years
*Burden Estimate:* 25,910 hours total
*Respondents:* State and local governments.
*Form(s):* (1) to be approved with submission
*Average Burden Hours Per Response:* 8.5 hours per report and ½ hour for recordkeeping.
*DOT No:* 3184
*OMB No:* New
*Administration:* U.S. Coast Guard
*Title:* Identification of Lifesaving, Fire Protection, and Emergency Equipment
*Need for Information:* The requirements contained herein are needed to make sure that the proper equipment is used on vessels inspected under 46 U.S.C. 3308(A) and that it is in proper location.
*Proposed Use of Information:* Merchant vessel crew members and Coast Guard inspectors use this information to determine that the material meets the regulatory requirements.
*Frequency:* On occasion
*Burden Estimate:* 23,000
*Respondents:* Manufacturers and vessel operators
*Form(s):* N/A
*Average Burden Hours Per Response:* .10 for reporting; 1 hour for recordkeeping.
*DOT No:* 3185
*OMB No:* New
*Administration:* U.S. Coast Guard
*Title:* Offshore Supply Vessels, 46 CFR Subchapter L
*Need for Information:* These requirements are needed to ensure the safety of individuals and property on board offshore supply vessels.
*Proposed Use of Information:* The information is used by crew, offshore workers, boarding officers and inspectors to make sure that the vessel is in compliance with the various regulations and treaties. Posting requirements are used to provide instructions to the crew members in order to prevent or respond to an emergency.
*Frequency:* On occasion
*Burden Estimate:* 2047
*Respondents:* varies
*Form(s):* CG–811
*Average Burden Hours Per Response:* Reporting—2.99 hours; Recordkeeping 74.33 hours.
*DOT No:* 3186
*OMB No:* New
*Administration:* U.S. Coast Guard
*Title:* 46 CFR Subchapter T, "Small Passenger Vessels"
*Need for Information:* This information collection requirement is needed to enforce the laws and regulations promoting the safety of life and property in marine transportation. Also, this requirement ensures safe operation of vessels and allows for proper reaction to emergencies.
*Proposed Use of Information:* These requirements are used to determine if the vessel's construction, arrangement stability and equipment are satisfactory for the intended service. Further, the requirements contained herein makes readily apparent to the crew, passengers, boarding officers and inspectors that the vessel is in compliance with the various regulations and treaties.



*Frequency:* On occasion
*Burden Estimate:* 249,680
*Respondents:* Small Passenger Vessels
*Form(s):* CG–854, CG–949, CG–3752, CG–3753, CG–5258
*Average Burden Hours Per Response:* .28 hours for reporting and 3.6 hours for recordkeeping.

Issued in Washington, DC, on February 27, 1989.

**Robert J. Woods,**
*Director of Information Resource Management.*

[FR Doc. 89–5139 Filed 3–3–89; 8:45 am]
BILLING CODE 4910–62–M

## Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended February 24, 1989

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et seq.). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

**Docket No. 46133**

*Date Filed:* February 21, 1989
*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* March 21, 1989
*Description:* Application of Northwest Airlines, Inc. pursuant to Section 401 of the Act and Subpart Q of the Regulations applies for an amendment of its certificate of public convenience and necessity for Route 3–F or a new certificate authorizing it to provide non-stop service between Tampa, Florida and Cancun, Mexico.

**Docket No. 46140**

*Date Filed:* February 21, 1989
*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* March 23, 1989
*Description:* Application of Northwest Airlines, Inc. pursuant to Section 402 of the Act and Subpart Q of the Regulations applies for a foreign air carrier permit to authorize it to engage in the scheduled foreign air transportation of persons, property, and mail between Toronto, Ontario and Atlantic City, New Jersey.

**Phyllis T. Kaylor,**
*Chief, Documentary Services Division.*

[FR Doc. 89–5138 Filed 3–3–89; 8:45 am]
BILLING CODE 4910–62–M

## Maritime Administration

**[Docket S–845]**

## Lykes Bros. Steamship Co., Inc.

In the matter of an application to acquire Argonaut Line, Inc. including Farrell Lines Incorporated and all of its subsidiaries and an application purusant to section 605(c) of the Merchant Marine Act, 1936, as amended, authorizing additional service from the U.S. Gulf to the Mediterranean.

By letter of February 16, 1989, as amended on February 27, 1989, Lykes Bros. Steamship Co., Inc. (Lykes) advised that it has entered into a Plan and Agreement of Merger pursuant to which Lykes will be acquiring all of the outstanding stock of Argonaut Line, Inc. (Argonaut) including Farrell Lines Incorporated (Farrell) and all of its subsidiaries. As presently contemplated, Lykes Enterprises V, Inc. (LEV), a newly incorporated Delaware corporation and a wholly-owned subsidiary of Lykes will be one of the constituent companies to the merger, and Argonaut will be the other.

Lykes and Farrell each currently served the Mediterranean. Lykes' Operating Differential Subsidy Agreement (ODSA) MA/MSB–451 permits, among other things, operation on Trade Route (TR) 13 (U.S. Gulf & South Atlantic/Mediterranean) up to a maximum of 48 annual sailings. Farrell's ODSA MA/MSB–482 permits operation of TR 10/13 (U.S. Atlantic/Mediterranean) up to a maximum of 66 annual sailings. Lykes states that, essential to realizing the economies of scale made available by the acquisition, it is necessary to amend Farrell's ODSA MA/MSB–482 to expand its authority to include U.S. Gulf ports.

Lykes believes that the authority sought by the application would do no more than allow Gulf port calls in addition to the geographic authority already provided for in the ODSA. While it is contemplated that there may be redeployment, either directly or by interchange or transfer of certain vessels, no increase in authorized sailings is requested.

It is Lykes' view that the inclusion of Gulf ports to the ODSA will allow more efficient utilization of the vessels in the future operations of the companies, while at the same time causing no injury to any other U.S.-flag liner company. Approval of the application would create a larger geographic area to be serviced by vessels operating under the ODSA and thereby limit or reduce the capacity which might be available to directly compete with any U.S.-flag liner company serving the Atlantic coast. Furthermore, no U.S. liner service is provided to U.S. Gulf ports, except that provided by Lykes.

Accordingly, Lykes believes that the facts demonstrate that to the extent any "additional service" within the meaning of section 605(c) of the Merchant Marine Act, 1936, as amended, might be sought by the application, such service is not in addition to any existing service other than that of Lykes and, therefore, Lykes knows of no entity which could satisfy the minimal requirements for standing in any section 605(c) proceeding, should one be considered.

In connection with the planned acquisition of Argonaut, including the stock of Farrell, Lykes requests that the Maritime Subsidy Board and the Maritime Administrator, as required, issue all consents, waivers, and other approvals necessary to permit the proposed transaction.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such request and desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration, Room 7300, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Comments must be received no later than 5:00 P.M. on March 17, 1989. The Maritime Subsidy Board will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 (Operating-Differential Subsidies.))

By Order of the Maritime Subsidy Board.

Date: March 1, 1989.

[FR Doc. 89–5063 Filed 3–3–89; 8:45 am]
BILLING CODE 4910–15–M

## National Highway Traffic Safety Administration

## Fourth Meeting of the Rollover Subcommittee of the Motor Vehicle Safety Research Advisory Committee

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Correction.

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**SUMMARY:** This notice announces a change in the meeting room for the fourth meeting of the Rollover Subcommittee of the Motor Vehicle Safety Research Advisory Committee (MVSRAC). The MVSRAC established this subcommittee at the February 1988 meeting to examine research questions regarding crashworthiness and crash avoidance for vehicles under 10,000 pounds GVW.

**DATE AND TIME:** The meeting is scheduled for Thursday, March 16, 1989, from 10:00 a.m. to 5:00 p.m.

**ADDRESS:** The meeting will be held in Room 10234 of the U.S. Department of Transportation Building, which is located at 400 Seventh Street, SW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Louis V. Lombardo, Office of Research and Development, 400 Seventh Street, SW., Room 6208, Washington, DC 20590, telephone: (202) 366-4862.

Issued on: February 28, 1989

**Howard M. Smolkin,**

*Chairman, Motor Vehicle Safety Research Advisory Committee.*

[FR Doc. 89-5140 Filed 3-3-89; 8:45 am]

BILLING CODE 4910-59-M

## DEPARTMENT OF THE TREASURY

### Public Information Collection Requirements Submitted to OMB for Review

Date: February 28, 1989.

The Department of the Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

**Internal Revenue Service**

*OMB Number:* 1545-0988.
*Form Number:* 8609.
*Type of Review:* Resubmission.
*Title:* Low-Income Housing Credit Allocation Certification.
*Description:* Form 8609 is used by State and local housing credit agencies to allocate a low-income housing credit dollar amount to owners of low-income housing. Also used by owners to certify that the building qualifies for credit. Part I completed by State or local agency; rest of form completed by building owner. (Part II completed first year only; Part III completed each year for 15-year compliance period.)
*Respondents:* State or local governments, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations.
*Estimated Number of Respondents:* 1,000.
*Estimated Burden Hours Per Response/Recordkeeping:*

| | 8609 | Sched. A |
|---|---|---|
| Recordkeeping | 7 hrs. 25 mins. | 6 hrs. 13 mins. |
| Learning about the law or the form. | 1 hr. 59 mins. | 53 mins. |
| Preparing, and sending the form to IRS. | 2 hrs. 11 mins. | 1 hr. 2 mins. |

*Frequency of Response:* Annually.
*Estimated Total Recordkeeping/Reporting Burden:* 1,307,100 hours.
*Clearance Officer:* Garrick Shear, (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
*OMB Reviewer:* Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports Management Officer.*

[FR Doc. 89-5110 Filed 3-3-89; 8:45 am]

BILLING CODE 4810-25-M

### Public Information Collection Requirements Submitted to OMB for Review

Date: February 28, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

**Alcohol, Tobacco and Firearms**

*OMB Number:* 1512-0007.
*Form Number:* ATF F 3310.6.
*Type of Review:* Extension.
*Title:* Interstate Firearms Shipment Report of Theft/Loss.
*Description:* ATF F 3310.6 is part of a voluntary program in which the Common Carrier and/or shipper report losses or thefts of firearms from interstate shipments. The form is completed by the carrier/shipper to notify ATF of the loss or theft. ATF uses this information to ensure that the firearms are entered into the National Crime Information Center (NCIC), to initiate investigations and to perfect criminal cases.
*Respondents:* Businesses or other for-profit.
*Estimated Number of Respondents:* 750.
*Estimated Burden Hours Per Response:* 20 minutes.
*Frequency of Response:* On occasion.
*Estimated Total Reporting Burden:* 250 hours.
*OMB Number:* 1512-0096.
*Form Number:* ATF F 5130.12 (1689).
*Type of Review:* Extension.
*Title:* Beer for Exportation.
*Description:* Untaxpaid beer may be removed from a brewery for exportation without payment of the excise taxes normally due. In order that this will be accomplished, and for ATF to monitor such transactions, brewers complete ATF F 5130.12 (1689). The form monitors exports on ships and aircraft or to military bases. The form is certified by U.S. Customs and ensures that untaxpaid beer does not reach domestic markets.
*Respondents:* Businesses or other for-profit, Small businesses or organizations.
*Estimated Number of Respondents:* 101.
*Estimated Burden Hours Per Response:* 1 hour 39 minutes.
*Frequency of Response:* On occasion.
*Estimated Total Reporting Burden:* 10,000 hours.
*OMB Number:* 1512-0138.
*Form Number:* ATF F 1520.20 (2005).
*Type of Review:* Extension.
*Title:* Certification of Tax Determination—Wine.
*Description:* Wine that has been manufactured, produced, bottled or packaged in bulk containers in the U.S. and then exported, may have the revenue tax already paid or determined on the refunded to the exporter. The form validates from the producing winery that the wine was produced in the U.S. and was taxpaid on withdrawal from bond.
*Respondents:* Individuals or households, Businesses or other for-profit, Small businesses or organizations.
*Estimated Number of Respondents:* 1,000.
*Estimated Burden Hours Per Response:* 30 minutes.
*Frequency of Response:* On occasion.
*Estimated Total Reporting Burden:* 500 hours.
*Clearance Officer:* Robert Masarsky (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.
*OMB Reviewer:* Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports Management Officer.*

[FR Doc. 89-5111 Filed 3-3-89; 8:45 am]

BILLING CODE 4810-25-M



### Public Information Collection Requirements Submitted to OMB for Review

Date: March 1, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

**Alcohol, Tobacco and Firearms**

*OMB Number:* 1512-0081.
*Form Number:* ATF F 5130.23.
*Type of Review:* Extension.
*Title:* Brewer's Bond Continuation Certificate.
*Description:* ATF F 5130.23 is completed by brewers to indicate that an existing bond is being continued by the surety company. The brewer may use this form instead of a new bond. The certificate identifies the respondent, the respondent's address and description of the bonds which are being continued by this certificate.
*Respondents:* Businesses or other for-profit, Small businesses or organizations.
*Estimated Number of Respondents:* 35.
*Estimated Burden Hours Per Response:* 1 hour.
*Frequency of Response:* On occasion.
*Estimated Total Reporting Burden:* 35 hours.
*Clearance Officer:* Robert Masarsky (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.
*OMB Reviewer:* Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports, Management Officer.*

[FR Doc. 89-5112 Filed 3-3-89; 8:45 am]

BILLING CODE 4810-25-M

## VETERANS ADMINISTRATION

### Agency Information Collection Under OMB Review

**AGENCY:** Veterans Administration.

**ACTION:** Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The responsible department or staff office; (2) the title of the collection(s); (3) the agency form number(s), if applicable; (4) a description of the need and its use; (5) how often the information collection must be completed, if applicable; (6) who will be required or asked to report; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to respond; and (9) an indication of whether section 3504(h) of Pub. L. 96-511 applies.

**ADDRESSES:** Copies of the proposed information collection and supporting documents may be obtained from John Turner, Department of Veterans Benefits (203C), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420 (202) 233-2744.

Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-7316.

**DATES:** Comments on the information collection should be directed to the OMB Desk Officer on or before April 5, 1989.

Dated: February 27, 1989.

By direction of the Administrator.

**Frank E. Lalley,**

*Director, Office of Information Management and Statistics.*

**Extension**

1. Department of Veterans Benefits.
2. Apprenticeship—Standards and Training Agreement; On-The-Job-Training Agreement and Training Standards; Employer's Application to Provide Job Training.
3. VA Forms 22-8863, 22-8864, and 22-8865.
4. The information is collected from employers and trainees to ensure that apprenticeship and on-the-job training programs and agreements meet the statutory requirement for approval.
5. On occasion.
6. State or local governments; Farms; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations.
7. 4,500 responses.
8. 3,750 hours.
9. Not applicable.

[FR Doc. 89-5073 Filed 3-3-89; 8:45 am]

BILLING CODE 8320-01-M

### Information Collection Under OMB Review

**AGENCY:** Veterans Administration.

**ACTION:** Notice.

The Veterans Administration has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The department sponsoring the information collection; (2) the title of the information collection; (3) the agency form number, if applicable; (4) a description of the need and its use; (5) frequency of the information collection; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Pub. L. 96-511 applies.

**ADDRESSES:** Copies of the study and supporting documents may be obtained from Ann Bickoff, Department of Medicine and Surgery (136E), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-2282.

Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-7316.

**DATES:** Comments on the information collection should be directed to the OMB Desk Officer on or before April 5, 1989.

Dated: February 17, 1989.

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By direction of the Administrator.

**Frank E. Lalley,**

*Director, Office of Information Management and Statistics.*

**Extension**

1. Department of Medicine and Surgery.
2. Agent Orange Registry Code Sheet.
3. VA Form 10–9009.
4. The form is used to obtain information from the veteran during an Agent Orange examination. Information is obtained through an interview with the examining physician and is used to identify veterans who may have been exposed to Agent Orange.
5. One-time (non-recurring).
6. Individuals or households.
7. 10,000 responses.
8. 1,500 hours.
9. Not applicable.

[FR Doc. 89–5074 Filed 3–3–89; 8:45 am]

BILLING CODE 8320-01-M

**Availability of Report; Program Evaluation; Nursing Home Care Programs**

Notice is hereby given that the VA's Nursing Home Care Program Evaluation has been completed.

Single copies of the VA's Nursing Home Care Programs Evaluation Report are available. Reproduction of multiple copies can be arranged at the user's expense.

Direct inquiries, specifying the name of the program evaluation desired, to Mr. Joseph W. Bauernfeind, Acting Director, Studies and Evaluation Service, Veterans Administration (072), 810 Vermont Avenue NW., Washington, DC 20420.

Dated: February 23, 1989.

By direction of the Acting Administrator.

**H. Raymond Wilburn,**

*Acting Director, Office of Program Analysis and Evaluation.*

[FR Doc. 89–5075 Filed 3–3–89; 8:45 am]

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federal register

Monday
March 6, 1989

Part II

# Department of Transportation

**Federal Aviation Administration**

**14 CFR Parts 1 and 23**

**Small Airplane Airworthiness Review Program Notice 2; Notice of Proposed Rulemaking**

VOL 54 ISS 42 MR 6 1989 UMI



**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Parts 1 and 23**

**[Docket No. 25811; Notice No. 89-5]**

**RIN 2120-AC15**

## Small Airplane Airworthiness Review Program Notice 2

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of Proposed Rulemaking (NPRM).

**SUMMARY:** This notice is one of a series of notices that proposes to adopt new and amended airworthiness standards for small airplanes which are based on certain proposals discussed at the Small Airplane Airworthiness Review Conference held on October 22–26, 1984, in St. Louis, Missouri. These new and amended airworthiness standards result in the need for new definitions to be added to the regulations, and this notice also proposes the addition of those definitions. The proposals of this notice reflect advancements in technology being incorporated in current designs, permit type certification of spin resistant airplanes, and reduce the regulatory burden in showing compliance with some of the requirements while maintaining the standards governing the design and type certification of small airplanes as may be required in the interest of safety.

**DATE:** Comments must be received on or before July 5, 1989.

**ADDRESS:** Comments on this notice may be mailed in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Docket No. 25811, 800 Independence Avenue SW., Washington, DC 20591, or delivered in triplicate to: Room 915-G, 800 Independence Avenue SW., Washingotn, DC 20591. Comments delivered must be marked Docket No. 25811. Comments may be inspected in Room 915-G between 8:30 a.m. and 5:00 p.m. on weekdays, except on Federal holidays.

In addition, the FAA is maintaining an information docket of comments in the Office of Assistant Chief Counsel, ACE-7, Federal Aviation Administration, Central Region, 601 East 12th Street, Kansas City, Missouri 64106. Comments in the information docket may be inspected in Room 1558 between the hours of 7:30 a.m. and 4:00 p.m. on weekdays, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Ervin E. Dvorak, Standards Office (ACE-110), Aircraft Certification Division, Central Region, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; Telephone (816) 426-5688.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rules by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, or economic impact that might result from adopting the proposals in this notice are invited. Communications should identify the regulatory docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administartor before taking further rulemaking action. Commenters wishing the FAA to acknowledge receipt of comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 25811." The postcard will be date stamped and returned to the commenter. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

### Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attn: Public Inquiry Center, (APA-200), 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on the mailing list for future NPRMs should also request a copy of Advisory Circular 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

### Background

On January 31, 1983, the FAA announced the Small Airplane Airworthiness Review Progarm, Notice CE-83-1, (48 FR 4290), and invited all interested persons to submit proposals for changes to the airworthiness standards of Part 23. The Review Program objective was to encourage public participation in improving and updating the airworthiness standards applicable to small airplanes.

In response to requests from interested persons, the FAA reopened the time period for submission of proposals by issuing Notice CE-83-1A (48 FR 26623; June 9, 1983). This action was based upon an FAA determination that it would be in the public interest to permit additional time for the public and the aviation industry to submit proposals.

By the close of the reopened proposal period on May 3, 1984, the FAA had received approximately 560 proposals in response to Notices CE-83-1 and CE-83-1A. On July 25, 1984, the FAA issued Notice CE-84-1 (49 FR 30053) announcing the Availability of Agenda, Compilation of Proposals, and Announcement of the Small Airplane Airworthiness Review Program Conference to discuss the proposals. The conference was held on October 22-26, 1984, in St. Louis, Missouri. A copy of the transcript of all discussions held during the conference is filed in Docket 23494.

Since the conference, Part 23 has been amended by amendments 23-31, 23-32, 23-33 and 23-34. Consequently, these proposals are based on Part 23, as amended through amendment 23-34.

Notice 1 (51 FR 44878, December 12, 1986) of the Small Airplane Airworthiness Review Program is directed toward improvement of crashworthiness. After a further consideration of the review proposals and the October 22-26, 1984, conference transcript, the FAA found that proposals selected for Notice 2 were identified in conference discussion as those next in priority. It should be noted the some of the originally scheduled Notice 2 proposals have been removed from this notice and that these proposals will be included in a separate notice identified as Notice 5.

This action was taken to expedite a limited number of proposals and, thus, eliminate the need for further processing of special conditions and exemptions; thereby eliminating costly delays to the applicants and reducing of the FAA resources dedicated to approval of these documents. The proposals in Notice 5 would upgrade airworthiness standards to include design requirements for complex systems critical to safety in Part 23 airplanes and amend the flight instrument requirements of Parts 91 and 135. The remaining review proposals will be divided between Notice 3 and 4. Those proposals for propulsion and systems items will be addressed in Notice 3 with flight and airframe items in Notice 4.



### Regulatory and Economic Evaluations

Most of the proposals in this notice are directed at developing uniform airworthiness standards (many of which have been applied previously as special conditions in specific type certification programs) in addressing the design and incorporation of advanced technology (anti-stall systems, icing systems, digital fuel control systems) in small airplanes as well as to facilitate the type certification of new designs (canard or tandem wing configurations). These proposals are of a cost-relieving nature because they would eliminate the need for special conditions processing, which often involves costly delays. In addition, many of these proposals involve design features that are optional in the sense that the manufacturers are not being directed to incorporate the newest technology in the design of their future models, but are being afforded a set of regulations to observe should they choose the new technology.

The benefits were estimated on the basis of two alternative assumptions of small airplane production. The conservative assumption projects a continuation of the depressed condition of this industry. A more optimistic assumption that the industry will regain its economic health was also used to estimate the benefits. These two assumptions were used to estimate a range of the expected benefits. It was determined that the most cost effective proposal pertained to spin resistant airplanes, which was estimated to involve fairly substantial quantifiable benefits amounting to about $21 million (discounted) over the 20 year study period (see Table 1) based on the optimistic assumption about small airplane production. Estimates of the potential benefits of these proposals were also derived on the basis of the conservative assumption of a continuation of the depressed condition of this industry. Using this alternative assumption, the benefits of this proposal were estimated at about $3 million. Three other proposals were expected to produce benefits amounting to a total of about $1.5 million over the study period, based on the optimistic assumption, and on the order of $.4 million using the more conservative assumption.

TABLE 1.—SUMMARY OF ESTIMATED BENEFITS (DISCOUNTED) AND COSTS (MILLIONS OF DOLLARS)

| Proposed rule | Best estimate of benefits | Range | Costs |
|---|---|---|---|
| A. Based on assumption of a continuation of recent small airplane production trends: | | | |
| §§ 23.221-23.445 Spin Resistant & Canard Configured Airplanes | $3.0 | $2.50-3.6 | Relieving. |
| § 23.735 Anti-Skid Braking Systems | 0.02 | 0.01-.06 | Minor. |
| § 23.831 Ventilation | 0.33 | 0.27-0.36 | Relieving. |
| § 23.1163 Powerplant Accessories | 0.08 | 0.04-0.12 | Relieving. |
| Total | 3.43 | 2.82-4.16 | |
| B. Based on assumption of a rebound in production: | | | |
| §§ 23.221-23.445 Spin Resistant & Canard Configured Airplanes | 21.4 | 17.70-25.6 | Relieving. |
| § 23.735 Anti-Skid Braking Systems | 0.13 | 0.07-0.4 | Minor. |
| § 23.831 Ventilation | 0.78 | 0.30-1.95 | Relieving. |
| § 23.1163 Powerplant Accessories | 0.57 | 0.29-0.86 | Relieving. |
| Total | 22.88 | 18.45-28.81 | |

### Trade Impact Analysis

The proposals in this notice would have little or no impact on trade for both U.S. firms doing business in foreign countries and foreign firms doing business in the U.S. In the U.S., foreign manufacturers would have to meet U.S. requirements, and thus they would gain no competitive advantage. In foreign countries, U.S. manufacturers would not be bound by Part 23 requirements and could, therefore, implement the proposal under study solely on the basis of competitive considerations.

### Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The RFA requires agencies to review rules which may have "a significant economic impact on a substantial number of small entities."

The FAA's criteria for a small airplane manufacturer is one employing less than 75 employees, a substantial number is a number which is not less than 11 and which is more than one-third of the small entities subject to the proposed rules, and a significant impact is one having an annual cost of more than $14,900 (in 1987 dollars) per manufacturer.

A review of domestic general aviation manufacturing companies indicates that only six companies meet the size threshold of 75 employees or less. The proposed amendment to 14 CFR Part 23 will, therefore, not affect a substantial number of small entities.

### Federalism Implications

The regulations proposed herein would not have substantial direct effects on the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

### Conclusion

The FAA has determined that this document involves regulations which are not considered to be major under the procedures and criteria prescribed by Executive Order 12291 or significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the regulatory evaluation prepared for this action is contained in the regulatory docket. A copy may be obtained from the person identified as the contact for further information. For the reasons stated above and in the regulatory evaluation, I certify that this proposed regulation will not have a significant economic impact on a substantial number of small entities. In addition, this proposed rule will have little or no impact on trade opportunities for the U.S. firms doing business overseas or for

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foreign firms doing business in the United States.

**List of Subjects**

*14 CFR Part 1*

Definitions, Abbreviations.

*14 CFR Part 23*

Aircraft, Aviation safety, Air transportation, Safety, Tires.

**The Proposed Amendment**

Accordingly, the Federal Aviation Administration proposes to amend Parts 1 and 23 of the Federal Aviation Regulations (14 CFR Parts 1 and 23) as follows:

**PART 1—DEFINITIONS AND ABBREVIATIONS**

1. The authority citation for Part 1 continues to read as follows:

**Authority:** 49 U.S.C. 1347, 1348, 1354(a), 1357(d)(2), 1372, 1421 through 1430, 1432, 1442, 1443, 1472, 1510, 1522, 1562(e), 1655(c), 1657(f); 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

2. Section 1.1 is amended by adding the definitions "Canard" and "Canard configuration" after "Calibrated airspeed"; "Forward wing" after "Foreign air transportation"; "Tandem wing configuration" after "Takeoff thrust"; and "Winglet or tip fin" after "VFR over-the-top" to read as follows:

**§ 1.1 General definitions.**

* * * * *

"Canard" means the forward wing of a canard configuration and may be a fixed, movable, or variable geometric surface, with or without control surfaces.

"Conard configuration" means a configuration in which the span of the forward wing is substantially less than that of the main wing.

* * * * *

"Forward wing" means a forward-lifting surface of a canard configuration or tandem-wing configuration airplane. The surface may be a fixed, movable, or variable geometric surface, with or without control surfaces.

* * * * *

"Tandem wing configuration" means a configuration having two wings of similar span, mounted in tandem.

* * * * *

"Winglet or tip fin" means an out-of-plane surface extending from a lifting surface. The surface may or may not have control surfaces.

* * * * *

**Explanation**

This proposal would adopt generally accepted terminology used to define airplane components and configurations that have come into use with new airplane designs and advanced technology.

Conference discussions indicated the definition of "canard" in conference proposal 520 was too brief and did not clearly indicate a canard's relationship to controlling an airplane with a canard. This relationship was implied in the definition of a forward wing and has therefore been included in the proposed definition of canard.

The advancement of technology has made it desirable to design airplanes with configurations differing from the conventional configurations where the wing (or wings for the common biplane) has ailerons and flaps, and the empennage has horizontal and vertical stabilizers, elevators, and rudders. The components of these new configurations have been used in amateur-built designs and sophisticated military designs for several years. A specific component has not always been referred to with the same terminology, although that component performs essentially the same function from one design to the next. However, the commercial use has resulted in some generally accepted terminology. Furthermore, this notice includes other proposals that use this terminology.

*Reference:* Conference proposal 520.

**PART 23—AIRWORTHINESS STANDARDS: NORMAL, UTILITY, ACROBATIC, AND COMMUTER CATEGORY AIRPLANES**

3. The authority citation for Part 23 continues to read as follows:

**Authority:** 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1425, 1428, 1429, 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

4. Section 23.67 is amended by revising paragraphs (a), (a)(2), (a)(5), (b), and (c) to read as follows:

**§ 23.67 Climb: One engine inoperative.**

(a) For normal, utility, and acrobatic category, reciprocating-engine-powered multiengine airplanes, one-engine-inoperative climb gradients must be determined at each weight established as an operational limit by the applicant, with the—

(1) * * *

(2) Remaining engines at not more than maximum continuous power or thrust;

* * * * *

(5) The means for controlling the engine cooling air supply in the position used in the engine cooling tests required by §§ 23.1041 through 23.1047 of this part.

(b) For normal, utility, and acrobatic category reciprocating-engine-powered multiengine airplanes the following apply:

(1) Each airplane with a $V_{so}$ of more than 61 knots, or of more than 6,000 pounds maximum weight, must be able to maintain a steady gradient of climb of at least 1.5 percent at a pressure altitude of 5,000 feet and at standard temperature (41 degrees F) with the airplane in the configuration prescribed in paragraph (a) of this section.

(2) Each airplane with a $V_{so}$ of 61 knots or less and of 6,000 pounds or less maximum weight must have its steady rate of climb at a pressure altitude of 5,000 feet and at standard temperature (41 degrees F) determined with the airplane in the configuration prescribed in paragraph (a) of this section.

(c) For normal, utility, and acrobatic category turbine-engine-powered multiengine airplanes the following apply:

(1) The steady gradient of climb must be determined at each weight, altitude, and ambient temperature within the operational limits established by the applicant, with the airplane in the configuration prescribed in paragraph (a) of this section.

(2) Each airplane must be able to maintain at least the following climb gradients with the airplane in the configuration prescribed in paragraph (a) of this section:

(i) 1.5 percent at the pressure altitude of 5,000 feet and standard temperature (41 degrees F); and

(ii) 0.75 percent at a pressure altitude of 5,000 feet and 81 degrees F (standard temperature plus 40 degrees F).

(3) The minimum climb gradient specified in paragraphs (c)(2)(i) and (ii) of this section must vary linearly between 41 degrees F and 81 degrees F and must change at the same rate up to the maximum operating temperature approved for the airplane.

* * * * *

**Explanation**

This proposal, which is applicable to normal, utility, and acrobatic category airplanes, would establish a climb gradient as the performance requirement for the one-engine-inoperative condition in place of the current rate-of-climb requirement, which is based upon the airplane's landing configuration stalling speed, and would consolidate the airplane's configuration requirements for determining climb gradients in one



paragraph rather than three paragraphs as currently stated.

The current rule is the only small airplane performance requirement expressed in terms of stall speed and results in a variable climb gradient, depending on an airplane's landing configuration stall speed if above 61 knots. In addition, the current requirement for a small airplane is also expressed in a different manner than the one-engine-inoperative climb requirements for transport category airplanes which has been used successfully and satisfactorily for many years.

A proposal to the 1974–1975 Airworthiness Review Program recommended use of climb gradients in the flight performance requirements rather than rate of climb for specifying climb performance requirements. In Notice 75–25 (40 FR 24664, June 9, 1975) the FAA stated that it would give further study to the issue of converting the climb requirements from a rate of climb to a gradient of climb.

The General Aviation Manufacturers Association (GAMA) petitioned for a change to the current rule (47 FR 38705, September 2, 1982) to require that the one-engine-inoperative climb requirements be independent of the airplane's stall speed if above 61 knots and instead be expressed as a simple gradient of at least 1.2 percent. Subsequently, GAMA, the FAA, and several other interested persons submitted proposals relative to this issue to the Small Airplane Airworthiness Review Program (48 FR 4290, January 31, 1983).

Of the seven proposals concerning § 23.67 submitted for the review, only proposals 46, 47, and 50 were discussed at the conference. Proposals 46 and 50 addressed requirements for airplanes having a gross weight of 6,000 pounds or less. Proposal 47 addressed turbine-engine-powered airplanes and reciprocating-engine-powered airplanes with a gross weight of more than 6,000 pounds. Proposal 46 recommended a climb gradient not less than zero at takeoff, while proposal 50 recommended a climb gradient of 1.0 percent when the airplane is flying 1,000 feet above the airport. Proposal 46 received one comment in support and one comment in opposition. Another commenter stated that there is no substantive information presented to support a need for a requirement change as recommended in proposal 46. One commenter opposed proposal 50 because it is an operational rather than an airworthiness requirement. In light of views expressed at the conference, and upon further review by the FAA, the FAA concludes that no further action is necessary on proposals 46 and 50.

Proposal 47 would establish a 1.2 percent climb gradient and remove the rate-of-climb requirement based on stall speed for turbine engine-powered airplanes and reciprocating-engine-powered airplanes having a gross weight of more than 6,000 pounds. In the conference discussion, one attendee expressed a desire to retain the rate-of-climb requirement based on stall speed and also retain the 1.2 percent climb gradient requirement. This expressed desire was predicated as being consistent with special conditions issued in past certifications and, at that time, considered necessary. Other commenters supported only the 1.2 percent climb gradient requirement. After further consideration and review of the background of the current requirement, including pertinent special conditions, the FAA concludes that the arguments presented in support of the intent of proposal 47 and the discussions at the conference in support of simplifying the requirement are valid reasons for proposing a rule change.

However, the FAA does not consider a one-engine-inoperative climb gradient of 1.2 percent as providing a minimum requirement equivalent to that required by the current rule in all cases. The FAA examined the performance data as presented in Airplane Flight Manuals (AFM) and Pilot Operating Handbooks (POH) for twelve reciprocating-engine-powered small airplanes and seven turbine-engine-powered small airplanes. A comparison of the current requirement based upon 0.027 $V_{so}^2$ for reciprocating-engine-powered small airplanes and the 1.2 percent climb gradient, or if greater, the 0.027 $V_{so}^2$ rate of climb for turbine-engine-powered small airplanes showed that the prevailing requirement for one-engine-inoperative climb is dictated by the landing configuration stall speeds, even when assuming that the climb gradient requirement as applicable for turbine-engine-powered airplanes would be applicable in the case of reciprocating-engine-powered airplanes. The landing configuration stall speeds varied from 62 knots calibrated airspeed (CAS) for one reciprocating-engine-powered airplane with a maximum certificated weight of 7,000 pounds to 79 knots CAS for another with a maximum certificated weight of 7,800 pounds. In addition, one of the twelve airplanes had a $V_{so}$ of 71 knots CAS at a maximum weight of 8,400 pounds. The one-engine-inoperative, rate of climb requirement for these airplanes, therefore, varies from 104 feet-per-minute to 169 feet-per-minute. When these rates of climb are converted to climb gradient equivalents using the AFM or POH published best rate of climb speeds with one engine inoperative, the climb gradient equivalents then vary from 0.99 to 1.34 percent. The actual performance as set forth in the AFM or POH for these airplanes varied from 150 feet-per-minute to 320 feet-per-minute and equivalent climb gradients from a low of 1.26 percent to a high of 2.77 percent at the one engine inoperative speeds. For the twelve reciprocating-engine-powered airplanes, the average climb gradients from the AFM or POH data was 1.92 percent, and ten of these twelve exceeded a climb gradient of 1.8 percent at a pressure altitude of 5,000 feet and at standard temperature, 41 degrees F. The comparison of the performance requirements for the seven turbine-engine-powered airplanes and the data contained in the AFM or POH showed an even wider variation between the Part 23 minimum requirements and actual performance than that for reciprocating-engine-powered airplanes. However, because of the higher landing configuration stall speeds of these turbine-engine-powered airplanes, compliance with the rate of climb requirement of Part 23 results in higher rate of climb performance. Current § 23.67(c) results in rate of climb requirements for the seven turbine-engine-powered airplanes of 124 feet-per-minute to 224 feet-per-minute. For the airplane with 124 feet-per-minute climb gradient, the requirement of 1.2 percent prevails by increasing the rate of climb by 6 feet-per-minute over that obtained by using the 0.027 $V_{so}^2$ value. When the preceding rates of climb of 124 to 224 feet-per-minute are converted to climb gradient equivalents using the AFM or POH published best rate of climb speeds with one engine inoperative, the climb gradient equivalents then vary from 1.2 to 1.65 percent, and averages 1.38 percent for the seven turbine-engine-powered airplanes. However, the actual performance as set forth in the AFM or POH for these airplanes varied from 2.65 percent to 5.82 percent.

The FAA reviewed the accidents/incidents due to one-engine-inoperative operations for the past five years for each of the reciprocating-engine-powered airplanes and turbine-engine-powered airplanes in the previously discussed comparisons. During this five year period, there were a total of 37 accidents in the reciprocating-engine-powered airplane models and nine accidents in the turbine-engine-powered airplane models. The difference in the number of accidents between the two

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types of airplanes can be attributed to a number of reasons, not the least of which could be the actual performance achieved by the designs of the turbine-engine-powered airplanes as opposed to mere compliance with the minimum performance requirements of § 23.67.

The FAA is proposing an increase in the minimum performance requirements of § 23.67 when compared to the current requirements. However, the proposed increase is not significant when compared to the actual performance achieved by current type certificated designs. The proposal also establishes a uniform minimum performance standard for one-engine-inoperative climb for all multiengine airplanes with maximum weights of 6,000 pounds or more, or stall speeds in excess of 61 knots, unrelated to the landing configuration stall speed, by requiring a minimum climb gradient as discussed at the Part 23 Airworthiness Review Conference. Therefore, the FAA is proposing to require as a minimum performance standard, a climb gradient of 1.5 percent at a pressure altitude of 5,000 feet and at standard temperature, 41 degrees F. In addition, the FAA is proposing that the climb gradient be achieved at a speed not less than 1.2 $V_{S1}$ to assure that the airspeed used in showing compliance does not degrade below a safe value.

*Reference:* Conference proposals 46, 47, 48, 49, 50, 51, and 52. Proposals 48, 49, 51, and 52 were withdrawn at the conference.

5. Section 23.75 is amended by revising paragraphs (a), (b), and (f)(3); and by adding a new paragraph (h) to read as follows:

**§ 23.75 Landing.**

* * * * *

(a) A steady approach with a calibrated airspeed of not less than 1.3 $V_{S1}$ must be maintained down to the 50-foot height and—

(1) The steady approach must be at a gradient of descent not greater than 5.2 percent (3 degrees) down to the 50-foot height.

(2) In addition, for airplane designs incorporating short field landing features, the landing distance must be determined by tests, after approach to the 50-foot height, at the maximum steady approach gradient selected by the applicant as an operating limitation.

(b) The landing may not require more than average piloting skill or conditions.

* * * * *

(f) * * *

(3) Is such that no more than average skill is required to control the airplane.

* * * * *

(h) If any device is used that depends on the operation of any engine, and the landing distance would be increased when a landing is made with that engine inoperative, the landing distance must be determined with that engine inoperative unless the use of other compensating means will result in a landing distance not more than that with each engine operating.

**Explanation**

This proposal would require that landing distances be determined for all airplanes by using a steady approach at a gradient of descent of 5.2 percent; require that landing distance for airplanes with short field landing features be determined at the maximum steady approach gradient selected by the applicant as an operating limitation; require that if any device used in determining the landing distance is dependent on any engine operation, and if the distance would be greater with that engine inoperative, the distance with that engine inoperative must be determined unless the use of compensating means will result in a landing distance not more than that with each engine operating; and require that the landing not require more than average piloting skills or average conditions. This FAA proposal was developed after further rview of conference proposals 56 through 61, and the conference discussions of these proposals.

Safety and repeatability of landings and landing distances for operational use are primary considerations in the type certification of airplanes. Unrealistically steep approaches and high vertical velocities at touchdown have damaged airplanes during the flight test phase of some type certification programs in attempting to establish short landing distances under the wording of the current requirements for determining landing distances.

The FAA has concluded that safer and more realistic methods should be proposed for establishing landing distance data.

The proposed steady approach at a gradient of descent of 5.2 percent (3 degrees) was considered by conferees to have advantages and disadvantages. It would eliminate the "gliding approach" of the current rule which resulted in each airplane approaching at different gradients of descent during landing distance tests depending on each airplane's ability to glide in a landing configuration, and, instead, require that the landing distance determination be made after approaching at the typical Instrument Landing System (ILS) approach gradient, 5.2 percent, used by the vast majority of instrument landing systems throughout the world. Some conferees preferred the gliding approach, but it was generally agreed that the 5.2 percent gradient would result in an operationally realistic and repeatable landing distance. The 5.2 percent approach gradient was also opposed because operating rules may factor landing distances determined during type certification. The FAA has determined that safe and repeatable landing distances should be established during type certification and, if an additional landing distance is required by any operating rule, such as Part 135, determination of that additional distance for an increased level of safety is a part of the operations certification and independent of the type certification process.

Another concern expressed was that the 5.2 percent approach gradient would discourage development of steep approach and short landing airplanes. The FAA expressed the position at the conference and continues to maintain the position, that it does not consider the 5.2 percent approach gradient design limiting since any applicant can demonstrate an approach envelope that includes the unique steep landing features of their airplanes. However, the 5.2 percent approach gradient is needed to assure landing distance data for the normal approach and landing environments in which all airplanes may be required to operate; i.e., standard instrument landing system, regardless of their steep landing features that may allow them to operate in unique environments, such as Microwave Landing System (MLS) approaches that are presently considering approach angles as great as eight degrees.

One conference proposal recommended a computation, in lieu of testing, to determine the landing distance. There was concern expressed at the conference that allowing computation of the distance from the 50-foot height point to the touchdown point, in lieu of testing, would remove incentive for manufacturers to provide airplanes with devices, such as spoilers, which could enhance landing safety. After further consideration, the FAA has concluded that computation, in lieu of testing, will not assure the level of safety necessary to make routine landings within the calculated landing distance or on the other hand, the calculated distance may be excessive and not provide a minimum requirement.

One conference proposal recommended limiting the touchdown velocity to six feet per second. The opinion was expressed that airplanes can be designed to land safely at touchdown sink rates in excess of six feet per second. The FAA agrees that such designs are possible, and is of the opinion that such a requirement may set forth an unwarranted restraint in light of the requirements presently in § 23.75(c).

There was no specific disagreement expressed relative to skill of pilots; i.e., "average piloting skill" versus "exceptional skill is not required." The FAA has concluded that the landing distances established during type certification must be able to be consistently and safely accomplished by the average pilot during routine operations.

Conference proposal 58 recommended landing distance determinations with all engines operating and also with the critical engine inoperative, and, in addition, that those distances should be factored. The conferees did not object to the greater of the all-engines operating and one-engine-inoperative landing distance, but did object to the factoring of the distances because the factoring is associated with specific operating rules. The FAA agrees and is proposing a new § 23.75(h) that requires the longer of the all-engine- or one-engine-inoperative landing distances be set forth in the Airplane Flight Manual unless the use of other compensating means such a drag chute will result in a landing distance not more than that with each engine operating. In addition, the FAA agrees with the conferees that factoring is not appropriate in the airworthiness requirements for type certification.

Conference proposal 56 recommended adding a new § 23.73 Landing speeds, to replace current § 23.75(a) that defines the landing approach and speed conditions. The recommended landing speeds would be dependent on a new $V_{REF}$, appropriate to the recommended all-engines-operating landing configuration, and a new $V_{REF-1}$, appropriate to the recommended one-engine-inoperative landing configuration. The conference discussion opposed this recommendation because Part 23 presently contains one-engine-inoperative controllability test. Furthermore, the airworthiness standards require procedures be established for one-engine-inoperative landings, and seemed to the conference participants to have worked well up to this point in time. The FAA agrees and proposal 56 has not been included in this notice.

Conference proposal 61 recommended an approach speed of at least 1.3 $V_{S1}$, and not less than $V_{MC}$. This concept was supported by the conferees but concern was expressed that $V_{MC}$ is a speed determined in the takeoff configuration at the maximum takeoff weight. $V_{MC}$ is a design constraint in that it may not exceed 1.2 $V_{S1}$, where $V_{S1}$ is determined at the maximum takeoff weight. Because the required approach speed must be at least 1.3 $V_{S1}$, it readily appears to be a speed that exceeds $V_{MC}$. This is not necessarily true because $V_{S1}$ determined in the takeoff configuration is likely to be higher than the $V_{S1}$ determined in the landing configuration. The difference in the values can result in 1.3 $V_{S1}$, in the landing configuration being less than $V_{MC}$ where $V_{MC}$=1.2 $V_{S1}$ in the landing configuration.

To make proposal 61 a meaningful requirement, it would be necessary to require $V_{MC}$ be determined for the envelope of approved approach weights and configurations. This would add to the cost of flight testing and, at this time, the FAA does not have records of adverse service experience to justify the additional requirements. Therefore, the FAA is not taking further action on this proposal.

*Reference:* Conference proposals 56, 57, 58, 59, 60, and 61.

6. Section 23.161 is amended by revising paragraphs (b)(1), (c)(1), (c)(1)(i), (c)(1)(ii), (c)(2), (c)(3)(i), introductory text of (d), and (d)(4); and by adding a new paragraph (c)(4) to read as follows:

**§ 23.161 Trim.**

* * * * *

(b) * * *

(1) For normal, utility, and acrobatic category airplanes at a speed of 0.9 $V_H$, $V_C$, or $V_{NO}$, whichever is the lower; and

(2) * * *

(c) * * *

(1) A climb with maximum continuous power at—

(i) The speed used in determining the climb performance required by § 23.65 of this part with the landing gear retracted, and the flaps in the take-off position; and

(ii) The recommended all-engines-operating climb speed specified in § 23.1585(a)(2)(i) of this part.

(2) An approach at a gradient of descent of 5.2 percent (3 degrees) with the landing gear extended and with—

(i) Flaps retracted and at a speed of 1.4 $V_{S1}$; and

(ii) Flaps extended and at a speed of 1.3 $V_{SO}$.

(3) * * *

(i) For normal, utility, and acrobatic category airplanes, at any speeds from the lesser of $V_H$ and $V_{NO}$ or $V_{MO}$, as applicable, to 1.4 $V_{S1}$; and

(ii) * * *

(4) A descent at 0.9 $V_{NO}$ or 0.9 $V_{MO}$, whichever is applicable, with power off and with the landing gear and flaps retracted.

(d) In addition, each multiengine airplane must maintain longitudinal and directional trim, and the lateral control force must not exceed five pounds, at the speed used in complying with § 23.67 of this part and with—

* * * * *

(4) Wing flaps in the position selected for showing compliance with § 23.67.

* * * * *

**Explanation**

The proposal would establish standards for those airplanes for which a maximum operating limit speed, $V_{MO}$, has been established in accordance with § 23.1505(c). In addition, the proposal addresses additional flight conditions for which, as a minimum requirement, the airplanes need to be trimmed. There was objection to revising the general trim requirements of § 23.161(a), as recommended in proposal 113 on the basis of the apparent vagueness of the proposal. The FAA agrees and no further action is being taken on proposal 113.

The proponent of proposal 114, which recommended a change to the lateral and directional trim controls, desired to modify the proposal as submitted to the conference by indicating the requirement be applicable only to those airplanes to be certificated for IFR flight. Opposition was expressed to proposal 114, as modified, because the requirement would require three axis trim systems on all airplanes to be type certificated for use in accordance with instrument flight rules (IFR) and it was not considered justified by the conferees. The FAA agrees and no further action is being taken on proposal 114.

There was a consensus of agreement with the proposed changes for longitudinal trim in that airplanes should be capable of being trimmed in level flight from the lesser of $V_H$ and $V_{NO}$ or $V_{MO}$, as applicable, to 1.4 $V_{S1}$ with the landing gear and flaps retracted and not just from 0.9 of these upper values as presently required. The FAA agrees since these speeds, $V_H$ and $V_{NO}$ or $V_{MO}$, are sustained cruise speeds. In addition, it was the consensus of attendees that airplanes should be capable of being trimmed from 0.9 $V_{NO}$ or 0.9 $V_{MO}$, whichever is applicable, in a descent with the power off and the landing gear and flaps in the retracted position. The FAA agrees because this regime is not addressed in the current requirements and 0.9 of these speeds, $V_{NO}$ or $V_{MO}$, is considered a necessary minimum requirement for power-off descents.

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Another proposal addresses the issue of lateral control forces at the speed used in showing compliance with § 23.67—Climb: One engine inoperative. It was noted at the conference that the current requirements are silent on this issue and the proposal is considered necessary to assure the overall task of the pilot in these circumstances is not unduly excessive in achieving an accurate airspeed for the one engine inoperative climb. One commenter on this proposal stated that designing an airplane to be trimmed laterally with one engine inoperative becomes very difficult, but recommended that the 5-pound force be the maximum force permitted under this condition. Another commenter stated that airplanes should be capable of being trimmed laterally to remove any need of input to hold lateral control. The FAA agrees that it is impractical to require lateral trim to be designed so that no one-engine inoperative lateral control is needed, but also agrees that the five-pound lateral control force should be the maximum untrimmable force and is proposing this as the minimum standard.

Proposal 117 recommended, in part, changing the longitudinal trim speed from a range of speeds, to a more specific climb speed. Although there was little discussion of this proposal, commenters supported this change. The FAA agrees that testing for a trim speed more closely related to operational climb speeds is desirable and changes are proposed accordingly.

*Reference:* Conference proposals 113, 114, 115, 116, 117, and 118. Proposal 115 was withdrawn at the conference.

7. Section 23.221 is amended by revising paragraph (a), (b), and (c)(3) to read as follows:

**§ 23.221 Spinning.**

(a) *Normal category.* Except as provided in paragraph (d) of this section, single-engine, normal category airplanes must be demonstrated to comply with either the one-turn spin or the spin-resistant requirements of this paragraph.

(1) One-turn spin. The airplane must recover from a one-turn spin or a three (3) second spin, whichever takes longer, in not more than one additional turn after the controls have been applied for recovery. In addition—

(i) For both the flaps-retracted and flaps-extended conditions, the applicable airspeed limit and positive limit maneuvering load factor may not be exceeded;

(ii) There must be no excessive back pressure during the spin or recovery;

(iii) It must be impossible to obtain unrecoverable spins with any use of the flying or engine power controls either at the entry into or during the spin; and

(iv) For the flaps-extended condition, the flaps may be retracted during the recovery, but not before rotation has ceased.

(2) Spin resistant. The airplane must be demonstrated to be spin resistant by the following:

(i) During the stall maneuvers contained in § 23.201 of this part, the pitch control must be pulled back and held against the stop. Then, using ailerons and rudders in the proper sense of direction, it must be possible to maintain wings-level flight within 15 degrees of bank and to roll the airplane from a 30-degree bank in one direction to a 30-degree bank in the other direction;

(ii) Reduce the airplne speed using pitch control at a rate of approximately one knot per second until the pitch control reaches the stop; then with the pitch control pulled back and held against the stop, apply full rudder control in a manner to promote spin entry, for a period of seven (7) seconds or through a 360-degree heading change, whichever occurs first. If the 360-degree heading change is reached first, it must have taken no less than four (4) seconds. This maneuver must be performed first with the ailerons in neutral position; and then with the ailerons deflected opposite the direction of turn in the most adverse manner. Power or thrust and airplane configuration must be set in accordance with § 23.201(f) of this part without change during the maneuver. At the end of seven (7) seconds or a 360-degree heading change, the airplane must respond immediately and normally to primary flight controls applied to regain coordinated, unstalled flight without reversal of control effect and without exceeding the temporary control forces specified by § 23.143(c) of this part; and

(iii) Compliance with §§ 23.201 and 23.203 of this part must be demonstrated with the airplane in uncoordinated flight, corresponding to one ball width displacement on a slip-skid indicator, unless one ball width displacement cannot be obtained with full rudder, in which case the demonstration must be with full rudder applied.

(b) *Utility category.* A utility category airplane must meet the requirements of paragraph (a) of this section or the requirements of paragraph (c) of this section if approval for spinning is requested.

(c) * * *

(3) It must be impossible to obtain unrecoverable spins with any use of the flight or engine power controls either at the entry into or during the spin.

* * * * *

**Explanation**

This proposal would allow certification of single-engine, normal category airplanes as spin resistant as an alternative to being recoverable from a one-turn spin as now required.

Conference proposal 162 recommended adding requirements for an option to certify airplanes as spin resistant. The concept of a spin resistant airplane was supported by all commenters but the discussions clearly showed the proposal was inadequate for the purpose. As a result of the discussions, National Aeronautics and Space Administration (NASA) and General Aviation Manufacturers Association (GAMA) representatives agreed to restudy the issue and submit a replacement proposal for conference proposal 162. GAMA forwarded the amended proposal to the docket by letter dated May 2, 1988. The amended proposal 162 alleviates the concerns expressed at the conference and is the basis for the proposal to add a spin-resistant option for type certification of single-engine, normal category airplanes.

In the amended conference proposal 162, a new § 23.204, titled "Uncoordinated stalls," was recommended. It is the FAA's opinion that the requirements of the recommended new section are integral to the spin-resistant option and that these requirements should be a part of the FAA proposal to amend § 23.221(a) instead of adding a new § 23.204.

As part of the FAA's request to NASA and GAMA to rework proposal 162, it was requested that material suitable for inclusion in this preamble be developed to justify and explain the recommended change.

Although the FAA has made changes to incorporate clarifying recommendations from other proposals discussed at the conference and incorporated the recommended requirements for a new § 23.204 in this proposal to amend § 23.221(a), the rationale developed by NASA and GAMA to support the recommended changes remains applicable to this proposal and is quoted here as justification for the proposed change:

The requirement of FAR 23.221 for Normal Category airplanes to demonstrate recovery from a one-turn spin (or delayed stall) in no more than one additional turn was first established in the airworthiness rules in CAR amendment 03-0, effective January 13th, 1945. The requirement for a private or a commercial pilot to demonstrate competency in spin recovery was deleted from CAR 20 with amendment 20-3, effective August 15th, 1949. This amendment placed greater emphasis on the recognition and recovery from stalls in lieu of the spin demonstration requirement. Also, this amendment stated the belief that "elimination of the required spin maneuver will act as an incentive for manufacturers to build and operators of schools to use spin-resistant or spin-proof aircraft." At the GAMA Stall/Spin Workshop, the majority completely agreed with the goal stated in amendment 20-3. At the same time it was recognized that, in actuality, there was no effective incentive for manufacturers to press beyond the regulations and no substantial technical base from which to do so.

Because of the high percentage of stall/spin accidents occurring at pattern altitudes and because the one-turn spin demonstrations consume considerable altitude, there was considerable skepticism expressed at the workshop that the one-turn spin requirement had any impact on stall/spin accident rate reduction. From this discussion, an effort emerged to formulate and propose an alternative to the one-turn spin demonstration requirement that would promote development of airplanes with the spin-resistant qualities that CAR amendment 20-3 called for and that, at the same time, would be more related to operational situations. Also, technology developments from NASA research and from industry suggested that the capability to produce airplanes with these desirable qualities was within reach.

The first proposal that was made and ultimately discussed as part of the FAR 23 Review adopted the approach of control abuse from MIL-S-83691A (USAF) to simulate potential pilot mishandling in a stall situation. This approach has been maintained and expanded in this modified proposal. The proposal embodies the requirement that an airplane would qualify to be identified as a "spin-resistant airplane" would have to demonstrate the tolerance to maintain controllability after sustained control abuse in a stall situation. The proposal is made as an additional path for approval of the spin requirements for certification of a normal category airplane. If this proposal is adopted, approval for a normal category airplane could be made either with the existing one-turn spin test or with the new requirements for a "spin-resistant" airplane. When satisfactory experience is gained on spin resistant testing, FAA could consider deleting the one-turn spin test demonstration.

This new requirement is proposed with the thought that it would provide a test for spin resistance in a manner that would simulate potential operational circumstances. The "spin resistant" label could provide some of the incentive hoped for but not realized by the current regulatory approaches.

There are three demonstration requirements in the proposed regulation. The first would be to show that complete lateral control can be maintained in the course of stall maneuvers. The existing stall requirements in FAR 23.201 are retained and expanded by adding the requirement, within the spin-resistant requirements, to be able to maintain level flight with no uncontrolled roll tendency, with the elevator held against the stop, and, further, to be able to generate 30-degree banks upon command.

The second demonstration requirement is to maintain controllability after sustained control abuse represented by pro-spin control inputs through a 360-degree heading change or seven (7) seconds. The 360-degree heading change turn was proposed in order to maintain a pro-spin entry situation at least as severe as the current one-turn requirement. In the case of an airplane with a very strong resistance to pro-spin controls and a corresponding slow yawing rate in this situation, seven (7) seconds was selected as a reasonable cutoff for the pro-spin control inputs. This time period is far longer than that allowed as recognition time for impending disastrous situations (autopilot malfunctions, for example), and is considered conservative from a safety point of view. For airplanes that have a tendency to build up yawing rate very quickly, a disorienting situation can develop even though controllability could be maintained. For this reason, a minimum time period of four (4) seconds to reach a 360-degree heading change with the prescribed pro-spin controls was selected. This is based on experience involving a number of airplane spin time histories developed from the NASA spin research program and from industry experience. Ailerons have been prescribed both in neutral position and deflected opposite the direction of turn, to allow for the adverse effect on spin entry that ailerons can add. These two aileron positions are believed to encompass the most adverse possibilities with consideration given to effects of timing of the aileron inputs. Power or thrust set according to FAR 23.201, but without change during the maneuver, considers the potential adverse effects of power or thrust setting on the possible spin entry in a manner that would be consistent with inadvertent spin entry. The primary requirement is that the airplane be able to respond to primary flight controls to regain coordinated unstalled flight after this control abuse. This will be possible only if the airplane has successfully resisted an entry into a spin situation. Any delay in airplane response would indicate that a recovery from a spin entry situation was required which would be considered unsatisfactory under this requirement.

The third requirement is that the airplane be demonstrated to have the capability to meet the requirements of the stall characteristics of FAR 23.201 and 23.203 with a degree of uncoordinated controls. The degree of uncoordinated controls was selected as that corresponding to one ball width on a standard slip-skid indicator. This selection was chosen as the best way to define uncoordinated controls for the test in a simple, straightforward manner.

This proposal has been developed with the benefit of a wide range of inputs and suggestions from various individuals and organizations, including representatives of aircraft manufacturers, NASA, other government agencies and a number of universities. It has also had the benefit of considerable spin testing experience developed both by manufacturers and by NASA over the past several years. The concepts and objectives that have been sought have been outlined above. The proposal is offered with the same openness for possible improvement that has existed throughout the many meetings and discussions that have produced its present format.

Conference proposal 163 recommended limiting applicability of spin requirements to airplanes used in non-VFR conditions unless tests with only 50 percent of the full rudder control during level stall or turning stall tests would lead to a spin or maneuver requiring exceptional piloting skill. This recommendation was opposed by all commenters and by the FAA, as a pilot would likely apply full rudder control during routine stalls resulting in maneuvers not adequately evaluated during certification. No further action is being taken on proposal 163.

Conference proposal 164 recommended changing § 23.221, paragraph (a) by replacing "with the controls used in the manner normally used for recovery" with "after the controls have been applied for recovery" to assure the additional turn of a spin that is allowed during recovery is from the point at which controls used for recovery have been applied. That proposal would further replace paragraph (a)(2) with a new requirement to prevent over-balancing of the control surfaces such that it is not excessive and difficult to overcome in the recovery instead of the current requirement that there be no excessive back pressure during the spin or recovery. It also proposed to change paragraph (a)(3) by replacing "unrecoverable spins" with "irrecoverable spins" and "any use of the controls" with "any use of the flying or engine power controls either at the entry to or during the spin" to assure that misuse of the flying controls during recovery is addressed. The proposal would also add at the end of the paragraph (a) closing statement, on retraction of flaps during spin recovery, "but not before the rotation has ceased" to prevent retracting the flaps as part of the stopping of spin rotation, but allow flap retraction to avoid exceeding flap limit speeds during the post rotation portion of the spin recovery; and add appendix material on application of this rule. Also presented at the conference was a position paper relative to conference proposal 164 that recommended a "reverse recovery" procedure where the controls are misused during the recovery attempt for up to two seconds before proper recovery controls are applied, with

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recovery occurring in not more than four additional turns.

The conference discussion of proposal 164 concerned the recommended abused control tests. One commenter strongly opposed any change that would allow four turns for recovery from a spin in a normal category airplane, while other commenters supported some relief from the current recovery requirements but didn't endorse proposal 164 as submitted to the conference. Misuse of controls on recovery is required as part of showing compliance with current § 23.221(a)(3), however, the FAA has concluded that minor clarification of the requirement is needed, but a more specific requirement as proposed in the submitted appendix material, is not necessary. As thus modified, proposal 164 is incorporated into the rule change.

Conference proposal 165 recommended amending paragraph (b) to make it clearer that the rule does not require utility category airplanes to comply with paragraph (c) unless the affected airplane is to be approved for intentional spins. The conference discussion showed that proposal 165 wording was also unclear, but one commenter recommended adding the phrase "if approval for spinning is requested" after the current requirement. This appeared to satisfy the intent of the conference proposal, and the FAA agrees. Therefore, the FAA is proposing a clarification to the requirements of § 23.221(b).

Conference proposal 166 recommended amending the acrobatic spin tests of paragraph (c)(1) to require proceeding for six turns prior to application of the controls for recovery, whereas the current rule requires six turns or three seconds, whichever takes longer. This proposal recommended that the flaps remain extended during recovery from spins with the flaps extended in paragraph (c)(2), whereas the current rule allows flap retraction during recovery provided the airplane is placarded to prohibit intentional spins with flaps extended. This proposal also recommended the reference to controls in paragraph (c)(3) be expanded to include engine power controls and that the requirement relative to misapplication of controls in paragraph (c)(3) be more specific to state that such misapplication includes the entry and during the spin. In addition, the proposal included in an appendix, material to require that multiple airplanes be spin tested to prove that variability and recovery characteristics are within acceptable limits for type approval.

The full six turns before initiating recovery, regardless of time, was opposed by commenters because they preferred the current requirement and stated that for some airplanes recovery after the fewer turns that occur in three seconds, rather than a full six turns, is more difficult. Accordingly, no change is proposed for § 23.221(c)(1).

The recommended change relative to flap retraction during spin recovery caused commenters concern relative to whether an airplane could be approved in the acrobatic category for spins if it didn't meet the full spin requirements with the flaps both up and down. A commenter explained there was no intent to change an applicant's option of certification with the airplane limited to intentional flaps-up spins. However, the FAA does not agree to elimination of testing, to assure ability to recover from unintentional spins with flaps down, on all airplanes to be type certificated in the acrobatic category. Accordingly, no change is proposed for § 23.221(c)(2).

The recommended testing of multiple airplanes for type certification was also objected to by a commenter and no justification was offered to substantiate the need for the recommended testing of more than one airplane. The FAA agrees with the objection to this recommendation and no further action is being taken.

Inclusion of reference to engine power controls and misapplication of flight controls in paragraph (c)(3) was accepted without comment at the conference. The FAA agrees that engine power controls should be considered and the proposal to amend § 23.221(c)(3) reflects this consideration of engine power controls.

Conference proposal 167 recommended deleting § 23.221(d) which allows normal category airplane designs which are characteristically incapable of spinning, because it had only been applied to a very few types of airplanes. In contrast, conference proposal 522 recommended requiring all normal category airplanes be incapable of spinning. Conference proposal 522 was opposed with no supporters at the conference. Conference proposal 167 was both supported and opposed by commenters. The supporters of deleting § 23.221(d) expressed the opinion that deletion of § 23.221(d) would strengthen the effort to add a requirement for a spin resistant airplane option, while opposing commenters expressed the opinion that the spin-resistant airplane is a separate issue. The FAA agrees that the requirements for a spin-resistant airplane is a separate issue, and is proposing requirements for it in § 23.221(a)(2). Furthermore, the FAA does not concur with removing the option of an applicant for an airplane "characteristically incapable of spinning," and requiring that all normal category airplanes be required to be incapable of spinning. Past experience has shown that the primary method available to make an airplane incapable of spinning is to restrict the elevator authority, which increases landing distances and severely restricts a pilot's ability to correct for minor windshear during the approach to landing.

*Reference:* Conference proposals 161, 162, 163, 164, 165, 166, 167, and 522.

8. Section 23.301 is amended by revising paragraph (b) to read as follows:

**§ 23.301 Loads.**

* * * * *

(b) Unless otherwise provided, the air, ground, and water loads must be placed in equilibrium with inertia forces, considering each item of mass in the airplane. These loads must be distributed to conservatively approximate or closely represent actual conditions. Methods used to determine load intensities and distribution on unconventional configurations must be validated by flight test measurement unless the methods used for determining those loading conditions are shown to be reliable or conservative on the configuration under consideration.

* * * * *

**Explanation**

This proposal would establish criteria for determining load intensities and distributions on unconventional configurations (canard and tandem wing). At the conference, several commenters argued that the proposed rule would not allow use of wind tunnel data in lieu of flight load measurements on conventional configurations. The FAA representatives did not agree because the conference proposal concerned "methods used for determining those loading conditions are shown to be reliable or conservative on the configuration under consideration." The FAA representatives contended that this wording allowed conventional configurations to be approved as they are now. Some conference commenters remained skeptical that all FAA elements would apply the rule as the FAA representatives at the conference contended. Therefore, the proposed rule now refers to "load intensities and distribution on unconventional configurations." Another conference commenter wanted the option to use wind-tunnel data as an option to flight load measurements. The proposed rule allows methods other than flight measurement that "are shown to be reliable or conservative on the



configuration under consideration." When such a showing is made, wind-tunnel data would be allowed.

*Reference:* Conference proposal 175.

9. Part 23 is amended by adding a new § 23.302 to read as follows:

**§ 23.302 Canard or tandem wing configurations.**

The forward structure of a canard or tandem wing configuration must:

(a) Meet all requirements of Subpart C of this part applicable to a wing; and

(b) Meet all requirements applicable to the function performed by these surfaces.

**Explanation**

This proposal would require canard or tandem wing configurations to meet all requirements of Subpart C applicable to a wing and to meet all requirements applicable to the function performed by the affected surface. While it might appear that proposed paragraph (a) is redundant to the proposed requirement in paragraph (b), an FAA representative at the conference explained that paragraph (a) is necessary for clarity to counter any misconception that the forward structure of a canard or a tandem wing configuration performs primarily a control function and not a lifting function. On a canard or forward wing configuration, the forward structure is a lifting surface similar to a main wing, and, therefore, should meet the wing requirements.

Conference proposal 177, in part, recommended that the requirements of proposed § 23.302 be added as a new paragraph (e) to § 23.301 Loads. However, as one commenter pointed out, requirements other than loads are applicable to canard configurations. Another commenter pointed out that specific items should not be part of the general loads requirements. The FAA agrees and therefore is proposing a new § 23.302 to clarify that all requirements applicable to a component performing a function in a conventional configuration are applicable to the components of these unconventional configurations (canard and tandem wing) that perform the same function.

Other discussions concerned the general wording of the conference proposal relative to "all the requirements applicable to a wing." As another commenter pointed out, the intent when the conference proposal was developed, was to incorporate by reference "all requirements of Subpart C applicable to a wing." The FAA agrees and proposed paragraph (a) includes the clarified wording.

*Reference:* Conference proposal 177.

10. Section 23.331 is amended in paragraph (a) by replacing "§ 23.331" with "§ 23.333" and by adding a new paragraph (c) to read as follows:

**§ 23.331 Symmetrical flight conditions.**

* * * * *

(c) Mutual influence of the aerodynamic surfaces must be taken into account when determining flight loads.

**Explanation**

Section 23.331 states that symmetrical flight conditions are specified in §§ 23.331 through 23.341. Since no symmetrical flight conditions are specified in § 23.331, this proposal corrects an error existing since recodification of Part 23.

Present requirements for flight loads are generally applicable only to airplanes with the horizontal stabilizing surface located aft of the main wing lifting surface. The induced velocities and vortices of a forward wing change the local flow angles, and therefore, the lift distribution of the main wing lifting surface. An airplane with a canard or tandem wing configuration responds differently than a conventional airplane in vertical gusts. The concern is that the forward surface penetrates the gust ahead of the main lifting surface, thus, increasing the effective airplane angle of attack. The reverse occurs as the airplane exits the gust. Therefore, the flight loads applicable to canard configurations and tandem wing configurations in which a horizontal surface is located forward of the main lifting surface need to be evaluated during the type certification process. There was a consensus of support for the proposal at the conference as a needed addition to § 23.331 and the FAA agrees.

*Reference*: Conference proposal 186.

11. Section 23.341 is amended by adding the words "for conventional configurations" after the word "analysis" in the existing test, and designating this existing text, as amended, as paragraph (b); and by adding a new paragraph (a) to read as follows:

**§ 23.341 Gust load factors.**

(a) The gust load factors for a canard or tandem wing configuration must be computed using a rational analysis considering the gust criteria of § 23.333(c) of this part or may be computed in accordance with paragraph (b) of this section provided the resulting load factors are shown to be conservative with respect to the gust criteria of § 23.333(c) of this part.

* * * * *

**Explanation**

This proposal would establish gust load requirements necessary for an airplane with a canard or tandem wing. Conference proposal 189 recommended a "Note" to § 23.341 to state that the method was not adequate for determining gust loads for canard or tandem wing airplanes. There was opposition expressed at the conference because a conference commenter stated the material of § 23.341 should be acceptable if it is demonstrated to produce conservative or acceptable values. It was concluded by the conference attendees, and the FAA agrees, that if an applicant can show gust load factors to be conservative with respect to the "1-Cosine" gust criteria of § 23.333(c), it is acceptable to use the current material of § 23.341 in computing the gust load factors.

*Reference*: Conference proposal 189.

**§ 23.351 [Amended]**

12. Section 23.351 is amended by removing the word "tail."

**Explanation**

This proposal would extend the yawing conditions requirements, that are now limited to vertical tail surfaces, to all vertical surfaces, such as winglets, that are now appearing in new airplane designs. There was not a specific conference proposal to amend this section and the amendment of this section was not discussed at the conference. However, development of recommended changes to requirements incorporated by reference in § 23.351, specifically §§ 23.441 through 23.445, caused a review of this section and resulted in this proposed change. This change is considered necessary to provide structural integrity of all vertical surfaces equivalent to that required for conventional vertical tail surfaces.

13. Subpart C is amended by revising the introductory title preceeding §§ 23.421 through 23.427 to read as follows:

**Horizontal Stabilizing and Balancing Surfaces.**

**Explanation**

The proposal is considered necessary because the present title implies the sections following it are limited to tail surfaces of conventional airplane designs. The affected sections, when amended, will be applicable to airplanes utilizing canards and tandem wing configurations. A change of title was included in conference proposal 203 that also proposed changes to § 23.421. Several alternate titles were touched

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upon briefly at the conference, with the title now proposed being the most descriptive of the affected sections.

*Reference*: Conference proposal 203.

14. Section 23.421 is amended by removing the word "tail" in paragraph (a) and inserting in its place the word "surface"; by removing the word "tail" in paragraph (b) and adding in its place the word "balancing"; and by removing the last sentence of paragraph (b) which reads as follows, "The distribution in Figure B6 of Appendix B may be used."

**§ 23.421 [Amended]**

**Explanation**

This proposal would extend the current balancing load requirements for conventional configurations to include canard and tandem wing configurations. Conference proposal 203 would have prohibited use of appendix B, but several commenters felt the use of appendix B should be allowed provided such use is shown to be conservative. Another commenter who had participated on the FAA-industry committee originating the conference proposal stated that the originating committee had intended prohibiting use of appendix B for canard configurations because, in their collective judgment, the simplified criteria of appendix B were unlikely to produce satisfactory results when applied to forward surfaces. This commenter also stated that someone might develop a procedure that would give acceptably conservative results utilizing appendix B for forward surfaces. The FAA does not agree with the continued use of appendix B. Appendix B to Part 23, "Control Surface Loadings," presents average load magnitudes and distributions for control surfaces and was provided to define loads information in the absence of a more rational analysis. In order for such data to be meaningful, it must by necessity be general. The curves and distributions shown in appendix B represent average conditions where considered conservative and, as such, are compromises based on typical airplanes and aeronautical knowledge available at the time. The information presented in appendix B has been part of the small airplane certification requirements in one form or another since the early 1930's. Particular curves, for example the tail surface load distribution of figure B6, have remained unchanged since initial promulgation.

The FAA recognizes that the intent of appendix B was to provide conservative load information when more extensive analysis was beyond the capability of the manufacturer. The FAA now proposes to eliminate appendix B in its entirety because the capability of the industry has increased whereby more accurate and realistic loads can readily be developed for the specific airplane design under consideration without the compromises used in appendix B and because in some cases, appendix B loads do not provide the conservative results intended.

The FAA recognizes that a multitude of airplane designs have been based on the loads of appendix B and that the service history and safety record of U.S. airplanes has long been a standard of world aviation. However, the FAA realizes that more accurate analysis techniques are now readily available and proposes to eliminate appendix B in its entirety.

*Reference*: Conference proposal 203.

15. Section 23.423 is revised to read as follows:

**§ 23.423 Maneuvering loads.**

Each horizontal surface with pitch control must be designed for the maneuvering loads imposed by the following conditions:

(a) A sudden movement of the pitching control, at the speed $V_A$, to the maximum aft movement, and the maximum forward movement, as limited by the control stops, or pilot effort, whichever is critical.

(b) A sudden aft movement of the pitching control at speeds above $V_A$, followed by a forward movement of the pitching control resulting in the following combinations of normal and angular acceleration:

| Condition | Normal Acceleration (n) | Angular Acceleration (radian/sec$^2$) |
|---|---|---|
| Nose-up pitching | 1.0 | $+\frac{39n_m(n_m-1.5)}{V}$ |
| Nose-down pitching | $n_m$ | $-39n_m(n_m-1.5)$ |

where—

(1) $n_m$ = positive limit maneuvering load factor used in the design of the airplane; and

(2) V = initial speed in knots.

The conditions in this paragraph involve loads corresponding to the loads that may occur in a "checked maneuver" (a maneuver in which the pitching control is suddenly displaced in one direction and then suddenly moved in the opposite direction). The deflections and timing of the "checked maneuver" must avoid exceeding the limit maneuvering load factor. The total horizontal surface load for both nose-up and nose-down pitching conditions is the sum of teh balancing loads at *V* and the specified value of the normal load factor *n*, plus the maneuvering load increment due to the specified value of the angular acceleration.

**Explanation**

This proposal would extend the current maneuvering loads requirements for conventional configurations to include canard and tandem wing configurations and delete the use of appendix B in showing compliance for canard, tandem wing, and conventional configurations. To accomplish this purpose where the current requirements refer to control deflections, and up and down loads, it is proposed to refer to the control movements as nose-up and nose-down pitching of the airplane. Conference discussions supported the proposal with suggested clarifications. The reasons for deleting use of appendix B is discussed in detail in the explanation for proposal 14.

*Reference:* Conference proposal 204.

16. Section 23.425 is amended by removing the text of current paragraph (b) and designating paragraph (b) as "Reserved"; and by revising the introductory text of paragraph (a), paragraph (c), and the introductory text of paragraph (d) to read as set forth below. In addition, the definitions of $a_{ht}$ and $S_{ht}$ in the formula following paragraph (d) is revised by changing $a_{ht}$ from "$a_{ht}$ = Slope of horizontal tail lift curve (per-radian)" to "$a_{ht}$ = Slope of aft horizontal lift curve (per radian)" and by changing $S_{ht}$ from "$S_{ht}$ = Area of horizontal tail (ft$^2$); and" to "$S_{ht}$ = Area of aft horizontal lift surface (ft$^2$); and".



**§ 23.425 Gust loads.**

(a) Each horizontal surface, other than a main wing, must be designed for loads resulting from—

* * * * *

(b) [Reserved]

(c) When determining the total load on the horizontal surfaces for the conditions specified in paragraph (a) of this section, the initial balancing loads for steady unaccelerated flight at the pertinent design speeds $V_F$, $V_C$, and $V_D$ must first be determined. The incremental load resulting from the gusts must be added to the initial balancing load to obtain the total load.

(d) In the absence of a more rational analysis, the incremental load due to the gust must be computed as follows only on airplane configurations with aft-mounted, horizontal surfaces, unless its use elsewhere is shown to be conservative:

* * * * *

**Explanation**

This proposal would extend the current horizontal tail surface gust load requirements to include canard configurations. Commenters at the conference expressed concern that the surfaces the proposed requirements would be applicable to should be clearly identified. The main wing is the only horizontal surface that is intended to be excluded from complying with the requirements of this section and the proposed revision of paragraph (a) clarifies the applicability of the requirements. The reasons for deleting use of appendix B are discussed in detail in the explanation for proposal 14.

*Reference*: Conference proposal 207.

**§ 23.427 [Amended]**

17. Section 23.427 is amended by removing the word "tail" from paragraphs (a) and (c); by removing the word "tail" from paragraph (b) and inserting in its place the word "horizontal"; and by adding the words "other than main wing" after the amended phrase which reads "horizontal surfaces" in paragraphs (a), (b), and (c).

**Explanation**

This proposal would extend the current unsymmetrical loads requirements for horizontal tail surfaces of conventional configurations to canard and tandem wing configurations. Commenters at the conference expressed concern that conference proposal 208 would extend the requirements to the main wing. This was not the intent and this proposal would specifically exclude the main wing but involve all other horizontal surfaces. Conference proposal 209 would limit the applicability of § 23.427(c) relative to V-tail surfaces. This proposal was opposed by FAA and industry representatives at the conference because they considered the current rule adequate for V-tail surfaces and their supporting structure. Accordingly, proposal 209 has not been included in this notice.

*Reference*: Conference proposals 208 and 209.

18. Subpart C is amended by revising the introductory title preceding § 23.441 to read as follows:

**Vertical surfaces.**

**Explanation**

The proposal is considered necessary because the present title implies the sections following it are limited to tail surfaces of conventional airplane designs. The affected sections, when amended, will be applicable to design features of airplanes utilizing vertical surfaces at locations other than the tail of the airplane. The removal of the word "Tail" from the title was not a conference proposal and was not specifically discussed at the conference. However, discussions of subsequent sections addressing vertical surfaces at locations other than the tail logically leads to the deletion of the word "Tail" from the title, as proposed.

**§ 23.441 [Amended]**

19. Section 23.441 is amended by removing the word "tail" in two places in paragraph (a); and by removing the text of paragraph (b) and designating paragraph (b) as "Reserved."

**Explanation**

This proposal would extend the maneuvering loads requirements that are now limited to vertical tail surfaces to all vertical surfaces such as winglets that are appearing in new airplane designs. There was not a specific conference proposal to amend this section as proposed herein and it was not discussed at the conference. However, development of recommended changes to requirements in § 23.445, which incorporates this section by reference, caused a review of this section and resulted in this proposed change. This change is considered necessary to assure structural integrity of the affected surfaces equivalent to that required for conventional vertical tail surfaces.

Conference proposal 210 recommended amending § 23.441 to require vertical tail surfaces be designed to withstand the maneuvering loads at $V_D$ rather than at $V_A$ as is now required. Both FAA and industry representatives at the conference opposed this recommended change. The FAA plans no further action on conference proposal 210. The reasons for deleting the use of appendix B is discussed in detail in the explanation for proposal 14.

*Reference*: Conference proposal 210.

**§ 23.443 [Amended]**

20. Section 23.443 is amended by removing the word "tail" from paragraph (a); by removing in three places the word "tail" in paragraph (c) and adding in its place the word "surface"; and by removing paragraph (d).

**Explanation**

See explanation for proposal 19 and proposed changes to § 23.441.

21. Section 23.445 is amended by revising the section title; by revising paragraph (a); by adding the words "or winglets" after the words "outboard fins" in paragraphs (b) and (c); and by adding a new paragraph (d) to read as follows:

**§ 23.445 Outboard fins or winglets.**

(a) If outboard fins or winglets are on the horizontal surfaces or wings, the horizontal surfaces or wings must be designed for their maximum load in combination with loads induced by the fins or winglets and moments or forces exerted on the horizontal surfaces or wings by the fins or winglets.

* * * * *

(d) When rational methods are used for computing loads, the maneuvering loads of § 23.441 of this part on the vertical surfaces and the one-g horizontal surface load, including induced loads on the horizontal surface and moments or forces exerted on the horizontal surfaces by the vertical surfaces, must be applied simultaneously for the structural loading condition.

**Explanation**

This proposal would amend the outboard fins requirements in § 23.445 to include all loads that are likely to occur

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simultaneously; require that rational analysis include all loads likely to be applied to horizontal surfaces, in addition to the one-g unaccelerated normal horizontal surface loads, during the maneuvering conditions specified in § 23.441; and extend the proposed revised requirements to all vertical surfaces that are mounted on horizontal surfaces including wings. Conference proposal 211 recommended amending the requirements to include all loads that are likely to occur simultaneously be deleting the last sentence of paragraph (a); however, it did not clearly recommend extending the requirements to vertical surfaces during a rational analysis. Discussions at the conference clarified that conference proposal 211 was intended to include vertical surfaces on wings. Other recommended changes in conference proposal 211 were accepted without discussion. The need to propose a new paragraph (d) was identified during development of this proposal from conference proposals and conference discussions and is based on past certification practices of accepting rational analysis where maneuvering loads on vertical surfaces are applied to the wings through the fuselage simultaneously with the one-g horizontal balancing load.

*Reference:* Conference proposal 211.

**§ 23.455 [Amended]**

22. Section 23.455 is amended by removing the text of paragraph (b) and designating paragraph (b) as "Reserved."

**Explanation**

The reasons for deleting use of appendix B are discussed in detail in proposal 14.

23. Section 23.677 is amended by revising paragraph (d) to read as follows:

**§ 23.677 Trim Systems.**

* * * * *

(d) It must be demonstrated that the airplane is safely controllable and that the pilot can perform all maneuvers and operations necessary to effect a safe landing following any probable powered trim system runaway which might be reasonably expected in service, allowing for appropriate time delay after pilot recognition of the runaway. The demonstration must be conducted at critical airplane weights and center of gravity positions.

**Explanation**

This proposal would extend the requirements for powered trim systems currently applicable to commuter category airplanes, to all categories of Part 23 airplanes. Such systems are now common on small airplanes. Control column forces can become excessive in adverse trim conditions and consideration must be given in the design of powered trim systems in order that the airplane does not become uncontrollable before the pilot can recognize the situation and take corrective action. In addition, under this proposal, the requirement that the airplane be capable of continued safe flight and landing following the appropriate corrective action taken by the pilot would be applicable to all categories of Part 23 airplanes. It was suggested at the conference that conference proposal 251 be revised to address "powered trim systems" and not just "electric trim systems" and delete the word "tab" in the recommended paragraph (d). The consensus at the conference was that these two changes improved the proposal and the FAA concurs.

*Reference:* Conference proposal 251.

24. Section 23.701 is amended by revising paragraph (a); by redesignating paragraph (b) as (c); and by adding a new paragraph (b) to read as follows:

**§ 23.701 Flap interconnection.**

(a) The main wing flaps and related movable surfaces as a system must—

(1) Be synchronized by mechanical connection; or

(2) Maintain synchronization so that the occurrence of an unsafe condition has been shown to be extremely improbable; or

(b) The airplane must be shown to have safe flight characteristics with any combination of extreme positions of individual movable surfaces (mechanically interconnected surfaces are to be considered as a single surface).

* * * * *

**Explanation**

This proposal would update the regulations to include provisions for airplanes with a flap configuration other than one flap on each wing. It would also address the failure of any single element in the flap control system and allow for an alternate equivalent means to the mechanical interconnection required by the present rule. Airplanes are currently being manufactured with two flaps on each side of the airplane and are being designed with flaps on canards and tandem wings. On an airplane with four flaps, there is a possibility that only one flap may be assymetric with respect to the other three and this issue needs to be addressed in the airworthiness standards, as proposed in paragraphs (a) and (b).

After further consideration of the discussion of conference proposals 256 and 257 on flap interconnection and study of configurations of small airplanes now being proposed, the FAA is proposing a requirement that addresses all of the concerns discussed at the conference and also includes consideration of failures that are likely to occur in the more complex designs.

*Reference:* Conference proposals 256 and 257.

25. Section 23.735 is amended by adding a new paragraph (c) to read as follows:

**§ 23.735 Brakes.**

* * * * *

(c) If antiskid devices are installed, the devices and associated systems must be designed so that no single probable malfunction or failure will result in a hazardous loss of braking ability or directional control of the airplane.

**Explanation**

The proposal would establish minimum airworthiness standards for airplanes equipped with antiskid braking systems. Conference proposal 267, which would have exempted airplanes weighing 3,000 pounds or less from meeting the requirements in § 23.735(a) was opposed by one conference commenter on the basis that the current requirements provide a good standard for airplane brakes. The FAA agrees and no further action is being taken on proposal 267. Conference proposal 268, which recommended a new paragraph (c) be added to § 23.735 for airplanes with antiskid braking systems, was supported by three conference commenters and the FAA agrees that this requirement is necessary as a minimum standard when antiskid devices are installed.

*Reference:* Conference proposals 267 and 268.

**§ 23.83 [Amended]**

26. Section 23.831 is amended by removing the word "In addition, for pressurized commuter category airplanes," in paragraph (b) and adding in their place the words "For pressurized airplanes,".

**Explanation**

This proposal would require hazardous gas free ventilating air for all Part 23 airplane pressurized crew and passenger compartments in normal operation and after probable equipment failures. Smoke evacuation must be readily accomplished if hazardous quantities are probable in the cockpit area.



Conference proposal 298, which would have required 10 cubic feet of fresh air for each cabin occupant, was opposed by one commenter and, subsequently, withdrawn by the proponent.

Conference proposal 299, which one conference commenter remarked was taken verbatim out of § 25.831, proved to be confusing to two other commenters. Other commenters stated there was merit in the proposal for pressurized airplanes. However, proposal 299 did imply that all airplanes were pressurized.

After further consideration and review, the FAA concludes that the present ventilation requirements of § 23.83(a) should be retained for all airplanes and that the additional requirements of § 23.831(b) should only be proposed for pressurized airplanes. Because ventilation air is introduced through the pressurization system in such airplanes, consideration must be given to system failures that could contaminate cabin air. Also, inflow and outflow values must be sized to adequately exhaust smoke from the cockpit area.

*Reference:* Conference proposals 298 and 299.

27. Section 23.939 is amended by revising paragraphs (b) and (c) to read as follows:

**§ 23.939 Powerplant operating characteristics.**

* * * * *

(b) Turbocharged, reciprocating engine operating characteristics must be investigated in flight to assure that no adverse characteristics, as a result of an inadvertent overboost, surge, flooding, or vapor lock, are present during normal or emergency operation of the engine(s) throughout the range of operating limitations of both airplane and engine.

(c) For turbine engines, the air inlet system may not, as a result of airflow distortion during normal operation, cause vibration harmful to the engine.

**Explanation**

This proposal would add a requirement for an in-flight investigation of turbocharged reciprocating engine operating characteristics. It would also make it clear that airflow distortion must not cause vibration harmful to turbine engines.

One commenter, in addressing proposal 323, said that the operating characteristics requirement was reasonable, but that the proposed requirements for magnetos and spark plug gaps were not. Another commenter conceded that the parameters spelled out in proposal 323 were the typical operating characteristics normally assessed and evaluated in turbocharged engine installations. After further consideration of proposal 323, the FAA agrees with the recommended engine operating characteristics and is proposing a revision of § 23.939(b), which includes these recommended characteristics. No further action is being taken on the recommended magnetos and spark plug gaps requirement in this proposal.

While a commenter did not object to the airflow distortion requirement recommended by proposal 324 for § 23.939(c), the commenter did object to the justification which stated that an inlet airflow distortion survey would be necessary to show compliance. Another commenter cited an engine that was not sensitive to having the inlet partially blocked. An FAA representative stated that the traditional way of satisfying the requirement was to run an inlet survey but, at the same time, conceded that there may have been other ways of satisfying the requirement. Still another commenter could not recall seeing an inlet distortion survey carried out as a part of many installations made by his company.

After further consideration, the FAA agrees that an inlet airflow distortion survey may not be necessary. However, some consideration of airflow distortion is necessary in designing inlet air systems in airplanes because of the requirements of § 33.7 which, in part, requires the engine manufacturer to establish operating limitations for each type engine based on consideration of inlet air distortion at the engine air inlet and, therefore, a revision to § 23.939(c) is included in this proposal.

*Reference:* Conference proposals 323 and 324.

28. Part 23 is amended by adding a new § 23.1109 to read as follows:

**§ 23.1109 Turbocharger bleed air system.**

The following applies to turbocharger bleed air systems used for cabin pressurization:

(a) The cabin air system may not be subject to hazardous contamination following any probable failure of the turbocharger or its lubrication system.

(b) The turbocharger supply air must be taken from a source where it cannot be contaminated by harmful or hazardous gases or vapors following any probable failure or malfunction of engine exhaust, hydraulic, fuel, or oil system.

**Explanation**

This proposal would assure clean air for pressurized cabins using bleed air from turbocharged engines by stating requirements similar to those required for bleed air from turbine engines (ref. § 23.1111). It was noted by one commenter at the conference that the criteria of conference proposal 396 have been used by the FAA for such approvals since turbochargers were first used for bleed air systems. No other comments were made concerning the conference proposal.

*Reference:* Proposal 396.

29. Section 23.1163 is amended by combining paragraphs (a)(1) and (a)(2) as paragraph (a)(1); by adding a new paragraph (a)(2); by revising paragraph (a)(3); by removing the words "In addition, for commuter category airplanes, if" in paragraph (d); and adding in their place the word "If"; and by adding a new paragraph (e) to read as follows:

**§ 23.1163 Powerplant accessories.**

(a) * * *

(1) Be approved for mounting on the engine involved and use the provisions on the engines for mounting; or

(2) Have torque limiting means on all accessory drives in order to prevent the torque limits established for those drives from being exceeded; and

(3) In addition to paragraphs (a)(1) or (a)(2) of this section, be sealed to prevent contamination of the engine oil system and the accessory system.

* * * * *

(e) Each accessory drive by a gearbox that is not approved as part of the powerplant driving the gearbox must—

(1) Have torque limiting means to prevent the torque limits established for the affected drive from being exceeded;

(2) Use the provisions on the gearbox for mounting; and

(3) Be sealed to prevent contamination of the gearbox oil system and the accessory system.

**Explanation**

This proposal would require provisions to stop rotation of engine accessories whose continued rotation after failure or malfunction would be hazardous, add torque limiting criteria for accessory drives of accessories mounted on engines but not specifically approved for the affected engine when the accessory design was first approved, and add requirements for accessories driven by gearboxes not approved as part of the affected powerplant.

During the conference discussion, one commenter said proposal 406 appeared

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to be a solution to a nonexistent problem because the commenter could not visualize any situation where continued rotation of an accessory would be hazardous. Another commenter, in support of the proposal, stated that if an accessory seizes, something should be done to prevent damage to the engine, and that providing a shear section in the drive mechanism should not be a great hardship. Still another commenter said that the engine would destroy the accessory if no shear section were provided. A fourth commenter noted that designing a starter/generator installation for an engine could pose a problem because starting torque could be 5 to 10 times greater than the running torque. A fifth commenter didn't believe the justification was adequate. The FAA agreed to look into the proposal's background.

Conference proposal 406 originated as a result of a special condition issued for a pressurized turbopropeller-engine powered airplane. That special condition and similar requirements were based on Civil Air Regulation § 4b.477. The concern for small airplane certifications remained essentially the same as the concern for large airplane certifications even after § 4b.477 became a requirement; that is, that continued rotation of an accessory could cause mechanical damage that could affect continued safe flight.

During the further review that resulted from the conference discussions, it became clear that § 23.1163, as amended by amendment 23–29, is now compatible with newly type certificated engines, but may not be adequate for installations involving previously approved engines still in production and eligible for installation in all new small airplane designs. Also, recent certification programs have involved accessory drives in gearboxes not approved as part of the affected engine. Therefore, accessory torque limiting means are proposed, with emphasis on not exceeding the engine accessory drive limits, and additional requirements are proposed for accessory drives on gearboxes not approved as part of the affected powerplant.

*Reference:* Conference proposal 406.

30. Section 23.1323 is amended by adding a new paragraph (e) to read as follows:

**§ 23.1323 Airspeed indicating system.**

* * * * *

(e) If certification for instrument flight rules or flight in icing conditions is requested, each airspeed system must have a heated pitot tube or an equivalent means of preventing malfunction due to icing.

**Explanation**

This proposal, while not specifically discussed at the conference, is based upon, in part, proposal 418, which recommended that § 23.1303 be expanded to list items needed for various kinds of operations. The recommendation for IFR operation included a heated pitot tube, which has been inadvertently omitted from previous Part 23 requirements. That item from proposal 418 is more appropriate for inclusion in § 23.1323 rather than the recommended § 23.1301 and, accordingly, has been proposed for that section. The remaining portion of proposal 418 will be addressed in another notice.

Maintaining a functional and accurate airspeed system is essential to safe and reliable control of an airplane in instrument meteorological conditions and flight in icing conditions. The proposal is considered necessary as a minimum airworthiness standard when the above operations in the airplane are to be approved.

Conference proposal 440 recommended relaxing the upper limit of $V_{MZ}$ to $V_C$ and this conference proposal was not generally supported. The consensus at the conference was that the requirement should not be changed in accordance with conference proposal 440 and the FAA agrees.

Conference proposal 442 recommended adding a new § 23.1328 for a pitot heat indication system which is identical to § 25.1326. Section 25.1326 was added to Part 25 in 1978 and, at the same time, Part 91 was amended by adding § 91.50. Section 91.50 required transport category airplanes to comply with § 25.1326 within a specified time. In 1981, the general aviation operators of transport category airplanes were relieved from this requirement by deleting § 91.50 since a study indicated that there never had been an accident attributed to a pitot heating system failure by general aviation transport category airplanes. The requirements for pitot heat indication systems were still in effect for air carrier operations in accordance with Parts 121, 125, and 135.

During the conference proceedings on this proposal, it was questioned whether warning indication is necessary because a pilot should be able to recognize misleading airspeed information. A commenter stated that the amber warning light would become a hindrance when the pitot heat system was turned off during day and VFR conditions.

For a five year period ended October 21, 1988, no accidents or incidents for small airplanes were reported due to a pitot heat failure. The FAA concludes that no further action on this recommendation should be taken at this time.

The FAA has required in past type certification programs, where an applicant applies for approval for flight in icing conditions pursuant to § 23.1419, that a heated pitot tube be a part of that system approval. Therefore, the requirement for a heated pitot tube for flight in icing conditions is a clarification of an existing requirement and no additional burden on an applicant.

*Reference:* Proposals 418, 440, and 442.

31. Section 23.1325 is amended by adding a new paragraph (g) to read as follows:

**§ 23.1325 Static pressure system.**

* * * * *

(g) For airplanes specifically prohibited from flight in instrument meteorological conditions and icing conditions in accordance with § 23.1559(b) of this part, paragraph (b)(3) of this section does not apply.

**Explanation**

This proposal would allow airplanes which are specifically prohibited from flight in instrument meteorological conditions and Instrument Flight Rule (IFR) icing conditions to be certificated without an alternate static air source.

At the conference, two commenters said they could foresee no problem with the proposed regulation; however, one commenter said it was debatable as to whether it was needed or not. The conference chairperson, in encouraging further comment, mentioned an FAA Flight Standards policy letter that justified the alternate static air source on the basis that freezing rain can occur in Visual Flight Rule (VFR) conditions.

Another commenter agreed that static system errors resulting from continued flight in freezing rain would be the least likely problem for a pilot in such a situation. The same commenter went on to cite an example where the alternate air source might prove useful to a pilot; i.e., taking off with moisture in the static line on a cold day.

The FAA reviewed the rationale supporting the requirements in § 23.1325(b)(3) that "each static pressure port must be designed or located in such a manner that the correlation between air pressure in the static pressure system and true ambient pressure is not altered when the airplane encounters icing condition," and "an anti-icing means or an alternate source of static pressure may be used in showing compliance with this requirement." The primary concern was that airframe ice accumulation would disturb airflow in the vicinity of static port(s) causing errors in the static pressure systems and altimeter indications.

The need for such a requirement, as stated in Notice 64–14 (29 FR 3310, March 12, 1964) was based on IFR operations at higher airspeeds and altitudes above 14,500 feet. The purpose was "to increase safety and improve airspace utilization" (vertical separation of air traffic).

In the case of an airplane certificated for flight in IFR conditions, an applicant can show compliance without flying the airplane in icing conditions; e.g., if the airplane were equipped with a pitot-static probe, anti-icing would be appropriate. If the airplane had static pressure ports installed on the fuselage, an alternate static pressure source would suffice.

Under the present requirements, an airplane limited to approval for flight in VFR conditions must meet a requirement intended to povide better vertical separation for airplanes flying in IFR conditions or icing conditions at altitudes above 14,500 feet. Section 23.1325(b)(3) requires that all small airplanes, including an airplane which isn't required to have a sensitive altimeter or a heated pitot, must either be tested in icing conditions or show compliance by means of a heated static pressure source or an alternate static pressure source.

In view of the above, it is considered inappropriate to continue to impose a requirement for an alternate static source or a means for anti-icing the static source on airplanes specifically prohibited from flight in IFR or icing conditions. It is considered unlikely that a midair collision could be caused by the altitude error in an airplane flying VFR that inadvertently enters icing conditions. Continued flight in such conditions cannot be sustained for long periods by airplanes without anti-icing or deicing equipment and most airplanes certificated for VFR only do not fly above 14,500 feet. Furthermore, an FAA review of incidents of static system malfunction in VFR icing conditions for the past five years showed no reported incidents or accidents.

*Reference:* Conference proposal 441.

32. Part 23 is amended by removing Appendix B and inserting the words "Appendix B [Removed and Reserved]" in its place.

**Appendix B—[Removed and Reserved]**

**Explanation**

Appendix B is removed for the reasons explained in proposal 14.

Issued in Washington, DC, on February 23, 1989.

**M.C. Beard,**

*Director, Aircraft Certification Service.*

[FR Doc. 89–4951 Filed 3–3–89; 8:45 am]

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Part III

# Department of Labor

**Occupational Safety and Health Administration**

**29 CFR Part 1910**

## Hazardous Waste Operations and Emergency Response; Final Rule

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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. S-760A]

Hazardous Waste Operations and Emergency Response

AGENCY: Occupational Safety and Health Administration; Labor.

ACTION: Final rule.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is amending the OSHA standard for hazardous waste operations and emergency response found in 29 CFR 1910.120. This final rule will replace the existing interim final rule required by Congress in the Superfund Amendments and Reauthorization Act of 1986 (as amended) (SARA) (Pub. L. 99-499, 29 U.S.C. 655 note). When this final rule becomes effective one year from today, the interim final rule promulgated December 19, 1986 (51 FR 45654) will be revoked. The interim final rule remains in effect until then. The Notice of Proposed Rulemaking for this final rule was published in the Federal Register on August 10, 1987 (52 FR 29620).

This rule will regulate the safety and health of employees involved in clean-up operations at uncontrolled hazardous waste sites being cleaned-up under government mandate, in certain hazardous waste treatment, storage, and disposal (TSD) operations conducted under the Resource, Conservation and Recovery Act of 1976 as amended (RCRA) [42 U.S.C. 6901 *et seq*], and in any emergency response to incidents involving hazardous substances.

This standard provides for employee protection during initial site characterization and analysis, monitoring activities, materials handling activities, training, and emergency response.

DATES: This final rule will become effective March 6, 1990.

Paperwork authorization has been granted by the Office of Management and Budget (OMB) under control number 1218-0139.

ADDRESS: In compliance with 28 U.S.C. 2112(a), the Agency designates for receipt of petitions for review of the standard, the Associate Solicitor for Occupational Safety and Health, Office of the Solicitor, Room S-4004, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, U.S. Department of Labor, Occupational Safety and Health Administration, Division of Consumer Affairs, Room N-3647, 200 Constitution Avenue NW., Washington, DC 20210, 202-523-8151.

SUPPLEMENTARY INFORMATION:

## I. Background

The U.S. Environmental Protection Agency estimates that approximately 57 million metric tons of hazardous waste are produced each year in the United States.[1] These wastes must be treated and stored or disposed in a manner that protects the environment from the adverse affects of the various constituents of those wastes.

In response to the need to protect the environment from the improper disposal of these hazardous wastes, Congress, over the years, has enacted several pieces of legislation intended to control the nation's hazardous waste problem. Federal laws passed in 1965 [2] and 1970 [3] initially addressed solid waste disposal. Several other pieces of legislation have been enacted by Congress that have ultimately led to the development of this rule and they are discussed below.

### *A. The Resource Conservation and Recovery Act of 1976*

The first comprehensive, federal effort to deal with the solid waste problem in general, and hazardous waste specifically, came with the passage of the Resource Conservation and Recovery Act of 1976 (RCRA) [4]. The act provides for the development of federal and state programs for otherwise unregulated land disposal of waste materials and for the development of resource recovery programs. It regulates anyone engaged in the creation, transportation, treatment, and disposal of "hazardous wastes." It also regulates facilities for the disposal of all solid wastes and prohibits the use of open dumps for solid wastes in favor of requiring sanitary landfills.

There are, however, many hazardous waste disposal sites that were created prior to the passage of RCRA. These sites are often abandoned and contain unknown quantities of unknown wastes.

### *B. The Comprehensive Environmental Response, Compensation and Liability Act of 1980*

In response to the need to clean-up and properly reclaim these pre-RCRA sites, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) [5] commonly known as "Superfund." Superfund established two related funds to be used for the immediate removal of hazardous substances released into the environment. Superfund is intended to establish a mechanism of response for the immediate clean-up of hazardous waste contamination from accidental spills and from chronic environmental damage such as is associated with abandoned hazardous waste disposal sites.

The treatment and disposal of hazardous wastes under RCRA and CERCLA creates a significant risk to the safety and health of employees who work in treatment and disposal operations. Exposure to hazardous wastes through skin contact, skin absorption, and inhalation pose the most significant risks to employees. Employee exposure to these risks occurs when employees respond to hazardous substance or waste emergencies, when they work with hazardous wastes during storage, treatment and disposal operations or when they participate in the clean-up of abandoned-waste sites.

This risk of exposure and the need for protecting employees exposed to hazardous wastes is addressed in the "Superfund Amendments and Reauthorization Act of 1986" (SARA).

### *C. Superfund Amendments and Reauthorization Act of 1986*

On October 17, 1986, the President signed into law the "Superfund Amendments and Reauthorization Act of 1986" (SARA).[6] As part of SARA, in section 126 of Title I, Congress addressed the risk of injury to employees by providing that the Secretary of Labor ("Secretary") issue interim final worker protection regulations within 60 days after the date of enactment of SARA that would provide no less protection for workers engaged in hazardous waste operations than the protections contained in the U.S. Environmental Protection Agency's (EPA) "Health and Safety Requirements for Employees Engaged in Field Activities" manual (EPA Order 1440.2) dated 1981, and the existing OSHA standards under Subpart C of 29 CFR Part 1926. OSHA published those interim final regulations in the Federal Register on December 19, 1986 (51 FR 45654). A correction notice was published on May 4, 1987 (52 FR 16241).

[1] U.S. Environmental Protection Agency, *Everybody's Problem Hazardous Waste* at 1 (1980).

[2] Solid Waste Disposal Act, Pub. L. No. 89-272, 79 Stat 99.

[3] Resource Recovery Act, Pub. L. No. 91-512, 84 Stat 1427 and Pub. L. 93-14, 87 Stat II.

[4] 42 U.S.C. 6901 *et seq.*

[5] 42 U.S.C. 9601 *et seq.*

[6] Pub. L. 99-499.



With the exception of a few provisions that had delayed start-up dates, OSHA's interim final regulations became effective on December 19, 1986 in accordance with section 126(e) of SARA, and apply to all regulated workplaces until the final rule developed under sections 126 (a)-(d) becomes effective.

Section 126(a) of SARA provides that the Secretary shall " * * * pursuant to section 6 of the Occupational Safety and Health Act of 1970, promulgate standards for the health and safety of employees engaged in hazardous waste operations." These standards must be promulgated within one year after the date of enactment of SARA. This notice completes the development of those standards by issuing a final rule based upon the proposed regulations as indicated in sections 126(a) and 126(b) of SARA.

Pursuant to section 126(c) of SARA, the final regulations issued today are to take effect in one year. Section 126(c) also provides that the final regulations are to include each of the worker protection provisions listed in section 126(b), unless the Secretary determines that the evidence in the public record developed during this rulemaking and considered as a whole does not support inclusion of any such provision. A discussion of the public record for this rulemaking and the changes made to the proposed regulations issued August 10, 1987 follows.

This final rule has been adapted from the language of the proposed rule. Changes have been made to address more fully the provisions which Congress directed the Agency to cover and the comments made in the public record. OSHA utilized several sources for the proposal. These included the EPA manual entitled "Health and Safety Requirements for Employees Engaged in Field Activities" (1981), the language of OSHA's safety and health standards in Subpart C of 29 CFR Part 1926 and various documents issued either jointly or separately by the EPA, OSHA, the U.S. Coast Guard, and the National Institute for Occupational Safety and Health (NIOSH).

OSHA specifically used the joint OSHA/EPA/USCG/NIOSH manual entitled, *"Occupational Safety and Health Guidance Manual for Hazardous Waste Site Activities"* (Preamble Reference 6), as an outline in preparing the interim rule and the proposed rule. This manual was developed as a result of the collaborative efforts of professionals representing the four agencies. These professionals, who are knowledgeable in hazardous waste operations, worked with over 100 experts and organizations in the development of the criteria contained in this manual. The manual was published in October 1985 and is public information. The manual is a guidance document for managers responsible for occupational safety and health programs at inactive hazardous waste sites. The manual is intended for use by government officials at all levels and contractors involved in hazardous waste operations. The manual provides general guidance and is intended to be used as a preliminary basis for developing a specific health and safety program for hazardous waste operations. Further, the major subject areas listed in section 126(b) of SARA are nearly identical to the major chapters in the manual.

Based upon the extensive public comments and hearing testimony, OSHA has modified the proposal. The final rule takes into account the entire record. In addition, the language of this final rule clarifies some areas of confusion in the interim rule that OSHA has identified during the public comment period and since the promulgation of the interim final rule. The final rule also reorganizes some of the sections to clarify the standard.

### *D. Regulatory History*

The Superfund Amendments and Reauthorization Act of 1986 (SARA) gave the Secretary of Labor 60 days to issue interim final regulations which would provide no less protection for workers employed by contractors and emergency response workers than the protections contained in the Environmental Protection Agency Manual (1981) "Health and Safety Requirements for Employees Engaged in Field Activities" and existing standards under the Occupational Safety and Health Act of 1970 found in Subpart C of Part 1926 of the Code of Federal Regulations. Those interim final regulations were to take effect upon issuance and would apply until final regulations became effective (SARA, § 126(e)). OSHA issued its interim final regulations on December 19, 1986 (51 FR 45654).

SARA also instructed the Secretary of Labor to promulgate, within one year after the date of the enactment of section 126 of SARA and pursuant to section 6 of the Occupational Safety and Health Act of 1970, standards for the health and safety protection of employees engaged in hazardous waste operations (SARA, section 126(a)). On August 10, 1987 OSHA issued a Notice of Proposed Rulemaking and Public Hearings (52 FR 29620). That Notice set forth OSHA's proposed language for its final rule and announced public hearings that would be held to gather further information to aid the agency in developing its permanent final rule.

Informal public hearings on the subject of this rulemaking were scheduled and held to afford interested parties the opportunity to comment on OSHA's proposals. The hearings were held October 13-16 and 20-21, 1987 in Washington, DC and October 27-28, 1987 in Seattle, Washington. The hearings originally scheduled for San Francisco, CA in the August 10, 1987 Notice of Proposed Rulemaking were rescheduled for Seattle, WA in an October 13, 1987 announcement (52 FR 37973).

Testimony from over 40 witnesses was presented at the hearings. Further, over 30 post hearing comments were submitted to the record of this rulemaking. In addition to the public hearings and the testimony received in response to those hearings, OSHA received over 125 written comments on its proposed language for a final rule.

## II. Summary and Explanation of the Standard

*Paragraph (a)—Scope, Application, and Definitions*

1. *Scope.* OSHA proposed to define the scope of this final rule in paragraphs (a)(1) and (a)(2). "*Scope*" defines the specific worker populations to be covered by this rule.

The scope of this rulemaking has been an issue during the development and promulgation of the final rule. OSHA requested specific comment on whether the proposed rule was appropriate.

Eastman Kodak's comment (10-36) states, "The preamble of the proposed standard at page 29622 requested 'specific comment on whether [OSHA's] interpretation of scope is too broad or too narrow.' The scope of applicability of the standard, especially with regard to ongoing operations at hazardous waste management facilities regulated under RCRA and/or corresponding state programs, appears to be appropriate."

While the language of the final rule is somewhat different from the language of the proposed rule, the four major areas of scope remain essentially the same. These four areas of scope include (1) clean-up operations at uncontrolled hazardous waste disposal sites that have been identified for clean-up by a governmental health or environmental agency, (2) routine operations at hazardous waste treatment, storage and disposal facilities or those portions of any facility regulated by 40 CFR Parts 264 and 265, (3) emergency response

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operations at sites where hazardous substances have been or may be released, and (4) corrective actions at RCRA sites. In addition OSHA has clarified that the agency intends to cover voluntary clean-ups at government identified sites.

OSHA's proposal addressed the three specific populations of workers at the above operations. First, it was proposed to regulate those operations where employees are engaged in the clean-up of uncontrolled hazardous waste sites. These operations include those hazardous substance response operations under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 as amended (CERCLA), including initial investigations at CERCLA sites before the presence or absence of hazardous substances has been ascertained, those major corrective actions taken in clean-up operations under the Resource Conservation and Recovery Act of 1976 as amended (RCRA), and those hazardous waste operations at sites that have been designated for clean-up by state or local governmental authorities.

The second worker population proposed to be covered included those employees engaged in operations involving hazardous waste treatment, storage, and disposal (TSD) facilities regulated under 40 CFR Parts 264 and 265 pursuant to RCRA, except for small quantity generators and those employers with less than 90 days accumulation of hazardous wastes as defined in 40 CFR 262.34.

The third and final worker population proposed to be covered were those employees engaged in emergency response operations for releases or substantial threats of releases of hazardous substances, and post-emergency response operations to such releases at all workplaces.

In paragraph (a)(1)(i) of the final rule OSHA is regulating all government mandated clean-up operations at uncontrolled hazardous waste disposal sites. These operations were included in paragraphs (a)(1)(i) and (a)(1)(iii) of the proposal. For the purposes of this final rule, "Superfund" and other uncontrolled hazardous waste disposal sites include hazardous substance response operations at sites regulated under 40 CFR Part 300, Subpart F; RCRA closure activities conducted under 40 CFR Part 265, Subpart G; and those similar uncontrolled hazardous waste disposal sites that have been designated for clean-up by Federal, state or local governments.

OSHA intends and the change in language clarifies that all government mandated clean-ups are covered. These include not only sites on the various "Superfund" lists, but also all other government mandated clean-ups as well. The changed language makes clear that such clean-ups are covered whether or not they are financed by the government. The language further clarifies that clean-ups mandated by any level of government are covered.

In paragraph (a)(1)(ii) of the final rule, OSHA is regulating corrective actions at RCRA facilities. This paragraph adopts the language proposed in paragraph (a)(1)(ii) of the proposal with one change. The term 'major' has been deleted as a modifier of "corrective action." Several commenters requested clarification of the term "major corrective action." International Technologies, a major hazardous waste clean-up contractor, requested in their comment (10–44), "Please clarify 'major corrective actions conducted under RCRA.' What distinguishes 'major' corrective actions from other corrective actions?" The State of Indiana commented (10–23), "There is no definition of what constitutes a 'major corrective action' under RCRA." In addition, the term "major" is not used in EPA terminology.

"Corrective action" is a term unique to RCRA and has been defined for use with RCRA. OSHA's addition of the modifier "major" raised many definitional questions. Therefore OSHA, in the final rule, is deleting the word "major" to be consistent with EPA terminology and eliminate confusion. Rather than define "major corrective action," OSHA is amending the language of the proposal to include a phrase describing the level of corrective action that is to be regulated in the scope of this rule. OSHA will be regulating those corrective actions that potentially expose employees to a "safety or health hazard." OSHA is not concerned with those corrective actions that are intended to abate environmental risks without exposing employees to safety or health hazards. The phrase "safety or health hazard" in the introductory language is the phrase that OSHA has used to differentiate the type of releases that this standard regulates versus those release that may pose only environmental threats rather than safety or health threats to employees.

OSHA has decided to add a new paragraph (a)(1)(iii) to the final rule that would include within the scope of this rule those voluntary clean-up operations conducted at sites recognized by governmental bodies as uncontrolled hazardous waste disposal sites. All other voluntary clean-ups would be exempt from 29 CFR 1910.120. OSHA does not have the statutory responsibility to identify hazardous waste sites. It will leave to agencies with that authority the responsibility to identify those sites. Those voluntary sites that are not recognized by the government as uncontrolled hazardous waste disposal sites would be exempt from 29 CFR 1910.120; however, they would still be regulated by the other OSHA general industry or construction industry standards applicable to the work being performed at the site.

OSHA did not propose to cover voluntary clean-ups of hazardous substances in its proposed rule. Many comments suggested this, however, the Agency has concluded that individuals involved in voluntary clean-ups may be exposed to the same safety and health risks at voluntary sites identified by the government whether or not the government is compelling action. However, it would be difficult to know whether or not sites not identified by the government are hazardous waste sites without a structured evaluation system for such potential sites.

OSHA raised an issue on the scope in the preamble to the proposal that generated several comments. On page 29622 of the preamble to the proposal, OSHA listed several TSD facilities that would not be covered by the final rule. The exemptions were taken from a list published by the U.S. EPA that are not directly regulated by U.S. EPA. However, the proposed standard's language did not grant these exemptions. Comments did not support the exemptions and OSHA did not believe that they were appropriate.

The particular exemption that generated the most comment exempted those TSD facilities which operate under a state hazardous waste program pursuant to RCRA section 3006. These state hazardous waste programs are recognized by U.S. EPA in a similar fashion to the OSHA state plan states under section 18 of the OSH Act. A number of commenters, such as the State of Indiana (10–23), objected to this type of exemption by OSHA as not being appropriate. They stated OSHA jurisdiction should not be impacted by U.S. EPA state agreements, but only those state agreements provided in the OSH Act. OSHA agrees with these commenters and therefore OSHA jurisdiction will be delegated to only those states which OSHA has formal agreements with under the OSH Act. However, it should be noted that the U.S. EPA jurisdictions under SARA section 126 may make use of their state agreements.



Other commenters, EXXON (10–33) and CONOCO (10–32), suggested that OSHA incorporate the exemptions on page 29622 as a separate paragraph in the final rule.

Typical TSD facilities range from the hazardous waste generator with a hazardous waste storage area to the large, complex hazardous waste disposal facility. EPA estimates that approximately 80 percent of all generators also treat, store, or dispose of their hazardous wastes and thereby qualify as a TSD facility. Over 30,000 TSD facilities notified EPA in 1980 that they would qualify for regulation under section 3004 of RCRA.

OSHA continues to regulate RCRA TSD facilities in paragraph (a)(1)(iv) of the final rule as it was proposed in the regulatory language of the proposal. The list of exemptions on page 29622 will not be incorporated into the final rule. OSHA believes that such a list would create too great a gap in the protection of workers. For example, with respect to workers at TSD facilities operating under a state hazardous waste program pursuant to RCRA section 3006, OSHA agrees with a comment made by the State of Indiana (10–23) that it is possible that the workers in those 42 authorized states identified by Indiana could be without the protections mandated by Congress.

In paragraph (a)(1)(v) OSHA would continue to regulate emergency response operations for releases of, or substantial threats of releases of, hazardous substances without regard to the location of the operation as proposed in paragraph (a)(2) of the proposal. Such emergency response operations are not limited to those responses at uncontrolled hazardous waste disposal sites or RCRA TSD facilities. With respect to transportation incidents, responders to the scene are covered but operators (i.e., truck drivers and train crews) are not covered unless they become actively involved in the response action.

OSHA is making major revisions to proposed paragraph (1). These revisions have been made in response to comments concerning OSHA's involvement in regulating emergency response at every site involving hazardous substance release or potential release. Some of the comments were in favor of OSHA's continued involvement with emergency response (i.e., American Chemical Society, 10–44) and others were opposed to continued involvement (i.e., ECOLAB, 10–64). Others supported OSHA involvement in emergency response activities at uncontrolled hazardous waste sites and certain RCRA facilities but opposed the agency's involvement with non-waste clean-up or non-RCRA facilities (i.e., The Chlorine Institute, 10–24). Yet others called for two separate areas in the rule; one for hazardous waste operations, and one for emergency response (i.e., Allied Signal, 10–38). Others opposed coverage of emergency response to petroleum spills (CONOCO, Ex. 10–32).

OSHA after reviewing all the comments, continues to believe that it is the clear intent of Congress that any employees participating in an emergency response to the release or potential for release of hazardous substance be covered by this rulemaking. This Congressional intent applies to all such emergency responses including those both off and on hazardous waste sites.

The statutory language indicates that all emergency responses where the threat of hazardous substance spills exist are to be covered.

Section 126(b)(11) of SARA specifically provides that "requirements for emergency response" are to be included and is not limited to hazardous waste sites.

In addition, section 126(d)(4) states:

> Training of Emergency Response Personnel.—Such training standards shall set forth requirements for the training of workers who are responsible for responding to *hazardous emergency situations* who may be exposed to toxic substances in carrying out their responsibilities. (emphasis added)

This is very broad language that is not limited to hazardous waste operations or hazardous wastes or substances on CERCLA or RCRA sites. It covers all "hazardous emergency situations" for all "toxic substances" which would clearly cover all types of emergency response for chemical spills including chemical tanker spills and the like. It should also be noted that once a tank truck spills a toxic chemical in an emergency it creates a hazardous waste in the very real sense.

Further, the grant provision of the statute clearly indicates that grants can be made to train workers for emergency response at any location, not just on hazardous waste sites.

Section 126(g)(1) states:

> Grant Purposes.—Grants for the training and education of workers who are or may be engaged in activities related to hazardous waste removal or containment or *emergency response* may be under this section. (emphasis added)

Other statutory sections also indicate the legislative intent to cover all emergency responses where hazardous chemical spills are possible.

In addition to the statutory language, the documents cited by Congress as the minimum guides for OSHA to use in developing this rule refer to all emergency responses. The EPA manual and the OSHA construction standards referred to in the statute require preparations and planning for emergencies generally, not just for hazardous waste site emergencies.

In addition the legislative history indicates that Congress intended Section 126 to cover emergency response to all situations where spills of hazardous chemicals were a possibility and not just emergency response on hazardous waste sites. For example, Senator Hatch stated:

> This amendment will address the concerns that have been raised that the Department of Labor issue standards for employees engaged in hazardous waste operations, as well as emergency response. (9/24/86 Cong. Rec. pg. S–12031)

As discussed elsewhere in this preamble OSHA believes there is a clear need for training and other provisions to protect workers engaged in all emergency responses when there is the possibility of hazardous substance spills. This is needed whether or not the emergency occurs on a hazardous waste site. The agency believes that the hazards are the same in these cases.

Finally, other parts of SARA, in particular Title III, address emergency response actions and planning by communities and local government employers outside of the hazardous waste clean-up operation. The Congressional concerns on toxic emergencies also discussed in *Task Force on Toxic Emergencies*, Environmental and Energy Study Conference Special Report, September 18, 1986. This report stresses the need for training of emergency response personnel as well as emergency response planning and related areas. This was part of the legislative research which led to the passage of section 126 of SARA.

OSHA's final rule rulemaking divides emergency response into three separate areas. First, OSHA is regulating emergency response by employees at uncontrolled hazardous waste sites in paragraph (l) of the final rule. This paragraph contains the requirements that were in paragraphs (l)(1) and (l)(2) of the proposal and the interim rule. These regulations applied to the "on-site" operations of the interim rule. Second, OSHA is regulating emergency response at RCRA facilities in paragraph (p)(8). This paragraph contains the requirements that were in paragraphs (l)(1) and (l)(3) of the proposal and interim rule. These regulations applied to the "off-site"

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operations of the interim rule. Third, OSHA is regulating emergency response to hazardous substance releases by employees not covered by paragraphs (l) and (p)(8) in paragraph (q). Paragraph (q) contains the requirements proposed in paragraphs (l)(1), (l)(3), (l)(4), and (l)(5) of the proposal and interim rule. These regulations were directed toward emergency response teams, industrial fire brigades, and hazardous materials teams.

In its proposal OSHA covered emergency response to releases of hazardous substances. The agency did not propose to limit emergency response to uncontrolled hazardous waste sites but decided instead to propose to cover all emergency response whether it was done at uncontrolled hazardous waste sites or anywhere else, including petrochemical and similar manufacturing facilities.

OSHA's decision to propose coverage of all emergency response was based upon the high risk associated with emergency response by untrained and unprotected employees and the need for proper training and equipment to be provided for emergency response to hazardous substance releases. In testimony during the public hearings on this rulemaking, Mr. William Bunner stated, "The highest-risk incidents are the persons who respond to spills and accidental releases of hazardous chemicals; and those personnel, particularly public first responders, have had the least protection in terms of chemical emergency response safety and health plans, training and equipment." (Tr. pgs. 24–25). Mr. Bunner goes on to state, "The real strength of 29 CFR 1910.120 is that it not only provides for a more consistent and thorough approach to protecting workers involved in hazardous waste operations, but also for personnel who face extremely high risk to life and health that's associated with chemical emergency response." (Tr. pg. 25).

Another witness, Mr. Ray Simpson, one of OSHA's expert witnesses on fire suppression, fire inspection, and training, testified, "I like to support any concept that advocates properly equipping, training, and supporting emergency responders. When I talk about an emergency responder, I'm not talking simply about fire fighters although that's basically my expertise. I'm talking about the emergency medical technicians, the people who handle the victims. I'm talking about the police officer who, many times, is first on the scene before any of us get there: the many who really must make, in some situations, the initial decision about what's going to happen. I have learned over these many years that the two greatest dangers that face us as emergency responders are ignorance or non-awareness of what we're facing and the lack of plan or any procedure that will take us to the end that we're trying to accomplish." (Tr. pgs. 89–90).

Margaret Seminario, Associate Director, Department of Occupational Safety, Health and Social Security of the American Federation of Labor-Congress of Industrial Organizations (AFL–CIO) also testified at OSHA's public hearings on the issue of emergency response. Ms. Seminario discussed the participation of the AFL–CIO in hearings before the House Subcommittee on Employment and Housing of the Government Operations Committee and the Safety and Health Subcommittee of Education and Labor. Ms. Seminario stated, "Those hearings dealt with the issues of the problems for hazardous waste workers in both Superfund operations and RCRA operations, but they also got into an issue that had really not been explored very fully: the problems facing emergency response workers, particularly for the AFL–CIO firefighters. The members of our firefighter's union were the ones who were called in when there were spills, leaks and other accidental releases. These weren't hazardous waste sites, per se, at the time. They became hazardous waste sites and were defined as such after the fact; but they were routinely called in without information, without adequate protection to deal with these problems. That was an issue, as I said, that was fully explored in those hearings and it was the reason that, when we moved from those hearings into a legislative opportunity in Superfund, we looked beyond the language that we had come up with in the 1980 law which dealt only with hazardous waste and expanded it to include emergency response operations." (Tr. pgs. 345–346)

Further, OSHA still believes that Congress intended this rule to have such coverage. This is indicated by the language of SARA as well as the legislative history.

As OSHA stated in the preamble to the proposed rule, "The language of section 126(a) mandates safety and health standards for the protection of employees engaged "in hazardous waste operations." The term "hazardous waste operation" is not limited in the legislation and a response to spills of hazardous substances on the highway or from a railway tank car in order to control and contain the hazardous substance (which has become a waste once it is not contained) is in the common sense meaning a hazardous waste operation."

"This interpretation is reinforced by the fact that SARA is a free-standing statutory provision and not an amendment to CERCLA. The clear Congressional intent then is to provide protection to employees whenever they deal with hazardous wastes."

In addition section 126(d)(4) discussing training for emergency response personnel utilizes the very broad term "hazardous emergency situation." Section 126(g)(1) indicates that training grants may be given independently for emergency response training separate from hazardous waste removal training. Section 126(b)(11) also indicates emergency response is an independent concept separate from hazardous waste removal operation. For those and other reasons OSHA believes section 126 is intended to cover emergency response to hazardous substances whether on an uncontrolled hazardous waste disposal site, a RCRA site or elsewhere. However, the clarified language in the scope sections makes it clear the only employers whose employees have the reasonable possibility of engaging in emergency response are covered. Emergency response employees who respond or will respond to incidents involving hazardous substances are covered by this final rule to the extent that they are exposed to hazardous substances. State and local government employees in states that have agreements with OSHA under section 18 of the OSH Act must be regulated by state regulations at least as effective as these to protect public employees. Those state regulations must be issued within six months of the date of promulgation of this final rule.

However, some commenters have commented that OSHA has exceeded the intent of Congress with the scope of the proposed rule. Many of these commenters stated that OSHA's coverage of emergency response at sites other than specific cleanup or TSD facilities was too broad and unwarranted. AMOCO's comment (10–26) is representative of some of the comments made on this issue. In their comment AMOCO stated that, "Section 126(a) of SARA is the directive to OSHA to promulgate standards 'for the health and safety protection of employees engaged in hazardous waste operations.' There is no reference whatsoever in this directive to promulgate standard (sic) with respect to emergency response activities outside of hazardous waste operations." However, other comments received from the petrochemical



industry support, on a limited basis, OSHA's decision to cover emergency response with the scope of the standard. CONOCO's comment (10–32) is representative of this point of view. CONOCO states, "Conoco's primary concern with the proposed rule centers on the extremely broad scope of employee coverage under this standard and compared to Congress' intent to cover 'hazardous waste operations and emergency response.' We believe that Congress intended section 126 of SARA to cover employees engaged in hazardous waste operations and emergency response to these operations on a full-time basis." While this comment would seem to support OSHA's coverage of employees engaged in emergency response, that support is limited to those employees engaged in response on a full-time basis at hazardous waste operations.

Based upon public testimony and written comments received into the record of this rulemaking, OSHA has concluded, that because of the high risk associated with emergency response to the releases of hazardous substances and the number of these incidents occurring, that coverage of workers conducting such emergency response activities is both appropriate and necessary.

OSHA believes that the scope of this final rule carries out the intent of Congress and is consistent with good occupational safety and health policy. Employees performing clean-up operations under CERCLA, RCRA (corrective actions) and state or local government designated sites—generally those employees likely to have the highest exposures to hazardous substances over a longer period—would be covered by virtually all the provisions of this final rule. Employees exposed to hazardous wastes in routine RCRA hazardous waste operations, who are regularly exposed to hazardous wastes but in a more controlled environment, would be covered by the more limited requirements of paragraphs (p) and (q). Emergency response workers, exposed usually for short periods to often unknown but possibly high levels of hazardous substances, would be regulated by paragraph (q).

2. *Application.* OSHA proposed to define the application of this final rule in paragraph (a)(3) of OSHA's Notice of Proposed Rulemaking (NPRM) published on August 10, 1987 (52 FR 29620). "*Application*" establishes which regulations within this rule apply to the specific worker populations to be protected by this rule.

In paragraph (a)(3)(i) OSHA proposed that the employer would have to comply with the standards in 29 CFR Parts 1910 and 1926, as well as with the requirements specifically covered in the proposed rule. If there were a conflict or overlap between standards, it was proposed that the more protective provisions would apply. Since this rule does not cover all of the hazards present at hazardous waste operations, other OSHA standards in Parts 1910 and 1926 should apply to ensure employee safety and health. Other OSHA standards regulate many other hazards, and OSHA wants to make clear that the other standards continue to apply. Also, OSHA proposed that hazardous waste operators who are not within the scope of this standard should continue to be regulated by the Parts 1910 and 1926 standards. OSHA is keeping those provisions in the final rule for the reasons stated with minor editorial changes for clarification.

In paragraph (a)(3)(ii), OSHA proposed that all paragraphs of section 1910.120 except paragraph (o) would apply to hazardous wastes operations at CERCLA sites, at major corrective action at RCRA sites, and at sites designated for clean-up by state and local governments. Paragraph (o) of the proposal addressed certain operations conducted under the Resource Conservation and Recovery Act of 1976 (RCRA).

OSHA recognizes that the hazards presented to employees engaged in clean-up operations involving uncontrolled hazardous wastes are far greater than those presented to employees engaged in the routine, day-to-day operations of an EPA licensed TSD facility.

OSHA has made two editorial changes in its proposed language in paragraph (a)(3)(ii) without changing the intent of the paragraph. First, rather than referring to each of the types of sites individually, OSHA is making reference to the scope paragraphs (a)(1)(i) through (a)(1)(iii) to identify the sites that this application paragraph addresses. The sites to be addressed remain the same as proposed. Second, because the codification of paragraphs has changed in this final rule due to changes made to the proposal, paragraph (p) of § 1910.120 rather than paragraph (o) will apply specifically to hazardous waste operations at RCRA sites which are involved in treatment, storage, disposal and handling of hazardous waste. The new requirements of paragraph (p) are discussed later in the preamble.

In paragraph (a)(3)(iii), OSHA proposed that the requirements set forth in paragraph (o) of section 1910.120 would apply specifically to the hazardous waste operations at RCRA sites which are involved in treatment, storage, disposal and handling of hazardous waste. The proposal contained a limited exclusion from these regulations for certain small quantity generators and less than 90-day accumulators, such as dry cleaners and gas stations, which come within the purview of RCRA, but are not hazardous waste operations in the normal meaning of the term. The exclusion was available to these operations depending upon the employer's decision to provide or not provide emergency response by employees to releases of, or substantial threats of releases of, hazardous substances.

OSHA proposed to exempt small quantity generators and less than 90 day accumulators from all parts of the rule if they did not provide emergency response by their employees to releases of, or substantial threats of releases of, hazardous substances. OSHA further proposed to exempt small quantity generators and less than 90 day accumulators from all parts of the rule except paragraph (l) if they did provide emergency response by their employees to releases of, or substantial threats of releases of, hazardous substances.

OSHA recognized that many small quantity generators are smaller businesses with limited employee populations. Since most of these establishments rely on the emergency response services of local fire and rescue departments, OSHA is providing a complete exemption from these proposed standards when the employer can show that employees are not required or encouraged to engage in emergency response, but are directed in the case of emergency spills of hazardous substances to maintain a safe distance and to call local fire or other emergency response organizations. In cases where such establishments do provide emergency response by employees, and thereby expose employees to hazardous substances, OSHA proposed that such employers meet the emergency response requirements of paragraph (l) of this proposed rule. OSHA concludes its proposal is supported by the record.

Without these exemptions, these regulations could be interpreted to cover gas stations, dry cleaners, and other small businesses which temporarily store small quantities of a hazardous waste. These businesses are not engaged in hazardous waste operations as that term is conceived of normally. In addition, it is not believed that Congress intended such businesses to be covered. They do not present the relatively high

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exposure to a number of hazardous health risks to employees that hazardous waste sites typically do.

In paragraph (a)(3)(iv) OSHA proposed that the requirements set forth in paragraph (l) of this section would specifically apply to the work conducted by emergency response personnel when they respond to hazardous substance emergency incidents. Emergency response personnel include firefighters, EMS personnel, and police as well as other employees.

The regulation of employees providing emergency response has been discussed under the "Scope" portion of this preamble discussion. Further discussion of OSHA's changes to the emergency response portion of this rulemaking is contained in the discussion of paragraph (l) of the proposal.

OSHA also requested comment on what other operations should be and are intended by Congress to be covered, and whether specific operations should be excluded because of low exposures. For example, municipal or other sanitary landfills that handle domestic wastes would not normally be regulated by this rule. Similarly, waste paper or scrap metal operations would not normally be regulated because of the type of wastes they handle. However, both types of operations would be regulated if they have clean-ups for or handle hazardous wastes meeting the scope provisions of the standard.

Also, employees at hazardous waste disposal sites who will not be exposed to, or do not have the potential to be exposed to, hazardous substances are not covered by this rule. The provisions of these regulations are designed to protect employees who have or may have exposures, and would not be needed for those employees who do not.

Operations with no exposure to hazardous substances, i.e., road building for site access, construction of or the setting up of temporary facilities in the clean zone, or the closure of a RCRA site involving the building of a clay cap over hazard wastes, are considered to be construction activities covered by the standards in 29 CFR Part 1926.

As a result of the comments received during the public comment phase of this rulemaking, OSHA has made some changes to the degree of regulation for emergency response workers. However, the scope of this standard continues to cover such workers and paragraph (a)(2)(iv) identifies the new paragraphs within the rule that reflect the changes and identifies the standards that apply to emergency response operations.

3. *Definitions.* In paragraph (a)(4), *Definitions*, OSHA proposed to identify and define the various terms used in this rulemaking that may cause confusion. However, the following new definitions have been added as a result of comments made in the record: "published exposure level," and "uncontrolled hazardous waste site". Except for the definition of "established exposure level" which has been amended to define "published exposure level," no definitions have been removed from the proposal.

The term "established permissible exposure limit" was incorporated as part of the determination of whether medical surveillance was required. There were a number of comments on this definition.

One commenter, Four Seasons Industrial Services (10–5), believed that the definition should be broadened. Four Seasons stated, "The routes of chemical exposure are through inhalation, skin absorption, and ingestion. All of these have to be considered when dealing with permissible exposure limits. Your definition as written does not include ingestion." Other commenters were concerned that OSHA included the NIOSH Recommended Exposure Limits in the definition of PELs. The E. I. DuPont de Nemours, Co. (10–28) comments summarize many of those received against the NIOSH levels. DuPont stated, "NIOSH limits have not undergone public review and comment as have national consensus standards and regulatory exposure standards. Therefore, they should not be included in the definition of 'established exposure limits'." CONOCO (10–32) agreed when they stated, "These NIOSH limits are not subject to peer review or public comment as are OSHA's PELs. We encourage OSHA to remove the references to these NIOSH limits. We strongly urge OSHA to *only* use PELs given in 29 CFR 1910, Subpart Z."

Dr. James Melius, Division of Environment Health Assessment, State of New York Department of Health Medical Surveillance, and one of OSHA's expert witnesses in occupational medicine, stated in his testimony (Tr. pg. 115) that, "I think it's important that the OSHA standards be supplemented by information from NIOSH and ACGIH, both of which cover a larger number of chemicals or toxic substances and both of which include, or at least consider, more up to date information on the toxicity of these substances."

In addition, during the public hearings, OSHA, through its panel of staff members specifically asked Captain Richard A. Lemen, Director of the Division of Standards Development and Technology Transfer within NIOSH, about the peer review process of NIOSH RELs. Mr. Thomas Seymour of OSHA directed the following question to Captain Lemen (Tr. pg. 195).

[Mr. Seymour:] We have received some feedback in our record about the order of the hierarchy that we have used for permissible exposure limits. There have been statements made that the RELs are not peer-reviewed or developed. I wonder if you might describe to us how the RELs have been developed by the National Institute for Occupational Safety and Health.

Captain Lemen's response (Tr. pgs. 195–197) to Mr. Seymour was:

Okay. In response to the peer review question, I would say that probably the RELs were more peer reviewed than most recommendations. The first process of developing an REL at National Institute for Occupational Safety and Health is to propose such a recommendation be developed to the Director of NIOSH through a position paper.

That is then reviewed by senior NIOSH staff. Once that approval is given, a criteria manager then develops the recommended exposure standard in the form of a criteria document.

Once the criteria document has gone through several layers of review within NIOSH, it is then sent out for external review. On the average, we usually send out to more than 40 experts in the field that document for their external comments.

We receive those comments back. We incorporate those comments where appropriate. We then submit the document through the same internal review within NIOSH. It goes through every division within the Institute and it finally winds up in the senior review staff at the directors' level at our headquarters in Atlanta.

A meeting is then held with the Director of NIOSH at which time the criteria manager and the senior scientists within the Institute [review] all of the reviewer—external and internal reviewer—comments and a decision is made by the Director of NIOSH whether or not to publish a recommended exposure limit.

If the decision is to publish, then we do so and submit that criteria document to the Director of OSHA.

So it goes through a very extensive peer review process compared to, for example, an article submitted to peer-review journal which is written by a researcher and generally sent out to three to five individuals to review before it's placed in a peer review journal.

So the extensiveness of our review process, I think, is much greater than that for a peer-preview journal article.

In light of these comments OSHA has concluded that the NIOSH REL's have undergone the necessary peer review to be included in the standard's hierarchy of limits.

The term "established exposure levels" was defined in the proposal to indicate the levels which would trigger medical surveillance of the exposed employees. The term included not only OSHA established PELs, but also



exposure limits suggested by NIOSH and ACGIH. After review of these and other comments, OSHA concludes that it is appropriate to go beyond the OSHA established PELs in triggering medical surveillance. First, medical surveillance is appropriate for workers exposed to toxic chemicals other than those covered by the PEL's. Second, because of the broadly-worded language in section 126(b)(3), which requires medical surveillance for workers engaged in hazardous waste operations "which would expose them to toxic substances." Some of these "toxic substances" are not included in the OSHA PELs. When OSHA completes its rulemaking on the air contamination proposal (PEL's project), there will be fewer toxic substances not covered by PEL's. But in light of Congressional language and the large number of hazardous chemicals present in an uncontrolled hazardous waste site, OSHA concludes that this definition is appropriate to protect employee safety and health.

The term "permissible exposure limits" was defined in the proposal as the inhalation or dermal permissible exposure limit specified in 29 CFR Part 1910, Subpart Z. As a result of the comments received in the record, OSHA has amended its definition that ignored the health limits specified in Subpart G, for "permissible exposure limits."

OSHA has amended the definition for "permissible exposure limits" to include a reference to Subpart G of Part 1910. It now includes both Subpart Z health hazards and those requirements in Subpart G of Part 1910.

First, OSHA has changed the term "established exposure levels" to the term "published exposure level" to reduce confusion. Second, the term "published exposure level" is defined as the exposure limits published in "NIOSH Recommendations for Occupational Health Standards" dated 1986, incorporated by reference, or if none is specified, the exposure limits published in the standards specified by the American Conference of Governmental Industrial Hygienists in their publication "Threshold Limit Values and Biological Exposure Indices for 1987–88" dated 1987, incorporated by reference. Third, the provisions of (f)(2) on medical surveillance have been changed to cover overexposures to both PEL's and, if none, then over-exposure to published exposure limits. OSHA concludes that with these changes the definitions are clear, comprehensive and carry out both statutory directives and appropriate medical criteria in determining whether medical surveillance is required. Some commenters stated a broader guide is necessary for respirator use and that is discussed under paragraph (g).

OSHA requested comment on the appropriateness of its definitions of hazardous waste, health hazard and hazardous substance and whether they were consistent with EPA and DOT practice. Several comments were received on these issues. One set of comments criticized OSHA's incorporation of petroleum and petroleum products in its definition of hazardous substances.

A typical comment was made by EXXON (10–33). In their comments EXXON presented the following discussion:

> Perhaps the most fundamental misinterpretation contained in this rule is the inclusion of petroleum and petroleum products in the definition of hazardous substance. As discussed in Comment II.A.4.v, below at pages 11 to 14 [internal EXXON comment references], Congress, the Environmental Protection Agency (EPA), and the Department of Transportation (DOT) have uniformly recognized the inappropriateness of characterizing petroleum as a hazardous substance. There is no indication in SARA Section 126 that Congress intended to change the petroleum exclusion or to subject petroleum releases to emergency response regulation.

EXXON further stated:

> It is EXXON's understanding that a situation is not an emergency response subject to the requirements of paragraph (1) unless there is a release of a "hazardous substance." Therefore it is essential that the definition of "hazardous substance" be accurate and correct.
>
> The proposed definition of "hazardous substance" references the Department of Transportation's definition of "hazardous materials" under 49 CFR 171.8. By so doing, petroleum and petroleum products have been included as hazardous substances; and, related spills may be subject to the burdensome requirements for emergency response operations.
>
> Congress, in the very CERCLA sections cited in the proposed definition of "hazardous substance," has recognized that petroleum and petroleum products are excluded from the federal definition of "hazardous substance." EPA regulations under CERCLA have incorporated this congressional directive. *See* 40 CFR Part 302 and discussion at 50 FR 13456, 13460 (April 4, 1985). DOT has specifically recognized this Federal petroleum exclusion and incorporated the exclusion in its definition of "hazardous substance." *See* 52 FR 24474 (July 1, 1987). As such, the proposed OSHA definition is inconsistent with the CERCLA, EPA and DOT definitions of "hazardous substance."
>
> The proposed definition of "hazardous waste" includes the EPA RCRA definition of hazardous waste and the DOT definitions at 49 CFR 171.8. The cited DOT regulation defines both hazardous substances and hazardous wastes. As noted above, the DOT definition of hazardous substance at 49 CFR 171.8 should properly be incorporated in the proposed OSHA definition of hazardous substance. It is not a waste definition. Therefore, the proposed definition of hazardous waste should be limited to waste materials; and, the DOT definition of hazardous substance should be clearly excluded.

OSHA does not agree with these arguments. Section 126 of SARA is directed to protecting workers from the hazards of all hazardous waste spills. Petroleum products create significant health and safety hazards. Many comments supported OSHA's incorporation of petroleum and petroleum products.

During the questioning of Dr. Kenneth H. Chase, M.D., President of the Washington Occupational Health Associates, Inc., Mr. Chappell Pierce of the OSHA panel asked Dr. Chase the following question (Tr. pg. 551):"Do you feel that medical monitoring for these types of products [petroleum products] is appropriate?"

Dr. Chase responded,"Petroleum products is just too broad a term for me to answer that in a general way. Certain petroleum derivatives are more toxic than others. Some have acute toxicity; others subacute toxicity; and others, the concern is more about chronic toxicity that is most difficult to detect."

During the hearings, OSHA asked many of the individuals who testified if petroleum and petroleum products should be included in the definition of hazardous substances.

Representative of the responses made to this question was the testimony of the Prince Georges County Fire Department; the International Association of Fire Fighters, AFL–CIO; NIOSH; and the Seattle, Washington Fire Department.

Mr. Gregory Noll, the Hazardous Materials Coordinator for the Prince George's County Maryland Fire Department, testified on the issue (Tr. pg. 448). Mr. Thomas Seymour of the OSHA panel addressed Mr. Noll by stating: "I notice in your testimony, on page 3, that you indicate that at least 50 percent of your responses are involved with flammable liquids or gas emergencies. The definition that OSHA is using in this rulemaking for hazardous substances dealing with and covering flammable liquids and gases you find, then, appropriate?"

Mr. Noll responded, "I think realistically, from the perspective of fire service, we've been successfully handling flammable liquid and gas emergencies for a number of years. Today, with HAZMATs being the buzz word, certainly those categories of

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commodities have been thrown into the hazardous materials field.

"We now regard them in the hazardous materials field from a practical perspective."

Mr. Thomas Seymour of the OSHA panel asked Mr. Richard Duffy of the International Association of Fire Fighters (Tr. pg. 110), "Mr. Duffy, we have had some previous commenters who have advocated that petroleum and petroleum products be excluded from the scope of the standard.

The example that you just gave about the propane tank inside the building exploding and killing fire fighters, what is your opinion about whether we should exclude petroleum products from this standard?"

Mr. Duffy responded: "I don't know how we would classify them. I would object to that. I mean, I don't know how to better qualify—I could talk to you for days about incidents involving petroleum products. I don't see any reason to exclude them any more than excluding the oxidizers or any group. I mean, you could pick lots of products and ask to exclude them. And I'm sure a lot of the lobbying entities can establish reasons for it. But I can't see any in terms for fire fighters."

Mr. Charles Gordon of the Department of Labor's Office of the Solicitor and a member of the OSHA panel asked Captain Richard A. Lemen, Director of the Division of Standards Development and Technology Transfer of, NIOSH the following question (Tr. pg. 200–201): "In the case of spills of petroleum or petroleum products in either an emergency response situation or as a hazardous waste dump were there are petroleum products as one of the major contaminants, is it appropriate for all the provisions of the OSHA standard or the recommendations to apply in those circumstances?"

Captain Lemen responded, "We believe it is appropriate and they should apply in those circumstances, as well."

Mr. Seymour also asked Deputy Chief Roger Ramsey of the Seattle Fire Department (Tr. pg. 142): "I gather from what you have also said that the definition we have, including the DOT hazardous material definition for hazardous substance and materials is appropriate, and that we should not exclude petroleum products from the coverage of this standard?"

Deputy Chief Ramsey responded, "Absolutely not."

Many spills and emergency response to these spills involve petroleum products. These spills present both health and safety risks. Training is necessary to protect employees who respond to petroleum spills as with other spills. In fact, these are usually the same employees.

OSHA concludes that it is crucial to cover responses to petroleum spills as well as all other spills because petroleum products constitute a substantial threat to employees responding to accidental releases of these substances. Many petroleum products present health hazards as well as fire and explosion hazards. In addition they often contain fractions which present high health hazards. For example, many contain benezene, a carcinogen to which employees may be exposed.

Therefore, OSHA is not amending its definition for "hazardous substance" to include the petroleum exclusion referenced by some of the commenters.

The other definitions are discussed in the preamble to the proposal for this rulemaking. There were no major comments. OSHA concludes that those definitions are appropriate for the reasons stated in the proposal preamble.

*Paragraph (b)—Safety and Health Program*

Paragraph (b) of the proposal has been reorganized for clarity as a result of the public comment. Basic requirements remain the same. Specific changes are discussed below. This paragraph basically requires that a written safety and health program cover safety and health organization and specific work practices to assure employee safety and health. OSHA has concluded that it is crucial for employee safety and health to have a written safety and health program that would force the systematic identification of site hazards and identify employee response to those hazards. The written plan is necessary to communicate hazards to employees for their awareness and protection. (See preamble discussion at 52 FR 29624.)

OSHA received many comments supporting the requirement for a written safety and health program (i.e, State of Wyoming, 10–9; James T. Dufour, 10–78; International Association of Fire Fighters Local 291, 10–12); other commenters have made suggestions for changes to the proposed language.

OSHA concludes that for the reasons stated a written program is necessary. The following discussion covers specific changes.

OSHA has included a non-mandatory note at the beginning of new paragraph (b) that explains the acceptability of safety and health programs developed and implemented to meet other Federal, state, or local regulations in meeting the requirements of this paragraph. Some commenters believed that OSHA's requirements for a safety and health program were somewhat duplicative of the contingency plans and emergency response plans required by the E.P.A. for its permit requirements (i.e., Tennessee Valley Authority, 10–43; National Paint and Coating Association, 10–72; Johnson Wax, 10–84). OSHA will permit existing programs that have been designed to meet other government or corporate requirements. For example, contingency plans developed under 40 CFR 265.50 are acceptable in meeting this requirement if they are supplemented with the provisions established by the OSHA standard. OSHA does not intend to require the duplication of efforts made to meet other governmental regulations. Therefore, any plan containing all of the elements required for the OSHA plan will be acceptable in meeting this requirement without the need for developing a separate OSHA plan.

In paragraph (b)(1) of the final rule OSHA has taken the language proposed in paragraphs (b)(1)(i), (b)(2), and (b)(3) of the proposal and subdivided it into paragraphs (b)(1)(i), (b)(1)(ii), (b)(1)(iii), and (b)(1)(iv). Paragraph (b)(1)(i) contains the first two sentences of the proposal along with two new sentences that clarify what the safety and health program shall include. OSHA has included the new sentences and the new note to this paragraph to provide further guidance to employers who may need assistance in developing their safety and health program.

In paragraph (b)(1)(ii) of the final rule OSHA is using the last sentence and the list of chapters proposed in paragraph (b)(1)(i) and subparagraphs (A) through (C). There are no changes made to the language as proposed other than a recodification of the paragraphs.

In paragraph (b)(1)(iii) of the final rule OSHA is using the exact language proposed in paragraph (b)(2). The proposed language has been moved to this paragraph because it contains a requirement that is of a general nature.

In paragraph (b)(1)(iv) of the final rule OSHA is using the language proposed in paragraph (b)(3)(i) with one exception. A new phrase would require the employer to inform contractors and subcontractors of the site emergency response procedures in addition to the proposed information. One commenter, CDM Federal Programs Corporation (10–83), suggested revised language to the proposal that would assure that the contractors and subcontractors received the site specific safety and health plan as well as the safety and health programs. OSHA agrees with the suggestion of the commenter and that the new language accomplishes the recommended change suggested by CDM Federal Programs.



In paragraph (b)(1)(v) of the final rule OSHA is using the exact language of proposed paragraph (b)(3)(ii).

In paragraphs (b)(2), (b)(3), and (b)(4) of the final rule OSHA is using the exact language of paragraphs (b)(1)(ii), (b)(1)(iii), and (b)(1)(iv) of the proposal. One commenter, James T. Dufour (10–78), while supporting the use of safety and health plans as an appropriate communication tool for identifying site hazards, suggested that OSHA should require a more comprehensive review and control of the plan to assure its professional quality. OSHA believes that the language of paragraph (b)(4)(iv) would provide for this type of oversight and control. Therefore, the only change to paragraphs (b)(1)(ii) through (b)(1)(iv) is a recodification of the paragraphs.

*Paragraph (c)—Site Characterization and Analysis.*

The employer needs to know the hazards faced by employees in order to develop and implement effective control measures. Site characterization provides the information needed to identify site hazards and to select employee protection methods. The more accurate, detailed, and comprehensive the information available about a site, the more the protective measures can be tailored to the actual hazards that the employees may encounter. Congress clearly intended that such a requirement be included. Section 126(b)(1) of SARA provides that the proposal include "requirements for a formal hazard analysis of the site * * *."

It is important to recognize that site characterization is a continuous process. At each phase of site characterization, information is obtained and evaluated to define the potential hazards of the site. This assessment is to be used to develop a safety and health plan for the next phase of work. In addition to the formal information gathering that takes place during the phases of site characterization described above, all site personnel should be constantly alert for new information about site conditions.

In paragraph (c) of the final rule OSHA has used most of the language in paragraph (c) of the proposal. New headnotes have been added to the major paragraphs to make reading the requirements easier.

In paragraphs (c)(1) through (c)(4) of the final rule, OSHA has used the language of paragraphs (c)(1) through (c)(3) of the proposal. The reason for the one additional paragraph in the final rule is that OSHA has numbered the initial unnumbered paragraph in the proposal, and renumbered the rest. This is an editorial change and does not change any of the proposed requirements.

In paragraph (c)(5) of the final rule, OSHA is using the language of paragraph (c)(4) of the proposal with one change. Paragraph (c)(4)(ii) of the proposal has been revised as paragraph (c)(5)(ii). The new requirement still requires the use of a five minute escape self-contained breathing apparatus, however, its need is now based upon two conditions. In the proposal, all employees had to have access to an ESCBA during initial site entry. Two commenters, the State of Wyoming (10–9) and CDM Federal Programs Corporation (10–83), suggested that OSHA revise this requirement to recognize that the use of ESCBAs should be determined by the nature of the health hazards and the nature of the work to be performed. OSHA agrees that all employees who cannot be exposed to site conditions where possible health hazards may occur should not be required to carry ESCBAs. Therefore OSHA has amended its proposal as follows. Two conditions will now limit the employee population that must be provided access to ESCBA. They are (1) if positive-pressure self-contained breathing apparatus is not used as part of the entry personal protective equipment; and (2) if respiratory protection is warranted by the potential hazards identified during the preliminary site evaluation. Workers in populations where these two conditions are not met need not be provided with ESCBA.

Paragraphs (c)(5)(i), (c)(5)(iii), and (c)(5)(iv) contain the exact language as proposed in paragraphs (c)(4)(i), (c)(4)(iii), and (c)(4)(iv).

In paragraph (c)(6) of the final rule, OSHA is using the language from paragraph (c)(5) of the proposal with some changes.

In paragraph (c)(6)(ii) of the final rule, OSHA has required that direct reading instruments be used where available. In the proposal OSHA had required only that appropriate equipment be used. The agency believes that direct reading instruments, where they are available for specific chemical hazards, will provide a more expeditious assessment of the hazards when there is not enough time during a specific work cycle to send samples out to a laboratory for analysis. In some situations, employees may be present at a particular job site for only a brief time. Certain sampling techniques, other than direct reading instruments, may require a longer time for analysis than the employee's actual exposure time on the job. Therefore, OSHA is amending its proposal by recognizing direct reading instruments as an alternative to standard testing procedures. OSHA has added the phrase "appropriate direct reading test equipment" in place of "appropriate equipment."

OSHA has also added a paragraph (c)(6)(iv) that would require that an ongoing air monitoring program be implemented in accordance with paragraph (h) of the final rule after site characterization has determined that the site is safe for start-up of operations. This is not a new requirement since it uses the same language as that proposed in paragraph (c)(8) of the proposal. OSHA has moved the paragraph from its position in the proposal to paragraph (c)(6)(iv) of the final rule because it is related to the subject matter of paragraph (c)(6). OSHA considers this to be an editorial change because there is no change in the proposed language.

Paragraphs (c)(6)(i) and (c)(6)(iii) continue to use the language of proposed paragraphs (c)(5)(i) and (c)(5)(iii).

In paragraph (c)(7) of the final rule OSHA is using the language of proposed paragraph (c)(6) with one change. In the note which describes risks to be considered, OSHA has amended paragraph (a) by changing the language to reflect the exposure limits and levels to be used in the final rule. Direct reference to Permissible Exposure Limits (PELs), Threshold Limit Values (TLVs), or Recommended Exposure Limits (RELs) has been deleted and a reference is made to permissible exposure limits and published exposure levels as defined in the final rule. No substantive change is made since those terms incorporate PELs, TLVs, and RELs by definition.

*Paragraph (d)—Site Control*

In paragraph (d) of the final rule OSHA is using the language of paragraph (d) of the proposal. Minor editorial changes have been made for clarity without changing the proposed requirements. The need for requirements for site control is discussed at 52 FR 29625 in the preamble to our proposal. There were few substantive comments. OSHA concludes that these provisions are necessary as discussed in the proposal.

*Paragraph (e)—Training*

The proposed rule included specific provisions for initial and routine training of employees before they would be permitted to engage in hazardous waste operations that could expose them to

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safety and health hazards. Section 126(b)(2) of SARA requires initial and recurrent training to be included in the final rule. The intent of the final training provisions is to provide employees with the knowledge and skills necessary to perform hazardous waste clean-up operations with minimal risk to their safety and health.

The proposed requirements for training in paragraph (e) addressed the needs of employees who will be working at CERCLA sites, certain RCRA sites, and sites designated or identified for clean-up by state or local governments.

The proposed provisions included a minimum of 40 hours of initial instruction off the site, and a minimum of three days of actual field experience under the direct supervision of a trained and experienced supervisor, at the time of job assignment. Congress has specifically imposed these hour and day requirements under section 126(d) of SARA for the proposed final standard. The proposed requirement represented a one-time effort by the employer for each employee covered by this standard. Employees would not need to be retrained for 40 hours at each site at which they work. Employees who had received the required training at one site could use that training to meet the proposed requirement at other sites even if it involved a different employer, provided the previous training addressed the hazards at the new site.

There are often many hazards at a waste site. The employee must be trained to recognize the hazards and appropriate work practices to minimize those hazards. The employee must also be well trained in the use of respirators and other forms of personal protective equipment. Without training, that equipment may not be used effectively and may not provide adequate protection. An extensive training program is necessary to assure that employees can use personal protective equipment effectively.

Managers and supervisors at regulated facilities, who are directly responsible for the site's operations, must have the same training as that of site employees and additional time for specialized training on managing hazardous waste operations. Since these managers and supervisors are responsible for directing others, it is necessary to enhance their ability to provide guidance and to make informed decisions. Section 126(d)(2) of SARA provides that there shall be eight hours of additional training for supervisors and managers.

The provisions also proposed that employees be retrained on an annual basis on relevant matters such as review of health hazards and the use of personal protective equipment. Employees at hazardous waste operations may face serious health and safety risks. Reminders are needed of this and of work practices necessary to avoid hazards. Personal protective equipment provides much of this protection. If there is no retraining in the use, care and maintenance of personal protective equipment, such equipment is unlikely to be properly utilized to provide adequate protection.

In all areas of training, whether it be for general site employees, supervisors at the site, or for the use of specific equipment, the level of training provided must be consistent with the worker's job function and responsibilities. Refresher training must be provided to reemphasize the initial training and to update employees on any new policies or procedures.

Section 126(d)(3) of SARA requires that OSHA provide for certification that an employee has received the training required by the standard. Section 126(d)(1) provides that OSHA not require training for employees who have already received equivalent training. The final standard has provisions to meet this directive.

OSHA requested comment as to whether its proposed training requirements were appropriate for hazardous waste operations. OSHA's proposed training requirements in paragraph (e) were limited to hazardous waste operations that involve the clean-up of uncontrolled hazardous waste disposal sites. Of all the issues raised by OSHA in its proposal, training was one that received a substantial amount of comment. Important comments directed to the paragraph (e) training requirements follow. Comments addressing the training of emergency response workers will be discussed later in this preamble under the appropriate paragraphs.

In paragraph (e)(1) of the final rule OSHA has combined the introductory paragraph of proposed paragraph (e) with the language proposed in paragraph (e)(5). The introductory paragraph of the proposal has been designated paragraph (e)(1)(i) and proposed paragraph (e)(5) has been designated (e)(1)(ii). OSHA considers this an editorial change which groups two general requirements under a single paragraph titled "General."

In paragraph (e)(2) of the final rule OSHA is using the language of paragraph (e)(1) in the proposal. Some minor changes are made to reflect the renumbering of the paragraph without changing any of the proposed requirements.

In paragraph (e)(3) of the final rule OSHA is revising the proposed language of paragraph (e)(2) of the proposal. Several comments addressed the proposed 40-hour training requirement for all employees who work on hazardous waste sites (i.e., Wassau Insurance Company, 10–8; International Technologies, 10–44; Cooperweld Steel, 10–41; James T. Dufour, 10–78). Some of the commenters believed that 40 hours of training for some employees at this type of site was excessive. For example, it was argued that 40 hours of training was excessive for general laborers who may be installing perimeter fencing around an unopened site and who are not exposed to any hazards. This type of employee normally will not be wearing the type of protective equipment or be performing the type of tasks normally associated with removal of hazardous wastes. On the other hand, employees who will be "digging in the dirt" after the site has been opened in order to remove hazardous waste may need additional training because of the types of equipment they will be using and the types of hazards to which they will be exposed.

Wassau Insurance commented, "I feel the 40 hour minimum training requirement is excessive for many employees who will never be required to work above level D protection." The commenter continues, "The excessive training requirements of the current proposal add a significant burden to employers in situations where only low levels of protection are required (e.g., level D and level C situations)."

OSHA has revised its proposal for 40 hours of training for all employees engaged in hazardous waste operations at uncontrolled hazardous waste sites. For general site workers, OSHA is retaining the 40-hour, three-day on-the-job training requirement. OSHA has concluded that this level of training is necessary to protect general site workers because they are engaged in difficult work in areas with safety and health hazards. Moreover, OSHA believes the Congressional language is quite clear on this matter.

However, for certain types of other workers, OSHA has concluded that less training may be appropriate. For example, those workers who visit sites only on occasion and then under the supervision of experienced site workers are required to have 24 hours of training and one-day of on-the-job training. OSHA has also concluded that this same level of training would be appropriate for those general site workers who work in areas which have been monitored and fully characterized



indicating that exposures are under both permissible exposure limits and published exposure limits and that respirators are not necessary.

In paragraph (e)(4) of the final rule OSHA is using the language proposed in paragraph (e)(3).

In paragraph (e)(5) of the final rule OSHA is using the language proposed in paragraph (e)(4) with the addition of a new sentence. Some commenters thought that the proposed language for the qualification of trainers was too broad and ambiguous. The State of Indiana (10–23) offered a representative comment: "Knowledge or training equivalent to (redundant phrase removed) a level of training higher than the level that they are presenting is no assurance that an employee is capable of providing adequate training to other employees."

Another commenter, the International Union of Operating Engineers (10–58), stated, "We believe it irresponsible to summarily state that trainers must be 'qualified,' without defining the term other than to suggest that one who knows more than the person he trains may be a qualified trainer."

Subsequent to the receipt of post-hearing briefs, Congress amended section 126(d) of SARA to require the Secretary of Labor to develop requirements for the certification of training programs offered to employees and employers who must meet the training requirements of this standard. OSHA will soon be publishing a Notice of Proposed Rulemaking to carry out this Congressional direction. The requirements of that rulemaking will expand on the provisions stated in this rulemaking.

In order to provide interim guidance to employees and employers in determining the competency of trainers and their qualifications, OSHA has added two sentences to the proposed language. These sentences require the use and demonstration of training, credentials and experience to show competency as a trainer.

In paragraph (e)(6) of the final rule OSHA is using the language of proposed paragraph (e)(6) with one minor change. In addition to permitting certification to be given by the classroom instructor, OSHA will also recognize certifications given by the head or supervisory instructor of the training facility. This change recognizes the fact that some training certificates are signed by the head instructor upon recommendation of the classroom instructor, rather than by the individual classroom instructor.

In paragraph (e)(7) of the final rule OSHA is using the exact language of proposed paragraph (e)(7).

In paragraph (e)(8) of the final rule OSHA is using the language of proposed paragraph (e)(8) with the addition of an example of the type of refresher training that OSHA would consider acceptable. OSHA considers, and has now suggested, that critiques of prior emergency response performance can serve as a means of refresher training. Critiques of performance during an emergency response can give employees a training experience in which they have actual knowledge of the acceptable or nonacceptable actions taken during the response. Such critiques can also provide employees with the experience they may need to perform in a more appropriate manner during their next response. The proposed requirement for annual refresher training has not been changed.

In paragraph (e)(9) of the final rule OSHA is using the exact language of paragraph (e)(9) in the proposal.

*Paragraph (f)—Medical Surveillance*

The proposed rule included specific provisions for baseline, periodic and termination medical examinations. Section 126(b)(3) of SARA provides that this rule include requirements for medical examinations of workers engaged in hazardous waste operations. In addition, the EPA manual referred to in section 126(e) of SARA has more detailed requirements for initial or baseline, periodic and termination medical examinations. The clear Congressional direction is to provide a comprehensive medical surveillance program for employees engaged in hazardous waste operations where it is medically prudent.

In paragraphs (f)(1) and (f)(2) OSHA is making some changes for clarity. In addition, OSHA is using the new term "permissible exposure limits or published exposure levels" instead of the term "established exposure levels." The reasoning for this change has been discussed under the paragraph of this preamble addressing definitions.

OSHA would like to clarify an issue concerning who is covered by medical surveillance under paragraph (f)(2) that has cause confusion since the promulgation of the interim final rule. After reviewing the record of comments addressing medical surveillance, it seems that several commenters, in particular from the fire service (i.e., 10–1, 10–3, 10–4, 10–12, 10–32 10–79), believe that all firefighters must have the medical surveillance protections of paragraph (f) since they may wear respirators 30 days or more a year. Firefighters responding to structural fires will typically wear self-contained breathing apparatus when they enter burning structures or other hazardous locations and they may make such responses 30 days or more a year. OSHA is not requiring all firefighters who wear respirators 30 days or more a year to have medical surveillance. Paragraph (f) applies only to individuals within the scope of paragraph (a)(1)(i) through (a)(1)(iii) as set forth in paragraph (a)(2)(ii). Typical firefighters from local fire departments do not fall within this scope. These firefighters are normally covered by the requirements of paragraph (q) as specified in paragraph (a)(2)(iv). Paragraph (q) does not contain requirements for medical surveillance of firefighters unless they are members of an organized and designated hazardous materials response team, are hazardous materials specialists, or have been injured due to an overexposure to health hazards during an emergency incident involving hazardous substances as established in paragraphs (e)(9) (i) and (ii) of the final rule.

In paragraph (f)(3) of the final OSHA is using the language proposed in paragraph (f)(2) with some changes. In new paragraph (f)(3)(i)(B), OSHA is adding the phrase "unless the attending physician believes a longer interval is appropriate" to the proposed language of paragraph (f)(2)(i)(B). Several commenters (State of Wyoming, 10–0; American Society of Safety Engineers, 10–29; Union Carbide Corporation, 10–56) suggested that an annual medical examination may be excessive for some employees, particularly when an attending physician can make a recommendation for a less frequent schedule. The American Society of Safety Engineers (10–29) stated, "This reviewer concurs in the approach that OSHA has outlined in this comment area that the practical health benefit of annual medical examination for hazardous waste operation workers is indeed uncertain. This is a broad area that requires input from the attending physician, the employee and the employer. It is recommended that annual medical examination *not* be required rigidly, that this be a flexible time frequency."

Wyoming (10–0) stated, "Periodic occupational health physical examination on an annual basis may not be warranted under all conditions." They go on to state, "It seems reasonable that a good occupational health program requiring physical examination would be based upon documented personal exposure levels and a medical physician's recommendation rather than on an arbitrary administrative decision to require personnel to undergo annual

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periodic physicals if they fit into the categories under § 1910.120 (f)(1)(i) and (f)(1)(ii)."

Union Carbide (10–56) said, "The frequency of medical examinations and consultations in this proposed rule has been redefined and the proposed change clarifies the issue of medical surveillance but retains the annual requirement for 'all employees who wear a respirator * * *.' This frequency of examination is arbitrary. There is not medically-supportable rational for this annual requirement."

There were also comments in support of OSHA's annual physical examination requirement. The Occupational Health Nurses (10–30) stated, "AAOHN supports pre-exposure, annual, and exit examinations with provision of additional exams if over-exposure or signs or symptoms develop." Lockheed (10–45) responded to OSHA's question on whether examinations should be performed yearly, or at other intervals by stating, "Medical exams should be performed at least yearly."

GSX Chemical Services, Inc. (10–63) stated, "(12) Paragraph (f) describes medical surveillance requirements. The general program described by OSHA for pre-employment, annual, post-exposure, and termination medical examinations is excellent."

BP America, Inc. (10–85) stated, "The need for medical surveillance of workers who would be covered under the provisions of the proposed regulation is appropriate and is supported." They further state, "The proposed requirement to examine workers exposed in emergency situations, but not continue periodic surveillance simply because of the single episode, *per se*, is logical, and is strongly supported. Having such employees continue under periodic medical surveillance on the basis of the findings of the medical examination is, of course, appropriate."

Because of variations in employee exposures due to work schedules, annual physicals may not be medically necessary. OSHA concludes that annual medical examinations may not always be appropriate. Accordingly the standard is amended to permit the physician to reduce the frequency to not less than bi-annually if the physician believes it is appropriate. The physician may also increase the frequency if it is medically appropriate.

OSHA has also replaced the term "established exposure limits" with the phrase "permissible exposure limits or published exposure levels" in new paragraph (f)(3)(i)(D) since the terms have been redefined as previously explained.

The rest of the language in new paragraph (f)(3) remains as it was proposed in paragraph (f)(2).

In paragraph (f)(4)(i) of the final rule OSHA is using the exact language proposed in paragraph (f)(3)(i).

In paragraph (f)(4)(ii) of the final OSHA is using the language of proposed paragraph (f)(3)(ii) with one change. OSHA is still requiring that the content of medical examination and consultations be determined by the attending physician. However, OSHA has added language that would direct the employee, employer, and physician to Appendix D for guidelines in developing the examination.

Several commenters requested guidance on the content of the medical examinations required by the proposal. The Okolona Fire District (10–1) commented, "As, written the current document is rather vague." They continued, ". . . the document should give guidance on what the physical examination should entail." The American Association of Occupational Health Nurses (10–30), suggested, "At least minimum content of the physical examination should be specified. An "exam" may be no more than visual inspection of an individual's eyes, ears and throat and have no relevance to the exposure situation."

Other commenters supported OSHA's proposal for the employer and the physician to determine examination protocols. Eastman Kodak (10–36) commented, "We support OSHA's position that the physician is best able to determine an appropriate medical surveillance protocol. As noted by OSHA, employees may be exposed to differing substances and may be required to use differing levels of personal protective equipment, such as respirators. In view of the particular circumstances presented, the physician is in the best position to formulate and follow an appropriate medical protocol. OSHA should not include a detailed protocol for medical surveillance." Lockheed (10–45) responded to OSHA's issue on protocols, "No. As with training, differences in amounts, kinds and combinations of exposures in different working situations require that protocol for medical surveillance be left to the discretion of the attending physician."

Dr. James Melius testified, "I'd like to direct most of my testimony to discussions of medical surveillance programs for hazardous waste and emergency response workers. I'd like to begin be saying that programs for both of these sets of workers are extremely important." (Tr. pg. 107) He goes on to say, "The medical surveillance program for the workers, therefore, should start with initially assessing their ability to work at the site and their capability for conducting that work. It should include an assessment that focuses through a medical history and initial physical examination on their cardiovascular and respiratory system, also looking for signs of other major medical problems. Selective testing may also be useful in these instance, including pulmonary function testing, chest x-rays and electrocardiograms. However, the workers may differ in their benefits from this testing depending on their age and other risk factors." (Tr. pgs. 110–111)

OSHA believes both sides of the argument can be addressed by placing recommended criteria for medical examination protocols in the Appendix to this section. Some commenters have suggested protocols that OSHA considered for placement in the Appendix. The St. Petersburg Fire Department (10–4) suggested, "A full physical examination: height, weight, eyesight, pulse, blood pressure, respiratory, skin examination, neurological examination, heart and lungs, medical history, and any other aspects determined by the physician. Also included are: Pulmonary function test, chest X-ray, urine analysis, SMA 18 blood test, and hearing examination." The chapter on medical surveillance found in the OSHA/NIOSH/EPA/Coast Guard manual in Appendix F also provides guidance. OSHA also believes that the language of Appendix F will provide guidance for developing the examination protocol.

In paragraph (f)(5) of the final rule OSHA is using the language of paragraph (f)(4) in the proposal with one change. OSHA has added a recommendation that a physician licensed in occupational medicine be used to supervise or administer the examination. Several commenters suggested that the use of such a physician would assure a more complete occupation-oriented examination than one offered by a physician licensed in another field.

Representative of these comments was the suggestion of the American Association of Occupational Health Nurses (10–30). The AAOHN (10–30) stated, "The nature of the potential exposures in hazardous waste operations requires specialized knowledge in toxicology—knowledge of signs and symptoms and effects of exposure to various substances—not common in basic health professional curricula. This is information that both occupational health nurses and physicians may have via advance



education degrees or continuing education, certification and experience." The AAOHN recommended that OSHA change its proposed language to require the examination to be performed "by a registered professional nurse or licensed physician with training and expertise in evaluating exposures to hazardous substances."

In recognition of AAOHN's comments, OSHA has added the recommendation for the use of a physician from the field of occupational health. The language of the final rule, while it does not preclude the use of occupational nurses, does not specifically call for the use of an occupational nurse. The final language requires that the examination be conducted under the supervision of a licensed physician and that would certainly allow the use of occupational nurses if the attending physician permits.

In paragraphs (f)(6), (f)(7) and (f)(8) of the final rule OSHA is using the exact language proposed in paragraphs (f)(5), (f)(6) and (f)(7)

*Paragraph (g)—Engineering controls, work practices, and personal protective equipment for employee protection*

OSHA is using the same opening paragraph for paragraph (g) that was in the opening paragraph for paragraph (g) in the proposal.

In paragraph (g)(1)(i) of the final rule OSHA is using the language of paragraph (g)(1)(i) of the proposal.

In paragraphs (g)(1)(ii) and (g)(1)(iii) of the final rule OSHA is using the exact language of paragraphs (g)(1)(ii) and (g)(1)(iii) of the proposal, except that the reference to Subpart G is deleted. A new paragraph (g)(1)(iv) is added to cross reference the requirements of Subpart G for clarity.

In paragraph (g)(2) of the final rule OSHA is using the language proposed in paragraph (g)(2) with some editorial modifications.

In paragraphs (g)(3), (g)(4) and (g)(5) of the final rule OSHA is using the language of paragraphs (g)(3), (g)(4) and (g)(5) in the proposal with minor editorial corrections to be consistent with the terms and language of the final rule.

*Paragraph (h)—Monitoring*

In paragraph (h)(1) of the final rule OSHA has combined the proposed language in the opening paragraph and paragraph (h)(1) of the proposal with a clarification. The new paragraphs are designated (h)(1)(i) and (h)(1)(ii).

In paragraph (h)(1)(i), OSHA has modified its proposed language by adding the phrase, "where it is not obvious that an exposure does or does not exist." OSHA is adding this phrase to clarify that monitoring is not necessary where the site environment or safety precautions taken by the employer prevent employee exposure to hazardous levels of chemical exposure. OSHA is only requiring monitoring where there may be a question as to an employee's exposure. When there is a question then the employer should monitor. Where there is no question of exposure, then monitoring is not necessary. For example, if it is obvious through site characterization and analysis that there are no exposures at the worksite, monitoring need not be performed unless worksite conditions or work practices change to the extent that workers could be potentially exposed to hazardous concentrations of chemical exposure. If an employer decides that employees should wear level B protection in an area where exposure will most probably be below the PEL's, then during initial entry monitoring will not be necessary because the employees are more than adequately protected.

In paragraphs (h)(2) and (h)(3) of the final rule, OSHA is using the language proposed in paragraphs (h)(2) and (h)(3) except for two changes. First, OSHA is adding language to clarify that monitoring should be used to determine exposure above permissible exposure limits which are not immediately dangerous to life or health. Second, OSHA is deleting proposed subparagraph (h)(3)(v) because it is too general in nature and the previous four subparagraphs adequately cover the hazard.

In paragraph (h)(4) OSHA is using the exact language proposed in paragraph (h)(4) with one addition. If employees with the highest exposure are overexposed, then representative samples of other employees who may be overexposed must be taken to determine if controls or PPE are needed.

*Paragraph (i)—Informational programs*

In paragraph (i) of the final rule OSHA is using the language of paragraph (i) of the proposal. Minor editorial changes have been made for clarity without changing the proposed requirements. The need for requirements for informational programs is discussed at 52 FR 29628 in the preamble to our proposal. There were few substantive comments. OSHA concludes that these provisions are necessary as discussed in the proposal.

*Paragraph (j)—Handling drums and containers*

In paragraph (j) of the final rule OSHA is using the language proposed in paragraph (j). Minor editorial changes have been made for clarity without changing the proposed requirements. The need for requirements for handling drums and containers is discussed at 52 FR 29629 in the preamble to our proposal. There were few substantive comments. OSHA concludes that these provisions are necessary as discussed in the proposal.

*Paragraph (k)—Decontamination*

In paragraph (k) of the final rule OSHA is using the language of paragraph (k) in the proposal. However, the agency has reorganized the paragraph and provided headnotes to make the reading of the paragraph easier. The need for requirements for decontamination is discussed at 52 FR 29629 in the preamble to our proposal. There were few substantive comments. OSHA concludes that these provisions are necessary as discussed in the proposal.

*Paragraph (l)—Emergency response by employees at uncontrolled hazardous waste sites*

In paragraph (l)(1) OSHA is using the exact language from proposed paragraph (l)(1)(i).

In paragraphs (l)(2)((i) through (l)(2)(xi) OSHA is using the exact text from paragraph (l)(1)(ii)(A) through (l)(1)(ii)(K).

In paragraph (l)(3) OSHA is using the language of proposed paragraph (l)(2)(i)(A) with some modification. The modifications are considered editorial and are made because of OSHA's reorganization of the overall proposed paragraph (l). In paragraph (l)(3) OSHA will require that employees performing emergency response at uncontrolled hazardous waste sites be trained in accordance with paragraph (e) of this section. This requirement is the same as proposed in the first part of proposed paragraph (l)(2)(i)(A). The portion of proposed paragraph (l)(2)(i)(A) that addresses training at RCRA sites is moved to the discussion of training in paragraph (p) of this rulemaking because of OSHA's reorganization of this paragraph.

The language proposed in paragraph (l)(2)(i)(B) has been moved to paragraph (e)(9) of this final rule. This move is considered editorial since it does not change any duties imposed on the employer, it only reflects the reorganization of proposed paragraph (l).

In paragraphs (l)(4)(i) through (l)(4)(vii) OSHA is using the exact language from paragraphs (l)(2)(ii)(A) through (l)(2)(ii)(G).

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In summary, paragraphs (l)(1) through (l)(4) of the final rule use the language of paragraphs (l)(1) and (l)(2) of the proposal with some modifications due to the reorganization of the emergency response requirements of the proposal.

*Paragraph (m)—Illumination*

In paragraph (m) and Table H–120.2 of the final rule OSHA is using the language of paragraph (m) and Table H–102.1 of the proposal with one minor change. OSHA has combined the language of the opening paragraph and paragraph (m)(1) of the proposal into one paragraph designated paragraph (m). Minor editorial changes have been made for clarity without changing the proposed requirements. OSHA has combined the language of the opening paragraph and paragraph (m)(1) of the proposal into one paragraph designated paragraph (m). The need for requirements for illumination is discussed at 52 FR 29831 in the preamble to our proposal. There were few substantive comments. OSHA concludes that these provisions are necessary as discussed in the proposal.

*Paragraph (n)—Sanitation at temporary workplaces*

In paragraph (n) of the final rule OSHA is using the language of paragraph (n) in the proposal with some minor editorial changes. The opening paragraph of proposed paragraph (n) has been deleted because it is not a requirement, and Table H–102.2 has been renumbered Table H–102.3. Minor editorial changes have been made for clarity without changing the proposed requirements. The need for requirements for illumination is discussed at 52 FR 29831 in the preamble to our proposal. There were few substantive comments. OSHA concludes that these provisions are necessary as discussed in the proposal.

*Paragraph (o)—New technology programs*

In paragraph (o) of the final rule OSHA is using the language of proposed paragraph (p). This change is necessary due to the reorganization of the emergency response requirements and the moving of proposed paragraph (o), *Certain Operations Conducted Under the Resource Conservation and Recovery Act of 1976 (RCRA)*. Proposed paragraph (o) has been moved to paragraph (p) of the final rule.

In paragraph (o)(1) of the final rule OSHA is using the exact language that was proposed in paragraph (p)(1).

In paragraph (o)(2) of the final rule OSHA has used the language of paragraph (p)(2) with some changes. OSHA has revised the paragraph to include some additional examples of acceptable means of suppression. The agency has also added additional information to provide guidance to the employer in making evaluations of products and new technologies. These changes are considered to be editorial since the requirement of the proposal has not changed.

*Paragraph (p)—Certain operations conducted under the Resource Conservation and Recovery Act of 1976 (RCRA)*

In paragraph (p) of the final rule OSHA is using the language proposed in paragraph (o) with some changes.

OSHA has revised the opening paragraph of the proposal to include large quantity generators of hazardous waste that store those wastes less than 90 days within the scope of this paragraph.

In paragraphs (p)(1), (p)(2), (p)(3), and (p)(4) of the final rule OSHA has used the proposed language of paragraphs (o)(1), (o)(2), (o)(3), and (o)(4) with some minor editorial changes. The proposed requirements for each individual paragraph remain the same.

OSHA is adding two new paragraphs, (p)(5) and (p)(6), to address new technology programs and material handling programs respectively. In paragraph (p)(5) OSHA requires the employee to develop and implement procedures for using new technologies and equipment. Congress, in the SARA legislation, directed OSHA to address new technology programs in its rule. The language of the proposal limited new technology programs to uncontrolled hazardous waste sites. OSHA is adding this paragraph to complete Congress's directive and to address these programs at RCRA TSD facilities.

In paragraph (p)(6) OSHA is requiring employers to develop and implement a material handling program for the same reasons as stated above.

In paragraph (p)(7) OSHA is using the language from paragraph (o)(5) of the proposal with some changes. In paragraph (p)(7)(i) OSHA is using the language of paragraph (o)(5)(i) with one change. OSHA has moved a requirement to paragraph (p)(7)(i) from the last sentence of proposed paragraph (o)(5)(ii) that requires employers to provide employees with a certificate indicating that they have successfully completed the training required in the paragraph. OSHA believes that the issuance of this certificate will make it easier for employers to determine if new employees have completed the necessary training and are ready for employment.

In paragraph (p)(7)(ii) of the final rule OSHA is using the language from paragraph (o)(5)(ii) of the proposal with two exceptions. First, the last sentence of proposed paragraph (o)(5)(ii) has been moved to paragraph (p)(7)(i) of the final rule as discussed above. Second, the requirement for eight hours of annual refresher training is added to this paragraph. OSHA has added this requirement to this paragraph because the new format of the final rule now addresses training for new employees and current employees separately. In the proposal there was no distinction between the two groups of employees.

In paragraph (p)(7)(iii) OSHA has added a new paragraph addressing the training of trainers who will be providing the required training to employees. OSHA received many comments on trainers' qualifications. The proposed language for RCRA facilities did not address these qualifications. Therefore OSHA is now requiring that trainers be properly trained and qualified to conduct the type of training that they are expected to provide.

In paragraph (p)(8) of the final OSHA is addressing emergency response at RCRA facilities. Paragraph (p)(8) addresses the subject matter proposed in paragraph (1) of the proposal as that paragraph applied to RCRA TSD facilities. Most of the language used in this paragraph has been taken from proposed paragraphs (l)(1).

In paragraph (p)(8)(i) of the final rule OSHA has used some of the language from paragraph (l)(1)(i) of the proposal. The basic requirement for the development and implementation of a written emergency action plan that addresses site procedures for handling emergency response is the same in the final rule as it was in the proposal. OSHA will still permit an exemption from this paragraph if the employer totally evacuates the facility at the time of the emergency and has an emergency action plan meeting the requirements of 29 CFR 1910.38(a). OSHA considers the changes made in this paragraph to be editorial since the proposed obligations of the employer remain the same.

In paragraph (p)(8)(ii) of the final rule OSHA has used the language of proposed paragraph (l)(1)(ii). This paragraph contains the minimum elements that must be addressed in the employers emergency response plan. The basic elements of the required plan remain the same as proposed.

As stated before, training and certification of training were among the many issues discussed during the rulemaking for this final rule. Several commenters indicated that there was a need for more specific training criteria for the courses to be offered and the quality of the instructors presenting the courses. In light of those comments, OSHA has added a new paragraph (p)(8)(iii) that addresses emergency response training on RCRA TSD facilities. The language that is used in the final rule was developed from that suggested in the comments made to the record of this proceeding.



Basically OSHA is requiring that all employees who are expected to perform emergency response at RCRA TSD facilities be trained in how to safely perform emergency response duties prior to being called upon to perform those duties [See paragraph (p)(8)(iii)(A).] Examples of the types of training to be provided have been given. Exemptions are provided in Exception #1 and Exception #2 when employee exposure is reduced through pre-emergency planning that includes development of employee awareness of hazards. OSHA is also requiring that employees who have attended and successfully completed the training that is required in paragraph (p)(8) be certified as having done so. Employers would also have to certify the continued competency of employees on an annual basis [See paragraph (p)(8)(iii)(C)].

In paragraph (p)(8)(iv) of the final rule OSHA is addressing the procedures to be used for handling emergency incidents. The language in the final rule has been taken from paragraph (1)(2)(ii) and the requirements remain the same as proposed.

*Paragraph (q)—Emergency response to hazardous substance releases not previously covered*

In paragraph (q) OSHA is covering those emergency response situations that occur at locations other than uncontrolled hazardous waste sites and RCRA TSD facilities. The typical site covered by this paragraph would be a transportation accident where hazardous substances are or have the potential for leaking into the environment. Other sites covered by this paragraph would include hazardous substance releases at chemical manufacturing facilities such as the release that occurred at the Union Carbide plants in Buphol, India, and Institute, WV.

A typical scenario where this paragraph would be applicable would be the emergency response to a derailed tank car containing a hazardous substance that has begun to leak its contents into the atmosphere. The emergency response to this type of accident would usually include the first responders (i.e., witnesses, police, employees on the train), the first dispatched-responsers (i.e., the first due rescue and fire apparatus), any multiple alarm dispatches (i.e., additional fire and rescue apparatus, HAZMAT teams, state fire marshal, Coast Guard or Federal E.P.A. national response teams), and the clean-up crew (i.e., initial response employees of the site owner who clean-up the release). Employees of outside clean-up contractors would be covered by paragraphs (b) through (p).

As the clean-up scenario proceeds towards completion, the various employees on the scene will need different levels of training and protective equipment required in this paragraph.

In paragraph (q)(1) of the final rule OSHA is using the language taken from paragraph (l)(1)(i) with some minor editorial changes. OSHA wants to emphasize that employers who will evacuate their employees from the workplace when an emergency occurs and who do not permit any of their employees to assist in handling the emergency are exempt from the requirements of this paragraph if they provide an emergency action plan in accordance with § 1910.38(a).

In paragraph (q)(2) of the final rule OSHA is using the exact language of paragraph (l)(1)(ii).

In paragraph (q)(3) of the final rule OSHA is using the language proposed in paragraph (l)(3)(ii) with the following changes. In paragraph (q)(3)(i) OSHA has used the language proposed in paragraph (l)(3)(ii)(A) with some change. OSHA has deleted the requirement that the senior official responding to an hazardous substance emergency establish the Incident Command System (ICS). As a result of other requirements in this final rule, the Incident Command System should already be established prior to an emergency. The senior official responding to an incident scene should only need to take charge of the incident and begin to implement the preplanned ICS.

In paragraph (q)(3)(iv) OSHA has used the proposed language of paragraph (l)(3)(ii)(D) with a change. The proposed language required all employees engaged in emergency response and exposed to hazardous substances in any way to wear positive pressure self-contained breathing apparatus while engaged in emergency response. The final rule will require only those employees engaged in emergency response and exposed to hazardous substances "presenting an inhalation hazard or potential inhalation hazard" to wear positive pressure self-contained breathing apparatus. OSHA has made this change since several comments suggested that some individuals engaged in emergency response may be exposed to hazardous substances that do not pose an inhalation hazard and, therefore, would negate the need for respiratory protection. Such protection would become a burden to those employees engaged in operations not requiring the use of such equipment.

In paragraph (q)(3)(vi) of the final rule OSHA has used the language of paragraph (l)(3)(ii)(F) with the following change. In the proposal OSHA called for "qualified basic life support" personnel to be present at the site. In some emergency medical service (EMS) systems the term "basic-life support (BLS)" identifies a unique group of trained individuals who have received an established level of specialized training. Typically emergency medical response begins at the first-responder level, and progresses through basic-first aid and basic-life support to advanced-life support (ALS). The amount of training and expertise increases as individuals progress through the system. As a result of several comments, OSHA has decided to reduce the level of training required for a minimum stand-by capability at a hazardous waste sites. Employees trained and qualified in basic first aid have the basic skills such as initial patient assessment, maintenance of airway, control of bleeding, immobilization of fractures, and possibly cardiopulmonary resuscitation (CPR) to control injuries until a higher level responder arrives. If response time for BLS or ALS is long enough that it is necessary for this level of training to be at the site in case of an emergency, this rule does not prohibit the stationing of this level at the site. However, OSHA believes that if BLS or ALS service is available within a reasonable time, a qualified basic first aider can provide the necessary interim care.

The rest of the language in paragraph (q)(3) contains the language that was proposed in paragraph (l)(3)(ii) without change.

In paragraph (q)(4) of the final rule OSHA has used the language from paragraph (l)(3)(i)(C) with some minor editorial changes to reflect the changes made to other paragraphs in this rule. The basic requirement for the use and training of skilled support personnel remains the same as it was proposed.

In paragraph (q)(5) of the final rule OSHA has used the language from paragraph (l)(3)(i)(B) with one major change. OSHA has eliminated the requirement for 24 hours of training for specialist employees and has replaced it

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with a requirement for annual training or demonstration of competency in their area of specialization. The required minimum hours of training was deleted because some employees may need more or may need less than 24 hours for their area of specialization. Specialized employees are by definition individuals specialized in their area of expertise and should only require whatever level of training is necessary to maintain their level of competency. OSHA considers the other changes made to the language of this paragraph to be editorial.

In paragraph (q)(6) of the final rule OSHA addresses the training requirements for employees who will be responding to hazardous materials incidents. In paragraph (q)(6) (i), (ii), (iii), and (iv) OSHA has provided tiered training criteria for those employees who may be designated as members of an emergency response team. The various levels of response and the required competency levels are based upon recognized levels of response being discussed in the hazardous materials response industry as recommended in several of the comments made during this rulemaking.

To illustrate OSHA's tiered approach to training, the following scenario describes a possible emergency response call.

A state trooper is on routine patrol along a highway passing through a residential and light industrial area of a large metropolitan city. Ahead in his path of travel, the trooper notices a multi-vehicle accident involving a large overturned tank truck. Immediately the trooper uses his radio to contact his dispatcher to report the accident. After letting the dispatcher know the location and type of accident, the trooper places his vehicle across the travel lanes of the highway approaching the accident site to stop traffic. While he is doing this the dispatcher is alerting the fire and rescue companies in the immediate area and dispatching an established number of fire and rescue vehicles. The trooper then surveys the accident scene from his vehicle trying to identify the type of cargo on the overturned truck. Seeing three different U.S. DOT placards on the vehicle the trooper makes note of the four digit numbers and checks his DOT Emergency Response Guide for a summary of actions to be taken for the chemicals identified on the placards. After determining his next on-site responsibility, he recontacts his dispatcher with the additional information and secures the scene. He stays away from the immediate accident site and does not become involved in rescue or site mitigation.

While the trooper has been securing the scene, the fire and rescue units dispatched after his first radio call begin to arrive on the scene with the additional information from the trooper's second call. The officer-in-charge (OIC) of the fire/rescue response stops his vehicles in a safe location and contacts the state trooper. After determining the type of accident and vehicles involved, the OIC takes control of the scene and directs his crews to take a predetermined defensive action in controlling a leak that has begun on the tanker. The OIC then contacts the dispatcher and reports his assessment of the accident scene including the fact that the tanker is now leaking. He requests the dispatcher to send him the closest hazardous materials response team. He also asks for representatives from the shipper of the liquid and the liquid's manufacturer.

In the meantime, firefighters have established a perimeter defense of the accident scene using fire hose lines and proper personal protective equipment. They begin to evacuate surrounding homes and businesses as indicated in the Emergency Response Guide in case the leaking tanker should explode. They construct dikes and diversion pits to contain water and chemical run-off from the fire hose lines. Rescue personnel, including emergency medical technicians, have made a preliminary assessment of the accident scene and have determined whether any individuals in the spill area are trapped in their vehicles or need immediate assistance. They report their observations to the OIC.

A decision is made by the OIC, based upon the reports of the police officer, the emergency response crew, and the data on the DOT placards, that no rescue attempts can be made safely until such time as the leaking liquid is positively identified and controlled by the HAZMAT team. The proper local authorities are notified under the requirements of SARA Title III.

As firefighters continue to provide defensive protection of the scene and as emergency medical technicians establish a triage area for the treatment of injured passengers, the HAZMAT team arrives and begins to take control of the accident scene. Hazardous materials technicians and specialists assess the scene and plan their attack on the leaking tanker.

After equiping themselves properly, the HAZMAT team makes a final, pre-attack evaluation of the scene, including a scan of the area with appropriate monitoring equipment, and reports its findings to the fire and rescue personnel. Based upon the results of the pre-attack evaluation and a determination by HAZMAT team members using monitoring equipment that the spill area is non-hazardous, rescue personnel now enter the area of the accident to provide emergency medical treatment to injured passengers and to extricate those passengers who may have been trapped in their vehicles. The HAZMAT team proceeds to the point of release and secures the leak.

After all the injured have been cared for and after the leak has been stopped, the firefighters and HAZMAT team begin to clean-up the accident scene in accordance with pre-planned procedures.

All four levels of hazardous materials response have played a role in this scenario. The state trooper, the first on the scene, is the first responder awareness level. The first responding fire and rescue companies who provided the defensive attack are the first responder operations level. The responding HAZMAT team had both hazardous materials technicians and hazardous materials specialists. In this scenario the state trooper would have to have a sufficient amount of training, the first responding fire/rescue companies would need eight hours of training, and the HAZMAT team would need 24 hours of training. The tiered training schedule is based upon the duties and responsibilities of the individuals involved in the various levels of response illustrated in the scenario.

In paragraph (q)(7) of the final rule OSHA is addressing the competency of the trainers who will be providing the training necessary for those employees responding to hazardous materials incidents. As discussed before, several commenters were concerned that OSHA's proposal for the qualifications of trainers was too weak.

In paragraph (q)(8) of the final rule OSHA is addressing refresher training for those employees who have been trained in accordance with paragraph (q)(6). In paragraph (l)(3)(i)(A) of the proposal OSHA addressed the training of employees who perform emergency response at non-hazardous waste clean-up sites. OSHA is using this proposed language in paragraphs (q)(8)(i) and (q)(8)(ii) because the language of the proposal was intended to cover the type of emergency response now regulated by paragraph (q).

In paragraph (q)(9) of the final rule OSHA is using the language of paragraph (l)(4)(ii) of the proposal with some editorial change. The basic requirement that employees who are members of an organized or designated



HAZMAT team and hazardous materials specialists receive a baseline physical examination in accordance with paragraph (f) of this section remains the same as proposed.

In paragraph (q)(10) of the final rule OSHA is using the proposed language of paragraph (l)(4)(iii).

In paragraph (q)(11) of the final rule OSHA is using the exact language as proposed in paragraph (l)(5). In paragraph (l)(5) OSHA regulated post-emergency clean-up and the language used in that paragraph has caused some confusion. Rather than change the basic requirement, OSHA is offering the following clarification of the intent of paragraph (q)(11):

Post-emergency response can be performed by two basic groups of employees: employees of the site, or employees from off of the site. Post-emergency clean-up begins when the individual in charge of the initial emergency response declares the site to be under control and ready for clean-up. For the purposes of this rule, paragraph (q)(11) will apply to those employees who come from other employers located off-of-the-site to perform post-emergency clean-up. Employees of the employer at the site where the release occurred, and who perform post-emergency clean-up, are considered, under this rule, to be part of the initial emergency response and not subject to paragraph (q)(11). The reason for this distinction is that employees at the site are more familiar with the types of emergencies that may occur and the types of clean-up operations that may have to take place. The more hazardous exposure to employees occurs when outside contractors or other off-site employees are brought into a strange environment and are expected to clean-up the residue from a release. With this clarification, OSHA concludes that no change to the proposed language is necessary.

**III. Summary of the Preliminary Regulatory Impact and Regulatory Flexibility Analysis and Environmental Impact Assessment**

*Introduction*

Executive Order 12291 (46 FR 13197, February 19, 1981) requires that a regulatory impact analysis be conducted for any rule having major economic consequences for the national economy, individual industries, geographical regions, or levels of government. In addition, the Regulatory Flexibility Act of 1980 (Pub. L. 96-353, 94 Stat. 1164 (5 U.S.C. 601 *et seq.*)) requires the Occupational Safety and Health Administration (OSHA) to determine whether a regulation will have a significant economic impact on a substantial number of small entities, and the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, *et seq.*) requires the agency to assess the environmental consequences of regulatory actions.

In order to comply with these requirements, OSHA has prepared a Regulatory Impact and Regulatory Flexibility Analysis (RIA) for the hazardous waste operations and emergency response standard. This analysis includes a profile of the industries that will be affected, the estimated number of employees who are at risk from occupational exposures to hazardous wastes, technological feasibility, costs, benefits, and an overall economic impact of the standard. The RIA is available in the OSHA Docket Office.

*Data Sources*

The primary sources of information used for this analysis are: an April 1987 report by the Eastern Research Group (ERG) entitled, "Preparation of Data To Support a Regulatory Analysis and Environmental Assessment of the Proposed Standard for Working at Hazardous Waste Sites;" and the comments supplied in response to the Notice of Proposed Rulemaking, the comments made during the public hearings, and the post-hearing comments and submissions. The information contained in the ERG report was gathered from the Environmental Protection Agency sources, industry sources, experts in the area of hazardous waste management, etc. Consequently, OSHA believes that it has given due notice to all responsive parties and that the data used are the best available data for this final Regulatory Impact Analysis (RIA).

*Industry Profile*

The standard will affect about 20,000 uncontrolled hazardous waste sites, about 4,000 hazardous waste operations conducted under the Resource Conservation and Recovery Act (RCRA) of 1976, about 13,600 spills of hazardous materials that occur annually outside a fixed facility, and about 11,000 spills of hazardous material that occur annually inside a fixed facility. The firms that will be affected by this standard are as follows: about 100 contractors that perform hazardous waste site clean-ups, about 50 engineering or technical services firms that perform hazardous waste preliminary assessments or site investigations and remedial investigations or feasibility studies for hazardous waste site cleanups, about 300 RCRA-regulated commercial treatment, storage and disposal facilities; about 3,700 RCRA-regulated facilities that are operated by a hazardous waste generator; about 19,000 state and local police departments; about 28,000 fire departments; about 750 private hazardous materials (HAZMAT) response teams; and about 22,000 manufactures that use in-hours personnel to respond to emergency spills of hazardous materials within the facility.

*Population at Risk*

As many as 1.758 million employees, police officers, and firefighters may be at risk from exposure to hazardous waste or to hazardous materials during an emergency response to a hazardous material spill. Of these employees, about 14,000 work at uncontrolled hazardous waste site cleanups, 52,700 at RCRA-regulated facilities, 563,200 are police officers, 944,500 are firefighters, 7,500 are private HAZMAT members, and 176,000 are members of industrial fire brigades that provide in-plant emergency responses to hazardous material spills. Most of these employees, however, do not work fulltime around hazardous waste. In fact, most police officers will not face a hazardous material emergency response and most fire fighters and industrial fire brigade personnel, who are at risk, are annually exposed to hazardous materials for only a few hours.

*Feasibility*

The standard does not require the use of any large-scale capital equipment that is not currently used in normal work operations. In addition, each provision requires equipment and work practices that are currently available. Thus, OSHA has determined that the standard is technologically feasible.

*Benefits*

This standard will protect 1.757 million employees and firefighters from health and safety hazards caused by their exposure to hazardous wastes. The benefits of this standard are quantified in Chapter 3 of the Final Regulatory Analysis (FRA). The FRA indicates that this standard will prevent 20 cancer deaths per year and from 6 to 20 deaths per year from cardiovascular, neurological, renal and liver disorders. The standard will also prevent 1,925 injuries per year involving 18,700 lost work days. The FRA also estimates that 6 fatalities that are not illness related will be prevented. This last figure is likely to be an underestimate. Individual incidents which are discussed in

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Chapter 3 and which may have been prevented by following the standard have sometimes led to more than 6 deaths. Also, the FRA does not take into account the benefits to the surrounding, non-worker community derived from the better handing of hazardous waste and emergency response incidents by the more qualified, properly trained and equiped response teams that are likely to result from compliance with this standard.

Chapter 3 of the FRA also presents risk rates. For example, the 17 excess cancer deaths per 1000 exposed hazardous waste workers for an occupational lifetime of exposures is likely to be reduced by 75 per cent.

OSHA concludes therefore, that this standard will substantially reduce the significant risk of material impairment of health which results from exposure to hazardous waste either at hazardous waste operations or from emergency response.

However, section 126 of SARA gives OSHA clear statutory directions to issue this standard and is reasonably explicit about what type of provisions should be included. Section 126 is also a free standing provision and not an amendment to the OSH Act. Accordingly, it evidences a legislative intent to issue these regulations without the specific need to quantify benefits and reach significant risk conclusions.

*Cost of Compliance*

OSHA used current work practices as its baseline for estimating the cost of full compliance with the standard. This estimated cost does not include any cost that is currently being incurred by employers as part of their work practices because those work practices, and therefore those costs, would continue whether or not the final standard were promulgated.

OSHA estimated that the total annualized incremental cost of full compliance with the standard will be about $153.422 million, of which $27.986 million will be spent by contractors on government-mandated clean-ups of uncontrolled hazardous waste sites, $18.372 million will be spent by RCRA-regulated facility cleanups and operations, $17.332 million will be spent by police departments, $50.553 million will be spent by fire departments, $4.226 million will be spent by private HAZMAT teams, and $29.179 million will be spent by industrial fire brigades. The provision with the largest annual cost of compliance is the employee training provision ($92.976 million), followed by the medical surveillance provision ($11.293 million), the use of escape self-contained breathing apparatus ($9.507 million), and the written plan to minimize employee exposure to hazardous materials during postemergency cleanups of hazardous materials spills ($8.381 million).

*Economic Impacts*

Most of the incremental cost of compliance will be paid by the government or the private firm responsible for the hazardous waste cleanup. OSHA calculated that it is economically feasible for every affected industry or group to comply with the standard. There may be an impact upon some labor markets as a consequence of the provision that only sufficiently experience employees, or employees certified to have received the necessary training at an appropriate training facility, will be allowed to work on hazardous waste sites. This provision will effectively curtail the current practice of using local subcontractors to provide short-term employees for hazardous waste site cleanups and limit the number of employees eligible to work at hazardous waste sites. This in turn, may increase future wage rates and the cost of hazardous waste site cleanups.

*Regulatory Flexibility Analysis*

Pursuant to the Regulatory Flexibility Act of 1980, the Assistant Secretary has assessed the expected impacts of the standard on small entities. Based on the available information, OSHA determined that the standard may have some impact upon some small entities. The cost of adequately training an employee off-site prior to working at a hazardous waste site cleanup will substantially reduce the use of subcontractor labor on a one-time basis. Thus, some local subcontractors face a potential reduction in hazardous waste site cleanup work. The majority of this subcontracted work will probably be performed by those subcontractors who concentrate upon this type of work. Subcontractors who have performed cleanup work but who do not elect to train employees needed to qualify for future work will probably be excluded from working in this market.

In addition, there could be an economic impact upon some small local fire departments depending upon the amount of financial resources available to them for additional training. With the allowance for different amounts of training hours depending upon the expected extent of involvement with hazardous materials spills, OSHA believes that this economic impact will not significantly affect a substantive number of local fire departments.

*Environmental Impact Assessment—Finding of No Significant Impact*

OSHA reviewed the final standard and concluded that no significant environmental impacts are likely to result from its promulgation. In OSHA's December 19, 1988, interim final rule for the protection of workers engaged in hazardous waste and emergency response operations, information was solicited from the public on various issues, including possible environmental impacts of the regulation. On the basis of the review detailed below, and in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 et seq.), the Council on Environmental Quality (CEQ) NEPA regulations (40 CFR Part 1500 et seq.), and the Department of Labor's implementing regulations for NEPA compliance (29 CFR Part 11), the Assistant Secretary determined that the standard will not have a significant impact on the external environment.

In most OSHA regulatory actions, two environments may be affected: (1) The workplace environment, and (2) the general human environment external to the workplace, including impacts on air and water pollution, solid waste, and energy and land use. The hazardous waste standard, however, is unique in that it focuses on the external environment because during these operations, the workplace and the external environment are usually one and the same. The standard is also unusual in that it is the first regulation since the passage of the Occupational Safety and Health Act of 1970 (the Act) to be mandated specifically by Congress under section 126 of the Superfund Amendments and Reauthorization Act (SARA). As indicated in the earlier sections of this Notice, the provisions of section 126 detail those protections that OSHA must include for workers at hazardous waste and emergency response operations. For example, section 126 requires that provisions for site analysis, training, and medical surveillance, among others, be included in the standard. In addition, there is a wide range of OSHA, EPA, and other standards that already apply to some activities that occur at hazardous waste sites and during emergency response operations. For example, there are existing OSHA standards that cover construction activities, onsite machinery and equipment, selection and use of personal protective equipment, handling of toxic and explosive materials, and general environmental and safety issues such as walking-working surfaces, noise, and illumination. Moreover, the final



standard, in many instances, either reflects OSHA regulations, procedures adopted by other federal agencies (e.g., EPA), or practices that are commonly used by those knowledgeable in hazardous waste and emergency response operations. To the extent that existing standards, rules, or standard operating procedures are incorporated into this rule, no significant change in the environment is anticipated.

Potential Positive Environmental Effects

While OSHA does not anticipate any significant environmental effects as a result of this standard, there is a potential for some beneficial impacts. In general, as the work practices and procedures requirements of the standard reduce the incidence of employee injury, an indirect result should be a reduction in the likelihood of environmental releases of hazardous materials. (Virtually all provisions of the standard can be categorized in this manner, because once they are implemented, they will have a positive influence on worker safety.) As these requirements also provide guidance for routine reactions to situations encountered in emergencies, they may help to reduce the severity of such emergencies. Additional potentially positive impacts might be categorized as follows: (1) Direct benefits associated with reduced incidences in, or the severity of, the release of hazardous materials, and (2) indirect benefits associated with the improved flow of information and increased worker awareness of hazardous materials or with improved worker preparedness (either for normal site operations or for unexpected accidents). The following discussion highlights those provisions with potentially beneficial environmental effects.

*Monitoring (h).* The requirements of this provision will increase the amount of monitoring for airborne hazardous substances at uncontrolled hazardous waste sites. In some cases, hazardous materials will be detected, and steps will be taken to more quickly control the release to the atmosphere, thereby providing an environmental benefit.

*Handling drums and containers (j).* A number of specific requirements of this paragraph will result in potentially positive environmental impacts. Relevant subsections include: Inspecting drums and containers; making salvage drums or absorbents available; initiating a spill containment program; emptying unsound drums and containers; requiring ground penetrating radar; and decontaminating equipment. These are discussed briefly in the following sections.

*Inspection of drums/containers before moving (j)(1)(iii).* This section requires that drums and containers be inspected for their integrity prior to handling and moving. Under current practices at hazardous waste cleanup sites, drums and containers are often handled with mechanized equipment (e.g., a barrel grapple on a backhoe arm) before being inspected, if unsound drums rupture or leak, any solid contaminated by the rupture or leak is removed for disposal upon completion of drum handling operations. This provision will, through worker awareness, increase the probability of averting ruptures and leakage. In addition, any hazardous materials in containers that cannot be moved without rupturing will have to be transferred to safe containers (as required in paragraph (j)(1)(ix)), with obvious positive environmental effect. These procedures will reduce the volume of contaminated soil requiring disposal and will also lower the possibility that leachate or runoff will carry contaminants offsite. This requirement does not have an impact on emergency response actions because the routines outlined are already standard procedure.

*Availability of salvage drums/absorbents (j)(1)(vii).* This provision specifies that salvage drums or containers as well as suitable amounts of proper absorbent be kept available for use in areas where spills, leaks, or ruptures might occur. This requirement will result in increased availability of salvage drums and spill absorbents at uncontrolled hazardous waste sites and in emergency response situations where spills are imminent, thereby reducing the environmental consequences related to spills of hazardous materials. In those instances where salvage drums/absorbents would have been inadequate without this requirement, there is a potential benefit to the environment.

*Implement a spill containment program (j)(1)(viii).* The purpose of this provision is to develop a program to be implemented, in the event of a major spill, that would contain and isolate hazardous materials being transferred into containers and drums. To the extent that this program is implemented, there will be a potential for reducing the negative environmental effects that occur as a result of spills, leakage, etc. This requirement will reduce the environmental impact of potential spills at cleanup sites.

*Empty unsound drum/containers (j)(1)(ix).* Unsound containers often rupture during handling operations. This provision requires that drums and containers that cannot be moved without spillage, leakage, or rupture be emptied into a sound container. This requirement will reduce the incidence of drum and container rupture and will provide concomitant environmental benefits.

*Use of a ground penetrating system to estimate depth and location of containers (j)(1)(x).* At present, when preliminary investigations at hazardous waste sites indicate that buried drums or containers may be present, ground penetrating systems are frequently used to determine the depth and location of the drums. The requirements of this provision will very likely cause an increase in the use of these systems, thereby reducing the number of instances in which buried containers would go undetected or where undetected containers would be accidentally ruptured during excavation activities. Where it applies, the requirement will help prevent accidental ruptures and spills, improve the thoroughness of remedial actions, and benefit the site environment.

*Develop Decontamination Procedures (k).* The requirement to clean and decontaminate equipment, personnel, and personal protective equipment will prevent the migration of hazardous substances offsite, thereby benefitting the surrounding environment. It will also eliminate or minimize the contamination of personnel. Decontamination is already standard practice at most cleanup sites.

*Inform Contractors of Existing Hazards (b)(1)(iv).* Under this provision, contractors are to be informed of any "fire, explosion, health or other safety hazards" that are present. By ensuring that contractors know the location and nature of site hazards, this requirement will reduce the possibility that contractor activities will result in inadvertent releases or spills of hazardous materials.

*Gather Information Before Site Entry (c)(4).* Among the various requirements for site evaluation are those for information to be gathered regarding the (a) pathways for hazardous substance dispersion, and (b) status and capability of emergency response teams. These procedural requirements will result in an increased ability to predict and prevent movement offsite of hazardous materials, will mitigate emergency situations quickly and effectively, and will reduce the possibility or severity of contaminant release. As the requirements of the section mirror current practices, compliance will be accomplished with little difficulty.

*Provide Worker Training (e).* The training requirement will assure that site

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activities will be carried out by qualified personnel, with the knowledge and ability to fulfill their job functions in a safe and responsible manner. To the extent that this occurs, there will be a potential benefit to the environment (in emergency-response situations, similar benefits accrue from emergency response training and RCRA-regulated facility employee training.) For example, worker training will result in a more careful handling of materials accompanied by a reduction in the potential for inadvertent spills, improper disposal, etc. In emergency situations this training will assure a more efficient and effective cleanup of hazardous materials or a quicker response to avert further hazardous material releases.

*Informational Programs (i).* These provisions include requirements for a site safety and health plan, pre-entry briefings, and site inspections. These requirements will not directly affect the existing environment; their purpose is to provide workers with the information necessary to carry out their activities safely. To the extent that this occurs, there will be a potential benefit to the environment. For example, implementing comprehensive site plans will reduce the incidence of accident releases of hazardous materials. Similarly, requiring pre-entry briefings will reduce the likelihood of employees unknowingly encountering contaminants or allowing their improper release or disposal.

*Emergency Response Plan (l) and (r).* The development and implementation of a response plan for on-site and off-site emergencies will provide for greater worker preparedness. In emergencies, workers will be able to respond more quickly and effectively, thereby benefitting the environment.

Potentially Negative Impacts

In some situations, there may be a potential for negative effects on the environment as a result of the standard. Any potential negative impacts, however, are not expected to be significant. To illustrate this, negative impacts may occur if there is an increase in the time required to implement specific cleanup and spill response activities, or to implement safe work practices or procedures required by the standard. Any such effects are likely to be negligible, however since response teams already have established operating procedures similar to those in OSHA's standard.

Another potential negative impact may result from the requirement that salvage drums and absorbents be readily available. This may increase the number of repacked hazardous waste drums and the amount of spent absorbent used, which could add to the amount of material that would require safe disposal. Similarly, the requirements for implementation of proper decontamination procedures for all equipment, personal protective gear, and personnel at hazardous waste emergencies, cleanup sites, and RCRA sites may result in an increase in the frequency and use of decontamination materials. This, in turn, could generate a larger volume of spent decontamination fluids which would then require proper handling and disposal. Again, any such impact should be negligible since decontamination is largely standard procedure for most hazardous waste operations. A possible exception may be during activities that take place in the early stages of site evaluation before cleanup, or at spill response, where decontamination procedures are not yet standardized.

*Conclusion*

To the extent that the work practices and procedures are implemented, increased worker awareness and preparedness will result in a safer and more healthful work environment, which may indirectly benefit the environment. Any negative impacts that may occur as a result of the implementation of these work practices or procedures are expected to be negligible. Based on this assessment and the information presented earlier in the preamble, OSHA concludes that no significant environmental changes are anticipated as a result of the standard.

## IV. International Trade

OSHA has evaluated the potential impact that this final standard would have upon international trade. OSHA has determined that the final standard would have a minimal potential impact upon the prices of products, so that there would be no effective change in the level of exported or imported products.

## V. OMB Approval Under the Paperwork Reduction Act

This section contains a collection of information pertaining to the preparation of a written safety and health plan site characterization and analysis, site control, training, medical surveillance, emergency controls, work practices, PPE, monitoring, informational programs, handling drums and containers, decontamination, emergency response planning, and emergency response drills. OMB has reviewed these collections and has approved them under approval number 1218-0139.

## VI. Public Reporting Burden

Public reporting burden for the collection of information identified in paragraph IV above is estimated to average 3.7 hours per response, including the time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other suggestions for reducing this burden to the Director, Directorate of Safety Standards Programs, OSHA Room N-3605, U.S. Department of Labor, Washington, DC 20210; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

## VII. State Plan States

This **Federal Register** document amends an interim final rule (section 1910.120, "Hazardous Waste Operations and Emergency Response") in Subpart H of 29 CFR Part 1910, OSHA's general industry standards on hazardous materials. The 25 states with their own OSHA approved occupational safety and health plans must develop a comparable standard applicable to both the private and public (state and local government employees) sectors within six months of the publication date of this permanent final rule or show OSHA why there is no need for action, e.g., because an existing state standard covering this area is already "at least as effective" as the new Federal standard. These states are Alaska, Arizona, California (for state and local government employees only), Connecticut (for state and local government employees only), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, New York (for state and local government employees only), North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, and Wyoming. After the effective date of this final rule, until such time as a state standard is promulgated, Federal OSHA will provide interim enforcement assistance, as appropriate, in these states.

## VIII. Federal and State Coverage of the Public Sector and Volunteers

Federal OSHA is specifically precluded by section 3(5) of the Occupational Safety and Health Act from covering employees of any State or political subdivision thereof. However, States that elect to have their own occupational safety and health program



under a plan approved and monitored by OSHA under section 18(b) of the Act are required to extend their coverage to these employees (see section VII of this preamble for a list of these states). Thus, a State hazardous waste operations standard that is either identical to or at least as effective as this Federal OSHA standard will apply to public sector as well as private sector employees in these States. Public sector employees in States without State plans will be protected from exposure to hazardous waste under Title I, section 126(f) of the Superfund Amendments and Reauthorization Act of 1986 (SARA), administered by the U.S. Environmental Protection Agency (EPA). This section requires EPA to promulgate, within 90 days of the promulgation date of this Federal OSHA standard, an identical standard that applies to employees of State and local governments in each State which does not have an OSHA-approved State plan.

OSHA's hazardous waste operations standard and the identical or equivalent standards which will be promulgated by States with OSHA-approved State plans apply under certain circumstances to volunteer firefighters and other volunteers engaged in emergency response operations or hazardous waste operations within the scope of these standards (see paragraphs (a) (1) and (2) of this standard). In many communities, fire and other emergency response services are provided by volunteer companies. In some cases, these companies are established as independent, private sector entities. In others, they are considered a component of State or local government (see 29 CFR 1975.5 for factors to consider in determining whether or not an entity is a public agency). A volunteer working for a public or private entity in a State with an OSHA-approved State plan must be considered an employee under State law in order to be covered by the State's hazardous waste operations and emergency response standard—for example, because of an employer-employee relationship or because of pay, retirement benefits, health insurance coverage, workers' compensation benefits, etc. This determination is made by each State as part of its standards promulgation process. In a State without an OSHA-approved State plan, a private entity fire company with one or more paid employees would be covered under this Federal standard (29 CFR 1975.4).

## IX. Federalism

This final regulation has been reviewed in accordance with Executive Order 12612 (52 FR 41685; October 30, 1987) regarding Federalism. Executive Order 12612 requires that agencies, to the extent possible, refrain from limiting state policy options, consult with states prior to taking any actions that would restrict state policy options, and take such actions only when there is clear constitutional authority and the presence of a problem of national scope. The Executive Order provides for preemption of state law only if there is a clear Congressional intent for the Agency to do so. Any such preemption is to be limited to the extent possible.

During the development of this rule, OSHA has, to the extent possible, refrained from limiting state policy options by developing a rule that permits flexibility on the part of the States through the use of performance language. We have also consulted with the States, in particular those states with approved state OSHA plans, during the public hearings and comment period called for in the notice of proposed rulemaking for this rule. We will continue to work with the States that have state occupational safety and health plans approved under section 18 of the OSHA Act to encourage those states to develop their own policies to achieve program objectives and continue to work with appropriate state officials as they present their state standards for approval.

This rulemaking is directed by Congress under the Superfund Amendments and Reauthorization Act of 1986 (SARA). The Constitutional authority and Congressional intent for Federal action in the area of worker protection standards for employees engaged in hazardous waste operations is mandated clearly in section 126 of SARA. Congress therefore has identified the protection of employees engaged in hazardous waste operations and emergency response as a problem of national scope through the enactment of SARA.

Section 18 of the Occupational Safety and Health Act (OSH Act), permits any state to develop its own independent state occupational safety and health program. Any state may develop and submit to OSHA, for approval and use, a state occupational safety and health program that provides, among other things, worker protection "at least as effective as" that protection provided under the Federal program.

With respect to Section 4 of Executive Order 12612, Section 18 of the OSH Act also expresses Congress' clear intent to preempt state laws relating to issues with respect to which Federal OSHA has promulgated occupational safety or health standards. Under the OSH Act, a state can avoid preemption only if it submits, and obtains Federal OSHA approval of, a plan for the development of such standards and their enforcement as mentioned above. Occupational safety and health standards developed by such approved Plan-States must, among other things, be as least as effective in providing safe and healthful employment and places of employment as the Federal standards.

OSHA has used its regulatory preemption of State law to the minimum level necessary to achieve the objectives of the OSH Act and section 126 of SARA.

Section 126 of SARA, under paragraph (f), requires that the U.S. Environmental Protection Agency (EPA) provide those state and local government workers who are not covered by the protections of approved OSHA state plans with protection that is identical to that provided under the Federal OSHA standards. Non-state and local government employees would be regulated by the Federal OSHA standard. State and local government workers, employed in 25 non-OSHA state plan states, would not normally be covered by standards promulgated under Federal OSHA or approved state OSHA programs. OSHA has worked with EPA in the development of this final rule to assure that the protections provided to all state and local government employees is consistent with that provided by the Federal OSHA standard and the OSH Act. EPA as the regulatory authority for the non-OSHA state plan states will address their actions with respect to worker protection policies that have federalism implications in their rulemaking.

This final rule is written so that employees engaged in hazardous waste operations and related emergency response operations in every state, including those state and local government employees in states regulated by EPA, would be protected by general, performance oriented standards. To the extent that there are state or regional peculiarities caused by the types of hazardous waste operations, including the types of related emergency response provided, states with occupational safety and health plans approved by OSHA under section 18 of the OSH Act would be able to develop their own state standards to address any special problems. This would assure the compatibility of state or local emergency response plans developed independently by state or local emergency planning committees under Title III of SARA with Federal

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worker protection standards issued by OSHA and EPA.

And, under the OSH Act, if a state develops its own OSHA approved state program, it could make additional requirements in its standards. States that will be covered by regulations issued by EPA under paragraph 126(f) of SARA will be provided the same option. Moreover, the performance nature of this final rule, of and by itself, allows for flexibility by states and owners or operators of hazardous wastes sites or providers of emergency response to provide as much safety as possible using varying methods consonant with the conditions in each state.

In summary, there is a clear national problem, identified by Congress, related to occupational safety and health in hazardous waste operations and related emergency response. While the individual states, if all acted collectively, might be able to deal with the safety problems involved, most have not elected to do so in the seventeen years since the enactment of the OSH Act. Those states which have elected to participate under section 18 of the OSH Act, would not be preempted by this final regulation and would be able to address special, local conditions within the framework provided by this performance oriented standard while ensuring that their standards are at least as effective as the Federal standard. State comments were invited on the proposal and those that were submitted to the record were fully considered prior to promulgation of this Final Rule.

The agency certifies that this document has been assessed in light of the principles, criteria, and requirements stated in sections 2 through 5 of Executive Order 12621. There are no provisions of this rulemaking that are inconsistent with the principles, criteria, and requirements stated in sections 2 through 5 of Executive Order 12621. States which have approved state occupational safety and health plans may incur additional costs associated with standards development and enforcement as a result of this rulemaking. Funding for these approved state plan programs is available from OSHA under section 18 of the OSH Act. This rulemaking would not change the State's ability to discharge traditional State governmental functions or other aspects of State sovereignty.

An outline of § 1910.120 is included for the convenience of the reader as follows:

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*§ 1910.120 Hazardous waste operations and emergency response.*

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**Appendices to § 1910.120—Hazardous Waste Operations and Emergency Response**

**Appendix A**—Personnel Protective Equipment Test Methods.
**Appendix B**—General Description and Discussion of the Levels of Protection and Protective Gear.
**Appendix C**—Compliance Guidelines.
**Appendix D**—References.

**List of Subjects in 29 CFR Part 1910**

Containers, Drums, Emergency response, Flammable and combustible liquids, Hazardous materials, Hazardous substances, Hazardous wastes, Incorporation by reference, Materials handling and storage, Personal protective equipment, Storage areas, Training, Waste disposal.

**Authority**

This document has been prepared under the direction of John A. Pendergrass, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Pursuant to section 126 of the Superfund Amendments and Reauthorization Act of 1986 as amended (Pub. L. 99-499, 100 Stat. 1690 as amended by Pub. L. 100-202, section 101(f), 101 Stat. 1329-198, 29 U.S.C. 655 note), sections 6 and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655, 657), section 4 of the Administrative Procedures Act (5 U.S.C. 553), 29 CFR Part 1911 and Secretary of Labor's Order 9-83 (48 FR 35736), it is proposed to amend 29 CFR Part 1910 by revising § 1910.120, Hazardous Waste Operations and Emergency Response, as set forth below.

Signed at Washington, DC this 28th day of February 1989.

**John A. Pendergrass,**

*Assistant Secretary of Labor.*

## PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

1. The authority citation for Subpart H of Part 1910 is amended by adding the following paragraph:

**Authority:** * * *

Section 1910.120 issued under the authority of section 126 of the Superfund Amendments and Reauthorization Act of 1986 as amended (29 U.S.C. 655 note), sections 6 and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655, 657), section 4 of the Administrative Procedure Act (5 U.S.C. 553), 29 CFR Part 1911 and Secretary of Labor's Order 9-83 (48 FR 35736).

2. Section 1910.120 of Title 29 of the Code of Federal Regulations is revised to read as follows:



**§ 1910.120 Hazardous waste operations and emergency response.**

(a) *Scope, application, and definitions*—(1) *Scope.* This section covers the following operations, unless the employer can demonstrate that the operation does not involve employee exposure or the reasonable possibility for employee exposure to safety or health hazards:

(i) Clean-up operations required by a governmental body, whether Federal, state, local or other involving hazardous substances that are conducted at uncontrolled hazardous waste sites (including, but not limited to, the EPA's National Priority Site List (NPL), state priority site lists, sites recommended for the EPA NPL, and initial investigations of government identified sites which are conducted before the presence or absence of hazardous substances has been ascertained);

(ii) Corrective actions involving clean-up operations at sites covered by the Resource Conservation and Recovery Act of 1976 (RCRA) as amended (42 U.S.C. 6901 *et seq.*);

(iii) Voluntary clean-up operations at sites recognized by Federal, state, local or other governmental bodies as uncontrolled hazardous waste sites;

(iv) Operations involving hazardous wastes that are conducted at treatment, storage, and disposal (TSD) facilities regulated by 40 CFR Parts 264 and 265 pursuant to RCRA; or by agencies under agreement with U.S.E.P.A. to implement RCRA regulations; and

(v) Emergency response operations for releases of, or substantial threats of releases of, hazardous substances without regard to the location of the hazard.

(2) *Application.* (i) All requirements of Part 1910 and Part 1926 of Title 29 of the Code of Federal Regulations apply pursuant to their terms to hazardous waste and emergency response operations whether covered by this section or not. If there is a conflict or overlap, the provision more protective of employee safety and health shall apply without regard to 29 CFR 1910.5(c)(1).

(ii) Hazardous substance clean-up operations within the scope of paragraphs (a)(1)(i) through (a)(1)(iii) of this section must comply with all paragraphs of this section except paragraphs (p) and (q).

(iii) Operations within the scope of paragraph (a)(1)(iv) of this section must comply only with the requirements of paragraph (p) of this section.

*Exceptions:* For large quantity generators of hazardous waste who store those wastes less than 90 days and for small quantity generators of hazardous wastes, who have emergency response teams that respond to releases of, or substantial threats of releases of, hazardous substances, for their RCRA workplaces only paragraph (p)(8) of this section is applicable. Such generators of hazardous wastes who do not have emergency response teams that respond to releases of, or substantial threats of releases of, hazardous substances are exempt from the requirements of this section.

(iv) Emergency response operations for releases of, or substantial threats of releases of, hazardous substances which are not covered by paragraphs (a)(1)(i) through (a)(1)(iv) of this section must only comply with the requirements of paragraph (q) of this section.

(3) *Definitions—"Buddy system"* means a system of organizing employees into work groups in such a manner that each employee of the work group is designated to be observed by at least one other employee in the work group. The purpose of the buddy system is to provide rapid assistance to employees in the event of an emergency.

*"Clean-up operation"* means an operation where hazardous substances are removed, contained, incinerated, neutralized, stabilized, cleared-up, or in any other manner processed or handled with the ultimate goal of making the site safer for people or the environment.

*"Decontamination"* means the removal of hazardous substances from employees and their equipment to the extent necessary to preclude the occurrence of foreseeable adverse health affects.

*"Emergency response"* or *"responding to emergencies"* means a response effort by employees from outside the

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immediate release area or by other designated responders (i.e., mutual-aid groups, local fire departments, etc.) to an occurrence which results, or is likely to result, in an uncontrolled release of a hazardous substance. Responses to incidental releases of hazardous substances where the substance can be absorbed, neutralized, or otherwise controlled at the time of release by employees in the immediate release area, or by maintenance personnel are not considered to be emergency responses within the scope of this standard. Responses to releases of hazardous substances where there is no potential safety or health hazard (i.e., fire, explosion, or chemical exposure) are not considered to be emergency responses.

*"Facility"* means (A) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, storage container, motor vehicle, rolling stock, or aircraft, or (B) any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located; but does not include any consumer product in consumer use or any water-borne vessel.

(3) *"Hazardous materials response (HAZMAT) team"* means an organized group of employees, designated by the employer, who are expected to perform work to handle and control actual or potential leaks or spills of hazardous substances requiring possible close approach to the substance. The team members perform responses to releases or potential releases of hazardous substances for the purpose of control or stabilization of the incident. A HAZMAT team is not a fire brigade nor is a typical fire brigade a HAZMAT team. A HAZMAT team, however, may be a separate component of a fire brigade or fire department.

*"Hazardous substance"* means any substance designated or listed under paragraphs (A) through (D) of this definition, exposure to which results or may result in adverse affects on the health or safety of employees:

(A) Any substance defined under section 101(14) of CERCLA;

(B) Any biological agent and other disease-causing agent as defined in section 101(33) of CERCLA;

(C) Any substance listed by the U.S. Department of Transportation as hazardous materials under 49 CFR 172.101 and appendices; and

(D) Hazardous waste as herein defined.

*"Hazardous waste"* means—

(A) A waste or combination of wastes as defined in 40 CFR 261.3, or

(B) Those substances defined as hazardous wastes in 49 CFR 171.8.

*"Hazardous waste operation"* means any operation conducted within the scope of this standard.

*"Hazardous waste site" or "Site"* means any facility or location within the scope of this standard at which hazardous waste operations take place.

*"Health hazard"* means a chemical, mixture of chemicals or a pathogen for which there is statistically significant evidence based on at least one study conducted in accordance with established scientific principles that acute or chronic health effects may occur in exposed employees. The term "health hazard" includes chemicals which are carcinogens, toxic or highly toxic agents, reproductive toxins, irritants, corrosives, sensitizers, heptaotoxins, nephrotoxins, neurotoxins, agents which act on the hematopoietic system, and agents which damage the lungs, skin, eyes, or mucous membranes. It also includes stress due to temperature extremes. Further definition of the terms used above can be found in Appendix A to 29 CFR 1910.1200.

*"IDLH"* or *"Immediately dangerous to life or health"* means an atmospheric concentration of any toxic, corrosive or asphyxiant substance that poses an immediate threat to life or would cause irreversible or delayed adverse health effects or would interfere with an individual's ability to escape from a dangerous atmosphere.

*"Oxygen deficiency"* means that concentration of oxygen by volume below which atmosphere supplying respiratory protection must be provided. It exists in atmospheres where the percentage of oxygen by volume is less than 19.5 percent oxygen.

*"Permissible exposure limit"* means the exposure, inhalation or dermal permissible exposure limit specified in 29 CFR Part 1910, Subparts G and Z.

*"Published exposure level"* means the exposure limits published in "NIOSH Recommendations for Occupational Health Standards" dated 1986 incorporated by reference, or if none is specified, the exposure limits published in the standards specified by the American Conference of Governmental Industrial Hygienists in their publication "Threshold Limit Values and Biological Exposure Indices for 1987–88" dated 1987 incorporated by reference.

*"Post emergency response"* means that portion of an emergency response performed after the immediate threat of a release has been stabilized or eliminated and clean-up of the site has begun. If post emergency response is performed by an employer's own employees who were part of the initial emergency response, it is considered to be part of the initial response and not post emergency response. However, if a group of an employer's own employees, separate from the group providing initial response, performs the clean-up operation, then the separate group of employees would be considered to be performing post-emergency response and subject to paragraph (g)(11) of this section.

*"Qualified person"* means a person with specific training, knowledge and experience in the area for which the person has the responsibility and the authority to control.

*"Site safety and health supervisor (or official)"* means the individual located on a hazardous waste site who is responsible to the employer and has the authority and knowledge necessary to implement the site safety and health plan and verify compliance with applicable safety and health requirements.

*"Small quantity generator"* means a generator of hazardous wastes who in any calendar month generates no more than 1,000 kilograms (2,205 pounds) of hazardous waste in that month.

*"Uncontrolled hazardous waste site"* means an area where an accumulation of hazardous waste creates a threat to the health and safety of individuals or the environment or both. Some sites are found on public lands, such as those created by former municipal, county or state landfills where illegal or poorly managed waste disposal has taken place. Other sites are found on private property, often belonging to generators or former generators of hazardous waste. Examples of such sites include, but are not limited to, surface impoundments, landfills, dumps, and tank or drum farms. Normal operations at TSD sites are not covered by this definition.

(b) *Safety and health program.*

**Note to (b):** Safety and health programs developed and implemented to meet other Federal, state, or local regulations are considered acceptable in meeting this requirement if they cover or are modified to cover the topics required in this paragraph. An additional or separate safety and health program is not required by this paragraph.

(1) *General.* (i) Employers shall develop and implement a written safety and health program for their employees involved in hazardous waste operations. The program shall be designed to identify, evaluate, and control safety and health hazards, and provide for



emergency response for hazardous waste operations.

(ii) The written safety and health program shall incorporate the following:

(A) An organizational structure;

(B) A comprehensive workplan;

(C) A site-specific safety and health plan which need not repeat the employer's standard operating procedures required in paragraph (b)(1)(ii)(F) of this section;

(D) The safety and health training program;

(E) The medical surveillance program;

(F) The employer's standard operating procedures for safety and health; and

(G) Any necessary interface between general program and site specific activities.

(iii) *Site excavation.* Site excavations created during initial site preparation or during hazardous waste operations shall be shored or sloped as appropriate to prevent accidental collapse in accordance with Subpart P of 29 CFR Part 1926.

(iv) *Contractors and sub-contractors.* An employer who retains contractor or sub-contractor services for work in hazardous waste operations shall inform those contractors, sub-contractors, or their representatives of the site emergency response procedures and any potential fire, explosion, health, safety or other hazards of the hazardous waste operation that have been identified by the employer, including those identified in the employer's information program.

(v) *Program availability.* The written safety and health program shall be made available to any contractor or subcontractor or their representative who will be involved with the hazardous waste operation; to employees; to employee designated representatives; to OSHA personnel, and to personnel of other Federal, state, or local agencies with regulatory authority over the site.

(2) *Organizational structure part of the site program.*—(i) The organizational structure part of the program shall establish the specific chain of command and specify the overall responsibilities of supervisors and employees. It shall include, at a minimum, the following elements:

(A) A general supervisor who has the responsibility and authority to direct all hazardous waste operations.

(B) A site safety and health supervisor who has the responsibility and authority to develop and implement the site safety and health plan and verify compliance.

(C) All other personnel needed for hazardous waste site operations and emergency response and their general functions and responsibilities.

(D) The lines of authority, responsibility, and communication.

(ii) The organizational structure shall be reviewed and updated as necessary to reflect the current status of waste site operations.

(3) *Comprehensive workplan part of the site program.* The comprehensive workplan part of the program shall address the tasks and objectives of the site operations and the logistics and resources required to reach those tasks and objectives.

(i) The comprehensive workplan shall address anticipated clean-up activities as well as normal operating procedures which need not repeat the employer's procedures available elsewhere.

(ii) The comprehensive workplan shall define work tasks and objectives and identify the methods for accomplishing those tasks and objectives.

(iii) The comprehensive workplan shall establish personnel requirements for implementing the plan.

(iv) The comprehensive workplan shall provide for the implementation of the training required in paragraph (e) of this section.

(v) The comprehensive workplan shall provide for the implementation of the required informational programs required in paragraph (i) of this section.

(vi) The comprehensive workplan shall provide for the implementation of the medical surveillance program described in paragraph (f) of this section.

(4) *Site-specific safety and health plan part of the program.*—(i) *General.* The site safety and health plan, which must be kept on site, shall address the safety and health hazards of each phase of site operation and include the requirements and procedures for employee protection.

(ii) *Elements.* The site safety and health plan, as a minimum, shall address the following:

(A) A safety and health risk or hazard analysis for each site task and operation found in the workplan.

(B) Employee training assignments to assure compliance with paragraph (e) of this section.

(C) Personal protective equipment to be used by employees for each of the site tasks and operations being conducted as required by the personal protective equipment program in paragraph (g)(5) of this section.

(D) Medical surveillance requirements in accordance with the program in paragraph (f) of this section.

(E) Frequency and types of air monitoring, personnel monitoring, and environmental sampling techniques and instrumentation to be used, including methods of maintenance and calibration of monitoring and sampling equipment to be used.

(F) Site control measures in accordance with the site control program required in paragraph (d) of this section.

(G) Decontamination procedures in accordance with paragraph (k) of this section.

(H) An emergency response plan meeting the requirements of paragraph (l) of this section for safe and effective responses to emergencies, including the necessary PPE and other equipment.

(I) Confined space entry procedures.

(J) A spill containment program meeting the requirements of paragraph (j) of this section.

(iii) *Pre-entry briefing.* The site specific safety and health plan shall provide for pre-entry briefings to be held prior to initiating any site activity, and at such other times as necessary to ensure that employees are apprised of the site safety and health plan and that this plan is being followed. The information and data obtained from site characterization and analysis work required in paragraph (c) of this section shall be used to prepare and update the site safety and health plan.

(iv) *Effectiveness of site safety and health plan.* Inspections shall be conducted by the site safety and health supervisor or, in the absence of that individual, another individual who is knowledgeable in occupational safety and health, acting on behalf of the employer as necessary to determine the effectiveness of the site safety and health plan. Any deficiencies in the effectiveness of the site safety and health plan shall be corrected by the employer.

(c) *Site characterization and analysis*—(1) *General.* Hazardous waste sites shall be evaluated in accordance with this paragraph to identify specific site hazards and to determine the appropriate safety and health control procedures needed to protect employees from the identified hazards.

(2) *Preliminary evaluation.* A preliminary evaluation of a site's characteristics shall be performed prior to site entry by a qualified person in order to aid in the selection of appropriate employee protection methods prior to site entry. Immediately after initial site entry, a more detailed evaluation of the site's specific characteristics shall be performed by a qualified person in order to further identify existing site hazards and to further aid in the selection of the appropriate engineering controls and personal protective equipment for the tasks to be performed.

(3) *Hazard identification.* All suspected conditions that may pose

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inhalation or skin absorption hazards that are immediately dangerous to life or health (IDLH), or other conditions that may cause death or serious harm, shall be identified during the preliminary survey and evaluated during the detailed survey. Examples of such hazards include, but are not limited to, confined space entry, potentially explosive or flammable situations, visible vapor clouds, or areas where biological indicators such as dead animals or vegetation are located.

(4) *Required information.* The following information to the extent available shall be obtained by the employer prior to allowing employees to enter a site:

(i) Location and approximate size of the site.

(ii) Description of the response activity and/or the job task to be performed.

(iii) Duration of the planned employee activity.

(iv) Site topography and accessibility by air and roads.

(v) Safety and health hazards expected at the site.

(vi) Pathways for hazardous substance dispersion.

(vii) Present status and capabilities of emergency response teams that would provide assistance to hazardous waste clean-up site employees at the time of an emergency.

(viii) Hazardous substances and health hazards involved or expected at the site, and their chemical and physical properties.

(5) *Personal protective equipment.* Personal protective equipment (PPE) shall be provided and used during initial site entry in accordance with the following requirements:

(i) Based upon the results of the preliminary site evaluation, an ensemble of PPE shall be selected and used during initial site entry which will provide protection to a level of exposure below permissible exposure limits and published exposure levels for known or suspected hazardous substances and health hazards, and which will provide protection against other known and suspected hazards identified during the preliminary site evaluation. If there is no permissible exposure limit or published exposure level, the employer may use other published studies and information as a guide to appropriate personal protective equipment.

(ii) If positive-pressure self-contained breathing apparatus is not used as part of the entry ensemble, and if respiratory protection is warranted by the potential hazards identified during the preliminary site evaluation, an escape self-contained breathing apparatus of at least five minute's duration shall be carried by employees during initial site entry.

(iii) If the preliminary site evaluation does not produce sufficient information to identify the hazards or suspected hazards of the site, an ensemble providing protection equivalent to Level B PPE shall be provided as minimum protection, and direct reading instruments shall be used as appropriate for identifying IDLH conditions. (See Appendix B for a description of Level B hazards and the recommendations for Level B protective equipment.)

(iv) Once the hazards of the site have been identified, the appropriate PPE shall be selected and used in accordance with paragraph (g) of this section.

(6) *Monitoring.* The following monitoring shall be conducted during initial site entry when the site evaluation produces information that shows the potential for ionizing radiation or IDLH conditions, or when the site information is not sufficient reasonably to eliminate these possible conditions:

(i) Monitoring with direct reading instruments for hazardous levels of ionizing radiation.

(ii) Monitoring the air with appropriate direct reading test equipment (i.e., combustible gas meters, detector tubes) for IDLH and other conditions that may cause death or serious harm (combustible or explosive atmospheres, oxygen deficiency, toxic substances).

(iii) Visually observing for signs of actual or potential IDLH or other dangerous conditions.

(iv) An ongoing air monitoring program in accordance with paragraph (h) of this section shall be implemented after site characterization has determined the site is safe for the start-up of operations.

(7) *Risk identification.* Once the presence and concentrations of specific hazardous substances and health hazards have been established, the risks associated with these substances shall be identified. Employees who will be working on the site shall be informed of any risks that have been identified. In situations covered by the Hazard Communication Standard, 29 CFR 1910.1200, training required by that standard need not be duplicated.

Note to (c)(7).—Risks to consider include, but are not limited to:

(a) Exposures exceeding the permissible exposure limits and published exposure levels.

(b) IDLH concentrations.

(c) Potential skin absorption and irritation sources.

(d) Potential eye irritation sources.

(e) Explosion sensitivity and flammability ranges.

(f) Oxygen deficiency.

(8) *Employee notification.* Any information concerning the chemical, physical, and toxicologic properties of each substance known or expected to be present on site that is available to the employer and relevant to the duties an employee is expected to perform shall be made available to the affected employees prior to the commencement of their work activities. The employer may utilize information developed for the hazard communication standard for this purpose.

(d) *Site control*—(1) *General.* Appropriate site control procedures shall be implemented to control employee exposure to hazardous substances before clean-up work begins.

(2) *Site control program.* A site control program for protecting employees which is part of the employer's site safety and health program required in paragraph (b) of this section shall be developed during the planning stages of a hazardous waste clean-up operation and modified as necessary as new information becomes available.

(3) *Elements of the site control program.* The site control program shall, as a minimum, include: A site map; site work zones; the use of a "buddy system"; site communications including alerting means for emergencies; the standard operating procedures or safe work practices; and, identification of the nearest medical assistance. Where these requirements are covered elsewhere they need not be repeated.

(e) *Training*—(1) *General.* (i) All employees working on site (such as but not limited to equipment operators, general laborers and others) exposed to hazardous substances, health hazards, or safety hazards and their supervisors and management responsible for the site shall receive training meeting the requirements of this paragraph before they are permitted to engage in hazardous waste operations that could expose them to hazardous substances, safety, or health hazards, and they shall receive review training as specified in this paragraph.

(ii) Employees shall not be permitted to participate in or supervise field activities until they have been trained to a level required by their job function and responsibility.

(2) *Elements to be covered.* The training shall thoroughly cover the following:

(i) Names of personnel and alternates responsible for site safety and health;



(ii) Safety, health and other hazards present on the site;

(iii) Use of personal protective equipment;

(iv) Work practices by which the employee can minimize risks from hazards;

(v) Safe use of engineering controls and equipment on the site;

(vi) Medical surveillance requirements, including recognition of symptoms and signs which might indicate overexposure to hazards; and

(vii) The contents of paragraphs (G) through (J) of the site safety and health plan set forth in paragraph (b)(4)(ii) of this section.

(3) *Initial training.* (i) General site workers (such as equipment operators, general laborers and supervisory personnel) engaged in hazardous substance removal or other activities which expose or potentially expose workers to hazardous substances and health hazards shall receive a minimum of 40 hours of instruction off the site, and a minimum of three days actual field experience under the direct supervision of a trained, experienced supervisor.

(ii) Workers on site only occasionally for a specific limited task (such as, but not limited to, ground water monitoring, land surveying, or geo-physical surveying) and who are unlikely to be exposed over permissible exposure limits and published exposure limits shall receive a minimum of 24 hours of instruction off the site, and the minimum of one day actual field experience under the direct supervision of a trained, experienced supervisor.

(iii) Workers regularly on site who work in areas which have been monitored and fully characterized indicating that exposures are under permissible exposure limits and published exposure limits where respirators are not necessary, and the characterization indicates that there are no health hazards or the possibility of an emergency developing, shall receive a minimum of 24 hours of instruction off the site and the minimum of one day actual field experience under the direct supervision of a trained, experienced supervisor.

(iv) Workers with 24 hours of training who are covered by paragraphs (a)(3)(ii) and (a)(3)(iii) of this section, and who become general site workers or who are required to wear respirators, shall have the additional 16 hours and two days of training necessary to total the training specified in paragraph (e)(3)(i).

(4) *Management and supervisor training.* On-site management and supervisors directly responsible for, or who supervise employees engaged in, hazardous waste operations shall receive 40 hours initial training, and three days of supervised field experience (the training may be reduced to 24 hours and one day if the only area of their responsibility is employees covered by paragraphs (e)(3)(ii) and (e)(3)(iii)) and at least eight additional hours of specialized training at the time of job assignment on such topics as, but not limited to, the employer's safety and health program and the associated employee training program, personal protective equipment program, spill containment program, and health hazard monitoring procedure and techniques.

(5) *Qualifications for trainers.* Trainers shall be qualified to instruct employees about the subject matter that is being presented in training. Such trainers shall have satisfactorily completed a training program for teaching the subjects they are expected to teach, or they shall have the academic credentials and instructional experience necessary for teaching the subjects. Instructors shall demonstrate competent instructional skills and knowledge of the applicable subject matter.

(6) *Training certification.* Employees and supervisors that have received and successfully completed the training and field experience specified in paragraphs (e)(1) through (e)(4) of this section shall be certified by their instructor or the head instructor and trained supervisor as having successfully completed the necessary training. A written certificate shall be given to each person so certified. Any person who has not been so certified or who does not meet the requirements of paragraph (e)(9) of this section shall be prohibited from engaging in hazardous waste operations.

(7) *Emergency response.* Employees who are engaged in responding to hazardous emergency situations at hazardous waste clean-up sites that may expose them to hazardous substances shall be trained in how to respond to such expected emergencies.

(8) *Refresher training.* Employees specified in paragraph (e)(1) of this section, and managers and supervisors specified in paragraph (e)(4) of this section, shall receive eight hours of refresher training annually on the items specified in paragraph (e)(2) and/or (e)(4) of this section, any critique of incidents that have occurred in the past year that can serve as training examples of related work, and other relevant topics.

(9) *Equivalent training.* Employers who can show by documentation or certification that an employee's work experience and/or training has resulted in training equivalent to that training required in paragraphs (e)(1) through (e)(4) of this section shall not be required to provide the initial training requirements of those paragraphs to such employees. However, certified employees new to a site shall receive appropriate, site specific training before site entry and have appropriate supervised field experience at the new site. Equivalent training includes any academic training or the training that existing employees might have already received from actual hazardous waste site work experience.

(f) *Medical surveillance*—(1) *General.* Employers engaged in operations specified in paragraphs (a)(1)(i) through (a)(1)(iv) of this section and not covered by (a)(2)(iii) exceptions and employers of employees specified in paragraph (q)(9) shall institute a medical surveillance program in accordance with this paragraph.

(2) *Employees covered.* The medical surveillance program shall be instituted by the employer for the following employees:

(i) All employees who are or may be exposed to hazardous substances or health hazards at or above the permissible exposure limits or, if there is no permissible exposure limit, above the published exposure levels for these substances, without regard to the use of respirators, for 30 days or more a year;

(ii) All employees who wear a respirator for 30 days or more a year or as required by § 1910.134;

(iii) All employees who are injured due to overexposure from an emergency incident involving hazardous substances or health hazards; or

(iv) Members of HAZMAT teams.

(3) *Frequency of medical examinations and consultations.* Medical examinations and consultations shall be made available by the employer to each employee covered under paragraph (f)(2) of this section on the following schedules:

(i) For employees covered under paragraphs (f)(2)(i), (f)(2)(ii), and (f)(2)(iv):

(A) Prior to assignment;

(B) At least once every twelve months for each employee covered unless the attending physician believes a longer interval (not greater than biennially) is appropriate;

(C) At termination of employment or reassignment to an area where the employee would not be covered if the employee has not had an examination within the last six months;

(D) As soon as possible upon notification by an employee that the employee has developed signs or symptoms indicating possible

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overexposure to hazardous substances or health hazards, or that the employee has been injured or exposed above the permissible exposure limits or published exposure levels in an emergency situation;

(E) At more frequent times, if the examining physician determines that an increased frequency of examination is medically necessary.

(ii) For employees covered under paragraph (f)(2)(iii) and for all employees including those of employers covered by paragraph (a)(1)(v) who may have been injured, received a health impairment, developed signs or symptoms which may have resulted from exposure to hazardous substances resulting from an emergency incident, or exposed during an emergency incident to hazardous substances at concentrations above the permissible exposure limits or the published exposure levels without the necessary personal protective equipment being used:

(A) As soon as possible following the emergency incident or development of signs or symptoms;

(B) At additional times, if the examining physician determines that follow-up examinations or consultations are medically necessary.

(4) *Content of medical examinations and consultations.* (i) Medical examinations required by paragraph (f)(3) of this section shall include a medical and work history (or updated history if one is in the employee's file) with special emphasis on symptoms related to the handling of hazardous substances and health hazards, and to fitness for duty including the ability to wear any required PPE under conditions (i.e., temperature extremes) that may be expected at the work site.

(ii) The content of medical examinations or consultations made available to employees pursuant to paragraph (f) shall be determined by the attending physician. The guidelines in the *Occupational Safety and Health Guidance Manual for Hazardous Waste Site Activities* (See Appendix D, Reference #10) should be consulted.

(5) *Examination by a physician and costs.* All medical examinations and procedures shall be performed by or under the supervision of a licensed physician, preferably one knowledgeable in occupational medicine, and shall be provided without cost to the employee, without loss of pay, and at a reasonable time and place.

(6) *Information provided to the physician.* The employer shall provide one copy of this standard and its appendices to the attending physician, and in addition the following for each employee:

(i) A description of the employee's duties as they relate to the employee's exposures.

(ii) The employee's exposure levels or anticipated exposure levels.

(iii) A description of any personal protective equipment used or to be used.

(iv) Information from previous medical examinations of the employee which is not readily available to the examining physician.

(v) Information required by § 1910.134.

(7) *Physician's written opinion.* (i) The employer shall obtain and furnish the employee with a copy of a written opinion from the attending physician containing the following:

(A) The physician's opinion as to whether the employee has any detected medical conditions which would place the employee at increased risk of material impairment of the employee's health from work in hazardous waste operations or emergency response, or from respirator use.

(B) The physician's recommended limitations upon the employee's assigned work.

(C) The results of the medical examination and tests if requested by the employee.

(D) A statement that the employee has been informed by the physician of the results of the medical examination and any medical conditions which require further examination or treatment.

(ii) The written opinion obtained by the employer shall not reveal specific findings or diagnoses unrelated to occupational exposures.

(8) *Recordkeeping.* (i) An accurate record of the medical surveillance required by paragraph (f) of this section shall be retained. This record shall be retained for the period specified and meet the criteria of 29 CFR 1910.20.

(ii) The record required in paragraph (f)(8)(i) of this section shall include at least the following information:

(A) The name and social security number of the employee;

(B) Physician's written opinions, recommended limitations, and results of examinations and tests;

(C) Any employee medical complaints related to exposure to hazardous substances;

(D) A copy of the information provided to the examining physician by the employer, with the exception of the standard and its appendices.

(g) *Engineering controls, work practices, and personal protective equipment for employee protection.* Engineering controls, work practices, personal protective equipment, or a combination of these shall be implemented in accordance with this paragraph to protect employees from exposure to hazardous substances and safety and health hazards.

(1) *Engineering controls, work practices and PPE for substances regulated in Subparts G and Z.* (i) Engineering controls and work practices shall be instituted to reduce and maintain employee exposure to or below the permissible exposure limits for substances regulated by 29 CFR Part 1910, to the extent required by Subpart Z, except to the extent that such controls and practices are not feasible.

Note to (g)(1)(i): Engineering controls which may be feasible include the use of pressurized cabs or control booths on equipment, and/or the use of remotely operated material handling equipment. Work practices which may be feasible are removing all non-essential employees from potential exposure during opening of drums, wetting down dusty operations and locating employees upwind of possible hazards.

(ii) Whenever engineering controls and work practices are not feasible, PPE shall be used to reduce and maintain employee exposures to or below the permissible exposure limits or dose limits for substances regulated by 29 CFR Part 1910, Subpart Z.

(iii) The employer shall not implement a schedule of employee rotation as a means of compliance with permissible exposure limits or dose limits except when there is no other feasible way of complying with the airborne or dermal dose limits for ionizing radiation.

(iv) The provisions of 29 CFR, Subpart G, shall be followed.

(2) *Engineering controls, work practices, and PPE for substances not regulated in Subparts G and Z.* An appropriate combination of engineering controls, work practices and personal protective equipment shall be used to reduce and maintain employee exposure to or below published exposure levels for hazardous substances and health hazards not regulated by 29 CFR Part 1910, Subparts G and Z. The employer may use the published literature and MSDS as a guide in making the employer's determination as to what level of protection the employer believes is appropriate for hazardous substances and health hazards for which there is no permissible exposure limit or published exposure limit.

(3) *Personal protective equipment selection.* (i) Personal protective equipment (PPE) shall be selected and used which will protect employees from the hazards and potential hazards they are likely to encounter as identified during the site characterization and analysis.



(ii) Personal protective equipment selection shall be based on an evaluation of the performance characteristics of the PPE relative to the requirements and limitations of the site, the task-specific conditions and duration, and the hazards and potential hazards identified at the site.

(iii) Positive pressure self-contained breathing apparatus, or positive pressure air-line respirators equipped with an escape air supply, shall be used when chemical exposure levels present will create a substantial possibility of immediate death, immediate serious illness or injury, or impair the ability to escape.

(iv) Totally-encapsulating chemical protective suits (protection equivalent to Level A protection as recommended in Appendix B) shall be used in conditions where skin absorption of a hazardous substance may result in a substantial possibility of immediate death, immediate serious illness or injury, or impair the ability to escape.

(v) The level of protection provided by PPE selection shall be increased when additional information on site conditions indicates that increased protection is necessary to reduce employee exposures below permissible exposure limits and published exposure levels for hazardous substances and health hazards. (See Appendix B for guidance on selecting PPE ensembles.)

Note to (g)(3): The level of employee protection provided may be decreased when additional information or site conditions show that decreased protection will not result in hazardous exposures to employees.

(vi) Personal protective equipment shall be selected and used to meet the requirements of 29 CFR Part 1910, Subpart I, and additional requirements specified in this section.

(4) *Totally-encapsulating chemical protective suits.* (i) Totally-encapsulating suits shall protect employees from the particular hazards which are identified during site characterization and analysis.

(ii) Totally-encapsulating suits shall be capable of maintaining positive air pressure. (See Appendix A for a test method which may be used to evaluate this requirement.)

(iii) Totally-encapsulating suits shall be capable of preventing inward test gas leakage of more than 0.5 percent. (See Appendix A for a test method which may be used to evaluate this requirement.)

(5) *Personal protective equipment (PPE) program.* A written personal protective equipment program, which is part of the employer's safety and health program required in paragraph (b) of this section or required in paragraph (p)(1) of this section and which is also a part of the site-specific safety and health plan shall be established. The PPE program shall address the elements listed below. When elements, such as donning and doffing procedures, are provided by the manufacturer of a piece of equipment and are attached to the plan, they need not be rewritten into the plan as long as they adequately address the procedure or element.

(i) PPE selection based upon site hazards,

(ii) PPE use and limitations of the equipment,

(iii) Work mission duration,

(iv) PPE maintenance and storage,

(v) PPE decontamination and disposal,

(vi) PPE training and proper fitting,

(vii) PPE donning and doffing procedures,

(viii) PPE inspection procedures prior to, during, and after use,

(ix) Evaluation of the effectiveness of the PPE program, and

(x) Limitations during temperature extremes, heat stress, and other appropriate medical considerations.

(h) *Monitoring*—(1) *General.* (i) Monitoring shall be performed in accordance with this paragraph where there may be a question of employee exposure to hazardous concentrations of hazardous substances in order to assure proper selection of engineering controls, work practices and personal protective equipment so that employees are not exposed to levels which exceed permissible exposure limits or published exposure levels for hazardous substances.

(ii) Air monitoring shall be used to identify and quantify airborne levels of hazardous substances and safety and health hazards in order to determine the appropriate level of employee protection needed on site.

(2) *Initial entry.* Upon initial entry, representative air monitoring shall be conducted to identify any IDLH condition, exposure over permissible exposure limits or published exposure levels, exposure over a radioactive material's dose limits or other dangerous condition such as the presence of flammable atmospheres or oxygen-deficient environments.

(3) *Periodic monitoring.* Periodic monitoring shall be conducted when the possibility of an IDLH condition or flammable atmosphere has developed or when there is indication that exposures may have risen over permissible exposure limits or published exposure levels since prior monitoring. Situations where it shall be considered whether the possibility that exposures have risen are as follows:

(i) When work begins on a different portion of the site.

(ii) When contaminants other than those previously identified are being handled.

(iii) When a different type of operation is initiated (e.g., drum opening as opposed to exploratory well drilling).

(iv) When employees are handling leaking drums or containers or working in areas with obvious liquid contamination (e.g., a spill or lagoon).

(4) *Monitoring of high-risk employees.* After the actual clean-up phase of any hazardous waste operation commences; for example, when soil, surface water or containers are moved or disturbed; the employer shall monitor those employees likely to have the highest exposures to hazardous substances and health hazards likely to be present above permissible exposure limits or published exposure levels by using personal sampling frequently enough to characterize employee exposures. If the employees likely to have the highest exposure are over permissible exposure limits or published exposure limits, then monitoring shall continue to determine all employees likely to be above those limits. The employer may utilize a representative sampling approach by documenting that the employees and chemicals chosen for monitoring are based on the criteria stated above.

Note to (h): It is not required to monitor employees engaged in site characterization operations covered by paragraph (c) of this section.

(i) *Informational programs.* Employers shall develop and implement a program, which is part of the employer's safety and health program required in paragraph (b) of this section, to inform employees, contractors, and subcontractors (or their representative) actually engaged in hazardous waste operations of the nature, level and degree of exposure likely as a result of participation in such hazardous waste operations. Employees, contractors and subcontractors working outside of the operations part of a site are not covered by this standard.

(j) *Handling drums and containers*—(1) *General.* (i) Hazardous substances and contaminated soils, liquids, and other residues shall be handled, transported, labeled, and disposed of in accordance with this paragraph.

(ii) Drums and containers used during the clean-up shall meet the appropriate DOT, OSHA, and EPA regulations for the wastes that they contain.

(iii) When practical, drums and containers shall be inspected and their integrity shall be assured prior to being

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moved. Drums or containers that cannot be inspected before being moved because of storage conditions (i.e., buried beneath the earth, stacked behind other drums, stacked several tiers high in a pile, etc.) shall be moved to an accessible location and inspected prior to further handling.

(iv) Unlabelled drums and containers shall be considered to contain hazardous substances and handled accordingly until the contents are positively identified and labeled.

(v) Site operations shall be organized to minimize the amount of drum or container movement.

(vi) Prior to movement of drums or containers, all employees exposed to the transfer operation shall be warned of the potential hazards associated with the contents of the drums or containers.

(vii) U.S. Department of Transportation specified salvage drums or containers and suitable quantities of proper absorbent shall be kept available and used in areas where spills, leaks, or ruptures may occur.

(viii) Where major spills may occur, a spill containment program, which is part of the employer's safety and health program required in paragraph (b) of this section, shall be implemented to contain and isolate the entire volume of the hazardous substance being transferred.

(ix) Drums and containers that cannot be moved without rupture, leakage, or spillage shall be emptied into a sound container using a device classified for the material being transferred.

(x) A ground-penetrating system or other type of detection system or device shall be used to estimate the location and depth of buried drums or containers.

(xi) Soil or covering material shall be removed with caution to prevent drum or container rupture.

(xii) Fire extinguishing equipment meeting the requirements of 29 CFR Part 1910, Subpart L, shall be on hand and ready for use to control incipient fires.

(2) *Opening drums and containers.* The following procedures shall be followed in areas where drums or containers are being opened:

(i) Where an airline respirator system is used, connections to the source of air supply shall be protected from contamination and the entire system shall be protected from physical damage.

(ii) Employees not actually involved in opening drums or containers shall be kept a safe distance from the drums or containers being opened.

(iii) If employees must work near or adjacent to drums or containers being opened, a suitable shield that does not interfere with the work operation shall be placed between the employee and the drums or containers being opened to protect the employee in case of accidental explosion.

(iv) Controls for drum or container opening equipment, monitoring equipment, and fire suppression equipment shall be located behind the explosion-resistant barrier.

(v) When there is a reasonable possibility of flammable atmospheres being present, material handling equipment and hand tools shall be of the type to prevent sources of ignition.

(vi) Drums and containers shall be opened in such a manner that excess interior pressure will be safely relieved. If pressure can not be relieved from a remote location, appropriate shielding shall be placed between the employee and the drums or containers to reduce the risk of employee injury.

(vii) Employees shall not stand upon or work from drums or containers.

(3) *Material handling equipment.* Material handling equipment used to transfer drums and containers shall be selected, positioned and operated to minimize sources of ignition related to the equipment from igniting vapors released from ruptured drums or containers.

(4) *Radioactive wastes.* Drums and containers containing radioactive wastes shall not be handled until such time as their hazard to employees is properly assessed.

(5) *Shock sensitive wastes.* As a minimum, the following special precautions shall be taken when drums and containers containing or suspected of containing shock-sensitive wastes are handled:

(i) All non-essential employees shall be evacuated from the area of transfer.

(ii) Material handling equipment shall be provided with explosive containment devices or protective shields to protect equipment operators from exploding containers.

(iii) An employee alarm system capable of being perceived above surrounding light and noise conditions shall be used to signal the commencement and completion of explosive waste handling activities.

(iv) Continuous communications (i.e., portable radios, hand signals, telephones, as appropriate) shall be maintained between the employee-in-charge of the immediate handling area and both the site safety and health supervisor and the command post until such time as the handling operation is completed. Communication equipment or methods that could cause shock sensitive materials to explode shall not be used.

(v) Drums and containers under pressure, as evidenced by bulging or swelling, shall not be moved until such time as the cause for excess pressure is determined and appropriate containment procedures have been implemented to protect employees from explosive relief of the drum.

(vi) Drums and containers containing packaged laboratory wastes shall be considered to contain shock-sensitive or explosive materials until they have been characterized.

**Caution:** Shipping of shock sensitive wastes may be prohibited under U.S. Department of Transportation regulations. Employers and their shippers should refer to 49 CFR 173.21 and 173.50.

(6) *Laboratory waste packs.* In addition to the requirements of paragraph (j)(5) of this section, the following precautions shall be taken, as a minimum, in handling laboratory waste packs (lab packs):

(i) Lab packs shall be opened only when necessary and then only by an individual knowledgeable in the inspection, classification, and segregation of the containers within the pack according to the hazards of the wastes.

(ii) If crystalline material is noted on any container, the contents shall be handled as a shock-sensitive waste until the contents are identified.

(7) *Sampling of drum and container contents.* Sampling of containers and drums shall be done in accordance with a sampling procedure which is part of the site safety and health plan developed for and available to employees and others at the specific worksite.

(8) *Shipping and transport.* (i) Drums and containers shall be identified and classified prior to packaging for shipment.

(ii) Drum or container staging areas shall be kept to the minimum number necessary to identify and classify materials safely and prepare them for transport.

(iii) Staging areas shall be provided with adequate access and egress routes.

(iv) Bulking of hazardous wastes shall be permitted only after a thorough characterization of the materials has been completed.

(9) *Tank and vault procedures.* (i) Tanks and vaults containing hazardous substances shall be handled in a manner similar to that for drums and containers, taking into consideration the size of the tank or vault.

(ii) Appropriate tank or vault entry procedures as described in the employer's safety and health plan shall



be followed whenever employees must enter a tank or vault.

(k) *Decontamination*—(1) *General.* Procedures for all phases of decontamination shall be developed and implemented in accordance with this paragraph.

(2) *Decontamination procedures.* (i) A decontamination procedure shall be developed, communicated to employees and implemented before any employees or equipment may enter areas on site where potential for exposure to hazardous substances exists.

(ii) Standard operating procedures shall be developed to minimize employee contact with hazardous substances or with equipment that has contacted hazardous substances.

(iii) All employees leaving a contaminated area shall be appropriately decontaminated; all contaminated clothing and equipment leaving a contaminated area shall be appropriately disposed of or decontaminated.

(iv) Decontamination procedures shall be monitored by the site safety and health supervisor to determine their effectiveness. When such procedures are found to be ineffective, appropriate steps shall be taken to correct any deficiencies.

(3) *Location.* Decontamination shall be performed in geographical areas that will minimize the exposure of uncontaminated employees or equipment to contaminated employees or equipment.

(4) *Equipment and solvents.* All equipment and solvents used for decontamination shall be decontaminated or disposed of properly.

(5) *Personal protective clothing and equipment.* (i) Protective clothing and equipment shall be decontaminated, cleaned, laundered, maintained or replaced as needed to maintain their effectiveness.

(ii) Employees whose non-impermeable clothing becomes wetted with hazardous substances shall immediately remove that clothing and proceed to shower. The clothing shall be disposed of or decontaminated before it is removed from the work zone.

(6) *Unauthorized employees.* Unauthorized employees shall not remove protective clothing or equipment from change rooms.

(7) *Commercial laundries or cleaning establishments.* Commercial laundries or cleaning establishments that decontaminate protective clothing or equipment shall be informed of the potentially harmful effects of exposures to hazardous substances.

(8) *Showers and change rooms.* Where the decontamination procedure indicates a need for regular showers and change rooms outside of a contaminated area, they shall be provided and meet the requirements of 29 CFR 1910.141. If temperature conditions prevent the effective use of water, then other effective means for cleansing shall be provided and used.

(l) *Emergency response by employees at uncontrolled hazardous waste sites*—(1) *Emergency response plan.* (i) An emergency response plan shall be developed and implemented by all employers within the scope of this section to handle anticipated emergencies prior to the commencement of hazardous waste operations. The plan shall be in writing and available for inspection and copying by employees, their representatives, OSHA personnel and other governmental agencies with relevant responsibilities.

(ii) Employers who will evacuate their employees from the workplace when an emergency occurs, and who do not permit any of their employees to assist in handling the emergency, are exempt from the requirements of this paragraph if they provide an emergency action plan complying with section 1910.38(a) of this part.

(2) *Elements of an emergency response plan.* The employer shall develop an emergency response plan for emergencies which shall address, as a minimum, the following:

(i) Pre-emergency planning.

(ii) Personnel roles, lines of authority, and communication.

(iii) Emergency recognition and prevention.

(iv) Safe distances and places of refuge.

(v) Site security and control.

(vi) Evacuation routes and procedures.

(vii) Decontamination procedures which are not covered by the site safety and health plan.

(viii) Emergency medical treatment and first aid.

(ix) Emergency alerting and response procedures.

(x) Critique of response and follow-up.

(xi) PPE and emergency equipment.

(3) *Procedures for handling emergency incidents.* (i) In addition to the elements for the emergency response plan required in paragraph (1)(2) of this section, the following elements shall be included for emergency response plans:

(A) Site topography, layout, and prevailing weather conditions.

(B) Procedures for reporting incidents to local, state, and federal governmental agencies.

(ii) The emergency response plan shall be a separate section of the Site Safety and Health Plan.

(iii) The emergency response plan shall be compatible and integrated with the disaster, fire and/or emergency response plans of local, state, and federal agencies.

(iv) The emergency response plan shall be rehearsed regularly as part of the overall training program for site operations.

(v) The site emergency response plan shall be reviewed periodically and, as necessary, be amended to keep it current with new or changing site conditions or information.

(vi) An employee alarm system shall be installed in accordance with 29 CFR 1910.165 to notify employees of an emergency situation; to stop work activities if necessary; to lower background noise in order to speed communication; and to begin emergency procedures.

(vii) Based upon the information available at time of the emergency, the employer shall evaluate the incident and the site response capabilities and proceed with the appropriate steps to implement the site emergency response plan.

(m) *Illumination.* Areas accessible to employees shall be lighted to not less than the minimum illumination intensities listed in the following Table H-120.1 while any work is in progress:

TABLE H-120.1.—Minimum Illumination Intensities in Foot-Candles

| Foot-candles | Area or operations |
|---|---|
| 5 | General site areas. |
| 3 | Excavation and waste areas, accessways, active storage areas, loading platforms, refueling, and field maintenance areas. |
| 5 | Indoors: Warehouses, corridors, hallways, and exitways. |
| 5 | Tunnels, shafts, and general underground work areas. (Exception: Minimum of 10 foot-candles is required at tunnel and shaft heading during drilling, mucking, and scaling. Mine Safety and Health Administration approved cap lights shall be acceptable for use in the tunnel heading.) |
| 10 | General shops (e.g., mechanical and electrical equipment rooms, active storerooms, barracks or living quarters, locker or dressing rooms, dining areas, and indoor toilets and workrooms.) |
| 30 | First aid stations, infirmaries, and offices. |

(n) *Sanitation at temporary workplaces.*—(1) *Potable water.* (i) An adequate supply of potable water shall be provided on the site.

(ii) Portable containers used to dispense drinking water shall be

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capable of being tightly closed, and equipped with a tap. Water shall not be dipped from containers.

(iii) Any container used to distribute drinking water shall be clearly marked as to the nature of its contents and not used for any other purpose.

(iv) Where single service cups (to be used but once) are supplied, both a sanitary container for the unused cups and a receptacle for disposing of the used cups shall be provided.

(2) *Nonpotable water.* (i) Outlets for nonpotable water, such as water for firefighting purposes, shall be identified to indicate clearly that the water is unsafe and is not to be used for drinking, washing, or cooking purposes.

(ii) There shall be no cross-connection, open or potential, between a system furnishing potable water and a system furnishing nonpotable water.

(3) *Toilet facilities.* (i) Toilets shall be provided for employees according to the following Table H-120.2.

TABLE H-120.2.—TOILET FACILITIES

| Number of employees | Minimum number of facilities |
|---|---|
| 20 or fewer | One. |
| More than 20, fewer than 200 | One toilet seat and one urinal per 40 employees. |
| More than 200 | One toilet seat and one urinal per 50 employees. |

(ii) Under temporary field conditions, provisions shall be made to assure that at least one toilet facility is available.

(iii) Hazardous waste sites not provided with a sanitary sewer shall be provided with the following toilet facilities unless prohibited by local codes:

(A) Chemical toilets;
(B) Recirculating toilets;
(C) Combustion toilets; or
(D) Flush toilets.

(iv) The requirements of this paragraph for sanitation facilities shall not apply to mobile crews having transportation readily available to nearby toilet facilities.

(v) Doors entering toilet facilities shall be provided with entrance locks controlled from inside the facility.

(4) *Food handling.* All food service facilities and operations for employees shall meet the applicable laws, ordinances, and regulations of the jurisdictions in which they are located.

(5) *Temporary sleeping quarters.* When temporary sleeping quarters are provided, they shall be heated, ventilated, and lighted.

(6) *Washing facilities.* The employer shall provide adequate washing facilities for employees engaged in operations where hazardous substances may be harmful to employees. Such facilities shall be in near proximity to the worksite: in areas where exposures are below permissible exposure limits and published exposure levels and which are under the controls of the employer; and shall be so equipped as to enable employees to remove hazardous substances from themselves.

(7) *Showers and change rooms.* When hazardous waste clean-up or removal operations commence on a site and the duration of the work will require six months or greater time to complete, the employer shall provide showers and change rooms for all employees exposed to hazardous substances and health hazards involved in hazardous waste clean-up or removal operations.

(i) Showers shall be provided and shall meet the requirements of 29 CFR 1910.141(d)(3).

(ii) Change rooms shall be provided and shall meet the requirements of 29 CFR 1910.141(e). Change rooms shall consist of two separate change areas separated by the shower area required in paragraph (n)(7)(i) of this section. One change area, with an exit leading off the worksite, shall provide employees with a clean area where they can remove, store, and put on street clothing. The second area, with an exit to the worksite, shall provide employees with an area where they can put on, remove and store work clothing and personal protective equipment.

(iii) Showers and change rooms shall be located in areas where exposures are below the permissible exposure limits and published exposure levels. If this cannot be accomplished, then a ventilation system shall be provided that will supply air that is below the permissible exposure limits and published exposure levels.

(iv) Employers shall assure that employees shower at the end of their work shift and when leaving the hazardous waste site.

(o) *New technology programs.* (1) The employer shall develop and implement procedures for the introduction of effective new technologies and equipment developed for the improved protection of employees working with hazardous waste clean-up operations, and the same shall be implemented as part of the site safety and health program to assure that employee protection is being maintained.

(2) New technologies, equipment or control measures available to the industry, such as the use of foams, absorbents, adsorbents, neutralizers, or other means to suppress the level of air contaminates while excavating the site or for spill control, shall be evaluated by employers or their representatives. Such an evaluation shall be done to determine the effectiveness of the new methods, materials, or equipment before implementing their use on a large scale for enhancing employee protection. Information and data from manufacturers or suppliers may be used as part of the employer's evaluation effort. Such evaluations shall be made available to OSHA upon request.

(p) *Certain Operations Conducted Under the Resource Conservation and Recovery Act of 1976 (RCRA).* Employers conducting operations at treatment, storage, and disposal (TSD) facilities specified in paragraph (a)(1)(iv) of this section not exempted by paragraph (a)(2)(iii) of this section shall provide and implement the programs specified in this paragraph.

(1) *Safety and health program.* The employer shall develop and implement a written safety and health program for employees involved in hazardous waste operations that shall be available for inspection by employees, their representatives and OSHA personnel. The program shall be designed to identify, evaluate and control safety and health hazards in their facilities for the purpose of employee protection, to provide for emergency response meeting the requirements of paragraph (p)(8) of this section and to address as appropriate site analysis, engineering controls, maximum exposure limits, hazardous waste handling procedures and uses of new technologies.

(2) *Hazard communication program.* The employer shall implement a hazard communication program meeting the requirements of 29 CFR 1910.1200 as part of the employer's safety and program.

**Note to 1910.120.**—The exemption for hazardous waste provided in § 1910.1200 is applicable to this section.

(3) *Medical surveillance program.* The employer shall develop and implement a medical surveillance program meeting the requirements of paragraph (f) of this section.

(4) *Decontamination program.* The employer shall develop and implement a decontamination procedure meeting the requirements of paragraph (k) of this section.

(5) *New technology program.* The employer shall develop and implement procedures meeting the requirements of paragraph (o) of this section for introducing new and innovative equipment into the workplace.

(6) *Material handling program.* Where employees will be handling drums or containers, the employer shall develop



and implement procedures meeting the requirements of paragraphs (j)(1) (ii) through (viii) and (xi) of this section, as well as (j)(3) and (j)(8) of this section prior to starting such work.

(7) *Training program.*—(i) *New employees.* The employer shall develop and implement a training program, which is part of the employer's safety and health program, for employees involved with hazardous waste operations to enable employees to perform their assigned duties and functions in a safe and healthful manner so as not to endanger themselves or other employees. The initial training shall be for 24 hours and refresher training shall be for eight hours annually. Employees who have received the initial training required by this paragraph shall be given a written certificate attesting that they have successfully completed the necessary training.

(ii) *Current employees.* Employers who can show by an employee's previous work experience and/or training that the employee has had training equivalent to the initial training required by this paragraph, shall be considered as meeting the initial training requirements of this paragraph as to that employee. Equivalent training includes the training that existing employees might have already received from actual site work experience. Current employees shall receive eight hours of refresher training annually.

(iii) *Trainers.* Trainers who teach initial training shall have satisfactorily completed a training course for teaching the subjects they are expected to teach or they shall have the academic credentials and instruction experience necessary to demonstrate a good command of the subject matter of the courses and competent instructional skills.

(8) *Emergency response program.*—(i) *Emergency response plan.* An emergency response plan shall be developed and implemented by all employers. Such plans need not duplicate any of the subjects fully addressed in the employer's contingency planning required by permits, such as those issued by the U.S. Environmental Protection Agency, provided that the contingency plan is made part of the emergency response plan. The emergency response plan shall be a written portion of the employers safety and health program required in paragraph (p)(1) of this section. Employers who will evacuate their employees from the worksite location when an emergency occurs and who do not permit any of their employees to assist in handling the emergency are exempt from the requirements of paragraph (p)(8) if they provide an emergency action plan complying with § 1910.38(a) of this part.

(ii) *Elements of an emergency response plan.* The employer shall develop an emergency response plan for emergencies which shall address, as a minimum, the following areas to the extent that they are not addressed in any specific program required in this paragraph:

(A) Pre-emergency planning and coordination with outside parties.

(B) Personnel roles, lines of authority, and communication.

(C) Emergency recognition and prevention.

(D) Safe distances and places of refuge.

(E) Site security and control.

(F) Evacuation routes and procedures.

(G) Decontamination procedures.

(H) Emergency medical treatment and first aid.

(I) Emergency alerting and response procedures.

(J) Critique of response and follow-up.

(K) PPE and emergency equipment.

(iii) *Training.* (A) Training for emergency response employees shall be completed before they are called upon to perform in real emergencies. Such training shall include the elements of the emergency response plan, standard operating procedures the employer has established for the job, the personal protective equipment to be worn and procedures for handling emergency incidents.

*Exception #1:* An employer need not train all employees to the degree specified if the employer divides the work force in a manner such that a sufficient number of employees who have responsibility to control emergencies have the training specified, and all other employees, who may first respond to an emergency incident, have sufficient awareness training to recognize that an emergency response situation exists and that they are instructed in that case to summon the fully trained employees and not attempt control activities for which they are not trained.

*Exception #2:* An employer need not train all employees to the degree specified if arrangements have been made in advance for an outside fully-trained emergency response team to respond in a reasonable period and all employees, who may come to the incident first, have sufficient awareness training to recognize that an emergency response situation exists and they have been instructed to call the designated outside fully-trained emergency response team for assistance.

(B) Employee members of TSD facility emergency response organizations shall be trained to a level of competence in the recognition of health and safety hazards to protect themselves and other employees. This would include training in the methods used to minimize the risk from safety and health hazards; in the safe use of control equipment; in the selection and use of appropriate personal protective equipment; in the safe operating procedures to be used at the incident scene; in the techniques of coordination with other employees to minimize risks; in the appropriate response to over exposure from health hazards or injury to themselves and other employees; and in the recognition of subsequent symptoms which may result from over exposures.

(C) The employer shall certify that each covered employee has attended and successfully completed the training required in paragraph (p)(8)(iii) of this section, or shall certify the employee's competency at least yearly. The method used to demonstrate competency for certification of training shall be recorded and maintained by the employer.

(iv) *Procedures for handling emergency incidents.* (A) In addition to the elements for the emergency response plan required in paragraph (p)(8)(ii) of this section, the following elements shall be included for emergency response plans to the extent that they do not repeat any information already contained in the emergency response plan:

(*1*) Site topography, layout, and prevailing weather conditions.

(*2*) Procedures for reporting incidents to local, state, and federal governmental agencies.

(B) The emergency response plan shall be compatible and integrated with the disaster, fire and/or emergency response plans of local, state, and federal agencies.

(C) The emergency response plan shall be rehearsed regularly as part of the overall training program for site operations.

(D) The site emergency response plan shall be reviewed periodically and, as necessary, be amended to keep it current with new or changing site conditions or information.

(E) An employee alarm system shall be installed in accordance with 29 CFR 1910.165 to notify employees of an emergency situation; to stop work activities if necessary; to lower background noise in order to speed communication; and to begin emergency procedures.

(F) Based upon the information available at time of the emergency, the employer shall evaluate the incident and the site response capabilities and proceed with the appropriate steps to

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implement the site emergency response plan.

(q) *Emergency response to hazardous substance releases.* This paragraph covers employers whose employees are engaged in emergency response no matter where it occurs except that it does not cover employees engaged in operations specified in paragraphs (a)(1)(i) through (a)(1)(iv) of this section. Those emergency response organizations who have developed and implemented programs equivalent to this paragraph for handling releases of hazardous substances pursuant to section 303 of the Superfund Amendments and Reauthorization Act of 1986 (Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. 11003) shall be deemed to have met the requirements of this paragraph.

(1) *Emergency response plan.* An emergency response plan shall be developed and implemented to handle anticipated emergencies prior to the commencement of emergency response operations. The plan shall be in writing and available for inspection and copying by employees, their representatives and OSHA personnel. Employers who will evacuate their employees from the workplace when an emergency occurs, and who do not permit any of their employees to assist in handling the emergency, are exempt from the requirements of this paragraph if they provide an emergency action plan in accordance with § 1910.38(a) of this part.

(2) *Elements of an emergency response plan.* The employer shall develop an emergency response plan for emergencies which shall address, as a minimum, the following to the extent that they are not addressed elsewhere:

(i) Pre-emergency planning and coordination with outside parties.

(ii) Personnel roles, lines of authority, training, and communication.

(iii) Emergency recognition and prevention.

(iv) Safe distances and places of refuge.

(v) Site security and control.

(vi) Evacuation routes and procedures.

(vii) Decontamination.

(viii) Emergency medical treatment and first aid.

(ix) Emergency alerting and response procedures.

(x) Critique of response and follow-up.

(xi) PPE and emergency equipment.

(xii) Emergency response organizations may use the local emergency response plan or the state emergency response plan or both, as part of their emergency response plan to avoid duplication. Those items of the emergency response plan that are being properly addressed by the SARA Title III plans may be substituted into their emergency plan or otherwise kept together for the employer and employee's use.

(3) *Procedures for handling emergency response.* (i) The senior emergency response official responding to an emergency shall become the individual in charge of a site-specific Incident Command System (ICS). All emergency responders and their communications shall be coordinated and controlled through the individual in charge of the ICS assisted by the senior official present for each employer.

**Note to (q)(3)(i).**—The "senior official" at an emergency response is the most senior official on the site who has the responsibility for controlling the operations at the site. Initially it is the senior officer on the first-due piece of responding emergency apparatus to arrive on the incident scene. As more senior officers arrive (i.e., battalion chief, fire chief, state law enforcement official, site coordinator, etc.) the position is passed up the line of authority which has been previously established.

(ii) The individual in charge of the ICS shall identify, to the extent possible, all hazardous substances or conditions present and shall address as appropriate site analysis, use of engineering controls, maximum exposure limits, hazardous substance handling procedures, and use of any new technologies.

(iii) Based on the hazardous substances and/or conditions present, the individual in charge of the ICS shall implement appropriate emergency operations, and assure that the personal protective equipment worn is appropriate for the hazards to be encountered. However, personal protective equipment shall meet, at a minimum, the criteria contained in 29 CFR 1910.156(e) when worn while performing fire fighting operations beyond the incipient stage for any incident or site.

(iv) Employees engaged in emergency response and exposed to hazardous substances presenting an inhalation hazard or potential inhalation hazard shall wear positive pressure self-contained breathing apparatus while engaged in emergency response, until such time that the individual in charge of the ICS determines through the use of air monitoring that a decreased level of respiratory protection will not result in hazardous exposures to employees.

(v) The individual in charge of the ICS shall limit the number of emergency response personnel at the emergency site, in those areas of potential or actual exposure to incident or site hazards, to those who are actively performing emergency operations. However, operations in hazardous areas shall be performed using the buddy system in groups of two or more.

(vi) Back-up personnel shall stand by with equipment ready to provide assistance or rescue. Advance first aid support personnel, as a minimum, shall also stand by with medical equipment and transportation capability.

(vii) The individual in charge of the ICS shall designate a safety official, who is knowledgable in the operations being implemented at the emergency response site, with specific responsibility to identify and evaluate hazards and to provide direction with respect to the safety of operations for the emergency at hand.

(viii) When activities are judged by the safety official to be an IDLH condition and/or to involve an imminent danger condition, the safety official shall have the authority to alter, suspend, or terminate those activities. The safety official shall immediately inform the individual in charge of the ICS of any actions needed to be taken to correct these hazards at an emergency scene.

(ix) After emergency operations have terminated, the individual in charge of the ICS shall implement appropriate decontamination procedures.

(x) When deemed necessary for meeting the tasks at hand, approved self-contained compressed air breathing apparatus may be used with approved cylinders from other approved self-contained compressed air breathing apparatus provided that such cylinders are of the same capacity and pressure rating. All compressed air cylinders used with self-contained breathing apparatus shall meet U.S. Department of Transportation and National Institute for Occupational Safety and Health criteria.

(4) *Skilled support personnel.* Personnel, not necessarily an employer's own employees, who are skilled in the operation of certain equipment, such as mechanized earth moving or digging equipment or crane and hoisting equipment, and who are needed temporarily to perform immediate emergency support work that cannot reasonably be performed in a timely fashion by an employer's own employees, and who will be or may be exposed to the hazards at an emergency response scene, are not required to meet the training required in this paragraph for the employer's regular employees. However, these personnel shall be given an initial briefing at the site prior to their participation in any emergency response. The initial briefing shall include instruction in the wearing of appropriate personal protective equipment, what chemical hazards are involved, and what duties are to be performed. All other appropriate safety and health precautions provided to the employer's own employees shall be used to assure the safety and health of these personnel.

(5) *Specialist employees.* Employees who, in the course of their regular job duties, work with and are trained in the hazards of specific hazardous substances, and who will be called upon to provide technical advice or assistance at a hazardous substance release incident to the individual in charge, shall receive training or demonstrate competency in the area of their specialization annually.

(6) *Training.* Training shall be based on the duties and function to be performed by each responder of an emergency response organization. The skill and knowledge levels required for all new responders, those hired after the effective date of this standard, shall be conveyed to them through training before they are permitted to take part in actual emergency operations on an incident. Employees who participate, or are expected to participate, in emergency response, shall be given training in accordance with the following paragraphs:

(i) *First responder awareness level.* First responders at the awareness level are individuals who are likely to witness or discover a hazardous substance release and who have been trained to initiate an emergency response sequence by notifying the proper authorities of the release. They would take no further action beyond notifying the authorities of the release. First responders at the awareness level shall have sufficient training or have had sufficient experience to objectively demonstrate competency in the following areas:

(A) An understanding of what hazardous materials are, and the risks associated with them in an incident.

(B) An understanding of the potential outcomes associated with an emergency created when hazardous materials are present.

(C) The ability to recognize the presence of hazardous materials in an emergency.

(D) The ability to identify the hazardous materials, if possible.

(E) An understanding of the role of the first responder awareness individual in the employer's emergency response plan including site security and control and the U.S. Department of Transportation's Emergency Response Guidebook.

(F) The ability to realize the need for additional resources, and to make appropriate notifications to the communication center.

(ii) *First responder operations level.* First responders at the operations level are individuals who respond to releases or potential releases of hazardous substances as part of the initial response to the site for the purpose of protecting nearby persons, property, or the environment from the effects of the release. They are trained to respond in a defensive fashion without actually trying to stop the release. Their function is to contain the release from a safe distance, keep it from spreading, and prevent exposures. First responders at the operational level shall have received at least eight hours of training or have had sufficient experience to objectively demonstrate competency in the following areas in addition to those listed for the awareness level and the employer shall so certify:

(A) Knowledge of the basic hazard and risk assessment techniques.

(B) Know how to select and use proper personal protective equipment provided to the first responder operational level.

(C) An understanding of basic hazardous materials terms.

(D) Know how to perform basic control, containment and/or confinement operations within the capabilities of the resources and personal protective equipment available with their unit.

(E) Know how to implement basic decontamination procedures.

(F) An understanding of the relevant standard operating procedures and termination procedures.

(iii) *Hazardous materials technician.* Hazardous materials technicians are individuals who respond to releases or potential releases for the purpose of stopping the release. They assume a more aggressive role than a first responder at the operations level in that they will approach the point of release in order to plug, patch or otherwise stop the release of a hazardous substance. Hazardous materials technicians shall have received at least 24 hours of training equal to the first responder operations level and in addition have competency in the following areas and the employer shall so certify:

(A) Know how to implement the employer's emergency response plan.

(B) Know the classification, identification and verification of known and unknown materials by using field survey instruments and equipment.

(C) Be able to function within an assigned role in the Incident Command System.

(D) Know how to select and use proper specialized chemical personal protective equipment provided to the hazardous materials technician.

(E) Understand hazard and risk assessment techniques.

(F) Be able to perform advance control, containment, and/or confinement operations within the capabilities of the resources and personal protective equipment available with the unit.

(G) Understand and implement decontamination procedures.

(H) Understand termination procedures.

(I) Understand basic chemical and toxicological terminology and behavior.

(iv) *Hazardous materials specialist.* Hazardous materials specialists are individuals who respond with and provide support to hazardous materials technicians. Their duties parallel those of the hazardous materials technician, however, those duties require a more directed or specific knowledge of the various substances they may be called upon to contain. The hazardous materials specialist would also act as the site liaison with Federal, state, local and other government authorities in regards to site activities. Hazardous materials specialists shall have received at least 24 hours of training equal to the technician level and in addition have competency in the following areas and the employer shall so certify:

(A) Know how to implement the local emergency response plan.

(B) Understand classification, identification and verification of known and unknown materials by using advanced survey instruments and equipment.

(C) Know of the state emergency response plan.

(D) Be able to select and use proper specialized chemical personal protective equipment provided to the hazardous materials specialist.

(E) Understand in-depth hazard and risk techniques.

(F) Be able to perform specialized control, containment, and/or confinement operations within the capabilities of the resources and personal protective equipment available.

(G) Be able to determine and implement decontamination procedures.

(H) Have the ability to develop a site safety and control plan.

(I) Understand chemical, radiological and toxicological terminology and behavior.

(v) *On scene incident commander.* Incident commanders, who will assume control of the incident scene beyond the

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first responder awareness level, shall receive at least 24 hours of training equal to the first responder operations level and in addition have competency in the following areas and the employer shall so certify:

(A) Know and be able to implement the employer's incident command system.

(B) Know how to implement the employer's emergency response plan.

(C) Know and understand the hazards and risks associated with employees working in chemical protective clothing.

(D) Know how to implement the local emergency response plan.

(E) Know of the state emergency response plan and of the Federal Regional Response Team.

(F) Know and understand the importance of decontamination procedures.

(7) *Trainers.* Trainers who teach any of the above training subjects shall have satisfactorily completed a training course for teaching the subjects they are expected to teach, such as the courses offered by the U.S. Fire Academy, or they shall have the training and/or academic credentials and instructional experience necessary to demonstrate competent instructional skills and a good command of the subject matter of the courses they are to teach.

(8) *Refresher training.* (i) Those employees who are trained in accordance with paragraph (q)(6) of this section shall receive annual refresher training of sufficient content and duration to maintain their competencies, or shall demonstrate competency in those areas at least yearly.

(ii) A statement shall be made of the training or competency, and if a statement of competency is made, the employer shall keep a record of the methodology used to demonstrate competency.

(9) *Medical surveillance and consultation.* (i) Members of an organized and designated HAZMAT team and hazardous materials specialists shall receive a baseline physical examination and be provided with medical surveillance as required in paragraph (f) of this section.

(ii) Any emergency response employees who exhibits signs or symptoms which may have resulted from exposure to hazardous substances during the course of an emergency incident, either immediately or subsequently, shall be provided with medical consultation as required in paragraph (f)(3)(ii) of this section.

(10) *Chemical protective clothing.* Chemical protective clothing and equipment to be used by organized and designated HAZMAT team members, or to be used by hazardous materials specialists, shall meet the requirements of paragraphs (g) (3) through (5) of this section.

(11) *Post-emergency response operations.* Upon completion of the emergency response, if it is determined that it is necessary to remove hazardous substances, health hazards, and materials contaminated with them (such as contaminated soil or other elements of the natural environment) from the site of the incident, the employer conducting the clean-up shall comply with one of the following:

(i) Meet all of the requirements of paragraphs (b) through (o) of this section; or

(ii) Where the clean-up is done on plant property using plant or workplace employees, such employees shall have completed the training requirements of the following: 29 CFR 1910.38(a); 1910.134; 1910.1200, and other appropriate safety and health training made necessary by the tasks that they are expected to be performed such as personal protective equipment and decontamination procedures. All equipment to be used in the performance of the clean-up work shall be in serviceable condition and shall have been inspected prior to use.

**APPENDICES TO § 1910.120—HAZARDOUS WASTE OPERATIONS AND EMERGENCY RESPONSE**

**Note:** The following appendices serve as non-mandatory guidelines to assist employees and employers in complying with the appropriate requirements of this section. However paragraph 1910.120(g) makes mandatory in certain circumstances the use of Level A and Level B PPE protection.

**Appendix A—Personal Protective Equipment Test Methods**

This appendix sets forth the non-mandatory examples of tests which may be used to evaluate compliance with § 1910.120 (g)(4) (ii) and (iii). Other tests and other challenge agents may be used to evaluate compliance.

*A. Totally-encapsulating chemical protective suit pressure test*

1.0—Scope

1.1 This practice measures the ability of a gas tight totally-encapsulating chemical protective suit material, seams, and closures to maintain a fixed positive pressure. The results of this practice allow the gas tight integrity of a totally-encapsulating chemical protective suit to be evaluated.

1.2 Resistance of the suit materials to permeation, penetration, and degradation by specific hazardous substances is not determined by this test method.

2.0—Definition of terms

2.1 *"Totally-encapsulated chemical protective suit (TECP suit)"* means a full body garment which is constructed of protective clothing materials; covers the wearer's torso, head, arms, legs and respirator; may cover the wearer's hands and feet with tightly attached gloves and boots; completely encloses the wearer and respirator by itself or in combination with the wearer's gloves and boots.

2.2 *"Protective clothing material"* means any material or combination of materials used in an item of clothing for the purpose of isolating parts of the body from direct contact with a potentially hazardous liquid or gaseous chemicals.

2.3 *"Gas tight"* means, for the purpose of this test method, the limited flow of a gas under pressure from the inside of a TECP suit to atmosphere at a prescribed pressure and time interval.

3.0—Summary of test method

3.1 The TECP suit is visually inspected and modified for the test. The test apparatus is attached to the suit to permit inflation to the pre-test suit expansion pressure for removal of suit wrinkles and creases. The pressure is lowered to the test pressure and monitored for three minutes. If the pressure drop is excessive, the TECP suit fails the test and is removed from service. The test is repeated after leak location and repair.

4.0—Required Supplies

4.1 Source of compressed air.

4.2 Test apparatus for suit testing, including a pressure measurement device with a sensitivity of at least ½ inch water gauge.

4.3 Vent valve closure plugs or sealing tape.

4.4 Soapy water solution and soft brush.

4.5 Stop watch or appropriate timing device.

5.0—Safety Precautions

5.1 Care shall be taken to provide the correct pressure safety devices required for the source of compressed air used.

6.0—Test Procedure

6.1 Prior to each test, the tester shall perform a visual inspection of the suit. Check the suit for seam integrity by visually examining the seams and gently pulling on the seams. Ensure that all air supply lines, fittings, visor, zippers, and valves are secure and show no signs of deterioration.

6.1.1 Seal off the vent valves along with any other normal inlet or exhaust points (such as umbilical air line fittings or face piece opening) with tape or other appropriate means (caps, plugs, fixture, etc.). Care should be exercised in the sealing process not to damage any of the suit components.

6.1.2 Close all closure assemblies.

6.1.3 Prepare the suit for inflation by providing an improvised connection point on the suit for connecting an airline. Attach the pressure test apparatus to the suit to permit suit inflation from a compressed air source equipped with a pressure indicating regulator. The leak tightness of the pressure test apparatus should be tested before and after each test by closing off the end of the tubing attached to the suit and assuring a pressure of three inches water gauge for three minutes can be maintained. If a component is removed for the test, that component shall be replaced and a second test conducted with another component removed to permit a complete test of the ensemble.

6.1.4 The pre-test expansion pressure (A) and the suit test pressure (B) shall be supplied by the suit manufacturer, but in no case shall they be less than: (A)=three inches water gauge; and (B)=two inches water gauge. The ending suit pressure (C) shall be no less than 80 percent of the test pressure (B); i.e., the pressure drop shall not exceed 20 percent of the test pressure (B).

6.1.5 Inflate the suit until the pressure inside is equal to pressure (A), the pre-test expansion suit pressure. Allow at least one minute to fill out the wrinkles in the suit. Release sufficient air to reduce the suit pressure to pressure (B), the suit test pressure. Begin timing. At the end of three minutes, record the suit pressure as pressure (C), the ending suit pressure. The difference between the suit test pressure and the ending suit test pressure (B–C) shall be defined as the suit pressure drop.

6.1.6 If the suit pressure drop is more than 20 percent of the suit test pressure (B) during the three-minute test period, the suit fails the test and shall be removed from service.

7.0—Retest Procedure

7.1 If the suit fails the test check for leaks by inflating the suit to pressure (A) and brushing or wiping the entire suit (including seams, closures, lens gaskets, glove-to-sleeve joints, etc.) with a mild soap and water solution. Observe the suit for the formation of soap bubbles, which is an indication of a leak. Repair all identified leaks.

7.2 Retest the TECP suit as outlined in Test procedure 6.0.

8.0—Report

8.1 Each TECP suit tested by this practice shall have the following information recorded:

8.1.1 Unique identification number, identifying brand name, date of purchase, material of construction, and unique fit features, e.g., special breathing apparatus.

8.1.2 The actual values for test pressures (A), (B), and (C) shall be recorded along with the specific observation times. If the ending pressure (C) is less than 80 percent of the test pressure (B), the suit shall be identified as failing the test. When possible, the specific leak location shall be identified in the test records. Retest pressure data shall be recorded as an additional test.

8.1.3 The source of the test apparatus used shall be identified and the sensitivity of the pressure gauge shall be recorded.

8.1.4 Records shall be kept for each pressure test even if repairs are being made at the test location.

**Caution**

Visually inspect all parts of the suit to be sure they are positioned correctly and secured tightly before putting the suit back into service. Special care should be taken to examine each exhaust valve to make sure it is not blocked.

Care should also be exercised to assure that the inside and outside of the suit is completely dry before it is put into storage.

*B. Totally-encapsulating chemical protective suit qualitative leak test*

1.0—Scope

1.1 This practice semi-qualitatively tests gas tight totally-encapsulating chemical protective suit integrity by detecting inward leakage of ammonia vapor. Since no modifications are made to the suit to carry out this test, the results from this practice provide a realistic test for the integrity of the entire suit.

1.2 Resistance of the suit materials to permeation, penetration, and degradation is not determined by this test method. ASTM test methods are available to test suit materials for these characteristics and the tests are usually conducted by the manufacturers of the suits.

2.0—Definition of terms

2.1 *"Totally-encapsulated chemical protective suit (TECP suit)"* means a full body garment which is constructed of protective clothing materials; covers the wearer's torso, head, arms, legs and respirator; may cover the wearer's hands and feet with tightly attached gloves and boots; completely encloses the wearer and respirator by itself or in combination with the wearer's gloves, and boots.

2.2 *"Protective clothing material"* means any material or combination of materials used in an item of clothing for the purpose of isolating parts of the body from direct contact with a potentially hazardous liquid or gaseous chemicals.

2.3 *"Gas tight"* means, for the purpose of this test method, the limited flow of a gas under pressure from the inside of a TECP suit to atmosphere at a prescribed pressure and time interval.

2.4 *"Intrusion Coefficient"* means a number expressing the level of protection provided by a gas tight totally-encapsulating chemical protective suit. The intrusion coefficient is calculated by dividing the test room challenge agent concentration by the concentration of challenge agent found inside the suit. The accuracy of the intrusion coefficient is dependent on the challenge agent monitoring methods. The larger the intrusion coefficient the greater the protection provided by the TECP suit.

3.0—Summary of recommended practice

3.1 The volume of concentrated aqueous ammonia solution (ammonia hydroxide $NH_4OH$) required to generate the test atmosphere is determined using the directions outlined in 6.1. The suit is donned by a person wearing the appropriate respiratory equipment (either a positive pressure self-contained breathing apparatus or a positive pressure supplied air respirator) and worn inside the enclosed test room. The concentrated aqueous ammonia solution is taken by the suited individual into the test room and poured into an open plastic pan. A two-minute evaporation period is observed before the test room concentration is measured, using a high range ammonia length of stain detector tube. When the ammonia vapor reaches a concentration of between 1000 and 1200 ppm, the suited individual starts a standardized exercise protocol to stress and flex the suit. After this protocol is completed, the test room concentration is measured again. The suited individual exits the test room and his stand-by person measures the ammonia concentration inside the suit using a low range ammonia length of stain detector tube or other more sensitive ammonia detector. A stand-by person is required to observe the test individual during the test procedure; aid the person in donning and doffing the TECP suit; and monitor the suit interior. The intrusion coefficient of the suit can be calculated by dividing the average test area concentration by the interior suit concentration. A colorimetric ammonia indicator strip of bromophenol blue or equivalent is placed on the inside of the suit face piece lens so that the suited individual is able to detect a color change and know if the suit has a significant leak. If a color change is observed the individual shall leave the test room immediately.

4.0—Required supplies

4.1 A supply of concentrated aqueous (58 percent ammonium hydroxide by weight).

4.2 A supply of bromophenol/blue indicating paper or equivalent, sensitive to 5–10 ppm ammonia or greater over a two-minute period of exposure. [pH 3.0 (yellow) to pH 4.6 (blue)]

4.3 A supply of high range (0.5–10 volume percent) and low range (5–700 ppm) detector tubes for ammonia and the corresponding sampling pump. More sensitive ammonia detectors can be substituted for the low range detector tubes to improve the sensitivity of this practice.

4.4 A shallow plastic pan (PVC) at least 12":14":1" and a half pint plastic container (PVC) with tightly closing lid.

4.5 A graduated cylinder or other volumetric measuring device of at least 50 milliliters in volume with an accuracy of at least ± 1 milliliters.

5.0—Safety precautions

5.1 Concentrated aqueous ammonium hydroxide, $NH_4OH$, is a corrosive volatile liquid requiring eye, skin, and respiratory protection. The person conducting the test shall review the MSDS for aqueous ammonia.

5.2 Since the established permissible exposure limit for ammonia is 50 ppm, only persons wearing a positive pressure self-contained breathing apparatus or a positive pressure supplied air respirator shall be in the chamber. Normally only the person wearing the totally-encapsulating suit will be inside the chamber. A stand-by person shall have a positive pressure self-contained breathing apparatus, or a positive pressure supplied air respirator available to enter the test area should the suited individual need assistance.

5.3 A method to monitor the suited individual must be used during this test. Visual contact is the simplest but other methods using communication devices are acceptable.

5.4 The test room shall be large enough to allow the exercise protocol to be carried out and then to be ventilated to allow for easy exhaust of the ammonia test atmosphere after the test(s) are completed.

5.5 Individuals shall be medically screened for the use of respiratory protection and checked for allergies to ammonia before participating in this test procedure.

6.0—Test procedure

6.1.1 Measure the test area to the nearest foot and calculate its volume in cubic feet. Multiply the test area volume by 0.2 milliliters of concentrated aqueous ammonia solution per cubic foot of test area volume to determine the approximate volume of

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concentrated aqueous ammonia required to generate 1000 ppm in the test area.

6.2.2 Measure this volume from the supply of concentrated aqueous ammonia and place it into a closed plastic container.

6.2.3 Place the container, several high range ammonia detector tubes, and the pump in the clean test pan and locate it near the test area entry door so that the suited individual has easy access to these supplies.

6.2.1 In a non-contaminated atmosphere, open a pre-sealed ammonia indicator strip and fasten one end of the strip to the inside of the suit face shield lens where it can be seen by the wearer. Moisten the indicator strip with distilled water. Care shall be taken not to contaminate the detector part of the indicator paper by touching it. A small piece of masking tape or equivalent should be used to attach the indicator strip to the interior of the suit face shield.

6.2.2 If problems are encountered with this method of attachment, the indicator strip can be attached to the outside of the respirator face piece lens being used during the test.

6.3 Don the respiratory protective device normally used with the suit, and then don the TECP suit to be tested. Check to be sure all openings which are intended to be sealed (zippers, gloves, etc.) are completely sealed. DO NOT, however, plug off any venting valves.

6.4 Step into the enclosed test room such as a closet, bathroom, or test booth, equipped with an exhaust fan. No air should be exhausted from the chamber during the test because this will dilute the ammonia challenge concentrations.

6.5 Open the container with the pre-measured volume of concentrated aqueous ammonia within the enclosed test room, and pour the liquid into the empty plastic test pan. Wait two minutes to allow for adequate volatilization of the concentrated aqueous ammonia. A small mixing fan can be used near the evaporation pan to increase the evaporation rate of the ammonia solution.

6.6 After two minutes a determination of the ammonia concentration within the chamber should be made using the high range colorimetric detector tube. A concentration of 1000 ppm ammonia or greater shall be generated before the exercises are started.

6.7 To test the integrity of the suit the following four minute exercise protocol should be followed:

6.7.1 Raising the arms above the head with at least 15 raising motions completed in one minute.

6.7.2 Walking in place for one minute with at least 15 raising motions of each leg in a one-minute period.

6.7.3 Touching the toes with a least 10 complete motions of the arms from above the head to touching of the toes in a one-minute period.

6.7.4 Knee bends with at least 10 complete standing and squatting motions in a one-minute period.

6.8 If at any time during the test the colorimetric indicating paper should change colors, the test should be stopped and section 6.10 and 6.12 initiated (See ¶4.2).

6.9 After completion of the test exercise, the test area concentration should be measured again using the high range colorimetric detector tube.

6.10 Exit the test area.

6.11 The opening created by the suit zipper or other appropriate suit penetration should be used to determine the ammonia concentration in the suit with the low range length of stain detector tube or other ammonia monitor. The internal TECP suit air should be sampled far enough from the enclosed test area to prevent a false ammonia reading.

6.12 After completion of the measurement of the suit interior ammonia concentration the test is concluded and the suit is doffed and the respirator removed.

6.13 The ventilating fan for the test room should be turned on and allowed to run far enough time to remove the ammonia gas. The fan shall be vented to the outside of the building.

6.14 Any detectable ammonia in the suit interior (five ppm ammonia ($NH_3$) or more for the length of stain detector tube) indicates that the suit has failed the test. When other ammonia detectors are used a lower level of detection is possible, and it should be specified as the pass/fail criteria.

6.15 By following this test method, an intrusion coefficient of approximately 200 or more can be measured with the suit in a completely operational condition. If the intrusion coefficient is 200 or more, then the suit is suitable for emergency response and field use.

7.0—Retest procedures

7.1 If the suit fails this test, check for leaks by following the pressure test in test A above.

7.2 Retest the TECP suit as outlined in the test procedure 6.0.

8.0—Report

8.1 Each gas tight totally-encapsulating chemical protective suit tested by this practice shall have the following information recorded.

8.1.1 Unique identification number, identifying brand name, date of purchase, material of construction, and unique suit features, e.g., special breathing apparatus.

8.1.2 General description of test room used for test.

8.1.3 Brand name and purchase data of ammonia detector strips and color change data.

8.1.4 Brand name, sampling range, and expiration date of the length of stain ammonia detector tubes. The brand name and model of the sampling pump should also be recorded. If another type of ammonia detector is used, it should be identified along with its minimum detection limit for ammonia.

8.1.5 Actual test results shall list the two test area concentrations, their average, the interior suit concentration, and the calculated intrusion coefficient. Retest data shall be recorded as an additional test.

8.2 The evaluation of the data shall be specified as "suit passed" or "suit failed," and the date of the test. Any detectable ammonia (five ppm or greater for the length of stain detector tube) in the suit interior indicates the suit has failed this test. When other ammonia detectors are used, a lower level of detection is possible and it should be specified as the pass fail criteria.

Caution

Visually inspect all parts of the suit to be sure they are positioned correctly and secured tightly before putting the suit back into service. Special care should be taken to examine each exhaust valve to make sure it is not blocked.

Care should also be exercised to assure that the inside and outside of the suit is completely dry before it is put into storage.

Appendix B—General Description and Discussion of the Levels of Protection and Protective Gear

This appendix sets forth information about personal protective equipment (PPE) protection levels which may be used to assist employers in complying with the PPE requirements of this section.

As required by the standard, PPE must be selected which will protect employees from the specific hazards which they are likely to encounter during their work on-site.

Selection of the appropriate PPE is a complex process which should take into consideration a variety of factors. Key factors involved in this process are identification of the hazards, or suspected hazards; their routes of potential hazard to employees (inhalation, skin absorption, ingestion, and eye or skin contact); and the performance of the PPE *materials* (and seams) in providing a barrier to these hazards. The amount of protection provided by PPE is material-hazard specific. That is, protective equipment materials will protect well against some hazardous substances and poorly, or not at all, against others. In many instances, protective equipment materials cannot be found which will provide continuous protection from the particular hazardous substance. In these cases the breakthrough time of the protective material should exceed the work durations, or the exposure after breakthrough may not pose a hazardous level.

Other factors in this selection process to be considered are matching the PPE to the employee's work requirements and task-specific conditions. The durability of PPE materials, such as tear strength and seam strength, should be considered in relation to the employee's tasks. The effects of PPE in relation to heat stress and task duration are a factor in selecting and using PPE. In some cases layers of PPE may be necessary to provide sufficient protection, or to protect expensive PPE inner garments, suits or equipment.

The more that is known about the hazards at the site, the easier the job of PPE selection becomes. As more information about the hazards and conditions at the site becomes available, the site supervisor can make decisions to up-grade or down-grade the level of PPE protection to match the tasks at hand.

The following are guidelines which an employer can use to begin the selection of the appropriate PPE. As noted above, the site information may suggest the use of combinations of PPE selected from the different protection levels (i.e., A, B, C, or D) as being more suitable to the hazards of the work. It should be cautioned that the listing below does not fully address the performance of the specific PPE material in relation to the specific hazards at the job site, and that PPE selection, evaluation and re-selection is an ongoing process until sufficient information about the hazards and PPE performance is obtained.



*Part A.* Personal protective equipment is divided into four categories based on the degree of protection afforded. (See Part B of this appendix for further explanation of Levels A, B, C, and D hazards.)

I. *Level A*—To be selected when the greatest level of skin, respiratory, and eye protection is required.

The following constitute Level A equipment; it may be used as appropriate:

1. Positive pressure, full face-piece self-contained breathing apparatus (SCBA), or positive pressure supplied air respirator with escape SCBA, approved by the National Institute for Occupational Safety and Health (NIOSH).
2. Totally-encapsulating chemical-protective suit.
3. Coveralls.[1]
4. Long underwear.[1]
5. Gloves, outer, chemical-resistant.
6. Gloves, inner, chemical-resistant.
7. Boots, chemical-resistant, steel toe and shank.
8. Hard hat (under suit).[1]
9. Disposable protective suit, gloves and boots (depending on suit construction, may be worn over totally-encapsulating suit).

II. *Level B*—The highest level of respiratory protection is necessary but a lesser level of skin protection is needed.

The following constitute Level B equipment; it may be used as appropriate.

1. Positive pressure, full-facepiece self-contained breathing apparatus (SCBA), or positive pressure supplied air respirator with escape SCBA (NIOSH approved).
2. Hooded chemical-resistant clothing (overalls and long-sleeved jacket; coveralls; one or two-piece chemical-splash suit; disposable chemical-resistant overalls).
3. Coveralls.[1]
4. Gloves, outer, chemical-resistant.
5. Gloves, inner, chemical-resistant.
6. Boots, outer, chemical-resistant steel toe and shank.
7. Boot-covers, outer, chemical-resistant (disposable).[1]
8. Hard hat.[1]
9. [Reserved]
10. Face shield.[1]

III. *Level C*—The concentration(s) and type(s) of airborne substance(s) is known and the criteria for using air purifying respirators are met.

The following constitute Level C equipment; it may be used as appropriate.

1. Full-face or half-mask, air purifying respirators (NIOSH approved).
2. Hooded chemical-resistant clothing (overalls; two-piece chemical-splash suit; disposable chemical-resistant overalls).
3. Coveralls.[1]
4. Gloves, outer, chemical-resistant.
5. Gloves, inner, chemical-resistant.
6. Boots (outer), chemical-resistant steel toe and shank.[1]
7. Boot-covers, outer, chemical-resistant (disposable).[1]
8. Hard hat.[1]
9. Escape mask.[1]
10. Face shield.[1]

IV. *Level D*—A work uniform affording minimal protection, used for nuisance contamination only.

The following constitute Level D equipment; it may be used as appropriate:

1. Coveralls.
2. Gloves.[1]
3. Boots/shoes, chemical-resistant steel toe and shank.
4. Boots, outer, chemical-resistant (disposable).[1]
5. Safety glasses or chemical splash goggles*.
6. Hard hat.[1]
7. Escape mask.[1]
8. Face shield.[1]

*Part B.* The types of hazards for which levels A, B, C, and D protection are appropriate are described below:

I. *Level A*—Level A protection should be used when:

1. The hazardous substance has been identified and requires the highest level of protection for skin, eyes, and the respiratory system based on either the measured (or potential for) high concentration of atmospheric vapors, gases, or particulates; or the site operations and work functions involve a high potential for splash, immersion, or exposure to unexpected vapors, gases, or particulates of materials that are harmful to skin or capable of being absorbed through the skin;
2. Substances with a high degree of hazard to the skin are known or suspected to be present, and skin contact is possible; or
3. Operations are being conducted in confined, poorly ventilated areas, and the absence of conditions requiring Level A have not yet been determined.

II. *Level B*—Level B protection should be used when:

1. The type and atmospheric concentration of substances have been identified and require a high level of respiratory protection, but less skin protection;
2. The atmosphere contains less than 19.5 percent oxygen; or
3. The presence of incompletely identified vapors or gases is indicated by a direct-reading organic vapor detection instrument, but vapors and gases are not suspected of containing high levels of chemicals harmful to skin or capable of being absorbed through the skin.

Note: This involves atmospheres with IDLH concentrations of specific substances that present severe inhalation hazards and that do not represent a severe skin hazard; or that do not meet the criteria for use of air-purifying respirators.

III. *Level C*—Level C protection should be used when:

1. The atmospheric contaminants, liquid splashes, or other direct contact will not adversely affect or be absorbed through any exposed skin;
2. The types of air contaminants have been identified, concentrations measured, and an air-purifying respirator is available that can remove the contaminants; and
3. All criteria for the use of air-purifying respirators are met.

IV. *Level D*—Level D protection should be used when:

1. The atmosphere contains no known hazard; and
2. Work functions preclude splashes, immersion, or the potential for unexpected inhalation of or contact with hazardous levels of any chemicals.

Note: As stated before, combinations of personal protective equipment other than those described for Levels A, B, C, and D protection may be more appropriate and may be used to provide the proper level of protection.

As an aid in selecting suitable chemical protective clothing, it should be noted that the National Fire Protection Association is developing standards on chemical protective clothing. These standards are currently undergoing public review prior to adoption, including:

NFPA 1991—Standard on Vapor-Protective Suits for Hazardous Chemical Emergencies (EPA Level A Protective Clothing)

NFPA 1991—Standard on Liquid Splash-Protective Suits for Hazardous Chemical Emergencies (EPA Level B Protective Clothing)

NFPA 1993—Standard on Liquid Splash-Protective Suits for Non-emergency, Non-flammable Hazardous Chemical Situations (EPA Level B Protective Clothing)

These standards would apply documentation and performance requirements to the manufacture of chemical protective suits. Chemical protective suits meeting these requirements would be labelled as compliant with the appropriate standard. When these standards are adopted by the National Fire Protection Association, it is recommended that chemical protective suits which meet these standards be used.

**Appendix C—Compliance Guidelines**

1. *Occupational Safety and Health Program.* Each hazardous waste site clean-up effort will require an occupational safety and health program headed by the site coordinator or the employer's representative. The purpose of the program will be the protection of employees at the site and will be an extension of the employer's overall safety and health program. The program will need to be developed before work begins on the site and implemented as work proceeds as stated in paragraph (b). The program is to facilitate coordination and communication of safety and health issues among personnel responsible for the various activities which will take place at the site. It will provide the overall means for planning and implementing the needed safety and health training and job orientation of employees who will be working at the site. The program will provide the means for identifying and controlling worksite hazards and the means for

[1] Optional, as applicable.

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monitoring program effectiveness. The program will need to cover the responsibilities and authority of the site coordinator or the employer's manager on the site for the safety and health of employees at the site, and the relationships with contractors or support services as to what each employer's safety and health responsibilities are for their employees on the site. Each contractor on the site needs to have its own safety and health program so structured that it will smoothly interface with the program of the site coordinator or principal contractor.

Also those employers involved with treating, storing or disposal of hazardous waste as covered in paragraph (p) must have implemented a safety and health program for their employees. This program is to include the hazard communication program required in paragraph (p)(1) and the training required in paragraphs (p)(7) and (p)(8) as parts of the employers comprehensive overall safety and health program. This program is to be in writing.

Each site or workplace safety and health program will need to include the following: (1) Policy statements of the line of authority and accountability for implementing the program, the objectives of the program and the role of the site safety and health supervisor or manager and staff; (2) means or methods for the development of procedures for identifying and controlling workplace hazards at the site; (3) means or methods for the development and communication to employees of the various plans, work rules, standard operating procedures and practices that pertain to individual employees and supervisors; (4) means for the training of supervisors and employees to develop the needed skills and knowledge to perform their work in a safe and healthful manner; (5) means to anticipate and prepare for emergency situations; and (6) means for obtaining information feedback to aid in evaluating the program and for improving the effectiveness of the program. The management and employees should be trying continually to improve the effectiveness of the program thereby enhancing the protection being afforded those working on the site.

Accidents on the site or workplace should be investigated to provide information on how such occurrences can be avoided in the future. When injuries or illnesses occur on the site or workplace, they will need to be investigated to determine what needs to be done to prevent this incident from occurring again. Such information will need to be used as feedback on the effectiveness of the program and the information turned into positive steps to prevent any reoccurrence. Receipt of employee suggestions or complaints relating to safety and health issues involved with site or workplace activities is also a feedback mechanism that can be used effectively to improve the program and may serve in part as an evaluative tool(s).

For the development and implementation of the program to be the most effective, professional safety and health personnel should be used. Certified Safety Professionals, Board Certified Industrial Hygienists or Registered Professional Safety Engineers are good examples of professional stature for safety and health managers who will administer the employer's program.

2. *Training.* The training programs for employees subject to the requirements of paragraph (e) of this standard should address: the safety and health hazards employees should expect to find on hazardous waste clean-up sites; what control measures or techniques are effective for those hazards; what monitoring procedures are effective in characterizing exposure levels; what makes an effective employer's safety and health program; what a site safety and health plan should include; hands on training with personal protective equipment and clothing they may be expected to use; the contents of the OSHA standard relevant to the employee's duties and function; and, employee's responsibilities under OSHA and other regulations. Supervisors will need training in their responsibilities under the safety and health program and its subject areas such as the spill containment program, the personal protective equipment program, the medical surveillance program, the emergency response plan and other areas.

The training programs for employees subject to the requirements of paragraph (p) of this standard should address: the employers safety and health program elements impacting employees; the hazard communication program; the medical surveillance program; the hazards and the controls for such hazards that employees need to know for their job duties and functions. All require annual refresher training.

The training programs for employees covered by the requirements of paragraph (q) of this standard should address those competencies required for the various levels of response such as: the hazards associated with hazardous substances; hazard identification and awareness; notification of appropriate persons; the need for and use of personal protective equipment including respirators; the decontamination procedures to be used; preplanning activities for hazardous substance incidents including the emergency response plan; company standard operating procedures for hazardous substance emergency responses; the use of the incident command system and other subjects. Hands-on training should be stressed whenever possible. Critiques done after an incident which include an evaluation of what worked and what did not and how could the incident be better handled the next time may be counted as training time.

For hazardous materials specialists (usually members of hazardous materials teams), the training should address the care, use and/or testing of chemical protective clothing including totally encapsulating suits, the medical surveillance program, the standard operating procedures for the hazardous materials team including the use of plugging and patching equipment and other subject areas.

Officers and leaders who may be expected to be in charge at an incident should be fully knowledgeable of their company's incident command system. They should know where and how to obtain additional assistance and be familiar with the local district's emergency response plan and the state emergency response plan.

Specialist employees such as technical experts, medical experts or environmental experts that work with hazardous materials in their regular jobs, who may be sent to the incident scene by the shipper, manufacturer or governmental agency to advise and assist the person in charge of the incident should have training on an annual basis. Their training should include the care and use of personal protective equipment including respirators; knowledge of the incident command system and how they are to relate to it; and those areas needed to keep them current in their respective field as it relates to safety and health involving specific hazardous substances.

Those skilled support personnel, such as employees who work for public works departments or equipment operators who operate bulldozers, sand trucks, backhoes, etc., who may be called to the incident scene to provide emergency support assistance, should have at least a safety and health briefing before entering the area of potential or actual exposure. These skilled support personnel, who have not been a part of the emergency response plan and do not meet the training requirements, should be made aware of the hazards they face and should be provided all necessary protective clothing and equipment required for their tasks.

3. *Decontamination.* Decontamination procedures should be tailored to the specific hazards of the site, and may vary in complexity and number of steps, depending on the level of hazard and the employee's exposure to the hazard. Decontamination procedures and PPE decontamination methods will vary depending upon the specific substance, since one procedure or method may not work for all substances. Evaluation of decontamination methods and procedures should be performed, as necessary, to assure that employees are not exposed to hazards by re-using PPE. References in Appendix F may be used for guidance in establishing an effective decontamination program. In addition, the U.S. Coast Guard's Manual, "Policy Guidance for Response to Hazardous Chemical Releases," U.S. Department of Transportation, Washington, DC (COMDTINST M16465.30) is a good reference for establishing an effective decontamination program.

4. *Emergency response plans.* States, along with designated districts within the states, will be developing or have developed local emergency response plans. These state and district plans should be utilized in the emergency response plans called for in the standard. Each employer should assure that its emergency response plan is compatible with the local plan. The major reference being used to aid in developing the state and local district plans is the *Hazardous Materials Emergency Planning Guide*, NRT-1. The current Emergency Response Guidebook from the U.S. Department of Transportation, CMA's CHEMTREC and the Fire Service Emergency Management Handbook may also be used as resources.



Employers involved with treatment, storage, and disposal facilities for hazardous waste, which have the required contingency plan called for by their permit, would not need to duplicate the same planning elements. Those items of the emergency response plan that are properly addressed in the contingency plan may be substituted into the emergency response plan required in 1910.120 or otherwise kept together for employer and employee use.

5. *Personal protective equipment programs.* The purpose of personal protective clothing and equipment (PPE) is to shield or isolate individuals from the chemical, physical, and biologic hazards that may be encountered at a hazardous substance site.

As discussed in Appendix B, no single combination of protective equipment and clothing is capable of protecting against all hazards. Thus PPE should be used in conjunction with other protective methods and its effectiveness evaluated periodically.

The use of PPE can itself create significant worker hazards, such as heat stress, physical and psychological stress, and impaired vision, mobility, and communication. For any given situation, equipment and clothing should be selected that provide an adequate level of protection. However, over-protection, as well as under-protection, can be hazardous and should be avoided where possible.

Two basic objectives of any PPE program should be to protect the wearer from safety and health hazards, and to prevent injury to the wearer from incorrect use and/or malfunction of the PPE. To accomplish these goals, a comprehensive PPE program should include hazard identification, medical monitoring, environmental surveillance, selection, use, maintenance, and decontamination of PPE and its associated training.

The written PPE program should include policy statements, procedures, and guidelines. Copies should be made available to all employees, and a reference copy should be made available at the worksite. Technical data on equipment, maintenance manuals, relevant regulations, and other essential information should also be collected and maintained.

6. *Incident command system (ICS).* Paragraph 1910.120(q)(3)(ii) requires the implementation of an ICS. The ICS is an organized approach to effectively control and *manage* operations at an emergency incident. The individual in charge of the ICS is the senior official responding to the incident. The ICS is not much different than the "command post" approach used for many years by the fire service. During large complex fires involving several companies and many pieces of apparatus, a command post would be established. This enabled *one* individual to be in charge of managing the incident, rather than having several officers from different companies making separate, and sometimes conflicting, decisions. The individual in charge of the command post would delegate responsibility for performing various tasks to subordinate officers. Additionally, all communications were routed through the command post to reduce the number of radio transmissions and eliminate confusion. However, strategy, tactics, and all decisions were made by one individual.

The ICS is a very similar system, except it is implemented for emergency response to all incidents, both large and small, that involve hazardous substances.

For a small incident, the individual in charge of the ICS may perform many tasks of the ICS. There may not be any, or little, delegation of tasks to subordinates. For example, in response to a small incident, the individual in charge of the ICS, in addition to normal command activities, may become the safety officer and may designate only one employee (with proper equipment) as a back-up to provide assistance if needed. OSHA does recommend, however, that at least two employees be designated as back-up personnel since the assistance needed may include rescue.

To illustrate the operation of the ICS, the following scenario might develop during a small incident, such as an overturned tank truck with a small leak of flammable liquid.

The first responding senior officer would implement and take command of the ICS. That person would size-up the incident and determine if additional personnel and apparatus were necessary; would determine what actions to take to control the leak; and, determine the proper level of personal protective equipment. If additional assistance is not needed, the individual in charge of the ICS would implement actions to stop and control the leak using the fewest number of personnel that can effectively accomplish the tasks. The individual in charge of the ICS then would designate himself as the safety officer and two other employees as a back-up in case rescue may become necessary. In this scenario, decontamination procedures would not be necessary.

A large complex incident may require many employees and difficult, time-consuming efforts to control. In these situations, the individual in charge of the ICS will want to delegate different tasks to subordinates in order to maintain a span of control that will keep the number of subordinates, that are reporting, to a manageable level.

Delegation of task at large incidents may be by location, where the incident scene is divided into sectors, and subordinate officers coordinate activities within the sector that they have been assigned.

Delegation of tasks can also be by function. Some of the functions that the individual in charge of the ICS may want to delegate at a large incident are: medical services; evacuation; water supply; resources (equipment, apparatus); media relations; safety; and, site control (integrate activities with police for crowd and traffic control). Also for a large incident, the individual in charge of the ICS will designate several employees as back-up personnel; and a number of safety officers to monitor conditions and recommend safety precautions.

Therefore, no matter what size or complexity an incident may be, by implementing an ICS there will be *one individual in charge* who makes the decisions and gives directions; and, all actions, and communications are coordinated through one central point of command. Such a system should reduce confusion, improve safety, organize and coordinate actions, and should facilitate effective management of the incident.

7. *Site Safety and Control Plans.* The safety and security of response personnel and others in the area of an emergency response incident site should be of primary concern to the incident commander. The use of a site safety and control plan could greatly assist those in charge of assuring the safety and health of employees on the site.

A comprehensive site safety and control plan should include the following: summary analysis of hazards on the site and a risk analysis of those hazards; site map or sketch; site work zones (clean zone, transition or decontamination zone, work or hot zone); use of the buddy system; site communications; command post or command center; standard operating procedures and safe work practices; medical assistance and triage area; hazard monitoring plan (air contaminate monitoring, etc.); decontamination procedures and area; and other relevant areas. This plan should be a part of the employer's emergency response plan or an extension of it to the specific site.

8. *Medical surveillance programs.* Workers handling hazardous substances may be exposed to toxic chemicals, safety hazards, biologic hazards, and radiation. Therefore, a medical surveillance program is essential to assess and monitor workers' health and fitness for employment in hazardous waste operations and during the course of work; to provide emergency and other treatment as needed; and to keep accurate records for future reference.

The *Occupational Safety and Health Guidance Manual for Hazardous Waste Site Activities* developed by the National Institute for Occupational Safety and Health (NIOSH), the Occupational Safety and Health Administration (OSHA), the U.S. Coast Guard (USCG), and the Environmental Protection Agency (EPA); October 1985 provides an excellent example of the types of medical testing that should be done as part of a medical surveillance program.

**Appendix D—References**

The following references may be consulted for further information on the subject of this standard:

1. OSHA Instruction DPO CPL 2.70—January 29, 1986, *Special Emphasis Program: Hazardous Waste Sites.*

2. OSHA Instruction DFO CPL 2–2.37A—January 29, 1986, *Technical Assistance and Guidelines for Superfund and Other Hazardous Waste Site Activities.*

3. OSHA Instruction DTS CPL 2.74—January 29, 1986, *Hazardous Waste Activity Form, OSHA 175.*

4. *Hazardous Waste Inspections Reference Manual*, U.S. Department of Labor, Occupational Safety and Health Administration, 1986.

5. Memorandum of Understanding Among the National Institute for Occupational Safety and Health, the Occupational Safety and Health Administration, the United States Coast Guard, and the United States Environmental Protection Agency, *Guidance for Worker Protection During Hazardous*

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*Waste Site Investigations and Clean-up and Hazardous Substance Emergencies*, December 18, 1980.

8. *National Priorities List*, 1st Edition, October 1984; U.S. Environmental Protection Agency, Revised periodically.

7. *The Decontamination of Response Personnel*, Field Standard Operating Procedures (F.S.O.P.) 7; U.S. Environmental Protection Agency, Office of Emergency and Remedial Response, Hazardous Response Support Division, December 1984.

8. *Preparation of a Site Safety Plan*, Field Standard Operating Procedures (F.S.O.P.) 9; U.S. Environmental Protection Agency, Office of Emergency and Remedial Response, Hazardous Response Support Division, April 1985.

9. *Standard Operating Safety Guidelines*; U.S. Environmental Protection Agency, Office of Emergency and Remedial Response, Hazardous Response Support Division, Environmental Response Team; November 1984.

10. *Occupational Safety and Health Guidance Manual for Hazardous Waste Site Activities*, National Institute for Occupational Safety and Health (NIOSH), Occupational Safety and Health Administration (OSHA), U.S. Coast Guard (USCG), and Environmental Protection Agency (EPA); October 1985.

11. *Protecting Health and Safety at Hazardous Waste Sites: An Overview*, U.S. Environmental Protection Agency, EPA/625/9-85/006; September 1985.

12. *Hazardous Waste Sites and Hazardous Substance Emergencies*, NIOSH Worker Bulletin, U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control, National Institute for Occupational Safety and Health; December 1982.

13. *Personal Protective Equipment for Hazardous Materials Incidents: A Selection Guide*; U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control, National Institute for Occupational Safety and Health; October 1984.

14. *Fire Service Emergency Management Handbook*, International Association of Fire Chiefs Foundation, 101 East Holly Avenue, Unit 10B, Sterling, VA 22170, January 1985.

15. *Emergency Response Guidebook*, U.S Department of Transportation, Washington, DC, 1987.

16. *Report to the Congress on Hazardous Materials Training, Planning and Preparedness*, Federal Emergency Management Agency, Washington, DC, July 1988.

17. *Workbook for Fire Command*, Alan V. Brunacini and J. David Beageron, National Fire Protection Association, Batterymarch Park, Quincy, MA 02269, 1985.

18. *Fire Command*, Alan V. Brunacini, National Fire Protection, Batterymarch Park, Quincy, MA 02269, 1985.

19. *Incident Command System*, Fire Protection Publications, Oklahoma State University, Stillwater, OK 74078, 1983.

20. *Site Emergency Response Planning*, Chemical Manufacturers Association, Washington, DC 20037, 1986.

21. *Hazardous Materials Emergency Planning Guide*, NRT-1, Environmental Protection Agency, Washington, DC, March 1987.

22. *Community Teamwork: Working Together to Promote Hazardous Materials Transportation Safety*, U.S. Department of Transportation, Washington, DC, May 1983.

23. *Disaster Planning Guide for Business and Industry*, Federal Emergency Management Agency, Publication No. FEMA 141, August 1987.

(The Office of Management and Budget has approved the information collection requirements in this section under control number 1218-0139)

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March 6, 1989

Part IV

# Department of Transportation

**Federal Aviation Administration**

**14 CFR Parts 23, 91 and 135**

**Small Airplane Airworthiness Review Program Notice No. 5; Notice of Proposed Rulemaking**

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Parts 23, 91, and 135**

**[Docket No. 25812; Notice No. 89-6]**

**Small Airplane Airworthiness Review Program Notice No. 5**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice is one of a series of notices that proposes to adopt new and amended airworthiness standards for small airplanes. It also proposes to amend the flight instrument requirements in the general operating rules and the operating rules for air taxi and commercial operators. This particular notice proposes amended design requirements for complex systems critical for safety in small airplanes, and to amend the requirements for locating certain instruments, including new technology electronic display indicators. It proposes to add a new airworthiness standard for electronic display instruments. It also includes related changes to the general and air taxi operating rules to allow a third attitude indicator in lieu of a rate-of-turn indicator. These proposals arise from the recognition, by both government and industry, that updated safety standards are needed for an acceptable level of safety in the design requirements for airplanes that are used in both private and commercial operations. The proposals of this notice, when adopted, will include design requirements applicable to advancements in technology being incorporated in current designs, and reduce the regulatory burden in showing compliance with some requirements while maintaining an acceptable level of safety.

**DATE:** Comments must be received on or before July 5, 1989.

**ADDRESS:** Comments on this notice may be mailed in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, Attn: Rules Docket (AGC-10), Docket No. 25812, 800 Independence Avenue, SW., Washington, DC 20591, or delivered in triplicate to: Room 915-G, 800 Independence Avenue, SW., Washington, DC 20591. Comments delivered must be marked Docket No.25812. Comments may be inspected in Room 915-G between 8:30 a.m. and 5:00 p.m. on weekdays, except Federal holidays.

In addition, the FAA is maintaining an information docket of comments in the Office of Assistant Chief Counsel, ACE-7, Federal Aviation Administration, Central Region, 601 East 12th Street, Kansas City, Missouri 64106. Comments in the information docket may be inspected in the Office of Assistant Chief Counsel weekdays, except Federal holidays, between the hours of 7:30 a.m. and 4:00 p.m.

**FOR FURTHER INFORMATION CONTACT:** Earsa Tankesley, Standards Office (ACE-110), Aircraft Certification Division, Central Region, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; Telephone (816) 374-5688.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, or economic impact that might result from adopting the proposals in this notice are invited. Communications should identify the regulatory docket or notice number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking further rulemaking action. Commenters wishing the FAA to acknowledge receipt of comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 25812" The postcard will be date stamped and returned to the commenter. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRM**

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attn: Public Inquiry Center (APA-200), 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on the mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

**Background**

The FAA announced the Small Airplane Airworthiness Review Program in Notice No. CE-83-1 (48 FR 4290; January 31, 1983) and invited all interested persons to submit proposals for consideration. The review program objective was to encourage public participation in improving and updating the airworthiness standards applicable to small airplanes.

The FAA issued Notice No. CE-83-1A in response to requests from interested persons, which reopened the proposal period for submission of proposals. This action (48 FR 26623; June 9, 1983) was based upon an FAA determination that it would be in the public interest to allow more time for the public and the aviation industry to submit their proposals.

By the close of the proposal period on May 3, 1984, the FAA had received approximately 560 proposals in response to Notice Nos. CE-83-1 and CE-83-1A. On July 25, 1984, the FAA issued Notice No. CE-84-1 (49 FR 30053; July 25, 1984) announcing the Availability of Agenda, Compilation of Proposals, and Announcement of the Small Airplane Airworthiness Review Program Conference to discuss the proposals. The conference was held on October 22-26, 1984, in St. Louis, Missouri. A copy of the transcript of all discussions held during the conference is filed in Docket No. 23494.

Since the conference, the FAA has received petitions for exemptions from the requirements of Parts 91 and 135 to allow the installation of a third attitude indicator in lieu of the required rate-of-turn indicator. Further, the FAA has received a significant number of applications for installation of complex instrument systems not envisioned in the current requirements of Part 23.

Notice No. 1 of the Small Airplane Airworthiness Review Program is directed toward improvement of crashworthiness. After a further review of the conference proposals and conference transcript, the FAA concluded that proposals planned for Notice No. 2 were next in priority. Notice No. 2 development did not progress as planned; therefore, the proposals to amend Part 23 in this notice were taken out of planned Notice No. 2 to expedite their issuance.

Current computer and instrumentation technology has resulted in systems and equipment being available for small airplanes that are novel and unusual relative to what was envisioned and considered when the current Part 23 requirements were promulgated.



Therefore, the FAA is finding it necessary to issue special conditions and expend significant resources to assure adequate airworthiness standards for these systems. To reduce the need for further processing of special conditions and exemptions and to allow concentration of FAA rulemaking resources on updating the airworthiness rules, the proposals in this notice are being given priority over the remaining Part 23 Airworthiness Review rulemaking actions.

**Regulatory and Economic Evaluations**

The proposals to amend Part 23 contained in this notice would upgrade airworthiness standards to include design requirements for complex systems critical for safety in Part 23 airplanes. These upgraded standards would apply to airplanes for which an application for a type certificate or change to type certificate under Part 23 is made after the effective date of the proposed rule. The proposals to amend Part 23 contained in this notice would require examination of systems and equipment for their criticality to the continued safe flight of the airplane, require reliability of such systems based on their criticality, define "essential loads", set forth power requirements for essential loads, and set forth standards for installation of instrument systems utilizing electronic display indicators.

The proposals to amend Parts 91 and 135 contained in this notice would allow the installation of a third attitude indicator in lieu of the required rate-of-turn indicator. The complex instrument systems now being proposed for installation may not include the rate-of-turn function. Allowing an additional attitude indicator with a dedicated power supply relieves the burden on the manufacturer and allows safer operations because of greater utility of the third attitude indicator.

These proposals impose no cost on the aviation community or other persons but rather include provisions which are currently being applied by special conditions.

Current computer and instrumentation technology has resulted in systems and equipment being available for airplanes that are novel and unusual relative to what was envisioned and considered when the current Part 23 requirements were promulgated. Therefore, the FAA finds it necessary to issue special conditions and expend significant resources to assure adequate airworthiness standards for these systems. These proposals are of a cost-relieving nature because they would eliminate the need for special conditions processing, which often involves costly and unnecessary delays. In addition, manufacturers are not being directed to incorporate the newest technology in their future models but are instead being afforded a set of regulations to observe should they choose the new equipment. Furthermore, it was determined that these three amendments involved fairly substantial quantifiable benefits over the 20-year study period (see Table 1). The benefits were estimated on the basis of two alternative assumptions of small airplane production. The conservative assumption projects a continuation of the depressed condition of this industry. A more optimistic assumption that the industry will regain its economic health was also used to estimate the benefits. These two assumptions were used to estimate a range for the expected benefits.

TABLE 1.— SUMMARY OF RANGE OF ESTIMATED BENEFITS (DISCOUNTED) AND COSTS

[Millions of dollars]

| Proposed rule | Best estimate of benefits | Range | Costs |
|---|---|---|---|
| A. Based on a continuation of recent production trends: | | | |
| 23.1309 Equipment, Systems | 1.80 | N/A | Relieving. |
| 23.1311-23.1321 Instrument displays | 0.33 | 0.14-0.43 | Relieving. |
| Total | $2.13 | | |
| B. Based on assumption of a rebound in small airplane production: | | | |
| 23.1309 Equipment, Systems | 13.1 | N/A | Relieving. |
| 23.1311-23.1321 Instrument displays | 2.0 | 1.0-3.1 | Relieving. |
| Total | $15.1 | | |

**Trade Impact Analysis**

The proposals in this notice would have little or no impact on trade for both U.S. firms doing business in foreign countries and foreign firms doing business in the U.S. In the U.S., foreign manufacturers would have to meet U.S. requirements, and thus they would gain no competitive advantage. In foreign countries, U.S. manufacturers would not be bound by Part 23 requirements and could, therefore, implement the proposal under study solely on the basis of competitive considerations.

**Regulatory Flexibility Determination**

The FAA has also determined that the proposed rule changes will not have a significant economic impact on a substantial number of small entities.

The FAA's criteria for a small airplane manufacturer is one employing less than 75 employees, a substantial number is a number which is not less than 11 and which is more than one-third of the small entities subject to the proposed rule, and a significant impact is one having an annual cost of more than $14,900 (in 1978 dollars) per manufacturer.

A review of domestic general aviation manufacturing companies indicates that only six companies meet the size threshold of 75 employees or less. The proposed amendments to 14 CFR Part 23 will therefore not affect a substantial number of small entities.

The majority of the small entities impacted by the proposals to amend the operating rules would represent operators of unscheduled aircraft for hire. The proposed changes to the operating rules provide alternatives to existing requirements and therefore do not impose any additional burden. These proposals, if enacted, would not have a significant economic impact on a substantial number of small entities.

**Federalism Implications**

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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**Conclusion**

For reasons discussed earlier in the preamble, the FAA has determined that this document (1) involves a proposed regulation that is not major under the provisions of Executive Order 12291, (2) is not significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), and (3) in addition, I certify that under the criteria of the Regulatory Flexibility Act, this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. In addition, this proposal, if adopted, would have little or no impact on trade opportunities for U.S. firms doing business overseas, or on foreign firms doing business in the United States.

**List of Subjects**

*14 CFR Part 23*

Aircraft, Air transportation, Aviation safety, Safety.

*14 CFR Part 91*

Air carriers, Aircraft, Aircraft pilot, Airspace, Air transportation, Aviation safety, Pilots, Safety.

*14 CFR Part 135*

Air carriers, Aircraft, Airman, Airplanes, Airspace, Air taxi, Air transportation, Airworthiness, Aviation safety, Pilots, Safety.

## PART 23—AIRWORTHINESS STANDARDS: NORMAL, UTILITY, AND ACROBATIC CATEGORY AIRPLANES

1. The authority citation for Part 23 continues to read as follows:

**Authority:** 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1425, 1428, 1429, 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

2. Section 23.1309 is amended by revising it to read as follows:

**§ 23.1309 Equipment, systems, and installations.**

(a) Each item of equipment, each system, and each installation:

(1) When performing its intended function, may not adversely affect the response, operation, or accuracy of any—

(i) Equipment essential to safe operation, or

(ii) Other equipment unless there is a means to inform the pilot of the effect.

(2) Of a single-engine airplane must be designed to minimize hazards to the airplane in the event of a probable malfunction or failure.

(3) Of a multiengine airplane must be designed to prevent hazards to the airplane in the event of a probable malfunction or failure.

(b) The design of each item of equipment, each system, and each installation must be examined separately and in relationship to other airplane systems to determine if the airplane is dependent upon its function for continued safe flight and landing and, for airplanes not limited to VFR conditions, if its failure would significantly reduce the capability of the airplane or the ability of the crew to cope with adverse operating conditions. Each item of equipment, each system, and each installation identified by this examination, upon which the airplane is dependent for proper functioning to ensure continued safe flight and landing, or whose failure would significantly reduce the capability of the airplane or the ability of the crew to cope with adverse operating conditions, must be designed to comply with the following additional requirements:

(1) It must perform its intended function under any foreseeable operating condition.

(2) When systems and associated components are considered separately and in relation to other systems—

(i) The occurrence of any failure condition which would prevent the continued safe flight and landing of the airplane must be extremely improbable; and

(ii) The occurrence of any other failure condition which would significantly reduce the capability of the airplane or the ability of the crew to cope with adverse operating conditions must be improbable.

(3) Warning information must be provided to alert the crew to unsafe system operating conditions, and to enable them to take appropriate corrective action. Systems, controls, and associated monitoring and warning means must be designed to minimize initiation of crew action which would create additional hazards.

(4) Compliance with the requirements of paragraph (b)(2) of this section may be shown by analysis and, where necessary, by appropriate ground, flight, or simulator tests. The analysis must consider—

(i) Modes of failure, including malfunctions and damage from external sources;

(ii) The probability of multiple failures, and undetected faults;

(iii) The resulting effects on the airplane and occupants, considering the stage of flight and operating conditions; and

(iv) The crew warning cues, corrective action required, and the capability of detecting faults.

(c) Each item of equipment, each system, and each installation whose functioning is required by this chapter and that requires a power supply is an "essential load" on the power supply. The power sources and the system must be able to supply the following power loads in probable operating combinations and for probable durations:

(1) Loads connected to the power distribution system with the system functioning normally.

(2) Essential loads after failure of—

(i) Any one engine on two-engine airplanes; or

(ii) Any two engines on three or more engine airplanes.

(iii) Any power converter, or energy storage device.

(3) Essential loads for which an alternate source of power is required by this chapter, after any failure or malfunction in any one power supply system, distribution system, or other utilization system.

(d) In determining compliance with paragraph (c)(2) of this section, the power loads may be assumed to be reduced under a monitoring procedure consistent with safety in the kinds of operation authorized. Loads not required in controlled flight need not be considered for the two-engine-inoperative condition on airplanes with three or more engines.

(e) In showing compliance with this section with regard to the electrical power system and to equipment design and installation, critical environmental and atmospheric conditions, such as radio frequency energy and the effects (both direct and indirect) of lightning strikes, must be considered. For electrical generation, distribution, and utilization equipment required by or used in complying with this chapter, the ability to provide continuous, safe service under foreseeable environmental conditions may be shown by environmental tests, design analysis, or reference to previous comparable service experience on other airplanes.

(f) As used in this section, "systems" refers to all pneumatic systems, fluid systems, electrical systems, mechanical systems, and powerplant systems included in the airplane design, except for the following:

(1) Powerplant systems provided as part of the certificated engine; and

(2) The flight structure (such as wing, empennage, control surfaces and their systems, the fuselage, engine mounting, and landing gear and their related primary attachments) whose requirements are specific in Subparts C and D of this part.



**Explanation**

Current Part 23 airplane airworthiness requirements are based on single-fault or fail-safe concepts and, when they were promulgated, the FAA did not envision use of complex, safety-critical systems in such airplanes. This proposal will require examination of systems and equipment for their criticality for continued safe flight and will permit the continued use of the existing reliability requirements of Part 23 for airplanes whose systems are not complex and do not perform safety-critical functions. For those cases where the manufacturer finds it necessary or desirable to include complex, safety-critical systems, the proposal includes requirements for identifying those systems and defines additional requirements needed for their certification. The proposed changes to § 23.1309 are summarized as follows:

Proposed paragraphs (a), (a)(1), (a)(2), and (a)(3) of § 23.1309 are derived from current paragraphs (a), (b), and (c) of § 23.1309. Under proposed § 23.1309(a)(1), the systems and installations, as well as the items of equipment, will be required to meet those requirements contained in current § 23.1309(a). Under proposed § 23.1309(a)(2), the systems and installations, as well as the items of equipment, for single-engine airplanes will be required to meet those requirements contained in current § 23.1309(c) and proposed § 23.1309(a)(3) will require these items on a multiengine airplane to meet the requirements contained in current § 23.1309(b).

(2) A new § 23.1309(b) is proposed which will require a detailed examination of each item of equipment, system, and installation. This examination is to determine whether a failure would affect the airplane's continued safe flight and landing. Each item of equipment, each system, and each installation identified by such an examination as being critical to the safe operation of the airplane would be required to meet additional requirements. This will permit the approval of more advanced systems, that were not envisioned when § 23.1309 was added to Part 23, without the need for special conditions.

A new § 23.1309(c) is proposed to require identification of loads which are "essential loads" and requires the airplane power sources for these loads to meet requirements consistent with other airplane airworthiness requirements. These requirements are substantially equivalent to section 59(c) of Appendix A to Part 135.

A new § 23.1309(d) is proposed to allow reduction of power loads when showing compliance with proposed § 23.1309(c)(2). This provision is substantially equivalent to section 59(c)(3) of Appendix A to Part 135.

A new § 23.1309(e) is proposed to require that the design of each electrical system, each item of equipment, and each installation take into account critical environmental conditions. Critical environmental and atmospheric conditions would include radio frequency energy and direct and indirect effects of lightning. Section 23.867 now requires the airplane structure to be protected from the effects of lightning and § 23.954 now requires the airplane fuel system to be protected from the effects of lightning.

A new § 23.1309(f) is proposed to provide a definition of the systems to which the requirements of this section are applicable and specifically identifies certain items to which they are not applicable.

Early in the development of minimum requirements for transport category airplanes, it was realized that more complex systems were being added to airplane designs and there was a need to include requirements which specifically addressed equipment, systems, and their installation. This was accomplished by the addition of § 4b.606 to Part 4b of the Civil Air Regulations (CAR). Amendment 4b-6, effective March 5, 1952, in part, accomplished this objective. The preamble to that amendment included the following in regard to that addition:

> An amendment clarifying the requirements for equipment, systems, and installations with regard to functioning and reliability is made in Subpart F. In addition, it specifies dual power supply for those installations the functioning of which is necessary to show compliance with the Civil Air Regulations.

This requirement, as adopted by that amendment, was retained in CAR Part 4b until that regulation was recodified to the Federal Aviation Regulations, Part 25, effective February 1, 1965. At that time, this requirement, substantially unchanged, was identified as § 25.1309. For many years the "single fault" or "fail safe" concept of this requirement, along with experience based on service-proven designs and engineering judgment, were used to successfully evaluate most airplane systems and equipment.

However, in the late 1960's there appeared a number of safety-critical systems that were utilizing new technical complexity to accomplish safety-critical functions. Due to the increasing complexity of the technology being used to develop these systems, it was becoming increasingly difficult to apply engineering judgment as the only means of determining the effects or likelihood of failure conditions. The increasing difficulty in evaluating these complex systems, along with the potential hazards to the airplane that could result from their failure made it necessary to provide duplicate and triplicate systems to assure an acceptable level of safety.

At about this same time, the development of rational methods for safety assessment of systems led to the conclusion that an inverse relationship should exist between the probability of a failure condition and its effect on the airplane. That is, the more serious the effect, the lower the probability must be that it will occur.

The availability of this rational method for safety analysis of systems, along with the increasing difficulty in applying the then existing "single fault" or "fail safe" concept, prompted the FAA to propose an amendment to § 25.1309 which would permit the use of this rational method as an acceptable means of accomplishing safety analysis. That proposed revision to § 25.1309, which specified a level of safety in qualitative terms, and required assessments to be made, was adopted by Amendment 25-23 on April 1, 1970.

At that time, the FAA also realized that more complex systems were being utilized in small airplanes and that there was a need to add a reliability requirement to Part 23. Accordingly, rulemaking action was initiated which resulted in § 23.1309 being added to Part 23 by Amendment 23-14, effective December 20, 1973. The requirements of that new § 23.1309 were similar to those of § 25.1309 prior to Amendment 25-23 which were based on the "single fault" or "fail safe" concept. At that time, it was not envisioned that complex safety-critical systems, utilizing technology now available, would be used in the designs of small airplanes. Therefore, there was no identified need to include provisions for use of the rational method of analysis in Part 23, as had been done in Part 25 by Amendment 25-23.

Experience has shown that the envisioned rate of technical growth of systems used in small airplanes was inaccurate and that safety-critical systems are now being proposed for use on Part 23 airplanes. As with the earlier experience with Part 25, the FAA is finding that it is difficult to apply "single fault" concepts to these complex systems and to utilize the application of engineering judgment as the only means of determining the effects or likelihood of certain failure conditions. Accordingly, there is now a need to

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revise the reliability requirements of Part 23 to allow the use of the latest available rational method for safety analysis of these complex safety-critical systems to assure continuation of the level of safety intended for airplanes certificated to Part 23. Such safety critical systems are currently being proposed for approval and there is an urgent need to accomplish this proposed rule change.

A recommendation for a complete change of § 23.1309 was submitted as a part of the Small Airplane Airworthiness Review Program. That recommendation, conference proposal number 434, was discussed during the October 22–26, 1984, Small Airplane Airworthiness Review Program conference held in St. Louis, Missouri. A copy of the transcript of all discussions held during the conference is filed in Docket No. 23494, and may be examined by interested persons.

At that conference a commenter on the recommendation noted that it dealt with failures that cause hazards which do not have catastrophic potential, but does not deal with hazards which are potentially catastrophic. As noted in the above discussion, in the development of requirements for small airplane systems it was originally recognized that failures of systems could produce hazards and the earlier requirements addressed protection from those failures, but did not address safety-critical systems whose failures could be potentially catastrophic or would be catastrophic. As proposed, § 23.1309 addresses all levels of hazards and the proposed requirements are based on the criticality of the system.

This would be accomplished by requiring all of the airplane's systems to be reviewed to determine (1) if the airplane is dependent upon a system function for continued safe flight and landing, and (2) if a failure of any system on the airplane, not limited to VFR conditions, would significantly reduce the ability of the crew to cope with the adverse operating conditions. For airplanes that do not include systems which perform either of these safety critical functions, the single-fault or fail-safe concept requirements would continue to be applicable as proposed in § 23.1309(a).

If the design of the airplane includes systems that perform a function that is needed for continued safe flight and landing of the airplane and, accordingly, whose failure could be catastrophic, the systems would be required to meet standards that establish that failures of the system must be extremely improbable. In addition, on airplanes designed for any type of operation other than VFR, the systems whose failure would significantly reduce the airplane's capability, or the ability of the crew to cope with the adverse operating conditions and, thereby, be potentially catastrophic would be required to meet standards that establish that failures of these systems are improbable. This standard is applicable if a system failure would reduce the capability of the airplane or the crew to cope with adverse operating conditions. It was recognized that any failure will reduce the airplane's or crew's capability by some degree, but that reduction may not be of the degree that will make operation of the airplane potentially catastrophic. The intent of this proposed standard, § 23.1309(b), is to have those systems whose failure would be catastrophic or potentially catastrophic be evaluated using the latest available techniques and, thereby, better assure that failures of such systems will not occur.

At the conference, a commenter expressed the opinion that the language of conference proposal 434 would require all system items to meet the analysis test and proof of compliance means. This commenter noted that simple and conventional systems can be assessed on the basis of service experience and engineering judgment and noted that low performance, simple designed airplanes should be able to use the existing method of determining compliance. The FAA agrees with this commenter and, as previously stated, proposed § 23.1309(a) is structured to allow the use of existing procedures for simple airplane system designs.

Another conference commenter expressed a concern over the applicability of Section XX.1309 of any of the airworthiness parts. To clarify the applicability of § 23.1309, a definition of "system" is included in proposed § 23.1309(f).

One commenter noted the difference in the way Part 23 and Part 25 airplanes are used and suggested different probability values for Part 23, but did not provide recommended values. In reviewing this comment, it should be noted that the probability terms do not have values assigned in these proposed requirements or other airworthiness parts. Extremely improbable failure conditions have been defined in FAA guidance material as those which are so unlikely that they are not expected to occur within the total operational life of all airplanes of one type. If such a definition were to be applied to items of structure, a failure that would cause the loss of a wing would be a type of catastrophic failure that would not be expected to occur in the life of all airplanes of one type. As cited, current requirements applicable to other portions of Part 23 airplanes, such as structures, establish a level of safety that does not permit the occurrence of catastrophic failures and, accordingly, there is no justification for allowing a lower level of safety for possible catastrophic system failures. Accordingly, the proposed language of this proposal uses the term "extremely improbable" to define this critical type of failure condition. Less critical failure condition terms used in airworthiness requirements for other categories of aircraft are also included in this proposal.

Other review conference comments, not limited to any one commenter, questioned the applicability of the rational method for analysis to two- to four-place airplanes. While this proposal allows the continued use of existing certification procedures for certification of simple airplane designs, it would, however, also require the use of rational procedures if the airplane's design includes systems for the accomplishment of safety-critical functions. Because the proposed additional requirements of this proposal are added in such a manner as to make their use dependent on the complexity of the affected design and because the degree of reliability required in a particular design will depend upon the criticality of the system function, there is no reason to limit these requirements to a size of airplane or to differentiate between single- or multiengine types of airplanes.

One review conference commenter questioned the power supply requirements of the conference proposal number 434. This commenter asked if this proposed requirement is related purely to electrical power, and if it is shouldn't it be located elsewhere in Part 23. During the discussion of this question, it was pointed out by FAA panel members that the proposed requirement does not specify an "electrical" power supply and, therefore, would be applicable to any form of power supply provided for a system that is required by this chapter. No additional language has been added to identify the types of power supply. The proposal language, which is similar to that used in other airworthiness parts, identifies requirements for power supplies used for each item of equipment, system, and installation required by this chapter. By its applicability, it is clear that the requirements are not limited to electrical power supplies.



Additional discussions at the conference suggested that current § 23.1309 was adequate and that the only need was an Advisory Circular (AC) to identify acceptable means of compliance. At that time, the FAA made it known that was not the case, and cited instances in which a complex safety-critical system had been used in the design of small airplanes that could not be properly evaluated under the existing "single fault" concept of § 23.1309. The FAA further noted that the number of occurrences where such a complex safety-critical system was being used in the design was increasing rapidly and noted the need to revise the requirements to keep them current with this rapid expansion of technology being applied to the design of small airplanes.

The FAA attempted to address some current issues relative to electronic flight instrument systems and autopilot monitors and limiters in advisory circulars. FAA reviews of resulting material in the draft advisory circulars determined that the contents were rulemaking in nature and not suitable in an advisory circular. The concern was relative to the complexity and criticality of such equipment. This proposal, when adopted, will provide a regulatory basis for determining the criticality level of such systems and require corresponding levels of reliability. Therefore, the FAA finds that there is a need to proceed and develop a proposal without further delay. Proposed § 23.1309 of this notice provides reliability requirements which are based on the criticality of the system's function and will provide the updated standards needed for the certification of complex safety-critical systems in small airplanes.

*Reference:* Conference proposal 434.

3. Part 23 is amended by adding a new § 23.1311 under the heading "General" to read as follows:

**§ 23.1311 Electronic display instrument systems.**

Unless an applicant requests evaluation for a more limited kind of operation pursuant to §§ 23.1525, 23.1559, and 23.1583(h), it is assumed that each airplane certificated to the requirements of this section is to be approved for operation in IFR conditions and the assessment of failures for compliance with § 23.1309 must consider these conditions. Electronic display indicators, including those incorporating more than one function, must comply with paragraph (a) or (b) as appropriate.

(a) Electronic display indicators may be grouped on the instrument panel and centered as nearly as practicable about the vertical plane of each required pilot's forward vision for compliance with § 23.1321—

(1) Provided the instruments required by § 23.1303 (a), (b), and (c) that are independent of the airplane's electrical power system, are installed in accordance with the requirements of § 23.1321(a), and

(2) The electronic display systems comply with paragraphs (c) and (d) of this section and other applicable sections of this part.

(3) This paragraph applies independently to each pilot station required for certification or by the applicable operating rules.

(b) Except for instruments required by § 23.1303 (a), (b), and (c), electronic display indicators may be installed in lieu of mechanical or electromechanical instruments provided the installations comply with paragraphs (c) and (d) of this section and other applicable sections of this part.

(c) Electronic display indicators, including those with features that make isolation and independence between powerplant instrument systems unfeasible, must—

(1) Be easily legible under all lighting conditions encountered in the cockpit, including direct sunlight, considering the expected electronic display brightness level at the end of the electronic display indicator's useful life. Specific limitations on display system useful life must be addressed in the Instructions for Continued Airworthiness requirements of § 23.1529.

(2) Not inhibit the primary display of attitude, airspeed, altitude, or powerplant parameters needed by any pilot to set power within established limitations, in any normal mode of operation.

(3) Not inhibit the primary display of engine parameters needed by any pilot to properly set or monitor powerplant limitations during the engine starting mode of operation.

(4) Have independent secondary attitude and rate of turn instruments that comply with § 23.1321(a) if the primary electronic display instrument system for a pilot presents this information. Instrument displays that are located in accordance with § 23.1321(d) are considered the primary displays.

(5) Incorporate sensory cues for the pilot that are equivalent to those in the instrument being replaced by the electronic display indicators, and

(6) Incorporate visual displays of instrument markings, required by §§ 23.1541 through 23.1553 or visual displays that alert the pilot to abnormal operational values, or approaches to established limitation values, of each parameter required to be displayed by this part.

(d) The electronic display indicators, including their systems and installations, and considering other airplane systems, must be designed so that one display of information essential for continued safe flight and landing will remain available to the crew, without need for immediate action by any pilot for continued safe operation, after any single failure or probable combination of failures.

(e) As used in this section, "instrument" includes devices that are physically contained in one unit, and devices that are composed of two or more physically separate units or components connected together (such as a remote indicating gyroscopic direction indicator that includes a magnetic sensing element, a gyroscopic unit, an amplifier, and an indicator connected together). As used in this section, "primary" display refers to the display of a parameter that is located in the instrument panel such that the pilot looks at it first when wanting to view that parameter.

**Explanation**

A significant number of electronic display systems have become available for installation in small airplanes. These systems include display of all parameters that are typically displayed on a small airplane instrument panel. Approval of these systems in small airplanes was addressed by several conference proposals that proposed to amend §§ 23.1303, 23.1305, 23.1321, 23.1323, and 23.1337.

Conference proposal 420 from the General Aviation Manufacturers' Association (GAMA) recommended removing the words "instrument" and "indicator" from § 23.1303 and require specific "data" be displayed rather than require specific "instruments". Conference proposal 428 recommended amending § 23.1305 by changing "powerplant instruments" to "powerplant displays" and "indicators" and "indicating" to "displays". Conference proposal 436 recommended amending § 23.1321 by changing "instrument" to "display" or "data on the flight displays". Conference proposal 439 recommended amending § 23.1323 by changing "instrument" and "indicator instrument" to "display". Conference proposal 450 recommended amending § 23.1337 by adding a new paragraph (e) to state "Displays other than individual indicators may be used if it is shown that adequate isolation is provided

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between engines and engine parameters."

The basic justification given for all of the recommended changes is that the current requirements of Part 23 were written when the required data could only be supplied using individual instruments. New technology now allows this same data to be displayed in a different manner, possibly with all the data on a common display.

It is desirable to take advantage of available new technology. The benefits include safer (less prone to misreading) displays with less cockpit space and of equal or lower cost than the cluster of typical individual instruments. As technology advances, the amount of energy used for these displays and the cost can be further reduced.

The FAA agrees that when current requirements of Part 23 were written, only mechanical or electromechanical instruments that functioned independently for each parameter displayed were envisioned. The engine instruments and systems envisioned were isolated and independent. A single failure of any engine or any of its systems could not affect the operation of any other engine. The requirements were based on "single fault" or "fail safe" concepts and, when these current requirements were promulgated, the FAA did not envision use of complex, safety-critical systems in small airplanes. All envisioned instruments were single function; i.e., a failure would cause loss of only one instrument function, although several instrument functions may have been housed in a common indicator case.

Since the conference, the FAA has further studied the problems associated with installation of current technology indicators in small airplanes. As is discussed relative to amending § 23.1309, these current technology systems have potential for being critical for continued safe flight of the airplane. The potential for increased clarity in data display and the concentration of data displays in a single indicator increases the potential criticality of failures. It is anticipated that pilots using these new instrument systems will become increasingly dependent on the use of them because of the tasks they perform for the pilot. After a period of time, where these electronic indicators are located in the primary instrument panel locations, it is anticipated that pilots will find it more difficult to transition to back-up or secondary indicators when failure occurs, such as reverting to use of needle-ball and airspeed for airplane attitude control when the artificial horizon instrument system fails.

The electronic indicators are expected to have significantly different modes of failure where they go from performing perfectly to total failure, whereas the mechanical and electromechanical indicators typically deteriorated in performance over a period of time such that they were replaced before a total failure that prevented them from providing useful information to the pilot.

Current technology instrument systems with electronic indicators for small airplanes may vary considerably in functional capability, complexity, and cost. Due to the economic considerations, the most expensive, complex, and reliable electronic instrument systems will only be installed in airplanes fitting a like description.

The electronic instrument systems can readily provide digital indication of exact numbers, moving pointer on a scale, and various other formats and combinations of them all. The FAA is especially concerned that pilots be provided adequate sensory cues as to whether numbers displayed are increasing or decreasing and how fast they are changing. Also of concern is that digital indication may not show the normal operating range cues to direction or rate of change or operational limits.

As a result of these concerns and this further review of possible ways to address electronic instrument systems in Part 23, the FAA concluded that a new § 23.1311 for these systems is better than amending several sections, which may result in an unclear treatment of the issue.

Relative to identifying the indicating means of the electronic instrument system, the FAA has reviewed existing materials and functions to be performed and has concluded the proper identifier is "indicator" rather than "display" as recommended.

Sections 23.1303 (a), (b), and (c) require basic flight and navigational instruments for small airplane certification. These mechanical instruments have performed their intended function very well over the years and these basic instruments will remain necessary for safety even when the current technology systems are installed. Therefore, this proposal will allow displacement of these instruments from the primary location for such instruments for compliance with the requirements of § 23.1321, provided their location in a secondary location is such that they are usable and in compliance with § 23.1321(a) requirements. It is the FAA's intent that this will continue the requirements that airspeed, altitude, and magnetic compass information will remain available to the pilot after total failure of the airplane's electrical power system.

This proposal will allow electronic display indicators for engine parameters without isolation and independence of engine instruments as is now required. In developing this proposal, the FAA considered the operational characteristics of airplane engines, the proposed amendment to § 23.1309 in this notice for assessing failures and their consequences, and the cues available to the pilots for assuring an engine instrumentation failure would not create a condition where the pilot would encounter significant difficulty in operating the engines.

Due to the dependence pilots are expected to place on use of electronic indicators when the indicators include information essential to airplane attitude control, the FAA is proposing secondary attitude and rate-of-turn instrument systems that comply with § 23.1321(a) when the electronic indicators include display of attitude and rate-of-turn.

Electronic indicator legibility is expected to change as the cathode ray tubes (CRT) used in the electronic indicators age. Therefore, it is considered necessary that instructions for continued airworthiness relative to the useful life be addressed in compliance with § 23.1529.

Electronic indicator systems will have great potential for inhibiting information to maximize the effect of other information in various phases of flight. Attitude, airspeed, altitude, and powerplant parameters needed to set power within established limits are information the FAA has concluded must be displayed during all normal modes of operation and, therefore, may not be inhibited during normal modes of operation. Information that is considered essential to continued safe flight must remain available on indicators usable by the pilot after any single failure or combination of probable failures without need for immediate crew action. At a minimum, without considering specific characteristics of an airplane's design, attitude, airspeed, and altitude must remain available without any crew action after such a failure, whereas a failure that would remove other essential information from displays, without resulting in an immediate hazard, would be acceptable provided the essential information could be returned to a usable indicator in a safe elapsed time.

*Reference:* Conference proposals 420, 428, 436, 437, 439, and 450.

4. Section 23.1321 is amended by revising paragraph (a) and the introductory text of paragraph (d); and by adding a new paragraph (d)(5) to read as follows:



**§ 23.1321 Arrangement and visibility.**

(a) Each flight, navigation, and powerplant instrument for use by any required pilot during takeoff, initial climb, final approach, and landing must be located so that any pilot when seated at the controls can monitor the airplane's flight path and these instruments with minimum head and eye movement. The powerplant instruments for these flight conditions are those needed to set power within powerplant limitations.

* * * * *

(d) For each airplane certificated for flight under instrument flight rules or of more than 6,000 pounds maximum weight, the flight instruments required by § 23.1303, and, as applicable, by the operating rules of this chapter, must be grouped on the instrument panel and centered as nearly as practicable about the vertical plane of each required pilot's forward vision. In addition:

* * * * *

(5) Electronic display indicators may be used for compliance with paragraphs (d)(1) through (d)(4) of this section when such displays comply with requirements in § 23.1311.

**Explanation**

This proposal would require those instruments used during certain maneuvers to be located such that minimum eye or head movement is needed to monitor the airplane's flight path and these instruments. Powerplant instruments for which the location requirements apply would be limited to those needed to set power within powerplant limitations. The proposed revision of paragraph (d) would extend the T-arrangement of flight instruments to include all small airplanes certificated for all flight under instrument flight rules. This revision also clarifies the rule relative to instrumentation that must be provided for each pilot required for type certification or by the applicable operating rules. If a pilot is required by any applicable requirement, then that pilot must be provided all instrumentation required for any operations for which the airplane is approved.

Airplanes certificated to Part 23, in most cases, are certificated with only one required pilot. However, many of such airplanes subsequently enter Part 135 operations where two pilots are required. A significant function of the second required pilot is to monitor the airplane's flight path regardless of whether or not this second pilot is controlling the flight path. Therefore, this second pilot must have flight instruments available that are installed in accordance with all of the criteria of Part 23 and the affected operating rules, with specific emphasis on the requirements of § 23.1321.

Conference proposal 436 recommended provisions for electronic displays to be included in § 23.1321. The current rules were written when electromechanical instruments were all that were available and the required data could only be supplied using individual instruments. Current technology now allows this same data to be displayed in a different manner, possibly with all the data on a common electronic display indicator. The benefits include safer (less prone to misreading) displays using less cockpit space with equal or lower cost than the cluster of individual instruments. As technology advances, the amount of energy used for these instrument systems and their cost can be reduced. As previously discussed relative to proposed § 23.1311, the FAA has determined that a new section on electronic indicators is the appropriate method of incorporating such requirements into Part 23, with a cross reference to that new section (§ 23.1311) in § 23.1321.

Conference proposal 437 recommended additional requirements relative to pilot sensory cues and digital displays. The digital displays that need sensory cues for the pilot are addressed in proposed § 23.1311. Further requirements relative to sensory cues in § 23.1321 are not considered necessary at this time.

Conference proposals 435 and 436 recommended changing paragraphs (d)(2) and (d)(3) of § 23.1321 to delete or replace the requirement for locating airspeed and attitude displays directly to the left and right respectively of the altitude display. The recommended replacement requirement for "directly" was "Its vertical orientation must be such that it easily fits into the pilot's cross check eye scan." These proposals were supported by commenters at the conference.

The FAA has encountered significant difficulty in administering requirements that are dependent on purely subjective evaluations. The FAA is also aware that the current requirements have been administered, in some cases but not all, such that the centers of airspeed, attitude, and altitude indicators must be on a straight horizontal line. Since the conference, the FAA has further evaluated these recommended changes and has determined that the requirement contains adequate flexibility for foreseeable designs and is not proposing the recommended change as part of this action. By not proposing a change, this requirement will remain consistent in Parts 23 and 25.

*Reference:* Conference proposals 435, 436, and 437.

## PART 91—GENERAL OPERATING AND FLIGHT RULES

5. The authority citation for Part 91 continues to read as follows:

**Authority:** 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

6. Section 91.33, paragraph (d)(3)(i), is amended by removing the word "Large", by capitalizing the following word to read "Airplanes", and by adding the words "the instrument requirements prescribed in" after the words "in accordance with".

Explanation:

The FAA proposes to remove the word "Large", which begins the sentence that states the alternative to the requirement for a gyroscopic rate-of-turn indicator in § 91.33 and add words to clarify that incorporating the requirements of § 121.305(j) by reference extends the criteria of § 121.305(j) to all airplanes operating under Part 91 regardless of size or propulsion means. The proposal, if adopted, would permit operation of small airplanes in accordance with the instrument and equipment requirements for instrument flight in the same manner as presently permitted for large airplanes by the installation of a third attitude indicating instrument system complying with the instrument and installation requirements of § 121.305(j).

The FAA fully recognizes that, for instrument flight, § 91.33 only requires, in part, a single gyroscopic bank-and-pitch indicator (artificial horizon/attitude indicating instrument system) in addition to a single gyroscopic rate-of-turn indicator, except on certain aircraft. The FAA does not consider it appropriate, nor in the interest of safety in those airplanes where only a single bank-and-pitch indicator is installed, to permit the substitution of a second bank-and-pitch indicator in lieu of the required gyroscopic rate-of-turn indicator. The bank-and-pitch indicator, being of a more complex design and, therefore, subject to additional failure

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modes than a gyroscopic rate-of-turn indicator, could have a higher failure rate. In the case when one attitude instrument fails, the pilot is denied information as to which of only two installed attitude instruments is providing correct attitude reference. In contrast, installation of a third attitude instrument, in lieu of the gyroscopic rate-of-turn indicator, will provide an inherent voting system. Three independent attitude instruments allow the crew to select two attitude instruments which agree to be the correct attitude of the airplane.

This proposal would respond to issues raised in petitions for exemptions and type certificate applications for airplanes when electronic instrument systems are installed that do not include a gyroscopic rate-of-turn indicator and when the airplane design includes three attitude indicating instrument systems with at least one such system installed in accordance with § 121.305(j) instrument installation criteria. While not specifically discussed at the Small Airplane Airworthiness Review Conference, the FAA considers proposals herein addressing §§ 23.1309, 23.1311, and 23.1321 to be directly related to this proposed revision to § 91.33, and to the proposals to amend §§ 135.149 and 135.159 in proposals 5–8 and 5–9 of this notice.

The cited proposals to amend §§ 23.1309, 23.1311, and 23.1321 provide criteria applicable to approval of electronic flight instrument systems (EFIS) installations. Some EFIS do not incorporate a rate-of-turn indicator in the design. Other EFIS present the rate-of-turn indication in the normal mode of operation; however, in the approach mode, the indication normally presented as rate-of-turn becomes an indication of deviation from the localizer course. The FAA does not consider it necessary for safety or in the public interest to require a rate-of-turn indicator in a small airplane when three attitude indicating instrument systems are installed in accordance with the instrument installation criteria of § 121.305(j) as permitted for large airplanes.

Section 121.305(j), instrument installation criteria, has been applied to transport category airplanes successfully for many years. However, this proposed change to § 91.33 will extend these criteria such that they will be applied to small airplanes by persons who are not accustomed to evaluating an airplane's electrical system to determine whether the airplane is eligible to have a third attitude indicator installed. Therefore, the FAA plans to issue an advisory circular to provide guidance for installation of third attitude indicators in small airplanes.

This proposed change to § 91.33 does not change the FAA's intent relative to pilot certification and continued proficiency in the use of partial panel instrumentation. Airplanes that are not configured such that partial panel proficiency can be demonstrated will not be accepted for demonstration of instrument proficiency during initial IFR ratings or for demonstrations of recurrency.

The FAA has been considering rulemaking to relieve the regulatory burden imposed by the requirement for a rate-of-turn indication, regardless of other airplane design features that would provide the intended level of safety, since the Small Airplane Airworthiness Review Conference. In the FAA deliberations to formulate this proposed rule, a lesser requirement (than a third attitude instrument) was considered and rejected because it did not result in an acceptable level of safety after a single probable failure.

Recently, on May 5 and 20, 1987, Beech Aircraft Corporation petitioned for amendment of §§ 91.33(d)(3) and 135.159(a), respectively, to allow adding an additional attitude instrument in lieu of the required rate-of-turn instrument. The FAA agrees the rules should be amended relative to the rate-of-turn instrument, but does not agree that direct replacement of the rate-of-turn instrument with an attitude instrument will provide the necessary level of safety because many airplanes could then be equipped with two attitude instruments and no rate-of-turn instruments. The safety issues concerning aircraft with less than three attitude instruments and with no rate-of-turn instrument were previously discussed herein. Therefore, the FAA is addressing the issue, raised by Beech Aircraft Corporation in its petition, in this notice, but is not proposing the lesser requirement recommended by Beech.

*Reference:* No conference proposals addressed this proposed revision.

## PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS

### Citation

7. The authority citation for Part 135 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1355(a), 1421 through 1431, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

8. Section 135.149 is amended by revising paragraph (c) to read as follows:

**§ 135.149 Equipment requirements: General.**

* * * * *

(c) For turbojet airplanes, in addition to two gyroscopic bank-and-pitch indicators (artificial horizons) for use at the pilot stations, a third indicator that is installed in accordance with the instrument requirements prescribed in § 121.305(j) of this chapter.

* * * * *

### Explanation

The FAA is proposing a revision to this section to establish uniformity in the installation requirements of the various operating rules when a third attitude instrument system is required to be installed. The current requirements as set forth in § 135.149 (c)(1) through (c)(6) are substantially the same as set forth in § 121.305(j) and the requirements of § 91.33 reference § 121.305(j) as the applicable criteria for approval of the third attitude instrument system in lieu of the rate-of-turn indicator in large airplanes. Therefore, to preclude any misunderstanding of requirements that are to be identically applied, the FAA is proposing to incorporate the instrument requirements of § 121.305(j) into § 135.149 by reference.

*Reference:* No Conference proposals addressed this proposed revision.

9. Section 135.159 is amended by redesignating paragraphs (a)(1) and (a)(2) as (a)(2) and (a)(3) respectively; and by adding a new paragraph (a)(1) to read as follows:

**§ 135.159 Equipment requirements: Carrying passengers under VFR at night or under VFR over-the-top conditions.**

* * * * *

(a) * * *

(1) Airplanes with a third attitude instrument system usable through flight attitudes of 360 degrees of pitch-and-roll and installed in accordance with the instrument requirements prescribed in § 121.305(j) of this chapter.

* * * * *

### Explanation

The FAA proposes an alternative requirement to the required gyroscopic rate-of-turn indicator in § 135.159 applicable to airplanes. The proposal, if adopted, would permit operation with any airplane used in Part 135 operations in substantially the same manner as airplanes similarly equipped and used in Part 121 operations.

The FAA fully recognizes that carrying passengers under VFR at night and under VFR over-the-top conditions requires, as a minimum, a single gyroscopic bank-and-pitch indicator (artificial horizon/attitude indicating instrument system) in addition to a single gyroscopic rate-of-turn indicator. The FAA does not consider it appropriate nor in the interest of safety in those airplanes where only a single bank-and-pitch indicator is installed to permit the substitution of a second bank-and-pitch indicator in lieu of the required gyroscopic rate-of-turn indicator. The bank-and-pitch indicator, being of a more complex design and, therefore, subject to more failure modes than a gyroscopic rate-of-turn indicator, could have a higher failure rate. In the case where one attitude instrument fails, the pilot is denied information as to which of only two installed attitude instruments is providing correct attitude reference. In contrast, installation of a third attitude instrument, in lieu of the gyroscopic rate-of-turn indicator, will provide an inherent voting system. Three independent attitude instruments allow the crew to select the two attitude instruments which agree to be the correct attitude of the airplane.

Part 135 operators of turbojet-powered airplanes are required to have installed three bank-and-pitch instruments (§ 135.149(c)) and, at least one rate-of-turn indicator (§ 135.159(a)). In contrast, Part 121 operators of turbojet-powered airplanes are required to have installed three bank-and-pitch indicators but not a rate-of-turn indicator. The equipment requirements of §§ 135.149(c) and 135.159(a) impose more stringent instrument installation requirements upon operators of turbojet-powered airplanes under Part 135 than do the operating rules of Part 121. The FAA considers that, when taken together, the requirements of §§ 135.149(c) and 135.159(a) are an unnecessary regulatory burden and the proposed revisions are in the public interest.

*Reference:* There were no conference proposals addressing this proposed revision.

Issued in Washington, DC, on February 23, 1989.

**M.C. Beard,**

*Director, Aircraft Certification Service.*

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Part V

# Department of Labor

Employment and Training Administration

**Job Training Partnership Act; Performance Standards for Programs Funded Under the Economic Dislocation and Worker Adjustment Assistance Act; and Annual Program Report and Quarterly Financial Report for Worker Adjustment Programs; Notices**

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**DEPARTMENT OF LABOR**

**Employment and Training Administration**

**Job Training Partnership Act; Performance Standards for Programs Funded Under the Economic Dislocation and Worker Adjustment Assistance Act**

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Notice of performance standards for the Economic Dislocation and Worker Adjustment Assistance Program for Program Year (PY) 1989.

**SUMMARY:** The Economic Dislocation and Worker Adjustment Assistance (EDWAA) Act (Title VI, Subtitle D, of the Omnibus Trade and Competitiveness Act of 1988) revised Title III of the Job Training Partnership Act (JTPA), necessitating the issuance of standards for the new worker adjustment program. As a transition strategy, the Department is issuing a single performance standard, the entered employment rate, for the worker adjustment program for Program Year (PY) 1989 (July 1, 1989–June 30, 1990) as well as an optional wage at placement goal. Additional measures will be implemented in the future as data become available. Governors are required to set an entered employment rate standard for each substate grantee and may adjust this standard to account for variations in participant characteristics, local economic conditions, and types of services provided.

**EFFECTIVE DATE:** July 1, 1989.

**FOR FURTHER INFORMATION CONTACT:** Martha Muirhead. Telephone: (202) 535–0687.

**SUPPLEMENTARY INFORMATION:** On December 13, 1988, proposed performance standards for the Economic Dislocation and Worker Adjustment Assistance Act were published in the **Federal Register** at 53 FR 50134. Interested parties were invited to submit written comments through January 13, 1989.

**A. Purpose of Performance Standards**

Pursuant to section 106(g) of the JTPA, the Secretary of Labor shall prescribe performance standards for programs under Title III based on placement and retention in unsubsidized employment. These measures of performance reflect Congress' desire to emphasize program outcomes for individuals that assess how well the JTPA system is meeting its statutory goals of increased employment and earnings and reduced welfare dependency. Title III performance standards measure the effectiveness of worker adjustment programs to adequately prepare dislocated workers to reenter productive employment and to enable them to retain that employment over time. The new provisions contain a number of program features which emphasize the importance of quality training in ensuring the employability of dislocated workers. Other program objectives—increased coordination, timely service delivery to workers and communities undergoing economic change, and improved fiscal accountability—are designed to ensure that service and funding decisions will support the goals of the Act.

For PY 1989 the Secretary intends to set an entered employment rate standard and an optional wage at placement goal for Title III. To ensure systemwide accountability, substate areas and statewide programs will be subject to performance standards. Reporting for the worker adjustment program will begin to gather the data needed to set and adjust a postprogram employment, job retention, replacement wage, or other standard considered appropriate for dislocated worker programs for future implementation.

Prior to EDWAA, substate administration was not required for dislocated worker programs; therefore, substate client characteristics and program performance data were not collected. Because of limited data, adequate adjustment models for follow-up standards for Title III are not currently available. Data from an alternative national database—the JTPA Quarterly Survey—will enable the Department to issue initial adjustment models for Governors' use in setting substate entered employment rate standards and placement wage goals until substate data on EDWAA programs are available.

**B. Authority To Issue Performance Standards**

Section 106(g) of the JTPA directs the Secretary to establish performance standards for Title III dislocated worker programs.

**C. Discussion of Comments**

The Department of Labor (Department) received 41 written comments on the proposed issuance within the comment period. Most of the comments focused on the proposed EDWAA reporting requirements which were published for comment simultaneously. Only a few remarks were received on the proposed standards. The following summarizes the comments received and the Department's response.

- Overall, there was general agreement that the anticipated retention and wage replacement standards are appropriate measures of success for Title III programs. Substate performance standards and adjustment models were also viewed as necessary in setting reasonable performance expectations that account for local variations in clients, services and economic conditions.
- Several comments centered on whether States are required to establish monetary incentives to reward local program performance.

There was concern that creating a system of cash awards would be impractical and unproductive, because there are insufficient funds in EDWAA to make awards meaningful. There was also concern that cash awards would reduce State flexibility in creating meaningful alternative incentives. The Department concurs that there is no statutory requirement for *monetary* incentives. However, out of concern that performance standards would create disincentives to longer-term training, Congress required at section 311(a) that the State plans include incentives to provide training of greater duration for those who require it. Because program experience in Title II has shown monetary incentives to be a powerful motivation for achievement, the Department permitted States to use a portion of the 40 percent funds under section 302(c)(1) for rewarding substate area performance.

Another issue raised in the comments involved those employees who remain with their original employer in instances where a layoff is averted. Currently, the definition of the entered employment rate treats all participants who leave the program without obtaining a job as negative terminations. Because one goal of EDWAA is early intervention, it is possible that resources will be spent on participants who do not lose their jobs as a result of successful layoff aversion. To hold programs harmless for serving such participants, the calculation of the entered employment rate for EDWAA performance standards will exclude all participants who are called back or retained by their original employer.

**D. Rationale for Substate Standards, Incentives, and Sanctions**

Under the new provisions, funds are to flow to substate areas to provide services to dislocated workers. Section 106 of the JTPA requires the Secretary to establish standards for dislocated worker programs, and the Title III amendments call for the Secretary to set parameters to guide Governors in adjusting substate area standards for varying local conditions. National standards are set with adjustments available for substate areas based on who is being served and what services are being provided.

The revised Title III provisions do not specifically set aside funds for incentives. However, a portion of the 40 percent funds reserved for State activities under section 302(c)(1) may be used for rewarding substate area performance, in particular those programs that provide lengthier, more substantive training to ensure the long-term employability of participants. Departmental regulations clarify that sanctions in section 106(h) apply to worker adjustment programs. Because the new Title III provisions enable Governors to redesignate substate areas every two years, the additional imposition of a reorganization plan will not be required. For the transition year (PY 1989), rewards and sanctions are not required; however, States should establish such policies for implementation by PY 1990.

**E. Rationale for the Proposed Measure**

The appropriateness of any performance standard should be judged by the extent to which it measures the goals of the program. The goals of the worker adjustment program are to adequately prepare workers for reemployment and to ensure their continued employability through a broad range of quality retraining, services and participant support. The measures defined in JTPA section 106(g) as appropriate for dislocated worker programs are placement and retention in unsubsidized employment.

As a transition strategy, the entered employment rate standard is proposed as the only measure against which performance will be assessed for PY 1989, continuing the standard set in PY 1988. The level may be updated in PY 1990 at the beginning of the next two-year cycle after the worker adjustment program is fully operational. The Department provided guidance on adjusting substate area standards in Training and Employment Information Notice No. 19–88, dated February 3, 1989. Additional measures will be adopted for this program in PY 1992 when sufficient substate data become available. Signed at Washington, DC this 27th day of February, 1989.

**Roberts T. Jones,**

*Assistant Secretary For Employment and Training.*



**Training and Employment Guidance Letter No.**

From: Roberts T. Jones, Assistant Secretary of Labor.

Subject: Secretary's Performance Standards for Programs Funded Under the Economic Dislocation and Worker Adjustment Assistance (EDWAA) Act for Program Year 1989.

*1. Purpose*

To transmit to the State Worker Adjustment Liaisons the Secretary's national numerical standards and implementing instructions for new programs serving dislocated workers for PY 1989.

*2. Background*

Section 106(g) of the Job Training Partnership Act (JTPA) directs the Secretary to establish performance standards for dislocated worker programs. The Secretary also issues instructions for implementing standards and parameter criteria for States to follow in adjusting the Secretary's standards for substate areas.

*3. Performance Management Goals for Program Year 1989*

Program Year 1989 marks the beginning of a new performance management system, while serving as a transition year between the former Title III program and the Economic Dislocation and Worker Adjustment Assistance (EDWAA) Act program. The objective of performance standards is to measure the effectiveness of worker adjustment programs in meeting the immediate goal of obtaining reemployment for dislocated workers and the long-term goal of their continued employment.

*4. Performance Measures for PY 1989*

One performance measure will be required for the worker adjustment transition year. This measure is the entered employment rate. An optional average wage at placement or other appropriate measures may also be adopted by Governors. The proposed reporting system will collect the data needed to set and adjust job retention, replacement wage, post-program and/or other standards appropriate for dislocated worker programs for future implementation.

*5. Secretary's National Numerical Standards for PY 1989*

The numerical standard is derived from the PY 1986 Title III performance data reported on the JTPA Annual Status Report (JASR).

An entered employment rate of 64 percent is the Secretary's national standard for PY 1989 and is the departure point for adjustments in the Department's optional adjustment model. Governors may also establish an average wage at placement goal, with the departure point left to the discretion of each Governor. The entered employment rate of 64 percent is set at a level that if worker adjustment programs continue to perform in the same manner as JTPA Title III in PY 1986, 75 percent of the system should exceed this standard.

*6. Implementation Provisions*

The following implementation requirements must be followed:

*a. Required Standards.* Governors are required to set for each substate area a numerical performance standard for entered employment.

*b. Setting the Standards.* The Governor may set the substate area standards by using the Secretary's numerical standard or by adjusting this standard. Such adjustments must conform to the Secretary's parameters described below: Procedures must be:

- Responsive to the intent of the Act;
- Consistently applied among substate areas;
- Objective and equitable throughout the State; and
- In conformance with widely accepted statistical criteria.

Source data must be:

- Of pubic use quality; and
- Available upon request.

Results must be:

- Documented; and
- Reproducible.

Adjustment factors must be limited to:

- Economic factors;
- Labor market conditions;
- Characteristics of the population to be served;
- Geographic factors; and
- Types of services to be provided.

The Department has developed an initial optional adjustment methodology for Governor's use in varying substate standards to account for participant characteristics and local economic conditions. Worksheets were included in Training and Employment Information Notice No. 19–88, dated February 3, 1989, for Governors to use at their discretion. The Department's methodology conforms to the parameter criteria cited above. Should the Governor choose to use an alternative methodology, or further adjust the Departmental model, it must conform to the parameter criteria and be documented in the State plan prior to the program year to which it applies. The State Job Training Coordinating Council must have an opportunity to consider adjustments to the Secretary's standard and to recommend variations.

*c. Performance Standards Definitions.* Governors must compute the performance of their substate areas according to the following definitins:

*(1) Entered employment rate.* Number of individuals who entered employment at termination excluding those who were recalled or retained by original employer after receipt of a layoff notice divided by total terminations excluding those who were recalled or retained by original employer after receipt of a layoff notice. The entered employment rate is computed from the Worker Adjustment Annual Program Report as follows:

*(Column B) I.C.1. + I.C.2*
(Column B) I.C. – I.C.3

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*(2) Average wage at placement.* Average hourly wage for all persons who entered employment at the time of termination. (Line 26 of Worker Adjustment Annual Program Report)

*7. Application of the Performance Standards*

Performance standards are to be applied to the following programs funded under section 302: All of section 302(c)(1) State activities, sections 302(c)(2) and 302(d) substate area activities. Performance goals will be set for programs operated under section 302(a)(2) Secretary's National Reserve; however, standards will not apply.

*8. State Action*

States should ensure that all substate grantees are promptly informed of this planning and policy guidance.

*9. Inquiries*

Questions concerning this issuance may be directed to Martha Muirhead at (202) 535-0087.

[FR Doc. 89-5106 Filed 3-3-89; 8:45 am]

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## DEPARTMENT OF LABOR

### Job Training Partnership Act: Annual Program Report and Quarterly Financial Report for Worker Adjustment Programs

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Worker Adjustment Annual Program Report and Quarterly Financial Report for Program Year 1989.

**SUMMARY:** The Department of Labor is issuing new program and financial reporting requirements needed to implement the Economic Dislocation and Worker Adjustment Assistance (EDWAA) Act which amended Title III of the Job Training Partnership Act (JTPA). The new reporting system consists of an annual report of program outcomes and worker characteristics and a quarterly financial report of funding availability and expenditures. These reports are designed to collect information that will permit the Department (1) to set transitional substate performance standards and for future standards management; (2) to provide adjusted substate standards for varying types of retraining thus enabling States to award incentives for long-term training; (3) to calculate reallotments and provide for financial reconciliation; (4) to meet Federal responsibilities for program administration, management and oversight; and (5) to respond to public and Congressional requests for information on implementation of the new EDWAA program.

**EFFECTIVE DATE:** July 1, 1989.

**FOR FURTHER INFORMATION, CONTACT:** Karen Greene, Telephone (202) 535-0660.

**SUPPLEMENTARY INFORMATION:** On December 13, 1988, the Department published proposed new reporting requirements for the Economic Dislocation and Worker Adjustment Assistance (EDWAA) program in the **Federal Register** at 53 FR 50117. Interested parties were invited to submit written comments through January 13, 1989. At the same time, the proposed reporting requirements were forwarded to the Office of Management and Budget (OMB) for review pursuant to the Paperwork Reduction Act.

Based on comments received, the proposed reporting forms and instructions have been revised to streamline both the annual and quarterly reports, retaining the most critical data elements needed for performance standards, program management and Federal oversight. Further, to the extent possible, reporting requirements and definitions were revised to permit flexibility and to promote coordination of service delivery from multiple programs. The final report forms and instructions are being published in this **Federal Register** notice for implementation with the EDWAA program beginning in Program Year 1989.

#### A. Authority and Purpose of the Worker Adjustment Program Reporting Requirements

Periodic reporting of activity under EDWAA is necessary to comply with the provisions of JTPA cited below regarding the Secretary's responsibilities and authority for setting performance standards and for program management and Federal oversight.

- *Section 106—Performance standards.* This section directs the Secretary to prescribe standards for dislocated worker programs under Title III. New provisions amending paragraph (e) of this section direct the Secretary to establish parameters within which Governors may vary standards for substate grantees based on local economic factors, characteristics of the population to be served, and types of services to be provided. Section 106(g)(2) further requires an adjustment in performance standards to account for the difference in costs resulting from serving workers receiving needs-related payments.
- *Section 165—Reports, recordkeeping and investigations.* This section requires States and substate grantees to maintain records and report information regarding program performance and fiscal management as specified by the Secretary.
- *Section 169—Administrative provisions.* The Secretary is directed at paragraph (d)(1) to submit an annual report to Congress summarizing program achievements and problems in meeting statutory objectives and, where appropriate, suggest recommendations for program modifications or administrative action.
- *Section 303—Reallotment.* This section requires the Secretary to annually reallot an amount of funds equal to unexpended formula funds in excess of 20 percent of the State's prior year's formula allotment, plus all unexpended formula funds from the year before the prior year.
- *Section 311—Incentives under EDWAA.* Paragraph (a) of this section mandates that each State plan include incentives to provide training of greater duration for those who require it.
- *Section 315—Limitations on uses of funds.* This section describes requirements and limitations on expenditures for retraining activities, needs-related payments and supportive services, and administration in EDWAA programs.
- *Section 322—Federal oversight.* The Secretary is directed at paragraph (a)(4) to monitor performance and expenditures of Title III programs and annually certify compliance with standards prescribed by the Secretary under section 106(g).

These provisions require a new worker adjustment reporting system to conform to programmatic changes associated with the implementation of EDWAA. The new reports include (1) quarterly State financial reporting, and (2) expanded annual performance reporting for State, substate, and National Reserve programs. Justification of this new reporting system is based on the Federal responsibilities for implementation of the provisions of EDWAA, recognizing the fact that:

- Quarterly reporting of expenditures is necessary to comply with the new reallotment requirements, increased Federal oversight responsibility, and budget preparation. It is anticipated that more frequent monitoring will enable the Department and the States to identify financial management problems—especially those associated with the implementation of a new program during the first two years—and resolve them before year's end to minimize Federal reallotment actions.
- Data on program performance, participant characteristics, and types of services provided must be collected at the substate level in order to support the establishment of substate standards and adjustments for varying these standards. Without substate data, objective and defensible local standards cannot be set because the effects on performance of varying significant local conditions cannot be systematically estimated.
- Federal reporting is the most cost effective method for collecting consistent financial, program activity, and performance information across State and substate areas in a timely manner to comply with management and oversight requirements of the Act.



#### B. Reasons for New Reporting Requirements

Existing reporting requirements for Title III have been determined to be inadequate for programs under EDWAA for several reasons:

- The Department anticipates adding new standards in the future—postprogram job retention, a measure of pre/postprogram wage, and separate placement levels for programs offering basic readjustment services only as compared to those providing retraining. Data collection must begin in Program Year 1989 for the Secretary and Governors to have adequate information to set and adjust these standards no later than PY 1992.
- Reporting of training duration and completions by major area of retraining specified in the Act will enable the Department to improve its adjustments to program outcomes by accounting for differences in program intervention and duration. These data will also enable States to establish and implement a system to provide incentives for training of longer duration, as required in the Act.
- New activities and priorities under EDWAA, including significant new State-level responsibilities for rapid response, must be monitored by the Department to ensure effective implementation, and will be the subject of public inquiry and Congressional review.

#### C. Discussion of Comments

In response to the request for comments included with the December 13 publication of proposed EDWAA reporting requirements, the Department received 34 letters from States, local areas, and public interest groups. The overriding concern expressed by a majority of the commenters centered on the magnitude of the effort necessary to implement the proposed reporting system when compared to the size of the program and the level of available resources.

The Department acknowledges the burden of establishing a new program, including the necessary management information and tracking systems. Although Title III provisions have mirrored Title II in the past, EDWAA seeks to focus on specific activities and outcomes for the dislocated worker. To reduce the impact of EDWAA implementation, the Department has streamlined the reporting requirements to capture the more critical data elements needed for EDWAA performance standards, program management and Federal oversight. Restructuring of both the annual and the quarterly report forms has reduced the total number of required reporting elements by one-third.

Specific comments regarding the proposed requirements for the annual and quarterly reports are addressed in the discussions below.

#### Worker Adjustment Annual Program Report (9019)

*Certificates of Continuing Eligibility (CCEs)*

The extent to which this new program feature is utilized by the substate grantees and its impact on the program will be of significant interest to the Department and to Congress. Most of the commenters focused on the burden of tracking CCEs to their ultimate disposition, as required in the interim-final regulations, especially if they are redeemed by another substate grantee. The EDWAA regulations are being clarified to require that records be kept on those CCEs issued and on those redeemed by the grantee, but the grantees do not have to track the certificates outside of the substate area. Since records must be maintained, the reporting burden is minimal and, therefore, these two line items have been retained.

#### Relocated Out of Area

The Department concurs with the commenters' observation that information on the number of placements from retraining who were relocated out of the area is only a subgroup of total relocations. The purpose of this report item, however, is to identify what may be a significant cost (i.e., actual relocation of a household) that will impact on the level of retraining expenditures. Placement in a new job that does not require the expenditure of retraining funds is not at issue. Therefore, this item has been retained as proposed.

#### Additional Termination Categories

Commenters were generally positive about collecting information on the nature of the services that resulted in placements, and information on the termination of participants who were not placed in unsubsidized employment. Some commenters sought additional clarification as to how these terminations will be treated in the calculation of the entered employment rate for performance standards purposes. The termination of participants who transfer was viewed by others as incompatible with coordination with other programs and the seamless delivery of services. The performance standards provisions have been revised to exclude from "total terminations" those participants who have been called back or remained with their employer. Provisions have been included in the reporting instructions that allow grantees the opportunity to continue to track participation through concurrent enrollment in other programs, such as under a case management-type system, if the services are consistent with an initially determined training objective. Final termination, and the outcome achieved as a result of concurrent participation in EDWAA-funded activities or any other program, is to be shown on each grantee's report (State, substate or National Reserve) at the conclusion of all activities. Separate reporting of transfers will be retained, however, to encourage coordination by those grantees which do not have a case management-type capability.

#### Economically Disadvantaged

Commenters took exception to this requirement, citing determination of economically disadvantaged status as excessively burdensome since it requires collection of information on income and family size, as well as calculation and comparison with published tables. Also, reporting of personal, confidential information was considered to be unjustifiable when not related to program eligibility. Therefore, this requirement has been deleted.

#### Dislocated Worker Eligibility Status

Commenters maintained that there is no identifiable connection between eligibility categories and performance outcomes due to varying definitions across States. Valuable performance standards adjustments such as "unemployed 15 out of 26 weeks" and "unemployment compensation claimant" appear redundant with the less objective eligibility categories. Finally, since EDWAA applicants may be eligible under more than one category, the resulting data may underestimate the numbers in each group. Although it is anticipated that

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service levels to the different eligibility groups will be of considerable Congressional interest, these items have been removed from the final report form.

**TRA Claimant**

A number of commenters noted that since TRA benefits may not be available until after enrollment into EDWAA, this would entail the additional burden of tracking and updating participant characteristics after the initial eligibility determination. Because collection, and hence reliability of the data would be problematic, this line has been deleted from the report form.

**Veterans**

Although one commenter questioned collecting information on Veteran status, pursuant to the "Veterans Employment, Training, and Counseling Amendments of 1988," these items have been retained on the final report form.

**Needs-Related Payments/Recipients**

Commenters pointed out that while the Act requires taking into account the cost of needs-related payments when establishing performance standards, it is not clear that the number of participants who received such payments will affect the outcomes. Therefore, the line item for costs of needs-related payments has been retained, while the second line on number of recipients has been deleted.

**Pre-Program Average Hourly Wage**

The calculated average of wages received prior to EDWAA participation was included on the proposed form. While generally supporting the concept, commenters pointed out that:

- This is a complicated item, requiring multiple determinations and computations.
- The individual's wage within a specific time period may not be an appropriate indicator of the wage at the time of dislocation.
- A limited look back period for pre-program wage will increase the likelihood of a zero wage for long term unemployed.

This line item has been retained, but the instructions have been revised to allow for an open-ended look back period to more accurately reflect the dislocation wage, and reduce the chance of a zero pre-program wage.

**Retraining Duration**

Commenters took exception to tracking length of stay according to three different time periods because it is unnecessarily burdensome, particularly when very little EDWAA retraining activity will last more than 52 weeks. Tracking the duration of retraining will be very important as Governors establish incentives to provide longer term training for those who require it, as directed in the Act. However, to reduce the burden of tracking, only two categories—retraining less than 26 weeks and 26 weeks or more—are now required.

**Types of Completed Retraining**

Commenters noted that the types of retraining listed on the report do not capture the variety of possible services under retraining. Exclusive use of the term "classroom training" sends a signal that this type of formalized instruction is the preferred method over other alternatives. Finally, some argued that if acquiring a GED is separately identified, other achievements such as certificates or degrees should also be included. "Classroom training" has been deleted from the line item for occupational skills training to allow for the inclusion of customized training or other appropriate types of occupational retraining. The acquisition of a GED has been deleted as a separate category and has been included in the basic education category.

**Section B—Rapid Response**

The extent of rapid response activity under the Governor's Reserve, which is a significant part of the EDWAA program, will be of considerable interest to the Department and to Congress. Many commenters pointed out, however, that a report that focuses on participants and outcomes is an inappropriate vehicle for collection of non-participant based activity. Moreover, some objected to the conclusions that might be drawn from this information. The number of employees affected by a dislocation is no indicator of the quality or the intensity of a rapid response effort. Absence of a labor-management committee may be the result of many factors beyond the control of the State's dislocated worker unit. And, information on studies relating to a plant purchase will be of little value. Therefore, the number of WARN notices received and initial rapid response contacts made will be monitored on the quarterly report as the more appropriate instrument for reporting general levels of activity.

**Section C—Secretary's National Reserve**

A separate section was included on the annual report to show a breakout of expenditures under the Secretary's National Reserve programs. Comments on this section pointed out that similar types of expenditure information was already being requested on the quarterly report, and these items were inappropriate for a report that focused on participants and outcomes. Therefore, these items are added as an additional column to the revised financial report.

**Worker Adjustment Quarterly Financial Report (9029)**

**Report Submission**

The proposed reporting instructions required submission of financial reports within 30 days after the end of the report period. Commenters questioned why the Department was making an exception for this financial report when other JTPA reports are to be submitted within 45 days after the end of the report period. Some commenters suggested that 30 days was insufficient to collect accurate financial data, resulting in many more resubmissions of revised reports. The quarterly reporting instructions have been modified to allow a 45-day submission period. Further, changes to financial data do not require submission of revised first, second or third quarter reports.

**Year of Fund Source**

New provisions in EDWAA require reallotment of an amount equal to unexpended formula funds for the prior year in excess of 20 percent of the prior year allotment, plus any unexpended funds from the year before the prior year. Commenters pointed out that National Reserve funds are not subject to reallotment, and therefore availability and expenditures should not be reported according to the year in which the funds were made available. The final report package continues to include a breakout of National Reserve funds, however, because this will allow for the annual reconciliation of both formula and discretionary grants from this one report without the current necessity for a separate and additionally burdensome report.

**Program Availability and Expenditures**

The number of cost categories specified in the regulations has been reduced by combining needs-related payments and supportive services as a single category, reducing the reporting categories by one. Also, the reporting instructions have been rewritten and clarified with regard to funds reserved by the Governor for distribution to substate grantees in need, eliminating the need for proposed separate reporting elements.

**Paperwork Reduction Act of 1980**

The Appendix to this notice has been reviewed in accordance with the Paperwork Reduction Act of 1980 by the Office of Management and Budget and approved for the period through December 31, 1992 (OMB No. 1205–0274).

Signed at Washington, DC, this 27 day of February, 1989.

**Roberts T. Jones,**

*Assistant Secretary for Employment and Training.*



**Appendix—Worker Adjustment Annual Program Report and Quarterly Financial Report**

*Combined Reporting Burden for the Economic Dislocation and Worker Adjustment Assistance Act (EDWAA) Annual Program Report and Quarterly Financial Report*

We estimate that it will take an average of 80 hours to complete this information collection including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information. If you have any comments regarding these estimates or any other aspect of this survey, including suggestions for reducing this burden, send them to the Office of Information Management, U.S. Department of Labor, Room N–1301, 200 Constitution Avenue NW., Washington, DC 20210; and to the Office of Management and Budget, Paperwork Reduction Project (1205–0274), Washington, DC 20503.

*Worker Adjustment Program Annual Program Report (ETA 9019)*

1. Purpose

The Economic Dislocation and Worker Adjustment Assistance Act (EDWAA) Annual Program Report (WAPR) displays cumulative data on participation, termination, performance measures and the socio-economic characteristics of all terminees on an annual basis. The information will be used to determine levels of program service and performance measures. Selected information will be aggregated to provide quantitative program accomplishments on a local, State, and national basis.

General instructions. The Governor will submit: (1) A separate WAPR for *each* designated Substate Area (SSA) (a Statewide summary of these SSA data need not be submitted); (2) a separate WAPR covering participants and terminees in statewide, regional or industrywide projects funded under section 302(c)(1)(B) of the Act; and (3) a separate WAPR covering participants and terminees in projects funded under Secretary's National Reserve Grants (section 302(a)(2)). Recipients may determine whether the reports are submitted on WAPR forms or as a computer printout, with data, including signature and title, date signed and telephone number, arrayed as indicated on the WAPR form. If revisions are made to the WAPR data after the reporting deadline, revised copies of the WAPR should be submitted to DOL as soon as possible according to the required reporting procedures. If these revisions affect data reported on the WQFR, then that revised document should also be submitted.

Note: For WAPR reporting purposes, EDWAA shall refer to: (1) Programs operated by Substate grantees with funds authorized under sections 302(c)(2) and 302(d) or otherwise distributed by the Governor under section 302(c)(1) (E) and (2) projects operated by the Governor with funds authorized under sections 302(c)(1) and 302(a)(2) of the Act.

The reporting period begins on the starting date of each Job Training Partnership Act (JTPA) program year, as stated in Section 161 of the JTPA. Reports are due in the National and Regional Offices no later than 45 days after the end of each program year. Two copies of the WAPR are to be provided to: U.S. Department of Labor, ETA, ATTN: TSVR—Room S–5306, 200 Constitution Avenue, NW., Washington, DC 20210.

At the same time an additional copy of the WAPR is to be provided to the appropriate Regional Administrator for Employment and Training in the DOL Regional Office that includes the State in which the JTPA recipient is located.

Note: The current JASR, ETA 8580 (June 1988), is to continue to be used for programs operating solely with PY88 and earlier year's Title III funds. The WAPR is to be used beginning July 1, 1989, for PY89 programs funded under EDWAA (including carrying funds used for EDWAA purposes, if any).

3. Facsimile of Form

See the following page.

4. Instructions for Completing the Worker Adjustment Program Annual Program Report (WAPR)

a. *State/substate area name and address.* On separate sections 302(c)(1) and 302(a)(2) reports, enter the name and address of the State agency that will administer the Statewide programs. For SSA reports, enter the name and address of the Substate grantee that will administer the SSA programs.

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OMB No. 1205-0274
Expires 12/31/92

| U.S. DEPARTMENT OF LABOR Employment and Training Administration<br>[illegible] ADJUSTMENT PROGRAM<br>Annual Program Report | a. STATE/SUBSTATE AREA NAME AND ADDRESS | b. REPORT TYPE<br>( ) SSA # _____<br>( ) Gov Statewide<br>( ) Secy N/Resv | c. REPORT PERIOD<br>FROM 7/1/19__ | TO 6/30/19__ |
|---|---|---|---|---|

| I. PARTICIPATION AND TERMINATION SUMMARY | A. Concurrent Participants | B. All Participants |
|---|---|---|
| A. Issued Certificate of Continuing Eligibility (CCE) | ////////// | |
| B. TOTAL PARTICIPANTS | | |
| 1. All CCEs Redeemed for Retraining | ////////// | |
| C. TOTAL TERMINATIONS | | |
| 1. Entered Unsubsidized Employment From Retraining | | |
| a. Relocated Out of Area | ////////// | |
| 2. Entered Unsubsidized Employment From Basic Readjustment Services ONLY | | |
| 3. Called Back/Remained with the Layoff Employer | ////////// | |
| 4. Transferred to Other JTPA Programs | ////////// | |
| 5. Entered Non-JTPA Training | ////////// | |
| 6. All Other Terminations | ////////// | |

| II. TERMINEE CHARACTERISTICS AND PERFORMANCE MEASURES SUMMARY | | All Terminees |
|---|---|---|
| 1 | Male | |
| 2 | Female | |
| 3 | 29 and Under | |
| 4 | 30 - 44 | |
| 5 | 45 - 54 | |
| 6 | 55 and over | |
| 7 | Less Than High School | |
| 8 | H.S. Graduate or Equivalent (No Post-High School) | |
| 9 | Post-High School Attendee | |
| 10 | College Graduate and Above | ////////// |
| 11 | Single Head of Household With Dependent(s) Under Age 18 | |
| 12 | White (Not Hispanic) | |
| 13 | Black (Not Hispanic) | |
| 14 | Hispanic | |
| 15 | American Indian or Alaskan Native | |
| 16 | Asian or Pacific Islander | |
| 17 | Limited English Language Proficiency | |
| 18 | Handicapped | |
| 19 | Reading Skills Below 7th-Grade Level | |

| d. SIGNATURE AND TITLE | e. DATE SIGNED | f. TELEPHONE NO. |
|---|---|---|
| | | |



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| a. STATE/SUBSTATE AREA NAME AND ADDRESS | REPORT PERIOD FROM 7/1/19__ | TO 6/30/19__ |
|---|---|---|

| II. TERMINEE CHARACTERISTICS AND PERFORMANCE MEASURES SUMMARY - CONTINUED | | |
|---|---|---|
| 20 | U.C. Claimant | |
| 21 | Unemployed: 15 or More Weeks of Prior 26 Weeks | |
| 22 | Veteran (Total) | |
| 23 | Vietnam-Era | ////////// |
| 24 | Average Weeks Participated | |
| 25 | Average Hourly Wage — Pre-Program | |
| 26 | Average Hourly Wage at Termination | |
| 27 | Total Program Costs (Federal Funds) | |
| 28 | Needs-Related Payments | ////////// |
| 29 | Total Available Federal Funds | |
| III. FOLLOW-UP INFORMATION | | |
| 30 | Employment Rate at Follow-up | |
| 31 | Average Hourly Wage at Follow-up | |
| 32 | Average Number of Weeks Worked in Follow-up Period | |
| 33 | Sample Size | |
| 34 | Response Rate | |
| IV. RETRAINING/BASIC READJUSTMENT SERVICES | | |
| 35 | Received Basic Readjustment Services ONLY | |
| 36 | Received ANY Retraining Activity | |
| 37 | Less than 26 Weeks | ////////// |
| 38 | 26 or More Weeks | ////////// |
| 39 | Completed Classroom Training: Basic Education or Attained GED | |
| 40 | Completed On-the-Job Training | |
| 41 | Completed Other Occupational Skills Training | |

Remarks:



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b. *Report type.* Designate the type of report data provided on this WAPR. If this is an SSA report, also enter the ETA-assigned Substate Area Code number.

c. *Report period.* Enter in "From" the beginning date of the designated JTPA program year and enter in "To" the ending date of that program year.

d. *Signature and title* (at bottom of the page). The authorized official signs here and enters his/her title.

e. *Date signed.* Enter the date the report was signed by the authorized official.

f. *Telephone number.* Enter the area code and telephone number of the authorized official.

5. *General Information*

Unless otherwise indicated, data reported on characteristics of terminees should be based on information collected at the time of eligibility determination.

**Characteristics Information Obtained on an Individual at the Time of Eligibility Determination for the Recipient's EDWAA Program Should Not Be Updated When the Individual Terminates From the EDWAA Program**

**Note:** Recipients shall ensure that individuals are enrolled within 45 days of the date of application or a new application must be taken (20 CFR 629.1). This 45-day period for Certificate of Continuing Eligibility (CCE) holders should begin upon completion of a full participant record, usually at the time of CCE redemption, as this may be at a location other than where the CCE was issued and such information taken earlier to determine eligibility may not be readily available at the redemption site.

*Section I—Participation and Termination Summary*

Section I displays the EDWAA program's accomplishments in terms of the total cumulative number of participants in the program, the number and types of terminations from the program, and the number of CCEs issued/redeemed, as of the end of the reporting period.

In Section I, Column A., Item I.B., enter individuals who are concurrent participants and are receiving Basic Readjustment Services and/or Retraining under another EDWAA-funded grantee/program, JTPA title or have entered non-JTPA/EDWAA training for the completion of the initially determined training objective, prior to termination from their initial EDWAA program. Column A. is a sub-breakout of Column B. for this line item.

In Section I, Column A., Item I.C., enter terminees who have been concurrent participants and have received Basic Readjustment Services and/or Retraining under another EDWAA-funded grantee/program, JTPA title or have received non-JTPA/EDWAA training for the completion of the initially determined training objective, prior to termination from their initial EDWAA program. Also, distribute these terminees between Items I.C.1. and I.C.2., as appropriate, on the basis of the final type of termination from the EDWAA program of final participation. Column A. is a sub-breakout of Column B. for these line items.

**Note:** An individual included in a line item entry in Column A. also must be included in the entry for the same line item in Column B.

Entries for Items I.A, I.B. and I.C. are cumulative from the beginning of the program year through the end of the reporting period.

Item I.A. *Issued Certificate of Continuing Eligibility (CCE).* Enter the total number of applicants to whom a Certificate of Continuing Eligibility was issued during this program year, as provided in section 316(b) of the Act, by the Substate grantee through the end of the reporting period.

**Note:** Enter zero for this item on the Governor's Statewide report (section 302(c)(1)).

Item I.B. *Total participants.* Enter by column the total number of participants who are or were receiving employment, training or services (except post-termination services) through the end of the reporting period, including both those on board at the beginning of the designated program year and those who have entered during the program year.

"Participant" means any individual who has: (1) Been determined eligible for participation upon intake; and (2) started receiving employment, training, or services (except post-termination services) funded under the Act, following intake. Individuals who receive *only* outreach and/or intake and initial assessment services or postprogram follow-up are excluded.

**Note:** Also exclude individuals who receive *only* Rapid Response Assistance and information, per section 314(b), provided by the State's Dislocated Worker Unit.

If individuals receive concurrent employment, training and/or services under more than one title/program, they are to be considered participants in both titles/programs for purposes of recording actual number of weeks participated, dollars expended, and other pertinent data. Individuals who initially participate in EDWAA funded activity and subsequently participate in any other EDWAA (or non-EDWAA) funded activity, FOR THE COMPLETION OF THE INITIALLY DETERMINED TRAINING OBJECTIVE, may be considered to be concurrent participants in each program.

The sum of the entries (all SSAs in a State) in Item I.B., Total Participants, and in Item I.C., Total Terminations, of the WAPR should equal the entries for Substate Grantees in Column B., Lines 14 and 15, respectively, of the WQFR for the final quarter of the same program year for the same recipient.

The entries in Item I.B. and in Item I.C. of the Governor's Statewide WAPR should equal the entries for Governor's Reserve in Column A., Lines 14 and 15, respectively, of the WQFR for the final quarter of the same program year for the same recipient.

The entries in Item I.B. and in Item I.C. of the Secretary's National Reserve WAPR should equal the entries for the Secretary's National Reserve in Column C., Lines 14 and 15, respectively of the WQFR, for the final quarter of the same program year for the same recipient.

*Item I.B.1. All CCES redeemed for retraining.* Enter the total number of *unexpired* participant CCEs, regardless of year issued, redeemed for Retraining during this program year by the Substate grantee, through the end of the reporting period. Include all CCEs so redeemed that were issued by any Substate grantee for periods not to exceed 104 weeks prior to redemption. This item is a sub-breakout of Item I.B.

*Item I.C. Total terminations.* Enter by column the total number of participants who terminated (as defined below) from the program during the reporting period. Include all participants who received no Basic Readjustment Services (except supportive services and/or counseling) or Retraining for 90 days. *This item is the sum of Items I.C.1 through I.C.6.*

"Termination" means the separation of a participant from the program who is no longer receiving Basic Readjustment Services or Retraining under EDWAA. Individuals may be considered participants for up to 90 days after last receipt of Basic Readjustment Services or Retraining, during which time they may continue to receive supportive services, as provided for in sections 314 (c)(15) and 4(24) of the Act.

For purposes of calculating average weeks participated, this single period of up to 90 days between "last receipt of Basic Readjustment Services or Retraining under EDWAA" and actual date of termination is defined as "inactive status" and is not to be included in "Average Weeks Participated". Terminees may continue to receive counseling necessary to assist in the retention of employment, for not more than 6 months following last receipt of Basic Readjustment Services (section 314(c)) or Retraining (section 314(d)).



Participants who have transferred from one title to another, or between programs of the same title, should be recorded as terminations from the title or program of initial participation and included as participants in the title or program into which they have transferred. If they are concurrent participants in more than one title or program, the type of termination determined for the final program should be recorded for all programs for these participants.

For purposes of calculating average weeks participated for such concurrent EDWAA program participants, the period between "last receipt of Basic Readjustment Services and Retraining funded under a given EDWAA program" (i.e., SSA, Governor's Reserve or Secretary's National Reserve) and actual date of termination from that EDWAA program is defined as "inactive status" and is not to be included in Line 24.

*Item I.C.1. Entered unsubsidized employment from retraining.* Enter by column the total number of participants who, at termination, entered full- or part-time unsubsidized employment from Retraining through the end of the reporting period. (These participants may or may not have received Basic Readjustment Services.) This item is a sub-breakout of Item I.C.

*Item I.C.1.a. Relocated out of area.* Enter the total number of participants who, at termination from other Retraining, entered unsubsidized employment after receiving relocation assistance and relocating outside the Substate Area which provided such relocation assistance, or within or outside of the State, if this assistance was provided by a Statewide SSA or by a program administered by the Governor. This item is a sub-breakout of Item I.C.1.

*Item I.C.2. Entered unsubsidized employment from basic readjustment services ONLY.* Enter by column the total number of participants who, at termination, entered full- or part-time unsubsidized employment from Basic Readjustment Services ONLY through the end of the reporting period. This item is a sub-breakout of Item I.C.

*Item I.C.3. Called back/remained with the layoff employer.* Enter the number of terminees from the EDWAA program who, after being laid off by an employer, were recalled by that employer to a permanent job at the same or another location. Also include EDWAA program terminees who remained in a permanent job with an employer after receipt of a layoff notice from that employer. This item is a sub-breakout of Item I.C.

NOTE: Do not include such terminees in the entry for Items I.C.1. or I.C.2., above.

*Item I.C.4. Transferred to other JTPA programs.* Enter the number of terminees who transferred to and entered programs funded under another JTPA title including Title III-Formula and Title III-National Reserve. Also include on this line terminees who transferred to and entered EDWAA programs operated by another Substate grantee, or who transferred to and entered EDWAA programs operated by the Governor (and conversely). This item is a sub-breakout of Item I.C.

*Item I.C.5. Entered non-JTPA training.* Enter the number of terminees who entered, during the program year, training not funded with JTPA monies. This item is a sub-breakout of Item I.C.

*Item I.C.6. All other terminations.* Enter by column the total number of participants who were terminated for reasons other than those in Items I.C.1. through I.C.5., successful or otherwise, through the end of the reporting period.

*Section II—Terminee Performance Measures Information*

Section II displays performance measures/parameters information. As indicated previously, data reported on characteristics of terminees should be based on information collected at time of eligibility determination unless otherwise indicated.

Governors may develop any participant record which meets the requirements of section 629.35 (c) and (d) of the JTPA regulations. The DOL/ETA *Technical Assistance Guide: The JTPA Participant Record,* dated May 1983, may be used as a reference.

*Line Item Definitions and Instructions.*

*Sex*

Line 1 Male
Line 2 Female

Distribute the terminees according to Sex. The sum of Lines 1 and 2 should equal Item I.C.

*Age*

Line 3 29 and Under
Line 4 30–44
Line 5 45–54
Line 6 55 and Over

Distribute the terminees according to Age. The sum of Lines 3 through 6 should equal Item I.C.

*Education Status*

Line 7 Less Than High School
Line 8 High School Graduate or Equivalent (No Post-High School)
Line 9 Post-High School Attendee
Line 10 College Graduate and Above

Distribute the terminees according to Education Status. The sum of Lines 7 through 9 should equal Item I.C.

**Note.**—Line 10 is a sub-breakout for a specific group included in Line 9.

*Family Status*

Line 11 Single Head of Household with Dependent(s) Under Age 18.

Enter the total number of terminees for whom the above Family Status classification applies.

*Race/Ethnic Group*

Line 12 White (Not Hispanic)
Line 13 Black (Not Hispanic)
Line 14 Hispanic
Line 15 American Indian or Alaskan Native
Line 16 Asian or Pacific Islander

Distribute the terminees according to the Race/Ethnic Groups listed above. For purposes of this report, Hawaiian Natives are to be recorded as "Asian or Pacific Islander". The sum of Lines 12 through 16 should equal Item I.C.

*Other Barriers to Employment*

Line 17 Limited English Language Proficiency
Line 18 Handicapped
Line 19 Reading Skills Below 7th Grade Level

Enter the total number of terminees for whom *each* of the above Other Barriers to Employment apply.

*Benefits Status*

Line 20 U.C. (Unemployment Compensation) Claimant

Enter the total number of terminees for whom each of the above benefits status classifications apply.

*Labor Force Status*

Line 21 Unemployed: 15 or More Weeks of Prior 26 Weeks

Enter the total number of terminees for whom the above Labor Force Status classification applies.

*Veteran Status*

Line 22 Veteran (Total)
Line 23 Vietnam Era

Enter the total number of terminees for whom *each* of the above Veteran classifications apply, as defined in section 4 (26)(A)(B) and (D) of the Act. Line 23 is a sub-breakout for a specific group included in Line 22.

*Other Program Information*

Line 24 Average Weeks Participated

Enter the average number of weeks of participation in the EDWAA program for all terminees. Weeks of participation include the period from the date an

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individual becomes a participant in EDWAA through the date of a participant's last receipt of Basic Readjustment and/or Retraining. Exclude the single period of up to 90 days during which an individual may remain in an inactive status prior to termination. Time in inactive status for all terminees should not be counted toward the actual number of weeks participated. Inactive status is defined as that period between "last receipt of Basic Readjustment Services and/or Retraining under EDWAA" and actual date of termination. (See Item I.C.)

To calculate this entry: Count the number of days participated for each terminee, including weekends, from the start date of his/her participation in EDWAA until his/her last receipt of Basic Readjustment Services and/or Retraining under EDWAA. Divide this result by 7. This will give the number of weeks participated for that terminee. Sum all the terminees' weeks of participation and divide the result by the number of terminees, as entered in Item I.C. This entry should be reported to the nearest whole week.

Line 25 Average Hourly Wage—Pre-Program

Enter the average hourly pre-EDWAA wage of all terminees. In calculating this average, use the hourly wage from the job of dislocation. Those terminees who had no pre-EDWAA employment should be counted as "$0.00" hourly wage.

To calculate this entry: Sum the pre-program hourly wage for all terminees shown in Item I.C. Divide the result by the number of terminees shown in Item I.C.

**Note.**—For the calculation, use the hourly wage regardless of whether the individual was employed full- or part-time.

Line 26 Average Hourly Wage at Termination

Enter the average hourly wage at termination for the total number of terminees in Items I.C.1. through I.C.3.

To calculate this entry: Sum the hourly wage at termination for all the terminees shown in Items I.C.1. through I.C.3. Divide the result by the number of terminees shown in Items I.C.1. through I.C.3.

Hourly wage includes any bonuses, tips, gratuities and commissions earned.

Line 27 Total Program Costs (Federal Funds)

Enter the total accrued expenditures, through the end of the reporting period, of the funds allocated to the SSA under sections 302(c)(2) and 302(d) of the Act or otherwise distributed by the Governor to the SSAs under section 302(c)(1)(E). On the separate WAPRs: (1) Covering participants and terminees projects funded under section 302(c)(1); (2) or participants and terminees in Secretary's National Reserve Grants projects funded under section 302(a)(2) of the Act, enter the total expenditures for all participants and terminees served in such programs through the end of the reporting period. Include, as appropriate, accrued expenditures against JTPA Title III funds provided for PY88 and PY87 which were carried into EDWAA and used for EDWAA purposes, if any. Include expeditures of Federal funds only.

**Note.**—Entries will be made to the nearest dollar. Negative entries are not acceptable. The WAPR program cost data will be compiled on an accrual basis. If the recipient's accounting records are not normally maintained on an accrual basis, the accrual information should be developed through an analysis of the records on hand or on the basis of best estimates.

The sum of the entries for Line 27, Total Program Costs, of the WAPR (i.e., total for the State's SSAs under EDWAA) should equal the entry for Column B., Line 10, Total Accrued Expeditures (Substate Grantees) of the WQFR for the same recipient that includes the final quarter of the same program year.

Line 27 of the Statewide WAPR for the Governor's Reserve activity (section 302(c)(1)) should equal Column A., Line 10 of the WQFR for the same recipient that includes the final quarter of the same program year; and Line 27 on the WAPR for the Secretary's National Reserve Grants (section 302(a)(2)) to the State should equal Column B., Line 5 on that WQFR.

Line 28 Needs-Related Payments

Enter the total accrued expeditures for needs-related payments to eligible dislocated workers who do not qualify or have ceased to qualify for Unemployment Compensation, in order to enable such workers to participate in training or education programs under EDWAA (Section 314(e)). This is a sub-breakout of Line 27.

Line 29 Total Available Federal Funds

Enter the total Federal funds available for the EDWAA program described on this report including (1) unexpended funds carried over from previous program years, (2) funds allocated or awarded for this program year, and (3) any reallocation that *increased or decreased* the amount of funds available for expenditure through the end of this reporting period. Entries will be made to the nearest dollar.

The sum of the entries for Line 29, Total Available Federal Funds, of the WAPR (i.e., total for the State's SSAs under EDWAA) should equal the entry for Column B., Line 9, Total Federal Funds Available (Substate Grantees) of the WQFR for the same recipient that includes the final quarter of the same program year.

Line 29 of the Statewide WAPR for the Governor's Reserve activity (section 302(c)(1)) should equal Column A., Line 9 of the WQFR for the same recipient that includes the final quarter of the same program year; and Line 29 on the WAPR for the Secretary's National Reserve Grants (section 302(a)(2)) to the State should equal Column B., Line 1 on that WQFR.

*Section III—Follow-up Information*

Section III displays information based on follow-up data which must be collected through participant contact to determine an individual's labor force status and earnings, if any, during the 13th full calendar week after termination and the number of weeks s/he was employed during the 13-week period. Follow-up data should be collected from participants whose 13th full calendar week after termination ends during the program year (the follow-up group). Thus, follow-up will be conducted for individuals who terminate during the first three quarters of the program year and the last quarter of the previous program year.

For PY89 follow-up may be conducted for individuals who terminate during the first three quarters of the program year and postprogram data collection need not begin until October 1, 1989.

In order to ensure consistency of data collection and to guarantee the quality of the follow-up information, follow-up procedures must satisfy certain criteria. (See the Follow-up Guidelines included in these WAPR instructions, Appendix A.) Other procedures used to collect the follow-up data are at the discretion of the Governors.

**Note.**—Every precaution must be taken to prevent a "response bias" which could arise because it may be easier to contact participants who were employed at termination than those who were not and because those who entered employment at termination are more likely to be employed at follow-up. Special procedures have been developed by which SSAs and States can monitor response bias. If your response rates for those who were and were not employed at termination differ by more than 5 percentage points, the follow-up entries for the WAPR must be calculated using the "Worksheet for Adjusting Follow-up Performance Measures" in the Follow-up Technical Assistance Guide. *If the response rates differ by 5 percentage points or less,* the following instructions for completing Lines 30–34 may be used.



Line 30 Employment Rate at Follow-up

Enter the employment rate at follow-up.

Calculate the employment rate by dividing the total number of respondents who were employed (full-time or part-time) during the 13th full calendar week after termination by the total number of respondents (i.e., terminees who completed follow-up interviews). Then multiply the result by 100. This entry should be reported to the nearest one decimal (00.0).

Line 31 Average Hourly Wage at Follow-up

Enter the average hourly wage of those employed (full-time or part-time) at follow-up.

To calculate this entry: Sum the hourly wage (and, if appropriate, add tips, overtime, bonuses, etc.) of each respondent employed at follow-up. Divide the sum of hourly wage for all respondents employed during the 13th full calendar week after termination by the number of respondents employed at the time of follow-up. Respondents not employed at follow-up are not included in this average.

Include any wages, bonuses, tips, gratuities, commissions *and* overtime pay earned.

Line 32 Average Number of Weeks Worked in Follow-up Period

Enter the average number of weeks worked in follow-up period.

To calculate the average number of weeks worked (full-time or part-time), divide the sum of the number of weeks worked during the 13 full calendar weeks after termination for all respondents who worked, by the *total* number of all respondents, whether or not they worked any time during this 13-week follow-up period. This entry should be reported to the nearest one decimal (00.0).

Line 33 Sample Size

Enter by column the size of the actual sample selected to be contacted for follow-up.

**Note:** If oversampling was used, the sample size should include all those selected, not just the required minimum sample size. Those deceased or severely incapacitated to the point of being unable to respond at follow-up may be excluded from the sample size.

Line 34 Response Rate

Enter the overall response rate, i.e., the percentage of complete surveys obtained.

To calculate the overall response rate, divide the number of terminees with complete follow-up information by the total number of terminees included in the follow-up sample (Line 33) and multiply by 100. This entry should be reported to the nearest whole percent.

**Note:** Complete follow-up information consists of substantive answers to the required follow-up questions and may not include "don't know", "no answer" or "don't remember".

*Section IV—Retraining/Basic Readjustment Services*

Section IV displays information relevant to program activities funded under EDWAA.

Line 35 Received Basic Readjustment Services ONLY

Enter the total number of terminees, regardless of type of termination, who received Basic Readjustment Services ONLY, as indicated in section 314(c) of the Act. The sum of Lines 35 and 36 should equal Item I.C. NOTE: Individuals who receive only outreach and/or intake and initial assessment services or Rapid Response assistance are not participants/terminees.

Line 36 Received ANY Retraining Activity

Line 37 Less than 26 Weeks

Line 38 26 or More Weeks

Enter the total number of terminees, regardless of type of termination, who received ANY Retraining activity included in section 314(d) of the Act. Lines 37 and 38 are sub-breakouts of Line 36 and should be used to distribute terminees who received ANY Retraining activity by actual length of stay in all Retraining activities, *whether or not such Retraining was completed.* These terminees may or may not have received Basic Readjustment Services. The sum of Lines 37 and 38 should equal Line 36.

**Note:** Terminees who have received retraining activity funded under a cooperative agreement with: (1) Other JTPA monies (i.e. 3%, 8%, Title II etc.) or (2) other than JTPA funds may be counted in Lines 36–41, PROVIDED SUCH TRAINING WAS FOR THE COMPLETION OF THE INITIALLY DETERMINED TRAINING OBJECTIVE.

Line 39 Completed Classroom Training: Basic Education or Attained GED

Line 40 Completed On-the-Job Training

Line 41 Completed Other Occupational Skills Training

Enter the total number of terminees for which *each* of these Retraining completion/attainment classifications apply. A terminee should be included in *all* appropriate categories.

**Note:** Basic Education in Line 39 includes remedial reading, writing, mathematics and/or English for non-English speakers. Attainment of a GED or a high school diploma upon completion of any training also should be included. (A terminee may be counted only once in this line item, as appropriate.)

**Appendix A—Follow-up Guidelines**

To ensure consistent data collection and as accurate information as possible, procedures used to obtain follow-up information must satisfy the following criteria:

- Participant contact should be conducted by telephone or in person. Mail questionnaires may be used in those cases where an individual does not have a telephone or cannot be reached.
- Participant contact must occur as soon as possible after the 13th full calendar week after termination but no later than the 17th calendar week after termination.
- Data reported are to reflect the individual's labor force status and earnings during the 13th full calendar week after termination and the number of weeks s/he was employed throughout the 13-week period after termination.
- Interview questions developed by DOL (see following Exhibit) must be used to determine the follow-up information reported on the WAPR. Respondents must be told that responding is voluntary and that information provided by them will be kept confidential. Other questions may be included in the interview. Attitudinal questions may precede DOL questions, but questions related to employment and earnings must follow.
- Attempts must be made to contact *all* individuals unless terminee populations are large enough to use sampling.
- At least six attempts may need to be made to contact enough individuals in the follow-up group to obtain the required response rate.
- For each SSA and for Statewide and National Reserve reports (WAPR), minimum response rates of 70% are required for each of the following two groups of dislocated workers: those who entered employment at termination and those who did not enter employment at termination. The response rate is calculated as the number of terminees with complete follow-up information divided by the total number of terminees included in the group eligible for follow-up.

**Exhibit—Minimum Postprogram Data Collection Questions**

A. I want to ask you about the week starting on Sunday, ____, and ending on Saturday, ____, which was (last week/two/three/four weeks ago).

1. Did you do any work for pay during that week?

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___ Yes [Go to 2]
___ No [Go to C]
2. How many hours did you work in that week?
___ Hours
3. How much did you get paid per hour in that week?
___ Dollars per hour
4. How much extra, if any, did you earn in that week from tips, overtime, bonuses, commissions, or any work you did on the side, before deductions?
___ Dollars
B. Now I want to ask you about the entire 13 weeks from Sunday, ___, to Saturday, ___.
5. Including the week we just talked about, how many weeks did you work at all for pay during the 13-week period?
___ Weeks [Go to end]

*Alternative Questions*

C. If answered "NO" to Question 1:
Now I want to ask you about the entire 13 weeks from Sunday, ___, to Saturday, ___.
6. Did you do any work for pay during that 13-week period?
___ Yes [Go to 7]
___ No [Go to end]
7. How many weeks did you do any work at all for pay during that 13-week period?

*Terminee Populations for Follow-up*

Each program (SSA, Governor's Reserve, Secretary's National Reserve) in EDWAA is responsible for conducting a follow-up of all or a sample of participants who have terminated from that program.

The "universe" of terminees for the follow-up includes all participants who terminated from a program. Those participants who may have been concurrent participants in more than one JTPA title/EDWAA program will be in the universe for each.

When selecting a sample from the universe, each title/program will be treated separately, so that an individual who had been a concurrent participant might be selected in one sample but not another. This, however, does not preclude the possibility that the participant might be selected in more than one sample. In the event that a concurrent participant has been selected in more than one sample, the responses collected from a single interview may be shared among the different titles/programs to avoid the necessity of multiple interviews with the same individual.

When an individual who has terminated from one title/program and subsequently becomes a participant in another program (i.e., not a concurrent participant) is selected in the sample for both titles/programs, separate interviews must be conducted. Further, if an individual is selected in one sample and is a participant in another title/program at the time of the interview, regular follow-up information should be determined and recorded.

*Sampling Procedures*

Where sampling is used to obtain participant contact information, it is necessary to have a system which ensures consistent random selection of sample participants from *all* terminees in the group requiring follow-up.

- No participant in the follow-up group may be arbitrarily excluded from the sample.
- Procedures used to select the sample must conform to generally accepted statistical practice, e.g., a table of random numbers or other random selection techniques must be used.
- The sample selected for contact must meet minimum sample size requirements indicated in Table 1.

TABLE 1.—MINIMUM SAMPLE SIZES FOR FOLLOW-UP

| Number of terminees in follow-up population | Minimum sample size | Sampling percentages |
|---|---|---|
| 1 to 137 | All | 100 |
| 138 to 149 | 137 | 94 |
| 150 to 159 | 143 | 92 |
| 160 to 169 | 149 | 89 |
| 170 to 179 | 154 | 87 |
| 180 to 189 | 159 | 85 |
| 190 to 199 | 164 | 84 |
| 200 to 224 | 175 | 82 |
| 225 to 249 | 185 | 78 |
| 250 to 274 | 194 | 74 |
| 275 to 299 | 202 | 71 |
| 300 to 349 | 217 | 67 |
| 350 to 399 | 229 | 62 |
| 400 to 449 | 240 | 57 |
| 450 to 499 | 250 | 53 |
| 550 to 599 | 265 | 50 |
| 600 to 749 | 282 | 44 |
| 750 to 999 | 302 | 38 |
| 1,000 to 1,499 | 325 | 30 |
| 1,500 to 1,999 | 338 | 22 |
| 2,000 to 2,999 | 352 | 17 |
| 3,000 to 4,999 | 364 | 12 |
| 5,000 or more | 383 | 7.3 |

The use of sampling will depend on whether the terminee populations are large enough to provide estimates which meet minimum statistical standards. If the number of terminees for whom follow-up is required is less than 138, sampling cannot be used. In such cases attempts must be made to contact all the appropriate terminees.

*Minimum Sample Sizes for Follow-up*

To determine the minimum number of terminees to be included in the follow-up sample, refer to Table 1 in the following instructions. Find the row in the left-hand column that contains the planned number of dislocated worker terminees. The required minimum sample size is given in the middle column of that row. The last column gives sampling percentages that will assure that the minimum sample size is obtained.

*Correcting for Differences in Response Rates*

Different response rates for those terminees who entered employment at termination and those who did not are expected to bias the performance estimates because those who entered employment at termination are more likely to be employed at follow-up. It is assumed that those who were employed at termination are easier to locate than those who were unemployed because the interviewer has more contact sources (e.g., name of employer). The resulting response bias can artificially inflate performance results at follow-up.

To account for this problem, separate response rates should be calculated for those who were employed at termination and for those who were not.

If the response rates of those employed at termination and those not employed differ by more than 5 percentage points, then the "Worksheet for Adjusting Follow-up Performance Measures" in the Follow-up Technical Assistance Guide must be used to correct the follow-up measures.

**Appendix B—Definition of Terms Necessary for Completion of Reports**

*Employment/Training Services*

*Assessment*—services are designed to initially determine each participant's employability, aptitudes, abilities and interests, through interviews, testing and counseling to achieve the applicant's employment related goals.

*Follow-up*—is the collection of information on a terminee's employment situation at a specified period after termination from the program.

*Intake*—includes the screening of an applicant for eligibility and: (1) A determination of whether the program can benefit the individual; (2) an identification of the employment and training activities and services which would be appropriate for that individual; (3) a determination of the availability of an appropriate employment and training activity; (4) a decision on selection for participation and (5) the dissemination of information on the program.

*Outreach*—activity involves the collection, publication and dissemination of information on program services directed toward



economically disadvantaged and other individuals eligible to receive JTPA training and support services.

*Education Status*

Less Than High School—An adult or youth: (1) Who is not attending school full-time and has not received a high school diploma or a GED certificate; or (2) who has not received a high school diploma or GED certificate and is enrolled full-time in an elementary, secondary or postsecondary-level vocational, technical, or academic school or is between school terms and intends to return to school.

High School Graduate or equivalent (No Post-High School)—An adult or youth who has received a high school diploma or GED certificate, but who has not attended any postsecondary vocational, technical, or academic school.

Post High School Attendee—An adult or youth who has received a high school diploma or GED certificate and has attended (or is attending) any postsecondary-level vocational, technical, or academic school.

College Graduate—A terminee who has received a degree (usually a BA or BS) conferred by a four-year college, university or professional school or an advanced degree from one of these institutions.

*Family Status*

Single Head of Household—A single, abandoned, separated, divorced or widowed individual who has responsibility for one or more dependent children under age 18.

*Race/Ethnic Group*

White (not hispanic)—A person having origins in any of the original peoples of Europe, North Africa, or the Middle East.

Black (not hispanic)—A person having origins in any of the black racial groups of Africa.

Hispanic—A person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin (including Spain), regardless of race.

**Note:** Among persons from Central and South American countries, only those who are of Spanish origin, descent, or culture should be included in the Hispanic category. Persons from Brazil, Guiana, and Trinidad, for example, would be classified according to their race, and would not necessarily be included in the Hispanic category. Also, the Portugese should be excluded from the Hispanic category and should be classified according to their race.

American Indian or Alaskan Native—A person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.

Asian or Pacific Islander—A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent (e.g., India, Pakistan, Bangladesh, Sri Lanka, Nepal, Sikkim, and Bhutan), or the Pacific Islands. This area includes, for example, China, Japan, Korea, the Philippine Islands, and Samoa. Hawaiian natives are to be recorded as Asian or Pacific Islanders.

*Other Barriers to Employment*

Limited English language proficiency—Inability of an applicant, whose native language is not English, to communicate in English, resulting in a job handicap.

Handicapped individual—Any individual who has a physical or mental disability which for such individual constitutes or results in a substantial handicap to employment.

**Note:** This definition includes disabled veterans for reporting purposes.

Reading skills below 7th grade level—An adult or youth assessed as having English (except in Puerto Rico) reading skills below the 7th grade level on a generally accepted standardized test.

**Note:** The following other methods of determination may be used:

- A school record of reading level determined within the last 12 months.
- If an applicant is unable to read and therefore cannot complete a self-application for the JTPA/EDWAA program, s/he may be considered to have English reading skills below the 7th-grade level.
- Individuals with any of the following may be considered to have English reading skills above the 7th-grade level:

—A GED certificate received within the last year.

—A degree (usually a BA or BS) conferred by a 4-year college, university or professional school.

If there is any question regarding reading ability, a standardized test should be administered.

*Benefits Status*

Unemployment compensation claimant—Any individual who has filed a claim and has been determined monetarily eligible for benefit payments under one or more State or Federal unemployment compensation programs, and who has not exhausted benefit rights or whose benefit year has not ended.

*Labor Force Status*

Unemployed: 15 or More weeks of Prior 26 weeks—An individual who is unemployed at the time of eligibility determination and has been unemployed for any 15 or more of the 26 weeks immediately prior to such determination, has made specific efforts to find a job throughout the period of unemployment, and is not classified as "Not in Labor Force".

*Veteran Status*

Veteran—An individual who served in the active military, naval, or air service (of the U.S.), and who was discharged or released therefore under conditions other than dishonorable.

**Note:** The term "active" means full-time duty in the Armed Forces, other than duty for training in the reserves or National Guard. Any period of duty for training in the reserves or National Guard, including authorized travel, during which an individual was disabled from a disease or injury incurred or aggravated in the line of duty, is considered "active" duty.

Vietnam-Era Veteran—A veteran, any part of whose active military, naval, or air service occurred between August 5, 1964 and May 7, 1975.

*Program Costs*

Accrued expenditures—The allowable charges incurred during the program year to date requiring provision of funds for: (1) goods and other tangible property received; and (2) costs of services performed by employees, contractors, subrecipients, and other payees.

**Note:** These charges do not include "resources on order", i.e., amounts for contracts, purchase orders and other obligations for which goods and/or services have not been received.

*Retraining Activity*

Basic Education—Includes remedial reading, writing, mathematics and/or English for non-English speakers.

Occupational Skills Training—Includes vocational education which is designed to provide individuals with the technical skills and information required to perform a specific job or group of jobs. For reporting purposes excludes On-the-Job Training.

On-The-Job Training—Is training in the public or private sector given to an individual, who has been hired first by the employer, while s/he is engaged in productive work which provides knowledge or skills essential to the full and adequate performance of the job.

*Worker Adjustment Program Quarterly Financial Report (ETA 9020)*

1. Purpose

The Worker Adjustment Program Quarterly Financial Report (WQFR) for

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the Economic Dislocation and Worker Adjustment Assistance (EDWAA) program displays cumulative data on fund availability and accrued expenditures, as well as total participants, total terminations, notices received under the Worker Adjustment and Retraining Notification (WARN) Act, and initial on-site rapid response visits on a quarterly basis. These data will be used to determine levels of program service and expenditures for State, substate and National Reserve programs. Selected information will be aggregated to provide quantitative program accomplishments on a State and national basis. Reallotment of formula funds, pursuant to Section 303 of EDWAA, and annual reconciliation of formula and National Reserve grants will be based on these expenditure reports.

2. General Instructions

A single WQFR for all EDWAA programs in the State will be submitted by the Governor each quarter. Entries are to be *cumulative* for the program year to date. Each report period begins on the start date of the program year, as stated in Section 161 of the Job Training Partnership Act. REPORTS ARE DUE IN THE NATIONAL OFFICE NO LATER THAN FORTY-FIVE (45) DAYS AFTER THE END OF EACH PROGRAM QUARTER (i.e., submitted no later than 11/15; 2/15; 5/15; and 8/15.

Two copies of *each* WQFR are to be provided to: U.S. Department of Labor, ETA, ATTN: TSVR—Room S-5306, 200 Constitution Avenue NW., Washington, DC 20210.

At the same time, an additional copy of *each* WQFR is to be provided to the appropriate Regional Administrator for Employment and Training in the DOL Regional Office that includes the State in which the JTPA recipient is located.

Recipients may determine whether the report is submitted on this form or as a computer printout, with data arrayed as indicated in this format, including identification and signature blocks. If revisions are made to the fourth quarter WQFR data after the reporting deadline, revised copies of the WQFR should be submitted to DOL as soon as possible according to the required reporting procedures. Revisions to WQFR data during the program year should be shown on subsequent reports; revised copies of first, second, or third quarter reports need not be submitted.

**Note:** The current JTPA Semiannual Status Report (JSSR, ETA 9009) is to continue to be used for Title III Formula and National Reserve funds allotted to States for Program Years (PYs) 1988 and earlier that are expended under regulations published in the **Federal Register** on February 12, 1988. The WQFR is to be used beginning July 1, 1989, for all funds expended under the EDWAA provisions, including any unexpended Title III Formula funds allotted for PY 1987 and PY 1988 that are used for EDWAA.

3. Facsimile of Form

See the following page.

BILLING CODE 4510-30-M



OMB No. 1205-0274
Expires 12/31/92

WORKER ADJUSTMENT PROGRAM
Quarterly Financial Report (WQFR)

| a. State Name and Address | b. Governor/Secretary Agreement Number |
|---|---|
| | c. Report Period From: To: |

| SECTION I: FORMULA AND NATIONAL RESERVE FUNDS | A. Total Formula | B. National Reserve |
|---|---|---|
| 1. Total Availability | | |
| 2. Current Year Allotment | | |
| 3. Unexpended Prior Year Funds | | |
| 4. Funds Unexpended from Year Before Prior Year | | |
| 5. Total Accrued Expenditures | | |
| 6. Current Year Allotment | | |
| 7. Prior Year Allotment | | |
| 8. Allotment for Year Before Prior Year | | |

| SECTION II: PROGRAM FUNDS AVAILABLE/EXPENDITURES | A. Governor's Reserve | B. Substate Grantees | C. National Reserve |
|---|---|---|---|
| 9. Total Federal Funds Available | | | \\\\\\\\\\\\\\ |
| 10. Total Accrued Expenditures | | | \\\\\\\\\\\\\\ |
| 11. Rapid Response | | \\\\\\\\\\\\\\ | |
| 12. Basic Readjustment | | | |
| 13. Retraining | | | |
| 14. Needs-Related Payments & Supportive Services | | | |
| 15. Administration | | | |

| SECTION III: PROGRAM ACTIVITY | | | |
|---|---|---|---|
| 16. Total Participants | | | |
| 17. Total Terminations | | | |
| 18. WARN Notices Received | | \\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\ | |
| 19. Initial On-site Rapid Responses | | \\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\ | |

REMARKS

| d. Signature and Title | e. Date Signed | f. Telephone No. |
|---|---|---|
| | | |

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ETA 9020 (March, 1989)

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4. Instructions for Completing the Worker Adjustment Program Quarterly Financial Report (WQFR)

a. *State name and address.* Enter the name and address of the recipient.

b. *Governor/Secretary Agreement number.* Enter the recipient's Governor/Secretary Agreement number, as assigned by ETA in a separate issuance.

c. *Report period.* Enter in "From" the beginning date of the designated JTPA program year, and enter in "To" the ending date of the report period, as specified above.

d. *Signature and title* (at bottom of page). The authorized official of the Governor signs here and enters his or her title.

e. *Date signed.* Enter the date the report was signed by the authorized official.

f. *Telephone no.* Enter the area code and telephone number of the authorized official.

**Special Note:** All availability and expenditures entries on the WQFR will be made to the nearest dollar. Negative entries are not acceptable. Expenditures reported on the WQFR will be compiled on an accrual basis. Accrued expenditure information is to be completed *cumulatively* for the end of each program quarter from the beginning of the program year. If the recipient's accounting records are not normally maintained on an accrual basis, the accrual information should be developed through an analysis of the records on hand or on the basis of best estimates.

*Section I—Formula And National Reserve Funds*

This section provides a breakout of availability and expenditures of all funds allotted by formula and all National Reserve funds, according to the program year in which the funds were made available to the State. Entries are to be made under the appropriate column heading as follows:

A. Total Formula

All entries in this column refer to funds made available to the State under the EDWAA allotment formula, including (1) funds allotted for this program year pursuant to section 302(a)(1); (2) unexpended formula-allotted funds carried over from earlier program years that were available on July 1 (including Title III funds allotted by formula for PY 1987 and PY 1988 that are being made available for EDWAA); and (3) any reallotment that *increased or decreased* the amount of Formula funds available for expenditure through the end of the reporting period pursuant to Section 303.

B. National Reserve

All entries in this column refer to EDWAA funds made available to the State under National Reserve grants. Title III National Reserve funds for Program Year 1988 and earlier will not be shown on this report.

Line 1 *Total availability.* Enter the total Federal funds available for this program year. This includes all current year allotments, plus all unexpended funds from the prior year and the year before the prior year which were available for expenditure under EDWAA on July 1. Line 1. is the sum of Lines 2., 3., and 4.

Edit Check: The entry on Line 29 on the WAPR for the Secretary's National Reserve Grants to the State should equal the entry for Column B., Line 1 on the WQFR for the same recipient that includes the final quarter of the same program year.

Line 2 *Current year allotment.* Enter the total funds allotted for this program year. Any reallotment or National Reserve grant that affects the amount of funds available will be included in the quarter during which the change occurred and in all later quarters.

Line 3 *Unexpended prior year funds.* Enter the total unexpended funds, if any, from last year's allotments (including reallotted funds, if any) that were available for expenditure in the current program year. This amount should agree with the report submitted for the final quarter of the prior year. Any revision in this amount must be accompanied or preceded by a revised report for prior year(s), or an explanation in the "Remarks" section of the report. In PY 1989, only unexpended PY 1988 Formula funds made available for EDWAA will be reported on this line.

Line 4 *Funds unexpended from year before prior year.* Enter the total unexpended funds, if any, from the allotments (including any reallotted funds) for the year before last year (i.e., 2 years before this program year) that were available for expenditure in the current program year. Any revision in this amount must be accompanied or preceded by a revised report for prior year(s), or an explanation in the "Remarks" section of the report. In PY 1989, only unexpended PY 1987 Formula funds made available for EDWAA will be reported on this line. In PY 1990, only unexpended PY 1988 Formula funds made available for EDWAA will be reported on this line.

Line 5 *Total accrued expenditures.* Enter the total accrued expenditures for EDWAA programs during the reporting period. Line 5. is the sum of Lines 6., 7., and 8.

"Accrued Expenditures" are the allowable charges incurred during the program year to date requiring provision of funds for: (1) Goods and other tangible property received; and (2) costs of services performed by employees, contractors, subrecipients, and other payees. These charges do not include "resources on order" (i.e., amounts for contracts, purchase orders and other obligations for which the goods and/or services have not yet been received).

Edit Check: The entry on Line 27 on the WAPR for the Secretary's National Reserve Grants to the State should equal the entry for Column B., Line 5 on the WQFR for the same recipient that includes the final quarter of the same program year.

Line 6 *Current Year Allotment.*

Line 7 *Prior Year Allotment.*

Line 8 *Allotment for Year Before Prior Year.* Expenditures are to be distributed according to the year in which the funds, against which the expenditures are applied, were made available to the State. If the recipient's accounting system for Formula funds is maintained on a First-in, First-out (FIFO) basis, expenditures will be reported against the "oldest" available funds until all of those funds have been exhausted before expenditures are reported against the current year allotment.

*Section II—Program Funds Available/ Expenditures*

This section provides a summary of the total Federal funds available and expenditures in programs supported with formula-allotted funds at the State and Substate levels and in National Reserve funded programs through the end of the reporting period. Entries are to be made under the appropriate column heading as follows:

A. Governor's Reserve

All entries in this column refer to activities and services administered by the Governor with funds available under section 302(c)(1) of the Act.



B. Substate Grantees

All entries in this column refer to activities and services administered by the Substate grantees with funds available under section 302(d) as well as sections 302(c)(1)(E) and 302(c)(2) of the Act.

C. National Reserve

All entries in this column refer to activities and services administered with funds available under section 302(a)(2) of the Act.

Line 9 *Total Federal funds available.* Enter the total Federal funds available for expenditure during the current program year. This includes the current year Formula allotment, reallotted Formula funds, and Formula funds reallocated within the State that are available for expenditure during the current year. National Reserve availability is shown in column B., Line 1. Funds reserved by the Governor for allocation to Substate grantees in need under section 302(c)(2) of the Act will be included in Column B. on this line only after they have been allocated to the Substate grantee(s). *For the reports for the third and fourth quarters,* the sum of the entries in Column A. and B. on this line should equal the entry in Column A., Line 1.

Edit Check: The sum of the entries for Line 29, Total Available Federal Funds on the WAPR (i.e., total for the State's Substate areas under EDWAA) should equal the entry for Column B., Line 9, Total Federal Funds Available (Substate Grantees) on the WQFR for the same recipient that includes the final quarter of the same program year.

The entry on Line 29 on the WAPR for the Governor's Reserve activity should equal the entry for Column A., Line 9 on the WQFR for the same recipient that includes the final quarter of the same program year.

Line 10 *Total accrued expenditures.* Enter the total actual accrued expenditures during the report period, without regard to the year the funds were allotted to the State or allocated to State or Substate grantees. Include, as appropriate, accrued expenditures against JTPA Title III Formula funds allotted for PY 1987 and PY 1988 which were used for EDWAA, if any. The sum of the entries in Columns A. and B. on Line 10 should be equal to the entry in Column A., Line 5. National Reserve total expenditures is shown in Column B., Line 5.

Edit Check: The sum of the entries for Line 27, Total Program Costs on the WAPR (i.e., total for the State's Substate areas under EDWAA) should equal the entry for Column B., Line 10, Total Accrued Expenditures (Substate Grantees) on the WQFR for the same recipient that includes the final quarter of the same program year.

The entry on Line 27 on the WAPR for the Governor's Reserve activity should equal the entry for Column A., Line 10 on the WQFR for the same recipient that includes the final quarter of the same program year.

Line 11 *Rapid response.* Enter the accrued expenditures allocable to the Rapid Response service cost category, as appropriate. This line is a sub-breakout of Line 10.

Line 12 *Basic Readjustment.* Enter the accrued expenditures allocable to the Basic Readjustment services cost category. This line is a sub-breakout of Line 10, and does not include amounts for supportive services reported on Line 14.

Line 13 *Retraining.* Enter the accrued expenditures allocable to the Retraining services cost category. This line is a sub-breakout of Line 10.

Line 14 *Needs-related payments and supportive services.* Enter the accrued expenditures allocable to the Needs-Related Payments and Supportive Services cost category. This line is a sub-breakout of Line 10.

Line 15 *Administration.* Enter the accrued expenditures allocable to the Administration cost category. This line is a sub-breakout of Line 10.

*Section III—Program Activity*

Line 16 *Total participants.* Enter by column the total number of participants who are or were receiving employment, training or services (except post-termination services) through the end of the reporting period, including both those on board at the beginning of the designated program year and those who have entered during the program year.

"Participant" means any individual who has: (1) Been determined eligible for participation upon intake; and (2) started receiving employment, training, or services (except post-termination services) funded under the Act, following intake. Individuals who receive *only* outreach and/or intake and initial assessment services or postprogram follow-up are excluded.

**Note:** Also exclude individuals who receive *only* Rapid Response Assistance and information, per Section 314(b), provided by the State's Dislocated Worker Unit.

If individuals receive concurrent employment, training and/or services under more than one title/program, they are to be considered participants in both titles/programs for purposes of recording actual number of weeks participated, dollars expended, and other pertinent data. Individuals who initially participate in EDWAA funded activity and subsequently participate in any other EDWAA (on non-EDWAA) funded activity, FOR THE COMPLETION OF THE INITIALLY DETERMINED TRAINING OBJECTIVE, may be considered to be concurrent participants in each program.

Line 17 *Total terminations.* Enter by column the total number of participants who terminated (as defined below) from the program during the reporting period. Include all participants who received no Basic Readjustment Services (except supportive services and/or counseling) or Retraining for 90 days.

"Termination" means the separation of a participant from the program who is no longer receiving Basic Readjustment Services or Retraining under EDWAA. Individuals may be considered participants for up to 90 days after last receipt of Basic Readjustment Services or Retraining, during which time they may continue to receive supportive services, as provided for in section 314(c)(15), and defined in section 4(24) of the Act.

Terminees may continue to receive counseling necessary to assist in the retention of employment for not more than 6 months following last receipt of Basic Readjustment Services or Retraining.

Participants who have transferred from one title to another, or between programs of the same title, should be recorded as terminations from the title or program of initial participation and included as participants in the title or program into which they have transferred. If they are concurrent participants in more than one title or program, the type of termination determined for the final program should be recorded for all programs for these participants.

Edit Check: The sum of the entries for all Substate areas in a State in Item I.B. (Column B.), Total Participants, and in Item I.C. (Column B.), Total Terminations of the WAPR should equal the entries for Substate Grantees in Column B., Lines 16 and 17, respectively, of the WQFR for the final quarter of the same program year for the same recipient.

The entries in Item I.B. (Column B.) and in Item I.C. (Column B.) of the Governor's Statewide WAPR should equal the entries for Governor's Reserve in Column A., Lines 16 and 17, respectively, of the WQFR for the final quarter of the same program year for the same recipient.

The entries in Item I.B. (Column B.) and in Item I.C. (Column B.) of the

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Secretary's National Reserve WAPR should equal the entries for National Reserve in Column C., Lines 16 and 17, respectively, of the WQFR for the final quarter of the same program year for the same recipient.

Line 18 *WARN notices received.* Enter the number of notices received under the Worker Adjustment and Retraining Notification (WARN) Act by the State Dislocated Worker Unit from the beginning of the program year through the end of the reporting period.

Line 19 *Initial on-site rapid responses.* Enter the number of worker dislocation events responded to by representatives of the State's Dislocated Worker Unit. Responses include on-site contact with employer and/or employee representatives, preferably within 48 hours after becoming aware of a current or projected plant closure or substantial layoff. The purpose of such contacts are to 1) provide information on and facilitate access to available public programs and services, and 2) provide emergency assistance adapted to the particular closure or layoff. On-site rapid responses may be the considered result of WARN notices received, or of other information available to the State Dislocated Worker Unit. Therefore, the entries on Line 18 and Line 19 may be different.

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Monday
March 6, 1989

Part VI

# Department of Agriculture

**Food Safety and Inspection Service**

**9 CFR Parts 317 and 381**

**Net Weight Labeling of Meat and Poultry Products; Proposed Rule and Withdrawal**

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DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 317 and 381

[Docket No. 87-025P]

## Net Weight Labeling of Meat and Poultry Products

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Proposed rule and withdrawal.

**SUMMARY:** This proposal, if adopted, would amend the Federal meat and poultry products inspection regulations to provide uniform net weight labeling requirements including reasonable variations for label statements of net weight contents of containers of meat and poultry products. The proposal incorporates by reference the National Bureau of Standards (NBS) Handbook No. 133, Third Edition, 1988, for compliance testing of net weight contents statements on packaged meat and poultry products. The proposal also incorporates by reference the NBS Handbook No. 44, 1988 Edition, on specifications, tolerances and other technical requirements for commercial weighing and measuring devices in Federal establishments. The proposal is drafted to establish objective, numerical variations from the labeled net weight which are to be determined by prescribed procedures adopted by way of incorporation by reference of the NBS Handbook 133, Third Edition, 1988. The proposal is designed to enhance the ability of Federal, State and local agencies to enforce the industry-wide use of strict net weight standards at the packing, warehouse, and retail level and would establish greater uniformity with regulations for net weight compliance used by the Food and Drug Administration for other types of foods. Finally, this proposed change withdraws the 1980 proposed rule on Net Weight Labeling.

**DATE:** Comments must be received on or before May 5, 1989.

**ADDRESS:** Written requests should be addressed to: Ms. Linda Carey, FSIS Hearing Clerk, Room 3171, South Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. (See also "comments" under Supplementary Information.)

**FOR FURTHER INFORMATION CONTACT:** Mr. Bill F. Dennis, Director, Processed Products Inspection Division, Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-3840.

**SUPPLEMENTARY INFORMATION:**

### Executive Order 12291

USDA has determined that this proposed rule is not a "major rule" under Executive Order 12291. This proposed rule would not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographical regions; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The proposed rule would standardize weights and measures practices for the Federal Government and State and local governments for federally inspected meat and poultry products.

The proposed rule would not create a significant economic or administrative burden upon these regulatory agencies or upon the industry. The proposed change only standardizes already similar Federal, State and local government net weight compliance procedures. Federal, State and local weights and measures officials would be spending the same amount of time conducting their compliance activities as before.

Moreover, the changes would not alter the prices or practices of the meat and poultry industry. Industry will not need to spend much, if any, additional time or money to adjust to these procedures. In fact, they may save time and money because they only have one set of rules to follow instead of possibly several different ones. One additional requirement is having their weighing devices tested and certified annually. This only makes explicit a common practice of most firms. Many State and local governments already annually test and certify weighing devices in the Federal establishments for free. In some cases, weighing devices which do not meet NBS Handbook 44 specifications would need to be replaced. The total replacement costs of these weighing devices would be less than one million dollars.

### Effect on Small Entities

The Administrator, Food Safety and Inspection Service, has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act, Pub. L. 96-354 (5 U.S.C. 601). The changes will not alter the prices or practices of the meat and poultry industry. Small firms will not be at a competitive disadvantage because the changes, as noted above, standardize weights and measures practices. Small firms, like large firms, may benefit by reducing the amount of time and effort they spend on adjusting their weights and measurement practices to suit different jurisdictions.

### Paperwork Reduction Act

The proposed rule does not appreciably increase the burden of recordkeeping of meat and poultry plants. All in-plant weighing devices will need to display proof that the device's accuracy has been annually validated. Many meat and poultry plants have USDA net weight quality control programs in which tare and net weights data are automatically collected and maintained by production lot. In this way producers can properly monitor that they are neither under packing or over packing. Those plants without an FSIS Quality Control program may want to collect and maintain net weight and tare measurements on production lots in order to controvert a potential finding made outside of the plant. Under used tare testing, net weights found in the "gray area" are to be determined to be out of compliance if there are no plant records on the lot to dispute the findings in the field.

The paperwork requirements of the proposed rule were reviewed by FSIS and seen as covered by existing information collection procedures approved under OMB control number 0583-0015, § 317.20(b), *Packaging Materials*.

### Comments

Interested persons are invited to submit written comments concerning this proposal. Written comments should be sent to the Policy Office and should refer to the docket number that appears in the heading of this document. Any person desiring an opportunity for oral presentation of views as provided under the Poultry Products Inspection Act must make such request to Mr. Dennis so that arrangements may be made for such views to be presented. A record will be made of all views orally presented. All comments submitted in response to this action will be made available for public inspection in the Policy Office between 9:00 a.m. and 4:00 p.m., Monday through Friday.

### Basis for Proposing New Regulations on Net Weight

Under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*), USDA must assure that meat and poultry products sold and distributed are properly marked, labeled, and packaged and not misbranded in any way. The Acts require an accurate statement of net quantity of contents, but allow the Secretary to establish reasonable variations by regulations (21 U.S.C. 451(h)(5), 601(n)(5)).

USDA's current net weight regulations for meat products (9 CFR 317.2(h)) and poultry products (9 CFR 381.121) stipulate that the labeled net weight shall not be false or misleading and shall express an accurate statement of the quantity of contents, exclusive of wrapping and packing substances. The regulations allow for reasonable variations from the labeled net weight caused by (1) moisture loss or gain during the course of good distribution practices or (2) unavoidable deviations during good manufacturing practices.

According to USDA studies, the regulations have been generally observed, but some consumer advocates and State and law enforcement officials have doubted their adequacy. The consumer advocates have charged that net weight labels are inaccurate and that consumers are being overcharged for the products they buy because the products contain too much water. The State law enforcement officials have argued that they are unable to protect consumers adequately because there are no numerical criteria for determining reasonable variations in net weight. The States and consumers have favored a "drained weight" or "wet tare" approach to net weight. That is, the moisture in the package is not included in the net weight determination. The different forms of net weight measurement are explained below.

When acting in their jurisdictions, some State officials have tried to measure products by "wet tare" standards. From time to time, they have brought to the attention of USDA problems involving suspected fraud or inaccurate net weight labeling. But some States have avoided acting on net weight problems involving meat and poultry products sold at retail because of uncertainty about the extent of Federal preemption. For its part, industry has sometimes responded to concerns about short-weighing by "overpacking" the product or deliberately understating the net weight on the label.

The National Conference on Weights and Measures (NCWM) has become the principal forum for building a consensus on how to determine the net weight of meat and poultry products. NCWM is an organization of State and local Weights and Measures officials that is supported by the National Institute of Standards and Technology (NIST—formerly the National Bureau of Standards). Since 1984, USDA, FDA, and meat and poultry industry and consumer representatives have been working through NCWM to resolve the net weight issue. The current proposal embodies the agreements worked out by the interested parties through NCWM.

### The Proposal

1. *Establishing definitions of tare and alternative methods of compliance testing.* USDA is adopting the definitions of "tare," "unused tare," and "used tare" that are given in National Bureau of Standards (NBS) Handbook 133, "Checking The Contents of Packaged Goods," Washington, DC, U.S. Government Printing Office, September 1988, Third Edition, Appendix C, Glossary. The "tare weight" is "the weight of a container, wrapper, or other material that is deducted from the gross weight to obtain the net weight". With regard to the liquids absorbed by the packaging material and free flowing liquid (free liquid), USDA allows, under certain conditions, two alternative definitions, "unused tare" and "used tare."

"Unused tare," (or dry tare) is the weight of "all packaging materials (including glue, labels, ties, etc.) that contain or enclose a product, including prizes, gifts, coupons, or decorations that are not part of the product." The free-flowing liquid and moisture in the packaging materials is assumed to be product except for those few products which are packed in substances which are normally discarded before consumer preparation and/or serving such as vienna sausage packed in a gelatin and canned chorizos packed in lard. "Unused tare" is weighed before the product is introduced into the container. "Unused tare" measurement is used for all compliance testing within the Federal establishment. Also, USDA recommends "unused tare" compliance testing outside the Federal establishment.

"Used tare," is the weight of "all packaging materials that can be separated from the product, either readily (e.g., by shaking) or by washing, scraping, ambient air drying, or by other technique involving more than "normal" household recovery procedures, but not including laboratory procedures such as oven drying." Wet tare" is the same as used tare "when no effort is made to reconstruct unused tare wieght by drying out the absorbent portion (if any) of the tare." USDA does not allow "used tare" testing in the Federal establishment. "Used tare" testing uses "gray areas", defined below, in new weight determinations.

"Gray area," is the percentage variation below the labeled net weight within which no determination of net weight compliance can be made by net weight alone. The "gray area" is used only with "used tare" compliance testing procedures outside the Federal establishment.

If a product's net weight falls below the product's gray area percentage, the product fails the compliance test. If a product's net weight is at or above its labeled net weight, the product passes the compliance test. However, if the product's net weight falls within the gray area or "no decision area," further information is sought before a determination is made.

For example, a product has been designated as a "gray area product" type, with a 3 percent maximum allowable variation from the declared net weight of that packaged product. This product is compliance tested, and its actual weight falls short of the declared net weight by more than 3 percent. This product has failed to comply and is in violation of the proposed rule. Another package of the same designated "gray area product" type is compliance tested. Its actual weight exceeds the declared net weight on the package; therefore, it is in compliance with the proposed rule and it passes. Another package of the same designated "gray area product" type is compliance tested. Its actual weight falls short of the declared net weight by an amount less than 3 percent, but more than 0 percent of the declared net weight. It falls within a no decision area, as defined by the proposed rule, because its actual weight falls within the maximum allowable variation designated for that "gray area product" type.

The data on the specific lot in question may well substantiate that the lot complied with net weight requirements. On the other hand, if no such data exists, then the State or local Weights and Measures authority could take appropriate regulatory enforcement actions. This process appears to be the best means to use effectively the concurrent jurisdiction available to both the Federal government and State and local authorities and to meet the Federal standard of reasonable variation caused by unavoidable deviations in good manufacturing and distribution practices.

It is important to note that gray area percentages are used only with used tare testing on meat and poultry products. These gray area percentages

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are calculated by product testing and have been approved by the NCWM's membership at their annual conference and published NBS Handbook 133, In § 3.18., "Meat and Poultry from Federally-Inspected Plants."

2. *Defining the currently permitted "reasonable variations" due to loss or gain of moisture during the course of good distribution practices or by unavoidable deviations in good manufacturing practices though numerical variations which appear to be reasonable when determined by specific procedures in the widely used and respected National Bureau of Standards (NBS) Handbook 133, "Checking The Contents of Packaged Goods," Washington, DC, U.S. Government Printing Office, September 1988, Third Edition.* These variations would be used and enforced at the time of production, during distribution, and at retail sale by Federal, State, and local regulatory officials within their respective authorities. There are two basic types of reasonable variations in the rule. The first are the gray area percentages for products in conducting used tare compliance testing. The second are the maximum allowable variations (MAV's) that individual packages can vary from the labeled weight.

*Gray areas*

The proposed regulations provide for specific moisture loss "gray areas" in net weight by product type to define the current "reasonable variation," for purposes of determining net weight compliance with only the used tare testing method. Such gray areas are currently being utilized by USDA. At this time, only five products have proposed gray area percentages. These are bacon, fresh sausage, and luncheon meats with a gray area of 0 (zero) percent, vacuum-packed frankfurters with one of 2½ percent and fresh poultry with one of 3 percent. These products with gray areas are listed in NBS Handbook 133, § 3.18.2., "Meat and Poultry from Federally-Inspected Plants: Types of Products."

*MAV's*

The proposed regulations incorporate USDA's current average and individual net weight requirements. That is, the average net weight of the lot must meet or exceed the labeled weight of the product, while individual reasonable variations are permitted for individual packages in accordance with Table 2–12, "U.S. Department of Agriculture, Meat and Poultry, Groups and Lower Limits for individual packages," NBS Handbook 133, page B–15. The table is included as shown below. The table provides limits for two classes of product, "Homogenous fluid when filled" and "All other products." "Homogenous fluid when filled" products are those which are of uniform consistency throughout. Baby food is homogenous; beef stew is not. "Fluid" at time of filling refers to liquids and solid products (like shortening) which are heated and filled as a liquid.

As can be seen the maximum allowable variations (MAV's) for individual package net weights from the labeled net weight generally becomes a decreasing percentage as the product's net weight increases. For example, a package with a labeled net weight of under 3 ounces (oz.) in Group A has a 10 percent of that packaged weight maximum allowable variation (MAV). That is, the package's weight must be accurate to within 10 percent of the labeled weight.

For the other groups, 1–5, the lower limits for a group are a specific amount for the whole range. For example, in group 1 the lower limit is either 7.1 grams, 0.25 ounce, 5/32 ounce, 4/16 ounce, 3/16 ounce, 3/8 ounce, or ¼ ounce. The selection of the particular scale gradation depends on the characteristics of the packer's scale. Therefore, a group 1, 3-ounce package with an allowance of 0.25, assuming a digital scale, would have a percentage allowance of 8.3 percent, while a 16-ounce package with an allowance of 0.25 would have a percentage allowance of 1.6 percent.

The maximum allowable variation from the labeled net weight on a 10-pound, 1-ounce package using a scale with accuracy of 2-ounce gradations is 1.24 percent. The maximum allowable variation from the labeled net weight of the same 10-pound, 1-ounce package on a scale with the accuracy of 4-ounce gradations is 2.28 percent. The selection of a 2-ounce or 4-ounce allowance depends whether the packer has a 2-ounce or 4-ounce gradation on the scale. The 2-ounce gradation is to be used unless the packer has only a 4-ounce gradation scale.

Moreover, for any product over 10, 20, 30 or more pounds, the 2-ounce or 4-ounce allowance is still used. A 50-pound package with a 2-ounce allowance has a 0.25 percent allowance, while one with a 4-ounce allowance has a 0.50 percent allowance. Packers have claimed that this fixed amount for group 5, the 2-ounce or 4-ounce limit, is too restrictive. USDA would be interested in further public comments on this issue.

TABLE 2–12.—U.S. DEPARTMENT OF AGRICULTURE, MEAT AND POULTRY, GROUPS AND LOWER LIMITS FOR INDIVIDUAL PACKAGES.

| Group name | Homogenous fluid filled | All other products | Lower limit for individual weights | Percent allowance for group range |
|---|---|---|---|---|
| A | Less than 3 ounces (oz.) | Less than 3 ounces (oz.) | 10 percent of labeled weight | 10 percent of labeled weight |
| 1 | 3–16 | | 7.1 grams, 0.25 oz., 5/32 oz., 4/16 oz., 3/16 oz., 3/8 oz., or ¼ oz | 8.3–1.6 |
| 2 | Over 16 | 3–7 | 14.2 grams, 0.50 oz., 1 3/32 oz., 9/16 oz., 9/16 oz., ¾ oz., or ¾ oz | 2.9–1.6 |
| 3 | | Over 7 to 48 | 28.3 grams, or 1 oz | 12.5–2 |
| 4 | | Over 48 to 160 | 42.5 grams, 1.50 oz., 1 13/32 oz., 1 9/16 oz., 1 13/16 oz., 1¾ oz., or 1¾ oz | 3.1–0.01 |
| 5 | | Over 160 ounces | 2-oz. scale gradation or | 1.24–0.63 |
| | | | 4-oz. scale gradation | 2.48–1.26 |

3. *Using NCWM to determine gray area percentages for meat and poultry products.* In the first five product determinations described above, cooperating industry and trade groups worked together with USDA and State and local weights and measures officials to gather data on moisture loss characteristics of these products. The Laws and Regulations Committee of NCWM, composed of NCWM members as well as associated members such as USDA, FDA, the American Meat Institute, the National Broiler Council and others developed and agreed for each product, a percentage allowance which best captured the results of the data in this pilot study called, "Report of the Task Force on Commodity Requirements to the Executive Committee." This report is Appendix E of the *National Conference of Weights and Measures: Program and Committee Reports for the 73rd Annual Meeting.* U.S. Department of Commerce: National Bureau of Standards, NCWM Publication 16, 1988. The report's recommendations were submitted to the NCWM's national conference for approval. The NCWM's recommendations were then sent to NIST for their incorporation in the third edition of Handbook 133. USDA believes that this same procedure should be followed for the next gray area determinations.

Industry or Trade groups are encouraged by USDA to request product gray area determinations by NCWM's Laws and Regulations Committee. The committee's address is: NCWM, Office of Weights and Measures, National Institute of Standards and Technology, Gaithersburg, MD 20899.

4. *Providing new regulations on weighing and measuring devices in Federal establishments which are described in National Bureau of Standards Handbook 44, "Specifications, Tolerances and other Technical Requirements for Measuring Devices", 1989 Edition, Washington, DC: U.S. Government Printing Office, 1988.* USDA officials and others who may test or certify the accuracy of these weighing and measuring devices, such as State and local weights and measures officials, would be using the same set of procedures. This NBS handbook is already widely known and used by many State and local enforcement officials.

5. *Establishing specific sampling procedures to assure consistent weight measurement and compliance determinations by Federal, State and local regulatory personnel.* All testing within the Federal establishment shall be conducted according to Sampling Plan B, but outside the establishment, Sampling Plan A shall be used. Sampling Plan B is the more stringent plan because it is at the point of packing, the first point in the distribution system. Sampling Plan A is at the point of sale, in the retail level, to make sure the first line of enforcement is working properly. In such dual-testing situations the latter test is less stringent.

Both Plans are described in NBS Handbook 133. The current USDA Plan and the proposed one for in-plant compliance testing are statistically equivalent in terms of stringency. That is, they each afford the same degree of protection. In conducting net weight compliance activities, lots would be sampled according to Sampling Plan B of NBS handbook 133. In general, for up to and including 250 units or packages, the sample size would be 10. For over 250 the sample size would be 30. This method for determining sample sizes is very similar to current practice. Many States and localities are already familiar with Sampling Plan A.

6. *Establishing consistent limited labeling exemptions for meat and poultry products which meet the criteria for "small packages" and individual "random weight packages."* It has been the practice of USDA to require that the net weight labeling of these products be applied to the bulk package shipped from the official establishments. Individual package net weight labeling is applied at the retail level. This rule clarifies that requirement.



**Purpose and Need for Action**

A revised regulation would serve several purposes. It would: (1) Create standards that would be easily enforceable so that the net weight statement is as accurate as can be reasonably required for the consumer; (2) enable Federal, State and local regulatory agencies to enforce strict net weight standards at retail and other locations within their jurisdictions where meat and poultry products are sold; (3) provide clear and uniform notice to packers, wholesalers and retailers of net weight compliance procedures and requirements; and (4) establish net weight regulations that are generally uniform with those used by FDA for other food products.

**Background**

*Introduction*

This introduction provides an overview of the issues, definitions and organizations involved in this proposed amendment. Since 1973 there have been three net weight proposals submitted by USDA for regulatory change which were dropped from consideration because of substantial objections from either the meat and poultry industry, consumer groups, or State and local Weights and Measures officials.

Very generally, "net weight" is the weight of the product itself—not the product and its packaging. USDA regulations allow labeled or declared product net weight to be greater or slightly less than actual net weight. Variations between actual and declared net weight, which are due to unavoidable deviations in good manufacturing and good distribution practices, are acceptable and are known as "reasonable variations" so long as they are not "unreasonably large." How to define "reasonable variations" for practical purposes is the larger question that previous proposals have sought to resolve, since both the meat and poultry laws require Federal net weight standards to permit reasonable variations due to moisture loss, among other things.

Approaching a definition of "reasonable variations" has been complicated by the treatment of liquids that drain from the product. Should these liquids be treated as product or packaging? If they are considered as product, is the consumer actually paying for water? In either case, how can Federal, State, and local officials verify that labeled or declared net weight represents a reasonable variation from actual net weight?

USDA regards water or other liquids used in the manufacture of meat or poultry products as part of the product. Thus, USDA uses a net weight determination called "dry tare," "dried used tare," or "used dry tare." Under dry tare net weight, net weight is the gross weight less the dry or dried packaging. In the Federal establishment, products are weighed using dry tare to reflect their net weight on the package. Depending upon the product, the USDA has many regulations for the control of added water to products. In some cases, these controls are process controls that limit the water that a product may pick up during processing. In other cases, the controls are indirect measures of water that measure other product characteristics from which the amount of added water can be estimated. The package or wrapping weight is not included in the net weight determinations. However, moisture loss can occur in two basic ways with these acceptably prepared products as they move from Federal plants into retail stores.

First, the liquid may "bleed" or "weep" from the product, such as fresh chicken, and be absorbed into the packaging (including cardboard backing or absorbent pad, if used) or float freely in a vacuum sealed package. Secondly, moisture loss from products may occur by evaporation after the product has been shipped from the Federal establishment and travels through the distribution channels.

In the case of sausages in permeable casings or of the skinless variety, some moisture may evaporate from the product and cause net weight discrepancies. However, for meat and poultry products, evaporation is not a major source of moisture loss. In fact, moisture loss due to evaporation is either non-existent for most acceptably

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prepared meat and poultry products or is so small that it is assumed to be zero. The weeping or bleeding of liquids from products causes much more net weight deviations than evaporation at different points in the distribution process. The concern of this proposal is the weeping.

From USDA's perspective, some moisture loss in certain meat and poultry products may be "unavoidable," even when the product is produced using good manufacturing or distribution practices. As long as the weight loss is not "unreasonably large," as dictated by the laws and the current regulations, reasonable variations of net weight between the declared dry tare net weight and the actual dry tare net weight are tolerated. USDA believes that moisture loss and possible product adulteration are limited by establishing limitations in the amount of liquid that may be added to or "picked up" by specific products in manufacturing. For example, there is a limit of added water in cooked frankfurters and up to 12 percent of the total product net weight water pick-up in the processing of chilled, consumer pack poultry.

*The Wholesome Meat Act, 1967; Poultry Products Inspection Act, 1968*

Before the enactment of the Wholesome Meat Act of 1967 and the Poultry Products Inspection Act (PPIA) in 1968, the Department had very limited responsibility for taking action against misbranded and adulterated meat and poultry products after they left the Federal establishment. These Acts, however, extended the Department's authority to cover federally inspected products in distribution channels between the official establishment and the retail level.

Weights and Measures officials of most States and municipalities are generally authorized to take action against all products including food products which fail to meet the label statement of net contents. Their authority, however, is limited when federally inspected meat or poultry products are involved. The States are enjoined from imposing requirements in addition to, or different from those made under the Acts with respect to marking or labeling of federally inspected products.

*Litigation involving Rath Packing Company*

During the period September 1971 to March 1972, California's Weights and Measures inspectors visited supermarkets in Los Angeles and Riverside Counties. They weighed packages of bacon from Rath Packing Company to determine compliance with the State statute and regulations concerning net weight labeling. Mr. M.H. Becker, Director, Weights and Measures of Los Angeles County, ordered approximately 84 lots of bacon taken off the shelves because they were said to be short weight. Mr. Joseph Jones, Director, Weights and Measures, Riverside County, ordered nearly 400 packages of Rath bacon off the shelf for the same reason.

On February 17, 1972, the Riverside County Counsel brought an injunction against Rath in the Superior Court. The complaint alleged that Rath had committed acts of unfair competition by distributing for sale short weight packages of bacon in Riverside County supermarkets, which Riverside County, California, Weights and Measures officials had verified. On March 1, 1972, the Los Angeles County Counsel filed a similar action against Rath in the Superior Court of Los Angeles County.

Rath removed both actions to Federal District Court. However, on March 20, 1972, the Federal Court remanded the actions to the State courts, finding that there was no substantial Federal question presented in the pleadings.

Meanwhile, on March 17, 1972, Rath filed two actions in Federal District Court, one against the Director, Weights and Measures of Los Angeles County, California, and the other against the Director, Weights and Measures of Riverside County, California. Rath claimed that the California statutes and regulations imposed net weight labeling requirements on its federally inspected bacon that are in addition to or different from the requirements imposed under the Federal Meat Inspection Act (FMIA), and that the State law was preempted under section 408 of the FMIA.

Rath also requested injunctions against the enforcement by Los Angeles and Riverside County's Weights and Measures Directors of labeling requirements in addition to or different from those in the FMIA and against the ordering "off-sale" or otherwise preventing the sale of Rath's federally inspected meat products. The two counties counterclaimed.

*The Rath Case Decisions*

In 1974, litigation continued in the case of Rath Packing Company and the California Weights and Measures authority. The central issue in this litigation was whether sections of the California statute and regulations were preempted by the FMIA. The Federal District Court held that the statistical variations allowed by California created a net weight labeling standard different from the Federal standard.

California officials claimed that this holding infringed on the legitimate interests of that State to protect its citizens from short weight meat products. The court held that the intent of Congress was to create a uniform national labeling standard, under the definitions set forth in the FMIA, including the definition of "misbranding."

Furthermore, the misbranding and mislabeling provisions of the Act were held to apply not only at the official establishment packing the product, but at all levels in the distribution chain, including the retail level. However, the U.S. District Court for the Central District of California also held that the Federal regulation allowing "reasonable variations" with respect to net weight (9 CFR 317.2(h)(2)) was void due to vagueness.

*Appeal of the Rath District Court Decision to the Ninth Circuit Court*

Rath appealed the decision to the State Court of Appeals, Ninth Circuit. The appeals court held that:

1. The District Court had jurisdiction over the subject matter of this case, personal jurisdiction being conceded.
2. District Court erred in invalidating 9 CFR 317.2(h)(2).
3. The FMIA and 9 CFR 317.2(h)(2) preempts California codes and that California authorities were properly enjoined from enforcing those sections.
4. State net weight labeling requirements which are not in addition to or different from the Federal net weight labeling requirement may be enforced by appropriate State procedures at the local level.

*U.S. Supreme Court Ruling*

The preemption issue was appealed by the State of California to the U.S. Supreme Court. A significant point in this appeal was that the Deputy Attorney General of California argued the case for 39 States urging reversal of the earlier decisions. Justice Marshall delivered the opinion of the Court, in which Justice Burger, Brennan, White, Blackmun, Powell, and Stevens joined. Justice Rehnquist filed an opinion concurring in part and dissenting in part, in which Justice Stewart joined on March 29, 1977. The court held that the California State Laws on net weight labeling of meat food products were preempted by the FMIA.

*USDA's First Proposal to Amend the Net Weight Regulations, 1973*

On December 3, 1973, USDA published in the **Federal Register** (38 FR 33308–33313) proposed reasonable



variations and procedures for enforcing net weight declarations on meat and poultry product labels. The proposal offered extensive revisions of the existing meat and poultry inspection regulations. It would have done the following:

1. Provide uniform sampling and acceptance procedures for determining net weights at the processing plant, and for checking compliance after the product leaves the plant, including that in retail stores;
2. Eliminate the allowance of an "acceptable" moisture loss from the net weight marked on the package in the processing plant;
3. Require processing plants to maintain quality control programs, approved by USDA, for checking consumer-sized packages, to be monitored by USDA inspectors as part of their inspection duties at official establishments;
4. Establish procedures whereby each lot of a product would have to be sampled and the "average" weight would have to conform to the net weight stamped on the label;
5. Provide an optional method for labeling bulk-packed meat and poultry products that are to be repacked and weighed before sale at retail stores; and
6. Define categories of products that are to be tested for net weight compliance using a dry tare or a wet tare method, and establish specific procedures for determining tare weights.

Interested persons were given until April 5, 1974, to offer comments on the proposal. The response to the 1973 proposal was overwhelmingly negative. On December 2, 1977, USDA withdrew the proposal by replacing it with a new one (42 FR 61279–61284).

Beginning in 1974, the Department sponsored a series of public hearings concerning net weight issues of meat and poultry products. The public hearings revealed widespread dissatisfaction on the proposal from consumers, industry representatives, and State and local weights and measures officials. The Department received over 1600 written comments essentially expressing the same dissatisfaction. Industry comments characterized the proposal as too intrusive and costly; consumers objected to the averaging concept of net weight compliance; and State and local governments objected to Federal preemption.

In view of this, USDA began discussions with the Food and Drug Administration (FDA), the Federal Trade Commission (FTC), and the National Bureau of Standards (NBS—renamed National Institute of Standards and Technology (NIST) in 1988) concerning net weight determination of amenable products.

*USDA's Second Proposal to Amend the Net Weight Regulations, 1977*

In 1977, the State of California's Department of Food and Agriculture submitted a petition to USDA, FTC, and FDA to issue specific reasonable variations and procedures on net weight labeling of food. For products subject to moisture loss, the petition recommended that compliance with the label declaration be determined at the point of sale rather than at the point of packaging. The petition was supported by:

—State officials from 48 of the 50 States
—American Farm Bureau Federation
—The National Grange
—National Farmers Organization
—National Farmers Union
—Consumer groups
—Food service organizations
—Scale manufacturers and repairers
—National Association of Attorney Generals
—National Association of State Departments of Agriculture
—Board of Directors of the Consumers Federation of America
—National Conference on Weights and Measures

Following this 1977 petition, on December 2, 1977, USDA published a second net weight proposal in the **Federal Register** (42 FR 61279–61284). Interested persons were given until June 2, 1978, to submit comments. This proposal would have provided that net weight declarations reflect the drained weight of products. Further, the proposal would have done the following:

1. Define specific limits by which individual containers could vary from the stated net weight on the label;
2. Require the marked net weight to be no less than the average drained weight at the point of sale;
3. Require official establishments to maintain USDA-approved quality control systems for net weight compliance;
4. Exempt small packages—less than ½ ounce—provided the shipping container complied with the net weight requirements; and
5. Bring shingle-packed bacon in line with the regulations concerning net weight for other meat products.

The free liquid in the package of meat products seemed to be the major issue. There was no provision for bulk-packed items. The proposal's comments showed that consumer groups supported the drained weight concept, industry groups totally opposed it, individuals either supported or opposed it, Weights and Measures organizations supported it, and the academic community was equally divided. There were over 3,000 public comments received by USDA with over two-thirds of the respondents opposing the second proposal.

*The Consumer Federation of America (CFA) Study*

As a result of the comments on the second proposal, USDA sought to answer certain questions about the economic costs and benefits of the proposal. CFA was awarded a contract to conduct such a study. The study was completed in October 1978. It observed that "Consumers cannot be expected to have different interpretations of labeled net weight depending on the particular food product being sold * * *" and that "Consumers are more hurt by shortweighing than they are benefited by overpack * * *."

In October 1978, the Department reopened the public comment period on its proposal to revise the net weight labeling regulations for meat and poultry products. This action was taken to provide interested persons until December 26, 1978, opportunity to submit comments on the consumer economic study prepared by the CFA.

*Government Accounting Office (GAO) Net Weight Study, 1978*

On December 20, 1978, GAO issued a report titled "Proposed Changes in Meat and Poultry Net Weight Labeling Regulations Based on Insufficient Data." In this report, GAO claimed USDA did not have sufficient data to:

1. Decide how to deal with moisture loss after a product has been packaged and shipped;
2. Consider the economic impact of the proposed changes; and
3. Comparatively evaluate the alternative net weight compliance systems.

The report stated that USDA should expand and extend its search for information concerning the best way to monitor net weight labeling for meat and poultry products.

*USDA's Response to the GAP Report: The Economics, Statistics and Cooperative Service (ESCS) Study*

As a result of the criticism of the GAO report, the Department initiated its own study to answer important questions about the effects and impacts of various policy changes in the proposed net weight regulation. On January 26, 1979, the Department released a statement saying it had asked the ESCS, now called the Economic Research Service

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(ERS), to conduct further studies on accurate net weight labeling of meat and poultry. The ESCS study evaluated comments submitted to the Department by the meat and poultry industries and consumers. It also addressed questions raised by the CFA and GAO net weight reports.

In December 1979, ESCS released its report, "Assessment of Proposed Net Weight Labeling Regulations for Meat and Poultry Products" (Report No. 443). The ESCS study concluded that the 1977 proposal would achieve two objectives of USDA. First, consumers would be assured that the weight of usable meat and poultry in a package is equal to its labeled weight. Second, States would be able to enforce strict net weight standards at retail establishments. However, the study also concluded that the latter objective could probably be accomplished as effectively under a system that allows free liquid as part of the product's net weight.

Generally, the ESCS study found that the economic benefits from using a drained weight requirement were substantially less than many consumer groups had contended, but the costs of such a requirement were substantially less than the producer groups had suggested. The ESCS study said the effects of the proposed rule change has been misunderstood by both consumers and producers.

Consumers could not expect the reported price per pound of a product to remain unchanged if free liquids are excluded from labeled product weights. The price per pound could be expected to increase—and to increase most for those products with relatively more free liquid. However, the cost to consumers for usable product would remain unchanged. That is, the unit cost would be the same.

Actual costs to producers would not increase because of the change in the definition of tare. The amount of drained weight meat would not be affected by a labeling rule, and processing costs per drained weight pound would be unaffected. The processor is only adjusting the price slightly higher per pound and net weight slightly lower to cover for the product's estimated weepage.

There would be increased costs to producers if there was a mandatory quality control program. The study estimated it would increase industry costs from $50 million to $116 million. The impact on the smaller firms would be greater than on the larger firms, many of which already have quality control systems.

There would also be additional compliance costs for the Federal, State and local governments. The study refrained from making any quantitative estimates of these costs but concluded that, "The proposed changes would have a larger impact on State and local governments than on the Federal Government."

*USDA's Third Proposal, 1980*

On August 8, 1980, USDA published its third proposal on net weight in the **Federal Register** (45 FR 53002–53023). The significant features of the proposal included:

1. *"Reasonable variations" would be based on scientific procedures developed in consultation with the NBS.* These variations for moisture loss would be used and enforced from production to retail sale by Federal, State and local officials within their respective regulatory authorities.

2. *Establishing a definition of tare in which the net weight of product equals the package and contents minus the weight of the packaging materials.* With regard to liquids absorbed by the packaging materials, USDA developed two alternatives as to whether to include or exclude them in net weight determinations. In the first, the "dry tare" method, the free liquid, which has separated itself from the product but which has not been absorbed in the packaging materials, is included in the product weight. The exceptions to this definition are those few products which are packed in substances which consumers normally discard in preparation and/or serving. In the second alternative, the "wet tare" method, the net weight excludes the free liquid as well as the packaging. In this case, the numerical allowances would be used to determine compliance.

3. *Establishing specific sampling procedures to assure consistent weight measurement and compliance determinations by Federal, State and local regulatory personnel.* This includes the provision that the net weight of all the sample packages must meet or exceed the stated net weight.

4. *Making quality control programs voluntary for the producers.*

5. *Minimizing substantive differences between USDA and FDA net weight compliance procedures.*

6. *Establishing consistent limited labeling exemptions for meat and poultry products that meet criteria for "small packages" and "multi-unit packages."*

When the comment period closed on USDA's third proposal in January 1981, over 275 individuals, 35 trade organizations, five Federal agencies, 15 county and city governments, 25 universities, 135 food producing establishments, and 30 State governments responded. These responses generally reflected differences in views between consumers, trade organizations, universities, industry, and State and local governments.

Consumer groups generally supported the idea of a wet tare alternative to the dry tare. Although they preferred a drained weight approach, they believed the wet tare approach was a reasonable compromise. However, the industry asserted that compliance was very good in this area and they believed there was no need for further regulation to change enforcement criteria. Industry preferred that USDA continue use of the dry tare approach, characterizing it as the most viable, efficient and uniformly controllable one. They favored the exemption of bulk packages from the net weight regulations.

State and local governments preferred using drained weight, but would accept the wet tare approach. They were concerned about the definition of a lot, their role in the enforcement and numerous other issues. NIST had some comments on defining lot size and generally encouraged the standardization of regulations and testing procedures for all governmental agencies.

*Comparison of 1980 Proposal With Current Proposal*

The new proposal is very similar to the 1980 one. Both proposals create a wet tare option to dry tare testing. In both, USDA is committed to using the dry tare, but will allow the wet tare under certain conditions. Both establish specific sampling procedures to assure consistent weight measurement. However, the current version specifically adopts NBS Handbooks 133 and 44 in these areas. The reasonable variations in both have been based on consultation with NIST. Moreover, the current one uses NCWM as the principal vehicle to establish the determination of those products suited to gray area percentage allowances.

In the current proposal, moisture loss allowances for several products have already been determined. For example, fresh poultry has 3 percent, vacuum packed frankfurters has 2½ percent, and bacon, fresh sausage, and luncheon meats have 0 percent gray area allowances. Also in both proposals, FDA and USDA coordinated their efforts to minimize their differences. Finally, in the current proposal the lot's average net weight must meet or exceed the labeled net weight, while in the 1980 proposal the minimum weight of each package of the lot had to meet or exceed the labeled weight.



*Withdrawal of 1980 Net Weight Proposal*

The Net Weight Labeling proposed rule, published on August 8, 1980, in the **Federal Register** (45 FR 53002–53023) is hereby withdrawn so this proposed rule is the only USDA proposed net weight rule. The inability of USDA to gain sufficient industry, State and local government, and consumer support was the primary reason for not submitting a final net weight rule. Furthermore, industry strongly objected to the provision that labeled net weight is the minimum, not the average, that all samples must meet or exceed. Industry believed this would cause much more product overpacking. Under the new proposal, this provision is no longer applicable.

*Increasingly Strained USDA-State and Local Government Relationship on Net Weights*

In the 1980's the net weight issue has become an increasing problem as States and local governments have increased or decreased their regulatory efforts on federally inspected products. The lack of an agreed upon standard for determining net weight with products that incur moisture loss has strained relationships among the Federal, State, and local governments, confused the public and angered parts of the industry.

*The National Conference on Weights and Measures (NCWM) Initiative*

The NCWM is an important national organization representing State and local Weights and Measures officials which is supported by NIST. Its annual convention is attended by many State, country, and city Weights and Measures officials, and by representatives of the Federal government, business, and industry.

During the 69th NCWM Annual Meeting in August 1984, then Chairman Ezio Delfino established a Task Force on Commodity Requirements. He gave the Task Force the charge to resolve the "moisture loss" issue in the area of red meat, poultry and flour. He asked them to apply three criteria in any proposal they developed: That it be fair to the packers, verifiable by regulatory agencies, and useful to consumers making value comparisons. The task force added the following criteria: That it be fair to all retailers, large and small, and applicable to all products subject to moisture loss, not just red meat, poultry, and flour.

The membership of the task force included individuals from Federal, State, and local government, business, and consumer interests. Mr. Richard L. Thompson, Chief of Weights and Measures for Maryland, was chairman of the 12-person group. The government and industry representatives were Mr. John W. McCutcheon, Deputy Administrator for Technical Services, Food Safety and Inspection Service (FSIS), USDA; Mr. Howard Pippin, Director, Division of Regulatory Guidance, FDA; Dr. Carroll Brickenkamp, NIST; Dr. Mahlon Burnette, American Meat Institute (AMI), later replaced by Dr. George Wilson of AMI; Dr. Kenneth May of Holly Farms, later replaced by Mr. Stephen Pretanik, National Broiler Council; Mr. Tom Klevay, Millers' National Federation; and Mr. Charles Cavenaro, White House Consumer Affairs Office, later replaced by Ms. Peggy Adams, Director of Bucks County Department of Consumer Protection.

The other members of the group included Mr. Paul B. Engler, Director of Los Angeles Weights and Measures, representing the Western States Weights and Measures (W&M) Association, which is one of the regional groups of State and local weights and measures officials; Dr. Edward Heffron, Chief, Food Division of Michigan Department of Agriculture, representing the Northwestern (now Central) States W&M Association; Mr. Kenneth Butcher, Maryland Weights and Measures, representing the Southern W&M Association; and Mr. Allan Nelson, Chief, Weights and Measures, Connecticut Department of Consumer Protection, representing the Northeastern W&M Association.

The task force set out to formulate national guidelines in wet tare compliance testing. The basis of these guidelines already existed. NBS Handbook 133 provides sampling and test procedures for packagers and inspectors to ensure the accuracy of net weight declarations. The task force set out to see how these procedures could be operationally applied to the meat and poultry industry as well as the flour industry. It conducted tests to determine the moisture loss characteristics of these different commodities.

The task force developed a conceptual model of a "gray area" to assess compliance using a wet tare methodology. While the dry tare method is expected to be the primary system of measurement, the wet tare method is an alternative for further testing, if desired, or for States that historically have used wet tare and wish to continue to do so. Its model had a range of weights from greater to lesser than the labeled weight. In the middle of the scale was a "gray area." Products whose test weight was greater than labeled weight would be in compliance. Products that weighed below the gray area would be out of compliance. When a product fell within the gray area, further investigation would be necessary to determine its state of compliance.

The first step in seeking additional information to determine compliance would be to contact the USDA official associated with that plant to see if there is a USDA approved net weight quality control (QC) program operating in the plant. If there is such a program, the data from the QC program can be used to prove the lot was in or out of compliance. If the plant does not have a USDA approved QC program, the State or local government authority should declare the lot out of compliance.

*Requirements for Implementing the Net Contents Procedures in NBS Handbook 133*

There are three sets of sampling test procedures for determining net contents compliance. They are the unused tare test to be used within the Federal establishment for all meat and poultry products, the unused tare test to be used outside the Federal establishment for all meat and poultry products, and the used tare test to be used outside of the Federal establishment for those meat and poultry products with gray areas cited in NBS Handbook 133, § 3.18.2., "Types of Products." USDA uses and requires the unused tare testing method in Federal establishments. State and local government Weights and Measures officials have a choice between used and unused tare tests in their testing of products that have gray area determinations. They must use unused tare testing with products that do not have a gray area determination. State and local Weights and Measures officials conduct their testing outside the Federal establishment. Below are requirements for each test based on NBS Handbook 133.

A. Unused tare test of products to be used in Federal establishments

(1) Define and Select the *lot.* See NBS Handbook 133, Chapter 2, Section 2.3, "Definition of The Lot." and § 3.18.3.c., "Selection of Lots."

(2) Select the proper *sample size* from a lot. See NBS Handbook 133, Chapter 2, Section 2.8, "Sampling Plans In Category B" and Appendix B., Table 2–5, "Sampling Plans of Category B."

(3) Determine the *gross weight.* The weight of the package including contents, packaging material, labels, etc. See Appendix C., Glossary.

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(4) Determine the *unused tare weight.* See NBS Handbook 133, Chapter 2, Section 2.11., "TARE.", Section "a."

(5) Determine the *net contents.* That quantity of packaged product remaining after all necessary deductions for tare (defined as unused tare in this case) have been made. See Appendix C, Glossary. Subtract the unused tare weight determined in (4) above from the gross weight determined in (3) above.

(6) Determine *individual package error.* See NBS Handbook 133, Section 2.8.1. "Decision Criterion: Individual Packages," Section 2.9. "Individual Packages." Also see NBS Handbook 133, Section 2.12. "MAV's," and Appendix B, Table 2–12, "U.S. Department of Agriculture, Meat and Poultry, Groups and Lower Limits for Individual Packages."

(7) Determine *average package error.* See NBS Handbook 133, Chapter 2, Section 2.8, "Sampling Plans In Category B," especially Section 2.8.2 "Decision Criterion: The Average Error."

B. Unused tare test of products to be used outside of the Federal establishment

(1) Define and Select the *lot.* See NBS Handbook 133, Section 2.3, "Definition Of The Lot." and § 3.18.3.c., "Selection of Lots."

(2) Select the proper *sample size* from a lot. See NBS Handbook 133, Chapter 2, Section 2.7, "Sampling Plans In Category A.;" § 3.18.3.d., "Sample Size" and Appendix B, Table 2–2, "Sampling Plans of Category A."

(3) Determine the *gross weight.* The weight of the package including contents, packaging material, labels, etc. See Appendix C, Glossary.

(4) Determine the *unused tare weight.* See NBS Handbook 133, Chapter 2, Section 2.11.a "TARE," and § 3.18.3.e(1), "Unused or Dried Used Tare."

(5) Determine the *net contents.* That quantity of packaged product remaining after all necessary deductions for tare (defined as unused tare in this case) have been made. See Appendix C, Glossary. Subtract the unused tare weight determined in (4) above from the gross weight determined in (3) above.

(6) Determine *individual package error.* See NBS Handbook 133, Chapter 2, Section 2.7., "Sampling Plans In Category A," especially Section 2.7.1 "Decision Criterion: Individual Packages," Section 2.12. "MAV's," and Appendix B, Table 2–12, "U.S. Department of Agriculture, Meat and Poultry, Groups and Lower Limits for Individual Packages." See NBS Handbook 133, § 3.18.3.g., "The Individual Package Requirement."

(7) Determine *average package error.* See NBS Handbook 133, Section 2.7., "Sampling Plans In Category A," especially Section 2.7.2., "Decision Criterion: The Average Error." See NBS Handbook 133, § 3.18.3.f(1), "The Average Requirement."

C. Used tare test of products to be used outside of the Federal establishment only with meat and poultry products that have been designated as gray areas types of products published in Handbook 133, Section 3.18.2, "Types of Products."

(1) Define and select the *lot.* See NBS Handbook 133, Section 2.3., "Definition Of The Lot.," and § 3.18.3.c., "Selection of Lots."

(2) Select the proper *sample size* from a lot. See NBS Handbook 133, Chapter 2, Section 2.7., "Sampling Plans In Category A.;" § 3.18.3.d., Sample Size; and Appendix B, Table 2–2, "Sampling Plans of Category A."

(3) Determine the *gross weight.* The weight of the package including contents, packaging material, labels, etc. See Appendix C, Glossary.

(4) Determine the *used tare weight.* See NBS Handbook 133, Chapter 2, Section 2.11.b "TARE," and § 3.18.3.e(2) "Wet Tare."

(5) Determine the *net contents.* That quantity of packaged product remaining after all necessary deductions for tare (defined as used tare in this case) have been made. See Appendix C, Glossary. Subtract the used tare weight determined in (4) above from the gross weight determined in (3) above.

(6) Determine *individual package error.* See NBS Handbook 133, Chapter 2, Section 2.7. "Sampling Plans In Category A," especially Section 2.7.1 "Decision Criterion: Individual Packages" and Section 2.12. "MAV's," and Appendix B, Table 2–12, "U.S. Department of Agriculture, Meat and Poultry, Groups and Lower Limits for individual packages." See NBS Handbook 133, § 3.18.3.g., "The Individual Package Requirement: Wet Tare" and § 3.18.3.h. "What to Do When the Lot Is in the Gray Area."

(7) Determine *average package error.* See NBS Handbook 133, Section 2.7. "Sampling Plans In Category A," especially Section 2.7.2., "Decision Criterion: The Average Error." See NBS Handbook 133, § 3.18.3.f(2), "The Average Requirement" and § 3.18.3.h., "What to Do When the Lot Is in the Gray Area."

*Memorandum of Understanding Between USDA and The States and Local Government Authorities*

One of the principal products of the Task Force was the development of a model Memorandum of Understanding (MOU) between USDA and a State or local government. This MOU concerns administrative procedures for USDA and the State and local governments to use in implementing this proposed regulation of meat and poultry products net weight compliance. This MOU would describe in concrete administrative procedures the State and local government concurrent jurisdiction authority with USDA for net weight enforcement activities outside the federally inspected establishment and the requirements for State and local officials when they enter a federally inspected establishment.

Under the MOU, the USDA would assist State and local officials by establishing procedures for making its records of net weights available at any federally inspected establishment, maintaining a system for evaluating tare weights, maintaining its role as exclusive authority for net content labeling at Federal establishments, reviewing records and decisions in the event of a disagreement with State and local officials, defining sampling procedures, and cooperating fully with State and local authorities through liaison officers.

In turn, State and local officials would assist USDA by instructing its officials in how to apply the testing methods, using proper protocol for entering Federal establishments, and taking disagreements between Federal inspectors and local officials to the FSIS Regional Director for action. Any disagreements at the regional level could be appealed to the Administrator of FSIS.

A draft of the MOU is printed in Appendix E of the *National Conference on Weights and Measures: Program and Committee Reports*, U.S. Department of Commerce: National Bureau of Standards, 1988.

*Progress of the NBS Task Force on Commodity Requirements, 1987–88*

In October 1987, FSIS, in cooperation with the National Broiler Council and the National Conference on Weights and Measures began a study on product moisture loss. The study group collected data regarding the moisture loss in fresh poultry during plant packing and shipping operations. This study was conducted in six cooperating poultry plants using over 400 retail labeled packages of poultry to determine moisture loss within the plant.

The study indicated that about a 2 percent moisture loss occurs within the plant. Previously, data on moisture loss from frankfurters collected by the American Meat Institute indicated that frankfurters incurred an initial rapid moisture loss then continued to lose moisture slowly during storage and merchandising.

The moisture loss studies provide the basis for a "gray area" for States that might use wet tare methods to determine compliance without being in conflict with Federal requirements. While the Federal Government prefers to use a dry tare system, the regulation would allow States to use the wet tare approach. The Department would be providing all enforcement officials a standard and uniform measure by which to determine net weight compliance for either dry or wet tare tests.

During the task force meeting on November 23 and 24, 1987, in Rockville, Maryland, the task force members discussed these moisture loss studies. After much deliberation, an agreement was reached by the Task Force concerning the gray area size for fresh poultry, which was 3 percent, and frankfurters, which was 2½ percent. Also, bacon, fresh sausage, and luncheon meats were determined to have a gray area of 0 percent. This means that these products and only these products have approved gray areas for wet tare testing. All other meat and poultry testing must undergo dry tare testing. NCWM has agreed to continue its work in establishing gray areas for meat and poultry products. In this manner, gray areas can be established for most, if not all, meat and poultry products.

These gray area agreements, representing the last major task of the group, were presented to the Executive Committee of NCWM for their consideration on January 15, 1988. They decided to put the task force's net weight proposal on NCWM's July 1988, convention agenda. On July 22, 1988, the conference participants approved the proposal, thus incorporating these changes in the next edition of NBS Handbook 133, the third edition. USDA intends to incorporate by reference NBS Handbook 133 third edition (1988), and NBS Handbook 44, 1989 Edition, in the present regulatory change. These materials and other pertinent reports are located in the Office of the Hearing Clerk, FSIS, USDA, Room 3871, South Building, 14th and Independence Avenue, SW., Washington, DC 20250. These materials are cited below:



"Analysis of Proposed Regulations on Net Weight Labeling," Washington, DC: Consumer Federation of America, 1978.

ESCS, "Assessment of Proposed Net Weight Labeling Regulations for Meat and Poultry Products," Washington, DC: USDA, January 1979.

National Bureau of Standards Handbook 44, "Specifications, Tolerances and Other Technical Requirements for Weighing and Measuring Devices," 1989 Edition, Washington, DC: U.S. Government Printing Office, September 1988.

National Bureau of Standards' (NBS) Handbook 133, "Checking The Contents of Packaged Goods," Washington, DC: U.S. Government Printing Office, September 1988, Third Edition.

*National Conference on Weights and Measures: Progam and Committee Reports*, U.S. Department of Commerce: National Bureau of Standards, 1988.

"Proposed Changes in Meat and Poultry Net Weight Labeling Regulations Based on Insufficient Data." Washington, DC: U.S. General Accounting Office, December 1978.

**Issues**

As the discussion above indicates, the development of a workable, enforceable net weight standard has proven to be a difficult and controversial task. The following discussion is provided to clarify USDA's position on a number of issues which had to be considered in the development of this proposal.

*Equity*

Consumers and State and local officials: This change would enable consumers and State and local law enforcement officials to know that there is a specific measurable amount of moisture loss that may be acceptable. The amount of acceptable moisture loss is determined by the particular product's characteristics by an objective and professional organization, the NCWM. While the proposal would not mandate a drained weight concept, it does move in that direction by providing for the optional use of a used tare method of assessment, which the consumers and State and local Weights and Measures officials should support.

Both unused tare (dry tare) and used tare (wet tare without oven drying) are seen as legitimate methods of determining net weight by the National Institute of Standards and Technology (NIST), the Federal agency concerned with this issue. International organizations also recognize unused tare as a fair and accurate method of determining net weight. In fact, NBS officials claim unused tare is often the method of choice because of the following advantages:

1. It is one professionally approved method to recognize moisture loss;

2. It is the most efficient and fastest way to test product weight; and

3. It is non-destructive testing.

However, poor distribution practices, such as lack of temperature controls, may cause more liquid to be purged from the product. This is a problem, but trying to forecast the drained weight at the point of packing is a guessing game. Certainly, new technology has reduced the margin of error for a packer in estimating the amount of purge from a product. USDA wanted to recognize used tare as an alternative to unused tare. It did so by making explicit the provision for used tare determinations in order that jurisdictions that want to use regularly used tare might do so. Also dry tare jurisdictions may use the used tare process to verify that the distribution practices are reasonable.

On the other hand, some consumers will probably register objections to this change because it does not go far enough toward a drained weight concept. They object to "paying for water, blood, etc." While the proposed changes may reduce problems between the regulators and the industry, the consumers will still be faced with a labeled net weight statement which includes some liquid as the product. However, moisture loss is a natural process from many water-added products. Products bleed or weep into their packaging, after they have been weighed in the plant. Some consumers think that no liquid or moisture should be included in the net weight calculations; however, the laws governing meat and poultry products require that reasonable variations be permitted for moisture loss.

Moreover, the marked net weight, on even products that do not suffer moisture loss, is not the weight of that individual package but of the average of all the identical product by type and weight in the lot. This means a given package could be slightly underweight while the overall weight of the lot average would be the same as the marked net weight. To achieve the marked net weight on every package the packer would have to overpack to account for normal variance in industrial production. Again, many consumers think that every package weighs at or above its declared net weight.

By the 1960's, the average weight had become the industry standard recognized by Weights and Measures authorities internationally, as well as by

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our Federal, State, and local governments. This is because companies that used a minimum standard were at a competitive disadvantage to those using an average. The very influential National Bureau of Standards' Handbooks 133 and 67 use the average weight concept as a correct means to determine accurate weight. In fact the California Code of Regulation, Title IV, Chapter 8, Subchapter 2, Article 5, like all other U.S. Weights and Measures authorities, uses the average weight.

The regulations under the FMIA and PPIA provide for reasonable variation in net weight declarations due to good manufacturing and/or distribution practices. The marked or labeled net weight is not necessarily the weight of that individual package but of the average of all the identical product by type and weight in the lot. This means a given package could be slightly underweight or slightly overweight, while the overall weight of the lot average would be the same as the marked net weight. Also, as noted before, USDA has maximum allowable variations by which individual packages can vary from the labeled net weight to ensure that the individual variations are "reasonable variations." To achieve the marked net weight on every package the packer would have to overpack to account for normal variance in industrial production. In practice, packers tend to slightly overpack so as to minimize short weight problems.

*Industry*

The new proposal would standardize what the Federal government recognizes as acceptable procedures for the State and local compliance procedures that industry faces at the retail level. The coordination of Federal and State action through this proposed regulation and the MOU should virtually eliminate the burden on industry of State and local net weight officials using different compliance criteria on federally inspected product by establishing a national, specific net weight standard with procedures for cooperative enforcement by the Federal and State and local governments.

*Ease of Enforcement*

One of the strongest features of this change is that it would greatly strengthen the enforcement of net weight at the Federal, State and local levels. The use of specific, numeric moisture loss allowances will eliminate much confusion in assessing compliance. The NBS Handbooks, 133 and 44, should provide well respected and reliable procedures.

The MOU would create a working relationship between the Federal Government and the State and local governments in the net weight labeling area. The sharing of responsibilities through effective concurrent jurisdiction should create a unified system to enforce net weight labeling for meat and poultry products.

*Compatibility with FDA*

This proposal is being developed in tandem with FDA to assure the maximum possible compatibility with FDA's new proposal. FDA has already told the MCWM that the use of Handbook 133 is not in conflict with their procedures. Like FSIS, FDA's proposal will provide for more explicit, quantifiable moisture loss allowances in net weight determinations.

*Economic Impacts*

Consumers

The proposed changes are largely technical changes in conducting net weight compliance checks on products. These should have little impact on consumers, since the industry's compliance is already high. The additional improvements would be small, as noted in ESCS, "Assessment of Proposed Net Weight Labeling Regulations for Meat and Poultry Products," Washington, DC: USDA, December 1979. We believe these findings are still valid because no changes in the regulatory system have been introduced since the study was done.

Industry

For producers, the regulations should have little impact on their operations. The FSIS net weight product sampling checks, through NBS Sampling Plan B, will be comparable to the current plan. The standardization of State and local enforcement efforts with the MOU and the use of NBS Sampling Plan A should reduce industry's problems by creating a known and verifiable standard for compliance checks.

Regulatory Agencies

There should be no real impact on FSIS to implement the changes. Inspectors in the field would have to follow new sampling plans and scale calibration procedures. The work and amount of time needed to accomplish these activities should be about the same as is currently needed. The inspection force would need some training to do the new sampling procedures, but this should not be a difficult or time-consuming task. States and localities would assist FSIS in examining scales for their accuracy using NBS Handbook 44 specifications. Generally, they already monitor the weighing devices in federally inspected plants in their areas.

With the MOU, State and local Weights and Measures officials would be able to do a much more effective and efficient job. The numerical definitions on acceptable moisture loss would make it easier to determine compliance, and fine and prosecute industrial wrongdoing. Some authorities may increase their activities and some reduce them with the MOU. In any case, there would probably not be much of a change in the cost of their inspection activities because of the proposal.

Summary

In summary, USDA believes that the proposed rule, if updated, would be an important change in standardizing weights and measures practices which benefit industry, enhance the role of the State and local governments, and provide greater protection for the consumers without creating much, if any, additional direct or indirect expenses for the meat and poultry industry.

**List of Subjects**

*9 CFR Part 317*

Meat inspection, Net weight.

*9 CFR Part 381*

Poultry products inspection, Net weight.

For reasons set out in the preamble Parts 317 and 381 of the Federal meat and poultry products inspection regulations would be amended as follows:

**PART 317—[AMENDED]**

1. The authority citation for Part 317 continues to read as follows:

**Authority:** 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*, 601 *et seq.*, 33 U.S.C. 1254.

2. Section 317.2 (9 CFR 317.2) would be amended by revising paragraphs (h)(1) and (h)(2), adding a new sentence to the end of paragraph (h)(5), revising paragraphs (h)(9) (i) and (ii), redesignating (h)(9) (iii) and (iv) as (h)(9) (iv) and (v), respectively, adding a new (h)(9)(iii) and revising (h)(11). These changes will read as follows:

**§ 317.2 Labels: Definition; required features.**

* * * * *

(h)(1) The statement of net quantity of contents shall appear on the principal display panel of all containers to be sold



at retail intact, in conspicuous and easily legible boldface print or type in distinct contrast to other matter on the container, and shall be declared in accordance with the provisions of this paragraph (h).

(2) The statement as it is shown on a label shall not be false or misleading and shall express an accurate statement of the quantity of contents of the container. Reasonable variations caused by loss or gain of moisture during the course of good distribution practices or by unavoidable deviations in good manufacturing practice will be recognized. Variations from stated quantity of contents shall be as provided in § 317.19. The statement shall not include any term qualifying a unit of weight, measure, or count such as "jumbo quart," "full gallon," "giant quart," "when packed," "minimum," or words of similar importance.

* * * * *

(5) * * * Paragraph (9) of this paragraph (h) permits certain exceptions from the provisions of this paragraph for margarine packages, random weight consumer size packages, and packages of less than ½ ounce net weight. Paragraph (12) of this paragraph (h) permits certain exceptions from the provision of this paragraph for multi-unit packages.

* * * * *

(9) * * * (i) Individually wrapped random weight consumer size packages (as specified in subparagraph (11)) and meat products that are subject to shrinkage through moisture loss during good distribution practices and are designated as gray area type of products as defined in Handbook 133, § 3.18.2, need not bear a net weight statement when shipped from an official establishment provided a net weight shipping statement which meets the requirements of paragraph (h)(2) is applied to their shipping container prior to shipping it from the official establishment. Net weight statements so applied are exempt from the type size, dual declaration, and placement requirements of this paragraph (h), if an accurate statement of net weight is shown conspicuously on the principal display panel of the container.

(ii) Individually wrapped and labeled packages of less than ½ ounce net weight and random weight consumer size packages shall be exempt from the requirements of this paragraph (h) if they are in a shipping container and the statement of net quantity of contents on the shipping container meets the requirements of paragraph (h)(2);

(iii) Individually wrapped and labeled packages of less than ½ ounce net weight bearing labels declaring net weight, price per pound, and total price, shall be exempt from the type size, dual declaration, and placement requirements of this paragraph (h), if an accurate statement of net weight is shown conspicuously on the principal display panel of the package.

* * * * *

(11) As used in this section, a "random weight consumer size package" is one which is one of a lot, shipment or delivery of packages of the same product with varying weights and with no fixed weight pattern.

* * * * *

3. Sections 317.19 and 317.20 (9 CFR 317.19 and 317.20) would be redesignated as §§ 317.23 and 317.24 respectively (9 CFR 317.23 and 317.24) and new §§ 317.18 through 317.22 (9 CFR 317.18 through 317.22) would be added to Part 317, and the Table of Contents would be amended accordingly, to read as follows:

Sec.

* * * * *

317.18 Quantity of contents labeling.
317.19 Definitions and procedures for determining net weight compliance.
317.20 Scale requirements for accurate weights, repairs, adjustments, and replacement after inspection.
317.21 Scales: testing of.
317.22 Handling of failed product.
317.23 Jar Closure requirements.
317.24 Packaging materials.

**§ 317.18 Quantity of contents labeling.**

Sections 317.18 through 317.22 of this Part prescribe the procedures to be followed for determining net weight compliance and prescribe the reasonable variations from the declared net weight on the labels of immediate containers of products in accordance with § 317.2(h) of this Part.

**§ 317.19 Definitions and procedures for determining net weight compliance.**

(a) For the purpose of §§ 317.18 through 317.22 of this Part, the reasonable variations allowed, definitions, and procedures to be used in determining net weight and net weight compliance are described in the National Bureau of Standards' (NBS) Handbook 133, "Checking The Contents of Packaged Goods," Washington, DC: U.S. Government Printing Office, September 1988, third edition, which is incorporated by reference, with the exception of the Handbook 133 requirements listed in paragraph (b) below. Those provisions incorporated by reference herein, are considered mandatory requirements. (These materials are incorporated as they exist on the date of approval. Copies may be purchased for under $20.00 from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. It is also available for inspection at the office of the Federal Register Information Center, Room 8401, 1100 L Street NW., Washington, DC 20408 or the FSIS Hearing Clerk, Room 3171, South Building, Food Safety and Inspection Service, USDA, 14th Street and Independence Avenue, SW., Washington, DC 20250).

(b) The following Handbook 133 requirements are not incorporated by reference.

**Chapter 2 General Considerations**

2.13.1 Polyethylene Sheeting and Film
2.13.2 Textiles
2.13.3 Mulch

**Chapter 3 Methods of Test for Packages Labeled by Weight**

3.11. Aerosol Packages
3.14. Glazed Raw Seafood and Fish
3.15. Canned Coffee
3.16. Borax
3.17. Flour

**Chapter 4 Methods of Test for Packages Labeled by Volume**

4.7. Milk
4.8. Mayonnaise and Salad Dressing
4.9. Paint, Varnish, and Lacquers—Nonaerosol
4.11. Peat Moss
4.12. Bark Mulch
4.15. Ice Cream Novelties

**Chapter 5 Methods of Test for Packages Labeled by Count, Length, Area, Thickness, or Combinations of Quantities**

5.4. Polyethylene Sheeting
5.5. Paper Plates
5.6. Sanitary Paper Products
5.7. Pressed and Blown Glass Tumblers and Stemware

**Appendix D: Package Net Contents Regulations**

D.1.1. U.S. Department of Health and Human Services, Food and Drug Administration
D.1.3. Federal Trade Commission
D.1.4. Environmental Protection Agency
D.1.5. U.S. Department of the Treasury, Bureau of Acohol, Tobacco, and Firearms

**§ 317.20 Scale requirements for accurate weights, repairs, adjustments, and replacement after inspection.**

(a) All scales used in federally inspected meat establishments used for weighing of meat and poultry products shall be installed, maintained and operated to insure accurate weights. Such scales shall meet the applicable requirements contained in National Bureau of Standards' Handbook 44, "Specifications, Tolerances and Other Technical Requirements for Weighing and Measuring Devices," 1989 Edition,

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Washington, DC: U.S. Government Printing Office, published September 1988, which is incorporated by reference. (These materials are incorporated as they exist on the date of approval. Copies may be purchased for under $20.00 from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. It is also available for inspection at the Office of the Federal Register Information Center, Room 8401, 1100 L Street NW., Washington, DC 20408 or the FSIS Hearing Clerk, Room 3171, South Building, Food Safety and Inspection Service, USDA, 14th Street and Independence Avenue, SW., Washington, DC 20250).

(b) All scales used to weigh meat products sold or otherwise distributed in commerce or in States designated under section 301(c) of the Federal Meat Inspection Act, shall be of sufficient capacity to weigh the entire unit and/or package.

(c) No scale shall be used at a federally inspected establishment to weigh meat products, unless it has been found upon test and inspection, as specified in NBS Handbook 44, to provide accurate weight. If a scale is inspected or tested and found to be inaccurate, or if any repairs, adjustments or replacements are made to a scale, it shall not be used until it has been inspected and tested by a USDA official and it must meet all accuracy requirements as specified in NBS Handbook 44.

**§ 317.21 Scales: testing of.**

(a) The operator of each official establishment that weighs meat food products shall cause such scales to be tested for accuracy in accordance with the technical requirements of NBS Handbook 44, at least once during the calendar year. In cases where the scales are found not to maintain accuracy between tests, more frequent tests may be required and monitored by an appropriate USDA program official.

(b) The operator of each official establishment shall display on or near each scale a valid certification of the scale's accuracy from a State or local government's Weights and Measures authority or shall have a USDA approved net weight program under a Total Quality Control System or Partial Quality Control Program in accordance with § 318.4 of this subchapter.

**§ 317.22 Handling of failed product.**

Any lot of product which is found to be out of compliance with net weight requirements upon testing in accordance with § 317.19 shall be handled as follows:

(a) A lot tested in an official establishment and found not to comply with net weight requirements may be reprocessed and must be reweighed and remarked to satisfy the net weight requirements of this section and be reinspected, in accordance with the requirements of this Part.

(b) A lot tested outside of an official establishment and found not to comply with net weight requirements must be reweighed and remarked with a proper net weight statement, provided that such reweighing and remarking shall not deface, cover, or destroy any other marking or labeling required under this subchapter and the net quantity of contents is shown with the same prominence as the most conspicuous feature of a label.

**PART 381—[AMENDED]**

4. The authority citation for Part 381 continues to read as follows:

**Authority:** 71 Stat. 441, 82 Stat. 791, as amended, 21 U.S.C. 451 *et seq.*; 76 Stat. 663 (7 U.S.C. 450 *et seq.*)

5. Section 381.121 (9 CFR 381.121) would be amended by revising the first sentence of paragraph (a), revising paragraph (b), adding a new sentence to the end of paragraph (c)(1), adding a new sentence to the end of paragraph (c)(5), revising paragraphs (c)(6) and (c)(9), and adding new paragraph (c)(10). These changes will read as follows:

**§ 381.121 Quantity of contents.**

(a) The label shall bear a statement of the quantity of contents in terms of weight or measures as provided in paragraph (c)(5) of this section. * * *

(b) When a poultry product and a nonpoultry product are separately wrapped and are placed in a single immediate container bearing the same name of both products, the net weight on such immediate container may be the total net weight of the products, or such immediate container may show the net weights of the poultry product and the nonpoultry product separately. Notwithstanding the other provisions of this paragraph, the label on consumer size retail packages of stuffed poultry and other stuffed poultry products must show the total net weight of the poultry product, and in close proximity thereto, a statement specifying the minimum weight of the poultry in the product.

(c)(1) * * * An unused tare weight, as defined in § 381.121b, may be printed adjacent to the statement of net quantity of contents when the product is packaged totally with impervious packaging material and is packed with a usable medium.

* * * * *

(5) * * * Paragraphs (c) (8) and (9) of this section permit certain exceptions of this paragraph (c)(5) for multi-unit packages, and random weight and small packages (less than ½ ounce), respectively.

(6) The statement as it is shown on a label shall not be false or misleading and shall express an accurate statement of the quantity of contents of the container. Reasonable variations caused by loss or gain of moisture during the course of good distribution practices or by unavoidable deviations in good manufacturing practice will be recognized. Variations from stated quantity of contents shall be as provided in § 381.121b. The statement shall not include any term qualifying a unit of weight, measure, or count such as "jumbo quart," "full gallon," "giant quart," "when packed," "minimum," or words of similar importance except as provided in paragraph (b) of this section.

* * * * *

(9) The following exemptions from the requirements contained in this section are hereby established:

(i) Individually wrapped random weight consumer size packages of poultry products (as specified in subparagraph (10)) and poultry products that are subject to shrinkage through moisture loss during good distribution practices and are designated as gray area type of products as defined in NBS Handbook 133, § 3.18.2, need not bear a net weight statement when shipped from an official establishment provided a net weight shipping statement which meets the requirements of paragraph (c)(6) is applied to the shipping container prior to shipping it from the official establishment. Net weight statements so applied are exempt from the type, dual declaration, and placement requirements of this paragraph (c), if an accurate statement of net weight is shown conspicuously on the principal display panel of the container;

(ii) Individually wrapped and labeled packages of less than ½ ounce net weight and random weight consumer size packages shall be exempt from the requirements of this paragraph (c) if they are in a shipping container and the statement of net quantity of contents on the shipping container meets the requirements of this paragraph (c)(6);

(iii) Individually wrapped and labeled packages of less than ½ ounce net weight bearing labels declaring net weight, price per pound, and total price, shall be exempt from the type size, dual declaration, and placement requirements of this paragraph (c), if an accurate statement of net weight is shown conspicuously on the principal display panel of the package.

(10) As used in this section a "random weight consumer size package" is one which is one of a lot, shipment or delivery of packages of the same product, with varying weights and with no fixed weight pattern.

6. New §§ 381.121a–381.121e (9 CFR 381.121a–381.121e) would be added to Part 381, and the Table of Contents would be amended accordingly, to read as follows:



Sec.
381.121a Quantity of contents labeling.
381.121b Definitions and procedures for determining net weight compliance.
381.121c Scale requirements for accurate weights, repairs, adjustments, and replacement after inspection.
381.121d Scales: Testing of.
381.121e Handling of failed product.

**§ 381.121a Quantity of contents labeling.**

Sections 381.121a through 381.121e of this Part prescribe the procedures to be followed for determining net weight compliance and prescribe the reasonable variations from the declared net weight on the labels of immediate containers of products in accordance with § 381.121 of this Part.

**§ 381.121b Definitions and procedures for determining net weight compliance.**

(a) For the purpose of §§ 381.121b of this Part, the reasonable variations allowed, definitions, and procedures to be used in determining net weight and net weight compliance are described in the National Bureau of Standards' (NBS) Handbook 133, "Checking The Contents of Packaged Goods," Washington, DC: U.S. Government Printing Office, published September 1988, third edition, which is incorporated by reference, with the exception of the Handbook 133 requirements listed in paragraph (b) below. Those provisions incorporated by reference herein, are considered mandatory requirements. (These materials are incorporated as they exist on the date of approval. Copies may be purchased for under $20.00 from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. It is also available for inspection at the Office of the Federal Register Information Center, Room 8401, 1100 L Street NW., Washington, DC 20408.).

(b) The following Handbook 133 requirements are not incorporated by reference.

**Chapter 2 General Considerations**
2.13.1 Polyethylene Sheeting and Film
2.13.2 Textiles
2.13.3 Mulch
**Chapter 3 Methods of Test for Packages Labeled by Weight**
3.11. Aerosol Packages
3.14. Glazed Raw Seafood and Fish
3.15. Canned Coffee
3.16. Borax
3.17. Flour
**Chapter 4 Methods of Test for Packages Labeled by Volume**
4.7. Milk
4.8. Mayonnaise and Salad Dressing
4.9. Paint, Varnish, and Lacquers—Nonaerosol
4.11. Peat Moss
4.12. Bark Mulch
4.15. Ice Cream Novelties
**Chapter 5 Methods of Test for Packages Labeled by Count, Length, Area, Thickness, or Combinations of Quantities**
5.4. Polyethylene Sheeting
5.5. Paper Plates
5.6. Sanitary Paper Products
5.7. Pressed and Blown Glass Tumblers and Stemware
**Appendix D: Package Net Contents Regulations**
D.1.1 U.S. Department of Health and Human Services, Food and Drug Administration
D.1.3. Federal Trade Commission
D.1.4. Environmental Protection Agency
D.1.5. U.S. Department of the Treasury, Bureau of Alcohol, Tobacco, and Firearms

**§ 381.121c Scale requirements for accurate weights, repairs, adjustments, and replacement after inspection.**

(a) All scales used in federally inspected poultry plants used for weighing of meat and poultry products shall be installed, maintained, and operated to insure accurate weights. Such scales shall meet the applicable requirements contained in National Bureau of Standards Handbook 44, "Specifications, Tolerances and Other Technical Requirements for Weighing and Measuring Devices," 1989 Edition, Washington, DC: U.S. Government Printing Office, published September 1988, which is incorporated by reference. (These materials are incorporated as they exist on the date of approval. A notice of any change in the Handbook cited herein will be published in the **Federal Register.** Copies may be purchased for under $20.00 from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. It is also available for inspection at the Office of the Federal Register Information Center, Room 8401, 1100 L Street NW., Washington, DC 20408 or the FSIS Hearing Clerk, Room 3171, South Building, Food Safety and Inspection Service, USDA, 14th Street and Independence Avenue SW., Washington, DC 20250.)

(b) All scales used to weigh poultry products sold or otherwise distributed in commerce or in States designated under section 5(c) of the Poultry Products Inspection Act, shall be of sufficient capacity to weigh the entire unit and/or package.

(c) No scale shall be used at a federally inspected establishment to weigh poultry products, unless it has been found upon test and inspection, as specified in NBS Handbook 44, to provide accurate weight. If a scale is inspected or tested and found to be inaccurate, or if any repairs, adjustments, or replacements are made to a scale, it shall not be used until it has been inspected and tested by a USDA official and it must meet all accuracy requirements, as specified in NBS Handbook 44.

**§ 381.121d Scales: Testing of.**

(a) The operator of each official establishment that weighs poultry products shall cause such scales to be tested for accuracy in accordance with the technical requirements of NBS Handbook 44, at least once during the calendar year. In cases where the scales are found not to maintain accuracy between tests, more frequent tests may be required and monitored by an appropriate USDA program official.

(b) The operator of each official establishment shall display on or near each scale, a valid certification of the scale's accuracy from a State or local government's weights and measures authority or shall have a USDA approved net weight program under a Total Quality Control System or Partial Quality Control Program in accordance with § 381.145 of this subchapter.

**§ 381.121e Handling of failed product.**

Any lot of product which is found to be out of compliance with net weight requirements upon testing in accordance with § 381.121b shall be handled as follows:

(a) A lot tested in an official establishment and found not to comply with net weight requirements may be reprocessed and must be reweighed and remarked to satisfy the net weight

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requirements of this section and be reinspected, in accordance with the requirements of this Part.

(b) A lot tested outside of an official establishment and found not to comply with net weight requirements must be reweighed and remarked with a proper net weight statement, provided that such reweighing and remarking shall not deface, cover, or destroy any other marking or labeling required under this subchapter and the net quantity of contents is shown with the same prominence as the most conspicuous feature of a label.

Done at Washington, DC, on: January 12, 1989.

**Lester M. Crawford,**

*Administrator, Food Safety and Inspection Service.*

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Part VII

# Environmental Protection Agency

**Proposed Amendments to the Guidelines for the Health Assessment of Suspect Developmental Toxicants; Request for Comments; Notice**

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**ENVIRONMENTAL PROTECTION AGENCY**

**[FRL-3532-9]**

## Proposed Amendments to the Guidelines for the Health Assessment of Suspect Developmental Toxicants

**AGENCY:** U.S. Environmental Protection Agency.

**ACTION:** Request for comments on the Proposed Amendments to the Guidelines for the Health Assessment of Suspect Developmental Toxicants.

**SUMMARY:** The U.S. Environmental Protection Agency (EPA) is today proposing amendments to the Guidelines for the Health Assessment of Suspect Developmental Toxicants that were issued on September 24, 1986 (51 FR 34028–34040) (hereafter "current guidelines").

These proposed amendments are intended to expand Agency guidance on the analysis of developmental toxicity data in accordance with appropriate scientific standards and with the policies and procedures established in the statutes administered by the EPA. The proposed amendments were developed as part of an interoffice guidelines development program under the auspices of the Agency's Risk Assessment Forum. The proposed amendments are based, in part, on recommendations developed in scientific workshops.

The public is invited to comment and public comments will be considered in final Agency decisions on amending the current guidelines. Commentors are asked to focus on several special issues, particularly, (1) a proposed new weight-of-evidence scheme and its use, and (2) the advantages and disadvantages of using this scheme only for hazard identification versus using it in conjunction with dose-response and exposure assessment information. Also, comments are invited on the use of the special term "reference dose for developmental toxicity ($RfD_{DT}$)." The term $RfD_{DT}$ is used to distinguish the time-limited reference dose for exposure during development from the reference dose (RfD), which generally refers to chronic exposure situations.

The proposed amendments are individually identified and explained in the Supplementary Information section of this notice. The full text of the proposed guidelines is published in the following section. As used in this notice, the term "proposed guidelines" refers to the current guidelines as modified by the proposed amendments. The request for comment applies only to the proposed amendments, but EPA will also consider any important new scientific information bearing on the proposed guidelines as a whole.

EPA's Science Advisory Board (SAB) also will review the proposed amendments at a meeting to be announced in a future FEDERAL REGISTER. Agency staff will prepare summaries of the public and SAB comments, analyses of major issues presented by commentors, and Agency responses to those comments. Appropriate comments will be incorporated, and the amended guidelines will be submitted to the Risk Assessment Forum and the Risk Assessment Council for review. The Risk Assessment Council will consider comments from the public, the SAB, and the Risk Assessment Forum in its recommendations to the EPA Administrator.

**DATE:** Public comments must be postmarked by June 5, 1989.

**ADDRESS:** Comments may be mailed or delivered to: Dr. Carole A. Kimmel, Reproductive and Developmental Toxicology Branch, Human Health Assessment Group, Office of Health and Environmental Assessment (RD–689), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Dr. Carole A. Kimmel, Telephone: 202–382–7331.

**Inspection and Copies:** This notice, references, supporting documents, and other relevant materials are available for inspection and copying at the Public Information Reference Unit, (202) 382–5926, EPA Headquarters Library, 401 M Street, SW., Washington, DC, between the hours of 8:00 a.m. and 4:30 p.m.

**SUPPLEMENTARY INFORMATION:** In 1984–85, the Agency proposed risk assessment guidelines for carcinogenicity, exposure assessment, mutagenicity, developmental toxicity (49 FR 46294–46331), and chemical mixtures (50 FR 1170–1176). Following extensive scientific and public review, final guidelines were issued on September 24, 1986 (51 FR 33992–34054). Each of the guidelines set forth principles and procedures to guide EPA scientists in the conduct of Agency risk assessments, to help promote high scientific quality and Agency-wide consistency, and to inform Agency decision makers and the public about these scientific procedures.

In publishing this guidance, EPA emphasized that one purpose of its risk assessment guidelines was to "encourage research and analysis that will lead to new risk assessment methods and data," which in turn would be used to revise and improve the guidelines, and better guide Agency risk assessors. Thus, each of the 1986 risk assessment guidelines was developed and published with the understanding that risk assessment is an evolving science and that continued study could lead to changes.

As expected, Agency experience with the current Guidelines for the Health Assessment of Suspect Developmental Toxicants suggests that additional or alternate approaches should be considered for certain aspects of these guidelines. Proposals to amend the current guidelines were considered soon after their publication in September 1986 because of new reviews or re-evaluations that focused on some of the issues identified for research in the guidelines. These included several workshops and symposia cited in the Introduction to the current guidelines. In addition, much experience has been gained in using these guidelines and in instructing others in their use. Based on this experience, the proposed amendments are designed to clarify certain aspects of the current guidelines, and the terminology has been updated to be consistent with that used in other Agency guidance.

As outlined below, some of the changes involve substantive revisions to the current guidelines, while others simply clarify or reorganize current provisions. The remainder of the notice publishes the full text of the proposed guidelines, that is, the current guidelines as modified by the proposed amendments.

### Overview of Proposed Amendments

The major proposed amendments include stronger statements concerning guidance on evaluating maternal and developmental toxicity based on EPA's 1987 workshop on this topic, particularly about the inter-relationship between these end points (see Reference 3 in Section VII of the proposed guidelines). A major innovation for the proposed guidelines is a weight-of-evidence scheme for developmental toxicants (Section III.D) which was developed in a 1987 EPA workshop by experts from within and outside the Agency.

Lesser changes in the proposed guidelines include a change in the title from "Guidelines for the Health Assessment of Suspect Developmental Toxicants" to "Proposed Guidelines for Developmental Toxicity Risk Assessment." In addition, three other sections have been revised: the Human Studies section (Section III.B) was reoriented more towards risk assessment than study design; and the Dose-Response and Risk Characterization sections (Sections IV and VI) were reorganized so that information on the NOAEL/uncertainty factor approach and low-dose extrapolation are contained in the Dose-Response section (Section IV), and the margin of exposure (MOE) approach is contained in the Risk Characterization section (Section VI).



One other proposed change is the introduction of the term $RfD_{DT}$ for the reference dose for developmental toxicity derived from dividing the NOAEL by an uncertainty factor. This is to distinguish the developmental toxicity reference dose ($RfD_{DT}$), which is based on a short-term exposure as occurs in most developmental toxicity studies, from the RfD, which the Agency derives based on a chronic or sometimes a subchronic exposure scenario. These and other proposed changes are discussed further by section.

### Section I. Introduction

This section gives the general background information on developmental toxicity risk assessment and the magnitude of the potential for developmental toxicity problems in the general population. In the current guidelines, EPA provides the general basis for the use of data from animal studies in estimating human risk, but does not describe the assumptions generally made in this process.

The primary proposed amendment in this section is a statement of the basic assumptions made in the risk assessment process for developmental toxicity, e.g., an agent that produces an adverse developmental effect in experimental animal studies is assumed to pose a potential hazard to humans, and all four possible manifestations of developmental toxicity (i.e., death, structural abnormality, growth alteration, functional deficit) are of concern for risk assessment. The assumption of a threshold is stated, although this assumption is currently being discussed in the literature, as indicated in the proposed amendments. These assumptions help to more clearly identify the basis for the Agency's approach to risk assessment described in the proposed guidelines. In addition, some background information and references have been revised.

### Section II. Definitions and Terminology

This section sets forth the definitions of particular terms that are widely used in the field of developmental toxicology. These include special terms such as "developmental toxicity," "altered growth," "malformations," and "variations."

The only proposed amendment in this section is the deletion of the terms "embryotoxicity" and "fetotoxicity." Because ambiguities in these terms have led to confusion and misuse, they are not used in the proposed guidelines. Thus, use of the term "developmental toxicity," which is a broader term, is encouraged and ambiguities are eliminated.

### Section III. Hazard Identification of Developmental Toxicants

This section describes the study designs used in animal studies and the evaluation and interpretation of end points. In the current guidelines the title of this section includes the term "qualitative assessment." Also, this section recommends that other EPA risk assessment guidelines be used when carcinogenic or mutagenic effects from developmental exposures are of concern.

The proposed heading for this section no longer includes the term "qualitative assessment," since hazard identification for developmental toxicity also includes some evaluation of the dose-response nature of an effect. This change is proposed because the distinction in the current guidelines between qualitative and quantitative assessment has proved to be unsatisfactory and is not made in actual practice when using the guidelines to assess developmental toxicity data.

The discussion of potential carcinogenic effects following development exposure is proposed to be expanded somewhat, as are the statements on potential mutational events. These changes would emphasize the importance of considering potential carcinogenic and mutagenic effects resulting from developmental exposures. More extensive information on conducting risk assessments for these types of effects is provided in the Guidelines for Carcinogen Risk Assessment (51 FR 33992) or the Guidelines for Mutagenicity Risk Assessment (51 FR 34006).

#### *A. Laboratory Animal Studies of Developmental Toxicity: End Points and Their Interpretation*

This section provides general information on the protocols typically used to assess developmental toxicity.

There are no proposed amendments to this section.

A.1. End Points of Maternal Toxicity.

This section describes the types of maternal end points evaluated in developmental toxicity studies and provides guidance for the hazard assessment.

The proposed amendments to this section include the addition of support from adverse histopathology findings to the use of alterations in organ weights as a sign of maternal toxicity. This change would indicate more clearly the basis fof the use of maternal organ changes as signs of maternal toxicity.

A.2. End Points of Developmental Toxicity.

This section describes the types of developmental end points evaluated in developmental toxicity studies and provides guidance for the hazard assessment.

There are no proposed amendments to this section.

A.3. Functional Developmental Toxicology.

This section provides information on the state-of-the-art in the evaluation of functional effects resulting from developmental exposures. Developmental neurotoxicity is briefly reviewed, along with other areas of functional evaluation. Since the publication of the current guidelines in 1986, specific testing in this area has been proposed or required by the Agency for certain agents.

The proposed amendments to this section reflect the current regulatory status for developmental neurotoxicity testing in the Agency. The Office of Toxic Substances (OTS) recently proposed developmental neurotoxicity testing guidelines and finalized at least one test rule requiring such testing (see Reference 28 in Section VII of the proposed guidelines). In addition, the Science Advisory Panel for the Office of Pesticide Programs (OPP) has approved the development of testing guidelines for developmental neurotoxicity. The proposed amendments note these activities and identify the proposed bases for OPP and OTS requirements for such testing.

A.4. Overall Evaluation of Maternal and Developmental Toxicity.

This section discusses the relationship of maternal and developmental toxicity and the evaluation of developmental toxicity data in the presence of maternal toxicity. In the current guidelines, the statement is made that developmental effects at maternally toxic doses should not be discounted as being secondary to maternal toxicity.

A stronger statement is proposed in this section concerning the finding of developmental toxicity in the presence of maternal toxicity, i.e., when adverse developmental effects are produced only at maternally toxic doses, they are still considered to represent developmental toxicity and should not be discounted as being secondary to maternal toxicity.

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Also, it is proposed that information be added on the importance of evaluating both maternal and developmental toxicity for the final characterization of risk as suggested by participants at the EPA-sponsored workshop on "The Evaluation of Maternal and Developmental Toxicity." This would indicate that maternal toxicity (even in the absence of developmental toxicity) is an important end point to evaluate in the context of all available toxicity data.

A.5. Short-Term Testing in Developmental Toxicity.

This section summarizes in vivo and in vitro approaches to short-term testing for developmental toxicity. In the current guidelines, the Chernoff/Kavlock assay is described, but more recent work, including a NIOSH-sponsored conference on this testing procedure, has appeared in the literature.

The proposed amendment would update the section to include recent information on the Chernoff/Kavlock assay, in particular, that from the NIOSH-sponsored workshop on "Evaluation of the Chernoff/Kavlock Test for Developmental Toxicity."

A.6. Statistical Considerations.

This section describes approaches to the statistical evaluation of data from animal developmental toxicity studies and includes important issues of study design that affect interpretation of data.

There are no proposed amendments to this section.

*B. Human Studies*

This section describes the evaluation of human data for developmental toxic effects. In the current guidelines, this section discusses important considerations of study design and evaluation, but does not provide much guidance to the risk assessor on the relative importance of various types of human data.

The proposed amendments would reorganize and modify this section to give more specific information concerning the use of human data in risk assessment (e.g., greatest weight should be given to carefully designed epidemiologic studies with more precise measures of exposure; studies with a low probability of biased data should carry more weight in a risk assessment). These revisions would make this section consistent with similar sections in the Proposed Guidelines for Assessing Male Reproductive Risk and Female Reproductive Risk.

*C. Other Considerations*

This section discusses the importance of pharmacokinetic data and structure-activity considerations, if available, in the risk assessment of developmental toxicants.

There are no proposed amendments to this section.

**D. Weight-of-Evidence Determination**

This section describes the important considerations in determining the relative weight of various kinds of experimental and/or human evidence in estimating the risk of development toxicity in humans. In the current guidelines, various factors are listed as being important, but there is no systematic procedure for categorizing the level of confidence in the available data.

A weight-of-evidence scheme is proposed that defines three levels of confidence for data used to identify developmental hazards and to assess the risk of human developmental toxicity. The language used in the scheme is intentionally broad to allow for scientific judgment in classifying data using this scheme, and classification of agents using this scheme would require experience with developmental toxicity data. The intent of the discussion is that the scheme would not be used in isolation, but would be the first step that must be combined with information on dose-response and exposure for the final characterization of risk.

**IV. Dose-Response Assessment**

This section describes the evaluation of the dose-response data from developmental toxicity studies. In the current guidelines, certain terminology (e.g., NOEL, LOEL) is used in a way that is no longer consistent with its usage in other Agency guidance. In addition, certain topics (e.g., the margin of safety, now termed the margin of exposure) that are discussed as dose-response issues in the current guidelines are treated as risk characterization issues in other Agency guidance.

The proposed heading for this section no longer includes the term "quantitative assessment," since a sharp separation between qualitative and quantitative assessment in the current guidelines is not made in practice. Dose-Response Assessment is Section IV.A. in the current guidelines.

The proposed amendments to this section incorporate terminology (e.g., NOAEL, LOAEL, RfD) that would make the proposed guidelines consistent with other Agency guidance. The section discusses the identification of the NOAEL/LOAEL, the factors used in establishing the appropriate uncertainty factor, and the calculation of the $RfD_{DT}$. These proposed changes would also be consistent with the way in which chronic RfDs are calculated. However, in the proposed guidelines, the term $RfD_{DT}$, based on short-term exposure, is introduced to distinguish it from the general RfD. An updated discussion of the status of mathematical approaches for dose-response modeling and low-dose extrapolation for developmental toxicity is also included.

**V. Exposure Assessment**

This section describes the issues of concern for developmental toxicity in the estimation of the human exposure levels. In the current guidelines, this section includes information related to human exposure-effect relationships that is actually more closely related to determining dose-effect relationship in humans.

The proposed amendments to this section, Section IV.B. in the current guidelines, include transferring some guidance from the section on determining human exposure-effect relationships to Section IV (Dose-Response Assessment) since this discussion is more involved with dose-response assessment in humans. The remaining information in this section focuses primarily on the special considerations concerning exposure assessment for developmental toxicity. Another proposed change in this section would more clearly indicate that since a single exposure at the critical time in development is sufficient to produce an adverse developmental effect, the human exposure estimate used to calculate the margin of exposure is usually based on a single dose that is not adjusted for duration of exposure, and the number of exposures is not considered important unless there is evidence for a cumulative effect.

**VI. Risk Characterization**

This section describes the summarization of all the toxicology and exposure data in the final stage of the risk assessment process. In the current guidelines, this section also includes a discussion of mathematical approaches to quantitative risk assessment.

The proposed amendments to the risk characterization section, Section IV.C. in the current guidelines, include a discussion of the Margin of Exposure approach. The discussion of dose-response models and risk extrapolation procedures has been moved to Section IV, Dose-Response Assessment in the proposed guidelines.

**VII. References**

This section includes a full list of references for the proposed guidelines and is Section V in the current guidelines. Appropriate reference changes and additions have been made to conform to the proposed amendments.



Date: February 23, 1989.

John A. Moore,

*Chairman, Risk Assessment Council.*

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**Proposed Guidelines for Developmental Toxicity Risk Assessment**

*I. Introduction*

A. General

These Proposed Guidelines for Developmental Toxicity Risk Assessment (hereafter Guidelines) describe the procedures that the U.S. Environmental Protection Agency (EPA) will follow in evaluating potential developmental toxicity associated with human exposure to environmental toxicants. The Agency has sponsored or participated in several conferences that addressed issues related to such evaluations and that provided some of the scientific basis for these risk assessment Guidelines (1–6). The Agency's authority to regulate substances that have the potential to interfere adversely with human development is derived from a number of statutes that are implemented through multiple offices within the EPA. The procedures described herein are intended to promote consistency across program offices within the Agency in the assessment of developmental toxic effects.

The developmental toxicity assessments prepared pursuant to these Guidelines will be used with the requirements and constraints of the applicable statutes to arrive at regulatory decisions concerning developmental toxicity. These Guidelines provide a general format for analyzing and organizing the available data for conducting risk assessments. The Agency previously has issued testing guidelines (7, 8) that provide protocols designed to determine the potential of a test substance to induce structural and/or other adverse effects in the developing conceptus. These risk assessment Guidelines do not change any statutory or regulatory prescribed standards for the type of data necessary for regulatory action, but rather provide guidance for the interpretation of studies that follow the testing guidelines, and in addition, provide limited information for the interpretation of other studies (e.g., epidemiologic data, functional developmental toxicity studies, and short-term tests) that are not routinely required, but may be encountered when reviewing data on particular agents.

The National Research Council (9) has defined risk assessment as being comprised of some or all of the following components: hazard identification, dose-response assessment, exposure assessment, and risk characterization. In general, the process of assessing the risk of human developmental toxicity may be adapted to this format. However, the components of this format should not be considered in isolation. Instead, an appreciation of the potential for risk and the consequences of exposure can come only from consideration of the integration of all four components. Each component contributes to the final assessment of risk.

Hazard identification involves the evaluation of all available experimental animal and human data to determine if an agent is likely to cause developmental toxicity. In considering developmental toxicity, these Guidelines will address not only structural abnormalities, but also fetal and neonatal death, growth alteration, and functional abnormalities that may result from developmental exposure to environmental agents.

The dose-response assessment defines the relationship of the dose of an agent to the occurrence of developmentally toxic effects. According to the National Research Council (9), this component would usually include extrapolation from high to low doses and from experimental animals to humans. Since at present there are no mathematical extrapolation models that are generally accepted for developmental toxicity, uncertainty factors are applied to the no observed adverse effect level (NOAEL) to derive a reference dose for developmental toxicity ($RfD_{DT}$). The $RfD_{DT}$ is based on a short duration of exposure as is typically used in developmental toxicity studies in experimental animals. The use of the term $RfD_{DT}$ distinguishes it from the reference dose (RfD) which refers to chronic exposure situations (10). This approach is discussed further in these Guidelines (Section IV). Potential mathematical models are being evaluated by the Agency for application to data in this area (5).

The exposure assessment identifies populations exposed to an agent, describes their composition and size, and presents the types, magnitudes, frequencies, and durations of exposure to the agent. The exposure assessment provides an estimate of human exposure levels from all potential sources.

In risk characterization, the exposure assessment and the hazard identification and dose-response assessment are combined to estimate some measure of the risk of developmental toxicity. Here the NOAEL and the estimated human exposure levels may be compared to provide a margin of exposure (MOE). As part of risk characterization, a summary of the strengths and weaknesses in each component of the risk assessment are presented along with major assumptions, scientific judgments, and, to the extent possible, qualitative and quantitative estimates of the uncertainties. The weight-of-evidence determination should always be presented in conjunction with information on dose-response and, if available, the human exposure estimate.

Risk assessment is just one component of the regulatory process and defines the adverse health consequences of exposure to a toxic agent. The other component, risk management, combines the risk assessment with the directives of the enabling regulatory legislation, together with socioeconomic, technical, political, and other considerations, to reach a decision as to whether to control future exposure to the suspected toxic agent and, if so, the level of control. The acceptability of the uncertainty factor or the margin of exposure and risk management decisions, but the scientific bases for establishing these values are discussed here.

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B. Background

The background incidence of developmental defects in the human population is quite large. For example, Hertig (11) estimated that approximately 50% of human conceptuses fail to reach term; Wilcox (12), using biochemical techniques for detecting pregnancy as early as 9 days postconception, observed that 35% of pregnancies ended in an embryonic or fetal loss. Approximately 3% of newborn children are found to have one or more significant congenital malformations at birth, and by the end of the first postnatal year, about 3% more are found to have serious developmental defects (13). Of these, it is estimated that 20% are of known genetic transmission, 10% are attributable to known environmental factors, and the remainder result from unknown causes (14). Also, approximately 7.4% of children are reduced in weight at birth (i.e., below 2500 g) (15).

Close to one-half of the children in hospital wards are there because of prenatally acquired malformations (16). The Centers for Disease Control recently evaluated the enormity of the problem of developmental disabilities in the United States. Among all races, congenital anomalies, sudden infant death syndrome, and prematurity combined account for more than 50% of infant mortality in the United States (17). In addition, among the leading causes of estimated years of potential life lost (YPLL) before the age of 65, congenital anomalies ranks fifth, prematurity ranks sixth, and sudden infant death syndrome ranks seventh (18). The YPLL estimates may actually underestimate the public health impact of congenital anomalies because statistics on the following may not be represented (19): (1) Anomalies in infants who die shortly after birth may not be diagnosed and death may not be attributed to congenital anomalies; (2) YPLL estimates are based only on live births and therefore do not take into account the number of fetuses with anomalies that were spontaneously aborted or infants that were stillborn; (3) with prenatal diagnoses of chromosomal abnormalities and neural tube defects, pregnancies may be terminated and thus these statistics are not represented in the YPLL estimates.

Exposure to agents affecting development can result in any one or more of four possible manifestations (death, structural abnormality, growth alteration, and/or functional deficit). Therefore, assessment efforts should encompass a wide array of adverse developmental end points, such as spontaneous abortions, stillbirths, malformations, early postnatal mortality, reduced birth weight, and other adverse functional or physical changes that are manifested postnatally.

Numerous agents have been shown to be developmental toxicants in animal test systems (16). Several of them have also been shown to be the cause of adverse developmental effects in humans, including alcohol, aminopterin, busulfan, chlorobiphenyls, diethylstilbestrol, isotretinoin, lead, organic mercury, thalidomide, and valproic acid (13, 20, 21). Although a number of agents found to be developmental toxicants in experimental animal studies have not shown clear evidence of hazard in humans, the available human data are inadequate to determine a cause and effect relationship. Comparisons of human and experimental animal data have been made for a limited number of agents that are human developmental toxicants (22–24). In these comparisons, there was almost always qualitative concordance of effects between humans and at least one species tested; also, the minimally effective dose (MED) for the most sensitive animal species was approximately 0.5 to 100 times the human MED, not accounting for differences in the incidence of effect at the MED. Thus, there is some basis for estimating the risk of exposure to human development based on data from animal studies.

However, there are a number of unknowns in the extrapolation of data from animal studies to humans. Therefore, a number of assumptions must be made which are generally applied. These assumptions are the bases for the approaches taken to risk assessment in these Guidelines.

First, an agent that produces an adverse developmental effect in experimental animal studies is assumed to pose a potential hazard to humans following exposure during development. This assumption is based on the comparisons of data for known human developmental toxicants (22–24). In almost all cases, the experimental animal data would have predicted a developmental effect in humans.

It is assumed that all of the four manifestations of developmental toxicity (death, structural abnormalities, growth alterations, and functional deficits) are of concern. In the past, there has been a tendency to consider only malformations or malformations and death as end points of concern. From the data on agents that are known human developmental toxicants (22–24), there is usually at least one experimental species that mimics the types of effects seen in humans, but in other species tested, the type of developmental perturbation may be different. Thus, the appearance of any of the four manifestations is considered indicative of an agent's potential for disrupting development and producing a developmental hazard.

It is assumed that the types of developmental effects seen in animal studies are not necessarily the same as those that may be produced in humans. This assumption is made because it is impossible to determine which will be the most appropriate species in terms of predicting the specific types of effects seen in humans. The fact that every species may not react in the same way is probably due to species—specific differences in critical periods, metabolism, developmental patterns, or mechanisms of action.

It is assumed that the most sensitive species should be used to estimate human risk. When data are available (e.g., pharmacokinetic, metabolic) to suggest the most appropriate species, that species will be used for extrapolation. In the absence of such data, the most sensitive species is used, based on the fact that for the majority of known human developmental toxicants, humans are as sensitive or more so than the most sensitive animal species (22–24).

In general, a threshold is assumed for the dose-response curve for most developmental toxicants. This is based on the known capacity of the developing organism to compensate for or to repair a certain amount of damage at the cellular, tissue, or organ level. In addition, because of the multipotency of cells at certain stages of development, multiple insults at the molecular or cellular level may be required to produce an effect on the whole organism. There are uncertainties concerning this assumption that are being discussed currently in the literature (25, 26).

*II. Definitions and Terminology*

The Agency recognizes that there are differences in the use of terms in the field of developmental toxicology. For the purposes of these Guidelines the following definitions and terminology will be used.

Developmental toxicology. The study of adverse effects on the developing organism that may result from exposure prior to conception (either parent), during prenatal development, or postnatally to the time of sexual maturation. Adverse developmental effects may be detected at any point in the life span of the organism. The major manifestations of developmental toxicity include: (1) Death of the developing organism, (2) structural abnormality, (3) altered growth, and (4) functional deficiency.

Altered Growth. An alteration in offspring organ or body weight or size. Changes in one end point may or may not be accompanied by other signs of altered growth (e.g., changes in body weight may or may not be accompanied by changes in crown-rump length and/or skeletal ossification). Altered growth can be induced at any stage of development, may be reversible, or may result in a permanent change.

Functional Developmental Toxicology. The study of alterations or delays in functional competence of the organism or organ system following exposure to an agent during critical periods of development pre- and/or postnatally.

Malformations and Variations. A malformation is usually defined as a permanent structural change that may adversely affect survival, development, or function. The term teratogenicity, which is used to describe these types of structural abnormalities, will be used in these Guidelines to refer only to structural defects. A variation is used to indicate a divergence beyond the usual range of structural constitution that may not adversely affect survival or health. Distinguishing between variations and malformations is difficult since there exists a continuum of responses from the normal to the extreme deviant. There is no generally accepted classification of malformations and variations. Other terminology that is often used, but no better defined, includes anomalies, deformations, and aberrations.

*III. Hazard Identification of Developmental Toxicants*

Developmental toxicity is expressed as one or more of a number of possible end points that may be used for evaluating the potential of an agent to cause abnormal development. The four types of effects on the conceptus that may be produced by developmental exposure to toxicants include death, structural abnormality, altered growth, and functional deficits. Of these, all four types of effects have been evaluated in human studies, but only the first three are traditionally measured in laboratory animals using the conventional developmental toxicity (also called teratogenicity or Segment II) testing protocol as well as in other study protocols, such as the multigeneration study. Although functional deficits have been shown to occur subsequent to developmental exposures in humans, such effects seldom have been evaluated in routine testing studies in experimental animals. However, functional evaluations are beginning to be examined under certain regulatory situations (27, 28).

Carcinogenic effects of developmental exposures have occurred in humans resulting from the use of diethylstilbestrol for the maintenance of pregnancy (29). Several agents have been shown to cause cancer following developmental exposures in experimental animals, and it appears from the data collected thus far that agents which are capable of causing cancer in adults may also cause transplacental or neonatal carcinogenesis (30). There is no way to predict whether adults or developing animals will be more sensitive to the carcinogenic effects of an agent. At present, testing for carcinogenesis following developmental exposure is not routinely required. However, if this type of effect is reported for an agent, it is considered appropriate to use the Guidelines for Carcinogen Risk Assessment (31) for assessing human risk. Mutational events also may occur as a result of exposure to developmental toxicants but may be difficult to discriminate from other possible mechanisms in standard studies of developmental toxicity. When mutational events are suspected from further experiments, the Guidelines for Mutagenicity Risk Assessment (32) should be consulted; however, these guidelines specifically address heritable and not somatic mutational risk.

A. Laboratory Animal Studies of Developmental Toxicity: End Points and Their Interpretation

This section will discuss the end points examined in routinely-used protocols as well as the use of other types of studies, including functional studies and short-term tests.

The most commonly used protocol for assessing developmental toxicity in laboratory animals involves the administration of a test substance to pregnant animals (usually mice, rats, or rabbits) during the period of major organogenesis, evaluation of maternal responses throughout pregnancy, and examination of the dam and the uterine contents just prior to term (7, 8, 33–35). Other protocols may use exposures of one to a few days to investigate periods of particular sensitivity for induction of anomalies in specific organs or organ systems (36). In addition, developmental toxicity may be evaluated in studies involving exposure of one or both parents prior to conception, of the conceptus during pregnancy and over several generations, or of offspring during the late prenatal and early postnatal periods (7, 8, 27, 28, 33–35, 37). These Guidelines are intended to provide information for interpreting developmental effects related to any of these types of exposure. Since many of the end points evaluated also are related to effects on the parental reproductive systems, these Guidelines should be used in conjunction with those published on assessing male and female reproductive risk (38, 39).

Study designs should include, at a minimum, a high dose, a low dose, and one intermediate dose. The high dose should produce some maternal or adult toxicity (i.e., a level which at the least produces marginal but significantly reduced body weight, weight gain, or specific organ toxicity, and at the most produces no more than 10% mortality). The low dose should demonstrate a NOAEL for adult and offspring effects. A concurrent control group treated with the vehicle used for agent administration should be included. The route of exposure is usually oral, although data from other routes may sometimes be useful, especially if supported by pharmacokinetic information. Test animals should be selected based on considerations of species, strain, age, weight, and health status, and should be randomized to dose groups in order to reduce bias and provide a basis for performing valid statistical tests.

The next three sections discuss individual end points of maternal and developmental toxicity as measured in the conventional developmental toxicity study and the multigeneration study, and, on occasion, in postnatal studies. Other end points specifically related to reproductive toxicity are covered in the relevant risk assessment guidelines (38, 39). The fourth section deals with the integrated evaluation of all data, including the relative effects of exposure on maternal animals and their offspring, which is important in assessing the level of concern about a particular agent. It should be noted that appropriate historical control data can be helpful in the interpretation of end points of maternal and developmental toxicity.

1. *End Points of Maternal Toxicity.* A number of end points that may be observed as possible indicators of maternal toxicity are listed in Table 1. Maternal mortality is an obvious end point of toxicity; however, a number of other end points can be observed which may give an indication of the subtle effects of an agent. For example, in well-conducted studies, the fertility and gestation indices provide information on

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the general fertility rate of the animal stock used and are important indicators of toxic effects to adults if treatment begins prior to mating or implantation. Changes in gestation length may indicate effects on the process of parturition.

Table 1. End Points of Maternal Toxicity

| |
|---|
| Mortality |
| Fertility Index (no. with seminal plugs or sperm/no. mated) |
| Gestation Index (no. with implants/no. with seminal plugs or sperm) |
| Gestation Length (when allowed to deliver pups) |
| Body Weight |
| Day 0 |
| During gestation |
| Sacrifice day |
| Body Weight Change |
| Throughout gestation |
| During treatment (including increments of time within treatment period) |
| Post-treatment of sacrifice |
| Corrected maternal (body weight change throughout gestation minus gravid uterine weight or litter weight at sacrifice) |
| Organ Weights (in cases of suspected specific organ toxicity and when supported by adverse histopathology findings) |
| Absolute |
| Relative to body weight |
| Food and Water Consumption (where relevant) |
| Clinical Evaluations |
| Types, incidence and duration of clinical signs |
| Enzyme markers |
| Clinical chemistries |
| Gross Necropsy and Histopathology |

Body weight and the change in body weight are viewed collectively as indicators of maternal toxicity for most species, althought these end points may not be as useful in rabbits, because body weight changes in some strains of rabbits are not good indicators of pregnancy status. Body weight changes may provide more information than a daily body weight measured during treatment or during gestation. Changes in weight gain during treatment could occur that would not be reflected in the total weight change throughout gestation, because of compensatory weight gain that may occur following treatment but before sacrifice. For this reason, changes in weight gain during treatment can be examined as another indicator or maternal toxicity.

Changes in maternal body weight corrected for gravid uterine weight at sacrifice may indicate whether the effect is primarily maternal or fetal. For example, there may be a significant reduction in weight gain throughout gestation and in gravid uterine weight, but no change in corrected maternal weight gain which would generally indicate an intrauterine effect. Conversely, a change in corrected weight gain and no change in gravid uterine weight generally suggests maternal toxicity and little or not intrauterine effect. An alternate estimate of maternal weight change during gestation can be obtained by subtracting the sum of the weights of the fetuses. However, this weight does not include the uterine tissue, placental tissue, or the amniotic fluid.

Changes in other end points may also be important. For example, changes in relative and absolute organ weights may be signs of a maternal effect when an agent is suspected or causing specific organ toxicity and when such findings are supported by adverse histopathologic findings in those organs. Food and water consumption data are useful, especially if the agent is administered in the diet or drinking water. The amount ingested (total and relative to body weight) and the dose of the agent (relative to body weight) can then be calculated, and changes in food and water consumption related to treatment can be evaluated along with changes in body weight and body weight gain. Data on food and water consumption are also useful when an agent is suspected of affecting appetite, water intake, or excretory function. Clinical evaluations of toxicity may also be used as indicators of maternal toxicity. Daily clinical observations may be useful describing the profile or maternal toxicity. Enzyme markers and clinical chemistries may be useful indicators of exposure but must be interpreted carefully as to whether or not a change constitutes toxicity. Gross necropsy and histopathology data (when specified in the protocol) may aid in determining toxic dose levels. The minimum amount of information/data considered useful for evaluating maternal toxicity [as noted in the Proceedings of the Workshop on the Evaluation of Maternal and Developmental Toxicity (3)], includes: morbidity or mortality; maternal body weight and body weight gain; clinical signs of toxicity; food (and water, if dosing is via drinking water) consumption; and necropsy for gross evidence of organ toxicity. Maternal toxicity should be determined in the pregnant and/or lactating animal over an appropriate part of gestation and/or the neonatal period, and should not be assumed or extrapolated from other adult toxicity studies.

2. *End Points of Developmental Toxicity.* Because the maternal animal, and not the conceptus, is the individual treated during gestation, data generally should be calculated as incidence per litter or as number and percent of litters with particular end points. Table 2 indicates the way in which offspring and litter end points may be expressed.

Table 2. End Points of Developmental Toxicity

| |
|---|
| *Litters with implants* |
| No. implantation sites/dam |
| No. corpora lutea (CL)/dam [a] |
| Percent preimplantation loss (CL − implantations) × 100 [a]/CL |
| No. and percent live offspring [b]/litter |
| No. and percent resorptions/litter |
| No. and percent litters with resorptions |
| No. and percent late fetal deaths/litter |
| No. and percent nonlive (late fetal deaths + resorptions) implants/litter |
| No. and percent liters with nonlive implants |
| No. and percent affected (nonlive + malformed) implants/litter |
| No. and percent litters with affected implants |
| No. and percent litters with total resorptions |
| No. and percent stillbirths/litter |
| *Litters with live offspring* |
| No. and percent litters with live offspring |
| No. and percent live offspring/litter |
| Viability of offspring [c] |
| Sex ratio/litter |
| Mean offspring body weight/litter [c] |
| Mean male body weight/litter [c] |
| Mean female body weight/litter [c] |
| No. and percent externally malformed offspring/litter |
| No. and percent viscerally malformed offspring/litter |
| No. and percent skeletally malformed offspring/litter |
| No. and percent malformed offspring/litter |
| No. and percent litters with malformed offspring |
| No. and percent malformed males/litter |
| No. and percent malformed females/litter |
| No. and percent offspring with variations/litter |
| No. and percent litters having offspring with variations |
| Types and incidence of individual malformations |
| Types and incidence of individual variations |
| Individual offspring and their malformations and variations (grouped according to litter and dose) |
| Clinical signs |
| Gross necropsy and histopathology |

[a] Important when treatment begins prior to implantation. May be difficult to assess in mice.

[b] Offspring refers both to fetuses observed prior to term or to pups following birth. The end points examined depend on the protocol used for each study.

[c] Measured at selected intervals until termination of the study.

When treatment begins prior to implantation, an increase in preimplantation loss could indicate an adverse effect on the fertilization process, ovum transport, uterine toxicity, the developing blastocyst, or on the process of implantation itself. If treatment begins around the time of implantation (i.e., day 6 of gestation in the mouse, rat, or rabbit), an increase in preimplantation loss probably reflects normal variability in the animals being used, but the data should be examined carefully to determine whether or not the effect is dose related. If preimplantation loss is related to dose in either case, further studies would be necessary to determine the mechanism and extent of such effects.

The number and percent of live offspring per litter, based on all litters, may include litters that have no live implants. Resorptions and late fetal deaths give some indication of when the conceptus died, and the number and percent nonlive implants per litter (post-implantation loss) is a combination of resorptions and late fetal deaths. The number and percent of litters showing an increased incidence for these end points is generally useful but may be less useful than incidence per litter because, in the former case, a litter is counted whether it has one or all resorbed, dead, or nonlive implants.

If a significant increase in postimplantation loss is found after exposure to an agent, the data may be compared not only with concurrent controls, but also with recent historical control data, since there is considerable interlitter variability in the incidence of post-implantation loss (40). If a given study control group exhibits an unusually high or low incidence of postimplantation loss compared to historical controls, then scientific judgment must be used to determine the adequacy of the study for risk assessment purposes.

The end point for affected implants (i.e., the combination of nonlive and malformed conceptuses) gives an indication of the total intrauterine response to an agent and sometimes reflects a better dose-response relationship than does the incidence of nonlive or malformed offspring taken individually. This is especially true at the high end of the dose-response curve in cases when the incidence of nonlive implants per litter is greatly increased. In such cases, the malformation rate may appear to decrease because only unaffected offspring have survived. If the incidence of prenatal death or malformation is unchanged, then the incidence of affected implants will not provide any additional dose-response information. In studies where maternal animals are allowed to deliver pups normally, the number of stillbirths per litter should also be noted.

The number of live offspring per litter, based on those litters that have one or more live offspring, may be unchanged even though the incidence of nonlive in all litters is increased. This could occur either because of an increase in the number of litters with no live offspring, or an increase in the number of implants per litter. A decrease in the number of live offspring per litter should be accompanied by an increase in the incidence of nonlive implants per litter unless the implant numbers differ among dose groups. In postnatal studies, the viability of live born offspring should be determined at selected intervals until termination of the study.

The sex ratio per litter, as well as the body weights of males and females, can be examined to determine whether or not one sex is preferentially affected by the agent. However, this is an annual occurrence.

A change in offspring body weight is a sensitive indicator of developmental toxicity, in part because it is a continuous variable. In some cases, offspring weight reduction may be the only indicator of developmental toxicity. While there is always a question remaining as to whether weight reduction is a permanent or transitory effect, little is known about the long-term consequences of short-term fetal or neonatal weight changes. Therefore, weight reduction should be used to establish the NOAEL. There are other factors that should be considered in the evaluation of fetal or neonatal weight changes. For example, in polytocous animals, fetal and neonatal weights are usually inversely correlated with litter size, and the upper end of the dose-response curve may be confounded by smaller litters and increased fetal or neonatal weight. Additionally, the average body weight of males is greater than that of females in the more commonly used laboratory animals.

Live offspring should be examined for external, visceral, and skeletal malformations. If only a portion of the litter is examined, then it is preferable that those examined be randomly selected from each litter. An increase in the incidence of malformed offspring may be indicated by a change in one or more of the following end points: the incidence of malformed offspring per litter, the number and percent of litters with malformed offspring, or the number of offspring or litters with a particular malformation that appears to increase with dose (as indicated by the incidence of individual types of malformations).

Other ways of examining the data include the incidence of external, visceral, and skeletal malformations which may indicate the general systems affected. A listing of individual offspring with their malformations and variations may give an indication of the pattern of developmental deviations. All of these methods of expressing and examining the data are valid for determining the effects of an agent on structural development. However, care must be taken to avoid counting offspring more than once in evaluating any single end point based on number or percent of offspring or litters. The incidence of individual types of malformations and variations should be examined for significant changes which may be masked if the data on all malformations and variations are pooled. Appropriate historical control data are helpful in the interpretation of malformations and variations, especially those that normally occur at a low incidence and may or may not be related to dose in an individual study. Although a dose-related increase in malformations is interpreted as an adverse developmental effect of exposure to an agent, the significance of anatomical variations is more difficult to determine, and must take into account what is known about developmental stage (e.g., with skeletal ossification), background incidence of certain variations (e.g., 12 or 13 pairs of ribs in rabbits), or other strain- or species-specific factors. However, if variations are significantly increased in a dose-related manner, these should also be evaluated as a possible indication of developmental toxicity. The Interagency Regulatory Liaison Group noted that dose-related increases in defects that may occur spontaneously are as relevant as dose-related increases in any other developmental toxicity end points (41).

3. *Functional Developmental Toxicology.* Developmental effects that

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are induced by exogenous agents are not limited to death, structural abnormalities, and altered growth. Rather, it has been demonstrated in a number of instances that subtle alterations in the functional competence of an organ or a variety of organ systems may result from exposure during critical developmental periods that may occur between conception and sexual maturation. Often, these functional defects are observed at dose levels below those at which gross malformations are evident (42). Such testing has not been routinely required in the United States, but studies are beginning to be required when other information indicates the potential for adverse functional effects (27, 28). Data from postnatal studies, when available, are considered very useful for the assessment of the relative importance and severity of findings in the fetus and neonate. Often, the long-term consequences of adverse developmental outcomes noted at birth are unknown, and further data on postnatal development and function are needed to determine the full spectrum of potential developmental effects. In some cases, useful data can be derived from well-executed multigeneration studies.

Much of the early work in functional developmental toxicology was related to behavioral evaluations, and the term "behavioral teratology" became prominent in the mid 1970s. Recent advances in this area have been reviewed in several publications (43, 44). Several expert groups have focused on the functions that should be included in a behavioral testing battery (45–47), and these include: sensory systems, neuromotor development, locomotor activity, learning and memory, reactivity and/or habituation, and reproductive behavior. No testing battery has adequately addressed all of these functions, but it is important to include as many as possible. Several testing batteries have been developed and evaluated (46, 48, 49). The U.S. EPA Office of Toxic Substances (OTS) has developed a guideline for developmental neurotoxicity testing (28) that includes some evaluation of all the categories listed above except for reproductive behavior, and also includes requirements for brain weights and neuropathology. Several criteria for selecting agents for developmental neurotoxicity testing have been suggested (46), including: agents that cause central nervous system malformations, pyschoactive drugs and chemicals, adult neurotoxicants, hormonally-active agents, and chemicals that are structurally related to other developmental neurotoxicants. Data from developmental neurotoxicity studies should be evaluated in light of the data that may have triggered such testing as well as all other toxicity data available.

Less work has been done on other developing functional systems, but data have accumulated to indicate that the cardiopulmonary, immune, endocrine, digestive, and urinary systems, as well as the central nervous system are subject to alterations in functional competence (50, 51) following exposure during development. Currently, there are no standard testing procedures for these functional systems. However, when data are encountered on a chemical under review, they are considered and evaluated in the risk assessment process.

Extrapolation of functional developmental effects to humans is limited by the lack of knowledge about underlying toxicological mechanisms and their significance as is true for other end points of developmental toxicity. In comparisons made on a limited number of agents known to cause developmental neurotoxic effects in humans (52), these agents also have been shown to produce developmental neurotoxic effects in animal species. As for other end points of developmental toxicity, the assumption is made that functional effects in animal studies indicate the potential for altered development in humans. When data from functional developmental toxicity studies are encountered for particular agents, they should be evaluated and included in the risk assessment process.

Some guidance is provided here concerning important general concepts of study design and evaluation for functional developmental toxicity studies.

- Several aspects of study design are similar to those important in standard developmental toxicity studies (e.g., a dose-response approach with the highest dose producing minimal overt maternal or perinatal toxicity, number of litters large enough for adequate statistical power, randomization of animals to dose groups and test groups, litter generally considered the statistical unit, etc.).
- A replicate study design provides added confidence in the interpretation of data.
- Use of a pharmacological challenge may be valuable in evaluating function and "unmasking" effects not otherwise detectable, particularly in the case of organ systems that are endowed with a reasonable degree of functional reserve capacity.
- Use of functional tests with a moderate degree of background variability may be more sensitive to the effects of an agent than are tests with low variability that may be impossible to disrupt without being life-threatening. Butcher et al. (53) discussed this with relation to behavioral end points.
- A battery of functional tests, in contrast to a single test, usually provides a more thorough evaluation of the functioanl competence of an animal; tests conducted at several ages may provide more information about maturational changes and their persistence.
- Critical periods for the disruption of functional competence include both the prenatal and the postnatal periods to the time of sexual maturation, and the effect is likely to vary depending on the time and degree of exposure.

Although interpretation of functional data may be limited at present, it is clear that functional effects must be evaluated in light of other toxicity data, including other forms of developmental toxicity (e.g., structural abnormalities, perinatal death, and growth retardation). The level of confidence in an adverse effect may be more important than the type of change seen, and confidence may be increased by such factors as replicability of the effect either in another study of the same function or by convergence of data from tests that purport to measure similar functions. A dose-response relationship is considered an important measure of chemical effect; in the case of functional effects, both monotonic and biphasic dose-response curves are likely, and both may be appropriate depending on the function being tested. Finally, there are at least three general ways in which the data from these studies may be useful for risk assessment purposes: (1) To help elucidate the long-term consequences of fetal and neonatal findings; (2) to indicate the potential for an agent to cause functional alterations and the effective doses relative to those that produce other forms of toxicity; and (3) for existing environmental agents, to suggest organ systems to be evaluated in exposed human populations.

4. *Overall Evaluation of Maternal and Developmental Toxicity.*

As discussed previously, individual end points of maternal and developmental toxicity are evaluated in developmental toxicity studies. In order to interpret the data fully, an integrated evaluation must be performed considering all maternal and developmental end points.

Those agents that produce developmental toxicity at a dose that is not toxic to the maternal animal are of greatest concern because the developing organism appears to be more sensitive than the adult. However, when adverse developmental effects are produced only at minimal maternally toxic doses, they are still considered to represent developmental toxicity and should not be discounted as being secondary to maternal toxicity. Current information is inadequate to assume that developmental effects at maternally toxic doses result only from maternal toxicity; rather, when the lowest observed adverse effect level (LOAEL) is the same for the adult and developing organisms, it may simply indicate that both are sensitive to that dose level. Moreover, the maternal effects may be reversible while effects on the offspring may be permanent. These are important considerations for agents to which humans may be exposed at minimally toxic levels either voluntarily or in the workplace, since several agents are known to produce adverse developmental effects at minimally toxic doses in adult humans (e.g., smoking, alcohol).

Since the final risk assessment not only takes into account the potential hazard of an agent, but also the nature of the dose-response relationship, it is important that the relationship of maternal and developmental toxicity be evaluated and described. Then, information from the exposure assessment is used to determine the likelihood of exposure to levels near the maternally toxic dose for each agent and the risk for developmental toxicity in humans.

If, on the other hand, maternal toxicity is seen in the absence of or at dose levels lower than those producing developmental toxicity, and if the effect level is lower than that in evaluations of other types of adult toxicity, this implies that the pregnant female is likely to be more sensitive than the nonpregnant female and the data from the pregnant female should be used to assess risk. Although the evaluation of developmental toxicity is the primary objective of standard studies within this area, maternal effects seen within the context of developmental toxicity studies should be evaluated as part of the overall toxicity profile for a given chemical.

Approaches for ranking agents according to their relative maternal and developmental toxicity have been proposed; Schardein (20) has reviewed several of these. Several approaches involve the calculation of ratios relating an adult toxic dose to a developmentally toxic dose (54–57). Such ratios may describe in a qualitative and roughly quantitative fashion the relationship of maternal (adult) and developmental toxicity. However, at the U.S. EPA Sponsored Workshop on the Evaluation of Maternal and Developmental Toxicity (3), there was no agreement as to the validity or utility of these approaches in other aspects of the risk assessment process. This is in part due to uncertainty about factors that can affect the ratios. For example, the number and spacing of dose levels, differences in study design (e.g., route an/or timing of exposure), and species differences in response (3, 58), can influence the maternal and developmental effects and the resulting ratios. Also, the end points used in the ratios need to be better defined to permit cross-species comparison. Until such information is available, the applicability of these approaches in risk assessment is not justified.

5. *Short-term Testing in Developmental Toxicity.* The need for short-term tests for developmental toxicity has arisen from the need to establish testing priorities for the large number of agents in or entering the environment, the interest in reducing the number of animals used for routine testing, and the expense of testing. Two approaches are considered here in terms of their contribution to the overall testing process: 1) an in vivo mammalian screen, and 2) a variety of in vitro systems. Currently, neither approach is considered as a replacement for routine in vivo development toxicity testing in experimental animals, and should not be used to make the final decision as to an agent's developmental toxicity. Rather, such tests may be useful in making preliminary evaluations of developmental toxicity, for evaluating structure-activity relationships, and for assigning priorities for further, more extensive testing. Although such short-term tests are not routinely required, data sometimes are encountered in the review of chemicals; the comments are provided here for guidance in the evaluation of such data.

*a. In vivo mamalian developmental toxicity screen.* The most widely studied in vivo short-term approach is that developed by Chernoff and Kavlock (59). This approach is based on the hypothesis that a prenatal injury, which results in altered development, will be manifested postnatally as reduced viability and/or impaired growth. When originally proposed, the test substance was administered to mice over the period of major organogenesis at a single dose level that would elicit some degree of maternal toxicity. At the NIOSH Workshop on the Evaluation of the Chernoff/Kavlock Test for Developmental Toxicity (4), use of a second lower dose level was encouraged to potentially reduce the chances of false positive results, and the recording of implantation sites was recommended to provide a more precise estimate of postimplantation loss (60).

In this approach, the pups are counted and weighed shortly after birth, and again after 3–4 days. End points that are considered in the evaluation include: general maternal toxicity (including survival and weight gain), litter size, and viability, weight, and gross malformations in the offspring. Basic priority-setting categories for more extensive testing have been suggested: 1) agents that induce perinatal death should receive highest priority, 2) agents that induce perinatal weight changes should be ranked lower in priority, and 3) agents that induce no effect should receive the lowest priority (59). Another scheme that has been proposed applies a numerical ranking to the results as a means of prioritizing agents for further testing (61, 62).

The mouse was chosen originally for this test because of its low cost, but the procedure has been applied to the rat as well (63). The test will predict the potential for developmental toxicity of an agent in the species used while extrapolation of risk to other species, including humans, has the same limitations as for other testing protocols. The EPA Office of Toxic Substances has developed testing guidelines for this procedure (64). Although the testing guidelines are available, such procedures are required on a case-by-case basis. Application of this procedure in the risk assessment process within the Office of Toxic Substances has been described (65), and the experiences of a number of laboratories are detailed in the proceedings of the NIOSH workshop (4).

*b. In vitro developmental toxicity screens.* Test systems that fall under the general heading of "in vitro" developmental toxicity screens include any system that employs a test subject other than the intact pregnant mammal. Examples of such systems include: Isolated whole mammalian embryos in culture, tissue/organ culture, cell culture, and developing nonmammalian organisms. These systems have long been used to assess events associated with normal and abnormal development, but only recently have they been considered for this potential as screens in testing (66–68). Many of these systems are now being evaluated for their ability to predict the developmental toxicity of

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various agents in intact mammalian systems. This validation process requires certain considerations in study design, including defined end points for toxicity and an understanding of the system's ability to handle various test agents (67, 69–71).

6. *Statistical Considerations.* In the assessment of developmental toxicity data, statistical considerations require special attention. Since the litter is generally considered the experimental unit in most developmental toxicity studies, the statistical analyses should be designed to analyze the relevant data based on incidence per litter or on the number of litters with a particular end point. The analytical procedures used and the results, as well as an indication of the variance in each end point, should be clearly indicated in the presentation of data. Analysis of variance (ANOVA) techniques, with litter nested within dose in the model, take the litter variable into account while allowing use of individual offspring data and an evaluation of both within and between litter variance as well as dose effects. Nonparametric and categorical procedures have also been widely used for binomial or incidence data. In addition, tests for dose-response trends can be applied. Although a single statistical approach has not been agreed upon, a number of factors important in the analysis of developmental toxicity data have been discussed (41, 72).

Studies that employ a replicate experimental design (e.g., two or three replicates with 10 litters per dose per replicate rather than a single experiment with 20 to 30 litters per dose group) allow for broader interpretation of study results since the variability between replicates can be accounted for using ANOVA techniques. Replication of effects due to a given agent within a study, as well as among studies or laboratories, provides added strength in the use of data for the estimation of risk.

An important factor to determine in evaluating data is the power of a study (i.e., the probability that a study will demonstrate a true effect), which is limited by the sample size used in the study, the background incidence of the end point observed, the variability in the incidence of the end point, and the analysis method. As an example, Nelson and Holson (73) have shown that the number of litters needed to detect a 5% or 10% change was dramatically lower for fetal weight (a continuous variable with low variability) than for resorptions (a binomial response with high variability). With the current recommendation in testing protocols being 20 rodents per dose group (7, 8), it is possible to detect an increased incidence of malformations in the range of 5 to 12 times above control levels, an increase of 3 to 6 times the in utero death rate, and a decrease of 0.15 to 0.25 times the fetal weight. Thus, even within the same study, the ability to detect a change in fetal weight is much greater than for the other end points measured. Consequently, for statistical reasons only, changes in fetal weight are often observable at doses below those producing other signs of developmental toxicity. Any risk assessment should present the detection sensitivity for the study design used and for the end point(s) evaluated.

Although statistical analyses are important in determining the effects of a particular agent, the biological significance of data should not be overlooked. For example, with the number of end points that can be observed in developmental toxicity studies, a few statistically significant differences may occur by chance. On the other hand, apparent trends with dose may be biologically relevant even though statistical analyses do not indicate a significant effect. This may be true especially for the incidence of malformations or in utero death where a relatively large difference is required to be statistically significant. It should be apparent from this discussion that a great deal of scientific judgment, based on experience with developmental toxicity data and with principles of experimental design and statistical analysis, may be required to adequately evaluate such data.

B. Human Studies

The category of "human studies" includes both epidemiologic studies and other reports of individual cases or clusters of events. Reports of individual cases or clusters of events may generate hypotheses of exposure-outcome associations, but require further confirmation with well-designed epidemiologic or laboratory studies. These reports of cases or clusters may give added support to associations suggested by other human or animal data, but cannot stand by themselves in risk assessments. Greatest weight should be given to carefully-designed epidemiologic studies with more precise measures of exposure, since they can best evaluate exposure-response relationships (see section IV). Epidemiologic studies in which exposure is presumed based on occupational title or residence (e.g., some case-control and all ecologic studies) may contribute data to qualitative risk assessments, but are of limited use for quantitative risk assessments because of the generally broad categorical groupings. Risk assessors should seek the assistance of professionals trained in epidemiology when conducting a detailed analysis.

1. *Examination of Clusters, Case Reports, or Case Series.* The identification of cases or clusters of adverse developmental effects is generally limited to those identified by the women involved, or clinically by their physicians. Examples of outcomes more easily identified include fetal loss in mid to late pregnancy or congenital malformations. Identification of other effects, such as embryonic loss may be difficult to separate from subfertility/infertility. Identification of such "non-events" (e.g., lack of pregnancies or children) are much harder to recognize than are developmental effects such as malformations resulting from in utero exposure. While case reports may have importance in the recognition of developmental toxicants, they may be of greatest use in suggesting topics for further investigation (74).

2. *Epidemiologic Studies.* Good epidemiologic studies provide the most relevant information for assessing human risk. As there are many different designs for epidemiologic studies, simple rules for their evalution do not exist. The following is a discussion of factors that affect the relative weight assigned a particular study in a risk assessment.

a. General design considerations. Factors that affect a study's usefulness for risk assessment include the power of the study, potential bias in data collection, control of potential risk factors, effect modifiers and confounders, and statistical factors (41, 75–80):

(1) The power of the study: The power, or ability of a study to detect a true effect, is dependent on the size of the study group, the frequency of the outcome in the general population, and the level of excess risk to be identified. In a cohort study, common outcomes, such as recognized embryo/fetal loss, require hundreds of pregnancies in order to have a high probability of detecting a modest increase in risk (e.g., 133 in both exposed and unexposed groups to detect a twofold increase; alpha <0.05, power = 80%), while less common outcomes, such as the total of all malformations recognized at birth, require thousands of pregnancies to have the same probability (e.g., more than 1200 in both exposed and unexposed groups) (15, 75, 76, 81, 82). In case-control studies, study sizes are dependent upon the frequency of exposure within the source population.



*A posteriori* determination of power of the actual study is useful in evaluating negative findings. Negative findings in a study of low power would be given considerably less weight than either a positive study, or a negative study with high power.

(2) Potential bias in data collection: Sources of bias may include selection bias and information bias (83). Selection bias may occur when an individual's willingness to participate varies with certain characteristics relating to the exposure status or health status of that individual. In addition, selection bias may operate in the identification of subjects for study. For example, for studies of very early loss, use of hospital records to identify embryonic or early fetal loss will underascertain events, because women are not always hospitalized for these outcomes. More weight would be given in a risk assessment to a study in which a more complete list of pregnancies is obtained by, for example, either interviewing the women in the study or, in a prospective study, collecting biological data (e.g., human chorionic gonadotropin measurements) of pregnancy status from study members. A second example of different levels of ascertainment of events is the use of hospital records to study congenital malformations. Hospital records contain more complete data on malformations than do birth certificates. Thus, a study using hospital records to identify congenital malformations would be given more weight in a risk assessment.

Information bias may result from misclassification of characteristics of individuals or events identified for study. Recall bias, one type of information bias, may occur when respondents with specific exposures or outcomes recall information differently than those without the exposures or outcomes. Interview bias may result when the interviewer knows *a priori* the category of exposure (for cohort studies) or outcome (for case-control studies) in which the respondent belongs. Use of highly structured questionnaires and/or "blinding" of the interviewer will reduce the likelihood of such bias. Studies with lower likelihood of such types of bias should carry more weight in a risk assessment.

When data are collected by interview or questionnaire, the appropriate respondent depends upon the type of data or study. For example, a comparison of husband-wife interviews on reproduction found the wives' responses to questions on pregnancy-related events to be considerably more complete and valid than those of the husbands (78). Studies based on interview data from the appropriate respondent (e.g., the woman when examining her pregnancy history) would carry more weight than those from proxy respondents (e.g., the man when examining his partner's pregnancy history).

Data from any source may be prone to errors or bias. Validation with an independent data source (e.g., vital or hospital records), or use of biomarkers of exposure or outcome, where possible, may indicate the presence or absence of bias and increase confidence in the results of the study. Those studies with a low probability of biased data should carry more weight (81, 84).

(3) Control of potential risk factors, effect modifiers, and confounders: Potential risk factors may include smoking, alcohol consumption, drug use, past reproductive history, and environmental and occupational exposure. Such characteristics should be examined, where appropriate, for the outcome under study, and should be controlled for in the study design and/or analysis.

The potential for characteristics of the subjects to be effect modifiers and/or confounders should also be considered. An effect modifier is a factor that produces different exposure-response relationships at different levels of the effect modifier. For example, maternal age would be an effect modifier if the risk associated with a given exposure increased with the mother's age. A confounder is associated with both the exposure and outcome, and these interrelationships could distort both the magnitude and direction of the measure of association between the exposure of interest and the outcome. For example, smoking might be a confounder in a study of the association of socioeconomic status and low birth weight, since smoking has been associated with both.

Both effect modifiers and confounders need to be controlled in the analysis to improve the estimate of the effects of exposure (85). A more in-depth discussion may be found elsewhere (83, 86). The statistical techniques used to control for these factors require careful consideration in their application and interpretation (83, 85). Studies that fail to account for these important factors should be given less weight in a risk assessment.

(4) Statistical factors: As in animal studies, pregnancies experienced by the same woman are not independent events. In animal studies, the litter is generally used as the unit of measure to deal with nonindependence of events. This approach is difficult in humans since the pregnancies are sequential, with the risk factors changing for different pregnancies (15, 41, 81, 86). If more than one pregnancy per women is included, as is often necessary due to small study groups, the use of nonindependent observations overestimates the true size of the population at risk and artificially increases the significance level (87). Some approaches to deal with these issues have been suggested (81, 86). At this point in time, a generally accepted solution to this problem has not been developed.

b. Selection of outcomes for study. As already discussed, a number of end points can be considered in the evaluation of adverse developmental effects. However, some of the outcomes are not easily observed in humans. These include early embryonic loss and reproductive capacity of the offspring. Currently, the most feasible end points for epidemiologic studies are reproductive history studies of some pregnancy outcomes (e.g., embryo/fetal loss, birth weight, sex ratio, congenital malformations, postnatal function, and neonatal growth and survival) and measures of subfertility/infertility which in some cases might be evidence of very early embryonic loss. Factors requiring control in the design or analysis (such as other risk factors, effect modifiers, and confounders) may vary depending on the specific outcomes selected for study.

The developmental outcomes available for epidemiologic examination are limited by a number of factors, including the relative magnitude of the exposure since differing spectra of outcomes may occur at different exposure levels, the size and demographic characteristics of the population, and the ability to observe the reproductive outcome in humans. Improved methods for identifying some outcomes such as embryonic or very early fetal loss using new human chorionic gonadotropin (hCG) assays may change the spectrum of outcomes available for study (12).

Demographic characteristics of the population, such as marital stutus, age distribution, education, and prior reproductive history are associated with the probability of whether couples will attempt to have children. There may also be differences in the use of birth control, which would affect the number of outcomes available for study. Additionally, workers may move in and out of areas with differing levels and types of exposures, affecting the number of exposed and comparison pregnancies for study. Larger populations are usually

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necessary in environmental settings, since the exposures in environmental settings are generally much lower than in occupational settings.

c. Reproductive history studies.

(1) Pregnancy outcomes: Pregnancy outcomes examined in human studies of parental exposures may include embryo/fetal loss, congenital malformations, birth weight, sex ratio at birth, and possibly postnatal survival, growth, and function. Epidemiologic studies that focus on only one type of pregnancy outcome may miss a true effect of exposure. As mentioned above, some reproductive end points can be thought of as a continuum of adverse effects; for example, a malformed stillbirth would not be included in a study of defects observed at live birth, even though the etiology could be identical (75, 89). Studies that examine multiple end points could yield more information, but the results may be difficult to interpret. Evidence of a dose-response relationship is usually an important criterion in the assessment of a toxic exposure. However, traditional dose-response relationships may not always be observed for some end points. For example, with increasing dose, a pregnancy might end in an embryo/fetal loss, rather than a live birth with malformations. A shift in the patterns of outcomes could result from differences either in level of exposure or in timing (90, 91). Therefore, a risk assessment should, when possible, attempt to look at the interrelationship of different reproductive end points and patterns of exposure.

(2) Measures of fertility: Normally, studies of subfertility/infertility would not be included in an evaluation of developmental effects. However, in humans it is difficult to identify very early embryonic loss, and to distinguish it from subfertility/infertility. Thus, studies that examine subfertility or infertility indirectly examine loss very early in the gestational period. Studies of subfertility may be thought of as the study of non-events: a couple is unable to have children within a specific time frame. Therefore, the epidemiologic measurement of reduced fertility is typically indirect, and is accomplished by comparing birth rates or time intervals between births or pregnancies. In these evaluations, the couple's joint ability to procreate is estimated. One method, the Standardized Birth Ratio (SBR; also referred to as the Standardized Fertility Ratio), compares the number of births observed to those expected based on the person-years of observation stratified by factors such as time period, age, race, marital status, parity, contraceptive use, etc. (92–94). The SBR is analogous to the Standardized Mortality Ratio (SMR), a measure frequently used in studies of occupational cohorts, and has similar limitations in interpretation (87, 95) and in usefulness for risk assessment.

Analysis of the time period between recognized pregnancies or live births has been suggested as another indirect measure of fertility (96). Because the time interval between births increases with increasing parity (97), comparisons within birth order (parity) are more appropriate. A statistical method (Cox regression) can stratify by birth or pregnancy order to help control for nonindependence of these events in the same woman.

Fertility may also be affected by alterations in sexual behavior. However, limited data are available linking toxic exposures to these alterations in humans. Moreover, such data are not easily obtained in epidemiology studies. More information on this subject is available in the Proposed Guidelines for Assessing Male Reproductive Risk (38) and the Proposed Guidelines for Assessing Female Reproductive Risk (39).

d. Community studies/surveillance programs. Epidemiologic studies may also be based upon broad populations such as a community, a nationwide probability sample, or surveillance programs (such as birth defects registries). A number of case-control studies have examined the relationship between broad classes of parental occupation in certain communities or countries, and embryo/fetal loss (98), birth defects (99–101), and childhood cancer (100, 102–104). In these reports, jobs are typically classified into broad categories based on the probability of exposure to certain classes or levels of exposure (e.g., 100). Such studies are most helpful in the identification of topics for additional study. However, because of the broad groupings of types of levels of exposure, such studies are not typically useful for risk assessment of a particular agent.

Surveillance programs may also exist in occupational settings. In this case, reproductive histories and/or clinical evaluation could monitor for reproductive effects of exposures. Both could yield very useful data for risk assessment; however, a clinical evaluation program would be costly to maintain.

C. Other Considerations

1. *Pharmacokinetics.* Extrapolation of toxicity data between species can be aided considerably by the availability of data on the pharmacokinetics of a particular agent in the species tested and, when available, in humans. Information on absorption, half-life, placental metabolism and transfer, comparative metabolism, and concentrations of the parent compound and metabolites in the maternal animal and conceptus may be useful in predicting risk for developmental toxicity. Such data may also be helpful in defining the dose-response curve, developing a more accurate comparison of species sensitivity, including that of humans (105, 106), determining dosimetry at target sites, and comparing pharmacokinetic profiles for various dosing regimens or routes of exposure. Pharmacokinetic studies in developmental toxicology are most useful if conducted in pregnant animals at the stage when developmental insults occur. The correlation of pharmacokinetic parameters and developmental toxicity data may be useful in determining the contribution of specific pharmacokinetic parameters to the effects observed (107).

2. *Comparisons of Molecular Structure.* Comparisons of the chemical or physical properties of an agent with those of known developmental toxicants may provide some indication of a potential for developmental toxicity. Such information may be helpful in setting priorities for testing of agents or for evaluation of potential toxicity when only minimal data are available. Structure/activity relationships have not been well studied in developmental toxicology, although data are available that suggest structure-activity relationships for certain classes of chemicals (e.g., glycol ethers, steroids, retinoids). Under certain circumstances (e.g., in the case of new chemicals), this is one of several procedures used to evaluate the potential for toxicity when little or no data are available.

D. Weight-of-Evidence Determination

Information from all available studies, whether indicative of potential concern or not, must be evaluated and factored into a weight-of-evidence judgment as to the likelihood that an agent may pose a risk for developmental toxicity in humans. The primary considerations are the human data (which are seldom available) and the experimental animal data. The qualitative assessment for developmental toxicity should consider quality of the data, resolving power of the studies, number and types of end points examined, relevance of route and timing of exposure, appropriateness of the dose selection, replication of effects, number of species examined, and availability of human case reports or series, and/or epidemiologic study data. In addition, pharmacokinetic data and structure-activity considerations, as well as other factors that may affect the strength of the evidence, should be taken into account. Therefore, all data pertinent to developmental toxicity should be examined in the evaluation of a chemical's potential to cause developmental toxicity in humans, and sound scientific judgment should be exercised in interpreting the data in terms of the risk for adverse human developmental health effects.

A categorization scheme for the weight of evidence has been developed. It contains several broad categories that reflect the accumulated data base on agents and serves as an indicator of whether exposure to the substance may cause developmental toxicity in humans. It represents one important step in the evaluation of agents. However, the risk of any given exposure to an agent can only be derived from an appreciation of its intrinsic biological activity and the nature of the anticipated exposure conditions. These important aspects are developed in subsequent sections of this Guideline.

Placing an agent in a particular weight-of-evidence category such as "adequate evidence for human developmental toxicity" does not mean that it will be a developmental toxicant at every dose (because of the assumption of a threshold) or in every situation (e.g., hazard may vary significantly depending on route and timing of exposure). Thus, in the final characterization of risk, the weight-of-evidence determination should always be presented in conjunction with information on dose-response (NOAEL and/or LOAEL), and, if available, with the human exposure estimate.

The weight-of-evidence scheme (outlined in Table 3) defines three levels of confidence for data used to identify developmental hazards and to assess the risk of human developmental toxicity: definitive evidence, adequate evidence, and inadequate evidence. Within the definitive evidence and adequate evidence categories, there are subcategories for evidence indicating adverse effects and for evidence indicating no apparent effects. In both categories, the evidence required to classify an agent as demonstrating no adverse effects is greater than that required to demonstrate an adverse effect and must include evaluations of a variety of potential manifestations of developmental toxicity. Greater evidence is required because it is much more difficult both biologically and statistically to support a finding of no apparent adverse effect than one of an adverse effect. Most agents meeting current testing requirements would be expected to fall within the adequate evidence category, while many for which little or no information is available would be classified in the inadequate category. Few agents would be expected to fall into the definitive evidence category because the human data necessary to meet the criteria for this category would be difficult to obtain.

**TABLE 3. WEIGHT OF EVIDENCE SCHEME FOR DEVELOPMENTAL TOXICITY**

Definitive Evidence for:
- —Human Developmental Toxicity
- —No Apparent Human Developmental Toxicity

Adequate Evidence for:
- —Potential Human Developmental Toxicity
- —No Apparent Potential Human Developmental Toxicity

Inadequate Evidence for Determining Potential Human Developmental Toxicity

Because a complex interrelationship exists among study design, statistical analysis and biological significance of the data, a great deal of scientific judgment, based on experience with developmental toxicity data and with the principles of experimental design and statistical analysis, may be required to adequately evaluate the data base. To allow for this, the language used in the scheme is intentionally broad.

*Definitive Evidence for*

—Human Developmental Toxicity

This category includes agents for which there is sufficient evidence from epidemiologic studies for the scientific community to judge that a cause and effect relationship exists. Case reports in conjunction with other supporting evidence may also be used.

—No Apparent Human Developmental Toxicity

Agents in this category have not been associated with developmental toxicity in well-executed epidemiologic studies (e.g., case control and cohort) with adequate power. A variety of potential manifestations of developmental toxicity have been studied. Supporting animal data may or may not be available.

*Adequate Evidence for*

—Potential Human Developmental Toxicity

This category includes agents for which sufficient evidence exists for them to be considered potential human developmental toxicants. The minimum evidence necessary for considering an agent a potential human developmental toxicant would include data from an appropriate, well-executed study in a single experimental animal species that demonstrates developmental toxicity, and/or strong suggestive evidence from adequate clinical/epidemiologic studies. Evidence may be modified by further data, such as studies in additional species or by other routes of exposure, and replication of the findings. Development of pharmacokinetic or mechanistic information may reduce uncertainties in extrapolation to the human. The strength of the evidence increases as it approaches the definition for definitive human developmental toxicity.

—No Apparent Potential Human Developmental Toxicity

This category includes agents with data from appropriate well-executed studies in several species (at least two) which evaluated a variety of the potential manifestations of developmental toxicity and showed no developmental effects at doses that were minimally toxic to the adult animal. In addition, there may be human data from adequate studies supportive of no adverse effects.

*Inadequate Evidence for Determining Potential Human Developmental Toxicity*

This category includes agents for which there is less than the minimum sufficient evidence necessary for assessing human risk. However, data on agents that fall into this category may be used to determine the need for additional testing or information that would then, if adequate, move the agent into the adequate evidence category.

This category includes a variety of types of information such as the lack of any data on the developmental toxicity potential of an agent, data from an appropriate well-executed study in a single species showing no developmental toxicity, data from poorly-conducted studies in animals (e.g., small numbers of animals, inappropriate dose selection, other confounding factors) or inadequate data in humans. Additionally, data on structure/activity relationships, short-term test data, pharmacokinetic data, or data on metabolic precursors of the agent of interest could be used to call for further testing but would be considered insufficient by themselves to assess human risk.

**IV. Dose-Response Assessment**

When quantitative human dose-effect data are available and with sufficient range of exposure, dose-response relationships may be examined. Data on

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exposure from human studies are usually qualitative, such as employment or residence histories; quantitative or dose data are frequently not available. In human studies, especially retrospective ones, linking of specific time periods and specific exposures, even on a qualitative level, may be difficult due to errors of recall or recordkeeping (where records are available). The appropriate exposure depends on the outcome(s) studied, the biologic mechanism affected by exposure, and the half-life of the exposure. The probability of misclassification of exposure status may affect the ability of a study to recognize a true effect (15, 41, 76, 108, 109).

Since data on human dose-effect relationships are rarely available, the dose-response assessment is usually based on the evaluation of tests performed in laboratory animals. Evidence for a dose-response relationship is an important criterion in the assessment of developmental toxicity, although this may be based on limited data from standard studies using three dose groups and a control group. Most human developmental toxicants that have been studied alter development at doses within a narrow range near the lowest maternally toxic dose (22). Therefore, for most chemicals, the exposure situations of concern will be those that are potentially within this range. For those few chemicals where developmental effects occur at much lower levels than maternal effects, the potential for exposing the conceptus to damaging doses is much greater. As mentioned previously (section III.A.2.), however, traditional dose-response relationships may not always be observed for some end points. For example, as the exposure level rises, embryo/fetolethal levels may be reached, resulting in an observed decrease in malformations with increasing dose (81, 90). The potential for this response pattern indicates that dose-response relationships of individual end points as well as combinations of end points (e.g., dead and malformed combined) must be carefully examined and interpreted.

Identification of a NOAEL and/or LOAEL is based on the lowest dose at which an adverse effect is detected from any adequate developmental toxicity study. Adequacy of the data to be used for determination must be judged using the weight-of-evidence approach discussed in section III.D. NOAELs and applied uncertainty factors may be used to determine a reference dose for developmental toxicity ($RfD_{DT}$) that is assumed to be below the threshold for an increase in adverse developmental effects. The $RfD_{DT}$ is based on a short duration of exposure as is typically used in developmental toxicity studies. The term $RfD_{DT}$ is used to distinguish from the RfD which refers to chronic exposure situations (10). Uncertainty factors for developmental toxicity generally include a 10-fold factor for interspecies variation and a 10-fold factor for intraspecies variation. In general, an additional uncertainty factor is not applied to account for duration of exposure. Additional factors may be applied due to a variety of uncertainties that exist in the data base. For example, the standard study design for a developmental toxicity study calls for a low dose that demonstrates a NOAEL, but there may be circumstances where a risk assessment must be based on the results of a study in which a NOAEL for developmental toxicity was not identified. Rather, the lowest dose administered caused significant effect(s) and was identified as the LOAEL. In circumstances where only a LOAEL is available, questions relative to the sensitivity of end points reported, adequacy of dose levels tested, or confidence in the LOAEL reported may require the use of an additional uncertainty factor of 10 (10). The total uncertainty factor selected is then divided into the NOAEL/LOAEL for the most sensitive end point from the most appropriate and/or sensitive mammalian species to determine the $RfD_{DT}$.

Although the Agency currently uses the NOAEL/uncertainty factor approach to establish an $RfD_{DT}$, discussions of risk extrapolation procedures have noted that improved mathematical tools are needed for developing estimates of potential human developmental risk (45, 110). Gaylor (111) suggested an approach for estimating risk that combines the use of mathematical models for low-dose estimation of risk with the application of an uncertainty factor based on a preselected level of risk. This approach is similar to approaches proposed for carcinogenesis, but does not preclude the possibility of a threshold, and may provide a more quantitative approach to estimating risk. Another approach proposed by Rai and Van Ryzin (112) and recently applied by Faustman et al. (113), uses a simple two-component developmental model in which the first component represents a dose-related risk to the litter environment and the second component expresses the risk to an individual offspring conditional upon a predisposing risk to the litter. These approaches and others have been summarized recently (5). In addition, other methods for expressing risk are being sought and will be applied, if considered appropriate.

The development of biologically-based dose-response models in developmental toxicology is limited by a number of factors, including a lack of understanding of the biological mechanisms underlying developmental toxicity, intra/interspecies differences in the types of developmental events, and the influence of maternal effects on the dose-response curve. A biological threshold is assumed for most developmental effects based on known homeostatic, compensatory, or adaptive mechanisms that must be overcome before a toxic end point is manifested, and on the rationale that the embryo is known to have some capacity for repair of damage or insult (90). In addition, most developmental deviations are probably multifactorial in nature (114). Although a threshold is assumed for developmental effects, the existence of a NOAEL in an animal study does not prove or disprove the existence or level of a true threshold; it only defines the highest level of exposure under the conditions of the study that is not associated with a significant increase in effect. The uncertainties concerning this assumption are being discussed currently in the literature (25, 26).

In conclusion, dose-response findings in developmental toxicity studies are used as part of the risk characterization. This use is dependent upon scientific judgment as to the accuracy and adequacy of the data. In addition, the slope of the dose-response curve should be considered in conjunction with a determination as to the adequacy of the exposure levels tested, the sensitivity of the end points reported, and the appropriateness of the experimental design to determine a level of confidence in the data and the resultant confidence in the LOAEL, NOAEL, and the uncertainty factors applied to obtain the $RfD_{DT}$.

### V. Exposure Assessment

In order to obtain a quantitative estimate of risk for the human population, an estimate of human exposure is required. The Guidelines for Estimating Exposures have been published separately (115) and will not be discussed in detail here. In general, the exposure assessment describes the magnitude, duration, schedule, and route of exposure. This information is developed from monitoring data and from estimates based on modeling of environmental exposures. Unique considerations for developmental



toxicity are duration and period of exposure as related to stage of development (i.e., critical periods), and the possibility that a single exposure may be sufficient to produce adverse developmental effects (i.e., repeated exposure is not a necessary prerequisite for developmental toxicity to be manifested). For these reasons, it is assumed that a single exposure at the critical time in development is sufficient to produce an adverse developmental effect. Therefore, the human exposure estimate used to calculate the margin of exposure is usually based on a single dose that is not adjusted for duration of exposure, and the number of exposures is not considered important unless there is evidence for a cumulative effect. It should be recognized also that exposure of almost any segment of the human population (i.e., fertile men and women, the conceptus, and the child up to the age of sexual maturation) may lead to risk to the developing organism.

### VI. Risk Characterization

Many uncertainties described in these Guidelines are associated with the toxicological and exposure components of risk assessments in developmental toxicology. In the past, these uncertainties have often not been readily apparent or consistently presented. The presentation of any risk assessment for developmental toxicity should be accompanied by statements concerning the weight of the evidence, dose-response relationships and assumptions underlying the estimation of the $RfD_{DT}$, estimates of human exposure, and any factors that affect the quality and precision of the assessment. The risk characterization of an agent should be based on data from the most appropriate species, or, if such information is not available, on the most sensitive species tested. It should also be based on the most sensitive indicator of toxicity, whether maternal, paternal, or developmental, and should be considered in relationship to other forms of toxicity.

In the risk characterization, the dose-response and the human exposure estimate may be combined either by comparing the $RfD_{DT}$ and the human exposure estimate or by calculating the margin of exposure (MOE). The MOE is the ratio of the NOAEL from the most appropriate or sensitive species to the estimated human exposure level from all potential sources (53). If a NOAEL is not available, a LOAEL may be used in the calculation of the MOE. In this case, the NOAEL may be estimated from the LOAEL by applying an uncertainty factor (10-fold) to assess the impact on the MOE (53). The MOE is presented along with a discussion of the weight of evidence, including the nature and quality of the hazard and exposure data, the number of species affected, and the dose-response information.

The $RfD_{DT}$ comparison with the human exposure estimate and the calculation of the MOE are conceptually similar but are used in different regulatory situations. The choice of approach is dependent upon several factors, including the statute involved, the situation being addressed, the data base used, and the needs of the decision maker. The $RfD_{DT}$ and/or the MOE are considered along with other risk assessment and risk management issues in making risk management decisions, but the scientific issues that must be taken into account in establishing them have been addressed here.

These Guidelines summarize the procedures that the U.S. Environmental Protection Agency will follow in evaluating the potential for agents to cause developmental toxicity. While these are the first amendments to the developmental toxicity guidelines issued in 1986, further revisions and updates will be made as advances occur in the field. Further studies that: (1) Delineate the mechanisms of developmental toxicity and pathogenesis, (2) provide comparative pharmacokinetic data, and (3) elucidate the functional modalities that may be altered by exposure to toxic agents, will aid in the interpretation of data and interspecies extrapolation. These types of studies, along with further evaluation of the relationship between maternal and developmental toxicity and the concept of a threshold, will provide for the development of improved mathematical models to more precisely assess risk.

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Part VIII

# Department of Transportation

**Federal Aviation Administration**

**14 CFR Part 71**

**Establishment of an Airport Radar Service Area; San Jose, CA; Final Rule; Request for Comments**

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 71**

**[Airspace Docket No. 88-AWA-3]**

**Establishment of an Airport Radar Service Area; San Jose, CA**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This action designates an Airport Radar Service Area (ARSA) at the San Jose International Airport, CA. The location is a public airport with an operating control tower served by a Level V Radar Approach Control Facility and a Level III Limited Terminal Radar Approach Control in a Tower Cab (TRACAB). Establishment of this ARSA will require that pilots maintain two-way radio communication with air traffic control (ATC) while in the ARSA. Implementation of ARSA procedures at this location will reduce the risk of midair collision in terminal areas and promote the efficient control of air traffic.

**DATES:** Effective date—0901 u.t.c., April 6, 1989. Comments must be received on or before June 6, 1989.

**ADDRESSES:** Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket [AGC-204], Airspace Docket No. 88-AWA-3, 800 Independence Avenue SW., Washington, DC 20591.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, DC.

The informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

**Comments Invited**

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on this rule. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of this rule. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this rule must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88-AWA-3." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking further action on this rule. The design contained in this rule may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**FOR FURTHER INFORMATION CONTACT:** Betty Harrison, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9255.

**SUPPLEMENTARY INFORMATION:**

**History**

On April 22, 1982, the National Airspace Review (NAR) plan was published in the **Federal Register** (47 FR 17448). The plan encompassed a review of airspace use and the procedural aspects of the ATC system. The FAA published NAR Recommendation 1-2.2.1, "Replace the Terminal Radar Service Areas (TRSA) with Model B Airspace and Service (Airport Radar Service Areas)," in Notice 83-9 (48 FR 34286, July 28, 1983) proposing the establishment of ARSA's at Columbus, OH, and Austin, TX. Those locations were designated ARSA's by SFAR No. 45 (48 FR 50038, October 28, 1983) in order to provide an operational confirmation of the ARSA concept for potential application on a national basis. The original expiration dates for SFAR 45, December 22, 1984, (Austin, TX) and January 19, 1985, (Columbus, OH) were extended to June 20, 1985 (49 FR 47176, November 30, 1984).

On March 6, 1985, the FAA adopted the NAR recommendation and amended Parts 71, 91, 103 and 105 of the Federal Aviation Regulations (14 CFR Parts 71, 91, 103 and 105) to establish the general definition and operating rules for an ARSA (50 FR 9252), and designated the Austin and Columbus airports as ARSA's, as well as the Baltimore/Washington International Airport, Baltimore, MD (50 FR 9250). Thus far, the FAA has designated 126 ARSA's as published in the **Federal Register** in the implementation of this NAR recommendation.

On December 30, 1988, the FAA proposed to designate an ARSA at San Jose International Airport, CA (53 FR 53272). Interested parties were invited to participate in this rulemaking proceeding by submitting comments on the proposal to the FAA. Additionally, the FAA has held informal airspace meetings on the establishment of the San Jose, CA, ARSA. Section 71.501 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6D, dated January 4, 1988.

**Discussion of Comments**

Fifty-two comments were received concerning this proposal. The FAA has considered these comments and amended the final configuration as contained in this rule. The FAA considers that the final design contained herein best meets ATC requirements, and promotes the safe and efficient use of airspace.

Some comments were received that were outside the scope of this rulemaking action and, therefore, will not be addressed. Those subject areas included controller staffing, ATC equipment, rules enforcement and pilot education.

Several commenters wrote requesting that the 5- to 7-mile area in the outer core, east of the 341° bearing from the San Jose International Airport, be deleted from the ARSA design or altered to align with U.S. Highway 880. These commenters are concerned that pilots flying visual flight rules (VFR), who do not wish to transit ARSA airspace or are unable to contact ATC, will be forced too close to each other and too close to mountainous terrain.

Through aerial observation, it was observed that a sufficient amount of airspace exists for aircraft choosing to circumnavigate the ARSA, east of U.S. Highway 680. The FAA finds this portion of airspace is vital for protecting the ALTAM, LOUPE, and SUNOL Standard Instrument Department (SID) procedures. Also, this area is used as an arrival path for the left base leg when executing a visual approach, and a left base leg for both VOR and ILS Runway 12 approaches.

Some commenters noted that the proposed ARSA altitude is too low for pilots to navigate successfully in the southwest corner because of terrain restraints. The FAA concurs and has redefined this boundary by deleting 2 nautical miles beginning at the 160° radial. In addition, the floor in this area has been raised from 2,000 feet to 2,500 feet MSL.



Some commenters suggested that the ARSA design be defined with more visual landmarks. Selection of distinct landmarks to define the boundaries of the San Jose ARSA was considered during the design stages. In order to provide the greatest amount of airspace protection and meet operational needs, it was not possible to place the boundaries along specific features. The FAA agrees that, where available, prominent visual landmarks aid pilots in detecting ARSA boundaries; therefore, the eastern portion of the inner core has been redefined as Interstate 680 and U.S. Highway 101.

Some commenters suggested raising the ceiling of the ARSA to 5,000 feet to protect aircraft climbing through the ceiling of the ARSA. In adopting the ARSA rule, the FAA concurred with the NAR task group that a 4,000-foot cap would afford sufficient airspace protection for aircraft executing instrument approaches. An instrument approach is assumed to be a critical phase of flight where pilots must devote considerable attention to their instruments. The FAA finds no merits in raising the entire ARSA to 5,000 feet MSL.

One area of concern expressed by commenters was that an ARSA does not provide a safer environment. The FAA finds that the ARSA program has several safety features which improve safety. First, ATC has knowledge of all aircraft operating in an ARSA because communication is mandatory. Second, target separation is a method of providing separation within an ARSA. Third, the ARSA program has surpassed expectations in most locations by reducing the potential for midair collisions without unnecessarily penalizing or unduly delaying aircraft in ARSA airspace.

Some commenters were concerned that implementing an ARSA would create a noise management problem. The establishment of an ARSA at the San Jose International Airport will not change the flow of traffic in the area. Consequently, no significant change to the present noise pattern will result and the present noise management practices will not be adversely affected.

Several commenters wrote requesting that the ARSA extend to 15 nautical miles with a floor of 2,500 feet MSL extending upward to 6,000 feet MSL in the southeastern corner. The rationale for this recommendation was that this extension of airspace would significantly reduce the likelihood of conflicts between aircraft approaching and departing the San Jose International Airport and other aircraft transiting this area.

The FAA concurs and has extended the southeast corner between 10 and 15 nautical miles west of the Oakland VOR 142° radial and east of a line 2.5 nautical miles west of and paralled to the San Jose International Airport Runway 30 localizer extending upward from 3,000 feet MSL to and including 6,000 feet MSL. Due to the mountainous terrain located on both sides of the Santa Clara Valley, a natural flyway exists. This extension of airspace will protect this corridor created by north/southbound traffic which cross the extended centerline of the San Jose International Airport runways. In the extension area, the ceiling was increased to 6,000 feet MSL, rather than the standard ARSA ceiling of 4,000 feet above airport elevation. This increase was adopted in order to include the airspace 10 to 15 miles from the San Jose International Airport that is used by approaching and departing aircraft. Comments are requested on the lateral limits and altitude of this extension area (Area B).

Several commenters wrote recommending the "consensus" ARSA design that was developed with input from local user groups in the San Jose area. This committee consisted of Chapters 62 and 338 of the Experimental Aircraft Association (EAA), Reid-Hillview Pilots Association, Sana Clara County Airman's Association, the Santa Clara Chapters of the Aircraft Owners & Pilots Association and the 99'ers.

Basically, the "consensus" ARSA differed from the FAA proposal in five areas: (1) The "consensus" ARSA boundaries were delineated by visual landmarks; (2) the outer core area, east of the 341° bearing from the San Jose International Airport, was reduced in the "consensus" design; (3) the inner core eastern boundary of the "consensus" ARSA was reduced to align with railroad tracks; (4) the outer area in the southwest corner of the "consensus" design was reduced to align with Highway 85 (presently under construction), direct to the Guadalupe Reservoir; and (5) the "consensus" ARSA depicted an extension between 10 and 15 miles in the southeast corner extending upward from 3,000 feet MSL up to and including, 4,000 feet MSL. The FAA altered the proposed ARSA design, incorporating as much of the "consensus" design as was operationally feasible.

The airspace configuration established by this action has taken into consideration all aspects of air traffic in the terminal area. This configuration is consistent with the fundamental safety objectives of the ARSA program. The FAA is mandated to analyze all ARSA operations one year after the effective date. At that time, any future alterations will be considered that would accommodate users and enhance safety.

**The Rule**

This amendment to part 71 of the Federal Aviation Regulations (14 CFR Part 71) designates an ARSA at the San Jose International Airport, CA. The location designated is a public airport with an operating control tower served by a Level V Radar Approach Control Facility and a Level III Limited Terminal Radar Approach Control in a tower cab (TRACAB). Establishment of this ARSA will require that pilots maintain two-way radio communication with ATC while in the ARSA. Implementation of ARSA procedures at this location will reduce the risk of midair collision in terminal areas and promote the efficient control of air traffic.

Section 91.88 of the Federal Aviation Regulations (14 CFR Part 91) defines an ARSA and prescribes operating rules for aircraft, ultralight vehicles, and parachute jump operations in airspace designated as an ARSA. The ARSA rule provides in part that, prior to entering the ARSA, any aircraft arriving at any airport in an ARSA or flying through an ARSA must: (1) Establish two-way radio communications with the ATC facility having jurisdiction over the area; and (2) while in the ARSA, maintain two-way radio communications with that ATC facility. For aircraft departing from the primary airport within the ARSA, two-way radio communications must be maintained with the ATC facility having jurisdiction over the area. For aircraft departing a satellite airport within the ARSA, two-way radio communications must be established with the ATC facility having jurisdiction over the area as soon as practicable after takeoff and thereafter maintained while operating within the ARSA.

All aircraft operating within an ARSA are required to comply with all ATC clearances and instructions and any FAA arrival or departure traffic pattern for the airport of intended operation. However, the rule permits ATC to authorize appropriate deviations from any of the operating requirements of the rule when safety considerations justify the deviation or more efficient utilization of the airspace can be attained through such deviations. Ultralight vehicle operations and parachute jumps in an ARSA may only be conducted under the terms of an ATC authorization.

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The FAA adopted the NAR task group recommendation that each ARSA be of the same airspace configuration insofar as is practicable. The standard ARSA consists of airspace within 5 nautical miles of the primary airport extending from the surface to an altitude of 4,000 feet above that airport's elevation, and that airspace between 5 and 10 nautical miles from the primary airport, from 1,200 feet above the surface to an altitude of 4,000 feet above that airport's elevation. Proposed deviation from the standard has been necessary at some airports due to adjacent regulatory airspace, international boundaries, topography, or unusual operational requirements.

Definitions, operating requirements, and specific airspace designations applicable to ARSA's may be found in Federal Aviation Regulations § 71.14 and § 71.501 (14 CFR Part 71), and § 91.1 and § 91.88 (14 CFR Part 91).

**Request for Comments**

The ARSA adopted differs from the proposed rule in that it contains a southeast extension to 15 miles from the San Jose International Airport, to an altitude of 6,00 feet MSL (Area B of the ARSA). The final rule is within the subject matter of the notice of proposed rulemaking, which proposed the ARSA and requested comments on the configuration of the ARSA airspace to be adopted. The final rule reflects comments received in the public docket, many of which requested a southeast extension and some of which specifically requested the configuration adopted. The incorporation of the ARSA extension beyond 10 nautical miles from the primary airport is an exception to conventional agency policy, which has been to limit ARSA lateral boundaries to a 10-nautical-mile radius are centered on the airport. To promote the fullest public participation in this rulemaking and to provide input on future agency policy, the FAA requests comments on two particular aspects of the rule adopted: (1) The ARSA extension described as "Area B" of the San Jose ARSA; and (2) the revision of agency policy to consider extension of ARSA airspace beyond 10 nautical miles from the primary airport and above 4,000-feet above airport elevation, on a very limited basis, where there would be a clear safety benefit.

**Regulatory Evaluation Summary**

The FAA has conducted a Regulatory Evaluation of this final rule to establish this additional ARSA site. The major findings of that evaluation are summarized below, and a copy of the detailed regulatory evaluation is available in the regulatory docket.

a. *Costs*

Costs which could potentially result from the establishment of additional ARSA sites fall into the following categories:

(1) Air traffic controller staffing, controller training, and facility equipment costs incurred by the FAA.

(2) Costs associated with the revision of charts, notification of the public, and pilot education.

(3) Additional operating costs for circumnavigating or flying over the ARSA.

(4) Potential delay costs resulting from operations within an ARSA.

(5) The need for some operators to purchase radio transceivers.

(6) Miscellaneous costs.

It has been the FAA's experience, however, that these potential costs do not materialize to any appreciable degree, and when they do occur, they are transitional, relatively low in magnitude, or attributable to specific implementation problems that have been experienced at a very small minority of ARSA sites. The reasons for these conclusions are presented below.

The FAA expects that because of the current high level of traffic, the San Jose International ARSA can be implemented without requiring additional controller personnel above currently authorized staffing levels. Moreover, the reduced separation standards permitted in ARSA's will allow controllers to absorb the slight increase in participating traffic by handling all traffic much more efficiently. Further, since controller training will be conducted during normal working hours, and existing facilities already operate the necessary radar equipment, the FAA does not expect to incur any appreciable implementation costs. Essentially, the FAA will modify its terminal radar procedures at the proposed ARSA sites in a manner that will make more efficient use of existing resources.

No additional costs are expected to be incurred because of the need to revise sectional charts to incorporate the new ARSA airspace boundaries. Changes of this nature are routinely made during charting cycles, and the planned effective dates for newly established ARSA's are scheduled to coincide with the regular 6-month chart publication intervals.

This rulemaking proceeding and process will satisfy most of the need to notify the public and educate pilots about ARSA operations. The informal public meeting being held at each location where an ARSA is being proposed provides pilots with the best opportunity to learn both how an ARSA works and how it will affect their local operations. The expenses associated with these public meetings are considered costs attributable to the rulemaking process; however, any public information costs following establishment of a new ARSA are strictly attributable to the ARSA. The FAA expects to distribute a Letter to Airmen to all pilots residing within 50 miles of each ARSA site, explaining the operation and configuration of the ARSA finally adopted. The FAA also has issued an Advisory Circular on ARSA's. The combined Letter to Airmen and prorated Advisory Circular costs have been estimated to be approximately $500 for each ARSA site. This cost is incurred only once upon the initial establishment of an ARSA.

Information on ARSA's, following the establishment of additional sites, will also be disseminated at aviation safety seminars conducted throughout the country by various district offices. These seminars are provided regularly by the FAA to discuss a variety of aviation safety issues and, therefore, will not involve additional costs strictly as a result of the ARSA program. Additionally, no significant costs are expected to be incurred as a result of the follow-on user meetings that will be held at each site following implementation of the ARSA. These meetings will allow users to provide feedback to the FAA on local ARSA operations. These meetings are being held at public facilities or at other locations which are being provided free of charge or at nominal cost. Further, because these meetings are being conducted by local FAA facility personnel, no travel, per diem, or overtime costs will be incurred by regional or headquarters personnel.

The FAA anticipates that some pilots who currently transit without establishing radio communications or participating in radar services may choose to circumnavigate the mandatory participation airspace of an ARSA rather than participate. Some minor delay costs will be incurred by these pilots because of the additional aircraft variable operating cost and lost crew and passenger time resulting from the deviation. Other pilots may elect to overfly the ARSA or transit below the 1,200 feet above ground level (AGL) floor between the 5- and 10-nautical-mile rings. Although this will not result in any appreciable delay, a small additional fuel burn will result from the climb portion of the altitude adjustment, which will be offset somewhat by the descent.



The FAA recognizes that the potential exists for delay to develop at some locations following the establishment of an ARSA. The additional traffic that the radar facilities will be handling as a result of the participation requirement may, in some instances, result in minor delays to aircraft operations. The FAA does not expect such delay to be appreciable. The FAA expects that the greater flexibility afforded controllers in handling traffic as a result of the reduced separation standards will keep delay problems to a minimum. Those delays that do occur will be transitional in nature, diminishing as facilities gain operating experience with ARSA's and learn how to tailor procedures and allocate resources to take fullest advantage of the increased efficiencies. This has been the experience at most of the locations where ARSA's have been in effect for the longest period of time and is the recurring trend at the locations that have been designated more recently.

The FAA does not expect that any operator will find it necessary to install radio transceivers as a result of establishing the ARSA in this rule. Aircraft operating to and from primary airports are already required to have two-way radio communications capability because of existing airport traffic areas and, therefore, will not incur any additional costs as a result of the new ARSA. Further, the FAA has made an effort to minimize these potential costs throughout the ARSA program by providing airspace exclusions, or cutouts, for satellite airports located within 5 nautical miles of the ARSA center where the ARSA would have otherwise extended down to the surface. Procedural agreements between the local ATC facility and the affected airports have also been used to avoid radio installation costs.

At some new ARSA locations, special situations might exist where the establishment of an ARSA could impose certain costs on users of that airspace. However, exclusions, cutouts, and special procedures have been used extensively throughout the ARSA program to alleviate adverse impacts on local fixed-base operators and other airport operators. Similarly, the FAA has eliminated the potential adverse impacts on existing flight-training practice areas, as well as on soaring, ballooning, parachuting, and ultralight and banner towing activities through special procedures. These procedures accommodate such activities through local agreements between ATC facilities and affected organizations. For these reasons, the FAA does not expect that any adverse impact due to such user costs will occur at the ARSA site in this rule.

b. *Benefits*

Most of the benefit that will result from ARSA's is nonquantifiable and attributable to simplification and standardization of ARSA configurations. Further, once experience is gained in ARSA operations, air traffic controllers will obtain greater flexibility in handling traffic within an ARSA, which will enable them to move traffic more efficiently. These expected savings may or may not offset the delay that some sites may experience after the initial establishment of an ARSA. Such savings are expected, however, to eventually provide overall time savings to all traffic, instrument flight rules (IFR) as well as VFR, as both pilots and controllers become more familiar with ARSA operating procedures.

Some of the benefits of the ARSA cannot be specifically attributed to individual candidate airports, but rather result from the overall improvements in terminal area ATC procedures realized as ARSA's are implemented throughout the country. ARSA's have the potential of reducing both near and actual midair collisions at the airports where they are established. Based upon the experience at the Austin and Columbus ARSA confirmation sites, the FAA estimates that near midair collisions may be reduced by approximately 35 to 40 percent. Further, the FAA estimates that the national implementation of the ARSA program may prevent approximately one midair collision every 1 to 2 years throughout the United States. The quantifiable benefits of preventing a midair collision can range from less than $100,000, due to the prevention of a minor, nonfatal accident between general aviation aircraft, to $300 million or more, due to the prevention of a midair collision involving a large air carrier aircraft and the numerous fatalities associated with such an incident. Establishment of an ARSA at the site in this final rule will contribute to these improvements in safety.

c. *Comparison of Costs and Benefits*

A direct comparison of the costs and benefits of this rule is difficult for a number of reasons. Many of the benefits of the rule are nonquantifiable, and it is difficult to specifically attribute the standardization benefits, as well as the safety benefits, to individual candidate ARSA sites.

The FAA expects any adjustment problems that may be experienced at the ARSA location established in this rule will be only temporary, and that once established, the ARSA will result in an overall improvement in efficiency in terminal area operations. This has been the experience at a vast majority of the ARSA sites that have already been implemented. In addition to these operational efficiency improvements, establishment of this ARSA site will contribute to a reduction in near and actual midair collisions. For these reasons, the FAA expects that the establishment of this ARSA site will produce long term, ongoing benefits that will far exceed costs, which are essentially transitional in nature.

**International Trade Impact Analysis**

This final rule will only affect terminal airspace operating procedures at selected airports within the United States. As such, it will have no effect on the sale of foreign aviation products or services in the United States, nor will it affect the sale of United States aviation products or services in foreign countries.

**Regulatory Flexibility Determination**

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. Small entities are independently owned and operated small businesses and small not-for-profit organizations. The RFA requires agencies to review rules that may have a significant economic impact on a substantial number of small entities.

The small entities that could be potentially affected by implementation of the ARSA program include fixed-base operators, flight schools, agricultural operators, and other small aviation businesses located at satellite airports within 5 nautical miles of the ARSA center. If the participation requirement were to extend down to the surface at these airports, where under current regulations radio communication with ATC is voluntary, operations at these airports might be altered, and some business could be lost to airports outside of the ARSA core. The FAA intends to exclude many satellite airports, located within 5 nautical miles of the primary airport at candidate ARSA sites, to avoid any adverse impact on their operations and to simplify the coordination of ATC responsibilities between primary and satellite airports.

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In some cases, the same purposes will be achieved through Letters of Agreement between ATC and the affected airports, which will establish special procedures for operating to and from these airports. In this manner, the FAA expects to eliminate any adverse impact on small satellite airport operations that could result from the ARSA program. Similarly, the FAA expects to eliminate potentially adverse impacts on existing flight training practice areas, as well as on soaring, ballooning, parachuting, and ultralight and banner towing activities through special procedures. These procedures will accommodate such activities through local agreements between ATC facilities and affected organizations. The FAA has utilized such arrangements extensively in implementing the ARSA's that have been established to date.

Further, because the FAA expects that any delay problems that may initially develop following implementation of an ARSA will be transitory, and because the airports that will be affected by the ARSA program represent only a small proportion of all the public-use airports in operation within the United States, no small entities of any type using aircraft in the course of business will be adversely impacted.

For these reasons, the FAA has determined that this rulemaking action is not expected to affect a substantial number of small entities. Therefore, the FAA certifies that this regulatory action will not result in a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**Federalism Implications**

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation (1) is not a "major rule" under Executive Order 12291; and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

**List of Subjects in 14 CFR Part 71**

Aviation safety, Airport radar service areas.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

## PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

**§ 71.501 [Amended]**

2. Section 71.501 is amended as follows:

**San Jose, CA [New]**

Area A. That airspace extending upward from the surface to and including 4,000 feet MSL within a 5-mile radius of the San Jose International Airport (lat. 37°21' 41" N., long. 121°55' 38" W.), excluding that airspace east of Interstate 680 and east of U.S. Highway 101 south of the intersection of U.S. Highway 101 and Interstate 680; and that airspace within 10 miles of the San Jose International Airport extending upward from 1,500 feet MSL to and including 4,000 feet MSL from the 142.5° bearing from the Oakland VOR clockwise to the 160° bearing from the San Jose International Airport, and that airspace within 10 miles of the San Jose International Airport from the 160° bearing from the San Jose International Airport clockwise to the 303° bearing from the San Jose International Airport extending upward from 2,500 feet MSL to and including 4,000 feet MSL, excluding that airspace west of the 161° bearing from the Oakland VOR, and excluding that airspace beyond 8 miles from the San Jose International Airport between the 160° bearing from San Jose International Airport clockwise to the 230° bearing from San Jose International Airport, and that airspace within a 10-mile radius of the San Jose International Airport from the 303° bearing from the San Jose International Airport clockwise to Interstate 680 extending upward from 1,500 feet MSL to and including 4,000 feet MSL, excluding that airspace beyond 7 miles between the 341° bearing from the San Jose International Airport extending clockwise until Interstate 680.

Area B. That airspace between 10 miles and 15 miles from the San Jose International Airport west of the 142.5° bearing from the Oakland VOR and east of a line 2.5 miles west of and parallel to the San Jose International Airport Runway 30 localizer extending upward from 3,000 feet MSL to and including 6,000 feet MSL.

This airport radar service area is effective during the specific days and hours of operation of the San Jose Tower and Bay Terminal Radar Approach Control Facility as established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

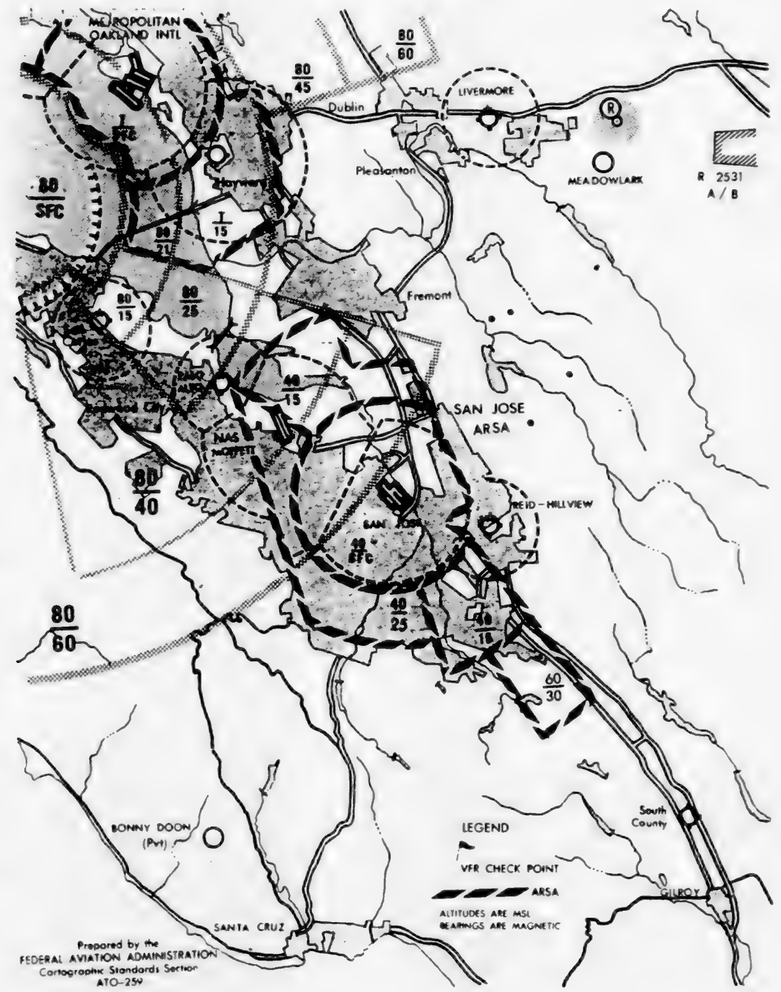
Issued in Washington, DC, on March 1, 1989.

**Richard Huff,**

*Manager, Airspace—Rules and Aeronautical Information Division.*

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## CFR CHECKLIST

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Federal Register
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Tuesday, March 7, 1989

# Presidential Documents

Title 3—

The President

## Presidential Determination No. 89-11 of February 28, 1989

## Certifications for Narcotics Source and Transit Countries

**Memorandum for the Secretary of State**

By virtue of the authority vested in me by Section 481(h)(2)(A)(i) of the Foreign Assistance Act of 1961, as amended by the Anti-Drug Abuse Act of 1986 (P.L. 99-570), and the Anti-Drug Abuse Act of 1988 (P.L. 100-690), I hereby determine and certify that the following major narcotics producing and/or major narcotics transit countries have cooperated fully with the United States, or taken adequate steps on their own, to control narcotics production, trafficking and money laundering:

The Bahamas, Belize, Bolivia, Brazil, Colombia, Ecuador, Hong Kong, India, Jamaica, Malaysia, Mexico, Morocco, Nigeria, Pakistan, Paraguay, Peru and Thailand.

By virtue of the authority vested in me by Section 481(h)(2)(A)(ii) of the Act, I hereby determine that it is in the vital national interests of the United States to certify the following country:

Lebanon.

Information for these countries as required under Section 481(h)(2)(B) of the Act is enclosed.

I have determined that the following major producing and/or major transit countries do not meet the standards set forth in Section 481(h)(2)(A):

Afghanistan, Burma, Iran, Laos, Panama and Syria.

In making these determinations, I have considered the factors set forth in Section 481(h)(3) of the Act, based on the information in the International Narcotics Control Strategy Report of 1988.

You are hereby authorized and directed to report this determination to the Congress immediately and to publish it in the **Federal Register**.

George Bush

THE WHITE HOUSE,
*Washington, February 28, 1989.*

[FR Doc. 89-5314
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# Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 989**

**[Docket No. FV-88-135FR]**

## Raisins Produced From Grapes Grown in California; Final Redemption Date for Raisin Diversion Program Certificates

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This action changes the administrative rules and regulations of the California raisin marketing order regarding the final redemption date for Raisin Diversion Program (RDP) certificates from January 15 to December 15. December 15 would remain the final redemption date thereafter. This action was unanimously recommended by the Raisin Administrative Committee (Committee), the agency responsible for local administration of the order. This change is intended to improve the efficiency of the program.

**EFFECTIVE DATE:** April 6, 1989.

**FOR FURTHER INFORMATION CONTACT:** Patricia A. Petrella, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-5120.

**SUPPLEMENTARY INFORMATION:** This final rule is issued under Marketing Agreement and Order No. 989 (7 CFR Part 989), both as amended, regulating the handling of raisins produced from grapes grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation No. 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 23 handlers of raisins who are subject to regulation under the raisin marketing order, and approximately 5,000 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California raisins may be classified as small entities.

This final rule changes administrative rules and regulations of the raisin marketing order. This action was unanimously recommended by the Committee. The change will revise the redemption date for RDP certificates from January 15 to December 15 of each crop year if a RDP were established for the prior crop year.

The RDP gives producers the means of voluntary reducing the quantity of grapes grown for drying into raisins. Producers wishing to participate in the RDP divert their grape crop from production. In return, the producer receives the equivalent quantity of raisins from the previous year's reserve pool, which is represented by a diversion certificate, to sell to handlers as though the raisins were produced in the current crop year. The producer is then paid by a handler the established field price minus the harvest costs determined for that year. Current rules and regulations require handlers to redeem diversion certificates with the Committee by January 15.

When RDP certificates are redeemed, the handler receives a quantity of reserve pool raisins equal to the amount of diverted raisins represented on the diversion certificate. Prompt redemption of diversion certificates will allow equity holders in the reserve pool to receive payments as early as possible for those reserve pool raisins utilized to redeem diversion certificates. This action will also tend to decrease storage and insurance costs related to reserve pool raisins because those raisins would be stored in the reserve pool for a reduced period of time.

The information collection requirements contained in the section of the regulations to be amended have been previously approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB No. 0581-0093.

Based on available information, the Administrator of the AMS has determined that the issuance of this final rule will not have a significant economic impact on a substantial number of small entities.

This action was proposed in the January 11, 1989, issue of the Federal Register (54 FR 987). Comments on the proposed rule were invited from interested persons until February 10, 1989. No comments were received.

After consideration of all relevant matter presented, the information and recommendation submitted by the Committee and other available information, it is found that this final rule will tend to effectuate the declared policy of the Act.

**List of Subjects in 7 CFR Part 989**

California, Grapes, Marketing agreements and order, Raisins.

For the reasons set forth in the preamble, 7 CFR Part 989 is amended as follows.

**Note.**—This section will appear in the annual Code of Federal Regulations

**PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA**

1. The authority citation for 7 CFR Part 989 continues to read as follows:

**Authority:** Secs. 1-19, 48 Stat. 31, as amended, 7 U.S.C. 601-674.

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**Subpart—Administrative Rules and Regulations**

2. Section 989.156 is amended by revising the last sentence of paragraph (k) to read as follows:

**§ 989.156 Raisin diversion program.**

* * * * *

(k) * * * Diversion certificates will only be valid and honored if presented to the Committee for redemption on or before December 15 of the crop year for which they were issued.

* * * * *

Dated: March 2, 1989.

**Robert C. Keeney,**

*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 89-5230 Filed 3-6-89; 8:45 am]

BILLING CODE 3410-02-M

## FEDERAL RESERVE SYSTEM

### 12 CFR Part 202

**[Reg. B; EC-1]**

### Equal Credit Opportunity; Update to Official Staff Commentary

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Final official staff interpretation.

**SUMMARY:** The Board is publishing in final form an addition to the official staff commentary to Regulation B (Equal Credit Opportunity). The commentary applies and interprets the requirements of Regulation B and is a substitute for individual staff interpretations of the regulation. The addition addresses a recent Board preemption determination regarding a provision of New York law.

**EFFECTIVE DATE:** March 7, 1989.

**FOR FURTHER INFORMATION CONTACT:** Linda Vesperony, Staff Attorney, Division of Consumer and Community Affairs, at (202) 452-2412; for the hearing impaired only, contact Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf, at (202) 452-3544, Board of Governors of the Federal Reserve System, Washington, DC 20551.

**SUPPLEMENTARY INFORMATION:**

**(1) General**

The Equal Credit Opportunity Act (ECOA) (15 U.S.C. 1691 *et seq.*) makes it unlawful for creditors to discriminate in any aspect of a credit transaction on the basis of race, color, religion, national origin, sex, marital status, age, receipt of public assistance, or the exercise of rights under the Consumer Credit Protection Act. This statute is implemented by the Board's Regulation B (12 CFR Part 202).

The Board also publishes an official staff commentary (EC-1, Supp. 1 to 12 CFR Part 202) to interpret the regulation. The commentary provides guidance to creditors in applying the regulation to specific transactions, and is updated periodically to address significant questions that arise. This notice contains the third update, and codifies a preexemption determination that took effect on November 11, 1988 (53 FR 45758).

**(2) Revision**

The following is a brief description of the revision to the commentary:

*Section 202.11—Relation to State Law.*

Paragraph 11(a) is added to the commentary in light of the Board's recent determination that a provision of New York law on credit discrimination is inconsistent with federal law, and that it is preempted by the ECOA and Regulation B to the extent of the inconsistency. Thus, the state of New York may not prohibit special-purpose credit programs or related inquiries that are permissible under federal law.

**(3) Text of Revision**

Pursuant to authority granted in section 703 of the Equal Credit Opportunity Act (15 U.S.C. 1691b), the Board amends the official staff commentary to Regulation B (12 CFR 202 Supp. I) as follows:

**PART 202—[AMENDED]**

1. The authority citation for Part 202 continues to read:

**Authority:** 15 U.S.C. 1691 et seq.

**Supplement I—[Amended]**

2. The addition amends the commentary (12 CFR Part 202, Supp. I) by adding comment 11(a) to read as follows:

* * * * *

*Section 202.11—Relation to State Law.*

11(a) *Inconsistent state laws.*

1. *Preemption determination—New York.* Effective November 11, 1988, the Board has determined that the following provisions in the state law of New York are preempted by the federal law:

- Article 15, section 296a(1)(b)—Unlawful discriminatory practices in relation to credit on the basis of race, creed, color, national origin, age, sex, marital status, or disability. This provision is preempted to the extent that it bars taking a prohibited basis into account when establishing eligibility for certain special-purpose credit programs.
- Article 15, section 296a(1)(c)—Unlawful discriminatory practice to make any record or inquiry based on race, creed, color, national origin, age, sex, marital status, or disability. This provision is preempted to the extent that it bars a creditor from requesting and considering information regarding the particular characteristics (for example, race, national origin, or sex) required for eligibility for special-purpose credit programs.

* * * * *

Board of Governors of the Federal Reserve System, March 1, 1989.

**William W. Wiles,**

*Secretary of the Board*

[FR Doc. 89-5160 Filed 3-6-89; 8:45 am]

BILLING CODE 6210-01-M

### 12 CFR Part 205

**[Reg. E; EFT-2]**

### Electronic Fund Transfers; Update to Official Staff Commentary

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Final official staff interpretation.

**SUMMARY:** The Board is publishing in final form revisions to the official staff commentary to Regulation E (Electronic Fund Transfers). The commentary applies and interprets the requirements of Regulation E and is a substitute for individual staff interpretations of the regulation. The revisions address questions that have arisen about the disclosure requirements of the regulation.

**EFFECTIVE DATE:** April 1, 1989.

**FOR FURTHER INFORMATION:** Contact Sharon T. Bowman or Thomas J. Noto, Staff Attorneys, Division of Consumer Affairs, at (202) 452-3667. For the hearing-impaired *only*, Earnestine Hall or Dorothea Thompson, Telecommunications Device for the Deaf, at (202) 452-3544, Board of Governors of the Federal Reserve System, Washington, DC 20551.

**SUPPLEMENTARY INFORMATION:**

**(1) General.**

The Electronic Fund Transfer Act (15 U.S.C. 1693 *et seq.*) governs any transfer of funds that is electronically initiated and that debits or credits a consumer's account. This statute is implemented by the Board's Regulation E (12 CFR Part 205).

The Board has published an official staff commentary (Supp. II to 12 CFR Part 205) to interpret the regulation. The commentary is designed to provide guidance to financial institutions and others in applying the regulation to specific situations. The commentary is updated periodically to address significant questions that arise. This notice contains the seventh update, which was proposed for comment on December 1, 1988. The revisions are effective April 1, 1989.



**(2) Description of Revisions**

Following is a brief description of the revisions of the commentary:

*Section 205.7 Initial Disclosure of Terms and Conditions*

Question 7-1. Question 7-1 addresses the situation where a financial institution provides EFT disclosures when a consumer opens an account. The question is revised to clarify that the regulation does not impose a time limit by which a consumer must sign up for an EFT service with a third party in order for the disclosures originally provided by the account holding institution to satisfy the regulation's requirements.

Question 7-2. Question 7-2 is revised to clarify that, in cases where a financial institution does not receive notice that a consumer has signed up for direct deposit of Social Security or other government payments (because there has been no prenotification and because no Form 1199A or other written agreement has been completed by the consumer and the financial institution), the financial institution must provide the necessary disclosures as soon as possible after the first electronic fund transfer has been made. In response to concerns raised by some commenters, the Board has revised its proposed language to read "as soon as reasonably possible."

In cases where the financial institution does receive prior notice of the consumer's enrollment in the direct deposit program, the financial institution must provide disclosures before the first EFT occurs. The institution has the option, of course, of providing disclosures to customers when an account is opened, as described in question 7-1.

**List of Subjects in 12 CFR Part 205**

Banks, banking, Consumer protection, Electronic fund transfers, Federal Reserve System, Penalties.

**(3) Text of Revisions**

Pursuant to authority granted in section 904 of the Electronic Fund Transfer Act, 15 U.S.C. 1693b, the Board amends the official staff commentary to Regulation E (12 CFR Part 205, Supp. II) as follows:

**PART 205—[AMENDED]**

1. The authority citation for Part 205 continues to read:

**Authority:** Pub. L. 95-630, 92 Stat. 3730 (15 U.S.C. 1693b).

2. The official staff commentary to Regulation E, Supp. II to 12 CFR Part 205, is amended by revising questions 7-1 and 7-2 for § 205.7 to read as follows:

**Supplement II—Official Staff Interpretations**

* * * * *

*Section 205.7 Initial Disclosure of Terms and Conditions.*

*7-1 Q: Timing of disclosures—early disclosure.* An institution is required to give initial disclosure either (1) when the consumer contracts for an EFT service or (2) before the first electronic fund transfer to or from the consumer's account. If an institution provides initial disclosures when a consumer opens a checking account and the consumer does not sign up for an EFT service until a later time, has the institution satisfied the disclosure requirements?

A: Yes, if the EFT contract is between the consumer and a third party for preauthorized electronic transfers to be initiated by the third party to or from the consumer's account. In this case, the financial institution need not repeat disclosures previously given unless the terms and conditions required to be disclosed are different from those that were given.

If, on the other hand, the EFT contract is directly between the consumer and the financial institution—for the issuance of an access device, or for a telephone bill-payment plan, for example—the institution should provide the disclosures at the time of contracting. Disclosures given before the time of contracting will satisfy the regulation only if they occurred in close proximity thereto. (§ 205.7(a))

*7-2 Q: Timing of disclosures—Social Security and other government direct deposits.* In the case of direct deposits by a government agency—Social Security payments, for example—how can the financial institution comply with the disclosure requirements absent prenotification, such as in cases where the government agency no longer uses Form 1199A?

A: Before direct deposit of payments such as Social Security takes place, usually the consumer and the institution both must complete a Form 1199A, and the institution can make disclosures at that time. However, if a Form 1199A (or a comparable form providing notice to the institution) is not used and there is no prenotification, the institution should provide the required disclosures as soon as reasonably possible after the first direct deposit is received, unless the institution has previously given the disclosures (see question 7-1). (§ 205.7(a))

* * * * *

Board of Governors of the Federal Reserve System, March 1, 1989.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 89-5159 Filed 3-6-89; 8:45 am]

BILLING CODE 6210-01-M

### 12 CFR Part 226

**[Reg. Z; TIL-1]**

### Truth in Lending; Update to Official Staff Commentary

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Official staff interpretation.

**SUMMARY:** The Board is publishing revisions to the official staff commentary to Regulation Z (Truth in Lending). The commentary applies and interprets the requirements of Regulation Z and is a substitute for individual staff interpretations of the regulation. The revisions address a variety of questions that have arisen about the regulation, and include new material and changes in existing material. The comments address, for example, disclosure questions raised by the emergence of reverse mortgage products, questions concerning the amendments to Regulation Z affecting disclosures for adjustable-rate mortgages, and questions concerning when a third party fee may be a finance charge in a credit transaction.

**DATES:** Effective February 28, 1989, but compliance optional until October 1, 1989.

**FOR FURTHER INFORMATION CONTACT:** The following attorneys in the Division of Consumer and Community Affairs, at (202) 452-3667 or (202) 452-2412: Sharon Bowman, Michael Bylsma, Leonard Chanin, Adrienne Hurt, Thomas Noto, or Linda Vesperony.

For the hearing impaired *only*, Telecommunications Device for the Deaf (TDD), Earnestine Hill or Dorothea Thompson, at (202) 452-3544, Board of Governors of the Federal Reserve System, Washington, DC 20551.

**SUPPLEMENTARY INFORMATION:** (1) *General.* The Truth in Lending Act (15 U.S.C. 1601 *et seq.*) governs consumer credit transactions and is implemented by the Board's Regulation Z (12 CFR Part 226). Effective October 13, 1981, an official staff commentary (TIL-1, Supp. I to 12 CFR Part 226) was published to interpret the regulation. The commentary is designed to provide

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guidance to creditors in applying the regulation to specific transactions and is updated periodically to address significant questions that arise. There have been seven general updates and one limited update so far. This notice contains the eighth general update. This update reflects material that was published in two proposed updates in 1988—a special update regarding disclosures for adjustable-rate mortgages published at 53 FR 38018 (September 29, 1988) and the proposed general update published at 53 FR 48925 (December 5, 1988). Creditors are free to rely on the revised commentary as of February 28, 1989, although they need not follow the revisions until October 1, 1989.

(2) *Revisions.* The following is a brief description of the revisions to the commentary:

**Subpart A—General**

*Section 226.2—Definitions and Rules of Construction*

2(a) Definitions

*2(a)(25) "Security Interest".* In the original proposal, comment 23(b)–3 would have been revised to clarify that multiple security interests in the same property need not be disclosed on rescission notices. The comment, for example, would have clarified that the disclosure that an interest is retained, as in form H–9, is adequate in a refinancing where a new mortgage is filed and a new advance is made. Several commenters suggested that the commentary also provide guidance on the specificity required of the security interest disclosure under §§ 226.6, 226.15, and 226.18. In order to clarify that the same principle holds true in other required disclosures of security interests, the substance of the proposed comment has been incorporated in new comment 2(a)(25)–6, instead of in comment 23(b)–3.

*Section 226.4—Finance Charge*

4(a) Definition

Comment 4(a)–3 is revised to clarify that charges imposed on the consumer by someone other than the creditor are finance charges if the creditor requires the services of the third party. For example, if a consumer cannot obtain the same credit terms from the creditor without using a loan broker, a fee imposed by the broker is a finance charge. The revised comment does not affect existing rules regarding charges which are excluded from the finance charge.

4(b) Examples of Finance Charges

*Paragraphs 4(b) (7) and (8).* Comment 4(b) (7) and (8)–2 is revised to clarify that insurance "written in connection with a credit transaction" does not include insurance written during an open-end credit plan if the insurance is written because of the consumer's default or because the consumer requests voluntary insurance after the opening of the plan. If insurance written during the term of the open-end plan is required by the creditor not as a result of the consumer's default, however, the insurance is written in connection with the plan. The final comment, which differs from the proposed comment, will provide identical rules for insurance written after consummation of a closed-end transaction and insurance written during the life of an open-end plan.

**Subpart C—Closed-End Credit**

*Section 226.17—General Disclosure Requirements*

17(a) Form of Disclosures

*Paragraph 17(a)(1).* Comment 17(a)(1)–5 is revised to provide that creditors with variable-rate transactions subject to § 226.18(f)(2) may also provide the information set forth in § 226.18(f)(1) as information directly related to the required disclosures.

17(c) Basis of Disclosures and Use of Estimates

*Paragraph 17(c)(1).* Comment 17(c)(1)–8 is revised to clarify the basis of disclosure for variable-rate transactions with no initial discounted or premium rate. The comment explains that creditors should base their disclosures only on the initial rate and not on any potential rate increases. The comment also has been been reorganized for clarity, but is not different in substance from the proposal.

Comments 17(c)(1)–14 and 17(c)(1)–15 are renumbered as 17(c)(1)–15 and 17(c)(1)–16, respectively. New comment 17(c)(1)–14 is added to clarify how lenders should provide disclosures for reverse mortgages. These mortgages, also known as reverse annuity or home equity conversion mortgages, typically involve the disbursement of monthly or other periodic advances to the consumer for a fixed period or until the occurrence of an event such as the sale of the house by the consumer or the consumer's death. Repayment of the loan may be required at the end of the disbursement period or at a later time; both accrued interest and principal generally are payable in one payment.

Some reverse "term" mortgages have a fixed term for the disbursement of funds to the consumer, but provide that the loan does not have to be repaid until a later time, such as when the consumer dies. The comment provides that the creditor should assume repayment will occur at the time disbursements are scheduled to end (or during a period following the date of the final disbursement which is not longer than the regular interval between disbursements). For example, in a transaction with monthly disbursements scheduled for ten years, the creditor may assume that repayment will be made in the 120th or 121st month.

The new comment also provides guidance on how creditors should make disclosures when both the period for disbursements and the date for repayment are determined solely by reference to future events, including the consumer's death. In such cases, the creditor may assume that disbursements will end upon the consumer's death (by using actuarial tables, for example). Alternatively, the creditor may assume that disbursements end upon the occurrence of the event that the creditor estimates will be most likely to occur first. If terms will be determined by reference to future events which do not include the consumer's death, the creditor must base the disclosures on the event estimated to be most likely to occur first. The creditor must assume repayment will occur at the same time the disbursements end (or during a period following the final disbursement which is not longer than the regular interval between disbursements).

The comment also provides that, in making disclosures, creditors would assume that all disbursements and accrued interest must be paid by the consumer. Thus, if a reverse mortgage has a "nonrecourse" provision providing that the consumer is not obligated for an amount greater than the value of the house, the comment explains that the disclosures must assume that the full amount disbursed will be repaid, although the creditor is permitted to explain that the consumer's contract may limit the amount that must be repaid.

Finally, the comment addresses the disclosure of shared-appreciation features associated with reverse mortgages. The commentary provides that the appreciation feature should be disclosed in accordance with either § 226.18(f)(1) or § 226.19(b), as appropriate.



*Section 226.18—Content of Disclosures*

18(f) Variable Rate

*Paragraph 18(f)(2).* Comment 18(f)(2)–1 is revised by adding a cross-reference to the commentary to § 226.17(a)(1) regarding the disclosure of additional variable-rate information as directly related information.

*Section 226.19—Certain Residential Mortgage Transactions*

19(b) Certain Variable-Rate Transactions

Comment 19(b)–1 is revised to clarify the disclosure of variable-rate construction loans that may be permanently financed. Under the current rules in § 226.17(c)(6), a creditor may disclose the construction and permanent financing arrangements, under § 226.18, as a single combined transaction or as separate transactions. Under revised comment 19(b)–1, a creditor is permitted to apply a similar analysis in determining the applicability of the variable-rate disclosure requirements of § 226.19(b). Thus, the creditor may treat the construction phase as a separate transaction and, if the term is one year or less, disclosures under § 226.19(b) are not required for the construction phase. The comment also makes clear that a creditor may treat the construction and permanent phases as separate and distinct transactions for purposes of determining coverage under § 226.19(b), yet still provide a single § 226.18 disclosure in accordance with the rules in § 226.17(c)(6). If the construction and permanent phases are treated as a single combined transaction with a term greater than one year, disclosures under § 226.18(f)(2) would be required. As provided in comment 17(a)(1)–5, however, the creditor may describe the variable-rate features of the combined transaction pursuant to § 226.18(f)(1).

Comment 19(b)–1 also is revised to address the disclosure requirements in assumptions of variable-rate transactions secured by the consumer's principal dwelling with a term longer than one year. The comment explains that disclosures need not be provided under § 226.18(f)(2)(ii) or 226.19(b). References to applicable sections and to particular parties are deleted as unnecessary and in order to make the comment more concise.

*Paragraph 19(b)(2).* Comment 19(b)(b)–1 is revised to omit references to the form of disclosures for ARM programs. New comment 19(b)(2)–3 has been added to describe the manner in which creditors may make the disclosures for each ARM program they offer.

Comment 19(b)(2)–1 also is revised to clarify the timing requirements for disclosures provided in response to a subsequent expression of interest by the consumer. Editorial changes have been made to the original proposal. The final comment makes clear that if a consumer expresses an interest in a different program, or if the consumer and creditor decide on a program different than that set forth in the disclosures that were first provided, disclosures for the new program must be provided as soon as reasonably possible.

In addressing the proposed revision to comment 19(b)(2)–1, several commenters also requested clarification of the timing requirements in situations, such as private banking arrangements, where loan terms that are not generally offered to the public are individually negotiated with a consumer. Commenters indicated that in these instances, creditors do not know the loan program terms in advance and therefore cannot prepare program disclosures until after they conclude their negotiations with the consumer. They also expressed concern that "customized" program disclosures might be needed to disclose each individually negotiated program. Accordingly, an additional sentence has been added to comment 19(b)(2)–1 to make clear that, in such cases, creditors may provide appropriate program disclosures as soon as reasonably possible after the terms have been decided upon, but in no event later than the time a non-refundable fee is paid. Furthermore, with the flexibility provided in this commentary concerning disclosure of variations in loan maturities, rate caps and frequencies of adjustments, the potential that "customized" disclosures will need to be developed for each private banking customer is significantly limited.

Comment 19(b)(2)–2 has been revised to clarify that the term to maturity of an ARM loan does not constitute a program variation. This revision corresponds to the guidance provided in new comments 19(b)(2)(viii)–5 and 19(b)(2)(x)–2 on the terms to maturity which may be used in calculating and disclosing the historical example and the initial and maximum rates and payments.

Comments 19(b)(2)–3 and –4 have been renumbered as comments 19(b)(2)–4 and –5, respectively. Based upon public comment and to permit greater flexibility for compliance with the requirements, new comment 19(b)(2)–3 has been added to describe the form for disclosures required under § 226.19(b)(2). The Comment incorporates material previously contained in comment 19(b)(2)–1 and includes new material which explains that a creditor may use either a separate disclosure form to describe each ARM program it offers or a disclosure form which describes more than one available ARM program. The comment explains that the multiple program form must disclose if any program features are available only in conjunction with certain other features. Finally, the new comment explains that multiple terms to maturity or multiple payment amortizations may be illustrated in any program disclosure form whether the form describes separate or multiple programs.

*Paragraph 19(b)(2)(iii).* Comment 19(b)(2)(iii)–1 differs from the proposal in two respects. The use of the term "balloon payment" has been replaced by a more specific reference to the type of transactions subject to the disclosure provisions. The comment is revised to clarify that, in transactions where paying the periodic payments will not fully amortize the loan at the end of the loan term and where the final payment will equal the periodic payment plus the remaining unpaid balance, the creditor must disclose that such a payment will be required. The creditor, however, need not reflect any irregular final payment in the historical example or in the disclosure of the initial and maximum rates and payments. (The exception for all irregular final payments is an expansion of the proposed comment, and would include final payments that differ in amount due to the effect of rate changes.)

*Paragraph 19(b)(2)(v).* Comment 19(b)(2)(v)–1 is revised to clarify that consumer buydowns and third-party buydowns reflected in the consumer's credit obligation should be disclosed in accordance with the rules for discounted variable-rate transactions. The revised comment also makes clear that no additional disclosures relating to the buydown need be provided on the program disclosure.

*Paragraph 19(b)(2)(vi).* Comment 19(b)(2)(vi)–1 is revised to address the disclosures for transactions in which the interval between consummation or closing and the initial adjustment is not known—for example, when ARM loans are grouped together for sale to a secondary mortgage market purchaser. In such cases, the comment explains that lenders may disclose the timing for the first adjustment as a range of the minimum and maximum length of time from consummation or closing until the first adjustment.

*Paragraph 19(b)(2)(vii).* Comment 19(b)(2)(vii)–1 is revised to address the disclosures for transactions in which the

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overall limitations on rate increases (and decreases) vary—for example, based on the loan features the consumer chooses or upon fluctuations in the pricing of the loan. The final comment extends the alternative disclosure rule to periodic limitations in addition to overall rate limitations. In such cases, the comment explains that the creditor may disclose the range of the lowest and highest periodic and overall rate limitations that may be applicable to the creditor's ARM transactions, and must include a statement that the consumer ask about the rate limitations that are currently applicable.

*Paragraph 19(b)(2)(viii).* Comment 19(b)(2)(viii)–1 is revised to clarify that, in transactions that end before the last year in the historical example, the example must illustrate all significant loan program terms such as rate limitations that would have affected the interest rate for the remaining years shown in the example.

Comment 19(b)(2)(viii)–5 is added to describe the terms to maturity or payment amortizations which may be used as a basis for the disclosures in ARM transactions. Based upon public comment and further consideration, the proposed comment has been revised. Under the final comment, creditors will be permitted to base the disclosures required under § 226.19(b)(2)(viii) and (x) for ARM loans within certain ranges upon only three maturities—five, fifteen and thirty years. Thus, a creditor who offers ARM loans for any term over one year would be permitted to make the disclosures required under these sections based on five-, fifteen- and thirty-year terms, and need not illustrate every other maturity that is offered. The comment also permits creditors to use five-, fifteen- and thirty-year term assumptions for disclosing payments based on amortizations different than the actual loan term. (Disclosures based on fifteen- and thirty-year maturities should provide payments that fairly approximate the payments for long-term ARMs. Disclosures based on a five-year maturity should provide payments that fairly approximate the payments for most short-term ARMs. Finally, the comment explains that the creditor would be required to state the term (or amortization) used in making the disclosures when using the three terms specified in the comment.)

Comment 19(b)(2)(viii)–6 is added to explain that a creditor following the alternative rule for disclosing periodic and overall rate limitations described in revised comment 19(b)(2)(vii)–1 must base the historical example upon the highest rate limitation disclosed under § 226.19(b)(2)(vii). In addition, such creditors must state the periodic or overall limitation used in the historical example.

Comment 19(b)(2)(viii)–7 also is added to explain the assumptions that can be made by a creditor following the alternative rule for disclosing the frequency of rate and payment adjustments described in revised comment 19(b)(2)(vi)–1. The comment explains that, in disclosing the historical example, the creditor may assume that the first adjustment occurred at the end of the first year in which the adjustment could occur.

*Paragraph 19(b)(2)(ix).* Comment 19(b)(2)(ix)–1 states that a creditor should base the example of how a consumer may calculate their actual payments on the latest payment shown in the historical example. The comment is revised to clarify that, in transactions where the latest payment shown in the historical example is not for the latest year of index values shown, a creditor may include additional examples that are based on the initial or maximum payments disclosed under § 226.19(b)(2)(x). This revision differs from the proposal in that it provides that creditors may provide the extra examples in addition to, but not as alternatives for, the example based on the last payment shown in the historical table.

*Paragraph 19(b)(2)(x).* Comment 19(b)(2)(x)–2 is added to allow creditors to base their calculations of the initial and maximum rates and payments upon the terms to maturity stated in new comment 19(b)(2)(viii)–5. The comment explains that the term used for making disclosures under § 226.19(b)(2)(viii) also must be used in disclosing the initial and maximum interest rates and payments.

Comment 19(b)(2)(x)–3 is added to describe how a creditor following the alternative rule for disclosing periodic and overall rate limitations described in revised comment 19(b)(2)(vii)–1 would calculate the maximum interest rate and payment. In such cases, the comment explains that the creditor must base the disclosure of the maximum rate and payment upon the highest periodic and overall rate limitation disclosed under § 226.19(b)(2)(vii). The creditor would be further required to state the periodic and overall rate limitations used in calculating the maximum rate and payment.

Comment 19(b)(2)(x)–4 also is added to explain how to calculate the initial and maximum rates and payments if a creditor follows the alternative rule for disclosing the timing of the first rate and payment adjustment described in revised comment 19(b)(2)(vi)–1. The comment explains that the creditor must assume that the first adjustment occurs at the earliest time disclosed under § 226.19(b)(2)(vi).

*Section 226.20—Subsequent Disclosure Requirements*

20(b) Assumptions

The proposed amendment to comment 20(b)–6 to add a cross reference to § 226.19(b) is deleted as unnecessary.

20(c) Variable-Rate Adjustments

*Paragraph 20(c)(4).* Comment 20(c)(4)–1 differs from the proposal in that it replaces the term "balloon payment" with a more specific reference to the type of transactions covered by the disclosure provisions. The comment is revised to clarify that the provisions of this paragraph apply to transactions in which paying the periodic payments will not fully amortize the outstanding balance at the end of the loan term and where the final payment will equal the periodic payment plus the remaining unpaid balance. The comment explains that the creditor should disclose any change in such a payment that results from an interest rate adjustment.

*Paragraph 20(c)(5).* Comment 20(c)(5)–1 is revised to clarify that the provisions of this paragraph apply only when negative amortization occurs in a transaction, and not merely because a payment is a non-amortizing or partially amortizing payment.

*Section 226.24—Advertising*

24(b) Advertisement of Rate of Finance Charge

Although not reprinted in this notice, comment 24(b)–5 is revised to change the references to comment 18(f)–8 to be comment 17(c)(1)–10. No substantive change is intended.

**Subpart D—Miscellaneous**

*Section 226.25—Record Retention*

25(a) General Rule

Comment 25(a)–3 is added to address the record retention requirements for variable-rate transactions that are subject to the disclosure requirements of § 226.19(b). The comment explains that maintaining written procedures for compliance with the disclosure provisions as well as retaining a sample disclosure form for each loan program will be adequate evidence of compliance. The comment also states that creditors may rely on the methods for reconstructing the required disclosures provided for under comment 25(a)–2.



*Section 226.30—Limitation on Rates*

Comment 30–8 is revised to clarify that this paragraph applies to the manner of stating the maximum interest rate in the credit contract only. This paragraph does not govern how interest rate ceilings should be stated in Truth in Lending disclosures. The disclosures are governed by provisions found elsewhere in the regulation and commentary.

Comment 30–13, concerning footnote 50, is revised to clarify the requirements of the regulation after October 1, 1988. For purposes of § 226.30, the rate must be stated in the credit contract as prescribed in comment 30–8. The disclosure requirements for limitations on rate increases are described elsewhere in the regulation and commentary.

**Appendix D—Multiple-Advance Construction Loans**

Although not reprinted in this notice, the first sentence of comment app. D–2 is revised to delete the word "most" and to change the reference to § 226.18(f)(4) to be § 226.18(f)(1)(iv). No substantive change is intended by either revision.

**List of Subjects in 12 CFR Part 226**

Advertising, Banks, Banking, Consumer protection, Credit, Federal Reserve System, Finance, Penalties, Rate limitations, Truth in lending.

**Text of Revisions**

Pursuant to authority granted in section 105 of the Truth in Lending Act (15 U.S.C. 1604 as amended) and section 1204 of the Competitive Equality Banking Act, Pub. L. 100–86, 101 Stat. 552, the Board amends the official staff commentary to Regulation Z (12 CFR Part 226 Supp. I) as follows:

**PART 226—[AMENDED]**

1. The authority citation for Part 226 continues to read:

**Authority:** Sec. 105, Truth in Lending Act, as amended by sec. 605, Pub. L. 96–221, 94 Stat. 170 (15 U.S.C. 1604 *et seq.*); sec. 1204(c), Competitive Equality Banking Act, Pub. L. 100–86, 101 Stat. 552.

2. The revisions amend the commentary (TIL–1, 12 CFR Part 226 Supp. I) by adding comment 2(a)(25)–6; adding a sentence and a bullet at the end of comment 4(a)–3; revising the heading and text of comment 4(b) (7) and (8)–2; adding a bullet at the end of comment 17(a)(1)–5; adding two sentences after the first sentence, and revising the second and third sentences and the parenthetical material in comment 17(c)(1)–6; redesignating comments 17(c)(1)–14 and –15 to be comments 17(c)(1)–15 and –16, respectively; adding comment 17(c)(1)–14; adding parenthetical material at the end of comment 18(f)(2)–1; adding three sentences at the end of comment 19(b)–1; revising the first, third and fourth sentences, adding a sentence after the third sentence, and removing the last three sentences of comment 19(b)(2)–1; revising the third sentence and the opening clause of the second and fifth sentences of comment 19(b)(2)–2 redesignating comments 19(b)(2)–3 and –4 to be comments 19(b)(2)–4 and –5, respectively; adding comment 19(b)(2)–3; adding three sentences after the second sentence in comment 19(b)(2)(iii)–1; adding a new sentence before the parenthetical material at the end of comment 19(b)(2)(v)–1; adding four sentences and parenthetical material at the end of comment 19(b)(2)(vi)–1; adding five sentences and parenthetical material at the end of comment 19(b)(2)(vii)–1; revising the third sentence in the parenthetical material after the first sentence in comment 19(b)(2)(viii)–1; adding comments 19(b)(2)(viii)–5, –6 and –7; adding a sentence after the second sentence in comment 19(b)(2)(ix)–1; adding comments 19(b)(2)(x)–2, –3 and –4; adding a sentence after the second sentence in comment 20(c)(4)–1; revising comment 20(c)(5)–1; changing the references to "comment 18(f)–8" in the first sentence and in the first bullet of comment 24(b)–5 to be "comment 17(c)(1)–10"; adding comment 25(a)–3; revising the first sentence of comment 30–8; revising the last sentence in comment 30–13; removing the word "most" and changing the reference to "§ 226.18(f)(4)" in comment app. D–2 to be "§ 226.18(f)(1)(iv)" to read as follows:

* * * * *

**Supplement 1—[Amended]**

**Subpart A—General**

* * * * *

*Section 226.2—Definitions and Rules of Construction*

*2(a) Definitions.*

* * * * *

*2(a)(25) "Security Interest".*

* * * * *

6. *Specificity of disclosure.* A creditor need not separately disclose multiple security interests that it may hold in the same collateral. The creditor need only disclose that the transaction is secured by the collateral, even when security interests from prior transactions remain of record and a new security interest is taken in connection with the transaction.

* * * * *

*Section 226.4—Finance Charge*

4(a) *Definition.*

* * * * *

3. *Charges by third parties.* * * *

In contrast, charges imposed on the consumer by someone other than the creditor are finance charges (unless otherwise excluded) if the creditor requires the services of the third party. For example:

• A fee charged by a loan broker if the consumer cannot obtain the same credit terms from the creditor without using a broker.

* * * * *

4(b) *Example of Finance Charges.*

* * * * *

*Paragraphs 4(b) (7) and (8)*

* * * * *

2. *Insurance written in connection with a transaction.* Insurance sold after consummation in closed-end credit transactions or after the opening of a plan in open-end credit transactions is not "written in connection with" the credit transaction if the insurance is written because of the consumer's default (for example, by failing to obtain or maintain required property insurance) or because the consumer requests insurance after consummation or the opening of a plan (although credit sale disclosures may be required for the insurance sold after consummation if it is financed).

* * * * *

**Subpart C—Closed End Credit**

*Section 226.17—General Disclosure Requirements*

17(a) *Form of Disclosures*

*Paragraph 17(a)(1)*

* * * * *

5. *Directly related.* * * *

• The disclosures set forth under section 226.18(f)(1) for variable-rate transactions subject to section 226.18(f)(2).

17(c) *Basis of Disclosures and Use of Estimates. Paragraph 17(c)(1)*

* * * * *

8. *Basis of disclosures in variable-rate transactions.* * * * Creditors should base the disclosures only on the initial rate and should not assume that this rate will increase. For example, in a loan with an initial rate of 10 percent and a 5 percentage points rate cap, creditors should base the disclosures on the initial rate and should not assume that this rate will increase 5 percentage points. However, in a variable-rate transaction with a seller buydown that is reflected in the credit contract, a consumer buydown, or a discounted or preminum rate, disclosures should not be based solely on the initial terms. In those transactions, the disclosed annual percentage rate should be a composite rate based on the rate in effect during the initial period and the rate that is the basis of the variable-rate feature for the remainder of the term. (See the commentary to § 226.17(c)

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for a discussion of buydown, discounted, and premium transactions and the commentary to section 226.19(a)(2) for a discussion of the redisclosure in certain residential mortgage transactions with a variable-rate feature).

* * * * *

14. *Reverse mortgages.* Reverse mortgages, also known as reverse annuity or home equity conversion mortgages, typically involve the disbursement of monthly advances to the consumer for a fixed period or until the occurrence of an event such as the consumer's death. Repayment of the loan (generally a single payment of principal and accrued interest) may be required to be made at the end of the disbursements or, for example, upon the death of the consumer. In disclosing these transactions, creditors must apply the following rules, as applicable:

• If the reverse mortgage has a specified period for disbursements but repayment is due only upon the occurrence of a future event such as the death of the consumer, the creditor must assume that disbursements will be made until they are scheduled to end. The creditor must assume repayment will occur when disbursements end (or within a period following the final disbursement which is not longer than the regular interval between disbursements). This assumption should be used even though repayment may occur before or after the disbursements are scheduled to end. In such cases, the creditor may include a statement such as "The disclosures assume that you will repay the loan at the time our payments to you end. As provided in your agreement, your repayment may be required at a different time."

• If the reverse mortgage has neither a specified period for disbursements nor a specified repayment date and these terms will be determined solely by reference to future events including the consumer's death, the creditor may assume that the disbursements will end upon the consumer's death (estimated by using actuarial tables, for example) and that repayment will be required at the same time (or within a period following the date of the final disbursement which is not longer than the regular interval for disbursements). Alternatively, the creditor may base the disclosures upon another future event it estimates will be most likely to occur first. (If terms will be determined by reference to future events which do not include the consumer's death, the creditor must base the disclosures upon the occurence of the event estimated to be most likely to occur first.)

• In making the disclosures, the creditor must assume that all disbursements and accrued interest will be paid by the consumer. For example, if the the note has a nonrecourse provision providing that the consumer is not obligated for an amount greater than the value of the house, the creditor must nonetheless assume that the full amount to be disbursed will be repaid. In this case, however, the creditor may include a statement such as "The disclosures assume full repayment of the amount advanced plus accured interest, although the amount you may be required to pay is limited by your agreement."

• Some reverse mortgages provide that some or all of the appreciation in the value of the property will be shared between the consumer and the creditor. Such loans are considered variable-rate mortgages, as described in comment 17(c)(1)–11, and the appreciation feature must be disclosed in accordance with § 226.18(f)(1). If the reverse mortgage has a variable interest rate, is written for a term greater than one year, and is secured by the consumer's principal dwelling, the shared appreciation feature must be described under § 226.19(b)(2)(vii).

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*Section 226.18—Content of Disclosures*

* * * * *

*18(f) Variable Rate*

* * * * *

*Paragraph 18(f)(2)*

1. *Disclosure required.* * * * (See the commentary to § 226.17(a)(1) regarding the disclosure of certain directly related information in addition to the variable-rate disclosures required under § 226.18(f)(2).)

* * * * *

*Section 226.19—Certain Residential Mortgage Transactions*

* * * * *

*19(b) Certain Variable-Rate Transactions*

1. *Coverage.* * * * In determining whether a construction loan that may be permanently financed by the same creditor is covered under this section, the creditor may treat the construction and the permanent phases as separate transactions with distinct terms to maturity or as a single combined transaction. For purposes of the disclosures required under section 226.18, the creditor may nevertheless treat the two phases either as separate transactions or as a single combined transaction in accordance with section 226.17(c)(6). Finally, in any assumption of a variable-rate transaction secured by the consumer's principal dwelling with a term greater than one year, disclosures need not be provided under sections 226.18(f)(2)(ii) or 226.19(b).

* * * * *

*Paragraph 19(b)(2)*

1. *Disclosure for each variable-rate program.* A creditor must provide disclosures to the consumer that fully describe each of the creditor's variable-rate loan programs in which the consumer expresses an interest. * * * Disclosures must be given at the time an application form is provided or before the consumer pays a nonrefundable fee, whichever is earlier. If program disclosures cannot be provided because a consumer expresses an interest in individually negotiating loan terms that are not generally offered, disclosures reflecting those terms may be provided as soon as reasonably possible after the terms have been decided upon, but not later than the time a non-refundable fee is paid. If a consumer who has received program disclosures subsequently expresses an interest in other available variable-rate programs subject to 226.19(b)(2), or the creditor and consumer decide on a program for which the consumer has not received disclosures, the creditor must provide appropriate disclosures as soon as reasonably possible. * * *

2. *Variable-rate loan program defined.* * * * For example, separate loan programs would exist based on differences in any of the following loan features: * * * In addition, if a loan feature must be taken into account in preparing the disclosures required by § 226.19(b)(2)(viii) and (x), variable-rate loans that differ as to that feature constitute separate programs under § 226.19(b)(2). * * * For example, separate programs would not exist based on differences in the following loan features: * * *

3. *Form of program disclosures.* A creditor may provide separate program disclosure forms for each ARM program it offers or a single disclosure form that describes multiple programs. A disclosure form may consist of more than one page. For example, a creditor may attach a separate page containing the historical payment example for a particular program. A disclosure form describing more than one program need not repeat information applicable to each program that is described. For example, a form describing multiple programs may disclose the information applicable to all of the programs in one place with the various program features (such as options permitting conversion to a fixed rate) disclosed separately. The form, however, must state if any program feature that is described is available only in conjunction with certain other program features. Both the separate and multiple program disclosures may illustrate more than one loan maturity or payment amortization—for example, by including multiple payment and loan balance columns in the historical payment example. Disclosures may be inserted or printed in the *Consumer Handbook* (or a suitable substitute) as long as they are identified as the creditor's loan program disclosures.

* * * * *

*Paragraph 19(b)(2)(iii)*

1. *Determination of interest rate and payment.* * * * In transactions where paying the periodic payments will not fully amortize the outstanding balance at the end of the loan term and where the final payment will equal the periodic payment plus the remaining unpaid balance, the creditor must disclose this fact. For example, the disclosure might read, "Your periodic payments will not fully amortize your loan and you will be required to make a single payment of the periodic payment plus the remaining unpaid balance at the end of the loan term." The creditor, however, need not reflect any irregular final payment in the historical example or in the disclosure of the initial and maximum rates and payments. * * *

* * * * *

*Paragraph 19(b)(2)(v)*

1. *Discounted and premium interest rate.* * * * In a transaction with a consumer buydown or with a third-party buydown that will be incorporated in the legal obligation, the creditor should disclose the program as a discounted variable-rate transaction, but need not disclose additional information regarding the buydown in its program disclosures. * * *



*Paragraph 19(b)(2)(vi)*

1. *Frequency.* * * * In certain ARM transactions, the interval between loan closing and the initial adjustment is not known and may be different from the regular interval for adjustments. In such cases, the creditor may disclose the initial adjustment period as a range of the minimum and maximum amount of time from consummation or closing. For example, the creditor might state: "The first adjustment to your interest rate and payment will occur no sooner than 6 months and no later than 18 months after closing. Subsequent adjustments may occur once each year after the first adjustment." (See comments 19(b)(2)(viii)–7 and 19(b)(2)(x)–4 for guidance on other disclosures when this alternative disclosure rule is used.)

*Paragraph 19(b)(2)(vii)*

1. *Rate and payment caps.* * * * The creditor need not disclose each periodic or overall rate limitation that is currently available. As an alternative, the creditor may disclose the range of the lowest and highest periodic and overall rate limitations that may be applicable to the creditor's ARM transactions. For example, the creditor might state: "The limitation on increases to your interest rate at each adjustment will be set at an amount in the following range: Between 1 and 2 percentage points at each adjustment. The limitation on increases to your interest rate over the term of the loan will be set at an amount in the following range: Between 4 and 7 percentage points above the initial interest rate." A creditor using this alternative rule must include a statement in its program disclosures suggesting that the consumer ask about the overall rate limitations currently offered for the creditor's ARM programs. (See comments 19(b)(2)(viii)–6 and 19(b)(2)(x)–3 for an explanation of the additional requirements for a creditor using this alternative rule for disclosure of periodic and overall rate limitations.) * * *

*Paragraph 19(b)(2)(viii)*

1. *Index movement.* * * * For the remaining ten years, 1982–1991, the creditor need only show the remaining index values, margin and interest rate and must continue to reflect all significant loan program terms such as rate limitations affecting them.) * * *

* * * * *

5. *Term of the loan.* In calculating the payments and loan balances in the historical example, a creditor need not base the disclosures on each term to maturity or payment amortization that it offers. Instead, disclosures for ARMs may be based upon terms to maturity or payment amortizations of 5, 15 and 30 years, as follows: ARMs with terms or amortizations from over 1 year to 10 years may be based on a 5-year term or amortization; ARMs with terms or amortizations from over 10 years to 20 years may be based on a 15-year term or amortization; and ARMs with terms or amortizations over 20 years may be based on a 30-year term or amortization. Thus, disclosures for ARMs offered with any term from over 1 year to 40 years may be based solely on terms of 5, 15 and 30 years. Of course, a creditor may always base the disclosures on the actual terms or amortizations offered. If the creditor bases the disclosures on 5-, 15- or 30-year terms or payment amortization as provided above, the term or payment amortization used in making the disclosure must be stated.

6. *Rate caps.* A creditor using the alternative rule described in comment 19(b)(2)(vii)–1 for disclosure of rate limitations must base the historical example upon the highest periodic and overall rate limitations disclosure under section 226.19(b)(2)vii). In addition, the creditor must state the limitations used in the historical example. (See comment 19(b)(2)(x)–3 for an explanation of the use of the highest rate limitation in other disclosures.)

7. *Frequency of adjustments.* In certain transactions, creditors may use the alternative rule described in comment 19(b)(2)(vi)–1 for disclosure of the frequency of rate and payment adjustments. In such cases, the creditor may assume for purposes of the historical example that the first adjustment occurred at the end of the first full year in which the adjustment could occur. For example, in an ARM in which the first adjustment may occur between 6 and 18 months after closing and annually thereafter, the creditor may assume that the first adjustment occurred at the end of the first year in the historical example. (See comment 19(b)(2)(x)–4 for an explanation of how to compute the maximum interest rate and payment when the initial adjustment period is now known.)

*Paragraph 19(b)(2)(ix)*

1. *Calculation of payments.* * * * However, in transactions in which the latest payment shown in the historical example is not for the latest year of index values shown (such as in a five-year loan), a creditor may provide additional examples based on the initial and maximum payments disclosed under § 226.19(b)(x). * * *

*Paragraph 19(b)(2)(x)*

* * * * *

2. *Term of the loan.* In calculating the initial and maximum payments the creditor need not base the disclosures on each term to maturity or payment amortization offered under the program. Instead, the creditor may follow the rules set out in comment 19(b)(2)(viii)–5. In calculating the initial and maximum payment, the terms to maturity or payment amortizations selected for the purpose of making disclosures under § 226.19(b)(2)(viii) must be used. In addition, creditors must state the term or payment amortization used in making the disclosures under this section.

3. *Rate caps.* A creditor using the alternative rule for disclosure of interest rate limitations described in comment 19(b)(2)(vii)–1 must calculate the maximum interest rate and payment based upon the highest periodic and overall rate limitations disclosed under § 226.19(b)(2)(vii). In addition, the creditor must state the rate limitations used in calculating the maximum interest rate and payment. (See comment 19(b)(2)(viii)–6 for an explanation of the use of the highest rate limitation in other disclosures.)

4. *Frequency of adjustments.* In certain transactions, a creditor may use the alternative rule for disclosure of the frequency of rate and payment adjustments described in comment 19(b)(2)(vi)–1. In such cases, the creditor must base the calculations of the initial and maximum rates and payment upon the earliest possible first adjustment disclosed under § 226.19(b)(2)(vi). (See comment 19(b)(2)(viii)–7 for an explanation of how to disclose the historical example when the initial adjustment period is not known.)

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*Section 226.20—Subsequent Disclosure Requirements*

* * * * *

*20(c) Variable-Rate Adjustments*

* * * * *

*Paragraph 20(c)(4).*

1. *Contractual effects of the adjustment.* * * * In transactions where paying the periodic payments will not fully amortize the outstanding balance at the end of the loan term and where the final payment will equal the periodic payment plus the remaining unpaid balance, the amount of the adjusted payment must be disclosed if such payment has changed as a result of the rate adjustment. * * *

*Paragraph 20(c)(5).*

1. *Fully-amortizing payment.* This paragraph requires a disclosure only when negative amortization occurs as a result of the adjustment. A disclosure is not required simply because a loan calls for non-amortizing or partially amortizing payments. For example, in a transaction with a five-year term and payments based on a longer amortization schedule, and where the final payment will equal the periodic payment plus the remaining unpaid balance, the creditor would not have to disclose the payment necessary to fully amortize the loan in the remainder of the five-year term. A disclosure is required, however, if the payment disclosed under § 226.20(c)(4) is not sufficient to prevent negative amortization in the loan. The adjustment notice must state the payment required to prevent negative amortization. (This paragraph does not apply if the payment disclosed in § 226.20(c)(4) is sufficient to prevent negative amortization in the loan but the final payment will be a different amount due to rounding.)

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**Subpart D—Miscellaneous**

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Section 226.25—Record Retention

25(a) General Rule

* * * * *

3. *Certain variable-rate transactions.* In variable-rate transactions that are subject to the disclosure requirements of § 226.19(b), written procedures for compliance with those requirements as well as a sample disclosure

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form for each loan program represent adequate evidence of compliance. (See comment 25(a)-2 pertaining to permissible methods of retaining the required disclosures.)

* * * * *

*Section 226.30—Limitation on Rates*

* * * * *

8. *Manner of stating the maximum interest rate.* The maximum interest rate must be stated in the credit contract either as a specific amount or in any other manner that would allow the consumer to easily ascertain, at the time of entering into the obligation, what the rate ceiling will be over the term of the obligation. * * *

* * * * *

13. *Transition rules.* * * * On or after that date, creditors must have the maximum rate set forth in their credit contracts and, where applicable, as part of their truth in lending disclosures in the manner prescribed in the applicable sections of the regulation.

Board of Governors of the Federal Reserve System, February 28, 1989.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 89-5161 Filed 3-6-89; 8:45 am]

BILLING CODE 6210-01-M

## SMALL BUSINESS ADMINISTRATION

### 13 CFR Part 120

**[Rev. 7; Amdt. 4]**

### Business Loans

**AGENCY:** Small Business Administration.

**ACTION:** Final rule.

**SUMMARY:** This rule implements section 113 of Pub. L. 100-590 (approved November 3, 1988) which authorizes the issuance by SBA of trust certificates representing ownership of all or a fractional part of the SBA-guaranteed portions of financings made to State and local development companies under Title V of the Small Business Investment Act, 15 U.S.C. 695, *et seq.*, by amending 13 CFR 120.709. The amendment removes the exclusion of Title V (section 502) loans from eligibility for pool formation and requires that such trust certificates be separately issued.

**EFFECTIVE DATE:** March 7, 1989.

**ADDRESS:** For further information contact Allan Mandel, Assistant Deputy Associate Administrator for Financial Assistance, Small Business Administration, 1441 L Street NW., Room 804, Washington, DC 20416. Telephone (202) 653-6696.

**SUPPLEMENTARY INFORMATION:** Prior to the amendment by section 113 of Pub. L. 100-590, the guaranteed portions of loans made pursuant to section 7(a)(13) of the Small Business Act (15 U.S.C. 636(a)(13), *i.e.*, Title V of the Small Business Investment Act, 15 U.S.C. 695 *et seq.*) were excluded from the authority given to SBA to issue trust certificates against pools of SBA-guaranteed loan portions [section 5(g), 15 U.S.C. 634(g)]. The cited statutory amendment now extends such pooling authority to pools formed with loans made under said Title V, which includes loans made pursuant to section 502 of that title, 15 U.S.C. 696. Accordingly, it became necessary to amend 13 CFR 120.709 to strike the parenthetical exclusion of Title V loans from pool eligibility, and replace it with a clause authorizing separate trust certificates issued against pools of loans guaranteed by SBA pursuant to section 502 of the Small Business Investment Act.

Pursuant to 5 U.S.C. 553(d), publication for public comment of the amendment here set forth is unnecessary for the following reasons:

(1) The amendment does no more than implement without change a statutorily mandated authority; and

(2) Immediate notification to the public of the new limit is essential and in the public interest. Since no notice of proposed rulemaking is required by section 553, no regulatory flexibility analysis is required under the Regulatory Flexibility Act, specifically 5 U.S.C. 603.

SBA certifies that this rule does not have federalism implications warranting the preparation of a Federal Assessment in accordance with Executive Order 12612.

For purposes of Executive Order 12291, SBA has determined that the rule is not a major rule. The new pooling authority will neither increase nor decrease SBA's authorized loan volume; it will merely facilitate the sale of these guaranteed loans to investors. In this regard, we estimate that the pricing advantage will be less than $5 million annually. Therefore, the annual economic effect on the national economy will not exceed $100 million. SBA is also certain that this rule will not cause an increase in costs for consumers, individual industries, Federal, State or local government agencies or geographic regions, or have adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based businesses to compete with foreign-based businesses in domestic or export markets.

There are no additional reporting or recordkeeping or other compliance requirements inherent in this final rule which would be subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35. There are no Federal rules which duplicate, overlap or conflict with this final rule. There are no alternative means to accomplish the objectives of this final rule.

**List of Subjects in 13 CFR Part 120**

Loan programs/business, Small business.

Accordingly, pursuant to the authority contained in sections 5(b)(6) and 5(g)(1) of the Small Business Act [15 U.S.C. 634(b)(6) and 634(g)(1)], SBA hereby amends Part 120, Chapter I, Title 13, Code of Federal Regulations, as follows:

## PART 120—BUSINESS LOAN POLICY

1. The authority citation for Part 120 continues to read as follows:

**Authority:** 15 U.S.C. 634(b)(6) and 636 (a) and (b).

2. Section 120.709 is amended by revising paragraph (a)(2) to read as follows:

**§ 120.709 Eligible loans for pools.**

(a) * * *

(2) Be guaranteed under the Small Business Act, as amended, except that loans guaranteed under section 502 of the Small Business Investment Act, 15 U.S.C. section 696 (relating to development companies), shall be pooled separately from other pools and separate trust certificates issued therefor);

* * * * *

(Catalogue of Federal Domestic Assistance Programs, No. 59.012, Small Business Loans and 59.013 State and Local Development Company Loans.)

Dated: January 30, 1989.

**James Abdnor,**

*Administrator.*

[FR Doc. 89-5119 Filed 3-6-89; 8:45 am]

BILLING CODE 8025-01-M

### 13 CFR Part 129

### Management Assistance; International Trade

**AGENCY:** Small Business Administration.

**ACTION:** Final rule.

**SUMMARY:** In compliance with the Small Business International Trade and Competitiveness Act, Pub. L. No. 100-418, SBA is amending its regulations on international trade to reflect changes made to SBA's Office of International Trade. The rule sets forth the services the Office of International Trade will provide to assist small businesses increase their ability to compete in international markets.



**EFFECTIVE DATE:** March 7, 1989.

**FOR FURTHER INFORMATION CONTACT:** Julius Toma (202) 653-7794.

**SUPPLEMENTARY INFORMATION:** On December 9, 1988, SBA published the proposed rule with a 30 day comment period. (53 FR 49675) One comment was received. That comment stated a concern that the proposed rule created programs which were duplicative of services currently available from other Federal agencies. Further, the comment stated a belief that the states were in a better position to understand and service the needs of small businesses involved in exporting, and that any federal program should therefore contain sufficient flexibility to allow the states to identify priority areas in the promotion of international trade. These comments were taken into consideration in formulation of the final rule but were not adopted because SBA is statutorily obligated to provide the services contained in the rule.

This rule incorporates into existing regulations changes made to the SBA Office of International Trade by the provisions of the Small Business International Trade and Competitiveness Act Pub. L. 100-418 (1988).

Section 129.100 of the rule reflects Congressional policy on small business international trade and competitiveness. That policy requires SBA to cooperate with the Department of Commerce and other relevant Federal and State agencies to aid and assist small businesses to increase their competitive abilities in international markets. In carrying out its decisions and actions, the Office of International Trade will be guided by principles enumerated in the statute and restated in the rule, § 129.100(a) through (f).

Section 129.200 of the rule reflects greater statutory specification of the Office's activities. Information on existing trade promotion, trade finance, trade adjustment, trade remedy assistance and trade data collection programs will be disseminated and marketed through a distribution network composed of SBA and Department of Commerce regional and local offices and Small Business Development Centers (SBDCs).

Small businesses interested in market research, identifying areas of demand in foreign markets, or sub-sectors of the small business community with strong export potential will be encouraged to use SBA's Export Information System (XIS) Data Reports, available through SBA regional, local or SBDC offices. Small businesses will also be advised as to the many sources of market research available through the Department of Commerce, such as International Market Research studies or Country Market Surveys.

Small businesses considering the formation of international joint ventures will be advised as to the resources available to identify potentially compatible firms, including the Department of Commerce's Export Mailing List Service and Trade Opportunities Program.

The Office, through the distribution network, will also make available to small business exporters information on existing domestic and foreign credit checking agencies that screen foreign and domestic firms for commercial and credit purposes.

Information on the availability of existing translation services will be identified and promoted through the distribution network, other Federal agencies, and relevant state and local export promotion programs.

Information and assistance in the formation and utilization of export trading companies, export management companies and research and development pools will be provided in cooperation with the Department of Commerce's Office of Export Trading Company Affairs.

Small businesses interested in obtaining counseling with respect to initiating and participating in any procedures relating to the administration of the United States trade laws will be advised of services provided by the Trade Remedy Assistance Office of the International Trade Commission or referred to the national coordinator of the Export Legal Assistance Network (ELAN). ELAN is a nationwide network of attorneys knowledgeable in export-related matters who have agreed to provide free initial consultations to small businesses new to the export market. The network includes a number of attorneys with expertise in trade remedy proceedings who will participate under the same agreement.

Section 129.300 of the rule relates to small business access to export financing programs. The Office will facilitate the access of small businesses to relevant export and pre-export financing programs of the Export-Import Bank, SBA and the private sector. This will be carried out by marketing existing Federal programs to financial institutions and the small business community. Additional training will also be provided to appropriate SBA personnel on export finance programs of SBA and the Export-Import Bank. A series of export finance briefings and education programs will be used to encourage financial intermediaries, such as lending institutions, to utilize existing Federal and State export financing programs.

Section 129.400 provides that the Office will work with experts in relevant fields to develop recommendations for policies and programs that will actively assist small businesses in the export process. The recommendations will be developed at a seminar to be held within one year from the date of enactment of the statute. The seminar will also be used to make recommendations on the utility of a subsequent international conference on small business and trade.

**Compliance With Executive Orders 12291 and 12612, the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., and the Paperwork Reduction Act 44 U.S.C. Chapter 35**

*Executive Order 12291*

For purposes of E.O. 12291, SBA has determined that this rule is not a major rule, because it will not have an economic impact of over $100 million annually. The total Office budget does not exceed $1.5 million and the primary effect of the rule is to modify program office operations. The rule will not increase costs to consumers, individual industries, Federal and State government agencies or geographic regions, nor can it have an adverse effect on competition, employment investment, productivity, innovation or the ability of U.S. based businesses in domestic or export markets.

*Regulatory Flexibility Act*

For purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, SBA certifies that this rule will not have a significant economic impact on a substantial number of small entities because the primary effect will be to modify program office operations.

*Paperwork Reduction Act*

For purposes of the Paperwork Reduction Act, 44 U.S.C. Chapter 35, SBA certifies that this rule would not impose any additional reporting or record-keeping requirements.

*Executive Order 12612*

This rule will not have federalism implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612.

**List of Subjects in 13 CFR Part 129**

Management assistance programs, International Trade.

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For the reasons set forth above, Part 129 of Title 13, Code of Federal Regulations, is amended as follows:

**PART 129—[AMENDED]**

1. The authority citation for Part 129 is revised to read as follows:

**Authority:** Title VIII of Pub. L. 100-418, Secs. 2 and 8, Small Business Act, as amended (15 U.S.C. 631, 637(b); secs. 7(i) and 7(j) of the Small Business Act, as amended (15 U.S.C. 636 (i) and (j); sec. 302(c)(2), Domestic Volunteer Service Act, Pub. L. 93-113, 87 Stat. 404; E.O. 11871, dated July 18, 1975.

**§§ 129.1 through 129.4 [Designated as Subpart A]**

**§ 129.5 [Removed]**

**§§ 129.6 through 129.9 [Redesignated as §§ 129.5 through § 129.8]**

2. Sections 129.1 through 129.4 are designed as "Subpart A—General," § 129.5 is removed, §§ 129.6 through 129.9 are redesignated as §§ 129.5 through 129.8 and are designated as "Subpart B—Service Corps of Retired Executives (SCORE) and Active Corps of Executives (ACE)—Payment of Out-of-Pocket Expenses to Volunteers," and a new Subpart C is added and reserved.

3. A new Subpart D consisting of §§ 129.100 through 129.400, is added to read as follows:

**Subpart D—Office of International Trade**

129.100 Policy.
129.200 Export assistance.
129.300 Access to export financing programs.
129.400 Stimulating small business exports.

**Subpart D—Office of International Trade**

**§ 129.100 Policy.**

It is the declared policy of Congress that the Small Business Administration, acting in cooperation with the Department of Commerce and other relevant Federal and State agencies, should aid and assist small businesses to increase their ability to compete in international markets by:

(a) Enhancing their ability to export;

(b) Facilitating technology transfers;

(c) Enhancing their ability to compete effectively and efficiently against imports;

(d) Increasing the access of small businesses to long-term capital for the purchase of new plant and equipment used in the production of goods and services involved in international trade;

(e) Disseminating information concerning State, Federal, and private programs and initiatives to enhance the ability of small businesses to compete in international markets; and

(f) Ensuring that the interests of small businesses are adequately represented in bilateral and multilateral trade negotiations.

**§ 129.200 Export assistance.**

SBA's Office of International Trade offers several services to assist small businesses increase their competitive abilities in international markets.

(a) The Office works in close cooperation with the Department of Commerce and other Federal agencies, Small Business Development Centers (SBDCs) engaged in export promotion efforts, regional and local SBA offices, the small business community, and relevant state and local export promotion programs to provide information to small businesses on:

(1) Existing trade promotion, trade finance, trade adjustment, trade remedy assistance and trade data collection programs through use of the SBA's regional, district and branch offices and the SBDC network;

(2) Marketing, including computerized marketing data and marketing leads;

(3) The formation of joint ventures;

(4) Existing programs which prescreen foreign buyers for commercial and credit purposes;

(5) Existing translation services, including those available through colleges and universities participating in the SBDC program; and

(6) Conferences on exporting and international trade sponsored by the public and private sector.

(b) In addition, the Office of International Trade works with the Department of Commerce, the International Trade Commission, and other Federal agencies, Small Business Development Centers (SBDCs) engaged in export promotion efforts, regional and local SBA offices, the small business community, and relevant state and local export promotion programs to:

(1) Identify sub-sectors of the small business community with strong export potential;

(2) Identify areas of demand in foreign markets;

(3) Assist in increasing international marketing by developing a mechanism to link potential sellers and buyers;

(4) Assist small businesses in the formation and utilization of export trading companies, export management companies and research and development pools authorized under section 9 of the Small Business Act, 15 U.S.C. 631, *et seq.*; and

(5) Assist small businesses in obtaining counseling with respect to initiating and participating in any proceedings relating to the administration of the United States trade laws.

**§ 129.300 Access to export financing programs.**

The Office of International Trade works in cooperation with the Export-Import Bank of the United States, the Department of Commerce, other relevant Federal agencies, and the States to develop programs through which export specialists in SBA's regional offices, regional, district and branch loan officers, and SBDC personnel can facilitate the access of small businesses to relevant export and pre-export financing programs available from the Export-Import Bank, the SBA and the private sector. Such programs include:

(a) Providing information to small businesses on financing available under various Export-Import Bank programs;

(b) Assisting in the development of financial intermediaries and facilitating the access of those intermediaries to existing financing programs; and

(c) Promoting greater participation by private financial institutions in export finance, particularly those institutions already participating in loan programs under the Small Business Act, 15 U.S.C. 631 *et seq.*

**§ 129.400 Stimulating small business exports.**

The Office of International Trade works with experts in the fields of international trade and small business development and representatives of small businesses, associations, the labor community, academic institutions, and Federal, State and local governments to develop recommendations designed to stimulate exports from small businesses.

**Date:** February 6, 1989.

James Abdnor,

*Administrator.*

[FR Doc. 89-5120 Filed 3-6-89; 8:45 am]

BILLING CODE 8025-01-M

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## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### 14 CFR Part 1260

### Changes to NASA Grant and Cooperative Agreement Handbook

**AGENCY:** National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule.

**SUMMARY:** This rule eliminates unnecessary administrative burdens on sponsored research by applying the most successful subset of the Florida Demonstration Project procedures to all NASA research grants.

**EFFECTIVE DATE:** March 14, 1989.

**FOR FURTHER INFORMATION CONTACT:** W.A. Greene, Chief, Regulations Development Branch, Procurement Policy Division (Code HP), Office of Procurement, NASA, Washington, DC 20546, Telephone: (202) 453-8823.

**SUPPLEMENTARY INFORMATION:**

**Background**

By memorandum of May 18, 1988, to the heads of executive departments and establishments, Mr. Joseph R. Wright, Jr., Deputy Director, Office of Management and Budget, provided guidance to reduce unnecessary administrative burdens on sponsored research projects and authorized the agencies to make routine use, as appropriate, of the most successful subset of procedures developed during the "Florida Demonstration Project."

NASA implemented the OMB guidance in an interim rule with request for comments, published in the **Federal Register** of August 4, 1988 (53 FR 29328). Responses were received from a total of nine individual universities, university systems, and university associations. While all respondents were supportive of the rule, a number of suggestions for improvement were made, resulting in the following actions:

1. The general foreign travel approval requirement has been eliminated. Further approval is no longer required for certain types of travel if described in the proposal.

2. Prior approval requirements for most subcontracting and purchase of nontechnical property have been reduced. Treatment of items described as "of a nontechnical nature" is clarified. The $5,000 approval requirement for items not in the proposal is retained, pending further Federal Demonstration Project experiences.

3. These changed requirements (February 1989) may be applied to grants bearing the version (July 1988) contained in the interim rule. Such application is at the grantee's option and requires no additional paperwork.

These changes will be included in the next modification to the NASA Grant and Cooperative Agreement Handbook (NHB 5800.1). The Handbook, a loose-leaf version of 14 CFR Part 1260, is available to the public by subscription from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. It is not available in whole or in part directly from NASA.



**Impact**

This rule has been reviewed by the Office of Management and Budget (OMB) under the provisions of Executive Order 12291. NASA certifies that this rule will not have a significant economic affect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule does not significantly alter any reporting or recordkeeping requirements currently approved under OMB Control Numbers 2700-0045, 2700-0047, 2700-0048, and 2700-0049.

**List of Subjects in 14 CFR Part 1260**

Grants.

**S.J. Evans**

*Assistant Administrator for Procurement.*

**PART 1260—[AMENDED]**

1. The authority citation for 14 CFR Part 1260 continues to read as follows:

**Authority:** Pub. L. 97-258, 31 U.S.C. 6301 *et seq.*

**Subpart 4—Research Grant and Cooperative Agreement Provisions**

2. Section 1260.420(f) is revised and adopted as final, to read as follows:

**§ 1260.420 Special conditions.**

* * * * *

(f)(1) The following provision shall be appended to all grants and cooperative agreements as a Special Condition.

(2) The grants officer is authorized to, and shall, upon request of an awardee institution, issue a letter agreement making the special condition immediately applicable to all current grants and cooperative agreements at that institution.

(3) Grantees are hereby offered the opportunity to substitute the final (February 1989) version of the Special Condition "Elimination of Unnecessary Administrative Burden" in all grants for which the interim (July 1988) version is in effect. The first grantee action in accordance with the final version will constitute grantee acceptance of the final version.

(4) Paragraphs (f) (1) and (2) of this section are valid only through December 31, 1989, and the procedures therein shall not be used after that time.

**Elimination of Unnecessary Administrative Burden (February 1989)**

The following special terms take precedence over NASA Form 1463A, Provisions for Research Grants and Cooperative Agreements and any other requirements in the Grant and Cooperative Agreement Handbook, NHB 5800.1 (14 CFR Part 1260).

(a) *Prior approvals*

(1) General

Cost related and administrative "prior approvals" required by OMB Circulars A-110 and A-21 are hereby waived, except for change in scope or objective and change in principal investigator. Subcontracting approvals are waived except for subcontracting or transferring substantive aspects of the research, if not provided for in the proposal. Other approvals and terms specifically required by the grant still apply, unless waived or modified elsewhere in this Special Condition. The grantee may maintain such internal prior approval systems as it considers necessary.

(2) Travel

The prior authorization requirement in NASA Form 1463A regarding domestic travel expenditures is waived. The costs of foreign travel are allowable charges to the grant provided that the travel is clearly essential to the research effort. Foreign travel to communist areas, foreign travel involving studies of foreign countries, per se, or foreign travel requiring special permits or licenses still requires prior approval by the NASA Grants Officer, unless the travel has been described in an accepted proposal.

(3) Equipment and Other Property

The prior approval requirement for acquiring property not included in the proposed budget is raised to $5,000. For approval purposes, an item of a "nontechnical nature" may be regarded as "technical property" if it is primarily used in and is essential to the actual conduct of the research.

(b) *Preaward costs.* Grantees may approve preaward costs of up to ninety (90) days prior to the effective date of a new award, provided the costs are necessary for the effective and economical conduct of the project and they are otherwise allowable under the terms of the grant. Any preaward expenditures are made at the grantee's risk. Approval by the grantee does not impose any obligations on NASA in the absence of appropriations, if an award is not subsequently made, or if an award is made for a lesser amount than the grantee anticipated.

(c) *No cost extensions.* Grantees may extend the expiration date of a grant or a supplement thereto if additional time beyond the established expiration date is required to assure adequate completion of the original scope of work within the funds already made available. A single extension, which shall not exceed twelve (12) months, may be made for this purpose, and must be made prior to the expiration date. The grantee must notify the grants officer in writing within 10 days of the extension. Absent timely notification, the prior approval requirement (Form 1463A) shall apply.

(d) *Unobligated balances.* Any unobligated balance of funds which remains at the end of any funding period, except the final funding period of the project, shall be carried over to the next funding period, and may be used to defray costs of any funding period of the project. If uncommitted carryover funds are likely to be substantial, the estimated amount

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shall be included in any continuation proposal.

[FR Doc. 89-5141 Filed 3-6-89; 8:45 am]
BILLING CODE 7510-01-M

## FEDERAL TRADE COMMISSION

### 16 CFR Part 13

[Docket No. C-2990 and C-3216]

### Liquid Air Corporation of North America et al. and L'Air Liquide Societe Anonyme et al.; Prohibited Trade Practices and Affirmative Corrective Actions

**AGENCY:** Federal Trade Commission.

**ACTION:** Modifying orders.

**SUMMARY:** This order modifies the Commission's consent orders issued on September 5, 1979, and on July 15, 1987, by deleting the requirement that respondents obtain prior Commission approval as to internal reorganization activities.

**DATES:** Consent Orders issued September 5, 1979 and July 15, 1987. Modifying Orders issued October 17, 1988.

**FOR FURTHER INFORMATION CONTACT:** Joseph Eckhaus, FTC/S-2115, Washington, DC 20580. (202) 326-2687.

**SUPPLEMENTARY INFORMATION:** In the Matter of Liquid Air Corporation of North America, et al. and L'Air Liquide Societe Anonyme Pour L'Etude Et L'Exploitation Des Procedes Georges Claude, et al. The prohibited trade practices and/or corrective actions, as set forth at 44 FR 58805 and 52 FR 30235, remain unchanged.

List of Subjects in 16 CFR Part 13

Industrial gases, Liquid gases, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

### Order Reopening and Modifying Orders Issued on September 5, 1979, Against Liquid Air Corporation of North America And on July 15, 1987, Against L'Air Liquide Societe Anonyme Pour L'Etude et L'Exploitation Des Procedes Georges Claude

Before Commissioners:
Daniel Oliver, Chairman
Terry Calvani
Mary L. Azcuenaga
Andrew J. Strenio, Jr.

On June 20, 1988, Liquid Air Corporation (formerly known as Liquid Air Corporation of North America) ("LAC") and its parent, L'Air Liquide Societe Anonyme Pour L'Etude Et L'Exploitation Des Procedes Georges Claude ("L'Air Liquide"), filed a "Request To Reopen Proceeding And Modify Orders In Docket No. C-2990 And In Docket No. C-3216" ("Request"). The Request was filed pursuant to section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), and § 2.51 of the Commission's Rules of Practice, 16 CFR 2.51. The Request asked the Commission to reopen the proceedings in Docket No. C-2990 and Docket No. C-3216 and modify the consent orders issued by the Commission on September 5, 1979, and July 15, 1987, in these respective matters. The respondents' Request was placed on the public record for thirty days, pursuant to § 2.51 of the Commission's Rules. One comment was received.

The complaint in Docket No. C-2990 was issued under section 7 of the Clayton Act, 15 U.S.C. 18, and section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, and alleged anticompetitive effects arising from LAC's acquisition of the Industrial Gases Division of Chemetron Corporation ("Chemetron"), a wholly-owned subsidiary of Allegheny Ludlum Industries, Inc. ("Allegheny").[1] The order in Docket No. C-2990, which was issued by the Commission on September 5, 1979, 94 F.T.C. 360 (1979), among other things, prohibits the respondents in that matter, including LAC, for a ten-year period ending on September 20, 1989, from acquiring without the prior approval of the Commission any United States air separation gases producer. The order defines "air separation gases producer" to mean "a person who is engaged in both (1) the production, and (2) the distribution and sale of two or more of the air separation gases."[2] 94 F.T.C. at 396. The order's prior approval provision thus applies to, among other things, intra-entity transactions involving LAC's possible acquisition of air separation gases producers which are owned and controlled by LAC or its parent.[3]

The complaint in Docket No. C-3216 was also issued under section 7 of the Clayton Act, 15 U.S.C. 18, and section 5 of the F.T.C. Act, 15 U.S.C. 45, and alleged anticompetitive effects arising from L'Air Liquide's acquisition of the outstanding voting securities of Big Three Industries, Inc. ("Big Three"). The order in Docket No. C-3216, which was issued by the Commission on July 15, 1987, among other things, prohibits L'Air Liquide, for a ten-year period ending on July 20, 1997, from acquiring without the prior approval of the Commission any United States merchant air separation gases producer. Paragraph I.(7.) of the order defines "merchant air separation gases producer" to mean "any person that is engaged in all of the following: (i) production, (ii) distribution, and (iii) sale of two or more merchant air separation gases."[4] The order's prior approval requirement in Docket No. C-3216 thus also applies to, among other things, intra-entity transactions involving L'Air Liquide's possible acquisition of merchant air separation gases producers which are owned and controlled by L'Air Liquide and/or LAC.[5] However, the order also provides that "nothing in this Order or in the Commission's order entered in Docket No. C-2990 shall require L'Air Liquide to obtain prior Commission approval if L'Air Liquide increases its ownership in [LAC] or causes Big Three to acquire [LAC]." *See* Paragraph VII, *L'Air Liquide* order. Both LAC and L'Air Liquide, under the orders in Dockets No. C-2990 and C-3216, respectively, are required to obtain the prior approval of the Commission for transaction in which L'Air Liquide causes LAC to acquire all or any part of Big Three.

Section 5(b) of the Federal Trade Commission Act provides that the Commission may modify an order when the Commission determines that the public interest so requires. Therefore, the Commission has invited respondents to show in petitions to reopen how the public interest warrants the requested modification. 16 CFR 2.51. In such a case, the respondent must demonstrate as a threshold matter some affirmative need to modify the order. *Damon Corp.*, Docket No. C-2916, Letter to Joel E. Hoffman, Esq. (March 24, 1984), at 2 ("Damon Letter"). For example, it may be in the public interest to modify an order "to relieve any impediment to

[1] Allegheny and Chemetron are also named respondents under the order in Docket No. C-2990. Neither, however, has asked the Commission to modify the order in this matter. This order modifying the order issued on September 5, 1979, in Docket No. C-2990 applies only to respondent LAC.

[2] "Air separation gases" is defined in the order to mean "oxygen, nitrogen and argon in gaseous or liquid form, or both." 94 F.T.C. at 396.

[3] The order in Docket No. C-2990 applies only to LAC "and all subsidiaries which it controls." 94 F.T.C. at 396. LAC's parent, L'Air Liquide, is thus not covered by the order.

[4] "Merchant air separation gases" is defined in Paragraph I.(6.) of the order to mean "oxygen, nitrogen and argon sold in liquid form or packaged in cylinders."

[5] The order in Docket No. C-3216 applies to L'Air Liquide and "all subsidiaries it controls." *See* Paragraph I.(1.).



effective competition that may result from the order." *Damon Corp.*, 101 F.T.C. 689, 692 (1983). Once such a showing of need is made, the Commission will balance the reasons favoring the modification requested against any reasons not to make the modification. Damon Letter at 2.

After reviewing the respondents' Request, the Commission has determined that it is in the public interest to reopen the proceedings and modify the orders in Dockets No. C-2990 and C-3216. The respondents have shown that the prior approval requirements of the orders impose substantial compliance costs on the respondents because they require the respondents to obtain the prior approval of the Commission in connection with the respondents' wholly internal activities. Such internal activities would raise no competitive questions and would not warrant prior approval review.

The orders' prior approval provisions are also inconsistent with the principle that the coordinated activity of a parent and its wholly-owned subsidiaries must be viewed as that of a single enterprise for Federal antitrust law purposes. *See Copperweld Corp.* v. *Independence Tube Corp.*, 467 U.S. 752 (1984). Any internal corporate restructuring by L'Air Liquide is not likely to raise significant competitive consequences, and the Commission's orders in Docket Nos. C-3216 and C-2990 afford the Commission the opportunity to monitor the respondents' covered inter-entity merger activities.

Accordingly, it is ordered that these matters be, and they are hereby, reopened and that the opening subparagraph (j) of the order in Docket No. C-2990 and Paragraph I.7. of the order in Docket No. C-3216 be, and they are hereby, modified as follows:

### Docket No. C-2990

(j) "Air separation gases producer" shall mean a person who is engaged in both (1) the production, and (2) the distribution and sale of two or more of the air separation gases, excluding, as to respondent Liquid Air Corporation, any individual, partnership, firm, corporation, association, or any other business or legal entity, controlled by L'Air Liquide Societe Anonyme Pour L'Etude Et L'Exploitation Des Procedes Georges Claude. "Control" shall mean either (i) holding 50 percent or more of the outstanding voting securities of an issuer or (ii) in the case of an entity that has no outstanding voting securities, having the right to 50 percent or more of the profits of the entity, or having the right in the event of dissolution to 50 percent or more of the assets of the entity, or (iii) having the contractual power presently to designate 50 percent or more of the directors of a corporation, or in the case of unincorporated entities, of individuals exercising similar functions.

### Docket No. C-3216

I.7. "Merchant air separation gases producer" means any person that is engaged in all of the following: (i) production, (ii) distribution, and (iii) sale of two or more merchant air separation gases, excluding any individual, partnership, firm, corporation, association, or any other business or legal entity, controlled by L'Air Liquide. "Control" shall mean either (i) holding 50 percent or more of the outstanding voting securities of an issuer or (ii) in the case of an entity that has no outstanding voting securities, having the right to 50 percent or more of the profits of the entity, or having the right in the event of dissolution to 50 percent or more of the assets of the entity, or (iii) having the contractual power presently to designate 50 percent or more of the directors of a corporation, or in the case of unincorporated entities, of individuals exercising similar functions.

By the Commission.
Benjamin I. Berman,
*Acting Secretary.*
[FR Doc. 89-5210 Filed 3-6-89; 8:45 am]
BILLING CODE 6750-01-M

## DEPARTMENT OF THE TREASURY

### Customs Service

### 19 CFR Ch. I

### Harmonized System of Tariff Classification Extension of Time for Comments

**AGENCY:** U.S. Customs Service, Department of the Treasury.

**ACTION:** Extension of time for comments.

**SUMMARY:** This notice extends the period of time within which interested members of the public may submit comments concerning the implementation of the Harmonized System (HS) of Tariff Classification by the United States. A notice inviting the public to comment on the adoption of the HS was published in the Federal Register on December 21, 1988 (53 FR 51244), and comments were to have been received on or before February 21, 1989. A request has been received to extend the period of time for comments for an additional 30 days. In view of the complexity of issues and subjects involved, the request is granted.

This extension of time to file comments will not affect the implementation of any local operational procedures and practices which were either permitted or scheduled to become effective in the interests of accomplishing the transition to the HS.

**DATE:** Comments will now be accepted if received on or before march 21, 1989.

**ADDRESS:** Comments (preferably in triplicate) should be submitted to and may be inspected at the Regulations and Disclosure Law Branch, U.S. Customs Service, Room 2119, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229.

**FOR FURTHER INFORMATION CONTACT:** Hubbard L. Volenick, International Nomenclature Staff (202-566-8530).

Dated: March 1, 1989.

Harvey B. Fox,
*Director, Office of Regulations and Rulings.*
[FR Doc. 89-5180 Filed 3-6-89; 8:45 am]
BILLING CODE 4820-02-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 558

### New Animal Drugs For Use in Animal Feeds; Narasin and Nicarbazin; Correction

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule; correction.

**SUMMARY:** The Food and Drug Administration (FDA) is correcting a document which amended the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Elanco Products Co. (54 FR 1927; January 18, 1989). The NADA provides for the use of a combination Type A medicated article containing narasin and granular nicarbazin to manufacture a Type C medicated feed for the prevention of coccidiosis in broiler chickens. However, the document inadvertently added narasin and nicarbazin (granular) as separate chemical entities. This document corrects that error.

**EFFECTIVE DATE:** March 7, 1989.

**FOR FURTHER INFORMATION CONTACT:** Dianne T. McRae, Center for Veterinary Medicine (HFV-135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4913.

**SUPPLEMENTARY INFORMATION:** In the Federal Register of January 18, 1989 (54

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FR 1927), FDA published a document which amended the animal drug regulations to reflect approval of NADA 138-952 filed by Elanco Products Co. The NADA provides for the use of a combination Type A medicated article containing narasin and granular nicarbazin to manufacture a Type C medicated feed for the prevention of coccidiosis in broiler chickens.

The document amended § 558.4 *Medicated feed applications* (21 CFR 558.4) with the intention of adding the combination to the Category II table. However, the document inadvertently added narasin and nicarbazin (granular) as separate chemical entities. Accordingly, the Category II table is being amended to correctly reflect the combination.

The approval is limited to a Type A medicated article manufactured by combining narasin with Elanco Products Co.'s granular form of nicarbazin. Accordingly, § 558.363 *Narasin* (21 CFR 558.363) is amended to explicitly add this limitation to paragraph (c)(1)(iii)(B) which reflects approval of the combination.

**List of Subjects in 21 CFR Part 558**

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended as follows:

**PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS**

1. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343-351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

2. Section 558.4 is amended in paragraph (d) in the table entitled "Category II" by removing the "Narasin" entry from its current position and adding it indented between the entries for "Nicarbazin (granular)" and "Nicarbazin (powder)", to read as follows:

**§ 558.4 Medicated feed applications.**

* * * * *

(d) * * *

CATEGORY II

| Drug | Assay limits percent [1] type A | Type B maximum (100x) | Assay limits percent [1] type B/C [2] |
|---|---|---|---|
| * * * | * * * | * * * | * |
| Nicarbazin (granular) | 90-110 | 5.675 g/lb (1.25%) | 85-115/75-125 |
| Narasin | 90-110 | 5.675 g/lb (1.25%) | 85-115/75-125 |
| Nicarbazin (powder) | 98-106 | 5.675 g/lb (1.25%) | 85-115/80-120 |
| * * * | * * * | * * * | * |

[1] Percent of labeled amount.
[2] Values given represent ranges for either Type B or Type C medicated feeds. For those drugs that have two range limits, the first set is for a Type B medicated feed and the second set is for a Type C medicated feed. These values (ranges) have been assigned in order to provide for the possibility of dilution of a Type B medicated feed with lower assay limits to make a Type C medicated feed.

* * * * *

**§ 558.363 [Amended]**

3. Section 558.363 *Narasin* is amended at the end of paragraph (c)(1)(iii)(B) by adding the sentence "only granular nicarbazin as provided by No. 000986 in § 510.600(c) of this chapter may be used in the combination."

Dated: February 24, 1989.

**Robert C. Livingston,**

*Deputy Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.*

[FR Doc. 89-5181 Filed 3-6-89; 8:45 am]

BILLING CODE 4160-01-M

**DEPARTMENT OF JUSTICE**

**Office of The Attorney General**

**28 CFR Part 60**

**[Order No. 1327-89]**

**Authorization of Federal Law Enforcement Officers to Request The Issuance of a Search Warrant**

**AGENCY:** U.S. Department of Justice.

**ACTION:** Final rule.

**SUMMARY:** Rule 41(h) of the Federal Rules of Criminal Procedure authorizes the Attorney General to designate categories of federal law enforcement officers who may request issuance of search warrants. Previous authorizations were made by Order No. 510-73 (38 FR 7244, March 19, 1973), as amended by Order No. 521-73 (38 FR 16389, July 10, 1973), Order No. 826-79 (44 FR 21785, April 12, 1979), Order No. 844-79 (44 FR 46459, August 8, 1979), Order No. 960-81 (46 FR 52360, October 27, 1981), Order No. 1026-83 (48 FR 37377, August 18, 1983), Order No. 1137-86 (51 FR 22282, June 19, 1986), Order No. 1143-86 (51 FR 26878, July 28 1986), and Order No. 1188-87 (52 FR 19138, May 21, 1987). This Order amends 28 CFR Part 60 by adding special agents of the Office of Investigations of the Office of Inspector General, General Services Administration, and special agents of the Offices of Inspector General of the Department of Housing and Urban Development, the Department of the Interior and the Veterans Administration to the list of federal law enforcement officers who are authorized to request the issuance of search warrants under Rule 41, Federal Rules of Criminal Procedure.

**EFFECTIVE DATE:** February 24, 1989.

**FOR FURTHER INFORMATION CONTACT:** Roger B. Cubbage, Deputy Chief, Martin C. Carlson, Senior Legal Advisor, or Ronald B. Nicholson, Attorney, General Litigation and Legal Advice Section, Criminal Division, Department of Justice, Washington, DC 20530 (202-786-4827).

**SUPPLEMENTARY INFORMATION:**

This Order adds a new § 60.2(l) to 28 CFR Part 60 to add special agents of the Office of Investigations of the Office of Inspector General, General Services Administration; a new § 60.2(m) to add special agents of the Office of Inspector General, Department of Housing and Urban Development; a new § 60.2(n) to add special agents of the Office of Inspector General, Department of the Interior; and a new § 60.2(o) to add special agents of the Office of Inspector General, Veterans Administration. It adds the Office of Investigations of the Office of the Inspector General, General Services Administration, as § 60.3(a)(13); the Office of Inspector General, Department of Housing and Urban Development, as § 60.3(a)(14); the Office of Inspector General, Department of the Interior, as § 60.3(a)(15); and the



Office of Inspector General, Veterans Administration, as § 60.3(a)(16). Because the material contained herein is a matter of Department of Justice practice and procedure, the provision of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date is inapplicable.

The Department of Justice has determined that this Order is not a major rule for purposes of either Executive Order 12291, or the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*

**List of Subjects in 28 CFR Part 60**

Search warrants.

By virtue of the authority vested in me by Rule 41(h) of the Federal Rules of Criminal Procedure, Part 60 of Chapter I of Title 28, Code of Federal Regulations, is hereby amended as follows:

**PART 60—[AMENDED]**

1. The authority for Part 60 continues to read as follows:

Authority: Rule 41(h), Fed.R.Crim.P.

**§ 60.2 [Amended]**

2. Section 60.2 is amended by adding a new paragraph (l), to read as follows:

* * * * *

(l) Any special agent of the Office of Investigations of the Office of Inspector General, General Services Administration.

3. Section 60.2 is amended by adding a new paragraph (m), to read as follows:

* * * * *

(m) Any special agent of the Office of Inspector General, Department of Housing and Urban Development.

4. Section 60.2 is amended by adding a new paragraph (n), to read as follows:

(n) Any special agent of the Office of Inspector General, Department of Interior.

5. Section 60.2 is amended by adding a new paragraph (o), to read as follows:

* * * * *

(o) Any special agent of the Office of Inspector General, Veterans Administration.

**§ 60.3 [Amended]**

6. Section 60.3(a) is amended by adding a new paragraph (13) to read as follows:

(a) * * *

(13) General Services Administration: Office of Inspector General

* * * * *

7. Section 60.3(a) is amended by adding a new paragraph (14) to read as follows:

(14) Department of Housing and Urban Development: Office of Inspector General

* * * * *

8. Section 60.3(a) is amended by adding a new paragraph (15) to read as follows:

(a) * * *

(15) Department of the Interior: Office of Inspector General

* * * * *

9. Section 60.3(a) is amended by adding a new paragraph (16) to read as follows:

(a) * * *

(16) Veterans Administration: Office of Inspector General

Date: February 24, 1989.

**Dick Thornburgh,**

*Attorney General.*

[FR Doc. 89-5173 Filed 3-6-89; 8:45 am]

BILLING CODE 4410-01-M

**DEPARTMENT OF THE TREASURY**

**Office of Foreign Assets Control**

**31 CFR Part 515**

**Removal from List of Specially Designated Nationals (Cuba)**

**AGENCY:** Office of Foreign Assets Control, Department of the Treasury.

**ACTION:** Notice of removal from the list of Specially Designated Nationals (Cuba).

**SUMMARY:** This notice provides the name of a firm which has been removed from the list of Specially Designated Nationals under the Treasury Department's Cuban Assets Control Regulations (31 CFR 515).

**EFFECTIVE DATE:** March 2, 1989.

**ADDRESS:** Copies of the list of Specially Designated Nationals are available upon request at the following location: Office of Foreign Assets Control, Department of the Treasury, 1331 G Street, NW., Washington, DC 20220.

**FOR FURTHER INFORMATION CONTACT:** Richard J. Hollas, Chief, Enforcement Division, Office of Foreign Assets Control, Tel: (202) 376-0400.

**SUPPLEMENTARY INFORMATION:** The Mexican airline, Aerocozumel, of Cozumel, Quintana Roo, Mexico, was listed in the Federal Register as a Specially Designated National (Cuba) on December 10, 1986 (51 FR 44459), pursuant to the Cuban Assets Control Regulations (31 CFR 515). It has been determined that Aerocozumel is no longer a Specially Designated National of Cuba; and, therefore, it is removed from the list of Specially Designated Nationals.

**Specially Designated Nationals of Cuba, Removal**

The list of Specially Designated Nationals, December 10, 1986 (51 FR 44459), as amended on November 3, 1988 (53 FR 44397) and on January 24, 1989 (54 FR 3446), is amended by removing the name:

Aero Cozumel, Cozumel, Mexico (address unknown).

Dated: February 28, 1989.

**R. Richard Newcomb,**

*Director, Office of Foreign Assets Control.*

Approved: March 2, 1989.

**Salvatore R. Martoche,**

*Assistant Secretary (Enforcement).*

Filed: March 3, 1989.

Publication date: March 7, 1989.

[FR Doc. 89-5432 Filed 3-3-89; 4:59 pm]

BILLING CODE 4810-25-M

**DEPARTMENT OF COMMERCE**

**Patent and Trademark Office**

**37 CFR Part 1**

**[Docket No. 81024-9018]**

**Revision of Patent and Trademark Fees; Correction**

**AGENCY:** Patent and Trademark Office, Commerce.

**ACTION:** Final rule; correction.

**SUMMARY:** This document corrects a final rule on the revision of patent fees that appears at pages 6893-6910 in the Federal Register of Wednesday, February 15, 1989 (54 FR 6893). This action is necessary to correct typographical errors.

Another document with additional corrections appeared in the Federal Register of Friday, February 24, 1989 at page 8053.

**EFFECTIVE DATE:** April 17, 1989.

**FOR FURTHER INFORMATION CONTACT:** Frances Michalkewicz by telephone at (703) 557-1610 or by mail marked to her attention and addressed to the Commissioner of Patents and Trademarks, Washington, DC 20231.

The following corrections are made to FR Doc. 89-3486 appearing on 6893-6910 in the issue of February 15, 1989.

**§ 1.17 [Corrected]**

1. On page 6901, in the first column, in § 1.17(g), in the third line, "Interferences in appeal" should read "Interferences in an appeal."

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2. On page 6901, in the second column, in § 1.17(h), in the sub-section listing §§ 5.12, 5.13, & 5.14, in the second line, "handling of foreign filing" should read "handling of a foreign filing."

3. On page 6901, in the second column, in § 1.17(l)(1), in the first line, "revival of an abandoned application" should read "revival of an unavoidably abandoned application".

4. On page 6901, in the second column, in § 1.17(m), "By a small entity (§ 1.19(f))" should read "By a small entity (§ 1.9(f))."

**§ 1.19 [Corrected]**

5. On pages 6901, in the third column, in § 1.19(a)(1), in the fifth line, "plant or color" should read "plant patent or color."

**§ 1.21 [Corrected]**

6. On page 6902, in the third column, in § 1.21(e), in the fifth and sixth lines, "in an national patent" should read "in a national patent."

**§ 1.55 [Corrected]**

7. On page 6903, in the first column, in § 1.55(a), in the twelfth line, "in the proceding sentence" should read "in the preceding sentence."

**§ 1.171 [Corrected]**

8. On page 6903, in the first column, in the twelfth line, "set further in" should read "set forth in."

**§ 1.177 [Corrected]**

9. On page 6903, in the second column, in the eleventh and twelfth lines, "such part of parts" should read "such part or parts."

**§ 1.313 [Corrected]**

10. On page 6903, in the second column, in § 1.313(a), in the tenth and eleventh lines, "set further in" should read "set forth in."

**§ 1.445 [Corrected]**

11. On page 6903, in the third column, the section heading, "international application filing and processing fees" should read "International application filing, processing and search fees."

12. On page 6903, in the third column, in § 1.445(a), in the first and second lines, "fees and charges are established" should read "fees and charges for international applications are established."

13. On page 6903, in the third column, paragraph (a)(2) (iii) is correctly designated as (a)(3) and the words in the second line "required per additional" should read "required, per additional."

Date: February 24, 1989.

**Bradford R. Huther,**

*Assistant Commissioner for Finance and Planning.*

[FR Doc. 89-5157 Filed 3-6-89; 8:45 am]

BILLING CODE 3510-16-M

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[FRL-3532-8]**

## Approval and Promulgation of Implementation Plans; Michigan

**AGENCY:** U.S. Environmental Protection Agency (USEPA).

**ACTION:** Final rulemaking.

**SUMMARY:** USEPA is approving a revision to the Michigan SIP that amends a portion of the State's definition for Rule 336.1122, as it relates to volatile organic compounds (VOC) emissions. The amendment exempts methyl chloroform emissions with respect to surface coating operations from the State's control technology requirements on the limitation of VOC emissions, if certain conditions are met. This revision is being approved because methyl chloroform has been identified by USEPA as an exempt compound.

**DATES:** This action is effective May 8, 1989, unless notice is received by April 6, 1989 that someone wishes to submit comments.

**ADDRESSES:** Copies of the SIP revision are available at the following addresses for review: (It is recommended that you telephone Ms. Toni Lesser, at (312) 886-6037, before visiting the Region V office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation (5AR-26), 230 South Dearborn Street, Chicago, Illinois 60604.

Michigan Department of Natural Resources, Air Quality Division, Stevens T. Mason Building, 530 West Allegan, Lansing, Michigan 48909.

U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street SW., Washington, DC 20460.

Comments on these proposed rules should be addressed to: (Please submit an original and three copies, if possible.)

Gary Gulezian, Chief, Regulatory Analysis Section, U.S. Environmental Protection Agency, Air and Radiation Branch (5AR-26), 230 South Dearborn Street, Chicago, Illinois 60604.

**FOR FURTHER INFORMATION CONTACT:** Ms. Toni Lesser, Michigan Regulatory Specialist, (312) 886-6037.

**SUPPLEMENTARY INFORMATION:** On May 25, 1988, the State of Michigan submitted an SIP revision in the form of an addendum to the State's Rule 336.1122, effective at the State level on May 20, 1988. The amendment will allow coating companies to exclude methyl chloroform from the VOC emission calculation when compliance with applicable limits is otherwise technically or economically reasonable. This exemption would apply to only the surface coating operations that are subject to Part 6 (Emission Limitations and Prohibitions—Existing Sources of VOC Emissions) or Part 7 (Emission Limitations and Prohibitions—New Sources of VOC Emissions) of the State's regulations. However, Rule 336.1122 requires implementation of all reasonable measures to reduce the emission of all organic solvents including commercial grade methyl chloroform, from the surface coating or coating line to the lowest reasonable level. An allowable annual ambient air concentration of 0.00041 parts per million for 1,2-butylene oxide has been added to Rule 336.1122. In addition, the amended rule also specifies that a permit evaluation is required before methyl chloroform emissions from a coating operation would be exempt.

USEPA is today approving the State of Michigan's addendum to Rule 336.1122 as a revision to the SIP. USEPA is approving this revision because methyl chloroform has been identified as an exempt compound, because it has been determined to be negligibly photochemically reactive (June 4, 1979, 44 FR 32042 and May 16, 1980, 45 FR 32424).

USEPA believes today's action to be noncontroversial and routine. Therefore it is being approved without prior proposal. This action will become effective May 8, 1989. However, if we receive notice by April 6, 1989, that someone wishes to submit comments, then USEPA will publish: (1) A notice that withdraws the action, and (2) a notice that begins a new rulemaking by proposing the action and establishing a comment period.

The Office of Management and Budget has exempted this rule from the requirement of section 3 of Executive Order 12291.

Under 5 U.S.C. 605(b), I certify that this SIP approval action will not have a significant economic impact on a substantial number of small entities.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 8, 1989. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).



**List of Subjects in 40 CFR Part 52**

Air pollution control, Ozone, Intergovernmental relations.

Note.—Incorporation by reference of the State Implementation Plan for the State of Michigan was approved by the Director of the Federal Register on July 1, 1982.

Date: February 28, 1989.

**William K. Reilly,**

*Administrator.*

Title 40 of the Code of Federal Regulations, Chapter I, Part 52, is amended as follows:

**PART 52—[AMENDED]**

**Subpart X—Michigan**

1. The authority citation for Part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401-7642.

2. Section 52.1170 is amended by adding paragraph (c)(86) to read as follows:

**§ 52.1170 Identification of plan.**

* * * * *

(c) * * *

(86) On May 25, 1988, the State of Michigan submitted an SIP revision in the form of an addendum to the State's Rule 336.1122, effective at the State level on May 20, 1988. The amendment will allow coating companies to exclude methyl chloroform from the VOC emission calculation when it is not technically or economically reasonable. This exemption applies only to the surface coating operations that are subject to Part 6 (Emission Limitations and Prohibitions—Existing Sources of VOC Emissions) or Part 7 (Emission Limitations and Prohibitions—New Sources of VOC Emissions) of the State's regulations.

(i) Incorporation by reference.

(A) R336.1122, Methyl Chloroform; effective at the State level on May 20, 1988.

[FR Doc. 89-5089 Filed 3-6-89; 8:45 am]

BILLING CODE 6560-50-M

## 40 CFR Part 52

**[FRL-3532-7; NC-032]**

## Approval and Promulgation of Implementation Plans; North Carolina Stack Height Review

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** EPA today approves a declaration by North Carolina that recent revisions to EPA's stack height regulations do not necessitate source-specific revisions to the State Implementation Plan (SIP) in this State. The State was required to review its SIP for consistency within nine months of final promulgation of the stack height regulations. The intended effect of this action is to formally document that North Carolina has satisfied its obligations under section 406 of the Clean Air Act Amendments of 1977 to review its SIP with respect to EPA's revised stack height regulations. No emission limitations were affected by stack height credit above GEP or any other dispersion technique.

**DATES:** This action will be effective on May 8, 1989 unless notice is received by April 6, 1989 that someone wishes to submit adverse or critical comments.

**ADDRESSES:** Copies of the materials submitted by North Carolina may be examined during normal business hours at the following locations:

Air Programs Branch, Region IV, Environmental Protection Agency, 345 Courtland Street NE., Atlanta, Georgia 30365.

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

North Carolina Department of Natural Resources and Community Development, Air Quality Section, Division of Environmental Management, Raleigh, North Carolina 27611.

**FOR FURTHER INFORMATION CONTACT:** Beverly T. Hudson, EPA Region IV Air Programs Branch, at the above listed address, telephone (404) 347-2864 or FTS 257-2864.

**SUPPLEMENTARY INFORMATION:** On February 8, 1982 (47 FR 5864), EPA promulgated final regulations limiting stack height credit and other dispersion techniques as required by section 123 of the Clean Air Act (the Act). These regulations were challenged in the U.S. Court of Appeals for the DC Circuit by the Sierra Club Legal Defense Fund, Inc., the Natural Resources Defense Council, Inc., and the Commonwealth of Pennsylvania in *Sierra Club v. EPA*, 719 F.2d 436. On October 11, 1983, the court issued its decision ordering EPA to reconsider portions of the stack height regulations, reversing certain portions and upholding other portions.

On February 28, 1984, the electric power industry filed a petition for a writ of certiorari with the U.S. Supreme Court. On July 2, 1984, the Supreme Court denied the petition (104 S. CT. 3571), and on July 18, 1984, the Court of Appeals formally issued a mandate implementing its decision and requiring EPA to promulgate revisions to the stack height regulations within six months. The promulgation deadline was ultimately extended to June 27, 1985.

Revisions to the stack height regulations were proposed on November 9, 1984 (49 FR 44878), and finalized on July 8, 1985 (50 FR 27892). The revisions redefine a number of specific terms, including "excessive concentration," "dispersion techniques," "nearby," and other important concepts, and modify some of the bases for determining good engineering practice (GEP) stack height.

Pursuant to section 406(d)(2) of Pub. L. 95-95, all states were required to (1) review and revise, as necessary, their state implementation plans (SIPs) to include provisions that limit stack height credit and dispersion techniques in accordance with the revised regulations and (2) review all existing emission limitations to determine whether any of these limitations have been affected by stack height credit above GEP or any other dispersion techniques. For any limitations so affected, states were to prepare revised limitations consistent with their revised SIPs. All SIP revisions and revised emission limits were to be submitted to EPA within 9 months of promulgation, as required by statute.

Subsequently, EPA issued detailed guidance on carrying out the necessary reviews. For the review of emission limitations, states were to prepare inventories of stacks greater than 65 m in height and sources with emissions of sulfur dioxide ($SO_2$) in excess of 5,000 tons per year. These limits correspond to the *de minimis* GEP stack height and the *de minimis* $SO_2$ emission exemption from prohibited dispersion techniques. The sources were screened for further review on the basis of the grandfathering clause (in existence before December 31, 1970), their stack height being less than *de minimis* stack height (65 m) and/or the actual height being less than the calculated Good Engineering Practice (GEP) stack height. The remaining sources were then subjected to detailed review for conformance with the revised regulations. State submissions were to contain an evaluation of each stack and source in the inventory. All potentially affected sources having stacks greater than 65 meters and total $SO_2$ allowable emissions greater than 5,000 tons per year were inventoried and summarized in the Technical Support Document, with documentation to support the analysis for each stack. North Carolina has indicated that the documentation is

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available for review at the State Office (listed above). A summary of the State's findings is provided below.

North Carolina inventoried 103 stacks. Only five stacks exceeded their formula for Good Engineering Practice (GEP) stack height. These five sources were evaluated to determine if the ambient standards are protected when only the GEP stack height is used. The modeling techniques used in the demonstration supporting this revision are, for the most part based on modeling guidance in place at the time that the analysis was performed, i.e., the EPA "Guideline on Air Quality Models" (1978). Since that time, revisions to modeling guidance have been promulgated by EPA (53 FR 392, January 6, 1988). Because the modeling analysis was underway prior to publication of the revised guidance, EPA accepts the analysis. The modeling for these sources shows that the ambient air quality standards for particulate and sulfur dioxide are not exceeded when only GEP stack height is considered.

No stacks received credit for prohibited dispersion techniques. Five of the nongrandfathered stacks that are less than 65 meters high have allowable emissions of sulfur dioxide greater than 5,000 tons per year or merged or combined flows. These merged and combined flows are not considered to be a dispersion technique under the stack height regulation. Therefore, no further analysis is needed.

EPA is not acting on two sources (identified in table form or by an asterisk) because they currently receive credit under one of the provisions remanded to the EPA in *NRDC* v. *Thomas*, 838 F.2d 1224 (DC Cir 1988). North Carolina and EPA will review these sources for compliance with any revised requirements when EPA completes rulemaking to respond to the *NRDC* remand.

*EPA Review.*

EPA has reviewed North Carolina's submittal and concurs with the conclusion that no revisions to North Carolina's existing source emission limitations are necessary as a result of EPA's revised stack height regulations. North Carolina has therefore met its obligations under section 406 of Pub. L. 95–95 for existing source emission limitations.

Today's action does not certify that North Carolina has complied with obligations under section 406 Pub. L. 95–95, for new sources, as required in 40 CFR 51.164 and 51.118. Those Federal provisions contain the stack height requirements for all sources that were or are constructed, reconstructed or modified subsequent to December 31, 1970. EPA is acting on North Carolina submittals to comply with these requirements in a separate **Federal Register** notice.

The technical support submitted by the State is available for public inspection at the EPA Regional Office listed in the ADDRESSES section of this notice. By publishing this approval of the submittal and soliciting public comment, EPA is ensuring the opportunity for public participation in this process.

**Final Action**

EPA approves the declaration by North Carolina that recent revisions to EPA's stack height regulations do not necessitate SIP revisions for specific sources in this State. This action is taken without prior proposal because the issues are straightforward and no adverse comment is anticipated. The public should be advised that this action will be effective 60 days from the date of this **Federal Register** notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 8, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2).)

Under 5 U.S.C. 605(b), I certify that this SIP action will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

**List of Subjects in 40 CFR Part 52**

Air Pollution Control, Intergovernmental relations, Particulate matter, Sulfur oxides.

Dated: February 28, 1989.

**William K. Reilly,**

*Administrator.*

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

**PART 52—[AMENDED]**

**Subpart II—North Carolina**

1. The authority citation for Part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401–7642.

2. Section 52.1781 is amended by designating the existing text as paragraph (a) and by adding paragraph (b) to read as follows:

**§ 52.1781 Control strategy: Sulfur oxides and particulate matter.**

* * * * *

(b) In letters dated February 4, 1987, and June 15, 1987, the North Carolina Department of Natural Resources and Community Development certified that no emission limits in the State's plan are based on dispersion techniques not permitted by EPA's stack height rules.

[FR Doc. 89–5090 Filed 3–6–89; 8:45 am]

BILLING CODE 6560–50–M

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**40 CFR Part 52**

**[Region II Docket No. 83; FRL–3532–6]**

**Approval and Promulgation of Implementation Plans; Revision to the State of New York Implementation Plan**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** This notice announces final action by the Environmental Protection Agency (EPA) on parts of a New York request to revise its State Implementation Plan (SIP) for ozone. EPA is approving modifications made by New York to one of its volatile organic compound (VOC) air pollution control regulations, Part 200, General Provisions. EPA is also approving Part 229, Petroleum Liquid Storage Facilities, and Part 230, Gasoline Dispensing Sites and Transport Vehicles, with the exception of their variance provisions. In addition, EPA has found that the State fulfilled two control strategy implementation commitments that it made in its SIP.

EPA is deferring action on two other VOC control regulations, Part 228, Surface Coating Processes, and Part 234, Graphic Arts, because the State has informed us that it is now revising those regulations.

EPA is accepting the State's certification that a regulation is not needed for controls on the manufacture of high-density polyethylene, polypropylene, and polystyrene resins, a



Control Techniques Guideline source category.

**EFFECTIVE DATE:** This action is effective on April 6, 1989.

**ADDRESSES:** Copies of the SIP revision are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region II Office, Air Programs Branch, Room 1005, 26 Federal Plaza, New York, New York 10278.

Environmental Protection Agency, Public Information Reference Unit, 401 M Street SW., Washington, DC 20460.

New York State Department of Environmental Conservation, Division of Air Resources, 50 Wolf Road, Albany, New York 12233.

**FOR FURTHER INFORMATION CONTACT:** William S. Baker, Chief, Air Programs Branch, Environmental Protection Agency, Room 1005, 26 Federal Plaza, New York, New York 10278, (212) 264–2517.

**SUPPLEMENTARY INFORMATION:**

**Background**

For areas designated under section 107(d) of the Clean Air Act as not attaining the national ambient air quality standard for ozone, the Environmental Protection Agency (EPA) requires that State Implementation Plans (SIPs) contain regulations providing for the application of reasonably available control technology (RACT) to specific sources of volatile organic compound (VOC) emissions (44 FR 20372, April 4, 1979). Such sources are those which fall into categories for which EPA has published a Control Techniques Guideline (CTG) document. Today's action concerns regulations that were adopted by New York State to control VOCs from two CTG categories and a finding by the State concerning the need for the regulation in New York of a third CTG category. It also deals with two of the commitments made by New York in its 1982 ozone and carbon monoxide SIP to adopt other control measures, specifically, a "Reevaluation of RACT" and "Controls at Major Facilities." The reader is referred to EPA's June 13, 1988 notice of proposed rulemaking (51 FR 21577) for a detailed description of the regulations and the two control measures which are the subject of today's notice.

**State Submittal**

On March 15, 1985 the State of New York sent to the EPA a request to revise its SIP. The New York submittal consisted of revisions that were adopted by the State to regulations already contained in the New York SIP. These revisions to Title 6 of the New York Code of Rules and Regulations (6 NYCRR) affect the following Parts of the Code:

- Part 200—"General Provisions," effective April 11, 1985
- Part 228—"Surface Coating Processes," effective April 11, 1985,
- Part 229 (old)—"Petroleum Liquids Storage and Transfer," effective June 21, 1980 and repealed.
- Part 229 (new)—"Petroleum Liquid Storage Facilities," effective April 11, 1985,
- Part 230 (new)—"Gasoline Dispensing Sites and Transport Vehicles," effective April 11, 1985, and
- Part 234—"Graphic Arts," effective April 11, 1985.

This action also involves State certifications, dated November 2, 1984 and April 3, 1987, that there are no sources in New York which manufacture high-density polyethylene, polypropylene, and polystyrene resins, and a December 31, 1984 State submittal of Air Guide 20, "Variances from RACT Regulations for VOC Emitting Sources."

**Public Comment**

No comments were received by EPA during the comment period established by its June 13, 1988 proposal.

**Findings**

EPA's findings concerning the revisions to New York's SIP are divided as follows into two main groups, full approval actions and partial approval actions. The partial approval actions are further subdivided as to the nature of the partial approval.

*I. Full Approval Actions*

—Part 200—"General Provisions,"
—Certification regarding manufacturer of high-density polyethylene, polypropylene, and polystyrene resins,
—"Reevaluation of RACT" SIP commitment, and
—"Controls at Major Facilities" SIP commitment.

*II. Partial Approval Actions*

A. Provisions requiring deferred action:
—Part 228—"Surface Coating Processes" and
—Part 234—"Graphic Arts."

B. Provisions requiring submittal of source-specific SIP submittals:
—Variances—§§ 229.10 and 230.7.
—A correction is also being made to the portion of the CFR covering §§ 228.3(d) and 234.3(c).

C. Provisions receiving approval (the remaining provisions of):
—Part 229—"Petroleum Liquid Storage Facilities" and
—Part 230—"Gasoline Dispensing Sites and Transport Vehicles."

*I. Full Approval Actions*

- Part 200—"General Provisions"

Part 200 effective April 11, 1985, as submitted by the State is being fully approved by today's action because it is consistent with EPA policy and guidance.

- Manufacture of High-Density Polyethylene, Polypropylene, and Polystyrene Resins

In a letter dated November 2, 1984, New York certified to EPA that there are no manufacturers of high-density polyethylene, polypropylene or polystyrene resins in the State. However, later investigation revealed sources that appeared to be covered by the CTG document for such manufacturers, and which would have required control. In a letter dated April 3, 1987, the State verified that the sources in question were not subject to this CTG and therefore that its original certification was correct. EPA is accepting New York's certification. Consequently, the State does not need to adopt a regulation for such sources, since none exist in the nonattainment area.

- Reevaluation of RACT

"Reevaluation of RACT" is intended to make more restrictive the criteria under which a source emitting VOCs may apply for and be granted a variance from State requirements to apply RACT to its operations. The State committed to this measure in its SIP and, by submitting Air Guide 20 which identifies the criteria that must be used has met its commitment.

- Controls at Major Facilities

"Controls at Major Facilities" is intended to limit the types of sources which can be included in a "facility-wide emission reduction plan" or bubble. The State committed to this measure in its SIP. Through revision to its Parts 228 and 234 New York now limits "facility-wide emission reduction plans" in the New York City metropolitan area to only those sources regulated by either Part 228 or Part 234.

*II. Partial Approval Actions*

A. Provisions Requiring Deferred Action

EPA is deferring action on Parts 228 and 234 because both regulations are currently being revised. The State has informed EPA that the revised regulations are due to be adopted during 1988, making the current version outdated. Besides including new emission limitations these revised

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regulations will include changes which will clarify and eliminate provisions where EPA has concerns with the current version. A SIP revision containing these revised regulations is expected soon after the State adopts them. Therefore, EPA is deferring action on Parts 228 and 234 because they will soon be outdated. A separate, new rulemaking action on the revised regulations will be initiated by EPA upon their submittal.

B. Provisions Requiring Submittal of Source-Specific SIP Submittals

Parts 228, 229, 230 and 234 include provisions that authorize the State to permit "a lesser degree of control" than necessary to achieve the explicit emission limitations in the SIP. These provisions, at §§ 228.3(d), 228.10, 230.7 and 234.3(c), would permit the State to revise explicit emission limitations to allow greater emissions than those allowed by the applicable SIP. Such variances from SIP emission limitations must be approved by EPA as SIP revisions under Section 110(a)(3) of the Clean Air Act.

While EPA is deferring action on Parts 228 and 234, the earlier versions of these regulations also contained these variance provisions. At the time of their approval (See 49 FR 3436, January 26, 1984), EPA stated that these variances or alternate requirements would not be recognized until they were submitted and approved by EPA, but a note to this effect was not included in the Code of Federal Regulations. In order to eliminate any confusion concerning the status of variance provisions, a note is now being included in the table in 40 CFR, Section 52.1679 under "Comments" for Parts 228, 229, 230 and 234. Under the Clean Air Act, variances issued by a state under provisions such as those addressed here cannot be recognized by EPA until they are submitted by the State and approved as revisions to the New York SIP.

C. Provisions Receiving Approval

Except for those sections identified earlier in Sections II. A and B of today's notice, Parts 229 and 230 are being approved by today's action.

Conclusion

EPA is approving the revisions made to Parts 200, 229 and 230 as part of the New York SIP. EPA is including a clarifying note with respect to the requirements for SIP revisions for any variance that the State may decide to authorize under §§ 229.10 and 230.7 as well as similar variance provisions in previously approved Parts 228 and 234.

EPA is deferring action on Parts 228 and 234 (except for a correction to the CFR).

EPA is accepting the State's certification of no sources subject to the CTG for the control of VOC emissions from the manufacture of high-density polyethylene, polypropylene, and polystyrene resins.

EPA has also determined that the State has met two commitments made in its 1982 ozone and carbon monoxide SIP concerning the VOC control measures "Reevaluation of RACT" and "Controls at Major Facilities."

This notice is issued as required by Section 110 of the Clean Air Act as amended. The Administrator's decision regarding the approval of this plan revision is based on its meeting the requirements of Section 110 of the Clean Air Act and 40 CFR Part 51.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit within May 8, 1989. This action may not be challenged later in proceedings to enforce its requirements (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control ozone, Incorporation by reference.

Note.—Incorporation by reference of the State Implementation Plan for the State of New York was approved by the Director of the Federal Register on July 1, 1982.

Date: February 27, 1989.

William K. Reilly,

*Administrator.*

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Title 40, Chapter I, Subchapter C, Part 52, Code of Federal Regulations is amended as follows:

### Subpart HH—New York

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.1670 is amended by adding paragraph (c)(77) to read as follows:

§ 52.1670 Identification of plan.

* * * * *

(c) * * *

(77) Revisions to the State Implementation Plan submitted by New York State Department of Environmental Conservation for controlling volatile organic compounds.

(i) Incorporation by reference. Adopted regulations Parts 200, 229, and 230, submitted on March 15, 1985.

(ii) *Additional material.* (A) Letters dated December 31, 1984 and March 15, 1985 concerning SIP commitments for "Reevaluation of RACT," and "Controls at Major Facilities," respectively.

(B) Letters dated November 2, 1984 and April 3, 1987 concerning the manufacture of high-density polyethylene, polypropylene, and polystrene resins.

3. Section 52.1679 is amended by revising the entries for Parts 200, 228, 229, and 234 and adding a new entry for Part 230 to the Table in numerical order to read as follows:

§ 52.1679 EPA—approved New York State regulations.

| New York State regulation | State effective date | Latest EPA approval date | Comments |
|---|---|---|---|
| Part 200, General Provisions | 4/11/85 | [Date & Citation of this notice] | The maximum operating heat input (200.1(gg)) will be as specified on a permit to construct or certificate to operate as per letter of Apr. 27, 1983 from H. Hovey, NYSDEC. Redesignation of nonattainment areas to attainment areas (200.1(ll)) does not relieve a source from compliance with previously applicable requirements as per letter of Nov. 13, 1981 from H. Hovey, NYSDEC. |



—Continued

| New York State regulation | State effective date | Latest EPA approval date | Comments |
|---|---|---|---|
| Part 228, Surface Coating Processes: | | | |
| 228.1, Applicability and Compliance | 8/23/79 | 11/10/80, 45 FR 74472 | Group I CTG sources are subject to final compliance dates as they appear in Section 228.1, effective Aug. 23, 1979. |
| 228.1–228.8 | 8/11/83 | 1/26/84, 49 FR 3439 | Variances adopted by the State pursuant to Section 228.3(d) become applicable only if approved by EPA as SIP revisions. |
| Part 229, Petroleum Liquid Storage Facilities | 4/11/85 | [Date & Citation of this notice] | Variances adopted by the State pursuant to Section 229.10 become applicable only if approved by EPA as SIP revisions. |
| Part 230, Gasoline Dispensing Sites and Transport Vehicles | 4/11/85 | ...do... | Variances adopted by the State pursuant to Section 230.7 become applicable only if approved by EPA as SIP revisions. |
| * * * | * | * | * |
| Part 234, Graphic Arts | 4/7/83 | 1/26/84, 49 FR 3439 | Variances adopted by the State pursuant to Section 234.3(c) become applicable only if approved by EPA as SIP revisions. |

4 Section 52.1683 is amended by adding new paragraph (c) as follows:

§ 52.1683

§Control strategy: Ozone.

* * * * *

(c) Manufacture of High-Density Polyethylene, Polypropylene, and Polystyrene Resins.

[FR Doc. 89–4990 Filed 3–6–89; 8:45 am]

BILLING CODE 6560–01–M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[MM Docket No. 88–147; RM–5862]

### Radio Broadcasting Services; Los Banos, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 295A to Los Banos, California, as requested by Ethnic Radio of Los Banos, Inc., thereby providing that community with its second local FM broadcast service. Reference coordinates for Channel 295A at Los Banos are 37–03–43 and 120–50–54. With this action, the proceeding is terminated.

DATES: Effective March 31, 1989. The window period for filing applications on Channel 295A at Los Banos, California, will open on April 3, 1989, and close on May 3, 1989.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530, concerning the allotment. Questions related to the window application filing process should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau, (202) 632–0394.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88–147, adopted January 31, 1989, and released March 1, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments for California, is amended by adding Channel 295A under the entry for Los Banos.

Federal Communications Commission

Steve Kaminer,

*Deputy Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 89–5128 Filed 3–6–89; 8:45 am]

BILLING CODE 6712–01–M

### 47 CFR Part 73

[MM Docket No. 88–253; RM–6162]

### Radio Broadcasting Services; Avon, CO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 276C2 for Channel 276A at Avon, Colorado, and modifies the Class A license of Rocky Mountain Wireless, Inc., for Station KZYR(FM), as requested, to specify operation on the higher class channel. This will provide Avon with its first wide coverage area FM service. Reference coordinates for Channel 276C2 at Avon are 39–36–58 and 106–28–57. With this action, the proceeding is terminated.

EFFECTIVE DATE: March 31, 1989.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88–253, adopted January 26, 1989, and released March 1, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments for Colorado, is amended by removing Channel 276A and adding Channel 276C2 under the entry for Avon.

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Federal Communications Commission
Steve Kaminer,
*Deputy Chief, Policy and Rules Division, Mass Media Bureau.*
[FR Doc. 89-5129 Filed 3-6-89; 8:45 am]
BILLING CODE 6712-01-M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 216

[Docket No. 90224-9045]

### Regulations Governing the Importation of Tuna Taken in Association With Marine Mammals

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** NMFS issues this interim final rule in response to amendments to the Marine Mammal Protection Act (MMPA) in 1984 and 1988. The rule amends marine mammal regulations regarding the importation of yellowfin tuna from nations with purse seine vessels fishing in the eastern tropical Pacific Ocean (ETP) and for the first time covers intermediary nations, which are nations that may or may not fish in the ETP but import yellowfin tuna and subsequently offer tuna or tuna products for importation into the United States.

Under this rule, any nation that has purse seine vessels in the ETP and that wishes to have yellowfin tuna it harvests imported into the United States must satisfy two categories of requirements by providing documentary evidence that: (1) The nation has adopted a regulatory program governing the incidental taking of marine mammals in the fishery that is comparable to the program of the United States, and (2) the average rate of incidental mortality of marine mammals in the fishery by its vessels is comparable to the rate of incidental mortality of marine mammals from fishing by the U.S. fleet as specified in the 1988 amendments. The rule also generally requires that any intermediary nation which wants to export yellowfin tuna and tuna products to the United States must ban the importation of yellowfin tuna and tuna products from any nation that is prohibited from exporting directly to the United States.

**DATES:** This rule is effective March 7, 1989. Comments on this rule must be received by May 8, 1989.

**ADDRESS:** Comments may be mailed to E. Charles Fullerton, Regional Director, Southwest Region, National Marine Fisheries Service, NOAA, 300 South Ferry Street, Terminal Island, CA 90731. A copy of this rule and the Environmental Assessment/Regulatory Impact Review may be obtained from this same address.

**FOR FURTHER INFORMATION CONTACT:** E.C. Fullerton (Director, Southwest Region, NMFS), 213-514-6198.

**SUPPLEMENTARY INFORMATION:**

#### Background

NMFS issued an interim final rule on March 18, 1988 (53 FR 8911), amending 50 CFR 216.24 to modify the importation requirements for yellowfin tuna caught in association with marine mammals by foreign purse seine vessels in the ETP. As a result of comments received on the interim final rule, modifications and clarifications have been made to the rule. In addition, on November 23, 1988, the President signed into law the Marine Mammal Protection Act Amendments of 1988 (Pub. L. 100-711) which contains several specific instructions relating to regulation of tuna imports. This amendment broadened considerably the scope of persons affected by the import rule. Particularly, persons in nations that are defined as "intermediary nations" in this rule were not as significantly affected by the interim final rule published in March 1988. In order to provide an opportunity to comment on these regulations, this interim final rule has a 60-day comment period.

Additional background information is available in the preamble to the interim final regulations published in the **Federal Register** on March 18, 1988.

#### MMPA Amendments of 1988

Many of the changes made by the 1988 amendments directly address requirements for nations wishing to have yellowfin tuna or tuna products imported into the United States. Other changes are directed toward the domestic tuna purse seine fishing industry and affect this import rule because foreign harvesting nations must have marine mammal protection measures that are comparable to those of the United States.

These regulations require, implementing the 1988 amendments, that by the beginning of the 1990 fishing season, a harvesting nation must have the same prohibitions on purse seine sets on pure schools of species of marine mammals, conducting sundown sets, and on other activities that are made applicable to U.S.-flag vessels by the 1988 amendments in order to have a program comparable to the United States. The sundown set prohibition must provide that sets must be completed through backdown to rolling the net to sack-up within one-half hour after sundown (an operator who consistently has had and continues to have an average mortality rate in observed sundown sets that is no greater than the average of the fleet in daylight sets may be exempted from this prohibition.) Two other new marine mammal protection measures and prohibitions a foreign nation must adopt for the purposes of comparability by the beginning of 1990 are: (1) A prohibition on the use of explosives, other than explosives equivalent to U.S. Department of Transportation rated Class C agricultural pest control devices; and (2) a system to identify, provide remedial training, and remove from the fishery operators whose mortality rate is consistently and substantially above the majority of the fleet.

In regard to observer coverage, these regulations require that fishing by the nation's tuna fishing fleet of purse seine vessels of greater than 400 tons carrying capacity, including all certified charter vessels operating under its laws, must be monitored by observers of the Inter-American Tropical Tuna Commission (IATTC) or another international observer program in which the United States participates. The sampling level achieved by that observer program must be equal to that achieved for the U.S. fleet for the same period, unless the Secretary of Commerce finds that an alternative observer program will provide a reliable estimate of the mortality rate of the nation's fleet. Further, a harvesting nation's fleet incidental mammal mortality rate to be comparable must not exceed twice that of the U.S. fleet for the same period by the end of 1989 and must not exceed 1.25 times that of the U.S. fleet for the same period by the end of 1990 and for subsequent years. In addition, the number of eastern spinner dolphin (*Stenella longirostris*) and coastal spotted dolphin (*Stenella attenuata*) incidentally killed by the nation's fleet cannot exceed 15 percent and 2 percent, respectively, of the nation's total marine mammal mortality during 1989 and for any subsequent fishing year.

To provide a reasonable time period for a nation to respond to future changes in the U.S. program, these regulations provide that any new prohibitions or marine mammal protection measures adopted in the future by the United States for its vessels must be substantially adopted and implemented



within six months of the U.S. implementation to avoid a finding that a program is no longer comparable to that of the United States. Failure of a harvesting nation to satisfy any of these conditions will result in a negative finding and a ban on the importation of its yellowfin tuna into the United States.

A substantial change from the interim final rule published in March 1988 is that these regulations apply to intermediary nations as mandated by the 1988 amendments. Except as noted below, any nation from which yellowfin tuna or tuna products will be imported into the United States must certify that it has acted to ban importation of yellowfin tuna and tuna products from any nation which is banned from directly importing them into the United States. The intermediary nation must implement its ban no later than 60 days after the United States bans such imports. These regulations provide that failure of an intermediary nation to certify within 90 days of the U.S. ban that it has implemented its ban will result in the United States prohibiting entry of all yellowfin tuna and tuna products from the intermediary nation. However, a nation which the Secretary determines does not obtain any part of its tuna supply from embargoed nations, will not be required to certify that it has banned imports from the embargoed nation or nations.

Another substantial change required by the 1988 amendments is that should a ban on imports of yellowfin tuna and tuna products from either a harvesting or intermediary nation under these regulations persist for six months, NOAA must certify that fact to the President. That certification will be deemed to be a certification under section 8(a) of the Fishermen's Protective Act of 1967 (22 U.S.C. 1978(a)). The ultimate effect of such a certification could be a ban on importation of all fish products from the subject nation into the United States. The ban would remain in effect so long as the ban on yellowfin tuna and tuna products persists under these regulations.

#### Comments on the Original Interim Final Rule and Responses

Seven comments were received on the original interim final rule. Letters were received from conservation organizations, a segment of the tuna fishing industry, the Inter-American Tropical Tuna Commission, and the Marine Mammal Commission. A summary of the comments received and the NMFS responses to these comments are as follows.

1. Comment: Several commenters expressed concern that the phase-in period in the regulations was longer than necessary and should be reduced to require that the kill rates of other nations be immediately comparable with the U.S. rate.

*Response:* The MMPA Amendments of 1988 established specific standards of mortality rate comparability. By the end of 1989, nations must have an average annual mortality rate no greater than twice that of the U.S. fleet average for the same period and by the end of 1990, their mortality rates can be no greater than 1.25 times that of the U.S. fleet for the same period. This rule implements those standards.

2. Comment: Several commenters indicated that the collection of kill and serious injury data and data on other forms of incidental take, including harassment and encirclement, should be required for individual species.

*Response:* The NMFS has modified the regulations to require the collection of kill and serious injury data for individual stocks but decided not to include harassment and encirclement data. As noted in the responses to comments in the March 1988 interim final regulations and in the response to comment 4 here, NMFS has chosen the rate of kill as the standard for the rate comparison test, and not other types of "takings" like chase, encirclement, or capture because "kill" is the most meaningful standard established by regulations that can be monitored and measured with the greatest accuracy. Marine mammal mortality is the "take" standard by which the U.S. tuna fleet is regulated under the quota system in effect under the MMPA.

3. *Comment:* Several comments were received indicating that the observer sample size should be greater than the 33 percent required.

*Response:* The MMPA amendments of 1988 require that the foreign harvesting nations' marine mammal mortality be monitored by observers from the IATTC or another international program in which the United States participates. That observer program must achieve a sample rate equal to that achieved by the United States for the same period, unless the Secretary of Commerce determines that an alternate observer program will provide a sufficiently reliable estimate of the nation's mortality rate. That determination must be published in the **Federal Register** no less than sixty days before an alternate observer program can be accepted as meeting this requirement.

4. *Comment:* Two commenters indicated that kill-per-set should be used as a performance standard.

*Response:* The NMFS still finds that kill-per-ton is the best single rate to use in the comparability test implemented in these regulations. Of the three performance standards evaluated by NMFS, kill-per-day, kill-per-ton, and kill-per-set, kill-per-set is the most variable because of the way occasional problem sets (kill-per-set > 15 animals) affect the estimate of variance.

5. *Comment:* Two commenters recommended that participation in the IATTC observer program should be mandatory.

*Response:* The NMFS continues to support the IATTC observer program as it is the only international porpoise research and observer program at the present time. This does not preclude, however, recognition of an alternate program proposed by any nation or regional body which will meet the requirements under the MMPA as amended in 1988. The Assistant Administrator will review any proposed alternate observer program to ascertain whether the observer training qualifications and requirements, methods of assigning observers to vessels, and the statistical reliability and accuracy of the data collected can serve as an acceptable basis for making mortality estimates. This review also could include an on-site review of the nation's porpoise protection program. The Assistant Administrator's proposed determination will be published in the **Federal Register** at least 60 days before implementation.

6. *Comment:* One commenter requested that the terms "consistently" and "drastically" should be defined in relation to comparability of achieving 33 percent coverage in foreign observer programs.

*Response:* The MMPA Amendments of 1988 have resulted in a modification of this portion of the rule. The basic observer coverage required is at least the same as achieved by the United States for the same period. Any exception from this requirement will require notice in the **Federal Register** at least 60 days before final action is taken, as explained in response five.

7. *Comment:* Two commenters questioned the basis for allowing the foreign kill rates to be 25 percent and 75 percent higher than the United States.

*Response:* This provision was eliminated to comply with the MMPA Amendments of 1988. Accordingly, all nations will be required to maintain a kill-per-ton rate within 25 percent of the U.S. rate by the end of 1990, regardless

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of the number of vessels in their fishing fleet.

8. *Comment:* One commenter requested that nations be required to submit data for all years from 1986–1991 and subsequent years and that these data be made publicly available.

*Response:* The NMFS has clarified the language to require nations to submit data for each year any of their vessels fished in the ETP beginning in 1986. Summary data for individual nations will be publicly available at the time a finding is made if three or more vessels participated in that nation's fishery. In accordance with NOAA's standard confidentiality procedures, confidential business information from nations with fewer than three vessels in this fishery will not be released to the public. However, the overall kill rate for even the nations with fewer than three vessels will be made available.

9. *Comment:* One commenter indicated that a finding should be terminated if a nation does not submit the required documentation by August 16, 1988, or fails to submit a complete annual report by July 31.

*Response:* The NMFS agrees and has modified the language in the regulations (see modification 10 on page 19) to clarify this point.

10. *Comment:* two commenters suggested that an overall ceiling be placed on the foreign kill rate and also that quotas be established for individual stocks and the aggregate kill of porpoise using current kill rates and annual net recruitment rates.

*Response:* The NMFS review of the 1984 and 1988 amendments to the MMPA and their legislative histories finds explicit instructions on various aspects of comparability, including establishment of a kill rate standard. There is not any indication that foreign quotas are contemplated. These regulations establish the kill rate standards and the species/stock limitations required by the 1988 amendments.

As required by the 1988 amendments, this rule limits the percentage of eastern spinner dolphin and coastal spotted dolphin that can be killed by each nation to 15 percent and 2 percent, respectively, of that nation's total annual mortality starting in 1989.

11. *Comment:* One commenter pointed out that there did not appear to be a specific requirement for fish being imported to have been caught while a finding of comparability was in effect, and that such a requirement should be explicitly included in the regulations.

*Response:* Neither the 1984 nor the 1988 amendments provide for such a treatment of tuna offered for importation. In order for a nation to receive an affirmative finding, the nations must demonstrate that it has in place a mammal protection program comparable to that of the United States and that its purse seine vessels have achieved a mortality rate comparable to that of the U.S. fleet over the same time period. NMFS believes that tuna caught during the period when the nation's fleet performance warranted a finding of comparability should be allowed entry into the United States.

12. *Comment:* Two commenters requested that the Certificate of Origin be modified to indicate the country that actually caught the canned tuna being imported and the dates that the fish were caught in order to prevent the importation of tuna taken when findings were not valid.

*Response:* The NMFS has modified the Certificate of Origin form to require nations exporting yellowfin tuna, both canned and non-canned, to the United States to provide the trip dates for the catch included in the shipment. This information will allow the U.S. Government to determine the identity of harvesting nations for tuna that is imported into the United States from an intermediary nation.

13. *Comment:* One commenter requested that the declaration statement on the Certificate of Origin form be changed to use language contained in 28 U.S.C. 1746(1) for unsworn declarations executed outside the United States.

*Response:* The NMFS reviewed the declaration statement and has decided not to modify the language which is patterned after the language used by the U.S. Customs Service in its declaration statement on documents accompanying the Certificate of Origin.

14. *Comment:* One commenter requested clarification on the scope of an embargo on nations without findings.

*Response:* The MMPA Amendments of 1988 modified the scope of the import ban envisioned in the original interim final rule. Consequently, the rule now provides that a nation purse seining for yellowfin tuna in the ETP (i.e. harvesting nation) without a finding cannot export any yellowfin tuna or tuna products to the United States regardless of the ocean area where the tuna were caught. Further, if the import ban remains in effect for six months, the ban may be broadened to include all fishery products from the harvesting nation. Intermediary nations with a history of importing eastern tropical Pacific yellowfin tuna, that desire to export yellowfin tuna or tuna products to the United States must certify to the U.S. Government that they have acted within 60 days of the effective date of the U.S. embargo of the harvesting nation to ban imports of yellowfin tuna and tuna products from that nation otherwise their yellowfin tuna and tuna products will also become subject to an import ban.

15. *Comment:* Two commenters indicated that a program should be established to verify foreign documentation and that comparable enforcement methods, effectiveness, and levels of penalties should be required.

*Response:* The NMFS will review all documentation and other available sources to verify the enactment of marine mammal laws, regulations, and guidelines and to assess the implementation of effective enforcement programs. An affirmative finding will not be granted unless all of these program areas, including enforcement, are comparable to the United States. However, the specific elements of enforcement programs are not required to be identical to those of the United States.

16. *Comment:* One commenter suggested an environmental impact statement should be prepared for the regulations.

*Response:* The NMFS has prepared an environmental assessment for the regulations which is available to the public. The Assistant Administrator has determined that no significant impact on the human environment, other than economic impacts, will occur as a result of these regulations and that no environmental impact statement will be required. Due to the potential for economic impacts, a Regulatory Impact Analysis will be prepared when a final rule is prepared to supersede this interim rule.

17. *Comment:* One commenter indicated that all required documents should be submitted in English, unless there is in-house translating capability.

*Response:* The NMFS has concluded that this additional burden on foreign countries is not warranted. The NMFS prefers receiving original language documents and obtaining its own translations, which it is committed to complete in a timely manner.

**Modifications to the Original Interim Final Rule**

This interim rule makes the following changes from the original interim rule:

1. Modifies the definition of "ETP Fishing Area 1" in § 216.3 to include an eastward boundary of 86° W. longitude which more accurately defines the region of differential mortality rate identified by IATTC. Other definitions added by the March 18, 1988 interim rule continue to apply unchanged. For ease of reference, those definitions that are not changed from the previous interim rule are as follows:

"ETP" means the eastern tropical Pacific Ocean which includes the Pacific Ocean area bounded by 40° N. latitude, 40° S. latitude, 160° W. longitude and the coastlines of North, Central and South America. "ETP Fishing Area 2" means the offshore area south of 14° N. latitude, north of 6° N. latitude, east of 150° W. longitude, and west of 123° W. longitude. "ETP Fishing Area 3" means all other areas within the ETP not included in Fishing Areas 1 and 2. "Harvesting nation" means the country under whose flag one or more fishing vessels are documented, or which has by formal declaration agreed to assert jurisdiction over one or more certified charter vessels, from which vessel(s) fish are caught that are a part of any cargo or shipment of fish to be imported into the United States, regardless of any intervening transshipment. "Kill-per-ton" means the number of small, toothed-cetaceans (marine mammals) killed-per-short ton of yellowfin tuna caught in sets made on marine mammals. "Purse seine set on common dolphins" means a purse seine set in which more than 50 percent of the marine mammals captured are common dolphins.

2. Adds the definition of "Intermediary nation" in § 216.3 to identify nations that are now required to ban importation of yellowfin tuna from nations that are prohibited from importing yellowfin tuna directly into the United States.

3. Modifies the language in paragraph (e)(3)(i) to reflect the addition of requirements for intermediary nations to qualify for importing tuna into the United States.

4. Revises paragraph (e)(3)(ii) to adopt the new U.S. Harmonized Tariff Codes.

5. Modifies the Yellowfin Tuna Certificate of Origin in paragraph (e)(3)(ii) to require that "the nation under whose laws the vessel operated" be identified instead of the country of registry for the harvesting vessel. This provides for the proper treatment of certified charter fishing vessels. NMFS added questions about the location of the harvest and the vessel trip dates for the tuna included in the shipment. These modifications were necessary to improve the monitoring of tuna shipments that may be submitted for importation into the United States from embargoed nations. The language in the declaration statement in the Certificate of Origin in sub-paragraph (e)(3)(ii)(G) was modified to conform with the language used by the U.S. Customs in its documentation accompanying the Certificate of Origin, and adds a cannery representative as a person who can sign the certificate. In the case of canned tuna offered for importation into the United States, a representative of the foreign cannery which processed the tuna is the person who has access to the information needed to accurately complete the Yellowfin Certificate of Origin because one shipment of canned tuna may contain the catch from several vessels.

6. Modifies paragraph (e)(5)(ii)(A) to reflect the 1988 MMPA amendments which require that mortality rate data be collected by the IATTC or equivalent international observer program in which the United States participates and to focus attention on the new measures that must be included in a harvesting nation's program for that program to remain comparable.

7. Clarifies the language in paragraph (e)(5)(ii)(C) to require nations to submit data for any vessel that fished in the ETP any time during a calendar year; and requires the inclusion of data on the number of marine mammals observed to be seriously injured, the number of trips, and on the number of purse seine sets by fishing area.

8. Adds a new paragraph (e)(5)(ii)(D) to require the submission of data for the individual species and stocks currently identified in the IATTC observer program plus coastal spotted dolphins. These species and stocks are northern and southern offshore spotted dolphin, eastern spinner dolphin, northern and southern whitebelly spinner dolphin, northern, southern and central common dolphin and other dolphins.

9. Modifies paragraph (e)(5)(ii)(E) to comply with the 1988 amendments to the MMPA. This paragraph now requires the data reported to the United States to be collected by the IATTC or other international observer program in which the United States participates. It also requires that the Assistant Administrator issue a negative finding to a nation whose observer coverage for any year falls below the level of observer coverage achieved by the U.S. program for the same period, unless the Assistant Administrator determines that the level of coverage achieved by the harvesting nation provides a sufficiently reliable estimate of the average mortality rate for that nation's fleet.

10. Clarifies the language in paragraph (e)(5)(iii) to explain that a finding may be terminated before the end of the next calendar year if the subsequent annual report is not submitted by July 31 (for nations participating in the IATTC observer program, within 14 days after the date the IATTC releases data on porpoise mortality), or if that report indicates the nation's program or mortality rate are no longer comparable to the United States.

11. Adds to paragraph (e)(5)(v) a new paragraph (B) requiring harvesting nations to adopt substantially the same restrictions for their vessels within 180 days of the date such restrictions are applied to U.S. vessels, unless other timing is specifically required in the statute.

12. Adds a new paragraph (e)(5)(v)(D) to reflect the 1988 MMPA amendment requirement for the harvesting nations to maintain observer coverage equal to that achieved by the United States, unless the Assistant Administrator determines a lesser level of coverage provides a sufficiently accurate sample of the nation's fleet mortality rate;

13. Redesignates paragraph (e)(5)(v)(A)(4) as (e)(5)(v)(E) and modifies the language to establish that, by the end of the 1990 fishing year, the average kill-per-ton rate for any nation, regardless of its fleet size, can be no more than 25 percent greater than the U.S. average for the same time period rather than the 25/75 percent standard previously adopted. This subparagraph also incorporates a provision for weighing a nation's observed mortality before comparing it to the U.S. rate to account for dissimilar fishing activity between the two nations' fleets in the three designated ETP areas. The weighing provision was contained in paragraph (e)(5)(v)(D) of the original interim rule.

14. Adds a new paragraph (e)(5)(v)(F) which reflects the mortality rate comparison standards contained in the MMPA amendments. For data collected through 1989, a nation's mortality rate must be no greater than twice the U.S. rate for the same period.

15. Adds a new paragraph (e)(5)(v)(G) which establishes that harvesting nations must limit the kill of eastern spinner dolphin and coastal spotted dolphin to 15 percent and 2 percent, respectively, of the nation's total annual dolphin mortality for 1989 and subsequent fishing years.

16. Adds a new paragraph (e)(5)(v)(H) which requires the Assistant Administrator to consider the harvesting nation's cooperation in conducting dolphin population assessments when making a finding.

17. Deletes paragraph (e)(5)(v)(B) which contained proposed criteria for comparing a harvesting nation's mortality rate to the U.S. mortality rate during a five-year baseline period (1986–90). The criteria for comparison are now found in section (e)(5)(v)(A). The negative trend test which was proposed has been eliminated in response to the 1988 MMPA amendments.

18. Eliminates paragraph (e)(5)(v)(C) which described the variable 25/75 percent standard for nations with fewer than five observed trips. That standard

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was changed to 25 percent only and is now contained in (e)(5)(v)(E).

19. Eliminates paragraph (e)(5)(v)(D) which provided for weighing the harvesting nation's mortality rate before comparing it with the U.S. rate. The weighing provision is now contained in (e)(5)(v)(E).

20. Eliminates paragraph (e)(5)(v)(E) which would have allowed the Assistant Administrator to consider special circumstances with a request for a finding.

21. Eliminates paragraph (e)(5)(vii)(B) and modifies paragraph (e)(5)(vii)(A) to reflect the submission of applications for initial findings that were received in response to the original interim rule. The findings for countries that had findings in effect on April 15, 1988, that did not submit the required paperwork by August 15, 1988, terminated on October 15, 1988.

22. Adds paragraph (e)(5)(viii) to require that the kill and serious injury data for individual species and stocks of marine mammals taken in 1986, 1987, and 1988 be included in the annual report covering 1988. This is necessary as the effective date of this rule requiring these new data will be after the August 15, 1988 due date for submitting applications for an initial finding under the interim final rule.

23. Adds a new paragraph (e)(5)(ix) which establishes the requirement for intermediary nations to ban imports of yellowfin tuna from any nation that is banned from exporting yellowfin tuna directly to the United States and provides for an embargo against yellowfin tuna and tuna products from any intermediary nation that does not comply with this requirement. The Secretary may waive this requirement for intermediary nations with no history of importing tuna from embargoed nations.

24. Adds a new paragraph (e)(5)(x) which requires certification of a nation under section 8 of the Fishermen's Protective Act of 1967 if an embargo against that nation under this section remains in effect for six months.

25. Eliminates the requirement in (e)(5)(i) that the Assistant Administrator consult with the Department of State in making a finding that imports can be allowed into the United States. Because the regulations did not provide explicitly for any role for the Department of State in the converse situation, in Agency decision-making leading to tuna being embargoed, and because the Department of State is not provided a consultive role in the Marine Mammal Protection Act, and based upon the actual needs of the Department of State in implementing this system, the limited consultation provision is replaced with a provision in the regulations at (e)(5)(xi) providing that the Assistant Administrator will promptly advise the Department of State of both embargo decisions and actions and finding decisions for its information and use.

26. Makes various editorial and numbering changes to conform the numbering as necessary to the changes made and to improve the clarity of certain sentences.

**Revised Interim Final Rule**

*Requirements for Importation: Two-Part Test*

This revised interim final rule implements two categories of requirements for yellowfin tuna importation certifications ("Two Part Test"). This Two Part Test will be used each year to determine whether to grant or extend a finding of comparability for any nation that has one or more vessels or certified charter vessels of greater than 400 short tons carrying capacity that purse seines for tuna in the ETP. This minimum vessel size is consistent with the U.S. experience that smaller vessels cannot effectively set and do not set on marine mammals.

First, a nation must have a regulatory program to protect marine mammals that is comparable to the U.S. program. The annual evaluation of the regulatory program will consider the comparability of laws, regulations, guidelines, the observer program, and the enforcement program which govern vessel operators and the gear and techniques they must use to prevent or minimize the number of marine mammals killed and seriously injured when purse seining for yellowfin tuna.

The second part of the test assesses the effectiveness of each nation's regulatory program based upon the nation's annual marine mammal kill rate. Each nation must demonstrate, using reliable and verifiable data, that the average annual rate of incidental mortality of marine mammals per ton of yellowfin tuna taken with marine mammals from fishing vessels operating under its laws is comparable, as set forth in these regulations, to the incidental rate of marine mammal mortality achieved by U.S. vessels fishing in the same geographic area and in association with the same species groups. For purposes of this test, two species groups are considered, common dolphins and all other marine mammal species. We will also consider three geographical areas. The reasons for partitioning mortality data by species group and by area were explained in the preamble of the earlier rule (53 FR 8910). Beginning with fishing in 1988, limitations on the taking of eastern spinner dolphin and coastal spotted dolphin also are included in the test. The comparable regulatory program test will be applied immediately and the kill rate test will be applied beginning in 1990. The kill rate test requires that the average kill per ton of a harvesting nation's fleet must be no greater than twice that of the U.S. fleet for the same time period by the end of 1989 and no greater than 1.25 times the U.S. rate for the same time period by the end of 1990 and thereafter.

Additional information may be requested from the nation before issuing an affirmative finding. An affirmative finding for the regulatory program test is likely to be issued if the program contains provisions substantially similar to those of the United States. Copies of the relevant U.S. regulations have been provided to all interested nations. Each nation's submission must be sufficiently documented and in adequate detail so that the Assistant Administrator will be able to determine that the nation's regulatory program is comparable in substance and effectiveness to the U.S. program.

The minimum documentation requirements are set forth in the regulations, and further explained in this preamble. Any nation that does not have an existing finding of comparability but has one or more vessels of greater than 400 short tons carrying capacity using purse seine gear in the ETP that desires to export yellowfin tuna or yellowfin tuna products to the United States must submit documentation to support a finding at least 120 days prior to the date it wishes the finding to be effective. A nation which has an affirmative finding in effect and is applying for renewal, must apply for renewal annually by submitting its report by July 31 or, if the nation participates in the IATTC observer program, within 14 days after the IATTC releases the required observer data, whichever is later. For renewal of an affirmative finding, the regulations provide that only new and changed information, including a description of the implementation of its program, must be provided. Existing information on file need not be resubmitted.

*Comparable Regulatory Program Test*

1. Marine mammal rescue gear, equipment and procedural requirements and guidelines.

At a minimum, the gear and procedural requirements must include the installation and use of a superapron or fine mesh system in the purse seine net, a backdown procedure, the availability of speedboats with towing bridles to hold open nets, the availability of a raft to aid live animals after backdown, a prohibition on brailing and sacking up live animals from the net, and the installation and use during darkness of a lighting system capable of illuminating the backdown channel with at least 140,000 lumens. Sets on pure schools of eastern spinner dolphins and on pure schools of any other species of marine mammals except offshore spotted dolphin stocks, striped dolphin species, and common dolphin species must be prohibited.

By the beginning of the 1990 fishing year, additional requirements must be met for a program to be comparable. Purse seine sets on marine mammals must be required to be completed through backdown to rolling the net to sack-up by one-half hour after sundown, except that operators with demonstrated kill rates in sundown sets that are consistently as low as the fleet's daylight set average may be exempted from this prohibition. Use of explosive devices must be prohibited with the following exception. Explosive devices may be used to influence the movements of marine mammals, if the devices meet the following description (taken from 49 CFR 173.100(ii)):

> Explosive pest control devices, Class C explosives, consist of a cardboard-pasteboard type tube not exceeding 4 inches in length and ¾ inch in diameter or a shotgun shell type having an explosive projectile. They may contain a mixture of potassium perchlorate, aluminum powder, sulfur, black powder, smokeless powder or similar pyrotechnic mixture. The component which produces the audible effect may not contain more than 40 grains of explosive composition.

The 1988 amendments further require that NOAA study the effects of Class C explosive devices on marine mammals in the tuna fishery and possibly restrict or prohibit their use by April 1, 1989. Should additional restrictions be applied to U.S. vessels, similar restrictions would have to be adopted by other harvesting nations to maintain a comparable program.

*2. Observer Program*

An observer program must be used to monitor the effectiveness of marine mammal rescue gear and procedures and to record the number of marine mammals by stock which are killed and seriously injured during fishing operations. To be comparable with the U.S. observer program, a nation must participate in the IATTC or other international observer program in which the United States participates and that program must achieve a level of observer coverage equal to that achieved by the U.S. program during the same period. The Assistant Administrator may determine, after 60 days notice in the **Federal Register**, that an alternative observer program is acceptable because it will provide a sufficiently reliable estimate of the nation's mortality rate. This includes making a determination that an alternative program with a lower level of observer coverage is acceptable because it provides a sufficiently reliable estimate of a nation's mortality rate.

*3. A System to Deal With Operators With Problems*

An advisory group must exist to identify problems and to provide solutions to improve the performance of individual fishermen in reducing incidental marine mammal mortality. A panel of expert fishing captains is used by the U.S. industry as a peer advisory group to review and improve individual skipper performance. A similar peer advisory group established by an individual nation or cooperatively with other nations on a regional basis, would be considered comparable, as would an advisory group of technical experts. When working with operators with problems, we expect these advisory groups to pay particular attention to sets that had a mortality of 15 animals or more. The U.S. industry uses this level of mortality as a threshold level above which the individual set is examined to determine what the cause of high mortality was. These sets require special attention by the nation to analyze operator performance or the effectiveness of fishing techniques to avoid future mortalities from similar causes.

By the beginning of 1990, a nation must have a system for identifying operators with consistently and substantially higher mortality rates than the majority of the nation's fleet, for the purpose of providing remedial training to these operators, and, if performance does not improve to that of the majority of the fleet, for removing the operator from the fishery.

*Comparable Mortality Rate Test*

As required by the 1988 amendments, this rule requires that by the end of the 1989 fishing year, a nation must achieve a fleet average marine mammal kill-per-ton rate that is no greater than twice that of the U.S. fleet for the same time period. By the end of the 1990 fishing year, the foreign nation's rate may not exceed 1.25 times that of the U.S. fleet for the same time period. For the purposes of this comparable rate test, a nation may offer the average rate for the most recent five year period or the average rate for only the most recent year, whichever is lower. The method to be used to compare mortality rates is described in detail below. The rates of marine mammal mortality (kill-per-ton) estimated from extensive observer data have varied significantly for the U.S. fleet since 1979 in each fishing area (Figure 1). We assume that the foreign kill rate will also vary significantly from year to year. To reduce this variability, NMFS will use a five year running average for kill rate comparison in 1990 and in subsequent years. This will provide a larger data base for use in the analysis. Most nations purse seining for tuna in the ETP were participating in the IATTC observer program by 1986 and are expected to continue gathering adequate data during the interim period of 1986 through 1990. If a country does not have five years of adequate data because it was not fishing in the ETP for one or more years, NMFS will use up to five years of data from those years for which the country was fishing and has data. If a nation's kill rate for the most recent year is lower than the multi-year average, the lower of the two averages will be used for comparison.

There are significant differences in mortality rates in three different areas of the ETP (Figure 2). These areas are the major inshore area (Area 1) and offshore area (Area 2) and all other areas fished (Area 3). Also, the marine mammal kill rate in sets on common dolphin is significantly greater than the kill rate from sets on all other species. NMFS has decided that these differences should be accounted for in applying the kill rate test. This results in a more fair and accurate comparison than a simple comparison of rates which does not consider the effect of area and species differences upon mortality rates.

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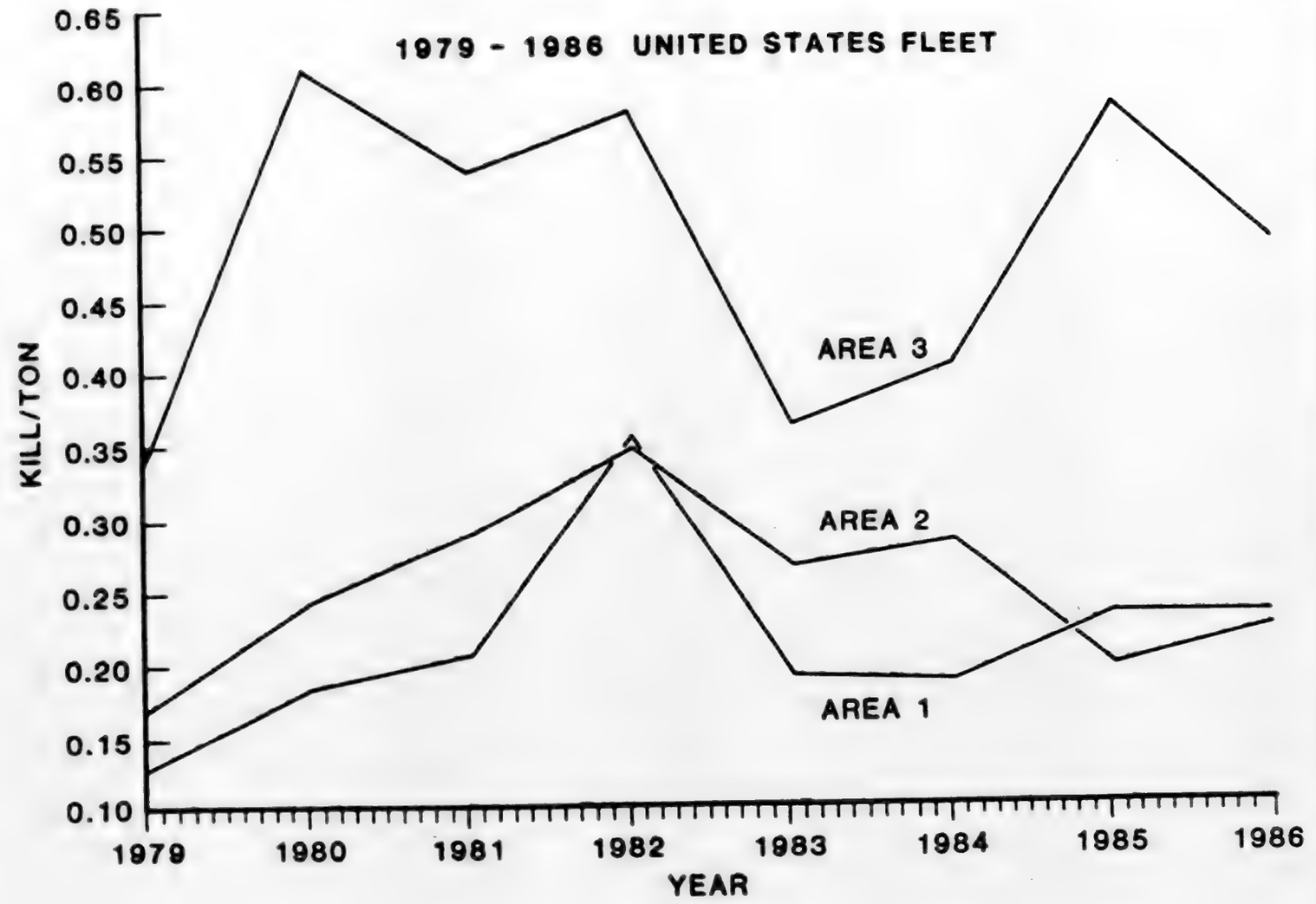



Figure 1. Kill-Per-Ton of Yellowfin Tuna Associated With Marine Mammals for the U.S. Fleet, 1979 - 1986.

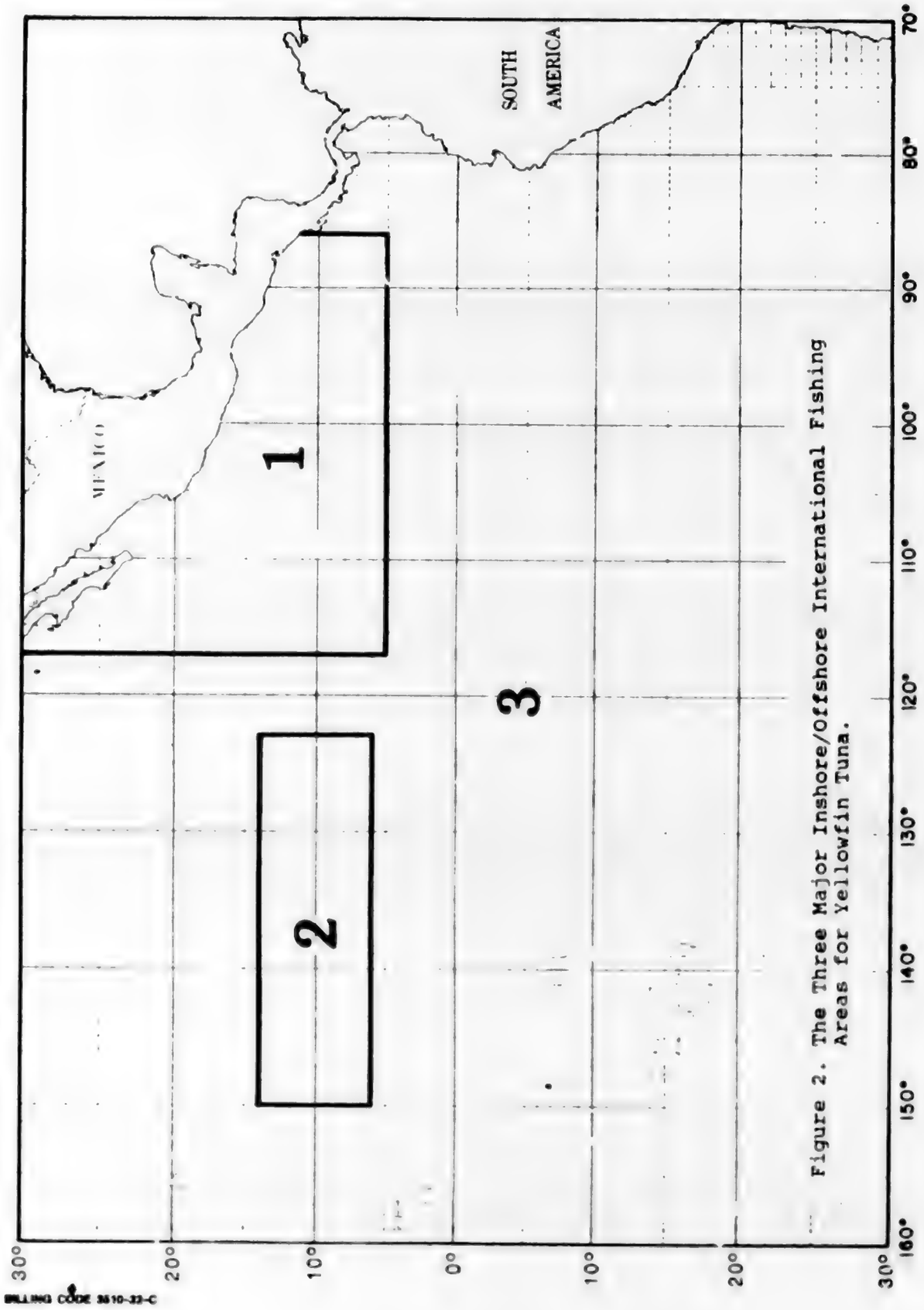



Figure 2. The Three Major Inshore/Offshore International Fishing Areas for Yellowfin Tuna.

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other nations will be required to take action under this rule, if the United States bans imports from any nation. Intermediary nations must certify to the U.S. Government that they have acted within 60 days of the U.S. ban to prohibit imports of yellowfin tuna and tuna products from a nation that is banned from directly exporting tuna to the United States. Intermediary nations that fail to provide such a certification within 90 days of the U.S. ban will not be allowed to import yellowfin tuna into the United States. The rule provides intermediary nations an additional 30 days to certify their action to the U.S. government. This period for notification to reach our government is intended to allow intermediary nations the full 60 days to be informed of the U.S. embargo of a nation's tuna and to take the necessary steps to prohibit import of the same products.

The reference to intermediary nations was contained in the 1988 amendments to the MMPA and is intended to prevent embargoed nations from circumventing the embargo by passing their tuna through other nations for importation into the United States. However, the amendment also provides the Secretary with discretion to consider its requirements and purposes satisfied without requiring formal governmental certifications when there is no reason to suspect that nations are importing tuna from embargoed nations. Accordingly, a nation, which the Secretary determines does not obtain any part of its tuna supply from embargoed nations, will not be required to certify that it has banned imports from the embargoed nation or nations. Each nation therefore, which expects to export tuna to the United States, should determine from its citizens whether yellowfin tuna from a nation whose tuna is prohibited from entry into the United States is also imported into their country. If a nation learns that it imported such tuna, then appropriate action, described above, should be taken. Should an intermediary nation be embargoed under this rule, other intermediary nations would be required to prohibit yellowfin imports from that nation as well, if they wish to continue to import tuna into the United States.

As of the date of publication of this rule, only El Salvador is prohibited from exporting yellowfin tuna and yellowfin tuna products to the United States. The U.S.S.R., which was prohibited from exporting yellowfin tuna to the United States under the previous rule (53 FR 8910, March 18, 1988), has not participated in the ETP fishery for over two years. Therefore, the prohibition on the importation of yellowfin tuna and tuna products into the United States is no longer appropriate and is hereby rescinded. The time period for intermediary nations to embargo tuna imported from these nations with existing embargoes will start running from the effective date of these regulations. The United States considers the publication of these regulations as the first effective opportunity to advise them to comply with these provisions recently added to the Marine Mammal Protection Act by the 1988 amendments.

*Embargo of All Fish Products*

This revised interim final rule requires that the Secretary of Commerce certify to the President when a ban on tuna imports under this rule remains in effect for six months. That certification will be considered a certification for the purposes of section 8 of the Fishermen's Protective Act of 1967 and could trigger an embargo on all fish products from the nation that was subject to the initial import ban. This provision applies to both harvesting and intermediary nations.

*Certifications in Effect Before August 16, 1988*

For harvesting nations, a finding of comparability (or "conformance") in effect before August 16, 1988, will continue in effect until a determination (either affirmative or negative) is made on a new request for a finding under these new regulations, if the request and required supporting documentation were submitted by August 16, 1988. If a request and documentation from a harvesting nation were not received by that date, the existing finding of conformance was rescinded and yellowfin tuna and tuna products from that nation were banned from importation into the United States. That ban continues until a new finding of comparability is made.

*Certifications in Effect on the Date This Rule is Published*

A finding of comparability that is in effect on the date these regulations are published in the **Federal Register** will remain in effect until a new finding is made based on the application for renewal that is required to be submitted by July 31, 1989 or, if the nation participates in the IATTC observer program, within 14 days after the IATTC release the required observer data, whichever is later. Should a nation with an affirmative finding fail to apply for a renewal of its finding by the required date, the finding will be terminated and imports from that nation will be banned.

*Confidentiality*

All data submitted by foreign nations in compliance with this rule will be kept confidential as allowed by U.S. law. Generally, this means that confidential business information will be made available to the public only in aggregated form.

**Classification**

This rule is being issued as an interim final rule because the statute requires harvesting nations meet action requirements by January 1, 1989, as well as additional requirements that must be in place by 1990. Public comment prior to publication is therefore impracticable.

The Assistant Administrator has determined that the modifications to the regulations being made at 50 CFR 216.24(e) will not have a significant impact on the human environment. NMFS has prepared an environmental assessment (EA) on the modification. The conclusion of that EA was a finding of no significant impact on the human environment, other than economic and social impacts. Therefore, an environmental impact statement is not required. The EA is available upon request (see **ADDRESS**).

The Under Secretary for Oceans and Atmosphere has determined that this rule is a "major" Federal action under Executive Order 12291. The potential annual effect on the U.S. economy, in the worst case, would exceed $100 million. However, this interim final rule is exempt from the advance review requirements of Executive Order 12291 under section 8(a)(2), which exempts actions that must meet statutory or judicial deadlines. Deadlines imposed by the Marine Mammal Protection Act Amendments of 1988 (Pub. L. 100-711) require that yellowfin tuna harvesting nations act to comply with provisions of the statute beginning January 1, 1989. This rule is being reported to the Director of the Office of Management and Budget with an explanation of why it is not possible to follow the procedures of that order.

The Regulatory Flexibility Act does not apply since the opportunity for public comment prior to publication of the interim final rule is not required by the Marine Mammal Protection Act or any other act. As a result, a Regulatory Flexibility Analysis was not prepared.

This rule contains collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). The collections which are subject to the Act are found at 50 CFR 216.24(e)(3) and (4) and have been approved by the Office of Management and Budget



Therefore, the comparable mortality rate test will compare a nation's average mortality rate to the average mortality rate of the United States which is weighted to account for dissimilar amounts of fishing activity between the United States and the foreign nation in three discrete fishing areas and for two groupings of dolphin species. The foreign nation's average mortality rate using the most recent year of data, or the average of all of the data available from the last five years, whichever is lower, will be used to compare with the kill rates from the U.S. fleet for the same period.

In addition to this comparable rate test, each nation must limit its annual incidental mortality of eastern spinner dolphin and coastal spotted dolphin to 15 percent and 2 percent of its total marine mammal mortality. If these levels are exceeded in 1989 or any subsequent fishing year, the Assistant Administrator cannot make an affirmative finding for that nation. As a consequence, that nation's yellowfin tuna will be embargoed for at least one year.

*Formulas Used to Calculate Foreign and U.S. Mortality Rates*

The mortality rate (dolphins killed/ton yellowfin caught) for each foreign nation $R_f$ is calculated using data stratified by year, species grouping and area as

$$R_f = \sum_{i=1}^{m}\sum_{j=1}^{2}\sum_{k=1}^{3} M_{ijk} \Big/ \sum_{i=1}^{m}\sum_{j=1}^{2}\sum_{k=1}^{3} C_{ijk}$$

where $M_{ijk}$ equals the number of dolphins killed during year i, of species group j and in area k and $C_{ijk}$ is the tons of yellowfin tuna caught during year i, on species group j and in area k. Note that m equals 1 if only the most recent year's data are used and equals 5 if the five-year running average is used.

The weighted average mortality rate for the U.S. fleet is calculated by weighing the U.S. rate by the proportion of the total yellowfin tuna caught by the foreign nation that was caught in each year, on each species grouping, and in each area. The U.S. weighted average ($R_{US}$) is calculated as:

$$R_{US} = (1/C\ldots)\left[\sum_{i=1}^{m}\sum_{j=1}^{2}\sum_{k=1}^{3} (K_{ijk}/T_{ijk})C_{ijk}\right]$$

where $K_{ijk}$ equals the number of dolphins killed by the United States fleet during year i, of species grouping j and in area k and $T_{ijk}$ equals the tons of yellowfin caught by the U.S. fleet during year i, on species grouping j and in area k. $C_{ijk}$ equals the tons of yellowfin tuna caught by the foreign nation during year i, on species grouping j, and in area k and C . . . is the total catch of the foreign nation for all years, species groupings, and areas combined.

Finally, the U.S. rate ($R_{US}$) is multiplied by 1.25 to apply the standard that nations must have a kill rate within 25 percent of the U.S. rate. If the foreign nation's rate is less than or equal to the adjusted U.S. rate then they have met the mortality rate test standard.

**Example**

To simplify this hypothetical example, we will assume that nation X has chosen to use only the most recent year (or the only year data was collected). During the year, nation X has completed 6 observed trips and made 250 observed sets on dolphins. Dolphin mortality and yellowfin catch during dolphin sets for nation X and the United States during the most recent year are presented in Table 1.

TABLE 1.—NUMBER OF DOLPHINS KILLED AND YELLOWFIN TUNA CAUGHT BY NATION X AND THE UNITED STATES DURING THE MOST RECENT FISHING YEAR, ON COMMON AND ALL OTHER SPECIES, AND IN THREE FISHING AREAS

(Hypothetical example)

| | Common dolphin sets | | All other sets | |
|---|---|---|---|---|
| | Mortality catch | | Mortality catch | |
| | (Animals) | (Tons) | (Animals) | (Tons) |
| **Nation X** [1] | | | | |
| Fishing Areas | | | | |
| 1 | 1,000 | 1,000 | 600 | 2,000 |
| 2 | 800 | 500 | 5,000 | 21,000 |
| 3 | 0 | 0 | 2,500 | 6,000 |
| Total | | 1,500 | | 29,000 |
| **United States** | | | | |
| 1 | 200 | 500 | 25 | 200 |
| 2 | 600 | 1,800 | 6,000 | 20,000 |
| 3 | 100 | 400 | 2,000 | 8,000 |

[1] Nation X Catch – all sets = 30,500.

1. Nation X Rate (hypothetical)

$$R_f = \frac{(1000+800+0+6\ 00+5000+2500)}{(1000+500+0+2000+21000+6000)}$$

$$= 9900/30500$$

$$= 0.325$$

2. United States Rate (hypothetical)

$$R_{US} = (1/30500)\,[(200/500)1000 + (600/1800)500 + (100/400)0 + (25/200)2000 + (6000/20000)21000 + (2000/6000)8000]$$

$$= (400 + 166.667 + 0 + 250 + 6300 + 2000)/30500$$

$$= 0.299$$

3. Comparison of Nation X and United States Rates (hypothetical)

Nation X rate = 0.325

U.S. rate ($R_{US}$) × 1.25 = 0.299 × 1.25 = 0.374

Therefore, because Nation X's rate is less than the adjusted U.S. rate, it will be eligible to import yellowfin tuna into the United States.

*Intermediary Nations*

Nations that export yellowfin tuna and tuna products to the United States and which also import yellowfin tuna and tuna products caught by vessels of

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(OMB) under OMB Control Number 0648–0040.

Public reporting burden for this collection of information is estimated to average .50 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Importers are required to present the information on a form 370–1 "Yellowfin Tuna Certificate of Origin" at the time of entry. Burden hours for the salmon/halibut collection is estimated to be the same as for yellowfin tuna. Send comments regarding these burden estimates, or any other aspect of this collection of information including suggestions for reducing this burden, to the National Marine Fisheries Service ((F/PR1), 1335 East-West Highway, Silver Spring, MD 20910, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attn: Paperwork Reduction Act Project 0648–0040)).

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

**List of Subjects in 50 CFR 216**

Administrative practice and procedure, Imports, Marine mammals, Penalties, Reporting and recordkeeping requirements, Transportation.

Date: March 1, 1989.

**James E. Douglas, Jr.,**

*Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For the reasons set forth in the preamble, 50 CFR Part 216 is amended as follows:

## PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

1. The authority citation for 50 CFR Part 216 continues to read as follows:

**Authority:** 16 USC 1361–1407.

2. Section 216.3 is amended by revising the definition of "ETP Fishing Area 1" to include an easterly boundary at 86° W. longitude and adding one new definition for "intermediary nation," in alphabetical order, to read as follows:

**§ 216.3 Definitions.**

* * * * *

*ETP Fishing Area 1* means the northern coastal portion of the ETP east of 117° W. longitude, north of 5° N. latitude, and west of 86° W. longitude.

* * *

*Intermediary nation* means a nation which exports yellowfin tuna or tuna products to the United States, and which imports yellowfin tuna or tuna products.

* * * * *

3. Section 216.24 is amended by revising paragraphs (e)(1), (2), (3), (4), and (5) to read as follows:

**§ 216.24 Taking and related acts incidental to commercial fishing operations.**

* * * * *

(e) *Importation.* (1) It is illegal to import into the United States any fish, whether fresh, frozen, or otherwise prepared, if the fish have been caught with commercial fishing technology that results in the incidental kill or incidental serious injury of marine mammals in excess of that allowed under this part for U.S. fishermen or in excess of what is specified in subsection (e)(5) in the case of fishing for yellowfin tuna.

(2) The following fish and categories of fish, which the Assistant Administrator has determined may be involved with commercial fishing operations which cause the death or injury of marine mammals, are subject to the requirements of this section:

(i) *Yellowfin tuna.* The following U.S. Harmonized Tariff Schedule Item Numbers identify the categories of tuna and tuna products under which yellowfin tuna is imported into the United States and which are subject to the restrictions of paragraphs (e)(3) and (e)(5) of this section:

(A) Fish, fresh or chilled, excluding fish fillets and other fish meat of heading 0302:

0302.32.00.00 Yellowfin tunas.

(B) Fish, frozen, excluding fish fillets and other fish meat of heading 0303:

0303.42.00 Yellowfin tunas

(c) *Prepared fish:* fish whole or in pieces, but not minced: Tuna, skipjack and Atlantic bonito:

1604.14.10.00 Tunas and skipjack; in airtight containers; in oil, except cans marked as other than yellowfin tuna in a manner approved in advance by the National Marine Fisheries Service Southwest Regional Director.

1604.14.20.40 Tunas and skipjack in airtight containers; not in oil; other than albacore, except cans marked as other than yellowfin tuna in a manner approved in advance by the National Marine Fisheries Service Southwest Regional Director.

1604.14.30.40 Tunas and skipjack in airtight containers; other; other than albacore, except cans marked as other than yellowfin tuna in a manner approved in advance by the National Marine Fisheries Service Southwest Regional Director.

1604.14.40.00 Tunas and skipjack; not in airtight containers; in bulk or in immediate containers weighing with their contents over 6.8 kg each, not in oil.

1604.14.50.00 Tunas and skipjack; in airtight containers; other.

(ii) *Salmon and Halibut.* The following U.S. Harmonized Tariff Schedule Item Numbers identify the categories of salmon and halibut products which are imported into the United States and are subject to the restrictions of paragraph (e)(4) of this section:

(A) Fish, fresh or chilled, excluding fish fillets and other fish meat of heading 0302:

0302.12.00 Pacific salmon, Atlantic salmon, and Danube salmon.
0302.21.00.00 Halibut and Greenland turbot.

(B) Fish, frozen, excluding fish fillets and other fish meat of heading 0303:

0303.10.00 Pacific salmon.
0303.22.00 Atlantic salmon and Danube salmon.
0303.31.00.00 Halibut and Greenland turbot.

(C) Fish fillets and other fish meat, fresh, chilled or frozen of heading 0304:

0304.10.40.40 Fresh or chilled fillets; Flatfish.
0304.10.40.80 Fresh or chilled fillets; other (salmon).
0304.20.20.22 Frozen fillets; Halibut.
0304.20.60.50 Other; Halibut.
0304.20.60.80 Other (salmon).

(D) Fish, dried, salted or in brine; smoked fish, whether or not cooked before or during the smoking process:

0305.41.00.00 Smoked fish, including fillets; Salmon.
0305.69.40.00 Fish salted but not dried or smoked and fish in brine; Salmon.

(E) Prepared or preserved fish; fish, whole or in pieces, but not minced:

1604.11 Salmon.

(3) *Yellowfin tuna.* (i) All shipments of tuna and tuna products listed in paragraph (e)(2)(i) of this section, from any nation, may be imported into the United States only if (1) accompanied by a separate Yellowfin Tuna Certificate of Origin (Standard Form 370–1); and (2) in the case of a harvesting nation, the finding allowing importation is made as required by paragraph (e)(5)(i) or, in the case of an intermediary nation, an embargo has not been imposed under paragraph (e)(5)(xi). Shipments of tuna and tuna products from nations which are both harvesting and intermediary nations must satisfy the provisions which apply to both categories of nations in order to be imported into the United States.

(ii) The Yellowfin Tuna Certificate of Origin must include the following information:



(A) Exporter (Name and Address);
(B) Consignee (Name and Address);
(C) Identity and quantity of the tuna to be imported, listed by U.S. tariff schedule number;
(D) Areas of harvest (ETP, western and central Pacific Ocean, Atlantic Ocean, Indian Ocean);
(E) Name of vessel(s) that caught the tuna, country under whose laws the vessel operated, and the date(s) of fishing trip on which the tuna was caught;
(F) Other documentation as may be required by the Assistant Administrator, subsequent to granting a finding in paragraph (e)(5) of this section;
(G) A declaration to be signed by either a responsible government official from the harvesting nation, the vessel master, the vessel owner's representative, or a representative of the cannery which processed the fish which states; "I certify that the above information is complete, true and correct to the best of my knowledge and belief."

(4) *Salmon and Halibut.* All shipments of fish and fish products listed in paragraph (e)(2)(ii) of this section, from any nation, may not be imported into the United States unless the following conditions are met:

(i) The shipment is accompanied by a commercial invoice and/or a bill of lading indicating the following:
(A) Nation of registry of the fishing vessel(s) involved;
(B) Exporter (name and address);
(C) Consignee (name and address);
(D) Identity and quantity of the fish or fish products to be imported; *and*

(ii) The shipment is accompanied by a statement by a responsible official of the harvesting nation or the master of the vessel which caught the fish that such fish were not caught in a manner prohibited for U.S. fishermen by these regulations. The statement will identify the species, quantity, and exporter of the fish to which the statement refers, and be submitted at the time of importation; *or*

(iii) A responsible official of the harvesting nation may certify to the Assistant Administrator that all of its flag vessels are fishing in conformance with these regulations or that the fishing technology practiced by the harvesting nation with respect to the species of fish presented for importation into the United States does not result in deaths to marine mammals in excess of that which results from U.S. commercial fishing operations as prescribed by these regulations. Upon receipt of a statement of conformance, the Assistant Administrator may then make a finding, and publish such finding in the **Federal Register**, that fish imports listed in paragraph (e)(2)(ii) of this section from the nation were not caught with commercial fishing technology which results in the incidental kill of marine mammals in excess of U.S. standards.

(5) *Yellowfin tuna.* (i) Any tuna or tuna products in the classifications listed in paragraph (e)(2)(i) of this section, from harvesting nations whose vessels of greater than 400 short tons carrying capacity operate in the ETP tuna purse seine fishery as determined by the Assistant Administrator, may not be imported into the United States unless the Assistant Administrator makes an affirmative finding and publishes the finding in the **Federal Register** that:

(A) The government of the harvesting nation has adopted a regulatory program governing the incidental taking of marine mammals in the course of such harvesting that is comparable to the regulatory program of the United States; and

(B) The average rate of incidental mortality by the vessels of the harvesting nation is comparable to the average rate of incidental mortality of marine mammals by U.S. vessels in the course of such harvesting.

(ii) A harvesting nation which desires an initial finding under these regulations that will allow it to import into the United States those products listed in paragraph (e)(2)(i) of this section must provide the Assistant Administrator with the following information:

(A) A detailed description of the nation's regulatory and enforcement program governing incidental taking of marine mammals in the purse seine fishery for yellowfin tuna, including:

(*1*) A description, with copies of relevant laws, implementing regulations and guidelines, of the gear and procedures required in the fishery to protect marine mammals, including but not limited to the following:

(*i*) A description of the methods used to identify problems and to take corrective actions to improve the performance of individual fishermen in reducing incidental mortality and serious injury. By 1990 the methods must identify individual operators with marine mammal mortality rates which are consistently and substantially higher than the majority of the nation's fleet, and provide for corrective training and, ultimately, suspension and removal from the fishery if the operator's performance does not improve to at least the performance of the majority of the fleet in a reasonable time period;

(*ii*) By 1990, a description of a regulatory system in operation which ensures that all marine mammal sets are completed through backdown to rolling the net to sack-up no later than one-half hour after sundown, except that individual operators may be exempted, if they have maintained consistently a rate of kill during their observed sundown sets which is not higher than that of the nation's fleet average during daylight sets made during the time period used for their comparability finding; and

(*iii*) By 1990, a description of its restrictions on the use of explosive devices in the purse seine fishery which are comparable to those of the United States.

(*2*) A detailed description of the method (e.g., IATTC or other international program observer records), and level, of observer coverage by which the incidental mortality and serious injury of marine mammals will be monitored;

(B) A list of its vessels and any certified charter vessels of greater than 400 short tons carrying capacity which purse seined for yellowfin tuna at any time during the preceding two years in the ETP, indicating the status of each such vessel during that two year period (i.e. actively fishing in ETP, fishing in other waters; in port for repairs; inactive) and the status of each vessel expected to operate in the ETP in the year in which the submission is made.

(C) A compilation of the best available data for the 1986 calendar year and each subsequent calendar year on the performance of any of its purse seine vessels (including certified charter vessels) fishing at any time for tuna associated with marine mammals within the ETP including the following:

(*1*) Total number of tons of yellowfin tuna observed caught in each fishing area by purse seine sets on:

(*i*) Common dolphin and

(*ii*) All other marine mammal species;

(*2*) Total number of marine mammals in each fishing area by species/stock observed killed and seriously injured by purse seine sets on:

(*i*) Common dolphin and

(*ii*) All other marine mammal species;

(*3*) Total number of observed trips and total number of observed purse seine sets on marine mammals in each fishing area by the nation's purse seine fleet during the year;

(*4*) Total number of vessel trips and total number of purse seine sets on marine mammals in each fishing area by the nation's purse seine fleet during the year; and

(*5*) The total number of observed purse seine sets in each fishing area in which more than 15 marine mammals were killed.

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(D) Data required by paragraph (e)(5)(ii)(C)(*2*) presented individually for the following marine mammal species/stocks: offshore spotted dolphin, coastal spotted dolphin, eastern spinner dolphin, whitebelly spinner dolphin, common dolphin, striped dolphin, and "other marine mammals".

(E) A description of the source of the data provided in accordance with paragraph (e)(5)(ii)(C) of this section. The observer program from which these data are provided must be operated by the IATTC or another international program in which the United States participates and must sample at least the same percentage of the fishing trips as the United States achieves over the same time period, unless the Assistant Administrator determines that an alternate observer program, including a lesser level of observer coverage, will provide a sufficiently reliable average rate of incidental taking for the nation.

(iii) A nation applying for its initial finding of comparability should apply at least 120 days before the desired effective date. The Assistant Administrator's determination on a nation's application for its initial finding will be announced and published in the **Federal Register** within 120 days of receipt of the information required in paragraph (e)(5)(ii) of this section. A finding is valid only for the period for which it was issued, and may be terminated before the end of the year if the Assistant Administrator finds that the nation no longer has a comparable regulatory program or kill rate.

(iv) A harvesting nation, which has in effect a positive finding under this section, may request renewal of its finding for the subsequent calendar year by providing the Assistant Administrator July 31, or for nations participating in the IATTC observer program, within 14 days after the date the IATTC releases data on porpoise mortality, whichever is later, an annual report updating the information listed in § 216.24(e)(5)(ii) which is current through the previous full calendar year.

(v) The Assistant Administrator will make an affirmative finding or renew an affirmative finding for a harvesting nation if:

(A) The harvesting nation has provided all information required by paragraphs (e)(5)(ii) and (e)(5)(iv) of this section;

(B) The nation's regulatory program is comparable to the regulatory program of the United States as described in paragraphs (a), (b), (c), (d)(2), and (f) of this section and the nation has incorporated into its regulatory program such additional prohibitions as the United States may apply to its own vessels within 180 days after the prohibition applies to U.S. vessels, except that provisions for identifying and removing problem operators, prohibiting sundown sets, and restricting the use of explosives described in (e)(5)(ii)(A)(*1*) must be applied by a nation to its vessels by January 1, 1990;

(C) The data on marine mammal mortality and serious injury submitted by the harvesting nation are determined to be accurate;

(D) The observer coverage of fishing trips was equal to that achieved by the United States during the same time period or, if less, was determined by the Assistant Administrator to provide a sufficiently accurate sample of the nation's fleet mortality rate;

(E) The average kill-per-ton rate for the longest period of time for which data are available, up to 5 consecutive years, or for the most recent year, whichever is lower, is no more than 25 percent greater than the U.S. average for the same time period, after the U.S. mortality rate is weighed to account for dissimilar amounts of fishing activities between the two nations in the three ETP fishing areas and for common dolphin and other marine mammal species, except as provided in (e)(5)(v)(F) below for findings made in 1990;

(F) For findings made in 1990 only, which are based on data collected through the 1989 fishing year, a nation's average mortality rate is no more than twice that of the U.S.-flag fleet for the same period, after the U.S. mortality rate is weighed to account for dissimilar amounts of fishing activities between the two nations in the three ETP fishing areas and for common dolphin and other marine mammal species;

(G) For the 1989 fishing year and subsequent years, the nation's observed kill of eastern spinner dolphin (*Stenella longirostris*) and coastal spotted (*Stenella attenuata*) dolphin is no greater than 15 percent and 2 percent, respectively, of the nation's total annual observed dolphin mortality; and

(H) The nation has complied with all reasonable requests by the Assistant Administrator for cooperation in carrying out dolphin population assessments in the ETP.

(vi) The Assistant Administrator may require verification of statements made in connection with requests to allow importations. The Assistant Administrator may reconsider a finding upon a request from and the submission of additional information by the harvesting nation.

(vii) Any finding in effect on April 18, 1988 will remain in effect until the Assistant Administrator's decision on the 1988 application is announced or until September 1, 1989, whichever is earlier, if the Assistant Administrator received on or before August 10, 1988, a valid, signed and substantially complete application for a new finding.

(viii) The 1988 annual report (to be submitted in 1989) required in paragraph (e)(5)(iv) of this section, must include data for the years 1986, 1987, and 1988, as requested in paragraph (e)(5)(ii)(C)(*2*) of this rule, before the Assistant Administrator will consider a request for a renewal of a finding in 1989. However, data on coastal spotted dolphin do not have to be submitted until the 1989 annual report.

(ix) Any tuna or tuna products in the classifications listed in paragraph (e)(2)(i) of this section, from any intermediary nation, may not be imported into the United States if the Assistant Administrator determines and publishes the determination in the **Federal Register** that the intermediary nation has not provided reasonable proof and has not certified to the United States that it has acted to ban the importation into its nation of all yellowfin tuna and tuna products from those nations from which the United States has banned the importation of yellowfin tuna and tuna products. The Secretary will not require an intermediary nation to certify that it has implemented a ban on yellowfin tuna and tuna products from nations embargoed by the United States, if the Secretary is satisfied that the intermediary nation imports tuna products, directly or indirectly, from sources other than an embargoed nation. The intermediary nation's ban must be effective within sixty days of the effective date of the United States ban to avoid a determination prohibiting importation, and the intermediary nation must supply the Assistant Administrator with the reasonable proof and certification within 90 days of the effective date of the United States ban in order to avoid imposition of the embargo on the 91st day. An embargo under this paragraph may be lifted by the Assistant Administrator upon a determination announced in the **Federal Register**, based upon new information supplied by the embargoed nation, that the nation has acted to ban yellowfin tuna and tuna products from those nations from which the United States has banned the importation of yellowfin tuna and tuna products.

(x) After six months of an embargo being in place against a nation under this section, that fact shall be certified to the President for purposes of certification under section 8(a) of the Fishermen's Protective Act of 1967 (22 U.S.C. 1978(a)) for as long as the embargo is in effect.

(xi) The Assistant Administrator will promptly advise the Department of State of embargo decisions and actions and of finding determinations.

* * * * *

[FR Doc. 89-5154 Filed 3-2-89; 8:45 am]
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# Proposed Rules

Federal Register
Vol. 54, No. 43
Tuesday, March 7, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 58

**[DA-88-119]**

### Grading and Inspection, General Specifications for Approved Dairy Plants and Standards for Grades of Dairy Products; Proposed Revision of United States Standards for Grades of Butter

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes revisions in the United States Standards for Grades of Butter. The standards are being revised to minimize the impact of the "short" body defect in the grading process. The revisions take into consideration the changes in production technology and marketing practices. Modern commercial packaging equipment tends to rework the butter so that the condition of "short" body defect is eliminated or greatly minimized in the butter in the final retail butter package.

**DATE:** Comments must be submitted on or before April 6, 1989.

**ADDRESS:** Comments should be sent to Director, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2750 South Building, P.O. Box 95456, Washington, DC 20090-6456.

**FOR FURTHER INFORMATION CONTACT:** Roland S. Golden, Dairy Products Marketing Specialist, USDA/AMS/Dairy Division, Room 2750 South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-7473.

**SUPPLEMENTARY INFORMATION:** This proposed rule has been reviewed under USDA guidelines implementing Executive Order 12291 and Secretary's Memorandum 1512-1 and has been classified as a "non-major" rule under criteria contained therein.

The Administrator of the Agricultural Marketing Service has determined that the proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because it is a voluntary standard and the revision will not increase costs to those utilizing the standard.

In addition, the Agency's Dairy Standardization Section conducted a review of the United States Standards for Butter. The objective of the review was to obtain both current and historical information relating to the impact of the "short" body defect in the butter grading process. "Short" body relates to the brittleness of butter and is influenced by processing techniques.

The review involved the collection and evaluation of information from the Agency's Dairy Grading Section and from the American Butter Institute, which represents the butter industry. It was determined from this information that modern commercial packaging equipment is able to rework butter in such a way that any "short" body defect in the butter is eliminated or greatly minimized when the butter is converted into retail packages.

Because of this, less importance should be given to the "short" body defect when grading butter. Currently, the standards require that butter possessing a "definite short" body defect receive the next lower grade. With the present packaging technology, however, such downgrading is inappropriate since the defect no longer causes problems when the butter is packaged for consumers. It is therefore proposed that the U.S. Standards for Grades of Butter be revised to minimize the impact of the "short" body defect. Also, it is proposed that the definition of "short" body characteristics be amended to add a definition for "pronounced short."

This proposal would:

1. Delete the "½" disrating for "slight short."

2. Change the "1" disrating for "definite short" to a "½" disrating.

3. Provide for a "1" disrating for "pronounced short."

4. Show a definition for "pronounced short" in the "Explanation of Terms" section.

USDA grade standards are voluntary standards that are developed to assist the orderly marketing process. Dairy plants are free to choose whether or not to use these grade standards. USDA grade standards for dairy products have been developed to identify the degree of quality in the various products. Quality in general refers to usefulness, desirability, and value of the product—its marketability as a commodity. When butter is officially graded, the USDA regulations governing the grading of manufactured or processed dairy products would be in effect. These regulations also require that fees and charges be assessed for grading services provided by USDA.

All written submissions made pursuant to this notice will be made available for public inspection at the Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC, during regular business hours.

### List of Subjects in 7 CFR Part 58

Food grades and standards, Dairy products.

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 58 be amended as follows:

## PART 58—[AMENDED]

1. The authority citation for 7 CFR Part 58 continues to read as follows:

Authority: Secs. 202–208, 60 Stat. 1087, as amended; 7 U.S.C. 1621–1627 unless otherwise noted.

2. In § 58.2627, Table II is revised to read as follows:

**§ 58.2627 Specifications for U.S. grades of butter.**

* * * * *

TABLE II—CHARACTERISTICS AND DISRATINGS IN BODY, COLOR, AND SALT

| Characteristics | Disratings | | |
|---|---|---|---|
| | S | D | P |
| Body: | | | |
| Short | | ½ | 1 |
| Crumbly | ½ | 1 | |
| Gummy | ½ | 1 | |
| Leaky | ½ | 1 | 2 |
| Mealy or grainy | ½ | 1 | |
| Weak | ½ | 1 | |
| Sticky | ½ | 1 | |
| Ragged boring | 1 | 2 | |
| Color: | | | |
| Wavy | ½ | 1 | |
| Mottled | 1 | 2 | |
| Streaked | 1 | 2 | |
| Color specks | 1 | 2 | |
| Salt: | | | |
| Sharp | ½ | 1 | |



TABLE II—CHARACTERISTICS AND DISRATINGS IN BODY, COLOR, AND SALT—Continued

| Characteristics | Disratings | | |
|---|---|---|---|
| | S | D | P |
| Gritty | 1 | 2 | |

S—Slight; D—Definite; P—Pronounced.

3. Section 58.2635(b)(6) is revised to read as follows:

**§ 58.2635 Explanation of terms.**

* * * * *

(b) * * *

(6) *Short.* The texture is short-grained, lacks plasticity and tends toward brittleness. The intensity is described as "slight" when the butter lacks pliability and tends to be brittle; "definite" when sharp and distinct breaks form as pressure is applied against the butter plug; and "pronounced" when sharp and distinct breaks form in the butter surface when the trier is inserted, or when segments of the butter plug separate along fracture lines.

* * * * *

Signed at Washington, DC, on: March 2, 1989.

**Patrick Boyle,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 89-5233 Filed 3-6-89; 8:45 am]

BILLING CODE 3410-02-M

## Animal and Plant Health Inspection Service

**[Docket No. 87-092]**

### 7 CFR Part 318

### Sharwil Avocados From Hawaii

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend "Subpart—Hawaiian Fruits and Vegetables" quarantine and regulations to allow interstate movement of untreated Sharwil avocados from Hawaii to any destination. Movement would be authorized by a certificate upon compliance with certain harvesting and handling requirements. The interstate movement of avocados from Hawaii is regulated to prevent spread of the Mediterranean fruit fly, the melon fly, and the Oriental fruit fly. It appears, however, that the Sharwil variety of avocado is not a host to these fruit flies if they are picked, handled, and packed in compliance with the regulation.

**DATE:** Consideration will be given only to comments postmarked or received on or before May 8, 1989.

**ADDRESSES:** Send an original and two copies of written comments to Helene R. Wright, Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 87-092. Comments received may be inspected at USDA, 14th and Independence Avenue, SW., Room 1141-South Building, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** Mr. L.H. Tengan, Staff Officer, Operations Support, International Services, APHIS, USDA, Room 654, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8892.

**SUPPLEMENTARY INFORMATION:**

### Background

The Hawaiian Fruits and Vegetables regulations (contained in 7 CFR 318.13 through 318.13-17 and referred to below as the regulations), among other things, govern the interstate movement from Hawaii of avocados in a raw or unprocessed state. Regulation is necessary to prevent spread of the Mediterranean fruit fly (*Ceratitis capitata* (Wied.)), the melon fly (*Dacus cucurbitae* A(Coq.)), and the Oriental fruit fly (*Dacus dorsalis* (Hendel)). These fruit flies, commonly referred to as "Trifly," infest Hawaii but not the rest of the United States.

In the early 1980's, Agricultural Research Service (ARS) scientists determined that Shawil avocados are not hosts to Trifly if they are picked with a stem attached and, within 24 hours after being picked, certain handling procedures are followed and the avocados are packed in cartons impervious to Trifly. This research [1] provided the basis for a proposal, published in the November 19, 1985 **Federal Register** (50 FR 47551-47555, Docket No. 85-330), to allow certification, for movement to any destination in the United States, of Sharwil avocados that were picked and then packed, under specified conditions, within the 24-hour safe period.

In a document published in the December 11, 1986 **Federal Register** (51 FR 44746-44751, Docket No. 86-332), we withdrew our "any destination" proposal and substituted a more limited proposal to allow movement of Hawaiian Sharwil avocados to Alaska only. At that time, we were not able to demonstrate that our proposed monitoring of avocado handling during the 24-hour safe period would be effective. The "Alaska only" final rule was published in the March 20, 1987 **Federal Register** (52 FR 8863-8865, Docket No. 87-003).

### Monitoring

Two harvest/shipping seasons for Sharwil avocados have passed since we issued our 1986 withdrawal notice. During this period, over 35 metric tons of Sharwil avocados have been moved from Hawaii to Alaska. No violations of the picking and the 24-hour harvest-to-packing requirements have been discovered by federal or state inspectors following the prescribed monitoring procedures.

If this monitoring were not effective, and some avocados had been packed after the 24-hour safe period or without the required stem, or been picked up off the ground, at least a few of the avocados would have carried Trifly to Alaska. In fact, no avocados without the required stem, and no eggs, larvae, or flies have been discovered after the avocados arrived in Alaska. We believe that this proves that our monitoring requirements are stringent enough to ensure that the avocados have the required stem, are picked off a tree and are packed within 24 hours after they are picked and, therefore, we are reinstating the proposal to allow movement of Hawaiian Sharwil avocados to any interstater destination.

### Certification

Movement of a regulated article from a quarantined area must be authorized by issuance of an official document. When movement is limited to specified destinations, the document used is a limited permit. Thus, the current regulations require issuance of a limited permit because a untreated Hawaiian Sharwil avocados may be moved interstate to Alaska only. Since the regulations would be amended to allow movement to any interstate destination, the proper authorizing document would be a certificate, not a limited permit.

We also propose to delete § 318.13-3(b)(2) and to revise § 318.13-4(c). Both paragraphs currently contain provisions

[1] The initial ARS research was conducted during Hawaii's January-March 1985 harvesting season on 38,241 Sharwil avocados. At our request, ARS continued the study until February 1987. A total of 114,112 Sharwil avocados were ultimately inspected during the 24-hour post-picking period. No Trifly eggs or larvae were found. Documents concerning the ARS research may be obtained from Mr. L.H. Tengan, Staff Officer, Operations Support, International Services, APHIS, USDA, Room 654, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8892.

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that relate only to the movement of Hawaiian Sharwil avocados, under limited permit, to Alaska.

**Miscellaneous**

To reflect agency policy, we are proposing to amend the regulations by removing all references to "Deputy Administrator" and "Plant Protection and Quarantine Programs," replacing them with references to "Administrator" and "Animal and Plant Health Inspection Service," respectively. Definitions of the replacement phrases would be added to § 318.13–1.

Under current § 318.13–2(a)(2), Sharwil avocados moved from Hawaii to Alaska are prohibited further interstate movement. Our proposal deletes this provision, since it will allow movement of Hawaiian Sharwil avocados to any interestate destination.

Under the regulations, all fruits and vegetables whose movement from Hawaii is regulated are listed in § 318.13–2(b). The movement of Sharwil avocados from Hawaii is restricted under the regulations, but this fruit is not currently listed as a regulated article. We propose to correct this oversight by adding the following reference to the list of regulated articles in § 318.13–2(b): "Avocado (Persea americana Mill. cultivar Sharwil) Sharwil avocado."

**Executive Order 12291 and Regulatory Flexibility Act**

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this proposed rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, federal, state or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Hawaiian Sharwil avocado industry is small. In 1986–1987, production was limited to about 100 acres, yielding approximately 80 tons of Hawaiian Sharwil avocados. In contrast, the total annual United States avocado production was 273,000 tons during this same period. Foreign-grown avocados imported for consumption by American consumers totaled 5,622 tons in 1985 (the last year for which figures are available). Thus, the amount of avocados moved interstate from Hawaii constitutes less than one tenth of one percent of the total annual United States avocado production.

It further appears that allowing shipments to any interstate destination would not appreciably increase Hawaiian Sharwil avocado production. Sharwil avocados can be grown only under certain climatic and soil conditions, which are not widely available throughout the Hawaiian Islands. Thus, the possibility of increases in Sharwil avocado production is limited.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities.

**Paperwork Reduction Act**

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

**Executive Order 12372**

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

**List of Subjects in 7 CFR Part 318**

Agricultural commodities, Avocados, Guam, Hawaii, Plant diseases, Plant pests, Plants (Agriculture), Puerto Rico, Quarantine, Transportation, Virgin Islands

## PART 318—HAWAIIAN AND TERRITORIAL QUARANTINE NOTICES

Accordingly, it is proposed to amend 7 CFR Part 318 as follows:

1. The authority citation for 7 CFR Part 318 would continue to read as follows:

**Authority:** 7 U.S.C. 150dd, 150ee, 150ff, 151–167; 7 CFR 2.17, 2.51, and 371.2(c).

**§§ 318.13 through 318.13–17 [Amended]**

2. Sections 318.13 through 318.13–17 would be amended by removing "Deputy Administrator of the Plant Protection and Quarantine Programs" and "Deputy Administrator", and inserting "Administrator" each time they appear.

3. Sections 318.13 through 318.13–17 would be amended by removing "Plant Protection and Quarantine Programs", and inserting "Animal and Plant Health Inspection Service".

**§ 318.13–1 [Amended]**

4. Section 318.13–1 would be amended as follows:

a. The definition of "Compliance agreement" would be amended by removing "§ 318.13–4(g)" and inserting "§ 318.13–4(e), and § 318.13–4g".

b. The definition of "Deputy Administrator" would be removed.

d. A new definition would be added for "Animal and Plant Health Inspection Service" to read as follows:

**§ 318.13–1 Definitions.**

* * * * *

*Animal and Plant Health Inspection Service.* The Animal and Plant Health Inspection Service of the United States Department of Agriculture (APHIS).

* * * * *

**§ 318.13–2 [Amended]**

5. Section 318.13–2 would be amended by removing and reserving paragraph (a)(2).

6. Section 318.13–2(b) would be amended by adding, in alphabetical order, the following listing:

* * * * *

Avocado (Persea americana Mill. cultivar Sharwil) Sharwil avocado.

* * * * *

**§ 318.13–3 [Amended]**

7. Section 318.13–3 would be amended by removing and reserving paragraph (b)(2).

8. Section 318.13–4 would be amended as follows:

a. Paragraphs (c) and (d) would be redesignated as paragraphs (d) and (e), respectively.

b. A new paragraph (c) would be added to read as follows:

c. Newly redesignated paragraph (d) would be revised to read as follows:

**§ 318.13–4 Conditions governing the issuance of certificates or limited permits.**

* * * * *

(c) *Certification of Sharwil avocados.* Certificates will be issued only for the interstate movement of Sharwil avocados if the provisions of § 318.13–4h are met.

(d) *Limited Permits.* Limited permits may be issued by an inspector for the movement of noncertified regulated articles designated in § 318.13–3(b).

* * * * *

**§ 318.13–4h [Amended]**

9. Section 318.13–4h would be amended as follows:

a. The section heading would be amended by removing "limited permits for Sharwil avocados for movement to Alaska" and inserting "certification of Sharwil avocados".

b. The introductory paragraph would be amended by removing "limited permit for movement from Hawaii to Alaska" and inserting "certificates for interstate movement from Hawaii".

c. Paragraph (c) would be amended by removing "and were clearly marked 'To be distributed in the United States only in Alaska'".

d. Paragraph (f) would be amended by removing "movement from Hawaii to Alaska" and inserting "interstate movement from Hawaii".

e. Paragraph (e) would be amended by removing "limited permit" and inserting "certificate", and by removing "marked".

Done at Washington, DC, this 2nd day of March 1989.

**James W. Glosser,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 89–5192 Filed 3–6–89; 8:45 am]

BILLING CODE 3410–34–M



**Agricultural Marketing Service**

**7 CFR Part 906**

**[Docket No. FV–89–017]**

## Oranges and Grapefruit Grown in the Lower Rio Grande Valley in Texas; Proposed Relaxation of the Requirements Governing the Shipment of Oranges and Grapefruit to Approved Citrus Processors

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would allow handlers to ship Texas oranges and grapefruit not meeting minimum grade and size requirements to approved processors for manufacturing into fresh sections and fresh juice without preservative treatment. This proposed would also add new safeguards, which firms must meet to become approved processors under the order, so that lower quality fruit could be safely shipped for these purposes without being diverted to fresh markets. These changes are designed to expand markets for Texas oranges and grapefruit by permitting fruit to be shipped for use in fresh sections and fresh juice products.

**DATE:** Comments must be received by March 22, 1989.

**ADDRESS:** Interested persons are invited to submit written comments concerning this rule to: Docket Clerk, Fruit and Vetetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456. Three copies of all written material shall be submitted, and they will be made available for public inspection in the office of the Docket Clerk during regular business hours. All comments should reference the date and page number of this issue of the Federal Register.

**FOR FURTHER INFORMATION CONTACT:** Gary C. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone: (202) 475–3918.

**SUPPLEMENTARY INFORMATION:** This proposed rule is issued under the Marketing Agreement and Marketing Order No. 906, as amended [7 CFR Part 906], regulating the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1947, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under critieria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 78 handlers of Texas oranges and grapefruit subject to regulation under the Texas citrus marketing order, and approximately 2,500 orange and grapefruit producers in Texas. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities.

The Texas Valley Citrus Committee (committee), which administers the order locally, unanimously recommended that §§ 906.120 and 906.123 of the rules and regulations be amended to relax the marketing order requirements for Texas oranges and grapefruit shipped to approved processors for manufacturing into fresh citrus sections and fresh juice. Currently Texas oranges and grapefruit shipped to approved processors for manufacturing into fresh citrus sections and fresh juice are exempt from handling requirements and assessment obligations under the order if such fruit is treated with a preservative. The proposed rule would remove the required treatment as a condition for exemption. This would enable handlers to ship fruit not meeting minimum grade and size requirements, such as packinghouse eliminations, to approved processors for conversion into sectioned fruit or fresh juice without prevervative treatment. Unless exempted fresh fruit shipped out of the production area must meet minimum grade, size, and container and pack requirements, and be inspected and certified as meeting these requirements. In addition, handlers must pay assessments to the committee on such shipments.

The proposal also includes safeguards, in addition to those currently specified, to help prevent such fruit from being diverted to fresh market outlets. These new safeguards would require the processor, as a condition of approval, to agree to radom facility inspections and to certify that the firm has no facilities, equipment, or outlet to repack or sell the fruit in fresh form. These safeguards would enable the committee to monitor approved processors and their facilities to help make sure that exempted fruit was not diverted to the fresh market. The new safeguards would also require approved processors to hold a license issued under the Perishable Agricultural Commodities Act (PACA) (7 CFR 46.4) when buying Texas oranges and grapefruit for processing. This requirement is designed to help make sure that the processor will comply with the requirements which must be met by approved processors under the order. The PACA requires that merchants, dealers and brokers involved in buying, selling, negotiating sales, purchasing or handling consignments of fruits and vegetables in interstate or foreign commerce must be licensed in accordance with the provisions of the PACA. Most firms applying to the committee to become approved processors under the marketing order would already have a PACA license

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because they would be performing activities covered under the PACA.

The committee believes that the removal of the current processing limitations for sections and juice will provide additional outlets for fruit not meeting minimum grade and size requirements and promote utilization of the crops. This action also allow additional firms without pasteurizers and other capital intensive equipment to become approved processors. The committee also believes that with the additional safeguards, exempted fruit can be shipped for these purposes without being diverted to the fresh market.

The industry is gradually recovering from the devastating freezes of the early 1980's. The objective of this proposed action is to expand markets for Texas oranges and grapefruit by permitting fruit not meeting marketing order grade and size requirements to be shipped to processors for the manufacture of fresh juice and sections without preservative treatment.

Section 906.120 of the regulations issued under the order defines the term "processing" and provides for exempting fruit for processing from the provisions of §§ 906.34 and 906.40 of the order, if the fruit is handled in accordance with the provisions of § 906.123. This proposed action would redefine the term "processing" to include in that definition fruit converted into fresh sections and fresh juice. Section 906.123 of the regulations issued under the order defines the term "approved processor" and establishes safeguards which persons must meet to be recognized as approved processors by the committee. This proposed action would redefine the term "approved processor" and establish the additional safeguards which processors must meet to be approved by the committee in order to handle exempted fruit.

Sections 906.120 and 906.123 were issued on a continuing basis subject to modification, suspension, or termination by the Secretary. The committee meets from time to time to consider recommendations for modification, suspension, or termination of the rules and regulatory requirements for Texas oranges and grapefruit. Committee meetings are open to the public and interested person may express their views at these meetings. The Agricultural Marketing Service reviews committee recommendations and other information submitted by the committee and other available information, and determines whether modification, suspension, or termination of the regulatory requirements will tend to effectuate the declared policy of the Act.

Texas orange and grapefruit shipments to markets in the United States, Canada, and Mexico are regulated under this marketing order. Certain shipments are exempt from the handling requirements effective under the marketing order. Handlers may ship oranges and grapefruit within the production area (the counties of Cameron, Hidalgo, and Willacy) exempt from all marketing order requirements. Grapefruit shipped in gift packages of not more than 500 pounds which are individually addressed and not for resale are exempt from handling requirements. Also, oranges and grapefruit shipped under the minimum quantity exemption provisions, and for relief, charity, and home use are exempt under certain conditions. In addition, oranges and grapefruit shipped to approved processors for conversion into canned or frozen products are not subject to the handling requirements.

Therefore, the Department's view is that the impact of this proposed action would be beneficial to producers and handlers because it would enable handlers to expand the markets for Texas oranges and grapefruit by shipping additional supplies of fruit to approved processors for conversion into fresh sections and fresh juice without preservatives.

Based on the above, the Administrator of AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

There would be no change in the reporting or recordkeeping requirements as the result of this action that would require submission of such requirements to the Office of Management and Budget (OMB) for approval. The information collection requirements contained in the regulations proposed to be amended have been approved previously by OMB under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Control Number 0581–0068.

It is found and determined that a comment period of less than 30 days is appropriate because this action needs to become effective promptly so that it will apply to as much of the 1988–89 season crop as possible. If adopted, this proposed rule would allow handlers to ship Texas oranges and grapefruit not meeting minimum grade and size requirements to approved processors for manufacturing into fresh sections and fresh juice without preservative treatment.

**List of Subjects in 7 CFR Part 906**

Marketing agreements and orders, Texas, Grapefruit, Oranges.

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 906 be amended as follows:

## PART 906—ORANGES AND GRAPEFRUIT GROWN IN THE LOWER RIO GRANDE VALLEY IN TEXAS

1. The authority citation for 7 CFR Part 906 continues to read as follows:

**Authority:** Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 906.120 is amended by revising paragraph (b) to read as follows:

**§ 906.120 Fruit exempt from regulations.**

* * * * *

(b) The term "processing" as used in § 906.42 (b) means the manufacture of any orange or grapefruit product which has been converted into sectioned fruit or into fresh juice, or preserved by any commercial process, including canning, freezing, dehydrating, drying, and the addition of chemical substances, or by fermentation. Fruit so processed, if handled in accordance with § 906.123, shall be exempt from the provisions of §§ 906.34 and 906.40.

* * * * *

3. Section 906.123 is amended by revising paragraph (b) to read as follows:

**§ 906.123 Fruit for processing.**

* * * * *

(b) *Approved processor.* Any person who desires to acquire, as an approved processor, fruit for processing, as set forth in § 906.120(b), shall, prior thereto, file an application with the committee on a form approved by it, which shall contain, but not be limited to, the following information:

(1) Name and address of applicant;

(2) Location of plant or plants where manufacturing is to take place;

(3) Approximate quantity of fruit used each month;

(4) A statement that the fruit obtained exempt from fresh fruit regulations will not be resold or transferred for resale, directly or indirectly, but will be used only for processing;

(5) A statement agreeing to hold a license issued under the Perishable Agricultural Commodities Act [7 CFR 46.4] when buying Texas oranges and grapefruit for processing;

(6) A statement agreeing to undergo random inspection by the committee;

(7) A statement that the requesting processor has no facilities, equipment, or outlet to repack or sell fruit in fresh form;



(8) A statement agreeing to submit such reports as are required by the committee.

Such application shall be investigated by the committee staff. After such investigation, the staff shall report its findings to the committee at its next meeting or to its delegated subcommittee. Based upon the staff's report and other reliable information, the committee or delegated subcommittee shall approve or disapprove the applciation and notify the applicant accordingly. If the application is approved, the applicant's name shall be placed upon the list of approved processors.

* * * * *

Dated: March 2, 1989.

**Robert C. Keeney,**

*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 89–5231 Filed 3–6–89; 8:45 am]

BILLING CODE 3410–02–M

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**7 CFR Part 917**

**[Docket No. FV–89–014]**

## Fresh Pears, Plums, and Peaches Grown in California; Proposed Rule Redefining Producer Representation Areas and Changing the Representation on the Peach Commodity Committee

**AGENCY:** Agricultural Marketing, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would make changes in representation areas and producer representation on the Peach Commodity Committee within the production area for California peaches. The proposal is needed to provide equitable representation on the committee based upon the proportionate quantity of fruit shipped from each representation area. The proposed action was unanimously recommended by the committee at its November 17, 1988, meeting.

**DATE:** Comments must be received April 6, 1989.

**ADDRESS:** Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2085–S, Washington, DC 20090–6456. Comments should reference the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Patrick Packnett, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, D.C. 20090–6456; telephone 202–475–3862.

**SUPPLEMENTARY INFORMATION:** This rule is proposed under Marketing Agreement and Order No. 917 [7 CFR Part 917], regulating the handling of fresh pears, plums and peaches grown in California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 520 handlers of plums, peaches and nectarines currently regulated under marketing orders [7 CFR Parts 916 and 917] and approximately 2030 producers of these commodities in the regulated area. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having annual gross revenues for the last three years of less thean $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the handlers and producers of these commodities may be classified as small entities.

The production area for California peaches is divided into six representation areas for the purpose of producer representation on the 13-member Peach Commodity Committee (committee). The currrent representation areas and committee representation for those areas are specified in paragraph (a) through (f) of § 917.22 as follows:

(a) South Coast District and Southern California District: one nominee.

(b) Tehachapi District and Kern District: one nominee.

(c) Tulare District: one nominee.

(d) Fresno District: eight nominees.

(e) Stanislaus District and Stockton District: one nominee.

(f) All of the production area not included in paragraphs (a) through (e) of this section: one nominee.

Paragraph (g) of § 917.35 of the order authorizes each commodity committee, with the approval of the Secretary, to change the representation of any representation area. Any such change must be based, so far as practicable, upon the proportionate quantity of peaches shipped from the respective representation area during the three preceding fiscal periods. In addition, and again so far as practicable, a member position should be assigned to any representation area from which five percent of regulated shipments have originated during such periods.

The peach committee recommended that the number of representation areas be reduced from six to five by combining Area "f" (the balance of the state), with Area "d" (Fresno District), and that the combined area be assigned nine member positions on the committee. These proposed changes would be included in a new § 917.120 and are intended to provide representation that is more nearly based upon the proportionate quantity of fruit shipped from each of the representation areas during the preceding three fiscal periods.

During the three years period 1986–1988 peach production totaled 41,683,000 packages. During that period, Area "d" (Fresno District), with eight members accounted for 35,590,000 packages or 85.4 percent of the total production. Area "f", with one member, accounted for 221,000 packages or only one-half of one percent of the total production.

Basing representation for the 13-member committee solely on the proportionate quantity of peaches shipped from each representation area would mean that every 7.69 percent of the total production shipped should be represented by one member on the committee. On this basis, Area "d", which accounted for 85.4 percent of the total production shipped during the past three years, would be entitled to 11 positions on the committee and Area "f" with only one-half of one percent of the shipments would not be allocated any positions on the committee. Providing three additonal members for Area "d", while retaining a 13-member committee, would require Area "f" and two other areas to lose positions on the committee. The committee indicated that it was not in the program's best interest to allocate 11 positions to Area "d" because doing

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so would cause the committee to lose valuable input in deliberations from a large part of the production area. The committee further indicated that growers from Area "f" have had limited interest in program matters in recent years and that the persons currently representing this small region are no longer interested in serving on the committee.

In recognition of these considerations, the committee recommended that area "d" and "f" be combined and that the combined area be provided nine positions on the committee. Bringing representation more in line with the proportionate quantity of peaches shipped from each representation area is warranted and would not impose any additional costs on producers or handlers.

Based on the above, the Administrator of AMS has determined that this proposed action would not have a significant economic impact on a substantial number of small entities.

**Lists of Subjects in 7 CFR Part 917**

Marketing agreements and order, Pears, Plums, Peaches, California.

For the reasons set forth in the preamble, 7 CFR Part 917 is proposed to be amended as follows:

**PART 917—FRESH PEARS, PLUMS AND PEACHES GROWN IN CALIFORNIA**

1. The authority citation for 7 CFR Part 917 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. New § 917.120 is added to read as follows:

**§ 917.120 Changes in nomination of Peach Commodity Committee members.**

Nomination for membership on the Peach Commodity Committee shall be made by growers of peaches in the respective representation areas, as follows:

(a) South Coast District and Southern California District: one nominee.

(b) Tehachapi District and Kern District: one nominee.

(c) Tulare District: one nominee.

(d) Stanislaus District and Stockton District: one nominee.

(e) Fresno District and all of the production area not included in paragraphs (a) through (d) of this section: nine nominees.

Dated: March 2, 1989.

**Robert C. Keeney,**

*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 89–5190 Filed 3–6–89; 8:45 am]

BILLING CODE 3410–02–M

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**7 CFR Part 1106**

**[DA–89–011]**

**Milk in the Southwest Plains Marketing Area; Proposed Suspension of Certain Provisions of the Order**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed suspension of rule.

**SUMMARY:** This notice invites written comments on a proposal for the months of March through August 1989 that would suspend the monthly requirement under the Southwest Plains milk order that a dairy farmer's milk be received at a pool plant in order to be eligible for diversion to nonpool plants. The action was requested by Mid-America Dairymen, Inc. (Mid-Am), a cooperative association that represents producers who supply milk for the market. Mid-Am contends that the action is necessary to assure the efficient disposition of an increasing supply of milk from producers who have historically supplied the market's fluid milk requirements.

**DATE:** Comments are due on or before March 14, 1989.

**ADDRESS:** Comments (Two copies) should be filed with the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456.

**FOR FURTHER INFORMATION CONTACT:** John F. Borovies, Marketing Specialist, USDA/AMS/Dairy Divison, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–2089.

**SUPPLEMENTARY INFORMATION:** The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under the criteria contained therein.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), the suspension of the following provisions of the order regulating the handling of milk in the Southwest Plains marketing area is being considered for the months of March through August 1989.

In § 1106.13, paragraph (d)(1) in its entirety.

All persons who want to send written data, views or arguments about the proposed suspension should send two copies of them to the USDA/AMS/Dairy Divison, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, by the 7th day after publication of this notice in the **Federal Register**. The period for filing comments is limited to 7 days because a longer period would not provide the time needed to complete the required procedures and include March in the suspension period.

The comments that are sent will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

**Statement of Consideration**

The proposal for March through August 1989 would suspend the monthly requirement that a dairy farmer's milk be received at a pool plant in order to be eligible for diversion to nonpool plants. The order provides that a dairy farmer's milk may be diverted to nonpool plants and still be priced under the order if at least one day's production of such person is physically received at a pool plant during the month.

The suspension was requested by Mid-America Dairymen, Inc. (Mid-Am), a cooperative association that represents a substantial number of producers who supply the market. Mid-Am contends that the action is needed because the market's production is increasing at a faster rate than fluid milk sales. As a result, Mid-Am contends that there will be ample supplies of milk available in the vicinity of the market's distributing plants to supply the fluid milk needs of such plants during the months of March–August this year. Thus, Mid-Am maintains that the milk of producers can be marketed more economically during this six-month period by supplying the needs of distributing plants with nearby milk and by moving the milk of more distant producers directly from the farm to manufacturing plants in the procurement area. Mid-Am contends that the requirement that each producer's milk be received at a pool plant one time each month will result in uneconomical and inefficient movements of milk to maintain pool status of producers who have historically been associated with the Southwest Plains market.

**List of Subjects in 7 CFR Part 1106**

Milk marketing orders, Milk, Dairy products.

The authority citation for 7 CFR Part 1106 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Signed at Washington, DC, on: March 2, 1989.

**J. Patrick Boyle,**

*Administrator.*

[FR Doc. 89–5191 Filed 3–6–89; 8:45 am]

BILLING CODE 3410–02–M

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**DEPARTMENT OF JUSTICE**

**Immigration and Naturalization Service**

**8 CFR Part 204**

**[INS #: 1055–89]**

**Acceptance by Overseas Immigration and Naturalization Service Offices and United States Consulates of Jurisdiction of Relative Petitions Based on Residence of Petitioners; Correction**

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Correction in proposed rule document number INS 1055–89 beginning on page 7433, in the issue of Tuesday, February 21, 1989.

**SUMMARY:** This corrects a paragraph in the proposed rule published on February 21, 1989 at 54 FR 7433, and extends the comment period.

**DATES:** Written comments must be received on or before (insert 30 days from date of publication in the Federal Register).

**FOR FURTHER INFORMATION CONTACT:** Yolanda Sanchez-K., Senior Immigration Examiner, Immigration and Naturalization Service, 425 I Street, NW., Room 7215, Washington, DC 20536, (202) 633–5014.

**PART 204—PETITION TO CLASSIFY ALIEN AS RELATIVE OF A UNITED STATES CITIZEN OR AS A PREFERENCE IMMIGRANT**

**§ 204.1 [Corrected]**

On page 7434 in the first column, § 204.1(a)(3)(iii) is correctly revised to read:

(a) * * *

(3) * * *

(iii) *Jurisdiction assumed by United States consular officers.* United States consular officers assigned to visa-issuing posts abroad, except those in countries listed in paragraph (a)(3)(ii) of this section, are authorized to approve any relative petition filed on Form I–130 if the petitioner and the beneficiary reside in the area over which the consular officers have jurisdiction. In emergent or humanitarian cases, the U.S. consular officers may use discretion in accepting an I–130 filed by a petitioner who does not reside within the consulate's jurisdiction. While these consular officers are authorized to approve petitions, they must refer any petition which is not clearly approvable to the appropriate Service office for a decision. Consultation with the appropriate Service office abroad may be sought prior to stateside referral.

* * * * *

Dated: March 3, 1989.

**James A. Puleo,**

*Assistant Commissioner, Adjudications, Immigration and Naturalization Service.*

[FR Doc. 89–5251 Filed 3–6–89; 8:45 am]

BILLING CODE 4410–10–M

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**DEPARTMENT OF AGRICULTURE**

**Animal and Plant Health Inspection Service**

**9 CFR Part 91**

**[Docket No. 89–003]**

**Ports Designated for Exportation of Animals, Chicago, IL**

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend the "Inspection and Handling of Livestock for Exportation" regulations by adding the Knief Quarantine Facility as an export inspection facility for the port of Chicago. The effect of this action will be to add an additional inspection facility for the port. We believe that this facility meets the requirements of the regulations for inclusion in the list of export inspection facilities.

**DATE:** May 8, 1989.

**ADDRESSES:** Send an original and two copies of written comments to Helene R. Wright, Regulatory Analysis and Development, PPD, APHIS, USDA, Room 866, Federal Buildinig, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 89–003. Comments received may be inspected at USDA, Room 1141, South Building, 14th and Independent Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** Dr. George O. Winegar, Senior Staff Veterinarian, Import-Export Animals Staff, VS, APHIS, USDA, Room 761 Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; (301) 436–8383.

**SUPPLEMENTARY INFORMATION:**

**Background**

The regulations in 9 CFR Part 91, "Inspection and Handling of Livestock for Exportation" (referred to below as the regulations) prescribe conditions for exporting animals from the United States. We are proposing to amend § 91.14 by adding the Knief Quarantine Facility as an export inspection facility for the port of Chicago. With certain exceptions, all animals exported are required to be exported through ports desingated as ports of embarkation.

To receive approval as a port of embarkation, a port must have export inspection facilities available for inspecting, holding, feeding, and watering animals prior to exportation in order to ensure that the animals meet certain requirements specified in the regulations. The regulations provide that approval of each export inspection facility shall be based on compliance with specified standards in § 91.14(c) concerning materials, size, inspection implements, cleaning and disinfection, feed and water, access, testing and treatment, location, disposal of animals wastes, lighting, and office and rest room facilities.

We believe that the Knief Quarantine Facility meets the requirements of § 91.14(c). The facility's address is 11 N 470 Chapman Road, Box 305, Burlington, Illinois 60109. Therefore, we propose to add the Knief Quarantine Facility as an export inspection facility for the airport of Chicago.

**Executive Order 12291 and Regulatory Flexibility Act**

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule". Based on information

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compiled by the Department, we have determined that this rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

There is now only one export inspection facility currently approved in the Chicago area. There are fewer than 50 exporters using this facility. Most of these would be considered small entities. This proposal would allow exporters the option of an additional export inspection facility for the Chicago, Illinois, airport with minimal economic effect.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

**Paperwork Reduction Act**

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

**Executive Order 12372**

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

**List of Subjects in 9 CFR Part 91**

Animal diseases, Animal welfare, Exports, Livestock and livestock products, Transportation.

**PART 91—INSPECTION AND HANDLING OF LIVESTOCK FOR EXPORTATION**

Accordingly, 9 CFR Part 91 would be amended as follows:

1. The authority citation for Part 91 would continue to read as follows:

Authority 21U.S.C. 105, 112, 113, 114a, 120, 121,, 134b, 134f, 612, 613, 614, 618, 46 U.S.C. 466a, 466b, 49 U.S.C. 1509(d); 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 91.14 would be amended by adding a new paragraph (a)(4)(i)(B) to read as follows:

(a) * * *

(4) Illinois.

(i) * * *

(B) Knief Quarantine Facility, 11 N 470 Chapman Road, Box 308, Burlington, Illinois 60109, (312) 683–3873.

* * * * *

Done in Washington, DC, this 2d day of March 1989

James W. Glosser,

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 89–5193 Filed 3–6–89; 8:45 am]

BILLING CODE 3410–34–M

## COMMODITY FUTURES TRADING COMMISSION

**17 CFR Part 34**

**Hybrid and Related Instruments; Extension of Comment Period for Proposed Rules and Statutory Interpretation**

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Extension of comment period.

**SUMMARY:** On January 11, 1989, the Commodity Futures Trading Commission ("Commission") published in the **Federal Register** proposed regulations concerning certain "hybrid" instruments that combine characteristics of commodity option contracts with debt or depository interests. 54 FR 1128 (January 11, 1989). The proposed rules would establish an exemption from CFTC regulations under the Commodity Exchange Act for hybrid instruments with limited commodity option components, based upon the limited nature of the option component and deference to other existing regulatory standards applicable to the noncommodity component of such instruments. In addition, the proposed rules would establish a notice requirement, under certain limited circumstances, for hybrid instruments qualifying for the proposed exemption. The Commission also published, in a companion release, a statutory interpretation intended to clarify the status of certain other categories of hybrid instruments. 54 FR 1139 (January 11, 1989). Both the proposed rules and statutory interpretation notices provided a period for public comment which ended February 27, 1989.

The Commission has been requested by several potential commenters to extend the comment period for the Commission's notice of proposed rulemaking and statutory interpretation. Such additional time has been requested in order to allow those commenters (*i.e.*, organizations and practitioners) to receive and analyze the comments of their memberships or to obtain the views of their clients on the issues raised by the Commission's rule proposal and statutory interpretation. The Commission believes that a thirty-day extension of the public comment period is appropriate to enhance the opportunity for interested parties to comment on the issues raised in the above releases.

**DATE:** All comments on the Commission's notice of proposed rulemaking concerning the regulation of hybrid and related instruments (54 FR 1128 (January 11, 1989)) and statutory interpretation (54 FR 1139 (January 11, 1989)) must be received by April 6, 1989.

**ADDRESS:** Comments should be sent to the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581.

**FOR FURTHER INFORMATION CONTACT:** Robert H. Rosenfeld, Esq., Staff Attorney, Division of Trading and Markets, telephone (202) 254–8955, David R. Merrill, Esq., Assistant General Counsel, Office of the General Counsel, telephone (202) 254–9880, or Eugene Moriarty, Director, Research Section, Division of Economic Analysis, telephone (202) 254–8980, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581.

Issued in Washington, DC on March 1, 1989.

Jean A. Webb,

*Secretary to the Commission.*

[FR Doc. 89–5186 Filed 3–6–89; 8:45 am]

BILLING CODE 6351–01–M

## DEPARTMENT OF THE TREASURY

**Internal Revenue Service**

**26 CFR Part 1**

**[EE–130–86]**

**Benefits Provided Under Certain Employee Benefit Plans**

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document contains proposed regulations relating to benefits provided under certain employee benefit plans under sections 89 and 125 of the Internal Revenue Code of 1986. The regulations reflect changes made by the Revenue Act of 1978, the Tax Reform Act of 1984, the Tax Reform Act of 1986, and the Technical and Miscellaneous Revenue Act of 1988. The regulations provide the public with guidance on the nondiscrimination and qualification requirements for certain employee benefit plans and affect sponsors of, and participants in, a variety of types of plans, including accident and health plans, group-term life insurance, and dependent care assistance programs.

**DATES:** Written comments and requests for a public hearing must be delivered or mailed on or before May 8, 1989. The amendments are generally proposed to apply to plan years beginning after December 31, 1988.

**ADDRESS:** Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:CORP:T:R (EE–130–86), Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Felix Zech or David Munroe of the Office of the Assistant Chief Counsel, Employee Benefits and Exempt Organizations, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:CORP:T:R (EE–130–86)) ((202) 535–3816) (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**Paperwork Reduction Act**

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503, with copies to the Internal Revenue Service, Attention: IRS Reports Clearance Officer TR:FP, Washington, DC 20224.

The collections of information in these regulations are in §§ 1.89(a)–1 and 1.89(k)–1. Certain of this information is required by the Internal Revenue Service to memorialize the method of testing used by the employer in determining whether it meets the requirements of section 89(a) and correctly reports an employee's wages on the Form W–2. Additional requirements include the preparation of a written plan document, a notice relating to benefits (both required under section 89(k)). The likely respondents/recordkeepers are employers who provide welfare benefit programs to their employees.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual recordkeepers may require more or less time, depending on their particular circumstances.

The burden estimates represent an estimation of the actual time for recordkeeping, learning about the law, computations and testings.

The estimated total annual reporting and/or recordkeeping burden: 9,600,000 hours. With respect to learning about the law, testing and making any written elections, the estimated annual burden per respondent/recordkeeper varies from 1 hour to 40 hours, depending on individual circumstances, with an estimated average of 10 hours. The estimated number of respondents and/or recordkeepers: 750,000. With respect to physically preparing the written plan, notice and statement relating to employees, the estimated annual burden per respondent/recordkeeper varies from 30 minutes to 4 hours, depending on individual circumstances, with an estimated average of 2 hours. The estimated number of respondents and/or recordkeepers: 750,000. Estimated annual frequency of response (for reporting requirements only): as necessary.

**Background**

This document contains proposed additions to the Income Tax Regulations (26 CFR Part 1) under sections 89 and 125 of the Internal Revenue Code of 1986 (Code). The additions with respect to section 89 are proposed to conform the regulations to section 1151 of the Tax Reform Act of 1986 (TRA '86) (100 Stat. 2494), and section 3021 of the Technical and Miscellaneous Revenue Act of 1988 (TAMRA '88) (102 Stat. 3625). The additions with respect to section 125 are proposed pursuant to section 134 of the Revenue Act of 1978 (92 Stat. 2763), section 101 of the Technical Corrections Act of 1979 (92 Stat. 2227), section 226 of the Miscellaneous Revenue Act of 1980 (94 Stat. 3525), section 531(b)(4) of the Tax Reform Act of 1984 (98 Stat. 494), section 1151 of the Tax Reform Act of 1986 (TRA '86) (100 Stat. 2494), and section 1011B of the Technical and Miscellaneous Revenue Act of 1988 (TAMRA '88) (102 Stat. 3485).

Section 89 was intended, in part, to discourage employers from offering health plans and other welfare benefits that disproportionately favor highly compensated employees either as to coverage or extent of benefits. A principal objective of this legislation was to extend health coverage for employees not now covered. The sanction for failing to meet nondiscrimination criteria outlined in the statute and this implementing rule is the taxation of the excess value of highly compensated employees' benefits.

To help provide an improved basis for evaluation of the specific content and effect of the statute and these regulations, comments are invited on changes in plan provisions, the numbers and types of employee eligible for plans affected by these regulations, and employee participation rates that may be associated with one or more changes proposed in these regulations. Information indicating the effect on particular groups of employees identified by wage levels, occupations, industries or other characteristics would be especially useful. Comments also are invited on the expected effect on costs to employers and health providers which result from particular requirements.

**Explanation of Rules**

The proposed regulations include guidance in three general areas. First, they provide information with respect to miscellaneous matters relating to the nondiscrimination rules of section 89(a). Second, the proposed regulations contain detailed guidance with respect to the qualification requirements of section 89(k). Finally, the proposed regulations include questions and answers relating to section 125 (cafeteria plans) and supplementing the existing proposed regulations contained at § 1.125–1 (49 FR 19321). The proposed regulations include a variety of special rules to facilitate the application of and compliance with sections 89 and 125, particularly for plan years beginning in 1989.

*1. In General*

These proposed regulations constitute the issuance of comprehensive section 89 rules on which taxpayers may rely. Nevertheless, until the later of January 1, 1990, or the beginning of the second testing year beginning after December 31, 1988, if an employer reasonably and in good faith complies with the requirements of section 89 (including the legislative history thereto), the employer will be treated as having satisfied section 89. After this transition period, this standard of compliance will not apply to the extent that these proposed regulations address issues under section 89. Whether compliance is reasonable and in good faith is to be determined on the basis of all the facts and circumstances, including whether the employer makes a reasonable and good faith effort to collect and analyze the necessary data and information, and whether the employer consistently resolves unclear issues in its favor.

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These questions and answers do not provide comprehensive guidance on certain issues. For example, no guidance is provided on the special multiemployer plan rules adopted in TAMRA '88. In addition, this guidance does not address the separate line of business rules of section 414(r) or the extent to which additional employer disaggregation is available under section 89. In addition, the proposed regulations generally do not address the application of section 89 to group-term life insurance. These matters will be addressed in future guidance.

The proposed regulations also do not address certain issues with regard to the application of section 89 to former employees and with regard to who is an excludable employee under section 89(h). Nevertheless, under the excludable employee rules, if any employee included in a collective bargaining unit receives any employer-provided benefit, no employee in that collective bargaining unit may be treated as an excludable employee merely because the employee is a member of the collective bargaining unit. This is the case without regard to the fact that the employer-provided benefit is in the form of an employer contribution under a collective bargaining agreement to a multiemployer plan. See section 1151(k) of TRA '86 and paragraph (a)(2) of Question and Answer (Q&A) 10 of the proposed regulation for the effective date of section 89 for certain collectively bargained plans.

The proposed regulations provide that, in general, section 414(n) applies to employee benefit plans covered by section 89 in the same manner as it applies to qualified plans covered by section 401(a). They also include a delegation to the Commissioner to provide guidance in the form of revenue rulings, notices or other publications of general applicability on the extent to which the differing nature of these types of plans require different rules. The Service invites comments on the manner in which the leased employee rules apply to plans covered by section 89 and, in particular, on the extent to which different rules are appropriate.

The proposed regulations also clarify that plans are not exempt from section 89 merely because they are maintained by the federal government, state or local governments, or employee organizations. In addition, plans maintained by tax-exempt entities are subject to the requirements of section 89, with the exception that a plan maintained exclusively for church employees by an entity described in section 3121(w) is not required to satisfy the requirements of section 89.

If the public wishes to comment on the content and timing of additional guidance that may be required to implement the law, the Service will consider these comments in developing further guidance. In particular, the Service invites comments regarding the exclusion of certain classes of employees for purposes of applying the nondiscrimination rules of section 89 (e.g., prisoners incarcerated in federal or state institutions or clients in sheltered workshops maintained by charitable entities) similar to the exclusion provided in the safe harbors in Notice 89-23, 1989-8 I.R.B. 25.

*2. Nondiscrimination Requirements*

Section 89(a) is generally applicable to accident and health plans within the meaning of sections 105 and 106 (health plans) and group-term life insurance plans within the meaning of section 79. In addition, an employer may elect to treat certain other plans as subject to section 89(a). The term "benefit" appears throughout the proposed regulations. Unless indicated otherwise, the term "benefit" in connection with the nondiscrimination requirements of section 89(a) means the value of the coverage provided under the plan in the case of insurance type plans and, in the case of noninsurance type plans, the value of the payments, reimbursements, services and products provided under the plan. The proposed regulation contained at § 1.89(a)-1 includes questions and answers relating to nondiscrimination rules for purposes of section 89.

Q&A-1 of § 1.89(a)-1 sets forth in general terms the nondiscrimination tests applicable under section 89(a). In general, an employer has two approaches to nondiscrimination testing under section 89. Under the first approach, an employer's employee benefit plan satisfies section 89(a) only if (i) at least 50 percent of the employees eligible to participate in a plan are nonhighly compensated employees (the 50 percent eligibility test); (ii) at least 90 percent of the nonhighly compensated employees are eligible to participate in the plan or plans of the same type that, on an aggregate basis, are at least 50 percent as valuable as the combined value of the plans of the same type that are available to any highly compensated employee (the 90 percent/50 percent eligibility test); and (iii) the average benefit received by nonhighly compensated employees under all plans of the same type is at least 75 percent of the average benefit received by highly compensated employees under such plans (the 75 percent benefits test).

Under the second approach, an employer's employee benefit plan satisfies section 89(a) only if it benefits at least 80 percent of the employer's nonhighly compensated employees (the 80 percent coverage test). An employer may elect to test its health and group-term life insurance plans (and determine excess benefits, if any) under the 80 percent coverage test notwithstanding the fact that the first approach would produce different amounts of excess benefits.

Under either of the two approaches, a plan fails to satisfy section 89(a) if the plan contains any provision that by its terms, operation or otherwise discriminates in favor of highly compensated employees (the nondiscriminatory provisions test).

For 1989 and 1990, an employer may decide to adopt an alternative to the 75 percent benefits test for its health plans. Under this alternative, set forth in Q&A-2, an employer must treat as includible in gross income (i.e., as discriminatory excess benefits) all employer-provided coverage under its health plans with respect to certain highly compensated employees. Also, if an employer adopts this alternative for 1989, the employer may use a modified version of the 90 percent/50 percent eligibility test under which at least 80 percent of the nonhighly compensated employees must be eligible to participate in plans of the same type that, on an aggregate basis, are at least 66 percent as valuable as the aggregate value of the plans of the same type available to any highly compensated employee. For testing years ending in 1990, this modified version of the 90 percent/50 percent eligibility test is not available and the class of highly compensated employees who are considered to receive taxable employer-provided health coverage under the alternative to the 75 percent benefits test is broadened.

Q&A-2 also provides a permanent alternative to the general nondiscrimination tests for certain large employers whose employees are substantially all nonhighly compensated employees. Under this alternative, an employer's health plans satisfy section 89(a) if the employer employs at least 5,000 individuals; at least 90 percent of the full-time active employees are nonhighly compensated employees; less than 0.75 percent of all active employees have compensation in excess of twice the section 414(q)(1)(C) amount ($50,000 indexed); at least 80 percent of those employees eligible to participate in each plan are nonhighly compensated



employees and 80 percent of the nonhighly compensated employees have available to them under all health plans a health benefit that is at least 80 percent as valuable as the largest such benefits available to any highly compensated employee; and at least 66 percent of all nonhighly compensated employees receive core health benefits that are at least 66 percent as valuable as the largest such benefit available to any highly compensated employee. In addition, the nondiscriminatory provisions test must be satisfied. This alternative is only available to determine if any employer's health plan or plans are discriminatory; it is not available to determine the amount of excess benefits.

Core health coverage generally means comprehensive major medical and hospitalization coverage. Dental, vision and health coverages provided under flexible spending arrangements (see paragraph (c) of Q&A-7 of proposed § 1.125-2) are not core health benefits. Note that the definition of "core health coverage" under section 89 is not necessarily the same as the definition of "core coverage" under section 4980B (COBRA continuation coverage) and, therefore, no inference should be drawn from these proposed regulations with respect to the meaning of such term under section 4980B.

Q&A-3 details the treatment of family and other coverage under section 89 and the extent to which such coverages may be tested separately from employee-only coverage. Included in Q&A-3 is guidance relating to the use of sworn statements when employee-only coverage is to be tested separately. The proposed regulations state that a sworn statement need not be notarized but, for testing years commencing on or after January 1, 1990, a sworn statement must be made under penalty of perjury. An example of a sworn statement is provided.

Q&A-4 sets forth rules relating to health plan comparability and health plan aggregation for the purposes of the 50 percent eligibility test and the 80 percent coverage tests. These rules were changed extensively by TAMRA '88. The comparability rules in the proposed regulations generally enable health plans that fail the 50 percent eligibility test or the 80 percent coverage test on an individual basis to satisfy such tests on a group basis.

Q&A-5 and Q&A-6 of the proposed regulation set forth the method for nondiscrimination testing. Q&A-5 states that testing for compliance with the nondiscrimination requirements of section 89(a) is done by reference to the employees employed on, and benefits provided for, a single day (the testing day), and such results are then annualized for the entire testing year with adjustments to reflect certain benefit changes during the testing year (both before and after the testing day). In general, the facts on the testing day must be adjusted to reflect benefit changes due to changes in plan terms and, in the case of highly compensated employees, changes in elections by such employees. If the terms of available plans change during an open season, benefit changes that occur due to elections during that open season are considered changes due to changes in plan terms. The proposed regulation contains a transition rule for 1989 that generally allows benefit changes prior to July 1, 1989 to be disregarded.

The employer must designate a uniform 12-month testing period for all its plans of the same type. In certain circumstances, an employer may elect a short testing year. To the extent that the employer elects to test plans of different types together for purposes of certain nondiscrimination tests, all these plans must be tested on a uniform testing year. Thus, if an employer tests its group-term life insurance plans with its dependent care assistance programs for purposes of the 75 percent benefits test, all such plans and programs must be tested on the same 12-month period. The same rule applies where the employer aggregates its health plans with its group-term life insurance plans to enable its group-term life insurance plans to satisfy the requirements of the 75 percent benefits test.

As set forth in Q&A-6, the first testing year of an employer with respect to plans of the same type generally must begin on the first day of the first plan year that any plan of that type is subject to section 89. Also, the employer may use an earlier testing year, including the calendar year, for 1989. Thus, for testing years beginning in 1989, the employer is required to test all its plans of the same type together even though not all of such plans are subject to the requirements of section 89 for the entire testing year. However, in determining any excess benefits under the plans, Q&A-6 contains rules under which an employer may prorate the amount of any excess to reflect the extent to which coverage is subject to section 89.

Q&A-7 sets forth rules relating to valuing coverage under a health plan. These rules apply until the Service publishes valuation procedures under section 89(g)(3)(B). Q&A-7 provides that an employer may use any reasonable method for valuing a health plan and specifies that the cost of the health plan is a reasonable method of valuation. Specifically, in valuing coverage an employer is permitted to use the cost of the applicable premium under section 4980B(f)(4) for continuation coverage under a group health plan and is permitted to adjust the premium for differences related to geographic locale, the demographics of the participant population, and utilization. No inference should be drawn from Q&A-7 concerning the method that may be used to determine the applicable premium under section 4980B(f)(4).

The proposed regulation clarifies that cost containment features may be disregarded under a reasonable method of valuation. Similarly, the fact that a delivery system used by a plan is different from a delivery system used by another plan should not affect the values of such plans. Thus, the fact that one plan is provided through a health maintenance organization and another through a traditional indemnity program should not cause the value of the plans to differ as long as the coverage under both plans is substantially similar.

The method of valuing health plans used by an employer for purposes of section 89 must be applied consistently for all the employer's health plans, except that the employer may use the cost method described in section 89(g)(3)(E) for multiemployer plans.

When determining the amount of excess benefits under section 89(b), an employer is required to use the cost method used for determining the applicable premium under section 4980B(f)(4), even if that was not the valuation method the employer used for testing purposes. This method must be used for calculating both the highly and nonhighly compensated employees' employer-provided benefits when excess benefits for highly compensated employees are determined. The only permissible adjustment to this method is for differences in the premium due to utilization.

Q&A-7 also sets forth the method of valuing coverage under flexible spending arrangements that provide health benefits. See Q&A-7 of § 1.125-2 of the proposed regulation for the definition of a flexible spending arrangement. Such coverage is to be valued on the basis of its cost (in general, the premium required for the health coverage under the arrangement). As is the case with any valuation method, the fact that a premium is not paid does not affect the value of the

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coverage so long as the coverage is provided.

Q&A–8 of the proposed regulation contains an explanation of the treatment of salary reduction contributions under the nondiscrimination tests of section 89. Salary reduction contributions generally are defined as elective, pre-tax contributions under a cafeteria plan. TAMRA '88 contains a provision allowing, in certain cases, salary reduction contributions to be taken into account as employer contributions in performing the 90 percent/50 percent eligibility test. In addition to this provision, the proposed regulation describes circumstances in which certain salary reduction contributions by highly compensated employees must be taken into account as employer contributions and circumstances in which certain salary reduction contributions by nonhighly compensated employees must be treated as after-tax employee contributions. This mandatory treatment of salary reduction contributions applies to testing years beginning after 1989.

Q&A–9 sets forth the method by which excess benefits provided under a discriminatory employee benefit plan are to be calculated.

Q&A–10 contains guidance relating to the effective dates of the nondiscrimination and qualification requirements. Generally, the requirements apply to plans for plan years that commence on or after January 1, 1989. With respect to health plans, a special rule applies if the designated plan year of such a plan begins later in calendar year 1989 than the plan year for such health plan began in 1988.

Section 89 provides a later effective date that may apply with respect to collectively bargained plans. In the case of a plan maintained pursuant to a collective bargaining agreement ratified before March 1, 1986, the rules under section 89 do not apply to employees covered by such agreement in years beginning before the earlier of January 1, 1991, or the date on which the last collective bargaining agreement relating to the plan expires (determined without regard to any extension thereof after February 28, 1986). Thus, such a collectively bargained plan is not subject to section 89 before the date determined under the preceding sentence, and collectively bargained employees under such a plan may be treated as excludable employees until such date for purposes of applying section 89 to those other plans of the same type of the employer that are subject to section 89. The proposed regulation provides that the employer may elect to take all such otherwise excludable collectively bargained employees under a plan into account and, in so doing, to accelerate the effective date with respect to the collectively bargained plan for purposes of the nondiscrimination tests.

*3. Qualification Requirements Under Section 89(k)*

Unless statutory employee benefit plans and certain other plans meet the requirements of section 89(k) employer-provided benefits received under such plans are includible in an employee's gross income, notwithstanding the fact that the employer-provided benefits are otherwise excludable under the Code. The term "benefit" for purposes of the section 89(k) qualification requirements, in contrast to the definition of the term "benefit" for purposes of the nondiscrimination tests, means the value of the payments, reimbursements, services and products provided under the plan.

In order to meet the requirements of section 89(k), a plan must be in writing, legally enforceable, maintained for the exclusive benefit of employees, and established with the intent that it will be maintained for an indefinite period of time. In addition, an employer must provide those who are eligible to participate in the plan with reasonable notice of benefits available under the plan.

Section 89(k) applies to statutory employee benefit plans and certain other types of plans maintained by an employer. Section 89(k) generally applies to the following types of plans, regardless of whether such plans are subject to nondiscrimination testing under section 89(a): Accident and health plans; group-term life insurance plans; dependent care assistance programs; qualified tuition reduction programs; cafeteria plans; fringe benefit programs providing no-additional-cost services, qualified employee discounts, or employer-operated eating facilities, the benefits from which are otherwise excludable from the gross income of the beneficiary; and plans to which section 505 applies. The list of specific kinds of plans contained in the proposed regulation that are of a type to which section 89(k) applies is not intended to be exhaustive.

The proposed regulation contains several special rules with respect to accident or health plans. In general, an accident or health plan is not subject to section 89(k) unless the employer-provided benefits under the plan are (or are intended to be) excludable from gross income under section 105(b) or (c). Thus, for example, sick pay and disability plans are generally not subject to the rules of section 89(k).

Because coverages under accidental death and dismemberment (AD&D plans) plans and business travel accidental death plans are eligible for the exclusion under section 106, benefits provided pursuant to such coverages are excludable under sections 101 and 105(c). Thus, such plans are subject to the provisions of section 89(k). The coverages and benefits under these plans, like other accident or health plans the coverage of which is excludable (or of a kind that is excludable) under section 106, may not be excluded under section 132. If a death benefit under an AD&D plan is not conditioned on the accidental death of the employee, that benefit is not part of an AD&D plan.

The proposed regulation states that a plan that is a part of an organization described in section 501(c)(9) or 501(c)(17) must meet the requirements of section 89(k) and that, to the extent that the plan provides benefits of the type provided by statutory employee benefit plans, such benefits must be considered in nondiscrimination testing under section 89. If a plan does not meet the requirements of section 89(k), the related organization is not exempt from tax under section 501(a). Section 89 applies to the plan that is part of a voluntary employees' beneficiary association (VEBA) even if the VEBA is a collectively bargained VEBA as described in section 505(a)(2).

Section 89(k)(1)(A) provides that a plan must be in writing. The proposed regulation provides that all of the material terms of a plan must be contained in a single written document. However, the document may incorporate material terms by reference to other documents rather than setting forth such terms in full. The proposed regulation also clarifies that a single written document may satisfy the writing requirement for several plans. Similarly, material terms contained in one document related to several plans may be incorporated in each of the single written documents for such plans. These rules have been included to give employers the flexibility to group their plans in written documents in various ways so long as all of the coverage is in fact in writing.

Both the proposed regulation and section 89 require that an employer's elections with respect to nondiscrimination testing be in writing. If any such election is not in writing it is waived. For example, if no testing year is designated in writing with regard to any health plan, all health plans must be tested on the calendar year. The nondiscrimination testing elections are not required to be in the single written document. Consequently, the failure to make an election in writing does not cause a plan to fail to meet the writing requirement.



The proposed regulation provides that a plan must be in writing prior to the first day on which coverage or benefits are available under the plan. There is a transition rule under which a plan is not required to meet the writing requirement of section 89(k) before the later of the beginning of the first day of the second plan year beginning after December 31, 1988, and the end of the 12-month period beginning on the first day of the first plan year that the plan is subject to section 89.

Section 89(k)(1)(B) provides that a plan must be legally enforceable. The intent of this provision is to ensure that the employer cannot exercise excessive discretion. Therefore, the proposed regulation provides that, in general, the conditions required for an employee to participate in or obtain a benefit under a plan must be definitely determinable and the employee must be able to compel the coverage or payment of benefits described in the plan. Except in certain circumstances, a plan fails the enforceability requirement if coverage or a benefit available under the plan is subject to the discretion of the employer, either in operation or under the terms of the plan. Nevertheless, the proposed regulation permits employer discretion relating to certain administrative acts. In addition, an employer generally may expand coverage on a retroactive basis if the employer memorializes such expansion in writing, provides notice of such expansion, and meets the permanence requirements of section 89(k) with regard to the expanded coverage. The fact that such limited employer discretion does not violate the enforceability requirement of section 89(k) does not mean that, under certain circumstances, such employer discretion would not cause the plan to fail the nondiscrimination tests of section 89, in particular the nondiscriminatory provisions test of section 89(d)(1)(C).

The proposed regulation contemplates that many cost containment features existing in the health care industry today do not violate the enforceability requirements of section 89(k). For example, a managed care program that allows an insurer to grant a benefit not otherwise available under the plan in lieu of a benefit described in the plan does not violate the enforceability requirement if the patient, the employer and the insurance company consent to such alternative, a physician recommends or concurs with such alternative, and the plan describes the possibility of such alternative as well as the general criteria under which such alternative is available and may be selected. Similarly, health benefits may be conditioned on a medical opinion of a physician.

The proposed regulation contains a transition rule with regard to the enforceability rules of section 89(k). A plan is not required to satisfy the enforceability rules outlined in the proposed regulation before the first day of the second plan year that the plan is subject to section 89.

Section 89(k)(1)(C) provides that employees must be provided reasonable notification of benefits available in a plan. The purpose of this requirement is to inform an individual who is eligible to participate in the plan of its essential features. Therefore, the proposed regulation requires that individuals eligible for coverage or benefits under a plan be provided with a summary explanation of these features, including directions concerning the method by which individuals may receive more information. Such notice must be given to an individual prior to the initial availability of coverage or benefits to such individual.

The proposed regulation states that the employer must provide the notice. In the case of a multiemployer plan, the plan administrator must provide the notice. Nevertheless, the notice requirements are satisfied if an insurance company or other health care insurer or provider (e.g., a health maintenance organization) provides the notice.

The proposed regulation provides a transition rule for the notice requirement for plan years commencing in 1989. Under this rule, an employer is not required to provide notice to employees for any such plan year until July 1, 1989. Thus, for example, an employer is first required to provide notice under section 89(k) with respect to a calendar year plan by July 1, 1989. Similarly, with respect to a plan that uses a September 1 through August 30 plan year, notice under section 89(k) is first required by September 1, 1989. The delay in the notice to employees under this rule does not preclude the transitional relief providing for a delay in the requirement that a plan be in writing.

The reporting, notification and written plan requirements under this regulation are in addition to, and not in lieu of, reporting, disclosure, notification and written plan requirements which may otherwise apply under Title I of the Employee Retirement Income Security Act of 1974 or any other law.

Section 89(k)(1)(D) provides that a plan must be maintained for the exclusive benefit of employees. The purpose of the exclusive benefit requirement is to preclude an employer from extending its plan to individuals who have no current or prior employment-type relationship with the employer. The proposed regulation provides, in general, that a plan must be maintained for the exclusive benefit of those employees who are described in the plan as eligible to participate. A plan may fail this requirement by its terms or through its operation.

The proposed regulation provides rules concerning who may participate under a plan. In general, only individuals who are or who are treated as employees (or former employees) of the employer or who otherwise perform services for the employer may participate under a plan of the employer. The proposed regulation does not have any effect on any other existing or future eligibility rule concerning who may participate in a plan. Thus, for example, a self-employed individual described in section 401(c)(1) cannot be a participant in a cafeteria plan even though such individual is treated as an employee for purposes of section 89(k).

There is a transition rule relating to the applicability of the exclusive benefit requirement. The proposed regulation provides that an employer is not required to meet the exclusive benefit requirement until the first day of the second plan year that the plan is subject to section 89.

Section 89(k)(1)(E) requires that a plan must be established with the intention that it will be maintained for an indefinite period of time. The proposed regulation focuses on the operation of the plan, as opposed to the plan terms, in determining whether the plan was intended to be maintained for an indefinite period of time. Accordingly, if a plan is materially amended or terminated and the coverage has been in effect for at least a consecutive 12-month period, the requirement of section 89(k)(1)(E) is satisfied, regardless of any terms of the plan which may provide that the employer has the right to change or terminate the plan. However, if a plan is materially amended or terminated before the coverage has been in effect for a consecutive 12-month period, the plan is considered to have been established with the intent of being temporary, unless the employer can demonstrate that there is a substantial business purpose for such termination or amendment.

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The proposed regulation contains several rules relating to the sanction under section 89(k). In general, the proposed regulation provides that if a plan fails to satisfy the qualification requirements of section 89(k), the value of the employer-provided benefits received (rather than the value of the coverage provided), is not excludable from gross income. Thus, for example, the exclusions provided in sections 101 and 105 are generally not available with respect to benefits provided under an accident or health plan. All employees who receive benefits are subject to this sanction without regard to whether they are highly compensated employees within the meaning of section 414(q).

The proposed regulation contains a rule that allows correction of failures to comply with section 89(k) in certain circumstances. If there is a de minimis failure to comply with certain requirements, the employer may correct the failure within 90 days of its occurrence. If the employer timely corrects the failure, the plan does not fail section 89(k) merely because of such failure. A failure is not de minimis under this rule if correction requires the amendment of the plan document to reduce coverage on a retroactive basis to conform the document to the operation of the plan.

The proposed regulation clarifies the definition of a plan with respect to the sanction under section 89(k). In the case of a health plan, to the extent that the coverage providing the benefit taxable by reason of section 89(k) may reasonably be separated from other plan coverage, the proposed regulation permits the failed portion of the plan to be treated as a separate plan.

The proposed regulation provides for a limitation on the amount that must be included in the income of an employee as a result of section 89(k). The limitation is the sum of the following (dollar amounts are indexed in accordance with section 414(q)(1)(C)): 10 percent of the first $50,000 of the employee's compensation; 25 percent for amounts of such compensation in excess of $50,000 and up to $100,000; 75 percent for amounts of such compensation in excess of $100,000 and up to $150,000; and 100 percent of compensation in excess of $150,000. In addition, the Commissioner, through revenue rulings, notices or other publication of general applicability, is authorized to adjust the amounts of the sanction where such adjustment is appropriate and is not inconsistent with the purposes of section 89(k). Section 213 governs whether the amount includible in income as a result of section 89(k) is deductible.

If the sanction under section 89(k) is imposed with regard to a benefit under coverage that is determined under section 89(a) to discriminate in favor of a highly compensated employee, the proposed regulation provides for the coordination of the two sanctions. In general, the higher of the two taxable amounts must be included in the gross income of the highly compensated employee.

*4. Miscellaneous Matters Relating to Section 125*

Proposed § 1.125–2 contains seven questions and answers that supplement and, in part, update the questions and answers contained in proposed regulations under § 1.125–1 that were published on May 7, 1984 (49 FR 19321), and amended on December 31, 1984 (49 FR 50733). Q&A–1 of proposed § 1.125–2 provides that Q&A–2 through Q&A–6 of that section are generally effective in accordance with the effective date provisions of section 89 (generally plan years commencing after December 31, 1988). In addition, Q&A–1 provides that Q&A–7 of proposed § 1.125–2 (relating to flexible spending arrangements subject to sections 106 and 105) applies to plan years beginning after December 31, 1989.

Many of the questions and answers under § 1.125–2 clarify previously proposed § 1.125–1 as well as § 1.125–2T of the Temporary Regulations published on February 4, 1986 (51 FR 4318). To the extent the provisions of proposed § 1.125–2 clarify the provisions of proposed §§ 1.125–1 or 1.125–2T and are less restrictive, the Service will apply them as if contained in those regulations. However, consistent with the statement in the preamble to the May 7, 1984 Notice of Proposed Rulemaking, to the extent that the provisions of proposed § 1.125–2 clarify the provisions of proposed §§ 1.125–1 and 1.125–2T and are more restrictive, the Service will apply them only as set forth in Q&A–1 of proposed § 1.125–2.

Q&A–2 and Q&A–3 of the proposed regulation under § 1.125–2 restate the general requirements of section 125. Q&A–4 sets forth what benefits are treated as qualified benefits and what benefits constitute cash under a cafeteria plan. For example, Q&A–4 provides that a benefit that is taxable because it is determined to be an excess benefit under section 89(b) or because the plan fails to satisfy section 89(k) remains a qualified benefit under section 125. As a result of this provision a cafeteria plan may provide such taxable benefits.

The proposed regulation provides further guidance with regard to the rule that a cafeteria plan may not operate to defer compensation. Thus, under Q&A–5, to the extent that a benefit carries over to the following plan year, such benefit may not be offered under a cafeteria plan. For example, life or health insurance with a savings or investment feature (e.g., so-called whole-life or whole-health insurance) may not be offered in a cafeteria plan. Q&A–5 also contains a rule to determine the extent to which the inclusion of elective vacation days under a cafeteria plan operates to permit the deferral of compensation.

A cafeteria plan may permit employees to make elective contributions under a qualified cash or deferred arrangement described in section 401(k). Similarly, a cafeteria plan does not impermissibly allow the deferral of compensation merely because, as an option under the plan, employees may make after-tax employee contributions under a qualified plan that is subject to section 401(m). Finally, the deferred compensation prohibition does not prevent an employer from providing employer matching contributions subject to section 401(m) with respect to elective contributions under section 401(k) or after-tax employee contributions subject to section 401(m).

Q&A–6 clarifies and expands the rule contained in proposed § 1.125–1 concerning when an employee may revoke a benefit election and make a new election under a cafeteria plan. In general, Q&A–6 provides that a plan may allow such a revocation and subsequent election in the following circumstances: When a third-party health care insurer or provider significantly increases the cost to the employee of coverage or significantly curtails or ceases coverage; when the participant has a change in family status; or when the participant has separated from service. In addition, a cafeteria plan may provide that a benefit ceases if the participant has ceased making required premium payments. Finally, a cafeteria plan may allow a revocation or modification with respect to elective contributions subject to section 401(k) and after-tax employee contributions subject to section 401(m), to the extent such modification or revocation is permitted under section 401(k) or 401(m).

Q&A–7 contains special rules applicable to health plans that are flexible spending arrangements (FSAs). These rules are intended to protect the integrity of the distinction between the taxable treatment of personal medical expenses (subject to the rules of section 213) and the more favorable tax treatment of employer-provided health plan coverage and benefits under section 106 or 105, including benefits received under employee-purchased accident or health coverage under section 104.



In general, if a health plan has a low maximum limitation on benefits and the amount of the premium for coverage is the same or similar to this limitation on benefits, there is a significant concern that the plan operates primarily to exclude from income amounts paid for personal medical expenses that would otherwise only be deductible under section 213 to the extent that they exceed 7.5 percent of adjusted gross income. This concern is greater if, with respect to such plan, there is no person, such as an employer or insurance company, who bears a risk of experience loss with respect to the health plan and thus has an interest in regulating the arrangement to minimize adverse selection and substantiate claimed expenses. In order to limit the extent to which health FSAs effectively operate to exclude amounts paid for personal medical expenses, Q&A–7 applies requirements to health FSAs that are similar to the requirements that an independent health insurer with a meaningful risk of loss would apply to protect against adverse selection and the inappropriate reimbursement of expenses. Thus, the requirements in the proposed regulation are consistent with those features that are commonly associated with arrangements that exhibit the basic risk-shifting and risk-spreading characteristics of insurance.

Q&A–7 clarifies that an employee's salary reduction contributions under a health FSA are payments of a premium by the employee for health coverage with respect to which the maximum reimbursement amount is the same or similar to the amount of the required premium. Therefore, health FSAs are bona fide plans and are not separate, employee-by-employee, health expense reimbursement accounts that operate in a manner similar to employee-funded, defined contribution plans. The maximum amount of reimbursement available under a health FSA at any particular time with respect to an individual cannot be based on the amount of premium that the individual has paid as of such time. Rather, the maximum reimbursement amount must be uniform throughout the coverage period. In addition, health FSAs cannot reimburse employees for premiums for other health coverage. Finally, because there is no party directly involved in an FSA with an interest in assuring that claims are bona fide, the proposed regulation imposes certain claims substantiation requirements for FSAs.

Under the proposed regulation, experience gains under health FSAs (i.e., premiums in excess of claims paid plus expenses) may be treated as gains under bona fide health plans. Thus, such gains may be available to pay reasonable and bona fide dividends or premium refunds to the premium payers. Similarly, experience gains may be used to reduce required premiums for coverage in future years. For example, experience gains for one year may be used in a second year to permit the health FSA to charge all eligible employees only a $490 premium for coverage with a $500 reimbursement maximum. In no case, however, may the treatment of experience gains under a health FSA have the effect, directly or indirectly, of reimbursing employees based on their individual claims.

**Reliance on These Proposed Regulations**

Taxpayers may rely on these proposed regulations for guidance pending the issuance of final regulations. Because these proposed regulations are generally effective for years beginning after December 31, 1988, the Service will apply these proposed regulations in issuing rulings and in examining returns with respect to taxpayers and plans after that date. If future regulations are more restrictive than these proposed regulations, such regulations will be applied without retroactive effect.

**Special Analyses**

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis is therefore not required. Although this document is a notice of proposed rulemaking which solicits public comments, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, the proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

**Comments and Requests for Public Hearing**

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register**.

**Drafting Information**

The principal authors of the proposed regulations are Felix Zech, David Munroe, and Steven Miller of the Office of the Assistant Chief Counsel (Employee Benefits and Exempt Organizations). However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the proposed regulations on matters of both substance and style.

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**List of Subjects in 26 CFR 1.61–1 Through 1.281–1**

Deductions, Exemptions, Income taxes, Taxable income.

**Proposed Amendments to the Regulations**

The proposed amendments to 26 CFR Part 1 are as follows:

**Income Tax Regulations**

**PART 1—[AMENDED]**

**Paragraph 1.** The authority citation for Part 1 is amended by adding the following citation:

**Authority:** 26 U.S.C. 7805 1.89(a)–1 and 1.89(k)–1 also issued under 26 U.S.C. 89(m).

**Par. 2.** New §§ 1.89(a)–1 and 1.89(k)–1 are added immediately after § 1.88–1 to read as follows:

**§ 1.89(a)–1 Miscellaneous questions and answers relating to nondiscrimination rules for certain employee benefit plans.**

The following is a list of the questions addressed in this section:

Q–1: What are the section 89 nondiscrimination rules?

Q–2: What transitional and special rules are available to health plans under section 89?

Q–3: Under what circumstances may employees be disregarded for purposes of section 89 when the employees receive health coverage from other employers or when employees do not have a family or have a family whose members receive health coverage from another employer?

Q–4: What is a health plan under the section 89 nondiscrimination rules and to what extent are health plans comparable or aggregated for purposes of such rules?

Q–5: What is the testing methodology for applying the nondiscrimination rules under section 89?

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Q–7: For purposes of applying section 89 to an employer's health plan, what rules apply for determining the employer-provided benefits and calculating the excess benefits?

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Q–10: What are the effective dates of the section 89 nondiscrimination and qualification rules?

Q–1: What are the section 89 nondiscrimination rules?

A–1: (a) *Nondiscrimination rules*—(1) *In general.* Section 89(a) provides that, notwithstanding any other provision of the tax law specifically excluding items from gross income (e.g., sections 79 and 106), the gross income of a highly compensated employee (as defined in section 414(q)) includes an amount equal to the employee's employer-provided benefit that is found to be discriminatory under the rules provided in this section. See paragraph (f)(3) of this Q&A–1 for the definition of "employer-provided benefit" for these nondiscrimination rules. The nondiscrimination requirements of section 89(a), however, do not affect the exclusion from gross income of death benefits under section 101(a) and accident and health benefits under sections 104 and 105.

(2) *Timing of inclusion and deduction.* The excess benefit for a testing year generally is treated as received on the last day of the testing year. Thus, the excess benefit for a testing year generally is included in a highly compensated employee's gross income for the employee's taxable year with or within which the testing year ends. Similarly, the excess benefit for a testing year generally is treated as paid by the employer on the last day of the testing year. Thus, the excess benefit for a testing year is deductible by the employer only for the taxable year of the employer with or within which the testing year ends. Also, for purposes of determining the deductibility of both employer-provided benefits that are not excess benefits and employer-provided benefits that are excess benefits, excess benefits are deemed to be attributable to the employer-provided benefits provided latest during the testing year. For purposes of determining the treatment of excess benefits under section 404, excess benefits are treated as paid under a plan or arrangement that defers the receipt of compensation or benefits to the extent that, under the rule of this paragraph (a)(2), the excess benefits are received after the end of the employer's taxable year in which the services creating the right to such compensation or benefits are performed. For these purposes, excess benefits are deemed to be attributable to employees' services performed latest in such testing year. Excess benefits are treated as paid under such a plan or arrangement even if they are received not more than a brief period (e.g., 2½ months) after the end of the employer's taxable year (see § 1.404(b)–1T) and even if the employer elects the rule of section 89(a)(2)(B) with respect to excess benefits. An employer's election of the rule of section 89(a)(2)(B) for a testing year must be made in writing by January 31 of the first calendar year following the calendar year in which the testing year ends. Such election, when made, must apply for all plans of the same type.

(b) *Discriminatory employee benefit plan*—(1) *In general.* A statutory employee benefit plan is a discriminatory employee benefit plan for a testing year unless, for such year, the plan satisfies the requirements of paragraphs (c) and (d) of this Q&A–1. Alternatively, in lieu of the requirements of paragraph (d) of this Q&A–1, an employer may elect to apply the requirements of paragraph (e) of this Q&A–1 to a statutory employee benefit plan. However, for testing years beginning in 1989, a statutory employee benefit plan is not treated as a discriminatory employee benefit plan for purposes of section 4976 if the excess benefits with respect to such plan are properly reported in accordance with section 89(1).

(2) *Disability coverage.* Generally, a plan (or portion thereof) that provides disability coverage is not subject to the requirements of paragraphs (c), (d) or (e) of this Q&A–1 for a testing year and, thus, may not be taken into account in determining whether any other accident or health plan satisfies the requirements of such paragraphs. For example, short-term sick pay, short-term and long-term disability plans, worker's compensation plans (as defined in paragraph (f)(1)((v) of this Q&A–1), plans described in section 104(a)(4) and (5) and similar wage continuation plans are not subject



to the requirements of paragraphs (c), (d) or (e) of this Q&A–1, even if there are significant employer-provided benefits with respect to such plans. This paragraph (b)(2) does not apply with respect to disability coverage the benefits of which are excludable from gross income under section 105(b) or (c).

(3) *No employer-provided benefit.* If there is no employer-provided benefit (other than by reason of coverage under such plan being considered excess benefit) for a testing year, with respect to a plan that is otherwise subject to the nondiscrimination rules of section 89, such plan is not subject to the requirements of paragraphs (c), (d) or (e) of this Q&A–1 for such testing year. See Q&A–7 of this section to determine a plan's employer-provided benefit. An employer cannot take into account a plan (or portion thereof) providing no employer-provided benefit in determining whether other plans meet the requirements of paragraphs (c), (d) or (e) of this Q&A–1.

(4) *Employers with only highly compensated employees.* A statutory employee benefit plan is not subject to the requirements of paragraphs (c), (d) or (e) of this Q&A–1 for a testing year if such plan is maintained by an employer that, for such year, only has employees who are highly compensated employees.

(c) *Nondiscriminatory provisions requirement*—(1) *In general.* A plan satisfies the requirement of this paragraph (c) and section 89(d)(1)(C) only if the plan does not contain any provision that (by its terms, operation, or otherwise) discriminates in favor of highly compensated employees. In making this determination, an employer must take into account all plans of the same type. For purposes of this requirement, an employer's election with respect to testing (e.g., designation of a testing day) is subject to the nondiscriminatory provisions requirement even though it is not required to be in the single written document required under section 89(k)(1)(A).

(2) *Waiting periods under core health plans.* If an employer has two or more core health plans with different waiting periods, the core health plans do not satisfy the nondiscriminatory provisions test of this paragraph (c) unless each plan satisfies the 50 percent eligibility test of paragraph (d)(3) of this Q&A–1 either on an individual basis or by inclusion in a group of comparable plans, under paragraph (b) of Q&A–4 of this section, that includes only one or more additional core health plans that have the same or shorter waiting periods. If a plan fails to satisfy this paragraph (c) by reason of this paragraph (c)(2), the excess benefit attributable to this failure is the employer-provided benefit under the plan that relates to the period of coverage that prevents the plan from being included in a group of comparable plans under the preceding sentence.

(3) *Examples.* The provisions of this paragraph (c) are illustrated in the following examples:

*Example 1.* Assume that an employer has 25 employees, 5 of whom are highly compensated employees. Two of the 20 nonhighly compensated employees have families. The employer provides employee-only health coverage with an employer-provided benefit of $2,000 to all employees, and provides the highly compensated employees with an additional plan providing employee-only coverage with an employer-provided benefit of $2,200. In addition, the employer provides family-only health coverage (with an employer-provided benefit of $2,000) to all of the nonhighly compensated employees, but makes such family-only coverage available to the highly compensated employees only if they pay the total cost of such coverage on an after-tax employee contribution basis. Thus, the highly compensated employees receive no employer-provided benefit with respect to such family-only coverage. The employer decides to treat all of its employees as having a family (see Q&A–3 of this section). The family-only coverage that is treated as received by employees without families may be used under the comparability rule of paragraph (c)(2) of Q&A–4 of this section to support the additional $2,200 employee-only coverage provided to highly compensated employees. Although after the application of the comparability rule, the $2,200 employee-only coverage for the highly compensated passes the 80 percent coverage test set forth in paragraph (e) of this Q&A–1, the nondiscriminatory provisions test is violated. This is because the coverage of 18 of the 20 nonhighly compensated employees is not meaningful because they are not in fact receiving benefits under the family-only coverage.

*Example 2.* A school district selects July 1 as its testing day. On that day, the school district has no part-time employees and only administrative personnel, regular faculty and maintenance personnel on its payroll. The designation of July 1 as the testing day does not constitute the designation of a testing day that is fairly representative of the employee pool and business operation of the school district and, therefore, such designation violates the nondiscriminatory provisions test.

*Example 3.* An employer that operates a department store selects July 1 as its testing day. Traditionally, the number of the employees employed by the employer on July 1 does not reasonably reflect the number of the employer's employees employed during most of its fiscal year. This designation violates the nondiscriminatory provisions test.

*Example 4.* Assume that an employer maintains numerous health plans (both core and noncore plans) for its 5,000 employees. All but one core health plan, Plan X, provides for a 3-month waiting period for new employees. Plan X provides coverage after 1 month of employment for certain executive personnel. This 1-month waiting period provision violates the nondiscriminatory provisions test of this paragraph (c) unless Plan X satisfies the 50 percent eligibility test of paragraph (d)(3) of this Q&A–1 either on an individual basis or by inclusion with another core health plan or plans with the same or shorter waiting periods in a group of comparable plans under paragraph (b) of Q&A–4 of this section. If the 1-month waiting period provision fails the nondiscriminatory provisions test of this paragraph (c), then the employer-provided benefit under Plan X that relates to coverage for the period between the first and third months of employment is treated as an excess benefit of each highly compensated employee eligible for coverage under Plan X after 1 month of employment.

(d) *Eligibility and benefit requirements*—(1) *In general.* A plan satisfies the requirements of this paragraph (d) only if the tests of paragraphs (d)(2), (d)(3), and (d)(4) of this Q&A–1 are satisfied.

(2) *90 percent/50 percent eligibility test.*—(i) *In general.* A plan satisfies this test only if at least 90 percent of all nonhighly compensated employees have available under all plans of the same type an employer-provided benefit that is at least 50 percent of the largest employer-provided benefit available under all such plans to any highly compensated employee. To the extent that an employee is eligible to be covered under two or more plans of different types (see paragraph (f)(2)(i) of this Q&A–1), but not fully under all such plans, the employee cannot be treated as eligible for the full employer-provided benefit of each plan for purposes of the 90 percent/50 percent test. Instead, the employer must use a reasonable, uniform, and nondiscriminatory allocation method to allocate to such employee only a reasonable portion of each plan's full employer-provided benefit. Whether a plan is available to an employee is determined under all of the facts and circumstances. For example, an HMO at a location distant from the location of the employer might not, under the facts and circumstances, be reasonably available to employees at the location of the employer. See Q&A–8 of this section for the treatment of salary reduction contributions under this test. Also, see Q&A–2 of this section for a transition rule for the 1989 testing year.

(ii) *Example.* The provisions of this paragraph (d)(2) are illustrated in the following example:

*Example.* An employer has 12 employees, 10 of whom are nonhighly compensated employees. The employer maintains two health plans. Plan A has an employer-

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provided benefit of $1,000. It is available to 9 of the 10 nonhighly compensated employees and both of the highly compensated employees. Plan B, a dental plan, has an employer-provided benefit of $500. It is available only to the two highly compensated employees. The health plans meet the requirements of this paragraph (d)(2). This is the result since 90 percent of the nonhighly compensated employees (9 of 10) have available to them an employer-provided benefit of $1,000, which is more than 50 percent of $1,500, the largest employer-provided benefit available to any highly compensated employee. Note that the dental plan in this example fails the 50 percent eligibility test set forth in paragraph (d)(3) of this Q&A–1.

(3) *50 percent eligibility test*—(i) *In general.* A plan satisfies this test only if the plan satisfies the requirement of either paragraph (d)(3)(ii) or paragraph (d)(3)(iii) of this Q&A 11. An employee is eligible to participate in a plan only if, under all of the facts and circumstances, the employee is reasonably eligible to participate in such plan. See Q&A–4 of this section with respect to rules relating to the comparability and aggregation of health plans.

(ii) *50 percent eligibility.* A plan satisfies the requirement of this paragraph (d)(3)(ii) only if at least 50 percent of the employees eligible to participate in the plan are nonhighly compensated employees.

(iii) *Nondiscriminatory ratio.* A plan satisfies the requirements of this paragraph (d)(3)(iii) only if the highly compensated eligibility percentage does not exceed the nonhighly compensated eligibility percentage. The highly compensated eligibility percentage is the percentage determined by dividing the number of highly compensated employees eligible to participate in the plan by the total number of highly compensated employees. The nonhighly compensated eligibility percentage is the percentage determined by the same method substituting nonhighly compensated employees for highly compensated employees.

(iv) *Example.* The provisions of this paragraph (d)(3) are illustrated in the following example:

*Example.* An employer maintains a plan providing for medical diagnostic examinations to a group of management personnel. Of this group, 10 percent are nonhighly compensated employees. Unless the plan can be treated as part of a group of comparable plans that passes the 50 percent eligibility test (see paragraph (b) of Q&A–4 of this section), the plan fails the tests described in this paragraph (d)(3).

(4) *75 percent benefits test*—(i) *In general.* A plan satisfies the test of this paragraph (d)(4) only if the average employer-provided benefit actually received under all plans of the same type by nonhighly compensated employees is at least 75 percent of the average employer-provided benefit actually received under all plans of the same type by highly compensated employees. See paragraph (f)(2)(ii) of this Q&A–1 for a rule under which, in certain circumstances, plans that are not of the same type may be treated as plans of the same type for purposes of this paragraph (d)(4). Also, see Q&A–2 of this section for transition rules for the 1989 and 1990 testing years.

(ii) *Example.* The provisions of this paragraph (d)(4) are illustrated in the following example:

*Example.* An employer has 5 highly compensated employees and 15 nonhighly compensated employees. The employer maintains only one health plan with an employer-provided benefit of $1,500. All of the highly compensated employees and 10 of the nonhighly compensated employees participate in the plan. The employer's health plan does not meet the requirements of this paragraph (d)(4) since the average employer-provided benefit of the nonhighly compensated employees is only $1,000 ((10 x $1,500)/15), and this amount is less than 75 percent of the average employer-provided benefit of the highly compensated employees, which is $1,500 ((5 x $1,500)/5). In order to meet the requirements of this paragraph (d)(4), the average employer-provided benefit of the nonhighly compensated employees must be at least $1,125 (75 percent of $1,500) or the average employer-provided benefit of the highly compensated employees must be no more than $1,333.33 ($1000 is 75 percent of $1333.33).

(e) *80 percent coverage test.* A plan that is a health plan or a group-term life insurance plan satisfies the requirements of this paragraph (e) only if at least 80 percent of the nonhighly compensated employees are covered under such plan and the plan meets the requirements of paragraph (c) of this Q&A–1 (the nondiscriminatory provisions test). Plans of the same type may pass the 80 percent test separately or together (e.g., by reason of health plans being comparable). See Q&A–4 of this section with respect to rules relating to comparability and aggregation. If any of an employer's plans of the same type are tested under this paragraph (e), all plans of the same type must be tested under the requirements of this paragraph (e). The employer must elect in writing to use this 80 percent test.

(f) *Definitions*—(1) *Statutory employee benefit plan*—(i) *In general.* The term "statutory employee benefit plan" means an accident or health plan (within the meaning of sections 106 and 105) or a group-term life insurance plan (within the meaning of section 79). Also, under section 89(i)(2), an employer may treat certain other plans as statutory employee benefit plans.

(ii) *Health plan.* In general, the term "health plan" means an accident or health plan under section 105 or 106, except to the extent the plan is a disability plan (see paragraph (b)(2) of this Q&A–1). In addition, a plan that provides payments for accidental death and dismemberment, or business travel accident insurance, is an accident or health plan because coverage under such plan is eligible for the exclusion under section 106. Furthermore, plan that provides for medical diagnostic procedures or physical examination is an accident or health plan because the plan is eligible for the exclusion under section 106.

(iii) *Church plans.* The term "statutory employee benefit plan" does not include a plan maintained by a church (as defined in section 3121(w)(3)(A)), including a qualified church-controlled organization within the meaning of section 3121(w)(3)(B)), if the plan is maintained exclusively for clergy and church employees, and their spouses and dependents.

(iv) *Plans maintained by governments.* A plan does not fail to be a statutory employee benefit plan merely because it is maintained by a state or local government or political subdivision or instrumentality thereof, by the District of Columbia, or by the Federal government or a political subdivision or instrumentality thereof.

(v) *Worker's compensation.* The term "statutory employee benefit plan" does not include a worker's compensation plan that pays amounts from a sickness and disability fund maintained for employees under the laws of the United States, a state or the District of Columbia (i.e., a fund maintained pursuant to a worker's compensation act or statute in the nature of a worker's compensation act, the benefits from which are excludable under section 104(a)(1)). Thus such a plan is not subject to the nondiscrimination requirements of section 89. An employer may not take into account a worker's compensation plan (or portion thereof) in determining whether other plans meet the requirements of paragraphs (c), (d) or (e) of this Q&A–1. However, accident or health plans maintained by a government (as defined in paragraph (f)(1)(iv) of this Q&A–1) that provide benefits that are excludable from the income of the employee solely by reason of section 105(b) or (c) are not worker's compensation plans within the meaning of the first sentence of this paragraph (f)(1)(v) and thus are subject to the



nondiscrimination requirements of section 89.

(2) *Plans of the same type*—(i) *In general.* Two or more plans are treated as plans of the same type if all of such plans are included in only one of the following categories: accident or health plans (sections 106 and 105); group-term life insurance (section 79); qualified group legal services plans (section 120); educational assistance programs (section 127); or dependent care assistance programs (section 129).

(ii) *Election.* For purposes of applying the requirements of paragraph (d)(4) of this Q&A–1 (the 75 percent benefits test) to plans of the same type other than health plans for a testing year, an employer may elect in writing to treat all plans of the types specified in the election as plans of the same type. Although this election is not available for purposes of determining whether the health plans of the employer satisfy the 75 percent benefits test, if such plans satisfy the 75 percent benefits test they may be taken into account in determining whether plans of the same type (e.g. group-term life insurance plans), other than health plans, satisfy such test. For any testing year, if an employer elects to take health plans into account in determining whether two or more plans of another type or types satisfy the 75 percent benefits test, all of the employer's health plans must be taken into account with all other plans of the type or types subject to the election. Thus, for example, if an employer elects to take its health plans into account in testing its group-term life insurance plans and dependent care assistance programs for purposes of the 75 percent benefits test, all such plans must be tested on an aggregated basis under the 75 percent benefits test.

(3) *Employer-provided benefit.* In the case of any health or group-term life insurance plan, the employer-provided benefit for purposes of this section is the value of the coverage under the plan that is attributable to employer contributions. For example, in the case of a health plan, the employer-provided benefit is the employer-provided portion of the value of the entitlement to receive payment on account of personal injury or sickness including medical care or reimbursements of specified medical expenses or other medical benefits, subject to various conditions and limits, rather than the value of the reimbursements, products, services and other benefits received pursuant to the health coverage. See Q&A–7 of this section for guidance relating to the value of health coverage. See section 89(g)(3)(C) for rules with respect to the value of coverage under a group-term life insurance plan. In the case of any other statutory employee benefit plan, an employee's employer-provided benefit under section 89 is the employer-provided portion of the value of the reimbursements, products, services and other benefits provided under the plan (rather than the value of the coverage or the entitlement to such benefits).

(4) *Highly compensated employee.* The term "highly compensated employee" is defined as that term is defined in section 414(q). For purposes of determining who is a highly compensated employee under section 89, the testing year is the determination year.

(5) *Nonhighly compensated employee.* The term "nonhighly compensated employee" is defined as each employee other than a highly compensated employee.

(6) *Employee*—(i) *In general.* The term "employee" generally means an individual who performs service for the employer maintaining the plan and who is either a common law employee of the employer, a self-employed individual treated as an employee under section 401(c)(1), or an individual who is treated as an employee with respect to the employer for purposes of the provision (e.g., section 106) that provides for the exclusion of the benefit being tested under section 89.

(ii) *Leased employees*—(A) *In general.* The term "employee" includes a leased employee who is treated as an employee of the employer-recipient pursuant to the provisions of sections 414(n)(1)(A) or 414(o)(2) and the regulations thereunder. In general, section 414(n) applies with respect to employee benefit plans covered by section 89 in the same manner as it applies with respect to qualified plans covered by section 401(a). Thus, the rule of section 414(n)(1)(B) permitting a recipient to take into account certain benefits provided by a leasing organization is available with respect to benefits subject to section 89. The safe harbor exception of section 414(n)(5), however, is not available with respect to section 89. In addition, the rule of § 1.414(n)–1(b)(10) regarding services performed on a "substantially full-time basis" is to be applied by appropriately adjusting the hour of service requirements to reflect the 6-month period of service requirement. Nevertheless, a leased employee may be disregarded by an employer-recipient when testing its health plans if the employer-recipient treats the health coverage received by the leased employee from the leasing organization as health coverage received from another employer and, on such basis, applies the rules of Q&A–3 of this section with respect to such leased employee. Notwithstanding the immediately preceding sentence, no leased employee described in this paragraph (f)(6)(ii) may be disregarded as having coverage from another employer unless the value of employer-provided core health benefits actually received by the leased employee from the leasing organization under its plan is at least 50 percent as valuable as the highest employer-provided core health benefit available to any highly compensated employee of the employer-recipient.

(B) *Authority to issue additional requirements.* The differing natures of employee benefit plans covered by section 89 and qualified plans covered by section 401(a) may require different rules in certain circumstances. The Commissioner may provide such rules, to the extent appropriate, through revenue rulings, notices, and other guidance of general applicability.

(iii) *Excluded employees.* In general, the term "employee" does not include employees who are excluded employees under section 89(h) and thus who are excluded from consideration in applying the nondiscrimination rules of section 89 with respect to other employees. For example, employees who are included in a unit of employees covered by a collective bargaining agreement are excluded employees only if there is evidence that the type of benefits provided under the plan being tested under section 89 was the subject of good faith bargaining and no employee in such collective bargaining unit of employees is eligible to receive or does receive any benefit under the plan or any plan of the same type.

(7) *Core health benefits.* Except as provided otherwise in this section, the terms "core health benefits," "core health coverage," and "core health plan" generally refer to coverage providing comprehensive major medical and hospitalization benefits and similar types of health benefits. Dental care, vision care, accidental death and dismemberment, and disability coverage are examples of health benefits that generally are not core health plans. Also, any health coverage provided through a flexible spending arrangement (as defined in Q&A–7 of § 1.125–2) is not a core health benefit.

(g) *Written election.* In general, unless specifically provided otherwise, an election required to be in writing under this section must be in writing by January 31 of the first calendar year following the calendar year in which

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excess benefits for the testing year (without regard to whether there are such excess benefits for such year) would be treated as received under paragraph (a)(2) of this Q&A–1. However, if an employer makes an election under section 89(a)(2)(B) to delay the inclusion of excess benefits in income for one year, then any other written elections must be in writing by January 31 of the first calendar year following the calendar year in which excess benefits for the testing year (without regard to whether there are such excess benefits for such year) are treated as received under paragraph (a)(2) of this Q&A–1. See Q&A–1(a)(2) for the time for making the section 89(a)(2)(B) election. The elections must be written in a manner that will allow a reconstruction of the employer's method of testing.

Q–2: What transitional and special rules are available to health plans under section 89?

A–2: (a) *Transition rule for 75 percent benefits test*—(1) *In general.* With respect to the 1989 and 1990 testing years, an employer's health plans are deemed to satisfy paragraph (d)(4) of Q&A–1 of this section (the 75 percent benefits test) with respect to active employees for a testing year if the requirements of paragraphs (a)(2), (a)(3), and (a)(4) of this Q&A–2 are satisfied with respect to such testing year.

(2) *Testing years ending in 1989 and 1990.* The requirement of this paragraph (a)(2) is satisfied only if the testing year ends in either the 1989 calendar year or the 1990 calendar year. For purposes of this paragraph (a), a testing year that ends in 1989 is a 1989 testing year and a testing year that ends in 1990 is a 1990 testing year.

(3) *Employer election.* The requirement of this paragraph (a)(3) is satisfied only if the employer elects in writing the application of the transition rule in this paragraph (a) with respect to a testing year.

(4) *Includible coverage for applicable group of employees*—(i) *In general.* The requirement of this paragraph (a)(4) is satisfied for a testing year only if the employer provided benefits (including the portion attributable to salary reduction contributions) under all health plans of the employer received by the applicable group of employees for the testing year are treated as excess benefits for such testing year. If an employer makes an election under paragraph (a) of this Q&A–2, then in determining whether the requirements of paragraphs (d)(2) and (d)(3) of Q&A–1 of this section (the 90 percent/50 percent eligibility test and the 50 percent eligibility test, respectively) are met, the employer may treat benefits that are includible in gross income by reason of this paragraph (a)(4) as attributable to after-tax employee contributions.

(ii) *Applicable group of employees*—(A) *1989 testing year.* For a 1989 testing year, the applicable group of employees includes all active employees of the employer for such year who had more than a 5 percent ownership interest in the employer (determined in accordance with section 416(i)) at any time between January 1, 1988, and the end of the testing year, and the applicable number of the highly compensated active employees of the employer who receive the most compensation for the 1989 testing year. The applicable number for the preceding sentence is the number of employees representing 20 percent of the highly compensated active employees of the employer for the testing year, but in no event greater than 1,000 highly compensated employees and in no event less than 10 employees (or the total number of highly compensated employees of the employer if less than 10).

(B) *1990 testing year.* For a 1990 testing year, the applicable group of employees includes all highly compensated active employees of the employer for such year who had more than a 5 percent ownership interest in the employer (determined in accordance with section 416(i)) at any time between January 1, 1989, and the end of the testing year, and the applicable number of highly compensated active employees of the employer (or all highly compensated active employees if the employer has fewer than the applicable number of such employees) who receive the most compensation for the 1990 testing year. The applicable number for the preceding sentence is the number of employees representing 40 percent of the highly compensated active employees of the employer for the testing year, but in no event greater than 2,000 highly compensated employees and in no event less than 50 employees (or the total number of highly compensated employees of the employer if less than 50).

(C) *Compensation.* For purposes of identifying those highly compensated employees who receive the greatest amount of compensation, "compensation" means "compensation" as defined in section 414(q)(7). In the case of two or more employees with the same amount of compensation, the employer may decide which of such employees is to be treated as receiving more compensation.

(b) *Transition rule for 90 percent/50 percent eligibility test?* If an employer's health plans are deemed to satisfy paragraph (d)(4) of Q&A–1 of this section (the 75 percent benefits test) by reason of paragraph (a) of this Q&A–2 for a testing year ending in 1989, then, for such testing year, such employer may elect in writing to apply the 90 percent/50 percent eligibility test of paragraph (d)(2) of Q&A–1 of this section with respect to active employees for such testing year by substituting "80 percent" for "90 percent" and by substituting "66 percent" for "50 percent" (i.e., the test may be treated as an 80 percent/66 percent eligibility test). The rule of this paragraph (b) is not applicable for purposes of determining excess benefits under section 89(b).

(c) *Special rule for certain large employers*—(1) *In general.* An employer's health plans are deemed to satisfy the requirements of paragraph (d) of Q&A–1 of this section (the eligibility and benefit requirements) with respect to active employees for a testing year if all of the requirements of paragraphs (c)(2) through (c)(7) of this Q&A–2 are satisfied for such testing year. In applying the requirements of paragraphs (c)(2) through (c)(7) of this Q&A–2, only nonexcludable employees are taken into account and, for such purpose, the excluded employee rules of section 89(h)(1)(A), (B), (C), and (D) are to be applied without regard to the last sentence of section 89(h)(1) and without regard to sections 89(h)(2) and 89(h)(3). Thus, for example, differences in eligibility waiting periods do not result in the loss of an employee's status as an excludable employee to the extent that the period with respect to such employee does not exceed the maximum period allowed under section 89(h) (e.g., 6 months for core health coverage). The nondiscriminatory provisions test of paragraph (c) of Q&A–1 of this section does not apply to waiting periods under core health plans as discussed in paragraph (c)(2) of Q&A–1 of this section with respect to plans tested under this paragraph (c). The rules of this paragraph (c) are not applicable for purposes of determining excess benefits under section 89(b).

(2) *Employer election.* The requirement of this paragraph (c)(2) is satisfied with respect to a testing year only if the employer elects in writing the application of the rule of this paragraph (c) with respect to such testing year. If any of an employer's health plans are tested under this paragraph (c), all of such employer's health plans must be tested under this paragraph (c).

(3) *Minimum number of employees.* The requirement of this paragraph (c)(3) is satisfied for a testing year only if the employer employs at least 5,000 active



employees on at least 1 day in each quarter of such testing year.

(4) *Minimum Percentage of nonhighly compensated employees.* The requirement of this paragraph (c)(4) is satisfied only if at least 90 percent of the employer's active employees are nonhighly compensated employees.

(5) *Maximum percentage of highly compensated employees.* The requirement of this paragraph (c)(5) is satisfied only if fewer than 3/4 percent (0.75 percent) of the employer's active employees have annual compensation (within the meaning of section 414(q)(7)) in excess of 200 percent of the dollar amount in effect under section 414(q)(1)(C) for the testing year.

(6) *Health plan eligibility*—(i) *In general.* The requirement of this paragraph (c)(6) is satisfied only if both of the tests in paragraphs (c)(6)(ii) and (c)(6)(iii) are satisfied. For purposes of this paragraph (c)(6), the rules of paragraph (b) of Q&A–3 of this section are available. However, for purposes of this paragraph (c)(6), the comparability rules of paragraph (c) of Q&A–4 of this section are not available.

(ii) *80 percent eligibility test.* This test is satisfied only if at least 80 percent of the employees eligible to participate in each health plan of the employer are nonhighly compensated employees. For purposes of this paragraph (c)(6)(ii) the comparability rules of paragraph (b) of Q&A–4(b) of this section and the family eligibility test rules of Q&A–3(b) of this section are available.

(iii) *80 percent/80 percent eligibility test.* This test is satisfied only if at least 80 percent of the nonhighly compensated employees of the employer have available to them under all health plans an employer-provided benefit that is at least 80 percent as valuable as the largest employer-provided benefit available under all such health plans to any highly compensated employee. The rules relating to the application of the 90 percent/50 percent eligibility test apply in making this determination.

(7) *Benefits test.* The requirement of this paragraph (c)(7) is satisfied only if at least 66 percent of the nonhighly compensated employees of the employer actually receive core health coverage with an employer-provided benefit that is at least 66 percent as valuable as the largest employer-provided benefit available under all health plans (including both core and noncore health coverage) to any highly compensated employee. In determining the largest employer-provided benefit available to a highly compensated employee, the rules applicable to the 75 percent benefits test apply, except that for this purpose salary reduction contributions are treated as employer contributions. For purposes of this paragraph (c)(7), the coverage rules of Q&A 3(c) of this section are available.

Q–3: Under what circumstances may employees be disregarded for purposes of section 89 when the employees receive health coverage from other employers or when employees do not have a family or have a family whose members receive health coverage from another employer?

A–3: (a) *In general.* For purposes of determining whether health plans providing coverage to the spouse and dependents (if any) of an employee (i.e., family-only coverage) satisfy the requirements of paragraph (d)(2) (the 90 percent/50 percent eligibility test) and paragraph (d)(3) (the 50 percent eligibility test) of Q&A–1 of this section, an employer may elect in writing to apply the rules of paragraph (b) of this Q&A–3. Also, for purposes of determining whether health plans satisfy the requirements of paragraph (d)(4) (the 75 percent benefits test) or paragraph (e) (the 80 percent coverage test) of Q&A–1 of this section, the employer may elect in writing to apply the rules of paragraph (c) of this Q&A–3.

(b) *Eligibility tests.* An employee who is eligible to receive family-only coverage under a health plan or would be eligible under the same terms and conditions as other eligible employees if the employee had a spouse and dependents may be treated as eligible to receive such family-only coverage without regard to whether the employee has a spouse and dependents. This is the case without regard to whether there is a requirement of an employee contribution or other employee election under the plan so long as any such election is uniformly available. If the employer applies the rule of this paragraph (b) with regard to any employee or any health plan, the employer must apply the rule uniformly with regard to all employees and health plans except to the extent such application would cause a plan to fail the nondiscriminatory provisions test of paragraph (c) of Q&A–1 of this section.

(c) *75 percent benefits test and 80 percent coverage test*— (1) *Separate testing.* Except as otherwise provided in this paragraph (c), an employer may elect in writing to apply the requirements of paragraph (d)(4) or (e) of Q&A–1 of this section for a testing year by testing its health plan or plans that provide employee-only coverage separately from the health plan or plans that provide family-only coverage. If the employer tests family-only coverage separately from employee-only coverage, all family-only coverage must be tested together under this paragraph (c). Therefore, an employer may not separately test coverage provided to a spouse from coverage provided to a dependent. Separate testing may be elected under this paragraph (c)(1) without regard to the fact that family-only coverage is not available as a separate option to employees (i.e., the employee-only and family-only coverages are available or provided only as a package to the employee). No amendment to a written plan document is required to test separately under this paragraph (c)(1).

(2) *Presumption of family status.* In applying the requirements of paragraph (d)(4) or (e) of Q&A–1 of this section for a testing year to a health plan that provides family-only coverage, an employee does not fail to be treated as receiving family-only coverage merely because the employee does not have a spouse or dependents. This is the case without regard to whether the employer has elected separate testing in accordance with paragraph (c)(1) of this Q&A–3. Thus, for example, if an employer automatically provides an employee with family-only coverage (i.e., such coverage is provided on a nonelective, noncontributory basis) or automatically provides an employee with family-only coverage if the employee purchases employee-only coverage and the employee does purchase such employee-only coverage, the employee may be treated as having received the family-only coverage even though the employee does not have a spouse or dependents. However, see paragraph (c) of Q&A–1 of this section with respect to the application of the nondiscriminatory provisions test to certain plans that provide family-only coverage.

(3) *Other core health coverage*—(i) *Employer does not elect separate testing.* If an employer does not elect to test plans providing employee-only coverage separately from plans that provide family-only coverage (as permitted under paragraph (c)(1) of this Q&A–3), an employee who has a family (as determined under this paragraph (c)) may be disregarded for purposes of applying the requirements of paragraphs (d)(4) and (e) of Q&A–1 of this section if either of the following two requirements are met. First, such employee and family members (if any) all receive core health coverage from another employer or from the spouse's or a dependent's employer. Second, if the employer does not provide a health plan that includes employer-provided family-only coverage, then the employee must receive core health coverage from

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another employer or from the spouse's or a dependent's employer.

(ii) *Employer elects separate testing.* If an employer elects to test employee-only coverage (as permitted under paragraph (c)(1) of this Q&A–3), an employee may be disregarded for purposes of applying the requirements of paragraphs (d)(4) and (e) of Q&A–1 of this section with respect to the family-only coverage if such employee does not have a family (as determined under this paragraph (c)) or if such employee has a family and the family members all receive core health coverage from another employer or from the spouse's or a dependent's employer. Similarly, for purposes of applying the requirements of paragraphs (d)(4) and (e) of Q&A–1 of this section with respect to the employee-only coverage, an employee may be disregarded if the employee receives core health coverage from another employer or from a spouse's or a dependent's employer. In testing only the health plan or plans that provide employee-only coverage, employees are taken into account without regard to whether they have families.

(4) *Sworn statements*—(i) *In general.* An employer may not elect the rules of paragraph (c)(3) of this Q&A–3 unless the employer obtains and maintains adequate sworn statements that satisfy the requirements of paragraph (c)(4)(ii) of this Q&A–3.

In the absence of an adequate sworn statement with respect to an employee or the application of paragraph (c)(4)(iii) of this Q&A–3, certain presumptions, set forth in section 89(g)(2)(C), are to be applied with respect to those facts that would otherwise have been provided on the sworn statement.

(ii) *Adequate sworn statement.* An adequate sworn statement must contain sufficient information to indicate whether the employee has a spouse or any dependents and, if so, the number of dependents and the current receipt by the employee and any spouse or dependents of core health coverage under a plan of another employer or the employer of the spouse or dependent. An employer cannot rely on sworn statements for testing years beginning after 1988 unless such statements are made under penalty of perjury and contain a designation of the employer-provided health coverage currently received by the employee under the employer's health plan or plans. In lieu of including information about the employer-provided health coverage being received by an employee under the employer's health plans, an employer may use any other reasonable method to enable it to determine, for each testing year, the extent to which an employee who is receiving core health coverage under a plan of another employer is also receiving employer-provided health coverage from the employer. A sworn statement is not required to be notarized or on a form approved in advance by the Commissioner. The rule of this paragraph (c)(4)(ii) is illustrated by the following example:

*Example.* As part of its open season on the selection of health plan coverage, an employer requests that an employee complete a form providing information about the employee's family status, number of dependents and whether the employee or the employee's spouse or dependents receive core health coverage through another employer or the employer of the spouse or a dependent. If the employee does receive other core health coverage, the form also requests the name of the other employer and, if applicable, the insurance company administering the program or providing the other coverage. At the bottom of the form, just above the signature block and date, is the following phrase: "Under penalties of perjury, I declare that the information I have furnished above, to the best of my knowledge and belief, is true, correct, and complete." This form satisfies the sworn statement requirement of section 89(g)(2)(B) and this Q&A–3 provided that the employer also is able to determine for each testing year, by other reasonable means, the extent to which employees who receive other core health coverage also receive health coverage from the employer.

(iii) *Exception.* If an employee is eligible to receive employee-only coverage under a core health plan of the employer with a substantial employer-provided benefit at no cost to the employee and such employee does not elect to receive any employee-only coverage under a core health plan of the employer, the employer may treat such employee as having completed an adequate sworn statement that the employee has core health coverage from another employer. Similarly, if an employee is eligible to receive family-only coverage under a core health plan of the employer with a substantial employer-provided benefit and at no cost, and such employee does not elect to receive any family-only coverage under a core health plan of the employer, the employer may treat such employee as having completed an adequate sworn statement that the employee has no family or has a family all the members of which receive other core health coverage. Even if a sworn statement is deemed to have been completed under this paragraph (c)(4)(iii), the employer must establish by other reasonable methods the extent to which employees described in this paragraph (c)(4)(iii) receive health coverage from such employer. For purposes of this paragraph (c)(4)(iii), the plan has a cost to the employee if the employee is required to make any after-tax or salary reduction contributions or to waive any other benefit (taxable or otherwise) in order to obtain the health coverage.

(iv) *Frequency of sworn statements.* An employer that elects to use sworn statements as permitted under this paragraph (c)(4) must obtain such statements on no less frequent a basis than once each 3-consecutive years. If the employer does not obtain sworn statements from substantially all of its employees or from a statistically valid random sample of all of its employees determined under statistical standards consistent with those in paragraph (d) of Q&A–5 of this section, the employer must obtain such sworn statements on an annual basis.

(5) *Certain highly compensated employees.* A highly compensated employee cannot be disregarded under paragraph (c)(3) of this Q&A–3 if such employee receives an employer-provided benefit under all health plans of the employer that is greater than 133⅓ percent of the average employer-provided benefit under all such health plans received by nonhighly compensated employees (after applying the rule of paragraph (c)(6) of this Q&A–3). The rule of this paragraph (c)(5) is applied separately with respect to employee-only coverage and family-only coverage if the employer elects under paragraph (c)(1) of this Q&A–3 to test such coverages separately.

(6) *Certain nonhighly compensated employees.* A nonhighly compensated employee may not be disregarded under paragraph (c)(3) of this Q&A–3 because of other core health coverage unless, at the time such other coverage ceases, such employee is eligible to elect coverage under any core health plan of the employer for which the employee was eligible (through election or otherwise) during the immediately preceding period in which the employee could have elected coverage (e.g. an open season). The election period for purposes of the rule in this paragraph (c)(6) must be no shorter than 30 days). This paragraph (c)(6) applies without regard to the reason for the cessation of the employee's other core health coverage and without regard to whether the employer's health plans otherwise permit employees to commence coverage at other than an open season. Similarly, a nonhighly compensated employee may not be disregarded as having no family or having a family with other coverage under paragraph (c)(3) of this Q&A–3 unless such employee is eligible to elect (on the same conditions set forth in the preceding two sentences) family-only coverage, upon a change in family status in which the employee acquires a family or upon a loss of such other coverage for a member of the family. This paragraph (c)(6) does not require that an employee be eligible to participate under a plan for which the employee would not previously have been eligible. In addition, any otherwise applicable eligibility conditions that would have barred participation during the immediately preceding open season, such as insurability, may continue to be applied with respect to eligibility resulting under this paragraph (c)(6) but only if such conditions exist at the time the other core health coverage ceases and such conditions are applied on a uniform, consistent and nondiscriminatory basis. However, in no event may an employer impose conditions on eligibility that were not previously applicable to such employee during the immediately preceding open season. Conditions that were previously applicable may be applied with regard to the facts in existence either at the time of previous eligibility or at the time the other core coverage ceases, as long as such application is on a uniform, consistent and nondiscriminatory basis. This paragraph (c)(6) is applicable only for plan years beginning after December 31, 1990.

(7) *Eligibility requirement.* An employer may not disregard employees under paragraph (c)(3) of this Q&A–3 for purposes of applying paragraph (e) of Q&A–1 of this section (the 80 percent coverage test) unless paragraph (e) of Q&A–1 of this section would be satisfied without use of the rules contained in such paragraph on the basis of eligibility to participate instead of coverage received.

Q–4: What is a health plan under the section 89 nondiscrimination rules and to what extent are health plans comparable or aggregated for purposes of such rules?

A–4: (a) *In general.* Except as otherwise provided in this section, a health plan is a uniform entitlement provided to employees with respect to payments on account of personal injury or sickness, including specified medical claims, expenses, products or services. Any difference in entitlement creates separate health plans. In addition, any difference in cost to different groups of employees, including the fact that salary reduction contributions are required for coverage that is identical to coverage that is otherwise employer-provided, creates separate plans. Each option as to coverage is treated as a separate health plan for purposes of section 89. However, paragraphs (b) through (f) of this Q&A–4 provide testing rules under which comparable health plans may be treated as a single health plan, rules when two or more health plans must be aggregated and treated as a single plan, and rules when separate health plans may be restructured. These rules apply solely for purposes of testing and calculating discriminatory excess with respect to an employer's health plans under the section 89 nondiscrimination rules, and do not require that the single written document required by Q&A–3 of § 1.89(k)–1 relating to any of such plans be modified to conform to the testing status of such plans under these rules.

(b) *Comparable health plans for 50 percent eligibility test.* For purposes of applying paragraph (d)(3) of Q&A–1 of this section (the 50 percent eligibility test), two or more health plans included in a group of comparable plans may be treated as a single health plan. A group of plans is comparable if the smallest employer-provided benefit available to any employee in any plan in the group is at least 95 percent of the largest employer-provided benefit available to any employee in any plan in the group. See paragraph (d) of this Q&A–4 for mandatory aggregation rules that may be applicable before the application of this paragraph (b).

(c) *Comparable health plans for 80 percent coverage test*—(1) *In general.* Except as otherwise provided in this paragraph (c), for purposes of applying paragraph (e) of Q&A–1 of this section (the 80 percent coverage test), two or more health plans included in a group of comparable plans, may be treated as a single health plan. A group of plans is comparable if the smallest employer-provided benefit available to any employee in any plan in the group is at least 90 percent of the largest employer-provided benefit available to any employee in any plan in the group. See paragraph (e) of this Q&A–4 for mandatory aggregation rules that may be applicable before the application of this paragraph (c).

(2) *Alternative general comparability rule.* At the employer's written election, a group of plans is comparable for purposes of applying paragraph (e) of Q&A–1 (the 80 percent coverage test) if the smallest employer-provided benefit available to any employee in any plan in the group is at least 80 percent of the largest employer-provided benefit available to any employee in any plan in the group. This alternative general comparability rule is available only if the employer applies the requirements of paragraph (e) of Q&A–1 by substituting "90 percent" for "80 percent." Thus, this alternative general comparability rule applies only if at least 90 percent of the nonhighly compensated employees are covered under the health plan or group of comparable plans being tested.

(3) *Restriction on general comparability.* If a plan fails to satisfy paragraph (d)(3) of Q&A–1 of this section (the 50 percent eligibility test) (the failed plan), the failed plan may not be included with any other plan in a group of comparable plans under paragraphs (c)(1) or (c)(2) of this Q&A–4 unless the following two requirements are met. First, the employer-provided benefit of the group of comparable plans must be within at least 95 percent of the employer-provided benefit of the failed plan. Second, the failed plan and the group of comparable plans, considered together, must be comparable under paragraph (c)(1) or (c)(2) of this Q&A–4. The following example illustrates the rules of this paragraph (c)(3):

*Example.* Assume that an employer with 25 employees, 5 of whom are highly compensated employees, provides all nonhighly compensated employees with a health plan with an employer-provided benefit of $3,000. In addition, the employer provides a health plan with an employer-provided benefit of $3,750 only to its highly compensated employees. The employer tests its health plans under the 80 percent coverage test of paragraph (e) of Q&A–1 of this section. Because the additional $3,750 health plan is available only to highly compensated employees and thus fails the 50 percent eligibility test, such plan may not be aggregated with the $3,000 plan unless the employer-provided benefit under the $3,750 plan is reduced to $3,158 ($3,000 is 95 percent of $3,158) or the employer-provided benefit under the other plan is increased to $3,562 (95 percent of $3,750).

(4) *Deemed comparability rule*—(i) *Health plan outside comparability range.* A health plan (or a group of health plans treated as a single health plan) that is not otherwise included with another health plan in a group of comparable plans (determined under paragraph (c) (1) through (3) of this Q&A–4) may be included in such group if the employer-provided benefit under the former health plan (or group of health plans) is greater than the employer-provided benefit under the latter health plan (or group of plans); the former health plan's nonhighly compensated coverage percentage is at least 80 percent of the highly compensated coverage percentage; and, after the inclusion of the former plan in a group with the latter plan, the nonhighly compensated coverage

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percentage remains at least 80 percent of the highly compensated coverage percentage for such group. No plan can be included under this rule if a plan with an employer-provided benefit smaller than the employer-provided benefit of the plan to be included has previously been included in the group of comparable plans under this rule. If the employer elects the alternative general comparability rule of paragraph (c)(2) of this Q&A–4, "80 percent" must be substituted for "80 percent" in the preceding sentence. If the deemed comparability rule of this paragraph (c)(4) is applied by treating a resulting group of comparable plans as a single health plan, the employer-provided benefit for such single health plan, except as provided in paragraph (c)(5)(i) of this section, is the largest employer-provided benefit of any plan included in the group.

(ii) *Coverage percentages.* For purposes of this paragraph (c)(4), a health plan's (or health plan group's) nonhighly compensated coverage percentage is the percentage determined by dividing the number of nonhighly compensated employees covered by the plan (or the group) by the total number of nonhighly compensated employees of the employer. A health plan's (or group's) highly compensated coverage percentage is the percentage determined in the same manner by reference only to highly compensated employees.

(iii) *Examples.* The following examples illustrate the application of the rules of this paragraph (c)(4):

*Example 1.* Assume that an employer maintains four health plans that constitute a group of comparable plans under the general comparability rule of paragraph (c)(1) of this Q&A–4. The employer also maintains another health plan that has too large an employer-provided benefit to permit it to be included in the group of comparable plans under the general comparability rule. Under this paragraph (c)(4), if the nonhighly compensated coverage percentage with respect to such plan is at least 80 percent of the highly compensated coverage percentage for such plan and if after inclusion of the plan with the group of four comparable plans, the resulting group of plans has a nonhighly compensated coverage percentage that is at least 80 percent of the highly compensated coverage percentage, then the plan may be included in the group of comparable health plans to form a new group of comparable plans.

*Example 2.* Assume the same facts as in Example 1, except that the other health plan has too small an employer-provided benefit to permit it to be included in a group of comparable plans under the general comparability rule of paragraph (c)(1) of this Q&A–4. If the nonhighly compensated coverage percentage for the group of comparable plans is at least 80 percent of the highly compensated coverage percentage for such group, and if, after inclusion of the other plan with the group of comparable plans, the resulting group of plans has a nonhighly compensated coverage percentage that is at least 80 percent of the highly compensated coverage percentage, then the group of comparable plans may be included with the other plan to form a new group of comparable plans.

(5) *Employee cost comparability*—(i) *In general.* Health plans may be treated as a group of comparable plans if such plans are available to all of the employees who are covered under any of such plans on the same terms and conditions and the difference in the annual employee costs between the plan in the group with the largest employee cost and the plan in the group with the smallest employee cost is not greater than $100 (adjusted for testing years beginning after 1989 in accordance with section 89(g)(1)(E)(v)). Two or more plans generally are not available on the same terms if the employee cost for one plan is in the form of after-tax employee contributions and the employee cost for another plan is in the form of salary reduction contributions. A health plan is available to an employee only if, under all of the facts and circumstances, the plan is reasonably available to such employee. The employer-provided benefit for a group of comparable plans determined under this paragraph (c)(5)(i) is deemed to be the largest employer-provided core health benefit of any plan included in the group under this paragraph (c)(5)(i). If both salary reduction contributions and after-tax employee contributions are required under each of the plans, the plans may be treated as comparable if the maximum total amount of such annual contributions under each plan does not differ from the maximum total amount of such contributions under any of the other plans by more than $100. The rules of this paragraph (c)(5)(i) are illustrated by the following examples:

*Example 1.* Assume that an employer maintains two health plans, Plan X and Plan Y. Plan X is provided to employees at no employee cost. Plan Y is available to employees under a cafeteria plan for $100 a year, to be paid through salary reduction contributions. These plans may not be treated as part of a group of comparable plans under an analysis that compares the after-tax employee contributions required for Plan X ($0) with the after-tax employee contributions required for Plan Y ($0) because Plan Y is not actually available for only $0 in after-tax employee contributions, but rather is available for $100 in salary reduction contributions. However, these plans may be treated as part of a group of comparable plans under an analysis that compares the salary reduction contributions of Plan X ($0) with the salary reduction contributions of Plan Y ($100) because the salary reduction contributions under each plan do not differ by more than $100 and neither plan has any required after-tax contributions.

*Example 2.* Assume that an employer maintains two health plans, Plan V and Plan W. Plan V is provided to employees for an after-tax employee contribution of $20 a year and a salary reduction contribution of $20 a year. Plan W is provided to employees for an after-tax employee contribution of $100 a year and a salary reduction contribution of $160 a year. These two plans may not be treated as part of a group of comparable plans under this paragraph (c)(5)(i) because the annual maximum total amount of after-tax and salary reduction contributions under Plan V ($40) differs from the maximum total amount of after-tax and salary reduction contributions for Plan W ($200) by more than $100.

(ii) *Coordination rule.* A health plan that is not included in a group of comparable plans under paragraph (c)(5)(i) of this Q&A–4 may be included with such group of comparable plans under the comparability rules of paragraphs (c)(1) through (c)(4) of this Q&A–4 if such plan and the group are otherwise comparable under such rules. The employer-provided benefit under the group of plans is to be determined under the rule of paragraph (c)(5)(i) of this Q&A–4.

(iii) *Special employee cost rule.* A health plan that is not otherwise included in a group of comparable plans may be included in a group with respect to an employee if the employer-provided benefit under the plan to be included is less than the employer-provided benefit of the plan within the group of comparable plans with the largest employer-provided benefit and, in the case of a nonhighly compensated employee, the employee is eligible on the same terms and conditions as other employees to participate in the plan in such group with the largest employer-provided benefit and the annual employee cost for the employee under the plan to be included is equal to or greater than the greatest employee cost for the employee under any plan in the group of comparable plans minus $100. Thus, the rule of this paragraph (c)(5)(iii) applies if a nonhighly compensated employee may choose a more expensive plan with a lesser employer-provided benefit than any plan in the group so long as the conditions of this paragraph (c)(5)(iii) are satisfied. A health plan is available to an employee only if, under all of the facts and circumstances, the plan is reasonably available to such employee. This paragraph (c)(5)(iii) may be applied with respect to a health plan and a group of comparable plans or with respect to two groups of comparable plans otherwise determined under paragraph (c)(1) through (c)(3) or (c)(5) of this Q&A–4. In such case, the employer-provided benefit of the group of comparable plans is the largest employer-provided benefit of any plan (whether or not that plan is a core health plan) in such group and the lowest employee cost permitted within the group of comparable plans is equal to the employee cost for the plan in such group with the largest employee cost minus $100. The rules of this paragraph (c)(5)(iii) are illustrated by the following examples:

*Example 1.* Assume that an employer permits all of its employees to elect coverage under one of two health plans: Plan A (with an employer-provided benefit of $3,000 and an employee contribution of $300) and Plan B (with an employer-provided benefit of $2,200 and an employee contribution of $500). These two plans may form a group of comparable plans under this paragraph (c)(5)(iii) because Plan B's employer-provided benefit is less than Plan A's employer-provided benefit and Plan B's required employee contribution of $500 is greater than $200 (i.e., Plan A's required employee contribution minus $100).

*Example 2.* Assume that an employer permits all of its employees to elect coverage under any one of four health plans: Plan A (with an employer-provided benefit of $2,000 and an employee contribution of $125); Plan B (with an employer-provided benefit of $2,500 and an employee contribution of $225); Plan C (with an employer-provided benefit of $3,000 and an employee contribution of $200); and Plan D (with an employer-provided benefit of $2,500 and an employee contribution of $300). Plans A, B, and C may be included in a group of comparable plans under the rules of paragraph (c)(5)(i). Plan D may be included in such group under the rules of paragraph (c)(5)(iii) with respect to all employees because Plan D's employer-provided benefit of $2,500 is less than Plan C's employer-provided benefit of $3,000 and Plan D's required employee contribution of $300 is greater than $125 (i.e., Plan B's required employee contribution of $225 minus $100).

*Example 3.* Assume that an employer permits all of its employees to elect coverage under one of three health plans: Plan A (with an employer-provided benefit of $3,000 and an employee contribution of $500); Plan B (with an employer-provided benefit of $2,700 and an employee contribution of $350); and Plan C (with an employer-provided benefit of $2,500 and an employee contribution of $450). Plans A and B are included in a group of comparable plans determined under paragraph (c)(1) of this Q&A–4 (i.e., 90 percent of $3,000 is $2,700). Plan C may be included in such group under the rules of this paragraph (c)(5)(iii) because Plan C's employer-provided benefit of $2,500 is less than Plan A's employer-provided benefit of $3,000 and Plan C's required employee contribution of $450 is greater than $400 (i.e., Plan A's required employee contribution of $300 minus $100).

(iv) *Employee cost.* For purposes of this paragraph (c)(5), the term "employee cost" refers to both the employee's after-tax employee contributions and salary reduction contributions that are required in order for the employee to receive coverage under the health plan. The de minimis employee cost comparability rule of this paragraph (c)(5) may be applied on the basis of either after-tax employee contributions or salary reduction contributions under a cafeteria plan, but not both. Thus, for example, health Plan X that is available for $50 in after-tax employee contributions and health Plan Y that is available for $100 in salary reduction contributions under a cafeteria plan may not be treated as comparable plans under this paragraph (c)(5).

(d) *Mandatory aggregation of plans for the 50 percent eligibility test.*—(1) *In general.* For purposes of applying paragraph (d)(3) of Q&A–1 of this section (the 50 percent eligibility test), if an employee may receive coverage under two or more health plans the rules of this paragraph (d) must be applied with respect to such plans. In addition, such plans may not be included in a group of comparable plans under paragraph (b) of this Q&A–4 with regard to such employee until the rules of this paragraph (d) have been applied with respect to such plans. Such health plans must be aggregated into an additional, single health plan that provides all of the coverage provided under any of the separate plans. The additional plan is treated as having an employer-provided benefit equal to the sum of the employer-provided benefits of each of the included plans (with an appropriate adjustment to eliminate the multiple inclusion of overlapping coverage). A nonhighly compensated employee is treated as eligible for both the additional plan and the separate plans. A highly compensated employee is treated as eligible only for the additional plan and is no longer treated as eligible for the separate plans.

(2) *Special rule for salary reduction contributions.* Any employer-provided benefit that is a non-core health benefit and is attributable to salary reduction contributions available to any nonhighly compensated employee that, after application of paragraph (d)(1) of this Q&A–4, exceeds the greater of $2,000 (adjusted for testing years beginning after 1989 in accordance with 89(g)(1)(E)(v)) or the employee's actual salary reduction contribution is not considered available to such employee. This paragraph (d)(2) is effective for plan years beginning after December 31, 1989.

(3) *Examples.* The provisions of this paragraph (d) are illustrated by the following examples:

*Example 1.* Assume that, under an employer's health program, an employee is permitted to elect coverage under one plan from among two health indemnity plans provided through insurance companies and two HMO plans. The indemnity and HMO plans are four alternative health coverages and thus an employer is not required to apply this paragraph (d).

*Example 2.* Assume the same facts as *Example 1.* In addition to electing one of the indemnity or HMO plans, an employee may also elect coverage under any one or more of the following plans: a dental plan, a vision plan and various levels of health coverage (up to and including $1000) under a health flexible spending arrangement (FSA). Under this paragraph (d), each of the indemnity and HMO plans must be aggregated with the 3 elective plans, before testing any of the plans under the 50 percent eligibility test.

*Example 3.* Employee X is a nonhighly compensated employee and may receive coverage under either Plan A or Plan B, each of which has an employer-provided benefit of $500, or under both Plans A and B. Under this paragraph (d), for Employee X, Plan A and Plan B must be aggregated to form an additional Plan AB for purposes of the 50 percent eligibility test. In addition, Plan AB is treated as having an employer-provided benefit equal to $1,000 (assuming no overlapping coverage). Thus, there are three health plans that each must pass the 50 percent eligibility test: Plan A ($500), Plan B ($500), and Plan AB ($1,000). Employee X is treated as eligible for all three plans.

*Example 4.* An employer maintains two health plans: Plan A ($500) and Plan B ($500). The following table illustrates all of the eligible employees for these two plans. In addition, HCE denotes a highly compensated employee and NCE denotes a nonhighly compensated employee.

| Employee | Plan A | Plan B |
|---|---|---|
| HCE 1 | 500 | 500 |
| HCE 2 | 500 | Not elig. |
| HCE 3 | Not elig. | 500 |
| HCE 4 | 500 | 500 |
| NCE 1 | 500 | 500 |
| NCE 2 | Not elig. | 500 |
| NCE 3 | 500 | Not elig. |
| NCE 4 | 500 | Not elig. |
| NCE 5 | Not elig. | 500 |

The following table reflects the plans after the application of this paragraph (d):

| Employee | Plan A | Plan B | Plan AB |
|---|---|---|---|
| HCE 1 | Not elig. | Not elig. | 1000 |
| HCE 2 | 500 | Not elig. | Not elig. |
| HCE 3 | Not elig. | 500 | Not elig. |
| HCE 4 | Not elig. | Not elig. | 1000 |
| NCE 1 | 500 | 500 | 1000 |
| NCE 2 | Not elig. | 500 | Not elig. |
| NCE 3 | 500 | Not elig. | Not elig. |
| NCE 4 | 500 | Not elig. | Not elig. |

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| Employee | Plan A | Plan B | Plan AB |
|---|---|---|---|
| NCE 5 | Not elig | 500 | Not elig. |

After application of this paragraph (d), there are three plans that must satisfy the 50 percent eligibility test. Plan A and Plan B satisfy the 50 percent eligibility test, both as separate plans and as plans included in a group of comparable plans under paragraph (b) of this Q&A–4. However, Plan AB fails the 50 percent eligibility test. See Q&A–9 for rules relating to the determination of the excess benefit with respect to a plan that fails to satisfy the 50 percent eligibility test.

*Example 5.* An employer maintains two health plans: Plan A ($1,000) and Plan B ($500). The following table illustrates all of the eligible employees for these two plans.

| Employee | Plan A | Plan B |
|---|---|---|
| HCE 1 | $1,000 | $500 |
| HCE 2 | $1,000 | $500 |
| NCE 1–100 | $1,000 | Not elig. |

The following table reflects the plans after the application of this paragraph (d):

| Employee | Plan A | Plan B | Plan AB |
|---|---|---|---|
| HCE 1 | Not elig | Not elig | $1,500 |
| HCE 2 | Not elig | Not elig | $1,500 |
| NCE 1–100 | $1,000 | Not elig | Not elig. |

After application of this paragraph (d), there are three plans that must pass the 50 percent eligibility test. Plan A passes the 50 percent eligibility test. Plan B is no longer available to any employee and is not required to be tested under the 50 percent eligibility test. However, Plan AB fails the 50 percent eligibility test. Under Q&A–9, an excess benefit must be imputed to HCEs 1 and 2 so that Plan AB may be included in a group of comparable plans under paragraph (b) of this Q&A–4.

(e) *Mandatory aggregation of plans for the 80 percent coverage test*—(1) *In general.* For purposes of applying paragraph (e) of Q&A–1 of this section (the 80 percent coverage test), if an employee receives coverage under two or more health plans the rules of this paragraph (e) must be applied with respect to such plans. In addition, such plans may not be included in a group of comparable plans under paragraph (c) of this Q&A–4 with regard to such employee until the rules of this paragraph (e) have been applied with respect to such plans. Such health plans must be aggregated into an additional, single health plan that provides all of the coverage that is provided under any of the separate plans. The additional plan is treated as having an employer-provided benefit equal to the sum of the employer-provided benefits of each of the included plans (with an appropriate adjustment to eliminate the multiple inclusion of overlapping coverage). A nonhighly compensated employee is treated as covered under both the additional plan and the separate plans. A highly compensated employee is treated as covered under the additional plan and not covered under the separate plans.

(2) *Exception.* This paragraph (e) does not apply with respect to two or more health plans if at least 90 percent of the nonhighly compensated employees eligible for coverage under each plan are eligible for coverage under all of such plans on the same terms and conditions as other employees, and each plan (prior to application of the comparability rules of paragraph (c) of this Q&A–4) satisfies the 80 percent coverage test.

(3) *Examples.* The provisions of this paragraph (e) are illustrated by the following examples:

*Example 1.* Assume that an employer maintains two health plans, Plan A and Plan B. Each has an employer-provided benefit of $500. Also, each plan covers 45 percent of the employer's nonhighly compensated employees who are not covered by the other plan. Employee X, a highly compensated employee, and Employee Y, a nonhighly compensated employee, are covered by both Plan A and Plan B. Plan A and Plan B must be aggregated to form an additional single health plan because the exception of paragraph (e)(2) of this Q&A–4 does not apply. Thus, there are three health plans: Plan A ($500), Plan B ($500), and Plan AB ($1,000). The plans fail the 80 percent coverage test because Plan AB may not be included with Plan A and Plan B under any of the comparability rules of paragraph (c) of this Q&A–4. Thus, the employer-provided benefit under Plan AB must be reduced to $526 with respect to Employee X for all plans to pass the 80 percent coverage test.

*Example 2.* Assume that an employer maintains two health plans, Plan A and Plan B. Each has an employer-provided benefit of $500. Each plan is available on the same terms to all employees of the employer and covers over 80 percent of the employer's nonhighly compensated employees. Because these plans qualify for the exception of paragraph (e)(2) of this Q&A–4, the employer is not required to aggregate the plans under this paragraph (e). Plan A and Plan B each satisfy the 80 percent coverage test.

*Example 3.* An employer maintains two health plans. Plan A has an employer-provided benefit of $1,000 and Plan B has an employer-provided benefit of $500. The following table illustrates all of the eligible employees for these two plans. HCE denotes a highly compensated employee and NCE denotes a nonhighly compensated employee.

| Employee | Plan A | Plan B |
|---|---|---|
| HCE 1 | $1,000 | $500 |
| HCE 2 | $1,000 | Not elig. |
| NCE 1 | $1,000 | $500 |
| NCE 2–100 | $1,000 | Not elig. |

The following table reflects the plans after the application of this paragraph (e):

| Employee | Plan A | Plan B | Plan AB |
|---|---|---|---|
| HCE 1 | Not elig | Not elig | $1,500 |
| HCE 2 | $1,000 | Not elig | Not elig. |
| NCE 1 | $1,000 | $500 | $1,500 |
| NCE 2–100 | $1,000 | Not elig | Not elig. |

After application of this paragraph (e), there are three plans that must be comparable in order for the plans to pass the 80 percent coverage test. The plans fail the 80 percent coverage test even though Plans A and B may be included in a group of comparable plans under paragraph (c)(3) because Plan AB may not be included in a group of comparable plans with Plan A and Plan B under any of the rules of paragraph (c) of this Q&A–4 for inclusion in a group of comparable plans with Plans A and B. It does, however, pass the 50 percent eligibility test, and therefore Plan AB's employer-provided benefit may be reduced to $1,111 ($1,000 is 90 percent of $1,111) and the health plans will be considered comparable.

(f) *Permissive plan restructuring.* For purposes of applying paragraphs (d)(3) and (e) of Q&A–1 of this section (the 50 percent eligibility test and the 80 percent coverage test, respectively) an employer may, in certain circumstances, restructure two or more health plans into two or more restructured health plans on the basis of the value of coverages under such plans. To the extent mandatory aggregation is applicable and if the employer decides to apply the comparability rules of this Q&A–4, such mandatory aggregation and comparability rules must be applied only prior to the application of the permissive restructuring rule of this paragraph (f). Pursuant to this rule, two or more health plans may be restructured into one health plan of common value and two or more plans of distinct values. In all cases, to the extent the values of any plans being restructured are equivalent, the values may be restructured into only one plan. In no case may the plan (or plans) with the lowest value be restructured into two or more plans with a lower value. Thus, for example, if an employer has three plans (after the application of the mandatory aggregation and the comparability rules of this Q&A–4), Plan A with an employer-provided benefit of $7,000, Plan B with an employer-provided benefit of $6,000 and Plan C with an employer-provided benefit of $4,000 the employer may restructure the three plans only in the following manner: A plan providing employer-provided benefits of $4,000, $2,000 and $1,000 respectively.

(g) *Authority to issue additional requirements.* The Commissioner, in revenue rulings, notices and other publications of general applicability, may make any modification to, or issue such additional requirements for the application of, the rules contained in this Q&A–4 as may be necessary to ensure proper compliance with the intent of such rules and section 89(g)(1).

Q–5: What is the testing methodology for applying the nondiscrimination rules under section 89?

A–5: (a) *In general.* Except as otherwise provided in this Q&A–5, the determination of whether a statutory employee benefit plan is a discriminatory employee benefit plan for a testing Year is made on the basis of all of the applicable facts with respect to the employees of the employer as of the testing day included within such testing year. Such facts generally are to be treated as in existence for the entire testing year.

(b) *Adjustments to facts on the testing day*—(1) *Changes in plan terms.* If the employer-provided benefit (actually provided or made available) of an employee who is taken into account on the testing day changes during the testing year (either before or after the testing day) in connection with any change in plan terms, the amount taken into account as such employee's employer-provided benefit for such testing year must be adjusted to reflect the employer-provided benefit for the portions of the testing year both before and after such change.

(2) *Election changes by highly compensated employees*—(i) *In general.* If the employer-provided benefit (actually provided or made available) of a highly compensated employee for a testing year who is taken into account on the testing day changes during the testing year (either before or after the testing day) solely on account of an election of the employee, the amount taken into account as such employee's employer-provided benefit for such testing year must be adjusted to reflect the employer-provided benefit for the portions of the testing year both before and after such change.

(ii) *Special rule for the first quarter of each testing year.* An employer must make the adjustments otherwise required under this paragraph (b)(2) for election changes during the first quarter of a testing year only for those election changes by employees who were highly compensated employees for the immediately preceding testing year and employees who, for the current testing year, either are among the 100 highly compensated employees who receive the most compensation for the current testing year or are 5 percent owners of the employer (as determined under section 416(i)).

(3) *Distinction between changes in plan terms and election changes.* A change in an employee's employer-provided benefit is treated as an election change only if such change is exclusively attributable to an election change by the employee that is not in connection with or otherwise related to any change in the terms of the plan or other plans of the same type available to the employee. Changes in an employee's employer-provided benefit are treated as attributable to changes in plan terms even if the changes are pursuant to an election of the employee that occurs in conjunction with any change in the terms of the plan (or of another plan of the same type available to such employee). Thus, for example, if during an open season or election period an employee elects to change health plan coverage and there is any change to any one or more of the health plans available to such employee during the open season, such employee's change in employer-provided benefit is treated as in connection with a change in plan terms even if the employee is not covered, either before or after the open season, by a health plan that changed. An increase or decrease in the after-tax employee contributions or employer contributions, including salary reduction contributions, is treated as a change in plan terms.

(4) *Taking required adjustments into account*—(i) *In general.* Adjustments taken into account under this paragraph (b) are to be taken into account as of the effective date of the change in the employer-provided benefit.

(ii) *Adjustment period rule—(A) In general.* If the requirements of paragraph (b)(4)(ii)(B) and (C) of this Q&A–5 are satisfied, an employer may on a uniform and consistent basis treat employer-provided benefit changes as having become effective as of the first day of the applicable adjustment period or periods.

(B) *Adjustment period.* The requirement of this paragraph (b)(4)(ii)(B) is satisfied only if the employer uses at least 24 adjustment periods for its testing year. Adjustment periods must be regular, uniform periods throughout the testing year. For example, an employer may use each 2-week pay period as an adjustment period.

(C) *Applicable adjustment periods.* The requirement of this paragraph (b)(4)(ii)(C) is satisfied only if, in the case of a nonhighly compensated employee, the lowest employer-provided benefit of such employee on any day during an adjustment period is taken into account for at least either the current adjustment period (i.e., the period during which the change in employer-provided benefit occurred) or the adjustment period immediately following the effective date of the benefit change. In the case of a highly compensated employee, the highest employer-provided benefit of such employee on any day during an adjustment period must be taken into account for at least either the current adjustment period or the adjustment period immediately following the effective date of the benefit change.

(5) *Transition rule for 1989*— (i) *In general.* For any testing year that begins prior to July 1, 1989, the employer may apply the nondiscrimination rules of section 89 (including the rules of Q&A–2 of this section) with respect to its health plans for such testing year in accordance with the rules in paragraph (b)(5)(ii) through (iv) of this Q&A–5.

(ii) *Partial testing year.* The facts with respect to all employees of the employer as of the testing day for the testing year are to be treated as in existence for the entire partial testing year. The partial testing year begins on the earliest of July 1, 1989; the testing day for such testing year; or the first day of the calendar month beginning three months before the end of the testing year. The last day of the partial testing year is the last day of such testing year.

(iii) *Adjustments.* The employer-provided benefit (received or made available) of an employee determined as of the testing day is to be adjusted for the partial testing year as required under this paragraph (b) for elections and plan design changes occurring during the partial testing year as if the partial testing year were the entire testing year.

(iv) *Annualization of employer-provided benefit.* The employer-provided benefit (received or made available) of an employee for the partial testing year (determined after the application of the other rules in this paragraph (b)(5)) is multiplied by the applicable fraction for the testing year and such product is deemed to be the employer-provided benefit (received or made available) of the employee for the testing year for purposes of applying the section 89 nondiscrimination tests to such testing year. The numerator of the applicable fraction for a testing year is the total number of calendar months in the testing year and the denominator of

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such fraction is the number of calendar months in the partial testing year.

(v) *Transition rule inapplicable with respect to certain plans*—(A) *Changes in plan terms.* The rule of this paragraph (b)(5) is not available with respect to a health plan that provides an employer-provided benefit for the partial testing year that is less, by more than a de minimis amount, than such plan's employer-provided benefit for the portion of the testing year that precedes the partial testing year. Thus, for example, the rule of this paragraph (b)(5) is not available if an employer amends its health plan to provide that employee contributions for coverage during the partial testing year are to be in the form of after-tax employee contributions rather than salary reduction contributions. See paragraph (c) of Q&A–1 of this section (the nondiscriminatory provisions test).

(B) *New plans.* The rule of this paragraph (b)(5) is not available with respect to a health plan that is first established, or coverage under a health plan that is first provided, on or after January 1, 1989, and that terminates or ceases to be provided before the end of the partial testing year. Also, such plan or coverage may fail to satisfy the requirement of section 89(k)(1)(E) (that a plan be established with the intention of being maintained for an indefinite period of time).

(C) *Certain discriminatory plans.* The rule of this paragraph (b)(5) is not applicable with regard to a plan unless, for the testing year, at least 25 percent of those employees eligible to participate in the plan are nonhighly compensated employees or such plan satisfies the alternative 50 percent eligibility test of paragraph (d)(3)(iii) of Q&A–1 of this section. The rules of Q&A–4 of this section are not available in determining whether a plan meets this 25 percent requirement.

(vi) *Example.* The rules of this paragraph (b)(5) are illustrated in the following example:

*Example.* Assume that an employer maintains several health plans, one of which has a plan year beginning on January 1, 1989. The employer elects to use a calendar year testing year for purposes of testing its health plans under section 89. Under this paragraph (b)(5), if the employer elects a testing day of July 1, 1989 (or any day after such date and before January 1, 1990), the employer may apply the testing day and benefit adjustment rules of section 89 to the period between July 1, 1989 and January 1, 1990 as if such period were the entire testing year. Thus, for example, only those benefit changes that occur during the partial testing year need to be taken into account under the rules of this paragraph (b). Then, employees' employer-provided benefits (received or made available) for the partial testing year are converted into employer-provided benefits for the full testing year by multiplying each of such benefits by two (i.e., 12/6, which is the applicable fraction, the numerator of which is the total number of calendar months in the testing year and the denominator of which is the number of calendar months in the partial testing year). The section 89 nondiscrimination tests are then applied with respect to such annualized employer-provided benefits.

(c) *Testing day.* The testing day is the single day within the testing year that is elected in writing as the testing day for purposes of applying the nondiscrimination tests of section 89 with respect to the testing year. The testing day is not required to be designated in the single written document required under section 89(k)(1)(A) (See Q&A–3 of § 1.89(k)(1). If a testing day is not elected in writing, the testing day is the last day of the testing year. All plans of the same type, and plans that are not of the same type but are treated as of the same type for nondiscrimination testing under section 89, must have the same testing day. The testing day for any testing year beginning after December 31, 1990, is the same testing day used for the immediately preceding testing year unless a change in such testing day is made with the consent of the Commissioner or is in accordance with such rules as the Commissioner may provide with respect to changes in testing days. The election of a testing day is subject to the requirements of the nondiscriminatory provisions test of paragraph (c) of Q&A–1 of this section. Thus, an employer's testing day must reasonably reflect the employee pool of the employer and the business of the employer throughout the year.

(d) *Sampling.* For purposes of determining whether a statutory employee benefit plan is a discriminatory employee benefit plan, an employer may elect in writing to apply the rules of paragraphs (d) and (e) of Q&A–1 of this section (the general eligibility and benefits tests and the alternative 80 percent coverage test, respectively), paragraph (c) of Q&A–2 of this section (the special rule for certain large employers), and paragraph (c)(4) of Q&A–3 of this section (relating to sworn statements) on the basis of a statistically valid random sample of the employer's employees. A sample is statistically valid for purposes of this paragraph (d) only if the statistical method and sample size result in at least a 95 percent probability that the results of the sample with respect to the applicable requirements have a margin of error not greater than 3 percent. Also, the statistical validity of the sample and statistical method and analysis must be confirmed in a written opinion of a qualified and independent third party.

Q–6: What is the period for testing whether the nondiscrimination rules of section 89 are satisfied?

A–6: (a) *Testing year*—(1) *In general.* An employer must apply the nondiscrimination tests of section 89 to its health plans and other statutory employee benefit plans on the basis of a testing year that begins on the first day of a calendar month and ends on the last day of a calendar month, regardless of the beginning of the plan year or years of such plans. Unless the employer elects otherwise in accordance with paragraph (a)(2) of this Q&A–6, the testing year for all statutory employee benefit plans is the calendar year.

(2) *Election of different testing year.* An employer may elect a uniform 12-month testing year other than the calendar year for purposes of applying the section 89 nondiscrimination tests to all plans of the same type. Thus, for example, an employer may elect to apply the section 89 nondiscrimination tests to all of its health plans on the basis of an April 1 to March 31 testing year. In addition, if the 75 percent benefits test is applied on an aggregate basis to plans of different types (e.g., health plans, group-term life insurance plans, and dependent care assistance programs) as though such plans were plans of the same type, the same testing year must be used with respect to all such plans.

(3) *Election.* An employer must make the election of a testing year described in paragraph (a)(2) of this Q&A–6 in writing prior to the commencement of the testing year to which the election relates. See paragraph (b)(3) of this Q&A–6 for a transition rule for 1989.

(b) *First testing year in 1989*—(1) *In general.* Notwithstanding paragraph (a) of this Q&A–6, for the first testing year applicable with respect to plans of the same type, the employer may elect to apply the section 89 nondiscrimination tests with respect to all plans of the same type on the basis of any 12-month period beginning on the first day of any calendar month beginning on or after January 1, 1989, but no later than the first day that any plan of such type first becomes subject to the section 89 nondiscrimination tests. The rule of this paragraph (b) is applicable even though not all of the plans of the same type are subject to the section 89 nondiscrimination tests for the entire first testing year. See paragraph (c) of this Q&A–6 for special rules applicable to the section 89 nondiscrimination tests in such cases. The rule of this paragraph (b)(1) is illustrated in the following example:

*Example.* Assume that an employer maintains three health plans, Plan A, Plan B and Plan C. Plan A's plan year begins on March 1, Plan B's plan year begins on July 1, and Plan C's plan year begins on September 1. The section 89 nondiscrimination rules apply to plan years that begin after December 31, 1988. For these plans, the employer may elect as its first testing year under section 89 any 12-month period beginning on or after January 1, 1989, and on or before March 1, 1989. This is the case even though not all of the health coverage provided during any of these possible first testing years is subject to the section 89 nondiscrimination tests.

(2) *Short testing year.* An employer may elect to apply the section 89 nondiscrimination tests to its first testing year commencing in 1989 with respect to all plans of the same type on the basis of a first testing year that is shorter than 12 months in duration. However, if an employer applies the section 89 nondiscrimination tests on the basis of such a short first testing year, the second testing year for such employer for such plans must be 12 months in duration. In addition, in no case may any employer-provided benefit subject to the section 89 nondiscrimination tests either be excluded from consideration in a testing year or considered in more than one testing year. The rule of this paragraph (b)(2) is illustrated in the following example:

*Example.* Assume that an employer's first testing year in 1989 for its health plans commences on March 1, 1989. The employer may elect to use a first testing year of March 1, 1989, to December 31, 1989, for all of its health plans. In such case, the employer's second testing year must commence on January 1, 1990, and must be 12 months in duration.

(3) *Election*—(i) *First day.* An employer must elect the first day of the first testing year beginning in 1989 with respect to plans of the same type in writing prior to the earlier of the first day of the second testing year for such plans or January 1, 1990. If an employer fails to make an election by such required date with respect to plans of the same type, the first day of the first testing year beginning in 1989 for all plans of such type is January 1, 1989.

(ii) *Last day.* If an employer uses a short testing year for the first testing year beginning in 1989 with respect to plans of the same type, the employer must elect the last day of such year in writing prior to such last day. Thus, for example, if an employer decides to begin the first testing year for its health plans on March 1, 1989, and, after such date, decides to use a calendar year testing year beginning in 1990, the employer must, before December 31, 1989, elect December 31, 1989, as the last day of the first testing year.

(c) *Testing where not all plans are subject to section 89*— (1) *In general.* If, during a testing year with respect to plans of the same type, there is any employer-provided benefit that is not subject to the section 89 nondiscrimination rules for the entire testing year, the rules of this paragraph (c) apply for purposes of testing and excess benefit calculations.

(2) *Testing.* All employer-provided benefits available or provided during the first testing year applicable with respect to plans of the same type are taken into account in applying the nondiscrimination tests of section 89. This is the case even if such employer-provided benefits are provided under a plan that is not yet subject to section 89. The rule of this paragraph (c)(2) is illustrated in the following example:

*Example.* Assume that an employer maintains three health plans. Plan A's plan year begins on March 1, Plan B's plan year begins on July 1, and plan C's plan year begins on September 1. The section 89 nondiscrimination rules apply to plan years that begin after December 31, 1988. Assume further that the employer elects as its first testing year under section 89 the 12-month period beginning on March 1, 1989. For purposes of applying the nondiscrimination tests of section 89, all health coverage provided during this 12-month period, including coverage under Plans B and C from March 1, 1989, until July 1, 1989, and September 1, 1989, respectively, is taken into account.

*(3) Excess benefit calculation*—(i) *In general.* If, during a testing year with respect to plans of the same type, an employer-provided benefit under one plan is not yet subject to the section 89 nondiscrimination rules and another plan subject to section 89 fails to satisfy the nondiscrimination rules, the rules of this paragraph (c)(3) apply for purposes of calculating the amount of excess benefit (if any) that is attributable to employer-provided benefits subject to section 89 for such testing year. Plans that are not of the same type but are being tested under the 75 percent benefits test as if they were of the same type are to be treated as plans of the same type for purposes of this paragraph (c)(3).

(ii) *Total excess benefit.* The excess benefit for the testing year with respect to plans of the same type is calculated with regard to an employee under the generally applicable rules of section 89 as if all employer-provided benefits provided under such plans during such year were subject to section 89. See Q&A–9 of this section for rules governing the determination of excess benefits.

(iii) *Excess benefit subject to section 89*—(A) *Determination with respect to the 90 percent/50 percent eligibility and 75 percent benefits tests.* For purposes of determining excess benefit resulting from the failure of the employer to meet the requirements of paragraph (d)(2) or (d)(4) of Q&A–1 of this section, the portion of an excess benefit that is attributable to employer-provided benefits subject to section 89 for the testing year with respect to the plan or plans being tested is determined by multiplying the excess benefit determined under paragraph (c)(3)(ii) of this Q&A–6 by a fraction. The numerator of the fraction is the total employer-provided benefit for the highly compensated employee under the plan or plans being tested that are subject to section 89, and the denominator is the total employer-provided benefit for the highly compensated employee under the plan or plans being tested for the first testing year, whether or not they are subject to section 89. The rule of this paragraph (c)(3)(iii)(A) is illustrated by the following example:

*Example.* Assume that an employer maintains two health plans, Plan A and Plan B. The plan years for these plans and the effective dates for these plans for purposes of section 89 are January 1, 1989, and July 1, 1989, respectively. Plan A provides health coverage with an annual employer-provided benefit of $1,000, and Plan B provides health coverage with an annual, employer-provided benefit of $2,000. In each case, the employer provided-benefit for the 1989 year is the same as the benefit for the prior year. With regard to its health plans, the employer uses a 12-month testing year beginning on January 1, 1989. Thus, in applying the section 89 nondiscrimination tests, all health coverage under Plan B for this testing year must be taken into account. Assume that, for the 1989 testing year, the employer determines that a highly compensated employee who was in Plan A and Plan B for the entire testing year has an excess benefit of $500 for the testing period. The applicable fraction for this employee is $2,000/$3,000. The $2,000 numerator represents the annual employer-provided benefit of Plan A ($1,000) because it was subject to section 89 for the entire testing year plus ½ of the annual employer-provided benefit of Plan B ($2,000) because it was only subject to section 89 for ½ of the testing year. The denominator is the annual employer-provided benefit of Plans A and B. Thus, the employee is treated as having received an excess benefit in the amount of $333.33 (i.e., 66⅔ percent of $500).

(B) *Determination with respect to 50 percent eligibility and 80 percent coverage tests.* If an excess benefit with regard to a highly compensated

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employee is attributable to a plan failing to meet the requirements of the 50 percent eligibility test or the 80 percent coverage test, then this paragraph (c)(3)(iii)(B) applies. The portion of an employee's excess benefit that is attributable to employer-provided benefits for the testing year with respect to the plan or plans being tested is determined by multiplying the excess benefit determined under paragraph (c)(3)(ii) of this Q&A–6 by a fraction. The numerator of the fraction is the number of months in the testing year that the plan or plans failing the applicable requirement is subject to section 89, and the denominator is the number of months that constitute such testing year. In the case of plans that have become subject to section 89 at different times during the testing year, which plans are aggregated under the mandatory aggregation requirements of paragraphs (d) and (e) of Q&A–4 of this section, the excess benefit is determined by calculating a weighted average for each of the originally separate plans in the aggregated plan and adding together such weighted averages. The weighted average for each plan is determined by multiplying the excess benefit by a fraction. The numerator of the fraction is the product of the total amount of the employer-provided benefit for the plan year (without regard to whether such coverage was subject to section 89 for the entire testing year) multiplied by the number of months that such plan has been subject to section 89. The denominator is the product of the total amount of the employer-provided benefit for all the plans in the aggregated plan (without regard to whether such coverage was subject to section 89 for the entire testing year) multiplied by the number of months in the testing year.

(d) *Changes in testing year*—(1) *In general.* Subject to paragraph (d)(2) of this Q&A–6, an employer may elect to change its testing year with respect to plans of the same type if such election is made in writing prior to the beginning of such new testing year. In no case may any such change result in any employer-provided benefit subject to the section 89 nondiscrimination tests not being included in any testing year or being included in more than one testing year. See also paragraph (b)(2) of this Q&A–6 (precluding changes in an employer's second testing year with respect to plans of the same type if the employer has elected a short first testing year for 1989).

(2) *Commissioner approval.* An employer's election to change its testing year with respect to plans of the same type subject to section 89 may be made without the prior approval of the Commissioner, provided that the first day of the new testing year is on or before January 1, 1991, such change otherwise meets the requirements of paragraph (d)(1) of this Q&A–6, and such change has no discriminatory effect. For all subsequent changes in testing years, the employer must obtain the prior approval of the Commissioner or must meet such requirements as the Commissioner may otherwise prescribe.

(3) *Example.* The provisions of this paragraph (d) are illustrated as follows:

*Example.* An employer is using the calendar year as its testing year for its health plans. On October 3, 1990, the employer designates the 12-month period beginning each December 1 as its new testing year, effective December 1, 1990. This is a permissible change in testing year. The result of this designation is that the employer's testing year beginning on January 1, 1990, is a short year ending on November 30, 1990.

Q–7: For purposes of applying section 89(a) to an employer's health plan, what rules apply for determining the employer-provided benefit and calculating the excess benefits?

A–7: (a) *In general.* For purposes of nondiscrimination testing under section 89, the employer-provided benefit under a health plan is the value of the health coverage under the plan that is attributable to employer contributions, determined in accordance with the rules in this Q&A–7. See paragraph (b) of this Q&A–7 for rules governing the determination of the excess benefit (if any) under section 89.

(b) *Reasonable valuation methods*—(1) *In general.* Prior to the effective date of procedures prescribed by the Secretary in accordance with section 89(g)(3)(B), employers may use any reasonable valuation method for valuing health coverage under each plan for purposes of applying the nondiscrimination tests of section 89. The employer must be able to demonstrate that its method for valuing such health coverage is actuarially reasonable. All features of a health plan must be taken into account under a reasonable method. However, unless the employer is using a reasonable cost method to value health coverage (in accordance with paragraph (c) of this Q&A–7), a reasonable valuation method may disregard those features that have a de minimis effect on the total value of the coverage under the plan and are not disproportionately available to highly compensated employees. The features that are disregarded cannot, in the aggregate, result in a more than de minimis effect on the total value of the plan. If a feature is disregarded as de minimis with respect to one health plan, it must be disregarded with respect to all health plans. An entitlement to a periodic medical diagnostic or physical examination, whether or not required as a condition of employment, is not considered to have a de minimis effect on the total value of the health coverage under the plan and thus the entitlement must be taken into account in valuing coverage even if the plan is available to nonhighly compensated employees on the same or a more favorable basis than it is to highly compensated employees and even for employees who do not actually undergo the covered examinations.

(2) *Presumption where value is substantially unrelated to cost.* If the employer is not using a cost method permitted under section 4980B to value health coverage (in accordance with paragraph (c) of this Q&A–7), a valuation method is presumed to be unreasonable if the relative values of the plans determined under such method do not reasonably reflect the relative values that would be determined for the plans using a cost method permitted under section 4980B. However, the fact that the relative values of the plans determined by the employer reasonably reflect the relative values of such plans under a cost method permitted under section 4980B does not mean that the valuation method is necessarily reasonable. The provisions of this paragraph (b)(2) are illustrated in the following example:

*Example.* Assume that an employer maintains three health plans for its employees and does not use a cost method permitted under section 4980B for purposes of determining the employer-provided benefits with respect to these plans. The applicable premiums under the cost method used under section 4980B(f)(4) for these plans are as follows: Plan A, $2,500; Plan B, $2,000; and Plan C, $2,100. Thus, Plan B's value under the cost method is 80 percent of Plan A's value, and Plan C's value, is 84 percent of Plan A's value. Under the employer's valuation method, the values of the plans are as follows: Plan A, $1,800; Plan B, $2,400; and Plan C, $400. Thus, under the employer's valuation method, Plan B's value is 150 percent of the value of Plan A, and Plan C's value is 25 percent of Plan A's value. These relative values do not reasonably reflect the relative values under the section 4980B cost method. Thus, the presumption of this paragraph (b)(2) applies, and unless the employer can demonstrate otherwise, its valuation method is not considered reasonable.

(3) *De minimis effect.* A feature does not have a de minimis effect on the total value of coverage unless it is demonstrably difficult to value such feature and, if it were valued, the feature would be insignificant in value.

(4) *Disproportionate ratio.* A de minimis feature of a health plan is not considered to be disproportionately available to highly compensated employees if that feature, treated as a separate plan, meets the requirements of paragraph (d)(3) of Q&A–1 of this section (the 50 percent eligibility test). For purposes of this paragraph (b)(4), the availability of the feature is determined based on all health plans of the employer.

(c) *Reasonable cost method—(1) In general.* An employer is deemed to be using a reasonable valuation method that satisfies the requirements of paragraph (b) of this Q&A–7 if the employer is using a reasonable cost method as described in this paragraph (c) to value its health coverage. The employer must be able to demonstrate that its method for determining the cost of health coverage is actuarially reasonable. The method that the employer uses to determine the applicable premium for purposes of the continuation coverage requirements for group health plans in accordance with section 4980B(f)(4) is deemed to be a reasonable cost method. If a health plan is not subject to the requirements of section 4980B, the employer may calculate cost on the basis of a method permitted to be used for determining an applicable premium under section 4980B(f)(4) as if such plan were subject to that section. A cost method does not fail to be a reasonable valuation method for purposes of section 89 merely because the calculation of cost takes into account the average annual cost under section 4980B(f)(4) of substantially similar coverage for the immediately preceding two years or the immediately preceding year if two years' data are not available or if data for the two years would not be reasonable to use under the facts and circumstances of the case.

(2) *Certain permitted adjustments*—(i) *In general.* An employer may elect in writing to make certain adjustments to the cost of health coverage in determining the value of such coverage under a reasonable cost method. These adjustments are intended to eliminate cost differences that are unrelated to the relative value of health coverage. These adjustments may be made only to the extent they have not already been taken into account (if permitted) under the method of determining the applicable premium under section 4980B. If an employer makes an adjustment of the type described in this paragraph (c)(2) with respect to one health plan, the employer must make that same type of adjustment for all health plans. Thus, if an employer maintains two plans providing identical coverage at two geographic locations and elects to make the geographic adjustment permitted in paragraph (c)(2)(ii) with respect to such plans, the employer must make a geographic adjustment to all plans at all locations since the values of these plans are compared to one another under the various tests contained in section 89.

(ii) *Geographic adjustment.* Costs may be adjusted to eliminate differences in cost solely attributable to the employer's operation in significantly separate geographic locations.

(iii) *Demographic adjustment.* Costs may be adjusted to eliminate differences in cost solely attributable to the different demographic characteristics (other than family status) of the participants in the plans.

(iv) *Utilization adjustment.* Costs may be adjusted to eliminate differences in costs solely attributable to differences in the utilization of coverage features common to two or more separate health plans. This adjustment must be made by allocating the total cost for a common feature among all the plans with such feature on the basis of the number of employees covered by such feature under each of the plans. The adjustment under this paragraph (c)(iv) is to be made only after all other adjustments that are permitted in this paragraph (c).

(d) *Certain cost containment features.* A valuation method is not unreasonable if it fails to make adjustments for bona fide cost containment features, such as second opinion requirements or requirements for physician approval prior to referral for specialized medical care. In addition, a valuation method generally is not reasonable if it makes adjustments based on the method of health benefit delivery (e.g., traditional indemnity plans, health maintenance organizations and preferred provider organizations).

(e) *Consistency rule.* With the exception of certain multiemployer plans (see section 89(g)(3)(E)), an employer must use the same valuation method (including any permitted adjustment under this Q&A–7) to value all of the health plans that are tested together under section 89.

(f) *Health coverage under flexible spending arrangements.* In the case of a health plan provided under a flexible spending arrangement (FSA) (as defined in Q&A–7 of § 1.125–2), the value of the coverage for a year generally is equal to the total cost (i.e., required premium or payment) of the coverage for the year, whether or not such cost is paid through employer contributions, including salary reduction contributions, or after-tax employee contributions. If an employer is separately testing employee-only health coverage and family-only health coverage (in accordance with paragraph (c) of Q&A–3 of this section) and health coverage under an FSA is applicable to employees and their family members, the employer may elect to treat 40 percent of the value of the coverage under the health FSA as family-only coverage and 60 percent of such value as employee-only coverage. This election must apply with respect to all employees who have a spouse or dependent. The rule of this paragraph (f) is illustrated in the following example:

*Example.* Assume that an employer maintains a cafeteria plan under which an employee may elect to reduce his or her salary by any amount of compensation for a year, to a maximum of $2,000, for reimbursements for health expenses. Assume further that the maximum reimbursement for any particular employee under the arrangement for a year is equal to the amount the employee has elected to reduce his or her salary for the year. This arrangement is a health flexible spending arrangement (FSA). Each different amount by which an employee may elect to reduce his or her salary for a year is a separate health plan under the FSA. The salary reduction contributions are employee premium payments for the level of health coverage elected for the year. For purposes of the 90 percent/50 percent eligibility test (if salary reduction contributions are treated as employer contributions under the rules of Q&A–8 of this section), the health plan under the FSA with the largest employer-provided benefit is the plan with a $2,000 maximum reimbursement. Because all employees may elect any level of coverage under the health FSA, all of the health plans included in the health FSA satisfy the 50 percent eligibility test. For purposes of the 75 percent benefits test, if an employee elects to receive health coverage under the FSA providing for the reimbursement of up to $1,200 of health expenses for a year, the value of such coverage received for the year is $1,200. This is the case without regard to whether the employee actually pays the total required premium for the coverage, as long as the employee receives the coverage. Finally, for purposes of the 80 percent coverage test, each different level of coverage under the health FSA is a separate health plan with a value equal to the cost of such level of coverage.

(g) *Health coverage attributable to employer contributions*—(1) *In general.* The portion of the value of the health coverage of a plan that is attributable to employer contributions is determined by multiplying the value of the health coverage of the plan (determined under paragraphs (b) through (f) of this Q&A–7) by a fraction. The numerator of the fraction is the employer-paid cost of the health plan, and the denominator of the

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fraction is the sum of the employer-paid cost and the employee-paid cost of the health plan. For this purpose, the cost of a health plan is its actual cost determined under the same method the employer uses to determine the applicable premium (for the same coverage) for health continuation coverage purposes under section 4980B(f)(4) without regard to any of the adjustments permitted in paragraph (c) of this Q&A–7 (other than the adjustment for utilization differences). If a health plan is not subject to the requirements of section 4980B, the employer may calculate cost on the basis of a method permitted to be used for determining an applicable premium under section 4980B(f)(4) as if such plan were subject to that section. For purposes of this Q&A–7, health coverage of a self-employed individual is deemed attributable to employer contributions to the extent that a deduction under section 162(m) is allowable with respect to the coverage. Also, the determination of the extent to which health coverage is attributable to employer or employee contributions is to be made without regard to whether an employee is permitted a deduction with respect to employee contributions under section 213.

(2) *Exception.* If, for a particular health plan, the employer-paid portion of the cost (treating salary reduction contributions as employer contributions) is less than or equal to 2 percent of the sum of the employer-paid cost and the employee-paid cost of such health plan, the employer may treat such health plan as providing no employer-provided benefit.

(3) *Salary reduction contributions.* See Q&A–8 of this section for the treatment of salary reduction contributions under a cafeteria plan as either employer or employee contributions.

(h) *Calculation of excess benefit.* The amount of a highly compensated employee's excess benefit under section 89(b) with respect to a health plan is the cost of the excess benefit based on its actual cost determined under the same method the employer uses to determine the applicable premium for the same coverage for health continuation coverage purposes under section 4980B(f)(4) without regard to any of the adjustments permitted in paragraph (c) of this Q&A–7 (other than the adjustment for utilization differences). This rule applies with respect to both highly compensated and nonhighly compensated employees. Thus, an employer must use the method it uses to determine the applicable premium for all coverage provided in making the determination of excess benefits. See Q&A–9 of this section for further guidance with respect to the determination of excess benefits.

Q–8: How are salary reduction contributions treated for purposes of the section 89 nondiscrimination tests?

A–8: (a) *Treatment of salary reduction contributions*—(1) *In general.* Except as otherwise provided (see, e.g., paragraphs (b) and (c) of this Q&A–8), salary reduction contributions are treated as employer contributions. Thus, for purposes of paragraph (d)(3) (the 50 percent eligibility test), paragraph (d)(4) (the 75 percent benefits test), and paragraph (e) (the 80 percent coverage test) of Q&A–1 of this section, the portion of the value of health coverage that is attributable to salary reduction contributions is treated as attributable to employer contributions and thus as an employer-provided benefit. See paragraph (d)(2) of Q&A–4 of this section for a special rule for the treatment of certain salary reduction contributions for purposes of the mandatory aggregation rule for the 50 percent eligibility test.

(2) *Definition of salary reduction contributions.* The term "salary reduction contributions" means all employer contributions that are excludable from the gross income of an employee by reason of section 125. Thus, all elective contributions under a cafeteria plan described in section 125 that are excludable from employees' gross incomes are salary reduction contributions, even if such amounts are available in cash or other taxable benefits only if the employee satisfies a specified condition under the plan (e.g., the completion of a statement that the employee has other health plan coverage). This is the case regardless of the manner in which such contributions are described under a plan. For example, amounts that are described as employer or company credits under a cafeteria plan are salary reduction contributions to the extent that such amounts are available to employees in cash or other taxable benefits under the plan, even if, for example, the plan defines salary reduction contributions as only those contributions that are directly and explicitly deducted from employees' regular salaries.

(b) *90 percent/50 percent eligibility test*—(1) *In general.* Except as provided in paragraphs (b)(2) and (c) of this Q&A–8, for purposes of paragraph (d)(2) of Q&A–1 of this section (the 90 percent/50 percent eligibility test), salary reduction contributions are treated as employee contributions (rather than employer contributions) in computing the employer-provided benefit available to any employee.

(2) *Election to treat as employer contributions*—(i) *In general.* An employer may elect in writing to treat all salary reduction contributions as employer contributions for purposes of paragraph (d)(2) of Q&A–1 of this section (the 90 percent/50 percent eligibility test). An employer may not elect to treat some, but not all, salary reduction contributions as employer contributions. An employer election under this paragraph (b)(2) applies with respect to all salary reduction contributions with regard to plans of the same type whether or not the plans are part of the same cafeteria plan.

(ii) *Requirements to qualify for election*—(A) *In general.* In order to make an election under this paragraph (b)(2), an employer must meet the requirements of paragraphs (b)(2)(ii)(B) through (b)(2)(ii)(D) of this Q&A–8.

(B) *Plan must be available on same terms.* This requirement is satisfied only if all of the benefits available under each cafeteria plan are available on the same terms and conditions to all employees eligible to participate under such plans.

(C) *Nonhighly compensated employees may not comprise a disproportionate portion of those eligible to participate.* This requirement is satisfied only if the nonhighly compensated eligibility percentage for each cafeteria plan does not exceed the highly compensated eligibility percentage for each such plan. The nonhighly compensated eligibility percentage is the percentage determined by dividing the number of nonhighly compensated employees eligible to participate in the cafeteria plan by the total number of nonhighly compensated employees, and the highly compensated eligibility percentage is the percentage determined in the same manner by reference only to highly compensated employees.

(D) *No highly compensated employee with benefits outside cafeteria plan.* This requirement is satisfied only if no highly compensated employee eligible to participate in a cafeteria plan is eligible to participate in any other statutory employee benefit plan that is of the same type as a plan available under the cafeteria plan unless such other statutory employee benefit plan (whether inside or outside of a cafeteria plan) is available on the same terms and conditions to all nonhighly compensated employees that are eligible to participate in the cafeteria plan.



(c) *Mandatory treatment of salary reduction contributions*—(1) *In general.* Notwithstanding paragraphs (b)(1) and (b)(2) of this Q&A–8, if certain conditions set forth in paragraph (c)(2) or (c)(3) of this Q&A–8 are satisfied, an employer is required to treat some or all salary reduction contributions available to highly compensated employees as employer contributions, some or all salary reduction contributions available to nonhighly compensated employees as employee contributions, or both. Paragraphs (c)(2) and (c)(3) of this Q&A–8 are applied separately. This mandatory treatment applies only for purposes of applying the 90 percent/50 percent eligibility test of paragraph (d)(2) of Q&A–1 of this section (including the 80 percent/66 percent and 80 percent/80 percent eligibility test alternatives set forth in paragraphs (b) and (c)(6)(iii) of Q&A–2 of this section).

(2) *Highly compensated employees*—(i) *In general.* In computing the largest employer-provided benefit available to a highly compensated employee (and for purposes of the excess benefit calculation under paragraph (e) of Q&A–9 of this section), core health coverage attributable to salary reduction contributions is treated as attributable to employer contributions (rather than employee contributions) to the extent that the portion of the core health coverage attributable to salary reduction contributions exceeds 100 percent of the portion of the core health coverage attributable to employer contributions (excluding salary reduction contributions). The rule of this paragraph (c)(2) applies only if the employer has not made the election described in paragraph (b)(2) of this Q&A–8.

(ii) *Examples.* The rule of this paragraph (c)(2) is illustrated by the following examples:

*Example 1.* Assume that a highly compensated employee may elect coverage under one of two health plans: Plan A has an employer-provided benefit of $4,000, which is attributable to non-salary reduction, employer contributions; and Plan B (a core health plan) has a total employer-provided benefit of $5,200 (i.e., $3,200 attributable to non-salary reduction, employer contributions and $2,000 attributable to salary reduction contributions). This paragraph (c)(2) does not require that any of the salary reduction contributions for Plan B be treated as employer contributions for purposes of determining the plan with the largest employer-provided benefit available to this highly compensated employee. Thus, for purposes of the 90 percent/50 percent eligibility test and assuming that the employer has not made the election under paragraph (b)(2) of this Q&A–8, Plan A is the plan with the largest employer-provided benefit available to this employee.

*Example 2.* Assume the same facts as Example 1, except that Plan B's total employer-provided benefit of $5,200 is comprised of $2,500 attributable to non-salary reduction, employer contributions and $2,700 attributable to salary reduction contributions. This paragraph (c)(2) requires that $200 of the salary reduction contributions for Plan B (i.e., the excess of the salary reduction contributions over the non-salary reduction, employer contributions) be treated as employer contributions for purposes of determining the plan with the largest employer-provided benefit available to this highly compensated employee. Thus, for purposes of the 90 percent/50 percent eligibility test, Plan B is treated as having an employer-provided benefit of $2,700. However, Plan A still is the plan with the largest employer-provided benefit available to this highly compensated employee.

*Example 3.* Assume the same facts as in Example 1, except that Plan B has a total employer-provided benefit of $6,000 (i.e., $3,500 attributable to non-salary reduction, employer contributions and $4,500 attributable to salary reduction contributions). This paragraph (c)(2) requires that $1,000 of the salary reduction contributions for Plan B (i.e., the excess of the salary reduction contributions over the non-salary reduction, employer contributions) be treated as employer contributions for purposes of determining the plan with the largest employer-provided benefit available to this highly compensated employee. Thus, for purposes of the 90 percent/50 percent eligibility test, Plan B is treated as having an employer-provided benefit of $4,500 and, accordingly, is the plan with the largest employer-provided benefit available to this highly compensated employee.

*Example 4.* Assume the same facts as in Example 3, except that the highly compensated employee also may elect health coverage under a flexible spending arrangement (FSA) providing for health expense reimbursements up to and including $5,000. Because health FSAs are not core health plans, this FSA is disregarded in applying this paragraph (c)(2). Thus, the manner in which such health FSA, the employer-provided benefit of which is wholly attributable to salary reduction contributions, is taken into account for purposes of the 90 percent/50 percent eligibility test depends upon whether salary reduction contributions are generally disregarded or are generally taken into account as employer contributions for purposes of such test.

*Example 5.* Assume the same facts as Example 3, except that the highly compensated employee also has available Plan C, a dental plan not funded through salary reduction and with an employer-provided benefit of $500. Since the dental plan is not a core health plan, it is not considered in determining whether salary reduction contributions are treated as employer contributions under this paragraph (c)(2). However, the employer-provided benefit of the dental plan is added to the total employer-provided benefit available to the highly compensated employee in determining the largest employer-provided benefit available to any highly compensated employee.

(3) *Nonhighly compensated employees.* In computing the employer-provided benefit available to a nonhighly compensated employee, core health coverage attributable to salary reduction contributions is treated as attributable to employee contributions (rather than employer contributions) to the extent that the portion of the core health coverage attributable to salary reduction contributions exceeds 100 percent of the portion of the core health coverage attributable to employer contributions (excluding salary reduction contributions). The rule of this paragraph (c)(3) applies only if the employer has made the election described in paragraph (b)(2) of this Q&A–8.

(4) *Transition rule.* This paragraph (c) does not apply with respect to testing years beginning before January 1, 1990.

(d) *Certain part-time employees.* See section 89(g)(3)(D)(i) for the treatment of salary reduction contributions for employees described in section 89(j)(5).

Q–9: How is an excess benefit under the section 89 nondiscrimination rules to be determined with respect to health plans?

A–9: (a) *In general.* A highly compensated employee's excess benefit under a discriminatory employee benefit plan that is a health plan for a testing year generally is determined in accordance with the rules for applying the requirements of section 89 for the testing year and with the modifications set forth in this Q&A–9. Because the method for determining excess benefits thus differs from the method for applying the nondiscrimination tests of section 89, a statutory employee benefit plan that is a discriminatory employee benefit plan under the nondiscrimination tests may, in some circumstances, not have any excess benefit under this Q&A–9. Similarly, a statutory employee benefit plan is treated as not having an excess benefit under this Q&A–9 if such plan satisfies the applicable nondiscrimination tests of section 89 and thus is not a discriminatory employee benefit plan. See paragraph (b) of Q&A–1 of this section. This is the case even if such plan would be determined to have an excess benefit under the rules of this Q&A–9 if such rules were applicable to such plan. See paragraph (h) of Q&A–7 of this section for the requirement that, for purposes of determining the amount of excess benefit, the value of the benefit of all employees must be determined under the same method the employer uses for determining the

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applicable premium for health continuation coverage purposes under section 4980B(f)(4) and the nondiscrimination tests reapplied on such basis. In addition, see paragraph (c) of Q&A–6 for rules relating to the determination of excess benefits for testing years beginning in 1989 if some, but not all, of the employer-provided benefits for such years are subject to the section 89 nondiscrimination rules.

(b) *Determination made under failed requirements*—(1) *In general.* A highly compensated employee's excess benefit under a discriminatory employee benefit plan is determined under the failed requirements of paragraphs (c), (d) and (e) of Q&A–1 of this section. Thus, for example, if each health plan satisfies the 50 percent eligibility test, but the health plans collectively fail to satisfy the 75 percent benefits test, excess benefits are to be determined only under the 75 percent benefits test. However, an employer may elect in writing to use the 80 percent coverage test to determine excess benefits without regard to whether it used that test in determining compliance with section 89. Similarly, the employer may elect in writing to use the tests described in paragraphs (c) and (d) of Q&A–1 of this section to determine excess benefits even if it initially used the 80 percent coverage test to determine whether its plans are discriminatory.

(2) *Failure of more than one requirement.* Where an employer's health plans of the same type fail to meet more than one requirement of Q&A–1 of this section, the excess benefit calculations for the failed requirements are to be made in the following order: The 50 percent eligibility test; the 90 percent/50 percent eligibility test; and the 75 percent benefits test. If a highly compensated employee is determined to have an excess benefit under the 50 percent eligibility test, then for purposes of determining such employee's excess benefit (if any) under the 90 percent/50 percent eligibility test, such employee's employer-provided benefit for purposes of the 90 percent/50 percent eligibility test excess benefit calculation is first reduced by the amount of such employee's excess benefit determined under the 50 percent eligibility test excess benefit calculation. If a portion of the employer-provided benefit of the plan that failed the 50 percent eligibility test is attributable to salary reduction contributions, then the same portion of an employee's excess benefit with respect to such plan is treated as attributable to salary reduction contributions. For purposes of determining excess benefits under the 75 percent benefits test, a highly compensated employee's employer-provided benefit under the plan or plans that failed the 50 percent eligibility test or the 90 percent/50 percent eligibility test (or both) is first reduced by the amount of such employee's excess benefit with respect to such test or tests.

(c) *Highly compensated employees and the employer-provided benefit taken into account for purposes of determining excess benefit*—(1) *In general.* For purposes of making the excess benefit calculations under this Q&A–9, all highly compensated employees who receive employer-provided benefits for a testing year under a plan or plan's that fail the applicable nondiscrimination test are eligible to be treated as receiving excess benefits. This is the case even though such highly compensated employees were not taken into account for any reason on the testing day for such testing year. In addition, only employer-provided benefits that highly compensated employees actually receive for a testing year under a plan or plans that fail the applicable nondiscrimination test may be treated as excess benefits. Thus, for example, a highly compensated employee does not have an excess benefit with respect to a plan that fails the 50 percent eligibility test merely because such employee is eligible to receive, but does not actually receive, employer-provided benefits (e.g., health plan coverage) under such plan. Similarly, employer-provided benefits that highly compensated employees do not actually receive but were treated as having received under the rules providing for the annualization and adjustment of the employer-provided benefits for the testing day are not treated as excess benefits.

(2) *Special rule.* In the case of the first testing year beginning in 1989 of an employer that is using the transition rule included in paragraph (b)(5) of Q&A–5 of this section, the excess benefits (if any) for such testing year may be determined by reference to those employer-provided benefits that highly compensated employees actually receive for the partial testing year, annualized for the entire testing year as provided in paragraph (b)(5)(iv) of Q&A–5 of this section. If an employer elects to determine excess benefits in accordance with the preceding sentence, the employer must provide those highly compensated employees having excess benefits an opportunity to demonstrate that they actually received less employer-provided benefits during the portion of the testing year preceding the partial testing year than the deemed employer provided benefits under paragraph (b)(5) of Q&A–5 of this section. If an employee makes such a demonstration, the employer must recalculate such employee's excess benefit based on the employer-provided benefits actually received for the entire testing year and make any amendments to required reports relating to such employee (e.g., Form W–2). This special rule is not available with respect to a plan for which paragraph (b)(5) of Q&A–5 of this section is inapplicable.

(d) *50 percent eligibility test.* A highly compensated employee's excess benefit under a health plan that fails to satisfy the 50 percent eligibility test of paragraph (d)(3) of Q&A–1 of this section is equal to that portion of the employer-provided benefit actually received by such employee under the plan that is in excess of the maximum employer-provided benefit that such plan may have and be included in a group of comparable plans under paragraph (b) of Q&A–4 of this section that satisfies the 50 percent eligibility test. The rule of this paragraph (d) is illustrated as follows:

*Example.* An employer maintains two health plans, Plan A and Plan B. Plan A has an employer-provided benefit of $3,000 and is automatically provided to all employees of the employer other than those eligible for Plan B. Plan B has an employer-provided benefit of $4,000 and is available to all employees who earn more than $100,000. Plan B fails to satisfy the 50 percent eligibility test. As a result, each highly compensated employee who actually receives coverage under Plan B is treated as receiving an excess benefit with respect to such plan. The employer-provided benefit under Plan B must be reduced by $842 to $3,158 ($3,000 is 95 percent of $3,158), in order for Plan B to be included in a group of comparable plans with Plan A under paragraph (b) of Q&A–4 of this section. Thus, for a highly compensated employee who received a full $4,000 employer-provided benefit under Plan B, the amount of the excess benefit with respect to Plan B is $842.

(e) *90 percent/50 percent eligibility test.* A highly compensated employee's excess benefit under plans of the same type that fail to satisfy the 90 percent/50 percent eligibility test of paragraph (d)(2) of Q&A–1 of this section is equal to that portion of the employer-provided benefit actually received by such employee under such plans that is in excess of 200 percent of the largest amount of employer-provided benefit available to at least 90 percent of the employer's nonhighly compensated employees. For this purpose, benefits attributable to salary reduction contributions by nonhighly compensated employees are not treated as employer-provided benefits, even if the employer has made the election provided under paragraph (b)(2) of Q&A–6 of this section. In addition, benefits with respect to highly compensated employees that are attributable to salary reduction contributions are not treated as employer-provided benefits except to the extent that such contributions are treated as employer contributions with regard to such employees under paragraph (c)(2) of Q&A–6 of this section. The rule of this paragraph (e) is illustrated as follows:

*Example.* Assume that an employer maintains numerous health plans for its employees. For a testing year, the largest employer-provided benefit available to any highly compensated employee, determined under the 90 percent/50 percent eligibility test, is $12,000. Because only 75 percent of the employer's nonhighly compensated employees have available to them an employer-provided benefit of at least $6,000, the employer's health plans fail to satisfy the 90 percent/50 percent eligibility test. As a result, the highly compensated employees who receive coverage under one or more health plans are treated as receiving an excess benefit. If, for this testing year, 90 percent of the employer's nonhighly compensated employees have available to them an employer-provided health benefit of at least $4,500, a highly compensated employee is treated as receiving an excess benefit to the extent such employee actually receives (rather than is eligible to receive) an employer-provided benefit under all health plans in excess of $9,000 (i.e., 200 percent of $4,500). If the largest amount of employer-provided benefit that is available to 90 percent of the employer's nonhighly compensated employees were $3,000 (instead of $4,500), a highly compensated employee's excess benefit would be the amount of such employee's employer-provided benefit that is in excess of $6,000. If no amount of employer-provided benefit is available to 90 percent or more of the nonhighly compensated employees, then all highly compensated employees have excess benefits equal to their total employer-provided benefits received for the testing year.

(f) *75 percent benefits test*—(1) *In general.* A highly compensated employee's excess benefit under plans of the same type that fail to satisfy the 75 percent benefits test of paragraph (d)(4) of Q&A–1 of this section is determined under the rules of this paragraph (f). If plans of different types are tested together under paragraph (f)(2)(ii) of Q&A–1 of this section, then such plans are treated as plans of the same type for purposes of this paragraph (f).

(2) *Reapply test.* The 75 percent benefits test is to be reapplied for the testing year with respect to those plans of the same type by taking into account, in accordance with paragraph (c) of this Q&A–9, all highly compensated employees of the employer and the employer-provided benefits that such employees actually received for the testing year. If upon such reapplication of the 75 percent benefits test, such test is satisfied, there are no excess benefits under section 89(b) with respect to such test.

(3) *Amount of excess benefit.* Excess benefits under the 75 percent benefits test are determined by reducing the employer-provided benefit of the highly compensated employee or employees with the highest amount of employer-provided benefit for the testing year, under the 75 percent benefits test as reapplied in accordance with this paragraph (f), until either such employee's employer-provided benefit is equal to the next highest amount of employer-provided benefit for any highly compensated employee or if no next highest such employee exists, until the employee no longer has any employer-provided benefit. This method of reduction is then applied with respect to additional highly compensated employees (beginning with highly compensated employees with the highest remaining amounts of employer-provided benefits) until the 75 percent benefits test is satisfied in accordance with this paragraph (f). A highly compensated employee's excess benefit is equal to the total amount of such employee's employer-provided benefit that is reduced under this paragraph (f).

(g) *80 percent coverage test*—(1) *In general.* A highly compensated employee's excess benefit under a plan that fails to satisfy the 80 percent coverage test of paragraph (e) of Q&A–1 of this section is equal to that portion of the employer-provided benefit received by such employee under the plan that is in excess of the maximum employer-provided benefit that such plan may have and be included in a group of comparable plans under paragraphs (c)(1) through (c)(4) of Q&A–4 of this section that satisfies the 80 percent coverage test.

(2) *Examples.* The rule of this paragraph (g) is illustrated in the following examples:

*Example 1.* An employer maintains numerous health plans. All but one of such employer's health plans are included in a group of comparable plans determined in accordance with paragraph (c)(5) of Q&A–4 of this section (employee cost comparability). Because over 80 percent of the employer's nonhighly compensated employees are covered by a plan included in the group of comparable plans, each of the plans in such group satisfies the 80 percent coverage test. The deemed employer-provided benefit for the group of comparable plans is $3,780. Plan F, which has an employer-provided benefit of $5,000, is not included in the group of comparable plans and thus such plan fails the 80 percent coverage test. If Plan F's employer-provided benefit were reduced by $800 to $4,200 ($3,780 is 90 percent of $4,200), it could be included in the group of comparable plans under the rules of paragraph (c)(1) of Q&A–4 of this section. Similarly, if Plan F's employer-provided benefit were reduced by $1,221 to $3,779, it could be included in the group of comparable plans under the rules of paragraph (c)(4) of Q&A–4 of this section. As a result, each highly compensated employee who receives coverage under Plan F is treated as receiving an excess benefit of $800 (the lesser of $800 and $1,221) with respect to such plan.

*Example 2.* Assume the same facts as Example 1 except that the plan that is not included in the group of comparable plans fails the 50 percent eligibility test of paragraph (b) of Q&A–4 of this section. Under paragraph (c)(3) of Q&A–4 of this section, the eligibility test must be satisfied before the plan may be included in a group of comparable plans in determining whether the 80 percent coverage test is satisfied. Thus, the excess benefit for Plan F must include the amount necessary to permit such plan to satisfy the 50 percent eligibility test. In this example, this would occur if Plan F's employer-provided benefit were reduced by $1,021 to $3,979 ($3,780 is 95 percent of $3,979).

Q–10: What are the effective dates of the section 89 nondiscrimination and qualification rules?

A–10: (a) *Effective date*—(1) *In general.* Except as otherwise provided in this Q&A–10, the nondiscrimination rules of sections 89 (a)–(j) and 89 (l)–(m) and the qualification rules of section 89(k) apply for plan years beginning after December 31, 1988.

(2) *Collectively bargained plans*—(i) *In general.* In the case of a collectively bargained plan that is adopted pursuant to one or more collective bargaining agreements ratified prior to March 1, 1986, section 89 does not apply to such plan with respect to employees included in a unit of employees covered by any of such collective bargaining agreements in years beginning before the earlier of January 1, 1991, or the date on which the last collective bargaining agreement relating to the plan expires (determined without regard to extensions after February 28, 1986).

(ii) *Definition of collectively bargained plan.* A collectively bargained plan is a plan covering only eligible individuals who are included in a unit of employees covered by an agreement that is a collective bargaining agreement entered into between employee representatives and one or more employers (as determined under section 7701(a)(46)). A plan that is maintained pursuant to two or more collective bargaining agreements is treated as two or more collectively bargained plans to

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the extent that the employer-provided benefits provided pursuant to the agreements are not uniform. Thus, for example, if a multiemployer plan is maintained pursuant to three collective bargaining agreements, two of which provide for an identical benefit structure and one of which provides for a different benefit structure, the plan is treated as two separate, collectively bargained plans for purposes of this paragraph (e)(2).

(iii) *Plans benefiting non-collectively bargained employees.* If a plan provides employer-provided benefits to employees who are included in a unit of employees covered by a collective bargaining agreement and to employees who are not included in any such unit of employees (i.e., non-collectively bargained employees), the non-collectively bargained employees are treated as covered by a plan that is not a collectively bargained plan for purposes of this paragraph (a)(2). Thus, the delayed effective date of paragraph (a)(2)(i) of this Q&A–10 is available only with respect to the portion of the plan that provides employer-provided benefits to the collectively bargained employees.

(iv) *Treatment of collectively bargained employees as excludable employees.* Unless the employer elects otherwise, employees who receive employer-provided benefits under a collectively bargained plan to which section 89 does not yet apply by reason of this paragraph (a)(2) are to be treated as excludable employees (i.e., as though they were described in section 89(h)) for purposes of applying the nondiscrimination tests of section 89 to plans that are subject to section 89. However, an employer may elect in writing not to treat such collectively bargained employees as excludable employees for purposes of applying section 89 to plans that are subject to section 89. Such an election must be made with respect to all collectively bargained employees, regardless of bargaining unit, and once made applies to all subsequent testing years. Such an election does not accelerate the otherwise applicable effective date with respect to the application of the qualification rules of section 89(k) to such collectively bargained plan or plans. However, if the employer makes an election under this paragraph (a)(2)(iv), then the nondiscrimination rules of section 89 are effective with respect to such plan or plans and thus a highly compensated employee within the group of otherwise excludable employees (i.e., nonexcludable by reason of such election), may have an excess benefit under section 89(b).

(v) *Examples.* The provisions of this paragraph (a)(2) are illustrated by the following examples:

*Example 1.* A collective bargaining agreement ratified in January 1988 is scheduled to expire on December 31, 1992. Such agreement provides for contributions by an employer to a multiemployer plan providing health coverage. Assuming that no employee who is included in the collective bargaining unit receives health coverage from the employer other than coverage under the multiemployer plan, the collective bargaining employees and their health coverage may be disregarded by the employer in applying the section 89 nondiscrimination tests for any period before January 1, 1991.

*Example 2.* Employer X maintains two health plans, Plan A (covering non-collectively bargained employees) and Plan B (covering collectively bargained employees). Plan B is a multiemployer plan that has an effective date for purposes of section 89 of January 1, 1991. Plan A is an insurance plan with a policy that expires on June 30, 1989. The collectively bargained employees receiving benefits under Plan B may be treated as excludable employees until January of 1991 and their health coverage may be disregarded by Employer X in applying the nondiscrimination tests of section 89 until that date. However, before that date, Employer X may elect to take such collectively bargained employees (and their employer-provided benefits) into account for purposes of testing Plan A for periods prior to January of 1991.

(b) *Definition of plan year*—(1) *In general.* Except as provided in paragraph (b)(2) or (b)(3) of this Q&A–10, for purposes of determining the applicable effective date of section 89 with respect to a plan, the plan year is the year that is designated as the plan year in the written plan. For plans other than health and group-term life insurance plans, if there is no such designation, the plan year is the calendar year. For purposes of this rule, the designation of a plan year solely for purposes of filing the Form 5500 is to be disregarded.

(2) *Certain health and group-term life insurance plans*—(i) *Insured plans.* If a health or group-term life insurance plan's plan year is not clearly ascertainable from a written plan document adopted and in existence on January 1, 1989, and the plan is provided under an arrangement through an insurance company, the policy year is the applicable plan year for effective date purposes. If there is no policy year, the employer may elect in writing either the limit/deductible year, the calendar year, or the employer's fiscal year as the applicable plan year for effective date purposes. If the employer does not make such an election, the applicable plan year is the calendar year. An arrangement is not provided through an insurance company for purposes of this paragraph (b) if the insurance company provides merely administrative services under the arrangement.

(ii) *Self-insured plans.* If a health or group-term life insurance plan's plan year is not clearly ascertainable from a written plan document adopted and in existence on January 1, 1989, and the coverage under such plan is not provided under an arrangement through an insurance company, the employer may elect in writing either the limit/deductible year, the calendar year, or the employer's fiscal year as the applicable plan year for effective date purposes. If the employer does not make such an election, the applicable plan year is the calendar year.

(iii) *Limit/deductible year.* The limit/deductible year is the year with respect to which the plan's benefit and deductible limits are applied, except that if different years are used for benefit limit purposes and for deductible limit purposes, it means the limit or deductible year that commences earlier in the calendar year.

(3) *Special rule to prevent delay of the section 89 effective date*—(i) *In general.* Notwithstanding paragraphs (b)(1) and (b)(2) of this Q&A–10, in the case of a health or group-term life insurance plan with respect to which the first day of the first plan year beginning after December 31, 1988 (determined under paragraphs (b)(1) and (b)(2)), is later during the calendar year than the first day of the first plan year (also determined under such paragraphs) beginning in 1988, the first plan year beginning after December 31, 1988, is deemed to begin on the day that is 12 months after the first day of the plan's first plan year beginning in 1988. Thus, section 89 becomes effective with respect to such plan on the first anniversary date of the plan's first plan year beginning in 1988. In addition, for purposes of this Q&A–10, a plan's last plan year beginning in 1988 is not treated as longer than 12 months in duration. Thus, for example, an agreement between an employer and insurance company to extend for longer than 12 months the last plan year of a health plan beginning in 1988 is not recognized for purposes of determining the applicable section 89 effective date with respect to such plan. Such plan is treated as commencing a new plan year on the day that is 12 months after the first day of the last plan year commencing in 1988.

(ii) *Exceptions*—(A) *In general.* Except as provided in paragraph (b)(3)(iii) of this Q&A–10, paragraph (b)(3)(i) of this Q&A–10 does not apply to the extent that any of the tests described in this paragraph (b)(3)(ii) (B) through (D) are satisfied.

(B) *Three-month rule.* A plan is a health plan and the first day of the plan's first plan year beginning after December 31, 1988, is not more than 3 months later during the calendar year than the first day of the plan's first plan year beginning in 1988 and the selection of the new plan year was for bona fide business reasons unrelated to section 89 (e.g., by reason of a merger or acquisition).

(C) *New carrier rule.* A plan is a health plan and the health coverage for the plan's first plan year beginning after December 31, 1988, is provided through an insurance arrangement with an insurance company unrelated to any insurance company that provided health coverage under the plan for the first day of the plan's first plan year beginning in 1988 and such change in insurance carriers and the selection of the new plan year were for bona fide business reasons unrelated to section 89.

(D) *Uniform plan year.* The first day of the plan's first plan year beginning after December 31, 1988, is the same day during the calendar year on which commenced in 1988 the plan year or years of the plan or plans of the same type that provided, in the aggregate, at least 25 percent of the total employer-provided benefits provided under all plans of the same type during 1988 and the selection of the new plan year was for bona fide business reasons unrelated to section 89. This rule may be applied in the case of a merger or acquisition by treating such transaction as having occurred on December 31, 1987.

(iii) *Retroactive plan year changes.* This paragraph (b)(3) is to be applied by disregarding any change in a plan year that is made after the commencement of such plan year.

(iv) *Additional rules.* The Commissioner may, through revenue rulings, notices, and other guidance of general applicability, provide such additional exceptions to paragraph (b)(3)(i) of this Q&A–10 as are appropriate if such exceptions do not have the effect of permitting employers to delay significantly the effective date of section 89 with respect to their plans without any significant, independent business reason.

(4) *New plans.* For purposes of this Q&A–10, a plan is not treated as a new plan commencing in calendar year 1989, unless such plan provides coverage and benefits that are substantially different from the coverage and benefits previously provided by a plan in calendar year 1988.

(5) *Certain dispositions or acquisitions.* If a person becomes or ceases to be a member of a group described in section 414 (b), (c), (m) or (o) on or before December 31, 1988, the transitional rule of section 89(j)(8) is not applicable with respect to any plan of such person or of any member of such group unless the requirements of section 89 were met immediately before such change in the group. This determination is to be made as though section 89 (and this section) were effective with respect to all such plans of such person. Alternatively, for testing years beginning in 1989, the nondiscrimination rules of section 89 may be applied separately to the separate portions of the group under section 414 (b), (c), (m) and (o) involved in the change of the group as if such portions did not become part of the same group until December 31, 1989.



**§ 1.89(k)–1 Qualification requirements for certain employee welfare benefit plans.**

The following is a list of the questions addressed in this section.

Q–1: What is required under section 89(k)?

Q–2: What plans must meet the requirements of section 89(k)?

Q–3: What is required under the writing requirement of section 89(k)(1)(A)?

Q–4: When is a plan legally enforceable within the meaning of section 89(k)(1)(B)?

Q–5: What constitutes reasonable notification of employees under section 89(k)(1)(C)?

Q–6: How does an employer meet the exclusive benefit requirement of section 89(k)(1)(D)?

Q–7: How is it determined whether a plan is established with the intent of being maintained for an indefinite period of time?

Q–8: What are the sanctions for failure to meet the qualification requirements of section 89(k)?

Q–1: What is required under section 89(k)?

A–1: (a) *In general.* Section 89(k) imposes the following requirements on employers maintaining certain employee benefit plans as described in Q&A–2 of this section: The plan must be in writing; employees within the class of employees designated in the plan as eligible for participation must have a legally enforceable right to participate and, if covered under such plan, to receive benefits; employees who are eligible to participate must be provided reasonable notice of the benefits available under such plan; the plan must be maintained for the exclusive benefit of employees; and the plan must be established with the intent that it will be maintained for an indefinite period of time.

(b) *Definitions*—(1) *Benefit.* For purposes of section 89(k), the term "benefit" or "benefits" means those payments, reimbursements, products and services provided under the plan to a participant on account of such participant's claim, need or event that is covered under the plan. For example, the fair market value of the use of an on-site child care facility by a participant is the benefit under a dependent care assistance program described in section 129. Similarly, reimbursement of a participant's expense incurred for a covered surgical procedure is a benefit under a health plan. Another example of a benefit under a plan is the payment of a death benefit under a group-term life insurance plan to which section 79 applies.

(2) *Employer-provided benefit.* With respect to section 89(k), the term "employer-provided benefit" means that portion of the benefits received by an individual that is attributable to employer contributions, including salary reduction contributions under a cafeteria plan. See paragraph (f)(3) of Q&A–1 of § 1.89(a)–1 for a definition of "employer-provided benefit" for purposes of the nondiscrimination rules under section 89.

(3) *ERISA.* The term "ERISA" refers to the Employee Retirement Income Security Act of 1974, as amended.

(4) *Salary reduction contributions.* The term "salary reduction contributions" means elective contributions under a cafeteria plan described in section 125 that would be taxable to an employee, but for section 125, by reason of such employee's right to receive such amounts as cash or other taxable benefits. See paragraph (a)(2) of Q&A–8 of § 1.89(a)–1 for further guidance regarding the term "salary reduction contributions."

Q–2: What plans must meet the requirements of section 89(k)?

A–2: (a) *In general*—(1) *Types of plans subject to section 89(k).* In general, the following plans are subject to section 89(k): An accident or health plan (sections 106 and 105); a plan of an employer providing group-term life insurance (section 79); a dependent care assistance program (section 129(d)); a qualified tuition reduction program (section 117(d)); a cafeteria plan (section 125(c)); a fringe benefit program providing no-additional-cost services, qualified employee discounts, or employer-operated eating facilities, the benefits from which are excludable from the gross income of the beneficiary under section 132; and a plan of which

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an organization covered by section 505 is a part. Section 89(k) applies to these plans without regard to whether they are statutory employee benefit plans subject to the nondiscrimination rules of section 89 and without regard to whether they are subject to Title I of ERISA. Also, section 89(k) applies to plans described in this paragraph (a)(1) even though they are maintained by employers that are state or local governments or by the federal government. Finally, except as provided in paragraph (f) of this Q&A–2, section 89(k) also applies to plans described in this paragraph (a)(1) even though they are maintained by organizations exempt from taxation under section 501(a).

(2) *Plans maintained by an employer.* For purposes of section 89(k), a plan "maintained by an employer" is any plan of, or subsidized by, an employer who employs participants in the plan. A plan is maintained by an employer even if the cost of such plan is borne by the employees through after-tax employee contributions, as long as the value of the coverage under the plan for any employee is greater than such employee's after-tax contributions. See section 79 and the regulations thereunder for rules relating to when a group-term life insurance plan is subject to section 79 and, therefore, to section 89(k). For purposes of this paragraph (a)(2), the term "employee" includes the spouse and dependents of an employee. See also Q&A–6 of this section with regard to individuals who may participate in a plan. In addition, plans of the type described in paragraph (a)(1) of this Q&A–2 that are maintained by one or more "employee organizations," as that term is defined in section 3(4) of ERISA, or that are maintained pursuant to one or more collective bargaining agreements, are maintained by one or more employers and must meet the requirements of section 89(k).

(b) *Special rules with respect to accident or health plans*—(1) *In general.* For purposes of section 89(k), an accident or health plan providing coverage that is excludable under section 106 must meet the requirements of section 89(k) if benefits under the plan are to be excludable under section 105 (b) or (c) or, in the case of a death benefit under a plan described in paragraph (b)(2) of this Q&A–2, under section 101. If employer-provided benefits under an accident or health plan are not excludable under section 105 (b) or (c) or section 101 (other than by reason of section 89), the plan is not required to comply with section 89(k). Thus, for example, employer-provided health plans (including plans that provide medical diagnostic examinations) must satisfy section 89(k) in order for the benefits thereunder to be excludable under section 105 (b) or (c). An accident or health plan the entire cost of which is borne by the employees on an after-tax contributory basis (as determined under Q&A–7 of § 1.89(a)–1) is not required to meet the requirements of section 89(k). Thus, if employees' required after-tax contributions for health coverage are equal to or exceed the applicable premium for such coverage within the meaning of section 4980B(f)(4), then the health plan does not have an employer-provided benefit (determined under Q&A–7 of § 1.89(a)–1) and thus is not subject to section 89(k).

(2) *Accidental death and dismemberment.* In order for the employer-provided benefit under an accidental death and dismemberment plan to be excludable under section 101 or 105, the plan must meet the requirements of section 89(k). For purposes of section 89, an accidental death and dismemberment plan is a plan that provides insurance type coverage attributable to employer contributions that are excludable under section 106 and that provides only benefits excludable from income under either section 105(c) or section 101 (where the benefits are payable on account of, and conditioned principally upon, the accidental death of the employee). If a plan provides for a general death benefit (described in § 1.79–1(a)(1)), it is not an accidental death and dismemberment plan.

(3) *Disability and other sick pay plans.* Sick pay plans and disability plans are subject to the requirements of section 89(k) only if employer-provided benefits under such plans are excludable from gross income upon receipt by the individual under section 105 (b) or (c).

(4) *Worker's compensation.* A worker's compensation plan that pays amounts from a sickness and disability fund maintained for employees under the laws of the United States, a state or the District of Columbia (i.e., a fund maintained pursuant to a worker's compensation act or a statute in the nature of a worker's compensation act, the benefits from which are excludable under section 104(a)(1)) is not subject to the requirements of section 89(k). However, accident or health plans maintained by the United States, a state or the District of Columbia that provide benefits that are excludable from the income of an employee solely by reason of section 105 (b) or (c) are not worker's compensation funds within the meaning of the preceding sentence and thus are subject to the requirements of section 89(k).

(5) *Section 401(h) accounts.* A section 401(h) account contained in a pension or annuity plan is subject to the requirements of section 89(k) with regard to benefits provided through such account.

(c) *Special rules relating to dependent care assistance programs, group legal services plans and educational assistance programs.* A dependent care assistance program (within the meaning of section 129(d)) must comply with section 89(k) without regard to whether the employer elects to treat such program as a statutory employee benefit plan as allowed under section 89(i)(2). Similarly, qualified group legal services plans (within the meaning of section 120(b)) and educational assistance programs (within the meaning of section 127(b)) must satisfy section 89(k) requirements, provided the applicable statutory provisions are in effect.

(d) *Plans to which section 505 applies.* A plan of which an organization covered by section 505 is a part must satisfy the requirements of section 89(k). Such plans include plans providing benefits through organizations described in sections 501(c)(9) or 501(c)(17). If section 120 is in effect, plans providing benefits through organizations described in section 501(c)(20) must satisfy the requirements of section 89(k). The requirements of section 89(k) must be met by a plan even if the related organization qualifies as an organization that is part of a plan maintained pursuant to a collective bargaining agreement as described in section 505(a)(2).

(e) *Multiemployer plans.* If a plan is otherwise subject to section 89(k) and is a multiemployer plan within the meaning of section 3(37) of ERISA, that plan is maintained by all contributing employers and is subject to the requirements of section 89(k).

(f) *Church plans.* Employee benefit plans of a type described in paragraph (a)(1) of this Q&A–2 that are maintained by organizations described in section 3121(w) (i.e., churches or church-controlled organizations) exclusively for their employees and clergy (including the spouse or dependents of employees or clergy) are not subject to the requirements of section 89(k).

(g) *Treatment of statutory employee benefit plans providing excess benefits.* A statutory employee benefit plan that provides any amount of employer-provided benefits is subject to the requirements of section 89(k) even though the plan fails to satisfy the nondiscrimination requirements of



section 89(a). Thus, for example, an employer-provided health plan that covers medical diagnostic examinations is subject to section 89(k) even if such health plan fails to satisfy the 50 percent eligibility test of section 89 and the entire value of the employer-provided coverage with respect to such plan is treated as an excess benefit under section 89(b).

(h) *Dispositions and acquisitions.* The rule of section 89(j)(8) does not apply with respect to the requirements of section 89(k). Thus, a plan that is subject to section 89(k) must continue to satisfy such requirements during the transition period (defined under section 89(j)(8)) without regard to the fact that the employer maintaining the plan has been involved in a merger, consolidation, or similar transaction.

(i) *Effective date.* Generally, see Q&A–10 of § 1.89(a)–1 for the effective date of the qualification requirements of section 89(k). However, the general effective date is subject to the transition rules set forth in this section.

(j) *Coordination with ERISA provisions.* The reporting, notification and written plan document requirements contained in this section are in addition to, and not in lieu of, any requirements otherwise imposed on employer-provided benefit plans by Title I of ERISA or any other provision of law. The rules contained herein apply for purposes of section 89(k) and no inference should be drawn therefrom regarding the requirements otherwise imposed by Title I of ERISA or any other law.

Q–3: What is required under the writing requirement of section 89(k)(1)(A)?

A–3: (a) *In general.* Section 89(k)(1)(A) requires a plan to be in writing. Generally, this means that all material terms of the plan must be contained, by direct inclusion, by incorporation by reference, or by a combination of these methods, in a single written document.

(b) *Requirement of a single written document*—(1) *In general.* The writing requirement of section 89(k) must be met with respect to a plan by a single written document. One such document may satisfy the writing requirement for more than one plan.

(2) *Incorporation by reference.* Written documents relating to the plan are treated as part of the single written document if they are specifically incorporated by reference in the single written document. Section 89(k)(l)(A) is satisfied with respect to a plan if the single written document with regard to such plan either contains all of the plan's material terms or, to the extent a material term is not contained in the single written document, incorporates by reference the document containing such term. Examples of documents which may be so incorporated in the single written document are: Contracts with insurance providers; contracts with any other provider of benefits under the plan; contracts with plan administrators of, or consultants to, the plan; documents creating a trust or other funding instrument related to the plan; resolutions of the employer's governing body relating to the creation, operation, maintenance or termination of the plan; collective bargaining agreements; pronouncements made by the employer, an agent of the employer, a plan administrator or other person relating to or concerning a material term in the plan; and all plan-related documents required to be provided to any employee or filed with any regulatory agency or instrumentality of any federal, state, or local governmental body by statute, rule, or regulation, including but not limited to the documentation required to be provided to employees by the notice requirement of section 89(k)(1)(C) (see Q&A–5 of this section). There is no limitation on the number of single written documents that may incorporate a document by specific reference.

(c) *Contents of single written document*—(1) *In general.* Certain minimum information must be included in the single written document in order for the plan to satisfy the writing requirement of section 89(k)(1)(A). All material terms of the plan must be included in the single written document. If a material term of an insured plan is not defined in the single written document of the plan or in a document incorporated therein by reference, and such term is stated in the insurance contract, the term has the meaning given it by the insurance company's usual practice. See paragraph (c)(4) of this Q&A–3 for the definition of a material term of a plan. Further, the provisions required to be included in the single written document by paragraphs (c)(2) and (c)(3) of this Q&A–3 are deemed to be material terms.

(2) *Recitation of certain qualification requirements.* The single written document must contain a recitation of the qualification requirements contained in section 89(k)(1)(B) and (D). Thus, the single written document must state that the employer intends that the plan terms, including those relating to coverage and benefits, are legally enforceable and that the plan is maintained for the exclusive benefit of employees.

(3) *Additional requirements under specific exclusion provision.* The single written document must include any information or term required by any other applicable provision of the Code or accompanying regulation.

(4) *Definition of a material term of a plan.* The phrase "material term of a plan" generally means a term relating to an employee's rights to be covered by, participate in, or benefit under a plan. The following are examples of material terms of a plan: the eligibility rules governing plan participation; terms relating to the periods during which coverage or benefits are provided; descriptions of available benefits; the procedures governing participants' elections under the plan, including the period during which an election may be made, the extent to which elections are irrevocable, and the periods with respect to which elections are effective; the manner in which employer contributions may be made under the plan, such as by salary reduction agreements between a participant and the employer and by nonelective employer contributions, as well as any maximum limitation on employer contributions on behalf of any participant; terms relating to the timing or amount of salary reduction or employee contributions to the plan; terms relating to deductibles, co-payments or similar requirements, including any dollar limit on any benefit; conditions precedent or subsequent with regard to a participant's qualification or continued qualification for any coverage or benefit, including any limitations or restrictions relating to benefits, such as a pre-existing condition limitation; provisions relating to the procedure under which claims are to be made and evaluated for reimbursement; provisions relating to health continuation coverage under section 4980B; and the procedures or circumstances under which the plan may be terminated, including a statement, if applicable, that the plan may be terminated at will by the employer.

(d) *Timing*—(1) *In general.* Except as set forth in paragraph (d)(2) or (d)(3) of this Q&A–3, the material terms of the plan, as well as any amendment, extension, or modification of any of such material terms of the plan, must be in writing prior to the first day for which coverage is provided under an insured or insurance-type plan, or benefits are available under any other type of plan, or prior to the effective date of any amendment, extension or modification of such material terms, as the case may be.

(2) *Certain plan modifications*—(i) *Clarifications of material terms.* Where a plan modification constitutes merely a clarification to a material term (i.e., if

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the change merely clarifies an existing term in the plan and will have a de minimis impact on the individuals eligible or covered under the plan), the plan document need not reflect such modification until 120 days after the effective date of the modification or, if there is no separate effective date, until 120 days after the adoption of such amendment. A clarifying change generally includes a change in the plan language (either by addition or amendment) that reflects the previous intention of the employer with respect to a term of the plan. Whether the change is a clarifying change is to be determined not only by reference to the existing plan provisions and the notices provided to the employees, but also with regard to all of the facts and circumstances including, but not limited to, whether and the extent to which the amended language is consistent with the previous operation of the plan.

(ii) *Extension of time where notice provided.* If the employer provides reasonable notice satisfying the requirements of section 89(k)(1)(C) relating to the material terms of a plan to those entitled to notice under Q&A–5 of this section prior to the effective date of the plan or prior to the effective date of any addition or amendment to any material term of the plan (including any amendment to the terms contained in documents that are incorporated in the single written document by reference), then the time by which the single written document must meet the requirements of paragraph (d)(1) of this Q&A–3 to reflect such notice (or the related additions or amendments) is extended until 120 days after the effective date of the new plan or modification. However, this rule is available only if the notice contains a statement that the terms of the notice are legally enforceable.

(iii) *Certain retroactive modifications*—(A) *In general.* A modification to a material term of a plan does not fail to satisfy section 89(k)(1)(A) or this section merely because such modification applies retroactively to periods prior to the date of adoption of such modification if all of the conditions set forth in paragraph (d)(2)(iii) (B) through (F) are satisfied.

(B) *Expansion of coverage or benefits.* The modification must constitute an expansion of coverage or benefits under the plan (i.e., results in the plan having a larger value).

(C) *Notification.* Employees under the plan (including all employees covered under the plan for any portion of the period to which the retroactive coverage applies, regardless of whether they are currently covered) must be reasonably notified (within the meaning of Q&A–5 of this section determined without regard to the last sentence of paragraph (g)(2) of Q&A–5) of the modification within 60 days after its adoption.

(D) *Plan amendment.* The single written document must be amended to reflect the modification no later than 120 days after the adoption of the modification.

(E) *Duration.* The modification must continue in effect with respect to all eligible individuals with respect to the plan from the effective date of the modification until 12 months after the date of adoption.

(F) *Nondiscrimination.* The modification must not discriminate in favor of highly compensated employees.

(iv) *Nonmaterial terms.* Modification to any term contained in the single written document that is not a material term must be incorporated in the document no later than 120 days after the effective date of the modification or, if there is no separate effective date, no later than 120 days after the adoption of such amendment. Thus, to the extent that the single written document includes nonmaterial terms of the plan, such writing must accurately reflect such nonmaterial terms and any modifications thereto must be incorporated in the single written document within the time set forth in the preceding sentence.

(v) *Examples.* The requirements of this paragraph (d) are illustrated by the following examples:

*Example 1.* A plan is amended to change the level of employee contributions required to participate. This constitutes an amendment to a material term of the plan. If the employer properly notifies the employees prior to the amendment being effective, the single written document need not be amended to reflect such change until 120 days after the effective date of such change as long as the notice contains a statement that its terms are legally enforceable.

*Example 2.* An administration agreement incorporated by reference in the plan document is amended to change the timing of fees paid to the plan administrator. Unless the circumstances indicate that this is a material term, no amendment to the plan document is required until 120 days after the effective date of the new fee agreement. In such case, the single written document must be amended to reflect by specific reference (by an addendum or otherwise) the date of execution of the new fee agreement.

(3) *Exception for certain on-site medical and eating facilities.* Certain on-site medical and eating facilities are exempt from the requirements of section 89(k)(1)(A). An on-site medical facility is described in this paragraph (d)(3) if it is located and operates exclusively on a work-site of the employer and there is no physician care provided at the site at any time. A wellness program sponsored by the employer may be considered an on-site medical facility. A medical facility is not described in this paragraph (d)(3) unless access to the facility is available on the same terms to each member of a group of employees that is defined under a reasonable classification set up by the employer that does not discriminate in favor of highly compensated employees. An eating facility is described in this paragraph (d)(3) if it is described in and meets the requirements of section 132(e)(2).

(4) *Transition rule.* A plan is not required to meet the writing requirement of section 89(k)(1)(A) with respect to the first plan year beginning in 1989. For the subsequent plan year, a plan is not required to meet the writing requirement of section 89(k)(1)(A) before the later of the first day of such plan year, and the day following the end of the 12-month period beginning on the first day of the first plan year in 1989 that the plan is subject to section 89. For purposes of this transition rule, the extension of time due to a notice that is described in paragraph (d)(2)(ii) of this Q&A–3 is not available.

Q–4: When is a plan legally enforceable within the meaning of section 89(k)(1)(B)?

A–4: (a) *In general.* A plan is considered legally enforceable only if the conditions required for an employee to participate, receive coverage and obtain a benefit are definitely determinable under the terms of the plan and an employee satisfying such conditions is able to compel such participation, coverage and benefit.

(b) *Employer discretion*—(1) *Impermissible discretion*—(i) *In general.* A plan generally is not considered legally enforceable if a decision as to whether to grant or deny participation, coverage or a benefit is discretionary with the employer either pursuant to the terms of the plan or through the operation of the plan. Thus, except as provided in paragraph (b)(2) of this Q&A–4, a plan that permits the employer, either directly or indirectly, through the exercise of discretion, to grant or deny an employee the right to participate, receive coverage or obtain a benefit under the plan for which the employee is otherwise eligible or ineligible (but for the employer's exercise of discretion) violates the requirement of section 89(k)(1)(B). An employer is deemed to have exercised discretion in a manner inconsistent with section 89(k)(1)(B) if the employer imposes conditions or limitations on



eligibility for coverage that are not contained in the single written document comprising the plan and have not been included in the notice described in paragraph (d)(2)(ii) of Q&A–3 of this section. Likewise, except as provided in paragraph (c) of this Q&A–4, a plan violates section 89(k)(1)(B) if the employer waives an otherwise applicable condition, restriction or other term contained in the plan if the single written document does not contain objective, clearly ascertainable criteria and procedures under which such condition, restriction or term may be waived. Finally, a plan violates section 89(k)(1)(B) if participation, coverage or benefits under the plan are subject to objective conditions that are within the control of the employer.

(ii) *Employer.* For purposes of this Q&A–4, the term "employer" includes the plan administrator, fiduciary, trustee, actuary, independent third party, and other persons. Thus, if a plan grants any person the discretion to deny or limit the availability of a plan benefit for which the employee may otherwise be eligible under the plan (but for the exercise of such discretion), and such exercise is not provided for under the terms of the plan through objective criteria or otherwise permissible under this Q&A–4, then the plan violates section 89(k)(1)(B).

(2) *Permissible discretion*—(i) *In general.* A plan may permit discretion with respect to the administration of the plan, including the application of objective criteria specifically set forth in the plan. In addition, a plan does not fail to meet the requirements of this Q&A–4 merely because discretion is exercised in accordance with a qualified medical opinion of a physician. Also, if plan coverage or benefits are limited to those employees who satisfy certain objective conditions that are clearly set forth in the single written document and are not generally subject to the employer's discretion, an employer may exercise discretion to the extent reasonably necessary to determine whether the objective conditions have been met.

(ii) *Administrative discretion.* Administrative discretion means a determination by the employer with respect to participation in, or coverage or benefits under, a plan or with respect to the general operation of a plan to the extent the exercise of such discretion is based exclusive1y on clearly defined and ascertainable criteria contained in the single written document. The following provisions that permit limited administrative discretion are examples of provisions that do not violate section 89(k)(1)(B), provided that the provisions are described in the single written document prior to the date a claim is incurred by a participant who is affected by the administrative discretion and, when the provisions are made effective, they apply only to claims that have not yet been incurred: A provision allowing for the commencement of benefits under the plan as soon as administratively feasible after a stated date or event; a provision granting the employer authority to determine whether an employee has satisfied the age and service requirements of the plan or is an excludable employee under section 89(b); and a provision stating that the benefits under the plan are limited to an amount equal to the reasonable and customary charge for such services.

(iii) *Medical discretion*—(A) *In general.* A health plan does not fail to be legally enforceable merely because coverage or benefits under the plan are conditioned on a qualified medical opinion of a physician. For example, the following plan provisions do not violate the requirements of this Q&A–4: The requirement of a qualified medical opinion of a physician that treatment or benefits are medically necessary or appropriate prior to the provision of such treatment or benefits under a health plan; the requirement of a second opinion or other cost-containment feature of a health plan that is conditioned on a qualified medical opinion of a physician; and the inclusion under the plan of a managed care program. This is the case even if the qualified opinion is provided by a physician who is an employee of the employer.

(B) *Managed care programs.* A managed care program is a program that permits the provision of alternative medical care not otherwise available under a health plan for medical conditions that are covered under the plan. A managed care program must operate pursuant to conditions and procedures clearly ascertainable under the plan. That is, the availability of the program as well as a description of the types of cases that may qualify under the program must be contained in the single written document. Also, the provision of alternative medical care must be based on the consent of the employee and a qualified medical opinion of a physician. Such program may also be conditioned upon the consent of the employer.

(iv) *Certain benefit limitations.* A health plan does not include impermissible discretion merely because the plan limits certain benefits, such as reimbursements, for specified medical claims to those benefits that constitute the "prevailing" or "reasonable and customary" charge for the claim if such charge is determined in accordance with a reasonable, uniform, consistent and nondiscriminatory method. In addition, a health plan does not include impermissible discretion merely beoause such plan reimburses medical claims in excess of a "prevailing" or "reasonable and customary" charge if such reimbursements are authorized in accordance with reasonable, uniform, consistent, and nondiscriminatory claims review and reimbursement procedures set forth in the single written document.

(c) *Certain retroactive modifications in the plan.* A modification to a plan's material terms does not fail to satisfy section 89(k)(1)(B) merely because such modification applies retroactively to periods prior to the date of adoption of such modification if all of the conditions set forth in paragraph (d)(2)(iii) of Q&A–3 of this section are satisfied with respect to such modification.

(d) *Examples.* The requirements of this Q&A–4 are illustrated as follows:

*Example 1.* A plan does not fail to meet the requirements of section 89(k)(1)(B) because the employer grants benefits to an employee with a pre-existing medical condition in contravention of a specific plan term excluding coverage for any pre-existing conditions if the single written document is amended to reflect such expanded coverage, it is provided in a nondiscriminatory manner, and the expanded coverage continues in effect for a period of at least 12 continuous months from such amendment.

*Example 2.* A plan includes a managed care program which provides that upon the recommendation of the attending physician and the consent of both the insurer and the participant, the plan will reimburse alternative care (e.g., home health care expenses) instead of continued hospitalization. This program does not cause the plan to fail to meet the requirements of section 89(k)(1)(B).

*Example 3.* An employer maintains a health plan for former employees who retire from the employer on or after age 55 with at least 10 years of service if the employer consents to such employee's separation from service. Conditioning participation in this health plan on the employer's consent to the employee's separation constitutes impermissible discretion and violates section 89(k)(1)(B).

(e) *Transition rule.* A plan that is otherwise subject to the rules contained in section 89(k) is not required to comply with section 89(k)(1)(B) prior to the first day of the plan year following the first plan year beginning in 1989.

Q–5: What constitutes reasonable notification of employees under section 89(k)(1)(C)?

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A–5: (a) *In general.* The employer or, if the plan is a multiemployer plan (within the meaning of section 3(37) of ERISA), the plan administrator must provide reasonable notice of the terms of a plan in order to satisfy section 89(k)(1)(C). Such reasonable notice must be provided to all eligible individuals (other than those individuals deriving their eligibility solely through another individual, such as dependents who derive their eligibility in a health plan through an employee). An eligible individual is an individual who participates under the plan or is described in the plan as eligible to participate. An otherwise eligible individual is an eligible individual even if participation under the plan is conditioned upon an election not yet made by such individual or the passage of a waiting period required by the plan. For purposes of this paragraph (a), an eligible individual also includes an individual who is a qualified beneficiary (as defined in section 4980B(g)(1)) under a health plan by reason of an occurrence of a qualifying event described in section 4980B(f)(3)(A), (C) or (E). Thus, such a qualified beneficiary must receive notice separate from the employee through whom such beneficiary derived eligibility in the health plan. See paragraph (g) of this Q&A–5 for rules regarding the timing of notice.

(b) *Content of reasonable notice.* The notice must contain a fair and complete summary of the material terms of the plan that are reasonably likely to be of significance to an eligible individual. These terms include at least the following: A general description of who is eligible to participate in the plan; a general description of the coverage or coverages offered (including the general types of benefits provided under the plan, basic limitations on such benefits, and required deductibles and co-payments); the timing and method of any election to participate; the cost to the employee relating to the plan, whether by way of salary reduction or employee contributions; the method by which a copy of the plan may be obtained; and the name and means of contacting a person from whom to request further information about the plan.

(c) *Alternative form of compliance.* For any plan other than an accident or health plan, in lieu of a notice meeting the requirements of paragraph (b) of this Q&A–5, the employer (or plan administrator, if the plan is a multiemployer plan) may furnish each eligible individual with a copy of the single written document and all related documents that have been incorporated by reference. This alternative cannot be used unless the single written document complies in all material respects with the requirements of 29 CFR 2520.102–2 (style and format of summary plan description).

(d) *Specific rule as to dependent care assistance programs.* If a plan is a dependent care assistance program described in section 129, any notice to employees that is required for any plan year commencing on or after January 1, 1990, shall include a general description of the dependent care credit (under section 21), the relationship between the credit and participation in the dependent care assistance program, and the general circumstances under which the credit may be more advantageous to a taxpayer than the exclusion. If any other provision of law requires that a notice be provided to individuals eligible to participate in a dependent care assistance program, the requirements of this Q&A–5 are deemed satisfied to the extent such notice meets the requirements of this Q&A–5.

(e) *Maintenance of single written document.* The notice must contain a statement that the employer (or the plan administrator, if the plan is a multiemployer plan) shall make the single written document (including all related documents incorporated therein by reference) available for inspection upon reasonable notice. At a minimum, the following individuals shall be entitled to inspect and copy the single written document: any eligible individual; any other employee of the employer maintaining the plan; and any employee organization that represents employees of such employer. The document must be made available at no cost to the requesting individual at a reasonable time and place and, if a copy of the document is requested, a copy is to be provided at a cost no greater than that prescribed in § 601.702(f)(5)(iv)(B) of this Title.

(f) *Method of notification.* Notification to eligible individuals must be provided by the employer (or the plan administrator, if the plan is a multiemployer plan). For purposes of this paragraph (f), notice that otherwise meets the requirements of this Q&A–5 and is provided by an insurance company, health maintenance organization or other health care entity is considered to be provided by the employer. Notice must be provided to all eligible individuals (other than those individuals deriving their eligibility solely through another individual, such as dependents who derive their eligibility in a health plan through an employee). Except as otherwise stated in the final sentence of this paragraph (f), notice must be made in a manner consistent in all material respects with 29 CFR § 2520.104b–1(b)(1). If the employer elects to notify eligible individuals through the use of the alternative described in paragraph (c) of this Q&A–5, the notice must be provided to each such eligible individual either by hand or by mail with first class postage prepaid to the last known address of the eligible individual.

(g) *Timing of notice*—(1) *In general.* The notice required under section 89(k) must be provided prior to the first day on which coverage is provided under an insured or insurance-type plan or benefits are available under any other type of plan and prior to the effective date of any material amendment, extension or modification of such coverage or benefits, and no later than a reasonable time prior to the availability of any election with respect to participation under such plan. For purposes of this paragraph (g), the first date on which coverage is provided or benefits are available is the earliest date on which a claim may be incurred and be covered under coverage provided under a written document in existence on the date the claim is incurred.

(2) *Plan modifications.* If there is a modification to a material term of a plan (including any change in plan design that results in a modification of a material term), eligible individuals must be provided with notice of such modification no later than 60 days after the effective date of the modification. In addition, a notice of a retroactive modification will be treated as satisfying this paragraph (g)(2) if all of the conditions set forth in paragraph (d)(2)(iii) of Q&A–3 of this section are satisfied with respect to such modification.

(3) *New employees.* If an employee's participation in a plan is nonelective and begins within the employee's first 60 days of employment, the notice to such employee required under section 89(k)(1)(C) is not required prior to 60 days after the first day such employee is employed.

(4) *Transition rule.* With respect to a plan year beginning on or after January 1, 1989, a plan is not required to comply with this Q&A–5 prior to the later of July 1, 1989, or the first day of such plan year. The transition rule of this paragraph (g)(4) is solely for purposes of compliance with section 89(k)(l)(C). Use of the transition rule of this paragraph (g)(4) does not accelerate the first date by which the plan must meet the writing requirement of section 89(k)(1)(A).



(h) *Examples.* The requirements of this Q&A–5 are illustrated in the following examples:

*Example 1.* An employer has its open season relating to health plan selection from September 1 to October 1. Because the employer operates at several locations, employees are provided notice at different times. However, the employer ensures that all of its eligible individuals are notified during the period of time beginning 90 days before and ending on the first of September. The employer has notified eligible individuals on a timely basis.

*Example 2.* An election with respect to a plan is available on a continuous basis throughout the plan year. The employer provides the required notice to all eligible individuals 30 days prior to the beginning of the plan year. The employer has notified eligible individuals on a timely basis.

*Example 3.* A plan is amended effective June 1 to increase the maximum amount payable for a benefit provided under the plan. The amendment is adopted on May 1 and notice is provided to eligible individuals on that date. The amendment relates to a material term of the plan, and the employer has notified the eligible individuals on a timely basis.

*Example 4.* An employee begins employment on October 10. Under the terms of the employer's health plan, the employee becomes a participant in the plan as of the beginning of the next calendar month. If notice is provided to the employee no later than December 9, the employer has provided timely notice regardless of the fact that the employee becomes a participant on November 1.

*Example 5.* The facts are the same as in Example 4 except that the plan is elective. The notice is timely only if the employee is given notice prior to November 1.

Q–6: How does an employer meet the exclusive benefit requirement of section 89(k)(1)(D)?

A–6: (a) *In general.* A plan must be maintained for the exclusive benefit of those employees who participate in the plan. A plan may fail the requirement of this Q&A–6 by reason of its terms or operation. Whether this rule is satisfied is based on all of the facts and circumstances.

(b) *Requirements as to the individuals who may participate in a plan*—(1) *In general.* The exclusive benefit provisions are satisfied only if all of the participants in the plan or plans are common law employees of the employer or employers maintaining the plan. In the case of a voluntary employees' beneficiary association described in section 501(c)(9) (VEBA) that is part of a plan which must satisfy the requirements of section 89(k)(1)(D), those individuals who may participate in the plan include those who may be members of the VEBA under § 1.501(c)(9)–2(a).

(2) *Deemed common law employees.* An individual who is not a common law employee of an employer maintaining the plan and who receives coverage or benefits under such plan is deemed to be an employee for purposes of paragraph (b)(1) if the exclusion from gross income that is granted under the relevant provision of the Code (e.g., sections 79, 105, 106, 129 and 132) is available to such individual on the same basis that it is available to a common law employee. In addition, a qualified beneficiary, as defined in section 4980B(g)(1), is treated as a common law employee for purposes of paragraph (b)(1) of this Q&A–6 with respect to a health plan under which the qualified beneficiary receives continuation coverage.

(3) *Certain nonemployees*—(i) *In general.* An individual who is not a common law employee of the employer maintaining the plan, but who performs significant services for the employer in a capacity other than as an employee, and receives coverage or benefits under such plan may be disregarded in applying paragraph (b)(1) of this Q&A–6 if such individual pays for such coverage entirely on an after-tax basis. Thus, a nonemployee participant may be disregarded in applying paragraph (b)(1) of this Q&A–6 with respect to a health plan if the participant performs significant services for the employer and purchases the full coverage under the plan with after-tax contributions.

(ii) *Self-employed individuals.* A self-employed individual who is treated as an employee under section 401(c)(1) is treated as a common law employee of the employer for purposes of applying paragraph (b)(1) of this Q&A–6.

(4) *Examples.* The requirements of this paragraph (b) are illustrated by the following examples:

*Example 1.* Under section 132(f)(3), certain use of air transportation by a parent of an employee is treated as use by the employee for purposes of determining the excludability of the value of air transportation. The parent of the employee is deemed to be a common law employee for purposes of applying section 89(k)(1)(D) to a plan providing such air transportation because the air transportation provided to the parent is excludable from gross income under section 132.

*Example 2.* A health plan provides coverage with respect to the spouse and dependents of a common law employee-participant. Because the value of such coverage is excludable under section 106 and the benefits are excludable under section 105(b), the spouse and dependent children are deemed to be common law employees and the plan does not violate the exclusive benefit requirement of section 89(k) by reason of such coverage.

*Example 3.* An employer allows an independent contractor to purchase health care continuation coverage under section 4980B. The plan does not fail to meet the requirements of section 89(k) by reason of the participation of the independent contractor.

*Example 4.* A full-time life insurance salesman within the meaning of section 7701(a)(20) participates in an accident or health plan of an insurance company. Since this individual is treated as an employee for purposes of sections 105 and 106, the inclusion of such an individual in the plan does not violate the exclusive benefit requirement of section 89(k).

*Example 5.* A former employee of Employer X participates in Employer X's accident or health plan. Because this individual is treated as an employee of Employer X for purposes of sections 105 and 106, the former employee's inclusion in the plan does not violate the exclusive benefit requirement of section 89(k).

*Example 6.* An individual who is a leased employee with respect to the recipient under section 414(n) of the individual's services is treated as an employee of the recipient for purposes of sections 105 and 106, and thus, the inclusion of such leased employee in an accident or health plan of the recipient does not violate the exclusive benefit requirement of section 89(k).

*Example 7.* An individual who provides significant services to another person for a year but who is not a leased employee under section 414(n) of such person and is not otherwise an employee of such person is not treated as that person's employee for purposes of sections 105 and 106. However, the inclusion of such individual in an accident or health plan maintained by the employer does not violate the exclusive benefit requirement of section 89(k) if such individual's participation in such plan is fully paid for by such individual with after-tax contributions.

(c) *Multiemployer plans.* A multiple employer plan or a multiemployer plan maintained by two or more employers does not fail to satisfy the requirements of section 89(k)(1)(D) merely because employees of contributing employers participate in such plan or because the plan includes employees of an employee organization or of the plan.

(d) *Rules under other sections of the Code relating to the individuals who may participate in a plan.* Nothing in this Q&A–6 modifies any other section of the Code or the regulations specifically relating to who may participate in a plan. To the extent this Q&A–6 is more restrictive than another section of the Code or regulations, this Q&A–6 applies only for purposes of section 89. Notwithstanding the preceding sentence, the rules relating to who may participate in plans provided through organizations to which section 505 applies (i.e., organizations described in sections 501(c)(9) and 501(c)(17)) continue to be applicable to such

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organizations. Similarly, in addition to the rules contained in this Q&A–6, the rule contained in section 125(c)(1)(A) remains applicable in determining who may participate in a cafeteria plan.

(e) *Example.* The provisions of this Q&A–6 are illustrated in the following example:

*Example.* A self-insured health plan is funded through a voluntary employees' beneficiary association (within the meaning of section 501(c)(9)) which accepts employee contributions.Under the plan, the experience gain for a year is used to fund a part of the cost of the program for the following year by reducing the employee cost of participation (i.e., employee premiums) for all participants. The provision does not violate the exclusive benefit rule of section 89(k).

(f) *Transition rule.* A plan that is subject to the rules contained in section 89(k) is not required to comply with section 89(k)(1)(D) prior to the first day of the plan year following the first plan year beginning in 1989.

Q–7: How is it determined whether a plan is established with the intent of being maintained for an indefinite period of time?

A–7: (a) *In general.* Whether a plan is established with the intent that it will be maintained for an indefinite period of time as required by section 89(k)(1)(E) is to be determined on the basis of all of the facts and circumstances. For purposes of section 89(k)(1)(E), a plan generally is treated as established with the intent that it will be maintained for an indefinite period of time if it is established and maintained for at least a consecutive 12-month period.

(b) *Plan modifications and terminations*—(1) *In general.* Generally, a plan does not fail the requirement of section 89(k)(1)(E) merely because the employer reserves the right to modify or terminate the plan or because the plan is not renewed pursuant to a specific plan provision or is terminated. However, in certain circumstances, significant modifications in the coverage or benefits under the plan or a termination of coverage or benefits raises a presumption that the plan was not established with the intent that it continue for an indefinite period of time. A plan is not considered to be modified or terminated merely because of a change in the insurance carrier or health care provider if the coverage and benefits under the plan are not substantially changed.

(2) *Coverage in effect for at least 12 consecutive months.* The requirement of section 89(k)(1)(E) is not violated by reason of a material modification or termination of a plan, if such material modification or termination is effective on a prospective basis and the affected coverage (or substantially similar coverage) has been in effect for at least a consecutive 12-month period. This paragraph (b)(2) applies even if the plan contains a term specifying the intent of the employer to terminate the plan upon the expiration of a 12-month period.

(3) *Coverage in effect for less than 12 consecutive months.* For plan years beginning after December 31, 1989, special scrutiny will be given with respect to material modifications and terminations of a plan that occur before the terminated or modified coverage or benefits have been in effect for at least 12 consecutive months. Such a termination or modification will not violate the requirement of section 89(k)(1)(E) if the employer can demonstrate that there is a substantial, independent business reason for such termination or modification and that the termination or modification does not discriminate in favor of one or more highly compensated employees.

(4) *Certain modifications.* A retroactive modification to a plan does not cause the plan to fail to satisfy section 89(k)(1)(E) if all of the conditions set forth in paragraph (d)(2)(iii) of Q&A–3 of this section are satisfied with respect to such modification.

(c) *Examples.* The requirements of this Q&A–7 are illustrated in the following examples:

*Example 1.* An employer merges with another company. Pursuant to the merger and in order to consolidate operations, the surviving employer terminates the health coverage in mid-year for the merged company's employees and adds these employees to the plan maintained by the surviving company. The merger constitutes a valid business purpose for the termination of the health plan of the merged company and, thus, neither plan has failed the requirements of section 89(k)(1)(E).

*Example 2.* A dental plan is modified on July 1 to include coverage for certain orthodontic benefits. The plan year of the dental plan is the calendar year. The requirements of section 89(k)(1)(E) are not violated if the orthodontic benefits are eliminated from the plan on or after July 1 of the following year because the coverage would have been in effect for at least 12 consecutive months.

*Example 3.* An employer announces that employees who retire from the employer on or after age 55 with at least 10 years of service will receive employer-provided health coverage for 1 year after separation if such employees retire during a specified 2-month period. This plan does not fail to satisfy section 89(k)(1)(E) merely because the retirement window is only 2 months long, because such window is a coverage eligibility condition rather than a limitation on the period of coverage under the plan.

*Example 4.* A health plan with a broad range of coverage provided to all nonhighly compensated employees of an employer is in existence for only one day in a year. The employer designates this day as the testing day for its health plans. Under the facts of the case, a reasonable inference may be made that the intention of the employer in granting the coverage under the health plan in existence only on the testing day is to enhance the likelihood that the employer's other health plan will satisfy the nondiscrimination requirements of section 89. This plan fails the requirement of section 89(k)(1)(E). These circumstances may also result in a finding by the Commissioner that the plan or plans fail the nondiscriminatory provisions test of section 89(d)(1)(C).

*Example 5.* The requirement of section 89(k)(1)(E) may be violated if a plan is established under circumstances in which it is likely to benefit only one individual. For example, assume that a plan is adopted after an illness is diagnosed with respect to an individual and that the coverage provided relates to this illness. If the plan is terminated after the payment of these expenses, the plan may fail the permanency requirement. In this individual is a highly compensated employee these circumstances may also result in a finding by the Commissioner that the plan fails the nondiscriminatory provisions test of section 89(d)(1)(C).

(d) *Exception for fringe benefits constituting no-additional-cost services and qualified employee discounts.* The requirements of section 89(k)(1)(E) and this Q&A–7 do not apply to any plan providing no-additional-cost services as described in section 132(b) or to any plan providing qualified employee discounts as described in section 132(c).

Q–8: What are the sanctions for failure to meet the qualification requirements of section 89(k)?

A–8: (a) *In general*—(1) *Employer provided benefits.* If a plan subject to section 89(k) fails to satisfy any of the requirements of that section, the employer-provided benefits under the plan generally are not eligible for any exclusion from gross income under Part III, Subchapter B, Chapter 1, Subtitle A, of the Code. For purposes of this Q&A–8, such benefits are termed "nonexcludable benefits". Thus, for example, employer-provided benefits provided under a health plan that fails to satisfy the requirements of section 89(k) are not excludable under section 105. See, however, the limit on the amount of the nonexcludable benefits under paragraph (c)(4) of this Q&A–8. In addition, see section 6652(k) with respect to certain sanctions that may be imposed on the employer with respect to the employer's responsibilities under section 89.

(2) *Employee-provided benefits.* Employee-provided benefits are not subject to section 89(k) and continue to be subject to any applicable exclusion including, for example, the exclusion



provided in section 104(a)(3) with respect to accident and health plans.

(3) *Determination of includible benefit.* The includible benefit is determined by calculating the total amount of the benefits provided under the plan and then subtracting the amount of the employee-provided benefit. Determination of the amount of the employee-provided benefit must be made under the provisions of paragraph (d) of this Q&A–8 regarding the allocation of benefits.

(4) *Section 89(b) excess benefits.* Except as provided under paragraph (e) of this Q&A–8, benefits received under a plan that fails to satisfy section 89(k) include those benefits received under coverage that constitutes an excess benefit under section 89(b). That is, for example, sections 101 and 105 (b) and (c) are not applicable to benefits received under a discriminatory accident or health plan that also fails to satisfy section 89(k). In addition, a plan's failure to satisfy section 89(k) does not, in and of itself, affect the extent to which the coverage provided with respect to such plan (as opposed to the benefits under the plan) is eligible for an exclusion from gross income. Thus, for example, coverage under a health plan does not fail to be excludable under section 106 merely because the plan fails to satisfy section 89(k).

(b) *De minimis failures to comply with section 89(k)(1) (A) and (C)*—(1) *In general.* If a plan fails to satisfy the writing or notice requirements of section 89(k) and such failure constitutes a de minimis failure (as defined in paragraph (b)(2) of this Q&A–8), then the plan will be deemed to have complied with the requirements of section 89(k) with respect to the failed requirement, provided that such failure is corrected within 90 days after the employer has notice of such failure.

(2) *Definition of de minimis failure to comply*—(i) *In general.* A failure constitutes a de minimis failure to comply only if the failure meets all of the requirements of paragraph (b)(2)(ii) of this Q&A–8. Whether a failure to comply is described in paragraph (b)(2)(ii) of this Q&A–8 is determined under all of the facts and circumstances.

(ii) *Requirements for qualifying as a de minimis failure*—(A) *Good faith effort.* The employer must have acted in good faith and must have made a reasonable effort to comply with the applicable requirement.

(B) *No discriminatory effect.* The failure must not have had the effect of causing the plan to discriminate in favor of one or more highly compensated employees.

(C) *No retroactive reduction of coverage.* Correction of the failure cannot require that coverage be reduced under the single written document (as that plan existed at the time of the failure). That is, a failure is not a de minimis failure if its correction requires that the coverage described in the single written document be reduced with retroactive effect to conform to the previous operation of the plan.

(iii) *Examples.* The requirements of paragraph (b)(2)(ii) of this Q&A–8 are illustrated by the following examples:

*Example 1.* An employer provides notice to its employees regarding a health plan. Despite the employer's good faith and reasonable efforts to provide timely notice, the notice is 1 week late. The notice complies with all other requirements of section 89(k). Provided that no facts or circumstances suggest otherwise, this is a de minimis failure to comply. The correction occurred when the notice was provided.

*Example 2.* Despite the employer's good faith and reasonable efforts, an employer fails to give notice to its employees with respect to nonelective coverage under a dental plan that has been added to the employer's health program. The employer has no knowledge (constructive or otherwise) of such failure. Only one employee incurs a covered expense under the dental program and the employee submits a claim to the employer notwithstanding the fact that the employee is not sure whether the claim is covered. If within 90 days of receiving notice of the failure the employer follows the single written document, reimburses the expense, and gives notice relating to such coverage (including the effective date of the dental plan), then the employer has corrected the failure to comply with the notice requirements.

(3) *Correction.* The terms "correct" and "correction" mean, with respect to a de minimis failure to comply, that the employer performs all the necessary acts in order to comply with section 89(k) and places the affected employees in a financial position not worse than that in which they would have been if the employer had been in full compliance with section 89(k). If a subsequent notice is given to correct a de minimis failure, such notice must reflect the original effective date relating to the coverage, benefit or other material term that is the subject of the notice and must indicate that the employer will honor (and the employer must in fact honor) claims incurred after such effective date (including those prior to the date of such correcting notice). This paragraph (b)(3) is illustrated in the following example:

*Example.* Despite the good faith and reasonable efforts of the employer, a benefit is denied by a plan administrator in contravention of the written terms of the plan. If at a later date payment is made under the plan and the employer otherwise places the participant in a financial position no worse than if the employer had complied (e.g., by paying the benefit, interest if applicable and any fees incurred in compelling payment), then the failure is a de minimis failure and there has been correction. If the employee cannot be put in the same financial position as if the employer had complied, the failure cannot be corrected and the employer has failed to meet the requirements of section 89(k).

(c) *Determination of the amount of nonexcludable benefit*—(1) *In general.* The amount of a nonexcludable benefit with respect to an employee under a plan that fails to satisfy section 89(k) (including any insurance-type plan) is the value of the benefits (rather than the coverage) either received by the employee under the plan during the plan year or received thereafter but incurred under coverage in effect during the plan year. Thus, the calculation of the amount of the nonexcludable benefit under section 89(k) is based on the plan year of the failed plan and not, as is the case with the determination of excess benefit under section 89(b), on the testing year of the employer. To the extent that the single written document does not reflect a plan year, the determination of the plan year shall be based on paragraph (b) of Q&A–10 of § 1.89(a)–1. Nonexcludable benefits under section 89(k) are treated as received by an employee at the time such benefits are actually received or, but for the employee's election to defer the receipt of such benefits, first become available for receipt. In no case, however, will the amount of a nonexcludable benefit with respect to an employee exceed the limit for such employee determined under paragraph (c)(4) of this Q&A–8.

(2) *Definition of plan*—(i) *In general.* The nonexcludable benefits with respect to a plan that fails to satisfy section 89(k) include all benefits received under such plan. Unless the special definition of plan set forth in paragraph (c)(2)(ii) of this Q&A–8 applies, the nonexcludable benefits are those benefits described in the single written document that relates to the failure under section 89(k).

(ii) *Severable coverage.* To the extent that the failure of a plan to satisfy section 89(k) is directly and exclusively related to a specific portion or aspect of coverage provided in a plan, such portion or aspect of the coverage may be treated as a separate plan for purposes of determining the nonexcludable benefits under a plan that fails to satisfy section 89(k). In such a case, the coverage remaining under the single written document after the severance of the coverage providing nonexcludable

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benefits does not fail to satisfy the requirements of section 89(k) solely by reason of the failure related to the severed coverage. This paragraph (c)(2)(ii) does not permit the severance of coverage of one individual from similar coverage provided to other individuals under the single written document.

(3) *Examples.* The requirements of paragraph (c) (1) and (2) of this Q&A–8 are illustrated by the following examples:

*Example 1.* An employer maintains a single health plan. During the plan year, the employer allows a claim for a pre-existing condition in direct contravention of a provision in the plan. If the plan is not modified in accordance with paragraph (d)(2)(iii) of Q&A–3 of this section and if no correction occurs, coverage for that benefit is deemed to constitute a separate plan and the benefit thereunder is nonexcludable. However, unless a pattern or practice indicates that this provision was intended to be a part of the employer's health plan (e.g., by continuous operation in a similar manner), benefits properly paid with respect to the plan are not taxable by reason of the above described failure.

*Example 2.* An employer fails to notify certain eligible individuals who are not highly compensated employees concerning their eligibility to elect to have coverage under a health plan. Certain of the individuals fail to receive coverage under the plan and incur medical expenses that are not reimbursed due to the fact that the insurance company refuses to retroactively cover these individuals. The plan relating to the notice fails to comply with section 89(k) and all benefits described in the single written document that relates to the failure are nonexcludable to the recipients.

*Example 3.* A health program contained in a single written document is terminated. The plan provided core coverage and dental care. The portion of the program containing dental coverage recently became effective and the termination with respect to such coverage fails to meet the permanence requirement of section 89(k)(1)(E). The failed coverage under the dental program can reasonably be severed from the balance of the program. Thus, the dental coverage is treated as a separate plan and the benefits that were provided under such plan are nonexcludable. Other benefits provided under the single written document which relates to the failed plan however, are not affected by such failure.

*Example 4.* A benefit is mistakenly granted to a participant in that the benefit amount exceeds the dollar limitation described in the single written document. Unless the plan is modified in accordance with paragraph (d)(2)(iii) of Q&A–3 of this section, the operation of the plan in a manner inconsistent with the single written document violates the writing requirement of section 89(k). The amount of the benefit in excess of the dollar limitation may be treated as severable coverage and thus be nonexcludable without adverse impact upon the balance of the program.

*Example 5.* An employer maintains a core health plan. A participant incurs an expense that is determined by the plan administrator to be incurred for a benefit not covered by the plan. The benefit is denied by the plan administrator in contravention of the terms of the plan. Coverage for such benefit is actually available under the terms of the insurance contract that describes medical benefits and coverage. However, if the employer is not able to correct the failure on a timely basis, all benefits described in the single written document that relates to the failure are nonexcludable because the coverage involved is not reasonably severable from the general core coverage under the plan.

*Example 6.* A notice sent to participants fails to satisfy section 89(k). The notice contains a modification of a material term relating to cosmetic surgical procedures coverage. If the failure is not corrected, benefits received under the coverage of the type described in the notice are nonexcludable.

*Example 7.* A notice is sent to employee participants failing to disclose a material term of the plan. The material term does not relate to a particular coverage or benefit, but rather applies to all benefits under the plan. All benefits provided under the single written document related to the notice are nonexcludable unless such failure is corrected on a timely basis.

(4) *Limit on nonexcludable amount.* Notwithstanding any other provision of this Q&A–8, the amount of the employer-provided portion (see paragraph (d)(2) of this Q&A–8) of the nonexcludable benefits received by an employee (and the employee's spouse and dependents) during a taxable year of the employee under one or more accident and health plans that fail to satisfy section 89(k) (but do not fail to be accident or health plans under section 105 and 106) shall not exceed the sum of the following 4 amounts: 10 percent of the employee's compensation (before inclusion of the employer-provided benefit) from the employer maintaining the plan for the employee's taxable year, up to and including the dollar amount in effect for such year under section 414(q)(1)(C); 25 percent of the employee's compensation in excess of such dollar amount up to and including 200 percent of such dollar amount; 75 percent of the employee's compensation in excess of 200 percent of such dollar amount up to and including 300 percent of such dollar amount; and 100 percent of the employee's compensation in excess of 300 percent of such dollar amount. The limitation under this paragraph (c)(4) is applied after the determination of the employer-provided portion of the nonexcludable benefits described in paragraph (d)(2) of this Q&A–8, but before the coordination of nonexcludable benefits with excess benefits as described in paragraph (e) of this Q&A–8. Compensation of an employee as used in this paragraph (c)(4) is compensation as determined under section 414(q)(7) and with respect to the taxable year of the employee in which the nonexcludable benefit is received. Thus, for example, if an employee with compensation from the employer of $25,000 for a calendar year also receives $20,000 in employer-provided benefits under a health plan that fails to satisfy section 89(k), the maximum amount of nonexcludable benefit for such employee for such year is $2,500 (i.e., 10 percent of $25,000). The remaining $17,500 in benefits under the plan that failed to satisfy section 89(k) may be excludable from gross income under section 105. Finally, this paragraph (c)(4) does not apply if, in addition to failing one or more of the requirements of section 89(k), a plan also fails to be an accident or health plan under sections 106 and 105.

(d) *Allocation between employer and employee contributions*—(1) *In general.* Section 89(k) generally eliminates the otherwise available exclusions only with regard to benefits attributable to the employer-provided portion of the benefits received. Thus, for example, if a portion of the coverage provided under a plan is attributable to after-tax employee contributions, an allocation of the benefits under such plan must be made on the basis of the relative cost to the employer and the employee for the plan. Allocation is permitted, however, only to the extent that a nonexcludable benefit is directly related to the portion of the coverage under the plan that is attributable to employee contributions.

(2) *Accident or health plans.* If coverage provided under an accident or health plan is partially attributable to after-tax employee contributions, an allocation of the benefits under such plan is made in accordance with a method set forth in paragraphs (c), (d) or (e) of § 1.105–1 and the method permitted to determine the applicable premium for a group health plan under section 4980B(f)(4) to determine the cost of a health plan. For purposes of this paragraph, coverage that is taxable by reason of being considered an excess benefit (as defined in section 89(b)) is not considered to be attributable to employee contributions to the plan. See paragraph (e) of this Q&A–8 for rules regarding coordination of sanctions.

(3) *Group-term life insurance plans.* The portion of coverage under a plan to which section 79 applies that is attributable to employee contributions must be computed in the manner set forth in § 1.79–3(e). In addition, the rule of paragraph (d)(1) of this Q&A–8 does not apply to certain benefits received under a group-term life insurance program subject to section 79. Thus, while the table value of coverage over $50,000 is taxable without regard to section 89, such coverage is not attributable to employee contributions for purposes of the rule in this paragraph (d). Similarly, coverage that is taxable by reason of being considered excess benefit (as defined in section 89(b)) is not considered to be attributable to employee contributions to the plan. See paragraph (e) of this Q&A–8 for rules regarding coordination of sanctions.

(4) *Example.* The following example illustrates the rule contained in this paragraph (d):

*Example.* Employer A maintains a plan under which it pays two-thirds of the annual premium cost on individual policies of accident and health insurance for its employees. The remainder of each employee's premium is paid through after-tax payroll deduction from the wages of the employee. The annual cost of coverage determined by the method permitted to determine the applicable premium (as defined in section 4980B(f)(4) for plans to which that section applies) for Employee X is $240, of which $160 is paid by the employer. Thus, two-thirds (160/240) of all amounts received by Employee X under such insurance policy are attributable to the contributions of the employer and are nonexcludable if the plan fails to meet the requirements of section 89(k).

(e) *Coordination rules*—(1) *Relationship between statutory employee benefit plans that fail to meet the section 89(k) requirements and nondiscrimination tests.* The employer-provided benefit (as defined in § 1.89(a)–1 for purposes of the section 89 nondiscrimination tests) with respect to a statutory employee benefit plan must be taken into account for purposes of nondiscrimination testing under section 89 even though the plan has failed the requirements of section 89(k). That is, unless the coverage under a statutory employee benefit plan is purchased by the employee with after-tax employee contributions (or is treated as having been purchased with after-tax employee contributions), the coverage is subject to section 89 nondiscrimination testing. For the purposes of this paragraph (e), coverage that is taxable by reason of being an excess benefit under section 89(b) is not treated as purchased with after-tax employee contributions. Thus, employer-provided benefits (as defined in paragraph (b) of Q&A–1 of this section) that are attributable to such excess benefits are nonexcludable benefits if the plan also fails section 89(k). Also, a group-term life insurance plan subject to section 79 must be considered for purposes of section 89 without regard to the fact that the cost of coverage is currently taxable to the extent provided in section 79 (those amounts in excess of $50,000) or by reason of being considered excess benefit under section 89(b).

(2) *Coordination of sanctions where there is a failure of section 89(k) related to discriminatory coverage*—(i) *In general.* If an individual has a nonexcludable benefit by reason of section 89(k), the treatment of that benefit and the related excess benefit under section 89(b) are coordinated by limiting the taxable amount of any employee to the greater of either the nonexcludable benefit or the excess benefit.

(ii) *Nonexcludable benefit must be related to discriminatory coverage.* Coordination of sanctions with respect to a nonexcludable benefit under section 89(k) and a discriminatory excess benefit under section 89(b) is available only when the nonexcludable benefit under section 89(k) is related to the excess benefit that is taxable by reason of its being contained in a discriminatory employee benefit plan under section 89(c). For this purpose, a plan means any specific option under the health program. The determination of relatedness is made on the basis of all of the facts and circumstances. Generally, if an employee is treated as having received an excess benefit under section 89(b) and the excess benefit relates to a failure to meet the requirements of paragraph (d)(2) (the 90 percent/50 percent eligibility test) or (d)(4) (the 75 percent benefits test) of Q&A–1 of § 1.89(a)–1, there is a presumption that such excess benefit does not relate to a plan (or portion thereof) that fails section 89(k). Thus, for example, an employee who receives employer-provided coverage with a value of $2,500 under an indemnity plan and employer-provided coverage with a value of $750 under a dental plan and who is treated as receiving an excess benefit of $1,000 under section 89(b) because these health plans fail to meet the requirements of the 75 percent benefits test or the 90 percent/50 percent eligibility test, and a nonexcludable benefit of $600 because the dental plan fails section 89(k), the entire $1,000 excess benefit is treated as attributable to the indemnity plan and the total includible amount would be $1,600 ($1,000 plus $600). If the employee received an excess benefit of $3,000 under section 89(b), then $500 of such excess benefit would be allocated to the dental plan and the total includible amount would be $3,100. If the dental plan failed the 50 percent eligibility test, then $750 of the excess benefit or the higher of the excess benefit if less than $750 of the excess benefit related to the dental plan under Q&A–9 of § 1.89(a)–1 or the $600 nonexcludable benefit would be includible in the employee's gross income.

(iii) *Coordination where nonexcludable benefit received in taxable year other than the taxable year in which testing year ends.* If a nonexcludable benefit under section 89(k) is received in a taxable year of the employee other than that taxable year in which ends the testing year for which there is a related excess benefit under section 89(b) (including any additional time permitted by reason of an election under section 89(a)(2)(B)) and if the benefits otherwise qualify for the coordination described in this paragraph (e), the rules of this paragraph (e)(2)(iii) apply. If the testing year ends in a later taxable year of the employee than the taxable year in which the nonexcludable benefit is received, the amount of the excess benefit that is included in gross income for the later taxable year is reduced (but not below zero) by the amount of nonexcludable benefit included in gross income for the earlier taxable year. Similarly, where the nonexcludable benefit is received in a later taxable year of the employee than the taxable year in which the testing year ends, the amount of the nonexcludable benefit included in gross income for the later year is reduced (but not below zero) by the amount of the excess benefit included for the earlier taxable year to which the nonexcludable benefit relates.

(iv) *Examples.* The provisions of this paragraph (e)(2) are illustrated by the following examples:

*Example 1.* Assume that an employer's testing year under section 89(a) is the calendar year. Plan A has a plan year beginning on July 1 and has an employer-provided benefit, based on its annual applicable premium, of $2,000. Employee X receives a reimbursement under plan A on July 10 in the amount of $500. Assume that Plan A fails section 89(k). Assume further that Employee X has received $1,000 in excess benefit for the testing year, all of which relates to the total value of coverage under Plan A. For this calendar year, Employee X must include in gross income $1,000.

*Example 2.* Assume the same facts as in Example 1, except that the $500 reimbursement is $1,500. Employee X must include in income $1,500.

*Example 3.* Assume that an employer's testing year begins on July 1. Plan A has an applicable premium of $2,000 and its plan year is the 1991 calendar year. Employee X receives a reimbursement of $500 under Plan A on July 10, 1991. Assume that Plan A fails section 89(k). The employer determines that Employee X has $2,000 in excess benefit in

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the testing year that begins July 1, 1991, related to Plan A. For 1991, Employee X must include $300 in gross income. However, for 1992, Employee X may use that $300 as an offset against the amount of excess benefit related to the coverage under which the benefit was granted. Thus, Employee X is only required to include $1,300 in gross income for 1992 ($2,000 − $500).

*Example 4.* Assume the same facts as Example 3, except that Employee X received the reimbursement on June 10, 1991. Unless other facts indicate otherwise, no offset is available since the reimbursement did not relate to excess benefit calculated with regard to the 1991 testing year.

(f) *Authority to limit nonexcludable benefits.* The Commissioner, in revenue rulings, notices and other publications of general applicability, may limit the nonexcludable benefit that would otherwise be determined under section 89(k) and this proposed regulation to the extent the facts and circumstances indicate that the elimination of the otherwise available exclusions from gross income would be inconsistent with the purposes underlying the requirements of section 89(k). Among the facts and circumstances to be taken into account are the relationship between the plan's failure under section 89(k) and the employee's receipt of benefits under such plan, the extent to which the plan's failure was attributable to a reckless or intentional disregard of the requirements of section 89(k), and whether the imposition of the full sanction under section 89(k) would impose a hardship on the employee that is not justified by the nature and degree of the plan's failure.

**Par. 3.** Proposed § 1.125–1 as published in the **Federal Register** on May 7, 1984 (49 FR 19321), and amended on December 31, 1984 (49 FR 50733), is amended by adding a new Q&A–30 at the end, to read as follows:

**§ 1.125–1 Questions and Answers relating to cafeteria plans.**

* * * * *

Q–30: Are there additional rules for cafeteria plans?

A–30: Yes. Additional rules for cafeteria plans are contained in § 1.125–2 and take effect as set forth in Q&A–1 of § 1.125–2. To the extent that § 1.125–2 and this § 1.125–1 are inconsistent, § 1.125–2 supersedes this § 1.125–1.

**Par. 4.** New § 1.125–2 is added to read as follows:

**§ 1.125–2 Miscellaneous cafeteria plan questions and answers.**

The following is a list of the questions addressed in this section.

Q–1: What are the effective dates of these cafeteria plan rules?

Q–2: What does section 125 of the Code provide?

Q–3: What is a cafeteria plan under section 125?

Q–4: What benefits constitute qualified benefits and what benefits constitute cash under a cafeteria plan?

Q–5: May a cafeteria plan include a benefit that defers the receipt of compensation?

Q–6: In what circumstances may participants revoke existing elections and make new elections under a cafeteria plan?

Q–7: How do the rules governing the tax-favored treatment of employer-provided benefits apply to plans that are flexible spending arrangements?

Q–1: What are the effective dates of these cafeteria plan rules?

A–1: Q&A–1 through Q&A–6 of this § 1.125–2 apply to plan years of cafeteria plans as set forth in Q&A–10 of § 1.89(a)–1 (regarding the effective date of section 89). Q&A–7 of this § 1.125–2 (relating to flexible spending arrangements) applies to plan years beginning after December 31, 1989.

Q–2: What does section 125 of the Code provide?

A–2: In general, an employee who has an election among nontaxable benefits and taxable benefits (including cash) must include in gross income any taxable benefits that the employee could have actually received pursuant to the employee's election. The amount of these benefits is included in the employee's income in the year in which the employee would have actually received the taxable benefits if the employee had elected such benefits. This generally is the result even if the employee's election between the nontaxable benefits and taxable benefits is made prior to the year in which the employee would have actually received the taxable benefits. However, section 125 provides that cash (including certain taxable benefits) provided under a nondiscriminatory cafeteria plan will not be included in a participant's gross income merely because the participant has the opportunity, before the cash becomes currently available to the participant, to choose among cash and the nontaxable benefits under the cafeteria plan

Q–3: What is a cafeteria plan under section 125?

A–3: A cafeteria plan is a plan maintained by an employer for the benefit of its employees that satisfies the requirements of section 89(k), under which all participants are employees, and under which each participant has the opportunity to choose among cash and qualified benefits. Additionally, a cafeteria plan satisfies the written plan document requirement of clause (v) of Q&A–3 of § 1.125–1 only if the plan describes the maximum amount of elective contributions available to any employee under the plan either by stating the maximum dollar amount or maximum percentage of compensation that may be contributed as elective contributions under the plan by employees or by stating the method for determining the maximum amount or percentage of elective contributions that employees may make under the plan. The meaning of "elective contributions" under a cafeteria plan is the same as the meaning of "salary reduction contributions" under a cafeteria plan. See also paragraph (a)(2) of Q&A–8 of § 1.89(a)–1.

Q–4: What benefits constitute qualified benefits and what benefits constitute cash under a cafeteria plan?

A–4: (a) *Qualified benefits*—(1) *In general.* A benefit is a qualified benefit under a cafeteria plan if the benefit does not defer the receipt of compensation and the benefit is not includable in an employee's gross income by reason of an express provision of Chapter 1 of the Code. In the case of insurance-type benefits, such as benefits provided under accident or health plans (sections 106 and 105) and group-term life insurance plans (section 79), the benefit is the coverage under the plan.

(2) *Items that constitute qualified benefits*—(i) *Accident or health plans.* Coverage under an accident or health plan is a qualified benefit to the extent that such coverage is excludable from income under section 106. Thus, for example, coverage under a long-term disability plan and coverage under an accidental death and dismemberment policy may be qualified benefits.

(ii) *Group-term life insurance.* Group-term life insurance coverage that is excludable from gross income under section 79 and group-term life insurance coverage that is includable in gross income solely because the death benefit payable thereunder is in excess of the dollar limit of section 79 are qualified benefits.

(iii) *Certain discriminatory benefits.* Accident or health plan coverage, group-term life insurance coverage, and benefits under a dependent care assistance program do not fail to be qualified benefits under a cafeteria plan merely because they are includable in gross income solely because of section 89 or any other applicable nondiscrimination requirement (e.g., section 129(d)).

(iv) *Certain dependent care assistance benefits.* Benefits under a dependent care assistance program that would have been excludable from gross income under section 129 but for the elimination of overnight camp expenses from dependent care assistance under such section (effective January 1, 1988) or the reduction of the age limit on children qualifying as dependents under such section (effective January 1, 1989) do not fail to be qualified benefits merely because such changes in law cause such benefits to be taxable. However, the preceding sentence applies only if the benefits are provided under a program that otherwise qualifies as a dependent care assistance program under section 129, are taxable to the employee upon receipt, and are provided by the December 31 next following the effective date of the applicable change in law. After such date, such benefits will not constitute qualified benefits but may be treated as cash pursuant to paragraph (b) of this Q&A–4.

(b) *Currently taxable benefits treated as cash.* In general, a benefit is treated as cash if such benefit does not defer the receipt of compensation and an employee who receives such benefit purchases such benefit with after-tax employee contributions or is treated, for all purposes under the Code (including, for example, reporting and withholding purposes), as receiving, at the time that such benefit is received, cash compensation equal to the full value of such benefit at such time and then purchasing such benefit with after-tax employee contributions. Thus, for example, long-term disability coverage is treated as cash if the cafeteria plan provides that an employee may purchase the coverage under the plan with after-tax employee contributions, or provides that the employee receiving such coverage is treated as having received cash compensation equal to the value of the coverage and then as having purchased the coverage with after-tax employee contributions. Any taxable benefit that is not described in paragraph (a) of this Q&A–4 and is not treated as cash under this paragraph (b) may not be included in a cafeteria plan.

(c) *Qualified cash or deferred arrangements.* Elective contributions to a qualified cash or deferred arrangement (section 401(k)) are permitted under a cafeteria plan. In addition, after-tax employee contributions under a qualified plan subject to section 401(m) are permitted under a cafeteria plan. The right to make such contributions will not cause a plan to fail to be a cafeteria plan merely because, under the qualified plan, employer matching contributions are made with respect to elective or after-tax employee contributions.



(d) *Benefits that do not constitute qualified benefits or cash.* Benefits of the type described in section 117 or 132 do not constitute qualified benefits or cash and thus may not be included in a cafeteria plan regardless of whether any such benefit is purchased with after-tax employee contributions or on any other basis. Thus, for example, health diagnostic or examination plans are qualified benefits under a cafeteria plan because such plans are accident or health plans that are eligible for the exclusion under section 106 and are not, in any case, eligible for the exclusion under section 132.

Q–5: May a cafeteria plan include a benefit that defers the receipt of compensation?

A–5: (a) *In general.* A cafeteria plan may not include any plan that offers a benefit that defers the receipt of compensation. In addition, a cafeteria plan may not operate in a manner that enables employees to defer compensation. For example, a plan that permits employees to carry over unused elective contributions or plan benefits (e.g., accident or health plan coverage) from one plan year to another operates to defer compensation. This is the case regardless of how the contributions or benefits are used by the employee in the subsequent plan year (e.g., whether they are automatically or electively converted into another taxable or nontaxable benefit in the subsequent plan year or used to provide additional benefits of the same type). Similarly, a cafeteria plan operates to permit the deferral of compensation if the plan permits participants to use contributions for one plan year to purchase a benefit that will be provided in a subsequent plan year (e.g., life, health, disability, or long-term care insurance coverage with a savings or investment feature, such as whole life insurance). For example, a cafeteria plan operates to permit the deferral of compensation if the cafeteria plan includes a health plan that is a flexible spending arrangement (as defined in Q&A–7 of this section) and such health plan may reimburse participants' premium payments for other accident or health coverage extending beyond the end of the plan year. See Q&A–7 of this section for the treatment of experience gains under a health plan that is a flexible spending arrangement.

(b) *Exceptions.* A plan does not fail to be a cafeteria plan merely because the plan permits participants to make elective contributions under a qualified cash or deferred arrangement under section 401(k) or permits participants employed by certain educational institutions to purchase retiree group-term life insurance. Similarly, a cafeteria plan does not include a benefit that defers the receipt of compensation merely because the cafeteria plan provides the opportunity to make after-tax employee contributions subject to section 401(m) under a qualified plan. In addition, a cafeteria plan will not be treated as including a benefit that defers the receipt of compensation merely because, under the qualified plan, employer matching contributions (as defined in section 401(m)(4)(A)) are made with respect to such elective contributions or after-tax employee contributions. Finally, reasonable premium rebates or policy dividends paid with respect to benefits provided under a cafeteria plan do not constitute impermissible deferred compensation if such rebates or dividends are paid before the close of the 12-month period immediately following the plan year to which such rebates and dividends relate.

(c) *Treatment of paid vacation days under a cafeteria plan*—(1) *In general.* A cafeteria plan may include elective, paid vacation days by permitting participants to receive either additional or fewer paid vacation days than the employer otherwise provides to the employees on a nonelective basis, if the inclusion of elective vacation days under the plan does not operate to permit the deferral of compensation.

(2) *Ordering of elective and nonelective vacation days.* In determining whether a plan that provides for paid vacation days operates to permit the deferral of compensation, and thus fails to be a cafeteria plan, a participant is deemed to use nonelective vacation days (i.e., the vacation days with respect to which the employee had no election) before elective vacation days.

(3) *Cashing out unused elective vacation days.* A plan does not operate to permit the deferral of compensation merely because the plan permits a participant who has not used all elective, paid vacation days for a plan year to receive in cash the value of such unused days in exchange for such days if the participant receives the cash on or before the earlier of the last day of the plan year of the cafeteria plan or the last day of the employee's taxable year to which the elective contributions used to purchase the unused days relate.

(4) *Examples.* The following examples illustrate the rules of this paragraph (c):

*Example 1.* Assume that an employer provides an employee with 2 weeks of paid vacation for each calendar year and maintains a calendar year cafeteria plan that

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permits the employee to "purchase," with elective contributions, an additional week of paid vacation. Assume further that Employee A, with a calendar tax year, purchases 1 additional week of vacation. If Employee A uses only 2 weeks of vacation during the year, the employee is treated as having used the 2 nonelective weeks and as having retained the 1 elective week. If the 1 remaining week (i.e., the elective week) may be carried over to the next year (or the value thereof used for any other purpose in the next year), the plan operates to permit the deferral of compensation and thus is not a cafeteria plan. However, the cafeteria plan may permit the employee to receive the value of the unused elective vacation week in cash before the end of the applicable calendar year.

*Example 2.* The facts are the same as set forth in Example 1, except that Employee A uses only 1 week of vacation during the year. Thus, Employee A is treated as having used 1 nonelective week and as having retained 1 nonelective week as well as 1 elective week of vacation. Because the nonelective vacation days are not part of the cafeteria plan (i.e., the employer or plan does not permit participants to exchange regular vacation days for other benefits), Employee A may be permitted to carry over the 1 nonelective week of vacation to the next year. In addition, under the terms of the cafeteria plan, Employee A must either forfeit the remaining elective vacation week or receive in cash the value of such unused days before the end of the applicable calendar year.

Q–6: In what circumstances may participants revoke existing elections and make new elections under a cafeteria plan?

A–6: (a) *In general.* A plan is not a cafeteria plan unless the plan requires that participants make elections among the benefits offered under the plan. In general, an election will not be deemed to have been made if, after a participant has elected and begun to receive a benefit under the plan, the participant is permitted to revoke the election during the period of coverage under the plan, even if the revocation relates only to the remaining portion of the coverage period with respect to the benefit and even if the revocation is in response to a change in the tax treatment of such benefit. However, in the circumstances specified in paragraphs (b) through (g) of this Q&A–6, notwithstanding Q&A–8 of § 1.125–1, the terms of a cafeteria plan may permit a participant to revoke an existing election and, in some cases, to make a new election with respect to the remaining portion of the period of coverage. If a new election is permitted under this Q&A–6, then such new election must be consistent with the reason that such change was permitted. In addition, a cafeteria plan may permit an election change to the extent required under paragraph (c)(6) of Q&A–3 of § 1.89(a)–1. Such election changes will not cause taxable benefits offered under the cafeteria plan to be treated as currently available to employees. See Q&A–7 of this section for certain additional limits on election changes that relate to certain flexible spending arrangements.

(b) *Significant cost or coverage changes*—(1) *Cost changes.* If the cost of a health plan provided by an independent, third party provider under a cafeteria plan increases or decreases during a plan year and under the terms of the cafeteria plan, employees are required to make a corresponding change in their premium payments, the cafeteria plan may, on a reasonable and consistent basis, automatically increase or decrease, as the case may be, all affected participants' elective contributions or after-tax employee contributions for such health plan. Alternatively, if the premium amount significantly increases, a cafeteria plan may permit participants either to make a corresponding change in their premium payments or to revoke their elections and, in lieu thereof, to receive on a prospective basis, coverage under another health plan with similar coverage. No elective adjustments of participants' contributions or revocations of participants' elections other than those provided for in the preceding sentence may be permitted under a cafeteria plan on account of changes in the cost of a health plan.

(2) *Coverage changes.* If the coverage under a health plan provided by an independent, third-party provider is significantly curtailed or ceases during a period of coverage, a cafeteria plan may permit all affected participants to revoke their elections of the health plan and, in lieu thereof, to receive on a prospective basis coverage under another health plan with similar coverage.

(c) *Certain changes in family status.* A cafeteria plan may permit a participant to revoke a benefit election during a period of coverage and to make a new election for the remaining portion of the period if the revocation and new election are both on account of a change in family status and are consistent with such change in family status. For purposes of this paragraph (d), examples of changes in family status for which a benefit election change may be permitted include the marriage or divorce of the employee, the death of the employee's spouse or a dependent, the birth or adoption of a child of the employee, the termination of employment (or the commencement of employment) of the employee's spouse, the switching from part-time to full-time employment status or from full-time to part-time status by the employee or the employee's spouse, and the taking of an unpaid leave of absence by the employee or the employee's spouse. Election changes are also permitted where there has been a significant change in the health coverage of the employee or spouse attributable to the spouse's employment. Benefit election changes are consistent with family status changes only if the election changes are necessary or appropriate as a result of the family status changes.

(d) *Separation from service.* A cafeteria plan may permit an employee who separates from the service of the employer during a period of coverage to revoke existing benefit elections and terminate the receipt of benefits for the remaining portion of the coverage period. However, in such case, the plan must prohibit the employee, if the employee should return to service for the employer, from making new benefit elections for the remaining portion of the period of coverage.

(e) *Cessation of required contributions.* A cafeteria plan may provide that a benefit will cease to be provided to an employee if the employee fails to make the required premium payments with respect to the benefit (e.g., employee ceases to make premium payments for health plan coverage after a separation from service). However, in such case, the plan must prohibit the employee from making a new benefit election for the remaining portion of the period of coverage.

(f) *Elective contributions under a qualified cash or deferred arrangement.* A cafeteria plan may permit a participant who has elected to make elective contributions under a qualified cash or deferred arrangement (within the meaning of section 401(k)) to modify or revoke the election as permitted under section 401(k). Similarly, a cafeteria plan may permit a participant who has elected to make after-tax employee contributions subject to section 401(m) to modify or revoke the election as permitted under section 401(m). Thus, for example, a cafeteria plan may include a benefit option providing for elective contributions under a qualified cash or deferred arrangement which requires that, as a condition of a hardship distribution, the employee receiving the distribution cease making elective contributions under the arrangement for a specified period.

Q–7: How do the rules governing the tax-favored treatment of employer-provided benefits apply to plans that are flexible spending arrangements?

A–7: (a) *In general.* Health plans that are flexible spending arrangements as defined in paragraph (c) of this Q&A–7 (health FSAs) must conform to the generally applicable rules under sections 105 and 106 in order for the coverage and reimbursements under such plans to qualify for tax-favored treatment under such sections. Thus, health FSAs must qualify as accident or health plans. This means that, in general, while the health coverage under the FSA need not be provided through a commercial insurance contract, health FSAs must exhibit the risk-shifting and risk-distribution characteristics of insurance. Similarly, reimbursements under health FSAs must be paid specifically to reimburse the participant for medical expenses incurred previously during the period of coverage. Furthermore, a health FSA cannot operate under a cafeteria plan in a manner that enables participants to receive coverage only for periods for which the participants expect to incur medical expenses if such periods constitute less than a plan year. A reimbursement is not paid specifically to reimburse the participant for medical expenses if the participant is entitled to these amounts, in the form of cash or any other taxable or nontaxable benefit (including health coverage for an additional period), without regard to whether or not the employee incurs medical expenses during the period of coverage. A health FSA will not qualify for tax-favored treatment under sections 105 and 106 of the Code if the effect of the reimbursement arrangement eliminates all, or substantially all, risk of loss to the employer maintaining the plan or other insurer. These rules apply with respect to a health plan without regard to whether the plan is provided through a cafeteria plan. See Q&A–17 of § 1.125–1.

(b) *Special requirements*—(1) *In general.* A health FSA must satisfy the requirements set forth in this paragraph (b) in order for the employer-provided health coverage provided through the health FSA to qualify for the exclusion from income under section 106 and for the reimbursements and other benefits pursuant to the health FSA coverage to qualify for the exclusion from income under section 105.

(2) *Uniform coverage throughout coverage period.* The maximum amount of reimbursement under a health FSA must be available at all times during the period of coverage (properly reduced as of any particular time for prior reimbursements for the same period of coverage). Thus, the maximum amount of reimbursement at any particular time during the period of coverage cannot relate to the extent to which the participant has paid the required premiums for coverage under the health FSA for the coverage period. Similarly, the payment schedule for the required premiums for coverage under a health FSA may not be based on the rate or amount of covered claims incurred during the coverage period. Reimbursement will be deemed to be available at all times if it is paid at least monthly or when the total amount of the claims to be submitted is at least a specified, reasonable minimum amount (e.g., $50). If the employee revokes existing elections, the employer must reimburse the employee for any amount previously paid for coverage or benefits relating to the period after the date of the employee's separation from service regardless of the employee's claims or reimbursements as of such date. The following examples illustrate the rules of this paragraph (b)(2):

*Example 1.* Assume that an employee elects coverage under a health FSA providing coverage of up to $300 in medical expenses and the annual premium for a calendar year of coverage is $300. Assume also that the employee is permitted to pay the $300 premium through salary reduction of $25 per month throughout the coverage period. The employee must be eligible to receive the maximum amount of reimbursement of $300 at all times throughout the coverage period (reduced by prior reimbursements). Thus, if the employee incurs $250 of medical expenses in January, the full $250 must be available for reimbursement even though the employee has made only one premium payment. If the employee incurs another $50 in health expenses in February, the remaining $50 of the $300 maximum must be available for reimbursement. The employer or plan may not provide for an acceleration of the required premium payments based on the employee's incurred claims and reimbursements.

*Example 2.* Assume that an employee elects coverage under a health FSA with a maximum reimbursement limit of $500 for a calendar year of coverage and is required to pay the $450 premium for such coverage in two equal $225 installments, one at the beginning of the period of coverage and the second installment by the beginning of the sixth month of coverage. Assume further that the employee incurs a $400 medical expense in February and the FSA makes a $400 reimbursement to the employee in March. The employee does not incur any additional medical expenses before the end of June, at which time the employee separates from service. If the employee fails to make the second premium installment, the employee's coverage under the FSA may be terminated as of the end of June so that medical expenses incurred after June are not covered. If the employee pays the second premium installment, the employee's coverage under the FSA must continue, so that additional medical expenses (up to the remaining $100) incurred before the end of December are covered.

(3) *Twelve-month period of coverage.* The period of coverage under a health FSA must be 12 months or, in the case of a short first plan year or a short plan year of a cafeteria plan where the plan year is being changed, the entire short plan year. Election changes to increase or decrease the level of coverage under a health FSA during the 12-month period of coverage are not permitted with respect to health FSAs. However, a cafeteria plan may permit participants to make health FSA election changes for the remaining portion of the 12-month period of coverage on account of and consistent with certain family status changes. See Q&A–6 of this section. In addition, a cafeteria plan may provide that the period of coverage under a health FSA terminates if the employee ceases to make required premium payments; however, such employee may not be permitted to make a new health FSA benefit election for the remaining portion of the original coverage period. Also, a cafeteria plan may permit an employee who separates from the service of the employer during a period of coverage to revoke existing benefit elections and terminate receipt of benefits, including coverage under the health FSA. For the application of the health care continuation rules of section 4980B of the Code to health FSAs, see the regulations under section 4980B or its predecessor section 162(k) of the Code. The requirements of this paragraph (b)(3) are illustrated by the following example:

*Example.* Assume that an employee has elected a $300 calendar year health FSA, with monthly premium payments of $25 during the 12-month period of coverage. Such employee separates from service for the employer at the end of June and ceases to make additional premium payments. The cafeteria plan may provide that the FSA's period of coverage does not extend beyond June if the employee does not continue to make the required premium payments. However, if the employee makes the total premium payment for the 12-month period of coverage, the cafeteria plan may not terminate the FSA's period of coverage merely because the employee separated from service before the end of the coverage period.

(4) *Prohibited reimbursement.* A health FSA can only reimburse medical expenses as defined in section 213. Thus, for example, a health FSA cannot reimburse dependent care expenses. In addition, a health FSA may not treat participants' premium payments for other health coverage as reimbursable expenses. Thus, for example, a health FSA may not reimburse participants for premiums paid for other health plan coverage, including premiums paid for health coverage under a plan

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maintained by the employer of the employee's spouse or dependent. (See also Q&A–5 of this section with respect to whether the reimbursement of other premiums constitutes impermissible deferred compensation.) This paragraph (b)(4) does not prevent premiums for current health plan coverage (including coverage under a health FSA) from being paid on a salary reduction basis through the ordinary operation of the cafeteria plan.

(5) *Claims substantiation.* A health FSA may reimburse a medical expense only if the participant provides a written statement from an independent third party stating that the medical expense has been incurred and the amount of such expense and the participant provides a written statement that the medical expense has not been reimbursed or is not reimbursable under any other health plan coverage. Thus, for example, as with any other flexible spending arrangement, a health FSA cannot make advance reimbursements of future or projected expenses. In determining whether, under all the facts and circumstances, employees are being reimbursed for inadequately substantiated claims, special scrutiny will be given to other arrangements such as employer-to-employee loans that are related to the employee premium payments or actual or projected employee claims.

(6) *Claims incurred.* Medical expenses reimbursed under a health FSA must be incurred during the participant's period of coverage under the FSA. Expenses are treated as having been incurred when the participant is provided with the medical care that gives rise to the medical expenses, and not when the participant is formally billed or charged for, or pays for the medical care. Also, expenses are not treated as incurred during a period of FSA coverage if such expenses are incurred before the later of the date the health FSA is first in existence or the participant first becomes enrolled under the health FSA.

(7) *FSA experience gains.* If a health FSA has an experience gain with respect to a year of coverage, the excess of the premiums paid (e.g., employer contributions, including salary reduction contributions and after-tax employee contributions) and income (if any) of the FSA over the FSA's total claims reimbursements and reasonable administrative costs for the year may be used to reduce required premiums for the following year or may be returned to the premium payers (the participants for premiums paid by salary reduction or employee contributions) as dividends or premium refunds. Such experience gains must be allocated among premium payers on a reasonable and uniform basis. It is permissible to allocate such amounts based on the different coverage levels under the FSA received by the premium payers. However, in no case may the experience gains be allocated among premium payers based (directly or indirectly) on their individual claims experience. The requirements of this paragraph (b)(7) are illustrated in the following example:

*Example.* Assume that an employer maintains a cafeteria plan under which its 1,200 employees may elect one of several different annual coverage levels under a health FSA in $100 increments from $500 to $2,000. For a plan year, 1,000 employees elect levels of coverage under the health FSA. For such year, the FSA has an experience gain of $5,000 (i.e., premium payments for the year exceed reimbursed claims plus administrative costs by $5,000). The $5,000 may be allocated to all premium payers for the year, as a premium refund, on a per capita basis weighted to reflect the participants' elected levels of coverage. Alternatively, the $5,000 may be used to reduce the required premiums under the health FSA for all eligible employees for the next plan year (e.g., a $500 health FSA for the next year might be priced at $480) or to reimburse claims incurred above the elective limit in such year as long as such reimbursements are made in a nondiscriminatory manner.

(8) *Dependent care assistance.* Analogous rules to this paragraph (b), with the exception of paragraph (b)(2) relating to uniform coverage throughout the coverage period, are applicable to dependent care assistance provided under section 129. See Q&A–18 of § 1.125–1.

(c) *Definition of flexible spending arrangement.* A flexible spending arrangement (FSA) generally is a benefit program that provides employees with coverage under which specified, incurred expenses may be reimbursed (subject to reimbursement maximums and any other reasonable conditions) and under which the maximum amount of reimbursement that is reasonably available to a participant for a period of coverage is not substantially in excess of the total premium (including both employee-paid and employer-paid portions of the premium) for such participant's coverage. A maximum amount of reimbursement is not substantially in excess of the total premium if such maximum amount is less than 500 percent of the premium. A single FSA may provide participants with different levels of coverage and maximum amounts of reimbursement. However, for purposes of section 89, each different level of coverage under a FSA is a separate plan.

(d) *Effective date.* This Q&A–7 is effective for plan years beginning after December 31, 1989.

(e) *Authority to issue additional requirements.* The Commissioner, in revenue rulings, notices and other publications of general applicability, may make any modification to, or issue such additional requirements for the application of, the rules contained in this Q&A–7 as may be necessary to insure proper compliance with the intent of such rules.

(f) *Example.* The provisions of paragraph (c) of this Q&A–7 are illustrated by the following example:

*Example 1.* Assume that an employer with 1,000 employees maintains a cafeteria plan under which the employees may elect among several benefit options, including insured health plans and HMOs. The plan provides that the required premiums or contributions for the benefits are to be made by salary reduction. Even though the plan may characterize employees' premium payments and other contributions as flexible spending contributions or credits, the operation of a cafeteria plan to permit employees' contributions to be made on a salary reduction basis does not, standing alone, cause the plan (or any benefit thereunder) to be treated as a flexible spending arrangement.

*Example 2.* Assume that an employer with 1,000 employees maintains a cafeteria plan under which the employees may elect, among other benefits, a level of coverage under an arrangement that will reimburse medical expenses incurred during a year up to the specified amount elected by the employee. The maximum amount of reimbursement that can be deducted for a year is $5,000.

Each employee's premium for such coverage is equal to the maximum reimbursement amount selected by the employee. Such an arrangement is a health FSA.

**Lawrence B. Gibbs,**

*Commissioner of Internal Revenue.*

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## DEPARTMENT OF TRANSPORTATION

### Saint Lawrence Seaway Development Corporation

### 33 CFR Part 401

### Seaway Regulations and Rules: Miscellaneous Amendments

**AGENCY:** Saint Lawrence Seaway Development Corporation.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Saint Lawrence Seaway Development Corporation and the St. Lawrence Seaway Authority of Canada publish joint Seaway Regulations and Rules. As a result of discussions with the Authority, it has been determined that a number of existing regulations need clarification. In addition, certain amendments are proposed to meet existing conditions, such as a permanent change in the tie-up side at Lock 2 of the Welland Canal, or to permit realistic flexibility in Seaway operations, such as a discretionary permit for the transit of certain higher levels of explosive cargoes. Finally, the Corporation and the Authority are proposing a lower fee for tolls security deposits for vessels with a good payment record over a period of five years. Therefore, the Corporation proposes to amend 33 CFR Part 401, Subpart A.



**DATES:** The Corporation invites comments on the proposed revision to the Tariff of Tolls from any interested person or organization. Any party wishing to present views or data on the proposed revision may file comments with the Corporation on or before April 5, 1989.

**FOR FURTHER INFORMATION CONTACT:** Marc C. Owen, Chief Counsel, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–0091.

**SUPPLEMENTARY INFORMATION:** As a result of discussions with the Authority, the Saint Lawrence Seaway Development Corporation proposes to amend the Seaway Regulations and Rules as described in the following summary.

The first paragraph in § 401.12(a), will be amended to make it clear that mooring lines are to be available for securing on either side of a vessel.

Sections 401.19(a) and (b)(2) will be amended to include the popular names of the applicable Canadian and United States laws.

In § 401.22(a), the word "weight" will be replaced by the word "displacement", which is the more appropriate term for reference to a vessel.

The references to Canadian financial entities in § 401.26(a)(2) and (4) will be amended to reflect changes to the Canadian Bank Act.

Present § 401.26(d) will be redesignated as 401.26(e) and a new § 401.26(d) will be added to reduce the security for tolls required for a number of precleared vessels owned and controlled by the same individual or company and having the same representative if the individual, company, or representative has paid every toll account in the preceding five years in a timely fashion. The amount will be reduced from $2.55 per ton of the aggregate maximum tonnage of vessels within the Seaway at any one time to $1.50 per ton for the aggregate gross registered tonnage of the precleared vessels.

Section 401.28(a) will be amended to add a reference to § 401.27 to make it clear that the vessel traffic controller or any other officer will provide the instructions on what will be the appropriate speed in the conditions described in § 401.28(a).

Section 401.22 will be amended to change the reference to § 401.3(d) to 401.3 because vessels with dimensions other than any of those described in § 401.3, as a whole, not just other than those described in paragraph (d), may be allowed transit with the Corporation's or the Authority's approval.

Section 401.31(a) will be amended to state that the International Regulations for the Prevention of Collisions at Sea are now the source of the rules for vessels meeting and passing, superseding those presently cited in that subsection. In § 401.33, the reference to paragraph (d) of § 401.3, will be deleted. Since it is possible to allow transit of vessels of greater dimensions than those permitted under present paragraph (d), the amendment will allow this with the approval of the Authority and the Corporation.

Section 401.42(a) will be amended to add a new requirement for passing hand lines which now is necessary for upbound vessels at Locks 4 and 5 of the Welland Canal.

The Welland Canal Lock 2 table in § 401.43, will be amended to reflect a permanent change to the tie-up side at Lock 2 to starboard for upbound vessels and to port for downbound vessels.

In § 401.61, the descriptions of the designated areas for assigned frequencies 156.7 MHz, 156.65 MHz, 156.6 MHz, and 156.55 MHz will be amended to more accurately describe them.

A new § 401.65(c) will be added to require specific information on destination, departure, and the nature of the cargo for departing a port, dock, or anchorage for the system if it is carrying manifested dangerous cargo.

Section 401.68(b) will be amended to permit the Corporation and the Authority discretion in allowing the transit of certain levels of explosive cargoes that are above the maximum designated in paragraph (a) of that section.

Section 401.68(c) will be amended to specifically cite the relevant Canadian and United States laws applicable to Seaway Explosives Permits.

Section 401.73 will be amended to delete the word "cargo" before the word "tanks" in order to clarify that this rule concerning cleaning tanks is applicable to slop tanks, which are not cargo tanks.

Schedule III, Calling-In-Table, will be amended to require additional message content information under items 19 and 29 for vessels proceeding through the Welland Canal and to eliminate redundant transit information under tiems 21 and 30. In addition, a new item 55 will be added to require call-in information from vessels departing docks and harbors between mid-lake Ontario and Long Point to aid in transit planning and traffic information.

**Regulatory Evaluation**

This proposed regulation involves a foreign affairs function of the United States, and therefore, Executive Order 12291 does not apply. This regulation has also been evaluated under the Department of Transportation's Regulatory Policies and Procedures and the regulation is not considered significant under those procedures and its economic impact is expected to be so minimal that a full economic evaluation is not warranted.

**Regulatory Flexibility Act Determination**

The Saint Lawrence Seaway Development Corporation certifies that this proposed regulation, if adopted, would not have a significant economic impact on a substantial number of small entities. The St. Lawrence Seaway Regulations relate to the activities of commerical users of the Seaway, the vast majority of whom are foreign vessel operators. Therefore, any resulting costs will be borne by foreign vessels.

**Environmental Impact**

This proposed regulation does not require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321, *et seq.*) because it is not a major federal action significantly affecting the quality of human environment.

**List of Subjects in 33 CFR Part 401**

Hazardous materials transportation, Navigation (water), Radio reporting and recordkeeping requirements, Vessels, Waterways.

**PART 401—[AMENDED]**

Accordingly, the Saint Lawrence Seaway Development Corporation proposes to amend Part 401—Seaway Regulations and Rules (33 CFR 401) as follows:

1. The authority citation for 33 CFR 401 continues to read as follows:

**Authority:** 68 Stat. 93–96 (33 U.S.C. 981–990), as amended; Sec. 104, Pub. L. 92–340, 86

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Stat. 424 (49 CFR 1.50a) (37 FR 21943), unless otherwise noted.

* * * * *

2. In § 401.12, paragraph (a) introductory text is revised to read as follows:

**§ 401.12 Minimum requirements—mooring lines and fairleads.**

(a) Minimum requirements in respect of mooring lines, which shall be available for securing on either side of the vessel, winches, and the location of fairleads on vessels are as follows:

* * * * *

3. In § 401.19, paragraphs (a) and (b) are revised to read as follows:

**§ 401.19 Disposal and discharge systems.**

(a) Every vessel not equipped with containers for ordure shall be equipped with sewage disposal system enabling compliance with the Garbage Pollution Prevention Regulations of Canada, the Great Lakes Seaway Pollution Prevention Regulations of Canada, the Clean Water Act of 1977 of the United States, and the River and Harbor Act of the United States.

(b) Garbage on a vessel shall be

(1) Destroyed by means of an incinerator or other garbage disposal device; or

(2) Retained on board in covered, leakproof containers, until such time as it can be disposed of in accordance with the provisions of the Garbage Pollution Prevention Regulations of Canada, the Great Lakes Sewage Pollution Prevention Regulations of Canada, the Clean Water Act of 1977 of the United States, and the River and Harbor Act of the United States.

* * * * *

4. In § 401.22, paragraph (a) is revised to read as follows:

**§ 401.22 Preclearance of vessels.**

(a) No vessel, other than a pleasure craft on 317.5 tonnes or less in displacement, shall transit until an application for preclearance has been made, pursuant to § 401.24 of this Part, to the Corporation or the Authority by the vessel's representative and the application has been approved by the Corporation or the Authority pursuant to § 401.25 of this Part.

* * * * *

5. In section 401.26, paragraphs (a)(2) and (a)(4) revised to read as follows:

**§ 401.26 Security for tolls.**

* * * * *

(a) * * *

(2) A deposit of money to the credit of the Corporation or the Authority with a bank in the United States or a member of the Canadian Payments Association or a local cooperative credit society that is a member of a central cooperative credit society having membership in the Canadian Payments Association;

* * * * *

(4) Furnishing to the Corporation or the Authority a letter of guarantee given by an institution referred to in paragraph (a)(2) of this section.

* * * * *

6. Section 401.28 is further amended by redesignating and revising the current paragraph (d) as (e) and by adding a new paragraph (d) as follows:

* * * * *

(d) Notwithstanding subsection (b), (c), and (e) of this section, where a number of vessels, for each of which a preclearance application has been approved, are owned or controlled by the same individual or company and have the same representative, the security for tolls may be provided in an amount equal to $1.50 per tonne for the aggregate gross registered tonnage of the vessels if the individual, company or representative has paid every toll account received in the preceding five years within the time set out in section 401.75 of this Part.

(e) Where, in the opinion of the Corporation or the Authority, the security provided by the representative is insufficient to secure the tolls and changes incurred or likely to be incurred by a vessel, the Corporation or the Authority may suspend the preclearance of the vessel.

* * * * *

7. In § 401.28, paragraph (a) is revised to read as follows:

**§ 401.28 Speed limits.**

(a) The maximum speed over the bottom for a vessel of more than 12 m in overall length shall be regulated so as not to adversely affect other vessels or shore property, and in no event shall such a vessel proceeding in an area between the place set out in column I of an item of Schedule II and the place set out in column II of that item exceed the speed set out in column III or column IV of that item, whichever is designated by the Corporation and the Authority from time to time in accordance with § 401.27 of this Part as being appropriate to existing water levels.

* * * * *

8. In § 401.31, paragraphs (a) and (b) are revised to read as follows:

**§ 401.31 Meeting and passing.**

(a) The International Regulations for Prevention of Collisions at Sea apply to the meeting and passing of vessels.

(b) No vessel shall meet another vessel within the caution signs at bridges or within any area that is designated as a "no meeting area" by signs erected by the Corporation or the Authority in that area.

* * * * *

9. Section 401.33 is revised to read as follows:

**§ 401.33 Special instructions**

Special instructions shall be applied for from the Corporation or the Authority in connection with the intended transit of vessels of unusual design, hulks, sections of vessels, large dredges, and all vessels in tow and vessels whose limits exceed the requirements or § 401.3 of this Part, and such vessels shall not transit except in compliance with such instructions.

10. Section 401.42 is amended by adding the following new paragraph (a)(4):

**§ 401.42 Passing hand lines**

(a) * * *

(4) Upbound vessels in Locks 4 and 5, Welland Canal, in excess of 218 m shall secure the hand line in the eye of No. 1 mooring wire by means of a bowline.

* * * * *

11. In § 401.43, the Welland Canal Lock 2 table is revised as follows:

**§ 401.43 Mooring table.**

* * * * *

WELLAND CANAL

| Locks | 1 | 2 | 3 | 4 | 5 | 6 | 7 | Guard gate out | 8 |
|---|---|---|---|---|---|---|---|---|---|
| Upb | S | S | P | P | P | P | P | | P |
| Dnb | P | P | S | P | P | P | S | | P |

* * * * *

12. Section 401.61 is revised to read as follows:

**§ 401.61 Assigned frequencies.**

The Seaway stations operate on the following assigned VHF frequencies:

156.8 MHz (channel 16) Distress and Calling

156.7 MHZ (channel 14 Working (Canadian Stations in Sector 1 and the Welland Canal)

156.65 MHZ (channel 13 Working (U.S. Stations in Lake Ontario and Sector 4 of the River)

156.6 MHZ (channel 12 Working (U.S. Stations in Sector 2 of the River)

156.55 MHZ (channel 11 Working (Canadian Stations in Sector 3, Lake Ontario and Lake Erie)

13. Section 401.65 is amended by adding a new paragraph (c) to read as follows:



**§ 401.65 Communication—ports, docks and anchorages.**

* * * * *

(c) Every vessel shall, upon departing from a port, dock or anchorage, report to the appropriate Seaway station its destination and the expected time of arrival at the next check point and, if carrying manifested dangerous cargo, report the nature, quantity, IMO classification, and the storage location of the manifested dangerous cargo.

* * * * *

14. In § 401.68, paragraphs (b) and (c) are revised to read as follows:

* * * * *

**§ 401.68 Explosives permit.**

* * * * *

(b) When an explosive vessel is carrying quantities of explosives above the maximum mention in paragraph (a) of this section, a Seaway Explosives Permit shall be granted if the vessel demonstrates to the satisfaction of the Corporation and the Authority that the vessel shall present no danger to itself, other vessels or persons, and facilities located along the Seaway.

(c) A written application for a Seaway Explosives Permit certifying that the cargo is packed, marked, and stowed in accordance with the Canadian Regulations respecting the Carriage of Dangerous Goods, the United States Regulations under the Dangerous Cargo Act, and the International Maritime Dangerous Goods Code may be made to the Saint Lawrence Seaway Development Corporation, P.O. Box 520, Massena, New York 13662 or to the St. Lawrence Seaway Authority, 202 Pitt Street, Cornwall, Ontario, K6J 3P7.

* * * * *

15. In § 401.73 is revised as follows:

**§ 401.73 Cleaning tanks—hazardous cargo vessels.**

Cleaning and gas freeing of tanks shall not take place

(a) in a canal or a lock;

(b) In an area that is not clear of other vessels or structures; and

(c) Before gas freeing and tank cleaning has been reported to the nearest Seaway station.

16. All those portions of items 19, 21, 29, and 30 of Schedule III, Calling-In-Table, under Message Content are revised as follows:

SCHEDULE III—CALLING-IN-TABLE

| C.I.P. and Check Point | Station to Call | Message Content |
|---|---|---|
| * * * | * * * | * * * |
| 19. * * * | * * * | 1. Name of Vessel<br>2. Location<br>3. Manifested dangerous cargo<br>—nature and quantity<br>—IMO classification<br>—location where dangerous cargo is stowed<br>and, if proceeding to Welland Canal,<br>4. Destination<br>5. Drafts, fore and aft<br>6. Cargo<br>7. Pilot requirement—Lake Erie |
| * * * | * * * | * * * |
| 21. * * * | * * * | 1. Name of Vessel |
| * * * | * * * | * * * |
| 29. * * * | * * * | 1. Name of Vessel<br>2. Location<br>3. ETA C.I.P. 16 or Port<br>4. Manifested dangerous cargo<br>—nature and quantity<br>—IMO classification<br>—location where dangerous cargo is stowed<br>and, if proceeding to Welland Canal,<br>5. Destination<br>6. Drafts, fore and aft<br>7. Cargo<br>8. Pilot requirement—Lake Ontario |
| * * * | * * * | * * * |
| 30. * * * | * * * | 1. Name of Vessel<br>.2. Location |

16. Schedule III, Calling-In-Table, is amended further by adding a new heading and the following new item 55:

* * * * *

SCHEDULE III—CALLING-IN-TABLE

| C.I.P. and Check Point | Station to Call | Message Content |
|---|---|---|
| * * * | * * * | * * * |
| Upbound and Downbound Vessels. | | |
| 55. Vessels departing from ports between mid-lake Ontario and Long Point. | Appropriate Seaway station for sector. | 1. Name of Vessel<br>2. Location<br>3. Destination<br>4. Manifested dangerous cargo<br>—nature and quantity<br>—IMO classification<br>—location where dangerous cargo is stowed,<br>and if proceeding to Welland Canal,<br>5. Drafts, fore and aft<br>6. Cargo<br>7. Pilot requirement—Lake Erie if upbound or Lake Ontario if downbound. |

Issued at Washington, DC on February 28, 1989.

Saint Lawrence Seaway Development Corporation

**James L. Emery,**

*Administrator.*

[FR Doc. 89-5080 Filed 3-6-89; 8:45 am]

BILLING CODE 4910-61-M

## DEPARTMENT OF COMMERCE

## Patent and Trademark Office

## 37 CFR Part 1

**[Docket No. 90114-9014]**

## Patent Term Extension for Animal Drug Products

**AGENCY:** Patent and Trademark Office, Commerce.

**ACTION:** Notice of Proposed Rulemaking.

**SUMMARY:** This notice of proposed rulemaking sets forth changes that the Patent and Trademark Office (PTO) is proposing to the rules directed to the extension of patent term. Pub. L. No. 100-670, signed November 16, 1988,

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permits owners of patents relating to new animal drugs or veterinary biological products that are not biotechnology-generated to apply for extension of the terms of such patents in the same manner as owners of patents related to human drugs, medical devices, food additives, or color additives are permitted to do under 35 U.S.C. 156.

**DATES:** Written comments must be submitted on or before May 1, 1989. There will be no oral hearing.

**ADDRESS:** Address written comments to Box 8, Commissioner of Patents and Trademarks, Washington, DC 20231 marked to the attention of Charles E. Van Horn.

**FOR FURTHER INFORMATION CONTACT:** Charles E. Van Horn by telephone at [703] 557-4035 or by mail marked to his attention and addressed to Box 8, Commissioner of Patents and Trademarks, Washington, DC 20231.

**SUPPLEMENTARY INFORMATION:** Pub. L. No. 100-670 has made it possible for owners of patents directed to new animal drugs and veterinary biological products that are not biotechnology-generated to apply for extension of the term of such patents in a manner similar to the owners of patents directed to human drugs, food additives, color additives, and medical devices. A new animal drug or veterinary biological product is biotechnology-generated if it is primarily manufactured using recombinant DNA, recombinant RNA, hybridoma technology, or other processes including site specific genetic manipulation techniques. The primary purpose of the proposed rule change is to revise the present regulations contained in 37 CFR Part 1, Subpart F, to include the two additional categories of subject matter that can now form the basis of patent term extension. These regulations set forth procedures that govern the content and submission of applications for the extension of a patent term to the PTO, and procedures governing the extension determination and issuance of patent term extension certifiates by the PTO.

The proposed changes also correct some minor errors in the regulations as they now exist. Section 1.740(a)(9) is proposed to be amended to strike the requirement that the information to be provided in accordance with that section must be on a new page of the application for extension of patent term. Section 1.741(a)(2) is proposed to be amended to acknowledge that regulatory review of a product may have occurred under more than one Federal statute. Section 1.785 is proposed to be amended to indicate that in cases where the terms of two or more patents are sought to be extended based upon the same regulatory review period, an applicant may elect which term to extend among eligible patents; in the absence of an election by the applicant, an appropriate extension of patent term will be given to the patent with the earliest date of issuance.

Initial guidelines directed to the preparation and filing of applications for patent term extension as authorized by Pub. L. No. 100-670 were published as "Guidelines For Extension of Patent Term For New Animal Drugs or Veterinary Biological Products Under 35 U.S.C. 156 as Amended" in the Official Gazette. 1087 *Official Gazette* 63 (December 27, 1988). It is intended that those guidelines will continue in effect until the promulgation of final rules based on the proposed rule making.

The Secretary of Health and Human Services will publish regulations to give guidance concerning the handling of applications for patent term extension for a new animal drug in the Department of Health and Human Services.

The Secretary of Agriculture will publish regulations to give guidance concerning the handling of applications for patent term extension for a veterinary biological product in the U.S. Department of Agriculture (USDA).

### Discussion of Specific Rules

Section 1.710(a), if amended as proposed, would specifically set forth the existing policy and practice relating to the eligibility of patents claiming a composition or formulation that includes the active ingredient. As noted in the final rule promulgation (53 FR 9386, March 24, 1987), a patent is considered to claim the product where it claims the active ingredient per se, or claims a composition or formulation which contains the active ingredient(s) and reads on the composition or formulation approved for commercial marketing or use.

Section 1.710(b), if amended as proposed, would revise the definition of human drug product in paragraph (b)(1) to make the definition conform to Pub. L. No. 100-670. A new paragraph (b)(2) would be added to expand the definition of "product" in § 1.710(a) to incldue a new animal drug and a veterinary biological product, but not ones that are primarily manufactured using recombinant DNA, recombinant RNA, hybridoma technology, or other processes including site specific genetic manipulation techniques. Present paragraph (b)(2) would be renumbered as paragraph (b)(3). It should be understood that the discussion here of new animal drugs and veterinary biological products is limited to the animal drugs and products defined in Pub. L. No. 100-670.

Section 1.720, if amended as proposed, would indicate in paragraph (e)(ii) that the conditions given therein concern a patent for a product other than one recited in § 1.710(b)(2) due to the exclusion of biotechnology-generated new animal drugs and veterinary biological products in Pub. L. No. 100-670. A new paragraph (e)(iii) would be added directed to the provision in 35 U.S.C. 156(a)(5)(c), which permits a patent directed to a new animal drug or veterinary biological product to be extended based on a second or subsequent approval of the active ingredient if the patent claims the drug or product, provided the drug or product is not covered by the claims in any other patent that has been extended ("covered by the claims" means that the drug or product would infringe a claim in the other patent), if the patent term was not extended on the basis of the regulatory review period for use in non-food-producing animals, and if the second or subsequent approval was the first permitted commercial marketing or use of the drug or product for administration to a food-producing animal. All conditions must exist before eligibility could be based on this provision of the statute, which is reflected in proposed new § 1.720(e)(iii). Paragraph (f), if amended as proposed, would add a new portion of the paragraph directed to the case where eligibility is to be based on 35 U.S.C. 156(a)(5)(C). In this latter case, the application must be field within 60 days of approval for administration to a food-producing animal.

Section 1.740(a), if amended as proposed, would have paragraph (a)(4) revised by (1) eliminating "human" as a modifier for "product," (2) adding the Public Health Service Act and the Virus-Serum-Toxin Act to the list of appropriate statutes, and (3) adding a requirement to indicate the use for which the product was approved. The first two proposed amendments are necessary to comply with terms of 35 U.S.C. 156 as amended, and the third proposed amendment is necessary to a determination of eligibility where the application is based on a second or subsequent approval of an active ingredient, but the first approval for administration to a food-producing animal. Paragraph (a)(9), if amended as proposed, would eliminate the requirement to set forth beginning on a new page the statement that the patent for which patent term extension is sought claims the approved product or a method of using or making same, and the required showing listing each applicable claim of the patent and demonstrating the manner in which each applicable claim reads on the approved product or a method of using or making same; this change is proposed because the information required by this paragraph is within the province of PTO review and there is no need to have such information recited in a readily segregable section of the application. Paragraph (a)(10), if amended as proposed, will indicate that, as appropriate, the Secretary of Health and Human Services or the Secretary of Agriculture will determine the applicable regulatory review period. Paragraph (a)(10)(i), if amended as proposed, will recite also a Product License Application as a type of application that may be recited in an application for term extension of a patent claiming a human biological product. New paragraphs (a)(10)(ii) and (a)(10)(iii) are proposed to be added to set forth the type of tests or applications that are to be considered for determination of the applicable regulatory review period for patents claiming a new animal drug or a veterinary biological product. Present paragraphs (a)(10)(ii) and (a)(10)(iii) are proposed to be renumbered as paragraphs (a)(10)(iv) and (a)(10)(v), respectively. Paragraph (a)(10)(v) is also proposed to be amended to reflect that approval of a medical device could be made through the use of a product development protocol. Paragraph (a)(13), if amended as proposed, will indicate that the duty to disclose any information material to the determination of entitlement to the extension sought applies also to the Secretary of Agriculture where the regulatory review was conducted by the USDA.

Section 1.741(a)(2), if amended as proposed, will represent an acknowledgement that regulatory review may take place under more than one Federal statute and that each appropriate statute should be listed. This proposed amendment is intended to apply to a situation where a human biological product is tested under an investigational new drug application (IND) pursuant to the Federal Food, Drug, and Cosmetic Act, but is approved under the Public Health Service Act. The amendment is not intended to encompass a situation where approval is sought for use of a particular medical device with a specific drug product. The product that forms the basis of an application for patent term extension must be either a medical device or a drug product; it cannot be a combination of those separate products. See the file history of U.S. Patent No. 4,428,744 for an example of the application of this principle.



Section 1.741(a)(5), if amended as proposed, will recognize that the Secretary of Agriculture may determine the length of the regulatory review period where the regulatory review of the product takes place at the USDA. The section is further modified to point out that a determination of the length of the regulatory review period is made under 35 U.S.C. 156(g), and not the length of the patent term extension that is made by the PTO under 35 U.S.C. 156(c).

Section 1.765(a), if amended as proposed, will recite that a duty of candor and good faith is owed to the Secretary of Agriculture in patent term extension proceedings wherein the USDA is involved.

Section 1.775, if amended as proposed, will have its title recite that the section is directed to calculating patent term extension for human drug, antibiotic drug, and human biological products. Paragraphs (a), (b), (c), and (d), if amended as proposed, will indicate that the determinations are being made for any of a human drug, an antibiotic drug, or a hmuan biological product. Sections (c)(1) and (c)(2), if amended as proposed, will refer merely to a "product" rather than to a "human drug product" or a "drug product" in order to make the sections more clear.

Section 1.778, if added as proposed, would set forth the manner of calculation of the patent term extension for an animal drug product.

Proposed paragraph (a) would specify that the extension will run from the original expiration date of the patent as shortened by any terminal disclaimer.

Proposed paragraph (b) of § 1.778 would provide that the patent term would be extended by the regulatory review period for the product but reduced, where appropriate, by the time periods provided in proposed paragraph (d).

Proposed paragraph (c) defines how the regulatory review period is to be calculated. The period is determined by counting

(1) The number of days in the period beginning on the earlier of the dates a major health or environmental effects test was initiated on the drug or an exemption under subsection (j) of section 512 of the Federal Food, Drug, and Cosmetic Act became effective for the drug and ending on the date an application was initially submitted for the drug under section 512 of the Federal Food, Drug, and Cosmetic Act; and

(2) The number of days in the period beginning on the date the application was initially submitted for the approved drug under subsection (b) of section 512 of the Federal Food, Drug, and Cosmetic Act and ending on the date the application was approved under the section.

The added total of the days determined in subparagraphs (c)(1) and (c)(2) constitutes the regulatory review period, which is then reduced, where appropriate, by the time periods described in proposed paragraph (d).

Proposed paragraph (d) of § 1.778 would revise the term of the patent extension by indicating that

(1) The time period determined from proposed paragraph (c) would be reduced, where appropriate, by

(i) The number of days in the period of proposed paragraphs (c)(1) and (c)(2) of § 1.778 that were before the date on which the patent issued;

(ii) The number of days in proposed paragraphs (c)(1) and (c)(2) of § 1.778 during which it is determined under 35 U.S.C. 156(d)(2)(B) that applicant did not act with due diligence; and

(iii) The number of days equal to one-half the number of days remaining in proposed paragraph (c)(1) after the paragraph (c)(1) determination has been reduced in accordance with proposed paragraphs (d)(1)(i) and (d)(1)(ii) of § 1.778 (half days to be ignored for subtraction purposes);

(2) Adding the number of days determined in proposed paragraph (d)(1) to the original expiration date of the patent as shortened by any terminal disclaimer;

(3) Adding 14 years to the date of approval of the application under section 512 of the Federal Food, Drug, and Cosmetic Act;

(4) Comparing the dates obtained from paragraphs (d)(2) and (d)(3) with each other and selecting the earlier date;

(5) If the original patent issued after November 16, 1988, by—

(i) Adding 5 years to the original expiration date of the patent as shortened by any terminal disclaimer; and

(ii) Comparing the dates obtained from paragraphs (d)(4) and (d)(5)(i) with each other and selecting the earlier date;

(6) If the original patent issued before November 16, 1988, and

(i) If no major health or environmental effects test on the drug was initiated and no request was submitted for an exemption under subsection (j) of section 512 of the Federal Food, Drug, and Cosmetic Act before November 16, 1988, by—

(A) Adding 5 years to the original expiration date of the patent as shortened by any terminal disclaimer; and

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(B) Comparing the dates obtained pursuant to paragraphs (d)(4) and (d)(6)(i)(A) with each other and selecting the earlier date; or

(ii) If a major health or environmental effects test was initiated or a request for an exemption under subsection (j) of section 512 of the Federal Food, Drug, and Cosmetic Act was submitted before November 16, 1988, and the application for commercial marketing or use of the drug was not approved before November 16, 1988, by—

(A) Adding 3 years to the original expiration date of the patent as shortened by any terminal disclaimer; and

(B) Comparing the dates obtained from paragraphs (d)(4) and (d)(6)(ii)(A) with each other and selecting the earlier date.

Section 1.779, if added as proposed, would set forth the manner of calculation of the patent term extension for a veterinary biological product.

Proposed paragraph (a) would specify that the extension will run from the origanal expiration date of the patent as shortened by any terminal disclaimer.

Proposed paragraph (b) of § 1.779 would provide that the patent term would be extended by the regulatory review period for the product but reduced, where appropriate, by the time periods provided in proposed paragraph (d).

Proposed paragraph (c) defines how the regulatory review period is to be calculated. The period is determined by counting

(1) The number of days in the period beginning on the date the authority to prepare an experimental biological product under the Virus-Serum-Toxin Act became effective and ending on the date an application for a license was submitted under the Virus-Serum-Toxin Act; and

(2) The number of days in the period beginning on the date an application for a license was initially submitted under the Virus-Serum-Toxin Act and ending on the date a license was issued.

The added total of the days determined in paragraphs (c)(1) and (c)(2) constitutes the regulatory review period, which is then reduced, were appropriate, by the time periods described in proposed paragraph (d).

Paragraph (d) of proposed § 1.779 would define the term of the patent extension by indicating that

(1) The time period determined from proposed paragraph (c) would be reduced, where appropriate, by

(i) The number of days in the periods of proposed paragraphs (c)(1) and (c)(2) that were on and before the date on which the patent issued;

(ii) The number of days in the periods of proposed paragraphs (c)(1) and (c)(2) during which it is determined under 35 U.S.C. 156(d)(2)(B) that the applicant did not act with due diligence; and

(iii) One-half the number of days remaining in the period defined by proposed paragraph (c)(1) after that period is reduced in accordance with paragraphs (d)(1)(i) and (d)(ii) (half days being ignored for purposes of subtraction);

(2) Adding the number of days determined in paragraph (d)(1) to the original terms of the patent as shortened by any terminal disclaimer;

(3) Adding 14 years to the date of the issuance of a license under the Virus-Serum-Toxin Act;

(4) Comparing the dates for the ends of the periods obtained pursuant to paragraphs (d)(2) and (d)(3) and selecting the earlier date;

(5) If the patent was issued after November 16, 1988, by—

(i) Adding 5 years to the original expiration date of the patent as shortened by any terminal disclaimer; and

(ii) Comparing the dates obtained pursuant to paragraphs (d)(4) and (d)(5)(i) with each other and selecting the earlier date;

(6) If the original patent issued before November 16, 1988 and

(i) If no request for the authority to prepare an experimental biological product under the Virus-Serum-Toxin Act was submitted before November 16, 1988, by—

(A) Adding 5 years to the original expiration date of the patent as shortened by any terminal disclaimer; and

(B) Comparing the dates obtained pursuant to paragraphs (d)(4) and (d)(6)(i)(A) with each other and selecting the earlier date; or

(ii) If a request for the authority to prepare an experimental biological product under the Virus-Serum-Toxin Act was submitted before November 16, 1988 and the commercial marketing or use of the Product was not approved before November 16, 1988, by—

(A) Adding 3 years to the original expiration date of the patent as shortened by any terminal disclaimer; and

(B) Comparing the dates obtained pursuant to paragraphs (d)(4) and (d)(6)(ii)(A) and selecting the earlier date.

Section 1.785(b), if amended as proposed, will indicate that, in those instances where an applicant is seeking patent term extension for two or more patents based upon the same regulatory review period, the applicant will have the right to elect which patent is to have its term extended. In the absence of an election by applicant, the Commissioner will extend that patent having the earliest date of issuance.

**Other Considerations**

The proposed rule change is in conformity with the requirements of the Regulatory Flexibility Act (Pub. L. No. 96–354), Executive Orders 12291 and 12612, and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

The General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration that the proposed rule change will not have a significant adverse economic impact on a substantial number of small entities [Regulatory Flexibility Act, Pub. L. 96–354]. The proposed rule change setting forth procedures allowing owners of patents directed to new animal drugs and veterinary biological products to apply for extension of patent term would not be expected to result in any adverse economic impact on small entities because patented drugs are generally not commercialized by small entities.

The PTO has determined that this rule change is not a major rule under Executive Order 12291. The annual effect to the economy will be less than $100 million. There will be no major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The PTO has also determined that this notice has no Federalism implications affecting the relationship between the National Government and the States as outlined in Executive Order 12612.

The proposed rule contains a collection of information subject to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* which has been submitted to the Office of Management and Budget for approval. Preparation of an application for patent term extension is estimated to take approximately 60 hours, including time for reviewing instructions, gathering and maintaining data needed and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Office of Management and Organization, Patent and Trademark Office, Washington, DC 20231; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. (Paperwork Reduction Project 0651–0020)



**List of Subjects in 37 CFR Part 1,**

Administrative practice and procedure, Authority delegations (government agencies), Conflict of interest, Courts, Inventions and patents, Lawyers.

For the reasons given in the preamble and pursuant to the authority granted to the Commissioner of Patents and Trademarks by 35 U.S.C. 6 and 156, the PTO proposes to amend Title 37 of the Code of Federal Regulations as set forth below:

It is proposed to amend 37 CFR Part 1, Subpart F, as follows wherein removals are indicated by brackets and additions by arrows:

**PART 1—[AMENDED]**

**Subpart F—Extension of Patent Term**

1. The authority citation for 37 CFR Part 1, Subpart F, would continue to read as follows:

**Authority: 35 U.S.C. 6 and 156.**

2. Section 1.710 is proposed to be amended by revising paragraphs (a) and (b) to read as follows:

**§ 1.710 Patents subject to extension of the patent term.**

(a) A patent is eligible for extension of the patent term if the patent claims a product as defined in paragraph (b) of this section, ►either alone or in combination with other ingredients that read on a composition that received permission for commercial marketing or use,◄ or a method of using such a product, or a method of manufacturing such a product, and meets all other conditions and requirements of this subpart.

(b) The term "product" referred to in paragraph (a) of this section means—

(1) [A human drug product which means] the active ingredient of a new ►human◄ drug, antibiotic drug, or human biological product (as those terms are used in the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act) including any salt or ester of the active ingredient, as a single entity or in combination with another active ingredient; or

►(2) The active ingredient of a new animal drug or veterinary biological product (as those terms are used in the Federal Food, Drug, and Cosmetic Act and the Virus-Serum-Toxin Act) that is not primarily manufactured using recombinant DNA, recombinant RNA, hybridoma technology, or other processes including site specific genetic manipulation techniques, including any salt or ester of the active ingredient, as a single entity or in combination with another active ingredient; or◄

[(2)] ►(3)◄ Any medical device, food additive, or color additive subject to regulation under the Federal Food, Drug, and Cosmetic Act.

3. Section 1.720 is proposed to be amended by revising paragraphs (e)(2) and (f) and adding paragraph (e)(3) to read as follows. The introductory text of (e) is republished for the convenience of the reader.

**§ 1.720 Conditions for extension of patent term.**

* * * * *

(e) The product has received permission for commercial marketing or use and—

* * * * *

(2) In the case of a patent ►other than one directed to subject matter within 37 CFR § 1.710(b)(2)◄ claiming a method of manufacturing the product [which] ►that◄ primarily uses recombinant DNA technology in the manufacture of the product, the permission for the commercial marketing or use is the first received permission for the commercial marketing or use of a product manufactured under the process claimed in the patent, ►or◄

►(3) In the case of a patent claiming a new animal drug or a veterinary biological product that is not covered by the claims in any other patent that has been extended, and has received permission for the commercial marketing or use in non-food-producing animals and in food-producing animals, and was not extended on the basis of the regulatory review period for use in non-food-producing animals, the permission for the commercial marketing or use of the drug or product after the regulatory review period for use in food-producing animals is the first permitted commercial marketing or use of the drug or product for administration to a food-producing animal.◄

(f) The application is submitted within the sixty day period beginning on the date the product first received permission for commercial marketing or use under the provisions of law under which the applicable regulatory review period occurred; or in the case of a patent claiming a method of manufacturing the product which primarily uses recombinant DNA technology in the manufacture of the product, the application for extension is submitted within the sixty day period beginning on the date of the first permitted commercial marketing or use of a product manufactured under the process claimed in the patent; ►or in the case of a patent that claims a new animal drug or a veterinary biological product that is not covered by the claims in any other patent that has been extended, and has received permission for the commercial marketing or use in non-food-producing animals, the application for extension is submitted within the sixty day period beginning on the date of the first permitted commercial marketing or use of the drug or product for administration to a food-producing animal;◄

* * * * *

4. Section 1.740 is proposed to be amended by revising paragraphs (a)(4), (a)(9), (a)(10), and (a)(13) to read as follows:

**§ 1.740 Application for extension of patent term.**

(a) An application for extension of patent term must be made in writing to the Commissioner of Patents and Trademarks. A formal application for the extension of patent term shall include:

* * * * *

(4) In the case of a [human] drug product, an identification of each active ingredient in the product and as to each active ingredient, a statement that it has not been previously approved for commercial marketing or use under the Federal Food, Drug, and Cosmetic Act, ►the Public Health Service Act, or the Virus-Serum-Toxin Act,◄ or a statement of when the active ingredient was approved for commercial marketing or use (either alone or in combination with other active ingredients), ►the use for which it was approved,◄ and the provision of law under which it was approved.

* * * * *

(9) A statement [beginning on a new page] that the patent claims the approved product or a method of using or manufacturing the approved product, and a showing which lists each applicable patent claim and demonstrates the manner in which each applicable patent claim reads on the approved product or method of using or manufacturing the approved product;

(10) A statement beginning on a new page of the relevant dates and information pursuant to 35 USC 156(g) in order to enable the Secretary of Health and Human Services ►or the Secretary of Agriculture, as appropriate,◄ to

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determine the applicable regulatory review period as follows:

(i) For a patent claiming a human drug ►, antibiotic, or human biological◄ product, the effective date of the investigational new drug (IND) application and the IND number; the date on which a new drug application (NDA) ►or a Product License Application (PLA)◄ was initially submitted and the NDA ►or PLA number◄ and the date on which the NDA was approved ►or the Product License issued◄;

(ii) For a patent claiming a new animal drug, the date a major health or environmental effects test on the drug was initiated and any available substantiation of the date or the date of an exemption under subsection (j) of section 512 of the Federal Food, Drug, and Cosmetic Act became effective for such animal drug; the date on which a new animal drug application (NADA) was initially submitted and the NADA number; and the date on which the NADA was approved;

(iii) For a patent claiming a veterinary biological product, the date the authority to prepare an experimental biological product under the Virus-Serum-Toxin Act became effective; the date an application for a license was submitted under the Virus-Serum-Toxin Act; and the date the license issued;◄

[(ii)] ►(iv)◄ For a patent that claims a food or color additive, the date a major health or environmental effects test on the additive was initiated and any available substantiation of that date; the date on which a petition for product approval under the Federal Food, Drug, and Cosmetic Act was initially submitted and the petition number; and the date on which the FDA published the Federal Register notice listing the additive for use;

[(iii)] ►(v)◄ For a patent that claims a medical device, the effective date of the investigational device exemption (IDE) and the IDE number, if applicable, or the date on which the applicant began the first clinical investigation involving the device if no IDE was submitted and any available substantiation of that date; the date on which the application for product approval ►or notice of completion of a product development protocol◄ under section 515 of the Federal Food, Drug, and Cosmetic Act was initially submitted and the number of the application ►or protocol◄; and the date on which the application was approved ►or the protocol declared to be completed◄.

• • • • •

(13) A statement that applicant acknowledges a duty to disclose to the Commissioner of Patents and Trademarks and the Secretary of Health and Human Services ►or the Secretary of Agriculture◄ any information which is material to the determination of entitlement to the extension sought (see § 1.765);

• • • • •

5. Section 1.741 is proposed to be amended by revising paragraphs (a)(2) and (a)(5) to read as follows. The introductory text of (a) is republished for the convenience of the reader.

**§ 1.741 Filing date of the application.**

(a) The filing date of the application for extension of patent term is the date on which a complete application is received in the Patent and Trademark Office or filed pursuant to the "Certificate of Mailing" provisions of 37 CFR 1.8 or "Express Mail" provisions of 37 CFR 1.10.

• • • • •

(2) An identification of [the] ►each◄ Federal statute under which regulatory review occurred.

• • • • •

(5) Sufficient information to enable the Commissioner to determine under 35 U.S.C. 156 subsections (a) and (b) the eligibility of a patent for extension and the rights that will be derived from the extension and information to enable the Commissioner and the Secretary of Health and Human Services ►or the Secretary of Agriculture◄ to determine the ►length of the regulatory review◄ period [of the extension]; and

• • • • •

6. Section 1.765 is proposed to be amended by revising paragraph (a) to read as follows:

**§ 1.765 Duty of disclosure in patent term extension proceedings.**

(a) A duty of candor and good faith toward the Patent and Trademark Office and the Secretary of Health and Human Services ►or the Secretary of Agriculture◄ rests on the patent owner or its agent, or each attorney or agent who represents the patent owner and on every other individual who is substantively involved on behalf of the patent owner in a patent term extension proceeding. All such individuals who are aware, or become aware, of material information adverse to a determination of entitlement to the extension sought, which has not been previously made of record in the patent term extension proceeding must bring such information to the attention of the Office of the Secretary, as appropriate, in accordance with paragraph (b) of this section, as soon as it is practical to do so after the individual becomes aware of the information. Information is material where there is a substantial likelihood that the Office or the Secretary would consider it important in determinations to be made in the patent term extension proceeding.

• • • • •

7. Section 1.775 is proposed to be amended by revising the title and paragraphs (a), (b), (c), and (d) introductory text to read as follows:

**§ 1.775 Calculation of patent term extension for a human drug ►, antibiotic drug or human biological ◄ product.**

(a) If a determination is made pursuant to § 1.750 that a patent for a human drug►, antibiotic drug or human biological◄ product is eligible for extension, the term shall be extended by the time as calculated in days in the manner indicated by this section. The patent term extension will run from the original expiration date of the patent or any earlier date set by terminal disclaimer (§ 1.321).

(b) The term of the patent for human drug►, antibiotic drug or human biological◄ product will be extended by the length of the regulatory review period for the product as determined by the Secretary of Health and Human Services, reduced as appropriate pursuant to paragraphs (d)(1) through (d)(6) of this section.

(c) The length of the regulatory review period for a human drug►, antibiotic drug or human biological◄ product will be determined by the Secretary of Health and Human Services. Under 35 U.S.C. 156(g)(1)(B), it is the sum of—

(1) The number of days in the period beginning on the date an exemption under subsection (i) of section 505 or subsection (d) of section 507 of the Federal Food, Drug, and Cosmetic Act became effective for the approval [human drug] product and ending on the date application was initially submitted for such [drug] product under those sections or under section 351 of the Public Health Service Act; and

(2) The number of days in the period beginning on the date the application was initially submitted for the appoved [human drug] product under section 351 of the Public Health Service Act, subsection (b) of section 505 or section 507 of the Federal Food, Drug, and Cosmetic Act and ending on the date such application was approved under such section.

(d) The term of the patent as extended for a human drug►, antibiotic drug or human biological◄ product will be determined by—

• • • • •

8. Section 1.778 is proposed to be added as follows:



**►§ 1.778 Calculation of patent term extension for an animal drug product.**

(a) If a determination is made pursuant to § 1.750 that a patent for an animal drug is eligible for extension, the term shall be extended by the time as calculated in days in the manner indicated by this section. The patent term extension will run from the original expiration date of the patent or any earlier date set by terminal disclaimer (§1.321).

(b) The term of the patent for an animal drug will be extended by the length of the regulatory review period for the drug as determined by the Secretary of Health and Human Services, reduced as appropriate pursuant to paragraphs (d)(1) through (d)(6) of this section.

(c) The length of the regulatory review period for an animal drug will be determined by the Secretary of Health and Human Services. Under 35 U.S.C. 156(g)(4)(B), it is the sum of—

(1) The number of days in the period beginning on the earlier of the date a major health or environmental effects test on the drug was initiated or the date an exemption under subsection (j) of section 512 of the Federal Food, Drug, and Cosmetic Act became effective for the approved animal drug and ending on the date an application was initially submitted for such animal drug under section 512 of the Federal Food, Drug, and Cosmetic Act; and

(2) The number of days in the period beginning on the date the application was initially submitted for the approved animal drug under subsection (b) of section 512 of the Federal Food, Drug, and Cosmetic Act and ending on the date such application was approved under such section.

(d) The term of the patent as extended for an animal drug will be determined by—

(1) Subtracting from the number of days determined by the Secretary of Health and Human Services to be in the regulatory review period:

(i) The number of days in the periods of paragraphs (c)(1) and (c)(2)) of this section that were on and before the date on which the patent issued;

(ii) The number of days in the periods of paragraphs (c)(1) and (c)(2) of this section during which it is determined under 35 U.S.C. 156(d)(2)(B) by the Secretary of Health and Human Services that applicant did not act with due diligence;

(iii) One-half the number of days remaining in the period defined by paragraph (c)(1) of this section after that period is reduced in accordance with paragraphs (d)(1)(i) and (ii) of this section; half days will be ignored for purposes of subtraction;

(2) By adding the number of days determined in paragraph (d)(1) of this section to the original term of the patent as shortened by any terminal disclaimer;

(3) By adding 14 years to the date of approval of the application under section 512 of the Federal Food, Drug, and Cosmetic Act;

(4) By comparing the dates for the ends of the periods obtained pursuant to paragraphs (d)(2) and (d)(3) of this section with each other and selecting the earlier date;

(5) If the original patent was issued after November 16, 1988, by—

(i) Adding 5 years to the original expiration date of the patent or any earlier date set by terminal disclaimer; and

(ii) Comparing the dates obtained pursuant to paragraphs (d)(4) and (d)(5)(i) of this section with each other and selecting the earlier date;

(6) If the original patent was issued before November 16, 1988 and

(i) If no major health or environmental effects test on the drug was initiated and no request was submitted for an exemption under subsection (j) of section 512 of the Federal Food, Drug, and Cosmetic Act before November 16, 1988, by—

(A) Adding 5 years to the original expiration date of the patent or earlier date set by terminal disclaimer; and

(B) Comparing the dates obtained pursuant to paragraphs (d)(4) and (d)(6)(i)(A) of this section with each other and selecting the earlier date; or

(ii) If a major health or environmental effects test was initiated or a request for an exemption under subsection (j) of section 512 of the Federal Food, Drug, and Cosmetic Act was submitted before November 16, 1988, and the application for commercial marking or use of the animal drug was not approved before November 16, 1988, by—

(A) Adding 3 years to the original expiration date of the patent or earlier date set by terminal disclaimer, and

(B) Comparing the dates obtained pursuant to paragraphs (d)(4) and (d)(6)(ii)(A) of this section with each other and selecting the earlier date.

9. Section 1.779 is proposed to be added to read as follows:

**►§ 1.779 Calculation of patent term extension for a veterinary biological product.**

(a) If a determination is made pursuant to § 1.750 that a patent for a veterinary biological product is eligible for extension, the term shall be extended by the time as calculated in days in the manner indicated by this section. The patent term extension will run from the original expiration date of the patent or any earlier date set by terminal disclaimer (§ 1.321).

(b) The term of the patent for a veterinary biological product will be extended by the length of the regulatory review period for the product as determined by the Secretary of Agriculture, reduced as appropriate pursuant to paragraphs (d)(1) through (d)(6) of this section.

(c) The length of the regulatory review period for a veterinary biological product will be determined by the Secretary of Agriculture. Under 35 U.S.C. 156(g)(5)(B), it is the sum of—

(1) The number of days in the period beginning on the date the authority to prepare an experimental biological product under the Virus-Serum-Toxin Act became effective and ending on the date an application for a license was submitted under the Virus-Serum-Toxin Act; and

(2) The number of days in the period beginning on the date an application for a license was initially submitted for approval under the Virus-Serum-Toxin Act and ending on the date such license was issued.

(d) The term of the patent as extended for a veterinary biological product will be determined by—

(1) Subtracting from the number of days determined by the Secretary of Agriculture to be in the regulatory review period:

(i) The number of days in the periods of paragraphs (c)(1) and (c)(2) of this section that were on and before the date on which the patent issued;

(ii) The number of days in the periods of paragraphs (c)(1) and (c)(2) of this section during which it is determined under 35 U.S.C. 156(d)(2)(B) by the Secretary of Agriculture that applicant did not act with due diligence;

(iii) One-half the number of days remaining in the period defined by paragraph (c)(1) of this section after that period is reduced in accordance with paragraphs (d)(1)(i) and (ii) of this section; half days will be ignored for purposes of subtraction;

(2) By adding the number of days determined in paragraph (d)(1) of this section to the original term of the patent as shortened by any terminal disclaimer;

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(3) By adding 14 years to the date of the issuance of a license under the Virus-Serum-Toxin Act;

(4) By comparing the dates for the ends of the periods obtained pursuant to paragraphs (d)(2) and (d)(3) of this section with each other and selecting the earlier date;

(5) If the original patent was issued after November 16, 1988, by—

(i) Adding 5 years to the original expiration date of the patent or any earlier date set by terminal disclaimer; and

(ii) Comparing the dates obtained pursuant to paragraphs (d)(4) and (d)(5)(i) of this section with each other and selecting the earlier date;

(i) Adding 5 years to the original expiration date of the patent or any earlier date set by terminal disclaimer; and

(ii) Comparing the dates obtained pursuant to paragraphs (d)(4) and (d)(5)(i) of this section with each other and selecting the earlier date;

(6) If the original patent was issued before November 16, 1988 and—

(i) If no request for the authority to prepare an experimental biological product under the Virus-Serum-Toxin Act was submitted before November 16, 1988, by—

(A) Adding 5 years to the original expiration date of the patent or earlier date set by terminal disclaimer; and

(B) Comparing the dates obtained pursuant to paragraphs (d)(4) and (d)(6)(i)(A) of this section with each other and selecting the earlier date; or

(ii) If a request for the authority to prepare an experimental biological product under the Virus-Serum-Toxin Act was submitted before November 16, 1988, and the commercial marketing or use of the product was not approved before November 16, 1988, by—

(A) Adding 3 years to the original expiration date of the patent or earlier date set by terminal disclaimer; and

(B) comparing the dates obtained pursuant to paragraphs (d)(4) and (d)(6)(ii)(A) of this section with each other and selecting the earlier date.◄

10. Section 1.785 is proposed to be amended to revise paragraph (b) to read as follows:

**§ 1.785 Multiple applications for extension of terms of the same patent or of different patents for the same regulatory review period for a product.**

* * * * *

(b) If more than one application for extension is filed by a single applicant which seeks the extension of the term of two or more patents based upon the same regulatory review peirod, and the applications are otherwise eligible for extension pursuant to the requirements of this subpart, ►in the absence of an election by applicant,◄ the certificate of extension of patent term, if appropriate, will be issued upon the application for extension of the patent term having the earliest date of issuance of those patents for which extension is sought.

Dated: January 13, 1989.

**Donald J. Quigg,**

*Assistant Secretary and Commissioner of Patent and Trademarks.*

[FR Doc. 89-5152 Filed 3-6-89; 8:45 am]

BILLING CODE 3510-16-M

**37 CFR Part 2**

**[Docket No. 81268-8268]**

## Amendments of Trademark Rules Governing Inter Partes Proceedings; Miscellaneous Amendments of Other Trademark Rules

**AGENCY:** Patent and Trademark Office, Commerce.

**ACTION:** Proposed rulemaking.

**SUMMARY:** The Patent and Trademark Office proposes amendments to the rules of practice in trademark cases to revise and/or codify procedures for the examination of applications; appeals from final refusals of registration; and the institution and conduct of trademark interference, concurrent use, opposition, and cancellation proceedings. The proposed amendments will assist the orderly and prompt resolution of issues in proceedings before the Trademark Trial and Appeal Board.

**DATE:** Written comments must be submitted on or before May 1, 1989.

**ADDRESS:** Address written comments to Box 5, Trademark Trial and Appeal Board, Commissioner of Patents and Trademarks, Washington, DC 20231, marked to the attention of Janet E. Rice.

Written comments will be available for public inspection in Room 108, Crystal Square 5, 1755 Jefferson Davis Highway, Arlington, Virginia 22202.

**FOR FURTHER INFORMATION CONTACT:** Janet E. Rice by telephone at (703) 557-3551 or by mail marked to her attention and addressed to Box 5, Trademark Trial and Appeal Board, Commissioner of Patents and Trademarks, Washington, DC 20231.

**SUPPLEMENTARY INFORMATION:** The Patent and Trademark Office (PTO) is proposing amendments to the rules of practice in trademark cases to revise, simplify, remove, or clarify existing rules or to codify in rules certain practices which are currently in effect. The rules involved include those relating to the requirements for concurrent use applications; the abandonment of trademark applications; appeals to the Trademark Trial and Appeal Board (Board) from the final refusal of registration in ex parte applications; the institution and conduct of interference, concurrent use, opposition, and cancellation proceedings before the Board; review by civil action of a decision of the Board; and allowing an assignee to take action with respect to the assigned application or registration.

### Discussion of Specific Sections Proposed to be Changed

In this discussion, "Patent and Trademark Office" is abbreviated as "PTO" and "Trademark Trial and Appeal Board" is abbreviated as "Board."

Section 2.42(a) is proposed to be amended by removing the designation "(a)" [because § 2.42(b) is proposed to be removed] and by deleting the qualifying phrase "to the extent of his knowledge" from the requirement that an applicant for registration as a lawful concurrent user state in the application the area, the goods, and the mode of use for which registration is sought. This information obviously is within the knowledge of the applicant and is essential for purposes of examination and publication.

Section 2.42(b), which requires that the verification or declaration in an application for registration as a lawful concurrent user "be made with the stated exception," is proposed to be removed to simplify practice. The paragraph has been construed, in the form for an application for registration based on concurrent use, as requiring that that portion of the verification or declaration which normally reads, "to the best of his/her knowledge and belief no other person, firm, corporation or association has the right to use said mark in commerce," also include, after the word "association," the additional phrase "other than specified in the application." Because most applicants and/or their attorneys do not realize that this is the import of the paragraph, the examination process is often prolonged. Moreover, an applicant for registration based on concurrent use is required to list, in the statement portion of the application, the exceptions to applicant's right to exclusive use, so that it is clear that the verification or declaration is being made, in effect, with the stated exceptions. Therefore, the requirement for a verification or declaration which differs in form from that of an application for a geographically unrestricted registration is unnecessary.



Section 2.66 is proposed to be amended to indicate that the section applies only to the abandonment of an application during the ex parte prosecution thereof, i.e., an application not involved in an inter partes proceeding before the Board. [The abandonment of an application which is involved in an inter partes proceeding before the Board is governed by § 2.135.]

Section 2.91 is proposed to be amended by changing the title of the section from "Interferences." to "Declaration of interference." The proposed amendment is one of a series of amendments, involving §§ 2.91–2.93, intended to distinguish between the "declaration" of an interference by the Commissioner upon petition and the subsequent "institution" of the interference by the Board. *See* Sections 1208.04 and 1208.05 of the *Trademark Manual of Examining Procedure*.

Section 2.92 is proposed to be revised to specifically indicate what must happen before an interference which has been "declared" by the Commissioner upon petition can be "instituted" by the Board.

Section 2.93 is proposed to be amended by, inter alia, changing the title of the section from "Declaration of interference." to "Institution of interference.", and by revising the text of the paragraph to harmonize with §§ 2.91 and 2.92, as proposed to be amended.

Section 2.102(c) is proposed to be amended to change the specified time period from "120 days" to "four months". The proposed "four months" time period would be easier to calculate than "120 days."

Section 2.104 is proposed to be amended to redesignate the present paragraph as "(a)" and to add a new paragraph, designated "(b)," codifying the practice that oppositions to different applications owned by the same party may be joined in a consolidated oppostion, when appropriate, provided that the required fees are paid. The proposed new paragraph parallels present § 2.112(b).

Section 2.106(b)(1) is proposed to be amended to include a short description of the content requirements for an answer to an opposition, just as present § 2.104 describes the content requirements for an opposition. The proposed amendment parallels a proposed amendment to § 2.114(b)(1) concerning answers to petitions for cancellation. The proposed description of the content requirements for an answer is modeled after portions of Rule 8 of the Federal Rules of Civil Procedure.

Section 2.106(c) is proposed to be amended to codify the practice that an applicant's written consent to the withdrawal of an opposition after answer may be signed by the applicant or by the applicant's attorney or other authorized representative. The proposed amendment parallels proposed amendments to §§ 2.114(c), 2.134(a), and 2.135.

Section 2.112(a) is proposed to be revised to delete the requirement that a petitioner indicate in the petition "the respondent party to whom notification shall be sent," and to substitute a requirement that the petitioner indicate, to the best of the petitioner's knowledge, "the name and address of the current owner of the registration." The purposes of the proposed revision are to provide the Board with information relating to the identity of the current owner of the registration sought to be cancelled, so that the Board can serve a copy of the petition on that party, and to remove any implication that the petitioner is permitted to designate who shall be the respondent. See also, in this regard, the proposed amendment to § 2.113.

Section 2.113 is proposed to be revised to codify the practices that the respondent shall be the party shown by the records of the PTO to be the current owner of the registration sought to be cancelled, except that the Board, in its discretion, may join or substitute as respondent a party who makes a showing of a current ownership interest in the registration. *See generally Gold Eagle Products Co. v. National Dynamics Corp.*, 193 USPQ 109 (TTAB 1976).

Section 2.114(b)(1) is proposed to be amended to include a short description of the content requirements for an answer to a petition for cancellation, just as present § 2.112(a) describes the content requirements for a petition for cancellation. The proposed amendment parallels the proposed amendment to § 2.106(b)(1) concerning answers to oppositions.

Section 2.114(c) is proposed to be amended to codify the practice that a registrant's written consent to the withdrawal of a petition for cancellation after answer may be signed by the registrant or by the registrant's attorney or other authorized representative. The proposed amendment parallels proposed amendments to §§ 2.106(c), 2.134(a), and 2.135.

Section 2.119 is proposed to be amended to change the title thereof from "Service of papers." to "Service and signing of papers.", so that the section title will describe the contents of the section as it is proposed to be amended by the revision of paragraphs (b) and (c), and by the addition of two new paragraphs, designated "(d)" and "(e)."

Section 2.119(b), which pertains to service of papers, is proposed to be revised to provide for two additional methods of service, namely, transmission by the "Express Mail" service of the United States Postal Service and transmission by overnight courier.

Section 2.119(c) is proposed to be revised to specify that whenever a party is required to take some action within a prescribed period after the service of a paper upon such party by another party, and the paper is served by first-class mail, "Express Mail," or overnight courier, 5 days shall be added to the prescribed period. The proposed amendments to this paragraph and to paragraph (b) codify existing practice.

Section 2.119(d) is proposed to be added to require that a party to an inter partes proceeding before the Board who is not domiciled in the United States, and is not represented by an attorney or other authorized representative located in the United States, appoint a domestic representative on whom may be served notices or process in the proceeding. The purpose of the proposed pargaraph is to facilitate the service of papers on foreign parties not represented by domestic counsel in proceedings before the Board.

Section 2.119(e) is proposed to be added to provide that every paper filed in an inter partes proceeding before the Board must be signed by the party filing it, or by the party's attorney or other authorized representative, but that an unsigned paper will not be refused consideration if a signed copy is submitted to the PTO within the time limit set in the notification of this defect by the Office. The purpose of the proposed amendment is to simplify practice, and to eliminate the necessity for a petition to the Commissioner in the case of an unsigned notice of opposition.

Section 2.120(a) is proposed to be amended to include a new sentence specifying that the opening of discovery is governed by the Federal Rules of Civil Procedure. The proposed amendment is a codification of current practice, which, in turn, finds its basis in the first sentence of the present paragraph. *See in general* Saul Lefkowitz and Janet E. Rice, *Adversary Proceedings Before the Trademark Trial and Appeal Board*, 75 TMR 323, 381–382 (1985).

Section 2.120(d) is proposed to be amended to change the title thereof from "Request for production." to "Interrogatories; request for production."; to redesignate the presen paragraph as "(2)"; and to add a new paragraph, designated "(1)." The proposed new paragraph limits the

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number of interrogatories a party may serve upon another party to twenty-five, not counting subparts (which must be relevant, and reasonable in number), with additional interrogatories being allowed by the Board, in its discretion, only upon motion to the Board showing extraordinary circumstances, or upon stipulation of the parties. The purpose of the proposed amendment is to discourage parties from using written interrogatories for purposes of harassment, as exemplified in the case of *C.H. Stuart Inc. v. S.S. Sarna*, 212 USPQ 386 (TTAB 1980). The proposed amendment is believed to be in general harmony with corresponding local rules now prevalent in the Federal district courts.

Section 2.120(g) is proposed to be amended to change the title from "Failure to comply with order." to "Sanctions."; to redesignate the present paragraph as "(1)"; and to add a new paragraph, designated "(2)," providing that if a party fails to attend his or her discovery deposition, after being served with proper notice thereof, or fails to respond to a set of interrogatories or to a set of requests for production of documents and things, and such party or the party's attorney informs the party seeking discovery that he or she will not respond thereto, the Board may make any appropriate order by way of sanctions. The purpose of the proposed amendment is to eliminate the expense and delay resulting from the present practice, embodied in present paragraphs (e) and (g) of § 2.120, that in situations of the type described in the proposed paragraph, a motion to compel must be filed and granted and the resulting order violated before the party seeking discovery may move for sanctions. The proposed practice is in harmony with Rule 37(d) of the Federal Rules of Civil Procedure.

Section 2.120(j)(3) is proposed to be amended to redesignate the present paragraph as "(i)" and to add a new paragraph, designated "(ii)." The proposed new paragraph codifies the existing practice, exemplified in cases such as *Jeanne-Marc, Inc. v. Cluett, Peabody & Co., Inc.*, 221 USPQ 58 (TTAB 1984); *Autac Inc. v. Viking Industries, Inc.*, 199 USPQ 367 (TTAB 1978); *Harvey Hubbell, Inc. v. Red Rope Industries, Inc.*, 191 USPQ 119 (TTAB 1976); and *MRI Systems Corp. v. Wesley-Jessen Inc.*, 189 USPQ 214 (TTAB 1975), that a party who has obtained documents from another party, pursuant to a request for production under Rule 34 of the Federal Rules of Civil Procedure, may not make the produced documents of record by notice of reliance alone, except to the extent that the documents fall within the provisions of § 2.122(e). The reason for the practice is that document so obtained generally suffer from a lack of proper authentication, unless they are of the self-authenticating type admissible by notice of reliance under § 2.122(e).

Section 2.120(j)(4), which presently provides, in effect, that if an appropriate party files a notice of reliance upon only part of a discovery deposition, an adverse party may file a notice of reliance upon any other part of the deposition which should in fairness be considered so as to make not misleading what was offered by the submitting party, is proposed to be amended to require that the notice of reliance filed by the adverse party be supported by a written statement explaining why he or she needs to rely upon each of the additional parts listed in his or her notice, failing which the Board, in its discretion, may refuse to consider the additional parts. The proposed amendment represents a codification of current practice. Cf. *Alabama Board of Trustees v. BAMA-Werke Curt Baumann*, 231 USPQ 408, 409 (TTAB 1986), and *Holiday Inns, Inc. v. Monolith Enterprises*, 212 USPQ 948, 950–951 (TTAB 1981).

Section 2.120(j)(5), which presently specifies who may make of record (by notice of reliance) an interrogatory answer or an admission to a request for admission, is proposed to be amended to require that a party who seeks to rely upon certain of his or her own responses to interrogatories or requests for admissions, pursuant to the fairness exception presently provide in the paragraph, support his or her notice of reliance with a written statement explaining why he or she needs to rely upon each of the additional discovery responses listed in his or her notice, failing which the Board, in its discretion, may refuse to consider the additional parts. The proposed amendment parallels the proposed amendment to pragraph (j)(4) of the section and represents a codification of current practice. *See The Board of Trustees of the University of Alabama v. BAMA-Werke Curt Baumann, supra*, and *Holiday Inns, Inc. v. Monolith Enterprises, supra*.

Section 2.120(j)(8), which presently provides that "[i]nterrogatories, requests for production, requests for admissions, and materials or depositions obtained during the discovery period" should not be filed with the Board except under certain specified circumstances, is proposed to be revised to provide that "requests for discovery, responses thereto, and materials or depositions obtained through the discovery process" should not be filed with the Board except under the specified circumstances, and that papers or materials filed in violation of the paragrpah may be returned by the Board. The purpose of the proposed amendment is to clarify the beginning of the paragraph, and to reduce the number of papers and materials which must be retained in a proceeding file and stored by the Board.

Section 2.121(a)(1) is proposed to be amended to include a new sentence codifying the practice that the resetting of a party's time to respond to an outstanding request for discovery will not automatically result in the rescheduling of the discovery and/or testimony periods, and that such dates will be rescheduled only upon stipulation of the parties approved by the Board, or upon motion granted by the Board, or by order of the Board.

Section 2.122(e), which presently requires that a notice of reliance on a printed publication specify the printed publication and the pages to be read, indicate generally the relevance of the material being offered, and be accompanied by "the printed publication or a copy of the relevant portion thereof, including the title page and any other page needed to show the place and date of publication, the name and address of the publisher, and the name of the author or the editor," is proposed to be simplified by revising the paragraph to require that the notice of reliance specify the printed publication (including information sufficient to identify the source and the date of the publication) and the pages to be read; indicate generally the relevance of the material being offered; and be accompanied by the printed publication or a copy of the relevant portion thereof.

Section 2.123(c) is proposed to be amended to clarify the paragraph and to codify the current practice that testimony depositions may be noticed for any reasonable time and place in the United States, but that a testimony deposition may not be noticed for a place in a foreign country except as provided in paragraph (a)(2) of the section. The proposed codification of practice as to the place where testimony depositions may be taken roughly parallels § 1.673(a), which governs the taking of testimony depositions in patent interference proceedings in the PTO.

Section 2.123(e)(2) is proposed to be amended to include a new sentence stating that exhibits which are marked and identified at a deposition will be deemed to have been offered into evidence, without any formal offer



thereof, unless the intention of the parties is clearly to the contrary. The purpose of the proposed amendment is to revise existing practice, which requires either a formal offer or a clear indication in the transcript of an intent to introduce the exhibits. *See, for example, Roux Laboratories, Inc. v. Kaler*, 214 USPQ 134, 135–136 (TTAB 1982); *H. Betti Industries, Inc. v. Brunswick Corp.*, 211 USPQ 1188, 1189 (TTAB 1981); and *Kay Corp. v. Weisfield's, Inc*, 190 USPQ 565, 567–568 (TTAB 1976). Under the exising practice, a Party can lose a case simply because his attorney forgets to make a formal offer of the exhibits marked and identified during the party's testimony deposition. Under the proposed practice, the Board would be able to determine such cases on their merits, rather than on the basis of a technical defect.

Section 2.123(g)(1), which relates to the form of deposition transcripts, is proposed to be amended to permit the use of paper with numbered lines as an alternative to consecutively numbering the questions propounded to a witness. The proposed amendment, which parallels § 1.677(a), the provision governing the form of deposition transcripts in patent interference proceedings, would serve to simplify practice.

Section 2.125(a) is proposed to be amended to codify the existing practice that if a copy of a deposition transcript, with exhibits, is not served upon each adverse party within thirty days after completion of the taking of the testimony or within an extension of time for the purpose, any adverse party who was not served may have remedy by way of a motion to the Trademark Trail and Appeal Board to reset his or her testimony and/or briefing periods, as may be appropriate. The paragraph is proposed to be further amended to provide that if the deposing party fails to serve a copy of the transcript with exhibits on an adverse party after having been ordered to do so by the Board, the Board may strike the deposition, or enter judgment as by default against the deposing party, or take other action as may be deemed appropriate.

Section 2.127(e)(1) is proposed to be added to codify the long-established practice that a motion for summary judgment should be filed prior to the commencement of the first testimony period, and that the Board, in its discretion, may deny as untimely any motion for summary judgment filed thereafter. *See Rainbow Carpet, Inc. v. Rainbow International Carpet Dyeing & Cleaning Co.*, 226 USPQ 716 (TTAB 1985); *Allegro High Fidelity, Inc. v. Zenith Radio Corp.*, 197 USPQ 550 (TTAB 1977); *La Maur, Inc. v. Bagwells Enterprises, Inc.*, 193 USPQ 234 (Comm'r Pat. 1976); *Peterson's Ltd., Inc. v. Consolidated Cigar Corp.*, 183 USPQ 559 (TTAB 1974); *Cities Service Oil Co. v. Perfection American Inc.*, 157 USPQ 209 (TTAB 1968); T. Jeffrey Quinn, *Tips From the TTAB: Inter Partes Summary Judgment Revisited*, 76 TMR 73 (1986); and David J. Kera, *Tips From the TTAB: Summary Judgment*, 71 TMR 59, 61–62 (1981).

Section 2.127(e)2) is proposed to be added to provide, in essence, that for purposes of summary judgment only, a party may rely on his or her own responses to requests for discovery served upon him or her by an adverse party. The proposed amendment would serve to revise the Board's current practice, under which a party normally is not permitted to rely upon his or her own responses to discovery for purposes of summary judgment. It is believed that the proposed practice would be more consistent with the practice in the federal district courts.

Section 2.127(f) is proposed to be added to codify the existing practice that the Board does not have authority to hold any person in contempt, or to award attorney's fees or other expenses to any party. Although paragraphs (f), (g), and (h) of § 2.120, the section which governs the taking and use of discovery in inter partes proceedings before the Board, include provisions very similar in nature to the proposed paragraph, some litigants and/or their attorneys have mistakenly assumed that the Board has the authority to award attorney's fees or other expenses in situations not involving a failure to provide discovery. The addition of the proposed paragraph to § 2.127, the section which governs motions in general, would serve to clarify the matter.

Section 2.128(b), which presently provides, in pertinent part, that without leave of the Board, no brief shall contain more than fifty pages of argument, is proposed to be amended to specify a minimum type or print size for a brief and to provide that without prior leave of the Board, a main brief on the case shall not exceed fifty-five pages in length in its entirety. Litigants before the Board, and their attorneys, are often confused as to exactly what is encompassed by the term "argument," as used in the present paragraph. The proposed amendment would serve to simplify and clarify practice by specifying length limits for briefs in their entireties, followed by a list of the elements which are included within the length limit. The main brief length limit specified in the proposed paragraph is five pages longer than that specified in the present paragraph, because the proposed length limit covers the entire brief, including the table of contents and index of cases, whereas the present length limit does not.

Section 2.129(a), which presently provides, in pertinent part, that oral arguments at final hearing will be heard by three Members of the Board, is proposed to be amended to provide that such oral arguments will be heard by at least three Members of the Board. The purpose of the proposed amendment, which parallels a proposed amendment to § 2.142(e)(1), is to reflect the Board's use of augmented panels in certain cases.

Section 2.134(a) is proposed to be amended to codify the practice that in a cancellation proceeding, an adverse party's consent to the respondent's voluntary surrender of the involved registration may be signed by the adverse party or by the adverse party's attorney or other authorized representative. The proposed amendment parallels proposed amendments to §§ 2.106(c), 2.114(c), and 2.135.

Section 2.135 is proposed to be amended to codify the practice that in an opposition, concurrent use, or interference proceeding, an adverse party's consent to an applicant's abandonment of the applicant's involved application may be signed by the adverse party or by the adverse party's attorney or other authorized representative. The proposed amendment parallels proposed amendments to §§ 2.106(c), 2.114(c), and 2.134(a).

Section 2.142(b) is proposed to be amended to redesignate the present paragraph as "(1)" and to add a new paragraph, designated "(2)," codifying the form requirements and a length limit (twenty-five pages) for briefs filed in connection with ex parte appeals to the Board.

Section 2.142(e)(1), which presently provides that oral argument on an ex parte appeal to the Board will be heard by three Members of the Board, is proposed to be amended to provide that such oral argument will be heard by at least three Members of the Board. The purpose of the proposed amendment, which parallels a proposed amendment to § 2.129(a), is to reflect the Board's use of augmented panels in certain cases.

Section 2.142(f)(6) is proposed to be added to codify the practice that if, during an appeal to the Board from a refusal of registration, it appears to the

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examiner that an issue not previously raised may render the mark of the appellant unregistrable, the examiner may request the Board to suspend the appeal and to remand the application to the examiner for further examination.

Section 2.145(c)(4) is proposed to be added to provide that a party to a proceeding before the Board who commences a civil action, pursuant to Section 21(b) of the Act, seeking review of a decision of the Board must file written notice with the Board, within one month after the expiration of the time for appeal or civil action, in order to avoid premature termination of the Board proceeding. The purpose of the proposed amendment is to ensure that parties who seek review of Board decisions by way of civil action will be aware of the need for informing the Board thereof.

Section 2.186, which presently provides that any action with respect to an assigned application or registration which may or must be taken by a registrant or applicant may be taken by the assignee provided that the assignment has been recorded, is proposed to be amended by adding at the end the phrase "or that proof of the assignment has been submitted." The purpose of the proposed amendment is to bring the section into closer conformity with Section 10 of the Act.

**Environmental, Energy, and Other Considerations**

The proposed rule change will not have a significant impact on the quality of the human environment or the conservation of energy resources.

The proposed rule change is in conformity with the requirements of the Regulatory Flexibility Act (Pub. L. 96-354), Executive Orders 12291 and 12612, and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

The General Counsel of the Department of Commerce has certified to the Small Business Administration that the proposed rule change will not have a significant adverse economic impact on a substantial number of small entities (Regulatory Flexibility Act, Pub. L. 96-354). The rule change includes no additional or increased fees. Substantive rights to use valuable trademarks are not adversely affected.

The Patent and Trademark Office has determined that this rule change is not a major rule under Executive Order 12291. The annual effect to the economy will be less than $100 million. There will be no major increase in costs or prices for consumers, individual industries, federal, state or local government agencies, or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The PTO has also determined that this notice has no federalism implications affecting the relationship between the National Government and the states as outlined in Executive Order 12612.

This rule contains collections of information subject to the Paperwork Reduction Act previously approved by OMB under ICB Number 0651-0009. Public reporting burden for this collection of information is estimated to average 25 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Commissioner of Patents and Trademarks, Washington, DC 20231 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

**List of Subject Terms in 37 CFR Part 2**

Administrative practice and procedures, Courts, Lawyers, Trademarks.

Notice is hereby given that pursuant to the authority contained in section 41 of the Trademark Act of July 5, 1946, as amended, the Patent and Trademark Office proposes to amend Part 2 of Title 37 of the Code of Federal Regulations by amending §§ 2.42, 2.66, 2.91, 2.92, 2.93, 2.102, 2.104, 2.106, 2.112, 2.113, 2.114, 2.119, 2.120, 2.121, 2.122, 2.123, 2.125, 2.127, 2.128, 2.129, 2.134, 2.235, 2.142, 2.145, and 2.186, as set forth below. Additions are indicated by arrows and deletions by brackets.

## PART 2—RULES OF PRACTICE IN TRADEMARK CASES

1. The authority for Part 2 continues to read as follows:

**Authority:** 15 U.S.C. 1123; 35 U.S.C. 6, unless otherwise noted.

1a. Section 2.42 is proposed to be amended by removing paragraph (b), removing the designation "(a)" from the remaining paragraph, and revising that paragraph to read as follows:

**§ 2.42 Concurrent use.**

►(a)] An application for registration as a lawful concurrent user shall specify and contain all the elements required by the preceding sections. The applicant in addition shall state in the application [.] ►the area, the goods, and the mode of use for which applicant seeks registration; and also shall state,◄ to the extent of his knowledge, the concurrent lawful use of the mark by others, setting forth their names and addresses; registrations issued to or applications filed by such others, if any; the areas of such use; the goods on or in connection with which such use is made; the mode of such use; ►and◄ the periods of such use ►.◄ [; and the area, the goods, and the mode of use for which the applicant seeks registration.]

2. Section 2.66 is proposed to be revised to read as follows:

**§ 2.66 Express abandonment (withdrawal) of application.**

An application may be expressly abandoned by filing in the Patent and Trademark Office a written statement of abandonment or withdrawal of the application signed by the applicant, or the attorney or other person representing the applicant. The fact that an application ha been expressly abandoned ►during the ex parte prosecution thereof◄ shall not, in any proceeding in the Patent and Trademark Office, affect any rights that the applicant may have in the mark which is the subject of the abandoned application.

3. Section 2.91 is proposed to be amended by revising the title thereof to read as follows:

**§ 2.91 ►Declaration of interference.◄ [Interferences.]**

* * * * *

4. Section 2.92 is proposed to be revised to read as follows:

**§ 2.92 Preliminary to interference.**

►An interference which has been declared by the Commissioner will not be instituted by the Trademark Trial and Appeal Board until the Examiner of Trademarks has determined that the marks which are to form the subject matter of the controversy are registrable, and all of the marks have been published in the Official Gazette for opposition.◄ [Before the declaration of an interference, the marks which are to form the subject matter of the controversy must have been decided to be registrable by each party except for the interfering mark.]

5. Section 2.93 is proposed to be amended by revising the title thereof and by revising the text to read as follows:



**§ 2.93 ►Institution◄ [Declaration] of interference.**

An interference is ►declared and◄ instituted by the mailing of a notice of interference to the parties. The notice shall be sent to each applicant, in care of his attorney or other representative of record, if any, and if one of the parties is a registrant, the notice shall be sent to him or his assignee of record. The notice shall give the name and address of ►every◄ [the] adverse party and of this attorney or other authorized representative, if any, together with the serial number and date of filing and publication [, if published,] of each of the applications ►, or the registration number and date of issuance of each of the registrations,◄ [or registrations] involved.

6. Section 2.102 is proposed to be amended by revising paragraph (c) to read as follows:

**§ 2.102 Extension of time for filing an opposition.**

* * * * *

(c) The written request to extend the time for filing an opposition must be filed in the Patent and Trademark Office before the expiration of thirty days from the date of publication or within any extension of time previously granted, should specify the period of extension desired, and should be addressed to the Trademark Trial and Appeal Board. A first extension of time for not more than thirty days will be granted upon request. Further extensions of time may be granted by the Board for good cause. In addition, extensions of time to file an opposition aggregating more than ►four months◄ [120 days] from the date of publication of the application will not be granted except upon (1) a written consent or stipulation signed by the applicant or its authorized representative, or (2) a written request by the potential opposer or its authorized representative stating that the applicant or its authorized representative has consented to the request, and including proof of service on the applicant or its authorized representative, or (3) a showing of extraordinary circumstances, it being considered that a potential opposer has an adequate alternative remedy by a petition for cancellation.

* * * * *

7. Section 2.104 is proposed to be amended by redesignating the present paragraph as (a) and republishing it and by paragraph (b) to read as follows:

**§ 2.104 Contents of opposition.**

►(a)◄ The opposition must set forth a short and plain statement showing why the opposer believes he would be damaged by the registration of the opposed mark and state the grounds for opposition. A duplicate copy of the opposition, including exhibits, shall be filed with the opposition.

►(b) Oppositions to different applications owned by the same party may be joined in a consolidated opposition when appropriate, but the required fee must be included for each party joined as opposer for each class in which registration is opposed in each application against which the opposition is filed.◄

8. Section 2.106 is proposed to be amended by revising paragraphs (b)(1) and (c) to read as follows:

**§2.106 Answer.**

* * * * *

(b)(1) ►An answer shall state in short and plain terms the applicant's defenses to each claim asserted and shall admit or deny the averments upon which the opposer relies. If the applicant is without knowledge or information sufficient to form a belief as to the truth of an averment, applicant shall so state and this will have the effect of a denial. Denials may take any of the forms specified in Rule 8(b) of the Federal Rules of Civil Procedure.◄ An answer may contain any defense, including the affirmative defenses of unclean hands, laches, estoppel, acquiescence, fraud, mistake, [or] prior judgment[.] ►, or any other matter constituting an avoidance or affirmative defense.◄ When pleading special matters, the Federal Rules of Civil Procedure [s] shall be followed. A reply to an affirmative defense need not be filed. When a defense attacks the validity of a registration pleaded in the opposition, paragraph (b)(2) of this section shall govern. A pleaded registration is a registration identified by number and date of issuance in an original notice of opposition or in any amendment thereto made under Rule 15, FRCP.

* * * * *

(c) The opposition may be withdrawn without prejudice before the answer is filed. After the answer is filed, the opposition may not be withdrawn without prejudice except with the written consent of the applicant [.] ►or the applicant's attorney or other authorized representative.◄

9. Section 2.112 is proposed to be amended by revising paragraph (a) to read as follows:

**§ 2.112 Contents of petition for cancellation.**

(a) The petition to cancel must set forth a short and plain statement showing why the petitioner believes he is or will be damaged by the registration, state the grounds for cancellation, and indicate►, to the best of petitioner's knowledge, the name and address of the current owner of the registration.◄ [the respondent party to whom notification shall be sent.] A duplicate copy of the petition, including exhibits, shall be filed with the petition.

* * * * *

10. Section 2.113 is proposed to be revised to read as follows:

**§ 2.113 Notification of cancellation proceeding.**

When a petition for cancellation has been filed in proper form (see §§ 2.111 and 2.112), a notification shall be prepared by the Trademark Trial and Appeal Board, which shall identify the title and number of the proceeding and the registration or registrations involved and shall designate a time, not less than thirty days from the mailing date of the notification, within which an answer must be filed. A copy of the notification shall be forwarded to the attorney or other authorized representative of the petitioner, if any, or to the petitioner. The duplicate copy of the petition for cancellation and exhibits shall be forwarded with a copy of the notification to the respondent (see § 2.118)[.] ►, who shall be the party shown by the records of the Patent and Trademark Office to be the current owner of the registration or registrations sought to be cancelled, except that the Board, in its discretion, may join or substitute as respondent a party who makes a showing of a current ownership interest in such registration or registrations.◄ If the petition is found to be defective as to form, the party filing the petition shall be so advised and allowed a reasonable time for correcting the informality.

11. Section 2.114 is proposed to be amended by revising paragraphs (b)(1) and (c) to read as follows.

**§ 2.114 Answer.**

* * * * *

(b)(1) ►An answer shall state in short and plain terms the respondent's defenses to each claim asserted and shall admit or deny the averments upon which the petitioner relies. If the respondent is without knowledge or information sufficient to form a belief as to the truth of an averment, respondent shall so state and this will have the effect of a denial. Denials may take any of the forms specified in Rule 8(b) of the Federal Rules of Civil Procedure.◄ An answer may contain any defense, including the affirmative defenses of unclean hands, laches, estoppel, acquiescence, fraud, mistake, [or] prior

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judgment[.] ◄, or any other matter constituting an avoidance or affirmative defense.► When pleading special matters, the Federal Rules of Civil Procedure shall be followed. A reply to an affirmative defense need not be filed. When a defense attacks the validity of a registration pleaded in the petition, paragraph (b)(2) of this section shall govern. A pleaded registration is a registration identified by number and date of issuance in an original petition for cancellation or in any amendment thereto made under Rule 15, FRCP.

* * * * *

(c) The petition for cancellation may be withdrawn without prejudice before the answer is filed. After the answer is filed, the petition may not be withdrawn without prejudice except with the written consent of the registrant[.] ►or the registrant's attorney or other authorized representative.◄

12. Section 2.119 is proposed to be amended by revising the title thereof, revising paragraphs (b) and (c), and adding new paragraphs (d) and (e) to read as follows:

**§ 2.119 Service ►and signing◄ of papers.**

* * * * *

(b) Service of papers must be on the attorney or other authorized representative of the part if there be such or on the party if there is no attorney or other authorized representative, and may be made in ►any◄ [either] of the following ways:

(1) By delivering a copy of the paper to the person served;

(2) By leaving a copy at the usual place of business of the person served, with someone in his employment;

(3) When the person served has no usual place of business, by leaving a copy at his residence, with a member of his family over 14 years of age and of discretion;

(4) Transmission by the ►"Express Mail Post Office to Addressee" service of the United States Postal Service or by◄ first-class mail, which may also be certified or registered [.] ►;

(5) Transmission by overnight courier.◄ Whenever it shall be satisfactorily shown to the Commissioner that none of the above modes of obtaining service or serving the paper is practicable, service may be by notice published in the *Official Gazette*.

(c) When service is made by mail [.] ►or by overnight courier,◄ the date of mailing ►or of delivery to the overnight courier◄ will be considered the date of service. Whenever a party is required to take some action within a prescribed period after the service of a paper upon him by another party and the paper is served by ►first-class◄ mail, ►"Express Mail," or overnight courier,◄ 5 days shall be added to the prescribed period.

►(d) If a party to an inter partes proceeding is not domiciled in the United States and is not represented by an attorney or other authorized representative located in the United States, the party must designate by written document filed in the Patent and Trademark Office the name and address of a person resident in the United States on whom may be served notices or process in the proceeding. In such cases, official communications of the Patent and Trademark Office will be addressed to the domestic representative unless the application is being prosecuted by an attorney at law or other qualified person duly authorized under § 10.14(c) of this subchapter. The mere designation of a domestic representative does not authorize the person designated to prosecute the proceeding unless qualified under § 10.14(a), or qualified under paragraph (b) or (c) of § 10.14 and authorized under § 2.17(b).◄

►(e) every paper filed in an inter partes proceeding must be signed by the party filing it, or by the party's attorney or other authorized representative, but an unsigned paper will not be refused consideration if a signed copy is submitted to the Patent and Trademark Office within the time limit set in the notification of this defect by the Office.◄

13. Section 2.120 is proposed to be amended by revising paragraph (a); revising the titles of paragraphs (d) and (g); redesignating paragraph (d) as (d)(2) and republishing it; adding new paragraph (d)(1); redesignating paragraph (g) as (g)(1) and republishing it; adding new paragraph (g)(2); redesignating paragraph (j)(3) as (j)(3)(i) and republishing it; adding new paragraph (j)(3)(ii); and revising paragraphs (j)(4)(j)(5), and (j)(8) to read as follows:

**§ 2.120 Discovery.**

(a) *In general.* The provisions of the Federal Rules of Civil Procedure relating to discovery shall apply in opposition, cancellatoin, interference and concurrent use registration proceedings except as otherwise provided in this section. The Trademark Trial and Appeal Board will specify the closing date for the taking of discovery. ►The opening of discovery is governed by the Federal Rules of Civil Procedure.◄

* * * * *

(d) ►*Interrogatories; request*◄ [*Request*] *for production.* ►(1) The number of written interrogatories which a party may serve upon another party pursuant to Rule 33 of the Federal Rules of Civil Procedure shall not exceed twenty-five, except that the Trademark Trial and Appeal Board, in its discretion, may allow additional interrogatories upon motion therefor showing extraordinary circumstances, or upon stipulation of the parties. The twenty-five interrogatories, and any additional interrogatories allowed by the Board upon motion or stipulation, may contain a reasonable number of relevant subparts.◄

►(2)◄ The production of documents and things under the provisions of Rule 34 of the Federal Rules of Civil Procedures will be made at the place where the documents and things are usually kept, or where the parties agree, or where and in the manner which the Trademark Trial and Appeal Board, upon motion, orders.

* * * * *

(g) ►*Sanctions.*◄ [*Failure to comply with order.*] ►(1)◄ If a party fails to comply with an order of the Trademark Trial and Appeal Board relating to discovery, including a protective order, the Board may make any appropriate order, including any of the orders provided in Rule 37(b)(2) of the Federal Rules of Civil Procedure, except that the Board does not have authority to hold any person in contempt or to award any expenses to any party. The Board may impose against a party any of the sanctions provided by this subsection in the event that said party or any attorney, agent, or designated witness of that party fails to comply with a protective order made pursuant to Rule 26(c) of the Federal Rules of Civil Procedure.

►(2) If a party, or an officer, director, or managing agent of a party, or a person designated under Rule 30(b)(6) or 31(a) of the Federal Rules of Civil Procedure to testify on behalf of a party, fails to attend his or her discovery deposition, after being served with proper notice, or fails to provide any response to set of interrogatories or to a set of requests for production of documents and things, and such party or the party's attorney or the notice of reliance. An objection made at a discovery deposition by a party answering a question subject to the objection will be considered at final hearing.

►(ii) A party who has obtained documents from another party under Rule 34 of the Federal Rules of Civil Procedure may not make the documents of record by notice of reliance alone, except to the extent that they are admissible by notice of reliance under the provisions of § 2.122(e).◄



(4) If only part of a discovery deposition is submitted and made part of the record by a party, an adverse party may introduce under a notice of reliance any other part of the deposition which should in fairness be considered so as to make not misleading what was offered by the submitting party. ►A notice of reliance filed by an adverse party must be supported by a written statement explaining why such party needs to rely upon each additional part listed in his or her notice, failing which the Board, in its discretion, may refuse to consider the additional parts.◄

(5) An answer to an interrogatory, or an admission to a request for admission, may be submitted and made part of the record by only the inquiring party except that, if fewer than all of the answers to interrogatories, or fewer than all of the other authorized representative informs the party seeking discovery that he or she will not respond thereto, the Board may make any appropriate order, as specified in paragraph (g)(1) of this section.◄

* * * * *

(j) *Use of discovery deposition, answer to interrogatory, or admission.*

* * * * *

►(3)(i)◄ [(3)] A discovery deposition, an answer to an interrogatory, or an admission to a request for admission, which may be offered in evidence under the provisions of paragraph (j) of this section may be made of record in the case by filing the deposition or any part thereof with any exhibit to the part that is filed, or a copy of the interrogatory and answer thereto with any exhibit made part of the answer, or a copy of the request for admission and any exhibit thereto and the admission (or a statement that the party from whom an admission was requested failed to respond thereto), together with a notice of reliance. The notice of reliance and the material submitted thereunder should be filed during the testimony period of the party who files admissions, are offered in evidence by the inquiring party, the responding party may introduce under a notice of reliance any other answers to interrogatories, or any other admissions, which should in fairness be considered so as to make not misleading what was offered by the inquiring party. ►The notice of reliance filed by the responding party must be supported by a written statement explaining why such party needs to rely upon each of the additional discovery responses listed in his or her notice, failing which the Board, in its discretion, may refuse to consider the additional responses.◄

* * * * *

(8) ►Requests for discovery, responses thereto,◄ [Interrogatories, requests for production, requests for admissions,] and materials or depositions obtained ►through the discovery process◄ [during the discovery period] should not be filed with the Board except when submitted with a motion to compel discovery, or in support of or response to a motion for summary judgment, or under a notice of reliance during a party's testimony period. ►Papers or materials filed in violation of this paragraph may be retained by the Board.◄

14. Section 2.121 is proposed to be amended by revising paragraph (a)(1) to read as follows:

**§ 2.121 Assignment of times for taking testimony.**

(a)(1) The Trademark Trial and Appeal Board will issue a trial order assigning to each party the time for taking testimony. No testimony shall be taken except during the times assigned, unless by stipulation of the parties approved by the Board, or, upon motion, by order of the Board. Testimony periods may be rescheduled by stipulation of the parties approved by the Board, upon motion granted by the Board, or by order of the Board. The resetting of the closing date for discovery will result in the rescheduling of the testimony periods without action by any party.

►The resetting of a party's time to respond to an outstanding request for discovery will not result in the automatic rescheduling of the discovery and/or testimony periods; such dates will be rescheduled only upon stipulation of the parties approved by the Board, or upon motion granted by the board, or by order of the Board.◄

* * * * *

15. Section 2.122 is proposed to be amended by revising paragraph (e) to read as follows:

**§ 2.122**

**Matters in evidence.**

* * * * *

(e) *Printed publications and official records.* Printed publications, such as books and periodicals, available to the general public in libraries or of general circulation among members of the public or that segment of the public which is relevant under an issue in a proceeding, and official records, if the publication or official record is competent evidence and relevant to an issue, may be introduced in evidence by filing a notice of reliance on the material being offered ►. The◄ [, which] notice shall specify the printed publication ►(including information sufficient to identify the source and the date of the publication)◄ or the official record and the pages to be read ►;◄ [,] indicate generally the relevance of the material being offered ►;◄ [,] and be accompanied by the official record or a copy thereof whose authenticity is established under the Federal Rules of Evidence, or by the printed publication or a copy of the relevant portion thereof ►.◄ [, including the title page and any other page needed to show the place and date of publication, the name and address of the publisher, and the name of the author or the editor.] A copy of an official record of the Patent and Trademark Office need not be certified to be offered in evidence. The notice of reliance shall be filed during the testimony period of the party that files the notice.

* * * * *

16. Section 2.123 is proposed to be amended by revising paragraphs (c), (e)(2), and (g)(1) to read as follows:

**2.123 Trial testimony in inter partes cases.**

* * * * *

(c) *Notice of examination of witnesses.* Before the depositions of witnesses shall be taken by a party, due notice in writing shall be given to the opposing party or parties, as provided in § 2.119(b), of the time when and place where the depositions will be taken, of the cause or matter in which they are to be used, and the name and address of each witness to be examined; if the name of a witness is not known, a general description sufficient to identify him or the particular class or group to which he belongs, together with a satisfactory explanation, may be given instead. ►Depositions may be noticed for any reasonable time and place in the United States. A deposition may not be noticed for a place in a foreign country except as provided in paragraph (a)(2)m of this section. No◄ [Neither] party shall take depositions in more than one place at the same time, nor so nearly at the same time that reasonable opportunity for travel from one place of examination to the other is not available.

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(e) *Examination of Witnesses.*

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(2) The deposition shall be taken in answer to questions, with the questions and answers recorded in their regular order by the officer, or by some other person (who shall be subject to the provisions of Rule 28 of the Federal Rules of Civil Procedure) in the presence of the officer except when his presence

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is waived on the record by agreement of the parties. The testimony shall be taken stenographically and transcribed, unless the parties present agree otherwise. In the absence of all opposing parties and their attorneys or other authorized representatives, depositions may be taken in longhand, typewriting, or stenographically. ►Exhibits which are marked and identified at the deposition will be deemed to have been offered into evidence, without any formal offer thereof, unless the intention of the parties is clearly to the contrary.◄

* * * * *

(g) *Form of deposition.* (1) The pages of each deposition must be numbered consecutively, and the name of the witness plainly and conspicously written at the top of each page. The deposition may be written on legal-size or letter-size paper, with a wide margin on the left hand side of the page, and with the writing on one side only of the sheet. The questions propounded to each witness must be consecutively numbered ►unless paper with numbered lines is used,◄ and each question must be followed by its answer.

* * * * *

17. Section 2.125 is proposed to be amended by revising paragraph (a) to read as follows:

**§ 2.125 Filing and service of testimony.**

(a) One copy of the transcript of testimony taken in accordance with § 2.123, together with copies of documentary exhibits and duplicates or photographs of physical exhibits, shall be served on each adverse party within thirty days after completion of the taking of that testimony. ►If the transcript with exhibits is not served on each adverse party within thirty days or within an extension of time for the purpose, any adverse party who was not served may have remedy by way of a motion to the Trademark Trial and Appeal Board to reset his or her testimony and/or briefing periods, as may be appropriate. If the deposing party fails to serve a copy of the transcript with exhibits on an adverse party after having been ordered to do so by the Board, the Board, in its discretion, may strike the deposition, or enter judgment as by default against the deposing party, or take any such other action as may be deemed appropriate.◄

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18. Section 2.127 is proposed to be amended by adding new paragraphs (e)(1), (e)(2), and (f) to read as follows:

**§ 2.127 Motions.**

* * * * *

►(e)(1) A motion for summary judgement should be filed prior to the commencement of the first testimony period, and the Trademark Trial and Appeal Board, in its discretion, may deny as untimely any motion for summary judgment filed thereafter.◄

►(2) For purposes of summary judgment only, a discovery deposition, or an answer to an interrogatory, or a document or thing produced in response for production, or an admission to a request for admission, will be considered by the Trademark Trial and Appeal Board if any party files, with his or her brief on the summary judgment motion, the deposition or any part thereof with any exhibit to the part that is filed, or a copy of the interrogatory and answer thereto with any exhibit made part of the answer, or a copy of the request for production and the documents or things in response thereto, or a copy of the request for admission and any exhibit thereto and the admission (or a statement that the party from whom an admission was requested failed to respond thereto.).◄

►(f) The Board does not have authority to hold any person in contempt, or to award attorneys' fees or other expenses to any party.◄

19. Section 2.128 is proposed to be amended by revising paragraph (b) to read as follows:

**§ 2.128 Briefs at final hearing.**

* * * * *

(b) Briefs shall be submitted in typewritten or printed form, double spaced, ►in at least pica or eleven-point type,◄ on letter-size paper. ►Each brief shall contain an alphabetical index of cases cited therein.◄ Without ►prior◄ leave of the Trademark Trial and Appeal Board, ►a main brief on the case shall not exceed fifty-five pages in length in its entirety, including the table of contents, index of cases, description of the record, statement of the issues, recitation of facts, argument, and summary, and a reply brief shall not exceed twenty-five pages in its entirety.◄ [no brief shall contain more than fifty pages of argument and, in the case of a reply brief, the entire brief shall not exceed twenty-five pages. Each brief shall contain an alphabetical index of cases cited therein]. ►Three◄ [One original and two] legible copies, on good quality paper, of each brief shall be filed.

20. Section 2.129 is proposed to be amended by revising pragraph (a) to read as follows:

**§ 2.129 Oral argument; reconsideration.**

(a) If a party desires to have an oral argument at final hearing, the party shall request such argument by a separate notice filed not later than ten days after the due date for the filing of the late reply brief in the proceeding. Oral arguments will be heard by ►at least◄ three Members of the Trademark Trial and Appeal Board at the time specified in the notice of hearing. If any party appears at the specified time, that party will be heard. If the Board is prevented from hearing the case at the specified time, a new hearing date will be set. Unless otherwise permitted, oral arguments in an inter partes case will be limted to thirty minutes for each party. A party in the position of plaintiff may reserve part of the time allowed for oral argument to present a rebuttal argument.

* * * * *

21. Section 2.134 is proposed to be amended by revising paragraph (a) to read as follows:

**§ 2.134 Surrender or voluntary cancellation of registration.**

(a) After the commencement of a cancellation proceeding, if the respondent applies for cancellation of the involved registration under section 7(d) of the Act of 1946 without the written consent of every adverse party [,] ►to the proceeding,◄ judgment shall be entered against the respondent. ►The written consent of an adverse party may be signed by the adverse party or by the adverse party's attorney or other authorized representative.◄

* * * * *

22. Section 2.135 is proposed to be revised to read as follows: **§ 2.135 Abandonment of application or mark.**

After the commencement of an opposition, concurrent use, or interference proceeding, if the applicant files a written abandonment of the application or of the mark without the written consent of every adverse party [,] ►to the proceeding,◄ judgment shall be entered against the applicant. ►The written consent of an adverse party may be signed by the adverse party or by the adverse party's attorney or other authorized representative.◄

23. Section 2.142 is proposed to be amended by redesignating paragraph (b) as (b) (1) and republishing it; adding new paragraphs (b)(2) and (f)(6); and revising paragraph (e)(1), to read as follows:

**§ 2.142 Time and manner of ex parte appeals.**

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►(b)(1)◄ [(b)] The brief of appellant shall be filed within sixty days from the date of appeal. If the brief is not filed within the time allowed, the appeal may be dismissed. The examiner shall, within sixty days after the brief of appellant is sent to the examiner, file with the Trademark Trial and Appeal Board a written brief answering the brief of appellant and shall mail a copy of the brief to the appellant. The appellant may file a reply brief within twenty days from the date of mailing of the brief of the examiner.

►(2) Briefs shall be submitted in typewritten or printed form, double spaced, in at least pica or eleven-point type, on letter-size paper. Without prior leave of the Trademark Trial and Appeal Board, a brief shall not exceed twenty-five pages in length in its entirety.◄

* * * * *

(e)(1) If the appellant desires an oral hearing, a request therefor should be made by a separate notice filed not later than ten days after the due date for a reply brief. Oral argument will be heard by ►at least◄ three Members of the Trademark Trial and Appeal Board at the time specified in the notice of hearing, which may be reset if the Board is prevented from hearing the argument at the specified time or, so far as is convenient and proper, to meet the wish of the appellant or his attorney or other authorized representative.

* * * * *

(f)(1) * * *

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►(6) If, during an appeal from a refusal of registration, it appears to the examiner that an issue not involved in the appeal may render the mark of the appellant unregistrable, the examiner may request the Board to suspend the appeal and to remand the application to the examiner for further examination. If the request is granted, the examiner and appellant shall proceed as provided by §§ 2.61, 2.62, 2.63 and 2.64. After the additional ground for refusal of registration has been withdrawn or made final, the examiner shall return the application to the Board, which shall resumue proceedings in the appeal and take further appropriate action with respect thereto.◄

* * * * *

24. Section 2.145 is proposed to be amended by adding new paragraph (c)(4) to read as follows:

**§ 2.145 Appeal to court and civil action.**

* * * * *

(c) *Civil action.*

* * * * *

►(4) A party to a proceeding before the Trademark Trial and Appeal Board who commences a civil action, pursuant to Section 21(b) of the Act, seeking review of a decision of the Board must file written notice thereof in the Patent and Trademark Office, addressed to the Board, within one month after the expiration of the time for appeal or civil action, in order to avoid premature termination of the Board proceeding.◄

* * * * *

25. Section 2.186 is proposed to be revised to read as follows:

**§ 2.186 Action may be taken by assignee of record.**

Any action with respect to an assigned application or registration which may or must be taken by ►an applicant or registrant◄ [a registrant or applicant] may be taken by the assignee provided that the assignment has been recorded [,] ►or that proof of the assignment has been submitted.◄

Dated: March 1, 1989.

**Donald J. Quigg,**

*Assistant Secretary and Commissioner of Patents and Trademarks.*

[FR Doc. 89-5153 Filed 3-6-89; 8:45 am]

BILLING CODE 3510-16-M



## FEDERAL EMERGENCY MANAGEMENT AGENCY

**44 CFR Parts 59, 60 and 65**

**National Flood Insurance Program**

**AGENCY:** Federal Insurance Administration (FIA), Federal Emergency Management Agency (FEMA).

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would revise the National Flood Insurance Program (NFIP) definitions of "substantial improvement", "new construction", and "development"; revise regulations dealing with variances, enclosed areas below the lower floor, and wind loading values in coastal high hazard areas; and create definitions for "alluvial fan" "apex" (as it pertains to alluvial fans), "historic structure" and "substantial damage". The proposed rule would also clarify NFIP regulations pertaining to procedures for map revisions and amendments and establish standards and procedures for the types of supporting data needed when map changes are requested involving Special Flood Hazard Areas (SFHAs) on alluvial fans.

**DATES:** Comments must be received on or before May 8, 1989.

**ADDRESSES:** Send comments to Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

**FOR FURTHER INFORMATION CONTACT:** Charles M. Plaxico, Federal Emergency Mangement Agency, Federal Insurance Administration, 500 C Street, SW., Washington DC 20472; telephone number (202) 646-3422.

**SUPPLEMENTARY INFORMATION:** These proposed amendments are the result of a continuing reappraisal of the NFIP from the standpoint of achieving greater administrative and fiscal effectiveness and encouraging sound flood plain management so that reductions in the loss of life and property and in disaster expenditures can be realized. Several revisions to NFIP flood plain management criteria are proposed that are intended to clarify or further explain provisions in those criteria or which liberalize certain requirements. Since this is a case, communities participating in the NFIP will not be required to amend their flood plain management regulations to incorporate the revised language. However, if a community has had difficulties in administering a provision, that community would be encouraged to amend its regulations accordingly.

**Substantial Improvement**

A number of revisions are proposed to the definition of "substantial improvement" in § 59.1. These revisions are the result of an ongoing study by FEMA on issues related to the implementation of the "substantial improvement" definition and are intended to clarify portions of that definition. In addition to these revisions, FEMA is presently developing further guidance to assist communities in administering substantial improvement. Substantial improvements of existing structures must meet nearly all of the same flood plain management requirements as new construction.

The proposed revision address three areas that have been identified as being in need of clarification including, (1) substantially damaged structures, (2) historic structures, and (3) cost exemptions for correcting health, safety and sanitary code related violations. Substitutions and deletions of terminology are also proposed to make the definition fully consistent with other NFIP definitions and existing FEMA policy, and to account for the revisions in the three areas.

There have been issues raised regarding the interpretation of the substantial improvement definition where a building has been substantially damaged and is either not fully repaired, or is repaired using discounted or donated materials and labor. The proposed rule explicitly defines a

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building as being substantially damaged when it sustains damage from any cause, whereby the cost of fully restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before damage occurred.

There have been instances where structures have been substantially damaged and not fully repaired. Some communities have determined that the repair of these structures is not a substantial improvement because they believed that the cost of repair was less than 50 percent of the structure's market value. While this is contrary to FEMA's interpretation of the definition, it is not unreasonable given the ambiguities in the current definition.

In essence, the reference to repair costs in the substantial improvement definition means the repair of *all* damages sustained and thus cannot reflect a level of repairs which is less than the amount of damages suffered. A building which sustains damages exceeding 50 percent of its market value will be subject to the substantial improvement rule, even if the actual cost of the repairs performed is reduced below the 50 percent threshold. Thus, the "cost of repair" used in determining repair cost to market value ratios shall be equal to the combined *value* of materials and labor used *or necessary* in repairing *all* damages sustained by a building, but in no case, shall be less than the value of materials and labor necessary to restore the building to its pre-damaged condition.

The value of "materials" shall be equal or equivalent to the actual or estimated cost of all materials, to be used or considered necessary in repairing all damages sustained by a building, and shall be no less than that required to restore the building to its pre-damaged condition. Where materials or servicing equipment are donated or discounted below normal market values, the value should be adjusted to an amount which would be equivalent to that estimated for normal market transactions for a given geographic location.

The value of "labor" shall be equal or equivalent to the actual or estimated labor charge for repair of all damages to the structure. Where non-reimbursed labor is involved (self or donated labor), the value of labor for the non-reimbursable portions shall be computed based on applicable hourly wage scales adjusted for a given geographic location and the type and skill of the labor involved.

Ultimately, it is the responsibility of the community permit official to assure that the cost of repair estimates provided or obtained reasonably reflect the value of damages sustained (or actual cost of repairs and improvements if greater than the value of the damages).

The underlying principle for including the costs associated with donated labor and materials is the added value of real property that would be located in flood hazard areas and that would be at risk to flood damage. It should be noted that in some form, the Federal Government (the NFIP and various disaster assistance programs) would likely be obligated to pay a portion of or all future damages to these more expensive improvements.

In estimating the "cost of material" for calculating substantial improvement, the costs of improvements required to remedy health, safety, and sanitary code violations can be deducted under the current definition of substantial improvement. However, there have been issues raised in the interpretation of substantial improvement in terms of the conditions of the code requirements and the degree of improvements which qualify for these deductions.

Current FEMA policy is that costs associated with improvements made to a structure are deductible from the overall costs of improvement *only* if the structure or specific items within the structure have been previously identified by the local code enforcement official as being substandard and in violation. If no official knowledge existed prior to the improvements, the local permit official has no way of knowing which items truly qualified as deductible and what the cost to repair or replace these items may have been. Without documentation or knowledge on the part of the permit official, the structure is assumed to have met all codes prior to the improvements, and all costs of improvements would be counted toward substantial improvement.

It is proposed that the substantial improvement definition be reworded to explicitly state that the costs of improvements required to remedy code deficiencies are deductible only if (1) an appropriate regulatory official such as a building official, code enforcement officer, fire marshal, or health officer was informed about and knew the extent of the code related deficiencies and (2) the deficiency was in existence prior to the repair or improvement and not triggered solely by the fact that the structure is being improved.

Consistent with current FEMA policy, for any improvement required to meet health, sanitary, and safety codes, the proposed rule also provides that only the *minimum* necessary to assure safe living conditions shall be credited as being deductible from the cost of the overall improvement. Costs of improvements which are in excess of the minimum necessary for continued occupancy or use will be counted toward the cost of the overall improvement. For example, if a certain feature of an item was in need of *repairs* to remedy a code violation, but the owner, of his own volition, chose to allocate additional funds to *replace* the entire item, then this additional cost would be counted substantial improvement and only the cost to perform the minimal necessary repairs would be deductible. The same policy applies when the owner chooses to use materials (or labor) that exceed the minimum expense for materials (or labor) necessary to remedy the code violation; the additional cost associated with the more expensive materials or labor would be counted toward substantial improvement.

As with donated labor and materials, the underlying principle for counting the extra costs associated with more expensive materials, labor, or designs is the added value of real property that would be located in flood hazard areas and that would be at risk to flood damage. It should be noted that in some form, the Federal Government (the NFIP and various disaster assistance programs) would likely be obligated to pay a portion of or all future damages to these more expensive improvements.

**Historic Structures**

Presently, in both the NFIP variance procedures (§ 60.6) and the definition of substantial improvement (§ 59.1) there is a provision which exempts "any alteration of a structure listed on the National Register of Historic Places or a State Inventory of historic places." Issues have been raised as to whether this exempting language can be modified to include structures that are not individually listed on the National Register, but that are located in a National, state or local historic district. In addition, the present exempting language is not fully consistent with the regulations of the Department of Interior (DOI) which define and set criteria for certification of historic structures.

The proposed rule change would clarfiy the current definition of substantial improvement and the procedures covering variances as they relate to the exemption of historic structures. This is to be done by including in the NFIP regulations, a separate definition for "historic structure" which is consistent with, but broader and more "inclusive than, the DOI definiton of "certified historic structure". In addition, language wuld be added to § 60.6(a) to clarify that variances granted to historic structures should be only the minimum deviation from NFIP criteria that is necessary to assure that the historic character and design of the structure is not destroyed.

A "Certified Historic Structure" is defined by the DOI (36 CFR 67.2) as any building (and its structural components) which is listed individually in the National Register of Historic Places (a listing maintained by the DOI); or, located in a "registered historic district" and "certified" by the Secretary of the Interior as contributing to the historic significance of that district.

The proposed NFIP definition of "historic structure" would include all structures which have been officially designated by the DOI as ""certified historic structure", but would go beyond this to include (a) structures individually listed on state inventories for states with historic preservation programs that have been approved by the Secretary of the Interior under 36 CFR 61.4 and (b) structures individually listed on local inventories for communities with historic preservation programs that have been certified either by an approved state program as determined by the Secretary of the Interior under 36 CFR 61.5, or directly by the Secretary of the Interior in states without approved programs.

The original intent of providing special treatment to historic structures was two-fold: First, to allow historic structures to always maintain Pre-FIRM, subsidized insurance rates and, second, to minimize the adverse impacts of NFIP requirements on historic structures. Therefore, the proposed rule modifies § 60.6(a) to stipulate that the variance be the minimum deviation necessary to preserve both the historic character of the structure and its designation as a historic building.

The granting of a variance should be based on a structure-by-structure review to determine whether elevation (or floodproofing if a non-residential structure is involved) to or above the base flood elevation would destroy the historic character or design of the structure. If so, a variance for that structure may be granted. Variances should never be granted for portions of, or entire historic districts, but only for individual historic structures.

For example, if elevation of a historic structure would destroy its character and cause a loss of its DOI designation, a variance for the elevation requirement may be considered. However, the owner of the structure should still be required, in accordance with § 60.6(a)(4), to elevate all utilities and finished interior workings to or above the BFE (or to the maximum extent possible or practically feasible) in order to reduce the potential of flood damage.

Physical alternations made to a "historic structure" which would otherwise constitute a substantial improvement must not result in the delisting of the structure from its DOI certified, state, or local inventory status. If such alterations cause the structure to lose its official listing or historic status, the structure would no longer be a "historic structure" for the purposes of the NFIP and would be considered a substantial improvement and must, therefore, comply with the NFIP requirements for new construction.

For further background on the pertinent regulations, procedures and adopted nomenclature of the DOI as they pertain to historic structures see 36 CFR 61.4, 61.5, 67.2, 67.4, 67.5, and 67.10.

**Start of Construction**

To make the definition of "start of construction" consistent with the definition of "substantial improvement", the second sentence in the current substantial improvement definition, which defines the point at which initial construction of a substantial improvement begins would be moved to the start of construction definition. In its place, a reference to "start of construction" would be added in the first sentence of the proposed substantial improvement definition. The actual start of construction for substantially improved structures would continue to mean the "the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the structure."

The term "reconstruction" has been deleted from the first sentence of the proposed definitions of "start of construction" and of "substantial improvement" and the terms "rehabilitation" and "addition" have been substituted. It is felt tha the terms "rehabilitation" and "addition" better describe the two types of improvements that actually occur to structures. This change is also consistent with current FEMA policy which, for the purposes of substantial improvement, differentiates between rehabilitations (improvements to a structure without an increase in external dimensions) and additions (increases in square footage of a structure) in terms of floodplain management and insurance rating requirements.

The term "repair" (due to damage) and the reference to market value of damaged structures would also be deleted from the first sentence of the substantial improvement definition because they are referenced in the proposed definition of "substantial damage".

**Other Flood Plain Management Revisions**

In addition, four other minor changes are proposed to clarify certain provisions of the regulations. First, the definition of "new construction" in § 59.1 would be modified to affirm current FEMA interpretation that the term applies to any subsequent improvements to a structure which meets the definition of "new construction". Occasionally, individuals have misinterpreted the current definition and argued that it allows for improvements to these structures which are not compliant with standards in § 60.3 provided that the improvements are not "substantial improvements". FEMA has maintained that the "substantial improvement" definition applies only to existing structures and that, once a structure meets the definition of "new construction", *any* further improvements to that structure must meet "new construction" requirements. Any other interpretation would be inconsistent with the structure and intent of the regulations in their entirety. However, FEMA believes that the fact that these misunderstandings of the definition have occurred is of sufficient concern to warrant clarification of the definition.

Second, paragraph (c)(5) of § 60.3 would be revised to make it clear that the openings requirement in that paragraph applies only to enclosures that are usable solely for vehicle parking, building access or storage. This would have to be the case since enclosures used for other uses would not be excluded under the definition of "lowest floor" and would have to be elevated to or above the base flood elevation or floodproofed (if non-residential). This change eliminates the need to refer back to the definition of "lowest floor" to draw this conclusion. Note that the type of storage permitted in these enclosures is only that which is incidental and accessory to the principal use of the structure. For instance, if the structure is a residence, the storage in the enclosure should be limited to items such as lawn and garden equipment, snow tires, and other low damage items which cannot be conveniently stored in the elevated portion of the structure. These items are likely to be flooded during more frequent flood events. No flood insurance coverage is provided for these items under most circumstances.



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Third, the anchoring requirement for structures built on piles or columns in coastal high hazard areas at § 60.3(e)(4) and (e)(5) would be revised to replace a requirement that such structures be capable of resisting floatation, collapse, and lateral movement due to the combined effects of wind and water loading from the one percent chance event. The proposed revision instead references the wind loading values in applicable State and local building requirements.

The reason for this change is that the original NFIP wind requirement was based on the 1972 version of the American National Standards Institute, Inc. (ANSI) standard. However, almost all State or local building codes now base their wind requirements on the 1982 version of the ANSI standard, which increased the loading requirements and developed a new basic wind speed map, based on a "50 year" mean recurrence interval. Because of the difference in basis for the wind speed maps, it has sometimes been interpreted that the codes' use of the "50 year" wind map is in conflict with FEMA's requirement that the "100 year" wind map be used. FEMA has examined this problem and has concluded that use of the new 1982 ANSI standard with its increased loading requirements will result in a design which is as protecting as using the 1972 ANSI standard.

Fourth, the definition of "development" in § 59.1 would be modified to clarify situations covering the storage of equipment and material. There have been questions raised as to whether the open-air storage of equipment and material constitutes "development" and whether certain stock-pile items such as lumber and equipment (e.g., heavy machinery storage lots, automobile salvage yards, etc.) require a flood plain permit and should adhere to NFIP regulations under § 60.3.

"Development" is currently defined as "any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation, or drilling operations". The definition of "development" describes the range of flood plain activities which require a permit by the community and which may increase flood levels during the occurrence of the base flood. For both communities which do not have designated floodways, and for those that do, development represents flood plain and floodway encroachments that must adhere to NFIP regulations under § 60.3(c)(10) and (d)(3), respectively.

Actual situations in the file have resulted in commercial enterprises storing equipment or materials in the designated floodway. In one situation a company was proposing to store lumber in the floodway. In another situation a company was storing numerous pieces of heavy equipment such as bulldozers, road graders, and cranes in the floodway. These experiences have demonstrated to FEMA the need to further define development to include the storage of equipment and material. Equipment or material stored on a site represents an encroachment which may increase flood levels during the base flood and must, therefore, under the proposed rule be both permitted by the community and considered during the application of § 60.3(c)(10) and (d)(3).

**Revision of Base Flood Elevation Determinations**

The proposed rule expands § 65.6(a)(6) by providing clarification of the criteria for acceptable hydraulic or hydrologic methodologies submitted to FEMA as supporting data for a request to revise a base flood elevation determination. No new requirements for such methodologies are proposed.

The flood risk data published on NFIP maps and in Flood Insurance Study (FIS) reports form the technical basis for the administration of the FNIP in each flood-prone community in the nation. These data provide the basis for local floodplain management measures required for participation in the NFIP, as well as the basis for actuarial flood insurance premiums. Although the preparation of NFIP maps and FIS reports is subject to rigorous technical standards, it is recognized that improvements in techniques used to estimate flood risks, changes in physical conditions in flood plains or watersheds, and availability of new technical data may necessitate revisions of the maps and studies.

In responding to new analyses submitted by appellants and in making such revisions, FEMA must exercise extreme care to ensure that all requests are fully documented and well justified. Therefore, adequate supporting data must be submitted. These data allow FEMA to review and evaluate the requests and to carry out its responsibility to ensure that the information to be presented is scientifically and technically correct. The availability of these data and methodology documentation also ensure that the right of the community and other property owners to review and appeal the new analysis is not infringed upon. Finally, access to the data and methods is necessary to update flood elevations and maps in an efficient manner as hydrologic or hydraulic conditions change in the future.

The existing regulation at § 65.6(a)(6) states: "In order for an alternative hydraulic or hydrologic methodology to be accepted, any computer program used must be accepted for general use by a governmental agency or notiable scientific body, must be well documented including a user's and programmer's manual, and must be available to the general user." The proposed rule is intended to eliminate the confusion regarding certain terms used in this regulation.

Specifically, the proposed rule includes an explanation of "governmental agency". In the context of this provision, it means an agency of the Federal Government that is responsible for water resources activities. A non-inclusive list of such agencies would consist of: The U.S. Army Corps of Engineers, U.S. Geological Survey, USDA Soil Conservation Service, Tennessee Valley Authority, and Bureau of Reclamation. "Governmental agnecy" does not embrace Federal agencies that do not have these responsibilities and does not include any governmental entity below the Federal level, whether they have these responsibilities or not.

"Notable scientific body" is explained in the proposed rule as an organization comparable to the National Academy of Sciences and is not intended to include individual universities and colleges.

The proposed rule clarifies the requirement that a computer program be available to the general user. Language has been added to explain that the program must be in the public domain (i.e., nonproprietary). If a program source code can be sent to FEMA free of charge with fully documented permission from the owner that FEMA may release this information and the user's manual to whomever requests it, with only nominal charges to cover FEMA's cost of reproducing these materials (i.e., photocopying the manuals and/or the cost of a magnetic tape or PC diskette), then FEMA will consider the program to be in the public domain.

**Mapping and Revision of Alluvial Fan Special Flood Hazard Areas**

The revisions to § 59.1 and 65.13, setting forth FEMA's policy for issuing Letters of MAP Amendment (LOMAs), Letters of Map Revision (LOMRs), Flood Insurance Rate Map (FIRM) revisions, and conditional Letters of Map Revision (CLOMRs) for Special Flood Hazard Areas (SFHAs) on alluvial fans is necessary because of the high level of interest in development of alluvial fans and in anticipation of an increasing demand for map changes for areas on alluvial fans.



Alluvial fans are cone or fan-shaped deposits of boulders, gravel, sand, and fine sediments that have been eroded from mountain slopes, transported by floodwater draining upsteam watersheds, and then deposited on the adjacent valley floor. Active alluvial fans are areas of extreme hazard subject to flash flood and high velocity flows. Unlike riverine flooding, that is associated with permanent channels and identifiable flood plains, or unlike shallow flooding by slow-moving sheetflows, flooding that occurs on alluvial fans is characterized by fast-moving debris and sediment-laden shallow flows. The paths followed by these flows are prone to lateral migration and sudden relocation to other portions of the fan. In addition, these fast-moving flows present hazards associated with erosion, debris flow, and sediment transport.

Alluvial fans occur in a variety of environments, particularly in arid, semi-arid or seasonally dry regions, where the sediment supply is large enough that deposition can occur. Such locations are particularly common along faulted or tectonic mountain fronts in California, Colorado, Nevada, Utah, Oregon, Texas, Arizona, Idaho, New Mexico, Wyoming, Montana, and Washington; however, alluvial fans are also found in Alaska, West Virginia, Kentucky, and Tennessee. Some of the fastest developing areas of the United States are in the arid and semi-arid southwestern regions, where alluvial fans occupy a large portion of the land area.

For flood insurance purposes, FEMA has chosen the 100-year flood as the base flood for the determination and mitigation of flood hazards and for setting insurance rates. However, the technology of mathematically modeling the hydrodynamics of water and debris flows on alluvial fans is still in the early development stage. Therefore, the estimation of the values of the various hazard parameters associated with the base flood is highly uncertain for alluvial fans.

Further research is needed to provide better understanding of the factors that affect alluvial fan flooding, including: The hydrology of the watersheds above and below the apex; the effects of alluvial fan geometric characteristics, sediment source and quantity; the effect of sediment on channel avulsion; the stability of flood channels on alluvial fans; the location and extend of the distinct hydraulic zones on the fan; and the determination of the stability of existing man-made structures during major flood events; and the effects of those structures on the natural alluvial fan boundaries.

In addition, the state of the art for the design and construction of other than major structural projects (i.e., whole fan protection projects) is not well developed. The efficacy of more localized projects in providing protection from fan hazards is not well known or readily assessed. Further research is also needed to investigate construction techniques and to assess design parameters for the construction of flood mitigation structures on fans. Unfortunately, the needed research will take time to complete.

Given the present interest in development of alluvial fans and in anticipation of an increasing demand for Flood Insurance Rate Map (FIRM) changes for areas on alluvial fans, FEMA has identified the need to develop a policy for issuing map revisions for SFHAs on alluvial fans. FEMA believes that it is prudent to take a conservative stand concerning the removal of the SFHA designation, and its associated lender notification and mandatory insurance purchase requirements, from alluvial fans. FEMA will, therefore, consider as a basis for map revisions involving alluvial fans only major structural flood mitigation measures that are supported by appropriate engineering analyses.

Such measures should be designed to mitigate all hazards associated with alluvial fan flooding which include inundation, ground erosion, scour around structures, and debris and sediment flow and accumulation, in addition to aggradation and degradation of the conveyance systems. In addition, the short and long-range effects of such measures on adjacent properties must be considered. Major mitigation structures may include, but are not restricted to, diversion dikes, flood walls, detention basins, and diversion channels with inlet and outlet systems.

Several communities special construction standards and zoning regulations for flood mitigation in developments on alluvial fans. While such approaches are encouraged, their efficacy in the control of flood waters on alluvial fans is uncertain. Therefore, FEMA will generally not recognize such approaches by themselves as an adequate basis for map revision.

Because of the complexities associated with the many variables affecting flooding on alluvial fans and the lack of information with which to qualify the major fan hazards and provide the appropriate construction techniques for structures on alluvial fans, the creation of an overall development master plan of flood control, drainage maintenance and floodplain management is encouraged by FEMA. Such plans allow for strategic management of alluvial fans at the early stages of development. At this stage, the community is afforded a number of alternatives for dedicating specific portions of the fan to both structural and non-structural measures that will address the unique hazards associated with alluvial fan flooding.

The proposed rule adds definitions for "Alluvial Fan" and "Apex". Additionally, the proposed rule amends Part 65 to add a new section to establish the policy, principles, and data requirements for flood plain mitigation measures on alluvial fans and the requirements for mapping and revising alluvial fan SFHAs.

FEMA has determined, based upon an Environmental Assessment, that the proposed rule does not have significant impact upon the quality of the human environment. As a result, an Environmental Impact Statement will not be prepared. A finding of no significant impact is included in the formal docket file and is available for public inspection and copying at the Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

The proposed rule does not have a significant economic impact on a substantial number of small entities and has not undergone regulatory flexibility analysis.

The proposed rule is not a "major rule" as defined in Executive Order 12291, dated February 17, 1981, and hence, no regulatory analysis has been prepared.

FEMA has determined that this proposed rule does not contain a collection of informaiton requirement as described in section 3504(h) of the Paperwork Reduction Act.

**List of Subjects in 44 CFR Parts 59, 60 and 65**

Flood insurance, Flood plains.

Accordingly, it is proposed to amend CFR Chapter I, Subchapter B as follows:

**PART 59—GENERAL PROVISIONS**

1. The authority citation for Part 59 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978; E.O. 12127.

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**§ 59.1 [Amended]**

2. § 59.1 is amended as follows:

a. By adding alphabetically, a definition of "Alluvial Fan" to read as follows:

* * * * *

*"Alluvial fan"* means a geomorphologic feature characterized by a cone or fan-shaped deposit of boulders, gravel, and fine sediments that have been eroded from mountain slopes, transported by flood flows, and then deposited on the valley floors, and which is subject to flash flooding, high velocity flows, debris flows, erosion, sediment movement and deposition, and channel migration.

* * * * *

b. By adding, alphabetically, a definition of "Apex" to read as follows:

* * * * *

*"Apex"* means the point of highest elevation on an alluvial fan, which on undisturbed fans is generally the point where the major stream that formed the fan emerges from the mountain front.

* * * * *

c. By adding to the definition of "Development" after the word "operations" the words "or storage of equipment or materials.

d. By adding, alphabetically, a definition of "Historic structure" to read as follows:

* * * * * * * *

*"Historic structure"* means any structure that is:

(a) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

(b) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

(c) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of Interior; or

(d) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:

(1) By an approved state program as determined by the Secretary of the Interior or

(2) Directly by the Secretary of the Interior in states without approved programs.

* * * * * * *

e. By revising the definition of "New construction" to read as follows:

* * * * * * * *

"New construction" means, for the purposes of determining insurance rates, structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For flood plain management purposes, "new construction" means structures for which the "start of construction" commenced on or after the effective date of a flood plain management regulation adopted by a community and includes any subsequent improvements to such structures.

f. By removing in the definition of "Start of construction" the word "reconstruction" in the first sentence and adding in its place the words "rehabilitation, addition" and by adding the following sentence at the end of the definition: "For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building."

g. By adding, alphabetically, a definition of "Substantial damage" to read as follows:

* * * * * * * *

*"Substantial damage"* means damage of any orgin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

* * * * * * * *

h. By revising the definition of "Substantial improvement" to read as follows:

* * * * * * * *

"Substantial improvement" means any rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred "substantial damage", regardless of the actual repair work performed. The term does not, however, include either—(a) Any project for improvement of a structure to correct existing violations of state of local health, sanitary or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions or

(b) Any alteration of a "historic structure".

## PART 60—CRITERIA FOR LAND USE MANAGEMENT AND USE

3. The authority citation for Part 60 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978; E.O. 12127.

**§ 60.3 [Amended]**

4. § 60.3 is amended as follows:

a. By adding in pargraph (c)(5) between the words "that" and "are" the phrase "are usable solely for parking of vehicles, building access or storage in an area other than a basement and which".

b. By removing the sentence in paragraph (e)(4) that begins with the word "Wind" and adding in its place "Water loading values used shall be those associated with the base flood. Wind loading values used shall be those required by applicable State of local building standards."

c. By removing the sentence in paragraph (e)(5)(ii) that begins with the word "Maximum" and adding in its place "Water loading values used shall be those associated with the base flood. Wind loading values used shall be those required by applicable State or local building standards."

* * * * *

**§ 60.6 [Amended]**

5. Section 60.6 is amended by removing in paragraph (a) introductory text the sentence "Variances may be issued by a community for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or a State Inventory of Historic Places or a State Inventory of Historic Places, without regard to the procedures set forth in this section", and adding in its place "Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and that the variance is the minimum necessary to preserve the historic character and design of the structure."

## PART 65—IDENTIFICATION AND MAPPING OF SPECIAL HAZARD AREAS

6. The authority citation for Part 65 continues to read as follows:

**Authority:** 42 U.S.C. 4001, *et seq.* Reorganization Plan No. 3 of 1978; E.O. 12127.



**§ 65.6 [Amended]**

7. § 65.6 is amended by revising paragraph (a)(6) to read as follows:

* * * * *

(a) * * *

(6) In order for an alternative hydraulic or hydrologic methodology to be accepted, any computer program used must meet all of the following criteria:

(i) It must be reviewed and approved for general use by a Federal agency responsible for water resources activities, such as the U.S. Army Corps of Engineers, U.S. Geological Survey, USDA Soil Conservation Service, Tennessee Valley Authority, or Bureau of Reclamation; or by a notable scientific body such as the National Academy of Sciences. Reviews or acceptance by Federal agencies that do not have water resources responsibilities, by non-Federal agencies, or by individual universities and colleges, are not admissible.

(ii) It must be well documented including source codes and user's manual.

(iii) It must be available to the general user, i.e. it must be in the public domain and nonproprietary. If the program is not generally available from a Federal agency, but the source code can be sent to FEMA free of charge with fully documented permission from the owner that FEMA may release the code and the user's manual to whomever requests it, with only nominal charges to cover FEMA's cost of reproducing these materials, then FEMA will consider the program to be in the public domain.

* * * * *

**§ 65.13 [Redesignated as § 65.14]**

8. Part 65 is amended by the redesignation of § 65.13 as 65.14 and the addition of a new § 65.13 to read as follows:

**§ 65.13 Mapping and Revision of Alluvial Fan Special Flood Hazard Areas**

This section describes the procedures to be followed and the types of information FEMA needs to recognize that a flood control measure is effective in removing or reducing the size of a Special Flood Hazard Area (SFHA) located on an alluvial fan. This information must be supplied to FEMA by the community or other party seeking recognition of such a flood control measure at the time a flood risk study or restudy is conducted, when a map revision under the provisions of Part 65 of this subchapter is sought, and upon request by the Administrator during the review of previously recognized flood control measures. The FEMA review will be for the sole purpose of establishing appropriate risk zone determinations for NFIP maps and shall not constitute a determination by FEMA as to how the flood control measure or system will perform in a flood event.

(a) The applicable provisions of §§ 65.2, 65.3, 65.4, 65.6, and 65.8 shall also apply to FIRM revisions involving alluvial fans.

(b) The provisions of § 65.5 regarding map revisions based on fill or other topographic alterations and the provisions of Part 70 regarding inadvertent inclusion of properties within a SFHA shall not apply to FIRM revisions involving alluvial fans. In general, topographic alterations alone, by fill or other means, will not serve as a basis for removing SFHA designations from alluvial fans.

(c) FEMA will consider for map revision purposes major flood control measures whose design and construction are supported by sound engineering analyses which demonstrate that the measures will effectively eliminate all alluvial fan flood hazard from the area protected by such measures. The provided analyses must include, but are not necessarily limited to the following:

(1) Engineering analyses that quantify the design discharges and volumes of water flow, debris flow, and sediment movement associated with the flood that has a one-percent probability of being equaled or exceeded in any year at the apex of the fan under current watershed conditions and under potential adverse conditions (e.g., deforestation of the watershed by fire). The potential for debris flow and sediment movement must be assessed using an engineering method acceptable to FEMA. The assessment should consider the characteristics and availability of sediment in the drainage basin above the apex and on the alluvial fan.

(2) Engineering analyses showing that the project elements will accommodate the estimated peak discharge and volumes of water, debris, and sediment, as determined in accordance with (c)(1) of this section, and their associated hydrodynamic and hydrostatic forces.

(3) Engineering analyses showing that the project elements have been designed against the erosion and scour forces present.

(4) Engineering analyses or evidence showing that the project elements will provide protection form potential lateral migration and sudden relocation of flows from other parts of the fan.

(5) Engineering analysis that assesses the methods of disposal of concentrated flood water and associated sediment load on adjacent properties.

(6) Engineering analyses demonstrating that flooding from local runoff, or sources other than the fan apex, is insignificant or has otherwise been accommodated by the appropriate flood control or drainage measures.

(d) Coordination. FEMA will recognize projects that are adequately designed and constructed provided that:

(1) Evidence is submitted to show that the impact of the project on flood hazards in all areas of the fan, (including those not protected by the project) and the design and maintenance requirements of the different elements of the project were reviewed and approved by the community, State or local agency that has jurisdiction over flood control activities in the community.

(2) The community provides assurance to FEMA that appropriate easements have been secured from owners of property on which flood waters have been directed.

(e) Operation and Maintenance Plans and Criteria. The requirements for operation and maintenance of flood control measures on alluvial fans shall be those specified under § 65.10 (c) and (d) when applicable.

(f) Certification Requirements. Data submitted to support that a given flood mitigation measure complies with the requirements set forth in paragraphs (c)(1) through (6) of this section must be certified by a registered professional engineer. Also, certified as-built plans of the flood mitigation measures must be submitted. Certifications are subject to the definition given at § 65.2 of this subchapter.

Dated: February 28, 1989.

**Harold T. Duryee,**

*Federal Insurance Administrator.*

[FR Doc. 89-5094 Filed 3-6-89; 8:45 am]

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**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

## Endangered and Threatened Wildlife and Plants; Proposal to List the Golf Stick Pearly Mussel as an Endangered Species

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The Service proposes to list a freshwater mussel, the golf stick pearly mussel (*Obovaria retusa*), as an endangered species under the Endangered Species Act of 1973, as

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amended (Act). This freshwater mussel historically occurred in the Ohio River and its large tributaries in Pennsylvania, West Virginia, Ohio, Indiana, Illinois, Kentucky, Tennessee, and Alabama. Presently, the golf stick pearly mussel is known from four relict, apparently nonreproducing, populations—two reaches of the Tennessee River (one in the State of Kentucky and one in the State of Tennessee), one reach of the Green River in Kentucky, and one reach of the Cumberland River in Tennessee. The distribution and reproductive capacity of this species has been seriously impacted by the construction of impoundments on the large rivers it once inhabited. Unless reproducing populations are found or methods developed to maintain existing populations, this species will likely become extinct in the foreseeable future. Comments and information are sought from the public concerning this proposal.

**DATES:** Comments from all interested parties must be received by May 8, 1989. Public hearing requests must be received by April 21, 1989.

**ADDRESSES:** Comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, Asheville Field Office, 100 Otis Street, Room 224, Asheville, North Carolina 28801. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Mr. Richard G. Biggins at the above address (704/259-0321 or FTS 672-0321).

**SUPPLEMENTARY INFORMATION:**

## Background

The golf stick pearly mussel (*Obovaria retusa*) was described by Lamarck (1819). This freshwater species, which is characterized as a large river species (Bates and Dennis 1985), has a medium to large shell that is ovate to subquadrate in outline (Bogan and Parmalee 1983). The shell exterior lacks rays and has a yellow-green to brown color. Older individuals are usually darker brown or black. The inside of the shell is salmon to deep purple surrounded by a white border. Like other freshwater mussels, it feeds by filtering food particles from the water. It has a complex reproductive cycle in which the mussel's larvae parasitize fish. The mussel's life span, fish species its larvae parasitize, and other aspects of its life history are unknown.

The golf stick pearly mussel has historically widely distributed in the Ohio, Cumberland, and Tennessee River systems in Pennsylvania, West Virginia, Ohio, Illinois, Indiana, Kentucky, Tennessee, and Alabama (Bogan and Parmalee 1983, Kentucky Nature Preserves Commission 1980, Parmalee and Klippel 1982, Lauritsen 1987, Stansbery 1970). Based on personal communication with knowledgeable experts (Steven Ahlstedt and John Jenkinson, Tennessee Valley Authority, 1987; Arthur Bogan, Philadelphia Academy of Sciences, 1988; Arthur Clarke, Corpus Christi State University, 1986; Ronald Cicerello, Kentucky Natural Preserves Commission, 1988; James Sickel, Murry State University, 1987; David Stansbery, Ohio State University, 1987) and a review of current literature (see above plus Sickel 1985), the species is known to survive in only four river reaches. The species still exists but apparently does not reproduce in the Tennessee River in Livingston, Marshall, and McCracken Counties, Kentucky; the Tennessee River in Hardin County, Tennessee; the Cumberland River in Wilson, Trousdale, and Smith Counties, Tennessee; and the Green River in Hart and Edmonson Counties, Kentucky.

The continued existence of these four popoulations is questionable. Unless reproducing populations can be found or methods can be developed to maintain these or create new populations, the species will become extinct in the forseeable future. The individuals that do still survive in these four river reaches are also threatened from other factors. The Green River in Kentucky has experienced water quality problems related to the impacts from oil and gas production in the watershed. The individuals still surviving in the Tennessee and Cumberland Rivers are potentially threatened by gravel dredging, channel maintenance, and commercial mussel fishing. Although the species is not commercially valuable, incidental take of the species does sometimes occur during commercial mussel fishing for other species.

The golf stick pearly mussel was recognized by the Service in the May 22, 1984, Federal Register (49 FR 21664) as a species that was being considered for possible addition to the Federal List of Endangered and Threatened Wildlife and Plants. The species was a candidate placed in Category 2; such species are those for which information then in possession of the Service indicates that a proposal is possibly inappropriate, but for which conclusive data are still lacking to support such a proposal. On March 17, 1987, and October 27, 1987, the Service notified Federal, State, and local governmental agencies and interested individuals by mail that a status review was being conducted specifically on the golf stick pearly mussel and that the species could be proposed for listing. Since that time, additional contacts with Federal and State agency personnel and the scientific community have occurred concerning the status and potentiality of the species' being protected under the Endangered Species Act.

## Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth procedures for adding species to the Federal lists. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(A)(1). These factors and their application to the golf stick pearly mussel (*Obovaria retusa*) are as follows:

*A. The present or threatened destruction, modification, or curtailment of its habitat or range*

The golf stick pearly mussel was once widespread in the Ohio River and its large tributaries in Pennsylvania, West Virginia, Ohio, Kentucky, Indiana, Illinois, Tennessee, and Alabama (Bogan and Parmalee 1983). However, most of the historically known populations were apparently lost due to conversion of many sections of these big rivers to a series of large impoundments. This seriously reduced the availability of preferred riverine gravel/sand habitat, and it likely affects the distribution and availability of the mussels' fish host. As a result, the species' distribution has been substantially reduced.

The species was last taken in Pennsylvania in 1908 (Pennsylvania Department of Environmental Resources, personal communication, 1987). No live or fresh dead specimens have been taken in West Virginia in recent years (William Tolin, U.S. Fish and Wildlife Service, personal communication, 1987). According to a personal communication from Robert McCance, Jr., Ohio Department of Natural Resources (1987), the last Ohio collection of the golf stick pearly mussel was made in 1930. In Indiana waters the species has not been collected in decades (Max Henschen, Indiana Mollusk Technical Advisory Committee, personal communication, 1987). The Illinois Department of Energy and Natural Resources (Kevin Cummings, personal communication, 1987) reported that the species has not been collected in over 30 years from Illinois.



The species is presently known from only four river reaches—two in Kentucky and two in Tennessee. In Kentucky waters the golf stick has been taken in recent years only from the Tennessee River in McCracken, Livingston, and Marshall Counties and from the Green River in Hart and Edmonson Counties (Linda Andrews, Kentucky Department of Fish and Wildlife Resources, and Ronald Cicerello, personal communication, 1987). Kentucky's Tennessee River population is represented by the collection of only two live individuals in recent years. One was taken in 1985 (Sickel 1985), and the other was collected in 1986 (C. E. Moore, U.S. Army Corps of Engineers, personal communication, 1987). In the Green River, only one fresh dead individual was taken during a mussel survey between Munfordville, Kentucky, and Mammoth Cave, Kentucky, in 1987 (Ronald Cicerello, personal communication, 1987). The last live specimen taken from the Green River was collected in the mid-1960s (Kentucky Natural Resources and Environmental Protection Cabinet, personal communication, 1987).

In Tennessee the species apparently still survives in the Cumberland River in Wilson, Trousdale, and Smith Counties, and in the Tennessee River in Hardin County. According to personal communication with knowledgeable individuals, the species is taken on rare occasions by commercial mussel fishermen from both these rivers (Paul Parmalee, University of Tennessee, personal communication, 1986; Steven Ahlstedt, personal communication, 1987; Paul Yokley, University of North Alabama, personal communication, 1987).

The four surviving populations are all threatened from impacts on their environment. The Green River population is threatened from degradation of water quality resulting from inadequate environmental controls at oil and gas exploration and production facilities and from altered stream flows from an upstream reservoir. The other populations are potentially threatened by river channel maintenance, navigation projects, and gravel and sand dredging.

*B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes*

Although the species is not commercially valuable, it does exist on harvested mussel beds, and the species is therefore sometimes taken by mussel fishermen. Thus, take does pose some threat to the species. Federal protection would help to control the take of individuals.

*C. Disease or Predation*

Although the golf stick pearly mussel is undoubtedly consumed by predatory animals, there is no evidence that predation threatens the species. However, freshwater mussel die-offs have recently (early to mid-1980s) been reported throughout the Mississippi River basin, including the Tennessee River and its tributaries (Richard Neves, Virginia Polytechnic Institute and State University, personal communication, 1986). The cause of the die-offs has not been determined, but significant losses have occurred to some populations.

*D. The Inadequacy of Existing Regulatory Mechanisms*

The States of Kentucky and Tennessee prohibit taking fish and wildlife, including freshwater mussels, for scientific purposes without a State collecting permit. However, these States do not protect the species from take for other purposes. Federal listing will provide the species additional protection under the Endangered Species Act by requiring Federal permits to take the species and by requiring Federal agencies to consult with the Service when projects they fund, authorize, or carry out may adversely affect the species.

*E. Other Natural or Manmade Factors affecting its Continued Existence*

None of the four populations is known to be reproducing. Therefore, unless reproducing populations can be found or methods can be developed to maintain these or create new populations, the species will be lost in the foreseeable future. In fact, three of the populations (Cumberland and Tennessee River populations) may contain only old individuals that have passed their reproductive age.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list the golf stick pearly mussel (*Obovaria retusa*) as an endangered species. Historical records reveal that the species was once much more widely distributed in many of the large rivers of the Ohio River system. Presently only four isolated, apparently non-reproducing, populations are known to survive. Due to the species' history of population losses and the vulnerability of the four remaining populations, threatened status does not appear appropriate for this species. See the following section for a discussion of why critical habitat is not being proposed for the golf stick pearly mussel.

## Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate any habitat of a species that is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for the golf stick pearly mussel at this time, owing to the lack of benefits from such designation. The U.S. Army Corp of Engineers and the Tennessee Valley Authority are the two Federal agencies most involved, and they, along with the State natural resources agencies in Tennessee and Kentucky, are already aware of the location of the remaining populations that would be affected by any activities in these river reaches. Both Federal agencies have conducted numerous studies in these river basins and are knowledgeable of the fauna and of their projects' impacts. No additional benefits would accrue from critical habitat designation that would not also accrue from the listing of the species. In addition, this species is so rare that taking for scientific purposes and private collection could be a threat. The publication of critical habitat maps and other publicity accompanying critical habitat designation could increase that threat. The location of populations of this species have consequently been described only in general terms in this proposed rule. Any existing precise locality data would be available to appropriate Federal, State, and local governmental agencies through the Service office described in the "Addresses" section.

## Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed

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species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibition against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in the destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or destroy or adversely modify its critical habitat. If a Federal action may adversely affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. The Service has notified Federal agencies having programs that may affect the golf stick pearly mussel. Federal activities that could occur and impact the species include, but are not limited to, the carrying out or the issuance of permits for hydroelectric facility construction and operation, reservoir construction, river channel maintenance, stream alterations, wastewater facilities development, and road and bridge construction. It has been the experience of the Service, however, that nearly all section 7 consultations have been resolved so that the species has been protected and the project objectives have been met. In fact, the areas inhabited by the golf stick pearly mussel are also inhabited by other mussels that have been federally listed since 1976, and all section 7 consultations for these areas have been successfully resolved.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any subject to the jurisdiction of the United States to take any listed species, import or export it, ship it in interstate commerce in the course of commercial activity, or sell it or offer it for sale in interstate or foreign commerce. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions would apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes to enhance the propagation or survival of the species and/or for incidental take in connection with otherwise lawful activities. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available.

### Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposal are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

Final promulgation of the regulation on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Field Supervisor, U.S. Fish and Wildlife Service, Asheville Field Office, 100 Otis Street, Room 224, Asheville, North Carolina 28801.

### National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, needed not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

### References Cited

Bates, J.M., and S.D. Dennis. 1985 State Museum of Tennessee Wildlife Resources Agency Technical Report No. 85-3. p. 125.

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Parmalee, P.W., and W.E. Klippel. 1982. A relic population of *Obovaria retusa* in the middle Cumberland River, Tennessee. The Nautilus, 96(1):30–32.

Sickel, James B. 1985. Biological assessment of the freshwater mussels in the Kentucky Dam tailwaters of the Tennessee River. Submitted to Kentucky Division of Water, Frankfort, Kentucky. 42 pp.

Stansbery, David H. 1970. Eastern freshwater molluska: (I) the Mississippi and St. Lawrence River systems. Malacologia, 10(1):9–22.

### Author

The primary author of this final rule is Richard G. Biggins, U.S. Fish and Wildlife Service, Asheville Field Office, 100 Otis Street, Room 224, Asheville, North Carolina 28801 (704/259–0321 or FTS 672–0321).

### List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

### Proposed Regulation Promulgation

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

## PART 17—[AMENDED]

11. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411; Pub. L. 100–478, 102 Stat. 2306; Pub. L. 100–653, 102 Stat. 3825 (16 U.S.C. 1531 *et seq.*); Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

12. It is proposed to amend § 17.11(h) by adding the following, in alphabetical order under CLAMS, to the List of Endangered and Threatened Wildlife:



§ 17.11 Endangered and threatened wildlife.

(h) * * *

| Species | | Historic range | Vertebrate population where endangered or threatened | Status | When listed | Critical habitat | Special rules |
|---|---|---|---|---|---|---|---|
| Common name | Scientific name | | | | | | |
| Clams: | | | | | | | |
| Pearly mussel, golf stick (=pink ring) | *Obovaria retusa* | U.S.A. (AL, IL, IN, KY, OH, PA, TN and WV). | NA | E | | NA | NA |

Dated: December 22, 1988.

**Becky Norton Dunlop,**

*Assistant Secretary for Fish and Wildlife and Parks.*

(Proposal: Golf stick pearly mussel (*Obovaria retusa*)—endangered)

[FR Doc. 89-5252 Filed 3-6-89; 8:45 am]

BILLING CODE 4310-55-M

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# Notices

Federal Register
Vol. 54, No. 43
Tuesday, March 7, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

### Special Committee on Ethics in Government; Public Meeting

**SUMMARY:** Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of a meeting of the Special Committee on Ethics in Government of the Administrative Conference of the United States. The committee has scheduled the meeting to continue its discussion of appropriate conflict-of-interest rules for Federal advisory committee members.

**DATE:** Tuesday, March 14, 1989 at 9:30 a.m.

LOCATION: Library of the Administrative Conference, 2120 L Street NW., Suite 500, Washington, DC.

PUBLIC PARTICIATION: The committee meeting is open to the interested public, but limited to the space available. Persons wishing to attend should notify the contact person at least two days prior to the meeting. The committee chairman may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of the meeting will be available on request.

**FOR FURTHER INFORMATION CONTACT:** Michael W. Bowers, Office of the Chairman, Administative Conference of the United States, 2120 L Street NW., Suite 500, Washington, DC 20037. Telephone: (202) 254–7065.

Dated: March 3, 1989.

**Michael W. Bowers,**

*Deputy Research Director.*

[FR Doc. 89–5401 Filed 3–6–89; 8:45 am]

BILLING CODE 6110–01–M

## DEPARTMENT OF AGRICULTURE

### Office of the Secretary

### Privacy Act; System of Records

**AGENCY:** Office of the Secretary, USDA.

**ACTION:** Notice of New Privacy Act System of Records.

**SUMMARY:** Notice is hereby given that USDA proposes to create a new Privacy Act system of records, USDA/FS–50, entitled "Skills Bank Data Base, USDA/FS."

**EFFECTIVE DATE:** This notice is effective on March 7, 1989.

**FOR FURTHER INFORMATION CONTACT:** Eddie L. Wade, Forest Service Privacy Act Officer, Forest Service, USDA, Information Systems Staff, P.O. Box 96090, Washington, D.C. 20090–6090.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Privacy Act, 5 U.S.C. 552a, USDA is creating a new system of records to be maintained by the Forest Service (FS). The purpose of this notice is to announce the creation and character of this system of records maintained by the FS. The system contains data on FS employees concerning their knowledge, skills, and abilities; career aspirations, work history, and education. This system is being created pursuant to a consent decree entered in the case of *Bernardi* v. *Lyng*, Civil Action No. 73–1110 SC (CW), which is pending in the United States District Court for the Northern District of California. These obligations require the FS to establish a "skills bank," for the purpose of assisting the FS to achieve, to the greatest extent possible, a long term goal of eliminating underrepresentation of women within each General Schedule job series represented within its workforce and at each grade level therein.

A "Report on New System," required by 5 U.S.C. 552a(r), as implemented by Appendix I to OMB Circular A–130, was sent to the President of the Senate, the Speaker of the House of Representatives and the Director of the Office of Management and Budget on February 10, 1989.

Signed at Washington, DC, on February 10, 1989.

PETER C. MYERS,

*Deputy Secretary.*

**USDA/FS–50**

**SYSTEM NAME:** 1Skills Bank Data Base, USDA/FS.

**SYSTEM LOCATION:**

USDA/FS, Pacific Southwest Forest and Range Experiment Station (Station), 1960 Addison Street, Berkeley, California 94704.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

All FS permanent employees assigned to the Pacific Southwest Region and to the Pacific Southwest Forest and Range Experiment Station.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

A skills bank data form, containing the name, social security number, position title, series, grade, career goals and aspirations, knowledge, skills, abilities, work history, and education of FS employees.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 301, 7 U.S.C. 2201, and 42 U.S.C. 2000e–16, *et seq.*

**PURPOSE OF THE SYSTEM:**

Assistance in eliminating underrepresentation of women within each General Schedule job series represented within the regional workforce and at each grade level therein and assistance in effective human resource management by encouraging more qualified applicants for vacancies and certain details.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

There are no routine uses for this system of records.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Skills Bank Data Base records are stored for computers on disks, magnetic tape, and other electronic media accessible only by password.



**RETRIEVABILITY:**

Records can be accessed by data entry number; computer address, name, social security number (obtained voluntarily and used for purposes of verification only), position title, current pay plan, series and job grade; career goals; education; work experience, and knowledge, skills and abilities.

**SAFEGUARDS:**

On-line access to Skills Bank Data Base data is controlled by password protection, and is limited to those names entered into a controlled pool of names of persons with designated access authority in the Region. These are either the persons who have been assigned to access the Skills Bank data base or those supervisors who have agreed to do so. At the Station, access is limited to the Director, Assistant Directors, Project Leaders, Group Leaders, Administrative Officer or Business Management Assistant.

**RETENTION AND DISPOSAL:**

Until the National Archives and Records Administration determines an appropriate retention and disposal schedule for these records, they will be retained indefinitely in accordance with the FS Handbook 6209.11, Records Management Handbook.

**SYSTEM MANAGER(S) AND ADDRESS:**

Group Leader of Statistics and Computer Services, Pacific Southwest Station, 1960 Addison Street, Berkeley, California 94704.

**NOTIFICATION PROCEDURE:**

An individual may request information as to whether the system contains records pertaining to him or her by signing on to a locally-based computer terminal and viewing his or her own record. The employee can then print out the data. Individuals not employed in the Pacific Southwest Region or Station may obtain this information by written request to the System Manager.

**RECORD ACCESS PROCEDURE:**

Same as notification procedure.

**CONTESTING RECORD PROCEDURES:**

See notification procedure, above. An employee, having obtained and printed his or her own record, may make corrections on the printed record and forward the corrected record to the appropriate Personnel Office for correction of the record in the data base. Further information may be obtained by making a written request to the system manager. USDA regulations on contesting contents of records and appealing initial determinations are set forth at 7 CFR 1.100–1.123.

**RECORD SOURCE CATEGORIES:**

Information in these records is obtained directly from the individuals in the system.

[FR Doc. 89–5229 Filed 3–6–89; 8:45 am]

BILLING CODE 3410–11–M

## Agricultural Marketing Service

**[No. LS–89–103]**

### Beef Promotion and Research; Certification and Nomination; Cattlemen's Beef Promotion and Research Board

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the United States Department of Agriculture's Agricultural Marketing Service (AMS) is accepting applications from State cattle producer organizations and beef importers who desire to be certified to nominate producers or importers for appointment to vacant positions on the Cattlemen's Beef Promotion and Research Board (board). Organizations which have not previously been certified that are interested in submitting nominations must complete and submit an official application form to AMS. Previously certified organizations do not need to reapply. Notice is also given that vacancies will occur on the board; and that during a period to be established, nominations will be accepted from eligible organizations and individual importers.

**DATE:** Applications for Certification must be received by close of business, April 6, 1989.

**ADDRESS:** Certification forms as well as copies of the certification and nomination procedures may be requested from Ralph L. Tapp, Chief; Marketing Programs and Procurement Branch; Livestock and Seed Division; Agricultural Marketing Service, USDA; Room 2610–S; P.O. Box 96456; Washington, DC 20090–6456.

**FOR FURTHER INFORMATION CONTACT:** Ralph L. Tapp at 202–447–2650 (FTS 447–2650).

**SUPPLEMENTARY INFORMATION:** The Beef Promotion and Research Act of 1985 (Act) (7 U.S.C. 2901 *et seq.*), approved December 23, 1985, authorizes the implementation of a national Beef Promotion and Reasearch Order. The Order, as published in the July 18, 1986, **Federal Register** (51 FR 26132), provides for the establishment of a board. The board consists of 108 cattle producers and 5 importers appointed by the Secretary. The duties and responsibilities of the board are specified in the Order.

The Act and the Order provide that the Secretary shall either certify or otherwise determine the eligibility of State or importer organizations or associations to nominate members to the board to ensure that nominees represent the interests of cattle producers and importers. Nominations for importer representatives may also be made by indivduals who import cattle, beef, or beef products. Individual importers do not need to be certified as eligible to submit nominations. When individual importers submit nominations, they must establish to the satisfaction of the Secretary that they are in fact importers of cattle, beef, or beef products, pursuant to § 1260.143(b)(2) of the Order (7 CFR 1260.143(b)(2)). Individual importers are encouraged to contact AMS at the above address to obtain further information concerning the nomination process including the beginning and ending dates of the established nomination period and required nomination forms and biographical data sheets. Certification and nomination procedures were promulgated in the final rule, published in the April 4, 1988, **Federal Register** (51 FR 11557). Organizations which have previously been certified to nominate members to the board do not need to reapply for certification to nominate producers and importers for the existing vacancies.

The Act and the Order provide that the members of the board shall serve for terms of three (3) years, except that members appointed to the initial board shall serve proportionately for terms of 1, 2, and 3 years. The Order also requires USDA to announce when a board vacancy does or will exist. Since the initial board was appointed on August 4, 1988, there will be vacancies in those States or units whose producer or importer representatives were appointed to the initial board for a 3-year term. The 39 vacancies by State or unit are as follows:

| State or unit | No. of vacancies |
|---|---|
| Alabama | 1 |
| Arkansas | 1 |
| California | 2 |
| Colorado | 1 |
| Florida | 1 |
| Georgia | 1 |
| Idaho | 1 |
| Illinois | 1 |
| Indiana | 1 |

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| State or unit | No. of vacancies |
|---|---|
| Iowa | 2 |
| Kansas | 2 |
| Kentucky | 1 |
| Minnesota | 1 |
| Missouri | 2 |
| Montana | 1 |
| Nebraska | 2 |
| New York | 1 |
| North Dakota | 1 |
| Ohio | 1 |
| Oklahoma | 2 |
| Oregon | 1 |
| Pennsylvania | 1 |
| South Dakota | 1 |
| Tennessee | 1 |
| Texas | 5 |
| Virginia | 1 |
| Wisconsin | 1 |
| Northeast | 1 |
| Importers | 1 |

Since there are no anticipated vacancies on the board for the remaining States' positions, or for the positions of the Northeast and mid-Atlantic units, nominations will not be solicited from certified organizations or associations in those States or units.

Uncertified eligible producer organizations in all States that are interested in being certified as eligible to nominate cattle producers for appointment to the listed producer positions, must complete and submit an official "Application for Certification of Organization or Association," which must be received by close of business 30 days after publication of this notice in the **Federal Register**. Uncertified, eligible importer organizations that are interested in being certified as eligible to nominate importers for appointment to the listed importer positions must apply by the same date. Importers should not use the application form but should provide the requested information by letter, as provided for in 7 CFR 1260.540(b). Applications from States or units without vacant positions on the board and other applications not received within the 30 day period after publication of this notice in the **Federal Register** will be considered for eligibility to nominate producers or importers for subsequent vacancies on the board.

Only those organizations or associations which meet the criteria for certification of eligibility promulgated at 7 CFR 1260.530 as published in 51 FR 11557, 11559 (April 4, 1986) are eligible for certification. Those criteria are:

(a) For State organizations or associations.

(1) Total paid membership must be comprised of at least a majority of cattle producers or represent at least a majority of cattle producers in a State or unit.

(2) Membership must represent a substantial number of producers who produce a substantial number of cattle in such State or unit.

(3) There must be a history of stability and permanency.

(4) There must be a primary or overriding purpose of promoting the economic welfare of cattle producers.

(b) For organizations or associations representing importers, the determination by the Secretary as to the eligibility of importer organizatons or associations to nominate members to the board shall be based on applications containing the following information—

(1) The number and type of members represented (i.e., beef or cattle importers, etc.).

(2) Annual import volume in pounds of beef and beef products and/or the number of head of cattle.

(3) The stability and permanency of the importer organization or association.

(4) The number of years in existance.

(5) The names of the countries of origin for cattle, beef, or beef products imported.

All certified organizations and associations, including those which were previously certified in the States or units having vacant positions on the board, will be notified simultaneously in writing of the beginning and ending dates of the established nomination period and will be provided with required nomination forms and biographical data sheets.

The names of qualified nominees received by the established due date will be submitted to the Secretary of Agriculture for consideration as appointees to the board.

The information collection requirements referenced in this notice have been previously approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C., Chapter 35 and have been assigned OMB No. 0581-0152.

Done in Washington, DC, on March 2, 1989.

**J. Patrick Boyle,**

*Administrator.*

[FR Doc. 89-5189 Filed 3-6-89; 8:45 am]

BILLING CODE 3410-02-M

## DEPARTMENT OF AGRICULTURE
### Forest Service
## DEPARTMENT OF THE INTERIOR
### National Park Service
### Grand Canyon Airport Railroad Spurline

**AGENCIES:** Forest Service, USDA and National Park Service, Interior.

**ACTION:** Notice of intent to prepare an environmental impact statement.

**SUMMARY:** The Department of Agriculture, Forest Service, and the Department of Interior, National Park Service, as joint lead agencies, will prepare an environmental impact statement for Grand Canyon Railway's proposed Grand Canyon Airport railroad spurline. Conceptually, the spurline would originate in the vicinity of the Grand Canyon Airport adjacent to the unincorporated community of Tusayan, Arizona, and extend in a westerly direction connecting with the existing railroad line that terminates in the Grand Canyon Village at the South Rim of the Grand Canyon. Analysis of this spurline proposal is independent of the environmental assessment prepared for the existing railroad line which authorized reactivation of passenger rail service from Williams to the Grand Canyon Village. This spurline proposal involves Federal lands under the administrative juridiction of the National Park Service, Grand Canyon National Park and the Forest Service, Tusayan Ranger District, Kaibab National Forest.

Construction of the proposed spurline, railroad depot and parking lot in Tusayan, in conjunction with the development of other transportation systems, could provide an opportunity to reduce vehicle congestion in the Grand Canyon National Park.

A range of alternatives will be considered in the analysis of the Grand Canyon Airport railroad spurline. A no action alternative will be considered, as will other alternative methods of transportation. The analysis will also evaluate alternative route locations for the spurline, as well as placement of the railroad depot and parking lot which could serve as a "transportation hub" for the Grand Canyon National Park.

Federal, State and local agencies, and other individuals and organizations who may be interested in or affected by the spurline proposal are invited to participate in the scoping process. The scoping process will define tentative issues and concerns such as potential social and economic impacts of the proposal on Tusayan, Coconino County and the Grand Canyon National Park, and environmental considerations involving wildlife, vegetative, cultural and mineral resources as well as impacts on the Grand Canyon Airport. The scoping process may also help identify alternative types of public transportation that could be developed in conjunction with, or in lieu of the proposed railroad spurline.



Open house scoping meetings are tentatively scheduled for Tusayan and Flagstaff, Arizona in mid-March. The analysis is expected to take about 6 months. The draft environmental impact statement should be available for public review in the Fall of 1989. The final environmental impact statement is scheduled to be completed in the Spring of 1990.

Leonard A. Lindquist, Forest Supervisor, Kaibab National Forest and Stanley T. Albright, Regional Director, Western Region, National Park Service are the responsible officials.

**DATE:** Written comments concerning initial issues or the analysis should be received by May 15, 1989.

**ADDRESSES:** Written comments and suggestions concerning the analysis should be sent to Forest Supervisor, Kaibab National Forest, 800 South Sixth Street, Williams, Arizona 86046 or Superintendent, Grand Canyon National Park, P.O. Box 129, Grand Canyon, Arizona 86023.

**FOR FURTHER INFORMATION CONTACT:** Questions about the proposal and environmental impact statement should be directed to R. Dennis Lund of the Kaibab National Forest, phone (602) 635-2681 or Chuck Lundy of the Grand Canyon National Park, phone (602) 638-7708.

Date: February 28, 1989.

**Leonard A. Lindquist,**

*Forest Supervisor, Kaibab National Forest.*

**Stanley T. Albright,**

*Regional Director, Western Region, National Park Service.*

[FR Doc. 89-5244 Filed 3-6-89; 8:45 am]

BILLING CODE 3410-11-M

## COMMISSION ON CIVIL RIGHTS
### District of Columbia Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the District of Columbia Advisory Committee to the Commission will convene at 1:30 p.m. and adjourn at 4:30 p.m. on Thursday, March 30, 1989, in the Conference Room, 5th Floor, U.S. Commission on Civil Rights, 1121 Vermont Ave., NW., Washington, DC 20425. The Committee will meet for orientation of new members, staff reports on the status of the agency, Committee actions, and program planning.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Walter E. Washington or John I. Binkley, Director of the Eastern Regional Division of the Commission at (202/523-5264 or TDD 202/376-8117). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 1, 1989.

**Melvin L. Jenkins,**

*Acting Staff Director.*

[FR Doc. 89-5241 Filed 3-6-89; 8:45 am]

BILLING CODE 6335-01-M

## DEPARTMENT OF COMMERCE
### Export Administration Bureau
**[Docket Nos.: 8110-01 et al.]**
### Actions Affecting Export Privileges of Goran Josberg

In the matter of: Goran Josberg (Docket No. 8110-01), individually and doing business as Globe Trade (Docket No. 8110-02), Globe Metals (Docket No. 8110-03), Globe Computers (Docket No. 8110-04), respondents.

**Summary**

Pursuant to the January 31, 1988 Recommended Decision and Order of the Administrative Law Judge, which Decision and Order is attached hereto and affirmed by me, Goran Josberg (aka Goran B. Josberg, Gooran B. Josberg and Goeran B. Josberg), individually and doing business as Globe Trade (aka Globe Trade AB), Globe Metals, and Globe Computers, all with an address of Strandvagen 9, S-11456 Stockholm, Sweden, is, and the Respondents are collectively, denied for a period of thirty-five years from the date hereof, all privileges of participating in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the regulations (14 CFR Part 768-700).

**Order**

On January 31, 1988, the Administrative Law Judge (ALJ) entered his Recommended Decision and Order in the captioned matter. That Decision and Order, a copy of which is attached hereto and made a part hereof, has been referred to me for final action. I hereby affirm the Recommended Decision and Order of the ALJ.

This constitutes final agency action in this matter.

Date: March 2, 1989.

**Paul Freedenberg,**

*Under Secretary, Bureau of Export Adminstration.*

**Decision And Order**

In the matter of: Goran Josberg[1] individually and doing business as Globe Trade[2], Globe Metals, Globe Computers, respondents.

Appearance for respondents: Goran Josberg and Globe Trade: Goran Josberg, President, Globe Trade, Strandvagen 9, S-11456 Stockholm, Sweden.

Appearance for agency: Louis K. Rothberg, Esq., Office of Chief Counsel, for Export Administration.

U.S. Department of Commerce, Room H-3329, 14th & Constitution Ave., NW., Washington, DC 20230.

**Preliminary Statement**

This proceeding began with the issuance by the Office of Export Enforcement ("the Agency"), Bureau of Export Administration, U.S. Department of Commerce of a May 2, 1988 charging letter against Respondent Goran Josberg, individually and doing business as Respondent Globe Trade, as Respondent Globe Metals, and as Respondent Globe Computers. (All four Respondents will hereinafter be referred to collectively as "Respondent Josberg," unless otherwise indicated.) The charging letter was issued under the authority of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2401-2420) ("the Act"), and the Export Administration Regulations ("the Regulations").[3]

[1] This Respondent was listed in most of the materials in this proceeding as "Goran Josberg," but in some appeared as "Goran B. Josberg" and in one as "Gooran B. Josberg" or "Goeran B. Josberg" (Respondent's September 13, 1988 letter). In this Decision and Order, this Respondent is listed as "Goran Josberg," and the Decision and Order applies to this Respondent also under any of the other quoted listings of his name.

[2] The Agency's charging letter, most of the Agency's subsequent filings, and the orders issued in this proceeding listed this Respondent as "Globe Trade." This Respondent was, however, identified as "Globe Trade AB" in the June 1, 1988 answer filed by this Respondent, in the two certificates of service filed by the Agency after that answer (July 19, 1988 and September 1, 1988), and in the Order of December 28, 1988 from a previous proceeding that was submitted by the Agency in this proceeding (Agency Exhibit III-10). In this Decision and Order, this Respondent is listed as "Globe Trade," and the Decision and Order applies to this Respondent also under the name "Globe Trade AB."

[3] The Act was reauthorized and amended by the Export Administration Amendments Act of 1985, Pub. L. 99-64, 99 Stat. 120 (July 12, 1985), and amended by the Omnibus Trade and Competitiveness Act of 1988, Pub. L. 100-418, 102 Stat. 1107 (August 23, 1988).

Continued

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The charging letter alleged that Respondent Josberg violated the Regulations through three separate transactions or series of transactions from 1983 through 1985. First, the charging letter alleged that Respondent Josberg violated §§ 387.3, 387.4, and 387.6 by conspiring with others to export an airstream modulator from the United States through Western Europe to the Soviet Union without the required U.S. authorization. Second, the charging letter alleged that Respondent Josberg violated §§ 387.4 and 387.6 by making eleven exports of U.S.-origin computers and peripherals from Sweden to the Soviet Union without the required U.S. authortzation. Third, the charging letter alleged that Respondent Josberg violated §§ 387.3, 387.4, and 387.6 by conspiring with others to acquire a U.S.-origin computer in Sweden and to export it to the Soviet Union without the required U.S. authortzation.

Respondent Josberg filed a June 1, 1988 answer claiming that the first two transactions or series of transactions had been approved by Swedish authorities, essentially denying any participation in the third transaction, and suggesting that a hearing on all three be held in Sweden. That suggestion for a hearing in Sweden was declined by this Tribunal in an Order of June 10, 1988; and, pursuant to the schedule set in that Order, this case is decided on the record without a hearing. The record contains submissions from both the Agency and Respondent Josberg since that June 10, 1988 Order. Finally, it may be noted that this case is one of several separate proceedings initiated by the Agency, each brought against one of the several individuals with whom Respondent Josberg is alleged in this case to have conspired.[4]

**Discussion**

Of the three transactions or series of transactions that are the subject of the Agency's charges, it is the second for which the Agency has supplied the most direct evidence (Agency Exhibits (hereinafter "Exh.") II–1 through II–12). Here the Agency charged that Respondent Josberg, from June 1983 through April 1985, on eleven separate occasions shipped U.S.-origin computers and peripherals from Sweden to the Soviet Union without the U.S. authorization that Respondent Josberg knew or should have known was required.

In the Agency's words, its evidence for these eleven transactions is as follows (Agency September 1, 1988 Submission 16–17).

The transactions are summarized on invoices with Josberg's Globe Metal or Globe Computer letterhead. Sales contracts corroborate the transactions described by the invoices. The sales contracts are on Soviet letterhead, and each one clearly describes the shipper to be one of the Globe companies, all related to Josberg, with delivery to be either to Prommashimport or Electronorgtechnica in Moscow. For some shipments, there are "acceptance and delivery protocols" indicating the "seller" to be Globe Metals or Globe Computers. In other exhibits, there are credit advices, showing the paying bank as "Bank for Foreign Trade of the U.S.S.R., Moskva".

In fact, the Agency's evidence does not always track each of the eleven shipments precisely as the Agency has described them.[5] Also, the Agency's evidence indicates that, had Respondent Josberg applied for U.S. authorization for the eleven shipments, all the equipment contained in them would have benefited from a presumption of approval.

But these aspects of the Agency's evidence do not undercut its main thrust. The evidence establishes that Respondent Josberg made the eleven shipments as alleged, and that each was made without the required U.S. authorization, required mostly for national security reasons. Indeed, Respondent Josberg did not deny either that the eleven shipments were made as charged, or that they lacked the required U.S. authorization. Respondent Josberg's only defense was that Swedish authorization had been obtained. No evidence was advanced to support that defense, nor was any explanation offered as to how such Swedish authorization would satisfy the requirement for U.S. authorization.

The Agency charged that, since each of the eleven shipments lacked the required U.S. authorization, Respondent Josberg in making them violated § 387.6 of the Regulations, which proscribes unauthorized exports. This Agency charge is sustained by a preponderance of the evidence. The Agency's documentary presentation shows that Respondent Josberg made the unauthorized exports as alleged, and Respondent Josberg's defense of an unsubstantiated reference to a Swedish authorization is unpersuasive.

The Agency additionally cited evidence—consisting partly of interviews of Respondent Goran Josberg, one by a U.S. government official (Agency Exh. III–11, III–13)—to show Respondent Josberg's awareness of U.S. export licensing requirements. Consequently, the Agency charged that in making these eleven shipments Respondent Josberg violated also § 387.4 of the Regulations, which proscribes participating in an export with knowledge that it is unauthorized.

Further, the Agency charged that an Order of December 28, 1983 had temporarily denied the U.S. export privileges of Respondent Goran Josberg and Respondent Globe Computers. Thus the Agency asserted that those six of the eleven shipments made after that date violated § 387.4 on the additional ground that Respondent Josberg knew that they were contravening the Order of December 28, 1983. These Agency charges of violations of § 387.4, on both grounds cited by the Agency, are not refuted by Respondent Josberg's defense of an unsubstantiated Swedish authorization, and are sustained by a preponderance of the evidence.

The first of the transactions or series of transactions that were listed as subjects of the Agency's charging letter is the most complex, and will be discussed last. The third of those three transactions concerned the acquisition of a U.S.-origin computer from a Swedish distributorship and its subsequent export to the Soviet Union, all in November and December 1985. The Agency charged that Respondent Josberg masterminded a conspiracy to acquire the computer, partly by misrepresenting the identity of the end user, and to ship it to Moscow.

The Agency introduced evidence showing the acquisition of the computer by several individuals other than Respondent Goran Josberg. This evidence consisted of commercial documentation of the acquisition (Agency Exh. III–1, III–4, III–5), of the signed statements of two officials of the Swedish distributorship (Agency Exh. III–2, III–8), and of a certificate signed by that one of the several individuals who played a leading role in acquiring the computer (Agency Exh. III–7).

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The Regulations, formerly codified at 15 CFR Parts 385–399, were redesignated as 15 CFR Parts 768–799, effective October 1, 1988 (53 FR 37781, September 28, 1988).

The charging letter alleged that Respondent Josberg violated the Regulations from April 1983 through December 1985. As the charging letter noted (at 1 n.1), twice during this period the Regulations were maintained in effect, not pursuant to the Act, which had lapsed, but pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (1982)).

[4] One of these cases has been already concluded: *Anton Elzer*, 53 FR 29079, July 20, 1988.

[5] For example, the memoranda in the Agency's Exhibits II–1 through II–11 to show the licensing requirement for the shipments do not always speak to the same month as that in which the Agency claimed that the shipment occurred.



The Agency further cited this evidence to argue that these several individuals had misrepresented to the Swedish distributorship that one of them would be the end user, when that in fact was not their intention (Agency Exh. III–1, III–2, III–4, III–8). The signed statement of one of the distributorship officials asserted that the individual designated as the end user had admitted that he had not intended to fulfill that role (Agency Exh. III–2); and the signed statement of the other distributorship officials asserted that the individual who played the leading role in the acquisition had said that he gave the computer to Respondent Goran Josberg and Respondent Globe Trading (Agency Exh. III–8).

For the Agency's claim that the computer was shipped to the Soviet Union, the Agency presented an air waybill for data equipment (Agency Exh. III–6), and cited circumstantial evidence involving the date of this shipment and its Moscow destination (Agency September 1, 1988 Submission 20–21). To tie Respondent Josberg to the acquisition of the computer from the Swedish distributorship and its shipment to Moscow, the Agency cited principally two documents. The first was the signed statement of one of the distributorship officials in which he said that the individual who played the leading role in acquiring the computer had declared that Respondent Goran Josberg was finishing the acquisition (Agency Exh. III–8). The second was the certificate signed by that individual in which he said that he gave the computer to Respondent Goran Josberg and Respondent Globe Computer (Agency Exh. III–7).

Finally, the Agency introduced evidence to show that the shipment of the computer from Sweden to the Soviet Union lacked the required U.S. authorization, and that this requirement was imposed for national security reasons (Agency Exh. III–8, III–8A). As evidence that Respondent Josberg was aware of the unauthorized nature of the shipment, the Agency cited, among other items, the evidence adduced above regarding the eleven computer shipments for Respondent Josberg's awareness of U.S. licensing requirements. The Agency cited also the Order of December 28, 1983 denying U.S. export privileges to Respondent Goran Josberg and Respondent Globe Trade.

In conclusion, the Agency contended that Respondent Josberg's actions violated three sections of the Regulations. According to the Agency, participating in the conspiracy to arrange the unauthorized export to the Soviet Union violated § 387.3, participating in the export with knowledge that it was illegal violated § 387.4, and participating in an unauthorized export violated § 387.6.

The reply of Respondent Josberg to these charges was a denial. Respondent Josberg denied any knowledge of the individual who had been represented to be the end user in the acquisition of the computer, denied conducting the alleged transaction with the individual who played the leading role in that acquisition, and claimed that Respondent Globe Trade had been sold at the end of 1985 to that individual. Respondent Josberg offered no evidence to support these denials and the claim.

On balance, the preponderance of the evidence sustains the Agency's charges. The Agency's documentary presentation shows an unauthorized shipment of a U.S.-origin computer from Sweden to the Soviet Union, and satisfactorily ties Respondent Josberg to this transaction through the statements of the individual who played the leading role in acquiring the computer from the Swedish distributorship. Respondent Josberg's rebuttal unsupported by evidence is insufficient to discredit the Agency's case. Respondent Josberg's denial of knowing the individual who has been represented to be the end user in the computer acquisition, for example, even if true, would not refute the Agency's case. Respondent Josberg was still shown by the record to have had enough connection with the other individual who was involved in that acquisition, enough connection with the shipment from Sweden to the Soviet Union, and enough awareness of U.S. licensing requirements to have violated §§ 387.3, 387.4, and 387.6 of the Regulations.

The last for discussion of the transactions or series of transactions that were the subject of the Agency's charging letter was the first listed, and the most complex. The Agency alleged that in 1983–84 Respondent Josberg masterminded a conspiracy to buy an airstream modulator in the United States, on the representation that the Federal Republic of Germany (F.R.G.) would be the ultimate destination, and then to export it to the Soviet Union without the required authorization.

As evidence, the Agency cited a letter to this Tribunal from one of the two alleged co-conspirators, Anton Elzer, of Sweden, who did business there as Development and Consultant Elzer ECO AB (Agency Exh. I–7). In this letter, Elzer said that he initially canceled the project to obtain the airstream modulator when both he and Respondent Goran Josberg declined to sign the end user statement that was required for a U.S. export license (*id.* 2). Subsequently, according to this letter, they arranged to obtain the equipment through Helmut Keck, of the F.R.G., who did business there as OTC Mess-Und Videotechnik GmbH (*id.*). Keck was the third of the Agency's alleged co-conspirators.

Keck ordered the airstream modulator from the U.S. manufacturer and submitted an F.R.G. import certificate in support of the order, as shown by the export license application filed by the manufacturer (Agency Exh. I–27). The export license was issued for the export to the F.R.G., listing Keck's company as the end user; and the equipment was shipped from the United States to the F.R.G. on or about October 12, 1984 (*id.*)

The Agency's contention was that this airstream modulator was really intended, not for Keck's company in the F.R.G., but for Respondent Josberg and reshipment to the Soviet Union. To prove this contention, the Agency cited a statement in the above letter to this Tribunal from Elzer declaring that Respondent Josberg had ordered the equipment from Allinson Ltd., of Singapore, with which Elzer was connected (Agency Exh. I–13, I–17).

The Agency then cited a commercial document (Agency Exh. I–26) indicating that Allinson Ltd. ordered the equipment from Keck in April 1984; and Keck confirmed the order in mid-May 1984, even before Keck ordered the equipment from the U.S. manufacturer at the end of May 1984, supporting that order with the F.R.G. import certificate (Agency Exh. I–27). Allinson Ltd., according to the Agency's evidence (Agency Exh. I–17), was a small operation located in Singapore and Hong Kong. It was, per that evidence (*id.*), apparently controlled significantly by Elzer, represented only the firms of Respondent Goran Josberg and Keck, and did all of its business in cash.

The Agency cited the above referenced commercial document to show also that Keck's company delivered the airstream modulator to Allinson Ltd. on or about October 25, 1984 (Agency Exh. I–26). The equipment itself apparently traveled directly from the United States to the F.R.G. When the equipment arrived in the F.R.G., Elzer and Keck arranged, according to a commercial document (Agency Exh. I–25) and the above referenced letter to this Tribunal from Elzer (Agency Exh. I–7 at 2), for it to be transferred to a freight forwarder in Finland. The letter stated that these arrangements were made at the direction of Respondent Goran Josberg, who had placed the

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original order for the equipment with Allinson Ltd. (*id.*).

The Agency asserted that the airstream modulator was next shipped from Finland to Moscow on October 28, 1984. To support this assertion, the Agency introduced a Helsinki-Moscow air waybill for that date for a shipment of "electricals" listing Elzer as the shipper and Respondent Globe Metals as the consignee (Agency Exh. I–28). To prove that the "electricals" were really the airstream modulator, the Agency further noted the evidence that the modulator, after its arrival in the F.R.G., had been moved rapidly to Finland at Respondent Josberg's direction, and that Respondent Goran Josberg had been the original customer for the equipment.

Finally, the Agency introduced evidence that export of the airstream modulator was controlled for national security reasons, and that a presumption of denial existed for a license application to export it to the Soviet Union (Agency Exh. I–10). The Agency noted also that the Order of December 28, 1983 denied Respondent Josberg's U.S. export privileges throughout all of 1984 when this export of the airstream modulator occurred, and cited the same evidence as in the other transactions addressed by the charging letter for Respondent Josberg's knowledge of U.S. export licensing requirements. The Agency observed additionally that Elzer has been found by this Tribunal to have violated the Regulations for his role in exporting the airstream modulator (*Anion Elzer*, 53 FR 28676, July 29, 1988).

The Agency charged that Respondent Josberg violated three sections of the Regulations in the export of the airstream modulator to the Soviet Union. According to the Agency, Respondent Josberg conspired to violate the Regulations in contravention of § 387.3, participated in this export with knowledge that it was unauthorized in contravention of Section 387.4, and participated in an unauthorized export in contravention of § 387.6.

In defense, Respondent Josberg denied any knowledge of Keck, noted that a U.S. export license had been issued, and asserted that Swedish authorities had advised that the transaction was legal. No evidence was supplied regarding the claimed Swedish advice, nor was any explanation offered as to how the reexport to the Soviet Union would be authorized either by such advice or by the U.S. license for an export to the F.R.G.

Respondent Josberg's defense fails to rebut the Agency's case. The claimed advice from Swedish authorities, unsupported by evidence or explanation, does not constitute an adequate rebuttal. Even if Respondent Josberg's claimed ignorance of Keck were true, the Agency's charges are sufficiently documented by the evidence tying Respondent Josberg to Elzer and to the unauthorized export to the Soviet Union, and showing Respondent Elzer's awareness of U.S. licensing restrictions. Thus the Agency has made its case by a preponderance of the evidence.

**Conclusion**

The Agency's charges regarding each of the three transactions or series of transactions cited in the charging letter are sustained by the evidence of record. Respondent Josberg's participation in the 1983–84 export of the airstream modulator from the United States through the F.R.G. and Finland to the Soviet Union violated §§ 387.3, 387.4, and 387.6 of the Regulations. Respondent Josberg's eleven shipments from June 1983 through April 1985 of U.S.-origin computers and peripherals from Sweden to the Soviet Union violated Sections 387.4 and 387.6 of the Regulations. Respondent Josberg's participation in the 1985 export of a U.S.-origin computer from Sweden to the Soviet Union violated §§ 387.3, 387.4, and 387.6 of the Regulations.

For Respondent Josberg's violations, the Agency has proposed a 35-year denial of U.S. export privileges. The magnitude of Respondent Josberg's violations is such that a denial period of that substantial length is warranted.

**Order**

I. For a period of 35 years from the date of the final Agency action, Respondent, Goran Josberg, individually and doing business as Globe Trade, Globe Metals, Globe Computers, Strandvagen 9, S–11456 Stockholm, Sweden, and all successors, assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations.

II. Participation prohibited in any such transaction, either in the United States or abroad, shall include, but not be limited to, participation:

(i) As a party or as a representative of a party to a validated or general export license application;

(ii) In preparing or filing any export license application or request for reexport authorization, or any document to be submitted therewith;

(iii) In obtaining or using any validated or general export license or other export control document;

(iv) In carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported; and

(v) In the financing, forwarding, transporting, or other servicing of such commodities or technical data.

Such denial of export privileges shall extend to those commodities and technical data which are subject to the Act and the Regulations.

III. After notice of opportunity for comment, such denial of export privileges may be made applicable to any person, firm, corporation, or business organization with which any Respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services.

IV. All outstanding individual validated export licenses in which any Respondent appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Respondents' privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

V. No person, firm, corporation, partnership, or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing, shall, with respect to commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with any Respondent or any related person, or whereby any Respondent or any related person may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly:

(i) apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for any Respondent or related person denied export privileges, or

(ii) order, buy, receive, use, sell, deliver, store, dispose of, forward,



transport, finance or otherwise service or participate in any export, reexport, transshipment or diversion of any commodity or technical data exported or to be exported from the United States.

VI. This Order as affirmed or modified shall become effective upon entry of the Secretary's final action in this proceeding pursuant to the Act (50 U.S.C.A. app. 2412(c)(1)). That disposition will constitute the sole basis for any entry regarding any Respondent in the Table of Denial Orders, until modified (15 CFR Part 388, Supp. No. 1).[6]

Date: January 31, 1989.

Thomas W. Hoya,

*Administrative Law Judge.*

[FR Doc. 89-5268 Filed 3-7-89; 8:45 am]

BILLING CODE 3510-DT-M

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**Bureau of Export Administration**

**Export Privileges; ABK International Distributors**

**Order**

The Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (Department), having notified Nabila Mango Shehadeh (Shehadeh), individually and formerly doing business as ABK International Distributors (ABK), (Respondents) but now doing business as Bisan Distribution Center, Inc. (Bisan), of its intention to initiate an administrative proceeding against Shehadeh and ABK pursuant to section 13(c) of the Export Administration Act of 1979 (50 U.S.C. app. §§ 2401–2420 (1982 and Supp. III 1985), as amended by Pub. L. 100–418, 102 Stat. 1107 (August 23,1988)) (the Act), by alleging that, on 30 separate occasions between August 3, 1984 and June 3, 1985, Shehadeh and ABK committed a total of 30 violations of section 787.5 of the Export Administration Regulations.[1]

The Department and Shehadeh, both on behalf of herself and doing business as ABK and Bisan, having entered into a Consent Agreement whereby the parties have agreed to settle this matter by the Department's imposing a civil penalty of $40,000, the Department's denying Shehadeh's, including Bisan's, export privileges for a one-year period, and ABK's export privileges for a three-year period;

The terms of the Consent Agreement having been approved by the undersigned;

*It Is Therefore Ordered, First,* Shehadeh shall pay to the Department a civil penalty in the amount of $40,000, as follows: Shehadeh shall pay $1,000 within 30 days of the entry of this Order. Within 30 days after the date of the payment of $1,000, Shehadeh shall make the first of seven installment payments to the Department of $2,000 each, to be paid every other month, over a period of 14 months, for a total of an additional $14,000. The last $2,000 installment payment shall be made within 15 months after the entry of this Order, whereupon the sum of $15,000 shall have been paid to the Department. The remainder of the civil penalty, $25,000, shall be suspended, as authorized by section 788.16(c) of the Regulations, for a period of two years from the date of entry of this Order, and shall thereafter be waived provided that, during the period of suspension, Shehadeh has committed no violation of the Act or any regulation, order or license issued under the Act.

*Second,* ABK International Distributors shall be denied, for a period of three years following the date of this Order, all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving the export of U.S.-origin commodities or technical data from the United States or abroad. Further, Nabila Mango Shehadeh, individually and now doing business as Bisan Distribution Center, Inc., shall be denied, for a period of one year following the date of this Order, all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving the export of U.S.-origin commodities or technical data from the United States or abroad.

A. All outstanding individual validated export licenses in which ABK appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all ABK's privileges of participating, in any manner or capacity, in any special licensing procedure including, but not limited to, distribution licenses, are hereby revoked.

B. Without limiting the generality of the foregoing, participation prohibited in any such transaction, either in the United States or abroad, shall include, but is not limited to, participation: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of any commodities or technical data, in whole or in part, exported or to be exported from the United States and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend only to those commodities and technical data which are subject to the Act and the Regulations.

C. After notice and opportunity for comment, such denial may be made applicable to any person, firm, corporation, or business organization with which Shehadeh, ABK or Bisan is now or may hereafter be related to by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services.

D. No person, firm, corporation, partnership or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing shall, with respect to U.S.-origin commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with Shehadeh, ABK or Bisan or any related party, or whereby Shehadeh, ABK or Bisan or any related party may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly: (a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported, in whole or in part, or to be exported by, to, or for Shehadeh, ABK, Bisan or any related party denied export privileges;

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[6] To be considered in the 30 day statutory review process which is mandated by section 13(c) of the Act, submissions must be received in the Office of the Under Secretary for Export Administration, U.S. Department of Commerce, 14th & Constitution Ave., NW., Room 3898B, Washington, DC 20230, within 12 days. Replies to the other party's submission are to be made within the following 8 days. 15 CFR 388.23(b), 50 FR 53134 (1985). Pursuant to section 13(c)(3) of the Act, the order of the final order of the Under Secretary may be appealed to the U.S. Court of Appeals for the District of Columbia within 15 days of its issuance.

[1] The Regulations have been redesignated as Parts 768–799 of Title 15 of the Code of Federal Regulations. 53 FR 37751 (September 28, 1988). The transfer merely changed the first number of each Part from a "3" to a "7". Until such time as the Code of Federal Regulations is republished, the Regulations can be found at 15 CFR Parts 368–399 (1988).

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or (b) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any export, reexport, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States. These prohibitions apply only to those commodities and technical data which are subject to the Act and the Regulations.

E. As authorized by section 788.16(c) of the Regulations, Shehadeh's and Bisan's denial periods shall be suspended for a period of 11 months beginning one month from the date of the entry of this order, and shall thereafter be waived provided that, during the period of suspension, Shehadeh and Bisan have committed no violation of the Act or any regulation, order or license issued under the Act.

*Third*, that the proposed Charging Letter and the Consent Agreement shall be made available to the public, and this Order shall be published in the **Federal Register**.

This Order is effective immediately.

**William V. Skidmore,**

*Acting Assistant Secretary for Export Enforcement.*

Entered this 24th day of February, 1989.

[FR Doc. 89-5164 Filed 3-6-89; 8:45 am]

BILLING CODE 3510-DT-M

## International Trade Administration

### Export Trade Certificate of Review

**AGENCY:** Department of Commerce.

**ACTION:** Notice of Issuance of an Amended Export Trade Certificate of Review, Application No. 88-AE015.

**SUMMARY:** The Department of Commerce has issued an amendment to the Export Trade Certificate of Review granted to the Ferrous Scrap Export Association on December 12, 1988 (53 FR 51294, December 12, 1988).

**FOR FURTHER INFORMATION CONTACT:** Thomas H. Stillman, Director, Office of Export Trading Company Affairs, International Trade Administration, 202-377-5131. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. No. 97-290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR Part 325 (50 FR 1804, January 11,1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

**Description of Amended Certificate**

Export Trade Certificate of Review No. 88-00015, issued to the Ferrous Scrap Export Association ("FSEA") on December 12, 1988, is amended as follows:

(1) "Financing" has been added to the list of FSEA's "Export Trade Facilitation Services"; and

(2) "The United States International Trade Commission" has been added to paragraph 1(j) of "Export Trade Activities and Methods of Operation," which lists the administrative agencies before which FSEA's Members may seek relief.

Effective date: January 9, 1989.

A copy of the amended Certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: March 3, 1989.

**Thomas H. Stillman,**

*Director, Office of Export Trading Company Affairs.*

[FR Doc. 89-5353 Filed 3-6-89; 8:45 am]

BILLING CODE 3510-CR-M

### Petitions By Producing Firms for Determinations of Eligibility To Apply for Trade Adjustment Assistance

Petitions have been accepted for filing on the dates indicated from the following firms: (1) Menapace Woodworking, Inc., Amory Street, Boston, Massachusetts 02119, producer of sofas, beds and headboards, accessories and office desks and credenzas (September 13, 1988); (2) Mohawk Industries, Inc., 601 Amhurst Street, Buffalo, New York 14207, producer of vertical hydraulic presses (September 15, 1988); (3) Trident Products, Inc., 2353 Industrial Parkway West, Hayward, California 94545, producer of toilet bowl cleaners (September 26, 1988); (4) Pyro Media, Inc., 7911 10th Avenue, South, Seattle, Washington 98108, producer of planters and pots (September 29, 1988); (5) Jennifer Dale, Inc., 75-16 Rockaway Boulevard, Woodhaven, New York 11421, producer of women's & girls' nightshirts, nightgowns, pajamas, loungewear and robes (October 3, 1988); (6) S & M Dress, Inc., 21 Lehman Street, Lebanon, Pennsylvania 17041, producer of women's blouses, robes, skirts and slacks (October 4, 1988); (7) The Slovin Company, Inc., 121 Higgins Industrial Park Worcester, Massachusetts 01606, producer of skirts and pants (October 4, 1988); (8) Angela Marie's, Inc., Building E-4, Freeport West, Clearfield, Utah 84015, producer of rice crispy marshmallow treats (October 5, 1988); (9) Carsell Lighting & Design, Inc., 4620 S. Valley View, Las Vegas, Nevada 89103, producer of lighting fixtures (October 5, 1988); (10) Tilton & Cook Company, 38 Spruce Street, Leominster, Massachusetts 01453, producer of combs, hair ornaments and tripers (October 5, 1988); (11) Printek, Inc., 1517 Townline Road, Benton Harbor, Michigan 49022, producer of matrix printers (October 6, 1988); (12) Padabar, Inc., 5701-5800 Grays Avenue, Philadelphia, Pennsylvania 19143, producer of folding paperboard boxes (October 6, 1988); (13) J. D. Phillips Corporation, 181 North Industrial Highway, Alpena, Michigan 49707, producer of milling machines, lathes and grinders (October 7, 1988); (14) Semicon Tools, Inc., 55 Webster Avenue, New Rochelle, New York 10801, producer of dicing blades, bonding tools and scribing tools (October 13, 1988); (15) Beatty Page, Inc., Brooklyn Navy Yard Bldg. 5, Flushing, New York 11205, producer of hat linings (October 20, 1988); (16) Color-Craft Flower Dyes, Inc., Box 52, Route 394, Chautauqua, New York 14722, producer of flower dyes (October 20, 1988); (17) A & G Manufacturers, Inc., P.O. Box 63, Brooklyn, New York 11231, producer of women's shower and sleep hats and women's shoe bows and pony-tail clips (November 2, 1988); (18) Woodcraft Industries, Inc., 6303 Rich Road, S.E., Olympia, Washington 98501, producer of kitchen cabinets (November 2, 1988); (19) Midwest Uncuts, Inc., 117 East Salem, Indianola, Iowa 50125, producer of glass, plastic & polycarbonate eye lenses (November 2, 1988); (20) L. H. Lincoln & Sons, Inc., P.O. Box 110, Coudersport, Pennsylvania 16915, producer of pancreatic enzymes, leather fillers and extracts, oils, greases and waterproofing for leather (November 3, 1988); (21) Phoenix Lighting Fixture Co., Inc., 167 41st Street, Brooklyn, New York 11232, producer of indoor and outdoor lighting fixtures (November 4, 1988); (22) Simmons Machine Tool Corporation, 1700 North Broadway, Albany, New York 12204, producer of lathes, wheel truing machines, wheel borers, railroad presses and parts (November 7, 1988); (23) Troytown Shirt Corporation, 100 N. Mohawk Street, Cohoes, New York 12047, producer of women's blouse and men's formal dress shirts (November 7, 1988); (24) Aztec Tool Company, Inc., 50 Doxsee Drive, Freeport, New York 11520 producer of injection molds, injection molded parts and brass pins (November 7, 1988); (25) Penril Corporation, 7811 Montrose Road, Potomac, Maryland 20854, producer of electrical measuring devices, static discharge simulators, modems, multiplexers, panel instruments, portable test meters, engine test equipment and audio speakers (November 8, 1988); (26) Insulated Duct & Cable Company, 96 Stokes Avenue, Trenton, New Jersey 08605, producer of rubber & plastic hoses (November 9, 1988); (27) David E. Anderson, Inc., 2186 Walden Avenue, Buffalo, New York 14225, producer of jewelry (November 10, 1988); (28) Goldfinger Hawaii, Inc., P.O. Box 10578, Honolulu, Hawaii 96816, producer of 14k gold rings, bracelets, earrings, pendants, charms (November 14, 1988); (29) Fulford Manufacturing Company, 65 Tripps Lane, East Providence, Rhode Island 02915, producer of pewter miniatures and stamped metal parts for automobiles and handbags and misc. articles (November 18, 1988); (30) Chahta Enterprises, Choctaw Industrial Park, Route 7, Box 20-D, Philadelphia, Mississippi 39350, producer of automotive and truck wiring harnesses (November 18, 1988); (31) Blue Hill Transformer, Inc., 500 Blue Hill Avenue, Mattapan, Massachusetts 02126, producer of transformers (November 18, 1988); (32) Jacques deLoux, Inc., 220 North Main Street, Sellersville, Pennsylvania 18960, producer of men's and women's sweaters (November 29, 1988); (33) Piscitelli, Inc., 1125 Pontiac Avenue, Cranston, Rhode Island 02920, producer of costume jewelry (November 30, 1988); (34) Trophy Glove Company, 122 East Washington Avenue, Albina, Iowa 52531, producer of sporting gloves (December 1, 1988); (35) Custom Chrome and Bumper, 335 Garden Highway, Yuba City, California 95991, producer of automobile bumpers and exhaust and injector pipes (December 1, 1988); (36) Applied Storage Koncepts, Inc., 13231 Lakeland Road, Sante Fe Springs, California 90670, producer of steel shelving systems (December 1, 1988); (37) George Frost Company, Leominster Road, Shirley, Massachusetts 01464, producer of leather and fabric belts and suspenders (December 1, 1988); (38) Lucky Star Undergarments, Inc., 160 Jay Street, Brooklyn, New York 11201, producer of girls slips and nightwear (December 2, 1988); (39) DaleBoot USA, 2150 South 300 West, Salt Lake City, Utah 84115, producer of ski boots (December 5, 1988); (40) Trac-Back Corporation, Highway 4 South, Emmetsburg, Iowa 50536, producer of attachable hydraulic cranes (December 6, 1988); (41) Better Sleep, Inc., 571 Industrial Road, Berkeley Heights, New Jersey 07922, producer of pillows and cushions, back rest, bed board, pillow covers and other bedding and bath accessories (December 7, 1988); (42) Opti-Gage, Inc., 5861 Wolf Creek Pike, Trotwood, Ohio 45426, producer of printed circuit board (December 7, 1988); (43) Sun Clothes, 28th and Reed Street, Philadelphia, Pennsylvania 19106, producer of swimming trunks, bathing suits, shorts and bathing suit liners (December 7, 1988); (44) Quality Steel Rule Die of Western New York Company, Inc., 701 Seneca Street, Buffalo, New York 14210, producer of custom-made "soft" dies for cutting paper cartons for the printing industry, dies for the medical industry (I.V. disposable containers and plasma bags), and dies for foam promotion products (December 8, 1988); (45) Hall-Welter Company, Inc., 970 Jay Street, Rochester, New York 14611, producer of automatic check writing machines (December 8, 1988); (46) Tekin-Plex, Inc., 68 35th Street, Brooklyn, New York 11232, producer of plastic and foil liners, packaging material and polystyrene trays (December 8, 1988); (47) Catskill Craftsman, Inc., 15 West End Avenue, Stamford, New York 12167, producer of wood kitchen work stations, cutting boards, bookcarts and clockcases (December 12, 1988); (48) Beldoch Industries Corporation, 1411 Broadway, New York, New York 10018, producer of women's sweaters and skirts (December 12, 1988); (49) A & A Manufacturing Company, Inc., P.O. Box 6069, Fall River, Massachusetts 02724, producer of skirts (December 15, 1988); (50) BW/EMP, Inc., 21000 East 32nd Parkway, Auror, Colorado 80011, producer of misc. metal enclosures and fabricated metal parts (December 16, 1988); (51) Hern Iron Works, Inc., 1900 Millview, Coeur D'Alene, Idaho 83814, producer of manhole covers (December 19, 1988); (52) Midwest Uncuts, Inc., 117 East Salem, Indianola, Iowa 50125, producer of plastic & glass eyeglass lenses (December 27, 1988); (53) Carolina Maid Products, Inc., P.O. Box 308, Granite Quarry, North Carolina 28072, producer of women's dresses (December 29, 1988); (54) Yale Sportswear Corporation, 215 North Washington Street, Easton, Maryland 21601, producer of shorts and sweatsuits (December 30, 1988); (55) Trout Traps Ltd., Inc., 7180 West 117th Avenue, Unit B, Broomfield, Colorado 80020, producer of float tubes (December 30, 1988); (56) Applied Photonics, Inc., 97 Marcus Boulevard, Hauppauge, New York 11788, producer of excimer lazer gas purifiers (December 30, 1988); (57) Roye's Fashions, Inc., 122 East Seventh Street, #1200, Los Angeles, California 90014, producer of women's dresses, suits, and blouses (January 3, 1989); (58) Sleeper & Hartley Corporation, P.O. Box 10, 335 Chandler Street, Worcester, Massachusetts 01602, producer of spring making machines (January 3, 1989); (59) Bon Homme Shirtmakers Ltd., Inc., 350 5th Avenue, Suite 6310, New York, New York 10118, producer of men's and boys' shirts (January 3, 1989); (60) Electrographics International Corporation, 1825 Stout Drive, Warminster, Pennsylvania 18974, producer of remanufactured microlithographic equipment (January 3, 1989); (61) The House That Tilly Built, Inc., 7610 Miramar Road, San Diego, California 92126, producer of stuffed dolls (January 6, 1989); (62) Greene Technologies, Inc., P.O. Box 156, Greene, New York 13778, producer of metal wire products (January 9, 1989); (63) HLP Manufacturing, Inc., 100 N. Mohawk, Cohoes, New York 12047, producer of women's blouses and men's formal shirts (January 9, 1989); (64) Delizza and Elster, Inc., 840 Fifth Avenue, Brooklyn, New York 11232, producer of jewelry (January 10, 1989); (65) Hughes Company, Inc., 1200 West James Street, Columbus, Wisconsin 53925, producer of food processing equipment (January 10, 1989); (66) Church & Company, 400 Kennedy Drive North, Bloomfield, New Jersey 07003, producer of jewelry (January 12, 1989); (67) Scientific Radio Systems, Inc., 367 Orchard Street, Rochester, New York 14606, producer of transceivers, transmitters and receivers (January 10, 1989); (68) Pasta U.S.A., Inc., East 601 Pacific Avenue, Spokane, Washington 99202, producer of pasta (January 30, 1989).

The petitions were submitted pursuant to section 251 of the Trade Act of 1974 (Pub. L. 93-618), as amended. Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

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Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by Certification Division, Office of Trade Adjustment Assistance, Room 4015A, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.309, Trade Adjustment Assistance. Insofar as this notice involves petitions for the determination of eligibility under the Trade Act of 1974, the requirements of Office of Management and Budget Circular No. A-95 regarding review by clearinghouses do not apply.

**E.T. Baker,**

*Supervisory Eligibility Examiner, Certification Division, Office of Trade Adjustment Assistance.*

[FR Doc. 89-5196 Filed 3-6-89; 8:45 am]

BILLING CODE 3510-GN-M

## National Oceanic and Atmospheric Administration

### National Fish and Seafood Promotional Council; Meeting

*Agency:* National Marine Fisheries Service (NMFS), NOAA, DOC.

*Time and Date:* The meeting will convene at 3:00 p.m., March 28, 1989 and adjourn approximately 5:00 p.m., March 30, 1989.

*Place:* Georgetown Marbury Hotel, 3000 M Street, NW., Washington, DC 20007.

*Status:* NOAA announces a meeting of the National Fish and Seafood Promotional Council (NFSPC). The NFSPC, consisting of 15 industry members and the Secretary of Commerce as a non-voting member, was established by the Fish and Seafood Promotion Act of 1986 to carry out programs to promote the consumption of fish and seafood and to improve the competitiveness of the U.S. fishing industry.

The NFSPC is required to submit an annual plan and budget to the Secretary of Commerce for his approval that describes the marketing and promotion activities the NFSPC intends to carry out. Funding for NFSPC activities is provided for through Congressional appropriations.

*Matters to be Considered*

*Portion Opened to the Public:*

March 29, 1989

8:30 a.m.–10:30 a.m.—Chairman's opening remarks, approval of minutes from last meeting, agenda for meeting, and discussion of Council/Advertising agency working relationship. 10:30 a.m.–6:00 p.m.—Presentation by W. B. Doner & Company of alternate execution/implementation styles/plans for the Council's advertising program. Lunch break: 12:30 p.m.–1:30 p.m.

March 30, 1989

8:30 a.m.–5:00 p.m.—Council Chairman's update, Executive Director's update, discussion of agency proposal, update on pollution/media relations activities, recap of the American Seafood Challenge, Canadian generic marketing presentation, regional implementation proposal, discussion of environmental issues and the handling of adverse publicity, future meeting agenda and other pending business. Lunch break: 12:30 p.m.–1:30 p.m.

*Portion Closed to the Public:*

March 28, 1989

3:00 p.m.–5:30 p.m.—Election of Council Chairman and discussion of Council operations.

*For Further Information Contact:* Jeanne M. Grasso, Program Coordinator, National Fish and Seafood Promotional Council, 1825 Connecticut Avenue, NW., Room 618, Washington, DC 20235. Telephone: (202) 673–5237.

Dated: March 1, 1989.

**James W. Brennan,**

*Assistant Administrator for Fisheries.*

[FR Doc. 89-5199 Filed 3-6-89; 8:45 am]

BILLING CODE 3510-22-M

### New England Fishery Management Council; Public Hearing

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of a rescheduled public hearing and request for comments.

**SUMMARY:** A notice of public hearings was published February 3, 1989 (54 FR 5539), concerning (1) two proposed measures to be included in a regulatory amendment to the regulations implementing the Sea Scallop Fishery Management Plan (FMP) and (2) six proposals for possible inclusion in Amendment 3 to the FMP. The New England Fishery Management Council (Council) has rescheduled and changed the location of one hearing and extended the public comment period to solicit additional input. Individuals and organizations may comment in writing to the Council if they are unable to attend the hearing.

**DATES:** The public comment period for the proposed regulatory amendment has been extended to March 18, 1989. The comment period for the other six proposals will close March 18, 1989.

The hearing previously scheduled for February 18, 1989, is rescheduled for March 16, 1989, 7:00 p.m. to 11:00 p.m.

**ADDRESSES:** All written comments and requests for hearing documents should be addressed to Chairman, New England Fishery Management Council, 5 Broadway (Route 1), Saugus, MA 01906.

The rescheduled March 16, 1989, hearing location is being changed from Washington, North Carolina, to the Craven County Courthouse, Broad & Craven Street, Superior Court Room, New Bern, North Carolina.

**FOR FURTHER INFORMATION CONTACT:** Douglas G. Marshall, Executive Director, New England Fishery Management Council, 617–231–0422.

**SUPPLEMENTARY INFORMATION:** The information concerning other hearings that were held was published February 3, 1989 (54 FR 5539), and will not be repeated here.

Dated: March 2, 1989.

**Alan Dean Parmele,**

*Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 89-5209 Filed 3-6-89; 8:45 am]

BILLING CODE 3510-22-M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Defense Science Board Task Force on Use of Commercial Components in Military Equipment; Meeting

**ACTION:** Notice of advisory committee meetings.

**SUMMARY:** The Defense Science Board Task Force on Use of Commercial Components in Military Equipment will meet in closed session on March 30, 1989 at the TRW Corporation, Fairfax, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will receive classified briefings on military acquisition programs and systems availability and the affect of increased use of commercial items on force posture.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

March 1, 1989.

**Linda M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 89-5194 Filed 3-6-89; 8:45 am]

BILLING CODE 3810-01-M



### Defense Science Board Task Force on Technological and Operational Surprise; Change in Meeting Date

**ACTION:** Change in date of advisory committee meeting notice.

**SUMMARY:** The meeting of the Defense Science Board Task Force on Technological and Operational Surprise scheduled for March 2–3, 1989 as published in the **Federal Register** (Vol. 54, No. 28, Page 6566, Monday, February 13, 1989, FR Doc. 89–3297) will be held on March 7–8, 1989.

March 1, 1989.

**Linda M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 89-5105 Filed 3-6-89; 8:45 am]

BILLING CODE 3810-01-M

## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection concerning contract cost or pricing data.

**ADDRESS:** Send comments to Ms. Eyvette Flynn, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jeremy Olson, Office of Federal Acquisition and Regulatory Policy, (202) 523–3781.

**SUPPLEMENTARY INFORMATION:** a. *Purpose.* The Competition in Contracting Act of 1984, Title VII of Pub. L. 98–369 substantially changed the basic statutes underlying the Federal procurement system—with a corresponding major impact on the FAR. Under the Act, agencies are required to provide for full and open competition by soliciting sealed bids or requesting competitive proposals, or use other competitive procedures, unless a statutory exception permits other than full and open competition. In addition, the Act lowered the threshold for submission of certified cost of pricing data by offerors from $500,000 to $100,000 when adequate price competition does not exist.

The information is used by the Government to perform cost analysis and to ultimately enable the Government to negotiate fair and reasonable prices on contracts.

b. *Annual reporting burden.* The annual reporting burden is estimated as follows: Respondents, *14,781;* responses per respondent, *10;* total annual responses, *147,814;* hours per response, *4;* and total response burden hours, *591,256.*

*Obtaining Copies of Proposals:* Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–0013, Cost or Pricing Data.

Dated: February 27, 1989.

**Margaret A. Willis,**

*FAR Secretariat.*

[FR Doc. 89-5168 Filed 3-6-89; 8:45 am]

BILLING CODE 6820-JC-M

## DEPARTMENT OF EDUCATION

### Office of Bilingual Education and Minority Languages Affairs

### Proposed Funding Priority for Fiscal Year 1989

**AGENCY:** Department of Education.

**ACTION:** Notice of Proposed Funding Priority for Fiscal Year 1989.

**SUMMARY:** The Secretary of Education proposes a funding priority for activities to be supported under the Transitional Bilingual Education and Special Alternative Instructional programs of the Office of Bilingual Education and Minority Languages Affairs (OBEMLA) in fiscal year (FY) 1989.

**DATE:** Comments must be received on or before April 6, 1989.

**ADDRESS:** All written comments and suggestions should be sent to OBEMLA, U.S. Department of Education, Room 5086, Switzer Bldg., 400 Maryland Ave., SW., Washington, DC 20202.

**FOR FURTHER INFORMATION CONTACT:** William Wooten, OBEMLA (Telephone: (202) 732–5063).

**SUPPLEMENTARY INFORMATION:** Authority for the Transitional Bilingual Education (TBE) and the Special Alternative Instructional (SAI) programs is contained in section 7021 of the Bilingual Education Act of 1984, as amended. Under both the TBE and SAI programs awards are made to local educational agencies (LEAs) to provide programs of instruction for limited English proficient (LEP) children. The following priority is designed to give a preference to programs that provide services to children who have not been previously served through federally funded TBE or SAI programs. Additionally, the LEA may not previously have provided services in the native language of those students to be served in the proposed project with TBE or SAI funds received from the Department.

The Secretary invites public comment on the merits of the proposed priority, including suggested modifications to the proposed priority. The final priority will be established on the basis of public comment, and other relevant Departmental considerations, and will be announced in a notice in the **Federal Register.** A notice inviting applications for this competition will be published at that time, after which application packages will be available. This competition is in addition to the previously announced TBE and SAI competitions for FY 1989. This Notice of Proposed Priority does not solicit applications, and Department of Education staff will not review concept papers or pre-applications. The publication of this proposed priority does not bind the Federal government to fund projects in this area, except as otherwise directed by statute. Funding of particular projects depends on the final priority, the availability of funds, and on the quality of applications that are received.

**Proposed Priority**

Bilingual instruction programs have been funded by the Federal government for over 20 years in an effort to insure

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Equal Educational Opportunity for all students. During that time new immigrant populations have continued to arrive, introducing new languages and cultures into many school systems whose existing bilingual programs were designed for other languages. The Secretary is concerned that children whose language is new to a school district receive bilingual instruction comparable with that of those children already in bilingual education programs.

In accordance with the Education Department General Administrative Regulations at 34 CFR 75.105(c)(3), the Secretary proposes to give an absolute perference to applications that meet the following priority:

The LEA must propose to provide bilingual instructional services for a group of limited English proficient (LEP) students who have not previously received services under TBE or SAI programs funded by the Department. Additionally, the LEA may not previously have provided service with TBE or SAI funds received from the Department in the native language of those students to be served in the proposed project.

**Invitation to Comment**

Interested persons are invited to submit comments and recommendations regarding this proposed priority. All comments submitted in response to this proposed priority will be available for public inspection during and after the comment period in Room 5086, Switzer Bldg., 330 C. Street SW., Washington DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

**Authority:** 20 U.S.C. 3231.

Dated: February 14, 1989.

**Lauro F. Cavazos,**

*Secretary of Education.*

[FR Doc. 89-5221 Filed 3-6-89; 8:45 am]

BILLING CODE 4000-01-M

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**[CFDA No.: 84.128G]**

**Vocational Rehabilitation Service Projects Program for Migratory Agricultural and Seasonal Farmworkers With Handicaps; Invitation for Applications for New Awards for Fiscal Year 1989**

Purpose of Program: This program supports projects conducted by State or local vocational rehabilitation agencies that provide vocational rehabilitation services to migratory agricultural workers with handicaps or seasonal farmworkers with handicaps.

Deadline for Transmittal of Applications: May 16, 1989.

Deadline for Intergovernmental Review Comments: July 18, 1989.

Applications Available: March 15, 1989.

Available Funds: $254,000.

Estimated Range of Awards: $100,000 to $150,000.

Estimated Average Size of Awards: $127,000.

Estimated Number of Awards: 2.

**Note.**—The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 75, 77, 79, 80, and 85; and (b) the regulations for this program in 34 CFR Parts 369 and 375.

The information collection requirements, including selection criteria, for Parts 369 and 375 are pending approval by the Office of Management and Budget. If any substantive changes are made in the information collection requirements for this program, applicants will be given an opportunity to revise or resubmit their applications.

For Applications or Information Contact: Joseph DePhillips, U.S. Department of Education, 400 Maryland Avenue SW., Room 3328, Switzer Building, Washington, DC 20202-2575. Telephone: (202) 732-1329.

Program Authority: 29 U.S.C. 777b.

Dated: March 2, 1989.

**Madeleine Will,**

*Assistant Secretary, Office of Special Education and Rehabilitative Services.*

[FR Doc. 89-5218 Filed 3-6-89; 8:45 am]

BILLING CODE 4000-01-M

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## DEPARTMENT OF ENERGY

### Bonneville Power Administration

**U.S.-Canada Free-Trade Agreement; Modification of Bonneville Power Administration's Long-Term Intertie Access Policy**

**AGENCY:** Bonneville Power Administration (BPA), DOE.

**ACTION:** Notice of modification of BPA's long-term intertie access policy (Policy) to comply with U.S.-Canada Free-Trade Agreement.

**SUMMARY:** On May 17, 1988, BPA finalized its Long-Term Intertie Access Policy. The Policy defines how the portion of the Pacific Northwest-Pacific Southwest Intertie (Intertie) controlled by BPA will be used. One provision of the Policy addresses the then proposed U.S.-Canada Free-Trade Agreement. Section 8(b) states as follows:

Upon approval of the proposed U.S.-Canada Free Trade Agreement by the Canadian Parliament and the United States Congress, any and all distinctions made in this policy between Canadian and United States Extraregional Utilities shall terminate on the effective date of the Agreement.

The Free-Trade Agreement has been approved by both Canada and the United States and became effective on January 1, 1989. Chapter 9 of the Statement of Administrative Action that accompanied the U.S.-Canada Free-Trade Agreement Implementation Act of 1988 states that the United States will "eliminate any discriminatory treatment of electricity produced by British Columbia Hydro as compared to electricity produced by U.S. utilities located outside the Pacific Northwest region with respect to access to the . . . Intertie into the California electricity market." Accordingly, under the Policy, British Columbia now will obtain access to BPA's share of the Intertie on the same basis as U.S. utilities located outside the Pacific Northwest region.

**FOR FURTHER INFORMATION CONTACT:** Ms. Marg Nelson, Intertie Section Chief, at 503-230-5847, or the Public Involvement office at 503-230-3478. Oregon callers may use 800-452-8429 to reach the Public Involvement office; callers in California, Idaho, Montana, Nevada, Utah, Washington, and Wyoming may use 800-547-6048. Information may also be obtained from:

Mr. George E. Gwinnutt, Lower Columbia Area Manager, Suite 243, 1500 NE. Irving Street, Portland, Oregon 97232, 503-230-4551.

Mr. Robert W. Rasmussen, Acting Eugene District Manager, Room 206, 211 East Seventh Street, Eugene, Oregon 97401, 503-687-6952.

Mr. Wayne R. Lee, Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509-456-2518.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406-329-3060.

Mr. Ronald K. Rodewald, Wenatchee District Manager, Room 307, 301 Yakima Street, Wenatchee, Washington 98801, 509-662-4377, extension 379.

Mr. Terence G. Esvelt, Puget Sound Area Manager, Suite 400, 201 Queen Anne Avenue, Seattle, Washington 98109-1030, 206-442-4130.

Mr. Thomas V. Wagenhoffer, Snake River Area Manager, 101 West Poplar, Walla Walla, Washington 99362, 509-522-6225.

Mr. Robert N. Laffel, Idaho Falls District Manager, 1527 Hollipark Drive, Idaho Falls, Idaho 83401, 208-523-2706.

Mr. Thomas H. Blankenship, Boise District Manager, Room 494, 550 West Fort Street, Boise, Idaho 83724, 208-334-9137.



Issued in Portland, Oregon, on February 15, 1989.

**James J. Jura,**

*Administrator.*

[FR Doc. 89-5144 Filed 3-6-89; 8:45 am]

BILLING CODE 6450-01

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## Federal Energy Regulatory Commission

**[Docket Nos. EL89-19-000 et al.]**

**City of Hamilton, OH, et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings**

Take notice that the following filings have been made with the Commission:

**1. City of Hamilton, Ohio v. Cincinnati Gas & Electric Company**

[Docket No. EL89-19-000]

March 1, 1989.

Take notice that on February 21, 1989, the City of Hamilton, Ohio (Hamilton) submitted a complaint and request for hearing and refund effective date against the Cincinnati Gas & Electric Company (CG&E), pursuant to rule 206 of the rules of practice and procedure of the Commission and sections 206 and 306 of the Federal Power Act.

Hamilton asserts that the rates charged by CG&E for transmission service under a 1981 interconnection agreement between Hamilton and CG&E are unjust and reasonable. Hamilton further asserts that the limitations on the services provided by CG&E under the 1981 agreement between Hamilton and CG&E further support rate reductions. Hamilton also asserts that CG&E is over-billing Hamilton for short term energy under the 1981 agreement. Hamilton urges the Commission to order a hearing to investigate the material issues of fact that Hamilton asserts it has raised in its complaint and to establish the just and reasonable rates, terms and conditions for the transmission and other services provided by CG&E to Hamilton. Hamilton also urges the Commission to direct CG&E to refund to Hamilton all over-collections for short term energy, establish a refund effective date 60 days after the date of filing of Hamilton's complaint, and grant Hamilton such further relief as is just and appropriate under the circumstances.

*Comment date:* March 31, 1989, in accordance with Standard Paragraph E at the end of this notice.

**2. Arizona Corporation Commission v. Alamito Company**

[Docket No. EL89-18-000]

March 1, 1989.

Take notice that on February 15, 1989, the Arizona Corporation Commission (Arizona Commission) submitted a complaint against Alamito Company (Alamito), pursuant to rule 206 of the rules of practice and procedure of the Commission and section 306 of the Federal Power Act.

The Arizona Commission asserts that the complaint concerns matters related to but not fully considered and decided in certain cases pending before the Commission, most notably Docket Nos. ER87-47-000 and ES87-23-000. The Arizona Commission requests that the Commission determine the just, reasonable and not unduly discriminatory rates to be charged by Alamito to Tuscon Electric Power Company (TEP) under a rate schedule on file with the Commission for the period November 26, 1984 to the date of the Commission's decision. The Arizona Commission requests that the Commission order Alamito to refund to TEP all amounts collected from TEP since November 26, 1984 in excess of the rate determined to be just, reasonable and not unduly discriminatory, plus interest computed in accordance with the Commission's regulations. The Arizona Commission requests the Commission to set a refund effective date as of 60 days following the filing of this complaint, and that the rates collected subsequent thereto be collected subject to refund, plus interest. The Arizona Commission requests that the Commission determine the just, reasonable and not unduly discriminatory rates, terms and conditions of service to be observed prospectively for the sale of electric power and energy by Alamito to TEP.

*Comment date:* March 31, 1989, in accordance with Standard Paragraph E at the end of this notice.

**3. Montaup Electric Company**

[Docket No. ER89-250-000]

March 3, 1989.

Take notice that on February 23, 1989, Montaup Electric Company (Montaup) filed a letter under section 205 of the Federal Power Act of a surcharge under its Purchased Capacity Adjustment Clause (PCAC) to true up the amounts billed in 1988 under a forecast billing rate to conform with actual purchased capacity costs. The surcharge will be added to bills charged Montaup for all requirements service to Montaup's affiliates Eastern Edison Company in Massachusetts and Blackstone Valley Electric Company in Rhode Island and contract demand service to the three nonaffiliated customers: The Town of Middleborough in Massachusetts and Pascoag Fire District and Newport Electric Corporation in Rhode Island.

The PCAC was established by the settlement agreement in FERC Docket No. ER85-106-002 and provides that Montaup will collect PCAC revenues from its wholesale customers for the sale of electric power through a forecast billing over an adjustment period consisting of a calendar year and will true up the amounts collected during each adjustment period to reflect actual cost through a surcharge or credit at the end of the adjustment period. The forecast billing rate is determined based on cost estimates provided by each supplier. The company keeps track of the accumulated overrecovery or underrecovery under the forecast billing rate as compared with actual payments by Montaup for purchased capacity and accrues a carrying charge to the customer's credit (in the case of an accumulated overrecovery) or customer's credit (in the case of an accumulated underrecovery). The accumulated overrecovery or underrecovery as of the end of each calendar year is flowed through to or recovered from customers in a credit or surcharge filed after the end of that year. The credit or surcharge is to be applied to a single month's bill unless (in the case of a surcharge) the percentage increase in the bill would exceed five percent. Any inaccuracy in the forecast billing rate is thus corrected and customers end up paying the costs actually incurred.

Montaup's forecast billing rate in effect during 1988 did not fully recover its purchased capacity cost, resulting in cumulative underrecoveries as of December 31, 1988, as follows:

Blackstone Valley—1,712,354.14.

Eastern Edison—3,409,073.34.

Newport Electric—333,205.90.

Middleborough—33,083.97.

Pascoag—16,591.80.

Montaup requests that it be permitted to collect the amounts shown above as a surcharge to monthly billings beginning with bills for January 1988 service and requests waiver of the 60-day notice requirement. Because of the 5 percent limit the surcharge will be collected over four or five months.

*Comment date:* March 20, 1989, in accordance with Standard Paragraph E at the end of this notice.

**4. The Washington Water Power Company**

[Docket No. ER89-247-000]

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March 3, 1989.

Take notice that on February 22, 1989, The Washington Water Power Company (WWP) tendered for filing copies of the Seventh Amendment to an Exchange Agreement with Puget Sound Power & Light Company (Puget) which provides for the exchange of steam-electric generation which, because of plant locations and load area locations, results in substantial savings in both transmission service cost and in transfer losses. The savings resulting therefrom are shared equally by WWP and Puget under the terms of the Exchange Agreement.

The Seventh Amendment shows the calculation of estimated costs and benefits for the 12-month period beginning January 1, 1988. The Seventh Amendment reflects the effect of the state of Montana's "Beneficial Use Tax" on the Exchange, and replaces the Sixth Amendment which was also effective January 1, 1988. It is estimated that the equal sharing of benefits under the Exchange Agreement will result in payments by Puget to WWP of $1,874,852 during this period.

Copies of the filing were served upon Puget.

*Comment date:* March 20, 1989, in accordance with Standard Paragraph E at the end of this notice.

**5. Montaup Electric Company**

[Docket No. ER89-245-000]

March 3, 1989.

Take notice that on February 22, 1989, Montaup Electric Company (Montaup) tendered for filing copies of short-term System Exchange Agreement, dated August 29, 1963, between Montaup and Boston Edison Company (Boston Edison). This agreement provides for a sale of capacity and associated energy from Montaup to Boston Edison in exchange for an equal amount of capacity and any associated energy from Boston Edison. This agreement allows each company to lower energy costs to their respective customers as the opportunity arises.

Boston Edison has a parallel agreement with Montaup. That agreement was filed in Docket No. ER87-408-000 and accepted for filing in September 1987.

In order to permit Montaup and Boston Edison to achieve mutual benefits from this agreement, Montaup requests waiver of the 60-day notice requirement to permit this rate schedule to become effective on August 29, 1963. The waiver, if granted, will have no effect upon purchases under any other rate schedule.

The agreement provides for payment by Boston Edison of an energy charge as provided in Article 7 for any energy which may be provided by Boston Edison and in Article 8 for energy to be provided by Montaup. Justification for the energy reservation charge rate was made and accepted by the FERC in Docket No. ER85-397-000, Rate Schedule FERC No. 97.

*Comment date:* March 20, 1989, in accordance with Standard Paragraph E at the end of this notice.

**6. Arkansas Power & Light Company**

[Docket No. ER89-246-000]

March 3, 1989.

Take notice that on February 14, 1989, Arkansas Power & Light Company (AP&L) tendered for filing an executed rate formula agreement with the City Water & Light Plant of the City of Jonesboro, Arkansas (Jonesboro). AP&L states that the proposed rate formula is the same as that filed for other customers in Docket No. ER89-150-000 and that the formula results in an 11.7 percent increase for Jonesboro.

AP&L proposes an effective date of March 1, 1989, for Jonesboro, as was proposed in its filing in Docket No. ER89-150-000.

*Comment date:* March 20, 1989, in accordance with Standard Paragraph E at the end of this notice.

**7. Orange and Rockland Utilities, Inc.**

[Docket NO. ER89-249-000]

March 3, 1989.

Take notice that on February 16, 1989, Orange and Rockland Utilities, Inc. (O&R) tendered for filing pursuant to Federal Energy Regulatory Commission's order issued January 15, 1988 in Docket No. ER88-112-000, and executed Service Agreement between O&R and Wakefern Food Corporation (Wakefern).

*Comment date: March 20, 1989, in accordance with Standard Paragraph E at the end of this document.*

**8. Detroit Edison Company**

[Docket No. ER89-251-000]

march 3, 1989.

Take notice that on the Detroit Edison Company (Detroit Edison) on February 23, 1989, tendered for filing Supplement No. 4 to Detroit Edison's Rate Schedule No. 23.

Detroit Edison states that Supplement No. 4 revises the present agreement for interconnection services between its electrical system and the City of Wyandotte by providing for an additional 120 kV service point. Detroit Edison states that no rates or charges for service are increased by Supplement No. 4 but rates and charges for Emergency Power and Energy, Capacity Reservation Power and Energy, Short Term Power and Energy and Displacement Power and Energy are restated in independent supplier-purchaser format. Detroit Edison requests that the supplement be permitted to become effective as of December 2, 1988.

*Comment date:* March 20, 1989, in accordance with Standard Paragraph E at the end of this notice.

**9. New England Power Company**

[Docket No. ER89-216-000]

March 3, 1989

Take notice that on February 1, 1989, New England Power Company (NEP) submitted for filing an executed Amendment to the Power Contract between NEP and the Town of Norwood, Massachusetts (Norwood).

NEP states that the Amendment modifies the notice of termination provision in the Contract, increases the transmission credit provided under the Contract, and allows Norwood to intervene in future NEP rate proceedings affecting Norwood's service, notwithstanding a prohibition on any such interventions under a settlement of an earlier antitrust action. NEP requests waiver of the notice requirements so that the Amendment may become effective September 20, 1988.

*Comment:* March 20, 1989, in accordance with Standard Paragraph E at the end of this notice.

**10. Southern Company Services, Inc.**

[Docket No. ER89-252-000]

March 3, 1989.

Take notice that on February 24, 1989, Southern Company Services, Inc., acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Savannah Electric and Power Company (Southern Companies) tendered for filing an interchange contract between Florida Power Corporation, Southern Companies and SCSI, together with service schedules showing the basis for interchange transactions between such companies. The filing also includes informational schedules which detail the charges and derivation of components of the rates to be used during the calendar year 1989. The new interchange contract is proposed to be made effective as of January 1, 1989.

The new interchange contract between Florida Power Corporation, Southern Companies and SCSI



constitutes an agreement to continue operation and maintenance of interconnection facilities. The contract provides for the provision of certain services, including Emergency Assistance, Economy Interchange and Economic Energy Participation, and establishes the basis of settlement for such services.

*Comment date:* March 20, 1989, in accordance with Standard Paragraph E at the end of this notice.

**11. Florida Power Corporation**

[Docket No. ER89-248-000]

March 3, 1989.

Take notice that on February 22, 1989, Florida Power Corporation, (Florida Power) tendered for filing a revised Attachment H-1 ("Letter of Commitment for Reserve Interchange Service") to Service Schedule H of Florida Power's August 1, 1983 Contract for Interchange Service with Seminole Electric Cooperative, Inc. ("Seminole"). Attachment H-1 specified the amount, duration and pricing for Florida Power's sale to Seminole of operating reserves and supplemental reserves for the period commencing January 1, 1989. The submittal continues in effect through April 30, 1989, the updated capacity charges which were implemented in 1988, pursuant to Florida Power's annual cost support filing.

Florida Power requests the sixty day notice requirement be waived so that the revised Attachment H-1, in accordance with its terms, may be permitted to become effective on January 1, 1989.

*Comment date:* March 20, 1989, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraphs**

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulation Commission, 825 North Capitol Street, NE. Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 89-5238 Filed 3-6-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER89-599-000 et al.]

**Rochester Gas and Electric Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings**

March 1, 1989.

Take notice that the following filings have been made with the Commission:

**1. Rochester Gas and Electric Company**

[Docket No. ER89-599-000]

Take notice that on February 13, 1989, Rochester Gas and Electric Corporation (Rochester) tendered for filing additional information on the development of the contract rates for Entitlement, Replacement, and Residual Power under the proposed contract between Rochester and Green Mountain Power.

*Comment date:* March 16, 1989, in accordance with Standard Paragraph E at the end of this notice.

**2. Nevada Power Company**

[Docket No. ER89-234-000]

Take notice that on February 17, 1989, Nevada Power Company (Nevada) tendered for filing an agreement entitled Short Term Seasonal Power Agreement between City of Boulder City (Boulder) and Nevada hereinafter "the Agreement". The primary purpose of the Agreement is to establish the terms and conditions for the Sale by Nevada to Boulder of 30 MW per hour of capacity and energy during January, February, and March 1989.

Nevada requests an effective date of January 1, 1989 and therefore requests waiver of the Commission's notice requirements.

Nevada states that Copies of the filing were served upon Boulder.

*Comment date:* March 20, 1989, in accordance with Standard Paragraph E at the end of this notice.

**3. Nevada Power Company**

[Docket No. ER89-235-000]

Take notice that on February 17, 1989, Nevada Power Company (Nevada) tendered for filing an agreement entitled Short Term Seasonable Power Agreement between Valley Electric Association (Valley) and Nevada hereinafter "the Agreement". The primary purpose of the Agreement is to establish the terms and conditions for the Sale by Nevada to Valley of 30 MW per hour of capacity and energy during January, February, and March 1989.

Nevada requests an effective date of January 1, 1989 and therefore requests waiver of the Commission's notice requirements.

Nevada states that copies of the filing were served upon Valley.

*Comment date:* March 20, 1989, in accordance with Standard Paragraph E at the end of this document.

**4. Nevada Power Company**

[Docket No. ER89-236-000]

Take notice that on February 17, 1989, Nevada Power Company (Nevada) tendered for filing an agreement entitled Short Term Seasonal Power Agreement between Overton Power District No. 5 (Overton) and Nevada hereinafter "the Agreement". The primary purpose of the Agreement is to establish the terms and conditions for the Sale by Nevada of Overton of 30 MW per hour of capacity and energy during January, February, and March 1989.

Nevada requests and effective date of January 1, 1989 and therefore requests waiver of the Commission's notice requirements.

*Comment date:* March 20, 1989, in accordance with Standard Paragraph E at the end of this notice.

**5. New York State Electric & Gas Corporation**

[Docket No. ER89-237-000]

Take notice that on February 21, 1989, New York State Electric & Gas Corporation (NYSEG) tendered for filing as an initial rate schedule a contract dated November 17, 1988 between NYSEG and the County of Tompkins, a municipal corporation of the State of New York ("Tompkins County"). The contract provides for Tompkins County to pay a charge to NYSEG for the use of its facilities to deliver hydroelectric power and energy sold by Tompkins County to its residential customers, equal to the charges that would have been billed to such customers under NYSEG's appropriate residential electric rate schedule on file with the New York State Public Service Commission less NYSEG's fuel and purchased power costs reflected in such rate schedule.

NYSEG states that copies of this filing have been served by mail upon Tompkins County, the New York State Public Service Commission, and the Power Authority of the State of New York, from whom Tompkins County is purchasing the hydroelectric power and energy to be sold by Tompkins County to its customers.

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*Comment date:* March 20, 1989, in accordance with Standard Paragraph E at the end of this document.

**6. Long Island Lighting Company**

[Docket No. ER89-238-000]

Take notice that Long Island Lighting Company (LILCO) on February 21, 1989, tendered for filing proposed changes in its FERC Rate Schedule 34, pursuant to which LILCO transmits power and energy from the New York Power Authority, Brookhaven National Laboratory in Upton, New York and Grumman Corporation in Bethpage, New York. The proposed changes would increase revenues from such service by $43,184.00 based on the 12-month period ending May 31, 1989.

LILCO proposes to increase the rates in order to recover the increase in the cost of service.

Copies of this filing were served upon the New York Power Authority, Brookhaven National Laboratory, Grumman Corporation and the New York State Public Service Commission.

*Comment date:* March 20, 1989, in accordance with Standard Paragraph E at the end of this notice.

**7. Nevada Power Company**

[Docket No. ER89-244-000]

Take notice that on February 21, 1989, Nevada Power Company (Nevada) tendered for filing an agreement entitled Economy Energy Agreement between Nevada and the Metropolitan Water District of Southern California (Metropolitan) hereinafter "the Agreement." The primary purpose of the Agreement is to establish the terms and conditions for the sale by Nevada of Economy Energy to Metropolitan upon request by Metropolitan and availability from Nevada.

Nevada states that copies of the filling were served upon Metropolitan.

*Comment date:* March 20, 1989, in accordance with Standard Paragraph E at the end of this notice.

**8. Northeast Utilities Service Company**

[Docket No. ER89-243-000]

Take notice that on February 21, 1989, Northeast Utilities Service Company (NUSCO) tendered for filing proposed changes with respect to (i) Sales Agreement with respect to Montville and Middletown Units, and (ii) Sales Agreement with respect to Various Gas Turbine Units, both between the Connecticut Light and Power Company (CL&P) and South Hadley Electric Light Department (South Hadley), dated September 18, 1967.

The proposed changes would (1) provide additional sales of capacity and energy under both rate schedules, and (2) provide a renegotiated capacity charge rate for the additional sales in 1987 and a cost-of-service capacity charge rate for the additional sales during the remainder of the term of the Sales Agreement with respect to various Gas Turbine Units.

Pursuant to Section 35.19 of the Commission's Regulations and in order to conform with the requirements of Section 35.13 (b) and (c), NUSCO incorporates hereto by reference the information previously submitted to the Commission under FERC Rate Schedule Nos. CL&P 372 and 373.

NUSCO requests that the Commission waive its standard notice periods and filing regulations to the extent necessary to permit the rate schedule changes to become effective May 1, 1967.

NUSCO states that copies these rate schedule changes have been mailed or delivered to CL&P and South Hadley.

*Comment date:* March 20, 1989, in accordance with Standard Paragraph E at the end of this notice.

**9. Long Island Lighting Company**

[Docket No. ER89-242-000]

Take notice that Long Island Lighting Company (LILCO) on February 21, 1989, tendered for filing a proposed rate schedule for the rate of emergency energy and capacity to Connecticut Light & Power Company. The proposed rate schedule would provide LILCO with $100,000 revenues from such service.

Copies of this filing were served upon the Connecticut Department of Public Utilities, Connecticut Light & Power Company, and the New York State Public Service Commission.

*Comment date:* March 20, 1989, in accordance with Standard Paragraph E at the end of this notice.

**10. Long Island Lighting Company**

[Docket No. ER89-241-000]

Take notice that Long Island Lighting Company (LILCO) on February 21, 1989, tendered for filing a proposed rate schedule for the sale of emergency energy and capacity to Boston Edison & Power Company. The proposed rate schedule would provide LILCO with $981,000 in revenues from such service.

Copies of this filing were served upon the Massachusetts Department of Public Utilities, Boston Edison Company, and the New York State Public Service Commission.

*Comment date:* March 20, 1989, in accordance with Standard Paragraph E at the end of this notice.

**11. Long Island Lighting Company**

[Docket No. ER89-240-000]

Take notice that Long Island Lighting Company (LILCO) on February 21, 1989, tendered for filing proposed changes in its FERC Rate Schedule 32, pursuant to which LILCO transmits power and energy from the New York Power Authority to the three municipal Electric utilities on Long Island: the Village of Greenport, Rockville Centre and Freeport. The proposed changes would increase revenues from such service by $37,270.00 based on the 12-month period ending May 31, 1989.

LILCO proposes to increase the rates in order to recover the increase in the Company's cost of service.

Copies of this filing were served upon the New York Authority the Municipal Electric Utilities Association of New York State, the Incorporated Villages of Greenport, Freeport and Rockville Centre, and the New York State Public Service Commission.

*Comment date:* March 20, 1989, in accordance with Standard Paragraph E at the end of this notice.

**12. Long Island Lighting Company**

[Docket No. ER89-239-000]

Take notice that Long Island Lighting Company (LILCO) on February 21, 1989, tendered for filing a proposed rate schedule for the sale of emergency energy and capacity to New England Power Company, the proposed rate schedule would provide LILCO with $1.9 million in revenues from such service.

Copies of this filing were served upon the Massachusetts Departemnt of Public Utilities, New England Company, and the New York State Public Service Commission.

*Comment date:* March 16, 1989, in accordance with Standard Paragraph E at the end of this notice.

**13. Arizona Public Service Company**

[Docket No. ER89-181-000]

Take notice that on February 8, 1989, Arizona Public Service Company (Arizona) tendered for filing a letter in response to a request by staff for additional information. The information submitted concerned the cost of service used as the basis for the company's Energy Interchange Ceiling rate submitted in the above referenced docket .

*Comment date:* March 20, 1989, in accordance with Standard Paragraph E at the end of this notice.



**Standard Paragraphs**

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 89-5236 Filed 3-6-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 1235-000 Virginia]

**City of Radford, VA; Availability of Environmental Assessment**

March 2, 1989.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for the minor license for the proposed Municipal Hydroelectric Project located on the Little River in Montgomery and Pulaski Counties, near Radford, Virginia, and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that the approval of the proposed project, with appropriate mitigative measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's offices at 825 North Capital Street NE., Washington, DC 20426.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 89-5239 Filed 3-6-89; 8:45 am]

BILLING CODE 6717-01-M

**Hydroelectric Application Filed with the Commission**

March 1, 1989.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is availble for public inspection.

*a. Type of Application:* Transfer of License.

*b. Project No.:* 1432-003.

*c. Date Filed:* January 19, 1989.

*d. Applicant:* CWC Fisheries, Inc. (transferor), Wards Cove Packing Company (transferee).

*e. Name of Project:* Dry Spruce Bay.

*f. Location:* On Dry Spruce Bay in Kodiack County, Alaska.

*g. Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

*h. Applicant Contact:* Mr. R. Eldridge Hicks, Hicks, Boyd, Chandler & Falconer, 550 W. 7th Avenue, Suite 1530, Anchorage, AK 99501.

*i. FERC Contact:* Mr. William Roy-Harrison (202) 376-9830.

*j. Comment Date:* April 3, 1989.

*k. Description of Project:* CWC Fisheries, Inc. proposes to transfer its license to Wards Cove Packing Company. The project is currently operating under an annual license issued December 20, 1988. The transferee is a private corporation organized under the laws of the state of Alaska.

*l. This notice also consists of the following standard paragraphs:* B and C.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, and or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS," "RECOMMENDATIONS FOR TERMS AND CONDITIONS," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATIONS," "PROTEST" or "MOTION TO INTERVENE," as applicable, and the project number of the particular application to which the filing is in response. Any of these documents must be filed by providing the original and the number of copies required by the Commision's regulations to: the Secretary, Federal Energy Regulatory Commission, 825 North Capital Street, NW., Washington, DC 20426. An additional copy must be sent to: the Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 204-RB, at the above address. A copy of any notice of intent, competing application, or motion to intervene must also be served upon each representative of the applicant specified in the particular application.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 89-5176 Filed 3-6-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-865-000, et al.]

**Williams Natural Gas Co., et al.; Natural Gas Certificate Filings**

Take notice that the following filings have been made with the Commission:

**1. Williams Natural Gas Company**

[Docket No. CP89-865-000]

February 28, 1989.

Take notice that on February 21, 1989, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89-846.000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of End Users Supply System (End Users), a marketer of natural gas, under WNG's blanket certificate issued in Docket No. CP86-631-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

WNG proposes to transport, on an interruptible basis, up to 7,734 MMBtu equivalent of natural gas on a peak day, 7,734 MMBtu equivalent on an average day, and 2,822,545 MMBtu equivalent on an annual basis for End Users. It is stated that WNG would receive the gas for End Users' account at various existing points on WNG's system in Kansas, Missouri, Oklahoma, Texas and Wyoming, and would deliver equivalent volumes at various points on WNG's system in Kansas, Missouri, and Nebraska. It is asserted that existing facilities would be used and that no construction of additional facilities would be required. It is explained that the transportation service commenced September 10, 1988, under the self-implementing authorization of § 284.223

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of the Commission's Regulations, as reported in Docket No. ST89–1650. It is further explained that the service ceased January 7, 1989, because the 120-day period allowed under the Regulations was about to expire. It is stated that WNG now proposes to reinstate the transportation service.

*Comment date:* April 14, 1989, in accordance with Standard Paragraph G at the end of this notice.

**2. Lone Star Gas Company, a Division of ENSERCH Corporation**

[Docket No. CP87–190–007]
February 28, 1989.

Take notice that on February 22, 1989, Lone Star Gas Company, a Division of ENSERCH Corporation (Lone Star), 301 South Harwood Street, Dallas, Texas 75201, filed in Docket No. CP87–190–007 a petition to further amend a certificate issued in Docket No. CP87–190–000, as amended in Docket No. CP87–190–005, to extend the authorization term to expire on September 30, 1999, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

It is stated that by order issued June 30, 1989, in Docket No. CP87–190–000, 39 FERC ¶ 61,360 (1987), Lone Star was granted authorization to provide firm transportation service for Coastal States Gas Transmission Company (Coastal), and to construct and operate certain facilities in interstate commerce necessary to perform the transportation service for a period of one year from the date of issuance of the order. It is then stated that by order issued June 6, 1988, in Docket No. CP87–190–005 43 FERC ¶ 62,271 (1988), Lone Star's authorization to transport for Coastal was amended to allow continued transportation for a term expiring on the earlier of one year from the date of issuance of the order or the date Lone Star accepts a blanket certificate pursuant to § 284.221 of the Commission's Regulations. Lone Star in its petition to further amend requests authority to extend this authorization to expire September 30, 1999, the date of expiration of its gas transportation contract. Lone Star proposes no other changes.

*Comment date:* March 21,. 1989, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

**3. Northern Natural Gas Company Division of Enron Corp.**

[Docket No. CP89–879–000]
February 28, 1989.

Take notice that on February 22, 1989, Northern Natural Gas Company, Division of Enron Corp., (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP89–879–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authority to transport natural gas on behalf of PSI, Inc., a marketer of natural gas, all as more fully set forth in the application on file with the Commission and open to public inspection.

Southern proposes to transport up to 50,000 MMBtu per day for PSI, Inc. Construction of facilities will not be required to provide the proposed service. Service under Section 284.223(a) commenced January 4, 1989, as reported in Docket No. ST89–1849 (filed January 23, 1989).

*Comment date:* April 14, 1989, in accordance with Standard Paragraph G at the end of this notice.

**4. Southern Natural Gas Company**

[Docket No. CP89–814–000]
February 28, 1989.

Take notice that on February 13, 1989, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP89–814–000 a request pursuant to §§ 157–205, 157.211 and 284.223(c) of the Regulations under the Natural Gas Act (18 CFR 157.205, 157.211 and 284.223(c)) for authorization to construct and operate a sales tap and to provide interruptible transportation service to Total Minatome Corporation (Total), under the blanket certificates issued in Docket Nos. CP82–406–000 and CP88–316–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Southern states that it would provide interruptible transportation service to Total for use at its Eloi Bay facilities in Chandeleur Sound Block 49, offshore Louisiana. In order to deliver the gas to Total, Southern would construct, install and operate a new sales tap which would include a measurement station and appurtenant facilities to interconnect to Southern's 6-inch Eloi Bay Pipeline and would be located in Chandeleur Sound Block 49, offshore Louisiana. Southern estimates that the cost of constructing and installing the facilities would be approximately $24,880.

Southern states that it would transport natural gas from various receipt points located on Southern's system to the proposed interconnection with Total in Chandeleur Sound Block 49, offshore Louisiana. Southern states that it would transport gas on behalf of Total pursuant to its Rate Schedule IT. Southern further states that the installation of the proposed facilities would have no significant effect on its peak day or annual requirements.

Additionally, Southern states that the peak day quantities for delivery of natural gas to Total are estimated to be 5,000 MMBtu, that the average daily quantities are estimated to be 1,000 MMBtu resulting in an estimated annual quantity of 365,000 MMBtu.

*Comment date:* April 14, 1989, in accordance with Standard Paragraph G at the end of this notice.

**5. Southern Natural Gas Company**

[Docket No. CP89–874–000]
February 28, 1989.

Take notice that on February 21, 1989, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP89–874–000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of Sonat Marketing Company (Sonat), a marketer of natural gas, under Southern's blanket certificate issued in Docket No. CP88–316–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Southern proposes to transport, on an interruptible basis, up to 50,000 MMBtu equivalent of natural gas on a peak day, 4,000 MMBtu equivalent on an average day, and 1,460,000 MMBtu equivalent on an annual basis for Sonat. It is stated that Southern would receive the gas at existing points on Southern's system in Louisiana, offshore Louisiana, Texas, offshore Texas, Mississippi, Alabama and Georgia. It is stated that Southern would deliver equivalent volumes at an existing point on Southern's system in Plaquemines Parish, Louisiana. It is asserted that Southern would utilize existing facilities and that no construction of additional facilities would be required. It is explained that the transportation service commenced December 20, 1988, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89–1769.

*Comment date:* April 14, 1989, in accordance with Standard Paragraph G at the end of this notice.

**6. Southern Natural Gas Company**

[Docket No. CP89–876–000]
February 28, 1989.

Take notice that on February 21, 1989, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP89–876–000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of Stellar Gas Company (Stellar), a marketer of natural gas, under Southern's blanket certificate issued in Docket No. CP88–316–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Southern proposes to transport, on an interruptible basis, up to 150,000 MMBtu equivalent of natural gas on a peak day, 150,000 MMBtu equivalent on an average day, and 54,750,000 MMBtu equivalent on an annual basis for Stellar. It is stated that Southern would receive the gas at existing points on Southern's system in Louisiana, offshore Louisiana, Texas, offshore Taxas, Mississippi, Alabama and Georgia. It is stated that Southern would deliver equivalent volumes at existing points on Southern's system in Georgia, Tennessee, and South Carolina. It is asserted that Southern would utilize existing facilities and that no construction of additional facilities would be required. It is explained that the transportation service commenced November 1, 1988, under the automatic authorization provisions of § 284.223 of the Commission's regulations, as reported in Docket No. ST89–2143.

*Comment date:* April 14, 1989, in accordance with Standard Paragraph G at the end of this notice.

**7. Trunkline Gas Company**

[Docket No. CP89–869–000]
February 28, 1989.

Take notice that on February 21, 1989, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP89–869–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to transport natural gas for Seagull Marketing Services, Inc. (Seagull), a marketer, pursuant to Trunkline's blanket certificate issued in Docket No. CP86–586–000 and section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Trunkline requests authority to transport up to 125,00 dt equivalent of natural gas per day on behalf of Seagull on an interruptible basis pursuant to a transportation agreement dated December 22, 1988, between Trunkline and Seagull. Trunkline states that the transportation agreement provides for Trunkline to receive gas from various existing points of receipt on its system in Illinois, Texas, Louisiana, and Offshore Louisiana and redeliver the gas, less fuel used and unaccounted for line loss to Panhandle Eastern Gas Company in Douglas County, Illinois.

Trunkline indicates it would provide the service for a primary term of one month from the date of initial transportation and continue to provide the service on a month-to-month basis until terminated by either party upon at least thirty days' prior notice to the other. Trunkline states that it would charge the rates and abide by the conditions provided by its Rate Schedule PT.

It is indicated that the estimated maximum daily volume, average volume, and annual volume would be 125,000 dt equivalent of natural gas, 25,000 dt equivalent of natural gas, and 9,125,000 dt equivalent of natural gas, respectively. Trunkline states that it commenced a 120-day transportation service for Seagull on January 1, 1989, as reported in Docket No. ST89–1841. It is indicated that Trunkline would use existing facilities to implement the service.

*Comment date:* April 14, 1989, in accordance with Standard Paragraph G at the end of this notice.

**8. Paiute Pipeline Company**

[Docket No. CP89–807–000]
March 1, 1989.

Take notice that on February 27, 1989, Paiute Pipeline Company (Paiute), P.O. Box 94197, Las Vegas, Nevada, filed in Docket No. CP89–807–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to transport natural gas for Nevada Cement Company (NCC), an end-user, pursuant to Paiute's blanket certificate issued in Docket No. CP87–309–000 and section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Paiute requests authority to transport up to seven billion Btu of natural gas per day on an interruptible basis on behalf of NCC pursuant to a transportation agreement dated December 2, 1988, between Paiute and NCC. Paiute states that the transportation agreement provides for Paiute to receive the gas at an existing point of interconnection between the facilities of Paiute and Northwest Pipeline Corporation located at the Nevada-Idaho border and redeliver the gas at an existing interconnection located in Lyon County, Nevada.

Paiute indicates it would provide the service for a primary term expiring October 31, 1991, but would continue the service on a month to month basis thereafter subject, however, to termination at expiration of the said primary term or upon the first day of any calendar month thereafter by either party hereto through written notice so stating and given to the other no less than thirty days in advance. Paiute states that it would charge the rates and abide by the terms and conditions of its Rate Schedule IT.

It is indicated that the estimated maximum daily volume, average volume, and annual volumes would be seven billion Btu of natural gas, 406 million Btu of natural gas, and 148.9 billion Btu of natural gas, respectively. Paiute states that it commenced a 120-day transportation service for NCC on December 20, 1988, as reported in Docket No. ST89–1813–000. It is also indicated that Paiute would use existing facilities to implement service.

*Comment date:* April 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

**9. United Gas Pipe Line Company**

[Docket No. CP89–884–000]
March 1, 1989.

Take notice that on February 22, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77152–1478, filed in Docket No. CP89–884–000 an application pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Houston Gas Exchange Corp. (Houston), a marketer of natural gas, under United's blanket certificate issued in Docket No. 86–6–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United proposes to transport, on an interruptible basis, up to 103,000 MMBtu per day for Houston. United states that construction of facilities would not be required to provide the proposed service.

United further states that the maximum day, average day, and annual transportation volumes would be approximately 103,000 MMBtu, 103,000 MMBtu and 37,595,000 MMBtu respectively.

United advises that service under Section 284.223(a) commenced January 4, 1989, as reported in Docket No. ST89–2183.

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*Comment date:* April 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

**10. Williams Natural Gas Company**

[Docket No. CP89-899-000]

March 1, 1989.

Take notice that on February 24, 1989, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89-899-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.206) for authorization to provide a firm transportation service for Washburn University of Topeka (Washburn), an end user, under the blanket certificate issued in Docket No. CP86-631-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

WNG states that pursuant to a transportation agreement dated January 1, 1989, under its Rate Schedule FTS, it proposes to transport up to 300 MMBtu per day equivalent of natural gas for Washburn. WNG states that it would transport the gas from various existing receipt points in Kansas, Oklahoma and Wyoming, and deliver such gas at various delivery points on WNG's pipeline system located in Kansas.

WNG advises that service under § 284.223(a) commenced January 9, 1989, as reported in Docket No. ST89-2179-000. WNG further advises that it would transport 100 MMBtu on an average day and 36,500 MMBtu annually.

*Comment date:* April 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

**11. Williams Natural Gas Company**

[Docket No. CP89-898-000]

March 1, 1989.

Take notice that on February 24, 1989, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89-898-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Victoria Gas Corporation (Victoria), a marketer, under the blanket certificate issued in Docket No. CP86-631-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

WNG states that pursuant to a transportation agreement dated January 1, 1989, under its Rate Schedule ITS, it proposes to transport up to 31,000 MMBtu per day equivalent of natural gas for Victoria. WNG states that it would transport the gas from various receipt points in Colorado, Kansas, Missouri, Oklahoma, Texas and Wyoming, and deliver such gas at various delivery points on WNG's pipeline system located in Kansas, Oklahoma, Texas and Wyoming.

WNG advises that service under § 284.223(a) commenced January 13, 1989, as reported in Docket No. ST89-2222-000. WNG further advises that it would transport 31,000 MMBtu on an average day and 11,315,000 MMBtu annually.

*Comment date:* April 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

**Standard Paragraphs**

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in the subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without farther notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 89-5237 Filed 3-6-89; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. CI64-26-030 et al.]

**Chevron U.S.A. Inc. et al.; Applications for Certificates, Abandonment of Service and Amendment of Certificates [1]**

March 1, 1989.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce, to abandon service or to amend certificates as described herein, all as more fully described in the respective applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before March 15, 1989, file with the Federal Energy Regulation Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

*Filing Code*

A—Initial Service
B—Abandonment
C—Amendment to add acreage
D—Amendment to delete acreage
E—Total Succession
F—Partial Succession

| Docket No. and date filed | Applicant | Purchaser and location | Description |
|---|---|---|---|
| CI64-26-030, 2-6-89 | Chevron U.S.A. Inc., P.O. Box 3725, Houston, TX 77253. | Texas Eastern Transmission Corporation, East Cameron Block 157, Offshore Louisiana. | Application to add a delivery point. |
| CI67-1834-002, 2-6-89 | Kerr-McGee Corporation, Kerr-McGee Center, Oklahoma City, OK 73125. | Texas Gas Transmission Corporation, Cartwright, Calhoun and Tremont Fields, Lincoln, Ouachita and Jackson Parishes, Louisiana. | Application to add a delivery point. |
| CI82-213-003, B, 2-6-89 | Amoco Production Company, P.O. Box 50879, New Orleans, LA 70150. | Stone County Compression Facility, Stone County, Mississippi. | Application to remove an electric driven compressor from the facility. |
| CI89-246-000, (CI65-360), B, 1-17-89. | ARCO Oil and Gas Company, Division of Atlantic Richfield Company, P.O. Box 2819, Dallas, TX 75221. | El Paso Natural Gas Company, Payton Field, Pecos County, Texas. | Well plugged and abandoned. |
| CI89-297-000, E, 2-6-89 | Amoco Production Company, 1670 Broadway, Room 1754, Denver, CO 80202. | El Paso Natural Gas Company, Blanco Mesaverde Field, San Juan and Rio Arriba Counties, New Mexico. | Acreage acquired 12-31-87 from Crown Central Petroleum Corporation. |
| CI89-288-000, E, 2-6-89 | Amoco Production Company | El Paso Natural Gas Company, Blanco Pictured Cliffs Field, San Juan County, New Mexico. | Acreage acquired 12-31-87 from Crown Central Petroleum Corporation. |
| CI89-289-000, E, 2-6-89 | Amoco Production Company | El Paso Natural Gas Company, Blanco Mesaverde Field, San Juan County, New Mexico. | Acreage acquired 12-31-87 from Crown Central Petroleum Corporation. |
| CI89-290-000, E, 2-6-89 | Amoco Production Company | Northwest Pipeline Corporation, Basin Dakota Field, San Juan County, New Mexico. | Acreaged acquired 12-31-87 from Crown Central Petroleum Corporation. |
| CI89-291-000, E, 2-6-89 | Amoco Production Company | El Paso Natural Gas Company, Blanco Mesaverde Field, San Juan County, New Mexico. | Acreage acquired 12-31-87 from Crown Central Petroleum Corporation. |
| CI89-292-000, E, 2-6-89 | Amoco Production Company | El Paso Natural Gas Company, Basin Dakota and Blanco Mesaverde Fields, San Juan County, New Mexico. | Acreage acquired 12-31-87 from Crown Central Petroleum Corporation. |
| CI89-293-000, E, 2-6-89 | Amoco Production Company | El Paso Natural Gas Company, Blanco Pictured Cliffs Field, San Juan County, New Mexico. | Acreage acquired 12-31-87 from Crown Central Petroleum Corporation. |
| CI89-298-000, E, 2-13-89 | ARCO Oil and Gas Company, Division of Atlantic Richfield Company. | Northern Natural Gas Company, Division of ENRON Corp. Mocane-Laverne Field, Beaver County, Oklahoma. | Acreage acquired 12-1-86 from Tenneco Oil Company. |

[FR Doc. 89-5234 Filed 3-6-89; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. CI85-673-005 et al.]

**LaSER Marketing Co., a Division of LaSalle Energy Corp., et al., Applications for Extension of Blanket Limited-Term Certificates With Pregranted Abandonment [1]**

March 2, 1989.

Take notice that each Applicant listed herein has filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for amendment of its blanket limited-term certificate with pregranted abandonment previously issued by the Commission for a term expiring March 31, 1989, to extend such authorization for the term listed herein, all as more fully set forth in the applications which are on file with the Commission and open for public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before March 21, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

**Lois D. Cashell,**

*Secretary.*

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

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| Docket No. | Date filed | Applicant |
|---|---|---|
| CI89-673-000 [1] | 2-23-89 | LaSER Marketing Co., a Division of LaSalle Energy Corp., P.O. Box 3327, Houston, TX 77253. |
| CI89-503-000 [1] | 2-21-89 | Bonsal Marketing Company, P.O. Box 2968, Birmingham, AL 35202-2968. |
| CI87-738-003 [1] [2] | 2-21-89 | Williams Gas Marketing Co., P.O. Box 3102, Tulsa, OK 74101. |
| CI89-649-001 [3] | 2-17-89 | Western Gas Marketing USA, Ltd., 8001 Bryan Tower, Suite 963, Dallas, TX 75201. |

[1] Applicant requests extension for a three-year term.
[2] Applicant requests extension for an unlimited term.
[3] Applicant also requests authorization on behalf of others selling gas to Applicant or through Applicant as agent.

[FR Doc. 89-5240 Filed 3-6-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. G-9991-001 et al.]

**Sun Exploration and Production Co. et al.; Applications for Termination or Amendment of Certificates [1]**

March 1, 1989.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7 of the Natural Gas Act for authorization to terminate or amend certificates as described herein, all as more fully described in the respective applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before March 15, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,
*Secretary.*

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

[Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession]

| Docket no. and date filed | Applicant | Purchaser and location | Description |
|---|---|---|---|
| G-5991-001, D, Feb. 3, 1989 | Sun Exploration and Production Company, P.O. Box 2880, Dallas, TX 75221. | El Paso Natural Gas Company, South Fullerton Plant, Andrews County, Texas. | Assigned 10-1-88 to Amoco Production Company. |
| G-7254-000, D, Feb. 6, 1989 | Marathon Oil Company, P.O. Box 3128, Houston, TX 77253. | Tennessee Gas Pipeline Company, Heyser Field, Victoria and Calhoun Counties, Texas. | Assigned 10-1-88 to Paul F. Barnhart. |
| CI81-870-000, D, Feb. 6, 1989 | ARCO Oil and Gas Company, Division of Atlantic Richfield Company, P.O. Box 2819, Dallas, TX 75221. | Tennessee Gas Pipeline Company, West Delta Block 83 Field, Plaquemines Parish, Louisiana. | Assigned 10-1-87 to Chevron U.S.A. Inc. |
| CI86-242-000 (CI76-612), D, Jan. 18, 1989. | Sohio Petroleum Company, P.O. Box 4587, Houston, TX 77210. | El Paso Natural Company, Lea County, New Mexico. | Assigned 10-1-88 to Presidio Oil Company. |
| CI89-244-000 (CI61-1662), D, Jan. 19, 1989. | Sohio Petroleum Company | Natural Gas Pipeline Company of America, Beaver County, Oklahoma. | Assigned 10-1-88 to Presidio Oil Company. |
| CI89-252-000 (CI77-102), D, Jan. 23, 1989. | Chevron, U.S.A. Inc., Box 3725, Houston, TX 77253. | Cities Service Gas Company, Hemphill County, Texas. | Assigned 1-3-89 to Shannon Energy. |
| CI89-256-000 (CI64-1062), D, Jan. 23, 1989. | Tenneco Oil Company, P.O. Box 52332, Houston, TX 77052. | Williams Natural Gas Company, NE Waynoka Field, Woods County, Oklahoma. | Assigned 12-1-88 to Redgate Petroleum, Inc. |
| CI89-294-000 (G-17411-000), D, Feb. 6, 1989. | ARCO Oil and Gas Company, Division of Atlantic Richfield Company. | United Gas Pipe Line Company, Sunrise Field, Terrebonne Parish, Louisiana. | Assigned 5-1-88 to Mobil Oil Exploration and Producing Southeast, Inc. |
| CI89-296-000 (CI81-000), D, Feb. 6, 1989. | ARCO Oil and Gas Company, Division of Atlantic Richfield Company. | Lone Star Gas Company, a Division of ENSERCH Corporation, Dexter East Field, Cooke County, Texas. | Assigned 1-1-87 to Hondo Oil & Gas Company. |
| CI89-297-000 (G-5991), D, Feb. 6, 1989. | Sun Exploration and Production Company | El Paso Natural Gas Company, S. Fullerton Field, Andrews County, Texas. | Assigned 10-1-88 to Exxon Corporation. |

[FR Doc. 89-5235 Filed 3-6-89; 8:45 am]
BILLING CODE 6717-01-M

## Office of Fossil Energy

[ERA Docket No. 88-71-NG]

**Intalco Aluminum Corp.; Conditional Order Granting Blanket Authorization To Import Natural Gas**

**AGENCY:** Office of Fossil Energy, Department of Energy.

**ACTION:** Notice of a Conditional Order Granting Blanket Authorization To Import Natural Gas.

**SUMMARY:** The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that it has issued a conditional order granting Intalco Aluminum Corporation (Intalco) blanket authorization to import natural gas from Canada. The order issued in ERA Docket No. 88-71-NG conditionally authorizes Intalco to import up to 2 Bcf per year of Canadian natural gas over a two-year period for use as fuel in its aluminum smelting plant located in Ferndale, Washington.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, February 28, 1989.

J. Allen Wampler,
*Assistant Secretary, Fossil Energy.*

[FR Doc. 89-5246 Filed 3-6-89; 8:45 am]
BILLING CODE 6450-01-M

## Office of Hearings and Appeals

**Cases Filed During Week of January 6 Through January 13, 1989**

During the Week of January 6 through January 13, 1989, the appeals and applications for relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

George B. Breznay,
*Director, Office of Hearings and Appeals.*

March 1, 1989.



LIST OF CASES RECEIVED BY THE OFFICE OF HEARING AND APPEALS

[Week on Jan. 6 through Jan. 13, 1989]

| Date | Name and location of applicant | Case No. | Type of submission |
|---|---|---|---|
| Dec. 14, 1988 | Belridge/South Dakota, Pierre, SD | RM-8-141 | Request for modification/rescission. If granted: The Jan. 24, 1987 decision and order issued to South Dakota would be modified regarding the state's plan submitted in the Belridge second stage refund proceeding. |
| Jan. 10, 1989 | Alaska, Anchorage, AL | KFA-0254 | Appeal of an information request denial. If granted: The Dec. 7, 1988, Freedom of Information request denial issued by the Office of Management and Information System, Economic Regulatory Administration, would be rescinded and the State of Alaska would receive access to certain reports submitted by oil refiners in 1977-81 pursuant to the DOE's entitlements program. |
| Jan. 11, 1989 | Glen Milner, Seattle, WA | KFA-0253 | Appeal of an information request denial. If granted: The Dec. 15, 1988, Freedom of Information request denial issued by the Albuquerque Operations Office would be rescinded and Glen Milner would receive a waiver of fees and access to documents regarding the shipment of Trident nuclear warheads to Bangor. |
| Do | M.A. Malik, Hartford, CT | KFA-0252 | Appeal of an information request denial. If granted: The Dec. 20, 1988 Freedom of Information request denial issue by the Oak Ridge Operations Office would be rescinded and M.A. Malik would receive access to certain documents that contain unclassified controlled nuclear information. |
| Do | Occupational Health Legal Rights Foundation, Washington, DC. | KFA-0255 | Appeal of an information request denial. If granted: The Dec. 2, 1988, Freedom of Information request denial issued by the Oak Ridge Operations Office would be rescinded and the Occupation Health Legal Rights Foundation would receive a waiver of fees for requested information. |
| Jan. 12, 1989 | Frank L. Bordell, Ballston, NY | KFA-0256 | Appeal of an information request denial. If granted: The DOE's Naval Reactors Office, Schenectady, NY, would be required to respond to two requests submitted by Frank L. Bordell on July 7, 1988 and July 17, 1988 and Mr. Bordell would receive access to five documents regarding the separations process research unit and certain logbooks. |
| Do | Aminoil/Burling Sales Assoc., St. Louis, MO | RR139-42 | Request for modification/rescission. If granted: The Dec. 13, 1988 decision and order (Case No. RF139-190) issued to the Burling Sales Assoc. would be modified regarding the firm's application for refund submitted in the Aminoil refund proceeding. |
| Do | Aminoil/City of Tulsa, St. Louis, MO | RR139-43 | Request for modification/rescission. If granted: The Dec. 13, 1988 decision and order issued to the City of Tulsa (Case No. RF130-189) would be modified regarding the firm's application for refund submitted in the Aminoil refund proceeding. |
| Do | Aminoil/Enson Corp., St. Louis, MO | RR139-44 | Request for modification/rescission. If granted: The Dec. 13, 1988 decision and order (Case No. RF139-201) issued to the Enson Corp. would be modified regarding the firm's application for refund submitted in the Aminoil refund proceeding |
| Do | Aminoil/Fred G. McKenzie Co., St Louis, MO | RR139-45 | Request for modification/rescission. If granted: The Dec. 7, 1988 decision and order (Case No. RF139-159) issued to the Fred G. McKenzie Co. would be modified regarding the firm's application for refund submitted in the Aminoil refund proceeding |
| Do | Plaquemines/Shell Oil Co., Hardin, KY | RR305-2 | Request for modification/rescission. If granted: The Dec. 14, 1988 decision and order (Case No. RF305-13) issued to the Shell Oil Co. would be modified regarding the firm's application for refund submitted in the Plaquemines refundproceeding. |

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REFUND APPLICATIONS RECEIVED

[Week of Dec. 30 through Jan. 4, 1989

| Date received | Name of refund proceeding/ name of refund applicant | Case No. |
|---|---|---|
| Nov. 24, 1987 | Marion Corporation. | RF253-61 |
| Dec. 14, 1987 | Amoco/South Dakota. | RQ21-494 |
| Do. | Amoco/South Dakota. | RQ251-495 |
| Do. | Vickers/South Dakota. | RQ1-496 |
| Do. | Palo Pinto/ South Dakota. | RQ5-497 |
| Do. | Bob's/South Dakota. | RQ35-498 |
| Do. | Colline/South Dakota. | RQ2-499 |
| Dec. 23, 1988 | Gates Learject Corporation. | RF317-1 |
| Jan. 6, 1989 | Two-Sister's Grocery. | RF300-10655 |
| Do. | A.T. Williams Company. | RF314-7 |
| Jan. 9, 1989 | Amoco/ Nebraska. | RQ251-493 |
| Do. | Bob's Quality Service, Inc. | RF313-15 |
| Do. | D&G Getty | RF265-2787 |
| Do. | Wynn Horney | RF308-10 |
| Do. | Carol Management Corporation. | RD272-74782 |
| Do. | Teddy B. Vicars. | RF300-10656 |
| Do. | Jery Schmechel. | RF300-10657 |

REFUND APPLICATIONS RECEIVED—Continued

[Week of Dec. 30 through Jan. 4, 1989

| Date received | Name of refund proceeding/ name of refund applicant | Case No. |
|---|---|---|
| Do. | Earl's Gulf | RF300-10658 |
| Do. | McCrary's Gulf | RF300-10659 |
| Jan. 11, 1989 | Lynch's Crown | RF313-16 |
| Do. | Johnson Controls, Inc. | RC272-16 |
| Jan. 12, 1989 | Madden Oil Company. | RF310-337 |
| Do. | Colline/ Wisconsin. | RQ2-500 |
| Do. | Perry Gas/ Wisconsin. | RQ183-501 |
| Jan. 6, 1989 thru Jan. 13 1989. | Crude Oil Refund Applications Received. | RF272-75204 thru RF272-75220 |
| Do. | Murphy Oil Refund Applications Received. | RF309-733 thru RF309-733 |
| Do. | Atlantic Richfield Refund Applications Received. | RF304-7626 thru RF304-7656 |
| Do. | Exxon Refund Applications Received. | RF307-7497 thru RF307-7618 |

[FR Doc. 89-5247 Filed 3-6-89; 8:45 am]

BILLING CODE 6450-01-M

**Cases Filed During the Week of December 30 Through January 5, 1989**

During the Week of December 30 through January 5, 1989, the applications for relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

**George B. Breznay,**

*Director, Office of Hearings and Appeals.*

March 1, 1989.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Dec. 30 through Jan. 5, 1989]

| Date | Name and location of applicant | Case No. | Type of submission |
|---|---|---|---|
| Jan. 4, 1989 | International Drilling & Exploration Corporation, Washington, D.C. | KEG-0036 | Petition for Special Redress. If granted: The Office of Hearings and Appeals would restore to the Petrolane-Lomita escrow account a sum equal to the amount of a refund requested by International Drilling and Exploration Corporation. |
| Jan. 4, 1989 | Marin Motor Oils, Inc., Parsippany, N.J. | RR272-22 | Request for Modification/Recession. If granted: The December 1, 1988 Decision and Order issued to Marin Motor Oils, Inc. would be rescinded (Case No. RF272-66842) and the firm would receive a refund in the Crude Oil refund proceeding. |

REFUND APPLICATIONS RECEIVED

[Week of Dec. 30 through Jan. 5, 1989]

| Date received | Name of refund proceeding/name of refund applicant | Case No. |
|---|---|---|
| 12/30/88 thru 1/5/89 | Crude Oil Refund Applications Received | RF272-75191 thru RF272-75203 |
| 12/30/88 thru 1/5/89 | Murphy Oil Refund Applications Received | RF309-718 thru RF309-732 |
| 12/30/88 thru 1/5/89 | Atlantic Richfield Refund Applications Received | RF304-7604 thru RF304-7625 |
| 12/30/88 thru 1/5/89 | Exxon Refund Applications Received | RF307-7383 thru RF307-7496 |
| 1/3/89 | Highway Oil, Inc. | RF314-6 |
| 1/3/89 | Remak's Beltway Gulf | RF300-10652 |
| 1/3/89 | Gates Gulf Service | RF300-10653 |
| 1/3/89 | City of Greensboro | RF300-10654 |
| 1/4/89 | Hupp Oil Company | RF310-336 |

[FR Doc. 89-5248 Filed 3-6-89; 8:45 am]

BILLING CODE 6450-01-M



**Issuance of Decisions and Orders During Week of January 23 Through January 27, 1989**

During the week of January 23 through January 27, 1989, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

**Appeal**

*Restrepo & Associates, 1/27/89, KFA-0250*

Restrepo & Associates filed an Appeal from the denial of a Request for Information which the firm had submitted under the Freedom of Information Act (FOIA). In considering the Appeal, the Office of Hearings and Appeals (OHA) found that the FOIA officer incorrectly interpreted the request as one for the "creation of a statement by DOE" and therefore conducted a search for the wrong documents. The OHA remanded the case to the Office of Administrative Services and directed that Office to search for any existing documents responsive to Restrepo's request.

**Request for Stay**

*Kenneth Walker, 1/26/89, KRS-0010*

Kenneth Walker filed a submission with the Office of Hearings Appeals (OHA) of the Department of Energy (DOE) seeking a stay of an evidentiary hearing scheduled in connection with an enforcement proceeding involving Mr. Walker and Southwestern States Marketing Corporation. Specifically, Walker requested that OHA stay the evidentiary hearing pending disposition by OHA of a Petition for Special Redress which Walker had filed at the same time he tendered his stay request. Walker contended in his stay request that a favorable ruling on his Petition for Special Redress could make an evidentiary hearing in the enforcement case unnecessary. In considering Walker's request, DOE first found that Walker's request failed to address any of the criteria OHA considers and weighs in assessing a stay request. DOE further held that there is an important public interest in the expeditious consideration and disposition of case submitted to OHA and, for this reason, OHA generally adheres to a policy of declining to delay enforcement proceedings by linking them to other proceedings. DOE noted that the enforcement proceeding involving Mr. Walker has been pending before OHA for over four years and that OHA has attemped to establish the framework for an evidentiary hearing in that case on three separate occasions. Finding that any further delay in the enforcement proceeding would be contrary to the public interest, DOE denied Walker's request for stay of the evidentiary hearing.

**Refund Applications**

*Art Lepak, et al., 1/25/89, RF272-34785 et al.*

The DOE issued a Decision and Order approving 33 Applications for Refund filed in the crude oil refund proceeding. The DOE found that the applicants, all end-users, met the eligibility requirements by supplying their actual or estimated purchase volume information for their commercial or agricultural activities. The DOE granted the applicants a total refund of $5,983.

*Bill Schlutt, et al., 1/23/88, RF272-5227 et al.*

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to six applicants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant used the products for various activities. Each applicant determined its volume claim either by utilizing actual purchase records from the crude oil price control period or by estimating its petroleum consumption during that period. Each applicant was an end-user of the products it claimed and was therefore found injured based upon the end-user presumption of injury. The sum of the refunds granted in this Decision is $133.

*Bob L. Hartneff Exxon, et al., 1/25/89, RF272-63159, et al.*

The DOE issued a Decision and Order denying 23 Applications for Refund filed in the Subpart V crude oil refund proceedings. Each applicant was a reseller or retailer during the period August 19, 1973 through January 27, 1981. Because none of the applicants demonstrated that it was injured due to the crude oil overcharges, each applicant was ineligible for a crude oil refund.

*East End Gulf Service, et al., 1/24/89, RF272-64679, et al.*

The DOE issued a Decision and Order denying 34 Applications for Refund filed in the Subpart V crude oil refund proceedings. Each applicant was a reseller or retailer during the period August 19, 1973 through January 27, 1981. Because none of the applicants demonstrated that it was injured due to the crude oil overcharges, each applicant was ineligible for a crude oil refund.

*Erickson's Diversified Corp., 1/24/89, RF272-32551*

The DOE issued a Decision and Order denying an Application for Refund filed by Erickson's Diversified Corp. (Erickson's) in the Subpart V crude oil proceedings. Erickson's was a reseller during the period August 19, 1973 through January 27, 1981. Because Erickson's did not demonstrate that it was injuried due to the crude oil overcharges, it was found to be ineligible for a crude oil refund.

*Exxon Corporation/Benson Manor Garage, et al., 1/25/88, RF307-3038 et al.*

The DOE issued a Decision and Order concerning six Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the applicants purchased directly from Exxon and was either a reseller whose allocable share was less than $5,000 or an end-user of Exxon products. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $2,579 ($2,227 in principal and $352 in interest).

*Exxon Corproation/City of Cayce, et al., 1/23/89, RF307-2203 et al.*

The DOE issued a Decision and Order concerning 35 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the applicants purchased directly from Exxon and was either a reseller whose allocable share was less than $5,000 or an end-user of Exxon products. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $18,375 ($15,872 in princcipal and $2,503 in interest).

*Exxon Corporation/Devoe Bros., et al., 1/23/89 RF307-2043 et al.*

The DOE issued a Decision and Order concerning 30 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the applicants purchased directly from Exxon and was either a reseller whose allocable share was less than $5,000 or an end-user of Exxon products. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is

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$23,909 ($20,651 in principal and $3,358 plus interest).

*Exxon Corporation Frank's Exxon, et al., 1/27/89, RF307–228 et al.*

The DOE issued a Decision and Order concerning eight Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the applicants purchased directly from Exxon and was either a reseller whose allocable share was less than $5,000 or an end-user of Exxon products. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $2,274 ($1,965 in principal plus $309 in interest).

*Exxon Corporation/Sampson Hamrick, et al., 1/27/89, RF307–5059 et al.*

The DOE issued a Decision and Order concerning 29 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the applicants purchased directly from Exxon and was either a reseller whose allocable share was less than $5,000 or an end-user of Exxon products. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $28,285 ($22,705 in principal plus $3,580 in interest).

*Exxon Corporation/Shields Oil Co., et al., 1/27/89 RF307–5000 et al.*

The DOE issued a Decision and Order concerning 40 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the Applicants purchased directly from Exxon and was either a reseller whose allocable share is less than $5,000 or an end-user of Exxon products. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $34,570 ($29,860 principal plus $4,710 interest).

*Exxon Corporation/Weir Fuel Co. Inc., RF 307–5044; Crockett Oil Co., RF 307–5078; Tri-County Oil Co., Inc., 1/27/89, RF 307–5086*

The DOE issued a Decision and Order concerning Applications for Refund filed by Weir Fuel Co. Inc., Crockett Oil Co., and Tri-County Oil Co., Inc. in the Exxon Corporation special refund proceeding. All three firms, wholesale distributors of Exxon products, purchased directly from Exxon and their allocable shares exceed the $5,000 small claims threshold established in the Exxon proceeding. However, in the Exxon proceeding a reseller applicant whose allocable share exceeds $5,000 may elect to receive as its refund the larger of $5,000 or 40 percent of its allocable share up to $50,000. In the present cases, $5,000 is greater. Accordingly, the refund granted each firm in this Decision is $5,789 ($5,000 principal plus $789 interest). The refunds granted in this Decision total $17,367.

*Gulf Oil Corporation/Baltimore Gas & Electric Company, RF300–6444; Atlantic City Electric Company, 1/26/89 RF300–6831*

The DOE issued a Decision and Order concerning Applications for Refund filed by two public utilities in the Gulf Oil Corporation special refund proceeding. The applications were decided using a presumption of injury and the applicants were required to pass the refund received through to their respective customers and to notify their appropriate regulatory bodies of the receipt of the refund money. The total amount of the refunds granted in this Decision is $91,558.

*Gulf Oil Corporation/H.L. Fuller & Son, Distr., et al., 1/26/89 RF 300–2490, et al.*

The DOE issued a Decision and Order concerning five Applications for Refund submitted by consignees in the Gulf Oil Corporation special refund proceeding. Each application was approved using the 10 percent presumption of injury. The sum of the refunds granted in this Decision is $2,904.

*Gulf Oil Corporation/Pickett's Gulf, et al., 1/25/89, RF300–6300, et al.*

The DOE issued a Decision and Order concerning 85 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury standard. The sum of the refunds granted in this Decision is $141,545.

*Gulf Oil Corporation/Tennessee Valley Authority, 1/23/89, RF300–1998*

The DOE issued a Decision and Order concerning an Application for Refund filed by Tennessee Valley Authority (TVA), a public utility, in the Gulf Oil Corporation special refund proceeding. The amount of the refund granted in this Decision, which includes both principal and interest, is $13,905.

*Gulf Oil Corporation/Walnut Grove Shopette, 1/24/89, RF300–10880*

On November 7, 1988, the Office of Hearings and Appeals (OHA) issued a Decision and Order in the Gulf Oil Corporation special refund proceeding to Dale Bower, *et al.* (Case Nos. RF300–4941, *et al.*) in which Walnut Grove Shopette, Case No. RF300–5112, was issued a refund of $500. It has come to OHA's attention that Walnut Grove Shopette's refund was based on an understatement of the firm's purchases from Gulf. Therefore, the OHA issued an additional refund to the firm on the basis of the difference between the purchase volume approved in *Gulf Oil Corp./Dale Bower* and the purchase volume the firm had demonstrated in its Application for Refund. The additional refund granted to Walnut Grove Shopette is $503.

*Henderson Oil and Butane Co., et al. 1/25/89, RF272–379, et al.*

The DOE issued a Decision and Order denying nine Applications for Refund filed in the Subpart V crude oil refund proceedings. Each applicant was a reseller or retailer during the period August 19, 1973 through January 27, 1981. Because none of the applicants demonstrated that it was injured due to the crude oil overcharges, each applicant was ineligible for a crude oil refund.

*Leo Perk, et al., 1/25/89. RF272–6501, et al.*

The DOE issued a Decision and Order denying 26 Applications for Refund filed in the Subpart V crude oil refund proceedings. Each applicant was a reseller or retailer during the period August 19, 1973 through January 27, 1981. Because none of the applicants demonstrated that it was injured due to the crude oil overcharges, each applicant was ineligible for a crude oil refund.

*Martin Gas Sales, Inc., 1/27/89, RF272–31610*

The DOE issued a Decision and Order denying an Application for Refund of Martin Gas Sales, Inc. (Martin) in the DOE's Subpart V crude oil refund proceeding. Martin was a reseller of liquified petroleum products (LPPs) during the period from August 19, 1973 through January 27, 1981. Martin purchased No. 2 diesel fuel for use in its trucks for delivery of LPPs from its terminal to its customers. Because the diesel fuel was not resold, Martin claimed it was an end-user and entitled to the end-user presumption of injury. The DOE rejected this claim, finding that as a reseller of LPPs, Martin was allowed to bank and pass through its non-product costs including transportation costs. Moreover, the DOE pointed out that, as a regulated petroleum products reseller, Martin should have records to demonstrate whether it was injured by any crude oil overcharges. Accordingly, Martin's Application for Refund was denied.



*Mobil Oil Corp./Ultramar Petroleum, Inc., 1/26/89, RF225–9996*

The DOE issued a Decision and Order partially granting an Application for Refund filed by Ultramar Petroleum, Inc. in the Mobil special refund proceeding that was implemented by *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985) (*Mobil*). Ultramar, a reseller-retailer of various petroleum products, claimed a refund based on purchases of No. 6 residual fuel oil, No. 2 heating oil and motor gasoline from Mobil. An analysis of purchase volume schedules submitted by Ultramar indicated that the firm was a spot purchaser of No.6 oil. Ultramar did not attempt to rebut the presumption of non-injury with regard to those purchases. Accordingly, the DOE denied that portion of the firm's claim. Ultramar was a regular purchaser of Mobil motor gasoline and No. 2 oil. Under the relevant injury presumptions established in *Mobil*, the DOE granted Ultramar a refund of $6,269, representing $5,000 in principal and $1,269 in interest, on those purchases.

*Murphy Oil Corporation/Morris Oil Co., et al., 1/27/89, RF309–207 et al.*

The DOE issued a Decision and Order granting eight Applications for Refund filed in the Murphy Oil Corporation special refund proceeding. Each of the Applicants purchased directly from Murphy and was either a reseller whose allocable share was less than $5,000 or an end-user of Murphy products. Accordingly, each applicant was granted a refund equal to its full allocable share plus a proportionate share of the interest that has accrued on the Murphy escrow account. The sum of the refunds granted in the Decision was $8,087 ($7,112 principal plus $966 interest).

*Murphy Oil Corporation/Rollette Oil Co., et al., 1/26/89, RF309–118 et al.*

The DOE issued a Decision and Order concerning Applications for Refund filed by three claimants in the Murphy Oil Corporation special refund proceeding. The claimants, Rollette Oil Company (Rollette), Tadco, Inc., and Campbell Oil Company, are related through change in ownership and had filed applications in part on the basis of the same purchases. The DOE examined the Purchase and Sale Agreement governing the sale of Tadco, Inc. to Rollette and determined that Tadco, Inc.'s right to any refund had not been passed on to Rollette in the sale. Accordingly, the DOE denied the portion of Rollette's claim that was based on purchases made by Tadco, Inc. but approved the portion of Rollette's claim based on its separate purchases. The DOE also approved the refunds applications submitted by Tadco, Inc. and its related firm, Campbell Oil Company according to the procedures established in *Murphy Oil Corp.*, 17 DOE ¶ 85,782 (1988). The total amount of refunds approved in this Decision was $10,185, representing $8,966 in principal plus $1,219 in accrued interest.

*Rex W. Anderson, 1/27/89, RF272–27711*

The DOE issued a Decision and Order denying a refund to Rex W. Anderson in the crude oil Subpart V proceeding. Anderson was a retailer of petroleum products during the period August 19, 1973 through January 27, 1981. Because Anderson did not demonstrate that he was injured by the crude oil overcharges, he was found ineligible for a crude oil refund. Accordingly, the Application for Refund was denied.

*Rutgers, The State University, 1/26/89, RF272–26005*

The OHA approved the Application for Refund filed in the crude oil overcharge refund proceeding by Rutgers, The State University, an end-user of refined petroleum products. The refund granted to Rutgers is $6,329.

*Standard Oil Co., (Indiana)/SOUTH DAKOTA, ET AL., 1/23/89, RM21–139 et al.*

The DOE issued a Decision and Order granting a Motion for Modification and Second-Stage Application for Refund filed by the State of South Dakota in the Standard Oil Co. (Indiana), Belridge Oil Co., Vickers Energy Corp., Palo Pinto Oil and Gas, Bob's Oil Co., and Coline Gasoline Corp. special refund proceedings. South Dakota was given permission use to $63,000 of previously allocated *Amoco II* funds to finance a program of matching grants to homes, small businesses, and non-profit organizations for energy efficiency improvements. South Dakota was also permitted to use $61,425 of previously allocated *Amco II* funds to purchase a vehicle to test the volumetric accuracy of service station pumps. South Dakota's final proposal was for a program to assist low-income homeowners with furnace tune-ups or replacements. For this program, South Dakota was permitted to use a total of $141,698 of previously allocated *Amoco II, Amoco I,* and *Belridge* funds. In addition, it was permitted to use $74,381, derived from the following funds: $27 in undistributed *Amoco I* funds, $65,386 ($55,776 in principal plus $9,610 in interest) in undistributed *Amoco II* funds, $1,576 ($825 in principal plus $751 in interest) in undistributed *Vickers* funds, $1,059 ($427 in principal plus $632 in interest) in undistributed *Polo Pinto* funds, $2,159 ($986 in principal plus $1,173 in interest) in udistributed *Bob's* funds, and $4,174 ($1,457 in principal plus $2,717 in interest) in undistributed *Coline* funds.

*Total Petroleum, Inc./Grohs Oil Co. Inc., et al., 1/26/89, RF310–110 et al.*

The DOE issued a Decision and Order concerning 10 Applications for Refund filed by purchasers of motor gasoline and/or No. 2 oils from Total Petroleum, Inc. The applicants sought a portion of the settlement fund obtained by the DOE through a consent order entered into with Total. Under the standards established in *Total Petroleum Inc.*, 17 DOE ¶ 85,542 (1988), the DOE granted refunds in this proceeding which total $101,487 ($88,372 principal and $13,115 interest).

**Crude Oil End-Users**

The Office of Hearings and Appeals granted crude oil overcharge refunds to end-user applicants in the following Decisions and Orders:

| Name | Case no. | Date | No. of applicants | Total refunds |
|---|---|---|---|---|
| Deback Farms, *et al* | RF272–45000 | 1/23/89 | 145 | $3,698 |
| Howard Batch, *et al* | RF272–3323 | 1/25/89 | 44 | 1,060 |
| M. C. Jones Trucking Co., *et al* | RF272–47200 | 1/23/89 | 191 | 1,131 |
| Rod Heinrichs, *et al* | RF272–47600 | 1/23/89 | 143 | 4,013 |

**Dismissals**

The following submissions were dismissed:

| Name | Case No. | Name | Case No. |
|---|---|---|---|
| Alexander's Gulf Service Station | RF300–8142 | Baker's Service Station | RF307–2054 |
| Allyn Oil Company, Inc | RF307–7154 | Bill York's Gulf Service | RF300–8810 |

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| Name | Case No. |
|---|---|
| Birchbrook Realty Co | RF272-80594 |
| Borough of Chambersburg | RF272-84037 |
| Cathedral College of the Immaculate Conception | RF272-80585 |
| Channelside High School | RF272-74454 |
| Charles M. Hardy | RF272-37574 |
| Clarksville Oil & Gas Company | RF307-182 |
| Clevelbrack Rural Electric Coop, Inc | RF272-74808 |
| Crowley Foods, Inc | RF272-74052 |
| D. A. Kessler Construction Co., Inc | RF272-74728 |
| David A. Knoche | RF307-4526 |
| Edgehill Gulf | RF272-8811 |
| Francis E. Wakely | RF272-73954 |
| Genstar Stone Products | RF272-74240 |
| Glen Milner | KFA-0253 |
| Julian's Exxon | RF307-970 |
| Lavahire Realty Co | RF272-80580 |
| Louis J. Kennedy Trucking Co | RF300-9416 |
| McCandless Fuels, Inc | RF300-9414 |
| Monterey Exxon | RF307-1016 |
| O-AT-KA Milk Products Coop,Inc | RF272-83531 |
| Pageland Exxon | RF307-929 |
| Patton's Exxon | RF307-1958 |
| Rolla County Electric Coop | RF272-48586 |
| Richie Fuel Company, Inc | RF307-7136 |
| Robbs Oil Company | RF300-10574 |
| Ryan Brothers Coal Co | RF272-75104 |
| Sequatchie County Highway Department | RF300-4257 |
| W.S. Frey Co., Inc | RF272-73927 |
| Wilco Chemical Corp | RD272-80165 |
| Wilco Corporation | RF272-80165 |
| 1122 Realty Co | RF272-80586 |

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, S.W., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

March 1, 1989.

George B. Breznay,

*Director, Office of Hearings and Appeals.*

[FR Doc. 89-5249 Filed 3-6-89; 8:45 am]

BILLING CODE 6450-01-M

## EXPORT-IMPORT BANK OF THE UNITED STATES

### Open Meeting of the Advisory Committee of the Export-Import Bank of the United States

*Summary:* The Advisory Committee was established by Pub. L. 98-181, November 30, 1983, to advise the Export-Import Bank on its programs and to provide comments for inclusion in the reports of the Export-Import Bank to the United States Congress.

*Time and Place:* Tuesday, March 21, 1989, from 9:30 a.m. to 12:00 noon. The meeting will be held at Eximbank in Room 1143, 811 Vermont Avenue, NW., Washington, DC 20571.

*Agenda:* The meeting agenda will include a discussion of the following topics: Financial/Budget Report, Congressional Status, Mixed Credit Report, City/State Report, Competitiveness Report Preview, 1989 Sub-Committee Topics, and other topics.

*Public Participation:* The meeting will be open to public participation; and the last 15 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. In order to permit the Export-Import Bank to arrange suitable accommodations, members of the public who plan to attend the meeting should notify Joan P. Harris, Room 935, 811 Vermont Avenue, NW., Washington, DC 20571, (202) 566-8871, not later than March 20, 1989. If any person wishes auxiliary aids (such as a language interpreter) or other special accommodations, please contact, prior to March 16, 1989, the Office of the Secretary, Room 935, 811 Vermont Avenue, NW., Washington, DC 20571, Voice: (202) 566-8871 or TDD: (202) 535-3913.

*Further Information:* For further information, contact Joan P. Harris, Room 935, 811 Vermont Avenue, NW., Washington, DC 20571, (202) 566-8871.

Joan P. Harris,

*Corporate Secretary.*

[FR Doc. 89-5163 Filed 3-6-89; 8:45 am]

BILLING CODE 6690-01-M

## FEDERAL HOME LOAN BANK BOARD

### Elysian Federal Savings Bank Hoboken, NJ; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A)(i), of the Home Owner's Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A)(i), and 12 U.S.C. 1701c (c)(2) (1982), as amended, the Federal Home Loan Bank Board was duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Elysian Federal Savings Bank Hoboken, NJ on February 16, 1989.

Dated: February 23, 1989

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

*Assistant Secretary to the Board.*

[FR Doc. 89-5253 Filed 3-6-89; 8:45 am]

BILLING CODE 6720-01-M

### Horizon Federal Savings and Loan Association, Baton Rouge, LA; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(6)(A)(i), of the Home Owners' Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A)(i) (1982), and 12 U.S.C. 1701c(c)(2) (1982), as amended, the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Horizon Federal Savings and Loan Association, Baton Rouge, Louisiana, on February 16, 1989.

Dated: February 23, 1989

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

*Assistant Secretary.*

[FR Doc. 89-5254 Filed 3-6-89; 8:45 am]

BILLING CODE 6720-01-M

### Occidental/Nebraska Federal Savings Bank, Omaha, NE; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A)(i), of the Home Owner's Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A)(i), and 12 U.S.C. 1701c (c)(2)(1982), as amended, the Federal Home Loan Bank Board was duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Occidental/Nebraska Federal Savings Bank, on February 16, 1989.

Dated: February 23, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

*Assistant Secretary.*

[FR Doc. 89-5255 Filed 3-6-89; 8:45 am]

BILLING CODE 6720-01-M

### Southwest Savings Loan Association, Phoenix, AZ; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 408(c)(1)(B)(i)(I) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B)(i)(I) (1982) the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Southwest Savings And Loan Association, Phoenix, Arizona, on February 16, 1989.

Dated: February 23, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

*Assistant Secretary.*

[FR Doc. 89-5256 Filed 3-6-89; 8:45 am]

BILLING CODE 6720-01-M

### Westwood Savings And Loan Association, Los Angeles, CA; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 406(c)(1)(B)(i)(I) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B)(i)(I) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Westwood Savings and Loan Association, Los Angeles, California, on February 16, 1989.

Dated: February 23, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

*Assistant Secretary.*

[FR Doc. 89-5257 Filed 3-6-89; 8:45 am]

BILLING CODE 6720-01-M

## FEDERAL MARITIME COMMISSION

### Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200209-001.

*Title:* Port of Portland Terminal Agreement.

*Parties:* Port of Portland, Oregon Terminal Company (OTC).

*Synopsis:* The Agreement amends the basic agreement (Agreement No. 224-200209) by adding approximately 2,252 square feet in the Terminal No. 4 truck check-in facility to the area covered by the basic agreement. It also provides that OTC will pay a monthly rent of $1,463.80 for this area during the three (3) year term of the agreement.

Agreement No.: 224-200010-001.

*Title:* City of Milwaukee Terminal Agreement.

*Parties:* City of Milwaukee (CM), Meehan Seaway Service, Ltd., (MSS) and Meehan Seaway Service of Milwaukee, Ltd. (MSS of Milwaukee).

*Synopsis:* The Agreement provides for MSS of Milwaukee's sublease from MSS of certain real property and improvements on the South Harbor Tract of the City of Milwaukee which MSS leased from CM under Agreement No. 224-200010. MSS of Milwaukee agrees to perform all of the applicable terms and conditions of Agreement No. 224-200010 with the same effect as if it had originally executed that agreement.

By Order of the Federal Maritime Commission

Joseph C. Polking,

*Secretary.*

Dated: March 2, 1989.

[FR Doc. 89-5219 Filed 3-6-89; 8:45 am]

BILLING CODE 6730-01-M

### Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in §§ 560.7 and/or 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224-200143-001.

*Title:* Maryland Port Authority Terminal Agreement.

*Parties:* Maryland Port Administration (MPA), Puerto Rico Maritime Shipping Authority (PRMSA).

*Filing Party:* Robert E. Hellauer, Jr., Director of Governmental Affairs, Maryland Port Administration. The World Trade Center, Baltimore, Maryland 21202-3041.

*Synopsis:* The Agreement provides that MPA will grant PRMSA a discount of $50.00 per loaded container moved by PRMSA into and out of the Port of Baltimore (the Port) and drayed to and from either CSX or CONRAIL railheads in Baltimore. The $50 discount is restricted to containers moving between the Port and Chicago, Louisville, or Detroit.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

*Secretary.*

Dated: March 2, 1989.

[FR Doc. 89-5220 Filed 3-6-89; 8:45 am]

BILLING CODE 6730-01-M

### Ocean Freight Forwarder License; Revocations; A Hartrodt (PACIFIC) Inc. et al.

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR Part 510.

*License Number:* 2776

*Name:* A Hartrodt (PACIFIC) Inc.

*Address:* 1300 Beacon St., #212, San Pedro, CA 90731

*Date Revoked:* December 12, 1988.

*Reason:* Surrendered license voluntarily

*License Number:* 851

*Name:* Baldwin R. Schmid dba AD. M. Schmid & Co.

*Address:* #1109, One World Trade Center, N.Y., NY 10048

*Date Revoked:* January 31, 1989.

*Reason:* Surrendered license voluntarily

*License Number:* 2358

*Name:* Worldwide Expeditors, Inc.

*Address:* 191 Aldine Bender, Houston, TX 77060

*Date Revoked:* February 10, 1989.

*Reason:* Failed to maintain a valid surety bond

*License Number:* 607

*Name:* George G. Tapper dba Southern States Shipping Co.

*Address:* P.O. Box 280, Port St., Joe, FL 32456

*Date Revoked:* February 12, 1989.

*Reason:* Failed to maintain a valid surety bond

Robert G. Drew,

*Director, Bureau of Domestic Regulation.*

[FR Doc. 89-5179 Filed 3-6-89; 8:45 am]

BILLING CODE 6730-01-M

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**Ocean Freight Forwarder Licenses; Applicants; George Robert Cowan, et al.**

Notice is given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR Part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarder and Passenger Vessel Operations, Federal Maritime Commission, Washington, DC 20573.

George Robert Cowan, 4701 Haygood Point Rd., Virginia Beach, VA 23455, Officer: George Robert Cowan, Sole Proprietor

American Paragon, 315 Dahlia Pl., Corona Del Mar, CA 92625, Officer: Richard Wayne Johnson, Sole Proprietor

Customs and Trade Services, Inc., P.O. Box 52–7328, Miami, FL 33152–7328, Officers: Jan Mark Roher, President/Treasurer, Terri Ann Roher, Secretary

ACMETRANS Worldwide Cargo Services, Inc., 7350 NW. 12 ST., #102–103, Miami, FL 33126, Officers: Fabio C. Bedoya, President/Stockholder, Fabio A. Bedoya Ponce, 2nd Vice Pres./Stockholder, Jorge Luis Castilla, Senior Vice Pres./Stockholder, Lourdes Bedoya, Director/Stockholder

Global Transport Services, Inc., 10077 Wallisville Road, Houston, TX 77013, Officers: Curtis Sellentin, President/Treasurer/Director, R.D. Sellentin, Vice President, Diana Womack, Secretary

A&P Forwarding Company, 11950 Airline Dr., #302, Houston, TX 77037, Officer: Horng Min Lin, Sole Proprietor

International Forwarding Services, Inc., 6701 N.W. 64th Ave., Miami, FL 33166, Officer: Ramon Montesano, President

Evans, Wood and Mooring, Inc., 11222 LaCienega Blvd., #307, Inglewood, CA 90304, Officers: James Fletcher Mooring, Chairman of the Board, Floy Wood Evans, President/Director, Holland B. Evans, Jr., Vice Pres./Treas./Dir., Betty Lu Mooring, V. Pres./Sec./Dir.

Cargo Express International, Inc., 301 Route 17 No.—2nd Fl., Rutherford, NJ 07070, Officers: Luis Gilabert, Jr., Pres./Treas./Dir., Carlos Fontes de Albornoz, Secretary, F. Manuel Voigt, Vice President/Operations

Bok Kun Chung, 11222 LaCienega Blvd., #400, Inglewood, CA 90304, Officer: Bok Kun Chung, Sole Proprietor

By the Federal Maritime Commission.

Dated: March 2, 1989.

Joseph C. Polking,

*Secretary.*

[FR Doc. 89–5178 Filed 3–6–89; 8:45 am]

BILLING CODE 6730–01–M

## FEDERAL RESERVE SYSTEM

**Bancomer S.N.C.; Formation of, Acquisition by, or Merger of Bank Holding Companies**

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than March 21, 1989.

**A. Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Bancomer S.N.C.*, Mexico City, Mexico; Bancomer Holding Company (Antilles), N.V., Curacao, Netherlands Antilles; Bancomer Holding Company (Netherlands), B.V., Rotterdam, Hollard; and Bancomer Holding Company, Los Angeles, California; to acquire 100 percent of the voting shares of Executive National Bank, San Antonio, Texas.

Board of Governors of the Federal Reserve System, March 3, 1989.

Jennifer J. Johnson,

*Associate Secretary of the Board.*

[FR Doc. 89–5496 Filed 3–6–89; 8:45 am]

BILLING CODE 6210–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Alcohol, Drug Abuse, and Mental Health Administration

**Meetings**

*Summary:* This notice sets forth schedules and proposed agendas of the forthcoming meetings of the agency's extramural science advisory boards in the month of April 1989. Attendance by the public will be limited to space available.

The Extramural Science Advisory Board, NIAAA, will discuss the business of the Board and its current program activities.

The Extramural Science Advisory Board, NIMH, will discuss the peer review process that evaluates all grant applications to the Institute's extramural research program.

*Committee Name:* Extramural Science Advisory Board, NIAAA

*Date and Time:* April 10: 9:00 a.m.–5:00 p.m.

*Place:* National Institutes of Health, Building 31, Conference Room 7, 9000 Rockville Pike, Bethesda, MD 20892

*Status of Meeting:* Open

*Contact:* Michael J. Lewis, Parklawn Building, Room 16C–26, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–6106

*Purpose:* The Advisory Board advises the Secretary, Department of Health and Human Services, the Administrator, Alcohol, Drug Abuse, and Mental Health Administration and the Director, National Institute on Alcohol Abuse and Alcoholism, based on an ongoing review on the direction, scope, balance, and emphasis of the Institute's extramural science program.

Substantive program information may be obtained from the contact person listed above. The NIAAA Advisory Board Staff Coordinator will furnish summaries of the meeting and a roster of committee members upon request. Contact Ms. Nancy Colladay, Staff Coordinator, NIAAA, Room 16C–23, Parkland Building, 5600 Fishers Lane, Rockville, Maryland 20857.

*Committee Name:* Extramural Science Advisory Board, NIMH

*Date and Time:* April 17: 8:30 a.m.–5:00 p.m. April 18: 9:00 a.m.–1:00 p.m.

*Place:* National Institutes of Health, Building 31, Conference Room 6, 9000 Rockville Pike, Bethesda, MD 20892

*Status of Meeting:* Open

*Contact:* Anthony Pollitt, Parklawn Building, Room 17C–28, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–3175



*Purpose:* The Extramural Science Advisory Board, NIMH, advises the Secretary of Health and Human Services, the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, and the Director, National Institute of Mental Health, on the direction scope, balance, and emphasis of the Institute's extramural programs.

Substantive program information may be obtained from the contact person listed above. The Institute Committee Management Officer who will furnish upon request summaries of the meeting and rosters of the Council members is Ms. Joanna Kieffer, Committee Management Officer, National Institute of Mental Health, Room 9–105, Parklawn Building, Rockville, Maryland 20857, (301) 443–4333.

Date: March 1, 1989

Peggy W. Cockrill,

*Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.*

[FR Doc. 89–5183 Filed 3–6–89; 8:45 am]

BILLING CODE 4160–20–M

## Food and Drug Administration

[Docket No. 89G–0016]

**Novo Laboratories, Inc.; Filing of Petition for Affirmation of GRAS Status**

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that Novo Laboratories, Inc., has filed a petition (GRASP 7G0323) proposing to affirm that insoluble esterase/lipase enzyme preparation derived from *Mucor miehei*, which has been fixed by immobilization with a substance whose use is generally recognized as safe (GRAS) or an approved food additive, is GRAS for use as a direct human food ingredient.

**DATE:** Comments by May 8, 1989.

**ADDRESS:** Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Daniel N. Harrison, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–426–5487.

**SUPPLEMENTARY INFORMATION:** Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))) and the regulations for affirmation of GRAS status in § 170.35 (21 CFR 170.35), notice is given that a petition (GRASP 7G0323) has been filed by Novo Laboratories, Inc., 33 Turner Rd., Danbury, CT 06810–5101, proposing that insoluble esterase/lipase enzyme preparation derived from *Mucor miehei*, which has been fixed by immobilization with a substance whose use for this purpose is GRAS or an approved food additive, be affirmed as GRAS for use as a direct human food ingredient.

The petition has been placed on display at the Dockets Management Branch (address above).

Any petition that meets the requirements outlined in §§ 170.30 and 170.35 (21 CFR 170.30 and 170.35) is filed by the agency. There is no prefiling review of the adequacy of data to support a GRAS conclusion. Thus, the filing of a petition for GRAS affirmation should not be interpreted as a preliminary indication of suitability for GRAS affirmation.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required, and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Interested persons may, on or before May 8, 1989, review the petition and/or file comments (two copies, identified with the docket number found in brackets in the heading of this document) with the Dockets Management Branch (address above). Comments should include any available information that would be helpful in determining whether the substance is, or is not, GRAS for the proposed use. A copy of the petition and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 17, 1989.

Richard J. Rosk,

*Acting Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 89–5182 Filed 3–6–89; 8:45 am]

BILLING CODE 4160–01–M

## Public Health Service

**Health and Allied Health Professions Eligibility for Scholarship Consideration Under the Health Professions Preparatory and Pregraduate Scholarship Programs for Indians, and the Indian Health Service Scholarship Program**

**AGENCY:** Indian Health Service, DHHS.

**ACTION:** Notice of health and allied health professions which will be eligible for scholarship support under the Indian Health Service Scholarship Program (IHSSP).

**SUMMARY:** The IHS is publishing a list of health and allied health professions for which support under the various scholarship programs administered by the IHS may be available for the 1989–1990 academic year and possibly beyond. Actual awards will be dependent upon the availability of funds. Awards may be available in health and allied health professional areas not listed pending the availability of funds and dependent upon the availability of qualified applicants in the priority areas. This list will remain in effect until superseded.

**DATE:** This IHS policy is effective on March 7, 1989.

**FOR FURTHER INFORMATION:** Please address inquiries to Mr. Larry Thomas, Chief, Indian Health Service Scholarship Branch, Parklawn Building, Room 6–12, 5600 Fishers Lane, Rockville, Maryland 20857; Telephone 301–443–6197. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** The Health Professions Preparatory and Pregraduate Scholarship Program for American Indians and Alaska Natives are authorized by section 103 of the Indian Health Care Improvement Act, Pub. L. 94–437 as amended by Pub. L. 96–537. Indian Health Care Amendments of 1980 and Pub. L. 100–713. Indian Health Care Amendments of 1988. The Indian Health Service Scholarship Program, formerly authorized by Section 3361 of the Public Health Service Act (42 U.S.C. 254r), is now authorized by section 104 of the Indian Health Care Amendments of 1988, Pub. L. 100–713. Both programs are intended to encourage American Indians and Alaska Natives to enter the health professions and to assure the availability of Indian health professionals to serve Indians. The list below is based upon the needs of the IHS as well as upon the needs of the

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Indians for additional service by specific health professions.

Regulations at 42 CFR 36.304 provide that the IHS shall, from time to time, publish a list of health professions eligible for consideration for the award of Health Professions Preparatory and Pregraduate Scholarships for Indians and Health Scholarships. Also, section 104(b)(1) of the Indian Health Care Amendments of 1988, Pub. L. 100-713, authorizes the determination of specific health professions for which Indian Health Scholarships will be awarded.

Pending the availability of funds, consideration will be given to qualified applicants for scholarship support under the above-named scholarship programs in the following health profession categories:

**Priority Categories**

*Health Professions Preparatory Scholarship Program for Indians*

A. Pre-Nursing.
B. Pre-Engineering.
C. Pre-Pharmacy.
D. Pre-Medical Technology
E. Pre-Sanitation
F. Pre-Physical Therapy

*Pre-Graduate Program* (Priority given in the following manner based on academic level: Senior, Junior, Sophomore, Freshman)

A. Pre-Medicine.
B. Pre-Dentistry.

*Indian Health Scholarship Program* (Priority given in the following manner based on academic level unless specified: Graduate, Senior, Junior, Sophomore, Freshman)

A. Medicine: Allopathic and Osteopathic.
B. Nursing: ADN, BSN, and MS Degrees.
C. Pharmacy: (Priority given as follows: Senior, Junior, Sophomore and Freshman)
D. Engineering: Civil, Environmental and Mechanical: BS Degree. (Priority given as follows: Senior, Junior, Sophomore and Freshman)
E. Dietician: BS Degree. (Priority as follows: Senior, Junior, Sophomore and Freshman)
F. Sanitarian: Environmental Health, Environmental Science, and Occupational Safety and Health: BS Degree. (Priority as follows: Senior, Junior, Sophomore and Freshman)
G. Dentistry:
H. Dental Hygiene: Associate and BS Degree.
I. Health Education: Masters Level only.
J. Chemical Dependency Counseling: Masters level only.
K. Nurse Practitioner: RNA, CNM and FNP
L. Medical Technology: BS Degree. (Priority as follows: Senior, Junior, Sophomore and Freshman)
M. Public Health Nutrition: Masters level only.
N. Physician Assistants: (Priority as follows: Senior, Junior, Sophomore and Freshman)
O. Public Health: MPH only (Applicants must be enrolled or accepted in a school of public health and must have two (2) years of health delivery experience.
P. Clinical Psychology: PH.D. level only.
Q. Optometry:
R. Physical Therapy:
S. Sonography:
T. Health Records:
U. Radiologic Technology:

Interested individuals are reminded that the list of eligible health and allied health professions is initially effective for the applicants for the 1988-1990 academic year. These priorities will remain in effect until superseded. Applicants for health and allied health professions not on the above priority list will be considered pending the availability of funds and dependent upon the availability of qualified applicants in the priority areas.

The Health Professions Preparatory and Pregraduate Scholarship Program for Indians is listed as No. 13.971 in the OMB Catalog of Federal Domestic Assistance. The Indian Health Scholarship Program is listed as NO. 13.972 in the catalog.

Dated: February 28, 1989.

**Everett R. Rhoades,**
*Assistant Surgeon General Director.*

[FR Doc. 89-5184 Filed 3-6-89; 8:45 am]
BILLING CODE 4160-16-M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of Administration

**[Docket No. N-89-1949]**

### Submission of Proposed Information Collection to OMB

**AGENCY:** Office of Administration, HUD.
**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**ADDRESS:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

**SUPPLEMENTARY INFORMATION:** This Notice informs the public that the Department of Housing and Urban Development has submitted to OMB, for emergency processing, an information collection package with respect to the Survey on Drug Abuse Elimination in Public and Indian Housing.

The information collection requirements in this package are necessary to meet the requirements of section 5143 of the Drug-Free Public Housing Act of 1988 (Pub. L. 100-690, Chapter 3, November 18, 1988). Under section 5143, the Department is required to establish a clearinghouse to receive, collect, process, and assemble information regarding the abuse of controlled substances in public housing projects. The Department has requested OMB to complete its paperwork review of the Survey of Drug Abuse Elimination Efforts in Public and Indian Housing in one day. Any control number issued by OMB to cover this emergency clearance would be valid for no more than 90-days.

The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.



**Authority:** Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: March 2, 1989.

**John T. Murphy,**
*Director, Information Policy and Management Division.*

*Proposal:* Survey on Drug Abuse Elimination Efforts in Public and Indian Housing.

*Office:* Administration.

*Description of The Need For The Information And Its Proposed Use:* This information collection requests Public and Indian Housing authorities to report to the Secretary regarding actions taken to deny drug abusers and dealers access to public housing. The collection also solicits ideas for fighting drugs in public housing projects.

*Form Number:* None.

*Resondents:* Non-Profit Institutions.

*Frequency of Submission:* Single-time.

*Reporting Burden:*

| | Number of resondents | x | Frequency of response | x | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|---|
| Survey | 3,400 | | 1 | | 1 | | 3,400 |

*Total Estimated Burden Hours:* 3,400.

*Status:* New.

*Contact:* David S. Cristy, (202) 755-6050, John Allison, OMB, (202) 395-6880.

*Date: March 2, 1989.*

[FR Doc. 89-5232 Filed 3-6-89; 8:45 am]
BILLING CODE 4210-01-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[AA-650-4120-02]**

### Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory materials may be obtained by contacting the Bureau's clearance office at the phone number listed below. Comments and suggestions should be made directly to the Bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1004-0073), Washington, DC 20503

*Title:* Federal Coal Management Program Regulations, 43 CFR 3400-3470.

*OMB Approval Number:* (1004-0073).

*Abstract:* Respondents supply information relevant to the extent and quality of the coal resource being proposed for coal leasing or exploration, the types and potential impacts on other natural resources of leasing the coal, and their qualifications for holding Federal coal leases or licenses. This information allows the Bureau to determine if leasing the Federal coal would be in the public interest and to assure that prospective lessees are complying with all applicable statutes and regulations.

*Additional Information:* This information collection currently has OMB approval. The approval expires in February, 1989. This proposal would extend the information approval, without change, through February, 1992.

*Bureau Form Numbers:* None.

*Frequency:* On request.

*Description of respondents:* Prospective holders of Federal coal leases, exploration licenses, and licenses to mine.

*Estimated completion times*

*Exploration License:* 30 hours.
*Call for Coal and Other Resource Information:* 10 hours.
*Surface Owner Consultation:* 1 hr.
*Expression of Leasing Interest:* 6.6 hours.
*Notice of Sale:* 3 hours.
*Leasing on Application:* 200 hours.
*Surface Owner Consent:* 10 hours.
*PRLA (Initial & Final Showings):* 160 hours.
*Lease Modification:* 35 hours.
*License to Mine:* 5 hours.
*Special Leasing Qualifications:* 4 hours.
*Bonding Requirements:* 40 hours.
*Annual responses:* 202.
*Annual burden hours:* 5410.
*Bureau clearance officer:* Rick Iovaine.

Dated: November 23, 1988.

**Robert H. Lawton,**
*Assistant Director, Energy and Mineral Resources.*

[FR Doc. 89-5250 Filed 3-6-89; 8:45 am]
BILLING CODE 4310-84-M

**[CO-930-09-4214-10; COC-49697]**

### Notice of Proposed Withdrawal and Proposed Public Meeting; Colorado; Correction

February 27, 1989.

**SUMMARY:** The Notice of Proposed Withdrawal and Proposed Public Meeting; published on Tuesday, August 16, 1988, in **Federal Register** Volume 53, No. 158, page 30873, is hereby corrected as follows: In column three under Sixth Principal Meridian, White River National Forest, T. 10. S., R. 85 W., Sec. 19, reading "N½N½N½, N½S½NW¼;" should be corrected to read "N½;"

**Jenny Saunders,**
*Acting Chief, Branch of Realty Programs.*

[FR Doc. 89-5167 Filed 3-6-89; 8:45 am]
BILLING CODE 4310-JB-M

### Fish and Wildlife Service

### Extension of Comment Period; National Wildlife Refuges Management

**AGENCY:** Fish and Wildlife Service, Department of the Interior.

**ACTION:** Notice of extension of comment period of a draft environmental impact statement for the management of the national wildlife refuges.

**SUMMARY:** On December 12, 1988, the U.S. Fish and Wildlife Service released, for public review, a Draft Environmental Impact Statement for the Management of the National Wildlife Refuges pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969. The Statement describes four alternatives for managing the national wildlife refuges and the environmental consequences of implementing each alternative.

**DATES:** The comment period is being extended from 90 to 120 days. The

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extended comment period will close on April 13, 1989.

**FOR FURTHER INFORMATION CONTACT:** Sean Furniss, Division of Refuges, U.S. Fish and Wildlife Service, Washington, DC 20240; telephone (202) 343–4944.

**SUPPLEMENTARY INFORMATION:** A summary of the environmental impact statement has been prepared and sent to all persons and organizations who participated in any part of the review process, such as scoping meetings or in other types of communication with the planning team. Copies of the complete draft environmental impact statement have been sent to Federal and State agencies, local governments, and other organizations and individuals who had already requested copies. A limited number of copies of both documents are available upon request from the environmental impact statement coordinators listed below.

To be considered in the preparation of the final environmental impact statement all comments should be received by no later than April 13, 1989.

Copies of the Draft Environmental Impact Statement are available for public review at the office listed below:

Refuges and Wildlife, Refuge EIS Coordinator, U.S. Fish and Wildlife Service, 500 NE. Multnomah Street, Suite 1692, Portland, OR 97232.

Refuges and Wildlife, Refuge EIS Coordinator, U.S. Fish and Wildlife Service, P.O. Box 1306, 500 Gold Avenue, SW., Room 1306 Albuquerque, NM 87103.

Refuges and Wildlife, Refuge EIS Coordinator, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, MN 55111.

Refuges and Wildlife, Refuge EIS Coordinator, U.S. Fish and Wildlife Service, Room 1200, Richard B. Russell Federal Building, 75 Spring Street, SW., Atlanta, GA 30303.

Refuges and Wildlife, Refuge EIS Coordinator, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, MA 02158.

Refuges and Wildlife, Refuge EIS Coordinator, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, CO 80225.

Refuges and Wildlife, Refuge EIS Coordinator, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, AK 99503.

Refuges and Wildlife, Refuge EIS Coordinator, U.S. Fish and Wildlife Service, 18th and C Sts., NW., Washington, DC 20240.

Dated: February 27, 1989.

**Frank Dunkle,**

*Director.*

[FR Doc. 89–5158 Filed 3–6–89; 8:45 am]

BILLING CODE 4310-55-M

## Minerals Management Service

### Outer Continental Shelf Advisory Board, Gulf of Mexico Regional Technical Working Group Meeting

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Notice of Gulf of Mexico Regional Technical Working Group (RTWG) meeting.

**SUMMARY:** Notice of this meeting is issued in accordance with the Federal Advisory Committee Act (Pub. L. No. 92–463). The Gulf of Mexico RTWG meeting will be held March 21–23, 1989, at the Gulf of Mexico OCS Regional Office, Rooms 111 and 115, 1201 Elmwood Park Boulevard, New Orleans, Louisiana. Dates and times are as follows: March 21, 1989—9:30 a.m. to 4:00 p.m.; March 22, 1989—9:00 a.m. to 5:00 p.m.; and March 23, 1989—9:00 a.m. to 12:00 noon.

The RTWG business meeting will be held in conjunction with the Spring Ternary Studies Meeting. Tentative agenda items for the business meeting include:

Gulf of Mexico Current Activities
Status of Environmental Studies Program
Update on Dispersants: Studies and Use
Review of Draft Regional Studies Plan for FY 1991
Election of 1989 State Co-Chair

**FOR FURTHER INFORMATION CONTACT:** This meeting is open to the public. Individuals wishing to make oral presentations to the Committee concerning agenda items should contact Eileen P. Angelico of the Gulf of Mexico OCS Regional Office at (504) 736–2959 by March 17, 1989. Written statements should be submitted by the same date to the Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123. A taped cassette transcript and complete summary minutes of the Business Meeting will be available for public inspection in the Office of the Regional Director at the above address not later than 60 days after the meeting.

**SUPPLEMENTARY INFORMATION:** The Gulf of Mexico RTWG is one of six such Committees that advises the Director of the Minerals Management Service on technical matters of regional concern regarding offshore prelease and postlease sale activities. The RTWG membership consists of representatives from Federal Agencies, the coastal States of Alabama, Florida, Louisiana, Mississippi, and Texas, the petroleum industry, the environmental community, and other private interests.

Date: February 27, 1989.

**J. Rogers Pearcy,**

*Regional Director, Gulf of Mexico OCS Region.*

[FR Doc. 89–5160 Filed 3–6–89; 8:45 am]

BILLING CODE 4310-MR-M

### Development Operations Coordination Document; Corpus Christi Oil and Gas Co.

**AGENCY:** Minerals Management Service, Interior

**ACTION:** Notice of the receipt of a Proposed Development Operations Coordination Document (DOCD).

**SUMMARY:** Notice is hereby given that Corpus Christi Oil and Gas Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 9485, Block 153, Vermilion Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Cameron, Louisiana.

**DATE:** The subject DOCD was deemed submitted on February 24, 1989. Comments must be received within 15 days of the publication date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

**ADDRESSES:** A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.



**FOR FURTHER INFORMATION CONTACT:** Mr. W. Williamson; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2874.

**SUPPLEMENTARY INFORMATION:** The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: February 27, 1989.

**J. Rogers Pearcy,**

*Regional Director, Gulf of Mexico OCS Region.*

[FR Doc. 89–5166 Filed 3–6–89; 8:45 am]

BILLING CODE 4310-MR-M

## National Park Service

### National Capital Region; Public Workshop; Harpers Ferry National Historical Park

Notice is hereby given in accordance with the Federal Advisory Committee Act that a public workshop will be hosted by the National Park Service, Saturday, March 11, from 9:00 a.m. to 12 noon, at the training facility on the grounds of the U.S. Fish and Wildlife Service in Leetown, West Virginia. The purpose of the meeting is to gather ideas on the special park boundary study as authorized by Congress.

This study of lands adjacent to the park is to consist of two (2) parts; the first is to focus on protection alternatives for the largely undeveloped lands comprising School House Ridge just west of the National Park; the second is to focus on protection alternatives for largely undeveloped lands in the down river view of the Potomac from Jefferson Rock located in the Harper Ferry National Historical Park.

The number of acres involved are approximately 800 acres in Jefferson County, West Virginia; 100 acres in Washington County, Maryland and; 100 acres in Loudoun County, Virginia.

The study excludes developed lands in and around the towns of Harpers Ferry and Bolivar, West Virginia and Sandy Hook, Maryland.

There will be a forty-five (45) day comment period following the workshop. Comments may be sent to the following address: Superintendent Donald Campbell, Harpers Ferry National Historical Park, Harpers Ferry, West Virginia 25425.

**FURTHER INFORMATION CONTACT:** Resource Manager Bill Hebb at (304) 535–6371 Ext. 6224.

Dated: March 1, 1989.

**Robert Stanton,**

*Regional Director, National Capital Region.*

[FR Doc. 89–5215 Filed 3–6–89; 8:45 am]

BILLING CODE 4310-70-M

### National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before February 24, 1989. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by March 22, 1989.

**Carol D. Shull,**

*Chief of Registration, National Register.*

**CALIFORNIA**

*Monterey County*

*Outlands in the Eighty Acres*, 25800 Hatton, Carmel By-the-Sea, 89000228.

*Stanislaus County*

*Whitmore, Daniel, House*, 2928 Fifth St., Ceres, 89000230.

**MASSACHUSETTS**

*Barnstable County*

*Pond Hill School*, US 6, Wellfeet, 89000222.

*Berkshire County*

*Lenox Railroad Station*, Housatonic St. and Willow Creek Rd., Lenox, 89000225.

*Hampshire County*

*Fort Hill Historic District*, Roughly South St. from Lyman to Monroe, Northampton, 89000223.

*Middlesex County*

*Manning, Joseph K., House*, 35–37 Forest St., Medford, 89000224.

*Plymouth County*

*Lower Union Street Historic District*, Union St. from Water St. to Market St., Rockland, 89000219.

*Phoenix Building*, 315–321 Union St., Rockland, 89000220.

*Rockland High School*, 394 Union St., Rockland, 89000217.

*Rockland Memorial Library*, 382 Union St., Rockland, 89000221.

*Rockland Trust Company*, 288 Union St., Rockland, 89000218.

*Suffolk County*

*Linwood Historic Distric*, Roughly Linwood Ave., Maple Ct., and Pine Ct., Northbridge, 89000226.

**NEW JERSEY**

*Atlantic County*

*Bay Front Historic District*, Roughly bounded by Decatur Ave., Egg Harbor Bay, George Ave., and Shore Rd., Somers Point, 89000227.

*Warren County*

*Great Meadows Railroad Station*, Cemetery Rd., Great Meadows vicinity, 89000229.

The following property is also being considered for listing in the National Register:

**KENTUCKY**

*Hopkins County*

Jackson, Beckley, House (Hopkins County MPS) Rt. 1068, .2 mi. S of jct. with Jones Rd. Hanson vicinity 88002733.

[FR Doc. 89–5210 Filed 3–6–89; 8:45 am]

BILLING CODE 4310-70-M

## INTERSTATE COMMERCE COMMISSION

**[Finance Docket No. 31405]**

### Arkansas Central Railway Co., Inc.; Operation Exemption Line of Herzog Stone Products Inc.

Decided: March 2, 1989.

Arkansas Central Railway Co., Inc. (ACR), a noncarrier, has filed a notice of exemption to operate 1.3 miles of rail line in Polk County, AK, that is owned by a corporate affiliate, Herzog Stone Products, Inc. (Herzog Stone).[1] ACR has also filed a motion to dismiss this notice together with a request that the motion be denied.[2] The line connects with

[1] Both Herzog Stone and ACR are under the common control of Herzog Services, Inc. Because Herzog Stone is presently the only shipper over the line, ACR has filed, concurrently with this notice, a petition for exemption from 49 U.S.C. 10746, the commodities clause, in Finance Docket No. 31410, *Arkansas Central Railway Co., Inc.—Petition for Exemption From Regulation Under 49 U.S.C. 10746.*

[2] In its motion to dismiss, ACR has effectively asked the Commission to address and resolve the

Continued

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Kansas City Southern Railway Co. (KCS), at KCS milepost 405 on its Kansas City to New Orleans mainline. Herzog Stone constructed the line in 1966 as an unregulated industrial spur, but petitioner points out that KCS presently provides through service over the line from Herzog's South Hatton facility to consignees throughout the country, and that the subject track is no longer an industrial spur within the meaning of 49 U.S.C. 10907(b).

Any comments must be filed with the Commission and served on John D. Heffner, Gerst, Heffner, Foldes and Podgorsky, Suite 1107, 1700 K Street, NW., Washington, DC 20006.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

**Noreta R. McGee,**

*Secretary.*

[FR Doc. 89-5289 Filed 3-6-89; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-303 (Sub-No. 1X)]

**Wisconsin Central, Ltd; Abandonment Exemption; in Price and Taylor Counties, WI**

Applicant has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon its 25.9-mile line of railroad between milepost 343.3 near Prentice, in Price County, WI, and milepost 317.4 near Medford, Taylor County, WI.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on April 6, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by March 17, 1989.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by March 27, 1989 with:

Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative:

William C. Sippel, 233 N. Michigan Ave., Suite 2400.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by March 10, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275-7316. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: February 28, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

**Noreta R. McGee,**

*Secretary.*

[FR Doc. 89-5174 Filed 3-6-89; 8:45 am]

BILLING CODE 7035-01-M

## DEPARTMENT OF JUSTICE

### Lodging of Consent Order Pursuant to the Clean Air Act; SCA Services, Inc.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Order in *United States v. SCA Services, Inc.* has been lodged on February 21, 1989 with the United States District Court for the Northern District of Indiana. The Consent Order addresses alleged violations by SCA Services, Inc., of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9604 (a) and (b), 9606, and 9607(a), to abate a release or substantial threat of release of hazardous substances from the Ft. Wayne Reduction facility.

The proposed Consent Order provides that SCA shall perform the remedy selected by U.S. EPA to remediate contamination at the Ft. Wayne Reduction Site in Ft. Wayne, Indiana. The settling PRP agrees to perform the entire remedy required by the Record of Decision ("ROD"), valued at approximately $10.2 million. Additionally, the settling PRP agrees to reimburse 30% of U.S. EPA's oversight costs, up to a maximum of $200,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Order. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. SCA Services, Inc.*, D.J. Ref. #90-11-2-382.

The proposed Consent Order may be examined at the office of the United States Attorney, Northern District of Indiana, 220 Federal Building, 1300 South Harrison Street, Ft. Wayne, Indiana 46802, and at the Office of Regional Counsel, United States Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604. Copies of the Consent Order may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1748, Ninth Street and Pennsylvania Ave., NW., Washington, DC 20530. A copy of the proposed Consent Order may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice. In requesting a copy, please refer to the referenced case name and D.J. Ref. number and enclose a check in the amount of $18.50 (ten cents per page reproduction cost) payable to the Treasurer of the United States.

**Donald A. Carr,**

*Acting Assistant Attorney General, Land and Natural Resources Division.*

[FR Doc. 89-5172 Filed 3-6-89; 8:45 am]

BILLING CODE 4410-01-M

### Lodging of a Final Judgment by Consent Pursuant to the Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on February 27, 1989 a proposed Consent Decree in *United States of America v. City of St. George and the State of Utah*, Civil Action No. 88-C-910G, was lodged with the United States District Court for the District of Utah, Central Division.

The complaint filed by the United States alleged that St. George violated sections 301(a) and 309(a) of the Clean Water Act (the "Act"), 33 U.S.C. 1311(a) and 1319(a), by discharging pollutants from its publicly owned treatment works ("POTW") in excess of the limitations allowed by St. George's NPDES permit and three Administrative Orders ("AO's") issued by EPA, and by failing to comply with the milestones for planning and construction of its new regional wastewater treatment facility imposed by the NPDES permit and AO's. The United States alleged that the State of Utah was liable for any judgment against St. George to the extent that its laws prevented St. George from raising revenues needed to comply with any such judgment pursuant to section 309(e) of the Act, 33 U.S.C. 1319(e). The United States sought an injunction and civil penalties of up to $25,000 per day of violation against St. George.

St. George and the State of Utah have executed the Consent Decree. St. George has agreed to pay a civil penalty of $75,000 to resolve past violations of the Act, complete construction of its new wastewater treatment facility by March 1, 1990, and achieve operational status at the new facility no later than April 1, 1990. St George will decommission its old facilities upon completion of the new facility and pay stipulated penalties for any future violations of the Consent Decree or the Act. The United States has reserved its claim against the State of Utah under section 309(e) of the Act, 33 U.S.C. 1319(e).

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty days from the date of publication of this notice. Comments should be addressed to the Acting Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. City of St. George and the State of Utah*, Civil Action No. 88-C-910G, DOJ Ref. No. 90-5-1-1-3204. The proposed Consent Decree may be examined at the office of the United States Attorney, District of Utah, 350 South Main Street, Room 476, Salt Lake City, Utah. Copies of the Consent Decree may also be examined and obtained in person at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1517, Tenth and Pennsylvania Avenue, NW., Washington, DC. A copy of the proposed Consent Decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Box 7611, Ben Franklin Station, Washington, DC 20044. When requesting a copy, please present or enclose a check in the amount of $2.60 (ten cents per page reproduction costs) payable to the Treasurer of the United States.

**Donald A. Carr,**

*Acting Assistant Attorney General, Land and Natural Resources Division.*

[FR Doc. 89-5243 Filed 3-6-89; 8:45 am]

BILLING CODE 4410-01-M

### Lodging of a Final Judgment by Consent Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on February 27, 1989 a proposed Consent Decree in *United States of America and the State of Maryland* v. *Signode Corporation*, Civil Action No. HAR-88-2326 was lodged with the United States District Court for the District of Maryland.

The complaint filed by the United States alleged that Signode Corporation operated its Magnus 2 metal surface coating line in Baltimore, Maryland, in violation of the Clean Air Act, 42 U.S.C. 7411, 7413, and 7414 and the standards for new stationary sources (NSPS), 40 CFR Part 60, Subpart A. The United States sought an injunction and civil penalties of up to $25,000 per day of violation. Signode Corporation has executed the Consent Decree and agreed to pay a penalty of $50,000, $25,000 to the United States and $25,000 to the State of Maryland, to resolve past violations of the NSPS and the Act, plus pay stipulated penalties for any future violations of the NSPS and various recordkeeping and reporting requirements of the Consent Decree. Signode also agreed to conduct a performance test of its volatile organic compound thermal incinerator and to otherwise comply with the Clean Air Act and the NSPS.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty days from the date of publication of this notice. Comments should be addressed to the Acting Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States and the State of Maryland* v. *Signode Corporation*, Civil Action No. HAR-88-2326, DOJ Ref. No. 90-5-1-1-1218. The proposed Consent Decree may be examined at the office of the United States Attorney, District of Maryland, 101 Lombard Street, 9th Floor, Baltimore, Maryland. Copies of the Consent Decree may also be examined and obtained in person at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1517, Tenth and Pennsylvania Avenue, NW., Washington, DC. A copy of the proposed Consent Decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Box 7611, Ben Franklin Station, Washington, DC 20044. When requesting a copy, please present or enclose a check in the amount of $4.00 (ten cents per page reproduction costs) payable to the Treasurer of the United States.

**Donald A. Carr,**

*Acting Assistant Attorney General, Land and Natural Resources Division.*

[FR Doc. 89-5242 Filed 3-6-89; 8:45 am]

BILLING CODE 4410-01-M

## Office of Justice Programs

### Crime Victim Assistance Grants

March 2, 1989.

**AGENCY:** Office of Justice Programs, Justice.

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[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 4 I.C.C.2d 409 (1988). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987), and final rules published in the Federal Register on December 22, 1987 (52 FR 48440-48449).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

[1] Issue of whether the line in question is a line of railroad subject to agency jurisdiction or whether it remains in industrial spur. This notice does not resolve that question, but is issued because ACR has met the requirements of 49 CFR 1150.31. The Commission will address the motion to dismiss in a separate decision.

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**ACTION:** Notice of proposed program guideline.

**SUMMARY:** The Office for Victims of Crime (OVC), Office of Justice Programs (OJP), U.S. Department of Justice (DOJ), is publishing for public comment proposed Program Guidelines to implement the victim assistance grant program authorized by the Victims of Crime Act of 1984 (VOCA), Pub. L. 98-473, as amended by the Children's Justice and Assistance Act of 1986 (CJA), Pub. L. 99-401, and as amended by the Anti-Drug Abuse Act of 1988, Title VII, Subtitle D, of Pub. L. 100-690 (hereinafter referred to as the "Act"). The Victims of Crime Act has been codified at 42 U.S.C. 10601, *et seq.* These proposed Guidelines when published in final will supersede all previous Program Guidelines issued by the Office for Victims of Crime to implement the Victims of Crime Act victim assistance grant program.

The Act provides Federal financial assistance to States for the purpose of compensating and otherwise assisting victims of crime, and also provides funds for training and technical assistance and assisting victims of Federal crimes. These proposed Guidelines provide program background, eligibility requirements, and administrative procedures for the implementation of the crime victim assistance grant program as outlined in Section 1404 (a) of the Act. These proposed Guidelines are based on the experience gained during the first four years of the program's implementation and are responsive to the amendments to the Victims of Crime Act of 1984.

The Victims of Crime Act was amended in 1988 to provide funding to previously underserved victim populations. (Subsection 1404 (a)(2)(B). However, the Act does not recommend any specific level of funds to be provided to underserved populations. After careful consideration of the legislative history, the Office for Victims of Crime is recommending that at least 10% of a State's victim assistance grant funds be utilized for programs providing services to this population. Comment is especially invited on this provision of the proposed Guidelines. (See Section III of this proposed Program Guideline.) The Office for Victims of Crime is interested in the views of state administrators, victim service providers, advocates, and other interested parties.

**DATE:** Comments are due on or before April 6, 1989. Comments received after the due date cannot be considered.

**ADDRESS:** Send comments to Duane Ragan, Ph.D., Office for Victims of Crime, Office of Justice Programs, 633 Indiana Avenue, NW., Room 1352, Washington, DC 20531.

**FOR FURTHER INFORMATION CONTACT:** Duane Ragan, Ph.D., (202) 724-5947. (This is not a toll free number).

**SUPPLEMENTARY INFORMATION:** On November 18, 1988, President Reagan signed into law the Anti-Drug Abuse Act of 1988, Public Law 100-690. Title VII, Subtitle D, of this Act reauthorized the Victims of Crime Act of 1984 through Federal Fiscal Year 1994.

The Office for Victims of Crime was established in 1984 within the Department of Justice to serve as the Federal focal point for victim issues and to administer the Victims of Crime Act of 1984, as amended. For the first time, section 1411 of the Act legislatively established an Office for Victims of Crime within the Office of Justice Programs, U.S. Department of Justice. The Director reports to the Attorney General through the Assistant Attorney General for the Office of Justice Programs, and has the final authority for all grants, cooperative agreements, and contracts awarded by the Office of Victims of Crime. The Director is responsible for administering funds made available under section 1402, 1403 and 1404 of the Act; establishing programs in accordance with section 1404(c) on terms and conditions determined by the Director to be consistent with that subsection; and cooperating with and providing technical assistance to States, units of local government, and other public and private organizations or international agencies involved in activities related to crime victims.

The fundamental approach of these Program Guidelines is to maximize State authority within the context of congressional intent of the Act. In this way, Federal intrusion on the States decision-making authority will be appropriately limited. Indeed, from its inception, the Act has strongly favored State autonomy within Federally determined guidelines. Program application, reporting, and evaluation requirements have been established at a level necessary to maintain proper Federal stewardship for the funds and to report to the President and Congress on the impact of the funding.

These Guidelines do not constitute a "major" rule as defined by Executive Order 12291 as they do not result in: (a) An effect on the economy of $100 million or more; (b) a major increse in any costs or prices; or (c) adverse effects on competition, employment, investment, productivity, or innovation among American enterprises.

In addition, because these Guidelines will not have significant economic impact on a substantial number of small entities, no analysis of the impact of these rules on such entities is required by the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*

The collection of information requirements contained in Section V of the Program Guidelines has been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act, 44 U.S.C. 3504(h).

Proposed Guidelines for the compensation and the Federal grant programs will be published separately in the **Federal Register**.

**Discussion of Victim Assistance Grant Program, Background, Legislative Changes and Program Policy**

The primary purpose of the VOCA victim assistance grant program is to assist states in providing high quality services that directly improve the health and well-being of victims of crime. A wide range of services for victims of crime are supported by this Act. They include, but are not limited to, ensuring that victims receive timely notification about the various proceedings involved in prosecuting the person accused of the crime and counseling to help the victim overcome the emotional trauma of victimization. Congress has supported the view that some services are more directly related to the emotional healing and recovery of the victim than others.

Since there are not enough dollars available in the Crime Victims Fund to permit funding of all victims services, it is the intent of VOCA to ensure that services that directly improve the health and well-being of the victim receive first consideration when planning the distribution of limited Crime Victims Fund monies. The Office for Victims of Crime encourages State administrators to consider first the funding of programs that offer counseling services, shelter, and other emergency assistance that address the devastating psychological and emotional consequences experienced by victims of crime and their families. Consequently, programs meeting the immediate, short-term emergency needs of crime victims should be considered for funding over programs offering other types of services.

**Crime Victims Fund Distribution**

The reauthorization legislation establishes a ceiling of $125 million in Fiscal Years 1989-1991 and $150 million in Fiscal Years 1992-1994 for the Crime Victims Fund (hereinafter referred to as the "Fund").

Monies deposited in the Fund shall be made available in the following manner. Of the first $100 million deposited in the Fund: 40.5% shall be made available for victim compensation program grants; 45% shall be made available for victim assistance program grants; 1% shall be available for support of services to Federal crime victims (of which up to 0.5% may be made available for training and technical assistance projects for eligible victim assistance programs), and 4.5% shall be made available under the provisions of the Children's Justice and Assistance Act of 1986. Of the 4.5% made available to the Department of Health and Human Services to improve the investigation and prosecution of child abuse, especially child sexual abuse cases, 15% shall be made available for assisting Native American tribes in developing, establishing, and operating programs designed to similarly improve the handling of child abuse cases, especially child sexual abuse cases in Indian country. This 15% shall be administered by the Office for Victims of Crime.

The next $5,500,000 deposited in the Fund above the first $100 million (i.e., any amounts between $100 million and $105.5 million) shall be made available for Children's Justice Act grant purposes. Deposits in excess of $105,500,000, but *not* in excess of the $110 million ceiling for Fiscal Years 1989, 1990, and 1991, shall be made available for victim assistance program grants.

Of deposits in excess of the $110 million and up to the ceiling, 47.5% shall be made available for victim compensation program grants, 47.5% shall be made available for victim assistance program grants, and 5% shall be made available for services to victims of Federal crimes.

If the total deposited in the Fund during a particular year reaches the ceiling, the excess shall *not* be a part of the Fund. The first $2.2 million of such excess shall be available to the Federal judicial branch for administrative costs to carry out the functions of the Administrative Office of the U.S. Courts with respect to the collection of criminal fines and penalty assessments. (Subsection 1402(c)(1)(A).) The remaining monies shall be deposited in the General Fund of the United States Treasury.

No deposits shall be made in the Fund after September 30, 1994, under the current reauthorization.



**Recent Changes in the Distribution of Victim Assistance Funds to the States**

The 1988 amendments to the Victims of Crime Act increased the base amount each State shall receive in victim assistance funds from $100,000 to $150,000 for Fiscal Year 1989, 1990, and 1991, and to $200,000 for Fiscal Years 1992, 1993, and 1994. (Section 1404(a)(5)(A) and (B).)

In addition, for the purposes of allocating the base amounts to the States, the United States Virgin Islands and all territories and possessions of the United States are to be included along with the District of Columbia and Puerto Rico. (Section 1404(d)(1).)

**Priority Categories and "Underserved" Victim Populations**

The Victims of Crime Act of 1984 requires each State to certify that "priority" will be given to programs serving victims of sexual assult, spousal abuse and child abuse. In reporting to the President and Congress on the impact of the Victims of Crime Act grant program, the Office of Justice Programs indicated that 76% of the monies allocated to State victim assistance programs went to programs serving victims of sexual assault, spousal abuse and child abuse. These monies funded 82% of the VOCA supported programs. The remaining VOCA funds supported a variety of specialized and generic victim services. This determination was made after a subgrant-by-subgrant review of all awards made in Fiscal Year 1986 by the States was conducted. (See *Report to Congress by the Attorney General*, April 1988.)

During reauthorization, there was considerable discussion of the extent to which funds were utilized to support victims in the three priority categories. After reviewing available data and hearing testimony from national organizations, programs, and individuals representing victims of other violent crimes, Congress amended VOCA to require that each State "certify that funds shall be made available for grants to programs which serve previously underserved populations of victims of violent crime." (See Section 1404(a)(2(B).) In doing so, Congress reaffirmed the special needs of the priority category victims, but also recognized the needs of victims of violent crimes who have received little support through VOCA victim assistance grant funds.

OVC is aware that the Congressional Record reflects a discrepancy in the views of members of the House of Representatives and the Senate regarding the underserved populations amendment contained in the VOCA reauthorization (Section 1404(a)(2)(b)). The following is a colloquy between Mr. Biden and Mr. Kennedy:

[Mr. Biden:] Do you anticipate that this priority will be implemented by the Department of Justice in a manner similar to the other priority programs listed in the Victims of Crime Act?

[Mr. Kennedy:] Yes. As the section-by-section analysis of the Senate bill clearly stated the Department of Justice shall require that States devote approximately 10 percent of their funds to this new priority category, as with the existing priority programs.

[Mr. Biden:] That was also my understanding. I thank the Senator." (See Congressional Record—Senate, page 17324, October 21, 1988.)

However, the Section-By-Section Analysis of this amendment inserted by Mr. Conyers, Chairman of the House Subcommittee on Criminal Justice, reflects a different view:

The Senate-passed bill contained a provision similar to new section 1404(a)(2)(B). During the debate on the Senate bill, it was indicated that it was intended that that provision be interpreted to require a chief executive to use at least 10% of the State's funds under section 1404 for those programs. The clear language of the provision in the Senate-passed bill did not require that, however.

Such an interpretation was unacceptable, and a provision with that interpretation would not have been agreed to. The language of new section 1404(a)(2)(B) imposes no requirement upon the chief executive of a State to allocate a specified minimum percentage of Crime Victims Fund money to programs serving 'underserved populations of victims of violent crime'. We agreed to new section 1404(a)(2)(B) with no intention that the provision be interpreted to impose such a minimum requirement. (Congressional Record—House, page 11261, October 21, 1988)

Mr. Fish added:

This is intended to promote the broadest effort possible to assist victims of violent crime and to ensure that no category of victim is ignored." (Congressional Record—House, page 11240, October 21, 1988).

In addition Mr. Miller stated:

As one who was involved in the negotiations between the House and the other body, I would like to make clear for the record that, in that form, this provision was not acceptable. The representatives of the other body verbally agreed, however, that such a requirement was not mandated by the statutory language and that it would not insist upon such a requirement. The House concurrence in this provision—with some changes in language—was with the explicit understanding that the provision did not bind the chief executive to allocate any given percentage of crime victims fund money to programs serving previously underserved populations of victims of violent crime."

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(Congressional Record—House, page 11263, October 21, 1988)

In implementing this new requirement, the Office for Victims of Crime has considered the conflicting perspectives expressed by members of Congress and constituency groups. With regard to the degree financial support that should be made available for "previously underserved victims," OVC believes that an interpretation which results in increased attention to previously underserved populations of victims and sets a minimum level of funding will best meet the unmet needs of a broad range of victims of violent crime. Therefore, States are directed in these proposed guidelines to allocate at least 10% of their VOCA assistance funds to such programs. In this way, previously underserved victims of violent crime identified by each State will constitute a single category for which at least 10% of the States' VOCA assistance funds must be allocated.

OVC does not intend to define what constitutes "previously underserved populations." Rather, it is expected that States will have flexibility in determining which groups of victims would be "underserved."

Each State must identify previously underserved victim populations in their State and develop specific plans to address the availability of victim assistance service grants in these areas. The Office for Victims of Crime encourages States not to solely consider underserved victim populations which were mentioned in congressional discussions of the amendment, i.e., homicide survivors, victims or survivors of victims of drunk driving. States should also consider the broad range of unmet victims' needs and the obstacles which prevent the delivery of services.

OVC recognizes the specialized needs of priority area victims and the skills required of service providers in assisting these victims. In Fiscal Years 1985, 1986, 1987, and 1988 States were given three options for meeting the three priority area requirements of the Victims of Crime Act legislation. These options were provided to meet the variety of State needs and to maximize State flexibility in implementing the Victims of Crime Act victim assistance grant program.

As in the development of any new program, knowledge is granted from experience. While preparing the Report to Congess, and in correspondence from State administrators and service providers, and during the reauthorization hearings, OVC learned of many concerns regarding the allocation of Victims of Crime Act victim assistance grant funds. Therefore, the Office for Victims of Crime has reviewed the options which were presented to States during the first four fiscal years of the program, the number of States which selected the various options, and the States' reports regarding their ultimate allocation of funding to priority services. As a result of this analysis, the Office for Victims of Crime has determined that a single approach which reflects a combination of elements from the three previous options would serve to clarify elements from the three previous options would serve to clarify this program requirement and better effectuate the intent of Congress. Henceforth,

Each State shall allocate at least ten percent of its total Victims of Crime Act victim assistance grant to each of the three priority categories, and at least ten percent to programs which serve victims determined by the State to have been previously underserved.

States are encouraged to engage in discussion with victims, victim advocates, and services providers through out the State and to assess the needs of underserved populations. Each State is further required to discuss in its application to the Office for Victims of Crime the method used to identify previously underserved victim populations and its plan for funding services to such groups.

The ten percent figure provided in these proposed Program Guidelines is intended to represent a base amount of funding to the priority areas, and to give each State discretion to determine the level of additional funding needed. The Office for Victims of Crime believes it is incumbent upon each State, not the Federal Government, to determine if funding in excess of the minimum base amount level established by the Office for Victims of Crime is needed in a particular priority area. In no way is the 30% base amount targeted for programs serving priority victims nor the 10% base amount targeted for programs serving previously underserved victim populations intended to establish a cap on the amount allocated to programs serving these categories of crime victims. Experience has shown States have allocated the vast majority of VOCA funds to programs which serve victims of child abuse, spouse abuse, and sexual assault. However, it is also noted that the requirement to give priority to services for victims of spouse abuse, sexual assault, and child abuse has not been and is not intended to convey that States may not provide funding for other types of services.

For purposes of this program, the Office for Victims of Crime defines a priority program as one whose *principal mission* is providing services to one or more of the priority victim categories. While programs which provide services to all victims of crime are needed in communities these are not considered to be priority programs. However, many priority programs provide services to more than one priority group. For example, many sexual assault programs serve adult victims of sexual assault and child victims of sexual abuse and molestation, and many shelter programs also provide services to victims of child abuse who accompany their mothers who are victims of spouse abuse/family violence. This definition reflects OVC's understanding of the intent of VOCA and is meant to clarify priority programs for purposes of funding decisions and reporting requirements.

OVC also wishes to clarify that there is no requirement that each program designated as a priority program provide what are termed as "generic" victim services. Further, there is no requirement that all VOCA funded programs must serve all types of victims in all ways.

**Clarification of Allowance Costs and Eligible Programs**

Section 1404(b)(1) of the Victims of Crime Act of 1984, as amended, provides specific criteria for programs to be eligible for victim assistance grant funds.(See Section III of these proposed Program Guidelines.) The reauthorization and issuance of these proposed Program Guidelines provide an opportunity to clarify several issues which have emerged regarding the appropriate use of Victim of Crime Act victim assistance grant funds. The Office for Victims of Crime is mindful of the fact that we now have had four years of experience administering VOCA victim assistance grants. After careful review of the subgrants made in prior fiscal years, the Office for Victims of Crime believes it is necessary to articulate policy positions concerning certain allowable costs and program eligibility.

One area of central importance in this discussion is the relationship between VOCA crime victim compensation and VOCA victim assistance programs. In their initial years of grants, some States used victim assistance grant funds to supplement crime victim compensation awards to victims of crime. In these cases, some programs receiving VOCA victim assistance grant funds supplemented crime victim compensation claims when a particular loss or expense was not covered by the State crime victim compensation program. This is not an appropriate use of limited VOCA victim assistance funds. It is clear in the legislative history that the crime victim compensation provision of the Act was intended as the sole source of VOCA funding for reimbursement to victims for out-of-pocket expenses relating to a compensable crime. VOCA victim assistance grant funds, on the other hand, are intended to support the provision of direct services to victims of crime.

Questions have also arisen as to whether local legal services corporation-funded offices are eligile as victim assistance subgrantees. Legal services, especially legal advocacy services, are not the types of victim services envisioned when the Victims of Crime Act was enacted. The "court related services" eligible for VOCA funding include, but are not limited to, assisting victims with filing temporary restraining orders, explaining court procedures, accompanying a crime victim to court, providing child care services for crime victims while they participate in essential court proceedings, providing transportation to and from court, and providing emotional support to crime victims during a trial. However, a legal services agency is not deemed ineligible as long as it provides the emergency services discussed above, e.g. securing temporary restraining orders, etc. Such programs may seek VOCA funding for the above-described emergency services.

Crime victim assistance funds may be used only to provide direct services to victims of crime. Any costs for activities not directly related or essential to the delivery of assistance to crime victims may not be charged to a VOCA victim assistance subgrant. The following activities are ineligible for VOCA funding.

(1) *Community Education.* The community education activities eligible to receive VOCA funds are limited to efforts describing direct services available and how to obtain a program's assistance, e.g., publication of brochures, pamphlets, etc. General public awareness campaigns designed to raise the public's consciousness of victims issues do not qualify as direct services to crime victims and are ineligible for support with VOCA funds.

(2) *Crime Prevention.* Also ineligible for funding are those programs in which crime victims are not the sole or primary beneficiaries of funded activities. The crime prevention activities eligible to receive VOCA funds are limited to those prevention efforts specifically included in providing emergency assistance after a victimization incident such as services to prevent the immediate reburgularization of a home or an apartment, e.g. boarding up of windows, replacement or repair of security locks, etc. Other more generalized crime prevention efforts are not allowable.

(3) *Lobbying, Legislative and Administrative Advocacy.* Lobbying for particular victim legislation or administrative reform, whether conducted directly or indirectly, is another activity that is an ineligible for funding with VOCA victim assistance grant funds. Chapter 5, paragraph 74, subsection 3, of the Office of Justice Programs' *Financial and Administrative Guide for Gants*, M7100.1 ((effective edition) hereinafter referred to as M 7100.1), lists the following activities as not allowable: "Any attempt to influence: (i) the introduction of Federal or State legislation; or (ii) the enactment or modification of any pending Federal or State legislation through communication with any member or employee of the Congress or State legislature (including efforts to influence State or local officials to engage in similar lobbying activity), or with any government official or employee in connection with a decision to sign or veto enrolled legislation." Refer to paragraph 74 of M 7100.1 for further information on allowable and unallowable activities.

(4) *Perpetrator Rehabilitation.* The Office for Victims of Crime has taken the position that perpetrator counseling and/or rehabilitation is not a direct service to a victim of crime as intended by VOCA and is, therefore, not an eligible service or activity to be supported by victim assistance grant funds. However, VOCA funds may be used to support family treatment programs that provide direct services to crime victims and rehabilitation or treatment of perpetrators. It is the intention of the Office for Victims of Crime to support such programs which seek to reunite the family through treatment of victims of family violence along with perpetrator rehabilitation. It is *not* our intention to provide VOCA victim assistance funds to support programs which are primarily perpetrator/offender treatment programs. This represents a change in OVC's previous policy which prohibited the funding of any perpetrator related activities.

(5) *Needs Assessments, Surveys, Manuals and Protocols.* The Office for Victims of Crime has further taken the position that the use of VOCA funds to conduct needs assessments, surveys, develop manuals and protocol, or to perform general administrative tasks does not fall within the intent of the Act and is outside the scope of the Program Guidelines.

(6) *Fundraising.* Chapter 5, Paragraph 75 of M7100.1 lists fund raising as an unallowable expense: "Cost of organized fund raising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contribution, may not be charged either as direct or indirect cost against the grant. Neither the salary of persons engaged in such activities nor indirect costs associated with those salaries can be charged to the grant, except insofar as such persons perform other grant-related activities."

(7) *Equipment Purchases/Capital Expenditures.* Section 1404(b)(2) provides that Victims of Crime Act victim assistance grant funds may only be used to provide services to victims of crime. Services to victims of crime means those activities that *directly* benefit individual crime victims, including the required coordination of such activities, i.e., coordination of volunteers and/or coordination of public and private efforts to aid crime victims. However, equipment that is necessary and essential to the delivery of direct service is deemed by the Office for Victims of Crime as an allowable cost.

(8) *Professional Services of Doctors and Lawyers.* The payment of fees for professional services rendered by lawyers and doctors extends beyond the intent of the Act and are, therefore, ineligible for VOCA victim assistance funding. Except for the purposes of providing reimbursement for forensic medical examinations, as provided in section III, D(2)(e) of the Act, victims treated for crime related injuries are encouraged to seek reimbursement for medical services rendered by doctors from their State crime victims compensation program. This provision, however, does not prohibit direct service programs from hiring as staff salaried medical/mental health professionals to provide services on site to clients. This differs significantly from a case by case fee-for-service type arrangement.

(9) *Witness Management and Notification Programs.* Projects whose primary objectives are to improve the prosecutorial efficiency of a prosecutor's office and whose goals are primarily witness management and notification are identified as administrative in nature and are, therefore, ineligible for support with Victims of Crime Act victim assistance grant funds. However, victim/witness programs in prosecutors offices, which provide both victim services such as escort and support

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during trials and other type of services, can receive VOCA funding support only for that portion of the program that provides direct services to crime victims.

(10) *Criminal Justice Improvements.* General criminal justice agency improvements or programs where crime victims are not the sole or primary beneficiaries are not eligible for support with VOCA victim assistance grant funds.

**Program Match**

*Required Match for New and Existing Programs.* The Office for Victims of Crime has initiated a new policy with respect to the required match for "new" and "existing" programs; the program match has been reduced for both. The Act requires that "existing" programs have a record of providing effective services to victims of crime and financial support from other sources and requires that "new" programs that have not yet demonstrated a record of effective services have substantial financial support from other sources. The Office for Victims of Crime believes that the current match requirements are too stringent and may have inhibited the development of much needed specialized services in underserved or remote areas. Therefore, the match requirement for "existing" programs has been lowered from 25% to 20% cash or in-kind; and for "new" programs, the match has been lowered from 50% to 35% cash *or in-kind.* In addition to the lower match requirement for new programs, the provision for in-kind match for new programs has been added. The Office for Victims of Crime believes these new match requirements will better reflect the intent of the Act regarding the continuity of existing crime victim assistance programs while also addressing recent Congressional concern for the development of new victim services programs for previously underserved victim populations.

*New Match Requirements for Native American Tribes or Native American Organizations on Indian Reservations.* The Office for Victims of Crime has initiated a policy to permit a 5 percent minimum "match" of cash or in-kind for grants to Indian tribes or native American organizations on reservations under the Victims of Crime Act victim assistance grant program. OVC has decided to implement this provision in response to the unique situation of native American Indian tribes in our nation, and their special problems and needs. In the past, we have found that the victim assistance match requirement are virtually impossible for Indian tribes to meet because of the tribes' meager financial resources. The result has been that the tribes have been unable to achieve full participation in the VOCA victim assistance program and significant Indian victim needs have gone unattended. This policy is intended to respond to the difficulties experienced by Indian tribes in providing matching funds. This is further intended to remind the States of their obligations to Indian tribes and similar groups to involve Indian tribes and such groups in full participation in this Federal assistance program.

Note.—This policy is limited to native American indian tribes or native American organizations on indian reservations.

*Overmatch.* In a number of the States' subgrant award reports, the Office for Victims of Crime has noted that subgrantees designated a substantial protion or all of their non-Federal dollars as match. States and subgrantees should be mindful that any funds designated as matching funds for Federal dollars are restricted to the same uses outlined in the Program Guidelines for Federal funds. Therefore, it is suggested that subgrantees only provide match at the level required by the Program Guidelines (i.e., 20% for existing programs, and 35% for new programs). In that way, there are no Federal restrictions on the non-Federal dollars not used by subgrant programs as match.

*Basis of Match.* The proposed Program Guidelines will continue to require match on a project-by-project basis. *No exceptions will be granted to this policy.* Programs receiving block funds must maintain records which clearly show the source, the amount, and the timing of all matching contributions. The M7100.1 also places primary responsibility on the State to ensure subgrantee compliance with this requirement.

**Seed Money**

The Office for Victims of Crime has received numerous inquiries from programs in States where State administrators have established a policy limiting the number of years a program may receive a VOCA victim assistance grant from the State. OVC has given consideration to these inquiries and the policies adopted by these States and has decided not to issue a formal policy/guideline regarding this practice. Instead, OVC encourages States to take into consideration in developing program funding policy, the range of victim services needed throughout the State, the track record of funded programs and the extent to which other sources of funding are available to new proposed projects and previously funded VOCA projects. However, the recent amendment to VOCA which mandates attention to underserved populations indicates Congressional concern about the extent to which victim services are available to victims outside the priority areas. Thus, States are encouraged to carefully examine their various victim service needs and expand into new service areas as crime victim funds increase.

**I. General Provisions**

A. *Eligible Applicants*: All States including the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, and all other territories and possessions of the United States are eligible to apply for and receive Victims of Crime Act victim assistance grants. (See Section 1404 (d)(1) of the Act.) For the purposes of these proposed Guidelines, the term "State" includes the District of Columbia, Puerto Rico, the United States Virgin Islands, and any other territory or possession of the United States [See Section 1404 (d)(1) of the Act.]

B. *State Office*: The chief executive of each participating State must designate or establish a State office for the purpose of preparing an application for funds and administering the funds received, including fund accounting and disbursement monitoring, reporting, and audit.

**II. Allocation of Funds**

A. *Fund Availability*: Section 1404(a)(1) of the Victims of Crime Act of 1984, as amended, provides that crime victim assistance grants shall be made from the portion of the Fund not used for crime victim compensation grants, or reserved for training and technical assistance activities, or for financial support to victims of Federal crime [See Section 1404 (c)(1) of the Act], or for grants under the Children's Justice Act [See Section 1404 A of the Act.] Funds are available for expenditures in the Federal fiscal year of award and in the next succeeding fiscal year. Note: The Federal fiscal year begins on October 1 and ends on September 30 of the following year.

B. *Allocation to States*: Each State, the District of Columbia, Puerto Rico, the United States Virgin Islands, and any territory and possession shall receive a base amount of $150,000 in fiscal years 1989 through 1991, and a base amount of $200,000 thereafter through fiscal year 1994, and that portion of the then remaining available money to each State that results from a distribution among the States on the basis of each State's



population in relation of all States. They shall, also, receive a portion of the available remaining monies based on their share of the total population using the most recent data of the U.S. Bureau of Census.

C. *Allocation of Funds within the States*: Funds granted to the States are to be further subgranted within the State to eligible victim services programs. The State has sole discretion as to which programs providing direct services to crime victims receive funds, so long as the eligibility criteria set-out in the Act and enumerated in these proposed Guidelines are met.

**III. Program Requirements**

A. *Priority.* Under the Act, the chief executive of the State must certify that the State shall give priority to eligible crime victim assistance programs which as their principle mission provide direct assistance to victims of sexual assault, spousal abuse, or child abuse, and to programs serving previously underserved populations of victims of violent crime as determined by each State. [See Section 1404 (a)(2)(A) and (B) of the Act.] To meet this requirement, each State shall allocate at least ten percent of its total Victims of Crime Act victim assistance grant to each of the three priority categories and at least ten percent to programs which serve victims determined by the State to have been previously underserved. Each State is further required to describe in its application the procedures used to identify previously underserved victim populations and the method planned for allocating VOCA funding for these services.

B. *Non-supplanting.* The chief executive of the State or his/her designated State Administrator must certify that crime victim assistance grant funds will not be used to supplant State and local funds that would otherwise be available for crime victim services. [See Section 1404(a)(2)(B) of the Act.] Federal grant funds are intended to enhance or expand services, not substitute for other sources of support.

C. *Eligibility Criteria.* States must use crime victim assistance grant funds to support programs that provide direct services to crime victims. Each individual victim assistance project receiving a crime victim assistance subgrant must meet the following eligibility requirements:

(1) Be operated by a public agency or nonprofit organization or a combination thereof that provides direct services to crime victims;

(2) If it is an existing program, have a record of providing effective services to victims of crime and financial support from other sources. In determining whether or not a program has a "record of providing effective services," the State shall consider whether the program has been providing services to victims of crime for a minimum of one year, has the support and approval of its services by the community, and whether or not an analysis of its activities and financial history shows that it achieves its intended results in a cost-effective manner. An existing program shall be considered to have "financial support from other [non-Federal] sources" if at least 20% of its support (including in-kind contributions) is from non-Federal sources, or an appropriation, as provided in Chapter 2, paragraph 14 (c)(2)(b) of the M 7100.1. (See Section 1404 (b)(1)(B)(i) of the Act.)

Note.—Funds subgranted to Indian tribes or Native American organizations on Indian reservations will require only a 5 percent minimum match (cash or in-kind) of the total costs of the VOCA supported victim assistance program or project.

(3) If it is a new program that has not yet demonstrated a record of effective services as required under (2) above, it may be eligible for funding if it demonstrates substantial financial support from non-Federal sources. "Substantial financial support" means that at least thirty-five percent (35%) of its budget is in the form of a *cash or in-kind* contributions from non-Federal sources or an appropriation as provided in Chapter 2, paragraph 14(c)(2)(b) of the M 7100.1. [See Section 1404(b)(1)(B)(ii) of the Act.]

Note.—Funds subgranted to Indian tribes or Native American organizations on Indian reservations will require only a 5 percent minimum match (cash or in-kind) of the total costs of the VOCA supported victim assistance program or project.

(4) Utilizes volunteers unless, and to the extent, the State chief executive determines compelling reasons exist to waive this requirement. A "compelling reason" may include statutory or contractual provisions that bar the use of volunteers for certain positions or a lack of persons volunteering after a sustained and aggressive recruitment effort has been conducted.

(5) Promotes within the community served coordinated public and private efforts to aid crime victims. (See Section 1404(b)(1)(D) of the Act.) Because of the various kinds of services needed by victims of crime, services are usually provided by a variety of agencies. Therefore, it is essential that these services be coordinated to ensure continuity of support to the victim and to avoid duplication of effort. In determining whether or not a program meets this requirement, the State shall consider the extent to which the program demonstrates that it will coordinate its activities with other service providers in the community, including Federal victim witness coordinators, so that the best interests of the crime victims are served and interagency communication is enhanced.

(6) Assists victims in seeking available crime victim compensation benefits. (See Section 1404(b)(1)(E) of the Act.) Such assistance may be achieved by identifying and notifying potential recipients of the availability of compensation and assisting them with application forms and procedures. An eligible program must demonstrate that it will coordinate its activities with the State compensation program, where one exists.

D. Crime victim assistance funds shall be used only to provide direct services to victims of crime. (Section 1404(b)(2).) For purposes of these proposed Guidelines, services to victims of crime means those activities that directly benefit individual crime victims including the required and necessary coordination of such activities, i.e., coordination of volunteers and/or coordination of services to the victim which must be provided by other community agencies. Activities unrelated or only tangentially related to the provision of direct services to victims are not eligible for support. Likewise, indirect costs which are often imposed by Indian tribes on Federal grants are not permissible in VOCA funded victim assistance grants.

(1) Examples of ineligible activities include (see earlier discussion of each of the following activities):

(a) Community education;

(b) Crime prevention programs;

(c) Lobbying, legislative or administrative advocacy for particular victim legislation or administrative reform;

(d) Perpetrator rehabilitation or counseling except for those programs which treat family violence victims and perpetrators, and are aimed at the reunification of the family;

(e) Needs Assessments, Surveys, Manuals, and Protocols;

(f) Fundraising

(g) Equipment purchases/capital expenditures

(h) Professional services of doctors an lawyers

(i) Witness management or notification program;

(j) Criminal justice improvements.

(2) "Services to victims of crime" include, but are not limited to, the following:

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(a) Crisis intervention services that meet the urgent short-term emotional or physical needs of crime victims. Crisis intervention services programs are encouraged to coordinate the provision of 24 hour services which may include the operation of a crisis hotline that provides emergency counseling or referral for crime victims;

(b) Emergency services that provide temporary shelter for crime victims who cannot safely remain in their current lodgings offer measures such as repair of locks, or boarding-up of windows to prevent the immediate reburglarization of a home or an apartment, or provide crime victims with petty cash for meeting immediate needs related to transportation, food, shelter, and other necessities;

(c) Support services that include follow-up counseling following the initial traumatic event; reassurance, empathetic listening, and guidance for resolving practical problems created by the victimization experience; acting on the victims behalf vis-a-vis other social services and criminal justice agencies; assistance in obtaining the swift return of property being kept by police as evidence; intervention, as appropriate, with landlords, creditors or employers; and referral to other sources of assistance, as needed;

(d) Court-related services that assist crime victims in participating in criminal justice proceedings including transportation to court, child care, and escort services;

(e) Payment of all reasonable costs for a forensic medical examination of a crime victim, to the extent that such costs are not otherwise reimbursed or paid by a third party.

Note.—Funds may only be used to pay for those forensic medical examinations that conform to standards adopted by the State or meet the evidentiary requirements of the local prosecutor.

E. The State must establish procedures to assure that funds subgranted to an eligible crime victim assistance program are expended only for providing services to victims of crime. These procedures shall require a program to demonstrate to the State that the assistance funds it requested are directly related to the delivery of services to crime victims. Any costs, with the exception of audit expenses at the subgrant level, not directly related to service delivery for crime victims must not be charged to a subgrant. Programs that serve both victims and non-victims must reasonably prorate their costs to assure that crime victims funds, are used only for victim services.

## IV Application Requirements

A. *Application Submission.* Applications for crime victim assistance grants must be submitted by the chief executive officer or his/her designee. The Office for Victims of Crime will provide a program Instruction and Application Kit to each State. The application kit shall include: SF 424-Application for Federal Assistance, a list of assurances, a table of Fund allocations, and additional guidance on how to prepare and submit an application for crime victim assistance grants. The Program Instruction and Application Kit will serve as the guidance document regarding application submission and content.

B. *Application Specificity.* Applications from the State need not specify the subgrants the State intends to make with the Federal crime victim assistance funds it receives. However, in the application, States must identify the "previously underserved" crime victim population to be served in the State with Federal victim assistance grant funds and discuss how the determination was made.

## V. Reporting Requirements

A report to the President and Congress from OVC on the monies collected for the Crime Victims Fund from each source described in section 1402 and on the effectiveness of the activities supported by the Fund is due on December 31, 1990, and on December 31, every two years thereafter.

Reporting requirements for this program are designed to provide the Office for Victims of Crime with meaningful information about the use of VOCA funds, progress in the delivery of victim services nationwide, and compliance with VOCA Program Guidelines.

Section 1407(b) of the Victims of Crime Act, as amended, requires each recipient of Federal victim assistance grant funds to maintain records as the Director of the Office for Victims of Crime may prescribe including records that fully disclose the amount and disposition by the recipient of sums, the total cost of the undertaking for which such sums are used, and that portion of the cost of the undertaking supplied by other surces, and any other records that will facilitate an effective audit. Section 1407(f) permits the Director to: (1) Terminate payments to a State; (2) suspend payments to a State until the Director is satisfied that noncompliance has ended; or take other action as appropriate towards any State failing to comply substantially with any provision of the Victims of Crime Act or Program Guidelines requirement.

A. *Subgrant Award Report.* The State is required to notify the Office for Victims of Crime within thirty (30) days of an award of a subgrant, or of a change in an award to a subgrant recipient, and provide all information required to complete a Subgrant Award Report form provided by the Office for Victims of Crime. This information is required on each individual project which receives Federal Crime victim assistance funds. If Federal victim assistance grant funds are passed through to another agency to further determine the distribution of funds, a Subgrant Award Report form must be completed for each program receiving Federal Victim assistance grant funds. This report provides the Office for Victims of Crime with information necessary to determine compliance with the Victims of Crime Act, Program Guidelines, and provides information necessary to determie the status of VOCA funded victim services in each State. Each State Administrator must notify OVC in their application of the approximate number of Subgrant Award Report forms they will need to meet this program requirement.

Note.—OVC will provide the State with blank forms with the notification of award or at a later date, if not available at that time.

B. *Performance Report.* The State crime victim assistance agency receiving Federal victim assistance grant funds under the Victims of Crime Act is required to submit a performance report 90 days after the end of each annual grant, in the format and on the form provided by the Office for Victims of Crime. The State Administrator is responsible for compiling the information and submitting a report to the Office for Victims of Crime. The performance report provides information on the effect the Federal funds have had on services to crime victims in the State. This report should be submitted to the Office for Victims of Crime, Office of Justice Programs, 633 Indiana Avenue NW., Washington, DC 20531, by December 30.

Note.—OVC will provide each State with a copy of the program performance report form with the notification of award, or at a later date, if not available at the time of the award.

c. *Financial Status Report.* A Financial Status Report (Form H–1) is required for all grants. This report shall be submitted by the grantee within 45 days after the end of each calendar quarter. Final reports are due 90 days after the end of the grant. Failure to comply with this requirement may result in administrative action such as the withholding of payments, cancellation of a Letter of Credit, or noncertification of new grant awards. In lieu of using the H–1, grantees may satisfy the financial reporting requirements by completing the H–1 turnaround document. This document is a facsimile of the H–1 extracted from the grantor agency's computer files and sent directly to each grantee. Pertinent information such as grantee name, address, grant number, and the previously submitted financial information (if any) is printed on the form by the computer.

Note.—Obligation and expenditure data must be reported at the subgrantee level.



## VI. Financial Requirements

A. *Payment of Grant Funds*

1. *Annual Requirements Under $120,000.* Grantees whose annual fund requirement is less than $120,000 will receive Federal funds on a "Check Issued" basis. Upon receipt, review and approval of a Request for Advance or Reimbursement, H–3 Report (OJP, Form 7160/3) by the grantor agency, a voucher and a schedule for payment is prepared for the amount approved. This schedule is forwarded to the U.S. Treasury requesting issuance and mailing of the check directly to the grantee or its designated fiscal agent. A request must be limited to the grantee's immediate cash needs and submitted at least monthly.

2. *Annual Requirements Over $120,000.* Grantees whose annual fund requirement exceeds $120,000 generally receive Federal funds by utilizing the "Letter of Credit" procedures. This funding method is a cash management process prescribed by the U.S. Treasury for all major grant-in-aid recipients.

3. *Check Issuance.* All checks drawn for the payment of fund requests, either under the "Check Issued" or the "Letter of Credit" process, are prepared and disbursed by the U.S. Treasury and *not* by the grantor agency.

4. *Termination of Advance Funding.* If a grantee organization receiving cash advances by letter of credit or by direct Treasury check demonstrates an unwillingness or inability to establish procedures that will minimize the time elapsing between cash advances and disbursement, the grantor agency may terminate advance funding and require the grantee organization to finance its operations with its own working capital. Payments to grantee will then be made by the direct Treasury check method to reimburse the grantee for actual cash disbursements. It is essential that the grantee organization maintain a minimal amount of cash on hand and that drawdowns of cash are made only when necessary for disbursements.

B. *Cost Allowability.* The Victims of Crime Act of 1984, as amended, specifically states that crime victim assistance grant funds may be used only for providing direct services to victims of crime. Only those costs directly related and essential to providing direct services to crime victims can be charged to the VOCA funded subgrant. The following items require specific discussion. For further guidance, see Office of Justice Programs' *Financial and Administrative Guide for Grants,* M7100.1, Chapter 5.

(1) *Audit costs:* Although under OMB Circular A–128 audit costs are generally allowable charges under Federal grants, audit costs incurred at the grantee (State) level are determined to be an administrative expense and, therefore, *cannot* be paid for with crime victim assistance grant funds. Reasonable audit costs incurred at the subgrantee level are, however, considered directly related and essential to the operation of the program and may be reimbursed as allowable costs.

(2) *Training:* An eligible subgrantee of crime victim assistance grant funds may only include as a budget item the reasonable cost of staff development for those persons (salaried and volunteer) staff who provide direct services to crime victims. Also included as an allowable cost are the necessary and reasonable travel expenses related to the participation of direct service staff in eligible training programs. Such costs are, however, permitted only within the State or a comparable geographic regon;

(3) *Printing and Postage:* An eligible subgrantee of crime victim assistance grant funds may include as a budget item reasonable costs of printing and distributing brochures and similar announcements to describe their program's victim services and how to obtain these services.

(4) *Examples of Ineligible Costs include:* the administrative costs associated with conducting surveys and needs assessments, developing manuals and protocols, fees for professional services rendered by doctors and lawyers, and those costs associated with fundraising activities.

c. *Audit Responsibilities.* Pursuant to the Office of Management and Budget (OMB) Circular A–128, "Audits of State and Local Governments," grantees, subgrantees, and subrecipients have the responsibility to provide for an audit of their activities. These audits shall be made annually, unless the State or local government has, by January 1, 1987, a constitutional or statutory requirement for less frequent audits. Note: Institutions of higher education, hospitals, and other nonprofit organizations have the responsibility to provide for an audit of their activities not less than every two years. While governments (state and local) receiving less than $25,000 in any fiscal year are exempt from a single audit, there is no audit exclusion for private nonprofit organizations. However, where state and local governments and nonprofit organizations received grants or other agreements less than $100,000 and do not obtain audits that meet the requirements of OMB Circulars A–110 and A–128, DOJ grantor organizations shall ensure that Federal funds are spent in accordance with applicable laws and regulations. Techniques to use to determine recipient compliance with Federal requirements are:

(1) Recipient obtained audits made in accordance with the Standards for Audit of Governmental Organizations, Programs, Activities, and Functions issued by the Comptroller General;

(2) Previous audits performed on recipients' operations;

(3) Desk reviews by program officials of project documentation;

(4) Project audits by Federal auditors or auditors obtained by recipients;

(5) Evaluations of recipients' operations by program officials.

These audits shall be made by an independent auditor in accordance with generally accepted government auditing standards governing financial and compliance audits. The required audits are to be performed on an organization-wide basis as opposed to a grant-by-grant basis. The audit reports must include:

(1) The auditor's reprot on financial statements of the recipient organization and a schedule of financial assistance showing the total expenditure for each Federal assistance program;

(2) The auditor's report on compliance containing:

(A) A statement of positive assurance with respect to those items tested for compliance, including compliance with law and regulations pertaining to financial reports and claims for advances and reimbursements;

(B) a negative assurance of those items not tested and a summary of all instances of noncompliance; and

(C) the auditor's report on the study and evaluation of internal control systems, which must identify the organization's significant internal accounting controls designed to provide reasonable assurance that Federal programs are being managed in compliance with applicable laws and regulation. It must also identify the

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controls that were evaluated, the controls that were not evaluated, and the material weaknesses identified as a result of that evaluation.

D. *Audit Objectives.* Grants and other agreements are awarded subject to conditions of fiscal, program and general administration to which the recipient expressly agrees. Accordingly, the audit objective is to review the recipient's administration of grant funds and required non-Federal contributions for the purpose of determining whether the recipient has:

(1) Financial statements of the government, department, agency, or establishment that present fairly its financial position and the results of its financial operations in accordance with generally accepted accounting principles;

(2) The organization has internal accounting and other control systems to provide reasonable assurance that it is managing Federal financial assistance programs in compliance with applicable laws and regulations; and

(3) The organization has complied with laws and regulations that may have material effect on its financial statements and on each Federal assistance program.

E. *Audit Implementation.* Grantees are required to specify their arrangement for complying with the provisions of OMB Circular A–128 and include in their grant application, to the extent possible, the following information:

(1) The identity of the organization that will conduct the audit;

(2) Approximate timing of when the audit will be performed;

(3) Audit coverage to be provided. Where the audit will not provide the coverage requirements as specified previously, the audit policy or procedures must describe the specific arrangements for obtaining audit services that will meet the requirements;

(4) An identification of the audit standards, if any, with which the grantee will not comply;

(5) Receipt and appropriate distribution of the resultant audit report; and

(6) Audit resolution policies and procedures to be followed in resolving the audit report.

F. *Fund Suspension or Termination.* If, after notice and opportunity for a hearing, the Office for Victims of Crime, Office of Justice Programs finds that a State has failed to substantially comply with the Victims of Crime Act, M7100.1, these proposed implementing Guidelines, or any implementing regulation, the Office for Victims of Crime, Office of Justice Programs may suspend or terminate funding to the State, or take other appropriate action. Only States may request a hearing; Subgrantees in the State may not.

**VII. Additional Requirements**

A. *Civil Rights*

(1) *General.* The Act provides that no person shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in connection with any activity receiving funds under the Act on the basis of race, color, religion, national origin, handicap, or sex. (See Section 1407(e) of the Act.) Recipients of funds under the Act are also subject to Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d (prohibiting discrimination in Federally-funded programs on the basis of race, color, or national origin), Section 504 of the Rehabilitation Act of 1973, 2 U.S.C. 794 (prohibiting discrimination in such programs on the basis of handicap), the Age Discrimination Act of 1975, 42 U.S.C. 6101, *et seq.*, and the Department of Justice Nondiscrimination Regulations, 28 CFR Part 42, Subparts C, D, and G.

(2) *Required Assistance and Information.* To be eligible for funding under the Act, a crime victim assistance program must submit the following assurances and information:

(a) An assurance that the program will comply with all applicable nondiscrimination requirements;

(b) An assurance that in the event a Federal or state court or Federal or state administrative agency makes a finding of discrimination after a due process hearing, on the grounds of race, color, religion, national origin, sex, age or handicap against the program, the program will forward a copy of the finding to the Office of Justice Programs, Office for Civil Rights (OCR);

(c) The name of the civil rights contact person who has lead responsibility in ensuring that all applicable civil rights requirements are met and who shall act as liaison in civil rights matters with OCR;

(d) An assurance that programs will maintain information on victim services provided by race, national origin, sex, age and handicap. Note: States are not required to submit this information as part of their program performance report.

B. *Confidentiality of Research Information.* No recipient of monies under the Victims of Crime Act of 1984, as amended, shall use or reveal any research or statistical information furnished under this program by any person and identifiable to any specific private person for any purpose other than the purpose for which such information was obtained in accordance with this program and Act. Such information shall be immune from legal process and shall not, without the consent of the person furnishing such information, be admitted as evidence or used for any purpose in any action, suit, or other judicial, legislative, or administrative proceeding. (See section 1407(d) of the Act.) This provision is intended, among other things, to assure the confidentiality of information provided by crime victims to crisis intervention counselors working for victim services programs receiving funds provided under this Act. Whatever the scope of application given this provision, it is clear that there is nothing in the Act or its legislative history to indicate that Congress intended to override or repeal, in effect, a State's existing law governing the disclosure of information which is supportive of the Act's fundamental goal of helping crime victims. For example, this provision would not act to override or repeal, in effect, a State's existing law pertaining to the mandatory reporting of suspected child abuse. See *Pennhurst State School and Hospital* v. *Halderman, et al.*, 451 U.S.1 (1981).

Approved:

**Jane Nady Burnley,**

*Director, Office for Victims of Crime.*

[FR Doc. 89–5217 Filed 3–6–89; 8:45 am]

BILLING CODE 3–4

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–416 ]**

### System Energy Resources, Inc., et al.; Grand Gulf Nuclear Station, Unit 1 Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–29, issued to Systems Energy Resources, Inc., *et. al.* (the licensee), for operation of the Grand Gulf Nuclear Station, Unit 1, located in Claiborne County, Mississippi.

**Environmental Assessment**

*Identification of Proposed Action*

The Technical Specifications (TS) Section 4.7.4 concerning surveillance requirements for snubbers contain three alternative sampling plans, one of which must be selected prior to surveillance testing of snubbers. Plan No. 1 requires at least 10% of the total number of each type of snubber to be functionally



tested. If acceptance criteria are not met, an additional 5% are required to be tested until no failures are found or until all snubbers are tested. Plan No. 2 requires an initial sample of at least 37 snubbers to be tested. The plan contains criteria for acceptance of the remainder of the untested population. Criteria for continued testing, and rejection criteria. Rejection criteria require that if the number of failures exceeds a specified small percentage of snubbers tested (7.5% to 10%), then all the remainder of the snubbers must be tested. Plan No. 3 requires an initial sample of at least 55 snubbers to be tested. For each snubber which fails to meet acceptance criteria another sample of at least ½ the size of the initial sample is required to be tested until the total number tested equals the initial sample size times the factor (1+C/2) where C is the number of failed snubbers. Testing continues until acceptance criteria are met or until all snubbers are tested.

The proposed amendment would revise the provisions in the Technical Specifications (TS) relating to Section 4.7.4 concerning surveillance requirements for snubbers by: (1) changing sampling plan No. 2 to eliminate the requirement to test all snubbers if the number of test failures exceeds a specified number, and (2) deleting sampling plan No. 3. In addition, the Bases for TS 3/4.7.4 would be changed to reflect the TS changes.

The proposed action is in accordance with the licensee's application for amendment dated July 25, 1988.

*The Need for the Proposed Action*

The proposed change to snubber sampling plan No. 2 is needed to reduce radiation exposure to testing personnel by eliminating unnecessary surveillance testing of 100% of the snubbers. The surveillance testing verifies that the snubbers are capable of maintaining the structural integrity of safety related systems during an earthquake or other events resulting in dynamic loads. Sampling plan No. 2 would still require an initial sample of 37 snubbers and continued testing until either the acceptance criteria are met or all the snubbers are tested. The proposed change does not change the acceptance criteria for continued snubber testing. The proposed change would eliminate the rejection criteria, which require testing of 100% of the snubbers if a small number of the sample tested do not meet the acceptance criteria. The elimination of the rejection criteria without changing acceptance criteria will result in an insignificant increase in the probability of accepting snubbers that do not meet acceptance criteria. The radiation exposure accumulated during the first refueling outage for snubber inspections using sampling plan No. 2 was 3.2 man-rem and during the second refueling outage the radiation exposure for snubber inspection was 29 man-rem. The projected potential exposure for the third refueling outage, without the proposed change is 60.2 man-rem. The proposed change to sampling plan No. 2 will reduce radiation exposure by eliminating unnecessary surveillance testing of snubbers.

The proposed elimination of sampling plan No. 3 is requested to simplify the TS. This plan has not been used and there is no need for it in future testing.

*Environmental Impacts of the Proposed Action*

The Commission has completed its evaluation of the proposed revision to the TS and concludes that the proposed TS would provide a small increase in the probability of operating with snubbers that do not pass functional tests, but the increase is not significant. Therefore, the proposed amendment does not significantly increase the probability or consequences of any accident. The Commission also concludes that the amendment involves no significant increase in the amounts and no significant change in the types of any effluents that may be released offsite and that there should be no significant increase in individual or cumulative occupational radiation exposure because the proposed change would reduce radiation exposure of testing personnel. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed change to the TS involves requirements with respect to installation or use of a facility component located within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed amendment.

*Alternative to the Proposed Action*

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in increased radiation exposure of snubber testing personnel.

*Alternative Use of Resources*

This action does not involve the use of any resources not previously considered in the "Final Environmental Statement related to the operation of Grand Gulf Nuclear Station, Units 1 and 2," dated September 1981.

*Agencies and Persons Consulted*

The NRC staff reviewed the licensee s request and did not consult other agencies or persons.

**Finding of No Signficant Impact**

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated July 25, 1988, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, N.W., Washington, DC and at the Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

Dated at Rockville, Maryland, this 1st day of March 1989.

For the Nuclear Regulatory Commission.

**Edward A. Reeves,**

*Acting Director, Project Directorate II–1, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 89–5207 Filed 3–6–89; 8:45 am]

BILLING CODE 7590–01–M

### Advisory Committee on Reactor Safeguards Instrumentation and Control Systems; Meeting

The ACRS Subcommittee on Instrumentation and Control Systems will hold a meeting on March 29, 1989, Room P–110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

*Wednesday, March 29, 1989—1:00 p.m. until the conclusion of business*

The Subcommittee will review the proposed resolution of Generic Issue 101, "BWR Water Level Redundancy."

Oral statements may be presented by members of the public with the

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concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Medhat El-Zeftawy (telephone 301/492-9901) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Date February 28, 1989.

**Morton W. Libarkin,**

*Assistant Executive Director for Project Review.*

[FR Doc. 89-5200 Filed 3-6-89; 8:45 am]

BILLING CODE 7590-01-M

### Advisory Committee on Reactor Safeguards Joint Subcommittees on Materials and Metallurgy and Structural Engineering; Meeting

The ACRS Subcommittees on Marterials and Metallurgy and Structural Engineering will hold a joint meeting on March 23, 1989, Room P-422, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting will be as follows:

*Thursday, March 23, 1989-8:30 a.m. Until the Conclusion of Business*

The Subcommittees will review the proposed amendment to the pressurized thermal shock (PTS) rule updating the formula given in the PTS rule for calculating the level of radiation embrittlement in reactor vessel beltline and the staff's position on reactor support embrittlement.

Oral statement may be presented by member of the public with the concurrence of the Subcommittee Chairman; written statement will be accepted and made available to the Committee. Recordings will be permitted only druing those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommitee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Staff member named below as far in advance as is practicable so that apropriate arrangements can be made.

During the inital protion of the meeting, the Subcommittees, along with any of their consultants who may be present, may exchange preliminary views regarding maters to be considered during the balance of the meeting.

The Subcommittees will than hear presentations by and hold discussions with representatives of the NRC Staff, their consultants, and other interested persons regrading this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS Staff member, Mr. Elpidio Igne (telephone 301/492-8192) Between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Date: February 28, 1989.

**Morton W. Libarkin,**

*Assistant Executive Director for Project Review.*

[FR Doc. 89-5201 Filed 3-6-89; 8:45 am]

BILLING CODE 7590-01-M

### Advisory Committee on Reactor Safeguards Maintenance Practices and Procedures; Meeting

The ACRS Subcommittee on Maintenance Practices and Procedures will hold a meeting on March 30, 1989, Room P-110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting will be as follows:

*Thursday, March 30, 1989-8:30 a.m. Until the Conclusion of Business*

The Subcommittee will review the proposed maintenance rule.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, their consultants, and other interested persons regrading this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS Staff member, Mr. Herman Alderman (telephone 301/492-7750) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Date: February 28, 1989.

**Morton W. Libarkin,**

*Assistant Executive Director for Project Review.*

[FR Doc. 89-5202 Filed 3-6-89; 8:45 am]

BILLING CODE 7590-01-M

### Regulatory Guide; Issuance and Availability

The Nuclear Regulatory Commission has issued a new guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.



Regulatory Guide 3.61, "Standard Format and Content for a Topical Safety Analysis Report for a Spent Fuel Dry Storage Cask," provides guidance on the type of information needed by the NRC staff for its evaluation of a Topical Safety Analysis Report for a spent fuel storage cask. The guide also provides a format for submitting this information.

Comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time. Written comments may be submitted to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Copies of issued guides may be purchased from the Government Printing Office at the current GPO price. Information on current GPO prices may be obtained by contacting the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013-7082, telephone (202) 275-2060 or (202) 275-2171. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland this 28th day of February 1989.

For the Nuclear Regulatory Commission.

**Eric S. Beckjord,**

*Director, Office of Nuclear Regulatory Research.*

[FR Doc. 89-5208 Filed 3-6-89; 8:45 am]

BILLING CODE 7590-01-M

**[Docket Nos. 50-369 and 50-370]**

### Duke Power Co.; Issuance of Amendments to Facility Operating Licenses and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License No. NPF-9 and Facility Operating License No. NPF-17 issued to Duke Power Company (the licensee), for operation of the McGuire Nuclear Station, Units 1 and 2, located in Mecklenburg County, North Carolina.

The proposed amendments would revise Technical Specification (TS) 4.8.1.1.2.e to allow certain 18-month diesel generator surveillances that are presently required to be performed during unit shutdown, to also be conducted during unit operation (i.e., without restriction to the shutdown mode). Specifically, the existing mode restriction would be removed from the following subparagraphs of TS 4.8.1.1.2.e: 2, 3, 5, 6.c, 6, 11, 12, 13, 14, and 15. The remaining subparagraphs would retain the shutdown mode restriction, but the restriction would be designated separately for each subparagraph, rather than collectively. The amendments were requested in a letter dated February 10, 1989.

Prior to issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By April 6, 1989, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rule of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW. Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to David B. Matthews, Director, Project Directorate II-3: (petitioner's name and telephone number); (date petition was mailed); (plant name); and (publication date and page number of this Federal Register notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes it technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated February 10, 1989, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28242.

Dated At Rockville, Maryland, this 1st day of March 1989.

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For the Nuclear Regulatory Commission.

**Darl S. Hood**

*Project Manager, Project Directorate II–3, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 89–5208 Filed 3–6–89; 8:45 am]

BILLING CODE 7590–01–M

**[Docket Nos. 50–282 and 50–306]**

**Northern States Power Co.; Issuance of Amendments to Facility Operating Licenses and Opportunity for Hearing**

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses Nos. DPR–42 and DPR–60, issued to the Northern States Power Company (the licensee), for operation of the Prairie Island Nuclear Generating Plant, Units Nos. 1 and 2, located in Goodhue County, Minnesota.

In accordance with the licensee's application for amendments dated October 24, 1988, the amendments would change the operating license to permit the transfer of by-product material to Prairie Island Nuclear Generating Plant facility from other Northern States Power Company job sites for volume reduction and decontamination.

Prior to issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By April 6, 1989, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendments under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–800–325–6000 ( in Missouri 1–800–342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Theodore R. Quay (petitioner's name and telephone number); (date petition was mailed); (plant name); and (publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendments after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its intent to make a no significant hazards consideration finding in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendments dated October 24, 1988, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Dated at Rockville, Maryland, this 28th day of February 1989.

For the Nuclear Regulatory Commission.

**Albert W. De Agazio,**

*Acting Director, Project Directorate III–1, Division of Reactor Projects—III, IV, V & Special Projects.*

[FR Doc. 89–5206 Filed 3–6–89; 8:45 am]

BILLING CODE 7590–01–M

## SMALL BUSINESS ADMINISTRATION

**[Declaration of Disaster Loan Areas #2343]**

**Declaration of Disaster Loan Area; Kentucky**

As a result of the President's major disaster declaration on February 24, 1989, I find that Anderson, Bourbon, Bullitt, Butler, Casey, Franklin, Hardin, Harrison, Henry, Jessamine, Larue, Mercer, Nelson, Owen, Pendleton, Trimble, Washington, and Woodford Counties, constitute a disaster loan area due to severe storms and flooding beginning on or about February 13, 1989. Eligible persons, firms, and organizations may file applications for physical damage until the close of business on April 27, 1989, and for economic injury until the close of business on November 24, 1989, at the address listed below:

Disaster Area 2 Office, Small Business Administration, 120 Ralph McGill Blvd., 14th Fl., Atlanta, Georgia 30308

or other locally announced locations. In addition, applications for economic injury from small businesses located in the contiguous counties of Adair, Boyle, Bracken, Breckinridge, Campbell, Carroll, Clark, Edmonson, Fayette, Gallatin, Garrard, Grant, Grayson, Green, Hart, Jefferson, Kenton, Lincoln, Logan, Madison, Marion, Meade, Montgomery, Muhlenberg, Nicholas, Ohio, Oldham, Pulaski, Robertson, Russell, Scott, Shelby, Spencer, Taylor, and Warren in the State of Kentucky; Clark, Harrison, and Jefferson Counties in the State of Indiana; and Clermont County in the State of Ohio may be filed until the specified date at this location.

The interest rates are:

| | |
|---|---|
| Homeowners with credit available elsewhere | 8.000% |
| Homeowners without credit available elsewhere | 4.000% |
| Businesses with credit available elsewhere | 8.000 |
| Businesses and non-profit organizations without credit available elsewhere | 4.000% |
| Businesses and non-profit organizations (EIDL) without credit available elsewhere | 4.000% |
| Others (including non-profit organizations) with credit available elsewhere | 9.125% |

The number assigned to this disaster for physical damage is 234306 for the State of Kentucky. For economic injury the numbers are 673100 for the State of Kentucky; 673200 for the State of Indiana; and 673300 for the State of Ohio.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Date: February 28, 1989.

**Bernard Kulik,**

*Deputy Associate Administrator for Disaster Assistance.*

[FR Doc. 89–5228 Filed 3–6–89; 8:45 am]

BILLING CODE 8025–01–M



**[Declaration of Disaster Loan Areas #2340, #2341, & #2342]**

**Pennsylvania (And Contiguous Counties in the States of Maryland & Delaware); Declaration of Disaster Loan Area**

The Borough of Phoenixville, Chester County, and the contiguous counties of Berks, Delaware, Lancaster, and Montgomery, in the State of Pennsylvania; Cecil County, in the State of Maryland; and New Castle County, in the State of Delaware, constitute a disaster area as a result of damage from a fire in the Wallblock Inn, in the Borough of Phoenixville, which occurred on February 10, 1989. Applications for loans for physical damage as a direct result of this fire may be filed until the close of business on May 1, 1989 and for economic injury as a direct result of this fire until the close of business on December 1, 1989 at the address listed below: Disaster Area 2 Office, Small Business Administration, 120 Ralph McGill Blvd., 14th Fl., Atlanta, GA 30308; or other locally announced locations.

The interest rates are:

| | Percent |
|---|---|
| Homeowners With Credit Available Elsewhere | 8.000 |
| Homeowners Without Credit Available Elsewhere | 4.000 |
| Businesses With Credit Available Elsewhere | 8.000 |
| Businesses and Non-Profit Organizations Without Credit Available Elsewhere | 4.000 |
| Businesses and Non-Profit Organizations (EIDL) Without Credit Available Elsewhere | 4.000 |
| Others (Including Non-Profit Organizations) With Credit Available Elsewhere | 9.125 |

The numbers assigned to this disaster for physical damage are 234005 for the State of Pennsylvania; 234105 for the State of Maryland; and 234205 for the State of Delaware. For economic injury the numbers are 672800 for the State of Pennsylvania; 672900 for the State of Maryland, and 673000 for the State of Delaware.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: March 1, 1989.

**James Abdnor,**

*Administrator.*

[FR Doc. 89–5225 Filed 3–6–89; 8:45 am]

BILLING CODE 8025–01–M

**Region IX Advisory Council; Public Meeting**

The U.S. Small Business Administration, Region IX Advisory Council, located in the geographical area of San Diego, will hold a public meeting at 10:00 a.m. on Tuesday, March 21, 1989, at the Federal Building, 880 Front Street, San Diego, California 92188, Room 2–S–14, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call George P. Chandler, Jr., District Director, U.S. Small Business Administration, 880 Front Street, Suite 4–S–29, San Diego, California 92188, 619/557–7252.

**Jeannette M. Paull,**

*Acting Director, Office of Advisory Councils.*

February 28, 1989.

[FR Doc. 89–5222 Filed 3–6–89; 8:45 am]

BILLING CODE 8025–01–M

**Region VII Advisory Council; Public Meeting**

The U.S. Small Business Administration, Region VII Advisory Council, located in the geographical area of Des Moines, will hold a public meeting at 10:00 a.m. on Wednesday, May 3, 1989, at the Grinnell City Hall, 927 4th Avenue, Grinnell, Iowa, to meet jointly with the Advisory Council for the U.S. Small Business Administration District Office located in Cedar Rapids, Iowa, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Conrad Lawlor, District Director, U.S. Small Business Administration, Grinnell City Hall, 927 4th Avenue, Grinnell, Iowa, 515/284–4567.

**Jeannette M. Paull,**

*Acting Director, Office of Advisory Councils.*

February 28, 1989.

[FR Doc. 89–5224 Filed 3–6–89; 8:45 am]

BILLING CODE 8025–01–M

**Region VII Advisory Council; Public Meeting**

The U.S. Small Business Administration, Region VII Advisory Council, located in the geographical area of St. Louis and Eastern Missouri, will hold a public meeting at 9:00 a.m. on Tuesday, March 21, 1989, at Peat Marwick Main & Co., 1010 Market Street, 20th Floor Conference Room, St. Louis, Missouri 63101, to discuss such matters as may be presented by

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members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Robert L. Andrews, District Director, U.S. Small Business Administration, 815 Olive St., Room 242, St. Louis, Missouri 63101, 314/539-6600.

**Jeannette M. Paull,**

*Acting Director, Office of Advisory Councils.*

February 28, 1989.

[FR Doc. 89-5223 Filed 3-6-89; 8:45 am]

BILLING CODE 8025-01-M

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

**[Docket 45951]**

### Application of Nashville Eagle, Inc., d/b/a American Eagle for Certificate Authority Under Subpart Q

**AGENCY:** Department of Transportation.

**ACTION:** Notice of order to show cause, Order 89-3-3.

**SUMMARY:** The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Nashville Eagle, Inc., fit and awarding it a certificate of public convenience and necessity to engage in domestic scheduled air transportation of persons, property, and mail.

**DATES:** Persons wishing to file objections should do so no later than March 17, 1989.

**ADDRESSES:** Objections and answers to objections should be filed in Docket 45951 and addressed to the Documentary Services Division (C-55, Room 4107), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Janet A. Davis, Air Carrier Fitness Division (P-56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-9721.

Dated: March 1, 1989.

**Patrick V. Murphy, Jr.,**

*Deputy Assistant Secretary for Policy and International Affairs.*

[FR Doc. 89-5203 Filed 3-6-89; 8:45 am]

BILLING CODE 4910-62-M

**[Docket No. 45813]**

### Brazil Cargo Charter Allocations (1989); Invitation to Apply

**AGENCY:** Department of Transportation.

**ACTION:** Invitation to apply for Brazil Cargo Charter Allocations (Order 89-3-2).

**SUMMARY:** On January 10, 1989, delegations of Brazil and the United States initialled a draft agreement which substantially expands charter air transportation opportunities for carriers of both countries. The charter provision of the *ad referendum* agreement provides for 100 round-trip cargo charters for carriers of each side to be operated during the 12-month period beginning April 1, 1989. Because of an earlier allocation which overlaps this period (Order 88-12-43), 69 charters now are available for distribution. The Department has decided to invite applications from carriers interested in operating some or all of these charters.

**DATES:** Applications shall be filed by March 10, 1989. Answers shall be filed not later than 7 calendar days thereafter.

**ADDRESSES:** Applications should be filed in Docket 45813, addressed to the Documentary Services Division, U.S. Department of Transportation, 400 Seventh Street, SW., Room 4107, Washington, DC 20590, and should be served on all parties in Docket 45813.

Dated: March 1, 1989.

**Patrick V. Murphy,**

*Deputy Assistant Secretary for Policy and International Affairs.*

[FR Doc. 89-5206 Filed 3-6-89; 8:45 am]

BILLING CODE 4910-62-M

### Federal Highway Administration

### Environmental Impact Statement

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project on the Lower Columbia River Highway (U.S. 30) in Columbia County, Oregon.

**FOR FURTHER INFORMATION CONTACT:** Elton Chang, Environmental Coordinator and Safety Programs Engineer, Federal Highway Administration, Equitable Center, Suite 100, 530 Center NE, Salem, Oregon 97301. Telephone: (503) 399-5749.

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with the Oregon Department of Transportation, will prepare an environmental impact statement (EIS) on a proposal to reconstruct a 6.3-mile section of the Lower Columbia River Highway (U.S. 30) in Columbia County, Oregon. The project would upgrade the existing two-four-lane roadway to a continuous four-lane section with a turning median and shoulder bicycle lanes included throughout. A sidewalk on one side would be provided in the urban sections of this improvement. The project is located on a highway which has been designated for improvement to promote economic development in Oregon ("Access Oregon Highway"). The project follows the Columbia River and passes through the small cities of St. Helens and Columbia City. The proposed improvement is considered necessary to provide for the existing and projected traffic demand and a safe and efficient highway meeting modern design standards.

Alternatives under consideration include the no-build and two alignment-shift options for the build alternative. One option would reduce project encroachment on adjacent residences and businesses by acquiring land from the Burlington Northern Railroad which abuts the existing highway right-of-way on one side throughout most of the project. The difference between the two build alignment options would be approximately a 16-foot shift in the proposed center line of the roadway.

Information describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies. Public meetings will be held during project development, and a public hearing will be held. No formal scoping meeting is planned at this time.

Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The provisions of Executive Order 12372, "Intergovernmental Review of Federal Programs" apply to this program.)

Issued on: February 27, 1989.

**Elton H. Chang,**

*Environment Coordinator/Safety Program Engineer, Oregon Division, Salem, Oregon.*

[FR Doc. 89-5175 Filed 3-6-89; 8:45 am]

BILLING CODE 4910-22-M

## DEPARTMENT OF THE TREASURY

### Fiscal Service

**[Dept. Circ. 570, 1988 Rev., Supp. No. 7]**

### Surety Companies Acceptable on Federal Bonds SCOR Reinsurance Co.

A Certificate of Authority as an acceptable surety on Federal Bonds is hereby issued to the following company under sections 9304 to 9308, Title 31, of the United States Code. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1988 Revision, on page 25074 to reflect this addition:

*SCOR Reinsurance Company.*

Business Address: 110 William Street, 15th Floor, New York, New York 10038. Underwriting Limitation [b]: $10,122,000. Surety Licenses [c]: AL, AR, CO, DE, FL, ID, IL, IA, LA, MD, MA, MN, MS, NE, NM, NY, OH, OR, PA, SC, TX, VT, WA, WY. Incorporated in: New York. Federal Process Agents [d].

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR Part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

Copies of the Circular may be obtained from the Surety Bond Branch, Finance Division, Financial Management Service, Department of the Treasury, Washington, DC 20227, telephone (202) 287-3921.

Dated: March 1, 1989.

**Mitchell A. Levine,**

*Assistant Commissioner, Comptroller, Financial Management Service.*

[FR Doc. 89-5171 Filed 3-6-89; 8:45 am]

BILLING CODE 4810-35-M

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# Sunshine Act Meetings

Federal Register
Vol. 54, No. 43
Tuesday, March 7, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**FEDERAL DEPOSIT INSURANCE CORPORATION**

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 3:07 p.m. on Wednesday, March 1, 1989, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider the following matters:

Recommendation regarding an administrative enforcement proceeding.

Recommendation concerning a request for certification under the Technical and Miscellaneous Revenue Act of 1988.

Recommendation concerning the Corporation's assistance agreement with an insured bank pursuant to section 13(c) of the Federal Deposit Insurance Act.

Recommendation regarding the Corporation's liquidation activities.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: March 2, 1989.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Deputy Executive Secretary.*

[FR Doc. 89-5308 Filed 3-3-89; 3:41 pm]

BILLING CODE 6714-01-M

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

March 1, 1989.

**TIME AND DATE:** 10:00 a.m., Thursday, March 9, 1989.

**PLACE:** Room 600, 1730 K Street, NW., Washington, DC.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** The Commission will consider and act upon the following:

1. *Tennessee Chemicals, Inc.*, Docket No. SE 85-63-M. (Issues include consideration of whether a violation occurred and whether it was the result of the operator's gross negligence.)

2. *Consolidation Coal Company*, Docket No. VA 87-27. (Issues include consideration of whether a violation occurred.)

Any person intending to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

**CONTACT PERSON FOR MORE INFORMATION:** Jean Ellen, (202) 653-5639/(202) 566-2673 for TDD Relay.

**Jean H. Ellen,**

*Agenda Clerk.*

[FR Doc. 89-5269 Filed 3-3-89; 12:38 pm]

BILLING CODE 6735-01-M

**FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS**

**TIME AND DATE:** 11:00 a.m., Monday, March 13, 1989.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: March 3, 1989.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 89-5359 Filed 3-3-89; 3:41 pm]

BILLING CODE 6210-01-M

**UNITED STATES INTERNATIONAL TRADE COMMISSION**

**TIME AND DATE:** Wednesday, March 8, 1989 at 3:00 p.m.

**PLACE:** Room 101, 500 E Street SW., Washington, DC 20436.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:**

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and Complaints:
   Certain Crystalline Cefadroxil Monohydrate Products (D/N 1488).
5. Any items left over from previous agenda.

**CONTACT PERSON FOR MORE INFORMATION:** Kenneth R. Mason, Secretary, (202) 252-1000.

**Kenneth R. Mason,**

*Secretary.*

February 24, 1988.

[FR Doc. 89-5382 Filed 3-3-89; 4:02 pm]

BILLING CODE 7020-02-M

**NUCLEAR REGULATORY COMMISSION**

**DATE:** Weeks of March 6, 13, 20, and 27, 1989.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Open and Closed.

**MATTERS TO BE CONSIDERED:**

**Week of March 6**

*Monday, March 6*

10:00 a.m.
Briefing on Operator Training (Public Meeting)

2:30 p.m.
Briefing on Status of Generic Issues (Public Meeting)

**Week of March 13—Tentative**

*Monday, March 13*

2:00 p.m.
Classified Security Briefing (Closed—Ex. 1)

*Wednesday, March 15*

10:00 a.m.
Briefing on Acceptance by DOE of Greater Than Class C Waste (Public Meeting)

2:00 p.m.
Preliminary Briefing on the Status of NUREG-1150 (Public Meeting)

*Thursday, March 16*

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)



**Week of March 20—Tentative**

*Wednesday, March 22*

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

**Week of March 27—Tentative**

*Tuesday, March 28*

2:00 p.m.
Discussion/Possible Vote on Full Power Operating License for South Texas, Unit 2 (Public Meeting)

*Wednesday, March 29*

10:00 a.m.
Briefing on Staff Proposal on Continuity of Government Program (Closed—Ex. 1)

2:00 p.m.
Briefing on Status of West Valley Project (Public Meeting)

*Thursday, March 30*

10:00 a.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

2:00 p.m.
Discussion/Possible Vote on Full Power Operating License for Vogtle, Unit 2 (Public Meeting)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting)

**ADDITIONAL INFORMATION:** Affirmation of "Final Rulemaking—Fitness-for-Duty Programs" scheduled for March 2, *postponed.*

By a vote of 4-0 (Commissioner Curtiss not participating) on March 2, 1989, the Commission determined pursuant to 5 U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that Commission business required that "Affirmation of Commission Decision—Shoreham Sanction Issue" (Public Meeting) scheduled for March 3, 1989, be held on less than one week's notice to the public.

Note.—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

**TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (301) 492-0292.**

**CONTACT PERSON FOR MORE INFORMATION:** William Hill (301) 492-1661.

**William M. Hill, Jr.,**

*Office of the Secretary.*

March 2, 1989.

[FR Doc. 89-5365 Filed 3-3-89; 3:41 pm]

BILLING CODE 7590-01-M

**UNITED STATES INTERNATIONAL TRADE COMMISSION**

**USITC SE-89-09**

**TIME AND DATE:** Wednesday, March 15, 1989 at 12:00 p.m.

**PLACE:** Room 101, 500 E Street, SW., Washington, DC 20436.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:**

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and Complaints:
   Certain Carrier Material Bearing Thermally Transferable Ink Compositions Used in a Process for Dry Adhesive-Free Thermal Transfer of Said Ink Compositions (D/N 1493).
5. Inv. No. 731-TA-389 (F) (3.5 Inch Microdisks and Media Therefor from Japan)—briefing and vote.
6. Inv. No. 731-TA-410 (F) (Certain Light-Walled Rectangular Pipes and Tubes from Taiwan)—briefing and vote.
7. Any items left over from previous agenda.

**CONTACT PERSON FOR MORE INFORMATION:** Kenneth R. Mason, Secretary, (202) 252-1000.

**Kenneth R. Mason,**

*Secretary.*

March 2, 1989.

[FR Doc. 89-5383 Filed 3-3-89; 4:17 pm]

BILLING CODE 7020-02-M

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# Corrections

Federal Register
Vol. 54, No. 43
Tuesday, March 7, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 522

### Implantation or Injectable Dosage Form New Animal Drugs Not Subject to Certification; Progesterone and Estradiol Benzoate

*Correction*

In rule document 89-3936 appearing on page 7406 in the issue of Tuesday, February 21, 1989, make the following correction:

In the second column, in the authority citation, in the first and second lines, "[21 U.S.C. 360b(i))" should read "21 U.S.C. 360b(i)]".

BILLING CODE 1505-01-D

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. 88N-0319]

### Blood Collection Kits Labeled For Human Immunodeficiency Virus Type I (HIV-1) Antibody Testing; Home Test Kits Designed To Detect HIV-1 Antibody; Open Meeting

*Correction*

In notice document 89-3734 beginning on page 7279, in the issue of Friday, February 17, 1989, make the following corrections:

1. On page 7280, in the second column, in the first complete paragraph, in the first line, "receiving" should read "reviewing.".

2. On the same page, in the third column, in the paragraph designated "4", in the sixth line, "kid", should read "kit".

BILLING CODE 1505-01-D

## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

### 14 CFR Part 241

[Docket No. 45529; Amdt. No. 241-58]

RIN 2137-AA99

### Aviation Economic Regulations; Updating the Accounting Provisions for Changes in GAAP

*Correction*

In the issue of Monday, February 27, 1989, on page 8261, the headings of the correction document that appeared in the third column, were innaccurate and should read as they appear above.

BILLING CODE 1505-01-D

federal register

Tuesday
March 7, 1989

Part II

# Environmental Protection Agency

**Filing System Guidance for Implementing 1506.9 and 1506.10 of the CEQ Regulations**

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**ENVIRONMENTAL PROTECTION AGENCY**

**Filing System Guidance for the Implementation of 1506.9 and 1506.10 of the CEQ Regulations Implementing the Procedural Provisions of the NEPA**

**Preamble**

In 1978, the Council of Environmental Quality (CEQ) and the Environmental Protection Agency (EPA) entered into a Memorandum of Agreement on the allocation of responsibilities of the two agencies for assuring the government-wide implementation of the National Environmental Policy Act of 1969 (NEPA). These responsibilities are consistent with the 1978 CEQ NEPA-Implementing Regulations (40 CFR Parts 1500–1508).

The Memorandum of Agreement transferred to EPA operational duties associated with the administrative aspects of the environmental impact statement (EIS) filing process. The Office of Federal Activities has been designated the official recipient in EPA of all EISs. It should be noted that the operational duties associated with the administrative aspects of the EIS process are totally separate from the substantive EPA reviews performed pursuant to both NEPA and section 309 of the Clean Air Act.

The purpose of the EPA Filing System paper is to provide guidance to federal agencies on filing EISs, including draft, final, and supplemental EISs. Information is provided on (1) Where to file; (2) number of copies required; (3) information required in the transmittal letter; (4) steps to follow when a federal agency is adopting an EIS or when an EIS is being withdrawn, delayed or reopened; (5) review periods; (6) notice of availability in the **Federal Register**; and, (7) retention of filed EISs.

On August 10, 1988, following consultation with CEQ, EPA sent the draft paper to 26 federal agencies for comment prior to its submission to the **Federal Register** for formal publication and implementation. EPA received comment letters from 16 agencies. Although this preamble does not respond to each comment individually all were carefully considered. A synopsis of the comments, other than editorial, and EPA's response follow:

*Section 3—Filing an EIS-Draft, Final and Supplemental*

As requested, clarification has been made that completion of the transmittal of an EIS is accomplished simultaneously with the filing with EPA. It was recommended that the cover letter include the official issuing agency number for the EIS being filed. EPA does not use an agency's number for the EIS being filed; therefore, it is not needed in the cover letter. An agency may, if it wishes, include the number because of internal requirements.

Information has been added to clarify that, in the case of filing an EIS that is not hand carried, the cover letter should state that transmittal has been completed. In addition, EPA will telephone the filing agency to verify that EPA has received the EIS.

At the recommendation of a commenter, EPA will now include a reference in the Notice of Availability when an agency adopts an EIS that does not require recirculation. This will not reopen the public comment period, but will complete the public record.

Several agencies commented on EPA's role in checking an EIS for "completeness and compliance." In response the specific subsection of the CEQ Regulations that recommends the standard format that an agency should follow unless the agency determines that there is a compelling reason to do otherwise has been identified—§ 1502.*10* of the CEQ Regulations—for clarification. EPA's review is to assure that the document meets certain minimum administrative requirements, i.e., there is a cover sheet, a summary of the statement, a table of contents, the name, address and telephone number of the agency is included, cooperating agencies are listed, etc. The format and explanation of each is found in § 1502.10 of the CEQ regulations. The review does *not* address the quality of the document's substance. Further, it is totally independent of EPA's review on environmental impacts under Section 309 of the Clean Air Act.

One commenting agency suggested deleting the sentence concerning reopening an EIS review period after a substantial amount of time has passed since the original review period closed. The commenting agency objected to the use of the word "substantial" without defining the term. EPA believes that the word substantial stands on its own merits and suggests that agencies use their best judgment in deciding what is reasonable. The intent is to keep the public informed. EISs reopened for review will be published in the Notice of Availability to inform all interested parties and to keep the public record current.

*Section 4—Notice in the* **Federal Register**

Language has been added to clarify that the Notice of Availability is published each Friday in the **Federal Register** for those EISs filed during the preceding week—e.g., the notice is published on January 13th for EISs filed between January 2nd and January 6th.

The last paragraph of this section has been deleted at the request of CEQ. CEQ will remain solely responsible for notification to the public of referral actions due to the process timeframes called for in the current CEQ Regulations.

*Section 5—Time Periods*

The section heading and opening paragraph have been edited to address many comments requesting clarification of time periods for draft and final EISs. The time period for review and comment on draft EISs shall not be less than 45 "calendar" days. CEQ Regulations do not address a review period for a final EIS. It is a 30 "calendar" day wait period during which no decision may be made to proceed with the proposed action.

Additional information has been added to address the question concerning calculated time periods ending on non-work days. When a calculated time period ends on a non-working day, the assigned time period will be the next working day.

Section 1506.10(b) of the CEQ Regulations allows for an exception to the rules of timing. Language has been included on exceptions relating to cases of an agency decision which is subject to a formal internal appeal. When exceptions are made by an agency, it is important to inform EPA so that it is accurately reflected in the Notice of Availability.

It was requested that the paper cite examples where both extensions and reductions of time periods have been granted by EPA and where CEQ has approved special cases. EPA appreciates the point but has declined to present examples since these are done on a case-by-case basis and each case is considered on its individual merits.

One commenting agency was concerned with having to request reductions and extensions of time periods in writing to EPA. The agency felt this put too much stress on a formal, and possibly time-consuming, process. Language has been added indicating EPA will accept these requests by telephone, but agencies should follow up in writing to ensure that EPA can maintain a complete record of the decision-making process.

One commenting agency requested that guidance be provided for filing of non-federal EISs, i.e., those prepared by state and local governments where federal statutes specifically identify these governments as the "federal official for the purposes of NEPA compliance." EPA's position is that EISs prepared by state and local governments for these federal programs are considered "federal" EISs by virtue of the fact that they are prepared in response to a federal statute—NEPA. Therefore, the same filing procedures apply to the filing of these "non-federal EISs" as those that apply to filing of federal EISs.



**General Comments**

EPA appreciates the comment concerning the length of the guidance and that it "burdens rather than provides useful guidance." However, EPA believes that the narrative format is easier to follow and more useful as a reference than a step by step outline or flow diagram of the process.

As indicated by one commenter, it should be noted that this guidance is intended only to improve the internal management of the Executive branch and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officials, or any person.

Dated February 28, 1989.

**Richard E. Sanderson,**

*Director, Office of Federal Activities.*

**EPA Filing System Guidance**

*1. Purpose.*

These guidelines provide information on filing environmental impact statements (EISs) required by the National Environmental Policy Act (NEPA) and the Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500–1508) for implementing the procedural provisions of NEPA. Sections 1506.9 and 1506.10 of the CEQ regulations set forward EPA's basic responsibilities for the filing process and authorize the Agency to issue guidelines to implement its responsibilities under these sections. The process of filing includes the following: (a) Reviewing and recording of the EISs so that information on them can be incorporated into EPA's computerized data base; (b) establishing the beginning and ending dates when draft and final EISs are officially available to the public; (c) publishing these dates in a "Notice of Availability" in the **Federal Register**; (d) retaining the EISs in a central repository; and (e) determining whether time periods can be lengthened or shortened for "compelling reasons of national policy."

EPA duties do not include responsibility for the distribution of EISs or for providing additional copies of already distributed EISs. These are the obligation of the lead agency preparing an EIS and are not addressed in this guidance. Nevertheless, EPA will assist the public and other federal agencies by providing agency contacts on, and information about, EISs.

*2. Background*

The official EIS filing system was transferred from the Council on Environmental Quality (CEQ) to the Environmental Protection Agency (EPA) effective December 5, 1977, as part of the reorganization of the Executive Office of the President. The functions of the filing system were further delineated by a Memorandum of Understanding between CEQ and EPA, dated March 29, 1978. CEQ promulgated its regulations for implementing the National Environmental Policy Act (NEPA) on November 29, 1978 (see 43 FR 55978).

The EPA filing system was created to provide an official log and public announcement of EISs received by EPA and to guarantee that the requirements of NEPA and the CEQ regulations are satisfied. It is a complete and separate filing system from the Environmental Review Process System which fulfills separate requirements under section 309 of the Clear Air Act for EPA to review and comment on EISs (and other actions) of federal agencies.

*3. Filing an EIS—draft, final and supplemental*

Federal agencies are required to prepare EISs in accordance with section 1502 of the Regulations and to file the EISs with EPA as specified in § 1506.9. The EISs must be filed no earlier than they are transmitted to commenting agencies and made available to the public. If an EIS is hand carried to EPA, the person delivering the document must complete a form stating that transmittal to all agencies is being made simultaneously with the filing with EPA. This will assure that the EIS is received by all interested parties by the time the EPA Notice of Availability appears in the **Federal Register**, and therefore allows for the full minimum review periods prescribed in § 1506.10. EPA will acknowledge by a phone call to the sender that it has received an EIS forwarded by means other than hand carried.

If EPA receives a request to file an EIS and transmittal of that EIS is not complete, the EIS will not be filed until assurances have been given that the transmittal process is complete. Similarly, if EPA discovers that a filed EIS has not been transmitted, EPA will retract the EIS from filing and not re-file the EIS until the transmittal process is completed. Once the agency has fulfilled the requirements of § 1506.9 and has completed the transmittal process, EPA will reestablish the filing date and the minimum time period, and will publish this information in the next Notice of Availability. Requirements for circulation of EISs appear in § 1502.19 of the regulations.

Federal agencies file an EIS by providing EPA with five (5) copies, including appendices. Material which is incorporated into the EIS by reference is not required to be filed with EPA. The agency filing the EIS (usually the lead agency if more than one is involved) should prepare a letter of transmittal to accompany the five copies of the EIS. The letter should identify the name and telephone number of the official responsible for both the distribution and contents of the EIS; should state that the transmittal has been completed; and should be addressed to:

U.S. Environmental Protection Agency,
Attention: Office of Federal Activities,
EIS Filing Section (Mail Code A–104),
Room 2119 Waterside Mall, 401 M Street SW., Washington, DC 20460.

Telephone inquiries can be made to (202) 382–5076 or FTS 382–5076.

EPA should be notified in writing of all situations where a federal agency is adopting an EIS, whether the document is recirculated and filed or adopted under the provisions of § 1506.3(c) of the regulations. If a federal agency chooses to adopt an EIS written by another agency and it was not a cooperating agency in the preparation of the original EIS, then the EIS must be re-transmitted and filed with EPA according to the requirements set forth in § 1506.3 of the CEQ regulations. In those cases where an agency can adopt an EIS without recirculating it, there is no necessity to file the EIS again with EPA. EPA should be notified, however, in order to ensure that the official log is accurate, and to include this information as a separate section within the Notice of Availability. This will not establish a comment period, but will complete the public record.

EPA also should be notified of all situations where an agency has decided to withdraw, delay or reopen a review period on an EIS. All such notices to EPA will be published in the **Federal Register**. In the case of reopening EIS review periods, the lead agency should notify EPA as to what measures will be taken to ensure that the EIS is available to all interested parties. This is especially important for EIS reviews that are being reopened after a

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substantial amount of time has passed since the original review period closed.

Once received by EPA, each EIS is stamped with an official filing date and checked for completeness and compliance with § 1502.10 of the CEQ regulations. If the EIS is not "complete" (i.e., if the documents do not contain those elements outlined in § 1502.10 of the regulations), EPA will contact the lead agency to obtain the omitted information or to resolve any problems prior to publication of the Notice of Availability in the **Federal Register**.

Agencies often publish (either in their EISs or individual notices to the public) a date by which all comments on an EIS are to be received. Agencies should ensure that the date they use is based on the date of publication of the Notice of Availability in the **Federal Register**. If the published date gives reviewers less than the minimum review time computed by EPA, then EPA will send the agency contact a letter explaining how the review period is calculated and the correct date by which comments are due back to the lead agency. This letter also encourages agencies to notify all reviewers and interested parties of the corrected review periods.

*4. Notice in the Federal Register*

EPA will prepare a weekly report of all EISs filed during the preceding week for publication each Friday under a Notice of Availability in the **Federal Register**. At the time EPA sends its weekly report for publication in the **Federal Register**, the report will also be sent to the CEQ. Information included in the report for each EIS is the same as the data entered in EPA's computerized data file. This includes an EIS Accession number (created by EPA), EIS status (draft, final, supplemental), date filed with EPA, the agency or bureau that filed the EIS, the state and county of the action that prompted the EIS, the title of the EIS, the date comments are due and the agency contact. Amended notices may be added to the Notice of Availability to include corrections, changes in time periods of previously filed EISs, withdrawals of EISs by lead agencies, and recision of EISs by EPA. A recision including nullifying the date the EIS was filed can occur, as explained earlier, if, after a filed EIS is published in the **Federal Register**, EPA is subsequently informed that the EIS has not been made available to commenting agencies and the public by the lead agency.

*5. Time Periods*

The minimum time periods set forth in § 1506.10(b), (c), and (d) are calculated from the date EPA publishes the Notice of Availability in the **Federal Register**. Review periods for draft EISs, draft supplements, and revised draft EISs shall extend 45 calendar days unless the lead agency extends the prescribed period or a reduction of the period has been granted. The wait periods for final EISs and final supplements shall extend for 30 calendar days unless the lead agency extends the period or a reduction or extension in the period has been granted. If a calculated time period would end on a non-working day, the assigned time period will be the next working day (i.e., time periods will not end on weekends or federal holidays).

It should be noted that § 1506.10(b) allows for an exception to the rules of timing. An exception may be made in the case of an agency decision which is subject to a formal internal appeal. Agencies should assure that EPA is informed so that the situation is accurately reflected in the Notice of Availability.

Under § 1506.10(d) EPA has the authority to both extend and reduce the time periods on draft and final EISs based on a demonstration of "compelling reasons of national policy." A lead agency request to EPA to reduce time periods or another federal agency request to formally extend a time period normally takes the form of a letter to the Director, Office of Federal Activities (OFA), EPA, outlining the reasons for the request. EPA will accept telephone requests; however, agencies should follow up such requests in writing so that the documentation supporting the decision is complete. A meeting to discuss the consequences for the project and any decision to change time periods may be necessary. For this reason EPA asks that it be made aware of any intent to submit requests of this type as early as possible in the NEPA process. This is to prevent the possibility of the time frame for the decision on the time period modification from interfering with the lead agency's schedule for the EIS. EPA will notify CEQ of any reduction or extension granted.

CEQ has the authority under section 1502.9(c)(4) to approve alternative procedures for preparing, circulating and filing supplemental draft and final EISs. The council will notify EPA of any such alternative procedures that are granted.

*6. Retention*

Filed EISs are retained in the EPA/OFA office for a period of two years and are made available for reviewing only. After two years the EISs are sent to the National Records Center. However, the EPA Library, Room 2904 Waterside Mall, 401 M Street, SW., Washington, DC 20460, houses a microfiche collection of final EISs issued from 1970 through 1977 and all draft, final and supplemental EISs filed from 1978 to the present time. Facilities for limited reproduction of the EISs are available.

A comprehensive collection of EISs is available for viewing and individual EISs are available on a loan basis at:

Northwestern University, Transportation Library–NEPA, 1935 North Sheridan Road, Evanston, Illinois 60201, Telephone: (312) 492–2913.

Final EISs prepared from 1970 through 1977, and any draft, final or supplemental EIS prepared from 1978 to the present time may be purchased in either microfiche or hardback copy from:

Information Resources Press, Herner and Company, 1700 North Moore Street, Arlington, Virginia 22209, Telephone: (703) 558–8275.

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Part III

# Environmental Protection Agency

**40 CFR Parts 124 and 270**

**Changes to Interim Status Facilities for Hazardous Waste Management; Modifications of Hazardous Waste Management Permits; Procedures for Post-Closure Permitting; Final Rule**

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 124 and 270

[FRL-3506-4]

# Changes to Interim Status Facilities for Hazardous Waste Management; Modifications of Hazardous Waste Management Permits; Procedures for Post-Closure Permitting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is today promulgating amendments to the hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) governing changes at interim status and permitted facilities, including redesignation of certain permit modifications as Class 1. Today's rule also amends the hazardous waste permitting regulations to clarify the Agency's authority to deny permits for the active life of a facility while a permit decision with respect to the post-closure period remains pending.

EFFECTIVE DATE: March 7, 1989.

ADDRESS: The public docket for this rulemaking is available for public inspection in Room S-212, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. The docket number is F-87-RIPP-FFFFF. The public must make an appointment to review docket materials by calling (202) 475-9327. The public may copy a maximum of 50 pages of material from any one regulatory docket at no cost; additional copies cost $0.20 per page.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline at (800) 424-9346 (in Washington, DC call 382-3000) or Barbara Foster, Office of Solid Waste, (OS-341), U.S. Environmental Protection Agency, Washington, DC 20460, telephone (202) 382-4751.

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## I. Authority

These regulations are issued under the authority of sections 2002(a), 3004, 3005, and 3006 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6912(a), 6924, 6925, and 6926.

## II. Background

Subtitle C of the Resource Conservation and Recovery Act (RCRA) creates a "cradle-to-grave" management system intended to ensure that hazardous waste is identified and properly transported, stored, treated, and disposed. Subtitle C requires EPA to identify hazardous waste and to promulgate standards for generators and transporters of such wastes. Under section 3004 of RCRA, owners and operators of treatment, storage, and disposal facilities are required to comply with standards "necessary to protect human health and the environment." These standards are generally implemented initially through interim status standards and later through permits that are issued under authorized State programs or by EPA.

Under section 3005(a) of RCRA, all treatment, storage, and disposal of hazardous waste are prohibited, except in accordance with a permit that implements the section 3004 standards. However, recognizing that the issuance of permits can be time consuming, Congress created "interim status" for facilities in existance on the effective date of EPA's permitting regulations (November 19, 1980). Under section 3005(e), owners and operators of hazardous waste treatment, storage, and disposal facilities in existance on that date who submitted a Part A permit application and a section 3010 notification are treated as having been issued permits until an authorized State or EPA takes final administrative action on their permit applications.

On August 14, 1987, the Agency proposed amendments to its regulations regarding changes at interim status facilities, procedures on post-closing permitting, and permit modifications. On November 17, 1988 the Agency issued a Federal Register notice soliciting public comment on the need to further amend its regulations on permit modification procedures. Those proposed amendments are discussed below.

### *A. Changes at Interim Status Facilities*

An interim status facility generally may change its waste management operations without notification or prior Agency approval, except for changes specifically identified at 40 CFR 270.72. Under previous regulations, these changes were: (1) The handling of wastes not previously identified in Part A of the permit application; (2) increase in design capacity of processes where there is a lack of available capacity at other waste management facilities; (3) changes in or addition of processes if necessary to protect human health and the environment or to comply with Federal regulations or State or local laws; and (4) changes in ownership or operational control of a facility. Section 270.72 specifies procedures and criteria for each of these changes. Prior approval by the Director is required before facilities can increase design capacity, add or make changes in processes, or change ownership under § 270.72. Prior to today's rule, the reconstruction limit (the former § 270.72(c)) prohibited any of the above changes to an interim status facility that required a capital expenditure equaling or exceeding 50 percent of the cost of constructing a comparable new hazardous waste management facility, except for changes necessary to comply with the recently promulgated tank standards (51 FR 25422, July 14, 1986) and certain changes to treat or store in tanks or containers hazardous wastes subject to land disposal restrictions (52 FR 25760, July 8, 1987).

EPA believes that these regulations may in some cases unnecessarily restrict interim status facilities' flexibility, particularly in complying with new regulatory requirements. The consequences include a potential delay for some facilities in complying with new requirements and, in some cases, increased risk to human health and the environment. In fact, some interim status facilities may have no means to operate in compliance with the RCRA regulations while EPA or an authorized State reviewed their application for a RCRA permit. To avoid these undesirable results, the Agency proposed several regulatory changes on August 14, 1987 (52 FR 30570) to increase flexibility for owners and operators of interim status facilities to make changes necessary to comply with Federal, State, or local regulatory requirements. Today's notice promulgates this proposal as a final rule.

### *B. Post-Closure Permitting*

The permitting regulations specify that RCRA permits cover both the active life (including the closure period) of a facility and, where applicable, the post-closure care period.

A permit applicant required to obtain an operating permit must include all necessary post-closure information in its Part B permit application for the application to be "complete" and thus initiate the review process. When the application is complete, EPA's decision to issue a permit applies to the whole permit, including the portion of the permit concerning post-closure care. In practice, however, EPA has found it necessary to separate the decision to deny a permit to operate a unit from the decision to issue a permit covering post-closure conditions. As the August 14, 1987 proposal stated, this practice has been necessary to ensure prompt closure of facilities that fail to meet the regulatory standards. The former regulations, however, did not specifically provide for a separation of the permit decision for the active life of the facility from post-closure permit decision.

In the August 14, 1987 Federal Register notice, the Agency proposed to amend its permitting regulations to clarify its authority to deny permits for the active life (including the closure period) of a facility while a permit decision with respect to the post-closure period remains pending.

### *C. Permit Modifications*

#### 1. Newly Listed or Identified Wastes

Whenever EPA lists a new hazardous waste or identifies a new hazardous characteristic, facilities handling that waste must come into compliance with Subtitle C requirements. Unpermitted facilities may continue to handle the waste without Agency approval if they comply with interim status requirements in Part 265 and they submit to EPA a Part A application and a section 3010 notice. Permitted facilities, however, were required to secure a permit modification incorporating the newly listed or identified waste before the effective date of the new listing or identification. Under previous regulations, such a change required a "major" permit modification. The major modification procedures of the former § 270.41 included the full administrative procedures that apply to issuance of a permit; the only significant difference was that, for a major modification, only those conditions of the permit to be modified were reopened.

Because of concerns over inequitable treatment of permitted versus interim status facilities, EPA proposed in the August 14 Federal Register notice to allow newly listed or identified wastes, and the units handling such wastes, to be added to permits as minor permit modifications if the facility owner or operator requested a major modification within 180 days.

Today's rule, however, does not finalize this proposal because the Agency has already addressed this problem as part of the recent amendments to the permit modification regulations (53 FR 37912, September 28, 1988). Comments received on the August 14 proposal for today's rule were addressed in the September 28 final permit modification rule. As a result of the permit modification rule, permitted facilities can now more easily modify permits to allow for handling of newly listed or identified wastes in a manner more consistent with interim status facilities.

#### 2. Land Disposal Restrictions

The permit modification regulations that EPA published on September 28, 1988 (53 FR 37912) established a new three-tiered system of permit modifications. In that rule, specific facility changes were classified as either Class 1, 2, or 3 modifications. This rule did not specifically address changes necessary to comply with the land disposal restrictions. However, in the course of developing land disposal restrictions for the First Third scheduled wastes (53 FR 31138, August 17, 1988) and the California list wastes (52 FR 25760, July 8, 1987), EPA received several comments on the need to provide increased flexibility for permitted facilities that need to make changes to comply with these requirements. Therefore, on November 17, 1988 (53 FR 46474), the Agency reopened the comment period on the facility changes rulemaking to solicit comment on whether certain facility changes stemming from the land disposal restrictions program should be Class 1 permit modifications.

The permit modifications addressed in the November 17 Federal Register notice are similar to two previous minor modifications that were superseded by the new permit modification procedures adopted on September 28, 1988. Former § 270.42(o) allowed facilities to add new waste codes to their permits if the wastes were restricted under Part 268, met the applicable treatment standards, and were not substantially different from currently handled wastes. Similarly, § 270.42(p) allowed the addition of new treatment processes used to treat restricted wastes to Best Demonstrated Available Technology (BDAT) levels as long as those processes took place in tanks and containers and the facility requested a major permit modification. (*See* 52 FR 25760, July 8, 1987).

## III. Section by Section Analysis

### *A. Summary*

Today's rule generally adopts the provisions of the proposed rule of August 14, 1987 related to changes at interim status and permitted facilities and post-closure permitting. It provides greater flexibility to interim status facilities to: (1) Increase design capacity, if approved by the Director as necessary to comply with Federal, State, or local requirements, and (2) make changes specified in section 3008(h) corrective action orders or similar orders issued by State or local authorities or by a court. It also lifts the "reconstruction" limit for: (1) Changes to certain units so long as they are necessary to comply with Federal, State, or local requirements; (2) changes necessary to allow continued handling of newly listed or identified hazardous wastes; (3) changes made in accordance with an approved closure plan; and (4) changes made pursuant to a corrective action order. In addition, it promulgates the proposed clarification that EPA can deny permits for the active

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life of a facility while a decision on post-closure permitting is pending.

As part of today's changes to § 270.72, the Agency also reorganized that entire section. Under the new organization, paragraph (a) lists the changes that are regulated under § 270.72 and paragraph (b) contains all provisions related to the reconstruction limit. Note that a requirement that new land disposal units at interim status facilities certify compliance with groundwater and financial responsibility requirements within a year was proposed in § 270.72(c) but is promulgated today at § 270.73(e) in this final rule. The following chart cross references the former § 270.72 with today's rule.

RELATIONSHIP OF TODAY'S RULE TO THE FORMER SECTION 270.72

| Previous citation | Today's rule |
|---|---|
| (a) | (a)(1) |
| (b) | (a)(2) |
| (c) | (a)(3) |
| (d) | (a)(4) |
| (e) | (b) |

It should also be noted that the Agency made a minor clarification to the section now designated as § 270.72(a)(1). That section provides that an interim status facility may continue to handle a newly listed or identified waste not previously identified in the Part A permit application if the owner or operator submits a revised Part A. The Agency has added language in today's rule to remove any possible ambiguity that the unit currently handling the newly listed or identified waste may be added under that provision as well. Thus, when EPA lists or identifies a new waste, the facility may continue to handle the waste in the same unit without obtaining prior Director approval. This situation for interim status facilities is analogous to that of unpermitted and permitted facilities handling newly identified wastes, both of which can make this change without prior Director approval.

Because today's rule has no substantive effect on former § 270.72(a) (now § 270.72(a)(1)) and § 270.72(d) (now § 270.72(a)(4)) the Agency did not address public comments related to those sections in this notice. Although only portions of § 270.72 are being amended by today's rule, it is printed in its entirety for the convenience of the reader.

Today's publication of § 270.72(b) also serves to correct a technical error created by a final rule published on July 8, 1987 (52 FR 25760). In another final rule published on July 14, 1986, the Agency amended the former § 270.72(e) to eliminate the reconstruction limit for changes made solely to comply with the requirements of § 265.193 for tanks and ancillary equipment. In the July 8, 1987 rule, the Agency again amended the former § 270.72(e) to lift the reconstruction limit for certain changes at interim status facilities made to implement the land disposal restrictions and, at the same time, inadvertently omitted the July 14, 1986 amendment. Today's publication of § 270.72(b) incorporates all amendments to the reconstruction limit to date; the amendment related to tanks and ancillary equipment is found in § 270.72(b)(1) and the land disposal restriction amendment is found in § 270.72(b)(6).

In addition to adopting the interim status and post-closure permitting provisions of the proposed rule, today's rule also modifies the regulations at § 270.42 to reclassify as Class 1 certain permit modifications necessary to enable facilities to comply with the land disposal restrictions. Specifically, it allows owners and operators of permitted facilities to add new waste codes, or a narrative description, to a permit as Class 1 modifications where the added wastes are: (1) Restricted wastes that have been treated to meet the applicable Part 268 treatment standard, or (2) residues from treating so called "soft hammer" wastes, and (3) certain wastewater treatment residues and incinerator ash. The rule also allows as a Class 1 modification, without prior approval, the addition of new wastes for treatment in tanks or containers under certain limited conditions. Finally the rule allows as a Class 1 modification, with prior Director approval, the addition of new treatment processes, as long as those processes are necessary to treat restricted wastes to meet treatment standards and the treatment processes are to take place in tanks or containers.

*B. Changes at Interim Status Facilities*

1. Increases in Design Capacity

Today's rule (§ 270.72(a)(2)) allows owners and operators to increase design capacity of processes at a facility when the Director approves the change as necessary to comply with Federal, State, or local requirements. This new provision expands the reasons for allowing capacity increases; the former § 270.72(b) allowed owners and operators to increase design capacity only if the Director approved the change because of a demonstrated lack of available capacity at other waste management facilities.

This change will allow interim status facilities to comply with new requirements, including those imposed by HSWA, and will, therefore, provide increased public and environmental protection. In the preamble to the proposal of this rule, the Agency set forth several examples to demonstrate this point. (*See* 52 FR 30570 at 30573). No comments were submitted in opposition to this amendment. For these reasons, the Agency is adopting the proposed § 270.72(a)(2)(i) to allow increases in design capacity necessary to comply with new requirements.

Several commenters, however, requested that the Agency clarify whether "increases in design capacity of processes" could include the addition of new units at a facility. Section 270.72(a)(2) does allow the Director to approve addition of new units at a facility to increase the capacity of a process already in operation at the facility. It should be noted, however, that addition of a unit of a type not already present at the facility would be considered a change in process rather than an increase in design capacity, and therefore would fall under § 270.72(a)(3). (*See* section III.B.2 of this preamble).

Another commenter argued that § 270.72(a)(2)(i), which allows the Director to approve an increase in design capacity because there is a lack of available capacity elsewhere, frustrates implementation of the minimum technology requirements of section 3004(o) by requiring a finding of lack of available capacity before increases in design capacity can be made. EPA believes that the new § 270.72(a)(2)(ii) addresses this commenter's concern. As explained above, EPA or a State Director may approve an increase in design capacity under this section if the change is necessary to comply with Federal, State, or local requirements, regardless of whether or not other capacity is available. The preamble to the proposal specifically references the facility changes necessary to comply with section 3004(o) as being the type of Federally mandated requirement that would qualify as an appropriate reason for EPA or a State to approve an interim status change.

2. Changes in or Addition of Processes

Under the former § 270.72(c), owners and operators could make changes in or add processes at a facility if the Director approved the change as necessary either to protect human health and the environment in an emergency or to comply with Federal regulations or State or local laws. The corresponding provision in today's rule, § 270.72(a)(3), has been amended to clarify that "Federal regulations or State or local laws" encompasses all Federal, State, and local requirements. This includes regulations, orders, statutes, and permit-related requirements such as approved closure plans. EPA received no comments opposing this clarifying amendment.



3. Corrective Action

Section 3008(h) authorizes the Agency to order a facility owner or operator to conduct corrective action during interim status when the Agency determines that there is or has been a release of hazardous waste into the environment. Section 270.72(a)(5) promulgated today allows interim status facilities to make changes in accordance with corrective action orders issued by the Agency under section 3008(h) or other Federal authority (or orders issued by a Director under an equivalent State authority). In today's rule, the Agency has modified the language proposed in § 270.72(a)(5) to clarify that when the Agency or a State seeks corrective action through judicial proceedings and a court, rather than the Agency or State, issues an order requiring corrective action, changes made in accordance with such an order would also be permissible changes under § 270.72(a)(5).

In addition to the new § 270.72(a)(5), today's rule also promulgates § 270.72(b)(5), which removes the reconstruction limit for changes made in accordance with such corrective action orders.

Under the new § 270.72(a)(5), facility changes introduced in accordance with corrective action orders restricted to activities involving wastes associated with the facility. This limitation does not prevent treatment, storage, or disposal of wastes released from within the facility that migrated beyond the facility's boundaries. Rather the limitation prevents the owner or operator from making changes under this authority to manage wastes and materials that have no relationship to the facility. The limitation for unrelated materials is necessary to prevent the owner or operator seeking to manage such materials from evading the permit requirement for new facilities and change in interim status requirements for facility modifications.

Some commenters expressed concern that the new § 270.72(a)(5) limits changes permissible for purposes of corrective action to those made in accordance with a corrective action order. The commenters argued that the provision should be expanded to allow changes necessary for voluntary corrective action to be made as well and that the reconstruction limit should not apply to voluntary corrective action measures. The commenters noted that corrective action done early can decrease the cost of clean-up and provide increased protection of human health and the environment. The Agency, however, limited the changes permissible under new § 270.72(a)(5) to those made in compliance with a corrective action order because voluntary corrective action would not typically involve EPA or State oversight or public notice. By requiring that the changes made under paragraph (a)(5) be made in accordance with a corrective action order, the Agency has assured that those changes will be subject to Agency review and, additionally, to public comment. Therefore, the Agency has not made the modification to § 270.72(a)(5) that the commenter suggested.

The Agency, nevertheless, believes that the regulations already provide significant flexibility for voluntary corrective action at interim status facilities. Section 270.72(a) (2) and (3) allow the Director to approve increases in design capacity or the addition of new processes, if necessary to comply with Federal, State, or local requirements. This would include changes made as part of voluntary corrective action taken in anticipation of a section 3008(h) order or section 3004(u) permit conditions. These changes, however, would be subject to Director approval and would be limited by the reconstruction cap of § 270.72(b).[1]

Sections 270.72(a) (2) and (3) and 270.72(a)(5), therefore, impose somewhat different requirements on different types of corrective action. Where EPA or a State has required specific corrective action as part of a section 3008(h) or similar order, or a court has ordered correction action, approval of that action as a change in interim status is not necessary, and the reconstruction limit does not apply (§ 270.72 (a)(5) and (b)(5)). On the other hand, where the action is not explicitly required in an order, or it is taken merely in anticipation of an order, Director approval is required and the reconstruction limit potentially applies (§ 270.72(a) (2) and (3)).

4. Loss of Interim Status

In some cases, new land disposal units may be added to a facility as a change in interim status. For example, a surface impoundment handling nonhazardous waste at an interim status facility might be brought into the system if EPA subsequently listed the waste as hazardous. In this case, § 270.73(e) of today's rule (proposed as § 270.72(c) but moved in the final rule to § 270.73 for purposes of clarity) would require the facility to certify, 12 months after the effective date of the listing, that the unit was in compliance with all applicable ground-water monitoring and financial responsibility requirements. EPA added this requirement to ensure comparable treatment of land disposal units containing newly identified hazardous wastes at permitted, unpermitted, and interim status facilities.

5. Other Issues

One commenter argued that the Agency should have the authority to approve any change in interim status that would improve environmental quality, decrease costs, or improve safety or efficiency. Another commenter argued that the Agency should allow changes made to: (1) Protect human health and the environment, (2) avoid disrupting ongoing waste management, and (3) enable the permittee to respond to sudden changes in the types or quantities of wastes being managed at the facility. The agency believes that the criteria suggested by these commenters are too broad. In adopting its regulation for interim status facilities, the Agency chose an approach it believed would allow reasonable modification to existing facilities without nullifying the requirements for obtaining a RCRA permit. (See 45 FR 33290 at 33324, May 19, 1980). As part of its approach, the Agency allowed increases in design capacity and addition of or changes in existing processes at interim status facilities only for specified reasons, and made those changes subject to Agency approval and to the reconstruction limit. The Agency continues to follow this approach in its regulations at § 270.72. EPA believes that the criteria suggested by the commenter might result in expansions at interim status facilities that require full public participation and other protections of the permitting process.

[1] The Agency addressed this general issue in the preamble to the proposed Mobile Treatment Unit (MTU) regulation (52 FR 20814 to 20930, June 3, 1987). In that preamble, the Agency explained that MTU's may be allowed to operate at interim status facilities as a change necessary to comply with Federal, State, or local requirements. The Agency then went further to say that the use of an MTU for studies at an interim status facility to determine whether a specific treatment could meet EDAT in accordance with the land disposal restrictions, or to select a remedial measure in anticipation of Agency action under sections 3008(h) or 3004(u) would likely qualify as an acceptable change in interim status.

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*C. Reconstruction Limit*

1. General

The former § 270.72(e) prohibited changes to an interim status facility that required a capital expenditure equalling or exceeding 50 percent of the cost of constructing a comparable new hazardous waste management facility. This "reconstruction limit" was designed to prevent facilities from circumventing permitting requirements by expanding significantly during interim status. This limitation was amended in EPA's new tank standards, issued on July 14, 1986 (51 FR 25422), which eliminated the reconstruction limit for changes made solely for the purposes of complying with the tank standards on § 265.193. It was further amended in a final rule issued on July 8, 1987 (52 FR 25760), which eliminated the reconstruction limit for changes made to treat or store, in tanks or containers, wastes subject to land disposal restrictions when the changes were made solely to comply with land disposal restrictions. The Agency believes, however, that there are additional changes that should be allowed at interim status facilities even when they amount to a reconstruction. The need for these changes is more compelling than the need to limit interim status facility expansion.

To allow those changes, today's rule eliminates the reconstruction limit for changes in interim status that EPA or the State Director determines to be necessary: (1) To comply with Federal, State, or local requirements, if the changes take place solely in existing units; in new tanks or containers; or in replacement surface impoundments that meet the minimum technology requirements of section 3004(o); or (2) to allow the owner or operator to continue to handle newly listed or identified hazardous wastes. It also amends the reconstruction limit to specify that it does not apply to corrective actions required by EPA or by States under authorized RCRA programs, or ordered by a court. Finally, it amends the reconstruction limit so that it does not apply during closure of a facility or of a unit within a facility that is done pursuant to an approved closure plan.

2. Federal, State, and Local Requirements

Section 270.72(b)(2) of today's rule lifts the reconstruction limit for changes to existing units, changes solely involving tanks or containers, and changes involving the addition of replacement surface impoundments meeting minimum technology requirements, if those changes are necessary to comply with Federal, State, or local requirements. As explained in the preamble to the August 14 proposal, this amendment will allow more expeditious compliance with new requirements, therefore improving protection of human health and the environment.

Several commenters argued that the scope of § 270.72(b)(2) was too narrow. For example, some commenters suggested that the reconstruction limit be lifted for any new or replacement landfill or surface impoundment, and for any lateral expansions to these units, as long as the units were in compliance with minimum technology requirements. Commenters also argued that limitations to the reconstruction cap will prevent facilities from making all changes necessary to comply with Federal, State, or local requirements. Commenters argued that some rules, such as the land disposal restrictions, mandate incineration as the treatment standard for some wastes and that the reconstruction limit stands in the way of incinerators being added to a facility to allow the facility to comply with these requirements. Another argued that a facility should be able to follow the requirements for interim status landfills and surface impoundments in RCRA section 3015(b) and not be blocked by the reconstruction limit.

EPA disagrees with these comments and has finalized the rule as proposed. As the Agency stated in the preamble to the proposal, major new landfills and incinerators (i.e., those that would exceed the 50% reconstruction limit) require the close Agency oversight and approval afforded by the permit process. In addition, the permit process provides an opportunity for public participation, including an opportunity for comment and a hearing. Public comments on other rulemakings—such as the recent amendments to the permit modification procedures—and the intent of Congress as illustrated by HSWA, which stressed, for example, concerns about land disposal, make it clear that major new land disposal units and incinerators are inappropriate at interim status facilities, without the protections provided by the permitting process.

3. Newly Listed or Identified Wastes

Section 270.72(b)(3) of today's rule lifts the reconstruction limit for changes that are necessary to allow owners or operators to continue handling newly listed or identified wastes that had been treated, stored, or disposed of at the facility prior to the effective date of the rule establishing the new listing or identification.

This provision has been slightly modified from the proposal. The proposal restricted acceptable changes to those taking place at facilities that had handled the newly listed or identified waste prior to the date of the **Federal Register** notice establishing the new listing or identification. Today's rule allows the changes if the facility had handled the waste before the effective date of the rule.

EPA made this change in response to commenters, who pointed out an inconsistency between the proposal's treatment of interim status facilities and the statute's treatment of unpermitted facilities. Under section 3005(e)(A)(ii) of RCRA, facilities handling newly listed or identified wastes may obtain interim status if they were in existence on the effective date of the regulation listing or identifying the waste. EPA does not believe there is any reason to treat interim status facilities and facilities outside the permitting universe differently in this case. Therefore, it has modified the proposed language, so that the trigger date for defining whether a facility is eligible is the effective date of the new listing or identification, not the date of the rule's publication. Note that EPA made a similar change with respect to management of newly listed and identified wastes at permitted facilities in its recent amendments to the permit modification procedures. (*See* 53 FR 37912, September 28, 1988).

One commenter argued that the reconstruction limit should be lifted for changes necessary to handle newly listed or identified wastes, whether or not previously handled at the facility, when the process necessary to handle the newly listed or identified waste was similar to processes already at the facility. The commenter argued that the restriction to wastes previously handled at the facility is unfounded, particularly if the treatment required for handling the new waste is similar to treatment already used at the facility.

EPA disagrees with this comment. The purpose of § 270.72(b)(3) in the August 14 proposal was to prevent disruptions in existing operations at interim status facilities, not to allow facilities to expand their activities significantly without meeting permitting requirements. In doing so, it put interim status facilities on an equal footing with unpermitted facilities. Therefore, EPA has not adopted the commenter's suggestion in today's rule.

The Agency, however, believes that in most cases the flexibility requested by the commenter is already provided in other parts of § 270.72. In particular, facility changes to handle newly identified wastes, where the unit process is similar to processes already at the facility, are unlikely to exceed the reconstruction limit. If such a change does not exceed the reconstruction limit, it can be made as a change in interim status, as long as it was approved as necessary to comply with Federal, State, or local requirements. Furthermore, such a change that involves storage or treatment solely in tanks or containers might be allowed as a change in interim status, even if the change exceeded the reconstruction limit. (See § 270.72(b)(2)).



4. Changes During Closure

Under § 270.72(b)(4) of today's rule, changes made at an interim status facility during closure in accordance with an approved closure plan are not subject to the reconstruction limit. For example, if an approved closure plan calls for the use of a new tank unit at a facility to treat waste before final disposal, that unit could be brought on to the facility, with Director approval, as a change in interim status. Similarly, if an approved closure plan required on-site incineration, an incinerator may be brought on to the facility as a change in interim status. However, in both cases, the unit could be used to handle only the wastes associated with closure.

EPA stresses that the closure plan approval process provides for Agency review and an opportunity for public comment analogous to that provided by the permit process. For example, in approving a closure plan, EPA or an authorized State would ensure that any new units brought on to the facility under a change in interim status met all applicable Part 265 operating and closure standards. Additional conditions might be required where necessary to ensure that the overall closure activity meets the closure performance standard at § 265.111. In the case of an incinerator, this would mean compliance with the trial burn requirements, the operating standards, and other requirements found in Part 264, depending on the site-specific circumstances. In addition, the closure regulations require public notice and an opportunity for comment, just as do the permitting regulations.

5. Corrective Action

As explained in section III.B.3 of this preamble, § 270.72(b)(5) removes the reconstruction limit for changes necessary to comply with corrective action orders, provided that such changes will be limited to treatment, storage, or disposal of solid waste from releases that originate within the boundary of the facility. This amendment will ensure prompter implementation of corrective action orders, while the section 3008(h) procedures will ensure public participation equivalent to permitting. For more discussion, see section III.B.3 of the preamble.

6. Other Issues

One commenter stated that the reconstruction limit is unsound and unwarranted. The commenter pointed out that EPA controls when to call in Part B permit applications and that new units are subject to new technology requirements. Citing the Agency's justification for the reconstruction limit in the preamble to the proposed rule, the commenter argued that if, as the Agency alleged, the purpose of the reconstruction limit is to prevent facilities from expanding during interim status, thereby evading the permitting process, the Agency should explicitly identify the means by which facilities do this and only those methods should be limited by the reconstruction limit. The commenter noted that there is no statutory reference to the reconstruction limit.

The Agency disagrees with this comment. Congress' purpose in establishing "interim status" was to ensure that facilities already in the business of managing hazardous waste were not unduly disrupted by RCRA's new permitting requirements. Interim status provides a mechanism to allow these facilities to continue in operation pending permit review and issuance.

In developing regulations to implement this requirement, EPA recognized that interim status facilities would require some flexibility to maintain operations. Section 270.72 provides that flexibility. However, EPA placed a cap on changes in interim status in the "reconstruction limit," to ensure that interim status facilities could not avoid permitting requirements for major new expansions of activities. Thus, the Agency struck the balance between undue disruption of current facility operations (the goal of interim status in the first instance) and the direction of Congress to move facilities into the permitting universe. This provision is described more fully in the preamble to EPA's interim status regulations (45 FR 33290 at 33324, May 19, 1980).

The August 14 proposal and today's rule do not change the basic requirements of the reconstruction limit. Instead, the purpose of the proposal was to identify specific areas where the reconstruction limit was not necessary or approrpriate. The commenter suggested that, instead of establishing the reconstruction limit as an across-the-board requirement and identifying exceptions, EPA should merely identify those activities where the limit applies. The Agency disagrees. Given the wide range of changes that might take place at an interim status facility, it would be impossible to identify all those that were "permit-like" or that required permit-level public participation. Therefore, the Agency has not adopted this approach, and continues to believe that the reconstruction limit should be lifted only in specific, clearly identified circumstances such as those identified in today's rule.

Another commenter suggested that EPA remove the reconstruction limit for any improvements to a facility that would provide increased protection of human health and the environment. EPA has rejected this standard as overly broad and vague. While the Agency does not wish to delay such changes unduly, it believes that, read broadly, this standard could allow almost any change at a facility, including the construction of a major new landfill or an incinerator. These are the kinds of changes that should undergo permitting and full public participation, regardless of whether they arguably increased health and environmental protection.

Another commenter suggested that the reconstruction limit (and more broadly § 270.72) prohibited a wide range of necessary or beneficial changes not identified in today's regulation. The commenter specifically referred to a storage facility that it claimed was unable to curb and pave an unpaved surface on which palletized drums were stored because the cost of this activity would exceed the reconstruction limit. The commenter in this case, however, has misunderstood the reconstruction limit. This limit applies only to facility changes that are regulated under § 270.72. If a change (for example, a new roof over a container storage area or the paving of a storage area) is not identified under § 270.72(a), and does not otherwise require a RCRA permit, it does not need Director approval before it can be made.

In general, if a facility requests an expansion during interim status, the Agency calculates the cumulative cost of all expansions made under § 270.72 since the time the facility gained interim status to determine if the proposed change constitutes a reconstruction. (Note that changes made to the facility that are not regulated under § 270.72 are not included in the cumulative cost). Today's rule raises the question of whether changes for which the reconstruction limit has been lifted should be included in this calculation of

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cumulative cost. The Agency believes that inclusion of such changes could effectively block any subsequent change to the facility under § 270.72. Such an effect would inappropriately limit facility changes in interim status. Therefore, when calculating the cumulative cost of changes to a facility to determine whether a proposed change would constitute a reconstruction, the Agency will exclude the cost of any changes listed under § 270.72(b).

*D. Post-Closure Permitting*

Today's rule clarifies that the Agency has the authority to deny a permit for the active life of a facility or unit while a decision with respect to the post-closure permit remains pending. This practice allows EPA to close interim status facilities promptly through the permit denial process if they are unable to meet permitting standards, rather than delay denial (and closure) until all post-closure permit conditions have been reviewed and approved. The Agency believes that it has always had the authority to separate these two permit decisions under the permitting regulations, although those regulations did not specifically outline such an approach. In the August 14 **Federal Register** notice, the Agency proposed modifications to its permitting regulations under 40 CFR Part 270 that would make clear this authority. Those amendments, promulgated today, make the following changes: A new § 270.29 is added to specify that the permitting authority may deny a permit under 40 CFR Part 124 either in its entirety or as to the operating portion only; amended § 270.1(c) clarifies that any such partial denial does not affect a facility's responsibility to obtain the post-closure permit; and, amended § 270.10(c) specifies that the permitting authority may deny the operating portion of a permit without awaiting an application that is complete as to post-closure responsibilities. Finally, to assure fairness in this process, today's rule amends §§ 124.1(a), 124.15 (a) and (b), and 124.19 to clarify that a decision under § 270.29 to deny the operating portion of a permit is subject generally to Part 124 procedures and, in particular, to the appeals procedures of § 124.19.

The amendments allow EPA to deal expeditiously with facilities or units clearly unable to meet standards for operation under Part 264. They clarify the Agency's authority, in such cases, to move more expeditiously to permit denial and initiation of the closure process. At the same time, the amendments make it clear that such permit denial does not relieve the facility of its post-closure care responsibilities under the Part 264 standards once the post-closure permit is issued. Prior to issuance of the post-closure permit, the facility or unit remains subject to Part 265 standards. (*See* § 265.1(b)).

If the Agency did not have the authority to bifurcate the permit decision and instead were limited to only one permit decision, then it would have to issue the permit for the post-closure care period at the same time that it denied the portion of the permit concerning operational life. Development of the post-closure information necessary for a complete application and for issuance of the post-closure portion of the permit can be very time-consuming. Thus, the Agency's permitting decision to close a facility could be greatly delayed due to the need to develop post-closure information, even after it became clear that the facility would not be permitted for continued operation.

For instance, under § 124.3(d), failure to submit sufficient information for permitting is a basis for permit denial. However, if the Agency could not deny a permit without simultaneously issuing the post-closure portion of the permit, the permit decision for the facility would be delayed, allowing the facility to continue operation while the Agency gathered information necessary to develop a post-closure permit. In fact, the permit denial might be delayed longer for facilities that have greater deficiencies in their applications, thus rewarding facilities that are in greater noncompliance.

The Agency pointed out in the preamble of the proposed rule that it cannot under these amendments bifurcate the *issuance* of an operating permit and a post-closure permit. No permit may be issued without conditions covering the post-closure period applicable to the facility. One commenter questioned whether EPA in fact adhered to that requirement. The commenter cited a permit that contained no post-closure permit but only incorporated a reference to the post-closure plan. In fact, the permit described by the commenter appears to be consistent with EPA policy, because it contains post-closure conditions (albeit by reference). At the time of "closure," a separate "post-closure permit" would not be issued; instead, the facility owner/operator would be required to follow the terms of the post-closure plan incorporated into the permit.

One commenter objected that a bifurcated permit issuance process would violate due process rights of owners and operators of interim status facilities. First, the commenter argued that, rather than deny a permit for the active life and issue a post-closure permit, the Agency should use its enforcement authority to force closure. The Agency agrees that enforcement may in many cases be the appropriate authority for forcing closure at interim status facilities unable to comply with the regulations. However, the Agency also has the responsibility and in fact is required to deny applications for an operating permit at such facilities, as well as at facilities that prove unwilling to or incapable of preparing a complete application.

Second, the commenter argued that the proposed amendment would provide the Agency with unfettered discretion to deny a permit application at any stage of the process and that possible abuse could occur if the Agency were to use proposed § 270.10(c) rather than the notice of deficiency/response procedures specified in § 124.3 as a means of addressing incomplete applications. The Agency does not agree. To deny a permit, the Agency must follow the applicable procedures of 40 CFR Part 124; today's rule does not change that. The new § 270.29 provides that "[t]he Director may, pursuant to the procedures in Part 124, deny the permit application either in its entirety or as to the active life of a facility or unit only." Permit denial under section 124 presupposes that the completeness review process of § 124.3 has been satisfied. In addition, § 124.6(b) requires that, if the Agency decides to deny a permit application, it must first issue a notice of intent to deny. This, of course, includes a notice of intent to deny a permit for the operating life of a facility and, this notice must follow the same procedures as any draft permit under that section, that is, it must be accompanied by a statement of basis and a fact sheet, based on the administrative record, publicly noticed, and made available for public comment. (*See* § 124.6(e)). In addition, to assure clarity, the Agency has amended §§ 124.1, 124.15 (a) and (b), and 124.19 in today's rule to indicate specifically that the decision to deny the operating life portion of a permit is subject to appeal under the procedures of § 124.19. Thus, today's amendments do not change the applicability of Part 124 procedures for permit denial, which the Agency believes provide owners and operators of interim status facilities full due process protection.

The commenter also pointed out that the Agency amended § 270.10(c) on December 1, 1987 (52 FR 45788) in a rule



that codified certain HSWA provisions. The Agency recognizes this fact and further amends that section in this rule.

One commenter pointed out that while the preamble language discussed bifurcation of permit decisions in terms of "facilities", the regulatory language in proposed §§ 270.1(c) and 270.10(c) referred to "units". The Agency agrees with the commenter that this discrepancy requires clarification. Generally, it is the Agency's practice to issue or deny permits for entire facilities, addressing all units in operation or closing at the site. However, the Agency has authority, under § 270.1(c)(4), to issue or deny a permit for one or more units at a facility without simultaneously issuing or denying a permit to all units at the facility. To make it clear that the Agency can either bifurcate its permit denial and post-closure permit decisions with respect to the entire facility or for selected units at the facility, the Agency has modified the language in today's revisions to §§ 270.1 and 270.10(c) to refer to "facility or unit."

*E. Permit Modifications to Comply With the Land Disposal Restrictions and to Facilitate Treatment*

On September 28, 1988 (53 FR 37912), EPA established a new three-tiered system of procedures for permittee-initiated permit modifications. In that rule, specific facility changes were classified as either Class 1, 2, or 3 modifications. On November 17, 1988 (53 FR 46474), EPA requested further comment in this rulemaking on whether it would be appropriate to allow, as Class 1 modifications, certain facility changes that are necessary to comply with the land disposal restrictions and to otherwise facilitate treatment of hazardous wastes. After reviewing comments on this notice, EPA is today amending the permit modification requirements to add the following types of modifications:

Class 1 modifications without prior approval

1. Addition of new waste codes (or a narrative description) for *disposal* of restricted wastes if:
—Treated to BDAT standards, or
—Treated in compliance with "soft-hammer" standards.
—In addition, the waste must be disposed of in landfills or surface impoundments meeting minimum technology requirements.

2. Addition of new waste codes (or a narrative description) for *disposal* of treated wastewater, waste-water treatment residues, and incinerator ash containing non-restricted waste codes, if:
—Disposed of in a landfill or surface impoundment meeting minimum technology requirements, and
—The receiving landfill or surface impoundment previously handled that type of waste

3. Addition of new waste codes (or a narrative description) for *treatment* if:
—Receiving unit is a tank or container, and
—No new tanks or containers and no new management or treatment processes are added, and
—The receiving unit previously handled that type of waste

Class 1 modification with prior approval

1. Addition of new tanks or containers or new treatment processes in tanks or containers (with or without addition of new waste codes), if:
—Used for treatment of restricted wastes to BDAT or "soft hammer" standards

Each of these new permit modifications are discussed in greater detail below.

*1. Disposal of Restricted Wastes that Meet Treatment Standards.* In the November 17 notice, the Agency requested comment on establishing a new Class 1 modification for the addition of new waste codes, or a narrative description of wastes, to a permit when the addition covers restricted wastes that meet the applicable treatment standards (i.e., the treatment standard promulgated in Subpart D of Part 268, which standard is based on performance of the Best Demonstrated Available Technology). This change would apply to treatment residues from restricted wastes (including wastes derived therefrom) treated to BDAT levels, or that meet the treatment standards as generated. In addition, the Agency requested comment on whether these modifications should be limited to situations where the receiving unit met the minimum technological requirements.

All of the commenters who responded to this request for further comment supported the general concept of establishing this new Class 1 modification. A few commenters expressed a preference for Agency approval prior to such a facility change. However, most commenters argued that prior Agency approval should not be required. Since the wastes would already meet BDAT treatment standards, the requirement for prior Agency approval would have little environmental benefit and would only delay the implementation of the changes. In addition, many commenters also argued that the minimum technological requirements should not be required for landfills or surface impoundments receiving these wastes because the wastes would meet BDAT standards, and so may legally be disposed in non-MTR landfills and, in limited circumstances, non-MTR impoundments.

EPA agrees with the commenters who urged that this modification be Class 1 without prior Agency approval. However, the Agency disagrees with the commenters who argued that minimum technological requirements should not apply to receiving landfills and surface impoundments. The rationale for establishing a Class 1 modification without prior Agency approval for these types of permit changes is based on the fact that the wastes will be treated in accordance with the applicable treatment standards and that they will be placed in receiving units that meet the most stringent unit design standards (i.e., minimum technology requirements). These prerequisites will assure that the permit modification will be relatively minor and, therefore, appropriate for Class 1. Under the Class 1 process, facilities implementing the change must notify the Agency within 7 days of implementation, and the Agency retains the right to reject a Class 1 modification for cause (e.g., not meeting the Class 1 modification preconditions).

Several commenters pointed out that the minimum technological standards are not imposed on landfills and surface impoundments that would otherwise be subject to those standards as long as they qualify for the exemption in section 3004(o) (2) and (3) (e.g., the unit has alternative design and operating practices or is a monofill). EPA agrees with these commenters that restricted wastes destined for a unit that qualifies for the section 3004(o) (2) or (3) exemption may also be added to the permit as a Class 1 change. This could include impoundments that meet certain of the section 3005(j) exceptions to retrofitting. (See 50 FR 28710, July 15, 1985, and 53 FR 31185–186, August 17, 1988). The Agency believes that this is equitable and protective since these two exemptions are allowed only in situations where environmental protection equivalent to the minimum technological requirements will be achieved.

In summary, today's rule allows the addition of new waste codes, or a narrative waste description, to a permit as a Class 1 modification where the addition involves a restricted waste that

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meets the applicable treatment standards, provided that the waste is disposed in a landfill or surface impoundment unit that meets the minimum technology requirements set forth at section 3004(o) (including the exemptions in section 3004(o) (2) and (3)). The modification appears in items (H)(5)(c) (surface impoundments) and J(6)(C) (landfills) of Appendix I to § 270.42.

This amendment will provide permittees the ability to respond quickly to the requirements of the land disposal restrictions. This will facilitate implementation of the land disposal restrictions program by helping to ensure that there is an ultimate disposal outlet for properly treated hazardous wastes (and for wastes that already meet treatment standards). Without a means a disposal, treatment facilities will not accept restricted wastes for treatment, thus undermining the whole purpose of the land disposal restrictions effort. Today's rule will also expedite final disposition of restricted wastes and will encourage the use of units that meet the minimum technological standards. It should be noted that those permittees who have landfill or surface impoundment units that do not meet the minimum technological requirements may generally use the Class 2 procedures to add waste codes for restricted waste treated to (or that meet) BDAT standards.

*2. Soft Hammer Waste Treatment Residues.* In the November 17 notice, EPA solicited comment on whether the addition of waste codes, or a narrative description, for the receipt of residues from the treatment of "soft hammer" wastes should also be a Class 1 modification. Further, the Agency requested comment on whether such Class 1 modifications should be available only when a certification has been submitted pursuant to § 268.8. This certification would ensure that these wastes would have to be treated by the practically available technologies that yield the greatest environmental benefit (§ 268.8(a)(2)(ii)). Under the approach described in the November 17 notice, therefore, Class 1 modifications would not be available for adding waste codes, or a narrative description, for: (1) *Untreated* "soft hammer" wastes, or (2) any treated "soft hammer wastes" that will not be disposed in a minimum technology landfill or surface impoundment (e.g., if the waste is destined for a land treatment unit).

Most commenters argued that the addition of waste codes to a permit for the receipt of residuals from the treatment of "soft hammer" wastes should be defined as Class 1 without prior Agency approval. Furthermore, several commenters believed that this modification should include the receipt of untreated "soft hammer" wastes.

EPA agrees with the commenters in general regarding the need for greater flexibility for permittees to be able to accept treated "soft hammer" wastes and, therefore, is today promulgating such permit changes as a Class 1 modification. (*See* Appendix I to § 270.42, items H(5)(c) (surface impoundments) and J(6)(c) (landfills)). However, the Agency has determined that only the "soft hammer" treatment residues for which there is a § 268.8 certification should qualify for Class 1 modifications. EPA believes that this limitation is necessary since today's rule is designed in large part to further the legitimate treatment of restricted wastes and to advance the ultimate goal of the land disposal restrictions statutory provisions. Allowing disposal of untreated soft hammer wastes (i.e., soft hammer wastes for which a generator certifies that there is no practically available treatment) does not further these objectives. Furthermore, since no § 268.8 certification is to be filed for soft hammer wastes not destined for disposal in a landfill or impoundment, there is no ready benchmark to evaluate the extent of treatment of such wastes, making the Class 1 modification inappropriate. Other permit changes involving "soft hammer" wastes or residues can generally be allowable under the Class 2 procedures.

*3. Other Treatment Residues.* EPA, in response to comment, is also allowing as a Class 1 modification without prior approval the addition of new waste codes (or a new narrative description of particular wastes) by a disposal facility to receive residues from wastewater treatment or incineration, or to receive treated wastewater, provided that the disposal unit meets minimum technology requirements, and provided that the surface impoundment or landfill has previously handled this type of waste. For example, if the facility already receives wastewater treatment sludge from treating multi-waste code leachate, it could add waste codes (or a narrative description) to allow it to continue to receive this same type of waste. In addition, today's rule would allow disposal facilities to modify their permits to receive multi-waste code incinerator ash as a Class 1 modification, without prior approval, where the facility already is permitted to accept incinerator ash and the waste is placed in an MTR unit. These modifications are described in items H(5)(d) (surface impoundments) and J(6)(d) (landfills) of Appendix I.

EPA is adopting this provision in response to comment, and also is acting to assure that there are means of disposing of properly treated residues from wastewater treatment and from incineration. As the Agency indicated in the November 17 notice, there are many forms of wastewater treatment and incineration that approximate BDAT that should be facilitated. (*See* 53 FR 46477). Treatment will not occur, however, if there is no means of disposing of the residues from such treatment. The Agency also is assuring that only land disposal units with the most safeguards are eligible for receipt of these treatment residues by limiting eligibility for this Class 1 modification to disposal in minimum technology landfills and surface impoundments.

*4. Addition of Wastes at Treatment Facilities.* The Agency also solicited comment on whether greater flexibility should be provided for treatment facilities receiving hazardous wastewaters and wastewater treatment residues carrying multiple waste codes not yet subject to land disposal restrictions. EPA specifically cited the problems potentially faced by treatment facilities handling leachate derived from the disposal of waste in the second or third of the schedule. Although the facility's level of treatment might approximate eventual BDAT, if the leachate or leachate treatment residue carries too many waste codes, the treatment facility's permit could preclude immediate receipt. (It should be noted that although many wastewater treatment tank facilities do not require RCRA permits, some do. (*See generally*, 53 FR 34080–81, September 2, 1988). Permits also are required for tanks treating wastewater treatment residues that are non-wastewaters).

Commenters on this question generally recommended that EPA provide broad flexibility for facilities receiving such wastes. In reviewing these comments as well as the principle underlying the current permit modification rules, however, the Agency concluded that a broad approach, setting no limits on the types of wastes received or the treatment conducted would be inappropriate—particularly where a Class 1 modification without prior approval was contemplated. As a result, the Agency has decided on a narrower approach, focusing on the specific examples cited in the November 17 notice.

Today's rulemaking, consequently, establishes a Class 1 modification



without prior approval to allow tank and container treatment facilities to add waste codes (or a narrative description) provided that the treatment occurs in tanks or containers, the facility does not add any new treatment units or types of treatment processes (i.e., methods), the waste does not require any new management standards, and the facility previously handled that type of waste. (*See* F(4)(b) (containers) and G(5)(d) (tanks)).

The Agency notes that in response to comment, it has determined that this Class 1 modification should be available without prior approval. The Agency believes that the limitations placed on eligibility assure minimal changes in existing treatment facility operation, and that the further limitation to treatment in tanks and containers will result in this modification being available only in situations with minimum potential for adverse environmental impact. The Agency also notes that this amendment will in many cases encompass restricted wastes, and thus addresses changes that were covered by the former § 270.42(p), which was superseded on September 28, 1988. In addition, as already noted, the Agency is attempting to avoid regulatory impediments to proper treatment, and believes that this amendment furthers that objective. Moreover, to the extent restricted wastes are involved (and by May, 1990, most wastes will be restricted), this modification furthers the ultimate goals of the land disposal restrictions program as well by increasing availability of treatment and thus allowing the land disposal prohibitions to go into effect without the need of national or case-by-case variances based on lack of existing treatment capacity.

*5. New Tanks and Containers to Perform Treatment.* In the November 17 Federal Register notice, EPA requested comment on the establishment of a Class 1 modification with prior Agency approval for the addition of new waste codes (or a narrative description) where additional tanks and containers, or new treatment processes that take place in tanks and containers, are necessary to treat restricted wastes to meet treatment standards. (The amendment would also cover addition of new tanks or containers, or new treatment processes, without addition of new waste codes). This would include partial treatment that meets treatment standards for some of the hazardous constituents in a waste mixture. Treatment would include treatment according to BDAT standards, or for "soft hammer" wastes, treatment for which a certification will be filed pursuant to § 268.8. This modification would be similar to the previous minor modifications in § 270.42 (o) and (p) that were superseded by the permit modification rule published on September 28, 1988. Most commenters supported this modification and its classification, and the Agency is today promulgating this provision as proposed. (*See* Appendix I of § 270.42, items F(1)(c) and G(1)(e)).

It should be noted that this modification would require Class 1 procedures, *with* prior Director approval. The Agency previously determined, in promulgating the former § 270.42 (o) and (p), that flexibility in adding treatment processes, treatment capacity, and waste codes of restricted wastes, would encourage availability of treatment to meet the BDAT standards and thus would further the objectives of the land disposal restrictions program. (*See* 52 FR 25781, July 8, 1987). At the same time, the Agency still believes that if new tanks or containers, or new treatment processes in tanks or containers, are to be added by the facility, prior Director approval should be required before the modification goes into effect. (In this regard, EPA disagrees with the commenter who stated that the former § 270.42(p) did not require prior Director approval; it in fact did require such approval.)

Another commenter stated that this modification should also include treatment in devices "similar to" tanks and containers. The commenter specifically cited distillation units as an example of such units. The Agency disagrees with this comment. In the first place, most distillation units will probably fall within the definition of tank, and therefore this amendment is unnecessary. (*See* 52 FR 3762–63, February 5, 1987). More importantly, it would be very difficult, if not impossible, to define by regulation which units were "similar to" tanks and which were not. The Agency, therefore, is not adopting this suggestion.

*6. Other Issues.* In commenting on the November 17 notice, several commenters raised a number of issues directly related to the "derived from" rule as discussed in the August 17, 1988 First Thirds Land Disposal Restrictions rule (53 FR 31138). Today's rule only addresses procedural concerns arising from the Agency's long-standing interpretation of the "derived from" rule. The more substantive aspects regarding the application of the "derived from" provisions are not part of this rulemaking.

Today's Class 1 modifications also do not apply to the listed dioxin-containing hazardous wastes (F020, 021, 022, 023, 026, 027, and 028). Such an amendment raises complicated issues beyond the scope of the Agency's notice and not discussed in any detail in the public comments.

The Agency also adds one further note respecting waste codes. Federal RCRA regulations do not require that waste codes be listed in permits. Although such permits must contain some language authorizing receipt of particular hazardous wastes, that language might for example take the form of a narrative description (for example "residues from incineration" or "residues from treating leachate"). Thus, facilities wishing to modify their permits pursuant to today's amendments could do so by establishing a narrative description of allowable wastes instead of by adding particular waste codes.

## IV. State Authority

### *A. Applicability of Rule in Authorized States*

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (*See* 40 CFR, Part 271 for the standards and requirements for authorization). Following authorization, EPA retains enforcement authority under sections 3008, 7003, and 3013 of RCRA, although authorized States have primary enforcement responsibility.

Prior to the Hazardous and Solid Waste Amendments (HSWA) of 1984, a State with final authorization administered its hazardous waste program entirely in lieu of EPA administering the Federal Program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in the State that the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under section 3006(g) of RCRA, 42 U.S.C. 6928(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to implement those requirements and prohibitions in an authorized State, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related

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provisions as State law to retain final authorization, HSWA applies in authorized States in the interim.

However, it should be noted that section 3009 of RCRA and § 271.1(i) provide that States can impose requirements that are more stringent than the Federal requirements. Federal program changes that are less stringent or reduce the scope of the Federal program do not have to be adopted by authorized States. Furthermore, any authorized State requirement that is more stringent than a newly enacted less-stringent Federal provision remains in effect as authorized State law. This is true even if the less stringent Federal requirements are imposed by HSWA. For less stringent Federal program changes (or changes that reduce the scope of the program), the combined effect of RCRA sections 3006 and 3009 will result in one of the two following situations. In the first case, if the new Federal requirements are promulgated pursuant to pre-HSWA authority, such requirements will not take effect in an authorized State unless and until the State chooses to adopt them as part of the State program. In contrast, less stringent Federal requirements that are imposed by HSWA authority become part of the Federal program that is in effect in all States, including authorized States; however, as discussed above, any more stringent State requirement remains in effect as authorized State law. Therefore, as a practical matter, the regulated community may not be able to benefit from the less stringent Federal HSWA provisions until the State chooses to amend its more stringent authorized RCRA regulations or enabling authority.

*B. Effect on State Authorizations*

Today's rule is considered to be less stringent than, or to reduce the scope of, existing Federal requirements. Therefore, authorized States are not required to modify their programs to adopt requirements equivalent to these provisions.

Today's rule is not a rule that imposes a requirement or prohibition pursuant to HSWA. However, portions of today's rule may be necessary in appropriate situations to effectively implement HSWA. For example, use of a Class 1 modification to add waste codes and/or narrative descriptions of treatment residues to RCRA permits may be necessary in appropriate situations to effectively implement the treatment requirements and prohibitions of the HSWA land disposal restrictions program. Other examples would involve a change in interim status needed to comply with an EPA-issued section 3008(h) corrective action order or to comply with the minimum technology requirements of HSWA section 3004(o). Hence, the portions of today's rule necessary to implement HSWA in appropriate situations will be immediately effective and administered by EPA in all States pursuant to RCRA section 3006(g). The Agency notes that a permit modification that specifies waste codes and/or narrative descriptions for a permit that previously did not specify waste codes and/or provided a less specific description may create a more stringent permit. Furthermore, during EPA's administration of today's rule, depending on State law, a State may not need to take any action to recognize the effectiveness of a Class 1 modification.

## V. Effective Date

Today's rule is effective immediately. Section 3010(b) of RCRA provides that regulations respecting permits for the treatment, storage, or disposal of hazardous waste shall take effect six months after the date of promulgation. However, section 3010(b)(1) of RCRA allows EPA to shorten the time to the effective date if the Agency finds that the regulated community does not need six months to come into compliance with the new regulation.

Today's rule establishes requirements that are less stringent than requirements currently in place. Since the rule relaxes regulations with which the regulated community is required to comply, the Agency finds that the regulated community does not need six months to come into compliance. In addition, the Agency believes that it is important for these amendments to become effective as soon as possible, because of the need for flexibility on the part of interim status facilities to comply with new requirements coming into effect, such as the land disposal restrictions and corrective action. These reasons also provide good cause for making today's rule immediately effective under section 553(d) of the Administrative Procedure Act.

## VI. Regulatory Analysis

*A. Regulatory Impact Analysis*

Under Executive Order 12291, EPA must determine whether a regulation is "major" and thus whether it must prepare and consider a Regulatory Impact Analysis in connection with the rule. Today's rule is not major because it will not result in an annual effect on the economy of $100 million or more, nor will it result in an increase in costs or prices to industry. There will be no adverse impact on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, the Agency has not prepared a Regulatory Impact Analysis for today's rule. This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12291.

*B. Regulatory Flexibility Act*

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, at the time an Agency publishes a proposed or final rule, it must prepare a Regulatory Flexibility Analysis that describes the impact of the rule on small entities, unless the Administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities. Today's rule provides more flexibility for treatment, storage, or disposal facilities to respond to new requirements and does not affect the compliance burdens of the regulated community. Therefore, pursuant to 5 U.S.C 601b, I certify that this regulation will not have a significant economic impact on a substantial number of small entities.

**List of Subjects**

*40 CFR Part 124*

Administrative practice and procedure, Hazardous waste, Reporting and recordkeeping requirements.

*40 CFR Part 270*

Administrative practice and procedure, Hazardous waste, Reporting and recordkeeping requirements, Permit application requirements, Permit modification procedures, Waste treatment and disposal.

Date: February 28, 1989.

**William K. Reilly,**

*Administrator.*

Therefore, Subchapter I of Title 40 is amended as follows:

## PART 124—PROCEDURES FOR DECISIONMAKING

1. The authority citation for Part 124 continues to read as follows:

**Authority:** Resource, Conservation, and Recovery Act, 42 U.S.C. 6901 *et seq.*; Safe Drinking Water Act, 42 U.S.C. 300(f) *et seq.*; Clean Water Act, 33 U.S.C. 1251 *et seq.*; and Clean Air Act, 42 U.S.C. 1857 *et seq.*

2. In § 124.1, paragraph (a) is amended by adding a sentence to the end to read as follows:



**§ 124.1 Purpose and scope.**

(a) * * * The procedures of this part also apply to denial of a permit for the active life of a RCRA hazardous waste management facility or unit under § 270.29.

* * * * *

3. In § 124.15, the first sentences in paragraphs (a) and (b) introductory text, are revised to read as follows:

**§ 124.15 Issuance and effective date of permit.**

(a) After the close of the public comment period under § 124.10 on a draft permit, the Regional Administrator shall issue a final permit decision (or a decision to deny a permit for the active life of a RCRA hazardous waste management facility or unit under § 270.29).

* * * * *

(b) A final permit decision (or a decision to deny a permit for the active life of a RCRA hazardous waste management facility or unit under § 270.29) shall become effective 30 days after the service of notice of the decision unless:

* * * * *

4. In § 124.19, the first sentence of paragraph (a) introductory text, is revised to read as follows:

**§ 124.19 Appeal of RCRA, UIC, and PSD permits.**

(a) Within 30 days after a RCRA, UIC, or PSD final permit decision (or a decision under § 270.29 to deny a permit for the active life of a RCRA hazardous waste management facility or unit) has been issued under § 124.15, any person who filed comments on that draft permit or participated in the public hearing may petition the Administrator to review any condition of the permit decision. * * *

* * * * *

## PART 270—EPA-ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

1. The authority citation for Part 270 continues to read as follows:

**Authority:** 42 U.S.C. 6905, 6912, 6924, 6925, 6927, 6939, and 6974.

2. In § 270.1, paragraph (c) introductory text, is amended by adding a sentence to the end to read as follows:

**§ 270.1 Purpose and scope of these regulations.**

* * * * *

(c) * * * The denial of a permit for the active life of a hazardous waste management facility or unit does not affect the requirement to obtain a post-closure permit under this section. * * *

3. In § 270.10, paragraph (c) is amended by adding a sentence to the end to read as follows:

**§ 270.10 General application requirements.**

* * * * *

(c) * * * The Director may deny a permit for the active life of a hazardous waste management facility or unit before receiving a complete application for a permit.

* * * * *

4. In Part 270, a new § 270.29 is added to Subpart B to read as follows:

**§ 270.29 Permit denial.**

The Director may, pursuant to the procedures in Part 124, deny the permit application either in its entirety or as to the active life of a hazardous waste management facility or unit only.

5. Section 270.42, Appendix I is amended by revising items F(1)(a), F(1)(b), F(3), G(1)(a), G(1)(b), (G)(5)(a), and G(5)(b) and adding items F(1)(c), F(4)(a), F(4)(b), G(1)(e), G(5)(c), G(5)(d), H(5)(c), H(5)(d), J(6)(c), and J(6)(d) as follows:

**§ 270.42 Permit modification at the request of the permittee.**

* * * * *

**Appendix I to § 270.42—Classification of Permit Modifications**

| Modification | Class |
|---|---|
| * * * * * | |
| F. *Containers* | |
| 1. Modification or addition of container units: | |
| a. Resulting in greater than 25% increase in the facility's container storage capacity, except as provided in F(1)(c) and F(4)(a) below | 3 |
| b. Resulting in up to 25% increase in the facility's container storage capacity, except as provided in F(1)(c) and F(4)(a) below | 2 |
| c. Or treatment processes necessary to treat wastes that are restricted from land disposal to meet some or all of the applicable treatment standards or to treat wastes to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in § 268.8(a)(2)(ii), with prior approval of the Director. This modification may also involve addition of new waste codes or narrative descriptions of wastes. It is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028) | [1] 1 |
| * * * * * | |
| 3. Storage of different wastes in containers, except as provided in (F)(4) below | |
| * * * * * | |
| 4. Storage of treatment of different wastes in containers: | |
| a. That require addition of units or change in treatment process or management standards, provided that the wastes are restricted from land disposal and are to be treated to meet some or all of the applicable treatment standards, or that are to be treated to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in § 268.8(a)(2)(ii). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028) | 1 |
| b. That do not require the addition of units or a change in the treatment process or management standards, and provided that the units have previously received wastes of the same type (e.g., incinerator scrubber water). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028) | 1 |
| * * * * * | |
| G. *Tanks* | |
| 1. * * * | |
| a. Modification or addition of tank units resulting in greater than 25% increase in the facility's tank capacity, except as provided in G(1)(c), G(1)(d), and G(1)(e) below | 3 |
| b. Modification or addition of tank units resulting in up to 25% increase in the facility's tank capacity, except as provided in G(1)(d) and G(1)(e) below | 2 |
| * * * * * | |
| e. Modification or addition of tank units or treatment processes necessary to treat wastes that are restricted from land disposal to meet some or all of the applicable treatment standards or to treat wastes to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in § 268.8(a)(2)(ii), with prior approval of the Director. This modification may also involve addition of new waste codes. It is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028) | [1] 1 |
| * * * * * | |
| 5. * * * | |
| a. That require additional or different management practices, tank design, different fire protection specifications, or significantly different tank treatment process from that authorized in the permit, except as provided in (G)(5)(c) below | 3 |
| b. That do not require additional or different management practices, tank design, different fire protection specifications, or significantly different tank treatment process than authorized in the permit, except as provided in (G)(5)(d) | 2 |

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| Modification | Class |
|---|---|
| c. That require addition of units or change in treatment processes or management standards, provided that the wastes are restricted from land disposal and are to be treated to meet some or all of the applicable treatment standards or that are to be treated to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in § 268.8(a)(2)(ii). The modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028) | 1 1 |
| d. That do not require the addition of units or a change in the treatment process or management standards, and provided that the units have previously received wastes of the same type (e.g., incinerator scrubber water). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028) | 1 |
| H. * * * | |
| 5. * * * | |
| c. That are wastes restricted from land disposal that meet the applicable treatment standards or that are treated to satisfy the standard of "use of practically available technology that yields the greatest environmental benefit" contained in § 268.8(a)(2)(ii), and provided that the unit meets the minimum technological requirements stated in § 268.5(h)(2). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028) | 1 |
| d. That are residues from wastewater treatment or incineration, provided that disposal occurs in a unit that meets the minimum technological requirements stated in §268.5(h)(2), and provided further that the surface impoundment has previously received wastes of the same type (for example, incinerator scrubber water). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 026) | 1 |
| J. * * * | |
| 6. * * * | |
| c. That are wastes restricted from land disposal that meet the applicable treatment standards or that are treated to satisfy the standard of "use of practically available technology that yields the greatest environmental benefit" contained in § 268.8(a)(2)(ii), and provided that the landfill unit meets the minimum technological requirements stated in § 268.5(h)(2). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028) | 1 |
| d. That are residues from wastewater treatment or incineration, provided that disposal occurs in a landfill unit that meets the minimum technological requirements stated in §268.5(h)(2), and provided further that the landfill has previously received wastes of the same type (for example, incinerator ash). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028) | 1 |

[1] Class 1 modifications requiring prior Agency approval.

6. Section 270.72 is revised to read as follows:

**§ 270.72 Changes during interim status.**

(a) Except as provided in paragraph (b), the owner or operator of an interim status facility may make the following changes at the facility:

(1) Treatment, storage, or disposal of new hazardous wastes not previously identified in Part A of the permit application (and, in the case of newly listed or identified wastes, addition of the units being used to treat, store, or dispose of the hazardous wastes on the effective date of the listing or identification) if the owner or operator submits a revised Part A permit application prior to such treatment, storage, or disposal;

(2) Increases in the design capacity of processes used at the facility if the owner or operator submits a revised Part A permit application prior to such a change (along with a justification explaining the need for the change) and the Director approves the changes because:

(i) There is a lack of available treatment, storage, or disposal capacity at other hazardous waste management facilities, or

(ii) The change is necessary to comply with a Federal, State, or local requirement.

(3) Changes in the processes for the treatment, storage, or disposal of hazardous waste or addition of processes if the owner or operator submits a revised Part A permit application prior to such change (along with a justification explaining the need for the change) and the Director approves the change because:

(i) The change is necessary to prevent a threat to human health and the environment because of an emergency situation, or

(ii) The change is necessary to comply with a Federal, State, or local requirement.

(4) Changes in the ownership or operational control of a facility if the new owner or operator submits a revised Part A permit application no later than 90 days prior to the scheduled change. When a transfer of operational control of a facility occurs, the old owner or operator shall comply with the requirements of 40 CFR Part 265, Subpart H (Financial Requirements), until the new owner or operator has demonstrated to the Director that he is complying with the requirements of that subpart. The new owner or operator must demonstrate compliance with Subpart H requirements within six months of the date of the change in ownership or operational control of the facility. Upon demonstration to the Director by the new owner or operator of compliance with Subpart H, the Director shall notify the old owner or operator in writing that he no longer needs to comply with Subpart H as of the date of demonstration. All other interim status duties are transferred effective immediately upon the date of the change in ownership or operational control of the facility.

(5) Changes made in accordance with an interim status corrective action order issued by EPA under section 3008(h) or other Federal authority, by an authorized State under comparable State authority, or by a court in a judicial action brought by EPA or by an authorized State. Changes under this paragraph are limited to the treatment, storage, or disposal of solid waste from releases that originate within the boundary of the facility.

(b) Except as specifically allowed under this paragraph, changes listed under paragraph (a) of this section may not be made if they amount to reconstruction of the hazardous waste management facility. Reconstruction occurs when the capital investment in the changes to the facility exceeds 50 percent of the capital cost of a comparable entirely new hazardous waste management facility. If all other requirements are met, the following changes may be made even if they amount to a reconstruction:

(1) Changes made solely for the purposes of complying with the requirements of 40 CFR 265.193 for tanks and ancillary equipment.

(2) If necessary to comply with Federal, State, or local requirements, changes to an existing unit, changes solely involving tanks or containers, or addition of replacement surface inpoundments that satisfy the standards of section 3004(o).

(3) Changes that are necessary to allow owners or operators to continue handling newly listed or identified hazardous wastes that have been treated, stored, or disposed of at the facility prior to the effective date of the rule establishing the new listing or identification.

(4) Changes during closure of a facility or of a unit within a facility made in accordance with an approved closure plan.

(5) Changes necessary to comply with an interim status corrective action order issued by EPA under section 3008(h) or other Federal authority, by an authorized State under comparable State authority, or by a court in a judicial proceeding brought by EPA or an authorized State, provided that such changes are limited to the treatment, storage, or disposal of solid waste from releases that originate within the boundary of the facility.

(6) Changes to treat or store, in tanks or containers, hazardous wastes subject to land disposal restrictions imposed by Part 268 or RCRA section 3004, provided that such changes are made solely for the purpose of complying with Part 268 or RCRA section 3004.

7. In § 270.73, paragraphs (e) and (f) are redesignated as paragraphs (f) and (g) and a new paragraph (e) is added to read as follows:



**§ 270.73 Termination of interim status.**

* * * * *

(e) For owners or operators of any land disposal unit that is granted authority to operate under § 270.72(a)(1), (2) or (3), on the date 12 months after the effective date of such requirement, unless the owner or operator certifies that such unit is in compliance with all applicable ground-water monitoring and financial responsibility requirements.

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Part IV

# Environmental Protection Agency

40 CFR Part 61
National Emission Standards for Hazardous Air Pollutants; Regulation of Radionuclides; Proposed Rule and Notice of Public Hearing

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 61**

**[FRL 3504-8]**

## National Emission Standards for Hazardous Air Pollutants; Regulation of Radionuclides

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule and notice of public hearing.

**SUMMARY:** On December 8, 1987, the DC Circuit Court granted EPA's motion for a voluntary remand of all radionuclide National Emission Standards for Hazardous Air Pollutants (NESHAPs) and decisions not to regulate certain categories of radionuclide emissions that had been challenged in petitions for review (*EDF v. EPA*). The Court ordered EPA to propose its regulatory decisions for all radionuclide source categories within 180 days and to finalize them within 360 days. On March 17, 1988, the Court modified the order to require EPA to propose regulatory decisions by February 28, 1989 and take final action by August 31, 1989.

This notice presents the Administrator's reexamination of regulatory decisions and issues associated with the use of section 112 of the Clean Air Act to control the emission of radionuclides from the following source categories: DOE Facilities, Licensees of the Nuclear Regulatory Commission and Non-DOE Federal Facilities, Uranium Fuel Cycle Facilities, Elemental Phosphorus Plants, Coal-Fired Boilers, High-level Nuclear Waste Disposal Facilities, Phosphogypsum Stacks, Underground and Surface Uranium Mines, and Licensed and Inactive Uranium Mill Tailings Piles. It proposes four policy alternatives that could be used in setting NESHAPs following the DC Circuit's decision in *NRDC v. EPA*, 824 F.2d 1146 (1987). The decisions that would result from application of each of the policy approaches to the radionuclide source categories are described and the resulting standards are proposed. Also included is a discussion of the issues raised by all the parties to the litigation that has surrounded these regulatory decisions.

Public hearings will be held to provide interested persons an opportunity for oral presentation of data, views, or arguments concerning these proposed actions.

**DATES:** *Comments.* Comments must be received on or before May 15, 1989.

*Public Hearing.* Public hearings will be held in Washington, DC on April 10 and 11, 1989 and in Las Vegas, Nevada on April 13 and 14, 1989.

*Request to Speak at Hearings.* Persons wishing to present oral testimony should notify EPA by April 3, 1989.

**ADDRESSES:** Comments should be submitted (in duplicate if possible) to: Central Docket Section (A-130), Environmental Protection Agency, Attn: Docket No. A-79-11, Washington, DC 20460.

The rulemaking record is contained in Docket No. A-79-11. This docket is located in Room 4, South Conference Center, Central Docket Section, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The docket may be inspected between 8 a.m. and 3 p.m. on weekdays. A reasonable fee may be charged for copying.

Single copies of the Draft Background Information Document and Draft Economic Assessment (which, combined, form the draft Environmental Impact Statement (EIS)) have been placed in the docket. Other documents available for review include: A Guide for Determining Compliance with the Clean Air Act Standards for Radionuclide Emissions from NRC-Licensed and Non-DOE Federal Facilities (January 1989); NRC Regulatory Guide 3.59, Methods for Estimating Radioactive and Toxic Airborne Source Terms for Uranium Mill Operations (March 1987); Procedures Approved for Demonstrating Compliance with 40 CFR Part 61 Subpart I (January 1989); Screening Techniques for Determining Compliance with Environmental Standards (March 1988); and User's Guide for the COMPLY Code (January 1989). Copies of these documents may be obtained by writing to: Director, Criteria and Standards Division (ANR-460), Office of Radiation Programs, Environmental Protection Agency, Washington DC 20460.

Requests to participate in the public hearings should be made in writing to the Director, Criteria and Standards Division. All requests for participation should include an outline of the topic to be addressed in the opening statement(s), the amount of time requested for the statement(s), and the name of the participants. Statements can be made at the hearings without prior notice, but may be subject to time constraints, at the discretion of the hearing officer. Statements should not repeat information already presented in written comments, but should address additional information or issues.

Locations for the hearings are:

*In Washington—*

Sheraton Inn, 8727 Colesville Rd., Silver Spring, MD 20910.

*In Las Vegas—*

Thomas M. Mack Center, 4505 South Maryland Parkway, Las Vegas, Nevada 89154.

**FOR FURTHER INFORMATION CONTACT:** James M. Hardin, Environmental Standards Branch, Criteria and Standards Division (ANR-460), Office of Radiation Programs, Environmental Protection Agency, Washington, DC 20460, (202) 475-8610.

**SUPPLEMENTARY INFORMATION:**

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## I. Definitions

### A. Terms

*Activity.* The amount of a radioactive material. It is a measure of the transformation rate of radioactive nuclei at a given time. The customary unit of activity, the curie, is $3.7 \times 10^{10}$ nuclear transformations per second.

*Agreement state.* Any state with which the Nuclear Regulatory Commission or the Atomic Energy Commission has entered into an effective agreement under subsection 274(b) of the Atomic Energy Act of 1954, as amended 68 Stat. 919.

*Annualized cost.* The equivalent uniform annual net disbursement.

*By-product material.* Any radioactive material (except source material and special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material and wastes from the processing of ores primarily to recover their source material content.

*Effective Dose Equivalent (EDE).* A risk-weighted average of the organ dose equivalents. The effective dose equivalent has the same risk (for the model used to derive the weighting factors) as a uniform dose equivalent to all organs and tissues. For the purposes of this standard, "effective dose equivalent" means the result of the calculation used to determine the dose eqivalent to the whole body, by taking into account the specific organs receiving radiation and the radiation effective dose eqivalent to the body as a whole. The method used to calculate the dose is described in detail in the International Commission on Radiological Protection's Publication No. 26.

*Half-life.* The time in which half the atoms of a particular radioactive substance transform, or decay, to another nuclear form.

*Incidence.* This term is used to denote the number of fatal cancers in a population. Other health effects (non-fatal cancers, genetic, and developmental) are noted separately.

*Maximum individual risk.* The additional cancer risk of a person due to exposure for a 70-year lifetime at a point of maximum concentration of a emitted pollutant.

*Pathway.* A method or way that radionuclides might contaminate the environment or reach people, e.g. air, food.

*Radionuclide.* A type of atom which spontaneously undergoes radioactive decay.

*Source term.* The amount of emisssions from a source, either estimated, measured or reported, that is used in the risk assessment.

*Transuranic.* An element with an atomic number greater than the atomic number of uranium.

*Uranium fuel cycle.* The operations of milling of uranium ore, chemical conversion of uranium, isotopic enrichment of uranium, fabrication of uranium fuel, generation of electricity by a light-water-cooled nculear power plant using uranium fuel, and reprocessing of spent uranium fuel, to the extent that these directly support the production of electrical power for public use utilizing nuclear energy. This definition does not include mining operations, operations at waste disposal sites, transportation of any radioactive material in support of these operations and the reuse of recovered non-uranium special nuclear and by-product materials from the cycle.

### B. Acronyms

AEA—Atomic Energy Act, 42 U.S.C. 2011 *et seq.*
ALARA—As low as reasonably achievable
AMC—American Mining Congress
ANPR—Advanced Notice of Proposed Rulemaking
BACT—Best available control technology
CAA—The Clean Air Act, 42 U.S.C. 7401 *et seq.*
CAP-88—Clean Air Act Assessment Package—1988
CFR—Code of Federal Regulations
BID—The Draft Background Information Document prepared in support of this rulemaking (Volume 1 of the draft EIS)
EIA—The Draft Economic Impact Assessment prepared in support of this rulemaking (Volume 2 of the draft EIS)
EIS—Environmental Impact Statement
DOE—United States Department of Energy
EDF—Environmental Defense Fund
EPA—United States Environmental Protection Agency
fCi—femtocurie, $1 \times 10^{15}$ curie
HLW—High-Level Radioactive Waste
ICRP—International Commission on Radiological Protection
MSHA—Mining Safety and Health Administration
mrem—millirem, $1 \times 10^{3}$ rem
NAAQS—National Ambient Air Quality Standards
NESHAP—National Emission Standard for Hazardous Air Pollutants
NCRP—National Council on Radiation Protection and Measurements
NRC—United States Nuclear Regulatory Commission
pCi—picocurie, $1 \times 10^{-12}$ curie
UFC—Uranium Fuel Cycle
UMTRCA—Uranium Mill Tailings Radiation Control Act of 1978, 42 U.S.C. 7901, *et seq.*



## II. Overview of Proposed Actions

Under section 112 of the Clean Air Act (CAA), EPA is required to establish emission standards for hazardous air pollutants at a level which provides an ample margin of safety to protect public health. In *Natural Resources Defense Council, Inc. v. EPA*, 824 F.2d 1146 (1987) (hereafter referred to as *Vinyl Chloride*), the Court set out a two-step decision process for EPA to follow in setting NESHAPs under section 112. The two steps are: (1) Determine a "safe" or "acceptable" health risk level and (2) set the standard at the level—which may be lower but not higher than the "safe" or "acceptable" level—that protects public health with an ample margin of safety. The Administrator may instead use only one step to set standards, but if he does this, he may not consider cost or technology.

As discussed in detail in Section VI of this notice, the Agency is, as it did in the proposed Benzene NESHAP, 53 FR 28496, proposing four alternative policy approaches for making these two decisions under section 112. Commentors should understand that the final decision on the NESHAP approach could be one of the four described in this notice or a variation. The final policy approach and the relative weight it gives to the various risk measures and uncertainties may become the framework for future NESHAPs decisions. Consequently, the Agency is interested in comments on general implications of the various policy approaches in addition to comments on the specific applications to the twelve radionuclide source categories.

The framework adopted for NESHAPs does not apply to other Agency programs. The Court's interpretation of the process required for establishing NESHAPs did not extend to regulatory decisions under any other section of the CAA or other statute administered by EPA: therefore, the Agency does not envision applying the process described below to regulatory judgments under other Acts. Regulatory decisions under other Acts will continue to be made using decisional approaches pursuant to those distinct statutory mandates.

The various policy approaches being proposed differ in how the question of acceptable risk is addressed and in how uncertainty in risk measures is considered. The Agency is using both the four proposed approaches and the applications of the approaches to the radionuclide source categories as a means to further frame the public debate on these questions. The Agency believes that the broad ramifications of any

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particular approach for establishing acceptable risk levels for all NESHAPs should be subject to informed public debate.

*A. Safe or Acceptable Risk Policy Approaches*

Each of the four approaches treats the acceptable risk decision differently. The major characteristics of the four proposed approaches to acceptable risk and ample margin of safety decisions are described below.

1. Approach A. Case-by-Case Approach

This is the only approach in which all the health information, risk measures and potential biases, underlying assumptions, and quality of the information (i.e., uncertainties) are considered together in the acceptable risk decision. The preferred level for the maximum individual lifetime risk in this approach is $10^{-4}$ or less; however, different results for specific source categories may be reached based on consideration of all the available information.

2. Approach B. Incidence-Based Approach

This approach only considers EPA's best estimate of the total incidence of fatal cancer in the acceptable risk decision. The other health information, including individual risk and the uncertainties, are not considered until the ample margin step. The incidence level being proposed as acceptable is no more than 1 case of fatal cancer per year per source category.

3. Approach C. $1\times10^{-4}$ or Less Maximum Individual Risk Approach

For this approach, the only parameter considered in determining acceptable risk is EPA's best estimate of the maximum individual lifetime risk of fatal cancer. The other health information including incidence, and the uncertainties, are considered in the ample margin step. In this approach, a maximum individual lifetime risk of no greater than $1\times10^{-4}$ is acceptable.

4. Approach D. $1\times10^{-6}$ or Less Maximum Individual Risk Approach

This approach is similar to Approach C, however, acceptable risk is defined as a maximum individual lifetime risk of no greater than $1\times10^{-6}$.

*B. Ample Margin of Safety Decision*

This decision is made separately after the safe determination has been made. The Administrator considers all the health risk measures as well as the technological feasibility, costs, estimation uncertainties, economic impacts of control technologies and any other relevant information. An issue that arises in this decision is whether to require all technologically feasible controls which are affordable no matter how small the risk reduction.

**III. Historical Background of Radiation NESHAPs**

On December 27, 1979, EPA listed radionuclides as a hazardous air pollutant under section 112 of the CAA [44 FR 76738 (December 27, 1979)]. EPA determined that radionuclides are a known cause of cancer and genetic damage and that radionuclides cause or contribute to air pollution that may reasonably be anticipated to result in an increase in mortality or an increase in serious irreversible or incapacitating reversible illness, constituting a hazardous air pollutant as defined by section 112(a)(1). EPA then determined that radionuclides presented a risk warranting regulation under section 112, and listed the pollutant under that section. Having listed radionuclides as a hazardous air pollutant, EPA was then required by section 112(b)(1)(B) to establish National Emissions Standards for Hazardous Air Pollutants (NESHAPs) at the "level which [in the judgment of the Administrator] provides an ample margin of safety to protect the public health from such hazardous air pollutant," or find that they are not hazardous and delist them.

On April 6, 1983, EPA proposed standards regulating radionuclide emissions from four source categories: (1) Elemental phosphorus plants, (2) DOE facilities, (3) NRC licensed facilities and non-DOE federal facilities (NRC-licensees), and (4) underground uranium mines. The Agency simultaneously proposed its decision not to regulate several other categories: (1) Coal-fired boilers, (2) the phosphate industry, (3) other extraction industries, (4) uranium fuel cycle facilities, (5) uranium mill tailings, (6) high level radioactive waste facilities, and (7) low energy accelerators [48 FR 15076 (April 6, 1983)]. In February 1984, the Sierra Club filed suit in the U.S. District Court for the Northern District of California to compel EPA to take final action on the proposed standards. *Sierra Club v. Ruckelshaus*, No. 84-0658. EPA was subsequently ordered by the Court to promulgate final standards or make a finding that radionuclides are not hazardous air pollutants and delist them.

In October 1984, EPA withdrew the proposed emission standards for elemental phosphorus plants, DOE facilities, and NRC licensees, finding that the control practices already in effect for those categories protected the public from exposure to radionuclides with an ample margin of safety. EPA, therefore, concluded that no additional regulation would be necessary [49 FR 43906 (October 31, 1984)].

In the notice, EPA also withdrew the proposed standard for underground uranium mines but stated its intention to promulgate a different standard for that category and simultaneously published an Advance Notice of Proposed Rulemaking (ANPR) for radon-222 emissions from underground uranium mines to solicit additional information on control methods. EPA also published an ANPR for radon-222 emissions from licensed uranium mills. EPA affirmed its decision not to regulate the other categories: coal-fired boilers, the phosphate industry, other extraction industries, uranium fuel cycle facilities, and high level radioactive waste. The Agency decided not to regulate phosphogypsum stacks under section 112 at that time, but instead to further study the category to determine whether the need for a standard existed.

On December 11, 1984, the U.S. District Court for the Northern District of California found EPA in contempt of its order to promulgate final standards and again directed that EPA issue final radionuclide emission standards for the original four categories or make a finding that radionuclides are not hazardous air pollutants. EPA complied with the court order by promulgating standards for radionuclides emissions from elemental phosphorus plants, DOE facilities, and NRC-licensees [50 FR 7280 (February 6, 1985)] and a work practice standard for radon-222 emissions from underground uranium mines [50 FR 15385 (April 17, 1985)]. On September 24, 1986, EPA promulgated a final rule regulating radon-222 emissions from licensed uranium mill processing sites by establishing work practices for new tailings [51 FR 34056 (September 24, 1986)].

The Environmental Defense Fund (EDF), the Natural Resources Defense Council (NRDC), and the Sierra Club filed petitions for review of the October 1984 withdrawals and final decisions not to regulate, the February 1985 standards for the three source categories and the April 1985 standard for underground uranium mines. The April 1985 standard for underground uranium mines was also challenged by the American Mining Congress (AMC). In November 1986, AMC and EDF filed petitions challenging the standard for licensed uranium mill processing sites.



On July 28, 1987, the U.S. Court of Appeals for the DC Circuit remanded to the Agency an emissions standard for vinyl chloride which had also been promulgated under section 112 of the CAA. The Court in *Vinyl Chloride* concluded that the Agency improperly considered cost and technological feasibility without first making a determination based exclusively on risk to health.

In light of that decision, EPA concluded that the standards for elemental phosphorus plants, DOE facilities, NRC-licensees, and underground uranium mines should be reconsidered and on November 16, 1987, moved the Court for a voluntary remand of those NESHAPs. EPA also agreed to reexamine all issues raised by the parties to the litigation. On December 8, 1987, the Court granted EPA's motion for voluntary remand and established a time schedule for EPA to propose regulatory decisions for all radionuclide source categories within 180 days and finalize them within 360 days. On March 17, 1988, the Court granted a subsequent EPA motion and modified the order to require proposed regulatory decisions by February 28, 1989 and final action by August 31, 1989.

On April 1, 1988, EPA also requested a remand for its standard for licensed uranium mill tailings. On August 3, 1988 the Court granted EPA's motion and put the uranium mill tailings NESHAP on the same schedule as the other radionuclide NESHAPs.

On remand, EPA intends to take a "fresh look" at the risks and issues involved in regulating or not regulating radionuclide emissions under section 112 of the CAA. This means that the Agency is not bound by previous statements, positions or decisions. The Agency will or will not regulate sources based on whether or not their emissions protect public health with an ample margin of safety as determined during this rulemaking.

**IV. Characterization of the Risks of Radiation**

*A. Sources of Radiation*

Every day each person is exposed to radiation from a variety of natural and manmade sources. Natural sources of radiation include cosmic rays, radon, and other terrestrial sources. Manmade radiation includes medical and dental X-rays, fallout from above ground nuclear weapons testing and indsutrial sources.

The earth's atmosphere acts as a shield to cosmic rays, absorbing much of the radiation. People receive a higher dose of cosmic rays at higher altitudes because there is less atmosphere to shield them from cosmic rays. For example, people living in the mountains receive a higher dose than people living at sea level, and people are exposed to even higher levels when flying in an airplane. Terrestrial radiation comes from the small amount of radionuclides that are naturally present in all matter: soil, air, food, clothes, and even our bodies.

Radon is a radionuclide that is produced as a radioactive decay product of the radium which is naturally found in soil. Radon is always present in the ambient air where it poses some health risk. In addition, radon often gets trapped in homes, leading to even higher health risks. EPA has issued recommendations to homeowners for reducing these risks.

This rulemaking deals with sources of radionuclide emissions, including radon, from industrial sources. Although the amount of radiation dose that most people receive as a result of these emissions is lower than their natural background dose, the resulting risk can still be signficant. A source does not present an acceptable risk simply by being less than natural background. It is important to note that total background radiation from all sources, including naturally occurring radon, results in a calculated maximum lifetime risk of fatal cancer of approximately $1\times10^{-2}$. In most cases, little can be done to reduce most of this radiation exposure which people receive from natural background.

Industrial sources of radionuclide emissions in the air include a wide variety of facilities, ranging from nuclear power facilities to hospitals to uranium mill tailing piles. Industry uses hundreds of distinct radionuclides in solid, liquid, and gaseous forms, emitting different types of radiation (alpha, beta, gamma) at various energy levels.

Industrial sources of radionuclide emissions fall into two major categories. The industries that use radioactive materials have emissions as a result of an inability to completely contain the materials they use. For example, hospitals use radionuclides as part of their radiology departments. Since many of the radionuclides they use are gases, liquids capable of evaporation, or solids capable of sublimation, some radionuclides inevitably are released into the environment. The other type of source is that which releases radionuclides (usually radon) as an unintended consequence of other activity, such as mining or milling. An example of this is phosphogypsum stacks. These piles emit radon because radium (from which radon is produced by radioactive decay) is found naturally in the same soils that are the source of phosphate rock.

*B. Health Effects of Radiation*

The level and type of hazard posed by radionuclides vary, depending on such characteristics as the radionuclide's radioactive half-life, the type of radiation it emits, the energy level of the emission(s), and its ability to concentrate in the body. Different radionuclides will irradiate different parts of the body causing different types of cancers.

There are three major types of long-term health impacts from exposure to radiation: Cancer, hereditary effects, and developmental effects on fetuses such as mental retardation. Since there is such a strong basis for quantifying the risk from fatal cancers, EPA's consideration of fatal cancers is the driving force in this rulemaking. However, it is important to note that other health effects have been considered as well in the rulemaking. The other effects are not specifically addressed in this discussion because none of them pose a more severe risk to health. Therefore, judging the risk of total fatal cancers acceptable is judging the other effects acceptable. In addition, risk distribution of health effects from radiation from most of the sources considered for regulation show that fatal cancers occur much more frequently than non-fatal cancers and cancers generally occur more often than genetic or developmental effects. For sources that emit radon, no genetic or developmental effects and very few non-fatal cancers are expected.

Numerous studies have demonstrated that radiation is a carcinogen. It is assumed that there is no completely risk-free level of exposure of radiation for cancer. The risks from radiation have been observed in studies of workers and of the survivors of Hiroshima and Nagasaki. This information has been verified with studies of animals in the laboratory. However, the effects of doses at low levels of exposure can only be predicted by extrapolating from the observed effects at higher doses since cancers caused by radiation cannot be distinguished from ones with other causes. Some pollutants cause diseases that are unique to the pollutant, for example, asbestos and asbestosis. Radiation, however, causes the same types of cancers that are caused by other factors, such as leukemia and lung and liver cancer. Since these cancers are not unique to radiation effects, it is impossible to differentiate cancers caused by radiation from other cancers.

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The second type of effect is the induction of hereditary effects in discendants of exposed persons, which vary in degree and may be fatal. It is assumed that there is no completely risk-free level of exposure for hereditary effects. Although hereditary effects have been observed in experimental animals at high doses, they have not been confirmed at low doses in studies of humans.

Based on extensive scientific evidence, it is prudent to assume that at low levels of exposure, the risk of incurring either cancer or hereditary effects is linearly proportional to the dose received in the revelant tissue. However, the severity of either effect is not related to the amount of dose received. That is, once a cancer or an hereditary effect has been induced, its severity is independent of the dose.

Regarding cancer, there continues to be divided opinion on how to interpolate between the absence of radiation effect at zero dose and the observed effects of radiation (mostly at high doses) in order to estimate the most probable effects at doses that represent small increases above natural background radiation. Most scientists believe that available data best support use of a linear model for estimating such effects. Others, however, believe that other models, which usually predict somewhat lower risk, provide better estimates. These differences of opinion have not been resolved to data by studies of the effects of radiation in humans, the most important of which are those of the survivors of the Hiroshima and Nagasaki atomic bombs. It is important to note that no one receives a zero dose of radiation. All doses received by people as a result of emissions from industrial sources are in addition to the natural background dose.

Studies are now underway to reassess radiation dose calculations for these survivors and to provide improved estimates of risk. These studies may reduce the uncertainty associated with extrapolation from high doses to low doses. These studies may also result in an increase of the estimated risk per unit dose. But they will not address the question of whether a threshold exists. EPA is monitoring the progress of this work and will initiate reviews of the risks of exposure to low levels of radiation upon its completion.

It could be argued that the approach taken understates the risk to an exposed individual. Two important and unquantifiable factors can lead to an underestimation of risk. The first is the possibility of greater susceptibility of some members of the population to radiation. The other factor that EPA cannot quantify is the synergistic effects of radiation with other pollutants. Radiation is only one of a number of carcinogens in the environment. While EPA's relative risk model takes into account the effect of chemicals that are widely distributed in the environment, there are hundreds of chemicals that are concentrated in local areas, and the effects of these chemicals are not and can not be taken into account.

*C. Risk Assessment*

EPA estimates numerical risk in several ways in this rulemaking. One is the maximum risk to which any individual would be exposed for his or her entire lifetimes, 70 years on the average. Another is to estimate the number of fatal cancers that will be caused by the annual radionuclide emissions from the studied facility. Another is to estimate how many persons within a certain distance of a source of pollutant emissions are at what level of individual risk. A risk distribution estimates how many persons within a certain distance of a source of pollutant emissions are at what level of individual risk. Typically, the distribution is given for 10-fold increments of individual risk. Such a distribution provides the decisionmaker with information on both the individual risk level for those exposed and the number of persons exposed at each level. For NESHAP and other decisions, the Agency has examined risk distributions both as measures of risk and to compare the effects of various strategies for risk reductions across a source category.

In attempting to make these estimates, EPA has tried at all times to give "best estimates" of the radionuclide concentrations in the environment and individual and population risks. Wherever possible, measured or reported data of emissions, meteorology and population were used. Where estimates were used, EPA has tried to use the most likely numbers in its assessments. When model facilities were used, they were designed to be representative of actual facilities. EPA's risk assessments are based on a current "snapshot" of each industrial source category as it now stands. EPA has not estimated the maximum conceivable risks that may result from the facilities analyzed at some point in the future. Future risk may be higher or lower depending on whether people move closer to, or further away from, the facilities studied and whether the emissions from those facilities increase or decrease. This is not to say that there is little or no uncertainly in the final results. As in all such assessments, the analysis have considerable uncertainly. EPA's analysis are not designed to consistently over- or underestimate risks.

The level of uncertainty is greater in the estimate of the maximum individual risk than in the estimate of population risk. Many possible errors in analysis cancel out in assessments of populations. For example, the results from pollutant dispersion models may be in error. For example, local meteorological conditions may cause more radionuclides to go in one direction than another. This effect may cause an over- or underestimate of the maximum individual risk, depending on where the most exposed individual is located. However, this source of error tends to be less important in population estimates, since the analysis integrates individual doses to a large number of people. If one person gets a larger risk due to local dispersion effects, it means that another person is getting less. Consequently, when the individual risks are summed, local conditions will not cause a serious error in the value for total population risk.

In estimating the radiation exposure to the meet exposed individual, EPA assumes that the person receiving the maximum individual risk lives for a lifetime, an average of 70 years, at the same site. EPA has assumed, *a priori*, that the person exposed to the maximum individual risk lives at the point of maximum exposure his whole life. EPA then makes its best estimate of the risks to the individual of living his entire lifetime under a set of certain conditions.

EPA makes this assumption as a matter of policy and does not believe that it undercuts the accuracy of risk assessments. It is not meant to be a "best guess" of how people live. EPA has made this assumption for several reasons. First, EPA is attempting to estimate the maximum individual risk and it is completely possible that someone could live in the same place for that person's entire life. Use of different assumptions could lead, in some cases, to understanding the maximum risk.

Second, a considerable fractions or risk can occur in less than 70 years. The effect of radiation and risk are not independent of age. Children appear to be a more susceptible to the effects of radiation than adults. In addition, due to their youth, they generally have a greater chance of developing the cancer the radiation would cause (and they are less likely to die of something else before they die of cancer). Due to these two factors, younger people are at a greater risk from the same dose than older people. (See Table 1). If EPA were to reduce the number of years of assumed exposure to less than a lifetime, it would be unclear what number of years to use or where to place those years. For example, should EPA assume that the person lives in the same place from birth to age 19 or from age 35 to 50? Generally, in the first case the risk is 6 times greater than in the second case. Finally, the difference that would be caused by assuming a shorter period of exposure is not very significant. For an assumed constant rate of exposure, people receive over 60 percent of their total lifetime risk during their first nineteen years. To change the period of exposure from 70 years to the first 19 years of life would change the final result by less than a factor of 2.



TABLE 1.—AGE DEPENDENCE OF RISK DUE TO WHOLE BODY RADIATION

[Assumed Percentage of Total Lifetime Risk As A Function Of Ages At Which Radiation Exposure Occurs]

| Period of exposure (ages) | Percentage of lifetime risk | Cumulative percentage of lifetime risk [1] |
|---|---|---|
| 0 to 9 | 30 | 30 |
| 10 to 19 | 30 | 60 |
| 20 to 34 | 20 | 80 |
| 35 to 50 | 10 | 90 |
| 50+ | 10 | 100 |

[1] Exposure is at a constant rate for a lifetime.

*D. Computer Models*

1. Clean Air Act Assessment Package—1988 (CAP–88)

In this rulemaking, EPA uses the Clean Air Act Assessment Package—1988 (CAP–88) in risk analysis and to estimate the dose and risk resulting from radionuclide emissions to air. CAP–88 is a set of computer programs, data bases and associated programs that model the transport of radionuclides from the emission point through the environment to exposed human populations and estimates the resulting dose and health impact. For more information on the source of data used in CAP–88, see the BID.

*a. Environmental transport of radionuclides.* The computer program which models environmental transport in CAP–88 is AIRDOS–EPA. This program uses a modified Gaussian plume equation to estimate both horizontal and vertical dispersion of radionuclides released from up to six sources. The sources may be either elevated stacks, such as a smokestack, or reasonably uniform area sources, such as a pile of uranium mill tailings. Plume rises can be calculated assuming either a momentum-driven or buoyancy-driven plume. Assessments are done for a circular area within a radius of 80 kilometers (50 miles) around the facility.

AIRDOS–EPA computes radionuclide concentrations in air, rates of deposition on ground surfaces, concentrations in food and intake rates to people from inhalation of air and ingestion of food produced in the assessment area. Estimates of the radionuclide concentrations in produce, milk and meat consumed by humans are made by coupling the output of the atmospheric transport models with the U.S. Nuclear Regulatory Commission Regulatory Guide 1.109 terrestrial food chain models. The computer program PREPAR is used to prepare the input data for use by AIRDOS–EPA. This is done to insure proper formatting of the large arrays required to do environmental transport calculations. These arrays include the agricultural productivity data, population distributions and meteorological data. PREPAR also passes on information on the fraction of food which is assumed to be home-grown, the fraction taken from production within the 80-km assessment area, and the fraction of uncontaminated food imported from outside the assessment area.

Population distributions are generated with the utility program SECPOP, which uses a data base of 1980 Census data. Since census enumeration districts vary widely in their size, the census data base is not very precise at estimating population groups close to the facility, and the arrays have to be modified with supplemental site specific data.

Meteorological data required to estimate the dispersion of radionuclides in air is either supplied from on-site weather stations or generated from stability arrays (STAR files) which are available from the National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce. These data are generated from weather data reported from airports across the nation and include the frequencies of wind direction, wind speed and stability category. Where on-site data are not available, and a reporting station is not close by, data are selected from the nearest reporting station judged to have similar weather conditions. The annual average rainfall rate is estimated for each facility from historical climatic data.

*b. Estimation of dose and risk.* The computer program RADRISK is used to estimate dose and risk conversion factors. Factors are provided for the pathways of ingestion and inhalation intake, ground level air immersion and ground surface irradiation. Factors are further broken down by particle size, solubility class and digestion transfer factors. These factors are generated once and stored in a data base for future use. The data base used for the 1988 rulemaking is RADRISK.V8401RBM. For more information concerning this data base, see the BID.

Estimation of dose and risk is made by the program DARTAB, which combines the inhalation and ingestion intake rates, and the air and ground surface concentrations output from AIRDOS–EPA with the dose and risk conversion factors from the RADRISK data base. DARTAB lists the dose and risk to the maximum individual, the average individual and the collective population. Doses and risks are further tabulated as a function of radionuclide, pathway, location and organ.

DARTAB also tabulates the number of people in each risk category, as well as the number of health effects from each risk category. Risk categories represent the lifetime risk and are computed by powers of ten from one in ten ($1\times10^{-1}$) to one in a million ($1\times10^{-6}$).

*c. Limitations of the CAP–88 methodology.* There are some limitations in the mathematical dispersion models that are available in CAP–88. The CAP–88 codes have been verified, and improvements will be made on a continuing basis as new techniques become available.

While up to six stack or area sources can be modeled, all the sources are modeled as if co-located at the same point; that is, stacks cannot be located in different areas of a facility. No correction for the diffusion introduced by building wakes or tip downwash can be made. Also, area sources are treated as uniform and co-located. Variation in radionuclide concentrations due to complex terrain cannot be modeled; all assessments assume a flat plain.

Errors arising from these assumptions will have a negligible effect for assessments where the distance to exposed individuals is large compared to the stack height, area or facility size.

*d. Verification of the CAP–88 methodology.* The Gaussian plume model used in CAP–88 to estimate dispersion of radionuclides in air is one of the most commonly used models. It produces results that agree with experimental data as well as other models, is fairly easy to work with, and is consistent with the random nature of turbulence.

The Office of Radiation Programs has made comparisons between the predictions of annual-average ground-level concentration to actual

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environmental measurements and found very good agreement. In the recent paper "Comparison of AIRDOS–EPA Prediction of Ground-Level Airborne Radionuclide Concentrations to Measured Values", environmental monitoring data at five Department of Energy (DOE) sites were compared to AIRDOS–EPA predictions. EPA concluded that, as often as not, AIRDOS–EPA predictions are within a factor of 2 of actual concentrations.

2. COMPLY

This section deals with the compliance procedures that the Agency has developed to implement the NESHAPs for NRC-licensees. Most of the estimated 6,000 facilities subject to the rule possess very small quantities of radioactive materials, and under normal conditions they will not exceed the standard.

In cooperation with the National Council on Radiation Protection and Measurements (NCRP), a group chartered by Congress to develop basic concepts about radiation measurement and protection, EPA has developed a system for implementing the CAA that is easy to use and that reduces the burden of demonstrating compliance for small facilities. The NCRP assisted the Agency by developing a simplified screening model allowing the regulated community to calculate dose based on: emissions to the atmosphere, distance to the receptor, building dimensions, and other readily available information. The NCRP model employs a Gaussian plume air dispersion model which was modified to take into consideration building wake effects. It calculates dose through four exposure pathways: Inhalation, ingestion, immersion, and radionuclides deposits on the ground. It was developed by the NCRP to provide a simple method for calculating radiation dose from releases of radioactivity to the atmosphere.

The NCRP model is intentionally designed to overestimate the dose both to maintain simplicity for hand calculation, and because it was intended for screening purposes only. The model is presented in NCRP Commentary No. 3, "Screening Techniques for Determining Compliance with Environmental Standards." To augment these procedures, the EPA has developed a method allowing the regulated community to estimate a source term for the models in lieu of measured release rates. Simple compliance procedures for the regulated community have been devised based on these considerations.

The process consists of providing the regulated community with a series of ways to make increasingly more accurate estimates, depending on their potential to exceed the standard. First, a facility can be found in compliance if the quantity of radioactive material possessed during the year is less than that listed in a table of annual possession quantities (Appendix E, Table 1). The table of annual possession quantity has been derived using EPA's emission factors in collaboration with the NCRP screening model. The table assumes that the nearest resident is 10 meters from the point of release while food is produced at 100 meters.

A facility will also be in compliance if the average annual radionuclide emission concentration is less than that listed in a table of air concentration levels (Appendix E, Table 2). This table is based on the effective dose equivalent calculated by the NCRP screening model assuming that the resident and the source of food production are located at the point of release. If the facility is not demonstrated to be in compliance by using these tables, it can establish compliance by estimating a dose using the NCRP screening model with a radiological source term derived using EPA approved emission factors. These procedures are described in "Guide for Determining Compliance with the Clean Air Act Standards for Radionuclide Emissions from NRC-Licensed and Non-DOE Federal Facilities."

A user-friendly computer program called COMPLY has been developed to reduce the burden on the regulated community. The Agency has also prepared a "User's Guide for the COMPLY Code" to assist the regulated community in using the code, and in handling more complex situations such as multiple release points.

The compliance model, which is an extension of the NCRP screening model, is the last stage of the COMPLY computer code. The compliance model was developed by EPA to decrease overestimation of the dose estimates by allowing input of site-specific information by user. The differences between the compliance model and the screening models developed by NCRP are as follows:

1. The compliance model allows the use of more complete meteorological data—the frequency with which the wind blows in a given direction and the average wind speed in that direction (a wind rose).

2. It accounts for momentum or buoyant plume rise.

3. It allows for a more precise determination of the locations for the sources of food production.

4. It uses more realistic pathway parameters from AIRDOS-EPA as opposed to the conservative pathway parameters selected by NCRP for screening purposes.

These differences make the compliance model more realistic than the NCRP model, which was designed to be simple enough to be implemented using a hand calculator. Comparisons of the dose calculated using the compliance model to that calculated using the AIRDOS–EPA code at the same air concentration, show that the two codes produce essentially the same results for inhalation and immersion. The compliance model predicts dose rates that are somewhat greater than AIRDOS–EPA values for ingestion and radioactivity deposited on the ground.

More radionuclides are contained in the COMPLY computer code than are in NCRP Commentary No. 3 and the tables to calculate dose for Subpart I. The Agency intends to expand the list of nuclides for the hand calculational procedures and is interested in soliciting comments on which nuclides should be added.

*E. Effective Dose Equivalent*

Since 1985, when EPA proposed dose standards regulating NRC-licensees and DOE facilities, a different methodology for calculating dose has come into widespread use, the effective dose equivalent (EDE). In 1987, EPA, in recommending to the President new standards for all workers exposed to radiation, accepted this methodology for the regulation of doses from radiation. This method, which was originally developed by ICRP, will be used in all the dose standards proposed by EPA in this notice. In the past, EPA dose standards were specified in terms of limits for specific organ doses and the "whole body dose," a methodology which is no longer consistent with current practices of radiation protection.

The EDE is simple, is more closely related to risk and is recommended by the leading national and international advisory bodies. By changing to this new methodology, EPA will be converting to the common international method for calculating dose. This will make it easier for the regulated community to understand and meet our standards.

The EDE is the weighted sum of the doses to the individual organs of the body. The dose to each organ is weighted according to the risk that dose represents. These organ doses are then added together and that total is the effective dose equivalent. In this manner the risk from different sources of radiation can be controlled by a single



standard. The weighting factors for the individual organs are listed in Table 2:

TABLE 2.—WEIGHTING FACTORS FOR INDIVIDUAL ORGANS

| Organ | Factor |
|---|---|
| Lung | .12 |
| Breast | .15 |
| Thyroid | .03 |
| Gonads | .25 |
| Bone surface | .03 |
| Red bone marrow | .12 |
| Remainder | .30 |

EPA risk models differ from those underlying the ICRP recommendations. The risks calculated by EPA are not strictly proportional to the EDE derived using ICRP quality factors and organ weighting factors. While the risk methodology underlying the ICRP EDE differs from that used by EPA, the widespread acceptance of the EDE approach, and the small likelihood that a regulation based on this concept would allow an unacceptable risk make it a reasonable basis for regulation under the CAA.

*F. Science Advisory Board Review*

Beginning in 1984, EPA's Science Advisory Board (SAB) has conducted reviews of the risk assessment methods used in this rulemaking. EPA has worked closely with the SAB with respect to their comments and findings and believes it has been responsive to them.

In 1984, the SAB recommended that available scientific information be integrated into an assessment document that would lead from identification of emission sources through calculation of radiation dose and health risk and the associated degrees of uncertainty; a full explanation of procedures to be provided. This has been done in the Environmental Impact Statement accompanying this rulemaking.

In 1988, the SAB reviewed the dose-risk conversion factors for low-LET radiation and for radon and the source terms and environmental pathway models used by EPA in the risk assessments which are considered in this rulemaking. Given below are specific SAB comments and the Agency's responses:

*SAB comment:* EPA should use the effective dose equivalent concept for regulations protecting people from exposure to radiation.

*EPA response:* This is done in the proposed rules.

*SAB comment:* EPA should use simple screening methods in implementation procedures such that only the largest users of radionuclides are required to report annually to EPA.

*EPA response:* A simple screening procedure is proposed.

*SAB comment:* SAB has given specific advice on risk factors for low-LET and for radon.

*EPA response:* The SAB approaches to these risk factors have been used in the risk assessments supporting this rulemaking.

*SAB comment:* EPA should improve presentation of risk by clearly stating assessment objectives, presenting the number of people exposed and health impacts in terms of individual risk ranges, defining input/output parameters clearly, and comparing risks with commonly encountered risks.

*EPA response:* Assessment objectives are carefully defined in the EIS in terms of the individuals and populations at risk. The number of people at risk and incidence is presented by range of risk. Summaries of inputs and outputs of the computer code models have been placed in the docket. Radiation risks are compared with other risks and other radiation control recommendations.

*SAB comment:* EPA should rigorously derive quantified uncertainty estimates for each risk assessment.

*EPA response:* This is a large task. For the short term, prior to the final rule, we will perform parameter sensitivity analysis of the most important parameters using simplifying assumptions. For the long term, an Agency task group has been formed to plan and conduct more complete studies of the uncertainty question. This longer term effort will take a number of years to complete.

EPA acknowledges the uncertainty in risk estimates, considers them when making risk management decisions and recognizes that a quantitative expression of uncertainty would be an improvement. However, it does not believe that the quantitative expression of uncertainties, which are themselves uncertain to a degree, would change the decisions made in this rulemaking. For a more complete discussion of uncertainty, see chapter 7, Volume 1 of the EIS.

*SAB comment:* Make environmental transport models state-of-the-art.

*EPA response:* The task group identified above will oversee the updating of risk assessment models for radionuclides. However, the SAB's recommendations to improve environmental transport models involve modifications of second order pathways, such as adding ingestion of contaminated soils by cattle to the existing ingestion pathways of cattle, correcting for the short range effect of the presence of a building on the air dispersion model predictions of radionuclide concentrations, and using seasonal parameters to describe agricultural practices instead of yearly averages.

While EPA acknowledges the desirability of making such improvements, we believe that the results of implementing these recommendations would make only minor changes in the estimated risks supporting this rulemaking.

**V. Decision to List Under Section 112**

Section 122(a) of the CAA required EPA to make a determination of whether or not "emissions of radioactive pollutants * * * will cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health." Once an affirmative determination is made, that section requires EPA to either list the substance under section 108(a)(1), governing National Ambient Air Quality Standards (NAAQS), 111(b)(1)(A), governing New Source Performance Standards, or 112(b)(1)(A), governing NESHAPs. EPA analyzed numerous studies which indicated that exposure to radionuclides can cause three major types of health effects: Cancer, genetic damage, and developmental effects. After considering these health effects, EPA made the determination that radionuclides cause or contribute to air pollution which "may reasonably be anticipated to endanger public health." Because EPA intended to regulate carcinogens under section 112, it listed radionuclides under section 112(b)(1)(A) [44 FR 76738 (Dec. 27, 1979)]. That decision was the first step in the regulatory process, and was challenged in the current litigation. As a result, EPA has reevaluated the decision and determined that the original listing under section 112 was correct. This discussion explains that decision to the public and provides an additional opportunity for comment on this issue.

The first part of the listing decision, the "hazardousness" of radionuclides, is unchallenged. The evidence that radionuclides can cause cancer has, if anything, increased since 1979, see Volume 1 of the BID. The evidence now points to the conclusion that radiation is even more dangerous than was believed at that time. While some people have expressed the view that, even though radiation can cause cancer, the amount of radionuclides that are released from a given source or industry is insignificant and to not present a risk. EPA believes that the results of the risk assessments demonstrate the risk to public health that results from radionuclide emissions

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from industrial sources. These risk assessments support the listing decision.

Section 112(b)(1)(A) applies not merely to any "air pollutant" as do sections 108 and 111, but to a "hazardous air pollutant" that is defined as a pollutant that "causes or contributes to air pollution which may reasonably be anticipated to result in an increase in mortality or an increase in serious irreversible or incapacitating reversible illness." Once a pollutant is determined to be a hazardous air pollutant, the only remaining step is for the Administrator to determine whether emissions of the pollutant present a risk warranting regulation under section 112—that is, whether it is a hazardous air pollutant "for which he intends to establish an emission standard" under that section. EPA has determined that radionuclides not only pose a risk of carcinogenicity and mutagenicity when emitted into the air (see, National Academy of Sciences, Commission on Biological Effects of Ionizing Radiation, Reports Number 3 and 4), but also are emitted in sufficient quantities as to create a risk warranting regulation under section 112. Therefore, EPA reaffirms its prior conclusion that radionuclides should be listed for regulation under section 112.

## VI. EPA NESHAPs Policy

### *A. Legal Framework Under Vinyl Chloride*

#### 1. Introduction

Under the Congressional mandate of Section 112 of the Clean Air Act, EPA must promulgate NESHAPs that provide "an ample margin of safety" "to protect the public health." The recent *Vinyl Chloride* decision defines this language as having two stages of analysis. First, EPA must make an initial determination of what is safe, based exclusively on risk to health. Second, the level may be adjusted downward in order to provide a greater degree of safety. The second step provides the "ample margin" of safety.

#### 2. "Safe" or "Acceptable" Level

The court in *Vinyl Chloride* explicitly declined to determine what risk level is safe or acceptable (the court used these terms interchangeably) or to set out the method for determining this level. The court recognized that scientific uncertainty concerning the effects of a particular carcinogenic pollutant is a matter for the Administrator's discretion under section 112. "EPA, not the court, has the technical expertise to decide what inferences may be drawn from the characteristics of * * * substances and to formulate policy with respect to what risks are acceptable." *Id.*, at 1163, *citing*, Environmental Defense Fund v. EPA, 598 F. 2d, 63–64 (DC Cir. 1978). But the Administrator may not consider other factors, such as cost or technological feasibility in making the "safe" determination.

The court did, however, provide some guidance on making the "safe" determination. The court stated that the Administrator must base the "safe" decision on "an expert judgment" concerning "the level of emissions that will result in an 'acceptable' risk to health." *Vinyl Chloride*, at 1164–65. To exercise this judgment, "the Administrator must determine what influences should be drawn from available scientific data and decide what risks are acceptable in the world in which we live." *Id.* at 1165. The court emphasized that "safe" does not require elimination of all risk. "There are many activities that we engage in every day—such as driving a car or even breathing city air—that entail some risk of accident or material health impairment; nevertheless, few people would consider those activities 'unsafe.' " *Id., citing, Industrial Union Dep't., AFL–CIO v. American Petroleum Inst.*, 448 U.S. 607,642 (1980) (OSHA Benzene Case)

#### 3. Ample Margin of Safety

Because the determination in the first stage of analysis of what is "safe" is marked by scientific uncertainty, and safe does not mean risk free, the Administrator may set the level below that which is determined to be safe in order to achieve an "ample margin of safety." Once "safety" is assured with regard only to risk to health, the Administrator may consider cost and technological feasibility in lowering the level. "Because consideration of these factors at this stage is clearly intended to protect the public health, it is fully consistent with the Administrator's mandate under section 112." *Vinyl Chloride*, at 1165.

#### 4. Uniqueness of Decision

The effect of *Vinyl Chloride* is to require a unique decisionmaking process for public health protection decisions, unlike any other regulatory decision faced by the Agency. This is the result of the court's prescription of two separate steps for decisionmaking, the first, in which only health factors can be considered in setting an acceptable risk level, and the second, in which additional factors including cost, technological feasibility, and other relevant factors may be considered in providing an ample margin of safety. This scheme is unlike any other in the Clean Air Act or any of the other statutes administered by EPA because the acceptable risk that EPA adopts in the first step cannot be exceeded by the standard EPA adopts in the second step.

In contrast, other EPA statutes have very different structures and legal requirements for decisionmaking on public health standards. For example, while the Safe Drinking Water Act provides for two separate decisions, the first is a health-based goal toward which to work, but not necessarily meet; the second is an enforceable standard that takes cost and feasibility into account. Under both the toxic Substances Control Act (TSCA) and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), the balancing of health concerns and benefits of continued chemical use and control costs are explicitly provided for within a single decision. RCRA and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) both require statutory decisionmaking very different from the bifurcated process mandated by the Court for section 112.

Thus, the *Vinyl Chloride* decision requires EPA to consider whether a risk is acceptable without at the same time considering benefits of the activity causing risk, feasiblity of control, or other factors. This problem is particularly acute in the case of carcinogens, for which the Agency has stated that it is unable to identify a threshold no-effect level.

The very examples cited by the Court bring home the unusual nature of the Court's "acceptable risk" decision step. The court (quoting the Supreme Court's decision in the OSHA Benzene Case) cited "driving a car or even breathing city air" as activities that "few people would consider * * * 'unsafe.' " But driving a car entails risks that most people would consider high; the annual incidence approximates 50,000 fatal accidents, and the average individual risk (not the maximum, but the actuarial average risk) approximates a 1 in 100 chance of automobile-related death over a 70-year lifetime. Yet the Court was correct to say that our society accepts (or tolerates) the risk from driving cars. As a society, we continue to try to reduce the level of risk, but we accept it due to the value of the benefits in increased mobility that the automobile affords. The same is true of "breathing city air." Individuals live in cities to be close to the workplace, for the recreational and cultural advantages associated with cities, and for a variety of reasons extrinsic to the risk itself.

Commentors have often suggested that EPA consider a cost-benefit



analysis in assessing risk acceptability. The court has rejected this approach. How, then, is EPA to make those judgments? Later in this section, EPA sets out for public comment four approaches that deal with this issue. The approaches cover a range of possible risk levels, and they give prominence to different measures of risk, e.g., individual versus population risk.

### *B. Survey of Societal Risk*

The question of what constitutes "safe" must be answered with reference to the "risks that are acceptable in the world in which we live." *Vinyl Chloride*, 824 F.2d at 1165.

In approaching the question of what level of risk is "acceptable" or "safe", EPA surveyed a range of health risks that our society faces. The objective of this survey was to develop information to place the radionuclide risk estimates in perspective. Thus, the risks examined included those encountered in everyday life, such as driving a car and breathing city air, which were cited in the *Vinyl Chloride* decision, as well as a range of regulatory judgments or risks. The EPA surveyed both the individual risk and the incidence in the population exposed to risk associated with the activities. Considering incidence comports with the purpose of section 112 to protect "public health" when incidence is viewed as a measure of health of the population as a whole.

The risks examined ranged from individual risks of 1 to 10 ($10^{-1}$) to less than 1 in 10,000,000 ($10^{-7}$). Everyday risks include risks from natural background radiation as well as risks from home accidents. Natural background radiation (excluding radon) at sea level creates individual lifetime cancer risks in the range of 3 in 1,000 ($3\times10^{-3}$) and an estimated 10,000 cancer cases per year. Naturally occurring radon in homes poses an additional source of radiation risk, and these risks can be as high as 1 in 100 to 1 in 10 ($10^{-2}$ to $10^{-1}$) and cause an estimated 5,000 to 20,000 cancer cases per year. In the U.S., accidents, natural disasters, and rare diseases pose individual risks of death from 1 in 10,000 ($10^{-4}$) (e.g., tripping and falling which cause approximately 470 deaths per year) to 1 in 10,000,000 ($10^{-7}$) (e.g., rabies which causes an average of 1.5 deaths per year).

Judgments on risks have also spanned a broad range of risk levels. The NCRP, following recommendations of the International Commission on Radiological Protection, has recommended that maximum individual exposures from non-medical manmade radiation be limited to an amount corresponding to risks of 3 in 1,000 ($3 \times 10^{-3}$). See Table 3 for a comparison of radiological risks and recommendations. It is important to note that the recommendations of national and international bodies shown in table 3 are coupled with recommendations that radiation doses should be "as low as reasonably achievable" (ALARA). The implementation of ALARA requires a site-specific consideration of the cost effectiveness of controls that could be added to reduce radiation doses. Therefore, these national and internationally recommended dose levels are acceptable only when the ALARA principle has also been satisfied.

The Food and Drug Administration (FDA) establishes tolerances for poisonous or deleterious substances, such as polychlorinated biphenyls (PCBs), at a level found necessary to protect the public health, taking into account the extent to which the substance is unavoidable in the food supply and the other ways the consumer may be affected by the same substance. For example, FDA has established a tolerance level for PCBs in fish at an individual risk of $7 \times 10^{-5}$, which could result in 34 cancer cases each year among heavy fish consumers alone (44 FR 38333, June 29, 1979).

The EPA regulates pesticide uses under FIFRA based on whether the pesticide creates unreasonable adverse effects, a statutory term defined as requiring the balancing of risks and benefits. The EPA has authorized some uses of the pesticide chlorobenzilate that would create individual risk of $1 \times 10^{-6}$ to $7 \times 10^{-6}$ and could result in 2 to 9 additional cancer cases per year (EPA banned other uses of this pesticide).

Regulatory judgments have also been made to require lower risks. For example, under the provisions of the Food, Drug, and Cosmetic Act, which povides that "no residue" from carcinogenic additives to animal feed may remain in any edible portion of the animal, FDA has established a policy of not allowing the use of additives that create a risk higher than 1 in 1,000,000 $1 \times 10^{-6}$. A complete description of the risks EPA considered is presented in a document in the docket entitled "Survey of Risks."

No fixed risk level could be identified as acceptable in all cases and under all regulatory programs for two main reasons. First, as discussed above, in most cases the calculation or risks depends on different data, assumptions, and uncertainties. For example, the risk associated with motor vehicle and other common accidents can be calculated directly from accident records and therefore reflects actual risk, whereas environmental risks are based on estimating procedures and assumptions and therefore are more uncertain.

TABLE 3.—RADIOLOGICAL RISKS COMPARED

| | Annual effective dose equivalent (mrem) | Lifetime risk |
|---|---|---|
| **REGULATORY RISK** | | |
| Federal guidance [1] (1960) (individual, long-term) | 500 | $1.5 \times 10^{-3}$ |
| ICRP advisory [1,2] (1987) (all sources) | 100 | $3 \times 10^{-3}$ |
| NCRP advisory [2,3] (1985) (all sources) | 100 | $3 \times 10^{-3}$ |
| British advisory [2] (1987) (all sources) | 50 | $1.5 \times 10^{-3}$ |
| NCRP advisory [2,3] (1984) (air sources) | 25 | $7 \times 10^{-4}$ |
| NRC goal for nuclear power plants [3] (current) | 5 | $1.5 \times 10^{-4}$ |
| EPA drinking water standards (1976) | 4 | $1.2 \times 10^{-4}$ |
| **BACKGROUND RISK** | | |
| Natural background (total) | 300 | $1 \times 10^{-3}$ |
| Natural background (total non-radon) | 100 | $3 \times 10^{-3}$ |
| Yearly round trip flight N.Y. to L.A. (70 years) | 7 | $2 \times 10^{-4}$ |
| Remaining fallout from atomic tests | 4 | $1.2 \times 10^{-4}$ |

[1] International Commission on Radiological Protection.
[2] National Council on Radiation Protection and Measurement.
[3] Risks stated are the maximum allowed. These regulatory decisions presume that all exposures will be kept "as low as reasonably achievable".

Thus, actuarial and environmental risk estimates cannot be directly compared so as to draw precise judgments as to whether one risk is larger, or less acceptable, than another. Second, the acceptability of risk is a relative concept and involves consideration of different factors. Considerations in these judgments may include: The certainty and severity of the risk; the reversibility of the health effect; the knowledge or familiarity of the risk; whether the risk is voluntarily imposed or whether the individual receives a direct benefit for

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accepting the risk voluntarily; the advantages of the activity; and the risk and advantages for any alternatives. Thus, different *judgments* on acceptability can be made for similar numerical estimates of risks.

In addition, the uses of individual risk and incidence as comparative factors face limitations since the relative size of the risks associated with an activity determine how the activity is defined. For example, incidence associated with a single leaking pipe at a plant within a particular industry could be quite small, but the cumulative risks associated with all plants within the industry could be significant. This limitation can be ameliorated by careful selection of the appropriate categories of sources.

In summary, EPA surveyed and considered this risk information to provide perspective on society's consideration and acceptance of risk. In its consideration, EPA is not judging whether each of the risks presented here is acceptable or unacceptable. They are presented, instead, to provide a context for evaluating the relative public health implications of a range of activities and the risk present in activities being considered for regulation under section 112.

*C. General NESHAP Policy Considerations*

The purpose of this section is to discuss and solicit comment on the appropriate criteria for determining an "acceptable risk" and an "ample margin of safety." In its determination, EPA will consider measures of health risk, and limitations and uncertainties of the risk estimation methods and basic data. A discussion of these factors follows, as well as a discussion of the four approaches to making the acceptable risk decision. Comments are solicited on all aspects of the discussion and the four approaches. The framework adopted in this proceeding has already been proposed in the Benzene NESHAP and may also become the policies for decisions on future NESHAPs but will not apply to other Agency programs or other sections of the Clean Air Act.

The main purpose of the discussion presented here is to provide a basis for comment on the major policy issues raised by the Court's opinion, in particular, on the requirement that in regulating air toxics under section 112 the Agency must decide what risk is acceptable in "the world in which we live." In the months since the Court's decision, issues about acceptability of risk from air toxics have been the subject of discussion both within the Agency and in public debate. The four alternative policy approaches outlined address the acceptable risk decision in different ways. The basic questions to be answered in each approach are: What measure or measures of risk should be given weight in the acceptable risk decision? Are there specific levels of individual or population risk that are acceptable? How should EPA balance individual, population risk and risk distribution? Should the same levels be set and the same measures applied for all NESHAPs? How should uncertainty in risk estimation be considered?

The approaches described include one in which all risk information and measures available as well as estimation limitations and uncertainties are considered in determining acceptable risk on a case-by-case basis. Other approaches simply apply one quantitative risk parameter, either risk to the maximally exposed individual or aggregate risk of increased fatal cancer in the population (population risk). The approaches also vary in the level of risk that would be acceptable. The details of the results of applying each of the approaches to radionuclide source categories are described later in this preamble.

Three of the approaches use either maximum individual risk or population risk as the sole criterion for acceptable risk. Some take the view that added cancer risk to the individual is the most, or only important measure. Two of the approaches use this as the only criterion for acceptable risk. The third approach uses incidence as the only criterion for acceptable risk. Arguments in favor of the individual risk measure are that no individual should be at high risk, that considering the number of people at risk leads to acceptance of higher individual risk when few people are exposed, and that it is inequitable for acceptable risk to an individual to depend upon the number of people similarly exposed. Arguments favoring use of added incidence are that it is an appropriate measure of total public health impact and this total risk to the population is a good indicator of acceptable risk.

On the other hand, fatal cancer is only one of a number of possible health effects and thus may not accurately measure the total health impact nor total population risk.

Uncertainty of risk estimates is also dealt with differently by the alternative approaches. Under Approach A, the case-by-case approach, all risk factors including estimation uncertainties are considered in the acceptable risk determination. Approaches B, C and D use a single risk measure as the criterion for the acceptable risk decision and thus would leave consideration of other risk measures and specific judgments concerning much of the overall uncertainty until the second step, the ample margin of safety decision. How to weigh these uncertainties is a problem under any approach because while the Agency often has quantitative estimates of uncertainty to use for specific elements of the risk assessment, it can often only make a qualitative judgment about whether the overall uncertainty in the methods and assumptions has resulted in a over- or underestimated risk. Comments are solicited on the consideration of uncertainty in acceptable risk decisions.

Each alternative deals similarly with the ample margin of safety decision. In each, all the health information as well as cost, technical feasibility, estimation uncertainties and other relevant factors would be considered. Comment is requested on five issues in particular. First, is the ample margin of safety step more suitable than the acceptable risk step to take into account (usually qualitatively) the direction and extent of estimation uncertainties? Second, should all technically feasible and affordable controls be required without regard to whether any significant risk reduction is associated with the control? Third, should the Agency adopt a policy of using the ample margin step to force the development of new technology to reduce risk? Fourth, how should EPA balance the various risk, technical, and economic considerations in ample margin of safety decisions? Fifth, what criteria should EPA use to define the "availability" and "feasibility" of technological controls?

The remainder of this section describes several risk measures, how they are derived, general questions regarding control technology, and the four alternative regulatory approaches. The approaches are considered from the perspective of application to the radionuclide source categories covered in today's notice and to the NESHAP program.

*D. Risk Measures Considered in NESHAP Policy Approaches*

In decisions on cancer risks from stationary sources of hazardous air pollutants, the Agency has estimated three measures of health risk. These are termed "maximum individual risk," "risk distribution," and "incidence". Each of these combines an estimate of the dose/response for a pollutant with estimates of exposure to the pollutant. The response estimated is the pollutant-related increase in the probability that an individual will contract fatal cancer in his or her lifetime. The exposure



estimated is the average daily exposure assuming exposure for 70 years.

1. Maximum Individual Risk

Individual risk is expressed as an estimated probability, e.g., 1 in 100 ($10^{-2}$), 1 in 1,000 ($10^{-3}$), 1 in 10,000 ($10^{-4}$). Thus a $1\times10^{-3}$ individual risk is an added "chance" of 1 in 1,000 of contracting fatal cancer sometime in the individual's lifetime.

In this discussion, the maximum individual lifetime risk is the additional cancer risk of a person due to exposure for 70-year lifetime at a point of maximum concentration of an emitted pollutant. The maximum individual risk is sometimes called the maximum exposed individual risk. This estimate is based on the fact that the concentration of an emission, and the consequent risk, diminishes with distance from its source. For NESHAP decisions, the practice has been to estimate this figure for the largest annual average pollutant concentration to which any member of the public may be subject according to census data on residence locations. It has also been estimated in some other Agency decisions as the maximum at the source perimeter.

The maximum individual lifetime risk is different from average individual risk which is sometimes estimated for sources like public drinking water systems or food in which the concentration of a pollutant and other factors are assumed to be equal at all distribution locations. This distinction is particularly relevant when considering the maximum risk one might find acceptable from different sources. In using the maximum individual risk in acceptable risk decisions for hazardous air pollutants, its limitations should be considered. Used alone, the measure does not tell how many people may be so affected; it relates only to the risk to the most exposed individual(s).

2. Risk Distribution

A risk distribution estimates how many persons within a certain distance (e.g. 80 km) of a source of pollutant emissions are at what level of individual risk. Typically, the distribution is given for 10-fold increments of individual risk. Such a distribution provides the decisionmaker with information on both the individual risk level for those exposed and the number of persons exposed at each level. For NESHAP and other decisions, the Agency has examined risk distributions both as measures of risk and to compare the effects of various strategies for risk reductions across a source category.

In making an acceptable risk decision, one relevant consideration is how many people are exposed at each risk level, e.g. a ($10^{-3}$) risk might be acceptable if only one person were at that level, but not if 1,000 people were subject to it. Similarly, the number of persons exposed at various individual risk levels could be an important element in deciding on acceptable risk. The risk distribution could be used in similar ways to consider whether an ample margin of safety exists.

3. Incidence

Incidence is an estimate of population, rather than individual, risk. It is derived by multiplying individual risk by the estimate of the number of persons at that level of risk and summing the results over all risk levels. This number, which provides a lifetime population risk figure, is then divided by 70 (years) to give an annual fatal cancer incidence estimate. The incidence parameter can be used as an estimate of impact on the entire exposed population within a given area by totalling the incidence associated with each increment of individual risk. Incidence can also be portrayed along with individual risk and population numbers in a risk distribution. Typically, the Agency weighs incidence estimates in conjunction with maximum individual risk or average individual risk estimates. Estimated incidence generally is a particularly informative parameter when looking at aggregate risk from a category of like sources. One feature to take into account whenever it is used is its dependence on the size of the source category.

*E. Uncertainties in Risk Measures.*

Each of the three risk parameters defined above has three elements. These are the estimated response per unit of pollutant concentration (e.g. pCi/1 in air), the estimated exposure concentration, and the estimation of the number and location of the population residing in the area of the sources (usually taken from census data).

Uncertainties exist in estimating each of these elements for a variety of reasons including the fact that the relevant data and our understanding of the biological events involved are not complete. Where data gaps exist, qualitative and quantitative assumptions are made based on our present understanding of the biological mechanisms of cancer causation, estimates of air dispersion, engineering estimates, and other factors. Selection of certain assumptions to be used is a policy decision. The Agency has published guidelines covering many of these for both cancer risk assessment and exposure assessment. ["Final Guidelines for Carcinogen Risk Assessment," 51 FR 33992 (September 24, 1986) and "Final Guidelines for Estimating Exposures," 51 FR 33042 (September 24, 1986)].

The following is a discussion of methods used to calculate the three parameters, together with a few examples of the uncertainties.

Risk assessment, under EPA guidelines, takes into account the nature and amount of evidence that the agent will cause the effect of concern in humans as well as the uncertainties of interpretation of data and its quantification. When the toxicity data from human studies are available, as in the case of radionuclides (which is a known carcinogen), there is less uncertainty about the hazard of dose/response than when the data is solely from animal studies. Nevertheless, important uncertainties enter into the analysis even when human data is available. Examples include the fact that human epidemiological studies are often retrospective and measure effects of exposure that occurred many years in the past. The level of exposure to the agent at that time usually must be estimated and cannot be verified. Also, in certain categories of human studies, the studies are often of workers exposed to the pollutant. Worker populations are not representative of the general population with respect to age or sex. Workers are also generally the healthier segment of the population. These factors can lead to over- or underestimation of risk.

When data from animal studies are used, uncertainties about exposure can be experimentally controlled, but other uncertainties arise. Many of these concern the extrapolation from data collected in animal tests to estimate effects on humans. The extrapolation has to try to account for many factors, such as the equivalent dose for humans and laboratory animals given the size differences and the potential differences in metabolism and excretion of a chemical pollutant.

In addition, uncertainties arise in extrapolating the observed dose/response relationship from either workplace or animal test exposures to the usually lower dose levels of the general population.

In estimating exposure, the dispersion of a pollutant from a source is usually quantified by a predictive mathematical model using a known or model source emission rate, temperature and velocity characteristics, and weather patterns at nearby stability array (STAR) stations, typically the nearest recording weather station. The model predicts the

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concentration of the dispersed pollutant at various distances from the source. Standard assumptions are that the population around the source resides there for a 70-year lifetime and is continuously exposed to the modeled concentrations. The amount of emissions can be derived from sampling and analysis of emissions at the source or from engineering estimates, with more or less uncertainty associated with each method according to the type of emission. There are varying degrees of accuracy and precision in sampling, analysis, or estimates of emissions. Therefore the uncertainties involved in the method of estimating individual exposure and the number of individuals exposed are numerous. Thus, it is evident that uncertainty is difficult to quantify. Questions relevant to two-step decisionmaking under the *Vinyl Chloride* opinion are: At which step or steps should uncertainty be accounted for? How should uncertainty be considered if it cannot be quantified?

*F. Technology Availability and Plant Closure Considerations*

In the proposed benzene NESHAP, as well as in this NESHAP for radionuclides, EPA has considered only factors relating to risks to public health in deriving alternative "acceptable" levels of risk. However, in evaluating whether to further reduce the risk to provide for an ample margin of safety, EPA has also considered the extent to which plants would be forced to: (a) Install control technologies which are not cost effective or fully demonstrated and/or (b) curtail or stop production. These considerations are reflected in today's proposal to the extent that they apply to affected radionuclide sources.

With regard to the availability of technology to control air pollutants, EPA has in this case considered a technology available if it has been installed on a commercial scale in the United States and adequate data have been collected on plant and control equipment characteristics and performance. However, at various times in the past, EPA has considered emission standards which force plants to install technologies which do not meet these current "availability" criteria or cause facilities to curtail production or shut down. For example, EPA has in the past considered a technology "available" if it has been commercially demonstrated in other countries, even if no units have been installed in the United States. Also, EPA has considered bench- or pilot-scale demonstrations in order to judge reasonableness of expenditures for commercial demonstration of a given technology. Others have argued that EPA should not be concerned about the extent to which technologies are "available" since the standards should be solely based on public health considerations. Proponents of this latter view argue that the health-based standards will themselves provide adequate incentive for currently high risk industries to develop new control technologies. Still others argue that the compliance schedules in section 112 will cause sources to close rather than undertake the risk of installing costly technology that is unproven.

The EPA solicits public comment on the relative merits of alternative criteria for determining the availability of technology and on the question of appropriate alternative methods for encouraging development of alternative technologies, processes, product substitutes, and/or lifestyle changes.

*G. Description of Alternative Policy Approaches*

Each of the four approaches described here for comment treat the "acceptable risk" decision differently. The first approach considers all risk factors in the "acceptable" decision and then considers all risk factors plus cost and feasibility of emission controls in the "ample margin of safety" decision. The other three approaches differ from the first in that they use a single parameter, maximum individual lifetime risk or incidence, as the sole deciding factor for acceptable risk, while considering other factors in the "ample margin" decision.

The case-by-case and single parameter approaches differ in the degree to which they possess each of two desirable features. One feature is the ability of the Agency to consider the weight of evidence, or confidence, in the hazard data from which risk numbers are derived and the confidence in the emission and exposure estimates. The second feature is the degree to which decisions are clear and understandable, and thus can be perceived by the public as consistent.

The case-by-case approach is designed to bring all of the evidence to bear in association with risk numbers at both decision steps. The Agency has adopted the policy of risk assessment contained in the 1983 study by the National Academy of Sciences entitled "Risk Assessment in the Federal Government Managing the Process" (National Academy Press). This study covers the various elements of cancer risk assessment and the assumptions and uncertainties it involves.

One of the policies emphasized in the report and adopted by EPA is to give the risk manager a risk characterization which contains the information needed for a decision on how much confidence to place on numbers. For example, numbers for risk estimates for two different pollutants might look the same, but be based on data sets of quite different quality. A very large set of data from human and animal studies could be the foundation for a high degree of certainty in deriving a quantitative dose/response relationship. On the other hand, a quantitative dose/response estimate based on less evidence could be more uncertain. Moreover, emission estimates and exposure modeling may be based on site-specific information, assumptions, or combinations of the two. Depending on the data and assumptions, there can be large differences in the confidence of the exposure estimates. EPA has used a variety of data in this rulemaking and has confidence in the data used for the purposes of this rulemaking. However, a risk manager would be justified in using two kinds of estimates differently in decisionmaking, in spite of the fact that the numbers might be very similar.

An advantage of the case-by-case approach is that it uses the full range of evidence behind the risk numbers in determining acceptable risk and in deciding on an ample margin of safety. A disadvantage of this approach is that it relies on case-by-case interpretation and judgment of data, which can make the basis for the decision more difficult for the public to understand. In addition, decisions may appear inconsistent when different numerical risks are judged to be acceptable in different cases.

The single measure approaches takes risk numbers at face value for the acceptable risk decision, with a fuller consideration of the weight of all evidence at the margin of safety step. The advantages of these approaches are their clarity and ease of administration, which are good bases for adoption of such an approach. Their disadvantage is that they do not consider all of the risk factors, risk characterization, and uncertainties in the initial step.

Approach A. Case-by-Case Approach

Under this approach, the Administrator makes decisions on what is an acceptable risk on a case-by-case basis. The Administrator considers individual risk, risk distribution and incidence, their estimation limitations and uncertainties in judging which levels of emissions present acceptable risks to public health for each of the sources considered. This approach recognizes that the risk to public health is a combination of these factors, and, therefore, the level of acceptable risk to the public health varies among the different sources.

In applying Approach A, the approach is to examine the risk distribution and to consider maximum individual risks around $10^{-4}$ or less to be the preferred range. The $10^{-6}$ level was selected for reasons analogous to its use in Approach C (see discussion of Approach C for further explanation). Under all Approach A decisions, however, the Agency will closely examine the aggravating and mitigating factors associated with the risk estimates. Included in this examination is recognition that there are considerable uncertainties in the risk characterization, emission, estimates, and exposure assumptions; these uncertainties may very widely among assessment. Acceptability of higher risks includes consideration of the number of people at that risk and the total incidence. Greater weight is given to the incidence associated with individual risks greater than $10^{-5}$, this is because risks lower than this are generally considered small. In addition, both the dose/response and exposure estimates increase in uncertainty at these lower levels, which generally represent large extrapolations from high to low doses and dispersion of the pollutant at greater distance from the source, respectively. Risks greater than the $10^{-4}$ or less preferred range may be judged acceptable in this approach when all factors are considered. Examples of circumstances that EPA believes appropriate to consider include: (1) The uncertainties of the analysis; (2) the degree of over or under estimation in the risk characterization; (3) the weight of evidence of the health effects and non-quantified health effects, (4) modeled versus measured exposures, and; (5) the estimated population predicted at lifetime risk of around 1 in 10,000 or greater.

It should be recognized that zero risk is unattainable. This approach provides a mechanism to reasonably consider various health risks or other health related factors that are appropriate to each source category.

EPA has also considered the health risk due to the level of natural background radiation. In the case of radionuclides, the background levels cause higher individual and population risks than any of the source categories being considered for regulation in this rulemaking.

The highest level of emissions that is considered in the acceptable risk step is the baseline level of emissions. Alternatives other than baseline emissions are developed to give the Administrator reasonable alternatives with specific quantitative benefits to choose from. In reality, the concepts of acceptable risk and ample margin of safety exist on a continuum and are not easily quantified.

Decisions on acceptable risk are premised on the highest associated risk that was judged acceptable after weighing the many different considerations appropriate for that source category. Clearly all the alternatives for that source category that present smaller risks are also acceptable. Any alternative that is higher than the chosen alternative for that case allows risks that are unacceptable. However, that does not mean that any risk that is even slightly higher than the chosen alternative is inherently unacceptable. In order to develop standards, discrete alternatives are selected and discrete lines are drawn.

Approach B. Incidence-Based Approach

In this approach, incidence is the only parameter used to decide acceptability of risk. At the "ample margin of safety" step, all of the risk parameters as well as estimation uncertainties, cost, and feasibility are considered. The annual incidence proposed as acceptable is no more than 1 death/yr per source category. The EPA is proposing an incidence number of 1 per category because it is felt that one was small compared to the total number of cancer deaths each year and in relation to incidence associated with risks from numerous everyday activities. Comment is requested on the appropriateness of this selection.

Approach B relies on incidence. An advantage of an incidence-based approach is that while incidence and maximum individual lifetime risk are uncertain figures, in general, incidence figures are likely to be more accurate than maximum individual lifetime risk figures. A maximum individual lifetime risk estimate is much more sensitive to errors in modeling assumptions in the exposure estimate. When those uncertainties are spread throughout the exposed population in an incidence estimate, they tend to average out and thus to yield results that are less uncertain.

One feature to note is that since no other criterion besides incidence plays a role in the acceptable risk decision, high maximum individual risk levels would be acceptable so long as the exposed population is sufficiently small that the incidence level is met.

Approach C. $1x10^{-4}$ or less Maximum Individual Risk Approach

This approach would use maximum individual risk as the sole criterion for deciding acceptable risk. At the ample margin of safety step, the risk distribution and incidence would be added to the factors considered as well as uncertainty, cost and feasibility.

The acceptable risk level for maximum individual risk under this approach is $1x10^{-4}$ or less. This approach focuses on the estimation of the maximum concentration to which anyone could be exposed, which is used to calculate the maximum individual risk. Approach C's acceptable risk is defined as $1x10^{-4}$ maximum individual risk. This level is analogous to the top of the target individual risk range used in some other EPA programs. A risk of $10^{-4}$ falls roughly in the middle of the range of risks considered in the survey of societal risks, discussed earlier in this section. An advantage of using the single parameter of individual risk is that it is simple and clear cut. The level chosen is low enough to assure that the risk to the public health is acceptable. One disadvantage of Option C is that without the additional perspective of the risk distribution and incidence estimates and all other risk information, many decisions would ride exclusively on the uncertain prediction of the concentration and location of the area of maximum exposure. The accuracy of emission factors, meteorological data, and census data for specific source locations are among the more uncertain estimates, but would be the most critical elements under this decision. However, at the ample margin of safety step, the other risk measure could be examined to bring the needed perspective to the overall decision.

Approach D. $1x10^{-6}$ or Less Maximum Individual Risk Approach

This approach is identical to Approach C except that it uses a more stringent criterion for individual risk. The acceptable risk is defined as $1x10^{-6}$ maximum individual risk. This level is proposed on the theory that risks below this level have been generally regarded as small additions to an individual lifetime risk or cancer considering the risks faced by background radiation. Additionally, the $10^{-6}$ level falls near the lower end of the risk range in the survey of risks, discussed earlier in this section.

Based on current information, EPA is unable to accurately quantify the effects resulting from the implementation of Approach D. We are interested in



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receiving comments concerning the effects of such action.

*H. Format of Standards*

The format of the standards proposed for the various source categories vary because of the differing technical features of the sources. For example, area sources emitting radon are best monitored by flux measurements. Thus, flux standards are most appropriate. Similarly, mixtures of radionuclides are best related to public health through the use of the concept of dose. We have proposed dose standards to limit emissions in those cases where it is appropriate. Where a single radionuclide is emitted or a single radionuclide emission limit would serve to limit all others, we have proposed an emission limit for that radionuclide. Where no form of emission limit is possible, we resort to work practice standards.

**VII. Discussion of Source Categories**

The regulatory decisions proposed today are based on the risk assessments and other factors available in the current rulemaking record. This proposal may provide EPA with additional risk analyses or other information relevant to these decisions. Consequently, based on such information the Administrator may choose to reach a different regulatory decision in the final rule for some or all the source categories addressed in the rulemaking.

*A. Department of Energy Facilities*

1. Introduction

The DOE administers many facilities, including government-owned, contractor-operated facilities across the country. Some facilities conduct nuclear energy and weapons research and development, some enrich uranium and produce plutonium for nuclear weapons and reactors, and some process, store and dispose of radioactive wastes. These facilities contain significant amounts of radioactive material and emit radionuclides into the air. Other facilities contain large stockpiles of byproduct material which emit large quantities of radon. A discussion of DOE facilities in this category appears as a separate section later in this Preamble. EPA is considering the two categories separately in this rulemaking because of the imprecision of converting radon measurements into dose standards. In addition, the two categories employ different control methods.

Some of the DOE facilities emitting radionuclides are on large sites covering hundreds of square miles in remote locations. Some of the smaller sites resemble typical industrial facilities and are located in suburban areas.

In total, DOE has almost 100 sites that emit radionuclides. These facilities emit a wide variety of radionuclides in various physical and chemical states. Emissions from various DOE facilities represent many types of radionuclides and both internal and external dose pathways (although specific facilities may emit only one or two radionuclides affecting only one pathway).

DOE facilities are presently covered by a radionuclide NESHAP which limits emissions such that no individual receives a whole body dose of 25 mrem/y or receives a dose of 75 mrem/y to any organ. DOE also controls releases from these facilities under DOE orders which limit calculated doses to the general public to be less than 100 mrem/y from all sources and pathways. By incorporating the ALARA concept into its Orders, DOE has kept the dose to the public well below 100 mrem/y. The NESHAP also mandates that DOE send annual reports of emissions to EPA. The information gathered from these reports contributed to EPA's risk assessment of DOE facilities.

2. Estimates of Exposure and Risk

EPA's risk assessment of DOE facilities is a site-by-site assessment. Emissions are based on DOE's 1986 report of emissions, meteorological data is taken from nearby weather stations, and population distributions within 80 km are based on U.S. census tract data. EPA has a high degree of confidence in the results of this risk assessment.

According to EPA's analysis, all DOE facilities are in compliance with the current NESHAP. The risk to the most exposed individual is approximately $1.2\times10^{-4}$. DOE facilities are estimated to cause 0.17 fatal cancers per year to the exposed populations within 80 km of all DOE facilities. Most of the exposed population has a lifetime fatal cancer risk of less than $1\times10^{-6}$.

Table 4 presents example scenarios to show how different emission levels would result in different health risk profiles. The table presents the risk estimates at baseline in terms of estimated annual fatal cancer incidence, maximum individual lifetime risk, total population exposed at or above particular risk levels (i.e., risk distribution), and annual incidence attributable to the population exposed at each risk level. The table also presents available estimates of annual incidence and maximum individual lifetime risk for a lower emission level identified as alternatives 2 and 3.

3. Application of Alternative Policy Approaches

The decisions that would result from the application of the four policy approaches described in Section VI, to the DOE source category are described below.

*Approach A: Case-by-Case Approach—Decision on Acceptable Risk.* As stated earlier the maximum individual risk to any individual is $1.2\times10^{-4}$,, which is virtually the same as the level generally preferred under the case-by-case approach. Only a few people are at risks greater than $1\times10^{-4}$, and the vast majority of people within 80 km of DOE facilities receive risks of less than $1\times10^{-6}$. The estimated annual incidence is 0.17 fatal cancers per year. Most DOE facilities have much smaller emissions than that causing the highest individual risk and do not contribute significantly to the total risk from the entire category. In addition, DOE has reduced the emissions from its facilities over the last few years and is continuing to do so.

EPA examined several alternatives before determining the acceptable level. Those alternatives and the risks they present are illustrated in Table 4. After examining these different options, the Administrator proposes to determine that 10 mrem/y ede, which represents the baseline, is acceptable under the case-by-case approach.

TABLE 4.— ALTERNATIVES FOR ACCEPTABLE RISK FROM DOE FACILITIES

| | Alternative 1 (baseline) | Alternative 2 | Alternative 3 |
|---|---|---|---|
| Maximum individual risk (lifetime) | $1.2\times10^{-4}$ | $3.6\times10^{-5}$ | $2.4\times10^{-5}$ |
| Incidence within 80 km (death/y) | 0.17 | 0.13 | 0.094 |
| Risk individual: | | | |
| E-2 to E-1 | 0 | 0 | 0 |
| E-3 to E-2 | 0 | 0 | 0 |
| E-4 to E-3 | (1) | 0 | 0 |



TABLE 4.— ALTERNATIVES FOR ACCEPTABLE RISK FROM DOE FACILITIES—Continued

| | Alternative 1 (baseline) | Alternative 2 | Alternative 3 |
|---|---|---|---|
| E-5 to E-4 | 500,000 | 540,000 | 250,000 |
| E-6 to E-5 | 1M | 140,000 | 410,000 |
| Less E-6 | 65M | 66M | 56M |
| Risk incidence: | | | |
| E-2 to E-1 | 0 | 0 | 0 |
| E-3 to E-2 | 0 | 0 | 0 |
| E-4 to E-3 | (1) | 0 | 0 |
| E-5 to E-4 | 0.12 | 0.11 | 0.042 |
| E-6 to E-5 | 0.035 | 0.0067 | 0.040 |
| Less E-6 | 0.011 | 0.014 | 0.012 |

*Other Health Impacts:* Total cancers no more than twice fatal cancers.
[1] EPA believes there are people at this risk at two facilities. However, we cannot quantify the number because site visits have not been made.

*Decision on Ample Margin of Safety.* EPA has examined the control technology necessary to lower emissions from DOE facilities. To reduce the complexity of studying the costs and benefits of all different control options, EPA has concentrated on the facilities with the largest emissions. The costs and benefits of controlling emissions to various levels can be seen in Table 5.

Based on the costs of achieving alternative 2 and the very small reductions of incidence and the small decreases in risk that would result, EPA has determined that it is not necessary to further reduce risks below their current level. Therefore, EPA believes that limiting emissions to their current level, represented by a level of 10 mrem/y ede, will protect public health with an ample margin of safety. No further reduction below the safe level is required. However, EPA believes that the risks are high enough, and have the potential to go significantly higher, that the protection of public health requires that a NESHAP be promulgated to insure that the current levels of emissions which are safe with an ample margin of safety are not increased. Therefore, EPA is proposing a NESHAP manadating that radionuclide emissions from DOE facilities shall not cause any individual to receive a dose of greater than 10 mrem/y ede.

TABLE 5.—ALTERNATIVES FOR AMPLE MARGIN OF SAFETY FOR DOE FACILITIES

| Alternative | MIR | Incidence | Incremental incidence reduction | Total incidence reduction | Incremental capital cost | Incremental annualized cost | Total annualized cost |
|---|---|---|---|---|---|---|---|
| 1 | $1.2\times10^{-4}$ | 0.17 | | | | | |
| 1-A | $1.2\times10^{-4}$ | 0.17 | | | | | |
| 2 | $3.6\times10^{-5}$ | 0.13 | 0.04 | 0.04 | $7.4M | $0.7M | $0.7M |
| 3 | $2.4\times10^{-5}$ | 0.094 | 0.036 | 0.076 | 111M | 16M | 17M |

Regulatory Status: Currently we have a NESHAP limiting air emissions to 25 mrem/y whole body and 75 mrem/y any organ (equivalent to a MIR of $7\times10^{-4}$).
Comments:
Alternative 1: Baseline, no rule—Self regulated by DOE. They use ALARA procedures and their own overall whole body limit of 100 mrem/y. The current NESHAP would be vacated.
Based on a low-LET risk factor of 400 fatal cancers per million person-rad, ranging from 120 to 1200 fatal cancers per million person-rad, the Alternative 1 risk may range from $3.6\times10^{-5}$ to $3.6\times10^{-4}$.
Alternative 1-A: Baseline rule, emission limit of 10 mrem/y ede (equivalent to a MIR of $3\times10^{-4}$)—highest emissions are from Reactive Metals, Los Alamos and Hanford sites.
Alternative 2: Emission limit of 3 mrem/y ede (equivalent to a MIR of $1\times10^{-4}$)—the following controls are needed: RMI—HEPA filters on 3 stacks; Los Alamos—beam stops and delay lines; Hanford—N-reactor remains closed; Oak Ridge–HEPA filters, particulate scrubbers, and tritiated water capture.
Alternative 3: Emission limit of 1 mrem/y ede (equivalent to a MIR of $3\times10^{-5}$)—the following additional controls are needed: Savannah River—HEPA filters for particulate control; FMPC–HEPA filters and scrubbers to control uranium emissions.
Alternative 4: Table does not contain alternative to bring the MIR to $1\times10^{-4}$ because it is not yet possible to predict results accurately. Many additional controls would be needed. DOE roughly estimates cost to exceed $250 million.

*Approach B: Incidence Based Approach. Decision on Acceptable Risk.* EPA has determined that emissions from DOE facilities cause less than one fatal cancer per year. Therefore, under this approach, current emissions are acceptable.

*Decision on Ample Margin of Safety.* EPA has examined the control technology necessary to lower emissions from DOE facilities. To reduce the complexity of studying the costs and benefits of all different control options, EPA has concentrated on the facilities with the largest emissions. The costs and benefits of controlling emissions to various levels can be seen in Table 5.

Based on the costs of achieving alternative 2 and the very small reductions of incidence and the small decreases in risk that would result, EPA has determined that it is not necessary to further reduce risks below their current level. Therefore, EPA believes that limiting emissions to their current level, represented by a level of 10 mrem/y ede, will protect public health with an ample margin of safety. No further reduction below the safe level is required. However, EPA believes that the risks are high enough, and have the potential to go significantly higher, that the protection of public health requires that a NESHAP be promulgated to insure that the current levels of emissions are not increased. Therefore, EPA is proposing a NESHAP mandating that radionuclide emissions from DOE facilities shall not cause any individual to receive a does of greater than 10 mrem/y EDE.

*Approach C: $1\times10^{-4}$ or Less Maximum Individual Risk Approach. Decision on Acceptable Risk.* The use of dose-based standards makes it simple to determine the correct standard under this approach. When the dose is evenly distributed to all organs, an effective dose equivalent of 3 mrem/y for 70 years equals a risk of $1\times10^{-4}$. Therefore, under this approach, an

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acceptable level of emissions is the amount that shall not cause any member of the public to receive an effective dose equivalent of more than 3 mrem/y.

*Decision on Ample Margin of Safety.* After comparing the benefits and costs of reducing risks below the safe level, EPA has determined that no further reductions below the level of 3 mrem/y EDE are needed. Therefore, EPA is proposing a NESHAP of 3 mrem/y which protects public health with an ample margin of safety.

*Approach D: $1\times10^{-4}$ or Less Maximum Individual Risk Approach. Decision on Acceptable Risk.* The use of dose based standards makes it simple to determine the correct standard under this approach. When the dose is evenly distributed to all organs, an effective dose equivalent of 0.03 mrem/y for 70 years equals a risk of $1\times10^{-4}$. Therefore, under this approach an acceptable level of emissions is the amount that shall not cause any member of the public to receive an effective dose equivalent of more than 0.03 mrem/y.

*Decision on Ample Margin of Safety.* After comparing the benefits and cost of reducing risks below the safe level, EPA has determined that no further reductions below the level of 0.03 mrem/y EDE are needed to protect public health with an ample margin of safety. Therefore, EPA is proposing a NESHAP of 0.03 mrem/y protects public health with an ample margin of safety.

4. Implementation

*a. Introduction.* ORP's experience in implementing the existing radionuclide NESHAP covering DOE facilities has shown that implementation of the current standard has several problems. EPA is proposing a new system for implementing the proposed NESHAP designed to overcome some of the limitations in the present standard. This system will be used regardless of the specific level of standard that is chosen.

*b. Yearly reports.* The implementation system for the NESHAP is designed to provide EPA with yearly reports on the levels of emissions from regulated facilities and resulting doses. Presently, DOE facilities monitor their emissions and make annual reports to EPA. These reports should continue under the new NESHAP. Although the report is based on a calendar year the dose standard applies to any year, i.e. any period of 12 consecutive months. Since these reports provide EPA with the information it needs, DOE facilities are exempted from the requirements of 61.10.

*c. Definition of a facility.* A problem in implementing the current standard is the ambiguity associated with the present definition of a facility. All the buildings, structures and operations within one contiguous site shall be considered a single facility. For example, the entire DOE facility at Oak Ridge, Tennessee must meet the current standard of 25 mrem/y, instead of each individual building getting its own 25 mrem/y standard.

*d. Distinction between construction and modification.* Since EPA takes the position that a facility is all the buildings within a given plant site, there can be confusion over whether the construction of a new building constitutes an existing facility, is new construction, or is a modification of an existing facility. It is proposed that the new NESHAP will specify that the construction of a new building is new construction at the facility and not a modification of the facility. This distinction is important because all new construction needs to be checked to see whether or not it needs prior approval but modifications which do not cause a net increase in the rate of emissions from the facility do not need prior approval.

*e. Prior approval of new construction or modification.* EPA will not change the basic definition of modification that exists at 40 CFR 61.15. A change that causes any increase in the rate of emissions is a modification, no matter how small that increase is. To reduce unnecessary paperwork, it is appropriate to avoid applications in cases of small changes.

EPA proposes a system under which DOE facilities will use AIRDOS to determine the dose to the most exposed individual due to the modification or new construction. If the estimated maximum individual dose added by the new construction or modification is less than 1% of the standard, then the modification or new construction does not need prior approval.

In making the determination of dose, for this purpose DOE must use the emission factors and source term determination from "BID: Procedures Approved for Demonstrating Compliance with the Dose Limits Established by 40 CFR Part 61, subpart I." (BID: Compliance).

*B. Nuclear Regulatory Commission Licensed and Non-DOE Federal Facilities*

1. Introduction

NRC-licensed, Agreement state-licensed, and non-DOE federal facilities include over 6,000 different facilities. These facilities include research and test reactors, hospitals, clinics, the radiopharmaceutical industry, low level nuclear waste facilities, and other research and industrial facilities. These facilities are located in all fifty states. EPA estimates that virtually every American lives within 80 km of an NRC licensee.

The facilities in this category emit a large number of radionuclides. These radionuclides affect individuals by inhalation, ingestion, ground deposition and immersion pathways. Individual facilities may emit only one or two radionuclides affecting only one or two pathways.

Emissions from this source category are presently covered by a radionuclide NESHAP which mandates that emissions do not cause any individual to receive a whole body dose of more than 25 mrem/y or receive a dose of 75 mrem/y to any organ. Two categories of NRC-licensees have been exempted from coverage by the existing NESHAP: High-level nuclear waste (HLW) facilities and uranium fuel cycle (UFC) facilities. There are two types of HLW facilities, management and disposal facilities. The disposal of HLW, which occurs at a few unique facilities, is considered as a separate source category. The management, processing and storage of HLW that occurs at a NRC-licensee is included in the estimate of emissions of the licensee used in the analysis that underlies today's proposal for this category. Most of the NRC-licensees that manage, process or store HLW do so because it is related to their other operations. For radionuclide NESHAPs, EPA has determined that it is impractical to separately analyze and regulate two different emissions from the same facility. UFC facilities, which are distinctly different facilities, are being analyzed as a separate source category.

2. Estimates of Exposure and Risk.

EPA's risk assessment of this category combined an analysis of the nine sub-categories that make up this category. Due to the wide scope of this category, EPA's risk assessment of this source category is based on large emitters and model facilities with model populations. The assessment included both analysis of those facilities believed to be the largest emitters and model facilities within each sub-category. The estimates of maximum individual risk are based on the site-by-site assessment of the largest known emitters.

The analysis of the largest sources was based on information compiled from previously existing data bases and information received from some of the sources themselves. The model facilities were developed after reviewing data from surveys conducted by the NRC and the Conference of Radiation Control Program Directors. The use of model facilities increases the uncertainty of the risk assessment. Especially uncertain are estimates of the population within given risk ranges. EPA requests that commentors provide any additional information concerning emissions from this source category that might change EPA's estimate of maximum individual risk or population incidence.

The estimates of population risks are based on extrapolations from model facilities using census tract data. Frequency distributions do not take into account overlapping sources.

The results of this analysis are a maximum individual risk of $1.6\times10^{-4}$. EPA estimates that this category results in 0.13 fatal cancers per year. EPA's analysis shows that less than 0.5% of the U.S. population receives a lifetime fatal cancer risk greater than $1\times10^{-6}$. Some of the larger NRC-licensees do release small amounts of iodine-125 and iodine-131; these radionuclides can cause thyroid cancer.



Table 6 presents example scenarios to show how different emission levels would result in different health risk profiles. The table presents the risk estimates at baseline in terms of estimated annual fatal cancer incidence, maximum individual lifetime risk, total population exposed at or above particular risk levels (i.e., risk distribution), and annual incidence attributable to the population exposed at each risk level. The table also presents available estimates of annual incidence and maximum individual lifetime risk for a lower emission level identified as alternatives 2 and 3.

3. Application of Alternative Policy Approaches

The decisions that would result from the application of the four policy approaches described in Section VI to the NRC-licensees source category are described below.

*Approach A: Case-by-Case Approach. Decision on Acceptable Risk.* The maximum individual risk to any individual is approximately $1.6\times10^{-4}$ which is higher than the level preferred under the case-by-case approach. The estimated annual incidence is 0.13 fatal cancers per year; virtually all of that risk is borne by people whose risk is less than $1\times10^{-5}$, and over 80% of the risk is borne by individuals whose risk is less than $10^{-6}$. Most NRC-licensees have much smaller emissions and do not contribute significantly to the total risk.

EPA examined several alternatives before determining the acceptable level. Those alternatives and the risks they present are illustrated in Table 6. After examining these different options, the Administrator proposes to determine that 10 mrem/y ede, which represents the baseline, is acceptable under the case-by-case approach. A maximum individual risk higher than the preferred level is acceptable in this case because only a few individuals incur this level of risk and because the risk distribution is such that incidence is only 0.13 per year.

TABLE 6.—ALTERNATIVES FOR ACCEPTABLE RISK FROM NRC LICENSEES

| | Alternative 1 (baseline) | Alternative 2 | Alternative 3 |
|---|---|---|---|
| Maximum individual risk (lifetime) | $1.6\times10^{-4}$ | $1.0\times10^{-4}$ | $3.0\times10^{-5}$ |
| Incidence within 80 km (death/y) | 0.13 | 0.13 | 0.12 |
| Risk individual: | | | |
| E-2 to E-1 | 0 | 0 | 0 |
| E-3 to E-2 | 0 | 0 | 0 |
| E-4 to E-3 | (1) | (1) | 0 |
| E-5 to E-4 | 2,600 | 2,600 | 800 |
| E-6 to E-5 | 720,000 | 720,000 | 400,000 |
| Less E-6 | 240M | 240M | 240M |
| Risk incidance: | | | |
| E-2 to E-1 | 0 | 0 | 0 |
| E-3 to E-2 | 0 | 0 | 0 |
| E-4 to E-3 | (1) | (1) | 0 |
| E-5 to E-4 | 0.00054 | 0.00054 | 0.00025 |
| E-6 to E-5 | 0.024 | 0.024 | 0.011 |
| Less E-6 | 0.11 | 0.11 | 0.11 |

*Other Health Impacts:* Total cancers may be as much as 9 times higher than the number of fatal cancers because risks from some of the largest facilities in this source category are caused predominately by iodine which causes thyroid cancer.

[1] We believe there are some individuals at this risk level but all 6,000 facilities in this category have not been characterized.

*Decision on Ample Margin of Safety.* EPA has examined the control technology necessary to lower emissions from NRC-licensees. To reduce the complexity of studying the costs and benefits of all different control options, EPA has concentrated on the facilities with the largest emissions. The costs and benefits of controlling emissions can be seen in Table 7.

Based on the costs of achieving alternative 2 and the very small reductions of incidence and the small decreases in risk that would result, EPA has determined that it is not necessary to further reduce risks below their current level. Therefore, EPA believes that limiting emissions to their current level, represented by a level of 10 mrem/y ede, will protect public health with an ample margin of safety. No further reduction below the safe level is required. However, EPA believes that the risks are high enough, and have the potential to go higher, that the protection of public health requires that a NESHAP be promulgated to insure that the current levels of emissions which are safe with an ample margin of safety are not increased. Therefore, EPA is proposing a NESHAP mandating that radionuclide emissions from NRC-licensees shall not cause any individual to receive a dose of greater than 10 mrem/y ede.

*Approach B: Incidence Based Approach. Decision on Acceptable Risk.* EPA has determined that emissions from NRC-licensees cause less than one fatal cancer per year. Therefore, under this approach, current emissions are acceptable.

*Decision on Ample Margin of Safety.* EPA has examined the control technology necessary to lower emissions from NRC-licensees. To reduce the complexity of studying the costs and benefits of all different control options, EPA has concentrated on the facilities with the largest emissions. The costs and benefits of controlling emissions to various levels can be seen in Table 7.

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TABLE 7.—ALTERNATIVES FOR AMPLE MARGIN OF SAFETY FOR NRC FACILITIES

| Alternative | MIR | Incidence | Incremental incidence reduction | Total incidence reduction | Incremental capital cost | Incremental annualized cost | Total annualized cost |
|---|---|---|---|---|---|---|---|
| 1 | $1.6\times10^{-4}$ | 0.13 | | | | | |
| 1–A | $1.6\times10^{-4}$ | 0.13 | | | | | |
| 2 | $1.0\times10^{-4}$ | 0.13 | <0.01 | <0.01 | $5M | $2.4M | $2.4M |
| 3 | $3.0\times10^{-5}$ | 0.12 | 0.1 | 0.1 | $20M | $9.6M | $12M |
| 4 | $1.0\times10^{-5}$ | 0.07 | 0.06 | 0.06 | $35M | $23M | $35M |

Regulatory Status: Currently we have a NESHAP limiting air emissions to 25 mrem/y whole body and 75 mrem/y any organ (equivalent to a MIR of $7\times10^{-4}$).
Comments: For this category, non-fatal cancer risk is appreciably higher than the fatal cancer risk because most of the risk is due to I-131 and I-125 exposure (thyroid).
Alternative 1: Baseline, no rule—Some facilities may cause higher risks. All 6000 facilities have not been characterized. The current NESHAP would be vacated. Based on a low-LET risk factor of 400 fatal cancers per million person-rad, ranging from 120 to 1200 fatal cancers per million person-rad, the Alternative 1 risk may range from $4.8\times10^{-4}$ to $4.8\times10^{-5}$.
Alternative 1–A: Baseline rule, 10 mrem/y ede (equivalent to a MIR of $3\times10^{-4}$)—As a practical matter, this alternative is the same as the current NESHAP.
Alternative 2: Emission limit of 3 mrem/y ede (equivalent to a MIR of $1\times10^{-4}$)—cost estimates are very uncertain. Several hundred facilities would install controls or measure emissions to demonstrate compliance.
Alternative 3: Emission limit of 1 mrem/y ede (equivalent to a MIR of $3\times10^{-5}$)—cost estimates are very uncertain; estimates are not site specific.
Alternative 4: Emission limit of 0.3 mrem/y ede (equivalent to a MIR of $1\times10^{-5}$)—compliance procedures have been developed to reduce the burdens to the regulated community. At this level many facilities will have difficulty demonstrating compliance.
Alternative 5: Table does not contain alternative to bring the MIR to $1\times10^{-6}$ because it is not possible to predict the impact. Many additional controls would be needed. Implementation would be burdensome as most facilities would now have to demonstrate compliance with an emission limit in rigorous fashion.

Based on the costs of achieving alternative 2 and the very small reductions of incidence and the small decreases in risk that would result, EPA has determined that it is not necessary to further reduce risks below their current level. Therefore, EPA believes that limiting emissions to their current level, represented by a level of 10 mrem/y EDE, will protect public health with an ample margin of safety. No further reduction below the safe level is required. However, EPA believes that the risks are high enough, and have the potential to go higher, that the protection of public health requires that a NESHAP be promulgated to insure that the current levels of emissions are not increased. Therefore, EPA is proposing a NESHAP mandating that radionuclide emissions from NRC-licensees shall not cause any individual to receive a dose of greater than 10 mrem/y EDE.

*Approach C: $1\times10^{-4}$ or Less Maximum Individual Risk Approach. Decision on Acceptable Risk.* The use of dose-based standards makes it simple to determine the correct standard under this approach. When the dose is evenly distributed to all organs, an effective dose equivalent of 3 mrem/y for 70 years equals a risk of $1\times10^{-4}$. Therefore, under this approach, an acceptable level of emissions is the amount that shall not cause any member of the public to receive an effective dose equivalent of more than 3 mrem/y.

*Decision on Ample Margin of Safety.* After comparing the benefits and costs of reducing risks below the safe level, EPA has determined that no further reductions below the level of 3 mrem/y EDE are needed. Therefore, EPA will propose a NESHAP of 3 mrem/y which protects public health with an ample margin of safety.

*Approach D: $1\times10^{-4}$ or Less Maximum Individual Risk Approach. Decision on Acceptable Risk.* When the dose is evenly distributed to all organs, an effective dose equivalent of 0.03 mrem/yr for 70 years equals a risk of $1\times10^{-4}$. Therefore, under this approach, an acceptable level of emissions is the amount that shall not cause any member of the public to receive an effective dose equivalent of more than 0.03 mrem/y.

*Decision on Ample Margin of Safety.* After comparing the benefits and costs of reducing risks below the safe level, EPA has determined that no further reductions below the level of 0.03 mrem/y EDE are needed to protect public health with an ample margin of safety. Therefore, EPA will propose a NESHAP of 0.03 mrem/y which protects public health with an ample margin of safety.

4. Implementation

a. Introduction. The system for implementing this NESHAP is described in "A Guide for Determining Compliance with Clean Air Act Standards for Radionuclide Emissions From NRC-Licensed and Non-DOE Federal Facilities." The Agency has also developed the COMPLY Computer Code (described earlier), for IBM and IBM-compatible computers, to assist the regulated community in determining compliance with the standard.

*b. Yearly reports.* The implementation system for the NESHAP is designed to provide EPA with yearly reports on the levels of emissions and the dose caused by those emissions from regulated facilities. There are over 6,000 NRC-licensees, many of whom have very small amounts of radionuclides. EPA considers that the emissions from most sources in this category are so low that reporting should not be necessary. EPA has developed a system to determine whether or not reporting is required by estimating the dose caused by a facility's emissions. As long as the dose to the maximum individual is 10% of the standard or less, then the facility does not have to report. EPA currently estimates that if the cutoff is 1 mrem/yr, then less than 300 facilities would have to report to EPA.

The Agency has developed a system for dose determination that is based on screening models originally developed by the NCRP. This system is a series of screening tests each more complicated and more realistic than the next. Using this system, each affected facility will, annually, have to check to see whether or not it needs to report to EPA. Even in it does not have to report, it must keep records of the results for 5 years to demonstrate that it has checked to see whether or not it needs to report. Although the report is based on a calendar year the dose standard applies to any year, i.e. any period of 12 consecutive months.

In order to simplify calculation of the source term, the Agency will allow the use of generic emission factors. The derivation of these emission factors is explained in BID: Compliance. These factors are applied to the quantity of radionuclides used annually at the facility. Radionuclides in sealed containers are excluded. The results of these calculations are used as the input of emissions for the screening model mentioned above.

Since these reports will provide EPA with the information it needs, NRC-licensees are exempted from the requirements of 61.10.

*c. Prior approval for modification or new construction.* EPA proposes that the system discussed for DOE facilities also be used for this source category except that the sources will not use AIRDOS to calculate the doses. Instead they will use the screening models and measured emissions or emission factors described above.



*C. Uranium Fuel Cycle Facilities*

1. Introduction

Uranium Fuel Cycle (UFC) facilities are the facilities used in the conversion of uranium ore to electric power. They include uranium mills and tailings (non-radon emissions), hexafloride conversion plants, fuel fabrication plants and commercial nuclear power plants. These facilities are licensed by the NRC. (Uranium fuel enrichment facilities are not included in this category because they are covered as DOE facilities.) These facilities are large sophisticated operations with the potential for large releases of radionuclides.

These facilities are not covered by a NESHAP. However, all releases from these facilities (air, water and direct gamma radiation) are covered under the Uranium Fuel Cycle Standard, 40 CFR 190. This standard was promulgated by EPA under the authority of the AEA and is enforced by NRC. Under the standard, the combined releases of all UFC facilities must not cause any individual to receive a dose of more than 25 mrem/y to the whole body or to any organ except the thyroid (which can receive 75 mrem/y). This standard has been implemented and enforced by the NRC. In the past, the Administrator has decided not to regulate this category under section 112, because he determined that the AEA standard protected public health with an ample margin of safety. EPA's decision not to regulate this category is one of the issues in the current litigation. After reconsidering this issue, EPA has decided to analyze UFC facilities using the same four regulatory options used for other categories.

2. Estimates of Exposure and Risk

EPA's risk assessment for this category is the combination of the results of the assessments of the different types of facilities included in this category. The source term for emissions from uranium mill tailing piles is estimated from a model mill using NRC methodology. The estimate does not include radon releases which are covered by a separate NESHAP. Meteorological and population data are based on typical mill sites. The assessment of the two uranium hexafluoride conversion plants is based on reported emissions and census population distributions using nearby meteorological data.

The assessment for fuel fabrication plants is based on reported emissions and census population distributions from large facilities. The emission estimate for nuclear power plants is based on actual releases from operating plants. Population data is taken from NRC reference populations for coastal, river and lake sites. Assessments consider effects of multiple reactors at a site, but not the overlap of multiple sites. Virtually the entire U.S. population lives within 80 km of at least one UFC facility.

The results of the analysis show that the most exposed individual receives a dose associated with an increased risk of fatal cancer of $2.2\times10-^{4}$. There is less than 0.1 fatal cancer per year in the population, and virtually all the population risk is received by people with a lifetime risk of less than $1\times10-^{6}$.

Table 8 presents example scenarios to show how different emission levels would result in different health risk profiles. The table presents the risk estimates at baseline in terms of estimated annual fatal cancer incidence, maximum individual lifetime risk, total population exposed at or above particular risk levels (i.e., risk distribution), and annual incidence attributable to the population exposed at each risk level. The table also presents available estimates of annual incidence and maximum individual lifetime risk for a lower emission level identified as alternatives 2 and 3.

3. Application of Alternative Policy Approaches

The decisions that would result from the application of the four policy approaches described in Section VI, to the UFC facilities source category are described below.

*Approach A: Case-by-Case Approach. Decision on Acceptable Risk.* As stated earlier, the maximum individual risk to any individual is approximately $2.2\times10-^{4}$ which is higher than the level preferred under the case-by-case approach. The estimated annual incidence is 0.1 fatal cancers per year, and almost all of that risk is borne by people whose risk is less than $1\times10-^{6}$.

EPA examined several alternatives before determining the acceptable level. Those alternatives and the risks they present are illustrated in Table 8. After examining these different options, the Administrator proposes to determine that Alternative 1 (baseline emissions) is acceptable under the case-by-case approach. A maximum individual risk higher than the preferred level is acceptable in this case because the risk distribution is such that incidence is only 0.1 per year.

TABLE 8.—ALTERNATIVES FOR ACCEPTABLE RISK FROM URANIUM FUEL CYCLE FACILITIES

| | Alternative 1 (baseline) | Alternative 2 | Alternative 3 |
|---|---|---|---|
| Maximum individual risk (lifetime) | $2.2\times10^{-4}$ | $1.4\times10^{-4}$ | $3.0\times10^{-5}$ |
| Incidence within 80 km (death/y) | 0.10 | 0.10 | 0.10 |
| Risk individual | | | |
| E–2 to E–1 | 0 | 0 | 0 |
| E–3 to E–2 | 0 | 0 | 0 |
| E–4 to E–3 | 95 | [1] | 0 |
| E–5 to E–4 | 13,000 | 13,000 | 4,000 |
| E–6 to E–5 | 190,000 | 190,000 | 190,000 |
| Less E–6 | 240M | 240M | 240M |
| Risk incidence | | | |
| E–2 to E–1 | 0 | 0 | 0 |
| E–3 to E–2 | 0 | 0 | 0 |
| E–4 to E–3 | 0.00024 | [1] | 0 |
| E–5 to E–4 | 0.0024 | 0.0024 | 0.001 |
| E–6 to E–5 | 0.0093 | 0.0093 | 0.0093 |
| Less E–6 | 0.091 | 0.091 | 0.091 |

*Other Health Impacts:* Total cancers no more than twice fatal cancers.
[1] At least one person may be at this risk level, total number of people unknown because site visit has not been made.

*Decision on Ample Margin of Safety.* EPA has examined the control technology necessary to lower emissions from UFC facilities. To reduce the complexity of studying the costs and benefits of all different control options, EPA has concentrated on the facilities with the largest emissions. The costs and benefits of controlling emissions can be seen in Table 9.

Based on the costs of achieving alternative 2 and the fact that it would reduce the incidence of fatal cancer by less than one case every 100 years, and considerating the small decreases in individual risk that would result, EPA has determined that it is not necessary to further reduce risks below their current level. Therefore, EPA believes that limiting emissions to their current level, represented by a level of 10 mrem/y ede, will protest public health with an ample margin of safety. No further reduction below the safe level is required. However, EPA believes that the risks are high enough, and have the potential to go significantly higher, that the protection of public health requires that a NESHAP be promulgated to insure that the current levels of emissions which are safe with an ample margin of safety are not increased. Therefore, EPA is proposing a NESHAP mandating that radionuclide emissions from UFC facilities shall not cause any individual to receive a dose of greater than 10 mrem/y ede.

*Approach B: Incidence Based Approach. Decision on Acceptable Risk.*

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EPA has determined that emissions from UFC facilities cause less than one fatal cancer per year. Therefore, under this approach, current emissions are acceptable.

TABLE 9.—ALTERNATIVES FOR AMPLE MARGIN OF SAFETY FOR URANIUM FUEL CYCLE FACILITIES

| Alternative | MIR | Incidence | Incremental incidence reduction | Total incidence reduction | Incremental Capital Cost | Incremental Annualized Cost | Total Annualized Cost |
|---|---|---|---|---|---|---|---|
| 1 | $2.2\times10^{-4}$ | 0.10 | | | | | |
| 1–A | $2.2\times10^{-4}$ | 0.10 | | | | | |
| 2 | $1.4\times10^{-4}$ | 0.10 | <0.01 | <0.01 | $5M | $5.4M | $5.4M |
| 3 | $3.0\times10^{-5}$ | 0.10 | <0.01 | <0.01 | $75M | $31M | $36M |

Regulatory Status: Current AEA standard limits total emissions to 25 mrem/y whole body; 25 mrem/y any organ. Previously, we deferred to this AEA standard and did not propose a NESHAP for this source category.

Comments:

Alternative 1: Baseline, no rule—AEA rule limits risk to a maximum value of $7\times10^{-4}$.

Based on a low-LET risk factor of 400 fatal cancers per million person-rad, ranging from 120 to 1200 fatal cancers per million person-rad, the Alternative 1 risk may range from $6.6\times10^{-5}$ to $6.6\times10^{-4}$.

Alternative 1–A: Baseline rule—10 mrem/y ede. The dose from one uranium mill is of this magnitude. CAA rule allows citizen suits not allowed under the AEA.

Alternative 2: Emission limit of 5 mrem/y ede (equivalent to a MIR of $1.4\times10^{-4}$)—Particulate controls added to uranium mills. 5 mrem/y is the NRC design goal for nuclear power reactors.

Alternative 3: Emission limit of 1 mrem/y ede (equivalent to a MIR of $3\times10^{-5}$)—Most of the incidence is due to power reactors and only a few are affected by this alternative, so there is little reduction in incidence. Additional controls are required for uranium mills and uranium conversion plants.

Alternative 4: Table does not contain alternative to bring the MIR to $1\times10^{-6}$ because of the difficulty in estimating impacts. About half of the operating nuclear plants would add additional controls. Most supporting facilities would add additional controls. Cost would be large.

*Decision on Ample Margin of Safety.* EPA has examined the control technology necessary to lower emissions from UFC facilities. To reduce the complexity of studying the costs and benefits of all different control options, EPA has concentrated on the facilities with the largest emissions. The costs and benefits of controlling emissions to various levels can be seen in Table 9.

Based on the costs of achieving alternative 2 and the small associated decreases in individual risk, and the fact that virtually no reduction in incidence would result, EPA has determined that it is not necessary to further reduce risks below their current level. Therefore, EPA believes that limiting emissions to their current levels, represented by a level of 10 mrem/y ede, will protect public health with an ample margin of safety. No further reduction below the safe level is required. However, EPA believes that the risks are high enough, and have the potential to go significantly higher, that the protection of public health requires regulation under section 112 to insure that the current levels of emissions which are safe with an ample margin of safety are not increased. Therefore, EPA is proposing a NESHAP mandating that radionuclide emissions from UFC facilities shall not cause any individual to receive a dose of greater than 10 mrem/y ede.

*Approach C: $1\times10^{-4}$ or Less Maximum Individual Risk Approach. Decision on Acceptable Risk.* When the dose is equally distributed to all organs, an effective dose equivalent of 3 mrem/y for 70 years equals a risk of $1\times10^{-4}$. Therefore, under this approach, an acceptable level of emissions is the amount that shall not cause any member of the public to receive an effective dose equivalent of more than 3 mrem/y.

*Decision on Ample Margin of Safety.* After comparing the benefits and costs of reducing risks below the safe level, EPA has determined that no further reductions below the level of 3 mrem/y EDE are needed. Therefore, EPA is proposing a NESHAP of 3 mrem/y which protects public health with an ample margin of safety.

*Approach D: $1\times10^{-4}$ or Less Maximum Individual Risk Approach. Decision on Acceptable Risk.* When the dose is equally distributed to all organs, an effective dose equivalent of 0.03 mrem/y for 70 years equals a risk of $1\times10^{-4}$. Therefore, under this approach, an acceptable level of emissions is the amount that shall not cause any member of the public to receive an effective dose equivalent of more than 0.03 mrem/y.

*Decision on Ample Margin of Safety.* After comparing the benefits and cost of reducing risks below the safe level, EPA has determined that no further reductions below the level of 0.03 mrem/y EDE are necessary to protect public health with an ample margin of safety. Therefore, EPA is proposing a NESHAP of 0.03 mrem/y which protects public health with an ample margin of safety.

4. Implementation

For each approach proposed today, EPA has independently decided that the same level of regulation is appropriate for both UFC facilities and NRC-licensees. Therefore, EPA proposes to remove the exemption for UFC facilities in the NRC-licensee NESHAP and regulate them exactly the same as other licensees, including reporting and recordkeeping requirements.

*D. Elemental Phosphorus Plants*

1. Introduction

Elemental phosphorus plants extract pure phosphorus from ore for use in the chemical industry. These facilities emit radionuclides into the air because phosphate ore is high in uranium and its decay products. These decay products, especially polonium-210 and lead-210, become volatilized during the extraction process and are released into the atmosphere. There are eight (5 operational, 3 standby) elemental phosphorus plants located in four different states. However, most of the emissions come from two plants in Idaho.

Due to the types of radionuclides emitted by these plants, virtually all the dose is received by the lung through the inhalation pathway causing an increased risk of lung cancer. This risk can be controlled through the use of a standard which directly limits emissions of polonium-210 (control measures which limit polonium-210 also limit emissions of lead-210). There is no need to write dose standards.

Elemental phosphorus plants are currently regulated by a NESHAP that limits their emissions to no more than 21 curies of polonium-210 annually.

2. Estimates of Exposure and Risk

EPA's risk assessment of elemental phosphorus plants is a site-by-site assessment of operating and standby plants, based on monitored data and throughput. Meteorological data was taken from nearby stations. Maximum individual risks were assessed at actual residences or at a location 1500 m in the predominant wind direction. The location of nearby populations was taken from census tract data.

According to the assessment, EPA estimates that the most exposed individual receives a lifetime fatal cancer risk of $5.6\times10^{-4}$. There is an increased incidence of 0.072 fatal cancer per year in the nearby (within 80 km) population. Over 75 percent of the exposed population receives risks of less than $1\times10^{-6}$.

Table 10 presents example scenarios to show how different emission levels would result in different health risk profiles. The table presents the risk estimates at baseline in terms of estimated annual fatal cancer incidence, maximum individual lifetime risk, total population exposed at or above particular risk levels (i.e., risk distribution), and annual incidence attributable to the population exposed at each risk level. The table also presents available estimates of annual incidence and maximum individual lifetime risk for a lower emission level identified as alternatives 2, 3 and 4.

3. Application of Alternative Policy Approaches

The decisions that would result from the application of the four policy approaches described in Section VI to the elemental phosphorus plants source category are described below.

*Approach A: Case-by-Case Approach. Decision on Acceptable Risk.* As stated earlier, the maximum individual risk to any individual is approximately $5.6\times10^{-4}$ which is higher than the level generally preferred under the case-by-case approach. The estimated annual incidence is less than 0.072 fatal cancers per year.

EPA examined several alternatives before determining the acceptable level. Those alternatives and the risks they present are illustrated in Table 10. After examining these different options, the Administrator proposes to determine that alternative 1 (10 Ci/y of polonium-210) is acceptable under the case-by-case approach. A maximum individual risk higher than the preferred level is acceptable in this case because the risk distribution is such that incidence is only 0.072 per year.



TABLE 10.—ALTERNATIVES FOR ACCEPTABLE RISK FROM ELEMENTAL PHOSPHORUS PLANTS

| | alternative 1 (baseline) | alt. 2 | alt. 3 | alt. 4 |
|---|---|---|---|---|
| Maximum individual risk (lifetime) | $5.6\times10^{-4}$ | $2.4\times10^{-4}$ | $2.4\times10^{-4}$ | $1.1\times10^{-5}$ |
| Incidence within 80 km (death/y) | 0.072 | 0.024 | 0.011 | 0.0022 |
| Risk individual | | | | |
| E–2 to E–1 | 0 | 0 | 0 | 0 |
| E–3 to E–2 | 0 | 0 | 0 | 0 |
| E–4 to E–3 | 6,000 | 800 | 1800 | 0 |
| E–5 to E–4 | 100,000 | 15,000 | 8,000 | 800 |
| E–6 to E–5 | 310,000 | 330,000 | 190,000 | 12,000 |
| Less E–6 | 1.4M | 1.5M | 1.6M | 1.8M |
| Risk incidence | | | | |
| E–2 to E–1 | 0 | 0 | 0 | 0 |
| E–3 to E–2 | 0 | 0 | 0 | 0 |
| E–4 to E–3 | 0.012 | 0.0019 | 0.0019 | 0 |
| E–5 to E–4 | 0.036 | 0.0037 | 0.0021 | 0.00009 |
| E–6 to E–5 | 0.016 | 0.012 | 0.0053 | 0.00030 |
| Less E–6 | 0.0056 | 0.0065 | 0.0021 | 0.0018 |

*Other Health Impacts:* Non-fatal cancers no more than 5% of deaths.

[1] Alternative 3 has no additional impact on the plant causing the highest risk.

*Decision on Ample Margin of Safety.* EPA has examined the control technology necessary to lower emissions from elemental phosphorus plants. The costs and benefits of controlling emissions can be seen in Table 11. Based on the costs of achieving alternative 2 and the very small reductions of incidence and the small decrease in maximum individual risk that would result, EPA has determined that it is not necessary to further reduce risks below their current level. Therefore, EPA believes that current emissions, represented by a level of 10 Ci/y polonium-210, will protect public health with an ample margin of safety. No further reduction below the safe level is required. However, EPA believes that the risks are high enough, and have the potential to go significantly higher, that the protection of public health requires regulation under section 112 to insure that the current levels of emissions which are safe with an ample margin of safety are not increased. Therefore, EPA is proposing a standard of 10 Ci/y of polonium-210, which will protect public health with an ample margin of safety.

*Approach B: Incidence Based Approach. Decision on Acceptable Risk.* As explained earlier, the emissions from elemental phosphorus plants cause less than one fatal cancer per year. Therefore, under this approach, current emissions are acceptable.

*Decision on Ample Margin of Safety.* EPA has examined the control technology necessary to lower emissions from elemental phosphorus plants.

TABLE 11.—ALTERNATIVES FOR AMPLE MARGIN OF SAFETY FOR ELEMENTAL PHOSPHORUS PLANTS

| Alternative | MIR | Incidence | Incremental incidence reduction | Total incidence reduction | Incremental capital cost | Incremental annualized cost | Total annualized cost |
|---|---|---|---|---|---|---|---|
| 1 | $5.6\times10^{-4}$ | 0.072 | | | | | |
| 1–A | $5.6\times10^{-4}$ | 0.072 | | | | | |
| 2 | $2.4\times10^{-4}$ | 0.024 | 0.048 | 0.048 | $9M | $2M | $2M |
| 3 | $2.4\times10^{-4}$ | 0.011 | 0.013 | 0.061 | 7M | 3M | 5M |
| 4 | $1.1\times10^{-5}$ | 0.0022 | 0.009 | 0.070 | 19M | 12M | 17M |

Regulatory Status: Current NESHAP of 21 curies per year of Po–210.

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Comments:
Alternative 1: Baseline, no rule—Existing NESHAP would be withdrawn.
Based on a low-LET risk factor of 400 fatal cancers per million person-rad, ranging from 120 to 1200 fatal cancers per million person-rad, the Alternative 1 risk may range from $1.7\times10^{-4}$ to $1.7\times10^{-3}$.
Alternative 1–A: Baseline rule, emission limit of 10 Ci/y Po-210—highest current emission rate is 10 curies/y Po-210.
Alternative 2: High energy scrubbers on the two largest plants.
Alternative 3: High energy scrubbers on all plants.
Alternative 4: Fabric filters on two largest plants, high energy scrubbers on all other plants.
Alternative 5: Table does not contain alternative to bring the MIR to $1\times10^{-4}$ because of the difficulties in accurately estimating the impacts. Probably 5 plants including the 3 largest elem processing western phosphate rock high in uranium would close. Two smaller plants processing low uranium eastern phosphate rock could continue after additional controls are installed at an annualized cost of about $9 million.

The costs and benefits of controlling emissions can be seen in Table 11. Based on the costs of achieving alternative 2 and the very small reduction of incidence and the small decrease in risk that would result, EPA has determined that it is not necessary to further reduce risks below their current level. Therefore, EPA believes that limiting emissions to their current level, represented by a level of 10 Ci/y polonium-210, will protect public health with an ample margin of safety. No further reduction below the safe level is required.

However, as in Approach A, EPA believes that the risks are high enough, and have the potential to go significantly higher, that the protection of public health requires that a NESHAP be promulgated to insure that the current levels of emissions are not increased. Therefore, EPA is proposing a standard of 10 Ci/y of polonium-210 which will protect public health with an ample margin of safety.

*Approach C: $1\times10^{-4}$ or Less Maximum Individual Risk Approach. Decision on Acceptable Risk.* An emissions limit of 0.8 Ci/y of polonium-210 for 70 years corresponds to a risk of $1\times10^{-4}$. Therefore, under this approach, an acceptable level of emissions is 0.8 Ci/y.

*Decisions on Ample Margins of Safety.* After comparing the benefits and costs of reducing risks below the safe level, EPA has determined that no further reductions below the level of 0.8 Ci/y are needed. Therefore, EPA is proposing a NESHAP of 0.8 Ci/y of polonium-210 which protects public health with an ample margin of safety.

*Approach D: $1\times10^{-6}$ or Less Maximum Individual Risk Approach Decision on Acceptable Risk.* An emissions limit of 0.008 Ci/y of polonium-210 for 70 years corresponds to a risk of $1\times10^{-6}$. Therefore, under this approach, an acceptable level of emissions is 0.080 Ci/y.

*Decision on Ample Margin of Safety.* After comparing the benefits and cost of reducing risks below the safe level, EPA has determined that no further reductions below the level of 0.008 Ci/y are needed to protect public health with an ample margin of safety. Therefore, EPA is proposing a NESHAP of 0.008 Ci/y of polonium-210 which protects public health with an ample margin of safety.

4. Implementation

The current NESHAP for elemental phosphorus plants required each plant to either conduct an initial test on its emissions or get a waiver from testing. After this original report no further testing was required, unless plant operations were changed significantly. EPA plans to continue this system, without the waiver provisions. Tests conducted under the current NESHAP are still valid if conditions have not changed.

Plants will be required to monitor their operations continuously and keep records of the results of their monitoring onsite for five years. Plant owners will have to certify on a semiannual basis that no changes in operations that would require new testing have occurred. Although the report is based on a calendar year the emission limit applies to any year, i.e. any period of 12 consecutive months.

Since the reports from provide EPA with the information it needs, elemental phosphorous plants are exempted from the requirements of 61.10.

*E. Coal-Fired Utility and Industrial Boilers*

1. Introduction

This category covers electrical utility and industrial boilers which emit the radionuclides naturally present in coal. Coal contains only minute amounts of radionuclides. This category is being considered because large boilers burn large quantities of coal and are so widely dispersed throughout the nation that the radionuclide emissions are estimated to cause 0.8 fatal cancer a year among the U.S. population.

Emissions from coal-fired boilers are presently regulated under National Ambient Air Quality Standards for particulate matter. In addition, the larger new coal-fired boilers have to meet New Source Performance Standards (NSPS). Coal-fired boilers are regulated for the other pollutants they emit including $SO_2$, particulates, and other hazardous air pollutants such as arsenic and benzene.

2. Estimates of Exposure and Risk

EPA's risk assessment of coal-fired boilers is based on extrapolations of real emissions with model populations. Estimates of emissions are from the reference facilities with the largest emissions. These emissions were analyzed on four sites: Urban, suburban, rural and remote. Further information was received from a recent study of emissions from coal-fired boilers done by the Office of Air Quality, Planning and Standards. EPA assumed that the entire U.S. population lives within 80 km of at least one coal fired boiler.

EPA estimates that the maximum individual risk is $3\times10^{-5}$ and that there are 0.8 fatal cancers a year caused by radionuclide emissions from coal fired boilers. Virtually all the fatal cancer risk is borne by individuals whose lifetime fatal cancer risk is less than $1\times10^{-6}$.

Table 12 presents example scenarios to show how different emission levels would result in different health risk profiles. The table presents the risk estimates at baseline in terms of estimated annual fatal cancer incidence, maximum individual lifetime risk, total population exposed at or above particular risk levels (i.e., risk distribution), and annual incidence attributable to the population exposed at each risk level. The table also presents available estimates of annual incidence and maximum individual lifetime risk for a lower emission level identified as alternative 2.

3. Application of Alternative Policy Approaches

The decisions that would result from the application of the four policy approaches described in Section VI. to the coal-fired boilers source category are described below.

*Approach A: Case-by-Case Approach. Decision on Acceptable Risk.* As stated earlier, the maximum individual risk to any individual is approximately $3\times10^{-5}$ which achieves a lower level of risk than the upper bound that is described in the case-by-case approach. The estimated annual incidence is estimated at 0.8 fatal cancer per year.

EPA examined several alternatives before determining the acceptable level; these alternatives and the risks they present are illustrated in Table 12. After examining these different options, the Administrator has determined that baseline emissions are acceptable under the case-by-case approach.



TABLE 12.—ALTERNATIVES FOR ACCEPTABLE RISK FROM COAL FIRED BOILERS—NUMBERS UNCERTAIN

| | Alternative 1 (baseline) | Alternative 2 |
|---|---|---|
| Maximum individual risk (lifetime) | $2.5\times10^{-5}$ | $1.0\times10^{-6}$ |
| Incidence within 80 km (death/y) | 0.8 | 0.4 |
| Risk individual | | |
| E-2 to E-1 | 0 | 0 |
| E-3 to E-2 | 0 | 0 |
| E-4 to E-3 | 0 | 0 |
| E-5 to E-4 | 19 | 0 |
| E-6 to E-5 | 130,000 | 0 |
| Less E-6 | 240M | 240M |
| Risk incidence | | |
| E-2 to E-1 | 0 | 0 |
| E-3 to E-2 | 0 | 0 |
| E-4 to E-3 | 0 | 0 |
| E-5 to E-4 | 19 | 0 |
| E-6 to E-5 | 0.001 | 0 |
| Less E-6 | 0.8 | 0.4 |

*Other Health Impacts:* Total cancers no more than twice fatal cancers.
[1] At least one person may be at this risk level, total number of people unknown because site visit has not been made.

*Decision on Ample Margin of Safety.* EPA has examined the control technology necessary to lower emissions from coal-fired boilers. The costs and benefits of controlling emissions can be seen in Table 13. Based on the huge costs of achieving alternative 2 and the small reduction of incidence and the small decreases in risk that would result, EPA has determined that it is not necessary to further reduce risks below their current level. The fact that no individual receives a high risk is a significant factor in this decision.

Therefore, EPA has determined that limiting radionuclide emissions from coal-fired boilers to current levels will protect public health with an ample margin of safety. No further reduction below the safe level is required. Due to the small level of radionuclides in coal and the fact that all new facilities will have to meet NSPS, a NESHAP does not need to be promulgated for coal fired boilers. EPA proposes not to regulate this source category.

*Approach B: Incidence Based Approach. Decision on Acceptable Risk.* As explained earlier, the emissions from coal-fired boilers cause 0.8 fatal cancer per year, which is less than the 1 fatal cancer per year. Therefore, by this approach, current emissions are acceptable.

*Decision on Ample Margin of Safety.* EPA has examined the control technology necessary to lower emissions from coal-fired boilers. The cost and benefits of controlling emissions can be seen in Table 13. Based on the huge costs of achieving alternative 2 and the small reduction of incidence and the small decreases in risk that would result, EPA has determined that it is not necessary to further reduce risks below their current level. The fact that no individual receives a high risk is a significant factor in this decision.

Therefore, EPA has determined that limiting radionuclide emissions from coal-fired boilers to current levels will protct public health with an ample margin of safety. No further reduction below the safe level is required. Due to the small level of radionuclides in coal and the fact that all new facilities will have to meet NSPS, a NESHAP does not need to be promulgated for coal fired boilers. EPA proposes not to regulate this source category.

TABLE 13.—ALTERNATIVES FOR AMPLE MARGIN OF SAFETY FOR COAL-FIRED BOILERS

| Alternative | MIR | Incidence | Incremental incidence reduction | Total incidence reduction | Incremental capital cost | Incremental annualized cost | Total annualized cost |
|---|---|---|---|---|---|---|---|
| 1(util) | $2.5\times10^{-5}$ | 0.4 | | | | | |
| 1(inds) | $7\times10^{-6}$ | .4 | | | | | |
| 2(util) | $1\times10^{-7}$ | .2 | 0.2 | 0.2 | $13B | $4.4B | $4.4B |
| 2(inds) | $1\times10^{-6}$ | .2 | .2 | .2 | | 1.7B | 1.7B |

Regulatory Status: Particulate emission controls also control radionuclides. Particulates are controlled by NSPS, PSD, and SIP. Previously, we did not propose a rule on the grounds that risks are small on a facility basis and other pollutants from these boilers cause far more risk. Controlling these other pollutant risks also controls radionuclide risks.
Comments:
Alternative 1: Baseline, no rule—utility boilers: current emissions as controlled by NSPS, PSD, and SIP; industrial boilers: current emissions as controlled by SIP. Based on a low-LET risk factor of 400 fatal cancers per million person-rad, ranging from 120 to 1200 fatal cancers per million person-rad, the Alternative 1 risk may range from $7.5\times10^{-6}$ to $7.5\times10^{-5}$.
Alternative 2: Emission limit of 0.03 mrem/y ede. Utility boilers: retrofit of all sources to meet NSPS (particulate standard). Assumes ESPs are used to retrofit to an emission limit of 13 ng/joule (NEPS revised). Industrial boilers: retrofit all units >2MM Btu/h with ESPs.

*Approach C: $1\times10^{-4}$ or Less Maximum Individual Risk Approach. Decision on Acceptable Risk.* Under this approach, an acceptable risk is one which causes a maximum individual risk of $1\times10^{-4}$ or less. EPA estimates that the maximum individual risk from coal-fired boilers is $3\times10^{-5}$, which exposes the public to a lower degree of risk than that allowed under this approach. Therefore, this level constitutes an acceptable risk to health.

*Decision on Ample Margin of Safety.* EPA believes that limiting radionuclide emissions to current levels from coal-fired boilers protects public health with an ample margin of safety. In addition, there is good reason to believe that emissions would decrease in the future. Therefore, EPA finds under this approach that the risks from radionuclide emissions from coal-fired boilers do not require regulation under section 112 of the CAA.

*Approach D: $1\times10^{-6}$ or Less Maximum Individual Risk Approach. Decision on Acceptable Risk.* Under this approach, an acceptable risk is one that causes a maximum individual risk of $1\times10^{-6}$ or lower, which corresponds to a NESHAP standard level of 0.03 mrem/y ede. Current emissions from both industrial boilers and utility boilers are above the acceptable range of $1\times10^{-6}$. Therefore, retrofitting of many sources so that they meet the NSPS for particulates will be necessary to reduce the risk below $1\times10^{-6}$.

*Decision on Ample Margin of Safety.* EPA has determined that a NESHAP standard of 0.03 mrem/y EDE provides an ample margin of safety. As stated above, under this approach, retrofitting of all coal-fired boilers would be necessary to reduce the current emissions to below a level of 0.03 mrem/y EDE. Therefore, EPA proposes that all coal-fired boilers be retrofitted to met NSPS for particulates.

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4. Implementation

The standard proposed for this category applies the NSPS 40 CFR 60.41a and 60.41b for particulates to all coal fired boilers whose output is greater than 2 million BTU's an hour. This NESHAP will be implemented in the same way as the NSPS is currently implemented.

*F. High-Level Nuclear Waste Disposal Facilities*

1. Introduction

Management and storage operations for high-level nuclear waste, spent fuel and transuranic waste are addressed in the categories for DOE facilities and NRC-licensed and non-DOE Federal facilities described above. This category addresses facilities constructed and dedicated to long term disposal of such materials pursuant to regulations to be promulgated at 40 CFR 191 Supbart B. Site characterization studies for the first such repository are being conducted by DOE and currently center on Yucca Mountain Nevada. In addition, DOE is constructing a test Waste Isolation Pilot Plant (WIPP) which may be dedicated as a disposal facility.

2. Estimates of Exposure and Risk

EPA's risk assessment of HLW disposal facilities is based upon DOE engineering estimates for conceptual designs for the WIPP in New Mexico, an MRS facility and a permanent repository at Yucca Mountain. They were analyzed by EPA and are believed to be reasonable. Although the decision on Yucca Mountain's acceptability has not yet been made, for purposes of improving the accuracy of the analysis, using a real site, EPA has analyzed the Yucca Mountain site. Population data was taken from U.S. census data at these sites.

EPA estimates that the maximum individual risk is $3\times10^{-7}$ and that there would be 0.0001 fatal cancers a year caused by radionuclide emissions from HLW disposal facilities to less than 1 million people within 80 km of these facilities. All the fatal cancer risk is borne by individuals whose total fatal cancer risk is less than $1\times10^{-6}$.

The reason why the emissions and risks are so low is the nature of the disposal operations. Sealed sources will be brought to the site and buried below ground. Normal operations preclude any significant air emissions.

Table 14 presents the risk estimates at baseline in terms of estimated annual fatal cancer incidence, maximum individual lifetime risk, total population exposed at or above particular risk levels (i.e., risk distribution), and annual incidence attributable to the population exposed at each risk level.

3. Application of Alternative Policy Approaches

The decisions that would result from the application of the four policy approaches described in Section VI to the HLW disposal facilities source category are described below.

*Approach A: Case-by-Case Approach. Decision on Safe With an Ample Margin of Safety.* As stated above, the individual risks from HLW disposal facilities are very small, less than $1\times10^{-6}$. In addition, there would be 0.0001 fatal cancers a year from radionuclide emissions from disposal of HLW, see Table 14. The emissions are so low that it was not necessary to evaluate any alternatives. The Administrator determines that the estimate of emissions from disposal of HLW represents a level that will protect public health with an ample margin of safety. EPA believes that since the emissions are so low, and there is no reason to expect that emissions to air would significantly increase, no NESHAP is needed.

TABLE 14.—ALTERNATIVES FOR ACCEPTABLE RISK FROM HIGH LEVEL NUCLEAR WASTE DISPOSAL FACILITIES

| | Alternative 1 (baseline) |
|---|---|
| Maximum individual risk (lifetime) | $2.8\times10^{-7}$ |
| Incidence within 80 km (death/y) | 0.00011 |
| Risk individual: | |
| E-2 to E-1 | 0 |
| E-3 to E-2 | 0 |
| E-4 to E-3 | 0 |
| E-5 to E-4 | 0 |
| E-6 to E-5 | 0 |
| Less E-6 | 780,000 |
| Risk incidence: | |
| E-2 to E-1 | 0 |
| E-3 to E-2 | 0 |
| E-4 to E-3 | 0 |
| E-5 to E-4 | 0 |
| E-6 to E-5 | 0 |
| Less E-6 | 0.0001 |

*Other Health Impacts:* Total cancers no more than twice fatal cancers.

No currently operating facilities. Baseline emissions are estimates of expected emissions. No alternative given due to expected risks well below $1\times10^{-6}$.

*Approach B: Incidence Based Approach. Decision on Acceptable Risk.* As explained earlier, the emissions from disposal of HLW will cause much less than one fatal cancer per year. Therefore, under this approach, expected radionuclide emissions are acceptable.

*Decision on Ample Margin of Safety.* As stated above, the individual risks from disposal of HLW are very small, less than $1\times10^{-6}$. In addition, there is 0.0001 fatal cancer a year from radionuclide emissions from disposal of HLW, see Table 14. The emissions are so low that no alternatives were evaluated. The Administrator proposes to determine that emissions from disposal of high-level waste will protect public health with an ample margin of safety. EPA believes that since the emissions are so low and there is no reason to expect that they would increase, no NESHAP is needed.

*Approach C: $1\times10^{-6}$ or Less Maximum Individual Risk Approach. Decision on Acceptable Risk.* An effective dose equivalent of 3 mrem/yr for 70 years equals a risk of $1\times10^{-6}$. Therefore, under this approach an acceptable level of emissions is the amount that shall not cause any member of the public to receive an effective dose equivalent of more than 3 mrem/y.

*Decision on Ample Margin of Safety.* EPA believes that risks from emissions from HLW disposal will be so small that current emissions protect public health with an ample margin of safety. In addition, there is no reason to believe that they would increase above expected levels. Therefore, EPA proposes to find that since the risks from radionuclide emissions from HLW disposal are so low and there is no reason to expect they would increase, no NESHAP is needed.

*Approach D: $1\times10^{-6}$ or Less Maximum Individual Risk Approach. Decision on Acceptable Risk.* An effective dose equivalent of 0.03 mrem/yr for 70 years equals a risk of $1\times10^{-6}$. Therefore, under this approach, an acceptable level of emissions is the amount that shall not cause any member of the public to receive an effective dose equivalent of more than 0.03 mrem/y.

*Decision on Ample Margin of Safety.* EPA believes the risks from air emissions from HLW disposal are so small that estimated emissions protect public health with an ample margin of safety. In addition, there is no reason to believe they will be higher than expected. Therefore, EPA finds that since the risks from radionuclide emissions from HLW disposal are so low and there is no reason to expect them to increase, no NESHAP is needed.

*G. Radon Releases from Department of Energy Facilities*

1. Introduction.

The DOE administers many facilities, including government-owned,



contractor-operated facilities across the country. Some of these facilities have large stockpiles of radium-containing material. Because this ore was originally high in uranium content, the tailings material that is left has a high radium content and, therefore, emits large quantities of radon. This material is stored in at least five different sites owned or controlled by DOE in Missouri, New Jersey, New York, Ohio and Utah. DOE is presently in the process of taking remedial action at these sites to dispose of the material on a long-term basis.

The current NESHAP covering DOE facilities does not regulate radon emissions. Environmental groups challenged EPA in court to address the problem of radon emissions from DOE facilities. EPA is responding with this proposed NESHAP.

2. Estimates of Exposure and Risk

EPA's risk assessment of DOE facilities is a site-by-site assessment of current emissions. Radon emission estimates were mostly measured values provided by DOE or estimated from measured radium-226 concentrations in the wastes. The meteorological data were taken from nearby stations and populations are based on U.S. census tract data.

According to EPA's analysis, lifetime fatal cancer risk to the most exposed individual is $2.4\times10^{-3}$. DOE facilities cause an estimated 0.16 fatal cancer per year to the 25.7 million persons within 80 km of the DOE facilities. Approximately 40 percent of the risk to that population comes from individuals whose risk is over $1\times10^{-6}$. It is noted that this analysis does not consider the planned remedial actions which will be implemented under CERCLA, as amended, in conjunction with either Interagency Agreements or Federal Facilities Agreements with EPA. Remedial action is scheduled at the Monticello Mill Tailings Pile near Monticello, Utah, per a signed Federal Facility Agreement.

Table 15 presents example scenarios to show how different emission levels would result in different health risk profiles. The table presents the risk estimates at baseline in terms of estimated annual fatal cancer incidence, maximum individual lifetime risk, total population exposed at or above particular risk levels (i.e., risk distribution), and annual incidence attributable to the population exposed at each risk level. The table also presents available estimates of annual incidence and maximum individual lifetime risk for a lower emission level identified as alternatives 2, 3 and 4.

3. Application of Alternative Policy Approaches

The decisions that would result from the application of the four policy approaches described in Section VI to the radon emissions from the DOE source category are described below.

*Approach A: Case-by-Case Approach. Decision on Acceptable Risk.* As stated earlier, the maximum lifetime individual risk to any individual is $2.4\times10^{-3}$ which is higher than the level generally preferred under the case-by-case approach. The estimated annual incidence is approximately 0.16 fatal cancer per year, and approximately 40 percent of that risk is borne by people whose risk is over $1\times10^{-6}$. EPA has examined several alternatives before determining the acceptable level; those alternatives and the risks they present are illustrated in Table 15. After examining these different options, the Agency would propose that the risk associated with alternative 2 represents a level that is acceptable under the case-by-case approach. A maximum individual risk higher than the preferred level is acceptable in this case because the risk distribution is such that incidence is only 0.042 per year.

*Decision on Ample Margin of Safety.* EPA has examined several alternative levels of control of radon emissions from DOE facilities. The costs and benefits of controlling emissions can be seen in Table 16. Based on the costs of further controls to reduce radon emissions, and the small decreases in risk and very small incidence reductions they represent, EPA has determined that it is not necessary to further reduce risks below the acceptable level, alternative 2. Therefore, EPA is proposing a NESHAP limiting radon emissions from DOE facilities to 20 $pCi/m^2-s$, which will protect public health with an ample margin of safety.

TABLE 15.—ALTERNATIVES FOR ACCEPTABLE RISK FROM RADON FROM DOE FACILITIES

| | Alternative 1 (baseline) | Alt. 2 | Alt. 3 | Alt. 4 |
|---|---|---|---|---|
| Maximum individual risk (lifetime) | $2.4\times10^{-3}$ | $2.9\times10^{-4}$ | $1.8\times10^{-4}$ | $1.3\times10^{-4}$ |
| Incidence within 80 km (death/y) | 0.16 | 0.042 | 0.021 | 0.012 |
| Risk individual: | | | | |
| E-2 to E-1 | 0 | 0 | 0 | 0 |
| E-3 to E-2 | 90 | 0 | 0 | 0 |
| E-4 to E-3 | 3,500 | 180 | 70 | 45 |
| E-5 to E-4 | 26,000 | 4,800 | 2,000 | 500 |
| E-6 to E-5 | 1.4M | 96,000 | 44,000 | 15,000 |
| Less E-6 | 27M | 28M | 28M | 28M |
| Risk incidence: | | | | |
| E-2 to E-1 | 0 | 0 | 0 | 0 |
| E-3 to E-2 | 0.002 | 0 | 0 | 0 |
| E-4 to E-3 | 0.011 | 0.0004 | 0.0001 | 0.00007 |
| E-5 to E-4 | 0.007 | 0.0020 | 0.00057 | 0.0002 |
| E-6 to E-5 | 0.040 | 0.0027 | 0.0012 | 0.0005 |
| Less E-6 | 0.10 | 0.037 | 0.020 | 0.01 |

*Other Health Impacts:* Non-fatal cancers no more than 5 percent of deaths.

*Approach B: Incidence Based Approach. Decision on Acceptable Risk.* As explained earlier, the radon emissions from DOE facilities cause less than one fatal cancer per year. Therefore, under this approach, current emissions are acceptable.

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TABLE 16.—ALTERNATIVES FOR AMPLE MARGIN OF SAFETY FOR RADON FROM DOE FACILITIES

| Alternative | MIR | Incidence | Incremental incidence reduction | Total incidence reduction | Incremental capital cost | Incremental annualized cost | Total annualized cost |
|---|---|---|---|---|---|---|---|
| 1 | $2.4\times10^{-3}$ | 0.16 | | | | | |
| 2 | $2.9\times10^{-4}$ | 0.042 | 0.12 | 0.12 | $29M | $1.5M | $1.5M |
| 3 | $1.8\times10^{-4}$ | 0.021 | 0.021 | 0.14 | 14M | 0.7M | 2.2M |
| 4 | $1.3\times10^{-4}$ | 0.012 | 0.009 | 0.15 | 13M | 0.7M | 2.8M |

Regulatory Status: Self regulated by DOE. AEA rules for uranium mill tailings are appropriate for this source category.

Comments:

Alternative 1: Baseline, no rule—Self-regulated by DOE.

Based on radon risk factor of 360 fatal cancers per million-WLM, ranging from 160 to 720 fatal cancers per million person-WLM, the Alternative 1 risk may range from $1.1\times10^{-3}$ to $5.8\times10^{-3}$.

Alternative 2: Cover source to limit emissions to 20 pCi/m²s—This is the same level as the current AEA rule set by EPA for uranium mill tailings.

Alternative 3: Cover source to limit emissions to 6 pCi/m²s—Most of the cost is to control emissions from the Monticello tailings pile.

Alternative 4: Cover source to limit emissions to 2 pCi/m²s—Most of the cost is to control emissions from the Monticello tailings pile.

Alternative 5: Table does not contain alternative to bring the MIR to $1.1\times10^{-4}$ because of the difficulties of estimating the impact. Additional radon controls would be required, amounting to about 8 meters of additional dirt cover. Costs could be in excess of $5 million.

MIR value does not decrease directly in proportion to emission flux because of the differing assumptions associated with each facility. Facilities are not alike.

*Decision on Ample Margin of Safety.* Based on an analysis of the costs of various control alternatives and decreases in risk and incidence they represent, see Table 16, EPA has determined that it is necessary to reduce risks to the level of alternative 2, but that further reductions are unnecessary. Therefore, EPA is proposing a NESHAP limiting radon emissions from DOE facilities to 20 pCi/m²—s, which will protect public health with an ample margin of safety.

*Approach C: $1\times10^{-4}$ or Less Maximum Individual Risk Approach. Decision on Acceptable Risk.* Since the dose/risk relationship for radon is reasonably well established, an acceptable level of emissions can be estimated under this approach. A radon emission limit of 2 pCi/m²—s yields a lifetime risk of $1\times10^{-4}$ to the maximum exposed individual. Therefore, under this approach an acceptable level of emission is 2 pCi/m²—s.

*Decision on Ample Margin of Safety.* Due to the costs and difficulty of further reducing emissions, EPA believes that no further reductions below a risk level of $1\times10^{-4}$ are needed. Therefore, EPA is proposing a NESHAP limiting emissions of radon to 2 pCi/m²—s which would protect public health with an ample margin of safety.

*Approach D: $1\times10^{-6}$ or Less Maximum Individual Risk Approach. Decision on Acceptable Risk.* A radon emission limit of 0.02 pCi/m²—s yields a lifetime risk of $1\times10^{-6}$ to the maximum exposed individual. Therefore, under this approach, an acceptable level of emissions is 0.02 pCi/m²—s.

*Decision on Ample Margin of Safety.* Due to the costs and difficulty of further reducing emissions, EPA believes that no further reductions below a risk level of $1\times10^{-6}$ are needed. Therefore, EPA is proposing a NESHAP limiting emissions to 0.02 pCi/m²—s which would protect public health with an ample margin of safety.

4. Implementation

This NESHAP is a flux standard that limits the emission of radon from DOE facilities. The standard limits the amount of radon that can be emitted per unit area (m²) per unit of time (s). This standard is not an average per facility but is an average per radon source. This will require that all radon sources must be disposed of in a manner that will reduce the radon flux to meet the standard.

The proposed standard will be effective immediately upon promulgation. While EPA believes that DOE will be able to meet this standard, EPA recognizes that in some cases DOE may need some time to perform all the actions necessary to reduce radon emissions to the required levels. In such a case, DOE may request a waiver of the compliance deadline of up to two years, under section 112(c)(1)(b)(ii) of the CAA. If two years are not sufficient time EPA is prepared to discuss schedules for compliance. EPA recognizes that the requirements of CERCLA and other environmental laws will have to be considered in these discussions.

Since the reports of the testing provide EPA with the information it needs, DOE-facilities are exempted from the requirements of 61.10.

*H. Phosphogypsum Stacks*

1. Introduction

Phosphogypsum stacks are large piles of waste from wet acid phosphorus fertilizer production. Phosphogypsum stacks are found at 41 different sites in 12 states. Because phosphate ore is relatively high in uranium and radium, phosphogypsum stacks are also high in these elements. The presence of radium in the stacks causes them to release radon into the atmosphere. In connection with the litigation, EPA has agreed to propose a standard for this source category.

2. Estimates of Exposure and Risk

EPA has performed a pile-by-pile assessment of radon releases at 58 phosphogypsum stacks at 41 sites. Radon emissions are based on measured radon fluxes at stacks in Florida and Idaho, the radium content of the phosphate rock and the estimated area of the stacks. Maximum individual risks are based on the locations of nearby residents obtained from industry or topographical maps. Where information was unavailable, people were assumed to be 800 meters from the site boundary. Populations within 80 km were taken from census tract data.

The estimated maximum individual risk of fatal cancer from radon emissions from phosphogypsum stacks is $2.0\times10^{-4}$. The radon emissions cause 0.97 fatal cancers per year to the population within 80 km. Approximately 90% of the risk to the population is borne by people whose risk is less than $1\times10^{-5}$, and 40% of the risk is borne by people whose risk is less than $1\times10^{-6}$.

Table 17 presents example scenarios to show how different emission levels would result in different health risk profiles. The table presents the risk estimates at baseline in terms of estimated annual fatal cancer incidence, maximum individual lifetime risk, total population exposed at or above particular risk levels (i.e., risk distribution), and annual incidence attributable to the population exposed at each risk level. The table also presents available estimates of annual incidence and maximum individual lifetime risk for a lower emission level identified as alternatives 2 and 3.



3. Application of Alternative Policy Approaches

The decisions that would result from the application of the four policy approaches described in Section VI, to the phosphogypsum stacks source category are described below.

*Approach A: Case-by-Case Approach. Decision on Acceptable Risk.* As stated earlier, the maximum individual risk to any individual is $2.0\times10^{-4}$ which is slightly higher than the level generally preferred under the case-by-case approach. Of the 58 stacks, only 4 had risks greater than $1\times10^{-4}$. The estimated annual incidence of fatal cancer is less than 1 per year, and almost all of that risk is borne by people whose risk is less than $1\times10^{-6}$. EPA has examined several alternatives before determining the acceptable level. Those alternatives and the risks they present are illustrated in Table 17. After examining these different alternatives, the Administrator has determined that baseline emissions, alternative 1, represents a level that is acceptable under the case-by-case approach. A maximum individual risk higher than the preferred level is acceptable in this case because only a few individuals are exposed to this level and because the risk distribution is such that incidence is only 0.97 per year.

*Decision on Ample Margin of Safety.* Based on the costs of further controls to reduce radon emissions, and the decreases in risk and small incidence reductions they represent, see Table 18, EPA has determined that it is not necessary to further reduce risks below the safe baseline level, alternative 1. EPA proposes a NESHAP limiting radon emissions from phosphogypsum stacks to 20 pCi/m²—s, which represents current emissions, which will protect public health with an ample margin of safety.

TABLE 17.—ALTERNATIVE FOR ACCEPTABLE RISK FOR DISPOSAL OF PHOSPHOGYPSUM STACKS

| | Alternative 1 (baseline) | Alternative 2 | Alternative 3 |
|---|---|---|---|
| Maximum individual risk (lifetime) | $2.0\times10^{-4}$ | $1.6\times10^{-4}$ | $5.6\times10^{-5}$ |
| Incidence within 80 km (death/y) | 0.97 | 0.83 | 0.29 |
| Risk individual | | | |
| E-2 to E-1 | 0 | 0 | 0 |
| E-3 to E-2 | 0 | 0 | 0 |
| E-4 to E-3 | [1] | [1] | 0 |
| E-5 to E-4 | 400,000 | 290,000 | 17,000 |
| E-6 to E-5 | 16M | 14M | 2.8M |
| Less E-6 | 78M | 81M | 92M |
| Risk incidence | | | |
| E-2 to E-1 | 0 | 0 | 0 |
| E-3 to E-2 | 0 | 0 | 0 |
| E-4 to E-3 | [1] | [1] | 0 |
| E-5 to E-4 | 0.064 | 0.064 | 0.0033 |
| E-6 to E-5 | 0.52 | 0.41 | 0.068 |
| Less E-6 | 0.34 | 0.34 | 0.21 |

*Other Health Impacts:* Non-fatal cancers no more than 5% deaths.

[1] At least one person may be at this risk level, total number of people unknown because site visit has not been made.

*Approach B: Incidence Based Approach. Decision on Acceptable Risk.* As explained earlier, the radon emission from phosphogypsum stacks cause less than one fatal cancer per year. Therefore, by this approach, current emissions provide an acceptable level of risk. However, the current incidence estimate is 0.97 fatal cancer a year, which is very close to the acceptable level. Future analysis could demonstrate that current emissions are not acceptable and need to be reduced.

*Decision on Ample Margin of Safety.* Based on the costs of further controls to reduce radon emissions, and the decreases in risk and small incidence reductions they represent, see Table 18, EPA has determined that it is not necessary to further reduce risk below the safe baseline level, alternative 1.

TABLE 18.—ALTERNATIVES FOR AMPLE MARGIN OF SAFETY FOR DISPOSAL OF PHOSPHOGYPSUM STACKS

| Alternative | MIR | Incidence | Incremental incidence reduction | Total incidence reduction | Incremental capital cost | Incremental annualized cost | Total annualized cost |
|---|---|---|---|---|---|---|---|
| 1 | $2.0\times10^{-4}$ | 0.97 | | | | | |
| 2 | $1.6\times10^{-4}$ | 0.83 | 0.14 | 0.14 | $500M | $ 43M | $ 43M |
| 3 | $5.6\times10^{-5}$ | 0.29 | 0.54 | 0.68 | $500M | $ 25M | $ 68M |

Regulatory Status: Presently unregulated. This source category is analogous to uranium mill tailings, but has much less radon emission per unit area. EPA is required under court order to propose a standard for this category.

Comments:

Alternative 1: Baseline rule, cover source to limit emissions to 20 pCi/m²s—Stacks have emissions of 4 to 15 pCi/m²s; no cover would be needed. This rule would be equivalent to the current AEA rule set by EPA for uranium mill tailings.

Based on radon risk factor of 360 fatal cancers per million person-WLM, ranging from 160 to 720 fatal cancers per million person-WLM, the Alternative 1 risk may range from $8.9\times10^{-5}$ to $4.0\times10^{-4}$.

Alternative 2: Cover source to limit emissions to 6 pCi/m²s—Stacks are covered with 0.5 meters of dirt. Usually dirt is not locally available and must be hauled to the site.

Alternative 3: Cover source to limit emissions to 2 pCi/m²s—Stacks are covered with 1 meter of dirt.

Alternative 4: Table does not contain alternative to bring the MIR to $1\times10^{-6}$ because the impacts cannot be accurately estimated. If all stacks would need a dirt cover of average depth of 4 meters, the total annualized cost would seem to approach $300 million.

However, to prevent emissions from increasing, EPA is proposing a NESHAP for this source category limiting radon emissions from phosphogypsum stacks to 20 pCi/m²—s. This represents current emissions and will protect public health with an ample margin of safety.

*Approach C: $1\times10^{-4}$ or Less Maximum Individual Risk Approach. Decision on Acceptable Risk.* A radon emission limit of 2 pCi/m²—s corresponds approximately to a lifetime risk of $1\times10^{-4}$ to the maximum exposed individual. Under this approach, an acceptable level of emissions is an average radon flux of 2 pCi/m²—s from phosphogypsum stacks.

*Decision on Ample Margin of Safety.* Due to the costs and difficulty of further reducing emissions, EPA believes that no further reductions below a risk level of $1\times10^{-4}$ are needed. Therefore, EPA is proposing limiting emissions to 2 pCi/m²—s, which would protect public health with an ample margin of safety.

*Approach D: $1\times10^{-6}$ or Less Maximum Individual Risk Approach. Decision on Acceptable Risk.* A radon emission limit of 0.02 pCi/m²—s corresponds approximately to a lifetime risk of $1\times10^{-6}$ to the maximally exposed individual. Under this approach, an acceptable level of emissions is an average radon flux of .02 pCi/m²—s.

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*Decision on Ample Margin of Safety.* Due to the costs and difficulty of further reducing emissions, EPA believes that no further reductions below a risk level of $1\times10^{-4}$ are needed. Therefore, EPA is proposing limiting radon emissions levels to 0.02 $pCi/m^2$–s, which would protect public health with an ample margin of safety.

4. Implementation

This NESHAP is a flux standard that limits the emission of radon from phosphogypsum stacks. The standard limits the amount of radon that can be emitted per unit area ($m^2$) per unit of time (s). This standard is not an average per facility but is an average per phosphogypsum stack. This will require that all stacks be disposed of in a manner that will reduce the radon flux to meet the standard.

Sixty days after the effective date of this rule or sixty days after the operator ceases using a phosphogypsum stack the operator must test the stack to determine whether or not the stack is in compliance with the flux standard. If Approach A or B is selected it is expected that all stacks will be in compliance with the standard. If Approach C or D are selected the stacks will most likely not be in compliance unless they cover the stack with dirt, or something else, to reduce the radon flux off the stack. If an operator knows that the stack cannot meet the standard, the operator can admit noncompliance instead of testing the stack.

Stacks must be retested every two years unless EPA requires more frequent testing or EPA determines that less frequent testing is sufficient to assure compliance with the standard. EPA will also reduce the need for testing if EPA determines that testing will interfere with ongoing operations designed to cover the stack.

Since the reports of the testing provide EPA with the information it needs, phosphogypsum stacks are exempted from the requirements of 61.10.

*I. Underground Uranium Mines*

1. Introduction

When these mines are operating, their ventilation systems emit large amounts of radon into the atmosphere. The levels of radon in an unventilated mine are a hazard to the miners. Ventilating to reduce radon exposure to the miners increases exposure to the general population.

Underground uranium mines are regulated by an existing NESHAP. This NESHAP requires bulkheading of unused portions of the mines in an effort to reduce the internal wall surface area of the mine and thereby reduce radon emissions into the mine atv. EPA has found that this system is unworkable for existing mines, and it is unproven for new mines. The interiors of these mines are so extensively interconnected that any attempt at bulkheading either produces no results or prevents fresh air from getting to the miners.

2. Estimates of Exposure and Risk

EPA's risk assessment of underground uranium mines is a site-by-site assessment of all operating or operable mines. Emission estimates were based on radon concentration or working level measurements and ventilation rates provided by mine operators.

The meteorological data was taken from nearby stations and populations from 5 to 80 km are based on U.S. census tract data. Population distributions within 5 km were taken from site visits or obtained from mine owners.

The maximum individual risk of fatal cancer from radon emissions from underground uranium mines is $1.2\times10^{-3}$. The radon emissions cause 0.77 fatal cancer per year to the population within 80 km.

Table 19 presents example scenarios to show how different emission levels would result in different health risk profiles. The table presents the risk estimates at baseline in terms of estimated annual fatal cancer incidence, maximum individual lifetime risk, total population exposed at or above particular risk levels (i.e., risk distribution), and annual incidence attributable to the population exposed at each risk level. The table also presents available estimates of annual incidence and maximum individual lifetime risk for a lower emission level identified as alternatives 2 and 3.

TABLE 19.—ALTERNATIVES FOR ACCEPTABLE RISK FPR UNDERGRAOUN URANIUM MINES

| | alternative 1 (baseline) | alternative 2 | alternative 3 |
|---|---|---|---|
| Maximum individual risk (lifetime) | $1.2\times10^{-3}$ | $2.7\times10^{-4}$ | $1.9\times10^{-4}$ |
| Incidence within 80 km (death/y) | 0.77 | 0.43 | 0.20 |
| Risk individual | | | |
| E-2 to E-1 | 0 | 0 | 0 |
| E-3 to E-2 | 0 | 0 | 0 |
| E-4 to E-3 | 90,000 | 15,000 | 1500 |
| E-5 to E-4 | 1.8M | 880,000 | 280,000 |
| E-6 to E-5 | 250,000 | 1.8M | 1.8M |
| Less E-6 | 7,000 | 20,000 | 22,000 |
| Risk incidence | | | |
| E-2 to E-1 | 0 | 0 | 0 |
| E-3 to E-2 | 0.00008 | 0 | 0 |
| E-4 to E-3 | 0.21 | 0.028 | 0.0024 |
| E-5 to E-4 | 0.54 | 0.30 | 0.089 |
| E-6 to E-5 | 0.021 | 0.086 | 0.089 |
| Less E-6 | 0.00006 | 0.00025 | 0.00095 |

*Other Health Impacts:* Non-fatal cancers no more than 5% of deaths.

3. Application of Alternative Policy Approaches

The decisions that would result from the application of the four policy approaches described in Section VI, to the surface uranium mines source category are described below.

*Approach A: Case-by-Case Approach. Decision on Acceptable Risk.* As stated earlier, the maximum individual risk to any individual is $1.2\times10^{-3}$ which is higher than the level preferred under the case-by-case approach. The estimated annual incidence is 0.77 fatal cancer per year. EPA has examined several alternatives before determining the acceptable level; those alternatives and the risks they present are illustrated in Table 19. After examining these different alternatives, the Agency would propose that the risks associated with alternative 2 represents the level that is acceptable under the case-by-case approach. Alternative 2 limits the emissions to 1500 Ci/y of radon. An emissions limit of 1500 Ci/y provides an acceptable level of risk.



However, EPA recognizes that, among the source categories analyzed, uranium mines present a unique situation in determining an acceptable level of risk. This occurs because Mine Safety and Health Administration (MSHA) standards require owners to protect mine workers by operating mine ventilation equipment to reduce the radon levels within the mines. This results in emissions of whatever amount of radon is necessary to reduce the radon levels in the mines to the required levels.

After considering the conflict in the goals of the MSHA regulations and the goals of the CAA, EPA has concluded that emissions higher than 1500 Ci/y can be allowed without increasing the risk to the nearby individuals. If a mine releases its exhaust fan emissions from a 30-meter stack, then radon emissions of 5,000 Ci/y would result in the same level of risk to the most exposed individuals as a ground level releases of 1500 Ci/y. This alternative provides an effective means to ventilate the mine, reducing radon levels in the mine, while protecting those persons exposed to the emissions from a mine. Therefore, the Agency would propose that the risks associated with exhaust vent emissions of radon from underground uranium mines emitted either at ground level with an emission limit of 1500 Ci/y or from a stack that is at least 30 meters high with an emission limit of 5000 Ci/y provides an acceptable level of risk.

*Decision on Ample Margin of Safety.* Based on the costs of further controls to reduce radon emissions, including the likelihood of closures and the decreases in risk and very small incidence reductions they represent, see Table 20, EPA has determined that it is not necessary to further reduce risks below the acceptable level, alternative 2. EPA recognizes that closures are not in themselves a reason not to further reduce risks.

*Approach B: Incidence Based Approach. Decision on Acceptable Risk.* As explained earlier the radon emissions from underground uranium mines cause less than one fatal cancer per year. Therefore, under this approach, current emissions are acceptable.

TABLE 20.—Alternatives for Ample Margin for Safety for Underground Uranium Mines

| Alternative | MIR | Incidence | Incremental incidence reduction | Total incidence reduction | Incremental capital cost | Incremental annualized cost | Total annualized cost |
|---|---|---|---|---|---|---|---|
| 1 | $1.2\times10^{-3}$ | 0.77 | | | | | |
| 1-A | $1.2\times10^{-3}$ | 0.77 | | | | | |
| 2 | $2.7\times10^{-4}$ | 0.43 | 0.34 | 0.34 | $15M | $2M | $8M |
| 3 | $1.9\times10^{-4}$ | 0.20 | 0.23 | 0.57 | $ * | $ * | $ * |

Regulatory Status: Currently there is a NESHAP in place requiring work practices to limit radon emissions (bulkheads).

Comments:

Alternative 1: Baseline, no rule—existing NESHAPS would be vacated. Bulkheading is no longer believed effective.

Based on radon risk factor of 360 fatal cancers per million person-WLM, ranging from 160 to 720 fatal cancers per million person-WLM, the Alternative 1 risk may range from $5.3\times10^{-4}$ to $2.4\times10^{-3}$.

Alternative 1-A: Baseline rule—10,000 Ci/y radon emissions limit. The largest mine emits 8900 Ci/y radon.

Alternative 2: Emission limit of 1,500 Ci/y radon for ground level release or 5,000 Ci/y radon if there is a 30 meter stack. Three mines exceed 5,000 Ci/y radon and would have to reduce operating time by 2-5 months. Several mines would in addition need to cut new vent shafts.

Alternative 3: Emission limit of 1,000 Ci/y radon. This alternative is more stringent than Alternative 2. (* Additional costs are in terms of mines shut down which cannot be quantified at this time.)

Alternative 4: Table does not contain alternative to bring the MIR to $1x10^{-4}$ because it is difficult to estimate the impact of such action. Most likely, mines could not operate at this level. Six mines would close; new mines could not be opened.

*Decision on Ample Margin of Safety.* EPA has examined several alternatives before determining the alternative that results in emissions that are safe with an ample margin of safety; those alternatives are presented in Table 20. After examining these different alternatives, the Administrator has determined that alternative 2 represents the level that is safe with an ample margin of safety. Alternative 2 limits the emissions to 1500 Ci/y of radon. An emissions limit of 1500 Ci/y provides a level of emissions that is safe with an ample margin of safety.

However, EPA recognizes that, among the source categories analyzed, uranium mines present a unique situation in determining an acceptable level of risk. This occurs because Mine Safety and Health Administration (MSHA) standards require owners to protect mine workers by operating mine ventilation equipment to reduce the radon levels within the mines. This results in emissions of whatever amount of radon is necessary to reduce the radon levels in the mines to the required levels.

After considering the conflict in the goals of the MSHA regulations and the goals of the CAA, EPA has concluded that emissions higher than 1500 Ci/y can be allowed without increasing the risk to the nearby individuals. If a mine releases its exhaust fan emissions from a 30-meter stack, then radon emissions of 5,000 Ci/y would result in the same level of risk to the most exposed individuals as a ground level release of 1500 Ci/y. This alternative provides an effective means to ventilate the mine, reducing radon levels in the mine, while protecting those persons exposed to the emissions from a mine. Therefore, the Administrator has determined that exhaust vent emissions of radon from underground uranium mines emitted either at ground level with an emission limit of 1500 Ci/y or from a stack that is at least 30 meters high with an ample margin of safety.

*Approach C: $1\times10^{-4}$ or Less Maximum Individual Risk Approach. Decision on Acceptable Risk.* Since the dose/risk relationship for radon is well established, it is straightforward to determine the correct standard under this approach. A radon emission limit of 500 Ci/y of radon under current release conditions equals a lifetime risk of $1\times10^{-4}$ to the most exposed individual. Therefore, under this approach, an acceptable level of emissions is 500 Ci/y of radon from any single mine.

*Decision on Ample Margin of Safety.* Based on the considerations expressed earlier, EPA believes that no further reductions below emissions of 500 Ci/y of radon would be needed. Therefore, EPA is proposing a NESHAP of 500 Ci/y of radon from any single mine, which would protect public health with an ample margin of safety.

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*Approach D: $1\times10^{-4}$ or Less Maximum Individual Risk Approach. Decision on Acceptable Risk.* A radon emissions limit of 5 Ci/y of radon would expose an individual to a lifetime risk of $1\times10^{-4}$. Therefore, under this approach, an acceptable level of emissions is 5 Ci/y of radon from any single underground uranium mine.

*Decision on Ample Margin of Safety.* A standard of 5 Ci/y radon would be impossible for most underground uranium mines to meet. Since this standard would shut down the industry, there is no need to look at lowering it further. EPA is proposing that underground uranium mines not emit more than 5 Ci/y radon-222 into the atmosphere in any year.

4. Implementation

This standard is an emission standard. Mines are limited in the amount of radon they emit from their exhaust vents. Due to Mine Safety and Health Administration (MSHA) regulations, which are designed to protect the miners from high levels of radon in the mine, the exhaust fans must be operating whenever there are miners working in the mine. This limits EPA flexibility in developing other types of standards to control radon emissions.

Under Approach A and B the limit is 1500 curies of radon a year. If mines emit radon from a stack 30 meters in height or higher, the risks to nearby individuals is reduced such that larger radon emissions will still result in risk levels that are safe with an ample margin of safety. In an effort to provide flexibility for the mine owners in meeting their obligations under MSHA regulations, EPA will allow mines that have 30 meter stacks to emit up to 5,000 curies a year.

Under Approach C, mines can emit up to 500 curies of radon a year, and under Approach D, they can emit up to 5 curies of radon a year. Under all the Approaches, mines will be required to measure and report their annual emissions. Although the report is based on a calendar year the emission limit applies to any year, i.e. any period of 12 consecutive months. Since these reports provide EPA with the information it needs, underground uranium mines are exempted from the requirements of 61.10.

*J. Surface Uranium Mines*

1. Introduction

Surface mining is accomplished by the excavation of one or more pits to expose uranium ore for removal. While this technique has accounted for about 80–70% of the uranium ore tonnage produced in this country between 1956 and 1985, much of today's uranium production is from underground mines and other sources. In the past, annual production from surface mines ranged from a few hundred tons of ore to 100,000 tons or more. In recent years, surface mining operations have been very large, typically 100,000 tons or more. Due to the dramatic decline in the uranium industry since 1981, the number of surface mines in operation in the U.S. has dropped from 50 in 1981 to just 2 in 1987. While only 2 mines are currently active, there remain about 1,200 mines in the U.S. in various stages of reclamation.

During surface mining, topsoil may be segregated and saved for reclamation; overburden is piled on land beside the pit. The pit and overburden represents a large surface area from which radon can escape into the atmosphere. Radon emissions are higher than usual because radium concentrations are larger than average near bodies of uranium ore.

Health, safety and environmental hazards associated with uranium mining are regulated by a variety of Federal and State laws. As a result of the laws and regulations, uranium mines, especially surface operations, are vastly different operations today than during the 1950s and 1960s. Many of the inactive mines are presently being reclaimed under state law. Reclamation of the mines significantly reduces radon emissions. In the past, EPA decided not to promulgate a NESHAP for this category. That decision was challenged in litigation and is being reexamined in this rulemaking.

2. Estimates of Exposure and Risk

EPA conducted a field study during the summer of 1988 to obtain information with which to model the surface mining industry so that estimates of risk from surface mining could be made. Radiometric surveys were conducted of the two active mines, located in Texas and Wyoming, and 28 inactive mines located in Arizona, New Mexico, Colorado, South Dakota, Texas and Wyoming. In addition, the demographic and meteorologic data were gathered in and around each mining site.

The maximum individual risk of fatal cancer from radon emissions from surface uranium mines is $1.0\times10^{-4}$. The radon emissions cause 0.016 fatal cancer per year to the population within 80 km. Over 80% of the risk to the population is borne by people whose risk is less than $1\times10^{-5}$, and 80% of the risk is borne by people whose risk is less than $1\times10^{-6}$.

Table 21 presents example scenarios to show how different emission levels would result in different health risk profiles. The table presents the risk estimates at baseline in terms of estimated annual fatal cancer incidence, maximum individual lifetime risk, total population exposed at or above particular risk levels, (i.e., risk distribution), and annual incidence attributable to the population exposed at each risk level. The table also presents available estimates of annual incidence and maximum individual lifetime risk for a lower emission level identified as alternative 2.

3. Application of Alternative Policy Approaches

The decisions that would result from the application of the four policy approaches described in Section VI, to the surface uranium mines source category are described below.

*Approach A: Case-by-Case Approach. Decision on Acceptable Risk.* As stated earlier, the maximum individual risk to any individual is $1.0\times10^{-4}$ which is the level generally preferred under the case-by-case approach. The estimated annual incidence is less than 0.0087 fatal cancer per year, and most of that risk is borne by people whose risk is less than $1\times10^{-5}$. EPA has examined several alternatives before determining the acceptable level, these alternatives and the risks they present are illustrated in Table 21. After examining these different alternatives, the Agency has determined that baseline emissions, alternative 1, represents the level that is acceptable under the case-by-case approach.

*Decision on Ample Margin of Safety.* Based on the costs of further controls to reduce radon emissions, and the decreases in risk and very small incidence reductions they represent, see Table 22, EPA has determined that it is not necessary to further reduce risks below the safe baseline level, alternative 1. Current emissions have an associated risk which is safe with an ample margin of safety. Especially important in this determination is the extremely low population risk and the current state reclamation system which is working to reduce its already low risks.

Due to the depressed state of the uranium mining industry, there is no reason to believe that any new surface mines will be constructed. Therefore, the baseline risks are not expected to increase in the future, and EPA proposes not to regulate this source category.

*Approach B: Incidence Based Approach. Decision on Acceptable Risk.* As explained earlier, the radon emissions from surface uranium mines cause much less than one fatal cancer per year. Therefore, under this approach, current emissions are acceptable.

TABLE 21.—ALTERNATIVE FOR ACCEPTABLE RISK FOR SURFACE URANIUM MINES

| | Alternative 1 (baseline) | Alternative 2 |
|---|---|---|
| Maximum individual risk (lifetime) | $1.0\times10^{-4}$ | $6.6\times10^{-5}$ |
| Incidence within 80 km (death/y) | 0.016 | 0.0029 |
| Risk individual: | | |
| E-2 to E-1 | 0 | 0 |
| E-3 to E-2 | 0 | 0 |
| E-4 to E-3 | 240 | 0 |



TABLE 21.—ALTERNATIVE FOR ACCEPTABLE RISK FOR SURFACE URANIUM MINES—Continued

| | Alternative 1 (baseline) | Alternative 2 |
|---|---|---|
| E-5 to E-4 | 1,400 | 750 |
| E-6 to E-5 | 62,000 | 28,000 |
| Less E-6 | 5.8M | 5.8M |
| Risk incidence: | | |
| E-2 to E-1 | 0 | 0 |
| E-3 to E-2 | 0 | 0 |
| E-4 to E-3 | 0.0004 | 0 |
| E-5 to E-4 | 0.0008 | 0.0005 |
| E-6 to E-5 | 0.0020 | 0.0007 |
| Less E-6 | 0.0035 | 0.0017 |

*Other Health Impacts:* Non-fatal cancers no more than 5 percent of deaths.

*Decision on Ample Margin of Safety.* Based on the costs of further controls to reduce radon emissions, and the decreases in risk and very small incidence reductions they represent, see Table 22, EPA has determined that it is not necessary to further reduce risks below the safe baseline levels, alternative 1, to protect health with an ample margin of safety. Therefore, EPA is proposing not to regulate under this approach.

TABLE 22.—ALTERNATIVES FOR AMPLE MARGIN OF SAFETY FOR SURFACE URANIUM MINES

| Alternative | MIR | Incidence | Incremental incidence reduction | Total incidence reduction | Incremental capital cost | Incremental annualized cost | Total annualized cost |
|---|---|---|---|---|---|---|---|
| 1 | $1.0\times10^{-4}$ | 0.016 | | | | | |
| 2 | $6.6\times10^{-5}$ | 0.0029 | 0.013 | 0.013 | $15M | $0.8M | $0.8M |
| 3 | $2.2\times10^{-5}$ | 0.0015 | 0.0014 | 0.014 | $51M | $2.6M | $3.3M |
| 4 | $1.3\times10^{-5}$ | 0.0007 | 0.0008 | 0.014 | $110M | $5.6M | $8.9M |

Regulatory Status: Presently unregulated by EPA. State reclamation rules apply to most of these mines. These requirements reduce radon emissions when the mine is closed and reclaimed. Some mines are located on Federal (23%) and Indian (7%) lands; reclamation rules established by Interior, Agriculture, or DOE then apply.

Comments:

Alternative 1: Baseline, no rule—State reclamation rules apply. Analysis assumes larger production mines characterize the risk associated with surface uranium mining. Analysis is based on 25 mines. States with reclamation requirements include Colorado, Texas, Utah, Wyoming and South Dakota.

Based on radon risk factor of 360 fatal cancers per million person-WLM, ranging from 160 to 720 fatal cancers per million person-WLM, the Alternative 1 risk may range from $4.4\times10^{-5}$ to $2.0\times10^{-4}$.

Alternative 2: Cover source to limit emissions to 40 pCi/m²s—This alternative represents Federalization of State laws covering reclamation. Assumes 0.2 meters of dirt cover.

Alternative 3: Cover source to limit emissions to 20 pCi/m²s—Assumes 0.9 meters of dirt cover.

Alternative 4: Cover source to limit emissions to 6 pCi/m²s—Assumes 2.4 meters of dirt cover.

Alternative 5: Table does not contain alternative to bring the MIR to $1\times10^{-6}$ because of the difficulty in accurately estimating the impacts. Most likely, in addition to State laws covering reclamation, EPA would add additional dirt cover requirements amounting to about 3 meters of dirt to further reduce radon emissions. The total annualized costs would approach $20 million for the 25 largest mines. There are over 1000 of these mines, although most are small operations.

*Approach C: $1\times10^{-4}$ or less Maximum Individual Risk Approch. Decision on Acceptable Risk.* Current emissions from surface uranium mines present risks of $1.0\times10^{-4}$ to the maximum exposed individual. Therefore, under this approach current emissions provide an acceptable level of risk.

*Decision on Ample Margin of Safety.* Based on the costs of further controls to reduce radon emissions, and the decreases in risk and very small incidence reductions they represent, see Table 22, EPA has determined that it is not necessary to further reduce risks below the safe baseline level, alternative 1, to protect health with an ample margin of safety. Therefore, EPA is proposing not to regulate under this approach.

*Approach D: $1\times10^{-4}$ or Less Maximum Individual Risk Approach. Decision on Acceptable Risk.* A radon emission limit of 0.02 pCi/m²– yields to the most exposed individual. Therefore, under this approach, an acceptable level of emissions is 0.02 pCi/m²–s.

*Decision on Ample Margin of Safety.* Due to the costs and difficulty of further reducing emissions, EPA believes that no further reductions below a risk level of $1\times10^{-4}$ are needed. EPA is proposing a NESHAP limiting emissions of radon to 0.02 pCi/m²–s which would protect public health with an ample margin of safety.

4. Implementation

This NESHAP is e flux standard that limits the emission of radon from uranium mines. The standard limits the amount of radon that can be emitted per unit area (m²) per unit of time (s). This standard is an average per mine including the overburden. This will require that all mimes must be disposed of in a manner that will reduce the radon flux to meet the standard.

Sixty days after the effective date of this rule or sixty days after the operator ceases using a surface uranium mine the operator must test the mine to determine whether or not the mine is in compliance with the flux standard. If an operator knows that the mine cannot meet the standard, the operator can admit noncompliance instead of testing.

Mines must be retested every two years unless EPA requires more frequent testing or EPA determines that less frequent testing is sufficient to assure compliance with the standard. EPA will also reduce the need for testing if EPA determines that testing will interfere with ongoing operations designed to reduce the flux from the mine.

Since the reports of the testing provide EPA with the information it needs, surface uranium mines are exempted from the requirements of 61.10.

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*K. Radon Releases from Operating Uranium Mill Tailings Piles*

1. Introduction

The process of separating uranium from its ore creates waste material that is called uranium mill tailings. Since uranium ore generally contains less than 1 percent uranium, uranium milling produces large quantities of tailings. These tailings are collected in impoundments that vary in size from 20 to 400 acres. The tailings contain large amounts of radium, and, therefore, they emit large quantities of radon. There are 26 licensed uranium mills in the western United States. Due to the depressed state of the uranium industry, most of these mills are not currently operating.

The Uranium Fuel Cycle standard, 40 CFR 190, does not regulate radon emissions from the tailings piles. Radon emmissions during operating are currently regulated by a NESHAP which is a work practice standard which specifies two methods, one of which must be used in the construction of any new tailings impoundment. Existing tailing piles cannot be used after December 31, 1992. Extensions and exceptions can be granted that would allow an existing pile to continue to operate beyond the 1992 deadline. The piles must be disposed of in accordance with EPA's AEA standard, 40 CFR 192.

For the current radionuclides NESHAP rulemaking, EPA is proposing rules for three different subcategories that deal with mill tailings: Operating mill tailings—existing piles, operating mill tailings—new technology, and disposal of uranium mill tailings (as a separate source category; see section VII.L of this notice).

This source category, operating mill tailings, has two subcategories because existing and future mill tailings piles present different problems. Existing mill tailings piles are large piles of wastes that emit radon. There is nothing that can be done to reduce the amount of radon they emit except cover them. New piles can be designed to utilize disposal systems that reduce the problem before very large (hundreds of acres) piles that require disposal accumulate. The new technology cannot readily be used on old piles. It is easier and cheaper to simply cover up the existing piles than to break them up into a series of smaller piles and dispose of them separately.

EPA has determined that it is not feasible to prescribe an emission standard for radon emissons from uranium mill tailing piles. Radon is emitted from the surfaces of tailings piles in a manner analogous to fugitive dust emissions and cannot be emitted through a conveyance designed and constructed to capture such radom emissions. Instead, EPA is requiring on improved work practice for the disposal of newly generated tailings and is specifying a date of which all newly generated tailings must be managed by this work practice.

A crucial issue with all uranium mill tailing piles is that of timing. The ony way to permanently reduce radon emissions from a pile is to cover it up and dispose of it. The piles continue to emit radon at significant levels which they remain uncovered. EPA has not dealt with this timing issue before. We are dealing with it at this time because there has been little, if any, action taken to dispose of the piles. If EPA promulgates a disposal NESHAP, it can require that disposal be started within a set period of time after operations cease or after the rule is promulgated. If this issue is not addressed with a disposal NESHAP, then a NESHAP covering operational piles could require termination of operations and start of final disposal within a set time.

Timing is also a significant issue for the owners of operating mill tailings piles. Operators want to be able to continue to use their existing piles for as long as possible. This allows them to avoid spending money on disposal or new impoundments. In the current NESHAP, EPA dealt with this issue by allowing the continued use of all existing piles until December, 1992, and creating a system of exceptions and extensions that would allow continued use for low risk piles until 2001. This system has been challenged as violating the section 112 requirement that NESHAP compliance be attained within 2 years.

2. Estimates of Exposure and Risk

EPA's risk assessment of operating uranium mill tailings is a site-by-site assessment of all 26 currently licensed mills. Emissions were estimated from the radium-226 concentrations in the tailings, the amount of tailings, and the assumption that 1 pCi/g of radium-226 in the tailings produces 1 pCi/m $^2$-s of radon. The meteorological data was taken from nearby stations and populations from 5 to 80 km are based on U.S. census tract data. Populations within 5 km were counted at each of the sites. EPA analyzed current emissions and the emissions that would be expected when new tailings impoundments are created in the future.

There are twelve licensed piles that are either operating or on standby. According to EPA's analysis, the lifetime fatal cancer risk to the most exposed individual is $3.3\times10^{-3}$ from these twelve piles. Uranium mill tailings are estimated to cause 1.6 fatal cancer per year to the 4.5 million persons within 80 km of the tailings piles.

Tables 23 and 24 present example scenarios to show how different emission levels would result in different health risk profiles. The tables present the risk estimates at baseline in terms of estimated annual fatal cancer incidence, maximum individual lifetime risk, total population exposed at or above particular risk levels (i.e., risk distribution), and annual incidence attributable to the population exposed at each risk level. The tables also present available estimates of annual incidence and maximum individual lifetime risk for a lower emission level identified as alternatives 2, 3 and 4.

3. Application of Alternative Policy Approaches

The decisions that would result from the application of the four policy approaches described in Section VI, to the radon emissions from the uranium mill tailings source category are described below.

*Approach A: Case-by-Case Approach. Decision on Acceptable Risk.* As stated earlier, the maximum individual risk to any individual is $3.3\times10^{-3}$ which is higher than the level generally preferred under the case-by-case approach. The estimated annual incidence within 80 km is 1.6 fatal cancers per year, and most of that risk is borne by people whose risk is less than $1\times10^{-4}$. Many of the piles are closing which will increase emissions from the tailings as they dry out. EPA has examined several alternatives before determining the acceptable level; those alternatives and the risks they present are illustrated in Tables 23 and 24.

After examining these different alternatives, the Agency would propose that the risks associated with alternative 3 for these twelve existing piles which limits the length of time that mills can continue to place new tailings on existing impoundments to 2 years, and limits the emissions to 6 pCi/m$^2$—s radon after disposal is completed, and alternative 2 for new technology for future piles, which requires a single large impoundment, represents the level that is acceptable under the case-by-case approach.

*Decision on Ample Margin of Safety.* Mills cannot create new impoundments to replace the existing impoundments in less than two years. EPA has determined that no alternatives more restrictive than alternative 3 need to be analyzed. The costs of this alternative are described in Table 25. Therefore, EPA is proposing to allow existing impoundments to operate for no more than two years unless they meet the work practice requirements for new impoundments. There is no reason to require closure of an existing impoundment which meets the requirements for new impoundments so that a new impoundment which is similar would need to be constructed.

For new impoundments, EPA has analyzed the costs of further controls to reduce radon emissions, and the decreases in risk and very small incidence reductions they represent, see Table 26.



TABLE 23.—ALTERNATIVES FOR ACCEPTABLE RISK FOR OPERATING URANIUM MILL TAILINGS PILES—EXISTING PILES [1]

| | Alternative 1 (baseline) | Alternative 2 | Alternative 3 |
|---|---|---|---|
| Maximum individual risk (< lifetime exposure) | $3.3\times10^{-3}$ | $1.4\times10^{-3}$ | $4.6\times10^{-4}$ |
| Incidence within 80 km | 1.6 for 15y (24) | 1.6 for 6y (9.6) | 1.6 for 2y (3.2) |
| Risk individual | | | |
| E-2 to E-1 | 0 | 0 | 0 |
| E-3 to E-2 | 600 | 300 | 0 |
| E-4 to E-3 | 40,000 | 20,000 | 5,000 |
| E-5 to E-4 | 400,000 | 200,000 | 60,000 |
| E-6 to E-5 | 400,000 | 200,000 | 60,000 |
| Less E-6 | 3.4M | 3.8M | 4.1M |
| Risk incidence | | | |
| E-2 to E-1 | 0 | 0 | 0 |
| E-3 to E-2 | 1.2 | 0.5 | 0.16 |
| E-4 to E-3 | 12.0 | 4.8 | 1.6 |
| E-5 to E-4 | 9.0 | 3.6 | 1.2 |
| E-6 to E-5 | 1.5 | 0.6 | 0.2 |
| Less E-6 | 0.0015 | 0.0006 | 0.0002 |

*Other Health Impacts:* Non-fatal cancers no more than 5 percent deaths. Incidence at greater than 80 km is comparable to that within 80 km.

[1] This assessment assumes that a disposal NESHAP has been promulgated, which would force closure of the piles as soon as they are filled.

TABLE 24.—ALTERNATIVES FOR ACCEPTABLE RISK FOR OPERATING URANIUM MILL TAILINGS PILES—NEW TECHNOLOGIES

| | Alternative 1 (baseline) | Alt. 2 | Alt. 3 | Alt. 4 |
|---|---|---|---|---|
| Maximum individual risk (lifetime) | $3.3\times10^{-3}$ | $1.8\times10^{-4}$ | $6.0\times10^{-5}$ | $2.0\times10^{-5}$ |
| Incidence within 80 km (death/y) | 0.78 | 0.11 | 0.053 | 0.018 |
| Risk individual: | | | | |
| E-2 to E-1 | 0 | 0 | 0 | 0 |
| E-3 to E-2 | 550 | 0 | 0 | 0 |
| E-4 to E-3 | 96,000 | 23,000 | 0 | 0 |
| E-5 to E-4 | 450,000 | 120,000 | 72,000 | 24,000 |
| E-6 to E-5 | 1.8M | 1.1M | 300,000 | 130,000 |
| Less E-6 | 110 | 1.2M | 2.0M | 2.2M |
| Risk incidence: | | | | |
| E-2 to E-1 | 0 | 0 | 0 | 0 |
| E-3 to E-2 | 0.016 | 0 | 0 | 0 |
| E-4 to E-3 | 0.47 | 0.027 | 0 | 0 |
| E-5 to E-4 | 0.17 | 0.051 | 0.028 | 0.0043 |
| E-6 to E-5 | 0.12 | 0.023 | 0.016 | 0.0081 |
| Less E-6 | 0.0000 | 0.01 | 0.02 | 0.017 |

*Other Health Impacts:* Non-fatal cancers no more than 5% of deaths Incidence at greater than 80 km is comparable to that within 80 km.

EPA has determined that no further reductions to alternative 3 or 4 are called for to provide an ample margin of safety. EPA believes that a NESHAP requiring the work practices of either phased disposal in 40-acre impoundments (alternative 3) or continuous disposal (alternative 4) will protect public health with an ample margin of safety.

TABLE 25.—ALTERNATIVES FOR AMPLE MARGIN OF SAFETY FOR 12 OPERATING URANIUM MILL TAILINGS—EXISTING PILES

| Alternative | MIR | Incidence | Incremental incidence reduction | Total incidence reduction | Incremental capital cost | Incremental annualized cost | Total annualized cost |
|---|---|---|---|---|---|---|---|
| 1 | $3.3\times10^{-3}$ | 1.6/15 yr (total 24) | | | | | |
| 2 | $1.4\times10^{-3}$ | 1.6/6 yr (total 10) | (14 Total) | (14 Total) | $230M | $33M | $33M |
| 3 | $4.6\times10^{-4}$ | 1.6/2 yr (total 3) | (7 Total) | (21 Total) | $160M | $46M | $42M |

Regulatory Status: Currently there is a NESHAP in place requiring work practices to limit radon emissions. Analysis assumes existing NESHAPS for new licensed mills is not vacated and there is a disposal NESHAP that requires disposal within 2 years of being closed.

(If a disposal rule is not promulgated then a uniform but unknown amount of risk, up to a maximum risk of 1.6 deaths/y and MIR of $2\times10^{-3}$, would be added to each alternative. Or, this increase could be prevented by promulgating a rule for this category that requires immediate closure.)

Comments: Alternative 1: Baseline, no rule—allows use of existing piles until full (15 years). Existing NESHAP would be vacated for operations of licensed mills. Existing NESHAP for operations at new licensed mills is not vacated.

Based on radon risk factor of 360 fatal cancers per million person-WLM, ranging from 180 to 720 fatal cancers per million person-WLM, the Alternative 1 risk may range from $1.5\times10^{-3}$ to $6.6\times10^{-3}$.

Alternative 2: Current NESHAP—allows use of existing piles for a maximum of 6 years. Costs include early disposal and capacity replacement.

Alternative 3: Same as current NESHAP—except allows use of existing piles for 2 years. After NESHAP is implemented the annual incidence rate is 0.07 due to radon from all existing piles after they are covered. Costs include early disposal and capacity replacement. Total annualized cost is not the sum of incremental annualized cost because alternative 2 and 3 represent changes in time of performing procedures instead of changes in the stringency of controls.

Alternative 4: Table does not contain alternative to bring the MIR to $1\times10^{-3}$ because there are no further alternatives beyond Alternative 3 other than immediate stop use of the tailings piles.

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TABLE 26.—ALTERNATIVES FOR AMPLE MARGIN OF SAFETY FOR OPERATING URANIUM MILL TAILINGS—NEW TECHNOLOGIES

| Alternative | MIR | Incidence | Incremental incidence reduction | Total incidence reduction | Incremental capital cost | Incremental annualized cost | Total annualized cost |
|---|---|---|---|---|---|---|---|
| 1 | $3.3\times10^{-3}$ | 0.78 | | | | | |
| 2 | $1.8\times10^{-4}$ | 0.11 | 0.67 | 0.68 | $30M | $2.4M | $2.4M |
| 3 | $6.0\times10^{-5}$ | 0.053 | 0.06 | 0.73 | 7M | 0.56M | 3.0M |
| 4 | $2.0\times10^{-5}$ | 0.018 | 0.04 | 0.77 | <$8M> | <$0.64M> | <$2.3M> |

Regulatory Status: Currently there is a NESHAP in place requiring work practices to limit radon emissions.
(If a disposal rule is not promulgated then a uniform but unknown amount of risk, up to a maximum risk of 1.6 deaths/y and MIR of $2\times10^{-1}$, would be added to each alternative. Or, this increase could be prevented by promulgating a rule for this category that requires immediate closure.)
Comments:
Alternative 1: Baseline, no rule—current technology is used. Assumes 12 existing mills.
Based on radon risk factor of 360 fatal cancers per million person-WLM, ranging from 160 to 720 fatal cancers per million person-WLM, the Alternative 1 risk may range from $1.5\times10^{-3}$ to $6.6\times10^{-3}$.
Alternative 2: Single large lined impoundment. Assumes 8 mills.
Alternative 3: Current NESHAP—several small lined impoundments with 40 acre limit (phased disposal). Assumes 8 mills.
Alternative 4: Current NESHAP—tailings are dried and disposed of immediately. Total capital cost is less than other two alternatives. Assumes 8 mills.
Alternative 5: To bring MIR to $1\times10^{-5}$, uranium tailings piles should not operate.

*Approach B: Incidence Based Approach. Decision on Acceptable Risk.* As explained earlier, the radon emissions from uranium mill tailings impoundments cause more than one fatal cancer per year. Therefore, under this approach, current emissions must be reduced to provide an acceptable level of risk. However if current NESHAP work practices are continued for new impoundments, radon emissions will cause less than one fatal cancer per year and therefore present acceptable risks. For new technologies, Alternative 1 represents an acceptable level of risk for a relatively small industry (i.e., 12 mills), provided the industry remains at the current level.

*Decision on Ample Margin of Safety.* Mills cannot create new impoundments to replace the existing impoundments in less than two years, even if they ceased operations in the interim. EPA has determined that no alternatives more restrictive than alternative 3 need to be analyzed. Therefore EPA will allow existing impoundments that do not use new technology to operate for no more than two years. There is no reason to require closing an existing impoundment which meets the requirements for new impoundments so that a new impoundment which is similar would need to be constructed.

For new impoundments, EPA has analyzed the costs of further controls to reduce radon emissions, and the decreases in risk and very small incidence reductions they represent, see Table 26. EPA has determined that no further reductions to alternative 3 or 4 are called for to provide an ample margin of safety. EPA believes that a NESHAP requiring the work practices of either phased disposal in 40 acre impoundments or continuous disposal will protect public health with an ample margin of safety.

*Approach C: $1\times10^{-4}$ or Less Maximum Individual Risk Approach. Decision on Acceptable Risk.* A work practice standard of either phased or continuous disposal results in a lifetime risk of less than $1\times10^{-4}$ to the most exposed individual. There is no reason to require closing an existing impoundment which meets the requirements for new impoundments so that a new impoundment which is similar would need to be constructed. The risks that result from allowing the continued use of existing disposal methods that do not meet these work practices bring the risks above the level of $1\times10^{-4}$. Therefore, under this approach, a work practice standard of phased or continuous disposal starting on the effective date of the rule provides an acceptable level of emissions.

*Decision on Ample Margin of Safety.* Due to the costs and difficulty of further reducing emissions, see Table 26, and the low risks resulting from the use of the new work practice standards, alternatives 3 and 4, EPA believes that no further measures are needed. Existing impoundments that meet the work practice standard will be allowed to continue to operate. Therefore, EPA is proposing a work practice NESHAP requiring either phased or continuous disposal of tailings starting on the effective date of the rule would protect public health with an ample margin of safety.

*Approach D: $1\times10^{-5}$ or Less Maximum Individual Risk Approach. Decision on Acceptable Risk.* A radon emission limit of 0.02 $pCi/m^2-s$ results in a lifetime risk of $1\times10^{-5}$ to the most exposed individual. Therefore, under this approach, an acceptable level of emissions is 0.02 $pCi/m^2-s$.

*Decision on Ample Margin of Safety.* A NESHAP limiting any increase of ambient radon levels to 0.02 $pCi/m^2-s$ would protect public health with an ample margin of safety. EPA believes there is no method to manage mill tailings which will result in this low an ambient radon level. Therefore, under this approach, EPA is proposing to prohibit the production of new tailings.

4. Implementation

This NESHAP is a work practice standard designed to reduce radon emissions by forcing mill operators to manage their tailings in a way that will reduce radon emissions. Under Approach A or B, mill operators would not be allowed to put any tailings on a mill tailings impoundment which does not meet the new work practices, phased or continuous disposal, two years after the effective date of this NESHAP. EPA is making a generic finding that at least two years is required for the construction of new impoundments using the new control technology and that during that two year period all persons will be protected from imminent endangerment from uranium mill tailings piles.

Under Approach C, mill operators would have to go to the new work practices after the effective date of the rule. Under Approach D, no new mill tailings may be produced starting after the effective date of the rule. EPA is forced to go to this extreme solution because it knows of no way to manage new tailings that will result in risks of less than $1\times10^{-6}$.

Since EPA already has the information it needs, uranium mill tailings are exempted from the requirements of 61.10.

*L. Radon Releases From the Disposal of Uranium Mill Tailings Piles*

1. Introduction

After uranium mill tailings impoundments can no longer be used, they must be disposed of. In addition to the fourteen licensed piles that commercial licensees are decommissioning, DOE controls 24 abandoned uranium mill tailings piles. The 1978 Uranium Mill Tailings Radiation Control Act (UMTRCA) gave DOE responsibility for remedial actions at these sites. This Act also requires EPA to set environmental standards which control the releases from all disposed uranium mill tailings impoundments.

In the past, EPA decided not to regulate under the CAA the disposal of uranium mill tailing impoundments regulated under UMTRCA. That decision has been challenged in court, so EPA is reexamining this category. The UMTRCA regulation limits postclosure radon releases to 20 $pCi/m^2-s$ from the tailings piles.

2. Estimates of Exposure and Risk

EPA's risk assessment of uranium mill tailings is a site-by-site assessment of all 24 inactive piles and 14 licensed piles that are being decommissioned. An additional uncertainty to this risk assessment occurs because DOE currently has plans to relocate eleven of the inactive mill tailings piles to unpopulated areas; in addition, DOE plans to stabilize the remaining 13 piles pursuant to regulations in 40 CFR Part 192, Health and Environmental Protection Standards for Uranium and Thorium Mill Tailings. EPA has information in the rulemaking record concerning DOE's plans which will be considered for use in the development of the final rule.

Emissions were estimated from the estimated area of the tailings pile combined with the assumed radon flux of 20 $pCi/m^2-s$ for reclaimed piles and 1 $pCi/m^2-s$ per pCi/g of radium for unreclaimed piles. The meteorological data was taken from nearby stations, and populations from 5 to 80 km are based on U.S. census tract data. Populations within 5 km were measured at the sites.

According to EPA's analysis, lifetime fatal cancer risk to the most exposed individual is $2.1\times10^{-3}$. The tailings piles cause 2.5 fatal cancers per year to the 9.7 million persons within 80 km.

Table 27 presents example scenarios to show how different emission levels would result in different health risk profiles. The table presents the risk estimates at baseline in terms of estimated annual fatal cancer incidence, maximum individual lifetime risk, total population exposed at or above particular risk levels (i.e., risk distribution), and annual incidence attributable to the population exposed at each risk level. The table also presents available estimates of annual incidence and maximum individual lifetime risk for a lower emission level identified as alternatives 2, 3 and 4.

3. Application of Alternative Policy Approaches

The decisions that would result from the application of the four policy approaches described in Section VI to the radon emissions from the uranium mill tailings source category are described below.



*Approach A: Case-by-Case Approach. Decision on Acceptable Risk.* As stated earlier, the maximum risk to any individual is $2.1\times10^{-3}$ which is much higher than the level generally preferred under the case-by-case approach. The estimated annual incidence within 80 km is 2.5 fatal cancers per year. Most of that risk is borne by people whose risk is less than $1\times10^{-4}$. EPA examined several alternatives before determining the acceptable level; those alternatives and the risks they present are illustrated in Table 27. After examining these different alternatives, the Agency would propose that the risks associated with alternative 3 is acceptable under the case-by-case approach.

*Decision on Ample Margin of Safety.* Based on the costs of further controls to reduce radon emissions, and the small decreases in risk, see Table 28, EPA has determined that it is not necessary to further reduce risks below the safe level, alternative 3. EPA is proposing a NESHAP limiting radon emissions from the disposal of uranium mill tailings to 0 $pCi/m^2-s$, which will protect public health with an ample margin of safety.

*Approach B: Incidence Based Approach. Decision on Acceptable Risk.* As explained earlier, the radon emissions from the disposal of uranium mill tailings cause 2.5 fatal cancers per year. Therefore, under this approach, current emissions provide a level of risk which is not acceptable. In order to reach an acceptable risk, current emissions must be reduced by a factor of 2.5.

TABLE 27.—ALTERNATIVES FOR ACCEPTABLE RISK FOR DISPOSAL OF URANIUM MILL TAILINGS

[Inactive and licensed]

| | Alternative 1 (baseline) | Alt. 2 | Alt. 3 | Alt. 4 |
|---|---|---|---|---|
| Maximum individual risk (lifetime) | $2.1\times10^{-3}$ | $1.8\times10^{-3}$ | $3.6\times10^{-4}$ | $1.8\times10^{-4}$ |
| Incidence within 80 km (death/y) | 2.7 | 0.12 | 0.040 | 0.013 |
| Risk Individual: | | | | |
| E-2 to E-1 | 350 | 0 | 0 | 0 |
| E-3 to E-2 | 12,000 | (1) | 0 | 0 |
| E-4 to E-3 | 300,000 | 1,000 | 300 | 100 |
| E-5 to E-4 | 3.4M | 100,000 | 20,000 | 10,000 |
| E-6 to E-5 | 2.5M | 1.8M | 300,000 | 200,000 |
| Less E-6 | 3.6M | 8.0M | 9.4M | 9.5M |
| Risk Incidence: | | | | |
| E-2 to E-1 | 0.06 | 0 | 0 | 0 |
| E-3 to E-2 | 0.3 | (1) | 0 | 0 |
| E-4 to E-3 | 1.2 | 0.004 | 0.0005 | 0.0002 |
| E-5 to E-4 | 0.9 | 0.04 | 0.005 | 0.002 |
| E-6 to E-5 | 0.2 | 0.045 | 0.014 | 0.005 |
| Less E-6 | 0.004 | 0.03 | 0.02 | 0.007 |

[1] We believe there could be a few people at this risk, but DOE may move the piles in question.
Note.—*Other Health Impacts:* Non-fatal cancers no more than 5% of deaths.

*Decision on Ample Margin of Safety.* Based on an analysis of the costs of various control alternatives and decreases in risk and incidence they represent, see Table 28, EPA has determined that it is necessary to reduce risks to the level of alternative 3, but that further reductions are unnecessary. EPA is proposing a NESHAP limiting

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radon emissions from disposal of uranium mill tailings to 6 pCi/m²s, which will protect public health with an ample margin of safety.

TABLE 28.—ALTERNATIVES FOR AMPLE MARGIN OF SAFETY FOR DISPOSAL OF URANIUM MILL TAILINGS

| | MIR | Incidence | Incremental incidence reduction | Total incidence reduction | Incremental capital cost | Incremental annualized cost | Total annualized cost |
|---|---|---|---|---|---|---|---|
| Alternative: | | | | | | | |
| 1 | $2.1 \times 10^{-3}$ | 2.7 | | | | | |
| 2 | $1.0 \times 10^{-4}$ | 0.12 | 2.6 | 2.6 | $210M | $22M | $22M |
| 3 | $3.0 \times 10^{-6}$ | 0.040 | 0.08 | 2.7 | 63M | 7M | 29M |
| 4 | $1.0 \times 10^{-6}$ | 0.013 | 0.03 | 2.7 | 53M | 6M | 34M |

Regulatory Status: Current AEA rule limits radon emission after disposal to 20 pCi/m²s. Previously, we deferred to this rule and did not propose a CAA rule. Comments:

Alternative 1: Baseline, no rule—AEA rule remains in force, but no deadline for disposal. MIR reflects piles that are currently uncovered.

Based on radon risk factor of 360 fatal cancers per million person-WLM, ranging from 180 to 720 fatal cancers per million person-WLM, the Alternative 1 risk may range from $8.3 \times 10^{-4}$ to $4.2 \times 10^{-3}$.

Alternative 2: Cover source to limit emissions to 20 pCi/m²s—the same level as the current AEA rule set by EPA.

Alternative 3: Cover source to limit emissions to 6 pCi/m²s.

Alternative 4: Cover source to limit emissions to 2 pCi/m²s. Emission rate is close to background emission rate of the cover. Implementation becomes difficult.

Alternative 5: Table does not contain alternative to bring MIR to $1 \times 10^{-6}$ because it is not possible to accurately predict the impacts. Compared to Alternative 3, an additional 8 meters of dirt cover would probably be needed to provide the necessary reduction by a factor of 300. The additional annualized cost would be approximately $70 million.

*Approach C: $1 \times 10^{-4}$ or Less Maximum Individual Risk Approach. Decision on Acceptable Risk.* Since the dose/risk relationship for radon is well established it is easy to determine the correct standard under this approach. A radon emission limit of 2 pCi/m²—s results in a lifetime risk of $1 \times 10^{-4}$ to the most exposed individual. Therefore, under this approach, an acceptable level of emissions is 2 pCi/m²—s.

*Decision on Ample Margin of Safety.* Due to the costs and difficulty of further reducing emissions, EPA believes that no further reductions below a risk level of $1 \times 10^{-4}$ are needed. Therefore, EPA is proposing a NESHAP limiting any emissions of radon to 2 pCi/m²—s, which will protect public health with an ample margin of safety.

*Approach D: $1 \times 10^{-4}$ or Less Maximum Individual Risk Approach. Decision on Acceptable Risk.* A radon emission limit of 0.02 pCi/m²—s results in a lifetime risk of $1 \times 10^{-6}$ to the most exposed individual. Therefore, under this approach, an acceptable level of emissions is 0.02 pCi/m²—s.

*Decision on Ample Margin of Safety.* Due to the costs and difficulty of further reducing emissions, EPA believes that no further reductions below a risk level of $1 \times 10^{-6}$ are needed. Therefore, EPA is proposing a NESHAP limiting any release of radon to 0.02 pCi/m²—s, which would protect public health with an ample margin of safety.

4. Implementation

Under this NESHAP, all uranium mill tailings will have to be covered to reduce the amount of radon they release. Under approaches A, B, C, and D, the standard limits the emission of radon from the mill tailings impoundments. The standard limits the amount of radon that can be emitted per unit area (m²) per unit of time (s). This standard is an average per mill tailings pile.

Sixty days after the effective date of this rule or sixty days after the pile ceases to be operational, the owner will test the pile to determine whether or not the pile is in compliance with the flux standard. If owner knows that the pile cannot meet the standard, the owner can admit noncompliance instead of testing the pile.

Piles must be retested every two years unless EPA requires more frequent testing or EPA determines that less frequent testing is sufficient to assure compliance with the standard. EPA will also reduce the need for testing if EPA determines that testing will interfere with ongoing operations designed to cover the pile.

Since the reports of the testing provide EPA with the information it needs, uranium mill tailings are exempted from the requirements of 61.10.

This standard like all NESHAPS requires compliance by existing sources within 90 days after the effective date in accordance with the CAA, 42 U.S.C. 7412(c)(1)(B)(i). EPA, however, is aware that many sources covered by this subpart will not be able to come into compliance that quickly. EPA is prepared to develop expeditious compliance schedules in consultation with affected parties within the framework of the waiver provision of 42 U.S.C. 7412(c)(1)(B)(ii) following the procedures described in 40 CFR 61.10 and 61.11 or through the enforcement mechanisms of 42 U.S.C. 7413, as appropriate. EPA recognizes that the requirements of CERCLA and other environmental laws will have to be considered in these consultations.

### VIII. Legal Issues Raised by Parties in the Radionuclides Litigation

The following is a discussion of the legal issues which have been raised in the current litigation. We have omitted reference to issues where they are resolved in the detailed discussion of the source categories earlier in the Preamble.

*1. Can EPA Not Issue Standards Under Section 112 in Situations Where People Will Be Killed by a Source of Pollution? Can EPA Disregard Projected Deaths as Insignificant?*

*Response:* EPA is presenting four different approaches for defining acceptable risk. Under all of these approaches, it is possible that a situation may present an acceptable risk even though some fatal cancers are estimated to be caused by the pollution. Any emissions of a pollutant assumed to be nonthreshold is assumed to entail some risk, however small, of fatal cancer. Section 112 does not require EPA to define a safe level as that level that entails no risk of fatal cancer. The DC Circuit Court, in the *vinyl chloride* decision, clearly stated that safe does not mean risk free. EPA agrees with the Court that section 112 requires a finding of acceptable risks, acceptable for the world in which we live. This means that some risk of fatal cancer may be acceptable.



*2. Must NESHAPS Provide "Equal Protection" for All Individuals, Including Those in Small Population Groups?*

*Response:* EPA believes that everyone is entitled to be protected by a standard that, overall, protects health with an ample margin of safety. Such a standard need not assure that every individual faces the same precise MIR. As with any regulation of a point source of pollution, the sources considered for regulation in this Preamble give higher risks to the people who are closer to the facility than to people who are farther away. It is impossible to protect all people equally unless the emission limit and, therefore, the risk is zero. Under the CAA, EPA is only required to protect public health (which includes the health of individuals) with an ample margin of safety; equal protection of all individuals is not required.

*3. Can EPA Set a Standard That EPA Does Not Find Protects Public Health With an Ample Margin of Safety?*

*Response:* EPA recognizes its duty to set NESHAPS that protect public health with an ample margin of safety. EPA will not establish a NESHAP that it does not find protects public health with an ample margin of safety.

*4. Can EPA Set a Dose Standard?*

*Response:* Section 112 requires that EPA set standards which protect public health with an ample margin of safety. The section allows EPA to set emission standards or work practice standards. Dose standards are, in effect, emission standards, since the standards require the source to have emissions that are low enough to meet the dose standard. There is a direct correlation between dose and risk. Sources would use the computer compliance models to track the doses caused by their emissions.

For categories involving very large numbers of different radionuclides, EPA has chosen not to set specific radionuclide emission standards because they would be completely impractical. All radionuclides are different—they have different half-lives, emit different levels of different kinds of energy and affect different parts of the body. Health physicists for years have used the concept of radiological dose to account for these many effects.

If EPA were not allowed to take advantage of this extensive body of knowledge, EPA would be forced to set separate emission standards for hundreds of distinct radionuclides. Since different sources use different radionuclides in different combinations, and many individual radionuclides are present in small amounts in only a few places; judged individually, it would generally be difficult to justify standards that would require any decrease in emissions. Yet the combination of the individual radionuclide with the scores of others that may be released from a facility can cause a significant risk that should be regulated.

*5. Is the Use of 1970 Census Data Instead of 1980 Census Data Acceptable?*

*Response:* 1980 census data has been used in the present rulemaking.

*6. Can EPA Allow Non-Regulation and Rely on Industry Practices?*

*Response:* EPA is obligated in this litigation to reexamine each source category and assure that public health is protected with an ample margin of safety. EPA may find that standards are unnecessary so long as public health is protected with an ample margin of safety. For example, if the risks caused by a source category's current emissions are low enough to protect public health with an ample margin of safety, then the decision whether or not to set a baseline standard will be based on whether EPA has any reason to believe that there is a need to insure that future emissions will not increase.

*7. Does EPA's Use of a Non-Threshold Hypothesis Require a Finding of Significant Risk?*

*Response:* EPA thoroughly considered the results of risk assessments before making a finding of significant risk regarding radionuclides. This assessment was based, in part, on the scientific consensus of the non-threshold carcinogenicity of radionuclides. EPA does not believe a finding of carcinogenicity need automatically result in a finding of significant risk. However, for radionuclides, the risk assessment supports EPA's finding of significant risk. See, Section 112 discussion earlier in preamble and discussion of individual source categories.

*8. Must Radon Emissions From Underground Uranium Mines Contribute a Significant Increment to the Total Human Exposure Burden in Order for Those Emissions To Be Regulated Under the Clean Air Act?*

*Response:* A level of emissions is not considered to be acceptable merely because it is below background. The relevant question under section 112 is whether, in the judgment of the Administrator, radionuclides cause, or contribute to, air pollution which may reasonably be anticipated to result in an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness. The Agency believes, based on substantial scientific evidence, that radionuclide emissions from underground uranium mines meet that test. See, preamble discussion of underground uranium mines.

*9. Are the Risks From Underground Uranium Mines Radon Emissions Real or Hypothetical? Does It Matter?*

*Response:* EPA utilizes scientifically accurate procedures in evaluating the risks posed by each source category. While EPA is ultimately forced to estimate these risks, the Agency has confidence in its methodology and considers the results to be a proper foundation for decisionmaking.

*10. Can Calculations Based on a Hypothetical "Maximally Exposed Individual" Be Used To Support a Finding of Significant Risk?*

*Response:* As a matter of expert judgment, EPA used a reasonable mix of data sources, using measured and estimated data inputs.

### IX. Request for Comments

Throughout this notice, comments and information are requested on specific areas. In addition, partly in response to *Vinyl Chloride*, EPA is reexamining assumptions and decision methods it has relied upon in making section 112 hazardous air pollutant regulatory determinations. As part of that process, EPA is seeking to engage the public and all interested parties in discussion concerning both specific elements of alternative proposals for radionuclide standards and a broader reexamination of assumptions and decision methods.

In an effort to structure that discussion, EPA has formulated the four alternative approaches noted earlier for the control of hazardous air pollutant emissions under section 112 of the CAA. Today's **Federal Register** notice proposes these four approaches for the control of air emissions of radon and other radionuclides and thereby provides the opportunity for EPA to solicit comments from the public on a variety of issues associated with this reexamination of the Federal program for hazardous air pollutants. Determinations on many of these specific issues within the proposed radionuclides and benzene regulations for proposal benzene regulations, see 53 FR 28496–28592, July 28, 1988) may be expected to set precedents for the approach to be used for the substantial number of forthcoming NESHAP decisions. Major areas on which the

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Administrator requests public comment include, among others:

(1) Should EPA consider all risk information in decision on risk acceptability or rely on a single numerical risk criterion? If multiple risk measures are to be used as the basis for decisions on risk acceptability, how should EPA balance individual versus population risk reductions?

(2) What health risk is acceptable not considering the cost and technical feasibility of achieving it? Moreover, what constitutes an ample margin of safety in cases where all exposures pose some risk?

(3) Should EPA require standards pursuant to the ample margin of safety decisions under section 112 that are "technology forcing"? What criteria should EPA use to define the "availability" and "feasibility" of technological controls?

(4) In the ample margin of safety determination, how should EPA balance the residual health risks versus the possibility of plant closures?

(5) How should uncertainty in risk estimates be considered in these decisions?

(6) How should EPA balance the various risk, technical, and economic considerations in ample margin of safety decisions? How should EPA consider the ramifications of potential errors and uncertainty of judgments on technology capability and costs?

(7) Should EPA set a risk limit rather than a dose limit or an emission limit?

(8) Should EPA establish a system for certifying that phosphogypsum piles and/or surface uranium mines are not going to be used anymore and, therefore, are ready for disposal? If so, what should that system be?

(9) Should EPA keep the current underground uranium mine NESHAP to control radon emissions for new mines?

(10) Is the proposed regulatory approach for underground uranium mines appropriate? Should EPA consider other combinations of stack height and radon emission limits?

(11) Is EPA's decision to list radionuclides under section 112 of the CAA appropriate?

(12) Should EPA determine compliance with a dose standard on the basis of the point of maximum concentration where there is a residence, school, business or office or should some other point or criteria be used?

(13) If EPA uses schools, businesses or offices as potential compliance points should EPA's implementation system adjust the exposure received at those points with occupancy factors? If so, what should they be?

(14) Considering that accidental releases are included in the emissions subject to the standard, should EPA include some additional provision in its compliance procedures dealing with accidents?

## X. Miscellaneous

### *A. Docket*

The docket is an organized and complete file of all information considered by EPA in the development of the standards. The docket allows interested persons to identify and locate documents so they can effectively participate in the rulemaking process. It also serves as the record for judicial review.

Transcripts of the hearings, all written statements, the Agency's response to comments, and other relevant documents have been placed in the docket and are available for inspection and copying during normal working hours.

### *B. General Provisions*

Except where otherwise specifically stated, the general provisions of 40 CFR Part 61, Subpart A apply to all sources regulated by this rule.

### *C. Paperwork Reduction Act*

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C 3501 *et seq.* An Information Collection Request document has been prepared by EPA (ICR NO. 1100), and a copy may be obtained from Carla Levesque, Information Policy Branch; EPA; 401 M St., SW. (PM–223); Washington, DC 20460 or by calling (202) 382–2466.

Public reporting burden for this collection of information is estimated to vary from 16 to 40 hours per response, with an average of 22 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden may be sent to the above address, but should be sent to the Office of Information and Regulatory Affairs, Paperwork Reduction Project (2060–0115), Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." In developing the final rule EPA will respond to any OMB or public comments on the information collection requirements contained in this proposal.

### *D. Executive Order 12291*

Under Executive Order 12291, EPA is required to judge whether this regulation is a "major rule" and therefore subject to certain requirements of the Order. The EPA has determined that regulations proposed for Approaches A, B and C for all categories and for D for all non-radon radionuclide categories will result in none of the adverse economic effects set forth in section 1 of the Order as grounds for finding a regulation to be a "major rule." These regulations are not major because: (1) Nationwide annual compliance costs do not meet the $100 million threshold; (2) the regulations do not significantly increase prices or production costs; and (3) the regulations do not cause significant adverse effects on domestic competition, employment, investment, productivity, innovation, or competition in foreign markets.

The regulations proposed under Approach D for radon categories, especially for the disposal of mill tailings for radon, may cause industries to incur costs exceeding $100 million and therefore may be determined to be a major rule under Executive Order 12291. The regulations could cause significant adverse effects on domestic competition, employment, investment, productivity, innovation, or competition in foreign markets. However, as provided by section 8 of the Order, the Agency has not conducted a Regulatory Impact Analysis (RIA) of these proposed regulations because of the time constraint of the judicially-ordered schedule.

All of the proposed regulations presented in this notice were submitted to OMB for review as required by Executive Order 12291. Any written comments from OMB to EPA and any written EPA response to those comments will be included in the docket.

### *E. Regulatory Flexibility Analysis*

Section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603, requires EPA to prepare and make available for comment an "initial regulatory flexibility analysis" in connection with any rulemaking for which there is a statutory requirement that a general notice of proposed rulemaking be published. The "initial regulatory flexibility analysis" describes the effect of the proposed rule on small business entities.

However, section 604(b) of the Regulatory Flexibility Act provides that section 603 "shall not apply to any proposed * * * rule if the head of the Agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."

EPA believes that virtually all small businesses covered by this final rule already comply. In addition, EPA has placed reporting exemptions in the rule for NRC-licensees to limit the amount of paperwork that would be required by the smaller operators. Therefore, this rule will have little or no impact on small businesses. A small business is one that has 750 employees or fewer.

For the preceding reasons, I certify that this rule will not have significant economic impact on a substantial number of small entities.



**List of Subjects in 40 CFR Part 61**

Air pollution control, Hazardous materials, Asbestos, Beryllium, Mercury, Vinyl chloride, Benzene, Arsenic, and Radionuclides.

Dated: February 28, 1989.

**William K. Reilly,**

*Administrator.*

**PART 61—[AMENDED]**

It is proposed to amend Part 61 of chapter I of title 40 of the Code of Federal Regulations as follows:

1. The authority citation for Part 61 continues to read as follows:

**Authority:** 42 U.S.C. 7401–7642.

2. By revising Subpart H to read as follows:

**Subpart H—National Emission Standards for Emissions of Radionuclides Other Than Radon From Department of Energy Facilities**

Sec.

61.90 Designation of facilities.
61.91 Definitions.
61.92 Standard.
61.93 Emission monitoring and test procedures.
61.94 Compliance and reporting.
61.95 Recordkeeping requirements.
61.96 Applications to construct or modify.
61.97 Exemption from the reporting and testing requirements of 40 CFR 61.10.

**Subpart H—National Emission Standards for Emissions of Radionuclides Other Than Radar From Department of Energy Facilities**

**§ 61.90 Designation of facilities.**

The provisions of this subpart apply to operations at any facility owned or operated by the Department of Energy that emits any radionuclide other than radon-222 into the air, except that this subpart does not apply to disposal at facilities subject to 40 CFR Part 191 subpart B or 40 CFR Part 192.

**§ 61.91 Definitions.**

As used in this subpart, all terms not defined here have the meaning given them in the Clean Air Act or subpart A of Part 61. The following terms shall have the following specific meanings:

(a) "Effective dose equivalent" means the sum of the products of absorbed dose and appropriate factors to account for differences in biological effectiveness due to the quality of radiation and its distribution in the body. The unit of the effective dose equivalent is the rem. For purposes of this subpart, doses caused by radon-220, radon-222 and their respective decay products are not included. The method for calculating effective dose equivalent is outlined in the International Commission on Radiological Protection's Publication No. 26.

(b) "Facility" means all buildings, structures and operations on one contiguous site.

(c) "Radionuclide" means a type of atom which spontaneously undergoes radioactive decay.

(d) "Residence" means any home, house, apartment building, or other place of dwelling which is occupied during any portion of the relevant year.

**§ 61.92 Standard.**

Approach A and Approach B

Emissions of radionuclides to the air from Department of Energy facilities shall not exceed those amounts that would cause any member of the public to receive an effective dose equivalent of 10 mrem/yr.

Approach C

Emissions of radionuclides to the air from Department of Energy facilities shall not exceed those amounts that would cause any member of the public to receive an effective dose equivalent of 3 mrem/yr.

Approach D

Emissions of radionuclides to the air from Department of Energy facilities shall not exceed those amounts that would cause any member of the public to receive an effective dose equivalent of 0.03 mrem/yr.

**§ 61.93 Emission monitoring and test procedures.**

(a) To determine compliance with the standard, radionuclide emissions shall be determined and effective dose equivalent values to members of the public calculated using EPA approved sampling procedures, computer models AIRDOS–EPA and RADRISK (CAP–88 version), or other procedures which EPA has determined to be suitable.

(b) Radionuclide emission rates from point sources (stacks or vents) shall be measured in accordance with the following requirements:

(1) Effluent flow rate measurements shall be made using the following methods:

(i) Reference Method 2 of Appendix A to Part 60 shall be used to determine velocity and volumetric flow rates for stacks and large vents.

(ii) Reference Method 2A of Appendix A to Part 60 shall be used to measure flow rates through pipes and small vents.

(2) Radionuclides shall be extracted, collected and measured using the following methods:

(i) Reference Method 1 of Appendix A Part 60 shall be used to select sampling sites.

(ii) Representative samples of an effluent stream shall be withdrawn continuously for the sampling site following the guidance presented in ANSI–N13.1 "Guide to Sampling Airborne Materials in Nuclear Facilities" (including the guidance presented in Appendix A of ANSI–N13.1), as specified in paragraph 61.18. Samples shall be collected continuously whenever there is potential for radionuclides to be emitted. The requirements for continuous sampling are applicable to batch processes when the unit is in operation. Periodic sampling (grab samples) may be used only with EPA's prior approval. Such approval may be granted in cases where continuous sampling is not practical and radionuclide emission rates are relatively constant.

(iii) Radionuclides shall be collected and measured using procedures based on the principles of measurement described in Appendix B, Method 114. Use of methods based on principles of measurement different from those described in Appendix B, Method 114 must have prior approval from the Administrator. EPA reserves the right to approve of measurement procedures.

(iv) A quality assurance program shall be conducted that meets the performance requirements described in Appendix B, Method 114.

(3) When it is impractical to sample an effluent stream at an existing source in accordance with the site selection and sample extraction requirements of paragraphs § 61.93(b), the facility operator may use alternative site selection and sample extraction procedures provided that:

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(i) It can be shown that the requirements of paragraph § 61.93(b) are impractical for the effluent stream.

(ii) The alternative procedure will not significantly underestimate the emissions.

(iii) The alternative procedure is fully documented.

(iv) The operator has received prior approval from EPA.

**§ 61.94 Compliance and reporting.**

(a) Compliance with this standard shall be determined by calculating the effective dose equivalent to any member of the public at the offsite point of maximum annual air concentration, where there is a residence, school, business or office. The operators of each facility shall submit an annual report to EPA by June 30 which includes the results of the monitoring and the dose calculations required by § 61.93 for the previous calendar year.

(b) In addition to the requirements of paragraph (a) of the section, an annual report shall include the following information:

(1) The name of the facility.

(2) A list of the radioactive materials used at the facility.

(3) A description of the handling and processing that the radioactive materials undergo at the facility.

(4) A list of the stacks or vents or other points where radioactive materials are released to the atmosphere.

(5) A description of the effluent controls that are used on each stack, vent, or other release point and an estimate of the efficiency of each control device.

(6) Distances from the points of release to the nearest residence, school, business or office and the nearest farms producing vegetables, milk, and meat.

(7) The values used for all other user-supplied input parameters for the computer models (e.g., meteorological data) and the source of these data.

(8) All information required in an application to construct or modify a facility under 61 subpart A, for all construction and modifications which are completed in the calendar year for which the report is prepared, but for which the requirement to apply for approval to construct or modify was waived under § 61.96.

(9) Each report shall be signed and dated by the principal executive officer or public official in charge of the facility and contain the following declaration immediately above the signature line: "I certify under penalty of law that I have personally examined and am familiar with the information submitted herein and based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment. See, 18 U.S.C. 1001."

(c) If the facility is not in compliance with the emission limits of § 61.92 in the calendar year covered by the report then the facility must report to the Administrator on a monthly basis the information listed in paragraph (b) of this section, for the preceding month. These reports will be due 30 days following the end of each month. This increased level of reporting will continue until the Administrator has determined that the monthly reports are no longer necessary. In addition to all the information required in paragraph (b) of this section, monthly reports shall also include the following information:

(1) All controls or other changes in operation of the facility that will be or are being installed to bring the facility into compliance.

(2) If the facility is under a judicial or administrative enforcement decree the report will describe the facilities performance under the terms of the decree.

**§ 61.95 Recordkeeping requirements.**

All facilities must maintain records documenting the source of input parameters including the results of all measurements upon which they are based, the calculations and/or analytical methods used to derive values for input parameters, and the procedure used to determine dose. In addition, the documentation should be sufficient to allow an independent auditor to verify the correctness of the determination made concerning the facility's compliance with the standard. These records must be kept at the site of the facility for at least five years and upon request be made available for inspection by the Administrator, or his authorized representative.

**§ 61.96 Applications to construct or modify.**

(a) In addition to any activity that is defined as construction under 61 subpart A, any fabrication, erection or installation of a new building or structure within a facility is also defined as new construction for purposes of 40 CFR Part 61, subpart A.

(b) An application for approval under § 61.07 does not need to be filed for any new construction of or modification within an existing facility if the effective dose equivalent, caused by all emissions from the new construction or modification, is less than 1% of the limit prescribed in § 61.92. The effective dose equivalent shall be calculated using the source term derived using Appendix D as input to the dispersion and other computer models described in § 61.93. In addition, based on its last annual report the facility is in compliance with this subpart.

**§ 61.97 Exemption from the reporting and testing requirements of 40 CFR 61.10**

All facilities designated under this subpart are exempt from the reporting requirements of 40 CFR 61.10.

3. By revising Subpart I to read as follows:

**Subpart I—National Emission Standards for Radionuclide Emissions From Facilities Licensed by the Nuclear Regulatory Commission and Federal Facilities Not Covered by Subpart H**

Sec.

61.100 Applicability.
61.101 Definitions.
61.102 Standard.
61.103 Determining Compliance.
61.104 Reporting requirements.
61.105 Recordkeeping requirements.
61.106 Applications to construct or modify
61.107 Emission Determination.
61.108 Exemption from the reporting and testing requirements of 40 CFR 61.10

**Subpart I—National Emission Standards for Radionuclide Emissions From Facilities Licensed by the Nuclear Regulatory Commission and Federal Facilities Not Covered by Subpart H**

**§ 61.100 Applicability.**

The provisions of this subpart apply to NRC-licensed facilities and to facilities owned or operated by any Federal agency other than the Department of Energy, except that this subpart does not apply to disposal at facilities under 40 CFR Part 191 subpart B, or to low energy accelerators or to any NRC-licensee that possesses and uses radionuclides only in the form of sealed sources.

**§ 61.101 Definitions.**

As used in this subpart, all terms not defined here have the meaning given them in the Clean Air Act or subpart A of Part 61. The following terms shall have the following specific meanings:

(a) "Agreement State" means a State with which the Atomic Energy Commission or the Nuclear Regulatory Commission has entered into an effective agreement under subsection 274(b) of the Atomic Energy Act of 1954, as amended.

(b) "Effective dose equivalent" means the sum of the products of absorbed dose and appropriate factors to account for differences in biological effectiveness due to the quality of radiation and its distribution in the body. The unit of the effective dose equivalent is the rem. For purposes of this subpart doses caused by radon-220, radon-222 and their decay products formed after their release from the facility are not included. The method for calculating effective dose equivalent is outlined in the International Commission on Radiological Protection's Publication No. 26.

(c) "Facility" means all buildings, structures and operations on one contiguous site.

(d) "Federal facility" means any facility owned or operated by any department, commission, agency, office, bureau or other unit of the government of the United States of America except for facilities owned or operated by the Department of Energy.

(e) "NRC-licensed facility" means any facility licensed by the Nuclear Regulatory Commission or any Agreement State to receive title to, receive, possess, use, transfer, or deliver any source, by-product, or special nuclear material.

(f) "Radionuclide" means a type of atom which spontaneously undergoes radioactive decay.

**§ 61.102 Standard.**

Approach A and Approach B

Emissions of radionuclides to the air from a NRC-licensed or federal facility shall not exceed those amounts that would cause any member of the public to receive an effective dose equivalent of 10 mrem/yr.

Approach C

Emissions of radionuclides to the air from a NRC-licensed or federal facility shall not exceed those amounts that would cause any member of the public to receive an effective dose equivalent of 3 mrem/yr.

Approach D

Emissions of radionuclides to the air from a NRC-licensed or federal facility shall not exceed those amounts that would cause any member of the public to receive an effective dose equivalent of 0.03 mrem/yr.

**§ 61.103 Determining compliance.**

The only criteria by which compliance with the emission standard in this subpart shall be determined is the doses calculated by either the EPA computer code COMPLY or the alternative requirements of Appendix E. The source terms to be used for input into COMPLY shall be determined through the use of the measurement procedures listed in § 61.107 or the emission factors in Appendix D.

**§ 61.104 Reporting requirements.**

(a) The owner or operator of a facility must submit an annual report to the EPA by March 30 of the following year.

(1) The report or application must provide the following information:

(i) The name of the facility.

(ii) The name of the person responsible for the operation of the facility and the name of the person preparing the report (if different).

(iii) The location of the facility, including suite and/or building number, street, city, county, state, and zip code.

(iv) The mailing address of the facility, if different from item (iii).

(v) A list of the radioactive materials used at the facility.

(vi) A description of the handling and processing that the radioactive materials undergo at the facility.

(vii) A list of the stacks or vents or other points where radioactive materials are released to the atmosphere.

(viii) A description of the effluent controls that are used on each stack, vent, or other release point and an estimate of the efficiency of each device.

(ix) Distances from the point of release to the nearest residence, school, business or office and the nearest farms producing vegetables, milk, and meat.

(x) The effective dose equivalent calculated using the compliance procedures in § 61.103.

(xi) The physical form and quantity of each radionuclide emitted from each stack, vent or other release point, and the method(s) by which these quantities were determined.

(xii) The volumetric flow, diameter, effluent temperature, and release height for each stack, vent or other release point where radioactive materials are emitted, the method(s) by which these were determined.

(xiii) The height and width of each building from which radionuclides are emitted.

(xiv) The values used for all other user-supplied input parameters (e.g., meteorological data) and the source of these data.

(xv) All information required in an application to construct or modify a facility under 61 subpart A, for all construction and modifications which were completed in the relevant calendar year but for which the requirement to apply for approval to construct or modify was waived under § 61.106.

(xvi) Each report shall be signed and dated by the principal executive officer or public official in charge of the facility and contain the following declaration immediately above the signature line:

I certify under penalty of law that I have personally examined and am familiar with the information submitted herein and based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment. See, 18 U.S.C. 1001.

(b) Facilities emitting radionuclides in an amount that would cause less than 10% of the dose listed in § 61.102, as determined by the compliance procedures from § 61.103, are exempt from the reporting requirements of § 61.104. Facilities shall annually make a new determination whether they are exempt from reporting.

(c) If the facility is not in compliance with the emission limits of § 61.102 in the calendar year covered by the report then the facility must report to the Administrator on a monthly basis the information listed in paragraph (a) of this section, for the preceding month. These reports will be due 30 days following the end of each month. This increased level of reporting will continue until the Administrator has determined that the monthly reports are no longer necessary. In addition to all the information required in paragraph (a) of this section, monthly reports shall also include the following information:

(1) All controls or other changes in operation of the facility that will be or are being installed to bring the facility into compliance.

(2) If the facility is under a judicial or administrative enforcement decree the report will describe the facilities performance under the terms of the decree.

**§ 61.105 Recordkeeping requirements.**

The owner or operator of any facility must maintain records documenting the source of input parameters including the results of all measurements upon which they are based, the calculations and/or analytical methods used to derive values for input parameters, and the procedure used to determine compliance. In addition, the documentation should be sufficient to allow an independent auditor to verify the correctness of the determination made concerning the facility's compliance with the standard, and, if claimed, qualification for exemption from reporting. These records must be kept at the site of the facility for at least five years and upon request be made available for inspection by the Administrator, or his authorized representative.

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**§ 61.106 Applications to construct or modify.**

(a) In addition to any activity that is defined as construction under 61 subpart A, any fabrication, erection or installation of a new building or structure within a facility is also defined as new construction for purposes of 40 CFR Part 61, subpart A.

(b) An application for approval under § 61.07 does not need to be filed for any new construction of or modification within an existing facility if one of the following conditions is met:

(1) The effective dose equivalent calculated by using methods described in § 61.103, that is caused by all emissions from the facility including the proposed new construction or modification, is less than 10% of the limit prescribed in § 61.102.

(2) The effective dose equivalent calculated by using methods described in § 61.103, that is caused by all emissions from the new construction or modification, is less than 1% of the limit prescribed in § 61.102.

**§ 61.107 Emission determination.**

(a) Facility owners or operators may, in lieu of monitoring, estimate radionuclide emissions in accordance with Appendix D.

(b) Radionuclide emission rates from point sources (stacks or vents) shall be measured in accordance with the following requirements:

(1) Effluent flow rate measurements shall be made using the following methods:

(i) Reference Method 2 of Appendix A to Part 60 shall be used to determine velocity and volumetric flow rates for stacks and large vents.

(ii) Reference Method 2A of Appendix A to Part 60 shall be used to measure flow rates through pipes and small vents.

(2) Radionuclides shall be extracted, collected and measured using the following methods:

(i) Reference Method 1 of Appendix A to Part 60 shall be used to select sampling sites.

(ii) Representative samples of an effluent stream shall be withdrawn continuously for the sampling site following the guidance presented in ANSI–N13.1 "Guide to Sampling Airborne Materials in Nuclear Facilities" (including the guidance presented in Appendix A of ANSI–N13.1), as specified in paragraph § 61.18. Samples shall be collected continuously whenever there is potential for radionuclides to be emitted. The requirements for continuous sampling are applicable to batch processes when the unit is in operation. Periodic sampling (grab samples) may be used only with EPA's prior approval. Such approval may be granted in cases where continuous sampling is not practical and radionuclide emission rates are relatively constant.

(iii) Radionuclides shall be collected and measured using procedures based on the principles of measurement described in Appendix B, Method 114. Use of methods based on principles of measurement different from those described in Appendix B, Method 114 must have prior approval from the Administrator. EPA reserves the right to approve of measurement procedures.

(iv) A quality assurance program shall be conducted that meets the performance requirements described in Appendix B, Method 114.

(3) When it is impractical to sample an effluent stream at an existing source in accordance with the site selection and sample extraction requirements of paragraphs § 61.107(b)(2), the facility operator may use alternative site selection and sample extraction procedures provided that:

(i) It can be shown that the requirements of paragraphs § 61.107(b)(2) are impractical for the effluent stream.

(ii) The alternative procedure will not significantly underestimate the emissions.

(iii) The alternative procedure is fully documented.

(iv) The operator has received prior approval from EPA.

**§ 61.108 Exemption from the Reporting and Testing Requirements of 40 CFR 61.10**

All facilities designated under this subpart are exempt from the reporting requirements of 40 CFR 61.10.

4. By revising subpart K to read as follows:

**Subpart K—National Emission Standards for Radionuclide Emissions From Elemental Phosphorus Plants**

Sec.

61.120 Applicability.
61.121 Definitions.
61.122 Emission standard.
61.123 Emission testing.
61.124 Recordkeeping requirements.
61.125 Test methods and procedures.
61.126 Monitoring of operations.
61.127 Certification of stable operation.
61.128 Exemption from the reporting and testing requirements of 40 CFR 61.10.

## Subpart K—National Emission Standards for Radionuclide Emissions From Elemental Phosphorus Plants

**§ 61.120 Applicability.**

The provisions of this subpart are applicable to owners and operators of calciners and nodulizing kilns at elemental phosphorus plants.

**§ 61.121 Definitions.**

(a) "Elemental phosphorus plant" or "plant" means any facility that processes phosphate rock to produce elemental phosphorus. A plant includes all buildings, structures, operations, calciners and nodulizing kilns on one contiguous site.

(b) "Calciner" or "Nodulizing kiln" means a unit in which phosphate rock is heated to high temperatures to remove organic material and/or to convert it to a modular form. For the purpose of this subpart, calciners and nodulizing kilns are considered to be similar units.

(c) "Operator" means any person who owns, operates or controls elemental phosphorous plant.

**§ 61.122 Emission standard.**

Approach A and B

Emissions of polonium-210 to air from all calciners and nodulizing kilns at an elemental phosphorus plant shall not exceed a total of 10 curies a year.

Approach C

Emissions of polonium-210 to air from all calciners and nodulizing kilns at an elemental phosphorus plant shall not exceed a total of 0.6 curies a year.

Approach D

Emissions of polonium-210 to air from all calciners and nodulizing kilns at an elemental phosphorus plant shall not exceed a total of 0.006 curies a year.

**§ 61.123 Emission testing.**

(a) Each owner or operator of an elemental phosphorus plant shall test emissions from the plant according to the following requirements:

(1) Within 90 days of the effective date of this standard for a plant that has an initial start-up date preceding the effective date of this standard; or

(2) Within 90 days of start-up for a plant, that has an initial startup after the effective date of the standard.

(b) The Administrator shall be notified at least 30 days prior to an emission test so that EPA may, at its option, observe the test.

(c) An emission test shall be conducted at each operational calciner or nodulizing kiln. If emissions from a calciner or nodulizing kiln are discharged through more than one stack, then an emission test shall be conducted at each stack and the total emission rate from the calciner or kiln shall be the sum of the emission rates from each of the stacks.



(d) Each emission test shall consist of three sampling runs that meet the requirements of § 61.125. The phosphate rock processing rate during each run shall be recorded. An emission rate in curies per metric ton of phosphate rock processed shall be calculated for each run. The average of all three runs shall apply in computing the emission rate for the test. The annual polonium-210 emission rate from a calciner or nodulizing kiln shall be determined by multiplying the measured polonium-210 emission rate in curies per metric ton of phosphate rock processed by the annual phosphate rock processing rate in metric tons. In determining the annual phosphate rock processing rate, the values used for operating hours and operating capacity shall be values that will maximize the expected processing rate. For determining compliance with the emission standard of § 61.122, the total annual emission rate is the sum of the annual emission rates for all operating calciners and nodulizing kilns.

(e) If the owner or operator changes his operation in such a way as to increase his emissions of polonium-210, such as changing the type of rock processed, the temperature of the calciners or kilns, or increasing the annual phosphate rock processing rate, then a new emission test shall be conducted under these conditions.

(f) Each owner of an elemental phosphorus plant shall furnish the Administrator a written report of the results of the emission test within 60 days of conducting the test. The report must provide the following information:

(1) The name of the facility.

(2) The name of the person responsible for the operation of the facility and the name of the person preparing the report (if different).

(3) A description of the effluent controls that are used on each stack, vent, or other release point and an estimate of the efficiency of each device.

(4) The results of the testing, including the results of each sampling run completed.

(5) The values used for all other user-supplied input parameters (e.g., meteorological data) and the source of these data.

(6) Each report shall be signed and dated by the principal executive officer in charge of the facility and contain the following declaration immediately above the signature line:

I certify under penalty of law that I have personally examined and am familiar with the information submitted herein and based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment. See, 18 U.S.C. 1001.

**§ 61.124 Recordkeeping requirements.**

The owner of any plant must maintain records documenting the source of input parameters including the results of all measurements upon which they are based, the calculations and/or analytical methods used to derive values for input parameters, and the procedure used in emission testing. In addition, the documentation should be sufficient to allow an independent auditor to verify the correctness of the results of the emission testing. These records must be kept at the site of the plant for at least five years and, upon request, be made available for inspection by the Administrator, or his authorized representative.

**§ 61.125 Test methods and procedures.**

(a) Each owner or operator of a source required to test emissions under § 61.123, unless an equivalent or alternate method has been approved by the Administrator, shall use the following test methods:

(1) Test Method 1 of Appendix A to Part 60 shall be used to determine sample and velocity traverses;

(2) Test Method 2 of Appendix A to Part 60 shall be used to determine velocity and volumetric flow rate;

(3) Test Method 3 of Appendix A to Part 60 shall be used for gas analysis.

(4) Test Method 5 of Appendix A to Part 60 shall be used to collect particulate matter containing the polonium-210; and

(5) Test Method 111 of Appendix B to this part shall be used to determine the polonium-210 emissions.

**§ 61.126 Monitoring of operations.**

(a) The owner or operator of any source subject to this subpart using a wet-scrubbing emission control device shall install, calibrate, maintain, and operate a monitoring device for the continuous measurement of the pressure loss of the gas stream through the scrubber. The monitoring device must be certified by the manufacturer to be accurate within ±250 pascals (±1 inch of water). Records of these measurements shall be maintained at the source and made available for inspection by the Administrator for a minimum of 5 years.

(b) The owner or operator of any source subject to this subpart using an electrostatic precipitator control device shall install, calibrate, maintain, and operate a monitoring device for the continuous measurement of the primary and secondary current and the voltage in each electric field. Baseline operating values for these parameters shall be maintained within ±30 percent of their baseline operating values. Records of these measurements shall be maintained at the source and made available for inspection by the Administrator for a minimum of 5 years.

(c) For the purpose of conducting an emission test under § 61.123, the owner or operator of any source subject to the provisions of this subpart shall install, calibrate, maintain, and operate a device for measuring the phosphate rock feed to any affected calciner or nodulizing kiln. The measuring device used must be accurate to within 0±5 percent of the mass rate over its operating range. Records of these measurements shall be maintained at the source and made available for inspection by the Administrator for a minimum of 5 years.

**§ 61.127 Certification of stable operation.**

Every 6 months the owner of a plant shall certify to the Administrator that no changes in operation that would require new testing under § 61.123(a) have occurred or inform the Administrator of the date on which new testing will occur.

**§ 61.128 Exemption from the reporting and testing requirements of 40 CFR 61.10.**

All facilities designated under this subpart are exempt from the reporting requirements of 40 CFR 61.10.

5. By adding the following Subpart Q:

**Subpart Q—National Emission Standards for Radon Emissions From Department of Energy Facilities**

Sec.

61.190 Designation of facilities.
61.191 Definitions.
61.192 Standard.
61.193 Radon monitoring and compliance procedures.
61.194 Recordkeeping requirements.
61.195 Exemption from the reporting and testing requirements of 40 CFR 61.10.

**Subpart Q—National Emission Standards for Radon Emissions From Department of Energy Facilities**

**§ 61.190 Designation of facilities.**

The provisions of this subpart apply to the design and operation of all storage and disposal facilities for radium-containing material (i.e., byproduct material as defined under section 11.e(2) of the Atomic Energy Act of 1954 (as amended)) that are owned or operated by the Department of Energy that emit radon-222 into air, including these facilities: 1) The Feed Materials Production Center, Fernald, Ohio; 2) the Niagara Falls Storage Site, Lewiston, NY; 3) the Weldon Spring Site, Weldon

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Spring, Mo.; 4) the Middlesex Sampling Plant, Middlesex, NJ; 5) the Monticello Uranium Mill Tailings Pile, Monticello, Utah. This subpart does not apply to facilities listed in, or designated by the Secretary of Energy under Title I of the Uranium Mill Tailings Control Act of 1978.

**§ 61.191 Definitions.**

As used in this subpart, all terms not defined here have the meaning given them in the Clean Air Act or subpart A of Part 61. The following terms shall have the following specific meanings:

(a) "Facility" means all buildings, structures and operations on one contiguous site.

(b) "Source" means any building, structure, pile, impoundment or area that is or contains waste material containing radium in sufficient concentration to emit radon-222 in excess of this standard prior to remedial action.

**§ 61.192 Standard.**

Approach A and Approach B

No source at Department of Energy facilities shall emit more than 20 pCi/m²s of radon-222 into the air.

Approach C

No source at Department of Energy facilities shall emit more than 2 pCi/m²s of radon-222 into the air.

Approach D

No source at Department of Energy facilities shall emit more than 0.02 pCi/m²s of radon-222 into the air.

**§ 61.193 Radon monitoring and compliance procedures.**

(a) Sixty days after the effective date of this subpart each DOE facility shall conduct testing for all sources within the facility, in accordance with the procedures described in Appendix B, Method 115 and provide EPA with a report detailing the actions taken and the results of the radon-222 flux testing. In lieu of testing the facility may make an admission that the source is in noncompliance.

(b) Each facility shall retest each source in accordance with the procedures described in Appendix B, Method 115 every two years and report to EPA. The Administrator may temporarily or permanently waive the retesting requirement or change the time between tests, if the Administrator determines that more frequent testing is required, the actions being conducted at the facility to reduce radon emissions preclude testing, or the facility demonstrates that the actions taken to reduce the radon flux from the source are of such a nature that a reduction in the frequency of the tests is appropriate.

(c) Ninety days after the testing is required, each facility shall report the results of the testing or an admission of noncompliance. Each report shall include the following information:

(1) The name of the facility.

(2) A list of the sources at the facility

(3) A description of the control measures taken to decrease the radon flux from the source and any actions taken to insure the long term effectiveness of the control measures.

(4) The results of the testing conducted, including the results of each measurement.

(5) Each report shall be signed and dated by the principal executive officer or public official in charge of the facility and contain the following declaration immediately above the signature line:

I certify under penalty of law that I have personally examined and am familiar with the information submitted herein and based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment. See, 18 U.S.C. 1001.

**§ 61.194 Recordkeeping requirements.**

The facility must maintain records documenting the source of input parameters including the results of all measurements upon which they are based, the calculations and/or analytical methods used to derive values for input parameters, and the procedure used to determine compliance. In addition, the documentation should be sufficient to allow an independent auditor to verify the correctness of the determination made concerning the facility's compliance with the standard, and, if claimed, qualification for exemption from reporting. These records must be kept at the facility for at least five years and upon request be made available for inspection by the Administrator, or his authorized representative.

**§ 61.195 Exemption from the reporting and testing requirements of 40 CFR 61.10.**

All facilities designated under this subpart are exempt from the reporting requirements of 40 CFR 61.10.

6. By adding the following Subpart R:

**Subpart R—National Emission Standards for Radon Emissions From Phosphogypsum Stacks**

Sec.

61.200 Designation of facilities.
61.201 Definitions.
61.202 Standard.
61.203 Radon monitoring and compliance procedures.
61.204 Recordkeeping requirements.
61.205 Exemption from the reporting and testing requirements of 40 CFR 61.10.

**Subpart R—National Emission Standards for Radon Emissions From Phosphogypsum Stacks**

**§ 61.200 Designation of facilities.**

The provisions of this subpart apply to the phosphogypsum that is produced as a result of phosphorus fertilizer production and all existing phosphogypsum stacks.

**§ 61.201 Definitions.**

As used in this subpart, all terms not defined here have the meaning given them in the Clean Air Act or subpart A of Part 61. The following terms shall have the following specific meanings:

(a) "Operator" means any person who owns, operates or controls a phosphogypsum stack.

(b) "Phosphogypsum stacks" or "stacks" are piles of waste from phosphorus fertilizer production containing phosphogypsum.

**§ 61.202 Standard.**

Approach A and Approach B

All phosphogypsum shall be disposed of in stacks or in phosphate mines which shall not emit more than 20 pCi/m²s of radon-222 into the air.

Approach C

All phosphogypsum shall be disposed of in stacks or in phosphate mines which shall not emit, more than 2 pCi/m²s of radon-222 into the air.

Approach D

All phosphogypsum shall be disposed of in stacks or in phosphate mines which shall not emit, more than 0.02 pCi/m²s of radon-222 into the air.

**§ 61.203 Radon monitoring and compliance procedures.**

(a) Sixty days after the effective date of the rule or sixty days after the operator ceases use of a phosphogypsum stack, whichever is later, the operator shall conduct testing for the stack in accordance with the procedures described in Appendix B, Method 115 and provide EPA with a report detailing the actions taken and the results of the radon-222 flux testing. In lieu of testing the facility may make an admission that the source is in noncompliance.

(b) Each operator shall retest each source in accordance with the procedures described in Appendix B, Method 115 every two years and report to EPA. The Administrator may temporarily or permanently waive the retesting requirement or change the time between tests, if the Administrator determines that more frequent testing is required, the actions being conducted on the stack to reduce radon emissions preclude testing, the stack is in compliance without the use of any control measures, or the operator demonstrates that the actions taken to reduce the radon flux from the stack are of such a nature that a reduction in the frequency of the tests is appropriate.

(c) Ninety days after the testing is required, each operator shall report the results of the testing or an admission of noncompliance. Each report shall include the following information:

(1) The name of the facility.

(2) A list of the stacks controlled by the operator.

(3) The name of the person responsible for the operation of the facility and the name of the person preparing the report (if different).

(4) A description of the control measures taken to decrease the radon flux from the source and any actions taken to insure the long term effectiveness of the control measures.

(5) The results of the testing conducted, including the results of each measurement.

(6) Each report shall be signed and dated by the principal executive officer in charge of the facility and contain the following declaration immediately above the signature line:

I certify under penalty of law that I have personally examined and am familiar with the information submitted herein and based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment. See 18 U.S.C. 1001.

(d) Sixty days after the effective date of the rule and annually thereafter, the operator shall file a report with the Administrator. This report will inform the Administrator which stacks are still being used for the disposal of additional phosphogypsum and which stacks are no longer being used for the disposal of additional phosphogypsum and, therefore, are ready for disposal.

**§ 61.204 Recordkeeping requirements.**

An operator must maintain records documenting the source of input parameters including the results of all measurements upon which they are based, the calculations and/or analytical methods used to derive values for input parameters, and the procedure used to determine compliance. In addition, the documentation should be sufficient to allow an independent auditor to verify the correctness of the determination made concerning the facility's compliance with the standard. These records must be kept at the facility for at least five years and upon request be made available for inspection by the Administrator, or his authorized representative.

**§ 61.205 Exemption from the reporting and testing requirements of 40 CFR 61.10.**

All facilities designated under this subpart are exempt from the reporting requirements of 40 CFR 61.10.

7. By adding the following Subpart S:

**Subpart S—National Emission Standards for Radon Emissions From Surface Uranium Mines**

Sec.

61.210 Designation of facilities.
61.211 Definitions.
61.212 Standard.
61.213 Radon monitoring and compliance procedures.
61.214 Recordkeeping requirements.
61.215 Exemption from the reporting and testing requirements of 40 CFR 61.10.

**Subpart S—National Emission Standards for Radon Emissions From Surface Uranium Mines**

**§ 61.210 Designation of facilities.**

The provisions of this subpart are applicable to any surface uranium mine which:

(a) Has mined or will mine over 100,000 tons of ore during the life of the mine; or

(b) Has had or will have an annual ore production rate greater than 10,000 tons, unless it can be demonstrated that the mine will not exceed total ore production of 100,000 tons during the life of the mine.

**§ 61.211 Definitions.**

As used in this subpart, all terms not defined here have the meaning given them in the Clean Air Act or subpart A of Part 61. The following terms shall have the following specific meanings:

(a) "Owner" means any person who owns, operates or controls a surface uranium mine.

(b) "Surface uranium mine" means a man-made excavation made for the purpose of removing material containing uranium for the principle purpose of recovering uranium.

**§ 61.212 Standard.**

Approach A, B and C

[No Rule]

Approach D

Surface uranium mines shall not emit more than 0.02 pCi/m²s of radon-222 into the air.

**§ 61.213 Radon monitoring and compliance procedures.**

(a) Sixty days after the effective date of the rule or sixty days after the mine owner ceases use of a mine, whichever is later, the operator shall conduct testing of the mine in accordance with the procedures described in Appendix B, Method 115 and provide EPA with a report detailing the actions taken and the results of the radon-222 flux testing.

(b) Each mine owner shall retest each source in accordance with the procedures described in Appendix B, Method 115 every two years and report to EPA. The Administrator may temporarily or permanently waive the retesting requirement or change the time between tests, if the Administrator determines that more frequent testing is required, the actions being conducted on the stack to reduce radon emissions preclude testing, or the operator demonstrates that the actions taken to reduce the radon flux from the mine are of such a nature that a reduction in the frequency of the tests is appropriate.

(c) Ninety days after the testing is required, each mine owner shall report the results of the testing or admit being in noncompliance. Each report shall include the following information:

(1) The name of the facility.

(2) The name of the person responsible for the operation of the facility and the name of the person preparing the report (if different).

(3) A description of the control measures taken to decrease the radon flux from the source and any actions taken to insure the long term effectiveness of the control measures.

(4) The results of the testing conducted, including the results of each measurement.

(5) Each report shall be signed and dated by the principal executive officer in charge of the facility and contain the following declaration immediately above the signature line:

I certify under penalty of law that I have personally examined and am familiar with the information submitted herein and based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment. See, 18 U.S.C. 1001.

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**§ 61.214 Recordkeeping requirements.**

The facility must maintain records documenting the source of input parameters including the results of all measurements upon which they are based, the calculations and/or analytical methods used to derive values for input parameters, and the procedure used to determine compliance. In addition, the documentation should be sufficient to allow an independent auditor to verify the correctness of the determination made concerning the facility's compliance with the standard. These records must be kept at the site of the facility for at least five years and upon request be made available for inspection by the Administrator, or his authorized representative.

**§ 61.215 Exemption from the reporting and testing requirements of 40 CFR 61.10.**

All facilities designated under this subpart are exempt from the reporting requirements of 40 CFR 61.10.

8. By revising Subpart B to read as follows:

**Subpart B—National Emission Standards for Radon Emissions From Underground Uranium Mines**

Sec.
61.20 Designation of facilities.
61.21 Definitions.
61.22 Standard.
61.23 Radon monitoring and compliance procedures.
61.24 Recordkeeping requirements.
61.25 Exemption from the reporting and testing requirements of 40 CFR 61.10.

**Subpart B—National Emission Standards for Radon Emissions From Underground Uranium Mines**

**§ 61.20 Designation of facilities.**

The provisions of this subpart are applicable to an active underground uranium mine which:

(a) Has mined or will mine over 100,000 tons of ore during the life of the mine; or

(b) Has had or will have an annual ore production rate greater than 10,000 tons, unless it can be demonstrated that the mine will not exceed total ore production of 100,000 tons during the life of the mine.

**§ 61.21 Definitions.**

As used in this subpart, all terms not defined here have the meaning given them in the Clean Air Act or subpart A of Part 61. The following terms shall have the following specific meanings:

(a) "Active mine" means an underground uranium mine which is being ventilated to allow workers to enter the mine for any purpose.

(b) "Owner" means any person who owns, operates or controls an underground uranium mine.

(c) "Underground uranium mine" means a man-made underground excavation made for the purpose of removing material containing uranium for the principle purpose of recovering uranium.

**§ 61.22 Standard.**

Approach A and Approach B

(a) The exhaust vents of an active underground uranium mine shall not emit more than 1500 curies of radon-222 into the atmosphere in any year.

(b) The requirements of paragraph (a) of this section notwithstanding, if all the exhaust vent emissions of radon-222 from underground uranium mines are emitted from stacks that are at least 30 meters high then all the exhaust vents of an active underground uranium mine may emit up to 5,000 curies of radon-222 into the atmosphere in any year.

Approach C

The exhaust vents of an active underground uranium mine shall not emit more than 500 curies of radon-222 into the atmosphere in any year.

Approach D

The exhaust vents of an active underground uranium mine shall not emit more than 5 curies of radon-222 into the atmosphere in any year.

**§ 61.23 Radon monitoring and compliance procedures.**

(a) An underground uranium mine owner shall conduct testing to determine the radon-222 emissions from their mines in accordance with the procedures described in Appendix B, Method 115 and provide EPA with a report of the results of the testing.

(b) The report of the results for each year shall be sent to EPA by March 31 of the following year. Each report shall include the following information:

(1) The name of the mine.

(2) The name of the person responsible for the operation of the facility and the name of the person preparing the report (if different).

(3) A list of the exhaust vents at the mine, including their location and size.

(4) The results of the testing conducted.

(5) Each report shall be signed and dated by the principal executive officer in charge of the facility and contain the following declaration immediately above the signature line:

I certify under penalty of law that I have personally examined and am familiar with the information submitted herein and based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment. See, 18 U.S.C. 1001.

(c) If the facility is not in compliance with the emission limits of § 61.22 in the calendar year covered by the report then the facility must report to the Administrator on a monthly basis the information listed in paragraph (b) of this section, for the preceding month. These reports will be due 30 days following the end of each month. This increased level of reporting will continue until the Administrator has determined that the monthly reports are no longer necessary. In addition to all the information required in paragraph (b) of this section, monthly reports shall also include the following information:

(1) All controls or other changes in operation of the facility that will be or are being installed to bring the facility into compliance.

(2) If the facility is under a judicial or administrative enforcement decree the report will describe the facility's performance under the terms of the decree.

**§ 61.24 Recordkeeping requirements.**

The mine must maintain records documenting the source of input parameters including the results of all measurements upon which they are based, the calculations and/or analytical methods used to derive values for input parameters, and the procedure used to determine compliance. In addition, the documentation should be sufficient to allow an independent auditor to verify the correctness of the determination made concerning the facility's compliance with the standard. These records must be kept at the mine for at least five years and upon request be made available for inspection by the Administrator, or his authorized representative.

**§ 61.25 Exemption from the reporting and testing requirements of 40 CFR 61.10.**

All facilities designated under this subpart are exempt from the reporting requirements of 40 CFR 61.10.

9. By revising Subpart W to read as follows:

**Subpart W—National Emission Standards for Radon Emissions From Operating Mill Tailings**

Sec.
61.250 Designation of facilities.
61.251 Definitions.
61.252 Standard.



Sec.
61.253 Exemption from the reporting and testing requirements of 40 CFR 61.10.

**Subpart W—National Emission Standards for Radon Emissions From Operating Mill Tailings**

**§ 61.250 Designation of Facilities.**

The provisions of this subpart apply to owners or operators licensed to manage uranium byproduct materials during and following the processing of uranium ores, commonly referred to as uranium mills and their associated tailings. This subpart does not apply to the disposal of tailings.

**§ 61.251 Definitions**

As used in this subpart, all terms not defined here have the meaning given them in the Clean Air Act or subpart A of Part 61. The following terms shall have the following specific meanings:

(a) "Area" means the vertical projection of the pile upon the earth's surface.

(b) "Continuous disposal" means a method of tailings management and disposal in which tailings are dewatered by mechanical methods immediately after generation. The dried tailings are then placed in trenches or other disposal areas and immediately covered to all applicable Federal standards.

(c) "Dewatered" means to remove the water from recently produced tailings by mechanical or evaporative methods such that the water content of the tailings does not exceed 30 percent by weight.

(d) "Operation" means that an impoundment is being used for the continued placement of new tailings or is in standby. An impoundment is in operation from the day that tailings are first placed in the impoundment until the day that final closure beings.

(e) "Owner" means any person who owns or operates a uranium mill or an existing tailings pile or a new impoundment.

(f) "Phased disposal" means a method of tailings management and disposal which uses lined impoundments which are filled and then immediately dried and covered to meet all applicable Federal standards.

(g) "Uranium byproduct material" or "tailings" means the waste produced by the extraction or concentration of uranium from any ore processed primarily for its source material content. Ore bodies depleted by uranium solution extraction and which remain underground do not constitute byproduct material for the purposes of this subpart.

**§ 61.252 Standard.**

Approach A and Approach B

Two years following the effective date of this rule no tailings may be placed in any impoundment which was not designed and constructed to meet one of the two following work practices and in the following manner:

(a) Phased disposal in lined tailings impoundments that are no more than 40 acres in area and meet the requirements of § 192.32(a). The owner shall have no more than two impoundments in operation at any one time.

(b) Continuous disposal of tailings such that tailings are dewatered and immediately disposed with no more than 10 acres uncovered at any time and operated in accordance with § 192.32(a).

Approach C

After the effective date of this rule, no tailings may be placed in any impoundment which was not designed and constructed to meet one of the two following work practices and in the following manner:

(a) Phased disposal in lined tailings impoundments that are no more than 40 acres in area and meet the requirements of § 192.32(a). The owner shall have no more than two impoundments in operation at any one time.

(b) Continuous disposal of tailings such that tailings are dewatered and immediately disposed with no more than 10 acres uncovered at any time and operated in accordance with § 192.32(a).

Approach D

After the effective date of this rule no tailings may be produced.

**§ 61.253 Exemption from the reporting and testing requirements of 40 CFR 61.10.**

All facilities designated under this subpart are exempt from the reporting requirements of 40 CFR 61.10.

10. By adding the following Subpart T:

**Subpart T—National Emission Standards for Radon Emissions From the Disposal of Uranium Mill Tailings**

Sec.
61.220 Designation of facilities.
61.221 Definitions.
61.222 Standard.
61.223 Compliance procedures.
61.224 Recordkeeping requirements.
61.225 Exemption from the reporting and testing requirements of 40 CFR 61.10.

**Subpart T—National Emission Standards for Radon Emissions From the Disposal of Uranium Mill Tailings**

**§ 61.220 Designation of facilities.**

The provisions of this subpart apply to the disposal of tailings at all sites that managed residual radioactive material or uranium byproduct materials during and following the processing of uranium ores, commonly referred to as uranium mills and their associated tailings, that are listed in, or designated by the Secretary of Energy under Title I of the Uranium Mill Tailings Control Act of 1978 or regulated Title II of the Uranium Mill Tailings Control Act of 1978.

**§ 61.221 Definitions.**

As used in this subpart, all terms not defined here have the meaning given them in the Clean Air Act or subpart A of Part 61. The following terms shall have the following specific meanings:

(a) "Operational" means a uranium mill tailings pile that is licensed to accept additional tailings, and those tailings can be added without violating subpart W or any other Federal, state or local rule or law.

(b) "Owner" means any person who owns, operates, controls or is responsible for the disposal of a uranium mill tailings pile or impoundment, including the Department of Energy.

(c) "Uranium byproduct material" or "tailings" means the waste produced by the extraction or concentration of uranium from any ore processed primarily for its source material content. Ore bodies depleted by uranium solution extraction and which remain underground do not constitute byproduct material for the purposes of this subpart.

**§ 61.222 Standard.**

Approach A and Approach B

Radon-222 emissions to the air from nonoperational uranium mill tailings piles shall not exceed 6 pCi/m$^2$s of radon-222.

Approach C

Radon-222 emissions to the air from nonoperational uranium mill tailings piles shall not exceed 2 pCi/m$^2$s of radon-222.

Approach D

Radon-222 emissions to the air from nonoperational uranium mill tailings piles shall not exceed 0.02 pCi/m$^2$s of radon-222.

**§ 61.223 Compliance procedures.**

(a) Sixty days after the effective date of this subpart or 60 days after the pile ceases to be operational, whichever is later, owners of uranium mill tailings shall conduct testing for all piles within the facility in accordance with the procedures described in Appendix B, Method 115 and provide EPA with a report detailing the actions taken and

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the results of the radon-222 flux testing. In lieu of testing the owner may make an admission that the source is in noncompliance.

(b) Each owner shall retest each pile in accordance with the procedures described in Appendix B, Method 115 every two years and report to EPA. The Administrator may temporarily or permanently waive the retesting requirements or change the time between tests, if the Administrator determines that more frequent testing is required, the actions being conducted on the pile to reduce radon emissions preclude testing, or the owner demonstrates that the actions taken to reduce the radon flux from the pile are of such a nature that a reduction in the frequency of the tests is appropriate.

(c) Ninety days after the testing is required, each facility shall report the results of the testing or an admission of noncompliance. Each report shall include the following information:

(1) The name of the facility.

(2) A list of the piles at the facility.

(3) A description of the control measures taken to decrease the radon flux from the source and any actions taken to insure the long term effectiveness of the control measures.

(4) The results of the testing conducted, including the results of each measurement.

(5) Each report shall be signed and dated by the principal executive officer or public official in charge of the facility and contain the following declaration immediately above the signature line:

I certify under penalty of law that I have personally examined and am familiar with the information submitted herein and based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment. See, 18 U.S.C. 1001.

**§ 61.224 Recordkeeping requirements.**

The facility must maintain records documenting the source of input parameters including the results of all measurements upon which they are based, the calculations and/or analytical methods used to derive values for input parameters, and the procedure used to determine compliance. In addition, the documentation should be sufficient to allow an independent auditor to verify the correctness of the determination made concerning the facility's compliance with the standard. These records must be kept at the site of the facility for at least five years and upon request be made available for inspection by the Administrator, or his authorized representative.

**§ 61.225 Exemption from the reporting and testing requirements of 40 CFR 61.10.**

All facilities designated under this subpart are exempt from the reporting requirements of 40 CFR 61.10.

11. By adding the following Subpart U:

**Subpart U—National Emission Standards for Coal-Fired Boilers**

Sec.
61.230 Designation of facilities.
61.231 Definitions.
61.232 Standard.

**Subpart U—National Emission Standards for Coal-Fired Boilers**

**§ 61.230 Designation of facilities.**

The provisions of this subpart apply to all coal-fired boilers operated by electric utility companies for the generation of electrical power and all industrial boilers whose output is greater than 2 million BTUs an hour.

**§ 61.231 Definitions.**

As used in this subpart, all terms not defined here have the meaning given them in the Clean Air Act of subpart A of Part 61 or 40 CFR 60.41a or 40 CFR 60.41b.

(a) "Coal-fired boiler" means a boiler that burns coal as an energy source in order to heat water.

**§ 61.232 Standard.**

Approach D

(a) All coal-fired boilers that are owned by electric utility companies shall meet all the requirements of 40 CFR Part 60 subpart Da that relate to the control of particulate matter.

(b) All industrial coal-fired boilers not regulated under paragraph (a) of this section shall meet all the requirements of 40 CFR Part 60 subpart Db that relate to the control of particulate matter.

12. By adding the following to the list of System International units of measure in § 61.03(a):

$m^2$ = square meter

13. By adding the following to the list of other units of measure in 61.03(b):

Ci = curie
pCi = picocurie = $10^{-12}$ curie
mrem = millirem = $10^{-3}$ rem

14. By adding the following to the methods in Appendix B:

Method 114—Test Methods for Monitoring Radionuclide Emissions from Stationary Sources

1. Purpose and Background

This appendix contains guidance on: (1) Continuous stack sample collection methods appropriate for radionuclides; (2) radiochemical methods which are used in determining the amounts of radionuclides collected by the stack sampling and; (3) quality assurance methods which are conducted in conjunction with these measurements. These methods are appropriate for emissions for stationary sources. A list of references is provided.

Many different types of facilities release radionuclides into air. These radionuclides differ in the chemical and physical forms, half-lives and type of radiation emitted. The appropriate combination of sample extraction, collection and analysis for an individual radionuclide is dependent upon many interrelated factors including the mixture of other radionuclides present. Because of this wide range of conditions, no single method for collection and analysis of a radionuclide is applicable to all types of facilities. Therefore, a series of methods based on "principles of measurement" are described for both sample collection and analysis which are applicable to the measurement of radionuclides found in effluent streams at stationary sources. This approach provides the user with the flexibility to choose the most appropriate combination of collection and analysis methods which are applicable to the effluent stream to be measured.

2. Continuous Stack Sample Collection Methods

Continuous sample collection methods are based on "principles of sample collection" which are applicable to the continuous collection of radionuclides from effluent streams at stationary sources. Radionuclides of most elements will be in the particulate form in these effluent streams and can be readily collected using a suitable filter media. Radionuclides of hydrogen, oxygen, carbon, nitrogen, the noble gases and in some circumstances iodine will be in the gaseous form. Radionuclides of these elements will require either the use of a flow through counter to directly measure the radionuclide, or suitable sorters or bubblers to collect the radionuclides.

2.1 *Radionuclides as Particulates.* The extracted effluent stream is passed through a filter media to remove the particulates. The filter must have a high efficiency for removal of sub-micron particles. The guidance in ANSI–N13.1(1) shall be followed in using filter media to collect particulates.

2.2 *Radionuclides as Gases.*

2.2.1 *The Radionuclide Tritium (H–3).* Tritium in the form of water vapor is continuously collected from the extracted effluent sample by sorption, condensation or dissolution techniques. Appropriate collectors may include silica gel, molecular sieves, and ethylene glycol or water bubblers.

Tritium in the gaseous form may be measured directly in the sample stream using Method B–1 or may be oxidized using a metal catalyst to tritiated water and collected as described above.

2.2.2 *Radioisotopes of Iodine.* Iodine is collected from the continuously extracted sample by sorption or dissolution techniques. Appropriate collectors may include charcoal, impregnated charcoal, metal zeolites and caustic solutions.

2.2.3 *Radionuclides of Argon, Krypton and Xenon.* Radionuclides of these elements are measured directly in the continuously extracted sample stream using a flow through counter or are collected from the extracted sample by low temperature sorption techniques. Appropriate sorters may include charcoal or metal zeolites.

2.2.4 *Radionuclides of Oxygen, Carbon, Nitrogen and Radon.* Radionuclides of these elements are measured directly in the continuously extracted sample using a flow through counter. Radionuclides of carbon in the form of carbon dioxide may be collected by dissolution in caustic solutions.

3. Radionuclide Analysis Methods

A series of methods based on "principles of measurement" are applicable to the analysis of radionuclides collected from airborne effluent streams at stationary sources. These methods are applicable only under the conditions stated and within the limitations described. Some methods specify that only a single radionuclide be present in the sample or the chemically separated sample. This condition should be interpreted to mean that no other radionuclides are present in quantities which would interfere with the measurement.

Also identified are methods for a selected list of radionuclides. The listed radionuclides are those which are most commonly used and which have the greatest potential for causing dose to members of the public.

Use of methods based on principles of measurement other than those described in this section must be approved in advance of use by the Administrator. For radionuclides not listed in this section, any of the described methods may be used provided the user can demonstrate that the applicability conditions of the method have been met.

The type of method applicable to the analysis of a radionuclide is dependent upon the type of radiation emitted, i.e., alpha, beta or gamma. Therefore, the methods described below are grouped according to principles of measurements for the analysis of alpha, beta and gamma emitting radionuclides.

3.1 *Methods for Alpha Emitting Radionuclides.*

3.1.1 *Method A–1 Radiochemistry-Alpha Spectrometry.*

*Principle:* The element of interest is separated from other elements, and from the sample matrix using radiochemical techniques. The procedure may involve precipitation, ion exchange, or solvent extraction. Carriers (elements chemically similar to the element of interest) may be used. The element is deposited on a planchet in a very thin film by electrodeposition or by coprecipitation on a very small amount of carrier, such as lanthanum fluoride. The deposited element is then counted with an alpha spectrometer. The activity of the nuclide of interest is measured by the number of alpha counts in the appropriate energy region. A correction for chemical yield and counting efficiency is made using a standardized radioactive nuclide (tracer) of the same element. If a radioactive tracer is not available for the element of interest, a predetermined chemical yield factor may be used.

*Applicability:* This method is applicable for determining the activity of any alpha-emitting radionuclide, regardless of what other radionuclides are present in the sample provided the chemical separation step produces a very thin sample and removes all other radionuclides which could interfere in the spectral region of interest. APHA–605(2), ASTM–D–3972(13).

3.1.2 Method A–2, *Radiochemistry-Alpha Counting.*

*Principle:* The element of interest is separated from other elements, and from the sample matrix using radiochemistry. The procedure may involve precipitation, ion exchange, or solvent extraction. Carriers (elements chemically similar to the element of interest) may be used. The element is deposited on a planchet in a thin film and counted with an alpha counter. A correction for chemical yield (if necessary) is made. The alpha count rate measures the total activity of all emitting radionuclides of the separated element.

*Applicability:* This method is applicable for the measurement of any alpha-emitting radionuclide, provided no other alpha emitting radionuclide is present in the separated sample. It may also be applicable for determining compliance, when other radionuclides of the separated element are present, provided that the calculated emission rate is assigned to the radionuclide which could be present in the sample that has the highest dose conversion factor. IDO–12096(18).

3.1.3 Method A–3, *Direct Alpha Spectrometry.*

*Principle:* The sample, collected on a suitable filter, is counted directly on an alpha spectrometer. The sample must be thin enough and collected on the surface of the filter so that any absorption of alpha particle energy in the sample or the filter, which would degrade the spectrum, is minimal.

*Applicability:* This method is applicable to simple mixtures of alpha emitting radionuclides and only when the amount of particulates collected on the filter paper are relatively small and the alpha spectra is adequately resolved. Resolutions should be 50 eV (HWFM) or better. ASTM–D–3084(16).

3.1.4 Method A–4, *Direct Alpha Counting* (Gross alpha determination).

*Principle:* The sample, collected on a suitable filter, is counted with an alpha counter. The sample must be thin enough so that self-absorption is not significant and the filter must be of such a nature that the particles are retained on the surface.

*Applicability:* Gross alpha determinations may be used to measure emissions of specific radionuclides only (1) when it is known that the sample contains only a single radionuclide, or the identity and isotopic ratio of the radionuclides in the sample are well-known, (2) measurements using either Method A–1 or A–2 have shown that this method provides a reasonably accurate measurement of the emission rate, and (3) the effective dose equivalent from the emission does not exceed 10 percent of the applicable emission standard. Gross alpha measurements are applicable to mixtures of radionuclides only for the purposes described in section 3.7. APHA–601(3), ASTM–D–1943(10).

3.1.5 Method A–5, *Chemical Determination of Uranium.*

*Principle:* Uranium may be measured chemically by either colorimetry or fluorometry. In both procedures, the sample is dissolved, the uranium is oxidized to the hexavalent form and extracted into hexone. Impurities are removed from the hexone layer. For colorimetry, dibenzoylmethane is added, and the uranium is measured by the absorbance in a colorimeter. For fluorometry, a portion of the solution is fused with a sodium fluoride-lithium fluoride flux and the uranium is determined by the ultraviolet activated fluorescence of the fused disk in a fluorometer.

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*Applicability:* This method is applicable to the measurements of emission rates of uranium when the isotopic ratio of the uranium radionuclides is well known. ASTM–E–318(15), ASTM–D–2907(14).

3.1.6 Method A–6, *Radon–222—Continuous Gas Monitor.*

*Principle:* Radon–222 is measured directly in a continuously extracted sample stream by passing the air stream through a calibrated scintillation cell. Prior to the scintillation cell, the air stream is passed through a filter and if needed a desiccant to remove particulates and excess moisture. The alpha particles from radon–222 and its decay products strike a zinc sulfide coating on the inside of the scintillation cell producing light pulses. The light pulses are detected by a photomultiplier tube which generates electrical pulses. These pulses are processed by the system electronics and the read out is in pCi/l of radon–222.

*Applicability:* This method is applicable to the measurement of radon–222 in effluent streams which do not contain significant quantities of radon–222. Users of this method should calibrate the monitor in a radon calibration chamber at least twice per year. The background of the monitor should also be checked periodically by operating the instrument in a low radon environment. EPA 520/1–88–04(24)

3.2 *Methods of Gaseous Beta Emitting Radionuclides.*

3.2.1 Method B–1, *Direct Counting in Flow-Through Ionization Chambers.*

*Principle:* An ionization chamber containing a specific volume of gas which flows at a given flow rate through the chamber is used. The sample (effluent stream sample) acts as the counting gas for the chamber. The activity of the radionuclide is determined from the current measured in the ionization chamber.

*Applicability:* This method is applicable for measuring the activity of a gaseous beta-emitting radionuclide that is suitable as a counting gas, when no other beta-emitting nuclides are present. DOE/EP–0096(17), NCRP–58(23).

3.2.2 Method B–2, *Direct Counting in Flow-Through Chamber with Beta Detectors.*

A chamber of known volume which contains a Geiger-Muller tube or other beta detector is used. The effluent gas stream passes through the chamber at a given flow rate. The activity of the radionuclide is determined from the beta count rate.

*Applicability:* This method is appropriate for measuring the activity of a gaseous beta-emitting radionuclide with a maximum energy greater than 0.2MeV (beta-max) when no other beta-emitting nuclides are present.

3.3 *Methods for Non-Gaseous Beta Emitting Radionuclides.*

3.3.1 Method B–3, *Radiochemistry-Beta Counting.*

*Principle:* The element of interest is separated from other elements, and from the sample matrix by radiochemistry. This may involve precipitation, distillation, ion exchange, or solvent extraction. Carriers (elements chemically similar to the element of interest) may be used. The element is deposited on a planchet, and counted with a beta counter. Corrections for chemical yield, and decay (if necessary) are made. The beta count rate determines the total activity of all radionuclides of the separated element. This method may also involve the radiochemical separation and counting of a daughter element, after a suitable period of ingrowth, in which case it is specific for the parent nuclide.

*Applicability:* This method is applicable for measuring the activity of any beta-emitting radionuclide, with a maximum energy greater than 0.2 MeV, provided no other radionuclide is present in the separated sample. APHA–606(5).

3.3.2. Method B–4, *Direct Beta Counting* (Gross beta determination).

*Principle:* The sample, collected on a suitable filter, is counted with a beta counter. The sample must be thin enough so that self-absorption corrections can be made.

*Applicability:* Gross beta measurements are applicable only to radionuclides with maximum beta particle energies greater than 0.2 MeV. Gross beta measurements may be used to measure emissions of specific radionuclides only: (1) When it is known that the sample contains only a single nuclide, (2) measurements made using Method B–3 show reasonable agreement with the gross beta measurement and (3) the effective dose equivalent from the emissions does not exceed 10% of the limits of the applicable standard. Gross beta measurements are applicable to mixtures of radionuclides only for the purposes described in section 3.7. APHA–602(4), ASTM–D–1890(10).

3.3.3 Method B–5, *Liquid Scintillation Spectrometry.*

*Principle:* An aliquot of a collected sample or the result of some other chemical separation or processing technique is added to a liquid scintillation "cocktail" which is viewed by photomultiplier tubes in a liquid scintillation spectrometer. The spectrometer is adjusted to establish a channel or "window" for the pulse energy appropriate to the nuclide of interest. The activity of the nuclide of interest is measured by the counting rate in the appropriate energy channel. Corrections are made for chemical yield where separations are made.

*Applicability:* This method is applicable to any beta-emitting nuclide when no other radionuclide is present in the sample or the separated sample provided that it can be incorporated in the scintillation cocktail. This method is also applicable for samples which contain more than one radionuclide but only when the energies of the beta particles are sufficiently separated so that they can be resolved by the spectrometer. This method is most applicable to the measurement of low-energy beta emitters such as tritium and carbon–14. APHA–609(6), EML–LV–0539–17(19).

3.4 *Gamma Emitting Radionuclides.*

3.4.1 Method G–1, *High Resolution Gamma Spectrometry.*

*Principle:* The sample is counted with a high resolution gamma detector, either a Ge(Li) or a high purity Ge detector, connected to a multichannel analyzer or computer. The gamma emitting radionuclides in the sample are measured for the gamma count rates in the energy regions characteristic of the individual radionuclide. Corrections are made for counts contributed by other radionuclides to the spectral regions of the radionuclides of interest. Radiochemical separations may be made prior to counting but are usually not necessary.

*Applicability:* This method is applicable to the measurement of any gamma emitting radionuclide with gamma energies greater than 20 kev. It can be applied to complex mixtures of radionuclides. The samples counted may be in the form of particulate filters, absorbers, liquids or gases. The method may also be applied to the analysis of gaseous gamma emitting radionuclides directly in an effluent stream by passing the stream through a chamber or cell containing the detector. ASTM–3649(9), IDO–12096(18).

3.4.2 Method G–2. *Low Resolution Gamma Spectrometry.*

*Principle:* The sample is counted with a low resolution gamma detector, a thallium activated sodium iodide crystal. The detector is coupled to a photomultiplier tube and connected to a multichannel analyzer. The gamma emitting radionuclides in the sample are measured from the gamma count rates in the energy regions characteristic of the individual radionuclides. Corrections are made for counts contributed by other radionuclides to the spectral regions of the radionuclides of interest. Radiochemical separation may be used prior to counting to obtain less complex gamma spectra if needed.

*Applicability:* This method is applicable to the measurement of gamma emitting radionuclides with energies greater than 100 KeV. It can be applied only to relatively simple mixtures of gamma emitting radionuclides. The samples counted may be in the form of particulate filters, absorbers, liquids or gas. The method can be applied to the analysis of gaseous radionuclides directly in an effluent stream by passing the gas stream through a chamber or cell containing the detector. ASTM–D–2459(12), EMSL–LV–0539–17(19).

3.4.3 Method G–3. *Single Channel Gamma Spectrometry.*

*Principle:* The sample is counted with a thallium activated sodium iodide crystal. The detector is coupled to a photomultiplier tube connected to a single channel analyzer. The activity of a gamma emitting radionuclide is determined from the gamma counts in the energy range for which the counter is set.

*Applicability:* This method is applicable to the measurement of a single gamma emitting radionuclide. It is not applicable to mixtures of radionuclides. The samples counted may be in the form of particulate filters, absorbers, liquids or gas. The method can be applied to the analysis of gaseous radionuclides directly in an effluent stream by passing the gas stream through a chamber or cell containing the detector.

3.5 *Counting methods.* All of the above methods with the exception of Method A–5 involve counting the radiation emitted by the radionuclide. Counting methods applicable to the measurement of alpha, beta and gamma radiations are listed below. The equipment needed and the counting principles involved are described in detail in ASTM–3648(8).

3.5.1 *Alpha Counting:*

• *Gas flow proportional counters.* The alpha particles cause ionization in the counting gas and the resulting electrical pulses are counted. These counters may be windowless or have very thin windows.

• *Scintillation counters.* The alpha particles transfer energy to a scintillator resulting in a production of light photons which strike a photomultiplier tube converting the light photons to electrical pulses which are counted. The counters may involve the use of solid scintillation materials such as zinc sulfide or liquid scintillation solutions.

• *Solid-state counters.* Semiconductor materials, such as silicon surface-barrier p–n junctions, act as solid ionization chambers. The alpha particles interact with the detector producing electron hole pairs. The charged pair is collected by an applied electrical field and the resulting electrical pulses are counted.

• *Alpha spectrometers.* Semiconductor detectors used in conjunction with multichannel analyzers for energy discrimination.

3.5.2 *Beta Counting:*

• *Ionization chambers.* These chambers contain the beta-emitting nuclide in gaseous form. Either the ionization current or the rate of charge may be measured.

• *Geiger-Muller (GM) counters- or gas flow proportional counters.* The beta particles cause ionization in the counting gas and the resulting electrical pulses are counted. Proportional gas flow counters which are heavily shielded by lead or other metal, and provided with an anti-coincidence shield to reject cosmic rays, are called low background beta counters.

• *Scintillation counters.* The beta particles transfer energy to a scintillator resulting in a production of light photons, which strike a photomultiplier tube converting the light photon to electrical pulses which are counted. This may involve the use of anthracene crystals, plastic scintillator, or liquid scintillation solutions with organic phosphors.

• *Liquid scintillation spectrometers.* Liquid scintillation counters which use two photomultiplier tubes in coincidence to reduce background counts. This counter may also electronically discriminate among pulses of a given range of energy.

3.5.3 *Gamma Counting:*

• *Low-resolution gamma spectrometers.* The gamma rays interact with a thallium-activated sodium iodide or cesium iodide crystal resulting in the release of light photons which strike a photomultiplier tube converting the light pulses to electrical pulses proportional to the energy of the gamma ray. Multi-channel analyzers are used to separate and store the pulses according to the energy absorbed in the crystal.

• *High-resolution gamma spectrometers.* Gamma rays interact with a lithium-drifted (Ge(Li)) or high-purity germanium (HPGe) semiconductor detector resulting in a production of electron-hole pairs. The charged pair is collected by an applied electrical field. A very stable low noise preamplifier amplifies the pulses of electrical charge resulting from the gamma photon interactions. Multichannel analyzers or computers are used to separate and store the pulses according to the energy absorbed in the crystal.

• *Single channel analyzers.* Thallium activated sodium iodide crystals used with a single window analyzer. Pulses from the photomultiplier tubes are separated in a single predetermined energy range.

3.5.4 *Calibration of counters.* Counters are calibrated for specific radionuclide measurements using a standard of the radionuclide under either identical or very similar conditions as the sample to be counted.

For gross alpha and beta measurements of the unidentified mixtures of radionuclides, alpha counters are calibrated with a natural uranium standard and beta counters with a cesium–137 standard. The standard must contain the same weight and distribution of solids as the samples, and be mounted in an identical manner. If the samples contain variable amounts of solids, calibration curves relating weight of solids present to counting efficiency are prepared. Standards other than those prescribed may be used provided it can be shown that such standards are more applicable to the radionuclide mixture measured.

3.6 *Radiochemical methods for selected radionuclides.* Methods for a selected list of radionuclides are listed in Table 1. The radionuclides listed are those which are most commonly used and which have the greatest potential for causing doses to members of the public. For radionuclides not listed in Table 1, methods based on any of the applicable "principles of measurement" described in section 3.1 through 3.4 may be used.

3.7 *Applicability of gross alpha and beta measurements to unidentified mixtures of radionuclides.* Gross alpha and beta measurements may be used as a screening measurement as a part of an emission measurement program to identify the need to do specific radionuclide analyses or to confirm or verify that unexpected radionuclides are not being released in significant quantities.

Gross alpha (Method A–4) or gross beta (Method B–4) measurements may also be used for the purpose of comparing the measured concentrations in the effluent stream with the limiting "Concentration Levels for Environmental Compliance" in Table 2 of Appendix E. For unidentified mixtures, the measured concentration value shall be compared with the lowest environmental concentration limit for any radionuclide which is not known to be absent from the effluent stream.

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TABLE 1.—LIST OF APPROVED METHODS FOR SPECIFIC RADIONUCLIDES

| Radionuclide | Approved methods of analysis |
|---|---|
| Am-241 | A-1, A-2, A-3, A-4 |
| Ar-41 | B-1, B-2, G-1, G-2, G-3 |
| Ba-140 | G-1, G-2, G-3 |
| Br-82 | G-1, G-2, G-3 |
| C-11 | B-1, B-2, G-1, G-2, G-3 |
| C-14 | B-5 |
| Ca-45 | B-3, B-4, B-5 |
| Ce-144 | G-1, G-2, G-3 |
| Cm-244 | A-1, A-2, A-3, A-4 |
| Co-60 | G-1, G-2, G-3 |
| Cr-51 | G-1, G-2, G-3 |
| Cs-134 | G-1, G-2, G-3 |
| Cs-137 | G-1, G-2, G-3 |
| Fe-55 | B-5, G-1 |
| Fe-59 | G-1, G-2, G-3 |
| Ga-67 | G-1, G-2, G-3 |
| H-3 ($H_2O$) | B-5 |
| H-3 (gas) | B-1 |
| I-123 | G-1, G-2, G-3 |
| I-125 | G-1 |
| I-131 | G-1, G-2, G-3 |
| In-113m | G-1, G-2, G-3 |
| Ir-192 | G-1, G-2, G-3 |
| Kr-85 | B-1, B-2, G-1, G-2, G-3 |
| Kr-87 | B-1, B-2, G-1, G-2, G-3 |
| Kr-88 | B-1, B-2, G-1, G-2, G-3 |
| Mn-54 | G-1, G-2, G-3 |
| Mo-99 | G-1, G-2, G-3 |
| N-13 | B-1, B-2, G-1, G-2, G-3 |
| O-15 | B-1, B-2, G-1, G-2, G-3 |
| P-32 | B-3, B-4, B-5 |
| Pm-147 | B-3, B-4, B-5 |
| Po-210 | A-1, A-2, A-3, A-4 |
| Pu-238 | A-1, A-2, A-3, A-4 |
| Pu-239 | A-1, A-2, A-3, A-4 |
| Pu-240 | A-1, A-2, A-3, A-4 |
| S-35 | B-5 |
| Se-75 | G-1, G-2, G-3 |
| Sr-90 | B-3, B-4, B-5 |
| Tc-99 | B-3, B-4, B-5 |
| Te-201 | G-1, G-2, G-3 |
| Uranium (total alpha) | A-1, A-4 |
| Uranium (isotopic) | A-1, A-3 |
| Xe-133 | G-1 |
| Yb-169 | G-1, G-2, G-3 |
| Zn-65 | G-1, G-2, G-3 |

4. Quality Assurance Methods

Each facility required to measure their radionuclide emissions shall conduct a quality assurance program in conjunction with the radionuclide emission measurements. This program shall assure that the emission measurements are representative, and are of know precision and accuracy and shall include administrative controls to assure prompt response when emission measurements indicate unexpectedly large emissions. The program shall consist of a system of policies, organizational responsibilities, written procedures, data quality specifications, audits, corrective actions and reports. This quality assurance program shall include the following program elements:

4.1 The organizational structure, functional responsibilities, levels of authority and lines of communications for all activities related to the emissions measurement program shall be identified and documented.

4.2 Administrative controls shall be prescribed to ensure prompt response in the event that emission levels increase due to unplanned operations.

4.3 The samples collection and analysis procedures used in measuring the emissions shall be described including where applicable:

4.3.1 Identification of sampling sites and number of sampling points, including the rationale for site selections.

4.3.2 A description of sampling probes and representativeness of the samples.

4.3.3 A description of any continuous monitoring system used to measure emissions, including the sensitivity of the system, calibration procedures and frequency of calibration.

4.3.4 A description of the sample collection systems for each radionuclide measured, including frequency of collection, calibration procedures and frequency of calibration.

4.3.5 A description of the laboratory analysis procedures used for each radionuclide measured, including frequency of analysis, calibration procedures and frequency of calibration.

4.3.6 A description of the sample flow rate measurement systems or procedures, including calibration procedures and frequency of calibration.

4.3.7 A description of the effluent flow rate measurement procedures, including frequency of measurements, calibration procedures and frequency of calibration.

4.4 The objectives of the quality assurance program shall be documented and shall state the required precision, accuracy and completeness of the emission measurement data including a description of the procedures used to assess these parameters. Accuracy is the degree of agreement of a measurement with a true or known value. Precision is a measure of the agreement among individual measurements of the same parameters under similar conditions. Completeness is a measure of the amount of valid data obtained compared to the amount expected under normal conditions.

4.5 A quality control program shall be established to evaluate and track the quality of the emissions measurement data against preset criteria. The program should include where applicable a system of replicates, spiked samples, split samples, blanks and control charts. The number and frequency of such quality control checks shall be identified.

4.6 A sample tracking system shall be established to provide for positive identification of samples and data through all phases of the sample collection, analysis and reporting system. Sample handling and preservation procedures shall be established to maintain the integrity of samples during collection, storage and analysis.

4.7 Periodic internal and external audits shall be performed to monitor compliance with the quality assurance program. These audits shall be performed in accordance with written procedures and conducted by personnel who do not have responsibility for performing any of the operations being audited.

4.8 A corrective action program shall be established including criteria for when corrective action is needed, what corrective actions will be taken and who is responsible for taking the corrective action.

4.9 Periodic reports to responsible management shall be prepared on the performance of the emissions measurements program. These reports should include assessment of the quality of the data, results of audits and description of corrective actions.

4.10 The quality assurance program should be documented in a quality assurance project plan which should address each of the above requirements.

5. References

(1) American National Standards Institute, "Guide to Sampling Airborne Radioactive Materials in Nuclear Facilities", ANSI–N13.1–1969, American National Standards Institute, New York, New York (1969).

(2) American Public Health Association, "Methods of Air Sampling", 2nd Edition, Method 605, "Tentative Method of Analysis for Plutonium content of Atmospheric Particulate Matter, American Public Health Association, New York, NY (1977).

(3) Ibid, Method 601, "Tentative Method of Analysis for Gross Alpha Radioactivity Content of the Atmosphere."

(4) Ibid, Method 602 "Tentative Method of the Analysis for Gross Beta Radioactivity Content of the Atmosphere."

(5) Ibid, Method 608, "Tentative Method of Analysis for Strontium-90 Content of Atmospheric Particulate Matter."

(6) Ibid, Method 609, "Tentative Method of Analysis for Tritium Content of the Atmosphere."

(7) Ibid, Method 603, "Tentative Method of Analysis for Iodine-131 Content of the Atmosphere."

(8) American Society for Testing and Materials, 1986 Annual Book ASTM Standards, Designation D–3648–78, "Standard Practices for the Measurement of Radioactivity." American Society for Testing and Materials, Philadelphia, PA (1986).

(9) Ibid, Designation D–3649–85, "Standard Practice for High Resolution Gamma Spectrometry."

(10) Ibid, Designation D–1943–81 "Standard Test Method for Alpha Particle Radioactivity of Water."

(11) Ibid, Designation D–1890–81 "Standard Test Method for Beta Particle Radioactivity of Water."

(12) Ibid, Designation D–2459–72, "Standard Test Method for Gamma Spectrometry of Water."

(13) Ibid, Designation D–3972–82, "Standard Test Method for Isotopic Uranium in Water by Radiochemistry."

(14) Ibid, Designation D–2907–83, "Standard Test Methods for Microquantities of Uranium in Water by Fluorometry."

(15) Ibid, Designation E–318, "Standard Test Method for Uranium in Aqueous Solutions by Colorimetry."

(16) Ibid, Designation D–3084–75, "Standard Practice for Alpha Spectrometry of Water."

(17) Corley, J.P. and C.D Corbit, "A Guide for Effluent Radiological Measurements at DOE Installations" DOE/EP–0096, Pacific Northwest Laboratories, Richland, Washington (1983).

(18) Department of Energy "RESL Analytical Chemistry Branch Procedures Manual" IDO–12096, U.S. Department of Energy, Idaho Falls, Idaho (1982).

(19) Environmental Protection Agency "Radiochemical Analytical Procedures for Analysis of Environmental Samples", EMSL–LV–0539–17, U.S. Environmental Protection Agency, Environmental Monitoring and Support Laboratory, Las Vegas, Nevada (1979).

(20) Environmental Protection Agency, "Radiochemistry Procedures Manual" EPA 520/5–84–006, Eastern Environmental Radiation Facility Montgomery, Alabama (1984).

(21) National Council on Radiation Protection and Measurements, NCRP Report No. 50, Environmental Radiation Measurements", National Council on Radiation Protection and Measurement, Bethesda, Maryland (1976).

(22) Ibid, Report No. 47, "Tritium Measurement Techniques." (1976)

(23) Ibid, Report No. 58 "A Handbook of Radioactivity Measurement Procedures" (1985).

(24) Environmental Protection Agency, "Interim Indoor Radon and Radon Decay Product Measurement Protocols", EPA 520/1–86–04, U.S. Environmental Protection Agency, Washington, DC (1986).

**Appendix B—[Amended]**

15. By adding the following Method to the list of method in Appendix B:

Method 115—Monitoring for radon-222 emissions

This Appendix describes the monitoring methods which must be used in determining the radon-222 emissions from underground uranium mines, uranium mill tailings piles, phosphogypsum stacks, and other piles of waste material emitting radon.

*1. Radon-222 Emissions from Underground Uranium Mine Vents*

1.1 Sampling Frequency and Calculation of Emissions. Radon-222 emissions from underground uranium mine vents shall be determined using one of the following methods:

1.1.1 Continuous Measurement. These measurements shall be made and the emissions calculated as follows:

(a) The radon-222 concentration shall be continuously measured at each mine vent whenever the mine ventilation system is operational.

(b) Each mine vent exhaust flow rate shall be measured at least 4 times per year.

(c) A weekly radon-222 emission rate for the mine shall be calculated and recorded weekly as follows:

$$A_w = C_1Q_1T_1 + C_2Q_2T_2 + \ldots C_nQ_nT_1$$

Where:

$A_w$ = Total radon-222 emitted from the mine during week(Ci)

$C_1$ = Average radon-222 concentration in mine vent i(Ci/m³)

$Q_1$ = Volumetric flow rate from mine vent i(m³/hr)

$T_1$ = Hours of mine ventilation system operation during week for mine vent i(hr)

(d) The annual radon-222 emission rate is the sum of the weekly emission rates during a calendar year.

1.1.2 Periodic Measurement. This method is applicable only to mines that continuously operate their ventilation system except for extended shutdowns. Mines which start up and shut down their ventilation system frequently must use the continuous measurement method described in Section 1.1.1 above. Emission rates determined using periodic measurements shall be measured and calculated as follows:

(a) The radon-222 shall be continuously measured at each mine vent for at least one week every three months.

(b) Each mine vent exhaust flow rate shall be measured at least once during each of the radon-222 measurement periods.

(c) A weekly radon-222 emission rate shall be calculated for each weekly period according to the method described in Section 1.1.1 In this calculation T = 168 hr.

(d) The annual radon-222 emission rate from the mine should be calculated as follows:

$$A_y = \frac{52 - W_s}{n} (A_{w1} + A_{w2} + \ldots A_{wn})$$

Where:

$A_y$ = Annual radon-222 emission rate from the mine (Ci)

$A_{wi}$ = Weekly radon-222 emission rate during the measurement period i(Ci)

n = Number of weekly measurement periods per year

$W_s$ = Number of weeks during the year that the mine ventilation system is shut down in excess of 7 consecutive days, i.e. the sum of the number of weeks each shutdown exceeds 7 days.

1.2 *Test Methods and Procedures.* Each underground mine required to test its emission, unless an equivalent or alternative method has been approved by the Administrator, shall use the following test methods:

1.2.1 Test Method 1 of Appendix A to Part 60 shall be used to determine velocity traverses. The sampling point in the duct shall be either the centroid of the cross section or the point of average velocity.

1.2.2 Test Method 2 of Appendix A to Part 60 shall be used to determine velocity and volumetric flow rates.

1.2.3 Test Method 6A of Appendix B, Method 114 to Part 61 shall be used for the analysis of radon-222.

*2. Radon-222 Emissions From Uranium Mill Tailings Piles*

2.1 Measurement and Calculation of the Mean Radon Flux.

2.1.1 *Frequency of Flux Measurements.* Radon flux measurements shall be performed on uranium mill tailings piles after disposal as described below. Additional measurements shall be performed at any time if the cover on the pile is disturbed or erodes in a manner that could cause a significant increase of the mean radon flux of the pile.

2.1.2 *Distribution and Number of Flux Measurements.* Radon flux measurements shall be made at approximately regularly spaced locations over the surface of the tailings pile. The minimum number of radon flux measurements required to determine the mean flux is 100 or two per acre whichever is smaller.

2.1.3 *Restrictions to Radon Flux Measurements.* The following restrictions are placed on making radon flux measurements:

(a) Measurements shall not be initiated within 24 hours of a rainfall.

(b) If a rainfall occurs during the 24-hour measurement period, the measurement is invalid if the seal has washed away or if the collector is surrounded by water.

(c) Measurements shall not be performed if the ambient temperature is below 35°F or if the ground is frozen.

2.1.4 *Radon Flux Measurements.* Measuring radon flux involves the adsorption of radon on activated



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charcoal in a large-area collector. The radon collector is placed on the surface of the tailings pile area to be measured and allowed to collect radon for a time period of 24 hours. The radon collected on the charcoal is measured by gamma-ray spectroscopy. The detailed measurement procedure provided in Appendix A of EPA 520/5-85-029(1) shall be used to measure the radon flux on the tailings piles, except the surface of the tailings pile cover shall not be penetrated by the lip of the collector as directed in the procedure, rather the collector shall be carefully positioned on a flat surface with soil or fine sand, containing no more than background quantities of radium-226, used to seal the edge.

2.1.5 *Calculations.* The radon flux calculations shall be made as provided in Appendix A of reference EPA86(1). The mean radon flux for the uranium mill tailings pile shall be calculated by summing all individual flux measurements and dividing by the total number of flux measurements.

2.1.6 *Reporting.* The results of individual flux measurements, the approximate measurement locations on the tailings pile, and the mean radon flux shall be included in the emission test report. Any condition or unusual event that occurred during the measurements that could significantly affect the results shall also be reported.

*3.0 Radon-222 Emissions From Phosphogypsum Stacks*

3.1 Measurement and Calculation of the Mean Radon Flux. Radon flux measurements shall be made on phosphogypsum stacks as described below:

3.1.1 *Distribution and number of flux measurements.* The distribution and number of radon flux measurements required on a stack will depend on clearly defined areas of the stack (called regions) that can have significantly different radon fluxes due to surface conditions. The mean radon flux shall be determined for each individual region of the stack. Regions that shall be considered are:

(a) Water covered areas,
(b) Water saturated areas (beaches),
(c) Loose and dry top surface areas,
(d) Hard-packed roadways, and
(e) Sides.

3.1.2 *Number of flux measurements.* Radon flux measurements shall be made within each region on the phosphogypsum stack, except for those areas covered with water. Measurements shall be made at regularly spaced locations across the surface of the region, realizing that surface roughness will prohibit measurements in some areas of a region. The minimum number of flux measurements considered necessary to determine a representative mean radon flux value for each type of region is:

(a) Water covered area—no measurements required as radon flux is assumed to be zero.
(b) Water saturated beaches—50 radon flux measurements.
(c) Loose and dry top surface—100 radon flux measurements.
(d) Hard-packed roadways—50 radon flux measurements, and
(e) Sides—100 radon flux measurements.

A minimum of 300 measurements are required. A stack that has no water cover can be considered to consist of two regions, top and sides, and will require a minimum of only 200 measurements.

3.1.3 *Restrictions to radon flux measurements.* The following restrictions are placed on making radon flux measurements:

(a) Measurements shall not be initiated within 24 hours of a rainfall.
(b) If a rainfall occurs during the 24 hour measurement period, the measurement is invalid if the seal around the lip of the collector has washed away or if the collector is surrounded by water.
(c) Measurements shall not be performed if the ambient temperature is below 35°F if the ground is frozen.

3.1.4 *Areas of stack regions.* The approximate area of each region of the stack shall be determined in units of square meters.

3.1.5 *Radon flux measurements.* Measuring radon flux involves the adsorption of radon on activated charcoal in a large-area collector. The radon collector is placed on the surface of the stack area to be measured and allowed to collect radon for a time period of 24 hours. The radon collected on the charcoal is measured by gamma-ray spectroscopy. The detailed measurement procedure provided in Appendix A of EPA 520/5-85-0029(1) shall be used to measure the radon flux on phosphogypsum stacks, except the surface of the phosphogypsum shall not be penetrated by the lip of the radon collector as directed in the procedure, rather the collector shall be carefully positioned on a flat surface with soil or phosphogypsum used to seal the edge.

3.1.6 *Calculations.* The mean radon flux for each region of the phosphogypsum stack and for the total stack shall be calculated and reported as follows:

(a) The individual radon flux calculations shall be made as provided in Appendix A EPA 86 (1). The mean radon flux for each region of the stack shall be calculated by summing all individual flux measurements for the region and dividing by the total number of flux measurements for the region.

(b) The mean radon flux for the total phosphogypsum stack shall be calculated as follows:

$$J_s = \frac{J_1A_1 + J_2A_2 + J_iA_i}{A_t}$$

Where:
$J_s$ = Mean flux for the total stack ($pCi/m^2$-s)
$J_i$ = Mean flux measured in region i($pCi/m^2$-s)
$A_i$ = Area of region i($m^2$)
$A_t$ = Total area of the stacks

3.1.7 *Reporting.* The results of individual flux measurements, the approximate locations on the stack, and the mean radon flux for each region and the mean radon flux for the total stack shall be included in the emission test report. Any condition or unusual event that occurred during the measurements that could significantly affect the results should be reported.

4.0 References.

(1) Hartley, J.N. and Freeman, H.D., "Radon Flux Measurements on Gardinier and Royster Phosphogypsum Piles Near Tampa and Mulberry, Florida," U.S. Environmental Protection Agency Report, EPA 520/5-85-029, January 1986.

16. By adding the following Appendix D to Part 61:

**Appendix D—Estimated Emissions Methods for Estimating Radionuclide Emissions**

*1. Purpose and Background*

Facility owners or operators may estimate radionuclide emissions to the atmosphere for dose calculations instead of measuring emissions. Particulate emissions from mill tailing piles should be estimated using the procedures listed in reference #2. All other emissions may be estimated by using the "Procedures" listed below, or using the method described in reference #1.

*2. Procedure*

To estimate emissions to the atmosphere:

(a) Determine the amount (in curies) used at facilities for the period under consideration. Radioactive materials in sealed packages that remain unopened, and have not leaked during the assessment period should not be included in the calculation.

(b) Multiply the amount used by the following factors which depend on the physical state of the radionuclide. They are:

(i) 1 for gases;
(ii) $10^{-3}$ for liquids or particulate solids; and
(iii) $10^{-6}$ for solids.

If any nuclide is heated to a temperature of 100 degrees Celsius or more, boils at a temperature of 100 degrees Celsius or less, or is intentionally dispersed into the environment, it must be considered to be a gas.

(c) If a control device is installed between the place of use and the point of release, multiply emissions from (b) by an adjustment factor. These are presented in Table 1.



TABLE 1.—ADJUSTMENT TO EMISSION FACTORS FOR EFFLUENT CONTROLS

| Controls | Types of radionuclides controlled | Adjustment factor to emissions | Comments and conditions |
|---|---|---|---|
| HEPA Filters | Particulates | 0.01 | Not applicable to gaseous radionuclides; periodic testing is prudent to ensure high removal efficiency. |
| Fabric Filter | Particulates | 0.1 | Monitoring would be prudent to guard against tears in filter. |
| Sintered Metal | Particulates | 1 | Insufficient data to make recommendation. |
| Activated Carbon Filters | Iodine Gas | 0.1 | Efficiency is time dependent; monitoring is necessary to ensure effectiveness. |
| Douglas Bags: Held 1 week or longer for decay | Xenon | ([1]) 0.5 | Based on xenon half-life of 5.3 days. |
| Released within 1 week | Xenon | 1 | Provides no reduction of exposure to general public. |
| Venturi Scrubbers | Particulates | 0.05 | Although venturis may remove gases, variability in gaseous removal efficiency dictates adjustment factor for particulates only. |
| | Gases | 1 | |
| Packed Bed Scrubbers | Gases | 0.1 | Not applicable to particulates. |
| Electrostatic Precipitators | Particulates | 0.05 | Not applicable for gaseous radionuclides. |
| Xenon Traps | Xenon | 0.1 | Efficiency is time dependent; monitoring is necessary to ensure effectiveness. |
| Fume Hoods | All | 1 | Provides no reduction to general public exposures. |
| Vent Stacks | All | 1 | Generally provides no reduction of exposure to general public. |

[1] Per week.

**References**

(1) Environmental Protection Agency, "A Guide for Determining Compliance with the Clean Air Act Standards for Radionuclides Emissions from NRC-Licensed and Non-DOE Federal Facilities", EPA 5201/1-89-002, January 1989.

(2) Nuclear Regulatory Commission, "Methods for Estimating Radioactive and Toxic Airborne Source Terms for Uranium Milling Operations", U.S. Nuclear Regulatory Commission Regulatory Guide 3.59, March 1987.

17. By adding the following Appendix E to Part 61:

**Appendix E—Compliance Procedures Methods for Determining Compliance With Subpart I**

*1. Purpose and Background*

This Appendix provides simplified procedures to reduce the burden on Nuclear Regulatory Commission (NRC) licensees, and non-Department of Energy Federal facilities in determining compliance with 40 CFR Part 61, Subpart I. The procedures consist of a series of increasingly more stringent steps, depending on the facility's potential to exceed the standard.

First, a facility can be found in compliance if the quantity of radioactive material possessed during the year is less than that listed in a table of annual possession quantities. A facility will also be in compliance if the average annual radionuclide emission concentration is less than that listed in a table of air concentration levels. If the facility is not in compliance by these tables, it can establish compliance by estimating a dose using screening procedure developed by the National Council on Radiation Protection and Measurements with a radiological source term derived using EPA approved emission factors. These procedures are described in a "Guide for Determining Compliance with the Clean Air Act Standards for Radionuclide Emissions From NRC-Licensed and Non-DOE Federal Facilities."

A user-friendly computer program called COMPLY has been developed to reduce the burden on the regulated community. The Agency has also prepared a "User's Guide for the COMPLY Code" to assist the regulated community in using the code, and in handling more complex situations such as multiple release points. The basis for these compliance procedures are provided in "Background Information Document: Procedures Approved for Demonstrating Compliance with 40 CFR Part 61, Subpart I". The compliance model is the highest level in the COMPLY computer code and provides for the most realistic assessment of dose by allowing the use of site-specific information.

*2. Table of Annual Possession Quantity.*

(a) Table 1 may be used for determining if facilities are in compliance with the standard. The possession table can only be used if the following conditions are met:

(i) No person lives within 10 meters of any release point; and

(ii) No milk, meat, or vegetables are produced within 100 meters of any release point.

(b) All restrictions on selecting the physical state of the radionuclide from section 61.103 apply to section 61.104. (c) If the quantity of any radionuclide possessed annually is less than the value listed in Table 1, the facility is in a compliance. If a facility uses multiple radionuclides, and the sum of the amount of each used annually divided by the limit from Table 1 is less than unity, then the facility is in compliance.

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TABLE 1.—ANNUAL POSSESSION QUANTITIES FOR ENVIRONMENTAL COMPLIANCE

| Radionuclide | Annual possession quantities (Ci/yr) | | |
|---|---|---|---|
| | Gaseous [1] form | Liquid/powder form | Solid form |
| Ag-110m | 8E-05 | 8E-02 | 8E+01 |
| Am-241 | 2E-07 | 2E-04 | 2E-01 |
| Ar-41 | 1E+00 | E | |
| Au-198 | 4E-02 | 4E+01 | 4E-04 |
| Ba-140 | 2E-03 | 2E+00 | 2E+03 |
| C-14 | 3E-01 | 3E+02 | 3E+05 |
| Ce-144 | 1E-03 | 1E+00 | 1E+03 |
| Cm-244 | 3E-08 | 3E-03 | 3E+00 |
| Co-60 | 1E-05 | 1E-02 | 1E+01 |
| Cr-51 | 5E-02 | 5E+01 | 5E+04 |
| Cs-134 | 4E-05 | 4E-02 | 4E+01 |
| Cs-137 | 2E-05 | 2E-02 | 2E+01 |
| Eu-154 | 1E-06 | 1E-02 | 1E+01 |
| Fe-59 | 1E-03 | 1E+00 | 1E+03 |
| Ga-67 | 1E-01 | 1E+02 | 1E+05 |
| Gd-152 | 1E-06 | 1E-03 | 1E+00 |
| H-3 | 8E+00 | 8E+03 | 8E+06 |
| Hf-181 | 2E-03 | 2E+00 | 2E+03 |
| Hg-197 | 2E-01 | 2E+02 | 2E+05 |
| Hg-203 | 4E-03 | 4E+00 | 4E+03 |
| I-123 | 4E-01 | 4E+02 | 4E+05 |
| I-125 | 5E-03 | 5E+00 | 5E+03 |
| I-131 | 6E-03 | 6E+00 | 6E+03 |
| In-113m | 2E+00 | 2E+03 | 2E+06 |
| Ir-192 | 8E-04 | 8E-01 | 8E+02 |
| K-40 | 6E-05 | 6E-02 | 6E+01 |
| Kr-83m | 7E+03 | | |
| Kr-85 | 5E+02 | | |
| Kr-85m | 9E+00 | | |
| Kr-87 | 2E+00 | | |
| Mn-54 | 2E-04 | 2E-01 | 2E+02 |
| Mo-99 [2] | 7E-02 | 7E+01 | 7E+04 |
| Na-24 | 2E-02 | 2E+01 | 2E+04 |
| Nb-95 | 2E-03 | 2E+00 | 2E+03 |
| Ni-63 | 3E-01 | 3E+02 | 3E+05 |

[1] Radionuclides boiling at 100 °C or less, or exposed to a temperature of 100 °C or more, must be considered to be a gas.

[2] Mo-99 contained in a generator to produce technetium-99 can be assumed to be a solid.

TABLE 1.—ANNUAL POSSESSION QUANTITIES FOR ENVIRONMENTAL COMPLIANCE (CONTINUED)

| Radionuclide | Annual possession quantities (Ci/yr) | | |
|---|---|---|---|
| | Gaseous form [1] | Liquid powder form | Solid form |
| P-32 | 5E-03 | 5E+00 | 5E+03 |
| Pb-210 | 5E-05 | 5E-02 | 5E+01 |
| Po-210 | 9E-05 | 9E-02 | 9E+01 |
| Ru-103 | 3E-03 | 3E+00 | 3E+03 |
| S-35 | 3E-02 | 3E+00 | 3E+04 |
| Sb-124 | 5E-04 | 5E-01 | 5E+02 |
| Sc-46 | 3E-04 | 3E-01 | 3E+02 |
| Se-75 | 1E-03 | 1E+00 | 1E+03 |
| Sn-113 | 2E-03 | 2E+00 | 2E+03 |

TABLE 1.—ANNUAL POSSESSION QUANTITIES FOR ENVIRONMENTAL COMPLIANCE (CONTINUED)—Continued

| Radionuclide | Annual possession quantities (Ci/yr) | | |
|---|---|---|---|
| | Gaseous form [1] | Liquid powder form | Solid form |
| Sr-85 | 2E-03 | 2E+00 | 2E+03 |
| Sr-90 | 8E-04 | 8E-01 | 8E+02 |
| Tc-95m | 1E-03 | 1E+00 | 1E+03 |
| Tc-99m | 1E+00 | 1E+03 | 1E+06 |
| W-187 | 9E-02 | 9E+01 | 9E+04 |
| Xe-133 | 4E+01 | | |
| Xe-133m | 5E+01 | | |
| Xe-135 | 6E-00 | | |
| Zn-65 | 3E-04 | 3E-01 | 3E+02 |

[1] Radionuclides boiling at 100 °C or less, or exposed to a temperature of 100 °C or more, must be considered to be a gas.

*3. Table of Concentration Levels*

(a) Table 2 may be used for determining if facilities are in compliance with the standard.

1. The concentration table can only be used if all releases are from point sources and concentrations have been measured using EPA-approved methods, and the distance between each stack or vent and the nearest resident is greater than 3 times the diameter of the stack or vent.

2. If the concentration of any radionuclide released from the facility is less than the value listed in Table 2, the facility is in compliance. If a facility releases multiple radionuclides, and the sum of the concentration of each radionuclide divided by its limiting concentration from Table 2 is less than unity, then the facility is in compliance.

*4. NCRP Screening Model*

The procedures described in National Council on Radiation Protection and Measurement Commentary No. 3 "Screening Techniques for Determining Compliance with Environmental Standards" may be used to determine the dose to members of the general public from emissions of radionuclides to the atmosphere.

*5. The COMPLY Computer Code*

The COMPLY computer code may be used to determine compliance with Subpart I. The compliance model in the COMPLY computer code may be used to determine the dose to members of the general public from emissions of radionuclides to the atmosphere. The compliance model contains more radionuclides than the current version of NCRP Commentary No. 3.

TABLE 2.—CONCENTRATION LEVELS FOR ENVIRONMENTAL COMPLIANCE

| Radionuclide | Concentration (Ci/m³) | Radionuclide | Concentration (Ci/m³) |
|---|---|---|---|
| Ag-110m | 7E-14 | Kr-85 | 7E-07 |
| Am-241 | 2E-15 | Kr-85m | 1E-08 |
| Ar-41 | 1E-09 | Kr-87 | 3E-09 |
| Au-198 | 1E-11 | Mn-54 | 2E-13 |
| Ba-140 | 1E-12 | Mo-99 | 8E-12 |
| C-14 | 4E-12 | Na-24 | 2E-11 |
| Ce-144 | 7E-13 | Nb-95 | 2E-12 |
| Cm-244 | 4E-15 | Ni-63 | 1E-11 |
| Co-60 | 2E-14 | P-32 | 7E-14 |
| Cr-51 | 5E-11 | Pb-210 | 3E-15 |
| Cs-134 | 2E-14 | Po-210 | 8E-15 |
| Cs-137 | 2E-14 | Ru-103 | 2E-12 |
| Eu-154 | 2E-14 | S-35 | 5E-13 |
| Fe-59 | 8E-13 | Sb-124 | 4E-13 |
| Ga-67 | 8E-11 | Sc-46 | 4E-13 |
| Gd-152 | 2E-14 | Se-75 | 4E-13 |
| H-3 | 4E-09 | Sn-113 | 5E-13 |
| Hf-181 | 2E-12 | Sr-85 | 8E-13 |
| Hg-197 | 2E-11 | Sr-90 | 2E-14 |
| Hg-203 | 9E-14 | Tc-95m | 1E-13 |
| I-123 | 5E-10 | Tc-99 | 2E-13 |
| I-125 | 9E-14 | Tc-99m | 2E-9 |
| I-131 | 3E-9 | W-187 | 2E-11 |
| In-113m | 3E-09 | Xe-133 | 5E-8 |
| Ir-192 | 8E-13 | Xe-133m | 7E-9 |
| K-40 | 3E-14 | Xe-135 | 1E-8 |
| Kr-83m | 9E-06 | Zn-65 | 7E-14 |

**6. References**

(1) Environmental Protection Agency, "A Guide for Determining Compliance with the Clean Air Act Standards for Radionuclides Emissions from NRC-Licensed and Non-DOE Federal Facilities", EPA 520/1-89-002, January 1989.

(2) Environmental Protection Agency, "User's Guide for the COMPLY code", EPA 520/1-89-003, January 1989.

(3) Environmental Protection Agency, "Background Information Document: Procedures Approved for Demonstrating Compliance with 40 CFR Part 61, Subpart I", EPA 520/1-89-001, January 1989.

(4) National Council on Radiation Protection and Measurement, "Screening Techniques for Determining Compliance with Environmental Standards", NCRP Commentary No. 3, Revision of January 1989.

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Part V

# Administrative Committee of the Federal Register

1 CFR Part 2 et al.

**Updates and Changes to Publication Procedures; Final Rule**

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## ADMINISTRATIVE COMMITTEE OF THE FEDERAL REGISTER

**1 CFR Parts 2, 3, 5, 6, 7, 8, 9, 10, 11, 12, 15, 16, 17, 18, 19, 20, 21 and 22**

**Updates and Changes to Publication Procedures; Final Rule**

**AGENCY:** Administrative Committee of the Federal Register.

**ACTION:** Final rule.

**SUMMARY:** The Administrative Committee of the Federal Register (ACFR) is updating its regulations for the Office of the Federal Register (OFR) publication system to clarify certain policies and reflect current procedures. These amendments concern availability of OFR publications, procedure and timing of regular schedule, reinstatement of expired regulations, effective dates and time periods, and technical amendments. The action is intended to improve publication procedures and better serve agencies and the public.

**EFFECTIVE DATE:** April 6, 1989.

**FOR FURTHER INFORMATION CONTACT:** Frances McDonald or Sandra McLean (202) 523–4534.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of August 9, 1988 (53 FR 29990) the ACFR proposed to amend some of its regulations to clarify certain policies and to reflect current procedures. All comments received were from Federal agencies with the exception of one comment from a State agency. The ACFR has analyzed all the comments and based on them, has made several changes to the regulations as proposed.

### Availability of Office of the Federal Register Publications

No comments were received on the ACFR's proposed consolidation and updating of regulations concerning availability of OFR publications.

The Federal Register Act gives the ACFR the authority to regulate the number of copies of OFR publications to be distributed without charge to members of the Government for official use and to be made available for purchase by the public. (44 U.S.C. 1506)

The ACFR is amending its regulations by consolidating all information on the availability of OFR publications in a new Subchapter D consisting of two parts, Parts 11 and 12. Information on subscriptions and official distribution within the Federal Government is presently dispersed throughout Chapter 1, with information located in 1 CFR 3.4, 1 CFR Part 7, 1 CFR 8.8, 1 CFR 9.3, 1 CFR 10.4, and 1 CFR 10.14.

The consolidation of all regulations concerning the availability of OFR publications provides a central, convenient source of information for users of OFR publications. Additionally, future revision of these consolidated regulations is simplified.

Some of the regulations consolidated in Subchapter D are out-of-date. The ACFR, therefore, revises these regulations. The regulations are also restructured and reworded for consistency. Since several OFR publications are now available in paper, microfiche, and magnetic tape forms, some of the regulations are clarified to identify the specific form to which the text applies. Also, present regulations provide that various OFR publications are distributed in the number needed, without charge to members of the Government for official use. The provision of these copies is based on a written request to the Director of the Federal Register, therefore, this procedure is included when applicable.

The availability of the slip laws and the U.S. Statutes at Large is not controlled by the ACFR and therefore information on their availability is not included in the new Part 11. In addition to paper and microfiche, the **Federal Register**, the Code of Federal Regulations (CFR), and The United States Government Manual, are now available in magnetic tapes. The current prices and availability of these magnetic tapes are added in the new Part 11.

The monthly Federal Register Index and the LSA (List of CFR Sections Affected) are included with each **Federal Register** subscription and each official distribution. Statements to this effect have been added in the new §§ 11.2 and 12.1(e). Additionally, the monthly Federal Register Index and LSA are available as separate subscriptions. A regulation on subscription to the LSA is added at § 11.8. A regulation on subscription to the monthly Federal Register Index is redesignated from § 3.4(b)(8) to § 11.8.

### Regulations Affected by Court Decision or Act of Congress

The ACFR proposed § 8.10 to emphasize the requirement that agencies publish documents in the **Federal Register** when their regulations are affected by a court decision or an Act of Congress. The Federal Register Act at 44 U.S.C. 1510 requires that the CFR contain agency regulations having general applicability and legal effect that are relied upon by the agency in the discharge of its functions and are in effect as of certain dates specified by the ACFR. Section 1510(e) specifically contemplates a system wherein agencies publish documents in the **Federal Register**, as necessary, to amend the CFR. The CFR together with these documents are prima facie evidence of the text of the regulations and the fact that they are in effect on and after the revision date of the CFR volume.

Although agency commenters acknowledged their responsibility for keeping their regulations current, proposed § 8.10 created a great deal of confusion as to how to comply with the rule in various fact situations that may arise.

In view of the agencies' difficulties in interpreting the proposed § 8.10, the ACFR believes it may not be appropriate to set out a general rule that would be applicable to widely varying facts and circumstances surrounding particular court decisions and statutes. Moreover, proposed § 8.10 is somewhat redundant in view of the fact that the ACFR is amending § 8.1 to more precisely mirror the language of 44 U.S.C. 1510 providing that the CFR contain regulations having legal effect. As discussed previously, the requirement that the CFR contain documents having legal effect places responsibility on each agency to expeditiously amend its regulations whenever the regulations are rendered ineffective in whole or in part by a court decision or an Act of Congress.

### Filing for Public Inspection and Publication Schedules

The Federal Register Act of 1935 provides for an official publication called the **Federal Register** in which all rules and regulations of Federal agencies shall systematically and uniformly be published. Under that Act, the ACFR is charged with regulating the "manner and form" in which the **Federal Register** shall be printed. (44 U.S.C. 1508(3)).

The ACFR provides a regular schedule for filing for public inspection and **Federal Register** publication in 1 CFR 17.2. Section 17.2(a) presently provides that receipt of a document by the OFR in the ordinary course of business (8:45 a.m.–5:15 p.m.) is considered to be a request for filing for public inspection and publication on the regular schedule, that is, 3 working days later.

Before a document can be scheduled for filing for public inspection and publication, it must be reviewed to ensure that it meets publication requirements set out in 1 CFR Chapters I and II. When documents are submitted late in the afternoon, the amount of time available for processing is severely decreased. As long as the number of documents submitted late in the day was small, this did not pose a problem for the printing and overall production of the **Federal Register**. Experience now shows, however, that so many documents are being submitted late in the afternoon that assigning the 3-day publication schedule for documents received late in the day is not practical and does not allow efficient use of editorial and printing staff resources.

This rule changes the deadline for receiving documents for filing for public inspection and publication on the regular 3-day schedule to 2:00 p.m. Documents received after 2:00 p.m. receive the next working day's regular filing for public inspection and publication schedule. The 2:00 p.m. deadline greatly improves the situation created by a large number of documents submitted late in the afternoon and allows for a more efficient production process.

One commenter suggested changing the 2:00 p.m. deadline for receiving documents for publication on the regular 3-day schedule to a later cutoff time in order to accommodate the use of agency shuttles after lunchtime. The ACFR cannot move the deadline back and still ensure that the OFR has adequate time for processing documents.

While the Administrative Committee recognizes that requiring receipt of documents by 2:00 p.m. to qualify for OFR's regular schedule may necessitate certain agency administrative adjustments, it believes that the overall benefits justify this change. Emergency processing of documents will continue to be offered as provided in 1 CFR 17.3 and new §§ 17.5 and 17.6.

One commenter expressed concern that the 2:00 p.m. deadline for receiving documents for the regular 3-day schedule might change the OFR's current practice on "emergency filings". The commenter urged that this current practice on emergency filings be codified in 1 CFR 17.2. The commenter further suggested that the provision that a document is filed only after it has been received, processed and assigned a publication date be included in 1 CFR 17.2.

The part heading for Part 17 has been revised to read "Filing for Public Inspection and Publication Schedules" and several sections in the part have been revised to clarify the difference between the regular and emergency schedules for filing for public inspection and the regular and emergency schedules for publication.

In response to the commenters' suggestions, a new paragraph is added to § 17.2 stating that each document received shall be filed for public inspection only after it has been received, processed and assigned a publication date. Also, language is added to clarify that the section provides for both the regular schedule for filing for public inspection and the regular schedule for publication.

New §§ 17.5 and 17.6 are added to codify the OFR's current practice on emergency filing for public inspection.

If an agency wishes to provide immediate notice to the public of a document's contents, the agency may request immediate processing and filing for public inspection. This is known as emergency filing for public inspection. A document may be filed for public inspection on the same day it is received if there is sufficient time for the document to be both processed and assigned a publication date by the OFR staff and inspected by the public. The document remains on public inspection until it is published according to either the regular or deferred schedule.

The ACFR has not provided in regulations for a regular schedule for Sunshine Act documents in the past, although the OFR has historically afforded these documents an expedited schedule. This rule formalizes the OFR's longstanding policy of assigning a 2-day schedule for each correctly submitted notice of meeting issued under the "Government in the Sunshine Act" (5 U.S.C. 522b(e)(3)). In accordance with the OFR's existing policy, each Sunshine Act document received before 4:00 p.m. is scheduled to be published 2 working days later. Each document received after 4:00 p.m. is scheduled to be published 3 working days later.

Sunshine Act documents are published in a separate section of the **Federal Register** under simplified formatting requirements. This simplified format allows an agency to present statutorily required information in a clear and efficient manner while providing public notice as quickly as possible. The OFR's abbreviated 2-day schedule is available because the simple, standardized format permits quicker processing.

### Reinstatement of Expired Regulations

Section 18.16 is added to provide that agencies may reinstate regulations removed from the CFR data base which have expired by their own terms only by republishing the regulations in full text in the **Federal Register**. This rule is necessary to enable OFR to maintain a more current CFR data base and to promote an orderly system of codification.

The addition of this rule was prompted by agency requests seeking to extend the effective dates of rules after they have expired by their own terms but prior to the annual revision date of the agency's CFR title, with the aim of avoiding republication of reinstated rules in full text in the **Federal Register**.

However ill-advised this method of reinstating rules is in terms of good rulemaking practice, the ACFR finds that, as a practical matter, it is not possible for agencies to rely on the revision date of the CFR title affected as the deadline for retroactively reinstating expired rules. The tendency of some agencies to fall back on CFR revision dates as a last resort for reviving regulations conflicts with OFR's procedures for updating the CFR.

Under the **Federal Register Act**, 44 U.S.C. 1510(c), the ACFR is authorized to regulate the codification of the CFR with a view to keeping the Code as current as practicable. In order to compile and issue revised editions of the CFR in a timely fashion, the OFR must update the CFR data base on a regular, if not daily basis. Once defunct regulations are removed from the data base, the only practical means of reinstating them is to republish them in full in the **Federal Register**.

As originally proposed, § 18.16 contemplated a complete ban on retroactive reinstatement of expired regulations. The ACFR continues to hold that good rulemaking practice calls for expired regulations to be republished in full. However, the ACFR recognizes that in those instances in which it is still possible for text to be retrieved from the CFR data base, the decision of whether to reinstate regulations by retroactive amendment or by full text republication is best left to the discretion of the individual agency.

Commenters who cited the annual revision date of the CFR title affected as the appropriate termination point for reinstating expired regulations should be aware that the CFR data base is subject to continuous updating to keep pace with changes in Federal regulations. It is the status of the text in the regularly updated data base at any given time that determines whether an expired rule may be reinstated, rather than the revision date of the CFR title. This procedure is necessary to ensure that new revisions of the CFR are delivered on a prompt basis.

Commenters should also bear in mind that the once yearly revision of the CFR is a minimum standard. The ACFR proposed § 18.16 to accommodate the prospect that the CFR may be made available in a more frequently updated form in the future.

As originally proposed, § 18.16 did not define the term "expired" within the regulatory text. Several commenters

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were confused as to the type of expired material to which § 18.16 applies. To clarify the focus of § 18.16, the ACFR modified the rule language to limit the application of § 18.16 to regulations which have "expired by their own terms". With this modification it should be clear that § 18.16 narrowly applies to rules of expressly limited duration which have expired under the terms set out in the effective dates section of the preamble or in the text of the rule itself.

Another misperception among commenters relates to rules which are currently being enforced but only have application with respect to past years. For example: the IRS retains rules in the CFR applicable to obligations and liabilities arising in past tax years; the Federal Crop Insurance Corporation carries rules relating to past crop years; the Health Care Financing Administration has regulations concerning Medicare and Medicaid benefits and payments which are applicable within various time periods; and the National Highway Traffic Safety Administration retains safety and fuel economy rules relating to a number of past model years.

These types of currently enforceable rules having prior application periods are not rules of expressly limited duration as contemplated by § 18.16. Agencies may continue to carry rules such as these in the CFR.

Another commenter opposed prompt removal of expired regulations from the CFR data base on the basis that removal should only be made at the agency's initiative. The ACFR points out that OFR does not remove regulations on its own initiative. Section 18.16 refers to regulations of expressly limited duration that have expired by their own terms. Removal of such regulations is self-executing in the sense that when the OFR finds it necessary to delete such material from the CFR data base, it is simply carrying out an agency's original instructions. These instructions are found in the effective dates section of the preamble or in text of the rule itself.

It should be noted that § 21.6 already requires agencies to submit notification by document for publication in the **Federal Register** when a codified regulation expires. Although the procedure for removal under § 21.6 might seem to be inconsistent with the procedure inherent in § 18.16, in practice, OFR will only implement an agency's original removal instructions as a last resort when the agency has failed to submit timely notification as required by § 21.6. The ACFR views these two procedures not as contradictory provisions, but rather as a necessary redundancy to ensure that the FR/CFR publication system is currently updated. While the addition of § 18.16 will enable the OFR to work toward a more current data base, the ACFR stresses that it continues to be the agencies' responsibility to follow § 21.16 to keep the CFR current.

Several commenters objected to § 18.16 by citing the expense of republication. The ACFR acknowledges that its requirement of full text republication could result in higher printing costs in some cases. However, such costs are largely avoidable when agencies monitor their regulations and make timely amendments.

Some commenters noted that there are circumstances in which it is not possible for an agency to amend its regulations until after the expiration date has passed. To address this concern as well as cost considerations cited above, the ACFR modified § 18.16 to require that agencies republish expired regulations in full text when the OFR has in fact deleted the regulations from the CFR data base. Agencies should consult with the OFR to determine the status of the text of regulations being reinstated. This should be done before the reinstatement document is submitted to agency officials for clearance and signature.

Even though under the new § 18.16 avoidance of full text republication may still be possible in some instances, the ACFR continues to strongly recommend that agencies publish rules in full when reinstating expired regulations. This procedure unambiguously satisfies the legal requirements for rulemaking and is clearly the most convenient for users of the FR/CFR publication system.

One commenter raised the issue of court ordered stays affecting regulations that are due to expire. The commenter correctly pointed out that OFR would not necessarily be aware of such court orders. The ACFR responds by noting that it is the responsibility of the agency to keep OFR informed. [See 1 CFR 18.17(c).] There should be no difficulty in preserving stayed regulations in the data base if agencies are conscientious in alerting OFR.

Finally, one commenter requested clarification as to whether a document that republishes reinstated rules in full should be a proposed or final rule. The extent to which the notice and comment provisions of the APA, 5 U.S.C. 551 *et seq.*, apply to reinstated rules is a question that is within the individual agency's discretion to determine.

**Effective Dates and Time Periods**

In 1 CFR 18.17, paragraph (a) is revised in accordance with the OFR's current practice, to reflect the fact that many agencies now rely on computed dates. The ACFR no longer expresses a preference for documents setting forth dates certain over documents setting forth time periods measured by a certain number of days after publication.

One commenter suggested that the ACFR revise 1 CFR 18.17(a) by using the words "rule document" rather than "document" and "shall" rather than "should". The ACFR does not agree with either suggestion. Paragraph (a) applies not only to rule but also proposed rule and notice documents which contain either a date certain or a time period measured by a certain number of days after publication in the **Federal Register**.

Paragraph (a) does not require a specific date or time period measured by a certain number of days after publication, because such a requirement would be inconsistent with the fact that some effective dates are dependent upon Congressional action. Thus, the term "shall" is not appropriate.

The ACFR received 5 comments on paragraph 18.17(c) which would require an agency to promptly publish a document in the **Federal Register** announcing an effective date in the event an act of Congress or court decision establishes or changes the effective date of an agency's regulation.

One commenter wanted a clarification of the term "court". The word "Federal" has been added to make that clarification.

Two commenters were concerned about publishing a document prior to a final determination by a court of last resort. To meet this concern, the word "dispositive" has been added to the regulation.

One commenter was concerned that the regulation would be inconsistent with the notice and comment requirements of the APA, 5 U.S.C. 553. This rule is not inconsistent with the APA. The documents required to be published in the **Federal Register** under 1 CFR 18.17 are ones in which there is no discretion on the part of the agency and therefore nothing for the public to comment on in accordance with 5 U.S.C. 553.

The responsibility for keeping agency regulations current and consistent with relevant acts of Congress and court orders rests with each agency. The APA requires that agencies provide notice of rulemaking by means of publication in the **Federal Register**. The ACFR takes the position that notice of a change to a regulation's effective date is an integral element of any rulemaking. Therefore, any change to an effective date due to act of Congress or court order should be published in the **Federal Register**.



Another commenter pointed out that not only acts of Congress but also Congressional action can establish an effective date. For example, some agencies must submit their regulations for Congressional review for a specified period of time based on days Congress is in session. The regulation has been expanded to also include Congressional action.

The OFR has received agency rulemaking documents that contained effective dates dependent upon Congressional action. Additionally, court orders or acts of Congress occasionally establish or change the effective date of an agency's regulation. In either of these instances, the public is only made aware of the changes in effective dates in a timely, convenient manner if the agency publishes a **Federal Register** document. Clearly the public has an interest in knowing the date on which compliance with agency regulations becomes mandatory. In most cases, the public can rely on the FR/CFR system to supply the effective date for any regulation.

In the past, the OFR has received a few agency documents, which contained both an effective date dependent upon Congressional action and language to the effect that persons interested in the effective date of the regulations should call the agency's contact person. Such an added burden upon the regulated public is unhelpful and unnecessary when **Federal Register** publication is available and required as the source of legal notice of rulemaking by the APA.

Furthermore, a practical consideration includes the burden such a vague effective date places on OFR editors updating the annual CFR volumes. When agency documents refer the public to the agency for a regulation's effective date, OFR editors must call the agency to discover the status of each such regulation prior to updating the yearly revision of the CFR volumes. Thus, the OFR as well as the public, must go outside the FR/CFR system to discover the current status of these regulations.

A second consideration is the ACFR's goal to improve Federal agencies' access to the most current text of the CFR. In order to implement this goal and maintain an orderly scheme of codification, the OFR editors must know the effective date of each regulation.

This regulation satisfies the legal requirements for rulemaking, relieves a presently existing burden on the public, helps maintain an orderly system of codification, and is compatible with ACFR's plans to fully implement a currently maintained data base. For these reasons, the ACFR amends 1 CFR 18.17 by adding a new paragraph (c) to require that an agency promptly publish a document in the **Federal Register** announcing the effective date in the event an effective date is dependent upon Congressional action, or an act of Congress or a dispositive Federal court decision establishes or changes the effective date of an agency regulation.

**Updating Regulations**

The ACFR has the statutory responsibility for maintaining the entire FR/CFR publication system and preserving its practical usefulness. This governmentwide responsibility requires that the ACFR issue regulations that will ensure and facilitate access to Government documents.

Some of the regulations in 1 CFR are simply out-of-date. The ACFR, therefore, is removing or amending these regulations to reflect current publication procedures.

The ACFR received several comments supporting the proposal to update its regulations and expressing appreciation to the OFR staff for its document drafting and reviewing services. Through this consultative process, the OFR staff will continue to work with agencies to resolve their document drafting problems.

The ACFR makes a nomenclature change in 1 CFR 2.3. The change corrects the name of the OFR's parent agency to the National Archives and Records Administration.

Some of the regulations in 1 CFR are gender specific. Sections that contain gender specific terminology, 1 CFR 2.4, 1 CFR 5.3, 1 CFR 9.1, 1 CFR 16.2, 1 CFR 16.3, 1 CFR 16.4, 1 CFR 17.4, 1 CFR 18.7, 1 CFR 20.1, 1 CFR 21.14, and 1 CFR 21.42 are amended to eliminate gender specification.

The title of "The United States Government Manual" is corrected in 1 CFR 2.5, 1 CFR 9.1, the Part heading of 1 CFR Part 20, and 1 CFR 20.1. Also, the "Federal Register Index" and the "LSA (List of CFR Sections Affected)" are added to the list of publications in paragraph (c) of 1 CFR 2.5.

The ACFR makes minor technical changes to 1 CFR 3.2 and to the section heading of 1 CFR 3.3. One commenter suggested that the word "filed" in 1 CFR 3.2(b) be replaced with the word "available". The ACFR defines the word "filing" in § 1.1 of its regulations as "making a document available for public inspection at the Office of the Federal Register . . .". The addition of the phrase "for public inspection" after the word "filed" or "filing" in 1 CFR 5.2, 5.3, and 18.4 is consistent with the ACFR's use of the word "filing" throughout its regulations. The ACFR has clarified the usage of the term "filing" under the Federal Register Act and will not adopt the commenter's suggested language change as the suggested language could result in confusion.

The regulations at 1 CFR 5.2 and 5.3 are clarified by adding the phrase "filed for public inspection" in place of the word "filed" in accordance with the language and content of 44 U.S.C. 1503. 1 CFR 5.6 is also clarified.

The categories of documents listed in 1 CFR 5.9 are clarified and expanded when necessary to reflect the current publication requirements of the ACFR. One commenter suggested that including "general policy statements" in the rules and regulations category of 1 CFR 5.9(b) is misleading since policy statements that are not related to any rule and do not have general applicability and legal effect appear in the notices category. The ACFR has therefore clarified paragraph (b) to include "general policy statements concerning regulations".

Another commenter asked why temporary and interim rules are not published in the CFR or listed as rule category documents in 1 CFR 5.9. The ACFR regards all permanent, temporary and interim rules simply as "rules" under section 5.9, publishes them in the rules category of the **Federal Register** and codifies them in the CFR if the rules are in effect as of the revision date of the CFR title affected.

In 1 CFR 6.5, the term "index-digests" is changed to "indexes, digests" and the section is clarified. The OFR publishes both indexes and digests, but not index-digests.

The term "general applicability and current or future effect" is changed to "general applicability and legal effect" in 1 CFR 8.1. This change adopts the language used in 44 U.S.C. 1505 and is consistent with the ACFR's language in 1 CFR 5.2.

The language in paragraph (c) of 1 CFR 8.3 is clarified.

The Code of Federal Regulations Index now contains the parallel tables of authorities and rules described in 1 CFR 8.5. The ACFR is updating and clarifying this section to reflect current practice.

The ACFR is clarifying the section heading of 1 CFR 15.4. This section's text pertains to the reproduction and certification of copies of acts and documents.

The ACFR is removing 1 CFR 15.5. Information on the availability of OFR publications controlled by the ACFR has been consolidated in the new Subchapter D. The availability of the slip laws and the U.S. Statutes at Large is not controlled by the ACFR and,

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therefore, reference to their availability is removed.

An addition to 1 CFR 18.2 provides that agency liaison officers shall be available to discuss documents submitted for publication with the OFR editors. This provision emphasizes the importance the ACFR places on this aspect of the liaison officer's duties.

The word "agency" is added to the text for identification purposes in 1 CFR 18.2, 18.3, and 18.4.

The OFR's procedures require each agency requesting publication on the emergency schedule to submit its request by letter. Therefore, 1 CFR 17.4 is revised to reflect this procedure by removing the phrase "if time permits".

The services provided in 1 CFR 17.5 in conjunction with the transmittal of documents by telecommunication are no longer needed due to the availability of expedited mail services. Therefore, this section is removed.

The term "unusual tabulations" in 1 CFR 17.6, is changed to "unusual or lengthy tables". Additionally, a provision that the OFR staff will notify an agency if its document must be assigned to a deferred schedule is added to § 17.8 to reflect the OFR's current notification procedure.

The regulation on submission of an original document and copies at 1 CFR 18.1 needs clarification and correction. The provision for documents printed on both sides in § 18.1 does not reflect the current OFR practice. The ACFR is amending § 18.1 to require that if an agency submits a document printed on both sides, one of the copies sent by the agency must be a collated, single-sided copy. Additionally, due to the availability of expedited mail services, paragraph (b) is out-of-date and is removed. The footnote to 1 CFR 18.1 is revised and updated. The footnote's reference to a 1972 document is removed because it is outdated.

The Director of the Federal Register's policy on combined category documents is clarified in the revision of 1 CFR 18.2.

Some of the regulations in 1 CFR include the term "rulemaking" as two words. The sections in the regulations that have rulemaking printed as two words, 1 CFR 18.2, 1 CFR 18.4, and 1 CFR 22.5, are revised to a one word spelling.

In 1 CFR 18.3, a new paragraph (c) is added to clarify that receipt dates of documents are determined at the time a signed original and clear and legible copies are received. Additionally, the ACFR is amending § 18.3(a) by removing the obsolete option of filing with the Administrative Committee.

A revision of 1 CFR 18.4 clarifies certain OFR format requirements. Paragraph (a), containing the format requirements for margins and page size, is removed. The OFR's Document Drafting Handbook is the proper source of technical and editorial information concerning OFR's drafting requirements. Additionally, language is added to 1 CFR 18.4 to reflect the fact that the OFR does not accept press releases for publication in the **Federal Register**.

The ACFR revises and makes minor technical changes to 1 CFR 18.5. Obsolete copying procedures are deleted and paragraph (c) is revised and redesignated more appropriately as 1 CFR 18.3(c).

An existing incomplete sentence is revised in 1 CFR 18.6.

The ACFR revises 1 CFR 18.9 to require that documents conform to the current edition of the U.S. Government Printing Office Style Manual in all matters of style. The Style Manual is intended to facilitate Government printing and ensure editorial quality. One commenter suggested that an edition date be set out in the regulation. By act of Congress, the Public Printer is authorized to determine the form and style of Government printing. Due to its official status, no confusion results from specifying that the most current edition be used.

Material on forms is included in 1 CFR 18.10. Paragraph (a) is clarified to reflect that a clear and legible original form or illustration, or a clear and completely legible reproduction shall be included in the original document and each certified copy when it is necessary to publish a form or illustration. The OFR finds that original forms are often needed in the publication process. Copies of forms occasionally are not completely legible due to the small print used for some portions of the forms.

Obsolete material in § 18.10 is removed and a new provision is added in paragraph (b) to provide that documents containing tabular material may be assigned to the deferred publication schedule. One commenter suggested that paragraph (b) be revised to indicate that "unusual or lengthy" tabular material may be assigned to the deferred publication schedule. This suggestion is not adopted since paragraph (b) references § 17.6 and this language is included in § 17.6.

The ACFR removes 1 CFR 18.11 because it does not reflect the OFR's current practice.

The language in 1 CFR 18.12 is revised and simplified. One commenter suggested that the proposed revision of the introductory text of 1 CFR 18.12(c) could result in agency documents that do not adequately disclose the basis of rules or respond to public comments. It is the responsibility of each agency to issue documents in accordance with the requirements of the APA and applicable case law. The ACFR's use of the word "may" ensures that each agency has discretion to fulfill the requirements of the APA as it sees fit.

Material reflecting the OFR's current procedures for the correction of errors in documents is included in 1 CFR 18.13. A new paragraph (b) is added reflecting the OFR's procedures for filing for public inspection and ultimate retention of revoking or correcting letters.

Two comments were received on proposed 1 CFR 18.13. One commenter requested further guidance on use of correction letters and clarification of paragraph (a). Paragraph (a) has been revised to reflect the OFR's current policy that minor corrections may be made to documents filed for public inspection, but not yet published, with a timely agency letter. Extensive corrections, however, may require agency withdrawal of the document from the publication schedule in order to prepare the correction. The decision as to when changes necessitate withdrawal of a document from a publication schedule is a production determination that is made by the OFR staff.

Another commenter asked how long the withdrawing or correcting letter mentioned in 1 CFR 18.13 will be retained by the OFR. Each letter received under § 18.13 will be attached to the document it affects and retained as long as that document is retained. The prescribed retention schedules for rules, proposed rules and notices are fifteen years, five years and one year, respectively.

The ACFR has also replaced the word "revoking" with "withdrawing" in § 18.13 for consistency with the section heading.

The ACFR removes 1 CFR 18.14 because it does not reflect the OFR's current procedures for correction of errors in documents. One commenter was confused by the removal of 1 CFR 18.14 and requested that a new regulation set forth the OFR's current procedures for the correction of errors in documents. This had already been accomplished in § 18.13.

The ACFR is removing superannuated material from 1 CFR 18.20. Provisions for agency actions by December 31, 1981, and April 1, 1982, are no longer current and are removed.

Part 19, which is based upon two Executive orders, has been amended by E.O. 12060. The ACFR revises the current authority citation for Part 19 and 1 CFR 19.4 to reflect the addition of this Executive order. The ACFR also adds an informational footnote on the availability of the publication "Specifications for Descriptions of Tracts of Land for Use in Executive Orders and Proclamations" to 1 CFR 19.1.



The text of 1 CFR 20.1 is restructured.

In 1 CFR 20.3, the ACFR removes the language requiring submission of charts in duplicate and clarifies other language in this section. It is not the OFR's current practice to require submission of charts in duplicate.

To avoid unnecessary duplication, a phrase is added to 1 CFR 20.4 providing that descriptions of administrative units common to most agencies will not be accepted for publication in The United States Government Manual.

In order to reflect current OFR procedures, 1 CFR 21.1 is revised to require each agency that prepares a document subject to codification to include words of issuance and amendatory language describing the precise relationship of the new provisions to the CFR.

The ACFR removes 1 CFR 21.4 and 1 CFR 21.15. Neither section reflects the OFR's current procedures.

It is the practice of the OFR to accept an agency document that amends more than one title, or more than one chapter of the CFR. Therefore, the ACFR removes 1 CFR 21.5.

The text of 1 CFR 21.6 is restructured and language is added to clarify the OFR's requirement that agencies must notify the OFR of the expiration of codified material by document for publication in the **Federal Register**.

The ACFR is adding a new paragraph (c) to 1 CFR 21.8 to clarify that chapter and subchapter assignments are made by the OFR, not by the agency. Two commenters suggested that 1 CFR 21.8(c) be revised to state that chapter and subchapter assignments are made by the OFR after agency consultation. The ACFR concurs. The OFR is responsive to agency needs and has always and will continue to consult with appropriate agency personnel prior to making chapter and subchapter assignments.

In 1 CFR 21.11, the standard organization of the CFR is revised to include a new example of paragraph designations.

The reservation of numbers at the end of related parts or sections to allow for future expansion is an agency option. Therefore, the ACFR revises the obsolete requirement for agency reservation of numbers at 1 CFR 21.12 and makes the reservation of numbers optional.

The ACFR is removing 1 CFR 21.13 because it is not consistent with current OFR guidance to agencies.

The ACFR is moving the provision dealing with deviations from the standard designations from its proposed location in 1 CFR 21.11(b) to 1 CFR 21.14(a). Section 21.14 has an existing provision for deviation from standard CFR designations and is revised to include a thorough description of when deviations from standard CFR designation will be permitted.

The ACFR received several comments about proposed § 21.11(b) prohibiting deviations from standard CFR designations unless approved in advance by the OFR. Many commenters asked for a more detailed explanation of this section, particularly whether existing numbering deviations in agency regulations would be permitted to remain in the CFR.

The ACFR is not requiring agencies to reach back and rewrite regulations already in the CFR. However, the ACFR is limiting future numbering deviations by permitting them subject to the prior approval of the OFR. Approval must be requested for all final rule documents that contain unusual numbering, including any documents that amend existing regulations that contain unusual numbering.

In response to commenter's requests for clarification, the ACFR is adding a description of the procedure agencies should follow when requesting approval of a deviation from standard CFR designations.

The table of contents in a document must list appendix headings to the part or subpart in addition to headings for the subparts, undesignated center headings and sections in the part as described in 1 CFR 21.18. The ACFR is updating 1 CFR 21.18 by adding appendix headings to the part or subpart to the list of items that shall appear in the table of contents. This revision reflects the OFR's current practice.

The ACFR removes 1 CFR 21.22. One commenter suggested that 1 CFR 21.4, 21.13, 21.15 and 21.22 be revised rather than removed. These sections no longer reflect the OFR's current editorial and technical procedures and are removed. The ACFR is working towards separating out purely editorial and technical instructions from its regulations. The OFR's functional Document Drafting Handbook is the proper source for nonregulatory document drafting guidance to agencies.

The regulation concerning placing and amending authority citations, 1 CFR 21.43, is clarified and corrected to include the provision that the authority citation shall appear at the end of the table of contents for a part or after each subpart heading within the text of a part.

The ACFR also clarifies 1 CFR 21.45.

The examples in 1 CFR 21.52 are revised to reflect the OFR's format for authority citations.

One commenter suggested that paragraphs (a) and (b) of § 21.52 be clarified. The ACFR agrees. The text of 1 CFR 21.52 is restructured and language is added to clarify that citations to titles of the United States Code, may be cited without Public Law or U.S. Statutes at Large citation. Citations to Public Laws and U.S. Statutes at Large are optional when the United States Code is cited.

The undesignated center headings in Parts 17 and 22 are designated as subpart headings.

An editorial change is made throughout Part 22 from use of the words "rule making proposals" and "notices of proposed rule making" to the words "proposed rules". This change is consistent with the proposed rules category of documents described in new 1 CFR 5.9. To conform with this editorial change, the part heading, table of contents, and subpart headings in Part 22 have been revised.

It is no longer necessary to place the CFR citation referred to in 1 CFR 22.6 in brackets. Obsolete language requiring the use of brackets is removed.

**Procedural Matters**

This is not a major rule as defined by Executive Order 12291. The rule has no impact on small entities as described in the Regulatory Flexibility Act. (5 U.S.C. 601 et seq.). The rule does not contain any information collection or recordkeeping requirements as defined in the Paperwork Reduction Act of 1980. (44 U.S.C. 3501 et. seq.).

**List of Subjects in 1 CFR, Parts 2, 3, 5, 6, 7, 8, 9, 10, 11, 12, 15, 16, 17, 18, 19, 20, 21 and 22**

Administrative practice and procedure, Government publications.

**Redesignation Table**

| Old section | New section |
|---|---|
| | Parts 11–12 (Subchapter D) |
| 3.4(a) | 11.1 |
| 3.4(b) introductory text | Removed |
| 3.4(b)(1) | Removed |
| 3.4(b)(2) | Removed |
| 3.4(b)(3) | 11.2 |
| 3.4(b)(4) | 11.3 |
| 3.4(b)(5) | 11.4 |
| 3.4(b)(6) | 11.5 |
| 3.4(b)(7) | 11.6 |
| 3.4(b)(8) | 11.7 |
| 7.1 | 12.1(a) |
| 7.4 | 12.1(b) |
| 7.5 | 12.1(c) |
| 7.6 | 12.1(d) |
| 8.8 | 12.2 |
| 9.3(a) | 12.3(a) |

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| Old section | New section |
|---|---|
| 9.3(b) | 12.3 (b) and (c) |
| 10.4 | 12.4 |
| 10.14 | 12.5 |
| Parts 15–22 (Subchapter D). | Parts 15–22 (Subchapter E) |
| 15.5 | Removed |
| 17.8 | 17.7 |
| 18.1(a) | 18.1 |
| 18.1(b) | Removed |
| 18.5(a) | 18.5 |
| 18.5(b) | Removed |
| 18.5(c) | 18.3(c) |
| 18.9 introductory text and (a). | 18.9 |
| 18.9(b) | Removed |
| 18.9(c) | Removed |
| 18.10(a) | Removed |
| 18.10(b) | 18.10(a) |
| 18.10(c) | Removed |
| 18.11 | Removed |
| 18.14 | Removed |
| 18.20(a) | Removed |
| 18.20(b) | 18.20(a) |
| 18.20(c) | 18.20(b) |
| 20.1 introductory text | 20.1(a) |
| 20.1(a) | 20.1(a)(1) |
| 20.1(b) | 20.1(a)(2) |
| 20.1(c) | 20.1(a)(3) |
| 20.1(d) | 20.1(a)(4) |
| 20.1 final undesignated paragraph. | 20.1(b) |
| 20.4 | 20.4 (a) and (b) |
| 21.4 | Removed |
| 21.5 | Removed |
| 21.11(a) | 21.11(a)(1) |
| 21.11(b) | 21.11(a)(2) |
| 21.11(c) | 21.11(a)(3) |
| 21.11(d) | 21.11(a)(4) |
| 21.11(e) | 21.11(a)(5) |
| 21.11(f) | 21.11(a)(6) |
| 21.11(g) | 21.11(a)(7) |
| 21.11(h) | 21.11(a)(8) |
| 21.13 | Removed |
| 21.15 | Removed |
| 21.22 | Removed |

For the reasons set out in the preamble, Title 1, Chapter I of the Code of Federal Regulations is amended as follows:

## PART 2—GENERAL INFORMATION

1. The authority citation for Part 2 continues to read as follows:

**Authority:** 44 U.S.C. 1506; sec. 6, E.O. 10530, 19 FR 2709; 3 CFR, 1954–1958 Comp., p. 189; 1 U.S.C. 112; 1 U.S.C. 113.

**§ 2.3 [Amended]**

2. In § 2.3(a) remove the words "Service of the General Services."

In § 2.3(c) remove the word "Service" and add, in its place, the word "Administration".

**§ 2.4 [Amended]**

3. In § 2.4(b) remove the word "his" and add, in its place, the words "the Director's".

4. Section 2.5 is amended by revising paragraph (c) to read as follows:

**§ 2.5 Publication of statutes, regulations, and related documents.**

* * * * *

(c) Based on source materials that are officially related to the acts and documents filed under paragraph (a) of this section, the Office also publishes "The United States Government Manual," the "Public Papers of the Presidents of the United States," the "Weekly Compilation of Presidential Documents," the "Federal Register Index," and the "LSA (List of CFR Sections Affected)".

## PART 3—SERVICES TO THE PUBLIC

1. The authority citation for Part 3 continues to read as follows:

**Authority:** 44 U.S.C. 1506; sec. 6, E.O. 10530, 19 FR 2709; 3 CFR, 1954–1958 Comp., p. 189.

**§ 3.2 [Amended]**

2. In § 3.2(a) remove the word "Current" and capitalize the word "documents"; and remove the figure "8401" and add, in its place, the figure "8301".

In § 3.2(d) remove the words "Manual, typewritten, or other copies" and add, in their place, the word "Photocopies".

3. Section 3.3 is amended by revising the section heading to read as follows:

**§ 3.3 Reproduction and certification of copies of acts and documents.**

* * * * *

**§ 3.4 [Removed]**

4. Section 3.4 is removed.

## PART 5—GENERAL

1. The authority citation for Part 5 continues to read as follows:

**Authority:** 44 U.S.C. 1506; sec. 6, E.O. 10530, 19 FR 2709; 3 CFR, 1954–1958 Comp., p. 189.

2. Section 5.2 is amended by revising the section heading and the introductory text to read as follows:

**§ 5.2 Documents required to be filed for public inspection and published.**

The following documents are required to be filed for public inspection with the Office of the Federal Register and published in the **Federal Register**:

* * * * *

3. Section 5.3 is revised to read as follows:

**§ 5.3 Publication of other documents.**

Whenever the Director of the Federal Register considers that publication of a document not covered by § 5.2 would be in the public interest, the Director may allow that document to be filed for public inspection with the Office of the Federal Register and published in the **Federal Register**.

4. Section 5.6 is revised to read as follows:

**§ 5.6 Daily publication.**

There shall be an edition of the **Federal Register** published for each official Federal working day.

5. Section 5.9 is amended by revising paragraphs (a), (b), (c), and (d) to read as follows:

**§ 5.9 Categories of documents.**

* * * * *

(a) *The President.* This category contains each Executive order or Presidential proclamation and each other Presidential document that the President submits for publication or orders to be published.

(b) *Rules and regulations.* This category contains each document having general applicability and legal effect, except those covered by paragraph (a) of this section. This category includes documents subject to codification, general policy statements concerning regulations, interpretations of agency regulations, statements of organization and function, and documents that affect other documents previously published in the rules and regulations section.

(c) *Proposed rules.* This category contains each notice of proposed rulemaking submitted pursuant to § 553 of Title 5, United States Code, or any other law, which if promulgated as a rule, would have general applicability and legal effect. This category includes documents that suggest changes to regulations in the Code of Federal Regulations, begin a rulemaking proceeding, and affect or relate to other documents previously published in the proposed rules section.

(d) *Notices.* This category contains miscellaneous documents applicable to the public and not covered by paragraphs (a), (b), and (c) of this section. This category includes announcements of meetings and other information of public interest.

## PART 6—INDEXES AND ANCILLARIES

1. The authority citation for Part 6 continues to read as follows:

**Authority:** 44 U.S.C. 1506; sec. 6, E.O. 10530, 19 FR 2709; 3 CFR, 1954–1958 Comp., p. 189.

2. Section 6.5 is revised to read as follows:

**§ 6.5 Indexes, digests, and guides.**

(a) The Director of the Federal Register may order the preparation and publication of indexes, digests, and similar guides, based on laws, Presidential documents, regulatory documents, and notice materials published by the Office, which will serve users of the **Federal Register**. Indexes, digests, and similar guides will be published yearly or at other intervals as necessary to keep them current and useful.

(b) Each index, digest, and guide is considered to be a special edition of the **Federal Register** whenever the public need requires special printing or special binding in substantial numbers.



## PART 7—[REMOVED]

1. Part 7 is removed.

## PART 8—CODE OF FEDERAL REGULATIONS

1. The authority citation for Part 8 continues to read as follows:

**Authority:** 44 U.S.C. 1506, 1510; sec. 6, E.O. 10530, 19 FR 2709; 3 CFR, 1954–1958 Comp., p. 189.

**§ 8.1 [Amended]**

2. In § 8.1(a) remove the words "current or future" and add, in their place, the word "legal".

**§ 8.3 [Amended]**

3. Section 8.3(c) is amended by adding the words "as a codified regulation" after the word "published".

4. Section 8.5 is amended by revising paragraphs (a), (b), and (c) to read as follows:

**§ 8.5 Ancillaries.**

* * * * *

(a) *Parallel tables of statutory authorities and rules.* In the Code of Federal Regulations Index or at such other place as the Director of the Federal Register considers appropriate, numerical lists of all sections of the current edition of the United States Code (except section 301 of Title 5) which are cited by issuing agencies as rulemaking authority for currently effective regulations in the Code of Federal Regulations. The lists shall be arranged in the order of the titles and sections of the United States Code with parallel citations to the pertinent titles and parts of the Code of Federal Regulations.

(b) *Parallel tables of Presidential documents and agency rules.* In the Code of Federal Regulations Index, or at such other place as the Director of the Federal Register considers appropriate, tables of proclamations, Executive orders, and similar Presidential documents which are cited as rulemaking authority in currently effective regulations in the Code of Federal Regulations.

(c) *List of CFR sections affected.* Following the text of each Code of Federal Regulations volume, a numerical list of sections which are affected by documents published in the **Federal Register**. (Separate volumes, "List of Sections Affected, 1949–1963" and "List of CFR Sections Affected, 1964–1972", list all sections of the Code which have been affected by documents published during the period January 1, 1949, to December 31, 1963, and January 1, 1964, to December 31, 1972, respectively.) Listings shall refer to **Federal Register** pages and shall be designed to enable the user of the Code to find the precise text that was in effect on a given date in the period covered.

**§ 8.8 [Removed]**

5. Section 8.8 is removed.

## PART 9—THE UNITED STATES GOVERNMENT MANUAL

1. The part heading is revised to read as shown above.

2. The authority citation for Part 9 continues to read as follows:

**Authority:** 44 U.S.C. 1506; sec. 6, E.O. 10530, 19 FR 2709; 3 CFR, 1954–1958 Comp., p. 189.

3. Section 9.1 is revised to read as follows:

**§ 9.1 Publication required.**

The Director of the Federal Register shall separately publish annually or at times designated by the Administrative Committee of the Federal Register a special edition of the **Federal Register** called "The United States Government Manual" or any other title that the Administrative Committee of the Federal Register considers appropriate. The Director of the Federal Register may issue special supplements to the Manual when such supplementation is considered to be in the public interest.

**§ 9.3 [Removed]**

4. Section 9.3 is removed.

## PART 10—PRESIDENTIAL PAPERS

1. The authority citation for Part 10 is revised to read as follows:

**Authority:** 44 U.S.C. 1506; sec. 6, E.O. 10530, 19 FR 2709; 3 CFR, 1954–1958 Comp., p. 189.

**§ 10.4 [Removed]**

2. Section 10.4 is removed.

**§ 10.14 [Removed]**

3. Section 10.14 is removed.

**Subchapter D—[Redesignated as Subchapter E]**

1. Subchapter D consisting of Parts 15 through 22, is redesignated as Subchapter E and new Subchapter D, consisting of Parts 11 and 12, is added to read as follows:

## SUBCHAPTER D—AVAILABILITY OF OFFICE OF THE FEDERAL REGISTER PUBLICATIONS

## PART 11—SUBSCRIPTIONS

Sec.

11.1 Subscription by the public.
11.2 Federal Register.
11.3 Code of Federal Regulations.
11.4 The United States Government Manual.
11.5 Public Papers of the Presidents of the United States.
11.6 Weekly Compilation of Presidential Documents.
11.7 Federal Register Index.
11.8 LSA (List of CFR Sections Affected).

**Authority:** 44 U.S.C. 1506; sec. 6, E.O. 10530, 19 FR 2709; 3 CFR, 1954–1958 Comp., p. 189.

**§ 11.1 Subscription by the public.**

The publications described in § 2.5 of this chapter are printed by the Government Printing Office and are sold by the Superintendent of Documents, Government Printing Office, Washington, DC 20402. All fees are payable in advance to the Superintendent of Documents, Government Printing Office. They are not available for free distribution to the public.

**§ 11.2 Federal Register.**

Daily issues, including the monthly Federal Register Index and the LSA (List of CFR Sections Affected), will be furnished by mail to subscribers for $340 per year in paper form; $195 per year in microfiche form; or $37,500 per year for the magnetic tape. Six-month subscriptions are also available at one-half the annual rate. Limited quantities of current or recent copies may be obtained for $1.50 per copy in paper or microfiche form, or $175 per magnetic tape.

**§ 11.3 Code of Federal Regulations.**

A complete set will be furnished by mail to subscribers for $620 per year for the bound, paper edition; $188 per year for the microfiche edition; or $21,750 per year for the magnetic tape. Individual copies of the bound, paper edition of the Code volumes are sold at prices determined by the Superintendent of Documents under the general direction of the Administrative Committee. The price of an individual volume in microfiche form is $2.00 per copy, or $125 per magnetic tape.

**§ 11.4 The United States Government Manual.**

Copies of the bound, paper edition of the Manual are sold at a price determined by the Superintendent of Documents under the general direction of the Administrative Committee. The

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price of the magnetic tape is $125 per tape.

**§ 11.5 Public Papers of the Presidents of the United States.**

Copies of annual clothbound volumes are sold at a price determined by the Superintendent of Documents under the general direction of the Administrative Committee.

**§ 11.6 Weekly Compilation of Presidential Documents.**

Copies will be furnished to subscribers in paper form for $96 per year by first-class mail or $55 per year by non-priority mail. The price of an individual copy in paper form, is $2.00.

**§ 11.7 Federal Register Index.**

The annual subscription price for the monthly Federal Register Index, purchased separately, in paper form, is $19. Individual copies in paper form are $1.50 per copy.

**§ 11.8 LSA (List of CFR Sections Affected).**

The annual subscription price for the monthly LSA (List of CFR Sections Affected), purchased separately, in paper form, is $21. Individual copies in paper form are $1.50 per copy.

## PART 12—OFFICIAL DISTRIBUTION WITHIN FEDERAL GOVERNMENT

Sec.

12.1 Federal Register.
12.2 Code of Federal Regulations.
12.3 The United States Government Manual.
12.4 Weekly Compilation of Presidential Documents.
12.5 Public Papers of the Presidents of the United States.

Authority: 44 U.S.C. 1506; sec. 6, E.O. 10530, 19 FR 2709; 3 CFR, 1954–1958 Comp., p. 189.

**§ 12.1 Federal Register.**

(a) Copies of the daily **Federal Register** in paper or microfiche form shall be made available to the following without charge:

(1) *Members of Congress.* Each Senator and each Member of the House of Representatives will be provided with not more than five copies of each daily issue based on a written request to the Director of the Federal Register.

(2) *Congressional committees.* Each committee of the Senate and the House of Representatives will be provided with the number of copies needed for official use based on a written request from the chairperson, or authorized delegate, to the Director of the Federal Register.

(3) *Supreme Court.* The Supreme Court will be provided with the number of copies needed for official use based on a written request to the Director of the Federal Register.

(4) *Other courts.* Other constitutional or legislative courts of the United States will be provided with the number of copies needed for official use based on a written request from the Director of the Administrative Office of the U.S. Courts, or authorized delegate, to the Director of the Federal Register.

(5) *Executive agencies.* Each Federal executive agency will be provided with the number of copies needed for official use based on a written request from the agency Federal Register authorizing officer, or the alternate, designated under § 16.1 of this chapter, to the Director of the Federal Register.

(b) Requisitions for quantity overruns of specific issues to be paid for by the agency are available as follows:

(1) To meet its needs for special distribution of the **Federal Register** in substantial quantity, any agency may request an overrun of a specific issue.

(2) An advance printing and binding requisition on Standard Form 1 must be submitted by the agency directly to the Government Printing Office, to be received not later than 12 noon on the working day before publication.

(c) Requisitions for quantity overruns of separate part issues to be paid for by the agency are available as follows:

(1) Whenever it is determined by the Director of the Federal Register to be in the public interest, one or more documents may be published as a separate part (e.g., Part II, Part III) of the **Federal Register**.

(2) Advance arrangements for this service must be made with the Office of the Federal Register.

(3) Any agency may request an overrun of such a separate part by submitting an advance printing and binding requisition on Standard Form 1 directly to the Government Printing Office, to be received not later than 12 noon on the working day before the publication date.

(d) An agency may order limited quantities of extra copies of a specific issue of the **Federal Register** for official use, from the Superintendent of Documents, to be paid for by that agency.

(e) Copies of the Federal Register Index and LSA (List of CFR Sections Affected) are included with each **Federal Register** official distribution.

**§ 12.2 Code of Federal Regulations.**

(a) Copies of the Code of Federal Regulations in paper or microfiche form shall be made available to the following without charge:

(1) *Congressional committees.* Each committee of the Senate and House of Representatives will be provided with the number of copies needed for official use based on a written request from the chairperson, or authorized delegate, to the Director of the Federal Register.

(2) *Supreme Court.* The Supreme Court will be provided with the number of copies needed for official use based on a written request to the Director of the Federal Register.

(3) *Other courts.* Other constitutional and legislative courts of the United States will be provided with the number of copies needed for official use based on a written request from the Director of the Administrative Office of the U.S. Courts, or authorized delegate, to the Director of the Federal Register.

(4) *Executive agencies.* Each Federal executive agency will be provided with the number of copies needed for official use, not to exceed 300 copies of individual titles per agency, based on a written request from the agency Federal Register authorizing officer, or the alternate, designated under § 16.1 of this chapter, to the Director of the Federal Register.

(b) Legislative, judicial, and executive agencies of the Federal Government may obtain additional copies of selected units of the Code, at cost, for official use, by submission, before the press run, of a printing and binding requisition to the Government Printing Office on Standard Form 1.

(c) After the press run, each request for extra copies of selected units of the Code must be addressed to the Superintendent of Documents, to be paid for by the agency making the request.

**§ 12.3 The United States Government Manual.**

(a) Copies of The United States Government Manual shall be made available to the following without charge:

(1) *Members of Congress.* Each Senator and each Member of the House of Representatives will be provided with twelve copies.

(2) *Congressional committees.* Each committee of the Senate and House of Representatives will be provided with the number of copies needed for official use based on a written request from the chairperson, or authorized delegate, to the Director of the Federal Register.

(3) *Supreme Court.* The Supreme Court will be provided with not more than 18 copies based on a written request to the Director of the Federal Register.

(4) *Other courts.* Other constitutional and legislative courts of the United States will be provided with one copy based on a written request from the Director of the Administrative Office of



the U.S. Courts, or authorized delegate, to the Director of the Federal Register.

(5) *Executive agencies.* Each head of a Federal executive agency and each liaison officer designated under § 16.1 or 20.1 of this chapter will be provided with one copy.

(b) Legislative, judicial, and executive agencies of the Federal Government may obtain additional copies of the Manual, at cost, for official use, by submission, before the press run, of a printing and binding requisition to the Government Printing Office on Standard Form 1.

(c) After the press run, each request for extra copies of the Manual must be addressed to the Superintendent of Documents, to be paid for by the agency making the request.

**§ 12.4 Weekly Compilation of Presidential Documents.**

(a) Copies of the Weekly Compilation of Presidential Documents shall be made available to the following without charge:

(1) *Members of Congress.* Each Senator and each Member of the House of Representatives will be provided with the number of copies needed for official use based on a written request to the Director of the Federal Register.

(2) *Congressional committees.* Each committee of the Senate and the House of Representatives will be provided with the number of copies needed for official use based on a written request from the chairperson, or authorized delegate, to the Director of the Federal Register.

(3) *Supreme Court.* The Supreme Court will be provided with the number of copies needed for official use based on a written request to the Director of the Federal Register.

(4) *Other courts.* Other constitutional and legislative courts of the United States will be provided with the number of copies needed for official use based on a written request from the Director of the Administrative Office of the U.S. Courts, or authorized delegate, to the Director of the Federal Register.

(5) *Executive agencies.* Each Federal executive agency will be provided with the number of copies needed for official use based on a written request from the agency Federal Register authorizing officer, or the alternate designated under § 16.1 of this chapter, to the Director of the Federal Register.

(b) Legislative, judicial, and executive agencies of the Federal Government may obtain additional copies of selected issues of the Weekly Compilation of Presidential Documents, at cost, for official use, by submission, before the press run, of a printing and binding requisition to the Government Printing Office on a Standard Form 1.

(c) After the press run, each request for extra copies of selected issues must be addressed to the Superintendent of Documents, to be paid for by the agency making the request.

**§ 12.5 Public Papers of the Presidents of the United States.**

(a) Copies of the Public Papers of the Presidents of the United States shall be made available to the following without charge:

(1) *Members of Congress.* Each Senator and each Member of the House of Representatives will be provided with one copy of each annual publication published during the Member's term in office based on a written request to the Director of the Federal Register.

(2) *Supreme Court.* The Supreme Court will be provided with not more than 12 copies of each publication based on a written request to the Director of the Federal Register.

(3) *Executive agencies.* Each head of a Federal executive agency will be provided with one copy of each annual publication based on a written request from the agency Federal Register authorizing officer, or the alternate, designated under § 16.1 of this chapter, to the Director of the Federal Register.

(b) Legislative, judicial, and executive agencies of the Federal Government may obtain additional copies, at cost, for official use, by submission before the press run, of a printing and binding requisition to the Government Printing Office on Standard Form 1.

(c) After the press run, each request for extra copies must be addressed to the Superintendent of Documents, to be paid for by the agency making the request.

## PART 15—SERVICES TO FEDERAL AGENCIES

1. The authority citation for Part 15 continues to read as follows:

Authority: 44 U.S.C. 1506; sec. 6, E.O. 10530, 19 FR 2709; 3 CFR, 1954–1958 Comp., p. 189.

2. Section 15.4 is amended by revising the section heading to read as follows:

**§ 15.4 Reproduction and certification of copies of acts and documents.**

* * * * *

**§ 15.5 [Removed]**

3. Section 15.5 is removed.

## PART 16—AGENCY REPRESENTATIVES

1. The authority citation for Part 16 continues to read as follows:

Authority: 44 U.S.C. 1506; sec. 6, E.O. 10530, 19 FR 2709; 3 CFR, 1954–1958 Comp., p. 189.

2. Section 16.2 is revised to read as follows:

**§ 16.2 Liaison duties.**

Each agency liaison officer shall—

(a) Represent the agency in all matters relating to the submission of documents to the Office of the Federal Register, and respecting general compliance with this chapter;

(b) Be responsible for the effective distribution and use within the agency of Federal Register information on document drafting and publication assistance authorized by § 15.10 of this chapter;

(c) Promote the agency's participation in the technical instruction authorized by § 15.10 of this chapter; and

(d) Be available to discuss documents submitted for publication with the editors of the **Federal Register**.

3. Section 16.3 is revised to read as follows:

**§ 16.3 Certifying duties.**

The agency certifying officer is responsible for attaching the required number of true copies of each original document submitted by the agency to the Office of the Federal Register and for making the certification required by §§ 18.5 and 18.6 of this chapter.

4. Section 16.4 is revised to read as follows:

**§ 16.4 Authorizing duties.**

The agency authorizing officer is responsible for furnishing, to the Director of the Federal Register, a current mailing list of officers or employees of the agency who are authorized to receive the **Federal Register**, the Code of Federal Regulations, and the Weekly Compilation of Presidential Documents for official use.

## PART 17—FILING FOR PUBLIC INSPECTION AND PUBLICATION SCHEDULES

1. The heading to Part 17 is revised to read as shown above.

2. The authority citation for Part 17 continues to read as follows:

Authority: 44 U.S.C. 1506; sec. 6, E.O. 10530, 19 FR 2709; 3 CFR, 1954–1958 Comp., p. 189.

3. Section 17.1 is designated as Subpart A and a subpart heading is added to read as follows:

**Subpart A—Receipt and Processing**

4. The undesignated center headings for §§ 17.2, 17.3–17.5, and 17.6 are

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designated as Subparts B, C, and D respectively.

5. Section 17.2 is revised to read as follows:

**§ 17.2 Procedure and timing for regular schedule.**

(a) Each document received shall be filed for public inspection only after it has been received, processed and assigned a publication date.

(b) Except as provided in paragraph (d) of this section, each document received by 2:00 p.m. which meets the requirements of this chapter shall be assigned to the regular schedule. Unless the issuing agency makes special arrangements otherwise, or the Office determines that the document requires a deferred schedule (see 1 CFR 17.7), receipt of a document by 2:00 p.m. is considered to be a request for filing for public inspection and publication on the regular schedule. Documents received after 2:00 p.m. which meet the requirements of this chapter shall be assigned to the next working day's regular schedule.

(c) The regular schedule for filing for public inspection and publication is as follows:

| Received before 2:00 p.m. | Filed for public inspection | Published |
|---|---|---|
| Monday | Wednesday | Thursday |
| Tuesday | Thursday | Friday |
| Wednesday | Friday | Monday |
| Thursday | Monday | Tuesday |
| Friday | Tuesday | Wednesday |

Where a legal Federal holiday intervenes, one additional work day is added.

(d) Each notice of meeting issued under the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(3)) is placed on immediate public inspection after it has been received, processed, and assigned a publication date.

(1) Each notice received before 4:00 p.m. is scheduled to be published 2 working days later.

(2) Each notice received after 4:00 p.m. is scheduled to be published 3 working days later.

**§ 17.3 [Amended]**

6. The section heading to § 17.3 is revised to read "Criteria for emergency publication."

7. Section 17.4 is amended by revising the section heading, paragraphs (a) and (b) and adding paragraph (d) to read as follows:

**§ 17.4 Procedure and timing for emergency publication.**

(a) Each agency requesting publication on the emergency schedule shall briefly describe the emergency and the benefits to be attributed to immediate publication in the **Federal Register**. The request must be made by letter.

(b) The Director of the Federal Register shall assign a document to the emergency schedule whenever the Director concurs with a request for that action and it is feasible.

* * * * *

(d) Each document assigned to the emergency schedule for publication will be filed for public inspection on the working day before publication unless emergency filing for public inspection is also requested.

8. Section 17.5 is revised to read as follows:

**§ 17.5 Criteria for emergency filing for public inspection.**

An agency may request emergency filing for public inspection for documents to be published under the regular, emergency or deferred publication schedules. Emergency filing for public inspection provides for the fastest possible public access to a document after it has been received, processed and assigned a publication date. Emergency filing for public inspection is considered a special arrangement under § 17.2 of this part that results in deviation from the regular schedule for filing for public inspection. A document receiving emergency filing for public inspection remains on public inspection until it is published according to the schedule for publication.

9. Section 17.6 is redesignated as § 17.7 and a new § 17.6 is added to Subpart C to read as follows:

**§ 17.6 Procedure and timing for emergency filing for public inspection.**

(a) Each agency requesting emergency filing for public inspection shall briefly describe the emergency and the benefits to be attributed to immediate public access. The request must be made by letter.

(b) The Director of the Federal Register shall approve an emergency filing for public inspection request whenever the Director concurs with a request for that action and it is feasible.

(c) Each document approved for emergency filing for public inspection shall be filed as soon as possible following processing and scheduling.

10. Newly redesignated § 17.7 is amended by revising the section heading, removing the word "tabulations" from paragraph (a) and by adding the words "or lengthy tables" in its place and by adding a paragraph (c) to read as follows:

**§ 17.7 Criteria for deferred schedule.**

* * * * *

(c) The Office of the Federal Register staff will notify the agency if its documents must be assigned to a deferred schedule.

## PART 18—PREPARATION AND TRANSMITTAL OF DOCUMENTS GENERALLY

1. The authority citation for Part 18 continues to read as follows:

**Authority:** 44 U.S.C. 1505; sec. 6, E.O. 10530, 19 FR 2709; 3 CFR, 1954–1958 Comp., p. 189.

2. Section 18.1 is revised to read as follows:

**§ 18.1 Original and copies required.**

Except as provided in § 19.2 of this subchapter for Executive orders and proclamations, each agency submitting a document to be filed and published in the **Federal Register** shall send an original and two duplicate originals or certified copies.[1] However, if the document is printed or processed on both sides, one of the copies sent by the agency must be a collated, single-sided copy.

3. Section 18.2 is revised to read as follows:

**§ 18.2 Prohibition on combined category documents.**

(a) The Director of the Federal Register will not accept a document for filing and publication if it combines material that must appear under more than one category in the **Federal Register**. For example, a document may not contain both rulemaking and notice of proposed rulemaking material.

(b) Where two related documents are to be published in the same **Federal Register** issue, the agency may insert a cross-reference in each document.

4. Section 18.3 is amended by revising paragraph (a) and adding paragraph (c) to read as follows:

**§ 18.3 Submission of documents and letters of transmittal.**

(a) Each document authorized or required by law to be filed for public inspection with the Office of the Federal Register and published in the **Federal Register** shall be sent to the Director of the Federal Register.

* * * * *

[1] Agencies with computer processed data are urged to consult with the Office of the Federal Register staff about possible use of the data in the publication process.



(c) Receipt dates are determined at the time a signed original and clear and legible copies are received.

5. Section 18.4 is revised to read as follows:

**§ 18.4 Form of document.**

(a) A printed or processed document may be accepted for filing for public inspection and publication if it is on bond or similar quality paper, legible, and free of adhesive or correction tape.[2]

(b) A document in the form of a letter or press release may not be accepted for filing for public inspection or publication in the rules and regulations, proposed rules, or notices categories of the **Federal Register**.

6. Section 18.5 is revised to read as follows:

**§ 18.5 Certified copies.**

The certified copies or duplicate originals of each document must be submitted with the original. Each copy or duplicate must be entirely clear and legible.

7. Section 18.6 is revised to read as follows:

**§ 18.6 Form of certification.**

Each copy of each document submitted for filing and publication, except a Presidential document or a duplicate original, must be certified as follows:

(Certified to be a true copy of the original)
The certification must be signed by a certifying officer designated under § 18.1 of this chapter.

**§ 18.7 [Amended]**

8. In § 18.7 in the first sentence, remove the word "his" and add, in its place, the word "the". In the second sentence, remove the word "may" and add, in its place, the word "will".

9. Section 18.9 is revised to read as follows:

**§ 18.9 Style.**

Each document submitted by an agency for filing and publication shall conform to the current edition of the U.S. Government Printing Office Style Manual in punctuation, capitalization, spelling, and other matters of style.

10. Section 18.10 is revised to read as follows:

**§ 18.10 Illustrations, tabular material, and forms.**

(a) If it is necessary to publish a form or illustration, a clear and legible original form or illustration, or a clear and completely legible reproduction approximately 8 ½ by 11 inches, shall be included in the original document and each certified copy.

(b) A document that includes tabular material may be assigned to the deferred publication schedule. See § 17.7.

11. Section 18.11 is removed.

12. Section 18.12 is amended by revising the last sentence of paragraph (b) and the introductory text of paragraph (c) to read as follows:

**§ 18.12 Preamble requirements.**

* * * * *

(b) * * *
(See paragraph (c) of this section).

(c) The agency may include the following information in the preamble, as applicable:

* * * * *

13. Section 18.13 is revised to read as follows:

**§ 18.13 Withdrawal or correction of filed documents.**

(a) A document that has been filed for public inspection with the Office of the Federal Register but not yet published, may be withdrawn from publication or corrected by the submitting agency. Withdrawals or minor corrections may be made with a timely letter, signed by a duly authorized representative of the agency. Extensive corrections may require agency withdrawal of the document from publication.

(b) Both the originally filed document and the withdrawing or correcting letter shall remain on file. The original document and the withdrawing or correcting letter will be retained by the Office of the Federal Register after the public inspection period expires.

14. Section 18.14 is removed.

15. Section 18.16 is added to read as follows:

**§ 18.16 Reinstatement of expired regulations.**

Agencies may reinstate regulations removed from the Code of Federal Regulations data base which have expired by their own terms only by republishing the regulations in full text in the **Federal Register**.

16. Section 18.17 is amended by revising paragraph (a) and adding paragraph (c) to read as follows:

**§ 18.17 Effective dates and time periods.**

(a) Each document submitted for publication in the **Federal Register** that includes an effective date or time period should either set forth a date certain or a time period measured by a certain number of days after publication in the **Federal Register**. When a document sets forth a time period measured by a certain number of days after publication, Office of the Federal Register staff will compute the date to be inserted in the document as set forth in paragraph (b) of this section.

* * * * *

(c) In the event an effective date is dependent upon Congressional action, or an act of Congress or a dispositive Federal court decision establishes or changes the effective date of an agency's regulation, the issuing agency shall promptly publish a document in the **Federal Register** announcing the effective date.

**§ 18.20 [Amended]**

17. Section 18.20 is amended by removing paragraph (a), redesignating paragraphs (b) and (c) as paragraphs (a) and (b), and amending newly redesignated paragraph (a) introductory text by removing the phrase "Beginning April 1, 1982," and capitalize the word "each".

## PART 19—EXECUTIVE ORDERS AND PRESIDENTIAL PROCLAMATIONS

1. The authority citation for Part 19 is revised to read as follows:

**Authority:** Secs. 1 to 6 of E.O. 11030, 27 FR 5847, 3 CFR, 1959–1963 Comp., p. 610; E.O. 11354, 32 FR 7695, 3 CFR, 1966–1970 Comp., p. 652; and E.O. 12080, 43 FR 42235, 3 CFR, 1978 Comp., p. 224.

**§ 19.1 [Amended]**

2. Section 19.1(e) is amended by adding footnote 1 after the reference to "Specifications for Descriptions of Tracts of Land for Use in Executive Orders and Proclamations", to read as follows:

[1] Agencies with computer processed data are urged to consult with the Office of the Federal Register staff about possible use of the data in the publication process.

3. Section 19.4 is amended by adding the following sentence to the end to read as follows:

**§ 19.4 Proclamations calling for the observance of special days or events.**

* * * * *

Notwithstanding the provisions of § 19.2, the Director shall transmit any approved commemorative proclamations to the President.

## PART 20—HANDLING OF THE UNITED STATES GOVERNMENT MANUAL STATEMENTS

1. The part heading is revised to read as shown above.

[2] Agencies with computer processed data are urged to consult with the Office of the Federal Register staff about possible use of the data in the publication process.

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2. The authority citation for Part 20 continues to read as follows:

**Authority:** 44 U.S.C. 1506; sec. 6, E.O. 10530, 19 FR 2709; 3 CFR, 1954–1958 Comp., p. 189.

**§ 20.1 [Amended]**

3. In § 20.1, the introductory text is designated as paragraph (a) introductory text and amended by capitalizing the word "the" that appears before the words "United States Government Manual"; paragraphs (a) through (d) are redesignated as (a) (1) through (4); and the final undesignated paragraph is designated as paragraph (b) and amended by removing the words "his agency's" and adding, in their place, the word "agency".

4. Section 20.3 is amended by revising paragraphs (a) and (c) to read as follows:

**§ 20.3 Organization.**

(a) Information about lines of authority and organization may be reflected in a chart if the chart clearly delineates the agency's organizational structure. Charts must be prepared so as to be perfectly legible when reduced to the size of a Manual page. Charts that do not meet this requirement will not be included in the Manual.

* * * * *

(c) Narrative descriptions of organizational structure or hierarchy that duplicate information conveyed by charts or by lists of officials will not be published in the Manual.

5. Section 20.4 is revised to read as follows:

**§ 20.4 Descriptions of program activities.**

(a) Descriptions should clearly state the public purposes that the agency serves, and the programs that carry out those purposes.

(b) Descriptions of the responsibilities of individuals or of administrative units common to most agencies will not be accepted for publication in the Manual.

## PART 21—PREPARATION OF DOCUMENTS SUBJECT TO CODIFICATION

1. The authority citation for Part 21 continues to read as follows:

**Authority:** 44 U.S.C. 1505; sec. 6, E.O. 10530, 19 FR 2709; 3 CFR, 1954–1958 Comp., p. 189.

2. Section 21.1 is amended by revising paragraph (b) to read as follows:

**§ 21.1 Drafting.**

* * * * *

(b) Each agency that prepares a document that is subject to codification shall include words of issuance and amendatory language that precisely describes the relationship of the new provisions to the Code.

**§ 21.4 [Removed]**

3. Section 21.4 is removed.

**§ 21.5 [Removed]**

4. Section 21.5 is removed.

5. Section 21.6 is revised to read as follows:

**§ 21.6 Notice of expiration of codified material.**

Whenever a codified regulation expires after a specified period by its own terms or by law, the issuing agency shall submit a notification by document for publication in the Federal Register.

6. Section 21.8 is amended by adding a new paragraph (c) to read as follows:

**§ 21.8 Chapters and subchapters.**

* * * * *

(c) Chapter and subchapter assignments are made by the Office of the Federal Register after agency consultation.

7. Section 21.11 is revised to read as follows:

**§ 21.11 Standard organization of the Code of Federal Regulations.**

(a) The standard organization consists of the following structural units:

(1) Titles, which are numbered consecutively in Arabic throughout the Code;

(2) Subtitles, which are lettered consecutively in capitals throughout the title;

(3) Chapters, which are numbered consecutively in Roman capitals throughout each title;

(4) Subchapters, which are lettered consecutively in capitals throughout the chapter;

(5) Parts, which are numbered in Arabic throughout each title;

(6) Subparts, which are lettered in capitals;

(7) Sections, which are numbered in Arabic throughout each part. A section number includes the number of the part followed by a period and the number of the section. For example, the section number for section 15 of Part 21 is "§ 21.15"; and

(8) Paragraphs, which are designated as follows:

level 1 (a), (b), (c), etc.
level 2 (1), (2), (3), etc.
level 3 (i), (ii), (iii), etc.
level 4 (A), (B), (C), etc.
level 5 (*1*), (*2*), (*3*), etc.
level 6 (*i*), (*ii*), (*iii*), etc.

**§ 21.12 [Amended]**

8. In § 21.12 remove the word "shall" and add, in its place, the word "may".

**§ 21.13 [Removed]**

9. Section 21.13 is removed.

10. Section 21.14 is revised to read as follows:

**§ 21.14 Deviations from standard organization of the Code of Federal Regulations.**

(a) Any deviation from standard Code of Federal Regulations designations must be approved in advance by the Office of the Federal Register. Requests for approval must be submitted in writing at least five working days before the agency intends to submit the final rule document for publication and include a copy of the final rule document.

(b) The Director of the Federal Register may allow the keying of section numbers to correspond to a particular numbering system used by an agency only when the keying will benefit both that agency and the public.

**§ 21.15 [Removed]**

11. Section 21.15 is removed.

12. Section 21.16 is amended by revising the last sentence to read as follows:

**§ 21.16 Tables of contents.**

* * * It shall also list the headings for the subparts, undesignated center headings, sections in the part, and appendix headings to the part or subpart.

**§ 21.22 [Removed]**

13. Section 21.22 is removed.

**§ 21.42 [Amended]**

14. In § 21.42 remove the word "he" and add, in its place, the words "the Director".

15. Section 21.43 is amended by revising the second sentence of paragraph (b) to read as follows:

**§ 21.43 Placing and amending authority citations.**

* * * * *

(b) * * * The authority citation shall appear at the end of the table of contents for a part or after each subpart heading within the text of a part. * * *

**§ 21.45 [Amended]**

16. In § 21.45 add the word "nonstatutory" before the word "document".

17. Section 21.52 is revised to read as follows:

**§ 21.52 Statutory material.**

(a) *United States Code.* All citations to statutory authority shall include a United States Code citation, where available. Citations to titles of the United States Code, whether or not enacted into positive law, may be cited without Public Law or U.S. Statutes at Large citation. For example:

**Authority:** 10 U.S.C. 501.

(b) *Public Laws and U.S. Statutes at Large.* Citations to Public Laws and U.S. Statutes at Large are optional when the United States Code is cited. Citations to current public laws and to the U.S. Statutes at Large shall refer to the section of the public law and the volume and page of the U.S. Statutes at Large to which they have been assigned. The page number shall refer to the page on which the section cited begins. For example:

**Authority:** Sec. 5, Pub. L. 89–670, 80 Stat. 935 (49 U.S.C. 1654); sec. 313, Pub. L. 85–726, 72 Stat. 752 (49 U.S.C. 1354).

**§ 21.53 [Amended]**

18. In § 21.53 add the word "Authority:" in front of the word "Special".



## PART 22—PREPARATION OF NOTICES AND PROPOSED RULES

1. The heading to Part 22 is revised to read as shown above.

2. The authority citation for Part 22 continues to read as follows:

**Authority:** 44 U.S.C. 1506; sec. 6, E.O. 10530, 19 FR 2709; 3 CFR, 1954–1958 Comp., p. 189.

3. The undesignated center heading for §§ 22.1–22.2 is designated as Subpart A and revised to read as follows:

### Subpart A—Notices

4. The undesignated center heading for §§ 22.5–22.7 is designated as Subpart B and revised to read as follows:

### Subpart B—Proposed Rules

**§ 22.5 [Amended]**

5. In § 22.5, the introductory text is amended by removing the phrase "notice of proposed rule making" and adding in its place "proposed rule" and removing the word "notice" and adding in its place "document" and in paragraph (a), the words "rule making" are made one word.

**§ 22.6 [Amended]**

6. In § 22.6 the words "in brackets" are removed and the brackets that appear around the citation, "[1 CFR Part 22]" are also removed.

**§ 22.7 [Amended]**

7. In § 22.7 the words "notice of" and "making" are removed.

**Don W. Wilson,**
*Chairman.*
**Joseph Jenifer,**
*Member.*
**Carol Williams,**
*Member.*
**Dick Thornburgh,**
*Attorney General.*
**Don W. Wilson,**
*Archivist of the United States.*

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Part VI

# Department of Education

**Invitation for Applications for New Awards for Fiscal year 1989 Under the Center for International Business Education Program; Notice**

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**DEPARTMENT OF EDUCATION**

**[CFDA No. 84.220]**

**Notice Inviting Applications for New Awards for Fiscal Year 1989 under the Centers for International Business Education Program**

*Note to Applicants:* This notice is a complete application package. Together with the statute authorizing the program and applicable regulations governing the Program, including the Education Department General Administrative Regulations (EDGAR), the notice contains information, application forms, and instructions needed to apply for a grant under this competition.

*Purpose of Program:* The purpose of the Centers for International business Education Program is to provide grants to eligible institutions of higher education, or combinations of these institutions, to pay the Federal share of the cost of planning, establishing and operating Centers for International Business Education that will—

(1) Be national resources for the teaching of imporved business techniques, strategies, and methodologies that emphasize the international context in which business is transacted;

(2) Provide instruction in critical foreign languages and international fields needed to provide an understanding of the cultures and customs of United States trading partners;

(3) Provide research and training in the international aspects of trade, commerce, and other fields of study;

(4) Provide training to students enrolled in the institution, or combinations of institutions, in which a center is located; and

(5) Serve as regional resources to businesses aproximately located by offering programs and providing research designed to meet the international training needs of these businesses.

*Deadline for Transmittal of Applications:* May 10, 1989.

*Available Funds:* $741,000. The Administration has not requested funds for this program for 1990, the second year of the proposed three-year funding cycle.

*Estimated Range of Awards:* $100,000–$125,000.

*Estimated Average Size of Awards:* $110,000.

*Estimated Number of Awards:* 5–7.

Note: The Department is not bound by any estimates in this notice.

*Project Period:* 36 Months.

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations), Part 75 (Direct Grant Programs); Part 77 (Definitions that Apply to Department Regulations); and Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)); (b) The Centers for International Business Education Program, authorized under Title VI, Part B, Section 612, of the Higher Education Act of 1965, as amended by section 6261 of the Omnibus Trade and Competitiveness Act of 1988, P.L. 100–418 (20 U.S.C. 1130a-b).

*Eligibility:* To be eligible for assistance under this program, an applicant must be an institution of higher education, or a combination of such institutions, that establishes a Center Advisory Council prior to the date that Federal assistance is received. The Center Advisory Council shall conduct extensive planning prior to the establishment of the Center for International Business Education, concerning the scope of the Center's activities and the design of its programs.

The Center Advisory Council shall include—

(1) One representative of an administrative department or office of the institution of higher education (or a combination of such institutions);

(2) One faculty representative of the business or management school or department of such an institution (or a combination of such institutions);

(3) One faculty representative of the international studies or foreign language school or department of such an institution (or a combination of such institutions);

(4) One faculty representative of another professional school or department of such an institution (or a combination of such institutions), as appropriate;

(5) One or more representatives of local or regional businesses or firms;

(6) One representative appointed by the Governor of the State in which the institution (or a combination of such institutions) is located whose normal responsibilities include official oversight or involvement in State-sponsored trade-related activities or programs; and

(7) Such other individuals as the institution of higher education (or a combination of such institutions) deems appropriate.

In addition to the initial planning activities required by the statute, the Center Advisory Council shall meet not less than once each year after the establishment of the center to assess and advise on the programs and activities conducted by the center.

*Programmatic Requirements:* Programs and activities to be conducted by Centers for International Business Education shall include—

(1) interdisciplinary programs that incorporate foreign language and international studies training into business, finance, management, communications systems, and other professional curricula;

(2) Interdisciplinary programs that provide business, finance, management, communications systems, and other professional training for foreign language and international studies faculty and advanced degree candidates;

(3) Evening or summer programs, including, but not limited to, intensive language programs, available to members of the business community and other professionals, that are designed to develop or enhance their international skills, awareness, and expertise;

(4) Collaborative programs, activities, or research involving other institutions of higher education, local educational agencies, professional associations, businesses, firms or combinations thereof, to promote the development of international skills, awareness, and expertise among current and prospective members of the business community and other professionals;

(5) Research designed to strengthen and improve the international aspects of business and professional education and to promote integrated curricula; and

(6) Research designed to promote the international competitiveness of American businesses and firms, including those not currently active in international trade.

*Other Allowable Activities:* Programs and activities to be conducted by Centers for International Business Education may also include—

(1) The establishment of overseas internship programs for students and faculty designed to provide training and experience in international business activities, except that no Federal funds provided under this program may be used to pay wages or stipends to any participant who is engaged in compensated employment as part of an internship program; and

(2) Other eligible activities consistent with the purposes and intent of the legislation.

*Funding Requirements:* The applicant's share of the cost of planning, establishing and operating centers under this section shall not be less than—



(1) 10 per centum for the first year in which Federal funds are furnished;

(2) 30 per centum for the second such year; and

(3) 50 per centum for the third such year and for each such year thereafter.

The non-Federal share of the cost of planning, establishing, and operating centers under this program may be provided either in cash or by in-kind assistance.

*Other Requirements:* The statute requires applicants to provide—

(1) An assurance that the Center Advisory Council shall meet not less than once each year after the establishment of the center to assess and advise on the programs and activities conducted by the center;

(2) A description of the extensive planning that the Center Advisory Council and the institution of higher education, or a combination of these institutions, have conducted or will conduct prior to the establishment of the Center for International Business Education, concerning the scope of the center's activities and the design of its programs;

(3) An assurance of ongoing collaboration in the establishment and operation of the center by faculty of the business, management, foreign language, international studies and other professional schools or departments, as appropriate;

(4) An assurance that the education and training programs of the center will be open to students concentrating in each of these respective areas, as appropriate; and

(5) An assurance that the institution of higher education, or combination of these institutions, will use the assistance provided under this section to supplement and not to supplant activities conducted by the institution or institutions of higher education.

*Allowable Costs:* Grant funds may be used to pay the Federal share of the cost of planning, establishing or operating a center, including the cost of—

(1) Faculty and staff travel in foreign areas, regions, or countries;

(2) Teaching and research materials;

(3) Curriculum planning and development;

(4) Bringing visiting scholars and faculty to the center to teach or to conduct research;

(5) Training and improvement of the staff, for the purpose of, and subject to such conditions as the Secretary finds necessary, for carrying out the objectives of this program; and

(6) Other costs consistent with planning, establishing or operating a center.

The applicant may complete a copy of Standard Form 424A, printed in the application package, for each year for which funding is requested, and may use Section F of Standard Form 424A to provide a detailed breakout of all proposed costs for each 12-month period for which funding is requested. Under 34 CFR 75.564, the Secretary accepts an indirect cost rate of 8 percent.

**Selection Criteria**

(a)(1) The Secretary uses the following selection criteria to evaluate applications for new grants under this competition.

(2) The maximum score for all of these criteria is 100 points.

(3) The maximum score for each criterion is indicated in parentheses.

(b) *The criteria.*—(1) *Meeting the purposes of the authorizing statute.* (30 points) The Secretary reviews each application to determine how well the project will meet the purpose of Title VI, Part B, Section 612, of the Highest Education Act of 1965, as amended by section 6261 of the Omnibus Trade and Competitiveness Act of 1988, Pub. L. 100–418 (20 U.S.C. 1130a–b), including consideration of—

(i) The objectives of the project; and

(ii) How the objectives of the project further the purposes of the authorizing statute.

(2) *Extent of need for the project.* (20 points) The Secretary reviews each application to determine the extent to which the project meets specific needs recognized in the statute that authorizes the program, including consideration of—

(i) The needs addressed by the project;

(ii) How the applicant identified those needs;

(iii) How those needs will be met by the project; and

(iv) The benefits to be gained by meeting those needs.

(3) *Plan of operation.* (25 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(i) The quality of the design of the project;

(ii) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(iii) How well the objectives of the project relate to the purpose of the program;

(iv) The quality of the applicant's plan to use its resources and personnel to achieve each objective;

(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition; and

(vi) For grants under a program that requires the applicant to provide an opportunity for participation of students enrolled in private schools, the quality of the applicant's plan to provide that opportunity.

(4) *Quality of key personnel.* (7 points.)

(i) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraph (b)(4)(i) (A) and (B) will commit to the project; and

(D) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(ii) To determine personnel qualifications under paragraphs (b)(4)(i) (A) or (B), the Secretary considers—

(A) Experience and training in fields related to the objectives of the project; and

(B) Any other qualifications that pertain to the quality of the project.

(5) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(i) The budget is adequate to support the project; and

(ii) Costs are reasonable in relation to the objectives of the project.

(6) *Evaluation plan.* (5 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(i) Are appropriate to the project; and

(ii) To the extent possible, are objective and produce data that are quantifiable.

(Cross-reference: See 34 CFR 75.590 Evaluation by the grantee.)

(7) *Adequacy of resources.* (3 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(Approved under OMB Control No. 1840–0616)

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**Instructions for Transmittal of Applications**

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.220), Washington, DC 20202–4725.

or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.220), Room #3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

**Notes.**—(1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) An applicant wishing to know that its application has been received by the Department must include with the application a stamped, self-addressed postcard containing the CFDA number and title of this program.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and letter, if any—of the competition under which the application is being submitted.

**Application Instructions and Forms**

The appendix to this application is divided into three parts. These parts are organized in the same manner that the submitted application should be organized. The parts are as follows:

Part I: Application for Federal Assistance (Standard Form 424 Rev. 4–88)) and instructions.

Part II: Budget Information—Non-Construction Programs (Standard Form 424A) and instructions.

Part III: Application Narrative.

Assurances—Non-Construction Programs (Standard Form 424B).

Assurances—Centers for International Business Education Program.

Certification regarding Debarment, Suspension, and other Responsibility Matters: Primary Covered Transactions (ED Form GCS–008) and instructions.

Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form GCS–009) and instructions. (NOTE: ED Form GCS–009 is intended for the use of primary participants and should not be transmitted to the Department.)

One or both of the following, as appropriate:

Certification Regarding Drug-Free Workplace Requirements: Grantees Other than Individuals (ED 80–0004).

Certification Regarding Drug-Free Workplace Requirements: Grantees Who Are Individuals (ED 80–0005).

*For Further Information Contact:* For specific information concerning the program contact: Susanna C. Easton, Center for International Education, Office of Postsecondary Education, Department of Education, Room 3053, ROB–3, 400 Maryland Avenue, SW., Washington, DC 20202–5332. Telephone (202) 732–3302.

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certification. However, the application form, the assurances, and the certification must each have an *original signature.* No grant may be awarded unless a completed application form has been received.

*Program Authority:* (20 U.S.C. 1130a–b)
Dated: February 2, 1989.

**Kenneth D. Whitehead,**
*Assistant Secretary for Postsecondary Education.*

BILLING CODE 4000-01-M



Appendix

**APPLICATION FOR FEDERAL ASSISTANCE**

OMB Approval No. 0348-0043

| | |
|---|---|
| 2. DATE SUBMITTED | Applicant Identifier |
| 3. DATE RECEIVED BY STATE | State Application Identifier |
| 4. DATE RECEIVED BY FEDERAL AGENCY | Federal Identifier |

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name: | Organizational Unit:

Address (give city, county, state, and zip code): | Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐
A. State; B. County; C. Municipal; D. Township; E. Interstate; F. Intermunicipal; G. Special District; H. Independent School Dist.; I. State Controlled Institution of Higher Learning; J. Private University; K. Indian Tribe; L. Individual; M. Profit Organization; N. Other (Specify): _____

8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision
If Revision, enter appropriate letter(s) in box(es): ☐ ☐
A. Increase Award; B. Decrease Award; C. Increase Duration; D. Decrease Duration; Other (specify): _____

9. NAME OF FEDERAL AGENCY: Department of Education

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 8 4 . 2 2 0
TITLE: Centers for International Business Education

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT: Start Date; Ending Date

14. CONGRESSIONAL DISTRICTS OF: a. Applicant; b. Project

15. ESTIMATED FUNDING:

| | |
|---|---|
| a. Federal | $ .00 |
| b. Applicant | $ .00 |
| c. State | $ .00 |
| d. Local | $ .00 |
| e. Other | $ .00 |
| f. Program Income | $ .00 |
| g. TOTAL | $ .00 |

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON: DATE _____
b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

| | | |
|---|---|---|
| a. Typed Name of Authorized Representative | b. Title | c. Telephone number |
| d. Signature of Authorized Representative | | e. Date Signed |

Previous Editions Not Usable

Standard Form 424 (REV. 4-88)
Prescribed by OMB Circular A-102

**Authorized for Local Reproduction**

## INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

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## BUDGET INFORMATION — Non-Construction Programs

**SECTION A - BUDGET SUMMARY**

| Grant Program Function or Activity (a) | Catalog of Federal Domestic Assistance Number (b) | Estimated Unobligated Funds | | New or Revised Budget | | |
|---|---|---|---|---|---|---|
| | | Federal (c) | Non-Federal (d) | Federal (e) | Non-Federal (f) | Total (g) |
| 1. | | $ | $ | $ | $ | $ |
| 2. | | | | | | |
| 3. | | | | | | |
| 4. | | | | | | |
| 5. TOTALS | | $ | $ | $ | $ | $ |

**SECTION B - BUDGET CATEGORIES**

| 6. Object Class Categories | GRANT PROGRAM, FUNCTION OR ACTIVITY (1) | (2) | (3) | (4) | Total (5) |
|---|---|---|---|---|---|
| a. Personnel | $ | $ | $ | $ | $ |
| b. Fringe Benefits | | | | | |
| c. Travel | | | | | |
| d. Equipment | | | | | |
| e. Supplies | | | | | |
| f. Contractual | | | | | |
| g. Construction | | | | | |
| h. Other | | | | | |
| i. Total Direct Charges (sum of 6a - 6h) | | | | | |
| j. Indirect Charges | | | | | |
| k. TOTALS (sum of 6i and 6j) | $ | $ | $ | $ | $ |
| 7. Program Income | $ | $ | $ | $ | $ |

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Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

| SECTION C - NON-FEDERAL RESOURCES | | | | |
|---|---|---|---|---|
| (a) Grant Program | (b) Applicant | (c) State | (d) Other Sources | (e) TOTALS |
| 8. | $ | $ | $ | $ |
| 9. | | | | |
| 10. | | | | |
| 11. | | | | |
| 12. TOTALS (sum of lines 8 and 11) | $ | $ | $ | $ |

| SECTION D - FORECASTED CASH NEEDS | | | | | |
|---|---|---|---|---|---|
| | Total for 1st Year | 1st Quarter | 2nd Quarter | 3rd Quarter | 4th Quarter |
| 13. Federal | $ | $ | $ | $ | $ |
| 14. NonFederal | | | | | |
| 15. TOTAL (sum of lines 13 and 14) | $ | $ | $ | $ | $ |

| SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT | | | | |
|---|---|---|---|---|
| (a) Grant Program | FUTURE FUNDING PERIODS (Years) | | | |
| | (b) First | (c) Second | (d) Third | (e) Fourth |
| 16. | $ | $ | $ | $ |
| 17. | | | | |
| 18. | | | | |
| 19. | | | | |
| 20. TOTALS (sum of lines 16 -19) | $ | $ | $ | $ |

| SECTION F - OTHER BUDGET INFORMATION (Attach additional Sheets if Necessary) | |
|---|---|
| 21. Direct Charges: | 22. Indirect Charges: |
| 23. Remarks | |

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## INSTRUCTIONS FOR THE SF-424A

**General Instructions**

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A,B,C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A,B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

**Section A. Budget Summary**
**Lines 1-4, Columns (a) and (b)**

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

**Lines 1-4, Columns (c) through (g.)**

*For new applications*, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

**Lines 1-4, Columns (c) through (g.)** (continued)

*For continuing grant program applications*, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

*For supplemental grants and changes* to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

**Line 5** — Show the totals for all columns used.

**Section B Budget Categories**

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

**Lines 6a-i** — Show the totals of Lines 6a to 6h in each column.

**Line 6j** - Show the amount of indirect cost.

**Line 6k** - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

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## INSTRUCTIONS FOR THE SF-424A *(continued)*

**Line 7** – Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

**Section C. Non-Federal-Resources**

**Lines 8-11** – Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

**Column (a)** – Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

**Column (b)** – Enter the contribution to be made by the applicant.

**Column (c)** – Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

**Column (d)** – Enter the amount of cash and in-kind contributions to be made from all other sources.

**Column (e)** – Enter totals of Columns (b), (c), and (d).

**Line 12** — Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

**Section D. Forecasted Cash Needs**

**Line 13** – Enter the amount of cash needed by quarter from the grantor agency during the first year.

**Line 14** – Enter the amount of cash from all other sources needed by quarter during the first year.

**Line 15** – Enter the totals of amounts on Lines 13 and 14.

**Section E. Budget Estimates of Federal Funds Needed for Balance of the Project**

**Lines 16 - 19** – Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

**Line 20** – Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

**Section F. Other Budget Information**

**Line 21** – Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

**Line 22** – Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

**Line 23** – Provide any other explanations or comments deemed necessary.





INSTRUCTIONS FOR PART III--APPLICATION NARRATIVE

Before preparing the Application Narrative, an applicant should read carefully all the information included in this notice. The Secretary recommends that you carefully consider the sections of this notice pertaining to the Purpose of the Program and the Programmatic Requirements as you address the selection criteria the Secretary uses to evaluate applications.

The narrative should--

1. Begin with an Abstract; that is, a summary of the proposed project;

2. Include the following information in order to establish eligibility under this program:

(a) The date the Center Advisory Council was or will be established. Note: The Advisory Council shall be established prior to the date that Federal assistance is received;

(b) A list of the members of the Advisory Council and a description of their academic or other affiliations; and

(c) A description of the extensive planning which was or will be conducted by the Advisory Council prior to the establishment of the Center for International Business Education, concerning the scope of the center's activities and the design of its programs.

3. Describe the proposed Center for International Business Education in light of each of the selection criteria in the order in which the criteria are listed in this notice. Describe the activities proposed to be carried out in each year of the 3-year funding cycle under the "Plan of Operation" section of the application.

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4. Include any other pertinent information that might assist the Secretary in reviewing the application.

Please limit the Application Narrative to 55 double-spaced, typed pages (on one side only). Please do not use reduced size type script. Supporting materials may be appended.



**NOTE:** Public reporting burden for this collection of information is estimated to average 35 hours per response in the first year, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the U.S. Department of Education, Information Management and Compliance Division, 400 Maryland Avenue, S.W., Washington, D.C. 20202-4651, and to the Office of Management and Budget, Paperwork Reduction Project (1840-0616) Washington, D.C. 20503.

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OMB Approval No. 0348-0040

## ASSURANCES — NON-CONSTRUCTION PROGRAMS

**Note:** Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

| SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL | TITLE |
|---|---|
| APPLICANT ORGANIZATION | DATE SUBMITTED |

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ASSURANCES

INSTRUCTIONS: Applicants are required to provide the following assurances: This assurance form must be signed by authorized representatives of the legal applicants.

ASSURANCES -- CENTERS FOR INTERNATIONAL BUSINESS EDUCATION

The applicant hereby assures and certifies that:

1. In addition to conducting the extensive planning activities required under the eligibility section of the statute, the center advisory council shall meet not less than once a year after the establishment of the center to assess and advise on the programs and activities conducted by the center;

2. There shall be ongoing collaboration in the establishment and operation of the center by faculty of the business, management, foreign language, international studies and other professional schools or departments, as appropriate;

3. The education and training programs of the center will be open to students concentrating in each of these respective areas, as appropriate; and

4. The applicant will use the assistance provided under this program to supplement and not to supplant activities already being conducted by the applicant.

Name And Title Of Authorized Representative

Signature Date



## Certification Regarding Debarment, Suspension, and Other Responsibility Matters Primary Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, Section 85.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211). Copies of the regulations may be obtained by contacting the U.S. Department of Education, Grants and Contracts Service, 400 Maryland Avenue, S.W. (Room 3633 GSA Regional Office Building No. 3), Washington, D.C. 20202-4725, telephone (202) 732-2505.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Organization Name PR/Award Number or Project Name

Name and Title of Authorized Representative

Signature Date



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## Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.



ED Form GCS-008, (REV. 12/88)



## Certification Regarding
## Debarment, Suspension, Ineligibility and Voluntary Exclusion
## Lower Tier Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, Section 85.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211). Copies of the regulations may be obtained by contacting the person to which this proposal is submitted.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Organization Name PR/Award Number or Project Name

Name and Title of Authorized Representative

Signature Date



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## Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.



ED Form GCS-009. (REV. 12/88)



## Certification Regarding Drug-Free Workplace Requirements
## Grantees Other Than Individuals

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988, 34 CFR Part 85, Subpart F. The regulations, published in the January 31, 1989 Federal Register, require certification by grantees, prior to award, that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the agency determines to award the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment (see 34 CFR Part 85, Sections 85.615 and 85.620).

**The grantee certifies that it will provide a drug-free workplace by:**

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing a drug-free awareness program to inform employees about--

(1) The dangers of drug abuse in the workplace;
(2) The grantee's policy of maintaining a drug-free workplace;
(3) Any available drug counseling, rehabilitation, and employee assistance programs; and
(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will--

(1) Abide by the terms of the statement; and
(2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

(e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;

(f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted--

(1) Taking appropriate personnel action against such an employee, up to and including termination; or
(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

Organization Name _____ PR/Award Number or Project Name _____

Name and Title of Authorized Representative _____

Signature _____ Date _____

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Part VII

# Department of Housing and Urban Development

**Office of the Assistant Secretary for Housing—Federal Housing Commissioner**

**24 CFR Part 219**

**Flexible Subsidy Program-Capital Improvement Loans; Interim Rule**

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**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**Office of the Assistant Secretary for Housing—Federal Housing Commissioner**

**24 CFR Part 219**

**[Docket No. R-89-1437; FR-2541]**

**Flexible Subsidy Program—Capital Improvement Loans**

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

**ACTION:** Interim rule.

**SUMMARY:** In response to amendments made to section 201 of the Housing and Community Development Amendments of 1978 in 1983, 1987, and 1988, this interim rule completely revises Part 219, reorganizing it into three subparts to cover the current program of Flexible Subsidy operating assistance, the new program of capital improvement loans, and general provisions applicable to both types of assistance.

Section 201 created the Flexible Subsidy program to provide operating assistance for projects experiencing extreme financial difficulty. Operating assistance is generally provided in the form of a deferred loan and, in conjunction with other resources, is designed to restore or maintain the physical and financial soundness of eligible projects so as to maintain their low- and moderate-income character. Assistance can be used to fund operating deficits, such as delinquent tax escrows or inadequate reserve accounts, and to correct past deficiencies in maintenance, repairs, and capital replacements.

The 1983 amendments expanded the scope of HUD-assisted projects that were eligible for operating assistance under the program. The 1987 amendments again added new types of projects that are eligible for Flexible Subsidy, and they added a loan program for projects assisted by HUD that have a need for capital improvements that cannot be financed from their reserve funds. These loans (as well as the operating assistance loans) are to be funded from a Flexible Subsidy Fund established in the U.S. Treasury. This Fund is comprised of excess receipts paid to HUD from owners of projects assisted under section 236 of the National Housing Act, any appropriations made for this purpose, and repayments of operating assistance or loans made under the Flexible Subsidy program. Repayment of capital improvement loans will commence after completion of the work covered by the loan and will continue throughout the loan term—usually until the end of the original project mortgage.

Section 1011 of the McKinney Homeless Assistance Amendments Act of 1988 (Pub. L. No. 100-628, approved November 7, 1988) now requires that HUD implement the capital improvement loan component of the program, at a stated minimum annual funding level, by issuing "regulations that become effective not later than February 5, 1989." Consequently, this rule is being issued to implement the current section 201, including the 1983, 1987 and 1988 changes.

**DATES:** *Effective date:* March 7, 1989. *Comment date:* May 8, 1989.

**ADDRESS:** Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection during regular business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** James J. Tahash, Director, Planning and Procedures Division, Office of Multifamily Housing Management, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 426-3944. A telecommunications device for hearing or speech-impaired persons is available at (202) 755-6490. These are not toll-free telephone numbers.

**SUPPLEMENTARY INFORMATION:**

**I. Paperwork Reduction Act Statement**

The information collection requirements contained in §§ 219.210, 219.220, and 219.310 of this rule have been submitted to the Office of Management and Budget (OMB) for emergency review under the Paperwork Reduction Act of 1980, seeking temporary approval for a 90-day period, to be followed by a submission for standard approval. The temporary approval numbers for these information collections will be published separately in a Notice in the **Federal Register**. Until that time no person may be subjected to a penalty for failure to comply with these information collection requirements.

Since the request for standard approval will be submitted within the next month or so, this preamble provides sufficient information for public comment on the information collections. The annual public reporting burden of these requirements, including the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information, is stated in the chart included under the heading of Findings and Certifications. Send comments regarding burden estimates or any other aspect of these sets of collections of information, including suggestions for reducing the burden, to the Department of Housing and Urban Development Rules Docket Clerk, at the address stated above and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for HUD. At the end of the public comment period on this rule, the Department may amend the information collection requirements set out in this rule to reflect public comments or OMB comments received concerning the information collections.

**II. Statutory Background**

The 1983 amendments to section 201 (made by section 217 of the Housing and Urban-Rural Recovery Act of 1983) expanded the Flexible Subsidy program to include projects assisted under section 8 of the United States Housing Act of 1937 that had been converted from assistance under section 236 of the National Housing Act or section 101 of the Housing and Urban and Development Act of 1965, and clarified that a project need not have an FHA-insured mortgage to be eligible.

The 1987 changes (made by sections 185 and 186 of the Housing and Community Development Act of 1987) again expanded the category of eligible projects. Projects assisted under section 23 of the United States Housing Act of 1937 as it existed before January 1, 1975, and projects that received a loan under section 202 of the Housing Act of 1959 more than 15 years before the date on which assistance is to be made available under this program, were made eligible.

The principal thrust of the 1987 amendments, however, was to create a new category of assistance to be provided under the Flexible Subsidy program for projects that need capital improvements to achieve physical soundness that cannot be funded from project reserve funds without jeopardizing other major repairs or replacements that are reasonably expected to be required in the near future. This program of capital improvement loans is to be funded at an annual minimum of $30 million or 40 percent of the amount available



(whichever is less), to the extent of approvable applications.

The 1987 amendments contemplate a contribution from the project owner toward the capital improvements of at least 20 percent of the total estimated cost. HUD may require the contribution to be as much as 30 percent of the cost, if that action is necessary to keep the rent burden required to service the loan down to a reasonable level. The cost for capital improvements to be made under this loan program is limited to the amount HUD determines to be necessary to repair or replace capital items that have failed or are likely to fail in the near future, to improve those items and associated items to meet HUD's cost-effective energy efficiency standards, and to satisfy requirements under section 504 of the Rehabilitation Act of 1973 for access by mobility-impaired persons.

The 1987 amendments specify priorities to be given in awarding capital improvement loans. Top priority is given to projects where the owner is seeking to prepay the mortgage and the project is eligible for incentives to continue operating for the benefit of low- and moderate-income tenants under section 224(b) of the Emergency Low Income Housing Preservation Act of 1987. Other projects are to be given priority to the extent (1) the capital improvements are immediately required; (2) the project serves lower income families and other suitable housing is unavailable in the area; (3) the capital improvements involve life, safety, or health of the project residents; and (4) the project demonstrates the greatest financial distress but can be rendered physically sound. In any case, the owner must agree to maintain the low- and moderate-income character of the project at least until the expiration of the project mortgage.

The 1987 amendments also specify that the interest rate on the loan is to be established by the Secretary of HUD. It is to be not less than 3 percent nor more than 6 percent (unless a rate of as low as 1 percent is needed to sustain acceptable rents), and is to be based on a point spread below the Treasury rate, plus an allowance established by the Secretary to cover administrative costs and probable losses. The term of the loan may not exceed the remaining term of the original mortgage. The Secretary is also authorized to impose additional conditions determined to be appropriate.

Recognizing that a project may need considerable assistance, the 1987 amendments provide that a project may receive more than one loan or other assistance under the Flexible Subsidy program. Those amendments also provide that if the debt service on a capital improvement loan would otherwise force the rents too high, the owner contribution can be required to be higher or the rate of interest on the loan can be lower, as discussed above. Other ways stated in the statute to resolve the high rent burden problem are to provide Section 8 Existing Housing assistance or to increase the length of the loan term.

**III. Changes to Regulation**

Part 219 is reorganized and revised in this rulemaking. Three subparts have been created to group the provisions in a logical order. General provisions that apply both to the existing Flexible Subsidy program of operating assistance and the new Flexible Subsidy program of capital improvement loans have been placed in Subpart A. Provisions that apply only to the operating assistance component have been placed in Subpart B, and provisions dealing principally with the capital improvement loan component have been placed in Subpart C.

*A. Subpart A*

The sections now placed in Subpart A include § 219.101, Purpose; § 219.105, Types of projects; § 219.110, General eligibility; § 219.120, Local government consultation; and § 219.130, Waivers. These sections correspond to existing sections with the same numbers, except for Local government consultation and Waivers, which used to be §§ 219.115 and 219.135, respectively.

The purpose section, based on section 201(a) of the Housing and Community Development Amendments of 1978 (HCD Amendments of 1978 or "section 201"), has been revised by deleting the reference to use of assistance under this part for supplemental funding for Rent Supplement contracts, since section 201(h) prohibits such use after October 1, 1981. It also adds reference to the capital improvement loan component of the Flexible Subsidy program, a 1987 Act change.

Both the purpose section and the following section on types of eligible projects have been revised to reflect the addition of several categories of projects: certain Section 8 projects, Section 23 (precursor to Section 8) projects, certain Section 202 projects, and all of the eligible categories without regard to whether they have FHA-insured mortgages.

The section that described conditions for approval has been renamed general eligibility. The paragraph on supplemental funding for Rent Supplement contracts has been deleted from this section, as it was from the purpose section. The paragraph on funding priorities has been moved to a section in Subpart B. The remaining paragraph, based on section 201(d) of the HCD Amendments of 1978, has been revised to reflect the 1987 amendments that added physical soundness to financial soundness as a goal to be supported by the Flexible Subsidy program. As modified, the eligibility criteria apply to both operating assistance loans and capital improvement loans, and therefore this section is left in the general subpart. It should be noted that one of the eligibility criteria is that this type of assistance is less costly than other methods of preserving the project as a housing resource for low- to moderate-income tenants. This criterion is interpreted to include consideration of the Department's possible future costs if the project were to fail, the owner default under the mortgage, and the mortgage be assigned to the Secretary for payment of a mortgage insurance claim.

The section on contact with local government, based on section 201(e), has been renamed Local Government Consultation rather than Local Government Assurances, to emphasize the process instead of the result. Again, the reference to supplemental funding for Rent Supplement contracts has been removed. The section is otherwise unchanged.

A section has been added to discuss the source of funds for the Flexible Subsidy program, consistent with the authorization of the Flexible Subsidy Fund by section 201(j), as added by the 1987 amendments. This section of the rule provides that available funds are allocated annually for two categories of projects: (1) State agency financed non-insured projects, and (2) all others, including projects with FHA-insured and HUD-held mortgages. The allocations are made based on the number of units in potentially eligible projects of the category as a percentage of the total number of units in all potentially eligible projects. This allocation is made because HUD generally allocates money separately for State agency-administered HUD programs that do not involve FHA mortgage insurance, and making this allocation at the beginning of each year allows them to plan the use of the money. Once these two funding categories are established, each must comply with the statutory requirements to spend its proportion of $30,000,000 or 40 percent of its allocation, whichever is less, for the capital improvement loan program, to the extent of approvable applications.

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Funding decisions on project applications are made on a quarterly basis using the applicable priorities enumerated in Subparts B and C. As the end of each fiscal year approaches, HUD will determine to what extent there are funds to be used for capital improvement loans that are allocated for each of the major categories that are likely to be unused. In the last quarter, to the extent there is to be an excess in either of the categories for capital improvement loans that could be used for such loans to eligible applicants of the other category, the funds will be reallocated to that category.

Another new section has been added to cover HUD's environmental responsibilities when a capital improvement is involved, whether funded under Subpart B or Subpart C. The type of repair and replacements anticipated to be approved under this rule will be sufficiently limited in scope and expense so that evaluation of each proposal will not be required under the National Environmental Policy Act of 1969. (See the categorical exclusion for limited rehabilitation stated in 24 CFR 50.20(c).) However, some applications for funding may involve either a project location or a type of improvement that will trigger HUD review under another environmental protection statutes.

Improvements to major mechanical systems will trigger HUD review to determine whether the project is located in a floodplain and if so, whether special action should be taken to minimize damage to the systems from possible flooding. If the project is listed on the National Register of Historic Places, the proposal will be reviewed for compliance with the National Historic Preservation Act of 1966. Exterior alterations that are not virtually identical replacements ("in-kind") will trigger review under the Act for unlisted projects located in an historic district.

Strict adherence with the National Historic Preservation Act of 1966 would require that inquiry be made to the State Historic Preservation Officer (SHPO) concerning every property for which funds are requested to cover captial improvements to determine whether the property is "eligible for" inclusion on National Register. This process might involve submission of documentation concerning the project to the SHPO and awaiting a formal determination of eligibility, under the then-prevailing standards of what is historic. The Department has concluded that following such a procedure in every case would interfere with its duty to administer the capital improvement loan program in accordance with its purposes, because of the emergency nature of the program and the concern that these projects not be allowed to deteriorate irretrievably. Consequently, the Department is consulting with the Advisory Council on Historic Preservation to pursue the possibility of recognizing an exemption from the requirement to discover whether every property that is to be funded for capital improvements is "eligible for" listing on the National Register. In the meantime, the rule provides for inquiry to determine whether each property actually is listed and for review of the proposed improvements to any listed property to assure compliance with the Act.

The emergency nature of the capital improvement loan program operated under Subpart C is evident in the statutory listing of the priorities to be used in making funding decisions. Top priority is to be given for major repairs or replacements of capital items in projects that are eligible for incentives not to prepay their mortgates, as described in section 224(b) of the Emergency Low Income Housing Preservation Act of 1987, to retain these projects in the inventory of housing stock available for low- or moderate-income families. Otherwise priority is to be given to projects with immediate need of repairs, where the repairs are needed to preserve the health and safety of their tenants, to save the housing where other low rent housing is unavailable for the tenants. (See section 201(k)(4).) Therefore, the rule's procedure provides for assuring that funding decisions can be made in a manner consistent with the loan program's purposes while satisfying the primary purposes of the National Historic Preservation Act of 1966.

*B. Subpart B*

The changes made in the sections placed in Subpart B are principally to delete references to use of operating assistance to provide supplemental funding for Rent Supplement contracts, as discussed above. The new §§ 219.205, 219.215, 219.220, and 219.230 correspond to current §§ 219.120, Use and amount of assistance; 219.130, Payment schedule; 219.125, Estimating project revenue and operating expenses; and 219.110(c), Conditions of approval (funding priorities).

Although the current regulation section dealing with eligibility (which has now been moved to Subpart A) refers to an amount of assistance furnished by the owner as determined by the Secretary, the current section on use and amount of assistance does not mention an owner contribution. The new section on this topic does mention the owner contribution (in § 219.205(b)) and provides that non-profit owners may be allowed to contribute in the form of services if neither the mortgagor nor the sponsor has the financial capacity to make a cash contribution. This minimal fleshing out of the statutory requirement that the owner provide assistance follows the procedure now specified in HUD administrative instructions, although it is far less specific than those instructions. Since this is an interim rule being published for immediate effect, the Department is reluctant to include any significant changes to the content of the regulations governing the existing Flexible Subsidy program of operating assistance.

In the final rule that follows this interim rule, however, the Department is considering making the requirement more specific, requiring a 30 percent contribution by owners (but preserving the more lenient treatment for non-profit owners). Such a change in the rule would require HUD to use this percentage, an amount that is similar to the percentage now found in the existing HUD administrative instructions. Of course, the 30 percent contribution regulation requirement could still be waived by the Assistant Secretary for Housing-Federal Housing Commissioner in appropriate circumstances, in accordance with § 219.125. The Department invites the public to comment on this possible change.

The current section on payment schedule focuses solely on HUD payments to the project owner. Its counterpart in this rule adds a paragraph to discuss repayment of the loan at the earlier of the expiration of the term of the mortgage, the termination of mortgage insurance, or prepayment of the mortgage. In the final rule, the Department is considering requiring repayment to begin earlier if a project becomes solvent and would be able to sustain a rent increase to cover repayments of the operating assistance. Comments are invited on this proposal.

The section on estimating project revenue currently tracks the statutory language (section 201(f)(2)) permitting the Secretary to estimate "at least 25 percent * * * of the income of each * * * tenant." The Secretary has determined to use 30 percent of income as the minimum in the corresponding section of this rule, since the programs involved generally require that level of rent.

One totally new section is added to describe briefly the application process, based on HUD's general administrative authority and section 201(g). Another new section has been added, based on section 201(i), to refer to HUD's authority to consider an owner's attempts to control utility costs as part of the rent increase approval process, which is governed by Part 245.

The regulatory provisions concerning funding priorities for operating assistance are left unchanged in this rule—again, because of this rule's status as an interim rule for effect. However, the Department is contemplating making some changes in priorities in the final rule and invites comment on the following. With respect to the funds for projects that are not State Agency financed, non-insured projects, first priority would be given to prevent defaults on insured mortgages; second priority would be given to projects with Secretary-held mortgages; and third priority would be given to other projects. Within each of these three categories, projects experiencing most immediate needs while being able to be stabilized would be funded before those whose needs are less immediate. (This immediacy of need factor is basically equivalent to the language found in the funding priorities section of this interim rule (and in the current rule).) The principal reason for this change would be to preserve HUD's resources for preserving housing serving low- and moderate-income families by preventing defaults and payments of insurance claims, followed by disposition efforts involving commitment of HUD subsidy funds. The Department invites public comments on the possibility of making this change.

*C. Subpart C*

Most of the sections contained in Subpart C are based directly on section 201 of the Housing and Community Development Amendments of 1978, as amended: Eligibility (§ 219.305), based on section 201(k)(1) through (k)(3); Amount of assistance (§ 219.315), based on section 201(l)(1); Loan terms and conditions (§ 219.320), based on section 201(l)(2); Effect on rental payments (§ 219.325), based on section 201(m); and Funding priorities (§ 219.330), based on section 201(k)(4). In addition, there are sections describing the application process (§ 219.310), which is similar to the provision in Subpart B, and the treatment of overruns (§ 219.335).

A project is eligible for a capital improvement loan if, in addition to meeting the criteria stated in Subpart A, the reserve for replacements—although funded in accordance with HUD requirements—is insufficient to cover the needed repair or replacement of a particular capital item as well as to cover other capital improvements that are reasonably expected to be required in the near future. (In this rule, "near future" is interpreted to mean the next 24 months.) If the reserve for replacements exceeds $1,000 per unit, the owner may be required to use funds from that source to cover capital improvements—to the extent that use of the reserve would not deplete it by more than 50 percent of its value above $1,000 per unit.

The eligibility section of this subpart also prescribes the amount of the owner contribution. It provides that the contribution must be made in cash and that it may not be taken from project income but may be taken from surplus cash from the project.

Section 201(k)(2) requires that the contribution be at least 20 percent of the total estimated cost of the improvements. Section 201(m)(2) authorizes the Secretary to require the contribution to be increased to an amount not to exceed 30 percent. Given the history of requiring up to one-third contributions in the operating assistance component, the Secretary has determined that the usual amount of owner contribution in the capital improvement loan component of the program should be higher than 20 percent. Since the ceiling is 30 percent, the intermediate rate of 25 percent has been selected and is stated as the general requirement in § 219.305(c). In accordance with section 201(k)(2) of the Act, an owner's contribution required under § 219.305(c) may be waived or reduced under the waiver authority of § 219.125 if sufficient justification is provided to the Secretary for a finding of good cause to do so.

In accordance with section 201(l)(1), the rule provides that the amount of the loan can cover the cost of repairing or replacing capital items that have failed or are likely to fail in the "near future", upgrading these items and related items to satisfy energy efficiency strandards, and complying with Federal requirements for accessibility to persons with handicaps. However, an administrative cap has been placed on loans that would otherwise be greater than the remaining balance of the mortgage: 80 percent of the value of the property as repaired, less the remaining mortgage.

The loan term and interest rate are to be determined on an individual basis, in accordance with section 201(l)(2). HUD will attempt to tailor each loan to the condition of the property and the ability of the rent structure to support the debt service necessary to amortize the loan. In the case of a project with an FHA-insured mortgage, the term generally will be the remaining term of the original mortgage, and it may never exceed that length. In the case of other projects, the loan term generally will be the remaining period for which the owner is committed to provide lower income housing.

The Secretary is authorized to charge an interest rate as low as 3 percent below the "applicable Federal rate" (as determined by the Secretary of the Treasury) at the end of the preceding Federal fiscal year, plus an allowance to cover HUD administrative costs and probable losses. The interest rate, including allowance, is to be no less than 3 percent nor more than 6 percent.

The Secretary of the Treasury will certify to HUD on an annual basis the "applicable Federal rate" determined in accordance with this statutory prescription. HUD has determined that the allowance for administrative costs plus probable losses will be one-half of 1 percent. This 0.5 percent will be taken into consideration in the following way: 3 percentage points will be subtracted from the applicable Federal rate, and then 0.5 percent will be added, to determine the minimum rate. Effecetively, the minimum will be 2½ percent below the rate determined by the Treasury as long as the HUD-determined allowance remains at one-half of 1 percent. As long as the "applicable Federal rate" is 8.5 percent or above, the minimum rate would be 6 percent or more. Since the statute provides that the rate used may not exceed 6 percent, any mimimum exceeding 6 percent may be ignored. Therefore, to the extent that the applicable Federal rate remains at 8.5 percent or above, the standard rate used by HUD will be 6 percent (representing both the minimum and maximum rate). If the applicable Federal rate determined by the Treasury in a particular year falls below 8.5 percent, HUD will publish the rate so that the public will have notice of a minimum rate lower than 6 percent. Of course, in a case of extreme rent burden (as discussed below), a rate lower than this standard minimum rate may be authorized.

A project may receive more than one type of assistance under the Flexible Subsidy program. However, the rule provides that different forms of assistance may not be provided within a five-year period to remedy the same deficiency. In addition, the rule provides that a capital improvement will not be financed partly by operating assistance under Subpart A and partly by a capital improvement loan under Subpart B.

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The rule follows the statute in providing that if the rents to be charged lower income residents of the project would be in excess of those generally charged tenants of section 8 projects, HUD may consider decreasing the impact on tenants by making housing assistance payments under the section 8 Loan Mangement Set-aside program or the section 8 Certificate program, increasing the length of the term or reducing the interest rate (to not less than 1 percent), or by increasing the owner contribution (thereby reducing the amount of the capital improvement loan to be amortized and decreasing the rents needed to support the loan).

Since the 1987 amendments make it clear that the top priority for funding capital improvement loans is to provide incentives to owners who might otherwise prepay their mortgages and terminate their project's availability to low- and moderate-income tenants, the rule provides a set-aside for this category of projects. At the beginning of each fiscal year, HUD will estimate the amount of the capital improvement part of the Flexible Subsidy Fund that is necessary for handling the prepayment priority, and the remainder will be made available for other eligible projects. With respect to these other eligible projects, the rule follows the statute's requirement that priority be given based on four other factors: immediacy of need, lack of availability of other suitable housing for low- and moderate-income tenants, degree to which the deficiencies involve life, safety or health of the residents or major capital improvements, and the degree of financial distress. No one of these priorities is necessarily to be given higher value than the others.

## IV. Justification for Interim Rule

Section 1011(b) of the McKinney Homeless Assistance Amendments Act of 1988 (Pub. L. 100-628, approved November 7, 1988) requires that, "the Secretary of Housing and Urban Development shall issue regulations that become effective not later than February 5, 1989." Although the Department has been unable to meet this precise deadline for publication, every effort is being made to comply with the deadline by making the rule effective upon publication.

We note that there are two procedural requirements that would have been obstacles to publication of a rule for effect by the statutory deadline. First, the general requirement for advance publication and solicitation of public participation in rulemaking would have required delays of several months after a rule was developed before it could have taken effect. Second, the provision requiring that effectiveness of HUD rules be delayed after publication until the expiration of 30 continuous days of the session of Congress would have delayed this rule's effectiveness until mid-April, based on its publication in mid-February. (See sec. 7(o)(3), Department of Housing and Urban Development Act, 42 U.S.C. 3535(o)(3).)

Although the Administrative Procedure Act ("the APA") (5 U.S.C. 553) requirements for advance publication and solicitation of public participation before issuing a rule for effect do not apply to this rulemaking because the program affected is covered by an exemption for public grants and contracts, HUD's own rule on rulemaking, 24 CFR Part 10, adopting these principles, does apply. Generally, HUD publishes a proposed rule and invites public comment before developing a rule to be published for effect, and when a rule is published for effect it is to be published at least 30 days before its effective date.

Part 10 does provide for exceptions from the general rule for advance notice and public participation and for publication in advance of effectiveness (as does the APA) where the agency finds good cause to omit them and states the basis in the rule. The good cause requirement is satisfied when prior public procedure is "impracticable, unnecessary, or contrary to the public interest." 24 CFR 10.1.

In this case, the Department has not had sufficient time between November 7, 1988 and the date of publication to develop and publish both a proposed rule for comment and a final rule for effect. Therefore, the Department finds that with the statutory deadline of publishing a rule for effect by February 5, 1989, and a statutory requirement to spend a stated minimum amount of money on the new program that is the subject of this rule, prior public procedure is impracticable, and there is good cause for publication of this rule for effect. In an attempt to provide maximum public participation, however, the Department is inviting public comment on this rule and will consider comments received in the development of a final rule.

With respect to the statutory requirement for a delayed effective date dependent on the Congressional schedule, satisfaction of both the delayed effectiveness requirement of the Department of HUD Act *and* the statutory deadline for effectiveness imposed by section 1011 of the McKinney Homeless Assistance Amendments Act of 1988, would have required publishing this rule by September 22, 1988, more than a month before the McKinney Act was signed into law. Since the Congress knew, at the time the Amendments Act was adopted, that legislative review requirements under section 7(o)(3) of the Department of HUD Act could not be met by February 5, 1989, the Department finds that section 7(o)(3) (42 U.S.C. 3535(o)(3)) is in conflict with section 1011 of the McKinney Act, and that the McKinney Act provision renders section 7(o)(3) inapplicable in this case, permitting the rule to become effective upon publication.

## V. Findings and Certifications

*Environment.* A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50 that implement section 101(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street SW., Washington, DC 20410.

*Executive Order 12291.* This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 issued by the President on February 17, 1981. Analysis of this rule indicates that it will not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

*Regulatory Flexibility Act.* Under the Regulatory Flexibility Act (5 U.S.C. 601), the Undersigned hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities. The rule will provide financial assistance to remedy the disrepair of necessary capital items at HUD-assisted projects without regard to the size of the project.

*Executive Order 12612, Federalism.* The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this rule would not have federalism implications and, thus, are not subject to review under the Order. The rule will provide for additional financial assistance to HUD-assisted multifamily housing projects but will not interfere with State or local government functions.

*Executive Order 12606, The Family.* The General Counsel, as the Designated Official under Executive Order 12606, *the Family*, has determined that this rule does not have potential significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. The rule involves the source of funding for capital improvements to multifamily projects.

*Regulatory Agenda.* This rule is listed as sequence number 944 under the Office of Housing in the Department's semiannual agenda of regulations published on October 24, 1988 (53 FR 41974, 41986), under Executive Order 12291 and the Regulatory Flexibility Act. The regulatory changes that are discussed under sequence numbers 942 and 989 (41986 and 41996) are to be included in this rulemaking.

*Catalog.* The Catalog of Domestic Assistance number for the program affected by this rule is 14.164.

*Information collection requirements.* The information collection requirements contained in this rule have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Information on the public reporting burden of the sections in this rule that the Department has determined contain information collection requirements is provided as follows:

ANNUAL REPORTING BURDEN OF INTERIM RULE—FLEXIBLE SUBSIDY PROGRAM

| Description of information collection | Section of 24 CFR affected | No. of respondents | No. of responses per respondent | Total annual responses | Hours per response | Total hours |
|---|---|---|---|---|---|---|
| MIO plan (action) | 219.210 | 40 | 1 | 40 | 8 | 320 |
| MIO plan (funding) | 219.210 | 40 | 1 | 40 | 1 | 40 |
| Req. for payment/req. for trans | 219.220 | 40 | 12 | 480 | ½ | 240 |
| Quart. perf. rep | 219.220 | 40 | 4 | 160 | 1 | 160 |
| MIO plan (action)/short form | 219.310 | 57 | 1 | 57 | 2 | 114 |
| MIO plan (action)/long form | 219.310 | 6 | 1 | 6 | 4 | 24 |
| MIO plan (funding) | 219.310 | 60 | 1 | 60 | 1 | 60 |
| Total burden hours | | | | | | 958 |

**List of Subjects in 24 CFR Part 219**

Grant programs—housing and community development, Loan programs—housing and community development, Low- and moderate-income housing, Rent subsidies.

Accordingly, Title 24, Part 219 of the Code of Federal Regulations is revised to read as follows:

## PART 219—FLEXIBLE SUBSIDY PROGRAM FOR TROUBLED PROJECTS

### Subpart A—General Provisions

Sec.


219.101 Purpose.
219.105 Types of projects.
219.110 General eligibility.
219.115 Flexible subsidy fund.
219.120 Local government consultation.
219.125 Environmental requirements.
219.130 Waivers.

Subpart B—Operating Assistance

219.205 Amount of operating assistance.
219.210 Application.
219.215 Estimating project revenue and operating expenses.
219.220 Payment and repayment of operating assistance.
219.225 Effect of assistance on rent increase approvals.
219.230 Priorities for funding.

Subpart C—Capital Improvement Loans

219.305 Eligibility.
219.310 Application.
219.315 Amount of assistance.
219.320 Loan terms and conditions.
219.325 Effect on rental payments.
219.330 Priorities for funding.
219.335 Operations.


**Authority:** Sec. 201, Housing and Community Development Amendments of 1978, 12 U.S.C. 1715z-1a; sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

### Subpart A—General Provisions

#### § 219.101 Purpose.

The purposes of the Flexible Subsidy program are to provide assistance to restore or maintain the financial soundness; to assist in the improvement of the management; to permit capital improvements to be made to maintain certain projects as decent, safe, and sanitary housing; and to maintain the low- to moderate-income character of certain projects assisted or approved for assistance under the National Housing Act, the United States Housing Act of 1937, the Housing Act of 1959, or the Housing and Urban Development Act of 1965, without regard to whether such projects are subject to insured financing under the National Housing Act.

#### § 219.105 Types of projects.

The types of rental or cooperative housing projects that may be eligible for assistance under this part include only the following types of projects:

(a) A project assisted under the section 236 Interest Reduction program, the section 221(d)(5) program (commonly known as the 221(d)(3) Below Market Interest Rate program), or the Rent Supplement program;

(b) A project that was constructed more than 15 years before assistance is to be provided under this part with a loan under the section 202 program for Housing for the Elderly or Handicapped;

(c) A project assisted under section 23 of the United States Housing Act of 1937 (1937 Act), as in effect immediately before January 1, 1975, that is ineligible for assistance under the modernization program operated under the 1937 Act;

(d) A project assisted under the Section 8 Housing Assistance Payments program after conversion from assistance under the Section 236 Rental Assistance Payments program or the Rent Supplement program; or

(e) A project that met the criteria in paragraph (a) or (b) before acquisition by the Secretary and that has been sold by the Secretary subject to a mortgage insured or held by the Secretary and subject to an agreement (in effect during the period of assistance under this part) that provides that the low- and moderate-income character of the project will be maintained; except that with respect to any project sold after October 1, 1978, operating assistance under Subpart B shall be available for a period not to exceed three years.

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**§ 219.110 General eligibility.**

Assistance under this subpart may not be made available unless the Secretary has determined that:

(a) This assistance, when considered with other resources available to the project, is necessary, will restore or maintain the financial or physical soundness of the project and maintain the low- and moderate-income character of the project. "Other resources" include but are not limited to mortgage modification agreements, owner contributions, and assistance from State or local programs;

(b) The owner has agreed to maintain the low- and moderate-income character of the project for a period at least equal to the remaining term of the project mortgage;

(c) This assistance will be less costly to the Federal Government over the useful life of the project than other reasonable alternatives by which the Secretary could maintain the low- and moderate-income character of the project;

(d) The project owner, together with the mortgagee in the case of projects not insured under the National Housing Act, has provided or agreed to provide assistance to the project in a manner as determined by the Secretary in accordance with §§ 219.205(b) and 219.305(c);

(e) The project is, or can reasonably be made, structurally sound, as determined from information resulting from an on-site inspection of the project;

(f) Project management is being conducted by persons who meet satisfactory levels of competency and experience as determined by the Secretary in the management review process; and

(g) The project is being operated and managed in accordance with a management improvement and operating (MIO) plan that is designed to reduce the operating costs of the project and that has been approved by the Secretary—except for a project for which the only assistance provided under this part is for capital improvements under Subpart C. (See § 219.310(b).)

**§ 219.115 Flexible subsidy fund.**

(a) The Flexible Subsidy Fund is a revolving fund established in the Treasury of the United States that is available to the Secretary, to the extent approved in appropriation Acts, to provide assistance under this part.

(b) The Fund consists of the following:

(1) Any amount appropriated to carry out the purposes of this part;

(2) Any amount repaid on any assistance provided under this part;

(3) Any amounts credited to the Section 236 program excess rental receipts fund; and

(4) Any amount received by the Secretary under this program, including any interest on investment of funds as described in paragraph (c) of this section.

(c) Any amounts in the Fund determined by the Secretary to be in excess of the amounts currently required to carry out the provisions of this part shall be invested by the Secretary in obligations of, or obligations guaranteed as to both principal and interest by, the United States or any agency of the United States.

(d) At the beginning of each fiscal year, funds are allocated for two categories of projects: State agency financed non-insured projects; and all others, including projects with FHA-insured and HUD-held mortgages. Each category is allocated an amount based on the number of units in potentially eligible projects of that category as a percentage of the total number of units in all potentially eligible projects. Once these two funding categories are established, each category will be administered to comply with the statutory requirement concerning spending for the capital improvement loan program enumerated in paragraph (e) of this section, by spending 40 percent of its allocation, or its share of the stated dollar amount (whichever is less), to the extent of approvable applications.

(e) The Secretary will use not less than $30 million, or 40 percent of the amounts available in the Fund (subject to paragraph (a) of this section) in any fiscal year (whichever is less), for purposes of providing capital improvement loans under Subpart C of this part, to the extent of approvable applications. If any of the amounts reserved for capital improvement loans remains unused 60 days before the end of a fiscal year, it will become available for operating assistance under Subpart B.

(f) Funding decisions are made on a quarterly basis using the applicable priorities enumerated in Subparts B and C. As the end of each fiscal year approaches, HUD will determine to what extent there are funds required to be used for capital improvement loans (under paragraph (e) of this section) that are allocated for one of the two major categories (described in paragraph (d) of this section) but are unlikely to be used by projects of that category. In the last quarter, to the extent there is to be an excess in either of the categories for capital improvement loans that could be used for such loans to eligible applicants of the other category, the funds will be reallocated.

**§ 219.120 Local government consultation.**

The Secretary, before making assistance available to a project, will consult with the appropriate officials of the unit of local government in which the project is located and seek the following assurances:

(a) The community in which the project is located is providing, or will provide, essential services to the project in keeping with the community's general level of these services;

(b) The real estate taxes on the project are or will be no greater than would be the case if the property were assessed in a manner consistent with normal property assessment procedures for the community; and

(c) Assistance to the project under this part would not be inconsistent with local plans and priorities. § 219.125 Environmental requirements.

**§ 219.125 Environmental requirements.**

In order to be approved for funding under this part, an application for assistance to cover a capital improvement, as defined in § 219.305, will be reviewed for compliance with applicable environmental requirements, as follows.

(a) If the proposed capital improvements involve major mechanical systems, HUD will determine whether the project is located in a 100-year floodplain and if so, will take all feasible actions to minimize the impact of flooding on the mechanical systems.

(b) If a project is listed on the National Register of Historic Places, the proposed use of funds will be reviewed for compliance with the National Historic Preservation Act of 1966. As a general rule, in-kind replacements will not trigger review under the Act. If the project is not listed on the National Register but is located in a historic district, review under the Act will only be required where there are proposed alterations to the exterior that are not in-kind.

**§ 219.130 Waivers.**

Upon a determination of good cause, the Secretary of Housing and Urban Development may, subject to statutory limitations, waive any provision of this part. Each such waiver will be in writing and will be supported by documentation of the pertinent facts and grounds.

## Subpart B—Operating Assistance

**§ 219.205 Amount of operating assistance.**

(a) The Secretary will provide the initial and subsequent operating assistance to permit the project to attain and maintain financial soundness, in an amount that is consistent with the project's MIO plan, subject to the availability of funds, as described in § 219.115, but the amount provided will not exceed the sum of the following:

(1) An amount determined by the Secretary to be necessary to correct project deficiencies existing at the beginning of the first year of assistance that were caused by the deferral of regularly scheduled maintenance and repairs or the failure to make necessary and timely replacements of equipment and other components of the project. A repair or replacement item is only eligible under this program if no previous payment of HUD-related assistance (such as assistance under this part, Housing Development Grant, or Community Development Block Grant) has been made. A capital improvement (as described in § 219.305(a)) is eligible for funding as part of operating assistance only if it is necessary to meet local building codes or to maintain the project in a decent, safe and sanitary condition and the Secretary determines that this method of funding the improvement is the most efficient;

(2) An amount determined by the Secretary to be necessary to maintain the low- and moderate-income character of the project by reducing deficiencies (which exist at the beginning of the first year of assistance and for which payment has not previously been made) in the reserve fund established by the project owner for the purpose of replacing capital items;

(3) An amount not greater than the amount by which the estimated operating expenses for the year for which assistance is made available exceeds the estimated revenues to be received by the project during that year, as determined in accordance with § 219.210; and

(4) An amount determined by the Secretary to be necessary to carry out a plan to upgrade the project to meet cost-effective energy efficiency standards approved by the Secretary.

(b) The owner must provide assistance to the project.

(1) Generally, an owner must make a cash contribution toward the amount needed to render the project financially sound. Cash that has already been agreed to be contributed to the project as a condition for approval of purchase of the project (TPA) will not be considered for this purpose. Cash contributions by the owner within the 24 months before application for operating assistance under this Subpart from sources other than project income may be considered.

(2) A non-profit owner may be permitted to contribute to the project in the form of services, if HUD determines that neither the mortgagor nor the sponsor has the financial capacity to make a cash contribution.

**§ 219.210 Application.**

(a) The project owner must submit an application on a form approved by the Secretary.

(b) The application will include a MIO plan that includes the following:

(1) A detailed maintenance schedule;

(2) A schedule for correcting past deficiencies in maintenance, repairs and replacements;

(3) A plan to upgrade the project to meet cost-effective energy efficiency standards approved by HUD;

(4) A plan to improve financial and management control systems;

(5) An updated annual operating budget, if the last budget was submitted more than 90 days before the application is submitted; and

(6) A plan setting forth the specific controls and procedures that will result in a reduction in operating costs, if possible, together with an estimate of the cost saving.

(c) The application will include documentation of eligibility, as described in § 219.110.

**§ 219.215 Estimating project revenue and operating expenses.**

(a) *Computing estimated project revenue.* The estimated revenue for a project with respect to any year is equal to the sum of the following:

(1) The estimated amount of rent that is to be paid by the tenants of the project during the year (without regard, in the section 236 Interest Reduction program, to whether the owner has established and is collecting a "basic rent", as defined in § 236.2), in accordance with the following:

(i) The rent being paid or projected to be paid at the time project revenue is estimated; but at least 30 percent of the adjusted income of each tenant, or, in the case of a tenant paying his or her own utilities, a percentage of income that is less than 30 percent and that takes into account the reasonable costs of utilities. Percentages of adjusted income, as defined in 24 CFR Part 813, can be based on the most recent tenant income certification. In no case will the amount used for this estimate exceed the HUD-approved rent for the project.

(ii) A vacancy allowance may be used in developing the estimated revenue for non-insured projects and HUD-held projects. This allowance may not exceed 6 percent of the rental payments otherwise to be anticipated, unless the Secretary permits a higher allowance for the first three years in which assistance is to be provided to a project under this subpart because the higher allowance is necessary to carry out the purposes of this subpart.

(2) The estimated amount of assistance payments to be made on behalf of the tenants during the year other than assistance made under this subpart; and

(3) Other income attributable to the project as determined by the Secretary, such as, commercial rental income, tax rebates or refunds, condemnation or insurance award proceeds.

(b) *Computing estimated project operating expenses.* The estimated operating expenses of any project with respect to any year shall include all estimated operating costs that the Secretary determines to be necessary and consistent with the MIO plan for the project for the year. Such costs include, but are not limited to, taxes, utilities, maintenance and repairs (except for maintenance and repairs that should have been performed in previous years), management, insurance, debt service, and payments made by the owner for the purpose of establishing or maintaining a reserve fund for replacement costs. The estimated operating expenses may not include any return on the equity investment of the owner.

**§ 219.220 Payment and repayment of operating assistance.**

(a) *Basic for payment.* Assistance payments will be computed on an annual basis in accordance with § 219.205, payable at least quarterly, after the amount payable from the reserve for replacements (if any) and the owner contribution payable as part of the approved plan have been exhausted. At the time of each payment, the operations of the project will be reviewed by the Secretary to determine that they are consistent with the MIO plan. Continued payments will be contingent upon satisfactory performance.

(b) *Basis for repayment of assistance.* Assistance that has been paid to a project owner under this subpart must be repaid at the earlier of the expiration of the term of the mortgage, termination of mortgage insurance, or prepayment of the mortgage.

**§ 219.225 Effect of assistance on rent increase approvals.**

To assure that projects eligible for assistance under this part restrain costs

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in every way possible, including by using assistance under this part to upgrade capital items to meet cost-effective energy efficiency standards, the Secretary will consider, as part of the rent increase approval process under Part 245, whether the project owner could control increases in utility costs by securing more favorable utility rates, by undertaking energy conservation measures that are financially feasible and cost effective, or by taking other financially feasible and cost-effective actions to increase energy efficiency or to reduce energy consumption. Where the Secretary determines that the owner could exercise such control, the amount of a proposed rent increase may be adjusted to reflect the estimated savings that could be attained.

**§ 219.230 Priorities for funding.**

HUD will give funding priority to projects presently experiencing financial and management problems where conditions can be stabilized by the provision of assistance under this subpart. To the extent that funds remain available, assistance may be provided to projects that, on the basis of a financial and management analysis, appear to have a high probability of having financial and management problems within approximately the next five years, and that satisfy the eligibility requirements of § 219.110.

**Subpart C—Capital Improvement Loans**

**§ 219.305 Eligibility.**

(a) Assistance is available under this subpart for capital improvements. For purposes of this subpart, "capital improvements" include any major repair or replacement of building components: *i.e.*, roof structures, ceiling, wall or floor structures, foundations, plumbing, heating, cooling, electrical systems and major equipment, including any major repair or replacement of any short-lived building component or equipment before the expiration of its useful life. Capital improvements also may include limited supplements or enhancements to mechanical equipment needed for health and safety of the residents, such as air conditioning, heating equipment, or water softeners, where they do not exist. Capital improvements do not include maintenance of any such item.

(b) Assistance under this subpart will be in the form of a loan. The Secretary will provide this assistance only if the Secretary determines that the owner's reserve for replacements (including any surplus cash, residual receipts or other funds from the project account or escrow outside the project account that could be used to fund the reserve) is insufficient to finance both the capital improvements for which assistance is being requested and other capital improvements that are reasonably expected to be required within the next 24 months, as described in the owner's work write-up (submitted as part of the application), and that the owner has funded the reserve fund in accordance with HUD requirements. An owner's reserve for replacements may only be tapped to cover needed capital improvements if the reserve exceeds $1,000 per unit, and then only to the extent of depleting it by up to 50 percent of the amount over $1,000 per unit on the date the capital improvement loan is made.

(c) An owner must contribute 25 percent of the total estimated cost of the capital improvements involved, unless the owner is a nonprofit corporation (other than a cooperative association), in which case it is exempt from this contribution requirement. The total estimated cost of the capital improvements includes the cost of the estimate of work, the cost of materials, and the cost of labor. This estimate must be approved by HUD as cost effective.

(1) The contribution must be made in cash. It must not be taken from project income, but may be taken from surplus cash (as defined in the Regulatory Agreement) from the project.

(2) Cash that has already been agreed to be contributed to the project as a condition for receiving operating assistance or approval of purchase of the project (TPA) will not be considered for purposes of meeting this contribution requirement.

(3) When an owner has spent its own money (as from surplus cash) to attempt to repair capital items within the 24 months before the application, and the repair was unsuccessful and has resulted in a need for a replacement (to be funded by a capital improvement loan), that expenditure will be considered for credit for purposes of meeting this contribution requirement.

**§ 219.310 Application.**

(a) A project owner must submit an application on a form approved by the Secretary, which will include a work write-up to describe the capital improvements to be covered by the requested loan (see § 219.315), and other documentation of eligibility, as described in §§ 219.110 and 219.305.

(b) The application must be accompanied by a MIO plan only in the following cases:

(1) A default under the mortgage;

(2) A violation of the fiscal requirements or property maintenance requirements of the regulatory agreement (for other than willful or fraudulent reasons);

(3) An unsatisfactory or marginally satisfactory management review in the past 24 months (unless the owner has corrected the problems through a substitution of management agent, management personnel, or otherwise, in a manner satisfactory to HUD); and

(4) A situation that HUD Headquarters has determined requires submission of a MIO plan.

**§ 219.315 Amount of assistance.**

(a) The amount of assistance will not exceed the sum of the following, minus the owner contribution made in accordance with § 219.305:

(1) The amount the Secretary determines is necessary to cover capital improvements at the project with respect to capital items that have failed, or are likely to fail or deteriorate seriously within 24 months;

(2) The amount the Secretary determines is necessary to upgrade the capital items and related capital items to meet cost-effective energy efficiency standards approved by HUD; and

(3) The amount the Secretary determines is necessary to comply with the Department's standards in 24 CFR Part 8 for accessibility to individuals with handicaps.

(b) Notwithstanding paragraph (a) of this section, if the requested loan is greater than the remaining balance of the mortgage, the loan will not exceed 80 percent of the appraised value of the property as repaired, less the balance of the first mortgage.

**§ 219.320 Loan terms and conditions.**

(a) The length of the loan term will be determined based on various factors, including the useful life of the improvement, the amount financed, and the impact on tenant rents. The term generally will be for the remaining period of the original mortgage, and the term may not exceed that period. With respect to a non-insured project, the loan term will generally be for the remaining period during which the owner is under an obligation to provide housing for lower income families, and the term may not exceed that period.

(b) In determining the interest rate on the loan, the Secretary will consider factors such as the length of the loan term and the effect of the required debt service on tenant rents.

(1) The minimum rate is the applicable Federal rate determined by the Secretary of the Treasury at the end of the Federal fiscal year before the loan is to be made, minus 3 percentage points,



plus an allowance established by the Secretary of HUD to cover administrative costs and probable losses under the program.

(2) Notwithstanding the provisions of paragraph (b)(1) of this section, the rate to be charged may not be less than 3 percent nor more than 6 percent.

(3) The rate that represents both the minimum and the maximum rate is 6 percent, unless the applicable Federal rate determined by the Secretary of the Treasury for a fiscal year is less than 8.5 percent or HUD changes the allowance from its initial amount of .5 percent, thereby producing a minimum rate other than 6 percent. In that event, HUD will publish in the **Federal Register** the following: the rate determined by the Secretary of the Treasury, the allowance established by HUD, and the minimum rate.

(4) Notwithstanding the minimum rate limitations specified in paragraphs (b)(1) and (b)(2) of this section, the Secretary may charge a lesser rate if the Secretary determines that the lower rate is necessary to maintain reasonable rental rates. (See § 219.325.)

(c) Each loan for capital improvements is a liability of the project and cannot be discharged in any bankruptcy proceeding under section 727, 1141, or 1328(b) of title 11, United States Code. The project owner will be required to execute a note evidencing the capital improvement loan, which generally must be secured.

(d)(1) A capital improvement loan may be made under this subpart to a project owner who already has received assistance under this part, so long as the capital items that are the subject of the loan application have reached the end of their useful life and the project meets all of the applicable eligibility criteria for the capital improvement loan (see §§ 219.110 and 219.305).

(2) A capital improvement may not be financed partly by operating assistance under Subpart A and partly by a capital improvement loan under Subpart B. However, a project owner may apply for assistance to cover deferred liabilities under Subpart B and, simultaneously, apply for a loan to cover capital improvements under Subpart C.

**§ 219.325 Effect on rental rates.**

(a) Rent increases resulting from the debt service and other expenses of a loan for capital improvements under this part for an owner whose project rents are not approved by HUD and that is subject to a plan of action approved under Part 248 are governed by the rent agreements entered into as part of that plan of action.

(b) If rent increases that would result from the debt service and other expenses of a capital improvement loan under this subpart for a project other than one described in § 219.330(a) would cause the rents of lower income residents of the project to be higher than the amount that would be allowed for eligible families under 24 CFR 813.107, the Secretary may consider taking any or all of the following actions:

(1) Increase the amount of the owner's contribution under § 219.305 to an amount not to exceed 30 percent of the total estimated cost of the capital improvements involved.

(2) Increase the term of the loan determined under § 219.305(a) to a term that does not exceed the remaining term of the mortgage on the project.

(3) Reduce the rate of interest determined under § 219.320(b) on the capital improvement loan to a rate not lower than one percent.

(4) Provide assistance under the Section 8 Existing Housing program (including project-base Certificates or Loan Management Set-aside), to the extent amounts are available for such assistance, and without regard to the limitation contained in 24 CFR 813.105 on the number of non-very low income families that may be admitted to the program.

**§ 219.330 Priorities for funding.**

(a) The Secretary will establish an annual set-aside for projects that are eligible for incentives to continue to operate as low- to moderate-income housing under a plan of action in accordance with Part 248, to assure that top priority for funding capital improvement loans is given to this category of projects. This set-aside may be increased or decreased during the year if it is determined to be appropriate.

(b) To the extent that funds are available for projects other than those described in paragraph (a) of the section, priority will be given to projects based on the extent to which—

(1) The capital improvements for which the loan is requested are immediately required;

(2) The project serves as the residence of lower income families, and the extent to which other suitable housing is unavailable for such families in the areas in which the project is located;

(3) The capital improvements for which the loan is requested involve the life, safety, or health of the residents of the project, or involve major capital improvements in the project; and

(4) The project demonstrates the greatest financial distress, while continuing to meet the requirements of § 219.110.

**§ 219.335 Operations.**

(a) Interest on the capital improvement loan starts to accure and the loan amortization period begins when the loan proceeds have been spent.

(b) If, after the work is completed, the estimated cost proves to be less than originally estimated, the excess will be returned to the Flexible Subsidy Fund, described in § 219.115, unless HUD has approved the excess for additional items or improvements. Any anticipated cost overruns must be reported to HUD immediately. The principal balance of the capital improvement loan may be increased at the sole discretion of HUD and subject to the availability of funds. Until the project owner receives a written commitment for an increase in the principal balance of the loan, the project owner will be solely responsible for any excess costs of performing the capital improvements. In the case of an identity of interest firm, no increases in the principal balance of the capital improvement loan to cover cost overruns will be considered.

Date: March 1, 1989.

**James E. Schoenberger,**

*General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.*

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Part VIII

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 5, 17, and 35
Federal Acquisition Regulation (FAR); Federally Funded Research and Development Centers; Proposed Rule

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**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 5, 17, and 35**

**Federal Acquisition Regulation (FAR); Federally Funded Research and Development Centers**

**AGENCIES:** Department of Defense (DoD) General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Proposed rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering changes to the Federal Acquisition Regulation (FAR) Parts 5, 17, and 35 to implement Office of Federal Procurement Policy (OFPP) Policy Letter 84–1 on Federally Funded Research and Development Centers, and the requirements of Pub. L. 99–500.

**DATE:** Comments should be submitted to the FAR Secretariat at the address shown below on or before May 8, 1989 to be considered in the formulation of a final rule.

**ADDRESS:** Interested parties should submit written comments to:
General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW, Room 4041, Washington, DC 20405

Please cite FAR Case 84–45 in all correspondence related to this issue.

**FOR FURTHER INFORMATION CONTACT:** Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 523–4755.

**SUPPLEMENTARY INFORMATION:**

### A. Background

OFPP Policy Letter 84–1 established Governmentwide policies for the establishment, use, periodic review, and termination of the sponsorship of Federally Funded Research and Development Centers (FFRDC's). The Policy Letter was issued at the recommendation of the Commission on Government Procurement, which recommended that the Federal Government keep open the option to organize and use FFRDCs to satisfy needs that cannot be satisfied by other organizational resources. The proposed changes to the FAR are based on the Policy Letter.

Section 912 of Pub. L. 99–500, added Section 2367 to Chapter 139 of Title 10 of the United States Code. This section places specific restrictions on certain civilian agencies and the DoD regarding the creation of new FFRDC's, and on DoD regarding the use of FFRDC's. The proposed regulatory changes also implement 10 U.S.C. 2367.

### B. Regulatory Flexibility Act

The proposed rule will not have a significant effect beyond the internal operating procedures of procuring agencies or a significant cost or economic impact on contractors or offerors, since the scope and mission of FFRDC's is generally very limited, and they are not permitted to compete with any non-FFRDC concern in response to a Federal agency formal request for proposal. Therefore, Section 19 of the OFPP Act does not require publicizing the rule for public comment. Consequently, the Regulatory Flexibility Act (Pub. L. 96–354) does not apply to the current proposal. However, since time permits, comments from small businesses and other interested parties are invited and will be considered in the preparation of a final rule.

### C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) does not apply because the proposed rule does not impose any reporting or recordkeeping requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, et seq.

**List of Subjects in 48 CFR Parts 5, 17, and 35**

Government procurements.

Dated: March 1, 1989.

**Harry S. Rosinski,**

*Acting Director, Office of Federal Acquisition and Regulatory Policy.*

Therefore, 48 CFR Parts 5, 17, and 35 are amended as set forth below:

1. The authority citation for 48 CFR Parts 5, 17, and 35 continues to read as follows:

**Authority:** 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

## PART 5—PUBLICIZING CONTRACT ACTIONS

2. Section 5.205 is amended by redesignating the existing paragraphs (b) through (d) as (c) through (e) and by adding a new paragraph (b) to read as follows:

**5.205 Special situations.**

* * * * *

(b) *Federally Funded Research and Development Centers.* Before establishing a Federally Funded Research and Development Center (FFRDC) (see Part 35) or before changing its basic purpose or mission, the sponsor shall place at least three notices over a 90-day period in the Commerce Business Daily, and in the **Federal Register**, indicating the agency's intention to sponsor an FFRDC or change the basic purpose or mission of an FFRDC. The notice shall indicate the scope and nature of the effort to be performed. Notice is not required where action is required by law.

* * * * *

## PART 17—SPECIAL CONTRACTING METHODS

3. Section 17.504 is amended by adding paragraph (e) to read as follows:

**17.504 Ordering procedures.**

* * * * *

(e) Nonsponsoring Federal agencies may use a Federally Funded Research and Development Center (FFRDC) only if the terms of the FFRDC's sponsoring agreement permit work from other than a sponsoring agency. Work placed with the FFRDC is subject to the acceptance by the sponsor and must fall within the purpose, mission, general scope of effort, or special competency of the FFRDC. (See 35.017; see also 6.302 for procedures to follow where using less than full and open competition.)

## PART 35—RESEARCH AND DEVELOPMENT CONTRACTING

4. Section 35.000 is amended by adding paragraph (c) to read as follows:

**35.000 Scope of part.**

* * * * *

(c) This part also implements OFPP Policy Letter 84–1, Federally Funded Research and Development Centers, by prescribing the procedures for initiation, use, and renewal of Federally Funded Research and Development Centers.

5. Section 35.001 is amended by alphabetically adding a definition to read as follows:

**35.001 Definitions.**

* * * * *

"Federally Funded Research and Development Centers (FFRDC's)," means activities that are sponsored under a broad charter by a Government agency (or agencies) for the purpose of performing, analyzing, integrating, supporting, and/or managing basic or applied research and/or development, and which receive more than 70 percent of their financial support from the Government. A long-term relationship is contemplated; most or all of the facilities are owned or funded by the Government; and the FFRDC has access to Government and supplier data, employees, and facilities beyond that which is common in a normal contractual relationship. The National Science Foundation maintains the master list of FFRDC's.

* * * * *

6. Part 35 is amended by adding section 35.017, consisting of sections 35.017–1 through 35.017–7, to read as follows:



**35.017 Federally Funded Research and Development Centers.**

(a) *Policy.* (1) Federal policy regarding the establishment, use and termination of Federally Funded Research and Development Centers (FFRDC's) and related sponsoring agreements is set forth in OFPP Policy Letter 84–1, Federally Funded Research and Development Centers, dated April 4, 1984.

(2) An FFRDC is brought into existence to meet some special long-term research or development need which at the time cannot be met as effectively by existing in-house or contractor resources. FFRDC's enable agencies to use private sector resources to accomplish tasks that are integral to the mission and operation of the sponsoring agency. An FFRDC, in order to discharge its responsibilities to the sponsoring agency, has access, beyond that which is common to the normal contractual relationship, to Government and supplier data including sensitive and proprietary data, and to employees and facilities. The FFRDC is required to conduct its business in a manner befitting its special relationship with the Government, to operate in the public interest, free from organizational conflicts of interest, with full disclosure of its affairs to the sponsoring agency. It is not the Government's intent that an FFRDC use its privileged information or access to facilities to compete with the private sector. However, an FFRDC may perform work for other than the sponsoring agency under the Economy Act, or other applicable legislation, either when the work is not otherwise available from the private sector, or is not of interest to the private sector.

(3) FFRDC's are operated, managed, and/or administered by either a university or consortium of universities, other not-for-profit or nonprofit organizations, autonomous industrial organizations, or identifiably separate operating unit of a parent industrial organization.

(4) Long-term relationships between the Government and FFRDC's are encouraged in order to provide the continuity that will attract high-quality personnel to the FFRDC. This relationship should be of a type to encourage the FFRDC to maintain currency in its field(s) of expertise, maintain its objectivity and independence, preserve its familiarity with the needs of its sponsor(s), and provide a quick response capability.

(b) *Definitions.*

"Nonsponsor," as used in this section, means any other organization, in or outside of the Federal Government, which funds specific work to be performed by the FFRDC and is not a party to the sponsoring agreement.

"Primary sponsor," as used in this section, means the lead agency responsible for managing, administering or monitoring overall use of the FFRDC under a multiple sponsorship agreement.

"Special competency," as used in this section, means a special or unique capability, including qualitative aspects, developed incidental to the primary functions of the FFRDC to meet some special need.

"Sponsor" means the executive agency which manages, administers, monitors, funds, and is responsible for the overall use of a FFRDC. Multiple agency sponsorship is possible as long as one agency agrees to act as the "primary sponsor." In the event of multiple sponsors, "sponsor" refers to the primary sponsor.

**35.017–1 Sponsoring agreements.**

(a) In order to facilitate a long-term relationship between the Government and an FFRDC, a written agreement of sponsorship between the Government and the FFRDC shall be prepared when the FFRDC is established. The sponsoring agreement may take various forms; it may be included in a contract between the Government and the FFRDC, or in another legal instrument under which an FFRDC accomplishes effort, or it may be in a separate written agreement.

(b) While the specific content of any sponsoring agreement will vary depending on the situation, the agreement shall contain, as a minimum, the requirements of paragraph (c) of this section. The requirements for, and the contents of, sponsoring agreements may be as further specified in agency supplements or other regulations or policies.

(c) The sponsoring agreement shall contain, as a minimum:

(1) A statement of the purpose for which the FFRDC is being brought into being.

(2) Provisions for the orderly termination or nonrenewal of the agreement, disposal of assets, and settlement of liabilities. The responsibility for capitalization of an FFRDC must be defined in such a manner that ownership of assets may be readily and equitably determined upon termination of the FFRDC's relationship with its sponsor(s).

(3) A provision for the identification of retained earnings (reserves) and the development of a plan for their use and disposition.

(4) A prohibition against the FFRDC competing with any non-FFRDC concern in response to a Federal agency request for proposal for other than the operation of an FFRDC. This prohibition is not required to be applied to any parent organization or other subsidiary of the parent organization in its non-FFRDC operations. Requests for information, qualifications or capabilities can be answered unless otherwise restricted by the sponsor.

(5) A delineation of whether or not the FFRDC may accept work from other than the sponsor(s). If nonsponsor work can be accepted, a delineation of the procedures to be followed, along with any limitations as to the clients (other Federal agencies, State or local governments, nonprofit or profit organizations, etc.).

(d) The sponsoring agreement may also contain, as appropriate, other provisions, such as identification of:

(1) Any cost elements which will require advance agreement if cost-type contracts are used; and

(2) Considerations which will affect negotiation of fees where payment of fees is determined by the sponsor(s) to be appropriate.

(e) The term of the agreement will not exceed five years, but can be renewed, as a result of periodic review, in increments not to exceed five years.

**35.017–2 Establishing or changing an FFRDC.**

To establish an FFRDC, or change its basic purpose or mission, the sponsor shall ensure the following:

(a) Existing alternative sources for satisfying agency requirements cannot effectively meet the special research or development needs.

(b) The notices required for publication (see 5.205(b)) are placed as required.

(c) There is sufficient Government expertise available to adequately and objectively evaluate the work to be performed by the FFRDC.

(d) The Executive Office of the President, Office of Science and Technology Policy, Washington, DC 20506, is notified.

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(e) Controls are established to ensure that the costs of the services being provided to the Government are reasonable.

(f) The basic purpose and mission of the FFRDC is stated clearly enough to enable differentiation between work which should be performed by the FFRDC and that which should be performed by others.

(g) A reasonable continuity in the level of support to the FFRDC is maintained, consistent with the agency's need for the FFRDC and the terms of the sponsoring agreement.

(h) The activity is operated, managed, or administered by an autonomous organization or as an identifiably separate operating unit of a parent organization, and is required to operate in the public interest, free from organizational conflict of interest, and to disclose its affairs (as an FFRDC) to the primary sponsor.

(i) OMB Circular A-120 is complied with when applicable, and quantity production or manufacturing is not performed unless authorized by legislation.

(j) Approval is received from the head of the sponsoring agency.

**35.017-3 Using an FFRDC.**

(a) All work placed with the FFRDC must be within the purpose, mission, general scope of effort or special competency of the FFRDC.

(b) Where the use of the FFRDC by a nonsponsor is permitted by the sponsor, the sponsor shall be responsible for compliance with paragraph (a) of this subsection (see 17.504). When permitted by the sponsor, a Federal agency may contract directly with the FFRDC. The nonsponsoring agency is responsible for making the determination required by 17.502, unless the agency is contracting directly with the FFRDC, in which case the agency is responsible for compliance with Part 6. Work from other than a Federal agency may be accepted only to the extent permitted by the sponsor.

**35.017-4 Reviewing FFRDC's.**

(a) The sponsoring agency, prior to extending the contract or agreement with an FFRDC, shall conduct a comprehensive review of the use and need for each FFRDC. The review will be coordinated with any co-sponsors and may be performed in conjunction with the budget process. If the sponsoring agency determined that its sponsorship is no longer appropriate, it shall apprise other agencies who use the FFRDC of the determination and afford them an opportunity to assume sponsorship.

(b) Approval to continue or terminate the sponsorship shall rest with the head of the sponsoring agency. This determination shall be based upon the result of the review conducted in accordance with paragraph (c) of this subsection.

(c) An FFRDC review should include the following:

(1) An examination of the agency's special technical needs and mission requirements to determine if and at what level they continue to exist.

(2) Consideration of alternative sources to meet the agency's needs.

(3) An assessment of the efficiency and effectiveness of the FFRDC in meeting the agency's needs, including the FFRDC's ability to maintain its objectivity, independence, quick response capability, currency in its field(s) of expertise, and familiarity with the needs of its sponsor.

(4) An assessment of the adequacy of the FFRDC management in ensuring a cost-effective operation.

(5) A determination that the criteria for establishing the FFRDC continue to be satisfied, and that the sponsoring agreement is in compliance with 35.017-1.

**35.017-5 Terminating an FFRDC.**

When a sponsor's need for the FFRDC no longer exists, the sponsorship may be transferred to one or more Government agencies, if appropriately justified. If the FFRDC is not transferred to another Government agency, it shall be phased out.

**35.017-6 Master list of FFRDC's.**

The National Science Foundation (NSF) maintains a master Government list of FFRDC's. Primary sponsors will provide information on each FFRDC, including sponsoring agreements, funding data, and type of R&D being performed, to the NSF upon its request for such information.

**35.017-7 Limitation on the creation of new FFRDC's.**

Pursuant to 10 U.S.C. 2367, the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, the Secretary of the Air Force, the Secretary of Transportation, and the Administrator of the National Aeronautics and Space Administration may not obligate or expend amounts appropriated to the Department of Defense for purposes of operating an FFRDC that was not in existence before June 2, 1988, until (i) the head of the agency submits to Congress a report with respect to such center that describes the purpose, mission, and general scope of effort of the center; and (ii) a period of 60 days, beginning on the date such report is received by Congress, has elapsed.

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Part IX

# Department of the Interior

**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Parts 701 and 785**

**Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Requirements for Permits for Special Categories of Mining; Final Rule**

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**DEPARTMENT OF THE INTERIOR**

**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Parts 701 and 785**

**Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Requirements for Permits for Special Categories of Mining**

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Final rule.

**SUMMARY:** The Office of Surface Mining Reclamation and Enforcement (OSMRE) of the United States Department of the Interior (DOI) is establishing separate definitions for the terms "agricultural activities" and "farming" to replace the suspended definition of "agricultural activities or farming." Related changes to existing regulations governing mining on alluvial valley floors (AVFs) will conform these existing regulations with the new definitions for "farming" and "agricultural activities." Also, OSMRE is amending its regulations to specify the essential hydrologic functions of AVFs for which information must be provided in a permit application. These actions are necessary to respond to court decisions arising from legal challenges to rules promulgated in 1983. The effect of these actions will be to remove the mining prohibition from those AVFs used for agricultural activities other than farming and to provide guidance to operators and regulatory authorities as to what type of information must be included in a permit application.

**EFFECTIVE DATE: April 6, 1989.**

**FOR FURTHER INFORMATION CONTACT:** Patrick W. Boyd, OSMRE, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: 202–343–4561.

**SUPPLEMENTARY INFORMATION:**

I. Background.
II. Discussion of Final Rule and Response to Comments.
III. Procedural Matters.

## I. Background

*Statutory Background*

In addition to the general environmental protection performance standards applicable to all lands, the Surface Mining Control and Reclamation Act of 1977 (the Act), 30 U.S.C. 1201 *et seq.*, provides specific protection for alluvial valley floors (AVFs). Section 701(1) of the Act, 30 U.S.C. 1291(1), defines "alluvial valley floors" as "unconsolidated stream laid deposits holding streams where water availability is sufficient for subirrigation of flood irrigation agricultural activities * * *." As discussed in more detail below, the nature of the protection afforded to AVFs is two-fold. The performance standards of section 515 of the Act protect all AVFs by requiring the preservation throughout the mining and reclamation process of the essential hydrologic functions of AVFs. In addition, the permitting requirements of section 510 of the Act prohibit surface coal mining operations for interrupting, discontinuing or precluding farming on certain AVFs. Thus, certain "farmed" AVFs have an absolute safeguard, while other AVFs are protected without precluding mining.

Subject to a number of exceptions, section 510(b)(5) of the Act, 30 U.S.C. 1260(b)(5), requires a surface coal mining operation permit application to demonstrate affirmatively, and the regulatory authority to find in writing, that a number of requirements unique to AVFs would be satisfied by the proposed operation. Section 510(b)(5)(A) requires that the application demonstrate that the surface coal mining operation would "not interrupt, discontinue, or preclude farming on alluvial valley floors that are irrigated or naturally subirrigated * * *." In addition, section 510(b)(5)(B) requires a demonstration that the operation would not materially damage the quantity or quality of water in surface or underground water systems that supply the AVFs referred to in paragraph (5)(A).

As provided in section 510(b)(5) these requirements do not apply to:

(1) Surface coal mining operations located east of the 100th meridian west longitude;

(2) Undeveloped range lands which are not significant to farming on the AVFs;

(3) Lands for which the regulatory authority finds that the mining operation will only interrupt, discontinue or preclude farming of "such small acreage as to be of negligible impact on the farm's agricultural production[;]" and

(4) Those surface coal mining operations which in the year preceding the enactment of the Act (August 3, 1977) produced coal in commercial quantities, and were located within or adjacent to AVFs or had specific permit approval from the State regulatory authority to conduct surface coal mining operations on AVFs.

Another exemption from the section 510(b)(5) requirements is provided by section 506(d)(2) of the Act, 30 U.S.C. 1256(d)(2), for new operations proposed in an application for renewal or revision of a permit issued under the Act where the new operations extend to land beyond the boundaries authorized in the original permit. This exemption applies only if (1) the new land previously was identified in the reclamation plan submitted under section 506 of the Act, and (2) the original operations were exempt from the requirements of section 510(b)(5) of the Act under the section 510(b)(5) proviso for operations which produced coal in commercial quantities in the year preceding enactment of the Act.

However, even where mining of AVFs is allowed under section 510(b)(5) of the Act, the hydrologic protection requirements of section 515(b)(10)(F) of the Act, 30 U.S.C. 1265(b)(10), will apply. Section 515(b)(10)(F) requires surface mining operations to minimize disturbances to the prevailing hydrologic balance at the mine site and in associated off site areas, and to the quality and quantity of water in surface and ground water systems both during and after surface coal mining operations by preserving throughout the mining and reclamation process the essential hydrologic functions of AVFs in the arid and semiarid areas of the country.

*Regulatory History and Court Decisions—Section 701.5 Definition of "agricultural activities or farming"*

The definition of AVFs in section 701 of the Act uses the term "agricultural activities," and its definition is thus relevant to determining what is and what is not an AVF subject to the protection of sections 510(b)(5) and 515(b)(10)(F) of the Act. The term "farming" is used in section 510(b)(5) of the Act and is relevant to determining the scope of the additional protection provided by that section. The term "agricultural activities" was first defined in a final rule published on March 13, 1979 (44 FR 15317). The rule did not define the term "farming." On June 28, 1983 (48 FR 29820), the substance of the definition was revised somewhat, and its scope was expanded to cover either "agricultural activities *or* farming." Under the revised definition the term "agricultural activities or farming" meant:

[W]ith respect to alluvial valley floors, the use of any tract of land for the production of animal or vegetable life, based on regional agricultural practices, where the use is enhanced or facilitated by subirrigation or flood irrigation. These uses include, but are not limited to, pasturing or grazing of livestock, and the cropping, cultivation, or harvesting of plants whose production is aided by the availability of water from subirrigation or flood irrigation. Those uses do not include agricultural activities which have no relationship to the availability of water from subirrigation or flood irrigation practices.



The preamble to the June 28, 1983 rule (48 FR 29803) stated that although the Act and OSMRE's regulations use both the terms "agricultural activities" and "farming," their meaning with respect to AVFs is the same.

Coal industry plaintiffs in *In Re: Permanent Surface Mining Regulation Litigation (II)*, No. 79–1144 (D.D.C. October 1, 1984), hereafter *In Re: Permanent II*, challenged the combined definition of "agricultural activities or farming" arguing that the term "agricultural activities" is more general than the term "farming," and thus encompasses more land uses.

Reasoning that the use of two different terms in the Act indicated a congressional intent to prescribe a different meaning to each, the district court in *In Re: Permanent II* remanded the definition of "agricultural activities or farming." Slip op. at 30–31. The court held that the Secretary must reconsider the definition and any additional regulations necessary to conform them to Congressional intent. On February 21, 1985, OSMRE suspended the definition (50 FR 7274). OSMRE since has reconsidered the definition and has proposed separate definitions for "agricultural activities" and "farming." OSMRE has also proposed other rule changes needed for conformity with the proposed definitions.

At the same time, the coal industry plaintiffs argued that the reach of the protection provided by § 515(b)(10) should be the same as that of § 510(b)(5). They were unsuccessful both with the district court and, upon appeal, with the United States Court of Appeals for the District of Columbia Circuit. See *NWF v. Hodel*, 839 F.2d 694, (D.C. Cir. 1988), hereafter *NWF v. Hodel*. The appeals court held that it is appropriate for the Secretary to consider that § 515(b)(10)(F) reaches to AVFs not protected by § 510(b)(5). (*Id.* at 746.)

*Section 785.19(d)(2)(i) Information on the essential hydrologic functions of alluvial valley floors.*

The March 13, 1979, permanent program rules at 30 CFR 785.19(d)(3) (44 FR 15375) described specific information, surveys and analyses that a surface coal mining and reclamation permit application was required to include concerning the geologic, hydrologic and biologic characteristics that support the essential hydrologic functions of AVFs. These rules were revised by OSMRE on June 28, 1983 (48 FR 29821) as part of a major revision of the AVF rules. The revised regulation at 30 CFR 785.19(d)(2)(i) required that the permit application include detailed surveys and baseline data required by the regulatory authority for a determination of the characteristics of AVFs which are necessary to preserve their essential hydrologic functions throughout the mining and reclamation process. However, the details formerly contained in § 785.19(d)(3) of precisely what such surveys and baseline data should consist of had been deleted.

The citizen and environmental plaintiffs in *In Re: Permanent II* challenged the deletion of the specific requirements from the rule on the grounds that the preamble to the rule contained inadequate justification for the revision. The court remanded 30 CFR 785.19(d)(2)(i) for OSMRE to provide guidance to operators and regulatory authorities as to what type of information was required or explain why such guidance is no longer needed. Slip op. at 39–40. The appeals court affirmed the district court remand, concluding the Secretary did not adequately explain why such guidance was deleted (*NWF v. Hodel*, at 729–31). Accordingly, OSMRE is amending § 785.19.

The proposed rule, incorporating changes to the definitions and to the information requirements to the essential hydrologic functions of AVFs, was published in the **Federal Register** on August 3, 1988 (53 FR 29310). Public hearings were scheduled for August 31, 1988 in Washington, DC and Denver, CO. Since no one requested to testify at these hearings, none were held. The comment period closed on September 19, 1988. OSMRE received comments from 15 sources: the State regulatory authorities of Utah and Wyoming, the Bureau of Land Management, five public interest groups, four individuals representing consulting firms, two individual landowners and a mining industry association. One commenter requested an additional 30 days for comment. OSMRE did not accede to the request; however, OSMRE did give full consideration to all comments received regardless of whether the comments were timely or late.

The rules adopted today replace the definition suspended in 1985 and respond to the court decisions described above. The minor changes from the proposed rule are identified in the following detailed discussion of the final rule. Based on an analysis of the issues involved, the legislative history of the Act, applicable court decisions, and the administrative record of this rulemaking, inlcuding comments received, this final rule is a proper and reasonable interpretation of the provisions of sections 701(1), 510(b)(5) and 510(b)(10) of the Act.

## II. Discussion of Final Rule and Response to Comments

*General.* The final rule removes the definition of the term "agricultural activities *or* farming" from 30 CFR 701.5 and replaces it with separate definitions of the terms "agricultural activities" and "farming." To conform related AVF rules with these proposed definitions OSMRE also has revised the definition of "materially damage the quantity or quality of water" and has revised 30 CFR 785.19(b)(2)(ii) and (b)(3). OSMRE also has revised 30 CFR 785.19(d)(2)(i) in response to the court order to provide guidance to operators and regulatory authorities as to what type of information about potentially affected AVFs must be placed in a permit application.

Each of these changes and the public comments received concerning them are discussed in detail below.

*A. Section 701.5 Definitions of "agricultural activities" and "farming"*

The final rule at 30 CFR 701.5 removes the suspended definition of the term "agricultural activities *or* farming" and replaces it with separate definitions of the terms "agricultural activities" and "farming." OSMRE has made this change following reexamination of both the language and legislative history of the Act in response to the remand order issued by the district court.

1. Court Decision

The district court in *In Re: Permanent II* stated: "Congress used the term 'agricultural activities' in its definition of AVFs, 30 U.S.C. 1291(1), and 'farming' in describing permit requirements. *Id.* at section 1260(5)(A). This court will not presume to define these terms, but the use of different words does connote an intent to prescribe a different meaning." (*In Re: Permanent II*, Slip op. at 31.) Thus, separate definitions of these two terms are required by the court's decision if they are needed to conform the OSMRE regulations with Congressional intent.

2. Legislative History

To determine Congressional intent OSMRE reexamined the legislative history of the Act as it relates to AVFs. Based on the statutory language and on the legislative history of section 510(b)(5) of the Act, OSMRE has concluded that separate definitions are appropriate.

Congress used the term "agricultural activities" in section 701(1) of the Act in defining "alluvial valley floors." The term "farming" was used in section 510(b)(5)(A) of the Act in the AVF permit finding provision, which provides a higher standard of protection to a more limited number of AVFs than provided in the performance standards of section 515(b)(10) of the Act. In an attempt to strike a balance between the need to preserve the productive use of AVFs and the need to recover coal beneath them, Congress intended sections 510(b)(5) of the Act to protect only those AVFs which support farming, but not those which support other

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agricultural activities and are protected by section 515(b)(10)(F) of the Act.

Early versions of section 510(b)(5)(A) of the Act would have applied to ranching as well as farming on AVFs. Both the House and Senate bills at one time prohibited the regulatory authority from approving a permit unless it found that the proposed surface coal mining operation, if located west of the 100th meridian west longitude, would "not have a substantial adverse effect on valley floors * * * where farming can be practiced * * * (excluding undeveloped range lands), where such valley floors are significant to * * * *farming and ranching operations* * * *." H.R. Rep No. 45, 94th Cong., 1st Sess. 22 (1975) (Reporting accompanying H.R. 25); S. Rep. No. 128, 95th Cong., 1st Sess. 20 (1977) (Report accompanying S. 7) (Emphasis added.) Additionally, both bills extended this prohibition to potential as well as present farming and ranching.

The language extending the coverage to "ranching operations" was deleted by the House in 1976 and by the Senate in 1977. After H.R. 25 was reported out in 1975, a controversy arose concerning the scope of section 510(b)(5). In the next session the House adopted language very similar to the provision that was finally enacted on August 3, 1977. It provided that the regulatory authority could not approve the permit unless it found that the operation would not "interrupt, discontinue, or prevent *farming* on alluvial valley floors, * * * but, excluding undeveloped range lands * * * and those lands as to which the regulatory authority finds that if the *farming* that will be interrupted * * * is of such small acreage as to be of negligible impact on the *farm's agricultural production* * * *." Section 510(b)(5) of the 1976 House bill also contained a provision grandfathering certain operations which existed prior to the enactment of the Act. See H.R. Rep. No. 896, 94th Cong., 2nd Sess. 2 (1976) (Report accompanying H.R. 9725).

Although the deletion of the term "ranching" was not specifically discussed, the debates on the floor indicated that the Congress amended the AVF permit finding provision largely in response to the Administration's concern that the provision in the 1975 House bill could be read to "close some existing mines and * * * lock up significant coal reserves." 121 Cong. Rec. 12958, 62–64 (May 5, 1975); H.R. Rep. No. 896, 94th Cong., 2nd Sess. 3 (1976). The effect of the amendment was to increase the recoverability of coal underlying AVFs by deleting the limitations on mining both for present and potential ranching provided by section 510(b)(5) of the Act, and by adding the grandfather provisions and the small acreage exception.

The Senate did not delete the ranching protection from the AVF permit finding provision of its bill until May of 1977 when it passed a compromise amendment introduced by Senator Melcher. Senator Johnston first introduced an amendment which required a finding that the operation would not interrupt, discontinue or prevent farming on AVFs unless, among other matters, "the total value of the coal mined * * * would exceed, by a ratio of 100 to 1, the total value of the *farming or ranching* products that would be produced from said acreage * * *." (123 Cong. Rec. S 8030, May 19, 1977) (Emphasis added.) Senator Hart then offered an amendment which would have banned all mining on AVFs irrespective of the agricultural use of the land, with a limited grandfather provision. (123 Cong. Rec. 15691, May 20, 1977) These two amendments were defeated.

A third amendment, introduced by Senator Melcher and ultimately adopted by the Senate, contained the identical language of the 1976 House bill, including the deletion of the protection for ranching, and the addition of the grandfather provision and the small acreage exemption. The Senator emphasized that this language was designed to protect lands where there was farming that depended on irrigation. He further stated that in 1976 this language had been carefully reviewed and represented a compromise among environmental and labor groups, coal companies, individual landowners and government agencies. (123 Cong. Rec. 15751, May 20, 1977) The Senator characterized his amendment as a "middle ground [between the Hart and the Johnston amendments] * * * because it does retain the restrictions on keeping the alluvial valley floor *farming* operations intact. But it allows enough discretion through the regulatory authority to allow [mining] in those instances where the mining operation would not violently disturb a *farming operation* on a valley floor * * *." (123 Cong. Rec. 15752) (Emphasis added.)

The legislative history of section 510(b)(5), therefore, indicated that the Congress twice rejected language which would have broadened the scope of the AVF permit finding provision to encompass ranching as well as farming activities. OSMRE's 1983 combined definition of "agricultural activities *or* farming" therefore was inconsistent with Congressional intent. Accordingly, OSMRE has defined "farming" as a subset of "agricultural activities" distinct from ranching.

3. Definitions

As described above, it appears from the debates leading to adoption of the Melcher amendment that the Congress intended to protect only those AVFs being farmed and not those being ranched. Therefore, in promulgating separate definitions of "agricultural activities" and "farming" consistent with the legislative history it was necessary to distinguish farming from ranching. The most practical way to make the distinction is to consider "pasturing or grazing of livestock" in the arid and semi-arid areas west of the 100th meridian as ranching, and to limit farming to activities which involve raising plants. That concept is embodied in the final definitions described below.

*"Agricultural activities".* The definition promulgated for "agricultural activities" is similar to the remanded definition of "agricultural activities *or* farming." However, the specific terms "cultivation," "cropping," and "harvesting" found in the definition of "agricultural activities or farming" are replaced in this final rule definition by the generic term "farming." Therefore, the definition of "agricultural activities" reads as follows:

*Agricultural activities* means, with respect to alluvial valley floors, the use of any tract of land for the production of animal or vegetable life, based on regional agricultural practices, where the use is enhanced or facilitated by subirrigation or flood irrigation. These uses include, but are not limited to, farming and the pasturing or grazing of livestock. These uses do not include agricultural activities which have no relationship to the availability of water from subirrigation or flood irrigation practices.

*"Farming."* For consistency with the definition of "agricultural activities" described above, OSMRE has defined "farming" in terms of the "cultivation," "cropping" or "harvesting" of plants as follows:

*Farming* means, with respect to alluvial valley floors, the primary use of those areas for the cultivation, cropping or harvesting of plants which benefit from irrigation, or natural subirrigation, that results from the increased moisture content in the alluvium of the valley floors. For purposes of this definition harvesting does not include the grazing of livestock.

The final definition of "farming" differs from the proposal by substituting the word "or" for the word "and" in the proposed phrase "cultivation, cropping and harvesting." OSMRE made this change in response to comments that indicated requiring all three activities to be performed to establish that an AVF is farmed is too restrictive. One commenter pointed out that farming operations employing "no-till" practices, where little if any cultivation occurs, could be excluded by the definition. Other commenters argued that the definition would exclude native hay meadows that are mechanically harvested for use as winter feed, but may not be cultivated. Thus, under the final rule, all three activities need not occur for farming to exist. For the purposes of the final rule, OSMRE intends that cultivation means the preparation of the land for planting, cropping means planting and tending, and harvesting means the gathering in of the crop. OSMRE also intends, for purposes of the final rule, that "pasturing or grazing of livestock" is not a method of harvesting. The production of forage is only considered a farming activity when the forage crop is cultivated, cropped or mechanically harvested (i.e., cut and either stacked or baled).

*Farming as the "primary use" of an AVF.* The phrase "primary use" in the definition of "farming" is intended to cover those AVFs which are farmed in most years but not in others due to an unsatisfactory yield, excess production, or some other factor. The use of an AVF for the "pasturing or grazing of livestock" in some years does not preclude the AVF from being classified as farmed and thereby subject to the mining prohibition under sections 510(b)(5) of the Act. However, the "cultivation, cropping or harvesting" of plants constitute "farming" only where such activities are actually the primary use of an AVF. The suspended definition placed all "cultivation, cropping or harvesting" within the scope of "agricultural activities or farming." This final rule differs since occasional farming activities on AVFs not primarily used for "cultivation, cropping or harvesting," and not capable of producing crops on a regular basis, are not considered farming. As discussed below in connection with the legislative history of the word "preclude" in section 510(b)(5)(A) of the Act, a change in primary use, from farming to some other use, will not eliminate the protection provided by section 510(b)(5).

*Plants not benefitting from irrigation or subirrigation.* "Farming," under the definition promulgated herein, is limited to those "plants * * * which benefit from irrigation, or natural subirrigation, that results from the increased moisture content in the alluvium of the valley floors." Therefore, although an AVF is used for the cultivation, cropping or harvesting of plants, it would not qualify as "farmed" if the plants being cultivated, cropped or harvested do not benefit from the irrigation or subirrigation described above.

4. *Effect of final rule.* The chief consequence of defining "farming" separately from "agricultural activities" is that whenever 30 CFR 785.19 or 822.12 refer to "farming," they no longer will apply to all "agricultural activities," but only to those activities which involve the "cultivation, cropping or harvesting" of plants. The "farmed" AVF areas being affected so as to invoke the § 822.12(a) prohibition can include areas which were not being mined but would have their "farming" interrupted, discontinued, or precluded by a mining operation located on a nearby portion of the same AVF or outside the AVF. The net effect of these final rule definitions would be to remove the prohibitions of section 510(b)(5) of the Act from those AVFs used for agricultural activities other than "farming." However, it should be emphasized that while the scope of the mining prohibition of section 510(b)(5) of the Act may be somewhat reduced under this final rule, that provision of the Act and implementing regulations were never intended to cover undeveloped rangelands not significant to farming, which characterize much of the grazing land on AVFs west of the 100th meridian. Moreover, the performance standards of 30 CFR Part 822, which implement section 515(b)(10)(F) of the Act, still apply to all AVFs allowed to be surface minded.

One commenter was confused about the effect of the rule and indicated support for "the proposal to make farming a prerequisite to AVF designation."

The process and criteria for AVF determination in 30 CFR 785.19(a) are not the subject of nor are they affected by this final rule. The presence of geologic and hydrologic characteristics determines whether an area is to be considered an AVF. All AVFs are protected by the performance standard established by section 515(b)(10)(F) of the Act. Whether "farming" may be interrupted, discontinued or precluded on a particular AVF is only a concern when applying the mining prohibition pursuant to section 510(b)(5) of the Act.

Two commenters were concerned about the affect the rule would have on a specific area. One stated "OSMRE's proposed rule would substantially limit or eliminate protection for AVFs in the Alton coalfield in Utah, currently the subject of a permitting dispute over a mine proposed by Utah International." The second stated the proposal "would serve to alleviate almost all the problems that BHP-Utah Intl., Inc. is having in convincing the Utah [regulatory authority] to deem complete its application for a permit to strip mine coal at Alton, Utah."

OSMRE agrees that the final rule does narrow the scope of the mining prohibition established by section 510(b)(5) of the Act; however the rule does not eliminate the protection afforded AVFs pursuant to section 515(b)(10)(F) of the Act. The Alton mine permit application and any subsequent mining activity must comply with the approved Utah regulatory program. Under primacy, the effect on the Alton application of any changes that may be made in the Utah program pursuant to these changes in OSMRE's permanent regulatory program would be evaluated by Utah, not by OSMRE. Under section 505 of the Act, any State program may be more stringent than the Secretary's regulations.

The proposed rule interpreted the pasturing and grazing of livestock as a non-farming (ranching) agricultural activity and would have limited "farming" to those situations where cultivation, cropping and harvesting practices are employed. Comments were solicited on whether any other meaningful or practical distinctions, consistent with the court order and the legislative history, could be made between "agricultural activities" and "farming."

Of the 15 commenters, 12 opposed OSMRE's exclusion of grazing activities from the definition of "farming" and three favored it. Many of the opposing comments focused on different interpretations of the legislative history of the Act. Several commenters argued that the focus of Congressional debate was water and its importance to Western agriculture, not agricultural production techniques. In relation to AVFs, they felt it is the non-AVF dependent and other non-water dependent agricultural activities that are not protected from mining even if they occur on an AVF. For example, a poultry operation on an AVF would not preclude mining since its production is not enhanced by irrigation. AVFs are important due to their greater productivity, which is a function of soils, topography and water, not a function of planted versus native crops or mechanical versus natural harvesting (grazing). Other commenters asserted that since the bulk of Western agriculture is beef production, not row crops, it does not make since for Congress to try to protect agricultural production without including livestock production. Many commenters attacked OSMRE's interpretation of the discussion of Senator Melcher's amendment and argued that he was concerned about irrigation and subirrigation in protected areas versus dry creeks, not farming versus ranching. In the commenters' view, Melcher opposed a total ban on mining on AVFs because it would protect dry creeks, not because it would protect irrigated or subirrigated grazed AVFs. Thus, the commenters held the opinion that the real issue behind the Melcher amendment was developed versus undeveloped AVF lands.

OSMRE believes that this final rule is a proper and reasonable interpretation of the intent of Congress, consistent with the language of the Act and the legislative history. Congress wanted to balance the needs of two competing interests, agriculture and coal mining. Congress achieved that balance by allowing mining to take place, albeit with strict performance standards, in most areas of the West. In areas important to the agricultural economy.

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AVFs, two levels of protection were provided: first, the preservation during and after mining of the essential hydrologic functions of all AVFs where water sufficient for irrigation or subirrigation is available, and second, a prohibition of mining that would interrupt, discontinue or preclude farming on AVFs. Congress did not forsake livestock production. On the contrary, Congress attempted to ensure the continued viability of Western livestock producers by preserving the areas that are crucial to any Western livestock operation, the areas where storable winter forage is produced. Livestock operations require hay and grain crops to sustain the animals during times when grazing and pasturing are ineffective, e.g. in winter or periods of drought. Congress protected the areas where crops can be produced that are essential to the overall viability of such operations. The "farmed" AVFs, as OSMRE has defined them, are the essential winter feed production areas that, together with the surrounding grazing land, make a livestock operation capable of sustaining itself.

Congress was aware of the differences between ranching and farming. Where it intended a provision to apply to both farming and ranching, it used both terms. Where it intended a provision to apply only to farming, it used the term "farming" alone. Thus, in section 714 of the Act, surface owner consent is needed from persons conducting farming or ranching operations. In section 510(b), however, only farming is covered. Therefore, the express protection provided for ranching is limited to where that term is used, section 714, and requires surface owner consent, but unlike section 510(b) does not prohibit mining.

One commenter, responding to OSMRE's request for comments on meaningful and practical distinctions between "agricultural activities" and "farming," indicated that "agricultural activities" and "farming" have distinct purposes in the Act. The commenter asserted that they do not depend on one term being a subset of the other. In the commenter's view, "agricultural activities" restricts AVFs to those with a certain amount of water. "Farming" limits the full protection of the Act to AVFs where agricultural production takes place, i.e., where AVF rangeland is developed or significant to agricultural production and where the agricultural production dependent on the AVF is significant to the farm's production. The commenter concluded that the difference is that one term addresses water availability, while the other is concerned with agricultural production.

OSMRE agrees in part. The terms are used for different purposes in the Act. However, the definition of "farming" adopted today is consistent with the statutory language, the legislative history and common usage.

In reference to the use of the term "undeveloped range lands" in section 510(b)(5)(A) of the Act, one commenter argued that if Congress had defined farming as OSMRE proposed, the phrase "undeveloped rangelands which are not significant to farming" would be unnecessary.

OSMRE disagrees. While Congress specifically excluded undeveloped range lands, they are not necessarily the only lands excluded from the protection of section 510(b)(5) of the Act. Moreover, OSMRE's definition of farming, which does not include ranching, is consistent with the usage employed by Congress in another part of the Act. In section 714(e)(2), Congress defined the term "surface owner," in part, as a person or persons who conduct farming or ranching operations upon a farm or ranch unit. Clearly, Congress considered farming and ranching to be separate activities.

As discussed in more detail below, the House discussion of April 29, 1977, makes clear that the House felt that a broader amendment was needed to extend the protection of section 510(b)(5) to areas grazed by cattle and sheep. Without further amendment, H.R. 2 would only prohibit mining those areas currently being "cultivated" and not those with potential for cultivation. While such an amendment was passed by the House on that day, it did not become law. Instead, the language of H.R. 2 being criticized that day as providing inadequate protection is what was ultimately passed into law.

Further evidence exists to refute the commenter's assertion that the undeveloped rangeland exception in section 510(b)(5) of the Act is inconsistent with OSMRE's proposed definition of "farming." In a February 1977 prepared statement submitted in a House subcommittee hearing, then-Congressman Baucus of Montana suggested that the undeveloped rangeland exception in section 510(b)(5) of H.R. 2 be eliminated. In his view, the use of land as undeveloped rangeland did not qualify as agriculture. His statement was as follows:

"It seems to me that the current use of land, such as 'undeveloped rangeland,' is not nearly so important as the potential use of the land—we should not render unproductive land which offers potential for agriculture." (*Hearings Before the Subcommittee on Energy and the Environment of the Committee on Interior and Insular Affairs on H.R. 2*, Serial No. 95–1, Part III, 95th Cong., 1st Sess., 161 (February 24, 1977)). Thus the commenter is wrong to suggest that inclusion of the exception for undeveloped rangeland requires OSMRE to conclude that farming must include a land use that at least one member of the House did not even consider to be agriculture. Nothing in the definition of "farming" is inconsistent with the language of section 510(b)(5) of the Act. Likewise, the language of the Act does not preclude a definition such as the one adopted today, which is consistent with the legislative history.

One commenter, who felt that Congress wanted to protect developed AVFs as distinct from undeveloped range lands rather than farming as distinct from ranching, suggested that undeveloped range lands be defined as grazing land which is not irrigated or naturally subirrigated and has not been developed to enhance or facilitate agricultural production.

The definition of "undeveloped range lands" in 30 CFR 701.5 was not a part of proposed rulemaking. Currently, "undeveloped range lands" are defined, for the purposes of AVFs, as lands where the use is not specifically controlled and managed. OSMRE does not agree with the commenter's interpretation of the legislative history. The suggested change would define "undeveloped range lands" in an inappropriately narrow manner in relation to irrigation or subirrigation and would inject ambiguity into the definition due to the lack of any clear meaning for the word "developed."

One commenter highlighted the following excerpts from a discussion between Representatives Udall and Johnson (of Colorado) concerning an amendment to H.R. 2 offered by Representative Baucus as evidence that Congress wanted to prohibit mining on grazing areas in AVFs (123 Cong. Rec. 12866, April 29, 1977):

"*Mr. Udall:* We do not protect the whole valley; we protect the valley floor. In most cases, this comprises a hundred yards. This is the subterranean stream, or this is where the alfalfa and forage crops are raised.

"*Mr. Johnson:* [T]here will not be any farming operations which are interrupted except for that one narrow exception that I pointed out earlier. This would essentially stop mining in areas that are presently being grazed by cattle and sheep . . . is that not correct?



"*Mr. Udall:* [I]f it is in the valley floor itself, then there would be a ban in the valley floor."

The commenter indicated that the second sentence of Mr. Johnson's remarks referred to H.R. 2, which was the House version of the bill that was sent to the conference committee that produced the final legislation. At that time, H.R. 2 contained an AVF provision similar to section 510(b)(5) of the Act.

Careful scrutiny of the entire context of the quoted remarks, however, reveals that Mr. Johnson was actually referring to the Baucus amendment as the instrument by which mining would be prohibited in grazing lands. Earlier in the same discussion, Mr. Johnson had stated, "Why do we want to prevent mining in areas where there is only grazing for cattle or sheep? That makes no sense to me whatever. I think the extension of the [Baucus] amendment goes too far and is not warranted." (123 Cong. Rec. 12865.) In support of this view is the fact that immediately following the Udall-Johnson discussion, Representative Jeffords of Vermont in voicing his support for the Baucus amendment stated that "I am aware that *much of the land in question is used for cattle grazing*, and is not presently under cultivation. But the underground water systems which would be endangered by strip mining present a long-term potential for crop cultivation." (Emphasis added.) (123 Cong. Rec. 12867) It is clear that the Baucus amendment was intended to extend the mining prohibition beyond lands under cultivation to grazing lands, lands that were not so protected under H.R. 2. While this amendment passed the House following the above cited discussion, it did not become a part of the Act. Since the conferees subsequently rejected the Baucus amendment and adopted language similar to the earlier House language, the Act does not extend the mining prohibition to grazing lands.

One commenter argued that OSMRE's statement in the proposal that deletion of the term "ranching" was not discussed in the legislative history lends support to the theory that it was an inconsequential change, not an attempt to exclude a major agricultural activity from protection. The commenter asserted that such an exclusion would not be done without explanation. In the commenter's opinion, the deletion of "ranching" from "farming and ranching operations" was not to distinguish them, but to avoid redundancy. Similarly, a commenter said that brevity was the purpose of removing the reference to ranching because the term "farming" is used three times in section 510(b)(5)(A) of the Act.

In cases where a change was made to statutory language without an explanation, OSMRE is guided by the principle expounded by the Supreme Court and referenced in *NWF v. Hodel*, at 764, in circumstances relating to the authority to grant variance from approximate original contour requirements. That is, that the plain language of the statute should be relied upon unless the legislative history contains a clearly expressed contrary intention. In this case, the words "and ranching" were deleted while, as noted above, other portions of the legislative history indicate that section 510(b)(5) as it became law was not intended to extend to grazing areas. The commenter's assertion that reference to ranching was deleted solely for brevity is belied by Congress' use of both farming and ranching three times in section 714(e)(2) of the Act. Thus, when Congress wished to include ranching, it did so expressly. Therefore, OSMRE may conclude properly that ranching was deleted to reduce the scope of the protection rather than to eliminate redundancy or to be brief.

One commenter who opposed OSMRE's proposal suggested that any distinction between farming and ranching as the terms are used in the West is cultural. For example, a large operation involving wheat production can be referred to as a wheat ranch. The commenter argued that lacking a statutory definition of ranching, it is logical to consult a dictionary, e.g. Webster's, which defines a ranch as a Western term meaning a large farm for the raising of cattle, horses or sheep or any large farm devoted to the raising of a particular crop or livestock.

While Webster's may define ranching as a Western U.S. subset of its global definition of farming, the two terms do have distinctly different meanings to farmers and ranchers of the arid and semiarid West. Farming is generally thought of as crop production associated with supplemental irrigation. Grain production without supplemental irrigation is as apt to be called dry farming as wheat ranching, depending on locality. The definition of "farming" adopted today is consistent with these practices and protects the irrigated areas used for stored forage production associated with cattle ranches.

Other commenters opposed the proposed definition of "farming" for reasons unrelated to the legislative history of the Act. Many commenters opposed the proposed change to the definition of "farming" because they believed it would remove from protection much of the AVF acreage in the West, was a rollback of protection for AVFs, ignored regional agricultural practices, would not protect grazed AVFs that are significant to farming, and would result in an illogical granting and denying of permits. In contrast, another commenter indicated that "using the [proposed] definitions, . . . there would be almost no changes in the AVF determinations already made in Wyoming. [T]he impact of the proposed definitions would be relatively minimal in our State."

OSMRE does not agree with the opposing commenters. Pursuant to section 515(b)(10)(F) of the Act, surface coal mining operations are required to preserve the essential hydrologic functions of *all* Western AVFs as defined in the Act. This rule in no way affects or diminishes that protection. This rule does affect the scope of the prohibition on mining "farmed" AVFs pursuant to secton 510(b)(5) of the Act to the extent that it will be incorporated into State programs. As noted, in the case of Wyoming, it may have relatively little impact. Although opposed by some commenters, the final definition of "farming" adopted today is consistent with the intent of Congress and the statutory language, as discussed above.

One commenter argued that the definition would have ludicrous consequences in practice: If hay planted on an AVF is baled and fed to cattle in the field, the AVF would be protected, yet if the same cattle ate the same hay in the same field before it was baled, the AVF would not be protected.

While the commenter is partially correct in his representation of the effect of this rule, he misstates the issue. Contrary to the commenter's assertion, all AVFs are protected by the performance standards of 30 CFR Part 822. The issue is not whether protection exists, but rather is for what AVFs the prohibition on mining will apply. Because of the more limited areas available for producing storable forage necessary for a successful livestock operation, the higher level of protection of such areas afforded by a mining prohibition is far more critical to the overall production of a given agricultural unit than affording such protection to areas merely being grazed in season.

In the opinion of several commenters, applying the special protection to AVFs based on past or current agricultural practices does not address the statutory requirement in section 510(b)(5)(A) of the Act that mining not preclude (future) farming. Another commenter wanted to

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add to the definition of "farming" a statement to the effect that to be considered "farmed" an area would have to have been "historically used for cropland." In the commenter's opinion, this would eliminate the need for the "primary use" concept in the definition, a concept that "could be subject to different interpretations."

OSMRE does not agree with these commenters. Under the Act, the special protection of section 510(b)(5) is only applied to AVFs significant to farming. That provision requires that the primary use of the land, either currently or in the past, be farming. Inclusion of the word "preclude" supports this interpretation and was discussed in the final House-Senate conference report on H.R. 2. The conferees stated, "[t]he phrase 'not interrupt, discontinue or prevent farming' was modified to 'not interrupt, discontinue or preclude farming' in order to assure coverage of those lands which may be taken out of agricultural production in order to qualify for a new mine start on an alluvial valley floor. The conferees did not want this type of change in land-use to qualify an alluvial floor for mining." H.R. 95-493, 95th Cong., 1st Sess. 104 (July 12, 1977). This statement indicates that there had to have been pre-existing farm use. The Jeffords discussion cited earlier lends additional support to this position. The phrase "primary use" in the definition of "farming" is intended to cover those AVFs which are farmed in most years, but not in others due to an unsatisfactory yield, excess production or some other factor. The concepts of "primary use" and "historical use" mesh in that the regulatory authority should examine the facts and determine whether the primary use of the land in the past had been farming.

The response to the commenter's concern that a regualtory authority determination of primary use may be subject to varying interpretations is that the potential for varying interpretations exists in any discretionary determination by the regulatory authority. The safeguard is that the permitting process requires public participation to assist the regulatory authority in making the decision and, under section 514 of the Act, any adversely affected person may petition for administrative review.

One commenter, a landowner, argued that in his case some meadows are hayed in high rainfall years (rare) and grazed in years of low rainfall (frequent). He asserted that the proposal makes application of the special protection dependent on a factor beyond the control of the farm or ranch operator.

OSMRE intends that the determination of which AVFs are covered by the mining prohibition will be made by the regulatory authority on a case-by-case basis based, in part, on whether the primary use of the area is farming.

The same landowner also argued that to obtain the special protection, a crop would have to be harvested instead of grazed. Such a forced change could affect the profitability of agricultural operations.

This rule does not require landowners to engage in any practice, profitable or not. The final rule was changed from the proposal so that the prohibition will apply if the land is cropped or cultivated, regardless of whether harvesting occurs. If the landowner chooses not to engage in cropping, cultivation or harvesting, the protection of section 515(b)(10) of the Act will still apply.

One commenter argued that AVFs should be defined by geological and hydrological parameters, not according to the changing practices of man.

OSMRE agrees in part. Under the Act and the permanent program regulations, AVF identification and protection is related to geological and hydrological parameters, including the availability of water. Such availability may be enhanced by irrigation. However, the applicability of the prohibition on mining is applied consistent with the intent of Congress that AVFs significant to farming not be mined.

Two landowners were concerned about the impact of mining on downstream unmined AVFs. One asserted that if a grazed AVF is mined, downstream farmed AVFs would be damaged.

OSMRE shares the landowners' concern about potential damage to "farmed" AVFs as a result of mining operations on non-"farmed" AVFs and other areas. In such circumstances the mining prohibition would apply. The protection provided by the performance standard at 30 CFR 822.12(a), which prohibits mining operations from interrupting, discontinuing or precluding farming on AVFs or causing material damage to the quality or quantity of water in surface or underground water systems that supply AVFs, is not limited by distance from or spatial relationship to the mining operation. Downstream effects of mining operations will be considered by the regulatory authority in the permitting process.

In addition to the comments on the definition of "farming" discussed above, OSMRE received a large number of comments suggesting specific language to be used in the definitions of both "agricultural activities" and "farming." Many of these suggestions would have had the effect of including grazing in the definition of "farming." Such a definition of the word "farming" would not be consistent with the statutory language and the intent of Congress, for the reasons discussed above, and the comments were not accepted.

One commenter suggested deleting the phrase "where the use is enhanced or facilitated by subirrigation or flood irrigation" and the entire last sentence from the proposed definition of "agricultural activities." The same commenter wanted to delete the phrase "which benefit from irrigation, or natural subirrigation, that results from the increased moisture content in the alluvium of the valley floors" from the proposed definition of "farming." The commenter felt that these changes were desirable because the relationship between agricultural activities and irrigation is covered in the Act.

OSMRE did not accept these comments. Because the relationship between agricultural activities and irrigation or natural subirrigation is specified in the Act, it is important and appropriate to carry the relationship over into the regulatory definitions for clarity and consistency.

One commenter opined that there was no support in the record for harvesting being limited to mechanical harvesting, nor for mechanical harvesting meaning not just "swathing," but also either stacking or baling.

As discussed above, OSMRE believes that the legislative history supports excluding grazing from the definition of "farming." Therefore, direct harvesting by animals, that is, pasturing and grazing, is not considered harvesting under the rule. Since Congress intended to prohibit mining in areas where storable winter forage is produced, harvesting must consist of cutting ("swathing") *and* preparing the crop for storage by stacking or baling, or for grain production, placing the grain in storage.

*B. Section 701.5 Definition of "materially damage the quantity or quality of water."*

As required by the district court in *In Re: Permanent II*, slip op. at 31, and for conformity with the amended definitions of "agricultural activities" and "farming," OSMRE has also amended the definition of "Materially damage the quantity or quality of water" by substituting the term "farming" for the term "agricultural activities." The revised definition reads as follows:

*Materially damage the quantity or quality of water* means, with respect to alluvial valley floors, to degrade or reduce by surface coal mining and reclamation operations the water quantity or quality supplied to the alluvial valley floor to the extent that resulting changes would significantly decrease the capability of the alluvial valley floor to support farming.

The final definition is unchanged from the proposed rule. Based on OSMRE's previously discussed review of the statutory language and legislative history of the Act to include only farming and not ranching, and the decision of the district court in *In Re: Permanent II*, the material damage finding required by section 510(b)(5)(B) of the Act applies only to AVFs which support "farming." Therefore, the definition of material damage should be, and is, limited to decreases in the capability of those AVFs to support "farming" instead of all "agricultural activities." The result of this change is to eliminate the mining prohibition, but not the protection under section 515(b)(10)(F) of the Act, for AVFs primarily used for non-farming agricultural activities such as grazing which were covered under the previous rule.

One commenter suggested that the definition of material damage should relate to the premining condition of the land, which can be documented and compared, and recommended defining material damage in terms of adverse impacts on pre-existing vegetation or changes limiting the adequacy of water for irrigation.

OSMRE did not accept this comment because it is not tied to the protection provided by section 510(b)(5) of the Act. The material damage finding required by section 510(b)(5)(B) of the Act applies only to AVFs which support "farming." The definition of material damage should be, and is, limited to decreases in the capability of those AVFs to support "farming" instead of all "agricultural activities" or pre-existing vegetation. To the extent that mining would limit the adequacy of water for for irrigation, the capability of the AVF to support farming would most likely be decreased.

One commenter was concerned that use of the term "alluvial valley floors" in 30 CFR 785.19(e)(2)(ii) and 822.12(a)(2) could give the erroneous impression that *all* AVFs, not just those significant to farming, are subject to the regulatory requirements of section 510(b)(5) of the Act. The commenter suggested that OSMRE preclude any possible confusion by providing a clear statement in the final rule to the effect that the use of the term "alluvial valley floors" in the cited regulations refers only to "farmed" AVFs.

The protection provided by the definition of "materially damage the quantity or quality of water" is clearly limited to those areas whose primary uses are or have been farming. Therefore, no further clarification in the regulations is necessary.

*C. Section 785.19(b) Applicability of statutory exclusions*

Revisions also were needed to conform existing 30 CFR 785.19(b) to the proposed definition of "agricultural activities" and "farming." Section 785.19(b)(2) is unchanged from the proposed rule and provides for mining on AVFs under two of the section 510(b)(5) statutory exclusions described above. The first exclusion applies to undeveloped rangelands which are not significant to farming; the second exclusion applies to mining when the regulatory authority finds that mining activities would affect farming of "such small acreage as to be of negligible impact on the farm's agricultural production." Final § 785.19(b)(2)(ii) requires the regulatory authority to base its determination of whether an impact was "negligible" on the relationship between the loss of production from the affected farmland areas to the farm's total agricultural production over the life of the mine.

This final provision includes several changes, but remains very similar to the 1983 final rule. Because this paragraph deals with the impact of surface coal mining on "farming" and the final definition of "farming" does not include the use of AVFs for grazing, OSMRE has deleted the reference to grazing in § 785.19(b)(2)(ii). Further, because the use of AVFs for hay production falls within the final definition of "farming" as previously discussed, this paragraph has been reorganized and the term "hayed AVF area" deleted.

Two other editorial changes also have been made for clarity and consistency with the final definition of "farming." First, the word "total" has been added as a modifier to the term "agricultural production" to emphasize that the basis by which any impact is measured is a farm's total agricultural production. Second, the phrase "vegetation and water of the developed grazed or hayed alluvial valley floor area" has been changed to "farmland areas" because the former could be construed to be related to areas which are not farmed under the final definition of "farming." The use of "farmland areas" is consistent with terms found in existing § 785.19(b)(3).

One commenter suggested that §785.19(b)(2)(i) should begin "Any farming on the irrigated or naturally subirrigated AVF * * *" rather than just "Any farming on the AVF * * *."

This comment was not accepted. It is not necessary to insert "irrigated or naturally subirrigated" in the subparagraph since the words are already present in the definition of AVF.

One commenter was concerned about the use of the term "agricultural production" in two places in § 785.19(b)(2)(ii). The commenter believed that the term is intended to mean "farming" production and suggested that OSMRE clearly state this in the final rule. A second commenter also opposed comparing impact on "farmed" AVFs to total agricultural production because to do so would allow inclusion of thousands of acres of non-AVF land, diluting the relative impact of mining on the AVFs. This commenter urged that the determination of impact should compare "farmed" AVFs to "the production of only the AVF portion of the farm or ranch." In contrast, one commenter found "considerable support" in the legislative history for the position that the impact of mining should be based on total agricultural production, not on the impact to areas solely used for farming. Another commentor objected to the insertion of the word "total" as an unwarranted deviation from the statutory language.

In applying the statutory exclusion of section 510(b)(5)(A) of the Act, which also uses the term "agricultural production," OSMRE has consistently interpreted the comparison to consist of the relative importance of the affected "farmed" AVF on the entire farming operation. For this reason, OSMRE added the clarifying adjective "total" to "agricultural production" in this paragraph. The need for clarity in this instance is demonstrated by the above comments. Because the farmed AVF may contribute a very critical element (stored forage) from a small portion of the total acreage, the comparison must be to the agricultural unit as a whole including non-AVF areas.

Several commenters argued that the phrase "vegetation and water of the developed, grazed or hayed AVF area" should not be changed to "farmland areas" because to do so would ignore the importance of water to production and restrict the measurement of importance of the mined AVF area to the farm's production to the acreage disturbed. One commenter objected to "farmland areas" because he believed the resources, i.e., water and vegetation,

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rather than the land area are the important elements of AVFs.

OSMRE does not agree. The exception in the Act focuses on the impact on agricultural production of the interruption of farming on the AVF. It is not necessary to specify the interrupted elements, such as water or vegetation. Reference to water and vegetation was deleted because it could be construed as applying to areas not "farmed." Because this paragraph deals with the impact of surface coal mining on "farming," and the final definition of "farming" does not include the use of AVFs for grazing, the reference to grazing was deleted from the paragraph. Also, since the use of AVFs for hay production falls within the definition of "farming," the term "hayed AVF area" is not necessary and has been deleted.

One commenter was concerned about the impact of the proposed definitions in terms of reclamation requirements. In the commenter's opinion, it may not be sufficient to require that a previously grazed or hayed AVF simply be reclaimed to a suitable postmining land use; it may be more appropriate to require restoration of the essential hydrologic functions of the AVF.

OSMRE agrees. The reclamation performance standards found in 30 CFR 822.11 require the re-establishment of the essential hydrologic functions of an AVF within the permit area, as well as the preservation of those functions outside the permit area. This performance standard is unchanged by the adoption of this final rule.

Four commenters were concerned about how the determination of negligible impact is to be made. All opposed measuring the impact of mining over the life of the mine. They believed that the use of a long period of time, such as the life of a mine (which may exceed 40 years), as opposed to the bond liability period (a minimum of ten years) or annual measurement, would result in more "farmed" AVFs being mined with the possible concomitant elimination of farms.

OSMRE believes that a time frame needs to be defined to measure the impact and that the expected life of mine is the most reasonable and accurate one. Consideration of impacts over such an extended period will reduce errors in measurement associated with normal expected fluctuations in a farm's annual output. The foregoing notwithstanding, OSMRE intends that a primary criterion to be applied by the regulatory authority in determining the impact of mining on farming operations on AVFs is preservation of the viability of the farming operation. This position is consistent with the intent of Congress. Therefore, the determination should be made on a case-by-case basis. The regulatory authority does have the flexibility to adopt a shorter time frame if, based on local conditions, imposition of such a provision is no less effective than this rule or if the regulatory authority wishes to establish more stringent protections.

Final § 785.19(b)(3) is unchanged from the proposed rule and defines a farm as a land unit on which farming is conducted. The requirements of this section are the same as those in the suspended rule except that the term "farming" has been substituted for the term "agricultural activities." This revision has been made to conform this paragraph with section 510(b)(5) of the Act, as well as with the final definition of "farming."

*D. Section 785.19(d)(2)(i) Information on the essential hydrologic functions of alluvial valley floors*

The district court in *In Re: Permanent II*, slip op. at 38–40, remanded 30 CFR 785.19(d)(2)(i) to the Secretary to provide guidance to operators and regulatory authorities as to what type of information was required. Section 785.19(d) (2) and (3) of the 1979 rules had included specific information requirements to describe the characteristics which support the essential hydrologic functions of alluvial valley floors. Those specific information requirements has been deleted from § 785.19(d) when it was revised in 1983. The appeals court "affirm[ed] the remand so that the Secretary may provide appropriate, official guidance to the operators and regulatory authorities, or conversely, explain why such guidance is not needed. *NWF v. Hodel*, at 731.

The special protections afforded to AVFs by the Act are described in two sections: Section 510(b)(5) prohibits a regulatory authority from approving a permit unless the applicant submits information which affirmatively demonstrates that certain protections to farming on AVFs are provided. Section 515(b)(10)(F) requires the preservation throughout mining and reclamation of the "essential hydrologic functions" of AVFs. In section 515(b)(10)(F) the Congress identified special protections to be afforded all AVFs independent of the protections for farming on alluvial valley floors provided by section 510(b)(5).

The court of appeals upheld the Secretary's view that the protection of essential hydrologic functions extended to all alluvial valley floors rather than just those significant to farming. The court stated that "it seems entirely plausible * * * that Congress intended * * * to protect all alluvial valley floors in arid and semi-arid areas with a performance standard while also providing special protection at the permit stage for those alluvial valley floors significant to farming." *NWF v. Hodel* at 747. The court went on to say that "[a]lthough the legislative history cited by Industry clearly supports the notion that Congress intended special protection for farms dependent on alluvial valley floors, it does nothing to refute the notion that other alluvial valley floors are also subject to protection, *albeit not at the permitting stage.*" (Emphasis added.) This is consistent with the fact that the Act requires no permitting information on the essential hydrologic functions of AVFs.

Although the Act does not require any permit information on essential hydrologic functions, and does not require the Secretary to further elaborate or "flesh out" this performance standard, it remains within the Secretary's discretion to add corresponding permit information requirements. *NWF v. Hodel*, at 734–5. Therefore, OSMRE has decided to continue to require permit information relative to preserving and reestablishing the essential hydrologic functions of all AVFs. The information requirement found in this final rule, which differs from that required under the 1979 and 1983 rules, is described below.

In the 1979 rules OSMRE regulated the protection of essential hydrologic functions in three ways: First, by promulgating at 30 CFR 701.5 an extensive definition of "essential hydrologic functions" which read as follows:

*"Essential hydrologic functions* means the role of an alluvial valley floor in collecting, storing, regulating, and making the natural flow of surface or ground water, or both, usefully available for agricultural activities by reason of the valley floor's topographic position, the landscape and the physical properties of its underlying materials. A combination of these functions provides a water supply during extended periods of low precipitation.

(a) The role of the valley floor in collecting water includes accumulating runoff and discharge from aquifers in sufficient amounts to make the water available at the alluvial valley floor greater than the amount available from direct precipitation.

(b) The role of the alluvial valley floor in storing water involves limiting the rate of discharge of surface water, holding moisture in soils, and holding ground water in porous materials.

(c)(1) The role of the alluvial valley floor in regulating the natural flow of surface water results from the characteristic configuration of the channel flood plain and adjacent low terraces.

(2) The role of the alluvial valley floor in regulating the natural flow of ground water results from the properties of the aquifers which control inflow and outflow.

(d) The role of the alluvial valley floor in making water usefully available for agricultural activities results from the existence of flood plains and terraces where surface and ground water can be provided in sufficient quantities to support the growth of agriculturally useful plants, from the presence of earth materials suitable for the growth of agriculturally useful plants, from the temporal and physical distribution of water making it accessible to plants throughout the critical phases of the growth cycle either by flood irrigation or by subirrigation, from the natural control of alluvial valley floors in limiting destructive extremes of stream discharge, and from the erosional stability of earth materials suitable for the growth of agriculturally useful plants." (44 FR 15314, March 13, 1979)

Second, by promulgating a performance standard at 30 CFR 822.11 requiring the preservation or reestablishment of the geologic, hydrologic, and biologic characteristics that support those functions. In the pertinent part, that standard read as follows:

"(a) Surface coal mining and reclamation operations shall be conducted to preserve * * * the essential hydrologic functions of alluvial valley floors not within an affected area * * * by maintaining those geologic, hydrologic and biologic characteristics that support those functions.

(b) Surface coal mining and reclamation operations shall be conducted to reestablish * * * the essential hydrologic functions of alluvial valley floors within an affected area * * * by reconstructing those geologic, hydrologic and biologic characteristics that support those functions.

(c) The characteristics that support the essential hydrologic functions of alluvial valley floors are those in 30 CFR 785.19(d)(3) * * *." (44 FR 15460, March 13, 1979).

And third, by promulgating, at 30 CFR 785.19(*d*), permit information requirements to describe those characteristics. (44 FR 15375–6, March 13, 1979).

In 1983, OSMRE revised the AVF rules with respect to essential hydrologic functions in four ways: First, the definition of "essential hydrologic functions" was shortened and simplified to read as follows:

*"Essential hydrologic functions* means the role of an alluvial valley floor in collecting, storing, regulating, and making the natural flow of surface or ground water, or both, usefully available for agricultural activities by reason of the valley floor's topographic position, the landscape, and the physical properties of its underlying materials. A combination of these functions provides a water supply during extended periods of low precipitation."

Second, the § 822.11 performance standards were rewritten to relate *directly to protection of the essential hydrologic functions*, rather than to the "geologic, hydrologic, and biologic characteristics that support those functions." In pertinent part, § 822.11 was revised to read as follows:

(a) The operator * * * shall minimize disturbances to the hydrologic balance by preserving * * * the essential hydrologic functions of an alluvial valley floor not within the permit area.

(b) The operator * * * shall minimize disturbances to the hydrologic balance within the permit area by reestablishing * * * the essential hydrologic functions of alluvial valley floors.

Third, former paragraph § 822.11(c) containing the cross reference to § 785.19(d)(3), which specified the detailed information requirements to describe those "geologic, hydrologic, and biologic" characteristics, was removed. (48 FR 29820, June 28, 1983)

And fourth, the § 785.19(d) permitting requirements were revised. That revision removed (1) the detailed information requirements previously contained in § 785.19(d)(2), which primarily related to the use of an alluvial valley floor for farming; and (2) § 785.19(d)(3), which required detailed information describing those geologic, hydrologic, and biologic characteristics necessary to support the essential hydrologic functions. See 48 FR 29820 (June 28, 1983). The 1983 revision of § 785.19(d)(2)(i) did retain, however, the requirement for detailed survey and baseline data to determine those characteristics of alluvial valley floors necessary to preserve the essential hydrologic functions, but did not specify what those surveys and baseline data should address.

In its October 1, 1984, decision, the district court in *In Re: Permanent II* remanded § 785.19(d)(2)(i) to the Secretary to provide guidance as to what type of information would satisfy this requirement in the absence of previous § 785.19(d)(3). Slip op. at 39–40. Although the court of appeals noted the deletions of both § 785.19(d)(2) and § 785.19(d)(3) (*NWF v. Hodel*, at 729, note 51), only the deletion of previous § 785.19(d)(3), which specified permit information requirements to describe those characteristics which support the essential hydrologic functions, was the subject to the district court remand. Therefore, the scope of this rulemaking is limited to providing the necessary degree of guidance as to what information must be submitted on the permit application to describe the essential hydrologic functions of alluvial valley floors, and to explaining the deviation from the requirements of § 785.19(d)(3) of the 1979 rules. Since the 1983 changes to the information requirements contained in § 785.19(d)(2) of the 1979 rules were not related to the characteristics supporting essential hydrologic functions, and were not covered by the district court remand, this rule does not address them.

In light of the court of appeals decision upholding the district court remand of § 785.19(d)(2)(i) to the Secretary the further guidance, OSMRE has reconsidered the requirements of that section and has made a substantial revision. Since this rule addresses those permit application information requirements necessary for a regulatory authority to determine projected compliance with the performance standards, the information requirement is structured to support the definition of essential hydrologic functions at 30 CFR 701.5 and the performance standard requiring their protection at 30 CFR 822.11, as they exist today. Since the performance standard no longer is written in terms of the characteristics which support the essential hydrologic functions, it is inappropriate to return to the information requirements previously contained in § 785.19(d)(3), which was written in terms of those "characteristics." Instead, final § 785.19(d)(2)(i) is structured to reflect the revised definition of essential hydrologic functions and the performance standard requiring direct protection or restoration of those functions.

Final § 785.19(d)(2)(i) expands upon the 1983 rule and identifies those specific requirements for AVF information that must be included in a permit application. It requires the applicant to include in the application specified information on essential hydrologic functions of the AVF. An editorial change has been made to the final rule in response to a comment. The word "evaluate" has been substituted for the word "identify" in the proposed sentence that began, "The information required by this subparagraph shall *identify* those factors which contribute . . ." Use of the word "evaluate" more accurately conveys the nature of the information to be submitted. The applicant shall not just identify the factors involved, but shall also evaluate their effects and interactions.

OSMRE believes that the detailed language added to final § 785.19(d)(2)(i)(A) through (D), although different from the information required under § 785.19(d)(3) of the March 13,

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1979 rule, provides the necessary guidance to operators and regulatory authorities, consistent with the revised definition and performance standards. This final rule has an emphasis different from the 1983 rule, which contained requirements to provide information on those characteristics of AVFs necessary to support their essential hydrologic functions. OSMRE has made this change since the performance standard is no longer structured around those characteristics, but is now built around the essential hydrologic functions themselves, and those factors related to the AVF that contribute to them. Therefore, OSMRE has revised 30 CFR 785.19(d)(2)(i)(A) through (D) as described below to specify those functions of AVFs for which information is required in a permit application.

Paragraph A is identical to the proposed rule and requires a description of those factors contributing to the collection of water within the AVF, such as the amount, rate and frequency of rainfall and runoff, surface roughness, slope and vegetative cover, infiltration and evapotranspiration, relief, and slope and density of drainage channels.

Paragraph B is identical to the proposed rule and requires a description of those factors contributing to storing of water within the AVF, such as permeability, infiltration, depth and direction of ground water flow, porosity, and water holding capacity.

Paragraph C is identical to the proposed rule and requires a description of those factors contributing to regulation of the flow of surface and ground water within the AVF, such as longitudinal profile and slope of the valley and channels, the sinuosity and cross sections of the channels, interchange of water between streams and associated alluvial and bedrock aquifers, and rates and amount of water supplied by the aquifers.

Paragraph D is identical to the proposed rule and requires a description of those factors contributing to the availability of water in the AVF, such as the presence of floodplains and terraces suitable for agricultural activities.

One commenter objected to OSMRE's decision to continue to require permit information relative to preserving *and re-establishing* the essential hydrologic functions of AVFs. The commenter felt that the decision represents an unwarranted broadening of 30 CFR 785.19(d)(2)(i), which seeks only information required to determine what is necessary to "preserve" the essential hydrologic functions. In the commenter's view, section 515(b)(10)(F) of the Act speaks only in terms of "preserving" essential hydrologic functions; therefore, to speak of "preserving and re-establishing" goes beyond the intent of Congress.

OSMRE has not changed the final rule preamble to respond to the commenter's concern. The words "and re-establishing" are intended to convey the idea that disruption of the essential hydrologic functions of the AVFs being mined is not precluded by the final rule. This usage parallels the existing performance standards in 30 CFR 822.11, which address the preservation of the essential hydrologic functions of AVFs outside the permit area and the re-establishment of those functions within the permit area. This final rule is supported by the legislative history of the Act which recognizes that the essential hydrologic functions of the actual operating area of a mine will be dewatered during mining (H. Rept. 95-218, 95th Cong., 1st Sess. 110 (1977)).

One commenter was dissatisfied with the proposal and indicated that the preamble spent a great deal of time explaining its change of the term "characteristics" to "factors," without remedying the problem which the district court identified with the previous rule, namely, that the detailed requirements of the 1980 rules of 30 CFR 785.19(d)(3) and 822.11(c) were dropped without adequate explanation. In the commenter's opinion, the proposed rule and preamble fail to explain why OSMRE's new list of "factors" is better than the more detailed previous list of characteristics. The commenter noted that the 1983 rule was remanded in part because the Secretary did not explain why the previously needed information was no longer necessary. This commenter and two others urged a reinstatement of the 1979 rule.

In contrast, another commenter argued that OSMRE had gone too far. The commenter believed that the specification of information to be included in permit applications is an unwarranted intrusion into the role of the regulatory authorities and an unwise limitation on their flexibility. The commenter recommended that the final rule leave the decision on what information is to be submitted to the discretion of the regulatory authority.

OSMRE did not accept these comments. First of all, the performance standard is no longer what it was in 1979 and, therefore, it would be inappropriate to build permit information requirements around characteristics that are not necessarily part of the performance standard. On the other hand, while it is true that the Act requires no permit information on essential hydrologic functions, and the appeals court noted that essential hydrologic functions are not provided the same level of protection at the permitting stage as farmed AVFs (*NWF v. Hodel* at 746-7), OSMRE believes it is necessary that an evaluation of the essential hydrologic functions for all AVFs be contained in the permit application so that the impact of mining and the effectiveness or reclamation can be evaluated. Thus, the rule is not an unwarranted intrusion into State authority. The word "factor" is used rather than the word "characteristic" to be more consistent with the revised performance standard and make clear that it is the essential hydrologic functions themselves that are to be described rather than the characteristics of the valley that supports those functions.

One commenter argued that the specific permit information requirements in 30 CFR 785.19(d)(2)(i) should include information on the quality of water in the AVF because water quality is an integral part of essential hydrologic functions. The commenter suggested adding a subparagraph (E) to describe factors contributing to the quality of water in the AVF, including descriptions of premining quality of surface water and of contributing groundwater aquifers.

OSMRE considered, but did not adopt, the suggestion to include water quality information requirements in this rule. Because water quality information for surface water and groundwater is required for both surface and underground mine permits in other parts of the permanent regulatory program (30 CFR 780.21 and 784.14 respectively), adoption of the suggestion would be unnecessarily duplicative.

Effects in Federal Program States and on Indian Lands

The final rules are applicable through cross-referencing in those States with Federal programs. This includes California, Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington. The Federal programs for these States appear at 30 CFR Parts 905, 910, 912, 921, 922, 933, 937, 939, 941, 942, and 947, respectively. The rule will also apply through cross-referencing in 30 CFR Part 750 to surface mining and reclamation operations on Indian lands. In the proposal, OSMRE specifically requested comment as to whether unique conditions exist in any of these Federal program States or on Indian lands which should be reflected either as changes to the national rules or as State-specific amendments to any or all of the Federal programs or the Indian lands program. No comments were received in response to this request.

Effects of the Rule on State Programs

Following promulgation of this rule, OSMRE will evaluate State programs to determine whether any changes in these programs will be necessary. If the Director determines that any State program provisions should be amended to be made no less effective than the revised Federal rules, the individual States will be notified in accordance with the provisions of 30 CFR 732.17.

## III. Procedural Matters

*Executive Order 12291 and Regulatory Flexibility Act*

The DOI has examined these final rules according to the criteria of Executive Order 12291 (February 17, 1981) and has determined that these are not major rules within the standards established by the Executive Order and, therefore, no regulatory impact analysis is required. The DOI has also determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that the final rule will not have a significant economic impact on a substantial number of small entities. The rule does not distinguish between small and large entities. The economic effects of the proposed rule are estimated to be minor and no incremental economic effects are anticipated as a result of the rule.

*Federal Paperwork Reduction Act*

The information collection requirements contained in this rule have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1029-0040. Public reporting burden for this information is estimated to average 120 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Information Collection Clearance Officer, OSMRE, Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project (1029-0040) Washington, DC 20503.

*National Environmental Policy Act*

OSMRE has prepared an environmental assessment (EA) on the impacts on the human environment of this rulemaking and has made a finding that the final rule would not significantly affect the quality of the human environment under section 102(C) of the National Environmental Policy Act of 1969(NEPA), 42 U.S.C. 4332(2)(C). The EA is on file at the OSMRE Administrative Record, Room 5131, 1100 L Street, NW, Washington, DC.

*Author*

The author of this rule is Patrick W. Boyd, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW, Washington, DC 20240; Telephone: 202-343-4561.

## List of Subjects

*30 CFR Part 701*

Law Enforcement, Surface mining, Underground mining.

*30 CFR Part 785*

Reporting and recordkeeping requirements, Surface mining, Underground mining.

Accordingly, 30 CFR Parts 701 and 785 are amended as follows:

Date: November 21, 1988.

**James E. Cason,**

*Deputy Assistant Secretary—Land and Minerals Management.*

## PART 701—PERMANENT REGULATORY PROGRAM

1. The authority citation for Part 701 is revised to read as follows:

**Authority:** Pub. L. 95-87 (30 U.S.C. 1201 *et seq.*), and Pub. L. 100-34.

2. In § 701.5 the definition of "agricultural activities *or* farming" is removed, definitions of "agricultural activities" and "farming" are added in alphabetical order, and the definition of "materially damage the quantity or quality of water" is revised to read as follows:

**§ 701.5 Definitions.**

*Agricultural activities* means, with respect to alluvial valley floors, the use of any tract of land for the production of animal or vegetable life, based on regional agricultural practices, where the use is enhanced or facilitated by subirrigation or flood irrigation. These uses include, but are not limited to, farming and the pasturing or grazing of livestock. These uses do not include agricultural activities which have no relationship to the availability of water from subirrigation or flood irrigation practices.

* * * * *

*Farming* means, with respect to alluvial valley floors, the primary use of those areas for the cultivation, cropping or harvesting of plants which benefit from irrigation, or natural subirrigation, that results from the increased moisture content in the alluvium of the valley floors. For purposes of this definition, harvesting does not include the grazing of livestock.

* * * * *

*Materially damage the quantity or quality of water* means, with respect to alluvial valley floors, to degrade or reduce by surface coal mining and reclamation operations the water quantity or quality supplied to the alluvial valley floor to the extent that resulting changes would signficantly decrease the capability of the alluvial valley floor to support farming.

* * * * *

## PART 785—REQUIREMENTS FOR PERMITS FOR SPECIAL CATEGORIES OF MINING

3. The authority citation for Part 785 is revised to read as follows:

**Authority:** Pub. L. 95-87 (30 U.S.C. 1201 *et seq.*), and Pub. L. 100-34.

4. Section 785.19 is amended by revising paragraphs (b)(2)(ii), (b)(3) and (d)(2)(i) to read as follows:

**§ 785.19 Surface coal mining and reclamation operations on areas or adjacent to areas including alluvial valley floors in the arid and semiarid areas west of the 100th meridian.**

* * * * *

(b) * * *

(2) * * *

(ii) Any farming on the alluvial valley floor that would be affected by the surface coal mining operation is of such small acreage as to be of negligible impact on the farm's agricultural production. Negligible impact of the proposed operation on farming will be based on the relative importance of the affected farmland areas of the alluvial valley floor area to the farm's total agricultural production over the life of the mine; or

* * * * *

(3) For the purpose of this section, a farm is one or more land units on which farming is conducted. A farm is generally considered to be the combination of land units with acreage and boundaries in existence prior to August 3, 1977, or if established after August 3, 1977, with those boundaries based on enhancement of the farm's agricultural productivity and not related to surface coal operations.

* * * * *

(d) * * *

(2) * * *

(i) The essential hydrologic functions of the alluvial valley floor which might

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be affected by the mining and reclamation process. The information required by this subparagraph shall evaluate those factors which contribute to the collecting, storing, regulating and making the natural flow of water available for agricultural activities on the alluvial valley floor and shall include, but are not limited to:

(A) Factors contributing to the function of collecting water, such as amount, rate and frequency of rainfall and runoff, surface roughness, slope and vegetative cover, infiltration, and evapotranspiration, relief, slope and density of drainage channels;

(B) Factors contributing to the function of storing water, such as permeability, infiltration, porosity, depth and direction of ground water flow, and water holding capacity;

(C) Factors contributing to the function of regulating the flow of surface and ground water, such as the longitudinal profile and slope of the valley and channels, the sinuosity and cross-sections of the channels, interchange of water between streams and associated alluvial and bedrock aquifers, and rates and amount of water supplied by these aquifers; and

(D) Factors contributing to water availability, such as the presence of flood plains and terraces suitable for agricultural activities.

* * * * *

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federal register

Tuesday
March 7, 1989

Part X

# Department of Transportation

**Federal Aviation Administration**

**14 CFR Parts 21, 36, 43, 91, 141, and 147**

**Primary Category Aircraft; Proposed Rule**

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**[14 CFR Parts 21, 36, 43, 91, 141, and 147]**

**[Docket No. 23345; Notice No. 89-7]**

**RIN 2120-AB53**

# Primary Category Aircraft

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice proposes to establish a new category of aircraft, and new simplified procedures for type, production, and airworthiness certification, and associated maintenance procedures. These aircraft would be of simple design intended for pleasure and personal use only, and would be designated as primary category aircraft. These aircraft (airplanes, gliders, rotorcraft, manned free balloons, etc.) may be unpowered or powered by a single, naturally aspirated engine having a certificated takeoff rating of 200 shaft horsepower or less. The aircraft would have a maximum occupant capacity of four or less, a maximum gross weight of 2,500 pounds or less, and would have unpressurized cabins. The notice also proposes to suspend or revoke any certificate, approval, or delegation issued under the FAA's certification procedures for products and parts, if an applicant makes a fraudulent or intentionally false statement on any FAA-required application, report, or record.

This proposal *does not* require type or airworthiness certification of ultralight vehicles (as defined in the Federal Aviation Regulations). However, it would afford an option for aircraft, now thought of as powered ultralight vehicles and other aircraft (e.g., growth versions of ultralights) having a maximum certificated gross weight of 1,000 pounds or less, to be type certificated and issued airworthiness certificates as "primary category-light" aircraft.

This notice emanates from a petition for rulemaking filed jointly by the Aircraft Owners and Pilots Association (AOPA) and the Experimental Aircraft Association (EAA).

The intended effect of this proposal is to—(1) Provide a category for aircraft that are less costly to certificate, produce, purchase, and maintain than current standard category aircraft; (2) stimulate the introduction of new, less costly airplane designs; (3) enable kit manufacturers to fill demand for low-cost aircraft; and (4) improve the safety of kit-built aircraft presently being certificated as experimental-amateur built.

**DATES:** Comments must be submitted on or before September 7, 1989.

**ADDRESS:** Comments on this notice should be mailed in triplicate, to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-10), Docket No. 23345, 800 Independence Avenue SW., Washington, DC 20591. Comments delivered must be marked Docket No. 23345. Comments may be examined in Room 915G weekdays between 8:30 a.m. and 5 p.m., except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lyle C. Davis, Aircraft Engineering Division, AIR-110, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, Telephone (202) 267-9583.

**SUPPLEMENTARY INFORMATION:**

## Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this notice are also invited. Substantive comments should be accompanied by cost estimates. Comments should identify the regulatory docket or notice number and should be submitted in triplicate to the Rules Docket address specified above. All comments received on or before the closing date for comments specified will be considered by the Administrator before taking action on this proposed rulemaking. The proposals contained in this notice may be changed in light of comments received. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with Federal Aviation Administration (FAA) personnel concerned with this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a pre-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 23345." The postcard will be date stamped and mailed to the commenter.

## Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center (APA-230), 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM.

Persons interested in being placed on the mailing list for future NPRM's should request from the above office a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

## History

This proposal for a primary category aircraft certification system is based on a joint petition from AOPA and EAA, modified in consideration of approximately 1,000 public comments received on that petition, and FAA's views of the concept. The FAA is particularly impressed by the high level of interest expressed by private pilots and potential operators in the joint AOPA and EAA proposal.

For some time, AOPA, EAA, and others have voiced a need for a new category of aircraft which are less costly to certificate, produce, purchase, and maintain than standard category aircarft. The proponents of "low cost" aircraft believe that it is becoming financially more difficult for the average aircraft owner to purchase and maintain an aircraft for personal use. They contend that, if an aircraft is limited to personal use and simple design, the detailed type certification rules could be simplified. In addition, they contend that the procedures for type, production, and airworthiness certification, and some maintenance requirements, should be simplified and related costs reduced commensurate with aircraft of simple design, low horsepower and limited occupant capacity. The FAA envisions that the kinds of aircraft eligible for primary category certification would range from powered ultralight vehicles (to be designated "primary category-light") to aircraft similar to, and including, popular four-place aircraft typified by the Cessna Model 172 "Skyhawk," Piper Model PA-28 "Warrior," and Beech Model C-23 "Sundowner" series aircraft.

The petitioners cite the economic downturn of the aviation industry as the impetus for the change. The FAA envisions the primary category aircraft proposal as a means to simplify type certification, production, maintenance and operation of general aviation aircraft while maintaining the current level of safety.



Approximately 4 years ago the FAA promulgated Part 103 of the Federal Aviation Regulations entitled Ultralight Vehicles. Such vehicles are limited in weight, horsepower, fuel capacity, speed, and occupancy. Under Part 103, ultralight vehicles are allowed to operate without an airworthiness certificate. This proposal would *not* change the current provisions of Part 103 and would not require vehicles meeting the ultralight vehicle definition of Part 103 to be certificated. Since Part 103 was issued, many light (e.g., two-place) aircraft designs have been developed using basic ultralight vehicle design. These aircraft currently must be certificated as experimental (amateur-built) or be certificated as standard category aircraft because they do not meet the ultralight vehicle definition. This proposal would provide another option for these ultralight vehicles: certification as primary category-light aircraft (1,000 lb. or less certificated gross weight). The type certification process would utlizie design standards (airworthiness standards) proposed by the aviation community at large and approved by the FAA through the public comment process. All primary category aircraft, having a certificated gross weight of 1,000 pounds or less, would carry the designation "primary category-light" on their special airworthiness certificates. Such aircraft would be subject to airspace operating limitations similar to those of Part 103 and would be limited in their use for flight training under Part 91.

The proposed type, production, and airworthiness certification for primary category aircraft would be heavily dependent upon the truthfulness of information and supporting reports provided with applications, and retained in the design, production quality control, airworthiness certification, and maintenance records. Since this is true for all certificates, approvals, and delegations granted under Part 21, a new provision proposed for Part 21 would establish sanctions for fraudulent or intentionally false statements made on any FAA-required application, report, or record submitted to the FAA or retained under Part 21. The proposed sanctions for fraudulent or intentionally false statements are modeled after similar provisions found in Parts 43, 61, 63, 65, and 143 for certificates, authorizations, and ratings issued under those parts.

## Discussion

The AOPA and EAA jointly petitioned the FAA for rulemaking to establish a new category of aircraft together with simplified and less costly type, production, airworthiness certification procedures, and maintenance practices.

The petitioners believe that there is a need to stimulate the introduction of new airplanes to fill the void created by discontinued production of many simpler airplanes. The petitioners also state that a major deterrent to the introduction of new private-use airplanes is the cost associated with FAA type certification. Many potential entrants to the aircraft manufacturing industry, deterred by this cost, have turned to production of aircraft component kits for amateur builders to construct and certificate as experimental aircraft. Some potential entrants have abandoned their projects altogether when it became apparent that type certification costs would raise the aircraft price to unacceptable levels.

The petitioners contend that the evolutionary increases in cost to certificate and maintain small personal use aircraft can be directly attributed to the regulations and certification procedures necessary to ensure the safety of small (i.e., 12,000 pounds or less certificated gross weight) "general aviation aircraft" used in commercial service, and associated advances in technology over the past 50-plus years. The FAA acknowledges that, because of the growth in air taxi and commuter operations and their use of aircraft certificated under Part 23, numerous government and industry committees, through periodic airworthiness reviews, have worked to amend Part 23 to reflect the state of the art that supported the development of a new generation of more sophisticated general aviation aircraft for commercial and business use. Part 23 has been amended more than 30 times since it was codified from Civil Air Regulations (CAR) Part 3 in February 1965. These amendments established type certification standards for such things as high performance characteristics of multi-turbine powered airplanes designed to operate at altitudes up to 50,000 feet; speed control devices; unsymmetrical loads for multiple wheel landing gear; fatigue evaluation for pressurized cabins; and minimum flight crew requirements. While such amendments to Part 23 were warranted to ensure an appropriate level of safety for sophisticated general aviation aircraft operated under the more demanding conditions of commercial operations, the Part 23 design standards, applicable to all small airplanes, have become unnecessarily complicated and restrictive for simpler, less sophisticated personal-use airplanes. The petitioners state that, in many instances, the current airworthiness regulations for certification and maintenance have become unnessarily burdensome for simple small, personal-use aircraft. The petitioners' views appear to be borne out by the continued satisfactory safety experience of the many thousands of small aircraft which were certificated under the less complex airworthiness standards of CAR Part 3, and which are still in service. Nothing in this proposal would funtion to reduce the current level of safety.

In summary, the joint AOPA and EAA petition proposes the following:

"1. Define *Primary Aircraft* to mean an aircraft with a single engine of not more than 200 horsepower and a seating capacity of not more than four persons.

2. Permit the Administrator to accept airworthiness standards and establish certification procedures appropriate for such *primary aircraft*, including engines and propellers, based upon complexity of the design, and issue type certificates for these aircraft, engines, and propellers.

3. Prohibit the carriage of passengers or property for compensation or hire in such *primary aircraft*.

4. Permit owners of *primary aircraft* to perform specified special maintenance and inspections (in addition to preventive maintenance) on their aircraft.

5. Provide a means for the purchaser of a kit of prefabricated parts from the holder of a type certificate and a production certificate for a *primary category aircraft* to complete the project and obtain a *personal use* experimental airworthiness certificate.

6. Provide for the conversion of standard category aircraft which have been certificated for operation in the normal, utility, or acrobatic category to be operated as a *primary category aircraft*."

The joint AOPA and EAA petition was published in the **Federal Register** on October 5, 1984 (49 FR 39336). The FAA received approximately 1,000 letters commenting on the petition. About 10 percent of these letters provide alternative views on the issues of the petition. The remainder of the commenters support the petition. After review of the petition and the submitted comments, the FAA has concluded that the petition has considerable merit. Accordingly, this NPRM is based on the joint AOPA and EAA petition; however, the substance has been further

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developed and influenced by public comments and the FAA's views on the concept. For example, the FAA has added the following three factors to the description of a primary category aircraft contained in the joint AOPA and EAA proposal: (1) The aircraft is limited to a maximum certificated gross weight of 2,500 pounds or less; (2) the cabin may not be pressurized, and (3) the engines for powered primary category aircraft are limited to naturally aspirated engines.

While the joint AOPA and EAA petition proposed a 200 horsepower limit and an occupant capacity limit of four, several commenters indicated a preference for a limit of 100 to 150 horsepower, and only two seats. They reasoned that this would keep the aircraft simple and less costly. The FAA reviewed the range of general aviation aircraft typically used for personal use and found a "break-point" in airframe, systems, and engine design complexity at the 2,500-pound maximum certificated gross weight, 200 horsepower, four-seat, unpressurized cabin criteria. For example, there is very little difference in the design complexity of the Cessna Model 152 (two place) and the Cessna Model 172 (four place) airplane with regard to type, production, or airworthiness certification procedures, on in-service maintenance practices. The lower limits suggested by these commenters would eliminate many present simple aircraft types, that have excellent safety records, from conversion to primary category. This would reduce the number of pilot-owners who might otherwise benefit from the maintenance aspects of this proposal. The lower limits would also preclude a number of manufacturers currently producing kits for certification as experimental aircraft from obtaining a primary category type certificate, a production certificate, and a special airworthiness certificate for their products. The FAA finds no safety-related reason to restrict the category eligibility to less than that proposed by the petitioners. Accordingly, the petitioners' proposal has been retained with respect to horsepower and seating capacity limits. The FAA is particularly interested in further comments regarding the scope of the proposed category and requests that commenters provide detailed opinions. The proposed regulatory language may be changed as a result of public comment on the proposed limitations.

The joint AOPA/EAA position regarding development of airworthiness standards and type certification procedures for primary category aircraft was supported by the majority of commenters. The FAA recognizes that existing airworthiness standards and present type certification procedures are directed toward aircraft that are used for both personal and commercial operations, including the carriage of passengers and cargo for compensation and hire. The current type certification process is the same for small, two-place, general aviation airplanes as it is for transport category airplanes, e.g., the Boeing Model 747 series airplanes. Therefore, the petitioners have a valid argument for review and revision of both airworthiness standards and certification procedures for small, simple, personal-use aircraft. If certification standards and procedures for these aircraft can be simplified and streamlined without compromising safety, the certification process would be less costly for both the government and the applicants. The FAA's 40 years of satisfactory safety experience with the Technical Standard Order (TSO) program for the approval of major aeronautical appliances (auxiliary power units, aircraft instruments, etc.), have clearly demonstrated that airworthiness standards appropriate to specific kinds of products, e.g., primary category aircraft, can be developed by the private sector, and approved by the FAA, without degrading safety.

Some commenters indicated a desire to conduct aerial spraying operations with primary category aircraft. Aerial spraying, or any other operations for compensation or hire, would not be within the scope or objectives of the primary category aircraft concept, under which aircraft are limited to personal use. However, the primary category concept would not preclude an aircraft, converted to or originally certificated as a primary category aircraft from being used in aerial spraying, provided the operation would be conducted under the authority of a private agricultural certificate issued under Part 137. For this purpose, aircraft certificated in the primary category would be "certificated aircraft" within the meaning of § 137.19(d).

Other commenters suggested that the FAA allow primary category aircraft to be used for flight instruction. They contend that primary category aircraft owners-pilots should be able to receive flight instruction from a properly certificated flight instructor in such aircraft, provided they are equipped with fully functional dual controls, and to reimburse the instructor. The FAA finds it appropriate to use primary category aircraft, having a maximum certificated gross weight of more than 1,000 pounds, for flight instruction in meeting pilot certification requirements under Part 61 and that flight instructor compensation should be permitted. However, instruction in a "primary category-light" aircraft should be limited to flight training in that type aircraft (provided the aircraft has dual controls and no other persons are carried aboard the aircraft), and exclude flight instruction to meet pilot certification requirements under Part 61. Public comments with substantive arguments are particularly sought in these areas.

A number of commenters indicated that pilot-owners should not be permitted to perform maintenance and inspection functions normally accomplished by certificated mechanics because it would lower safety levels. The FAA does not concur because a pilot-owner would be required to satisfactorily complete an FAA-approved maintenance training program and obtain a certificate of competence, for a particular aircraft involved, before being allowed to perform the specified inspection and maintenance. Further, private pilots are currently permitted to perform specific preventive maintenance tasks, provided records are kept and made available for review during required inspections by certificated maintenance airmen, agencies, and FAA inspectors. Similar procedures would be used by pilots when performing the expanded maintenance and inspection functions. The FAA's experience with the preventive maintenance provisions of Part 43, which permit pilots to perform tasks without the special training provisions of the primary category concept, shows that additional inspection and servicing functions could be accomplished by pilot-owners who have had special training. The maintenance provisions of this proposal could advance safety by encouraging pilot-owners to undergo maintenance training and adopt the special inspection program. This would result in more frequent inspections. Pilot-owners would be encouraged to acquire training in order to benefit from the privilege of performing more of their inspections and maintenance, and to extend from annual to biennial inspections. Under such a program, safety-related maintenance would be less likely to be deferred until an annual inspection because it could be accomplished by the specially trained pilot-owner. There could also be a cost saving compared to having those tasks performed by a certificated mechanic or maintenance facility. More complicated inspections, maintenance tasks, repairs, and modifications and the biennial inspection would still require an appropriately rated and certificated mechanic or agency.



The FAA accepts the petitioners' concept of issuing special airworthiness certificates for primary category aircraft which are either completely assembled by the manufacturer, or, for aircraft completed from kits, by the pilot-owner when assembly is accomplished under the direct supervision and quality control of the manufacturer holding a production certificate for the aircraft or aircraft kits. Allowing the owner to participate in production of the aircraft could further reduce the purchase price of such aircraft. Further, persons who have assembled their own aircraft, under the supervision and quality control of the production certificate holder, will be more qualified to maintain their aircraft once it is certificated. Production certificate holders for kit-built primary category aircraft could integrate a maintenance training program for the pilot-owner into the supervision program for kit assembly.

The proposed rules would also provide for purchasers of kits to obtain experimental airworthiness certificates for their aircraft if they elect to further reduce costs by assembling the aircraft without the supervision of the primary category aircraft production certificate holder. These aircraft would not be eligible for a primary category airworthiness certificate. Those who select this option would have to abide by the more restrictive operational limits prescribed in § 91.42 for experimental aircraft. The proposed primary category operating privileges would encourage more persons to assemble their kits under the supervision of the kit manufacturer, and would serve to improve the quality of kit-built aircraft that would otherwise be certificated as experimental aircraft.

Owners of antique and vintage aircraft object to the conversion of existing aircraft to the primary category in order to permit pilot-owners to perform more of their own maintenance. They are concerned that older aircraft, of historical significance, would not remain in their original vintage configuration. Under this NPRM, conversion to primary category is voluntary. The maintenance provisions for primary category aircraft would not allow modifications, or "conversions" by pilots. Further, under the present regulations, the FAA does not prohibit aircraft owners from altering the original appearance of older aircraft if the alterations are FAA-approved. The FAA does not agree with these commenters and has retained the petitioner's proposal to provide for voluntary conversion of certain aircraft from standard category to the primary category.

Several commenters from the ultralight community expressed concerns about the poor reputation for safety attributed to ultralight vehicles, and suggested that the primary category concept might be a reasonable and cost effective means of developing design standards and airworthiness certification procedures for these vehicles. The FAA agrees and proposes to provide the option for the certification and maintenance of ultralight vehicles as one kind of primary category aircraft, to be designated as "primary category-light". However, ultralight vehicles would not be required to be certificated as aircraft by the provisions of this notice.

**Proposed Rules**

While the FAA agrees, for the most part, with the intent of the joint AOPA/EAA petition, the specific rule changes proposed by the petitioners require refinement. This proposal integrates the concepts of the petitioners' request, the opinions of approximately 1,000 commenters, and of the FAA's views on how to accomplish these objectives while maintaining safety and cost effectiveness. This NPRM should not be perceived as an effort to deregulate general aviation safety. The FAA believes that the proposals set out below will maintain a level of safety equivalent to that in effect for small, personal-use aircraft certificated under Parts 23, 27, 31, 33, and 35 as applicable. Additionally, the proposals in this NPRM would afford an opportunity to improve the safety of some amateur-built aircraft (certificated as experimental) not presently subject to extensive (or rigorous) type certification or production requirements. There will be no reduction of FAA presence, simply a more efficient use of that presence through increased use of the delegation systems currently in existence.

The economic incentive for pilot-owners to get special maintenance training and perform maintenance under an expanded preventative maintenance program, that might otherwise be deferred, should contribute to safety. The economic incentives could also improve safety by encouraging amateur builders of kit aircraft to seek the supervision and quality control of the primary category aircraft kit manufacturer. In this regard, further public comments with substantive arguments are sought on the safety and economic aspects of each element of this proposal. The final decision on whether to adopt the primary category aircraft concept will depend on such comments.

*Falsification of Applications, Reports, or Records*

The proposed new § 21.2 would cause a fraudulent or intentionally false statement on any FAA application, report, or record required to be made, kept, or submitted to the FAA by certificate, approval, or delegation holder under Part 21, to be a basis for suspension or revocation of the subject FAA certificate, approval, or delegation which is the subject of the false statement.

The proposed § 21.2 is necessary to deter fraudulent or intentionally false information being submitted in or with applications and reports. The ability to act quickly to suspend or revoke a certificate obtained fraudulently is essential to safety. The possible loss of certificates, approvals, or delegations would serve as a strong deterrent. It is particularly important that a firm but reasonable deterrent to fraudulent or intentionally false statements be present where the FAA must rely heavily on such statements. Even though this provision is particularly important to the success of the primary category concept, the accuracy of statements, records, and reports made and retained by all applicants under Part 21 has a significant influence on the quality of all certifications, approvals, or delegations issued pursuant to Part 21. Therefore, this provision would apply to all applicants who seek an FAA certificate, approval, or delegation under Part 21, not just those concerning primary category aircraft. It would be applicable to all type certificates, supplemental type certificates, design change approvals, production certificates, approved production inspection systems, delegation option authorizations, designated alteration station authorizations, all airworthiness certificates, and export airworthiness approvals. It would also apply to approvals for imported engines, propellers, materials, parts, and appliances, Technical Standard Order authorizations, and design and/or production approvals for other kinds of materials, parts and appliances. Similar provisions are contained in §§ 43.12, 61.59, 63.20, 65.20, 67.20, and 143.20 for certificates issued in accordance with those parts. These provisions are in addition to section 1001 of Title 18 of the United States Code which makes it a federal crime to make false statements

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on any U.S. Government application. The provisions of this proposal would permit the FAA to respond quickly with administrative measures, when necessary, to protect the public safety.

Public comments, with substantive arguments, are solicited regarding whether the threat of criminal and/or civil sanctions would serve to deter persons from submitting fraudulent or intentionally false statements in support of applications, reports, or records.

*The Primary Category Type Certificate*

As used with respect to the certification of aircraft and as defined in § 1.1, category means "a grouping of aircraft based upon intended use or operating limitations." Examples include: transport, normal, utility, Acrobatic, limited, restricted, and provisional categories of aircraft. Consistent with the above, the FAA is proposing to create a new "primary" category of aircraft as defined by the criteria in proposed § 21.24(a)(1).

*The Primary Category Airworthiness Certificate*

For aircraft type certificated in the primary category, or in another category, that meet the criteria of proposed § 21.24(a)(1), the FAA proposes to establish new § 21.184 for the issuance of a Special Airworthiness Certificate-Primary Category, FAA Form 8130–7, to be used in lieu of the Standard Airworthiness Certificate, FAA Form 8100–2. A special airworthiness certificate is necessary because such aircraft would not meet the requirements for international operations required by Annex 8 to the Convention On International Civil Aviation for "Standard Airworthiness Certification," and because of the operational restrictions on primary category-light aircraft. There is also a need to clearly distinguish them from standard category aircraft to reflect their substantially different type certification standards.

Aircraft Eligibility

Under proposed § 21.24(a)(1), the FAA proposes that aircraft be eligible for type certification in the primary category if they: (1) Have a maximum certificated gross weight of 2,500 pounds or less; (2) are unpowered (gliders and hot air balloons) or are powered by a single, naturally aspirated engine with a certificated takeoff rating of 200 shaft horsepower or less at sea level, standard day conditions; (3) have a maximum occupant capacity of four or fewer persons, including the pilot, adult passengers, children, or infants, and (4) have an unpressurized passenger cabin. These criteria will make many existing aircraft with standard airworthiness certificates eligible for certification in the primary category. The FAA is particularly interested in comments concerning the above eligibility criteria in order to gain a broader perspective of the needs of the aviation community and general public. Classes of aircraft envisioned as eligible for primary category include fixed-wing airplanes, helicopters, gliders, airships, manned free balloons, powered and unpowered ultralight vehicles, and any other kind of aircraft meeting the criteria of proposed § 21.24(a)(1).

Airworthiness Design Standards

The FAA agrees that design standards for small, personal use aircraft can be simplified. The FAA also agrees with the petitioners that the airworthiness design criteria for such aircraft could be developed effectively by the private sector, through associations and consensus groups, and presented to the FAA for final approval. Such a process would be similar to the manner in which technical performance standards are currently developed by the Society of Automotive Engineers, Inc. (SAE), Radio Technical Commission for Aeronautics (RTCA), and other competent bodies, under FAA's Technical Standard Order (TSO) authorization program. At present, SAE and RTCA standards are incorporated by reference in the FAA's TSO's as design standards. The FAA's TSO procedures have been highly successful in promoting safety in the design, production, and quality control of many articles which are safety critical and used in commercial operations. The FAA's TSO approval process enables the public to benefit from the collective technical knowledge of the private sector. The proposed primary category type certification procedures will be available to all type certificate applicants and the FAA envisions that several sets of primary category aircraft standards would eventually be developed by private sector associations. These standards might vary with the class and complexity of aircraft involved. The applicant, not wishing to develop its own standards, would be free to select any FAA-approved design standard applicable to the kind of aircraft to be certificated. The FAA does not envision approving separate standards proposed by individual applicants for their exclusive use. All proposed standards received will be made available for public comment, and, if approved, will be available for public use.

Section 21.21(b)(1) of the FAR and its predecessor, Civil Air Regulation (CAR) section 3.10, provide for the issuance of type certificates based upon a finding that an applicant has complied with all applicable regulations or, if any airworthiness provisions are not complied with, a finding that the applicant's design compensates for the noncompliance by factors that provide an "equivalent level of safety." Historically, findings of equivalency pursuant to these regulations have been made during type certification programs. To the extent that privately proposed airworthiness standards vary from the airworthiness standards presently contained in the FAR, once approved, they will be considered to provide an equivalent level of safety. This proposal will permit persons or organizations other than individual type certificate applicants to develop proposed airworthiness standards for primary category aircraft and submit them to the FAA for approval.

The FAA is aware that several foreign civil air authorities have developed, or are in the process of developing, special airworthiness standards for simple aircraft that would meet the proposed primary category aircraft eligibility criteria. These standards would be eligible for consideration by the FAA for the type certification of primary category aircraft.

Proposed § 21.17(f) would allow standards developed in the private sector or by foreign governments to be reviewed and approved by the Administrator using a public comment process. This process would have to be completed prior to use by an applicant in a certification program. The FAA anticipates that the aviation community will take the initiative in developing these standards. When invited, FAA specialists would assist in the development of such standards as is currently the practice on SAE and RTCA technical committees. Then, similar to the way the FAA develops TSO's, the FAA formal review and adoption process would consist of public notice of the proposed standards, FAA analysis of the standards and comments received, and FAA approval or rejection. This process would assure public participation in the evaluation of the standards. This process is not unprecedented. Part 11 currently allows anyone to propose airworthiness standards for any type of aircraft. Under the Administrative Procedure Act, the FAA must evaluate all such petitions and accept them as proposals, modify and accept them, or reject them.

As indicated in proposed §21.17(f), the airworthiness design standards for primary category aircraft may include



standards for certification of the engine and propeller as part of the aircraft. This is an alternative to the certification standards provided in Parts 33 and 35, respectively, as is currently required for standard category aircraft.

To disseminate this information, the FAA would issue an Advisory Circular in the AC 21 series listing all approved standards and provide information as to where interested persons could obtain copies. This AC would be similar to existing AC 21.23–1 for glider certification. (A copy of AC 21.23–1 is in the docket for reference.)

Once airworthiness standards are approved by the Administrator, any person may apply for a type certificate using those standards as their type certification basis, provided that person possesses a complete copy of the standards and that copy is current. Aircraft designs found to comply with these airworthiness design standards would be eligible for a Primary Category Type Certificate. The type certificate data sheet for the aircraft would indicate the standards used.

Proposed § 21.17(f) would allow applicants for primary category type certificates the option of applying the existing standards of § 21.17(b) or Parts 23, 27, or 31, as appropriate, and still use the streamlined primary category certification procedures of § 21.24. Thus they would have the production certification, special airworthiness certification provisions, and, with certain limitations, the maintenance privileges associated with primary category aircraft.

Under the proposed concept, multiple classes of primary category aircraft could be accommodated, since each individual class of aircraft could have separate, approved airworthiness design standards. A flight manual would be required to set forth operating limitations, but could vary with aircraft design complexity. Airworthiness design standards would be less burdensome than existing standards, because they could be tailored to a particular aircraft design, level of complexity, and intended use.

The FAA, in considering airworthiness design standards proposed under § 21.17(f), would be guided by the goal of achieving the level of safety inherent in Parts 23, 27, 31, 33, and 35 as appropriate. The level of safety provided by the simplified primary category standards would be consistent with that provided by the present regulations. Those persons developing proposed airworthiness design standards would be guided by the level of safety provided by Parts 23, 27, 31, 33, and 35, even though details may differ because of design simplicity. Since the proposed method for developing and approving airworthiness standards for primary category aircraft involves the airworthiness standards presently administered by the FAA Directorate system, policies, procedures, and standardization will be implemented by the Aircraft Certification Service to ensure uniformity in the review and approval of primary category aircraft type certification projects.

Some persons have expressed concern about permitting industry to generate airworthiness standards. In light of existing regulations, §§ 11.25 and 21.17(b), under which procedures are provided for industry-generated airworthiness standards, the FAA is particularly interested in further comments, with substantive arguments, as to the efficacy of a certification system that would allow the use of private sector-generated airworthiness standards that would be subject to FAA approval after a public comment period.

Type Certification Procedures

The FAA proposes to simplify the type certification procedures of Part 21 for primary category aircraft. These procedures will rely heavily on existing delegation procedures and applicant statements. An application for a primary category aircraft type certificate would be submitted to the FAA in accordance with existing procedures and would be valid for 3 years as specified in § 21.17(c). Prior to completion of the type certification program, the applicant would submit a compliance checklist addressing all applicable airworthiness standards used in accordance with proposed § 21.24. The applicable airworthiness standards would have been previously approved by the FAA as discussed earlier. The compliance checklist would also contain a summary of methods used to determine compliance with these standards and to reference all reports or records of engineering analysis and test data used to establish compliance. This checklist would be retained by the applicant as a permanent part of the project file.

Following the applicant's submittal of the compliance checklist, compliance statement, and the data required under proposed § 21.24, the FAA would issue the type certificate, provided that a review by the Administrator of the material submitted and other examinations reveals that the aircraft is of proper design and meets the applicable airworthiness standards, and that no unsafe condition exists. The type certification basis would be referenced on the aircraft's type certificate data sheet, and the complete and detailed type certification basis would become a part of the continued airworthiness documentation.

The FAA would normally base its finding of compliance with the applicable airworthiness standards on initial design familiarization, applicant's certification of compliance with the type certification basis and the review of the compliance checklist. The FAA would retain the right to review drawings and reports and to witness or conduct tests to ensure the integrity of the type certification program. The right to review data and to conduct or witness tests would be exercised if: (1) The design embodies unusual or uncommon design features or characteristics, (2) the applicant's engineering capability is not clearly established, (3) the design contains features known to be unsafe based on past experience, and/or (4) in the course of routine surveillance.

This procedure is similar to the successful TSO authorization program presently used to approve the design and production quality control of many safety critical articles (e.g., gas turbine auxiliary power units, instruments, seats, safety belts, fire extinguishers, fuel system components, evacuation slides, navigation equipment, parachutes, etc.) used on standard category aircraft. To provide a clearer understanding of primary category type certification, some of the salient features are summarized below:

- FAA approves the certification basis
- The applicant provides limitations: AFM, placards, markings
- The applicant provides a certifying statement for type certification basis compliance
- The applicant provides a compliance summary report (checklist)
- The applicant maintains the type design and substantiating data files
- The FAA has the option to review data
- The FAA must find that the aircraft complies with the certification basis
- The FAA must find that there are no unsafe features
- The FAA has the option to inspect products, records, and facilities
- The FAA issues the type certificate
- The FAA issues the airworthiness certificates
- The applicant is responsible for continuing airworthiness

Another burden-alleviating feature of the primary category concept is that the design compliance substantiation data will not be sent, normally, to the FAA for review. Therefore, the applicant would not have to wait for that review

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before proceeding with the next phase of the project. The FAA believes that its presence at the major milestones of the primary category type certification program will ensure compliance with the FAA-approved airworthiness design criteria.

The type certification procedures for primary category aircraft will be codified by revising sections of existing Part 21 as opposed to consolidating all requirements in a special "primary category" subpart of Part 21. Except for the revisions proposed herein, all other requirements of Part 21 would apply to the certification of primary category aircraft.

Section 609 of the Federal Aviation Act of 1958, as amended, would remain applicable to the suspension, amendment, or revocation of primary category aircraft certificates. Should the need arise for the FAA to evaluate or reevaluate a type design awaiting approval or already approved, the FAA would follow the normal type certification procedures specified in Part 21, and the applicant would be expected to demonstrate, assist, or provide data to the FAA as necessary under §§ 21.33(a) and 21.49.

Like any other type certification project, the designation of applicable airworthiness standards would be established in accordance with proposed § 21.17(f) when an application is made. On the date of application for the type certificate, the applicant would identify the airworthiness standards, and the specific documents in which they reside, for the aircraft to be type certificated. The applicant may request deviations from previously-approved airworthiness standards, and show that the modified standards are appropriate to the design presented for certification and are consistent with the level of safety provided by the approved standards. If the FAA finds that the applicant's design includes novel or unusual design features not addressed by the airworthiness standards established at the onset of the type certification process, special requirements may be identified by the FAA, under deviation procedures, to assure that the design complies with adequate airworthiness standards.

With respect to changes to type design, the requirements of Part 21, Subpart D, would apply, and those of Part 21, Subpart E, would apply to supplemental type certificates. For approval of such changes, the applicant would apply the process described in § 21.24. The FAA would be guided by § 21.19 when determining whether or not a particular design change presented for approval requires a new type certificate, and possibly new airworthiness standards, in accordance with § 21.17.

Under proposed § 21.24, the applicant normally would not submit all type design data to the FAA for review. However, all data must be retained indefinitely and made available to the FAA or the National Transportation Safety Board upon request, as presently required by § 21.49. The contents of the type certificate and the type design are defined in §§ 21.41 and 21.31, respectively. Therefore, the applicant must retain all of the data until the type certificate is surrendered, suspended, revoked, or terminated, or until the applicant goes out of business, at which time those data must be surrendered to the FAA. Continued application of these requirements to primary category aircraft is necessary to assure that engineering data will be available to correct unsafe conditions that may develop while in service.

Proposed § 21.24 would require the applicant to prepare a flight manual which is consistent with the present requirements of §§ 21.5, 23.1581, and 27.1581, or an alternative approved standard based on these sections. This would ensure that the pilot is provided with all design-related limitations associated with operating the aircraft. Part 91 operating limitations should not be repeated in the flight manual. The flight manual would be reviewed and approved by the type certificate holder for content, format, and consistency with the requirements of the airworthiness standards described in the certification basis. Existing FAA-approved flight manuals or operator's handbooks would remain applicable to aircraft converted from standard to primary category. Reductions in maximum certificated gross weight, rated horsepower, or occupant capacity as set forth in the type certificate data for a previously type certificated aircraft, by supplemental type certificate or other means, would not be approved to make the aircraft eligible as a primary category aircraft.

Proposed § 21.24(c) sets forth import type certification procedures for primary category aircraft which are consistent with the Bilateral Airworthiness Agreements between the United States and other countries in which such aircraft might be developed.

FAA policies and procedures for the type certification of primary category aircraft or the conversion of standard category aircraft to primary category would be published in an AC to ensure that they are available to all applicants.

Public comments, with substantive arguments, are solicited concerning the safety aspects of the proposed type certification procedures.

Production Certification

The holder of a primary category aircraft type certificate would be eligible for a production certificate (P.C.) when the FAA finds that the applicant has complied with the existing requirements in Part 21, Subpart G, for production certification. This notice also proposes, in §§ 21.165 and 21.184, that a manufacturer of a primary category aircraft be permitted to manufacture kits under its P.C. In accordance with proposed § 21.184, a person purchasing such a kit for a primary category aircraft would be offered the option by the P.C. holder to obtain a special airworthiness certificate—primary category. If this option is chosen, the owner's location of aircraft assembly would be considered as an extension of the P.C. holder's manufacturing facility for purposes of quality control responsibility, provided the assembly point is in the United States. This limitation on the location of assembly would permit FAA surveillance of the P.C. holder's supervision and quality control system. The quality of workmanship and type design configuration conformity of all work performed by the assembler would be the responsibility of the P.C. holder under its production certificate. Aircraft production flight tests would be accomplished only by production flight test pilots, approved and employed by, or designated as an agent of, the P.C. holder. The production flight test pilot would be identified by the applicant and authorized by the FAA as part of the manufacturer's P.C.

The procedure of permitting assembly of primary category aircraft under the manufacturer's P.C. at a location remote from the manufacturer's facility is similar to existing practice. For example, many components and subassemblies have been built by subcontractors for a prime manufacturer under the prime manufacturer's P.C. An example of final assembly at a remote location from the manufacturer's facility is the McDonnel Douglas Model DC–9–82 airplane being assembled in China. The airplane is being assembled under the McDonnel Douglas P.C. and is eligible for a U.S. standard airworthiness certificate. Another example is that of the Piper Model PA–18, where a procedure is currently being developed by Piper Aircaft Corporation in coordination with the FAA. This Owner Assembly Program will provide for final assembly to be accomplished at a remote location under the Piper P.C. quality control system through manuals and inspections



by Piper inspectors. Upon completion, the airplane would be eligible for a standard airworthiness certificate. As stated in § 21.165, it is the responsibility of the P.C. holder to maintain the quality control system and to determine that each completed product submitted for airworthiness certification conforms to the type design and is in a condition for safe operation. There is no reason to believe that safety will be derogated provided the requirements of § 21.165 are met.

The holder of a primary category aircraft type certificate would not be eligible for production under Part 21, Subpart F (Production Under Type Certificate Only), since this would be an undue burden on FAA inspection resources.

The FAA believes that safety will not be derogated under the primary category P.C. concepts. These concepts are currently in use and have been very successful. Public comments, with substantive arguments, are solicited regarding safety-related issues associated with aircraft assembly accomplished by the owner of a kit manufactured by a P.C. holder at a location other than the P.C. holder's manufacturing facility.

Special Airworthiness Certification

An aircraft type certified in the primary, normal, utility, or acrobatic categories and meeting § 21.24(a)(1), would be eligible for a special airworthiness certificate as either a primary category aircraft under § 21.184 (a), (b), (c) or (d), or as an experimental primary category aircraft under § 21.191(h) if it is assembled from a kit. The operating limitations, if any, required by Part 91, would depend on the kind of special airworthiness certification (primary category or experimental) under which the aircraft is approved. When a person purchases a primary category aircraft kit from the holder of a production certificate, and the location where the aircraft is assembled is not treated as an extension of the P.C. holder's quality control system, the aircraft would be eligible for only an experimental certificate under new § 21.191(h). When the kit assembler elects to obtain an experimental certificate in lieu of a primary category airworthiness certificate, the more restrictive operating limitations of proposed § 91.42 would apply and be made a part of the airworthiness certificate.

As a matter of policy, the inspection, flight tests, and issuance of special airworthiness certificates for primary category aircraft would normally be accomplished by FAA designees (private persons) authorized to perform those particular functions. To minimize government costs, FAA inspectors and flight test pilots would not normally perform these functions. Applicants, instead, would be encouraged to employ FAA designees as presently prescribed under Part 183. As with all designees, periodic FAA surveillance would continue, and if deemed necessary or in the course of routine surveillance, the right to conduct inspections, witness tests, or issue special airworthiness certificates would be exercised.

Proposed § 21.184(b) sets forth special airworthiness certification procedures for primary category aircraft imported from a country with which the United States has an applicable bilateral airworthiness agreement.

Airworthiness Certification Category Conversion

The FAA proposes that aircraft having a standard airworthiness certificate in the normal, utility, or acrobatic category which meet the weight, power, occupant capacity, and unpressurized cabin eligibility criteria of proposed § 21.24(a)(1) would be eligible for conversion to a special airworthiness certificate in the primary category under new § 21.184(c). Reversion to the normal, utility, or acrobatic category would be accomplished under § 21.183(d), and would require complete type design conformity and condition inspections prior to issuance of a standard airworthiness certificate by the FAA, or an FAA designee such as a Designated Airworthiness Representative. Such inspections would be required to ensure that the aircraft complies with an approved type design for standard certification and that it is in a condition for safe operation. When reverting from primary category to a normal, utility, or acrobatic category under § 21.183(d), responsbility to show that the aircraft conforms to an approved type design and that the aircraft is in condition for safe operation would rest with the applicant. Such an applicant would have to present to the FAA all aircraft records required by Parts 43, 91, etc., including records for the period during which the aircraft was certificated and operated in the primary category.

Conversion of standard category airplanes to the primary category would allow a pilot-owner to perform certain maintenance tasks, newly classified as preventive maintenance, upon successful completion of an FAA-approved training program. Conversion to primary category would not relieve aircraft and its components of the requirements of Airworthiness Directives (AD's) applicable prior to conversion. New AD's applicable to primary category, primary category—light, and primary category—experimental aircraft would identify these aircraft in their applicability statements. Primary category aircraft would not be eligible for multiple certification under any other category.

Pilot Requirements and Marking and Registration

The pilot requirements and the marking and registration requirements for primary category aircraft would be the same as those applicable to aircraft with a standard airworthiness certificate. Therefore, no regulatory changes are proposed for these requirements.

Maintenance

Existing § 43.3(g) permits a pilot, with at least a private pilot certificate, to perform preventive maintenance on standard category aircraft which are owned or operated by that pilot. Paragraph (c) of Appendix A of Part 43 lists 30 specific preventive maintenance tasks that may be performed, under appropriate circumstances, by a private pilot on the specific aircraft involved. The proposed amendments to Part 43 would expand that list, with regard to primary category aircraft only. To qualify for these additional preventive maintenance privileges, the pilot must: (1) Hold at least a private pilot certificate; (2) be the owner or co-owner of the aircraft; (3) have successfully completed special training as evidenced by a certificate of competence specifying the aircraft type for which training was received; and (4) perform the special inspection and preventive maintenance tasks in accordance with an FAA-approved special inspection and preventive maintenance program for the type of aircraft involved. The pilot may receive the special training before becoming a private pilot.

All provisions of Part 43 would be applicable to the maintenance, preventive maintenance, rebuilding, and alterations of primary category aircraft, including the additional special inspections and preventive maintenance tasks performed under the provisions of proposed new paragraph (c)(29), Appendix A of Part 43. At present pilots are required to record preventive maintenance tasks in accordance with § 43.9 and retain those records in accordance with § 91.173. These provisions remain unchanged for the expanded pilot maintenance and inspection functions.

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Proposed new § 21.24(b) would provide the means for FAA approval of special inspection and preventive maintenance programs under a primary category type certificate or supplemental type certificate. Such programs may include foreign type certificate holders. The FAA envisions that these programs would be approved by the Aircraft Evaluation Group (AEG) whose membership would include FAA engineering, manufacturing, operations, and maintenance specialists.

Proposed §§ 21.183(b), 121.57(b), and 147.21(f) would provide for FAA approval of special preventive maintenance training courses for persons who wish to perform the special inspection and preventive maintenance programs under proposed item 28, paragraph (c), Appendix A, Part 43. The training courses could be taught by the aircraft manufacturer (production certificate holder), pilot schools, or aviation maintenance technician schools provided they use curricula previously approved by the FAA. Students satisfactorily completing such courses would be issued a certificate of competence specifying the primary category aircraft for which training was successfully completed. Students would not be required to hold private pilot certificates, or be aircraft owners to complete training; however, under existing § 43.3 and the proposed changes to Part 43, Appendix A, such persons would be required to become a private pilot and owner or co-owner of the aircraft prior to exercising the privileges of § 43.3.

This proposal would not allow for the certification of schools under Part 141 or 147 that teach only the special preventive maintenance training. Schools would be required to meet all other requirements of Part 141 or 147 and be previously certificated to apply for FAA approval of these special courses.

Proposed new § 91.169(c)(4) would allow the required annual inspection to be extended to a biennial inspection for primary category aircraft, provided the aircraft records document proper accomplishment of an FAA-approved special inspection and preventive maintenance program by a person authorized under § 43.3.

Public comments, with substantive arguments, are solicited concerning the safety aspects of pilot-owner performed maintenance by pilots who have satisfactorily completed FAA-approved maintenance training programs.

*Flight Instruction—Air Traffic and General Operating Rules*

Primary category aircraft are intended for personal, non-commercial use; they are not intended to be used for compensation or hire or to train primary pilot trainees. The FAA recognizes, however, that these aircraft will be used in a variety of training situations because of their low operational costs. The lower costs associated with primary category aircraft will result in an expanded general aviation market and increased pilot activity. This growth will make it necessary to ensure a continued high level of proficiency in the pilot population. Therefore, aeronautical experience, including flight instruction, obtained while operating a primary category aircraft (excluding primary category-light aircraft) will be creditable toward pilot certificate and rating requirements in accordance with Part 61. It should be noted that aircraft used for training by Part 141 pilot schools will continue to require standard category airworthiness certificates. Thus, aircraft certificated as primary category aircraft would be precluded from use in approved Part 141 training school programs.

The current fleet of training aircraft certificated in the standard category (e.g., Cessna C–152, Piper PA–28, and Beechcraft C–23 aircraft) are adequately fulfilling the general aviation training mission. These standard category aircraft have evolved over the years to include design refinements enabling them to safely withstand the rigors of the daily training environment. In light of the proven reliability of these standard airworthiness category aircraft, the FAA does not intend or envision that these aircraft will be replaced in the training fleet by primary category aircraft. As previously stated, however, aeronautical experience obtained in a primary category aircraft (excluding primary category-light) will be creditable toward pilot certification requirements.

Proposed new § 91.21(d) sets limitations on the use of "primary category-light" aircraft for flight training. These aircraft are not considered suitable for flight instruction in obtaining a pilot's certificate rating under Part 61. Therefore, proposed § 91.21(d) would prohibit all flight training in such aircraft, except for flight training in the operation of that specific aircraft type, provided no other person or property are carried. Flight instructors may be compensated for this training. Such training need not be given in an aircraft owned by the person being trained. This would allow pilots to pay to get "checked out" in "primary category-light" aircraft that they do not own.

It is pointed out that all of the provisions of existing § 91.21 would apply to primary category aircraft, including those designated as "primary category-light." Thus, fully-functional, dual controls would be required for all flight instruction.

Proposed § 91.44(a) would prohibit the use of primary category aircraft for compensation or hire.

Proposed § 91.44(b) would, in the interest of safety in the air traffic system, restrict persons from operating an aircraft designated as "primary category-light" within an airport traffic area, control zone, terminal control area, airport radar service area, or positive control area, unless prior authorization is received from the air traffic facility having jurisdiction over that airspace.

Proposed § 91.44(c) would require any person operating a primary category-light aircraft to maintain visual reference with the surface. This will preclude a pilot from being caught "on top" and creating an unsafe situation for that pilot and other airspace users.

The FAA solicits public comment, supported by substantive arguments, relating to the restrictions and uses of primary category and primary category-light aircraft.

Noise

Primary category airplanes, including those designated as "primary category-light" will be required to meet the present requirements of Part 36, Appendix F, for small propeller-driven airplanes. Other kinds of primary category aircraft would not be affected by Part 36 because noise standards do not exist for them.

Ultralight Vehicles

On September 2, 1982, the FAA established 14 CFR Part 103 governing the operation of ultralight vehicles in the United States (47 FR 38770). Part 103 defines powered and unpowered ultralight vehicles and excludes such ultralights from the requirements for airmen certification, aircraft certification, and aircraft registration and marking.

The primary purpose of Part 103 is to maintain safety by protecting the airspace, and persons and property on the ground. When establishing Part 103, the FAA chose not to require aircraft registration, airworthiness certification, or pilot certification for ultralight vehicles provided that, among other restrictions, the aircraft were used for sport or recreation purposes only.



Ultralight flying is considered a "sport" generally conducted away from population centers and aircraft operations. The ultralight community was challenged to develop programs for pilot and aircraft certification, and aircraft registration to promote the safety of ultralight operations.

This notice proposes no changes to Part 103. However, manufacturers of vehicles meeting the ultralight criteria of Part 103 would have the option of type certificating their vehicles as primary category-light aircraft, thus affording their owners a higher level of design safety. Owners of such type certificated aircraft would have the option of obtaining a special airworthiness certificate and operating them within the operational limitations imposed on primary category-light aircraft. Public comments are being requested concerning the feasibility and acceptability of the primary category-light aircraft proposals as they relate to ultralight vehicles.

*Assessment of Safety and Economic Impact*

The FAA believes that the primary category airworthiness certification concept, described in the AOPA and EAA joint petition as modified in this notice, provides an opportunity to reduce costs to present and future aircraft manufacturers, and the pilot-owners of simple, personal use aircraft without adversely impacting the safety. Fixed-base operators, maintenance facilities, maintenance airmen, and other associated businesses would be expected to realize a net economic benefit from the anticipated growth in personal use general aviation operations stimulated by the adoption of the primary category aircraft concept.

As previously discussed, this NPRM should not be perceived as an effort to deregulate general aviation safety. The FAA believes that these proposals will maintain an equivalent level of safety. The certification requirements listed in proposed § 21.17(f) provided levels of safety equivalent to those of Parts 23, 27, 31, 33, and 35 for the types of aircraft affected. In addition, the proposals in this NPRM will afford an opportunity to improve the safety of a segment of amateur-built aircraft not presently subject to extensive (or rigorous) type certification or production requirements without requiring changes to the amateur-built provisions of Part 21. The level of safety of such aircraft, which would otherwise be treated as "experimental aircraft," could be significantly enhanced. This proposed rule provides all elements for ensuring the level of safety prescribed by the current regulations. There will be no reduction of FAA presence, simply a more efficient use of that presence through increased use of the delegation systems currently in existence. The primary category aircraft defines a system that will provide levels of safety equivalent to those currently existing for small personal-use aircraft.

The continuing experience of many thousands of small aircraft certificated under earlier, less complex, airworthiness standards illustrates that a return to simpler design certification requirements for these types of aircraft would not reduce that current level of safety. The economic incentive for pilot-owners to get special maintenance training on their aircraft, and the increased awareness of the importance of maintenance to safety could enhance safety. More frequent pilot inspections under approved special inspection programs together with expanded preventive maintenance, that might otherwise be deferred, should also contribute to safety. The economic incentives could also improve safety by encouraging amateur builders of kit aircraft to seek the supervision and quality control of the primary category aircraft kit manufacturer during assembly to make the finished aircraft eligible for a special airworthiness certificate in the primary category. Even if amateur builders are satisfied with an experimental certificate, safety levels would be improved because the kits would be produced under an FAA-approved quality control system.

The FAA is aware of the need to reduce the cost of its operations and proposes to reduce its involvement in type certification of aeronautical products wherever possible. This proposal is intended to maintain the present level of safety while minimizing the associated costs to the private sector and Government.

The FAA expects the number of private sector organizations that will undertake development of primary category standards will be small. However, by using private sector organizations to prepare the primary category standards, the FAA can reduce its administrative costs.

Once these standards are developed and approved, the simplified type certification process would reduce the time required of FAA technical personnel. Additionally, many FAA inspections and tests, leading to issuance of primary category type certificates, would be done by qualified private persons under the existing FAA designee program. This proposal will facilitate type, production, and airworthiness certification of small, personal-use aircraft.

Simplified airworthiness standards and type certification procedures should reduce certification costs and delays for manufacturers of primary category aircraft. The FAA considers neither the cost associated with design development, including developmental testing, nor the costs of analyses and tests incurred by the manufacturer to meet product liability responsibilities, to be "certification costs." Certification costs are those costs incurred by a manufacturer to show compliance with design requirements by engineering analysis and tests that would not otherwise be done to develop and test a design for market. Administrative costs incurred in working with the FAA throughout the certification process are also considered "certification costs."

Public comment, with substantive arguments, is urged specifically with respect to the safety implications of the issues listed below:

- Growth in the number of personal-use aircraft expected to be stimulated by the adoption of the primary category aircraft concept.
- Expected participation of the private sector in the development of primary category aircraft certification standards.
- Streamlining of FAA certification procedures by involvement of manufacturers and pilot-owners in type certification, manufacturing, and airworthiness certification of primary category aircraft.
- Expected response to the increased reliance on delegation programs.
- Expected reduction in the pilot-owner's operational costs.
- Expected reduction in the FAA's operational costs.
- Overall impact of the primary category concept on aircraft manufacturers.

Additionally, the FAA recognizes that there is concern that primary category aircraft manufacturers would not be willing to assume the liability associated with some of the proposals contained in this notice (e.g., the building of aircraft by the purchaser as an extension of the kit manufacturer's production certificate). This subject is a major concern as evidenced by liability bills, addressing general aviation accidents, which have been introduced in Congress. The FAA is particularly interested in public comments, with substantive arguments, regarding the effect this NPRM may have on the liability of aircraft manufacturers of, and component suppliers for, primary category aircraft.

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**Regulatory Evaluation Summary**

*Introduction*

The FAA proposes to establish a new category of small aircraft intended for personal use only, that would be classified as "primary category aircraft." The FAA is also proposing simplified type, production, and airworthiness certification procedures and maintenance criteria for this aircraft category. The proposed primary category aircraft would be unpowered or powered by a single, naturally aspirated engine having a certificated takeoff rating of 200 horsepower or less, would have a certificated takeoff weight of 2,500 pounds or less, and would have an unpressurized cabin.

This evaluation discusses how the benefits expected to result from the proposed regulations would outweight their expected costs. The proposed primary category aircraft regulations are expected to reduce costs to designers and manufacturers of small personal use aircraft that would otherwise be regulated by the provisions of Part 23. The proposed regulations would not require ultralight vehicles, operated under Part 103, to be certificated; however, it would offer such vehicles the option to be certificated as "primary category aircraft."

*Benefits*

Benefits expected to result from the proposed regulations include: (1) New business opportunities and cost savings to aircraft manufacturers who would be able to produce the new primary category aircraft; (2) improved public confidence in kit-built aircraft with improved product liability considerations for kit-built aircraft manufactured under FAA-approved airworthiness standards; (3) preventive maintenance cost savings to pilot-owners of primary category aircraft; and (4) stimulation of business associated with general aviation activities.

Cost savings resulting from revised procedures for obtaining airworthiness certifications have been estimated by industry spokesmen to range from 10 to 80 percent of the costs of compliance with current Part 21 procedures and existing airworthiness standards. For example, certification costs under Part 23 for simple, single-engine aircraft generally range from $2 million to $10 million per aircraft design. These costs vary depending upon aircraft complexity. Certification cost for an advanced four-place aircraft with highly innovative systems will be greater than those for a simple one- or two-place aircraft with rudimentary systems. Some industry spokesmen maintain that savings from the proposed rule would never exceed 10 percent of the existing costs, because product liability considerations force prudent manufacturers to exceed the substantive content of most of the existing airworthiness standards, even in the absence of regulations. These individuals maintain that the costs of conducting tests, such as wing structure integrity, flight capabilities, etc., necessary to satisfy product liability considerations, would be essentially the same under either existing standards or under any other simplified regulation.

Conservatively, the FAA assumes that savings to manufacturers of primary category aircraft would be 10 percent of existing certification costs. Thus, the FAA estimates that manufacturers who elect to use the primary category aircraft certification concept could save from $200,000 to $1 million per new aircraft design. (See the Regulatory Evaluation in the docket for details about these estimates.) The FAA has no basis upon which to predict accurately cost savings that would accrue to these aircraft manufacturers. Such predictions inherently require some knowledge of the number of manufacturers that would enter the primary category aircraft field and the number and complexity of the aircraft models they would produce.

Under the proposed regulations, pilot-owners of primary category aircraft would also benefit from savings associated with: (1) Assembling a portion of their aircraft themselves; (2) performing certain maintenance tasks and inspections themselves, and (3) having the inspection period of their aircraft extended from 1 to 2 years. The FAA has no basis for estimating these costs savings. The portions of the aircraft that may be assembled and the maintenance procedures that pilot-owners may perform have not as yet been determined, and their performance by the pilot-owner would be optional. Also, these procedures would vary with aircraft complexity.

In general, the proposed regulations would provide cost savings to all manufacturers and pilot-owners of primary category aircraft. The FAA believes that the benefits of the proposed regulations would more than offset any costs they would impose.

While the FAA does not have data to accurately estimate these benefits, it believes that they could be substantial. For example, if 5 to 10 new manufacturers enter the primary category aircraft field and produce two new models per year, then the cost savings accruing to the entering manufacturers could range from $2 to $20 million per year. These benefits do not include: (1) Cost savings to primary category aircraft pilot-owners through reduced maintenance and inspections costs, (2) jobs provided by new manufacturers, (3) increased business for fixed based operators due to increased personal use aircraft activities.

**Regulatory Flexibility Determination**

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress in order to ensure primarily that small entities are not disproportionately affected by Government regulations. The RFA requires Federal Government agencies to review regulations to determine whether they may have "a significant economic impact on a substantial number of small entities."

The proposed primary category aircraft regulations would directly impact entities who produce small, single engine general aviation aircraft and certificate them under existing airworthiness standards. The FAA defines a small aircraft manufacturer as one with less than 75 employees. It defines a substantial number as one that is not less than 11 and that is more than one-third of the small entities subject to the proposed regulations. A significant economic impact is defined as $14,250 per year to each of these small manufacturers.

A review of the aircraft manufacturers indicates that about 11 small manufacturers may be subject to the proposed regulations. However, in order for a substantial number to be affected, all 11 of the estimated number of manufacturers would have to choose to produce aircraft under these regulations. The FAA has no basis for estimating how many manufacturers will choose to produce aircraft under the proposed regulations or the level of complexity of these aircraft. Thus, it cannot presently estimate the level of impact on these manufacturers. If it is determined, at promulgation, that this proposal would have a significant impact on a substantial number of small entities, a regulatory flexibility analysis will be prepared and placed in the docket.

**Trade Impact Assessment**

The proposed primary category aircraft regulations, if adopted, could have a beneficial impact on trade opportunities both for U.S. firms doing business overseas and foreign firms doing business in the United States. The airworthiness authorities of several other countries are known to be developing regulations similar in concept to these proposed primary category aircraft regulations. These regulations could afford new opportunities for international trade between the U.S. and other countries in general aviation personal use aircraft and their opponents. Adoption of the primary category aircraft concept would also provide a means for U.S. import certification of several personal use aircraft that are being developed abroad, many of which incorporate U.S. manufactured components. United States citizens, fixed base operators, maintenance facilities, and service organizations would benefit from the availability of these aircraft for personal use in the United States.



**Federalism Implications**

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

**Conclusion**

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this proposed regulation is not major under Executive Order 12291. In addition, it is certified that this proposal, if adopted, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This proposal is considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

A draft regulatory evaluation of the proposals, including a Regulatory Flexibility Determination and Trade Impact Assessment, has been placed in the regulatory docket. A copy may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT"**.

**List of Subjects**

*14 CFR Part 21*

Aviation safety, Aircraft, Production certification, Safety, Type certification.

*14 CFR Part 36*

Aircraft noise, Type certification.

*14 CFR Part 43*

Aircraft, Aviation safety, Safety.

*14 CFR Part 91*

Aircraft, Aviation safety, Safety.

*14 CFR Part 141*

Air safety, Aviation safety, Education, Educational facilities, Pilot schools, Schools

*14 CFR Part 147*

Aircraft, Air safety, Aviation safety, Education, Educational facilities, Schools.

**The Proposed Amendments**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Parts 21, 36, 43, 91, 141, and 147 of the Federal Aviation Regulations (14 CFR Parts 21, 36, 43, 91, 141, and 147) as follows:

## PART 21—CERTIFICATION PROCEDURES FOR PRODUCTS AND PARTS

1. The authority citation for Part 21 is revised to read as follows:

**Authority:** 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f–10, 4321 *et seq.*; E.O. 11514; 49 U.S.C. 108(g) (Revised Pub. L. 97–449, January 12, 1983).

2. Part 21 is amended by adding a new § 21.2 to read as follows:

**§ 21.2 Falsification of applications, reports, or records.**

(a) No person shall make or cause to be made—

(1) Any fraudulent or intentionally false statement on any application for a certificate or approval under this part;

(2) Any fraudulent or intentionally false entry in any record or report that is required to be kept, made, or used to show compliance with any requirement for the issuance or the exercise of the privileges of any certificate or approval issued under this part;

(3) Any reproduction for a fraudulent purpose of any certificate or approval issued under this part; or

(4) Any alteration of any certificate or approval issued under this part.

(b) The commission by any person of an act prohibited under paragraph (a) of this section is a basis for suspending or revoking any certificate or approval issued under this part and held by that person.

3. Section 21.17 is amended by adding a new paragraph (f) to read as follows:

**§ 21.17 Designation of applicable regulations.**

* * * * *

(f) For primary category aircraft, the applicable requirements are:

(1) The appropriate airworthiness requirements contained in Parts 23, 27, 31, 33, or 35 of this subchapter, or such other airworthiness criteria the Administrator may find appropriate and applicable to the specific design and intended use and which provide a level of safety equivalent to that provided by those parts.

(2) The noise standards of Part 36 applicable to small, propeller driven primary category airplanes.

4. Part 21 is amended by adding a new § 21.24 to read as follows:

**§ 21.24 Issue of type certificate: primary category aircraft.**

(a) The applicant is entitled to a type certificate for an aircraft in the primary category if—

(1) The aircraft—

(i) Is unpowered or powered by a single, naturally aspirated engine with a certificated takeoff rating of 200 shaft horsepower or less under sea level standard day conditions;

(ii) Has a maximum certificated gross weight of not more than 2,500 pounds;

(iii) Has a maximum occupant capacity limit of not more than four persons, including the pilot; and

(iv) The cabin is unpressurized.

(2) The applicant has submitted—

(i) Except as provided by paragraph (c), a statement, in a form and manner acceptable to the Administrator, certifying that the applicant has completed the necessary engineering analysis; conducted appropriate flight, structural, propulsion, and systems tests necessary to show that the aircraft, its components, and its equipment are reliable and function properly; the type design complies with the airworthiness standards and noise requirements established for the aircraft under § 21.17(f); and no feature or characteristic makes it unsafe for its intended use;

(ii) A flight manual, in accordance with § 21.5(b) containing the applicant's approval, information on operating limitations, markings and placards, and other information required to be furnished by the airworthiness standards;

(iii) Instructions for continued airworthiness in accordance with § 21.50(b); and

(iv) A report that summarizes how compliance with each provision of the type certification basis was determined, lists the specific documents in which they reside, contains a list of all necessary drawings and documents used to define the type design (such as a master drawing list), and contains a list of all the engineering reports on tests

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and computations that the applicant will retain and make available under § 21.49 to substantiate compliance with the applicable airworthiness standards.

(3) The Administrator finds that—

(i) The aircraft complies with those appropriate airworthiness requirements contained in Parts 23, 27, 31, 33, or 35 of this subchapter, or such other airworthiness criteria the Administrator may find appropriate and applicable to the specific design and intended use; and

(ii) The aircraft has no feature or characteristic that makes it unsafe for its intended use.

(b) The applicant is entitled to a special inspection and preventive maintenance program, as part of the aircraft's type design, or supplemental type design, on aircraft approved under this section.

(c) If the applicant is located in a foreign country with which the United States has an agreement for the acceptance of these products for export and import, and the aircraft is to be imported into the United States—

(1) The statement required by paragraph (a)(2)(i) of this section must be made by the Foreign Civil Airworthiness Authority (FCAA) of the country of the applicant; and

(2) The required manuals, placards, listings, instrument markings, and documents required by paragraphs (a) and (b) of this section must be submitted in the English language.

5. Section 21.31(c) is amended by adding the phrase ", or otherwise required by the Administrator" after the word "chapter".

6. In § 21.31 paragraph (d) is redesignated as paragraph (e) and new paragraph (d) is added to read as follows:

**§ 21.31 Type design.**

* * * * *

(d) For Primary Category Aircraft, if desired, any special inspection and preventive maintenance program designed to be accomplished by an appropriately rated and trained pilot.

**§ 21.35 [Amended]**

7. Section 21.35(a) is amended by adding "§ 21.24" in place of "§ 21.25".

**§ 21.93 [Amended]**

8. Section 21.93(b)(3) is amended by adding the word "primary, " before the word "normal,".

9. Section 21.183 is amended by redesignating the introductory paragraph as paragraph (a); by redesignating paragraphs (a) and (b) as (a)(1) and (a)(2); and by adding a new paragraph (b), to read as follows:

**§ 21.183 Privileges.**

(a) The holder of a production certificate may—

(1) Obtain an aircraft airworthiness certificate without further showing, except that the Administrator may inspect the aircraft for conformity with the type design; or

(2) In the case of other products, obtain approval for installation on certificated aircraft.

(b) Notwithstanding the provisions of §§ 141.3 and 147.3, the holder of a production certificate for a primary category aircraft type design or for a normal, utility, or acrobatic category aircraft of a type design that is eligible for special airworthiness certification in the primary category under § 21.184(c) may—

(1) Conduct training for persons in the performance of a special inspection and preventive maintenance program approved as a part of the aircraft's type design under § 21.24(b), provided the training is given by a person holding a mechanic certificate with airframe and powerplant ratings issued under Part 65 of this chapter.

(2) Issue a certificate of competency to persons successfully completing the approved training program, provided the certificate specifies the aircraft to make and model to which the certificate applies.

**§ 21.185 [Amended]**

10. Section 21.185(b) is amended by adding the phrase ", including primary category aircraft assembled under a production certificate by another person in the United States from a kit provided by the holder," after the word "product".

**§ 21.175 [Amended]**

11. Section 21.175(b) is amended by adding "primary," after the word "are".

**§ 21.181 [Amended]**

12. Section 21.181(a)(1) is amended by adding the words ", special airworthiness certificates-primary category," after the words " Standard airworthiness certificates".

13. Section 21.182 is amended by revising paragraph (b)(2) as follows:

**§ 21.182 Aircraft identification.**

* * * * *

(b) * * *

(2) An experimental certificate for an aircraft that is not "amateur-built" or "kit-built."

* * * * *

14. Part 21 is amended by adding a new § 21.184 to read as follows:

**§ 21.184 Issue of special airworthiness certificates for primary category aircraft.**

(a) *New primary category aircraft manufactured under a production certificate.* An applicant for a special airworthiness certificate-primary category for a new aircraft that meets the criteria of § 21.24(a)(1), manufactured under a production certificate, including aircraft assembled by another person in the United States from a kit provided by the holder and under the supervision and quality control of the holder, is entitled to a special airworthiness certificate without further showing, except that the Administrator may inspect the aircraft to determine conformity to the type design and condition for safe operation.

(b) *Import aircraft.* An applicant for a special airworthiness certificate-primary category for an import aircraft type certificated under § 21.29 is entitled to a special airworthiness certificate if the Foreign Civil Airworthiness Authority of the country in which the aircraft was manufactured certifies, and the Administrator finds after inspection, that the aircraft conforms to an approved type design that meets the criteria of § 21.24(a)(1) and is in a condition for safe operation.

(c) *Aircraft having a current standard airworthiness certificate.* An applicant for a special airworthiness certificate-primary category for an aircraft having a current standard airworthiness certificate, that meets the criteria of § 21.24(a)(1), may obtain the primary category certificate in exchange for its standard airworthiness certificate without further showing. For the purposes of this paragraph, a current standard airworthiness certificate means that the affected aircraft conforms to an approved normal, utility, or acrobatic type design, complies with all applicable airworthiness directives, has been inspected and found airworthy within the last 12 calendar months in accordance with § 91.169(a)(1) of this chapter, and is found to be in a condition for safe operation by the Administrator.

(d) *Other aircraft.* An applicant for a special airworthiness certificate-primary category for an aircraft that meets the criteria of § 21.24(a)(1), and not covered by paragraphs (a), (b), and (c) of this section, is entitled to a special airworthiness certificate if—

(1) The applicant presents evidence to the Administrator that the aircraft conforms to an approved primary, normal, utility, or acrobatic type design, including compliance with all applicable airworthiness directives;



(2) The aircraft has been inspected and found airworthy within the past 12 calendar months in accordance with § 91.169(a)(1) of this chapter and;

(3) The aircraft is found by the Administrator to conform to an approved type design and to be in a condition for safe operation.

(e) A multiple category airworthiness certificate in the primary category and any other category will not be issued; and a primary category aircraft may only hold one airworthiness certificate.

(f) *Noise requirements.* For all primary category propeller driving small airplanes (except for airplanes that are designed for "agricultural aircraft operations" as defined in § 137.3 of this chapter, as effective on January 1, 1986), no special airworthiness cerificate is originally issued under this section unless the applicant shows that the type design complies with the applicable noise requirements of Part 36 of this chapter in addition to the applicable airworthiness requirements in this section.

(g) *Primary category-light.* Primary category aircraft that have a maximum certificated gross weight of 1,000 pounds or less must be designated as "primary category-light" on the special airworthiness certificate.

15. Section 21.187 is amended by revising paragraph (a) to read as follows:

**§ 21.187 Issue of multiple airworthiness certification.**

(a) An applicant for an airworthiness certificate in the restricted category, and in one or more other categories, except primary category and primary category-light, is entitled to the certificate, if—

* * * * *

16. Section 21.191 is amended by adding a new paragraph (h) to read as follows:

**§ 21.191 Experimental certificates.**

* * * * *

(h) *Operating kit-built aircraft.* Operating an aircraft certificated in the primary category that meets the criteria of § 21.24(a)(1) which was assembled by the applicant from a kit production certificate, but which was assembled without the supervision and quality control of the production certificate holder under § 21.184(a).

## PART 36—NOISE STANDARDS: AIRCRAFT TYPE AND AIRWORTHINESS CERTIFICATION

17. The authority citation for Part 36 is revised to read as follows:

**Authority:** 49 U.S.C. 1344, 1348, 1354(a), 1355, 1421, 1423, 1424, 1425, 1428, 1429, 1430, 1431(b), 1651(b)(2), 2121 through 2125; 42 U.S.C. 4321 et seq.; Sec. 124 of Pub. L. 06–473, E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

**§ 36.9 [Amended]**

18. The introductory paragraph of § 36.9 is amended by adding the word "primary," before the word "normal,".

**§ 36.501 [Amended]**

19. Section 36.501(a)(1) is amended by adding the word "primary," before the word "normal,".

## PART 43—MAINTENANCE, PREVENTIVE MAINTENANCE, REBUILDING, AND ALTERATION

20. The authority citation for Part 43 is revised to read as follows:

**Authority:** 49 U.S.C. 1354, 1421 through 1430; 49 U.S.C. 106(g) (Revised Pub L. 97–449, January 12, 1983).

21. Paragraph (c) of Appendix A of Part 43 is amended by adding a new item (31) to read as follows:

**Appendix A—Major Alterations, Major Repairs, and Preventive Maintenance**

* * * * *

(c) * * *

(31) The inspection and maintenance tasks prescribed and specifically identified as preventive maintenance in a primary category aircraft type certificate or supplemental type certificate holder's approved special inspection and preventive maintenance program when accomplished on a primary category aircraft provided:

(i) They are performed by the holder of at least a private pilot certificate issued under Part 61 who is the registered owner (including co-owners) of the affected aircraft and who holds a certificate of competency for the aircraft involved issued by a school approved under § 141.57(b) or § 147.21(f) of this chapter, or issued by the holder of a primary category aircraft production certificate that has a special training program approved under § 21.163(b) of this subchapter; and

(ii) The inspections and maintenance tasks are performed in accordance with instructions contained in the special inspection and preventive maintenance program approved under § 21.24(b).

## PART 91—GENERAL OPERATING AND FLIGHT RULES

22. The authority citation for Part 91 continues to read as follows:

**Authority:** 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 *et seq.*; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub L. 97–449, January 21, 1983).

23. Section 91.21 is amended by adding a new paragraph (d) to read as follows:

**§ 91.21 Flight instruction; simulated instrument flight and certain flight tests.**

* * * * *

(d) No person may give flight instruction in a primary category aircraft designated as "primary category-light" on its special airworthiness certificate, or with an aircraft having an experimental certificate that has a maximum certificated gross weight of 1,000 pounds or less, except for the purpose of providing flight training in the operation of that aircraft and provided that no other persons or property are carried.

24. Section 91.42 is amended by redesignating existing paragraph (e) as (f), and by adding a new paragraph (e) to read as follows:

**§ 91.42 Aircraft having an experimental certificate; operating limitations.**

* * * * *

(e) No person may operate an aircraft having an experimental certificate that has a maximum certificated takeoff weight of less than 1,000 pounds within an airport traffic area, control zone, terminal control area, airport radar service area, or positive control area, unless that person has prior authorization from the air traffic facility having jurisdiction over that air space.

* * * * *

25. Part 91 is amended by adding a new § 91.44 to read as follows:

**§ 91.44 Primary Category Aircraft: Operating limitations.**

(a) No person may operate a primary category aircraft carrying persons or property for compensation or hire.

(b) No person may operate a primary category aircraft designated as "primary category—light" on the special airworthiness certificate within an airport traffic area, control zone, terminal control area, airport radar service area, or positive control area, unless that person has prior authorization from the air traffic facility having jurisdiction over that airspace.

(c) No person may operate a primary category aircraft designated as "primary category—light", except by visual reference with the surface.

26. Section 91.169 is amended by adding a new paragraph (c)(4) to read as follows:

**§ 91.169 Inspections.**

* * * * *

(c) * * *

(4) An aircraft having a special airworthiness certificate—primary

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category, except primary category aircraft with an experimental certificate, when inspected and maintained by a person authorized under § 43.3 of this chapter to perform preventive maintenance in accordance with a special inspection and preventive maintenance program approved under § 21.24(b) of this chapter; and the aircraft is inspected in accordance with paragraph (a)(1) of this section each 24 calendar months.

* * * * *

## PART 141—PILOT SCHOOLS

27. The authority citation for Part 141 is revised to read as follows:

**Authority:** 49 U.S.C. 1354, 1355, 1421, 1422, and 1427; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

28. Section 141.57 is amended by redesignating the current paragraph as paragraph (a) and adding a new paragraph (b) to read as follows:

**§ 141.57 Special curricula.**

* * * * *

(b) A pilot school certificated under this part may apply for and receive approval for special courses in the performance of special inspection and preventive maintenance programs for primary category aircraft type certificated under § 21.24(b) of this chapter, provided the special courses are taught by persons holding a mechanic certificate with airframe and powerplant ratings issued under Part 65 of this chapter.

**§ 141.65 [Amended]**

29. Section 141.65 is amended by redesignating the current paragraph as paragraph (a) and adding a new paragraph (b) to read as follows:

(a) * * *

(b) The holder of an examining authority may issue a certificate of competency to persons successfully completing training provided under § 141.57(b), provided the certificate specifies the aircraft make and model to which the certificate applies.

30. Section 141.73 is amended by adding a new paragraph (c) to read as follows:

**§ 141.73 Privileges.**

* * * * *

(c) The holder of a pilot school or a provisional pilot school certificate may issue a certificate of competency to pilots successfully completing training provided under § 141.57(b), provided the certificate specifies the aircraft make and model for which the certificate applies.

## PART 147—AVIATION MAINTENANCE TECHNICIAN SCHOOLS

31. The authority citation for Part 147 is revised to read as set forth below and the authority citations following the sections of Part 147 are removed:

**Authority:** 49 U.S.C. 1354(a), 1355, 1421, and 1427; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

32. Section 147.21 is amended by adding a new paragraph (f) to read as follows:

**§ 147.21 General curriculum requirements.**

* * * * *

(f) Notwithstanding the provisions of paragraphs (a) through (e) of this section and §147.11, the holder of a certificate issued under Subpart B of this part may apply for and receive approval of special courses in the performance of special inspection and preventive maintenance programs for a primary category aircraft type certificated under § 21.24(b) of this chapter. The school may also issue certificates of competency to persons successfully completing such courses provided all other requirements of this part are met and the certificate of competence specifies the aircraft make and model for which the certificate applies.

Issued in Washington, DC, on March 1, 1989.

**M.C. Beard,**

*Director, Aircraft Certification Service.*

[FR Doc. 89-5198 Filed 3-6-89; 8:45 am]

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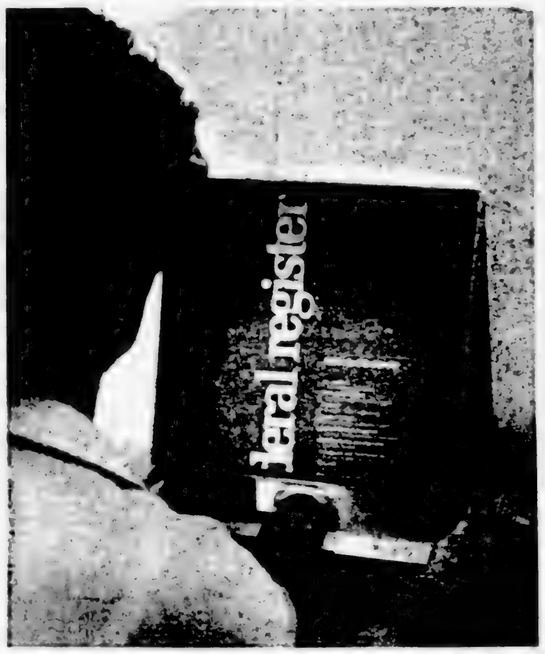
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Wednesday, March 8, 1989

# Presidential Documents

Title 3—

**The President**

## Memorandum of February 14, 1989

## Reports Concerning Department of Defense Support for Drug-Interdiction Efforts Required by the FY 1989 National Defense Authorization Act

**Memorandum for the Secretary of Defense**

By virtue of the authority vested in me by the Constitution and the laws of the United States, including Section 301 of Title 3 of the United States Code, I authorize you to submit to the Congress the reports concerning drug-interdiction efforts by the Department of Defense as specified in Sections 1103(a)(2), 1105(c), and 1107(a) of the National Defense Authorization Act, Fiscal Year 1989, Public Law No. 100-456, September 29, 1988.

This memorandum shall be published in the **Federal Register**.

George Bush

THE WHITE HOUSE,
*Washington, February 14, 1989.*

[FR Doc. 89-5521
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# Rules and Regulations

Federal Register
Vol. 54, No. 44
Wednesday, March 8, 1989

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## OFFICE OF PERSONNEL MANAGEMENT

**5 CFR Part 317**

## Appointment, Reassignment, Transfer, and Reinstatement in the Senior Executive Service

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing final regulations on procedures governing Senior Executive Service (SES) appointment and staffing actions, including (1) qualifications standards; (2) agency recruitment and selection procedures for initial career appointment to the SES; (3) the 1-year probationary period for career appointees; (4) reinstatement to the SES; (5) reassignment and transfers; and (6) details within, into, and out of SES positions. The reinstatement regulations are a revision of current regulations. The other regulations are new. The regulations are intended to ensure compliance with merit staffing provisions and to implement statutory requirements for regulation by OPM.

**EFFECTIVE DATE:** April 7, 1989.

**FOR FURTHER INFORMATION CONTACT:** Neal Harwood, (202) 632–4486.

**SUPPLEMENTARY INFORMATION:** On July 22, 1988, OPM published proposed regulations (53 FR 27666) on staffing actions in the Senior Executive Service (SES). The comment period, which was 60 days from the date of publication, ended on September 20, 1988. Comments were received from 16 agencies, one executive organization, and one member of Congress.

### Subpart D—Qualifications Standards

One agency recommended that § 317.402(a) not require that a qualifications standard identify the "breadth and depth" of the knowledges, skills, and abilities required for successful performance on the basis that such a requirement is more appropriate to developing a crediting plan. We have retained this provision since the standard sets out the "breadth and depth" of the qualifications factors, and the crediting plan then shows how to measure these factors.

One agency recommended that § 317.402(b), which states that the standard must be specific enough to enable applicants to be rated and ranked according to their degree of qualifications, be deleted to avoid confusing examination factors with qualfications factors. We do not believe this provision will cause confusion. The standard has to be specific enough so that a crediting or examining plan can be developed by the agency that will make qualitative distinctions among the applicants for ranking purposes.

One agency recommended deletion of the provision in § 317.402(d)(1) that a standard may not contain a minimum length of experience requirement. The agency argued that such a requirement may be useful in predicting successful performance in certain situations. We have revised the provision to allow agencies to use a minimum length of experience requirement if they believe it is appropriate, but the requirement may not exceed that for a similar position in the General Schedule.

One agency recommended deletion of § 317.404, which provides that agencies have to keep copies of old qualifications standards for 2 years. The provision has been retained to assure that adequate documentation exists in case a question is raised or an audit is conducted.

### Subpart E—Career Appointments

*(1) Recruitment and Selection of Initial SES Career Appointment*

One agency recommended that § 317.501(a) be revised to state that the agency Executive Research Board (ERB) will "oversee" rather than "conduct" the merit staffing process for career appointees so as to indicate that the ERB has authority to delegate its functions. The term "conduct" is used in 5 U.S.C. 3393(b) and therefore is retained. The authority of the ERB to delegate certain of its functions is specified in § 317.501(c)(2).

Two agencies objected to the provision in § 317.501(b)(2) that agencies must list in OPM's biweekly publication of SES vacancies any vacancy they intended to fill by career appointment. One of the agencies stated that there may be occasions when an expedited announcement is required. The provision has been retained to assure that notice of all SES vacancies is made available as a minimum to all groups of qualified individuals within the civil service, as required by 5 U.S.C. 3393(a), and that notice of SES vacancies open to individuals outside the civil service is made available to the U.S. Employment Service, as required by 5 U.S.C. 3327. The provision has been clarified, however, to indicate agencies only have to list those vacancies which are being filled by initial career appointment to the SES. Positions being filled by reassignment, transfer, or reinstatement of career SES appointees do not have to be listed. The minimum period of listing is 14 calendar days, which should still allow agencies to expedite the filling of their jobs when necessary.

One agency commented that under § 317.501(c)(1) all candidates responding to a vacancy announcement would have to be rated and ranked on the same basis. It recommended that the rating and ranking of current career SES members and reinstatement eligibles should be at the option of the agency since competitive requirements for entry into the SES have already been met and these individuals could be placed noncompetitively. We agree, and the regulations have been revised accordingly.

One agency objected to the provision in § 317.501(c)(2) that the ERB is required to consider the qualifications only of those candidates who meet the requirements of the vacancy announcement (i.e., are within the area of consideration and meet the minimum qualifications requirements.) The agency noted that 5 U.S.C. 3393(b) provides that the ERB is responsible for "reviewing the executive qualifications of each candidate * * *." We do not believe it was the intent of the law to prohibit the ERB from using subject matter specialists to screen out unqualified candidates before the ERB considered

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the candidates, and the provision has been retained.

One agency recommended that in § 317.502(c)(5) the ERB not be required to provide written recommendations to the appointing authority on all eligible candidates, but be allowed instead to provide a statement that it had reviewed the applications of the eligible candidates and was referring "X" number for selection consideration. This section implements 5 U.S.C. 3393(b)(2), which states that the ERB is responsible for "making written recommendations to the appropriate appointing authority concerning such candidates." We believe that the intent of the law is that the appointing authority be made aware of the ERB determinations on all the eligible candidates, and therefore the provision has been retained.

One agency commented that in § 317.502(c)(5) it appears that rating sheets could be used to satisfy the requirement that written recommendations be provided by the ERB to the appointing authority only when there was a large number of candidates. The section has been clarified to state that rating sheets may be used at any time. The section has also been revised to indicate that although rating sheets may be used for the written recommendation on individual candidates, the ERB still has to certify in writing the list of candidates provided to the appointing authority.

Two agencies objected to the provision in § 317.501(c)(6) that the appointing authority certify that appropriate merit staffing procedures were followed. They both noted that the ERB is charged by law with conducting the merit staffing process and recommended that the ERB be allowed to make the certification. The provision has been revised to allow either the appointing authority or the ERB to make the certification (§ 317.501(c)(7)).

*(2) Qualifications Review Board (QRB) Certification*

One agency objected to the provision in § 317.502(b) that agencies must submit their case to a QRB within 9 months of the closing date of a vacancy announcement or the completion of an OPM approved SES candidate development program. It noted that the provision removed any flexibility for OPM to waive the requirement in extreme circumstances. We agree and have revised the section to state that OPM may set the length of time during which a case must be received, and we will provide the length in the *Federal Personnel Manual*. In the meantime, the 9-month limitation will be applicable unless OPM provides a waiver in a specific case for good cause.

One agency recommended that § 317.502(c) be revised to provide that QRB certifications, including those for graduates of SES candidate development programs, will be good for 5 years rather than 3 years. The provision has been retained to assure that the qualifications are sufficiently recent.

Five agencies objected to § 317.502(d), which provides that OPM may determine the disposition of agency QRB cases between the time an agency head leaves office and the time a new agency head is confirmed and appointed. One agency stated that action should not be taken by OPM without consulting the agency. One agency stated that it might be appropriate to return the few cases involving positions reporting directly to the agency head, but not other cases. One agency stated that although such a provision might be appropriate during a Presidential transition, it would not be appropriate at other times. Two agencies stated that the provision would not be appropriate at any time. Generally, the attitude of the agencies responding was, as stated by one agency, that the provision was "an unwarranted intrusion into an agency's management of its SES resources."

When we issued the proposed regulations, we stated that this authority was needed to assure that the new agency head will be able to make his or her own selections for key positions. We still hold this view and therefore have retained the provision. As we also pointed out when we issued the proposed regulations, however, cases will not be automatically returned to agencies. We stated then that OPM may return cases to agencies, hold them pending appointment of a new agency head, or submit them for QRB review depending on the circumstances, such as the organizational level of the position being filled, the degree to which the imcumbent would be involved in policy matters, and how long before a new agency head is likely to take office. Criteria will be included in the *Federal Personnel Manual*, and we will consult with agencies when possible before making a decision on what to do in an individual case.

*(3) Probationary Period*

Section 317.503(d) of the proposed regulations provided that if a career appointee left the SES before completing the probationary period, the appointee need not be recertified by a QRB if selected for another SES position within 3 years of the previous QRB certification. The section has been clarified to indicate that recertification is required if the individual was removed from the SES for performance or disciplinary reasons.

One agency recommended that the regulations also state that once an SES member completes an SES probationary period, the member need not receive QRB certification to enter another SES position following a break in SES service. We do not believe this statement is necessary in the regulations since the QRB is responsible only for review of initial career appointments, but will make clear in the *Federal Personnel Manual* that QRB action is not required for an individual who completed the probationary period and is reinstated to the SES.

**Subpart G—Reinstatement**

Section 317.702(a)(2) lists separation actions following which a career appointee is not eligible for reinstatement to the SES. The Office of Special Counsel, Merit Systems Protection Board (MSPB), provided clarifying language, which we have adopted, regarding removals directed by the MSPB resulting from disciplinary actions initiated by the Special Counsel.

Section 317.703 covers reinstatement of former career appointees who have taken Presidential appointments. One agency recommended that § 317.703(b), which provides that a Presidential appointee may apply to OPM for directed reinstatement only after the appointee's resignation is requested or submitted, be amended to allow application also when the resignation is "projected." We have not adopted the recommendation because OPM needs to know definitely that a resignation is to occur before directing reinstatement in the SES, which may occur in another agency. Once a resignation is requested or submitted, however, OPM will initiate action even though the effective date of the resignation is not until later.

One agency recommended that § 317.703(c)(2), which states the agency order of precedence in directing reinstatement, be revised to provide that each precedence-ordered group of agencies be used only if it is not possible to place the Presidential appointee in an agency in any higher ranking group. Although OPM will attempt to follow the order of precedence whenever possible, we want to maintain sufficient flexibility to assure the most appropriate placement. Therefore, we have not changed the provision.

One agency recommended that § 317.703(c)(5), which provides that an



agency may place a Presidential appointee on a limited term appointment pending reinstatement to avoid a break in service, be revised to provide that a limited emergency appointment may be used instead, particularly since most appointments will be of a short term nature. We have revised the section to allow use of either a limited term or emergency appointment, as appropriate, for this purpose.

**Subpart I—Reassignments, Transfers, and Details**

*(1) Reassignments*

Two sets of comments were received on § 317.901(c), concerning the 120-day moratorium on the involuntary reassignment of a career appointee following the appointment of a new agency head or the appointee's most immediate noncareer supervisor who has the authority to reassign the appointee. One of the comments was from the Chairwoman of the House Subcommittee on Civil Service. The other comment was from an executive organization.

Both comments disagreed with the interpretation expressed in the Supplementary Information portion of the proposed regulations that although a noncareer supervisor could not personally involuntarily reassign any subordinate career appointee during the 120 days following appointment, the appointee could be reassigned by the agency head during that period if the agency head had been in office 120 days. The commenters contended that the purpose of the moratorium was to allow the noncareer supervisor to become familiar with the talents of career subordinates prior to their being reassigned, but that under the OPM interpretation the supervisor could just request the agency head to take the action during the period the supervisor was subject to the moratorium.

It should be noted that under 5 U.S.C. 3359(e)(1), the moratorium is only applicable to a noncareer supervisor who "has the authority to reassign the career appointee." If the agency head has retained the reassignment authority for all career appointees in the agency, it is clear that the agency head could reassign any career appointee once the agency head had been in office for 120 days even if the noncareer supervisor of the appointee has not served 120 days. Therefore, the only matter at issue is whether when the reassignment authority had been delegated by the agency head to the noncareer supervisor, the agency head may reclaim that authority and direct an involuntary reassignment before the noncareer supervisor has served 120 days.

The interpretation stated in the proposed regulations is one that OPM has made since 1979. We do not believe that Congress intended to pyramid moratorium periods. Under the interpretation proposed by the commenters, the moratorium could last for 240 days if the noncareer supervisor was appointed just as the 120-day moratorium on the agency head was ending. A new agency head often brings in his or her own top subordinates. If each time a noncareer supervisor who had reassignment authority changed, a new 120-day moratorium was initiated that also applied to the agency head, there could be an exceedingly long time before reassignments could be effected and the agency head could exercise control over the agency. We do not believe that the agency head will automatically honor every request from a noncareer supervisor since the agency head will be looking at the situation from the perspective of the whole agency and often will have had the opportunity personally to observe the appointee.

Therefore, it continues to be OPM's interpretation that the moratorium is not applicable to the agency head once the agency head has been in office 120 days if the agency head is the actual decision maker for the reassignment.

The executive organization also contended that details are used to circumvent the moratorium on involuntary reassignments and urged that details of career appointees be prohibited during the moratorium period, unless the detail was agreed to in writing, or that time spent on detail not count against the moratorium period. There is no statutory prohibition on the use of details during the moratorium period. While reassignment is a permanent change of positions, a detail is temporary; and the individual continues to occupy the position from which detailed. OPM is as concerned as the executive organization that details not be used improperly. Agency management, however, must have the flexibility to accomplish the work of the agency; and there may be times when a detail is necessary for this purpose during the moratorium period. Therefore, we have not adopted the recommendation. Agencies are cautioned, however, that any detail during the moratorium period should be made judiciously and only when there is a bona fide need for the individual to serve temporarily in the position. It should be noted that career SES members have recourse to the Special Counsel of the Merit Systems Protection Board if they believe a detail has been used improperly to circumvent the 120-day moratorium period.

*(2) Transfers*

Two agencies recommended that § 317.902(b), which states that transfers may not occur without the appointee's consent except in a transfer of function, should be amended to indicate that the gaining agency must also consent. The section has been revised accordingly.

One agency recommended that § 317.902(a) also be amended to state that a transfer between major components of the Department of Defense (e.g., between the Departments of Army and Navy or between the Office of the Secretary of Defense and the Department of Navy) need not be voluntary if specifically directed by the Secretary of Defense. The agency noted that 10 U.S.C. 113(b) provides that the Secretary "has authority, direction, and control over the Department of Defense." This matter pertains to only one Department and is based on statutory provisions outside title 5 of the U.S. Code, for which OPM is responsible. Therefore, rather than amending the regulations, we will put an explanatory statement in the Federal Personnel Manual discussion of this provision that it is not intended to restrict the statutory authority of the Secretary of Defense under title 10 of the U.S. Code in the matter of transfers between major components of the Department specifically directed by the Secretary.

*(3) Details*

Several agencies commented on the provision in § 317.903(b) that states OPM may set limits on the total length of details and the length of details that may be made without competition. Two agencies opposed allowing OPM to set any limits. One agency recommended that the current 240-day limitation, without prior OPM approval, of a General Schedule or competitive service employee to an SES position (FPM Letter 300–32) be changed to one year. One agency recommended setting limits only when an individual is being detailed from a non-SES position to an SES position. One agency recommended that in using competitive procedures, agencies not be bound by the competitive promotion requirements in FPM Chapter 335.

The authority of OPM to place limitations on details has been retained to ensure that details which extend a significant period of time are used properly. The section has been revised

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to make clear that the limitations intended are not on the overall length of details, but on the length that may be made without the prior approval of OPM. The section has also been revised to indicate that the limitation on details without competition applies only to details from outside the SES. The specific limitations will be set out in the *Federal Personnel Manual*.

**Subpart J—Corrective Action**

One agency recommended that § 317.1001 be revised to state that when OPM finds that an agency has taken an action contrary to law or regulation, "it may require the agency to take appropriate corrective action" rather than "whatever corrective action OPM deems necessary." The recommendation has been adopted.

**E.O. 12291, Federal Regulation**

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

**Regulatory Flexibility Act**

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it deals with the SES of the executive branch of the Federal Government.

**List of Subjects in 5 CFR Part 317**

Government employees.

U.S. Office of Personnel Management.

**Constance Horner,**

*Director.*

Accordingly, OPM is amending 5 CFR Part 317 by revising the authority citation for the part and removing the authority citation for Subpart G; adding Subpart D, §§ 317.401 through 317.404; adding Subpart E, §§ 317.501 through 317.503; revising Subpart G, §§ 317.701 through 317.703; adding Subpart I, §§ 317.901 through 317.904; and adding Subpart J, § 317.1001, to read as follows:

## PART 317—APPOINTMENT, REASSIGNMENT, TRANSFER, AND REINSTATEMENT IN THE SENIOR EXECUTIVE SERVICE

• • • • •

**Subpart D—Qualifications Standards**

Sec.

317.401 General.
317.402 Career reserved positions.
317.403 General positions.
317.404 Retention of qualifications standards.

**Subpart E—Career Appointments**

317.501 Recruitment and selection for initial SES career appointment.
317.502 Qualifications Review Board certification.
317.503 Probationary period.
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**Subpart G—SES Career Appointment by Reinstatement**

317.701 Agency authority.
317.702 General reinstatement: SES career appointees.
317.703 Guaranteed reinstatement: Presidential appointees.
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**Subpart I—Reassignments, Transfers, and Details**

317.901 Reassignments.
317.902 Transfers.
317.903 Details.
317.904 Change in type of SES appointment.

**Subpart J—Corrective Action**

317.1001 OPM authority for corrective action.

Authority: 5 U.S.C. 3392, 3393, 3395, 3397, 3593, and 3595.

**Subpart D—Qualifications Standards**

**§ 317.401 General.**

The head of each agency is responsible for establishing qualifications standards for Senior Executive Service (SES) positions in accordance with the procedures described in this subpart.

**§ 317.402 Career reserved positions.**

(a) The qualifications standard must be in writing and identify the breadth and depth of the professional/technical and executive/managerial knowledges, skills, and abilities, or other qualifications, required for successful performance in the position.

(b) The standard must be specific enough to enable applicants to be rated and ranked according to their degree of qualifications when the position is being filled on a competitive basis.

(c) Each qualifications criterion in the standard must be job related. The standard may not emphasize agency-related experience, however, to the extent that it precludes otherwise well-qualified condidates from outside the agency from appointment consideration.

(d) The standard may not include—

(1) A minimum length of experience requirement beyond that authorized for similar positions in the General Schedule;

(2) A minimum education requirement beyond that authorized for similar positions in the General Schedule; or

(3) Any criterion prohibited by law or regulation.

**§ 317.403 General positions.**

An agency may apply the criteria in § 317.402 when developing qualifications standards for general positions. If it does not, OPM must be consulted before the agency develops the standard.

**§ 317.404 Retention of qualifications standards.**

If a qualifications standard is changed, or a position is cancelled, the former standard shall be retained for 2 years.

**Subpart E—Career Appointments**

**§ 317.501 Recruitment and selection for initial SES career appointment.**

(a) *Executive Resources Board (ERB).* The head of each agency shall appoint one or more ERBs from among employees of the agency or commissioned officers of the uniformed services serving on active duty in the agency. The ERB shall, in accordance with requirements established by OPM, conduct the merit staffing process for initial SES career appointment.

(b) *Recruitment.* (1) As a minimum, the source of recruitment to fill a SES position by career appointment must include all groups of qualified individuals within the civil service (as defined by 5 U.S.C. 2101). It may also include qualified individuals outside the civil service.

(2) Announcements of SES vacancies to be filled by initial career appointment must be listed in OPM's publication of SES vacancies for such time as prescribed by OPM.

(c) *Merit staffing requirements.* As a minimum, agencies must—

(1) Provide that competition be fair and open, that all candidates compete and be rated and ranked on the same basis, and that selection be based solely on qualifications and not on political or other non-job-related factors. If a candidate is a current SES career appointee or an SES reinstatement eligible, an agency may consider the candidate either competitively or noncompetitively.

(2) Provide that the ERB consider the qualifications of each candidate, other than those found ineligible because they do not meet the requirements of the vacancy announcement. Preliminary qualifications screening, rating, and ranking of candidates may be delegated by the ERB.

(3) Provide that the rating and ranking procedures sufficiently differentiate among eligible candidates on the basis of the knowledges, skills, abilities, and other job-related factors in the qualifications standard for the position, so as to enable the appointing authority to adequately determine those most qualified. For this purpose, eligible candidates may be grouped into broad categories, such as best qualified, well qualified, and qualified. Numerical rating and ranking are not required.

(4) Provide that the record be adequately documented to show the basis of qualifications, rating, and ranking determinations.

(5) Provide that the ERB make written recommendations to the appointing authority on the eligible candidates. Rating sheets may be used to satisfy the written recommendation requirement for individual candidates, but the ERB must certify in writing the list of candidates to the appointing authority.

(6) Provide that the appointing authority certify in writing that the candidate selected meets the qualifications requirements of the position.

(7) Provide that the appointing authority or the ERB certify in writing that appropriate merit staffing procedures were followed.

(d) *Retention of documentation.* Agencies must keep such documentation as OPM prescribes for 2 years to permit reconstruction of merit staffing actions.

(e) *Applicant inquiries and appeals.* Individuals are entitled to obtain information from an agency regarding the process used to recruit and select candidates for career appointment to SES positions. Upon request, applicants must be told whether they were considered qualified for the position and whether they were referred for appointment consideration. Also, they may have access to questionnaires or other written material regarding their own qualifications, except for material that would identify a confidential source. There is no right of appeal by applicants to OPM on SES staffing actions taken by ERBs, Qualifications Review Boards, or appointing authorities.

**§ 317.502 Qualifications Review Board certification.**

(a) A Qualification Review Board (QRB) convened by OPM must certify the executive/managerial qualifications of a candidate before initial career appointment may be made to an SES position. More than one-half of the members of a QRB must be SES career appointees.

(b) Agency requests for certification of a candidate by a QRB must contain such information as prescribed by OPM, including evidence that merit staffing procedures were followed and that the appointing authority has certified the candidate's qualifications for the position. Requests must be received within the time period prescribed by OPM.

(c) QRB certification must be based on demonstrated executive experience; successful completion of an OPM-approved candidate development program; or possession of special or unique qualities that indicate a likelihood of executive success. A QRB certification is valid for 3 years from the date of certification.

(d) OPM may determine the disposition of agency QRB requests if the agency head leaves office before QRB action.

**§ 317.503 Probationary period.**

(a) An individual's initial appointment as an SES career appointee becomes final only after the individual has served a 1-year probationary period as a career appointee.

(b) The probationary period begins on the effective date of the personnel action initially appointing the individual to the SES as a career appointee and ends one calendar year later. Service as a probationer that is interrupted is creditable toward completion of the probationary period as prescribed by OPM.

(c) Removal of a career appointee during the probationary period is covered by subpart D of Part 359 of this chapter.

(d) A career appointee who resigns or is removed from the SES before completion of the probationary period may not receive another SES career appointment unless selected under SES merit staffing procedures. The individual, however, need not be recertified by a QRB within 3 years of the previous QRB certification, unless the individual was removed for performance or disciplinary reasons.

**Subpart G—SES Career Appointment by Reinstatement**

**§ 317.701 Agency authority.**

As provided for in §§ 317.702 and 317.703, an agency may reinstate a former SES career appointee without regard to the merit staffing requirements established by OPM in § 317.501(c).

**§ 317.702 General reinstatement: SES career appointees.**

(a) *Eligibility for general reinstatement.* A former SES career appointee who meets the following conditions is eligible for reinstatement under this section:

(1) The individual completed an SES probationary period under a previous SES career appointment or was exempted from that requirement; and

(2) The individual's separation from his or her last SES career apointment was not a removal under subpart E of Part 359 of this chapter for less than fully successful executive performance; or under 5 U.S.C. 1207 by order of the Merit Systems Protection Board as a result of a disciplinary action initiated by the Special Counsel under 5 U.S.C. 1206; or under 5 U.S.C. 7532 (National Security); or under subpart F of Part 752 of this chapter for misconduct, neglect of duty, or malfeasance; or a resignation after receipt of a notice proposing or directing removal under any of the above conditions. Removal for failure to accept a directed reassignment to another commuting area, or to accompany a position in a transfer of function to another commuting area, does not preclude reinstatement to the SES unless the appointment to the original position included acceptance of a written nationwide mobility agreement or policy.

(b) *Applying for reinstatement; time limit.* Application for reinstatement under this section shall be made directly to the agency in which SES employment is sought. There is no time limit for reinstatement under this section.

(c) *Qualifications.* The individual must meet the qualification requirements of the position to which reinstated. The agency makes this determination.

(d) *Tenure upon reinstatement.* An individual who is reinstated under § 317.702 becomes an SES career appointee.

**§ 317.703 Guaranteed reinstatement: Presidential appointees.**

(a) *Eligibility for reinstatement.* A former SES career appointee who was appointed by the President to a civil service position outside the SES without a break in service, and who left the Presidential appointment for reasons other than misconduct, neglect of duty, or malfeasance, is entitled by law to be reinstated to the SES.

(b) *Applying for reinstatement; time limit.* Except as provided in paragraph (d) of this section, an application in writing for reinstatement under this section must be made to OPM within 90 days after separation from the Presidential appointment. An application may be submitted as soon as the Presidential appointee's resignation is requested or submitted.

(c) *Directing reinstatement.* (1) To the extent practicable, OPM will direct reinstatement within 45 days of the date of receipt by OPM of the application for reinstatement or the date of separation from the Presidential appointment, whichever is later.

(2) OPM will use the following order of precedence in directing reinstatement of a former Presidential appointee:

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(i) The agency in which the individual last served as an SES career appointee before accepting the Presidential appointment;

(ii) The successor agency to the one in which the individual last served as an SES career appointee;

(iii) The agency or agencies in which the individual served as a Presidential appointee; or

(iv) Any other agency in the Executive branch with positions under the SES.

(3) The agency being directed to take the reinstatement action is responsible for assigning the individual to a position for which he or she meets the qualifications requirements.

(4) When directing the reinstatement of a Presidential appointee, OPM may, as appropriate, allocate an additional SES space authority to the agency.

(5) When a Presidential appointee tenders his or her resignation, voluntarily or upon request, the agency in which the Presidential appointment was held, upon approval by OPM, may place the appointee as an interim measure on an SES limited term or limited emergency appointment as appropriate, pending reinstatement, to preclude a break in service after the Presidential appointment has terminated.

(6) To preserve reinstatement rights under this section, an individual who has been serving in a presidential appointment, if selected by the President for another appointment in the same or a new agency, must be reinstated to an appropriate position as an SES career appointee before the effective date of the new Presidential appointment, unless service as a Presidential appointee would be continuous.

(d) *Reinstatement following direct negotiations with an agency.* (1) A Presidential appointee who qualifies under paragraph (a) of this section may initiate direct negotiations with an agency regarding reinstatement under this section.

(2) An agency may voluntarily reinstate a former Presidential appointee without an order from OPM directing such action.

(3) The agency is responsible for assigning the individual to a position for which he or she meets the qualification requirements.

(4) Direct negotiations with an agency do not extend the time limit stated in paragraph (b) of this section for making application to OPM.

(5) OPM may, when appropriate and upon request by the agency, allocate an additional SES space authority to an agency that voluntarily reinstates a former Presidential appointee under this paragraph.

(6) An individual who is reinstated under this paragraph because of direct negotiations with an agency is not entitled to further assistance by OPM.

(e) *Tenure upon reinstatement.* (1) An individual reinstated under § 317.703 becomes an SES career appointee.

(2) An individual reinstated under § 317.703 who was serving an SES probationary period at the time of his or her Presidential appointment is required to complete the 1-year SES probationary period upon reinstatement.

(f) *Compliance.* (1) An agency must comply with an order to reinstate issued by OPM under this section as promptly as possible, but not more than 30 calendar days from the date of the order.

(2) The agency will notify OPM of a reinstatement action taken under this section within 5 workdays of the effective date of the reinstatement.

(3) An individual who declines a reinstatement ordered by OPM is not entitled to further placement assistance by OPM under this section.

## Subpart I—Reassignments, Transfers, and Details

### § 317.901 Reassignments.

(a) In this section, "reassignment" means a permanent assignment to another SES position within the employing executive agency or military department. (See 5 U.S.C. 105 for a definition of "executive agency" and 5 U.S.C. 102 for a definition of "military department.")

(b) A career appointee may be reassigned to any SES position for which qualified in accordance with the following conditions:

(1) *Reassignment within a commuting area.* For reassignment within a commuting area, the appointee must receive a written notice at least 15 days before the effective date of the reassignment. This notice requirement may be waived only when the appointee consents in writing.

(2) *Reassignment outside of a commuting area.* For reassignment outside of a commuting area, (i) the agency must consult with the appointee on the reasons for, and the appointee's preferences with respect to, the proposed reassignment; and (ii) following such consultation, the agency must provide the appointee a written notice, including the reasons for the reassignment, at least 60 days before the effective date of the reassignment. This notice requirement may be waived only when the appointee consents in writing.

(c) A career appointee may not be involuntarily reassigned within 120 days after the appointment of the head of an agency, or within 120 days after the appointment of the career appointee's most immediate supervisor who is a noncareer appointee and who has the authority to take the reassignment action.

(1) In this paragraph—

(i) "Head of an agency" means the head of an executive or military department or the head of an independent establishment.

(ii) "Noncareer appointee" includes an SES noncareer or limited appointee, an appointee in a position filled by Schedule C or noncareer executive assignment, or an appointee in an Executive Schedule or equivalent position that is not required to be filled competitively.

(2) These restrictions are not applicable to a reassignment resulting from an unsatisfactory performance rating under 5 U.S.C. 4314(b)(3) that was issued before the appointment of the person taking the reassignment action.

(3) A voluntary reassignment during the 120-day period is permitted, but the appointee must agree in writing before the reassignment.

### § 317.902 Transfers.

(a) *Definition.* In this section, "transfer" means a permanent assignment or appointment to another SES position in a different executive agency or military department.

(b) *Requirements.* Transfers are voluntary and cannot occur without the consent of the appointee and the gaining agency, except transfers connected with a transfer of functions to another agency.

### § 317.903 Details.

(a) *Definition.* In this section, "detail" means the temporary assignment of an SES member to another position (within or outside of the SES) or the temporary assignment of a non-SES member to an SES position, with the expectation that the employee will return to the official position of record upon expiration of the detail. For purposes of pay and benefits, the employee continues to encumber the position from which detailed. The provisions of this section cover details within or outside of the employing agency.

(b) *Time limits.*

(1) Details within an executive agency or military department must be made in no more than 120-day increments.

(2) OPM may set limits on the total length of details that may be made without prior OPM approval and on the length of details from outside the SES that may be made without competition.

(c) *SES career reserved positions.* Only a career SES appointee or a career-type non-SES appointee may be detailed to a career reserved position.

(d) *SES general positions.* Any SES appointee or non-SES appointee may be detailed to a general position.

### § 317.904 Change in type of SES appointment.

An agency may not require a career SES appointee to accept a noncareer or limited SES appointment as a condition of appointment to another SES position. If a career appointee elects to accept a noncareer or limited appointment, the voluntary nature of the action must be documented in writing before the effective date of the new appointment. A copy of such documentation must be retained permanently in the appointee's Official Personnel Folder.

## Subpart J—Corrective Action

### § 317.1001 OPM authority for corrective action.

If OPM finds that an agency has taken an action contrary to law or regulation under this part, it may require the agency to take appropriate corrective action.

[FR Doc. 89-5285 Filed 3-7-89; 8:45 am]

BILLING CODE 6325-01-M



## 5 CFR Part 339

## Medical Qualification Determinations

**AGENCY:** Office of Personnel Management.

**ACTION:** Final regulations.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing final regulations governing medical qualification determinations to allow agencies greater flexibility in setting appropriate medical standards and requirements without OPM approval, and to ensure treatment of applicants and employees consistent with Federal law and policy requiring nondiscrimination and affirmative action in Federal employment of individuals with handicaps. These regulations are being issued together with a comprehensive revision of chapter 339 of the Federal Personnel Manual (FPM).

**EFFECTIVE DATE:** April 7, 1989.

**FOR FURTHER INFORMATION CONTACT:** Raleigh M. Neville, (202) 632-6817.

**SUPPLEMENTARY INFORMATION:** On March 21, 1988, OPM published (at 53 FR 9121) proposed regulations to amend 5 CFR Part 339 governing medical qualification determinations. At the same time, the corresponding FPM chapter was sent to agencies, unions, and professional organizations for comment, and was made available to the general public. We received comments from 28 agencies, 7 professional organizations, 3 unions and 1 individual. Key aspects of the final regulations are summarized below, followed by a discussion of the more significant comments received on both the regulations and the FPM, as well as OPM's responses.

### Key Provisions of the Final Regulations

1. Delegate to agencies authority to establish medical standards for occupations that predominate in one agency (i.e., a single agency standard), as well as authority to establish appropriate physical requirements for individual positions in accordance with OPM-prescribed criteria. (5 CFR 339.202 and 203)

2. Clarify the authority for agencies to establish medical evaluation programs necessary for safeguarding employee health. (5 CFR 339.205)

3. Clarify an agency's authority to require medical examinations for employees occupying positions subject to medical standards, medical evaluation programs, or physical requirements. (5 CFR 339.301)

4. Allow agencies specific authority to examine employees injured on the job, but only for the purpose of determining employees' qualifications for reemployment, not for entitlement to compensation. (5 CFR 339.301)

5. Clarify that routine pre-appointment examinations are not allowed for positions that are not subject to specific medical standards, physical requirements, or a medical evaluation program (in other words, where health status is not an important component of a position, there is no authority to require a medical examination). (5 CFR 339.301)

6. Establish that agencies have the right to designate the examining physician when they order or offer an examination. (5 CFR 339.303)

7. Allow the agency to order psychiatric examinations (or psychological assessments) when specifically required by medical standards or a medical evaluation program, or when a general medical examination which the agency is otherwise authorized to order under these regulations rules out of physical cause to explain actions or behavior causing performance or conduct problems on the job. The examinations may be performed by a licensed practitioner authorized to conduct such examinations, in accordance with accepted professional standards. (5 CFR 339.301)

8. Clarify that the agency pays for all examinations that it orders or offers. The employee pays for all other examinations. (5 CFR 339.304)

9. Provide a regulatory basis for the existing agency authority to disqualify nonpreference eligibles for medical reasons, and for OPM review of the medical disqualification of 30 percent or more compensably disabled veterans by the U.S. Postal Service. Require agencies to provide a higher level review within the organization for medically disqualified nonveterans. (5 CFR 339.306)

10. Provide that all actions under this regulation must comply with Rehabilitation Act requirements and EEOC regulations governing the employment of individuals with handicaps. (5 CFR 339.103)

### Comments Received and OPM Response

*Relationship to Drug Testing Program*

*Comment:* One agency asked that the relationship between these regulations and Executive Order 12564, "Federal Drug Free Workforce," be clarified.

*Response:* We have clarified the relationship in the FPM.

*Coverage*

*Comment:* One agency asked that we make it clear that these regulations do not restrict an agency from conducting, under independent authority, medical examinations to determine an individual's eligibility for a security clearance.

*Response:* OPM recognizes that certain laws or executive orders may authorize an agency to conduct medical examinations as part of its security program and the regulations do not intend to preclude such actions. However, OPM sees no reason to amend the regulations based on this agency's comment. Agencies that believe they have independent authority to conduct medical examinations under their security clearance programs are in the best position to make and defend such determinations.

*Establishing Physical Requirements*

*Comment:* Several agencies questioned the provision that physical requirements be approved by agency headquarters, citing the burden this would impose, particularly on large agencies with a wide range of jobs having physical requirements.

*Response:* Upon further review, we agree this could prove burdensome. We have therefore changed this provision in the chapter to provide for periodic

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review by agency headquarters of physical requirements established by individual components. This should be sufficient to ensure consistency and fairness.

*Establishing Medical Standards*

*Comment:* One agency and a union questioned the criterion of a "reasonable relationship" between a medical standard and the duties of the job as being too loose, and not consistent with the criteria for establishing physical requirements.

*Response:* We have amended this section to require a "direct relationship" to the actual requirements of the position.

*Comment:* One agency and a union believed medical standards should only be established by OPM.

*Response:* Consistent with the Administration's policy of delegating maximum operating authority to individual agencies, OPM has allowed agencies to establish selective factors, according to their own individual needs, which have the effect of amending the qualification standards for a position. This has worked well. Allowing agencies to establish modified medical standards in accordance with OPM-prescribed requirements is a logical extension of this authority. However, we plan to monitor agency use of this authority carefully.

*Medical Evaluation Programs*

*Comment:* One agency recommended that medical evaluation programs be authorized only for jobs that expose employees to significant health hazards. Where the purpose of the medical examination is to detect impairments that could interfere with an individual's performance on the job (rather than injuries to the employee's health *caused* by the job), the agency suggested that the position should be covered by "medical standards" rather than a "medical evaluation program."

*Response:* We generally agree and have revised this section accordingly. However, the nature of the job could pose a risk to others (for example, hospital workers who may have an infectious disease), so there is a need to allow examinations not only because of potential injury to the employee, but to others as well.

*Comment:* One agency suggested we make clear that the authority to establish medical evaluation programs includes immunization programs for certain health care workers.

*Response:* We have clarified this as suggested.

*Comment:* One union commented that the proposed standard for allowing a medical evaluation program was too broad.

*Response:* We have tightened the criteria by providing that the need for a medical evaluation program must be clearly supported by the nature of the position.

*Medical Examinations*

*Comment:* One union commented that when an agency orders or offers an examination, the employee must be allowed to choose the doctor to protect privacy interests.

*Response:* OPM believes it is appropriate for the agency to designate the physician—both when it orders an examination (given that the employee must also be given an opportunity to submit additional information from his or her own physician), and when the agency offers (and pays for) the examination. The agency may, of course, decide to designate the employee's physician. However, since the employee has ample opportunity to submit additional information, and since the agency has a reasonable interest in controlling the source of the information in those circumstances where an agency-ordered or offered examination is appropriate, no change in the proposed regulations is warranted. It is important to emphasize, in this context, that the regulations do not contemplate that personnel management decisions would be made by the physician, be it an employee or agency-identified physician. The deciding official is a supervisor or manager who uses available medical information from any source as one component influencing his or her decision. Finally, privacy is not the issue here, because any medical information obtained by the agency—whether from the individual's own doctor or from an agency-designated physician—is subject to the same Privacy Act requirements.

*Comment:* One union expressed concern about a change in the existing regulations which would allow an agency to refer an employee for psychiatric evaluation rather than requiring that such exams be ordered by a physician. It believed this might allow a supervisor to refer an employee for a psychiatric examination because of harmless, idiosyncratic behavior. The union also asked that this provision be tightened to allow such examinations only when the employee fails to perform "in a safe and efficient manner" rather than when there are "performance or conduct problems," as proposed.

*Response:* We have tightened the language as suggested by the union. If any event, this change would not permit an employee to be referred for a psychiatric evaluation because of harmless, idiosyncratic behavior. Before any employee can be referred for a psychiatric evaluation, two factors must be present:

1. The employee's performance or conduct must be such that it may affect safe and efficient performance, *and*

2. A general medical examination which *the agency has the authority to order under these regulations* does not indicate a physical explanation for the performance or conduct problems. Since in this context the general medical examination would leave unanswered from a *physical* standpoint the reason for the performance or conduct deficiencies, the examining physician in effect would be recommending that a psychiatric examination is indicated. The agency, then, using the results of the general medical examination along with its own day-to-day knowledge of the employee, is authorized under the regulations to order a psychiatric examination.

*Comment:* One union also advocated that OPM set detailed and strictly confined guidelines for the permissible scope of required examinations and limit medical inquiries to those areas that have been specifically pinpointed as posing a problem.

*Response:* OPM and EEOC regulations already restrict the basis on which an agency can make any inquiry into a individual's medical status to those issues which are directly related to safe and efficient performance. We have, nevertheless, included a specific reminder in the FPM that agencies may not request medical information which is not pertinent to the decision at hand.

*Comment:* A professional association urged that only board certified psychiatrists, not psychologists, be allowed to conduct mental status examinations, primarily out of concern for proper diagnosis and treatment.

*Response:* Psychologists are licensed by all 50 states and the District of Columbia to provide a wide range of mental health services, including psychological testing, evaluation, and treatment. They can testify in court as to a person's mental competence. The purpose of these regulations is simply to allow mental health professionals (psychologists and psychiatrists) to conduct general screening to determine a person's qualifications for employment; it is typically not to prescribe a treatment regimen. Such examinations are well within the psychologist's professional qualifications and licensure requirements.



*Payment for Examinations*

*Comment:* Several agencies wanted the flexibility to require applicants to pay for their own pre-employment examinations, citing the financial burden that a requirement to pay for these examinations would impose. On the other hand, one union insisted that the agency should pay for all examinations by a non-agency doctor, even those where the employee chooses the physician in lieu of being examined by the agency's physician.

*Response:* Given the conflicting views about who should pay for a medical examination and when, the many and varied situations in which an examination might be indicated, and the concern that candidates may be required to undergo expensive pre-employment medical examinations even when they are not under serious consideration for a position, we believe the most appropriate and clearest approach is to require the agency to pay when it orders or offers the examination, and to require the employee to pay when the employee seeks a specific benefit or accommodation. (This is also the current policy.)

*Medical Documentation*

*Comment:* One union suggested that the scope of medical documentation required under these regulations should be specifically limited to items that directly affect safe and efficient performance.

*Response:* The definition of medical documentation in the proposed regulations was unchanged from the definition in the current regulations—and the clear intent was alway to limit medical documentation to material which was "relevant and necessary" to make personnel determinations under this title. To ensure that there is no misunderstanding on this point, we have included a clarifying statement to this effect in the FPM.

*Comment:* One union strongly opposed the provision allowing agencies to require medical documentation (under penalty of disciplinary action for refusal) whenever there is evidence of a health problem which may affect safe and efficient performance. The union believed this amounted to requiring the employee to prove he or she was medically qualified, and would be subject to abuse by allowing an agency to remove an employee without having to prove the individual's performance or conduct was unsatisfactory.

*Response:* This authority was intended to allow agencies to directly address questions about an employee's health status where safe and efficient performance was at issue, without having to take disciplinary action based on performance or conduct. However, upon further consideration, we are persuaded that the current regulatory framework, which places the burden on employees to come forward with medical information if they wish agencies to consider a medical condition in connection with agency actions based on performance or conduct, is the preferable way of resolving these issues. We have therefore deleted this provision. When health status is believed to be an issue, an agency can still *offer* an employee the opportunity to resolve it through submission of medical documentation or by examination with an agency physician.

**E.O. 12291, Federal Regulation**

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

**Regulatory Flexibility Act**

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only Federal employees.

**List of Subjects in 5 CFR Part 339**

Civil rights, Government employees, Handicapped, Health.

U.S. Office of Personnel Management.

**Constance Horner,**

*Director.*

Accordingly, OPM is revising Part 339 of Title 5, Code of Federal Regulations, as follows:

## PART 339—MEDICAL QUALIFICATION DETERMINATIONS

**Subpart A—General**

Sec.

339.101 Coverage.
339.102 Purpose and effect.
339.103 Compliance with EEOC regulations.
339.104 Definitions.

**Subpart B—Physical and Medical Qualifications**

339.201 Disqualification by OPM.
339.202 Medical standards.
339.203 Physical requirements.
339.204 Waiver of standards and requirements.
339.205 Medical evaluation programs.
339.206 Disqualification on the basis of medical history.

**Subpart C—Medical Examinations**

339.301 Authority to require an examination.
339.302 Authority to offer examinations.
339.303 Examination procedures.
339.304 Payment for examination.
339.305 Records and reports.
339.306 Processing medical eligibility determinations on certificates of eligibles.

**Authority:** 5 U.S.C. 3301, 3302, 5112; E.O. 9830, February 24, 1947.

### Subpart A—General

**§ 339.101 Coverage.**

This part applies to all applicants for and employees in competitive service positions; and to excepted service employees when medical issues arise in connection with an OPM regulation which governs a particular personnel decision, for example, removal of a preference eligible employee in the excepted service under Part 752.

**§ 339.102 Purpose and effect.**

(a) This part defines the circumstances under which medical documentation may be acquired and examinations and evaluations conducted to determine the nature of a medical condition which may affect safe and efficient performance.

(b) Personnel decisions based wholly or in part on the review of medical documentation and the results of medical examinations and evaluations shall be made in accordance with appropriate parts of this title and corresponding Federal Personnel Manual instructions.

(c) Failure to meet a properly established medical standard or physical requirement under this part means that the individual is not qualified for the position unless a waiver or reasonable accommodation is indicated, as described in §§ 339.103 and 339.204. An employee's refusal to be examined in accordance with a proper agency order authorized under this part is grounds for appropriate disciplinary or adverse action.

**§ 339.103 Compliance with EEOC regulations.**

Actions under this part must be consistent with 29 CFR 1613. 701 *et seq.* Particularly relevant to medical qualification determinations are § 1613.704 (requiring reasonable accommodation of individuals with handicaps); § 1613.705 (prohibiting use of employment criteria that screen out individuals with handicaps unless shown to be related to the job in question) and § 1614.706 (prohibiting pre-employment inquiries related to handicap and pre-employment medical examinations, except under specified circumstances). In addition, use of the term "qualified" in these regulations shall be interpreted consistently with

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§ 1613.702(f), which provides that a "qualified handicapped person" is a handicapped person "who, with or without reasonable accommodation, can perform the essential functions of the position in question without endangering the health and safety of the individual or others."

**§ 339.104 Definitions.**

For purposes of this part—

"Accommodation" means "reasonable accommodation" as described in 29 CFR 1613.704.

"Arduous of hazardous positions" means positions that are dangerous or physically demanding to such a degree that an incumbent's medical condition is necessarily an important consideration in determining ability to perform safely and efficiently.

"Medical condition" means health impairment which results from injury or disease, including psychiatric disease.

"Medical documentation" or "documentation of a medical condition" means a statement from a licensed physician or oher appropriate practitioner which provides information the agency considers necessary to enable it to make a employment decision. To be acceptable, the diagnosis or clinical impression must be justified according to established diagnostic criteria and the conclusions and recommendations must not be inconsistent with generally accepted professional standards. The determination that the diagnosis meets these criteria is made by or in coordination with a physician or, if appropriate, a practitioner of the same discipline as the one who issued the statement. An acceptable diagnosis must include the following information, or parts identified by the agency as necessary and relevant:

(a) The history of the medical conditions, including references to findings from previous examinations, treatment, and responses to treatment;

(b) Clinical findings from the most recent medical evaluation, including any of the following which have been obtained: findings of physical examination; results of laboratory tests; X-rays; EKG's and other special evaluations or diagnostic procedures; and, in the case of psychiatric evaluation of psychological assessment, the findings of a mental status examination and the results of psychological tests, if appropriate;

(c) Diagnosis, including the current clinical status;

(d) Prognosis, including plans for future treatment and an estimate of the expected date of full or partial recovery;

(e) An explanation of the impact of the medical condition on overall health and activities, including the basis for any conclusion that restrictions or accommodations are or are not warranted, and where they are warranted, an explanation of their therapeutic of risk avoiding value;

(f) An explanation of the medical basis for any conclusion which indicates the likelihood that the individual is or is not expected to suffer sudden or subtle incapacitation by carrying out, with or without accommodation, the tasks or duties of a specific position;

(g) Narrative explanation of the medical basis for any conclusion that the medical condition has or has not become static or well stabilized and the likelihood that the individual may experience sudden or subtle incapacitation as a result of the medical condition. In this context, "static or well-stabilized medical condition" means a medical condition which is not likely to change as a consequence of the natural progression of the condition, specifically as a result of the normal aging process, or in response to the work environment or the work itself. "Subtle incapacitation" means gradual, initially imperceptible impairment of physical or mental function whether reversible or not which is likely to result in performance or conduct deficiencies. "Sudden incapacitation" means abrupt onset of loss of control of physical or mental function.

"Medical evaluation program" means a program of recurring medical examinations or tests established by written agency policy or directive, to safeguard the health of employees whose work may subject them or others to significant health or safety risks due to occupational or environmental exposure or demands.

"Medical standard" is a written description of the medical requirements for a *particular occupation* based on a determination that a certian level of fitness of health status is required for successful performance.

"Physical requirement" is a written description of job-related physical abilities which are normally considered essential for successful performance in a *specific position*.

"Physician" means a licensed Doctor of Medicine or Doctor of Osteopathy, or a physician who is serving on active duty in the uniformed services and is designated by the uniformed service to conduct examinations under this part.

"Practitioner" means a person providing health services who is not a medical doctor, but who is certified by a national organization and licensed by a State to provide the service in question.

## Subpart B—Physical and Medical Qualifications

**§ 339.201 Disqualification by OPM.**

Subject to Subpart C of Part 731 of this chapter, OPM may deny an applicant examination, deny an eligible appointment, and instruct an agency to remove an appointee by reason of physical or mental unfitness for the position for which he or she has applied, or to which he or she has been appointed. An OPM decision under this section is separate and distinct from a determination of disability under § 831.502, 844.103, 844.202, or Subpart L of Part 831 of this title, and does not necessarily entitle the employee to disability retirement under sections 8337 or 8451 of title 5, United States Code.

**§ 339.202 Medical standards.**

OPM may establish or approve medical standards for a Governmentwide occupation (i.e., an occupation common to more than one agency). An agency may establish medical standards for positions that predominate in that agency (i.e., where the agency has 50 percent or more of the positions in a particular occupation). Such standards must be justified on the basis that the duties of the position are arduous or hazardous, or require a certain level of health status or fitness because the nature of the positions involve a high degree of responsibility toward the public or sensitive national security concerns. The rationale for establishing the standard must be documented. Standards established by OPM or an agency must be:

(a) Established by written directive and uniformly applied,

(b) Directly related to the actual requirements of the position, and

(c) Consistent with OPM instructions published in FPM chapter 339.

**§ 339.203 Physical requirements.**

Agencies are authorized to establish physical requirements for individual positions without OPM approval when such requirements are considered essential for successful job performance. The requirements must be clearly supported by the actual duties of the position and documented in the position description.

**§ 339.204 Waiver of standards and requirements.**

Agencies must waive a medical standard or physical requirement established under this part when there is sufficient evidence that an applicant or employee, with or without reasonable accommodation, can perform the essential duties of the position without endangering the health and safety of the individual or others.



**§ 339.205 Medical evaluation programs.**

Agencies may establish periodic examination or immunization programs by written policies or directives to safeguard the health of employees whose work may subject them or others to significant health or safety risks due to occupational or environmental exposure or demands. The need for a medical evaluation program must be clearly supported by the nature of the work. The specific positions covered must be identified and the applicants or incumbents notified in writing of the reasons for including the positions in the program.

**§ 339.206 Disqualification on the basis of medical history.**

A candidate may not be disqualified for any position solely on the basis of medical history. For positions with medical standards or physical requirements, or positions subject to medical evaluation programs, a history of a particular medical problem may result in medical disqualification only if the condition at issue is itself disqualifying, recurrence cannot medically be ruled out, and the duties of the position are such that a recurrence would pose a reasonable probability of substantial harm.

## Subpart C—Medical Examinations

**§ 339.301 Authority to require an examination.**

(a) A routine preappointment examination is appropriate only for a position which has specific medical standards, physical requirements, or is covered by a medical evaluation program established under these regulations.

(b) Subject to § 339.103 of this part, an agency may require an individual who has applied for or occupies a position which has medical standards or physical requirements or which is part of an established medical evaluation program, to report for a medical examination:

(1) Prior to appointment or selection (including reemployment on the basis of full or partial recovery from a medical condition);

(2) On a regularly recurring, periodic basis after appointment; or

(3) Whenever there is a direct question about an employee's continued capacity to meet the physical or medical requirements of a position.

(c) An agency may require an employee who has applied for or is receiving continuation of pay or compensation as a result of an on-the-job injury or disease to report for an examination to determine medical limitations that may affect placement decisions.

(d) An agency may require an employee who is released from his or her competitive level in a reduction in force to undergo a relevant medical evaluation if the position to which the employee has reassignment rights has medical standards or specific physical requirements which are different from those required in the employee's current position.

(e)(1) An agency may order a psychiatric examination (including a psychological assessment) only when:

(i) The result of a current general medical examination which the agency has the authority to order under this section indicates no physical explanation for behavior or actions which may affect the safe and efficient performance of the individual or others, or

(ii) A phychiatric examination is specifically called for in a position having medical standards or subject to a medical evaluation program established under this part.

(2) A psychiatric examination or psychological assessment authorized under (i) or (ii) above must be conducted in accordance with accepted professional standards, by a licensed practitioner or physician authorized to conduct such examinations, and may only be used to make legitimate inquiry into a person's mental fitness to successfully perform the duties of his or her position without undue hazard to the individual or others.

**§ 339.302 Authority to offer examinations.**

An agency may, at its option, offer a medical examination (including a psychiatric evaluation) in any situation where the agency needs additional medical documentation to make an informed management decision. This may include situations where an individual requests for medical reasons a change in duty status, assignment, working conditions, or any other benefit or special treatment (including reasonable accommodation or reemployment on the basis of full or partial recovery from a medical condition) or where the individual has a performance or conduct problem which may require agency action. Reasons for offering an examination must be documented. An offer of an examination shall be carried out and used in accordance with 29 CFR 1613.706.

**§ 339.303 Examination procedures.**

(a) When an agency orders or offers a medical examination under this subpart, it must inform the applicant or employee in writing of its reasons for doing so and the consequences of failure to cooperate. (A single notification is sufficient to cover a series of regularly recurring or periodic examinations ordered under this subpart.)

(b) The agency designates the examining physician or other appropriate practitioner, but must offer the individual an opportunity to submit medical documentation from his or her personal physician or practitioner. The agency must review and consider all such documentation supplied by the individual's personal physician or practitioner.

**§ 339.304 Payment for examination.**

Agencies shall pay for all examinations ordered or offered under this subpart, whether conducted by the agency's physician or the applicant's or employee's physician. Applicants and employees must pay for a medical examination conducted by a private physician (or practitioner) where the purpose of the examination is to secure a benefit sought by the applicant or employee.

**§ 339.305 Records and reports.**

(a) Agencies will receive and maintain all medical documentation and records of examinations obtained under this part in accordance with instructions provided by OPM, under provisions of 5 CFR Part 293, Subpart E.

(b) The report of an examination conducted under this subpart must be made available to the applicant or employee under the provisions of Part 297 of this chapter.

(c) Agencies must forward to the Office of Workers' Compensation Programs (OWCP), Department of Labor, a copy of all medical documentation and reports of examinations of individuals who are receiving or have applied for injury compensation benefits including continuation of pay. The agency must also report to the OWCP the failure of such individuals to report for examinations that the agency orders under this subpart. When the individual has applied for disability retirement, this information must be forwarded to OPM.

**§ 339.306 Processing medical eligibility determinations on certificates of eligibles.**

(a) In accordance with the provisions of this part, agencies are authorized to medically disqualify a nonpreference eligible. A nonpreference eligible so disqualified has a right to a higher level review of the determination within the agency.

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(b) OPM must approve the sufficiency of the agency's reasons to:

(1) Medically disqualify or pass over a preference eligible on a certificate in place of a nonpreference eligible,

(2) Medically disqualify or pass over a 30 percent or more compensably disabled veteran for a position in the U.S. Postal Service in favor of a nonpreference eligible,

(3) Medically disqualify a 30 percent or more compensably disabled veteran for assignment to another position in a reduction in force, or

(4) Medically disqualify a 30 percent or more disabled veteran for noncompetitive appointment.

[FR Doc. 89-5286 Filed 3-7-89; 8:45 am]

BILLING CODE 6325-01-M

## DEPARTMENT OF AGRICULTURE

### Federal Crop Insurance Corporation

### 7 CFR Part 401

[Amdt. No. 24; Doc. No. 6558S]

### General Crop Insurance Regulations

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) hereby adopts, as a final rule, an interim rule which was published in the **Federal Register** on Tuesday, May 10, 1988, at 53 FR 16539. The interim rule clarified the intent of FCIC with respect to not insuring any acreage upon which a second crop is harvested within the same crop year. The intent of this rule is to remove a perceived restriction in some areas of the country in which two different crops are harvested from the same acreage during the same crop year as a normal practice, yet because of the language in the policy, procedures infer that a restriction is imposed on insurance for the second crop.

**EFFECTIVE DATE:** March 8, 1989.

**ADDRESS:** Written comments on this rule may be sent to the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

**FOR FURTHER INFORMATION CONTACT:** Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447-3325.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is established as July 1, 1991.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environmental, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

On Tuesday, May 10, 1988, FCIC published an interim rule in the **Federal Register** at 53 FR 16539, to remove a perceived restriction in some areas of the country in which two different crops are harvested from the same acreage during the same crop year as a normal practice, yet because of the language in the policy, producers infer that a restriction is imposed on insurance for the second crop.

Section 2.e.(9) of the General Crop Insurance Policy (7 CFR 401.8.2.e.(9)) provides that FCIC will not insure any acreage * * * "(O)f a second crop following any crop (insured or uninsured) harvested in the same crop year unless specifically permitted by the crop endorsement or the actuarial table."

The intent of this section was to disallow insurance on a second crop of the same crop from the same acreage within the same crop year because of lowered yields and other problems inherent in this type of farming, unless that practice was specifically permitted by the endorsement or the actuarial table. This type of double cropping is allowed on a limited number of certain crops.

The language in this section is perceived by some as not permitting (for example) grain sorghum following wheat on the same acreage in the same crop year, when this type of farming is an accepted and successful practice in the county. However, it is an accepted practice in certain sections of the country for a producer to plant two different crops on the same acreage within the same crop year especially in those areas where fall-planted crops are customary.

In order to clarify this section, FCIC has determined that the word "any" in the first line of this section should be removed and the words "the same" should be substituted therefor. This constituted the only change necessary.

Written comments on the interim rule were solicited by FCIC for 60 days following publication of this rule in the **Federal Register**, and the rule was scheduled for review. No comments were received, therefore, the interim rule published at 53 FR 16539 is hereby adopted without change as a final rule.

### List of Subjects in 7 CFR Part 400

Crop insurance; General crop insurance regulations.

### Final Rule

Accordingly, the Interim Rule published in the **Federal Register** on Tuesday, May 10, 1988, at 53 FR 16539, is hereby adopted as final without change.

**Authority:** 7 U.S.C. 1506, 1516.

Done in Washington, DC on February 28, 1989.

**John Marshall,**

*Manager, Federal Crop Insurance Corporation.*

[FR Doc. 89-5316 Filed 3-7-89; 8:45 am]

BILLING CODE 3410-08-M

## Agricultural Marketing Service

### 7 CFR Part 985

[FV-89-001FR]

### Spearmint Oil Produced in the Far West; Salable Quantities and Allotment Percentages for the 1989-90 Marketing Year

**AGENCY:** Agricultural Marketing Service, USDA.



**ACTION:** Final rule.

**SUMMARY:** This rule establishes the quantity of spearmint oil produced in the Far West, by class, that may be purchased from or handled for producers by handlers during the 1989-90 marketing year, which begins June 1, 1989. This action is taken under the marketing order for spearmint oil produced in the Far West in order to avoid extreme fluctuations in supplies and prices and thus stabilize the market for spearmint oil. This action was recommended by the Spearmint Oil Administrative Committee (Committee), the agency responsible for local administration of the order.

**EFFECTIVE DATE:** April 7, 1989.

**FOR FURTHER INFORMATION CONTACT:** Jacquelyn R. Schlatter, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-5120.

**SUPPLEMENTARY INFORMATION:** This final rule is issued under Marketing Agreement and Order No. 985, as amended [7 CFR Part 985], regulating the handling of spearmint oil produced in the Far West. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small business will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

The Far West spearmint oil industry is characterized by primarily small producers whose farming operations generally involve more than one commodity and whose income from farming operations is not exclusively dependent on the production of spearmint oil. The production of spearmint oil is concentrated in the Far West, primarily Washington, Idaho, and Oregon (part of the area covered under the marketing order). Spearmint oil is also produced in the Midwest and Great Plains. The production area covered by the marketing order normally accounts for more than 75 percent of U.S. production of spearmint oil.

The Committee reports that there are approximately 9 handlers and 253 producers of spearmint oil under the marketing order for spearmint oil produced in the Far West. Of the 253 producers, 160 producers hold "Class 1" (Scotch) oil allotment base and 136 producers hold "Class 3" (Native) oil allotment base. As of June 1, 1988, the producers' allotment base ranged from 667 to 181,902 pounds for Scotch oil and from 290 to 124,346 pounds for Native oil. The average total allotment base held is 10,413 pounds and 13,539 pounds for Scotch and Native oils, respectively.

Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.1) as those having average gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of Far West spearmint oil producers and handlers may be classified as small entities.

The final rule will establish salable quantities of 706,742 pounds and 781,092 pounds, respectively, for Scotch and Native spearmint oils produced in the Far West, and allotment percentages of 42 percent for both oils. This action will limit the amount of spearmint oil that may be purchased from or handled for producers, by handlers, during the 1989-90 marketing year, which begins June 1, 1989. Such salable quantities and allotment percentages have been placed into effect each season since the order's inception in 1980. The establishment of salable quantities and allotment percentages will likely result in the production of less than half of the total allotment base available for production of spearmint oil. However, the amounts recommended for sale are based on average sales levels over the past seven years, and are not expected to cause a shortage of spearmint oil supplies. Any unanticipated or additional market needs which may develop can be more than satisfied by current reserve stocks. In addition, those producers who produce more than their annual percentage of allotment may transfer such excess spearmint oil to a producer with a deficiency in spearmint oil production, or such excess spearmint oil may be placed into reserve stocks.

This regulation is similar to those which have been issued in prior seasons. Costs to producers and handlers resulting from this proposed action are expected to be offset by the benefits derived from improved returns.

The salable quantities and allotment percentages were recommended by the Committee at its September 21, 1988, meeting.

The salable quantity and allotment percentage for each class of spearmint oil for the 1989-90 marketing year, which begins June 1, 1989, is based upon recommendations of the Committee and the following data and estimates:

(1) "Class 1" (Scotch) Spearmint Oil

(A) Estimated carryin on June 1, 1989—16,892 pounds.

(B) Estimated trade demand (domestic and export) for the 1989-90 marketing year, based on an average of producer sales for the past seven marketing years, beginning with the 1980-81 marketing year through the 1986-87 marketing year (minus 23,419 pounds) [1]—718,000 pounds.

(C) Recommended desirable carryout on May 31, 1990—0 pounds.

(D) Salable quantity required from 1989 regulated production [2]—701,108 pounds.

(E) Total allotment bases for Scotch oil—1,682,719 pounds.

(F) Computed allotment percentage—41.6 percent.

(G) The Committee's recommended salable quantity—706,742 pounds.

(H) Recommended allotment percentage—42 percent.

(2) "Class 3" (Native) Spearmint Oil

(A) Estimated carryin on June 1, 1989—40,000 pounds.

(B) Estimated trade demand (domestic and export) for the 1989-90 marketing year, based on an average of producer sales for the past seven marketing years, beginning with the 1980-81 marketing year through the 1986-87 marketing year (minus 50,000 pounds [3])—818,266 pounds.

[1] The seven year average of sales was 741,419 pounds. The high years average approximately 50,000 pounds above the seven year average and the low years average approximately 50,000 pounds below the seven year average. Taking into consideration the cyclical demand for Scotch spearmint oil over the past years, the Committee determined that it was appropriate to reduce the estimated trade demand for the 1989-90 marketing year by 23,419 pounds.

[2] In past years, the Committee has considered production of 100,000 pounds from South Dakota in its computation of the Scotch salable quantity However, this year, the Committee has determined that the South Dakota production does not directly affect the marketing of Far West Scotch spearmint oil. Therefore, South Dakota production was not included in the computation of trade demand and salable quantity.

[3] The seven year average sales was 868,266 pounds. The 1987-88 level of 745,777 pounds was

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(C) Recommended desirable carryout on May 31, 1990—0 pounds.

(D) Salable quantity required from 1989 production—778,266 pounds.

(E) Total allotment bases for Native oil—1,859,743 pounds.

(F) Computed allotment percentage—41.8 percent.

(G) The Committee's recommended salable quantity—781,902 pounds.

(H) Recommended allotment percentage—42 percent.

The salable quantity is the total quantity of each class of oil which handlers may purchase from or handle on behalf of producers during a marketing year. Each producer is allotted a share of the salable quantity by applying the allotment percentage to the producer's allotment base for the applicable class of spearmint oil. Pursuant to the order, the Committee may issue additional allotment base to both new and existing producers for each marketing year (17 CFR 985.51(b)).

Establishment of these salable quantities and allotment percentages will allow for anticipated market needs based on historical sales and provides spearmint oil producers with information on the amount of oil which should be produced for next season. Spearmint oil has an extremely inelastic demand and excess production normally is placed into the industry's reserves. Current reserves are equal to about 35 percent of the volume of Scotch spearmint oil and 110 percent of the volume of Native spearmint oil utilized by the market on a yearly basis. These reserve stocks are sufficient to meet any unanticipated marketing opportunities in the coming season.

This action establishes a new § 985.209 and is based on recommendations of the Committee and other information. Notice of a proposal to establish the salable quantity and allotment percentage for each class of oil was published in the December 30, 1988, issue of the **Federal Register** [53 FR 53001]. Comments on the proposed rule were solicited from interested persons until January 30, 1989. No comments were received. The salable quantities and allotment percentages established by this final rule are identical to those contained in the proposed rule.

Based on available information, the Administrator of the AMS has determined that the issuance of this final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the Committee's recommendations and other available information, it is found that the regulation, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

**List of Subjects in 7 CFR Part 985**

Far west, Marketing agreements and orders, and Spearmint oil.

For the reasons set forth in the preamble, 7 CFR Part 985 is amended as follows:

## PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

1. The authority citation for 7 CFR Part 985 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Add a new § 985.209 under Subpart—Salable Quantities and Allotment Percentages to read as follows:

Note:—This section will not appear in the Code of Federal Regulations.

**Subpart—Salable Quantities and Allotment Percentages**

**§ 985.209 Salable quantities and allotment percentages—1989–90 marketing year.**

The salable quantity and allotment percentage for each class of spearmint oil during the marketing year which begins June 1, 1989, shall be as follows:

(a) "Class 1" (Scotch) oil—a salable quantity of 706,742 pounds and an allotment percentage of 42 percent.

(b) "Class 3" (Native) oil—a salable quantity of 781,092 pounds and an allotment percentage of 42 percent.

Dated: March 3, 1989.

**Robert C. Keeney,**

*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 89–5306 Filed 3–7–89; 8:45 am]

BILLING CODE 3410–02–M

below the seven year average and could be followed by another low year. Actual movement to date has not been at more than average levels. Based on this, the Committee used a seven year average but reduced this average by 50,000 pounds.

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**Animal and Plant Health Inspection Service**

**9 CFR Part 92**

**[Docket No. 88–153]**

**Importation of Animals Through the Harry S Truman Animal Import Center; Special Use by the Agricultural Research Service During 1989**

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Affirmation of interim rule.

**SUMMARY:** We are affirming without change an interim rule that granted to the Agricultural Research Service of the United States Department of Agriculture the exclusive right to use the Harry S Truman Animal Import Center (HSTAIC) for an importation during calendar year 1989. This action enables the Agricultural Research Service to complete negotiations with officials in the People's Republic of China, and to proceed with the singular opportunity to import swine from that country in a project that should improve the germplasm of breeding animals in the United States, eventually improving the productivity and international competitiveness of U.S. swine.

**EFFECTIVE DATE:** April 7, 1989.

**FOR FURTHER INFORMATION CONTACT:** Dr. Harvey A. Kryder, Senior Staff Veterinarian, Import-Export Products Staff, Veterinary Services, APHIS, USDA, Room 810, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8695.

**SUPPLEMENTARY INFORMATION:**

**Background**

On July 25, 1988, we published in the **Federal Register** (53 FR 27846–27847, Docket Number 88–107) an interim rule that amended the regulations in 9 CFR Part 92, § 92.41, by granting the Agricultural Research Service (ARS) of the United States Department of Agriculture the exclusive right to use the Harry S Truman Animal Import Center (HSTAIC) for an importation of swine from the People's Republic of China during calendar year 1989. We took that action to enable ARS to capitalize on a singular opportunity to proceed with a swine-importation project expected to improve the germplasm of breeding animals in the United States. This improved breeding stock should benefit breeders in the private sector.

**Comments**

Our interim rule invited the submission of written comments, which were to be postmarked or received on or before September 23, 1988. We received five comment letters. One commenter supported our action, and four commenters objected, raising the issues discussed below.

*Comment:* Despite numerous requests, the Animal and Plant Health Inspection Service (APHIS) has not published a space allocation plan for assigning space in HSTAIC to private importers for their shipments.

This comment is outside the scope of the interim rule, which concerns use of HSTAIC by ARS in 1989, not use by private importers at other times. However, APHIS is currently developing a proposed rule allocating the use of HSTAIC after ARS use of the facility is completed.

*Comment:* HSTAIC was built for the express purpose of providing the private sector the capability of importing animals from countries where diseases exist that are exotic to the United States.

We disagree that HSTAIC was built solely for use by the private sector. The legislation authorizing establishment of HSTAIC (Pub. L. 91–239; 21 U.S.C. 135) also authorizes the Secretary of Agriculture "to cooperate in such manner as he deems appropriate, with other North American countries or with breeders' organizations or similar organizations or with individuals within the United States regarding importation of animals into and through the quarantine station * * *". The legislative history of Pub. L. 91–239 also clearly shows that one of the uses envisioned for the facility was the safe importation of animals by livestock producers, breeders, and research institutions to upgrade the genetic quality of domestic livestock. We believe that the use of HSTAIC by ARS is consistent with the intent of the authorizing legislation.

*Comment:* It is not appropriate to spend tax dollars to import one species to the exclusion of others.

It would be impossible to import all species eligible for quarantine in HSTAIC at any one time; decisions must be made on how to use the limited facilities. As for use of tax monies, we believe that a project to improve the germplasm of breeding swine within the United States is consistent with the legislatively authorized missions of both APHIS and ARS. In addition, part of the cost of the project is being borne by the University of Illinois and Iowa State University.

*Comment:* APHIS should open a replacement animal quarantine facility or approve an alternative method for importation of animals from foot-and-mouth disease countries for the period that ARS has exclusive use of HSTAIC.

The legislation authorizing establishment of HSTAIC (21 U.S.C. 135) authorized the Secretary of Agriculture to establish and maintain one international animal quarantine station. A replacement facility could not be opened without legislative action by Congress.

*Comment:* Since private importers are capable of performing the importation of swine from China, public funds should not be used.

The question of whether public funds should be used to import swine from China is outside the scope of our interim rule, which concerns use of the HSTAIC facility for the swine project. However, we note that no private importer has ever requested use of HSTAIC to import swine from China.

*Comment:* Private facilities other than HSTAIC are available to swine industry importers and have been offered to ARS.

Law and regulation do not allow importation of swine from countries where foot-and-mouth disease occur (including China) except through an international animal quarantine station established by the Secretary of Agriculture, i.e., HSTAIC.

*Comment:* Importers are ready to import llamas through HSTAIC, but cannot move their shipments until HSTAIC is available.

We do not believe that the possibility of importing llamas in 1989 is a sufficient justification to forego the opportunity to import swine from China for the germplasm improvement project. We are currently developing space allocation methods and otherwise preparing for the use of HSTAIC in the future to allow private importers, including llama importers, the opportunity to apply for space in HSTAIC for their shipments.

We therefore maintain that the facts presented in the interim rule still provide a basis for the rule. In granting to the Agricultural Research Service the exclusive right to use HSTAIC for 1989, we are capitalizing on an unprecedented opportunity to serve short- and long-term agricultural interests in the United States. Therefore, we are affirming the interim rule without change.

**Executive Order 12291 and Regulatory Flexibility Act**

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

If the Agricultural Research Service's importation proceeds according to plan, breeders in the public sector should eventually benefit.

This rule will enable ARS to proceed with a swine-importation project expected to improve the germplasm of breeding animals in the United States. This improved breeding stock should eventually benefit breeders in the private sector. There should be no near-term economic impacts caused by importation of the breeding stock for this project. The possible long-term impacts cannot be calculated at this time, since the project is experimental in nature and any eventual economic impacts would depend on the outcome of the experimental project, which is not presently quantifiable.

Adoption of this rule might result in a small number of importers of animals being unable to obtain space in HSTAIC that might otherwise be available for importation of their shipments of animals in 1989. The total number of animals that could be imported through HSTAIC in one calendar year is very small compared to the total number of animals imported into the United States annually.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

**Paperwork Reduction Act**

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

**Executive Order 12372**

This program/activity is listed in the Catalog of Federal and Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

**List of Subjects in 9 CFR Part 92**

Animal diseases, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

## PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

Accordingly, the interim rule amending 9 CFR Part 92 that was published at 53 FR 27846–27847 on July 25, 1988, is adopted as a final rule without change.

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Authority: 7 U.S.C. 1622; 18 U.S.C. 1308; 21 U.S.C. 102–105, 111, 134a, 134b, 134c, 134d, 134f, and 135; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC, this 3rd day of March 1989.

James W. Glosser,

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 89–5311 Filed 3–7–89; 8:45 am]

BILLING CODE 3410-34-M

## DEPARTMENT OF COMMERCE

### Bureau of Export Administration

### 15 CFR Part 799

[Docket No. 80466-9066]

### Chlorendic Anhydride; Reduction in Export Control

**AGENCY:** Bureau of Export Administration, Commerce.

**ACTION:** Correction notice; announcement of effective date.

**SUMMARY:** On August 10, 1988 (53 FR 30026), the Bureau of Export Administration issued a final rule amending export controls on chlorendic anhydride. This chemical, formerly controlled for national security reasons under Export Control Commodity Number (ECCN) 5799C on the Commodity Control List, was transferred to ECCN 6799G and remains subject to export controls to Country Groups S and Z for foreign policy reasons.

The effective date was inadvertently omitted from the August 10 final rule. This notice establishes that the effective date of that rule is August 10, 1988, the date of publication.

**FOR FURTHER INFORMATION CONTACT:** Jim Seevaratnam, Capital Goods Technology Center, Bureau of Export Administration (Telephone: (202) 377–5695).

Dated: February 23, 1989.

Michael E. Zacharia,

*Assistant Secretary for Export Administration.*

[FR Doc. 89–5281 Filed 3–7–89; 8:45 am]

BILLING CODE 3510-DT-M

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Parts 229 and 249

[Release Nos. 33–6822; 34–26567; IC–16844; FR–34; File No. S7–6–88]

### Acceleration of the Timing for Filing Forms 8–K Relating to Changes in Accountants and Resignations of Directors; Amendments to Regulation S–K Regarding Changes in Accountants

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rules.

**SUMMARY:** The Securities and Exchange Commission ("Commission") today announced the adoption of amendments to its rules to reduce the time period from 15 calendar days to five business days for a registrant to file a Form 8–K announcing a change in its independent certifying accountant or the resignation of a director. The Commission also announced amendments to Regulation S–K concerning changes in a registrant's independent certifying accountant to: (1) Reduce the time period for filing with the Commission the former accountant's letter from 30 calendar days to ten business days after the filing of the report or registration statement announcing the change in accountants, (2) require the registrant to file any such letter within two business days of receipt, and (3) permit the former accountant to provide an interim letter to the registrant, which also must be filed by the registrant within two business days of receipt.

**EFFECTIVE DATE:** April 7, 1989. These amendments are effective for changes in accountants and the receipt of letters from resigned directors occurring on or after the effective date.

**FOR FURTHER INFORMATION CONTACT:** Robert E. Burns or John M. Riley, (202) 272–2130, Office of the Chief Accountant, or William H. Carter, (202) 272–2573, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

**SUPPLEMENTARY INFORMATION:**

### I. Background

When a registrant's independent certifying accountant resigns, declines to stand for re-election or is dismissed the registrant must provide the disclosure required by Item 304(a)(1) of Regulation S–K.[1] When the registrant engages a new independent certifying accountant, it must provide the disclosure required by Item 304(a)(2) of Regulation S–K.[2] In both cases, Item 304(a)(3) of Regulation S–K directs the registrant to request the former accountant to provide to the registrant a letter addressed to the Commission that indicates whether the former accountant agrees with the registrant's disclosures and, if not, the respects in which it does not agree.[3] The registrant is required to file any such letter received as an exhibit to the document containing the relevant disclosure.[4]

Generally, this disclosure regarding the change in accountants will first appear in a Form 8–K [5] filing. Prior to the adoption of the amendments announced today, General Instruction B.1 to Form 8–K required a registrant to file a report within 15 calendar days after the former accountant resigned, was dismissed, or declined to stand for re-election, or a new accountant was engaged. Under Item 304(a)(3) of Regulation S–K, the letter from the registrant's former accountant was to be filed within 30 calendar days after the document containing the registrant's Item 304 disclosures had been filed with the Commission.[6] Assuming the initial disclosure was made by the registrant on a Form 8–K 15 days after the former accountant resigns, declines to stand for re-election or is dismissed, and the former accountant's letter was filed 30 days after the date of the filing of the Form 8–K, a total of 45 calendar days could elapse from the date of the former accountant's leaving the engagement until the filing with the Commission of the former accountant's letter. This letter may be the first expression of the former accountant's concerns regarding communications with the registrant that are now disclosed as reportable events,[7] disagreements with the registrant concerning certain accounting, auditing or financial reporting issues,[8] or other matters.

More prompt disclosure of information related to changes in registrants' certifying accountants is in the public interest.[9] Moreover, in commenting on previous rulemaking proceedings the American Institute of Certified Public Accountants ("AICPA") and others recommended that the time period for filing the former accountant's letter be reduced.[10] Accordingly, in April 1988, the Commission published for public comment a proposal to reduce the time period from 15 to 5 calendar days for filing the initial Form 8–K, and to reduce the time period from 30 to 10 calendar days for filing the letter from the former accountant.[11] The Commission also proposed to require that the registrant file any letter from the former accountant responding to the registrant's Form 8–K disclosures within two calendar days of receipt,[12] and expressly to permit the former accountant to provide an interim letter, which also would be filed by the registrant within two calendar days of receipt.[13]

In reviewing the need for more prompt disclosure regarding changes in independent accountants, the Commission noted that disclosures concerning the resignation of a director [14] may be of similar importance in bringing to light disagreements or difficulties concerning management policies or practices that may be material to an investment decision with regard to the registrant's securities. Accordingly, the Commission further proposed to shorten the time period from 15 to five calendar days for reporting on Form 8–K the resignation of a member of a registrant's board of directors.[15]

The Commission received a total of 19 comment letters in response to this proposing release.[16] All 19 addressed the proposal to shorten the Form 8–K filing period for changes in accountants, 17 addressed the reduction in the time period under Regulation S–K for filing the former accountant's letter, and six addressed the time period for filing a Form 8–K concerning the resignation of directors. A significant majority of commentators on each of these proposals supported some reduction in the relevant time periods. The commentators differed, however, on what those periods should be.

Eight commentators also discussed direct communication by accountants with the Commission when there is a change in accountants. One suggestion was that a registrant be required to request that its former accountant send to the Commission a copy of its letter responding to the registrant's Form 8–K disclosures. This suggestion for further rulemaking is being reviewed by the Commission's staff. Even in the absence of rulemaking, however, the Commission continues to believe that an independent accountant who is aware that a required filing related to a change of accountants has not been made by the registrant should consider advising the registrant in writing of that reporting responsibility with a copy to the Commission.[17] In addition, the Commission strongly encourages the accounting profession to establish either a professional requirement for auditors to notify the Commission directly if they know that a required filing has not been made by a former client, or another approach that may achieve essentially the same result.

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[1] 17 CFR 229.304(a)(1). These disclosures include whether the former accountant resigned, declined to stand for re-election or was dismissed; whether the accountant's report on the registrant's financial statements for either of the past two fiscal years contained (and if so the nature of) an adverse opinion, disclaimer of opinion, modification or qualification; whether the change in accountants was recommended or approved by the audit or similar committee of the board of directors; and a description of disagreements between management and the former accountant and "reportable events," including whether the former accountant discussed such matters with the audit committee or board of directors and whether the registrant has authorized the former accountant to discuss these matters with the successor auditors. For definitions of "reportable events" and "disagreements," see notes 7 and 8 *infra*.

[2] 17 CFR 229.304(a)(2). These disclosures principally focus on certain pre-existing relationships between the registrant and the newly engaged accountant. To the extent required disclosures previously were made in connection with the disclosure of the former accountant's resignation, declination to stand for reelection or dismissal, they do not have to be repeated. Instruction 1. to Item 304, and Instruction to Item 4, Form 8–K, 17 CFR 249.308.

[3] 17 CFR 229.304(a)(3). However, if the disclosures are to appear in an annual report to shareholders or a proxy or information statement, then in lieu of requesting such a letter the registrant must provide the former accountant with the opportunity to submit a brief statement to be included directly in the registrants's document. This statement must be submitted to the registrant within ten business days of the date the accountant receives the registrant's disclosure. See Instruction 2 to Item 304 of Regulation S–K, 17 CFR 229.304.

[4] Item 304(a)(3) of Regulation S–K, 17 CFR 229.304(a)(3).

[5] Item 4, Form 8–K, 17 CFR 249.308. The Division of Corporation Finance reviews all incoming Item 4 Forms 8–K. This review may result in a referral to the Commission's Division of Enforcement, examination of the current or next financial statements on a high priority basis, or disposition according to the routine comment process. The Division of Enforcement makes appropriate inquiries when it receives referrals on these matters from the Division of Corporation Finance.

[6] Under Item 4 of Form 8–K the resignation or dismissal of an independent accountant, or its declination to stand for re-election, is a reportable event separate from the engagement of a new independent accountant. On some occasions, two reports on Form 8–K will be required for a single change in accountants, the first on the resignation (or declination to stand for re-election) or dismissal of the former accountant and the second when the new accountant is engaged. See Instruction to Item 4, Form 8–K. If the termination of the relationship with the former accountant and the engagement of the new accountant are reported separately, the registrant must make two requests for the former accountant to provide a letter indicating whether it agrees with the registrant's disclosure. The timing for each letter is computed separately, each period beginning with the related filing of the registrant's disclosure.

[7] Reportable events involve situations where the accountant has advised the registrant that it: questions the reliability of the registrant's financial statements, management's representations or the registrant's internal controls; needs to expand the scope of its audit to investigate certain matters; or, has concluded that certain information that has come to its attention materially impacts the fairness or reliability of current or past audit reports or the financial statements underlying those reports. See Item 304(a)(1)(v) of Regulation S–K, 17 CFR 229.304(a)(1)(v). *See generally* Financial Reporting Release No. 31 (April 12, 1988) (53 FR 12924).

[8] Instruction 4 to Item 304 of Regulation S–K, 17 CFR 229.304, states in part:

The term "disagreements" as used in this Item shall be interpreted broadly, to include any difference of opinion concerning any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure which (if not resolved to the satisfaction of the former accountant) would have caused it to make reference to the subject matter of the disagreement in connection with its report. It is not necessary for there to have been an argument to have had a disagreement, merely a difference of opinion.

*See generally* Financial Reporting Release No. 31 (April 12, 1988) (53 FR 12924).

[9] *See e.g.*, Hearings on Failure of ZZZZ Best Co. Before the Subcommittee on Oversight and Investigations of the House Committee on Energy and Commerce, 100th Cong., 2d Sess., Serial No. 100–115 (1988).

[10] *See* Letter from AICPA to Jonathan G. Katz, October 9, 1987, contained in File No. S7–24–87, which recommended that this period be reduced to 21 calendar days. Copies may be obtained by contacting the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549.

[11] Securities Act Release No. 6767 (April 12, 1988) [53 FR 12948].

[12] *Id.*

[13] *Id.*

[14] A Form 8–K must be filed when a director resigns (or declines to stand for re-election) because of a disagreement with the registrant relating to its operations, policies or practices, and that director has furnished a letter to the registrant describing the disagreement and requesting that the matter be disclosed. The required disclosure includes the date of resignation or refusal to stand for re-election and a summary of the director's description of the disagreement, with the director's letter attached to the Form 8–K as an exhibit. The registrant also may state briefly its own view of the disagreement. Item 6, Form 8–K.

[15] Securities Act Release No. 6767, *supra* note 11.

[16] Copies of the letters from commentators are available to the public in File No. S7–6–88 in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

[17] In Accounting Series Release No. 165 (December 20, 1974) (40 FR 1010), Financial Reporting Codification section 603.02.a.iii, the Commission stated:

When a change in independent accountants occurs so that the accountant being replaced is aware that a Form 8–K should be filed reporting the event, he might well bring that reporting responsibility to the attention of the registrant. If he becomes aware that the required reporting has not been made, e.g., because he has not been requested to furnish a letter as required by the Form 8–K item, he should consider advising the registrant in writing of that reporting responsibility with a copy to the Commission.

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**II. A Registrant's Filing on Form 8–K Regarding a Change in Certifying Accountants**

The Commission has accelerated the timing for filing an initial Form 8–K regarding a change in certifying accountants from 15 calendar days to five business days.[19]

In proposing a five *calendar* day period, the Commission noted that documentation regarding disagreements and reportable events should be readily available to both the registrant and the former accountant.[19] While 14 of the 19 commentators generally supported reduction of the filing period, only one agreed with the five calendar day proposal. Others stated that the proposed periods may be too short for the preparation of complete and informative disclosures.[20] They indicated that the individuals who prepare and review the Form 8–K filing may not be available during a period as short as five calendar days. They also noted that with intervening weekends and holidays the filing period effectively could be reduced to as few as two business days if the change occurred immediately preceding a "three-day weekend." Several commentators, therefore, suggested that the filing period be either extended or expressed in business rather than calendar days. Four commentators specifically suggested a ten calendar day period, four others suggested a ten business day period, and five specifically recommended a five business day period.

In recognition of the commentators' concerns, the Commission has adopted a five business day period. In calculating the five business day period, the day on which the change in accountants occurs would not be counted. For example, assuming there are no intervening federal holidays, if the accountant resigns [21] on a Monday, the Form 8–K must be filed no later than the close of the Commission's business [22] on the following Monday. If the Item 4, Form 8–K event occurs on other than a business day, the filing period begins to run on and includes the first business day thereafter.

**III. Filing Period Related to the Former Accountant's Letter**

The Commission is amending Item 304(a)(3) of Regulation S–K to state that the former accountant's letter should be provided to the registrant as promptly as possible to permit the letter to be filed by the registrant with the Commission within ten business days [23] after the filing of the Form 8–K or other report or registration statement announcing the change in accountants. In order to facilitate the preparation of the accountant's letter, the Commission also has adopted, as proposed,[24] a requirement that the registrant provide the former accountant with a copy of the disclosures it has made concerning the change in accountants no later than the day those disclosures are filed with the Commission.

Fifteen of 17 commentators addressing the issue supported a reduction in the 30 day period for filing the former accountant's letter. Four of these commentators supported the proposed ten calendar day period, but others suggested longer periods citing the unavailability of personnel and the impact of weekends, among other factors, on promptly preparing and reviewing a complete and informative letter. Nine commentators suggested a ten business day period, four suggested a ten calendar day period, two recommended 21 calendar days, one suggested 15 business days, and one suggested a period of 21 business days.[25] After considering these comments, the Commission has revised the proposed ten calendar day period to ten business days. Calculation of this period should begin on and include the first business day after the initial filing with the Commission.

The new rules, as amended, contain the proposed language that the registrant shall request that the former accountant provide the letter "as promptly as possible." One commentator objected to this language, stating that it would be impossible to demonstrate compliance with that request.[26] This language has been added to the disclosure requirement to focus the accountant's attention on the need to address the issue in a timely manner, that is, with the diligence that may be expected under the circumstances.

The accountant's letter, therefore, may be received by the registrant prior to the expiration of the ten business day period. In order that such a letter may be made available to the public on a timely basis, the Commission proposed that the registrant file the letter within two calendar days of receipt. Three of the 11 commentators addressing this issue supported the proposed two calendar day period, while seven commentators suggested a two business day period and cited the adverse impact of weekends and holidays on their ability to meet the two calendar day requirement. One commentator noted that the proposed period may cause timing problems but did not offer a specific recommendation as to the appropriate time period. In response to the commentators' concerns, the Commission has adopted a two business day period.[27]

The newly adopted filing requirements for Form 8–K concerning a change in accountants result in a reduction in the overall time period for filing both the Form 8–K and the former accountant's letter from 45 calendar days to 15 business days.[28] The new time periods reflect an appropriate balance between the need for prompt disclosure and the time required to research, prepare and review the disclosures called for when a change in accountants occurs.[29]

**IV. Interim Letter From the Former Accountant**

The amendments to Item 304(a)(3) of Regulation S–K include the proposed provision specifying that the former accountant, at its discretion, may provide the registrant with an interim letter highlighting specific areas of concern and indicating a more detailed

[19] The term "business day" means any day other than a Saturday, Sunday, or federal holiday on which the Commission is not opened for business.

[19] Securities Act Release No. 6767, *supra*, note 11.

[20] *See* note 18, *supra*.

[21] In contrast to the dismissal of an accountant through the mail, which occurs when the registrant sends the notice of dismissal, when the accountant resigns by mailing a letter of resignation to the registrant the resignation is deemed to occur for the purpose of this requirement when the registrant receives the letter.

[22] The business hours of the principal office of the Commission in Washington, DC are from 9:00 a.m. to 5:30 p.m. Eastern Standard Time or Eastern Daylight Savings Time, whichever is currently in effect in Washington, each day except Saturdays, Sundays and holidays. Rule 0–3 under the Securities Exchange Act of 1934, 17 CFR 240.0–3.

[23] *See* note 18, *supra*.

[24] Securities Act Release No. 6767, *supra* note 11. The proposal stated that the accountant should be provided with a copy of these disclosures no later than the "time" they are filed with the Commission. To avoid controversy over the specific time that the disclosures were filed and the time they were received by the accountant, this provision has been revised to require that the accountant receive the disclosures on the same day they are filed with the Commission.

[25] Some commentators suggested more than one time period.

[26] Letter to Jonathan G. Katz from Peat Marwick Main & Co. dated May 16, 1988, available in File No. S7–6–88. *See* note 16, *supra*.

[27] The requirement to file the former accountant's letter within two business days of receipt is independent of the ten business day period discussed above and is not intended to result in an extension of that ten business day period.

[28] It should be noted that in current practice the accountant's letter often is filed with the initial Form 8–K.

[29] *See generally* Item 4 of Form 8–K, 17 CFR 249.308, and Item 304 of Regulation S–K, 17 CFR 229.304.



letter will follow. If such an interim letter is provided it must be filed by the registrant within two business days of receipt.[30]

Ten of 11 commentators addressing the interim letter provision generally opposed the provision because: the statements in the interim letter may be based on incomplete information; the provision could create a de facto reporting obligation; or the need for such a provision is diminished by the reduction of the filing period relating to the accountant's letter. The Commission recognizes these concerns. However, it believes it is important explicitly to provide former accountants with the opportunity to provide expedited notice to the public of situations where former accountants have concluded that registrants' Forms 8–K contain patently false disclosures. The Commission does not intend to establish a de facto reporting obligation and, to the contrary, believes that such interim letters will generally pertain to cases where there is no reasonable uncertainty regarding the former accountant's objection to the registrant's disclosures. An example of a case where the accountant may file such an interim letter is when the accountant is dismissed after having an obvious disagreement with the registrant and the registrant's initial Form 8–K states that there were no disagreements.

**V. Filing Period for Reporting Disagreements Associated With the Resignation of a Director**

In addition to the disclosure of disagreements between the registrant and its former accountant, disclosure of disagreements between the registrant and a director who has resigned (or declined to stand for re-election) also may be material to a shareholder's voting or investment decisions.[31]

Accordingly, the Commission has reduced the period from 15 calendar days to five business days for filing a Form 8–K relating to the resignation of a director.

Four of six commentators addressing this proposal agreed that some reduction in the filing period was appropriate. However, the impact of weekends and holidays and the possible unavailability of continuing directors to consult on the matter, and of legal counsel and others to prepare and review the Form 8–K disclosures were cited as reasons to extend the proposed five calendar day period.[32] Three commentators respectively suggested periods of ten business days, ten calendar days, and five business days, while another commentator supported either a ten calendar or five business day period.

The Commission has adopted a five business day filing period. The event that triggers the Form 8–K reporting obligation concerning the resignation of a director is the receipt by the registrant of a letter describing a disagreement between the registrant and the director relating to the registrant's operations, policies or practices.[33] For example, assuming no intervening federal holidays, if the registrant received the resigned director's letter on a Monday, it would be required to file the Form 8–K no later than the following Monday.

**VI. Cost/Benefit Analysis**

The amendments announced in this release affect the timing of procedures for a registrant filing a Form 8–K disclosing the resignation of a director or a change in the registrant's certifying accountant and the filing of a letter containing the views of the registrant's former account regarding certain matters disclosed by the registrant. The amendments, however, do not affect the recordkeeping, substance of the disclosure, or contents of the registrant's disclosure or the former accountant's letter. It is anticipated therefore that the costs associated with these amendments will be small and relate solely to the more prompt preparation of the registrant's disclosure and the former accountant's letter. The principal benefit of the amendments is the availability of signficant information to the market on a more timely basis.

**VII. Certain Findings**

Section 23(a)(2) of the Exchange Act [34] requires the Commission, in adopting rules under the Exchange Act, to consider the anti-competitive effect of such rules, if any, and to balance any impact against the regulatory benefits gained in terms of furthering the purposes of the Exchange Act. The Commission has considered the amendments to Form 8–K and Regulation S–K in light of the standard cited in section 23(a)(2) and believes that adoption of these changes will not impose any burden on competition not necessary or appropriate in furtherance of the Exchange Act. As stated above, these amendments are designed to promote the purpose of the Exchange Act by providing more prompt disclosure of significant information, without changing the substance of the disclosure obligation.

**VIII. Regulatory Flexibility Act**

Pursuant to section 605(b) of the Regulatory Flexibility Act,[35] the Chairman of the Commission previously certified that adoption of these amendments will not have a significant impact on a substantial number of small entities. No comments were received on that certification.

**IX. Codification Update**

The "Codification of Financial Reporting Policies" announced in Financial Reporting Release No. 1 (April 15, 1982) (47 FR 21028) is updated to:

1. Include a new paragraph 603.02.d to include the text in topic II of this release, "A Registrant's Filing On Form 8–K Regarding A Change In Certifying Accountants." (Footnotes in this topic that refer to footnotes in topic I of this release to contain the full text of the cited notes.)

2. Include a new paragraph 603.08 to include the text in topic III of this release, "Filing Period Related to the Former Accountant's Letter." (Footnotes in this topic that refer to footnotes in topics I or II of this release to contain the full text of the cited notes.)

3. Include a new paragraph 603.08.a to include the text in topic IV of this release, "Interim Letter from the Former Accountant." (Footnotes in this topic that refer to discussions or footnotes in topics II or III of this release to contain the appropriate citations to the codification and the full text of the cited notes.)

**List of Subjects in 17 CFR Parts 229 and 249**

Reporting and recordkeeping requirements; Securities.

**Text of Amendments**

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

**PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER THE SECURITIES ACT OF 1933 AND SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K**

1. The authority citation for Part 229 continues to read as follows:

[30] A two calendar day period was proposed for comment. The Commission, however, has adopted a two business day period due to the impact of weekends and holidays on the registrant's ability to comply with the requirement. *See* the discussion of the two day filing period *supra*.

[31] *See* note 14, *supra*, for a discussion of when a Form 8–K regarding the resignation of a director should be filed and the required disclosures.

[32] *See* note 16, *supra*.

[33] Item 6(a), Form 8–K.

[34] 15 U.S.C. 78w(a)(2).

[35] 5 U.S.C. 605(b).

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**Authority:** Secs. 6, 7, 8, 10, 19(a), 48 Stat. 78, 79, 81, 85; secs. 12, 13, 14, 15(d), 23(a), 48 Stat. 892, 894, 901; secs. 205, 209, 48 Stat. 908, 908; sec. 203(a), 49 Stat. 704; secs. 1, 3, 8, 49 Stat. 1375, 1377, 1378; sec. 301, 54 Stat. 857; secs. 8, 202, 56 Stat. 685, 686; secs. 3, 4, 5, 6, 70 Stat. 565–568, 569, 570–574; sec. 1, 70 Stat. 1081; secs. 1, 2, 3, 82 Stat. 454, 455; secs. 1, 2, 3–5, 28(c), 84 Stat. 1435, 1497; sec. 105(b), 88 Stat. 1503; secs. 8, 9, 10, 11, 18, 89 Stat. 117, 118, 119, 135; 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 78l, 78m, 78n, 78o(d), 78w(a), unless otherwise noted.

2. By revising § 229.304(a)(3) to read as follows:

**§ 229.304 (Item 304) Changes in and disagreements with accountants on accounting and financial disclosure.**

(a) * * *

(3) The registrant shall provide the former accountant with a copy of the disclosures it is making in response to this Item 304(a) that the former accountant shall receive no later than the day that the disclosures are filed with the Commission. The registrant shall request the former accountant to furnish the registrant with a letter addressed to the Commission stating whether it agrees with the statements made by the registrant in response to this Item 304(a) and, if not, stating the respects in which it does not agree. The registrant shall file the former accountant's letter as an exhibit to the report on registration statement containing this disclosure. If the former accountant's letter is unavailable at the time of filing such report or registration statement, then the registrant shall request the former accountant to provide the letter as promptly as possible so that the registrant can file the letter with the Commission within ten business days after the filing of the report or registration statement. Notwithstanding the ten business day period, the registrant shall file the letter by amendment within two business days of receipt; if the letter is received on a Saturday, Sunday or holiday on which the Commission is not open for business, then the two business day period shall begin to run on and shall include the first business day thereafter. The former accountant may provide the registrant with an interim letter highlighting specific areas of concern and indicating that a more detailed letter will be forthcoming within the ten business day period noted above. If not filed with the report or registration statement containing the registrant's disclosure under this Item 304(a), then the interim letter, if any, shall be filed by the registrant by amendment within two business days of receipt.

* * * * *

## PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

3. The authority citation for Part 249 continues to read in part as follows:

**Authority:** The Securities Exchange Act of 1934, 15 U.S.C. 78a, *et seq.*, unless otherwise noted.

4. By amending General Instruction B1 to Form 8–K (§ 249.308 of this chapter) to read as follows:

**Note.**—Form 8–K does not appear in the Code of Federal Regulations.

**Form 8–K.**

General Instructions

* * * * *

B. Events to be Reported and Time for Filing of Reports.

1. A report on this form is required to be filed upon the occurrence of any one or more of the events specified in Items 1–4 and 6 of this form. A report of an event specified in Items 1–3 is to be filed within 15 calendar days after the occurrence of the event. A report of an event specified in Item 4 or 6 is to be filed within 5 business days after the occurrence of the event; if the event occurs on a Saturday, Sunday, or holiday on which the Commission is not open for business then the 5 business day period shall begin to run on and include the first business day thereafter.

* * * * *

By the Commission.

**Jonathan G. Katz,**

*Secretary.*

March 2, 1989.

[FR Doc. 89–5293 Filed 3–7–89; 8:45 am]

BILLING CODE 8010-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 178

**[Docket No. 87F–0320]**

### Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the increased use of di-*tert*-butylphenyl phosphonite condensation product with biphenyl as an antioxidant for low density polyethylene and olefin copolymers intended to contact food. This action responds to a petition filed by Ciba-Geigy Corp.

**DATES:** Effective March 8, 1989; written objections and requests for a hearing by April 7, 1989.

**ADDRESS:** Written objections may be sent to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Marvin D. Mack, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

**SUPPLEMENTARY INFORMATION:** In a notice published in the **Federal Register** of October 29, 1987 (52 FR 41627), FDA announced that a petition (FAP 7B4018) had been filed by Ciba-Geigy Corp., Three Skyline Dr., Hawthorne, NY 10532, proposing that § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) be amended to provide for the increased use of di-*tert*-butylphenyl phosphonite condensation product with biphenyl as an antioxidant for low density polyethylene and olefin copolymers intended to contact food.

FDA has evaluated data in the petition and other relevant material in response to the petitioner's request. The agency concludes that these data and material establish the safety of increasing the level of use of the additive in certain copolymers, and that the regulations should be amended in § 178.2010(b) as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. Under FDA's regulations implementing the National Environmental Policy Act (21 CFR Part 25), an action of this type would require an abbreviated environmental assessment under 21 CFR 25.31a(b)(1).

Any person who will be adversely affected by this regulation may at any time on or before April 7, 1989, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

**List of Subjects in 21 CFR Part 178**

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, Part 178 is amended as follows:

## PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR Part 178 continues to read as follows:

**Authority:** Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 178.2010 is amended in the table in paragraph (b) by adding a new entry "4" under the heading "Limitations" for the entry "Di-*tert*-butylphenyl phosphonite condensation product with biphenyl" under the heading "Substances" to read as follows:

**§ 178.2010 Antioxidants and/or stabilizers for polymers.**

* * * * *

(b) * * *

| Substances | Limitations |
|---|---|
| * * * * * | |
| Di-*tert*-butylphenyl phosphonite condensation product with biphenyl (CAS Reg. No. 38613–77–3) produced by the condensation of 2,4-di-*tert*-butylphenol with the Friedel-Crafts addition product (phosphorus trichloride and biphenyl) so that the food additive has a minimum phosphorus content of 5.4 percent, an acid value not exceeding 10 milligrams potassium hydroxide per gram, and a melting range of 85 °C to 110 °C (185 °F to 230 °F). | For use only:<br>* * *<br>4. At levels not to exceed 0.15 percent by weight of olefin polymers complying with § 177.1520(c) of this chapter, item 2.1, 2.2, 3.1, or 3.2, where the polyethylene component has a density less than 0.94 gram per cubic centimeter. |
| * * * * * | |

Dated: February 28, 1989.

**Fred R. Shank,**

*Acting Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 89–5273 Filed 3–7–89; 8:45 am]

BILLING CODE 4160-01-M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 165

**[COTP Western Alaska Regulation 89–01]**

### Safety Zone Regulations: 54–12–30N, 165–37–39W, Lost Harbor, Akun Island, AK

**AGENCY:** Coast Guard, DOT

**ACTION:** Emergency rule.

**SUMMARY:** The Coast Guard is establishing a safety zone for the M/V AOYAGI MARU currently grounded at position latitude 54–12–30N, longitude 165–37–39W, Lost Harbor, Akun Island, for fifty (50) yards around the said vessel. The zone is needed to protect from a safety hazard associated with the pollution removal actions being conducted under section 311 of the Federal Water Pollution Control Act which includes use of explosives on the M/V AOYAGI MARU. Entry into this zone is prohibited unless authorized by the Captain of the Port.

**EFFECTIVE DATE:** This regulation becomes effective on February 24, 1989. It terminates on June 20, 1989 unless sooner terminated by the Captain of the Port.

**FOR FURTHER INFORMATION CONTACT:** LCDR W.J. Hutmacher, 907–271–5137.

**SUPPLEMENTARY INFORMATION:** In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent death or injury to unauthorized personnel and further damage to the vessel.

**Drafting Information**

The drafters of this regulation are LCDR W.J. Hutmacher, project officer for the Captain of the Port, and LCDR R. Nelson, project attorney, Seventeenth Coast Guard District Legal Office.

**Discussion of Regulation**

The circumstances requiring this regulation resulted from the grounding of the M/V AOYAGI MARU on December 10, 1988. It has approximately 52,598 gallons of diesel, bunker C and lube oil in breached tanks and approximately 47,632 gallons of diesel, bunker C, and lube oil remaining in the vessel's unruptured tanks. This poses a major pollution threat. The Federal government has taken over the removal action under the Federal Water Pollution Control Act which includes using explosives to ignite the remaining oil aboard. All personnel or vessels not directly involved with the Federal removal action may not approach within fifty (50) yards of the M/V AOYAGI MARU nor within fifty yards of the M/V KRYSTAL SEA and M/V BETTYE K when working alongside M/V AOYAGI MARU.

This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of Part 165.

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

**Regulation**

In consideration of the foregoing, Subpart C of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

## PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. A § 165.T1701 is added to read as follows:

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§ 165.T1701 Safety zone: Lost Harbor, Akun Isl, Alaska.

(a) *Location.* The following area is a safety zone:

54-12-30N, 165-36-30W, Lost Harbor, Akun Island, Alaska, fifty yards (50) radius around M/V AOYAGI MARU and M/V KRYSTAL SEA and M/V BETTYE K when working alongside M/V AOYAGI MARU.

(b) *Effective Date.* This regulation becomes effective on 24 February 1989. It terminates on June 20, 1989 unless sooner authorized by the Captain of the Port.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port.

(2) Personnel or vessels not involved with the Federal removal actions may not approach the area within fifty (50) yards.

Dated: February 24, 1989.

R.N. Rousseal,

*Captain, U.S. Coast Guard, Captain of the Port, Western Alaska.*

[FR Doc. 89-5409 Filed 3-7-89; 8:45 am]

BILLING CODE 4910-14-M

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**33 CFR Part 165**

**[COTP Cleveland REG 88-01]**

## Safety Zone; Old River and Cuyahoga River, Cleveland, OH

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** This rule makes permanent the ten temporary safety zones most recently re-established on the Old and Cuyahoga Rivers on December 5, 1988 (53 FR 48907). Those temporary rules expired on January 31, 1989.

A pattern of collisions between large, underway vessels and small vessels located on bends in the river was identified. On August 31, 1987 one such collision resulted in severe damage to three recreational boats, one of which had persons aboard. Ten areas are considered to present the greatest danger to life and property based on collisions that have occurred or are likely to occur. Those areas are in the vicinity of river bends adjacent to the properties of Ontario Stone, Nicky's, Shooters, Nautica Stage, Columbus Road bridge, Upriver Marina, Alpha Precast Products (United Ready Mix), and Shippers C & D. Preventing mooring, standing, or anchoring of vessels in the ten areas will decrease danger to persons, property, and the environment by reducing the risk of collision at these river bends. This has been borne out by the positive results of the temporary safety zones first established on September 3, 1987.

**EFFECTIVE DATE:** This regulation becomes effective on April 7, 1989.

**FOR FURTHER INFORMATION CONTACT:** CDR Patrick A. Turlo, Captain of the Port, Cleveland (216) 522-4406.

**SUPPLEMENTARY INFORMATION:** On December 3, 1987, the Coast Guard published a notice of proposed rulemaking in the **Federal Register** for these regulations (52 FR 45973). Interested persons were requested to submit comments by January 22, 1988 and 25 written comments were received. The comments came from the following groups: commercial operators/industrial interests, riparian landowners, private citizens, recreational boating organizations, small business organizations, and officials from the City of Cleveland.

As a result of some of these comments, notice of a public hearing was published in the **Federal Register** on February 8, 1988, and the comment period was extended to March 7, 1988 (53 FR 3609). A public hearing was held on March 7, 1988. At the hearing, there were 19 respondents, representing the City of Cleveland, private citizens, commercial shipping/local industry, landowners, and private businesses.

As a result of the public hearing, the Captain of the Port agreed to extend the comment period for an additional 90 days until June 8, 1988 to allow a working group of interested parties to further study the situation and submit any new proposals at that time. See the **Federal Register** of March 31, 1988 (53 FR 10399). A second extension was requested by the working group, and was granted until December 1, 1988. See the **Federal Register** of July 22, 1988 (53 FR 27711). A letter from the working group supporting these regulations was received by the Captain of the Port on December 2, 1988.

### Drafting Information

The drafters of these regulations are CDR Patrick A. Turlo, the Captain of the Port, Cleveland, project officer, and LCDR Carl V. Mosebach, project attorney, Ninth Coast Guard District Legal Office.

### Discussion of Comments

The Coast Guard received a total of twenty-five letters in addition to nineteen statements made at the public hearing. These comments are discussed below and are arranged by topic.

*1. Formation of a Working Group to Study the River Problem*

Five commenters suggested that a working group comprised of interested parties be formed to study the river problem and develop its own suggestions to improve river safety without federal regulation. Such a working group was formed with the following members:

Shipping—Gordon Hall, Lake Carriers Association.
Recreational Boating—Norm Schultz, Lake Erie Marine Trades Association.
Small Commercial Boating—Wayne Bratton, Trident Marine.
River-related Industry—Carl Barricelli, Ontario Stone.
River-related Entertainment—Paul Ertel, JRM, Inc. (Nautica).
Ohio Department of Natural Resources Watercraft Division—Ken Alvey.
Property owner—Jack Stickney (Scranton Averell Trust).
Property owner/Flats Oxbow Association—Frank Samsel.
Flats Oxbow Association—Genevieve Ray (chair).
(Non-member observer) Ron Toth—City Division of Port Control.

The comment period was extended for an additional 90 days, until June 8, 1988, to allow the committee to meet. The working group requested and was granted a second extension until December 1, 1988. On December 1, 1988, the working group notified the Captain of the Port that they supported the proposed regulations. The group confirmed this with a letter on December 2, 1988.

*2. Public Hearing*

Five of the written comments called for a public hearing. On March 7, 1988, a public hearing was held in Cleveland.

*3. Additional Zones*

One commenter suggested that additional safety zones be included at International Salt and D'Poo's, and that the zone at Nautica Stage be enlarged. Another commenter recommended that rafting at the Commodores Club Marina be limited as part of these regulations. No problems requiring Coast Guard regulation have been identified at International Salt, D'Poo's, or Commodores Club Marina since they are not at bends in the river. The zone at Nautica Stage is deemed sufficient as is.

*4. Channel Obstructions and Adequacy of Existing Regulations*

One commenter felt that the real problem on the river is rafting of small craft, not mooring at dangerous bends. Another commenter felt that new



regulations were not necessary because existing "rules" adequately address the problem of small boats moored or standing within ten feet of certain river bends. 33 USC 409 already prohibits obstructing the river channel, so these regulations need not address the problem of rafting in general. However, no existing law, regulation, or Inland Navigation Rule specifically prohibits small vessels from mooring, standing, or anchoring at the ten areas covered by this regulation.

*5. River Traffic*

Two commenters voiced opposition to the proposal citing declining commercial use of the Cuyahoga River versus booming recreational use. The Coast Guard disagrees that commercial use of the river is declining. According to figures recently released by the Lake Carriers Association, an organization representing 14 U.S. flag fleets, the number of annual transits of the Cuyahoga River by commercial vessels has increased steadily from 770 transits in 1982 to 1,264 in 1987.

*6. Closing the River*

One commenter suggested that the Cuyahoga River be closed to commercial traffic from Friday evening until Monday morning during the peak boating season. The Coast Guard feels that closing the river to commercial traffic would place an undue burden on commercial vessel owners and on the industries which depend on these vessels for delivery of raw materials.

*7. Mandatory Use of Tugs*

Two commenters recommended that vessels greater than 1600 gross tons be required to use tugs for assistance when transiting the river. The Coast Guard feels that the mandatory use of tugs could be counter-productive. When the vessel and the attending tugs are considered as a unit, the tugs only add to the size of the unit, potentially making a transit in confined waters even more difficult. The danger to vessels moored at river bends would still exist. Therefore, this recommendation was not adopted. It will continue to be the vessel master's responsibility to request tugs as needed.

*8. Mandatory "Call Ahead" to the Coast Guard for Vessels of More Than 1600 Gross Tons*

Three commenters suggested that all vessels greater than 1600 gross tons be required to notify the Coast Guard of their intent to transit the river and their estimated time of arrival (ETA). Notice of vessel arrivals is information not needed by the Coast Guard, but only by dock owners who have, or apply for, a partial waiver under these regulations. Paragraph (b)(3) of these regulations requires approval of a plan, including notice of vessel arrivals, to obtain a partial waiver, so this comment was not incorporated into the final rule.

*9. Use of Bumpers*

One commenter proposed that "bumpers" or pilings could be placed at river bends where lakers could "pivot" around dangerous areas. The Coast Guard does not have the authority to require the construction of "bumpers" or pilings on the river.

*10. Signs*

Two commenters recommended the use of signs warning of the inherent dangers on the Cuyahoga River. One went on to suggest that the signs declare that a boat owner's insurance is null and void should he moor in any one of the ten areas, thus precluding the need for regulations. River property owners were provided and posted signs warning of the dangers on the river while the temporary regulations were effective. Similar signs will again be provided now that these regulations have been issued. However, such warning signs do not preclude the need for regulations. The Coast Guard does not have the authority to declare insurance null and void.

*11. Coast Guard Authority*

One commenter felt that the proposed regulations set a dangerous precedent, and could serve to give the Coast Guard more authority than a federal government agency should have. Another commenter stated that the Coast Guard does not have the authority to create the ten safety zones. The Coast Guard has the authority and the obligation under the Ports and Waterways Safety Act to ensure the safety of life, property, and the environment. This rulemaking addresses only the specific hazards of mooring, standing, or anchoring at certain bends in the Cuyahoga and Old Rivers.

*12. Revocation of Partial Waivers*

One commenter suggested that a provision for revoking the partial waiver to the safety zones be included in the final rules. This provision is not necessary since it is covered in the waiver letter itself.

*13. Economic Effect*

Two commenters suggested that implementation of the zones would constitute a "taking without compensation," would diminish land values and tax revenues, and would halt or severely restrict further development on the river. The regulations establish what are akin to "no parking" zones in a *federal* waterway, so no property is being "taken". Of the ten zones considered, only four have established facilities for mooring vessels. Two are not currently in operation, and one readily agreed that the zone in his area was acceptable. The fourth found it acceptable, and applied for and received a waiver. The Coast Guard has received no information concerning adverse economic impact during the year that the temporary safety zones have been in effect. In promulgating these zones, the Captain of the Port held discussions with the Flats Oxbow Association, a non-profit development corporation for the Cuyahoga River Flats, and with Tower City Development Corporation regarding development in the zones being considered. There are no plans for any development, such as a marina, which would be negatively impacted by these regulations.

*14. Enforcement*

One commenter suggested that the regulations shift the burden of enforcement from the Coast Guard to the property owner, and that the regulations are not enforceable. The Coast Guard disagrees. These regulations do not require or prohibit any conduct by property owners unless they have or apply for a partial waiver under paragraph (b)(3). Property/dock owners who obtain a waiver and boaters must comply with these regulations. The Coast Guard will enforce these regulations in the same manner we enforce any other Coast Guard regulation which has the force and effect of law.

*15. Technical Changes*

During the extended comment period, it was brought to the Coast Guard's attention that cargo vessels, by nature of their size, could intrude into several of the zones while moored for cargo operations. These regulations were not intended to restrict cargo operations. Therefore, the temporary regulations which became effective on August 1, 1988 included a provision which allowed cargo vessels to temporarily moor in the zones while conducting loading/unloading operations. This provision has been included in the final rule. Additionally, the zone described in paragraph 2(a)(10) was reduced to thirty feet from fifty feet.

*Economic Assessment and Certification*

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and

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nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. Of the ten affected areas, only five have existing dock space which would be capable of providing the owner with income from dock fees. The other five have no established mooring facilities for small boats, although small boats have moored there in the past. The dock space at one entity, formerly used for fueling boats, is not presently being used. Conversations with that property manager addressed the waiver which may be granted under these regulations, and a satisfactory agreement was reached whereby the fueling facility may qualify for a waiver should the property manager request one. Of the five affected entities with existing dock space, only one currently charges a fee for its use. This entity applied for and received a waiver under the temporary regulations, and the same partial waiver procedures are included in this final rulemaking. Additionally, the Captain of the Port, Cleveland has researched the long range plans for riverfront development, both with individual companies and with the Flats Oxbow Association, and has found that the regulations do not adversely affect income-generating capabilities of any entities now planned.

Since the impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

**Federalism**

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The Coast Guard has met and held discussions with representatives of the City of Cleveland, and with the Ohio Department of Natural Resources concerning this action. Both sent representatives to the working group, and both have expressed their support for the proposed rules. Both have also stated that their law enforcement branches do not have the authority to enforce such zones, nor do they have rules which provide a similar degree of safety. Therefore, these regulations are consistent with the principles of Federalism.

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

**Final Regulations**

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations is amended as follows:

**PART 165—[AMENDED]**

1. The authority citation for Part 165 continues to read as follows:

**Authority:** U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. Section 165.903 is added to read as follows:

**§ 165.903 Safety zones: Cuyahoga River and Old River, Cleveland OH.**

(a) *Location*: The waters of the Cuyahoga River and Old River extending ten (10) feet into the river at the following ten (10) location, including the adjacent shorelines, are safety zones:

(1) One hundred (100) feet downriver to one hundred (100) feet upriver from 41 degrees 29'53.5"N, 81 degrees 42'33.5"W, which is the knuckle on the north side of the Old River entrance at Ontario Stone.

(2) Fifty (50) feet downriver to fifty (50) feet upriver from 41 degrees 29'48.4"N, 81 degrees 42'44"W, which is the knuckle adjacent to the Ontario Stone warehouse on the south side of the Old River.

(3) From 41 degrees 29'51.1"N, 81 degrees 42'32.0"W, which is the corner of Nicky's pier at Sycamore Slip on the Old River, to fifty (50) feet east of 41 degrees 29'55.1"N, 81 degrees 42'27.6"W, which is the north point of the pier at Shooter's Restaurant on the Cuyahoga River.

(4) Twenty-five (25) feet downriver to twenty-five (25) feet upriver of 41 degrees 29'48.9"N, 81 degrees 42'10.7"W, which is the knuckle toward the downriver corner of the Nautica Stage.

(5) Ten (10) feet downriver to ten (10) feet upriver of 41 degrees 29'45.5"N, 81 degrees 42'9.7"W, which is the knuckle toward the upriver corner of the Nautica Stage.

(6) The fender on the west bank of the river at 41 degrees 29'45.2"N, 81 degrees 42.10"W, which is the knuckle at Bascule Bridge (railroad).

(7) The two hundred seventy (270) foot section on the east bank of the river between the Columbus Road bridge (41 degrees 29'18.8"N, 81 degrees 42'02.3W) downriver to the chain link fence at the upriver end of the Commodores Club Marina.

(8) Fifty (50) feet downriver of twenty-five (25) feet upriver from 41 degrees 29'24.5"N, 81 degrees 41'57.2"W, which is the knuckle at the Upriver Marine fuel pump.

(9) Seventy-five (75) feet downriver to seventy-five (75) feet upriver from 41 degrees 29'33.7"N, 81 degrees 41'57.5"W, which is the knuckle adjacent to the warehouse at Alpha Precast Products (United Ready Mix).

(10) Fifteen (15) feet downriver to fifteen (15) feet upriver from 41 degrees 29'41"N, 81 degrees 41'38.6"W, which is the end of the chain link fence between Jim's Steak House and Shippers C & D.

(b) *Regulations*—(1) *General Rule.* Except as provided below, entry of any kind or for any purpose into the foregoing zones is strictly prohibited in accordance with the general regulations in § 165.23 of this part.

(2) *Exceptions.* Any vessel may transit, but not moor, stand or anchor in, the foregoing zones as necessary to comply with the Inland Navigation Rules or to otherwise facilitate safe navigation. Cargo vessels of 1600 gross tons (GT) or greater may moor in these zones when conducting cargo transfer operations.

(3) *Waivers.* Owners or operators of docks wishing a partial waiver of these regulations may apply to the Captain of the Port, Cleveland, Ohio. Partial waivers will only be considered to allow for the mooring of vessels in a safety zone when vessels of 1600 GT on greater are not navigating in the proximate area. Any requests for a waiver must include a plan to ensure immediate removal of any vessels moored in a safety zone upon the approach of a vessel(s) 1600 GTs or greater.

Dated: February 13, 1989.

**Patrick A. Turlo,**

*Commander, U.S. Coast Guard, Captain of the Port, Cleveland, OH.*

[FR Doc. 89–5410 Filed 3–7–89; 8:45 am]

BILLING CODE 4910-14-M

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**33 CFR Part 165**

**[COTP Philadelphia, Pa Reg. 89–03]**

**Safety Zone Regulations; Marcus Hook Range Ship Channel, Marcus Hook Anchorage (Anchorage 7), Mantua Creek Anchorage (Anchorage 9), and Deepwater Point Anchorage, (Anchorage 6)**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Emergency rule.

**SUMMARY:** The Coast Guard is establishing a safety zone on the Delaware River that includes the Marcus Hook Range ship channel, Marcus Hook Anchorage (Anchorage 7), Mantua Creek Anchorage (Anchorage 9), and Deepwater Point Anchorage (Anchorage 6). The safety zone is needed to protect vessels from safety hazards associated with dredging operations in Marcus Hook Range ship channel and to minimize temporary port congestion while the dredging operations are ongoing. The Marcus Hook Range ship channel in the vicinity of the dredging operation is closed to vessel traffic. Marcus Hook Anchorage (Anchorage 7) is closed to anchoring to permit vessel traffic to transit the anchorage in lieu of using the Marcus Hook Range ship channel. Vessels over 700 feet in length are subject to anchorage restrictions in Deepwater Point and Mantua Creek Anchorages (Anchorages 6 and 9). The safety zone is an amendment to the previous safety zone entitled 49 CFR § 165.T05076 that was in effect from November 24, 1988 to January 21, 1989. The amendment is necessary due to delays in completing the dredging., Additionally, vessels over 800 feet long will be required to have an additional tug alongside while bunkering.

**EFFECTIVE DATES:** This regulation is effective from 8:00 a.m., January 21, 1989 to 8:00 a.m., March 28, 1989, unless sooner terminated by the Captain of the Port, Philadelphia, Pennsylvania.

**FOR FURTHER INFORMATION CONTACT:** LTJG Gary T. Croot, at the Captain of the Port, Philadelphia, (215) 271–4894.

**SUPPLEMENTARY INFORMATION:** In accordance with 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. The Coast Guard was not officially informed that the dredging operations would extend past their anticipated completion date until February 2, 1989. Publishing an NPRM and delaying its effective date would be contrary to the public interest, since immediate action is needed to respond to potential hazards to vessel traffic caused by the presence of the dredge in the ship channel.

**Drafting Information**

The drafters of this regulation are LTJG Gary T. Croot, project officer for the Captain of the Port, Philadelphia, and LCDR Robin K. Kutz, project attorney, Fifth Coast Guard District Legal Staff.

**Discussion of the Regulation**

The hazards requiring this regulation result from maintenance dredging of the Marcus Hook Range ship channel. The dredging operation originally was to have been completed by January 21, 1989, but has been delayed. The Marcus Hook Range ship channel must be closed and traffic diverted through Marcus Hook Anchorage (Anchorage 7) to reduce the hazards associated with dredging of the channel. Anchorage restrictions in Mantua Creek Anchorage and Deepwater Point Anchorage are being imposed to accommodate those vessels that will be prevented from anchoring in Marcus Hook Anchorage. The Captain of the Port, Philadelphia has been requiring a third tug alongside vessels 800 feet or longer while bunkering since the inception of the original safety zone entitled 49 CFR 165.T05076. The purpose is to ensure that at least two tugs will be dedicated to vessels 800 feet or longer at all times, and a third tug will be on scene to tend the bunkering barge. This regulation is effective from 8:00 a.m., January 21, 1989 until 8:00 a.m., March 28, 1989 unless sooner terminated by the Captain of the Port, Philadelphia.

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

**Regulation**

In consideration of the foregoing, Subpart C of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

**PART 165—[AMENDED]**

1. The authority citation for Part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. Section 165.T05076 is revised to read as follows:

**§ 165.T05076 Safety Zone: Marcus Hook Range ship channel, Marcus Hook Anchorage (Anchorage 7), Mantua Creek Anchorage (Anchorage 9), Deepwater Point Anchorage (Anchorage 6), Delaware River.**

(a) *Location.* The following areas are a safety zone: The Marcus Hook Range ship channel, as delineated on National Ocean Survey Chart 12312, within 150 yards of dredging operations, Marcus Hook Anchorage (Anchorage 7), Mantua Creek Anchorage (Anchorage 9), and Deepwater Point Anchorage (Anchorage 6), located in the Delaware River, as described in § 110.157 of this title.

(b) *Regulations.* (1) No vessel may enter or remain in the Marcus Hook Range ship channel within 150 yards of dredging operations. Vessels transiting the area shall pass through the Marcus Hook Anchorage (Anchorage 7).

(2) A vessel may not anchor in Marcus Hook Anchorage (Anchorage 7).

(3) In addition to the general regulations contained in § 110.157(b) of this title, before anchoring in the Mantua Creek or Deepwater Point Anchorages (Anchorages 9 and 6):

(i) Vessels over 700 feet in length shall obtain permission from the Captain of the Port to anchor in Deepwater Point or Mantua Creek Anchorages (Anchorage 6 or 9).

(ii) Vessels between 700 and 750 feet long shall have one tug alongside while anchored in either Deepwater Point or Mantua Creek Anchorage (Anchorage 6 or 9).

(iii) Vessels greater than 750 feet long shall have two tugs alongside while anchored in either Deepwater Point or Mantua Creek Anchorage (Anchorage 6 or 9).

(iv) In addition to the requirements of paragraph (b)(3)(iii) of this section, vessels greater than 800 feet long shall have one additional tug alongside while bunkering.

(4) Each tug alongside a vessel meeting the restrictions in either paragraph (b)(3) (ii) or (iii) of this section must have a minimum rating of 1000 shaft horsepower.

(5) Any vessel operating within this zone shall comply with the directions of the Captain of the Port, Philadelphia, Pennsylvania, or his designated representative.

(c) *Effective Date.* This regulation is effective from 8:00 a.m., January 21, 1989 to 8:00 a.m. March 28, 1989, unless sooner terminated by the Captain of the Port, Philadelphia, Pennsylvania.

**E.K. Roe,**

*Captain, U.S. Coast Guard, Captain of the Port, Philodelphia.*

[FR Doc. 89–5406 Filed 3–7–89; 8:45 am]

BILLING CODE 4910-14-M

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3519-8]

**Approval and Promulgation of State Implementation Plans; Colorado; Revisions to Regulation No. 4; Regulation on the Sale of New Woodstoves**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rulemaking.

**SUMMARY:** In this action, EPA is approving a revision to Regulation No. 4 of the Colorado State Implementation Plan (SIP), "Regulation on the Sale of New Woodstoves," which was submitted to EPA by the Governor on September 10, 1988. The revision exempts certain woodburning devices from the certification requirements of Regulation No. 4 in order to maintain consistency with EPA's "Standards of Performance for New Residential Wood Heaters" (53 FR 5860, February 26, 1988).

**DATES:** This action will be effective on May 8, 1989 unless notice is received by April 7, 1989 that someone wishes to submit adverse or critical comments.

**ADDRESSES:** Copies of the State submittal are available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday, at the following locations:

Environmental Protection Agency, Region VIII, Air Programs Branch, 999 18th Street, Suite 500, Denver, Colorado 80202-2405.

Environmental Protection Agency, Public Information Reference Unit, Waterside Mall, 401 M Street SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Michael Silverstein, Air Programs Branch, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202-2405, (303) 293-1769, (FTS) 564-1769.

**SUPPLEMENTARY INFORMATION:** On July 18, 1985, the Governor of Colorado submitted to EPA new Regulation No. 4, "Regulation on the Sale of New Woodstoves," as a revision to the Colorado SIP. This new regulation requires all new woodstoves sold, offered for sale, or advertised for sale after January 1, 1987, to be certified to meet emission standards for particulates and carbon monoxide (CO), with more stringent emission standards taking effect on July 1, 1988. On April 10, 1986 (51 FR 12321), EPA approved Regulation No. 4 as part of the Colorado SIP.

On October 24, 1986, the Governor submitted to EPA a revision to Regulation No. 4 of the Colorado SIP. On June 22, 1987 (52 FR 23446), EPA approved this revision to Regulation No. 4, which established a new fee schedule for certification of new woodstoves sold after January 1, 1987. The original fee structure did not generate sufficient fees to pay for the projected costs of the certification program, including the costs associated with enforcement of Regulation No. 4.

On February 26, 1988 (53 FR 5860), EPA adopted a national woodstove certification program, "Standards of Performance for New Stationary Sources; New Residential Wood Heaters." In response, the State of Colorado revised Section I "Definitions" and Section II "Requirements for Sale of Wood Stoves" of Regulation No. 4 so as to exempt wood-fired appliances, boilers, furnaces, and cookstoves from the certification requirements of Regulation No. 4. Such revisions, which became effective on June 30, 1988, would provide for consistency between the State and Federal regulations. This revision to Regulation No. 4 was submitted by the Governor as a SIP revision on September 10, 1988.

The revisions made in Section I amend the definition for "Wood Stove" to be consistent with EPA's program, and add definitions for "Boiler," "Furnace," and "Cookstove." After review of these revisions, EPA finds that the revisions serve to maintain consistency between the State and Federal programs.

The revisions made in Section II add a subsection which lists wood burning devices exempted from the certification criteria of Regulation No. 4. This list includes "wood-fired appliances that are not suitable for heating equipment in or used in connection with residences," "boilers," "furnaces," and "cookstoves." Because boilers, furnaces, and cookstoves are now defined identically in the State and Federal regulations, and the Federal regulation also exempts these wood burning devices from the Federal certification program, EPA finds that these revisions to Regulation No. 4 serve to maintain consistency between the State and Federal programs.

Though the exemption of "wood-fired appliances that are not suitable for heating equipment in or used in connection with residences" is not an exemption listed in the Federal regulation, the revision mandates that "such appliances must be exempted by the Division (Colorado Air Pollution Control Division) on a case-by-case basis." Due to the State's federally consistent definition of "wood stove," and the case-by-case scrutiny allowed for in the revisions to section II, EPA finds this exemption of "wood-fired appliances that are not suitable for heating equipment in or used in connection with residences" to be reasonable and not inconsistent with the Federal regulations.

EPA also finds that because the subject exempted wood burning devices are few in number, the revision to Regulation No. 4 will not result in any appreciable increase in emissions and will not jeopardize attainment and maintenance of the ambient air quality standards in Colorado.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective 60 days from the date of the **Federal Register** notice unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective May 8, 1989.

**Final Action**

EPA hereby approves the revisions to Regulation No. 4, "Regulation on the Sale of New Woodstoves," of the Colorado SIP, which exempts certain woodburning devices from Regulation No. 4's certification requirements.

EPA finds good cause exists for making the action taken in this notice immediately effective because the implementation plan revisions are already in effect under State law or regulation, and EPA's approval poses no additional regulatory burden.

Under 5 U.S.C. section 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709)

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the U.S. Court of Appeals for the appropriate circuit by May 8, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.



**List of Subjects in 40 CFR Part 52**

Air pollution control, Particulate matter, Carbon monoxide, Incorporation by reference.

Note.—Incorporation by reference of the State Implementation Plan for the State of Colorado was approved by the Director of the Federal Register on July 1, 1982.

Date: February 8, 1989.

**Jack Moore,**

*Acting Administrator.*

**PART 52—[AMENDED]**

Part 52 Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

**Subpart G—Colorado**

1. The authority citation for Part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401-7642.

2. Section 52.320 is amended by adding paragraph (c)(44) to read as follows:

**§ 52.320 Identification of plan.**

* * * * *

(c) * * *

(44) A revision to Regulation No. 4 of the Colorado SIP which exempts certain woodburning devices from the certification requirements of Regulation No. 4 was submitted by the Governor of Colorado on September 10, 1988.

(i) *Incorporation by reference.* (A) In a letter dated September 10, 1988, Roy Romer, Governor of Colorado, submitted a revision to Regulation No. 4 of the Colorado SIP.

(B) Paragraph (I)(A)(10)–(13) and (II)(C), revisions to Regulation No. 4, "Regulation on the Sale of New Woodstoves," of the Colorado SIP became effective on June 30, 1988.

[FR Doc. 89-3529 Filed 3-7-89; 8:45 am]

BILLING CODE 6560-50-M

**40 CFR Part 52**

**[A-1-FRL-3530-6]**

**Approval and Promulgation of Air Quality Implementation Plans; Connecticut; Reasonably Available Control Technology for Dow Chemical, U.S.A.**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Connecticut. This revision establishes and required the use of reasonably available control technology (RACT) to control volatile organic compound (VOC) emissions from Dow Chemical, U.S.A. in Gales Ferry, Connecticut. The intended effect of this action is to approve of a source-specific RACT determination made by the State in accordance with commitments made in its Ozone Attainment Plan which was approved by EPA on March 21, 1984 (49 FR 10542). This action is being taken in accordance with section 110 of the Clean Air Act.

**EFFECTIVE DATE:** This rule will become effective on April 7, 1989.

**ADDRESSES:** Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Bldg., Room 2313, Boston, MA 02203; and the Air Compliance Unit, Department of Environmental Protection, State Office Building, 165 Capitol Avenue, Hartford, CT 06106.

**FOR FURTHER INFORMATION CONTACT:** David B. Conroy, (617) 565-3252; FTS 835-3252.

**SUPPLEMENTARY INFORMATION:** On October 25, 1988 (53 FR 42979), EPA published a Notice of Proposed Rulemaking (NPR) for the State of Connecticut. The NPR proposed approval of State Order No. 8011 as a revision to the Connecticut SIP. The final State order was submitted by Connecticut as a formal SIP revision on December 5, 1988. The provisions of the Connecticut Department of Environmental Protection's (DEP's) State Order define and impose RACT on Dow Chemical, U.S.A. as required by subsection 22a-174-20(ee), "Reasonably Available Control Technology for Large Source", of Connecticut's Regulations for the Abatement of Air Pollution.

Under subsection 22a-174-20(ee), the Connecticut DEP determines and imposes RACT on all stationary sources with the potential to emit one hundred tons per year or more of VOC that are not already subject to RACT under Connecticut's regulations developed pursuant to the control techniques guidelines (CTG) documents. EPA approved this regulation on March 21, 1984 (49 FR 10542) as part of Connecticut's 1982 Ozone Attainment Plan. That approval was granted with the agreement that all source-specific RACT determinations made by the DEP would be submitted to EPA as source-specific SIP revisions.

EPA has reviewed State Order No. 8011 and has determined that the level of control required by this Order represents RACT for Dow. Dow manufactures a variety of polymers and a polymer-based expanded foam at its Gales Ferry facility. Dow's operation consists of four separate manufacturing processes that all have emissions of VOC. The four manufacturing processes are the Polystyrene Manufacturing Process, the Acrylonitrile-Butadiene-Styrene (ABS) Resin Manufacturing Process, the Styrene/Butadiene (SB) Latex Manufacturing Process, and the Styrofoam® Manufacturing Process. The State Order imposes various control requirements on each of the processes.

**I. Polystyrene Manufacturing Process**

The Polystyrene manufacturing Process produces polystyrene resins from styrene monomer using a continuous, thermal polymerization process. This process is regulated under subsections 22a-174-20(x) and 22a-174-20(y) of Connecticut's regulations entitled "Control of Volatile Organic Compound Leaks from Synthetic Organic Chemical & Polymer Manufacturing Equipment" and "Manufacture of Polystyrene Resins," respectively. These RACT regulations were adopted pursuant to two of EPA's Group III CTG's entitled "Control of Volatile Organic Compound Emissions from Manufacture of High-Density Polyethylene, Polypropylene, and Polystyrene Resins" (EPA-450/3-83-008) and "Control of Volatile Organic Compound Leaks from Synthetic Organic Chemical and Polymer Manufacturing Equipment" (EPA-450/3-83-006).

The State Order requires Dow to demonstrate compliance with all of the provisions of subsections 22a-174-20(x) and 20(y) of Connecticut's regulations for this process. The State Order also imposes one additional requirement that is not contained in the two Connecticut regulations. It requires Dow to meet the CTG-recommended emission limit of 0.12 pounds of VOC per 1,000 pounds of product from all of the vents in the manufacturing process and not just the vents on the material recovery section as is required by Connecticut's polystyrene manufacturing regulation.

**II. ABS Resin Manufacturing Process**

The ABS Resin Manufacturing Process produces both polystyrene and ABS resins. The ABS resin is produced through the polymerization of acrylonitrile, polybutadiene rubber and styrene. The process is similar to the Polystyrene Manufacturing in that it also uses a continuous, thermal polymerization process. This process is also covered under the two Connecticut regulations adopted pursuant to EPA's Group III CTGs.

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The State Order requires Dow to demonstrate the compliance with all of the provisions of subsection 22a–174–20(x) and 22a–174–20(y) of Connecticut's regulations. Additionally, as with the polystyrene operation, Dow is required to meet the CTG recommended emission limit of 0.12 pounds of VOC per 1,000 pounds of product from all of the vents in the manufacturing process.

### III. SB Latex Manufacturing Process

The SB Latex Manufacturing Process uses an emulsion medium to copolymerize styrene and butadiene. For this process, the State Order restates the requirements of a federally-enforceable permit to construct/modify permit that was issued to Dow by the Connecticut DEP in 1984. Dow was required to obtain the permit when it undertook modifications to modernize and expand the capacity of the SB latex process. The permit requires the installation of Best Available Control Technology (BACT) on the SB latex process which has been defined as a refrigerated vapor recovery system on the butadiene storage sphere and a packed scrubber, with at least 91 percent efficiency, on the process equipment in the latex production facility. (The Connecticut SIP's new source review regulations require BACT for minor sources and minor modifications.)

### IV. Styrofoam® Manufacturing Process

The Styrofoam® Manufacturing Process produces polystyrene foam. The process consists of mixing melted polystyrene with an additive, injecting a blowing agent, and extruding the material through a die where it expands and forms a rigid board. Historically, the blowing agent has consisted of both dichlorodifluoromethane (Freon 12) and methyl chloride, of which only methyl chloride is considered a VOC. Total usage of methyl chloride averaged approximately 740 tons per year for 1983 and 1984.

Dow has investigated the feasibility of installing add-on pollution control equipment to control the emissions from this process. However, the majority of the VOC emissions are fugitives emitted during the curing of the styrofoam®. In its analysis of add-on control equipment, Dow found that add-on control equipment would be prohibitively expensive. Dow has submitted studies to the DEP which justify the infeasibility of add-on control equipment at its Gales Ferry plant. (Copies of those studies are included in the Technical Support Document prepared by EPA for this final action.)

Since add-on control equipment is believed to be infeasible at this point in time, the only remaining option for this process was the reduction and/or replacement of its present blowing agent in order to reduce VOC emissions. Although the use of most of the compounds investigated (including exempt VOCs, inert gases and chemical decomposing blowing agents) has been found to be unsatisfactory for foam production, Dow has found that the replacement of the methyl chloride blowing agent with a mixture of ethyl chloride and carbon dioxide results in an acceptable blowing agent with a corresponding reduction in VOC emissions. The substitution of the methyl chloride blowing agent has been found to be feasible for all but two of the products produced at the Gales Ferry plant. In recent years, these two products have counted for approximately 12 percent of the total styrofoam® production at the plant.

As RACT, the State Order requires Dow to maintain a continuous emission rate for each product in terms of pounds VOC per one hundred pounds of polymer extruded. The emission rate for each product represents the reduction from the historical emission rate that has been found to represent RACT for that product. The implementation of RACT on this process will result in approximately a twenty percent reduction in VOC usage.

The level of reduction which will be achieved at the proposed RACT level for this process is generally less than the level of reduction achieved by RACT for most VOC-emitting processes. The only additional control technology which would result in greater VOC reductions, however, is add-on control equipment, and it has been shown that the costs which would be incurred for this equipment are in excess of the costs which would typically represent RACT.

Dow is required to comply with all of the requirements of the State Order by December 31, 1987 which is the final compliance date of subsection 22a–174–290(ee) of Connecticut's Regulations. Further, the State Order requires Dow to conduct and complete emission testing on the Polystyrene Manufacturing Process and the ABS Resin Manufacturing Process within 150 days of the final date of the State Order. Other specific requirements of State Order and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

### Final Action

EPA is approving Connecticut State Order No. 8011 as a revision to the Connecticut SIP. The provisions of State Order No. 8011 define and impose RACT on Dow Chemical, U.S.A. to control VOC emissions as required by subsection 22a–174–20(ee) of Connecticut's regulations.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 8, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

### List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan for the State of Connecticut was approved by the Director of the Federal Register on July 1, 1982.

Date: February 13, 1989.

**Paul G. Keough,**

*Acting Regional Administrator, Region I.*

Subpart H, Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

## PART 52—[AMENDED]

## Subpart H—Connecticut

1. The authority citation for Part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401–7642.

2. Section 52.370 is amended by adding paragraph (c)(48) to read as follows:

**§ 52.370 Identification of plan.**

* * * * *

(c) * * *

(48) Revisions to the State Implementation Plan submitted by the Connecticut Department of Environmental Protection on December 5, 1988.

(i) *Incorporation by reference.* (A) Letter from the Connecticut Department of Environmental Protection dated December 5, 1988 submitting a revision to the Connecticut State Implementation Plan.

(B) State Order No. 8011 and attached Compliance Timetable and Appendix A (allowable limits by product classification) for Dow Chemical, U.S.A. in Gales Ferry, Connecticut. State Order No. 8011 was effective on October 27, 1988.

(ii) *Additional materials.* (A) Technical Support Document prepared by the Connecticut Department of Environmental Protection providing a complete description of the reasonable available control technology determination imposed on the facility.

[FR Doc. 89–4850 Filed 3–7–89; 8:45 am]

BILLING CODE 6560–50–M



## 40 CFR Part 52

**[FRL–3525–5]**

## Approval and Promulgation of Air Quality Implementation Plans; Louisiana

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This notice conditionally approves the recodification of those federally-approved regulations that are a part of the Louisiana State Implementation Plan (SIP). This action is necessary because the Louisiana Legislature mandated in 1974 that the State's agencies adopt a uniform regulatory code. This action also approves the amendment of the SIP to include those regulations that contain minor textual changes, add test methods, or make administrative changes. EPA does not intend to approve any regulation that was disapproved in an earlier action.

**DATES:** This action will become effective on May 8, 1989, unless notice is received on or before April 7, 1989, that someone wishes to submit adverse comments. Such notice may be submitted to Mr. Thomas H. Diggs, Chief, SIP/New Source Section, at the address given below for EPA Region VI.

**ADDRESSES:** Copies of the State's submittal and other relevant documents are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region VI, 1445 Ross Avenue, Mail Code 6T–AN, Dallas, TX. 75202–2733,

Louisiana Department of Environmental Quality, Air Quality Division, 625 North 4th Street, 8th Floor, Baton Rouge, LA. 70804–4098, and

Public Information Reference Unit, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

If you plan to visit any of these offices, please contact the person named below to schedule an appointment.

**FOR FURTHER INFORMATION CONTACT:** Barbara Durso, (214) 655–7214 or FTS 255–7214.

**SUPPLEMENTARY INFORMATION:** In 1974, the Louisiana Legislature adopted a new administrative code and mandated that the State's agencies renumber their regulations to conform to the new code. On December 20, 1987, after public hearing, LDEQ adopted the recodified air quality regulations. In a letter dated January 6, 1988, the Governor of Louisiana requested that EPA approve the recodified air quality regulations as part of the SIP. After extensive review, the Region notified LDEQ in a letter dated April 11, 1988, that parts of the request could not be classified as recodification of existing regulations nor could all the regulations be properly included in the SIP. EPA identified those sections that the State should resubmit in a separate SIP revision request or that did not belong in the SIP (e.g., new source performance standards). On July 21, 1988, LDEQ and EPA discussed the April letter, and EPA agreed to expand the rulemaking to more than a strict recodification of the existing SIP. On July 22, 1988, EPA sent LDEQ a letter to clarify its position. EPA sent a final letter to LDEQ date September 26, 1988, asking the State to clarify its January request. In a letter dated October 4, 1988, the Governor revised his initial request to exclude these regulations: LAC:33:III:Chapters 21, 25, 29, and 31, and LAC:33:III:Section 6099 and 6100. He also noted that the original submittal erroneously deleted the bottom half of LAC:33:III:Table 4 and submitted a corrected copy of that table.

During the final review of the draft rulemaking notice, EPA identified three recodified regulations that contained unacceptable changes. These regulations, LAC:33:III:2305.C, 2307.C.1.a, and 2307.C.2.a, were reworded to refer to State regulations that are not, and will not, be a part of the SIP. When EPA approved these regulations originally, the State referenced the Code of Federal Regulations. EPA asked LDEQ to readopt these regulations with the original wording. LDEQ agreed to do so.

Except as noted above, the recodification makes only minor changes at most. For example, as part of the recodification, the names of State offices and agencies have been replaced throughout the regulations with the phrase "administrative authority." This phrase eliminates the need to amend regulations whenever the names of the positions or agencies are changed or eliminated. For example, the regulations no longer refer to the defunct Louisiana Environmental Control Commission (LECC). Therefore, the State eliminated the definitions of "Commission" and "Assistant Secretary" to add a new term: "administrative authority." Also, wherever the term "administrative authority" appears with an asterisk (*) in the regulations, the reader should note that the Administrator of EPA must also concur before "any alternative or equivalent test methods, waivers, monitoring methods, testing and monitoring procedures, customized or correction factors, and alternative to any design, equipment, work practices or operational standards * * * become effective."

Some other changes included revising all internal references to adhere to the new code, deleting obsolete terms, and consolidating repetitive regulations. In addition to the recodification, the State requested that EPA approve its Division Source Test Manual (LAC:33:III:Chapters 60, 61, and 63) as part of its SIP. Later, when the Governor modified his request to exclude LAC:33:III:Sections 6099 and 6100, he effectively withdrew Chapter 61, because this chapter only consisted of section 6100. EPA agreed to approve the remaining test methods, because they are identical to the test methods in 40 CFR Parts 60 and 61.

Rather than recount the many changes here, the Agency prepared Table A to compare the existing SIP regulations to the proposed regulations under the recodification. EPA also prepared Table B to show those regulations being deleted for obsolescence. Finally, Table C identifies the regulations that are new to the SIP. These regulations include definitions, test methods, and administrative procedures. Because these new rules are either identical to existing federal rules or are administrative, EPA is approving them without prior notice. These tables are printed below.

TABLE A.—RECODIFIED LOUISIANA AIR QUALITY REGULATIONS

| New Code | Title | Old Code | Comments |
|---|---|---|---|
| Title 33<br>Part III | Environmental Quality<br>Air | | |

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TABLE A.—RECODIFIED LOUISIANA AIR QUALITY REGULATIONS—Continued

| New Code | Title | Old Code | Comments |
|---|---|---|---|
| Chapter 1 | General Provisions | | |
| Section 101 | Authority | 1.0 | Updated to show the amendments to the La.R.S. 30:1061, et seq. Throughout the new code, the State has substituted the term "administrative authority" for the former titles of State and Federal offices. Also, the State has replaced "LEQC" and "Commission" with "Department." All references to the Commission and its meetings have been removed. |
| 101.A | | 1.1 | See above. |
| 101.B | | 3.0 | See above. |
| | | 3.1 | See above. |
| 103 | Scope and Severability | | |
| 103.A | Scope | 2.0 | Unchanged. |
| | | 2.1 | |
| 103.B | Severability | 30.0 | See section 101 comments. |
| 106 | | | (Reserved.) |
| 107 | Investigations—Authority | 7.0 | See section 101 comments. |
| 107.A | Private Conference Method | 7.1 | See section 101 comments. |
| 107.B | Complaints to be Sent by Registered Mail | 7.2 | Unchanged. |
| 107.C | Investigations to be Made Only for Written Complaints. | 7.3 | See section 101 comments. |
| 107.D | If Investigation Reveals No Violation | 7.4 | See section 101 comments. |
| 107.E | Confidentiality of Information | 7.5 | The word "secret" is replaced with "proprietary" in this section. |
| 109 | Compliance Schedules | | |
| 109.A | | 6.10 | See section 101 comments. |
| 109.B | Necessary Changes for Approval | 6.10.1 | See section 101 comments. |
| 109.C | Annual Report Requirement | 6.10.2 | See section 101 comments. |
| 111 | Definitions: | 4.0 | |
| | "Act" | 4.1 | Unchanged. |
| | "Aerosol" | 4.2 | Unchanged. |
| | "Afterburner" | 4.3 | Unchanged. |
| | "Air Contaminants" | 4.4 | Unchanged. |
| | "Air Pollution" | 4.5 | Unchanged. |
| | "Ambient Air" | 4.6 | Unchanged. |
| | "Application for Approval of Emissions" | 4.7 | Unchanged. |
| | "ASME" | 4.8 | Unchanged. |
| | "ASTM" | 4.9 | Unchanged. |
| | "Asphalt" | 4.91 | Unchanged. |
| | "Atmosphere" | 4.10 | Unchanged. |
| | "Automobile" | 4.85 | Unchanged. |
| | "Automobile and Light-Duty Assembly Plant" | 4.86 | Unchanged. |
| | "Bubble Concept" | 4.97 | Unchanged. |
| | "Bulk Plant" | 4.92 | Unchanged. |
| | "Bulk Terminal" | 4.93 | Unchanged. |
| | "Carbon Monoxide (CO)" | 4.11 | Unchanged. |
| | "Class II Finish" | 4.106 | Unchanged. |
| | "Combustion Unit" | 4.13 | Unchanged. |
| | "Component" | 4.140 | Unchanged. |
| | "Condensate" | 4.15 | Unchanged. |
| | "Control Equipment" | 4.16 | Unchanged. |
| | "Cross-recovery" | 4.96 | Unchanged. |
| | "Cutback Paving Asphalt" | 4.82 | Unchanged. |
| | "Department" | 4.17 | See section 101 comments. |
| | "Distance from Source to Property Line" | 4.18 | Unchanged. |
| | "Downwind Level" | 4.19 | Unchanged. |
| | "Dry Cleaning Facility" | 4.107 | Unchanged. |
| | "Dwelling" | 4.21 | Unchanged. |
| | "Effluent Water Separator" | 4.22 | Unchanged. |
| | "Emission" | 4.23 | Unchanged. |
| | "Emission Inventory" | 4.24 | Unchanged. |
| | "Emulsified Asphalt" | 4.83 | Unchanged. |
| | "Final Repair" | 4.87 | Unchanged. |
| | "Flexographic Printing" | 4.101 | Unchanged. |
| | "Flue" | 4.25 | Unchanged. |
| | "Fossil Fuel" | 4.26 | Unchanged. |
| | "Fossil Fuel-fired Steam Generating Unit" | 4.27 | Unchanged. |
| | "Fuel Burning Equipment" | 4.28 | Unchanged. |
| | "Fugitive Dust" | 4.29 | Unchanged. |
| | "New Design Furnace" | 4.95 | Unchanged. |
| | "Garbage" | 4.30 | Unchanged. |
| | "Gasoline" | 4.94 | Unchanged. |
| | "Gas/Vapor Service" | 4.139 | Unchanged. |
| | "Good Performance Level" | 4.126 | Unchanged. |
| | "Graphic Arts (Printing)" | 4.98 | Unchanged. |
| | "Hardboard" | 4.114 | Unchanged. |
| | "Hardwood Plywood" | 4.112 | Unchanged. |
| | "Heat Input" | 4.31 | Unchanged. |
| | "Heat Sensitive Material" | 4.109 | Unchanged. |



TABLE A.—RECODIFIED LOUISIANA AIR QUALITY REGULATIONS—Continued

| New Code | Title | Old Code | Comments |
|---|---|---|---|
| | "Hydrocarbon" | 4.32 | Unchanged. |
| | "Impairment of Visibility" | 4.34 | Unchanged. |
| | "Incinerator" | 4.35 | Unchanged. |
| | "Installation" | 4.36 | Unchanged. |
| | "Leak" | 4.141 | Unchanged. |
| | "Light-Duty Truck" | 4.88 | Unchanged. |
| | "Low Organic Solvent Coating (LOSC)" | 4.115 | Unchanged. |
| | "Micrograms per Cubic Meter (μg/m*3)" | 4.37 | Unchanged. |
| | "Modification" | 4.38 | Unchanged. |
| | "Multiple Chamber Incinerator" | 4.39 | Unchanged. |
| | "Natural Finish Hardwood Plywood Panels" | 4.113 | Unchanged. |
| | "New Source" | 4.40 | Unchanged. |
| | "Nitric Acid Production Unit" | 4.41 | Unchanged. |
| | "Nitrogen Oxides" | 4.42 | Unchanged. |
| | "Nuisance" | 4.43 | Unchanged. |
| | "Opacity" | 4.44 | Unchanged. |
| | "Organic Solvents" | 4.45 | Unchanged. |
| | "Outdoor Burning (Open Burning)" | 4.46 | Unchanged. |
| | "PPM by Volume" | 4.51 | Unchanged. |
| | "Packaging Rotogravure Printing" | 4.99 | Unchanged. |
| | "Particleboard" | 4.104 | Unchanged. |
| | "Particulate Matter" | 4.47 | Disapproved on 3/28/79 and not approved here. |
| | "Penetrating Prime Coat" | 4.84 | Unchanged. |
| | "Person" | 4.49 | Unchanged. |
| | "Petroleum Refinery" | 4.80 | Unchanged. |
| | "Pharmaceutical Manufacturing Facility" | 4.103 | Unchanged. |
| | "Photochemical Oxidant" | 4.50 | Unchanged. |
| | "Polymer Manufacturing Industry" | 4.138 | Unchanged. |
| | "Portland Cement Plant" | 4.48 | Unchanged. |
| | "Premises" | 4.52 | Unchanged. |
| | "Primer" | 4.89 | Unchanged. |
| | "Primer-Surfacer" | 4.90 | Unchanged. |
| | "Printed Panels" | 4.111 | Unchanged. |
| | "Process Height" | 4.53 | Unchanged. |
| | "Production Equipment Exhaust System" | 4.108 | Unchanged. |
| | "Property" | 4.54 | Unchanged. |
| | "Publication Rotogravure Printing" | 4.1000 | Unchanged. |
| | "Public Nuisance" | 4.55 | Unchanged. |
| | "Refuse" | 4.56 | Unchanged. |
| | "Ringlemann Smoke Chart" | 4.57 | Unchanged. |
| | "Rubbish" | 4.58 | Unchanged. |
| | "Smoke" | 4.59 | Unchanged. |
| | "Soiling Index" | 4.60 | Unchanged. |
| | "Source" | 4.61 | Unchanged. |
| | "Stack or Chimney" | 4.62 | Unchanged. |
| | "Standard Condition" | 4.63 | Unchanged. |
| | "State" | 4.64 | Unchanged. |
| | "Submerged Fill Pipe" | 4.65 | Unchanged. |
| | "Sulfation Rate" | 4.66 | Unchanged. |
| | "Sulphur Compounds" | 4.67 | Unchanged. |
| | "Sulphur Dioxide (SO2)" | 4.68 | Unchanged. |
| | "Sulphur Trioxide (SO3)" | 4.69 | Unchanged. |
| | "Sulfuric Acid (H2SO4)" | 4.70 | Unchanged. |
| | "Sulfuric Acid Production Unit" | 4.71 | Unchanged. |
| | "Suspended Particulate Matter" | 4.72 | Disapproved on 3/28/79 and not approved here. |
| | "Synthetic Organic Chemical Manufacturing Industry". | 4.137 | Unchanged. |
| | "Thin Particleboard" | 4.105 | Unchanged. |
| | "Topcoat" | 4.91 | Unchanged. |
| | "Transfer Efficiency" | 4.110 | Unchanged. |
| | "Undesirable Levels" | 4.74 | See section 101 comments. |
| | "Upwind Level" | 4.75 | Unchanged. |
| | "Variance" | 4.76 | Unchanged. |
| | "Volatile Organic Compounds" ! | 4.77 | Unchanged. |
| | "Waste Classification" | 4.78 | Unchanged. |
| | "Weak Nitric Acid (HNO3)" | 4.79 | Unchanged. |
| Chapter 3 | Notification and Procedures for Unauthorized Discharges. | (Reserved.) | |
| Chapter 5 | Permit Procedures | | |
| 501 | Authority | 6.0 | See section 101 comments. |
| 503 | Interstate Pollution | 6.11 | See section 101 comments. |
| 505 | For Emissions Below PSD de minimis Levels | | |
| 505.A.1 | Requirements for Preconstruction Permit | 6.1, ¶ 1 | See section 101 comments. |
| 505.A.2 | | 6.1, ¶ 2 | Unchanged. |
| 505.A.3 | | 6.1.5, ¶ 1 | Unchanged. |
| 505.A.4 | | 6.1.5, ¶ 2 | See section 101 comments. |
| 505.A.4.a | | 6.1.5, ¶ 2 part A. | See section 101 comments. |
| 505.A.4.b | | 6.1.5, ¶ 2 part B. | Unchanged. |
| 505.A.5 | | 6.1.5, ¶ 3 | See section 101 comments. |

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TABLE A.—RECODIFIED LOUISIANA AIR QUALITY REGULATIONS—Continued

| New Code | Title | Old Code | Comments |
|---|---|---|---|
| 505.B | Provisions for Exemptions and Certification of Approval. | | |
| 505.B.1 | | 6.1.1, ¶ 1 | See section 101 comments. |
| 505.B.2 | | 6.1.1, ¶ 2 | See section 101 comments. |
| 505.C | Permits for Storage Tanks May be Granted by the Administrative Authority. | | |
| 505.D | Department Has the Power to Prohibit Construction. | 6.1.3 | See section 101 comments. |
| 505.E | Notification of Change of Ownership Required | 6.1.4 | See section 101 comments. |
| 505.F | Multiple Process Permit | 6.1.6 | |
| 505.F.1 | | 6.1.6, ¶ 1 | Unchanged. |
| 505.F.2 | | 6.1.6, ¶ 2 | See section 101 comments. |
| 505.G | Professional Engineer Required | 6.2 | Unchanged. |
| 505.H | Permit Request (report) Contents | 6.3 | Unchanged. |
| 505.H.1 | Description of Proposed Action | 6.3.1 | Unchanged. |
| 505.H.2 | Location Map | 6.3.2 | Unchanged. |
| 505.H.3 | Data on Emission Sources Required | 6.3.3 | Unchanged. |
| 505.H.4 | Indicate Abatement | 6.3.4 | Unchanged. |
| 505.H.5 | State Effect on Air Quality | 6.3.5 | Unchanged. |
| 505.H.6 | Administrative Authority can Require Detailed Ambient Air Analysis. | | See section 101 comments. |
| 505.H.7 | Other Pertinent Data | 6.3.7 | Unchanged. |
| 505.H.8 | LAER Required in Nonattainment Areas, Certification of Other Major Source Compliance Required. | 6.3.8 | See section 1 comments. |
| 505.I | Public Comment Provisions | 6.6 | Unchanged. |
| 505.I.1 | | 6.6(1) | See section 101 comments. |
| 505.I.2 | | 6.6(2) | See section 101 comments. |
| 505.I.3 | | 6.6(3) | See section 101 comments. |
| 505.I.4 | | 6.6(4) | See section 101 comments. |
| 505.J | Variances for Site Preparation | 6.7 | Disapproved on 3/28/79 and not approved here. |
| 505.J.1 | | 6.7, ¶ 1 | See section 505.J comments. |
| 505.J.2 | | 6.7, ¶ 2 | See section 505.J comments. |
| 505.J.3 | | 6.7, ¶ 3 | See section 505.J comments. |
| 505.J.4 | | 6.7, ¶ 4 | See section 505.J comments. |
| 505.K | Relocation of Portable Facilities | 6.8 | |
| 505.K.1 | | 6.8, ¶ 1 | See section 101 |
| 505.K.1.a | | 6.8 (1) | Unchanged. |
| 505.K.1.b | | 6.8 (2) | Unchanged. |
| 505.K.1.c | | 6.8 (3) | Unchanged. |
| 505.K.1.d | | 6.8 (4) | Unchanged. |
| 505.K.2 | | 6.8, ¶ 2 | Unchanged. |
| 505.K.3 | | 6.8, ¶ 3 | Unchanged. |
| 505.L | Temporary Exemption for Testing | 6.9 | Disapproved on 3/28/79 and not approved here |
| 505.L.1 | | 6.9, ¶ 1 | See section 505.L comments. |
| 505.L.2 | | 6.9, ¶ 2 | See section 505.L comments. |
| 505.L.3 | | 6.9, ¶ 3 | See section 505.L comments. |
| 505.L.4 | | 6.9, ¶ 4 | See section 505.L comments. |
| 505.M | Confidential Information | | |
| 505.M.1 | Disclosure of Classified or Confidential Information Not Required. | 6.4 | The word "secret" is replaced with the word "proprietary." |
| 507 | Notification Required (for Emission Reduction) | 6.5 | See section 101 comments. |
| 509 | Prevention of Significant Deterioration | | |
| 509.A | Applicability | 90.1 | Unchanged. |
| 509.A.1 | | 90.1(1) | Unchanged. |
| 509.A.2 | | 90.1(2) | Unchanged. |
| 509.B | Definitions | 90.2 | Unchanged. |
| | "Actual Emissions" | 90.2(20) | Unchanged. |
| | Part 1 | 90.2(20)i | Unchanged. |
| | Part 2 | 90.2(20)ii | Unchanged. |
| | Part 3 | 90.2(20)iii | Unchanged. |
| | "Administrative Authority" | 90.2(27) | Unchanged. |
| | "Adverse Impact on Visibility" | 90.2(26) | Unchanged. |
| | Part 1 | 90.2(26)i | Unchanged. |
| | Part 2 | 90.2(26)ii | Unchanged. |
| | "Allowable Emissions" | 90.2(16) | Unchanged. |
| | Part 1 | 90.2(16)i | Unchanged. |
| | Part 2 | 90.2(16)ii | Unchanged. |
| | Part 3 | 90.2(16)iii | Unchanged. |
| | "Baseline Area" | 90.2(15) | Unchanged. |
| | Part 1 | 90.2(15)i | Unchanged. |
| | Part 2 | 90.2(15)ii | Unchanged. |
| | "Baseline Concentration" | 90.2(13) | Unchanged. |
| | Part 1 | 90.2(13)i | Unchanged. |
| | Subpart a | 90.2(13)i (a) | Unchanged. |
| | Subpart b | 90.2(13)i(b) | Unchanged. |
| | Part 2 | 90.2(13)ii | Unchanged. |
| | Subpart a | 90.2(13)ii(a) | Unchanged. |
| | Subpart b | 90.2(13)ii(b) | Unchanged. |
| | "Baseline Date" | 90.2(14) | Unchanged. |



TABLE A.—RECODIFIED LOUISIANA AIR QUALITY REGULATIONS—Continued

| New Code | Title | Old Code | Comments |
|---|---|---|---|
| | Part 1 | 90.2(14)i | Unchanged. |
| | Part 2 | 90.2(14)ii | Unchanged. |
| | Part 3 | 90.2(14)iii | Unchanged. |
| | Subpart a | 90.2(14)iii(a) | Unchanged. |
| | Subpart b | 90.2(14)iii(b) | Unchanged. |
| | "Begin Acutal Construction" | 90.2(11) | Unchanged. |
| | "Best Available Control Technology (BACT)" | 90.2(12) | Unchanged. |
| | Part 1 | 90.2(12) ¶ 1 | Unchanged. |
| | Part 2 | 90.2(12) ¶ 2 | Unchanged. |
| | "Best Available Retrofit Technology (BART)" | 90.2(28) | Unchanged. |
| | "Building, Structure, Facility, or Installation" | 90.2(6) | Unchanged. |
| | "Commence" | 90.2(9) | Unchanged. |
| | Part 1 | 90.2(9)i | Unchanged. |
| | Part 2 | 90.2(9)ii | Unchanged. |
| | "Complete" | 90.2(21) | Unchanged. |
| | "Construction" | 90.2(8) | Unchanged. |
| | "Emissions Unit" | 90.2(7) | Unchanged. |
| | "Existing Stationary Facility" | 90.2(29) | Unchanged. |
| | "Federal Class I Area" | 90.2(30) | Unchanged. |
| | "Federal Land Manager" | 90.2(23) | Unchanged. |
| | "Fixed Capitol Cost" | 90.2(31) | Unchanged. |
| | "Fugitive Emissions" | 90.2(19) | Unchanged. |
| | "In Existence" | 90.2(32) | Unchanged. |
| | "In Operation" | 90.2(34) | Unchanged. |
| | "Indian Governing Body" | 90.2(25) | Unchanged. |
| | "Indian Reservation" | 90.2(24) | Unchanged. |
| | "Innovative Control Technology" | 90.2(18) | Unchanged. |
| | "Installation" | 90.2(33) | Unchanged. |
| | "Integral Vista" | 90.2(35) | Unchanged. |
| | "Major Modification" | 90.2(2) | Unchanged. |
| | Part 1 | 90.2(2)i | Unchanged. |
| | Part 2 | 90.2(2)ii | Unchanged. |
| | Part 3 | 90.2(2)iii | Unchanged. |
| | Subpart a | 90.2(2)iii(a) | Unchanged. |
| | Subpart b | 90.2(2)iii(b) | Unchanged. |
| | Subpart c | 90.2(2)iii(c) | Unchanged. |
| | Subpart d | 90.2(2)iii(d) | Unchanged. |
| | Subpart e | 90.2(2)iii(e) | Unchanged. |
| | Condition 1 | 90.2(2)iii(e)1 | Unchanged. |
| | Condition 2 | 90.2(2)iii(e)2 | Unchanged. |
| | Subpart f | 90.2(2)iii(f) | Unchanged. |
| | Subpart g | 90.2(2)iii(g) | Unchanged. |
| | "Major Stationary Source" | 90.2(1) | Unchanged. |
| | Part 1 | 90.2(1)i | Unchanged. |
| | Part 2 | 90.2(1)ii | Unchanged. |
| | Part 3 | 90.2(1)iii | Unchanged. |
| | Part 4 | 90.2(1)iv | Unchanged. |
| | "Mandatory Class I Federal Area" | 90.2(36) | Unchanged. |
| | "Natural Conditions" | 90.2(37) | Unchanged. |
| | "Necessary Preconstruction Approvals or Permits". | 90.2(10) | Unchanged. |
| | "Net Emissions Increase" | 90.2(3) | Unchanged. |
| | Part 1 | | |
| | Subpart a | 90.2(3)i(a) | Unchanged. |
| | Subpart b | 90.2(3)i(b) | Unchanged. |
| | Part 2 | 90.2(3)ii | Unchanged. |
| | Subpart a | 90.2(3)ii(a) | Unchanged. |
| | Subpart b | 90.2(3)ii(b) | Unchanged. |
| | Part 3 | 90.2(3)iii | Unchanged. |
| | Part 4 | 90.2(3)iv | Unchanged. |
| | Part 5 | 90.2(3)v | Unchanged. |
| | Part 6 | 90.2(3)vi | Unchanged. |
| | Subpart a | 90.2(3)vi(a) | Unchanged. |
| | Subpart b | 90.2(3)vi(b) | Unchanged. |
| | Subpart c | 90.2(3)vi(c) | Unchanged. |
| | Part 7 | 90.2(3)vii | Unchanged. |
| | "Potential to Emit" | 90.2(4) | Unchanged. |
| | "Reasonably Attributable" | 90.2(38) | Unchanged. |
| | "Reconstruction" | 90.2(39) | Unchanged. |
| | Secondary Emissions" | 90.2(17) | Unchanged. |
| | Part 1 | 90.2(17)i | Unchanged. |
| | Part 2 | 90.2(17)ii | Unchanged. |
| | "Significant" | 90.2(22) | Unchanged. |
| | Part 1 | 90.2(22)i | Unchanged. |
| | Part 2 | 90.2(22)ii | Unchanged. |
| | Part 3 | 90.2(22)iii | Unchanged. |
| | "Signifcant Impairment" | 90.2(40) | Unchanged. |
| | "Stationary Source" | 90.2(5) | Unchanged. |
| | "Visibility Impairment" | 90.2(41) | Unchanged. |

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| New Code | Title | Old Code | Comments |
|---|---|---|---|
| | "Visibility in Any Mandatory Class I Federal Area" | 90.2(42) | Unchanged. |
| Table A | Table A | Table A | Unchanged. |
| 509.C | Area Classification | 90.3 | Unchanged. |
| 509.C.1 | | 90.3(1) | Unchanged. |
| 509.C.2 | | 90.3(2) | Unchanged. |
| 509.C.3 | | 90.3(3) | Unchanged. |
| 509.C.3a | | 90.3(3)i | Unchanged. |
| 509.C.3.a.1 | | 90.3(3)i(a) | Unchanged. |
| 509.D | Ambient Air Increments | 90.4 | Unchanged. |
| 509.E | Ambient Air Ceilings | 90.5 | Unchanged. |
| 509.E.1 | | 90.5(1) | Unchanged. |
| 509.E.2 | | 90.5(2) | Unchanged. |
| 509.F | Exclusions from Increment Consumption | 90.6 | Unchanged. |
| 509.F.1 | | 90.6(1) | Unchanged. |
| 509.F.1.a | | 90.6(1)i | Unchanged. |
| 509.F.1.b | | 90.6(1)ii | Unchanged. |
| 509.F.1.c | | 90.90.6(1)iii | Unchanged. |
| 509.F.1.d | | 90.6(1)iv | Unchanged. |
| 509.G | Redesignation | 90.7 | Unchanged. |
| 509.H | Stack Heights | 90.8 | Unchanged. |
| 509.H.1 | | 90.8(1) | Unchanged. |
| 509.H.1.a | | 90.8(1)i | Unchanged. |
| 509.H.1.b | | 90.8(1)ii | Unchanged. |
| 509.H.2 | | 90.8(2) | Unchanged. |
| 509.I | Review of Major Stationary Sources and Major Modifications Applicability and Exemptions. | 90.9 | Unchanged. |
| 509.I.1 | | 90.9(1) | Unchanged. |
| 509.I.2 | | 90.9(2) | Unchanged. |
| 509.I.3 | | 90.9(3) | Unchanged. |
| 509.I.4 | | 90.9(4) | Unchanged. |
| 509.I.4.a | | 90.9(4)i | Unchanged. |
| 509.I.4.b | | 90.9(4)ii | Unchanged. |
| 509.I.4.b.i-xxvii | | 90.9(4)ii(a)-(zz), (aa) | Unchanged. |
| 509.I.4.c | | 90.9(4)iii | Unchanged. |
| 509.I.4.c.i-iv | | 90.9(4)iii (a)-(d) | Unchanged. |
| 509.I.5 | | 90.9(5) | Unchanged. |
| 509.I.6 | | 90.9(6) | Unchanged. |
| 509.I.7 | | 90.9(7) | Unchanged. |
| 509.I.8 | | 90.9(8) | Unchanged. |
| 509.I.8.a | | 90.9(8)i | Unchanged. |
| 509.I.8.b | | 90.9(8)ii | Unchanged. |
| 509.I.8.c | | 90.9(8)iii | Unchanged. |
| 509.J | Control Technology Evaluation | 90.10 | Unchanged. |
| 509.J.1 | | 90.10(10) | Unchanged. |
| 509.J.1 | | 90.10(1) | Unchanged. |
| 509.J.2 | | 90.10(2) | Unchanged. |
| 509.J.3 | | 90.10(3) | Unchanged. |
| 509.J.4 | | 90.10(4) | Unchanged. |
| 509.K | Source Impact Analysis | 90.11 | Unchanged. |
| 509.K.1 | | 90.11(1) | Unchanged. |
| 509.K.2 | | 90.11(2) | Unchanged. |
| 509.L | Air Quality Models | 90.12 | Unchanged. |
| 509.M | Air Quality Analysis | 90.13 | Unchanged. |
| 509.M.1 | Preapplication Analysis | 90.13(1) | Unchanged. |
| 509.M.1.a | | 90.13(1)i | Unchanged. |
| 509.M.1.a.i | | 90.13(1)i(a) | Unchanged. |
| 509.M.1.a.ii | | 90.13(1)i(b) | Unchanged. |
| 509.M.1.b | | 90.13(1)ii | Unchanged. |
| 509.M.1.c | | 90.13(1)iii | Unchanged. |
| 509.M.1.d | | 90.13(1)iv | Unchanged. |
| 509.M.2 | Post-Construction Monitoring | 90.13(2) | Unchanged. |
| 509.M.3 | Operation of Monitoring Station | 90.13(3) | Unchanged. |
| 509.N | Source Information | 90.14 | Unchanged. |
| 509.N.1 | | 90.14(1) | Unchanged. |
| 509.N.1.a | | 90.14(1)i | Unchanged. |
| 509.N.1.b | | 90.14(1)ii | Unchanged. |
| 509.N.1.c | | 90.14(1)iii | Unchanged. |
| 509.N.2 | | 90.14(2) | Unchanged. |
| 509.N.2.a | | 90.14(2)i | Unchanged. |
| 509.N.2.b | | 90.14(2)ii | Unchanged. |
| 509.O | Additional Impact Analyses | 90.15 | Unchanged. |
| 509.O.1 | | 90.15(1) | Unchanged. |
| 509.O.2 | | 90.15(2) | Unchanged. |
| 509.O.3 | | 90.15(3) | Unchanged. |
| 509.O.3.a | | 90.15(3)i | Unchanged. |
| 509.O.3.b | | 90.15(3)ii | Unchanged. |
| 509.O.4 | | 90.15(4) | Unchanged. |
| 509.O.5 | | 90.15(5) | Unchanged. |



TABLE A.—RECODIFIED LOUISIANA AIR QUALITY REGULATIONS—Continued

| New Code | Title | Old Code | Comments |
|---|---|---|---|
| 509.P | Source Impacting Federal Class I Areas-Additional Requirements. | 90.16 | Unchanged. |
| 509.P.1 | Notice to Federal Land Managers | 90.16(1) | Unchanged. |
| 509.P.2 | Denial-Impact on Air Quality Related Values | 90.16(2) | Unchanged. |
| 509.P.3 | Visibility Analysis | 90.16(3) | Unchanged. |
| 509.P.4 | Class I Variances | 90.16(4) | Unchanged. |
| 509.Q | Public Participation | 90.17 | Unchanged. |
| 509.Q.1 | | 90.17(1) | Unchanged. |
| 509.Q.2 | | 90.17(2) | Unchanged. |
| 509.Q.2.a | | 90.17(2)i | Unchanged. |
| 509.Q.2.b | | 90.17(2)ii | Unchanged. |
| 509.Q.3 | | 90.17(3) | Unchanged. |
| 509.Q.3.a | | 90.17(3)i | Unchanged. |
| 509.Q.3.a.i-vii | | 90.17(3)1 (a)-(g) | Unchanged. |
| 509.Q.4 | | 90.17(4) | Unchanged. |
| 509.Q.5 | | 90.17(5) | Unchanged. |
| 509.Q.6 | | 90.17(6) | Unchanged. |
| 509.Q.7 | | 90.17(7) | Unchanged. |
| 509.Q.8 | | 90.17(8) | Unchanged. |
| 509.Q.8.a | | 90.17(8) | Unchanged. |
| 509.Q.8.b | | 90.17(8)ii | Unchanged. |
| 509.R | Sourse Obligation | 90.18 | Unchanged. |
| 509.R.1 | | 90.18(1) | Unchanged. |
| 509.R.2 | | 90.18(2) | Unchanged. |
| 509.R.3 | | 90.18(3) | Unchanged. |
| 509.R.4 | | 90.18(4) | Unchanged. |
| 509.S | Innovative Control Technology | 90.19 | Unchanged. |
| 509.S.1 | | 90.19(1) | Unchanged. |
| 509.S.2 | | 90.19(2) | Unchanged. |
| 509.S.2.a | | 90.19(2)i | Unchanged. |
| 509.S.2.b | | 90.19(2)ii | Unchanged. |
| 509.S.2.c | | 90.19(2)iii | Unchanged. |
| 509.S.2.d | | 90.19(2)iv | Unchanged. |
| 509.S.2.d.i-iii | | 90.19(2)iv a-c | Unchanged. |
| 509.S.2.e | | 90.19(2)v | Unchanged. |
| 509.S.3 | | 90.19(3) | Unchanged. |
| 509.S.3.a | | 90.19(3)i | Unchanged. |
| 509.S.3.b | | 90.19(3)ii | Unchanged. |
| 509.S.3.c | | 90.19(3)iii | Unchanged. |
| 509.S.4 | | 90.19(4) | Unchanged. |
| Map | Untitled map of Louisiana air control regions | Map | Unchanged. |
| Chapter 7 | Ambient Air Quality | | This chapter consolidates the sections on National Ambient Air Quality Standards (NAAQS) in the old code. |
| 701 | Purpose | | Unchanged. |
| 701.A | General | 8.1 | Unchanged. |
| 701.B | Particulate Matter (Suspended Particulates) | 9.1.1 | Unchanged. |
| 701.C | Sulfur Dioxide | 12.1 | Unchanged. |
| 701.D | Carbon Monoxide | 13.1 | Unchanged. |
| 701.E | | | (Reserved.) |
| 701.F | Atmospheric Oxidants | 15.1 | Unchanged. |
| 701.G | Nitrogen Oxides | 16.1 | Unchanged. |
| 701.H | Lead | 10.1.1 | Unchanged. |
| 703 | Scope | 9.1.2, 13.2, 12.2, 16.2, 10.1.2, 15.2 | This section consolidates the statements of scope for each of the NAAQS. |
| 70 | Standards | 8.4 | Unchanged. |
| 707 | Degradation of Ambient Air Having Higher Quality than Set Forth in these Sections Restricted. | 9.15, 12.3, 10.1.5, 13.3, 15.3, 16.3 | This section consolidates sections in the old code that prohibit the degradation of air having a higher quality than set forth by the standards. |
| 709 | Measurement of Concentrations-Particulate Matter (Suspended Particulates), Sulfur Dioxide, Carbon Monoxide, Atmospheric Oxidants, Nitrogen Oxides, and Lead. | 15.5, 16.5, 10.3, 9.4, 13.5, 12.5 | This section consolidates the statements on measurement and methodology of air quality standards in the old code. |
| 709.A | | 15.5.1, 9.4.1, 13.5.1, 16.5.1, 12.5.1, 10.3.1. | See section 709 comments. |
| 709.B | | 15.5.2, 16.5.2, 13.5.2, 9.4.2, 12.5.2, 10.3.2. | See section 709 comments. |
| Table 1 | Primary Ambient Air Quality Standards | Table 1 | Unchanged. |
| Table 1a | Secondary Ambient Air Quality Standards | Table 1a | Unchanged. |
| Table 2 | Ambient Air—Methods of Contaminant Measurement. | Table 2 | Unchanged. |
| Chapter 9 | General Regulations on Control of Emissions and Emission Standards. | | |
| 901 | Purpose | 17.1 | Unchanged. |
| 903 | Scope | 17.2 | Unchanged. |
| 905 | Control Facilities to be Installed when Feasible | 17.9, 8.9 | Consolidates statements in old code. |
| 907 | Emission Resulting in Undesireable Levels Not Allowed. | 8.8 | Unchanged. |
| 907.A | | 8.2, 17.10 | Consolidates statements from old code. |
| 907.B | From Refuse Disposal | 8.3 | Unchanged. |

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TABLE A.—RECODIFIED LOUISIANA AIR QUALITY REGULATIONS—Continued

| New Code | Title | Old Code | Comments |
|---|---|---|---|
| 909 | Responsible Person to have Test Made | 8.5 | Unchanged. |
| 911 | Department May Make Tests | 8.6, 17.4 | Consolidates statements from old code |
| 913 | New Sources to Provide Sampling Ports | 17.5 | Unchanged |
| 915 | Emission Monitoring Requirements | 17.6 | Unchanged |
| 915.A | Applicability | 17.6.1 | Unchanged |
| 915.B | Minimum Monitoring System Capability, Specifications, Data Reporting, Data Reduction | 17.6.2 | Unchanged |
| 915.C | Special Consideration | 17.6.3 | See section 101 comments |
| 915.D | Exemptions | 17.6.1.1 | Unchanged |
| 915.E | Circumvention | 17.6 | Unchanged. |
| 917 | Variances | 17.7 | Unchanged. |
| 917.A | | 17.7.1 | See section 101 comments |
| 917.B | | 17.7.2 | Unchanged. |
| 918 | Recordkeeping and Annual Reporting | 8.5.1, 17.13 | Consolidates statements made in the old code |
| 923 | Maintenance of Pay | 17.15 | Unchanged |
| 925 | Mass Emission Rate Control Plan | | |
| 925.A | | 17.16, ¶1 | See section 101 comments. |
| 925.B | | 17.16, ¶2 | See section 101 comments |
| 927 | Notification Required (Emergency Occurrences) | 17.11 | Unchanged. |
| 929 | Violation of Emission Regulations Cannot be Authorized. | | |
| 929.A | | 8.4, 9.1.3, 10.1.3, 13.4.1, 16.4.1, 12.4.1, 15.4.1 | Drops phrase "above which limits the ambient air is hereby declared to be unacceptable and requires air pollution control measures" and the second sentence of Section 8.4 of the old code. Also consolidates the statements made in the other sections of the old code listed. |
| 929.B | | 9.1.4, 13.4.2, 10.1.4, 15.4.2, 16.4.2, 12.4.2 | Consolidates the statements made made in the old code on prohibited activities. |
| Chapter 11 | Control of Emissions of Smoke | | |
| 1101 | Control of Air Pollution from Smoke | 18.0 | Unchanged. |
| 1101.A | Purpose | 18.1 | Unchanged. |
| 1101.B | Control of Smoke | 18.2 | Unchanged. |
| 1103 | Impairment of Visibility on Public Roads Prohibited | 18.5 | Unchanged. |
| 1105 | Smoke from Flaring Shall be no Darker than No. 1 Ringelmann. | 18.3 | See section 101 comments. |
| 1107 | Exemptions | 18.4 | See section 101 comments. |
| 1109 | Control of Air Pollution from Outdoor Burning | 11.0 | Unchanged. |
| 1109.A | Purpose | 11.1 | Unchanged. |
| 1109.B | Outdoor Burning Prohibited | 11.2 | Unchanged. |
| 1109.C | Exceptions to Prohibition Against Outdoor Burning. | 11.3 | Unchanged. |
| 1109.C.1 | | 11.3.1 | Unchanged. |
| 1109.C.2 | | 11.3.2 | Unchanged. |
| 1109.C.3 | | 11.3.3 | Unchanged. |
| 1109.C.4 | | 11.3.4 | Unchanged. |
| 1109.C.5 | | 11.3.5 | Unchanged. |
| 1109.C.6 | | 11.3.6 | Unchanged. |
| 1109.C.7 | | 11.3.7 | Unchanged. |
| 1109.C.8 | | 11.3.8 | Unchanged. |
| 1109.C.8.a-f | | 11.3.8(a)-(f) | Unchanged. |
| 1109.C.9 | | 11.3.9 | Unchanged. |
| 1109.C.9.a-c | | 11.3.9(a)-(c) | Unchanged. |
| 1109.C.10 | | 11.3.10 | Unchanged. |
| 1109.C.10.a-c | | 11.3.10(a)-(c) | Unchanged. |
| 1109.C.11 | Special Situations Approvable for Exemption by the Administrative Authority Prior to Initation of Burning Operation. | 11.3.11 | See section 101 comments. |
| 1109.D | Traffic Hazards Prohibited | 11.4 | Unchanged. |
| 1109.E | Exclusion from Application of this Section | 11.5 | Unchanged. |
| 1111 | Exclusion | 18.7 | Unchanged. |
| 1111.A | Variance | 18.8.1 | Unchanged. |
| 1111.B | Unpopulated Areas | 18.8.2 | Unchanged. |
| 1111.B.1 | | 18.8.2(a) | Unchanged. |
| 1111.B.2 | | 18.8.2(b) | Unchanged. |
| 1111.C | Water Vapor | 18.8.3 | See section 101 comments |
| Chapter 13 | Emission Standards for Particulate Matter. | | |
| Subchapter A | General | | |
| 1301 | Emission Standards for Particulate Matter | 19.0 | Unchanged. |
| 1301.A | Purpose | 19.1 | Unchanged. |
| 1301.B | Scope | 19.2 | Unchanged. |
| 1303 | Provision Governing Specific Activities | 9.2 | Unchanged. |
| 1303.A | Toxic Substances | 9.2.1 | Unchanged. |
| 1303.B | Impairment of Visibility | 9.2.2 | Unchanged. |
| 1305 | Control of Fugitive Emissions | 19.3 | Unchanged. |
| 1305.A | | 19.3(a) | Unchanged. |
| 1305.A.1 | | 19.3(b) | Unchanged. |
| 1305.A.2 | | 19.3(c) | Unchanged. |
| 1305.A.3 | | | |



TABLE A.—RECODIFIED LOUISIANA AIR QUALITY REGULATIONS—Continued

| New Code | Title | Old Code | Comments |
|---|---|---|---|
| 1305.A.4 | | 19.3(d) | Unchanged |
| 1305.A.5 | | 19.3(e) | Unchanged |
| 1305.A.6 | | 19.3(f) | Unchanged |
| 1305.A.7 | | 19.3(g) | Unchanged |
| 1309 | Measurement of Concentration | 19.7 | Unchanged |
| 1309.A | Method | 19.7.1 | Unchanged |
| 1305.B | Calibration Required | 19.7.2 | Unchanged |
| Subchapter B | Fluid Catalytic Cracking Units | | |
| 1311 | Emission Limits-Including Fluid Catalytic Cracking Units. | | |
| 1311.A | | 19.4 | Unchanged |
| 1311.B | | 19.5 | Unchanged |
| 1311.C | | 19.5.1, ¶ 1 | Unchanged. |
| 1311.D | | 19.5.1, ¶ 2 | Unchanged |
| 1311.E | | 19.5.1, ¶ 3 | Unchanged. |
| 1311.F | | 19.5.1, ¶ 4 | Unchanged. |
| 1311.G | Variances | 19.5.2 | Unchanged. |
| Subchapter C | Fuel Burning Equipment | | |
| 1313 | Emission from Fuel Burning Equipment | 21.0 | Unchanged |
| 1313.A | Purpose | 21.1 | Unchanged. |
| 1313.B | Scope | 21.2 | Unchanged. |
| 1313.C | Limitations | 21.3 | Unchanged. |
| 1315 | More Stringent Regulations may be Prescribed if Particulates are Toxic. | 21.6, 21.6.1 | The new regulation combines these statements from the old code |
| 1317 | Exclusions | 9.3 | Unchanged. |
| 1317.A | When Variance is Granted | 9.3.1 | Unchanged. |
| 1317.B | Applicant Shall Furnish the Department of Environmental Quality. | 9.3.2 | Unchanged |
| Subchapter D | Refuse Incinerators | | |
| 1319 | Refuse Incinerators | 20.0 | Unchanged. |
| 1319.A | Purpose | 20.1 | Unchanged. |
| 1319.B | Scope | 20.2 | Unchanged. |
| 1319.C | Determination of Incinerator Maximum Burning Capacity. | 20.3 | Unchanged |
| 1319.D | All Incinerators Must be Approved Prior to Installation. | 20.4 | Unchanged |
| 1319.E | Allowable Emission from Incinerator | 20.5 | Unchanged. |
| 1319.F | Restriction on Emissions | 20.6 | Unchanged. |
| 1319.F.1 | | 20.6.1 | Unchanged. |
| 1319.F.2 | | 20.6.2 | Unchanged. |
| 1319.F.3 | | 20.6.3 | Unchanged. |
| 1319.G | Disposal of Particulate Matter and/or Suspended Particulate Matter. | 20.7 | Unchanged. |
| 1319.H | All Incinerator Equipment to be Kept in Good Working Condition. | 20.8 | Unchanged. |
| Subchapter E | Leadened Particulate Matter. | | |
| 1321 | Emission Standards for Leadened Particulate Matter. | 19.0A | Unchanged. |
| Chapter 15 | Emission Standards for Sulfur Dioxide | 24.0 | Unchanged. |
| 1501 | Degradation of Existing Emission Quality Restricted. | 24.5 | Unchanged. |
| 1503 | Emission Limitations | | |
| 1503.A | Sulfuric Acid Plants New and Existing | 24.7.2 | Unchanged |
| 1503.B | Sulfur Recovery Plants—New | 24.7.3 | Unchanged. |
| 1503.C | All Other Sources—New and Existing not Elsewhere Discussed. | 24.7.4 | Unchanged. |
| 1503.D | Measurement of Concentrations | 24.6 | Unchanged |
| 1503.D.1 | Analytical methods | 24.6.1 | Unchanged. |
| 1503.D.2 | Calibration of Equipment Required | 24.6.2 | Unchanged. |
| 1505 | Variances | 24.8 | Unchanged. |
| 1507 | Exceptions | 24.9 | Unchanged. |
| 1507.A | Start-Up provisions | 24.9.1 | Unchanged. |
| 1507.A.1 | | 24.9.1, ¶ 1 | Unchanged. |
| 1507.A.2 | | 24.9.1, ¶ 2 | Unchanged. |
| 1507.B | On-line Operating Adjustments | 24.9.2 | Unchanged. |
| 1507.B.1 | | 24.9.2, ¶ 1 | Unchanged. |
| 1507.B.2 | | 24.9.2, ¶ 2 | Unchanged. |
| 1509 | Reduced Sulfur Compounds (New Source) | 24.7.1 | Unchanged. |
| Chapter 17 | Control of Emissions of Carbon Monoxide (New Sources). | 25.0 | Unchanged. |
| Subchapter A | General | | |
| 1701 | Degradation of Existing Emission Quality Restricted. | 25.5 | Unchanged. |
| Subchapter B | Ferrous Metal Emissions | | |
| 1703 | Ferrous Metal Emissions | 25.6.1 | Unchanged. |
| Subchapter C | Petroleum Refinery Emissions | | |
| 1705 | Petroleum Refinery Emissions | 25.6.2 | Unchanged. |
| Chapter 19 | Control of Emission of Nitrogen Oxides | | (Reserved.) |
| Table 8 | Table 8 | Table 8 | Unchanged. |
| Chapter 23 | Control of Emissions for Specific Industries | | |

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TABLE A.—RECODIFIED LOUISIANA AIR QUALITY REGULATIONS—Continued

| New Code | Title | Old Code | Comments |
|---|---|---|---|
| Subchapter A | Chemical Woodpulping Industry | | |
| 2301 | Control of Emissions from the Chemical Woodpulping Industry. | 23.0 | Unchanged. |
| 2301.A | Purpose | 23.1 | Unchanged. |
| 2301.B | Scope | 23.2 | Unchanged. |
| 2301.C | General | 23.3 | Unchanged. |
| 2301.D | Emission Limitations | 23.4 | Unchanged. |
| 2301.D.1 | Particulate Emissions | 23.4.1 | Unchanged. |
| 2301.D.1.a–d | | 23.4.1(1)–(4) | Unchanged. |
| 2301.D.2 | Sulfur Oxides | 23.4.2 | Unchanged. |
| 2301.D.3 | Total Reduced Sulfur Oxides | 23.4.3 | Unchanged. |
| 2301.D.3.a | | 23.4.3(1) | Unchanged. |
| 2301.D.3.a.i–iv | | 23.4.3(1)a–d | Unchanged. |
| 2301.D.3.b | | 23.4.3.(2) | Unchanged. |
| 2301.D.3.c | | 23.4.3.(3) | Unchanged. |
| 2301.D.3.d | | 23.4.3.(4) | Unchanged. |
| 2301.D.3.e | | 23.4.3.(5) | Unchanged. |
| 2301.D.3.f | | 23.4.3.(6) | Changes applicability to smelt dissolving tanks with 0.0016 grs/lag black liquor fired. |
| 2301.D.3.g | | 23.4.3.1 | Unchanged. |
| 2301.D.3.h | | 23.4.3.2 | Unchanged. |
| 2301.D.3.i | Compliance | 23.4.3.3 | Unchanged. |
| 2301.D.4 | Opacity Limitation | 23.4.4 | Unchanged. |
| 2301.D.4.a | Compliance | 23.4.4.1 | Unchanged. |
| 2301.D.4.a.i–ii | | 23.4.4.1(1)–(2) | Unchanged. |
| Subchapter B | Aluminum Plants | | |
| 2303 | Standards for Horizontal Stud Soderberg Primary Aluminum Plants and Prebake Primary Aluminum Plants. | 26.0 | Unchanged. |
| 2303.A | Purpose | 26.1 | Unchanged. |
| 2303.B | Scope | 26.1 | Unchanged. |
| 2303.C | General Definitions | 26.2 | Unchanged. |
| 2303.C.1 | Pot Line Primary Emission Control Systems | 26.3 | Unchanged. |
| 2303.C.2 | Prebake Process Primary Aluminum Plants | 26.3.2 | Unchanged. |
| 2303.C.3 | Horizontal Stud Soderberg Process Primary Aluminum Plant. | 26.3.3 | Unchanged. |
| 2303.D | Emission Limitations | 26.4 | Unchanged. |
| 2303.D.1 | Particulate Emissions—Horizontal Stud Soderberg Process. | 26.4.1 | Unchanged. |
| 2303.D.1.a | | 26.4.1, ¶ 1 | Unchanged. |
| 2303.D.1.b | | 26.4.1, ¶ 2 | Unchanged. |
| 2303.D.1.b.i–ii | | 26.4.1(a)–(b) | Unchanged. |
| 2303.D.2 | Particulate Emissions—Prebake Process | 26.4.2 | Unchanged. |
| 2303.D.2.a | | 26.4.2, ¶ 1 | Unchanged. |
| 2303.D.2.b | | 26.4.2, ¶ 2 | Unchanged. |
| 2303.D.2.b.i–ii | | 26.4.2(a)–(b) | Unchanged. |
| 2303.D.3 | Fluoride Emissions—Horizontal Stud Soderberg Process. | 26.4.3 | Unchanged. |
| 2303.D.4 | Fluoride Emissions—Pre-Bake Process | 26.4.4 | Unchanged. |
| 2303.E | Monitoring | 26.5 | Unchanged. |
| 2303.E.1 | Measurement of Concentrations | 26.5.1 | Unchanged. |
| 2303.F | Reporting | 26.6 | Unchanged. |
| 2303.F.1 | | 26.6.1 | Unchanged. |
| 2303.F.1.a | Ambient Air | 26.6.1(a) | Unchanged. |
| 2303.F.1.b | Particulate Emissions | 26.6.1(b) | Unchanged. |
| 2303.F.1.c | | 26.6.1(c) | Unchanged. |
| 2303.F.1.d | | 26.6.1(d) | Unchanged. |
| 2303.F.2 | | 26.6.2 | Unchanged. |
| 2303.G | Operating Practices | 26.7 | Unchanged. |
| 2303.G.1 | | 26.7, ¶ 1 | Unchanged. |
| 2303.G.2 | | 26.7, ¶ 2 | Unchanged. |
| 2303.G.3 | | 26.7, ¶ 3 | Unchanged. |
| Subchapter C | Phosphate Fertilizer Plants | | |
| 2305 | Fluoride Emission Standards for Phosphate Fertilizer Plants. | 29.0 | Unchanged. |
| 2305.A | Purpose | 29.1 | Unchanged. |
| 2305.B | Scope | 29.2 | Unchanged. |
| 2305.C | Definitions | 29.3 | Changes reference from 40 CFR Part 60, Subparts A, T, U, and V to terms defined in Chapter 31. LDEQ has agreed to readopt the original language. |
| 2305.D | Emission Limitations | 29.4 | Unchanged. |
| 2305.D.1 | Wet-Process Phosphoric Acid Plants | 29.4.1 | Unchanged. |
| 2305.D.2 | Superphosphoric Acid Plants | 29.4.2 | Unchanged. |
| 2305.D.3 | Diammonium Phosphate Plants | 29.4.3 | Unchanged. |
| 2305.E | Test Methods and Procedures | 29.5 | Unchanged. |
| Subchapter D | Nitric Acid Industry | | |
| 2307 | Emission Standards for the Nitric Acid Industry | 28.0 | Unchanged. |
| 2307.A | Purpose | 28.1 | Unchanged. |



TABLE A.—RECODIFIED LOUISIANA AIR QUALITY REGULATIONS—Continued

| New Code | Title | Old Code | Comments |
|---|---|---|---|
| 2307.B | Scope | 26.2 | The scope is reworded to include "all nitric acid producers," not just those *not* covered by NSPS as previously approved. |
| 2307.C | Exceptions | 26.3 | Unchanged. |
| 2307.C.1 | Start Up Provision | 26.3.1 | Unchanged. |
| 2307.C.1.a | | | Changes reference to LAC:33:III: 3191–3199 from 40 CFR Part 60, Subpart G. LDEQ has agreed to readopt the original language. |
| 2307.C.1.b | | 26.3.1, ¶ 2 | Unchanged. |
| 2307.C.2 | On-Line Operating Adjustments | 26.3.2 | Unchanged. |
| 2307.C.2.a | | | See section 2307.C.1.a comments. |
| 2307.C.2.b | | 26.3.2, ¶ 2, lines 1–4 | Unchanged. |
| 2307.C.2.c | | 26.3.2, ¶ 2, lines 5–6 | Unchanged. |
| 2307.D | Emission | 26.4 | Unchanged. |
| 2307.E | Responsible Persons to Have Tests Made | 26.5 | Unchanged. |
| 2307.F | The Department May Make Tests | 26.6 | Unchanged. |
| 2307.G | Degradation of Existing Emission Quality Restricted. | 26.7 | Unchanged. |
| 2307.H | Measurement of Concentrations | 26.8 | Unchanged. |
| 2307.H.1 | | 26.8.1 | Unchanged. |
| 2307.H.2 | | 26.8.1 | Unchanged. |
| Chapter 56 | Prevention of Air Pollution Emergency Episodes | 27.0 | Unchanged. |
| 5601 | Purpose | 27.1 | Unchanged. |
| 5603 | Scope | 27.2 | Unchanged. |
| 5605 | Episode Criteria | | |
| 5605.A | | 27.3 | Unchanged. |
| 5605.A.1 | Air Pollution Forecast | 27.3.1 | Unchanged. |
| 5607 | Administrative Authority Will Determine When Criteria Level Has Been Reached. | 27.4.4 | Unchanged. |
| 5609 | Preplanning Strategies Required | 27.5 | Unchanged. |
| 5609.A | Alert Level | 27.5.1 | Unchanged. |
| 5609.A.1 | | | |
| 5609.A.1.a | | 27.3.2, lines 1–4 | Unchanged. |
| 5609.A.1.a.i–iv | | 27.3.2, lines 5–13 | Unchanged. |
| 5609.A.1.b | | 27.4.1 | Unchanged. |
| 5609.A.2.a | Warning Level | 27.3.3, lines 1–5 | Unchanged. |
| 5609.A.2.a. i–iv | | 27.3.3, lines 6–13 | Unchanged. |
| 5609.A.2.b | | 26.4.2 | Unchanged. |
| 5609.A.3. | Emergency Level | | |
| 5609.A.3.a | | 27.3.4, lines 1–13 | Unchanged. |
| 5609.A.3.a. i–iv | | 27.3.4, lines 14–19 | Unchanged. |
| 5609.A.3.b | | 27.4.3 | |
| 5611 | Standby Plans to be Submitted When Requested by Administrative Authority. | | |
| 5611.A | | 27.5.2 | Unchanged. |
| 5611.B | | 27.5.4 | Unchanged. |
| 5611.B.1 | To Be Available During Episode | 27.5.3 | Unchanged. |
| Table 5 | Table 5 | Table 5 | Unchanged. |
| Table 6 | Table 6 | Table 6 | Unchanged. |
| Table 7 | Table 7 | Table 7 | Unchanged. |
| Figure 1 | Figure 1 | Figure 1 | Unchanged. |
| Chapter 65 | Rules and Regulations for the Fee System of the Air Quality Control Programs. | | These regulations were not previously coded, but were identified in the narrative portion of the SIP. EPA approved the fee system as meeting the requirements of section 110(a)(2)(K). (See 47 FR 29535.) |
| 6501 | Scope and Purpose | | See above. |
| 6503 | Authority | | See above. |
| 6505 | Definitions | | See above. |
| 6507 | Application Fees | | See above. |
| 6509 | Annual Fees | | See above. |
| 6511 | Methodology | | See above. |
| 6513 | Determination of Fee | | See above. |
| 6515 | Method of Payment | | See above. |
| 6517 | Late Payment | | See above. |
| 6519 | Failure to Pay | | See above. |
| 6521 | Effective Date | | See above. |
| 6523 | Fee Schedule Listing | | See above. |

TABLE B. DELETIONS FROM THE LOUISIANA AIR QUALITY REGULATIONS

| Old code | Text | Comments |
|---|---|---|
| 5.0, 5.1 | "For details on meetings of the Commission, see booklet entitled 'Rules of Procedure LA. Environmental Control Commission.'" | This section was in the approved 1982 SIP but has been deleted because the Environmental Control Commission (LECC) is now defunct. |

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TABLE B. DELETIONS FROM THE LOUISIANA AIR QUALITY REGULATIONS—Continued

| Old code | Text | Comments |
|---|---|---|
| 4.73 | "Assistant Secretary. The Assistant Secretary of the [LECC] as specified in La. R.S. 30:1064." | The State has deleted this and adopted "administrative authority" instead, because the regulations will not have to be amended each time the title or office changes. |
| 4.14 | "Commission. The Environmental Control Commission of the State of Louisiana." | See comments for regulations 5.0 and 5.1. |
| 4.12 | "COH (Coefficient of Haze per 1000 linear feet). The measurement of the optical density of a filtered deposit of particulate matter as given in ASTM Standard D 1704–61." | LDEQ deleted this term, because it will no longer use this term in its emergency episode plan once the $PM_{10}$ SIP is approved. |
| 4.33 | "I.I.A. Incinerator Institute of America." | This term was accidently deleted during recodification. Since then, LDEQ has taken steps to correct this oversight by spelling out this term the definition of "waste classification" (section 111). |

TABLE C. ADDITIONS TO THE LOUISIANA SIP

| New code | Title | Comments |
|---|---|---|
| 101.C | Matter Incorporated by Reference | Administrative change that allows LDEQ to adopt a regulation by reference. The State can only enforce the regulation as it appeared on the date of incorporation. |
| 111 | Definitions<br>"Administrative Authority"<br>"Affected Facility"<br>"Alternate Method"<br>"Commenced"<br>"Construction"<br>"Continuous Monitoring System"<br>"Equivalent Method"<br>"Isokinetic Sampling"<br>"Malfunction"<br>"Monitoring Device"<br>"One-hour Period"<br>"Proportional Sampling"<br>"Reference Method"<br>"Run"<br>"Shutdown"<br>"Six-minute Period"<br>"Start-up"<br>"Volatile Organic Compound"[1] | These definitions are all taken from 40 CFR 60.2, with the exception of "administrative authority," which is used in place of the titles of State offices and agencies. |
| 505.M.2 | Non-disclosure Must be Requested | Declares that all information collected under the Louisiana Environmental Affairs Act (R.S. 30:1051 et seq.) or the regulations is subject to public disclosure unless non-disclosure is requested and granted under the terms of La. R.S. 30:1076. |
| 505.M.3 | Non-disclosure Shall Not Apply to Necessary Use by the Department. | Non-disclosure shall not apply to those duly authorized employees of State or Federal government who seek such information as a necessary part of their jobs. |
| 505.M.4 | Basis for non-disclosure must be specified | A facility must submit a written request for non-disclosure of information and specify the basis for seeking such treatment. |
| 505.M.5 | Provision for Denial | Requires that the administrative authority submit a written notice to the requestor in the event that non-disclosure is denied. |
| 505.M.6 | Non-confidential Material to be Segregated | Requires that the administrative authority segregate nonconfidential material from confidential material where feasible. When such information cannot be segregated, the administrative authority will treat the entire document as confidential. |
| 505.M.7 | Persons Who Must Sign Access Log | Whenever an authorized person seeks access to a confidential document, the person shall sign an access log to acknowledge his understanding of the confidentiality of the material and his responsibility to keep that information confidential. |
| 505.M.8 | Department representative must be present while confidential file is reviewed. | Requires that a staff member of the Air Quality Division must be present when a non-staff member is reviewing a confidential file. |
| 505.M.9 | Confidential Information to be Returned When No Longer Needed. | Once the confidential material is no longer needed for the purposes of the Louisiana Environmental Affairs Act, the regulations, any order, or under the terms or conditions of a permit, the administrative authority shall return the material to the provider. |



TABLE C. ADDITIONS TO THE LOUISIANA SIP—Continued

| New code | Title | Comments |
|---|---|---|
| 919 | Emission Inventory | LDEQ first adopted these regulations on May 20, 1985, but EPA has no record by which these regulations were incorporated into the SIP. The regulations were readopted as part of the December 1987 recodification and are being incorporated here into the SIP. This regulation requires that information for emissions inventories be submitted to LDEQ in a machine readable format. The regulation also describes emissions inventories for affected facilities and sources. |
| Chapter 60 | Test Methods-NSPS Division's Source Test Manual | This chapter describes test methods for sources affected by NSPS. LDEQ took these methods from 40 CFR Part 60, Appendix A. LDEQ Adopted Methods 1, 2, 2A, 2B, 3, 4, 5, 5A, 6, 6A, 6B, 6C, 7, 7a, 7B, 7C, 7D, 8, 9, 9—Alternative Methods 1, 11, 13A, 13B, 14, 15, 16, 16A, 17, 18, 19, 20, 21, 24, 25, and 27. |
| Chapter 63 | Test Methods—LESHAP Division's Source Test Manual | This chapter describes the test for complying with Louisiana's Emission Standards for Hazardous Air Pollutants (LESHAP). The State's methods are taken from 40 CFR 61, Appendix B. LDEQ adopted Methods 101, 101A, 102, 103, 104, 105, 106, 107, and 107A. Also this chapter includes quality assurance procedures, adopted from 40 CFR 61, Appendix C. |

EPA is approving these changes without prior public notice, because these changes are minor and noncontroversial. However, if anyone submits notice within 30 days from the date of this publication that he or she is sending adverse comments on this rulemaking, then the Agency will withdraw this notice of final rulemaking and publish a notice of proposed rulemaking instead. With that notice will come a thirty-day comment period. At the end of that time, the Agency will make its final decision and publish a new notice of final rulemaking.

### Final Action

EPA is approving the recodification of those regulations already approved as part of the Louisiana SIP on the condition that LDEQ readopt LAC:33:III:2305.C, 2307.C.1.a., and 2307.C.2.a. with the original wording. Also EPA is approving minor textual changes, new definitions and test methods taken from Federal regulations, and new regulations reflecting administrative changes. The Agency is also approving the deletion of certain obsolete sections from the old code.

EPA is not approving the text of section 111 "Particulate matter," "Suspended particulate matter," section 505.J., and section 505.L., because these regulations were previously disapproved at 44 FR 18490.

Under 5 U.S.C. section 605(b), I certified that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

Under Executive Order 12291, this action is not "Major." It has been submitted to the Office of Management and Budget (OMB) for review.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 8, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2).)

### List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Note: Incorporation by reference of the State Implementation Plan for the State of Louisiana was approved by the Director of the Federal Register on July 1, 1982.

Date: February 10, 1989.

**Jack Meore,**

*Acting Administrator.*

40 CFR Part 52 Subpart T is amended as follows:

## PART 52—[AMENDED]

### Subpart T—Louisiana

1. The authority citation for Part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401–7643.

2. Section 52.970 is amended by adding paragraph (c)(48) to read as follows:

**§ 52.970 Identification of plan.**

* * * * *

(c) * * *

(48) The recodified and revised regulations of the Louisiana Administrative Code, Title 33, Part 3 (LAC:33:III) that were adopted by the State effective December 20, 1987, and submitted by the Governor by letters dated January 6, 1988, and October 4, 1988, for inclusion in the SIP. These regulations include LAC:33:III: Chapters 1, 5, 7, 9, 11, 13, 15, 17, 23, 56, 60, 63, and 65, except LAC:33:III:111 "Particulate matter," and "Suspended particulate matter," LAC:33:III:505.J, and LAC:33:III:505.L, which were previously disapproved, and LAC:33:III:6099, which was withdrawn by the Governor.

(i) *Incorporation by Reference.* (A) Louisiana Administrative Code, Title 33, Part 3, Chapters 1, 5, 7, 9, 11, 13, 15, 17, 23, 56, 60, 63, and 65 as adopted by Louisiana Department of Environmental Quality on December 20, 1987, except LAC:33:III: section 111 "Particulate matter," "Suspended particulate matter," section 505.J, section 505.L, and section 6099.

(ii) *Additional Material.* (A) A letter dated December 16, 1987, from Martha Madden, Secretary of the Louisiana Department of Environmental Quality, to the Governor of Louisiana, approving the codified air quality regulations effective December 20, 1987.

3. Section 52.986 is revised to read as follows:

**§ 52.986 Significant deterioration of air quality.**

(a) The plan submitted by the Louisiana Department of Environmental Quality, specifically LAC:33:III:509 (formerly Louisiana Air Quality Regulation—Part V, § § 90.1 through 90.19) and supplemental documents as incorporated by reference, is approved as meeting the requirements of Part C, Clean Air Act for preventing significant deterioration of air quality.

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(b) The requirements of sections 160 through 165 of the Clean Air Act are not met for Indian lands since the plan, specifically LAC:33:III:509.A.1 (formerly known as Louisiana Air Quality Regulation § 90.1(1)), excludes all Federally recognized Indian lands from the provisions of this regulation. Therefore, the provisions of § 52.21 (b) through (w) are hereby incorporated by reference, made a part of the applicable implementation plan, and are applicable to sources located on land under the control of Indian governing bodies.

4. Section 52.988 is revised to read as follows:

**§ 52.988 Rules and regulations.**

(a) The requirements of § 51.281 of this chapter are not met since the definitions of "particulate matter" and "suspended particulate matter," as provided in LAC:33:III:111 (formerly §§ 4.47 and 4.72 respectively), could make applicable emission limitations of the Louisiana Department of Environmental Quality unenforceable in some circumstances. Therefore, LAC:33:III:111 "particulate matter" and "suspended particulate matter" are disapproved.

(b) The following definition of particulate matter applies to LAC:33:III: Chapters 13 and 56 (formerly regulations 9.0 and 27.0 respectively): "Particulate matter" means any finely divided solid or liquid material, other than uncombined water, as measured by the high volume method prescribed in 40 CFR 50, Appendix B.

(c) The following definition of particulate matter applies to LAC:33:III: Chapter 13 (formerly Regulations 19.0, 20.0, 21.0) and Chapter 23, Subchapters A and B (formerly Regulations 23.0 and 28.0 respectively): "Particulate matter" means any finely divided solid or liquid material, other than uncombined water, as measured by Method 5, or an equivalent or alternative method, in 40 CFR 60, Appendix A.

[FR Doc. 89-4023 Filed 3-7-89; 8:45 am]

BILLING CODE 6560-50-M

## 40 CFR Part 52

[FRL-3534-2]

## Approval and Promulgation of Air Quality Implementation Plans; Louisiana; Correction to Identification of Plan

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This rule corrects an error made previously in the identification of the Louisiana State Implementation Plan (SIP) at 40 CFR 52.970(c). The publication of a rule at 47 FR 6017 on February 10, 1982, introduced an error to the numbering of 40 CFR 52.970(c) that remained until today.

**DATE:** This action will become effective on March 8, 1989, unless someone wishes to submit adverse comments.

**ADDRESSES:** Written comments on this action should be addressed to Tom Diggs, Chief, SIP/New Source Section at the following address:

U.S. Environmental Protection Agency, Region 6, Mail Code 6T-AN, Dallas, Texas 75202-2733.

Copies of documents relevant to today's notice may be examined at the above location or at either of the following locations:

U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street SW., Washington, DC 20460.

Louisiana Department of Environmental Quality, 625 N. 4th Street, 8th Floor, Baton Rouge, Louisiana, 70804-4096.

If you wish to review these documents, please contact the person named below to schedule an appointment.

**FOR FURTHER INFORMATION CONTACT:** Barbara Durso, (214) 655-7214 or FTS 255-7214.

### Final Action

Today's rule will correct an error made on February 10, 1982, at 47 FR 6017, by redesignating the paragraphs at 40 CFR 52.970(c) (21) through (48) as 40 CFR 52.970(c) (22) through (49). Then, the second paragraph designated 40 CFR 52.970(c)(20) will be redesignated 40 CFR 52.970(c)(21).

This action is being taken without prior public notice, because the changes are noncontroversial and EPA does not anticipate receiving any adverse comments on them. The public should be advised that this action is effective on the date of publication of this **Federal Register** notice. However, if notice is received within 30 days of publication that someone wishes to submit adverse or critical comments, this action will be withdrawn and a subsequent notice will be published that begins a new rulemaking period by announcing a proposal of the action and establishing a comment period.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 8, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

### List of Subjects in 40 CFR Part 52

Air pollution control.

Date: February 27, 1989.

**Robert E. Layton Jr.,**

*Regional Administrator (6A).*

Note.—This document was received by the Office of the Federal Register March 3, 1989.

40 CFR Part 52, Subpart T, is amended as follows:

## PART 52—[AMENDED]

### Subpart T—Louisiana

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

**§ 52.970 [Corrected]**

2. Section 52.970 is amended by redesignating paragraphs (c)(21) through (c)(48) as (c)(22) through (c)(49), and the second paragraph designated (c)(20) is redesignated as (c)(21).

[FR Doc. 89-5333 Filed 3-7-89; 8:45 am]

BILLING CODE 6560-50-M

## 40 CFR Part 52

[FRL- 3497-9]

## Approval and Promulgation of State Implementation Plans; Utah; CO SIP Revision for Utah County

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA today is approving a revision to the Utah Carbon Monoxide (CO) State Implementation Plan (SIP). The revision affects the CO SIP for Utah County which was approved on December 21, 1983 (48 FR 56378), with a revision on the attainment date on July 11, 1984 (49 FR 28243). The SIP revision, regulations and technical support documents were submitted by the Governor of Utah on December 12, 1985. The submittal defines several control strategies for CO in Utah County. The strategies are Federal Motor Vehicle Emission Control Program (FMVECP), Inspection/Maintenance (I/M) with anti-tampering, and Transportation Control Measures (TCM). The submittal is in response to a SIP Call dated December 19, 1984. EPA proposed approval of this SIP revision on February 18, 1987 (52 FR 4921). No comments were received.



**DATES:** This action will be effective on April 7, 1989.

**ADDRESSES:** Copies of the revision are available for public inspection between 8:00 a.m. and 4:00 p.m. Monday through Friday at the following offices:

Environmental Protection Agency, Region VIII, Air Programs Branch, Denver Place, Suite 500, 999 18th Street, Denver, Colorado 80202-2405.

Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, DC 20460.

The Office of the Federal Register, 1100 L Street, NW., Room 8301, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Lee Hanley, Air Programs Branch, Environmental Protection Agency, Denver Place, Suite 500, 999 18th Street, Denver, Colorado 80202-2405, (303) 293-1762.

**SUPPLEMENTARY INFORMATION:**

### Background

The Utah CO SIP for Utah County (hereafter called the Provo CO SIP) was approved on December 21, 1983 (48 FR 56378), with a revision on the attainment date in the July 11, 1984 **Federal Register** (49 FR 28243). The approval was based on CO monitored levels for the base year 1980-1981 of a second high 8-hour average of 12.5 ppm (14.4 mg/m³). According to the SIP, a 25 percent reduction in CO emissions was required with an attainment date of February 1, 1986. The SIP further stated that based on Mobile 2 emission factors for typical winter conditions of 35°F and 25 mph for "all modes", a 40 percent reduction would be attained by 1987 under the FMVECP. Transportation controls were expected to result in an additional 1 percent reduction.

Since the approval of this SIP, CO in Provo has shown increased levels from the base year 1980-1981. Data indicate the following:

| Year | Date of 2nd highest day | 8-hr average |
|---|---|---|
| 1980 to 1981 | Base year | 14.4 mg/m³. |
| 1/82 to 12/82 | Jan. 25, 1982 | 19.0 mg/m³. |
| 1/83 to 12/83 | Nov. 15, 1983 | 16.4 mg/m³. |

Based on the 1982 second maximum, a reduction of 51 percent in CO emissions would be required to meet the air quality standards. Calculations using the latest mobile emission factors (Mobile 3) indicate that the FMVECP will only result in 37 percent CO reduction by the end of 1987. Even with the additional transportation measures, the Provo CO SIP would still not be capable of meeting the CO standard by 1987. (The primary difference between Mobile 2, as used in the Provo CO SIP approved in 1983, and Mobile 3, is that Mobile 3 has been adjusted for the level of tampering and fuel switching that EPA surveys have found is occurring nationwide.)

### SIP Call

In a letter dated December 19, 1984, EPA advised the Governor of Utah of the inadequacies of the Provo CO SIP. This finding of inadequacy required Utah, pursuant to the provisions of section 110(a)(2)(H) of the Clean Air Act (CAA), to carry out SIP obligations and to adopt and submit to EPA for approval whatever additional control measures are necessary to assure timely attainment and maintenance of the CO National Ambient Air Quality Standards (NAAQS). The Governor of Utah responded, in a letter dated February 11, 1985, with a schedule for revision to the SIP for CO in Utah County. The schedule committed to a December 19, 1985, deadline for submittal of the required SIP revision.

### SIP Revision

On December 12, 1985, the Governor of Utah submitted a revision to the Utah SIP stating the program strategies for CO attainment in Utah County.

The SIP revision contains a new section, Section 9.C.6, which describes the data history, emission inventory, control strategies, authority to implement an Inspection/Maintenance (I/M) program with anti-tampering and the Utah County Health Regulations. The SIP references the technical support document which contained the summarized analyses and conclusions behind the control strategies listed in the SIP.

The inventory lists highway vehicles, point sources and space heating as the major emission categories of CO in Utah County. The SIP Revision documents indicate that the winter weekdays are when high CO concentrations are typically observed. Monitoring data show these high concentrations to be in the urban areas, and modeling, using meteorological data from high CO concentration days, indicates vehicle emissions as the major contributor. Point sources, which account for 14 percent of the CO (and is the second highest category) in the overall county emission inventory, affect the high concentration areas by less than 1 percent. (The point sources are located in the outskirts of the city and the wind patterns from these point sources are away from the areas of high concentration.) Space heating emissions are potentially greater during winter days but would be infeasible to reduce. Therefore, it was determined that the reduction of CO emissions must come from vehicle emissions. The SIP Revision documents state that a 40 percent reduction in vehicle CO emissions is necessary for attainment of the standard.

To obtain this reduction, the control strategies are: (1) FMVECP, (2) automobile I/M with anti-tampering, and (3) various TCMs.

The FMVECP requires vehicle manufacturers to certify that new vehicles meet federal vehicle emission standards. The replacement of older vehicles in a fleet with newer models produces a reduction in CO emissions. This strategy is estimated to provide an 18 percent reduction in vehicle CO emissions.

The automobile I/M with anti-tampering program requires the inspection of vehicles, model years 1968 and newer, prior to vehicle registration with the Utah State Tax Commission. The I/M portion of the program will test vehicle emissions with respect to the Utah County emission standards (known as cutpoints). (The emissions standards (cutpoints) are the percent CO and parts/million hydrocarbon that a car or truck of a given model year must meet during the vehicle exhaust gas test.) The anti-tampering portion of the program requires inspection of the air pollution control devices and the lead Plumbtesmo test of vehicles for model years 1968 and newer. (The lead Plumbtesmo test uses lead sensitive paper to determine lead contamination in the exhaust system. Lead contamination indicates an inoperative catalytic converter which would be required to be replaced.)

The vehicle owner will receive a "Certificate of Compliance" upon successful completion of the I/M and anti-tampering inspection tests. The certificate is necessary for annual vehicle registration or annual renewable registration in Utah County.

Given qualifying conditions, a "Certificate of Waiver" can be issued when a vehicle fails to pass the I/M test. Failure to pass the anti-tampering test will void the certificate of waiver requirements. The County is allowing a one-year grace period, July 1, 1986 to June 30, 1987, for vehicles, model years 1968 to 1980, in which a "Certificate of Waiver" can be issued even if the vehicle fails the tampering inspection. After June 30, 1987, the vehicle owner must correct the tampering before

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another inspection is performed on that vehicle.

The SIP states that the I/M with anti-tampering program is expected to reduce CO emissions by 23 percent. It is designed to have a stringency factor of 30 percent; i.e., it is expected that 30 percent of the vehicles will fail the test, indicating such vehicles are not properly maintained.

The I/M program officially began on July 1, 1988. It will operate under the requirements stated in the City-County Health Department of Utah County Health Regulations, Vehicle Emission-Inspection Maintenance Program. The program requires station operators to be certified by the County, to operate these stations, the issue "Certificates of Compliance or Waiver" according to the County Rules and Regulations for I/M and anti-tampering program.

The TCMs are designed to reduce and improve traffic flow within Provo. The TCMs are: (1) Ridesharing, (2) traffic improvements, and (3) transit improvements. The ridesharing program is a transportation brokerage that will operate in Utah County to construct and operate park-and-ride lots, cars and van pooling programs, and to coordinate other transportation needs. The traffic improvement program would affect five major roads in Provo that would allow for better traffic flow through the area. These improvements were calculated to reduce automobile CO emissions by 3 percent. The transit improvements are being coordinated with the Utah Transit Authority for a mass transit system in Utah County; this effort is expected to reduce automobile CO emissions by 1 percent.

The above described strategies were designed to attain the CO standard by December 31, 1987. Utah County embarked on an aggressive program in an attempt to reach attainment of the standard by year-end 1987. This aggressive program allowed the County only 18 months to implement an I/M with anti-tampering program.

The County initiated a public awareness program immediately after adoption of the regulations. This program included (a) radio and television public information spots, (b) displays at the County Health Fair, (c) distribution of program brochures, (d) free voluntary inspections prior to I/M program start-up, and (e) discussions with local news reporters. With these efforts, the County's goal was to reduce the public's anxiety about the requirements and, therefore, improve the program's success.

The EPA has four concerns with the I/M and anti-tampering credits that the County has presumed. First, the County in its calculations assumed a start date of January 1988 for the I/M and anti-tampering programs. Since the I/M with anti-tampering program officially began on July 1, 1988, the calculations should use this date. Second, the full anti-tampering program only applies to 1977 and later vehicles; the County included 1974 and newer vehicles. Third, the County estimated credit for catalyst replacement on vehicles with tampered fuel inlet restrictors; however, no such requirement (catalyst replacement) exists in the program regulations. Finally, the County did not adjust the anti-tampering credits to reflect the one-year waivers for replacement of tampered equipment in the first year of the program; some of these waivers could have postponed repairs beyond December 31, 1987, and thus would have provided no emission reductions toward attainment by then.

The SIP, however, did not take credit for other efforts that EPA believes should be recognized. These efforts are: (1) The passage of anti-tampering inspection is required prior to waiver considerations for all 1988 and later vehicles and, (2) the I/M program includes heavy-duty vehicles (greater then 8500 lbs. GVWR), as well as all other vehicles (less than 8500 lbs. GVWR).

EPA realizes that excess credit may have been taken on the Mobile 3 calculations, but EPA also finds that such credit can be weighted and offset against that which was not claimed (i.e., anti-tampering passage and I/M for heavy duty vehicles). In addition to the credits just discussed, it is important to note that the County and State implemented a public awareness program since regulation adoption on the importance of the success of the I/M program, its health and economic benefits. EPA believes that for all intents and purposes, the I/M program was underway prior to July 1, 1988.

Following its review of the State's submittal, EPA requested clarification to (1) parts of section 9.11, "Inspection Procedures", (2) program reporting requirements to EPA, and (3) plan for maintenance of the standard once attainment is reached.

The State submitted additional information, dated May 8, 1988, in response to the EPA questions. Specifically, EPA was concerned with section 9.11.4, which allows waivers but does not specify the applicable critiera for such waivers. The State responded that the waiver option is to be used only in special circumstances, such as when an owner is unable to readily obtain a replacement part prior to registering his car. EPA understands from the State's explanation that the State will require ultimate compliance with the I/M requirements in those cases. On reporting requirements, EPA has been assured that the State will coordinate with the County to submit an annual status report to EPA.

On maintenance of the standard, EPA is concerned that House Bill No. 21 automatically expires on attainment of the CO standard. The State has responded by replying that it will comply with EPA policy on determining when an area is in attainment. EPA is putting the State on notice that ending the I/M program once the CO standard is achieved may not allow for protection *and* maintenance of the standard as required by the CAA. Unless the State can demonstrate maintenance of the standard without the I/M program, EPA will not entertain a redesignation request even if monitoring data shows attainment of the standard. EPA believes the SIP will be inadequate if the I/M program is abolished.

On February 18, 1987 (52 FR 4921), EPA proposed approval of the Utah CO SIP Revision for Utah County. No comments were received.

Because of the most recent air quality data released by EPA on May 3, 1988, Provo appears on the list of areas which received a call for a SIP revision on May 25, 1988. Despite the aggressive program outlined in this notice, CO values remained above the national ambient air quality standard (NAAQS) in 1987. The air quality data for 1987 shows improvement over 1986 data although still above the standard. Both years of data have to be considered for determining the design value. It is hoped that another year or two of further implementation of the I/M program and the other measures will bring further improvement. This will be analyzed as a result of the SIP call, and other measures, if needed, will be implemented. As a result of the recent SIP Call, EPA may require Utah to include additional specific measures based on EPA's proposed 1987 $CO/O_3$ policy in responding to the SIP Call.

### EPA Action

The EPA is today approving the measures in a revision to the Utah CO SIP for Utah County. The SIP commits to reduction of vehicle emissions through the implementation of various programs, specifically that of a vehicle I/M with anti-tampering program. The SIP has stated an attainment date of December 31, 1987 but, because of the continuing exceedances of the CO NAAQS, EPA will not take final action today on the attainment demonstration.



EPA audited the Utah County I/M with anti-tampering program in August 1987 and found the program to be meeting its design goals.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from publication). This action may not be challenged later in proceedings to enforce its requirements (see 307(b)(2) CAA).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

### List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide and Incorporation by reference.

Note.—Incorporation by reference of the State Implementation Plan for the State of Utah was approved by the Director of the Federal Register on July 1, 1982.

Date: December 20, 1988.

**Lee M. Thomas,**

*Administrator.*

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

## PART 52—[AMENDED]

### Subpart TT—Utah

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.2320 is amended by adding paragraph (c)(20) to read as follows:

**§ 52.2320 Identification of plan.**

* * * * *

(c) * * *

(20) A revision to the SIP was submitted by the Governor on December 12, 1985, for attaintment of the CO standard in Utah County.

(i) *Incorporation by reference.* (A) Letter and attachments dated December 12, 1985, from Governor Norman H. Bangerter submitting the SIP Revision for attainment of NAAQS for CO in Utah County. The attachments included Section 9, Part C; Section 9, Appendices A, C, H, and I; and Technical Support Document—Provo.

(ii) *Additional material.* (A) Letter dated May 8, 1986, from Brent C. Bradford to Irwin Dickstein; Re: Response to questions on I/M with anti-tampering program.

(B) Letter and attachment dated May 15, 1986, from Brent Bradford to Irwin Dickstein transmitting Appendix D of the Technical Support Document.

[FR Doc. 89–4301 Filed 3–7–89; 8:45 am]

BILLING CODE 6560–50–M

## 40 CFR Part 180

**[PP 9E2149, 3E2910/R1008; FRL–3533–5]**

## Sodium Chlorate; Exemption From Tolerance

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This rule exempts from the requirement of a tolerance residues of the defoliant, desiccant, and fungicide sodium chlorate when used as a harvest aid in or on the raw agricultural commodities dry edible beans and southern peas. This regulation, which eliminates the need to establish a maximum permissible level for residues of sodium chlorate in or on the commodities, was requested in petitions submitted by the Interregional Research Project No. 4 (IR–4).

**EFFECTIVE DATE:** March 8, 1989.

**ADDRESS:** Written objections, identified by the document control number [PP 9E2149, 3E2910/R1008], may be submitted to: Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** By mail:

Hoyt Jamerson, Emergency Response and Minor Use Section (TS–767C), Registration Division (TS–767C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 557–2310.

**SUPPLEMENTARY INFORMATION:** EPA issued a proposed rule, published in the **Federal Register** of December 29, 1988 (53 FR 52734), in which it was announced that the Interregional Research Project No. 4 (IR–4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petitions to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR–4 Project, and the named Agricultural Experiment Stations. These petitions requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of an exemption from the requirement of a tolerance for residues of sodium chlorate when used in accordance with good agricultural practice as a harvest aid in or on certain raw agricultural commodities.

1. *PP 9E2149.* Petition submitted on behalf of the California, Minnesota, Michigan, and North Dakota Agricultural Experiment Stations for dry edible beans.

2. *PP 3E2910.* Petition submitted on behalf of the Arkansas, Georgia, Missouri, Oklahoma, and Tennessee Agricultural Experiment Stations for southern peas.

Sodium chlorate is a strong oxidizing agent that can easily be reduced to sodium chloride in the presence of organic material. The available data indicate that the use results in negligible residues of sodium chlorate on the raw agricultural commodities. Dried beans and southern peas are normally rehydrated and cooked prior to human consumption, and these processes favor further reduction of sodium chlorate residues to sodium chloride.

Comments were received in response to the proposed rule from the National Food Processors Association (NFPA). NFPA commented in support of the proposed exemption from the requirement of a tolerance for sodium chlorate. NFPA commented that use of sodium chlorate as a desiccant would remove a physical barrier to harvest and maintain product quality in the event of untimely rainfall at or near harvest.

There were no adverse comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and all other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered by the Agency, the exemptions from the requirement of a tolerance established by amending 40 CFR 180.1020 would protect the public health. Therefore, the exemptions are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported

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by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

**List of Subjects in 40 CFR Part 180**

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 17, 1989.

**Douglas D. Campt,**

*Director, Office of Pesticide Programs.*

Therefore, 40 CFR Part 180 is amended as follows:

**PART 180—[AMENDED]**

1. The authority citation for Part 180 continues to read as follows:

**Authority:** 21 U.S.C. 346a.

2. Section 180.1020 is revised, to read as follows:

**§ 180.1020 Sodium chlorate; exemption from the requirement of a tolerance.**

Sodium chlorate is exempted from the requirement of a tolerance for residues in or on the following raw agricultural commodities when used as a defoliant, desiccant, or fungicide in accordance with good agricultural practice.

| *Commodities* |
|---|
| Beans, dry, edible |
| Corn, fodder |
| Corn, forage |
| Corn, grain |
| Cottonseed |
| Flaxseed |
| Flax, straw |
| Guar beans |
| Peas, southern |
| Peppers, chili |
| Rice |
| Rice, straw |
| Safflower, grain |
| Sorghum, grain |
| Sorghum, fodder |
| Sorghum, forage |
| Soybeans |
| Sunflower seed |

[FR Doc. 89-5212 Filed 3-7-89; 8:45 am]

BILLING CODE 6560-50-M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[MM Docket No. 87-121; FCC 88-406]**

### FM Broadcast Service; Use of Directional Antennas in Making Short-Spaced Station Assignments

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission adopts new rules that permit an applicant for a commercial FM broadcast station to request the authorization of a transmitter site that would be nominally short-spaced to other co-channel or adjacent channel stations, provided the service of those other licensees is protected from interference in accordance with well established criteria. The maximum amount of short-spacing is limited by the amount of separation specified for the next smaller size station class. However, because of resource limitations, permissible short-spacing will also be initially limited to 8 kilometers (5 miles). No change is made to the FM channel allotment process, or the intermediate frequency minimum distance separation requirements. The purpose of these new rules is to afford FM broadcast station licensees some additional flexibility in the selection of transmitter sites.

**EFFECTIVE DATE:** The Federal Communications Commission will issue a Public Notice, to be published in the **Federal Register**, announcing the effective date of this action.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** B.C. "Jay" Jackson, Jr., or Bernard Gorden, Mass Media Bureau, (202) 632-9660.

**SUPPLEMENTARY INFORMATION:** Public reporting burden for this collection of information is estimated to vary from 71 hours 45 minutes to 301 hours 30 minutes per response with an average of 110 hours 28 minutes per response for an FCC Form 301 applicant (3060-0027), and from 76 hours to 80 hours per response with an average of 78 hours 4 minutes for an FCC Form 340 applicant (3060-0034), including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Federal Communications Commission, Office of the Managing Director, Washington, DC 20554, and to the Office of Management and Budget, Paperwork Reduction Project (3060-0027/3060-0034), Washington, DC 20503.

Following is a summary of the Commission's *Report and Order* adopted December 12, 1988, and released February 22, 1989. The full text of this action is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this action may also be purchased from the Commission's copy contractors, International Transcription Services, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

**Summary of the Report and Order**

1. The Commission adopts new rules that permit an applicant for commercial FM facilities to request the authorization of a transmitter site that would be nominally short-spaced to the facilities of other co-channel or adjacent channel stations, provided the service of other licensees is protected from interference in accordance with well established criteria. Various methods may be used to provide this protection, such as taking advantage of terrain elevation in the direction of the short-spaced station(s), making an appropriate reduction in operating facilities (power and/or antenna height), using a directional antenna, or employing any combination of these means. The maximum amount of short-spacing permitted will be limited by the amount of separation specified for the next smaller station class. However, because of limited application processing resources, permissible short-spacing is restricted temporarily to 8 kilometers (5 miles). No change is made in the current FM channel allotment process, under which proposals for new channel allotments must meet minimum distance separation requirements with respect to other co-channel and adjacent channel stations. Also, no change is made in the intermediate frequency minimum distance separation requirements. Although these new provisions pertain mainly to commercial FM stations, non-commercial educational FM stations that are currently subject to the distance separation requirements of 47 CFR 73.207 are also affected.

2. Under the new rules, all existing fully spaced stations will continue to be afforded protection based on the presumed use of the maximum ERP and reference HAAT for their station class. However, only the actual facilities of the stations that apply for short-spaced locations under the new rules will be protected. In general, stations will not be authorized at locations that do not meet, as a minimum, the required co-channel and adjacent channel spacings applicable to the next lower class of station. Thus, short-spaced sites will be allowed, but only to the extent that would be feasible if the stations were to operate with the approximate minimum facilities permitted their class. The exact distances involved are specified in a new rule, 47 CFR 73.215. The Commission will continue to require licensees to provide principal city coverage (70 dBu) over their community of license and to preserve their service from interference.

3. Because this proceeding reintroduces, in a limited way, the contour protection method of making assignments affecting the commercial FM service, it was necessary to determine the signal strength to be used for FM stations' protected contour. The *Notice of Proposed Rule Making ("Notice")* questioned whether a uniform level of 1 mV/m for all station classes might be appropriate. This is the level used for non-commercial educational FM stations and approximates the level that is, in effect, protected for most of the commercial station classes. However, Class B and B1 stations in the non-reserved band, in effect, receive protection of somewhat lower signal levels, approximately 0.5 mV/m and 0.7 mV/m respectively. In view of the record developed in this proceeding, the Commission will use these lower values for Class B and Class B1 stations' protected contours for the purpose of contour protection in connection with these short-spacing rules, but recognizes that it may be appropriate to revisit this matter in the future.

4. On the matter of voluntary acceptance of interference, the comments were virtually unanimous that licensees should not be allowed to accept any interference beyond that already permitted. The Commission prefers to develop further experience with various methods of limiting interference, such as the use of directional antennas as contemplated in this proceeding. Accordingly, the new rules do not permit acceptance of additional interference.

5. The rules for determining antenna height above average terrain ("HAAT") in the non-commercial FM service and the Low Power TV service require the use of as many radials as necessary to establish the lack of prohibited overlap. In some cases, only a few radials are needed, while in other cases, such as a valley between two mountains, many radials may be necessary to accurately establish the lack of prohibited overlap. The Commission has determined that this method also be used for commercial FM broadcast stations when contour protection is required. The distance to pertinent contours is calculated at each azimuth using the HAAT and effective radiated power ("ERP") along the individual radial. This method must be used for both the protected contour and the interfering contour. However, for purposes of station authorization, the overall HAAT will be computed in accordance with the traditional eight-radial procedure.

**New Application Tenderability Requirements**

6. Because applications processed pursuant to the new rules are entitled only to protection based on proposed facilities, applicants for such stations will be required to expressly indicate by an appropriate exhibit in their application that they are to be processed pursuant to these new rules. This will allow immediate identification of the protection to be afforded such applications. Failure to indicate that an application is to be processed under these new rules would afford the proposed facility more protection than it is entitled to and unnecessarily restrict other applicants. Therefore, if an applicant requests authorization to operate pursuant to these new rules, an additional element of substantial completeness at tender will be the requirement that an exhibit be submitted intended to demonstrate compliance with the applicable provisions of the new rules. Accordingly, an applicant's failure to submit the appropriate exhibit will result in the return of the application as not substantially complete at tender. The Commission is therefore adding this requirement for an exhibit to its list of tender criteria utilized in evaluating the substantial completeness of applications under the FM "hard look" processing procedures (*see Report and Order* in MM Docket No. 84-750, 50 FR 19936, May 13, 1985). Finally, the Commission is adding a question to Section V-B, FCC Form 301 ("Application for Authority to Construct or Make Changes in a Commercial Broadcast Station"), which will require an engineering study to establish the lack of prohibited overlap of contours involving affected stations. A similar revision in FCC Form 340 ("Application for Authority to Construct or Make Changes in a Noncommercial Educational Broadcast Station") is being made. In the interim, before the changed forms are available, applicants proposing operation pursuant to the new rules must include, as a supplement to the old form, an additional exhibit. The information to be contained in the exhibit is given at the end of of this summary, however, a full sized copy of the exhibit, available from the Commission, must be used for actual filings.

7. Applications involving the use of directional antennas will require considerably more resources to process than others, both from a personnel and computer processing standpoint. Budgetary constraints will severely limit the Commission's ability to process any significant number of applications involving directional antennas at this time. The Commission therefore finds it necessary to limit temporarily the number of applications received that involve short-spacing and believes that this is best done by temporarily limiting the amount by which applicants may short-space to 8 kilometers (about 5 miles). This limit will enable the Commission to be responsive to the majority of applications which currently require consideration on a waiver basis and it will, moreover, assist it in identifying any unforeseen problems in the evaluation of these applications. Consistent with this short-term necessity, the Commission will not consider applications involving greater amounts of short-spacing at this time. This temporary policy is stated in a Note in the new rules. Authority is delegated to the Chief, Mass Media Bureau, to issue an Order to remove this Note when it is no longer necessary.

8. Also, pending the outcome of the Commission's proposal in MM Docket No. 88-375 (*see Notice of Proposed Rule Making*, 53 FR 38743, October 3, 1988) to increase the maximum power of Class A FM stations to 6 kW, it will not accept applications which involve contour protection based on the current 3 kW Class A power limit. Because such applications could preclude the intended benefits of the power increase proposal for individual Class A stations, it would clearly be inappropriate to accept them until a decision concerning Class A power is final. However, the Commission will accept applications based on the presumed use of an ERP of 6 kW and and antenna HAAT of 100 meters for Class A stations, as the potential preclusive effect of such applications on Class A facilities would be largely avoided. However, Class A applicants applying under the new rules should be aware that they will be protected only to their actual facilities

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and therefore may not be able to take advantage of any rule changes that the Commission may adopt in MM Docket No. 88-375. A Note concerning this policy is being added following paragraph (b)(2)(ii) of new rule 47 CFR 73.215. This Note will be removed when final action concerning the Class A power increase is taken.

9. Applications submitted prior to the effective date of the new rules that include a request for waiver of 47 CFR 73.207 will be processed under the current minimum spacing rules only and not under the new contour protection rules. Applications submitted on or after the effective date must specify whether they are to be processed under the new contour protection rules. Amendments submitted on or after the effective date (including amendments to applications on file prior to the effective date) also must specify whether they are to be processed under the new contour protection rules. The Commission believes that it would be improper to presume, without an explicit election, that an applicant chooses processing under the new contour protection rules, as this entails some risk that future modifications of its facilities might become restricted as the result of protection of actual, rather than maximum, facilities. Therefore, in the absence of a specific request by the applicant, including the required supplementary exhibit as described below, the Commission will presume that the applicant intends the application to be processed under the minimum spacing rules only and not under the new contour protection rules.

10. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 603, the Commission notes that adoption of these provisions will provide broadcasters with an alternative and increased flexibility in selecting the most beneficial antenna site.

**Additional Exhibit Required**

11. The provisions contained in this action have been analyzed with respect to the Paperwork Reduction Act of 1980, and have been found to impose a new or modified information collection requirement on the public. Implementation of any new or modified requirement will be subject to approval by the Office of Management and Budget as prescribed by the Act.

12. Applicants requesting processing pursuant to 47 CFR 73.215 must submit additional information as follows, together with FCC Form 301 ("Application for Authority to Construct or Make Changes in a Commercial Broadcast Station"), or FCC Form 340 ("Application for Authority to Construct or Make Changes in a Noncommercial Educational Broadcast Station"), as appropriate. The information to be submitted as an exhibit is a complete engineering study to establish the lack of prohibited overlap of contours involving affected stations. The engineering study must include the following:

(a) Protected and interfering contours, in all directions (360°), for the proposed operation.

(b) Protected and interfering contours, over pertinent arcs, of all short-spaced assignments, applications and allotments, including a plot showing each transmitter location, with identifying call letters or file numbers, and indication of whether facility is operating or proposed. For vacant allotments, use the reference coordinates as transmitter location.

(c) When necessary to show more detail, an additional allocation study utilizing a map with a larger scale to clearly show prohibited overlap will not occur.

(d) A scale of kilometers and properly labeled longitude and latitude lines, shown across the entire exhibit(s). Sufficient lines should be shown so that the location of the sites may be verified.

(e) The official title(s) of the map(s) used in the exhibit(s).

13. Accordingly, *it is ordered* That 47 CFR Part 73 is amended as set forth below. This action is taken pursuant to authority contained in sections 4 and 303 of the Communications Act of 1934, as amended. *It is further ordered* That this proceeding is terminated.

Federal Communications Commission.

**Donna R. Searcy,**

*Secretary.*

**List of Subjects in 47 CFR Part 73**

Radio broadcasting, FM broadcast stations, Minimum distance separation requirements, Directional antennas (FM), Short-spaced antenna sites (FM).

For the reasons set forth in the preamble, 47 CFR Part 73 is amended as follows:

**PART 73—[AMENDED]**

1. The authority citation for 47 CFR Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154 and 303.

2. 47 CFR 73.207 is amended by revising paragraph (a) to read as follows:

**§ 73.207 Minimum distance separation between stations.**

(a) Except for assignments made pursuant to §§ 73.213 or 73.215, FM allotments and assignments must be separated from other allotments and assignments on the same channel (co-channel) and on nearby adjacent channels by not less than the minimum distances specified in paragraphs (b) and (c) of this section. The Commission will not accept petitions to amend the Table of Allotments, applications for new stations, or applications to change the channel or location of existing assignments unless transmitter sites meet the minimum distance separation requirements of this section, or such applications conform to the requirements of §§ 73.213 or 73.215. However, applications to modify the facilities of stations with short-spaced antenna locations authorized pursuant to prior waivers of the distance separation requirements may be accepted, provided that such applications propose to maintain or improve that particular spacing deficiency. Class D (secondary) assignments are subject only to the distance separation requirements contained in paragraph (b)(3) of this section. (*See* § 73.512 for rules governing the channel and location of Class D (secondary) assignments.)

* * * * *

3. 47 CFR 73.209 is amended by revising paragraph (b) and removing paragraph (c), as follows:

**§ 73.209 Protection from interference.**

* * * * *

(b) The nature and extent of the protection from interference afforded FM broadcast stations operating on Channels 221-300 is limited to that which results when assignments are made in accordance with the rules in this subpart.

4. A new section 47 CFR 73.215 is added to read as follows:

**§ 73.215 Contour protection for short-spaced assignments.**

The Commission will accept applications that specify short-spaced antenna locations (locations that do not meet the domestic co-channel and adjacent channel minimum distance separation requirements of § 73.207); Provided That, such applications propose contour protection, as defined in paragraph (a) of this section, with all short-spaced assignments, applications and allotments, and meet the other applicable requirements of this section. Each application to be processed pursuant to this section must specifically request such processing on its face, and must include the necessary exhibit to demonstrate that the requisite contour protection will be provided. Such applications may be granted when the Commission determines that such action would serve the public interest, convenience, and necessity.



(a) *Contour protection.* Contour protection, for the purpose of this section, means that on the same channel and on the first, second and third adjacent channels, the predicted interfering contours of the proposed station do not overlap the predicted protected contours of other short-spaced assignments, applications and allotments, and the predicted interfering contours of other short-spaced assignments, applications and allotments do not overlap the predicted protected contour of the proposed station.

(1) The protected contours, for the purpose of this section, are defined as follows. For all Class B and B1 stations on Channels 221 through 300 inclusive, the F(50,50) field strengths along the protected contours are 0.5 mV/m (54 dBμ) and 0.7 mV/m (57 dBμ), respectively. For all other stations, the F(50,50) field strength along the protected contour is 1.0 mV/m (60 dBμ).

(2) The interfering contours, for the purpose of this section, are defined as follows. For co-channel stations, the F(50,10) field strength along the interfering contour is 20 dB lower than the F(50,50) field strength along the protected contour for which overlap is prohibited. For first adjacent channel stations (±200 kHz), the F(50,10) field strength along the interfering contour is 6 dB lower than the F(50,50) field strength along the protected contour for which overlap is prohibited. For second adjacent channel stations (±400 kHz), the F(50,10) field strength along the interfering contour is 20 dB higher than the F(50,50) field strength along the protected contour for which overlap is prohibited. For third adjacent channel stations (±600 kHz), the F(50,10) field strength along the interfering contour is 40 dB higher than the F(50,50) field strength along the protected contour for which overlap is prohibited.

(3) The locations of the protected and interfering contours of the proposed station and the other short-spaced assignments, applications and allotments must be determined in accordance with the procedures of paragraphs (c), (d)(2) and (d)(3) of § 73.313, using data for as many radials as necessary to accurately locate the contours.

(b) Applicants requesting short-spaced assignments pursuant to this section must take into account the following factors in demonstrating that contour protection is achieved:

(1) The ERP and antenna HAAT of the proposed station in the direction of the contours of other short-spaced assignments, applications and allotments. If a directional antenna is proposed, the pattern of that antenna must be used to calculate the ERP in particular directions. See § 73.316 for additional requirements for directional antennas.

(2) The ERP and antenna HAAT of other short-spaced assignments, applications and allotments in the direction of the contours of the proposed station. The ERP and antenna HAATs in the directions of concern must be determined as follows:

(i) For vacant allotments, contours are based on the presumed use, at the allotment's reference point, of the maximum ERP that could be authorized for the station class of the allotment, and antenna HAATs in the directions of concern that would result from a non-directional antenna mounted at a standard eight-radial antenna HAAT equal to the reference HAAT for the station class of the allotment.

(ii) For existing stations that were not authorized pursuant to this section, including stations with authorized ERP that exceeds the maximum ERP permitted by § 73.211 for the standard eight-radial antenna HAAT employed, and for applications not requesting authorization pursuant to this section, contours are based on the presumed use of the maximum ERP for the applicable station class (as specified in § 73.211), and the antenna HAATs in the directions of concern that would result from a non-directional antenna mounted at a standard eight-radial antenna HAAT equal to the reference HAAT for the applicable station class, without regard to any other restrictions that may apply (e.g. zoning laws, FAA constraints, application of § 73.213).

**Note to paragraphs (b)(2)(i) and (b)(2)(ii):** Until further notice, contours for existing Class A assignments, Class A applications not requesting authorization pursuant to this section, and Class A allotments are based on the presumed use of an ERP of 6000 Watts, and antenna HAATs in the directions of concern that would result from a non-directional antenna mounted at a standard eight-radial antenna HAAT equal to 100 meters. This temporary provision will be removed after the final resolution of proposals in MM Docket No. 88-375.

(iii) For stations authorized pursuant to this section, except stations with authorized ERP that exceeds the maximum ERP permitted by § 73.211 for the standard eight-radial antenna HAAT employed, contours are based on the use of the authorized ERP in the directions of concern, and HAATs in the directions of concern derived from the authorized standard eight-radial antenna HAAT. For stations with authorized ERP that exceeds the maximum ERP permitted by § 73.211 for the standard eight-radial antenna HAAT employed, authorized under this section, contours are based on the presumed use of the maximum ERP for the applicable station class (as specified in § 73.211), and antenna HAATs in the directions of concern that would result from a non-directional antenna mounted at a standard eight-radial antenna HAAT equal to the reference HAAT for the applicable station class, without regard to any other restrictions that may apply.

(iv) For applications containing a request for authorization pursuant to this section, except for applications to continue operation with authorized ERP that exceeds the maximum ERP permitted by § 73.211 for the standard eight-radial antenna HAAT employed, contours are based on the use of the proposed ERP in the directions of concern, and antenna HAATs in the directions of concern derived from the proposed standard eight-radial antenna HAAT. For applications to continue operation with an ERP that exceeds the maximum ERP permitted by § 73.211 for the standard eight-radial HAAT employed, if processing is requested under this section, contours are based on the presumed use of the maximum ERP for the applicable station class (as specified in § 73.211), and antenna HAATs in the directions of concern that would result from a nondirectional antenna mounted at a standard eight-radial antenna HAAT equal to the reference HAAT for the applicable station class, without regard to any other restrictions that may apply.

**Note to paragraph (b):** Applicants are cautioned that the antenna HAAT in any particular direction of concern will not usually be the same as the standard eight-radial antenna HAAT or the reference HAAT for the station class.

(c) Applications submitted for processing pursuant to this section are not required to propose contour protection of any assignment, application or allotment for which the minimum distance separation requirements of § 73.207 are met, and may, in the directions of those assignments, applications and allotments, employ the maximum ERP permitted by § 73.211 for the standard eight-radial antenna HAAT employed.

(d) Stations authorized pursuant to this section may be subsequently authorized on the basis of compliance with the domestic minimum separation distance requirements of § 73.207, upon filing of an FCC Form 301 or FCC Form

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340 (as appropriate) requesting a modification of authorization.

(e) The Commission will not accept applications that specify a short-spaced antenna location for which the following minimum distance separation requirements, in kilometers (miles), are not met:

| Relation | Co-channel | 200 kHz | 400/800 kHz |
|---|---|---|---|
| A to A | 82 (51) | 42 (26) | 25 (16) |
| A to B1 | 119 (74) | 66 (41) | 46 (29) |
| A to B | 143 (89) | 88 (55) | 67 (42) |
| A to C2 | 143 (89) | 84 (52) | 53 (33) |
| A to C1 | 178 (111) | 111 (69) | 73 (45) |
| A to C | 203 (126) | 142 (88) | 93 (58) |
| B1 to B1 | 138 (86) | 88 (55) | 48 (30) |
| B1 to B | 175 (109) | 114 (71) | 68 (43) |
| B1 to C2 | 163 (101) | 105 (65) | 56 (34) |
| B1 to C1 | 200 (124) | 134 (83) | 74 (46) |
| B1 to C | 233 (145) | 169 (105) | 105 (65) |
| B to B | 211 (131) | 145 (90) | 71 (44) |
| B to C2 | 200 (124) | 134 (83) | 68 (43) |
| B to C1 | 241 (150) | 169 (105) | 77 (48) |
| B to C | 270 (168) | 195 (121) | 105 (65) |
| C2 to C2 | 163 (101) | 105 (65) | 55 (34) |
| C2 to C1 | 196 (122) | 130 (81) | 74 (46) |
| C2 to C | 224 (139) | 169 (105) | 105 (65) |
| C1 to C1 | 224 (139) | 156 (98) | 79 (49) |
| C1 to C | 249 (155) | 186 (117) | 105 (65) |
| C to C | 270 (168) | 209 (130) | 105 (65) |

**Note to paragraph (e):** Until further Notice, the Commission will not accept applications that specify short-spaced antenna locations pursuant to this section wherein the proposed distance separation is less than the normally required distance separation in § 73.207 by more than 8 kilometers (5 miles). This temporary restriction will be removed when the Commission determines that available resources are sufficient to allow the timely processing of additional applications proposing short-spaced locations using contour protection.

5. 47 CFR 73.311 is amended by revising paragraph (a) and adding a new paragraph (b)(4) as follows:

**§ 73.311 Field strength contours.**

(a) Applications for FM broadcast authorizations must show the field strength contours required by FCC Form 301 or FCC Form 340, as appropriate.

(b) * * *

(4) In determining compliance with § 73.215 concerning contour protection.

6. 47 CFR 73.316 is amended by revising paragraphs (b), (c)(1), (c)(2), and (c)(3), and by adding paragraphs (c)(4), (c)(5), (c)(6), (c)(7), and (c)(8), to read as follows:

**§ 73.316 FM antenna systems.**

* * * * *

(b) *Directional antennas.* A directional antenna is an antenna that is designed or altered for the purpose of obtaining a non-circular radiation pattern.

(1) Directional antennas that have a ratio of maximum to minimum radiation in the horizontal plane of more than 15 dB will not be authorized.

(2) Directional antennas that have a radiation pattern which varies more than 2 dB per 10 degrees of azimuth will not be authorized.

(c) * * *

(1) A complete description of the proposed antenna system, including the manufacturer and model number of the proposed directional antenna. It is not sufficient to label the antenna with only a generic term such as "dipole". A specific model number must be provided. In the case of individually designed antennas with no model number, or in the case of a composite antenna composed of two or more individual antennas, the antenna must be described as a "custom" or "composite" antenna, as appropriate. A full description of the design of the antenna must also be submitted.

(2) A relative field horizontal plane pattern of the proposed directional antenna. A single pattern encompassing both the horizontal and vertical polarization is required, rather than separate patterns for horizontal and vertical polarization. A value of 1.0 must be used to correspond to the direction of maximum radiation. The plot of the pattern must be oriented such that 0° corresponds to the direction of maximum radiation or alternatively, in the case of an asymmetrical antenna pattern, the plot must be oriented such that 0° corresponds to the actual azimuth with respect to true North. The horizontal plane pattern must be plotted to the largest scale possible on unglazed letter-size polar coordinate paper (main engraving approximately 7" x 10") using only scale divisions and subdivisions of 1, 2, 2.5, or 5 times 10 to the Nth power. Values of field strength less than 10% of the maximum field strength plotted on that pattern must be shown on an enlarged scale. In the case of a composite antenna composed of two or more individual antennas, the pattern required is that for the composite antenna, not the patterns for each of the individual antennas.

(3) A tabulation of the relative field pattern required in paragraph (c)(2) of this section. The tabulation must use the same zero degree reference as the plotted pattern, and must contain values for at least every 10°. In addition, tabulated values of all maximas and minimas, with their corresponding azimuths, must be submitted.

(4) Sufficient vertical patterns to indicate clearly the radiation characteristics of the antenna above and below the horizontal plane. Complete information and patterns must be provided for angles of ±10° from the horizontal plane and sufficient additional information must be included on that portion of the pattern lying between +10° and the zenith and −10° and the nadir, to conclusively demonstrate the absence of undesirable lobes in these areas. The vertical plane pattern must be plotted on rectangular coordinate paper with reference to the horizontal plane. In the case of a composite antenna composed of two or more individual antennas, the pattern required is that for the composite antenna, not the patterns for each of the individual antennas.

(5) A statement that the antenna will be mounted on the top of an antenna tower recommended by the antenna manufacturer, or will be side-mounted on a particular type of antenna tower in accordance with specific instructions provided by the antenna manufacturer.

(6) A statement that the directional antennas will not be mounted on the top of an antenna tower which includes a top-mounted platform larger than the nominal cross-sectional area of the tower in the horizontal plane.

(7) A statement that no other antennas of any type are mounted on the same tower level as a directional antenna, and that no antenna of any type is mounted within any horizontal or vertical distance specified by the antenna manufacturer as being necessary for proper directional operation.

(8) In the case of applications for license upon completion of antenna construction, a statement from a licensed surveyor that the antenna has been installed pursuant to the manufacturer's instructions and is in the proper orientation.

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[FR Doc. 89-5277 Filed 3-7-89; 8:45 am]
BILLING CODE 6712-01-M

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**47 CFR Part 73**

**[MM Docket No. 88-114; FCC 89-43]**

## Broadcast Services; Deregulatory Review of Technical and Operational Regulations for Television Stations

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rules.

**SUMMARY:** This action amends certain technical and operational regulations for television broadcast stations. This action continues the Commission's deregulatory review of technical and operational regulations for various radio services. It is intended to delete burdensome or outdated television broadcast regulations that are no longer needed.

**EFFECTIVE DATE:** April 13, 1989.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Bernard Gorden, Mass Media Bureau, (202) 632-9660.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Report and Order* adopted February 7, 1989, and released February 28, 1989. The full text of this action is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this action may also be purchased from the Commission's copy contractors, International Transcription Services, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

### Summary of Report and Order

1. This action deletes certain technical and operational television broadcast regulations that are outdated and unnecessary. The majority of comments filed in response to the *Notice of Proposed Rule Making (Notice)* in this proceeding generally supported these rule amendments.

2. *Separate operation of TV aural and visual transmitters.* Television broadcasts are usually composed of both picture and sound signals. The picture and sound generally are transmitted simultaneously via separate video and audio transmitters. Under certain conditions, however, programs may consist of picture and sound transmissions that are unrelated to one another. For example, TV stations may provide an additional broadcast service in the form of an audio program with or without visual material, or a video informational bulletin board with or without related sound information. Such a service might display the text of news, weather, and other reports. Currently, such service is restricted by our rules to "graveyard hours" (12 midnight to 6 a.m.), or for only 15 minutes just prior to a station regular sign-on time, if after 6 a.m. When those provisions were adopted in 1980, the Commission was concerned that broadcasters might over use this form of service by filling their program day with audio-only or video-only bulletin board-like informational service, in place of normal programming during regular operational hours.

3. Upon reviewing the comments, all of which supported the proposed relaxation, the Commission can find no basis for continuing to preclude licensees from making a wider range of programming judgments. The Commission believes that the public interest would better be served by allowing licensees to establish the duration and time of day deemed to be most appropriate for transmitting separate audio or video services. Therefore, the Commission is amending § 73.653 by eliminating all time restrictions pertaining to the transmission of separate aural and video service.

4. *Power meter calibration.* The rules currently require that a television broadcast licensee have the capability to determine the station's visual power at all times. The most popular method of complying with this regulation is use of a power meter that must be calibrated at least once every 6 months. Because the rules also stipulate that this meter should be calibrated as often as necessary to ensure compliance with the appropriate power level, we find that the 6-month calibration requirement to be redundant.

5. While the comments filed in response to the *Notice* supported the requirement to perform meter calibration as often as needed, they recommended that the Commission eliminate the periodic 6-month calibration period as being duplicative of the general calibration requirement. Accordingly § 73.663 is amended to reflect this decision.

6. *Color burst signal requirement.* The color burst is a special synchronizing signal, transmitted within the television picture signal, that enables the TV receiver to decode the color information for proper display on the screen. During the transmission of black-and-white video programming, color burst signals do not benefit reception. In fact, they have the potential to degrade the picture quality if transmitted along with certain black-and-white picture signals. Thus, the rules currently require that the color burst signal be omitted during the extended transmission of black-and-white programming.,

7. In recent years however, broadcasters have encountered certain operational disadvantages in omitting the color burst signal during black-and-white program production. Modern video equipment technology now utilizes the color burst signal for more than its original purpose of conveying transmitted color reference information. Popular types of video processing equipment now rely on the color burst for timing and synchronization information to correct video signal stability or timing errors. For example, many production video tape recorders (as opposed to most consumer equipment) require the color burst signal for proper operation. Consequently, broadcasters have occasionally requested and received waivers of our color burst rules on a case-by-case basis. Also, some broadcasters have suggested that the color burst omission requirement should be eliminated because they believe that today's television receivers have been developed to the point that they are immune to picture degradation caused by the color burst signal.

8. On the other hand, some television receiver manufacturers are skeptical, recalling that older model receivers have in fact experienced black-and-white picture degradation due to the color burst and that current receivers may not be totally immune either. Thus, the manufacturers generally prefer that the current color burst omission standard be retained.

9. While the comments were divided over the extent of picture degradation caused by the presence of the color burst, the Commission notes that the color burst omission requirement was established as a quality control regulation and does not relate to preventing or restricting cochannel or adjacent channel interference. However, the comments have focused our attention on the fact that the current requirement has become a television receiver interoperability standard. Thus, television sets are currently designed and produced in accordance with the traditional objectives of the color burst omission requirement. Therefore, the Commission believes the current rule should be retained as a *recommended* standard instead of an absolute broadcast operating requirement. This approach is consistent with a 1985 action taken by the Commission with respect to standards relating to maximum horizontal and vertical blanking intervals (*see Report and Order*, MM Docket No. 79-145, 50 FR 13971, April 9, 1985). Therefore, § 73.699 is amended accordingly.

10. *Equipment installation and safety specifications.* The rules currently contain requirements pertaining to the construction and installation of transmission systems and studio equipment, as well as related safety procedures. These requirements were imposed many years ago, when it was common for broadcasters to design and build their own facilities. Today, nearly all broadcasters acquire their transmission system equipment from manufacturers that must design it to meet the safety requirements imposed by other regulatory agencies (*e.g.*, OSHA and various local and state agencies).

11. The comments favored elimination of the current requirements, but



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suggested that an advisory reference to pertinent federal, state, local or other recognized safety organizations standards and procedures would be appropriate. The Commission agrees and amends § 73.687 accordingly.

12. *Reference table for conversion of minutes and seconds to decimal parts of a degree.* This table contains mathematical conversions for minutes-to-decimal and seconds-to-decimal parts of a degree. These values may be used in the calculation of geographical distance separations between television channel assignment locations. They were placed in the rules to provide the means for consistent and accurate calculations before the advent and widespread availability of electronic calculators and computers.

13. The commenters agreed with the Commission that the table has become superfluous and no longer needed because of the universal availability of electronic calculators and computers that provide far more accuracy. Therefore, the Commission is deleting from § 73.698 the reference table of minutes and seconds converted to decimal parts of a degree.

14. *Antenna radiation pattern limitations.* Television broadcasting directional antennas may be useful in improving service, *e.g.*, to reduce radiation over large bodies of water and concentrate it over populated areas. In such cases, the antennas must normally comply with restrictions that limit the ratio of the maximum radiated power at any point in the antenna pattern to the minimum radiated power at some other point in the pattern (the degree of suppression or null). The Commission adopted these limits in the early 1950s. It concluded at that time that the limits were needed because of the difficulty in determining the actual radiated pattern of an antenna with very sharp nulls. Additionally, early antenna patterns were considered unstable, and more subject to television picture "ghosting" degradation in null areas because of the exaggerated signal strength ratio that is possible between the directly received signal and other reflected signals.

15. However, over the years broadcasters have been granted waivers to exceed the current ratio limits in order to more effectively limit the power radiated over large bodies of water, or to avoid excessive signal radiation toward the face of a hill or mountain, which could reflect the signal and cause "ghosting" degradation. Also, the current ratio limits have no relationship with the spacing criteria used to control interstation interference. Thus, the *Notice* proposed that these limits be eliminated.

16. The comments, however, have convinced the Commission that while waivers permitting the use of non-restricted radiation patterns are often appropriate (as described above), such operation might not be advisable in all situations, particularly in cases involving tightly located or short-spaced stations. The comments further expressed concern over the Commission's ongoing FM directional antenna proceeding, which is addressing a similar issue, but which does contemplate the short-spacing of FM station antenna sites (*see* MM Docket No. 87-121, 53 FR 12779, April 19, 1988). The comments emphatically reject such short-spacing in the case of TV stations. Thus, the Commission's proposal to eliminate the current ratio limits received only qualified support. Moreover, the record is inadequate in terms of suggesting what degree of relaxation in the limits might be appropriate. Because of the current controversy over the circumstances in which directional antennas should be authorized, and because the Commission's current waiver process appears adequate in dealing with unusual situations, elimination of the current rule does not appear to be a matter of great urgency. Accordingly, the Commission believes the appropriate course of action is to retain the current rules for the time being, and reconsider this matter at some time in the future if circumstances warrant.

17. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 603, the Commission notes that adoption of these provisions will provide broadcasters with alternatives and increased flexibility in meeting their operational requirements.

18. The rule amendments contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980, and found to contain no new or modified form, information collection, and/or record keeping, labeling, disclosure, or record retention requirement; and will not increase or decrease burden hours imposed on the public.

19. Accordingly, *it is ordered that*, Pursuant to authority contained in sections 4(i) and 303 of the Communications Act of 1934, as amended, Part 73 of the Commission's Rules and Regulations are amended as set forth at the end of this document. *It is further ordered*, That this proceeding is terminated.

**Donna R. Searcy,**

*Secretary, Federal Communications Commission.*

**List of Subjects in 47 CFR Part 73:**

Radio broadcasting.

**Appendix**

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

**PART 73 [AMENDED]**

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154 and 303.

2. Section 73.208 is amended by removing paragraphs (c)(1) (i) and (ii) and revising paragraph (c)(1) to read as follows:

**§ 73.208 Reference points and distance computations.**

* * * * *

(c) * * *

(1) Convert the latitudes and longitudes of each reference point from degree-minute-second format to degree-decimal format by dividing minutes by 60 and seconds by 3600, then adding the results to degrees.

* * * * *

3. 47 CFR 73.653 is revised in its entirety to read as follows:

**§ 73.653 Operation of TV aural and visual transmitters.**

The aural and visual transmitters may be operated independently of each other or, if operated simultaneously, may be used with different and unrelated program material.

4. 47 CFR 73.683 is amended by revising paragraph (b)(3) to read as follows:

**§ 73.683 Determining operating power.**

* * * * *

(b) * * *

(3) The meter must be calibrated with the transmitter operating at 80%, 100%, and 110% of the authorized power as often as may be necessary to maintain its accuracy and ensure correct transmitter operating power. In cases where the transmitter is incapable of operating at 110% of the authorized power output, the calibration may be made at a power output between 100% and 110% of the authorized power output. However, where this is done, the output meter must be marked at the point of calibration of maximum power output, and the station will be deemed to be in violation of this rule if that power is exceeded. The upper and lower limits of permissible power deviation as determined by the prescribed calibration, must be shown upon the meter either by means of adjustable red markers incorporated in the meter or by red marks placed upon the meter scale or glass face. These markings must be checked and changed, if necessary, each time the meter is calibrated.

5. 47 CFR 73.687, Transmission system requirements, is amended by revising paragraph (d), and removing paragraphs (e), (f) and (h), and redesignating paragraph (g) as (e) to read as follows:

**§ 73.687 Transmission system requirements.**

* * * * *

(d) The construction, installation, and operation of broadcast equipment is expected to conform with all applicable local, state, and federally imposed safety regulations and standards, enforcement of which is the responsibility of the issuing regulatory agency.

* * * * *

**§ 73.698 [Amended]**

6. 47 CFR 73.698, Tables, is amended by removing and reserving in its entirety Table I.

7. 47 CFR 73.699, Figure 6, is amended by revising Note 8 to read as follows:

**§ 73.699 TV engineering charts.**

* * * * *

Figure 6, Television Synchronizing Waveform for Color Transmission

**Notes**

* * * * *

8. It is recommended that color bursts signal be omitted during monochrome transmission.

* * * * *

**§ 73.4272 [Removed]**

8. 47 CFR 73.4272 is removed in its entirety.

[FR Doc. 89-5131 Filed 3-7-89; 8:45 am]

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## DEPARTMENT OF DEFENSE

### 48 CFR Parts 204, 219, and 252

### Federal Acquisition Regulation Supplement; Small Business Competitiveness Demonstration Program

**AGENCY:** Department of Defense (DoD).

**ACTION:** Interim rule (Extension of comment period).

**SUMMARY:** The Defense Acquisition Regulatory Council published an interim rule with request for public comment on January 27, 1989 (54 FR 4246), to revise the Department of Defense Federal Acquisition Regulation Supplement (DFARS) Parts 204, 219, and 252 to further implement FAR Subpart 19.10 and the December 22, 1988 joint Office of Federal Procurement Policy (OFPP) and Small Business Administration (SBA) interim policy directive and test plan implementing Title VII of the "Business Opportunity Development Reform Act of 1988", Pub. L. 100-656 (53 FR 52889). The original date for submission of comments, February 27, 1989, has been extended to April 15, 1989, to accommodate the requests of interested parties.

**DATE:** Written comments on the interim rule should be submitted to the address shown below not later than April 15, 1989, to be considered in the formulation of a final rule.

**ADDRESS:** Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Mr. Charles W. Lloyd, Executive Secretary, ODASD(P)/DARS, c/o OASD(P&L) (M&RS), Room 3D139, The Pentagon, Washington, DC 20301-3062. Please cite DAR Case 88-322 in all correspondence related to this subject.

**FOR FURTHER INFORMATION CONTACT:** Mr. Charles W. Lloyd, Executive Secretary, DAR Council, telephone (202) 697-7266.

**Charles W. Lloyd,**

*Executive Secretary, Defense Acquisition Regulatory Council.*

[FR Doc. 89-5384 Filed 3-7-89; 8:45 am]

BILLING CODE 3810-01-M

## DEPARTMENT OF ENERGY

### Office of the Secretary

### 48 CFR Parts 932 and 952

### Acquisition Regulation; Prompt Payment Policies, Procedures and Contract Clauses

**AGENCY:** Department of Energy (DOE).

**ACTION:** Final Rule.

**SUMMARY:** This final rule amends the Department of Energy Acquisition Regulation (DEAR), by deleting the DOE unique prompt payment policies, procedures and contract clauses established in the DEAR to implement the requirements of the Prompt Payment Act (Pub. L. 97-177; May 21, 1982), and requires the use of the prompt payment policies, procedures and contract clauses recently established, on a Federal-wide basis, in the Federal Acquisition Regulation (FAR).

**EFFECTIVE DATE:** The requirements of this amended regulation are effective as of March 8, 1989.

**FOR FURTHER INFORMATION CONTACT:** Rudolph J. Schuhbauer, Business and Financial Policy Division (MA-422), Procurement and Assistance Management, Washington, DC 20585, (202) 586-8175

Paul A. Gervas, Office of the Assistant General Counsel for Procurement and Finance (GC-34), Washington, DC 20585, (202) 586-6906.

**SUPPLEMENTARY INFORMATION:**

I. Background
II. Procedural Requirements
A. Review Under Executive Order 12291
B. Review Under the Regulatory Flexibility Act
C. Review Under the Paperwork Reduction Act
D. Review Under the National Environmental Policy Act
E. Public Hearing
III. Public Comments

**I. Background**

Under Section 644 of the Department of Energy Organization Act, Pub. L. 95-91 (42 U.S.C. 7254), the Secretary of Energy is authorized to prescribe such procedural rules and regulations as may be deemed necessary or appropriate to accomplish the functions vested in that position. Accordingly, the DEAR was promulgated with an effective date of April 1, 1984 (49 FR 11922, March 28, 1984), 48 CFR Chapter 9.

The purpose of this final rule is to revise the DEAR, as necessary, to implement the requirements of the Prompt Payment Act as implemented by Office of Management and Budget (OMB) Circular A-125, Prompt Payment, and FAR Subpart 32.9, Prompt Payment, which was published in the **Federal Register** (53 FR 3688, February 8, 1988) as Federal Acquisition Circular 84-33.

A brief description of the DEAR amendments follows:

DEAR Section 932.111, Contract Clauses, is deleted in its entirety.

DEAR Subpart 932.71, Contract Payments, is deleted in its entirety.

DEAR Subpart 932.9, Prompt Payment, is added as a new subpart in order to establish certain DOE specific policies and procedures required to implement the prompt payment provisions specified in FAR Subpart 32.9.

Under Part 952, Solicitation Provisions and Contract Clauses, Section 952.232, including Subsections 952.232-1 through 952.232-8, 952.232-10, and 952.232-70 through 952.232-73, is deleted in its entirety.

**II. Procedural Requirements**

*A. Review Under Executive Order 12291*

In accordance with the requirements of Executive Order 12291 (46 FR 13193, February 27, 1981), this rulemaking has been reviewed by DOE. DOE has concluded that the rule is not a "major rule" because its promulgation will not

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result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete in domestic or export markets. Accordingly, a regulatory impact analysis is not required.

*B. Review Under the Regulatory Flexibility Act*

This rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96–354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. This rule will simplify DOE's implementation of Pub. L. 97–177, by requiring use of the Federalwide prompt payment policies, procedures, and contract clauses prescribed in FAR Subpart 32.9, rather than the unique DEAR provisions established by DOE in 1984. Accordingly, this rule will have no impact on interest rates, tax policies or liabilities, the costs of goods or services or other direct economic factors. It will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

*C. Review Under Paperwork Reduction Act*

No information collection or recordkeeping requirements are imposed by this amended rule. Accordingly, no OMB clearance is required by section 350(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, et seq.).

*D. Review Under the National Environmental Policy Act*

DOE has concluded that promulgation of this rule would not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 432 et seq., 1976), or the Council on Environmental Quality regulations (40 CFR Part 1020), and therefore does not require an environmental impact statement or an environmental assessment pursuant to NEPA.

*E. Public Hearing*

The Department has concluded that this final rule does not involve a substantial issue of fact or law, and that the rule should not have a substantial impact on the nation's economy or large numbers of individuals or businesses. This rule will result in uniform implementation of the Federal-wide prompt payment provisions recently established in the FAR. Therefore, pursuant to Pub. L. 95–91, the DOE Organization Act, the Department did not hold a public hearing on this rule.

**III. Public Comments**

This final rule is based on the Notice of Proposed Rulemaking (NOPR) that DOE published in the **Federal Register** on November 9, 1988 (53 FR 45294), wherein public comments were invited for the 30-day period ending December 9, 1988. No public comments were received.

**List of Subjects in 48 CFR Parts 932 and 952**

Government procurement.

For the reasons set out in the preamble, Chapter 9 of Title 48 of the Code of Federal Regulations is amended as set forth below.

Issued in Washington, DC on February 27, 1989.

Berton J. Roth,

*Deputy Assistant Secretary for Procurement and Assistance Management.*

**PART 932—CONTRACT FINANCING**

1. The authority citation for Parts 932 and 952 continues to read as follows:

Authority: (42 U.S.C. 7254; 40 U.S.C. 486(c)).

**§ 932.111 [Removed]**

2. Section 932.111 is removed in its entirety.

**Subpart 932.71—[Removed]**

3. Subpart 932.71, consisting of sections 932.7100, 932.7101, 932.7102, 932.7103, 932.7104, 932.7105, 932.7106 and 932.7107 and subsections 32.7107–1 and 932.7107–2, is removed in its entirety.

4. Part 932 is amended by adding a new Subpart 932.9, Prompt Payment, consisting of §§ 932.908 and 932.970, as follows:

**Subpart 932.9—Prompt Payment**

932.908 Contract clause.
932.970 Implementing DOE policies and procedures.

**Subpart 932.9—Prompt Payment**

**§ 932.908 Contract clause.**

(c) The contracting officer shall incorporate paragraph (c), *Electronic Funds Transfer*, promulgated as Alternate II at FAR 52.232–25, in solicitations and contracts containing the basic Prompt Payment clause or its Alternate I as prescribed at FAR 32.908(a) and FAR 32.908(b), respectively.

**§ 932.970 Implementing DOE policies and procedures.**

(a) *Invoice payments.* (1) *Contract Settlement Date.* For purposes of determining payment due dates on a final invoice pursuant to paragraph (a)(2)(ii) of the basic Prompt Payment clause and (a)(2)(i)(B) of its Alternate I at FAR 52.232–25, contract settlement occurs when the contracting officer determines that the contractor has complied with all contract terms and conditions, including all administrative requirements (e.g., execution and delivery of contractor's release of claims, execution of understandings setting forth final indirect cost rates, and establishment of final contract price). In addition, for purposes of determining any interest penalties under cost-type contracts, the effective date of contract settlement shall be the effective date of the final contract modification issued to acknowledge contract settlement and to close out the contract.

(2) *Constructive acceptance periods.* It is expected that, in the majority of cases, Government acceptance or approval can occur within the standard constructive acceptance or approval periods specified in paragraphs (a)(6)(i) of the basic Prompt Payment clause and (a)(5)(i) of its Alternate I at FAR 52.232–25. However, the contracting officer should coordinate these provisions with the DOE official(s) that will be responsible for performing the acceptance and/or approval function(s). Where the contracting officer determines, in writing, on a case-by-case basis, that it is not reasonable or feasible for DOE to perform the acceptance or approval function within the standard period, the contracting officer should specify a longer constructive acceptance or approval period, as appropriate. Considerations include, but are not limited to, the nature of supplies or services involved, geographical site location, inspection and testing requirements, shipping and acceptance terms, and available DOE resources.

(b) *Contract Financing Payments.* (1) The standard payment due date, to be specified by the contracting officer in paragraphs (b)(2) of the basic Prompt Payment clause and its Alternate I at FAR 52.232–25, shall normally be 30 days for progress payments and 30 days for interim payments on cost-type contracts.

(2) Contracting officers may specify payment due dates that are less than the standard when a determination is made,



in writing, on a case-by-case basis, that a shorter contract financing payment cycle will be required to finance contract work. In such cases, the contracting officer should coordinate with the finance and program officials that will be involved in the payment process to ensure that the contract payment terms to be specified in solicitations and resulting contract awards can be reasonably met. Consideration should be given to geographical separation, workload, contractor ability to submit a proper request, and other factors that could affect timing of payment. However, payment due dates that are less than 7 days for progress payments or less than 14 days for interim payments on cost-type contracts are not authorized

**PART 952—SOLICITATION PROVISION AND CONTRACT CLAUSES**

**§§ 952.232, 952.232–1, 952.232–2, 952.232–3, 952.232–4, 952.232–5, 952.232–6, 952.232–7, 952.232–8, 952.232–10, 952.232–70, 952.232–71, 952.232–72, and 952.232–73—[Removed]**

5. Subpart 952.2 is amended by removing section 952.232 and subsections 952.232–1, 952.232–2, 952.232–3, 952.232–4, 952.232–5, 952.232–6, 952.232–7, 952.232–8, 952.232–10, 952.232–70, 952.232–71, 952.232–72, and 952.232–73.

[FR Doc. 89–5245 Filed 3–7–89; 8:45am]
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**DEPARTMENT OF TRANSPORTATION**

**National Highway Traffic Safety Administration**

**49 CFR Part 580**

**[Docket Number 87–09; Notice 9]**

**RIN: 2127–AC42**

**Odometer Disclosure Requirements**

**AGENCY:** National Highway Traffic Safety Administration.

**ACTION:** Interim final rule; request for comments.

**SUMMARY:** This interim final rule is in response to a recent amendment to the Truth in Mileage Act (contained in the Pipeline Safety Reauthorization Act of 1988). The amendment concerns powers of attorney used in connection with mileage disclosures and requires NHTSA to promulgate regulations concerning their use.

This rule permits, in limited circumstances when a title document is physically held by a lienholder, the use of a secure power of attorney form. It allows a transferor to make the required odometer disclosure on a secure power of attorney form, issued by a State, that would authorize the transferee to exactly restate the mileage on the title document on the transferor's behalf. Similarly, this rule allows a transferee to authorize this transferor to sign the disclosure on the title document, on behalf of the transferee. To the extent that they are consistent with the new law, this rule grants, in whole or in part, three petitions for reconsideration.

This notice is published as an interim final rule without notice and the opportunity for comment. However, NHTSA requests comments on this rule. Following the close of the comment period, NHTSA will publish a notice responding to the comments and, if appropriate, NHTSA will amend the provisions of this rule.

**DATES:** Comments on this interim rule are due no later than April 7, 1989. This interim final rule becomes effective on April 29, 1989, unless a permanent final rule is issued thirty days prior to that date.

**ADDRESS:** Written comments should refer to the docket number of this notice and should be submitted to: Docket Section, Room 5109, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. (Docket hours are 8 a.m. to 4 p.m.)

**FOR FURTHER INFORMATION CONTACT:** Judith Kaleta, Office of the Chief Counsel, Room 5219, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590 (202–366–1834).

**SUPPLEMENTARY INFORMATION:**

**Background**

To implement the Truth in Mileage Act of 1986 and to make some needed changes in the Federal odometer regulations, the National Highway Traffic Safety Administration (NHTSA) published a notice of proposed rulemaking (NPRM) on July 17, 1987. 52 FR 27022 (1987). The agency received numerous comments on the NPRM, representing the opinions of new and used car dealers, auto auctions, leasing companies, State motor vehicle administrators, and enforcement and consumer protection agencies. Each of the comments was considered and a final rule was published on August 5, 1988. 53 FR 29464 (1988).

As required by the Truth in Mileage Act, the August 1988 final rule requires the transferor of a motor vehicle to provide a mileage disclosure on the title document or, if the title document does not include a space for the mileage disclosure (during the phase-in period), or if the vehicle has not been previously titled, it requires the transferor to make a written disclosure of mileage on a separate document. Also as required by that statute, that final rule requires that title documents be manufactured or otherwise set forth by a secure process to deter counterfeiting and alteration; requires that at the time of issue, the titles include the mileage disclosure; adds disclosure requirements for lessors and lessees; and adds retention requirements for lessors and auction companies. In addition, consistent with the statute, the rule amends the form and content of the odometer disclosure statement. The August 1988 rule also prohibits a person from signing the disclosure as both the transferor and transferee in the same transaction in order to guard against a situation where only one party to the transaction would be aware of the disclosure. Finally, that rule clarifies the definition of transferor and transferee and extends the record retention requirement for dealers and distributors.

The Agency received seven petitions for reconsideration of the August 1988 final rule. In addition, we received numerous letters concerning the final rule and supporting the petitions. These petitions requested that NHTSA reconsider the provisions of the final rule that: (1) Prohibit a person from signing the odometer disclosure statement as both the transferor and transferee in the same transaction; (2) define "transferor" and "transferee"; (3) define "secure printing process"; (4) concerned the language included on the odometer disclosure statement; and (5) require dealers and distributors to retain, for five years, a copy of every odometer disclosure statement, including the transferee's signature, that they issue and receive. These petitions and letters have been placed in the docket. Before the Agency could fully consider the petitions, Congress enacted the Pipeline Safety Reauthorization Act of 1988, Pub. L. 100–561.

Section 401 of the Pipeline Safety Reauthorization Act, which amends section 408(d)(1) of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. 1988(d)(1), concerns the use of certain powers of attorney in connection with the required mileage disclosure. Although the Truth in Mileage Act generally requires that a vehicle seller (or other transferor) make the required disclosure on the vehicle's title, Congress determined that, under certain limited conditions when the title document is physically held by a lienholder, the transferor should not be precluded from making the disclosure on a secure power of attorney form which

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includes a space for the required odometer disclosure information. This secure power of attorney form would be given to a buyer (transferee), authorizing him to restate, on the title document, the mileage disclosed by the seller on the secure power of attorney form, if State law otherwise permits. Congress found that precluding such uses of powers of attorney could cause an undue burden on dealers when a consumer's title is held by a bank or other lienholder. Because the consumer does not have the vehicle's title document, the consumer would be unable to complete the disclosure on the title unless: (1) The consumer returned to the dealer after the dealer paid off the lien and received the title from the lienholder, or (2) the title was mailed by the dealer to the consumer, completed by the consumer, and mailed back to the dealer. Both of these alternatives were seen by Congress as interfering with usual commercial transactions. 134 Cong. Rec. H10079 (daily ed. October 12, 1988) (remarks of Rep. Dingell).

To resolve this problem and to alleviate potential costs for dealers and consumers, the new amendment specifies that a secure power of attorney form, which includes a mileage disclosure by the transferor, may be used when the transferor's title document is physically held by a lienholder, if otherwise permitted by State law. The new law directs the agency to prescribe the form and content of the power of attorney/disclosure document and reasonable conditions for its use by the transferor, "consistent with this Act and the need to facilitate enforcement thereof." More specifically, the new law requires that the form: (1) "be issued by a State to transferees in accordance with paragraph (2)(A)(i) * * *" (Paragraph (2)(A)(i) concerns the issuance of documents that are set forth by a secure printing process or other secure process.); (2) include an odometer disclosure statement and other information as NHTSA deems necessary; and (3) be submitted to the State by the person granted the power of attorney. It also requires NHTSA's rule to provide for the retention of a copy of the power of attorney and to ensure that the person granted the power of attorney completes the disclosure on the title consistent with the disclosure on the power of attorney form.

**Scope**

Consistent with the statutory mandate, this interim final rule grants, in whole or in part, three of the petitions for reconsideration. This interim final rule also implements the portion of the Pipeline Safety Reauthorization Act of 1988 that concerns the use of powers of attorney to disclose mileage.

NHTSA has also granted, in whole or in part, four petitions for reconsideration in a Notice of Proposed Rulemaking (NPRM) published in today's **Federal Register**. Generally, the NPRM concerns the definition of transferor and transferee with regard to the person who acts as agent for the transferor and transferee. It also concerns the relationship between the retention requirement applicable to dealers and distributors and the requirement that the transferee's signature appear on the odometer disclosure statements.

NHTSA has denied, in whole or in part, three petitions for reconsideration of the final rule published on August 5, 1988, because they are inconsistent with the new statute. For reasons discussed in the document denying the petitions, two other petitions were also denied. The denial notice is published in today's **Federal Register**.

**Misuse of Powers of Attorney in Odometer Fraud Schemes**

Although the July 1987 proposed rule to implement the Truth in Mileage Act did not include a regulatory provision explicitly concerning the use of powers of attorney, we stated in the preamble to the proposed rule that we recognize that powers of attorney are necessary in certain transactions. Someone acting on behalf of a deceased or incompetent owner would use a power of attorney from those owners to transfer the vehicles to a third party. In addition, the spouse of overseas military personnel, or of someone out of town or otherwise unavailable, may have a power of attorney from a husband or wife to transfer a vehicle to a third party. However, we emphasized that powers of attorney that allow a person to sign a disclosure as both the transferor and transferee result in only one party to the transaction being aware of the previous mileage disclosures. This could jeopardize the integrity of the "paper trail," the evidence of rollbacks that Congress intended to enhance by enacting the Truth in Mileage Act. 52 FR 27026 (1987).

The American Association of Motor Vehicle Administrators (AAMVA), the Wisconsin Department of Transportation (Wisconsin), and the National Association of Consumer Agency Administrators (NACAA) agreed with our position. AAMVA noted that a power of attorney that allows a person to sign the disclosure as both the buyer and the seller creates a situation ripe for fraud, if that person is intent on rolling back the vehicle's odometer. Several of AAMVA's members concurred in this position. Wisconsin suggested that a new paragraph be added to section 580.5 providing that no person may sign a disclosure as both the transferor and transferee.

Other commenters, concerned that the title had to be present at the time of sale ("title present"), hoped that the use of a power of attorney would ease the burden that title present might have imposed. A coalition of commenters (the "coalition"), consisting of AAMVA, the National Auto Auction Association (NAAA), the National Automobile Dealers Association (NADA), the National Independent Automobile Dealers Association (NIADA), the Automotive Trade Association Executives, and the American Car Rental Association, suggested the use of a special power of attorney. (Although the coalition used the term "secure power of attorney," we are referring to its suggestion by the term "special power of attorney." This helps to differentiate between the statutorily permitted secure power of attorney and the coalition's suggestion.) The coalition proposed that this special power of attorney would (1) Be set forth by a secure process; (2) contain the appropriate Federal odometer disclosure statement; and (3) be fully completed, dated, and signed by the transferee. Upon receipt of the transferor's title, the initial transferee would negotiate the title and complete the transferor's statement based on the transferor's special power of attorney and mileage disclosure thereon. The title, together with the special power of attorney and all subsequent reassignments, would be presented to the State with any application for title.

We reviewed AAMVA's comments and the suggestions of Wisconsin and the coalition in light of our investigative experience which showed that powers of attorney had been abused in the furtherance of odometer fraud schemes. The following two schemes, uncovered during NHTSA's investigations, are illustrative of the use of a power of attorney to commit odometer fraud:

(A) The transferor, a leasing company, sold several vehicles to a wholesale dealer and gave this dealer a power of attorney to execute the odometer disclosure statements on its behalf. The buying dealer rolled back the odometer on the vehicles, entered the lower mileage on the disclosure statements, and signed the disclosures as both the buyer and the seller. The buyer then sent a copy of the statements to the leasing company where they were filed.



(B) A new car dealer purchased a used vehicle and received a separate odometer disclosure staement on which his transferor certified that the odometer reflected the actual mileage of the vehicle. The new car dealer sold the car before he received the title, certifying that the odometer reflected the vehicle's actual mileage. The new car dealer then received the title, which had a blatantly altered odometer reading in the reassignment space on the reverse side of the title. Using the power of attorney that he received from his buyer, the new car dealer signed the disclosure as both the transferor and transferee. He never advised his buyer of the mileage problem. [Note: Other title problems that could be ignored by unscrupulous persons include higher mileage on the face of the title than on the reassignment on the reverse side and a certification that the odometer reading does not reflect the actual mileage.]

Based on the comments from AAMVA, NACAA, and Wisconsin and our own investigative experience, we adopted Wisconsin's suggestion and added a new § 580.5(h). This provision prohibits a person from signing the disclosure as both the transferor and transferee in the same transaction.

We did not adopt the suggestion of the coalition of commenters for several reasons. First, we had modified the proposed requirement in the NPRM of July 1987 that the title be present at the time of transfer of ownership and addressed the primary concern of the commenters by permitting the disclosure to be made "in connection with the transfer of ownership," rather than "at the time of transfer of ownership." Second, we were concerned that the coalition's suggestion would interfere with the integrity of the paper trail, which Congress intended to enhance by enacting the Truth in Mileage Act. Under the coalition's suggestion, only one party to the transfer would see the odometer disclosure (which would have been on the title). The power of attorney could be easily discarded and a new one forged and submitted to the State by any of the parties to subsequent transfers, since the issuance of the special power of attorney forms would not be controlled in any way. Finally, this process would place a burden on State titling offices to review additional documentation, check for conformity of the information contained on the documents, and maintain additional records. Accordingly, the final rule of August 1988 implemented the Truth in Mileage Act, while allowing the States the maximum discretion in complying with these requirements. 53 FR 29469, 29472, 29475 (1988).

**Petitions for Reconsideration**

In petitions filed with the agency, NADA, NIADA, and NAAA asked NHTSA to reconsider § 580.5(h), the provision which prohibits a person from signing the disclosure as the transferor and transferee in the same transaction. The agency also received many letters in support of the petitions. The petitioners claimed that customers would not return to dealers to sign the disclosure on the title. They alleged that a customer's failure to return would result in costs associated with locating these people, administrative costs for mailing and/or duplicating titles, and increased inventory costs in States where the dealer must have the title present at time of sale. This would result in higher vehicle prices as dealers would pass these expenses on to the consumer. Alternatively, they argued that if customers did return, this return visit would result in lost time at work and other costs. They also claimed that a person signing the disclosure as the buyer and the seller did not create a situation ripe for fraud, that the provision conflicted with State laws and was contrary to Federal law. Additional information concerning these petitions is included in the denial of petitions for reconsideration published in today's **Federal Register**.

The petitioners asked that NHTSA eliminate section 580.5(h). Alternatively, the petitioners suggested that NHTSA permit the use of a special power of attorney or require title sets, a two-part title system where the owner holds the title and the lienholder holds a notice of security interest filing.

**Congressional Mandate**

Before the agency could fully consider these petitions, Congress enacted the Pipeline Safety Reauthorization Act, Pub. L. 100-561. Section 401 of the Act, which amends section 408(d)(1) of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. 1988(d)(1), concerns the use of limited powers of attorney in connection with mileage disclosure. The purpose of this provision is to resolve a technical problem for purchaser: of used motor vehicles (dealers), without increasing the burden on States or lessening our ability to fight odometer fraud. 134 Cong. Rec. H10079 (daily ed. October 12, 1988) (remarks of Rep. Whittaker). Congress determined that NHTSA's August 1988 final rule, which prohibits a person from signing an odometer disclosure statement as both the transferor and transferee in the same transaction, could have the effect of precluding the use of a power of attorney in certain instances. Recognizing that the Truth in Mileage Act of 1986 requires a disclosure, including the transferee's signature, on the title, Congress found that limiting the use of powers of attorney could cause an undue burden on dealers and consumers when a consumer's title is held by a bank or other lienholder. Because the consumer does not have the vehicle's title in these instances, the consumer, as a transferor, would be unable to complete the disclosure on the title unless: (1) The consumer returned to the dealer after the dealer paid off the lien and received the title from the lienholder, or (2) the title was mailed by the dealer to the consumer, completed by the consumer, and mailed back to the dealer. Both of these alternatives were rejected by Congress. "It is not reasonable to assume that the consumer will come back to the dealer several days or weeks later to fill in a title received from the bank by the dealer after paying off the lien. It is also not safe to rely on the mails to send the valuable title document to the consumer or to rely on the consumer to return the document in a timely fashion." 134 Cong. Rec. H10079 (daily ed. October 12, 1988) (remarks of Rep. Dingell).

To resolve the problem and alleviate potential costs for dealers and consumers, the new law specifies that a power of attorney authorizing the dealer to disclose mileage on the title on behalf of the consumer may be used when the transferor's title document is physically held by a lienholder, if otherwise permitted by State law. The new law does not require the States to allow the use of a power of attorney for the purpose of mileage disclosure. However, if a State chooses to permit the use of powers of attorney in connection with mileage disclosure, the State itself must issue the power of attorney form, and the form must be consistent with the requirements of the law and the regulations promulgated thereunder. The new law directs the agency to prescribe the form and content of the power of attorney/disclosure document and reasonable conditions for its use by the transferor. More specifically, the new law requires that the form: (1) "be issued by a State to transferees in accordance with paragraph (2)(A)(i) * * *" (Paragrpah (2)(A)(i) concerns the issuance of documents that are set forth by a secure printing process or other secure process.); (2) include an odometer disclosure statement and other information as NHTSA deems necessary; and (3) be submitted to the State by the person granted the power of

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attorney. It also requires NHTSA to provide for the retention of a copy of the power of attorney form and to ensure that the person granted the power of attorney completes the disclosure on the title consistent with the disclosure on the power of attorney form.

We note that in some States, a secure power of attorney is not necessary to ensure that the mileage disclosure of the customer trading in a vehicle to a dealer is included on the vehicle's title document. For example, some States record all lien information on computerized recordkeeping systems and allow the registered owner to hold the title document. Other States have adopted a two-part title system under which the registered owner holds the title document and the lienholder holds a notice of security interest filing. Under either system, because the vehicle owner would have the title document, he could make the disclosure on the title and would not need to use a power of attorney form. In these States, the provisions of the new law would not apply, and the disclosure signed by the transferor would continue to be required on the vehicle's title document.

**Interim Final Rule**

This notice is published as an interim final rule, without prior notice and opportunity to comment. NHTSA believes that there is good cause for finding that notice and comment rulemaking is impracticable, unnecessary, and contrary to the public interest in this instance, since it would prevent compliance with the February 1, 1989 statutory deadline for issuance of a final rule. This finding is also based on the agency's view that given the April 29, 1989 effective date of NHTSA's August 1988 final rule which could result in an undue burden on dealers and consumers when a consumer's title is held by a bank or other lienholder, relief from the August 1988 rule is imperative.

As an interim final rule, this regulation is fully in effect and binding after its effective date, unless NHTSA issues a permanent final rule thirty days prior to that time. No further regulatory action by NHTSA is essential to the effectiveness of this rule. However, in order to benefit from comments which interested parties and the public may make, we are requesting that comments be submitted to the docket for this notice. All comments submitted in response to this notice will be considered by the agency. Following the close of the comment period, NHTSA will publish a notice responding to the comments and, if appropriate, NHTSA will amend the provisions of this rule.

Consistent with the provisions of the new law concerning the security of the power of attorney forms, this interim final rule revises § 580.4, which concerns the security of title documents. Although the legislative history indicates that the power of attorney forms must be "no less secure than the title document itself", 134 Cong. Rec. H10079 (daily ed. October 12, 1988) (remarks of Rep. Dingell), we believe that we can satisfy our statutory obligation to require secure forms and avoid unnecessary financial burdens upon the States by including a provision that is consistent with our position on the security of reassignment documents. Since the August 1988 final rule requires that reassignment documents be set forth by "a secure process", not necessarily the same process used to secure the title, this rule requires that the power of attorney forms also be set forth by "a secure process". Accordingly, we are changing the title of § 580.4 to read "Security of titles documents and power of attorney forms", and we are amending that section to require that power of attorney forms issued pursuant to § 580.13 and § 580.14 be set forth by a secure process.

The new law does not give NHTSA explicit statutory authority to require the States to control the power of attorney forms by any type of numbering system. Therefore, we have not limited the administrative discretion of the States in this area even though we recognize that it is common practice to control secure documents. This is also consistent with our position concerning reassignment documents. However, nothing in the Act or this rule should be read to preclude a State from using control techniques on these documents.

Since section 401 of the Pipeline Safety Reauthorization Act has the effect of allowing a person to sign an odometer disclosure statement on the title as both the transferor and the transferee in specified circumstances, we are amending § 580.5(h), which prohibits a person from signing an odometer disclosure statement as both the transferor and transferee in the same transaction. This amendment to § 580.5(h) permits a person to sign an odometer disclosure statement as both the transferor and transferee if the requirements of the new § 580.13 and § 580.14, which NHTSA is adding below, have been met.

In accordance with the Congressional mandate, we are adding a new § 580.13. Under this section, if permitted by State law, a transferor whose motor vehicle title document is physically held by a lienholder may give his transferee a power of attorney for the purpose of mileage disclosure on the title document. The power of attorney must be on Part A of a secure form issued by the State and must contain a space for the transferor to disclose the mileage.

The disclosure required to be made by the transferor to the transferee on the power of attorney form parallels the disclosure required to be made by the transferor to the transferee on the title and on a separate odometer disclosure statement. While this rule sets forth the information which must be disclosed, we are adding, in Appendix E, a sample power of attorney form that the States which elect to provide power of attorney forms may adopt. The form must be separated into parts A, B, and C. However, each State is free to organize, in each part, the information required by this rule in any way it wishes.

As required by the new law and to ensure the integrity of the paper trail, we are requiring the transferee exercising the power of attorney to restate the mileage on the transferor's title exactly as it appears on the transferor's disclosure on the power of attorney form. In addition, this rule requires the transferee to submit the original power of attorney form to the State with an application for title and the transferor's title. This could be accomplished at one of two times. The transferee could apply for title in his own name and submit the secure power of attorney form and his transferor's title. Alternatively, the transferee could submit the secure power of attorney form after selling the vehicle, with the title and his purchaser's title application, provided his purchaser permits him to apply for title on behalf of the purchaser. As noted by Representative Clement, "Limiting the use of the power of attorney to this "first sale" instance should assist auto dealers in completing the sales transaction while affording sufficient safeguards against odometer fraud." 134 Cong. Rec. H10081 (daily ed. October 12, 1988) (remarks of Rep. Clement). It would ensure that the State would be able to compare the transferor's disclosure on the power of attorney form with the transferee's disclosure, on behalf of the transferor, made on the title pursuant to the power of attorney. If the transferee were not required to submit the power of attorney to the State with the application for title and the transferor's title, the integrity of the paper trail would be at risk, because subsequent transferors could discard the power of attorney, forge a new one, and alter the mileage on the title. (As noted above, we recognize that even with securely printed titles, some alterations have been, and may continue to be, undetected upon initial review by State Departments of Motor Vehicles.) Additionally, the paper trail would be in jeopardy if the transferee submitted only the power of attorney form and no title documents. This could result in the transfer of the vehicle to an out-of-state buyer. The title would be in one State and the secure power of attorney form in another; they could not be easily compared. This would be similar to the problems with the current use of a separate odometer disclosure statement. Therefore, we believe that this submission of the original power of attorney form to the titling State is necessary to prevent the misuse of the forms and to facilitate enforcement of the anti-fraud provisions of the law.



As requested during the debate in the House of Representatives on the amendment, NHTSA has also considered other instances when a secure power of attorney may be necessary so as not to alter or interfere with proper business transactions. We have considered whether to permit a transferee to give his power of attorney to his transferor for the purpose of acknowledging the mileage disclosure. For example, if the transferor is a dealer who does not have possession of the title, because the vehicle was a trade-in and the lienholder has not yet released title, should the buyer, the transferee, be permitted to give a power of attorney to the transferor/selling dealer to acknowledge the mileage disclosure on his behalf? This power of attorney from the transferee to the transferor would allow the tranferor to sign the title as both the transferor and transferee in the same transaction. To alleviate any potential commercial or business problems that could result in costs to dealers when they have not yet received the title upon which they must make a mileage disclosure, because the title is physically held by the lienholder of the person who traded in a car to the dealer, we are adding a new § 580.14 that permits a transferee to give his power of attorney to his transferor for the purpose of reviewing the title and any reassignment documents to determine whether there are any mileage discrepancies and, if there are no mileage discrepancies, to sign the title, acknowledging the disclosure. This power of attorney must include a disclosure from the transferor to the transferee that parallels the disclosure required to be made by the transferor to the transferee on the title document and on the separate odometer disclosure statement. In addition, because this power of attorney would allow the same person to sign the title as the transferor and transferee in the same transaction, the appointment of the transferor as the tansferee's attorney-in-fact must be made on Part B of the same secure power of attorney form, issued by a State, upon which the transferor was appointed the attorney-in-fact by his transferor pursuant to § 580.13. This will enable purchasers to examine the previously issued power of attorney for alterations, erasures, and other marks, and to learn the name of the prior owner without the additional cost of a title search. This is the same information that purchasers would receive if the title was not held by a lienholder since, under the Truth in Mileage Act of 1986, the transferor is required to disclose mileage on the vehicle's title, if the title contains a space for the disclosure. This rule requires that a transferee who is granted a power of attorney from his transferor and who applies for title in his own name must show his purchaser, upon his purchaser's request, a copy of the previous owner's title, including the odometer disclosure completed on behalf of the previous owner, and a copy of the power of attorney form completed by the previous owner. Similarly, if a purchaser decides not to appoint his transferor as his attorney-in-fact pursuant to § 580.14, the transferor must show his purchaser a copy of the previous owner's title and a copy of the power of attorney form completed by the previous owner.

To ensure that a person who exercises a power of attorney, either under § 580.13, alone, or under §§ 580.13 and 580.14, is fully aware of his obligation and his liability for any action that is inconsistent with the power of attorney, this interim final rule requires, under a new § 580.15, that the person exercising a power of attorney, either under § 580.13 or under §§ 580.13 and 580.14, complete, on Part C of the secure power of attorney form issued by the State, a certification that he has received and reviewed the title and any reassignment documents and that there are no indications of mileage discrepancies. Any mileage discrepancies void the powers of attorney. A violation of this section could result in fines and/or imprisonment.

We have also considered other instances in which a secure power of attorney that would allow a person to sign a disclosure as the transferor and transferee in the same transaction should be permitted. Some have suggested that a secure power of attorney should be permitted when a title is lost or misplaced. We have carefully balanced the potential convenience of permitting a power of attorney in this circumstance against the serious potential for undermining the law enforcement purposes of the law. (As we have explained above, a person signing a mileage disclosure as both the transferor and transferee creates a situation ripe for fraud when the person signing the disclosure is intent on rolling back the odometer.) On balance, we have concluded that the possible increase in inconvenience does not outweigh the increased opportunity for odometer fraud. Furthermore, we have not been made aware of any business or commercial problems associated with this conclusion that would be comparable to the problems associated with titles physically held by lienholders. Especially because lost or misplaced titles can be replaced, and because we can limit the possible misuse of secure power of attorney forms, we have not extended the use of these secure powers of attorneys to situations in which the transferor's title is lost or misplaced.

NHTSA invites comments on other situations in which a secure power of attorney form may be necessary and appropriate.

Finally, section 401 of the Pipeline Safety Reauthorization Act requires NHTSA to promulgate a regulation that provides for the retention of a copy of the power of attorney form. Therefore, we are amending § 580.6 which concerns odometer disclosure statement retention by adding a new paragraph (c). Under this new paragraph, motor vehicle dealers and distributors who are granted a power of attorney by their transferor are required to retain, for five years, a photostat, carbon, or other facsimile copy of each power of attorney form that they receive. These documents must be retained at the primary place of business of the dealer or distributor in an order that is appropriate with business requirements and that permits systematic retrieval. This new paragraph (c) is consistent with the retention requirements of the August 1988 final rule that is applicable to dealers, distributors, and lessors. Like that final rule, the storage provision of this amendment is phrased broadly to include any media by which information may be stored, provided there is no loss of information.

**Federalism Assessment**

Congress found that limiting the use of powers of attorney in connection with mileage disclosure could cause an undue burden on dealers and consumers when a consumer's title is physically held by a bank or other lienholder. To resolve the

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problem and alleviate potential costs for dealers and consumers, the new law specifies that a power of attorney may be used, if otherwise permitted by State law. The law specifies that the form be securely printed and include a disclosure. This interim final rule does not impose any requirements upon the States other than those imposed by the law. Nevertheless, this action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this interim final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The States may decide not to allow the use of powers of attorney in connection with mileage disclosure and, therefore, would not be required to print conforming forms.

**Regulatory Impacts**

*A. Costs and Benefits to Dealers, States, and Consumers*

NHTSA has analyzed this rule and determined that it is neither "major" within the meaning of Executive Order 12291, nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. A regulatory evaluation of the impacts of this proposal has been prepared and place in Docket 87-09, Notice 9. Any interested person may obtain a copy of this regulatory analysis by writing to NHTSA Docket Section, 400 Seventh Street, SW., Washington, DC 20590, or by calling the Docket Section at (202) 366-4949.

*B. Small Business Impacts*

The agency has also considered the impacts of this rule in relation to the Regulatory Flexibility Act. I certify that this rule will not have a significant economic impact on a substantial number of small entities. The net increase in annual operating costs resulting from this interim final rule would be an estimated $4.1 million for States and localities and an estimated $4.5 million to $8.6 million to dealers. We estimate that there are 75,000 dealers that would be effected by this rule. Therefore, the cost to each dealer would be approximately $60.00 to $80.00. Small businesses (dealers) will need to spend the same time executing each form as will large businesses (dealers). It is not possible to minimize this burden. However, since these small entities will make fewer sales than large businesses, they will spend less time on these forms. Furthermore, while the States may charge dealers for these secure power of attorney form, the estimated cost of these documents is only approximately five cents per form. Accordingly, no regulatory flexibility analysis has been prepared. However, the agency invites comments from small businesses on this issue.

*C. Environmental Impacts*

NHTSA has considered the environmental implications of this rule, in accordance with the National Environmental Policy Act, and determined that it will not significantly affect the human environment. Accordingly, an environmental impact statement has not been prepared.

*D. Paperwork Reduction Act*

The office of Management and Budget (OMB) has already approved NHTSA's information collection requirements that require consumers, dealers, distributors, lessors, and auction companies to disclose and/or retain odometer disclosure information. [OMB #2127-0047]. This rule expands the scope of those requirements to include transferrors who authorize their transferee to exactly restate the mileage disclosure on the title as they have disclosed it on a power of attorney form issued by a State. It also expands the scope of the requirements to include transferees who use a secure power of attorney form to authorize their transferors to review the title for discrepancies and acknowledge mileage disclosure on their behalf. Finally, this rule expands the scope of the information collection requirements to include dealers and distributors who retain a copy of the secure power of attorney form. Therefore, these new requirements are also considered to be information collection requirements as that term is defined by OMB in 5 CFR Part 1320. Accordingly, this rule will be submitted to OMB for its approval pursuant to the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Comments on these information collection requirements should be submitted to Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, Attention: Desk Office for NHTSA. It is requested that comments sent to OMB also be sent to the NHTSA rulemaking docket for this proposed action.

**Public Comments**

Interested persons are invited to submit comments on this interim final rule. It is requested, but not required, that ten copies be submitted.

All comments must not exceed fifteen pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the fifteen page limit. This limitation is intended to encourage comments to detail their preliminary arguments in a concise fashion.

All comments received before the close of business on the comment closing date listed above will be considered and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Following the close of the comment period, NHTSA will publish a notice responding to the comments and, if appropriate, NHTSA will amend the provisions of this rule. Comments received too late for consideration will be considered as suggestions for future rulemaking action. The agency will continue to file relevant information as it becomes available. It is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments by the docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

In consideration of the foregoing, 49 CFR Part 580 is amended as follows:

**PART 580-[AMENDED]**

1. The authority citation for Part 580 continues to read as follows:

**Authority:** 15 U.S.C. 1988; delegation of authority at 49 CFR 1.50(f) and 501.8(e)(1).

2. Section 580.4 is revised to read as follows:

**§ 580.4 Security of title documents and power of attorney forms.**

Each title shall be set forth by means of a secure printing process or other secure process. In addition, any other documents which are used to reassign the title shall be set forth by a secure process. Power of attorney forms issued pursuant to §§ 580.13 and 580.14 shall be issued by the State and shall be set forth by a secure process.

3. Section 580.5 is amended by revising paragraph (h) to read as follows:

**§ 580.5 Disclosure of odometer information.**

* * * * *

(h) No person shall sign an odometer disclosure statement as both the transferor and transferee in the same transaction, unless permitted by § 580.13 or § 580.14.



4. Section 580.8 is amended by adding paragraph (c) to read as follows:

**§ 580.8 Odometer disclosure statement retention.**

* * * * *

(c) Dealers and distributors of motor vehicles who are granted a power of attorney by their transferor pursuant to § 580.13, or by their transferee pursuant to § 580.14, shall retain for five years a photostat, carbon, or other facsimile copy of each power of attorney that they receive. They shall retain all powers of attorney at their primary place of business in an order that is appropriate to business requirements and that permits systematic retrieval.

5. Section 580.13 is added to read as follows:

**§ 580.13 Disclosure of odometer information by power of attorney.**

(a) If the transferor's title is physically held by a lienholder and if otherwise permitted by State law, the transferor may give a power of attorney to his transferee for the purpose of mileage disclosure. The power of attorney shall be on a form issued by the State to the transferee that is set forth by means of a secure printing process or other secure process, and shall contain, in Part A, a space for the information required to be disclosed under paragraphs (b), (c), (d), and (e) of this section and in Part B, a space for the information required to be disclosed under § 580.14. The form shall contain, in Part C, a space for the certification required to be made under § 580.15.

(b) In connection with the transfer of ownership of a motor vehicle, each transferor whose title is physically held by a lienholder and who elects to give his transferee a power of attorney for the purpose of mileage disclosure, must appoint the transferee his attorney-in-fact for the purpose of mileage disclosure and disclose the mileage on the power of attorney form issued by the State. This written disclosure must be signed by the transferor, including the printed name, and contain the following information:

(1) The odometer reading at the time of transfer (not to include tenths of miles);

(2) The date of transfer;

(3) The transferor's name and current address;

(4) The transferee's name and current address; and

(5) The identity of the vehicle, including its make, model, year, body type, and vehicle identification number.

(c) In addition to the information provided under paragraph (b) of this section, the power of attorney form shall refer to the Federal law and state that providing false information or the transferee's failure to submit the form to the State may result in fines and/or imprisonment. Reference may also be made to applicable State law.

(d) In addition to the information provided under paragraphs (b) and (c) of this section,

(1) The transferor shall certify that to the best of his knowledge the odometer reflects the actual mileage; or

(2) If the transferor knows that the odometer reading reflects mileage in excess of the designed mechanical odometer limit, he shall include a statement to that effect; or

(3) If the transferor knows that the odometer reading differs from the mileage and the difference is greater than that caused by calibration error, he shall include a statement that the odometer reading does not reflect the actual mileage and should not be relied upon. This statement shall also include a warning notice to alert the transferee that a discrepancy exists between the odometer reading and the actual mileage.

(e) The transferee shall sign the power of attorney form, print his name, and return a copy of the power of attorney form to the transferor.

(f) Upon receipt of the transferor's title, the transferee shall complete the space for mileage disclosure on the title exactly as the mileage was disclosed by the transferor on the power of attorney form. The transferee shall submit the original power of attorney form to the State, with the application for title and the transferor's title.

6. A section 580.14 is added to read as follows:

**§ 580.14 Power of attorney to review title documents and acknowledge disclosure.**

(a) If the transferor does not have the title document of the vehicle because it is physically held by the lienholder of his transferor and if otherwise permitted by State law, the transferee may give a power of attorney to his transferor to review the title and any reassignment documents for mileage discrepancies, and if no discrepancies are found, to acknowledge disclosure on the title. The power of attorney shall be on a form issued by the State to the transferee that is set forth by means of a secure printing process or other secure process, and shall contain, in Part A, the information required to be disclosed under § 580.13. The form shall also contain, in part B, a space for the information required to be disclosed under paragraphs (b), (c), (d), and (e) of this section and, in Part C, a space for the certification required to be made under § 580.15.

(b) In connection with the transfer of ownership of a motor vehicle, each transferee of a transferor who does not have the title document because it is physically held by the lienholder of his transferor and who was granted a power of attorney by his transferor for the purpose of mileage disclosure, may appoint his transferor as his attorney-in-fact to review the title and any reassignment documents. This power of attorney must include a mileage disclosure from the transferor to the transferee and must be signed by the transferor, including the printed name, and contain the following information:

(1) The odometer reading at the time of transfer (not to include tenths of miles);

(2) The date of transfer;

(3) The transferor's name and current address;

(4) The transferee's name and current address; and

(5) The identity of the vehicle, including its make, model, year, body type, and vehicle identification number.

(c) In addition to the information provided under paragraph (b) of this section, the power of attorney form shall refer to the Federal law and state that providing false information or the transferee's failure to submit the form to the State may result in fines and/or imprisonment. Reference may also be made to applicable State law.

(d) In addition to the information provided under paragraphs (b) and (c) of this section.

(1) The transferor shall certify that to the best of his knowledge the odometer reflects the actual mileage; or

(2) If the transferor knows that the odometer reading reflects mileage in excess of the designated mechanical odometer limit, he shall include a statement to that effect; or

(3) If the transferor knows that the odometer reading differs from the mileage and the difference is greater than that caused by calibration error, he shall include a statement that the odometer reading does not reflect the actual mileage and should not be relied upon. This statement shall also include a warning notice to alert the transferee that a discrepancy exists between the odometer reading and the actual mileage.

(e) The transferee shall sign the power of attorney form, print his name.

(f) The transferor shall give a copy of the power of attorney form to his transferee.

(g) If a transferee elects to return to his transferor to sign the disclosure on the title when the transferor obtains the title from the lienholder and does not

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transferor and transferee requested that NHTSA eliminate this provision. Alternatively, they ask NHTSA to allow a person to use "a special power of attorney" to appoint the other party to the transfer as his attorney-in-fact to sign the disclosure on his behalf. The petitioners consider "a special power of attorney" to be one that is (1) set forth by a secure printing process; (2) contains the appropriate Federal disclosure; (3) is completed, signed, and dated by the transferee; and (4) submitted to the State with the title and all subsequent reassignments. Before NHTSA could fully consider these petitions, Congress passed an amendment to the Truth in Mileage Act, which addresses many of the points raised by these petitions. NHTSA has issued an interim final rule, which appears elsewhere in today's Federal Register, to implement the new law. To the extent that they seek changes inconsistent with today's rule, NHTSA has denied the petitions in part, including the requests to eliminate entirely the provision of the final rule that prohibits a person from signing the odometer disclosure statement as the transferor and transferee in the same transaction or to permit the use of a special power of attorney. In addition, the petition concerning the security of documents asked for no specific relief and it is also denied. Finally, we have denied the petition that requested that the exemption from the disclosure requirements for vehicles ten years old and older be included on the disclosure statements.

**FOR FURTHER INFORMATION CONTACT:** Judith Kaleta, Office of the Chief Counsel, Room 5219, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202-366-1834).

**SUPPLEMENTARY INFORMATION:**

**Background**

To implement the Truth in Mileage Act of 1986 and make some needed changes in the Federal odometer rules, the National Highway Traffic Safety Administration (NHTSA) published a notice of proposed rulemaking (NPRM) on July 17, 1987. 52 FR 27022 (1987). The agency received numerous comments on the NPRM, representing the opinions of new and used car dealers, auto auctions, leasing companies, State motor vehicle administrators, and enforcement and consumer protection agencies. Each of the comments was considered and a final rule was published on August 5, 1988. 53 FR 29464 (1988).

As required by the Truth in Mileage Act, the August 1988 final rule requires the transferor of a motor vehicle to provide mileage disclosure on the title document or, if the title document does not include a space for the mileage disclosure (during the phase-in period), or if the vehicle has not been previously titled, it requires the transferor to make a written disclosure of mileage on a separate document. Also as required by that statute, the final rule requires that title documents be manufactured or otherwise set forth by a secure process to deter counterfeiting or alteration; requires that at the time of issue, the titles include the mileage disclosure; adds disclosure requirements for lessors and lessees; and adds retention requirements for lessors and auction companies. In addition, consistent with the statute, this rule amends the form and content of the odometer disclosure statement. The rule also prohibits a person from signing the disclosure as both the transferor and transferee in the same transaction, in order to guard against a situation where only one party to the transaction would be aware of the disclosure. Finally, this rule clarifies the definition of transferor and transferee and extends the record retention requirement for dealers and distributors.

The Agency received seven petitions for reconsideration of the final rule. In addition, we received numerous letters concerning the final rule and supporting the petitions. These petitions requested that NHTSA reconsider the provisions of the final rule that: (1) Prohibit a person from signing the odometer disclosure statement as both the transferor and transferee in the same transaction; (2) define "transferor" and "transferee"; (3) concern the "secure printing process" for titles and reassignment documents; (4) concern the language included on the odometer disclosure statement; and (5) require dealers and distributors to retain, for five years, a copy of every odometer disclosure statement, including the transferee's signature, that they issue and receive. These petitions and letters have been placed in the docket. Before the Agency could fully consider these documents, Congress enacted the Pipeline Safety Reauthorization Act of 1988, Pub. L. 100-561.

Section 401 of the Pipeline Safety Reauthorization Act, which amends section 408(d)(1) of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. 1988(d)(1), concerns the use of certain powers of attorney in connection with the required mileage disclosure. Although the Truth in Mileage Act generally requires that a vehicle seller (or other transferor) make the required disclosure on the vehicle's title, Congress determined that, under certain limited conditions when the title document is physically held by a lienholder, the transferor should not be precluded from making the disclosure on a secure power of attorney form which includes the required odometer disclosure information. This secure power of attorney form would be given to a buyer (transferee), authorizing him to restate, on the title document, the mileage disclosed by the seller on the secure power of attorney form, if State law otherwise permits. Congress found that precluding such uses of powers of attorney could cause an undue burden on dealers when a consumer's title is held by a bank or other lienholder. Because the consumer does not have the vehicle's title document, the consumer would be unable to complete the disclosure on the title unless: (1) The consumer returned to the dealer after the dealer paid off the lien and received the title from the lienholder, or (2) the title was mailed by the dealer to the consumer, completed by the consumer, and mailed back to the dealer. Both of these alternatives were seen by Congress as interfering with usual commercial transactions. 134 Cong. Rec. H10079 (daily ed. October 12, 1988) (remarks of Rep. Dingell).

To resolve this problem and to alleviate potential costs for dealers and consumers, the new amendment specifies that a secure power of attorney form, which includes a mileage disclosure by the transferor, may be used when the transferor's title document is physically held by a lienholder, if otherwise permitted by State law. The new law directs the agency to prescribe the form and content of the power of attorney/disclosure document and reasonable conditions for its use by the transferor, "consistent with this Act and the need to facilitate enforcement thereof." More specifically, the new law requires that the form: (1) Be issued by a State to transferees in accordance with paragraph (2)(A)(i) * * *" (Paragraph (2)(A)(i) concerns the issuance of documents that are set forth by a secure printing process or other secure process.); (2) include an odometer disclosure statement and other information as NHTSA deems necessary; and (3) be submitted to the State by the person granted the power of attorney. It also requires NHTSA's rule to provide for the retention of a copy of the power of attorney and to ensure that the person granted the power of attorney completes the disclosure on the



give his transferor a power of attorney to review the title and any reassignment documents, upon the transferee's request, the transferor shall show to the transferee a copy of the power of attorney that he received from his transferor.

(b) Upon subsequent transfer of the vehicle and upon request of the purchaser, the transferor, who was granted the power of attorney by his transferor and who now holds the title to the vehicle in his own name, must show to his purchaser the copy of the previous owner's title and the power of attorney form.

7. A section 580.15 is added to read as follows:

**§ 580.15 Certification by person exercising power(s) of attorney.**

(a) A person who exercises a power of attorney either under § 580.13 alone, or under §§ 580.13 and 580.14 must complete a certification that he has reviewed the title and any reassignment documents for mileage discrepancies and that no discrepancies exist. This certification shall be under Part C and on the same form as the powers of attorney executed under §§ 580.13 and 580.14, and shall include:

(1) The signature and printed name of the person exercising the power of attorney;

(2) The address of the person exercising the power of attorney; and

(3) The date of the certification.

(b) Any mileage discrepancies void the powers of attorney.

8. An Appendix E is added to read as follows:

**Appendix E—Power of Attorney Disclosure Form**

**Warning:** This Form May Be Used Only When Title Is Physically Held By Lienholder. This Form Must Be Submitted To The State By The Person Exercising Powers Of Attorney. Failure To Do So May Result In Fines And/Or Imprisonment.

VEHICLE DESCRIPTION

Year _____ Make _____

Model _____ Body Type _____

Vehicle Identification Number _____

**Part A. Power of Attorney to Disclose Mileage**

Federal law (and State Law, if applicable) requires that you state the mileage upon transfer of ownership. Providing a false statement may result in fines and/or imprisonment.

I, _____ (transferor's name, Print) appoint _____ (transferee's name, Print) as my attorney-in-fact, to disclose the mileage, on the title for the vehicle described above, exactly as stated in my following disclosure.

I state that the odometer now reads _____ (no tenths) miles and to the best of my knowledge that it reflects the actual mileage unless one of the following statements is checked.

___ (1) I hereby certify that to the best of my knowledge the odometer reading reflect the mileage in excess of its mechanical limits.

___ (2) I hereby certify that the odometer reading is NOT the actual mileage.

WARNING—ODOMETER DISCREPANCY.

_____

(Transferor's Signature)

_____

(Printed Name)

Transferor's Address (Street)

_____

(City) _____ (State) ___ (ZIP Code)

_____

Date of Statement _____

_____

(Transferee's Signature)

_____

(Printed Name)

Transferee's Name _____

Transferee's Address (Street)

_____

(City) _____ (State) ___ (ZIP Code)

_____

**Part B. Power of Attorney to Review Title Documents and Acknowledge Disclosure.**

(Part B is invalid unless Part A has been completed.)

I, _____ (transferee's name, Print) appoint _____ (transferor's name, Print) as my attorney-in-fact, to sign the mileage disclosure, on the title for the vehicle described above, only if the disclosure is exactly as the disclosure completed below.

_____

(Transferee's Signature)

_____

(Printed Name)

Transferee's Name _____

Transferee's Address (Street)

_____

(City) _____ (State) ___ (ZIP Code)

_____

Federal law (and State Law, if applicable) requires that you state the mileage upon transfer of ownership. Providing a false statement may result in fines and/or imprisonment.

I, _____ (transferor's name, Print) state that the odometer now reads _____ (no tenths) miles and to the best of my knowledge that it reflects the actual mileage unless one of the following statements is checked.

___ (1) I hereby certify that to the best of my knowledge the odometer reading reflect the mileage in excess of its mechanical limits.

___ (2) I hereby certify that the odometer reading is NOT the actual mileage.

WARNING—ODOMETER DISCREPANCY.

_____

(Transferor's Signature)

_____

(Printed Name)

Transferor's Address (Street)

_____

(City) _____ (State) ___ (ZIP Code)

_____

Date of Statement _____

**Part C. Certification**

I, _____ (person exercising above powers of attorney, Print) hereby certify that I have received and reviewed the title for the vehicle described above and that there are no indications of mileage discrepancies.

_____

(Signature)

_____

(Printed Name)

Address (Street) _____

(City) _____ (State) ___ (ZIP Code)

_____

Date _____

Issued on March 3, 1989.

**Diane K. Steed,**

*National Highway Traffic Safety Administrator.*

[FR Doc. 89-5326 Filed 3-6-89; 10:01 am]

BILLING CODE 4910-59-M

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**49 CFR Part 580**

**[Docket Number 87-08; Notice 8]**

**RIN: 2127-AC42**

**Odometer Disclosure Requirements**

**AGENCY:** National Highway Traffic Safety Administration.

**ACTION:** Denial of petitions for reconsideration.

**SUMMARY:** This is in response to five petitions for reconsideration of the National Highway Traffic Safety Administration's final rule concerning odometer disclosure requirements. Numerous letters were also submitted on this subject. These petitions request that NHTSA reconsider the provisions of the final rule that: (1) Prohibit a person from signing the odometer disclosure statement as both the transferor and transferee in the same transaction; (2) require that titles and reassignment documents be set forth by a "secure printing process"; and (3) concern the information included on the odometer disclosure statement.

The petitions concerning the provision that prohibits a person from signing the odometer disclosure statement as both

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title consistent with the disclosure on the power of attorney form.

Consistent with this statutory mandate, NHTSA has issued an interim final rule that is published elsewhere in today's **Federal Register**. That rule permits a person to sign an odometer disclosure statement as both the transferor and transferee in the same transaction, if the disclosure is based on a secure power of attorney. In addition, NHTSA has issued an NPRM that is also published in today's **Federal Register**. The NPRM attempts to clarify the definition of transferor and transferee by proposing a new definition for each of those terms. Finally, in response to the two petitions for reconsideration that concern the disclosure and retention requirements, that NPRM proposes to require the transferee to return a copy of a signed odometer disclosure statement to his transferor.

**Scope**

To the extent the petitions request relief that is not proposed to be granted in the NPRM or is not granted in the interim final rule, this notice denies, in whole or in part, five petitions for reconsideration. These petitions request that NHTSA reconsider the provisions of the final rule that: (1) Prohibit a person from signing the odometer disclosure statement as both the transferor and transferee in the same transaction; (2) require that titles and reassignment documents be set forth by a "secure printing process"; and (3) concern the information included on the odometer disclosure statement.

**Security for Motor Vehicle Titles**

The Truth in Mileage Act of 1986 requires that, beginning April 29, 1989, each State motor vehicle title must be set forth by a secure printing process or other secure process. To implement this statutory requirement, we proposed to define "secure printing process" and "other secure process" as "any process which deters and detects counterfeiting and/or unauthorized reproduction and allows alterations to be visible to the naked eye". 3M requested that the definition be amended to read, in lieu of "visible to the naked eye", "easily detected under recommended viewing conditions". 3M stated that the definition as proposed could be interpreted to mean without the aid of a verification device and asserted that any verification process that precludes the use of a supporting device was too restrictive. Because the intent of the Truth in Mileage Act is to provide a paper trail for the protection of consumers, we stated that any alteration should be visible to the purchaser who would not routinely have a verification device. We adopted the definition as proposed.

To implement the provisions of the Truth in Mileage Act that require the security of motor vehicle titles, we also proposed the addition of a new § 580.4. This section proposed to require that motor vehicle titles be set forth by a secure printing process or other secure process. It also proposed to require that any documents used to reassign the title be set forth by the same secure process. To assist the States in their efforts to issue motor vehicle titles that comply with the requirements of the Truth in Mileage Act and the regulations implementing the Act, we proposed to include an Appendix A consisting of a list of technologies that we deemed to be secure processes. We proposed that Appendix A would include intaglio, high resolution, and micro-line printing, security paper, erasure sensitive background inks, and security lamination. The comments concerning the proposed § 580.4 and Appendix A were divergent. 3M suggested that NHTSA require the title to be set forth by one of the secure processes in Appendix A and that Appendix A be amended to include all available security processes which would be ranked as to the level of security that they provide. The American Association of Motor Vehicle Administrators (AAMVA) and several member jurisdictions commented that Appendix A was superfluous and unnecessary, and requested that it be deleted. In addition, these commenters also requested that the agency permit reassignment documents to be printed by a secure process, not necessarily the same secure process as the title.

To allow for the maximum administrative discretion on the part of the States, we did not adopt 3M's suggestion to list and rank all secure processes. Appendix A was adopted with minor technical changes. We noted that the States are permitted to choose alternative methods of security beyond those listed in Appendix A. In addition, we adopted the suggestion of AAMVA and its member jurisdictions with regard to reassignment documents. Accordingly, the final rule of August 1988 permits reassignment documents to be set forth by a secure process, but not necessarily the same process as the title.

3M filed a petition for reconsideration. 3M stated, "* * * it is incumbent upon 3M to respond for reconsideration of the final ruling. 3M agrees with the intent of the final ruling, but feels that further clarification is required to prevent any misunderstanding of the assumptions made by NHTSA relative to 3M's security lamination and the consumer protection afforded by its inclusion on title documents issued by individual states." 3M then explained its security lamination and claimed that NHTSA's reference to 3M's security lamination "does not take the consumer verifiable feature into consideration and gives the impression that the intent of the law is not met with its incorporation."

Paragraph 2(b) of Appendix A lists security laminate under the heading: "Methods to allow alterations to be visible to the naked eye." NHTSA finds no inaccuracies concerning security lamination in the preamble to the final rule of August 1988, nor in Appendix A, and 3M fails to be specific in its allegations. Furthermore, 3M has not requested the agency to take any specific action. Therefore, 3M's petition for reconsideration is denied.

**Disclosure of Odometer Information: Exemptions**

With regard to the information concerning the odometer required to be disclosed by the transferor to the transferee, we proposed a new § 580.5. This section proposed to continue to require certain information that the agency had already required and to include some additional provisions. While the proposed regulation set forth the information which would be disclosed, it also included, in Appendices B and C, sample disclosure forms which could be followed. Appendix B was a sample disclosure form which a State may wish to include on its titles. Appendix C was a sample disclosure form which could be used if the vehicle was not titled on a title that conforms to the law and our regulations (during the phase-in period) or if the vehicle had not been previously titled, such as a new vehicle or a vehicle imported into the United States from a foreign country. With some minor changes, § 580.5 and Appendices B and C were adopted as proposed.

We also proposed a new § 580.6 which proposed to exempt certain transferors from issuing odometer disclosure statements. This section proposed to exempt the transferors that NHTSA currently exempts. Specifically, among other transferors, NHTSA proposed to continue to exempt a transferor of a vehicle that is twenty-five years or older from the requirements of issuing an odometer disclosure statement. We received numerous requests to lower the vehicle's age. AAMVA, several of its member jurisdictions, and a coalition of commenters (the "coalition") consisting of AAMVA, the National Automobile Dealers Association (NADA), the National Auto Auction Association (NAAA), the National Independent Automobile Dealers Association (NIADA), the Automotive Trade Association, and the American Car Rental Association, suggested that the exemption be given to the transferor of a vehicle that is ten years old and older. The National Association of Consumer Agency Administrators recommended that the absolute maximum age of a vehicle for which the transferor should be required to issue an odometer disclosure statement is fifteen years. The Director of the California Department of Motor Vehicles proposed that the regulation be changed to exempt transferors of vehicles that are six years or older. Oregon noted that the State legislature amended Oregon law to require odometer disclosure information only for vehicles eight years old and newer. NHTSA considered each of the suggestions and the August 1988 final rule exempts a transferor of a vehicle ten years old and older.

A private citizen filed a petition for reconsideration concerning the odometer disclosure requirements and the exemption for a transferor of a vehicle ten years old and older. Referring to Appendices B and C, he recommends that the exemption for vehicles ten years and older be incorporated into the disclosure forms. He feels that a statement noting the exemption would clarify the regulatory requirements for the benefit of persons who buy and sell automobiles for personal use.

While entitling his letter a petition for reconsideration, this individual does not explain why compliance with Appendices B and C of the rule is not practicable, is unreasonable, or is not in the public interest. *See*, 49 CFR 553.35. Rather, he seems to suggest that NHTSA amend the appendices. As noted in the preamble to the final rule, the appendices are examples and do not introduce any new requirements or restrictions into the law. 53 FR 29471 (1988). Therefore, what this individual is actually suggesting is that NHTSA amend the provisions concerning the disclosure of odometer information, § 580.5, to require the transferor to inform his transferee that, because the vehicle is ten years old or older, the transferor is not required to disclose the vehicle's mileage. To adopt this suggestion at this time could impose unnecessary financial burdens on the States that have already begun to revise their titles to conform with the requirements of the Truth in Mileage Act and the final rule. It could also impose similar burdens on dealers and distributors who have already placed orders for separate disclosure statements and/or sales contracts that contain odometer disclosure statements that meet all statutory and regulatory requirements. Furthermore, this suggested statement would not alert buyers and sellers to their legal obligations, but rather merely advise them of an exemption from those obligations. The benefits to be gained from this suggested statement would not outweigh the significant costs that could be imposed on the States and the automobile industry. Therefore, we are denying this petition, but may consider this suggestion at the time of any future rulemaking. We note that the States and dealers, distributors, and other transferors may include a provision of an odometer disclosure statement that a transferor of a vehicle ten years old or older is not required to disclose the vehicle's mileage to his transferee.



**Powers of Attorney**

*A. Background; Misuse in Odometer Fraud Schemes*

Although the July 1987 proposed rule to implement the Truth in Mileage Act did not include a regulatory provision explicitly concerning the use of powers of attorney, we stated in the preamble to the proposed rule that we recognize that powers of attorney are necessary in certain transactions. Someone acting on behalf of a deceased or incompetent owner would use a power of attorney from those owners to transfer the vehicles to a third party. In addition, the spouse of overseas military personnel, or of someone out of town or otherwise unavailable, may have a power of attorney from a husband or wife to transfer a vehicle to a third party. However, we emphasized that powers of attorney that allow a person to sign a disclosure as both the transferor and transferee result in only one party to the transaction being aware of the previous mileage disclosures. This could jeopardize the integrity of the "paper trail", the evidence of rollbacks that Congress intended to create by enacting the Truth in Mileage Act. 52 FR 27026 (1987).

The American Association of Motor Vehicle Administrators (AAMVA), the National Association of Consumer Agency Administrators (NACAA), and the Wisconsin Department of Transportation, Motor Vehicle Division, (Wisconsin) agreed with our position. AAMVA noted a power of attorney that allows a person to sign the disclosure as both the buyer and the seller creates a situation ripe for fraud, if that person is intent on rolling back the vehicle's odometer. Several of AAMVA's members concurred in this position. Wisconsin suggested that a new paragraph be added to § 580.5 providing that no person may sign a disclosure as both the transferor and transferee.

Other commenters, concerned that the title had to be present at the time of sale ("title present"), hoped that the use of a power of attorney would ease the burden that title present might have imposed. The coalition suggested the use of a special power of attorney. (Although the coalition used the term "secure power of attorney", we are referring to the coalition's suggestion by the term "special power of attorney". This will help to differentiate between the statutorily permissible secure power of attorney and the power of attorney proposed by the coalition.) The coalition proposed that this special power of attorney would (1) be set forth by a secure process; (2) contain the appropriate Federal odometer disclosure statement; and (3) be fully completed, dated, and signed by the transferee. Upon receipt of the transferor's title, the initial transferee would negotiate the title and complete the transferor's statement based on the transferor's special power of attorney and mileage disclosure thereon. The title, together with the special power of attorney and all subsequent reassignments, would be presented to the State with any application for title.

We reviewed AAMVA's comments and the suggestions of Wisconsin and the coalition in light of our investigative experience which showed that powers of attorney have been abused in the furtherance of odometer fraud schemes. The following two schemes, uncovered during NHTSA's investigations, are illustrative of the use of a power of attorney to commit odometer fraud:

(A) The transferor, a leasing company, sold several vehicles to a wholesale dealer and gave this dealer a power of attorney to execute the odometer disclosure statements on its behalf. The buying dealer rolled back the odometer on the vehicles, entered the lower mileage on the disclosure statements, and signed the disclosures as both the buyer and the seller. The buyer then sent a copy of the statements to the leasing company where they were filed.

(B) A new car dealer purchased a used vehicle and received a separate odometer disclosure statement on which his transferor certified that the odometer reflected the actual mileage of the vehicle. The new car dealer sold the car before he received the title, certifying

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that the odometer reflected the vehicle's actual mileage. The new car dealer then received the title, which had a blatantly altered odometer reading in the reassignment space on the reverse side of the title. Using the power of attorney that he received from his buyer, the new car dealer signed the disclosure as both the transferor and transferee. He never advised his buyer of the mileage problem.

Note: Other title problems that could be ignored by unscrupulous persons include higher mileage on the face of the title than on the reassignment on the reverse side and a certification that the odometer reading does not reflect the actual mileage.

Based on the comments from AAMVA, NACAA, and Wisconsin and our own investigative experience, we adopted Wisconsin's suggestion and added a new § 580.5(h). This provision prohibits a person from signing the disclosure as both the transferor and transferee in the same transaction.

We did not adopt the suggestion of the coalition of commenters for several reasons. First, we had modified the proposed requirement in the NPRM of July 1987 that the title be present at the time of transfer of ownership and addressed the primary concern of the commenters by permitting the disclosure to be made "in connection with the transfer of ownership", rather than "at the time of transfer of ownership." Second, we were concerned that the coalition's suggestion would interfere with the integrity of the paper trail, which Congress intended to enhance by enacting the Truth in Mileage Act. Under the coalition's suggestion, only one party to the transfer would see the odometer disclosure (which would have been on the title). The power of attorney could be easily discarded and a new one forged and submitted to the State by any of the subsequent transferees, since the issuance of the special power of attorney forms would not be controlled in any way. Finally, this process would place a burden on State titling offices to review additional documentation, check for conformity of the information contained on the documents, and maintain additional records. Accordingly, the final rule of August 1988 implemented the Truth in Mileage Act, while allowing the States the maximum discretion in complying with these requirements. 53 FR 29469, 29472, 29475 (1988).

*B. Petitions for Reconsideration*

In petitions filed with the agency, NADA, NIADA, and NAAA asked NHTSA to reconsider § 580.5(h), the provision which prohibits a person from signing the disclosure as the transferor and transferee in the same transaction. The agency also received many letters in support of the petitions. The petitioners correctly noted that this provision would prohibit a seller from giving his buyer, and conversely, a buyer from giving his seller, a power of attorney to sign the disclosure on the title. The basis for the petitions is the fear that customers buying from, and selling to, automobile dealers will not return to the dealers to sign the disclosure on the title, although the customer's failure to sign the title would be in violation of the Federal law and could result in fines and/or imprisonment. The petitioners claimed that customers failing to return to the dealer to sign the disclosure on the title would interfere in the sales of vehicles and result in costs associated with locating these people, administrative costs for mailing and/or duplicating titles, and increased inventory costs in States where the dealer must have the title present at time of sale. This would result in higher vehicle prices as dealers would shift these expenses to the consumer. Alternatively, they argued that if customers did return, this return visit would result in lost time at work, travel time, and other costs. They also claimed that a person signing the disclosure as the buyer and the seller did not create a situation ripe for fraud, that the provision conflicted with State laws and was contrary to Federal law.

The petitioners asked that NHTSA eliminate § 580.5(h). Alternatively, the petitioners suggested that NHTSA permit the use of special powers of attorney or require title sets, a two-part title system where the registered owner holds the title to his vehicle and the lienholder holds a notice of security interest filing.

*C. Congressional Mandate*

Before the agency could fully consider these petitions, Congress enacted the Pipeline Safety Reauthorization Act, Pub. L. 100–561. Section 401 of the Act, which amends section 408(d)(1) of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. 1988(d)(1), and concerns the use of limited powers of attorney in connection with mileage disclosure. The purpose of this provision is to resolve a technical problem for purchasers of used motor vehicles (dealers), without increasing the burden on States or lessening our ability to fight odometer fraud. 134 Cong. Rec. H10079 (daily ed. October 12, 1988) (remarks of Rep. Whittaker). Congress determined that NHTSA's final rule, which prohibits a person from signing an odometer disclosure statement as both the transferor and transferee in the same transaction, could have the effect of precluding the use of a power of attorney in certain instances. Recognizing that the Truth in Mileage Act of 1986 requires a disclosure, including the transferee's signature, on the title, Congress found that limiting the use of powers of attorney could cause an undue burden on dealers and consumers when a consumer's title is held by a bank or other lienholder. Because the consumer does not have the vehicle's title in these instances, the consumer, as a transferor, would be unable to complete the disclosure on the title unless: (1) The consumer returned to the dealer after the dealer paid off the lien and received the title from the lienholder, or (2) the title was mailed by the dealer to the consumer, completed by the consumer, and mailed back to the dealer. Both of these alternatives were rejected by Congress. "It is not reasonable to assume that the consumer will come back to the dealer several days or weeks later to fill in a title received from the bank by the dealer after paying off the lien. It is also not safe to rely on the mails to send the valuable title document to the consumer or to rely on the consumer to return the document in a timely fashion." 134 Cong. Rec. H10079 (daily ed. October 12, 1988) (remarks of Rep. Dingell).

To resolve the problem and alleviate potential costs for dealers and consumers, the new law specifies that a power of attorney authorizing the dealer to disclose mileage on the title on behalf of the consumer may be used when the transferor's title document is physically held by a lienholder, if otherwise permitted by State law. The new law does not require the States to allow the use of a power of attorney for the purpose of mileage disclosure. However, if a State chooses to permit the use of powers of attorney in connection with mileage disclosure, the State itself must issue the power of attorney form, and the form must be consistent with the requirements of the law and the regulations promulgated thereunder. The new law directs the agency to prescribe the form and content of the power of attorney/disclosure document and reasonable conditions for its use by the transferor. More specifically, the new law requires that the form: (1) "be issued by a State to transferees in accordance with paragraph (2)(A)(i) * * *" (Paragraph (2)(A)(i) concerns the issuance of documents that are set forth by a secure printing process or other secure process.); (2) include an odometer disclosure statement and other information as NHTSA deems



necessary; and (3) be submitted to the State by the person granted the power of attorney. It also requires NHTSA to provide for the retention of a copy of the power of attorney form and to ensure that the person granted the power of attorney completes the disclosure on the title consistent with the disclosure on the power of attorney form.

We note that in some States, a secure power of attorney is not necessary to ensure that the customer trading in a vehicle to a dealer makes a mileage disclosure on the vehicle's title document. For example, some States record all lien information on computerized recordkeeping systems and allow the registered owner to hold the title document. Other States have adopted a two-part title system under which the registered owner holds the title document and the lienholder holds a notice of security interest filing. Under either system, because the vehicle owner would have the title document, he could make the disclosure on the title and would not need to use a power of attorney form. In these States, the provisions of the new law would not apply, and the disclosure signed by the transferor would continue to be required on the vehicle's title document.

To implement section 401 of the Pipeline Safety Authorization Act of 1988, NHTSA has published an interim final rule in today's **Federal Register**. Consistent with the new law, this rule allows the use of a secure power of attorney that would permit a person to sign a disclosure as both the transferor and transferee in the same transactions, in specified instances. NHTSA has also published an NPRM in today's **Federal Register**. Although the NPRM and the rule responds to most of the requests set forth in the petitions for reconsideration, this notice will respond to the issues not addressed in today's NPRM and interim final rule.

*D. The Agency Response to the Petitions*

1. Costs to Dealers and Consumers

The petitioners claimed that § 580.5(h) would result in significant costs to dealers and consumers and, therefore, that compliance with the section is not practicable, is unreasonable, and is contrary to the public interest. The petitioners claimed that customers would not return to dealers to sign the disclosure on the title, and that this inaction would result in costs associated with locating these people, administrative costs for mailing and/or duplicating titles, and increased inventory costs in States where the dealer must have the title present at time of sale. This would result in higher vehicle prices as dealers would shift these expenses on to the consumer. Alternatively, they argued that if customers did return, this return visit would result in lost time at work and other costs. NIADA estimates that the costs associated with this section are $170,000,000. (17,000,000 used cars sold each year × $10 per car.) NADA estimates the costs of this section to be $365,100,000.

Consistent with section 401 of the Pipeline Safety Reauthorization Act of 1988, and balancing the need for strong odometer laws against the potential business problems in used vehicle sales presented in our original rule, in an interim final rule, we have issued an amendment to § 580.5(h) which permits the use of a secure power of attorney in certain limited instances. The interim final rule is published elsewhere in today's **Federal Register**.

In reviewing these petitions, including the data provided by NIADA and NADA, NHTSA undertook to reanalyze its *Regulatory Evaluation—Final Rule Implementing the Truth in Mileage Act* (April 1988). This new evaluation, *Regulatory Evaluation—Restrictions on Power of Attorney Resulting from Implementation of the Truth in Mileage Act*, has been placed in the docket for this notice and interested persons may obtain a copy by writing to NHTSA Docket Section, 400 Seventh Street, SW., Washington, DC 20590, or by calling the Docket Section at (202) 366–4949. In light of these costs estimates and the interim final rule, the petitioners have not demonstrated that compliance with § 580.5(h) is not practicable, is unreasonable, and is contrary to the public interest.

2. Fraud and § 580.5(h)

NADA claims that the number of instances where franchised dealers have discarded and/or forged separate odometer disclosure statements is insignificant and that there is an insignificant level of fraud by franchised dealers or their employees acting on behalf of customers under powers of attorney. NADA attributes this to the legal sanctions imposed upon those acting in a manner inconsistent with the terms of a power of attorney. NADA argues further that § 580.5(h) may nevertheless promote fraud by unscrupulous dealers. NADA claims that these dealers are likely to forge the transferor's or transferee's signature on the title, in order to transfer a vehicle that a customer has traded-in but for which the customer has not returned to sign the title.

As noted above, section 401 of the Pipeline Safety Reauthorization Act and the interim final rule which is published elsewhere in today's **Federal Register**, permit the use of a secure power of attorney under certain limited conditions when the title documents is physicially held by a lienholder. Therefore, the major portion of NADA's concerns have been addressed. The new law and the interim final rule have balanced the business concern raised in the event that a title document is held by a lienholder against the need for an enhanced paper trial to deter and detect odometer fraud. However, as we have explained above, a person signing a mileage disclosure as both the transferor and transferee creates a situation ripe for fraud when the person signing the disclosure is intent on rolling back the vehicle's odometer. Therefore, neither the law nor the interim final rule permit a person to sign a disclosure statement as the transferor and transferee in the same transaction in the event that title is lost, misplaced or otherwise unavailable; we have amended § 580.5(h), but we have not eliminated it in its entirety. Increasing the number of situations in which the same person is permitted to sign the disclosure as the transferor and transferee increases the opportunity for odometer fraud. Because lost or misplaced titles can be replaced and because we can limit the possible misuse of secure power of attorney forms, we have not proposed to extend the use of secure power of attorney forms to situations in which the transferor's title is lost or misplaced.

3. The Administrative Procedures Act and NHTSA's Rulemaking Regulations

NADA and NIADA assert that the agency must reconsider § 580.5(h) because that section did not appear in the proposed rule published on July 17, 1987. They claim that the agency violated the Administrative Procedures Act, 5 U.S.C. 553, and the agency's regulation concerning rulemaking, 49 CFR Part 553, by failing to provide notice and comment.

Contrary to the petitioners' assertion, the agency did provide notice and an opportunity for comment. The very cases cited by NIADA in support of its allegation find that the Administrative Procedures Act does not require an agency to publish in advance every precise proposal which it may ultimately adopt as a rule. The test of adequacy of notice of proposed rulemaking is whether it fairly appraised interested parties of the issues involved. In the NPRM, we addressed NIADA's question about whether a power of attorney could be granted so that the transferor could sign a disclosure on behalf of the

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transferee, to avoid any problems when the vehicle was subject to an existing lien. In response to this inquiry, the preamble to the NPRM discussed that NHTSA recognizes that powers of attorney are necessary in certain transactions. 52 FR 27028 (1987). The coalition, which included these petitioners, commented on the use of a power of attorney that would allow a person to sign the disclosure as the transferor and transferee in the same transaction. The rulemaking record supports our conclusion that they did have notice and were provided an opportunity to comment on the power of attorney issue.

In any event, the NIADA argument is largely moot insofar as titles held by lienholders are concerned. Consistent with section 401 of the Pipeline Safety Reauthorization Act of 1988, as noted above, we have issued an interim final rule amending § 580.5(h) to address the lienholder issue. The interim final rule is published elsewhere in today's **Federal Register**. We have requested comments on the interim final rule. Following the close of the comment period, NHTSA will publish a notice responding to the comments and, if appropriate, NHTSA will amend the provisions of this rule. Thus, NIADA will have an opportunity to comment.

4. The Regulatory Flexibility Act

NADA and NIADA requested that the agency reconsider section 580.5(h) and its regulatory flexibility determination. Both petitioners submit that a power regulatory flexibility analysis would include regulatory alternatives.

At the time the NPRM and final rule were published, the agency certified that neither rulemaking would have a significant economic impact on a substantial number of small entities. No alternatives were presented because the agency cannot impose different requirements on small dealers as opposed to new dealers, or new car dealers as opposed to used car dealers or wholesalers. Odometer fraud is not limited to a particular segment of the automobile industry.

5. Petitioners' Suggested Alternatives

The petitioners request, as they did when commenting on the NPRM, that the agency permit the use of a special power of attorney. This special power of attorney would (1) be set forth by a secure process; (2) contain the appropriate Federal odometer disclosure statement; and (3) be fully completed, dated, and signed by the transferee. Upon receipt of the transferor's title, the initial transferee would negotiate the title and complete the transferor's statement based on the transferor's special power of attorney and mileage disclosure thereon. The title, together with the special power of attorney and all subsequent reassignments, would be presented to the State with any application for title.

We have carefully considered the petitioners' request but have decided to deny it. We have concluded that granting the request would interfere with the integrity of the paper trail, which Congress intended to enhance by enacting the Truth in Mileage Act without providing any compensating commercial advantages that would outweight the law enforcement concern. The special power of attorney could be easily discarded and a new one forged, since the issuance of the special power of attorney forms would not be controlled in any way. For the agency to spend resources to investigate whether the powers of attorneys were, in fact, securely printed when there is no limit on who could print these documents, would detract from the time that could be spent on odometer fraud investigations. Indeed, the agency has experienced investigatory problems pursuing cases involving unsecure powers of attorney. Furthermore, to allow the person granted the power of attorney to reassign the title and pass along the power of attorney could result in a subsequent transferor discarding the actual document and forging a false power of attorney.

The petitioners also requested that NHTSA require the States to adopt a two-part title system or a system that records all lien information on computerized recordkeeping systems and allows the registered owner to hold the title. We have not adopted this alternative. We have allowed the States the maximum administration discretion possible in complying with the Federal requirements. We note that the States may also petition for approval of alternative mileage disclosure requirements under section 580.11 of the August 1988 final rule.

In an interim final rule published in today's **Federal Register**, the agency implements the provisions of the Pipeline Safety Reauthorization Act that concerns the use of a secure power of attorney to disclose mileage. The interim final rule permits a person to sign the disclosure on the title as the transferor and transferee in the same transaction in certain limited circumstances. Congress' action addresses the major problem posed in the petitions and we are implementing that law. A balance has been struck between the potential problem in the sale of used cars and legitimate enforcement concerns.

Except to the extent they are granted in today's interim final rule, NHTSA has concluded that these petitions have not otherwise provided any reasonable basis for changing § 580.5(h) of the final rule published on August 5, 1988. Accordingly, these petitions are denied.

Issued on March 3, 1989.

**Diane K. Steed,**

*National Highway Traffic Safety Administrator.*

[FR Doc. 89-5304 Filed 3-6-89; 10:02 am]

BILLING CODE 4910-59-M

## INTERSTATE COMMERCE COMMISSION

### 49 CFR Parts 1105 and 1152

**[Ex Parte No. 274 (Sub-No. 6; Sub-No. 10A)]**

### Environmental Compliance; Out-of-Service Rail Line Exemptions

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Final rules.

**SUMMARY:** The Commission adopts final rules set forth below to codify its policy of routinely staying the effectiveness of out-of-service class exemptions where an informed decision on pending environmental and historic preservation issues cannot be made prior to the date the exemption authority would otherwise become effective; and eliminating the requirement that petitions for stay involving environmental issues be filed within 10 days of the service of the notice. The rules also address procedures regarding environmental issues, and public use conditions. The rules will give the Commission the opportunity to consider and resolve environmental and historic preservation issues before permitting an exemption to become effective, and allow the public a greater opportunity to be heard regarding these matters. A notice of proposed rulemaking in this proceeding was served June 30, 1988 and published in the **Federal Register** on July 1, 1988 at 53 FR 24971.

**DATE:** The rules will be effective on April 7, 1989.

**FOR FURTHER INFORMATION CONTACT:** Joseph H. Dettmar, (202) 275-7245. (TDD for hearing impaired, (202) 275-1721.)

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 275-1721.)



These rules will not have a significant adverse effect on the quality of the human environment or energy conservation. Instead, they codify certain procedures (and explain and expand others) that promote heightened environmental scrutiny.

It is certified that these rules will not have significant impact on a substantial number of small businesses.

**List of Subjects**

*49 CFR Part 1105*

Environmental impact statements, Reporting and recordkeeping requirements.

*49 CFR Part 1152*

Administrative practice and procedure, Environmental protection, National resources, Railroads, Reporting and recordkeeping requirements.

**Authority:** 5 U.S.C. 553 and 559, 42 U.S.C. 4332; and 49 U.S.C. 10321, 10505, 10903, 10904, and 10906.

Decided: February 16, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Simmons. Commissioner Phillips concurred in the result.

**Noreta R. McGee,**

*Secretary.*

Title 49, Subtitle B, Chapter X, Parts 1105 and 1152 of the Code of Federal Regulations are amended as follows:

## PART 1105—GUIDELINES FOR IMPLEMENTATION OF THE NATIONAL ENVIRONMENTAL POLICY ACT OF 1969

1. The authority citation for 49 CFR Part 1105 continues to read as follows:

**Authority:** 49 U.S.C. 10321, 10505, 10903–10906; 16 U.S.C. 1247(d); 42 U.S.C. 4332; and 5 U.S.C. 553 and 559.

2. Section 1105.10 is amended by adding a new paragraph (g)(3) to read as follows:

**§ 1105.10 Commission procedures and public involvement.**

* * * * * *

(g) * * *

(3) In out-of-service rail line exemption proceedings under 49 CFR 1152.50, the Commission, on its own motion, will stay the effective date of individual notices of exemption when an informed decision on pending environmental and historic preservation issues cannot be made prior to the date that the exemption authority would otherwise become effective.

* * * * * *

## PART 1152—ABANDONMENT AND DISCONTINUANCE OF RAIL LINES AND RAIL TRANSPORTATION UNDER 49 U.S.C. 10903

3. The authority citation for 49 CFR Part 1152 continues to read as follows:

**Authority:** 5 U.S.C. 553, 559, and 704; 11 U.S.C. 1170; 16 U.S.C. 1247(d); and 49 U.S.C. 10321, 10362, 10505, 10903, 11161, 11162, 11163, *et seq.*

4. Section 1152.50(d)(3) is revised to read as follows:

**§ 1152.50 Exempt abandonments and discontinuances of service and trackage rights.**

* * * * * *

(d) * * *

(3) The Commission, through the Director of the Office of Proceedings, shall publish a notice in the **Federal Register** within 20 days after the filing of the notice of exemption. Petitions to stay the effective date of the notice on other than environmental or historic preservation grounds must be filed within 10 days of the publication. Petitions to stay the effective date of the notice on environmental or historic preservation grounds may be filed at any time but must be filed sufficiently in advance of the effective date in order to allow the Commission to consider and act on the petition before the notice becomes effective. Petitions for reconsideration, comments regarding environmental, energy and historic preservation matters, and requests for public use conditions under 49 U.S.C. 10906 and 49 CFR 1152.28(a)(2) must be filed within 20 days after publication. The exemption will be effective 30 days after publication, unless stayed. If the notice of exemption contains false or misleading information, the use of the exemption is void *ab initio* and the Commission shall summarily reject the exemption notice.

5. Section 1152.50(d) is amended by redesignating paragraphs (d)(4) and (d)(5) as paragraphs (d)(5) and (d)(6) and by adding a new paragraph (d)(4) to read as follows:

* * * * * *

(d) * * *

(4) In out-of-service rail line exemptoin proceedings under 49 CFR 1152.50, the Commission, on its own motion, will stay the effective date of individual notices of exemption when an informed decision on pending environmental and historic preservation issues cannot be made prior to the date that the exemption authority would otherwise become effective.

6. Newly redesignated § 1152.50(d)(5) is revised to read as follows:

* * * * * *

(d) * * *

(5) A request to implement interim trail use and rail banking under 16 U.S.C. 1247(d) and 49 CFR 1152.29 should be filed with the Commission and served on the railroad within 10 days of publication of the notice of exemption in the **Federal Register**. A notice or decision to all parties will be issued if use of the exemption is made subject to environmental, energy, historic preservation, public use and/or interim trail use and rail banking conditions.

* * * * * *

[FR Doc. 89-5288 Filed 3-7-89; 8:45 am]

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# Proposed Rules

Federal Register
Vol. 54, No. 44
Wednesday, March 8, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 51

[Docket Number FV-88-204]

### Snap Beans; Grade Standards

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This action would revise the voluntary U.S. Standards for Grades of Snap Beans. The South Florida Vegetable Exchange (the Exchange), which represents the majority of snap bean growers in South Florida, has requested the standards be revised to bring them into conformity with current cultural and harvesting practices. The Agricultural Marketing Service (AMS), in cooperation with industry, has the responsibility to develop and improve standards of quality, condition, quantity, grade, and packaging in order to encourage uniformity and consistency in commercial practices.

**DATE:** Comments must be postmarked or courier dated on or before May 8, 1989.

**ADDRESS:** Interested parties are invited to submit written comments concerning this proposal. Comments must be sent in duplicate to the Standardization Section, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Room 2056 South Building, Washington, DC 20090-6456. Comments should reference the date and page numbers of this issue of the **Federal Register** and will be made available for public inspection in the above office during business hours.

**FOR FURTHER INFORMATION CONTACT:** Paul W. Manol at the above address, or call (202) 447-5410.

**SUPPLEMENTARY INFORMATION:** This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been designated as "non-major" under the criteria therein.

Pursuant to the requirements set forth in the Regulatory Flexibility Act, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities. The proposed revision of the standards for snap beans will not impose substantial direct economic cost, recordkeeping, or personnel workload changes on small entities, and will not alter the market share or competitive position of these entities relative to large businesses.

This action proposes changes to the U.S. Standards for Grades of Snap Beans as set forth in §§ 51.3830-51.3844 (7 CFR 51.3830-51.3844). This proposal is set forth in order to bring the standards into conformity with current harvesting and marketing practices. The United States Standards for Grades of Snap Beans were last revised on August 1, 1936. The Exchange has requested the following revisions which are proposed herein:

First, a general section would be added specifying the types of beans covered by this standard. Although the current standards apply to snap, pole, and wax beans, according to the Exchange, there exists some confusion in the industry as to what types of beans may be certified by the U.S. Standards for Grades of Snap Beans.

Next, the U.S. Combination and Unclassified grades would be eliminated because they are rarely used and may create confusion in the marketplace.

With the majority of beans now being mechanically harvested rather than handpicked, the Exchange indicates that the industry is finding that with the newer, more tender varieties of beans, it is increasingly difficult to meet the requirements of the grade due to the higher percentages of broken beans in any lot resulting from the harvesting process. The current standards for U.S. Fancy and U.S. No. 1 grades allow ten percent total defects, including not more than 5 percent serious damage, including therein not more than 1 percent soft rot. For the U.S. No. 2 grade, ten percent total defects are allowed including not more than 1 percent soft rot. The new standard would be revised as follows:

(a) *U.S. Fancy:* Ten percent for beans in any lot which fail to meet the requirements of the grade, including not more than 3 percent damage by broken beans. Additionally, within the ten percent tolerance, not more than 5 percent shall be allowed for defects causing serious damage, including therein, not more than 1 percent for beans affected by soft rot.

(b) *U.S. No. 1:* Thirteen percent for beans in any lot which fail to meet the requirements of the grade, including not more than ten percent for grade defects other than broken beans, including not more than 5 percent shall be allowed for defects causing serious damage, including therein, not more than 1 percent for beans affected by soft rot.

(c) *U.S. No. 2:* Fifteen percent for beans in any lot which fail to meet the requirements of the grade; including not more than ten percent serious damage by grade defects other than broken beans, including therein, not more than 1 percent for beans affected by soft rot.

Therefore, the proposal would lessen the restriction for broken beans only in the U.S. No. 1 and U.S. No. 2 grades, while further restricting the percentage of broken beans allowed in the U.S. Fancy grade. This further restriction would allow growers who "hand-pick" beans to market their product under a grade that reflects the quality difference due to harvesting and packing techniques.

Currently, the maxium tolerance for defects permitted in any grade is ten percent and individual packages may contain up to one and one-half times this amount. The proposal would allow maxium defects of thirteen percent and fifteen percent in the U.S. No. 1 and U.S. No. 2 grades respectively. Therefore, it would be necessary to revise the application of tolerances whereby individual packages may contain up to one and one-half times the thirteen percent tolerance or the fifteen percent tolerance, provided that the average for the entire lot averages within the maximum tolerance specified for the grade. Thus paragraph (a) of § 51.3836, Application of tolerances, would be revised to read as follows: For tolerances of ten percent or more, individual packages may contain not more than one and one-half times the tolerance specified. *Provided*, that the average for the entire lot is within the tolerance specified for the grade.

Finally, the definition of "Similar Varietal Characteristics" would be updated and simplified. The current definition references specific varieties that are not among those that are being widely grown. In addition, since varieties change in popularity over time, the Exchange stated that a revised definition should provide that beans of different colors or types shall not be mixed within the same container.



### List of Subjects in 7 CFR Part 51

Fresh fruits, Vegetables and Other products (Inspection, certification, and standards).

For reasons set forth in the preamble, the subpart—United States Standards for Grades of Snap Beans, 7 CFR Part 51, shall be amended as follows:

## PART 51—FRESH FRUITS, VEGETABLES, AND OTHER PRODUCTS (INSPECTION, CERTIFICATION, AND STANDARDS)

1. The authority citation for 7 CFR Part 51 continues to read as follows:

Authority: Secs 203, 205, 60 Stat. 1087 as amended, 1090 as amended [7 U.S.C. 1622-1624].

1. In Subpart—United States Standards for Grades of Snap Beans, § 51.3829 is added to read as follows:

### General

**§ 51.3829 General.**

These standards can be applied to all beans used in their entirety rather than shelled beans, and includes varieties such as snap, pole, and wax beans. These standards do not apply to varieties such as fava, lima, pinto, or calico beans.

**§§ 51.3832 and 51.3834 [Removed and Reserved]**

3. Section 51.3832 and 51.3834 are removed and reserved.

4. Paragraphs (a), (b), and (c) of § 51.3835 are revised to read as follows:

### Tolerances

**§ 51.3835 Tolerances.**

* * * * *

(a) *U.S. Fancy.* Ten percent for beans in any lot which fail to meet the requirements of the grade, including not more than 3 percent damage by broken beans. Additionally, within the ten percent tolerance, not more than 5 percent shall be allowed for defects causing serious damage, including therein, not more than 1 percent for beans affected by soft rot.

(b) *U.S. No.* 1. Thirteen percent for beans in any lot which fail to meet the requirements of the grade, including not more than 10 percent for grade defects other than broken beans, including that not more than 5 percent shall be allowed for defects causing serious damage, including therein, not more than 1 percent for beans affected by soft rot.

(c) *U.S. No.* 2. Fifteen percent for beans in any lot which fail to meet the requirements of the grade, including not more than 10 percent for grade defects other than broken beans, including therein, not more than 1 percent for beans affected by soft rot.

5. Paragraph (a) of § 51.3836 is revised to read as follows:

### Application of Tolerances

**§ 51.3836 Application of Tolerances.**

* * * * *

(a) For tolerances of 10 percent or more, individual packages may contain not more than one and one-half times the tolerances specified: Provided, that the average for the entire lot is within the tolerance specified for the grade.

* * * * *

6. Section 51.3837 is revised to read as follows:

**§ 51.3837 Similar varietal characteristics.**

"Similar varietal characteristics" means that the beans are of the same color and general type. For example, wax and green beans, or Snap and Pole type beans must not be mixed.

Dated: March 3, 1989.

J. Patrick Boyle,
*Administrator.*

[FR Doc. 89-5307 Filed 3-7-89; 8:45 am]

BILLING CODE 3410-02-M

## Federal Crop Insurance Corporation

### 7 CFR Part 401

[Amdt. No. 48 Doc. No. 6577S]

### General Crop Insurance Regulations

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) proposes to amend the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1990 and succeeding crop years, by changing several endorsements to provide that the premium reduction gained by insureds through good insuring experience will extend beyond the present 1989 crop year expiration. The intended effect of this rule is to allow a continuation of good experience discount for all present policyholders who are eligible for a premium reduction while FCIC reviews the entire good experience discount issue for all policyholders.

**DATE:** Written comments, data, and opinions on this proposed rule must be submitted not later than April 7, 1989, to be sure of consideration.

**ADDRESS:** Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

**FOR FURTHER INFORMATION CONTACT:** Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is established as April 1, 1992.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Under the provisions of the Potato Crop Insurance Regulations (7 CFR Part 422), an insured may be eligible for a premium reduction in excess of 5

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percent based on that individual's insuring experience through the 1983 crop year under the terms and conditions contained in their potato crop insurance policy for 1984. The insured will continue to receive the benefit of such reduction subject to several conditions, one of which being that no premium reduction will be retained after the 1989 crop year.

The FCIC Board of Directors has suggested that the present premium reduction be continued, and directed that a study be made of the entire premium reduction for good experience issue as it might apply to all policyholders.

Accordingly, FCIC herein proposes to amend the Potato Crop Insurance Regulations (7 CFR Part 422) to allow a continuation of the good experience discount provision so that no premium reduction will be retained after the 1991 crop year.

Various amendments to the Potato Crop Insurance Regulations (7 CFR Part 422) were published, some of which contained an incorrect amendment number. While this does not affect the purpose or intent of the rule, it is appropriate that these amendment numbers be corrected. Amendment 2, published in the **Federal Register** on June 22, 1987, at 52 FR 23424, should read Amendment 1. Amendment 4, published on January 24, 1989, at 53 FR 3416, should read Amendment 2.

All written comments received pursuant to this proposed rule will be available for public inspection and copying in the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

**List of Subjects in 7 CFR Part 401**

General Crop Insurance Regulations.

**Proposed Rule**

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to amend the General Crop Insurance Regulations (7 CFR Part 401), proposed to be effective for the 1990 and succeeding crop years, in the following instances:

**PART 401—[AMENDED]**

1. The authority citation for 7 CFR Part 401 continues to read as follows:

**Authority:** 7 U.S.C. 1506, 1516.

**§§ 401.101, 401.103, 401.105, 401.106, 401.111, 401.113, 401.116, 401.117, and 401.124 [Amended]**

2. 7 CFR 401.101—Wheat Endorsement; § 401.105—Oat Endorsement; § 401.106—Rye Endorsement; § 401.103—Barley Endorsement; § 401.111—Corn (Grain) Endorsement; § 401.113—Grain Sorghum Endorsement; § 401.116—Flaxseed Endorsement; § 401.117—Soybean Endorsement; and § 401.124—Sunflower Endorsement, are amended by revising subsection 3.b.(1) to read as follows:

3. *Annual Premium.*

* * * * *

b. * * *

(1) No premium reduction will be retained after the 1991 crop year;

* * * * *

**§ 401.114 [Amended]**

3. 7 CFR 401.114—Canning and Processing Tomato Endorsement; is amended by revising subsection 4.b.(1) to read as follows:

4. *Annual Premium.*

* * * * *

b. * * *

(1) No premium reduction will be retained after the 1991 crop year;

* * * * *

**§ 401.100 [Amended]**

4. 7 CFR 401.100—Almond Endorsement; is amended by revising subsection 5.c.(1) to read as follows:

5. *Annual Premium.*

* * * * *

c. * * *

(1) No premium reduction will be retained after the 1991 crop year;

* * * * *

Done in Washington, DC on February 28, 1989.

**John Marshall,**

*Manager, Federal Crop Insurance Corporation.*

[FR Doc. 89-5316 Filed 3-7-89; 8:45 am]

BILLING CODE 3410-08-M

**7 CFR Part 402**

**[Amdt. No. 1; Doc. No. 6600S]**

**Raisin Crop Insurance Regulations**

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) proposes to amend the Raisin Crop Insurance Regulations (7 CFR Part 402), effective for the 1990 and succeeding crop years, to provide that the premium reduction gained by insureds through good insuring experience will extend beyond the present 1989 crop year expiration. The intended effect of this rule is to allow a continuation of good experience discount for all present policyholders who are eligible for a premium reduction while FCIC reviews the entire good experience discount issue for all policyholders.

**DATE:** Written comments, data, and opinions on this proposed rule must be submitted not later than April 7, 1989, to be sure of consideration.

**ADDRESS:** Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC, 20250.

**FOR FURTHER INFORMATION CONTACT:** Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447-3325.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed under USDA procedures established by Department Regulation 1512-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is January 1, 1990.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Under the provisions of the Raisin Crop Insurance Regulations (7 CFR Part 402), an insured may be eligible for a premium reduction in excess of 5 percent based on that individual's insuring experience through the 1983 crop year under the terms and conditions contained in their raisin crop insurance policy for 1984. The insured will continue to receive the benefit of such reduction subject to several conditions, one of which being that no premium reduction will be retained after the 1989 crop year.

The FCIC Board of Directors has suggested that present premium reduction be continued, and directed that a study be made of the entire premium reduction for good experience issue as it might apply to all policyholders.

Accordingly, FCIC herein proposes to amend the Raisin Crop Insurance Regulations (7 CFR Part 402) to allow a continuation of the good experience discount provision so that no premium reduction will be retained after the 1991 crop year.

FCIC is soliciting public comment for 30 days after publication of the rule in the **Federal Register**.

All written comments received pursuant to this proposed rule will be available for public inspection and copying in the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

**List of Subjects in 7 CFR Part 402**

Crop insurance, Raisins.

**Proposed Rule**

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to amend the Raisin Crop Insurance Regulations (7 CFR Part 402), proposed effective for the 1990 and succeeding crop years, in the following instances:

**PART 402—[AMENDED]**

1. The authority citation for 7 CFR Part 402 continues to read as follows:

**Authority:** 7 U.S.C. 1506, 1516.



Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Under the provisions of the Raisin Crop Insurance Regulations (7 CFR Part 402), an insured may be eligible for a premium reduction in excess of 5 percent based on that individual's insuring experience through the 1983 crop year under the terms and conditions contained in their raisin crop insurance policy for 1984. The insured will continue to receive the benefit of such reduction subject to several conditions, one of which being that no premium reduction will be retained after the 1989 crop year.

The FCIC Board of Directors has suggested that present premium reduction be continued, and directed that a study be made of the entire premium reduction for good experience issue as it might apply to all policyholders.

Accordingly, FCIC herein proposes to amend the Raisin Crop Insurance Regulations (7 CFR Part 402) to allow a continuation of the good experience discount provision so that no premium reduction will be retained after the 1991 crop year.

FCIC is soliciting public comment for 30 days after publication of the rule in the **Federal Register**.

All written comments received pursuant to this proposed rule will be available for public inspection and copying in the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

**List of Subjects in 7 CFR Part 402**

Crop insurance, Raisins.

**Proposed Rule**

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to amend the Raisin Crop Insurance Regulations (7 CFR Part 402), proposed effective for the 1990 and succeeding crop years, in the following instances:

**PART 402—[AMENDED]**

1. The authority citation for 7 CFR Part 402 continues to read as follows:

**Authority:** 7 U.S.C. 1506, 1516.

2. Section 402.7(d) of the Raisin Crop Insurance Regulations (7 CFR 402.7) is amended in subsection 5.c.(1) to read as follows:

**§ 402.7 The application and policy.**

* * * * *

c. * * *

5. *Annual Premium.*

* * * * *

(d) * * *

(1) No premium reduction will be retained after the 1991 crop year;

* * * * *

Done in Washington, DC on February 28, 1989.

**John Marshall,**

*Manager, Federal Crop Insurance Corporation.*

[FR Doc. 89-5325 Filed 3-7-89; 8:45 am]

BILLING CODE 3410-08-M

**7 CFR Part 411**

**[Amdt. No. 1; Doc. No. 6574S]**

**Grape Crop Insurance Regulations**

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) proposes to amend the Grape Crop Insurance Regulations (7 CFR Part 411), effective for the 1990 and succeeding crop years, to provide that the premium reduction gained by insureds through good insuring experience will extend beyond the present 1990 crop year expiration. The intended effect of this rule is to allow a continuation of good experience discount for all present policyholders who are eligible for a premium reduction while FCIC reviews the entire good experience discount issue for all policyholders.

**DATE:** Written comments, data, and opinions on this proposed rule must be submitted not later than April 7, 1989, to be sure of consideration.

**ADDRESS:** Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

**FOR FURTHER INFORMATION CONTACT:** Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is established as April 1, 1990.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Under the provisions of the Grape Crop Insurance Regulations (7 CFR Part 411), an insured may be eligible for a premium reduction in excess of 5 percent based on that individual's insuring experience through the 1984 crop year under the terms and conditions contained in their grape crop insurance policy for 1985. The insured will continue to receive the benefit of such reduction subject to several conditions, one of which being that no premium reduction will be retained after the 1990 crop year.

The FCIC Board of Directors has suggested that the present premium reduction be continued, and directed that a study be made of the entire premium reduction for good experience

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issue as it might apply to all policyholders.

Accordingly, FCIC herein proposes to amend the Grape Crop Insurance Regulations (7 CFR Part 411) to allow a continuation of the good experience discount provision so that no premium reduction will be retained after the 1991 crop year.

FCIC is soliciting public comment for 30 days after publication of the rule in the **Federal Register**.

All written comments received pursuant to this proposed rule will be available for public inspection and copying in the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

**List of Subjects in 7 CFR Part 411**

Grape Crop Insurance Regulations.

**Proposed Rule**

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1510 *et seq.*), the Federal Crop Insurance Corporation proposes to amend the Grape Crop Insurance Regulations (7 CFR Part 411), proposed to be effective for the 1990 and succeeding crop years, in the following instances:

**PART 411—[AMENDED]**

1. The authority citation for 7 CFR Part 411 continues to read as follows:

**Authority:** 7 U.S.C. 1506, 1516.

2. Paragraph (d) of the Grape Crop Insurance Regulations (7 CFR 411.7) is amended by revising subsection 5.c.(1) to read as follows:

**§ 411.7 The application and policy.**

* * * * *

(d) * * *

5. *Annual Premium.*

* * * * *

c. * * *

(1) No premium reduction will be retained after the 1991 crop year;

* * * * *

Done in Washington, DC on February 28, 1989.

**John Marshall,**

*Manager, Federal Crop Insurance Corporation.*

[FR Doc. 89-5317 Filed 3-7-89; 8:45 am]

BILLING CODE 3410-08-M

**7 CFR Part 416**

**[Amdt. No. 2; Doc. No. 6597S]**

**Pea Crop Insurance Regulations**

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) proposes to amend the Pea Crop Insurance Regulations (7 CFR Part 416), effective for the 1990 and succeeding crop years, to provide that the premium reduction gained by insureds through good insuring experience will extend beyond the present 1989 crop year expiration. The intended effect of this rule is to allow a continuation of good experience discount for all present policyholders who are eligible for a premium reduction while FCIC reviews the entire good experience discount issue for all policyholders.

**DATE:** Written comments, data, and opinions on this proposed rule must be submitted not later than April 7, 1989, to be sure of consideration.

**ADDRESS:** Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

**FOR FURTHER INFORMATION CONTACT:** Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is established as August 1, 1989. These regulations are currently under review under the procedures established by Departmental Regulations 1512-1 and FCIC will issue a determination as to the need, currency, clarity, and effectiveness of these regulations on or before August 1, 1989.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) an annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with the foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Under the provisions of the Pea Crop Insurance Regulations (7 CFR Part 416), an insured may be eligible for a premium reduction in excess of 5 percent based on that individual's insuring experience through the 1984 crop year under the terms and conditions contained in their pea crop insurance policy for 1985. The insured will continue to receive the benefit of such reduction subject to several conditions, one of which being that no premium reduction will be retained after the 1989 crop year.

The FCIC Board of Directors has suggested that the present premium reduction be continued, and directed that a study be made of the entire premium reduction for good experience issue as it might apply to all policyholders.

Accordingly, FCIC herein proposes to amend the Pea Crop Insurance Regulations (7 CFR Part 416) to allow a continuation of the good experience discount provision so that no premium reduction will be retained after the 1991 crop year.

FCIC is soliciting public comment for 30 days after publication of the rule in the **Federal Register**.

All written comments received pursuant to this proposed rule will be available for public inspection and copying in the office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.



**List of Subjects in 7 CFR Part 416**

Crop insurance; Peas

**Proposed Rule**

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to amend the Pea Crop Insurance Regulations (7 CFR Part 416), proposed to be effective for the 1990 and succeeding crop years, in the following instances:

**PART 416—[AMENDED]**

1. The authority citation for 7 CFR Part 416 continues to read as follows:

**Authority:** 7 U.S.C. 1506, 1516.

2. Section 416.7(d) of the Pea Crop Insurance Regulations (7 CFR 416.7) is amended in paragraph 5.c.(1) to read as follows:

**§ 416.7 The application and policy.**

* * * * *

(d) * * *

5. *Annual Premium.*

* * * * *

c. * * *

(1) No premium reduction will be retained after the 1991 crop year;

* * * * *

Done in Washington, DC on February 28, 1989.

**John Marshall,**

*Manager, Federal Crop Insurance Corporation.*

[FR Doc. 89-5326 Filed 3-7-89; 8:45 am]

BILLING CODE 3410-08-M

**7 CFR Part 422**

**[Amdt. No. 3; Doc. No. 6599S]**

**Potato Crop Insurance Regulations**

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) proposes to amend the Potato Crop Insurance Regulations (7 CFR Part 422), effective for the 1990 and succeeding crop years, to provide that the premium reduction gained by insureds through good insuring experience will extend beyond the present 1989 crop year expiration. The intended effect of this rule is to allow a continuation of good experience discount for all present policyholders who are eligible for a premium while FCIC reviews the entire good experience discount issue for all policyholders.

**DATE:** Written comments, data, and opinions on this proposed rule must be submitted not later than April 7, 1989 to be sure of consideration.

**ADDRESS:** Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

**FOR FURTHER INFORMATION CONTACT:** Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action does not constitute a review as to the neeed, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is established as October 1, 1990.

John Marshall, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact of the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Under the provisions of several crop endorsements to the General Crop Insurance Policy, contained in the General Crop Insurance Regulations (7 CFR Part 401), an insured may be eligible for a premium reduction in excess of 5 percent based on that individual's insuring experience through the 1983 or 1984 crop year under the terms and conditions contained in their particular crop insurance endorsement for 1984 or 1985. The insured will continue to receive the benefit of such reduction subject to several conditions, one of which being that no premium reduction will be retained after the 1989 or 1990 crop year.

The FCIC Board of Directors has suggested that the present premium reduction be continued, and directed that a study be made of the entire premium reduction for good experience issue as it might apply to all policyholders.

Accordingly, FCIC herein proposes to amend all listed applicable crop insurance endorsement issued under 7 CFR Part 401 to allow a continuation of the good experience discount provision so that no premium reduction will be retained after the 1991 crop year.

FCIC is soliciting public comment on this proposed rule for 30 days after publication of the rule in the **Federal Register**.

All written comments received pursuant to this proposed rule will be available for public inspection and copying in the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

**List of Subjects in 7 CFR Part 422**

Crop Insurance, Potatoes.

**Proposed Rule**

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to amend the Potato Crop Insurance Regulations (7 CFR Part 422), proposes to be effective for the 1990 and succeeding crop years, in the following instances:

**PART 422—[AMENDED]**

1. The authority citation for 7 CFR Part 422 continues to read as follows:

**Authority:** 7 U.S.C. 1506, 1516.

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2. Paragraph (d) of the Potato Crop Insurance Regulations ( 7 CFR 422.7) is amended by revising subsection 5.c.(1) to read as follows:

**§ 422.7 The application and policy.**

* * * * *

(d) * * *

5. *Annual Premium.*

* * * * *

c. * * *

(1) No premium reduction will be retained after the 1991 crop year;

* * * * *

Done in Washington, DC on February 28, 1989.

**John Marshall,**

*Manager, Federal Crop Insurance Corporation.*

[FR Doc. 89-5321 Filed 3-7-89; 8:45 am]

BILLING CODE 3410-08-M

**7 CFR Part 425**

**[Amdt. No. 1; Doc. No. 6508S]**

**Peanut Crop Insurance Regulations**

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) proposes to amend the Peanut Crop Insurance Regulations (7 CFR Part 425), effective for the 1990 and succeeding crop years, to provide that the premium reduction gained by insureds through good insuring experience will extend beyond the present 1989 crop year expiration. The intended effect of this rule is to allow a continuation of good experience discount for all present policyholders who are eligible for a premium reduction while FCIC reviews the entire good experience discount issue for all policyholders.

**DATE:** Written comments, data, and opinions on this proposed rule must be submitted not later than April 7, 1989 to be sure of consideration.

**ADDRESS:** Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

**FOR FURTHER INFORMATION CONTACT:** Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

**SUPPLEMENTARY INFORMATION:** This section has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The Peanut Crop Insurance Regulations (7 CFR Part 425) have been reviewed in their entirety under the procedures established in Departmental Regulation 1512-1 with respect to the need, currency, clarity, and effectiveness of these regulations. The new sunset review date established for these regulations is April 1, 1993.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Under the provisions of the Peanut Crop Insurance Regulations (7 CFR Part 425), an insured may be eligible for a premium reduction in excess of 5 percent based on that individual's insuring experience through the 1988 crop year under the terms and conditions contained in their peanut crop insurance policy for 1988. The insured will continue to receive the benefit of such reduction subject to several conditions, one of which being that no premium reduction will be retained after the 1989 crop year.

The FCIC Board of Directors has suggested that the present premium reduction be continued and directed that a study be made of the entire premium reduction for good experience issue as it might apply to all policyholders.

Accordingly, FCIC herein proposes to amend the Peanut Crop Insurance Regulations (7 CFR Part 425) to allow a continuation of the good experience discount provision so that no premium reduction will be retained after the 1991 crop year.

FCIC is soliciting public comment for 30 days after publication of the rule in the **Federal Register.**

All written comments received pursuant to this proposed rule will be available for public inspection and copying in the office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

**List of Subjects in 7 CFR Part 425**

Crop Insurance, Peanuts.

**Proposed Rule**

Accordingly, pursuant to the authority contained in the Federal Corp Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to amend the Peanut Crop Insurance Regulations (7 CFR Part 425), proposed to be effective for the 1990 and succeeding crop years, in the following instances:

**PART 425—[AMENDED]**

1. The authority citation for 7 CFR Part 425 continues to read as follows:

**Authority:** 7 U.S.C. 1508, 1516.

2. Paragraph (d) of the Peanut Crop Insurance Regulations (7 CFR 425.7) is amended by revising subsection 5.c(1) to read as follows:

**§ 425.7 The application and policy.**

* * * * *

(d) * * *

5. *Annual Premium.*

* * * * *

c. * * *

(1) No premium reduction will be retained after the 1991 crop year;

* * * * *

Done in Washington, DC, on February 28, 1989.

**John Marshall,**

*Manager, Federal Crop Insurance Corporation.*

[FR Doc. 89-5320 Filed 3-7-89; 8:45 am]

BILLING CODE 3410-08-M



**7 CFR Part 430**

**[Amdt. No. 1; Doc. No. 6601S]**

**Sugar Beet Crop Insurance Regulations**

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) proposes to amend the Sugar Beet Crop Insurance Regulations (7CFR Part 430), effective for the 1990 and succeeding crop years, to provide that the premium reduction gained by insureds through good insuring experience will extend beyond the present 1989 crop year expiration. The intended effect of this rule is to allow a continuation of good experience discount for all present policyholders who are eligible for a premium reduction while FCIC reviews the entire good experience discount issue for all policyholders.

**DATE:** Written comments, data, and opinions on this proposed rule must be submitted not later than April 7, 1989, to be sure of consideration.

**ADDRESS:** Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

**FOR FURTHER INFORMATION CONTACT:** Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is established as October 1, 1990.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Under the provisions of the Sugar Beet Crop Insurance Regulations (7 CFR Part 430), an insured may be eligible for a premium reduction in excess of 5 percent based on that individual's insuring experience through the 1984 crop year (1985 in Arizona and California) under the terms and conditions contained in their sugar beet crop insurance policy for 1985 (1986 in Arizona and California). The insured will continue to receive the benefit of such reduction subject to several conditions, one of which being that no premium reduction will be retained after the 1990 crop year.

The FCIC Board of Directors has suggested that the present premium reduction be continued, and directed that a study be made of the entire premium reduction for good experience issue as it might apply to all policyholders.

Accordingly, FCIC herein proposes to amend the Sugar Beet Crop Insurance Regulations (7 CFR Part 430) to allow a continuation of the good experience discount provision so that no premium reduction will be retained after the 1991 crop year.

FCIC is soliciting public comment for 30 days after publication of the rule in the **Federal Register.**

All written comments received pursuant to this proposed rule will be available for public inspection and copying in the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

**List of Subjects in 7 CFR Part 430**

Crop insurance; Sugar beets.

**Proposed Rule**

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to amend the Sugar Beet Crop Insurance Regulations (7 CFR Part 430), proposed to be effective for the 1990 and succeeding crop years, in the following instances:

**PART 430—[AMENDED]**

1. The authority citation for 7 CFR Part 430 continues to read as follows:

**Authority:** 7 U.S.C. 1508, 1516.

2. Section 430. 7(d) of the Sugar Beet Crop Insurance Regulations (7 CFR 430.7) is amended in subsection 5.c.(1) to read as follows:

**§ 430.7 The application and policy.**

* * * * *

(d) * * *

5. *Annual Premium.*

* * * * *

c. * * *

(1) No premium reduction will be retained after the 1991 crop year;

* * * * *

Done in Washington, DC on February 28, 1989.

**John Marshall,**

*Manager, Federal Crop Insurance Corporation.*

[FR Doc. 89-5327 Filed 3-7-89; 8:45 am]

BILLING CODE 3410-08-M

**7 CFR Part 433**

**[Amdt No. 2; Doc. No. 6576S]**

**Dry Bean Crop Insurance Regulations**

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) proposes to amend the Dry Bean Crop Insurance Regulations (7 CFR Part 433), effective for the 1990 and succeeding crop years, to provide that the premium reduction gained by insureds through good insuring experience will extend beyond the present 1989 crop year expiration. The intended effect of this rule is to allow a continuation of good experience discount for all present policyholders who are eligible for a premium reduction while FCIG reviews the entire good experience discount issue for all policyholders.

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**DATE:** Written comments, data, and opinions on this proposed rule must be submitted not later than April 7, 1989, to be sure of consideration.

**ADDRESS:** Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC, 20250.

**FOR FURTHER INFORMATION CONTACT:** Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447–3325.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is established as April 1, 1992.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Under the provisions of the Dry Bean Crop Insurance Regulations (7 CFR Part 433), an insured may be eligible for a premium reduction in excess of 5 percent based on that individual's insuring experience through the 1984 crop year under the terms and conditions contained in their dry bean crop insurance policy for 1985. The insured will continue to receive the benefit of such reduction subject to several conditions, one of which being that no premium reduction will be retained after the 1989 crop year.

The FCIC Board of Directors has suggested that the present premium reduction for good experience issue as it might be made of the entire premium reduction for good experience issue as it might apply to all policyholders.

Accordingly, FCIC herein proposes to amend the Dry Bean Crop Insurance Regulations (7 CFR Part 433) to allow a continuation of the good experience discount provision so that no premium reduction will be retained after the 1991 crop year.

FCIC is soliciting public comment for 30 days after publication of the rule in the **Federal Register**.

All written comments received pursuant to this proposed rule will be available for public inspection and copying in the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

**List of Subjects in 7 CFR Part 433**

Dry bean crop insurance regulations.

**Proposed Rule**

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to amend the Dry Bean Crop Insurance Regulations (7 CFR Part 433), proposed to be effective for the 1990 and succeeding crop years, in the following instances:

**PART 433—[AMENDED]**

1. The authority citation for 7 CFR Part 433 continues to read as follows:

**Authority:** 7 U.S.C. 1506, 1516.

2. Section 433.7(d) of the Dry Bean Crop Insurance Regulations (7 CFR 433.7) is amended in subsection 5.c.(1) to read as follows:

**§ 433.7 The application and policy.**

* * * * *

(d) * * *

5. *Annual Premium.*

* * * * *

c. * * *

(1) No premium reduction will be retained after the 1991 crop year;

* * * * *

Done in Washington, DC on February 28, 1989.

**John Marshall,**

*Manager, Federal Crop Insurance Corporation.*

[FR Doc. 89-5328 Filed 3-7-89; 8:45 am]

BILLING CODE 3410-08-M

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**7 CFR Part 435**

**[Amdt. No. 1; Doc. No. 6605S]**

**Tobacco (Quota Plan) Crop Insurance Regulations**

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) proposes to amend the Tobacco (Quota Plan) Crop Insurance Regulations (7 CFR Part 435), effective for the 1990 and succeeding crop years, to provide that the premium reduction gained by insureds through good insuring experience will extend beyond the present 1989 crop year expiration. The intended effect of this rule is to allow a continuation of good experience discount for all present policyholders who are eligible for a premium reduction while FCIC reviews the entire good experience discount issue for all policyholders.

**DATE:** Written comments, data, and opinions on this proposed rule must be submitted not later than April 7, 1989, to be sure of consideration.

**ADDRESS:** Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

**FOR FURTHER INFORMATION CONTACT:** Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447–3325.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is August 1, 1989. These regulations are presently under review in accordance with Departmental Regulation 1512–1 and FCIC will issue a determination



under those procedures as to the need, currency, clarity, and effectiveness of these regulations on or before August 1, 1989.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Under the provisions of the Tobacco (Quota Plan) Crop Insurance Regulations (7 CFR Part 435), an insured may be eligible for a premium reduction in excess of 5 percent based on that individual's insuring experience through the 1983 crop year under the terms and conditions contained in their tobacco crop insurance policy for 1984. The insured will continue to receive the benefit of such reduction subject to several conditions, one of which being that no premium reduction will be retained after the 1989 crop year.

The FCIC Board of Directors has suggested that the present premium reduction be continued and directed that a study made of the entire premium reduction for good experience issue as it might apply to all policyholders.

Accordingly, FCIC herein proposes to amend the Tobacco (Quota Plan) Crop Insurance Regulations (7 CFR Part 435) to allow a continuation of the good experience discount provision so that no premium reduction will be retained after the 1991 crop year.

FCIC is soliciting public comment for 30 days after publication of the rule in the **Federal Register**.

All written comments received pursuant to this proposed rule will be available for public inspection and copying in the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

**List of Subjects in 7 CFR Part 435**

Crop insurance, Tobacco (quota plan).

**Proposed Rule**

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to amend the tobacco (Quota Plan) Crop Insurance Regulations (7 CFR Part 435), proposed to be effective for the 1990 and succeeding crop years, in the following instances:

**PART 435—[AMENDED]**

1. The authority citation for 7 CFR Part 435 continues to read as follows:

**Authority:** 7 U.S.C. 1506, 1516.

2. Section 435.7(d) of the Tobacco (Quota Plan) Crop Insurance Regulations (7 CFR 435.7) is amended in subsection 5.c.(1) to read as follows:

**§ 435.7 The application and policy.**

* * * * *

(d) * * *

5. *Annual Premium.*

* * * * *

c. * * *

(1) No premium reduction will be retained after the 1991 crop year;

* * * * *

Done in Washington, DC on February 28, 1989.

**John Marshall,**

*Manager, Federal Crop Insurance Corporation.*

[FR Doc. 89-5329 Filed 3-7-89; 8:45 am]

BILLING CODE 3410-08-M

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**7 CFR Part 436**

**[Amdt. No. 1; Doc. No. 6603S]**

**Tobacco (Guaranteed Production Plan) Crop Insurance Regulations**

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) proposes to amend the Tobacco (Guaranteed Production Plan) Crop Insurance Regulations (7 CFR Part 436), effective for the 1990 and succeeding crop years, to provide that the premium reduction gained by insureds through good insuring experience will extend beyond the present 1989 crop year expiration. The intended effect of this rule is to allow a continuation of good experience discount for all present policyholders who are eligible for a premium reduction, while FCIC reviews the entire good experience discount issue for all policyholders.

**DATE:** Written comments, data, and opinions on this proposed rule must be submitted not later than April 7, 1989, to be sure of consideration.

**ADDRESS:** Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC, 20250.

**FOR FURTHER INFORMATION CONTACT:** Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447–3325.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is August 1, 1989. These regulations are currently under review under the procedures established by Departmental Regulations 1512–1 and FCIC will issue a determination as to the need, currency, clarity, and effectiveness of these regulations on or before August 1, 1989.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (1) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and

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other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Under the provisions of the Tobacco (Guaranteed Production Plan) Crop Insurance Regulations (7 CFR Part 436), an insured may be eligible for a premium reduction in excess of 5 percent based on that individual's insuring experience through the 1983 crop year under the terms and conditions contained in their tobacco crop insurance policy for 1984. The insured will continue to receive the benefit of such reduction subject to several conditions, one of which being that no premium reduction will be retained after the 1989 crop year.

The FCIC Board of Directors has suggested that the present premium reduction be continued, and directed that a study be made of the entire premium reduction for good experience issue as it might apply to all policyholders.

Accordingly, FCIC herein proposes to amend the Tobacco (Guaranteed Production Plan) Crop Insurance Regulations (7 CFR Part 436) to allow a continuation of the good experience discount provision so that no premium reduction will be retained after the 1991 crop year.

FCIC is soliciting public comment for 30 days after publication of the rule in the **Federal Register**.

All written comments received pursuant to this proposed rule will be available for public inspection and copying in the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

**List of Subjects in 7 CFR Part 436**

Crop insurance, Tobacco (guaranteed production plan).

**Proposed Rule**

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *ex seq.*), the Federal Crop Insurance Corporation proposes to amend the Tobacco (Guaranteed Production Plan) Crop Insurance Regulations (7 CFR Part 436), proposed to be effective for the 1990 and succeeding crop years, in the following instances:

**PART 436—[AMENDED]**

1. The authority citation for 7 CFR Part 436 continues to read as follows:

**Authority:** 7 U.S.C. 1506, 1516.

2. Section 436.7(d) of the Tobacco (Guaranteed Production Plan) Crop Insurance Regulations (7 CFR 436.7) is amended in subsection 5.c.(1) to read as follows:

**§ 436.7 The application and policy.**

* * * * * *

(d) * * *

5. *Annual Premium.*

* * * * * *

(c) * * *

(1) No premium reduction will be retained after the 1991 crop year;

* * * * * *

Done in Washington, DC on February 28, 1989.

**John Marshall,**

*Manager, Federal Crop Insurance Corporation.*

[FR Doc. 89-5330 Filed 3-7-89; 8:45 am]

BILLING CODE 3410-08-M

**7 CFR Part 437**

**[Amdt. No. 1; Doc. No. 6602S]**

**Sweet Corn Crop Insurance Regulations**

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) proposes to amend the Sweet Corn Crop Insurance Regulations (7 CFR Part 437), effective for the 1990 and succeeding crop years, to provide that the premium reduction gained by insureds through good insuring experience will extend beyond the present 1989 crop year expiration. The intended effect of this rule is to allow a continuation of good experience discount for all present policyholders who are eligible for a premium reduction while FCIC reviews the entire good experience discount issue for all policyholders.

**DATE:** Written comments, data, and opinions on this proposed rule must be submitted not later than April 7, 1989 to be sure of consideration.

**ADDRESS:** Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

**FOR FURTHER INFORMATION CONTACT:** Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is established as June 1, 1989. These regulations are currently under review under the procedures established by Departmental Regulations 1512-1 and FCIC will issue a determination as to the need, currency, clarity and effectiveness of these regulations on or before August 1, 1989.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Supart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Under the provisions of the Sweet Corn Crop Insurance Regulations (7 CFR Part 437), an insured may be eligible for a premium reduction in excess of 5 percent based on that individual's insuring experience through the 1983 crop year under the terms and conditions contained in their sweet corn crop insurance policy for 1984. The insured will continue to receive the benefit of such reduction subject to several conditions, one of which being that no premium reduction will be retained after the 1989 crop year.

The FCIC Board of Directors has suggested that the present premium reduction be continued and directed that a study be made of the entire premium reduction for good experience issue as it might apply to all policyholders.

Accordingly, FCIC herein proposes to amend the Sweet Corn Crop Insurance Regulations (7 CFR Part 437) to allow a continuation of the good experience discount provision so that no premium reduction will be retained after the 1991 crop year.

FCIC is soliciting public comment for 30 days after publication of the rule in the **Federal Register**.

All written coments received pursuant to this proposed rule will be available for public inspection and copying in the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

**List of Subjects in 7 CFR Part 437**

Crop insurance; Sweet corn.

**Proposed Rule**

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to amend the Sweet Corn Crop Insurance Regulations (7 CFR Part 437), proposed to be effective for the 1990 and succeeding crop years, in the following instances:

**PART 437—[AMENDED]**

1. The authority citation for 7 CFR Part 437 continues to read as follows:



**Authority:** 7 U.S.C. 1506, 1516.]

2. Paragraph (d) of the Sweet Corn Corp Insurance Regulations (7 CFR 437.7) is amended by revising subsection 5.c.(1) to read as follows:

**§ 437.7 The application and policy.**

* * * * * *

(d) * * *

5. *Annual Premium.*

* * * * * *

c. * * *

(1) No premium reduction will be retained after the 1991 crop year;

* * * * * *

Done in Washington, DC on February 28, 1989.

**John Marshall,**

*Manager, Federal Crop Insurance Corporation.*

[FR Doc. 89-5319 Filed 3-7-89; 8:45 am]

BILLING CODE 3410-08-M

**7 CFR Part 443**

**[Amdt. No. 1; Doc. No. 6543S]**

**Hybrid Seed Crop Insurance Regulations**

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) proposes to amend the Hybrid Seed Crop Insurance Regulations (7 CFR Part 443), effective for the 1990 and succeeding crop years, to provide that the premium reduction gained by insureds through good insuring experience will extend beyond the present 1989 crop year expiration. The intended effect of this rule is to allow a continuation of good experience discount for all present policyholders who are eligible for a premium reduction while FCIC reviews the entire good experience discount issue for all policyholders.

**DATE:** Written comments, data, and opinions on this proposed rule must be submitteed not later than April 7, 1989, to be sure of consideration.

**ADDRESS:** Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

**FOR FURTHER INFORMATION CONTACT:** Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington DC 20250, telephone (202) 447-3325.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed under USDA procedures established by Departmental Regulation 1521-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of those regulations under those procedures. The sunset review date established for these regulations is established as October 1, 1990.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices of consumers, individual industries, federal, State, or local governments, or a geographical region, or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officals. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Under the provisions of the Hybrid Seed Crop Insurance Regulations (7 CFR Part 443), an insured may be eligible for a premium reduction in excess of 5 percent based on that individual's insuring experience through the 1983 crop year under the terms and conditions contained in their hybrid seed crop insurance policy for 1984. The insured will continue to receive the benefit of such reduction subject to several conditions, one of which being that no premium reduction will be retained after the 1989 crop year.

The FCIC Board of Directors has suggested that the present premium

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reduction be continued, and directed that a study be made of the entire premium reduction for good experience issue as it might apply to all policyholders.

Accordingly, FCIC herein proposes to amend the Hybrid Seed Crop Insurance Regulations (7 CFR Part 443) to allow a continuation of the good experience discount provision so that no premium reduction will be retained after the 1991 crop year.

FCIC is soliciting public comment for 30 days after publication of the rule in the **Federal Register**.

All written comments received pursuant to this proposed rule will be available for public inspection and copying in the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

**List of Subjects in 7 CFR Part 443**

Crop insurance, Hybrid seed.

**Proposed Rule**

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to amend the Hybrid Seed Crop Insurance Regulations (7 CFR Part 443), proposed to be effective for the 1990 and succeeding crop years, in the following instances:

**PART 443—[AMENDED]**

1. The authority citation for 7 CFR Part 443 continues to read as follows:

**Authority:** 7 U.S.C. 1506, 1516.

2. Section 443.7(d) of the Hybrid Seed Crop Insurance Regulations (7 CFR 443.7) is amended in subsection 5.c.(1) to read as follows:

**§ 443.7 The application and policy.**

* * * * *

(d) * * *

5. *Annual Premium.*

* * * * *

c. * * *

(1) No premium reduction will be retained after the 1991 crop year;

* * * * *

Done in Washington, DC, on February 28, 1989.

**John Marshall,**

*Manager, Federal Crop Insurance Corporation.*

[FR Doc. 89-5331 Filed 3-7-89; 8:45 am]

BILLING CODE 3410-08-M

**Animal and Plant Health Inspection Service**

**9 CFR Part 92**

**[Docket No. 88-015]**

**Protocols for Importation of Swine From China Through the Harry S Truman Animal Import Center**

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend our regulations on the importation of swine from the People's Republic of China by adding two protocols to allow the Agricultural Research Service of the United States Department of Agriculture to import swine from the People's Republic of China through the Harry S Truman Animal Import Center (HSTAIC) during calendar year 1989. These protocols specify requirements for importations through HSTAIC of swine from China. The swine should improve the germplasm of breeding animals in the United States, eventually improving the productivity and international competitiveness of U.S. swine.

**DATES:** Consideration will be given only to comments postmarked or received on or before March 23, 1989.

**ADDRESSES:** Send an original and two copies of written comments to Helene R. Wright, Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 88-015. Comments received may be inspected at USDA, 14th and Independence Avenue SW., Room 1141, South Building, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** Dr. Samuel S. Richeson, Senior Staff Veterinarian, Import-Export Products Staff, Veterinary Services, APHIS, USDA, Room 759, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8144.

**SUPPLEMENTARY INFORMATION:**

**Background**

On July 25, 1988, was published in the **Federal Register** (53 FR 27846-27847, Docket Number 88-107) an interim rule that amended the regulation in 9 CFR Part 92, § 92.41, by granting the Agricultural Research Service (ARS) of the United States Department of Agriculture the exclusive right to use the Harry S Truman Animal Import Center (HSTAIC) for an importation of swine from the People's Republic of China during calendar year 1989. We have affirmed that interim rule in a document (Docket Number 88-153) published in this issue of the **Federal Register**. We took that action to enable ARS to capitalize on a singular opportunity to proceed with a swine-importation project expected to improve the germplasm of breeding animals in the United States. This improved breeding stock should benefit breeders in the private sector.

The interim rule allows ARS to import swine from the People's Republic of China through HSTAIC in calendar year 1989, in accordance with procedures determined by the Secretary of Agriculture. The interim rule also stated that protocols governing the procedures for this importation would be published for comment prior to the importation.

This proposed rule publishes the protocol determined by the Secretary of Agriculture for overseas quarantine of swine from China prior to their importation. This proposed rule also published a second protocol describing procedures required for the swine from the time they leave China until their release from quarantine at HSTAIC.

The two protocols concern the origin, handling, isolation, examination, testing, and shipment of the swine, as well as other matters related to their importation through HSTAIC. Organizations with responsibilities detailed in the protocols include the official veterinary organization of the People's Republic of China, USDA, APHIS, and the importer.

The protocols would be added to the new paragraph (g) of 9 CFR 92.41 that was established by the interim rule of July 25, 1988, and which provides that ARS may, in calendar year 1989, import swine from the People's Republic of China into the United States through the Harry S Truman Animal Import Center in accordance with procedure determined by the Secretary of Agriculture.

The protocols are designed to allow importation of swine from China without presenting a significant risk of introducing foot-and-mouth disease (FMD) or other foreign animal diseases into the United States. The purpose and operation of the protocols' provisions are discussed below.

**Responsibilities**

The official veterinary organization (OVO) of the People's Republic of China (PRC) would be responsible for implementing a pre-shipment quarantine of the swine in China, and for issuing certificates concerning the diseases that exist in China and certain other matters.



Specifically, the OVO of the PRC would certify that the People's Republic of China is free of rinderpest and African swine fever, and that Teschen's disease has never been diagnosed on the premises of origin and there has been no clinical evidence of that disease on the premises of origin during the isolation period. The OVO of the PRC would also designate laboratories to perform the tests required by the protocol while the swine are in isolation in China. The OVO of the PRC would also certify that the swine were kept in isolation for a minimum of 60 days and that, during that time, the animals remained healthy with no evidence of communicable disease affecting swine and that all tests and conditions as stated in this protocol have been met.

USDA would be responsible for sending veterinarians to the premises of origin of export swine, related isolation premises, testing laboratories, and isolation facilities to cooperate with PRC veterinarians in conducting quarantine procedures. USDA would issue the permits required by 9 CFR Part 92 for importation of the swine, and would conduct certain tests required for the swine while in isolation in China (FMD microtiter virus neutralization tests for types C and Asia FMD and swine vesicular disease (SVD) virus neutralization test) because the test antigen for conducting these tests are not permitted in the PRC, but they are available at the USDA Foreign Animal Disease Diagnostic Laboratory. USDA would provide the PRC with antigens and protocols for the brucellosis card test, a test developed by USDA. USDA would also be responsible for quarantine and testing of the swine at HSTAIC after their arrival in the United States, and for making the final determination on whether the swine may be released into the United States.

The OVO of the PRC and USDA would be jointly responsible for making certain determinations about the disease status of the swine and their premises of origin, and for supervising the movement of the swine from the isolation facility in China to the exporting carrier. The OVO of the PRC would be responsible for the disinfection of the trucks moving the swine to the exporting carrier, using a 4 percent sodium carbonate solution used in accordance with applicable label instructions.

The ARS would be responsible for all costs involved in the isolation, testing, transportation, and embarkation quarantine of the swine in China, their transportation to HSTAIC, and quarantine costs at HSTAIC. The U.S. importer would also be responsible for the cost of all swine that test positive to the tuberculosis intradermal test and are necropsied.

**Premises of Origin**

USDA and PRC veterinarians would work in cooperation to determine that the premises of origin of the swine met certain standards designed to minimize the possibility that the swine were exposed to disease. The three most serious swine diseases that may occur in China and that do not occur in the United States are foot-and-mouth disease (FMD), swine vesicular disease (SYD), and hog cholera. The protocols propose to require that the premises of origin must be at the center of an area of 16-km radius that has been free of these diseases for three years prior to quarantine of the swine, and that no cases of these diseases occurred on the premises of origin or adjacent premises for at least five years previous to quarantine of the swine. The protocols would also require that no animal has been introduced into the herd of origin from farms affected with these diseases for three years previous to the quarantine of the swine.

Other diseases of concern in China include brucellosis, tuberculosis, and pseudorabies, and the protocols propose to require that there has been no evidence of these diseases on the premises of origin or adjacent premises for one year previous to the quarantine of the swine.

To minimize the exposure of swine for export to other animals and other sources of disease, the swine would have to originate on farms which are solely swine breeding operations and must not have left the farm on which they were born and reared, except for movement to the isolation facility.

**Isolation Period in China**

The protocols propose that the swine be isolated in China for 60 days prior to export, in a facility on premises approved by the OVO of the PRC. This period would allow continual observation of the swine for signs of disease and would eliminate possible contact with other animals that may be capable of spreading disease. This period would also be used to conduct tests for diseases, discussed below. The facility would be cleaned, and disinfected using a 4 percent sodium carbonate solution used in accordance with applicable label instructions, prior to the start of the isolation. During the isolation period, personnel handling the animals would not have contact with other domestic farm livestock (this term does not include pets such as dogs and cats). Raw animal food wastes (garbage) would not be allowed to be fed to the animals in isolation, because feeding of garbage is known to spread many animal diseases. Feed and bedding used during the isolation period and during transport would have to come from areas free from epizootic diseases, and would have to meet veterinary hygienic requirements established by the OVO of the PRC concerning freedom of the materials from contamination that could transmit diseases. These provisions would help ensure that the swine are not infected with diseases of concern prior to export.

**Testing for Disease**

During their isolation in China, and again during quarantine at HSTAIC, all swine would be tested for seven diseases that are of concern under animal importation regulations and that may occur in China.[1] No swine would be accepted for export that have been vaccinated for FMD, SVD, or hog cholera, because vaccination for these diseases can cause false positive results in the tests for these diseases.

All the tests used are internationally recognized as standard procedures. They are also recognized by the American Association of Veterinary Laboratory Technicians (AAVLD), the principal organization in the United States to establish the validity of laboratory diagnostic procedures for animals. Most of the tests are based on identification of antibodies in the animals' blood serum against the various diseases. Reaction of the serum with the test materials of various dilutions constitutes a positive reaction, with the dilution varying according to the disease. For example, reaction of a 1:4 serum dilution constitutes a positive reaction to the pseudorabies test, reaction of a 1:16 dilution constitutes a positive reaction to the hog cholera test, and reaction of a 1:40 dilution constitutes a positive reaction to the SVD test. These dilutions are recognized as standard by AAVLD for determining positive reactions to these tests.

The type and number of tests to be conducted, in China and at HSTAIC, are described below:

[1] Technical information on laboratory methods and procedures for these tests may be obtained from the Administrator, APHIS, c/o Director, National Veterinary Services Laboratories, P.O. Box 844, Ames, IA 50010.

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| | No. of tests in China | No. of tests at HSTAIC |
|---|---|---|
| FMD microtiter virus neutralization (VN) test for types A, O, C, and Asia | 1 | 2 |
| FMD agar gel immunodiffusion (AGID) test using virus infection associated antigen (VIAA) in serum | 1 | 3 |
| Brucellosis standard tube test (STT) at less than 30 IU/ml | 1 | 2 |
| Brucellosis card test (antigen and protocol to be supplied by USDA) | 1 | 2 |
| Swine vesicular disease virus neutralization (VN) test at 1:40 dilution (serums to be tested at FADDL) | 1 | 2 |
| Hog cholera fluorescent antibody neutralization (FAN) test at 1:16 dilution | 1 | 2 |
| Japanese B encephalitis hemagglutination inhibition (HI) test | 1 | 2 |
| Pseudorabbes virus neutralization (VN) test at 1:4 dilution | 1 | 2 |
| Tuberculosis intradermal test using bovine PPD tuberculin (positive animals will be necropsied and examined for lesions) | 1 | 2 |

During their quarantine at HSTAIC, all swine would undergo each test twice, at an interval of 60 days, except for the FMD AGID–VIAA test. The swine would undergo the FMD AGID–VIAA test three times, at intervals of 21 and 60 days after the first application of this test at HSTAIC. The tests at 60 days would detect any animals that were infected during isolation in China or during shipment and had not developed serological responses in a quantity sufficient to be detected at the time of the first tests at HSTAIC. For all the diseases in question, 60 days after infection is sufficient time for serological responses to develop that can be detected by the tests. The FMD AGID–VIAA test would be administered three times instead of twice to ensure that a distinction is made between animals that have developed antibodies to FMD without being infected and animals that are actually infected with live FMD virus.

The FMD microtiter VN test is a test on animal blood serum to detect antibody to FMD virus. If FMD virus has been introduced into the swine, its immune system will produce antibodies against the disease. When mixed with FMD virus in the laboratory at a 1:10 or greater dilution, serum with FMD antibody will neutralize the effects of the FMD virus on test materials, while serum without FMD antibody (i.e. from animals that have not been in contact with FMD virus) will not neutralize the effects of the FMD virus on test materials. This test may produce positive results when used on animals that have been vaccinated against FMD, but are not necessarily infected with FMD.

The FMD AGID–VIAA test is the ager gel immunodiffusion test with virus infection associated antigen. When an animal becomes infected with the field strain of FMD, the live virus replicates in the animal's body. The animal's immune system produces a specific antibody at this time to help stop the viral replication. The VIAA antigen has been developed to detect the presence of this antibody; thus, if the test is positive, it shows that the animal has experienced active FMD infection, rather than antibody production as a result of vaccination against FMD.

Animals must test negative to both FMD tests, and be free from clinical signs of FMD, or they will be prohibited export.

The brucellosis STT test is the standard tube agglutination test. If the animal is infected with brucellosis organisms, the test demonstrates the presence of antibodies against brucellosis. The *Brucella* cells in the antigen, when mixed with serum, will be agglutinated, or clumped, by the action of the antibody in the animal's serum. If the animal is free of brucellosis, no agglutination will occur in the serum sample.

The brucellosis card test is a rapid field test for brucellosis that may be performed on while blood. A positive reaction will cause agglutination on the special card developed for the test. An obvious advantage is that the test results are immediately available at the test site with no need to be sent to a laboratory. This test has been used with special success in testing swine.

The SVD VN test is a test of serum to detect antibodies against the SVD virus. In a positive test result, serum from an animal that has been infected with SVD neutralizes the effect of the SVD virus in specific laboratory materials.

The hog cholera FAN test is the fluorescent antibody neutralization test. It is based on direct microscopic examination. If hog cholera antibodies are present in serum from swine, it will neutralize the fluorescence caused by the viral antigen in infected tissue. If no antibody is present, the tissue will exhibit fluorescence.

The Japanese B encephalitis HI test is a hemagglutination test of serum. If antibody against Japanese B encephalitis is present it neutralizes the ability of the viral antigen to cause agglutination in the serum sample.

The pseudorabies VN test is a virus neutralization test. It is a plate agglutination test, conducted with antigen particles bonded to latex. In the presence of pseudorabies antibodies, agglutination occurs.

The tuberculosis intradermal test is done by injecting an antigen called tuberculin into the skin of the animal to be tested. If antibodies against tuberculosis are present in the animal, the point of injection will react with swelling and redness within 48 hours. This reaction shows that the animal has been exposed to the tuberculosis organism and is probably infected. Positive animals would be necropsied and examined for TB lesions as conclusive proof of infection. If no lesions are found, the remaining swine would be eligible for export.

In addition, while at HSTAIC the swine would share their pens with contact sentinel animals (pigs and calves that are known to be susceptible to the above diseases and that are known not to possess antibodies to these diseases). The contact sentinel animals would provide an additional test for infection of the imported swine, as they would be regularly examined for clinical signs of disease and their serum would be tested for antibodies that would indicate exposure to diseases carried by the imported swine. Approximately 60 days after the contact sentinel animals are placed with the imported swine, the sentinel pigs would be inoculated with blood from the imported swine to ensure exposure to any pathogens present in the swine. Approximately 90 days after the contact sentinel animals are placed with the imported swine, serum from the sentinel pigs would be tested for signs of exposure to the seven diseases for which the imported swine were tested.

**Transportation**

The protocols contain requirements to ensure that the imported swine would not come in contact during transport with any animals or other materials that could infect the swine with disease, and to ensure that the swine could not infect any other animals with diseases they may carry. All crates and parts of vehicles, ships, or aircraft used to hold livestock for transport or handling of the swine while in China must be cleaned, and disinfected prior to use with a 4 percent sodium carbonate solution used in accordance with applicable label instructions. During movement from the premises of origin to the isolation facility, and from the isolation facility to HSTAIC, the swine may not have contact with, or exposure to, animals not included in the group at the isolation facility. Exposure consists of contact with yards, pens, or other facilities or vehicles that have been in contact with other animals and have not been cleaned and disinfected as described above. In China, the swine would be moved under joint supervision by the OVO of the PRC and USDA directly from the isolation facility to the exporting carrier by trucks or other carriers that have been cleaned, and disinfected using a 4 percent sodium carbonate solution used in accordance with applicable label instructions, under joint OVO/USDA supervision. The swine would be examined clinically within 24 hours prior to loading for export by a USDA veterinarian and must be healthy and free of signs of infectious and contagious diseases. During movement from China to HSTAIC, if the swine transit countries affected with FMD, rinderpest, hog cholera, SVD, or African swine fever, they would be refused entry on arrival at HSTAIC, unless they were accompanied en route by a USDA inspector who certifies that no disease exposure occurred during shipment. As a safeguard against spreading foreign animal diseases into the United States, the swine would not transit through the United States, or any of its territories, en route to U.S. quarantine, except as specifically provided for in an import permit issued by APHIS.

The landing of the swine in the United States would be carried out in accordance with instructions given by a USDA veterinary officer at HSTAIC. All vessels or aircraft from which the imported swine were landed would be immediately cleaned, and disinfected using a 4 percent sodium carbonate and 0.1 percent sodium silicate solution used in accordance with applicable label instructions, in the presence of a USDA veterinary officer.

**Ectoparasites and Precautionary Treatments**

Swine are subject to infestation with ticks, lice, and mange organisms and other ectoparasites, and to leptospirosis, a communicable disease of swine, humans, and many other animals. While infestation with ectoparasities or leptospirosis does not preclude swine from being imported under the regulations, they are a general health hazard for swine, and the protocols therefore require examination and treatments for ectoparasites, and a precautionary treatment for leptospirosis. While in isolation in China, all swine offered for exportation would be clinically examined and treated for ectoparasites with a pesticide approved by the OVO of the PRC used in accordance with applicable label instructions, and given an intramuscular injection of dihydrostreptomycin at a rate of 25 mg/kg dosage twice at an interval of 14 days as a precautionary treatment for leptospirosis. This treatment is an internationally recognized standard procedure for leptospirosis. All imported swine would be examined for ectoparasites on arrival at HSTAIC and, if found free of infestation, would receive a precautionary spray with coumaphos, used in accordance with applicable label instructions, in a wettable powder or 0.06 emulsified concentrate solution spray form. If found to be infested, all affected and exposed swine would be treated until found free of infestation.

**Release or Disposal of the Swine**

USDA would make the final determination on the eligibility of Chinese swine to be exported to the United States, and their eligibility to be released from quarantine at HSTAIC into the United States. The swine would be quarantined at HSTAIC under the supervision of a veterinary officer of USDA for a period of at least 120 days after arrival and until all tests required by the protocols have been successfully completed. To qualify for release, an animal must have negative test results. If any imported or sentinel animals showed clinical symptoms of, or the causative organism was isolated for, FMD, rinderpest, SVD, or hog cholera, USDA would cause all imported and sentinel animals to be slaughtered and the carcasses disposed of as prescribed by USDA to prevent the spread of disease. These diseases constitute major risks to the health of the U.S. animal industries, and if one animal in a consignment tests positive for one of these diseases the level of risk justifies destruction and disposal of all animals in the consignment, even those that tested negative for the diseases. This provision would guard against the slight possibility that animals that tested negative for these diseases were so recently infected that the tests would be unable to detect the infection, or that noninfected animals carried viable disease viruses externally. If any imported or sentinel animals showed clinical symptoms of, or were considered exposed to, any other disease, or were classified as positive to any of the tests conducted during the quarantine period, USDA may cause any or all of the animals to be slaughtered and the carcasses disposed of as prescribed by USDA to prevent the spread of disease.

As part of monitoring the imported swine for clinical signs of disease, HSTAIC personnel would take the temperatures of all imported swine daily for seven days after arrival and thereafter at the discretion of the quarantine officers in charge.

No animals would be allowed to be moved from HSTAIC until duly discharged by APHIS.

**Executive Order 12291 and Regulatory Flexibility Act**

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Our proposal would enable ARS to import 144 swine for research on the possibility of improving the germplasm of breeding swine in the United States. If improved breeding stock is developed, it should eventually benefit breeders in the private sector.

In December 1986, the swine population of the United States was approximately 51,000,000, of which approximately 6,612,000 were intended for breeding purposes. The ARS shipment is very small compared to this population, and is destined for research facilities instead of the normal market channels in the United States.

There are two potential effects resulting from adoption of this proposed rule, one immediate and one long-term. The first impact is the costs involved in importing the shipment of Chinese swine in accordance with the proposed rule, estimated at $497,000. All costs associated with the importation of the swine would be borne by ARS.

The second possible impact is indirect and could occur only after years of research and development involving the import swine. This impact would be development of improved breeds of U.S. swine incorporating desirable traits of the imported Chinese swine. If such development is successful, productivity of U.S. swine could increase, resulting in savings for swine producers and decreases in domestic consumer prices

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for pork and pork products. Since over 98 percent of U.S. swine producers qualify as small entities, higher swine productivity would have a beneficial effect on small entities. Higher swine productivity may be achieved only if numerous activities outside the scope of this rule occur, such as successful research results, development of improved breeds that are marketable, and acceptance and distribution of improved breeds by the marketplace.

Under these circumstances, the Administrator of the animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

**Paperwork Reduction Act**

The regulations in this proposal contain on information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

**Executive Order 12372**

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmetnal consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

**Comment Period**

The Administrator of the Animal and Plant Health Inspection Service has determined that this rulemaking proceeding should be expedited by allowing a 15-day comment period on the proposal. The Agricultural Research Service and the People's Republic of China have already selected swine to be imported in accordance with this rule, and delay would jeopardize arrangements to import these swine, which will be used in research to benefit United States swine breds. In addition, delay would lengthen the period during which use of the HSTAIC facility is devoted exclusively to use by the Agricultural Research Service for importation of swine from China.

**List of Subjects in 9 CFR Part 92**

Animal diseases, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

Accordingly, we are proposing to amend 9 CFR Part 92 as follows:

## PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation for Part 92 would continue to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 134a, 134b, 134c, 134d, 134f, and 135; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

2. Paragraph (g) of § 92.41 would be revised to read as follows:

**§ 92.41 Requirements for the importation of animals into the United States through the Harry S Truman Animal Import Center**

* * * * *

(g) The Agricultural Research Service may, in calendar year 1989, import swine from the People's Republic of China into the United States through the Harry S Truman Animal Import Center in accordance with the following protocols.

**Protocol for Quarantine and Health Requirements for Porcine Animals Exported From the People's Republic of China to the United States of America**

1. The official veterinary organization (OVO) of the People's Republic of China (PRC) shall be responsible for the implementation of quarantine procedures in the PRC and the issuance of certificates concerning the disease status of the swine and certain other matters required by the regulations in this Part 92.

2. The U.S. Department of Agriculture (USDA) shall send veterinarians to the premises of origin of export swine, related isolation premises, testing laboratories, and quarantine facilities to cooperate with PRC veterinarians in conducting quarantine procedures.

3. The premises of origin of export swine shall meet the following requirements:

a. For the last 3 years the premises of origin was located in an area with a 16-km radius which was free of foot-and-mouth disease (FMD), swine vesicular disease (SVD), and hog cholera (HC).

b. For the last year, there has been no evidence of brucellosis, tuberculosis, or pseudorabies on the premises of origin or on premises adjacent to the premises of origin.

c. For the last 5 years, there have been no cases of FMD, SVD, or HC.

d. For the last 3 years, no animal has been introduced into the herd of origin from farms affected with FMD, SVD, or HC.

e. Raw animal food wastes (garbage) have not been fed to the animals for export while in isolation.

4. Animals offered for exportation shall originate from farms which are solely swine breeding operations and shall not have left the farm on which they were born and reared, except as necessary for movement to an approved isolation facility.

5. Animals offered for exportation shall not have been vaccinated for FMD, SVD, or HC.

6. Animals offered for exportation shall pass a 60-day isolation period in a facility on premises approved by the OVO of the PRC. The facility shall be cleaned and disinfected, using a 4 percent sodium carbonate solution used in accordance with applicable label instructions, prior to the start of the isolation. During the isolation period, personnel handling the animals shall not have contact with other domestic farm livestock. The term "domestic farm livestock" does not include pets such as dogs and cats.

7. During the 60-day isolation period, the animals offered for exportation shall be found negative to the following tests [1]:

| | |
|---|---|
| a. Food-and-mouth disease. | 1. Microtiter virus neutralization (VN) test for types A, O, C, and Asia. (The PRC will test for types A and ), and the United States will test for types C and Asia at the USDA Foreign Animal Disease Diagnostic Laboratory (FADDL)). |
| | 2. Agar gel immunodiffusion (AGID) test using virus infection associated antigen (VIAA) in serum. (Animals having responses to the AGID test or reacting to the VN test at 1:10 dilution or greater shall be prohibited from export. Other animals shall be retested within 30 days if the whole group does not have the above responses and there is no clinical evidence of FMD, the group shall be eligible for export. Otherwise, the whole group shall be prohibited from export.) |
| b. Brucellosis: | 1 Standard tube test (STT) at less than 30 IU/ml. |
| | 2. Card test (antigen and protocol to be supplied by USDA). |
| c. Swine vesicular disease. | Virus neutralization test at 1:40 dilution (serums to be tested at FADDL). |
| d. Hog cholera | Fluorescent antibody neutralization (FAN) test at 1:16 dilution. |
| e. Japanese B encephalitis. | Hemagglutination inhibition (HI) test, |

[1] Technical information on laboratory methods and procedures for these tests may be obtained from the Administrator, APHIS, c/o Director, National Veterinary Services Laboratories, P.O. Box 844, Ames, IA 50010.



| | |
|---|---|
| | negative according to PRC standards. |
| f. Pseudo- rabies | Virus neutralization at 1:4 dilution. |
| g. Tuberculosis | Intradermal test using bovine PPD tuberculin (Positive animals will be necropsied. If there are lesions of TB in the test positive pigs, the whole group will be ineligible for export. If no lesions are found, the rest of the pigs will be eligible for export. Note: All swine sacrificed for diagnosis of tuberculosis will be at the importer's expense.) |

All samples of the above tests, except as noted in items 7a, 7c, and 7g, will be submitted to laboratories designated by the OVO of the PRC.

8. All animals offered for exportation during the isolation period must be clinically examined and treated for ectoparasites with a pesticide approved by the OVO of the PRC, used in accordance with applicable label instructions, and given an intramuscular injection of dihydrostreptomycin at a rate of 25 mg/kg dosage twice at an interval of 14 days as a precautionary treatment for leptospirosis.

9. All crates and parts of vehicles and ships used to hold livestock for transport or handling of animals shall be cleaned and disinfected prior to use with a 4 percent sodium carbonate solution used in accordance with applicable label instructions. All aircraft used to transport animals shall be cleaned and disinfected prior to use with a 4 percent sodium carbonate and 0.1 percent sodium silicate solution used in accordance with applicable label instructions.

10. Feed and bedding to be used during the 60-day isolation and during transport shall not originate from epizootic disease infected areas and must meet applicable veterinary hygienic requirements established by the OVO of the PRC concerning freedom of the feed and bedding from contamination that could transmit diseases.

11. The OVO of the PRC shall certify that the People's Republic of China is free of rinderpest and African swine fever, that Teschen's disease has never been diagnosed on the presmises of origin and that there has been no clinical evidence of Teschen's disease on the premises of origin during the isolation period.

12. The animals to be exported shall be examined clinically within 24 hours prior to loading for export by a USDA veterinarian and be healthy and free of signs of infectious and contagious diseases.

13. During the isolation period on the premises of origin and all transport from the isolation facility on the premises or origin to the port of embarkation (including loading), export animals shall not have contact with, or exposure to, animals not included in the group at the isolation facility. Exposure consists of contact with yards, pens, or other facilities or vehicles that have been in contact with animals and have not been cleaned and disinfected.

14. USDA, APHIS representatives will make the final determination on the eligibility of Chinese swine not to be exported to the United States.

**Protocol for Quarantine of Swine From China at the Harry S. Truman Animal Import Center**

*Shipment to the United States*

1. On successful completion of the 60-day isolation period on the premises of origin, the swine shall be accepted for shipment to the United States provided that the official veterinary organization (OVO) of the People's Republic of China (PRC) issues or endorses an official health certificate to the effect that the swine have been kept in isolation for a minimum of 60 days and that, during that time, the animals remained healthy with no evidence of communicable disease affecting swine and that all tests and conditions as stated in this protocol have been met.

2. The swine shall be moved under joint supervision by the OVO of the PRC and U.S. Department of Agriculture (USDA) direct from the isolation facility to the exporting carrier by trucks or other carriers that have been cleaned and disinfected using a 4 percent sodium carbonate solution used in accordance with applicable label instructions under joint OVO/USDA supervision.

3. If the swine transit countries affected with foot-and-mouth disease (FMD), rinderpest, hog cholera, swine vesicular disease (SVD), or African swine fever en route to the United States, they will be refused entry on arrival at the Harry S. Truman Animal Import Center (HSTAIC), unless they were accompanied en route by a USDA inspector who certifies that no disease exposure occurred during shipment.

4. The swine may not transit through the United States or any of its territories en route to U.S. quarantine, except as specifically provided for in an import permit issued by APHIS under the authority of 21 U.S.C. 135.

5. The landing of the swine shall be carried out in accordance with instructions given by a USDA veterinary officer at HSTAIC.

6. All vessels or aircraft from which the imported swine are landed shall be immediately cleaned and disinfected using a 4 percent sodium carbonate and 0.1 percent sodium silicate solution used in accordance with applicable label instructions, in the presence of a USDA veterinary officer.

*Quarantine and Testing Procedures at HSTAIC*

1. The swine shall be quarantined in the import center under the supervision of a veterinary officer of USDA for a period of at least 120 days after arrival and until all tests have been successfully completed.

2. The temperature of all imported swine will be taken daily for 7 days after arrival and thereafter at the discretion of the quarantine officers in charge.

3. All imported swine shall be examined for ectoparasites on arrival at HSTAIC and, if found free of infestation, receive a precautionary spray with coumaphos, used in accordance with applicable label instructions, in the form of a wettable powder or 0.06 emulsified concentrate spray solution. If found to be infested, all affected and exposed swine shall be treated until found free of infestation.

4. During the initial portion of quarantine, the imported swine shall be subjected to the tests listed below.[2] The tests will be performed at the Foreign Animal Disease Diagnostic Laboratory (FADDL). To qualify for release, every animal must have negative test results.

| | |
|---|---|
| * a. Foot-and-mouth disease. | 1. Microtiter virus neutralization (VN) test for types A, O, C, and Asia. |
| | 2. AGID test using virus infection associated antigen (VIAA) in serum. |
| b. Brucellosis | 1. Standard tube test (STT) at less than 30 IU/ml. |
| | 2. Card test. |
| *c. Swine vesicular disease. | Virus neutralization test at 1:40 dilution. |
| *d. Hog cholera. | Fluorescent antibody neutralization (FAN) test at 1:16 dilution. |
| e. Japanese B encephalitis. | Hemagglutination inhibition (HI) test at 1:10 dilution. |
| f. Pseudo-rabies. | Virus neutralization at 1:4 dilution. |
| g. Tuberculosis | Intradermal test using bovine PPD tuberculin and read at 48 hours post injection (positive animals will be necropsied. If there are lesions of TB in the test positive pigs, the whole group may be ineligible for release until it is determined they are free of tuberculosis). |

h. Any other tests determined to be necessary by the Administrator. All tests on collected specimens will be conducted at FADDL, unless authorized by USDA to be conducted at HSTAIC. Imported swine with less than negative test results that are not definitely considered to be infected will be retested if retesting is ordered by APHIS.

* If any imported swine are determined to be infected with these diseases based on test results and other data, they will be refused entry and destroyed, and all other imported swine in HSTAIC will be refused entry and destroyed.

5. Twenty-one days after initial collection of samples for FMD testing a second sample will be taken from each imported swine for a FMD virus infection associated antigen (VIAA) test. All tests listed in items 4a through 4h will be repeated on imported swine at approximately 60 days following the initial collection of test samples.

6. Within seven days of arrival of the imported swine, contact sentinel animals shall be placed with the imported animals at the ratio of at least one contact calf and one contact pig to eight imported swine. The sentinel pigs and calves shall have been found negative to the tests listed in items 4a through 4h prior to their entry into the animal import center.

7. Following the 60-day tests required by item 5, 10 ml of heparinized blood shall be drawn from each imported swine and used to inoculate sentinel pigs, in the ratio of one sentinel pig for each eight imported swine. Each sentinel pig shall be inoculated with

[2] Technical information on laboratory methods and procedures for these tests may be obtained from the Administrator, APHIS, c/o Director, National Veterinary Services Laboratories, P.O. Box 844, Ames, IA 50010.

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blood from eight different imported swine, in eight separate subcutaneous sites. The identity of each imported swine used to inoculate each sentinel pig shall be recorded in order to trace possible reactions.

8. Approximately 90 days after arrival of the imported swine, serum from the sentinel pigs and calves will be collected and submitted to FADDL to be tested for the same diseases for which the imported swine were tested.

9. If any imported or sentinel animals show clinical symptoms of, or the causative organism is isolated for, FMD, rinderpest, swine vesicular disease, or hog cholera, USDA shall cause all imported and sentinel animals to be slaughtered and the carcasses disposed of as prescribed by USDA. If any imported or sentinel animals show clinical symptoms of, or are considered exposed to, any other disease, or are classified as positive to any of the tests conducted during the quarantine period, USDA may cause any or all of the animals to be slaughtered and the carcasses disposed of as prescribed by USDA.

10. No animals shall be moved from HSTAIC until duly discharged by APHIS.

11. The ARS will be directly responsible for the payment of all costs involved in the isolation, testing, transportation, and embarkation quarantine of the swine in China, their transportation to HSTAIC, and all applicable quarantine costs at HSTAIC.

Done in Washington, DC, this 3rd day of March 1989.

**James W. Glosser,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 89-5312 Filed 3-7-89; 8:45 am]

BILLING CODE 3410-34-M

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## 9 CFR Parts 145 and 147

**[Docket No. 89-023]**

### National Poultry Improvement Plan and Auxiliary Provisions

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice of reopening and extension of comment period.

**SUMMARY:** We are reopening and extending the comment period for a proposed to (1) expand the National Poultry Improvement Plan (referred to below as the Plan) to include a new "U.S. Sanitation Monitored, Turkeys" program for reducing Salmonella levels in turkey flocks and products and (2) make other amendments in order to increase the effectivenss of the Plan's monitoring and testing procedures, and to keep the Plan current with the latest improvements in poultry disease technology. Extending the comment period will give interested persons additonal time to prepare comments.

**DATE:** Consideration will be given only to written comments that are postmarked or received on or before April 7, 1989.

**ADDRESSES:** Send an original and two copies of written comments to Helene R. Wright, Chief, Regulatory Analysis and Development, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 86-110. Comments received may be inspected at USDA, 14th and Independence Avenue, SW., Room 1141, South Building, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** Dr. I. L. Peterson, Sheep, Goat, Equine, and Poultry Diseases Staff, VS, APHIS, USDA, Room 771, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-7768.

**SUPPLEMENTARY INFORMATION:** On January 6, 1989, we published in the **Federal Register** (54 FR 418-427, Docket 86-110) a proposal to amend 9 CFR Parts 45 and 147 by (1) expanding the National Poultry Improvement Plan (referred to below as the Plan) to include a new "U.S. Sanitation Monitored, Turkeys" program for reducing Salmonella levels in turkey flocks and products, and (2) making other amendments in order to increase the effectiveness of the Plan's monitoring and testing procedures, and to keep the Plan current with the latest improvements in poultry diseases technology. Comments on the proposal were to be postmarked or received on or before February 6, 1989.

Three commenters indicated, generally, that the original comment period would not allow sufficient time to survey the industry, formulate a consensus, and write comments. Also, the turkey industry has been involved in a number of conventions, leaving inadequate time to respond to the proposed rule within the original comment period. In response to these requests for an extension, we are reopening and extending the comment period for an additonal 30 days from the date of publication of this notice. We will consider all written comments that are postmarked or received on or before April 7, 1989. The new deadline will give interested persons additional time to prepare comments.

Done at Washington, DC, this 3rd day of March 1989.

**James W. Glosser,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 89-5310 Filed 3-7-89; 8:45 am]

BILLING CODE 3410-34-M

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## SECURITIES AND EXCHANGE COMMISSION

## 17 CFR Part 240

**[Release No. 34-26590; File No. S7-27-88]**

### Net Capital Requirements for Brokers and Dealers

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Extension of comment period.

**SUMMARY:** The Securities and Exchange Commission is extending from March 1, 1989 to April 3, 1989 the date by which comments on Securities Exchange Act Release No. 34-26402 (December 28, 1988) 54 FR 315 (January 5, 1989) should be received.

**DATE:** Comments on Release No. 34-26402 should be received by April 3, 1989.

**ADDRESS:** Persons wishing to express their views should submit their comments in triplicate addressed to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, NW., Mail Stop 6-9, Washington, DC 20549. Reference should be made to File No. S7-27-88.

**FOR FURTHER INFORMATION CONTACT:** Michael A. Macchiaroli (202) 272-2804, Michael P. Jamroz (202) 272-2372, or Jerry W. Carpenter (202) 272-3128, Division of Market Regulation, 450 5th Street, NW., Mail Stop 5-1, Washington, DC 20549.

**SUPPLEMENTARY INFORMATION:** In Securities Exchange Act Release No. 34-26402, the Commission requested written comments on the proposed amendments to its net capital rule, Rule 15c3-1 (17 CFR 240.15c3-1), that would make the rule applicable to all specialists, other than certain market makers, on national securities exchanges and would allow specialists one business day to meet the haircuts on positions in their specialty securities. In response to requests for additional time in which to comment on the proposed rule amendments and in order to receive the benefit of comments from the greatest number of interested persons, the Commission is extending the comment period for Release No. 34-26402 from March 1, 1989 to April 3, 1989.

By the Commission.

**Jonathan G. Katz,**

*Secretary.*

March 1, 1989

[FR Doc. 89-5296 Filed 3-7-89; 8:45 am]

BILLING CODE 8010-01-M



## 17 CFR Part 270

**[Rel. No. IC-16842; File No. S7-5-89]**

### Time Period During Which the Board of Directors of a Registered Management Investment Company Must Select the Company's Independent Public Accountant

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Proposed rule and request for comment.

**SUMMARY:** The Commission is publishing for public comment a rule proposal that would expand the time period during which certain registered management investment companies must select an independent public accountant ("accountant"). Currently, each such company must select its accountant at a board of directors' meeting held within 30 days before or after the beginning of the company's fiscal year (the "60 day window") or before the annual meeting of shareholders in that year. The proposed rule would set out the following alternative time periods during which the accountant may be selected: (a) 90 days before or after the beginning of the fiscal year (the "180 day window"), or (b) 30 days before or 90 days after the beginning of the fiscal year (the "120 day window"). The 180 day window would be available only to registered management investment companies that are part of a family of investment companies ("family") whose members have staggered fiscal year ends, are organized in a jurisdiction not requiring them to hold annual meetings of shareholders, and do not in fact hold such meetings. Registered management investment companies that are not part of a family (or are part of a family whose members have identical fiscal year ends) may use the 120 day window if organized in jurisdiction not requiring the company to hold annual meetings of shareholders, and the company does not in fact hold such a meeting. The Commission makes this proposal because of numerous applications that have been filed seeking an exemption from the 60 day window. If adopted, the proposed rule could reduce significantly the need for registered management investment companies to obtain individual exemptions in this area.

**DATE:** Comments must be received on or before May 8, 1989.

**ADDRESS:** Send comments in triplicate to Johanthan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments should refer to File No. S7-5-89. All comments will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

**FOR FURTHER INFORMATION CONTACT:** Brian P. Kindelan, Special Counsel, (202) 272-2048, or Christopher Sprague, Staff Attorney, (202) 272-7779, Office of Regulatory Policy, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

**SUPPLEMENTARY INFORMATION:** The Commission is asking for public comment on proposed rule 32a-3 under section 32(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*) (the "Act"). The proposed rule would enlarge the time period during which the boards of directors of certain registered management investment companies must select an independent public accountant.

### Executive Summary

Section 32(a)(1) of the Act (15 U.S.C. 80a-31(a)(1)) requires the independent public accountant ("accountant") who issues a report as to financial statements to be filed with the Commission by a registered management investment company ("company") to be selected at a board of directors' meeting held within 30 days before or after the beginning of the company's fiscal year (the "60 day window") or before the annual meeting of stockholders in that year.[1] The 60 day window is less pertinent to a company that, consistent with prevailing industry practice, holds its annual shareholders' meeting several months after the beginning of its fiscal year, because the board of such a company may select the accountant at any time up to the date of the annual shareholders' meeting. However, where an investment company is not required by state law to hold annual meetings of shareholders and does not in fact hold such meetings, it must comply with the 60 day window. Presently, corporate statutes in several states permit investment companies to forego annual meetings of shareholders. In addition, investment companies organized as business trusts are typically not required to hold annual shareholders' meetings.

In series of applications for exemption from section 32(a)(1), some open-end management investment companies ("mutual funds") organized in states not requiring annual meetings of shareholders have argued that the 60 day window is impractical for mutual funds within a family of investment companies ("family") whose members have staggered fiscal year ends. These mutual funds have sought permission to select their accountants instead during a period running from 90 days before to 90 days after the beginning of their fiscal years (a "180 day window"). The Commission has granted the exemptions, based primarily on the applicants' representations that this relief would allow such mutual funds to avoid duplicative board meetings called to select the accountant. Proposed rule 32a-3 would codify these exemptions for companies within a family whose members have staggered fiscal year ends.

Other applicants have requested and received exemptive orders on the ground that a 120 day window (*i.e.*, a period commencing 30 days before and ending 90 days after the beginning of the company's fiscal year) would allow the board of directors to review the accountant's audit of the previous year's operations, and thereby make a better informed decision as to whether to retain that accountant. As discussed more fully below, auditing and preparing financial reports for a company is more complex and time-consuming today than in 1940, when a 60 day window appeared sufficient. Accordingly, proposed rule 32a-3 would codify these exemptions to give companies not qualifying for the 180 day window an additional 60 days to select their accountants. As is the case with companies that would have a 180 day window available, those companies that would have a 120 day window available to them must be organized in a state that does not require annual shareholders' meetings (and must not, in fact, hold such a meeting in the fiscal year in which the exemption is relied on). Since the 60 day window has little import for companies that hold annual meetings of shareholders, the proposal would not extend to such companies.

Proposed rule 32a-3 would be prospective in effect and is intended to set forth for all open-end and closed-end management investment companies the Commission's standards for exemption from the statutory 60 day window for accountant selection. If adopted, rule 32a-3 would supersede all prior Commission orders that exempted such companies from the 60 day window. Receipients of such prior orders should, therefore, avail themselves of the

[1] This requirement also applies to registered face-amount certificate companies. However, because no such company has sought relief from the 60 day window, registered face-amount certificate companies are not within the scope of the proposed rule.

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comment process on proposed rule 32a–3, if they so desire.

The Commission believes that the proposed rule would benefit management investment companies by removing the need to file applications for exemption from section 32(a)(1). At the same time, the proposed rule would not contravene the legislative intent of that section of harm shareholders.

**Background**

Section 32(a)(1) of the Act states that it shall be unlawful for any registered management company or registered face-amount certificate company to file with the Commission any financial statement signed or certified by an independent public accountant, unless such accountant shall have been selected at a meeting held within thirty days before or after the beginning of the fiscal year or before the annual meeting of stockholders in that year by the vote, cast in person, of a majority of those members of the board of directors who are not "interested persons" of such registered company.[5] At issue in proposed rule 32a–3 is the requirement in section 32(a)(1) that an investment company's board of directors select the accountant "at a meeting held within thirty days before or after the beginning of the fiscal year or before the annual meeting of stockholders in that year * * *."

The accountant selection requirement was part of the Act as originally enacted.[6] However, the original legislative history of the Act has no discussion of why Congress chose a 60-day window.[7] The discussion of section 32(a) focuses only on the rationale for the shareholder ratification requirement of section 32(a)(2) (15 U.S.C. 80a–31(a)(2)).[8] Section 32(a)(2) requires that where an investment company holds annual meetings, the board's selection of an accountant must be ratified at the next such meeting following selection.

Today, a large number of investment companies are organized as Maryland corporations or Massachusetts business trusts,[9] and, as such, are not required to convene an annual meeting of shareholders.[10] Unless such a company decided to hold an annual shareholders' meeting as a means of obtaining certain approvals required by the Act[11] or for some other reason, section 32(a)(1) would require its board of directors to select the accountant within the 60-day window. This requirement may be impractical for mutual fund families, which typically employ staggered fiscal year ends for funds within the family to facilitate the economic utilization of resources for the accounting personnel of both the investment manager and the accountant.[12] Overlapping boards of directors also are used by many mutual fund families to reduce the costs associated with board meetings.[13] One apparent effect of the 60-day window on mutual funds with these characteristics is that their boards of directors are required to hold more frequent meetings, sometimes for the sole purpose of selecting the accountant.[14] The fact that directors must cast their votes "in person" at these meetings adds to the expense of time and money.[15]

In both no-action letters and exemptive orders, companies have received relief from the 60 day window of section 32(a)(1). The Division of Investment Management ("Division") has taken no-action positions in several cases where special circumstances made compliance with section 32(a)(1) impractical.[16] Commencing in 1967,[17] there began a series of exemptive orders allowing mutual funds within families whose members had staggered fiscal year ends to select their accountants as much as 90 days before or after the beginning of the fiscal year.[18] These

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conference call have been held not to satisfy the statutory requirement. *See* Overseas Securities Co. (pub. avail. Mar. 12, 1981). *See also* S. Rep. No. 184, 91st Cong., 1st Sess. 39 (1969) (discussing an earlier version of the section of the Investment Company Amendments Act of 1970 that amended section 32(a) to require that directors be personally present at a meeting held to select the accountant).

[18] In Farm Bureau Growth Fund, Inc., (pub. avail. Feb. 8, 1980) the company's board of directors selected the accountant for the ensuing fiscal year and also made an immediately effective change to its fiscal year. The requisite board approval of the accountant was ultimately obtained for the original and revised fiscal years, although not in compliance with section 32(a)(1). The Division granted a no-action position, noting these "unique circumstances." The Division also took a no-action position in South Bay Corporation, (pub. avail. Apr. 7, 1977) despite the selection of the accountant outside the time period prescribed by section 32(a)(1). That closed-end company requested special treatment because it was in the process of being liquidated. Finally, in League Investment Fund, Inc., (pub. avail. May 10, 1974) all the shares of League Investment Fund, Inc. were owned by ICU Services Corporation. By way of a no-action position, the Division sanctioned the board's selection of the accountant outside the time period prescribed by section 32(a)(1), because written approval of the accountant by the sole shareholder was obtained. *But see* John Nuveen & Co. Inc., (pub. avail. Nov. 18, 1988) in which the Division declined to take a no-action position regarding a mutual fund family's proposal to select the accountant at its regular board meeting rather than within the 60 day window, suggesting that the fund instead seek an exemptive order. In support of its request for a no-action position, the mutual fund family had proffered arguments similar to those made in the series of applications for exemptive orders that ultimately followed (*e.g.*, that given the varying fiscal year ends and overlapping boards of directors for the funds within the family, strict compliance with the 60 day window would entail duplication of effort).

[19] IDS Mutual, Inc., Investment Company Act Rel. Nos. 15812 (June 18, 1987) (52 FR 23504, June 22, 1987) (notice of application) and 15874 (July 16, 1987) (order).

[20] Other exemptive orders that granted a 180 day window include: The Pierpont Money Market Fund, Investment Company Act Rel. Nos. 16575 (Sept. 28, 1988) (53 FR 39010, Oct. 4, 1988) (notice of application) and 16812 (Oct. 26, 1988) (order); PaineWebber America Fund, Investment Company Act Rel. Nos. 16554 (Sept. 8, 1988) (53 FR 35474, Sept. 14, 1988) (notice of application) and 16691 (Oct. 4, 1988) (order); Alex. Brown Cash Reserve Fund, Investment Company Act Rel. Nos. 16624 (Aug. 12, 1988) (53 FR 31795, Aug. 19, 1988) (notice of application) and 16650 (Sept. 7, 1988) (order); Pilgrim Adjustable Rate Fund, Investment Company Act

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Banking and Currency, 76th Cong., 3d Sess. 305, 1119 (1940). *See also id.* at 920 (at which William Werntz, Chief Accountant of the Commission, testified that the shareholder approval mechanism "will give the auditor a greater sense of direct responsibility to the stockholders * * *.").

[9] Of the 2,511 funds that were the basis for an unpublished survey conducted in the fall of 1988 by Lipper Analytical Securities Corporation, 1,309 were organized in Massachusetts (the vast majority as business trusts) and 734 were organized in Maryland. Looking to other states that also have no annual shareholders' meeting requirement, 80 funds were organized in Minnesota and 33 were organized in California.

[10] *See* Gould and Lins, *Unit Investment Trusts*, 43 Bus. Law. 1177, 1179 (Aug. 1988); Md. Corps. & Ass'ns Code § 3–801 (Michie Supp. 1988). Of course, some companies in existence in 1940 also were allowed under state law to forego annual shareholders' meetings. Thus, the impetus for the proposed rule has more to do with the increased number and size of fund families and the added difficulty of accounting tasks today, as discussed at notes 10 and 23 *infra*, respectively.

[11] *See infra* note 28 and accompanying text, discussing generally the shareholder approvals required by the Act, which may be obtained at an annual shareholders' meeting.

[12] *See* Letter from Kathy D. Ireland of the Investment Company Institute to Kathryn B. McGrath, Director, Division of Investment Management (June 10, 1988) ("ICI Letter").

[13] ICI Letter.

[14] ICI Letter.

[15] The Division of Investment Management has interpreted the "in person" requirement of section 32(a)(1) of the Act so that meetings by telephone

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[5] The term "interested person" is defined in section 2(a)(19) of the Act (15 U.S.C. 80a–2(a)(19)).

[6] Investment Company Act of 1940, Pub. L. No. 76–768, section 32(a)(1), 54 Stat. 789, 838 (1940).

[7] There is also no discussion of the rationale for the 60-day window in the legislative history to the 1970 amendments to the Act. The Investment Company Amendments Act of 1970 amended section 32 to its present form. Pub. L. No. 91–547, 84 Stat. 1413, 1427–39 (1970). The 1970 amendments were generally designed to substitute a new defined term—"interested person"—for the term "affiliated person", and to require that directors vote in person. Investment Company Amendments Act of 1970: Report of the Committee on Interstate and Foreign Commerce, H.R. Rep. No. 1382, 91st Cong., 2d Sess. at 36 (1970).

[8] In their testimony before a Senate subcommittee, both Commissioner Healy and David Schenker (counsel to the Commission's Investment Trust Study) pointed out that the approval mechanism set out in section 32(a) was intended to emphasize that the accountant acts for the security holders rather than for management. Investment Trusts and Investment Companies: Hearings on S. 3580 Before a Subcomm. of the Senate Comm. on



applications involved mutual funds organized in states not requiring them to hold annual shareholders' meetings. The applicants noted that fewer board meetings would have to be called if a 180 day window were in effect, thereby reducing expenses ultimately borne by the shareholders. Applicants also asserted that as a general matter, unlike the mutual funds in existence at the time the Act was drafted, the mutual funds of today typically are part of families [16] characterized by staggered fiscal year ends and overlapping boards of directors, for which a 60 day window is inappropriate.

Another recent class of exemptive applicants consists primarily of mutual funds that were not in a family (or were in a family having identical fiscal year ends) and were organized in a state not requiring annual shareholders' meetings. These companies argued that expanding to 90 days the portion of the window occurring after the beginning of the fiscal year would allow their boards of directors to review the accountant's audit of the previous fiscal year's operations, and thereby make a better-informed decision on whether to retain that accountant.[17] This argument is also germane to companies eligible to rely on the 180 day window.

**Discussion**

Proposed rule 32a–3 would offer an expanded time period in which to select an accountant to any company organized in a state that does not require annual shareholders' meetings, where the company does not in fact hold such a meeting in the fiscal year in which reliance on the rule is sought. A company within a family of investment companies [18] whose members have staggered fiscal year ends would be allowed to select the accountant during the period from 90 days before to 90 days after the beginning of its fiscal year. This 180 day window would help such companies to minimize redundant board of directors' meetings.[19] A company not within a family (or a company within a family whose members have identical fiscal year ends)—a "stand-alone company"—[20] would be allowed to select the accountant during the period from 30 days before to 90 days after the beginning of its fiscal year. This 120 day window would promote an objective shared by all the companies that would be eligible to rely on the proposed rule: The opportunity to review the accountant's audit of the previous fiscal year's financial statements before having to decide whether to retain that accountant. Comment is specifically requested, however, on whether the proposed windows should be expanded or shortened.

Proposed rule 32a–3, if adopted, would be within the Commission's exemptive power under section 6(c) of the Act (15 U.S.C. 80a–6(c)). Section 6(c) provides that the Commission, by rules and regulations upon its own motion, may, among other things, conditionally or unconditionally exempt any person or any class or classes of persons, from any provision of the Act, "if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions" of the Act. Mutual fund structure and accounting in the eligible companies display a degree of complexity that would have been exceptional in 1940. As discussed more fully below, the exemption provided by proposed rule 32a–3, if adopted, would be appropriate in the public interest by responding to these developments and allowing eligible companies additional time to review the accountant's work and by minimizing duplicative board of directors' meetings. Of particular importance is the absence of any legislative history, contemporaneous Commission interpretive releases, or other evidence indicating that the 60 day window, rather than some other time period, reflected a particular judgment by Congress. In light of these considerations, and because the regularity with which directors select the accountant would not be reduced significantly, the Commission believes the rule would be consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Despite the absence of legislative history explaining the need for only a 60 day window, the Commission has considered whether expansion of the window to 180 days for companies in a family with staggered fiscal year ends

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Rel. 16470 (July 5, 1988) (53 FR 26352, July 12, 1988) (notice of application) and 16505 (July 29, 1988) (order); American Capital California Tax-Exempt Trust, Investment Company Act Rel. Nos. 16398 (May 11, 1988) (53 FR 17526, May 17, 1988) (notice of application) and 16434 (June 6, 1988) (order); The Rodney Square Benchmark U.S. Treasury Fund, Inc., Investment Company Act Rel. Nos. 16361 (Apr. 28, 1988) (53 FR 15942, May 4, 1988) (notice of application) and 16409 (May 23, 1988) (order); AIM Convertible Securities, Inc., Investment Company Act Rel. Nos. 16328 (Mar. 21, 1988) (53 FR 9838, Mar. 25, 1988) (notice of application) and 16369 (Apr. 18, 1988) (order); Command Government Fund, Investment Company Act Rel. Nos. 16270 (Feb. 12, 1988) (53 FR 3089, Feb. 19, 1988) (notice of application) and 16314 (Mar. 14, 1988) (order); Nuveen Tax-Free Bond Fund, Inc., Investment Company Act Rel. Nos. 15899 (July 13, 1987) (52 FR 27099, July 17, 1987) (notice of application) and 15939 (Aug. 6, 1987) (order). *But see* MacKay-Shields Mainstay Series Fund, Investment Company Act Rel. Nos. 16875 (Dec. 2, 1988) (53 FR 49810, Dec. 9, 1988) (notice of application) and 16733 (Dec. 30, 1988) (order), in which a 180 day window was granted to an open-end series investment company and all companies organized in the future without any requirement as to staggered fiscal year ends.

[16] Over the past few decades, an increasing proportion of mutual funds have been created as part of a family. A study of mutual funds submitted to the Congress in 1962 revealed that of the 156 open-end companies surveyed, only 86 companies (or 55%) were part of a multicompany unit. *See* A Study of Mutual Funds, prepared for the Securities and Exchange Commission by the Wharton School of Finance and Commerce, 87th Cong., 2d Sess., Report of the House Committee on Interstate and Foreign Commerce 41–42 (Comm. Print 1962). The study did note, however, that "the number of multifirm groups and members of existing groups would be somewhat enlarged if account were taken of the companies excluded because of small size (and occasionally other reasons)". *Id.* at 42, n.11. In contrast, a 1988 survey revealed that 2,305 of 2,458 mutual funds surveyed (or 94%) were in a complex containing at least two funds. *See* Lipper Directors' Analytical Data, Summary Table by Complex, Lipper Analytical Securities Corporation (Fall 1988).

[17] *See* USAA Mutual Fund, Inc., Investment Company Act Rel. Nos. 16324 (Mar. 18, 1988) (53 FR 9042, Mar. 25, 1988) (notice of application) and 16362 (Apr. 13, 1988) (order); Midwest Income Trust, Investment Company Act Rel. Nos. 16625 (Nov. 7, 1988) (53 FR 45839, Nov. 14, 1988) (notice of application) and 16672 (Dec. 2, 1988) (order) (expanding the window to 90 days after the beginning of each company's fiscal year); MBL Growth Fund, Inc. and MAP Government Fund, Inc., Investment Company Act Rel. Nos. 16649 (Nov. 21, 1988) (53 FR 47898, Nov. 28, 1988) (notice of application) and 16727 (Dec. 20, 1988) (order) (expanding the window to 60 days after the beginning of each fund's fiscal year); Growth Industry Shares, Inc., Investment Company Act Rel. Nos. 16686 (Nov. 30, 1988) (53 FR 49282, Dec. 8, 1988) (notice of application) and 16713 (Dec. 27, 1988) (order) (expanding the window to 90 days after the beginning of each fund's fiscal year). One item of form N–SAR, the semiannual report of registered management investment companies, is based on the audit examination conducted by the accountant. Form N–SAR must be filed with the Commission no later than the sixtieth day after the end of the fiscal period to which the report relates. The audited financial statements for the fiscal year are required to be mailed to shareholders within the same 60 day period. Providing the board 90 days after the beginning of the company's fiscal year to select the accountant would thus allow it to review the accountant's audit examination for the just-ended fiscal year and also the form N–SAR item for which the examination serves as the basis.

[18] Paragraph (b)(1) of the proposed rule defines "family of investment companies" as "any two or more registered management investment companies which share the same investment adviser or principal underwriter and hold themselves out to investors as related companies for purposes of investment and investor services".

[19] The Commission seeks comment on the costs associated with such board of directors' meetings in quantitative terms, and on alternatives other than the proposed rule that would allow such companies to reduce these costs.

[20] Paragraph (b)(2) of the proposed rule defines "stand-alone company" as "any registered management investment company that is not in a family of investment companies, or is in a family, each of whose members has the same fiscal year end."

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might cause selection of the accountant to become more perfunctory. Under the proposed rule, it may become common for the accountant for several companies within a family to be selected at a single board of directors's meeting. Arguably, this could result in the individualized accounting needs of each company being overlooked. The Commission believes, however, that the risk of overlooking a particular company's accounting needs is slight, and that, in any event, investment company directors will continue to give thorough consideration to the selection of an appropriate accountant for each company. This belief is supported by the fact that to the Commission's knowledge, no problems of this nature have arisen in the operation of rule 18f-2(e) [17 CFR 270.18f-2(e)] under the Act, which provides that each series of a series investment company is not required to vote separately on the selection of the accountant (because their interests in that regard are consistent).[21]

The Commission also has considered the consequences of expanding to 120 days the current 80 day window for companies that are not in a family whose members have staggered fiscal year ends, but are organized in states not requiring such companies to hold annual shareholders' meetings (and in fact hold no annual meetings). The only apparent risk in that expansion is that should a change of accountants become necessary, it may not be accomplished in as prompt a fashion as might otherwise be the case. The Commission does not believe that this risk is significant, however, and is persuaded by the argument that the accountant's audit of the previous fiscal year's operations is important to the issue of accountant selection, and that such audit is generally incomplete 30 days after the beginning of the fiscal year.[22] Applicants have argued that the auditing and preparation of financial reports for companies may be more complex and time-consuming today than in 1940.[23]

Unlike the applicants that sought a 180 day window,[24] those seeking a 120 day window focused on the need to expand the portion of the window occurring after the beginning of the fiscal year to provide additional time in which to review the accountant's work.[25] Thus, there is no need to expand the portion of the window occurring before the beginning of the fiscal year for such companies, and the proposed rule would not do so.

The Commission has considered whether to allow companies organized in a state requiring annual shareholders' meetings or companies that simply choose to hold annual shareholders' meetings to rely on the propose rule. A company could choose to hold an annual shareholders' meeting to elect its directors even though section 16(a) of the Act (15 U.S.C. 80a-16(a)) requires investment companies to hold an annual or special shareholders' meeting in only two situations: (1) To elect the initial board of directors, and (2) to elect directors to fill existing vacancies on the board in the event that less than a majority of directors were elected by shareholders.[26]

Under section 32(a)(1), the boards of directors of companies holding shareholders' meetings may select the accountant either within 30 days before or after the beginning of the fiscal year, or at any time before the annual shareholders' meeting in that fiscal year. Given the discretion that companies have in when to hold their annual shareholders' meetings, the board's ability under the section to make its accountant selection any time before the shareholders' meeting would generally give a company holding such meetings great flexibility in the time period for selection. For example, a calendar-year company that holds annual shareholders' meetings in June or later in the year would have a time period for accountant selection that equals or exceeds the windows of the proposed rule. Viewed another way, under the section, such a company with a meeting after March 31 (90 days after the beginning of the company's fiscal year) could still make its accountant selection any time before that meeting, while the rule would permit selection to be made only up until March 31.[27] Because there appears to be no public interest to be served by extending the proposed rule to companies that hold annual meetings, the proposal would not be available to them.

The Commission, however, seeks comment on whether there is a substantial need for companies that hold annual shareholders' meetings to use the expanded windows. If there is significant persuasive comment answering this question affirmatively, the Commission may modify the rule to exempt those companies.

Finally, the Commission believes that the proposed rule should apply to both open-end and closed-end management investment companies. Although virtually all of the exemptive orders and no-action letters involved open-end companies, one of the exemptive orders involved closed-end companies.[28]

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[21] In the release proposing rule 18f-2(e), the Commission stated that "[s]uch a matter [voting on the accountant] is not one in which series would generally have inconsistent interests since their primary concern is obtaining the services of a competent accountant who will give them an accurate picture of the financial condition of their series and company." Investment Company Act Rel. No. 6898 (Feb. 17, 1973) [37 FR 4219, Feb. 28, 1972].

[22] *See supra* note 17.

[23] This increased complexity may be attributable to a variety of innovations appearing since 1940 which must be reviewed by the accountant. In addition, the variety of securities held by investment companies has increased, thereby complicating the task of valuing the portfolio. *See also* application of MFL Growth Fund, Inc. and MAP Government Fund (File No. 813-7170), *supra* note 17, in which the applicants represented that "[g]iven the increased complexities in both the audit and reporting of financial information of the Funds, both in the daily accounting along with the ever changing tax laws, it is not feasible that work can be accomplished and reviewed to everyone's satisfaction and be presented to the Boards of Directors within a thirty day period."

[24] *See supra* note 15.

[25] *See supra* note 17.

[26] *See* John Nuveen & Co., Inc. (pub. avail. Nov. 15, 1988). Other sections of the Act also require approvals, which may be obtained at an annual shareholders' meeting. Section 32(a)(2) requires the directors' selection of the accountant to be submitted for ratification or rejection at the next succeeding annual meeting of stockholders, if such meeting be held. Section 15 (15 U.S.C. 80a-15) requires that the investment advisory contract be approved initially by the vote of a majority of outstanding voting securities of the registered investment company. Section 15 also requires that the contracts governing a company's investment adviser and principal underwriter shall continue in effect for a period more than two years from the date of execution only if specifically approved at least annually by the company's board of directors or by the vote of a majority of the company's outstanding voting securities.

[27] Of course, if a company held its annual shareholders' meeting very early in the fiscal year, it could have a narrower window for accountant selection under section 32(a)(1) than that available under the proposed rule. For example, assume a calendar-year company has its annual meeting on March 1. Under the statute, selection would have to be made by that time. If the proposal was available, however, selection could also be made between March 1 and March 31 (*i.e.*, up to 90 days after the beginning of the fiscal year). In that circumstance, a year or more could pass before ratification of that choice by the shareholders, which need only be at the *next* annual meeting (*i.e.*, accountant selection and shareholder ratification need not occur in the same fiscal year). Under the statute, that type of delay would result only if the shareholders' meeting was held before 30 days after the beginning of the fiscal year.

[28] Cigna Funds Group, Investment Company Act Rel. Nos. 16728 (Dec. 29, 1988) (54 FR 345, Jan. 5, 1989) (notice of application) and 16772 (Jan. 23, 1989) (order) (The closed-end funds included in the order held annual shareholders' meetings to comply with the listing requirements of the New York Stock Exchange. Accordingly, those funds were entitled to relief only in the event that they ceased holding annual shareholders' meetings.) In addition, many of the exemptive orders applied to "future investment companies", and thus were not limited to open-end companies.



**Cost/Benefit of Proposed Action**

Proposed rule 32a-3 would not impose any significant additional burdens on investment companies. On the contrary, investment companies to which the rule would apply would generally file fewer applications for exemption and would be able to hold fewer board of directors' meetings. The proposed rule also would allow the board of directors of eligible companies to make better-informed decisions concerning the selection of an accountant. The Commission would benefit from the proposed rule because its staff would review fewer applications for exemption in this area. Comments are requested on these matters, however, and on the costs or benefits of any other aspect of the proposed action.

**Regulatory Flexibility Act Certification**

Pursuant to section 605(b) of the Regulatory Flexibility Act [5 U.S.C. 605(b)], the Chairman of the Commission has certified that proposed rule 32a-3 will not, if adopted, have a significant impact on a substantial number of small entities. This certification, including the reasons therefor, is attached to this release.

**List of Subjects in 17 CFR Part 270**

Investment companies, Reporting and recordkeeping requirements, Securities.

**Text of Proposed Rule**

Part 270 of Chapter II of Title 17 of the Code of Federal Regulations is proposed to be amended as shown.

**PART 270—RULE AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940**

1. The Authority citation for Part 270 is amended by adding the following citation:

**Authority:** Secs. 38, 40, 54 Stat. 841, 842; 15 U.S.C. 80a-37, 80a-39; The Investment Company Act of 1940, as amended, 15 U.S.C. 80a-1 *et seq.*; unless otherwise noted. * * * § 270.32a-3 is also issued under sec. 6(c) (15 U.S.C. 80a-6(c)).

2. By adding 270.32a-3 to read as follows:

**§ 270.32a-3 Exemption from provision of Section 32(a)(1) regarding the time period during which a registered management investment company must select an independent public accountant.**

(a) A registered management investment company ("company") organized in a jurisdiction that does not require it to hold annual meetings of its stockholders, and which does not hold an annual stockholders' meeting in a given fiscal year, shall be exempt in that fiscal year from the requirement of section 32(a)(1) of the Act (15 U.S.C. 80a-31(a)(1)) that the independent public accountant ("accountant") be selected at a board of directors' meeting held within 30 days before or after the beginning of the fiscal year or before the annual meeting of stockholders in that year, *provided*, that such company is either:

(1) In a family of investment companies as defined in paragraph (b)(1), where not all the member companies of such family have an identical fiscal year end and where such company selects an accountant at a board of directors' meeting held within 90 days before or after the beginning of its fiscal year; or

(2) A stand-alone company as defined in paragraph (b)(2) of this section, where such company selects an accountant at a board of directors' meeting held within 30 days before or 90 days after the beginning of its fiscal year.

(b) For purposes of this rule:

(1) "Family of investment companies" means any two or more registered management investment companies which share the same investment adviser or principal underwriter and hold themselves out to investors as related companies for purposes of investment and investor services; and

(2) "Stand-alone company" means any registered management investment company that is not in a family of investment companies, or is in a family, each of whose members has the same fiscal year end.

By the Commission.

**Jonathan G. Katz,**

*Secretary.*

March 1, 1989.

**Regulatory Flexibility Act Certification**

I, David S. Ruder, Chairman of the Securities and Exchange Commission, hereby certify, pursuant to 5 U.S.C. 605(b), that proposed rule 32a-3 under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*), concerning the selection of independent public accountants by certain registered management investment companies, will not, if promulgated, have a significant impact on a substantial number of small entities. The proposed rule in certain cases would allow an investment company that is a small entity to avoid the expense of one additional board of directors meeting each year. The resulting expense saving, however, would not be a significant proportion of the investment company's expenses.

David S. Ruder,

*Chairman.*

Dated: March 1, 1989.

[FR Doc. 89-5294 Filed 3-7-89; 8:45 am]

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**DEPARTMENT OF THE INTERIOR**

**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Part 761**

**Areas Unsuitable for Mining; Areas Designated by Act of Congress; Reopening of Public Comment Period on Proposed Rule and Draft Environmental Impact Statement Supplement**

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Notice of reopening of public comment period.

**SUMMARY:** The Office of Surface Mining Reclamation and Enforcment (OSMRE) of the Department of the Interior is reopening the comment period on a proposed rule and the accompanying draft environmental impact statement (EIS) supplement. The proposed rule would amend those portions of OSMRE's permanent program regulations that address (1) the circumstances which constitute valid existing rights to mine in areas where Congress has otherwise prohibited mining and (2) the applicablility of the mining prohibitions to subsidence resulting from underground mining. This action will afford additional time for public comment on the proposed rule and on the draft EIS supplement.

**DATES:** The comment period is extended until 3:30 p.m. Eastern time April 24, 1989. Comments received after the close of the comment period may be considered in preparation of the final rule or the final EIS supplement.

**ADDRESSES:** *Written comments on the proposed rule:* Hand deliver to the office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5131, 1100 L Street NW., Washington, DC; or mail of OSMRE, Administrative Record, Room 5131L, 1951 Constitution Avenue NW., Washington, DC 20240.

*Written comments on the draft EIS supplement:* Hand deliver to the office of Surface Mining Reclamation and Enforcement, Room 5121, 1100 L Street, NW., Washington, DC; or mail to Catherine Roy, OSMRE, Room 5121L,

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1951 Constitution Avenue NW., Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** For information concerning the proposed rule: Patrick W. Boyd, (202 or FTS) 343–1864; for information concerning the draft EIS supplement: Catherine Roy, (202 or FTS) 343–5143.

**SUPPLEMENTARY INFORMATION:** On December 27, 1988, OSMRE published in the **Federal Register** a proposed rule that would amend those portions of its permanent program regulations at 30 CFR Part 761 which address the circumstances which constitute valid existing rights (VER) to mine in areas where Congress has otherwise prohibited mining under section 522(e) of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.* (the Act). At the same time, OSMRE also issued for comment a proposal on the applicability of the prohibitions in section 522(e) of the Act to subsidence resulting from underground mining. The proposal stated that comments would be accepted until 5:00 p.m. local time on March 7, 1989 (53 FR 52374). Interested persons should also refer to the Departmental policy statement to prevent coal mining in the national parks and similarly protected areas, which was also published on December 27, 1988.

On January 11, 1989, OSMRE published in the **Federal Register** a notice of the availability of and a request for comments on a draft EIS supplement addressing the proposed revisions to the permanent program rules. The notice stated that comments would be accepted until 3:30 p.m. local time on March 3, 1989. (54 FR 989)

The Secretary of the Interior is very concerned about the complex and difficult problem of valid existing rights to mine in areas otherwise protected from mining by the Act. Therefore, he has decided to Reopen the comment period on the proposed rule and on the draft EIS supplement for a additional 45 days of ensure that everyone has an adequate opportunity to comment. He hopes that interested parties will take this opportunity to suggest additional options that they believe may solve this problem. If other viable options are suggested, the Secretary may decide to repropose the rule and solicit additional comments on those suggestions. Also, the Secretary wants the final EIS to be the best possible technical product. He hopes everyone with relevant information will submit it to OSMRE to assist us in developing an EIS that addresses the public's concerns.

Dated: March 1, 1989.

**Robert H. Gentile,**

*Director, Office of Surface Mining Reclamation and Enforcement.*

[FR Doc. 89–5256 Filed 3–7–89; 8:45 am]

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## POSTAL RATE COMMISSION

**39 CFR Part 3001**

**[Docket No. R88S–3]**

### Rules of Practice and Procedure Relating to Documentation of Statistical and Volume Evidence

March 1, 1989.

**AGENCY:** Postal Rate Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Commission proposes to amend Rule 31(k)(2) of its rules of practice to require improved documentation of econometric and other statistical studies offered in evidence, to amend Rule 54(j) of its rules of practice to require improved documentation of volume estimates offered in evidence by the Postal Service, and to amend Rule 102(b) to require the Postal Service to report on a current basis revisions to certain data relating to volumes.

**DATES:** Comments must be received on or before April 24, 1989.

**ADDRESS:** Comments and correspondence relating to this Notice should be sent to Charles L. Clapp, Secretary of the Commission, Suite 300, 1333 H Street, NW., Washington, DC 20268. (Telephone: 202/789–6840).

**FOR FURTHER INFORMATION CONTACT:** David F. Stover, General Counsel, Postal Rate Commission, Suite 300, 1333 H Street, NW., Washington DC 20268; (202) 789–6820.

**SUPPLEMENTARY INFORMATION:** We propose to amend rule 31(k)(2) of our rules of practice (39 CFR 3001.31(k)(2)), which governs the statistical presentations of all parties to our proceedings; rule 54(j) of our rules of practice (39 CFR 3001.54(j)), which governs the Postal Service's presentation of projected volumes in our proceedings; and Rule 102(b) of our rules of practice (39 CFR 3001.102(b)), which governs periodic data reporting requirements to the Commission. Our proposed amendments set forth initial documentation standards for these categories of evidence that are clearer and more specific than those contained in the current rules. Our purpose in doing so is to expedite discovery and cross-examination of such evidence and facilitate its analysis in the limited time available in our rate hearings.

**Amendments to Rule 31(k)(2)**

The Commission's rules of practice setting documentation standards for statistical evidence were drafted in the early 1970s. If adequate then, they have proven to be too vague and general to meet the current needs of the Commission and the parties in this area. Certain statistical evidence submitted in recent proceedings has become too complex and sophisticated to be effectively understood and tested in the limited time available in our proceedings, given the current level of initial documentation required by our rules. If the Commission is to conduct adequate discovery and cross-examination of such evidence in the time allotted by statute, clear and thorough documentation must accompany it at the time it is filed.

The improved documentation that we propose to require for statistical evidence focuses on econometric evidence. The econometric evidence submitted in our proceedings, especially that underlying the Postal Service's volume forecasts, has become the most difficult form of statistical evidence to evaluate within the hearing time allotted. This is due to its highly technical nature, its ever increasing quantity, and its documentation, which, at times, has been inadequate. Therefore, econometrics is the statistical area where improved documentation standards are needed most.

The standard econometric approach involves several steps. It begins with a model that summarizes theories about economic relationships in a form convenient for measurement and empirical testing. It specifies the characteristics of the model, develops and refines relevant data, and then applies appropriate econometric techniques to the refined data to estimate model parameters.[1]

Our proposed documentation standards reflect these steps, as they are employed in the standard econometric approach, by requiring explicit documentation of each step. They are also drafted to strengthen specific weaknesses in documentation of econometric models, particularly volume forecasting models, that have hindered our evaluation of such models in recent rate proceedings.

A significant weakness of our current rules that has been made apparent by past rate hearings is the vagueness of current rule 31(k)(2)(ii) governing econometric investigations. With respect

[1] See, e.g., M. Intriligator, *Econometric Models, Techniques, & Applications*, chapter 1 (1978).



to the Postal Service's volume forecasts, for example, the principal obstacle to effective review by the Commission has been the inadequate support offered for the numerous subjective judgments that the Postal Service has employed in developing the econometric models upon which its forecast is based. In the past the Commission often has been put in the position of having to "take or leave" the Postal Service's volume forecast, and some unsupported judgments that underlie it, because there has been no viable alternative to the Postal Service's econometric demand models.

Examples of the technical choices that the Postal Service has sometimes made on the basis of subjective judgment in building its demand models including selecting variables, selecting equation forms, assembling data sets, selecting techniques for estimating parameters, and assigning values to parameters that are not estimated. The reasonableness of these judgmental choices could not be effectively evaluated in past hearings for two reasons: (1) Alternatives that the Postal Service considered and rejected were not preserved, presented and explained and, (2) there was little inquiry into the Postal Service's failure to consider plausible alternatives, because a procedure for such inquiry was not readily available.

In addition, statistical measures needed to evaluate the reliability of the model's results such as coefficient estimates, standard errors and t-values, goodness of fit and other test statistics, variance/covariance matrices of estimates, computed residuals, etc., have not always been made available in past proceedings, even where they have been repeatedly requested. Ideally, the Commission should have all relevant measures of reliability available to it not only for the Postal Service's model but for likely model variations against which the reasonableness of the Postal Service's version could be judged. The same applies to the econometric models submitted by other parties.

It is because the parties have preserved little of the "choice trail" followed in their econometric investigations, and because there has been no practical procedure for testing the result of their investigations with independently selected choices, that the Commission has been placed in the position of having to "take or leave" their models on the strength of subjective assertions of their reasonableness.

To remedy this situation, we propose to amend current rule 31(k)(2)(ii) (which we propose to renumber as 31(k)d(2)(iii)) to clearly require that the part of the "choice trail" that is relevant to sustaining judgments about the reasonableness of the model would be retained, and would be provided during discovery if other parties or the Commission request it.

Proposed rule 31(k)(2)(iii)(*d*) would require researchers to retain and produce those portions of their work product that comprise the empirical basis for judgments that were made in the course of their investigations. Witness Tolley's use of Shiller Smoothness Priors in Docket No. R87–1 provides an example of how this proposed requirement would be applied in a rate proceeding. Witness Tolley's procedure for selecting a value for the Shiller Prior is described at USPS–T–2, pp. A11–A12, and again, in his response to DMA interrogatory 6.

There he makes it clear that the submitted product of his investigations consisted only of a single estimated demand equation for each class of postal service for which the selected Shiller Prior just achieved an "admissible" pattern. Yet it is also celar that other estimates corresponding to other values of the Shiller Priors were computed and studied to reach the judgment that the pattern of price responses has been constrained "just enough to achieve an admissible pattern." This illustrates how our current rules fail to clearly require researchers to preserve sufficient work product to support critical technical judgments. Had it been in effect, the proposed rule would have clearly imposed the burden on witness Tolley of preserving and, on request, producing a selection of his alternative estimates that would be sufficient to allow an independent verification of his judgments.

In addition, proposed rule 31(k)(2)(iii)(*j*) would provide that opposing parties or the Commission could specify plausible variations in the model, data set, or estimation methodology, to investigate the reasonableness of judgments made in the course of the econometric investigation. Alternatives that could serve this purpose include adding, transforming, or redefining a variable, altering a parameter whose value had been assigned for the purpose of compiling the sample or computing coefficient estimates, adding or replacing a set of related observations in the sample, or using an alternative standard estimating technique.

The purpose of proposed subsection (*j*) is to provide a means of validating an offered econometric model by observing the impact of such independently specified alternatives on modelled results. The results obtained would be strictly limited to that purpose. We contemplated that the Presiding Officer would approve requests for such validation only where they are made well in advance of cross-examination, where the requesting party has made a convincing showing of the likely value of its request in validating the specific judgment being probed, and where the impact of the specified alternative can be observed by a reasonably simple substitution of input data and execution of an otherwise unmodified data processing program.

With these proposed rules the Commission hopes to avoid being put again in the position of having to adopt a forecasting model whose support rests in important respects on the researcher's unverified judgment.

The other major objective of our proposed amendments to rule 31(k)(2) is to require that documentation of econometic and other statistical studies, including volume forecasting models, be adequate to enable opposing parties or the Commission to replicate them. An ability to replicate statistical studies is necessary if their reasonableness is to be evaluated.

Subsection (*e*) of proposed rule 31(k)(2)(iii) is intended to exclude the use of ad hoc econometric techniques in our proceedings that have not undergone review in the professional literature, or whose application in the context of postal ratemaking has no counterpart in related fields. This proposed subsection is based upon the belief that it is inappropriate for the Commission to assume the role of a technical reviewer of statistical methods.

Subsection (*g*) of proposed rule 31(k)(2)(iii) lists the statistics that the Commission considers necessary to evaluate econometric studies, and requires the sponsoring party to provide them at the outset.

**Amendments to Rule 54(j)**

Rule 54(j) applies specifically to the Postal Service's volume presentations contained in its formal rate requests. The amendments and additions to rule 54(j) that we propose would improve our ability to apply the Postal Service's volume methodology to scenarios that include our own recommendations concerning rate and other factors that impact on volumes. These proposed rule changes would require the Postal Service to provide: quarterly computations of projected volumes (proposed rule 54(j)(5)); seasonal adjustments of observed and projected volumes; a computer implementation of

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the Postal Service's volume- and revenue-forecasting methodology (proposed rule 54(j)(6)); and the input files and programs, in computer-readable form, needed to replicate or verify the econometric demand analysis submitted by the Postal Service (proposed rule 54(j)(7)).

More specifically, our subsections (ii) and (iii) of proposed rule 54(j)(5) would require the Postal Service to provide volume estimates for both prefiled and proposed rates by quarter, from the last reported quarter to one year beyond the end of the test year. The Postal Service's current practice is to compute quarterly volume estimates from the last reported quarter to the end of the test year, but include only aggregated test year volumes in its filing. Subsection (iv) would require the Postal Service to report the observed and estimated quarterly volumes that subsections (ii) and (iii) would require in seasonally adjusted form, at annual rates.

There are substantial benefits to having seasonally adjusted quarterly volume data. It would bring the Postal Service's volume data into conformity with economic data reported throughout the remainder of the Federal government, which is reported on a seasonally adjusted basis. It would bring consistency to the volume data that is used in postal ratemaking, since the adjusted data would come from the same source as other volume data. The primary benefit of adjusted data, of course, would be that the major non-economic source of variation in the volume data would be removed, isolating the economic variations for analysis.

Adjusted volume data provided by quarter would allow participants to make judgments concerning volume trends and the accuracy of volume forecasts without having to wait for a full year of volume data to accumulate. Because our proposed amendments would require quarterly volume projections that extend beyond the test year by four quarters, they would provide a means that is not currently available for checking the reasonableness and consistency of the Postal Service's forecasting method during the course of the rate hearing, as well as for the post test-year life of the new rate structure.

Subsection (v) of proposed rule 54(j)(5) would require the Postal Service to calculate confidence intervals for its volume estimates. While these would not reflect all sources of uncertainty affecting the reliability of its volume forecast, it would indicate the degree of uncertainty that is attributable to statistical factors. Without a confidence interval, the Commission has not been able to determine whether actual revenues have been within the expected error of the applicable revenue forecast that the Postal Service's econometric model had produced.

Proposed rule 54(j)(6) would require the Postal Service to derive its volume projections from an econometric demand analysis that conforms strictly to the one that it must provide to satisfy proposed subsection 54(j)(5)(i). In past rate proceedings there have been some unacknowledged differences between the Postal Service's demand model as presented, and its model as implemented in making the forecasts required by the current rule.

Subsections (iii) and (iv) of proposed rule 54(j)(6) would require the Postal Service to provide a computer implementation of its volume- and revenue-estimating methodology that would allow the Commission to calculate volumes and revenues for alternative postal rates and for alternative non-rate factors that impact upon volumes. Proposed subsection (v) makes it clear that this computer implementation must satisfy the Commission's rules concerning documentation of computer-based evidence.

In past rate proceedings, the Commission has found it necessary to reconstruct the Postal Service's volume and revenue forecasting methodology in order to determine the impact that alternative rates, fees, and other relevant assumptions being considered would have on volumes and revenues. Because examining the impact of alternative rates is a necessary step in our deliberations, it is appropriate that we have the tools necessary to apply the Postal Service's forecasting methodology correctly. Proposed subsections 54(j)(6) (iii) and (iv) are intended to make it clear that a "turn key" computer implementation of the forecasting methodology is required.

Item (*c*) of proposed subsection (iv) contemplates the possibility that projected economic determinants such as those prepared by DRI that are incorporated in the Postal Service's forecast could be rendered obsolete over the course of the hearing by changed economic conditions. Item (*c*) would enable the Commission to substitute a current for an obsolete projection in that circumstance. Where the Postal Service has resorted to unverifiable judgments in selecting parameter values, Item (*d*) of proposed subsection (iv) is intended to allow the Commission to analyze the effect of employing such judgments and to substitute alternative judgments.

Proposed rule 54(j)(7) would be an addition to current rule 54(j). It is intended to make it clear that the Postal Service should include in its initial filing the computer input files and programs needed to generate the estimates that proposed rules 54(j)(5) requires.

**Amendments to Rule 102(b)**

Proposed paragraph (4) of Rule 102(b) would require the Postal Service to report, on a current basis, any extensions and revisions of explanatory variables used in the econometric demand study required by proposed Rule 54(j)(5)(i). Proposed paragraph (5) of Rule 102(b) would require the reporting of current revisions of the actual quarterly volumes required by proposed rule 54(j)(5)(iv).

Typically the Postal Service's omnibus rate filing includes major extensions and revisions to the data employed in its econometric demand study. Our proposed additions to Rule 102(b) would allow prospective participants in our rate hearings to examine such extensions and revisions prior to an omnibus rate hearing. This would ease the considerable burden currently imposed upon participants to evaluate these revisions within the narrow span of our omnibus rate proceedings.

*Impact of proposed changes.* Pursuant to Executive Order 12291, the Commission finds that these proposed rule changes do not, individually or collectively, constitute a "major rule." They affect only rules of practice governing hearing procedures. Their economic impact will be negligible, including their impact on the costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions. Additionally, these rule changes will have no measurable effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The above analysis that these rule changes do not constitute a major rule applies, as well, to the Regulatory Flexibility Act.

These proposed rule changes do not contain policies with Federalism implications, and therefore do not warrant preparation of a Federalism assessment under E.O. 12612.

**List of Subjects in 39 CFR Part 3001**

Administrative practice and procedures, Postal Service.



**Proposed Rules**

For the reasons set forth above, the Commission proposes to amend its rules of practice and procedure as follows:

**PART 3001—RULES OF PRACTICE AND PROCEDURE**

1. The authority citation for 39 CFR Part 3001 continues to read as follows:

**Authority:** 39 U.S.C. 404(b), 3603, 3622–3624, 3661, 3662, 84 Stat. 759–762, 764, 90 Stat. 1303; (5 U.S.C. 553), 80 Stat. 383.

2. Sections 3001.31(k)(2) introductory text, and (k)(2)(ii)–(iv) and 3001.54(j) (5)–(7) are revised and 3001.102(b) (4) and (5) are added to read as follows:

**§ 3001.31 Evidence.**

* * * * *

(k) * * *

(2) *Statistical studies.* All statistical studies offered in evidence in hearing proceedings or relied upon as support for other evidence shall include a comprehensive description of the assumptions made, the study plan utilized and the procedures undertaken. Where a computer analysis is employed to obtain the result of a statistical study or might reasonably be employed to replicate the study result, all of the submissions required by § 3001.31(k)(3) shall be furnished, upon request. For example, for each of the following types of statistical studies, the indicated information should be furnished:

* * * * *

(ii) *Experimental analyses. (a)* A complete description of the experimental design, including a specification of the controlled conditions and how the controls were realized;

*(b)* A complete description of the methods of making observations and the adjustments, if any, to observed data.

(iii) *Econometric Studies. (a)* A presentation of the economic theory underlying the study;

*(b)* A complete description of the econometric model(s) and the reasons for each major assumption and specification;

*(c)* The definition of the variables selected and the justification for their selection;

*(d)* A summary description of any alternative models employing different assumptions or specifications that have been tested and rejected;

*(e)* A reference to a detailed description in a text or manual for every econometric technique utilized in the estimation process and the reasons for selecting the technique;

*(f)* Summary descriptions and source citations for all input data. Complete descriptions of any alternations made to the data as received from the original sources and the reasons for making the alterations;

*(g)* A complete report of the econometric results including, where applicable:

*(1)* Coefficient estimates,

*(2)* Standard errors and t-values,

*(3)* Goodness-of-fit statistics,

*(4)* Other appropriate test statistics,

*(5)* The variance/covariance matrix of the estimates,

*(6)* Computed residuals;

*(h)* Descriptions of all statistical tests of hypotheses and the results of such tests;

*(i)* Upon request, the computed econometric results with any alternative models as described in paragraph (k)(2)(iii)(*d*) of this section;

*(j)* Upon request, the computed econometric results that would be obtained if the econometric model, the sample used to fit the model, on the estimation procedure employed by the model, were altered as specified by a participant or the Commission, where such results can be computed without undue burden and may be expected to confirm or refute judgments made in the course of the econometric investigation.

(iv) *All other studies involving statistical methodology. (a)* The formula used for statistical estimates;

*(b)* The standard errors of each component estimated;

*(c)* Test statistics and the description of statistical tests and all related computations, and final results; and

*(d)* Summary descriptions of input data, and upon request the actual input data shall be made available at the offices of the Commission.

**§ 3001.54 Contents of formal requests.**

* * * * *

(j) * * *

(5) Subject to paragraph (a)(2) of this section, there shall be furnished in every formal request, for each class and subclass of mail and postal service, the following:

(i) An econometric demand study relating postal volumes to their economic and noneconomic determinants including postal rates, discounts and fees, personal income, business conditions, competitive and complementary postal services, competitive and complementary nonpostal activities, population, trend, seasonal patterns and other factors.

(ii) The actual or estimated volume of mail at the prefiled rates for each postal quarter beginning with the first quarter of the most recent complete fiscal year and ending one year beyond the last quarter of the future fiscal year.

(iii) The estimated volume of mail assuming the effectiveness of the suggested rates for each postal quarter beginning with the quarter in which the rates are assumed to become effective and ending one year beyond the last quarter of the future fiscal year.

(iv) Seasonally adjusted quarterly totals at annual rates for all actual and estimated quarterly volumes referred to in paragraphs (j)(5) (ii) and (iii) of this section.

(v) Confidence intervals or other suitable measures of statistical reliability for all estimated volumes referred to in paragraphs (j)(5) (ii) and (iii) of this section.

(6) The estimated volumes and revenues referred to in paragraphs (j) (2), (3) and (5) of this section shall be derived from the econometric demand study referred to in paragraph (j)(5)(i) of this section. The assumptions and specifications used to estimate volumes and revenues shall conform exactly to the assumptions and specifications used in the econometric demand study.

(i) Subject to paragraph (a)(2) of this section, there shall be furnished in every formal request a detailed explanation of the methodology employed to forecast volumes for each class and subclass of mail and postal service.

(ii) Subject to paragraph (a)(2) of this section, there shall be furnished in every formal request a detailed explanation of the methodology employed to forecast changes in revenues for each class and subclass of mail and postal service resulting from changes in rates and fees.

(iii) Subject to paragraph (a)(2) of this section, there shall be furnished in every formal request a computer implementation of the methodology employed to forecast volumes and revenues for each class and subclass of mail and postal service.

(iv) The computer implementation described in paragraph (j)(6)(iii) of this section shall be able to compute forecasts of volumes and revenues compatible with those referred to in paragraphs (j) (2), (3) and (5) of this section for:

(*a*) Any set of rates and fees within a reasonable range of the prefiled and suggested rates,

(*b*) any date of implementation within the range spanned by the assumed date and the start of the future fiscal year,

(*c*) alternative forecasts of the economic determinants of postal volumes other than postal rates and fees, and

(*d*) alternative values of any parameters with assigned values that are based upon unverifiable judgments.

(v) The computer implementation described in paragraph (j)(6)(iii) of this

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section shall comply with § 3001.31(k)(3).

(7) Subject to paragraph (a)(2) of this section, there shall be made available at the offices of the Commission with every formal request, in a form that can be read directly by a standard digital computer, the following:

(i) All of the input files and programs needed to replicate the econometric demand study referred to in paragraph (j)(5)(i) of this section;

(ii) Any input files prepared in the process of testing alternative models for the econometric demand study referred to in paragraph (j)(5)(i) of this section;

(iii) Any input files and programs employed to derive a price index for any class or subclass of mail or postal service from postal rates, discounts and fees;

(iv) Any input files and programs employed to seasonally adjust quarterly postal volumes or to convert quarterly totals to their equivalent annual rates;

(v) Any input files and programs used to prepare data for use in the econometric demand study referred to in paragraphs (j)(5)(i) of this section.

**§ 3001.102 Filing of reports.**

* * * * *

(b) * * *

(4) Current extensions and revisions in the values of all explanatory variables used in the econometric demand studies submitted by the Postal Service in compliance with § 3001.54(j)(5)(i) for the most recent formal request for a change in rates or fees.

(5) Current extensions and revisions of the unadjusted and seasonally adjusted actual quarterly volumes submitted by the Postal Service in compliance with § 3001.54(j)(5)(iv) for the most recent formal request for a change in rates or fees.

By the Commission.

**Charles L. Clapp,**

*Secretary.*

[FR Doc. 89-5283 Filed 3-7-89; 8:45 am]

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**DEPARTMENT OF THE INTERIOR**

**Office of Hearings and Appeals**

**43 CFR Part 4**

**Special Rules Applicable to Surface Coal Mining Hearings and Appeals**

**AGENCY:** Office of Hearings and Appeals, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** In order to achieve uniformity of procedures and to provide for expedited administrative review of all permit-related decisions, the Office of Hearings and Appeals proposes to amend the procedural rules for review of the Office of Surface Mining Reclamation and Enforcement (OSMRE) decisions on applications for new permits, permit revisions, permit renewals, the transfer, assignment, or sale of rights granted under permit, and coal exploration permits. In addition, the method of notifying an appplicant, operator, or permittee of OSMRE's written decision would be changed from publication in a local newspaper to certified mail.

**DATES:** Comments are due on or before April 7, 1989.

**ADDRESS:** Comments may be mailed or delivered in person to: Director, Office of Hearings and Appeals, U.S. Department of the Interior, Room 1111, 4015 Wilson Boulevard, Arlington, Virginia 22203.

**FOR FURTHER INFORMATION CONTACT:** Will A. Irwin, Administrative Judge, Interior Board of Land Appeals, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. Phone 703-235-3750.

**SUPPLEMENTARY INFORMATION:** In October 1987 the Office of Hearings and Appeals (OHA) adopted rules providing procedures for administrative review of decisions of the Office of Surface Mining Reclamation and Enforcement (OSMRE) concerning (1) applications for new permits (43 CFR 4.1360–4.1369), (2) applications for permit revisions, permit renewals, the transfer, assignment, or sale of rights granted under permit, and permit revisions ordered by OSMRE (43 CFR 4.1370–4.1379), and (3) applications for coal exploration permits (43 CFR 4.1380–4.1388). 52 FR 39521–39531 (Oct. 22, 1987). OHA proposes to remove the rules in 43 CFR 4.1370–4.1379 and 4.1380–4.1388 and to revise the rules in 43 CFR 4.1360–4.1369 so they will include review of decisions presently provided for by 43 CFR 4.1370–4.1379 and 4.1380–4.1388.

In addition § 4.1351 would be amended by adding a sentence providing that notice of OSMRE's preliminary finding shall be provided by certified mail or by overnight delivery service, if the applicant or operator has agreed to bear the expense for this service, and § 4.1391(b) would be revised by providing for notice of OSMRE's written determination by certified mail or by overnight delivery service, if the applicant or permittee has agreed to bear the cost for this service, rather than by publication in a local newspaper.

**Determination of Effects**

Because these rules only set forth the details of procedures for conducting hearings and appeals of decisions of OSMRE under the Surface Mining Control and Reclamation Act of 1977, the Department has determined that they are not major, as defined by Executive Order 12291, and will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act [5 U.S.C. 601 *et seq.*].

**National Environmental Policy Act**

The Department has determined that these rules will not significantly affect the quality of the human environment on the basis of the categorical exclusion of regulations of a procedural nature set forth in 516 DM 2, Appendix 1, section 1.10.

**Paperwork Reduction Act**

These rules contain no information collection requirements requiring Office of Management and Budget approval under 44 U.S.C. 3501 *et seq.*

The author of these regulations is Will A. Irwin, Administrative Judge, Interior Board of Land Appeals, Office of Hearings and Appeals.

**List of Subjects in 43 CFR Part 4**

Administrative practice and procedure, Mines, Public Lands, Surface mining.

For the reasons set forth in the preamble, Subpart L of Part 4 of Title 43 of the Code of Federal Regulations is proposed to be amended as set forth below.

Dated: March 3, 1989.

**James L. Byrnes,**

*Director.*

43 CFR Part 4 is amended as follows:

**PART 4—[AMENDED]**

1. The authority citation for Part 4, Subpart L, continues to read as follows:

**Authority:** 30 U.S.C. 1256, 1260, 1261, 1264, 1268, 1271, 1272, 1275, 1293; 5 U.S.C. 301.

2. Section 4.1351 is revised to read as follows:

**§ 4.1351 Preliminary finding by OSMRE.**

If OSMRE determines during review of the permit application that the applicant or operator specified in the application controls or has controlled mining operations with a demonstrated pattern of willful violations of such nature and duration with such resulting irreparable damage to the environment as to indicate an intent not to comply, OSMRE shall issue the applicant or operator a notice of such preliminary finding. Notice by OSMRE shall be provided by certified mail, or by overnight delivery service if the applicant or operator has agreed to bear the expense for this service. The notice shall state with specificity the violations upon which the preliminary finding is based.

3. Sections 4.1360–4.1369 and the table of contents for those sections are revised to read as follows:



Sec.

4.1360 Scope.
4.1361 Who may file.
4.1362 Where to file; when to file.
4.1363 Contents of request; amendment of request; responses.
4.1364 Time for hearing; notice of herring; extension of time for hearing.
4.1365 Status of decision pending administrative review.
4.1366 Burdens of proof.
4.1367 Requests for temporary relief.
4.1368 Determination by the administrative law judge.
4.1369 Petition for discretionary review; judicial review.

**Request for Review of Approval or Disapproval of Applications for New Permits, Permit Revisions, Permit Renewals, the Transfer, Assignment or Sale of Rights Granted Under Permit (Federal Program; Federal Lands Program; Federal Program for Indian Lands) and for Coal Exploration Permits (Federal Program)**

**§ 4.1360 Scope.**

These rules set forth the procedures for review of decisions by OSMRE concerning—

(a) Applications for new permits, including applications under 30 CFR Part 785, and the terms and conditions imposed or not imposed in permits by those decisions. They do not apply to decisions on applications to mine on Federal lands in States where the terms of a cooperative agreement provide for the applicability of alternative administrative procedures (see 30 CFR 775.11(c)), but they do apply to OSMRE decisions on applications for Federal lands in states with cooperative agreements where OSMRE as well as the state issue Federal lands permits;

(b) Applications for permit revisions, permit renewals, and the transfer, assignment, or sale of rights granted under permit;

(c) Permit revisions ordered by OSMRE; and

(d) Applications for coal exploration permits.

**§ 4.1361 Who may file.**

The applicant, permittee, or any person having an interest which is or may be adversely affected by a decision of OSMRE set forth in § 4.1360 may file a request for review of that decision.

**§ 4.1362 Where to file; when to file.**

(a) The request for review shall be filed with the Hearings Division, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203 (phone 703-235-3800), within 30 days after the applicant or permittee is notifed by OSMRE of the written decision by certified mail or by overnight delivery service if the applicant or permittee has agreed to bear the expense for this service.

(b) Failure to file a request for review within the time specified in paragraph (a) of this section shall constitute a waiver of a hearing and the request shall be dismissed.

**§ 4.1363 Contents of request; amendment of request; responses.**

(a) The request for review shall include—

(1) A clear statement of the facts entitling the one requesting review to administrative relief;

(2) An explanation of each specific alleged error in OSMRE's decision, including reference to the statutory and regulatory provisions allegedly violated;

(3) A request for specific relief;

(4) A statement whether the person requests or waives the opportunity for an evidentiary hearing; and

(5) Any other relevant information.

(b) All interested parties shall file an answer or motion in response to a request for review, or a statement that no answer or motion will be filed, within 15 days of receipt of the request specifically admitting or denying facts or alleged errors stated in the request and setting forth any other matters to be considered on review.

(c) A request for review may be amended once as a matter of right prior to filing of an answer or motion or statement filed in accordance with paragraph (b) of this section. Thereafter, a motion for leave to amend the request shall be filed with the administrative law judge. An administrative law judge may not grant a motion for leave to amend unless all parties agree to an extension of the date of commencement of the hearing under § 4.1364. A request for review may not be amended after a hearing commences.

(d) An interested party shall have 10 days from filing of a request for review that is amended as a matter of right or the time remaining for response to the original request, whichever is longer, to file an answer, motion, or statement in accordance with paragraph (b) of this section. If the administrative law judge grants a motion to amend a request for review, the time for an interested party to file an answer, motion, or statement shall be set forth in the order granting it.

(e) Failure of any party to comply with the requirements of paragraphs (a) or (b) of this section may be regarded by an administrative law judge as a waiver by that party of the right to commencement of a hearing within 30 days of the filing of a request for review if the administrative law judge concludes that the failure was substantial and that another party was prejudiced as a result.

**§ 4.1364 Time for hearing; notice of hearing; extension of time for hearing.**

Unless all parties agree in writing to an extension or waiver, the administrative law judge shall commence a hearing within 30 days of the date of the filing of the request for review or amended request for review and shall simultaneously notify the applicant or permittee and all interested parties of the time and place of such hearing before the hearing commences. The hearing shall be of record and governed by 5 U.S.C. 554. An agreement to waive the time limit for comencement of a hearing may specify the length of the extension agreed to.

**§ 4.1365 Status of decision pending administrative review.**

The filing of a request for review shall not stay the effectiveness of the OSMRE decision pending completion of administrative review.

**§ 4.1366 Burdens of proof.**

(a) In a proceeding to review a decision on an application for a new permit—

(1) If the permit applicant is seeking review, OSMRE shall have the burden of going forward to establish a prima facie case as to failure to comply with the applicable requirements of the Act or the regulations or as to the appropriateness of the permit terms and conditions, and the permit applicant shall have the ultimate burden of persuasion as to entitlement to the permit or as to the inappropriateness of the permit terms and conditions.

(2) If any other person is seeking review, that person shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that the permit application fails in some manner to comply with the applicable requirements of th Act or the

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regulations, or that OSMRE should have imposed certain terms and conditions that were not imposed.

(b) In a proceeding to review a permit revision ordered by OSMRE, OSMRE shall have the burden of going forward to establish a prima facie case that the permit should be revised and the permittee shall have the ultimate burden of persuasion.

(c) In a proceeding to review the approval or disapproval of an application for a permit renewal, those parties opposing renewal shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that the renewal application should be disapproved.

(d) In a proceeding to review the approval or disapproval of an application for a permit revision or an application for the transfer, assignment, or sale of rights granted under a permit—

(1) If the applicant is seeking review, OSMRE shall have the burden of going forward to establish a prima facie case as to failure to comply with applicable requirements of the Act or the regulations, and the application requesting review shall have the ultimate burden of persuasion as to entitlement to approval of the application; and

(2) If any other person is seeking review, that person shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that the application fails in some manner to comply with the applicable requirements of the Act and the regulations.

(e) In a proceeding to review a decision on an application for a coal exploration permit—

(1) If the coal exploration permit applicant is seeking review, OSMRE shall have the burden of going forward to establish a prima facie case as to failure to comply with the applicable requirements of the Act or the regulations, and the permit applicant shall have the ultimate burden of persuasion as to entitlement to the approval.

(2) If any other person is seeking review, that person shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that the application fails in some manner to comply with the applicable requirements of the Act or the regulations.

**§ 4.1367 Request for temporary relief.**

(a) Where review is requested pursuant to § 4.1362, any party may file a request for temporary relief at any time prior to a decision by an administrative law judge, so long as the relief sought is not the issuance of a permit where a permit application has been disapproved in whole or in part.

(b) The request shall be filed with the administrative law judge to whom the case has been assigned. If no assignment has been made, the application shall be filed in the Hearings Division, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203 (phone 703–235–3800).

(c) The application shall include—

(1) A detailed written statement setting forth the reasons why relief should be granted;

(2) A statement of the specific relief requested;

(3) A showing that there is a substantial likelihood that the person seeking relief will prevail on the merits of the final determination of the proceeding; and

(4) A showing that the relief sought will not adversely affect the public health or safety or cause significant, imminent environmental harm to land, air, or water resources.

(d) The administrative law judge may hold a hearing on any issue raised by the application.

(e) The administrative law judge shall issue expeditiously an order or decision granting or denying such temporary relief. Temporary relief may be granted only if—

(1) All parties to the proceeding have been notified and given an opportunity to be heard on a request for temporary relief;

(2) The person requesting such relief shows a substantial likelihood of prevailing on the merits of the final determination of the proceeding; and

(3) Such relief will not adversely affect the public health or safety or cause significant, imminent environmental harm to land, air, or water resources.

(f) Appeals of temporary relief decisions.

(1) Any party desiring to appeal the decision of the administrative law judge granting or denying temporary relief may appeal to the Board, or, in the alternative, may seek judicial review pursuant to section 526(a), 30 U.S.C. 1276(a), of the Act.

(2) The Board shall issue an expedited briefing schedule and shall issue a decision on the appeal expeditiously.

**§ 4.1368 Determination by the administrative law judge.**

Unless all parties agree in writing to an extension or waiver, the administrative law judge shall issue a written decision in accordance with § 4.1127 within 30 days of the date the hearing record is closed by the administrative law judge. An agreement to waive the time limit for issuing a decision may specify the length of the extension agreed to.

**§ 4.1369 Petition for discretionary review; judicial review.**

(a) Any party aggrieved by a decision of an administrative law judge may file a petition for discretionary review with the Board within 30 days of receipt of the decision or, in the alternative, may seek judicial review in accordance with 30 U.S.C. 1276(a)(2) (1982). A copy of the petition shall be served simultaneously on the administrative law judge who issued the decision, who shall forthwith forward the record to the Board, and on all other parties to the proceeding.

(b) The petition shall set forth specifically the alleged errors in the decision, with supporting argument, and shall attach a copy of the decision.

(c) Any party may file a response to a petition for discretionary review within 20 days of receipt of the petition.

(d) The Board shall issue a decision denying the petition or granting the petition and deciding the merits within 60 days of the deadline for filing responses.

**§§ 4.1370 through 4.1379 and 4.1380 through 4.1386 [Removed]**

4. 43 CFR 4.1370–4.1379 and 43 CFR 4.1380–1386 are removed.

5. Section 4.1391 is revised to read as follows:

**§ 4.1391 Who may file; where to file; when to file; filing of administrative record.**

(a) The permit applicant or any person with an interest which is or may be adversely affected by a determination of OSMRE that a person holds or does not hold a valid existing right, or that surface coal mining operations did or did not exist on the date of enactment of the Act, or that surface coal mining operations may be permitted within the boundaries of a national forest, may file a request for review of that determination with the office of the OSMRE official whose determination is being appealed and at the same time shall send a copy of the request to the Board of Land Appeals, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203 (phone 703–235–3750). The OSMRE official shall file with the Board the complete administrative record of the decision under review as soon as practicable.

(b) The request for review shall be filed within 30 days after the applicant or permittee is notified by OSMRE of the written determination. Notice by OSMRE shall be provided by certified mail or by overnight delivery service if the applicant has agreed to bear the expense for this service.

(c) Failure to file a request for review within the time specified in paragraph (b) of this section shall constitute a waiver of the right to review and the request shall be dismissed.

[FR Doc. 89-5373 Filed 3-7-89; 8:45 am]
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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

### 49 CFR Part 571

[Docket No. 73-20; Notice 13]

RIN 2127-AC58

### Federal Motor Vehicle Safety Standards; Fuel System Integrity

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

**ACTION:** Advance notice of proposed rulemaking (ANPRM).

**SUMMARY:** Mr. Thomas Feaheny submitted a petition for rulemaking to amend Federal Motor Vehicle Safety Standard No. 301, *Fuel System Integrity*, to set performance requirements that would ensure that the fuel system as a whole, or an appropriate part thereof (e.g., the tank), is capable of performing in a manner equivalent to fuel systems incorporating high density polyethylene plastic fuel tanks with reguard to: (1) Resisting hydrostatic rupture, which the petitioner states is a phenomenon likely to result in massive fuel leakage in a crash; (2) avoiding a "flame-throwing characteristic" when the system is heated externally; and, (3) resisting puncture. NHTSA granted the petition in a letter dated September 8, 1988, stating that the granting of the petition signified that the agency believes that a further review of the issues raised in the petition appears to have merit. This notice requests comments to assist the agency in analyzing the safety and practicability issues of possible proposals relating to the performance capabilities of non-metallic (e.g., high density polyethylene plastic) fuel tanks and of fuel systems having such fuel tanks.

**DATE:** Comments must be received on or before May 8, 1989.

**ADDRESSES:** Comments should refer to the docket and notice numbers set forth above and be submitted (preferably in 10 copies) to the Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC 20590 (Docket hours are from 8 a.m. to 4 p.m., Monday through Friday.)

**FOR FURTHER INFORMATION CONTACT:** Ms. Margaret Gill, NRM–12, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC, 20590. Telephone: (202) 366–6651.

**SUPPLEMENTARY INFORMATION:** Federal Motor Vehicle Safety Standard No. 301, *Fuel System Integrity*, limits the amount of fuel spillage that can occur from fuel systems during and for a 30-minute period following front, rear, and lateral barrier impact tests. Briefly, these limits are: (1) From impact until the vehicle has ceased motion, spillage must not exceed one ounce; (2) for a five-minute period following cessation of motion, fuel spillage must not exceed five ounces; and, (3) for the following 25-minute period, fuel spillage during any one-minute interval must not exceed one ounce. The standard is intended to reduce deaths and injuries occurring from firs that result from fuel spillage during and after motor vehicle crashes. The standard applies to new passenger cars, and to multipurpose passenger vehicles, trucks, and buses (including school buses) with a gross vehicle weight rating (GVWR) of 10,000 pounds or less, and to school buses with a GVWR greater than 10,000 pounds. Specific performance requirements for individual components of the fuel system, such as the fuel tank, are not currently included in the standard.

Mr. Thomas Feaheny submitted a petition for rulemaking to amend Standard No. 301 to set performance requirements that would ensure that the fuel system as a whole, or an appropriate part thereof (e.g., the tank), is capable of performing in a manner equivalent to a fuel system having a high density polyethlene (HDPE) plastic fuel tank with regard to: (1) Resisting a phenomenon called hydrostatic rupture, which the petitioner states is a likely cause of massive fuel leakage in a crash; (2) avoiding a "flame-throwing characteristic" when the system is heated externally; and, (3) resisting puncture. A result of adopting the petitioner's suggested amendment could be to require the incorporation of HDPE fuel systems on all vehicles affected by the rule.

According to the petitioner, HDPE fuel tanks are inherently safer than steel fuel tanks because HDPE tanks are "substantially immune" to hydrostatic rupture. As to the cause and consequences of "hydrostatic rupture," Mr. Feaheny states:

> • • •[L]iquid is basically incompressible. If a steel tank holding ten gallons of gasoline is distorted so the resulting shape can only hold nine gallons, enormous "hydro-static" internal pressures are developed that will typically burst the steel tank. In a similar situation, the HDPE plastic simply stretches itself into a new configuration to still contain ten gallons.

Mr. Feaheny refers to "drop tests" in his petition in which both steel and HDPE fuel tanks were dropped from a height of 20 feet onto a concrete surface. Petitioner states that in these tests, "[t]he steel tanks *always* burst hydrostatically and spilled their contents. The HDPE tanks bounced like a lopsided football and *never* spilled a drop of liquid." (Emphases in text.) According to the petitioner, the superior performance of HDPE tanks over steel tanks have been demonstrated in dynamic testing of passenger cars as well. The petitioner says that in some tests, HDPE tanks have been shown to withstand crashes which steel tanks had failed either by puncture or by hydrostatic rupture.

In his petition, Mr. Feaheny also described a phenomenon which he called a "flame-throwing characteristic" that is allegedly potentially associated only with steel, and not HDPE, fuel tanks. According to the petition, a fuel system using a steel tank can behave similarly to a flame-thrower when exposed to a raging under-car fire. When exposed to such extreme heat, the steel tank quickly (due to its ability to conduct heat rapidly) boils the gasoline contained therein, but cannot expand enough to accommodate the accompanying pressure build-up. Plastic or synthetic rubber components in the fuel system (e.g., hose, gaskets, connectors, etc.) quickly melts or burn away in the extreme heat, leaving openings, or vents, through which burning gasoline can be sprayed. Petitioner states that, in tests of HDPE material tanks this "flame-thrower" effect was not exhibited. With HDPE fuel tanks, "the temperature rise was slower than that with steel and the HDPE material expanded to reach an equilibrium pressure substantially lower than that reached in the steel tank, and not sufficient to expunge fuel from openings." As opposed to the flame-throwing characteristic, the petitioner states that in the face of a raging under-car fire, an HDPE tank would slowly melt and discharge its fuel by dropping it into the fire, presumably in a safer manner relative to the flame-throwing

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characteristic of metallic tanks. The petitioner believes that at least one hundred deaths or injuries could have been prevented since 1979 by use of fuel tanks with the performance capabilities of HDPE tanks.

Additionally, petitioner states that HDPE fuel tanks are less likely to be punctured directly by impact since they can be fabricated from thick (three-sixteenths of an inch) plastic. Mr. Feaheny also states that HDPE fuel tanks have an added benefit of "totally eliminat[ing] rust and corrosion failures."

NHTSA granted the petition in a letter dated September 8, 1988, stating that the granting of the petition signified that the agency believes that a further review of the issues raised in the petition appears to have merit. This ANPRM requests comments to assist the agency in analyzing the safety and practicability issues relating to possible proposals to amend Standard No. 301 with regard to new performance requirements directly evaluating the ability of fuel systems to withstand hydrostatic rupture and puncture. NHTSA emphasizes that it has issued this ANPRM to obtain information on issues raised by the petition for rulemaking. If the agency were ultimately to issue a final rule, it would do so only after a notice of proposed rulemaking and an opportunity for interested parties to comment thereon.

In 1979, NHTSA issued an ANPRM (June 11, 1979; 44 FR 33441) concerning a petition for rulemaking from Ford Motor Company to amend Standard No. 301 to incorporate performance requirements from the Economic Commission for Europe regulations for plastic fuel tanks. In that notice, NHTSA announced that it wished to explore whether the performance requirements for motor vehicle fuel systems established by Standard No. 301 were sufficient to ensure the integrity of the fuel system, given what appeared to be the advent of plastic fuel tanks in the near future. NHTSA was concerned whether a minimum level of safety should be established for non-metallic fuel tanks exposed to fires from external sources. In particular, the agency wished to explore whether there was a safety problem associated with the softening or burning of non-metallic fuel tanks exposed to heat or flame.

In July 1981, after considering the comments on the ANPRM, NHTSA terminated the rulemaking proceeding on the Ford petition. (July 27, 1981; 46 FR 38392.) The agency determined from the comments and other information that there was no evidence to indicate vehicle fuel-fed fire incidents could be associated with non-metallic tanks. Also, data available at the time of the termination notice indicated that non-metallic tanks were used by only about two percent of the vehicle population. In light of these factors, NHTSA determined that there was insufficient need to regulate non-metallic fuel tanks.

The issues presented by Mr. Feaheny's petition contrast with those raised by the Ford petition in two respects. First, as opposed to Ford, which was concerned about whether non-metallic fuel tanks achieve an acceptable level of safety, Mr. Feaheny believes that HDPE plastic fuel tanks exhibit superior performance over steel tanks with regard to resistance to hydrostatic rupture and puncture and the safe venting of fuel vapor pressure (which allows HDPE tanks to avoid the flame-throwing effect when heated externally). Second, at the time of the Ford petition, there apparently was very little known about plastic fuel tanks because those tanks were only used on a limited number of vehicles. Current indications now show that many foreign and domestic manufacturers have been or will be installing plastic fuel tanks in a substantial portion of their vehicle fleet. For example, by 1995, indications are that Ford will use HDPE plastic fuel tanks on virtually all of its cars and trucks. (Automotive News, June 6, 1988, at 4.)

In view of the increasing presence of non-metallic fuel tanks in the vehicle market, the agency is interested in obtaining more information about these fuel tanks, especially information that would be helpful in determining whether to amend Standard No. 301 along the lines suggested by the petitioner. In particular, NHTSA is interested in obtaining information on the safety need for, and practicability of, performance requirements in Standard No. 301 for resistance to hydrostatic rupture, resistance to puncture, and avoidance of a flame-throwing reaction when the fuel system is heated externally, and on whether those requirements can be stated in objective terms.

**Issues**

*Safety.* The agency notes that an effectiveness evaluation of Standard No. 301 for passenger cars, which NHTSA conducted in 1983, fund that the standard appears to have substantially reduced crash fires and the fatalities and injuries resulting therefrom. ("Evaluation of Federal Motor Vehicle Safety Standard 301–75, Fuel System Integrity: Passenger Cars," DOT HS–806–338, January 1983.) Notwithstanding the demonstrated effectiveness of the present fuel system integrity standard, the agency believes it should fully consider whether the likelihood of crash fires or the risk or death or serious injury in a crash can be further reduced through reasonable and practicable means, such as by use of HDPE or other non-metallic fuel tanks. The agency also wishes to explore whether there are negative safety effects that are associated with non-metallic fuel tanks, but *not* with metallic tanks. NHTSA requests comments and data on the following questions relating to safety:

1. The agency desires to analyze data from NHTSA's Fatal Accident Reporting System (FARS) to compare the fire involvement rate of vehicles equipped with non-metallic fuel tanks against the fire involvement rate of vehicles with metallic fuel tanks, and the death and injury rates associated with fire in these vehicles, for the 1980–1988 model year period. However, in order to conduct such a comparative analysis, detailed information is needed by NHTSA to identify the vehicles in the FARS file which were equipped with non-metallic fuel tanks, and those with metallic fuel tanks. NHTSA requests information from manufacturers on the makes, models, and identification numbers (VIN's) of vehicles having non-metallic fuel tanks and those having metallic fuel tanks for the 1980–1988 model years.

It would be helpful if commenters provided lists of VIN's in a computer compatible format (i.e., magnetic tape or disk) in addition to hard copy. NHTSA asks that commenters planning to provide the VIN's in the suggested format contact the agency to discuss further the format for the VIN's and the manner in which the data should be submitted.

2. The petitioner believes that HDPE fuel tanks are "substantially immune" to hydrostatic rupture and are more puncture-resistant than metal tanks, and are therefore much safer in a crash than the latter. Is the petitioner correct in believing that the performance of HDPE tanks is superior to that of steel tanks in crashes with regard to hydrostatic rupture, resistance to puncture, and avoidance of a "flame-throwing effect"? If yes, do non-metallic fuel tanks made from material other than HDPE plastic perform similarly to HDPE tanks with regard to the three aspects of performance mentioned above? Are non-metallic (e.g., HDPE) fuel tanks superior to steel tanks in other aspects? If so, which aspect(s)? Please provide all available technical research data on the performance of non-metallic fuel tanks and comparable data on metallic tanks.

3. Are there general aspects of performance for which non-metallic fuel tanks are inferior to steel tanks? Please identify these and explain how the tanks are inferior. Do non-metallic fuel tanks negatively affect safety in any manner, and if so, how? Please provide all available real-world, fire-related accident data involving vehicles with non-metallic fuel tanks.

4. How should the standard be amended to reasonably improve the crash performance of the fuel tank on light weight vehicles?

*Current and future use.* As mentioned above, it appears that many foreign and domestic manufacturers have been or will be installing plastic fuel tanks in a substantial portion of their vehicle fleet. For example, by 1995, indications are that Ford will use HDPE plastic fuel tanks on just about all of its cars and trucks. NHTSA requests comments from motor vehicle manufacturers, and other interested persons, on the following questions relating to the current and future use of non-metallic fuel tanks:

5. What is the current population of light-weight vehicles (10,000 pounds or under GVWR) having non-metallic fuel tanks? What is the projected population of such vehicles in 1995?

6. If you are currently using non-metallic fuel tanks in your motor vehicle fleet, do you plan to continue using them? Why or why not?

7. If you are not currently using non-metallic fuel tanks in your motor vehicle fleet, do you contemplate using them in the near future? Why or why not?

8. What plant changes would you have to make (or have made) in order to install non-metallic fuel tanks on your motor vehicle fleet?

9. If you are or will be installing non-metallic fuel tanks in your vehicle fleet, why did you decide to use them? For example, is it more cost effective to use non-metallic fuel tanks instead of steel tanks?

10. What problems, if any, have you encountered with the availability of HDPE materials? Are there non-metallic fuel tanks made from materials other than high density polyethylene? If yes, what are these materials, and how readily available (and costly) are they?

11. In deciding whether to issue a proposal on non-metallic fuel tanks, NHTSA will consider the extent to which non-metallic fuel tanks are or will be incorporated by manufacturers in the absence of the suggested amendment, and how that voluntary use of the tanks would affect the safety need for possible rulemaking. Should NHTSA proceed with a rulemaking that could have the effect of forcing the conversion to non-metallic fuel tanks if needed there are indications that manufacturers are voluntarily incorporating such tanks on their new vehicles? Why or why not? Would the superior performance characteristics attributed to non-metallic fuel tanks be exhibited by any non-metallic tank, regardless of design, or only those non-metallic tanks built to ensure the presence of those characteristics?

*Feasibility of an objective standard.* The petitioner requests NHTSA to consider amending Standard No. 301 to set minimum performance requirements for certain aspects of safety that can be achieved by fuel systems having HDPE fuel tanks. Presumably, currently manufactured fuel systems using metallic tanks cannot achieve the performance desired by the petitioner. The agency would like to obtain more information on possible performance requirements for the aspects of performance identified by the petitioner as being capable of improvement through the use of HDPE fuel tanks. This desire is based on the assumptions that there is a safety need for improving the rupture, puncture and venting characteristics of the metallic fuel tanks typically found on most automobiles today, that the petitioner is correct with regard to the alleged superior safety performance of HDPE fuel tanks over metallic tanks, and that the costs associated with the contemplated requirements are not unreasonable.

12. Compliance with Standard No. 301, a "vehicle" standard, is currently determined in a crash test of the entire vehicle. Should Standard No. 301 incorporate an entirely different dynamic test to assess the integrity of the fuel system with regard to the aspects of performance identified by the petitioner, assuming such a test can be developed and can satisfy the requirements of the Vehicle Safety Act? Alternatively, should the standard incorporate additional tests of component parts of the fuel system? For example, would it be appropriate to incorporate a "drop test" such as the one established by the Federal Highway Administration (FHWA) for side-mounted liquid fuel tanks? (*See*, 49 CFR § 393.67(e)(1). Briefly, under the FHWA "drop test," a fuel tank may not leak more than a total of one ounce by weight of water per minute after being dropped 30 feet on its corner onto an unyielding surface.) What tests should be considered and how do they relate to the safety of the fuel tank?

13. In the event NHTSA tentatively determines there is a safety need to proceed with a proposed rule on the aspects of performance targeted by Mr. Feaheny as candidates for rulemaking, would it be possible to state the desired performance requirements using objective criteria, as is required by the National Traffic and Motor Vehicle Safety Act? If yes, what should those requirements be?

**Impacts**

NHTSA has considered the impacts of this action in accordance with the Department of Transportation's regulatory policies and procedures and has concluded that it is nonsignificant within the meaning of those procedures. The expected impacts are too indeterminate at this time to conclude whether a regulatory evaluation would be appropriate. Should the agency decide to proceed with a notice of proposed rulemaking, the decision whether to prepare a regulatory evaluation would be made at that time.

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Before issuing a notice of proposed rulemaking, the agency would evaluate the action for the purposes of E.O. 12291, the Regulatory Flexibility Act, and the National Environmental Policy Act.

**Comments**

Interested persons are invited to submit comments. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible,

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comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

**List of Subjects in 49 CFR Part 571**

Imports, Motor vehicle safety, Motor vehicles.

(15 U.S.C. 1392, 1401, 1407; delegation of authority at 49 CFR 1.50)

Issued on March 2, 1989.

**Barry Felrice,**

*Associate Administrator for Rulemaking.*

[FR Doc. 89-5424 Filed 3-7-89; 8:45 am]

BILLING CODE 4910-59-M

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**49 CFR Part 580**

**[Docket No. 87-09; Notice 7]**

**RIN: 2127-AC42**

## Odometer Disclosure Requirements

**AGENCY:** National Highway Traffic Safety Administration.

**ACTION:** Grant of petitions for reconsideration; notice of proposed rulemaking.

**SUMMARY:** This is in response to four petitions for reconsideration of the National Highway Traffic Safety Administration's final rule concerning odometer disclosure requirements. Numerous letters were also submitted on this subject. These petitions requested that NHTSA reconsider the provisions of the final rule which: (1) Define "transferor" and "transferee" and (2) require dealers and distributors to retain, for five years, a copy of every odometer statement, including the transferee's signature, that they issue and receive.

This notice proposes to clarify the definitions of transferor and transferee with regard to the person who acts as an agent for the transferor or transferee. In addition, this notice proposes to require a transferee to return to his transferor, a signed copy of the odometer disclosure statement that he received from his transferor. Finally, this notice also proposes to require that title reassignment documents be issued by the States.

**DATE:** Comments on this NPRM are due no later than April 7, 1989.

**ADDRESS:** Written comments should refer to the docket number of this notice and should be submitted to: Docket Section, Room 5109, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. (Docket hours are 8:00 a.m. to 4:00 p.m.)

**FOR FURTHER INFORMATION CONTACT:** Judith Kaleta, Office of the Chief Counsel, Room 5219, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202-366-1834).

**SUPPLEMENTARY INFORMATION:**

### Background

To implement the Truth in Mileage Act of 1986 and to make some needed changes in the Federal odometer regulations, the National Highway Traffic Safety Administration (NHTSA) published a notice of proposed rulemaking (NPRM) on July 17, 1987. 52 FR 27022 (1987). The agency received numerous comments on the NPRM, representing the opinions of new and used car dealers, auto auctions, leasing companies, State motor vehicle administrators, and enforcement and consumer protection agencies. Each of the comments was considered and a final rule was published on August 5, 1988. 53 FR 29464 (1988).

As required by the Truth in Mileage Act, the final rule requires the transferor of a motor vehicle to provide a mileage disclosure on the title document or, if the title document does not include a space for the mileage disclosure (during the phase-in period), or if the vehicle has not been previously titled, it requires the transferor to make a written disclosure of mileage on a separate document. Also as required by that statute, the final rule requires that title documents be manufactured or otherwise set forth by a secure process to deter counterfeiting and alteration; requires that at the time of issue, the titles include the mileage disclosure; adds disclosure requirements for lessors and lessees; and adds retention requirements for lessors and auction companies. In addition, consistent with the statute, the rule amends the form and content of the odometer disclosure statement. The rule also prohibits a person from signing the disclosure as both the transferor and transferee in the same transaction in order to guard against a situation where only one party to the transaction would be aware of the disclosure. Finally, the final rule clarifies the definition of transferor and transferee and extends the record retention requirement for dealers and distributors.

The Agency received seven petitions for reconsideration of the final rule. In addition, we received numerous letters concerning the final rule and supporting the petitions. These petitions requested that NHTSA reconsider the provisions of the final rule that: (1) Prohibit a person from signing the odometer disclosure statement as both the transferor and transferee in the same transaction; (2) define "transferor" and "transferee"; (3) define "secure printing process"; (4) concern the language included on the odometer disclosure statement; and (5) require dealers and distributors to retain, for five years, a copy of every odometer disclosure statement, including the transferee's signature, that they issue and receive. These petitions and letters have been placed in the docket. Before the Agency could fully consider the petitions, Congress enacted the Pipeline Safety Reauthorization Act of 1988, Pub. L. 100-561.

Section 401 of the Pipeline Safety Reauthorization Act, which amends section 408(d)(1) of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. 1988(d)(1), concerns the use of certain powers of attorney in connection with the required mileage disclosure. The new law directs the agency to prescribe the form and content of the power of attorney/disclosure document and reasonable conditions for its use by the transferor, "consistent with this Act and the need to facilitate enforcement thereof." It also requires NHTSA's rule to provide for the retention of a copy of the power of attorney and to ensure that the person granted the power of attorney completes the disclosure on the title consistent with the disclosure on the power of attorney form.

### Scope

Consistent with the statutory mandate, this notice grants, in whole or in part, four of the petitions for reconsideration. Generally, two of these petitions concern the definition of transferor and transferee with regard to the person who acts as an agent for the transferor or transferee. The other two petitions concern the relationship between the retention requirement applicable to dealers and distributors and the requirement that the transferee's signature appear on the odometer disclosure statements. The most significant points of the four petitions are addressed below.

In an interim final rule also published in today's **Federal Register**, NHTSA grants, in whole or in part, three petitions for reconsideration of the portion of the final rule that provides that a person shall not sign a disclosure statement as the transferor and transferee in the same transaction and implements the portion of the Pipeline Safety Reauthorization Act of 1988 that concerns the use of powers of attorney to disclose mileage.

NHTSA has denied, in whole or in part, three petitions for reconsideration of the final rule published on August 5, 1988, because they are inconsistent with the new statute. For reasons discussed in the document denying the petitions, two other petitions were also denied. The denial notice is published in today's **Federal Register**.

### Definitions

To clarify that the liability for issuing a false odometer disclosure statement could be placed on a person acting as an agent for the owner of a vehicle, in a notice issued on July 17, 1987, we proposed to amend the definition of "transferor" and the definition of "transferee", contained in § 580.3, to include the agent of the transferor and transferee. 52 FR 27023 (1987). Although one commenter feared that the definitions could be misconstrued to require that every agent who participates in the transfer must issue an odometer disclosure statement, we felt that the preamble to the final rule permitted us to clarify the meaning of the definition without changing the regulatory language, and the definitions were adopted as proposed.

The National Independent Automobile Dealers Association (NIADA) and the National Auto Auction Association (NAAA) have requested that NHTSA reconsider the definitions of transferor and transferee adopted in the final rule.

NIADA asserts that the definitions should be expressly limited to a principal or an agent who signs the required disclosure on behalf of the owner. Without this limitation, NIADA believes that that the definitions in the final rule may subject agents of the transferor to liability for failure to comply with the odometer disclosure requirements, whether or not they have any responsibility for issuing an odometer disclosure statement. Likewise, NAAA claimed that the definitions were ambiguous. NAAA's argument was based upon an apparent inconsistency in the preamble to the final rule. NAAA noted that while NHTSA defined "transferor" to include "any person, who as agent, transfers the ownership of another", 53 FR 29476 (1988), NHTSA also stated that "transfer of ownership under State laws may not occur at one point in time, but is a process." 53 FR 29466 (1988). Therefore, NAAA suggested that NHTSA define "transferor" to include any agent who actually makes the required disclosure on behalf of the owner. NAAA also suggested that the definition of "transferee" be amended in a similar manner.

Even though NHTSA attempted to clarify the definitions in the preamble, it is apparent that some confusion still remains. The suggestions proposed by NIADA and NAAA are consistent with NHTSA's intention expressed in the preamble to the NPRM and to the final rule. It has not been NHTSA's intention to require that the transferee receive multiple odometer disclosure statements. Therefore, we are proposing to amend the portions of the definitions of transferor and transferee concerning the transferor's and transferee's agents. "Transferor" would be defined to include the transferor's agent who signs any odometer disclosure statement on behalf of the transferor. Similarly, "Transferee" would be defined to include the transferee's agent who signs any odometer disclosure statement. NHTSA requests comments on these proposed amendments to the definitions.

NAAA included with its petition, eight scenarios of vehicle transfers and asked who would be the transferor. To assist those involved in the transfer of vehicles to more fully understand the requirements of the law and our proposed definitions, we have addressed each of these scenarios and the duties of the parties as they would be interpreted under those proposals:

1. A, a retail customer with a trade-in, purchases a vehicle from B, a dealer. The secured lender holds the title to A's trade-in. A gives B a power of attorney. B pays off the loan, obtains the title, and transfers ownership pursuant to the power of attorney. A would be a transferor. B, A's agent, would also be a transferor. A would make a disclosure to B on the secure power of attorney and B would make and sign a disclosure on the title on A's behalf.

Note: The use of the power of attorney in this instance would allow B to sign as both the transferor and transferee in the same transaction. Therefore, the power of attorney form must meet the requirements of section 401 of the Pipeline Safety Reauthorization Act of 1988, Pub. L. 100-561, and the interim final rule issued by NHTSA pursuant to the Act, which has been published in today's **Federal Register**.

2. A, a wholesale dealer, sells a vehicle to B, a wholesale dealer. A gives B a power of attorney. B uses the power of attorney to transfer the ownership to C after receiving the title documents from A. A is B's transferor and B is C's transferor. However, if A sells the car to B and gives B the title, it is unclear why A gave B a power of attorney. If B used A's power of attorney to transfer the car to C and B's name did not appear on the title as a buyer, B would be in violation of State laws which prohibit "skipping title". "Skipping title" means omitting an owner from the chain of ownership.

3. A, a dealer, employs B as a salesperson. B sells A's car and signs the transfer of ownership document. If the car is owned by A as a dealer and not personally, both A and B would be transferors, and either A must issue and sign an odometer disclosure statement or B may issue and sign an odometer disclosure statement on A's behalf.

4. A is an independent contractor who buys and sells cars for B, a dealer. A sells B's cars and signs the transfer of ownership documents on behalf of B. A and B would be transferors, and A should issue and sign an odometer disclosure statement on B's behalf.

5. A and B are wholesale dealers. A sells a car to B through C, a wholesale auction. C has not purchased the car and signs no transfer of ownership documents. C obtains the title from A, pays A on B's behalf, and then delivers the title to B. A would be the transferor and must issue and sign an odometer disclosure statement to B.

6. A and B are wholesale dealers. A sells a car to B through C, a wholesale auction. C has not purchased the car, but signs transfer of ownership documents, pursuant to a power of attorney from A. C obtains the title from A, pays A on B's behalf, and then delivers title to B. A and C would be transferors and C should issue an odometer disclosure statement to B, on behalf of A.

7. A is an attorney who is the personal representative of an estate. A signs the transfer of ownership documents, transferring a vehicle that is part of the estate to B, the beneficiary. The estate and A would be the transferors, and A is required to issue and sign an odometer disclosure statement on behalf of the estate.

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8. A is an attorney who is the personal representative of an estate. A signs the transfer of ownership documents, transferring a vehicle that is part of the estate to B, the beneficiary. C, A's secretary, carries the transfer of ownership documents to the state titling office to be processed. A new title will be issued in B's name. The estate and A would be transferors, and A is required to issue and sign an odometer disclosure statement on behalf of the estate.

**Record Retention and Long-Distance Sales Transactions**

The NPRM of July 1987 proposed a new section 580.8 concerning the retention of odometer disclosure statements by motor vehicle dealers, distributors, and lessors. This section proposed to increase, from four to five years, the length of time the dealers and distributors, required by this part to issue an odometer disclosure statement, shall retain odometer disclosure statements. Since the Truth in Mileage Act requires that the disclosure be on the title, transferors involved in long-distance transactions were concerned that their transferees would not return a signed copy of the disclosure made on the title. (Currently, the disclosure is on a separate document and these transferors refuse to release the title until they receive the signed disclosure statement.) PHH Group, Inc. (now PHH Corporation) (PHH) asserted that is not reasonable to place a legal requirement on the transferor to retain records over which he does not have control and that any transferee, with intent to commit fraud by tampering with the title, will simply alter the title after the transferor's copy has been made. PHH argued that since the States will be receiving and retaining fully executed title documents, there seems to be little benefit to require transferors to also retain these records. Therefore, PHH requested that the final rule require the transferor to retain only a copy of the disclosure statement prior to release of the document to the transferee. The American Automotive Leasing Association (AALA) suggested that the regulation allow a transferor who is also a lessor, and therefore, involved in long-distance transactions, to fulfill the retention requirements by retaining a copy of the disclosure statement, which is forwarded for the buyer's signature, and requesting the buyer to sign the statement and return a copy.

We did not grant the requests of PHH and AALA; the final rule was adopted as proposed. In the preamble to the final rule of August 1988, we explained that requiring the transferor to retain a copy of the disclosure signed by the transferee is essential to enforcement. It prevents a buyers from altering the mileage and later alleging that the altered mileage is the mileage he received from the transferor, since the transferor would have a copy of the disclosure with the higher mileage and the transferee's signature. This unaltered copy would not be on file in the State titling office. 53 FR 29474 (1988).

Because they are concerned that they will be found in violation of the retention requirements if their transferees do not return a copy of the title, including the signed disclosure, PHH and the National Association of Fleet Administrators, Inc. (NAFA) have petitioned NHTSA to reconsider the retention requirements of the final rule. They feel that they have no way to compel their transferees to return a signed copy of the disclosure and that section 580.8 of the rule, which requires a transferor to retain a copy of the disclosure that includes the transferee's signature, places an unreasonable administrative and financial burden on them.

NAFA and PHH proposed the following three alternatives: (1) An amendment to the regulation to require the transferor to retain only a copy of his disclosure, not a disclosure signed by the transferee; (2) an amendment to the regulation to specify what constitutes a good faith effort by a transferor to obtain a copy of a completed odometer disclosure statement from his transferee; and (3) an amendment to the regulation to require a transferee to return a completed odometer disclosure statement to his transferor.

In support of the first alternative, PHH and NAFA noted that since the disclosure is on the title, a completed disclosure will be on file in the State Department of Motor Vehicles. They also noted that because titles will be securely printed, transferees will be unable to alter the mileage disclosed by the transferor on the titles. Finally, they claimed that the cost of obtaining a completed odometer disclosure statement, involving mailing fees and administrative expenses, would outweigh the benefits of this requirement.

NHTSA has not adopted this first alternative. As we stated in the preamble to the final rule, requiring the transferor to retain only a copy of his disclosure presents a problem for investigative and enforcement actions. This would permit a buyer to alter the mileage disclosure on the title and later allege that the altered mileage is the mileage received from his transferor, since his transferor would not have a copy of disclosure on the title with the higher mileage and the transferee's signature. We recognize that even with securely printed titles and reassignment documents, some alterations have been, and may continue to be, undetected upon initial review by State Departments of Motor Vehicles. We have found that copies of titles, made before the titles were altered, are an effective investigative aid in determining whether the title has been altered and whether additional analysis of the title is needed.

NAFA argues that NHTSA underestimated the costs of the retention requirement and that the benefits to be derived from the requirement of obtaining a photocopy of the title do not outweigh the costs. In NHTSA's regulatory evaluation of the final rule, NHTSA estimated the cost of this requirement to be $900,000. Regulatory Evaluation—Final Rule Implementing Truth in Mileage Act of 1986. (April 1988; pages 43–44). (NAFA mistakenly claims that NHTSA estimated the costs of this provision to be $254,000, 2,540,000 fleet vehicles × .10). NAFA argues that while NHTSA has estimated the cost of photocopying the title, NHTSA did not consider the cost of this service provided by auto auctions and wholesalers. Because the service of providing a copy of the title will replace the current practice of providing a copy of the separate odometer statement, NHTSA sees no reason to consider this cost; it is not a new cost imposed by the final rule.

In addition to saving personnel time and lab/analysis costs, the record retention requirement in the final rule is a vital part of the investigative process, especially since a significant part of odometer fraud involves vehicles that have been sold through long-distance transactions, those used by lease companies or in business fleets. A study by the Illinois Office of the Attorney General found that 40.8 percent of all one-time lease vehicles surveyed in twenty-three States during a one-year period had their odometers rolled back. A Washington State study estimate that sixty percent of leased vehicles have their odometers reset. NHTSA estimates the cost of odometer fraud resulting from lease vehicles to be between $1,272,500,000 and $2,156,580,000. Regulatory Evaluation—Final Rule Implementing Truth in Mileage Act of 1986. (April 1988; page 79). If requiring long-distance transferors to keep a copy of the disclosure on the title, including the transferee's signature, would reduce



odometer fraud by less than one-tenth of one percent, it would be cost effective.

The purpose of this requirement is to aid investigative action. It is not now, nor has it ever been, NHTSA's intention to require transferors involved in long-distance transfers to compare the copy of the returned odometer disclosure statement with the mileage statement that these transferors have in their files.

We have adopted the second alternative proposed by NAFA and PHH, the suggestion to amend the regulation to specify what constitutes a good faith effort by a transferor to obtain a copy of a completed odometer disclosure statement from his transferee. As we noted in the preamble to the final rule of August 1988, 15 U.S.C. 1990b provides that NHTSA must take into account the nature, circumstances, extent, and gravity of the violation. Similarly, "a good faith effort" is dependent upon the circumstances in a particular instance, and we cannot provide a complete listing of these matters. Therefore, it would be inappropriate to include, in the regulation, a provision as to what actions constitute good faith.

We are proposing to adopt the third alternative suggested by NAFA and PHH, an amendment to the regulation to require transferees to return a completed odometer disclosure statement to their transferors. Specifically, we are proposing to amend § 580.5(f). Under that provision of the final rule, the transferee is required to sign the disclosure statement and print his name. This proposal would require that the transferee, in addition to signing the disclosure and printing his name, return a copy of the signed disclosure statement to his transferor. A transferee who fails to return this statement would be subject to civil and criminal penalties. We expect that this provision will ensure that transferees who obtain the title from their long-distance transferors will return a copy of the completed odometer disclosure statement to their transferors, and that these long-distance transferors will be able to retain a copy of the signed odometer disclosure statement, as required by § 580.8(a).

**Security of Title Documents**

The Truth in Mileage Act requires that each State motor vehicle title be set forth by a secure printing process or other secure process, beginning on April 29, 1989. Consistent with this statutory requirements, in a notice published in the **Federal Register** on July 17, 1987, 52 FR 27028 (1980), we proposed to add a new section concerning the security of title documents. In addition to proposing that the title be set forth by a secure process, we proposed to require that each reassignment document be set forth by the same secure process as the title. To assist the States in their efforts to issue motor vehicle titles that comply with the Truth in Mileage Act and this regulation, we prepared a list of technologies that we proposed to deem a "secure process." This list was included in Appendix A.

We received several divergent comments concerning the security of the title document and Appendix A. To allow for maximum administrative discretion on the part of the States, we did not adopt a suggestion from 3M to list and rank all secure processes. Furthermore, we did not delete Appendix A as suggested by the American Association of Motor Vehicle Administrators (AAMVA) and several of its member jurisdictions. Rather we expanded and corrected it. We noted in the preamble to the August 1988 final rule that Appendix A was included to aid the States in their selection of a secure process and in no way limits the States or adds new requirements or restrictions beyond those listed in the rule itself.

With regard to the document used to reassign the motor vehicle title, AAMVA and several of its member jurisdictions urged the agency to amend the requirement to read, rather than by the "same" secure process as the title, by "a" secure process. Arkansas asserted that it would be a financial burden for the State to use a reassignment document that incorporates the same secure process as the title. Other commenters, including Texas, Vermont, and the Arkansas Independent Automobile Dealers Associated, were opposed to the requirement in its entirety, and cited costs burdens. The Wisconsin Department of Transportation (Wisconsin), on the other hand, asked that NHTSA eliminate separate reassignments. In the alternative, Wisconsin suggested that if reassignments are allowed, NHTSA should require the reassignment documents to bear control numbers and that the number be included on the title. Wisconsin also requested that NHTSA require the States to record the control numbers of the reassignment documents they give to each dealer and that each dealer be required to keep a record of the reassignment document issued for each vehicle.

NHTSA reconsidered it proposed requirement in response to these comments. In the preamble to the August 1988 final rule, we noted that while separate reassignment documents are not mentioned in the Truth in Mileage Act, they are often an integral part of the transfer process. Since reassignment documents are logical extension of the title, requiring secure reassignment documents is a logical extension of the statutory requirements. Therefore, the final rule required secure reassignment documents. However, rather than requiring that reassignment documents be printed by the same secure process as the title, we required that the reassignment documents be set forth by "a secure process."

We are proposing to amend § 580.4 concerning the security of reassignment documents. Specifically, we are proposing to require that, in addition to being set forth by a secure printing process, reassignment documents must be issued by the States. The proposal is consistent with the new law and our interim rule, published elsewhere in today's **Federal Register**, that requires that secure powers of attorney be issued by the States. If the States were to only offer guidelines to transferors as to what would constitute a secure reassignment and transferors could have these reassignment documents printed, unscrupulous transferors could easily roll back the odometer on a vehicle, discard a reassignment document, and forge a new one with a lower mileage disclosure. Currently, only eleven States allow a vehicle to be transferred on a reassignment document that is not issued by the State. Comments are requested from the States concerning the issuance and printing of secure reassignments documents by the State and/or State contractors.

**Exemptions**

In the July 1987 NPRM, we proposed a new § 580.6 to exempt certain transferors from issuing odometer disclosure statements. This new section proposed to exempt the same transferors exempted by the current § 580.5. NHTSA created these exemptions for transferors of vehicles for which the odometer reading is not relied upon as an indicator of vehicle mileage or condition. 47 FR 51885. With one exception, § 580.6 was adopted as proposed. (Transferors of vehicles ten years old or older, rather than transferors of vehicles twenty-five years or older, as proposed, are exempt from the odometer disclosure requirements of § 580.5.)

Since the August 1988 final rule was issued, NHTSA has been asked whether a lessee of a vehicle having a gross vehicle weight rating (GVWR) of more than 16,000 pounds or of a vehicle that is ten years old or older must furnish to his

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lessor a written statement regarding the vehicle's mileage. Because the lessor, when transferring a vehicle with a GVWR of more than 16,000 pounds or a vehicle ten years old or older, is not required to give his transferee an odometer disclosure statement, we see no reason to require a lessee of any of these types of vehicles, or of any vehicles that are not self-propelled, to give their lessor a written statement concerning to vehicle's mileage. Therefore, in this notice, we are proposing to amend § 580.6 to exempt the lessees of certain vehicles from the odometer disclosure requirements of § 580.7. Likewise, we are proposing to exempt the lessors of certain vehicles from the notification requirements of § 580.7.

**Federalism Assessment**

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. While it is estimated that this proposed rule would result in additional costs to the States for printing secure title reassignment documents, the cost to each State is minimal.

**Regulatory Impacts**

*A. Costs and Benefits to Dealers, States, and Consumers*

NHTSA has analyzed this rule and determined that it is neither "major" within the meaning of Executive Order 12291, nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures because of the substantial public interest in this matter. This NPRM does not result in any costs to the States, dealers, and distributors in addition to those imposed by the August 1988 final rule. (*See*, Regulatory Evaluation—Final Rule Implementing the Truth in Mileage Act, Docket No. 87–09, No. 4). Any interested person may obtain a copy of this regulatory evaluation by writing to NHTSA Docket Section, 400 Seventh Street, SW., Washington, DC 20590, or by calling the Docket Section at (202) 366–4949.

*B. Small Business Impacts*

The agency has also considered the impacts of this rule in relation to the Regulatory Flexibility Act. I certify that this rule will not have a significant economic impact on a substantial number of small entities. The final rule of August 1988 requires that reassignments be securely printed or otherwise set forth by a secure process. This proposal merely requires that the States issue these documents. At the time the final rule was issued, NHTSA estimated the cost of producing secure reassignments to be $1,730,000 to States, dealers, and distributors. NHTSA estimated the costs of controlling reassignment forms to be $1,500,000 to the States. In addition, NHTSA estimated the costs of copying and mailing titles containing the odometer disclosure to be $900,000. (*See*, Regulatory Evaluation—Final Rule Implementing the Truth in Mileage Act, Docket No. 87–09, No. 4). This proposal would not result in any requirements in addition to those imposed by the August 1988 final rule. Accordingly, no regulatory flexibility analysis has been prepared at this time. However, the agency invites comments from small businesses on this issue.

*C. Environmental Impacts*

NHTSA has considered the environmental implications of this rule, in accordance with the National Environmental Policy Act, and determined that it will not significantly affect the human environment.

*D. Paperwork Reduction Act*

The Office of Management and Budget (OMB) has already approved NHTSA's information collection requirements that require consumers, dealers, distributors, lessors, and auction companies to disclose and/or retain odometer disclosure information. (OMB 2127–0047). This NPRM does not propose any new information collection requirements as that term is defined by OMB in 5 CFR Part 1320.

**Public Comments**

Interested persons are invited to submit comments on the proposal. It is requested, but not required, that ten copies be submitted.

All comments must not exceed fifteen pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the fifteen page limit. This limitation is intended to encourage commenters to detail their preliminary arguments in a concise fashion.

All comments received before the close of business on the comment closing date listed above will be considered and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration will be considered as suggestions for future rulemaking action. The agency will continue to file relevant information as it becomes available. It is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments by the docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

In consideration of the foregoing, 49 CFR Part 580 would be amended as follows:

**PART 580—[AMENDED]**

1. The authority citation for Part 580 continues to read as follows:

**Authority:** 15 U.S.C. 1988; delegation of authority at 49 CFR 1.50(f) and 501.8 (e)(1).

2. In § 580.3, the definitions of transferor and transferee would be revised to read as follows:

**§ 580.3 Definitions.**

* * * * *

"Transferee" means any person to whom ownership of a motor vehicle is transferred, by purchase, gift, or any means other than by the creation of a security interest, and any person who, as agent, signs an odometer disclosure statement for the transferee.

"Transferor" means any person who transfers his ownership in a motor vehicle by sale, gift, or any means other than by creation of a security interest, and any person who, as agent, signs an odometer disclosure statement for the transferor.

3. Section 580.4 would be revised to read as follows:

**§ 580.4 Security of title documents and power of attorney forms.**

Each title shall be set forth by means of a secure printing process or other secure process. In addition, power of attorney forms issued pursuant to § 580.13 and § 580.14 and documents which are used to reassign the title shall be issued by the State and shall be set forth by a secure process.

4. Section 580.5 would be amended by revising paragraph (f) to read as follows:

**§ 580.5 Disclosure of odometer information.**

* * * * *

(f) The transferee shall sign the disclosure statement, print his name, and return a copy to his transferor.

5. Section 580.6 would be amended by revising the introductory text and (a) introductory text, and by adding paragraph (c) to read as follows:



**§ 580.6 Exemptions.**

Notwithstanding the requirements of § 580.5 and § 580.7:

(a) A transferor or a lessee of any of the following motor vehicles need not disclose the vehicle's odometer mileage:

(c) A lessor of any of the vehicles listed in paragraph (a) of this section need not notify the lessee of any of these vehicles of the disclosure requirements of § 580.7.

Issued on March 3, 1989.

**Erika Z. Jones,**

*Chief Counsel, National Highway Traffic Safety Administration.*

[FR Doc. 89–5393 Filed 3–6–89; 10:03 am]

BILLING CODE 4910-59-M

## INTERSTATE COMMERCE COMMISSION

**49 CFR Parts 1312 and 1314**

**[Ex Parte No. 290 (Sub-No. 6)] [1]**

**Amendments to Rail Carrier Cost Recovery Tariffs**

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Advance notice of proposed rulemaking; held in abeyance.

**SUMMARY:** The Commission announces its decision to hold in abeyance further action in this proceeding for 180 days from the date of publication of this notice in the **Federal Register**. The Commission indicates that it wishes to allow opportunity for the publishers of the Rail Carrier Cost Recovery (RCCR) tariff to demonstrate their willingness, as expressed in their comments in this proceeding, to give more consideration to the user public in the preparation and publication of the RCCR tariffs. The Commission offers some suggestions (drawn from the views of other commenters) to the RCCR tariff publishers for improvement of the way information is conveyed in the tariff. Voluntary adoption of these suggestions or other tariff improvements or practices by the RCCR publishers should alleviate the most pressing concerns of the tariff users. At the end of the 180-day period, the Commission will decide what further actions it will take in this proceeding, after review of tariff users' experience with the RCCR tariffs during this period.

**DATE:** Further formal action in this proceeding is held in abeyance until September 5, 1989.

**FOR FURTHER INFORMATION CONTACT:** Lawrence C. Herzig, (202) 275–7358, or Charles E. Langyher, (202) 275–7739, [TDD for hearing impaired, (202) 275–1721.]

**ADDRESS:** Bureau of Traffic, Room 4310, Washington, DC 20423.

**SUPPLEMENTARY INFORMATION:** 49 U.S.C. 10762(d)(2) indicates that we may permit the filing of the Rail Carrier Cost Recovery (RCCR) tariffs reflecting railroad cost adjustment factors in a master tariff format as an alternative to amendments to each affected rate tariff. However, the statute stipulates that such filing is to be permitted only when it is consistent with the public interest.

During the period of time tariff ICC RCCR X088A was in effect, the Commission's staff received a number of informal criticisms from users of the tariff asserting that due to the number and form of amendments to the tariff, it had become extremely cumbersome to follow and apply. In view of these complaints and our concern that the public interest might not be well served by the existing RCCR tariff format, we sought the views of the shipping public and tariff publishers regarding the RCCR tariffs.

Our advance notice of proposed rulemaking of August 19, 1988, (53 FR 31720), posed for consideration a number of specific questions which dealt with the form of publication for the RCCR tariffs and the forms of amendments to them. Additionally, we sought comments and recommendations on other matters relating to the manner in which information is conveyed in the RCCR tariffs.

In response to our notice we received comments from 16 parties. The comments offered by the users of the RCCR tariff contain many positive suggestions for improvements of the tariff. Further, and most significantly, the comments of the publishers of the RCCR tariff indicate their intention to make the tariff more "user friendly."

In view of the comments of the RCCR tariff publishers, we will withhold further action in this proceeding for 180 days. This will allow the publishers time to demonstrate their expressed willingness to give more consideration to the user public when compiling the RCCR tariffs. In fact, the publishers have already taken some steps toward improving the presentation of amendments to the RCCR tariff.

In addition to the steps the publishers have taken, they should also consider implementing suggestions offered in the comments received in response to our ANPR. An entire set of comments will be sent to the rail publishers. Further, the Commission's staff has also formulated some suggestions for improved publication which are outlined below.

1. The partial amendments to items or other units should clearly state what matter is being changed or canceled. For example, the tariff matter that is to be affected by a partial amendment could be highlighted in the heading of the partial amendment notice; such as:

**Special Notice Item 135**

Amend Item 135 to include "BN" as a participant to the provisions of Item 135.

This suggestion would facilitate a tariff user's awareness of amendments to tariff matter of particular interest to the tariff user.

2. The publishers should limit the number of partial amendments to items or other units to no more than two in effect at the same time. Each third partial amendment to an item or other unit could contain all changes for that particular item or unit and cancel all prior amendments. The RCCR tariff could contain an item explaining this partial amendment procedure to the tariff users.

3. The publishers should attempt to avoid having more than five supplements in effect at any one time. Also, the total number of effective supplemental pages should not exceed 70 percent of the total pages in the original tariff. Complaints concerning the volume of supplemental matter to the RCCR tariffs have been the most common complaint our staff has received.

4. The cumulative index of new or changed items should include reference to the number of the supplement containing any effective "special notices" providing partial amendments to tariff items.

We are encouraged by the efforts that the RCCR tariff publishers have recently made to improve the presentation of information in the RCCR tariff. After the implementation of the suggestions discussed above or other improvements, we will be in a better position to determine whether or not regulatory adjustments are needed. During the 180-day observation period, the Commission's staff will monitor and analyze the content and level of complaints regarding the RCCR tariff format. Should tariff users encounter problems with the tariff during this

[1] As a result of the Commission's action in Ex Parte No. 444, *Electronic Filing of Tariffs*, 54 FR 6403, the regulations contained in 49 CFR Part 1312 will be replaced by new regulations in 49 CFR Part 1314, effective March 13, 1989. The Commission has carried forward its regulation dealing with rail carrier cost recovery tariffs to 49 CFR 1314.17. That regulation would be the subject of future Commission revision in this proceeding, should the Commission determine that revision is appropriate.

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period, their complaints should be directed to the individuals named above under the heading "For Further Information Contact." At the end of the observation period, the Commission will decide what actions it will take.

**List of Subjects in 49 CFR Parts 1312 and 1314**

Railroads.

This action will not significantly affect the quality of the human environment or energy conservation and it will not have a significant economic impact on a substantial number of small entities.

This notice is issued under authority of 49 U.S.C. 10321 and 10762 and 5 U.S.C. 553.

*It is ordered:*

1. Further action in this proceeding will be held in abeyance until September 5, 1989.

2. This decision is effective March 8, 1989.

Decided: March 1, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips.

**Noreta R. McGee,**

*Secretary.*

[FR Doc. 89-5287 Filed 3-7-89; 8:45 am]

BILLING CODE 7035-01-M



# Notices

Federal Register
Vol. 54, No. 44
Wednesday, March 8, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Forms Under Review by Office of Management and Budget

March 3, 1989.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96-511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from:

Department Clearance Office, USDA, OIRM, Room 404-W Admin. Bldg., Washington, DC 20250, (202) 447-2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

New

- Animal and Plant Health Inspection Service
  Varroa Mite Regulation
  PPQ Forms 300, 527, 530, 537, 540
  Recordkeeping; Weekly; Monthly; Quarterly; Annually
  State or local governments; Farms; Businesses or other for-profit; Federal agencies or employees; Small businesses or organizations; 75,875 responses; 13,973 hours; not applicable under 3504(h)
  Charles C. Jackson (301) 436-8247.

**Donald E. Hulcher,**

*Acting Departmental Clearance Officer.*

[FR Doc. 89-5425 Filed 3-7-89; 8:45 am]

BILLING CODE 3410-01-M

## Commodity Credit Corporation

### Final Determination; 1989 Extra Long Staple Cotton Program

**AGENCY:** Commodity Credit Corporation, USDA.

**ACTION:** Notice of final determination of 1989 extra long staple cotton program.

**SUMMARY:** The purpose of this notice is to affirm the determinations made by the Secretary of Agriculture which are required to be made in order to implement the 1989 extra long staple (ELS) cotton price support and production adjustment program. These determinations are made in accordance with the Agricultural Act of 1949, as amended, (the "1949 Act").

**EFFECTIVE DATE:** March 8, 1989.

**ADDRESS:** Bruce R. Weber, Director, Commodity Analysis Division, USDA-ASCS, Rm. 3741 South Building, P.O. Box 2415, Washington, DC 20013.

**FOR FURTHER INFORMATION CONTACT:** Charles V. Cunningham, Leader, Fibers Group, Commodity Analysis Division, USDA-ASCS, Room 3758 South Building, P.O. Box 2415, Washington, DC 20013 or call (202) 447-7954.

**SUPPLEMENTARY INFORMATION:** This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512-1 and has been designated as "non-major" since these program provisions are not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. The Final Regulatory Impact Analysis describing the options considered in developing this notice of determination is available on request from the aforementioned individual.

The titles and numbers of the Federal assistance programs to which this notice applies are: Title—Cotton Production Stabilization, Number 10.052 and Title—Commodity Loans and Purchases, Number 10.051, as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since the Commodity Credit Corporation ("CCC") is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of these determinations.

It has been determined by environmental evaluation that this action will have no significant impact on the quality of the human environment.

Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

On August 19, 1988 (53 FR 31732), a notice of proposed determination was published requesting public comment on the 1989 ELS Cotton Program. A total of three respondents submitted comments. Respondents included two producer associations and one ELS cotton producer. One respondent submitted comments relating to issues for which comments were not requested. One respondent recommended that the ARP be established at 5 percent and another supported an ARP of 10 percent. The third respondent favored an ARP but did not specify the level, recommending only that the program be operated to minimize costs and avoid burdensome surpluses. Under the two options analyzed, the supply-utilization outlook

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was nearly identical. The 5 percent ARP option was selected instead of the 10 percent option in order that U.S. ELS cotton producers maintain ELS cotton production at a level which will support the growing demands of the export market while minimizing the possibility of overproduction.

**Determinations**

In accordance with section 103(h)(2) of the 1949 Act, it has been determined that the loan level for 1989-crop ELS cotton will be 81.77 cents per pound.

In accordance with section 103(h)(3)(B) of the 1949 Act, it has been determined that the "established" target price for 1989-crop ELS cotton will be 90.7 cents per pound.

In accordance with section 103(h)(8)(A) of the 1949 Act, it has been determined that the acreage reduction requirement for the 1989 crop of ELS cotton will be 5 percent. Accordingly, producers will be required to reduce their 1989 ELS cotton plantings for harvest by at least 5 percent from the ELS cotton acreage base established for a farm in order to be eligible for ELS cotton price support loans and deficiency payments.

In accordance with section 103(h)(17) of the 1949 Act, it has been determined that recourse loans will be made available for 1989 ELS seed cotton.

**Authority:** Sec. 103(h) of the Agriculture Act of 1949, as amended, 97 Stat. 494 (7 U.S.C. 1444(h)).

Signed at Washington, DC on March 2, 1989.

**Milton J. Hertz,**

*Executive Vice President, Commodity Credit Corporation.*

[FR Doc. 89-5305 Filed 3-7-89; 8:45 am]

BILLING CODE 3410-05-M

## COMMISSION ON CIVIL RIGHTS

### Arizona Advisory Committee; Agenda and Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Arizona Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 4:00 p.m. on March 24, 1989, at the Ramada Hotel Airport East, 1600 South 52nd Street, Tempe, Arizona 85201. The Committee will discuss the status and disposition of the immigration report.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, John White or Philip Montez, Director of the Regional Division (213) 894-3437, (TDD 213/894-0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 28, 1989.

**Melvin L. Jenkins,**

*Acting Staff Director.*

[FR Doc. 89-5322 Filed 3-7-89; 8:45 am]

BILLING CODE 6335-01-M

## DEPARTMENT OF COMMERCE

### Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* National Oceanic and Atmospheric Administration (NOAA).

*Title:* Final Regulations for Deep Seabed Mining Commercial Recovery.

*Form Number:* Agency—None; OMB—0648-0170.

*Type of Request:* Request for extension of a currently approved collection.

*Burden:* 0 respondents; 1 reporting hour; Average hours per response—No hours have been estimated because applications are unlikely to be received before 1994.

*Needs and Uses:* U.S. citizens who wish to conduct operations to commercially recover deep seabed minerals must obtain a license from NOAA. The information provided in the application, and the information from reporting requirements in effect after licensing, are used by NOAA and other Federal agencies to ensure the application meets the requirements established by legislation.

*Affected Public:* Businesses or other for-profit institutions.

*Frequency:* On occasion, annual.

*Respondent's obligation:* Mandatory

*OMB Desk Officer:* Francine Picoult, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: March 2, 1989.

**Edward Michals,**

*Departmental Clearance Officer, Office of Management and Organization.*

[FR Doc. 89-5279 Filed 3-7-89; 8:45 am]

BILLING CODE 3510-CW-M

### Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* Patent and Trademark Office (PTO).

*Title:* Patent Term Extension.

*Form Number:* Agency—N/A; OMB—0651-0020.

*Type of Request:* Revision of a currently approved collection.

*Burden:* 30 respondents; 1,800 reporting hours—Average hours per response—60 hours.

*Needs and Uses:* The normal term of a patent is 17 years. However, certain categories of patents (drugs, medical devices, etc.) are eligible to be renewed. To be eligible for renewal, certain information is required so that PTO can determine if the extension would meet the requirements of the Drug Price Competition and Patent Term Restoration Act and the Generic Animal Drug and Patent Restoration Act.

*Affected Public:* Businesses or other for-profit institutions; Federal agencies or employees; Non-profit institutions; Small businesses or organizations

*Frequency:* On occasion.

*Respondent's obligation:* Required for a benefit.

*OMB Desk Officer:* Robert Veeder, 395-3785.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Robert Veeder, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

Dated: March 2, 1989.

**Edward Michals,**

*Departmental Clearance Officer, Office of Management and Organization.*

[FR Doc. 89-5280 Filed 3-7-89; 8:45 am]

BILLING CODE 3510-CW-M



## Bureau of Export Administration

**[Docket No. 90253-9053]**

### Domestic Crude Oil Export Study

**AGENCY:** Office of Industrial Resource Administration, Bureau of Export Administration, Commerce.

**ACTION:** Request for comments, Domestic Crude Oil Export Study.

**SUMMARY:** Section 2424 of the Omnibus Trade and Competitiveness Act of 1988 requires that the Secretary of Commerce, in consultation with the Secretary of Energy, undertake a comprehensive review to assess whether existing statutory restrictions on the export of crude oil produced in the lower 48 States are adequate to protect the energy and national security interests of the United States and American consumers. The Department of Commerce has been designated by the Congress to coordinate and prepare this review. This notice invites comments from interested parties and announces that public hearings are planned in California and Texas to assist the Department in preparing this study.

**DATE:** Comments must be submitted on or before April 7, 1989.

**ADDRESS:** Send written comments to Brad I. Botwin, Director, Strategic Analysis Division, Office of Industrial Resource Administration, Room 3878, Bureau of Export Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

**FOR FURTHER INFORMATION CONTACT:** Brad I. Botwin, Director, Strategic Analysis Division, (202) 377-4060, or Bernard Kritzer, Senior Energy Adviser, (202) 377-3984.

**SUPPLEMENTARY INFORMATION:** On August 23, 1988, the President signed the Omnibus Trade and Competitiveness Act of 1988 (Act). Section 2424 of the Act (to be codified as a note to section 7 of the Export Administration Act, 50 U.S.C., app. 2406) requires the Secretary of Commerce, in consultation with the Secretary of Energy, to undertake a comprehensive review to determine whether the existing statutory restrictions on the export of crude oil produced in the contiguous United States (i.e., lower 48 States) are adequate to protect the energy and national security interests of the United States and American consumers.

The Act further states that such review shall assess the effect of increased exports of crude oil produced in the contiguous United States on:

(a) The adequacy of domestic supplies of crude oil and refined petroleum products in meeting United States energy and national security needs;

(b) The quantity, quality, and retail price of petroleum products available to consumers in the United States generally and on the West Coast in particular;

(c) The overall trade deficit of the United States;

(d) The acquisition costs of crude oil by domestic refiners;

(e) The financial viability of sectors of the domestic petroleum industry (including independent refiners, distributors, marketers, and pipeline carriers); and

(f) The United States tanker fleet (and the industries that support it), with particular emphasis on the availability of militarily useful tankers to meet anticipated national defense requirements.

The Act further directs the Secretary of Commerce to develop—after consulting with appropriate State, Federal, and Congressional officials and other persons—findings, options, and recommendations regarding the adequacy of existing statutory restrictions on the export of crude oil produced in the contiguous United States in protecting the energy and national security interests of the United States and American consumers.

The Department of Commerce has initiated this study. This notice is intended to provide all interested parties, especially those in the oil industry, consumer groups, environmental groups, the maritime industry, and all other industries, groups or individuals likely to be affected by any change in existing law governing the export of crude oil produced in the contiguous United States, with an opportunity to submit written comments and participate in hearings planned on these issues.

Interested parties are invited to submit written comments, opinions, data, information or advice with respect to the study to the Strategic Analysis Division, Office of Industrial Resource Administration, U.S. Department of Commerce at the address stated above.

The period for submission of comments will close on April 7, 1989. All comments received before the close of the comment period will be considered by the Department in completing the study. While comments received after the end of the comment period will be considered if possible, their consideration cannot be assured.

All public comments, whenever received, will be a matter of public record and will be available for public inspection and copying.

In the interest of accuracy and completeness, written comments are preferred. Written comments (3 copies requested) should be sent to the address indicated above. If oral comments are received during a telephone conversation or meeting, a written summary will be prepared by the person receiving the oral comments. That written summary will also be a matter of public record and will be available for public review and copying.

Anyone submitting business confidential information should clearly identify the business confidential portion of the submission and also provide a nonconfidential submission which can be placed in the file. If this procedure is not followed, the comments and materials will be returned to the submitter and will not be considered in completing this study.

Cummunications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record concerning this study will be maintained in the Bureau of Export Administration's Freedom of Information Records Inspection Facility, Bureau of Export Administration, U.S. Department of Commerce, Room H-4886, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Records in this facility, including written public comments, memoranda summarizing the substance of oral communications and the transcript of hearings may be inspected and copied in accordance with regulations published in Part 4 of Title 15 of the Code of Federal Regulations. Information pertaining to the inspection and copying of records may be obtained from Ms. Margaret Cornejo, Bureau of Export Administration's Freedom of Information Officer, at the above address or by calling (202) 377-2593.

Notice of public hearings in California and Texas will be published in the **Federal Register** giving the time, place, and matters to be considered, so that interested parties will have an opportunity to participate. The hearings will be recorded and transcripts will be placed on the record.

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March 3, 1989.

**Michael E. Zacharia,**

*Assistant Secretary for Export Administration.*

[FR Doc. 89-5420 Filed 3-7-89; 8:45 am]

BILLING CODE 3510-DT-M

## International Trade Administration

### Initiation of Antidumping and Countervailing Duty Administrative Reviews

**AGENCY:** International Trade Administration/Import Administration, Commerce.

**ACTION:** Notice of initiation of antidumping and countervailing duty administrative reviews.

**SUMMARY:** The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders, findings, and suspension agreements. In accordance with the Commerce Regulations, we are initiating those administrative reviews.

**EFFECTIVE DATE:** March 8, 1989.

**FOR FURTHER INFORMATION CONTACT:** Bernard T. Carreau or Richard W. Moreland, Office of Countervailing Compliance or Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786/2104.

**SUPPLEMENTARY INFORMATION:**

### Background

On August 13, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 32556) a notice outlining the procedures for requesting administrative reviews. The Department has received timely requests, in accordance with §§ 353.53a (a)(1), (a)(2), (a)(3), and 355.10(a)(1) of the Commerce Regulations, for administrative reviews of various antidumping and countervailing duty orders, findings, and suspension agreements.

### Initiation of Reviews

In accordance with §§ 353.53a(c) and 355.10(c) of the Commerce Regulations, we are initiating administrative reviews of the following antidumping and countervailing duty orders, findings, and suspension agreements. We intend to issue the final results of these reviews no later than February 28, 1990.

| Antidumping Duty Proceedings and Firms | Periods to be Reviewed |
|---|---|
| Canada: | |
| Brass Sheet and Strip (A-122-601) | 01/01/88—12/31/88 |
| Ratcliffs | |
| France: | |
| Anhydrous Sodium Metasilicate (A-427-098) | 01/01/88—12/31/88 |
| Rhone Poulenc | |
| Hungary: | |
| Truck Trailer Axle-and-Brake Assemblies (A-437-001) | 01/01/88—12/31/88 |
| RABA | |
| Japan: | |
| Tapered Roller Bearings and Parts Thereof, Finished and Unfinished (A-588-604) | 3/27/87—8/30/88 |
| NTN | |
| Koyo Seiko | |
| Japan: | |
| Titanium Sponge (A-588-020) | 11/01/87—10/31/88 |
| Toho Titanium | |
| Showa Denko | |
| Japan: | |
| Color Picture Tubes (A-588-609) | 06/30/87—12/31/88 |
| Toshiba Corp. | |
| Japan: | |
| Cell-Site Transceivers (A-588-021) | 01/01/88—07/28/88 |
| Kokusai Electric | |
| New Zealand: | |
| Low-Fuming Brazing Copper, Wire and Rod (A-614-502) | 01/01/88—12/31/88 |
| McKechnie Brothers | |
| Sweden: | |
| Certain Stainless Steel Hollow Products (A-401-602) | 05/22/87—11/30/88 |
| Sandvik AB | |
| West Germany: | |
| Dry Cleaning Machinery (A-428-037) | 11/01/87—10/31/88 |
| Boewe | |
| Seco | |

| Countervailing Duty Proceedings | Periods to be Reviewed |
|---|---|
| Colombia: Miniature Carnations (C-301-601) | 01/01/88—12/31/88 |



| Countervailing Duty Proceedings | Periods to be Reviewed |
|---|---|
| Colombia: Roses and Other Cut Flowers (C-301-003) | 01/01/88—12/31/88 |
| Costa Rica: Fresh Cut Flowers (C-223-601) | 01/01/88—12/31/88 |
| Ecuador: Fresh Cut Flowers (C-331-601) | 01/01/88—12/31/88 |
| Mexico: Fabricated Automotive Glass (C-201-406) | 01/01/88—12/31/88 |
| Spain: Stainless Steel Wire Rod (C-469-004) | 01/01/88—12/31/88 |

Interested parties are encouraged to submit applications for administrative protective orders as early as possible in the review process.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930 (19 U.S.C. 1675(a)) and 19 CFR 353.53a(c) and 355.10(c).

Dated: February 15, 1989.

**Joseph A. Spetrini,**

*Deputy Assistant Secretary For Compliance.*

[FR Doc. 89-5421 Filed 3-7-89; 8:45 am]

BILLING CODE 3510-DS-M

### Short-Supply Review on Certain Flat-Rolled Steel; Request for Comments

**AGENCY:** Import Administration/International Trade Administration, Commerce.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of Commerce hereby announces its review of a request for a short-supply determination under Article 8 of the U.S.-EC Arrangement on Certain Steel Products, with respect to certain alloy hot-rolled sheet and strip used to manufacture bi-metal band saws.

**DATE:** Comments must be submitted no later than March 20, 1989.

**ADDRESS:** Send all comments to Nicholas C. Tolerico, Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue NW., Washington, DC 20230.

**FOR FURTHER INFORMATION CONTACT:** Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue NW., Washington, DC 20230, (202) 377-0159.

**SUPPLEMENTARY INFORMATION:** Article 8 of the U.S.-EC Arrangement on Certain Steel Products provides that if the U.S. "* * * determines that because of abnormal supply or demand factors, the US steel industry will be unable to meet demand in the USA for a particular product (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), an additional tonnage shall be allowed for such product or products * * *"

We have received a short-supply request for certain D6A hot-rolled alloy steel sheet and strip, in thicknesses ranging from 0.060 to 0.125 inch and in widths ranging from 10 to 16 inches. This material is used to produce cold-rolled steel strip for bi-metal band saws.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than March 20, 1989. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly so label the business proprietary portion of the submission and also provide a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Room B-099, Import Administration, U.S. Department of Commerce, at the above address.

**Jan W. Mares,**

*Assistant Secretary, for Import Administration.*

February 28, 1989.

[FR Doc. 89-5422 Filed 3-7-89; 8:45 am]

BILLING CODE 3510-DS-M

### UMDNJ-RWJ Medical School et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 2841, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

*Docket Numbers:* 88-169 and 88-170.
*Applicant:* UMDNJ-RWJ Medical School, Piscataway, NJ 08854.
*Instrument:* Rotating Anode X-ray Generator, Model RU-200.
*Manufacturer:* Rigaku Corp., Japan.
*Intended Use:* See notice at 53 FR 18329, May 23, 1988.
*Instruments Ordered:* June 23, 1987 and October 27, 1987 respectively.
*Reasons for this Decision:* The foreign instrument provides a power density of at least 6.0 kilowatts per square millimeter and a focal spot of 0.3 x 3.0 millimeter or less.
*Advice Submitted by:* The National Institutes of Health, September 6, 1988.

*Docket Number:* 88-201. *Applicant:* University of Kentucky, Lexington, KY 40506-0099. *Instrument:* Scanning Electron Microscope with Accessories, Model S-800-1. *Manufacturer:* Hitachi Scientific, Japan. *Intended Use:* See notice at 53 FR 22684.
*Instrument Ordered:* December 23, 1987. *Reasons for this Decision:* The foreign instrument provides a field emission electron source and a guaranteed resolution (lattice) of 20 angstroms. *Advice Submitted By:* The National Institutes of Health, September 21, 1988.

*Docket Number:* 88-123. *Applicant:* Cold Spring Harbor Laboratory, Cold Spring Harbor, NY 11724. *Instrument:* Mass Spectrometer, Model BIOION 20. *Manufacturer:* Bio-Ion, Sweden. *Intended Use:* See notice at 53 FR 15103, April 27, 1988. *Instrument Ordered:* December 15, 1987. *Reasons for this Decision:* The foreign instrument provides measurements of mass fragments in excess of 20 000 amu and accuracy of 0.01% in the 0 to 6000 amu range. *Advice Submitted By:* The National Institutes of Health, September 6, 1988.

*Docket Number:* 88-231. *Applicant:* University of Kentucky, Lexington, KY 40536-0084. *Instrument:* Scanning Electron Microscope, Model S-900. *Manufacturer:* Hatachi Scientific, Japan.

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*Intended Use:* See notice at 53 FR 31077, August 17, 1988.

*Instrument Ordered:* December 23, 1987. *Reasons for this Decision:* The foreign instrument provides a field emission electron source and a guaranteed resolution of 8.0 angstroms *Advice Submitted By:* The National Institutes of Health, September 27, 1988.

*Comments:* None received. *Decision.* Approved. No instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as each is intended to be used, was being manufactured in the United States at the time the foreign instruments were ordered.

The capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and we know of no instrument or apparatus of equivalent scientific value to either of the foreign instruments for the applicant's intended use which was being manufactured in the United States at the time the foreign instruments were ordered

**Frank W. Creel,**

*Director, Statutory Import Programs Staff*

[FR Doc. 89-5423 Filed 3-7-89; 8:45 am]

BILLING CODE 3510-05-M

## National Oceanic and Atmospheric Administration

**[Docket No. 80119-9019]**

## Financial Assistance for Research and Development Projects To Provide Information for the Full and Wise Use and Enhancement of Fishery Resources in the Gulf of Mexico

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of availability of financial assistance.

**SUMMARY:** For fiscal year 1989, Marine Fisheries Initiative (MARFIN) funds are available to assist persons in carrying out research and development projects which optimize the use of a U.S. Gulf of Mexico fishery involving the U.S. fishing industry (recreational or commercial) including, but not limited to, harvesting methods, economic analyses, processing, fish stock assessment, and fish stock enhancement. NMFS issues this notice describing the conditions under which applications will be accepted and how NMFS will determine which applications will be funded.

**DATE:** Applications must be received by April 24, 1989. Applications received after that date will not be considered for funding.

**ADDRESS:** Send applications to Southeast Regional Office, 9450 Koger Boulevard, National Marine Fisheries Service, St. Petersburg, Florida 33702.

**FOR FURTHER INFORMATION CONTACT:** Dr. Donald R. Ekberg, 813-893-3720.

**SUPPLEMENTARY INFORMATION:**

### Classification

NMFS reviewed this solicitation in accordance with Executive Order 12291 and the Department of Commerce guidelines implementing that Order. This solicitation is not "major" because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. This notice does not contain policies with sufficient Federalism implications to warrant preparation of a Federalism assessment under E.O. 12612. Prior notice and an opportunity for public comments are not required by the Administrative Procedure Act or any other law for this notice concerning grants, benefits, and contracts. Therefore, a regulatory flexibility analysis is not required for purposes of the Regulatory Flexibility Act. Information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB clearance No. 0648-0175) under the provisions of the Paperwork Reduction Act. This program is subject to the provisions of Executive Order 12372.

### I. Introduction

Section 3049(e) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1854(e)) authorizes the Secretary to conduct research to enhance U.S. fisheries. The Departments of Commerce, Justice, and State, the Judiciary, and related Agencies Appropriation Act of 1989 makes funds available to the Secretary of Commerce for fiscal year 1989. This solicitation makes available approximately $2.0 million (including $315 thousand for continuing projects) for financial assistance under the MARFIN program to manage and enhance the use of fishery resources in the Gulf of Mexico. There is no guarantee that sufficient funds will be available to make awards for all approved projects. U.S. fisheries [1] include any fishery that is or may be engaged in by U.S. citizens. The phrase "fishing industry" includes both the commercial and recreational sectors of U.S. fisheries.

### II. Funding Priorities

Fishery research and development proposals should be related to one or more of the priority areas listed below (in no rank order):

1. *Shrimp.* (a) Development of improved gear efficiency, on-board handling, grading, sorting and preservation methods, and methods to reduce catch of non-target species, (b) determination of social and economic impacts of turtle excluder devices (TEDs), (c) evaluation of alternative harvesting (other than otter trawls), handling and processing systems, (d) identification of numbers and types of fishing vessels and gear now in use, trends in capital inputs into the fleet, and assessment of multiple uses of shrimp trawlers in other fisheries, (e) characterization (catch, effort, size, etc.) and determination of impacts of the bait shrimping industry, (f) characterization (catch, effort, size, etc.) and determination of impacts of recreational shrimping, (g) assessment of impact of imported shrimp on domestic price structure, economics of the domestic industry and relationship to fishery management actions which influence the sizes of shrimp being landed, (h) methods to reduce conflicts between shrimp trawlers and other marine resource user groups, and (i) assessment and management strategies for white shrimp.

2. *Menhaden.* (a) Economic enhancement of products (surimi, oil, and food additives) for human consumption, and (b) prey-predator relationships.

3. *Coastal Pelagics.* (a) Determination of recruitment indices for king and Spanish mackerel, cobia, and dolphin (fish), (b) identification of king and Spanish mackerel management units, (c) development of methods to solve problems of competition between recreational and commercial fishermen, and (d) stock assessment for and economic analysis of fishing strategies for harvest of blue runners, little tunny, and related species.

[1] For purposes of this notice, a fishery is defined as one or more stocks of fish, including tuna, and shellfish which are identified as a unit based on geographic, scientific, technical, recreational and economic characteristics, and any and all phases of fishing for such stocks. Examples of a fishery are Gulf of Mexico shrimp, groundfish, menhaden, etc.



4. *Reef Fish.* (a) Determination of socioeconomic impacts of recreational and commercial fishing, (b) determination of recruitment processes for shallow and deep-water reef fish, (c) identification of reef fish management units, (d) development of methods to solve problems of competition between recreational and commercial fishermen, (e) determination of trends in fishing effort for inshore and offshore fisheries, (f) determination of size composition by species for inshore and offshore fisheries, (g) determination of the role of artificial reefs and reef site location in productivity, (h) stock assessment information on secondary target species such as triggerfish, amberjack, etc., (i) analysis of biological and economic impacts of bottom longline depth-specific management strategies, (j) compilation of existing data on location and areal extent of reef fish habitats, and (k) development of rearing techniques for early life history stages of red snapper.

5. *Coastal Herrings.* (a) Handling and processing, shoreside methods, and product development, (b) resource surveys and gear development, (c) economic analysis of harvesting, handling, and processing systems, (d) assessment of predator-prey relationships, particularly with respect to recreational and commercial impacts, and (e) analysis of impacts of localized stock harvest and/or environmental perturbations on predator populations.

6. *Ocean Pelagics.* (a) Development of species-selective fishing gear, including longline methods, (b) determination of social and economic impacts of alternative fishing methods, (c) development of methods to determine recreational fishing participation, and (d) characterization of the Gulf longline fishery (including fish caught, participants, and landings).

7. *Marine Mollusks.* (a) Development of methods for onshore and offshore oyster depuration systems, (b) development of guidelines for oyster reef expansion, rehabilitation, and management, (c) development of improved oyster varieties, culture methods, and technology transfer, and (d) determination of baseline information for a quahog fishery.

8. *Crabs and Lobsters.* (a) Determination of safe harvest potential for deepwater crabs, (b) development of methods to quantify the recreational blue crab fishery, (c) determination of conflicts and methods of resolution among blue crab user groups, (d) development of information for population assessment of blue crab stocks, and (e) life history studies and habitat requirements of early juvenile blue crabs.

9. *Bottomfish.* (a) Assessment of impact of shrimp trawling on bottomfish stocks, (b) determination of life history of Gulf butterfish, (c) development of methods to reduce incidental trawl catch of bottomfish, (d) assessment of biological, social, and economic impact of incidental catch reduction, and (e) evaluation of product development options fof Gulf butterfish and harvest fish.

10. *Marine Mammals and Endangered Species.* Assessment of nonshrimping mortality of sea turtles, using available data.

11. *Estuarine Fish.* (a) Improving estimates of age structures and catches of red and black drums, (b) measurement of escapement rate of inshore red drum juveniles to offshore stock, (c) determination of potential to develop an eel fishery, and (d) enhancing knowledge of recruitment of early juvenile stages of economically important sciaenids, including habitat requirements.

12. *General.* (a) Conduct social and economic research applicable to each Gulf of Mexico fishery including costs and returns plus production function analysis, demand analyses on recreational and commercial fisheries, economics of recreational or commercial multi-species fisheries, and analysis of foreign trade barriers affecting Gulf of Mexico fisheries; (b) description of procedures to implement limited entry for existing or developing fisheries such as reef fish, shark, stone crab, or butterfish, and (c) development of alternative methods to handle or use by-products generated from seafood processing common to the Gulf of Mexico.

MARFIN financial assistance for projects started in fiscal year 1988. For fiscal years 1986, 1987, and 1988 awards totaled ($5.288 million). Funding by fisheries was as follows:

| | Thousands of dollars | Percent of total |
|---|---|---|
| 1. Shrimp (includes TED technology transfer) | 1,044.1 | 19.7 |
| 2. Menhaden | 10.0 | 0.2 |
| 3. Coastal pelagics | 666.9 | 12.6 |
| 4. Reef fish | 259.9 | 4.9 |
| 5. Coastal herrings | 284.3 | 5.4 |
| 6. Ocean pelagics | 182.1 | 3.4 |
| 7. Marine mollusks | 230.0 | 4.3 |
| 8. Crabs and lobsters | 479.4 | 9.1 |
| 9. Bottomfish | 89.1 | 1.7 |
| 10. Marine mammals and endangered species | 127.0 | 2.4 |
| 11. Estuarien fish | 1,798.9 | 34.0 |
| 12. General | 116.7 | 2.2 |

Priority in program emphasis will be placed upon funding projects which have the greatest probability of maintaining and improving existing fisheries, improving our understanding of factors affecting recruitment success, generating increased yields from fisheries, and generating increased recreational opportunity and harvest potential. Projects will be evaluated as to the likelihood of achieving these benefits through both short-term and long-term research projects with consideration of the magnitude of the eventual benefit that may be realized. Both short-term projects that may yield more immediate benefits and long-term projects yielding greater benefits will receive equal emphasis. Planning emphasis will be placed upon attaining each discrete target benefit either through a single project or series of projects necessary to attain that goal.

Further information on current programs that address the above listed priorities may be obtained from the NOAA National Marine Fisheries Service's Southeast Regional Office.

### III. How to Apply

*1. Eligibility Applicants*

Applications for grants or cooperative agreements for MARFIN projects may be made, in accordance with the procedures set forth in this notice, by:

(a) Any individual who is a citizen or national of the United States;

(b) Any corporation, partnership, or other entity, non-profit or otherwise, if such entity is a citizen of the United States within the meaning of section 2 of the Shipping Act, 1916 as amended (46 U.S.C. 802).[2]

[2] To qualify as a citizen of the United States within the meaning of this statute, citizens or nationals of the United States or citizens of the Northern Mariana Islands (NMI) must own less than 75 percent of the interest in the entity or, in the case of a non-profit entity, exercise control of the entity that is determined by the Secretary to be equivalent to such ownership; and in the case of a corporation, the president or other chief executive officer and the chairman of the board of directors must be citizens of the United States. No more of its board of directors than a minority of the number necessary to constitute a quorum may be non-citizens; and the corporation itself must be organized under the laws of the United States, or of a State, including the District of Columbia, Commonwealth of Puerto Rico, American Samoa, the Virgin Islands of the United States, Guam, the NMI or any other Commonwealth, territory, or possession of the United States. Seventy-five percent of the interest in a corporation shall not be deemed to be owned by citizens of the

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NOAA will consider not awarding a grant or cooperative agreement to any individual or organization who is delinquent on a debt to the Federal government until payment is made or satisfactory arrangements are made with the agency to whom the debt is owed. Any first time applicant for Federal grant funds is subject to a preaward accounting survey prior to execution of the award. Women and minority individuals and groups are encouraged to submit applications. NOAA employees including full, part-time, and intermittent personnel, (or their immediate families) and NOAA offices or centers are not eligible to submit an application under this solicitation, or aid in the preparation of an application, except to provide information about the MARFIN program and the priorities and procedures included in this solicitation.

*2. Amount and Duration of Funds*

Under this solicitation for fiscal year 1989 an estimated $2.0 million will be available to fund fishery research and development projects ($1.69 million for new projects and $315 thousand for continuing projects). Although grants or cooperative agreements will generally be awarded for a period of one year, two- or three-year projects may be approved for funding in subsequent years. Once approved, multi-year projects will not compete for funding in subsequent years. For multi-year projects, funding beyond the first year is contingent on the availability of program funds in subsequent fiscal years and the extent to which project objectives and reporting requirements are met during the prior year. Publication of this announcement does not obligate NMFS to award any specific grant or to obligate all or any part of the available funds. Selection of successful applications generally will be provided by June 8, 1989. Awards generally will be made no later than 60 days after the funding selection is determined and negotiations completed.

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NMI, if: (1) The title to 75 percent of its stock is not vested in such citizens or nationals of the United States or citizens of the NMI free from any trust or fiduciary obligation in favor of any person not a citizen or national of the United States or citizens of the NMI (2) 75 percent of the voting power in such corporation is not vested in citizens or nationals of the United States or citizens of the NMI (3) through any contract or understanding it is arranged that more than 25 percent of the voting power in such corporation may be exercised, directly or indirectly in behalf of any person who is not a citizen or national of the United States or a citizen of the NMI; or (4) by any means whatsoever, control of any interest in the corporation is conferred upon or permitted to be exercised by any person who is not a citizen or national of the United States.

*3. Cost-Sharing Requirements*

Applications must reflect the total amount of money necessary to accomplish the project including contributions and/or donations. Cost sharing is not required for the MARFIN program. However, cost sharing is encouraged, and in case of a tie in considering proposals for funding, cost-sharing may affect the final decision. The appropriateness of all cost-sharing will be determined on the basis of guidance provided in Office of Management and Budget (OMB) circulars. Appropriate documentation must exist to support in-kind services or property used to fulfill cost-sharing requirements.

*4. Format*

Applications for project funding must be complete. They must identify the principal participants and include copies of any agreements between the applicant and the participants describing the specific tasks to be performed. Project applications should give a clear presentation of the proposed work, the methods for carrying out the project, its relevance to managing and enhancing the use of Gulf of Mexico fishery resources and cost estimates as they relate to specific aspects of the project. Budgets will include a detailed breakdown by category of expenditure with appropriate justification. Applicants may submit two or more related projects under one proposal but must identify project costs including administrative costs, separately for each individual project. Applicants should not assume prior knowledge on the part of the NMFS as to the relative merits of the project described in the application. Applications must be submitted in the following format:

(a) *Cover Sheet.* An applicant must use OMB Standard Form 424 (revised 4/88) as the cover sheet for each project or group of consolidated projects. Applicants may obtain copies of the form from the NMFS Regional Office, or Department of Commerce's Central Administrative Support Center (CASC); addresses are set forth at Section E., Application Submission.

(b) *Project Summary.* Each project must contain a summary of not more than one page which provides the following information:

(i) Project title;

(ii) Project status: (new or continuing);

(iii) Project duration: (beginning and ending dates);

(iv) Name, address, and telephone number of applicant;

(v) Principal Investigator(s);

(vi) Project objective; and

(vii) Summary of work to be performed.

For continuing projects the applicant is to briefly describe progress to date in addition to any changes to the statement of work previously submitted.

(viii) Total Federal funds requested (for multi-year projects, identify each year's requested funding).

(ix) Project costs (matching funds) to be provided from non-NOAA sources (for multi-year projects, identify each year's requested funding). Specify whether cash or in-kind contributions.

(x) Total project cost.

(c) *Project Description.* Each project must be completely and accurately described. Each project description may be up to 15 pages in length. The NMFS will make all portions of the project description available to the public and members of the fishing industry for review and comment; therefore, NMFS cannot guarantee the confidentiality of any information submitted as part of any project nor will NMFS accept for consideration any project requesting confidentiality of any part of the project. Each project must be described as follows:

(i) Identification of Problem(s). Describe how existing conditions prevent the full use of Gulf of Mexico fishery resources. In this description, identify (1) the fisheries involved, (2) the specific problem(s) that the fishing industry has encountered, (3) the sectors of the fishing industry that are affected, and (4) how the problem(s) prevent the fishing industry from using the fishery resources.

(ii) Project Goals and Objectives. State what the proposed project will accomplish and describe how this will eliminate or reduce the problem(s) described above. For multi-year projects, describe the ultimate objective of the project and how the individual tasks contribute to reaching the objective. Describe the time frame in which tasks would be conducted.

(iii) Need for Government Financial Assistance. Explain why other fund sources cannot fund all the proposed work. List all other sources of funding which are or have been sought for the project.

(iv) Participation by Persons or Groups Other Than the Applicant. Describe the level of participation required in the project(s) by NOAA or other government and non-government entities. Specific NOAA employees should not be named in the proposal, even though the applicant may wish to acknowledge government expertise in an allied area.



(v) Federal, State, and Local Government Activities. List any programs (federal, state, or local government or activities, including State Coastal Zone Management Programs, Sea Grant, Southeast Area Monitoring and Assessment Program, Pub. L. 99-659 and Cooperative Statistics), this project would affect and describe the relationship between the project and those plans or activities.

(vi) Project Outline. Describe the work to be performed during the project, starting with the first month's work and continuing to the last month. Identify specific milestones that can be used to track project progress. For multi-year projects, major project tasks and milestones for future years must also be identified. If the work described in this section does not contain sufficient detail to allow for proper technical evaluation, the NMFS will not consider the application for funding and will return it to the applicant.

(vii) Project Management. Describe how the project will be organized and managed. Include resumes of principal investigators. List all persons directly employed by the applicant who will be involved in the project, their qualifications, and their level of involvement in the project.

(viii) Monitoring of Project Performance. Identify who will participate in monitoring of the project.

(ix) Project Impacts. Describe the impact of the project in terms of anticipated increased landings, production, sales, exports, product quality, safety, or any other measurable factors. Describe the specific products or services that will be produced by this project. Describe how these products or services will be made available to the fishing industry.

(x) Evaluation of Project. The applicant is required to provide an evaluation of project accomplishments in the final report. The application must describe the methodology or procedures to be followed to determine technical or economic feasibility, to evaluate consumer acceptability, or to quantify the results of the project in promoting increased landings, production, sales, exports, product quality, safety, or other measurable factors.

(xi) Total Project Costs. Total project costs is the amount of funds required to accomplish the proposed statement of work (SOW), and includes contributions and donations. All costs must be shown in a detailed budget. No cost-sharing can come from another Federal source. Costs must be allocated to the Federal share and non-NOAA share provided by the applicant or other sources. Non-NOAA costs are to be divided into cash and in-kind contributions. A standard budget form (ED-357 NG; Rev. 3-80) is available from the offices listed in section E. A separate budget must be submitted for each project. An applicant submitting a multi-year project must submit two budgets: one covering total project costs (including individual costs per year) and one covering the initial funding request for the project. The initial funding request should cover funds required during the first 12-month period. NMFS will not consider fees or profits as allowable costs for grantees. To support its budget, the applicant must describe briefly the basis for estimating the value of the non-NOAA funds derived from in-kind contributions. Costs for the following categories must be detailed in the budget as follows:

(A) *Personnel.* (*1*) Identify salaries by position and percentage of time of each individual dedicated to the project.

(*2*) Fringe Benefits. Indicate benefits associated with personnel working on the project. This entry should be the proportionate cost of fringe benefits paid for the amount of time spent in the project. For example, if an employee spends 20 percent of his/her time on the project, 20 percent of his/her fringe benefits should be charged to the project.

(B) *Consultants and contract services.* Identify all consultant and/or contractual service costs by specific task in relation to the project. If a commitment has been made prior to application for funding to contract with a particular vendor, explain how the vendor was selected, type of contract, deliverable expected, time frame, and cost. All contracts must meet the standards established in OMB circulars.

(C) *Travel and transportation.* Identify number of trips to be taken, purpose, and number of people to travel. Itemize estimated costs to include approximate cost of transportation, per diem, and miscellaneous expenses. Registration fees should be included.

(D) *Equipment, space or rental costs.* (*1*) Identify equipment purchases or rental costs, along with the intended use. Equipment purchases greater than $500.00 will not be allowed, since experienced investigators are expected to have sufficient capital equipment on hand. Use of lease to purchase (LTOP) or similar leases are prohibited.

(*2*) Identify space rental costs with specific uses.

(E) *Other costs.* (*1*) Supplies: Identify specific supplies necessary for the accomplishment of the project. Consumable office supplies may be included under Indirect Costs unless purchased in a large quantity to be used specifically for the project.

(*2*) Postage and shipping. Include postage for correspondence and other material produced under grant, as well as air freight, truck or rail shipping of bulk materials to be used in conferences and workshops.

(*3*) Printing costs. Include costs associated with producing materials in conjunction with the project.

(*4*) Telephone and telegraph. Identify estimated calls and monthly bills.

(*5*) Utilities may be included under Indirect Costs unless purchased in a large quantity to be used specifically for the project. Identify costs of utilities and percentage of use in conjunction with performance of project.

(*6*) Indirect Costs. This entry should be based on the applicant's established indirect cost agreement rate with the Federal Government. A copy of the current approved negotiated Indirect Cost Agreement should be included.

(*7*) Additional costs. Indicate any additional costs associated with the project which are allowable under OMB Circulars A-21, A-87, and A-122.

(d) *Supporting Documentation.* This section should include any required documents and any additional information necessary or useful to the description of the project. The amount of information given in this section will depend on the type of project proposed. The applicant should present any information which would emphasize the value of the project in terms of the significance of the problems addressed. Without such information, the merits of the project may not be fully understood, or the value of the project to fisheries use may be underestimated. The absence of adequate supporting documentation may cause reviewers to question assertions made in describing the project and may result in a lower ranking of the project. Reviewers will not necessarily examine all material provided as supporting documentation except where sufficient detail is lacking in the project description to properly evaluate the project. Therefore, information presented in this section should be clearly referenced in the project description.

*5. Application Submission and Deadline*

(a) *Deadline.* NMFS will accept applications for funding under this program between March 8, 1989 and April 24, 1989. An application will be accepted if the application is received by the office listed below on or before April 24, 1989 (6 p.m. e.s.t.).

(b) *Submission of applications to NMFS.* Applications are not to be bound

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in any manner and should be one-sided. Any application not fully including all information called for herein, will be returned to the applicant. Applicants must submit one signed original and two (2) copies of the complete application to the address set forth below:

Regional Director, Attn: D. Ekberg, National Marine Fisheries Service, Duval Bldg., 9450 Koger Blvd., St. Petersburg, Florida 33702, Telephone No. (813) 893–3720.

Questions of an administrative nature should be referred to:

NOAA RAS/CC31, Attn: Jean West, Central Administrative Support Center, Federal Bldg., Room 1758, 601 East 12th Street, Kansas City, Missouri 64106, Telephone No. (816) 426–7287.

**IV. Review Process and Criteria**

*1. Evaluation and Ranking of Proposed Projects*

For applications meeting the requirements of this solicitation, NMFS will conduct a technical evaluation of each project prior to any other review. If an application contains two or more projects, NMFS will evaluate the projects separately. All comments submitted to NMFS will be taken into consideration in the technical evaluation of projects. NMFS will provide point scores on proposals based on the following evaluation criteria:

(a) Adequacy of research/development/demonstration for managing or enhancing Gulf of Mexico marine fishery resources, addressing especially the possibilities of securing productive results (30 points).

(b) Soundness of design/technical approach for enhancing or managing the use of Gulf of Mexico marine fishery resources (25 points).

(c) Organization and management of the project, including qualifications and previous related experience of the applicant's management team and other project personnel involved (20 points).

(d) Effectiveness of proposed methods for monitoring and evaluating the project (15 points).

(e) Justification and allocation of the budget in terms of the work to be performed (10 points).

The average technical scores will be ranked by NMFS into three groups: (1) highly recommended, (2) recommended, and (3) not recommended, for presentation to MARFIN Board members. The Board members will consider the significance of the problem addressed in the project, along with the technical evaluation and need for funding. This evaluation and ranking will enable NMFS to determine the appropriate level of funding for each project.

*2. Consultation with Others*

NMFS will make project descriptions available for review as follows:

(a) Public review and comment.

Applications may be inspected at the National Marine Fisheries Service Regional Office in St. Petersburg, Florida from April 24, 1989, to May 1, 1989.

(b) Consultation with members of the fishing industry. The NMFS shall, at its discretion, request comments from members of the fishing and associated industries who have knowledge in the subject matter of a project or who would be affected by a project.

(c) Consultation with government agencies. Applications will be reviewed in consultation with the NMFS Southeast Science and Research Director and appropriate laboratory personnel, CASC Grants Officer and, as appropriate, Department of Commerce bureaus and other federal agencies for elimination of duplicate funding. The Regional Fishery Management Councils may be asked to review projects and advise of any real or potential conflicts with council activities.

*3. Funding Decision*

After projects have been evaluated, MARFIN Board members will develop and submit funding recommendations to the Director of the NMFS Southeast Regional Office. The Director of the NMFS Southeast Regional Office will ascertain that the projects do not substantially duplicate other projects that are currently funded by or are approved for funding by the U.S. Government, determine the projects to be funded, and determine the amount of funds available for the program. The exact amount of funds awarded to each project will be determined in preaward negotiations between the applicant, NMFS, and the Grants Office. The Department of Commerce will review all recommended projects and funding before an award is executed by the Grants Officer. The funding instrument will be determined by the Grants Officer. Projects may not be initiated by a recipient until a notice of award is received from the Grants Officer. For multi-year projects, funds will be provided when specified tasks are satisfactorily completed and after NMFS has received MARFIN funds for subsequent fiscal years.

**V. Administrative Requirements**

*1. Obligations of the Applicant*

An Applicant must:

(a) Meet all application requirements and provide all information necessary for the evaluation of the project.

(b) Be available, upon request, in person or by designated representative, to respond to questions during the review and evaluation of the project(s).

(c) If a project is awarded, manage the day-to-day operations of the project, be responsible for the performance of all activities for which funds are awarded, and be responsible for the satisfactory completion of all administrative and managerial conditions imposed by the award. This includes adherence to procurement standards set forth in the award and referenced OMB circulars.

(d) If a project is awarded, keep records sufficient to document any costs incurred under the award, and allow access to records for audit and examination by the Secretary, the Comptroller of the United States, or their authorized representatives.

(e) Fishery data collected during the course of a project that could be pertinent to fishery management needs must be available to NMFS on request, subject to pertinent confidentiality requirements.

(f) If a project is awarded, submit quarterly project status reports on the use of funds and progress of the project to NMFS within 30 days after the end of each calendar quarter to the individual specified as the program officer in the funding agreement. The content of these reports will include, at a minimum:

(i) A summary of work conducted, which includes a description of specific accomplishments and milestones achieved;

(ii) The degree to which goals or objectives were achieved as originally projected;

(iii) Where necessary, the reasons why goals or objectives are not being met; and

(iv) Any proposed changes in plans or redirection of resources or activities and the reason therefore.

(g) If a project is funded, submit an original and two copies of a final report within 90 days after completion of each project. The report must describe the accomplishments of the project and include an evaluation of the work performed and the results and benefits of the work in sufficient detail to enable NMFS to assess the success of the completed project. Results must be described in relation to the project objectives of resolving specific impediments to managing or enhancing fisheries, and be qualified to the extent possible. Potential uses of project results by private industry or fishery managment agencies should be specified. Any conditions or requirements necessary to make productive use of the project results should be identified.

(h) Present current project results at the annual MARFIN conference and submit an abstract 15 days prior to the conference. Travel funds for this meeting will be provided by NMFS.

(i) Each recipient of MARFIN funding must comply with applicable OMB circulars, and Department of Commerce and NOAA policies. Each award contains standard terms and conditions and any special conditions which must be met by the recipient.

(j) For each project funded three copies of all publications or reports printed with grant funds must be submitted to the Program Officer. Any publication printed with grant funds must identify the MARFIN program of NOAA as the funding source along with the grant award number.

*2. Obligations of the National Marine Fisheries Service*

The NMFS Southeast Region will:

(a) Provide programmatic information necessary for the proper submission of applications.

(b) Provide advice to inform applicants of NMFS fishery management and development policies and goals.

(c) Monitor all projects after award to ascertain their effectiveness in achieving project objectives and in producing measurable results. Actual accomplishments of a project will be compared with stated objectives.

(d) Refer questions of an administrative nature from applicants/recipients to the Grants Office.

*3. CASC Grants Officer Responsibility*

The CASC Grants Officer is responsible for the administrative processing of NOAA Federal Assistance Awards and will provide all forms needed by an applicant. Processing includes review of applications to determine that they are in conformance with Federal requirements, negotiation, determination of the funding instrument, clearance through administrative review once program funding has been determined, execution of awards, reports and administrative monitoring, and close out of awards. The official grant file will be maintained by the Grants Officer.

*4. Legal Requirements*

The applicant will be required to satisfy the requirements of applicable local, State, and Federal laws.

This program is not included in the Catalog of Federal Domestic Assistance.

**Authority:** 16 U.S.C. 1854(e).

Dated: March 3, 1989.

**James E. Douglas, Jr.,**

*Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.*

[FR Doc. 89–5371 Filed 3–7–89; 8:45 am]

BILLING CODE 3510-22-M



## Pacific Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's Groundfish Management Team (GMT) will meet on March 21, 1989, at the National Marine Fisheries Service, Northwest and Alaska Fisheries Center, Building 4, Room 2079, 7600 Sand Point Way, NE., Seattle, WA. The GMT will meet at 12:30 p.m., to discuss 1989 commercial groundfish catch projections, research needs, technical revisions to the fishery management plan, and management of the commercial sablefish fishery. Other issues related to management of the west coast groundfish fishery may also be discussed.

**FOR FURTHER INFORMATION CONTACT:** Lawerence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, Suite 420, 2000 SW. First Avenue, Portland, OR 97201: telephone: (503) 221–6352.

Date: March 2, 1989.

**Alan Dean Parsons,**

*Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 89–5372 Filed 3–7–89; 8:45 am]

BILLING CODE 3510-22-M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of Import Limits for Certain Cotton and Wool Textile Products Produced or Manufactured in Brazil

March 3, 1989.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs adjusting limits.

**EFFECTIVE DATE:** March 6, 1989.

**FOR FURTHER INFORMATION CONTACT:** Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377–3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854)

The current limit for Categories 347/348 and sublimit for Category 410 are being increased for swing and carryforward. Category 410 is being increased further by special shift from Categories 410/624.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 53 FR 46644, published on November 18, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

**Ronald I. Levin,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

**Committee For The Implementation Of Textile Agreements**

March 3, 1989.

Commissioner of Customs, Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on November 15, 1988 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in Brazil and exported during the twelve-month period which began on April 1, 1988 and extends through March 31, 1989.

Effective on March 6, 1989, the directive of November 15, 1988 is amended to adjust the current limit and sublimit for cotton and wool textile products in the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and the Federative Republic of Brazil:

| Category | Adjusted twelve-month limit [1] |
|---|---|
| 347/348 | 728,000 dozen |
| 410 | 3,697,355 square meters |

[1] The limits have not been adjusted to account for any imports exported after March 31, 1988.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs

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exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Ronald I. Levin,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 89-5354 Filed 3-7-89; 8:45 am]

BILLING CODE 3510-DR-M

## Announcement of a Negotiated Settlement on Import Limits for Certain Cotton Textile Products and Guaranteed Access Levels for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Costa Rica

March 3, 1989.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs establishing a limit.

**EFFECTIVE DATE:** March 10, 1989.

**FOR FURTHER INFORMATION CONTACT:** Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, refer the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377-3715.

**SUPPLEMENTARY INFORMATION:**

**Authority.** Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); President's February 20, 1988 announcement of a Special Access Program.

During negotiations held between the Governments of the United States and Costa Rica, agreement was reached, effected by a Memorandum of Understanding dated February 14, 1989, to establish a new bilateral textile agreement for cotton textile products in Categories 347/348 beginning on January 1, 1989 and extending through May 31, 1992. The United States Government will control imports in Categories 347/348 at the agreed level for the first agreement period January 1, 1989 through May 31, 1989.

The agreement also establishes Guaranteed Access Levels for Categories 340/640 and 347/348 for the three-year periods beginning June 1, 1989 and extending through May 31, 1992.

Beginning on March 10, 1989, for goods to be exported from Costa Rica to the United States on and after June 1, 1989, U.S. Customs will start signing the first section of the form ITA-370P for shipments of U.S. formed and cut parts in Categories 340/640 and 347/348 that are destined for Costa Rica and subject to the Guaranteed Access Levels established for Categories 340/640 and 347/348. These products, which are assembled in Costa Rica from parts cut in the United States from fabric formed in the United States, are governed by Harmonized Tariff item number 9802.00.8010. Interested parties should be aware that shipments of cut parts in Categoreis 340/640 and 347/348 must be accompanied by a form ITA-370P, signed by a U.S. Customs officer, prior to export from the United States for assembly in Costa Rica in order to qualify for entry under the Guaranteed Access Levels.

A formal exchange of notes between the Governments of the United States and Costa Rica will follow.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 53 FR 49343, published on December 7, 1988.

Ronald I. Levin,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

Committee for the Implementation of Textile Agreements

March 3, 1989.

*Commissioner of Customs, Department of the Treasury, Washington, DC 20229*

Dear Mr. Commissioner: This directive cancels and supersedes the directive issued to you on December 2, 1988 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports into the United States of cotton textile products in Categories 347/348, produced or manufactured in Costa Rica and exported during the period which began on July 28, 1988 and extends through July 27, 1989.

Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and pursuant to the Memorandum of Understanding dated February 14, 1989 between the Governments of the United States and Costa Rica; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on March 10, 1989, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Categories 347/348, produced or manufactured in Costa Rica and exported during the five-month period which began on January 1, 1989 and extends through May 31, 1989, in excess of 730,000 dozen.

Textile products in Categories 347/348 which have been exported to the United States prior to January 1, 1989, shall not be subject to the directive.

Missing charges for Categories 347/348 will be provided at a later date.

Beginning on March 10, 1989, U.S. Customs is directed to start signing the first section of the form ITA-370P for shipments of U.S. formed and cut parts in Categories 347/348 and 340/640 that are destined for Costa Rica and re-exported to the United States on and after June 1, 1989.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 89-5358 Filed 3-7-89; 8:45 am]

BILLING CODE 3510-DR-M

## Adjustment of Import Limits for Certain Wool Textile Products Produced or Manufactured in Czechoslovakia

March 3, 1989.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs adjusting limits.

**EFFECTIVE DATE:** March 10, 1989.

**FOR FURTHER INFORMATION CONTACT:** Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377-3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Category 443 is being increased for swing and carryover. The limit for Category 435 is being reduced to account for the swing being applied.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 53 FR 19965, published on June 1, 1988.

Ronald I. Levin,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

Committee for the Implementation of Textile Agreements

March 3, 1989.

*Commissioner of Customs Department of the Treasury Washington, DC 20229*

Dear Mr. Commissioner: This directive amends, but does no cancel, the directive issued to you on May 25, 1988. That directive concerns imports into the United States of certain wool textile products, produced or manufactured in Czechoslovakia and exported during the twelve-month period which began on June 1, 1988 and extends through May 31, 1989.

Effective on March 10, 1989, the directive of May 25, 1988 is amended to adjust the previously established limits for wool textile products in the following categories, as provided under the provisions of the current bilateral agreement between the Governments of the United States and the Czechoslovak Socialist Republic.

| Category | Adjusted 12-month limit [1] |
|---|---|
| 435 | 6,835 dozen |
| 443 | 85,205 numbers |

[1] The limits have not been adjusted to account for any imports exported after May 31, 1988.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 89-5357 Filed 3-7-89; 8:45 am]

BILLING CODE 3510-DR-M

## Establishment of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in Costa Rica

March 3, 1989.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs establishing a limit.

**EFFECTIVE DATE:** March 10, 1989.

**FOR FURTHER INFORMATION CONTACT:** Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377-3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Article 3 of the Arrangement Regarding International Trade in Textiles.

Inasmuch as consultations held November 2-4, 1988 and December 12-13, 1988 between the Governments of the United States and Costa Rica have not resulted in a mutually satisfactory limit for Category 331, the United States Government has decided to control imports in this category for the period November 30, 1988 through November 29, 1989.

The United States remains committed to finding a solution concerning Category 331. Should such a solution be reached in further consultations with the Government of Costa Rica, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 53 FR 52765, published on December 29, 1988.

Ronald I. Levin,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

Committee for the Implementation of Textile Agreements

March 3, 1989.

Commissioner of Customs
Department of the Treasury
Washington, DC 20229

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further amended on July 31, 1986; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on March 10, 1989, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Category 331, produced or manufactured in Costa Rica and exported during the twelve-month period which began on November 30, 1988 and extends through November 29, 1989, in excess of 698,289 dozen pairs.

Textile products in Category 331 which have been exported to the United States prior to November 30, 1988 shall not be subject to this directive.

Textile products in Category 331 which have been released from the custody of the U.S. Customs Service under the provisons of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Ronald I. Levin,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 89-5355 Filed 3-7-89; 8:45 am]

BILLING CODE 3510-DR-M



## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulatory Council; Meetings

**AGENCIES:** Department of Defense (DoD) and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of meetings.

**SUMMARY:** The Defense Acquisition Regulatory (DAR) Council will travel to Phoenix, Arizona and San Antonio, Texas during the week of April 3, 1989. The Council will conduct joint Government/Industry meetings at both locations and will discuss significant Federal Acquisition Regulation and Defense Federal Acquisition Regulation Supplement issues of mutual interest. The Council tentatively plans presentations on the following topics: Cost Principles, Bid Protests Suspension and Debarment, and Technical Data Rights. Panel discussions will also be conducted on issues involving Small and Small Disadvantages Business, Payment/Pricing/Finance, and Integrity/Ethics/Drug Free Workplace. The Council will be available for questions on these issues or other DAR cases.

**DATES:** April 4, 1989 and April 6, 1989.

**FOR FURTHER INFORMATION CONTACT:** Mr. Charles W. Lloyd, Executive Secretary, DAR Council, telephone (202) 697-7266.

**SUPPLEMENTARY INFORMATION:** The Defense Contract Administration Region-Dallas and Defense Contract Administration Services Management Area-Phoenix will host the Council's meetings on Tuesday, April 4, 1989, from 8:00 a.m. to 4:00 p.m. at the Safari Resort, 4611 North Scottsdale Road, Scottsdale, Arizona 85251, (602) 945-0721. Registration fee is $20 and registration deadline is March 20, 1989. Checks should be made payable to DAR Council Seminar and mailed to

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DCASMA Phoenix, The Monroe School, 215 N. 7th Street, Attn: GXACB, T. HINTZ, Phoenix, Arizona 85034-1012. Point of contact is Ms. Tammy Hintz (602) 261-6192, Autovon 361-6192.

The Directorate of Contracting and Manufacturing, San Antonio Air Logistics Center, Kelly AFB, Texas, will host the Council's meeting on Thursday, April 6, 1989, from 8:30 a.m. to 4:30 p.m. at the Radisson Airport Hotel, 611 NW Loop, San Antonio, Texas 78216, (512) 340-6060. Registration fee is $20 and registration deadline is March 30, 1989. Checks should be made payable to DAR Council Seminar and mailed to SA-ALC/PWMA, Kelly AFB, Texas 78241-5000. Point of contact is Ms. Valery Johnson (512) 925-8331, Autovon 945-8331.

**Charles W. Lloyd,**

*Executive Secretary, Defense Acquisition Regulatory Council.*

[FR Doc. 89-5301 Filed 3-7-89; 8:45 am]

BILLING CODE 3810-01-M

## Department of the Air Force

### USAF Scientific Advisory Board; Meeting

March 3, 1989.

The USAF Scientific Advisory Board Ad Hoc Committee on Integrated Avionics 28-30 March 1989 from 8:00 a.m. to 5:00 p.m. at the Headquarters Aeronautical Systems Division, Wright-Patterson Air Force Base, Ohio 45431.

The purpose of this meeting will be to review the status of Air Force integrated avionics programs. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4648.

**Patsy J. Conner,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 89-5361 Filed 3-7-89; 8:45 am]

BILLING CODE 3910-01-M

### USAF Scientific Advisory Board; Meeting

March 3, 1989.

The USAF Scientific Advisory Board will hold its Spring General Board Meeting on 18-19 April 1989 from 8:30 a.m. to 5:00 p.m. at the Headquarters Air Force Space Command, Peterson AFB, CO.

The purpose of this meeting will be to enable participants, Board members, and key military leaders to grasp the important issues of Space. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4648.

**Patsy J. Conner,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 89-5362 Filed 3-7-89; 8:45 am]

BILLING CODE 3910-01-M

### USAF Scientific Advisory Board; Meeting

March 3, 1989.

The USAF Scientific Advisory Board Ad Hoc Committee on Electronic Combat will meet on 28-30 March 1989 from 8:00 a.m. to 5:00 p.m. at the Pentagon, Washington, DC 20330.

The purpose of this meeting will be to review the requirements for and the status of Air Force Electronic Combat programs. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4648.

**Patsy J. Conner,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 89-5363 Filed 3-7-89; 8:45 am]

BILLING CODE 3910-01-M

### USAF Scientific Advisory Board; Meeting

March 3, 1989.

The USAF Scientific Advisory Board Airlift Cross-Matrix Panel 23-24 Mar 89 from 8:00 a.m. to 5:00 p.m. at the Headquarters Military Airlift Command, Scott Air Force Base, Illinois 62225-5001.

The purpose of this meeting is to provide an orientation to the new panel members on the mission, policies, and programs of the Military Airlift Command and to review the status of previous initiatives that have been implemented based on Scientific Advisory Board recommendations. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4648.

**Patsy J. Conner,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 89-5360 Filed 3-7-89; 8:45 am]

BILLING CODE 3910-01-M

## DEPARTMENT OF DEFENSE

## Department of the Navy

### Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Naval Research Advisory Committee will meet on March 23-25, 1989. The meeting will be held at the Naval Air Station, Jacksonville, Florida. The meeting will commence at 9:00 a.m. on March 23 and terminate at 12:00 Noon on March 25, 1989. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to provide briefings and demonstrations for the committee members on naval aviation. The agenda will include briefings on the naval aviation mission and operations, shipboard safety, as well as demonstrations related to aircraft, simulators and flight operations. These briefings, discussions and demonstrations will contain classified information that is specifically authorized under criteria established by Executive Order to be kept secret in the interest of national defense and are in fact properly classified pursuant to such Executive Order. The classified and non-classified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander L. W. Snyder, U. S. Navy, Office of Naval Research, 800 North Quincy Street, Arlington, VA 22217-5000, Telephone Number: (202) 696-4870.

Date: February 22, 1989.

**Jane M. Virga,**

*Lieutenant, JAGC, U.S. Navy Reserve, Federal Register Liaison Officer.*

[FR Doc. 89-5259 Filed 3-7-89; 8:45 am]

BILLING CODE 3810-AE-M



## DEPARTMENT OF EDUCATION

**[CFDA No. 84.142]**

### College Facilities Loan Program; New Awards Under the College Facilities Loan Program for Fiscal Year 1989

*Purpose:* The College Facilities Loan Program provides low interest loans to eligible undergraduate postsecondary educational institutions for the construction, reconstruction, or renovation of housing facilities, undergraduate academic facilities, and other educational facilities for students and faculties.

*Deadline for Transmittal of Applications:* April 24, 1989

*Applications Available:* March 15, 1989

*Available Funds:* $29,640,000

*Estimated Range of Awards:* $250,000 to $3,000,000

*Estimated Average Size of Awards:* $1,500,000

*Estimated Number of Awards:* 20

*Project Period:* Until completion

*Priorities:* In accordance with the requirements of section 763 of the Higher Education Act, 20 U.S.C. 1132g-2, and 34 CFR 614.3(c), the Secretary gives priority to loans for renovation or reconstruction of older undergraduate academic facilities, and undergraduate academic facilities that have gone without major renovation or reconstruction for an extended period of time. In order to accomplish this objective, $15,000,000 will be reserved for loans for the renovation or reconstruction of older undergraduate academic facilities, and undergraduate academic facilities that have gone without major renovation or reconstruction for an extended period of time, and $14,640,000 will be reserved for loans for housing facilities. Under 34 CFR 75.105(c)(3), the Secretary funds under this competition only applications that meet either of these two absolute priorities.

*Deadline for Intergovernmental Review Comments:* June 23, 1989.

*Applicable Regulations:* Education Department General Administrative Regulations (EDGAR) 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals and Nonprofit Organizations), Subpart D of 34 CFR Part 75 (Direct Grant Programs) 75.105, 75.600-75.616; 34 CFR Part 77 (Definitions that Apply to Department Regulations); 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities), and 34 CFR Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)). Final regulations governing the College Facilities Loan Program, as codified in 34 CFR Part 614, were published in the Federal Register, 52 FR 30560, on August 14, 1987.

*Technical Assistance Workshop:* Applicants are invited to participate in a technical assistance workshop to assist applicants in application preparation. The workshop will take place in Washington, DC on March 13, 1989. For specific information on the workshop, please contact the Division of Higher Education Incentive Programs on (202) 732-4384.

*For Applications or Information Contact:* Sumner S. Bravman, U.S. Department of Education, 400 Maryland Ave., SW., Room 3022, ROB-3, Washington, DC 20202-5251. Telephone: (202) 732-4394.

**Program Authority:** 20 U.S.C. 1132g-1132g-3.

Dated: March 2, 1989.

**Kenneth D. Whitehead,**

*Assistant Secretary for Postsecondary Education.*

[FR Doc. 89-5433 Filed 3-7-89; 8:45 am]

BILLING CODE 4000-01-M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. TM89-6-20-000]**

### Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

March 3, 1989.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on February 21, 1989, tendered for filing proposed changes in its FERC Gas Tariff, Second Revised Volume No. 1 as set forth in the revised tariff sheets:

*Rate Schedule F-2, proposed to be effective March 1, 1989* Thirty-second Revised Sheet No. 203

*Rate Schedule F-3, proposed to be effective March 1, 1989* Twenty-fourth Revised Sheet No. 204

Algonquin states that in a filing dated January 27, 1989 in Docket No. TQ89-3-22-000, Algonquin's pipeline supplier, CNG Transmission Corporation ("CNGT") made a Quarterly Purchased Gas Adjustment filing to flow though increases in its cost of purchased gas and to reflect certain tariff changes. Pursuant to Section 7 of Rate Schedule F-2, Algonquin is filing Thirty-second Revised Sheet No. 203 to concurrently track the rate changes made by CNGT in the service underlying Algonquin's Rate Schedule F-2. Thirty-second Revised Sheet 203 represent increases of $1.115 per MMBtu in the Demand component and 36.21 cents per MMBtu in the Commodity component.

Algonquin states that in a filing dated January 30, 1989 in Docket No. TF89-2-16-000 and amended on February 1, 1989, Algonquin's pipeline supplier, National Fuel Gas Supply Corporation ("National") made an Interim Purchased Gas Adjustment which decreased its commodity rate by 17.14 cents per MMBtu from the rate filed in its Interim PGA dated December 30, 1988 in Docket No. TF89-1-16-00. Pursuant to Section 7 of Rate Schedule F-3, Algonquin is filing Twenty-fourth Revised Sheet No. 204 to concurrently track the rate change filed for by National in the service underlying Algonquin's Rate Schedule F-3.

Algonquin notes that copies of this filing were served upon the affected parties and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 10, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to inervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 89-5343 Filed 3-7-89; 8:45 am]

BILLING CODE 6717-01-M

**[Docket No. TM89-2-20-002, TM89-5-20-001, TM89-6-20-002 and TF89-1-20-000]**

### Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

March 3, 1989.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on February 22, 1989, tendered for filing proposed changes in its FERC Gas Tariff, Second Revised Volume No. 1 as set forth in the revised tariff sheets:

*Proposed to be effective November 1, 1988,* Substitute Twenty-third Revised Sheet No. 205, Substitute Revised Thirteenth Revised Sheet No. 214

*Proposed to be effective January 1, 1989,* Substitute Twentieth Revised

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Sheet No. 211, Substitute Fourteenth Revised Sheet No. 214

*Proposed to be effective February 1, 1988:* Substitute Alternate Substitute Twenty-fourth Revised Sheet No. 205, Second Substitute Alternate Fifteenth Revised Sheet No. 214

*Proposed to be effective March 1, 1989:* Substitute Alternate Substitute Thirtieth Revised Sheet No. 201

Algonquin states that pursuant to Section 7, Section 10 and Section 9 of Rate Schedules F-4, STB and SS-III, respectively, it is filing Substitute Twenty-third Revised Sheet No. 205, Substitute Revised Thirteenth Revised Sheet No. 211, Substitute Twentieth Revised Sheet No. 211 and Substitute Fourteenth Revised Sheet No. 214 to track the change in rates for the services underlying Algonquin's Rate Schedules F-4, STB and SS-III as made by its pipeline supplier Texas Eastern Transmission Corporation ("Texas Eastern") in its filings of January 25, 1989 in Docket Nos. TM89-1-17 *et al.* and CP87-28 *et al.*

Additionally, Algonquin states that it is filing Substitute Alternate Substitute Twenty-fourth Revised Sheet No. 205 (Rate Schedule F-4) and Second Substitute Alternate Fifteenth Revised Sheet No. 214 (Rate Schedule SS-III) to concurrently track the Interim PGA filed by Texas Eastern, dated January 31, 1989 in Docket No. TF89-1-17-000.

Furthermore, Algonquin states that it is filing Substitute Alternate Substitute Thirtieth Revised Sheet No. 201 to revise its current adjustment contained in its annual PGA of January 3, 1989, as first revised on January 30, 1989, (Docket Nos. TA89-1-20-000 & 001). This revision to the current adjustment is made to reflect the lowered purchased gas cost in Texas Eastern's Interim PGA as it affects Rate Schedules F-1, WS-1, I-1, and E-1.

Algonquin alleges that the rate effects are as follows:

Rate Schedules F-1, WS-1, I-1 and E-1: The rate changes reflected in the instant filing represent a projected decrease in Algonquin's purchased gas costs and revenues of approximately $2.9 million from the $7.3 million increase filed for March 1, 1989 rates (Docket No. TA89-1-20-001, Alternate sheet) for the three month period beginning March 1, 1989.

Rate Schedule F-4: The change on November 1, 1988 represents decreases of 41.4 cents per MMBtu in the Demand component and 0.16 cents in the commodity component below the previously filed for November 1, 1988 rates (Docket No. TM89-2-20-000). The change effective on February 1, 1989 represents a decrease in the commodity component of 9.72 cents per MMBtu below the previously filed for February 1, 1989 rate. (Docket No. TM89-6-20-001, Alternate sheet).

Rate Schedule STB: The effective January 1, 1989 is to reduce the demand by 2.0 cents per MMBtu and the Space charge by 0.06 cents per MMBtu below previously filed for January 1, 1989 rates (Docket No. TM89-5-20-000).

Rate Schedule SS-III: The effect of the change in rates effective on November 1, 1989 is to increase the Non-FDDQ Withdrawal Charge 0.09 cents per MMBtu over the previously filed for November 1, 1989 rate (Docket No. TM89-2-20-001). The effect of the January 1, 1989 rate change is to reduce the demand by 2.0 cents per MMBtu and the Space charge by 0.06 cents per MMBtu below previously filed for January 1, 1989 rates (Docket No. TM89-5-20-000). The effect of the February 1, 1989 rates is to bring forward the January 1, 1989 changes and to further decrease the FDDQ and Non-FDDQ Withdrawal charges by 0.03 cents per MMBtu, each (Docket No. TM89-6-20-001).

Algonquin notes that copies of this filing were served upon the affected parties and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 10, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 89-5344 Filed 3-7-89; 8:45 am]

BILLING CODE 6717-01-M

**[Project No. 2538 New York]**

**Beebee Island Corp.; Intention to File an Application For a New License**

March 3, 1989.

Take notice that on December 29, 1988, Beebee Island Corporation, the existing licensee for the Beebee Island Hydroelectric Project No. 2538, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99-495. The original license for Project No. 2538 was issued effective April 1, 1962, and expires December 31, 1993.

The project is located on the Black River in Jefferson County, New York. The principal works of the Beebee Island Project include a 265-foot-long concrete overflow dam; a reservoir of 10 acres at elevation 431 feet m.s.l.; an open flume leading directly to the powerhouse; a powerhouse with an installed capacity of 8,000 kW; a transmission line connection; and appurtenant electrical and mechanical facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87-7-000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street NE., Washington, DC 20426. The above information as described in the rule is now available from the licensee at HYDRA-CO Enterprises, Inc., 100 Clinton Square, Suite 400, Syracuse, NY 13202-1049, Attn: Mr. John M. Cordes.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 89-5337 Filed 3-7-89; 8:45 am]

BILLING CODE 6717-01-M

**[Docket No. TM89-3-4-001]**

**Granite State Gas Transmission, Inc.; Filing**

March 3, 1989.

Take notice that on February 27, 1989, Granite State Gas Transmission, Inc. (Granite State), 120 Royall Street, Canton, Massachusetts 02021, tendered for filing with the Commission the following tariff sheet in its FERC Gas Tariff, First Revised Volume No. 1, for effectiveness on February 1, 1989:

Substitute First Revised Sheet No. 7-C

According to Granite State, the purpose of the instant filing is to comply with the Commission's letter order issued February 10, 1989 in this docket relating to the procedures pursuant to which Granite State will recover from its customers the fixed take-or-pay charges billed by Tennessee Gas Pipeline Company under the provisions of Order No. 500. Granite State requests an effective date of February 1, 1989.

Granite State further states that copies of its filing were served upon its customers, Bay State Gas Company and Northern Utilities, Inc., and the regulatory commissions of the States of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulation Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 10, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 89-5345 Filed 3-7-89; 8:45 am]

BILLING CODE 6717-01-M



**[Project No. 2300, New Hampshire]**

**James River—New Hampshire Electric, Inc., Intention To File an Application for a New License**

March 3, 1989.

Take notice that on December 28, 1988, James River—New Hampshire Electric, Inc., the existing licensee for the Shelburne Hydroelectric Project No. 2300, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99-495. The original license for Project No. 2300 was issued effective July 1, 1958, and expires December 31, 1993.

The project is located on the Androscoggin River in Coos County, New Hampshire. The principal works of the Shelburne Project include a concrete and rock-filled, timber-crib dam with gated spillway; a reservoir of 192 acres at elevation 733.55 feet m.s.l.; a powerhouse with an installed capacity of 3,720 kW; a tailrace; step-up transformers and transmission lines; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87-7-000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street NE., Washington, DC 20426. The above information as described in the rule is now available from the licensee at 650 Main Street, Berlin, NH 03570-2489, Attn: Mr. David L. Dunham, telephone (603) 752-4600.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 89-5338 Filed 3-7-89; 8:45 am]

BILLING CODE 6717-01-M

**[Project No. 2311, New Hampshire]**

**James River—New Hampshire Electric, Inc.; Intention To File an Application for a New License**

March 3, 1989.

Take notice that on December 28, 1988, James River—New Hampshire Electric, Inc., the existing licensee for the Gorham Hydroelectric Project No. 2311, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99-495. The original license for Project No. 2311 was issued effective July 1, 1958, and expires December 31, 1993.

The project is located on the Androscoggin River in Coos County, New Hampshire. The principal works of the Gorham Project include a rock-filled, timber-crib dam flanked by earth dikes; a reservoir of 45 acres; a headworks to a 3,350-foot-long canal lined with riprap; a powerhouse with an installed capacity of 4,800 kW; a tailrace; step-up transformers and transmission lines; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87-7-000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street NE., Washington, DC 20426. The above information as described in the rule is now available from the licensee at 650 Main Street, Berlin, NH 03570-2489, Attn: Mr. David L. Dunham, telephone (603) 752-4600.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 89-5339 Filed 3-7-89; 8:45 am]

BILLING CODE 6717-01-M

**[Docket No. RP89-36-001]**

**Midwestern Gas Transmission Co.; Filing of Refund Report**

March 3, 1989.

On January 31, 1989, Midwestern Gas Transmission Company filed a refund report stating that on January 31, 1989, it refunded $997,757.72 to various customers pursuant to § 154.305 of the Commission's regulations and a stipulation filed with the Commission.

Any person wishing to do so may submit comments in writing concerning the subject refund report. All such comments should be filed with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, on or before March 17, 1989. Copies of the respective filing is on file with the Commission and available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 89-5341 Filed 3-7-89; 8:45 am]

BILLING CODE 6717-01-M

**[Docket No. RP72-154-015]**

**Northwest Pipeline Corp.; Filing of Refund Report**

March 3, 1989.

On February 7, 1989, Northwest Pipeline Corporation filed a refund report stating that on January 27, 1989 it refunded $1,915,026.01 to various customers pursuant to § 154.305 of the Commission's regulations and § 16.8(C)(F) of the General Terms and Conditions of Northwest's FERC Gas Tariff, First Revised volume No. 1.

Any person wishing to do so may submit comments in writing concerning the subject refund report. All such comments should be filed with the Federal Energy Regulatory Commission.

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825 North Capitol Street NE., Washington, DC 20426, on or before March 14, 1989. Copies of the respective filing is on file with the Commission and available for public inspection.

Lois D. Cashell,

*Secretary.*

[FR Doc. 89-5342 Filed 3-7-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-226-000]

**Tennessee Gas Pipeline Co.; Filing of Changes in Rates**

March 3, 1989.

Take notice that on February 23, 1989, Tennessee Gas Pipeline Company (Tennessee) tendered for filing changes to certain tariff sheets in its FERC Gas Tariff pursuant to the Commission's August 31, 1988, October 31, 1988, and January 31, 1989 orders in the referenced proceeding. Additionally, Tennessee states that the tariff sheets reflect the Commission's October 6, 1988 and December 20, 1988 orders in Docket Nos. RP82-121-000, *et al.*

Tennessee states that the revised tariff sheets reflect the following changes:

1. A reduction in Tennessee's claimed cost of service to account for the elimination of the costs of facilities not placed in service by February 1, 1989.
2. The elimination of standby sales service.
3. A 100 percent load factor rate for interruptible sales under Rate Schedule R.
4. The Opinion No. 352, single centroid Mcf-mile method of allocation of mileage-related transmission costs.
5. A one-part rate based on an imputed load factor of 60 percent for full requirements customers under Rate Schedule GS.
6. The use of peak-day deliveries to allocate downstream commodity transmission costs to storage service.

Tennessee further states that the revised tariff sheets also reflect the Annual Average Cost of Purchased Gas and the Surcharge for Amortizing the Unrecovered Gas Cost Account as well as the latest GRI and Annual Charge Adjustments, as shown in Tennessee's October 31, 1988 filing in Docket No. TA89-1-0 to be effective on January 1, 1989.

Although Tennessee does not believe any waivers are necessary for the Commission to accept the revised tariff sheets to be effective February 1, 1989, Tennessee requests that the Commission grant any waivers it deems necessary.

Tennessee states that copies of the filing have been mailed to all parties in this proceeding, affected customers, and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should mile a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989)). All such motions or protests should be filed on or before March 10, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

*Secretary.*

[FR Doc. 89-5349 Filed 3-7-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI83-166-001 *et al.*]

**TOC-Rocky Mountains Inc.; Application**

March 3, 1989.

Take notice that on February 17, 1989, TOC-Rocky Mountains Inc. (Applicant), c/o Amoco Production Company, P.O. Box 800, Denver, Colorado 80201, filed an application pursuant to section 7 of the Natural Gas Act and Parts 154 and 157 of the Federal Energy Regulatory Commission's (Commission) regulations thereunder for certificates of public convenience and necessity to continue sales of natural gas previously made by Tenneco Oil Company (Tenneco) under the certificates listed in the Appendix hereto. Applicant also requests that Tenneco's rate schedules listed in the Appendix hereto be redesignated as those of Applicant, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Applicant states that by Conveyance dated November 22, 1988, and effective June 30, 1988, Tenneco assigned all of its interests in all of the properties subject to Tenneco's FERC Gas Rate Schedules listed in the Appendix hereto Applicant.

Any person desiring to be heard or to make any protest with reference to application should on or before March 22, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Lois D. Cashell,

*Secretary.*

**Appendix**

| Tenneco Oil Company FERC Gas Rate Schedule No. | Certificate Docket No. | Purchaser |
|---|---|---|
| 17 | CI63-195 | El Paso Natural Gas Company |
| 21 | CI63-801 | El Paso Natural Gas Company |
| 26 | CI64-984 | El Paso Natural Gas Company |
| 36 | CI64-994 | El Paso Natural Gas Company |
| 37 | CI65-995 | El Paso Natural Gas Company |
| 38 | CI64-996 | El Paso Natural Gas Company |
| 39 | CI64-997 | El Paso Natural Gas Company |
| 45 | CI64-1003 | El Paso Natural Gas Company |
| 47 | CI64-1005 | El Paso Natural Gas Company |
| 50 | CI64-1007 | El Paso Natural Gas Company |



**Appendix—Continued**

| Tenneco Oil Company FERC Gas Rate Schedule No. | Certificate Docket No. | Purchaser |
|---|---|---|
| 51 | CI64-1008 | El Paso Natural Gas Company |
| 57 | CI64-1014 | El Paso Natural Gas Company |
| 66 | CI64-1025 | El Paso Natural Gas Company |
| 120 | CI62-463 | El Paso Natural Gas Company |
| 121 | CI62-557 | El Paso Natural Gas Company |
| 124 | CI62-1153 | El Paso Natural Gas Company |
| 1126 | CI63-282 | El Paso Natural Gas Company |
| 142 | G-6306 | Southern Union Gathering |
| 144 | G-12634 | El Paso Natural Gas Company |
| 151 | G-18623 | El Paso Natural Gas Company |
| 152 | G-19973 | El Paso Natural Gas Company |
| 153 | G-20564 | El Paso Natural Gas Company |
| 157 | G-6669 | El Paso Natural Gas Company |
| 158 | G-6669 | El Paso Natural Gas Company |
| 159 | G-14800 | El Paso Natural Gas Company |
| 161 | G-20154 | El Paso Natural Gas Company |
| 164 | CI63-851 | El Paso Natural Gas Company |
| 172 | CI65-506 | Northwest Pipeline Corporation |
| 178 | CI65-1159 | El Paso Natural Gas Company |
| 180 | CI66-142 | Northwest Pipeline Corporation |
| 196 | CI66-429 | El Paso Natural Gas Company |
| 198 | CI66-822 | Northwest Pipeline Corporation |
| 203 | CI66-1261 | El Paso Natural Gas Company |
| 223 | CI68-1038 | El Paso Natural Gas Company |
| 225 | CI68-1192 | El Paso Natural Gas Company |
| 226 | CI68-1345 | El Paso Natural Gas Company |
| 230 | CI69-313 | El Paso Natural Gas Company |
| 257 | CI70-48 | El Paso Natural Gas Company |
| 260 | CI70-781 | El Paso Natural Gas Company |
| 281 | CI73-154 | El Paso Natural Gas Company |
| 282 | CI73-196 | El Paso Natural Gas Company |
| 291 | CI63-195 | Northwest Pipeline Corporation |
| 292 | CI65-1159 | Northwest Pipeline Corporation |
| 304 | CI75-643 | El Paso Natural Gas Company |
| 305 | CI75-661 | El Paso Natural Gas Company |
| 306 | CI75-662 | El Paso Natural Gas Company |
| 307 | CI75-704 | El Paso Natural Gas Company |
| 311 | CI76-42 | El Paso Natural Gas Company |
| 313 | CI76-103 | El Paso Natural Gas Company |
| 330 | CI77-745 | El Paso Natural Gas Company |
| 334 | CI78-391 | El Paso Natural Gas Company |
| 524 | CI84-49 | El Paso Natural Gas Company |
| 526 | CI84-676 | El Paso Natural Gas Company |
| 527 | CI85-677 | El Paso Natural Gas Company |

[FR Doc. 89-5350 Filed 3-7-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2402 Michigan]

**Upper Peninsula Power Co.; Intent to File An Application For a New License**

March 3, 1989.

Take notice that on December 29, 1988, Upper Peninsula Power Company, the existing licensee for the Prickett Hydroelectric Project No. 2402, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99-495. The original license for Project No. 2402 was issued effective April 1, 1962, and expires December 31, 1993.

The project is located on the Sturgeon River in Baraga and Houghton Counties, Michigan. The principal works of the Prickett Project include a concrete diversion dam, with three gated 24-foot spillway bays, flanked by earth embankments; a reservoir of 807 acres at elevation 770.32 feet m.s.l.; an intake canal and two penstocks; a powerhouse with an installed capacity of 2,200 kW; an outdoor substation and transmission line connection; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87-7-000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426. The above information as described in the rule is now available from the licensee at 616 Shelden Avenue, Houghton, MI 49931, Attn: Mr. Charles W. Streicher, telephone (906) 482-0220.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Lois D. Cashell,

*Secretary.*

[FR Doc. 89-5340 Filed 3-7-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-5-51-000]

**Great Lakes Gas Transmission Co.; Proposed Changes in FERC Gas Tariff Purchased Gas Adjustment Clause Provisions**

March 3, 1989.

Take notice that Great Lakes Gas Transmission Company ("Great Lakes") on February 24, 1989, tendered for filing Second Substitute Eighteenth Revised Sheet Nos. 57(i) and 57(ii), Second Substitute Nineteenth Revised Sheet Nos. 57(i) and 57(ii) and Substitute Sixth Revised Sheet No. 57(v) to Great Lakes

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Gas Transmission Company's FERC Gas Tariff, First Revised Volume No. 1.

Great Lakes states that Second Substitute Eighteenth Revised Sheet Nos. 57(i) and 57(ii) and Substitute Sixth Revised Sheet No. 57(v) reflect revised current PGA rates for the months of February, March and April, 1989. The tariff sheets were filed as an Out of Cycle PGA to reflect the latest estimated gas cost as provided to Great Lakes by its sole supplier of natural gas, TransCanada PipeLines Limited ("TransCanada"). These pricing arrangements were the result of contract renegotiation between each of Great Lakes' resale customers and the supplier.

Great Lakes states that Second Substitute Eighteenth Revised Sheet Nos. 57(i) and 57(ii), proposed to be effective February 1, 1989, reflect a surcharge rate which expires on February 28, 1989. Second Substitute Nineteenth Revised Sheet Nos. 57(i) and 57(ii) were filed in order to reflect the termination of the surcharge rate and were proposed to be effective on March 1, 1989.

Great Lakes requested waiver of the notice requirements of the provisions of Section 154.309 of the Commission's Regulations and any other necessary waivers so as to permit the above tariff sheets to become effective as requested in order to implement the gas pricing agreements between Great Lakes' resale customers and TransCanada on a timely basis.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 10, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 89-5346 Filed 3-7-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM89-5-17-000]

**Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff**

March 3, 1989.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on February 24, 1989 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies of the following tariff sheets:

Fifth Revised Sheet No. 64
Fifth Revised Sheet No. 65
Fifth Revised Sheet No. 66
Fifth Revised Sheet No. 67

Texas Eastern states that this filing is being made in compliance with the Commission's order on September 16, 1988 in Docket No. RP88-80-007 requiring Texas Eastern to track any modifications of Southern Natural gas Company's (Southern) flowthrough charges in Southern's Docket No. RP88-229 of take-or-pay charges from United Gas Pipe Line Company.

Texas Eastern states that on Feb. 2, 1989, the Commission approved tariff sheets filed by Southern on January 4, 1989 in Docket No. TM89-2-7-000. Southern originally tendered the filing on December 16, 1988 in Docket No. RP88-229 reflecting the flowthrough to Southern's customers of additional take-or-pay costs allocated to Southern by United Gas Pipe Line Company (United) in United's Docket No. RP88-264. These additional costs were allocated to Southern by United in United's November 30, 1988 filing in Docket Nos. RP88-27-000 and RP88-264-000. Pursuant to the allocation methodology proposed by Southern, Southern will now bill and recover from Texas Eastern an aggregate principal amount of $2,042,789, excluding amortization interest, by means of a monthly charge, including amortization interest, of $47,466 over a period of fifty-six months beginning Janaury 1, 1989. The aggregate principal amount of $2,042,789 represents $1,994,848 flowed through to Texas Eastern by Southern from United's Docket No. RP88-27-006 as described in Texas Eastern's filing on October 24, 1988 in Docket No. RP88-80-011 and approved by the Commission on January 13, 1989, and the additional amount of $47,941 flowed through to Texas Eastern by Southern from United's Docket No. RP88-264.

Texas Eastern states that the tariff sheets proposed are filed solely to track modifications filed by Southern on January 4, 1989. Fifth Revised Sheet Nos. 64 through 67 set forth the principal amount plus the allocation factor for carrying costs that each Texas Eastern customer will be required to pay in order to recover Southern's flowthrough of United take-or-pay charges in Docket No. RP88-229 billed to Texas Eastern by Southern. Workpapers setting forth Texas Eastern's determinaiton of the allocation factor for the total principal amount (which excludes a predetermined carrying charge) and a breakdown of the monthly principal amounts (which include a predetermined carrying charge) each Texas Eastern customer will be required to pay are set forth on Appendix A, attached to the filing.

The proposed effective date of the above tariff sheets is January 1, 1989 to coincide with the date Southern will commence billing Texas Eastern.

Copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions. In addition, Texas Eastern is mailing a copy of this filing to all parties of record in Docket No. RP88-80.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 10, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 89-5347 Filed 3-7-89 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM89-4-17-000]

**Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff**

March 3, 1989.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on February 24, 1989 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies of the following tariff sheets:

Sixth Revised Sheet No. 68
Sixth Revised Sheet No. 69
Sixth Revised Sheet No. 70
Sixth Revised Sheet No. 71

Texas Eastern states that this filing is made in compliance with the



Commission's order on October 7, 1988 in Docket No. RP88-251-000 requiring Texas Eastern to track any modifications to Texas Gas Transmission Corporation's (Texas Gas) take-or-pay charges in Texas Gas's Docket No. RP88-230.

Texas Eastern states that on Feb. 10, 1989 in Docket No. TM89-2-18-000, the Commission accepted tariff sheets filed by Texas Gas on January 13, 1989. The January 13 filing revised fixed take-or-pay costs pursuant to Texas Gas's Docket No. RP88-230 to recover take-or-pay costs to be billed through a demand surcharge by Tennessee Gas Pipeline Company (Tennessee). Tennessee's take-or-pay surcharge is effective for a six month period from January 1, 1989 through June 30, 1989 to recover costs incurred from June 1, 1988 through November 30, 1988. Texas Gas stated in its original filing in Docket No. RP88-230 on August 8, 1988 that it would file tariff sheets to be effective February 1 and August 1, corresponding with Tennessee's tariff sheets to be effective January 1 and July 1. Texas Eastern's portion of the total principal amount of Tennessee's take-or-pay charges billed by Texas Gas is $14,632 to be amortized over the six month period beginning February 1, 1989. This is a decrease in the total principal amount of $62,323 for the prior six month period.

Texas Eastern states that these proposed tariff sheets are being filed solely to track modifications made by Texas Gas on January 13, 1989. Sixth Revised Sheet Nos. 68 through 71 set forth the monthly principal amount plus the allocation factor for carrying costs that each Texas Eastern customer will be required to pay in order to recover Texas Gas's take-or-pay charges billed to Texas Eastern pursuant to Texas Gas's filing on January 13, 1989. Workpapers setting forth Texas Eastern's determination of the allocation factor for the principal amount (which include a predetermined carrying charge) and a breakdown of the total and monthly principal amounts (which include a predetermined carrying charge) each Texas Eastern customer will be required to pay are set forth under Appendix A, attached to the filing.

The proposed effective date of the above tariff sheets is April 1, 1989, corresponding with the six month amortization period used by Tennessee and Texas Gas.

Copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions. In addition, Texas Eastern is mailing a copy of this filing to all parties of record in Docket No. RP88-251.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 10, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 89-5348 Filed 3-7-89; 8:45 am]

BILLING CODE 6717-01-M

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-3533-8]

**Agency Information Collection Activities Under OMB Review**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

**FOR FURTHER INFORMATION CONTACT:** Sandy Farmer at EPA, (202 382-2740).

**SUPPLEMENTARY INFORMATION:**

**Office of Water Regulations and Standards**

*Title:* Pharmaceutical Industry Survey (Phase I: Screener Questionnaire (EPA ICR # 1460). This is a new collection.

*Abstract:* The Pharmaceutical Screener Questionnaire for 1988 will collect information on subcategory activity and wastewater discharge practices from all known pharmaceutical manufacturers in the United States and its territories. The information provided in response to this questionnaire will enable the Agency to determine which facilities could be subject to new and/or revised regulations.

*Burden Statement:* The estimated average public reporting and recordkeeping burden for this collection of information is 1 hour per respondent. This estimate includes the time required to fill out the questionnaire and the little, if any, time required to consult existing records.

*Respondents:* All manufacturers or producers of pharmaceutical products in the United States and its territories.

*Estimated No. of Respondents:* 1100.

*Estimated Total Burden on Respondents:* 1100 hours.

*Frequency of Collection:* 1 response.

Send comments regarding the burden estimate, or any other aspect of these information collections, including suggestions for reducing the burden to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223), 401 M Street, SW., Washington, DC 20460

and

Tim Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place, NW., Washington, DC 20503, (Telephone (202) 395-3084).

**OMB Responses to Agency PRA Clearance Requests**

EPA ICR #1485; Quality Control Recordkeeping for Hazardous Waste Testing; was approved 02/09/89; OMB # 2050-0097; expires 12/31/91.

EPA ICR #0143; Recordkeeping Requirements for Producers of Pesticides; was approved 02/29/89; OMB #2070-0028; expires 02/29/89.

EPA ICR #0783.07; Motor Vehicle Emission Certification and Fuel Economy Labeling Program (Emission Standards for Methanol-Fueled Vehicles); was approved 02/09/89; OMB #2060-0104; expires 08/31/89.

EPA ICR #0559; Application for Reference or Equivalent Method Determination; was approved 02/09/89; OMB #2060-0005; expires 02/29/92.

EPA ICR #0226.04; Application for Permit to Discharge Wastewater and Associated Regulations; was disapproved 02/09/89.

Date: March 1, 1989.

**Paul Lapsley,**

*Information and Regulatory Systems Division.*

[FR Doc. 89-5335 Filed 3-7-89; 8:45 am]

BILLING CODE 6560-50-M

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[OPP-36169; FRL-3531-6]

## Addenda on Data Reporting to Pesticide Assessment Guidelines

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Request for comments.

**SUMMARY:** EPA is making available, for public comment, proposed addenda to the following studies in the Pesticide Assessment Guidelines: acute oral toxicity, acute dermal toxicity, repeated dose (21-day) and subchronic (90-day) dermal toxicity, reproductive and fertility effects, and mutagenicity studies. The addenda would supersede paragraphs in the Guidelines on data reporting and would provide a format for the preparation of study reports by those submitting data to EPA. This will increase the efficiency of pesticide registration and other regulatory activities. Copies of the proposed addenda are available at the address listed below for the Public Docket and Freedom of Information Section.

**DATE:** Comments, identified by the docket control number OPP-36169 must be received on or before April 7, 1989.

**ADDRESS:** Submit three copies of written comments, identified with the docket control number "OPP-36169" by mail to: Public Docket and Freedom of Information Section, Field Operations Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. In person, deliver comments to: Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Copies of the draft guidelines are also available at this above address.

**FOR FURTHER INFORMATION CONTACT:** Robert P. Zendzian, Health Effects Division (TS-769C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Office location and telephone number: Rm. 816D, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-5495).

**SUPPLEMENTARY INFORMATION:** The Pesticide Assessment Guidelines describe protocols for performing tests to support the registration of pesticides under the Federal Food, Drug, and Cosmetic Act and the Federal Insecticide, Fungicide, and Rodenticide Act. A description of the organization of these Guidelines and their relationship to data requirements, along with the necessary information for ordering them from the National Technical Information Service, appears in 40 CFR 158.115, published in the **Federal Register** of October 24, 1984 (49 FR 42856). The Data Reporting addenda will clarify sections in the Guidelines on data reporting and provide formats which guide pesticide registrants in report preparation. With consistent and complete reports, the Agency will spend less time in reorganizing data, retrieving information, and resolving misunderstandings.

This is the sixth set of Data Reporting addenda which has been made available for public comment. Public comment for the other sets were requested in the **Federal Register** of July 31, 1985 (50 FR 31010); May 21, 1986 (51 FR 18660); October 15, 1986 (51 FR 36753); March 25, 1987 (52 FR 9536); and May 25, 1988 (53 FR 18886). Most of these guidelines have been published by the National Technical Information Service as announced in the **Federal Register** of November 26, 1986 (51 FR 42931); September 23, 1987 (52 FR 35766); January 28, 1988 (53 FR 2535); April 13, 1988 (53 FR 12186); June 1, 1988 (53 FR 20011) and January 23, 1989 (54 FR 3136). The unpublished documents are being revised for publication in the near future. The specific subdivisions and series now being considered are: Subdivision F, Series 81-1, Acute Oral Toxicity Study; Subdivision F, Series 81-2, Acute Dermal Toxicity Study; Subdivision F, Series 82-2, Repeated Dose Dermal Toxicity Study (21-days); Subdivision F, Series 82-3, Subchronic Dermal Toxicity Study (90-days); Subdivision F, Series 83-4, Reproductive and Fertility Effects; and Subdivision F, Series 84-2, Mutagenicity Studies. This is expected to be the last set of Data Reporting Guidelines developed for this effort.

Drafts have been reviewed by the Agency. Comments on this set of reporting formats will be considered by the Agency in preparing a final draft for publication by the National Technical Information Service.

Dated: February 23, 1989.

**William L. Burnam,**

*Acting Director, Health Effects Division, Office of Pesticide Programs.*

[FR Doc. 89-4847 Filed 3-7-89; 8:45 am]

BILLING CODE 6560-50-M

[PF-514; FRL-3533-4]

## American Cyanamid Co.; Withdrawal of Pesticide Tolerance Petitions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the withdrawal without prejudice of pesticide petitions (PP) 1F2433 by the American Cyanamid Co. and PP 6F1851 by the E.I. Du Pont de Nemours & Co.

**ADDRESS:** By mail, submit written comments, identified by the document control number [PF-514], to: Public Docket and Freedom of Information Section, Field Operations Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Room. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** By mail: William Miller, Product Manager (PM) 16, Office of Pesticide Programs, Registration Division, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

In person, bring comments to: Room. 211, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-2600.

**SUPPLEMENTARY INFORMATION:** EPA gives notice that it has received two requests to withdraw without prejudice, as specified under 40 CFR 180.8, pesticide petitions as described below.

### Withdrawn Filings of Pesticide Petitions

1. *PP 1F2433.* The American Cyanamid Co., Agricultural Research Division, P.O. Box 400, Princeton, NJ 08540, has requested the withdrawal without prejudice of PP 1F2433 proposing to amend 40 CFR 180.352 by establishing tolerances for the combined residues of the insecticide terbufos (S-[(1,1-dimethyl)thio]methyl]-*O,O*-diethyl phosphorodithioate) and its cholinesterase-inhibiting metabolites in or on the harvestable portions of the following raw agricultural commodities: cabbage, broccoli, and cauliflower at 0.05 part per million. Notice of the initial filing appeared in the **Federal Register** of December 23, 1980 (45 FR 84849). PP 1F2433 was amended in the **Federal Register** of January 13, 1982 (47 FR 1405), proposing to increase the tolerance levels for cabbage, broccoli, and cauliflower from 0.05 ppm to 0.20 ppm.

2. *PP 6F1851.* E.I. Du Pont de Nemours & Co., Walker's Mill, Barley Mill Plaza, Wilmington, DE 19898, has requested the withdrawal without prejudice of PP 6F1851 proposing to amend 40 CFR 180.298 by establishing tolerances for residues of the insecticide dimethyl phosphate of 3-hydroxy-N-methyl-ciscrotonamide in or on the raw agricultural commodities sweet corn kernels at 0.3 ppm, field corn grain at 0.2 ppm, and field corn fodder and field corn forage (including silage) at 2.0 ppm. Notice of the petition was published in the **Federal Register** of November 26, 1976 (41 FR 52102). The petition was originally filed by the Shell Chemical Co., but was transferred to the E.I. Du Pont de Nemours & Co.

**Authority:** 7 U.S.C. 136a.

**Dated:** February 24, 1989.

**Anne E. Lindsay,**

*Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 89-5213 Filed 3-7-89; 8:45 am]

BILLING CODE 6560-50-M



[OPP-30282A; FRL-3533-8]

## ICI Americas, Inc.; Approval of Pesticide Product Registrations

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces Agency approval of an application submitted by ICI Americas, Inc., to conditionally register the pesticide product Force® 1.5G Insecticide containing an active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(7) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

**FOR FURTHER INFORMATION CONTACT:** *By mail:* George LaRocca, Product Manager (PM) 15, Registration Division (TS-767C), Office of Pesticide Programs, 401 M Street, SW., Washington, DC 20460.

*Office location and telephone number:* Rm. 204, TS-767C, Environmental Protection Agency, 1921 Jefferson Davis Hwy, Arlington, VA 22202, (703-557-2400).

**SUPPLEMENTARY INFORMATION:** EPA issued a notice, published in the **Federal Register** of August 5, 1987 (52 FR 29063), which announced that ICI Americas, Inc., Agricultural Chemicals Div., Wilmington, DE 19897, had submitted an application to conditionally register the pesticide product Force® 1.5G an insecticide containing the active ingredient 2,3,5,6-tetrafluoro-4-methylbenzyl-cis-3-[(Z)2-chloro-3,3,3-trifluoroprop-1-enyl]-2,2-dimethylcyclopropanecarboxylate at 1.5 percent; an active ingredient not included in any previously registered product.

The application was approved on January 13, 1989, as Force® 1.5G Insecticide for restricted use on field corn and popcorn.

The active ingredient identified in the above application of August 5, 1987 (52 FR 29063), was amended to read "tefluthrin (2,3,5,6-tetrafluoro-4-methylphenyl)methyl-(1 *alpha*, 3 *alpha*)-(*Z*)-(+)-3-(2-chloro-3,3,3-trifluoro-1-propenyl)2,2-dimethylcyclopropanecarboxylate." The product was assigned EPA Registration No. 10182-130.

A conditional registration may be granted under section 3(c)(7)(C) of FIFRA for a new active ingredient where certain data are lacking, on condition that such data are received by the end of the conditional registration period and do not meet or exceed the risk criteria set forth in 40 CFR 154.7; that use of the pesticide during the conditional registration period will not cause unreasonable adverse effects; and that use of the pesticide is in the public interest.

The Agency has considered the available data on the risks associated with the proposed use of tefluthrin, and information on social, economic, and environmental benefits to be derived from such use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of tefluthrin during the period of conditional registration will not cause any unreasonable adverse effect on the environment, and that use of the pesticide is, in the public interest.

In January 1989, the Agency issued a conditional registration for tefluthrin with a final expiration date of July 31, 1993. The registration was made conditional since certain data were lacking. In order to: (1) Evaluate the effects of tefluthrin on fish and aquatic organisms, (2) establish a permanent acceptable daily intake (ADI) and, (3) establish a crop rotation interval, several data requirements must be fulfilled during the period of conditional registration. Such requirements include an aquatic invertebrate life-cycle test (72-4) which is due by August 1989; a fish life-cycle study (72-5) which must be submitted to the Agency by August 1990; an aquatic residue monitoring study (70-1) which must be submitted by March 1991; and a field rotational crop study, (165-2) which must be submitted by March 1993. In addition, unfulfilled data requirements in the area of toxicology comprise a 21-day feeding study and a 21-day dermal study, both in the rat and both designed to investigate serum electrolytes, including magnesium. These studies must be submitted to the Agency by April 1989.

Consistent with section 3(c)(7)(C), the Agency has determined that this conditional registration is in the public interest. Use of this pesticide is of significance to the user community, and appropriate labeling, use directions, and other measures have been taken to ensure that use of the pesticide will not result in unreasonable adverse effects to man and the environment.

More detailed information on this conditional registration is contained in a Chemical Fact Sheet on tefluthrin.

A copy of this fact sheet, which provides a summary description of the chemical, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from Registration Division (TS-767C), Environmental Protection Agency, Registration Support and Emergency Response Branch, 401 M St., SW., Washington, DC 20460.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label and the list of data references used to support registration are available for public inspection in the office of the Product Manager. The data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental

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Protection Agency, Rm. 236, CM#2, Arlington, VA 22202 (703–557–4460). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A–101), 401 M St., SW., Washington, DC 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

**Authority:** 7 U.S.C. 136.

Dated: February 17, 1989.

**Douglas D. Campt,**

*Director, Office of Pesticide Programs.*

[FR Doc. 89–5214 Filed 3–7–89; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–400026; FRL–3534–5]

## Emergency Planning and Community Right-to-Know; Availability of Guidance Materials, Brochures, and Electronic Files

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of availability.

**SUMMARY:** The EPA has prepared a variety of guidance documents and electronic files to assist facilities in understanding and complying with section 313 of the Emergency Planning and Community Right-to-Know Act. A number of documents produced by EPA are available in "camera ready" form or on disc. All of these documents are currently available at no charge either through the address given under **ADDRESS** or the address or telephone number given under **FOR FURTHER INFORMATION CONTACT.**

**ADDRESS:** The "Reporting Package" may now be obtained from the following address: Section 313 Document Distribution Center, P.O. Box 12505, Cincinnati, OH 45212.

**FOR FURTHER INFORMATION CONTACT:** Eileen Gibson, Emergency Planning and Community Right-to-Know Information Hotline, U.S. Environmental Protection Agency, 0S–120, 401 M St., SW., Washington, DC 20460, Toll Free: 1–800–535–0202, Washington, DC and Alaska (202) 479–2449.

**SUPPLEMENTARY INFORMATION:**

### A. Reporting Package for 1988 Reporting Year

EPA has prepared a document titled the "Toxic Release Inventory Reporting Package" which carries document number EPA 560/4–89–001. EPA will be mailing this document to facilities that reported under section 313 for the 1987 reporting year.

The "Reporting Package" contains the following documents:

1. 1988 Revised Form R and Instructions—step by step instructions for completing the toxic chemical release inventory reporting Form R, sample of completed Form R, list of the State section 313 contacts, and a copy of Form R.

2. Revised Question and Answer Document—contains answers to frequently asked questions about the section 313 rule. It is organized by subject area and supplements the instructions for completing Form R.

3. Title III List of Lists—consolidated list of chemicals subject to reporting under Title III of SARA. This document contains the chemical name, CAS Registry, number, and specific information on reporting requirements(s) to which the chemical is subject.

4. Section 313 Final Rule (53 FR 4500, February 16, 1988).

5. Magnetic Media Submission Instructions—reports under section 313 may be submitted by computer tape or floppy disc. This document provides record format specifications and certification requirements for the use of magnetic media. These specifications must be followed exactly for EPA to accept the magnetic media submission.

The "Reporting Package" also contains information about other available support documents. When requesting the "Reporting Package" be sure to specify document number EPA 560/4–89–001.

### B. Materials Available to Persons Developing Training or Other Compliance Aids

Persons developing training courses or software to assist in compliance with section 313 requirements may obtain "camera ready" copy of certain printed documents as follows:

1. TRI Trainer's Guide—provides the basic course content, presentation material, and reference sources that may be used to develop a complete course on section 313 reporting. This guide is supplemented by an accompanying packet of background materials that may be reproduced for course participants.

2. Section 313 Brochure—this 24 page brochure alerts businesses to their reporting obligations under section 313 and helps them determine whether their facility is required to report. The brochure contains the section 313 EPA Regional contacts, the section 313 toxic chemical list, and a description of the Standard Industrial Classification (SIC) Groups subject to section 313 reporting.

3. Section 313 Brochure (Spanish language version).

4. 1988 Revised Form R and Instructions.

5. Revised Question and Answer Document.

6. Title III List of Lists (print copy).

7. Magnetic Media Submission Instructions.

In addition there are electronic files available for the following two documents: Text of the Revised 1988 Instructions for Completion of Form R and text of the Question and Answer document. These text files were developed using Wordperfect 4.2 software. Please send a separate disc for each file. When requesting these files you must send a blank 5¼ inch diskette, double sided, double density formatted for IBM or compatible DOS 3.0 or higher. Send the diskette(s) in a stamped, self-addressed mailer to the address provided under **FOR FURTHER INFORMATION CONTACT.**

Another set of electronic files is also available. EPA has developed a PC based interpretive guidance system that allows for quick searching of a large number of questions, the rule, and other policy documents. Most of the questions and answers are the same as appear in the Question and Answer document. To use these files it is necessary to obtain data base searching software. The Agency is currently using a software package titled "Ask Sam" by Seaside Software, Inc. Other data base searching software may be used, however. The interpretive guidance system data files (without the operating software) may be obtained by submitting a 10 megabyte Bernoulli cartridge formatted for IBM or compatible DOS version 3.0 or higher with an appropriate stamped, self-addressed mailer to the address given under **FOR FURTHER INFORMATION CONTACT.**

### C. List of Lists Files Available on Diskette

A diskette version of the List of Lists is available from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, (703) 487–4650. This diskette is 5¼ inch IBM compatible. The request accession no. is PB88–193255. ($50.00).

Dated: February 27, 1989.

**Michael H. Shapiro,**

*Director, Economics & Technology Division, Office of Toxic Substances.*

[FR Doc. 89–5335 Filed 3–7–89; 8:45 am]

BILLING CODE 6560–50–M



## FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 87–339, DA 89–102]

### Establishment of a Program to Monitor the Impact of Joint Board Decisions

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** This Order extends the filing date for reports identifying the impact of the new Part 36 Separations Manual from March 1, 1989, to May 1, 1989. See Report and Order published September 28, 1987 (52 FR 36299). These reports are part of the Docket 86–297 Joint Board's monitoring program designed to assess the jurisdictional impact of the new Part 36 Separations Manual. The extension will allow the carriers more time to compile actual 1988 data and file complete reports.

**DATES:** *Effective* January 30, 1989; reports may be filed until May 1, 1989.

**FOR FURTHER INFORMATION CONTACT:** Diane Shaw-Gill at (202) 632–7500.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Chief, Common Carrier Bureau's Memorandum Opinion and Order, CC Docket 87–339, DA 89–102, adopted January 30, 1989 and released February 8, 1989.

The full text of this Order is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The full text of this Order may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037 (202) 857–3800.

Federal Communications Commission.

**Donna R. Searcy,**

*Secretary.*

[FR Doc. 89–4503 Filed 3–7–89; 8:45 am]

BILLING CODE 6712–01–M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Type:* New Collection

*Title:* Great Lakes Planning Assistance

*Abstract:* This legislation allows for each Great Lake State to apply for a one-time grant of up to $250,000. They must apply for the grant within one year of enactment. Since funds have not been appropriated, we have determined that a Technical Proposal will serve as this initial application. States will then remain eligible for the grant until such time as funds are appropriated.

*Type of Respondents:* State or local governments

*Estimate of Total Annual Reporting and Recordkeeping Burden:* 240

*Number of Respondents:* 8

*Estimated Average Burden Hours Per Response:* 30

*Frequency of Response:* On Occasion

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646–2624, 500 C Street, SW., Washington, DC 20472.

Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to the FEMA Clearance Officer at the above address; and to Francine Picoult, (202) 395–7231, Office of Management and Budget, 3235 NEOB, Washington, DC 20503 within two weeks of this notice.

Date: March 1, 1989.

**Wesley C. Moore,**

*Director, Office of Administrative Support.*

[FR Doc. 89–5309 Filed 3–7–89; 8:45 am]

BILLING CODE 6718–01–M

## FEDERAL HOME LOAN BANK BOARD

### Alamo Savings Association of Texas, San Antonio, TX; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained is section 406(c)(1)(B)(i)(I) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B)(i)(I) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Alamo Savings Association of Texas, San Antonio, Texas, on February 28, 1989.

Dated: March 2, 1989.

By the Federal Home Loan Bank Board.

**John F. Ghizzoni,**

*Assistant Secretary.*

[FR Doc. 89–5413 Filed 3–7–89; 8:45 am]

BILLING CODE 6720–01–M

### The Barber County Savings and Loan Association, Medicine Lodge, KS; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 406(c)(1)(B)(i)(I) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B)(i)(I) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for the Barber County Savings & Loan Association, Medicine Lodge, Kansas on February 28, 1989.

Dated: March 2, 1989.

By the Federal Home Loan Bank Board.

**John F. Ghizzoni,**

*Assistant Secretary.*

[FR Doc. 89–5414 Filed 3–7–89; 8:45 am]

BILLING CODE 6720–01–M

### La Hacienda Savings Association, San Diego, TX; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 406(c)(1)(B)(i)(I) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B)(i)(I) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for La Hacienda Savings Association, San Diego, Texas on February 28, 1989.

Dated: March 2, 1989.

By the Federal Home Loan Bank Board.

**John F. Ghizzoni,**

*Assistant Secretary.*

[FR Doc. 89–5417 Filed 3–7–89; 8:45 am]

BILLING CODE 6720–01–M

### Permian Savings and Loan Association, Kermit, TX; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained insection 406(c)(1)(B)(i)(I) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B)(i)(I) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Permian Savings and Loan Association, Kermit, Texas, on February 28, 1989.

Dated: March 2, 1989.

By the Federal Home Loan Bank Board.

**John F. Ghizzoni,**

*Assistant Secretary.*

[FR Doc. 89–5418 Filed 3–7–89; 8:45 am]

BILLING CODE 6720–01–M

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**Southmost Savings & Loan Association, Brownsville, TX; Appointment of Conservator**

Notice is hereby given that pursuant to the authority contained in section 406(c)(1)(B)(i)(I) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B)(i)(I) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Southmost Savings & Loan Association, Brownsville, Texas on February 28, 1989.

Dated: March 2, 1989.

By the Federal Home Loan Bank Board.

**John F. Ghizzoni,**

*Assistant Secretary.*

[FR Doc. 89-5415 Filed 3-7-89; 8:45 am]

BILLING CODE 6720-01-M

**Suburban Savings Association, San Antonio; Appointment of Conservator**

Notice is hereby given that pursuant to the authority contained in section 406(c)(1)(B)(i)(I) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B)(i)(I) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Suburban Savings Association, San Antonio, Texas on February 28, 1989.

Dated: March 2, 1989.

By the Federal Home Loan Bank Board.

**John F. Ghizzoni,**

*Assistant Secretary.*

[FR Doc. 89-5416 Filed 3-7-89; 8:45 am]

BILLING CODE 6720-01-M

**Bexar Savings Association, San Antonio, TX; Appointment of Conservator**

Notice is hereby given that pursuant to the authority contained in section 406(c)(1)(B)(i)(I) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B)(i)(I) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Bexar Savings Association, San Antonio, Texas on February 28, 1989.

Dated: March 3, 1989.

By the Federal Home Loan Bank Board.

**John F. Ghizzoni,**

*Assistant Secretary.*

[FR Doc. 89-5390 Filed 3-7-89; 8:45 am]

BILLING CODE 6720-01-M

**Colonial Savings Association of America; Liberal, KS; Appointment of Conservator**

Notice is hereby given that pursuant to the authority contained in section 406(c)(1)(B)(i)(I) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B)(i)(I) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Colonial Savings Association of America, Liberal Kansas on February 28, 1989.

Dated: March 3, 1989.

By the Federal Home Loan Bank Board.

**John F. Ghizzoni,**

*Assistant Secretary.*

[FR Doc. 89-5397 Filed 3-7-89; 8:45 am]

BILLING CODE 6720-01-M

**First State Savings Bank, F.S.B., Mountain Home, AR; Appointment of Conservator**

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A)(i), of the Home Owner's Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A)(i), and 12 U.S.C. 1701c(c)(2) (1982), as amended, the Federal Home Loan Bank Board has duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for First State Savings Bank, F.S.B., Mountain Home, Arkansas on February 28, 1989.

Dated: March 2, 1989.

By the Federal Home Loan Bank Board.

**John F. Ghizzoni,**

*Assistant Secretary.*

[FR Doc. 89-5398 Filed 3-7-89; 8:45 am]

BILLING CODE 6720-01-M

**First State Savings Association, San Antonio, TX; Appointment of Conservator**

Notice is hereby given that pursuant to the authority contained in section 406(c)(1)(B)(i)(I) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B)(i)(I) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for First State Savings Association, San Antonio, Texas on February 28, 1989.

Dated: March 3, 1989.

By the Federal Home Loan Bank Board.

**John F. Ghizzoni,**

*Assistant Secretary.*

[FR Doc. 89-5411 Filed 3-7-89; 8:45 am]

BILLING CODE 6720-01-M

**Home Savings Bank, Anchorage, AL; Appointment of Conservator**

Notice is hereby given that pursuant to the authority contained in section 406(c)(1)(B)(i)(I) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B)(i)(I) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Home Savings Bank, Anchorage, Alaska, on February 28, 1989.

Dated: March 3, 1989.

By the Federal Home Loan Bank Board.

**John F. Ghizzoni,**

*Assistant Secretary.*

[FR Doc. 89-5403 Filed 3-7-89; 8:45 am]

BILLING CODE 6720-01-M

**Home Federal Savings and Loan Association, Mountain Home, AR; Appointment of Conservator**

Notice is hereby given that pursuant to the authority contained in section 406(c)(1)(B)(i)(I) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B)(i)(I) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Home Federal Savings and Loan Association Mountain Home, Arkansas on February 28, 1989.

Dated: March 3, 1989.

By the Federal Home Loan Bank Board.

**John F. Ghizzoni,**

*Assistant Secretary.*

[FR Doc. 89-5399 Filed 3-7-89; 8:45 am]

BILLING CODE 6720-01-M

**Madison Guaranty Savings and Loan Association, McCrory, AR; Appointment of Conservator**

Notice is hereby given that pursuant to the authority contained in section 406(c)(1)(B)(i)(I) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B)(i)(I) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Madison Guaranty Savings and Loan Association, McCrory, Arkansas on February 28, 1989.

Dated: March 2, 1989.

By the Federal Home Loan Bank Board.

**John F. Ghizzoni,**

*Assistant Secretary.*

[FR Doc. 89-5412 Filed 3-7-89; 8:45 am]

BILLING CODE 6720-01-M



**Topeka Savings, a Federal Savings and Loan Association, FS&LA Topeka, KS; Appointment of Conservator**

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A)(i), of the Home Owner's Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A)(i), and 12 U.S.C. 1701c (c)(2)(1982), as amended, the Federal Home Loan Bank Board has duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Topeka Savings, a Federal Savings & Loan Association, Topeka, Kansas on February 28, 1989.

Dated: March 2, 1989.

By the Federal Home Loan Bank Board.

**John F. Ghizzoni,**

*Assistant Secretary.*

[FR Doc. 89-5400 Filed 3-7-89; 8:45 am]

BILLING CODE 6720-01-M

**San Antonio Savings Association, San Antonio, TX; Appointment of Conservator**

Notice is hereby given that pursuant to the authority contained in section 406(c)(1)(B)(i)(I) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B)(i)(I) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for San Antonio Savings Association, San Antonio, Texas, on February 28, 1989.

Dated: March 3, 1989.

By the Federal Home Loan Bank Board.

**John F. Ghizzoni,**

*Assistant Secretary.*

[FR Doc. 89-5402 Filed 3-7-89; 8:45 am]

BILLING CODE 6720-01-M

**Vision Banc Savings Association, Kingsville, TX; Appointment of Conservator**

Notice is hereby given that pursuant to the authority contained in section 406(c)(1)(B)(i)(I) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B)(i)(I) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Vision Banc Savings Association, Kingsville, Texas on February 28, 1989.

Dated: March 3, 1989.

By the Federal Home Loan Bank Board.

**John F. Ghizzoni,**

*Assistant Secretary.*

[FR Doc. 89-5404 Filed 3-7-89; 8:45 am]

BILLING CODE 6720-01-M

## FEDERAL MARITIME COMMISSION

**Notice of Agreement(s) Filed**

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments and protests are found in §§ 560.7 and/or 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

*Agreement No.:* 224-200222.

*Title:* Part of Houston Authority Terminal Agreement.

*Parties:* Port of Houston Authority of Harris County, Texas (Port); Southside Services Incorporated (SSC).

*Synopsis:* The Agreement provides that SSC will perform or have performed freight handling services at the Port's Wharves and Transit Sheds Number 27 (facility). The services include the loading and unloading of cargo to or from rail cars and motor vehicles at the terminal facility, and allocating space within the facility to accommodate the cargo of ships berthing at the facility. The Agreement also provides that SSC will guarantee the Port an income of $0.3125 per square foot of shedded space and cargo movement for the Agreement's term of 22.5% of a ton per square foot of shedded space. The Agreement's term expires April 30, 1989.

*Filing Party:* Algenita Scott Davis, Counsel, Port of Houston Authority, P.O. Box 2562, Houston, TX 77252-2562.

By Order of the Federal Maritime Commission.

**Joseph C. Polking,**

*Secretary.*

Dated: March 3, 1989.

[FR Doc. 89-5419 Filed 3-7-89; 8:45 am]

BILLING CODE 6730-01-M

**Agreement(s) Filed**

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments and protests are found in §§ 560.7 and/or 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224-200151-001.

*Title:* Mississippi State Port Authority Terminal Agreement.

*Parties:* Mississippi State Port Authority (MSPA); Carter-Green-Redd, Inc. (CGR).

*Synopsis:* The Agreement amends the basic lease agreement (Agreement No. 224-200151) to defer commencement of the five (5) year lease period provided in Article V of the basic agreement.

*Filing Party:* Sandra Grimes, Administrative Assistant, Public Relations, Mississippi State Port Authority at Gulfport, P.O. Box 40, Gulfport, MS 39502.

By Order of the Federal Maritime Commission.

**Joseph C. Polking,**

*Secretary.*

Dated: March 3, 1989.

[FR Doc. 89-5374 Filed 3-7-89; 8:45 am]

BILLING CODE 6730-01-M

**Agreement(s) Filed**

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each

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agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200224.

*Title:* Georgia Ports Authority Terminal Agreement.

*Parties:* Georgia Ports Authority (GPA) Chiquite Brands, Inc. (CB)).

*Synopsis:* The Agreement provides for preferential berthing of CB's vessels at GPA's Containerport facility. It also provides that CB will guarantee GPA a minimum of 100,000 tons of cargo per year for certain wharfage incentive rates on CB's cargo moving through the facility. In addition, CB will pay GPA for dockage, container crane rental and other services at GPA's published tariff rates.

Agreement No.: 224-200223.

*Title:* Philadelphia Port Corporation Terminal Agreement.

*Parties:* Philadelphia Port Corporation (PPC); American Transport Lines, Linc. (ATL).

*Synopsis:* The Agreement provides for ATL to operate PPC's Tioga I Container Terminal under a non-exclusive preferential license guaranteed by ATL's parent, Crowley Marine Corporation. The License is subject to the right of PPC or its designee to also use the terminal for berthing of vessels and loading/unloading cargo.

By Order of the Federal Maritime Commission.

**Joseph C. Polking,**

*Secretary.*

Dated: March 3, 1989.

[FR Doc. 89-5375 Filed 3-7-89; 8:45 am]

BILLING CODE 6730-01-M

## FEDERAL RESERVE SYSTEM

### Golden Isles Financial Holdings, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 24, 1989.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Golden Isles Financial Holdings, Inc.*, Brunswick, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of The First Bank of Brunswick, Brunswick, Georgia, a de novo bank.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Hastings Financial Corporation*, Hastings, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of National Bank of Hastings, Hastings, Michigan.

2. *Lawrence L. Osborn Scholarship Trust*, Veedersburg, Indiana, to become a bank holding company by acquiring 13.5 percent of the voting shares of The Veedersburg State Bank, Veedersburg, Indiana.

C. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *First McKinley Corporation*, Denver, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank in Evanston, Evanston, Wyoming.

2. *MidAmerican Corporation*, Shawnee Mission, Kansas; to merge with Merchants Bancorporation, Inc., Topeka, Kansas, and thereby directly acquire First National Bank of Lawrence, Lawrence, Kansas, and Merchants National Bank of Topeka, Topeka, Kansas. MidAmerican seeks to retain its permanently grandfathered general insurance agency which sells insurance in a community of more than 5,000 persons.

D. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *City Bancorp, Inc.*, Wellington, Texas; to become a bank holding company by acquiring 88.67 percent of the voting shares of Security Bancshares, Inc., Wellington, Texas, and thereby indirectly acquire Security State Bank, Hedley, Texas, and City State Bank in Wellington, Wellington, Texas.

2. *Harvey Bancorporation, Inc.*, Dallas, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Preston Forum National Bank of Dallas, Dallas, Texas.

Board of Governors of the Federal Reserve System, March 2, 1989.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 89-5376 Filed 3-7-89; 8:45 am]

BILLING CODE 6210-01-M

### Philip J. Lunsford; Change in Bank Control; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 22, 1989.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Philip J. Lunsford*, St. Simons Island, Georgia, to acquire an additional 2.12 percent thereby increasing his share to 28.87 percent; and Tom R. Lundsford, Cleveland, Oklahoma, to acquire an additional 2.07 percent thereby increasing his share to 28.17 percent of the voting shares of Heritage Bancorp Company, Cleveland, Oklahoma, and thereby indirectly acquire First National Bank of Cleveland, Cleveland, Oklahoma.



Board of Governors of the Federal Reserve System, March 2, 1989.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 89-5379 Filed 3-7-89; 8:45 am]

BILLING CODE 6210-01-M

### NCNB Corp., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage de novo, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 24, 1989.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *NCNB Corporation*, Charlotte, North Carolina; to engage de novo through its subsidiary, Superior Life Insurance Company, Charlotte, North Carolina, in underwriting insurance, including home mortgage redemption insurance, that is directly related to extensions of credit by subsidiaries of NCNB Corporation and its subsidiaries and which is limited to ensuring the repayment of the outstanding balances due on such extensions of credit in the event of death, disability, or involuntary unemployment of the debtor pursuant to section 225.25(b)(8) of the Board's Regulation Y.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Northern Trust Corporation*, Chicago, Illinois; to engage de novo through its subsidiary, Northern Trust Company of New York, New York, New York, in trust company activities pursuant to § 225.25(b)(3) of the Board's Regulation Y. Comments on this application must be received by March 22, 1989.

2. *Star Financial Group, Inc.*, Marion, Indiana; to engage de novo through its subsidiary, Star Trust Company, Marion, Indiana, in trust company functions pursuant to § 225.25(b)(3) of the Board's Regulation Y.

C. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Grenada Sunburst System Corporation*, Grenada, Mississippi; to engage de novo through its subsidiary, Sunburst Financial Services, Inc., Jackson, Mississippi, in insurance sales, acting as insurance agent or broker in offices in which it is already otherwise engaged in business with respect to any insurance that is directly related to an extension of credit pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y. These activities will be conducted in the State of Mississippi.

2. *Heritage Bancorp Company*, Cleveland, Oklahoma; to engage de novo in insurance sales pursuant to § 225.25(b)(8)(iii); and making and servicing loans pursuant to § 225.25(b)(1) of the Board's Regulation Y. The insurance activities will be conducted in Cleveland, Oklahoma, and the loan activities will be conducted on a nationwide basis.

Board of Governors of the Federal Reserve System, March 2, 1989.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 89-5380 Filed 3-7-89; 8:45 am]

BILLING CODE 6210-01-M

### Southeast Banking Corporation, et al; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than March 29, 1989.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Southeast Banking Corporation*, Miami, Florida; to acquire Cobb Partners Financial, Inc., Boca Raton, Florida, and thereby engage in general mortgage banking activities, including the origination, purchase, sale and servicing of mortgage loans pursuant to § 225.25(b)(1) of the Board's Regulation Y.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230

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South LaSalle Street, Chicago, Illinois 60690:

1. *Kerndt Bank Services, Inc.*, Lansing, Iowa; to acquire Kerndt Brothers Agency, Inc., Lansing, Iowa, and thereby engage in insurance sales in small towns pursuant to § 225.25(b)(8)(iii); and operation of an insurance agency office in Waukon, Iowa, pursuant to § 225.25(b)(8)(vi) of the Board's Regulation Y.

C. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Northwest Corporation*, Minneapolis, Minnesota, and two of its subsidiaries, Norwest Financial Services, Inc., Des Moines, Iowa, and Norwest Financial, Inc., Des Moines, Iowa; to acquire substantially all of the assets and liabilities of ACTION Data Services, St. Louis, Missouri, a division of Control Data Corporation, and thereby engage in providing to others data processing and data transmission services, facilities (including data processing and data transmission hardware, software, documentation or operating personnel), data bases, or access to such services, facilities or data bases pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 2, 1989.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 89-5361 Filed 3-7-89; 8:45 am]

BILLING CODE 6210-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control

### Change in Method of Reporting Results of Sanitation Inspections of International Cruise Ships

**AGENCY:** Centers for Disease Control (CDC), Public Health Service, HHS.

**ACTION:** Change in the method of reporting the results of sanitation inspection of international cruise vessels.

**SUMMARY:** The method of reporting the results of sanitation inspection of international cruise vessels in the biweekly Summary of Sanitation Inspections of International Cruise Ships will be changed to include the numerical score achieved by vessels during the most recent sanitation inspection.

**EFFECTIVE DATE:** On or about March 17, 1989.

**FOR FURTHER INFORMATION CONTACT:** Linda Anderson, Chief, Special Programs Group, Center for Environmental Health and Injury Control, CDC, Atlanta, Georgia, 30333. Telephone: FTS: 236-4595, Commercial: (404) 488-4595.

**SUPPLEMENTARY INFORMATION:**

#### Purpose and Background

A request for public comment on a proposal to change the method of reporting the results of sanitation inspections of international cruise vessels in the biweekly Summary of Sanitation Inspections of International Cruise Ships was published in the **Federal Register** on Thursday, November 10, 1988 (53 FR 45584).

#### Discussion of Comments

The public notice of the intent to change the method of reporting the results of the sanitation inspections provided for a 60-day comment period. During the comment period, comments were received from 9 sources; one of which was the International Committee of Passenger Lines (ICPL) representing 19 separate cruise lines and their subsidiaries. Of the 9 comments received, 4 supported the Department's position and are not addressed in this notice. Discussion of the other substantive comments and the Department's response follows:

*Comment:* One commentor suggested that it is in the obvious self-interest of the cruise ship industry to be vitally interested in good health on cruise ships and to have a major commitment to providing a healthful cruise experience. The commentor stated that their company is totally committed to this goal of good health but believes the publication of numerical scores "is self-defeating in that it will lead to confusion as to the true state of health conditions existing onboard cruise ships."

*Response:* The Department agrees that it is in the best interest of the cruise ship industry to provide a healthful cruise experience. The Department does not agree that publication of the numerical scores achieved during sanitation inspections will lead to confusion. The Department believes that problems with the current reporting scheme will be resolved by the proposed change. For example, under the current reporting method, ships which just barely achieve a satisfactory rating (e.g., a score of 86) receive the same rating as ships which score 100. Conversely, ships which score 40 receive the same "unsatisfactory" rating as ships which score 85. Since the sanitation inspection is intended to reflect the level of sanitation on board the vessel at the time of inspection, reporting actual numerical scores would be more indicative of the level of sanitation on board the vessel at the time of the inspection than the current reporting of a Satisfactory/Unsatisfactory rating. This information would be most helpful to travel agents and the traveling public and would be an incentive for the vessel to achieve and maintain a high level of sanitation on board.

*Comment:* One commentor states there are a significant number of vessels which have maintained demonstratively high health standards with no incidents, which have historically received low scores because of the many problems which have existed in the past with the inspection and scoring system. Despite their excellent health records, these vessels will be in a position of having negative median scores reported for 5 years after the date when an equitable scoring and inspection system is implemented.

*Response:* The Department is not aware of any ships that meet the description outlined by the commentor. The Department believes that its scoring and inspection system is equitable.

*Comment:* Another commentor suggested the Department has often failed to undertake followup inspections resulting in numerous incidents of ships remaining in a "fail status for many months even years after conditions on board had been corrected." It would not be right for ships with good health records to be penalized for this past failure to inspect promptly after correction. In addition, another commentor states, to be meaningful, past median scores should reflect the fact that the Vessel Sanitation Program (VSP) provides for semiannual inspections. Recent inspection summaries ("green sheets") show that up to 20% or more of all ships have not been inspected for 10 months or more, with others not inspected since before September 1987.

*Response:* The Department acknowledges that during most of 1988 the Vessel Sanitation Program was not at full staff. The shortage of personnel and scheduling difficulties prevented performing the number of sanitation inspections that otherwise would have been performed. Additional staff has been recruited for the Program to enable the Department to provide at least two inspections per year for every ship that regularly sails from a U.S. port. Ships unable to achieve a score of at least 86 on a routine periodic inspection will receive a reinspection within a reasonable time frame depending upon ship schedules and receipt of the "Statement of Corrective Action" from the ship's management. In the scheduling of inspections, priority will be given to the first reinspection of those vessels which were unable to achieve a score of at least 86 during the routine periodic inspection. Since there is a fee for inspections, vessels unable to achieve a satisfactory score of at least 86 during a periodic sanitation inspection will receive only one reinspection unless specifically requested in writing by the owner/operator.



*Comment:* One commentor stated the notice in the **Federal Register** states, while there is no evidence that a single inspection score accurately predicts the probability of outbreak on a particular cruise, "CDC believes there is evidence to indicate that an outbreak is less likely to occur on vessels achieving higher scores over a period of time." The commentor suggested that if statistics are calculated ignoring the result of those inspections made immediately after a disease outbreak in a ship (which public health inspectors have tended to score extremely low), then the government's own data proves that the inspection score has no predictive value in determining whether outbreak is likely to occur or not.

*Response:* The Department believes this comment is not germane to the issue of the publication of a numerical score. The Department has previously stated that there is no evidence that a single inspection, indicating a low level of sanitation, predicts an outbreak of diarrheal disease on a cruise ship. Data published by the Department indicate that vessels that consistently achieve and maintain high levels of sanitation have fewer outbreaks of diarrheal disease than vessels with lower scores. The data used by the Department in the analysis included only routine periodic sanitation inspections. Reinspections and inspections conducted in association with an epidemiological investigation of a disease outbreak were specifically excluded from the data analysis.

*Comment:* One commentor was of the opinion that "this proposed change is less fair to all concerned whether a ship has been consistently passed and then failed or conversely, consistently failed and then passed." The commentor suggested that the change be discussed in "committee forum" and receive input from the cruise lines. Another commentor suggested that the subject should be reviewed by the group of experts when they meet on January 30, 1989, to review the *Operations Manual*, adopted in March 1987, in the context of all other aspects of the VSP. The summary of inspection results as proposed reflects the outcome of individual vessel inspections in accordance with the *Operations Manual* and the scoring system contained therein which will also be reviewed by the group.

*Response:* The Department believes the publication of numerical scores is an issue which should be considered separately from a review of the *Vessel Sanitation Program Operations Manual*. Publication of the numerical scores is not contingent upon revision of the *Manual* and the scores would be published regardless of the system of scoring used. The Department has received and considered input from cruise lines and does not agree that additional review of the matter is required.

*Comment:* One commentor supported the proposed change and suggested that reinspection scores be included in the calculation of the median score.

*Response:* Since the sanitation inspection is intended to reflect the level of sanitation on board the vessel at the time of inspection, including the scores achieved during reinspection would be misleading. Comparison of median scores of vessels which had not received a reinspection, for whatever reason, with the median scores of vessels which had been reinspected would not be equitable. The Department believes the comparison of median scores achieved during routine periodic sanitation inspections provides the most equitable method of providing information relative to the current level of sanitation on board at the time of the inspection.

*Comment:* One commentor suggested that, besides being discriminatory, publication of the "green sheets" is misleading. The information on the sheets may be outdated. Since partial—or no—credit is allowed for corrections made during inspections, the information may be inaccurate because it may not reflect current conditions on board a ship. More importantly, the information on the sheet may conflict with the inspection report that is released to the public, calling into question the credibility of the sheet.

*Response:* The Summary of Sanitation Inspections of International Cruise Ship ("green sheet") is updated and published every other week. The Department agrees that levels of sanitation could potentially vary considerably between sanitation inspections. However, the Department believes that a vessel which demonstrates a high level of sanitation at the time of the inspection will generally maintain that level of sanitation between inspections. The results of the sanitation inspection are a reflection of the current status on board the ship and a reflection of the routine procedures on board the ship which effect ongoing levels of sanitation. The Department believes that the biweekly publication of the results of sanitation inspections and the Department's policy of providing copies of the actual sanitation inspection reports are the most timely and cost effective methods of providing information to interested parties.

*Comment:* One commentor suggested the text at the bottom of the "green sheet" should also be reviewed by the group of experts at the January 30 meeting. As has been pointed out on earlier occasions, the regulatory tone of the text seems out of step with the voluntary cooperative nature of the program and exaggerates the seriousness, and frequency, of diarrhea outbreaks. In comments submitted to CDC by the ICPL on February 3, 1987, the recommendation was that the whole text be revised by deleting all but the first and last sentences as follows:

> All passenger cruise ships arriving at United States ports are inspected under the voluntary cooperative inspection program. Ships are rated on the following items to determine if they meet CDC inspection standards: (1) Water, (2) food preparation and holding, (3) potential contamination of food, and (4) general cleanliness, storage and repair.

*Response:* The meeting referred to by this commentor is intended as an opportunity for individual experts in a variety of disciplines to provide recommendations to the Department regarding the *Vessel Sanitation Program Operations Manual*. The Department believes the issue of the publication of numerical scores or the wording on the "Summary of Sanitation Inspections of International Cruise Ships" is a separate issue. Information included in the legend of the Summary provides recipients with useful information which would not be apparent otherwise. The Department agrees with the suggestion to reword the first sentence to emphasize the voluntary nature of the program.

*Comment:* One commentor suggested the Department place "an observer aboard ship to see what sanitation is like during an actual cruise. A travel agent with a checklist could easily attest to the procedures being followed; this could be done without the knowledge of the ship's personnel or crew."

*Response:* The Department believes that it would be inappropriate to use untrained observers to measure levels of sanitation on board ships. Sanitation

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inspections are carried out by highly qualified sanitarians and require knowledge and skills beyond the capability of a casual observer.

*Comment:* One commenter suggested that the reporting of intestinal illness be mandatory.

*Response:* Current regulations (42 CFR 71.21(c)) require the reporting of diarrheal illness by the master of a ship carrying 13 or more passengers prior to entering a port under the control of the United States.

*Comment:* One commenter stated his organization does not believe that the publication of a 5-year median score is either constructive or accurate. For example, a ship which has maintained consistently high scores for many years but which may have had one low score as a result of a health incident or on account of a virus or an unusual operating condition will find itself some 30 months later being shown with a very low median score to no purpose. The use of the median in this instance would merely confuse the public's perception as to the health standard which has been historically maintained in the vessel. This confusion will last during the period of 6 months in which the particular low score will be reported. Another commenter expressed the belief that reporting of median scores from the "old" system and current scores from the "modified" system is not productive. Another commenter stated the proposed publication of the "5-year median" score would present problems. The commenter stated, first of all, as proposed it would include the median results of inspections for the years 1984–1989 during which two entirely different scoring systems were used. Vessels scored under the two different systems would lead to different final scores which in turn would affect the percentage of ships that met standards or not. While the publication of the latest inspection score is a statement of fact, which can be documented by the individual vessel inspection report, the 5-year median raises more questions than answers and could lead to false conclusions.

Another commenter suggested that even further confusion would be caused in the minds of the traveling public by the publication of median scores in addition to the most recent score achieved by a ship and suggested that no statistics should be included other than that score received by the vessel in its most recent examination. Another commenter believed the change would be confusing to the public if a company were to acquire a ship (through purchase of the individual asset or of a whole company) which had historically had problems in achieving acceptable scores and should the buyer immediately turn the operation around, it will find itself haunted for the next 2½ years by a historical record which is both negative and irrelevant.

Another commenter suggested during such a long period of time vessels change ownership and management which can affect the operation of the vessel. Also, the past record of median scores, whether good, moderate, or low does not have any bearing on the sanitation conditions of the vessel during time of inspection or in the future, nor to the incidence of illness as documented by CDC and industry studies. And, finally, one commenter recommended, if regular summary reports are to be continued, they include only (a) the name of the vessel, (b) the most recent inspection score, and (c) the date of the inspection. Alternatively, if a median score of past inspections is to be included, these should include past scores going back to March 1987 only, at which time the new *Operations Manual* and the inspection scoring system currently in use were adopted. Vessels that change hands should have only the inspection score of the last inspection listed, with past median scores added for subsequent inspections. This approach would be similar to that proposed for new vessels.

*Response:* After careful consideration of the issues raised by several commenters, the Department agrees there exists the potential for confusion that would be counter productive to the Department's intentions if a 5-year median score were published as proposed. The Department agrees that a 5-year median score may not be indicative of the cruise lines current operations. Changes of ownership of vessels, changes in management of vessels, and subsequent changes in on board practices may make a 5-year median a misleading indicator of current levels of sanitation. The Department does not wish to penalize a vessel which has a history of unsatisfactory ratings but, under new management, is now making a concentrated effort to improve the level of sanitation on board. Publication of a 5-year median score which included previous unsatisfactory ratings could potentially reduce the incentive for a vessel to maintain a high level of sanitation as the results of their efforts would take them years to show. Upon further review of the scores during the past 5 years, the Department agrees that only those sanitation inspections conducted since March 1987, at which time the inspection scoring system currently in use was adopted, will be used in calculating a median of scores. The Department will not routinely publish the 5-year median but will maintain a 5-year median of scores achieved by a vessel during routine periodic sanitation inspections which will be available upon written request. Therefore, regular summary reports will continue to be published and will include only the name of the vessel, the numerical score of the most recent inspection, and the date of inspection.

Dated: March 1, 1989.

**Robert L. Foster,**

*Acting Director, Office of Program Support, Centers for Disease Control.*

[FR Doc. 89-5278 Filed 3-7-89; 8:45 am]

BILLING CODE 4160-18-M

## Food and Drug Administration

**[Docket No. 88N-0396]**

### Ray Batchelor Livestock; Withdrawal of Approval of Applications for Animal Feeds Bearing or Containing a New Animal Drug

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Center for Veterinary Medicine (CVM), Food and Drug Administration (FDA), is withdrawing approval of all applications held by Ray Batchelor Livestock for animal feeds bearing or containing new animal drugs. This action is being taken because the firm failed to respond to a notice of opportunity for hearing proposing to withdraw approval of the applications.

**EFFECTIVE DATE:** March 20, 1989.

**FOR FURTHER INFORMATION CONTACT:** Philip J. Frappaolo, Center for Veterinary Medicine (HFV-240), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4940.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of September 29, 1988 (53 FR 38074), CVM provided a notice of opportunity for a hearing on a proposal to withdraw approval of all the applications held by Ray Batchelor Livestock, P.O. Box 306, Enfield, NC 27823, for the manufacture of animal feeds bearing or containing new animal drugs (medicated feed applications).

Ray Batchelor Livestock holds the following medicated feed applications:

1. F110–725 for medicated feeds containing lincomycin for swine use; approved July 12, 1977.

2. F110–785 for medicated feeds containing melengestrol acetate for cattle use; approved July 15, 1977.



3. F111–150 for medicated feeds containing carbadox for swine use; approved September 2, 1977.

4. F111–176 for medicated feeds containing carbadox and pyrantel tartrate for swine use; approved September 9, 1977.

5. G128–373 for medicated feeds containing lincomycin for swine use; approved June 2, 1981.

The notice of opportunity for hearing stated that CVM was proposing to issue an order under section 512(m)(4)(B)(i) and (ii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(m)(4)(B)(i) and (ii) withdrawing approval of the listed applications, and all amendments and supplements thereto, on the grounds that the applicant had refused to permit access to required records, and that new information, evaluated together with the evidence available when the applications were approved, showed that the methods used in, or the facilities and controls used for, the manufacturing, processing, and packing of such animal feeds were inadequate to assure and preserve the identity, strength, quality, and purity of the new animal drug therein, and were not made adequate within a reasonable time after receipt of written notice from FDA specifying the matters complained of. The firm was provided until October 31, 1988, to file a written appearance requesting a hearing (53 FR 36074 and 38075). Ray Batchelor Livestock failed to file such an appearance.

Under 21 CFR 514.200 *Contents of notice of opportunity for hearing*, the failure of the sponsor to file a written appearance in answer to a notice of opportunity for hearing constitutes a waiver of the right to a hearing and is grounds for CVM to summarily enter a final order withdrawing approval of the applications.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345–347 (21 U.S.C. 360(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval applications* (21 CFR 514.115), notice is given that approval of F110–725, F110–785, F111–150, F111–176, and G128–373 and all amendments and supplements thereto is hereby withdrawn, effective March 20, 1989.

Dated: February 28, 1989.

**Gerald B. Guest,**

*Director Center for Veterinary Medicine.*

[FR Doc. 89-5274 Filed 3-7-89; 8:45 am]

BILLING CODE 4160-01-M

**[Docket No. 88F-0050]**

### Stork Friesland B.V.; Filing of Food Additive Petition

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that Stork Friesland B.V. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of a polymeric reaction product of poly(*N*-vinyl-*N*-methylamine), *N,N'*-bis-(3-aminopropyl)-ethylenediamine, 1,3-benzenedicarbonyl chloride and 1,3,5-benzenetricarbonyl chloride as a reverse osmosis membrane intended for use in contact with food.

**FOR FURTHER INFORMATION CONTACT:** Rudolph Harris, Center for Food Safety and Appied Nutrition (HFF–335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–472–5690.

**SUPPLEMENTARY INFORMATION:** Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 9B4128) has been filed by Stork Friesland B.V., c/o Suite 200, 1029 Vermont Avenue NW., Washington, DC 20005–3517, proposing that § 177.2550 Reverse osmosis membranes (21 CFR 177.2550) be amended to provide for the safe use of a polymeric reaction product of poly(*N*-vinyl-*N*-methylamine), *N,N'*-bis-(3-aminopropyl)-ethylenediamine, 1,3-benzenedicarbonyl chloride and 1,3,5-benzenetricarbonyl chloride as a reverse osmosis membrane intended for use in contact with food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: February 27, 1989.

**Richard J. Ronk,**

*Acting Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 89-5352 Filed 3-7-89; 8:45 am]

BILLING CODE 4160-01-M

**[Docket No. 88G-0122]**

### Diamond Crystal Salt Co.; Withdrawal of GRAS Affirmation Petition

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the withdrawal without prejudice of a petition requesting that the agency affirm that the use of *d*-α- and *dl*-α-tocopherols as inhibitors of nitrosamine formation in dry-cured bacon is generally recognized as safe (GRAS).

**FOR FURTHER INFORMATION CONTACT:** Carl L. Giannetta, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–426–5487.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of April 10, 1986 (51 FR 12395), FDA published a notice that a petition (GRASP 6G0313) had been filed by Diamond Crystal Salt Co., St. Clair, MI 48079–1999. This petition asked that the agency affirm that the use of *d*-α- and *dl*-α- tocopherols as inhibitors of nitrosamine formation in dry-cured bacon is GRAS.

On August 19, 1986, FDA asked the firm for additional data to support the petition. This data has never been submitted to the agency.

On September 9, 1988, the agency contacted the firm by telephone to determine the firm's plans for the petition. The firm advised the agency that it intended to withdraw the petition and would send a letter requesting the withdrawal. However, 30 days later the agency had not received a letter from the firm asking that its petition be withdrawn.

Consequently, on October 18, 1988, FDA wrote the firm and advised it that because of the firm's lack of action in response to the communications between the agency and the firm, FDA was going to publish a notice in the **Federal Register** advising that it considered the petition to be withdrawn. More than 60 days have passed since that letter was sent, and the company has not voiced any objection to the projected course of action. Therefore, the agency is announcing that it considers this petition to be withdrawn by the firm in accordance with 21 CFR 171.7(b).

Dated: February 23, 1989.

**Richard J. Ronk,**

*Acting Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 89-5276 Filed 3-7-89; 8:45 am]

BILLING CODE 4160-01-M

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[Docket No. 89M-0002]

**Sola/Barnes-Hind; Premarket Approval of Polycon® HDK (Silafocon B) Gas Permeable Contact Lens for Extended Wear (Clear and Tinted)**

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing its approval of the supplemental application by Sola/Barnes-Hind, Sunnyvale, CA, for premarket approval, under the Medical Device Amendments of 1976, of the spherical POLYCON® HDK (silafocon B) Gas Permeable Contact Lens for Extended Wear (clear and tinted). After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of December 21, 1988, of the approval of the application.

**DATE:** Petitions for administrative review by April 7, 1989.

**ADDRESS:** Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** David M. Whipple, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7940.

**SUPPLEMENTARY INFORMATION:** On May 27, 1988, Sola/Barnes-Hind, Sunnyvale, CA 94086-5200, submitted to CDRH a supplemental application for premarket approval of the POLYCON® HDK (silafocon B) Gas Preamble Contact Lens for Extended Wear (clear and tinted). The spherical lens is indicated for extended wear from 1 to 7 days between removals for cleaning and disinfection as recommended by the eye care practitioner. The lens is indicated for the correction of visual acuity in not-aphakic persons with nondiseased eyes that are myopic or hyperopic. The lens may be worn by persons who exhibit astigmatism of 4.00 diopters (D) or less that does not interfere with visual acuity. The spherical lens ranges in powers from −10.00 D to +10.00 D and is to be disinfected using the chemical lens care system recommended in the approved labeling. The blue tinted lens contains the color additive D & C Green No. 6 in accordance with the color additive listing provisions of 21 CFR 74.3206.

On October 20, 1988, the Ophthalmic Devices Panel, and FDA advisory committee, reviewed and recommended approval of the supplemental application. On December 21, 1988, CDRH approved the supplemental application by a letter to the applicant from the Acting Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact David M. Whipple (HFZ-460), address above. The labeling of the POLYCON® HDK (silafocon B) Gas Permeable Contact Lens for Extended Wear (clear and tinted) states that the lens is to be used only with certain solutions for disinfection and other purposes. The restrictive labeling informs new users that they must avoid using certain products, such as solutions intended for use with hard contact lenses only.

**Opportunity for Administrative Review**

Section 515(d)(3) of the Act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the Act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before April 7, 1989, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554-555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: March 1, 1989.

**Walter E. Gundaker,**

*Acting Deputy Director, Center for Devices and Radiological Health.*

[FR Doc. 89-5275 Filed 3-7-89; 8:45 am]

BILLING CODE 4160-01-M

**Public Health Service**

**Human Immunodeficiency Virus Services Planning Program Grants**

**AGENCY:** Health Resources and Services Administration, PHS, DHHS.

**ACTION:** Notice of availability of funds.

**SUMMARY:** The Bureau of Maternal and Child Health and Resources Development (BMCHRD), Health Resources and Services Administration (HRSA), announces that Fiscal Year (FY) 1989 funds are available for Human Immunodeficiency Virus (HIV) Services Planning Program Grants to cities and States not affected by the Acquired Immune Deficiency Syndrome (AIDS) epidemic to the same extent as high incidence cities. All public and private entities are eligible to apply, including State and local Governments and nonprofit and for profit organizations capable of developing coordinated plans for services for persons with AIDS within designated cities and States. These entities must be able to consolidate the information received from governments, service providers, community coalitions, and community-based organizations into a comprehensive plan for a system-of-care. For statewide planning, entities must be able to document how they will utilize the information received from major cities within the State to reflect a cooperative statewide plan for services.

Eligible jurisdictions are determined based on the number of AIDS cases reported by the Centers for Disease Control as of September 12, 1988. Grant funds will be used to support planning activities for AIDS Services as outlined under *Program Objectives*. At the end of the one-year grant period, the grantee will provide the HRSA with a copy of a plan that describes the planning processes performed and identifies the actions, with time frames, to be taken in implementing the plan. Funds were appropriated by Public Law 100-436 for this purpose.

**DATE:** To receive consideration, grant applications must be received by the Grants Management Officer by June 5, 1989. Applications shall be considered as meeting the deadline if they are either (1) received on or before the deadline date; or (2) postmarked on or before the deadline date and received in time for submission to the review committee. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be accepted as proof of timely mailing. Applications which do not meet the deadline will be considered late applications and will be returned to the applicant.

**FOR FURTHER INFORMATION CONTACT:** Requests for technical or programmatic information should be directed to Ms. June Horner, Acting Chief, HIV Services Operations Branch, Room 9A-05, 5600 Fishers Lane, Rockville, Mayland 20857, (301 443-0652). Grant applications (Form PHS 5161-1 with revised face sheet HHS Form 424 approved under OMB Number 0348-0006) and additional information regarding business administration or fiscal issues related to the awarding of grants under this notice may be requested from Ms. Glenna Wilcom, Grants Management Specialist, BMCHRD, Parklawn Building, Room 11A-18, 5600 Fishers Lane, Rockville, Maryland 20857 (301 443-1440). The original and two copies of the application must be submitted to Ms. Wilcom.

**SUPPLEMENTARY INFORMATION:**

**Program Objectives**

The HIV Services Planning Program (HSPP) is intended to help States and cities with low prevalance and incidence of HIV infection to plan for community-based systems of care that provide the spectrum of services needed for people with HIV infection and its complications, and to provide appropriate alternatives to inpatient hospital care. The purpose of the planning grant will be to enable each approved grantee to:

(1) Prepare a plan that describes the planning process and participants in the development and implementation of an HIV system of care;

(2) Conduct a needs/demand assessment for HIV prevalance and care;

(3) Identify required health and social service needs based on the needs/demand assessment;

(4) Estimate the resources required to implement the system of care and the cost of provision of identified services and systems;

(5) Develop a plan for the optimal integration and coordination of resources, emhasizing a continuum of care including use of out-of-hospital services and case management of patients; and

(6) Identify problems and proposed actions, including timeframes for the resolution of the problems and for the provision of services to HIV infected individuals in the service area.

**Availability of Funds**

Approximately $3.9 million is available in FY 1989 for the HSPP grants. Grants will be awarded competitively. The application must include a budget indicating how grant funds would be used over the 1-year budget and project period.

**Eligible Jurisdictions**

Eligible jurisdictions are: (1) Standard Metropolitan Statistical Areas (SMSAs) having between 100 and 400 cases of AIDS (See Appendix A) as reported by the centers for Disease Control (CDC) as of September 12, 1988 or (2) States which have more than 125 AIDS cases statewide (See Appendix B) as reported by the CDC as of September 12, 1988. An application submitted on behalf of a State which contains one or more SMSAs having 400 or more cases of AIDS must emphasize statewide planning for other than these high AIDS prevalence areas. When both a State and one or more SMSA's within that State are eligible jurisdictions, priority will be given to applications that demonstrate a coordinated approach among all eligible jurisdictions.

**Collaboration/Coordination with other HIV Programs**

Where appropriate, the HIV Services Planning Program grantees will be expected to document the participation of other HIV program managers within their regions, such as the directors of the HRSA AIDS Service Demonstration Programs; the HRSA Pediatric AIDS Health Care Demonstration Projects; the HRSA AIDS Regional Education and Training Centers Program; the National Institute on Drug Abuse AIDS Community Outreach Demonstration Projects; information, public education/prevention and testing programs supported by the Centers for Disease Control; the AIDS drug clinical trial studies and other research programs conducted by the National Institutes of Health; the Community Health Centers and Migrant Health Centers supported by HRSA; the Robert Wood Johnson Foundation AIDS Health Services Programs; the Ford Foundation National Community AIDS Partnership and other major foundation-supported programs; State Health Departments or other appropriate State-level representatives; activities of the Office of Minority Health of the Office of the Assistant Secretary for Health; community based AIDS service organizations; and State Medicaid Programs.

**Review and Evaluation Criteria**

Applications for HSPP grants will be reviewed and rated by an objective review committee and evaluated on the basis of the following:

—Applicant's experience and qualifications to function as the lead agency in planning for HIV services;

—Applicant's financial support from, and linkages with, units of State and/or local Government, and/or support from the private sector;

—Applicant's description of the process for inclusion of service providers and coalitions of service providers to be involved in HIV services planning;

—The appropriateness of methodologies the project will use in the following areas: (1) Conducting the needs/demand assessment, including approaches for developing inventories of existing services and case projection rates; (2) assessing knowledge and attitudes about the HIV epidemic among community members and health workers; and (3) identifying the health care services and planning resources currently in place, including resources of minority and special interest groups and of other non-Federal organizations and providers, and consideration of the process by which these may be integrated into a model for care;

—Evidence of support by, and the extent to which the planning process will incorporate the needs of, HIV-infected individuals, minorities, providers and other groups affected by the epidemic; and

—Time frames for implementation of the planning process.

Where appropriate, contiguous cities/States should undertake cooperative regional systems of care in order that duplication of services may be avoided. More detailed information on the review

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and evaluation criteria may be found in the grant application kit.

**Technical Assistance Workshops**

The Division of AIDS Programs will conduct two Technical Assistance (T.A.) workshops to respond to questions from potential applicants. The dates and locations of the T.A. workshops are as follows:

1. Wednesday, April 12, 1989 at 5600 Fishers Lane, Rockville, Maryland.

2. Tuesday, April 25, 1989 at the PHS Regional Office in Denver, Colorado, 1961 Stout Street, Denver, Colorado.

Applicants who plan to attend one of the T.A. workshops must confirm their participation, the location of the workshop they will be attending, and the number of individuals in their party. Confirmation should be made at least 2 weeks prior to the workshop date to: Ms. Janice Edmonds, Parklawn Building, Room 9A-05, 5600 Fishers Lane, Rockville, Maryland 20857, 301 443-0652 or 443-8745. If there are changes to the above schedule, applicants will be notified at the time of confirmation.

**Allowable Costs**

The basis for determining the allowability and allocability of costs charged to PHS grants is set forth in 45 CFR Part 74, Subpart Q, and 45 CFR 92.22 for State and local governments. These regulations implement the five separate sets of cost principles prescribed for grant recipients, which are: OMB Circular A-87 for State and local governments; OMB Circular A-21 for institutions of higher education; 45 CFR Part 74, Appendix E for hospitals; OMB Circular A-122 for nonprofit organizations; and 48 CFR Chapter 1, Subpart 31.2 for for-profit (commercial) organizations.

**Other Award Information**

A successful applicant under this notice will submit reports in accordance with the provisions of the general regulations which apply under 45 CFR Part 74, Subpart J, and 45 CFR 92.40 for State and local governments.

**Executive Order 12372**

The HIV Services Planning Program has been determined to be a program which is subject to the provisions of Executive Order 12372 concerning intragovernmental review of Federal programs, as implemented by 45 CFR Part 100. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application package under this notice will contain a listing of States which have chosen to set up such a review process and will provide a point of contact in the States for the review. Applicants should promptly contact their State single point of contact (SPOC) and follow their instruction prior to the submission of an application. The SPOC has 60 days after the application deadline date to submit its review comments.

(The OMB Catalog of Federal Domestic Assistance number of the HIV Services Planning Program is 13.168.)

Date: March 2, 1989.

**John H. Kelso,**

*Acting Administrator.*

APPENDIX A—STANDARD METROPOLITAN STATISTICAL AREAS (SMSAs) ELIGIBLE FOR GRANTS UNDER THE HIV SERVICES PLANNING PROGRAM

[100 to 400 AIDS Cases]

| Standard metropolitan statistical area | Cities and counties included in the SMSA | Cumulative cases |
|---|---|---|
| 1. Albany, NY | Albany City<br>Schenectady City<br>Troy City<br>Albany County<br>Greene County<br>Rensselaer County<br>Saratoga County<br>Schenectady County | 136 |
| 2. Austin, TX | Austin City<br>Hays County<br>Travis County<br>Williamson County | 225 |
| 3. Birmingham, AL | Birmingham City<br>Blount County<br>Jefferson County<br>St. Clair County<br>Shelby County<br>Walker County | 104 |
| 4. Bridgeport, CT | Bridgeport City<br>Stamford City<br>Norwalk City<br>Danbury City<br>Fairfield County | 117 |
| 5. Buffalo, NY | Buffalo City<br>Niagara Falls City<br>Erie County<br>Niagara County | 104 |
| 6. Charlotte, NC | NC<br>Charlotte City<br>Gastonia City<br>Rock Hill City<br>Cabarrus County<br>Gaston County<br>Lincoln County<br>Mecklenburg County<br>Rowan County<br>Union County<br>SC<br>York County | 103 |
| 7. Cincinnati, OH | OHO<br>Cincinnati City<br>Clermont County<br>Hamilton County<br>Warren County<br>KY<br>Boone County<br>Campbell County<br>Kenton County | 139 |
| 8. Cleveland, OH | IN<br>Dearborn County<br>Cleveland City<br>Cuyahoga County<br>Geauga County<br>Lake County<br>Medina County | 272 |
| 9. Columbus, OH | Columbus City<br>Delaware County<br>Fairfield County<br>Franklin County<br>Licking County<br>Madison County<br>Pickaway County<br>Union County | 205 |
| 10. Ft. Myers, FL | Cape Coral City<br>Fort Meyer City<br>Lee County | 144 |
| 11. Hartford, CT | Hartford City<br>New Britain City<br>Middleton City<br>Bristol City<br>Hartford County<br>Middlesex County<br>Tolland County | 179 |
| 12. Honolulu, HI | Honolulu City<br>Honolulu County | 210 |
| 13. Indianapolis, IN | Indianapolis City<br>Boone County<br>Hamilton County<br>Hancock County<br>Hendricks County<br>Johnson County<br>Marion County<br>Morgan County<br>Shelby County | 146 |
| 14. Jacksonville, FL | Jacksonville City<br>Clay County<br>Duval County<br>Nassau County<br>St. Johns County | 254 |
| 15. Kansas City, MO | MO<br>Kansas City<br>Cass County<br>Clay County<br>Jackson County<br>Lafayette County<br>Platte County<br>Ray County<br>KS<br>Jackson County<br>Leavenworth County<br>Miami County<br>Wyandotte County | 365 |
| 16. Las Vegas, NV | Las Vegas City<br>Clark County | 172 |
| 17. Long Branch, NJ | Monmouth County<br>Ocean County | 167 |
| 18. Memphis, TN | TN<br>Memphis City<br>Shelby County<br>Tipton County<br>AR<br>Crittenden County<br>MS | 137 |



APPENDIX A—STANDARD METROPOLITAN STATISTICAL AREAS (SMSAs) ELIGIBLE FOR GRANTS UNDER THE HIV SERVICES PLANNING PROGRAM—Continued

[100 to 400 AIDS Cases]

| Standard metropolitan statistical area | Cities and counties included in the SMSA | Cumulative cases |
|---|---|---|
| 19. Milwaukee, WI | De Soto County<br>Milwaukee City<br>Milwaukee County<br>Ozaukee County<br>Washington County<br>Waukesha County | 149 |
| 20. Minneapolis, MN. | MN<br>Minneapolis City<br>St. Paul City<br>Anoka County<br>Carver County<br>Chisago County<br>Dakota County<br>Hennepin County<br>Isanti County<br>Ramsey County<br>Scott County<br>Washington County<br>Wright County<br>WI<br>St. Croix County | 349 |
| 21. Nashville, TN | Nashville City<br>Chastham County<br>Davidson County<br>Dickson County<br>Robertson County<br>Rutherford County<br>Sumner County<br>Williamson County<br>Wilson County | 139 |
| 22. New Brunswick, NJ. | Hunterdon County.<br>Middlesex County<br>Somerset County | 275 |
| | New Haven City<br>Waterbury City<br>Meriden City<br>New Haven County | 254 |
| 24. Norfolk, VA | James City<br>Chesapeake City<br>Hampton City<br>Newport News City<br>Norfolk City<br>Poquoson City<br>Portsmouth City<br>Suffolk City<br>Virginia Beach City<br>Williamsburg City<br>Gloucester County<br>York County | 127 |
| 25. Oklahoma City, OK. | OKlahoma City<br>Canadian County<br>Cleveland County<br>Logan County<br>McClain County<br>Oklahoma County | 119 |
| 26. Orlando, FL | Pottawatomie County<br>Orlando City<br>Orange County<br>Osceola County<br>Seminole County | 262 |
| 27. Pittsburgh, PA | Pittsburgh City<br>Beaver Valley City<br>Beaver County<br>Allegheny County<br>Fayette County<br>Washington County<br>Westmoreland County | 217 |
| 28. Portland, OR | OR<br>Portland City<br>Clackamas County<br>Multnomah County<br>Washington County<br>Yamhill County<br>WA<br>Vancouver City<br>Clark County | 344 |
| 29. Pughkeepsie, NY. | Poughkeepsie City<br>Duchess County | 150 |
| 30. Providence, RI | Providence City<br>Pawtucket City<br>Woonsocket City<br>Bristol County<br>Kent County<br>Providence County<br>Washington County | 165 |
| 31. Raleigh, NC | Raleigh City<br>Durham City<br>Durham County<br>Franklin County<br>Orange County<br>Wake County | 126 |
| 32. Richmond, VA | Richmond City<br>Petersburg City<br>Charles City<br>Colonial Heights City<br>Hopewell City<br>Petersburg City<br>Richmond City<br>Chesterfield County<br>Dinwiddie County<br>Goochland County<br>Hanover County<br>Henrico County<br>New Kent County<br>Powhatan County<br>Prince George County | 125 |
| 33. Rochester, NY | Rochester City<br>Livingston County<br>Monroe County<br>Ontario County<br>Orleans County<br>Wayne County | 177 |
| 34. Sacramento, CA. | Sacramento City<br>El Dorado County<br>Placer County<br>Sacramento County<br>Yolo County | 268 |
| 35. Salt Lake City, UT. | Salt Lake City<br>Ogden City<br>Davis Lake County<br>Salt Lake County<br>Weber County | 125 |
| 36. San Antonio, TX. | San Antonio City<br>Bexar County<br>Comal County<br>Guadalupe County | 254 |
| 37. San Jose, CA | San Jose City<br>Santa Clara County | 349 |
| 38. Santa Rosa, CA | Santa Rosa City<br>Petaluma City<br>Sonoma County | 202 |
| 39. St. Louis, MO | MO<br>St. Louis City<br>Franklin County<br>Jefferson County<br>St. Charles County<br>St. Louis County<br>IL County<br>Clinton County<br>Jersey County<br>Madison County<br>Monroe County<br>St. Clair County | 297 |
| 40. Trenton, NJ | Trenton City<br>Mercer County | 148 |
| 41. Tucson, AZ | Tucson City<br>Pima County | 118 |

**Appendix B—States Eligible for Grants Under the HIV Services Planning Program (States With More Than 125 AIDS Cases)**

1. Alabama
2. Arizona *
3. Arkansas
4. California *
5. Colorado *
6. Connecticut
7. Delaware
8. Florida *
9. Georgia *
10. Hawaii
11. Illinois *
12. Indiana
13. Kansas
14. Kentucky
15. Louisiana *
16. Maryland *
17. Massachusetts *
18. Michigan *
19. Minnesota
20. Mississippi
21. Missouri
22. Nevada

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23. New Jersey *
24. New Mexico
25. New York *
26. North Carolina
27. Ohio
28. Oklahoma
29. Oregon
30. Pennsylvania *
31. Puerto Rico *
32. Rhode Island
33. South Carolina
34. Tennessee
35. Texas *
36. Utah
37. Virginia
38. Washington *
39. Wisconsin

* These States are eligible for planning grants, but since they contain one or more SMSAs having 400 or more cases of AIDS, applications must emphasize planning for other than these high AIDS prevalence areas.

[FR Doc. 89-5272 Filed 3-7-89; 8:45 am]
BILLING CODE 4160-15-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[CO-010-09-4320-02]

### Craig, Colorado, Advisory Council Meeting

*Time and Date:* April 12, 1989, at 10 a.m.
*Place:* BLM-Craig District Office, 455 Emerson Street, Craig, Colorado
*Status:* Open to public; interested persons may make oral statements at 10:30 a.m. Summary minutes of the meeting will be maintained in the Craig District Office.
*Matters to be Considered:*
1. Election of Officers
2. Recreation 2000
3. Weed Control
4. District Riparian Plan

*Contact Person for More Information:* Mary Pressley, Craig District Office, 455 Emerson Street, Craig, Colorado 81625-1129, Phone: (303) 824-8261.

Dated: February 28, 1989.

Jerry L. Kidd,
*Associate District Manager.*

[FR Doc. 89-5315 Filed 3-7-89; 8:45 am]
BILLING CODE 4310-JB-M

[UT-060-09-4320-14]

### Notice of Grazing Advisory Board Meeting

**AGENCY:** Bureau of Land Management.

**ACTION:** District Grazing Advisory Board Meeting.

**SUMMARY:** The Richfield District Grazing Board will hold a meeting on April 4, 1989. The meeting will start at 9:00 a.m. in the District Office, 150 East 900 North, Richfield, Utah. The agenda will be:

1. Election of officers
2. Discussion on Weed Day
3. Project funding and District fencing program
4. Henry Mountain CRM update
5. Wild Horse program
6. Riparian management
7. Wilderness program update
8. Change of livestock class and new and revised AMP's
9. Electronic Combat Test Capacity

Interested person may make oral statements to the Board between 1:15 p.m. and 2:15 p.m. or file written comments for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 150 East 900 North, Richfield, Utah 84701 (801-896-8221). For further information contact: Bert Hart, District Public Affairs Specialist at the above address.

February 28, 1989.

Jerry Goodman,
*Richfield District Manager.*

[FR Doc. 89-5323 Filed 3-7-89 8:45 am]
BILLING CODE 4310-DQ-M

### Bureau of Land Management

[CA-14638]

### Realty Action;Exchange of Public and Private Lands, Inyo and Los Angeles Counties, CA

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of realty action; exchange of public and private lands, CA-14638.

**SUMMARY:** The following public lands in Inyo County, CA, have been determined suitable for disposal by exchange to the City of Los Angeles, pursuant to the National Parks and Recreation Act of 1978 (92 Stat. 3501), as amended:

Mt. Diablo Meridian

| | Acres |
|---|---|
| T. 19S., R. 37E., | |
| Sec. 34, SW¼ | 160.0 |
| T. 20S., R. 37E., | |
| Sec. 3, Lot 5 | 40.53 |
| Sec. 4, E½SE¼ | 80.0 |
| Sec. 10, W½SW¼ | 80.0 |
| Sec. 18, SE¼NW¼, E½SW¼, SW¼SW¼, W½SE¼, SE¼SE¼ | 280.0 |
| Sec. 22, NW¼NE¼, W¼W½, SE¼SW¼ | 240.0 |
| Sec. 28, Lots 6, 7, 8, SW¼NW¼, S½SW¼, SW¼SE¼ | 279.19 |
| Sec. 27, NE¼NW¼, W½W½ | 200.0 |
| Sec. 34, SW¼NE¼, NE¼SW¼, W½SE¼ | 160.0 |
| Sec. 35, W½NE¼, NW¼ | 240.0 |
| T. 21S., R. 37E., | |
| Sec. 1, Lot 1, SW¼NW¼, W½SW¼ | 160.25 |
| Sec. 2, Lots 3, 7, 8, 9, 10, 11, 12, 15, SE¼NE¼, N½SE¼SW¼, SE¼SE¼ | 419.03 |
| Sec. 11, Lots 4, 5, 6, 7, 12, 13, NE¼NE¼, E½N½NE¼, E½W½NW¼NE¼, SW¼SW¼NW¼NE¼, E½SE¼S W¼, S½SE¼ | 353.08 |
| Sec. 14, Lot 11, E½NE¼NW¼ | 41.32 |

Containing 2,734.80 acres, more or less

In exchange the United States will acquire all or a portion of private lands owned by the City of Los Angeles in Los Angeles County, CA, for inclusion in the Santa Monica Mountains National Recreation Area. The specific parcels to be acquired will be determined following final determination of values and will be adjusted to equalize the value of the public and private land.

**SUPPLEMENTARY INFORMATION:** The purpose of this exchange is to convey public land which surrounds Haiwee Reservoir in Inyo county to the City of Los Angeles. The city operates Haiwee Reservoir as a part of its Los Angeles aqueduct system, and its acquisition of the public land involved will consolidate ownership of the reservoir and will facilitate the city's management of that facility.

In exchange, the United States will acquire interest in lands owned by the city within the Santa Monica Mountains National Recreation area in the County of Los Angeles. These lands consist of parcels in the vicinity of Upper Franklin Reservoir. Acquisition of these lands by the United States will facilitate management of the recreation area by the National Park Service.

Approximately 16 acres of private land has been offered by the city. The value of the interest offered in these lands approximately equals the value of the selected lands. Determination of the exact parcels of offered lands to be conveyed to the United States will be made after acceptance of final appraisals, with the amount of offered land to be adjusted to equal the value of the selected lands.

Lands transferred out of Federal ownership will be subject to the following reservations:

1. A reservation of right of way to the United States for ditches and canals, pursuant to the Act of August 30, 1890 (43 U.S.C. 945).

2. All valid existing rights existing at the time of publication of this notice, including but not limited to valid rights of way, entries, grants, leases and



locations, including valid mining claim locations.

Numerous mining claims of record may encumber the public lands, and are not enumerated herein for the sake of publication convenience. Further information regarding these possibly valid claims may be obtained by contacting the office noted below. The patent would be issued subject to those claims identified in the patent document, together with the right of the claimants to the following:

1. The right to continue to prospect for, mine, and remove locatable minerals subject to applicable laws.

2. The right of claimants to obtain patent, pursuant to applicable law, to both the surface and mineral estates within the mining claims if valid discovery was made prior to issuance of the subject exchange patent, or to obtain patent to the mineral estate only if valid discovery is made subsequent to the subject exchange patent.

Publication of this notice in the Federal Register segregates the public lands from the operation of the public land laws and the general mining laws, but not the mineral leasing laws. The segregative effect will end upon issuance of patent or two years from the date of publication, whichever occurs first.

**FOR FURTHER INFORMATION CONTACT:** Wesley T. Chambers, California Desert District, (714) 351-6402. Information relating to this action is readily available for review.

**DATES:** For a period on or before April 24, 1989 interested parties may submit comments to the Bureau of Land Management, District Manager, California Desert District, 1695 Spruce Street, Riverside, CA 92507. Objections will be reviewed by the State Director, who may sustain, vacate, or modify this realty action. In the absence of objections, this action will become the final determination of the Department of the Interior. No transfer of public lands will occur sooner than 60 days from first publication of this notice in the Federal Register.

H. W. Riecken,
*Acting District Manager.*

Date: February 28, 1989.

[FR Doc. 89-5283 Filed 3-7-89; 8:45 am]
BILLING CODE 4310-40-M

### Bureau of Land Management

[ID-942-09-4730-12]

### Idaho; Filing of Plats of Survey

The plat of survey of the following described land, was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 10:00 a.m., February 27, 1989.

The plat representing the dependent resurvey of a portion of the south and east boundaries, and subdivisional lines, and the subdivision of certain sections, T. 11 S., R. 28 E., Boise Meridian, Idaho, Group No. 668 was accepted February 21, 1989.

This survey was executed to meet certain administrative needs of this Bureau.

All inquiries about this land should be sent to the Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Duane E. Olsen,
*Chief Cadastral Surveyor for Idaho.*

February 27, 1989.

[FR Doc. 89-5270 Filed 3-7-89; 8:45 am]
BILLING CODE 4310-GG-M

### National Park Service

### Concession Contract Negotiations; Barren Island Marina, Inc.

**AGENCY:** National Park Service, Interior.

**ACTION:** Public notice.

**SUMMARY:** Public notice is hereby given that the National Park Service proposes to extend a concession contract with Barren Island Marina, Inc., authorizing it to continue to provide marina facilities and services for the public at the Jamaica Bay/Breezy Point Unit of Gateway National Recreation Area, New York, for a period of one (1) year from 1 January, 1989, through December 31, 1989.

**EFFECTIVE DATE:** April 7, 1989.

**ADDRESS:** Interested parties should contact the Regional Director, North Atlantic Region, Boston, Massachusetts 02109 (telephone: 617-565-8864), for information as to the requirements of the proposed contract.

**SUPPLEMENTARY INFORMATION:** This contract extension has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act, and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expired by limitation of time on December 31, 1988, and therefore, pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract as defined in 36 CFR 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the thirtieth (30th) day following the release date of this Public Notice to be considered and evaluated.

Dated: February 10, 1989.

Herbert S. Cables, Jr.,
*Regional Director, North Atlantic Region.*

[FR Doc. 89-5428 Filed 3-7-89; 8:45 am]
BILLING CODE 4310-70-M

## INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-292]

### Certain Methods of Making Carbonated Candy Products; Investigation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Institution of investigation pursuant to 19 U.S.C. 1337.

**SUMMARY:** Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on January 31, 1989, under section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), on behalf of General Foods Corporation, 250 North Street, White Plans, New York 10625, Carbonated Candy Ventures, 1195 Niagara Street, Buffalo, New York, 14240, and Pop Rocks, Inc., 986 Bedford Street, Stamford, Connecticut 06905. The complaint was amended and supplemented on February 21, 1989. The complaint, as amended and supplemented, alleges violation of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain carbonated candy products which infringe or are made by a process covered by: (1) Claims 1-9 of U.S. Letters Patent 3,985,910 and (2) claims 1-9 of U.S. Letters Patent 4,001,457; and that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after a full investigation, issue a permanent general exclusion order and permanent cease and desist orders.

**ADDRESSES:** The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade

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Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–252–1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

**FOR FURTHER INFORMATION CONTACT:** David A. Guth, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–252–1574.

**Authority**

The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and § 210.12 of the Commission's Interim Rules of Practice and Procedure, 52 FR 33034, 33057 (Aug. 29, 1988).

**Scope of Investigation**

Having considered the complaint, the U.S. International Trade Commission, on March 1, 1989, ORDERED THAT—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B)(ii) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain carbonated candy products allegedly made by a process covered by claims 1–9 of U.S. Letters Patent 3,965,910 or claims 1–9 of U.S. Letters Patent 4,001,457; and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are—

General Foods Corporation, 250 North Street, White Plains, New York 10625

Carbonated Candy Ventures, 1195 Niagara Street, Buffalo, New York 14240

Pop Rocks, Inc., 986 Bedford Street, Stamford, Connecticut 06905

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint shall be served:

Zeta Espacial, S.A., Apartado 140, Sant Boi (Barcelona), Spain

Confex, Inc., 187 Avenue at the Common, Shrewsbury, New Jersey 07702

(c) David A. Guth, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401 Washington, DC 20436, shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with § 210.21 of the Commission's Interim Rules of Practice and Procedure, 53 FR 33034, 33057 (Aug. 29, 1988). Pursuant to §§ 201.16(d) and 210.21(a) of the Commission's rules (19 CFR 201.16(d) and 53 FR 33034, 33057 (Aug. 29, 1988)), such responses shall be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

By order of the Commission.

**Kenneth R. Mason,**

*Secretary.*

Issued: March 1, 1989.

[FR Doc. 89–5389 Filed 3–7–89; 8:45 am]

BILLING CODE 7020–02–M

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**[Investigation No. 337–TA–258]**

**Certain Cryogenic Ultramicrotome Apparatus and Components Thereof; Change of Commission Investigative Attorney**

Notice is hereby given that, as of this date, Juan S. Cockburn, Esq., of the Office of Unfair Import Investigations will be the Commission investigative attorney in the above-cited investigation instead of Stephen H. Sulzer, Esq.

The Secretary is requested to publish this Notice in the **Federal Register.**

Respectfully submitted,

**Lynn I. Levine,**

*Director, Office of Unfair Import Investigations.*

Dated: February 27, 1989.

[FR Doc. 89–5387 filed 3–7–89; 8:45 am]

BILLING CODE 7020–02–M

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**[Investigation No. 337–TA–291]**

**Certain Insulated Security Chests; Investigation**

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Institution of investigation pursuant to 19 U.S.C. 1337.

**SUMMARY:** Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on January 25, 1989, under section 337 of the Tariff Act of 1930, as amended, (19 U.S.C. 1337), on behalf of John D. Brush & Co., Inc., 900 Linden Avenue, Rochester, New York 14625. The complaint was supplemented on February 8, 1989. The complaint, as supplemented, alleges violations of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain insulated security chests by reason of (1) direct infringement of claims 1 through 7 of U.S. Letters Patent 4,048,926; and (2) direct infringement of U.S. Letters Patent Des. 289,562; and that there exists an industry in the United States as required by subsection (a)(2) of the section 337.

The complainant requests that the Commission institute an investigation and, after a full investigation, issue a permanent exclusion order and permanent cease and desist orders.

**ADDRESSES:** The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E. Street S.W., Room 112, Washington, DC 20436, telephone 202–252–1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

**FOR FURTHER INFORMATION CONTACT:** Juan Cockburn, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–252–1572.



**Authority**

The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in 210.12 of the Commission's Interim Rules of Practice and Procedure, 53 FR 33034, 33057 (Aug. 29, 1988).

**Scope of Investigation**

Having considered the complaint, the U.S. International Trade Commission, on February 22, 1989, ORDERED THAT—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine (a) whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain insulated security chests by reason of alleged (1) infringement of claims 1, 2, 3, 4, 5, 6 or 7 of U.S. Letters Patent 4,048,926, or (2) infringement of the claim of U.S. Letters Patent Des. 289,582, and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served;

(a) The complainant is—

John. D Bush & Co., Inc., 900 Linden Avenue, Rochester, New York 14625.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Scotty's, 5300 North Recker Highway, P.O. Box 939, Winter Haven, Florida 33882.

Home Quarters Warehouse, 2866 Virginia Beach Boulevard, Virginia Beach, Virginia 23450.

Center Manufacturing Co., 540 Goodrich, Bellevue, Ohio 44811.

(c) Juan Cockburn, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E. Street SW., Room 401Q, Washington, DC 20436, shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with § 210.21 of the Commission's Interim Rules of Practice and Procedure, 53 FR 33034, 33057 (Aug. 29, 1988). Pursuant to §§ 201.16(d) and 210.21(a) of the Commission's Rules (19 CFR 201.16(d) and 53 FR 33034, 33057 (Aug. 29, 1988)), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

By order of the Commission.

Issued: February 27, 1989.

**Kenneth R. Mason,**

*Secretary.*

[FR Doc. 89–5390 Filed 3–7–89; 8:45 am]

BILLING CODE 7020–02–M

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**[Investigation No. 731–TA–429 (Preliminary)]**

**Mechanical Transfer Presses From Japan**

**Determination**

On the basis of the record [1] developed in the subject investigation, the Commission unanimously determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Japan of mechanical transfer presses [2] provided for in subheadings 8462.29.00, 8462.39.00, 8462.49.00, 8462.99.00, and 8466.94.50 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

**Background**

On January 12, 1989, a petition was filed with the Commission and the Department of Commerce by Verson Division of Allied Products Corp., the United Auto Workers, and the United Steelworkers of America (AFL–CIO–CLC) alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of mechanical transfer presses from Japan. Accordingly, effective January 12, 1989, the Commission instituted preliminary antidumping investigation No. 731–TA–429 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of January 25, 1989 (54 FR 3693). The conference was held in Washington, DC, on February 3, 1989, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on February 27, 1989. The views of the Commission are contained in USITC Publication 2160 (February 1989), entitled "Mechanical Transfer Presses from Japan: Determination of the Commission in Investigation No. 731–TA–429 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

By Order of the Commisison.

**Kenneth R. Mason,**

*Secretary.*

Issued: March 2, 1989.

[FR Doc. 89–5392 Filed 3–7–89; 8:45 am]

BILLING CODE 7020–02–M

[1] The record is defined in § 207.2(h) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(h)), as amended by 53 FR 33041 (August 29, 1988).

[2] For purposes of this investigation, the term "mechanical transfer presses" refers to automatic metal-forming machine tools with multiple die stations in which the workpiece is moved from station to station by a transfer mechanism synchronized with the press action, whether imported as machines or parts suitable for use solely or principally with these machines. These presses may be assembled or unassembled.

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**[Investigation No. 337–TA–281]**

**Certain Recombinant Erythropoietin; Commission Decision To Review the Administrative Law Judges' Final Initial Determination**

**AGENCY:** International Trade Commission.

**ACTION:** Notice.

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**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined to review in its entirety the initial determination (ID) issued by the administrative law judge (ALJ) finding no violation of section 337 of the Tariff Act of 1930, as amended, in the above-captioned investigation. The Commission does not request any further briefing from the parties at this time. Written submissions on the issues of remedy, the public interest and bonding may be requested by the Commission later in the proceedings.

**ADDRESS:** Copies of the presiding ALJ's ID and all other non-confidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1000.

**FOR FURTHER INFORMATION CONTACT:** Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–252–1104. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

**SUPPLEMENTARY INFORMATION:** On February 10, 1988, the Commission instituted an investigation to determine whether there is a violation of section 337 in the importation or sale of recombinant erythropoietin by reason of alleged unfair acts in the importation into and sale in the United States of certain recombinant erythropoietin manufactured abroad by a process which, if practiced in the United States, would infringe claims 2, 4–7, 23–25, and 27–29 of U.S. Letters Patent 4,703,008. The Commission named Chugai Pharmaceutical Co., Ltd. of Japan and Chugai, USA, Inc. of New York City as respondents. During the investigation, the Commission granted a motion filed by The Upjohn Company of Kalamazoo, Michigan, to intervene as a respondent.

Notice of this investigation was published in the **Federal Register** of February 10, 1988 (53 FR 3947–3948).

This action is taken under authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and sections 210.55 and 210.56 of the Commission's interim rules (53 FR 33071 (Aug. 29, 1988)).

By order of the Commission.

**Kenneth R. Mason,**

*Secretary.*

Issued: February 27, 1989.

[FR Doc. 89–5386 Filed 3–7–89; 8:45 am]

BILLING CODE 7020–02–M

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**[Investigation No. 337–TA–286]**

**Certain Track Lighting System Components, Including Plugboxes; Meeting**

Notice is hereby given that the prehearing conference in this matter will commence at 9:00 a.m. on March 13, 1989, in Courtroom A (Room 100), U.S. International Trade Commission Building, 500 E St. SW., Washington, DC, and the hearing will commence immediately thereafter.

The Secretary shall publish this notice in the **Federal Register.**

**Janet D. Saxon,**

*Chief Administrative Law Judge.*

Issued: February 27, 1989.

[FR Doc. 89–5386 Filed 3–7–89; 8:45 am]

BILLING CODE 7020–02–M

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**[Investigation No. 337–TA–290]**

**Certain Wire Electrical Discharge Machining Apparatus and Components Thereof; Investigation**

**AGENCY:** International Trade Commission.

**ACTION:** Institution of investigation pursuant to 19 U.S.C. 1337.

**SUMMARY:** Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on January 23, 1989, under section 337 of the Tariff Act of 1930, as amended, (19 U.S.C. 1337), on behalf of Elox Corporation, Griffith Street, P.O. Box 220, Davidson, North Carolina 28036 and A.G. fur Industrielle Elektronik AGIE, Losone bei Locarno, CH–6616 Losone, Switzerland. A supplement was filed on February 8, 1989. The complaint, as supplemented, alleges violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain wire electrical discharge machining apparatus and components by reason of alleged direct, induced, and contributory infringement of claims 1 and 7–24 of U.S. Letters Patent 3,928,163; and that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after a full investigation, issue a permanent exclusion order and permanent cease and desist orders.

**ADDRESSES:** The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–252–1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

**FOR FURTHER INFORMATION CONTACT:** Gary M. Hnath, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–252–1571.

**Authority**

The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.12 of the Commission's Interim Rules of Practice and Procedure, 53 FR 33034, 33057 (Aug. 29, 1988).

**Scope of Investigation**

Having considered the complaint, the U.S. International Trade Commission, on February 22, 1989, *Ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain wire electrical discharge machining apparatus and components by reason of alleged direct, induced, or contributory infringement of any of claims 1 or 7–24 of U.S. Letters Patent 3,928,163, and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are—

Elox Corporation, Griffith Street, P.O. Box 220, Davidson, North Carolina 28036

A.G. fur Industrielle Elektronik AGIE, Losone bei Locarno, CH–6616 Losone, Switzerland

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:



Sodick Co., Ltd., 1–5–1 Shin-Yokohama, Kouhoku-Ku, Yokohama, Kanagawa 222, Japan

Sodick Inc., 2100 Golf Road, Suite 350, Rolling Meadows, Illinois 60008

KGK Corporation, 1–6, Sakuradai 1-chome, Nerima-ku, Tokyo 176, Japan

KGK International Corporation, 543 W. Algonquin Road, Arlington Heights, Illinois 60005

Maruka Machinery Co., Ltd., 2–28 Itsukaichi Midori-cho, Ibaraki-shi, Osaka 567, Japan

Maruka Machinery Corporation of America, 60 Chapin Road, Pine Brook, New Jersey 07058

Yamazen Co., Ltd., 3–16, Itachibori 2-chome, Nishi-ku, Osaka-shi, Osaka 550, Japan

Yamazen USA, Inc., 1130 E. Dominguez Street, Carson, California 90746

Bridgeport Machines, Inc., 500 Lindley Street, Bridgeport, Connecticut 06606

(c) Gary M. Hnath, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 401I, Washington, DC 20436, shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with § 210.21 of the Commission's Interim Rules of Practice and Procedure, 53 FR 33034, 33057 (Aug. 29, 1988). Pursuant to sections 201.16(d) and 210.21(a) of the Commission's Rules (19 CFR 201.16(d) and 53 FR 33034, 33057 (Aug. 29, 1988)), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

By order of the Commission.

Issued: February 27, 1989.

**Kenneth R. Mason,**

*Secretary.*

[FR Doc. 89–5385 Filed 3–7–89; 8:45 am]

BILLING CODE 7020–02–M

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## DEPARTMENT OF LABOR

### Bureau of International Labor Affairs

**Partial Revision of the Indigenous and Tribal Populations Convention, 1957 (No. 107), International Labor Organization**

**AGENCY:** Department of Labor.

**ACTION:** Request for comment from tribal governments.

**SUMMARY:** The Department of Labor (DOL) invites comments from tribal governments on the appended proposed revision of the International Labor Organization's (ILO) Indigenous and Tribal Populations Convention, 1957 (No. 107). In preparation for the second discussion of this revised convention at the upcoming 1989 International Labor Conference, the Bureau of International Labor Affairs of the Department of Labor, with the assistance of the relevant Federal agencies, will prepare a position paper on the proposed text.

**DATE:** Comments will be accepted through April 7, 1989.

**ADDRESS:** Written comments should be directed to Marion F. Houstoun, Office of International Organizations, Bureau of International Labor Affairs, S–5311, U.S. Department of Labor, Washington, DC 20210.

**FOR FURTHER INFORMATION CONTACT:** Marion F. Houstoun, Office of International Organizations, Bureau of International Labor Affairs, S–5311, U.S. Department of Labor, Washington, DC 20210, telephone number (202) 523–6241.

**SUPPLEMENTARY INFORMATION:** In June 1988, the annual Conference of the ILO held the first of two annual discussions on the Partial Revision of the Indigenous and Tribal Populations Convention (No. 107), which the Conference adopted in 1957. The existing Convention deals with a wide range of issues such as native land rights, consultation between governments and native peoples in social and economic development, and issues of employment, vocational training, health and education affecting tribal peoples. The Convention is being revised because its assimilationist or integrationist approach to fundamental issues is widely seen as inapproprate and outdated. The ILO issued the report of the June 1988 session of the Conference Committee on Convention No. 107 and a proposed Convention text based on the results of that meeting. The ILO requested that Member States submit amendments or comments on the proposed text. The U.S. Government prepared and submitted comments to the ILO after consulting with U.S. employers' and workers' organizations, as well as U.S. indigenous groups (see DOL request for comments from tribal governments in the October 28, 1988, **Federal Register**). The attached new ILO draft of the proposed revised convention, which will be considered at the June 1989 session of the Conference, incorporates the comments of Member States. The Bureau of International Labor Affairs of the Department of Labor, with the assistance of the Departments of Interior and State, will prepare the U.S. position paper on this draft text for the upcoming Conference. The Department of Labor invites comments from tribal governments on the proposed revised Convention. The revised Convention is intended to be a broad statement of principles that can be adopted by many countries whose indigenous and tribal peoples face a wide range of circumstances.

Signed on the 2d day of March, 1989.

**Eugene K. Lawson,**

*Deputy Under Secretary for International Affairs, U.S. Department of Labor.*

**Proposed Text**

The following is the English version of the proposed Convention concerning indigenous and tribal peoples in independent countries which is submitted as a basis for discussion of the fourth item on the agenda of the 76th Session of the Conference.

*Proposed Convention Concerning Indigenous and Tribal Peoples in Independent Countries*

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its 76th Session on 7 June 1989, and

Noting the international standards contained in the Indigenous and Tribal Populations Convention and Recommendation, 1957, and

Recalling the terms of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, and the many international instruments on the prevention of discrimination, and

Considering that the developments which have taken place in

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international law since 1957, as well as developments in the situation of indigenous and tribal peoples in all regions of the world, have made it appropriate to adopt new international standards on the subject with a view to removing the assimilationist orientation of the earlier standards, and

Recognising the aspirations of these peoples to exercise control over their own institutions, ways of life and economic development and to maintain and develop their identities, languages and religions, within the framework of the States in which they live, and

Noting that in many parts of the world these peoples are unable to enjoy their fundamental human rights to the same degree as the rest of the population of the State within which they live, and that their laws, values, customs and perspectives have often been eroded, and

Calling attention to the distinctive contributions of indigenous and tribal peoples to the cultural diversity and social and ecological harmony of humankind and to international co-operation and understanding, and

Noting that the following provisions have been framed with the co-operation of the United Nations, the Food and Agriculture Organisation of the United Nations, the United Nations Educational, Scientific and Cultural Organisation and the World Health Organization, as well as of the Inter-American Indian Institute, at appropriate levels and in their respective fields, and that it is proposed to continue this co-operation in promoting and securing the application of these provisions, and

Having decided upon the adoption of certain proposals with regard to the partial revision of the Indigenous and Tribal Populations Convention, 1957 (No. 107), which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention revising the Indigenous and Tribal Populations Convention, 1957;

adopts this —— day of June of the year one thousand nine hundred and eighty-nine the following Convention, which may be cited as the Indigenous and Tribal Peoples Convention, 1989:

Part I. General Policy

*Article 1*

1. This Convention applies to:

*(a)* tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations;

*(b)* peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.

2. Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply.

3. The use of the term "peoples" in this Convention shall not be construed as having any implications as regards the rights which may attach to the term under other international instruments.

*Article 2*

1. Governments shall have the responsibility for developing, with the participation of the peoples concerned, co-ordinated and systematic action to protect the rights of these peoples and to guarantee respect for their integrity.

2. Such action shall include measures for:

*(a)* Enabling members of these peoples to benefit on an equal footing from the rights and opportunities which national laws and regulations grant to other members of the population;

*(b)* Promoting the full realisation of the social, economic and cultural rights of these peoples with respect for their social and cultural identity, their customs and traditions and their institutions;

*(c)* Assisting the members of the peoples concerned to raise their standard of living to that enjoyed by other members of the national community, in a manner compatible with their aspirations and ways of life.

*Article 3*

1. Indigenous and tribal peoples shall enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination.

2. No form of force or coercion shall be used in violation of the human rights and fundamental freedoms of the peoples concerned, including the rights contained in this Convention.

*Article 4*

1. Special measures shall be adopted as appropriate for safeguarding the persons, institutions, property, labour and environment of the peoples concerned.

2. Such special measures shall not be contrary to the wishes of the peoples concerned.

3. Enjoyment of the general rights of citizenship, without discrimination, shall not be prejudiced in any way by such special measures.

*Article 5*

In applying the provisions of this Convention:

*(a)* The social, cultural and religious values and practices of these peoples shall be recognised and protected, and due account shall be taken of the nature of the problems which face them both as groups and as individuals;

*(b)* The integrity of the values, practices and institutions of these peoples shall be respected;

*(c)* Policies aimed at mitigating the difficulties experienced by these peoples in adjusting to new conditions of life and work shall be adopted, with the participation and co-operation of the peoples affected.

*Article 6*

1. In applying the provisions of this Convention, governments shall:

*(a)* Consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly;

*(b)* Establish means by which these peoples may freely participate, to at least the same extent as other sectors of the population, at all levels of decision-making in elective institutions and administrative and other bodies responsible for policies and programmes which may affect them directly;

*(c)* Make available to these peoples opportunities for the full development of their own institutions and initiatives, and in appropriate cases provide the resources necessary for this purpose.

2. The consultations carried out in application of this Convention shall be undertaken, in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures.

*Article 7*

1. The improvement of the conditions of life and work and levels of health and education of the peoples concerned, with their participation and co-operation, shall be a matter of priority in plans for the overall economic development of areas inhabited by them. Special projects for development of the areas in question shall also be so designed as to promote such improvement.

2. The peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, territories, institutions and spiritual well-being and to exercise control, to the extent possible, over their own economic, social and cultural development. In addition, they shall be involved in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly.

3. Governments shall ensure that, whenever appropriate, studies are carried out, in co-operation with the peoples concerned, to assess the social, spiritual, cultural and environmental impact on them of planned development activities.

4. Governments shall take measures, in co-operation with the peoples concerned, to protect and preserve the environment of the territories they inhabit.

*Article 8*

1. In the application of national laws and regulations to the peoples concerned, due regard shall be had to their customs or customary laws.

2. These peoples shall have the right to retain their own customs and institutions, where these are not incompatible with fundamental rights defined by the national legal system or with internationally recognised human rights. Procedures shall be established, whenever necessary, to resolve conflicts which may arise in the application of this principle.

3. The application of paragraphs 1 and 2 of this Article shall not prevent members of these peoples from exercising the rights granted to all citizens and from assuming the corresponding duties.

*Article 9*

1. To the extent compatible with the national legal system and internationally recognised human rights, the use of methods customarily practised by the peoples concerned for dealing with offences committed by their members shall be respected.

2. The customs of these peoples in regard to penal matters shall be taken into consideration by the authorities and courts dealing with such cases.

*Article 10*

1. In imposing penalties laid down by general law on members of these peoples account shall be taken of their economic, social and cultural characteristics.

2. Preference shall be given to methods of punishment other than confinement in prison.

*Article 11*

The exaction from members of the peoples concerned of compulsory personal services in any form, whether paid or unpaid, shall be prohibited and punishable by law, except in cases prescribed by law for all citizens.

*Article 12*

The peoples concerned shall be safeguarded against the abuse of their rights and shall be able to take legal proceedings, either individually or through their representative bodies, for the effective protection of these rights. Measures shall be taken to ensure that members of these peoples can understand and be understood in legal proceedings, where necessary through the provision of interpretation or by other effective means.

Part II. Land

*Article 13*

In applying the provisions of this Part of the Convention governments shall have due regard to the special importance for the cultures of the peoples concerned of their relationship with the lands and territories they occupy, and in particular the collective aspects of this relationship.

*Article 14*

1. The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognised.

2. Governments shall take steps as necessary to identify the lands which the people concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession.

3. Where appropriate, measures shall be taken to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect.

4. Adequate procedures shall be established within the national legal system to resolve land claims by the peoples concerned, including claims arising under treaties.

*Article 15*

1. The rights of the peoples concerned to the surface resources pertaining to their lands and territories, including flora and fauna, waters and sea-ice, shall be specially safeguarded. These rights include the right of these peoples to participate in the management and conservation of these resources.

2. Governments shall establish or maintain procedures, in accordance with Article 6 of this Convention, through which they shall seek to obtain the agreement of these peoples before undertaking or permitting any programmes for the exploration or exploitation of mineral and other sub-surface resources pertaining to their lands and territories. The peoples concerned shall wherever possible participate in the benefits of such activities, and shall receive fair compensation for any such activities undertaken within their territories.

*Article 16*

1. Subject to the following paragraphs of this Article, the peoples concerned shall not be removed from the lands and territories which they occupy.

2. Where the removal of these peoples is considered necessary as an exceptional measure, such removals shall take place only with their free and informed consent. Where their consent cannot be obtained, such removal shall take place only following appropriate procedures established by national laws and regulations, including public inquiries where appropriate, which provide the opportunity for effective representation of the peoples concerned.

3. In such exceptional cases of removal, these peoples shall be provided with lands of quality and legal status at least equal to that of the lands previously occupied by them, suitable to provide for their present needs and future development. Where the peoples concerned express a preference for compensation in money or in kind, they shall be so compensated under appropriate guarantees.

4. Whenever possible, these peoples shall have the right to return to their traditional lands and territories, as soon as the grounds for removal cease to exist.

5. Persons thus removed shall be fully compensated for any resulting loss or injury.

*Article 17*

1. Procedures established by the peoples concerned for the transmission of land rights among members of these peoples shall be respected.

2. The peoples concerned shall be consulted whenever consideration is being given to their capacity to alienate their lands or otherwise transmit their rights outside their own community.

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3. Persons who are not members of these peoples shall be prevented from taking advantage of their customs or of lack of understanding of the laws on the part of their members to secure the ownership, possession or use of land belonging to them.

*Article 18*

Adequate penalties shall be established by law for unauthorised intrusion upon, or use of, the lands of the peoples concerned, and governments shall take measures to prevent such offences.

*Article 19*

National agrarian programmes shall secure to the peoples concerned treatment equivalent to that accorded to other sectors of the population with regard to:

*(a)* The provision of more land for these peoples when they have not the area necessary for providing the essentials of a normal existence, or for any possible increase in their numbers;

*(b)* The provision of the means required to promote the development of the lands which these peoples already possess.

Part III. Recruitment and Conditions of Employment

*Article 20*

1. Governments shall, within the framework of national laws and regulations, and in co-operation with the peoples concerned, adopt special measures to ensure the effective protection with regard to recruitment and conditions of employment of workers belonging to these peoples, to the extent that they are not effectively protected by laws applicable to workers in general.

2. Governments shall do everything possible to prevent any discrimination between workers belonging to the peoples concerned and other workers, in particular as regards:

*(a)* Admission to employment, including skilled employment, as well as measures for promotion and advancement;

*(b)* Equal remuneration for work of equal value;

*(c)* Medical and social assistance, occupational safety and health, all social security benefits and any other occupationally related benefits, and housing;

*(d)* The right of association and freedom for all lawful trade union activities, and the right to conclude collective agreements with employers or employers' organisations.

3. The measures taken shall include measures to ensure:

*(a)* That workers belonging to the peoples concerned, including seasonal, casual and migrant workers in agricultural and other employment, as well as those employed by labour contractors, enjoy the protection afforded by national law and practice to other such workers in the same sectors, and that are fully informed of their rights under labour legislation and of the means of redress available to them;

*(b)* That workers belonging to these peoples are not subjected to working conditions hazardous to their health, in particular through exposure to pesticides or other toxic substances;

*(c)* That workers belonging to these peoples are not subjected to coercive recruitment systems, including bonded labour and other forms of debt servitude;

*(d)* That workers belonging to these peoples enjoy equal opportunities and equal treatment in employment for men and women, and protection from sexual harassment.

4. Particular attention shall be paid to the establishment of adquate labour inspection services in areas where workers belonging to the peoples concerned undertake wage employment, in order to ensure compliance with the provisions of this Part of this Convention.

Part IV. Vocational Training, Handicrafts and Rural Industries

*Article 21*

Members of the peoples concerned shall enjoy opportunities at least equal to those of other citizens in respect of vocational training measures.

*Article 22*

1. Measures shall be taken to promote the voluntary participation of members of the peoples concerned in vocational training programmes of general application.

2. Whenever existing programmes of vocational training of general application do not meet the special needs of the peoples concerned, governments shall, with the participation of these peoples, ensure the provision of special training programmes and facilities.

3. Any special training programmes shall be based on the economic environment, social and cultural conditions and practical needs of the peoples concerned. Any studies made in this connection shall be carried out in co-operation with these peoples, who shall be consulted on the organisation and operation of such programmes. Where feasible, these peoples shall progressively assume responsibility for the organisation and operation of such special training programmes, if they so decide.

*Article 23*

1. Handicrafts, rural and community-based industries, and subsistence economy and traditional activities of the peoples concerned, such as hunting, fishing, trapping and gathering, shall be recognised as important factors in the maintenance of their cultures and in their economic self-reliance and development. Governments shall, with the participation of these peoples and whenever appropriate, ensure that these activities are strengthened and promoted.

2. Upon the request of the peoples concerned, appropriate technical and financial assistance shall be provided wherever possible, taking into account the traditional technologies and cultural characteristics of these peoples, as well as the importance of sustainable and equitable development.

Part V. Social Security and Health

*Article 24*

Social security schemes shall be extended progressively to cover the peoples concerned, and applied without discrimination against them.

*Article 25*

1. Governments shall ensure that adequate health services are made available to the peoples concerned, or shall provide them with resources to allow them to design and deliver such services under their own responsibility and control, so that they may enjoy the highest attainable standard of physical and mental health.

2. Health services shall, to the extent possible, be community-based. These services shall be planned and administered in co-operation with the peoples concerned and take into account their economic, geographic, social and cultural conditions as well as their traditional preventive care, healing practices and medicines.

3. The health care system shall give preference to the training and employment of local community health workers, and focus on primary health care while maintining strong links with other levels of health care services.

4. The provision of such health services shall be co-ordinated with other social, economic and cultural measures in the country.



Part VI. Education and Means of Communication

*Article 26*

Measures shall be taken to ensure that members of the peoples concerned have the opportunity to acquire education at all levels on at least an equal footing with the rest of the national community.

*Article 27*

1. Education programmes and services for the peoples concerned shall be developed and implemented in co-operation with them to address their special needs, and shall incorporate their histories, their knowledge and technologies, their value systems and their further social, economic and cultural aspirations.

2. The competent authority shall ensure the training of members of these peoples and their involvement in the formulation and implementation of education programmes, with a view to the progressive transfer of responsibility for the conduct of these programmes to these peoples as appropriate.

3. In addition, governments shall recognise the right of these peoples to establish their own educational institutions and facilities, provided that such institutions meet minimum standards established by the competent authority in consultation with these peoples. Appropriate resources shall be provided for this purpose.

*Article 28*

1. Children belonging to the peoples concerned shall, wherever practicable, be taught to read and write in their own indigenous language or in the language most commonly used by the group to which they belong. When this is not practicable, the competent authorities shall undertake consultations with these peoples with a view to the adoption of measures to achieve this objective.

2. Adequate measures shall be taken to ensure that these peoples have the opportunity to attain fluency in the national language or in one of the official languages of the country.

3. Measures shall be taken to preserve and promote the development and practice of the indigenous languages of the peoples concerned.

*Article 29*

The imparting of general knowledge and skills that will help children belonging to the peoples concerned to participate fully and on an equal footing in their own community and in the national community shall be an aim of education for these peoples.

*Article 30*

1. Governments shall adopt measures appropriate to the traditions and cultures of the peoples concerned, to make known to them their rights and duties, especially in regard to labour, economic opportunities, education and health matters, social welfare and their rights deriving from this Convention.

2. If necessary, this shall be done by means of written translations and through the use of mass communications in the languages of these peoples.

*Article 31*

Educational measures shall be taken among all sections of the national community, and particularly among those that are in most direct contact with the peoples concerned, with the object of eliminating prejudices that they may harbour in respect to these peoples. To this end, efforts shall be made to ensure that history textbooks and other educational materials provide a fair, accurate and informative portrayal of the societies and cultures of these peoples.

Part VII. Migration Across Borders

*Article 32*

Governments shall take appropriate measures, including by means of international agreements, to facilitate contacts and co-operation between indigenous and tribal peoples across borders, including activities in the economic, social, cultural, spiritual and environmental fields.

Part VIII. Administration

*Article 33*

1. The governmental authority responsible for the matters covered in this Convention shall ensure that agencies or other appropriate mechanisms exist to administer the programmes affecting the peoples concerned, and shall ensure that they have the means necessary for the proper fulfilment of the functions assigned to them.

2. These programmes shall include:

*(a)* the planning, co-ordination, execution and evaluation, in co-operation with the peoples concerned, of the measures provided for in this Convention;

*(b)* the proposing of legislative and other measures to the competent authorities and supervision of the application of the measures taken, in co-operation with the peoples concerned.

Part IX. General Provisions

*Article 34*

The nature and scope of the measures to be taken to give effect to this Convention shall be determined in a flexible manner, having regard to the conditions characteristic of each country.

*Article 35*

The application of the provisions of this Convention shall not adversely affect rights and benefits to the peoples concerned pursuant to other Conventions and Recommendations, international instruments, treaties, or national laws, awards, custom or agreements.

Part X. Final Provisions

*Article 36*

This Convention revises the Indigenous and Tribal Populations Convention, 1957.

[FR Doc. 89-5313 Filed 3-7-89; 8:45 am]
BILLING CODE 4510-29-M

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**Employment and Training Administration**

**Federal-State Unemployment Compensation Program; New Extended Benefit Period in the State of Alaska**

This notice announces the beginning of a new Extended Benefit Period in Alaska, effective on February 19, 1989, and remaining in effect for at least 13 weeks after that date.

**Background**

The Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note) established the Extended Benefit Program as a part of the Federal-State Unemployment Compensation Program. Under the Extended Benefit Program, individuals who have exhausted their rights to regular unemployment benefits (UI) under permanent State (and Federal) unemployment compensation laws may be eligible, during an extended benefit period, to receive up to 13 weeks of extended unemployment benefits, at the same weekly rate of benefits as previously received under the State law. The Federal-State Extended Unemployment Compensation Act is implemented by State unemployment compensation laws and by Part 615 of Title 20 of the Code of Federal Regulations (20 CFR Part 615).

Each State unemployment compensation law provides that there is

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a State "on" indicator (triggering on an Extended Benefit Period) for a week if the head of the State employment security agency determines that, for the period consisting of that week and the immediately preceding 12 weeks, the rate of insured unemployment in the State equaled or exceeded the State trigger rate. The Extended Benefit Period actually begins with the third week following the week for which there is an "on" indicator in the State. A benefit period will be in effect for a minimum of 13 weeks, and will end the third week after there is an "off" indicator.

**Determination of an "on" Indicator**

The head of the employment security agency of the State named above has determined that the rate of insured unemployment in the State, for the 13-week period ending on February 4, 1989, equals or exceeds 6 percent, so that for that week there was an "on" indicator in the State.

Therefore, a new Extended Benefit Period commenced in the State with the week beginning on February 19, 1989. This period will continue for no less than 13 weeks, and until three weeks after a week in which there is an "off" indicator in the State.

**Information for Claimants**

The duration of extended benefits payable in the Extended Benefit Period, and the terms and conditions on which they are payable, are governed by the Act and the State unemployment compensation law. The State employment security agency will furnish a written notice of potential entitlement to extended benefits to each individual who has established a benefit year in the State that will expire after the new Extended Benefit Period begins. 20 CFR 615.13(d)(1). The State employment security agency also will provide such notice promptly to each individual who exhausts all rights under the State unemployment compensation law to regular benefits during the Extended Benefit Period. 20 CFR 615.13(d)(2).

Persons who believe they may be entitled to extended benefits in the State named above, or who wish to inquire about their rights under the Extended Benefit Program, should contact the nearest State employment service office or unemployment compensation claims office in their locality.

Signed at Washington, DC, on February 24, 1989.

**Roberts T. Jones,**

*Assistant Secretary of Labor.*

[FR Doc. 89-5376 Filed 3-7-89; 8:45 am]

BILLING CODE 4510-30-M

## NATIONAL SCIENCE FOUNDATION

### Interagency Arctic Research Policy Committee; Meeting

In accordance with the Arctic Research and Policy Act, Pub. L. 98-373, the National Science Foundation announces the following meeting:

*Name:* Interagency Arctic Research Policy Committee.

*Date & Time:* March 27, 9:00 a.m.

*Place:* National Science Foundation, Room 540 1800 G Street, NW., Washington, DC.

*Type of Meeting:* Open, but part of the meeting will be closed for a discussion of agency budget initiatives.

*Contact Person:* Jerry Brown, Division of Polar Programs, Room 627, National Science Foundation, Washington, DC 20550. Telephone: (202) 357-7817.

*Purpose of Meeting:* The Interagency Arctic Research Policy Committee was established by Pub. L. 98-373, the Arctic Research and Policy Act, to survey arctic research, help determine priorities for future arctic research, develop a natonal arctic research policy, prepare a single, integrated multi-agency budget request for arctic reasearch, develop a plan to implement national arctic research policy, and facilitate cooperation in and coordination of arctic research.

*Agenda: Open Session* 9:00 a.m.

1. Welcome and Introductions
2. Discussion of Biennial Revision to U.S. Arctic Research Plan
3. Comments from Arctic Research Commission
4. Status of International Arctic Scientific Activities
5. Other Business

*Closed Session.* Disussion of Ageny Arctic Budget Initiatives.

*Public Participation:* Committee meetings are not designed as public hearings and will not normally receive verbal comments from observers unless specifically invited by the Committee. Observers invited to address the Committee will be limited to five minutes each. An invitation to address the Committee is contingent upon advance submission of the proposed statement and a determination by the Committee that such statement is relevant and appropriate to the agenda at the particular meeting. The texts of such statements shall not exceed five double-spaced typed pages each.

**Charles E. Myers,**

*Division of Polar Programs.*

[FR Doc. 89-5308 Filed 3-7-89; 8:45 am]

BILLING CODE 7555-01-M

## NUCLEAR REGULATORY COMMISSION

### Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

**I. Background**

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular biweekly notice. P.L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from February 10, 1989 through February 24, 1989. The last biweekly notice was published on February 22, 1989 (54 FR 7822).

### NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.



Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room P-216, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC The filing of requests for hearing and petitions for leave to intervene is discussed below.

By April 7, 1989 the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Project Director*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

**Arizona Public Service Company, et al., Docket Nos. STN 50-528, STN 50-529 and STN 50-530, Palo Verde Nuclear Generating Station (PVNGS), Unit 1, 2 and 3, Maricopa County, Arizona**

*Date of amendment request:* November 9, 1988

*Description of amendment request:* The proposed amendment would revise the PVNGS Technical Specifications (TS), Section 3.4.5.1, "RCS Leak Detection System" by revising the operability requirements of the monitoring systems which comprise the RCS Leak Detection System, and the

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associated Action Statements. More specifically, the proposed amendments to TS Section 3.4.5.1 would clarify that primary system leakage is monitored by two independent techniques, not three. Airborne radioactivity is monitored using the particulate and/or gaseous monitor and the liquid volumes are monitored using the sump level and/or flow monitoring system.

Currently, the TS list three independent detection systems: containment atmosphere particulate radioactivity monitoring system, containment sump level and flow monitoring system, and the containment atmosphere gaseous radioactivity monitoring system. However, the containment atmosphere particulate system and the gaseous system are a common system utilizing the same power source, sample point and various other common components.

The proposed Action Statement for inoperable containment atmosphere gaseous radioactivity and containment atmosphere particulate radioactivity would also be revised to allow continued operation for up to 30 days provided that gaseous and/or particulate grab samples of the containment atmosphere are obtained at least once per 12 hours and analyzed within the subsequent 3 hours, and that the containment sump level and flow monitoring system is available.

In addition, the proposed Action Statement for inoperable containment sump level and flow monitoring system would allow continued operation for up to 30 days provided the containment atmosphere gaseous radioactivity monitoring and the containment atmosphere particulate radioactivity monitoring system are operable.

*Basis for Proposed No Significant Hazards Consideration Determination:* The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensees have evaluated the proposed amendment against these standards and have provided the following discussion:

Standard 1 - Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated because the proposed change does not alter the current design or operation of the facility. The revised operability requirements will not provide significant degradation to the Reactor Coolant System leakage detection capability. These changes do not adversely affect the consequences of the design basis accidents. Therefore, the proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

Standard 2 - Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated. Since there are no changes in the way the plant is being operated, the potential for an unanalyzed accident is not created. No new failure modes are introduced. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Standard 3 - Involve a significant reduction in a margin of safety.

The proposed change does not involve a significant reduction in a margin of safety. The proposed changes do not have any adverse impact on the containment integrity. Since the proposed changes do not affect the consequences of any accident previously analyzed, there is no reduction in the margin of safety.

The proposed change matches two of the examples given in 51 FR 7751 of amendments that do not include a significant hazards consideration. The proposed changes are enveloped by example (ii), a change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications, e.g., a more stringent action statement. The proposed changes require that grab samples of the containment atmosphere be obtained at least once per twelve hours and analyzed within the next three hours. This requirement is more restrictive than the current Technical Specification which requires that grab samples of the containment atmosphere be obtained and analyzed at least once per twenty-four hours....

The staff has reviewed the licensees' no significant hazards analysis and concurs with their conclusions. As such, the staff proposes to determine that the requested changes do not involve a significant hazards consideration.

*Local Public Document Room location:* Phoenix Public Library, Business and Science Division, 12 East McDowell Road, Phoenix, Arizona 85004

*Attorney for licensees:* Mr. Arthur C. Gehr, Snell & Wilmer, 3100 Valley Center, Phoenix, Arizona 85007.

*NRC Project Director:* George W. Knighton

**Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina**

*Date of application for amendments:* February 29, 1988

*Description of amendment request:* The proposed change for the Brunswick Steam Electric Plant (BSEP) would delete Surveillance Requirement 4.8.1.1.1.b which requires that the on-site Class 1E distribution system be demonstrated operable at least once per 18 months during shutdown by manually transferring the unit power supply from the normal circuit to the alternate circuit.

*Basis for proposed no significant hazard consideration determination:* The Commission has provided standards for determining whether a no significant hazard consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The Carolina Power & Light Company (CP&L) has reviewed the proposed deletion to TS and has determined that the requested amendment does not involve a significant hazards consideration for the following reasons:

1. The proposed change deletes a Surveillance Requirement that does not apply to the BSEP design. The intent of the surveillance requirement; to demonstrate power source operability, is met on a continuous basis by continually providing four normal offsite power sources for each unit as opposed to a single normal and a single alternate offsite power source. Deletion of this requirement has no impact on the consequences of any accident because the intent of the surveillance requirement is met and verified continuously. The current Technical Specification only requires verification on an 18 month basis. The probability of an accident is likewise unchanged, simply because current practice is more conservative than the existing surveillance requirement.

2. The present electrical distribution system does not physically change as a result of the proposed change; nor does its operation. Manual transfer from a normal to an alternate power source is not possible at BSEP, simply because there is no differentiation between "normal" and "alternate" power sources. Each of the four transmission lines on each unit are



continuously energized. Only two are required to be operable to meet the intent of Technical Specification 3.8.1.1. These four supply lines will continue to provide the offsite power necessary to provide sufficient capacity and capability to automatically start and operate all required safety loads. Based on this reasoning, CP&L has determined that the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change deletes a surveillance requirement which is not consistent with the BSEP design basis. The surveillance requirement requires that each of the two independent circuits be demonstrated operable at least once per 18 months by manually transferring unit power supply from the normal circuit to the alternate circuit. At BSEP, there are four independent circuits for each unit (transmission lines) and there is no difference between the alternate and normal power supplies. Manual transfer of the power supply is not necessary because each of the four lines for each unit is normally energized, and therefore verified operable, continuously. Thus, the intent of Technical Specification 3.8.1.1 is met, and the offsite power sources are verified operable more frequently than the current surveillance requires. Thus, there is no decrease in the margin of safety.

The staff has reviewed the CP&L determinations and agrees that CP&L has met the three standards involved for determination of no significant hazards consideration. Accordingly, the Commission proposes to determine that these changes do not involve a significant hazards consideration.

*Local Public Document Room location:* University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

*Attorney for licensee:* R. E. Jones, General Counsel, Carolina Power & Light Company, P. O. Box 1551, Raleigh, North Carolina 27602

*NRC Project Director:* Elinor G. Adensam

**Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina**

*Date of application for amendments:* September 19, 1988

*Description of amendment request:* The proposed change revises the actions associated with Technical Specification 3/4.6.4 (Drywell-Suppression Chamber - Vacuum Breakers) to clarify the alternative actions to be taken if the existing actions cannot be taken. To do this, existing Action 3.6.4.1.d will be incorporated into Actions 3.6.4.1.a, 3.6.4.1.b, and 3.6.4.1c and present action 3.6.4.1.d will be deleted. Action a addresses no more than two drywell - suppression chamber vacuum breakers inoperable for opening, but closed, whereas action b addresses one open vacuum breaker. Action c deals with vacuum breakers position indication inoperability whereas action d defines unit shutdown requirements.

*Basis for proposed no significant hazard consideration determination:* The Commission has provided standards for determining whether a no significant hazard consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The Carolina Power & Light Company (CP&L) has reviewed the proposed changes and has determined that the requested amendment does not involve a significant hazards consideration for the following reasons:

1. The proposed change clarifies the existing requirement of Technical Specification 3.6.4.1. It does not impact plant equipment or design; it only provides a clearer statement of the actions to be taken if Technical Specification 3.6.4.1 cannot be met, thereby providing assurance that the proper actions are taken when necessary. The probability of an accident is not increased because the requirement of Technical Specification 3.6.4.1 and its actions have not changed; the actions have only been clarified. The same is true for the consequences of an accident; they have not changed because the requirements of Technical Specification 3.6.4.1 and its actions have not changed.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated because the requirements of Technical Specification 3.6.4.1 and its actions have not changed. The proposed change requires that if Actions 3.6.4.1.a, 3.6.4.1.b, or 3.6.4.1.c cannot be met, the unit must be in hot shutdown within 12 hours and in cold shutdown within the next 24 hours, just as Technical Specification 3.6.4.1. and its actions currently require.

3. The proposed amendment only clarifies the existing requirement of Technical Specification 3.6.4.1 and its actions. It does not change the design or operation of plant equipment, nor does it change the intent of any requirements provided in the Technical Specifications. Therefore, it does not involve a significant reduction in the margin of safety.

The staff has reviewed the CP&L determination and is in agreement with them. Accordingly, the Commission proposes to determine that these changes do not involve a significant hazards consideration.

*Local Public Document Room location:* University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

*Attorney for licensee:* R. E. Jones, General Counsel, Carolina Power & Light Company, P. O. Box 1551, Raleigh, North Carolina 27602

*NRC Project Director:* Edward A. Reeves

**Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York**

*Date of amendment request:* August 18, 1986, as modified January 25, 1989.

*Description of amendment request:* The proposed amendment would modify the licensee's August 18, 1988 application for amendment which was noticed on October 8, 1986 (51 FR 36067). The August 18, 1986 application proposed to add requirements to Technical Specification Tables 3.5-2 and 4.1-1 requiring the operability and surveillance of the reactor trip breakers shunt trip attachment in accordance with the requirements of item 4.3 of Generic Letter 83-28. The August 18, 1986 application proposed that with one reactor trip logic train inoperable, reactor operation at power be permitted to continue (allowable-out-of-service time) for up to 48 hours. The proposed amendment would reduce this allowable-out-of-service time to six hours. The six hour allowable-out-of-service time is consistent with the requirements of Generic Letter 85-09. The proposed amendment would also add a restriction of eight hours for the time during which reactor operation at power may continue with a reactor trip breaker and/or associated logic channel bypassed for maintenance or surveillance testing. The proposed amendment would also correct two minor typographical errors.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870). Example (ii) of those involving no significant hazards consideration discusses a change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications: for example, a more stringent surveillance requirement. The proposed changes to Technical Specification Tables 3.5-2 and 4.1-1 with respect to the reactor trip breakers provide new explicit Limiting Conditions

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for Operation and testing requirements consistent with the modified shunt trip design, not previously included in Technical Specifications.

The licensee provided the following analysis of the proposed changes:

The proposed change does not involve a significant hazards consideration because operation of Indian Point Unit No. 2 in accordance with these changes would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. The Technical Specification changes submitted reflect plant modifications already implemented and reviewed pursuant to 10 CFR 50.59, and as such are expected to enhance the reliability of the reactor trip breakers to trip on demand. The proposed Technical Specification changes are consistent with guidance contained in Generic Letter 85-09. In addition, the proposed changes constitute additional controls not presently included in the Technical Specifications. Therefore, this change will not increase the probability or consequences of an accident.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed Technical Specification changes resulted from extensive review and analysis of the Salem ATWS event and are a result of modifications made as recommended by those analyses. The proposed change would not alter the configuration of any of the plant's safety equipment. Therefore, it has been determined that this change will not create the possibility of a new or different kind of accident from that previously evaluated.

(3) Involve a significant reduction in a margin of safety. The modifications made to the plant increase the margin of safety and the proposed Technical Specifications changes reflect additional conservative administrative controls based on those modifications. Therefore, it has been determined that this change does not involve a significant reduction in a margin of safety.

Based on the above consideration, and inasmuch as this proposed change is similar to an example for which the Commission has determined no significant hazards considerations exist (i.e., a new limitation or surveillance requirement), the licensee concluded this proposed change does not constitute a significant hazards consideration.

The staff agrees with the licensee's analysis. Therefore, based on the above, the staff proposes that the proposed amendment will not involve a significant hazards consideration.

*Local Public Document Room location:* White Plains Public Library, 100 Martine Avenue, White Plains, New York, 10610.

*Attorney for licensee:* Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003

*NRC Project Director:* Robert A. Capra, Director

**Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina**

*Date of amendment request:* March 16, 1987, as supplemented April 24, 1987

*Description of amendment request:* The proposed amendment request would delete the requirements in the Technical Specifications (TS) for resistance testing of certain fuses whose function is to provide containment penetration conductor overcurrent protection, and would substitute a requirement that a fuse inspection and maintenance program be maintained to ensure that the proper size and type of fuse is installed, that the fuses show no signs of deterioration, and that the fuse connections are tight and clean. The list of containment penetration conductor overcurrent protective devices (circuit breakers and fuses) would be deleted from the TS and the associated testing technique for these circuit breakers would be relocated to the TS Bases.

*Basis for proposed no significant hazards consideration determination:* The TS currently require that among other things, all containment penetration conductor overcurrent protection fuses shall periodically be demonstrated operable by selecting and functionally testing a representative sample (10%) of each type of fuse on a rotating basis. The proposed license amendment application addresses the fact that resistance checking of fuses does not provide a meaningful assurance of the fault interrupting capability of the fuse, and that periodic removal of fuses for testing can compromise the integrity of the fuse holder and contact points. In lieu of resistance testing, the change would require a fuse inspection and maintenance program in conformance with IEEE Standard 242-1975, which calls for "inspection to ensure that the proper size fuse is installed, that it shows no signs of deterioration, and that the enclosure is clean and the connections are tight." Based on these considerations, and the fact that resistance verification is performed by the vendor during the manufacturing process, the deletion of the requirements for resistance checking of these fuses would not involve a significant increase in the probability of fuse failure. Since the proposed deletion of field testing by resistance would not impact fuse integrity, would not affect the method of plant operation, and would not affect equipment important to safe operation, the proposed amendment would not create the possibility of a new and different accident from any previously evaluated. Since the resistance checking of fuses only generates data that are not indicative of performance, and resistance checking would be replaced by an inspection and maintenance program, the deletion of the requirements for resistance checking of these fuses would not significantly reduce any margins of safety.

TS Tables 3.1-1a for Unit 1 and 3.1-1b for Unit 2 presently list the containment penetration conductor overcurrent protective devices (circuit breakers and fuses), their trip setpoints or continuous ratings, and their response times. The license amendment application addresses the fact that the deletion of this list from the TS shall in no way degrade compliance with the operability of the containment penetration conductor overcurrent protective devices since it is proposed that the list of these devices, including their trip setpoints or continuous ratings and their response times, would be maintained in an appropriately controlled (QA Condition 1) document entitled "Electrical Controls System Description - Electrical Penetration Circuits," which would be referenced in the associated TS Bases 3/4.8.4. Test procedures for fuses and breakers used at the plant would reference this system description document. The Commission has determined that removal of these circuit breakers and fuses from the TS is consistent with its TS Improvement Program. Maintaining the list in the system description document instead of in the TS will allow the licensee to have the flexibility in the future to change the list as needed without first obtaining a TS change. Examples of such changes are the addition or deletion of circuits (and breakers) or the changing of a circuit to require a larger or smaller breaker, as a result of a design change in the plant. The licensee states that its reviews regarding any modification to containment penetration circuits, including additions or deletions thereof, will be in accordance with 10 CFR 50.59, and will assure completeness and accuracy of the tables. The Commission has provided guidance (51 FR 7744) concerning examples of amendments that are not likely to involve a significant hazards consideration. This part of the amendment request matches the example of a purely administrative change to the technical specifications. The list of containment electrical penetration protective devices will be administratively maintained in the licensee-controlled document rather than in the TS, and this will in no way degrade the operability or surveillance requirements of these devices.



Accordingly, the Commission proposes to determine that the proposed changes involve no significant hazards consideration.

*Local Public Document Room location:* Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

*Attorney for licensee:* Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

*NRC Project Director:* David B. Matthews

**Duquesne Light Company, Docket No. 50-412, Beaver Valley Power Station, Unit No. 2, Shippingport, Pennsylvania**

*Date of amendment request:* January 30, 1989

*Description of amendment request:* The proposed amendment would revise three license conditions to extend the completion dates for three issues from the first to the second refueling outage. These issues concern the plant safety monitoring system (PSMS), detailed control room design review (DCRDR) and safety parameter display system (SPDS).

With regard to the change to the PSMS license condition, the licensee has not yet received any document evaluating its verification and validation plan. NRC approval may come too late for the licensee to effect changes. Therefore, the change is submitted for such an eventuality.

Concerning the change to the DCRDR license condition, the licensee stated that this program identified a large number of human engineering deficiencies (HEDs). Despite past and current efforts, a few HEDs are unlikely to be all resolved before startup from the first refueling outage. The majority, however, have been resolved.

Finally, regarding the change to the SPDS license condition, the licensee stated that the majority of issues will be resolved/completed on schedule. However, some faults identified through site acceptance and final response time testing would not be completed in time.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists in accordance with 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazard consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The proposed amendment would relax the implementation schedules for the PSMS, DCRDR and SPDS. The extensions themselves do not create additional changes in plant design or hardware, or operating procedures of the plant. These programs and their associated hardware cannot adversely affect safety equipment or cause accidents. Even though their full implementation is expected to help reduce the consequences and probabilities of accidents, their incomplete implementation does not increase consequences and probabilities of accidents. Hence the answers to questions (1) and (2) are negative. Finally, these programs and associated hardware were not factored into any analysis, and hence their delayed implementation does not reduce any margin of safety. The answer to question (3) is similarly negative.

The staff therefore proposes to determine that the requested amendment involve no significant hazards.

*Local Public Document Room location:* B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

*Attorney for licensee:* Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

*NRC Project Director:* John F. Stolz

**GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania**

*Date of amendment request:* January 31, 1989

*Description of amendment request:* Makes numerous administrative changes to the Technical Specifications and their bases to improve their clarity and consistency and to correct an error in a previous amendment (142).

*Basis for proposed no significant hazards consideration determination:* GPU Nuclear Corporation has determined that this Technical Specification change request poses no significant hazards as defined by the NRC in 10 CFR 50.92.

1. The proposed change will not involve a significant increase in the probability or consequences of any accident previously evaluated. The probability of occurrence or the consequences of previously evaluated accidents are not affected by these changes because the majority of the changes are administrative in nature, or serves to conform to existing regulations which do not affect the plant configuration or operation.

2. Operation of the facility in accordance with the proposed Technical Specification changes would not create the possibility of a new or different kind of accident from any previously evaluated. As stated above, these changes are administrative in nature, conform to existing regulations.

3. Operation of the facility in accordance with the proposed changes would not involve a significant reduction in the margin of safety. The administrative changes do not reduce the margin of safety because of the nature of such changes which serve to provide additional clarity or enhanced understanding of existing Technical Specifications and bases statements.

The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

*Local Public Document Room location:* Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

*Attorney for licensee:* Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

*NRC Project Director:* John F. Stolz

**Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-366, Edwin I. Hatch Nuclear Plant, Unit 2, Appling County, Georgia**

*Date of amendment request:* January 23, 1989

*Description of amendment request:* The amendment would change the Technical Specifications (TS) to require a local leak rate test (LLRT) on each main steam isolation valve (MSIV) to be conducted during each refueling outage, but at intervals not to exceed two years, rather than at 18-month intervals as required by the existing TS. The amendment also would revise TS 4.6.1.2.d.2 to specify the test pressure.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of

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a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The licensee's January 23, 1989 submittal provided the following evaluation of the proposed change with respect to these standards:

This change does not involve a significant increase in the probability or consequences of an accident, because the leakage rate testing on the MSIVs will still be performed within the time interval set forth [in] by the NRC in 10 CFR Part 50, Appendix J. In addition, the addition of the required test pressure under the specification addressing the Type C tests is merely a clarification of an exemption to 10 CFR Part 50, Appendix J previously granted by the NRC as evidenced in Specification 3.6.1.2.c. Thus, the addition of the test pressure value is merely an administrative change.

The possibility of a different kind of accident from any analyzed previously is not created by this change, since the proposed change of extending the potential time duration between MSIV LLRTs is consistent with the 10 CFR Part 50, Appendix J regulations. The administrative change of indicating the test pressure of the MSIV LLRTs under the specification section covering Type C tests has already been approved by the NRC as an exemption to the 10 CFR Part 50, Appendix J requirements.

Margins of safety are not significantly reduced by this change, since the valves will continue to be tested at regular intervals consistent with other primary containment isolation valves and at the required test pressure as required by the GPC Plant Hatch 10 CFR Part 50, Appendix J program.

The staff has considered the proposed changes and agrees with the licensee's evaluation with respect to the three standards.

On this basis, the Commission has determined that the requested amendment meets the three standards and, therefore, has made a proposed determination that the amendment application does not involve a significant hazards consideration.

*Local Public Document Room location:* Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

*Attorney for licensee:* Bruce W. Churchill, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

*NRC Project Director:* David B. Matthews

**Illinois Power Company, Soyland Power Cooperative, Inc., Western Illinois Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois**

*Date of amendment request:* December 21, 1988

*Description of amendment request:* This proposed amendment would revise Technical Specification 4.6.6.1.c.1 to provide appropriate values for the secondary containment drawdown test. The limit provided would replace the current value of 168 seconds with a graph which specifies the drawdown time as a function of the standby gas treatment system flow rate observed during the drawdown when the required differential pressure of 0.25 inches (water gauge) is attained. The acceptance criteria specified for the drawdown test is based on a computer model, verified by the actual performance of drawdown tests, in which the drawdown time determined for accident conditions is adjusted to account for performance of the test during normal plant conditions.

This amendment was provided to comply with a commitment by the licensee to analyze the drawdown time under actual or normal test conditions and to provide an appropriate value for the drawdown test criteria at least 60 days prior to the initiation of the second fuel cycle.

*Basis for proposed no significant hazards consideration determination:* The staff has evaluated this proposed amendment and determined that it involves no significant hazards considerations. According to 10 CFR 50.92(c), a proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the amendment would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or

(3) Involve a significant reduction in a margin of safety.

The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated because the proposed change to the testing acceptance criteria is intended only to revise the criteria to more accurately demonstrate the capability of the system to perform under accident conditions. The new test criteria is revised to reflect that the system would be able to perform its intended function less time under normal conditions that under accident conditions.

The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed change introduces no changes to plant design or operation of the facility. The requirement for testing the containment drawdown has not been changed, only the criteria for acceptability.

The proposed changes do not involve a significant reduction in a margin of safety because the criteria for acceptability has been revised in a more stringent direction from that which currently exists.

For the reasons stated above, the staff believes this proposed amendment involves no significant hazards consideration.

*Local Public Document Room location:* Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727

*Attorney for licensee:* Sheldon Zabel, Esq., Schiff, Hardin and Waite, 7200 Sears Tower, 233 Wacker Drive, Chicago, Illinois 60606

*NRC Project Director:* Daniel R. Muller

**Illinois Power Company, Soyland Power Cooperative, Inc., Western Illinois Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois**

*Date of amendment request:* January 26, 1989

*Description of amendment request:* This proposed amendment would revise Technical Specification 4.4.1.1.3.d to provide consistency with ACTION "d" of the associated Limiting Condition for Operation, Technical Specification 3.4.1.1. The current surveillance requirement directs that while in single loop operation, a minimum core flow must be verified when thermal power is within the unrestricted zone of Figure 3.4.1.1-1. However, the associated LCO action statement requires that when core flow is less than the required minimum and thermal power is within the restricted zone that either the thermal power must be reduced to the unrestricted zone or core flow must be increased above the required minimum. These two statements are in clear conflict. Based on an analysis of the intent of this section of the technical specifications, the amendment proposes to revise the surveillance requirement to require verification of the minimum core flow when thermal power is within the restricted rather than the unrestricted zone.

*Basis for proposed no significant hazards consideration determination:* The staff has evaluated this proposed amendment and determined that it involves no significant hazards considerations. According to 10 CFR 50.92(c), a proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the amendment would not:



(1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or

(3) Involve a significant reduction in a margin of safety.

The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated because providing consistency between the surveillance and LCO will help to ensure that the plant is operated within the bounds and assumptions of the analyses performed and approved for single-loop operation (SLO). The SLO analysis included an evaluation of the impact of SLO on the applicable accident analyses. The proposed change does not involve any changes to the accident or single-loop analyses themselves.

The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated since it does not affect plant design. The scope of the proposed change is limited only to an editorial correction to ensure that the affected surveillance is consistent with the applicable SLO analyses.

The proposed change does not involve a significant reduction in a margin of safety because it will make the surveillance consistent with the purpose of monitoring core flow during core-flow/reactor power conditions corresponding to the restricted zone of Figure 3.4.1.1. Maintaining core flow above the specified value when in the restricted zone maintains sufficient margin from low-flow conditions where power/flow ratios may be high enough for destabilizing effects to occur.

For the reasons stated above, the staff believes this proposed amendment involves no significant hazards consideration.

*Local Public Document Room location:* Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727

*Attorney for licensee:* Sheldon Zabel, Esq., Schiff, Hardin and Waite, 7200 Sears Tower, 233 Wacker Drive, Chicago, Illinois 60606

*NRC Project Director:* Daniel R. Muller

**Philadelphia Electric Company, Docket No. 50-352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania**

*Date of amendment request:* November 4, 1988

*Description of amendment request:* The application requests changes to the Technical Specifications (TSs) to permit operation of the reactor with one of two reactor recirculation loops in service under certain specified conditions. Section 3.4.1.1 of the TSs currently has an "ACTION" requirement which states: "With one reactor coolant system recirculation loop not in operation, immediately initiate action to reduce THERMAL POWER...within two hours and initiate measures to place the unit in at least HOT SHUTDOWN within 12 hours...." The proposed changes would allow reactor operation with only one recirculation loop, at reduced power and for significant periods of time, without the need to remove the reactor from service.

Single Loop Operation (SLO) is the operation of a reactor with only one recirculation loop in service. The use of SLO provides a great deal of operational flexibility and serves as a mechanism to avoid the unnecessary removal of a reactor from service with the attendant cycling of reactor components in the event a recirculation pump or other component malfunction renders one recirculation loop inoperable. During SLO, the core pressure drop is reduced and the total discharge flow from the active bank of jet pumps increases at rated drive flow. Flow through the inactive jet pumps reverses direction and the flow pattern in the reactor lower plenum becomes asymmetric relative to rated conditions with balanced two-loop inlet flow. SLO is a recognized practice for boiling water reactors that has been previously accepted and licensed by the Nuclear Regulatory Commission at various facilities including Peach Bottom Atomic Power Station, Hope Creek Generating Station, Susquehanna Steam Electric Station, Browns Ferry Nuclear Station, Duane Arnold, et al. The NRC has determined that SLO of BWR's is generically acceptable as set forth in Generic Letter No. 86-09, "Technical Resolution of Generic Issue No. B-59-(N-1) loop operation in BWRs and PWRs," dated March 31, 1986.

The design basis accidents and abnormal operational transients associated with power operation, as presented in the Limerick Final Safety Analysis Report (FSAR), Sections 6.2 and 6.3, and the main text of Chapter 15.0 have been reviewed for unit operation with only one recirculation loop in service. The transient safety analysis was performed on an initial cycle basis consistent with that for the FSAR. The analysis shows that the transient consequences for SLO are bounded by the full power two loop operation analysis results given in the FSAR. The conclusion drawn from the transient analysis results is applicable to reload cycle operation as well as initial cycle operation for the Limerick Generating Station (LGS).

Operating with one recirculation loop results in a maximum power output approximately 30% below that which is attainable for two-loop operation. Therefore, the consequences of abnormal operational transients from one-loop operation will be considerably less severe than those analyzed for two-loop operation. For pressurization, flow increase, flow decrease, and cold water injection transients, the results presented in Chapter 15 of the LGS FSAR for two-loop operation bound both the thermal and overpressure consequences of SLO.

The Loss of Coolant Accident (LOCA) analysis presented in LGS FSAR Section 15.6 has been evaluated for SLO. The evaluation utilized the GE methodology outlined in NEDO-20566-2, Revision 1, "General Electric Company Analytical Model for Loss-of-Coolant Analysis in Accordance with 10 CFR 50 Appendix K Amendment No. 2 - One Recirculation Loop Out-of-Service," dated July 1978.

The licensee also presented the results of certain other analyses, the consequences of which are bounded by previously submitted full power two loop operation analyses. These include MCPR operating limit, containment analysis, ATWS and fuel mechanical performance. Consequently, no changes to the Technical Specifications addressing these areas are proposed based on the results of these analyses.

As noted previously, the licensee has proposed certain operating restrictions that would go into effect if the plant were to enter SLO. The proposed changes to the TSs are listed below:

The proposed changes on Page 2-1 raise the Safety Limit Minimum Critical Power Ratio (MCPR) by 0.01 to account for increased uncertainties in the core total flow and Traversing Incore Probe (TIP) readings during SLO.

The proposed changes on Pages 2-4, 3/4 2-7, 3/4 3-60, and 3/4 3-60a provide individual Average Power Range Monitor (APRM) scram and rod block equations and Rod Block Monitor (RBM) rod block equations for two loop operation and SLO to account for the discrepancy between actual core flow and indicated flow in the active loop during SLO.

The proposed change on Page 3/4 2-1 incorporates a Maximum Average Planar Linear Heat Generation Rate (MAPLHGR) reduction factor of 0.89 for SLO. The MAPLHGR reduction factor accounts for core flow decreasing more rapidly during a LOCA in SLO than two-loop operation which could result in more severe heatup of fuel cladding.

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The proposed changes on Pages 3/4 4-1 through 3/4 4-2 incorporate action statements and associated surveillance requirements to ensure SLO is conducted within the analyzed bases. In addition to the previously mentioned MCPR, MAPLHGR, APRM and RBM changes, this specification restricts SLO to manual flow control, limits thermal power to less than or equal to 70% of rated, limits operating recirculation pump speed to less than or equal to 90% of rated, and establishes thermal hydraulic stability and differential temperature requirements.

The proposed changes to Figure 3.4.1.1-1 Thermal Power Versus Core Flow on Page 3/4 4-3 define the unrestricted and restricted operating regions of the percentage rated core thermal power versus percentage rated core flow curves.

The proposed changes on Pages 3/4 4-4 and 3/4 4-4a establish jet pump operability Surveillance Requirements for SLO.

In addition, changes are proposed on Page 3/4 2-7 to delete an ambiguous phrase in the note; on Pages 3/4 2-10 and 3/4 2-10a to provide notes to clarify the applicability of MCPR operating limits; on Page 3/4 4-5 to clarify the recirculation loop flow mismatch Action requirements; and on Pages B2-1, B3/4 1-2, B 3/4 2-1, B 3/4 2-2, B 3/4 2-4 and B 3/4 4-1 to incorporate the results of SLO analyses in the Bases.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee addressed the above three criteria, both generally and for each TS change, in the amendment application and made a no significant hazards consideration determination. The licensee's analysis of the proposed amendment is reproduced below:

The proposed Technical Specification changes for SLO will not increase the probability or consequences of any accident previously evaluated. The design basis accidents and abnormal operational transients associated with power operation, as presented in the LGS FSAR, Sections 6.2 and 6.3, and Chapter 15.0 have been reviewed for unit operation with only one recirculation loop in service. The appropriate setpoints and operating limits are adjusted for SLO and are bounded by the LGS FSAR analysis performed for two-loop operation.

The proposed Technical Specification changes will not create the possibility of a new or different accident from any previously evaluated. Although the proposed changes introduce a new mode of operation, the possible accidents during SLO are the same as those analyzed in the FSAR for two-loop operation and are within the bounds of the LGS FSAR analysis.

The proposed Technical Specification changes will not involve a significant reduction in a margin of safety. The proposed changes adjust the appropriate setpoints and operating limits for SLO to maintain or improve the current margin of safety.

A no significant hazards consideration determination for each proposed change follows:

A. MCPR Safety and Operating Limit for SLO

(1) The proposed increase in the MCPR fuel cladding integrity safety limit during SLO does not increase the probability or consequences of any accident previously evaluated.

The MCPR fuel cladding integrity safety limit is set such that no fuel damage is calculated to occur if the limit is not violated. It is determined using the NRC approved General Electric Thermal Analysis Basis (GETAB), which is a statistical model that combines uncertainties in the methods used to calculate critical power. For SLO, the uncertainties in total core flow and TIP readings used in the determination of the safety limit MCPR are larger than for two-loop operation. The total core flow and TIP reading uncertainties for SLO have been analyzed. The net effect of these two revised uncertainties is a 0.01 incremental increase in the required MCPR fuel cladding integrity safety limit to a higher safety limit MCPR of 1.08 for SLO.

The current MCPR operating limit and flow-dependent MCPR limit provide adequate protection for transients initiated during SLO. The results of the analyses of these events show sufficient margin to the proposed increased MCPR fuel cladding integrity safety limit. The consequences of abnormal operational transients during single loop operation will be less severe than those analyzed for two-loop operation due to reduced maximum power output. For pressurization, flow increase, flow decrease, and cold water injection transients, the results presented in Chapter 15 of the LGS FSAR bound both the thermal and overpressure consequences of SLO. The two most limiting pressurization transients analyzed for SLO are Feedwater Controller Failure - Maximum Demand (FWCF) and Generator Load Rejection with Bypass Failure (LRBPF).

The FWCF event is postulated on the basis of a single failure of a master feedwater control device, specifically one which can directly cause an increase in coolant inventory by increasing the total feedwater flow. The most severe applicable event is a feedwater controller failure during maximum flow demand. The calculated transient MCPR of 1.20 for SLO is much greater than the current safety limit of 1.07 and the proposed limit of 1.08. The resulting peak vessel pressure of 1113 psig is much less than the ASME limit of 1375 psig. The LRBPF event which is the loss of generator electrical load from high power conditions with failure of the main turbine bypass valves is discussed in FSAR Section 15.2.2. The calculated transient MCPR of 1.10 for SLO is much greater than the current safety limit 1.07 and the proposed limit of 1.08. The resulting peak vessel pressure of 1182 psig is much less than the ASME limit of 1375 psig.

The safety limit MCPR for SLO is set such that no fuel damage is calculated to occur and thereby accomplishes the same purpose as the two-loop operation limit. Because the revised higher safety limit of 1.08 maintains the current margin of safety and the current operating limit maintains sufficient margin to the revised safety limit, the change to the MCPR safety limit during SLO does not increase the probability or consequences of any accident previously evaluated.

(2) The proposed increase in the MCPR fuel cladding integrity safety limit during SLO does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The MCPR safety limit cannot initiate an accident and imposing the MCPR limit does not involve a change in the current mode of operation; therefore, this change does not create the possibility of a new or different kind of accident than previously evaluated.

(3) The proposed increase in the MCPR fuel cladding integrity safety limit during SLO does not involve a significant reduction in a margin of safety.

The MCPR safety limit is determined using NRC approved methodology. The proposed 0.01 increase accounts for the increased uncertainties in total core flow and TIP readings due to SLO. This increase in the MCPR safety limit maintains the margin of safety established for two-loop operation. Therefore, this change does not involve a significant reduction in the margin of safety.

B. Correction of RBM and APRM Flow-Biased Setpoint Equations

(1) The proposed changes to the RBM and APRM flow-biased setpoint equations do not increase the probability or consequences of any accident previously evaluated.

SLO results in backflow through 10 of the 20 jet pumps such that the direct active-loop flow measurement may not indicate actual flow above about 40% core flow without correction. The proposed changes to the RBM and APRM flow-biased setpoint equations conservatively modify the recirculation flow rate dependent rod block and scram setpoint equations to correct for one pump operation. The proposed changes adjust the setpoint equations to preserve the original relationship between the setpoints and the effective drive flow when operating in SLO such that the consequences of a rod withdrawal error during SLO are bounded by the analysis presented in FSAR Section 15.4.2. Further, lower power during SLO assures that the MCPR operating limit is not violated. Therefore, the changes to the RBM and APRM flow-biased setpoint equations do not increase the probability or consequences of an accident previously evaluated.

(2) The proposed changes to the RBM and APRM flow-biased setpoint equations do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes correct the RBM and APRM flow-biased setpoint equations to preserve the original relationship between the setpoints and the actual effective drive flow when operating in SLO and therefore do not create the possibility of a new or different kind of accident than previously evaluated.

(3) The proposed changes to the RBM and APRM flow-biased setpoint equations do not involve a significant reduction in a margin of safety.

The proposed corrections to the RBM and APRM flow-biased setpoint equations preserve the original relationship between rod blocks and scram and actual effective drive flow during SLO; therefore, it follows that these changes do not involve a significant reduction in the margin of safety.

C. MAPLHGR Reduction Factor

(1) Application of the proposed MAPLHGR reduction factor during SLO does not increase the probability or consequences of any accident previously evaluated.

MAPLHGR Limits are established to ensure that the acceptance criteria for fuel and Emergency Core Cooling Systems (ECCS) established in 10 CFR 50.46 are met. For SLO, in the event of a LOCA, the core flow decreases more rapidly than in the two-loop operating case, resulting in more severe cladding heatup. SLO would also result in small changes in the high-power node uncovery times and times of rated spray. The effect of the reflooding times for various break sizes is also generally small. A SLO LOCA analysis was performed for LGS using the models and assumptions documented in General Electric Document NEDO-20566-2 Revision 1, previously referenced. Using this method, SAFE/REFLOOD computer code runs were made for a full spectrum of large break sizes for only the recirculation suction line breaks (most limiting for LGS). The total hot node uncovered time for two-loop operation is 133.8 seconds for the 100% DBA suction break. For SLO the uncovered time is 134.3 seconds for the 100% DBA suction break. A small break LOCA would cause a slight increase approximately 50 degrees F) in the PCT. This increase would be offset by the reduced MAPLHGR used during SLO, resulting in PCT values for small breaks less than the 1550 degree F small break PCT value previously reported for LGS, and significantly less than the 10 CFR 50.46 cladding temperature limit of 2200 degrees F. Since the reflood minus uncovery time for the SLO analysis is similar to the two-loop analysis, the MAPLGHR curves can be modified by derived reduction factors for use during SLO. The results of an analysis performed to determine the MAPLHGR reduction factor for Cycle 2 fuel is set forth in General Electric Company Document No. 23A5801, "Supplemental Reload Licensing Submittal for Limerick Generating Station Unit 1, Reload 1," dated February, 1987. The proposed MAPLHGR reduction factor is applied to ensure the consequences of a LOCA are not increased in SLO. Therefore, this change does not increase the probability or consequences of an accident previously analyzed (LOCA).

(2) Application of the proposed MAPLHGR reduction factor during SLO does not create the possibility of a new or different kind of accident from any accident previously evaluated.

MAPLHGR limits are established to ensure fuel integrity in the event of an accident. Modification of the MAPLHGR limit during SLO does not create the possibility of a new or different kind of accident than previously evaluated.

(3) Application of the proposed MAPLHGR reduction factor during SLO does not involve a significant reduction in a margin of safety.

The acceptance criteria of 10 CFR 50.46 establish the margins of safety for fuel and ECCS. The analysis calculated the total hot node uncovered time for the most limiting 100% DBA suction break to be 133.8 seconds for two loop operation and 134.3 seconds for single loop operation. The calculated small break peak cladding temperature (PCT) for SLO would be less than the 1550 degrees F small break PCT reported for the two loop analysis. Since application of the conservatively calculated MAPLHGR reduction factor acts only to preserve the original relationship between two-loop MAPLHGRs and the acceptance criteria, this change does not involve a significant reduction in the margin of safety.

D. Thermal Power Limitation

(1) Restricting operation in SLO to less than or equal to 70% rated thermal power does not increase the probability or consequences of any accident previously evaluated.

The analyses performed for SLO assume 75% rated thermal power and 80% rated core flow, which represents single recirculation loop operation at 100% pump speed on the 105% rod line. All abnormal operational transients analyzed in the FSAR have been examined for effects caused by SLO. The limiting abnormal operational transients have been reevaluated in detail: generator load rejection with bypass failure and feedwater controller failure to maximum demand.

The impact of SLO on containment response, ATWS, and fuel thermal and mechanical performance was also evaluated. Consequences of all these were found to be bounded by previously submitted full power analyses. Therefore, restricting operation in SLO to less than or equal to 70% rated thermal power does not increase the probability or consequences of an accident previously analyzed.

(2) Restricting operation in SLO to less than or equal to 70% rated thermal power does not create the possibility of a new or different kind of accident from any accident previously evaluated. The range of power/flow conditions in the SLO operating domain has been evaluated and found to be within the previously evaluated range of operating conditions. SLO only changes the assumptions utilized in the appropriate previous analyses and therefore, does not create the possibility of a new or different kind of accident than previously evaluated.

(3) Restricting operation in SLO to less than or equal to 70% rated thermal power does not involve a significant reduction in a margin of safety.

Results of the aforementioned analyses show that SLO at 75% rated thermal power is bounded by previously submitted full power analyses. Therefore, limiting SLO to less than or equal to 70% rated thermal power (which corresponds to 90% rated pump speed) does not involve a significant reduction in the margin of safety.

E. Recirculation Pump Speed Limitation

(1) Operation in SLO with recirculation pump speed limited to less than or equal to 90% of rated pump speed does not increase the probability or consequences of any accident previously evaluated.

The recirculation pump speed will be limited to 90% of rated during SLO. The safety analysis assumed 100% pump speed in SLO. Vibration tests have been conducted on BWRs in SLO which demonstrate that all instrumented vessel internal component vibrations are within the allowable criteria. Results of these analyses and tests show that under all SLO operating conditions the vibration level is acceptable and bounded by previously submitted full power analyses; therefore, operation in SLO with recirculation pump speed limited to less than or equal to 90% of rated pump speed will not increase the probability or consequences of an accident previously analyzed.

(2) Operation in SLO with recirculation pump speed limited to less than or equal to 90% of rated pump speed does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Recirculation pump speed is not the initiating event of any accident so this change does not create the possibility of a new or different kind of accident than previously evaluated.

(3) Operation in SLO with recirculation pump speed limited to less than or equal to 90% of rated pump speed does not involve a significant reduction in a margin of safety.

Results of the aforementioned analyses and tests show that SLO at 100% rated pump speed is bounded by previously submitted full power analyses. Therefore, conservatively limiting pump speed to less than or equal to 90% of rated pump speed does not involve a significant reduction in the margin of safety.

F. Stability Requirements

(1) Revision of the stability monitoring requirements for operation in SLO does not increase the probability or consequences of any accident previously evaluated.

These revisions regarding stability monitoring requirements are an addition to the current stability provisions to implement the NRC approved stability criteria (GE Co. SIL-380, Revision 1) for SLO as set forth by Generic Letter 86-02, dated January 23, 1986 and Generic Letter 86-09 dated March 31, 1986. Thermal-hydraulic stability during SLO was generically evaluated in the General Electric report NEDE-24011, Rev. 6, Amendment 8, "Thermal Hydraulic Stability Amendment to GESTAR II," dated April 24, 1985 and found to satisfy the requirements of

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10CFR50, Appendix A, General Design Criterion 12. Stability monitoring provisions decrease the probability of fuel damage by avoiding limit cycle neutron flux oscillations. Consequently, these changes will not increase the probability or consequences of an accident previously analyzed.

(2) Revision of the stability monitoring requirements for operation in SLO does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Since these changes only add additional stability monitoring requirements and operating restrictions, they do not create the possibility of a new or different kind of accident than previously evaluated.

(3) Revision of the stability monitoring requirements for operation in SLO does not involve a significant reduction in a margin of safety.

Since these changes only add additional stability monitoring requirements and operating restrictions to ensure that limit cycle neutron flux oscillations are avoided, they do not involve a significant reduction in the margin of safety.

G. Differential Temperature Requirements

(1) The addition of recirculation loop differential temperature limits for operation in SLO does not increase the probability or consequences of any accident previously evaluated.

These revisions for surveillance of recirculation loop differential temperature are an addition to the current differential temperature requirements of Technical Specification 3.4.1.4 for idle recirculation loop startup. The purpose of the additional surveillance on differential temperatures below 30% thermal power or 50% rated recirculation loop flow is to mitigate undue thermal stress on vessel nozzles, recirculation pump and vessel bottom head during extended SLO. With thermal power and recirculation loop flow greater than the action levels, cold water will be adequately swept from the vessel bottom head, thus preventing stratification. Since these revisions act to decrease the possibility of undue thermal stress, the changes will not increase the probability or consequences of an accident previously analyzed.

(2) The addition of recirculation loop differential temperature limits for operation in SLO does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Since the changes only add additional differential temperature monitoring requirements and operating restrictions, they do not create the possibility of a new or different kind of accident than previously evaluated.

(3) The addition of recirculation loop differential temperature limits for operation in SLO does not involve a significant reduction in a margin of safety.

Since these changes simply apply the differential temperature requirements presently existent for idle recirculation loop startup to extended SLO, they do not involve a significant reduction in the margin of safety.

H. Manual Flow Control

(1) Restriction of the recirculation flow control system to the manual mode during SLO does not increase the probability or consequences of any accident previously evaluated.

To prevent potential control oscillation from occurring in the recirculation flow control system, the operation mode of the recirculation flow control system will be restricted to operation in the manual control mode for SLO. Recirculation drive flow can be significantly noisier during SLO than during normal operation, resulting in a noisier signal to the scoop tube positioner. In the manual mode, the positioner flow demand signal will be constant between operator induced demand changes. Restricting operation of the recirculation flow control system to the manual mode during SLO will not increase the probability or consequences of an accident previously analyzed since this is a normal mode of operation.

(2) Restriction of the recirculation flow control system to the manual mode during SLO does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Operation of the recirculation flow control system in the manual mode is not the initiating event of any accident and requires no changes in the current mode of operation; therefore, this requirement does not create the possibility of a new or different kind of accident than previously evaluated.

(3) Restriction of the recirculation flow control system to the manual mode during SLO does not involve a significant reduction in a margin of safety.

Since operation of the recirculation flow control system in the manual mode will prevent potential control oscillations from occurring in the system, this change does not involve a significant reduction in the margin of safety.

I. Jet Pump Surveillance

(1) Revision of the jet pumps surveillance requirements to account for SLO does not increase the probability or consequences of any accident previously evaluated.

The changes to the jet pump surveillance requirements merely provide clarification to specifically address SLO and two-loop operation. Therefore, the changes will not increase the probability or consequences of an accident previously analyzed.

(2) Revision of the jet pump surveillance requirements to account for SLO does not create the possibility of a new or different kind of accident from any accident previously evaluated.

These changes to the jet pump surveillance requirements are not the initiating event of any accident and require no changes in the current mode of operation; therefore, they do not create the possibility of a new or different kind of accident than previously evaluated.

(3) Revision of the jet pump surveillance requirements to account for SLO does not involve a significant reduction in a margin of safety.

Since these changes result in surveillance requirements of the operating jet pumps in SLO identical to those existent for two-loop operation, they do not involve a significant reduction in the margin of safety.

J. Administrative Changes

(1) The proposed administrative changes do not increase the probability or consequences of any accident previously evaluated.

The proposed change to the note on page 3/4 2-7 deletes the reference to "power ascension" when adjusting APRM setpoints by adjusting the APRM gain when the MFLPD is greater than the FRTP. The proposed change to pages 3/4 2-10 and 3/4 2-10a simply provides clarification that the current MCPR operating limits are applicable to both two recirculation loop and single recirculation loop operation. The proposed change to the ACTION of Technical Specification 3.4.1.3 on page 3/4 4-5 will require the shutdown of one of the two recirculation loops when recirculation flow mismatch exceeds the limit rather than declaring the loop of slower speed not in operation. These two proposed changes merely provide clarification of the existent specifications; therefore, these changes will not increase the probability or consequences of an accident previously analyzed.

(2) The proposed administrative changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

These changes are not the initiating event of any accident and require no changes in the current mode of operation; therefore, they do not create the possibility of a new or different kind of accident than previously evaluated.

(3) The proposed administrative changes do not involve a significant reduction in a margin of safety.

Since these changes only serve to better define the requirements of the appropriate LCOs, they do not involve a significant reduction in the margin of safety.

The staff has reviewed the licensee's submittal and significant hazards analysis and concurs with the licensee's determination as to whether the proposed amendment involves a significant hazards consideration. Therefore, the staff proposes to determine that the proposed amendment involves no significant hazards consideration.

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*NRC Project Director:* Walter R. Butler

**Philadelphia Electric Company, Docket No. 50-352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania**

*Date of amendment request:* January 27, 1989

*Description of amendment request:* The request would change the Technical Specifications (TSs) to revise the effluent dose limits to a per site rather than a per unit bases. The Limerick Generating Station is a two-unit site. At present, only Unit 1 has an operating license. Unit 2 is expected to be ready for operation within the next four months. The station has several liquid and gaseous waste processing systems that are common to both units. The liquid waste collection tanks and processing equipment serve both units. The arrangement precludes quantification of liquid waste sources from each unit. The station has four gaseous effluent release points, two of which are common to both units. The North Stack Exhaust Duct is the release point for the offgas systems (each unit), the mechanical vacuum pump and gland seal condenser exhaust system (each unit), the containment purge system (common for both units), the standby gas treatment system (common for both units), and the Turbine Enclosure ventilation systems (each unit) and other common and separated systems.

There is one "hot" maintenance shop for both units. Ventilation exhaust is released from a separate exhaust duct. There is a Unit 1 South Stack Exhaust Duct and a Unit 2 South Stack Exhaust Duct. The Unit 1 duct is the release point for the Unit 1 refuel floor ventilation exhaust and the Unit 1 Reactor Enclosure ventilation exhaust. Likewise, the Unit 2 duct is the release point for the Unit 2 refuel floor ventilation exhaust and the Unit 2 Reactor Enclosure ventilation exhaust. As is true for most BWRs, the refuel floor is one long open area above the reactors. This arrangement precludes quantification of the gaseous waste sources to a particular unit.

The activity released through all these gaseous effluent release points is monitored in accordance with the Technical Specifications and released under controlled conditions to ensure that the airborne concentrations meet the dose limiting objectives and requirements specified in 10 CFR Part 50, Appendix I and requirements specified in 10 CFR 20.106 and 10 CFR 50.34a. The offsite dose consequences from gaseous effluent releases are calculated in accordance with the equations and methodologies described in the Limerick Generating Station Offsite Dose Calculation Manual (ODCM).

The proposed changes to the Technical Specifications would revise the effluent offsite dose limits to reflect a per site rather than a per unit limit. The current dose limits have been established as criteria for reporting the offsite dose consequences for operation at "each reactor unit" to the NRC. The current Technical Specifications are based on the assumption that a multi-unit site, like the Limerick Generating Station, (LGS) can distinguish as to which unit specific radioactive effluent releases originate. There are no provisions, however, to distinguish the offsite dose attributable from a unit specific radioactive release origin at the Limerick Generating Station because of the common systems and common release points.

In accordance with NRC guidance provided in NUREG-0133, "Preparation of Radiological Effluent Technical Specifications for Nuclear Power Plants," the LGS offsite dose assessment may be derived by estimating the contribution from each unit and allocating the doses accordingly. However, the sophistication of the Limerick offsite dose assessment system allows for a more realistic and conservative evaluation of the offsite dose consequences of the radioactive effluent releases without having to "estimate" the contribution from each unit. Doses are assigned (calculated for each hour) to receptors during a release based upon hourly meteorological data and corresponding hourly average effluent release rates. By accumulating the doses to each receptor over the entire year, and summing these for all of the release points for the entire site, the maximum potential offsite exposure is assured. Attempting to separate the releases and reporting the offsite dose consequences on a per-unit basis could potentially underestimate the dose to the maximum exposed individual. This underestimation could occur when each units' maximum exposed individuals are in different sectors than the maximum exposed individual resulting from the site's total releases.

The proposed changes to the Technical Specifications do not change the magnitude of the offsite dose limits allowed for a two-unit site.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

In the letter of January 27, 1989, PECo addressed each of these standards and concluded that the proposed amendment does not constitute a significant hazards consideration based on the following:

(1) The proposed changes to revise the effluent offsite dose limits to a per site rather than a per unit limit do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The changes only revise the normal operating dose limits to reflect a two unit site. These limits are established to reflect a criteria for reporting offsite dose consequences to the NRC. The offsite consequences of routine operation are based on the projected radioactive material released from an operating two unit site as described in Sections 11.2 and 11.4 of the Final Safety Analysis Report. The proposed changes will not affect any plant hardware, plant design, plant system operation or procedure, and therefore do not modify or add any initiating parameters that would significantly increase the probability or consequences of any previously analyzed accident.

(2) The proposed changes to revise the effluent offsite dose limits to a per site rather than a per unit limit do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The design bases of LGS will remain the same. Therefore, the current station Final Safety Analysis Report will remain complete and accurate in its discussion of the licensing basis events and in analyzing plant response and consequences. Further, the proposed changes would only revise the NRC reporting limits based upon a per site limit rather than a per unit limit. As discussed in Item (1) above, the proposed changes do not affect any equipment nor do they involve any potential initiating events that would create any new or different kind of accident. As such, the plant initial conditions utilized for the design basis accident analyses are still valid.

(3) The proposed changes to review the effluent offsite dose limits to be per site rather than a per unit limit do not involve a significant reduction in a margin of safety.

While these proposed changes affect the reporting of the offsite consequences of radioactive material releases, the total offsite dose limit for the site has not changed. The proposed changes continue to meet the dose-limiting objectives specified in 10 CFR 50, Appendix I. In addition, the dose limits specified in 10 CFR 20 remain unchanged. As discussed in Item (1) above, the proposed changes do not affect any equipment involved in potential initiating events, nor increase the consequences of an event.

The staff has reviewed the licensee's submittal and significant hazards analysis and concurs with the licensee's determination as to whether the proposed amendment involves a significant hazards consideration. Therefore, the staff proposes to determine that the proposed amendment involves no significant hazards consideration.

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**Philadelphia Electric Company, Docket No. 50-352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania**

*Date of amendment request:* January 27, 1989

*Description of amendment request:* This submittal requests changes to the Technical Specifications (TSs) to reflect the completion and tie-in of the Unit 2 Standby Gas Treatment System (SGTS) and the Unit 2 Refueling Area Heating, Ventilating and Air Conditioning (HVAC) system. The proposed changes reflect the original two-unit design as described in the Final Safety Analysis Report which was previously reviewed and approved by the Nuclear Regulatory Commission in NUREG-0991, "Safety Evaluation Report related to the operation of the Limerick Generating Station, Unit 1 and Unit 2" dated August 1983 and supplements thereto. These changes are being requested to allow the inclusion of Unit 2 equipment that will be relied upon or required to be operable to support the operation of Unit 1 when Unit 2 is issued an Operating License.

The SGTS is a redundant safety-related system that is designed to reduce the radioactive halogen and particulate concentrations in (1) gases that may be present in the secondary containment after a Loss-of-Coolant Accident (LOCA), and (2) gases present after a postulated Fuel Handling Accident in the refueling floor area before the gases are discharged to the environment. The SGTS is a common system that serves both the Unit 1 and Unit 2 Reactor Enclosure and the Common Refueling Area. The SGTS is designed to drawdown and maintain a negative pressure in these areas during a secondary containment isolation. The SGTS also functions to reduce halogen and particulate concentrations purged from the primary containment through the drywell or suppression pool purge exhaust lines. A detailed description of the SGTS is provided in Section 6.5.1.1 of the Final Safety Analysis Report.

The SGTS is presently operable for the Unit 1 Reactor Enclosure, and can be made available for the refueling area if needed while construction is being completed on Unit 2. The SGTS is designed as a shared system for filtration and treatment of both the Unit 1 and Unit 2 Reactor Enclosure atmospheres and the refueling area. When the tie-in of the Unit 2 Reactor Enclosure to the SGTS is complete, that portion of the Unit 2 ductwork will form a part of the secondary containment isolation boundary for the Unit 1 Reactor Enclosure. Included in this ductwork are the Unit 2 drywell purge exhaust valves (HV-57-214 and HV-57-215), the suppression pool purge exhaust valves (HV-57-204 and HV-57-212), and the slide gate dampers which are normally open but can be used to isolate the drywell and suppression pool purge exhaust lines in the event that the exhaust valves are inoperable.

The Unit 2 Refueling Area HVAC system, as well as the existing Unit 1 Refueling Area HVAC system, have exhaust duct radiation monitors which provide input to the Refueling Area Secondary Containment Isolation System. The Unit 1 Refueling Area HVAC system exhaust duct radiation monitors, the isolation activation instrumentation, and the isolation valves are required to be operable when irradiated fuel is being handled in the refueling area secondary containment, during core alterations, and during operations with the potential for draining the reactor vessel when the vessel head is off. An isolation signal from either unit's exhaust duct radiation monitors will cause both the Unit 1 and Unit 2 Refueling Area HVAC systems to isolate. The Unit 2 radiation monitors located in the Refuel Area HVAC exhaust duct are not presently connected to the Unit 1 isolation logic. Completion of the tie-in would require the Unit 2 HVAC isolation activation instrumentation, isolation valves, and the exhaust duct radiation monitors to be operable for the appropriate Operational conditions.

The proposed changes to the TSs add various Unit 2 SGTS and Refueling Area HVAC equipment operability requirements and reflect the completion and tie-in of Unit 2. Specifically, the proposed changes are the following.

(a) Technical Specification Table 3.3.2-1, Table 3.3.2-2, Table 3.3.2-3, and 4.3.2.1-1 would be revised to include the "Refueling Area Unit 2 Ventilation Exhaust Duct Radiation - High" radiation monitors. The Limiting Conditions for Operation, setpoints, and Surveillance Requirements for these monitors are the same as that for the existing Unit 1 radiation monitors contained in the Unit 1 Technical Specifications. Since the Refuel Area is common to both units, operation of either Unit 1 or 2 Refuel Area Ventilation System during OPCON * represents a potential exhaust pathway and the associated radiation monitors should be Operable. Therefore, Tables 3.3.2-1 and 4.3.2.1-1 will be revised to show the applicable Operational Condition as * which is defined as when: (1) in Operational Condition * and, (2) during operation of the associated ventilation exhaust system. Finally to reflect completion of Unit 2 construction, Technical Specification Table 3.6.5.2.2-1 Footnote ** is being deleted for the Refueling Area Ventilation Supply Valves (HV-76-217 and HV-76-218) and the Drywell Purge Exhaust inboard and outboard valves (HV-57-214 and HV-57-215), and the suppression Purge Exhaust inboard and outboard valves (HV-57-204 and HV-57-212) to eliminate the provision not to have these valves operable during Unit 2 construction.

(b) Technical Specification Table 3.6.5.2.1-1 (also listed in Table 3.6.5.2.2-1) would be revised to include the Unit 2 drywell purge exhaust valves (HV-57-214 and HV-57-215) and suppression purge exhaust valves (HV-57-204 and HV-57-212). These valves are required to be operable in order to maintain the Unit 1 Reactor Enclosure secondary containment isolation boundary. Any breech of this isolation boundary to an area outside of the Unit 1 Reactor Enclosure affects the ability of the SGTS to perform its design functions. Therefore, these valves are added to the list of Reactor Enclosure Secondary Containment Ventilation System Automatic Isolation Valves, Table 3.6.5.2.1-1. In addition, since these drywell and suppression pool purge exhaust valves also provide a primary containment function, their dual function, as Reactor Enclosure isolation valves for the other unit will be reflected in Table Notation 33 to Table 3.6.3-1.

(c) Technical Specification 3.6.5.2.1, Action C, is being revised to include a reference to slide gate dampers. The slide gate dampers are normally open and are located in the Unit 2 ductwork. These slide gate dampers can be used to isolate the drywell and/or suppression pool exhaust lines in the event that the exhaust valves are not operable. The inclusion of the slide gate dampers into Specification 3.6.5.2.1 provides manual isolation capability in these lines.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

In the submittal of January 27, 1989, the licensee has addressed each of these standards and has concluded that the proposed amendment does not constitute a significant hazards consideration based upon the following:

(1) The proposed changes to add various Unit 2 SGTS and Refueling Area HVAC equipment operability requirements or clarifications to reflect the completion and tie-in of Unit 2 do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes only incorporate additional limitations, restrictions or controls into the Technical Specifications as the result of the completion and tie-in of common Unit 2 systems. The changes reflect the original two unit design and will not affect nor change any plant hardware, plant design or plant system operation from that already described in the Final Safety Analysis Report. Therefore, the proposed changes do not modify or add any initiating parameters that would significantly increase the probability or consequences of any previously analyzed accident.

(2) The proposed changes, to add various Unit 2 SGTS and Refueling Area HVAC equipment operability requirements and reflect the completion and tie-in of Unit 2, do not create the possibility of a new or different kind of accident from any previously evaluated.

The design bases of the Limerick Generating Station will remain the same. Therefore, the current station Final Safety Analysis Report will remain complete and accurate in its discussion of the licensing basis events and in analyzing plant response and consequences. As discussed in (1) above, the proposed changes do not affect any equipment nor do they involve any potential initiating events that would create any new or different kind of accident. As such, the plant initial conditions utilized for the design basis accident analyses are still valid.

(3) The proposed changes to add various Unit 2 SGTS and Refueling Area HVAC equipment operability requirements or clarifications to reflect the completion and tie-in of Unit 2 does not involve a significant reduction in a margin of safety.

As discussed in (1) above, the changes only incorporate additional limitations, restrictions or controls in the Technical Specification as the result of the completion and tie-in of common Unit 2 systems.

Finally, the deletion of footnotes referencing Unit 2 construction in the Technical Specifications which reflect the completion of Unit 2 construction are considered purely administrative and as such do not require a No Significant Hazards Determination.

The staff has reviewed the licensee's submittal and significant hazards analysis and concurs with the licensee's determination as to whether the proposed amendment involves a significant hazards consideration. Therefore, the staff proposes to determine that the proposed amendment involves no significant hazards consideration.

*Local Public Document Room location:* Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

*Attorney for licensee:* Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW., Washington, DC 20006

*NRC Project Director:* Walter R. Butler

**Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego, New York**

*Date of amendment request:* May 19, 1988.

*Description of amendment request:* The proposed amendment would revise Appendix B, Radiological Effluent Technical Specifications (RETS), of the Facility Operating License to clarify or correct minor problems. These changes do not change the intent of the RETS sections being addressed. The proposed amendment would also revise the Technical Specifications (TS) (Appendix A of the Facility Operating License) to clarify the reporting requirements for major modifications to radioactive waste systems. The TS change is administrative in nature and is designed to clarify the RETS provisions by reducing the need for interpretations, but not change their intent.

The proposed RETS portion of the amendment would: (1) modify Note (b) to Table 2.2-1 by changing the analysis required if the monitors do not meet operability requirements from a gross radioactivity (beta or gamma) to a principal gamma emitter analysis since gamma emitters are analyzed using gamma spectroscopy which is more reliable and accurate; (2) add Iodine-133 to Table 3.2-1 for the type of activity analysis included in the radioactive gaseous waste sampling and analysis program for consistency with the program for determining the gaseous dose rates of Section 3.2 and the Offsite Dose Calculation Manual (ODCM); (3) reformat and combine some Table 3.2-1 notes for clarity and consistency; (4) change the noble gas sample location designated in Surveillance 3.5.a. from the Steam Jet Air Ejector discharge (only) to either the Steam Jet Air Ejector discharge or the offgas recombiner discharge (prior to delay of the offgas) in order to obtain a more representative sample of gross radioactivity release rate during offgas recombiner operation; (5) add new LCOs and corresponding surveillance requirements to Specification 3.6 to address charcoal bed bypass capability (rather than bypass of the offgas treatment system) and required actions per the ODCM since it is the charcoal beds which specifically treat the offgas; (6) modify LCO specification 3.7.b.2 and 3.7.b.3 concerning isolation of the offgas system dealing with the offgas recombiner inlet and outlet temperature sensor instrumentation limits for clarity; (7) modify Surveillance Requirement 3.7.c so that it more closely reflects its corresponding LCO by specifying the recombiner effluent rather than the recombiner for the sample location; (8) modify Table 3.10-1 to show that Footnote (a) only applies to the first six trip functions listed in the table and to show that the requirement for operability in Footnote (a) is concerned with one operable or tripped instrument channel per system; (9) delete Note (i) from the calibration column of Table 3.10-2 since the test only applies to instrument channel functional testing. The proposed amendment would also change the instrument channel calibration frequency for the turbine and radwaste building radiation exhaust monitors from semiannual to quarterly for consistency with similar tests; (10) correct an error by deleting the words "ground level" and corresponding footnote from Note (d) to Figure 5.1-1 since the actual evaluation of the vents is taken into account in the offsite dose calculations method in the ODCM; (11) delete the contents found under the Food Products subheading (Items a. and b. of Table 6.1-1) since it provides an unnecessary alternative for milk sampling. Milk sampling has been, and will continue to be, performed in conjunction with similar programs at Nine Mile Point (NMP) Units 1 and 2; (12) change the reporting levels of 2 and 1 pCi/liter for Iodine-131 in water samples in Tables 6.1-2 and 6.1-3 respectively, to 20 and 15 pCi/liter respectively, for consistency with recent NRC criteria and NMP site RETS, since the direction and distance to the nearest water intake means that the plant does not have a drinking water pathway under normal operating conditions; (13) change Specification 7.3.d. to show that the reactor centerline used for determining sample locations listed in the Annual Environmental Operating Report can be either the NMP Unit 2 or the FitzPatrick reactor centerlines. This will allow continued use of the NMP



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Unit 2 reactor centerline to determine sample locations, which is consistent with NRC guidance for sites with joint environmental programs.

The proposed change to the TS (Appendix A to the Operating License) Specification 6.18, would eliminate the annual FSAR update as an alternative method for reporting major modifications to the radioactive waste systems. This requirement will be furnished in either the semiannual report or the annual 10 CFR 50.59 Safety Evaluation Report, as specified in this TS section.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards provided above and has made the following determination:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated, because the changes are only designed to clarify and correct RETS. They are administrative changes such as: consolidating footnotes; clarifying wording; and correcting reporting levels to achieve consistency with Nine Mile Point. There is no impact on plant operations. There are no setpoint changes regarding isolation or alarms. There is no change to the environmental monitoring program. The changes will have no impact on previously evaluated accidents.

2. The proposed changes will not create the possibility of a new or different kind of accident previously evaluated. The proposed amendment does not involve physical changes to the facility. The changes are administrative in nature and do not involve safety limit changes. These proposed changes are intended to further clarify and improve RETS. The changes cannot create a new or different accident.

3. The proposed changes do not involve a significant reduction in the margin of safety. The proposed amendment will achieve consistency throughout the specifications and clarify or correct minor errors. There is no impact on plant operation, nor are there any setpoint or safety limit changes regarding isolation or alarms. There is no change to the environmental monitoring program. The proposed changes are designed to improve and facilitate the use of RETS. The changes will assist the operator in better understanding of these specifications. The proposed changes do not reduce safety margins of any kind.

The staff has reviewed the licensee's no significant hazards consideration determination. Based on the review and above discussion, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

*Local Public Document Room location:* State University of New York, Penfield Library, Reference and Documents Department, Oswego, New York 13126.

*Attorney for licensee:* Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

*NRC Project Director:* Robert A. Capra, Director

**Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego, New York**

*Date of amendment request:* June 10, 1988

*Description of amendment request:* The proposed amendment would revise the Technical Specification (TS) Sections 3.11.B. and 4.11.B., "Crescent Area Ventilation," to clarify and eliminate inconsistencies in the Limiting Condition for Operation (LCO) and Surveillance Testing requirements. One change to Section 3.11.B. would replace the term "compartment" with the nomenclature "half of the crescent area" to more precisely define the applicable area of the plant using the generic terminology. Another change to this section would replace the reference to Specification 3.5.D. with 3.5.B. since Specification 3.5.D. is the Automatic Depressurization System (which is not associated with the crescent rooms) and Specification 3.5.B. is the Containment Cooling Subsystem of the RHR System (which does have equipment located in the area). The proposed change to Specification 4.11.B. would eliminate the existing conflict between Specifications 3.11.B.1. and 4.11.B.1. in determining the applicability of the 7-day and 24-hour LCOs when more than one cooler in a crescent room is inoperable. The proposed amendment deletes the 7-day LCO, retains the 24-hour LCO, and moves the specification from the surveillance section to the LCO section of the TS.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed TS change against the standards provided above and has determined that the proposed changes to the TS do not involve hardware or procedural changes to the plant. Further, operation of the plant in accordance with the proposed amendment would not involve significant hazards consideration as defined in 10 CFR 50.92, since it would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated because the change results in clarifying the operability of the crescent area ventilation system. Also, the proposed change will eliminate Specification 4.11.B.1 which is in conflict with and non-conservative with respect to Specification 3.11.B.1.

2. Create the possibility of a new or different kind of accident previously evaluated. As stated above, the proposed amendment does not involve physical changes to the facility. These proposed changes will facilitate the understanding of the crescent area ventilation operations and not create a new or different kind of accident. Also, the proposed change will eliminate the conflict between Specifications 3.11.B.1 and 4.11.B.1 by the selection of the more conservative LCO.

3. Involve a significant reduction in the margin of safety. The proposed amendment clarifies the area ventilation system and eliminates the conflict that existed prior to the change. This will help the operator in better understanding of these specifications.

The staff has reviewed the licensee's no significant hazards consideration determination. Based on the review and above discussions, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

*Local Public Document Room location:* State University of New York, Penfield Library, Reference and Documents Department, Oswego, New York 13126.

*Attorney for licensee:* Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

*NRC Project Director:* Robert A. Capra, Director



**Power Authority of The State of New York, Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York**

*Date of amendment request:* January 20, 1989, supplemented February 2, 1989.

*Description of amendment request:* The licensee has provided, in part, the following description: The proposed amendment would provide for the use of Vantage 5 fuel and changes the Technical Specifications appropriately to reflect the use of Vantage 5 fuel. Indian Point Unit 3 is currently operating in Cycle 6 with a transition fueled core containing Westinghouse 15x15 low-parasitic (LOPAR) assemblies and 15x15 Optimized Fuel Assemblies (OFAs). For subsequent cycles, it is planned to refuel and operate Indian Point Unit 3 with the Westinghouse 15x15 Vantage 5 improved fuel design. As a result, future core loadings would range from approximately a 60%-65% OFA and 35%-40% Vantage 5 transition core (Cycle 7) to eventually an all Vantage 5 fueled core. The 15x15 Vantage 5 fuel assembly is designed as a modification to the current 15x15 LOPAR and the optimized fuel assembly (OFA) designs (Reference 1). Except for the 15x15 fuel array, no Intermediate Flow Mixer (IFM) grids and the use of a Debris Filter Bottom Nozzle (DFBN), the Indian Point Unit 3 15x15 Vantage 5 fuel assembly has the same design features as the standard 17x17 fuel assembly.

This change also reduces the shutdown margin from 10% delta k/k to 5% delta k/k.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee has provided the following analysis:

1. Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response

The transition to Vantage 5 fuel does not involve a significant increase in the probability of an accident previously evaluated. The proposed changes do not effect any systems or equipment which are involved in the initiation or mitigation of any previously analyzed accident. Therefore, the proposed changes cannot increase the probability of any accident previously evaluated. The IP-3 FSAR accident analyses for non-LOCA and LOCA (large and small breaks) transients have been reanalyzed and evaluated by Westinghouse with regard to the proposed changes. These reanalyses and evaluations show that the proposed changes do not significantly increase the consequences of previously evaluated accidents.

The change of the shutdown margin from 10% delta k/k to either 5% delta k/k or 1900 ppm, whichever results in the greater boron concentration, does not involve a significant increase in the probability of an accident previously evaluated. The proposed change does not affect any system or equipment which are involved in the initiation or mitigation of any previously analyzed accident. Therefore, the proposed change cannot increase the probability of any accident previously evaluated. Westinghouse has reanalyzed the inadvertant boron dilution transient (chemical and volume control malfunction). The results show that boron concentration in the refueling water must reduce from 1900 ppm to approximately 1300 ppm before the reactor will go critical. Since this will take significantly more than 30 minutes, the operator has ample time to initiate corrective actions. Therefore, the proposed change does not significantly increase the consequences of previously evaluated accidents.

2. Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response

The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. None of the proposed changes introduce any new equipment or require any existing equipment or systems to perform a different type of function than they are currently designed to perform. The proposed changes provide operation limits and a means to monitor those limits to assure that the consequences of existing accidents are not affected.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response

Westinghouse has reanalyzed and evaluated the IP-3 FSAR accident analyses for non-LOCA and LOCA (large and small breaks) transients with regard to the Vantage 5 fuel transition. The results of the non-LOCA reanalyses and evaluations show that the transition from 15x15 OFA to 15x15 Vantage 5 fuel can be accommodated with margin to the applicable FSAR safety limits. With regard to the LOCA transients, the reanalyses for both the large and small breaks show that the acceptance criteria of 10 CFR 50.46 is met. Therefore, the proposed transition to Vantage 5 fuel does not involve a significant reduction in a margin of safety.

The purpose of the decrease in the shutdown margin from 10% delta k/k to 5% delta k/k is to incorporate the guidance of the Westinghouse Standard Technical Specifications (WSTS) and to enhance fuel management flexibility. The WSTS recommend a shutdown margin of 5% delta k/k for the refueling condition. Westinghouse has reanalyzed the inadvertant boron dilution transient (chemical and volume control malfunction) using 5% delta k/k shutdown margin. This reanalysis shows that the minimum boron concentration of the refueling water is typically 1900 ppm for a shutdown margin of 5% delta k/k. The boron concentration must be reduced from 1900 ppm to approximately 1300 ppm before the reactor will go critical. This would require significantly more than 30 minutes. Since information on the status of the reactor coolant makeup is continuously available to the operator, this is ample time for the operator to initiate corrective actions. An additional conservatism exists in that the greater of the two boron concentrations, either 1900 ppm or that required for a 5% delta k/k margin, is to be used during refueling activities. Therefore, the proposed change in the shutdown margin does not involve a significant reduction in a margin of safety.

Based on the above analysis, the staff proposes to conclude that these changes do not involve a significant hazards consideration.

*Local Public Document Room location:* White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

*Attorney for licensee:* Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

*NRC Project Director:* Robert A. Capra, Director

**Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey**

*Date of amendment request:* April 14, 1987 and October 5, 1988

*Description of amendment request:* The proposed amendments would modify the Salem Unit 1 and 2 Technical Specifications, Section 3/4.7.9, Snubbers, to incorporate Generic Letter 84-13, Technical Specifications for Snubbers, dated May 3, 1984. The proposed changes would eliminate the tables that list the snubbers, Tables 3.7.4a and 3.7.4b, revise Section 3/4.7.9 to eliminate references to the Tables and revise Bases 3/4.7.9 to require a detailed list of individual snubbers be maintained at the plant. The requirement that the Station Operations Review Committee approve the accessibility classification of each snubber and that additions or deletions from the list of snubbers must undergo a 10 CFR 50.59 review is being added to Bases 3/4.7.9 for both Units. Also, a footnote to Section 4.7.9c of the Unit 1 Technical Specifications is being deleted

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because it is no longer applicable. In addition, Bases 3/4.7.9 for Unit 1 is being revised to bring it into agreement with the Unit 2 Bases 3/4.7.9.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee evaluated the proposed changes against the standards of 10 CFR 50.92 and has determined that the amendments would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. The surveillances will still be performed in accordance with the existing requirements. Only the location of where the list of snubbers is maintained has changed. Revision of the Bases is administrative and does not change the intent.

2. Create the possibility of a new or different kind of accident from any previously analyzed. There are no equipment, instrument, or setpoint changes related to the proposed change to Technical Specifications.

3. Involve a significant reduction in a margin of safety. The scope of applicability and test requirements for snubbers remains unchanged.

The staff has reviewed the licensee's submittal and significant hazards analysis and concurs with the licensee's determination that the proposed amendment does not involve a significant hazards consideration. Therefore, the staff proposes to determine that the proposed amendments involve no significant hazards consideration.

*Local Public Document Room location:* Salem Free Public library, 112 West Broadway, Salem, New Jersey 08079

*Attorney for licensee:* Mark J. Wetterhahn, Esquire, Conner and Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue, NW., Washington, DC 20006

*NRC Project Director:* Walter R. Butler

**Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey**

*Date of amendment request:* July 23, 1987

*Description of amendment request:* The proposed amendment revises the emergency core cooling system (ECCS) limiting conditions for operation, surveillance requirements and associated basis to clearly define the emergency core cooling subsystem alignment and component availability requirements in various modes. Changes are also proposed that eliminate the requirement to issue a report when an action statement is entered as a result of inservice testing. Changes are also proposed that will make the Salem Unit 1 emergency core cooling technical specifications consistent with the Salem Unit 2 emergency core cooling technical specifications.

Specifically, this amendment request proposes to modify the Technical Specifications as follows:

1. Technical Specification 3.5.2

This section is being modified to explicitly identify the flow paths into the Reactor Coolant System (RCS) which are required to be Operable in Modes 1, 2 and 3.

Also, an Action Statement that allows both ECCS subsystems to be inoperable for up to one hour for surveillance testing is being added. Shutdown must commence if this time limit is exceeded.

2. Technical Specification 4.5.2

The first change adds a requirement to verify the RH19 valves open once per 12 hours. The second change adds the requirement to verify that the Salem 1 ECCS piping is full of water by venting once every 31 days. This requirement already appears in the corresponding Salem Unit 2 Surveillance Requirement. The third change clarifies that with the CS14 valve inoperable the affected system is the Containment Spray System (Spray Additive Tank) and directs the operator to Technical Specification 3.6.2.2.

3. Technical Specification 3.5.3

This section is being modified to explicitly identify the required Operable flow paths into the RCS for each ECCS subsystem in Mode 4.

The second part is for clarification only. This change makes it explicitly clear that one safety injection (SI) or one centrifugal charging pump shall be Operable when the RCS temperature is less than or equal to 312° F.

Third, the following note that appears in the Salem Unit 2 Technical Specifications: "Note: This particular restriction also applies in Modes 5 and 6" is being added to the Unit 1 Technical Specifications to achieve consistency between the two documents.

4. Technical Specification Bases Section 3/4.5.2 and 3/4.5.3

The first part serves to reiterate the requirement to maintain the capability to supply all four RCS cold legs with each ECCS subsystem. The second part reflects the phrase being added to the pound symbol footnote of Technical Specification 3.5.3 addressing the operability requirements for the safety injection and charging pumps in Modes 4, 5 and 6.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

1. The licensee has analyzed the proposed changes to Technical Specification 3.5.2 to determine if a significant hazard exists:

The proposed changes to Technical Specification 3.5.2 do not involve a significant hazards consideration because operation of Salem Unit 1 and 2 in accordance with these changes would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. The first change is being made for clarification only. Its purpose is to clearly reflect ECCS-LOCA design bases requirements in the Technical Specifications. No physical change to plant systems is involved, nor is there an impact on the licensing bases of the units. Therefore, this change cannot increase the probability or consequences of an accident. The second change allows IST stroke testing of valves listed in Surveillance 4.5.2 to continue without submittal of an LER. The IST stroke testing intervals remain unchanged, as do the Action Statement time limits. Therefore this second change cannot increase the probability or consequences of an accident.

(2) Create the possibility of a new or different kind of accident from any previously analyzed. The first change only serves to emphasize ECCS-LOCA requirements for injection flow paths into the RCS. These requirements are not new as they are already part of the design and licensing bases of the Salem units. The second change makes no changes to the Action Statement time limits associated with IST surveillances conducted on valves listed in Technical Specification Surveillance 4.5.2. It only serves to address reporting requirements. Therefore, these changes do not create the possibility of a new or different kind of accident.

(3) Involve a significant reduction in a margin of safety. The first change serves to maintain the current margin of safety associated with the LOCA accident analysis and ensure that the ECCS subsystems are aligned as assumed in the design bases for the ECCS-LOCA. The second change maintains the Action Statement time limitations associated with IST stroke testing. Therefore, these changes make no reduction in a margin of safety.

The staff has reviewed the licensee's significant hazards consideration analysis for changes to Technical Specification 3.5.2 and concurs with the licensee's determination that the proposed changes do not involve a significant hazards consideration.

2. With respect to the proposed changes to Technical Specification 4.5.2 and 3.5.3, the Commission has provided guidance concerning the application of its standards set forth in 10 CFR 50.92 by providing certain examples (51 FR 7751). One of the examples, (i), of an amendment likely to involve no significant hazards consideration relates to "A purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error or a change in nomenclature."

Another example, (ii), of an amendment likely to involve no significant hazards consideration relates to "A change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications, e.g., a more stringent surveillance requirement."

The proposed changes to Technical Specifications 4.5.2 and 3.5.3 relate to one of these examples:

a. Technical Specification 4.5.2

The RH19 valves must be open in order for the residual heat removal (RHR) pumps to be capable of injecting into each RCS cold leg. This helps ensure that the design bases for the ECCS-LOCA (Loss of Coolant Accident) is maintained. The addition of the RH19 valves to the Surveillance Requirements is a means of additional control on the plant and represents a more stringent surveillance requirement. Therefore, this meets example ii.

The requirement to verify that the Salem 1 ECCS piping is full of water is an example of a more stringent surveillance requirement. This meets example ii. In addition, the requirement to verify that the ECCS piping is full already appears in the Salem 2 Technical Specifications. This change will achieve consistency between units. This meets example i.

The directing of operators to Technical Specification 3.6.2.2 for appropriate action if the CS14 valve is inoperable clarifies the action requirements. By addition of the reference to Technical Specification 3.6.2.2, the Action Statement for an inoperable Spray Additive Tank will be followed if valve CS14 becomes inoperable. CS14 is part of the Containment Spray System. Because it is a clarification, it is deemed an administrative change as illustrated in example i.

b. Technical Specification 3.5.3

This change will clearly reflect the design bases flow paths for the ECCS-LOCA in the Technical Specifications. This change does not modify the ECCS injection or recirculation flow paths in any way. The identification of the required flow path for the operable ECCS subsystem represents a means of control not currently in the technical specifications. This meets example ii.

The addition of the footnote to clearly specify that only one safety injection pump or one centrifugal charging pump need be operable in Mode 4, 5 and 6 is a restriction not currently in the technical specifications. This meets example ii. The addition to the note in the Salem 1 Technical Specifications of the applicability to Modes 5 and 6 is also more restrictive, an illustration of example ii, and already appears in the Salem 2 Technical Specifications, an illustration of example i.

Based on the above, the staff proposes to determine that the changes to Technical Specification 4.5.2 and 3.5.3 do not involve significant hazards considerations because they provide additional controls or are more restrictive than the current technical specifications or involve administrative changes.

3. The licensee has analyzed the proposed changes to Technical Specification Bases Section 3/4 5.2 and 3/4 5.3 to determine if a significant hazard exists:

The proposed changes to Technical Specification Bases Sections 3/4 5.2 and 3/4 5.3 do not involve a significant hazards consideration because operation of Salem Unit 1 and 2 in accordance with these changes would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. The first change is for clarification only and serves to highlight the ECCS-LOCA requirements to maintain the capability to supply all four RCS cold legs. The second change again only clarifies in the Bases Section existing requirements that serve to maintain the RCS pressure below the 10 CFR 50, Appendix G limits in case of an inadvertent mass addition.

(2) Create the possibility of a new or different kind of accident from any previously analyzed. The first change does not involve any hardware or procedure modifications and only serves to identify an existing design bases for the ECCS-LOCA. Likewise, the second change clarifies in the Bases Section existing requirements. No new or different kind of accident can be postulated as a result of these changes.

(3) Involve a significant reduction in a margin of safety. These changes serve to identify existing design bases for the ECCS-LOCA and RCS pressure limits in Mode 4. They do not impact any margin of safety.

The staff has reviewed the licensee's significant hazards consideration analysis for changes to Technical Specification Bases Sections 3/4 5.2 and 3/4 5.3 and concurs with the licensee's determination that the proposed changes do not involve a significant hazards consideration.

Based on the staff's review and analysis of the licensee's submittal as detailed above, the staff proposes to determine that the proposed amendment involves no significant hazards consideration.

*Local Public Document Room location:* Salem Free Public library, 112 West Broadway, Salem, New Jersey 08079

*Attorney for licensee:* Mark J. Wetterhahn, Esquire, Conner and Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue, NW., Washington, DC 20006

*NRC Project Director:* Walter R. Butler

**Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California**

*Date of amendment request:* April 26, 1988 (Reference PCN-247)

*Description of amendment request:* The proposed change would revise Technical Specification (TS) 3/4.6.4.2, "Electric Hydrogen Recombiners." TS 3/4.6.4.2 requires that two hydrogen recombiners be operable during startup or power operation (Modes 2 and 1, respectively), defines periodic surveillance tests to verify operability, and requires compensatory actions to be taken when the minimum operability requirements are not met.

The hydrogen recombiners are part of the post accident combustible gas control system. During a postulated loss of coolant accident, hydrogen gas would evolve from the reaction of water with fuel cladding, radiolytic decomposition of water, and corrosion of metals inside containment. The function of the

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combustible gas control system is to maintain the post accident concentration of hydrogen gas in the containment atmosphere below the explosive gas limit and thereby prevent a hydrogen gas explosion from challenging containment integrity.

To verify operability of the hydrogen recombiners, TS 3/4.6.2.a requires that a functional test be performed at least once per six months. In addition, TS 4.6.4.2.b requires each hydrogen combiner system to be demonstrated operable at least once per 18 months by performance of the following surveillance requirements: (1) TS 4.6.4.2.b.1 requires a channel calibration of all hydrogen recombiner instrumentation and control circuits. This test verifies electrical resistance and calibrates thermocouples to plus or minus one percent. (2) Technical Specification 4.6.4.2.b.2 and 3 require that (a) there is no evidence of abnormal conditions within the recombiners by performing a visual examination, and (b) the integrity of the heater electrical circuits is satisfactory by performing a continuity and resistance to ground test.

The proposed change would increase the interval for performance of TS 4.6.4.2.b surveillance tests from at least once per 18 months to at least once per refueling.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided the following no significant hazards consideration determination:

Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The function of the hydrogen recombiners is to maintain the post accident concentration of hydrogen gas in the containment atmosphere below the explosive gas limit [and] thereby prevent a hydrogen gas explosion from challenging containment integrity. The proposed change increases the interval for surveillance tests currently performed at 18 month intervals. There has been a low incidence of problems detected by the 18 month surveillance tests. Additionally the functionality of the hydrogen recombiners is demonstrated at six month intervals by the required functional test, which is unaffected by the proposed change. Because of the low incidence of problems, and the functional testing at six month intervals, the proposed change will not significantly affect the hydrogen recombiners' availability to function post accident. Therefore, the proposed change will not significantly increase the probability [or consequences] of previously analyzed accidents.

Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change affects only the frequency of hydrogen recombiner surveillance testing. The proposed change does not alter the configuration of the facility or its operation. Therefore, the proposed change does not create the possibility of new or different kind of accident.

Will operation of the facility in accordance with the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change affects only the frequency of certain hydrogen recombiner surveillance tests which may result in a small reduction of confidence in hydrogen recombiner operability and the associated margin of safety. However, the 18 month surveillances have historically detected few problems and the six month functional tests are unaffected by the proposed change. Therefore, the proposed change will not result in a significant reduction in a margin of safety.

The NRC staff has reviewed this analysis and, based on that review, it appears that the three criteria are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* General Library, University of California, P.O. Box 19557, Irvine, California 92713.

*Attorney for licensee:* Charles R. Kocher, Assistant General Counsel, and James Beoletto, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770.

*NRC Project Director:* George W. Knighton

**Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California**

*Date of amendment request:* April 20, 1988 (Reference PCN-249)

*Description of amendment request:* The proposed change would revise Technical Specification 3/4.1.3.4, "CEA Drop Time." This specification provides an individual full length control element assembly (CEA) maximum drop time restriction. The individual (shutdown and control) CEA drop time is measured from the time that electrical power is interrupted to the CEA drive mechanism (from a fully withdrawn position) to the time the CEA reaches its 90% insertion position. The maximum allowable CEA drop time (less than or equal to 3.2 seconds) is consistent with the value assumed in the safety analyses. CEA drop times are required to be measured following each removal and reinstallation of the reactor vessel head (Surveillance Requirement (SR) 4.1.3.4.a); following any maintenance on, or modification to, the CEA drive system which could affect the drop time of those specific CEA's (SR 4.1.3.4.b); and at least once per 18 months (SR 4.1.3.4.c).

The proposed change would revise the frequency of the CEA drop time testing required by Surveillance Requirement 4.1.3.4.c of this Specification from the current 18 month interval to an interval of at least once per refueling.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided the following no significant hazards determination:

Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change ties the CEA drop time testing to a refueling interval frequency.... Factors that could adversely affect rod drop times during a cycle are addressed by other surveillance requirements not affected by this proposed change. Therefore, the proposed change will not involve a significant increase in the probability or consequences of any accident previously evaluated.

Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change only redefines the periodic surveillance interval for CEA drop time testing. The requirements to conduct CEA drop time testing following maintenance which might affect the drop time or following reactor vessel head removal are not changed. No physical modification to the plant is proposed, nor is there a change in how the facility is operated. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Will operation of the facility in accordance with the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change extends the 18 month interval for performing the CEA drop time surveillance to a refueling interval.... The actual time interval between surveillances will be a function of the plant capacity factor for the particular fuel cycle.... [For a nominal 24 month cycle,] the fuel cycle length will be 513 effective full power days (EFPD). Assuming a production factor of 90% and a 75 day refueling outage, an actual cycle length and surveillance interval would be approximately 21 months. Technical Specification 4.0.2.a permits a maximum allowable extension not to exceed 25% of the current surveillance interval.... Thus, the proposed change does not represent a radical increase over what is already permitted by



technical specifications. Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed this analysis and, based on that review, it appears that the three criteria are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* General Library, University of California, P.O. Box 19557, Irvine, California 92713.

*Attorney for licensee:* Charles R. Kocher, Assistant General Counsel, and James Beoletto, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770.

*NRC Project Director:* George W. Knighton

**Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California**

*Date of amendment request:* April 20, 1988 (Reference PCN-250)

*Description of amendment request:* The proposed change would revise Technical Specification 3/4.3.3.10, "Loose-Part Detection Instrumentation." The loose part detection instrumentation serves to provide early detection of loose metallic parts in the primary system to avoid and/or mitigate damage to the primary system components. The Vibration and Loose Parts Monitoring System (V&LPM) monitors the major reactor primary system components. The selected locations provide a qualitative indication of vibration throughout the primary system.

Surveillance Requirement 4.3.3.10.c states that each channel of the loose-part detection system shall be demonstrated operable by the performance of a channel calibration at least once per 18 months. The proposed change would revise this requirement from at least once per 18 month interval to at least once per refueling.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided the following no significant hazards consideration determination:

Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The operability of the V&LPM ensures that sufficient capability exists to detect loose metallic parts in the primary system and [to] avoid or mitigate damage to primary system components. The system serves no safety function and is not credited in the accident analyses. The proposed change will revise the frequency of the channel calibration test to an interval [of] at least once per refueling. Most failures of the system are detected during performance of the daily and monthly testing. Therefore, the proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The V&LPM is a monitoring system and does not initiate any automatic protective functions. The proposed change extends the surveillance interval (for a test intended to be performed during a refueling outage) to coincide with the refueling outage interval.... Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Will operation of the facility in accordance with the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change extends the 18 month interval for performing the... channel calibration surveillance to refueling intervals. The actual time interval between surveillances will be a function of the plant capacity factor for the particular fuel cycle. For the equilibrium cycle, the fuel cycle length will be 513 effective full power days (EFPD). A production factor of 90% and a 75 day refueling outage would result in an actual cycle length of 21 months. Technical Specification 4.0.2.a permits a maximum allowable extension not to exceed 25% of the current surveillance interval.... Thus, the proposed change does not represent a radical increase over what is already permitted by technical specifications.... Therefore, the proposed change will not involve a significant increase in a margin of safety.

The NRC staff has reviewed this analysis and, based on that review, it appears that the three criteria are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* General Library, University of California, P.O. Box 19557, Irvine, California 92713.

*Attorney for licensee:* Charles R. Kocher, Assistant General Counsel, and James Beoletto, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770.

*NRC Project Director:* George W. Knighton

**Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California**

*Date of amendment request:* October 11, 1988 (Reference PCN-264)

*Description of amendment request:* The proposed change would revise Technical Specification (TS) 3/4.4.5.2, "Operational Leakage." The purpose of this specification is to provide limits on operational leakage. The surveillance requirements for the Reactor Coolant System (RCS) Pressure Isolation Valves provide added assurance of valve integrity, thereby reducing the probability of gross valve failure and a consequent intersystem Loss Of Coolant Accident (LOCA). Leakage from the RCS Pressure Isolation Valves is identified leakage and will be considered as a portion of the allowable limit. The RCS Pressure Isolation Valves function to create a pressure boundary isolating the RCS from connecting systems. Surveillance Requirement 4.4.5.2.2.a requires verifying valve leakage to be within its limit at least once every 18 months. The proposed change would revise the surveillance interval from at least once per 18 months to at least once per refueling interval.

*Basis for Proposed No Significant Hazards Consideration Determination:* As required by 10 CFR 50.91 (a), the licensee has provided the following no significant hazards consideration determination:

Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The function of the RCS Pressure Isolation Valves is to create a pressure boundary between the RCS and connected systems. The proposed change increases the interval for surveillance testing currently performed at 18 month intervals to a refueling interval, nominally 24 months. There has been one failed leak test detected in the 18 month surveillance program which is not expected to be repeated due to the implementation of the recommendations provided in IE Bulletin 85-03. Therefore, the proposed change will not significantly increase the probability [or consequences] of previously analyzed accidents.

Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change affects only the frequency of the RCS Pressure Isolation Valves surveillance. The proposed change does not alter the configuration of the facility or its operation. Therefore, the proposed

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change does not create the possibility of a new or different kind of accident.

Will operation of the facility in accordance with the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change affects the frequency of the surveillance test which may result in a small reduction in confidence in system operability and the associated margin of safety. However, the 18 month surveillances have only detected one failure, which has been resolved in conjunction with IE Bulletin 85-03. In addition, other [T]echnical [S]pecification surveillances establish requirements to monitor leakage from the reactor coolant system on a more frequent basis. Therefore, the proposed change will not result in a significant reduction in a margin of safety.

The NRC staff has reviewed this analysis and, based on that review, it appears that the three criteria are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* General Library, University of California, P.O. Box 19557, Irvine, California 92713.

*Attorney for licensees:* Charles R. Kocher, Assistant General Counsel and James Beoletto, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770.

*NRC Project Director:* George W. Knighton

**Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California**

*Date of amendment request:* October 11, 1988 (Reference PCN-265)

*Description of amendment request:* The proposed change would revise Surveillance Requirement 4.5.1.e of Technical Specification (TS) 3/4.5.1, "Safety Injection Tanks." The purpose of this specification is to ensure that the Safety Injection Tanks are operable. Surveillance Requirement 4.5.1.e requires verifying that each Safety Injection Tank isolation valve opens automatically before Reactor Coolant System (RCS) pressure exceeds 715 psia, and upon a SIAS test signal. The proposed change would revise the surveillance interval for these tests from at least once per 18 months to at least once per refueling interval.

*Basis for Proposed No Significant Hazards Consideration Determination:* As required by 10CFR 50.91 (a), the licensee has provided the following no significant hazards consideration determination:

Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The [S]afety [I]njection [T]ank isolation valves are used to separate the RCS from the [S]afety [I]njection [T]anks when depressurizing the RCS. The proposed change increases the interval for surveillance testing currently performed at 18 month intervals to a refueling interval, nominally 24 months. There have been no failures in the 18 month surveillance program. Therefore, the proposed change will not significantly increase the probability [or consequences] of previously analyzed accidents.

Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change affects only the frequency of the [S]afety [I]njection [T]ank isolation valve surveillance. The proposed change does not alter the configuration of the facility or its operation. Therefore, the proposed change does not create the possibility of a new or different kind of accident.

Will operation of the facility in accordance with the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change affects only the frequency of the surveillance test which may result in a small reduction in confidence in system operability and the associated margin of safety. However, the 18 month surveillances have detected no failures. Therefore, the proposed change will not result in a significant reduction in a margin of safety.

The NRC staff has reviewed this analysis and, based on that review, it appears that the three criteria are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* General Library, University of California, P.O. Box 19557, Irvine, California 92713.

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*NRC Project Director:* George W. Knighton

**Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California**

*Date of amendment request:* October 24, 1988 (Reference PCN-258)

*Description of amendment request:* The proposed change would revise Technical Specification (TS) 3/4.6.3, "Containment Isolation Valves." TS 3/4.6.3 lists the containment isolation valves and specifies their required response times for closure. Operability of the containment isolation valves ensures that the containment atmosphere will be isolated from the outside environment in the event of a release of radioactive material to the containment atmosphere. Containment isolation within the time limits specified ensures that the release of radioactive material to the environment will be consistent with the assumptions used in the accident analyses. TS 3/4.6.3 also defines periodic surveillance tests and action to be taken if the minimum operability requirements are not met. Surveillance Requirement (SR) 4.6.3.2 requires that each isolation valve (except check valves) specified in Section A and B of Table 3.6-1, "Containment Isolation Valves," of this specification, be demonstrated operable at least once per 18 months during cold shutdown or refueling by verifying that on an Engineered Safety Features Actuation System (ESFAS) test signal, each isolation valve actuates to its isolation position. The proposed change would revise this surveillance interval from at least once per 18 months to at least once per refueling interval.

*Basis for Proposed No Significant Hazards Consideration Determination:* As required by 10 CFR 50.91(a), the licensee has provided the following no significant hazards consideration determination:

Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No

The required semi-annual testing of the components included within the scope of these [T]echnical [S]pecifications provides a high level of assurance that the equipment is capable of proper operation. The frequency of the semi-annual testing is not affected by this change.... Based on [a] review of the... surveillance testing to date, the results have demonstrated reliable equipment performance. Additional assurance of proper operation of ASME pumps and valves is provided by inservice testing. Therefore, the proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change only affects the frequency of refueling interval testing and does not alter the configuration of the facility or its operation. Therefore, this proposed change will not create the possibility of a



new or different kind of accident from any accident previously evaluated.

Will operation of the facility in accordance with the proposed change involve a significant reduction in a margin of safety?

Response: No

The proposed change only affects the frequency of testing on a sub-system basis (18 months) without affecting the testing frequency that is done on a sub-group basis (semi-annual). The semi-annual test is capable of detecting problems which are most likely to occur. Inservice testing of ASME pumps and valves provides additional assurance of proper operation. This, coupled with reliable equipment performance, makes any potential reduction in safety margin negligible. Therefore, the proposed change will not involve a significant increase in a margin of safety.

The NRC staff has reviewed this analysis and, based on that review, it appears that the three criteria are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* General Library, University of California, P.O. Box 19557, Irvine, California 92713.

*Attorney for licensees:* Charles R. Kocher, Assistant General Counsel and James Beoletto, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770.

*NRC Project Director:* George W. Knighton

**Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California**

*Date of amendment request:* October 24, 1988 (Reference PCN-261)

*Description of amendment request:* The proposed change would revise Technical Specification (TS) 3/4.1.2.2, "Reactivity Control Systems, Boration Flow Paths-Operating," and TS 3/4.5.2, "Emergency Core Cooling Subsystems-Tavg Greater Than or Equal to 350° F." TS 3/4.1.2.2 defines the required number of operable boron injection flow paths to the Reactor Coolant System. TS 3/4.5.2 defines the required number of operable Emergency Core Cooling System (ECCS) subsystems. The boron injection system ensures that negative reactivity control is available during each mode of reactor operation. TS 3/4.5.2 requires two independent operable Emergency Core Cooling Systems (ECCS) in modes 1, 2, and 3. The operability of two separate and independent ECCS subsystems ensures that sufficient emergency core cooling capability will be available in the event of a LOCA assuming the loss of one subsystem through any single failure consideration. In addition, each Technical Specification defines periodic surveillance tests and action to be taken if the minimum operability requirements are not met. These tests require verification that components will operate upon energization/deenergization of the respective initiation relays, that the shutdown cooling isolation valve interlocks will operate properly, and that the Containment Sump is not blocked or damaged.

Surveillance Requirement (SR) 4.1.2.2.c requires that, at least once per 18 months during shutdown, each valve in the boron injection flow path be demonstrated operable by verifying that it actuates to its correct position upon a Safety Injection Actuation Signal (SIAS) test signal. SR 4.5.2.e requires that, at least once per 18 months during shutdown, the components in the ECCS flow paths be demonstrated operable by verifying that they actuate to their correct position upon a Safety Injection Actuation Signal (SIAS) or Recirculation Actuation Signal (RAS) test signal. SR 4.5.2.d.1 requires verifying, at least once every 18 months, automatic closure of the Shutdown Cooling Isolation valves when the simulated RCS pressure equals or exceeds 715 psia, and that interlocks prevent opening the valves when the RCS pressure equals or exceeds 376 psia. SR 4.5.2.d.2 requires a visual inspection of the Containment Sump to verify that all sump inlets are not restricted by debris and that no evidence of structural distress or abnormal conditions exists. The proposed change would revise the interval of these surveillance tests from at least once per 18 months during shutdown to at least once per refueling interval during shutdown.

*Basis for Proposed No Significant Hazards Consideration Determination:* As required by 10 CFR 50.91(a), the licensee has provided the following no significant hazards consideration determination:

Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The required semi-annual testing of the components included within the scope of Surveillance Requirements 4.1.2.2 and 4.5.2.e provides a high level of assurance that the equipment is capable of proper operation. The frequency of the semi-annual testing is not affected by this change. Inservice testing of ASME pumps and valves provides additional assurance of proper operation. Results of surveillance testing to date have demonstrated reliable equipment performance. The proposed change also increases the interval for surveillance testing associated with Shutdown Cooling Isolation Valve interlocks, currently performed at 18 month intervals. No problems have been detected in the 18 month surveillance program. Access to the Containment Sump area is severely restricted, especially during non-refueling outage periods. This essentially precludes events which could cause the condition of the Containment Sump to deteriorate. Inspections since the beginning of commercial operation of both units have all been satisfactory. Therefore, the proposed change will not significantly increase the probability or consequences of an accident previously analyzed.

Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change only affects the frequency of refueling interval testing and does not alter the configuration of the facility or its operation. Based on the review of plant history, it has been demonstrated that most deficiencies have been detected by means other than surveillances. Therefore, this proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Will operation of the facility in accordance with the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change only affects the frequency of testing on a subsystem basis (18 months) without affecting the testing frequency that is done on a sub-group basis (semi-annual). The semi-annual test is capable of detecting problems which are most likely to occur. Inservice testing of ASME pumps and valves provides additional assurance of proper operation. This, coupled with reliable equipment performance, makes any potential reduction in safety margin negligible. The proposed change also affects the frequency of certain shutdown cooling isolation valve surveillance tests which may result in a small reduction in confidence in valve operability and the associated margin of safety. However, the 18 month surveillances have historically detected no problems. Therefore, the proposed changes will not result in a significant reduction in a margin of safety.

The NRC staff has reviewed this analysis and, based on that review, it appears that the three criteria are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* General Library, University of California, P.O. Box 19557, Irvine, California 92713.

*Attorney for licensees:* Charles R. Kocher, Assistant General Counsel and James Beoletto, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770.

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*NRC Project Director:* George W. Knighton

**Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California**

*Date of amendment request:* December 16, 1988 (Refernce PCN-254)

*Description of amendment request:* The proposed change would revise Technical Specification (TS) 3/4.8.4.1, "Containment Penetration Conductor Overcurrent Protective Devices," and TS 3/4.8.4.2 "Motor Operated Valves Thermal Overload Protection Bypass." TS 3.8.4.1 requires circuits entering containment to be provided with an overcurrent protective device. The containment penetration conductor overcurrent protective devices listed in Table 3.8-1 of this Specification are required to be operable in Mode 1 through Mode 4. Containment electrical penetrations and penetration conductors are protected by either deenergizing circuits not required during reactor operation or by demonstrating the operability of primary and backup overcurrent protection circuit breakers during periodic surveillance. The overcurrent protective devices provide protection of the containment penetration to maintain containment integrity. TS 3.8.4.2 requires the thermal overload protection to be bypassed by a bypass device integral with the motor starter of each valve listed in Table 3.8-2 of this Specification. The thermal overload bypass device ensures that the motor will not trip off due to a thermal overload. The bypass devices are required to be operable whenever the motor-operated valve is required to be operable.

Surveillance Requirement 4.8.4.1.a requires all containment penetration conductor overcurrent devices listed in Table 3.8-1 of the Technical Specification be demonstrated operable at least once per 18 months by verifying that the medium voltage (4-15KV) circuit breakers are operable. This is accomplished by selecting on a rotating basis at least 10 percent of the circuit breakers of each voltage level, and performing a Channel Calibration of the associated protective relays and an integrated system functional test. For any circuit breaker found inoperable, an additional representative sample of at least 10 percent of the circuit breakers of the inoperable type shall also be functionally tested. In addition, 10 percent of the lower voltage circuit breakers are functionally tested on a rotating basis. Again, if any circuit breaker is found inoperable, an additional representative sample of 10 percent will be tested. Surveillance Requirement 4.8.4.1.a states that the thermal overload protection on motor operated valves (MOVs) shall be verified bypassed by integral bypass devices at least once per 18 months. The proposed change would revise these surveillance intervals from at least once per 18 months to at least to once per refueling interval.

*Basis for Proposed No Significant Hazards Consideration Determination:* As required by 10 CFR 50.91(a), the licensee has provided the following no significant hazards consideration determination:

Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No

Containment penetration overcurrent devices are installed to protect equipment from being damaged due to an overcurrent condition. The thermal overload bypass device ensures that the motor will not trip off due to a thermal overload. The proposed change revises the frequency of surveillance tests to demonstrate the operability of the electrical equipment protective devices. While the proposed change increases the interval between surveillance tests, past surveillances have demonstrated high system reliability. Therefore, the proposed change will not significantly increase the probability.... or consequences of previously evaluated accidents.

Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No

The proposed change only redefines the surveillance interval for containment penetration overcurrent protection and the surveillance interval for MOV thermal overload bypass verification. No physical modification to the plant is proposed, nor is there a change in how the facility is operated. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated(.)

Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

Response: No

The proposed change reduces the frequency of the surveillance tests which may reduce the confidence in the electrical equipment protective devices[']' operability at the end of the surveillance interval and may reduce the associated margin of safety. A review of plant history documentation reveals that the surveillance test provides excellent results in equipment operability. Therefore, the proposed change will not result in a significant reduction in a margin of safety.

The NRC staff has reviewed this analysis and, based on that review, it appears that the three criteria are satisfied. Therefore, the NRC staff proposed to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* General Library, University of California, P.O. Box 19557, Irvine, California 92713.

*Attorney for licensees:* Charles R. Kocher, Assistant General Counsel and James Beoletto, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770.

*NRC Project Director:* George W. Knighton

**Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California**

*Date of amendment request:* December 19, 1988 (Reference PCN-279)

*Description of amendment request:* The proposed change would revise Technical Specification (TS) 3/4.4.5.1, "Reactor Coolant System Leakage." The system functions to detect liquid level in the containment sump using two redundant transmitters which provide information to the control room. The level signal from train 'B' also inputs to the Critical Function Monitoring System (CFMS), which converts changes in level signal to flowrate. Surveillance Requirement (SR) 4.4.5.1.b requires performing a channel calibration at least once every 18 months. The proposed change would revise the surveillance interval from at least once per 18 months to at least once per refueling interval.

*Basis for Proposed No Significant Hazards Consideration Determination:* As required by 10 CFR 50.91(a), the licensee has provided the following no significant hazards consideration determination:

Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No. This [T]echnical [S]pecification addresses equipment used for measuring level in the Containment sump. Leak detection is accomplished by monitoring the changes in level indication as opposed to using the absolute value that is indicated. The containment sump inlet flow surveillance calibrates the monitoring instrumentation. The proposed change increases the interval for surveillance testing currently performed at 18 month intervals. There has been only one out of calibration condition determined through the 18 month surveillance test. Since these instruments are used by monitoring the changes, the instrument may be capable of performing its leak detection function even though the instrument is out of calibration on an absolute basis. Therefore, the proposed change will not involve a significant increase in the probability or consequences of any accident previously evaluated.

Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change affects only the frequency of the containment sump inlet flow surveillance. The proposed change does not alter the configuration of the facility or its operation. Therefore the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Will operation of the facility in accordance with the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change affects only the frequency of the surveillance. The 18 month surveillances have detected no out of calibration conditions since 1985. All other problems have been identified by Operations channel comparisons (performed each shift). Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed this analysis and, based on that review, it appears that the three criteria are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* General Library, University of California, P.O. Box 19557, Irvine, California 92713.

*Attorney for licensees:* Charles R. Kocher, Assistant General Counsel and James Beoletto, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770.

*NRC Project Director:* George W. Knighton

**Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California**

*Date of amendment request:* December 28, 1988 (Reference PCN-271)

*Description of amendment request:* The proposed change would revise Technical Specification 3/4.3.4, "Turbine Overspeed Protection." This specification is provided to ensure that the turbine speed control valves are operable and will protect the turbine form excessive overspeed. The main generator overspeed tripping circuits are designed to trip the turbine if the factory recommended maximum speed is approached. This circuit consists of dual train protection with two independent tripping mechanisms and electrical circuits which initiate a trip on the turbine if the turbine speed reaches the trip setpoint. Turbine overspeed protection is considered necessary to prevent postulated turbine missiles from being generated and potentially damaging safety related structures.

Surveillance Requirement 4.3.4.c specifies that the turbine overspeed protection system shall be demonstrated operable at least once per 18 months by performance of a channel calibration on the turbine overspeed protection systems. The proposed change would revise the surveillance interval from at least once per 18 months to at least once per refueling interval.

*Basis for Proposed No Significant Hazards Consideration Determination:* As required by 10CFR 50.91 (a), the licensee has provided the following no significant hazards consideration determination:

Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The main turbine overspeed trip test has consistently proven system integrity and component reliability. No detrimental trends or degradation of components have been found. Recalibration of protective and control relays ha[s] been minimal. Therefore, the proposed change will not involve a significant increase in the probability or consequences of any accident previously evaluated.

Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change only revises the period the 18 month channel calibration is performed. The facility will not be operated any different[ly] than it is currently. Therefore, the proposed change will not create the possibility of a new or different kind of accident form any accident previously evaluated.

Will operation of the facility in accordance with the proposed change involve a significant reduction in a margin of safety?

Response: No.

Based on the results of the turbine overspeed protection surveillance, currently performed every 18 months,.... extending it to a refueling interval, nominally 24 months, will [not] involve a significant reduction in a margin of safety.

The NRC staff has reviewed this analysis and, based on that review, it appears that the three criteria are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* General Library, University of California, P.O. Box 19557, Irvine, California 92713.

*Attorney for licensees:* Charles R. Kocher, Assistant General Counsel and James Beoletto, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770.

*NRC Project Director:* George W. Knighton

**Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee**

*Date of amendment requests:* January 27, 1981 (TS 88-31)

*Description of amendment requests:* The Tennessee Valley Authority (TVA) proposes to modify the Sequoyah Nuclear Plant (SQN) Units 1 and 2 Technical Specifications (TS). The changes affect the limiting condition for operation (LCO) 3.4.8, Specific Activity, for radioiodine in the reactor coolant system. The proposed changes would (1) delete the Action a for Modes 1, 2 and 3, eliminating the reporting requirement for the number of hours above the allowable dose equivalent Iodine 131 (I-131) limit; (2) delete the part of the Action a for Modes 1, 2, 3, 4 and 5 that involves the special report requirement for I-131 and proposed an additional requirement in TS Section 6.9, Annual Reports, to include an annual report to NRC regarding instances when the I-131 specific activity limit was exceeded; and (3) within the Bases sections for TS 3/4.4.8, delete the discussion of the Specific Activity shutdown requirement for operation in excess of 800 hours above the dose limit in a 12-month period.

*Basis for proposed no significant hazards consideration determination:* TVA provided the following information on the proposed TS changes in its submittal:

TVA is requesting this change to reduce unnecessary reporting requirements and eliminate an unnecessary shutdown requirement. The proposed changes are made in response to NRC Generic Letter (GL) 85-19.

The primary coolant-specific activity is sampled for radioiodine in accordance with SQN technical specification table 4.4-4. Technical specification 3.4.8 contains specific actions to be taken in response to high specific [I-131] activities. These requirements ensure plant operation within the assumptions of previous accident analyses. In addition, waste sampling for radioiodine is performed in accordance with technical specification tables 4.11-1 and 4.11-2. Radioiodine effluent monitoring instrumentation requirements are specified in technical specification tables 3.3-12 and 3.3-13 for liquid and gaseous effluent release paths. These sampling and monitoring programs ensure that radioactive effluent

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releases are maintained within regulatory limits.

NRC issued GL 85-19 to recommend that licensees delete unnecessary reporting and plant shutdown requirements. The recommendation was based on the NRC review of nuclear fuel quality and performance and an assessment of the usefulness of the standard technical specification reporting and plant shutdown requirements. TVA's fuel performance at SQN is consistent with the industry experience. Therefore, the recommendations of GL 85-19 are applicable to SQN.

The Commission has provided Standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92, on the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has performed and provided the following analysis:

TVA has evaluated the proposed technical specification change and has determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c). Operation of SQN in accordance with the proposed amendment will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change to the unnecessary reporting requirements regarding radioiodine 131 levels in the primary coolant system is strictly administrative and involves no change to plant hardware or its configuration. The shutdown requirement deleted by this change has been evaluated by the NRC in GL 85-19 as being unnecessary and serving in no way to increase plant safety. TVA fuel performance at SQN is consistent with industry experience. The remaining requirements of technical specification 3.4.8 ensure that the probability or consequences of accidents previously evaluated remain unchanged. Therefore, deletion of the unnecessary administrative requirements changes neither the probability of occurrence nor the consequences of a previously evaluated accident.

(2) Create the possibility of a new or different kind of accident from any previously analyzed. The administrative change to delete certain unnecessary reporting and plant shutdown requirements does not affect plant hardware or its configuration. Therefore, deletion of the unnecessary administrative requirements creates no new or different type of accident. The remaining requirements of technical specification 3.4.8 ensure plant operation within the bounds of previous accident analyses. The requirements of technical specifications 3.3.3.8, 3.3.3.10, 3.11.1.1, and 3.11.2.1 ensure that radioactive effluent releases are maintained within regulatory limits.

(3) Involve a significant reduction in a margin of safety. The margin of safety is not reduced by the administrative change to delete certain unnecessary reporting and shutdown requirements. The remaining requirements of technical specification 3.4.8 and the requirements of technical specifications 3.3.3.8, 3.3.3.10, 3.11.1.1, and 3.11.2.1 ensure that the margin of safety is preserved.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendments involves no significant hazards considerations.

*Local Public Document Room location:* Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

*Attorney for licensee:* General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

*NRC Assistant Director:* Suzanne Black

**Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia**

*Date of amendment requests:* October 11, 1988

*Description of amendment requests:* The proposed amendments would modify Surry Units 1 and 2 Technical Specifications (TS) Sections 3.0, "Turbine Cycle," 3.9, "Station Service System," and 3.13, "Emergency Power Systems." The proposed modifications address the operability and redundancy requirements of the cross-connect feature of the Auxiliary Feedwater (AFW) System. The proposal is the result of the identification of an apparent discrepancy between the analyses presented in the Updated Final Safety Analysis Report (UFSAR) and the requirements of the TS. This discrepancy was found to result in the potential for inadequate AFW flow via the Unit-to-Unit Cross-Connect for certain high energy line break events.

Surry Units 1 and 2 AFW systems can be cross-connected. Thus, in the event of a failure of all of one Unit's AFW pumps, core cooling can be provided by the other Unit's AFW pumps via the cross-connect. The current TS require that in order to operate a Unit, only one of the other Unit's AFW pumps need be operable. The proposed change would increase the number of required available pumps to two. This would provide an additional margin of safety for common mode failure events. Allowance is made for the outage time necessary to conduct maintenance on the AFW pumps.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided criteria for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee addressed the above three criteria in the amendment application and made a proposed no significant hazards consideration determination. In regard to the first criterion, the licensee provided the following analysis:

The effect of the changes will be to increase the reliability of the auxiliary feedwater cross-connect feature, which is relied on for mitigation of certain high energy line breaks outside containment and fires [sic]. The current UFSAR accident analysis results and conclusions are not affected by the proposed changes.

With respect to the second criterion, the licensee stated:

The redundancy requirements for the auxiliary feedwater system have no impact on the range of initiating events previously assessed.

In regard to the third criterion, the licensee provided the following statement:

Since the results of the existing UFSAR accident analyses remain bounding, the safety margins are not impacted.

The staff has reviewed the analysis provided by the licensee in support of a proposed no significant hazards consideration determination. The staff agrees with the licensee's analysis and believes that the licensee has met the criteria for such a determination. In addition, the Commission has provided guidance concerning the application of the criteria for determining whether a significant hazards consideration exists by providing certain examples (51 FR 7751). One of the examples of actions involving no significant hazards considerations is example (ii), a change that constitutes an additional restriction not presently included in the TS; e.g., a more stringent surveillance requirement. The proposed changes fall within the scope of this example. Therefore, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

*Local Public Document Room location:* Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

*Attorney for licensee:* Michael W. Maupin, Esq., Hunton and Williams, Post Office Box 1535, Richmond, Virginia 23213.

*NRC Project Director:* Herbert N. Berkow



## PREVIOUSLY PUBLISHED NOTICES OF CONSIDERATION OF ISSUANCE OF AMENDMENTS TO OPERATING LICENSES AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the Federal Register on the day and page cited. This notice does not extend the notice period of the original notice.

**Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1 West Feliciana Parish, Louisiana**

*Date of amendment request:* December 16, 1988 as supplemented January 24, 1989

*Brief description of amendment request:* The proposed amendment would modify the Technical Specifications (TSs) to provide one-time exceptions to the provisions of TS 3.0.4 for three TSs for use during the second refueling outage scheduled to begin March 15, 1989. These exceptions are applicable in operations conditions 4 or 5 to allow entry into a specified operational conditions without meeting the Limiting Condition for Operation (LCO), provided that the requirements of the associated action statements are met.

*Date of publication of individual notice in* Federal Register: January 31, 1989 (54 FR 4927) and corrected February 16, 1989 (54 FR 7115)

*Expiration date of individual notice:* March 2, 1989

*Local Public Document Room location:* Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803.

**Houston Lighting & Power Company, Docket No. 50-498, South Texas Project, Unit 1, Matagorda County, Texas**

*Date of amendment request:* January 17, 1989

*Brief description of amendment request:* The proposed amendment would revise the Unit 1 Technical Specifications to incorporate the Unit 1/Unit 2 Combined Technical Specifications which are to be issued with the Unit 2 full power license. At the time Unit 2 receives an operating license, Houston Lighting & Power Company will receive Technical Specifications that are applicable for both units, i.e., Combined Technical Specifications. To implement the Combined Technical Specifications on Unit 1, the Unit 1 license requires an administrative change.

*Date of publication of individual notice in* Federal Register: February 2, 1989 (54 FR 5292).

*Expiration date of individual notice:* March 6, 1989

*Local Public Document Room Locations:* Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488 and Austin Public Library, 810 Guadalupe Street, Austin, Texas 78701

**Houston Lighting & Power Company, Docket No. 50-498, South Texas Project, Unit 1, Matagorda County, Texas**

*Date of amendment request:* January 25, 1989

*Brief description of amendment request:* The proposed amendment would change the technical specifications by modifying the Fuel Handling Building Exhaust Air Subsystem electric heaters to operate at 38 kW instead of the current 50 kW; modifying the Source Range Neutron Monitor calibration requirements to ensure that a new model of preamplifier can be installed for use in the Source Range Neutron Monitoring instrumentation circuit; and clarifying action statements for the Chemical Detection System and the Control Room Ventilation System.

*Date of publication of individual notice in* Federal Register: February 15, 1989 (54 FR 6789)

*Expiration date of individual notice:* March 16, 1989

*Local Public Document Room Locations:* Wharton County Junior College Library, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488 and Austin Public Library, 810 Guadalupe Street, Austin, Texas 78701

**Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, York County, Pennsylvania**

*Date of amendment request:* June 12, 1987 as amended February 7, 1989

*Brief description of amendment request:* This amendment will modify the Technical Specifications to reflect the instrumentation required by ATWS (10 CFR 50.62) Rule.

*Date of publication of individual notice in* Federal Register: February 17, 1989 (54 FR 7313)

*Expiration date of individual notice:* March 20, 1989

*Local Public Document Room location:* Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

## NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the Federal Register as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has

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made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

**Commonwealth Edison Company, Docket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County,. Illinois**

*Date of application for amendments:* November 15, 1988

*Brief description of amendments:* Delete tabular listing of safety-related snubbers from Technical Specifications in accordance with Generic Letter 84-13.

*Date of issuance:* February 22, 1989

*Effective date:* February 22, 1989

*Amendment Nos.:* 115 and 111

*Facility Operating License Nos. DPR-29 and DPR-30.* Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** December 30, 1988 (53 FR 53091). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 22, 1989.

*No significant hazards consideration comments received:* No

*Local Public Document Room location:* Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

**Consumers Power Company, Docket No. 50-155, Big Rock Point Plant, Charlevoix County, Michigan**

*Date of application for amendment:* December 22, 1988, as supplemented on October 26, 1988.

*Brief description of amendment:* This amendment revises the station battery surveillance test time from the present 8-hour requirement to two hours.

*Date of issuance:* February 15, 1989

*Effective date:* February 15, 1989

*Amendment No.:* 94

*Facility Operating License No. DPR-6.* The amendment revises the Technical Specifications.

*Date of initial notice in* **Federal Register:** March 25, 1987 (52 FR 9566). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 15, 1989.

*No significant hazards consideration comments received:* No.

*Local Public Document Room location:* North Central Michigan College, 1515 Howard Street, Petoskey, Michigan 49770.

**Duke Power Company, et al., Docket No. 50-414, Catawba Nuclear Station, Unit 2, York County, South Carolina**

*Date of application for amendment:* May 24, 1988

*Brief description of amendment:* The amendment revised license condition 2.C.(11) to delete item 6 of Attachment 1.

*Date of issuance:* February 15, 1989

*Effective date:* February 15, 1989

*Amendment No.:* 53

*Facility Operating License No. NPF-52.* Amendment revised the Operating License.

*Date of initial notice in* **Federal Register:** October 19, 1988 (53 FR 40984). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 15, 1989.

*No significant hazards consideration comments received:* No.

*Local Public Document Room location:* York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

**Duquesne Light Company, Docket No. 50-334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania**

*Date of application for amendment:* November 1, 1988

*Brief description of amendment:* The amendment revises license condition 2.c(5) and eliminates most fire protection specifications from the Technical Specifications. Approval of this amendment is in accordance with our Generic Letter 86-10 and 88-12.

*Date of issuance:* February 17, 1989

*Effective date:* February 17, 1989

*Amendment No.:* 136

*Facility Operating License No. DPR-66.* Amendment revised the License and the Technical Specifications.

*Date of initial notice in* **Federal Register:** December 14, 1988 (53 FR 50326). An earlier notice was published on July 15, 1987 (52 FR 26585) as a result of the licensee's submittal dated April 7, 1987. The November 1, 1988 submittal replaces the April 7, 1987 submittal.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 17, 1989.

*No significant hazards consideration comments received:* No

*Local Public Document Room location:* B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

**Duquesne Light Company, Docket No. 50-412, Beaver Valley Power Station, Unit No. 2, Shippingport, Pennsylvania**

*Date of application for amendment:* June 27, 1988

*Brief description of amendment:* The amendment revises one of the reporting requirements in Table 3.3-6, "Radiation Monitoring Instrumentation", of the Technical Specifications. The amendment also effects a number of editorial changes.

*Date of issuance:* February 14, 1989

*Effective date:* February 14, 1989

*Amendment No.* 13

*Facility Operating License No. NPF-73.* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** September 7, 1988 (53 FR 34603). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 14, 1989

*No significant hazards consideration comments received:* No

*Local Public Document Room location:* B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

**Florida Power Corporation, et al., Docket No. 50-302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida**

*Date of application for amendment:* November 16, 1987, as revised August 25, 1988 and supplemented October 31, 1988

*Brief description of amendment:* The amendment revised the maximum allowable temperature of the ultimate heat sink.

*Date of issuance:* February 14, 1989

*Effective date:* February 14, 1989

*Amendment No.:* 109

*Facility Operating License No. DPR-72.* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** November 30, 1988 (53 FR 48338). The letter dated October 31, 1988 provided additional information which did not alter the staff's proposed determination that the amendment involved no significant hazards considerations.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 14, 1989.

*No significant hazards consideration comments received:* No.

*Local Public Document Room Location:* Crystal River Public Library, 668 N.W. First Avenue, Crystal River, Florida 32629



**Florida Power Corporation, et al., Docket No. 50-302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida**

*Date of application for amendment:* April 15, 1987

*Brief description of amendment:* The amendment revised the Technical Specifications surveillance requirements to allow testing of the high and low pressure systems in Modes 3, 4, 5, or 6, rather than in Mode 6 only.

*Date of issuance:* February 16, 1989

*Effective date:* February 16, 1989

*Amendment No.:* 110

*Facility Operating License No. DPR-72.* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** April 20, 1988 (53 FR 13015). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 16, 1989.

*No significant hazards consideration comments received:* No.

*Local Public Document Room Location:* Crystal River Public Library, 668 N.W. First Avenue, Crystal River, Florida 32629

**General Public Utilities Nuclear Corporation, Docket No. 50-320, Three Mile Island Nuclear Station, Unit No. 2, (TMI-2), Dauphin County, Pennsylvania**

*Date of application for amendment:* March 11, 1988

*Brief description of amendment:* The amendment modifies Appendix A Technical Specification Section 6 changing the requirement that all retraining and replacement training for TMI-2 personnel be under the direction of the Plant Training Manager and substitutes the requirement that this training be under his cognizance. Actual direction of the specific training program would be the responsibility of the TMI-2 organization requiring the training. The exception to this change, which is consistent with the existing Technical Specifications, is the Radiological Controls Training which may remain under the direction of the Vice President Radiological and Environmental Controls.

*Date of Issuance:* February 14, 1989

*Effective date:* February 14, 1989

*Amendment No.:* 32

*Facility Operating License No. DPR-50.* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** September 7, 1988 (53 FR 34605). The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated February 14, 1989

*No significant hazards consideration comments received:* No.

*Local Public Document Room location:* Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

**Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-321, Edwin I. Hatch Nuclear Plant, Unit 1, Appling County, Georgia**

*Date of application for amendment:* September 6, 1988

*Brief description of amendment:* The amendment modified the definitions of hot shutdown and cold shutdown and modified relevant Technical Specification sections to specify which equipment must be, or need not be, operable during performance of hydrostatic and leakage pressure testing.

*Date of issuance:* February 24, 1989

*Effective date:* February 24, 1989

*Amendment No.:* 160

*Facility Operating License No. DPR-57.* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** November 2, 1988 (53 FR 44251). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 24, 1989.

*No significant hazards consideration comments received:* No.

*Local Public Document Room location:* Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

**Illinois Power Company, Docket No. 50-461, Clinton Power Station, Unit 1, DeWitt County Illinois**

*Date of application for amendment:* October 30, 1987, as supplemented December 21, 1988.

*Description of amendment request:* The proposed changes will achieve consistency with previously approved changes and to clarify existing requirements.

*Date of issuance:* February 22, 1989

*Effective date:* February 22, 1989

*Amendment No.:* 19

*Facility Operating License No. NPF-62.* The amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** January 27, 1988 (53 FR 2317 and 53 FR 2318). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 22, 1989.

*No significant hazards consideration comments received:* No

*Local Public Document Room location:* The Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

**Indiana Michigan Power Company, Dockets Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Units Nos. 1 and 2, Berrien County, Michigan**

*Date of application for amendments:* March 26, 1987, as supplemented August 25, 1987, June 7, 1988 and August 31, 1988.

*Brief description of amendments:* The amendments revise the Technical Specifications (TS) on boron concentrations; change the moderator temperature coefficient to a ramp function rather than a step function; remove 3-loop operation in Modes 1 and 2; add additional restrictions because of safety analyses; add footnotes such that addition of water from the RWST does not constitute a boron dilution; clarify trip channel positions for different pressure between steam lines in 3-loop operation; require two PORV's be available in Modes 1, 2, and 3; add 4.0.4 and 3.0.4 section exemptions; change values related to boron dilution events, half-loop operation, RCS flow measurement, auxiliary feedwater flow measurements, and flow measurement error; change descriptions of P-12 interlock; simplify power distribution and APDMS requirements; make changes to achieve similarity between units; and make miscellaneous editorial changes

*Date of issuance:* February 10, 1989

*Effective date:* February 10, 1989

*Amendments Nos.:* 120 and 107

*Facility Operating Licenses Nos. DPR-58 and DPR-74.* Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** June 3, 1987 (52 FR 20801) and May 6, 1988 (53 FR 16949). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 10, 1989

*No significant hazards consideration comments received:* No. Clarifications to the proposed TS changes were submitted in letters dated August 25, 1987 and January 13, June 7 and August 31, 1988. A portion of the amendment request was withdrawn by letter dated June 7, 1988. These changes did not substantially alter the action initially noticed or affect the Commission's initial determination of no significant hazards consideration.

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*Local Public Document Room location:* Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

**Indiana Michigan Power Company, Docket No. 50-315, Donald C. Cook Nuclear Plant, Unit No. 1, Berrien County, Michigan**

*Date of application for amendment:* August 9, 1988, as revised January 10, 1989.

*Brief description of amendment:* The amendment grants one-time surveillance interval extensions for surveillances associated with ice basket weighing and resistance temperature detector calibrations.

*Date of issuance:* February 23, 1989
*Effective date:* February 23, 1989
*Amendment No.:* 121
*Facility Operating License No. DPR-58.* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** January 17, 1989 (54 FR 1806). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 23, 1989.

*No significant hazards consideration comments received:* No.

*Local Public Document Room location:* Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

**Mississippi Power & Light Company, System Energy Resources, Inc., South Mississippi Electric Power Association, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi**

*Date of application for amendment:* August 19, 1988, as supplemented October 10, 1988.

*Brief description of amendment:* The amendment changes the downtravel power cutoff setpoint for the refueling platform hoist in TS 3/4.9.6, "Refueling Equipment."

*Date of issuance:* February 15, 1989
*Effective date:* February 15, 1989
*Amendment No.* 55
*Facility Operating License No. NPF-29.* This amendment revises the Technical Specifications.

*Date of initial notice in* **Federal Register:** November 2, 1988 (53 FR 44252). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 15, 1989.

*No significant hazards consideration comments received:* No

*Local Public Document Room location:* Hinds Junior College, McLendon Library, Raymond, Mississippi 39154

**Northern States Power Company, Docket No. 50-263, Monticello Nuclear Generating Plant, Wright County, Minnesota**

*Date of application for amendment:* February 16, 1987, as revised August 17, 1988

*Brief description of amendment:* This amendment revises the plant Technical Specifications (TSs) to: (1) clarify the location for monitoring airborne radioiodine and particulates consistent with and as set forth in the approved Offsite Dose Calculation Manual; (2) delete page 251a, incorrectly retained, and which should have been deleted by License Amendment No. 46 (July 1, 1986); (3) delete Section 6.8 which was superseded by the publication of 10 CFR 50.49, "Environmental qualification of electric equipment important to safety for nuclear power plants"; (4) standardize reports and correspondence to reflect addressee changes in conformance with 10 CFR 50.4; and (5) indicate the current ANSI standard referenced in the updated Qualify Assurance Plan for Monticello operation by replacing "Paragraph 4.4 of ANSI N18.7-1972" with "ANSI N18.7-1976 as modified by the Operational Quality Assurance Plan" on page 239 of the TSs.

*Date of issuance:* February 16, 1989
*Effective date:* February 16, 1989
*Amendment No.:* 59
*Facility Operating License No. DPR-22.* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** October 5, 1988 (53 FR 39173). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 16, 1989.

*No significant hazards consideration comments received:* No.

*Local Public Document Room location:* Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

**Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska**

*Date of amendment request:* December 16, 1988.

*Brief description of amendment:* This amendment modified the Technical Specifications to (1) increase the minimum allowable Safety Injection and Refueling Water Tank (SIWRT) temperature from 40° F to 50° F, (2) change the title of the Senior Vice President - Nuclear Operations, Production Operations, Production Engineering, and Quality and Environmental Affairs to Senior Vice President - Nuclear Operations, Production Engineering, and Quality and Environmental Affairs, (3) administratively correct the listed NRC address to which the Monthly Operating Reports are sent, and (4) correct two references to the Updated Safety Analysis Report in T 3.5(8)b.(i) and 2.1.3. Additionally, the amendment revised Facility Operating License DPR-40 to delete a license condition, related to a modification to the Spent Fuel Pool storage capacity, which has been satisfied.

*Date of issuance:* February 14, 1989
*Effective date:* Full implementation within 30 days from the date of issuance.
*Amendment No.:* 119
*Facility Operating License No. DPR-40.* Amendment revised the Technical Specifications and license.

*Date of initial notice in* **Federal Register:** January 11, 1989 (54 FR 1022). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 14, 1989.

*No significant hazards consideration comments received:* No.

*Local Public Document Room location:* W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

**Philadelphia Electric Company, Public Service Electric and Gas Company Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, York County, Pennsylvania**

*Date of application for amendments:* March 21, 1988 as supplemented on September 23, 1988. The supplemental letter did not make substantive changes to the original application.

*Brief description of amendments:* The amendments (a) revised the Technical Specifications (TS) Bases to reflect the Codes now applicable to the recirculation system piping for Units 2 and 3, (b) revised the TS to reflect removal of the head spray piping for Unit 3, and (c) revised the TS to reflect removal of the recirculation system cross-tie piping and equalizer valves for Units 2 and 3.

*Date of issuance:* February 10, 1989
*Effective date:* February 10, 1989
*Amendments Nos.:* 138 and 140
*Facility Operating License Nos. DPR-44 and DPR-56:* Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** June 15, 1988 (53 FR 22404). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 10, 1989.



*No significant hazards consideration comments received:* No

*Local Public Document Room location:* Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

**Philadelphia Electric Company, Public Service Electric and Gas Company Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, York County, Pennsylvania**

*Date of application for amendments:* August 26, 1988

*Brief description of amendments:* These amendments authorized the removal of that portion of the carbon dioxide fire suppression system (CARDOX) which is installed in the control room due to the potential for unexpected releases of carbon dioxide in the control room.

*Date of issuance:* February 13, 1989
*Effective date:* February 13, 1989
*Amendments Nos.:* 139 and 141
*Facility Operating License Nos. DPR-44 and DPR-56:* Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** December 30, 1988 (53 FR 53095). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 13, 1989.

*No significant hazards consideration comments received:* No

*Local Public Document Room location:* Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

**Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York**

*Date of application for amendment:* September 13, 1988

*Brief description of amendment:* The amendment reflects deletion of pressure switches used to bypass the main steam line isolation valve (MSIV) reactor scram signal and to bypass the MSIV isolation signal on low main condenser vacuum when reactor pressure was below the setpoint, with the mode switch in the refuel or startup positions. The effect of the changes is to make the bypass dependent on the position of the mode switch alone, and independent of reactor pressure.

*Date of issuance:* February 7, 1989.
*Effective date:* February 7, 1989.
*Amendment No.:* 122
*Facility Operating License No. DPR-59:* Amendment revised the Technical Specification.

*Date of initial notice in* **Federal Register:** November 16, 1988 (53 FR 46152). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated Februray 7, 1989.

*No significant hazards consideration comments received:* No

*Local Public Document Room location:* Penfield Library, State University College of Oswego, Oswego, New York.

*NRC Project Director:* Robert A. Capra.

**Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York**

*Date of application for amendment:* February 5, 1988 (TAC 67145)

*Brief description of amendment:* Reflects management reorganization of the New York Power Authority headquarters staff which merged the engineering staff and construction management functions into the existing operations departments.

*Date of issuance:* February 13, 1989
*Effective date:* February 13, 1989
*Amendment No.:* 123
*Facility Operating License No. DPR-59:* Amendment revised the Technical Specification.

*Date of initial notice in* **Federal Register:** April 20, 1988 (53 FR 13017). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 13, 1989.

*No significant hazards consideration comments received:* No

*Local Public Document Room location:* Penfield Library, State University College of Oswego, Oswego, New York.

**Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York**

*Date of application for amendment:* December 1, 1986, November 19, 1987, and March 7, 1988

*Brief description of amendment:* This amendment modifies paragraph 2.D of the license to require compliance with the amended Physical Security Plan. This Plan was amended to conform to the requirements of 10 CFR 73.55. Consistent with the provisions of 10 CFR 73.55, search requirements must be implemented within 60 days and miscellaneous amendments within 180 days from the effective date of this amendment.

*Date of issuance:* February 14, 1989
*Effective date:* February 14, 1989
*Amendment No.:* 124
*Facility Operating License No. DPR-59:* This amendment revised the license.

*Date of initial notice in* **Federal Register:** December 30, 1988 (53 FR 53097). The Commission's related evaluation of the amendment is contained in a letter to the Power Authority of the State of New York dated February 14, 1989 and a Safeguards Evaluation Report dated February 14, 1989

*No significant hazards consideration comments received:* No

*Local Public Document Room location:* Penfield Library, State University College of Oswego, Oswego, New York.

**Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York**

*Date of application for amendment:* November 9, 1988

*Brief description of amendment:* The amendment completes the Commission action initiated in our letter of November 16, 1988, "Temporary Waiver of Compliance With Technical Specification Surveillance Tests 4.7.A.2.a(10) and 4.7.A.2.f." and supersedes the Temporary Waiver. This amendment also completes the Commission Action Concerning our letter dated November 29, 1988 which transmitted the "Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration and Opportunity For Hearing." This Notice was published in the **Federal Register** on December 7, 1988 (53 FR 49366). The amendment eliminates two tests required by the Technical Specifications during the 1988 refueling outage. These tests are a Type A primary containment integrated leak rate test and a Type A, Type B, or Type C leak rate test following replacement of the turbine exhaust line manual block valve in the high pressure coolant injection system. An exemption from the requirements of Appendix J to 10 CFR Part 50 to perform the tests was granted by our letter of November 16, 1988 and published in the **Federal Register** on November 25, 1988 (53 FR 47784).

*Date of issuance:* February 17, 1989
*Effective date:* February 17, 1989
*Amendment No.:* 125
*Facility Operating License No. DPR-59:* Amendment revised the Technical Specification. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 17, 1989.

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*No significant hazards consideration comments received:* No

*Local Public Document Room location:* Penfield Library, State University College of Oswego, Oswego, New York.

**Tennessee Valley Authority, Docket No. 50-260, Browns Ferry Nuclear Plant, Unit 2, Limestone County, Alabama**

*Date of application for amendment:* July 29, 1988 (TS 246)

*Brief description of amendment:* This Technical Specification change updates and corrects all references to the present ADS timers in Table 3.2.B, "Instrumentation that Initiates or Controls the Core and Containment Cooling Systems." These modifications involve changes to the setpoints for the existing automatic depressurization system and add surveillance and setpoint requirements for the high drywell pressure bypass timer.

TVA's September 12, 1988 response to NRC's August 10, 1988 request for additional information provided the complete design package change for the ADS actuator modification, which did not change the substance of the Notice of Consideration of issuance of an amendment which the staff issued in the Federal Register on August 24, 1988 on TVA's application for TS 246.

*Date of issuance:* January 30, 1989

*Effective date:* January 30, 1989, and shall be implemented within 60 days

*Amendment No.:* 162

*Facility Operating License No. DPR-52:* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** August 24, 1988 (53 FR 32297). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 30, 1989.

*No significant hazards consideration comments received:* No

*Local Public Document Room location:* Athens Public Library, South Street, Athens, Alabama 35611.

**Toledo Edison Company and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio**

*Date of applications for amendment:* December 1, 1986 and January 12 and January 29, 1988

*Brief description of amendment:* The amendment modified paragraph 2.D of the license to require compliance with the amended Physical Security Plan. This plan was amended to conform to the requirements of 10 CFR 73.55. Consistent with the provisions of 10 CFR 73.55, search requirements must be implemented within 60 days and miscellaneous amendments within 180 days from the effective date of this amendment. The amendment also permits modifications to vital area designations and the vital area access authorization system at the site.

*Date of issuance:* February 14, 1989.

*Effective date:* February 14, 1989.

*Amendment No.* 129

*Facility Operating License No. NPF-3.* Amendment revised the license.

*Date of initial notice in* **Federal Register:** December 30, 1988 (53 FR 53103). The Commission's related evaluation of the amendment is contained in a Safeguards Evaluation Report dated February 14, 1989.

*No significant hazards consideration comments received:* No

*Local Public Document Room location:* University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

**Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri**

*Date of application for amendment:* December 16, 1988

*Brief description of amendment:* The amendment revised Technical Specification 5.3.2, "Control Rod Assemblies," to allow the use of hafnium and/or silver-indium-cadmium as the absorber material in the rod cluster control assemblies.

*Date of issuance:* February 14, 1989

*Effective date:* February 14, 1989

*Amendment No.:* 41

*Facility Operating License No. NPF-30.* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** January 11, 1989 (54 FR 1026). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 14, 1989.

*No significant hazards consideration comments received:* No.

*Local Public Document Room location:* Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251 and the John M. Olin Library, Washington University, Skinker and Lindell Boulevards, St. Louis, Missouri 63130.

**Virginia Electric and Power Company, et al., Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia**

*Date of application for amendments:* January 13, 1989

*Brief description of amendments:* The amendments revised the NA-1&2 TS 3/4.9.10, Refueling Operations Water Level-Reactor Vessel, to allow control rod movement with the requirement of 23 feet of water above the irradiated fuel assemblies within the reactor pressure vessel. The amendments removed the ambiguity associated with control rod latching and unlatching operations where control rods are raised (with the upper internals package installed) for weight or drag testing.

*Date of issuance:* February 15, 1989

*Effective date:* February 15, 1989

*Amendment Nos.:* 115 and 98

*Facility Operating License Nos. NPF-4 and NPF-7.* Amendments revised the Technical Specifications.

*Public comments requested as to proposed no significant hazards consideration:* Yes (54 FR 4355, dated January 30, 1989). That notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. The notice also provided for an opportunity to request a hearing by March 1, 1989, but indicated that if the Commission makes a final no significant hazards consideration determination any such hearing would take place after issuance of the amendments. The Commission's related evaluation is contained in a Safety Evaluation dated February 15, 1989.

*Local Public Document Room location:* The Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

**Washington Public Power Supply System, Docket No. 50-397, Nuclear Project No. 2, Benton County, Washington**

*Date of application for amendment:* November 19, 1987

*Brief description of amendment:* This amendment revises the statement of the number of channels per trip system for main steam line flow, main steam line tunnel temperature, and temperature gradient in Technical Specification Table 3.3.2-1, "Isolation Actuation Instrumentation."

*Date of issuance:* February 22, 1989

*Effective date:* February 22, 1989

*Amendment No.:* 65

*Facility Operating License No. NPF-21:* Amendment changed the Technical Specifications.

*Date of initial notice in* **Federal Register:** May 10, 1988 (53 FR 16804). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 22, 1989.

*No significant hazards consideration comments received:* No.

*Local Public Document Room location:* Richland City Library, Swift and Northgate Streets, Richland, Washington 99352.



**Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin**

*Date of application for amendments:* May 24, 1988 and supplemented on November 7, 1988.

*Brief description of amendments:* The amendments revised the testing frequency specified in Technical Specification Table 15.4.1-1 for a number of instrumentation channels.

*Date of issuance:* February 8, 1989

*Effective date:* February 8, 1989

*Amendment Nos.:* 116 and 119

*Facility Operating License Nos. DPR-24 and DPR-27.* Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** July 27, 1988 (53 FR 28298) and December 14, 1988 (53 FR 50336). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 8, 1989.

*No significant hazards consideration comments received:* No.

*Local Public Document Room location:* Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

**Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas**

*Date of amendment request:* October 19, 1988

*Brief description of amendment:* The amendment removed the operating corporation and onsite organization charts (Figure 6.2-1 and 6.2-2) from Section 6 of the Technical Specifications and incorporated essential organization requirements such as lines of authority, responsibility, and communication. The amendment also made additional editorial changes to delete references to the removed organization charts. The changes are in accordance with NRC Generic Letter 88-06, "Removal of Organization Charts from Technical Specification Administrative Control Requirements," dated March 22, 1988.

*Date of Issuance:* February 14, 1989

*Effective date:* February 14, 1989

*Amendment No.:* 24

*Facility Operating License No. NPF-42.* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** November 30, 1988 (53 FR 46341). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 14, 1989.

*No significant hazards consideration comments received:* No.

*Local Public Document Room Location:* Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

**Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas**

*Date of amendment request:* November 21, 1988

*Brief description of amendment:* The amendment revised Wolf Creek Generating Station, Unit No. 1, Technical Specification Section 6.5.1.2, Plant Safety Review Committee Composition, to add the Manager Nuclear Plant Engineering Wolf Creek as an additional committee member.

*Date of Issuance:* February 21, 1989

*Effective date:* February 21, 1989

*Amendment No.:* 25

*Facility Operating License No. NPF-42.* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** December 30, 1988 (50 FR 53105). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 21, 1989.

*No significant hazards consideration comments received:* No.

*Local Public Document Room Location:* Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621.

## NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND FINAL DETERMINATION OF NO SIGNIFICANT HAZARDS CONSIDERATION AND OPPORTUNITY FOR HEARING (EXIGENT OR EMERGENCY CIRCUMSTANCES)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for a Hearing. For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant

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to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendments. By April 7, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Project Director*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

**Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska**

*Date of amendment request:* February 9, 1989 and a supplement thereto dated February 10, 1989

*Brief description of amendment:* This amendment revised the effective date of the portion previously issued Amendment No. 115 related to the Intermediate Range Monitor/Source Range Monitor Power supply from February 11, 1989 to "before loading fuel during the 1989 refueling outage" currently scheduled to begin in April 1989.

*Date of issuance:* February 21, 1989

*Effective date:* February 10, 1989

*Amendment No.:* 128

*Facility Operating License No. DPR-46.* Amendment revised the license.

*Public comments requested as to proposed no significant hazards consideration:* No

The Commission's related evaluation of the amendment, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated February 21, 1989.

*Attorney for licensee:* Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

*Local Public Document Room location:* Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

Dated at Rockville, Maryland, this 2nd day of March, 1989.

For the Nuclear Regulatory Commission

Elinor G. Adensam,

*Acting Director, Division of Reactor Projects-I/II Office of Nuclear Reactor Regulation*

[Doc. 89-5157 Filed 3-7-89; 8:45 am]

BILLING CODE 7590-01-D



[Docket No. 50-320-OLA]

**General Public Utilities Nuclear Corp. et al. (Three Mile Island Nuclear Station, Unit 2) (Disposal of Accident-Generated Water); Reconstitution of Atomic Safety and Licensing Appeal Board**

Notice is hereby given that, in accordance with the authority conferred by 10 CFR 2.787(a), the Chairman of the Atomic Safety and Licensing Appeal Panel has reconstituted the Atomic Safety and Licensing Appeal Board for this operating license amendment proceeding. As reconstituted, this Appeal Board will consist of the following members:

Thomas S. Moore, Chairman, Christine N. Kohl, Howard A. Wilber.

Barbara A. Tompkins,

*Secretary to the Appeal Board.*

Dated: March 2, 1989.

[FR Doc. 89-5364 Filed 3-7-89 8:45 am]

BILLING CODE 7590-01-D

**Gulf States Utilities Co.; Issuance of Amendment to Facility Operating License**

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 34 to Facility Operating License No. NPF-47, issued to Gulf States Utilities Company, (the licensee), which revised the license for operation of the River Bend Station, Unit 1 located in West Feliciana Parish, Louisiana.

The amendment was effective as of the date of its issuance.

The amendment deleted the License Condition 2.C.(4), Attachment 2, Item 1 requirement to install an additional brace on the control rod hydraulic units as used in the qualification testing.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

The Notice of Consideration of Issuance of Amendment was published in the Federal Register on December 2, 1988 (53 FR 48743).

No request for a hearing or petition for leave to intervene was filed following the notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment.

For further details with respect to the action, see: (1) The application for amendment dated November 9, 1988; (2) Amendment No. 34 to Facility Operating License No. NPF-47; and (3) the Commission's related Safety Evaluation and Environmental Assessment. All these items are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555 and at the Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803. A copy of items (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—III, IV, V and Special Projects.

Dated at Rockville, Maryland, this 22nd day of February 1989.

For the Nuclear Regulatory Commission.

Walter A. Paulson,

*Project Manager, Project Directorate—IV, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.*

[FR Doc. 89-5358 Filed 3-7-89; 8:45 am]

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## POSTAL RATE COMMISSION

[Docket No. A89-5; Order No. 819]

**Post Office Closings; Petitions for Appeal; Crawford, WV; Order Accepting Appeal and Establishing Procedural Schedule**

Issued March 1, 1989.

Before Commissioners: Janet D. Steiger, Chairman; Patti Birge Tyson, Vice-Chairman; John W. Crutcher; Henry R. Folsom; W. H. "Trey" LeBlanc III.

*Docket Number:* A89-5.

*Name of Affected Post Office:* Crawford, West Virginia 26343.

*Name(s) of Petitioner(s): Mrs. Elsie I. Snyder.*

*Type of Determination:* Closing.

Date of Filing of Appeal Papers: February 27, 1989.

*Categories of Issues Apparently Raised:*

1. Effect on postal services (39 U.S.C. 404(b)(2)(C)).
2. Effect on the community (39 U.S.C. 404(b)(2)(A)).

Other legal issues may be disclosed by the record when it is filed; or, conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition, in light of the 120-day decision schedule (39 U.S.C. 404(b)(5)), the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the petitioner. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memoranda previously filed.

*The Commission orders:*

(A) The record in this appeal shall be filed on or before March 14, 1989.

(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the Federal Register.

By the Commission.

Charles L. Clapp,

*Secretary.*

Appendix

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|---|---|
| Feb. 27, 1989 | Filing of Petition. |
| Mar. 1, 1989 | Notice and Order of Filing of Appeal. |
| Mar. 24, 1989 | Last day of filing of petitions to intervene (*see* 39 CFR 3001.111(b)). |
| Apr. 3, 1989 | Petitioners' Participant Statement or Initial Brief (*see* 39 CFR 3001.115(a) and (b)). |
| Apr. 24, 1989 | Postal Service Answering Brief (*see* 39 CFR 3001.115(c)). |
| May 10, 1989 | Petitioners' Reply Brief should Petitioners choose to file one (*see* 39 CFR 3001.115(d)). |
| May 17, 1989 | Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116). |
| June 28, 1989 | Expiration of 120-day decisional schedule (*see* 39 U.S.C. 404(b)(5)). |

[FR Doc. 89-5284 Filed 3-7-89; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-26585; File No. SR-NASD 89-7]

**Self-Regulatory Organizations; National Association of Securities Dealers; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Revising the Fee for NASDAQ Level 2/3 Service**

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on February 17, 1989, the National Association of Securities Dealers, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The following is the full text of a proposed amendment to Part IX of Schedule D of the Schedules to the By-Laws of the National Association of Securities Dealers, Inc. ("NASD"), revising the fee for NASDAQ Level 2/3 service. (New language is italicized; deleted language is bracketed.)

**Schedule D**

*Part IX—Schedule of charges*

A. System Services

* * * * *

2. NASDAQ Level 2/3 Service.

The charge to be paid by the subscriber for each terminal receiving NASDAQ Level 2 or NASDAQ Level 3 Service shall be $150 per month *plus $140 per month communication charge*, [and $0.02 per quotation request] plus equipment related charges as detailed in Parts B, C, and D below. Equipment and related charges include an installation charge, a terminal charge and conversion, removal and relocation charges.

* * * * *

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The purpose of the pricing modification proposed in this filing is to convert the current variable rate of $0.02 per query to a fixed monthly communication charge of $140 per month. Recent cost experience for the Level 2/3 service shows that the average regional telephone line communication costs per terminal, including allocated dial back-up charges, are approximately $140 per month. In the past, the $0.02 cost per query for Level 2/3 service on the Harris and Harris emulation terminals was sufficient to recoup the communication costs of the service, due to the number of terminals in use as well as the number of queries transmitted to the processor. Today, however, because significant numbers of the Harris terminal peopulation are converting to Workstation™ service, and the number of queries has decreased generally because of market conditions, NASDAQ is unable to recoup the full communication costs of Level 2/3 service utilizing the current query fee method. In order to maintain the quality of service available to the remaining Harris terminal population, the NASD believes that it is equitable and appropriate to establish a fixed monthly communication charge, which seeks to recover the costs of the regional telephone lines and allowable dial back-up facilities associated with delivery of the Level 2/32 service to Harris and Harris emulation terminals.

The statutory basis for the proposed rule change is found in section 15A(b)(5) of the Securities Exchange Act of 1934 ("Act"). Section 15A(b)(5) requires that the rules of the NASD "provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the association operates or controls." The communication fee proposed in this filing has been formulated on the basis of the cost of operating that service in light of the decreasing use of the query function and the diminishing Harris terminal population. The NASD believes that assessing the users of Level 2/3 service for the costs of communication lines is an equitable allocation of reasonable fees as prescribed in section 15A(b)(5); further, we believe that converting to a flat rate based on communication line costs is a non-discriminatory method of allocating Level 2/3 service costs among the remaining Harris terminal users, rather than readjusting the individual query rate upward to support the system as the Harris population continues to decline.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The NASD does not foresee any burden on competition by the proposed rule change not necessary or appropriate in furtherance of purposes of the Act because the proposed fee seeks to recover costs of regional telephone lines, and will be applicable to all NASDAQ Level 2/3 subscribers. In addition, there are other services equivalent to Level 2 service currently available from vendors.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number SR-NASD-89-7, and should be submitted by March 29, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: March 2, 1989.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 89-5427 Filed 3-7-89; 8:45 am]

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[Release No. 35-24830]

**Filings Under the Public Utility Holding Company Act of 1935 ("Act")**

March 2, 1989.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by March 27, 1989 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the manner. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

**Alabama Power Company (70-7211)**

Alabama Power Company ("Alabama"), 600 North 18th Street, Birmingham, Alabama 35291, an electric utility subsidiary of The Southern Company, a registered holding company, has filed a post-effective amendment to its application filed with this Commission pursuant to section 6(b) of the Act and Rule 50(a)(5) thereunder.

By supplemental order dated March 17, 1987 (HCAR No. 24347), Alabama was authorized, in relevant part, to issue and sell short-term notes ("Notes") to banks and commercial paper ("Commercial Paper") to dealers in an aggregate principal amount at any one time outstanding of up to $300 million, from time-to-time prior to April 1, 1989, pursuant to an exception from the competitive bidding requirements of Rule 50 under subsection (a)(5) thereunder. Alabama now proposes to extend its authorization to issue and sell its Notes and Commercial Paper through April 1, 1991, pursuant to an exception from competitive bidding, and to increase the aggregate principal amount of Notes and Paper at any one time outstanding to $350 million.

**New England Energy Incorporated, et al. (70-7813)**

New England Electric System ("NEES"), a registered holding company, its fuel subsidiary, New England Energy Incorporated ("NEEI") and NEES' generation and transmission subsidiary, New England Power Company ("NEP"), (together, "Applicants"), all located at 25 Research Drive, Westborough, Massachusetts, 01582, have filed an application-declaration pursuant to sections 6(a), 7, 9(a), 10 and 12(b) of the Act and Rule 45 thereunder.

NEEI proposes to issue short-term notes to refinance its existing short-term bank debt in connection with its oil and gas exploration program ("Old Program") ("New Program") (HCAR No. 23658, April 8, 1985), through a financing arrangement with a syndicate of banks led by Citibank, N.A., as Agent ("Credit Agreement"). The Credit Agreement would provide for a revolving short-term credit facility of up to $400 million aggregate principal amount outstanding at any one time, which would reduce incrementally to $50 million by December 31, 1997, and terminate on December 31, 1998. NEEI would also have the option to further reduce the available facility. In order to secure borrowings under the Credit Agreement, Applicants also propose to extend the term of the Fuel Purchase Contract between NEEI and NEP (HCAR No. 23873, October 22, 1985) and the Capital Funds Agreement, the Loan Agreement (both authorized by HCAR No. 23658, April 8, 1985) and the Capital Maintenance Agreement (HCAR No. 23873, October 22, 1985) between NEEI and NEES, so they will be in effect throughout the term of the Credit Agreement.

NEEI's interest rate options under the Credit Agreement would be based upon and selected among the then applicable LIBOR rate plus a margin of ¼% in years 1-3, ⅜% in years 4-5, ½% in years 6-7 and ⅞% in years 8-10; the Citibank base rate in years 1-3, the base rate plus a margin of ⅛% in years 4-5, ⅜% in years 6-7, and ⅝% in years 8-10; the Certificate of deposit rate plus a margin of ⅜% in years 1-3, ½% in years 4-5, ¾% in years 6-7, and 1% in years 8-10; and rates obtained through competitive bids.

The security for the borrowings would be an assignment by NEEI to the banks of its rights under the Fuel Purchase Contract, the Capital Funds Agreement and the Loan Agreement to secure Old Program borrowings, and an assignment to the banks of its rights under the Capital Maintenance Agreement to secure New Program borrowings. NEEI would pay a facility fee of ⅛% per year on the available facility; and a commitment fee of 1/16% per year on the unused balance.

The Applicants also request that the authorization previously granted for NEES to invest in NEEI be increased by $25 million to $75 million, to replace, on a less costly basis, investments that may be required under the Capital Maintenance Agreement.

**The Southern Company, et al. (70-7614)**

The Southern Company ("Southern"), a registered holding company, 64 Perimeter Center East, Atlanta, Georgia, and two of its public utility subsidiaries, Gulf Power Company ("Gulf"), 75 North Pace Boulevard, Pensacola, Florida 32505, and Mississippi Power Company ("Mississippi"), 2992 West Beach, Gulfport, Mississippi 39501, have filed an application-declaration subject to sections 6(a), 6(b), 7(e), 12(b) and 12(e) of the Act and Rules 45, 50(a)(5), 62 and 65 thereunder.

Southern proposes to use the proceeds of borrowings previously authorized by the order dated December 29, 1987 (HCAR No. 24552), together with treasury funds and the proceeds from other external sources including but not limited to the issuance of common stock authorized in the order dated September 13, 1988 (HCAR No. 74713), to make additional equity investments, through March 31, 1991, in the form of capital contributions to Gulf, Mississippi and Georgia Power Company, also a utility subsidiary of Southern, in amounts not to exceed $200 million, $10 million and $20 million, respectively.

Gulf and Mississippi propose to issue and sell from time to time, up to the aggregate principal amount of $50 million for Gulf and $120 million for Mississippi, through March 31, 1991: (1) Short-term notes to banks; (2)

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commercial paper to dealers; and/or (3) Short-term non-negotiable promissory notes to public entities in connection with the financing of certain pollution control facilities through the issuance by public entities of their revenue bond anticipation notes. Borrowings from banks will be at the lending bank's prevailing rate offered to corporate borrowers of similar quality or the prime rate. Compensation for the credit facilities is currently provided by balances equal to approximately 5% of the available facility or by fees equal to ⅛ of 1% per annum of the amount of the facility.

Mississippi also proposes to submit to the holders of its outstanding preferred stock for consideration and action at a special meeting of such holders to be held on or about May 18, 1989, a proposal that Mississippi be authorized, by vote of its preferred stockholders, to issue or assume, until July 1, 1999, securities representing unsecured debt having maturities of less than ten years in excess of 10% of capital, surplus and secured debt, provided that (a) the amount of securities representing unsecured debt having maturities of less than ten years outstanding on January 1, 2000 shall not exceed said 10% limitation, and (b) Mississippi's total indebtedness represented by unsecured securities shall at no time exceed 20% of capital stock, surplus and secured debt. Mississippi also proposes to solicit proxies from the holders of its preferred stock in connection with the proposed amendment to its Charter.

Gulf and Mississippi have requested an exception from the competitive bidding requirements of Rule 50 pursuant to Rule 50(a)(5) in connection with the issue and sale of the commercial paper.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 89-5428 Filed 3-7-89; 8:45 am]

BILLING CODE 8010-01-M

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**[Release No. 33-6821, File No. S7-6-89]**

## Securities Uniformity; Annual Conference on Uniformity of Securities Law

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Publication of release announcing issues to be considered at a conference concerning uniformity of securities laws, announcing a hearing and requesting written comments.

**SUMMARY:** In conjunction with a conference to be held on April 26, 1989, the Commission and the North America Securities Administrators Association, Inc. today announced public hearings and published a request for comments on the proposed agenda for the conference. This inquiry is intended to carry out the policies and purposes of section 19(c) of the Securities Act of 1933, adopted as part of the Small Business Investment Incentive Act of 1980, to increase uniformity in matters concerning state and federal regulation of securities, maximize the effectiveness of securities regulation in promoting investor protection, and reduce burdens on capital formation through increased cooperation between the Commission and the state securities regulatory authorities.

**DATES:** The conference will be held on April 26, 1989. A public hearing will be held on April 7, 1989 commencing at 10:00 a.m. All witnesses are requested to submit 15 copies of their prepared statments no later than March 31, 1989. Written comments not prepared in connection with an oral presentation must be received on or before April 21, 1989 in order to be considered by the conference participants.

**ADDRESSES:** The public hearing will be held at the headquarters of the Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549, Room 1C-35, on April 7, 1989. All witnesses should notify Richard K. Wulff or William E. Toomey in writing of their desire to testify as soon as possible and submit 15 copies of their prepared statements by March 31, 1989 to Richard K. Wulff or William E. Toomey, Office of Small Business Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Written comments not prepared in connection with an oral presentation should be submitted in triplicate by April 21, 1989 to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Comments should refer to File No. S7-6-89. All written submissions, including the written texts submitted in connection with oral presentations and the transcripts of such oral presentations, will be available for public inspection at the Commission's Public Reference Room, 450 5th Street NW., Washington, DC 20549.

**FOR FURTHER INFORMATION CONTACT:** Richard K. Wulff or William E. Toomey, Office of Small Business Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549, (202) 272-2644.

**SUPPLEMENTARY INFORMATION:**

### I. Discussion

A dual system of federal-state securities regulation has existed since the adoption of a federal regulatory structure in the Securities Act of 1933 (the "Securities Act").[1] Issuers attempting to raise capital through securities offerings, as well as participants in the secondary trading markets, are responsible for complying with federal securities laws as well as all applicable state regulations. In recent years, it has been recognized that there is a need to increase uniformity between federal and state regulatory systems and to improve cooperation among those regulatory bodies so that capital formation can be made easier while investor protections are retained.

The importance of facilitating greater uniformity in securities regulation was endorsed by Congress with the enactment of section 19(c) of the Securities Act in the Small Business Investment Incentive Act of 1980 (the "Investment Incentive Act").[2] Section 19(c) authorizes the Commission to cooperate with any association of state securities regulators which can assist in carrying out the declared policy and purpose of section 19(c). The declared policy of the section is that there should be greater federal and state cooperation in securities matters, including: (1) Maximum effectiveness of regulation; (2) maximum uniformity in federal and state standards; (3) minimum interference with the business of capital formation; and (4) a substantial reduction in costs and paperwork to diminish the burdens of raising investment capital, particularly by small business, and to diminish the costs of the administration of the government programs involved. In order to establish methods to accomplish these goals, the Commission is required to conduct an annual conference. The 1989 conference will be the sixth annual conference.

### II. 1989 Conference

The Commission and the North American Securities Administrators Association, Inc. ("NASAA")[3] are planning the 1989 Conference on Federal-State Securities Regulation (the "Conference") to be held April 26, 1989, in Washington, DC. At the Conference, representatives from the Commission and NASAA will divide into working groups in the areas of corporation finance, investment management, market regulation, and enforcement, to discuss methods of enhancing cooperation in securities matters in order to improve the efficiency and effectivess of federal and state securities regulation. Generally, attendance will be limited to representatives from the Commission and NASAA in an effort to maximize the ability of Commission and state representatives to engage in frank and uninhibited discussion. However, each working group, in its own discretion, may decide to invite certain self-regulatory organization to attend and participate in certain sessions.

Representatives from the Commission and NASAA currently are in the process of formulating an agenda for the Conference. As part of that process, the public, securities associations, self-regulatory organizations, agencies, and private organizations are invited to participate through the submission of written comments or by making oral presentations to a panel of Commission and NASAA representatives at a public hearing on April 7, 1989 on the issues set forth below. In addition, comment is requested on other appropriate subjects that commenters wish to be included in the Conference agenda. All comments will be considered by the Conference attendees.

### III. Tentative Agenda and Request for Comments

The tentative agenda for the Conference consists of the following topics in the areas of corporation finance, investment management, market regulation and oversight and enforcement.

*(1) Corporation Finance Issues*

a. Uniform Limited Offering Exemption

Congress specifically acknowledged the need for a uniform limited offering exemption in enacting section 19(c) of the Securities Act and authorized the Commission to cooperate with NASAA in its development. Working with the states, the Commission developed Regulation D, the federal exemption governing exempt limited offerings. Regulation D was adopted by the Commission in March 1982. On September 21, 1983, NASAA endorsed a revised form of the Uniform Limited Offering Exemption ("ULOE") that is intended to coordinate with Regulation D.

ULOE provides a uniform exemption from state registration for certain issuers. An issuer raising capital in a state which has adopted ULOE may take advantage of both a state registration exemption and a federal exemption under Regulation D. To date, more than half of the states have adopted some form of ULOE. Both the Commission and NASAA continue to make a concerted effort toward the universal adoption of ULOE.

Because Regulation D provides the framework for ULOE, NASAA's assistance in developing proposals to change Regulation D is invaluable. During 1986, the Commission, with NASAA's cooperation, adopted several changes for Form D, the notice used to report offerings pursuant to Regulation D, and revised Rule 503 to delete six-month updates and final filings on Form D.[4] At its 1987 Spring meeting, NASAA adopted these revisions as part of ULOE. In March 1988, the Commission adopted several additional changes to Regulation D,[5] which were subsequently endorsed by NASAA. In fact, all changes to Regulation D to date have been made a part of the ULOE policy statement. In December 1988, a number of proposals were made regarding Regulation D.[6] These proposals were developed with the cooperation of NASAA. Discussions regarding additional possible improvements in the regulation will be held among the conferees.

The Commission and NASAA hope to achieve the goal of uniformity envisioned by the statute. Comment is requested on approaches to achieve this goal and on other issues relating to uniformity of exemptions.

b. Disclosure Policy and Standards

The Commission has an ongoing program of considering, reviewing and revising its policies with regard to the most appropriate methods of ensuring the disclosure of material information to the public. Coordination with the states has been beneficial. For example, such cooperation was helpful in the development of guidelines for real estate offerings. Discussions have been held and will continue to be held with respect to such issues as the inclusion of various ratings of securities, such as those based upon investment risk, in filings made with the regulatory authorities as well as in the materials provided to investors. Additional consideration of a uniform legend policy at both the federal and the states levels will be undertaken.

The conferees will consider the area of general advertising and the use of sales literature in the contexts of both public and private offerings and whether any uniformity may be attanied in the regulation thereof.

Commenters are invited to discuss other areas where federal-state cooperation could be of particular significance as well as any ways in which federal-state cooperation could be improved.

c. Multinational Securities Offerings

The Commission published a release in 1985 soliciting comments on methods of harmonizing disclosure and distribution practices for multinational offerings by non-governmental issuers.[7] At that time, the Commission published for comment two conceptual approaches to facilitating such offerings—a "common prospectus" approach and a "reciprocal prospectus" approach.

A majority of the commenters favored the reciprocal approach, and the staff of the Commission commenced discussions with the staffs of the Ontario and Quebec Securities Commissions with a view toward establishing a system of multijurisdictional registration based on a reciprocal approach. The Internationalization Committee of NASAA is working with the staff of the Commission since it is important that any system developed be acceptable to the states. It is anticipated that the multijurisdictional system will initially cover investment grade debt and equity offerings by certain substantial issuers, as well as certain rights and exchange offerings. The current status of the multijurisdictional system will be discussed. Comment is specifically requested on ways to coordinate federal and state treatment of multinational offerings.

d. Other Rulemaking Initiatives and Areas for Discussion

Participants at the Conference will consider possible rulemaking initiatives which the Commission may introduce. One such proposal involves an exemptive rule from registration for the offer and sale of securities pursuant to certain offerings with an issuer's existing securityholders. Outstanding Commission rulemakings such as

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[1] 15 U.S.C. 77a et seq.

[2] Pub. L. 96-77 (October 21, 1980).

[3] NASAA is an association of securities administrators from each of the 50 states, the District of Columbia, Puerto Rico and ten Canadian provinces.

[4] Release No. 33-6663 (October 2, 1986) (51 FR 36385).

[5] Release No. 33-6758 (October 3, 1988) (53 FR 7866).

[6] Release No. 33-6812 (December 20, 1988) (54 FR 309).

[7] Release No. 33-6568 (February 28, 1985) (50 FR 9281).

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Regulation S[8] and Rule 144A[9] also will be considered.

It is expected that the conferees will address the general areas of classifying issuers to govern their entry into and exit from the Commission's full disclosure system, takeover regulation and the impact of the Edgar system upon the full disclosure program.

*(2) Investment Management Issues*

a. Investment Companies

(i) *Uniform Disclosure Requirements.* At the 1988 Conference, representatives from NASAA met with the staff of the Commission and discussed the possibility of finding a method by which the Commission and as many states as possible could accept the same disclosure documents from investment company registrants. This result could be achieved by either harmonizing the federal and state disclosure requirements, as was done with Form ADV, the investment adviser registration form, or by providing a way to create a disclosure filing that meets Commission and all state requirements even if the Commission or some states would not alone require all of the disclosure. With respect to open-end management investment companies and unit investment trusts, it is important to note that many states use the currently existing uniform application forms, Forms U-1 and U-2. Streamlining uniform state filing procedures would have the added advantage of facilitating eventual one-stop electronic filing meeting both federal and state requirements. The conferees will review what progress has been made to achieve this goal.

(ii) *Blue Sky Laws.* In the past year the Commission has encountered situations in which investment companies have failed to register initially or to maintain the registration of their shares under state "Blue Sky" laws. Failure to register may result in the investment company accruing substantial contingent liabilities. This, in turn, raises questions concerning the accurate calculation of net asset values and the adequacy of prospectus disclosure. The conferees will discuss how to better assure compliance with applicable state registration requirements and the regulatory problems resulting from the failure of an investment company to comply with these requirements.

(iii) *Use of Company Assets To Pay for Distribution Expenses.*

In June 1988, the Commission proposed amendments to Rule 12b-1 under the Investment Company Act of 1940 that would substantially revise conditions under which open-end management investment companies (mutual funds) are permitted to use fund assets to pay for distribution expenses.[10] The conferees expect to discuss state and federal regulatory concerns that arise out of the use of mutual fund assets to pay these expenses.

b. Investment Advisers

(i) *Proposed Federal Registration Exemptions.* In March, 1988, the Commission authorized its staff to seek NASAA's views on possible rulemaking to exempt certain smaller investment advisers from most federal adviser regulations, other than statutory antifraud prohibitions, if the advisers were registered in all states in which they do business. NASAA polled its members in response to the staff's draft exemptive rules and, in December 1987, its Board of Directors endorsed the concept of the draft rules, with certain changes.

On September 16, 1987, the Commission proposed rules exempting certain small and intrastate advisers similar to the draft rules endorsed by the NASAA Board of Directors.[11] The proposals, which include both an interstate and intrastate exemption, would determine eligibility for the exemptions by reference to the size of the adviser's business, whether the adviser has custody of clients' funds or securities, and whether the adviser is registered as an adviser in all states in which it does business. In addition, the Commission proposed amendments to Rules 206(4)-1 (advertising), 206(4)-3 (cash solicitation), and 206(4)-4 (financial and disciplinary disclosures) to make these rules and those provisions of the Advisers Act that restrict principal agency cross transactions inapplicable to advisers taking advantage of the small and intrastate adviser exemptions. The comment period ended on November 22, 1988, and the Commission received 15 comments on the proposals including letters from NASAA and two states. The purpose of the proposed exemptions is to place primary regulatory responsibility for certain smaller advisers with states that regulate advisers. The conferees will discuss the status of the rulemaking proposals.

(ii) *Central Registration Depository.* The Central Registration Depository ("CRD") is a computerized system that was developed by NASAA and the National Association of Securities Dealers, Inc. ("NASD") and is used to register securities industry personnel with the NASD and the states. In October, 1985, NASAA and the Commission adopted a uniform adviser registration form for advisers registering with the Commission and the states that register advisers. At that time NASAA and the Commission indicated that a clearing house procedure, such as the CRD, would be considered to process adviser registration filings. In 1986, the CRD, in a pilot test, began registering investment adviser representatives for the state of Virginia, which had just begun to require registration of advisers and their representatives.

The conferees will continue to discuss developing a central registration system for advisers. The discussions will consider, among other things, how the system should be designed, what cost savings to advisers and regulatory benefits would result from a central registration processing system, what the experience is of the Virginia representative registration pilot, and whether costeffective means can be developed for Commission participation in any central processing system using the CRD. As discussed below, participants in the sessions on Market Regulation issues will discuss the use of the CRD in connection with broker-dealer registration.

(iii) *Investment Adviser Registration Form.* Last summer, the Forms Revision Committee of NASAA began exploring possible revisions to Form ADV to accommodate future entry of the form onto NASD's CRD system and to establish uniform Federal-State updating requirements. The conferees will discuss the progress of this committee's efforts.

(iv) *Inspections.* The conferees also expect to discuss the ongoing cooperative efforts of the Commission and the states to increase routine surveillance of investment advisers. A joint Commission-state inspection and training program was instituted in 1984 to coordinate regulatory efforts by sharing registration and examination information, thereby increasing the overall regulatory coverage of the investment adviser industry. To date this program has provided training to more than 125 inspectors from 30 states.

(v) *Self-Regulatory Organization for Investment Advisers.* In June 1987, the Board of Governors of the NASD passed a resolution to take steps to become a self-regulatory organization ("SRO") with jurisdiction over the investment advisory activities of its members and affiliates that are investment advisers. Subsequent to that action, the staff of the Commission's Division of Investment Management asked the NASD to consider whether it would be feasible to expand the scope of the proposal to cover all registered investment advisers. The NASD recently informed the Division that it intends to conduct a study to determine the feasibility of such an expansion of the SRO proposal. In the meantime, the Division has been evaluating the NASD SRO proposal and expects to make a recommendation to the Commission for its consideration when the evaluation is completed. The conferees are expected to discuss the merits of investment adviser self-regulation and the NASD proposal.

*(3) Market Regulation Issues*

a. Central Registration Depository ("CRD")

As indicated above, certain aspects of the CRD will be discussed under investment management issues. The CRD will also be discussed by the market regulation working group. The NASD, forty-nine states, the District of Columbia, Puerto Rico and the New York Stock Exchange presently approve or register broker-dealer agents by means of the CRD. Persons filing applications for agent registration file a Form U-4 and any required fees with the CRD, which disseminates the information contained on the forms and transmits fees electronically to the appropriate jurisdictions. This agent phase of CRD, known as Phase I, similarly provides for the filing of U-4 amendments and for the transfer of agent registration under certain circumstances. Implementation of the final stage of Phase II was completed on February 1, 1989, and broker-dealers are now able to use CRD for Form BD filings as well as filings for associated persons.

During the sessions, participants will focus on the present efficacy of the CRD, future uses of the CRD by the states and the relationship of the Commission to the CRD (including processing of broker-dealer registrations with the Commission through the system). In this regard, the Commission has requested funding for fiscal year 1990 to contract with the NASD to develop a one-stop filing concept for broker-dealer documents, consistent with the Commission's electronic filing policy. This will permit broker-dealers to make one filing of a uniform registration form and amendments with the NASD, which will include the filing in the CRD. In addition to improving the efficiency of the registration process, the new system will provide better access to critical data and result in substantial cost savings to registrants by eliminating multiple filings with several regulatory bodies.

Commenters are requested to address the effectiveness and efficiency of the CRD (including any suggestions for improving the system) as well as the future direction of the system.

b. National Market System Exemption from Registration

Most state securities laws currently provide an exemption from their securities registration requirements to issuers that list on the New York ("NYSE") or American ("Amex") Stock Exchanges, or, in some cases, certain regional stock exchanges. Recently, some states have extended these exemptions to include over-the-counter ("OTC") securities designated as National Market System ("NMS") securities, while other states and legislatures have rejected such proposals. In December 1988, the Commission issued a release announcing a Memorandum of Understanding between NASAA and the NASD on the development of exemptive standards for NASDAQ/NMS securities that are comparable to the exemptive standards for exchange-listed securities. Furthermore, last year the Commission amended Rule 11Aa2-1 to designate as NMS securities all listed and OTC equity securities for which real-time last sale reporting is required by a transaction reporting plan. At the same time the Commission approved proposed amendments to the NASD's transaction reporting plan that add corporate governance standards for OTC NMS securities. The effect of these amendments is to designate as NMS securities all NYSE and Amex-listed equity securities and all equity securities listed on regional exchanges that meet Amex's listing standards and that are reported pursuant to a transaction reporting plan. All current OTC NMS securities also would continue to be designated as NMS securities if they satisfy the new corporate governance standards. Commenters are asked to address whether the states generally should exempt certain securities from registration, particularly in light of the changes to company listing standards on corporate governance and foreign issuers. Commenters are asked to address, in particular, the adoption of a uniform, objective exemptive standard, applicable to all reported securities in light of increasing competition between NASDAQ and the exchanges.

c. Forms Revisions

The Commission and NASAA are considering revisions to Schedules A, B, and C of Form BD to clarify the ownership disclosure requirements of those schedules, simplify the presentation of this information, and possibly reduce the reporting burden.

d. Internationalization of the Securities Markets

The implications of multinational securities offerings are being discussed in the corporation finance working group with a particular focus on the development of a reciprocal prospectus for certain offerings. The Market Regulation Task Force will also discuss internationalization with the resulting development of the global securities markets. The Commission continues to follow closely these developments and, to that end, requests comment on the direction of the internationalization of the trading markets. Commenters are asked to address steps that would be useful on the national and state levels to facilitate international markets while protecting investors and maintaining fair and orderly markets in the United States.

e. "Pink Sheet" Fraud

The Commission and NASAA will discuss regulatory approaches to reducing the incidence of fraud in the sale of "pink sheet" securities. The discussions will include possible rule proposals to improve information available to customers and heighten broker-dealer compliance with their fiduciary duties to customers.

*(4) Enforcement Issues*

In addition to the above stated topics, the state and federal regulators will discuss various enforcement related issues which are of mutual interest.

*(5) General*

There are a number of matters which are applicable to all, or a number, of the areas noted above. These include Edgar, the Commission's pilot electronic disclosure system, the coordination of Commission rulemaking procedures with the states, training and educating staff examiners and analysts, and sharing of information.

The Commission and NASAA request specific public comments and recommendations on the above-mentioned topics. Commenters should focus on the agenda but may also

[8] Release No. 33-6779 (June 10, 1988) (53 FR 22661).

[9] Release No. 33-6806 (October 25, 1988) (53 FR 44016).

[10] Investment Company Act Rel. No. 16431 (June 13, 1988) (53 FR 23258).

[11] Investment Advisers Act Rel. No. 1140 (September 16, 1988) (53 FR 36997).

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discuss or comment on other topics in which the existing scheme of state and federal regulation can be made more uniform while high standards of investor protection are maintained.

By the Commission.

Jonathan G. Katz,

*Secretary.*

March 1, 1989.

[FR Doc. 89-5297 Filed 3-7-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26576; File No. SR-BSE-87-1]

**Self-Regulatory Organizations; Boston Stock Exchange, Inc. Order Partially Approving Rule Change and Request for Comment Relating to the Establishment Automated Communications Order-routing Network (BEACON)**

**Introduction**

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on February 22, 1989, the Boston Stock Exchange, Inc. ("BSE") requested that the Securities and Exchange Commission ("Commission") extend a trial period for the implementation of the BSE's proposed BEACON system.[2] On August 25, 1988, BSE received approval to proceed with the implementation of BEACON up to full-scale operational levels during a six-month trial period, which ends on February 25, 1989. BSE therefore requested an extension of this trial period until the Commission has completed its review pursuant to BSE's request for permanent approval of BEACON.

As proposed by the Exchange, BEACON routes orders in eligible stocks from member firms to the BSE. For stocks traded on the Intermarket Trading System ("ITS"),[3] BEACON guarantees either an automatic or manual execution of up to either 500 or 1,299 shares, depending on the classification of the stock, at the BEACON quotation.[4] To accomplish this, a BEACON order electronically entered into the system by a member firm is transmitted to a BSE specialist's post where it is displayed on the specialist's terminal together with the automatically assigned BEACON quote at which the order would be automatically executed. The order is displayed on the specialist's terminal for up to 15 seconds to permit the specialist to intervene in the automatic execution of the order should he wish to improve on the BEACON quotation. Where the specialist does not intervene, the order automatically will be executed at the BEACON quote.

**Description of Proposed Rule**

The BSE's proposed BEACON rules, described below, define the specific procedures for the entry and executions of orders in the system. These include how orders are entered into the system, the types of orders that may be entered, how orders will be executed, how the execution price will be determined, and how the system may be used to route orders.

Section 1 of the proposed rules provides that BEACON is available to BSE member organizations and to foreign stock exchanges with which BSE has established a trading link.[5] All issues traded on the Exchange will be eligible for BEACON but only agency orders (orders executed on behalf of a member organization's client) will be eligible for automatic execution.

Section 2 provides that BEACON will permit orders to be routed to specialists or to floor brokers.[6] The system also will allow floor brokers to transmit orders to specialists. Under subparagraph (c), member firms may send market and limit orders to BSE over the system in size parameters established by the BSE.[7] Once orders are routed to the specialist, they may be executed either automatically (if eligible) or manually.

Execution parameters for BEACON are set out in Section 3 of the proposed rule. Market and marketable limit orders in issues traded over ITS transmitted to the specialist prior to the BSE's opening will be provided the opening price on the primary market on which the issue is traded. The primary market opening price usually will be the NYSE or Amex opening price for the stock. The only exception to applying the primary market opening price to an opening transaction would be where the member firm entering the order asks, instead, for the order to be provided the consolidated opening price.

Market and marketable limit orders entered after the opening will receive an execution price based upon the BEACON quotation.[8] As noted previously, these orders, when transmitted to the specialist for execution, will be displayed on the specialist's video display terminal for up to 15 seconds (so-called "exposure period") to allow the specialist to improve on the BEACON quotation that was automatically determined when the system received the order. Certain types of orders entered on BEACON always would be manually executed. These include cross orders entered in the system; nonmarketable limit orders; orders that are "stopped"; and orders entered prior to opening, which are executed at the primary market opening price.

The circumstances under which orders entered on BEACON are eligible for automatic execution are set out in section 5 of the proposed rule.[9] The system automatically will execute all market and marketable limit orders in ITS issues up to 1,299 shares for Tier I stocks and 599 shares for Tier II stocks.[10] This section also permits specialists to provide guaranteed automatic execution of 2,500 shares on specific stocks.[11] Automatic execution guarantee levels for BEACON orders will be published in BEACON and in hard copy. Guarantee levels in excess of 2,500 shares may be made by arrangement between a specialist and a specific member organization. These guarantees will not be published in BEACON unless requested by the specialist.

Market orders that would be executed outside the primary market price range for the day will be "stopped" and will be executed at the BEACON quotation or better as subsequent trades occur on the consolidated tape. An order that has been "stopped" must be executed by the close of trading.

**Discussion**

The Commission has determined that it is appropriate to grant the BSE an extension of the trial period of the implementation and operation of the BEACON system until the Commission has determined to approve or disapprove permanently the BSE's proposed rule change. The BSE stated that it currently received orders in 500 stocks (out of a total of 1,500 stocks listed on the exchange) from 5 firms through BEACON. All specialists on the floor have at least one stock where market orders are automatically executed and reported back to the firm. In addition, day limit orders are maintained for all 500 issues through BEACON to the specialist. In addition, one completed book (77 issues) has been activated in total. The BSE believes that it should have full floor participation by mid-June. Thus, the Commission believes it is appropriate to extend the trial period while the BSE continues to bring BEACON fully operational to afford the Commission further opportunities to review BEACON's performance.

The proposed BEACON system is similar in many respects to automatic execution systems currently in operation on other regional stock exchanges such as the Midwest Stock Exchange's "MAX" system, the Pacific Stock Exchange's "SCOREX" system, and the Philadelphia Stock Exchange's "PACE" system. These systems are all designed to receive small orders electronically from member firms and route them to the appropriate specialist for automatic or manual execution. These systems provide the primary means of handling the vast majority of small orders executed on these regional exchanges.

Before the development of BEACON, the BSE was unique among the regional exchanges because it only had manual systems for the routing and execution of small orders. BEACON is a key element in the BSE's overall effort to automate a substantial portion of its operations. The Exchange's development of BEACON represents a major improvement for the BSE in terms of the speed and efficiency with which it can process and execute retail orders and provide reports of executed trades. BEACON, once it is fully operational, will interface with the BSE's BASE system,[12] a computerized back office system that currently processes all orders executed on the Exchange floor. Once the BEACON and BASE interface is completed, BASE will be able to generate a report immediately confirming the execution of a BEACON order, including the number of shares and the execution price, and transmit it to the member firm that entered the order. The new system will also be able to provide BSE specialists with continuous updates of their positions, average costs, concentrations (short or long), and a computerized limit order book.

On July 15, 1988, the Commission gave approval to the BSE to proceed with the initial stages of the implementation of BEACON[13] and on August 25, 1988, authorized the BSE to institute a six-month trial period during which the BSE was to gradually phase-in use of BEACON.[14] The Commission stated that it intended to closely review results of operational tests on the system as the Exchange added stocks and connected more specialist posts and member firms to BEACON. In addition, the order stated that the BSE would submit results of stress tests on the system to demonstrate that BEACON has the capacity to handle transaction and order volume levels similar to those encountered by the Exchange during the October 1987 market break without experiencing significant order queues or delays in execution.

The Commission has received and reviewed the preliminary test results on the implementation stages of BEACON. From the data provided by the Exchange and discussions with BSE officials, the Commission is satisfied with the results thus far. In addition, the BSE has provided the Commission with the results of several simulated traffic stress tests.[15] The first test was conducted by SIAC and designed to test the performance of vendors and other market participants such as the BSE to receive output from the consolidated transaction and quotation lines for equities and options. The BEACON system adequately handled the sustained output message traffic from SIAC. In addition, the BSE recently conducted a series of stress tests with SIAC during which the traffic from SIAC was well above the October, 1987 peaks. The BSE stated that BEACON was easily able to handle the traffic from SIAC and had excess capacity of approximately 20–35%.

**Request for Comment**

As noted above, the BSE has requested that the Commission permanently approve the proposed rule change implementing BEACON.[16] Thus, interested persons are invited to submit written data, views and arguments concerning that request. Persons making written submissions should file six copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and

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[1] 15 U.S.C. 78 s(b).

[2] *See* letter from George W. Mann, Jr., BSE, to Christine A. Sabasch, Division of Market Regulation, dated February 22, 1989. The BSE also renewed its request for permanent approval of the proposed rule change.

The term "BEACON" is an acronym for Boston Exchange Automated Communications Order-routing Network. The initial set of rules proposed for BEACON (File No. SR-BSE-87-4) was noticed in Securities Exchange Act Release No. 26187 (March 6, 1987), 52 FR 8662. No comments were received on this proposal. Subsequently, the Commission received amendments to the BSE's proposed BEACON rules. These amendments were noticed in Securities Exchange Act Release No. 24880, July 8, 1987, 52 FR 26612. On December 8, 1987, June 10, 1988, July 1, 1988, and August 19, 1988, the Commission received additional amendments to the proposed BEACON rules. These amendments were not separately noticed by the Commission; however, on August 25, 1988, the Commission approved BEACON for a six-month trial period. Securities Exchange Act Release No. 26029 (August 25, 1988), 53 FR 27564.

[3] ITS is a communications system designed to facilitate trading among competing markets by providing each market with order routing capabilities based on current quotation information. Specifically, ITS links the participating markets (American Stock Exchange, BSE, Cincinnati Stock Exchange, Midwest Stock Exchange, New York Stock Exchange, Pacific Stock Exchange, Philadelphia Stock Exchange, and the National Association of Securities Dealers) and provides facilities and procedures for: (1) Display of composite quotation information from each participating market so that brokers are able to determine the best bid and offer available from any participating market for a multiply traded security; (2) efficient routing of orders and administrative messages between participating markets; and (3) participation, under certain conditions, by members of all participating markets in opening transactions in those markets. As of June 30, 1988, 1,539 stocks were traded over ITS.

[4] *See* discussion *infra* note 7.

[5] The Exchange currently has a trading link with the Montreal Stock Exchange. The BSE has informed the Commission, however, that it has no plans to make BEACON available for transactions over the Montreal linkage. Should the BSE subsequently decide that it wants to make access to BEACON available over the Montreal linkage, a proposed rule change would have to be submitted to the Commission for consideration under the requirements of section 19(b) of the Act and Rule 19b-4 thereunder.

[6] A floor broker receiving such an order would bring the order to the trading crowd for execution.

[7] The BSE has informed the Commission that there are currently no size limits for orders routed on BEACON and that it has no plans to adopt such limits. Telephone conversation between George Mann, Senior Vice President and General Counsel, BSE, and Howard Kramer, Assistant Director, Division of Market Regulation, on June 30, 1988. Automatic execution limits for BEACON are discussed *infra* at 5.

[8] The BEACON quotation, defined in Section 3(c) of the proposed rule, is the primary market quotation price, except that, where bids and offers from other markets are displayed that are superior to the BEACON price, the BEACON order will be executed at that superior price up to the size of the quote displayed.

[9] As noted previously, automatic execution guarantees under BEACON are available to agency orders only.

[10] Subparagraph (b) of Section 5 provides that all ITS issues will be deemed Tier I stocks. Tier II stocks will be comprised of exceptions from Tier I. These exceptions may be requested by specialists who must submit a statement to the BSE's Market Performance Committee that would set forth the specific reasons that would cause Tier I classification of the stock to be burdensome (e.g., a high priced, lightly traded stock).

[11] The Exchange currently has an execution guarantee under Chapter II, section 33 of the BSE Rules. Under this provision, BSE specialists guarantee execution on all agency orders from 100 up to 1,299 shares in all issues traded through ITS registered to a BSE member specialist. For the 100 most actively traded stocks reported to the consolidated tape, BSE specialists must guarantee execution on all agency orders of up to 2,500 shares. Market orders filled under this guarantee must be filled on the basis of the best Consolidated Quotation System ("CQS") bid or offer or better.

[12] "BASE" is an acronym for Brokerage Accounting Systems Element.

[13] Securities Exchange Act Release No. 25918 (July 15, 1988).

[14] Securities Exchange Act Release No. 26029 (August 25, 1988).

[15] *See* letter from George Mann, Senior Vice President and General Counsel, BSE, to Howard Kramer, Assistant Director, Division of Market Regulation, dated July 12, 1988.

[16] *See supra* note 2.

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all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of the filing will also be available for inspection and copying at the principal office of the BSE. All submissions should refer to File No. SR-BSE-88-1 and should be submitted by March 29,1989.

**Partial Approval of Proposed Rule Change**

The BSE also requested that the Commission extend the trial period under which the BSE has been implementing BEACON. On the basis of the BSE's experience with BEACON in the trial period to date, the Commission has concluded that it is appropriate to grant the BSE an extension of the trial period for the implementation of BEACON up to full-scale operational levels. During this extension the Commission will continue to review closely the BSE's operational test results as more stocks, specialists, and member firms are brought on to the system. Once the system is fully operational, BSE should be able to provide the Commission with additional stress test data to ensure that BEACON has the capacity to handle order and transaction levels like those BSE encountered in the October 1987 market break without experiencing significant queues or execution delays.

Accordingly, the Commission has determined that the BSE may continue its implementation of BEACON up to full-scale operational levels, operating under the procedures outlined in the proposed BEACON rule, as amended.

In view of the above, the Commission concludes that an extension of the trial period of the BSE's proposed BEACON system while the Commission determines to approve or disapprove permanently the proposed rule change is reasonable and is consistent with the requirements of the Act, particularly Section 6(b)(5).

It is therefore ordered, Pursuant to Section 19(b)(2) of the Act that the proposed rule change be, and hereby is, approved with the limitations cited above.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

Dated: February 28, 1989.

[FR Doc. 89-5302 Filed 3-7-89; 8:45 am]

BILLING CODE 8010-01-M

**Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and Opportunity for Hearing; Boston Stock Exchange, Incorporated**

March 2, 1989

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Bariod Corp., Common Stock, $.10 Par Value (File No. 7-4247)
Lyondell Petrochemical Co., Common Stock, $1 Par Value (File No. 7-4248)
Magma Copper Co., Class B Common, $.01 Par Value (File No. 7-4249)
Athlone Industries, Inc., Common Stock, $.10 Par Value (File No. 7-4250)
Carpenter Technology Corp., Common Stock, $5 Par Value (File No. 7-4251)
Crompton & Knowles Corp., Common Stock, $5 Par Value (File No. 7-4252)
CRS Sirrine, Inc., Common Stock, $1 Par Value (File No. 7-4253)
Premier Industrial Corp., Common Stock, $1 Par Value (File No. 7-4254)
British Steel, PLC, Interim American Depository Shares, No Par Value (File No. 7-4255)
Beazer, PLC, American Depository Shares, No Par Value (File No. 7-4256)
Hong Kong Telecommunications, Ltd., American Depository Shares, No Par Value (File No. 7-4257)
Racal Telecom, PLC, American Depository Shares, No Par Value (File No. 7-4258)
Service Merchandise Co., Inc., Common Stock, $.50 Par Value (File No. 7-4259)
Shawmut National Corp., Common Stock, $.01 Par Value (File No. 7-4260)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 23, 1989, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 89-5290 Filed 3-7-89;8:45am]

Billing Code 8010-01-M

**[Release No. 34-26677; File No. DTC-88-18]**

**Self Regulatory Organizations; Depository Trust Company; Order Extending Temporary Approval of a Proposed Rule Change**

On October 26, 1988, the Depository Trust Company ("DTC") filed a proposed rule change (File No. SR-DTC-88-18) with the Commission pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] The proposal established a pilot program for DTC's International Institutional Delivery ("IID") System. The Commission published notice of the proposal in the **Federal Register** November 10, 1988.[2]

On December 20, 1988, the Commission temporarily approved the proposed rule change through January 31, 1989.[3] At DTC's request, on January 26, 1989, the Commission extended the temporary approval until February 28, 1989.[4] DTC again has requested that the pilot program be extended, this time through March 31, 1989.[5] DTC also has filed a proposed rule change requesting approval of the IID System as a full service, effective sometime in March.[6] Extension of the temporary approval through March 31, 1989, will ensure that DTC may continue to operate the pilot

[1] 15 U.S.C. 78(b)(1).

[2] Securities Exchange Act Release No. 26349 (November 3, 1988), 53 FR 45837.

[3] Securities Exchange Act Release No. 26574 (December 20, 1988), 53 FR 52283.

[4] Securities Act Release No. 26682 (January 26, 1989), 54 FR 5164.

[5] See letter from Karen Lind, Associate Counsel, DTC, to Sandra Sciola, Special Counsel, Commission, dated February 27, 1989.

[6] Notice of the proposed rule change was published in Securities Exchange Act Release No. 25505 (January 31, 1989), 54 FR 6223.



program until permanent approval is obtained. For the reasons expressed in Securities Exchange Act Release Nos. 26374 and 26492, the Commission believes the proposal is consistent with the Act, and is therefore extending temporary approval of the proposed rule change through March 31, 1989.

*It is therefore ordered,* Pursuant to section 19(b) of the Act, that DTC's proposed rule change (File No. SR-DTC-88-18), be, and it hereby is, approved temporarily through March 31, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

Dated: February 28, 1989.

[FR Doc. 89-5299 Filed 3-7-89; 8:45 am]

BILLING CODE 8010-01-M

**[Release No. 34-26675; File Nos. SR-MBS-88-7, MBS-88-9, and MBS-88-11]**

**Self-Regulatory Organizations; MBS Clearing Corporation; Order Temporarily Approving Proposed Rule Changes.**

On April 11, 1988, the MBS Clearing Corporation ("MBSCC") filed with the Commission three proposed rule changes (File Nos. SR-MBS-88-7, MBS-88-9, and MBS-88-11) under section 19(b) of the Securities Exchange Act of 1934 ("Act").[1] The proposals would amend various MBSCC Depository Division rules including those pertaining to participant accounts, transfers of mortgage-backed securities, the MBSCC participants fund, and the MBSCC certificate withdrawal policy. The Commission published notice of the proposals in the **Federal Register** on May 11, 1988.[2]

The Commission preliminarily believes that the proposals are consistent with the Act and is approving the proposals on a temporary basis. The Commission believes that the proposals are designed appropriately to clarify MBSCC's rules and to strengthen MBSCC's procedures, thereby enhancing MBSCC's ability to safeguard securities and funds and promote prompt and accurate clearance and settlement. The Commission, however, intends to continue to analyze the proposals and to discuss with MBSCC the actual operation of the proposals and the need for any refinements or enhancements to the proposals. For those reasons, the Commission is temporarily approving the proposals through March 31, 1989.

*It is therefore ordered,* Pursuant to section 19(b) of the Act, that MBSCC's proposed rule changes (File Nos. SR-MBS-88-7, MBS-88-9, and MBS-88-11) be, and thereby are approved temporarily through March 31, 1989.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

Dated: February 28, 1989.

[FR Doc. 89-5300 Filed 3-7-89; 8:45 am]

BILLING CODE 8010-01-M

**Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and Opportunity for Hearing; Midwest Stock Exchange, Incorporated**

March 2, 1989.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Diasonics, Inc.
Common Stock, $.01 Par Value (File No. 7-4237)
Jan Bell Marketing
Common Stock $.01 Par Value (File No. 7-4238)
U.S. Cellular
Common Stock, $1 Par Value (File No. 7-4239)
Union Planters Corp.
Common Stock, $5 Par Value (File No. 7-4240)
Williams Corp. (A.L.) The
Common Stock, $.10 Par Value (File No. 7-4241)
Fiat, S.P.A.
American Depositary Shares, No Par Value (File No. 7-4242)
L.A. Gear, Inc.
Common Stock, No Par Value (File No. 7-4243)
Colonial High Income Municipal Trust
Shares of Beneficial Interest, No Par Value (File No. 7-4244)
Huntingdon International Holdings, PLC
American Depositary Shares, No Par Value (File No. 7-4245)
Putnam Managed Municipal Income Trust
Shares of Beneficial Interest, No Par Value (File No. 7-4246)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 23, 1989, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 89-5291 Filed 3-7-89; 8:45 am]

BILLING CODE 8010-01-M

**(Release No. 34-26684; File No. SR-NASD-88-51)**

**Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Proposed Rule Change Relating to the Composition of Arbitration Panels and the Content of Arbitration Awards**

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on November 7, 1988, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change, and two amendments thereto, filed on December 23, 1988 and January 26, 1989, as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The NASD proposes to amend sections 9, 19, and 41 of the Code of Arbitration Procedure ("Code"). The following is the text of the proposed rule change. New language is italicized; deleted language is in brackets.

Code of Arbitration Procedure

* * * * *

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release Nos. 25660 (May 4, 1988), 53 FR 16812; 25662 (May 4, 1988), 53 FR 16808; 25660 (May 4, 1988), 53 FR 16818.

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**Composition of Panels**

Section 9(*a*) Except as otherwise provided in Section 10 of the Code, in all arbitration matters between or among members and/or persons associated with members, [a panel shall consist of no fewer than three nor more than five arbitrators,] *and where the amount in controversy does not exceed $30,000, the Director of Arbitration shall appoint a single arbitrator to decide the matter in controversy. The arbitrator chosen shall be from the securities industry. Upon the request of a party in its initial filing or the arbitrator, the Director of Arbitration shall appoint a panel of three (3) arbitrators, all of whom shall be from the securities industry.*

*(b) In all arbitration matters between or among and/or persons associated with members and where the amount in controversy exceeds $30,000, a panel shall consist of three arbitrators,* all of whom shall be from the securities industry.

* * * * *

**Designation of Number of Arbitrators**

Section 19(*a*) Except as otherwise provided in *Section 13 of the* [this] Code, in all arbitration matters involving public customers and where the [matter] *amount* in controversy [exceeds $10,000,] *does not exceed $30,000,* [or where the amount in controversy does not involve or disclose a money claim, the Director of Arbitration shall appoint an arbitration panel which consists of no fewer than three (3) nor more than five (5) arbitrators] *the Director of Arbitration shall appoint a single arbitrator knowledgeable in but who is not from the securities industry to decide the dispute, claim or controversy. Upon the request of a party in its initial filing or the arbitrator, the Director of Arbitration shall appoint a panel of three (3) arbitrators which shall decide the matter in controversy.* At least a majority of [whom] *the arbitrators appointed* shall not be from the securities industry, unless the public customer requests a panel consisting of at least a majority from the securities industry.

*(b) In arbitration matters involving public customers and where the amount in controversy exceeds $30,000, or where the matter in controversy does not involve or disclose a money claim, the Director of Arbitration shall appoint an arbitration panel which consists of no fewer than three (3) nor more than five (5) arbitrators, at least a majority of whom shall not be from the securities industry, unless the public customer requests a panel consisting of at least a majority from the securities industry.*

*(c) An arbitrator will be deemed as being from the securities industry if he or she:*

*(1) is a person associated with a member or other broker/dealer, municipal securities dealer, government securities broker, or government securities dealer, or*

*(2) has been associated with any of the above within the past three (3) years, or*

*(3) is retired from any of the above, or*

*(4) is an attorney, accountant, or other professional who has devoted twenty (20) percent or more of his or her professional work effort to securities industry clients within the last two years.*

*(d) An arbitrator who is not from the securities industry shall be deemed a public arbitrator. A person will not be classified as a public arbitrator if he or she has a spouse or other members of the household who is a person who is associated with a member or other broker/dealer, municipal securities dealer, government securities broker, or government securities dealer.*

* * * * *

**Awards**

**Section 41**

* * * * *

*(e) The award shall contain the names of the parties, a summary of the issues in controversy, the damages and other relief requested, the damages and other relief awarded, a statement of any other issues resolved, the names of the arbitrators, and the signatures of the arbitrators concurring in the award.*

*(f) All awards involving public customers and their contents, excluding the names of the arbitrators, shall be made publicly available. A party to an arbitration involving a public customer may request that the Director of Arbitration provide copies of all awards rendered by the arbitrator(s) chosen to decide its case. A party wishing to obtain such information must notify the Director of Arbitration within three (3) business days of receipt of notification of the identity of the person(s) named to the panel.*

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

A Uniform Arbitration Code (the "Uniform Code") has been developed by the Securities Industry Conference on Arbitration ("SICA"), which is composed of representatives of the NASD, nine other self-regulatory organizations, four public members, and the Securities Industry Association. The Uniform Code, as implemented by the various self-regulatory organizations, has established throughout the securities industry a uniform system of arbitration procedures. The proposed rule change to subparagraphs (c) and (d) of section 19 of the Code is intended substantially to conform the provisions of the NASD's Code to changes in the Uniform Code approved by SICA on August 16, 1988, except as discussed below; and the proposed rule change to subparagraph (e) of section 41 is intended to conform the provisions of the Code to changes in the Uniform Code approved by SICA on July 28, 1988.

The proposed changes to section 9 and subparagraphs (a) and (b) of section 19 were recommended by the NASD's National Arbitration Committee.

*Composition of Panels:* Section 9 of the Code currently requires, in all arbitration proceedings other than those conducted under the Simplified Industry Arbitration procedures set forth in section 10 of the Code, that in all arbitration matters between or among members and/or persons associated with members, an arbitration panel consisting of no fewer than three (3) nor more than five (5) arbitrators, all of whom are from the securities industry, shall be used. The proposed rule change to section 9(a) would permit the Director of Arbitration to assign such industry cases in which the amount in controversy exceeds $10,000 but does not exceed $30,000 to a single arbitrator from the securities industry. However, either at the request of an industry party in its initial complaint or answer or at the request of the designated arbitrator, the rule change provides that the Director of Arbitration would be required to designate a panel of three (3) arbitrators, all from the securities industry. Proposed new section 9(b) would continue the current practice of appointing a panel of three (3) arbitrators from the securities industry



to hear industry cases in which the amount in controversy exceeds $30,000.

By authorizing the handling of claims between securities professionals of less than $30,000 by a single industry arbitrator, the proposed rule change to section 9(a) would appreciably reduce costs and delays while preserving the opportunity to be heard before a three-person industry panel upon timely motion of a party or the designated arbitrator. Proposed section 9(b) would, in addition, codify the current administrative practice of appointing no more than three arbitrators to panels hearing industry disputes, a measure taken to reduce costs and delays generated by the appointment of five-member panels.

*Designation of Number of Arbitrators:* Section 19 of the Code currently requires in all arbitration matters involving public customers and where the matter in controversy exceeds $10,000 or does not involve or disclose a money claim, that the Director of Arbitration appoint a panel of no fewer than three (3) nor more than five (5) arbitrators, at least a majority of whom shall not be from the securities industry, unless the public customer requests a panel consisting of at least a majority from the securities industry. The proposed section 19(a) would permit the Director of Arbitration to assign cases involving public customers in which the amount in controversy exceeds $10,000 but does not exceed $30,000 to a single public arbitrator. At the request of a party in its initial complaint or answer, or at the request of the designated arbitrator, the Director of Arbitration would be required to designate a panel of three (3) arbitrators, constituted as set forth in current section 19 of the Code. Proposed new section 19(b) would continue the current requirement that the Director of Arbitration, in all arbitration matters involving public customers, where the matter in controversy exceeds $30,000 or does not involve or disclose a money claim, appoint a panel of no fewer than three (3) nor more than five (5) arbitrators, constituted as set forth in current section 19 of the Code.

By authorizing the handling of claims involving public customers of less than $30,000 by a single public arbitrator, the proposed rule change to section 19(a) would appreciably reduce costs and delays while preserving the opportunity to be heard before a three-person panel upon timely motion of a party or the designated arbitrator. Proposed new section 19(b) would, in addition, require the appointment of a three- or five-person arbitration panel in all matters involving public customers where the amount in controversy exceeds $30,000 or where the matter does not involve or disclose a money claim. Both sections 19 (a) and (b) would continue to require that a majority of the arbitrators not be from the securities industry, unless the public customer requests a panel consisting of at least a majority from the securities industry.

Proposed new sections 19 (c) and (d) codify in substantial part the definitions of "securities industry arbitrator" and "public arbitrator" approved by SICA on August 16, 1988. In an effort to address possible perceptions of bias or interest, and in the absence of recorded instances in which the bias or interest occurring as a result of familial relationship was shown to have influenced the rendition of an award, SICA determined, as set forth in proposed section 19(d), that a person should not be classified as a public arbitrator if he or she has a spouse or other member of the household who is a person associated with a member or other broker/dealer, municipal securities dealer, government securities broker or government securities dealer. Attorneys, accountants, or other professionals who have devoted 20% or more of their professional work effort to Securities industry clients within the last 2 years would now be classified as securities industry arbitrators rather than public arbitrators. In addition, the NASD's proposed definition of "securities industry arbitrator," in contrast with the corresponding SICA proposal, does not include current or former registered investment advisors not associated with a member firm, their spouses, or members of their households. The NASD believes that registered investment advisors are generally well-informed and well-qualified individuals and are, in fact, independent from the securities industry in that their income is derived from investors rather than from the securities industry. Further, such individuals represent an untapped source whose enrollment would serve to replenish the NASD's pool of public arbitrators, which would be significantly depleted by proposed sections 19 (c) and (d).

*Awards:* Proposed new sections 41 (e) and (f) represent the results of initiatives of the Commission, and were approved by SICA on July 28, 1988. Proposed section 41(e) codifies the minimum content of all NASD arbitration awards, which would contain the names of the parties, a summary of the factual issues, the relief requested and awarded, a statement of any other issues resolved, the names of the arbitrators, and the signatures of the arbitrators concurring in the award.

Consistent with SICA's endorsement of the practice of making the information contained in arbitration awards involving public customers, including any opinions voluntarily prepared by the arbitrators in such cases, publicly available in accordance with the individual policies of the sponsoring self-regulatory organization, Proposed section 41(f) would make all NASD awards involving public customers, with the exclusion of the names of the arbitrators, publicly available. Upon implementation of Proposed sections 41 (e) and (f), the NASD will make all awards involving public customers issued subsequent to the effective date of these sections available to the public by means of a reading room. Proposed section 41(f) would also permit parties to an arbitration involving a public customer to obtain copies of all awards rendered pursuant to proposed section 41(e) by the arbitrator or arbitrators assigned to hear their case if a request is made to the Director of Arbitration within 3 business days of receipt of notification of the identity of the arbitrators.

The NASD believes that the proposed rule change is consistent with section 15A(b)(6) of the Act, as the proposed rule change will facilitate the arbitration process in the public interest and, therefore, is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and, in general, protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

The NASD has neither solicited nor received comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and

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publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR-NASD-88-51 and should be submitted by March 29, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: March 1, 1989.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 89-5301 Filed 3-7-89; 8:45 am]

BILLING CODE 8010-01-M

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[Release No. 34-26866; File No. SR-NSCC-89-2]

## National Securities Clearing Corp.; Proposed Rule Change Relating to Acceleration of the OTC Comparison Cycle and Modification of NSCC Procedures With Respect Thereto

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on February 8, 1989, NSCC filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The proposed rule change would amend NSCC's Rules and Procedures concerning certain aspects of trade comparison.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

(a) The primary purpose of the proposed rule change is to accelerate the comparison of transactions executed Over-the-Counter ("OTC") and on national securities exchanges other than the New York Stock Exchange (hereinafter referred to as "OTC transactions"). The proposed rule change accelerates by approximately 11 hours the time frame for input and accelerates by approximately 24 hours the time frame for the corresponding output relative to comparison of OTC transactions.

The market break in October, 1987 prompted the securities industry to review processing time frames for comparison of securities transactions. It was recognized that by shortening the comparison process, Members will be able to reconcile transactions earlier, thereby reducing financial exposure. As a result, initiatives are underway to accelerate and redesign the comparison process for transactions in listed and OTC securities.

In December of 1988 NSCC convened a Comparison Advisory Committee comprised of representatives from NSCC, the New York Stock Exchange, the National Association of Securities Dealers, Inc., the American Stock Exchange and fourteen firms representing different aspects of the industry. The purpose of the Committee was to discuss developments in the comparison process, including new systems being developed by the self-regulatory organizations and to obtain guidance from Member firms on the best way for all entities to implement and coordinate the changes. The Committee, at a meeting in January 1989, discussed the proposed modifications to listed and OTC comparison. The Committee discussed the fact that the listed project involves *both* acceleration and redesign. It was, therefore, agreed that it would be prudent to familiarize the firms with acceleration first so that the redesign portion, when implemented, could be accomplished more smoothly. Moreover, it was determined that implementation of one project at a time would provide the Members with greater control over each project and, therefore, promote greater efficiency. Members input OTC and listed transactions separately. Accordingly, there is no difficulty in bifurcating the acceleration process. The proposed rule change reflects the accelerated input and output time frames for comparison of OTC transactions.

Currently, Members submit non-systematized transactions to NSCC by 1:00 p.m. on T+1. Members may also submit deletes to this T+1 input by 3:00 p.m. on T+1. NSCC runs an initial match and issues Regular Way T+1 Contract Lists, reflecting the results of the initial match by 8:00 a.m. on T+2.

Under the proposal, Members will be required to submit all non-systematized transactions to NSCC no later than 2:00 a.m. the morning of T+1. NSCC will then produce Regular Way T+1 Contract Lists by 7:00 a.m. on T+1. Upon receiving these contracts, Members will be able to submit adjustments until 2:00 p.m. on T+1, rather than 2:00 p.m. on T+2, with NSCC issuing corresponding output by 7:00 a.m. on T+3. After this point, Members will be able to submit adjusting information with NSCC generating corresponding output until the final comparison output on T+4.

Presently, the procedures for comparison of OTC transactions incorporate by reference some of the procedures for comparison of listed transactions. Since the proposed rule change will accelerate the OTC comparison process, certain of the procedures covered by the listed section must be set forth separately in the procedures section on OTC comparison and modified accordingly.

In addition, the proposed rule change makes clarifying changes to the entire Trade Comparision Service by differentiating between the comparison of regular way transactions and when-issued transactions. Further, the term "T+1 input" is being changed to "Original Trade Data" in order to differentiate that type of input from the time the input is required. Finally, NSCC is modifying the reference throughout the rules from "Advisory Notice" and "Contract List" to "Advisory Listing" and "Regular Way T+1 Contract List", to reflect current usage.

(b) Earlier comparison is integtral to an efficient, settlement system. By accelerating the comparison cycle, less trades will be unresolved at later points in the settlement process, and thus participants will achieve a higher comparison rate closer to the point of trade execution. Since the proposed rule change promotes the prompt and accurate clearance and settlement of securities transactions, it is consistent with the requirements of the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to NSCC.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

NSCC does believe that the proposed rule will have an impact or impose a burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

Members have been advised by Important Notice dated November 16, 1988. One written comment was received. NSCC will notify the Commission of any other written comments received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and published its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be approved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR-NSCC-89-01 and should be submitted by March 29, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

*Secretary.*

Dated: March 1, 1989.

[FR Doc. 89-5298 Filed 3-7-89; 8:45 am]

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## Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and Opportunity for Hearing; Philadelphia Stock Exchange, Incorporated

March 2, 1989.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Audio/Video Affiliates, Inc., Common Stock, $.01 Par Value (File No. 7-4227)
Energy Service Company, Inc., Common Stock, $.01 Par Value (File No. 7-4228)
KeyCorp., Common Stock, $5 Par Value (File NO. 7-4229)
L.A. Gear, Inc., Common Stock, No Par Value (File No. 7-4230)
Acme-Cleveland Corporation, Common Stock, $1 Par Value (File No. 7-4231)
Central Vermont Public Service Corp., Common Stock, $6 Par Value (File No. 7-4232)
Copperweld Corporation, Common Stock, $0.833 Par Value (File No. 7-4233)
Excel Industries, Inc., Common Stock, No Par Value (File No. 7-4234)
Fiat, S.P.A., American Depository Shares (File No. 7-4235)
Green Mountain Power Corporation, Common Stock, $3.33 ⅓ Par Value (File No. 7-4236)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 23, 1989, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 89-5292 Filed 3-7-89; 8:45 am]

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[File No. 1-7938]

## Issuer Delisting; Application To Withdraw From Listing and Registration on the American and Pacific Stock Exchanges; First City Industries, Inc., 6¾% Convertible Subordinated Debentures, Due 1991

March 2, 1989.

First City Industries, Inc. ("Company"), has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2-2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the American ("Amex") and Pacific ("PSE") Stock Exchanges.

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

On January 4, 1989, First City Acquisition Corp. ("Acquisition") completed a tender offer for all of the Company's common stock, pursuant to which, First City Developments Corp. (the parent corporation) along with Acquisition became the beneficial owner of approximately 99.2% of the Company's outstanding common stock. On January 30, 1989, Acquisition was merged with and into the Company and the Company became a wholly-owned subsidiary of First City Developments Corp. As a result of that merger, the remaining holders of the common stock became entitled to receive $13.10 in cash for each share of common stock they owned and the common stock was

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subsequently delisted from the New York and Pacific Stock Exchanges.

On February 27, 1989, there were only 219 holders of record of $569,300 principal amount of the Company's Debentures. The Company has determined that the cost of continued listing of the Debentures is no longer justified because of the small number of holders of the Debentures and the very limited trading.

Any interested person may, on or before March 23, 1989, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 89-5295 Filed 3-7-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-24831]

**Filings Under the Public Utility Holding Company Act of 1935 ("Act"); Savannah Electric and Power Co.**

March 2, 1989.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by March 27, 1989 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the manner. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

**Savannah Electric and Power Company (70-7831)**

Savannah Electric and Power Company ("Savannah"), 600 Bay Street, East, Savannah, Georgia 31401, an electric utility subsidiary of The Southern Company, a registered holding company, has filed a post-effective amendment to its application-declaration pursuant to sections 6(a)(2), 6(b), 7(e) and 12(e) of the Act and Rules 50, 62 and 65 thereunder.

By order dated September 2, 1988 (HCAR No. 24709), Savannah was authorized to solicit proxies with respect to several proposals, including amendments to its Charter, to be presented at a special meeting of its shareholders held in September 28, 1988. By order dated November 30, 1988 (HCAR No. 24763) Savannah was authorized, among other things, to amend its Charter to increase the permitted amount of unsecured short-term debt. At the September 28, 1988 meeting, all of the proposals were duly adopted, with the exception of the proposal to increase the permitted amount of unsecured short-term debt.

Savannah now proposes to submit for consideration and action by its preferred stockholders at the annual meeting to be held on or about May 16, 1989, the proposal that Savannah be authorized, until July 1, 1990, to issue or assume unsecured debt having maturities of less than ten years in excess of 10% of capital stock, surplus and secured debt, provided that (a) none of such additional short-term debt outstanding on July 1, 1990, shall mature on or after January 1, 2000, and (b) Savannah's total indebtedness represented by unsecured securities shall at no time exceed 20% of capital stock, surplus and secured debt.

Savannah requests that the effectiveness of its post-effective amendment to its application-declaration with respect to the solicitation of proxies for voting by its stockholders on the proposal to amend the Charter, be permitted to become effective as provided in Rule 62(d). Savannah proposes to mail a notice of meeting, proxy statement and proxy to its preferred stockholders for the annual meeting on or about May 16, 1989.

It appearing to the Commission that Savannah's post-effective amendment to its application-declaration regarding the proposed solicitation of proxies should be permitted to become effective forthwith, pursuant to Rule 62:

It is ordered, That the post-effective amendment to its application-declaration regarding the proposed solicitation of proxies, be, and it hereby is, permitted to become effective forthwith, pursuant to Rule 62 and subject to the terms and conditions prescribed in Rule 24 under the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 89-5303 Filed 3-7-89; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Coast Guard

[CGD 89-015]

**Houston/Galveston Navigation Safety Advisory Committee**

Prusant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of the twentieth meeting of the Houston/Galveston Navigation Safety Advisory Committee. The meeting will be held on Thursday, May 11, 1989 in the conference room of the Houston Pilots Office, 8150 South Loop East, Houston, Texas. The meeting is scheduled to begin at approximately 9:30 a.m. and end at approximately 1:00 p.m. The agenda for the meeting consists of the following items:

1. Call to Order.
2. Presentation of the minutes of the Inshore and Offshore Waterways Subcommittees and discussion of recommendations.
3. Discussion of previous recommendations made by the Committee.
4. Presentation of any additional new items for consideration of the Committee.
5. Adjournment.

The purpose of this Advisory Committee is to provide recommendations and guidance to the Commander, Eighth Coast Guard District on navigation safety matters affecting the Houston/Galveston area.

Attendance is open to the public. Members of the public may present written or oral statements at the meeting.

Additional information may be obtained from Lieutenant Commander C.T. Bohner, USCG, Executive Secretary, Houston/Galveston Navigation Safety Advisory Committee, c/o Commander, Eighth Coast Gaurd District (oan), Room 1141, Hale Boggs Federal Building, 500 Camp Street, New Orleans, LA 70130-3396, telephone number (504) 589-4686.

Dated: February 17, 1989.

A.E. Henn,

*Captain, U.S. Coast Gaurd, Commander, 8th Coast Guard District, Acting.*

[FR Doc. 89-5405 Filed 3-7-89; 8:45 am]

BILLING CODE 4910-14-M



[CGD 89-016]

**Houston/Galveston Navigation Safety Advisory Committee; Offshore Waterway Management Subcommittee Meeting**

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Offshore Waterway Management Subcommittee of the Houston/Galveston Navigation Safety Advisory Committee. The meeting will be held on Thursday, April 27, 1989 at the Houston Yacht Club, 3620 Miramar Drive, Laporte, Texas. The meeting is scheduled to begin at 9:00 a.m. and end at 10:30 p.m. The agenda for the meeting consists of the following items:

1. Call to Order.
2. Discussion of previous recommendations made by the full Advisory Committee and the Offshore Waterway Management Subcommittee.
3. Presentation of any additional new items for consideration by the Subcommittee.
4. Adjournment.

Attendance is open to the public. Members of the public may present written or oral statements at the meeting.

Additional information may be obtained from Lieutenant Commander C.T. Bohner, USCG, Executive Secretary, Houston/Galveston Navigation Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (oan), Room 1141, Hale Boggs Federal Building, 500 Camp Street, New Orleans, LA 70130-3396, telephone number (504) 589-4686.

Dated: February 17, 1989.

A.E. Henn,

*Captain, U.S. Coast Guard, Commander, 8th Coast Guard District, Acting.*

[FR Doc. 89-5408 Filed 3-7-89; 8:45 am]

BILLING CODE 4910-14-M

[CGD 89-017]

**Houston/Galveston Navigation Safety Advisory Committee; Inshore Waterway Management Subcommittee Meeting**

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Inshore Waterway Management Subcommittee of the Houston/Galveston Navigation Safety Advisory Committee. The meeting will be held on Thursday, April 27, 1989 at the Houston Yacht Club, 3620 Miramar Drive, Laporte, Texas. The meeting is scheduled to begin at 10:30 a.m. and end at 12:00 p.m. The agenda for the meeting consists of the following items:

1. Call to Order.
2. Discussion of previous recommendations made by the full Advisory Committee and the Inshore Waterway Management Subcommittee.
3. Presentation of any additional new items for consideration to the Subcommittee.
4. Adjournment.

Attendance is open to the public. Members of the public may present written or oral statements at the meeting.

Additional information may be obtained from Lieutenant Commander C.T. Bohner, USCG, Executive Secretary, Houston/Galveston Navigation Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (oan), Room 1141, Hale Boggs Federal Building, 500 Camp Street, New Orleans, LA 70130-3396, telephone number (504) 589-4686.

Dated: February 17, 1989.

A.E. Henn,

*Captain, U.S. Coast Guard, Commander, 8th Coast Guard District, Acting.*

[FR Doc. 89-5407 Filed 3-7-89; 8:45 am]

BILLING CODE 4910-14-M

## DEPARTMENT OF THE TREASURY

**Public Information Collection Requirements Submitted to OMB for Review.**

Date: March 7, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

**Alcohol, Tobacco and Firearms**

*OMB Number:* 1512-0034.
*Form Number:* ATF F 5000.9.
*Type of Review:* Extension.
*Title:* Personnel Questionnaire—Alcohol and Tobacco Products.
*Description:* The information listed on ATF F 5000.9, Personnel Questionnaire, enables ATF to determine whether or not an applicant for an alcohol or tobacco permit meets the minimum qualifications. The form identifies the individual, residence, business background, financial sources for business and criminal record. If the applicant is found not to be qualified, the permit may be denied.
*Respondents:* Individuals or households, Businesses and other for-profit, Small businesses or organizations.
*Estimated Number of Respondents:* 5,000.
*Estimated Burden Hours Per Response:* 2 hours.
*Frequency of Response:* On occasion.
*Estimated Total Reporting Burden:* 10,000 hours.

*OMB Number:* 1512-0298.
*Form Number:* ATF REC 5120/1.
*Type of Review:* Extension.
*Title:* Usual and Customary Business Records Relating to Wine.
*Description:* Usual and customary business records relating to wine are routinely inspected by ATF officers to ensure the payment of alcohol taxes due to the Federal Government.
*Respondents:* Individuals or households, Farms, Businesses or other for-profit, Small businesses or organizations.
*Estimated Number of Recordkeepers:* 1,246.
*Estimated Total Recordkeeping Hours:* 1 hour.
*Frequency of Response:* Recordkeeping.
*Estimated Total Recordkeeping Burden:* 1 hour.

*OMB Number:* 1512-0461.
*Form Number:* ATF Requirement 5120/5.
*Type of Review:* Extension.
*Title:* Marks on Tanks and Other Bulk Wine Containers on Wine Premises.
*Description:* ATF requires that tanks and other bulk wine containers on wine premises be marked with identifying information. The prescribed marks

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provide a control over revenue accountability used by ATF to validate the propriety of revenue received by the Federal Government..

*Respondents:* Farms, Businesses and other for-profit, Small businesses or organizations.

*Estimated Number of Respondents:* 1,126.

*Estimated Burden Hours Per Response:* 1 hour.

*Frequency of Response:* On occasion.

*Estimated Total Reporting Burden:* 1 hour.

*Clearance Officer:* Robert Masarsky (202) 566–7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue NW., Washington, DC 20226.

*OMB Reviewer:* Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports Management Officer.*

[FR Doc. 89–5368 Filed 3–7–89; 8:45 am]

BILLING CODE 4810–31–M

## Public Information Collection Requirements Submitted to OMB for Review

Date: March 2, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

### Internal Revenue Service

*OMB Number:* 1545–0755.

*Form Number:* None.

*Type of Review:* Extension.

*Title:* Related Group Election With Respect to Qualified Investments in Foreign Base Company Shipping Operations.

*Description:* The election described in the attached justification converted an annual election to an election effective until revoked. The computational information required is necessary to assure that the U.S. shareholder correctly reports any shipping income of its controlled foreign corporations which is taxable to that shareholder.

*Respondents:* Businesses or other for-profit.

*Estimated Number of Respondents:* 100.

*Estimated Burden Hours Per Response:* 2 hours.

*Frequency of Response:* Nonrecurring annual election.

*Estimated Total Reporting Burden:* 205 hours.

*OMB Number:* 1545–0955.

*Form Number:* None.

*Type of Review:* Extension.

*Title:* Time and Manner of Making Quarterly Payments of the Railroad Unemployment Repayment Tax.

*Description:* Section 3321 imposes a tax (railroad unemployment repayment tax) on every rail employer with respect to rail wages paid to the employees of such employer and on every employee representative with respect to rail wages received by such employee representative.

*Respondents:* Individuals or households, Businesses or other for-profit.

*Estimated Number of Respondents:* 2,457.

*Estimated Burden Hours Per Response:* 661 hours.

*Frequency of Response:* Quarterly, Annually.

*Estimated Total Reporting Burden:* 661 hours.

*Clearance Officer:* Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

*OMB Reviewer:* Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports, Management Officer.*

[FR Doc. 89–5367 Filed 3–7–89; 8:45 am]

BILLING CODE 4810–25–M

## Customs Service

[T.D. 89–34]

### Cancellation "With Prejudice" of Corporate Broker's License No. 6024; Maki International, Inc.

**AGENCY:** U.S. Customs Service, Department of the Treasury.

**ACTION:** General notice.

**SUMMARY:** Notice is hereby given that the Secretary of the Treasury on December 22, 1988, pursuant to section 641, Tariff Act of 1930, as amended (19 U.S.C. 1641), and § 111.51(b) and 111.74 of the Customs Regulations, as amended (19 CFR 111.51(b), 111.74), cancelled with prejudice the corporate broker's license No. 6042 issued to Maki International Incorporated.

Dated: March 2, 1989.

**Victor G. Weerth,**

*Director, Office of Trade Operations.*

[FR Doc. 89–5369 Filed 3–7–89; 8:45 am]

BILLING CODE 4820–02–M

[T.D. 89–35]

### Cancellation "With Prejudice" of Individual Broker's License No. 4551; Walter Bruno Maki

**AGENCY:** U.S. Customs Service, Department of the Treasury.

**ACTION:** General notice.

**SUMMARY:** Notice is hereby given that the Secretary to the Treasury on December 22, 1988, pursuant to section 641, Tariff Act of 1930, as amended (19 U.S.C. 1641), and §§ 111.51(b) and 111.74 of the Customs Regulations, as amended (19 CFR 111.51(b), 111.74), cancelled with prejudice the individual broker's license No. 4551 issued to Walter Bruno Maki.

Dated: March 2, 1989.

**Victor G. Weerth,**

*Director, Office of Trade Operations.*

[FR Doc. 89–5370 Filed 3–7–89; 8:45 am]

BILLING CODE 4820–02–M

## VETERANS ADMINISTRATION

### Career Development Committee; Open Meeting

The Veterans Administration gives notice under Pub. L. 92–463 that a meeting of the Career Development Committee, authorized by 38 U.S.C. 4101, will be held in the State Room of the Governor's House Holiday Inn, Rhode Island Avenue at 17th Street NW, Washington, DC, April 26 through 28, 1989, starting at 8 a.m., April 26. The meeting will be for the purpose of scientific review of applications for appointment to the Career Development Program in the Veterans Administration. The committee advises the Director, Medical Research Service, on selection and appointment of Associate Investigators, Research Associates, Clinical Investigators, Medical Investigators, and Senior Medical Investigators.

The meeting will be open to the public up to the seating capacity of the room from 8 a.m. to 8:30 a.m. on April 26, 1989, to discuss the general status of the program. Because of the limited seating capacity of the room, those who plan to attend should contact Mr. David D. Thomas, Executive Secretary of the Career Development Committee (151J), Veterans Administration Central Office, Washington, DC 20420 (202–233–2317) prior to April 21, 1989. The meeting will be closed from 8:30 a.m. to 5 p.m., on April 26, 8 a.m. to 5 p.m. on April 27, 8 a.m. to 3 p.m. on April 28, for consideration of individual applications for positions in the Career Development Program. This necessarily requires examination of personnel files and discussion and evaluation of the qualifications, competence, and potential of the candidates, disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Accordingly, closure of this portion of the meeting is permitted by section 10(d) of Pub. L. 92–463 as amended, in accordance with subsection (c) (6), 5 U.S.C. 552b.

Minutes of the meeting and rosters of the committee members may be obtained from David D. Thomas, Chief, Career Development Program, Medical Research Service (151J), Veterans Administration, Washington, DC 20420 (phone 202–233–3267).

Dated: February 28, 1989.

By direction of the Administrator.

**Rose Maria Fontanez,**

*Committee Management Officer.*

[FR Doc. 89–5294 Filed 3–7–89; 8:45 am]

BILLING CODE 8320–01–M



### Special Medical Advisory Group; Open Meeting

The Veterans Administration gives notice under Pub. L. 92–463 that a meeting of the Special Medical Advisory Group will be held on March 23 and 24, 1989. The session on March 23 will be held at the Capital Hilton Hotel, 16th and "K" Streets, NW., Washington, DC 20036, and the session on March 24 will be held in the Omar Bradley Conference Room (10th floor) at the Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420.

The purpose of the Special Medical Advisory Group is to advise the Administrator and Chief Medical Director relative to the care and treatment of disabled veterans, and other matters pertinent to the Veterans Administration and the Department of Medicine and Surgery. The session on March 23 (held at the Capital Hilton Hotel) will convene at 8 p.m. and the session on March 24 will convene at 8 a.m. All sessions will be open to the public up to the seating capacity of the rooms. Because this capacity is limited, it will be necessary for those wishing to attend to contact Lorri Fertal, Office of the Chief Medical Director, Veterans Administration (phone 202/233–3666) prior to March 16, 1989.

Dated: February 28, 1989.

By direction of the Acting Administrator.

**Rose Maria Fontanez,**

*Committee Management Officer.*

[FR Doc. 89–5295 Filed 3–7–89; 8:45 am]

BILLING CODE 8320–01–M

### Cooperative Studies Evaluation Committee; Meeting

The Veterans Administration gives notice under Pub. L. 92–463 (Federal Advisory Committee Act) as amended by section 5(c) of Pub. L. 96–409 that a meeting of the Cooperative Studies Evaluation Committee will be held at the Royal Sonesta Hotel, 5 Cambridge Parkway, Cambridge, MA 02142, April 11 and 12, 1989. The session on April 11 is scheduled to begin at 7:30 a.m. and end at 6 p.m. and the session on April 12 is scheduled to begin at 7:30 a.m. and end at 2:30 p.m. The meeting will be for the purpose of reviewing five proposed new clinical trials, one in diabetes, one in arthritis, one in alcoholic liver disease, one in hypertension, one in heart disease, and the progress of two ongoing cardiovascular cooperative studies. The Committee advises the Director, Medical Research Service, through the chief of the Cooperative Studies Program on the relevance and feasibility of the studies, the adequacy of the protocols, and the scientific validity and propriety of technical details, including protection of human subjects.

The meeting will be open to the public up to the seating capacity of the room from 7:30 to 8 a.m., on April 11, 1989 to discuss the general status of the program. To assure adequate accommodations, those who plan to attend should contact Dr. Fing Hsiung, Coordinator, Cooperative Studies Evaluation Committee, Veterans Administration Central Office, Washington, DC (202–233–2981), prior to April 6, 1989.

The meeting will be closed from 8 a.m. to 6 p.m. on April 11, and from 7:30 a.m. to 3:10 p.m. on April 12, 1989, for consideration of specific proposals in accordance with provisions set forth in section 10(d) of Pub. L. 92–463 (the Federal Advisory Committee Act), as amended by section 5(c) of Pub. L. 94–409, and 5 U.S.C. 552b(c)(6). During this portion of the meeting, discussions and recommendations will deal with qualifications of personnel conducting the studies, staff and consultant critiques of research protocols, and similar documents, and the medical records of patients who are study subjects, the disclosure of which would constitute clearly unwarranted invasion of personal privacy.

Dated: February 27, 1989.

By direction of the Acting Administrator.

**Rose Maria Fontanez,**

*Committee Management Officer.*

[FR Doc. 89–5296 Filed 3–7–89; 8:45 am]

BILLING CODE 8320–01–M

### Advisory Committee on Structural Safety of Veterans Administration Facilities; Meeting

The Veterans Administration gives notice under Public Law 92–463 that a meeting of the Advisory Committee on Structural Safety of Veterans Administration facilities will be held in Room 442 of the Lafayette Building, 811 Vermont Avenue, NW., Washington, DC, on April 14, 1989, at 10 a.m. The committee members will review Veterans Administration construction standards and criteria relating to fire, earthquake and other disaster resistant construction.

The meeting will be open to the public up to the seating capacity of the room. Because of the limited seating capacity, it will be necessary for those wishing to attend to contact Mr. Richard D. McConnell, Director, Structural Engineering Service, Office of Facilities, Veterans Administration Central Office (phone 202–233–2864) prior to April 12, 1989.

Dated: February 27, 1989.

By direction of the Administrator.

**Rose Maria Fontanez,**

*Committee Management Officer.*

[FR Doc. 89–5297 Filed 3–7–89; 8:45 am]

BILLING CODE 8320–01–M

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# Sunshine Act Meetings

Federal Register
Vol. 54, No. 44
Wednesday, March 8, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**NATIONAL LABOR RELATIONS BOARD**

**TIME AND DATE:** 10:00 a.m., Thursday, March 23, 1989.

**PLACE:** Board Conference Room, Sixth Floor, 1717 Pennsylvania Avenue NW., Washington, DC 20570.

**STATUS:** Open to public observation.

**MATTERS TO BE CONSIDERED:** Rulemaking—29 CFR Part 103 (Collective-Bargaining Units in the Health Care Industry).

**CONTACT PERSON FOR MORE INFORMATION:** John C. Truesdale, Executive Secretary, National Labor Relations Board, Washington, DC 20570, Telephone: (202) 254-9430.

Dated, Washington, DC, March 6, 1989.

By direction of the Board.

John C. Truesdale,
*Executive Secretary, National Labor Relations Board.*

[FR Doc. 89-5604 Filed 3-6-89; 2:36 pm]
BILLING CODE 7545-01-M

**NATIONAL TRANSPORTATION SAFETY BOARD**

**TIME AND DATE:** 9:30 a.m., Tuesday, March 14, 1989.

**PLACE:** The Board Room, Eighth Floor, 800 Independence Avenue SW., Washington, DC 20594.

**STATUS:** The first three items are open to the public. The last three items are closed under Exemption 10 of the Government in Sunshine Act.

**MATTERS TO BE CONSIDERED:**

1. Highway Accident Report: Collision of Levy County Schoolbus and Airdrome Tire Centers, Inc., Truck, Bronson, Florida, August 28, 1987.
2. Petition for Reconsideration: Highway Accident Report and Safety Study—Multiple Vehicle Collision and Fire, Snow Hill, North Carolina, May 31, 1988, and Crashworthiness of Large Poststandard Schoolbuses.
3. Recommendation to FAA: Engine Stoppage in Fuel Injected Piper Model Airplanes Due to Ice/Snow Blockage of Induction Air Filters.
4. Opinion and Order: Administrator v. Hanson, Docket SE-8273; disposition of Administrator's appeal.
5. Opinion and Order: Administrator v. Secooman, Docket SE-8117; disposition of the Administrator's appeal.
6. Opinion and Order: Administrator v. Funk, Docket SE-8081; disposition of Administrator's appeal.

**FOR MORE INFORMATION CONTACT:** Bea Hardesty, (202) 382-6525.

Bea Hardesty,
*Federal Register Liaison Officer.*

March 3, 1989.

[FR Doc. 89-5442 Filed 3-6-89; 9:21 am]
BILLING CODE 7535-01-M

**SECURITIES AND EXCHANGE COMMISSION**

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of March 13, 1989.

Open meetings will be held on Tuesday, March 14, 1989, at 10:00 a.m., followed by a closed meeting, and on March 15, 1989 at 9:30 a.m., in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Fleischman, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the open meeting scheduled for Tuesday, March 14, 1989, at 10:00 a.m., will be:

1. Consideration of whether to approve proposed rule changes by the Philadelphia Stock Exchange, Inc. ("Phlx"), American Stock Exchange, Inc. ("Amex"), and the Chicago Board Options Exchange, Inc. ("CBOE") to establish index participations trading rules and list for trading index participations based on both established and newly developed broad based stock indices. For further information, please contact Ivan D. Davis at (202) 272-2088.
2. Consideration of whether to withdraw proposed amendments to rules 134, 436, and 482 under the Securities Act of 1933 and a staff guideline to Form N-1A. The rule amendments would have permitted money market mutual funds assigned a rating by a nationally recognized statistical rating organization ("NRSRO") to include that rating in tombstone ads, prospectuses, and "omitting prospectuses" without obtaining the NRSRO's consent to being named as having prepared or certified the rating. The staff guideline to Form N-1A concerned disclosure of ratings in registration statements. For further information, please contact Ernest P. Francis at (202) 272-2107.

The subject matter of the closed meeting scheduled for Tuesday, March 14, 1989, following the 10:00 a.m. open meeting, will be:

Institution of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Settlement of administrative proceeding of an enforcement nature.
Opinions.

The subject matter of the open meeting scheduled for Wednesday, March 15, 1989, at 9:30 a.m., will be:

The Commission is hosting a roundtable to discuss proposed Rule 144A and issues in the Securities Act Release No. 6808. Rule 144A, which was published for comment on October 25, 1988, would provide a safe harbor from the registration requirements of the Securities Act of 1933 for resale of securities to institutional investors. For further information, please contact Sara Hanks at (202) 272-2848.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Pat Daugherty at (202) 272-2200.

Jonathan G. Katz,
*Secretary.*

March 3, 1989.

[FR Doc. 89-5519 Filed 3-6-89; 3:56 pm]
BILLING CODE 8010-01-M

federal register

Wednesday
March 8, 1989

## Part II

## Enforcement of Nondiscrimination on the Basis of Handicap in Federally Assisted Programs; Notice of Proposed Rulemaking

Department of Agriculture
Department of Education
Department of Energy
Department of Health and Human Services
Department of State
ACTION
Environmental Protection Agency
International Development Cooperation Agency
Agency for International Development
National Aeronautics and Space Administration
National Foundation on the Arts and the Humanities
National Endowment for the Arts
National Endowment for the Humanities
National Science Foundation
Nuclear Regulatory Commission
Small Business Administration
Veterans' Administration

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DEPARTMENT OF AGRICULTURE
7 CFR PART 15B
NUCLEAR REGULATORY COMMISSION
10 CFR PART 4
DEPARTMENT OF ENERGY
10 CFR PART 1040
SMALL BUSINESS ADMINISTRATION
13 CFR PART 113
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
14 CFR PART 1251
DEPARTMENT OF STATE
22 CFR PART 142
INTERNATIONAL DEVELOPMENT COOPERATION AGENCY
Agency for International Development
22 CFR PART 217
DEPARTMENT OF EDUCATION
34 CFR PART 104
VETERANS ADMINISTRATION
38 CFR PART 18
ENVIRONMENTAL PROTECTION AGENCY
40 CFR PART 7
DEPARTMENT OF HEALTH AND HUMAN SERVICES
45 CFR PART 84
NATIONAL SCIENCE FOUNDATION
45 CFR PART 606
NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES
National Endowment for the Arts
45 CFR PART 1151
National Endowment for the Humanities
45 CFR PART 1170
ACTION
45 CFR PART 1232

**Enforcement of Nondiscrimination on the Basis of Handicap in Federally Assisted Programs**

**AGENCIES:** ACTION, Departments of Agriculture, Education, Energy, Health and Human Services, and State, Environmental Protection Agency, International Development Cooperation Agency, National Aeronautics and Space Administration, National Foundation on the Arts and the Humanities, National Endowment for the Arts and National Endowment for the Humanities, National Science Foundation, Nuclear Regulatory Commission, Small Business Administration, Veterans Administration.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This proposed regulation would amend the regulations issued by the agencies listed above for enforcement of section 504 of the Rehabilitation Act of 1973, as amended, in federally assisted programs or activities to include a cross-reference to the Uniform Federal Accessibility Standards (UFAS). Because some facilities subject to new construction or alteration requirements under section 504 are also subject to the Architectural Barriers Act, governmentwide reference to UFAS will diminish the possibility that recipients of Federal financial assistance would face conflicting enforcement standards. In addition, reference to UFAS by all Federal funding agencies will reduce potential conflicts when a building is subject to the section 504 regulations of more than one Federal agency.

**DATE:** Comments must be received by May 8, 1989.

**ADDRESSES:** See individual agencies below.

Copies of this notice are available on tape for persons with impaired vision. They may be obtained from the Coordination and Review Section, Civil Rights Division, Department of Justice, Washington, DC 20530; (202) 724–2222 (voice) or 724–7678 (TDD).

**FOR FURTHER INFORMATION CONTACT:** See individual agencies below.

**SUPPLEMENTARY INFORMATION:** Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), provides in part that

> No otherwise qualified individual with handicaps in the United States * * * shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance * * *.

The above listed agencies' existing section 504 regulations for federally assisted programs or activities require that new construction be designed and built to be accessible and that alterations of facilities be made in an accessible manner. Except as otherwise noted in the additional supplementary information, the regulations state that new construction or alteration accomplished in accordance with the "American National Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped" published by the American National Standards Institute, Inc. (ANSI A117.1–1961 (R1971) (ANSI)) meets the requirements of section 504. Three agencies (the Department of Agriculture, the Environmental Protection Agency, and the Small Business Administration) reference the 1980 edition, ANSI A117.1–1980. The proposed revision set forth in this document will reference UFAS in place of the current standard.

On August 7, 1984, UFAS was issued by the four agencies establishing standards under the Architectural Barriers Act (49 FR 31528 (see discussion *infra*)). The Department of Justice (DOJ), as the agency responsible under Executive Order 12250 for coordinating the enforcement of section 504, has recommended that agencies amend their section 504 regulations for federally assisted programs or activities to establish that, with respect to new construction and alterations, compliance with UFAS shall be deemed to be compliance with section 504. Because some facilities subject to new construction or alteration requirements under section 504 are also subject to the Architectural Barriers Act, governmentwide reference to UFAS will diminish the possibility that recipients of Federal financial assistance would face conflicting enforcement standards. In addition, reference to UFAS by all Federal funding agencies will reduce potential conflicts when a building is subject to the section 504 regulations of more than one Federal agency.

**Background of Accessibility Standards**

The Architectural Barriers Act of 1968, 42 U.S.C. 4151–4157, requires certain Federal and federally funded buildings to be designed, constructed, and altered in accordance with accessibility standards. It also designates four agencies (the General Services Administration, the Departments of Defense, and Housing and Urban Development, and the U.S. Postal Service) to prescribe the accessibility standards. Section 502 of the Rehabilitation Act of 1973 established the Architectural and Transportation Barriers Compliance Board (ATBCB). In 1978 the Rehabilitation Act was amended to require the ATBCB, *inter alia*, to issue minimum guidelines and requirements for the standards to be issued by the four standard-setting



agencies. The minimum guidelines were published on August 4, 1982 (47 FR 33862), and are codified at 36 CFR Part 1190.[1]

On August 7, 1984, the four standard-setting agencies issued UFAS as an effort to minimize the differences among their Barriers Act standards, and among those standards and accessibility standards used by the private sector. The General Services Administration (GSA) and Department of Housing and Urban Development (HUD) have incorporated UFAS into their Barriers Act regulations (*see* 41 CFR Subpart 101–19.6 (GSA) and 24 CFR Part 40 (HUD)). In order to ensure uniformity, UFAS was designed to be consistent with the scoping and technical provisions of the ATBCB's minimum guidelines and requirements, as well as with the technical provisions of ANSI A117.1–1980. ANSI is a private, national organization that publishes recommended standards on a wide variety of subjects. The original ANSI A117.1 was adopted in 1961 and reaffirmed in 1971. The current edition, issued in 1986, is ANSI A117.1–1986. The 1961, 1980, and 1986 ANSI standards are frequently used in private practice and by State and local governments.

This proposed amendment would amend the agencies' section 504 regulations to refer to UFAS.

The agencies have determined that they will not require the use of UFAS, or any other standard, as the sole means by which recipients can achieve compliance with the requirement that new construction and alterations be accessible. To do so would unnecessarily restrict recipients' ability to design for particular circumstances. In addition, it might create conflicts with State or local accessibility requirements that may also apply to recipients' buildings and that are intended to achieve ready access and use. It is expected that in some instances recipients will be able to satisfy the section 504 new construction and alteration requirements by following applicable State or local codes, and vice versa.

**Effect of Amendment**

Except as otherwise noted in the additional supplementary information for individual agencies, the agencies' current section 504 rules require that new facilities be designed and constructed to be readily accessible to and usable by persons with handicaps and that alterations be accessible to the maximum extent feasible. The amendment would not affect the current requirement but would merely provide that compliance with UFAS with respect to buildings (as opposed to "facilities," a broader term that encompasses buildings as well as other types of property) shall be deemed compliance with these requirements with respect to those buildings. Thus, for example, an alteration is accessible "to the maximum extent feasible" if it is done in accordance with UFAS. It should be noted that UFAS contains special requirements for alterations where meeting the general standards would be impracticable or infeasible (*see, e.g.*, UFAS sections 4.1.6(1)(b), 4.1.6(3), 4.1.6(4), and 4.1.7).

The amendment also includes language providing that departures from particular UFAS technical and scoping requirements are permitted so long as the alternative methods used will provide substantially equivalent or greater access to and utilization of the building. Allowing these departures from UFAS will provide recipients with necessary flexibility to design for special circumstances and will facilitate the application of new technologies that are not specified in UFAS. As explained under "Background of Accessibility Standards," the agencies anticipate that compliance with some provisions of applicable State and local accessibility requirements will provide "substantially equivalent" access. In some circumstances, recipients may choose to use methods specified in model building codes or other State or local codes that are not necessarily applicable to their buildings but that achieve substantially equivalent access.

The amendment requires that the alternative methods provide "substantially" equivalent or greater access, in order to clarify that the alternative access need not be precisely equivalent to that afforded by UFAS. Application of the "substantially equivalent access" language will depend on the nature, location, and intended use of a particular building. Generally, alternative methods will satisfy the requirement if in material respects the access is substantially equivalent to that which would be provided by UFAS in such respects as safety, convenience, and independence of movement. For example, it would be permissible to depart from the technical requirement of UFAS section 4.10.9 that the inside dimensions of an elevator car be at least 68 inches or 80 inches (depending on the location of the door) on the door opening side, by 54 inches, if the clear floor area and the configuration of the car permits wheelchair users to enter the car, make a 360° turn, maneuver within reach of controls, and exit from the car. This departure is permissible because it results in access that is safe, convenient, and independent, and therefore substantially equivalent to that provided by UFAS.

With respect to UFAS scoping requirements, it would be permissible in some circumstances to depart from the UFAS new construction requirement of one accessible principal entrance at each grade floor level of a building (see UFAS section 4.1.2(8)), if safe, convenient, and independent access is provided to each level of the new facility by a wheelchair user from an accessible principal entrance. This departure would not be permissible if it required an individual with handicaps to travel an extremely long distance to reach the spaces served by the inaccessible entrances or otherwise provided access that was substantially less convenient than that which would be provided by UFAS.

It would not be permissible for a recipient to depart from UFAS' requirement that, in new construction of a long-term care facility, at least 50% of all patient *bedrooms* be accessible (see UFAS section 4.1.4(9)(b)), by using large accessible wards that make it possible for 50% of all *beds* in the facility to be accessible to individuals with handicaps. The result is that the population of individuals with handicaps in the facility will be concentrated in large wards, while able-bodied persons will be concentrated in smaller, more private rooms. Because convenience for persons with handicaps is therefore compromised to such a great extent, the degree of accessibility provided to persons with handicaps is not substantially equivalent to that intended to be afforded by UFAS.

It should be noted that the amendment does not require that existing buildings leased by recipients meet the standards for new construction and alterations. Rather, it continues the current Federal practice under section 504 of treating newly leased buildings as subject to the program accessibility standard for existing facilities.

Buildings under design on the effective date of this amendment will be governed by the amendment if the date that bids were invited falls after the effective date. This interpretation is consistent with GSA's Architectural

[1] The ATBCB Office of Technical Services is available to provide technical assistance to recipients upon request relating to the elimination of architectural barriers. Its address is: U.S. ATBCB, Office of Technical Services, 1111 18th Street, NW., Suite 500, Washington, DC 20036. The telephone number is (202) 653–7834 [voice/TDD]. This is not a toll free number.

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Barriers Act regulation incorporating UFAS, at 41 CFR Subpart 101–19.6.

The proposed revision includes language modifying the effect of UFAS section 4.1.6(1)(g), which provides an exception to UFAS 4.1.6, *Accessible buildings: Alterations.* Section 4.1.6(1)(g) of UFAS states that "mechanical rooms and other spaces which normally are not frequented by the public or employees of the building or facility or which by nature of their use are not required by the Architectural Barriers Act to be accessible are excepted from the requirements of 4.1.6." Particularly after the development of specific UFAS provisions for housing alterations and additions, UFAS section 4.1.6(1)(g) could be read to exempt alterations to privately owned residential housing, which is not covered by the Architectural Barriers Act unless leased by the Federal Government for subsidized housing programs. This exception, however, is not appropriate under section 504, which protects beneficiaries of housing provided as part of a federally assisted program. Consequently, the proposed amendment provides that, for purposes of this section, section 4.1.6(1)(g) of UFAS shall be interpreted to exempt from the requirements of UFAS only mechanical rooms and other spaces that, because of their intended use, will not require accessibility to the public or beneficiaries, or result in the employment or residence therein of persons with handicaps.

The proposed revision also provides that whether or not the recipient opts to follow UFAS in satisfaction of the ready access requirement, the recipient is not required to make building alterations that have little likelihood of being accomplished without removing or altering a load-bearing structural member. This provision does not relieve recipients of their obligation under the current regulation to ensure program accessibility.

Several agencies' section 504 regulations for federally assisted programs are contained in parts entitled "Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance." This document deletes the phrase "or benefiting from" from those titles. The phrase is being deleted pursuant to *Department of Transportation* v. *Paralyzed Veterans of America*, 477 U.S. 597 (1986), which held that air transportation services provided by airlines were not part of the covered program or activity because the airlines were not the intended recipient of the Federal financial assistance to airports, even if the airlines benefited from that assistance. The recent passage of the Civil Rights Restoration Act of 1987, Pub. L. 100–259, does not overrule or alter this result. S. Rep. No. 64, 100th Cong., 1st Sess. 29 (1987).

This document has been reviewed by DOJ. It is an adaptation of a prototype prepared by DOJ under Executive Order 12250 of November 2, 1980. The ATBCB has been consulted in the development of this document in accordance with 28 CFR 41.7.

The proposed common rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981. As required by the Regulatory Flexibility Act, it is hereby certified that this proposed rule will not have a significant impact on small business entities.

### Adoption of the Common Rule

The adoption of the common rule by the agencies in this document appears below.

## DEPARTMENT OF AGRICULTURE

### 7 CFR Part 15b

**ADDRESSES:** Comments should be sent to: The Associate Director, Equal Opportunity, Office of Advocacy and Enterprise, U.S. Department of Agriculture, Washington, DC 20250.

Comments received will be available for public inspection in the Office of Advocacy and Enterprise, Equal Opportunity, Room 1226, South Bldg., 14th and Independence Ave., SW., Washington, DC 20250 from 8:30 a.m. to 5:00 p.m. Monday through Friday except legal holidays.

**FOR FURTHER INFORMATION CONTACT:** James A. Westbrooks, Special Assistant, Equal Opportunity, Office of Advocacy and Enterprise, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–5681, TTY 382–1130.

**ADDITIONAL SUPPLEMENTARY INFORMATION:** This notice also revises the definition of "historic properties" in § 15b.3(q) in order to conform it to UFAS section 4.1.7(1)(a). Historic properties under the current definition are limited to those listed or eligible for listing in the National Register of Historic Places. The special historic preservation section of UFAS applies additionally to buildings and facilities designated as historic under State and local law.

**List of Subjects in 7 CFR Part 15b**

Blind, Buildings, Civil rights, Employment, Equal employment opportunity, Grant programs, Handicapped, Historic preservation, Loan programs.

For the reasons stated in the preamble, Part 15b of title 7 of the Code of Federal Regulations is proposed to be amended as follows:

### PART 15b—NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

1. The title for Part 15b is revised to read as set forth above.

2. The authority citation for Part 15b is revised to read as follows:

**Authority:** 29 U.S.C. 794.

2. In § 15b.3, "Definitions," paragraph (q) is revised to read as follows:

**§ 15b.3 Definitions.**

* * * * *

(q) For purposes of § 15b.18(d), "Historic properties" means those buildings or facilities that are eligible for listing in the National Register of Historic Places, or such properties designated as historic under a statute of the appropriate State or local government body.

* * * * *

**§ 15b.19 [Amended]**

4. In § 15b.19, "New construction," paragraph (c) is revised to read as set forth at the end of this document.

**William C. Payne, Jr.,**

*Deputy Associate Director.*

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 4

**ADDRESSES:** Comments should be sent to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Docketing & Service Branch. Comments received will be available for public inspection at The NRC Public Document Room, 1717 H Street, NW., Washington, DC 20555 from 7:30 a.m. to 4:15 p.m. Monday through Friday except legal holidays.

**FOR FURTHER INFORMATION CONTACT:** Mr. Edward E. Tucker, Manager, Civil Rights Program, Office of Small and Disadvantaged Business Utilization/ Civil Rights, U.S. Nuclear Regulatory Commission, Washington, DC 20555.Telephone: (301) 492-7697 (voice) or (800) 638-8282 (TDD).

**List of Subjects in 10 CFR Part 4**

Administrative practice and procedure, Blind, Buildings, Civil rights, Employment, Equal employment opportunity, Federal aid programs, Grant programs, Handicapped, Loan programs, Reporting and recordkeeping requirements, Sex discrimination.



For the reasons stated in the preamble, Part 4 of title 10 of the Code of Federal Regulations is proposed to be amended as follows:

### PART 4—NONDISCRIMINATION IN FEDERALLY ASSISTED COMMISSION PROGRAMS

1. The authority citation for Part 4 is revised to read as follows:

**AUTHORITY:** Sec. 181, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 274, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 207, Pub. L. 95–604, 92 Stat. 3033.

Subpart A also issued under secs. 602–605, Pub. L. 88–352, 78 Stat. 252, 253 (42 U.S.C. 2000d–1–2000d–4); sec. 401, 88 Stat. 1254 (42 U.S.C. 5891). Subpart B also issued under sec. 504, Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 706); sec. 119, Pub. L. 95–602, 92 Stat. 2984 (29 U.S.C. 794); sec. 122, Pub. L. 95–602, 92 Stat. 2984 (29 U.S.C. 706(6)). Subpart C also issued under Title III of Pub. L. 94–135, 89 Stat. 728, as amended (42 U.S.C. 6101). Subpart E also issued under 29 U.S.C. 794.

**§ 4.128 [Amended]**

2. In § 4.128, "New construction," paragraph (a) is amended by adding the heading *"Design, construction, and alteration."* to the beginning of the paragraph.

3. Section 4.128 is further amended by revising paragraph (b) to read as set forth at the end of this document.

**Victor Stello, Jr.,**

*Executive Director for Operations.*

## DEPARTMENT OF ENERGY

### 10 CFR Part 1040

**ADDRESSES:** Comments should be sent to: Marion A. Bowden, 1000 Independence Avenue, SW., Rm. 4B–112, Washington, DC 20585.

Comments received will be available for public inspection at 1000 Independence Avenue, SW., Rm. 4B–112, Washington, DC 20585 from 8 a.m. to 5 p.m. Monday through Friday except legal holidays.

**FOR FURTHER INFORMATION CONTACT:** Marion A. Bowden, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–2218 (voice) or 252–9777 (TDD).

**List of Subjects in 10 CFR Part 1040**

Aged, Blind, Buildings, Civil rights, Employment, Equal employment opportunity, Grant programs, Handicapped, Loan programs, Sex discrimination.

For the reasons stated in the preamble, Part 1040 of title 10 of the Code of Federal Regulations is proposed to be amended as follows:

### PART 1040—NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS

1. The authority citation for Part 1040 is revised to read as follows:

**Authority:** 20 U.S.C. 1681–1686; 29 U.S.C. 794, 794a., 794b., 42 U.S.C. 2000d to 2000d–4, 3601–3631, 5891, 6101–6107, 6870, 7161 *et seq.*

**§ 1040.73 [Amended]**

2. In § 1040.73, "New construction," paragraph (c) is revised to read as set forth at the end of this document.

**July 1, 1988.**

**Marion A. Bowden,**

*Director, Office of Equal Opportunity*

## SMALL BUSINESS ADMINISTRATION

### 13 CFR Part 113

**ADDRESSES:** Comments should be sent to: J. Arnold Feldman, Chief, Office of Civil Rights Compliance, 1441 L Street NW., Suite 501, Washington, DC 20416

Comments received will be available for public inspection at 1441 L Street NW., Suite 501, Washington, DC, from 8:30 a.m. to 5 p.m. Monday through Friday except legal holidays.

**FOR FURTHER INFORMATION CONTACT:** J. Arnold Feldman, Chief, Office of Civil Rights Compliance, Small Business Administration, 1441 L Street NW., Suite 501, Washington, DC 20416, (202) 653–6054 (Voice), (202) 653–6579 (TDD) These are not toll-free numbers

**ADDITIONAL SUPPLEMENTARY INFORMATION:** The Small Business Administration currently requires compliance with a particular standard (the 1980 edition of the ANSI). Under this amendment, compliance with a particular standard is no longer mandated. Rather, recipients are encouraged to follow UFAS for new construction and alterations subject to the regulation

**List of Subjects in 13 CFR Part 113**

Blind, Buildings, Civil rights, Discrimination based on race, Color, Religion, Sex, Marital status, Age Handicap or national origin, Employment, Equal employment opportunity, Grant programs, Handicapped, Loan programs

For the reasons stated in the preamble, Part 113 of title 13 of the Code of Federal Regulations is proposed to be amended as follows:

### PART 113—NONDISCRIMINATION IN FINANCIAL ASSISTANCE PROGRAMS OF SBA—EFFECTUATION OF POLICIES OF FEDERAL GOVERNMENT AND SBA ADMINISTRATOR

1. The authority citation for Part 113 is revised to read as follows:

**Authority:** Secs. 5, 308, 72 Stat. 385, 694, as amended; 15 U.S.C. 633, 634, 657, 1691; 20 U.S.C. 1681–1688; 29 U.S.C. 794.

**§ 113.3–3 [Amended]**

1. In 113.3–3, "Structural accommodations for handicapped clients," paragraph (a) is amended by adding the heading *"Existing facilities."* at the beginning of the paragraph.

2. Section 113.3–3 is further amended by adding the heading *"Design, construction, and alteration."* at the beginning of paragraph (b) and by adding a new sentence after the heading to read as follows: "New facilities shall be designed and constructed to be readily accessible to and usable by persons with handicaps."

3. Section 113.3–3 is further amended by revising paragraph (c) to read as set forth at the end of this document.

**James Abdnor,**

*Administrator.*

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### 14 CFR Part 1251

**ADDRESS:** Ms. Lynda Sampson, Handicapped and Aged Employment Program Manager, National Aeronautics and Space Administration, Room 6111, Code UI, 400 Maryland Avenue SW., Washington, DC 20546.

Comments received will be available for public inspection at the above address from 10:00 a.m. to 3:00 p.m., Monday through Friday, except legal holidays.

**FOR FURTHER INFORMATION CONTACT:** Ms. Lynda Sampson, (202) 453–2177 (voice) or (202) 426–1436 (TDD)

**List of Subjects in 14 CFR Part 1251**

Blind, Buildings, Civil rights, Employment, Equal employment opportunity, Grant programs, Handicapped, Loan programs.

For the reasons stated in the preamble, Part 1251 of title 14 of the Code of Federal Regulations is proposed to be amended as follows:

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## PART 1251—NONDISCRIMINATION ON BASIS OF HANDICAP

1. The authority citation for Part 1251 is revised to read as follows:

**Authority:** 29 U.S.C. 794.

**§ 1251.302 [Amended]**

2. In § 1251.302, "New construction," paragraph (c) is revised to read as set forth at the end of this document.

**James C. Fletcher,**

*Administrator.*

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## DEPARTMENT OF STATE

### 22 CFR Part 142

**ADDRESSES:** Comments should be sent to: William O. Wallace, Attorney-Adviser, Office of Equal Employment Opportunity and Civil Rights, Department of State, Room 4216, Washington, DC 20520.

Comments received will be available for public inspection at Room 4216, Department of State, Washington, DC 20520 from 8:15 a.m. to 4:45 p.m., Monday through Friday, except legal holidays.

**FOR FURTHER INFORMATION CONTACT:** William O. Wallace, Attorney-Adviser, Office of Equal Employment Opportunity and Civil Rights, Department of State, Room 4216, Washington, DC 20520, (202) 647–9258 (voice or TDD).

**ADDITIONAL SUPPLEMENTARY INFORMATION:** The Department of State's existing section 504 requirement for alterations, contained at 22 CFR 142.17(b), mandates compliance with the standards set forth in 41 CFR subpart 101–19.6 (*i.e.*, UFAS). Under this amendment, compliance with UFAS is no longer mandated, but is merely encouraged. This notice also amends paragraph (a), which incorrectly implies that all federally funded construction since 1968 is subject to the Architectural Barriers Act. In fact, only certain federally funded construction triggers Architectural Barriers Act coverage.

**List of Subjects in 22 CFR Part 142**

Blind, Buildings, Civil rights, Employment, Equal employment opportunity, Grant programs, Handicapped, Loan programs.

For the reasons stated in the preamble, Part 142 of title 22 of the Code of Federal regulations is proposed to be amended as follows:

## PART 142—NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

1. The title for Part 142 is revised to read as set forth above.

2. The authority citation for Part 142 is revised to read as follows:

**Authority:** 29 U.S.C. 794.

3. In § 142.17, paragraphs (a) and (b) are revised to read as follows:

**§ 142.17 New construction.**

(a) *Design and construction.* Each facility or part of a facility constructed by, on behalf of, or for the use of a recipient shall be designed, constructed, and operated in a manner so that the facility or part of the facility is accessible to and usable by persons with handicaps, if the construction was commenced after the effective date of this part.

(b) *Alteration.* Each facility or part of a facility which is altered by, on behalf of, or for the use of a recipient after the effective date of this part in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered so that the altered portion of the facility is readily accessible to and usable by persons with handicaps.

* * * * *

3. Section 142.17 is further amended by revising paragraph (c) to read as set forth at the end of this document.

**Kenneth Hunter,**

*Associate Director for Personnel, Department of State.*

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## INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

### Agency for International Development

### 22 CFR Part 217

**ADDRESSES:** Comments should be sent to: Dennis G. Diamond, Acting Director, Office of Equal Opportunity Programs, Agency for International Development, Washington, DC 20523.

Comments received will be available for public inspection at Room 1224 SA–1, 2401 "E" Street NW., Washington, DC from 8:45 a.m. to 5:30 p.m. Monday through Friday except legal holidays.

**FOR FURTHER INFORMATION CONTACT:** Leticia Peoples, 663–1340 (Voice) or 663–1337 (TDD).

**List of Subjects in 22 CFR Part 217**

Blind, Buildings, Civil rights, Employment, Equal employment opportunity, Grant programs, Handicapped, Loan programs.

For the reasons stated in the preamble, Part 217 of title 22 of the Code of Federal Regulations is proposed to be amended as follows:

## PART 217—NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

1. The title for Part 217 is revised to read as set forth above.

2. The authority citation for Part 217 is revised to read as follows:

**Authority:** 29 U.S.C. 794.

**§ 217.23 [Amended]**

3. In § 217.23, "New construction," paragraph (c) is revised to read as set forth at the end of this document.

**Dennis Diamond,**

*Acting Director.*

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## DEPARTMENT OF EDUCATION

### 34 CFR Part 104

**ADDRESSES:** Comments should be sent to: LeGree S. Daniels, Assistant Secretary for Civil Rights, Room 5000, Mary E. Switzer Building, 330 C Street SW., Washington, DC 20202–1100.

Comments received will be available for public inspection at Office for Civil Rights Law Library, Room 5022, Mary E. Switzer Building, 330 C Street SW., Washington, DC 20202–1100 from 9 a.m. to 5 p.m. Monday through Friday except legal holidays.

**FOR FURTHER INFORMATION CONTACT:** Frederick T. Cioffi, Acting Director, Policy and Enforcement Service, Room 5046A, Mary E. Switzer Building, 330 C Street SW., Washington, DC 20202–1100, 732–1635 (Voice) or 566–2673 (TDD).

**List of Subjects in 34 CFR Part 104**

Blind, Buildings, Civil rights, Education, Educational facilities, Employment, Equal educational opportunity, Equal employment opportunity, Grant programs, Handicapped, Loan programs, School construction.

For the reasons stated in the preamble, Part 104 of title 34 of the Code of Federal Regulations is proposed to be amended as follows:

## PART 104—NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

1. The title for Part 104 is revised to read as set forth above.



2. The authority citation for Part 104 is revised to read as follows:

**Authority:** 20 U.S.C. 1405; 29 U.S.C. 794.

**§ 104.23 [Amended]**

3. In § 104.23, "New construction," paragraph (c) is revised to read as set forth at the end of this document.

**Appendix A—[Amended]**

4. Appendix A, No. 21, referring to the ANSI standard, is removed.

**Laura F. Cavazos,**

*Secretary of Education.*

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## VETERANS ADMINISTRATION

### 38 CFR Part 18

**ADDRESS:** Interested person are invited to submit written comments, suggestions, or objections to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue NW, Washington, DC 20420. All written comments received will be available for public inspection in the Veterans Services Unit, room 132, at the above address only between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday (except holidays) until April 17, 1989.

**FOR FURTHER INFORMATION CONTACT:** Mr. William Nunn, Equal Opportunity Specialist, Office of Equal Opportunity, (202) 233–2150 or (202) 233–3710 (TDD).

**ADDITIONAL SUPPLEMENTARY INFORMATION:** The VA has determined that this proposed regulation is not a "major rule" within the meaning of Executive Order 12291, Federal Regulation. It will not have an annual effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers or individual industries, and will not have any other significant adverse effects on the economy.

The Administrator hereby certifies that this proposed regulation will not, if promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), this proposed regulation is therefore exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reasons for this certification are that the proposed regulation does not impact on small entities.

The Catalog of Federal Domestic Assistance program numbers affected by this regulation are 64.005, 64.013, 64.014, 64.015, 64.016, 64.018, 64.019, 64.020, 64.021, 64.121, 64.124, 64.203. Other financial assistance to which this requirement applies is listed in Appendix A of 38 CFR Part 18, Subpart D.

**List of Subjects in 38 CFR Part 18**

Administrative practice and procedure, Aged, Authority delegations, Blind, Buildings, Civil rights, Employment, Equal educational opportunity, Equal employment opportunity, Grant programs, Handicapped, Investigations.

Approved: February 24, 1988.

**Thomas K. Turnage,**

*Administrator.*

38 CFR Part 18, Nondiscrimination in Federally-Assisted Programs of the Veterans Administration—Effectuation of Title VI of the Civil Rights Act of 1964, is proposed to be amended as follows:

## PART 18—[AMENDED]

1. The heading and authority citation for Subpart D are revised to read as follows:

**Subpart D—Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving Federal Financial Assistance**

**Authority:** 29 U.S.C. 794; 42 U.S.C. 2000d–1 to 2000d–4, 6101–6107.

2. In § 18.423, paragraph (c) is revised to read as set forth at the end of this document.

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 7

**ADDRESSES:** Comments should be sent to: Ms. Suzanne E. Olive, Associate Director for Discrimination Complaints and External Compliance Programs, Office of Civil Rights (A–105), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Comments received will be available for public inspection at the U.S. Environmental Protection Agency, Office of Civil Rights, Room 206 West Tower, 401 M Street SW., Washington, DC 20460, from 9:00 a.m. to 3:00 p.m., Monday through Friday except legal holidays.

**FOR FURTHER INFORMATION CONTACT:** Ms. Nereid Maxey, Office of Civil Rights, EPA, at the above address; telephone 202/382–4567 (Voice) or TDD 202/382–4565.

**List of Subjects in 40 CFR Part 7**

Blind, Buildings, Civil rights, Employment, Equal employment opportunity, Grant programs, Handicapped, Loan programs, Sex discrimination.

For the reasons stated in the preamble, Part 7 of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

## PART 7—NONDISCRIMINATION IN PROGRAMS RECEIVING FEDERAL ASSISTANCE FROM THE ENVIRONMENTAL PROTECTION AGENCY

1. The authority citation for Part 7 is revised to read as follows:

**Authority:** 42 U.S.C. 2000d to 2000d–4, 29 U.S.C. 794; 33 U.S.C. 1251 nt.

**§ 7.70 [Amended]**

2. In § 7.70, "New construction," paragraphs (b), (c), and (d) are removed.

3. Section 7.70 is further amended by adding a new paragraph (b) to read as set forth at the end of this document.

**Nathaniel Scurry,**

*Director, Office of Civil Rights.*

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### 45 CFR Part 84

**ADDRESSES:** Comments should be sent to: Audrey F. Morton, Director, Office for Civil Rights, Department of Health & Human Services, Washington, DC 20201.

Comments received will be available for public inspection at Room 5034, HHS-North Building, 330 Independence Avenue SW., Washington, DC 20201, from 9:00 a.m. to 5:30 p.m. Monday through Friday except legal holidays.

**FOR FURTHER INFORMATION CONTACT:** Marcella Haynes, Director, Policy & Special Projects Staff, or Frank EG Weil, Chief, Policy Branch on (202) 245–6671 TDD (202) 472–2916.

**List of Subjects in 45 CFR Part 84**

Blind, Buildings, Civil rights, Employment, Equal employment opportunity, Grant programs, Handicapped, Health facilities, Hospitals, Loan programs.

For the reasons stated in the preamble, Part 84 of title 45 of the Code of Federal Regulations is proposed to be amended as follows:

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**PART 84—NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE**

1. The title for Part 84 is revised to read as set forth above.

2. The authority citation for Part 84 is revised to read as follows:

**Authority:** 20 U.S.C. 1405; 29 U.S.C. 794; 42 U.S.C. 290dd–2; 21 U.S.C. 1174.

**§ 84.23 [Amended]**

3. In § 84.23, "New construction," paragraph (c) is revised to read as set forth at the end of this document.

**Don Newman,**
*Acting Secretary.*

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## NATIONAL SCIENCE FOUNDATION

**45 CFR Part 605**

**ADDRESSES:** Comments should be sent to: Brenda M. Brush, Director, Office of Equal Opportunity, National Science Foundation, 1800 G Street NW., Room 546, Washington, DC 20550.

Comments received will be available for public inspection at the National Science Foundation, Room 546, 1800 G Street NW., Washington, DC 20550, from 8:30 a.m. to 5:00 p.m. Monday through Friday except legal holidays.

**FOR FURTHER INFORMATION CONTACT:** Brenda M. Brush, Director, Office of Equal Opportunity, 1800 G Street NW., Room 546, Washington, DC 20550, (202) 357–9619. TDD No.: (202) 357–9667.

**List of Subjects in 45 CFR Part 605**

Blind, Buildings, Civil rights, Employment, Equal employment opportunity, Grant programs, Handicapped, Loan programs.

For the reasons stated in the preamble, Part 605 of title 45 of the Code of Federal Regulations is proposed to be amended as follows:

**PART 605—NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE**

1. The title for Part 605 is revised to read as set forth above.

2. The authority citation for Part 605 is revised to read as follows:

**Authority:** 29 U.S.C. 794.

**§ 605.23 [Amended]**

3. In § 605.23, "New construction," paragraph (c) is revised to read as set forth at the end of this document.

**John H. Moore,**
*Acting Director, National Science Foundation.*

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## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

**National Endowment for the Arts**

**45 CFR Part 1151**

**ADDRESS:** Comments should be sent to: Arthur A. Warren, Deputy General Counsel, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Room 522, Washington, DC 20506.

Comments received will be available for public inspection at National Endowment for the Arts, Office of General Counsel, Room 522, 1100 Pennsylvania Avenue NW., Washington, DC 20506, from 9:00 a.m. to 5:30 p.m. Monday through Friday except legal holidays.

**FOR FURTHER INFORMATION CONTACT:** Paula Terry, Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, (202) 682–5532, TTY Number: (202) 682–5496.

**List of Subjects in 45 CFR Part 1151**

Blind, Buildings, Civil rights, Employment, Equal employment opportunity, Grant programs, Handicapped, Loan programs.

For the reasons stated in the preamble, Part 1151 of title 45 of the Code of Federal Regulations is proposed to be amended as follows:

**PART 1151—NONDISCRIMINATION ON THE BASIS OF HANDICAP**

1. The authority citation for Part 1151 is revised to read as follows:

**Authority:** 29 U.S.C. 794.

**§ 1151.23 [Amended]**

2. In § 1151.23, "New construction," paragraph (a) is amended by adding the heading "*Design, construction, and alteration*" to the beginning of the paragraph.

3. Section 1151.23 is further amended by revising paragraph (b) to read as set forth at the end of this document.

**Francis S.M. Hodsoll,**
*Chairman, National Endowment for the Arts.*

**National Endowment for the Humanities**

**45 CFR Part 1170**

**ADDRESS:** Comments should be sent to: Carol M. Gordon, Director, Office of Equal Opportunity.

Comments received will be available for public inspection at 1100 Pennsylvania Avenue NW., Room 419, Washington, DC 20506 from 8:30 a.m. to 4:00 p.m. Monday through Friday except legal holidays.

**FOR FURTHER INFORMATION CONTACT:** Carol M. Gordon (202) 786–0410 (Voice) or 786–0282 (TDD).

**List of Subjects in 45 CFR Part 1170**

Blind, Buildings, Civil rights, Employment, Equal employment opportunity, Grant programs, Handicapped, Loan programs.

For the reasons stated in the preamble, Part 1170 of title 45 of the Code of Federal Regulations is proposed to be amended as follows:

**PART 1170—NONDISCRIMINATION ON THE BASIS OF HANDICAP IN FEDERALLY ASSISTED PROGRAMS AND ACTIVITIES**

1. The authority citation for Part 1170 is revised to read as follows:

**Authority:** 29 U.S.C. 794.

**§ 1170.33 [Amended]**

2. In § 1170.33 "New construction," paragraph (a) is amended by adding the heading "*Design, construction, and alteration*" to the beginning of the paragraph.

3. Section 1170.33 is further amended by revising paragraph (b) to read as set forth at the end of this document.

**Lynne V. Cheney,**
*Chairman.*

---

## ACTION

**45 CFR Part 1232**

**ADDRESSES:** Comments should be sent to: Jeanne D. McCamley, ACTION, Office of the Director, Equal Opportunity Staff, 806 Connecticut Avenue NW., Washington, DC 20525.

Comments received will be available for public inspection at 806 Connecticut Avenue NW—Room 207, Washington, DC from 9:00 a.m. to 5:00 p.m. Monday through Friday except legal holidays.



**FOR FURTHER INFORMATION CONTACT:** Jeanne D. McCamley, ACTION, Office of the Director, Equal Opportunity Staff, 806 Connecticut Avenue NW., Washington, DC 20525. 634–9312 (voice) or 566–2673 (JDD).

**List of Subjects in 45 CFR Part 1232**

Blind, Buildings, Civil rights, Employment, Equal employment opportunity, Grant programs, Handicapped, Loan programs.

For the reasons stated in the preamble, Part 1232 of title 45 of the Code of Federal Regulations is proposed to be amended as follows:

**PART 1232—NON-DISCRIMINATION ON BASIS OF HANDICAP IN PROGRAMS RECEIVING FEDERAL FINANCIAL ASSISTANCE FROM ACTION**

1. The authority citation for Part 1232 is revised to read as follows:

**Authority:** 29 U.S.C. 794.

**§ 1232.15 [Amended]**

2. In § 1232.15, "New construction," paragraph (a) is amended by adding the heading "*Design, construction, and alternation.*" to the beginning of the paragraph.

3. Section 1232.15 is further amended by revising paragraph (b) to read as set forth at the end of this document.

**Donna M. Alvarado,**
*Director.*

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**Text of the Common Rule**

The text of the common rule as adopted by the agencies in this document appears below.

§ _____

* * * * *

(____) *Conformance with Uniform Federal Accessibility Standards.* (1) Effective as of [insert the effective date of this regulation], design, construction, or alteration of buildings in conformance with sections 3–6 of the Uniform Federal Accessibility Standards (UFAS) (Appendix A to 41 CFR Subpart 101–19.6) shall be deemed to comply with the requirements of this section with respect to those buildings. Departures from particular technical and scoping requirements of UFAS by the use of other methods are permitted where substantially equivalent or greater access to and usability of the building is provided.

(2) For purposes of this section, section 4.1.6(1)(g) of UFAS shall be interpreted to exempt from the requirements of UFAS only mechanical rooms and other spaces that, because of their intended use, will not require accessibility to the public or beneficiaries or result in the employment or residence therein of persons with physical handicaps.

(3) This section does not require recipients to make building alterations that have little likelihood of being accomplished without removing or altering a load-bearing structural member.

[FR Doc. 89–5260 Filed 3–7–89; 8:45 am]

BILLING CODES 3410–01–M; 7555–01–M; 6450–01–M; 6025–01–M; 7510–01–M; 4710–15–M; 6116–01–M; 4000–01–M; 8320–01–M; 6050–28–M; 4150–04–M; 7505–01–M; 7537–01–M; 7536–01–M; 8050–28–M

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Wednesday
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Part III

# Department of Education

Office of Special Education and Rehabilitative Services

## Handicapped Special Studies Program; Notice Inviting Applications for New Awards for Fiscal Year 1989; Notices

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## DEPARTMENT OF EDUCATION

### Office of Special Education and Rehabilitative Services

### Handicapped Special Studies Program

**AGENCY:** Department of Education.

**ACTION:** Notice of final annual evaluation priority.

**SUMMARY:** The Secretary announces an annual evaluation priority for the Handicapped Special Studies program. This priority has been selected to ensure effective use of program funds and to meet requirements of the Education of the Handicapped Act (EHA).

**EFFECTIVE DATE:** This priority takes effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of this priority call or write the Department of Education contact person.

**FOR FURTHER INFORMATION CONTACT:** Linda Glidewell, Division of Innovation and Development, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 3511–M/S 2313), Washington, DC 20202. Telephone: (202) 732–1099.

**SUPPLEMENTARY INFORMATION:** The Handicapped Special Studies program, authorized by section 618 of Part B of the Education of the Handicapped Act (EHA), as amended, supports studies to evaluate the impact of the Act, including efforts to provide a free appropriate public education and early intervention services to infants, toddlers, children and youth with handicaps. The results of these studies must be included in the annual report submitted to the Congress by the Department.

A notice of proposed funding priorities was published in the **Federal Register** on September 29, 1988 at 53 FR 38254, which contained the following two proposed priorities for fiscal year 1989 awards under this program:

(1) State Agency/Federal Evaluation Studies Projects; and

(2) Design Study for Obtaining National Estimates of Outcome Data on Children and Youth with Handicaps.

There is no difference between the proposed priorities and these final priorities.

However, due to budget constraints, the Secretary intends to award a contract in fiscal year 1990 to carry out the study described in priority (2). Under the Department's procedures, requests for proposals for individual contracts are announced in the *Commerce Business Daily* pursuant to the Federal Acquisition Regulation in 48 CFR Chapter 1 and the Education Department Acquisition Regulation in 48 CFR Chapter 34, and are not subject to section 431 of the General Education Provisions Act, which establishes procedures for promulgating rules and regulations that apply to the Department's non-procurement programs. The priority described under (1), *State Agency/Federal Evaluation Studies Projects*, has been selected as a final priority for cooperative agreements to be entered into by the Secretary and State agencies, and, therefore, is included in this notice of final annual evaluation priority, in accordance with section 431.

### Public Comment

In the September 29th notice, the Secretary invited comments on the proposed annual priorities. The Secretary did not receive any comments. The Secretary has made no changes in the priorities since publication of the proposed priorities.

### Priority

The Secretary announces a priority under the Handicapped Special Studies Program. In accordance with the Education Department General Administrative Regulations (EDGAR, 34 CFR 75.105(c)(1)), the Secretary invites applications for cooperative agreements to support certain types of studies.

*Priority 1. State Agency/Federal Evaluation Studies Projects.* (CFDA No. 84.159)

The purpose of this priority is to support evaluation studies by State agencies to assess the impact and effectiveness of activities assisted under the Education of the Handicapped Act. Within this priority, the Secretary particularly invites studies that: (1) Examine the relationship between State and local administrative factors (e.g., funding formulas, personnel certification, or other policies and procedures) and placement of students with handicaps in regular education environments; (2) examine the impact of various aspects of educational reform (e.g., increased graduation requirements, use of minimum competency testing to determine graduation eligibility, increased academic and curricular requirements, more rigorous promotion policies, etc.) on special education; or (3) examine the relationship between students' educational characteristics and their adult service needs.

In accordance with the Education Department General Administrative Regulations (EDGAR, 34 CFR 75.105(c)(1)), applications for studies described in items (1), (2), and (3) will not receive a competitive or absolute preference over other applications that propose evaluation studies to assess the impact and effectiveness of activities assisted under the Education of the Handicapped Act.

**Authority:** 20 U.S.C. 1418.

Dated: February 21, 1989.

**Lauro F. Cavazos,**

*Secretary of Education.*

(Catalog of Federal Domestic Assistance Number 84.159; Handicapped Special Studies Program)

[FR Doc. 89–5262 Filed 3–7–89; 8:45 am]

BILLING CODE 4000–01–M

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**[CFDA No. 84.159]**

### Handicapped Special Studies Program; Notice Inviting Applications for New Awards for Fiscal Year 1989

*Purpose of Program:* To support the collection of data, studies, investigations, and evaluations to assess the impact and effectiveness of programs assisted under the Education of the Handicapped Act, and to provide Congress and others with this information.

*Deadline for Transmittal of Applications:* April 19, 1989.

*Applications Available:* March 9, 1989.

*Available Funds:* $760,000.

*Estimated Average Size of Awards:* $95,000.

*Estimated Number of Awards:* 7.

*Project Period:* up to 18 months.

*Applicable Regulations:* (a) The Handicapped Special Studies Program Regulations, 34 CFR Part 327, (b) The Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, 80, and 85.

*Priority:* See the Notice of Final Annual Evaluation Priority published in this issue of the **Federal Register.**

*For Applications or Information Contact:* Susan Sanchez, Division of Innovation and Development, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 3519—MES 2725), Washington, DC 20202. Telephone: (202) 732–1117.

**Program Authority:** 20 U.S.C. 1418.

Dated: March 1, 1989.

**Madeleine Will,**

*Assistant Secretary, Office of Special Education and Rehabilitative Services.*

[FR Doc. 89–5261 Filed 3–7–89; 8:45 am]

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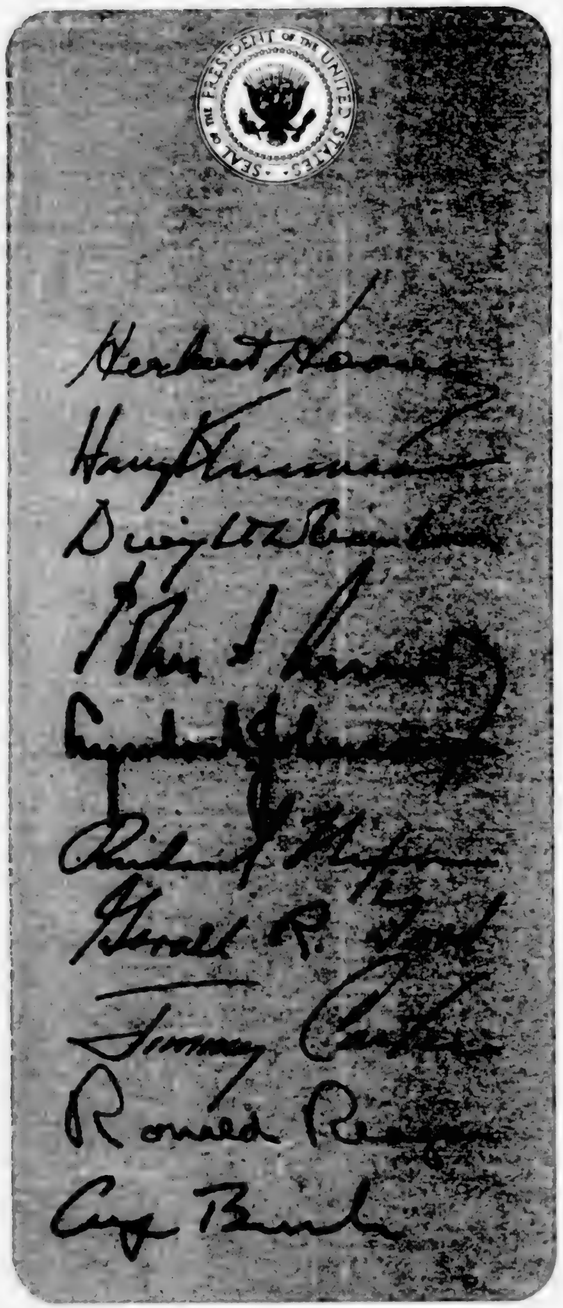
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# Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 510

### Animal Drugs, Feeds and Related Products: Sponsor Name and Address Changes

*CFR Correction*

In Title 21 of the Code of Federal Regulations, Parts 500 to 599, revised as of April 1, 1988, portions of the table in § 510.600(c)(1) appeared incorrectly.

**§ 510.600 [Corrected]**

On page 101, in the second column, the drug labeler codes in the table in paragraph (c)(1) beginning with the firm name "Solvay Veterinary, Inc." and continuing through and including "Steris Laboratories, Inc." are corrected to read "053501", "001800", "049685", "035955", "036108", "000003", "017153", "017032" and "000402" respectively.

BILLING CODE 1505-01-M

## DEPARTMENT OF JUSTICE

### 28 CFR Part 11

**[Order No. 1322-89]**

### Offset of Debts Owed the United States

**AGENCY:** Department of Justice.

**ACTION:** Interim final rule.

**SUMMARY:** The Department of Justice amends Part 11 of Title 28 of the Code of Federal Regulations by establishing procedures for referring to the Secretary of the Treasury debts that have been reduced to judgment for collection by offset against Federal income tax refunds. This regulation contains safeguards for the debtor while strengthening the ability of the Department to collect outstanding debts.

**EFFECTIVE DATE:** March 9, 1989.

**FOR FURTHER INFORMATION CONTACT:** Robert C. Niffenegger, United States Department of Justice, Justice Management Division, Room 1121, 10th Street and Constitution Avenue NW., Washington, DC 20530; (202) 633-5345. (This is not a toll free number).

**SUPPLEMENTARY INFORMATION:**

**Background**

Section 2653 of the Deficit Reduction Act, 31 U.S.C. 3720A, authorizes the Secretary of the Treasury to offset a delinquent debt owed to the Federal Government from the income tax refund due a taxpayer when other collection efforts have failed to recover the amount due. The purpose of the Act is to improve the ability of the Government to collect money owned it while adding certain notice requirements and other protections for the debtor.

The Department published a Notice of Proposed Rulemaking to implement 31 U.S.C. 3720A on June 13, 1988 (53 FR 22026). No comments were received. At the time of the initial notice publication, the Debt Collection Act provisions on tax refund offsets were to expire on July 1, 1988. The effective date of the Act was extended from July 1, 1988 to January 10, 1994 by sec. 701 of the Family Support Act of 1988, enacted October 13, 1988 (Pub. L. 100-485, 102 Stat. 2343).

The rule provides for referral of judgment debts of individuals to the Department of the Treasury for offset. (A complete discussion of the rule is contained in the Federal Register notice of June 13, 1988 [53 FR 22026].)

The Department is considering expanding its use of the tax offset program to include procedures for the collection of debts not reduced to judgment. For that reason, this rule is being published as an interim final rule. In the event that the Department determines that such expansion is warranted, the Department will publish a new notice of proposed rulemaking.

**Other Matters**

This is not a major rule within the meaning of section 1(b) of Executive Order 12291. The Department certifies that this regulation will not have a significant economic impact on a substantial number of small entities. These procedures will only apply to named individuals. Thus, the regulation will not affect any small entities. Accordingly, this rule is exempt from requirements to the Regulatory Flexibility Act, 5 U.S.C. 601-612 (Supp. 1988). This rule contains no reporting and recordkeeping requirements subject to the Paperwork Reduction Act of 1980.

**List of Subjects in 28 CFR Part 11**

Claims.

By virtue of the authority vested in me as Attorney General by 31 U.S.C. 3720A and 28 U.S.C. 301, 509 and 510, Part 11 of Title 28 of the Code of Federal Regulations is hereby amended:

**PART 11—[AMENDED]**

1. The authority citation for 28 CFR Part 11 is revised to read as follows:

**Authority:** 28 U.S.C. 301, 509, 510, 31 U.S.C. 3716, 3720A.

2. A new Subpart B is added and reserved to read as follows:

**Subpart B—[Reserved]**

3. A new Subpart C is added consisting of § 11.10 to read as follows:

**Subpart C—Tax Refund Offsets**

Sec.
§ 11.10 Procedures for tax refund offsets for the collection of judgments.

**Subpart C—Tax Refund Offsets**

**11.10 Procedures for tax refund offsets for the collection of judgments.**

(a) The Department may refer any past-due, non-paid final civil or criminal judgment debts imposed by a court of the United States against an individual to the Secretary of the Treasury for offset. (Judgments in amounts lower than $25.00 or outstanding for longer than ten years are not subject to referral.)

(b) The Department will provide the civil or criminal judgment debtor with written notice of its intent to offset before initiating the offset. Notice will be mailed to the debtor at the current address of the debtor, as determined from information obtained from the IRS' prior year's tax records or from information regarding the debt maintained by the Department of Justice. The notice sent to the debtor will inform the debtor that:

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(1) The civil or criminal judgment debt is past due;

(2) The Department intends to refer the civil or criminal judgment to the Secretary of the Treasury for offset from income tax refunds that may be due to individuals;

(3) The debtor, within 65 days of the date on the written notice, has an opportunity to:

(i) Present evidence that all or part of a civil judgment debt or a criminal fine and/or assessment is not past-due;

(ii) Present evidence that the amount of the civil judgment debt or criminal fine and/or assessment, as reported to the IRS, is not the amount currently owed;

(iii) Present evidence that the judgment debt has been stayed or satisfied.

(4) If the civil or criminal judgment debtor wishes to contest the offset, he or she must present evidence set forth under paragraph (b)(3) of this section by a date specified in the notice. The debtor must present such evidence to the Assistant Attorney General for Administration at the address specified in the notice. The Assistant Attorney General for Administration will review the evidence and make a determination whether to terminate efforts to offset the judgment, modify the amount to be referred, or refer for offset the amount stated in the notice, and notify the debtor in writing. There is no appeal of this decision.

(5) The authority of the Assistant Attorney General for Administration may be redelegated to subordinate officials as appropriate.

Date: February 6, 1989.

**Dick Thornburgh,**

*Attorney General.*

[FR Doc. 89-5477 Filed 3-8-89; 8:45 am]

BILLING CODE 4410-01-M

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

### 30 CFR Part 931

### New Mexico Permanent Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

**ACTION:** Final rule; approval of amendment.

**SUMMARY:** OSMRE is announcing the approval of an amendment to the New Mexico permanent regulatory program (hereinafter referred to as the New Mexico program), as administered by the New Mexico Mining and Minerals Division (MMD), under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment pertains to the training, examination, and certification of blasters; annual reports; regarding and stabilizing of rills and gullies; inspection and enforcement; permit conditions, applications and fees; backfilling and grading; support facilities; and disposal of noncoal waste. The amendment revises the State program to be consistent with the corresponding Federal regulations and to incorporate additional flexibility afforded by revised Federal regulations.

**EFFECTIVE DATE:** March 9, 1989.

**FOR FURTHER INFORMATION CONTACT:** Robert H. Hagen, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 625 Silver Avenue SW., Suite 310, Albuquerque, NM 87102; Telephone (505) 766-1486.

**SUPPLEMENTARY INFORMATION:**

## I. Background on the New Mexico Program

On December 31, 1980, the Secretary of the Interior conditionally approved the New Mexico program. Information regarding the general background of the New Mexico program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval can be found in the December 31, 1980, **Federal Register** (45 FR 86459). Actions taken subsequent to approval are found in 30 CFR 931.12, 931.13, 931.15, 931.16, and 931.30.

## II. Discussion of the Amendment

By letter dated June 17, 1987, New Mexico submitted to OSMRE a proposed amendment to certain provisions of Coal Surface Mining Commission (CSMC) Rule 80-1 (Administrative Record No. NM-356). OSMRE published a notice in the July 28, 1987 **Federal Register** (52 FR 28162) announcing receipt of the proposed amendment and inviting public comment on its adequacy. After reviewing the proposed amendment and all comments OSMRE notified New Mexico by letter dated November 10, 1987, of several provisions that appeared to be inconsistent with the Federal regulations (Administrative Record No. NM-390). By letter dated February 18, 1988 (Administrative Record No. NM-393) New Mexico clarified and revised those provisions which pertain to hydrologic balance protection, disposal of noncoal waste, inspection and enforcement, and backfilling and regarding of rills and gullies. To allow the public an opportunity to comment on the additional material, OSMRE reopened and extended the comment period to April 15, 1988, in a **Federal Register** notice dated March 31, 1988 (53 FR 10398). On August 10, 1988, New Mexico withdrew the proposed revisions concerning protection of the hydrologic balance at CSMC Rule 80-1-20-42(a) (3), (5), (6) and (8) (Administrative Record No. NM-438).

## III. Director's Findings

The Director finds, in accordance with SMCRA, 30 CFR 732.15, and 30 CFR 732.17, that the proposed amendment submitted by New Mexico on June 17, 1987, as subsequently revised and clarified on February 18, 1988 and August 10, 1988, meets the requirements of SMCRA and 30 CFR Chapter VII as discussed below.

*1. Training, Examination, and Certification of Blasters*

(a) *General.* Under 30 CFR 850.12 (a) and (b), States are required to develop and adopt a program to examine and certify persons directly responsible for blasting in surface coal mining and reclamation operations. To satisfy this requirement and its State-specific counterpart at 30 CFR 931.16(a), New Mexico is adding a new Part 33 to CSMC Rule 80-1 to establish a State blaster certification program. For the reasons discussed below, the Director finds that the New Mexico submission meets the requirements of and is no less effective than the Federal rules governing State blaster training, examination and certification programs in 30 CFR Part 850.

(b) *Training examination and experience requirements.* CSMC Rule 80-12-33-13 specifies minimum training requirements for certification identical to those in the corresponding Federal rule at 30 CFR 850.13. However, New Mexico does not plan to conduct either a training or an examination program. Instead, section 33-14 requires all candidates for State certification to be certified under another OSMRE-approved State or Federal blasters certification program. Paragraph 33-14(a) requires the MMD Director to verify that any such program requires training in the topics specified in section 33-13. The Director also must verify that the applicant successfully completed this training program and passed an examination on the topics. Paragraph 33-14(b) further requires candidates for certification to have at least one year of practical field experience, thus satisfying the requirement of 30 CFR 850.15(a)(2) that applicants have an adequate level of experience.

The Federal standards for State blaster certification programs in 30 CFR 850.14 include specific requirements, such as a written examination, that are not included in the New Mexico rule. However, under the proposed rule, New Mexico cannot and will not certify candidates unless they are already certified under an OSMRE-approved program in another State. Therefore, it is not necessary for New Mexico to adopt all the specific examination and experience standards of 30 CFR 850.14 since candidates will already have met those requirements in another State.

(c) *Certificate issuance, maintenance, renewal, suspension and revocation.* CSMC Rule 80-1-33-15 authorizes the MMD Director to enforce all certification conditions and requirements placed on the applicant by the State in which he or she is certified. Also, persons certified under Section 33-14 must meet all requirements for recertification and demonstration of continued competency in the other State(s) in which they are certified if they desire to maintain their New Mexico certification. The State rules thus meet the certification and recertification requirements of 30 CFR 850.15 (a) and (c).

New Mexico's provisions for protection, suspension and revocation of blasters' certificates in paragraphs 33-15 (c) and (d) include all requirements of the corresponding Federal regulations in 30 CFR 850.15 (b) and (d). In addition, if the Director of MMD suspends or revokes a certificate, the State rule requires that he notify all other States in which the individual is certified.

(d) *Conditions for maintaining certification.* CSMC Rule 80-1-33-15(3) specifies that, to maintain certification, a blaster must immediately exhibit his certificate to an authorized representative of the MMD Director upon request, and refrain from assigning or transferring his or her certification or delegating blasting responsibility to any individual who is not a certified blaster. The corresponding Federal regulation at 30 CFR 850.15(e) requires three similar conditions, which differ from the State conditions only in that the Federal rules, unlike the State rules, require that the blaster exhibit his or her certificate to an authorized representative of OSMRE upon request.

In correspondence with OSMRE, New Mexico has stated that it is not necessary for State regulations to require blasters to exhibit certificates to an authorized representative of OSMRE (Administrative Record No. NM-348). New Mexico believes that OSMRE has authority under 30 CFR 842.13(a)(2) to require exhibition of blasters certificates to OSMRE representatives.

Under 30 CFR 842.13(a)(2), OSMRE has access to, and the authority to copy, any records of a surface coal mining operation. The Director finds that while it would provide clarity in the New Mexico program to require that the blaster exhibit his or her certificate to an authorized representative of OSMRE, the lack of such a provision does not render the program less effective than the Federal rules because OSMRE has such authority under the Federal regulations at 30 CFR 842.13(a)(2).

Since, except as noted above, CSMC Rule 80-1-33-15(e) is identical to 30 CFR 850.15(e), the Director finds that the State rule is no less effective than, and meets the requirements of, its Federal counterpart.

*2. Annual Reports*

New Mexico proposes to add to CSMC Rule 80-1 a new section 5-26 to require an annual report from a permittee detailing reclamation measures taken during the previous year. This report, due every March 1, would include a map showing permit boundaries, mine facilities, roads, drainage features, impoundment features, coal waste disposal areas, soil stock piles, and reclaimed areas. Each subsequent annual report would show updates from the previous year and would thus provide an additional means of monitoring operator compliance with the approved permit.

There is no comparable requirement in SMCRA or the Federal regulations. Under 30 CFR 730.11(b), any State regulation which provides for more stringent control or regulation of surface coal mining and reclamation operations than the Federal regulations shall not be construed to be inconsistent with the Federal regulations. Adoption of the annual report requirement will not adversely affect other provisions of the program.

Therefore, the Director finds that New Mexico's requirement for annual reports is not inconsistent with SMCRA and the Federal regulations.

*3. Regrading and Stabilizing Rills and Gullies*

CSMC Rule 80-1-20-106 requires the stabilization of certain rills and gullies that form in areas which have been regraded and topsoiled. New Meixco is amending section 20-106(a) to add a general requirement that regraded and topsoiled areas be protected and stabilized to effectively control erosion and air pollution attendant to erosion. The added erosion control requirement is identical to the corresponding Federal erosion control requirement in 30 CFR 816.95(a).

Section 20-106 also is amended to remove the specific requirement that rills and gullies deeper than nine inches be filled or stabilized. This requirement is being replaced with a new requirement in section 20-106(b) to fill, regrade or otherwise stabilize, topsoil and revegetate rills and gullies which disrupt the postmining land use or the reestablishment of the vegetative cover, or which cause or contribute to a violation of water quality standards. Revised section 20-106(b) is identical to the corresponding Federal provisions in 30 CFR 816.95(b).

As currently approved, CSMC Rule 80-1-20-106(b) includes a "State window" provision allowing the MMD Director to waive rill and gully repair requirements if it is demonstrated that erosion on the reclaimed lands does not exceed erosion levels on similar unmined lands in the area, and if the rills and gullies do not and would not adversely affect compliance with other specific provisions of the New Mexico regulation. The amendment recodified this provision as paragraph (c) and revises it to require a demonstration that the unrepaired rills and gullies will not affect compliance with "all applicable parts of these rules and regulations." Thus, the revised wording broadens the environmental protection provided by this rule.

For the reasons discussed above, the Director finds revised CSMC Rule 80-1-20-106 no less effective than the Federal regulations and no less stringent than the requirements of SMCRA.

*4. Permit Conditions*

New Mexico is amending CSMC Rule 80-1-11-27 to add a new subsection (d). The new subsection requires each New Mexico permittee to notify the MMD Director, in writing, of his or her intention to begin operations at least 10 days prior to initial surface disturbance.

There is no direct Federal counterpart to the New Mexico notification requirement. However, this reporting requirement will improve New Mexico's ability to monitor mining activity and it will not adversely affect other requirements of the State program. Therefore, the Director finds that the amendment is not inconsistent with the requirements of SMCRA and the Federal regulations.

*5. Disposal of Noncoal Waste*

New Mexico is amending CSMC Rule 80-1-20-89 to include a new subsection (e). This subsection provides that any

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noncoal mine waste defined as "hazardous" under section 3001 of the Federal Resource Conservation and Recovery Act (RCRA) and 40 CFR Part 261 shall be handled in accordance with Subtitle C of RCRA, the New Mexico Hazardous Waste Act, and regulations associated with either Act.

The New Mexico requirement is identical to 30 CFR 816.89(d) and 817.89(d) to the extent that it requires compliance with RCRA. The requirement for compliance with the New Mexico Hazardous Waste Act and associated regulations represents an additional State requirement authorized under 30 CFR 730.11(b). The Federal regulations at 30 CFR 816.89(d) and 817.89(d) were suspended on November 20, 1986, (51 FR 41952) to implement the decision of the U.S. District Court for the District of Columbia in *In re: Permanent Surface Mining Regulation Litigation (II)* (Civil Action No. 79–1144, July 15, 1985). The court remanded these rules because OSMRE failed to comply with the public notice and public comment requirements of the Administrative Procedure Act in promulgation of the regulations. No substantive issues were involved. Since New Mexico is not subject to the Administrative Procedures Act, failure to comply with this Act need not be considered in evaluating this proposed amendment.

Therefore, for the reasons discussed above, the Director finds that CSMC Rule 80–1–20–89(e) is no less stringent than SMCRA and no less effective than the Federal regulations.

*6. Permit Fees*

Revised CSMC Rule 80–1–5–25(b) deletes the minimum annual permit acreage fee of $1,000 and provides for determination of the amount based on disturbed acreage, without establishing a minimum fee. Although 30 CFR 777.17 provides for the assessment of permit application fees, the method for determining the amount of such fees is left to the discretion of the regulatory authority. Therefore, the Director finds that New Mexico's revised permit fee schedule is not inconsistent with any Federal requirements.

*7. Support Facilities and Utility Installations*

New Mexico is amending CSMC Rule 80–1–20–181(a) to include fuel, chemical and lubricant storage facilities as activities subject to the coal surface mining performance standards. Subsection 80–1–20–181(a) is also being modified editorially to eliminate paragraphs (1) and (2) while retaining the same language as a continuation of paragraph (a).

The Federal regulations for support facilities at 30 CFR 816/817.181 do not specifically mention fuel, chemical and lubricant storage, although storage areas, in general, are included under other Federal provisions. The New Mexico requirement adds specificity to CSMC Rule 80–1–20–181(a); therefore, the Director finds that the revised rule is not inconsistent with SMCRA and the Federal requirements.

*8. Cut-and-Fill Terraces*

New Mexico is amending its backfilling and grading requirements at CSMC Rule 80–1–20–102(b)(3) by deleting a requirement that the outslopes of cut-and-fill terraces have a minimum static safety factor of 1.3.

The Federal rules concerning cut-and-fill terraces at 30 CFR 816/817.102(g) do not include the specific provision that terrace outslopes have a 1.3 static safety factor. Since New Mexico's rules and the Federal regulations at 30 CFR 816/817.102(g) both include requirements that all backfilled areas attain a minimum static safety factor of 1.3, the separate requirement of CSMC Rule 80–1–20–102(b)(3) is redundant. Therefore, the Director finds that New Mexico's revised rule is no less effective than the Federal regulations at 30 CFR 816/817.102(g).

*9. Covering Coal and Acid and Toxic-Forming Materials*

New Mexico is amending CSMC Rule 80–1–20–103(a) by adding a new paragraph (2) and recodifying current paragraph (2) as paragraph (3). The revised rule allows the Director of MMD to specify thicker amounts of backfill to isolate coal seams and acid and toxic-forming and combustible materials. The Federal regulations require similar safeguards at 30 CFR 816/817.41 and 816/817.102(f). Therefore, the Director finds that the revised New Mexico rule is no less effective than the Federal regulations.

*10. Inspections*

CSMC Rule 80–1–29–11 is being amended to provide for aerial partial inspections, reduce the inspection frequency for inactive surface mining operations, and provide for quarterly inspections for permitted operations that have not commenced operations.

New Mexico's currently approved program requires all inspections to be on-the-ground inspections and does not distinguish between active and inactive operations with regard to inspection frequency. The procedures for aerial inspections at CSMC Rule 80–1–29–11(a) are similar to 30 CFR 840.11 (a) and (d); therefore, the Director finds the revised New Mexico rule regarding aerial inspections to be no less effective than the Federal regulations.

Revised CSMC Rule 80–1–29–11(b) defines inactive operations and provides for quarterly complete inspections of such sites in a manner similar to 30 CFR 840.11 (b) and (f). Although not specifically mentioned, the Director of New Mexico MMD also has the authority to require such partial inspections of inactive coal surface mining operations as are necessary to ensure effective enforcement consistent with the Federal rule at 30 CFR 840.11(a). Both the Federal and New Mexico rules establish minimum inspection frequencies but neither limits additional inspections which may be performed. Therefore, the Director finds New Mexico's procedures and requirements for inspecting inactive coal surface mining operations to be no less effective than the Federal regulations.

New Mexico is adding a new subsection (c) to CSMC Rule 80–1–29–11. This new paragraph requires quarterly inspections of undisturbed permits until the permittee notifies the MMD it is commencing operations. Since a permit is not subject to the inspection criteria of 30 CFR Part 842 until disturbed, the Director finds New Mexico's rule is not inconsistent with the Federal requirements and provides the necessary safeguards to monitor the commencement of new operations. The Director notes that in revising CSMC Rule 80–1–29–11 New Mexico added a new subsection (c) but did not redesignate existing subsection (c) or the paragraphs that follow. Therefore, New Mexico will have two paragraphs codified as (c) under Rule 80–1–29–11 when this program amendment becomes effective. The Director expects that New Mexico will correct this editorial error during its next rulemaking.

*11. Miscellaneous Provisions*

The amendment includes two additional changes. CSMC Rule 80–1–8–11 is being amended to add a provision that information on premining resources will be used during evaluation of the permit application.

Although the corresponding Federal rules at 30 CFR 779.11 and 783.11 lack a similar provision, the Director finds that, by implication, they have a similar purpose. Therefore, the revised New Mexico rule is no less effective than the cited Federal rules.

CSMC Rule 80–1–9–18(b)(4) is being revised for clarity by changing the word "topdressing" to "topsoil". Since this is a nonsubstantive change, the Director finds that it does not render the New Mexico program less effective than the Federal requirements.



## IV. Summary and Disposition of Comments

No public comments were received. Pursuant to Section 503(b) of SMCRA and 30 CFR 732.17(h)(11), comments were solicited from various Federal and State agencies with an actual or potential interest in the New Mexico program.

The Environmental Protection Agency (EPA) submitted comments (Administrative Record No. NM–403) on the proposed regulations concerning water quality standards. Based on EPA's comments and other considerations, New Mexico withdrew all proposed amendments concerning water quality standards (Administrative Record No. NM–438). EPA's comments are, therefore, no longer applicable to this rulemaking. EPA did not comment on the remainder of the proposed regulations.

The New Mexico Office of Cultural Affairs and Historical Preservation recommended that cultural resources information, such as mitigation stipulations, known site information, and a summary of completed and anticipated work be included in the annual report (Administrative Record No. NM–368). As noted in Finding 2 above, there is no Federal requirement for an annual report. Therefore, OSMRE cannot require the State to include specific items in the report. Other sections of the New Mexico program either contain or are being amended to include all the mandatory cultural resource requirements.

## V. Director's Decision

The Director, based on the above findings, is approving the amendment submitted by New Mexico on June 17, 1987, as revised and clarified on February 18, 1988, and August 10, 1988. The Director is approving these rules provided that they are adopted in a form identical to that submitted to and reviewed by OSMRE and the public.

The Director is amending 30 CFR Part 931 to reflect his approval of this amendment and the removal of a required program amendment concerning blaster training, examination, and certification. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to conform their programs to Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

## VI. Procedural Matters

*1. Compliance with National Environmental Policy Act*

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

*2. Executive Order No. 12291 and the Regulatory Flexibility Act*

On July 12, 1984, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any requirements established by SMCRA and the Federal rules will be met by the State.

*3. Paperwork Reduction Act*

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

**List of Subjects in 30 CFR Part 931**

Coal mining, Intergovernmental relations, Surface Mining, Underground Mining.

Date: March 3, 1989.

**Robert H. Gentile,**

*Director, Office of Surface Mining Reclamation and Enforcement.*

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below.

## PART 931—NEW MEXICO

1. The authority citation for Part 931 continues to read as follows:

**Authority:** 30 U.S.C. 1201 *et seq.*

2. In § 931.15, a new paragraph (h) is added to read as follows:

**§ 931.15 Approval of amendments to State regulatory program.**

* * * * *

(h) The following amendment is approved effective March 9, 1989. Revisions to or addition of the following portions of New Mexico Coal Surface Mining Commission (CSMC) Rule 80–1, as submitted on June 17, 1987, and clarified and modified on February 18, 1988, and August 10, 1988, provided New Mexico promulgates these rules in a form identical to that in which they were reviewed by OSMRE:

Section 5–25 Permit Fees.
Section 5–28 Annual Reports.
Section 8–11 General Requirements for Permit Applications.
Section 9–18 General Requirements for Reclamation Plan.
Section 11–27 Permit Conditions.
Section 20–89 Disposal of Noncoal Waste.
Section 20–102 Cut-and-Fill Terraces.
Section 20–103 Covering Coal and Acid and Toxic-Forming Materials.
Section 20–106 Regrading and Stabilizing Rills and Gullies.
Section 20–181 Support Facilities and Utility Installations.
Section 29–11 Inspections.

Part 33 Training, Examination, and Certification of Blasters.

**§ 931.16 [Removed and Reserved]**

3. Section 931.16 is removed and reserved.

[FR Doc. 89–5476 Filed 3–8–89; 8:45 am]
BILLING CODE 4310–05–M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### 32 CFR Part 45

**[DoD Instruction 1336.1]**

### Certificate of Release or Discharge From Active Duty (DD Form 214/5 Series)

**AGENCY:** Department of Defense.

**ACTION:** Final rule.

**SUMMARY:** This document amends 32 CFR Part 45 to incorporate the correct pages of Appendix A of this part. On February 21, 1989, the Department of Defense published in the **Federal Register** this final rule. Appendix A was not accurately displayed, therefore, we are revising Appendix A.

**EFFECTIVE DATE:** January 6, 1989.

**FOR FURTHER INFORMATION CONTACT:** Lt. Col. T. Sutherland, Office of the Assistant Secretary of Defense (Force Management and Personnel), the Pentagon, Washington, DC 20301, telephone 202–695–6312.

**SUPPLEMENTARY INFORMATION:**

**List of Subjects in 32 CFR Part 45**

Armed forces reserves, Military personnel.

Accordingly, 32 CFR Part 45 is amended as follows:

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1. The authority citation continues to read as follows:

Authority: 10 U.S.C. 1158 and 972.

2. Appendix A is revised as follows:

L.M. Bynum,
*Alternate OSD Federal Register Liaison Officer, Department of Defense.*
March 3, 1989.

BILLING CODE 3810-01-M



**Appendix A–DD Form 214**

CAUTION: NOT TO BE USED FOR IDENTIFICATION PURPOSES — THIS IS AN IMPORTANT RECORD. SAFEGUARD IT. — ANY ALTERATIONS IN SHADED AREAS RENDER FORM VOID

## CERTIFICATE OF RELEASE OR DISCHARGE FROM ACTIVE DUTY

| | | | |
|---|---|---|---|
| 1. NAME (Last, First, Middle) | | 2. DEPARTMENT, COMPONENT AND BRANCH | 3. SOCIAL SECURITY NO. |
| 4.a. GRADE, RATE OR RANK | 4.b. PAY GRADE | 5. DATE OF BIRTH (YYMMDD) | 6. RESERVE OBLIG. TERM. DATE (Year, Month, Day) |
| 7.a. PLACE OF ENTRY INTO ACTIVE DUTY | | 7.b. HOME OF RECORD AT TIME OF ENTRY (City and state, or complete address if known) | |
| 8.a. LAST DUTY ASSIGNMENT AND MAJOR COMMAND | | 8.b. STATION WHERE SEPARATED | |
| 9. COMMAND TO WHICH TRANSFERRED | | 10. SGLI COVERAGE Amount: $ ☐ None | |

| 11. PRIMARY SPECIALTY (List number, title and years and months in specialty. List additional specialty numbers and titles involving periods of one or more years.) | 12. RECORD OF SERVICE | Year(s) | Month(s) | Day(s) |
|---|---|---|---|---|
| | a. Date Entered AD This Period | | | |
| | b. Separation Date This Period | | | |
| | c. Net Active Service This Period | | | |
| | d. Total Prior Active Service | | | |
| | e. Total Prior Inactive Service | | | |
| | f. Foreign Service | | | |
| | g. Sea Service | | | |
| | h. Effective Date of Pay Grade | | | |

13. DECORATIONS, MEDALS, BADGES, CITATIONS AND CAMPAIGN RIBBONS AWARDED OR AUTHORIZED (All periods of service)

14. MILITARY EDUCATION (Course title, number of weeks, and month and year completed)

| 15.a. MEMBER CONTRIBUTED TO POST-VIETNAM ERA VETERANS' EDUCATIONAL ASSISTANCE PROGRAM | Yes | No | 15.b. HIGH SCHOOL GRADUATE OR EQUIVALENT | Yes | No | 16. DAYS ACCRUED LEAVE PAID |
|---|---|---|---|---|---|---|

17. MEMBER WAS PROVIDED COMPLETE DENTAL EXAMINATION AND ALL APPROPRIATE DENTAL SERVICES AND TREATMENT WITHIN 90 DAYS PRIOR TO SEPARATION ☐ Yes ☐ No

18. REMARKS

| 19.a. MAILING ADDRESS AFTER SEPARATION (Include Zip Code) | 19.b. NEAREST RELATIVE (Name and address - include Zip Code) |
|---|---|
| 20. MEMBER REQUESTS COPY 6 BE FURNISHED VA OF VET AFFAIRS ☐ Yes ☐ No | 22. OFFICIAL AUTHORIZED TO SIGN (Typed name, grade, title and signature) |
| 21. SIGNATURE OF MEMBER BEING SEPARATED | |

DD Form 214, NOV 88 — Previous editions are obsolete. — MEMBER - 1

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## CERTIFICATE OF RELEASE OR DISCHARGE FROM ACTIVE DUTY

| | | | |
|---|---|---|---|
| 1. NAME (Last, First, Middle) | | 2. DEPARTMENT, COMPONENT AND BRANCH | 3. SOCIAL SECURITY NO. |
| 4a. GRADE, RATE OR RANK | 4b. PAY GRADE | 5. DATE OF BIRTH (YYMMDD) | 6. RESERVE OBLIG. TERM. DATE (Year / Month / Day) |
| 7a. PLACE OF ENTRY INTO ACTIVE DUTY | | 7b. HOME OF RECORD AT TIME OF ENTRY (City and state, or complete address if known) | |
| 8a. LAST DUTY ASSIGNMENT AND MAJOR COMMAND | | 8b. STATION WHERE SEPARATED | |
| 9. COMMAND TO WHICH TRANSFERRED | | 10. SGLI COVERAGE Amount: $ ☐ None | |

| 11. PRIMARY SPECIALTY (List number, title and years and months in specialty. List additional specialty numbers and titles involving periods of one or more years.) | 12. RECORD OF SERVICE | Year(s) | Month(s) | Day(s) |
|---|---|---|---|---|
| | a. Date Entered AD This Period | | | |
| | b. Separation Date This Period | | | |
| | c. Net Active Service This Period | | | |
| | d. Total Prior Active Service | | | |
| | e. Total Prior Inactive Service | | | |
| | f. Foreign Service | | | |
| | g. Sea Service | | | |
| | h. Effective Date of Pay Grade | | | |

13. DECORATIONS, MEDALS, BADGES, CITATIONS AND CAMPAIGN RIBBONS AWARDED OR AUTHORIZED (All periods of service)

14. MILITARY EDUCATION (Course title, number of weeks, and month and year completed)

| 15a. MEMBER CONTRIBUTED TO POST-VIETNAM ERA VETERANS' EDUCATIONAL ASSISTANCE PROGRAM | Yes | No | 15b. HIGH SCHOOL GRADUATE OR EQUIVALENT | Yes | No | 16. DAYS ACCRUED LEAVE PAID |
|---|---|---|---|---|---|---|
| | | | | | | |

17. MEMBER WAS PROVIDED COMPLETE DENTAL EXAMINATION AND ALL APPROPRIATE DENTAL SERVICES AND TREATMENT WITHIN 90 DAYS PRIOR TO SEPARATION ☐ Yes ☐ No

18. REMARKS

| 19a. MAILING ADDRESS AFTER SEPARATION (Include Zip Code) | 19b. NEAREST RELATIVE (Name and address - include Zip Code) |
|---|---|
| 20. MEMBER REQUESTS COPY 6 BE SENT TO DEPT. OF VET AFFAIRS ☐ Yes ☐ No | 22. OFFICIAL AUTHORIZED TO SIGN (Typed name, grade, title and signature) |
| 21. SIGNATURE OF MEMBER BEING SEPARATED | |

SPECIAL ADDITIONAL INFORMATION (For use by authorized agencies only)

| 23. TYPE OF SEPARATION | 24. CHARACTER OF SERVICE (Include upgrades) |
|---|---|
| 25. SEPARATION AUTHORITY | 26. SEPARATION CODE / 27. REENTRY CODE |
| 28. NARRATIVE REASON FOR SEPARATION | |
| 29. DATES OF TIME LOST DURING THIS PERIOD | 30. MEMBER REQUESTS COPY 4 (Optional) |

DD Form 214, NOV 88 — Previous editions are obsolete.



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CERTIFICATE OF RELEASE OR DISCHARGE FROM ACTIVE DUTY

1. NAME (Last, First, Middle) | 2. DEPARTMENT, COMPONENT AND BRANCH | 3. SOCIAL SECURITY NO.
4a. GRADE, RATE OR RANK | 4b. PAY GRADE | 5. DATE OF BIRTH (YYMMDD) | 6. RESERVE OBLIG. TERM. DATE (Year / Month / Day)
7a. PLACE OF ENTRY INTO ACTIVE DUTY | 7b. HOME OF RECORD AT TIME OF ENTRY (City and state, or complete address if known)
8a. LAST DUTY ASSIGNMENT AND MAJOR COMMAND | 8b. STATION WHERE SEPARATED
9. COMMAND TO WHICH TRANSFERRED | 10. SGLI COVERAGE Amount: $ ☐ None

11. PRIMARY SPECIALTY (List number, title and years and months in specialty. List additional specialty numbers and titles involving periods of one or more years.)

12. RECORD OF SERVICE — Year(s) / Month(s) / Day(s)
a. Date Entered AD This Period
b. Separation Date This Period
c. Net Active Service This Period
d. Total Prior Active Service
e. Total Prior Inactive Service
f. Foreign Service
g. Sea Service
h. Effective Date of Pay Grade

13. DECORATIONS, MEDALS, BADGES, CITATIONS AND CAMPAIGN RIBBONS AWARDED OR AUTHORIZED (All periods of service)

14. MILITARY EDUCATION (Course title, number of weeks, and month and year completed)

15a. MEMBER CONTRIBUTED TO POST-VIETNAM ERA VETERANS' EDUCATIONAL ASSISTANCE PROGRAM ☐ Yes ☐ No | 15b. HIGH SCHOOL GRADUATE OR EQUIVALENT ☐ Yes ☐ No | 16. DAYS ACCRUED LEAVE PAID

17. MEMBER WAS PROVIDED COMPLETE DENTAL EXAMINATION AND ALL APPROPRIATE DENTAL SERVICES AND TREATMENT WITHIN 90 DAYS PRIOR TO SEPARATION ☐ Yes ☐ No

18. REMARKS

19a. MAILING ADDRESS AFTER SEPARATION (Include Zip Code) | 19b. NEAREST RELATIVE (Name and address - include Zip Code)
20. MEMBER REQUESTS COPY 6 BE SENT TO DEPT. OF VET AFFAIRS ☐ Yes ☐ No | 22. OFFICIAL AUTHORIZED TO SIGN (Typed name, grade, title and signature)
21. SIGNATURE OF MEMBER BEING SEPARATED

SPECIAL ADDITIONAL INFORMATION (For use by authorized agencies only)

23. TYPE OF SEPARATION | 24. CHARACTER OF SERVICE (Include upgrades)
25. SEPARATION AUTHORITY | 26. SEPARATION CODE / 27. REENTRY CODE
28. NARRATIVE REASON FOR SEPARATION
29. DATES OF TIME LOST DURING THIS PERIOD | 30. MEMBER REQUESTS COPY 4 (Optional)

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**COPY DESIGNATION** *(Printed in lower right margin)*

**MEMBER - 1**

**SERVICE - 2**

**VETERANS ADMINISTRATION - 3**

**MEMBER - 4**

**DEPARTMENT OF LABOR - 5**

**STATE DIRECTOR OF VETERANS AFFAIRS - 6**

**SERVICE - 7**

**SERVICE - 8**

Copy 1 (the original) does not have Items 23 - 30, and the page ends after Item 22.

Copies 2, 4, 7, and 8 contain all items.

Copies 3, 5, and 6 contain all items, but Items 25 through 27 are blacked out.

[FR Doc. 89-5435 Filed 3-8-89; 8:45 am]
BILLING CODE 3810-01-C



**32 CFR Part 358**

**[DoD Directive 5105.41]**

## Defense Advanced Research Projects Agency (DARPA)

**AGENCY:** Department of Defense.

**ACTION:** Final rule.

**SUMMARY:** This document revises 32 CFR Part 358 to reflect placement of the Defense Advanced Research Projects Agency under the authority, direction, and control of the Under Secretary of Defense for Acquisition; to change the title of the Assistant Secretary of Defense (Comptroller) to Comptroller of the Department of Defense pursuant to 10 U.S.C. 131; and to make minor editorial changes.

**EFFECTIVE DATE:** January 25, 1989.

**FOR FURTHER INFORMATION CONTACT:** Mr. R., Furtner, Office of the Director for Administration and Management, Washington, DC 20301-1155, telephone 202-697-0709.

**SUPPLEMENTARY INFORMATION:**

**List of Subjects in 32 CFR Part 358**

Organization and management.

Accordingly, Title 32 CFR Part 358 is revised as follows:

## PART 358—DEFENSE ADVANCED RESEARCH PROJECTS AGENCY

Sec.

358.1 Purpose.
358.2 Mission.
358.3 Organization and Management.
358.4 Responsibilities and Functions.
358.5 Authority.
358.6 Relationships.
358.7 Administration.

Appendix—Delegation of Authority

**Authority:** 10 U.S.C. 133

### § 358.1 Purpose.

Pursuant to the authority vested in the Secretary of Defense under Title 10 U.S.C., this document revises 32 CFR Part 358 to update the responsibilities, functions, relationships, and authorities of the Defense Advanced Research Projects Agency (DARPA).

### § 358.2 Mission.

As the central research and development organization of the Department of Defense with a primary responsibility to maintain U.S. technological superiority over potential adversaries, DARPA shall:

(a) Pursue imaginative and innovative research and development projects offering significant military utility.

(b) Manage and direct the conduct of basic and applied research and development that exploits scientific breakthroughs and demonstrates the feasibility of revolutionary approaches for improved cost and performance of advanced technology for future military applications.

(c) Stimulate a greater emphasis on prototyping in defense systems by conducting prototype projects that embody technology that might be incorporated in joint programs, programs in support of deployed U.S. Forces (including the Unified and Specified Commands), or selected Military Department programs, and on request, assist the Military Departments in their own prototyping programs.

### § 358.3 Organization and Management.

DARPA is established as a separate Agency of the Department of Defense under the direction, authority, and control of the Under Secretary of Defense (Acquisition) (USD(A)), in accordance with 32 CFR Part 382. It shall consist of a Director and such subordinate elements as are established by the Director within resources authorized by the Secretary of Defense.

### § 358.4 Responsibilities and Functions.

The *Director, DARPA,* shall:

(a) Organize, direct, and manage the DARPA and all assigned resources.

(b) Provide guidance and assistance, as appropriate, to all DoD Components and other U.S. Government activities on matters pertaining to the projects assigned to DARPA.

(c) Recommend to the Secretary of Defense, through the USD(A)), the assignment of research projects to DARPA.

(d) Arrange for the performance of, and supervise the work connected with, DARPA projects assigned to the Military Departments, other U.S. Government activities, individuals, private business entities, educational institutions, or research institutions, giving consideration to the primary functions of the Military Departments.

(e) Engage in assigned advanced research projects.

(f) Keep the USD(A), the Military Departments, the Joint Chiefs of Staff (JCS), and other DoD Agencies informed, as appropriate, on significant new developments, breakthroughs, and technological advances within assigned projects and on the status of such projects to facilitate early operational assignment.

(g) Prepare and submit to the Comptroller of the Department of Defense, in accordance with established procedures, the DARPA annual program budget estimates, to include the assignment of appropriation program priorities.

(h) Perform such other functions as may be assigned by the USD(A).

### § 358.5 Authority.

The Director, DARPA, is specifically delegated authority to:

(a) Place funded work orders with Military Departments and other DoD Components or directly with subordinate levels of the Military Departments, after clearance with the Secretary of the Military Department concerned.

(b) Authorize the allocation, as appropriate, of funds made available to DARPA for assigned advanced projects.

(c) Establish for DARPA, the Military Departments, and other R&D activities, procedures required in connection with work being performed for DARPA, consistent with policies and instructions governing the Department of Defense.

(d) Serve as head of an Agency and Contracting Activity within the meaning of, and subject to the limitations of, FAR Subpart 2.1, April 1, 1984, as supplemented by DFARS Subpart 202.1.

(e) Prosecute assigned advanced research projects by contract, grant, cooperative agreement, or any other authorized means.

(f) Acquire or construct, directly or through a Military Department or other U.S. Government Agency, such research, development, and test facilities and equipment required to carry out assignments that may be approved by the Secretary of Defense in accordance with applicable statutes and DoD Directives.

(g) Obtain reports and information, consistent with the policies and criteria of DoD Directive 7750.5 and advice and assistance from other DoD Components, as necessary, to carry out DARPA functions and responsibilities.

(h) Exercise the administrative authorities in the Appendix to this part.

### § 358.6 Relationships.

(a) In the performance of assigned functions, the Director, DARPA, shall:

(1) Maintain appropriate liaison for the exchange of information and advice in the field of assigned responsibility with other DoD Components, Agencies of the executive branch, foreign research activities, and non-DoD R&D activities including private business entities and educational institutions.

(2) Ensure that appropriate staff elements of the Office of the Secretary of Defense (OSD), the Joint Chiefs of Staff and the Joint Staff, the Military Departments, and other DoD Components are kept fully informed concerning DARPA activities with which they have substantive concern.

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(3) Make appropriate use of established facilities and services in the Department of Defense or other governmental Agencies, wherever practicable, to achieve maximum efficiency and economy.

(b) The Secretaries of the Military Departments and heads of other DoD Components shall:

(1) Provide assistance and support, in their respective fields of responsibility and within available resources, to the Director, DARPA, as may be necessary to carry out the responsibilities and functions assigned to DARPA.

(2) Coordinate with the Director, DARPA, on all matters related to responsibilities and functions assigned to DARPA.

**§ 358.7 Administration.**

(a) The Director, DARPA, shall be a civilian selected by the Secretary of Defense.

(b) DARPA shall be authorized such personnel, facilities, funds, and other administrative support as the Secretary of Defense deems necessary.

(c) The Military Departments shall assign personnel to DARPA in accordance with approved authorizations and procedures for assignment to joint duty.

(d) Administrative support required for DARPA shall be provided by the Director, Washington Headquarters Services (WHS), and other DoD Components, as appropriate.

**Appendix—Delegations of Authority**

Pursuant to the authority vested in the Secretary of Defense, and subject to the direction, authority, and control of the Secretary of Defense, and in accordance with DoD policies, Directives, and Instructions, the Director, DARPA, or in the absence of the Director, the person acting for the Director, is hereby delegated authority as required in the administration and operation of DARPA to:

1. Designate any position in DARPA as a "sensitive" position, in accordance with 5 U.S.C. 7532; Executive Orders 10450, 12333, and 12356; and DoD Directive 5200.2, "DoD Personnel Security Program," December 20, 1979, as appropriate.

2. Authorize and approve overtime work for DARPA civilian officers and employees in accordance with 5 U.S.C. Chapter 55, Subchapter V, and applicable OPM regulations.

3. Authorize and approve:

a. Travel for DARPA civilian officers and employees in accordance with Joint Travel Regulations, Volume, 2, "DoD Civilian Personnel."

b. Temporary duty travel for military personnel assigned or detailed to DARPA in accordance with Joint Travel Regulations, Volume I, "Members of Uniformed Services."

c. Invitational travel to persons serving without compensation whose consultive, advisory, or other highly specialized technical services are required in a capacity that is directly related to, or is in connection with, DARPA activities, pursuant to 5 U.S.C. 5703.

4. Approve the expenditure of funds available for travel by military personnel assigned or detailed to DARPA for expenses incident to attendance at meetings of technical, scientific, professional or other similar organizations in such instances where the approval of the Secretary of Defense, or designee, is required by law (37 U.S.C. 412 and 5 U.S.C. 4110 and 4111). This authority cannot be redelegated.

5. Develop, establish, and maintain an active and continuing Records Management Program, pursuant to Section 506(b) of the Federal Records Act of 1950 (44 U.S.C. 3102).

6. Enter into and administer contracts, directly or through a Military Department, DoD contract administration services component, or other Government Department or Agency, as appropriate, for supplies, equipment, and services required to accomplish the mission of DARPA. To the extent that any law or Executive order specifically limits the exercise of such authority to persons at the Secretarial level, such authority shall be exercised by the appropriate Under Secretary or Assistant Secretary of Defense.

7. Enter into and administer grants, cooperative agreements, and other authorized transactions with any Agency, university, non-profit corporation or other organization to carry out or support work required to execute any assigned advanced research project.

8. Establish and use imprest funds for making small purchases of material and services, other than personal, for DARPA, when it is determined more advantageous and consistent with the best interests of the Government, in accordance with DoD Instruction 5100.71, "Delegation of Authority and Regulations Relating to Cash Held at Personal Risk Including Imprest Funds," March 5, 1973.

9. Authorize the publication of advertisements, notices, or proposals in newspapers, magazines, or other public periodicals as required for the effective administration and operation of DARPA consistent with 44 U.S.C. 3702.

10. Promulgate the necessary security regulations for the protection of property and places under the jurisdiction of the Director, DARPA, pursuant to DoD Directive 5200.8, "Security of Military Installations and Resources," July 29, 1980.

11. Establish and maintain, for the functions assigned, an appropriate publications system for the promulgation of common supply and service regulations, instructions, and reference documents, and changes thereto, pursuant to the policies and procedures in DoD 5025.1–M, "Department of Defense Directives System Procedures," April 1981.

12. In coordination with the Director of Administration and Management, enter into support and service agreements with the Military Departments, other DoD Components, or other Government Agencies, as required for the effective performance of DARPA functions and responsibilities.

13. Establish and maintain appropriate property accounts for DARPA and appoint Boards of Survey, approve reports of survey, relieve personal liability, and drop accountability for DARPA property contained in the authorized property accounts that has been lost, damaged, stolen, destroyed, or otherwise rendered unserviceable, in accordance with applicable laws and regulations.

The Director, DARPA, may redelegate these authorities as appropriate, and in writing, except as otherwise specifically indicated above or as otherwise provided by law or regulation.

March 6, 1989.

**L. M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 89–5517 Filed 3–8–89; 8:45 am]

BILLING CODE 3810-01-M

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## Department of the Army

## 32 CFR Part 518

**[Army Reg. 340–17]**

## Release of Information and Records From Army Files

**AGENCY:** Department of the Army, DoD.

**ACTION:** Final rule.

**SUMMARY:** The Department of the Army is amending its rule for administering the Freedom of Information Act by revising Initial Denial Authorities' responsibilities.

**DATE:** Effective on March 9, 1989.

**FOR FURTHER INFORMATION CONTACT:** Mr. William A. Walker, Policy and Strategy Directorate, Office of the Director of Information Systems for Command, Control, Communications and Computers, Office of the Secretary of the Army, Washington, DC 20310–0107.

**SUPPLEMENTARY INFORMATION:** This amendment shifts responsibilities for initial denial authority held by the Administrative Assistant to the Secretary of the Army, by designating new initial denial authorities as follow: Assistant Secretary of the Army (Financial Management) for finance and accounting records; Assistant Secretary of the Army (Research, Development and Acquisition) for procurement records; and, Director of Information Systems for Command, Control, Communications and Computers for information resources management related records. It also provides that special initial denial authority may be designated in cases that do not specifically fall under an existing initial denial authority purview. This rule is not a "major rule" as defined by Executive Order 12291. Therefore, no regulatory impact analysis has been prepared. The Department of the Army certifies that this document will not have an impact on a significant number of small entities under the Regulatory Flexibility Act (5 U.S.C. *et seq.*) Therefore, no regulatory flexibility analysis has been prepared. The rule has no collection of information requirements and therefore does not require the approval of OMB under 44 U.S.C. 3501 *et. seq.*



**Lists of Subjects in 32 CFR Part 518**

Information, Archives and records, Privacy, Freedom of information.

Dated: March 1, 1989.

**John O. Roach,**

*Department of the Army Liaison Officer with the Federal Register.*

**PART 518—[AMENDED]**

32 CFR Part 518 is amended to read as follows:

**Subpart E—Release and Processing Procedures**

1. 32 CFR Part 518.15 is amended by revising paragraphs (a)(4) (i) through (xxiv) as follows:

**§ 518.15 Initial determinations.**

(a) * * *

(4) * * *

(i) The Administrative Assistant to the Secretary of the Army is authorized to act for the Secretary of the Army (SA) on requests for all records maintained by the Office of the Secretary of the Army and its serviced activities, except those specified in paragraphs (a)(4) (ii) through (vi) of this section, as well as those requests requiring the personal attention of the SA.

(ii) The Assistant Secretary of the Army, (Financial Management) is authorized to act on requests for finance and accounting records.

(iii) The Assistant Secretary of the Army, (Research, Development and Acquisition), is authorized to act on requests for procurement records, other than those under the purview of the Chief of Engineers and the Commander, U.S. Army Materiel Command.

(iv) The Director of Information Systems for Command, Control, Communications and Computers is authorized to act on requests for records pertaining to the Army Information Resources Management Program (automation, telecommunications, visual-information, records management, publications and printing, and libraries).

(v) The Inspector General is authorized to act on requests for all Inspector General records under Army Regulation 20–1.

(vi) The Auditor General is authorized to act on requests for records relating to audits done by the U.S. Army Audit Agency under Army Regulation 10–2. This includes requests for related records developed by the Audit Agency.

(vii) The Deputy Chief of Staff for Operations and Plans is authorized to act on requests for records relating to strategy formulation; force development, individual and unit training policy, strategic and tactical command and control systems, nuclear and chemical matters, use of DA forces, and military police records and reports, prisoner confinement, and correctional records.

(viii) The Deputy Chief of Staff for Personnel is authorized to act on requests for case summaries; letters of instruction to boards; behavioral science records, general education records, and alcohol and drug prevention and control records. Excluding individual treatment/test records; which is a responsibility of The Surgeon General.

(ix) The Deputy Chief of Staff for Logistics is authorized to act on requests for records to DA logistical requirements and determinations, policy concerning materiel maintenance and use, equipment standards, and logistical readiness.

(x) The Chief of Engineers is authorized to act on requests for records involving civil works, military construction, engineer procurement, and ecology; and the records of the U.S. Army Engineer divisions, districts, laboratories, and field operating agencies.

(xi) The Surgeon General is authorized to act on requests for medical research and development records, and the medical records of active duty military personnel, dependents, and persons given physical examinations or treatment at DA medical facilities; to include alcohol and drug treatment/test records.

(xii) The Chief of Chaplains is authorized to act on requests for records involving ecclesiastical relationships, rites performed by DA chaplains, and non-privileged communications relating to clergy and active duty chaplains military personnel files.

(xiii) The Judge Advocate General (TJAG) is authorized to act on requests for records relating to claims, courts-martial, legal services, and similar legal-type records. TJAG is also authorized to act on requests for records described elsewhere in this AR, if those records relate to litigation in which the United States has an interest. In addition, TJAG is authorized to act on requests for records that are not within the functional areas of responsibility of any other IDA.

(xiv) The Chief, National Guard Bureau is authorized to act on requests for all Army National Guard records, unless such records clearly fall within another IDA's responsibility. This includes National Guard organization and training files, plans, operations, and readiness files, policy files, historical files, and files relating to National Guard military support and civil disturbance activities.

(xv) The Chief of Army Reserve is authorized to act on requests for all personnel and medical records of retired, separated, discharged, deceased, and reserve component military personnel, and all Army reserve (USAR) records, unless such records clearly fall within another IDA's responsibility. This includes records relating to USAR plans, policies and operations, changes in the organizational status of USAR units; mobilization and demobilization policies, active duty tours, and the Individual Mobilization Augmentation Program.

(xvi) The Commander, United States Army Material Command (AMC) is authorized to act on requests for the records of AMC headquarters and its subordinate commands, units, and activities that relate to procurement, logistics, research and development, and supply and maintenance operations.

(xvii) The Commander, United States Army Criminal Investigation Command (USACIDC), is authorized to act on requests for criminal investigative records of USACIDC headquarters and its subordinate activities. This includes criminal investigation records, investigation-in-progress records, and military police reports that result in criminal investigation reports.

(xix) The Commander, United States Total Army Personnel Command, is authorized to act on requests for military personnel files relating to active duty (other than those of reserve and retired personnel) military personnel matters, personnel locator, physical disability determinations, and other military personnel administration records; records relating to military

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casualty and memorialization activities; heraldic activities, voting, records relating to identification cards, naturalization, citizenship, commercial solicitation, Military Postal Service Agency and Army postal and unofficial mail service, civilian personnel records, other civilian personnel matters and personnel administration records.

(xx) The Commander, United States Army Community and Family Support Center is authorized to act on requests for records relating to morale, welfare and recreation activities; nonappropriated funds, child development centers, community life programs, family action programs, retired activities, club management, Army emergency relief, consumer protection, retiree survival benefits, and records dealing with DA relationships and social security, veterans' affairs, United Service Organization, U.S. Soldiers' and Airmen's Home, and American Red Cross.

(xxi) The Commander, United States Army Intelligence and Security Command is authorized to act on requests for intelligence and investigation and security records, foreign scientific technological information, intelligence training, mapping and geodesy information, ground surveillance records, intelligence threat assessments, and missile intelligence data relating to tactical land warfare systems.

(xxii) The General Counsel, Army and Air Force Exchange Service (AAFES) is authorized to act on requests for AAFES records, under Army Regulation 60-301/ Air Force Regulation 147-14.

(xxiii) The Commander, Forces Command, as a specified commander, is authorized to act on requests for specified command records that are unique to Forces Command under DOD 5400.7-R, paragraph 1-510.

(xxiv) Special IDA authority for time-event related records may be designated on a case-by-case basis. These will be published in the **Federal Register**. Current information on special delegations may be obtained from the Office of the Director of Information Systems for Command, Control, Communications and Computers, Attention: SAIS-PSP, Washington, DC 20310-0107 (697-5798).

* * * * *

**John O. Roach, II,**

*Army Liaison Officer with the Federal Register.*

[FR Doc. 89-5456 Filed 3-8-89; 8:45 am]

BILLING CODE 3710-08-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[FRL-3496-8; NC-021]**

### Approval and Promulgation of Implementation Plans North Carolina Stack Height Rules

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY OF ACTION:** In this action, EPA is approving North Carolina's stack height regulations. This action will approve the original stack height regulations (2D.0533) proposed on March 29, 1983 (48 FR 13052). It will also approve revisions to rule 2H.0603 proposed on October 17, 1984 (49 FR 40807), and revisions to rule 2D.0533 proposed on May 26, 1987 (52 FR 19539). These regulations satisfy EPA's stack height requirements.

Although EPA generally approves North Carolina's stack height rules on the grounds that they satisfy 40 CFR Part 51, this action may be subject to modification when EPA completes rulemaking in response to the decision in *NRDC* vs *Thomas*, 838 F.2d 1224 (D.C. Cir. 1988). If EPA's response to the NRDC remand modifies the July 8, 1985, stack height regulations, EPA will notify the State of North Carolina that its rules must be changed to comport with EPA's modified requirements. This may result in revised emission limitations or may affect other actions taken by North Carolina and source owners or operators.

**DATE:** These actions are effective April 10, 1989.

**ADDRESSES:** Copies of the materials submitted by the State may be examined during normal business hours at the following locations:

Air Programs Branch, Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365.

Public Information Reference Unit Library Systems Branch, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

North Carolina Department of Natural Resources and Community Development, P.O. Box 27687, Raleigh, North Carolina 27611.

**FOR FURTHER INFORMATION CONTACT:** Beverly T. Hudson, EPA Region IV, Air Programs Branch at the above listed address, telephone (404) 347-2864 or FTS 257-2864.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of July 8, 1985 (50 FR 27892), EPA published final regulations to implement Section 123 of the Clean Air Act (CAA), which regulates the manner in which dispersion of pollutants from a source may be considered in setting emission limitations. Pursuant to these regulations and the Clean Air Act Amendments of 1977, all states were required to (1) review and revise, as necessary, their state implementation plans (SIPs) to include provisions that limit stack height credit and dispersion techniques in accordance with the revised regulations and (2) review all existing emission limitations to determine whether these limitations have been affected by stack height credits above GEP or any other dispersion techniques. For any limitations so affected, states were to prepare revised limitations consistent with their revised SIPs. All SIP revisions and revised emission limits were to be submitted to EPA within nine months of promulgation.

#### State Submission

On September 24, 1982 North Carolina submitted to EPA a new regulation (2D.0533) on stack heights, which was intended to satisfy EPA's February 8, 1982, stack height requirements (see 47 FR 5858). On March 29, 1983 (48 FR 13052), EPA proposed to approve the regulation provided the State submitted appropriate provision for public comment in cases where fluid modeling would be used to allow stack height credit in excess of good engineering practice (GEP).

North Carolina submitted an additional regulation change (2H.0803) on April 17, 1984, which would satisfy the public comment requirement of EPA's stack height regulations. This additional change was presumed to make regulation 2D.0533 fully approvable under the Agency's 1982 requirements. EPA proposed to approve the revision to 2H.0803 on October 17, 1984 (49 FR 40807).

*The Sierra Club vs. EPA* court decision substantially revised EPA's stack height regulations and North Carolina was required to revise 2D.0533 to make it consistent with the new federal requirements. A revision to 2D.0533 was submitted to EPA on February 25, 1988, and was proposed for approval on May 26, 1987 (52 FR 19539). The regulations apply to both new and existing sources, thereby satisfying requirements for state new source review regulations in 40 CFR 51.164. The regulations apply to all stacks not in existence on December 31, 1970, and all dispersion techniques implemented, since December 31, 1970.

EPA's stack height regulations were challenged in *NRDC* vs. *Thomas*, 838 F2d 1224 (D.C. Cir. 1988). On January 22, 1988, the U.S. Court of Appeals for the D.C. Circuit issued a decision affirming the regulations in large part, but remanding three provisions to EPA for reconsideration:

1. Grandfathering pre-October 11, 1983, within-formula stack height increases from demonstration requirements [40 CFR 51.100(kk)(2)].

2. Dispersion credit for sources originally designed and constructed with merged or multi-flue stacks [40 CFR 51.100(hh)(2)(ii)(A)].

3. Grandfathering pre-1979 use of the refined H+1.5L formula [40 (FR 51.100(ii)(2)].

If EPA's response to the NRDC remand modifies the July 8, 1985, stack height regulations, EPA will notify the State of North Carolina that its rules must be changed to comport with EPA's modified requirements. This may result in revised emission limitations or may affect other actions taken by North Carolina and source owners or operators.

#### Public Comment

EPA received one comment on the North Carolina stack height regulations (2D.0533) proposal of March 29, 1983 (48 FR 13052). This comment objected to the regulations because their effect would be to increase stack heights, causing pollution problems and greater danger of acid rain.

The purpose of the stack height regulations is to prohibit stacks taller than good engineering practice (GEP) height and other dispersion techniques from affecting the emission limitation required to meet the National Ambient Air Quality Standards (NAAQS) or Prevention of Significant Deterioration air quality increments (PSD increments). These regulations were promulgated to implement section 123 of the Clean Air Act. Although they do not limit actual stack height, they would also not lead sources to construct stacks heigher than GEP. On the contrary, approval of stack height regulations will tend to lead to lower stacks than would exist in the absence of such regulations. Furthermore, EPA has no mandate in section 123 to consider the effect of stack heights on acid precipitation, but is required only to assure that dispersion is not used instead of control to bring ground-level concentration of criteria pollutants within the NAAQS.

#### Final Action

EPA is approving North Carolina's stack height regulations and associated regulatory revisions. These revisions are consistent with EPA's stack height requirements as Part 51 of Chapter I, Title 40 of the Code of Federal Regulations.

However, EPA points out again that this action may be subject to modification when EPA completes rulemaking to respond to the decision in *NRDC* vs. *Thomas*, 838 F.2d 1224 (D.C. Cir. 1988). If EPA's response to the NRDC remand modifies the July 8, 1985, stack height regulations, EPA will notify the State of North Carolina that its rules must be changed to comport with EPA's modified requirements. This may result in revised emission limitations or may affect other actions taken by North Carolina and source owners or operators.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 8, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

#### List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Incorporation by reference.

Note.—Incorporation by reference of the North Carolina State Implementation Plan was approved by the Director of the Federal Register on July 1, 1982.

Date: December 15, 1988.

**Lee M. Thomas,**

*Administrator*

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

#### PART 52—[AMENDED]

#### Subpart II—North Carolina

1. The authority citation for Part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401-7642.

2. Section 52.1770 is amended by adding paragraph (c)(50) to read as follows:

**§ 52.1770 Identification of plan.**

* * * * *

(c) * * *

(50) Stack Height regulations were submitted to EPA on September 24, 1982, April 17, 1984, and February 25, 1986, by the North Carolina Department of Natural Resources and Community Development.

(i) Incorporation by reference. (A) Regulations 15NCAC 2D.0533 (Stack Height) adopted on September 9, 1982 and Regulations 15NCAC 2H.0603 (Applications) adopted on February 13, 1986 and April 12, 1984, by the Environmental Management Commission.

(ii) Other material—none.

[FR Doc. 89-5543 Filed 3-8-89; 8:45 am]

BILLING CODE 6560-50-M

### 40 CFR Part 52

**[FRL-3534-3; NC-010]**

### Approval and Promulgation of Implementation Plans; North Carolina; $SO_2$ SIP Revision for Alba Waldensian and Valdese Manufacturing

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** Today, EPA is approving a source-specific revision to the North Carolina State Implementation Plan (SIP) for sulfur dioxide ($SO_2$), which was proposed on November 3, 1988 (53 FR 44495). No comments were received. Ambient air quality modeling to support this SIP relaxation was submitted to EPA by the State on April 2, 1986. The modeling demonstrated that a less stringent $SO_2$ limit is approvable for Alba Waldensian, Inc., and Valdese Manufacturing Company and that the National Ambient Air Quality Standards (NAAQS) for $SO_2$ will be protected. No interstate impacts or attainment problems are expected as a result of approving this SIP revision.

**DATES:** This action is effective April 10, 1989.

**ADDRESSES:** Copies of the State's submittals are available for review during normal business hours at the following locations:

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Air Quality Section, Division of Environmental Management, North Carolina Department of Natural Resources and Community Development, Archdale Building, 512 North Salisbury Street, Raleigh, North Carolina 27611.

Air Programs Branch, Region IV, U.S. Environmental Protection Agency, 345 Courtland Street NE., Atlanta, Georgia 30365.

BEST COPY AVAILABLE

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**FOR FURTHER INFORMATION CONTACT:** Rosalyn Hughes of the Region IV EPA Air Programs Branch, at the above address and the following phone: (404) 347-2864, or (FTS) 257-2864.

**SUPPLEMENTARY INFORMATION:** On December 7, 1982 (47 FR 54934), EPA approved, for all but 24 sources in the State of North Carolina, a revision to the State's regulation 2D.0516 which relaxed the $SO_2$ limit for fuel-burning sources. The original version of 2D.0516 prescribed a stepdown in $SO_2$ emissions for all fuel-burning sources (from 2.3 pounds per million BTU (lb/MBTU) to 1.6 lb/MBTU) by July 1, 1980. Air quality dispersion modeling submitted by the State in 1982 indicated that removal of the $SO_2$ stepdown requirement was approvable for all but 24 sources.

EPA indicated in the December 7, 1982, **Federal Register** notice that if future modeling could show that the relaxed $SO_2$ limit of 2.3 lb/MBTU was adequate to protect the NAAQS, then the stepdown requirement could be eliminated for other sources as well.

Alba Waldensian, Inc., and Valdese Manufacturing Company were two of the sources excluded from EPA's approval of the revised fuel-burning regulation. On April 2, 1986, North Carolina submitted the ambient air quality analysis necessary to show the Alba Waldensian and Valdese Manufacturing Company could be allowed to emit 2.3 lb $SO_2$/MBTU without jeopardizing the NAAQS. On November 3, 1988 (53 FR 44495), EPA proposed approval and no comments were received.

The modeling analysis differs from the modeling submitted January 11, 1982, in that the load capacities for the Alba Waldensian facilities and the Valdese Manufacturing plant have been reduced. The new load capacities for the Alba Waldensian facilities are contained in permits No. 4786 and No. 4920. The new Valdese Manufacturing load capacities are in permit number 504R3. EPA will incorporate the permits into the SIP so that the reduced load capacities will become federally enforceable.

The VALLEY dispersion model was used to estimate the ambient impact of the allowable $SO_2$ emission limit because the sources are located close together in complex terrain. The results of the analysis showed a maximum 24-hour concentration of 346 ug/m³, which is below the 24-hour NAAQS of 365 ug/m³. Demonstration of attainment with the 3-hour and annual ambient $SO_2$ standards was also made. In addition, the ISCST model was used to determine the downwash effects of nearby buildings on $SO_2$ concentrations near the two facilities. The maximum impacts predicted by this model were well below the NAAQS for $SO_2$.

The modeling techniques supporting the demonstration are primarily based on modeling guidance in place at the time that the analysis was performed, i.e., the EPA Guidance of Air Quality Modeling (1978). Since that time, revisions to the modeling guidance have been promulgated (51 FR 32176, September 9, 1986, and 53 FR 592, January 6, 1988). Since the modeling was completed and reviewed by EPA prior to publication of the revised guidance, EPA accepts the analysis.

In its review of the State's submittal for these two sources, EPA became aware of deficiencies in North Carolina's compliance test method for $SO_2$. The State has revised their compliance test method. The new method was approved by EPA on June 9, 1988 (53 FR 21638).

Actual $SO_2$ emissions at the two facilities have not increased as a result of eliminating the $SO_2$ stepdown requirement. Therefore, EPA's Prevention of Significant Deterioration (PSD) regulations (August 7, 1980, 45 FR 52676) do not apply to this SIP revision.

No analysis is required for compliance with the Good Engineering Stack Height rule revision because the stacks of both sources are below 65 meters. Also, there are no merged plume issues associated with this source-specific SIP revision.

EPA has also reviewed this SIP revision for consistency with Section 110(a)(2)(E) of the Clean Air Act, and has found that the interstate impact of these sources will be significantly less than the significant impact concentrations for each averaging period. Due to present limitations on air quality modeling, the ambient analysis was limited to a 50 km radius around the Alba Waldensian and Valdese Manufacturing facilities. Both plants are located further than 50 km from any interstate boundary. Also, as shown in the technical Support Document for this SIP revision, the VALLEY model demonstrate that the 3-hour and 24-hour ambient $SO_2$ concentrations resulting from these two sources' emissions woud decrease markedly a short distance from the plant and the predicted ambient concentrations would fall in every case below the $SO_2$ standards. Therefore, in EPA's judgment, the revision will not contribute to $SO_2$ nonattainment in Tennessee, South Carolina, Virginia or more distant states. Neither will this revision interfere with PSD measures in the states surrounding North Carolina.

**Final Action**

Based on the foregoing, EPA hereby approves the revision to North Carolina regulation 2D.0516, submitted to EPA on March 22, 1977, as it applies to Alba Waldensian and Valdese Manufacturing. This will replace the existing federally approved limit of 1.6 lb $SO_2$/MBTU with the limit of 2.6 lb $SO_2$/MBTU for these two sources.

For further discussion of these issues and the air quality modeling analysis, please consult the Technical Support Document, which is available for public inspection at the EPA Region IV Office in Atlanta, Georgia.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate Circuit by May 8, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

The Office of Management and Budget (OMB) has exempted this rule from the requirements of Section 3 of Executive Order 12291.

**List of Subjects in 40 CFR Part 52**

Air pollution control, Intergovernmental relations, Incorporation by reference, Sulfur oxides.

**Note:** Incorporation by reference of the State Implementation Plan for the State of North Carolina was approved by the Director of the Federal Register on July 1, 1982.

Date: February 15, 1989.

**Lee A DeHihns, III,**

*Acting Regional Administrator.*

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

**PART 52—[AMENDED]**

**Subpart II—North Carolina**

1. The authority citation for Part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401–7642.

2. Section 52.1770 is amended by adding paragraph (c)(45) to read as follows:

**§ 52.1770 Identification of plan.**

* * * * *

(c) * * *

(45) $SO_2$ revisions for Alba Waldensian and Valdese Manufacturing which were submitted by the North Carolina Department of Natural Resources and Community Development on April 2, 1986.

(i) Incorporation by reference. (A) Letter of April 2, 1986, from the North Carolina Department of Natural Resources and Community Development.

(B) Permits for Alba Waldensian (2 plants) and Valdese Manufacturing which were issued by the Environmental Management Commission on July 23, 1986, March 11, 1987, and August 1, 1985, respectively.

(ii) Additional material—none.

[FR Doc. 89-5332 Filed 3-8-89; 8:45 am]

BILLING CODE 6560-50-M



**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Office of the Secretary**

**42 CFR Part 1001**

**Medicare and Medicaid Programs: Fraud and Abuse; Administrative Adjudication of Certain Health Care Exclusion Cases**

**AGENCY:** Office of the Secretary, HHS; Office of Inspector General (OIG).

**ACTION:** Final rule.

**SUMMARY:** This final rule will allow for the administrative hearings and administrative appeal of certain health care exclusion cases governed by 42 CFR part 1001 to be handled by the Departmental Appeals Board of this Department. The purpose of this final rule is to conform existing regulations in this Part to the delegations of authority made by the Secretary on June 16, 1988 to handle these hearings and appeals.

**EFFECTIVE DATE:** These regulations are effective on March 9, 1989.

**FOR FURTHER INFORMATION CONTACT:** Joel J. Schaer, Office of Inspector General, Legislation, Regulations and Public Affairs Staff, (202) 472-5270.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

42 CFR Part 1001 currently contains the substantive and procedural regulations for implementing sections 1128, 1842(j), 1862(e), and former section 1862(d) of the Social Security Act. These statutory provisions constitute some of the authorities that provide for exclusions under the Medicare and Medicaid programs. The procedures for conducting hearings and appeals of cases arising under these statutory provisions are set forth in regulations at 42 CFR 1001.107(c) and 1001.128 (b) and (c). In the past, hearings in these cases have been conducted by administrative law judges assigned to the Office of Hearings and Appeals of the Social Security Administration, while the administrative appeals of these cases have been handled by the Appeals Council also of the Social Security Administration. In all cases, subsequent judicial review is available in United States District Court.

On June 16, 1988, the Secretary delegated to the administrative law judges assigned or detailed to the Departmental Appeals Board the authority to conduct administrative hearings for a number of statutory authorities, including those governed by 42 CFR Part 1001. In addition, the Secretary delegated to the Departmental Appeals Board the authority to hear administrative appeals of these cases. (53 FR 25543, July 7, 1988.)

**II. Provisions of the Regulation**

This final rule is designed to conform existing regulations governing the administrative adjudication of certain types of health care exclusion cases to the June 16, 1988 delegations of authority made by the Secretary. Specifically, the revisions to 42 CFR Part 1001 provide that hearings in these type cases may be conducted by administrative law judges assigned or detailed to the Departmental Appeals Board. These regulations further provide that administrative appeals of such cases may be decided by the members of the Departmental Appeals Board. At the discretion of the Secretary, these changes to the regulations may be applied to cases pending in administrative adjudication.

These regulations are rules of agency procedure and practice exempt from the notice and comment rulemaking requirement (5 U.S.C. 553(b)).

**III. Impact Analysis**

*Executive Order 12291*

We have determined that these regulations do not meet the criteria for a major rule as defined by section 1(b) of Executive Order 12291. Under those criteria, a rule is classified as major if it would have an annual effect on the economy of $100 million or more; cause a major increase in costs or prices for consumers, government agencies, industry or a geographic region; or cause significant adverse effects on business.

*Regulatory Flexibility Analysis*

These regulations do not constitute a rule as defined under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601(2)).

**List of Subjects in 42 CFR Part 1001**

Administrative practice and procedure, Fraud, Health facilities, Health professions, Medicare.

42 CFR Chapter V, Part 1001 is amended as set forth below:

**PART 1001—PROGRAM INTEGRITY**

1. The authority citation for Part 1001 continues to read as follows:

**Authority:** Secs. 1102, 1128, 1842(j), 1862(d), 1862(e), 1866(b)(2) (D), (E) and (F), and 1871 of the Social Security Act (42 U.S.C. 1302, 1320a-7, 1395u(j), 1395y(d), 1395y(e), 1395cc(b)(2) (D), (E) and (F), and 1395hh), unless otherwise noted.

2. Section 1001.107 is amended by revising paragraph (c) to read as follows:

**§ 1001.107 Notice of exclusion or termination to affected party.**

* * * * *

(c) This decision and notice constitute an "initial determination" and a "notice of initial determination" for purposes of the administrative appeals procedures specified in Subparts D and E of Part 498 of this title, except that (1) the authority to conduct hearings and render decisions may be exercised by administrative law judges assigned to, or detailed to, the Departmental Appeals Board, and (2) the authority to render final determinations may be exercised by the Departmental Appeals Board.

3. Section 1001.128 is amended by revising paragraphs (b) and (c) to read as follows:

**§ 1001.128 Appeal procedures.**

* * * * *

(b) A hearing under this section will be conducted in accordance with procedures set forth in Subpart D of Part 498 of this title, except that the authority to conduct hearings and render decisions may be exercised by administrative law judges assigned to, or detailed to, the Departmental Appeals Board.

(c) If any party to the hearing is dissatisfied with the hearing decision, that party is entitled to request review of the decision as specified in Subpart E of Part 498 of this title, except that the authority to render final determinations may be exercised by the Departmental Appeals Board. A suspended party may also seek judicial review of the final administrative decision.

Dated: November 28, 1988.

**Richard P. Kusserow,**

*Inspector General, Department of Health and Human Services.*

Approved: January 18, 1989.

**Otis R. Bowen,**

*Secretary.*

[FR Doc. 89-5488 Filed 3-8-89; 8:45 am]

BILLING CODE 4120-03-M

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**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 2**

**[FCC 89-19]**

## Non-Government Use of the Tracking and Data Relay Satellite System

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** By this action the Commission is adopting a new United States footnote to permit non-Government space stations to transmit to National Aeronautical and Space Administration's (NASA) Tracking and Data Relay Satellite System (TDRSS) in the 14.896–15.121 GHz band. This action is necessary to facilitate the expansion of commercial space ventures by providing lower-cost, more efficient radiocommunications to and from earth. By taking this action the Commission will be furthering the President's directive to remove regulatory obstacles to non-Government space activities.

**EFFECTIVE DATE:** March 31, 1989.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Damon C. Ladson, Frequency Allocations Branch, Office of Engineering and Technology, (202) 653–8108.

**SUPPLEMENTARY INFORMATION:**

**List of Subjects in 47 CFR Part 2**

Radio.

This is a summary of the Commission's order, FCC 89–19, adopted January 27, 1989, and released February 15, 1989.

The full text of the Commission's decisions are available for inspection and copying during normal business hours in the FCC dockets branch (room 230), 1919 M Street Northwest, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street Northwest, Suite 140, Washington, DC 20037.

**Summary of Order**

1. The Commission is amending § 2.106, 47 CFR Part 2, by adding a new United States footnote to permit non-Government space stations to transmit to NASA's Tracking and Data Relay Satellite System in the 14.896–15.121 GHz band. The footnote also provides power flux density limits consistent with recommendations of the International Radio Consultative Committee (CCIR). The 14.896–15.121 GHz band is currently allocated for Government fixed and mobile services on a primary basis and Government space research on a secondary basis. Presently, there is no non-Government allocation in this band.

2. On February 11, 1988, the President issued a revised directive on national space policy, calling upon the Government to identify and eliminate regulatory impediments to non-Government space sector activities. In order to further that directive, NTIA has requested that the Commission adopt a footnote to permit commercial users access to the 14.896–15.121 GHz NASA TDRSS frequencies. This footnote will provide that access. Since there are no other non-Government operations in the 14.896–15.121 GHz band, this action will not affect other non-Government spectrum users.

*Ordering Clause*

This action is taken pursuant to 47 U.S.C. 154(i), 303(c), 303(f), 303(g) and 303(r).

*Rule Changes*

Part 2 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

**PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS**

1. The authority citation in Part 2 continues to read:

**Authority:** Sec. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted.

2. Section 2.106, the Table of Frequency Allocations, is amended by listing footnote US310 in column 4 for the 14.7145–15.1365 GHz band, and column 5 for the 14.50–15.35 GHz band and adding the text of footnote US310 to the list at the end of the table as follows:

**§ 2.106 Table of frequency allocations.**

| United States table | |
|---|---|
| Government Allocation (GHz) | Non-Government Allocation (GHz) |
| (4) | (5) |
| • • • | • • • |
| 14.5000–14.7145 FIXED. Mobile. Space Research. 14.7145–15.1365. | 14.50–15.35 |

| United States table | |
|---|---|
| Government Allocation (GHz) | Non-Government Allocation (GHz) |
| (4) | (5) |
| MOBILE. Fixed. Space Research. US310 G119. 15.1365–15.35. FIXED. Mobile. Space Research. 720 US211 | 720 US211 US310 |
| • • • | • • • |

• • • • • •

**United States (US) Footnotes**

• • • • • •

US310 In the band 14.896–15.121 GHz, non-Government space stations in the space research service may be authorized on a secondary basis to transmit to Tracking and Data Relay Satellites subject to such conditions as may be applied on a case-by-case basis. Such transmissions shall not cause harmful interference to authorized Government stations. The power flux density at the earth's surface from such non-Government stations shall not exceed −136 to −148 dBW/m²/kHz, depending on the angle of arrival, in accordance with CCIR Recommendation 610-1.

• • • • • •

Federal Communications Commission.

**Donna R. Searcy,**

*Secretary.*

[FR Doc. 89-5405 Filed 3-8-89; 8:45 am]

BILLING CODE 6712-01-M

**47 CFR Part 15**

**[General Docket 86-422; FCC 89-50]**

## Control and Security Alarm Devices

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This action denies a petition for reconsideration filed by the National Academy of Science's Committee On Radio Frequencies (CORF) and the National Radio Astronomy Observatory (NRAO), requesting certain changes to the Report and Order in General Docket 86–422. Based on this action, the limits specified in the subject report and order will remain in effect.

**EFFECTIVE DATE:** March 9, 1989.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554.



**FOR FURTHER INFORMATION CONTACT:** John A. Reed, telephone (202) 653–7313.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Memorandum Opinion and Order in General Docket 86–422, adopted February 10, 1989, and released February 27, 1989. The full text of the Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

**Summary of Memorandum Opinion and Order**

1. In the *Report and Order (Order)* in General Docket 86–422, adopted March 9, 1988, FCC 88–101 (53 FR 11861, April 11, 1988), the Commission, among other things, limited the emissions permitted in certain restricted bands above 1000 MHz, to a level of 500 uV/m at a distance of 3 meters. This level was established after considering the need to minimize the potential for interference to sensitive radio services authorized to operate in those bands.

2. On May 12, 1988, the National Academy of Science's Committee on Radio Frequencies (CORF) and the National Radio Astronomy Observatory (NRAO) filed a petition for reconsideration. CORF/NRAO requested that the Commission set aside its decision and revert to a previously established limit of 125 uV/m at 3 meters in four radio astronomy bands; 1400–1427 MHz, 1660–1668.5 MHz, 2690–2700 MHz and 4990–5000 MHz. Although this limit had been established in a proceeding prior to the initiation of General Docket 86–422, it was not enforced due to a partial stay of the rules and a waiver with regard to the requirement to measure unwanted emissions above 1000 MHz. This resulted in a situation where, for all practical purposes, there were no limits on the level of emissions permitted in the restricted bands above 1000 MHz, for control and security alarm devices including the frequency bands of concern to CORF/NRAO.

3. Oppositions to the CORF/NRAO petition were filed by Interactive Technologies, Inc. ("ITI"), Pittway Corporation ("Pittway"), Linear Corporation ("Linear"), The Door Operator and Remote Controls Manufacturers Association ("DORCMA"), The Chamberlain Group ("Chamberlain"), and Rollins, Inc. ("Rollins"). They believe that there should be no stay in the effectiveness of the Report and Order in this proceeding, and that the Commission should re-affirm its findings. There were no filings in support of the petition.

4. In the *Order*, the Commission pointed out that the objective in establishing emission limits in the restricted frequency bands is to minimize the potential for interference to the sensitive radio services, including radio astronomy, authorized to operate in those bands. The 500 uV/m at 3 meter limit was established as a balance between the desire for interference control and the economic difficulty of producing devices to comply with the limit.

5. The Commission observed that there are numerous potential sources of unwanted emissions, in addition to Part 15 control and security devices which could affect operations possibly within the radio astronomy bands. CORF/NRAO was unable to identify a single source of interference to their operations; whether from Part 15 devices or from transmitters operated in the authorized services. It is important to note that unwanted emissions from equipment used in the authorized services are permitted to be more than 1000 times greater than unwanted emissions from Part 15 devices, and these greater emissions are also permitted within the radio astronomy bands. Since unwanted emissions from equipment used in the authorized services are permitted within the radio astronomy bands, and at a much higher level than those permitted to be radiated from Part 15 devices, the Commission must recognize the probability that the unidentified interference referenced by CORF/NRAO may be caused by emissions from equipment used in the authorized services. Therefore, the Commission cannot accept speculation that significant interference has been caused by Part 15 devices.

6. The Commission finds that CORF/NRAO have not presented any new information in their petition for reconsideration that had not been considered previously by the Commission in reaching the decision in this proceeding. Furthermore, the Commission finds that the CORF/NRAO petition does not contain any persuasive arguments or evidence to warrant a change in the emission limit of 500 uV/m at 3 meters for emissions in the restricted bands above 1000 MHz, caused by control and security alarm devices operated under the provisions of Part 15 of the Rules. For these reasons, and in light of the above discussion, the Commission is not persuaded by the arguments set forth in CORF/NRAO's request for reconsideration of the decisions in the Report and Order in General Docket 86–422.

**Ordering Clause**

7. Accordingly, *It Is Ordered* that the petition for reconsideration filed by the National Academy of Science, through its Committee on Radio Frequencies, and the National Radio Astronomy Observatory *is denied.*

**List of Subjects in 47 CFR Part 15**

Control and security alarm equipment.

Federal Communications Commission.

**Donna R. Searcy,**

*Secretary.*

[FR Doc. 89-5125 Filed 3-8-89; 8:45 am]

BILLING CODE 6712-01-M

**47 CFR Part 73**

**[MM Docket No. 88-29; RM-5796]**

## Radio Broadcasting Services; Anchorage, AK

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document substitutes Channel 277C2 for Channel 276A at Anchorage, Alaska, and modifies the Class A license of Korlyn Broadcasting, Inc. for Station KXDZ(FM), as requested, to specify operation on the higher class channel. This will provide Anchorage with an additional expanded coverage area FM service. Reference coordinates for Channel 277C2 at Anchorage are 61–09–58 and 149–49–34. With this action, the proceeding is terminated.

**EFFECTIVE DATE:** April 17, 1989.

**FOR FURTHER INFORMATION CONTACT:** Nancy Joyner, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 88–29, adopted February 8, 1989, and released March 3, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

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**PART 73—[AMENDED]**

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments for Alaska, is amended by amending the entry for Anchorage by removing Channel 276A and adding Channel 277C2.

Federal Communications Commission.

**Steve Kaminer,**

*Deputy Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 89-5469 Filed 3-8-89; 8:45 am]

BILLING CODE 6712-01-M

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**47 CFR Part 73**

**[MM Docket No. 88-236; RM-5726]**

**Radio Broadcasting Services; Carthage, IL**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document substitutes Channel 221B for Channel 221A and modifies the license of Station WCAZ(FM) at Carthage, Illinois, to specify the higher class channel, at the request of Bryan Broadcasting, Inc., licensee of Station WCAZ(FM). A *Report and Order* was issued in this proceeding on November 4, 1988, dismissing the petition for rule making for lack of interest. According to petitioner timely comments were filed but were never received by Commission staff responsible for acting on petitions. Petitioner's late expression of interest has been accepted for the purpose of substituting Channel 221B1 for Channel 221A at Carthage, Illinois. The restricted site coordinates for Channel 221B1 are 40-18-01 and 91-11-54. With this action, this proceeding is terminated.

**EFFECTIVE DATE:** April 17, 1989.

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Memorandum Opinion and Order, MM Docket No. 88-236, adopted February 8, 1989, and released March 3, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Illinois is amended by adding Channel 221B1 and removing Channel 221A at Carthage.

**Steve Kaminer,**

*Deputy Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 89-5467 Filed 3-8-89; 8:45 am]

BILLING CODE 6712-01-M

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**47 CFR Part 73**

**[MM Docket No. 88-325; RM-5901]**

**Radio Broadcasting Services; Ocean Springs, MS**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document substitutes FM Channel 276C2 for Channel 276A at Ocean Springs, Mississippi, in response to a petition filed by Charles H. Cooper. In accordance with § 1.420(g) of the Commission's Rules, we have also modified the license for Station WOSM(FM), Ocean Springs, to specify operation on Channel 276C2 in lieu of Channel 276A, at the current site of Station WOSM(FM). The coordinates for Channel 276C2 at Ocean Springs are 30-24-34 and 88-42-23. With this action, this proceeding is terminated.

**EFFECTIVE DATE:** April 17, 1989.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 88-325, adopted February 8, 1989, and released March 3, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. In § 73.202(b), the Table of FM Allotments under Mississippi is amended by removing Channel 276A and adding Channel 276C2 at Ocean Springs.

Federal Communications Commission.

**Steve Kaminer,**

*Deputy Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 89-5466 Filed 3-8-89; 8:45 am]

BILLING CODE 6712-01-M

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**47 CFR Part 73**

**[MM Docket No. 88-23; RM-6106]**

**Radio Broadcasting Services; Ashland, WI**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document substitutes Channel 244C2 for Channel 244A Ashland, Wisconsin, and modifies the license of Station WJJH(FM) to specify operation on the higher powered frequency, as requested by Bay Broadcasting Corp. The current transmitter site of Station WJJH(FM) at coordinates 46-34-23 and 90-51-56 can be used. The Canadian government has concurred in the allotment. With this action, this proceeding is terminated.

**EFFECTIVE DATE:** April 17, 1989.

**FOR FURTHER INFORMATION CONTACT:** Patricia Rawlings, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No 88-23, adopted February 8, 1989, and released March 3, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.



**PART 73—[AMENDED]**

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments is amended under Wisconsin, by adding Channel 244C2 and removing Channel 244A at Ashland.

**Steve Kaminer,**

*Deputy Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 89-5468 Filed 3-8-89; 8:45 am]

BILLING CODE 6712-01-M

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**47 CFR Parts 73 and 76**

**[MM Docket No. 87-154; FCC 89-344]**

**Broadcast Television and Cable Television Service; Cross-Interest Policy**

**AGENCY:** Federal Communications Commission.

**ACTION:** Policy statement.

**SUMMARY:** Through this decision the Commission reduces the scope and applicability of its cross-interest policy. The cross-interest policy essentially prevents individuals or entities from having "meaningful" relationships in two competing media outlets serving the same area. The meaningful relationships which have been considered by the Commission to be encompassed by this policy include: (1) Consulting positions; (2) joint ventures; (3) time brokerage arrangements; (4) advertising agencies; (5) nonattributable equity interests; and (6) key employee relationships. The cross interest policy was originally developed as a supplement to the Commission's duopoly rule and, in later years, was extended through case-by-case adjudication as a corollary to the Commission's other ownership rules. Like these rules, the cross-interest policy was aimed at ensuring the public's access to a diversity of viewpoints and at preventing undue concentration of economic power in broadcast licensees.

The Commission believes, for a variety of reasons, that the cross-interest policy, as it has applied to consulting positions, time brokerage arrangements and advertising agency relationships, is not longer essential to maximize diversity of viewpoints or to prevent undue concentration of economic power in broadcast markets. First, the substantial growth of media outlets across markets of all sizes has vastly emeliorated diversity concerns. Second, the new attribution provisions in the ownership rules amply define those relationships which create program and economic diversity concerns and those which do not. In many respects, these new rules duplicate, or are more extensive than the cross-interest policy, thereby rendering it superfluous. Third, other legal remedies exist that reduce or deter potential anticompetitive consequences which the cross-interest policy is designed to curb. Finally, our analysis indicates that the cross-interest policy imposes costs and burdens on the public, as well as the Commission, that are especially difficult to justify given the reduced need for the policy. At the same time that the Commission issues this decision reducing the scope of the cross-interest policy, it is also issuing a separate *Further Notice of Inquiry/Notice of Proposed Rulemaking* inviting further comment for a more extensive record before determining whether to eliminate the cross-interest policy as it applies to key employees, certain nonattributable equity interests and joint ventures. Thus, until this proceeding is completed, the cross-interest policy remains in effect as it applies to these relationships.

**EFFECTIVE DATE:** April 6, 1989.

**ADDRESS:** Federal Communication Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Douglas Minster, Mass Media Bureau, Policy and Rules Division, (202) 632-7792.

**List of Subjects**

**47 CFR Part 73**

Radio broadcasting, Television broadcasting.

**47 CFR Part 76**

Cable television.

Federal Communications Commission.

**Donna R. Searcy,**

*Secretary.*

**Policy Statement**

Adopted: October 27, 1988; Released: February 28, 1989.

By the Commission:

*Introduction*

1. On May 14, 1987, we instituted a *Notice of Inquiry* (*Notice*) into the cross-interest policy, which essentially prevents individuals or entities from having "meaningful" cross-interests in two broadcast stations, or a daily newspaper and a broadcast station, or a cable television system and a television broadcast station, serving substantially the same area.[1] As a result of our comprehensive review of the cross-interest policy, we are today issuing this Policy Statement reducing the scope and applicability of that policy. A careful review of the record, our considerable regulatory experience in administering this policy, and our analysis of the public interest costs and benefits, convince us that continued review of many relationships within the cross-interest policy can no longer be justified as a matter of sound policy. Because issues remain with respect to the policy as it applies to key employee relationships, certain nonattributable equity interests and certain joint ventures, we are issuing a *Further Notice of Inquiry/Notice of Proposed Rulemaking* requesting additional comment on those matters.

*Purpose and Scope of Inquiry*

2. In the *Notice* in this proceeding, we sought comment on the possible elimination of the cross-interest policy.[2] Based on our experience in applying the policy and the developments in the communications marketplace, we expressed skepticism that the cross-interest policy, as applied on an *ad hoc* adjudicatory basis, continued to serve the public interest. Our *Notice* solicited comment on whether retention of the cross-interest policy is necessary to prevent anticompetitive abuses from occurring, whether alternative policing mechanisms exist to assure competition, and whether continued regulation of relationships not specifically addressed by the Commission's rules is necessary. More specifically, we requested commenters to discuss the role of market forces, private remedies, and the antitrust laws to deter anticompetitive misconduct and to ensure competitive communications markets. In addition, we asked whether we should amend our attribution rules to include key employees.

3. In the *Notice*, we identified certain relationships to be within the ambit of the cross-interest policy. These relationships involve key employees, consulting positions, advertising agency representative relationships, time brokerage arrangements, sales representative relationships, nonattributable equity interests, and joint ventures. We observed that the concerns relating to certain cross-interest relationships had either been eliminated or specifically addressed by the Commission's rules. In particular, we

[1] *Reexamination of the Commission's Cross-Interest Policy*, 2 FCC Rcd 3699 (1987).

[2] *Id.* at 3702.

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noted that sales representative relationships had been stricken from the cross-interest policy because we found the examination of such relationships unnecessary to promote economic competition and that, to the extent that abuses arose, they could be addressed more adequately by remedies other than regulatory intervention. We further noted that certain minority stock interests and positional interests, such as officers and directors, were now encompassed by the local ownership rules and, therefore, the need to address these interests in the context of our existing cross-interest policy was unnecessary. Accordingly, based upon the considerations described above, we proposed to eliminate most of the remainder of the existing policy.

4. We conclude that retention of our policies relating to consulting positions, advertising agency representative relationships and time brokerage arrangements are no longer warranted in the public interest.[3] Before discussing the reasons for this determination, we shall initially describe the different types of cross-interests addressed in this *Policy Statement* which have created regulatory concern under our existing policy, provide an overview of the policy's evolution, and summarize the comments filed in this proceeding. We shall then focus our attention on the reasons which, considered together, persuade us that these parts of our cross-interest policy are no longer essential to promote economic competition or diversity of viewpoint or otherwise necessary to serve the public interest.

*Background*

1. Cross-Interests Proscribed Under Policy

5. The cross-interest policy is designed to address instances in which an individual or entity has a "meaningful" relationship in two competing media outlets serving substantially the same area. The meaningful relationships which the Commission has determined to be encompassed under the policy are set forth below.[4]

6. *Consulting Positions.* The Review Board has applied the cross-interest policy where a consultant who provides advice and/or has what would now be an attributable interest in one media outlet in the market also provides advice to other competing stations in the same market.[5] For example, the policy was applied where a spouse of the sole owner of one radio station was to serve as an accountant/bookkeeper or program director for that station as well as serve in a consulting capacity for competing radio stations in the same market. The Review Board reasoned that the consultant had access to confidential finanical or programming information of competitors and, therefore, had the potential to impair arms-length competition.[6]

7. *Time Brokerage Arrangements.* The cross-interest policy has also been considered in instances where a radio station proposes to enter into a "time brokerage" arrangement to purchase varying amounts of time from a competing station in the same market in order to air programming and sell advertising during those segments. Generally, the Commission has found that such proposals implicate the cross-interest policy because of the potential for diminution of competition arising from owning and programming one station and making programming decisions at an independently-owned station.[7]

8. *Advertising agencies.* The cross-interest policy is also triggered when an individual has ownership interests in both a broadcast station and an advertising agency, and the ad agency purchases advertising time on behalf of its clients on other stations in the same service in the same market as the commonly owned station. In these instances, the Commission reasoned that the ad agency may be in a position to favor the commonly-owned station as against competing stations in the placement of advertising. In the past, hearings were held to determine whether such cross-interests implicated the policy.[8]

2. Development of the Cross-Interest Policy

9. The cross-interest policy has evolved almost entirely through case-by-case adjudication. The cross-interest policy was developed in the 1940's as a supplement to the "duopoly" rule, which then prohibited the common ownership, operation, or control of two stations in the same broadcast service covering substantially the same area.[9] At that time, either actual working control or ownership of fifty percent or more of the stock of the licensee were necessary to meet the "ownership, operation or control" requirement of the "duopoly" rule.[10] This phrase, therefore, did not

[3] As indicated above, our inquiry also included examination of our cross-interest policy as it relates to joint ventures, key employee relationships, and nonattributable equity interests. In order to develop a fuller record, however, we are issuing a separate notice requesting additional comment on these issues.

[4] In addition to determining what constitutes a "meaningful" cross-interest, it is also necessary to ascertain when media outlets serve substantially the same area. Generally, the policy applies to stations or media outlets located in the same community or substantially in the same market. *See, e.g., Farmville Broadcasting Co.*, 47 FCC 2d 663, 664 (1974); *Guy S. Erway*, 80 FCC 2d 750, 752 (Rev. Bd. 1980). The cross-interest policy has not been applied, however, in situations that merely involve a minimal overlap of the 1 mV/m contours of the stations because such stations are not considered to be in the same market. *See, e.g., United Community Enterprises, Inc.*, 37 FCC 2d 953 (Rev. Bd. 1972).

[5] Consultants, as distinguished from key employees, usually involve relationships with the licensee that are limited in duration and scope and generally confined to providing advice, which can either be accepted or rejected by the licensee. In general, consultants are not considered, and hence do not serve, as "employees" of the licensee but rather as independent contractors who are hired for their expertise in one or a number of areas. For example, a consultant may be hired to prepare audience surveys and, based on these surveys, report findings and recommend a course of action. Thus, while consultants may be engaged by licensees to make findings and recommendations regarding aspects of a station's management, operations or direction, they would not have the final say as to whether the recommendations should be implemented. Rather, such matters would usually be undertaken by officers or directors of the licensee.

[6] *See, e.g., Lexington County Broadcasters, Inc.*, 42 FCC 2d 581 (Rev. Bd. 1973); *Guy S. Erway*, 98 FCC 2d at 758.

[7] *WCVL, Inc.*, 66 FCC 2d 879 (1975); *Station WWSM*, 31 FCC 2d 564 (1971).

[8] *Eastern Broadcasting Corp.*, 30 FCC 2d 745 (Rev. Bd. 1971) (specific allegations of fact were sufficient to raise questions as to whether applicant's interest in an advertising agency and proposed broadcast station serving the same area were contrary to the public interest). *Cf. Atlantic Broadcasting Co. (WUST)*, 5 FCC 2d 717 (1966) [cross-interest issue not warranted because of absence of specific allegations of fact that the interest would be contrary to the public interest].

[9] The "duopoly" rule currently prohibits the common ownership, operation, or control of two commercial broadcast stations in the same broadcast service which serve the same local area. It accomplishes this goal by prohibiting the overlap of the 3.16 mV/m contours of commonly-owned FM stations, the 5 mV/m contours of commonly-owned AM stations, or the Grade B contours of commonly-owned television stations. *See* 47 CFR 73.3555(e) (1988). The "duopoly" rule, as well as the one-to-a-market rule (47 CFR 73.3555(b) (1987)), *see infra* note 18, have recently been reexamined in a separate proceeding. *See Amendment of § 73.3555 of the Commission's Rules, the Broadcast Multiple Ownership Rules*, ___ FCC Rcd ___ (1988) *(First Report and Order* in MM Docket No. 87-7, adopted October 27, 1988) (Radio Duopoly Rule). *Amendment of § 73.3555 of the Commission's Rules, the Broadcast Multiple Ownership Rules*, ___ FCC Rcd ___ (1988) *(Second Report and Order* in MM Docket No. 87-7, adopted December 12, 1988) (One-to-a-Market-rule).

[10] *Rules Governing Standard and High Frequency Broadcast Stations*, 5 Fed. Reg. 2,382, 2,384 (1940) (FM and Television Duopoly); *Rules Governing Standard and High Frequency Broadcast Stations*, 8 Fed. Reg. 16,065 (1943) (AM Duopoly).



encompass minority stock interests or positional interests such as being an officer, a director or a manager.[11] Thus, situations in which the owner of one station obtained an interest in another station in the same area through a position as an officer, director, manager or minority stockholder were not prohibited by the "duopoly" rule then in effect. Even though these cross-interests were not covered by the "duopoly" rule, they were perceived to create the same kind of anticompetitive concerns addressed by the rule. To address these concerns, the Commission applied a policy which went beyond the scope of the "duopoly" rule by limiting "cross-interests" in more than one broadcast service covering substantially the same area.

10. One of the earliest cases where this new policy was applied involved an entity which had a controlling interest in one television station and a minority stock interest at another television station in the same community.[12] In a similar vein, this policy was invoked by the Commission where principals proposed to be officers or directors of competing stations in the same market.[13] In both instances, the Commission noted that the underlying purpose served was to promote and maintain full competition between stations located in the same city.[14] Further, the Commission indicated that prevention, not correction, of anticompetitive practices was the goal sought. In subsequent decisions, the Commission expanded the purpose underlying the cross-interest policy beyond its original intent by stating that it was designed to restrict not only those relationships having the potential to threaten economic competition but also those having the potential to lessen diversity of viewpoint.[15]

11. In an effort to promote the dual goals of competition and diversity, the cross-interest policy was invoked, in 1969, to prohibit a national or regional sales representative company that was wholly or partially owned by a licensee of a broadcast station from representing and soliciting advertising for competing stations in the same service in the same area.[16] This policy known as the *Golden West* policy, was based upon the concern that such a "sales rep" could impair competition by colluding or price fixing in the sale of advertising time, or placing the station it did not own at a competitive disadvantage. The Commission also expressed concern that this type of relationship was antithetical to the promotion of diversity of viewpoint. In 1981, the Commission instituted a rulemaking proceeding in which it questioned the regulatory wisdom underlying the *Golden West* policy. Finding that limiting these types of relationships did not appear necessary to further the goals of promoting diversity of viewpoint or economic competition, the Commission eliminated the policy.[17] The Commission concluded that the operation of market forces and application of the antitrust laws would be adequate to deter anticompetitive practices that the policy sought to address.

12. Although the cross-interest policy was originally developed as an intra-service supplement to the duopoly rule, it was subsequently extended to the Commission's other local ownership rules,[18] including the broadcast one-to-a-market rule,[19] and the broadcast/newspaper [20] and cable/television cross-ownership rules.[21] Subsequent case-by-case adjudications, under the cross-interest policy, have resulted in creation of additional restraints beyond those expressly prohibited by the local ownership rules.[22]

13. At the time the policy developed, and for much of its history, the attribution rules were narrow, leaving many relationships outside their purview.[23] Under the former rules only the duopoly provisions were in effect. Thus, only the cross-interest policy prevented an owner of one station from holding a position as an officer, director, manager, or minority stockholder in a competitor. In 1953, the attribution rules were revised, as they applied to the national ownership limit, to include all minority interests, partners, and officers and directors.[24] Recently, the attribution rules were further modified to exempt from their scope holders of less than five percent of the voting stock of the licensee and limited partners.[25] In addition, relief from attribution was provided to certain officers and directors whose duties are unrelated to broadcast operations. Thus, under the revised attribution rules, ownership of as little as five percent of the voting stock of a broadcasting station is treated

[11] *See e.g., Radio Athens, Inc. (WATH) v. FCC*, 401 F.2d 398 (D.C. Cir. 1968).

[12] *See Minnesota Broadcasting Corp.*, 13 FCC 672 (1949). *See also Macon Broadcasting Co.*, 10 FCC 444 (1945), in which the Commission conditioned its grant of a construction permit for a new AM station upon the applicant's two majority shareholders divesting themselves of "any connection" with a competing AM station in the same community.

[13] *Shenandoah Life Insurance Co.*, 19 RR 1 (1959). The cross-interests addressed in both *Minnesota Broadcasting* and *Shenandoah Life Insurance* are now prohibited by our local ownership rules.

[14] *Id.* at 2.

[15] *Compare Minnesota Broadcasting Corp.*, 13 FCC at 672 (singular purpose of economic competition) *with United Community Enterprises, Inc.*, 37 FCC 2d at 953 (dual purpose of economic competition and diversity of viewpoint).

[16] *Golden West Broadcasters*, 16 FCC 2d 918 (1969).

[17] *Golden West Policy*, 87 FCC 2d 668 (1981) (Report and Order in BC Docket No. 80-438).

[18] These rules, described below, including the duopoly rule, will be collectively referred to hereinafter as "the local ownership rules."

[19] *See, e.g., Cleveland Television Corp.*, 91 FCC 2d 1129 (Rev. Bd. 1982), *rev. denied*, FCC 83-235 (released May 18, 1983), *affirmed sub nom. Cleveland Television Corp. v. FCC*, 732 F.2d 962 (D.C. Cir. 1984) (radio-television cross-interest case). Unlike the "duopoly" rule, the "one-to-a-market" rule restricts common ownership between commercial stations in different broadcast services. In essence, it restricts a party to one AM-FM combination or one television station in a market. *See* 47 CFR 73.3555(b) (1988).

[20] The broadcast/newspaper cross-ownership rule prohibits common interests in a broadcast station and a daily newspaper if the broadcast station's relevant service contour would encompass the entire community in which such newspaper is published. *See* 47 CFR 73.3555(c) (1988). *See Wisconsin Television, Ltd.*, 59 RR 2d 193 (1985) (television-newspaper cross-interest case). Although recent appropriations legislation circumscribes Commission authority in the area of newspaper cross-ownership, the legislation is inapplicable to the non-attributable relationships discussed herein. *See Making Appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies for the Fiscal Year Ending September 30, 1989, and for Other Purposes*, Pub. L. No. 100-459 (signed October 1, 1988).

[21] *News International, PLC*, 97 FCC 2d 349, 367-71 (1984) (cross-interests between cable television systems and television stations in same market). The cable/broadcast cross-ownership rule prohibits, *inter alia*, the common ownership of a cable television system and a television broadcast station whose predicted Grade B contour covers any portion of the service area of the cable television system. *See* 47 CFR 76.501(a)(2) (1988). This provision of the cable/broadcast cross-ownership rule was recently codified in the Cable Communications Policy Act of 1984, Pub. L. No. 98-549, 98 Stat. 2779, 2785 (codified at 47 U.S.C. 553(a) (Supp. II 1984)).

[22] For example, even though the multiple ownership rules permit the common ownership of colocated commercial AM and FM stations, the cross-interest policy has been invoked where cross-interests exist between separately controlled AM and FM stations in the same market. *See, e.g., Lexington County Broadcasters, Inc.*, 42 FCC 2d 581 (Rev. Bd. 1973).

[23] The attribution provisions are contained in notes appended to the local ownership rules and, in essence, constitute the means by which the local ownership rules are implemented. Currently, they provide that, *inter alia*, partnership and direct ownership interests of voting stock of five percent or more will be cognizable as ownership interests significant enough to invoke the rule. They also provide that officers and directors of a licensee are positions which entail an amount of control great enough to require prohibition under the rule. 47 CFR 73.3555, Note 2(a) (1988). Exempted from attributable interest are passive investor interests under ten percent, holders of nonvoting stock, limited partners and certain officers and directors who certify that they are not materially involved in the management or operation of the licensee. 47 CFR 73.3555, Note 2(c), (f), (g)(1), and (h) (1988).

[24] *Amendment of the Multiple Ownership Rules*, 18 FCC 288 (1953).

[25] *See* 47 CFR 73.3555, 76.501, Notes 1, 2 (1988).

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the same as majority ownership for purposes of applying the local ownership rules. As a result of these intervening revisions, the attribution rules now proscribe many of the interests that originally led to the adoption of the cross-interest policy.[16] For example, interests of officers and directors, and of minority stockholders that were originally prohibited by the cross-interest policy alone now come within the purview of Commission rules. Similarly, where voting ownership interests at or above five percent are involved, the rules, instead of the policy, now apply.

*Summary of Comments*

14. The majority of commenters agree with the initial views expressed in the *Notice* that the cross-interest policy no longer serves the public interest and should be eliminated.[17] Commenters supporting elimination of the policy, including NAB, Group W, Morgan Stanley, and Cox, cite the confusion and uncertainty created by the cross-interest policy as it relates to the multiple ownership rules. They express concern with the *ad hoc* application of the policy that fails to provide the kind of clear guidelines which the rules provide in this area. They maintain that the unpredictable application of the cross-interest policy may require evaluation whether a relationship permitted by the Commission's rules will be transformed into one which is prohibited pursuant to the cross-interest policy. Such a determination is difficult for a licensee to make in light of the varying case law, and any conclusion in this area often lacks certainty, thus impeding efficient decision making. Commenters further assert that the concerns underlying the policy are now addressed by either market forces or alternative rules and remedies. They argue that market pressure creates incentives for licensees to meet the needs and desires of the public rather than enter into relationships which would have a deleterious effect on competition and diversity. Audience reaction aside, commenters maintain that state and federal antitrust actions, as well as remedies based on contracts between parties, will discourage abuses and provide relief should any such abuse occur. Thus, they conclude that the public interest can be protected through means less restrictive and more certain than the cross-interest policy.

15. Specifically, these commenters argue that retention of the policy harms the public interest through delay and, in many instances, discouragement of investment in media properties. They assert that the risk of a cross-interest challenge always exists even if the relationship is structured to comport with Commission rules. They stress that this uncertainty hampers the ability of broadcasters to enter into relationships which may improve existing facilities or provide new facilities.

16. These commenters assert that the policy is no longer necessary to promote competition and viewpoint diversity due to the growth of the marketplace. They maintain that the proliferation of media outlets has attenuated the need for Commission-imposed restraints to ensure against anti-competitive abuses. They assert further that, in the event such abuses do occur, marketplace forces should correct the misconduct without Commission intervention. They argue that the cross-interest policy is an artificial and unnecessary impediment to the functioning of the marketplace which, due to competitive pressure, polices itself. They conclude that practices that are anticompetitive and reduce diversity are simply too difficult to coordinate due to the number of outlets and, therefore, will be ineffective. Further, stations must try to optimize performance in order to retain a share of the market, and that effort could be thwarted by an adverse reaction, from their audience or competitors, to any anticompetitive practices.

17. All commenters who support elimination of the cross-interest policy also argue that the local ownership rules, particularly the attribution provisions, include the majority of relationships sought to be addressed by the cross-interest policy. They point out that the local ownership rules and the attribution provisions are the product of extensive rulemaking proceedings designed to determine which interests create a level of concern sufficient to require proscription. They maintain that relationships falling outside of the rules are of minimal significance and have, therefore, been deemed nonattributable. They further assert that the cross-interest policy undercuts the purpose of these rulemakings by creating uncertainty where the rules strive for clarity. Commenters, therefore, conclude that the local ownership rules and the attribution provisions should stand as the Commission's determination of what relationships are inconsistent with the public interest. To the extent that the multiple ownership rules do not address all relationships contemplated by the policy, commenters reiterate their contention that alternative policing mechanisms exist in the marketplace which would discourage anticompetitive misconduct before it occurs, or provide a remedy in the event such abuse arises.

18. In opposing elimination of the cross-interest policy, CFA/TRAC argue that while streamlining the policy is desirable, elimination is unwarranted. They point to what they characterize as an overwhelming desire of the Commission to eliminate all multiple ownership rules as demonstrated by a recent rule making proceeding inquiring into the duopoly and one-to-a-market rules.[18] These commenters specifically take issue with the Commission's assertion, in the *Notice*, that revisions of the attribution rules have abrogated the need for the cross-interest policy in many instances. They argue that, in light of the duopoly rulemaking proceeding, it is disingenuous for the Commission to rely on the local ownership rules and the attribution provisions as support for eliminating the cross-interest policy. CFA/TRAC points out that the Commission has previously predicated repeal of one policy on the existence of another even as the latter faces repeal, and is following a similar course in the instant proceeding. They assert that repeal of the one-to-a-market rule [19] has already been accomplished through a liberal policy of granting stays of outstanding divestiture obligations. Thus, in conjunction with the Commission's lack of commitment to the ownership rules, repeal of the cross-interest policy will leave unchecked relationships which will lead to an increase in predatory practices resulting in a diminution of competition and a reduction in program options. They conclude that retention of the policy in a clarified form is, therefore, required to promote the public interest.

19. Similarly, in reply comments, ABI maintains that the NAB relies too heavily on the attribution provisions as support for elimination of the cross-interest policy. ABI argues that the policy is designed to supplement the attribution provisions and provide the Commission with the means by which to promote, independent of other government agencies, arms-length competition. It further asserts that the NAB points to no instance in which the antitrust laws have addressed competitive abuses of the type encompassed by the cross-interest policy, thus failing to demonstrate that reliance on antitrust laws to cope with cross-interest concerns is either an effective deterrent or remedy. Arguing that the cross-interest policy is necessary to promote arms-length competition, ABI concludes that the Commission's rules, without more, are inadequate to protect against certain anticompetitive practices. ABI contends that where specific rules are applicable the cross-interest policy should not apply, but where there are gaps in the rules the cross-interest policy is required to stem abuses. ABI concludes that the policy should, therefore, be clarified and retained for use only on an "as needed" basis.

*Discussion*

20. Although, as indicated, there are aspects of this policy with respect to which further comment is being sought, the analysis that follows provides not only the justification for the changes we are adopting but establishes a background against which the remainder of the policy should eventually be judged. After a careful review of the record in this proceeding, we find that the public interest would be better served by reducing the scope of the cross-interest policy.[20] While this policy may have been at one time regarded as necessary to preserve competition and diversity of viewpoint, a number of different factors, including changes in the mass media marketplace, modifications of the attribution rules, and the adequacy of other legal remedies, convince us that a substantial part of this policy is not essential to maximize diversification of viewpoints to the public or to prevent undue concentration of economic power. Similarly, we are further convinced that, with respect to the interests addressed herein, the costs associated with continued case-by-case review outweigh the minimal public interest benefits that might be derived therefrom. As we explain below, we are confident that the public's access to a multiplicity of programs, information, and viewpoints will not be adversely affected as a result of our removal of these unnecessarily restrictive aspects of the policy. We are also equally confident that economic competition in mass media markets will not materially diminish, but, on the contrary, will continue to flourish to the overall benefit of the public.

Growth of Media Outlets

21. Since the implementation of the cross-interest policy, there has been rapid and widespread growth in mass media outlets. This growth has led to a significant increase in diversity nationwide and, of even more relevance to the instant proceeding, locally. While we do not rely upon these changes alone to reach the determinations herein, we do believe that, together with the other factors presented below, they undercut the notion that any single entity or individual is capable of manipulating or otherwise skewing competition in the marketplace of ideas or in the economic marketplace to the detriment of the public through the cross-interests mentioned above.

22. *National Growth.* To the extent that the logic behind the cross-interest policy was appropriate when first developed, the substantial growth in broadcast services across all markets, and the resulting increase in competition and diversity have reduced our concerns about the relationships addressed by the policy. For example, between 1950 and 1988, the total number of AM, FM, and TV broadcast stations authorized increased from 3,144 to 12,207 outlets, an increase of 288.3%.[21] Moreover, continued growth in the broadcast services can be expected as a result of recent Commission actions designed to foster growth of the industry.[22] In addition, there has been substantial expansion of alternate media services such as cable television, low power television (LPTV), and video cassette recorders (VCRs).[23] The potential for even further growth of media outlets exists from other developing technologies, including multipoint distribution systems (MDS) and satellite master antenna television systems (SMATVs).[24]

23. *Local Growth.* This growth of media outlets on a national level is paralleled by the growth of such outlets on the local level. In analyzing the need for the cross-interest policies, the number of outlets at the local level is more relevant than national growth because the policy was developed as a supplement to the local ownership rules. With this in mind, we note that a study submitted by the NAB [25] assessed the number of media outlets, including publications, within all television markets (Designated Market Areas). The study shows that there are a large number of media outlets and information sources in local markets of all sizes. For example, whereas the top 25 markets average about 72 radio and television stations per market, even the smallest television markets average

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[16] *See Attribution of Ownership Interests*, 97 FCC 2d at 988 n.4.

[17] Comments supporting elimination of the cross-interest policy were filed by the National Association of Broadcasters (NAB), Westinghouse Broadcasting, Inc. (Group W), Morgan Stanley & Co., Inc. (Morgan Stanley), and Cox Enterprises, Inc. (Cox). London Bridge Broadcasting, Inc. (London Bridge) filed comments which generally support elimination of the cross-interest policy except as it applies to key employee positions. Comments opposing elimination of the policy were filed jointly by the Consumer Federation of America and Telecommunications Research and Action Center (CFA/TRAC). Amherst Broadcasting, Inc. (ABI), in a reply to the comments of NAB, opposed elimination of the policy. To the extent these comments and reply comments address the subject of cross-interests involving key employees nonattributable equity interests or joint ventures, they will be incorporated by reference in the record of the new proceeding instituted today.

[18] *Amendment of § 73.3555 of the Commission's Rules, the Broadcast Multiple Ownership Rules*, 2 FCC Rcd 1138 (1987) (*Notice of Proposed Rulemaking* in MM Docket No. 87-7).

[19] 47 CFR 73.3555(b) (1988).

[20] As stated earlier, exempted from this policy statement shall be cross-interests involving certain joint ventures not otherwise addressed by the attribution rules, key employees, and certain nonattributable equity interests. Subject to the outcome of our *Further Notice of Inquiry/Notice of Proposed Rulemaking*, these cross-interests will continue to be subject to review.

[21] In 1950 there were 2,302 AM, 732 FM, and 109 television stations. *Sixteenth Annual Report of the Federal Communications Commission—FY 1950*, at 102. The 1988 station totals are based on Commission records as of October 31, 1988, which indicate that there are 4,823 AM, 4,930 FM, and 1,791 television stations.

[22] *See Modification of FM Broadcast Station Rules to Increase the Availability of Commercial FM Broadcast Assignments*, 94 FCC 2d 152 (1983) (*Report and Order* in BC Docket No. 80-90), *recon. denied*, 97 FCC 2d 279 (1984); *see also FM Broadcast Assignments*, 100 FCC 2d 1332, 1340-1379 (1985) (implementation of BC Docket No. 80-90) (the Commission established 889 new commercial FM allotments, the majority of which are in medium and small radio markets, and created three new classes of FM channels); *Preparation for an International Telecommunication Union Region 2 Administrative Radio Conference for the Planning of Broadcasting in the 1605-1705 kHz Band*, 51 FR 8,706 (1986) (Second Report in Gen. Docket No. 84-467) (international agreement provides for more spectrum use by AM radio service, potentially stimulating a significant number of new AM stations in the future).

[23] The number of cable television systems has increased from 300 in 1954 to about 8,000 in 1987. *See Twentieth Annual Report of the Federal Communications Commission—FY 1954*, at 90. Of all television households, 79% are passed by cable television systems. "Cable Stats," *Cable Vision*, Aug 31, 1987, at 88. Approximately 49.5% of all television households subscribe to cable. Nielsen Media Research estimate, quoted in "July Numbers," *Broadcasting*, Sept 21, 1987, at 78. Currently, there are about 410 licensed LPTV stations, and we estimate that this service may ultimately increase by an additional 4,000 stations. *Report Concerning General Fairness Doctrine Obligations of Broadcast Licensees*, 102 FCC 2d 143, 212 (1985). The percentage of television households with VCRs has increased from 19% in 1984 to 48.7% in 1987. See A.C. Nielsen estimate, quoted in Comments of NAB, "An Analysis of Media Outlets by Market" ("NAB Media Outlet Study"), Appendix B at 1 (June 1987), filed in MM Docket 87-7, which NAB incorporates by reference in comments filed in the current proceeding. *See* Comments of NAB at 8 n. 16 (July 1987) (MM Docket No. 87-154).

[24] As of June 30, 1986, MDS systems reached approximately 280,880 subscribers and estimates suggest the number of subscribers could reach more than nine million. Paul Kagan Associates, Inc., *Multicast Newsletter*, No. 322, November 10, 1986.

[25] NAB Media Outlet Study, *supra* note 23.

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about 9 radio and television outlets per market.[36] In addition, our own analysis of Arbitron data by Metropolitan Statistical Area, the geographic market measure that may be more appropriate for radio reception, shows that while the top 25 radio markets average approximately 35 total AM and FM stations, even the smallest radio markets average approximately 10 commercial AM and FM stations. As these figures demonstrate, there are a significant number of commercial broadcast outlets throughout markets of all sizes. Further, if cable and VCRs are taken into account, listeners and viewers have even more sources of programs. Cable penetration actually increases as the size of television markets decreases,[37] and VCR penetration appears to be relatively constant across market sizes.[38] This multitude of media sources provides audiences with a wide diversity of choices, and also encourages broadcasters to provide service in the public interest.

24. We believe the competitive and diverse market which has developed since the initial implementation of the cross-interest policy substantially attenuates the need for our regulatory oversight of the interests at issue here to promote diversity and economic competition. As suggested by Cox, market conditions have reduced diversity concerns because stations are under strong market pressure to maximize performance and typically do so through providing service desired by the public.[39] With many competing media outlets available to the public, consumers can easily switch from one station to another if the first station's programs do not suit their tastes. Hence, stations have strong incentives to take into account the tastes and needs of viewers or listeners. Moreover, we recognized, in a previous proceeding eliminating regulations which encroached on licensee's business practices, that the increased number of stations and the increase in facilities give new importance to the uniqueness of a program format in an effort to attract advertising dollars.[40] This plethora of media services, and the resulting increase in the diversity of voices, therefore, strongly undercuts, in our view, any underlying need for restraints on consulting agreements.

[36] *Id.* at Figure I.
[37] *Id.* at Figure III.
[38] *Id.* at Figure II.
[39] Comments of Cox Enterprises at 10.
[40] *Second Report and Order in Re Elimination of Unnecessary Broadcast Regulation*, 98 RR 2d 1500, 1517 (1988) (MM Docket No. 83-842).

advertising agencies, and time brokerage arrangements to enhance diversity.

25. Moreover, the considerable choice which exists in the marketplace creates incentives for service providers to compete as vigorously as possible. Because of the many competing stations, they are more likely to be acutely aware of their audience's desires, and to attempt to meet those desires in order to compete successfully. For example, it is doubtful that consulting agreements would continue to be a legitimate concern, since the station entering into such an agreement must continue to remain responsive to the needs and interests of its audience or risk losing a portion of that audience. Thus, a station would likely disregard advice from a consultant which would only serve to protect the consultant's cross-interest and would not improve the outlet's competitive stance. If a station is unresponsive to its audience, its ratings will drop, and the resultant decrease in earnings will influence the station as much as, if not more than, Commission policy. Accordingly, we believe that the remarkable growth in the broadcast market, and the mass media marketplace generally, are important factors which suggest that continued review of interests such as these is not needed to achieve its original and primary goal of preserving diversity and competition among media voices in a given market.

Costs/Burdens Imposed By Operation Of The Cross-Interest Policy

26. We have also evaluated the costs and burdens imposed on the public by continuing to scrutinize consulting arrangements, advertising agency arrangements, and time brokerage agreements. We conclude that these aspects of the cross-interest policy impose costs and burdens on the public, as well as the Commission, which are difficult to justify given the reduced need for continued oversight of these relationships. As discussed below, these costs vary in character, but are alike in that they are not counterbalanced by any significant concomitant public interest benefits.

27. *The Policy Creates Uncertainty in Broadcasters and Other Media Entrepreneurs.* First, the *ad hoc* development of the policy has had the unintended effect of surrounding certain media transactions with a cloud of uncertainty. In the line of cases from which the policy has evolved the Commission has tried to determine whether particular relationships are "meaningful" and whether the media outlets at issue serve "substantially" the same area. Inconsistencies among these cases render difficult, if not impossible, a definitive determination by broadcasters, in advance of adjudication, as to whether an overlap in service areas is substantial enough or a relationship sufficiently meaningful to warrant regulatory intervention. For example, it is unclear, from an examination of the case law, how the cross-interest policy would be applied to time brokerage arrangements. In one case, the Commission permitted this type of relationship relying, in part, on the large number of radio stations in the market.[41] The Commission indicated that the small percentage of local stations programmed by the same licensee reduced concern that the time brokerage relationship would have a negative effect on the pubic interest. In another decision, the Commission found no violation of the cross-interest policy even though the time brokerage agreement resulted in one licensee programming the only two nighttime radio stations operating in the area during the brokered time period.[42]

28. As commenters assert, the inconsistency in the case law complicates the business planning of inherently complex media transactions. In spite of bona fide efforts to avoid any actual control in another media entity through the use of relationships which are clearly permitted by our cross-ownership rules, broadcasters may unintentionally run afoul of our policy.[43] Further, the fact that the cross-interest policy addresses potential rather than actual harm, together with the absence of a requirement that specific allegations of fact be demonstrated,[44] leave broadcasters particularly vulnerable to cross-interest challenges by competitors, even if groundless. It is, therefore, possible that parties might decide not to enter into a particular relationship merely because of the absence of clear-cut guidelines about whether the relationship would pass muster under the cross-interest policy.[45] In fact, Morgan Stanley asserts that there are numerous situations in which unobjectionable relationships will not be undertaken due to uncertainty regarding potential effects of the policy. In short, the policy places burdens on outside sources and on the Commission's resources which must be

[41] *Dual-Language TV/FM Programming in Puerto Rico*, 33 RR 2d 515 (1975).
[42] *Station WWSM*, 31 FCC 2d 564 (1971).
[43] *See* Comments of Morgan Stanley at 5–11.
[44] *Cleveland Television Corp.*, 732 F.2d at 970.
[45] *See* Comments of Morgan Stanley at 11–12.



borne by the public. Even if it is quite likely that the relationship would be approved, the affected parties have no way of reliably predicting that result in advance.[46] Past cases construing the policy afford some general guidance, but do not approach the specificity required for parties to determine, in advance, the propriety of the anticipated relationship. Thus, relationships which might benefit licensees and the public often may be avoided or aborted because of the policy's lack of clarity.[47]

29. *Limitations on Use of Qualified Personnel.* A second burden imposed by the cross-interest policy is that it hinders the ability of media outlets to attract and utilize, in consulting positions, qualified personnel with substantial broadcast experience. Barring contract provisions to the contrary, the absence of the cross-interest policy would permit experts to work at, or have interests in, multiple outlets. This would allow a station to attract and utilize personnel who are cognizant of the requirements of station management and the programming needs and unique characteristics of the particular market. In turn, this may enable a station to increase revenues or decrease costs. The increased profits obtained from such efficiencies could then be recycled into improved programming or facilities, providing more resources to stations suffering from declining revenues and ratings. As a result, a previously unpopular format or station, rather than succumbing to competition, may experience new life and viability in the market through the expertise of a consultant. Thus, the use of qualified personnel, now potentially barred by our cross-interest policy, may "rescue" the station, avoiding a diminution in local diversity and competition.

30. Some would argue that allowing the same person to be employed by two outlets will only contribute to a diminution of diversity and competition. To the contrary, permitting common ownership of media outlets, in certain circumstances, does not detract from diversity of viewpoint but may, in fact, enhance diversity and competition, providing benefits which inure to the public interest.[48] Given the trend towards counterprogramming and narrowcasting, it is reasonable to assume that this same result may occur by permitting broadcast stations to attract and utilize all qualified personnel. Consultants and similar professionals have a clear business incentive to provide advice and assistance that address the individual needs of their clients. Viewed in that light, a consultant will counsel each client station according to its particular situation. For this reason, a consultant serving different broadcasters in the same market might well give each client different advice regarding the type of programming that will effectively maximize its audience. The consultant might recommend, for example, a "top-forty" format to one radio station while advising another competing outlet to use an all news format, thereby stimulating diversity in the market. Furthermore, as a general proposition, freed of the cross-interest policy, broadcasters will have more flexibility to enter into relationships which may strengthen their viability and thus preserve existing levels of diversity of viewpoint and competition. We, therefore, believe it is in the public interest to permit the use of qualified personnel between competing media outlets.

31. *Imposition of Administrative Costs.* A third burden imposed by the continued application of the cross-interest policy results in administrative costs placed upon affected parties as well as the Commission. Such costs could be justified, but only if the review process involved was likely to lead to discovery of significant public interest concerns not otherwise remediable. Where a potential cross-interest issue is raised, the Commission must review the facts and allegations and determine if a *prima facie* case has been presented under the policy. Where the facts of a case are such that a cross-interest issue is designated for hearing, this process can be even longer and more complex. Often, an individual must go through administrative review in order to show that his proposed relationship does not violate the cross-interest policy.[49] This process is often time consuming and costly to the participants and the Commission. As we recognized in a prior proceeding, even one investigation culminating in a hearing significantly increases the resources required to administer our policies.[50] Further, in addition to the costs of investigation and enforcement, countless staff hours may be spent responding to inquiries relating to the applicability and interpretation of the policy.[51] In view of the lack of benefits involved in continued retention of the policy to address consultancies, advertising agency relationships and time brokerage agreements, the costs of applying the policy to these relationships are unjustifiably high. Given the questionable value of continued oversight of these relationships in the current competitive market, these cost may be reduced, and the public better served, by reliance on methods other than the policy to protect the public interest.

Adequacy of Existing Regulatory Prohibitions

32. We also believe that the need for the existing cross-interest policy has decreased with the adoption of new attribution provisions in the ownership rules that have superceded the cross-interest policy in several respects. Originally, the cross-interest policy was developed to fill the interstices left by the early ownership rules. Since then, we have amended the ownership rules[52] and adopted new attribution provisions[53] to encompass a greater number of relationships that previously were addressed only by the cross-interest policy. At the time the Commission adopted the new attribution rules, we stated that the duopoly and one-to-a-market rules would be applied, in lieu of the policy, "where voting ownership interests at or above the relevant benchmarks [five

[46] For example, although the Commission intended to apply the cross-interest policy to ownership interests in newspapers, *see Multiple Ownership*, 50 FCC 2d 1046, 1079–77 (1975), the Commission declined to do so when it approved a transfer which resulted in a nonattributable stock interest in the licensee of a television station being held by the owner of a daily newspaper which served the same market. *Evening Star Broadcasting Co.*, 66 FCC 2d 129 (1978). Although the Commission discussed the impact on competition in that case, the cross-interest policy was not invoked to ban the transaction.

[47] We recognize that vagueness is not fatal to the cross-interest policy. However, even if the policy were clarified in an effort to cure this uncertainty, our decision to delete the policy, for the reasons stated herein, would not be altered.

[48] *Amendment of § 73.3555 of the Commission's Rules, the Broadcast Multiple Ownership Rules.* ——— *FCC Record* ——— *(1988) (Second Report and Order* in MM Docket No. 87–7, adopted December 12, 1988) ¶¶ 51–64. *See also* P. Steiner, *Program Patterns and Preferences, and the Workability of Competition in Radio Broadcasting*, 66 Quarterly J. Economics 194; FCC Network Inquiry Special Staff, *New Television Networks: Entry, Jurisdiction, Ownership, and Regulation*, Volume I, at 365–66.

[49] *See, e.g., Metromedia Broadcasting Corporation*, 1 FCC Rcd 1622 (1986); *Wisconsin Television, Ltd.*, 102 FCC 2d at 1001.

[50] *Elimination of Unnecessary Broadcast Regulation*, 59 RR 2d at 1509.

[51] ABI argues that these administrative burdens can be minimized by applying the policy only on an "as needed" basis where it is necessary to ensure free competition. This approach, however, would in no way preclude the need for case-by-case adjudication and might further complicate the process by requiring the Commission to make findings or establish guidelines as to when the policy should be invoked.

[52] *Amendment of the Multiple Ownership Rules*, 18 FCC 288 (1958).

[53] *See Attribution of Ownership Interests*, 97 FCC 2d at 1032–33.

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percent stock ownership or officers or directors) are involved."[64] Thus, for example, cross directorships and substantial minority interests, which, until amendment of the ownership rules only fell within the purview of the policy, are now expressly covered by these rules.

33. In developing the local ownership rules, in the 1940s, and modifying the scope of our attribution provisions in the 1980s, the Commission identified those relationships which were of genuine concern because of their potential for abuse. We concluded that ownership of five percent or more of a station's stock or a position as an officer or director of a licensee were situations which would be deemed attributable for purposes of the multiple ownership rule.[65] Conversely, nonvoting stockholders and limited partners, we decided, do not take part in control and, therefore, would not be considered attributable for the purposes of the ownership rules.[66] These actions reflected our informed policy judgment on the types of relationships which would detrimentally affect diversity and competition and should, therefore, be restricted in order to promote the public interest.[67] As for CFA/TRAC's argument that our reliance on the multiple ownership rules is misplaced because we are proposing to repeal those rules,[68] we think it is sufficient to note that our recent decisions only modestly revised the duopoly and one-to-a-market rules.[69]

34. Further reducing our concern with respect to the need for the existing cross-interest policy are remedies in the form of federal and state antitrust laws, which may be available to reduce or deter potential anticompetitive consequences which the cross-interest policy is designed to curb. Antitrust analysis will take into account the market sizes and the number of competitors when determining if a violation has occurred. The potential for anti-competitive consequences perceived to be present in such relationship as consulting agreements, time brokerage arrangements, and relationships involving advertising agencies is reduced by the presence of these laws. The existence of such laws and remedies has supported modification or elimination of other rules and policies.[70] To the extent that they reduce anticompetitive effects, these remedies may also have an ancillary effect which, in conjunction with the substantial market growth, discussed *supra* paras. 21–25, reduces our concern over diversity. We believe that reliance on such alternative forms of deterrence will more effectively serve the public interest and preclude the need for a stringent policy to insure against anticompetitive consequences.[71]

35. Also, contractual arrangements into which the parties enter may provide further protection from anticompetitive activity. For example, the improper use of consultants or advertising agencies could conceivably give rise to a cause of action for breach of contract. Alternatively, such actions might give rise to a breach of a fiduciary duty imposed by either the contracting party or by the entity with which the cross-interest relationship exists. Further, a station that wishes to hire a consultant may insert into the terms of the contract a provision to require that any confidential business information obtained during the consultancy period not be disclosed to a rival station for which the consultant also worked.[72] Similarly, contracts can protect stations in situations in which an advertising agency with a cross-interest in one station in a market contracts to purchase time on competing stations. As part of the contractual relationship, a client may require the agency to spread advertising among competing stations in order to reach a larger audience or a broader demographic base. Thus, if the agency favors the station with which it shares a common interest by directing advertisers exclusively to that station, an action for breach of contract may lie. Notwithstanding the legal remedies available, the harm to the reputation of one who breaches these types of contractual requirements acts as a strong incentive to conduct themselves in a forthright manner. The existence of these alternative prohibitions further reduces our concern that permitting cross-interest relationships will result in harm to the public interest.

Summary

36. *Consulting Positions and Advertising Agencies.* The vast changes in the media marketplace reduce our concern that these interests will result in harm to the public interest. Current market conditions require consultants and advertising agencies to represent clients vigorously in order to remain competitive. Thus, it would not avail representatives to favor one client over any other. Our concern with the possible anticompetitive effects of these interests is further attenuated by the availability of alternative methods to prevent and remedy abuses. Specifically, contract provisions can create enhanced duties of care, confidentiality requirements, or affirmative obligations in the method of conducting business. These agreements can protect the rights of the parties as well as deter anticompetitive conduct. In the event of abuse, less speculative remedies are available in the form of federal and state antitrust laws or, if the relationship is contractual, an action for breach. These alternatives serve both deterrent and remedial purposes and will address actual abuses, should they occur, rather than circumscribe potentially beneficial relationships in an effort to prevent speculative abuses.

37. *Time Brokerage Arrangements.* The substantial increase in media outlets, and the corresponding increase in diversity and competition, since the implementation of the cross-interest policy, reduces the need to prohibit time brokerage arrangements to protect the public interest. Competitive conditions require a station that decides to broker its time to another to remain alert to the needs of its audience or risk losing some of that audience to a competitor, with a resultant decrease in ratings and revenue. Thus, the amount of choice available to listeners and viewers insures that competition will be vigorous in order for a station to retain its share of the audience. Should an anticompetitive arrangement occur, the antitrust laws are equally applicable to remedy this situation as they are to remedy abuse of relationships involving consulting positions and advertising agencies. Moreover, since a licensee entering into a time brokerage arrangement must continue to maintain control over its programming, the fact that some of its programming may be provided by another station in the market does not raise the same viewpoint diversity questions that may be raised if stations in the market were under common ownership or shared key employees.

38. Our decision to narrow the scope of the cross-interest policy is further based on the fact that revisions to the attribution rules now directly address a number of interests previously limited only by the policy. Moreover, our action here will reduce the number of *ad hoc* determinations required, thus making it easier for broadcasters and others to determine when a relationship will be circumscribed. This will, in turn, reduce the chilling effect on potentially beneficial relationships because of the lack of specificity on which to base a determination whether the relationship will ultimately be permitted.

39. In our view, wherever feasible it is more efficient and effective to confront whatever cross-interest problems arise by applying the various remedies (*e.g.*, breach of contract and federal and state antitrust provisions) which are designed to discourage activities that may be inimical to the welfare of the public. Our present policy ignores the fact that every cross-interest covered by the policy is not certain to harm the public; in fact, we conclude that some might be beneficial. We will thus allow parties affected by particular cross-interests and, as to antitrust issues, the Justice Department and the Federal Trade Commission, to identify and take appropriate action as those cross-interests emerge.

40. The decision contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980, and found to impose a new or modified information collection requirement on the public. Implementation of any new or modified requirement will be subject to approval of the Office of Management and Budget as prescribed by the Act.

41. Accordingly, *it is ordered*, That the cross-interest policy, except as applied to joint ventures, key employee relationships, and nonattributable equity interests as discussed herein, *is eliminated* effective *April 6, 1989.*

42. Authority for the policy decisions herein is contained in sections 4(i) and 303 of the Communications Act of 1934, as amended.

43. For further information on this proceeding contact Douglas Minster, Mass Media Bureau, (202) 632–7792.

[FR Doc. 89–5494 Filed 3–8–89; 8:45 am]

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[64] *Id.* at 999 n.4 (parenthetical statement added).

[65] *Id.* at 1025.

[66] *Id.* at 1020, 1022.

[67] At the time of modifying the attribution provisions, we stated that "[t]he attribution rules . . . are designed to measure what ownership interests will confer that amount of influence or control which must be limited." The scope of that proceeding, however, did not encompass the cross-interest policy, which addresses business relationships of broadcasters that do not rise to the level of attributable interests. Therefore, we did not revisit in that rulemaking whether the relationships covered by the cross-interest policy continued to confer sufficient influence or control to warrant limitations comparable to those governing attributable interests. Although we stated that the attribution rulemaking proceeding was not intended to affect the cross-interest policy and that the policy would continue to be applied except where, as a practical matter, it overlapped with specific provisions of the new attribution rules, *see id.* at 1000 n.4, it was not our intent to foreclose reexamination of the continued validity and effectiveness of the cross-interest policy. We note that any relationship covered by the cross-interest policy that is deemed to pose a serious threat to viewpoint diversity or competition, should be treated, if possible, as an attributable interest under the local ownership rules rather than subjecting it to *ad hoc* review as is our current practice. As noted previously, we are inviting further comment with respect to the appropriate regulatory treatment of key employees and certain joint ventures and nonattributable equity interests in a separate proceeding. With respect to nonattributable equity interests and joint ventures, however, if we decide in our separate proceeding that they require continued oversight, it may not be possible to incorporate them in the ownership rules. The multiplicity of possible relationships makes it difficult to forecast definitively all the relationships which threaten diversity or competition. Thus, should we decide at the conclusion of our separate proceeding that these interests continue to warrant Commission scrutiny, our current *ad hoc* review may be necessary for such interests. We would nonetheless like to develop, if possible, any guidelines that might identify, at least in general terms, those nonattributable equity and other interests that require continued oversight to minimize uncertainty caused by continued case-by-case review.

[68] *See Amendment of § 73.3555 of the Commission's Rules, the Broadcast Multiple Ownership Rules*, 2 FCC Rcd 1138 (1988) (*Notice of Proposed Rulemaking* in MM Docket No. 87–7).

[69] *See Amendment of § 73.3555 of the Commission's Rules, the Broadcast Multiple Ownership Rules*, ——— FCC Rcd ——— (1988) (*First Report and Order* in MM Docket No. 87–7, adopted October 27, 1988) (Radio Duopoly Rule); *Amendment of § 73.3555 of the Commission's Rules, the Broadcast Multiple Ownership Rules*, ——— FCC Rcd ——— (1988) (*Second Report and Order* in MM Docket No. 87–7, adopted December 12, 1988) (One-to-a-Market Rule). These decisions were adopted concurrent with, or shortly after, the Commission adopted the instant *Policy Statement*, but prior to its release.

[70] *See, e.g., Elimination of Unnecessary Broadcast Regulation*, 59 RR 2d at 1500; *Golden West Policy*, 87 FCC 2d at 866.

[71] The fact that broadcasters are subject to Federal licensing and regulation, of course, does not immunize them from antitrust oversight. In this regard, we note that, in addition to possible governmental enforcement actions in this area, the private parties injured by Federal antitrust law violations are entitled to bring a private action for treble damages against the defendant. Clayton Act, ch 323, Section 4, 38 Stat. 731 (1914) (15 U.S.C. 15 (1982)).

[72] In fact, it is within the discretion of the licensee, prior to retaining a consultant, to require disclosure of the consultant's other media interests, permitting the licensee to make an informed judgment regarding possible conflicts of interest.



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## 47 CFR Part 80

**[PR Docket No. 87–491, FCC 89–48]**

## Amendment of the Maritime Services Rules Concerning the Use of Digital Selective Calling (DSC) Equipment

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rules.

**SUMMARY:** These amended rules provide for modified DSC equipment characteristics and for the use of a shipboard sensor-activated VHF alarm system for moored vessels using DSC technology. New international DSC equipment standards and the capability of VHF DSC equipment to accommodate a safety alarm system have created a need for this action. The amended rules will better serve the communications interests of the maritime community and tend to encourage early implementation of the DSC system.

**EFFECTIVE DATE:** April 14, 1989.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Robert E. Mickley, Federal Communications Commission, Private Radio Bureau, Washington, DC 20554, (202) 632–7175.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Report and Order* in PR Docket No. 87–491 adopted February 10, 1989 and released February 28, 1989. The full text of the Commission's decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

### Summary of Report and Order

1. Digital selective calling (DSC) is a signalling system that can be used to establish contact with a station or group of stations in the maritime radio services. DSC provides an improvement over the old method of establishing radio contact which required a ship operator to (1) be on duty, and (2) be monitoring for a call. The DSC system, therefore, promotes additional safety and more efficient use of the spectrum. DSC will eventually be an integral part of the Global Maritime Distress and Safety System (GMDSS) planned for implementation in the 1990's.

2. In 1985 the Commission amended its maritime services rules to provide for the optional use of DSC equipment. These rules were based on the then effective International Radio Consultative Committee (CCIR) Recommendation 493–2 which was developed primarily for large, ocean-going ships. In 1986 CCIR revised its recommendation in a document entitled "Digital Selective Calling System for Use in the Maritime Mobile Service" (CCIR Recommendation 493, Dubrovnik, 1986). This Recommendation provided for three levels of DSC equipment. The first level would be used by compulsorily fitted vessels that are required to have a sophisticated radio installation for safety purposes. Two simpler versions of DSC equipment specifications were also developed to fill the needs of the smaller vessel operators.

3. The rules were amended to remove the minimum operational characteristics

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from our current rules to permit all classes of DSC equipment to be used on U.S. vessels in conformance with CCIR Recommendation 493, Dubrovnik, 1988. The three classes of DSC equipment contained in the revised CCIR Recommendation are:

- Class A—DSC equipment intended for large, ocean-going ships to meet the GMDSS carriage requirements.
- Class B—DSC equipment applicable to small ships equipped only with VHF and/or MF two-way communications equipment.
- Class C—DSC equipment intended as an add-on for VHF communications equipment to provide DSC alerting, transmitting ship identification only.

4. The rules authorize the use of shipboard sensor-activated VHF alarm systems using DSC technology to transmit brief digital messages that relate to the condition or safety of vessels while moored. Such systems utilize sensors capable of detecting fire, explosion, grounding, listing, sinking and the like. In the past, the use of marine frequencies for safety purposes on board unoccupied ships has been barred because of rule provisions that prohibit unattended transmitter operations and the lack of a frequency that could be dedicated to this purpose. However, Article 60 of the International Radio Regulations authorizes the use of marine frequencies in the port operations service for communications related to the safety of ships. Channel 70 (156.525 MHz) is already dedicated to VHF DSC and the rules are amended to use it for this purpose. The transmission of a VHF DSC message would take approximately 0.5 second and if a call is not acknowleged by the addressed coast station, the call sequence from the ship station is to be repeated after five seconds. Any subsequent repetitions of the call sequence cannot be made until at least fifteen minutes have elapsed and the number of repetitions of sensor-activated DSC transmissions are limited to no more than three after the fifteen minute waiting period.

**Ordering Clauses**

5. The Commission hereby certifies pursuant to section 605(b) of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354) that this rulemaking proceeding will not have a significant economic impact on a substantial number of small entities. The new rules replace the minimum operational characteristics contained in our current Rules.

No U.S. manufacturer is known to be manufacturing DSC equipment under the rules proposed to be deleted in this proceeding. No new equipment carriage requirements are imposed.

6. The Rule amendments adopted herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements; and will not increase or decrease the burden hours imposed on the public. See 5 CFR 1320.7(c)(2).

7. *It Is Ordered* that Part 80 of our Rules *is amended* as shown at the end of this document. The authority for this action is contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r).

8. *It Is Further Ordered* that these rule amendments shall become effective April 14, 1989.

9. *It Is Further Ordered* that a copy of this Report and Order shall be sent to the Chief Counsel for Advocacy of the Small Business Administration.

10. *It Is Further Ordered* that this proceeding *is Terminated*.

**List of Subjects in 47 CFR Part 80**

Coast stations, Ship stations, Marine safety, Radio communications equipment.

Federal Communications Commission.

**Donna R. Searcy,**

*Secretary.*

**Amended Rules**

Part 80 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

## PART 80—STATIONS IN THE MARITIME SERVICES

1. The authority citation for Part 80 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–158, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377, unless otherwise noted.

2. Section 80.153 is amended by revising paragraph (a) to read as follows:

**§ 80.153 Coast station operator requirements.**

(a) Except as provided in § 80.179, operation of a coast station transmitter must be performed by a person holding a commercial radio operator license of the required class, who is on duty at the control point of the station. The operator is responsible for the proper operation of the station.

* * * * *

3. Section 80.155 is revised to read as follows:

**§ 80.155 Ship station operator requirements.**

Except as provided in §§ 80.177 and 80.179, operation of transmitters of any ship station must be performed by a person holding a commercial radio operator license or permit of the class required below. The operator is responsible for the proper operation of the station.

4. A new § 80.179 is added to read as follows:

**§ 80.179 Unattended operation.**

The following unattended transmitter operations are authorized:

(a) EPIRB operations when emergency conditions preclude attendance of the EPIRB transmitter by a person.

(b) Automatic use of a transmitter during narrow band-direct printing (NB-DP) operations in accordance with CCIR Recommendation 476 or 625.

(c) Automatic use of a transmitter during digital selective calling (DSC) operations in accordance with CCIR Recommendations 493 and 541.

(d) Automatic use of transmitter when operating as part of the Automated Maritime Telecommunications System (AMTS) or an automated multi-station system for which provisions are contained in this Part.

(e) Automatic use of a VHF transmitter to send brief digital communications relating to the condition or safety of vessels while moored when all of the following conditions are met:

(1) The equipment must be using DSC in accordance with CCIR Recommendations 493 and 541 as modified by this section.

(2) Sensors must automatically activate the transmitter only under one or more of the following conditions:

(i) Fire, explosion;
(ii) Flooding;
(iii) Collision;
(iv) Grounding;
(v) Listing, in danger of capsizing;
(vi) Sinking;
(vii) Disabled and adrift; and
(viii) Undesignated condition related to ship safety.

(3) The "ROUTINE" DSC category must be used.

(4) Communications must be selectively addressed to an individual station.

(5) Transmitter output power must not exceed one watt.

(6) The call must employ a fixed format and must be in conformity with Recommendation 493 as follows:



Format specifier: Individual call—symbol 120 sent twice.

Address: 9 digit maritime mobile service identity of called station.

Category: Routine—symbol 100.

Self-identification: 9 digit ship station identity.

Message 1: Telecommand symbol 126 sent twice.

Message 2: Telecommand symbol 128 sent 6 times.

End of sequence: Symbol 127.

Error-check character: Check sum.

(7) Such transmissions are permitted only on channel 70 and the transmitter must be inhibited automatically whenever there is another call in progress on Channel 70.

(8) The call sequence for any one alarm must not be repeated until after an interval of at least five seconds. Further repetition is permitted only after intervals of at least fifteen minutes each. Repetitions following fifteen-minute waiting intervals must not exceed three.

5. Section 80.225 is revised to read as follows:

**§ 80.225 Requirements for digital selective calling (DSC) equipment.**

This section specifies the requirements for optional DSC equipment installed in ship and coast stations. Reference to any CCIR Recommendation in this section is to the most recent CCIR approved Recommendation that does not prevent the use of existing equipment.

(a) DSC equipment installed in coast and ship stations must be designed in accordance with CCIR Recommendation 493. Classes A, B, and Class C DSC equipment must not be used with the sensors referred to in § 80.179(e)(2).

(b) Manufacturers of Class C DSC equipment to be used on United States vessels must affix a clearly discernible permanent plate or label visible from the operating controls containing the following:

Warning. This equipment is designed to generate a digital maritime distress and safety signal to facilitate search and rescue. To be effective as a safety device, this equipment must be used only within communication range of a shore-based VHF marine channel 70 distress and safety watch system. The range of the signal may vary but under normal conditions should be approximately 20 nautical miles.

(c) Selective calling equipment, other than that designed in accordance with CCIR Recommendation 493, is authorized as follows:

(1) Equipment used in conjunction with the Automated Maritime Telecommunications System (AMTS) in the band 216–220 MHz.

(2) Equipment used to perform a selective calling function during narrow-band direct-printing (NB–DP) operations in accordance with CCIR Recommendation 476 or 625, and

(3) Equipment functioning under the provisions of § 80.207(a) until at least three years after mandatory DSC requirements become effective.

[FR Doc. 89-5132 Filed 3-8-89; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### 49 CFR Parts 1 and 7

**[OST Docket No. 1; Amdt. 1-228; Docket No. 43466; Amdt. 7-1]**

### Organization and Delegation of Powers and Duties

**AGENCY:** Office of the Secretary, DOT.

**ACTION:** Final rule.

**SUMMARY:** This delegation transfers Departmental responsibility for functions related to the Freedom of Information Act from the Office of Public Information, Office of the Assistant Secretary for Public Affairs to the Office of the General Counsel. It also makes technical corrections to 49 CFR Part 7 to reflect the change in delegations.

**EFFECTIVE DATE:** February 27, 1989.

**FOR FURTHER INFORMATION CONTACT:** Samuel E. Whitehorn, Office of the General Counsel, C-50, (202) 366-9307, Department of Transportation, 400 Seventh Street, SW., Washington, DC, 20590.

**SUPPLEMENTARY INFORMATION:** The Departmental responsibility for ensuring uniform implementation of the Freedom of Information Act (FOIA) (5 U.S.C. 552) and responding to requests for records of the Office of the Secretary, including the Office of the Inspector General, currently is exercised by the Office of the Assistant Secretary of Public Affairs under authority delegated by the Secretary to that office (49 CFR 1.63 (a)). The Office of the General Counsel currently has the responsibility for reviewing and taking final action on applications for reconsideration of initial decisions not to disclose unclassified records of the Office of the Secretary under FOIA (49 CFR 1.57(m)). The General Counsel, or his or her designee, also reviews any final determination by the head of an operating element within the Department not to disclose a record (or a denial of a request for a fee waiver or reduction) under 49 CFR Part 7 (53 FR 30265, August 11, 1988). Appendix A to Part 7 also sets out, among other things, where documents may be inspected (paragraph 2), where requests for records should be submitted (paragraph 4), and the official that has authority to make determinations on requests (paragraph 5).

By this delegation, the Associate General Counsel, or his or her designee, will now be responsible for the functions currently exercised by the Office of the Assistant Secretary for Public Affairs. As a result of this change, all FOIA requests will be handled within the Office of the General Counsel. The requests should be submitted to the Associate General Counsel. In the event the position of Associate General Counsel is vacant, and no designation by the Associate General Counsel has been made, the General Counsel shall designate another person to make the determination on requests.

The review functions will continue to be exercised by the General Counsel, or his or her designee. This process will maintain a two-tiered approach to FOIA issues. The review procedures set forth in 49 CFR Part 7 generally remain intact. However, a technical correction to Part 7 is needed. Section 7.1(d) will be changed to reflect the reorganization of function. Appendix A to Part 7 will be amended as follows:

—Paragraph 2 explains, among other things, that document inspection facilities are maintained by the Office of the Assistant Secretary for Public Affairs. This facility remains unchanged, but the office designation will be changed to Office of the General Counsel.

—Paragraph 4 will be changed to the Associate General Counsel.

—Paragraph 5 will be changed to the Associate General Counsel, or his or her designee.

Since this amendment relates to Departmental management, procedures, and practice, notice and comment on it are unnecessary and it may be made effective in fewer than thirty days after publication in the **Federal Register**.

**List of Subjects**

*49 CFR Part 1*

Authority delegations (Government agencies), Organization and functions (Government agencies).

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*49 CFR Part 7*

**Freedom of Information.**
**Administrative practice and procedures.**
**Records.**

In consideration of the foregoing, Parts 1 and 7 of Title 49, Code of Federal Regulations, are amended to read as follows:

**PART 1—[AMENDED]**

1. The authority citation for Part 1 continues to read as follows:

**Authority:** 49 U.S.C. 322.

2. Section 1.57b is added to read as follows:

**§ 1.57b Delegations to the Associate General Counsel.**

Administer 5 U.S.C. 552 and 49 CFR Part 7 in connection with the records of the Office of the Secretary (including the Office of the Inspector General) and issue procedures to ensure uniform Departmental implementation of statutes and regulations regarding public access to records.

3. Section 1.83 is amended by removing and reserving paragraph (a) to read as follows:

**§ 1.83 Delegations to Assistant Secretary for Public Affairs.**

* * * * *

(a) [Reserved]

**PART 7—[AMENDED]**

4. The authority citation for Part 7 continues to read as follows:

**Authority:** 5 U.S.C. 552; 31 U.S.C. 9701; 49 U.S.C. 322.

**§ 7.1 [Amended]**

5. In § 7.1(d), remove the words "Assistant Secretary for Public Affairs" and add in their place the words "Office of the General Counsel".

**Appendix A to Part 7—[Amended]**

6. In Appendix A to Part 7, paragraph 2, remove the words "Assistant Secretary for Public Affairs" and add in their place the words "Office of the General Counsel".

7. In Appendix A to Part 7, paragraphs 4 and 5, remove the words "Assistant Secretary for Public Affairs" and add in their place the words "Associate General Counsel".

Issued on: February 27, 1989.

**Samuel K. Skinner,**

*Secretary of Transportation.*

[FR Doc. 89-5527 Filed 3-8-89; 8:45 am]

BILLING CODE 4910-62-M

**Research and Special Programs Administration**

**49 CFR Part 173**

**Hazardous Materials; Requirements for Shipments and Packagings; Limited Quantities of Flammable Liquids**

*CFR Correction*

In Title 49 of the Code of Federal Regulations, Parts 100 to 177, revised as of October 1, 1988, in § 173.118(c), appearing on page 471 a portion of the text was omitted.

**§ 173.118 [Corrected]**

The last line of § 173.118(c) should read "rated capacity of one gallon or less are not subject to the requirements of this subchapter."

BILLING CODE 1505-01-M

## DEPARTMENT OF COMMERCE

**National Oceanic and Atmospheric Administration**

**50 CFR Part 651**

**[Docket No. 90251-9051]**

**Northeast Multispecies Fishery**

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Emergency rule.

**SUMMARY:** The Secretary of Commerce (Secretary) has determined that an emergency rule is necessary to promote effective management of the yellowtail flounder fishery and to prevent wastage of the yellowtail flounder stocks by closing the area, designated as the Southern New England/Mid-Atlantic Region closed area, earlier than specified in the existing regulations. The intended effect of this action is to provide protection to the juvenile yellowtail flounder stocks present in the area to enhance future spawning potential.

**EFFECTIVE DATE:** March 6, 1989 through April 1, 1989.

**ADDRESS:** A copy of the environmental assessment (EA) for this rule may be obtained from Douglas Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway, Saugus, MA 01908.

**FOR FURTHER INFORMATION CONTACT:** Jack Terrill (Resource Policy Analyst) 508-281-3600, ext. 252.

**SUPPLEMENTARY INFORMATION:** This notice of emergency action was prepared by NMFS at the request of the New England Fishery Management Council (Council) in response to a vote taken by the Council at its January 1989 meeting. This action is being implemented using emergency authority provided to the Secretary under section 305(e)(2)(B) of the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1855(e)(2)(B).

Regulations at 50 CFR Part 651 implement the Fishery Management Plan for the Northeast Multispecies Fishery (FMP) and specify that an area, designated as the Southern New England/Mid-Atlantic Region closed area, be closed during certain times of each year in order to protect yellowtail and winter flounder which concentrate there. By regulation, the area is divided into two areas with the eastern part closing on March 1 and the western remainder closing on April 1 of each year. The entire area will be reopened at 2400 hours on May 31 of each year, or at an earlier date after May 1 if the NMFS Northeast Regional Director, in consultation with the Council, determines that the closure has achieved the appropriate spawning level for yellowtail and winter flounder. Beginning at the end of December 1988, harvesters indicated the presence of large quantities of juvenile yellowtail flounder in both the eastern and western areas. The fish were reported to be of 6 to 8 inches in length (less than the legal minimum size of 12 inches) with discards of 50% and greater occurring. While mortality rates for the discarded undersized flounder are unknown, rates are expected to be high. Incidental mortality will vary depending upon length of tow, amount of fish caught by trawl, handling, and other factors, but is believed a serious threat to prerecruit flounders. Members of the Southern New England fishing industry contacted the Council and requested that action be taken to protect the flounders. They suggested that the closing dates for the area be moved up to help prevent the occurrence of any further takes.

Critical to their request was a recent report published by the NOAA/NMFS, Northeast Fisheries Center, that indicated that yellowtail flounder stocks are at record low levels of abundance with poor prospects for recovery. According to the report, yellowtail flounder landings are at a 30 year low, and recent weak year classes and continued fishing pressure are expected to continue this downward trend. The yellowtail flounder found in the Southern New England area spawn at approximately 10 inches so the continued take and discard with the resultant mortality of juvenile fish will be detrimental to any rebuilding.



Four sea sampling trips directed by NMFS were conducted in the Southern New England area. The trips confirmed that the juvenile flounder were present throughout the area, with discards measuring 8 to 12 inches in length comprising up to 95 percent of the tow. Total average lengths and discard percentages for these trips were 11 inches and 73 percent respectively.

Based on this information, the Secretary has determined that the need for emergency action does exist and that it is appropriate to close the entire area to fishing with groundfish gear. Continued effort on yellowtail flounder would not be in the best interest of the resource and the industry. The eastern portion of the area closed March 1 under existing regulations at 50 CFR 651.21(b). Accordingly, this emergency action provides for the early closure of the remaining western portion of the area.

**Classification**

The Assistant Administrator for Fisheries, NOAA, has determined that this rule is necessary to respond to an emergency situation and is consistent with the Magnuson Act and other applicable law.

The Assistant Administrator finds no potential negative impact on the groundfish resources as a result of this rule. An environmental assessment is available which explains the projected effects of the rule and finds that it has no significant effect on the human environment under the National Environmental Policy Act. A copy of the assessment may be obtained from the Council at the address listed above (see **ADDRESSES**).

This emergency rule is exempt from normal review procedures of Executive Order 12291 as provided in section 6(a)(1) of that Order. This rule is being reported to the Director of the Office of Management and Budget, with an explanation of why it is not possible to follow the regular procedures of that Order.

Pursuant to section 553(b)(B), the Assistant Administrator also finds that, because of the likelihood of high mortality of juvenile yellowtail flounder in the Southern New England/Mid-Atlantic closed area and because recent data indicate the yellowtail flounder stocks are at record low levels of abundance, notice and opportunity for public comment are impracticable and contrary to the public interest. Pursuant to section 553(d) and for the reasons stated above, the Assistant Administrator further finds good cause to make this rule immediately effective.

This emergency action is exempt from the requirements of the Regulatory Flexibility Act because it is being issued without opportunity for prior public comment.

This rule does not contain a collection of information requirement subject to the Paperwork Reduction Act.

The Assistant Administrator has determined that this rule does not directly affect the coastal zone of any State with an approved coastal zone management program.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

**List of Subjects in 50 CFR Part 651**

Fishing, Fisheries, Vessel permits and fees.

Dated: March 6, 1989.

**James W. Brennan,**

For the reasons set out in the preamble, NOAA amends 50 CFR Part 651 as follows:

**PART 651—NORTHEAST MULTISPECIES FISHERY**

1. The authority citation for 50 CFR Part 651 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

2. Section 651.21 paragraph (b)(2)(i) is suspended until April 1, 1989, and a new paragraph (b)(4) is added to read as follows:

**§ 651.21 Closed areas.**

* * * * *

(b) * * *

(2)(i) [Suspended]

(3) * * *

(4)(i) The entire area defined in paragraph (b)(1) of this section shall be closed effective March 6, 1989, until 2400 hours on May 31, 1989, unless reopened in accordance with paragraph (b)(2)(ii) of this section.

(ii) The closure specified in paragraph (b)(4)(i) shall not apply to dredge gear designed and being used for the taking of scallops in the west of 71°30' W. longitude until April 1, 1989.

* * * * *

[FR Doc. 89-5505 Filed 3-6-89; 4:01 pm]

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# Proposed Rules

Federal Register
Vol. 54, No. 45
Thursday, March 9, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 29

[TB-89-001]

### Tobacco Inspection; Flue-Cured and Burley Tobacco; Importation Prohibitions

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Dairy and Tobacco Adjustment Act of 1983, as amended, prohibits the importation of flue-cured and burley tobacco which contains any prohibited pesticide residue and establishes related certification and testing requirements. This proposal would amend the implementing regulations to: (1) Substitute the term "prohibited pesticide residue" for "banned pesticide"; (2) revise the list of pesticides for which testing is conducted; (3) revise the maximum allowable concentrations of residues; and (4) require that shipments of imported flue-cured and burley tobacco not be altered or moved from the point of entry until it has been determined that the tobacco does not exceed the maximum allowable concentrations of residues. These proposed changes would improve effective implementation of the 1983 Act.

**DATE:** Comments are due on or before April 10, 1989.

**ADDRESS:** Send comments to the Director, Tobacco Division, Agricultural Marketing Service (AMS), United States Department of Agriculture (USDA), Room 502 Annex Building, P.O. Box 96456, Washington, DC 20090-6456. Comments will be available for public inspection at this location during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Director, Tobacco Division, AMS, USDA, Room 502 Annex Building, P.O. Box 96456, Washington, DC 20090-6456, telephone—(202) 447-2567.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the Department proposes to amend the regulations governing the inspection and grading of tobacco (7 CFR Part 29, Subpart B) as they pertain to the testing of imported flue-cured and burley tobacco for prohibited pesticide residues and to related matters. The authority for these regulations is contained in the Dairy and Tobacco Adjustment Act of 1983, as amended (7 U.S.C. 511r) ("the Act") and the Tobacco Inspection Act (U.S.C. 511-511q).

The term "banned pesticide" is presently defined in section 29.401(p) with a reference to pesticides which have been canceled, suspended, revoked, or otherwise prohibited under the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA") (7 U.S.C. 135 *et seq.*). However, the term is used by various national and international organizations and others to refer to pesticides the use of which has been completely prohibited in a particular jurisdiction. In order to avoid any possible confusion, this proposed rule would substitute the term "prohibited pesticide residue," which would be defined as any pesticide residue exceeding the maximum concentration of residue for a specific pesticide or combination of pesticides as set forth in § 29.427. Also, conforming changes would be made in § 29.401(u), the definition of "Testing," and § 29.429, "Disposition of imported tobacco exceeding pesticide residue standards."

When the initial regulations concerning pesticide residues in tobacco were issued (51 FR 30196, August 22, 1986), it was stated in the supplementary information that the list of pesticides for which residue limits were established would be subject to revision from time to time as the circumstances require. The list comprises those pesticides which are not approved for use on tobacco in the United States (i.e., those pesticides which have been canceled, suspended, revoked, or otherwise prohibited under FIFRA) but which are not known or believed to be used on tobacco in foreign countries and for which reliable testing methodologies exist. Based upon information obtained from the Tobacco Pesticide Committee of the Tobacco Workers Conference, this proposed rule would add the following pesticides to the list in § 29.427: DDE, hexachlorobenzene (HCB), lindane, methoxychlor, tamaron, and cypermethrin. Maximum allowable concentrations of residues for these pesticides would be established in the manner described below.

The program for testing flue-cured and burley tobacco for pesticide residues has been under continual review since its inception. Initially, the maximum allowable concentrations of pesticide residues were established by analogy to the residue tolerances established by the Environmental Protection Agency (EPA), for food crops. The agency now believes that the program could be placed upon a more appropriate scientific footing. In proposing new maximum allowable concentrations of residues, the Department has relied upon research conducted by several land grant universities, information from the Codex Alimentarius Commission, published scientific literature, regulations of the Environmental Protection Agency, data from the Department's Agricultural Stabilization and Conservation Service (ASCS) domestic tobacco monitoring program, and data on pesticide residues in imported tobacco collected by testing imported tobacco under the present regulations. This information is available for inspection at the same address as for the comments.

During the 2½ years that the regulations have been in place, over 14,000 samples of imported flue-cured and burley tobacco have been tested for pesticide residues. The resulting data provide norms for expected pesticide residue levels. Residues significantly in excess of expected levels would indicate that good agricultural practices may not have been followed in the production of that tobacco. Consideration has been given to sources of pesticide residues which would not be inconsistent with good agricultural practices, such as incidental drift from the spraying of adjacent fields and unavoidable exposure to contaminated soil and ground water.

Some pesticides are persistent and degrade very slowly in the environment and thus may continue to occur in tobacco for many years after application of the pesticide has ceased. Limits for these unavoidable residues would be based upon the levels that are unavoidable in domestically grown tobacco. The proposed level for persistent pesticides were derived by analyzing results of tobacco monitoring samples taken from various areas of the United States. The pesticides involved are DDT, TDE, DDE, aldrin, dieldrin, toxaphene, heptachlor, heptachlor epoxide, chlordane, hexachlorobenzene (HCB), formotion, and dibromochloropropane (DBCP).

The available data for the pesticides dicamba, 2,4,—D, methamidophos, cypermethrin and permethrin are more limited than that for other pesticides. Although all of the proposed maximum allowable concentrations of residue are subject to change as new data may become available, the proposed levels for these pesticides would be denominated "temporary" in order to indicate a greater likelihood of revision. Interested persons are particularly invited to submit suggestions and data concerning the temporary levels at any time. These may be sent to the address given above for submitting comments on this proposed rule.

As is presently the case, no maximum allowable concentration of residue would be set below 0.1 ppm because this is the limit of reliable measurement.

The Act prohibits the entry into the United States of imported flue-cured and burley tobacco which is found to contain prohibited pesticide residues. The importer is required to complete a Pesticide and End User Certification form at the time of importation and must certify either that the tobacco is free of prohibited pesticide residues, or that it will not move in commerce until it has been tested and found to meet the tobacco pesticide residue requirements. Tobacco certified as not containing prohibited pesticide residues is subjected to random sampling and testing. If the test results are positive, the importer may request a retest. The testing process inherently involves a delay between the time samples are taken and the time that test results are available. In order to prevent the entry and use of tobacco later found to be contaminated, and to preserve the integrity of the testing and retesting process, it is necessary to require that imported flue-cured and burley tobacco not be mixed, blended, manipulated, altered, processed, manufactured, moved, shipped or transported from the point of entry until it has been determined that the tobacco does not exceed the maximum allowable pesticide residue concentrations set forth in § 29.427. This proposed rule would establish these requirements in a new § 29.431.

This proposed rule has been reviewed under USDA procedures established to implement Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be "nonmajor" because it does not meet any of the criteria established for major rules under the Executive Order.

The information collection requirements contained in the provisions of the regulations that would be amended by this proposed rule have been previously approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB No. 0581-0056.

Pursuant to the requirements set forth in the Regulatory Flexibility Act, full consideration has been given to the potential economic impact on small business of this proposed rule. Few, if any, of the firms which would be affected by these proposed regulations meet the definition of small business because of their individual size. The Administrator, Agricultural Marketing Service, has determined that this action would not have a significant economic impact upon a substantial number of small entities.

All persons who desire to submit written data, views or arguments for consideration in connection with this proposal may file them with the Director, Tobacco Division, Agricultural Marketing Service, United States Department of Agriculture, Room 502 Annex Building, P.O. Box 96456, Washington, DC 20090-6456.

For reasons set forth in the preamble, it is proposed that the regulations in 7 CFR Part 29, Subpart B, be amended as follows:

## PART 29—[AMENDED]

1. An authority citation for Part 29, Subpart B, is added to read as follows:

Authority: 7 U.S.C. 511m and 511r.

### Subpart B—Regulations

2. In § 29.401, paragraphs (p) and (u) are revised to read as follows:

**§ 29.401 Definitions**

* * * * *

(p) *Prohibited pesticide residue.* The maximum concentration of residue allowable for a specific pesticide or combination of pesticides as set forth in section 29.427.

* * * * *

(u) *Testing.* The chemical analysis of a pesticide test sample to determine levels of pesticide residues.

* * * * *

3. Section 29.427 is revised to read as follows:



**§ 29.427 Pesticide residue standards.**

(a) The maximum concentration of residues of the following pesticides allowed in flue-cured or burley tobacco, expressed as parts by weight of the residue per one million parts by weight of the tobacco (ppm) are:

(1) 0.2 ppm for the sum of op isomers of DDT, TDE (DDD) and DDE,

(2) 0.2 ppm for the sum of pp isomers of DDT, TDE (DDD) and DDE,

(3) 0.1 ppm for the sum of aldrin and dieldrin,

(4) 0.1 ppm for the sum of heptachlor and heptachlor epoxide,

(5) 0.1 ppm for hexachlorobenzene (HCB),

(6) 0.3 ppm for toxaphene,

(7) 1.0 ppm for disbromochloropropane (DBCP),

(8) 0.5 ppm for formothion,

(9) 3.0 ppm for chlordane,

(10) 0.1 ppm for endrin,

(11) 0.1 ppm for lindane,

(12) 0.1 ppm for methocychlor,

(13) 0.1 ppm for 2,4,5—T, and

(14) 0.1 ppm for ethylene dibromide (EDB).

(b) Temporary maximum concentrations of residues of the following pesticides allowed in flue-cured or burley tobacco expressed as parts by weight of the residue per one million parts by weight of the tobacco are:

(1) 5.0 ppm for dicamba,

(2) 5.0 ppm for 2,4,—D,

(3) 10.0 ppm for methamidophos, and

(4) 3.0 ppm for the sum of cypermethrin and permethrin.

4. Section 29.429 is revised to read as follows:

**§ 29.429 Disposition of imported tobacco exceeding pesticide residue standards.**

Within 10 days of the receipt of test results from pesticide test samples, the Director shall notify the importer or entity responsible for the lot of tobacco of the test results. If the test results indicate that the lot or any portion of the lot contains prohibited pesticide residues, the Director will notify the importer or entity responsible for the affected tobacco and the appropriate U.S. Customs officials that the tobacco cannot enter the United States. The importer or other entity shall notify the Director in writing of the methods by which the tobacco will be disposed of and provide 5 days advance notice of the time and place of final disposition. The Department will monitor the disposition procedures to verify that the tobacco has been accurately identified as to lot, kind, type, and grade.

5. A new § 29.431 is added to read as follows:

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**§ 29.431 Handling of imported tobacco pending test results.**

After an individual shipment of imported flue-cured or burley tobacco has been sampled, regardless of whether it is certified as being free from prohibited pesticide residues, it must be kept in the original packages, and not be mixed, blended, manipulated, or altered in any manner, or moved, shipped, or transported from the point of entry until it has been determined that the tobacco does not contain prohibited pesticide residues.

Dated: March 6, 1989.

**J. Patrick Boyle,**

*Administrator.*

[FR Doc. 89-5490 Filed 3-8-89, 8:45 am]

BILLING CODE 3410-02-M

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**7 CFR Part 51**

**[Docket Number FV-88-210]**

**Christmas Trees; Grade Standards**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This action would revise the voluntary U.S. Standards for Grades of Christmas Trees. The National Christmas Tree Association, a trade association representing a cross section of growers, shippers, and other industry members who market Christmas trees in the United States, has requested that the U.S. standards be revised to reflect current cultural and marketing practices. The Agricultural Marketing Service (AMS), in cooperation with industry, has the responsibility to develop and improve standards of quality, condition, quantity, grade, and packaging in order to encourage uniformity and consistency in commercial practices.

**DATE:** Comments must be postmarked or courier dated on or before May 8, 1989.

**ADDRESS:** Interested parties are invited to submit written comments concerning this proposal. Comments must be sent, in duplicate, to the Standardization Section, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Room 2056, South Building, Washington, DC 20090-6456. Comments should reference the date and page numbers of this issue of the Federal Register and will be made available for public inspection in the above office during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Paul W. Manol at the above address, or call (202) 447-5410.

**SUPPLEMENTARY INFORMATION:** This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been designated as "nonmajor."

Pursuant to the requirements set forth in the Regulatory Flexibility Act, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities. The proposed revision of the U.S. standards for Christmas trees will not impose any substantial direct economic cost, recordkeeping, or personnel workload changes on small entities, and will not alter the market share or competitive position of these entities relative to large businesses. This action proposes changes to the U.S. Standards for Grades of Christmas Trees which brings the standards into conformity with current marketing practices. In addition, these standards are voluntary.

The United States Standards for Grades of Christmas Trees were last revised on April 1, 1973. These standards are applicable to sheared or unsheared coniferous trees which are normally marketed as Christmas Trees. Most of these trees are of the following categories: Douglas fir, Balsam fir, Black spruce, Eastern Red cedar, White spruce, Scotch pine, Norway spruce, Red pine, Eastern White pine, Red spruce, Fraser fir, and Virginia pine.

The following grades are currently provided for in the standards: U.S. Premium, U.S. No. 1 or U.S. Choice, and U.S. No. 2 or U.S. Standard. Provisions for tolerances are set forth in the standards, as well as definitions of various terms that are used in the standards. Finally, these standards contain a metric conversion table.

The Agricultural Marketing Service received a petition from the National Christmas Tree Association to amend the U.S. Standards for Grades of Christmas Trees. The Association contends that due to high levels of production in recent years and the fact that more trees are being "nursery bred," changes are necessary in the current standard. The Association believes that the industry requires a more uniform and simplified standard by which to market and grade Christmas trees. In addition, they feel that certain revisions will ultimately provide the consumer with a higher quality product, and bring the standards up to date with current marketing practices.

The National Christmas Tree Association has requested that the U.S. Standards be revised to reflect current cultural and marketing practices. In addition, the standards have been reviewed for need, currentness, clarity, and effectiveness as part of a periodic review. Accordingly, the following changes and additions are proposed:

—The general provisions regarding the majority of species marketed would be revised to reflect current marketing trends. Several species would be deleted while others would be added.

—The current standards allow a 10 percent tolerance for off-size, 20 percent tolerance for off-length handles, and 10 percent tolerance for defects, provided, that for the U.S. Premium and U.S. No. 1 grades, not more than 5 percent shall be allowed for trees failing to meet requirements of the text lower grade. As proposed, tolerances would be restricted to a total of 10 percent for defects, provided, that included in this tolerance, not more than the following percentages shall be allowed: not more than 5 percent for off-size, 10 percent for off-length handles, and 10 percent for defects failing to meet the remaining requirements of the grade. These proposed changes would reduce the amount of defects permitted thereby increasing the quality of Christmas trees available to the consumer.

—The use of the terms "U.S. Choice" and "U.S. Standard" as companion grades to U.S. No. 1 and U.S. No. 2 respectively, would be deleted so as to eliminate any confusion in the grade certification process.

—The cleanness requirement for the U.S. No. 1 grade would be changed from "clean" to "fairly clean," thereby differentiating the amounts of allowable vines or other foreign material between the U.S. Premium grade, which is required to be clean, and the U.S. No. 1 grade.

—Current standards require the U.S. Premium grade to have not less than medium density. As proposed, U.S. Premium grade Christmas trees would require not less than heavy density. This proposed change would provide that U.S. Premium graded trees have a fuller foliated appearance.

—The handle length requirement in the current standards, unless otherwise specified, is not less than 6 inches or more than 1¾ inches of each foot of tree length. This applies to both cut trees and those graded "on the stump." The proposed handle length, unless otherwise specified, would be not less than 6 inches or more than 1½ inches for each foot of tree length for all grades. Additionally, handle length requirements would be waived for trees graded "on the stump." It is the contention of the National Christmas Tree Association that lowering the specification from 1¾ inches per foot of tree length to 1½ inches provides the consumer with a trunk that is more proportional to tree height. Additionally, trees graded "on the stump," i.e. in the field prior to cutting, would have no handle length requirements because inspection personnel would have no way of knowing where on the trunk the tree would ultimately be cut.



—Currently, the U.S. No. 2 grade requires a candlestick, normal, or flaring taper. As proposed, only a "normal taper" would be required of U.S. No. 2 Christmas trees. This proposed change would provide that trees graded U.S. No. 2 have a shape that would be generally more desirable to consumers.

—The "face" requirements as pertaining to allowable defects would be revised in all grades to permit minor and/or noticeable defects not addressed in the current standards. This would provide a means of determining how defects affect the appearance of the tree in relation to the face requirements for each grade. For example, the current standards requires trees graded U.S. Premium to have four complete faces tree from any defects. In essence, a perfect tree. The proposed requirements for U.S. Premium trees would allow one minor defect to affect three complete faces and one minor defect to affect the remaining face.

It is the National Christmas Tree Association's contention that these proposed changes more closely reflect how Christmas trees actually grow and appear.

—In the current standards, size is stated in foot or half-foot increments and, unless otherwise specified, color codes may be used to designate respective sizes. As proposed, size would be stated in foot increments only and, unless otherwise specified, new color codes would be used to designatge respective sizes. Additionally, in any size range, a minimum of ⅓ of the trees in a lot would be required to be in the top half of that size range. Christmas trees are generally marketed in one foot increments. Therefore, this proposed change would eliminate any confusion in sizing trees per current size tolerances and would provide a standard for measurement determination.

—Definitions for "fresh," "clean," "height," "healthy," and "butt trimmed" would be reworded to better reflect current cultural and marketing conditions and new definitions would be established for "medium" and "light density" that would reflect the change whereby a tree's density would be based on individual species.

—A definition for "heavy density" would be established. This conforming change is necessary because of the proposed change establishing "heavy density" as the minimum requirement for the U.S. Premium grade.

—The current standards list only noticeable and materially detracting classifications of defects. As proposed, three new classes of defects would be established and defined: minor, noticeable, and culls. This proposed change would simplify the determination of defects by listing them in chart form in descending order, minor to cull.

—The grade standards format itself would be revised and updated to incorporate all of the above mentioned changes, and provide convenient use to the industry.

—Finally, the authority citation which is stated at the beginning of this subpart would be deleted. This would bring this subpart into conformity with the remainder of Part 51 as to the use of statutory authority citations.

**List of Subjects in 7 CFR Part 51**

Fresh fruits, vegetables, and other products (Inspection, certification, and standards).

For reasons set forth in the preamble, it is proposed that 7 CFR Part 51 be amended as follows:

**PART 51—FRESH FRUITS, VEGETABLES, AND OTHER PRODUCTS (INSPECTION, CERTIFICATION, AND STANDARDS)**

1. The authority citation for 7 CFR Part 51 continues to read as follows:

**Authority:** Secs. 203, 205, 60 Stat. 1087, as amended, 1090 as amended [7 U.S.C. 1622-1624].

2. The authority citation at the beginning of subpart—United Standards for Grades of Christmas Trees is removed.

3. In Part 51, Subpart—United States Standards for Grades of Christmas Trees and the table of contents thereof are revised to read as follows:

* * * * *

**Subpart—United States Standards for Grades of Christmas Trees**

**General**

Sec.
51.3085 General.

**Grades**

51.3086 U.S. Premium.
51.3087 U.S. No. 1.
51.3088 U.S. No. 2.

**Culls**

51.3089 Culls.

**Size**

51.3090 Size.

Sec.

**Tolerances**

51.3091 Tolerances.

**Definitions**

51.3092 Fresh.
51.3093 Clean.
51.3094 Healthy.
51.3095 Well shaped.
51.3096 Butt trimmed.
51.3097 Density.
51.3098 Normal taper.
51.3099 Complete face.
51.3100 Fairly clean.
51.3101 Handle.
51.3102 Height.
51.3103 Minor defects.
51.3104 Noticeable defects.
51.3105 Classification of defects.

**Metric Conversion Table**

51.3106 Metric conversion table.

**Subpart—United States Standards for Grades of Christmas Trees**

**General**

**§ 51.3085 General.**

The standards contained in this subpart are applicable to sheared or unsheared trees of the coniferous species which are normally marketed as Christmas trees. The majority of the Christmas trees marketed are of the following species: Douglas Fir (Pseudotsuga Menziesii); Balsam Fir (Abies Balsamea); Red Fir (Abies Magnifica); White Fir (Abies Concolor); Fraser Fir (Abies Fraseri); Grand Fir (Abies Grandis); Noble Fir (Abies Procera); White Spruce (Picea Glauca); Blue Spruce (Picea Pungens); Eastern Red Cedar (Junperus Virginiana); Red Pine (Pinus Resionsa); White Pine (Pinus Strobus); Virginia Pine (Pinus Virginiana); Scotch Pine (Pinus Sylvestris).

**Grades**

**§ 51.3086 U.S. Premium.**

"U.S. Premium" consists of trees which meet the following requirements:

(a) Characteristics typical of the species;

(b) Butt trimmed, except for trees graded "on the stump";

(c) Normal taper;

(d) Fresh,

(e) Clean;

(f) Healthy;

(g) Well shaped;

(h) Not less than heavy density;

(i) Handle length, unless otherwise specified, shall be not less than 6 inches, or more than 1½ inches for each foot of tree height. For trees graded "on the stump", handle length will not be a requirement of the grade;

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(j) Three complete faces with not more than 1 minor defect. Remaining face may not have more than 1 minor defect;
(k) For size see § 51.3090;
(l) For tolerances see § 51.3091.

**§ 51.3087 U.S. No. 1.**

"U.S. No. 1" consists of trees which meet the following requirements.
(a) Characteristics typical of the species;
(b) Butt trimmed; except for trees graded "on the stump";
(c) Normal taper;
(d) Fresh;
(e) Fairly clean;
(f) Healthy;
(g) Well shaped;
(h) Not less than medium density;
(i) Handle length, unless otherwise specified, shall be not less than 6 inches, or more than 1⅛ inches for each foot of tree length. For trees graded "on the stump", handle length will not be a requirement of the grade.
(j) Three complete faces with not more than 2 minor defects. Remaining face may not have more than 1 noticeable defect;
(k) For size see § 51.3090;
(l) For tolerances see § 51.3091.

**§ 51.3088 U.S. No. 2.**

"U.S. No. 2" consists of trees which meet the following requirements:
(a) Characteristics typical of the species;
(b) Butt trimmed; except for trees graded "on the stump";
(c) Normal taper;
(d) Fresh;
(e) Fairly clean;
(f) Healthy;
(g) Well shaped;
(h) Not less than light density;
(i) Handle length, unless otherwise specified, shall be not less than 6 inches or more than 1⅛ inches for each foot of tree length. For trees graded "on the stump," handle length will not be a requirement of the grade;
(j) Two complete adjacent faces with not more than 3 minor defects. Remaining faces may not have more than 2 noticeable defects;
(k) For size see § 51.3090;
(l) For tolerances see § 51.3091.

## Culls

**§ 51.3089 Culls.**

"Culls" consist of individual trees which fail to meet the requirements of the U.S. No. 2 grade. (See § 51.3105 Table II).

## Size

**§ 51.3090 Size.**

(a) Height of trees shall be stated in foot increments and unless otherwise specified, the following color codes will be used to designate the respective sizes:

| Color | Tree height (feet) |
|---|---|
| Lime | 3 feet or less. |
| Orange | Over 3 to 4. |
| Blue | Over 4 to 5. |
| Red | Over 5 to 6. |
| Yellow | Over 6 to 7. |
| Green | Over 7 to 8. |
| White | Over 8 to 9. |
| Ink | Over 9 feet. |

(b) In determining which designations apply, the measurement for the height is the distance from the base of the handle to the top of the main leader, excluding that portion of the leader that extends more than 4 inches above the apex of the cone of the taper applicable to the tree.

(c) In any size range, a minimum of ½ of the trees in a lot shall be in the top half of that size range.

## Tolerances

**§ 51.3091 Tolerances.**

In order to allow for variations incident to proper sizing, grading and handling in each of the foregoing grades the following tolerances, by count, shall apply when a lot of Christmas trees is required to meet a specific grade.

(a) For total defects, 10 percent for Christmas trees in any lot which fail to meet the requirements for the grade: Provided that included in this amount not more than the following percentage shall be allowed for defects listed:

(1) *Off-size.* Five percent for trees which fail to meet the height specified.

(2) *Off-length handle.* Ten percent for trees which fail to meet the requirement for handle length, but which meet all other requirements for the specified grade.

(3) *Defects.* Ten percent for trees which fail to meet the remaining requirements of the grade.

(b) [Reserved]

## Definitions

**§ 51.3092 Fresh.**

"Fresh" means the needles are green, pliable, and firmly attached; with not more than slight shedding.

**§ 51.3093 Clean.**

"Clean" means the tree is reasonably free from foreign material.

**§ 51.3094 Healthy.**

"Healthy" means the needles have a fresh, natural appearance characteristic of the species.

**§ 51.3095 Well shaped.**

"Well shaped" means that the tree is not flat on one side and the branches of the tree, whether sheared or unsheared, are of sufficient number and length to form a circular outline tapering from the lowest whorl of branches to the top.

**§ 51.3096 Butt trimmed.**

"Butt trimmed" means that all barren branches shall have been removed, and the trunk has been smoothly cut at approximately right angles to the trunk.

**§ 51.3097 Density.**

"Density" means the amount of foliage on the tree. Factors contributing to degree of density are: The number and size of branches within the whorl, distance between the whorls, number and arrangements of the branchlets on each branch, the extent of internodal branching, needle arrangement, and needle length. Species differ in their habit of growth and some species do not have internodal branches. Density is judged on the basis of species characteristics.

(a) "Heavy density" means the whorls or branches are relatively close together, the spaces between are filled with needles and twigs so that the following species have said percentage of foliage so the main stem is not visible and the needle content and length are adequate to cover the branches:

| Name | Percentage of main stem covered (percent) |
|---|---|
| Red Cedar | 90 to 100 |
| Balsam Fir | 80 to 100 |
| Douglas Fir | 90 to 100 |
| Fraser Fir | 70 to 100 |
| Red Fir | 70 to 100 |
| White Fir | 70 to 100 |
| Grand Fir | 80 to 100 |
| Noble Fir | 60 to 100 |
| Red Pine | 70 to 100 |
| Scotch Pine | 90 to 100 |
| Virginia Pine | 90 to 100 |
| White Pine | 90 to 100 |
| Spruce (all) | 80 to 100 |

(b) "Medium density" means the whorls or branches are reasonably close together, the spaces between are filled with twigs and needles so that the following species have said percentage of foliage so the main stem is not visible and the needle content and length are adequate to cover the branches:

| Name | Percentage of main stem covered (percent) |
|---|---|
| Red Cedar | 70 to 90 |
| Balsam Fir | 60 to 80 |
| Douglas Fir | 70 to 90 |
| Fraser Fir | 50 to 70 |
| Red Fir | 50 to 70 |



| Name | Percentage of main stem covered (percent) |
|---|---|
| White Fir | 50 to 70 |
| Grand Fir | 60 to 80 |
| Noble Fir | 50 to 60 |
| Red Pine | 60 to 70 |
| Scotch Pine | 70 to 90 |
| Virginia Pine | 70 to 90 |
| White Pine | 70 to 90 |
| Spruce (all) | 60 to 80 |

(c) "Light density" means the whorls or branches are reasonably spaced, the spaces between are only partially filled so that the following species have said percentage of foliage so the main stem is not visible and the needle content and length are adequate to cover the branches:

| Name | Percentage of main stem covered (percent) |
|---|---|
| Red Cedar | 50 to 70 |
| Balsam Fir | 40 to 60 |
| Douglas Fir | 50 to 70 |
| Fraser Fir | 40 to 50 |
| Red Fir | 40 to 50 |
| White Fir | 40 to 50 |
| Grand Fir | 40 to 60 |
| Noble Fir | 40 to 50 |
| Red Pine | 40 to 60 |
| Scotch Pine | 50 to 70 |
| Virginia Pine | 50 to 70 |
| White Pine | 50 to 70 |
| Spruce (all) | 40 to 60 |

**§ 51.3098 Normal taper.**

"Normal taper" means the relationship of the width of the tree at its lowest branches to the height of the tree, less the handle, judged from its best side. All trees shall form a cone, the base of which is from 40 to 100 percent of its height.

**§ 51.3099 Complete face.**

"Complete face" means the visible area of a tree as viewed from a distance of 8 to 10 feet from the tree. A tree shall be considered as having four complete faces, each consisting of one-quarter of the surface area of the tree.

**§ 51.3100 Fairly clean.**

"Fairly clean" means that the tree is moderately free from foreign material.

**§ 51.3101 Handle.**

"Handle" means that the portion of the trunk between the butt or base of the tree and the lowest complete whorl of foliated branches.

**§ 51.3102 Height.**

"Height" means the distance from the base of the handle to the top of the main leader, excluding that portion of the leader that extends more than 4 inches above the apex of the cone of the taper applicable to the tree.

**§ 51.3103 Minor defects.**

"Minor defects" are slight imperfections in the development of the tree or defects resulting from handling, which materially affect the appearance of the tree. While many minor defects may be visible from more than 1 face, a given defect shall be scored only once. (See § 51.3105 Table I).

**§ 51.3104 Noticeable defects.**

"Noticeable defects" are imperfections in the development of the tree or defects resulting from handling, which seriously affect the appearance of the tree. While many noticeable defects may be visible from more than 1 face; a given defect shall be scored only once. (See § 51.3105 Table I).

**§ 51.3105 Classification of defects.**

TABLE I

| Factor | Minor defects | Noticeable defects |
|---|---|---|
| 1. Density | Slight uneven density | Moderately uneven density. |
| 2. Curvature of main stem | Slight, visible crook in the main stem (4 inches or less from vertical) | Main stem visibly curved more than 4 but less than 6 inches from vertical. |
| 3. Insect or disease damage | Slight insect or disease damage | Moderate insect or disease damage. |
| 4. Broken branches | 1 broken whorl branch close to main stem | Broken leader or more than 1 broken whorl branch near mainstem. |
| 5. Physical damage | Slight physical damage | Moderate physical damage. |
| 6. Foreign material and/or vines | Slight amount of foreign material or vines | Moderate amount of foreign material or vines. |
| 7. Multiple leader stems | Multiple leaders | Crows nest. |
| 8. Extra long branches | Branch over 10 inches longer than other branches on corresponding whorl | N/A. |
| 9. Abnormal curling of needles | Slightly abnormal curling of needles | Moderately abnormal curling of needles. |
| 10. Weak lower branches | Free from | Weak lower branches affecting up to ¾ of branches on bottom whorl. |
| 11. Handle not proportionate to height | Free from | Handle not proportionate to height of tree |
| 12. Incomplete whorl of branches | Less than ¼ of branches are missing in a given whorl | ¼ but less than ½ of branches are missing in a given whorl. |
| 13. Holes or gaps in tree | Free from | Hole in the tree or tree or space considerably out of proportion with the uniform branch characteristics of the balance of the tree. |
| 14. Gooseneck | Free from | Free from. |
| 15. Loss of needles | Slight loss of needles | Moderate loss of needles. |

TABLE II

| Factor | Culls |
|---|---|
| 1. Density | Severely uneven density. |
| 2. Curvature of mainstem. | Main stem curved more than 6 inches. |
| 3. Insect or disease damage. | Severe insect or disease damage or abnormal curling of needles. |

TABLE II—Continued

| Factor | Culls |
|---|---|
| 4. Broken branches | Main stem broken below top whorl or more than three branches broken near trunk. |
| 5. Physical damage | Severe physical damage. |
| 6. Foreign material and/or vines | Heavy amounts of foreign material or vines. |
| 7 Multiple stems | Multiple main stems (not leaders). |

TABLE II—Continued

| Factor | Culls |
|---|---|
| 8. Extra long branches. | N/A. |
| 9. Abnormal curling of needles. | Severely abnormal curling of needles. |
| 10. Weak lower branches. | Weak lower branches affecting more than ¾ of branches on bottom whorl |

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TABLE II—Continued

| Factor | Quite |
|---|---|
| 11. Handle not proportional to height. | N/A. |
| 12. Incomplete whorl of branches. | More than ¼ of branches missing in a given whorl or when missing branches create an shell. |
| 13. Holes or gaps in tree. | Shelf or a decided gap or space between whorls of branches noticeable on 2 or more faces. |
| 14. Gooseneck | Any gooseneck. |
| 15. Abnormal loss of needles. | Severe loss of needles. |

**Metric Conversion Table**

**§ 51.3106 Metric conversion table.**

| Feet | Centimeters (cm) | Feet | Centimeters (cm) |
|---|---|---|---|
| 1 | 30.48 | 6 | 182.88 |
| 2 | 60.96 | 7 | 213.36 |
| 3 | 91.44 | 8 | 243.84 |
| 4 | 121.92 | 9 | 274.32 |
| 5 | 152.40 | 10 | 304.80 |

Dated: March 6, 1989.

J. Patrick Boyle,

*Administrator.*

[FR Doc. 89-5530 Filed 3-8-89; 8:45 am]

BILLING CODE 3410-02-M

**Packers and Stockyards Administration**

**9 CFR Part 203**

**Statement of General Policy; Antibiotic and Sulfa Residues, in Slaughter Animals**

**AGENCY:** Packers and Stockyards Administration, USDA.

**ACTION:** Withdraw notice of intent to institute proposed rulemaking.

**SUMMARY:** This document withdraws a Notice of Intent to Institute Proposed Rulemaking published May 24, 1988 (53 FR 18572), which proposed a "bill-back" mechanism intended to shift economic responsibility for violative drug residues from the meat packer to the person causing the violation. Withdrawal of this proposal does not alter the U.S. Department of Agriculture's commitment to assuring a residue free meat supply.

**DATE:** Effective March 9, 1989.

**FOR FURTHER INFORMATION CONTACT:** Harold W. Davis, Director, Livestock Marketing Division, Room 3408-South Building, U.S. Department of Agriculture, Washington, DC 20250 (202) 447-6951.

**SUPPLEMENTARY INFORMATION:** Because of continuing concerns about the number of violative sulfa and antibiotic drug residues in carcasses of young calves, cull dairy cows and swine, a proposed "bill-back" mechanism was published in the **Federal Register** on May 24, 1988 (53 FR 18572). In addition to seeking public comments, the proposal sought alternative suggestions which would accomplish the objectives of deterring violative residues and shifting economic responsibility when violations occur. Pursuant to industry requests, the period for filing comments was extended to September 23, 1988 (53 FR 27174).

A total of 285 comments were received with 249 or 87 percent of these opposed to the "bill-back" concept. Thirty-four or twelve percent of the comments favored the proposal and two did not express a position. Six of the thirty-four comments favoring the "bill-back" proposal expressed reservations, such as whether there is sufficient animal identification to permit positive traceback and whether the actual violator could always be determined. Comments were filed by 99 livestock producers and producer trade associations, 146 livestock marketing businesses and marketing trade associations and 24 meat packers and packer trade associations with the remaining 16 filed by a variety of interests, including Government agencies and agri-businesses.

Almost all of the comments recognized the need to assure a meat supply free of illegal residues and expressed support for the proposition that the person causing the illegal residue should be held economically responsible. However, most of those commenting were strongly opposed to the "bill-back" proposal because they do not believe it will accomplish these objectives and they feel it is unfair and/or unworkable.

Valid questions were raised by the comments about the ability to accurately identify the source of illegal residues. While the comments generally acknowledged that livestock producers cause some of the illegal residues, persuasive arguments were made that livestock producers are not the sole cause of residue violations. Further, there was strong disagreement as to the number of residue violations caused by livestock producers and the source of the remaining violations.

Meat packers and the packer trade associations generally supported the "bill-back" concept pointing out that packers have absorbed the loss for most carcasses condemned because of violative residues. On the other hand, most of the comments filed by marketing businesses and a national trade association representing many of these businesses argued that the "bill-back" proposal would only shift the economic responsibility for illegal drug residues from the packer to the marketing sector. Since livestock producers are not subject to the Packers and Stockyards Act, the markets contend their only recourse would be the same as the packers' which is to file suit against the producer. This is not economically feasible in most instances because of the relatively small dollar amounts at issue in individual cases.

Other issues raised by the comments included the lack of adequate animal identification to permit positive trace back in all instances, concern that the drug residue tests being used are not 100 percent accurate and the declining number of residue violations has reduced the need for a program as drastic as the "bill-back" proposal. The residue violation rate in swine dropped dramatically during 1988 as a result of industry efforts and other programs administered within the Department of Agriculture. The residue violation rate in the other problem classes (young calves and cull dairy cows) has also been substantially reduced over the last 3 years.

Under these circumstances, a proposed rule permitting a "bill-back" with the right to offset from future purchases cannot be justified at this time without positive identification of the actual source of the residue contamination. Accordingly, the Notice of Intent to Institute Proposed Rulemaking is being withdrawn.

Withdrawal of the proposal will not preclude any person suffering financial harm because of an illegal residue from pursuing any rights they may have to obtain restitution, including seeking voluntary payment from the seller. An arbitrary offset from a future purchase, however, would not be permitted and could be considered an unfair practice under the provisions of the Packers and Stockyards Act. It should be noted that the Packers and Stockyards Administration recognizes a packer is entitled to know the identity of a consignor when a carcass is condemned as a result of an illegal residue. Such disclosure is subject to the packer furnishing official verification that the animal was condemned because of an illegal residue.

All segments of the industry have recognized the need for a residue free meat supply and expressed a willingness and desire to work with each other and the Department to solve this problem. Withdrawal of this proposal will afford the industry an opportunity to pursue a solution which may avoid the need for further rulemaking. However, the Department of Agriculture remains committed to assuring a residue free meat supply and will consider further rulemaking if necessary.

Done at Washington, DC this 6th day of March 1989.

B.H. (Bill) Jones,

*Administrator, Packers and Stockyards Administration.*

[FR Doc. 89-5492 Filed 3-8-89; 8:45 am]

BILLING CODE 3410-KD-M



**DEPARTMENT OF THE TREASURY**

**Customs Service**

**19 CFR Parts 24, 132, 141, 142, and 143**

**Proposed Customs Regulations Amendments Concerning Statement Processing and Automated Clearinghouse**

**AGENCY:** U.S. Customs Service, Department of the Treasury.

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes to amend the Customs Regulations to provide users of Customs Automated Broker Interface (ABI) with the option of paying their entry/entry summaries and entry summaries by the statement processing method. Statement processing allows entry/entry summaries and entry summaries to be grouped and payment made for the group with a single payment. The document further proposes that ABI filers who use statement processing must pay their statements through the use of the Automated Clearinghouse electronic payment mechanism.

Additionally, this document proposes that entries of quota class merchandise and other special classes of merchandise designated by Customs Headquarters can be paid through statement processing if the preponderance of the ABI filer's non-special class entry summaries are also processed under statement processing. This would mean that estimated duties would no longer be required to be attached to entry summary documentation for such entries, but could be electronically sent within 10 days from the date of entry.

**DATE:** Comments must be received on or before May 8, 1989.

**ADDRESS:** Written comments (preferably in triplicate) may be addressed to and inspected at the Regulations and Disclosure Law Branch, Room 2119, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229. Comments concerning the accuracy of the burden estimate and suggestions for reducing the burden should be directed to U.S. Customs Service, 1301 Constitution Avenue, NW, Reports Management Office, Washington, DC 20229 or the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** James Childress, Commercial Systems Division (202-343-0778).

**SUPPLEMENTARY INFORMATION:**

**Background**

Historically, Customs has generally required that estimated duties be attached to the submission of entry documentation or entry summary documentation. This payment was usually made by an individual check covering the entry or the entry summary. Through Customs Automated Commercial System (ACS), specifically its Automated Broker Interface (ABI), Customs has developed a method known as statement processing which now allows one payment to cover multiple entry summaries. Further, Customs has developed an enhancement to statement processing which no longer requires that the estimated duties be attached to the submission of entry summary documentation. The enhancement is known as the Automated Clearinghouse (ACH); ACH is an electronic payment mechnism. A filer who is on Customs ABI now may transmit his entry data to Customs through the ABI, may elect to use statement processing, and may utilize ACH to effect payment. The entry summary documentation must be submitted within 10 working days after entry of the merchandise. Payment through ACH for the entry summaries must be made on the same day the documentation is submitted.

This document proposes that amendments be made to the Customs Regulations providing for the voluntary use by ABI participants of statement processing. It also proposes the requirement that payment of all ABI statements be made through the use of the ACH electronic payment mechanism.

Additionally, this document proposes that the Customs Regulations be amended concerning the payment of estimated duties regarding special classes of merchandise, consisting of quota-class merchandise and other classes designated by Customs Headquarters. It is proposed that payment of estimated duties regarding these entry/entry summaries be allowed through ABI statement processing if the preponderance of the ABI participant's non-special class entry summaries are also processed under statement processing. As with all entry/entry summaries and entry summaries that are statement processed, these entry/entry summaries must appear on an ABI statement no later than 10 working days from date of entry and must be paid using ACH.

**Automated Commercial System**

The Automated Commercial System (ACS) was developed to enable Customs to process the rapidly increasing volume of commercial importations in an efficient and expeditious manner. As part of this effort, Customs has developed automated computer interfaces with various elements of the importing community. One of these is the Automated Broker Interface (ABI).

**Automated Broker Interface**

ABI is a voluntary system which pemits qualified trade participants to interface directly with the Customs computer and transmit entry release and entry summary data for merchandise being imported. The ABI system speeds entry processing and provides two-way communication between the user and Customs. In this manner, participants are able to ensure the accuracy and completeness of data by accessing Customs automated reference files.

The ABI was designed in cooperation with the trade, making use of standard technology available to both large and small businesses. Users are responsible for developing computer programs necessary to support the functional aspects of the system according to the specifications contained in the *ABI Broker Requirements Document* (Customs Publication No. 540). ABI requires that private sector systems have complete edit and verification programs which are utilized during entry preparation to ensure data accuracy and completeness. Costs for communications hardware, adapters, and supporting software are absorbed by the ABI participants. Customs provides access to toll-free lines for actual data transmissions.

Those entities which do not interface directly with Customs are able to submit entries through a service bureau or port authority which will communicate with Customs in the same way as other ABI users. One-time and occasional importers may elect to continue to file entries directly with Customs.

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The general requirements for ABI participation are as follows:

- Demonstration of acceptable entry summary preparation capabilities in both a manual and an automated environment.
- The assembly and communication of entry data in conformity with the ABI Broker Requirements Document.
- Successful completion of a period of intensive testing on the Customs system.
- The continued meeting or exceeding of Customs established error and reject standards.

Participants who become operational in the ABI may elect to process entry summaries utilizing ABI statement processing.

**ABI Statement Processing**

Before ABI, pursuant to § 141.101, Customs Regulations (19 CFR 141.101), estimated duties were required, generally, upon submission of the entry documentation or the entry summary documentation, when the entry summary served as both the entry and entry summary. This payment was usually made by a check covering the individual entry or the entry summary. ABI statement processing is an option available to ABI participants. Through statement processing, the ABI filer elects to group entry summaries on a daily basis and pay the duties, taxes and fees on those entry summaries with a single payment. An ABI filer using statement processing must submit on the scheduled statement date the estimated duties, taxes, and fees along with the related entry summary documentation.

Currently, the payment of ABI statements may be accomplished through the use of check payment to the statement processing location. Customs is now proposing that the required method of payment for all ABI statements be through the use of ACH, an electronic payment mechanism.

**Mechanics of Statement Processing**

The mechanics of statement processing are as follows. When entry summary data is transmitted through ABI, the filer, who has been preapproved for statement processing, indicates whether he desires to pay a particular entry summary by an individual payment or by using statement processing. If statement processing is selected, the filer indicates if it is to be an importer or broker statement and provides a valid scheduled statement date, not a Saturday, Sunday, or holiday. ABI will not warn the filer if the scheduled statement date given may result in late payment. The ABI filer is responsible for ensuring that all entry/entry summaries and entry summaries are scheduled for payment within 10 working days after the date of entry.

During the evening prior to the scheduled statement date, the ACS system extracts the affected entries and generates a preliminary statement which is available to the ABI participant the morning of the scheduled statement date. The preliminary statements are to be printed by the ABI filer, who assembles entry summary packages by grouping the required entry summaries as listed on the statement and submitting them to Customs for acceptance.

If a filer must remove an entry summary appearing on a preliminary statement, he may request that it be deleted from the statement by lining the entry number out on the statement copy, adjusting totals and the payment amount accordingly. The actual deletions from the ABI statement are performed by Customs through ACS; the ABI filer cannot perform the deletions. The filer may then pay the deleted entry(s) by individual check, or schedule them for another statement by retransmitting the entry summary data through ABI with a future scheduled statement date.

During the ACS "end-of-day" processing, a final statement is generated for each preliminary statement where payment has been accepted. The filer prints the final statement which is a permanent record of the entry summaries and the related duty, tax, and fee amounts actually paid. The final statement will also provide the filer a listing of any entries which may have been deleted from the preliminary statement at the request of the filer.

**Automated Clearinghouse (ACH)**

The ACH process is a payment method for use by operational ABI filers to effect payment of ABI statements. The ACH is similar to a bank lockbox arrangement. Instead of the payment being made by check, however, the participant will electronically provide Customs authorization to notify a specific Treasury-designated ACH processor to perform an electronic debit to its bank account, wherever the account is currently located. The payment amount will subsequently be credited to the account of the Treasury.

The ACH process requires that the ABI statement filer provide to Customs in writing the bank transit routing number and the bank account number from which the ACH payments will be electronically debited by the Treasury-designated ACH processor. The information can be obtained from the bottom of the related check or by inquiring of the bank where the account is on file. Customs will prepare a Masterfile Maintenance Form which will be provided to the Treasury-designated ACH processor containing the account information with a unique participant unit number assigned by Customs. A copy of the maintenance form will be provided to the ABI filer identifying this unique number. All future ACH payment authorizations transmitted by the ABI filer must identify this unique number which will alert the Treasury-designated ACH processor as to the bank and account to which to issue the electronic debit transaction. If more than one account is to be used, the ABI filer must notify Customs so that unique numbers can be assigned to each account and the Treasury-designated ACH processor will have the information in their files for appropriate action. It will be the responsibility of the ABI participant to ensure that all bank account information is accurate and that the correct unique participant number is utilized in each ACH payment authorization transaction.

**Effect of ACH on Statement Processing**

The following overview shows the effect on statement processing resulting from the ACH payment process.

The preliminary statement will be generated in the current manner and available to the ABI filer on the morning of the scheduled statement date. This process will allow the ABI filer to identify any entry deletions which are to be removed from the statement. These deletions will be accomplished by Customs at the statement processing location before payment action is accomplished.

When the preliminary statement has been verified by both Customs and the ABI filer, Customs wil freeze the preliminary statement to prevent subsequent manipulation from occurring prior to the receipt of the ACH payment. The ABI filer will then transmit to Customs through the ABI the ACH payment authorization for that statement.

If by the close of business on the preliminary statement date the statement has not been frozen, the ACS system will automatically freeze the preliminary statement. If the preliminary statement is frozen by Customs without having performed any necessary deletions, the ABI participant should immediately notify the statement processing location so that deletions will be performed.

Currently, ABI participants are utilizing the ACH system by initiating payment transactions through a Treasury-designated ACH processor. In the near future, ABI participants will have the capability of remitting payment transactions directly to Customs for subsequent processing through the ACH system. When this capability is available to the ABI filer, the notification of acceptance of the ACH payment authorization will be transmitted to the filer through the ABI. Upon acceptance of the ACH payment authorization transaction by Customs, the statement will be identified as paid, and Customs, in the course of its normal end-of-day processing, will post the appropriate payment amounts (duties, taxes, fees) to the related entries.

Customs will electronically debit, through the Treasury-designated ACH processor, the payor's account on the second business day following the accepted payment date provided in the ABI acceptance notification record. The final statement will be available to the participant the morning following acceptance of the ACH payment authorization by Customs.

The ABI filer will also receive through ABI a notification that an ACH payment authorization cannot be accepted. The ABI filer will be given an error narrative(s) identifying the error(s) that were in the original authorization transmission. If the participant receives the ABI notification that the original payment authorization record contained errors, no payment will have been applied to the statement and the authorization cannot be provided to the Treasury-designated ACH processor for processing. It is the responsibility of the participant to timely retransmit a corrected authorization record or risk the potential of late payment claims on each statement entry.

**Statement Processing and ACH Transmission**

Entry presentation and processing will require discipline and supervisory oversight in both the ABI filers' and Customs offices to ensure timely transmission of ACH payments.

All preliminary statement entries are to be presented to Customs on the date of the preliminary statement. The ABI filer will indicate what, if any, deletions are to be performed. Customs will not initiate any deletions on its own. Customs will perform the deletions. After any deletions are processed, Customs will reconcile the statement and provide summary information to the ABI participant. Customs will then freeze the preliminary statement at the reconciled amount, thereby preventing further manipulation to the statement prior to ACH payment. When there are no deletions to be performed to the preliminary statement, Customs will simply freeze the preliminary statement, as originally presented. It will be the responsibility of the ABI filer to ensure that the ACH transmission via ABI is accomplished by close of business on the scheduled statement date.

As previously noted, Customs will electronically debit, through the Treasury-designated processor, the payor's account on the second business day following the accepted payment date, as provided in the ABI acceptance notification record.

**Statement Processing and Special Classes of Merchandise**

Special classes of merchandise defined in § 142.13(c) (1) and (2), Customs Regulations (19 CFR 142.13(c) (1) and (2)), consist of quota-class merchandise and other classes of merchandise designated by Customs Headquarters. Entry/entry summaries for these special classes of merchandise currently are not eligible to be statement processed. This document proposes to give an ABI filer who uses statement processing as a normal course of business an option to include such entry/entry summaries on a statement. However, if the filer chooses to use statement processing for those entry/entry summaries, they must remain on the statement. As discussed earlier in this document, ACH will be the required method of payment.

**Effect of Statement Processing on Quota Status and Priority**

"Quota priority" as defined in § 132.1(f), Customs Regulations (19 CFR 132.1(f)), is the precedence granted to one entry, or withdrawal from warehouse, for consumption of quota-class merchandise over other entries or withdrawals of merchandise subject to the same quota. "Quota status" as defined in § 132.1(g), Customs Regulations (19 CFR 132.1(g)), is the standing which entitles quota-class merchandise to admission under an absolute quota, or to a reduced rate of duty under a tariff-rate quota, or to any other quota benefit.

Under the current system, quota priority and status are determined as of the time of presentation to Customs of the entry/entry summary for consumption, or withdrawal from warehouse for consumption. The time of presentation is generally the time of delivery in proper form of an entry summary for consumption, which serves as both the entry and the entry summary, with estimated duties attached, or a withdrawal for consumption, with estimated duties attached.

The quota status of a commodity subject to a tariff-rate quota cannot be determined in advance of the entry. The quota rates of duty are ordinarily assessed on such commodities entered from the beginning of the quota period until such time in the period as it is determined that imports are nearing the quota level. District Directors of Customs are then instructed to require the deposits of estimated duties at the over-quota duty rate and to report the time of official presentation of each entry. A final determination of the date and time when a quota is filled is made, and all district directors are advised accordingly.

This document proposes that an ABI filer using statement processing may include quota-class merchandise on a statement. Customs is also proposing that quota status and quota priority can be acquired without estimated duties being attached to the entry/entry summary documentation. This can occur when Customs successfully receives from the ABI filer via ABI a transmission of entry/entry summary information and a valid scheduled statement date for the subsequent payment of duties, taxes and fees. It should be noted that the proposed amendments do not intend to change the requirement that an entry summary for consumption must be presented to Customs for quota-class merchandise to obtain quota status. Merely transmitting the entry/entry summary information to Customs via ABI and paying by statement processing is not sufficient. It also should be noted that it is not proposed to change the requirement that estimated duties must be attached to withdrawals from warehouse for consumption for such quota-class merchandise to obtain quota status and priority.

**Effect of Statement Processing on Release of Special Classes of Merchandise**

Section 141.101, Customs Regulations (19 CFR 141.101), currently provides that estimated duties must be deposited at the time of the filing of the entry summary documentation when it serves as both the entry and entry summary. Section 142.13(c), Customs Regulations (19 CFR 142.13(c)), provides that estimated duties must be attached to the entry summary documentation before quota-class merchandise and other special classes of merchandise designated by Customs Headquarters can be released.

This document proposes to amend the Customs Regulations to allow such merchandise to be released without the

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estimated duties being attached to the entry/entry summary documentation, if Customs successfully receives from the ABI filer via ABI a transmission of the entry/entry summary information and a valid scheduled statement date for subsequent payment of duties, taxes and fees. Processing of these entries generally requires pre-release review for assurance of statistical accuracy or compliance with special entry requirements on trade sensitive commodities.

**Summary of Proposed Changes**

This document proposes to amend sections of Parts 24, 132, 141, 142 and 143 of the Customs Regulations. An amendment proposed to § 24.1 states that ABI participants may elect to pay duties, taxes and other charges through statement processing and, if so, such payment must be electronically through ACH. It is proposed to create a § 24.25 that describes statement processing. Various sections of Part 132 are proposed to be amended to reflect that statement processing of quota entries is permitted and that quota status and priority can be granted to those entries without the attachment of estimated duties, taxes and fees. It is also proposed to amend § 142.13(c) to state that ABI filers filing entry/entry summaries for other special classes of merchandise designated by Customs Headquarters may use the statement processing method. Numerous other sections of the regulations in Parts 141, 142 and 143 are also proposed to be amended to reflect that estimated duties need not be attached to entry/entry summaries and entry summaries for consumption if Customs successfully receives from the ABI filer via ABI a transmission of entry/entry summary information and a valid scheduled statement date.

**Comments**

Before adopting this proposal, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4 Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations and Disclosure Law Branch, Room 2119, U.S. Customs Service Headquarters, 1301 Constitution Avenue, NW., Washington, DC 20229.

**Regulatory Flexibility Act**

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that if adopted, the proposed amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, they are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

**Executive Order 12291**

This document does not meet the criteria for a "major rule" as specified in E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

**Paperwork Reduction Act**

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(b)). Comments concerning the accuracy of this burden estimate and suggestions for reducing the burden should be directed to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503, with copies to the U.S. Customs Service at the address previously specified.

The collection of information in this regulation is in 19 CFR 24.25. This information is needed by Customs so that payments electronically transmitted to Customs are correctly debited to the right accounts. The likely respondents are businesses or other for-profit organizations and small businesses or organizations.

Estimated total annual reporting and/or recordkeeping burden: 35 hours.

Estimated average annual burden per respondent and/or recordkeeper: 15 minutes.

Estimated number of respondents and recordkeepers: 139.

Estimated annual frequency of responses: 1.

Part 178, Customs Regulations (19 CFR Part 178), which lists the information collections contained in the requirements and control numbers assigned by OMB would be amended accordingly if this proposal is adopted.

**Drafting Information**

The principal author of this document was Harold M. Singer, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

**List of Subjects**

*19 CFR Part 24*

Accounting, Claims, Customs duties and inspection, Imports, Taxes, Wages

*19 CFR 132*

Customs duties and inspection, Imports, Quotas

*19 CFR Parts 141, 142 and 143*

Customs duties and inspection, Entry, Imports

**Proposed Amendments**

It is proposed to amend Parts 24, 132, 141, 142 and 143, Customs Regulations (19 CFR Parts 24, 132, 141, 142 and 143), as set forth below.

## PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

1. The general and relevant specific authority citation for Part 24, Customs Regulations (19 CFR Part 24), continues to read as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 58a–58c, 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1624; 31 U.S.C. 9701; Pub. L. 99–662 § 24.1 also issued under 19 U.S.C. 197, 198, 1648.

* * * * *

2. It is proposed to amend § 24.1(a) by adding a paragraph (8) to read as follows:

**§ 24.1 Collection of Customs duties, taxes and other charges.**

(a) * * *

(8) Participants in the Automated Broker Interface may use statement processing as described in § 24.25 of this part. Statement processing allows entry/entry summaries and entry summaries to be grouped either by importer or by filer, and allows payment of related duties, taxes and fees by a single payment, rather than by individual checks. Users of statement processing must pay Customs duties, taxes and fees electronically through the Automated Clearinghouse.

3. It is proposed to amend Part 24 by adding a new § 24.25 to read as follows:

**§ 24.25 Statement processing.**

Statement processing is a voluntary automated program for participants in the Automated Broker Interface (ABI), allowing the grouping of entry/entry summaries and entry summaries on a daily basis. The related duties, taxes and fees must be paid electronically through the Automated Clearinghouse (ACH) with a single payment.

(a) *How to elect participation.* An ABI filer must notify Customs in writing of the intention to utilize statement processing. All ABI statements must be paid electronically through ACH. The ABI filer must provide to Customs the bank transit routing number and the bank account number for each account from which the ACH payments will be electronically debited. Upon the determination by Customs that the ABI filer has the necessary software to participate and otherwise qualifies to participate, Customs shall assign a unique identifying number to the participant and provide that number to both the participant and the Treasury-designated ACH processor. This unique number assigned by Customs will alert the ACH processor as to which bank and account to issue the electronic debit. It is the responsibility of the participant to ensure that all bank account information is accurate and that the correct unique participant number is utilized for each ACH transaction.

(b) *Automated Clearinghouse.* A filer using ABI statement processing must make payment electronically through the Automated Clearinghouse (ACH). ACH is an arrangement in which the filer electronically provides payment authorization for the Treasury-designated ACH processor to perform an electronic debit to the payor's bank account. The payment amount will then be automatically credited to the account of the Department of the Treasury.

(c) *Procedure for filer.* (1) The filer shall transmit entry/entry summary and entry summary data through ABI indicating whether payment for a particular entry summary will be by individual check or by using statement processing. If statement processing is indicated, the filer shall designate whether the entry summary is to be grouped by importer or broker, and shall provide a valid scheduled statement date (not a Saturday, Sunday or holiday).

(2) Customs shall provide a preliminary statement to the ABI filer on the scheduled statement date. The preliminary statement shall contain all entry/entry summaries and entry summaries scheduled for that statement date. The preliminary statement shall be printed by the filer, who will review the statement entries, and the statement totals, assemble the required entry summaries as listed in the statement, and present them to Customs with the preliminary statement. This presentation to Customs shall be on the date of the preliminary statement. If a filer elects to perform deletions from the preliminary statement (other than items related to special classes of merchandise provided for in § 142.13(c) of this chapter), the filer shall notify Customs in such manner as designated by Customs Headquarters. Any entry number deleted from a statement may be paid by an individual check or scheduled for another statement by transmitting the entry summary data through ABI with a future payment date.

(3) When the preliminary statement is presented to Customs by the filer, Customs shall freeze the preliminary statement to prevent subsequent manipulation from occurring prior to the receipt of the ACH payment. If the filer does not present the preliminary statement by close of business on the scheduled statement date, Customs shall freeze the statement.

(4) Customs shall notify the filer when the preliminary statement is frozen. If the preliminary statement is frozen by Customs without having performed previously requested deletions, the ABI filer should immediately notify the statement processing location and the deletions will be performed. It is the responsibility of the filer to transmit the ACH payment authorization through ABI for that statement by no later than the close of business on the scheduled statement date.

(5) Upon acceptance of the ACH payment authorization transactions by Customs, the preliminary statement shall be identified as paid and Customs shall post the appropriate payment amounts to the related entries. The final statement generally shall be available to the filer the day following the acceptance of the ACH payment.

(d) *Choice of excluding certain entries from statement processing.* A filer, generally, has the right to inform Customs electronically whether he desires that a particular entry summary be paid by an individual payment rather than through statement processing. Entry/entry summaries for special classes of merchandise defined in § 142.13(c) of this chapter are not requried to be statement processed, but the filer has the option of including such entry/entry summaries. However, if statement processing is used for these special classes of merchandise, they cannot be deleted from a statement. In order to include entry/entry summaries for special classes of merchandise on a statement, a filer must use statement processing for a preponderance of the filer's non-special class entry summaries. If Customs determines that the preponderance of the non-special class entry summaries are not being processed through statement processing, the filer can be disqualified from using statement processing.

(e) *Scheduled statement date.* Entry/entry summaries and entry summaries must be designated for statement processing within 10 working days after the date of entry. It is the responsibility of the ABI filer using statement processing to ensure that the elected scheduled statement date is within that 10-day time frame. Customs will not warn the filer if the scheduled statement date given is late.

## PART 132—QUOTAS

1. The authority of Part 132, Customs Regulations (19 CFR Part 132), continues to read as follows:

**Authority:** 19 U.S.C. 66, 1202 (Gen. Headnote 11), 1624.

2. It is proposed to revise § 132.1(d) to read as follows:

**§ 132.1 Definitions.**

* * * * *

(d) *Presentation.* "Presentation" is the delivery in proper form to the appropriate Customs officer of:

(1) An entry summary for consumption, which shall serve as both the entry and the entry summary, with estimated duties attached (see § 141.0a(b)); or

(2) An entry summary for consumption, which shall serve as both the entry and the entry summary, without estimated duties attached, if the entry/entry summary information and a valid scheduled statement date (pursuant to § 24.25 of this chapter) have been successfully received by Customs via the Automated Broker Interface; or

(3) A withdrawal for consumption with estimated duties attached.

3. It is proposed to revise the text of § 132.11(b) to read as follows (the cross references at the end of paragraph (b) remain unchanged):

**§ 132.11 Quota priority and status.**

* * * * *

(b) *Documentation and deposit of duties in proper form required.* Merchandise covered by an entry summary for consumption, which serves as both the entry and entry summary, or by a withdrawal for consumption, shall be regarded as entered for purposes of quota priority and shall acquire quota status if:

(1) The entry summary or withdrawal for consumption is in proper form, and duties have been attached to the entry summary or withdrawal for consumption in proper form; or

(2) The entry summary for consumption is in proper form, and the entry/entry summary information and a valid scheduled statement date (pursuant to § 24.25 of this chapter) have

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been successfully received by Customs via the Automated Broker Interface.

* * * * *

4. It is proposed to revise § 132.11a(a) to read as follows:

**§ 132.11a Time of presentation.**

(a) *General rule.* Except as provided in paragraph (b) of this section, the time of presentation of an entry/entry summary for quota purposes shall be the time of delivery in proper form of:

(1) An entry summary for consumption, which serves as both the entry and the entry summary, with estimated duties attached; or

(2) An entry summary for consumption, which shall serve as both the entry and the entry summary without estimated duties attached, if the entry/entry summary information and a valid scheduled statement date have been successfully received by Customs via the Automated Broker Interface (see § 132.1(d)(2); payment must be subsequently made by the statement processing method as set forth in § 24.25 of this chapter); or

(3) A withdrawal for consumption with estimated duties attached.

* * * * *

5. It is proposed to amend § 132.11a by adding a new paragraph (c) to read as follows:

**§ 132.11a Time of presentation.**

* * * * *

(c) *Failure to use statement processing method.* If presentation is chosen to be made pursuant to § 132.11a(a)(2) and payment is not made as required through the statement processing method, the district director may require filing of an entry summary for consumption with estimated duties attached as described in § 132.11(a)(1) for future filings.

**§ 132.14 [Amended]**

6. It is proposed to amend the first sentences of subparagraphs (1), (2), (3), (4)(i) and (4)(ii) in § 132.14(a), by inserting the word "proper" before the words "presentation of an entry summary for consumption, or withdrawal for consumption."

7. It is also proposed to amend the first sentences of subparagraphs (1), (2), (3), (4)(i) and (4)(ii) in § 132.14(a) by removing the words "with estimated duties attached" following the words "presentation of an entry summary for consumption, or a withdrawal for consumption" and replacing them with "pursuant to § 132.1 of this part".

## PART 141—ENTRY OF MERCHANDISE

1. The general and relevant specific authority for Part 141, Customs Regulations, continues to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624. Subprt G also issued under 19 U.S.C. 1505.

2. It is proposed to revise the opening paragraph of § 141.101 to read as follows:

**§ 141.101 Time of deposit.**

Estimated duties shall either be deposited with the Customs officer designated to receive the duties at the time of the filing of the entry documentation or the entry summary documentation when it serves as both the entry and entry summary, or be electronically transmitted to Customs by the scheduled statement date according to the statement processing method as described in § 24.25 of this chapter, except in the following cases:

* * * * *

**§ 141.62 [Amended]**

2. It is proposed to amend the second sentence of § 141.62(b)(2)(ii) by inserting the words "or without the estimated duties attached, if the entry/entry summary information and a scheduled statement date have been successfully received by Customs via the Automated Broker Interface," between the words "with the estimated duties attached," and "shall be the time of presentation for quota purposes."

**§ 141.68 [Amended]**

3. It is proposed to amend § 141.68(b) by deleting the period at the end of the paragraph and adding, "except as provided in § 142.13(c)."

4. It is proposed to amend § 141.68(d) by inserting between the words "with estimated duties attached," and "as provided in § 132.11a of this chapter," the words "or if the entry/entry summary information and a valid scheduled statement date (pursuant to § 24.25 of this chapter) have been successfully received by Customs via the Automated Broker Interface, without the estimated duties attached,".

## PART 142—ENTRY PROCESS

1. The authority citation for Part 142 continues to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

2. It is proposed to revise § 142.13(c) to read as follows:

**§ 142.13 When entry summary must be filed at time of entry.**

* * * * *

(c) *Special Classes of merchandise*—(1) *Quota-class merchandise.* Quota-class merchandise shall not be released upon delivery of entry documentation before presentation of:

(i) An entry summary for consumption with estimated duties attached; or

(ii) A withdrawal for consumption, with estimated duties attached; or

(iii) An entry summary for consumption, without the estimated duties attached, if the entry/entry summary information and a valid scheduled statement date have been successfully received by Customs via the Automated Broker Interface. (See Part 132 and § 24.25 of this chapter.

(2) *Other classes of merchandise.* Entry summary documentation, with estimated duties attached, or a withdrawal for consumption with estimated duties attached, or an entry summary for consumption, without the estimated duties attached if the entry/entry summary information and a valid scheduled statement date have previously been transmitted to Customs via the Automated Broker Interface (see § 24.25 of this chapter) shall be filed at the time of entry before release of any other merchandise of a class designated by Customs Headquarters.

3. It is proposed to revise § 142.21(e) to read as follows:

**§ 142.21 Merchandise eligible for special permit for immediate delivery.**

* * * * *

(e) *Quota-class merchandise*—(1) *Tariff rate.* At the discretion of the district director, merchandise subject to a tariff-rate quota may be released under a special permit for immediate delivery provided the importer has on file a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter. An entry summary shall be properly presented pursuant to § 132.1 of this chapter within the time specified in § 142.23, or within the quota period, whichever expires first. If proper presentation is not made until after the tariff-rate quota is filled, the merchandise shall not be entitled to the quota rate of duty, and the importer shall pay duties at the over-quota rate.

(2) *Absolute.* At the discretion of the district director, perishable merchandise of a class approved by Customs Headquarters which is subject to an absolute quota may be released under a special permit for immediate delivery for removal to the importer's premises, or to any other location approved by the district director, until an entry summary is properly presented pursuant to § 132.1 of this chapter. A proper entry summary must be presented for merchandise so released within the time specified in § 142.23, or within the quota period, whichever expires first. If the absolute quota is filled before the importer has properly presented an entry summary,



he may either present an entry summary for warehouse or, under Customs supervision, export or destroy the merchandise.

* * * * *

4. It is proposed to revise § 142.22(b)(1) to read as follows:

**§ 142.22 Application for special permit for immediate delivery.**

* * * * *

(b) *Customs custody.* * * *

(1) An entry summary for consumption, with estimated duties attached; an entry summary for consumption without estimated duties attached, if entry/entry summary information and a valid scheduled statement date (pursuant to § 24.25 of this chapter) have successfuly been received by Customs via the Automated Broker Interface; an entry summary for warehouse; or an entry summary for entry temporarily under bond, which may be field in any of the circumstances under § 142.21 of this part except for merchandise released from warehouse under § 142.21(f) of this part;

* * * * *

## PART 143—CONSUMPTION, APPRAISEMENT, AND INFORMAL ENTRIES

1. The authority citation of Part 143 continues to read as follows:

Authority: 19 U.S.C. 66, 1481, 1484, 1498 1624.

2. It is proposed to revise the first sentence of § 143.28 to read as follows:

**§ 143.28 Deposit of duties and release of merchandise.**

Unless statement processing is used pursuant to § 24.25 of this chapter, the estimated duties and taxes, if any, shall be deposited at the time the entry is presented and accepted by a Customs officer, whether at the customhouse or elsehwere.* * *

**William von Raab,**

*Commissioner of Customs.*

Approved: March 2, 1989.

**Salvatore R. Martoche,**

*Assistant Secretary of the Treasury.*

[FR Doc. 89-5351 Filed 3-8-89; 8:45 am]

BILLING CODE 4820-02-M

## EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

### 29 CFR Part 1626

### Procedures; Age Discrimination in Employment Act

**AGENCY:** Equal Employment Opportunity Commission (EEOC, Commission).

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Commission hereby publishes a notice of proposed rulemaking (NPRM) under section 9 of the Age Discrimination in Employment Act of 1969 (ADEA), 29 U.S.C. 621 *et seq.*, providing that the one-year tolling provision of section 7(e)(2) of the ADEA, 29 U.S.C. 626(e)(2), applies to private party litigation.

**DATE:** Comments should be submitted on or before April 10, 1989.

**ADDRESS:** Comments should be submitted in quadruplicate, if possible, to: Executive Secretariat, EEOC, 2401 E Street NW., Washington, DC 20507.

**FOR FURTHER INFORMATION CONTACT:** John K. Light, Office of Legal Counsel, Room 209, EEOC, 2401 E Street NW., Washington, DC 20507, (202) 634-7623.

**SUPPLEMENTARY INFORMATION:**

### Background

Section 7(e)(2) of the ADEA (29 U.S.C. 626(e)(2)) provides for tolling the statute of limitations (as provided in section 6 of the Portal-to-Portal Act of 1947)[1] for up to one year while the Commission "is attempting to effect voluntary compliance with the requirements of this Act through informal methods of conciliation, conference, and persuasion pursuant to subsection (b)." Subsection (b) of section 7 is the provision that requires the Commission to engage in conciliation, conference, and persuasion efforts before it can institute court action under the ADEA.

After considering the language of the statutory provision, overall statutory scheme favoring voluntary compliance, its legislative background, and the court discussions on the subject of tolling, the Commission believes that Congress neither required nor intended that the one year tolling period provided by section 7(e)(2) be applied only to suits brought by the government. It is the view of the Commission that once section 7(b) conciliation, conference, and persuasion have been commenced by the Commission, the period of tolling applies regardless of whether the EEOC or a private party files an ADEA suit after the attempt at informal resolution fails.

This view of tolling is consistent with Congress' express preference in the ADEA for voluntary settlement of age discrimination claims as well as the experienced reality that unsuccessful section 7(b) conciliation, even of an allegation deemed meritorious by the government, may not always result in the Commission bringing suit. Thus, limiting tolling during section 7(b) conciliation to the government's right of action encourages charging parties to file protective suits, thereby derailing the voluntary settlement process, and may also reward employers for not engaging in prompt or serious conciliation efforts.[2] An interpretation applying section 7(e)(2) tolling to private as well as government actions is fully consistent with the ADEA's statutory scheme.

There is nothing in the statutory language of section 7(e)(2) or its legislative history which would contradict or prohiblt an interpretation applying tolling to private litigants. The Conference Committee report stated that:

> The Senate amendment amends section 7(e) of the act to provide that the statute of limitations as provided in section 6 of the Portal-to-Portal Act of 1947 shall be tolled (for a period not exceeding 2 years [conference agreement substituted 1 year]) during the period in which the Secretary of Labor [now EEOC] is attempting to effect voluntary compliance pursuant to section 7(b). This amendment does not apply to conciliation required by section 7(d). House Conf. Report No. 95-950, supra, p. 13, 1978 U.S. Code Cong. and Admin. News, p. 534.

This discussion does not limit the benefits of section 7(b) tolling exclusively to an action filed by the enforcement agency, it simply requires 7(b), as opposed to 7(d), conciliation efforts as a prerequisite for tolling.[3] As

[1] Section 6 of the Portal-to-Portal Act is made applicable by section 7(e)(1) of the ADEA to all litigation under the Act whether brought by the Commission or by private individuals.

[2] For example, there may be persons with meritorious claims who, at some point beyond the applicable statute of limitations but within the 1 year tolling period, learn that the government is not going to litigate on their behalf. It would not be in keeping with simple notions of fairness, nor with the concept that aggrieved individuals act as "private attorneys general" under the ADEA, to interpret section 7(e) as tolling the time frames solely for government suits.

[3] Section 7(d) conciliation simply requires the EEOC, upon receiving a charge, to promptly notify all persons named as prospective defendants and to promptly seek to eliminate any alleged unlawful practice by informal methods of conciliation, conference and persuasion. It is the informal, predetermination action that promptly follows the filing of a charge and in no event can delay a private suit by more than 60 days.

Section 7(b) conciliation follows written notice from the EEOC to prospective defendant(s) that it is prepared to commence conciliation pursuant to that section of the Act and is required before the Commission itself can file suit. Commission regulations provide that section 7(b) conciliation may be commenced whenever the Commission has a reasonable basis to conclude that a violation of the ADEA has occurred or will occur (ordinarily issued in the form of a Letter of Determination). 29 CFR 1626.15(b). *See also* H.R. Conf. Rep. No. 950, 95th Cong., 2d Sess. 13 (1978) (tolling under section 7(e)(2) "begin[s] when the Department of Labor

Continued

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**ACTION:** Further notice of inquiry/Notice of proposed rulemaking.

**SUMMARY:** The Commission seeks further comment on those aspects of its cross-interest policy that were not abolished in its companion *Policy Statement*. The cross-interest policy restricts broadcast licensees' ability to enter into certain kinds of business relationships. In particular, the Commission seeks comment regarding: (1) Whether "key" employee relationships should be included in the ownership rules; (2) whether joint ventures and nonattributable equity interests cause sufficient concern to justify their further review by the Commission under a continued cross-interest policy; and, if so, how the Commission could better state what principles should govern such *ad hoc* review of those two relationships.

**DATES:** Comments are due by April 21, 1989, and reply comments are due by May 8, 1989.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Douglas Minster, Mass Media Bureau, Policy and Rules Division, (202) 632-7792.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Further Notice of Inquiry/Notice of Proposed Rulemaking (Further Notice)* in MM Docket No. 87-154, adopted October 27, 1988, and released February 28, 1989. The complete text of this *Further Notice* is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

**Summary of Further Notice of Inquiry and Notice of Proposed Rulemaking**

1. In this *Further Notice* the Commission seeks further comment concerning the cross-interest policy as it applies to "key employee" relationships, certain nonattributable equity interests and joint ventures. The cross-interest policy was originally developed as a corollary to the multiple ownership rules to minimize the perceived negative effects on diversity of viewpoint and economic competition of certain relationships not addressed by the rules. In a companion *Policy Statement* in this proceeding, the Commission is eliminating the cross-interest policy, except as it is applied to key employees, nonattributable equity interests and joint ventures.

2. A key employee, under existing case law, is a person who has a position of authority to implement programming decisions, sales practices, or station operations. The *Policy Statement* does not eliminate the restriction on key employee relationships because of concern that such employees exercise a level of control which, in combination with an attributable interest in a competing media outlet in the same area, might reduce diversity of viewpoint and economic competition. Thus, the Commission specifically requests comment on: (1) Whether, for regulatory purposes, key employees are distinguishable from officers and directors, and, if so, in what ways; (2) what criteria, if any, should be used to determine if a position entails a level of control warranting regulatory restrictions; (3) whether the original concerns underlying key employee relationships are already addressed sufficiently by the types of marketplace mechanisms and alternative remedies that led to our decision to abolish the restriction on other cross-interests; and (4) whether the public interest benefits derived from permitting marginal stations to resolve financial or programming difficulties through the use of experienced employees would offset any concerns about the adverse effect of allowing these relationships on viewpoint diversity and competition. If the Commission decides, at the conclusion of this proceeding, that continued regulatory oversight of such cross-interests is required, our preference is to include key employees in the attribution rules rather than proceed on an *ad hoc* basis without guidelines with regard to key employee cases.

3. The initial *Notice of Inquiry (Notice)* in this proceeding (52 FR 22504, June 12, 1987) also questioned the continued need for limiting nonattributable equity interests through the cross-interest policy. That aspect of the policy generally involves an individual who has an attributable or controlling interest in one station and a *substantial* equity interest in another station in the same market that is not attributable under our ownership rules. On the one hand, it could be argued that such interests may, in certain circumstances, engender concerns about arms length competition and diversity in markets in which the interest holder also has an attributable interest in another outlet. Such an attributable interest may be used to take action which would benefit or protect the nonattributable investment in a competing station, thus hindering economic competition. On the other hand, in the *Notice* we questioned whether such an anticompetitive result is probable and whether such concerns are addressed by the same marketplace constraints which contributed to our decision to eliminate the limitation on other cross interests. The *Notice* produced little record evidence regarding these matters.

4. Although the Commission is not reopening the attribution proceeding (49 FR 19482, May 8, 1984), we invite comment on whether nonattributable equity interests confer a level of control or create concerns sufficient to require some kind of regulatory limitation. commenters are asked to provide, wherever possible, data, studies, and other evidence in support of their position. In the event that commenters deem some form of continued case-by-case review of nonattributable equity interests to be appropriate, we invite them to identify, at least in general terms, categories of nonattributable equity interests requiring such review. In addition, commenters should address whether such review should be confined to particular geographic markets. To the greatest extent possible, we seek to develop clear principles to govern any *ad hoc* review found necessary at the conclusion of this proceeding.

5. The Commission also received few comments directly addressing the joint venture aspect of the cross-interest policy. Although the Commission has never explicitly defined joint ventures that fall within the ambit of the policy, they usually involve an association of two or more parties to carry out a business enterprise for profit. The *Notice* questioned whether joint ventures involving multiple broadcast stations in a market seeking to build or purchase another broadcast facility continue to require Commission oversight. It might be argued that arms-length competition may be reduced as a result of the close business relationship between the stations engaged in the venture. On the other hand, it may be equally arguable that the competitive nature of local media markets eliminates any benefit which may result from anticompetitive behavior by the participants in a joint venture. In a market with many stations, even if two stations attempted to collude through a joint venture, we question whether there would be a substantial decrease in the overall level of competition among broadcast stations in the area. If the possibility of anticompetitive behavior still exists, it may be more appropriate, as with the cross-interests we are now



was articulated as dictum in *Fulton v. NCR Corp.*, 472 F. Supp. 377, 382 (W.D. Va. 1979):

> The court does not necessarily read this limitation as saying that a period of section 7(b) conciliation attempts will never work to toll the period of limitations for bringing private actions under section 7B(c) (for which the prior period of conciliation attempts under section 7(d) is required). It may mean only that section 7(d) conciliations will work to toll the limitations period for *no* ADEA action, while section 7(b) conciliations may work to toll the limitations period for *any* ADEA suit, whether brought under section 7(b) [by the government] section 7(c) [by a private litigant]. (Emphasis in original).[4]

Three courts, including one court of appeals, have reached a different conclusion, albeit without a thorough analysis of the question. In *Heiar v. Crawford County*, 746 F.2d 1190, 1198 (7th Cir. 1984), *cert. denied*, 472 U.S. 1027 (1985), the court, in an opinion by Judge Posner, stated, in *dictum*:

> The conciliation referred to [in section 7(e)(2)]—conciliation under section 7[(b)—is that preceding suits by the EEOC. Conciliation in private actions is provided for separately in section 7[(d) * * *. The point is not that there are different forms of conciliation; it is that only the EEOC can use the period of conciliation to toll the statute of limitations.

In *Leite v. Kennecott Copper Corp.*, 558 F. Supp. 1170, 1172-73 (D. Mass.), *aff'd without opinion*, 720 F. 2d 658 (1st Cir. 1983), the court held that, notwithstanding the Commission's advice that its conciliation efforts would extend the statute of limitations for a charging party's private suit, tolling was inapplicable. According to the court, the Commission's advice "misstate[d] the law" because sec. 7(e)(2)'s "reference to [sec. 7](b) makes clear [that] this tolling provision applies only to the conciliation efforts preceding the institution of legal action by the [government], not to those that might precede a private civil action." 558 F. Supp. 1173 & n. 1. Finally, in *Hovey v. Lutheran Medical Center*, 516 F. Supp. 554, 556 (E.D.N.Y. 1981), the court, in holding that tolling was not available in a private suit, stated that "the tolling provision of [sec. 7](e)(2) applies only to the conciliatory efforts required by [sec. 7](b) preceding the institution of legal action by the Secretary [; it] does not refer to conciliation before a private civil action..." [5]

The Commission believes that these decisions are unpersuasive and incorrect on the issue of tolling.[6] The decisions discussed the issue, largely in dicta, only in a brief and conclusory manner without articulated reasoning and using as authority the same legislative history discussed above that clearly does not mandate that tolling only applies to government actions. To the contrary, the Commission views the legislative history and general structure of the ADEA enforcement scheme as evidencing Congress' understanding that section 7(b) conciliation and section 7(e)(2) tolling may occur in cases where the Commission does not ultimately bring suit. A clear indication of this fact is the statement in the Conference Committee Report that tolling under section 7(e)(2) "begin[s] when the Department of Labor [now EEOC] states, in a letter to the prospective defendant[s], that it is prepared to commence conciliation pursuant to section 7(b) of the act." H.R. Conf. Rep. No. 950, 95 Cong., 2d Sess. 13 (1978). Had Congress intended section 7(e)(2) tolling to be limited to the government, it could easily have said so. Instead of such a limitation, Congress stated in that section that "the statute of limitations," which applies to both private and government actions, "shall be tolled."

Therefore, the Commission believes that it is in the best interest of effective and efficient enforcement of the ADEA that the one-year tolling period provided by section 7(e)(2) be interpreted to apply to both Commission and private litigation. In order to make this purpose clear, the Commission hereby provides notice that it intends to modify its procedural regulation at 29 CFR 1626.15(b) to add the following statement at the conclusion of this subsection:

> This tolling period pursuant to section 7(e)(2) is applicable to both Commission and private party litigation.

**I. Impact Analysis—Classification-Executive Order 12291**

The proposed rule in this document is not classified as a "major rule" under Executive Order 12291 on Federal Regulations, because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, no regulatory impact analysis is required.

Similarly, the Chairman of the EEOC certifies under 5 U.S.C. Sec. 605(b), enacted by the Regulatory Flexibility Act (Pub. L. 96-354), that this amendment will not result in a significant impact on a substantial number of small employers.

**List of Subjects in 29 CFR Part 1626**

Aged, Equal employment opportunity

Accordingly, the Commission proposes to amend 29 CFR 1626.15(b) as follows:

**PART 1626—[AMENDED]**

1. The authority citation for Part 1626 continues to read as follows:

> Authority: Sec. 9, 81 Stat 605, 29 U.S.C. 628 sec. 2, Reorg. Plan No. 1 of 1978, 3 CFR 321 (1979).

2. By adding a new sentence at the end of paragraph (b) to read as follows

**§ 1626.15 Commission enforcement**

* * * * *

(b) * * * The tolling period pursuant to section 7[e](2) is applicable to both Commission and private party litigation

* * * * *

Signed on 6th day of February at Washington, DC, for the Commission

**Clarence Thomas,**

*Chairman, Equal Employment Opportunity Commission.*

[FR Doc. 89-5324 Filed 3-8-89; 8:45 am]

BILLING CODE 6570-06-M

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**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Parts 73 and 76**

**[MM Docket No. 87-154; FCC 89-345]**

**Broadcast Television and Cable Television Service; Cross-Interest Policy**

**AGENCY:** Federal Communications Commission.

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[now EEOC] states in a letter to prospective defendant(s), that it is prepared to commence conciliation pursuant to section 7(b) of the act.")

[4] Two other courts have stated in *dicta* in private ADEA actions that tolling under section 7(e)(2) was available for the time spent in conciliation. *See Miller v. International Telephone and Telegraph Co.*, 756 F.2d 20, 24 (2d Cir. 1985), *cert. denied*, 474 U.S. 1013 (1986); and *Vukota v. Bathlehem Steel Corp.*, 540 F. Supp. 1278, 1280 n. 13 (E.D. Pa. 1982), *aff'd without opinion*, 707 F.2d 1406 (3d Cir. 1983), *cert. denied*, 464 U.S. 836 (1983).

[5] *Hovey* and *Leite* cite to and erroneously rely upon the decision in *Fulton v. NCR Corp.*, discussed earlier, which supports the opposite view, *i.e.*, that tolling is available in a private action.

[6] By letter dated February 28, 1979, the Department of Labor, then responsible for ADEA enforcement, expressed the view that sec. 7(e) tolling was limited to the government's right of action. For the reasons discussed in the text, the Commission rejects this view.

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permitting, to rely on Federal and state antitrust laws to prevent or remedy any abuses of joint venture relationships.

6. Thus, we invite comment on whether the growth of the media marketplace, in conjunction with alternative deterrents and remedies, is sufficient to reduce our concern that joint ventures will adversely affect the level of competition in a market. Finally, eliminating this aspect of the cross-interest policy so as routinely to permit joint ventures, may result in a number of public interest benefits. We ask whether such benefits outweigh the negative effect joint ventures are thought to have on local media competition. In short, we seek comment on whether it is necessary to continue to review joint ventures under the cross interest policy. Those who favor continued review should comment on whether such oversight should concur in all cases or should be limited to particular kinds of joint ventures or geographic areas.

**Paperwork Reduction Act Statement**

7. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose a new or modified information collection requirement on the public. Implementation of any new or modified requirement will be subject to approval by the Office of Management and Budget, as prescribed by the Act.

**Ex Parte Consideration**

8. This is a non-restricted proceeding. *See* Section 1.1231 of the Commission's Rules, 47 CFR 1.1231, for rules governing permissible *ex parte* contacts.

**Comment Information**

9. Pursuant to applicable procedures set forth in Section 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before April 21, 1989, and reply comments on or before May 8, 1989. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

**Initial Regulatory Flexibility Act Analysis**

10. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, this proceeding could, dependent on the comments received as part of the record, relieve the burden that these aspects of the cross-interest policy place on the broadcast industry. The proceeding was initiated to seek ways of easing such a burden. Public comment is requested on the initial regulatory flexibility analysis set out in full in the Commission's complete decision.

11. As required by section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IFRA) of the expected impact on small entities of the proposals suggested in this document. Written public comments are requested on the IFRA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the *Further Notice*, but they must have a separate and distinct heading designating them as responses to the Regulatory Flexibility Analysis. The Secretary shall send a copy of this *Further Notice*, including the IFRA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act (Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.*, (1981)).

12. Authority for this proposed rule making is contained in sections 1, 3, 4(i) and (j), 303, 308, 309, and 403 of the Communications Act of 1934, as amended.

**List of Subjects**

*47 CFR Part 73*

Radio broadcasting, Television broadcasting.

*47 CFR Part 76*

Cable television.

Federal Communications Commission.

**Donna R. Searcy,**

*Secretary.*

[FR Doc. 89-5470 Filed 3-8-89; 8:45 am]

BILLING CODE 6712-01-M



# Notices

Federal Register

Vol. 54, No. 45

Thursday, March 9, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Agricultural Stabilization and Conservation Service

### Feed Grain Donations for the Yankton Sioux Tribe Indian Reservation in South Dakota

Pursuant to the authority set forth in section 407 of the Agricultural Act of 1949, as amended (7 U.S.C. 1427) and Executive Order 11336, I have determined that:

1. The chronic economic distress of the needy members of the Yankton Sioux Tribe Reservation in South Dakota has been materially increased and become acute because of severe and prolonged drought, thereby creating a serious shortage of feed and causing increased economic distress. This reservation is designated for Indian use and is utilized by members of the Yankton Sioux Tribe for grazing purposes.

2. The use of feed grain or products thereof made available by the Commodity Credit Corporation (CCC) for livestock feed for such needy members of the Tribe will not displace or interfere with normal marketing of agricultural commodities.

3. Based on the above determinations, I hereby declare the reservation and grazing lands of the Tribe to be acute distress areas and authorize the donation of feed grain owned by the CCC to livestock owners who are determined by the Bureau of Indian Affairs, United States Department of the Interior, to be needy members of the tribe utilizing such lands. These donations by the CCC may commence upon March 1, 1989, and shall be made available through May 15, 1989, or such other date as may be stated in a notice issued by the USDA.

Signed at Washington, DC on March 2, 1989.

**Milton J. Hertz,**

*Administrator, Agricultural Stabilization and Conservation Service.*

[FR Doc. 89-5491 Filed 3-8-89; 8:45 am]

BILLING CODE 3410-05-M

## Forest Service

### Flathead National Forest, Glacier View District, Flathead County, State of Montana; Werner Creek Timber Sale

**AGENCY:** Forest Service, Agriculture.

**ACTION:** Notice of intent to prepare an environmental impact statement.

**SUMMARY:** The Forest Service will prepare an Environmental Impact Statement (EIS) to analyze and disclose the environmental impacts of a proposal to harvest and regenerate timber in portions of Werner Creek, on the Glacier View Ranger District. This EIS will tier to the Flathead National Forest Land and Resource Management Plan of January, 1986, which provides overall guidance in achieving the desired future condition for the area. The primary purpose and goal for the proposed action is to help satisfy short-term demands for timber, and maintain a continous supply of timber in the future.

While some preliminary scoping was done for this project during the preparation of an Environmental Assessment for Werner Creek in 1987-88, the Forest Service is seeking information and comments from Federal, State, and local agencies and other individuals or organizations who may now be interested in or affected by the proposed actions. This input will be used in preparing the Draft EIS. This process will include;

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Identification of additional reasonable alternatives.
5. Identification of potential environmental effects of the alternatives.
6. Determination of potential cooperating agencies and task assignments.

The agency invites written comments and suggestions on the issues and management opportunities in the area being analyzed.

**DATE:** Comments concerning the scope of the analysis should be received by April 1989 to receive timely consideration in the preparation of the draft EIS.

**ADDRESS:** Send written comments to Tom Hope, District Ranger, Glacier View Ranger District, P.O. Box W, Columbia Falls, MT 59912.

**FOR FURTHER INFORMATION CONTACT:** Cathy Calloway, Werner Creek Interdisciplinary Team Leader, or Tom Hope, District Ranger, Glacier View Ranger District, Flathead National Forest, P.O. Box W, Columbia Falls, MT 59912.

**SUPPLEMENTARY INFORMATION:** Management activities under consideration would occur in an area encompassing approximately 5400 acres of National Forest lands in the Big Creek Geographic Unit, on the Glacier View Ranger District, as delineated in the Flathead Forest Plan. Included in the area of analysis are all or portions of the following: sections 1-5, T32N, R22W; sections 25-28 and 33-36, T33N, R22W; sections 5-6 T32N, R21W; and sections 30-32, T33N, R21W, Principal Montana Meridian.

The Land and Resource Management Plan for the Flathead National Forest provides the overall guidance for management activities in the potentially affected area through its goals, objectives, standards and guidelines, and management area direction. In the Forest Plan, timber harvest and reforestation was tentatively scheduled in the Werner Creek area in 1990.

Most areas of proposed harvest and reforestation for the Werner Creek project are within Management Area 15. Forest plan direction states that Management Area 15 consists of lands where timber management with roads is economical and feasible. The management goal is to manage those lands suitable for timber production for the long-term growth and production of commercially valuable wood products as well as provide for soil and water protection, wildlife habitat, and roaded recreation opportunities.

In addition, road construction, re-construction, and timber harvest and reforestation may occur within

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Management Area 12 (riparian areas along perennial streams) or Management Area 17 (riparian areas with typically intermitten streams). Management goals for Management Area 12 are to emphasize old-growth habitat, water quality and fisheries and vegetative diversity for wildlife habitat. Goals for Management Area 17 are similar, and also include maintaining a sustained yield of timber.

The analysis will consider a range of alternatives. One of these will be the "no-action" alternative, in which all harvest and regeneration activities would be deferred. Other alternatives will examine various levels and locations of harvest and regeneration to provide emphasis on differing mixes of timber and non-timber resource values.

The analysis will disclose the environmental effects of alternative ways of implementing the Forest Plan. The Forests Service will analyze and document the direct, indirect, and cummulative environmental effects of the alternatives. In addition, the EIS will disclose the analysis of site specific mitigation measures and their effectiveness.

Public participation is especially important at several points of the analysis. People may visit with Forest Service officials at any time during the analysis and prior to the decision. However, two periods of time are identified for the receipt of comments on the analysis. The two public comment periods are during the scoping process (now thru April 15, 1989) and in the review of the Draft EIS (May–June, 1989).

The Fish and Wildlife Service, Department of the Interior, will be informally consulted throughout the analysis. To meet the requirements of the Endangered Species Act, the Fish and Wildlife Service will review the EIS and biological evaluation and if necessary, render a formal Biological Opinion of the effects on the Threatened and Endangered Species including grizzly bear, grey wolf, and bald eagle.

The DEIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in May 1989. At that time the EPA will publish a notice of availability of the DEIS in the **Federal Register**. After a 45-day public comment period, the comments received will be analyzed and considered by the Forest Service in the final environmental impact statement (FEIS). The FEIS is scheduled to be completed by August 1989. The Forest Service will respond in the FEIS to the comments received on the DEIS. The District Ranger who is responsible official for this EIS will make a decision regarding this proposal considering the comments, responses and environmental consequences discussed in the FEIS, and applicable laws, regulations, and policies. The decision and reasons for the decision will be documented in a Record of Decision.

Tom Hope, District Ranger for the Glacier View Ranger District, Flathead National Forest, is the Responsible Official.

Date: February 28, 1989.

**Tom Hope,**

*District Ranger, Glacier View Ranger District, Flathead National Forest.*

[FR Doc. 89-5455 Filed 3-8-89; 8:45 am]

BILLING CODE 3410-11-M

## Flathead National Forest, Glacier View Ranger District, Flathead County, Montana, Lakalaho Timber Sale

**AGENCY:** Forest Service, Agriculture.

**ACTION:** Notice of Intent To Prepare an Environmental Impact Statement.

**SUMMARY:** The Forest Service will prepare an Environmental Impact Statement (EIS) to analyze and disclose the environmental impacts of a proposal to harvest and regenerate timber in portions of Lakalaho Creek, on the Glacier View Ranger District, Flathead County, Montana. This EIS will tier to the Flathead National Forest Land and Resource Management Plan of January, 1986, which provides overall guidance in achieving the desired future condition for the area. The purpose and goals for the proposed action are to help satisfy short-term demands for timber and to maintain a continuous supply of timber in the future

Some preliminary scoping was done for this project during the preparation of an Environmental Assessment for Lakalaho Creek in 1987–88. The Forest Service is now seeking additional information and comments from Federal, State, and local agencies and other individuals or organizations who may now be interested in or affected by the proposed actions. This input will be used in preparing the Draft EIS. This process will include:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Identification of additional reasonable alternatives.
5. Identification of potential environmental effects of the alternatives.
6. Determination of potential cooperating agencies and task assignments.

The agency invites written comments and suggestions on the issues and management opportunities in the area being analyzed.

**DATE:** Comments concerning the scope of the analysis should be received by April 7, 1989 to receive timely consideration in the preparation of the draft EIS.

**ADDRESS:** Send written comments to Tom Hope, District Ranger, Glacier View Ranger District, P.O. Box W, Columbia Falls, MT 59912.

**FOR FURTHER INFORMATION CONTACT:** Dave Cawrse, Lakalaho Interdisciplinary Team Leader, or Tom Hope, District Ranger, Glacier View Ranger District, Flathead National Forest, P.O. Box W, Columbia Falls, MT 59912.

**SUPPLEMENTARY INFORMATION:** Management activities under consideration would occur in an area encompassing approximately 3600 acres of National Forest lands in the Big Creek Geographic Unit, on the Glacier View Ranger District, as delineated in the Flathead Forest Plan. Included in the area of analysis are all or portions of the following: sections 12, 13, 14, and 24, T32N, R22W; and sections 5, 7, 8, 17–20, T32N, R21W, Principal Montana Meridian

The land Resource Management Plan for the Flathead National Forest provides the overall guidance for management activities in the potentially affected area through its goals, objectives, standards and guidelines, and management area direction. In the Forest Plan, timber harves and reforestation was tentatively scheduled in the Lakalaho Creek area in 1990. The Lakalaho Creek analysis will examine site specific activities that are consistent with the Forest Plan guidelines, standards, and management area goals. Road building and timber harvest are proposed to take place in the following management areas within the Lakalaho project area.

Management Area 7: Consists of timberlands in visually sensitive areas. Management activities are not dominant. A pleasing, naturally appearing landscape is maintained.

Management Area 15: Consists of lands classified as suitable for timber management, and timber harvest is scheduled. The management goal is to manage these lands for the long-term growth and production of commercially valuable wood products as well as provide soil and water protection, wildlife habitat maintenance, and roaded natural-appearing recreation opportunities.

The analysis will consider a range of alternatives. One of these will be the "no-action" alternative, in which all harvest and reforestation activities would not be done. Other alternatives will examine various levels, locations and cutting methods of harvest and reforestation to provide emphasis on different mixes of timber and non-timber resources.

The Forest Service will analyze and document the direct, indirect, and cumulative environmental effects of the alternatives. In addition, the EIS will disclose the analysis of site specific mitigation measures and their effectiveness.

Public participation is especially important at several points of the analysis. People may visit with Forest Service officials at any time during the analysis and prior to the decision. Two periods of time, however, are identified for the receipt of comments on the analysis.

The two public comment periods are during the scoping process (now thru April 7, 1989) and in the review of the Draft EIS (May, 1989).

The Fish and Wildlife Service, Department of the Interior, will be informally consulted throughout the analysis. To meet the requirements of the Endangered Species Act, the Fish and Wildlife Service will review the EIS and biological evaluation and if necessary, render a formal Biological Opinion of the effects on the Threatened and Endangered Species, the grizzly bear and gray wolf.

The DEIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in May 1989. At that time the EPA will publish a notice of availability of the DEIS in the **Federal Register**. After a 45-day public comment period, the comments received will be analyzed and considered by the Forest Service in the final environmental impact statement (FEIS). The FEIS is scheduled to be completed by August, 1989. The Forest Service will respond in the FEIS to the comments, responses and environmental consequences discussed in the FEIS, and applicable laws, regulations, and policies. The decision and reasons for the decision will be documented in a Record of Decision.

Date: February 28, 1989.

**Tom Hope,**

*District Ranger, Glacier View Ranger District, Flathead National Forest.*

[FR Doc. 89-5456 Filed 3-8-89; 8:45 am]

BILLING CODE 3410-11-M



## Packers and Stockyards Administration

### Amendment to Certification of Central Filing System—Louisiana

The Statewide central filing system of Louisiana has been previously certified, pursuant to section 1324 of the Food Security Act of 1985, on the basis of information submitted by Bob Odom, Commissioner of Agriculture, for farm products produced in that State (51 FR 47036, December 30, 1986; 53 FR 15722, May 3, 1988; and 53 FR 24755, June 30, 1988).

The same system is hereby certified on the basis of information submitted by the Lousiana Department of Agriculture & Forestry for additional farm products produced in that State as follows: Potatoes, Irish, Eggplant, Okra, Crabs.

This is issued pursuant to authority delegated by the Secretary of Agriculture.

**Authority:** Sec. 1324(c)(2), Pub. L. 99-198, 99 Stat. 1535, 7 U.S.C. 1631(c)(2); 7 CFR 2.17(e)(3), 2.56(a)(3), 51 FR 22795.

Dated: March 6, 1989.

**B.H. (Bill) Jones,**

*Administrator, Packers and Stockyards Administration.*

[FR Doc. 89-5493 Filed 3-8-89; 8:45 am]

BILLING CODE 3410-KD-M

## Soil Conservation Service

### East Yellow Creek Watershed, Missouri; Availabe of a Record of Decision

**AGENCY:** Soil Conservation Service, USDA.

**ACTION:** Notice of availability of a record of decision.

**SUMMARY:** Russell C. Mills, responsible Federal official for projects administered under the provisions of Pub. L. 83-566, 16 U.S.C. 1001-1008, in the State of Missouri, is hereby providing notification that a record of decision to proceed with the installation of the East Yellow Creek Watershed project is available. Single copies of this record of decision may be obtained from Russell C. Mills at the address shown below.

**FOR FURTHER INFORMATION CONTACT:** Russell C. Mills, State Conservationist, Soil Conservation Service, 555 Vandiver Drive, Columbia, Missouri 65202, telephone (314) 875-5214.

**Russell C. Mills,**

*State Conservationist.*

Date: March 2, 1989.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention. State and local review procedures for Federal and federally assisted programs and projects are applicable.)

[FR Doc. 89-5539 Filed 3-8-89; 8:45 am]

BILLING CODE 3410-16-M

## COMMISSION ON CIVIL RIGHTS

### Pennsylvania Advisory Committee Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of Pennsylvania Advisory Committee to the Commission will convene at 9:15 a.m. and adjourn at 12:45 p.m. on Thursday, April 6, 1989, in the Third Floor Public Information Room of the Federal Reserve Bank Building, 100 North Seventh Street, Philadelphia, Pennsylvania. The meeting will feature a forum entitled "Implementing the 1988 Fair Housing Amendments Act" which will begin at 9:45 a.m. in the same location. Federal, State, and local government officials and representatives of nonprofit institutions will make presentations on the subject.

Persons desiring additional information on this matter should contact Committee Chairperson Susan M. Wachter (215/898-6355) or John I. Binkley, Director of the Eastern Regional Division of the Commission at (202/523-5264 or TDD 202/376-8117). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 2, 1989.

**Melvin L. Jenking,**

*Acting Staff Director.*

[FR Doc. 89-5457 Filed 3-8-89; 8:45 am]

BILLING CODE 6335-01-M

BEST COPY AVAILABLE

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**DEPARTMENT OF COMMERCE**

**International Trade Administration**

**Export Trade Certificate of Review Application**

**AGENCY:** International Trade Administration, Commerce.

**ACTION:** Notice of application.

**SUMMARY:** The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

**FOR FURTHER INFORMATION CONTACT:** Thomas H. Stillman, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** Title III of the Export Trading Company Act of 1982 (Pub. L. 97-290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and Federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 303(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the Federal Register identifying the applicant and summarizing its proposed export conduct.

**Request for Public Comments**

Interested parties may submit written comments relevant to the determination whether the Certificate should be issued. An original and five (5) copies should be submitted not later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 12233, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 89-00005." A summary of the application follows.

**Summary of Application**

*Applicant:* CherreX Corporation ("CherreX"), 2220 University Park Drive, Suite 200, Contact: C. Richard Johnston, Telephone: 517/347-0010.

*Application No.:* 89-00005.

*Date Deemed Submitted:* February 28, 1989.

*Members:* Burnette Foods, Inc., Hartford, MI; Beukirk Processing, Inc., Lawrence, MI; Cherry Central Cooperative, Inc., Traverse City, MI; Cherry Marketing Institute, Inc., Okemos, MI; Comstock/Michigan Fruit Division (a division of Curtice Burns Foods), Rochester, NY; DeRuiter Farms, Hart, MI; Great Lakes International Trading, Inc., Traverse City, MI; Great Lakes Packing Company, Kewaskia, MI; Ludington Fruit Exchange, Inc., Ludington, MI; and Stanek & Sons, Inc., Traverse City, MI.

*Export Trade:*

Products. Processed red cherries (prunus cerasus) and cherry products, including cherry pie filling, water pack cherries, cherry juice concentrate, dried cherries, frozen pack cherries, individually quick frozen cherries, cherry sausage, and cherry jams, jellies, and sauces.

Export Trade Facilitation Services (as they relate to the export of Products). Trade promotion, marketing, sales, and transportation services (including packing, transportation, wharfing and handling, trade documentation, freight forwarding, storage, and customs clearance).

Technology Rights. Technology related to the processing of the Products.

*Export Markets:*

All parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

*Export Trade Activities and Methods of Operation:*

CherreX and the Members propose to engage in the joint export of the Products by:

1. Selling the Products in Export Markets under the CherreX or other common brand or label;

2. CherreX negotiating and entering into agreements, on behalf of and with the advice of the Members, for the transportation, storage, and promotion (including trade shows, advertising, and contracting marketing services) of the Members' Products in Export Markets;

3. Sharing transportation, storage, and promotion costs associated with the export of the Products through CherreX;

4. Establishing prices and terms for the sale of the Products in Export Markets;

5. Allocating export sales and export markets among the Members on the basis of each Member's commitment of Products for sale in Export Markets;

6. CherreX granting to nonmembers exclusive distributorship rights in specific Export Markets;

7. CherreX negotiating and entering into agreements, on behalf of and with the advice of the Members, with buyers in Export Markets for the sale of the Members' Products;

8. Advising and cooperating with the U.S. Government in establishing procedures regulating the export of the Products;

9. Negotiating and entering into agreements with foreign governments and foreign persons regarding the quantities, time periods, prices, and terms and conditions upon which the Members shall export the Products;

10. Developing new processing technology, new product applications and new products for Export Markets; and

11. Licensing processing technology to licensees in Export Markets.

Date: March 3, 1989.

**Thomas H. Stillman,**

*Director, Office of Export Trading Company Affairs.*

[FR Doc. 89-5509 Filed 3-8-89; 8:45 am]

BILLING CODE 3510-DR-M

**National Technical Information Service**

**Intent To Grant Exclusive Patent License; Uni-Star Industries, Ltd.**

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Uni-Star Industries, Ltd., having a place of business in Cuba, IL 61427, an exclusive license in the United States and certain foreign countries to practice the invention embodied in the U.S. Patent 4,454,268 (Patent Application Serial Number 6-607,191, "Starch-Based Semipermeable Films." The patent rights in this invention have been assigned to the United States of America, as represented by the Department of Commerce.

The intended license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended licenses would not serve the public interest.

Inquiries, comments and other materials relating to the intended license must be submitted to Douglas J. Campion, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Copies of the subject patent may be purchased from the Commissioner of Patents, U.S. Patent & Trademark Office, Washington, DC 20231.

**Douglas J. Campion,**

*Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.*

[FR Doc. 89-5459 Filed 3-8-89; 8:45 am]

BILLING CODE 3510-04-M

**COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS**

**Changes in Visa Arrangements To Coincide With Implementation of the Harmonized Tariff Schedule; Correction**

March 6, 1989.

On page 52468, 3rd column of the Federal Register notice published on December 28, 1988 (53 FR 52464), add Category 223 (all HTS numbers in Category 223, excluding cotton webs, wadding and batting in 5601.21.0010) for Mexico.

**James H. Babb,**

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 89-5495 Filed 3-8-89; 8:45 am]

BILLING CODE 3510-DR-M

**DEPARTMENT OF DEFENSE**

**Office of the Secretary of Defense**

**DIA Advisory Board's Sigint Panel; Cancellation of Meeting**

**AGENCY:** Defense Intelligence Agency Advisory Board.

**ACTION:** Notice of cancellation of closed meeting.

**SUMMARY:** Notice is hereby given that the closed meeting of the DIA Advisory Board's SIGINT Panel, scheduled for 1 March 1989, previously announced in the Federal Register on Friday, February 3, 1989, Volume 54, No. 22, FR Document 89-2589 was cancelled.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Colonel John E. Hatlelid, USAF, Executive Secretary, DIA Advisory Board, Washington, DC 20340-1328 (202 373-4930).

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

March 6, 1989.

[FR Doc. 89-5518 Filed 3-8-89; 8:45 am]

BILLING CODE 3810-01-M

**Meeting of the National Advisory Panel on the Education of Handicapped Dependents**

**ACTION:** Change in location.

**SUMMARY:** The location of the meeting of the National Advisory Panel on the Education of Handicapped Dependents scheduled for March 28 through 30 as published in the Federal Register (Vol. 54, No. 38, February 28, 1989) has been changed to the Capri Hotel, 2700 Eisenhower Avenue, Alexandria, VA 22306, telephone 703-329-2323. All other information remains unchanged.

March 3, 1989.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 89-5440 Filed 3-8-89; 8:45 am]

BILLING CODE 3810-01-M

**Advisory Group on Electron Devices; Advisory Committee Meeting**

**SUMMARY:** Working Group A (Mainly Microwave Devices) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

**DATE:** The meeting will be held at 0800, Wednesday, 5 April 1989.

**ADDRESS:** The meeting will be held at Palisades Institute for Research Services, Inc., 2940 Presidential Drive, Suite 210, Fairborn, Ohio 45433.

**FOR FURTHER INFORMATION CONTACT:** Harold Summer, AGED Secretariat, 2011 Crystal Drive, Suite 307, Arlington, Virginia 22202.

**SUPPLEMENTARY INFORMATION:** The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. This microwave device area includes programs on developments and research related to microwave tubes, solid state microwave, electronic warfare devices, millimeter wave devices, and passive devices. The review will include classified program details throughout.

In accordance with section 10(d) of Pub. L. 92-463, as amended, (5 U.S.C. App. II 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

March 3, 1989.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 89-5436 Filed 3-8-89; 8:45 am]

BILLING CODE 3810-01-M

**Defense Science Board 1989 Summer Study on Improving Test and Evaluation Effectiveness**

**ACTION:** Notice of advisory committee meetings.

**SUMMARY:** The Defense Science Board 1989 Summer Study on Improving Test and Evaluation Effectiveness will meet in closed session on April 11-12, 1989 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will examine the contributions of modeling and simulation to Defense test and evaluation so as to improve the acquisition process.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

March 3, 1989.

**Linda M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 89-5437 Filed 3-8-89; 8:45 am]

BILLING CODE 3810-01-M

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### Defense Science Board 1989 Summer Study on Non-Cooperative Identification

**ACTION:** Notice of advisory committee meetings.

**SUMMARY:** The Defense Science Board 1989 Summer Study on Non-Cooperative Identification will meet in closed session on April 13–14, May 17–18, and June 14–15, 1989 at the VEDA Corporation, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will receive classified briefings, study classified documents, and conduct classified interviews on technologies, intelligence data, and programs relating to noncooperative target identification techniques.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II, (1982)), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly these meetings will be closed to the public.

March 3, 1989.

**Linda M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 89–5439 Filed 3–8–89; 8:45 am]

BILLING CODE 3810–01–M

### Defense Science Board Task Force on Low Observable Technology

**ACTION:** Notice of advisory committee meetings.

**SUMMARY:** The Defense Science Board Task Force on Low Observable Technology will meet in closed session on March 30 and April 20, 1989 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will evaluate low observable technology.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II, (1982)), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly these meetings will be closed to the public.

March 3, 1989.

**Linda M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 89–5438 Filed 3–8–89; 8:45 am]

BILLING CODE 3810–01–M

## Department of the Air Force

### Privacy Act of 1974; Amended Record System Notice

**AGENCY:** Department of the Air Force, DoD.

**ACTION:** Notice of an amendment of an Air Force System of Record.

**EFFECTIVE DATE:** This amendment shall be effective without further notice on or before April 10, 1989, unless comments are received which result in a contrary determination.

**ADDRESS:** Send any comments to Ms. Linda G. Adams, SAF/AADAQI, The Pentagon, Washington, DC 20330–1000, telephone (202) 694–3488, Autovon: 224–3488.

**SUPPLEMENTARY INFORMATION:** The Air Force is amending a system of records subject to the Privacy Act of 1974 (5 U.S.C. 552a). The record system was previously published in the Federal Register at 50 FR 24365, June 28, 1985. Besides minor editorial changes, the Air Force is amending the Routine Uses provision of the notice so as to add additional users. Disclosures of information can now be made to Federal, state or local government investigative agencies if necessary to obtain information for a human/personnel reliability determination; and to the National Aeronautics and Space Administration (NASA) concerning its making, issuing, or retaining a human/personnel reliability determination regarding unescorted entry to specified space launch and operations related facilities or areas, or assignment to designated sensitive positions related to space launch and operations activities.

The publication of this amendment is required by subsection (e)(4)(11) of the Privacy Act (5 U.S.C. 552a). This amendment is not within the purview of subsection (r) of the Act that requires the submission of a new or altered system report.

The complete Air Force inventory of record system notices subject to the Privacy Act has been published in the Federal Register to this date as listed:

50 FR 22332 May 29, 1985 (Compilation, changes follow)
50 FR 24672 June 12, 1985
50 FR 25737 June 21, 1985
50 FR 48477 November 8, 1985
50 FR 50827 December 10, 1985
51 FR 4531 February 5, 1986
51 FR 7371 March 3, 1986
51 FR 16735 May 6, 1986
51 FR 18927 May 23, 1986
51 FR 41382 November 14, 1986
51 FR 41402 November 14, 1986
51 FR 44332 December 9, 1986
52 FR 11845 April 13, 1987
53 FR 24354 June 28, 1988
53 FR 45809 November 14, 1988
53 FR 50072 December 13, 1988
53 FR 51391 December 21, 1988

March 3, 1989.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**F205 AFSC A**

**SYSTEM NAME:**

Space Human Assurance and Reliability Program (SHARP).

**SYSTEM LOCATION:**

HQ SD/CLFRX, P.O. Box 92960, Los Angeles AFB, Los Angeles, CA 90009–2960; HQ SAMTO/XOO, Vandenberg AFB, CA 93437–6021; WSMC/SP, Vandenberg AFB, CA 93437–6021; ESMC/SPI, Patrick AFB, FL 32925–6215; and CSTC/VOB, P.O. Box 3430, Onizuka AFB, CA 94088–3430.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Military, civil service, and contractor personnel who require SHARP certification for unescorted entry to specified space launch and operations related facilities or areas at certain Air Force or National Aeronautics and Space Administration (NASA) installations or activities or for assignment to designated sensitive space launch and operations positions at such installations or facilities.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Documentation used to request certification, to include the applicant's name, social security number, date and place of birth, level of security investigation, medical, financial, and arrest information, and data pertaining to the applicant's certification, such as date of certification, date certification suspended, withdrawn, or denied (as appropriate) and date recertification required.

**AUTHORITY FOR MAINTAINING THE SYSTEM:**

Title 50, U.S.C. 797, Internal Security Act of 1950; 5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 8013, "Secretary of the Air Force: Power and duties: Delegation by;" Executive Order 9397, November 1943 (SSN) Numbering System for Federal Register Accounts Relating to Individual Persons; 32 CFR 809a.1, Enforcement of Order at Air Force Installations, Air Force Regulation (AFR) 127–2, ¶¶ 3–6 & 4–4, U.S. Air Force Mishap Prevention Program; Space Division Regulation (SDR) 55–3, Space Human Assurance and Reliability Program (SHARP).



**PURPOSES:**

To obtain background information for investigative and evaluative purposes for use in making human/personnel reliability determinations under SHARP regarding personnel (a) seeking unescorted entry to specified space launch and operations related facilities or areas at certain Air Force or National Aeronautics and Space Administration (NASA) installations or activities, or (b) occupying sensitive positions related to space launch and operations designated by the commander of such installations.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

To federal, state, or local government investigative agencies if necessary to obtain information for a human/personnel reliability determination; to NASA concerning its making, issuing, or retaining a human/personnel reliability determination regarding unescorted entry to specified space launch and operations related facilities or areas, or assignment to designated sensitive positions related to space launch and operations activities. See also, the "Blanket Routine Uses" set forth at the beginning of the Department of the Air Force's listing of record system notices and reprinted in Air Force Pamphlet 12–36, Privacy Act Systems of Records.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Maintained in file folders, binders, card files, computer files, and computer products.

**RETRIEVABILITY:**

Filed by name and security number.

**SAFEGUARDS:**

Records are accessed by the custodian of the records system and by personnel responsible for maintaining and updating the record system in performing their official duties. Such personnel are screened and cleared for access to SHARP data on a need-to-know basis. Records are stored in locked cabinets or file containers. Computerized files reflecting the identity and program status of applicants for SHARP certification are protected against unauthorized access. Computers containing such data are located in controlled access areas or otherwise secured so as to preclude unauthorized access.

**RETENTION AND DISPOSAL:**

Records are destroyed in accordance with AFR 12–50, Table 205–5. Unit requests for investigation or unescorted entry are destroyed when no longer needed. AFR 12–50, Table 205–5, Rule 7. Completed personal history statements or comparable forms at units of assignment are destroyed when an individual's employment is terminated. AFR 12–50, Table 205–5, Rule 12. Documents are shredded, pulped, or burned to preclude the disclosure of Privacy Act information.

**SYSTEM MANAGER(S) AND ADDRESS:**

Headquarters Space Division, Deputy Commander for Launch Operations, Plans and Operations Division, SHARP Program Manager, SAMTO/XOO, Vandenberg AFB, CA 93437–6021; SHARP Administrator, HQ SD/CLFRX, P.O. Box 92960, Los Angeles AFB, Los Angeles, CA 90009–2960; SHARP Administrator, WSMC/SP, Vandenberg AFB, CA 93437–6021; SHARP Administrator, ESMC/SPI, Patrick AFB, FL 32925–6215; and SHARP Administrator, CSTC/VOB, P.O. Box 3430, Onizuka AFB, CA 94088–3430.

**NOTIFICATION PROCEDURES:**

Individuals can ascertain if their records are in the system by contacting the system manager or the system location where the requester applied for SHARP certification. Requesters should identify themselves by name and social security number to facilitate access.

**RECORD ACCESS PROCEDURES:**

Written requests should be addressed to the system manager or to the system location where the requester applied for SHARP certification. For personal visits, the requester may be asked to show a valid identification card, a driver's license, or some similar proof of identity.

**CONTESTING RECORDS PROCEDURES:**

The rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the system manager and are published in Air Force Regulation 12–35, 32 CFR Part 806b.

**RECORD SOURCE CATEGORIES:**

Information is provided by the individual; his or her supervisor; the servicing security police organization; various federal, state, and local investigative agencies; and the local SHARP Administrator or equivalent NASA official.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. 89–5441 Filed 3–8–89; 8:45 am]

BILLING CODE 3910–01–M

## Department of the Army

### Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

*Name of the Committee:* Army Science Board (ASB).

*Dates of Meeting:* 27–31 March 1989.

*Time of Meeting:* 0800–1700 hours.

*Place:* Ft. Monmouth, NJ; Ft Belvoir, VA; and White Sands Missile Range, NM.

*Agenda:* The Army Science Board 1989 Summer Study on International Cooperation and Data Exchange to Enhance the Army's Technology Base will meet for the purpose of observing the US/France Technology Working Group Data Exchange Program. This meeting will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. Contact the Army Science Board Administrative Officer, Sally Warner, for further information at (202) 695–3039 or 695–7046.

**Sally A. Warner,**

*Administrative Officer, Army Science Board.*

[FR Doc. 89–5506 Filed 3–8–89; 8:45 am]

BILLING CODE 3710–08–M

### Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

*Name of the Committee:* Army Science Board (ASB).

*Date of Meeting:* 30 March 1989.

*Time: 0700–1700 hours.*

*Place:* Sacramento Army Depot, Sacramento, California.

*Agenda:* The Army Science Board Ad Hoc Subgroup on Total Quality Management will hold its initial planning meeting. This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the

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time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039/7046.

**Sally A. Warner,**

*Administrative Officer, Army Science Board.*

[FR Doc. 89–5507 Filed 3–8–89; 8:45 am]

BILLING CODE 3710–08–M

## DEPARTMENT OF EDUCATION

**[CFDA No.: 84.129]**

### State Vocational Rehabilitation Unit In-Service Training Program; New Awards for Fiscal Year (FY) 1989

*Purpose of Program:* This program provides grants to State agencies and other public or nonprofit agencies and organizations, including institutions of higher education, to support special projects for training State vocational rehabilitation unit personnel in program areas essential to the effective management of the unit's program of vocational rehabilitation services or in skill areas that will enable State unit personnel to improve their ability to provide vocational rehabilitation services to individuals with severe disabilities. Pursuant to 34 CFR 385.33(a), fiscal year 1989 funds are available under this program for the support of new projects in Department of Education Regions I, II, IV, V, VII, IX, and X only.

*Deadline for Transmittal of Applications:* May 31, 1989.

*Applications Available:* March 10, 1989.

*Estimated Total Available Funds:* $1,576,400.

*Estimated Available Funds:*

Region I—$249,650
Region II—$9,500
Region IV—$858,100
Region V—$209,225
Region VII—$16,850
Region IX—$271,850
Region X—$161,225

*Estimated Range of Awards:* $5,500–$127,400.

*Estimated Average Size of Awards:* $39,410.

*Estimated Number of Awards:*

Region I—0
Region II—1
Region IV—13
Region V—4
Region VII—1
Region IX—5
Region X—7

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* Up to 36 months.

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 80, and 85; and (b) the regulations for this program in 34 CFR Parts 385 and 388.

*For Applications or Information Contact:* Mary Ford, U.S. Department of Education, 400 Maryland Avenue SW., Room 3332 (Switzer Building), Washington, DC 20202–2650. Telephone (202) 732–1351.

**Program Authority:** 29 U.S.C. 774.

Dated: March, 6, 1989.

**Madeleine Will,**

*Assistant Secretary, Office of Special Education and Rehabilitation Services.*

[FR Doc. 89–5536 Filed 3–8–89; 8:45 am]

BILLING CODE 4000–01–M

## DEPARTMENT OF ENERGY

### Floodplain/Wetlands Involvement for the Proposed Clean Coal Technology Project at City Water Light & Power, Lakeside Station, Unit 7, Springfield, IL

**AGENCY:** Department of Energy (DOE).

**ACTION:** Notice of floodplain/wetlands involvement.

**SUMMARY:** Under the Clean Coal Technology Program, DOE proposes to fund, in part, a project entitled "Enhancing the Use of Eastern and Midwestern Coals by Gas Reburning-Sorbent Injection at City Water Light & Power, Lakeside Station, Unit 7." Pursuant to 10 CFR Part 1022 (DOE's "Compliance with Floodplain/Wetlands Environmental Review Requirements"), DOE has determined that this action would involve activities within a floodplain/wetlands and, therefore, the following notice is submitted for public review and comment.

In accordance with DOE regulations for compliance with floodplain/wetland environmental review requirements (10 CFR Part 1022), DOE will prepare a floodplain/wetland assessment for this site. The floodplain/wetland assessment will be incorporated into the environmental assessment to be prepared for this proposed action. Maps and further information are available from DOE at the address shown below.

**DATE:** Any comments are due on or before March 24, 1989.

**ADDRESS:** Address comments to the Pittsburgh Energy Technology Center, Department of Energy, P.O. Box 10940, Pittsburgh, PA 15236. All comments should refer to the project title.

**FOR FURTHER INFORMATION CONTACT:** Dr. Earl Evans, Environmental Project Manager, Pittsburgh Energy Technology Center, Department of Energy, P.O. Box 10940, Pittsburgh, PA 15236, (412) 892–5709.

**SUPPLEMENTARY INFORMATION:** The proposed project is a field evaluation of the effectiveness of gas reburning-sorbent injection (GR–SI) technologies in controlling $NO_x$ and $SO_2$ emissions from a coal-fired boiler equipped with a cyclone combustor. The evaluation will be conducted at City Water Light and Power (CWLP), Lakeside Station. Lakeside Station includes three coal-fired steam generating electrical units with a total net generating capacity of 100 MWe. The project will be conducted in Unit 7, a 33 MWe cyclone-fired boiler.

Lakeside Station and the adjacent Dallman Station occupy a 75-acre site on the northwest shore of Lake Springfield in Sangamon County, Illinois. Coal combustion and flue gas cleaning wastes are transported to an existing on-site waste disposal area located immediately north of Lake Springfield. This disposal area includes three ash ponds for wet disposal of fly ash and bottom ash from the two stations, and three dry landfill cells for disposal of dewatered flue gas desulfurization sludge from Dallman Station. The flood zone map from the Federal Emergency Management Agency for the Lakeside Station area shows that the power station is not located within the floodplain. However, the waste disposal area is located within the 100-year floodplain of Lake Springfield, i.e. an area with a one percent chance of being flooded in any one year.

The power station area does not contain wetlands. However, information obtained from the U.S. Fish and Wildlife Service indicates that the existing ash pond and dry landfill cells contain wetland areas. The ash pond contains wetlands that are classified as lacustrine littoral unconsolidated shore seasonal diked/impounded wetlands and lacustrine limnetic unconsolidated bottom permanent diked/impounded wetlands. The dry landfill cells contain wetlands that are classified as palustrine unconsolidated bottom intermittently exposed diked/impounded wetlands.

The Illinois Department of Conservation, which compiled the wetlands map for the U.S. Fish and Wildlife Service, indicates that the ash pond and landfill wetlands are so identified because they contain standing water, and not because they support aquatic life. The ponds and landfill cells were excavated for the purpose of waste disposal, and did not contain standing water or support aquatic life prior to excavation.

Project construction will involve retrofit to the existing power plant. All construction will take place in the immediate vicinity of the boiler except pipeline installation, which will involve on-site construction of a 1400-foot natural gas pipeline. Once the equipment has been installed, the GR–SI demonstration will operate for a period of 12 months.

Construction of the GR–SI equipment will involve internal structural retrofit of the existing plant. The natural gas pipeline will be constructed entirely within the boundaries of the site and will not traverse floodplains or wetlands. The only project activity with the potential to impact the floodplain or wetlands involes use of the existing ash pond and dry landfill cells.

Gas burning is not expected to change the properties of either the fly ash or bottom ash produced. Sorbent injection will not affect the bottom ash, but the fly ash will be altered to contain appreciable amounts of calcium sulfate and unreacted sorbent. The sorbent-modified fly ash will be similar in character to the flue gas desulfurization scrubber sludge now produced at the adjacent Dallman Station. Thus, the by-product materials to be produced by Lakeside Station, Unit 7, during the GR–SI demonstration project will have esentially the same characteristics as the materials now generated at the CWLP plant.

During the GR–SI demonstration, fly ash from Unit 7 will be collected dry and placed in the landfill cells. Bottom ash will continue to be sluiced to the ash pond. The annual waste generated by the CWLP plant during the GR–SI demonstration is expected to result in a 3.0 percent decrease in the wet disposal requirement and an 11.2 percent increase in the dry disposal requirement. The waste placed in the dry disposal cells as a result of the GR–SI project will consume approximately 0.5 percent of the remaining usable volume and will shorten the life of the cells by approximately 0.15 years.

Issued at Washington, DC, this 2nd day of March, 1989, for the United States Department of Energy.

**J. Allen Wampler,**

*Assistant Secretary, Fossil Energy.*

[FR Doc. 89–5522 Filed 3–8–89; 8:45 am]

BILLING CODE 6450–01–M



### Committee on Petroleum Storage and Transportation, National Petroleum Council; Meeting Cancellation

An open meeting of the Committee on Petroleum Storage and Transportation which was scheduled to be held on Friday, March 17, 1989, at 10:00 AM, at Marathon Oil Company, Marathon Tower, Conference Room, 1012, 5555 San Felipe Road, Houston, TX, has been canceled. This meeting was announced in the **Federal Register**, Vol. 53, No. 34 on Wednesday, February 22, 1989.

**J. Robert Franklin,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 89–5524 Filed 3–8–89; 8:45 am]

BILLING CODE 6450–01–M

**[ERA Docket No. 89–05–NG]**

### Gas Masters, Inc.; Application To Export Natural Gas to Canada and Mexico

**AGENCY:** Office of Fossil Energy, Department of Energy.

**ACTION:** Notice of application for blanket authorization to export natural gas to Canada and Mexico.

**SUMMARY:** The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on January 31, 1989, of an application from Gas Masters, Inc. (GMI), for blanket authorization to export a total of up to 100 Bcf of natural gas from the United States to Canada and Mexico for short-term and spot makret sales over a two-year term beginning on the date of the first delivery. GMI, a Texas corporation with its principal place of business in Houston, proposes to export natural gas for its own account or act as broker for both U.S. suppliers and foreign purchasers. GMI intends to use existing pipeline facilities for the transportation of the volumes to be exported, and to submit quarterly reports detailing each transaction.

The application is filed pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–127. Protests, motions to intervene, notices of intervention, requests for additional procedures and written comments are invited.

**DATE:** Protexts, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed no later than April 10, 1989.

**FOR FURTHER INFORMATION:**

Frank Duchaine, Office of Fuels Programs, Office of Fossil Energy, Forrestal Building, Room 3H–087, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–6233.

Diane J. Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–6667.

**SUPPLEMENTARY INFORMATION:**

This export application will be reviewed pursuant to section 3 of the Natural Gas Act and the authority contained in DOE Delegation Order No. 0204–127. In deciding whether the proposed export of natural gas is in the public interest, domestic need for the gas will be considered and any other issue determined to be appropriate, including whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties that may oppose this application should comment on these matters.

All parties should be aware that the approval of GMI's application may permit the export of the gas at any point of exit on the international border where existing transmission facilities are located.

GMI requests that an authorization be granted on an expedited basis. A decision on GMI's request for expedited treatment will not be made until all responses to this notice have been received and evaluated.

**NEPA Compliance**

On August 9, 1988, the DOE published in the **Federal Register** (53 FR 29934) a notice of proposed amendments to it guidelines for compliance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, effective on an interim basis upon publication. In that notice, the DOE proposed to amend the department's NEPA guidelines to add to its list of categorical exclusions the approval or disapproval of an import-export authorization for natural gas in cases not involving new construction. Application of the categorical exclusion in any particular case raises a rebuttable presumption that the action is not a major Federal action under NEPA. Unless comments are received indicating the presumption does not or should not apply in this case, no further NEPA review will be conducted by the DOE.

**Public Comment Procedures**

In response to this notice, any person may file a protest, motion to intervene

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or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590.

Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs, Fossil Energy, Room 3F-056, FE-50, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9478. They must be filed no later than 4:30 p.m. e.s.t., April 10, 1989.

A decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. A request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request of a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of GMI's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on March 2, 1989.

**J. Allen Wampler,**

*Assistant Secretary Fossil Energy.*

[FR Doc. 89-5525 Filed 3-8-89; 8:45 am]

BILLING CODE 6450-01-M

## Office of Nuclear Energy

### Certification of the Radiological Condition of the National Guard Armory in Chicago, IL

**AGENCY:** Office of Remedial Action and Waste Technology, Department of Energy.

**ACTION:** Notice of certification.

**SUMMARY:** The Department of Energy has completed radiological surveys and taken remedial action to decontaminate the National Guard Armory in Chicago, Illinois. The site was found to contain quantities of radioactive material remaining from wartime activities conducted at the site by the Manhattan Engineer District/Atomic Energy Commission.

**FOR FURTHER INFORMATION CONTACT:** James J. Fiore, Division of Facility and Site Decommissioning Projects, Office of Remedial Action and Waste Technology, U.S. Department of Energy, Washington, DC 20545, (301) 353-5272.

**SUPPLEMENTARY INFORMATION:** The Department of Energy (DOE), Office of Nuclear Energy, Office of Remedial Action and Waste Technology, Division of Facility and Site Decommissioning Projects, has implemented a remedial action project at the National Guard Armory (NGA) in the Chicago, Illinois area as part of the Formerly Utilized Sites Remedial Action Program (FUSRAP), which was initiated by the United States Government in 1974 to identify, clean up, or otherwise control sites where residual radioactive material (exceeding current guidelines) remains from the early years of the nation's atomic energy program or from commercial operations causing conditions that Congress has mandated DOE to remedy.

The NGA was used beginning in March 1942 by the Manhattan project when space shortages occurred at the University of Chicago. The Atomic Energy Commission (AEC), which succeeded the MED, ceased use of the NGA in 1951.

Available information indicates that the NGA was utilized to store and process uranium metal. The building was the shipping and central procurement location for the Metallurgical Laboratory in 1943, and records indicate that uranium metal stock was received and temporary stored at the NGA in 1944.

Apparently, the armory storeroom was used to store grinding wastes and uranium shavings, because one of the uranium fires in the armory occurred in the northeast corner of this room.

In 1987, the subject property was decontaminated. The post-remedial action survey has demonstrated and DOE has certified that radiological conditions at the affected property are consistent with applicable criteria and that use of the property presents no radiological hazard to the general public or to site occupants. These findings are supported by the DOE *Certification Docket for the Remedial Action Performed at National Guard Armory in Chicago, Illinois from April 1987 to June 1987.* Accordingly, this property is released from the Formerly Utilized Sites Remedial Action Program.

This certification docket will be available for review between 9:00 a.m. and 4:00 p.m., Monday through Friday (except on Federal holidays), in the Department of Energy Public Reading room located in Room 1E-190 of the Forrestal Building, 1000 Independence Avenue SW., Washington, DC. The certification docket will also be available in the Public Document Room, U.S. Department of Energy, Chicago Operations Office, 9800 S. Cass Avenue, Argonne, Illinois.

The Department of Energy, through the Oak Ridge Operations Office, Technical Services Division, has issued the following statement:

**Statement of Certification: National Guard Armory in Chicago, IL**

The Oak Ridge Operations Office, Technical Services Division, has reviewed the radiological data obtained following the remedial action at the subject property. Based on this review, DOE has certified that the property is in compliance with all applicable decontamination criteria and standards. This certification of compliance provides assurance that use of the property will result in no radiological exposure above applicable criteria and standards to members of the general public or to occupants of the site. Accordingly, the National Guard Armory property is released from the Formerly Utilized Sites Remedial Action Program.

Dated: February 17, 1989.

**J.E. Baublitz,**

*Acting Director, Office of Remedial Action and Waste Technology, Office of Nuclear Energy, U.S. Department of Energy.*

[FR Doc. 89-5526 Filed 3-8-89; 8:45 am]

BILLING CODE 6450-01-M



## Economic Regulatory Administration

### Final Consent Order With Quintana Energy Corp. et al.

**AGENCY:** Economic Regulatory Administration, Department of Energy.

**ACTION:** Final action on proposed consent order.

**SUMMARY:** The Department of Energy (DOE) hereby gives the notice required by 10 CFR 205.199J that it has adopted as final the Consent Order with Quintana Energy Corporation, Quintana Refinery Co., and Quintana Petrochemical Company (hereinafter collectively referred to as "Quintana"), executed on January 9, 1989, and published for comment in 54 FR 3833 (January 26, 1989).

As required by 10 CFR 205.199J, DOE provided a period of thirty days following publication of the Notice of Proposed Consent Order for the submission of comments. The Economic Regulatory Administration (ERA) received no comments in response to this Notice. Accordingly, ERA has determined that the Consent Order should be made final without modification. The Consent Order becomes effective as a Final Order of the DOE on the date of publication of this notice.

**FOR FURTHER INFORMATION CONTACT:** Dorothy Hamid, Office of Enforcement Litigation, Economic Regulatory Administration, U.S. Department of Energy, Room 3H-017, RG-32, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-1699.

Copies of the Consent Order may be obtained free of charge by written request to "Quintana Consent Order Request" at the above address or by calling Dorothy Hamid at the above telephone number. Copies may also be obtained in person at the same address or at the Freedom of Information Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585.

**SUPPLEMENTAL INFORMATION:** On January 26, 1989, DOE published notice in the **Federal Register**, Vol. 54 at page 3833, announcing the execution of a Proposed Consent Order between Quintana and DOE. That Notice summarized the proposed Consent Order and the relevant facts.

As a result of an audit of Quintana's compliance with the Federal petroleum price and allocation regulations, the Economic Regulatory Administration (ERA) raised certain issues with respect to Quintana's application of the Federal petroleum price and allocation regulations. A Proposed Remedial Order was issued to Quintana-Howell Joint Venture, a Texas joint venture comprised of Quintana Refinery Co. and Howell Corporation on June 24, 1988, in which ERA alleged failure to comply with obligations under the Crude Oil Allocation Program (Entitlements Program) during the period April 1978 through December 1979 in violation of those regulations.

The Consent Order resolves these matters and all other civil and administrative claims or causes of action regarding Quintana's compliance with its obligations under the Federal petroleum price and allocation regulations. As consideration, Quintana has agreed to pay $3.8 million to DOE within fifteen (15) days of the effective date of the Consent Order. The Howell Corporation would continue to be potentially liable for the remaining violation amount. The ERA will petition DOE's Office of Hearings and Appeals to implement special refund procedures pursuant to 10 CFR Part 205, Subpart V, to distribute all amounts paid by Quintana pursuant to the Consent Order.

As noted, no comments were received in response to the Notice of Proposed Consent Order. Accordingly, ERA has determined to adopt the Proposed Consent Order, without modification, as a final order of the DOE, pursuant to 10 CFR 205.199J. The Consent Order becomes effective upon publication of this Notice.

Issued in Washington, DC, on March 2, 1989.

**Milton C. Lorenz,**

*Chief Counsel for Enforcement Litigation, Economic Regulatory Administration.*

[FR Doc. 89-5523 Filed 3-8-89; 8:45 am]

BILLING CODE 6450-01-M

## Federal Energy Regulatory Commission

**[Docket Nos. CP89-866-000 et al.]**

### Trunkline Gas Co. et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

**1. Trunkline Gas Co.**

[Docket No. CP89-866-000]

March 2, 1989.

Take notice that on February 21, 1989, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP89-866-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon the authorization issued by the Commission on April 6, 1988, in Docket No. CP88-187-000 with respect to adding a new delivery point for sales service to Entex, Inc. (Entex), all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Trunkline states that, by order issued April 6, 1988, the Commission granted Trunkline authorization to increase its level of contract demand sales from 1,900 Mcf per day to 4,900 Mcf per day, as well as authority to construct and operate measuring and regulatory facilities necessary to establish a new delivery point for deliveries of gas to Entex in Montgomery County, Texas. It is stated that Entex requested such additional service from Trunkline in anticipation of providing gas service to the new residential communities of Cumberland and White Oak Creek near the town of New Caney in Montgomery County, Texas. Trunkline states that, by a letter dated January 18, 1989, from Entex, Trunkline was advised that the developer of the subdivisions which Entex planned to serve has declared bankruptcy. Accordingly, Entex has stated that it no longer needs the new delivery station in Montgomery County, Texas; however, it does desire to maintain the authorized increased contract demand quantity to be delivered at existing delivery points, it is stated.

*Comment date:* April 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

**2. Panhandle Eastern Pipe Line Co.**

[Docket No. CP89-851-000]

March 2, 1989.

Take notice that on February 21, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.PO. Box 1642, Houston, Texas 77001, filed in Docket No. CP89-851-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon part of its sales service provided to Northern Indiana Fuel & Light Company, Inc. (NIFL), an existing jurisdictional sales customer, all as more fully set forth in the application which is on file

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with the Commission and open to public inspection.

Panhandle states that pursuant to § 284.10 of the Commission's Regulations, NIPL has elected to convert a portion of their firm sales entitlements to firm transportation, to be effective on March 1, 1989. Panhandle proposes to reduce NIPL's annual total contract demand from 4,743,707 Mcf to 3,997,690 Mcf under Rate Schedule G–1, to be effective March 1, 1989.

*Comment date:* March 23, 1989, in accordance with Standard Paragraph G at the end of this notice.

**3. Transwestern Pipeline Co.**

[Docket No. CP89–888–000]

March 2, 1989.

It is stated that on December 30, 1988, Transwestern made a general rate filing under section 4 of the Natural Gas Act. On January 31, 1989, the Commission issued an order accepting and suspending the tariff sheets to become effective February 1, 1989. It is asserted that the January 31, 1989, order stated that notwithstanding the term of the settlement in Docket No. RP88–175–000, Transwestern cannot terminate the standby service without first obtaining abandonment authorization. It is therefore requested that the Commission issue an order granting Transwestern permission and approval to abandon its standby service obligation to SoCal effective February 1, 1989, consistent with the Stipulation and Agreement approved by the Commission in 36 FERC ¶61,061 (1987) and 41 FERC ¶61,128 (1987).

Take notice that on February 23, 1989, Transwestern Pipeline Company (Transwestern), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP89–888–000 an application pursuant to section 7 (b) of the Natural Gas Act for permission and approval to abandon standby service provided for Southern California Gas Company (SoCal) under Rate Schedules CDQ–1 and FTS, as set forth in Transwestern's rate settlement in Docket No. RP88–175–000, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is averred that on December 21, 1988, Transwestern and SoCal entered into a letter agreement whereby SoCal would reduce 39 percent of its contract demand quantity under Rate Schedule CDQ–1 to firm transportation under Rate Schedule FTS. It is alleged that the conversion is intended to replace the standby service that is scheduled to terminate the date Transwestern's new Section 4 rate filing is made effective.

*Comment date:* March 23, 1989, in accordance with Standard Paragraph F at the end of this notice.

**4. Tennessee Gas Pipeline Co.**

[Docket No. CP88–452–001]

March 2, 1989.

Take notice that on February 21, 1989, Tennessee Gas Pipeline Company (Tennessee) P.O. Box 2511, Houston, Texas, 77252, filed in Docket No. CP88–452–001 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act [18 CFR 157.205) for authorization to transport natural gas on behalf of G.A.S. Orange Development, Inc. (GAS) and to construct, prior to commencement of the transportation service, a sales tap to accommodate the delivery of natural gas under its blanket authorization issued in Docket Nos. CP82–413–000 and CP87–115–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

It is stated that prior to commencement of the transportation service, Tennessee requested authorization to construct pursuant to § 157.211 of the Commission's Regulations and its blanket certificate authority, a sales tap to accommodate the delivery of natural gas. On January 3, 1989, the Commission issued a notice of request under blanket authorization in Docket No. CP89–452–000.

It is further stated that on February 2, 1989, Tennessee accepted and agreed to an amendment to the contract filed in the subject docket, which amendment states the following:

This Agreement shall become effective on the date of execution and shall remain in full force and effect for a term of two years and month to month thereafter provided, however, that either party may terminate this Agreement at any time upon at least thirty (30) days prior written notice to the other Party. Except as amended herein, all terms and provisions of the Agreement shall remain in full force and effect as written.

*Comment date:* April 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

**5. United Gas Pipe Line Co.**

[Docket No. CP89–885–000]

March 2, 1989.

Take notice that on February 22, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP89–885–000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of Heath Petra Resources, Inc. (Heath Petra), a marketer of natural gas, under United's blanket certificate issued in Docket No. CP88–6–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United proposes to transport on an interruptible basis up to 20,600 MMBtu equivalent of natural gas on a peak day, 20,600 MMBtu equivalent on an average day, and 7,519,000 MMBtu equivalent on an annual basis. It is stated that United would receive the gas for Heath Petra's account at an existing interconnection between United and Sea Robin Pipeline Company near Erath, Vermilion Parish, Louisiana, and would deliver equivalent volumes at existing points on United's system in Louisiana. It is asserted that the transportation service would be effected utilizing existing facilities and would not require any construction of additional facilities. It is explained that the transportation service commenced January 11, 1989, as reported in Docket No. ST89–2185.

*Comment date:* April 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

**6. Panhandle Eastern Pipe Line Co.**

[Docket No. CP89–880–000]

March 2, 1989.

Take notice that on February 21, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP89–850–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon part of its sales service provided to Kokomo Gas and Fuel Company (Kokomo), an existing jurisdictional sales customer, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Panhandle states that pursuant to § 284.10 of the Commission's Regulations, Kokomo has elected to convert a portion of their firm sales entitlements to firm transportation, effective on March 1, 1989. Panhandle proposes to reduce Kokomo's annual total contract demand from 16,769,700 Mcf to 11,738,790 Mcf under Rate Schedule G–1, to be effective March 1, 1989.

*Comment date:* March 23, 1989, in accordance with Standard Paragraph F at the end of this notice.



**7. Natural Gas Pipeline Co. of America**

[Docket No. CP89–883–000]

March 2, 1989.

Take notice that on February 23, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89–883–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Sun Gas Transmission Limited Partnership (Sun Gas), an intrastate pipeline, under its blanket authorization issued in Docket No. CP86–582–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Natural would perform the proposed interruptible transportation service for Sun Gas, pursuant to an interruptible transportation service agreement dated January 18, 1989. The transportation agreement is effective for a primary term ending January 18, 1990, and shall continue month to month thereafter unless terminated by five days prior notice by either party. Natural proposes to transport up to a maximum of 20,000 MMBtu of natural gas per day (plus any additional volumes accepted pursuant to the overrun provisions of Natural's Rate Schedule ITS); on an average day up to 10,000 MMBtu; and on an annual basis 3,650,000 MMBtu of natural gas for Sun Gas. Natural proposes to receive the subject gas at various points located in the states of Illinois and Texas. It is stated that the points of delivery are located in the states of Louisiana and Texas. Natural avers that no new facilities are required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. Natural commenced such self-implementing service on January 19, 1989, as reported in Docket No. ST89–2342–000.

*Comment date:* April 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

**8. Texas Gas Transmission Corp.**

[Docket No. CP89–891–000]

March 2, 1989.

Take notice that on February 23, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89–891–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas for Hadson Gas Systems, Inc. (Hadson), under its blanket certificate issued in Docket No. CP86–686–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Texas Gas proposes to transport for Hadson on an interruptible basis up to 50,000 MMBtu of natural gas on a peak day, 35,000 MMBtu on an average day, and 14,600,000 MMBtu on an annual basis. It is stated that service under § 284.223(a) commenced January 5, 1989, as reported in Docket No. ST89–1720. Texas Gas indicates that the service would have an initial term continuing through the end of the month in which the agreement is dated and continue on a monthly basis thereafter. Texas Gas proposes to charge Hadson a rate pursuant to Texas Gas' currently effective Rate Schedule T. No new facilities are proposed herein.

*Comment date:* April 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

**9. Panhandle Eastern Pipe Line Co.**

[Docket No. CP89–848–000]

March 2, 1989.

Take notice that on February 21, 1989, Panhandle Eastern Pipe Line Company (Panhandle) P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP89–848–000 a request pursuant to § 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 284.223) for authority to provide interruptible transportation service for Marathon Oil Company (Marathon), a producer of natural gas, under Panhandle's blanket transportation certificate authority issued November 20, 1987, in Docket No. CP86–585–000, all as more fully set in the application which is on file with the Commission and open to public inspection.

Panhandle states it will receive the gas at various existing points on its system in the States of Texas, Oklahoma, Kansas, Colorado, Wyoming, and Illinois and deliver the gas for the account of Marathon Trunkline Gas Company in Vermillion Block 321, offshore, Louisiana.

Panhandle proposes to transport up to 16,000 dt of gas per peak day and approximately 16,000 dt and 5,840,000 dt of gas per average day and annually, respectively. Panhandle states that the transportation service commenced under the 120-day automatic authorization of § 284.223(a) of the Commission's Regulations on January 2, 1989, pursuant to a transportation agreement dated December 29, 1988. Panhandle notified the Commission of the commencement of the transportation service in Docket No. ST89–2087–000.

*Comment date:* April 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

**10. Tennessee Gas Pipeline Co.**

[Docket No. CP89–913–000]

March 2, 1989.

Take notice that on February 27, 1989, Tennessee Gas Pipeline Company, (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89–913–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Catamount Natural Gas, Inc. (Catamount), a marketer, under the blanket certificate issued in Docket No. CP87–115–000 on June 18, 1987, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Tennessee states that pursuant to a transportation agreement dated January 19, 1989, under its Rate Schedule IT, it proposes to transport up to 100,000 dekatherms (dt) per day equivalent of natural gas for Catamount. Tennessee states that it would transport the gas from receipt points located in the State of Texas and deliver such gas to a delivery point at Colorado, Texas. Tennessee further states that the ultimate delivery point is located in the State of Tennessee.

Tennessee advises that service under § 284.223(a) commenced February 1, 1989, as reported in Docket No. ST89–2350 (filed February 23, 1989). Tennessee further advises that it would transport 100,000 dt on an average day and 36,500,000 dt annually.

*Comment date:* April 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

**11. United Gas Pipe Line Co.**

[Docket No. CP89–909–000]

March 2, 1989.

Take notice that on February 27, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77152–1478, filed in Docket No. CP89–909–000 an application pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of MidCon Marketing Corp. (MidCon), a marketer of natural gas, under United's blanket certificate issued in Docket No. 88–6–000 pursuant to

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Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United proposes to transport, on an interruptible basis, up to 827,000 MMBtu per day for MidCon. United states that construction of facilities would not be required to provide the proposed service.

United further states that the maximum day, average day, and annual transportation volumes would be approximately 827,000 MMBtu, 827,000 MMBtu and 336,355,000 MMBtu respectively.

United advises that service under § 284.223(a) commenced February 4, 1988, as reported in Docket No. ST88-2268.

*Comment date:* April 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

**12. Williams Natural Gas Co.**

[Docket No. CP89-800-000]

March 2, 1989.

Take notice that on February 24, 1989, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89-800-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86-631-000 pursuant to section 7 of the Natural Gas Act for Armco, Inc. (Armco), all as more fully set forth in the request on file with the Commission and open to public inspection.

Williams proposes to transport natural gas for Armco, an end user, on a firm basis, pursuant to a transportation agreement dated December 1, 1988. Williams explains that service commenced January 1, 1989, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-223(a) of the Commission's Regulations, as reported in Docket No. ST89-2180-000. Williams further explains that the peak day quantity would be 1,200 MMBtu and that the annual quantity would be 438,000 MMBtu. Williams explains that it would receive natural gas for the account of Armco at receipt points located in Kansas, Colorado and Missouri and would redeliver the gas at various delivery points in Kansas and Missouri.

*Comment date:* April 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

**13. Texas Gas Transmission**

[Docket No. CP89-880-000]

March 2, 1989.

Take notice that on February 23, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89-880-000 a request pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to provide an interruptible transportation service for Bethlehem Steel Corporation (Bethlehem) under the blanket certificate issued in Docket No. CP88-686-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Texas Gas request authorization to transport on a peak day up to 18,500 MMBtu equivalent of natural gas for Bethlehem, with an estimated average daily quantity of 10,000 MMBtu equivalent of natural gas, and an estimated annual quantity of 4,000,000 MMBtu equivalent of natural gas. Texas Gas states that the transportation service is being rendered through the use of Texas Gas's existing facilities. It is stated that the location of the points of receipt and points of delivery are specified in Exhibits B and C, respectively, of the gas transportation agreement dated November 4, 1988, between Texas Gas and Bethlehem. Texas Gas further states that transportation service for Bethlehem commenced January 10, 1989, under the 120-day automatic provisions of 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-1819.

*Comment date:* April 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

**14. Questar Pipeline Co.**

[Docket No. CP88-239-001]

March 2, 1989.

Take notice that on February 17, 1989 [1] Questar Pipeline Company (Questar), 79 South State Street, P.O. Box 11450 Salt Lake City, Utah 84147, filed in Docket No. CP88-239-001 a petition to amend its application filed on February 19, 1988, to construct and operate pipeline facilities, pursuant to section 7(c) of the Natural Gas Act, so as to change the preferred construction route from the Red Creek/Sears Canyon Alternative (Red Creek Alternative) to the Jesse Ewing Canyon/Rye Grass Draw Alternative (Jesse Ewing Alternative), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Questar states that the Bureau of Land Management and itself, after thoroughly evaluating the Jesse Ewing Alternative as part of the Environmental Assessment (EA) preparation process, found this alternative attractive primarily because this route would traverse the highest percentage (75 percent) of existing rights-of-way. It is stated that the Jesse Ewing Alternative would be 3.9 miles longer than the Red Creek Alternative and would extend in a southeast direction for approximately 61.3 miles from Questar's Storage Main Line No. 58 in Daggett County, Utah, to its Fidlar Compressor Station in Uintah County, Utah. Lastly, Questar estimates that the Jesse Ewing Alternative would (1) cost an additional $783,250 to install, (2) increase the first year's cost service by $168,376, (3) and reduce pipeline capacity by approximately 2.5 percent.

*Comment date:* March 23, 1989, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

[1] The petition to amend was tendered for filing on February 1, 1989; however, the fee required by 381.207 of the Commission's Rule (18 CFR 381.207) was not paid until February 17, 1989. Section 381.108 of the Commission's Rules provides that the filing date is the date on which the fee is paid.

**15. Enron Gas Processing Co.**

[Docket No. CI82-257-001 and CI82-360]

March 2, 1989.

Take notice that on February 9, 1989, Enron Gas Processing Company (EGP) of P.O. Box 1188, Houston, Texas 77251-1188, filed an application pursuant to Section 7(c) of the Natural Gas Act and § 154.92(d) of the Federal Energy Regulatory Commission's (Commission) regulations thereunder for authorization to continue sales of gas previously made by Northern Gas Products Company (NGP) to Northern Natural Gas Company, Division of Enron Corp. at the tailgate of EGP's processing plants in Martin County, Texas, and Crane and Pecos Counties, Texas, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

EGP states that by Certificate of Amendment of Certificate of Incorporation dated June 9, 1986, the corporate name of Northern Gas Products Company was changed to Enron Gas Processing Company. EGP requests that the certificates of public convenience and necessity issued to NGP in Docket Nos. CI82-257 and CI82-360 be amended to reflect this name change and that NGP's FERC Gas Rate Schedule Nos. 1 and 2 be redesignated accordingly.

*Comment date:* March 22, 1989, in accordance with Standard Paragraph J at the end of this notice.



**16. United Gas Pipe Line Co.**

[Docket Nos. CP89-795-000 and CP89-795-001]

March 2, 1989.

Take notice that on February 9, 1989, United Gas Pipeline Company (United) [1] P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-795-000 a request pursuant to §§ 157.205 and 284.223 (18 CFR 157.205 and 284.223) of the Commission's Regulations under the Natural Gas Act for authority to provide interruptible transportation service for Reliance Gas Marketing Company (Reliance), a marketer of natural gas, under United's blanket transportation certificate which was issued by Commission order on January 15, 1988, in Docket No. CP88-6-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United indicates that it will receive the gas from Reliance at various existing interconnections in Texas and deliver the gas for the account of Reliance at various interconnections in Louisiana. United will transport the gas pursuant to its Rate Schedule ITS.

United proposes to transport up to 30,900 MMBtu of gas per peak day and approximately 11,278,000 MMBtu of gas annually. United indicates that the transportation service commenced under the 120-day automatic authorization of § 284.223(a) of the Commission's Regulations on January 1, 1989, pursuant to a transportation agreement dated October 18, 1988, as amended November 15, and December 13, 1988. United notified the Commission of the commencement of the transportation service in Docket No. ST89-1963-000 on January 26, 1989.

*Comment date:* April 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

[1] United supplemented the request on February 21, 1989 in Docket No. CP89-795-001.

**17. Trunkline Gas Co.**

[Docket No. CP89-903-000]

March 3, 1989.

Take notice that on February 24, 1989, Trunkline Gas Company (Trunkline) P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-903-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Shell Gas Trading Company (Shell), under the authorization issued in Docket No. CP86-586-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Trunkline would perform the proposed interruptible transportation service for Shell, a shipper and marketer of natural gas, pursuant to a transportation agreement rate schedule PT dated April 11, 1989 (contract no. T-PLT-1117). The term of the transportation agreement is for a primary term of one month from the initial date for service, and shall continue in effect month-to-month thereafter unless terminated upon 30 days prior written notice by one party to the other party. Trunkline proposes to transport on a peak day up to 90,000 dekatherm; on an average day up to 70,000 dekatherm; and on an annual basis 25,550,000 dekatherm of natural gas for Shell. Trunkline proposes to receive the subject gas from various receipt points in Louisiana, Texas and Illinois. Trunkline would then transport and redeliver the subject gas, less fuel and unaccounted for line loss, to Columbia Gulf Transmission Company in St. Mary Parish, Louisiana. The ultimate delivery of the transportation volumes would be to various LDC's and end users. It is alleged that Shell would pay Trunkline the effective rate contained in Trunkline's rate schedule PT, which is currently 16.01 cents, which includes the ACA and GRI surcharge. Trunkline avers that construction of facilities would not be required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's regulations. Trunkline commenced such self-implementing service on January 7, 1989, as reported in Docket No. ST89-1906-000.

*Comment date:* April 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

**18. Northern Natural Gas Co., Division of Enron Corp.**

[Docket No. CP89-887-000]

March 3, 1989.

Take notice that on February 23, 1989, Northern Natural Gas Company, Division of Enron Corp. (Northern), P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP89-887-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a firm transportation service provided by Northern for Natural Gas Pipeline Company of America (Natural), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern states that it was authorized to provide the transportation service for Natural pursuant to the certificate granted in Docket No. CP81-18-000, as amended in Docket No. CP81-18-002 and that the underlying transportation agreement, as amended, expired on October 31, 1988. Northern further states that Natural ceased nominating volumes under the transportation agreement as of November 1, 1988, and began nominating volumes for transportation under Northern's blanket certificate authorization issued pursuant to Part 284 of the Commission's Regulations. Northern asserts that the duplicate transportation authorization is unnecessary and that transportation for Natural under Northern's blanket certificate will place Natural on an equal footing with other current and future shippers on Northern's system.

*Comment date:* March 24, 1989 in accordance with Standard Paragraph F at the end of the notice.

**19. ANR Pipeline Co.**

[Docket No. CP89-822-000]

March 3, 1989.

Take notice that on February 14, 1989, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP89-822-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Unicorp Energy, Inc. (Unicorp), a marketer, under its blanket authorization issued in Docket No. CP88-532-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

ANR would perform the proposed interruptible transportation service for Unicorp, pursuant to an interruptible transportation service agreement dated November 1, 1988. The transportation agreement is effective for a term until 120 days from the day of initial deliveries, and thereafer until November 30, 1989, and month to month thereafter until terminated by either party on thirty days written notice. ANR proposes to transport approximately 100,000 dth

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natural gas on a peak and average day; and on an annual basis 36,500,000 dth of natural gas for Unicorp. ANR proposes to receive the subject gas at various points located in ANR's Southeast and Southwest gathering areas and redeliver the gas for the account of Unicorp at existing interconnections located in the state of Illinois.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. ANR commenced such self-implementing service on January 1, 1989, as reported in Docket No. ST89-2068-000.

*Comment date:* April 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

**Standard Paragraphs**

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules [18 CFR 385.214] a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act [18 CFR 157.205] a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

J. Any person desiring to be heard or make any protest with reference to said filings should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 89-5486 Filed 3-8-89; 8:45 am]

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**[Docket No. CI87-734-002 et al.]**

**Williams Gas Supply Co. et al.; Applications For Extension of Blanket Limited-Term Certificates With Pregranted Abandonment [1]**

March 6, 1989.

Take notice that each Applicant listed herein has filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for amendment of its blanket limited-term certificate with pregranted abondonment previously issued by the Commission for a term expiring March 31, 1989, to extend such authorization for the term listed herein, all as more fully set forth in the applications which are on file with the Commission and open for public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before March 23, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedures (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

**Lois D. Cashell,**

*Secretary.*

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

| Docket No. | Date filed | Applicant |
|---|---|---|
| CI87-734-002 [2] | 1-27-89 [3] | Williams Gas Supply Company (formerly Northwest Marketing Company), P.O. Box 2400, Tulsa, Oklahoma 74101. |
| CI87-825-002 [4] | 1-24-89 | V.H.C. Gas Systems, L.P., 530 McCullough Avenue, San Antonio, Texas 78215. |

[2] Applicant requests extension for a three-year term. Applicant also requests that the Commission expand its authorization to apply to transactions in which Applicant acts as agent for others selling gas through Applicant. In addition Applicant requests that its certificate be amended to reflect a change in corporate name.

[3] Applicant filed a supplement to its application on March 1, 1989.

[4] Applicant requests authorization to resell all natural gas subject to the Commission's NGA jurisdiction including natural gas sold under any existing or subsequently approved pipeline blanket certificate authorizing interruptible sales of surplus system supply. Applicant requests such authorization for an unlimited term.

[FR Doc. 89-5485 Filed 3-8-89; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket Nos. TA89-1-21-000 and TM89-2-21-000]**

**Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff**

March 6, 1989.

Take notice that Columbia Gas Transmission Corporation (Columbia) on Februrary 28, 1989, tendered for filing the following proposed changes to its FERC Gas Tariff, Original Volume No. 1, to be effective May 1, 1989:

One hundred and thirty-fourth Revised Sheet No. 16
Twenty-second Revised Sheet No. 16A2
Thirty-ninth Revised Sheet No. 64A

Columbia states that the sales rates set forth on One hundred and thirty-fourth Revised Sheet No. 16 reflect an overall decrease of .17¢ per Dth in the Commodity rate, and an increase of $.003 per Dth in the Demand-1 rate and a decrease of 3.32¢ per Dth in the Demand-2 rate. In addition, the transportation rates set forth on Twenty-second Revised Sheet No. 16A2 reflect a decrease in the Fuel Charge component of .02¢ per Dth.

Columbia states that the purpose of this filing is to reflect the following:

(1) A Current Purchased Gas Cost Adjustment Applicable to Sales Rate Schedules;

(2) Unrecovered Purchased Gas Cost Surcharges which are proposed to be effective during the 12-month period of May 1, 1989 through April 30, 1990;

(3) A surcharge adjustment to provide for the recovery, over the 12-month period ending April 30, 1990, of carrying charges related to take-or-pay reimbursements paid by Columbia to Panhandle Eastern Pipe Line Company (Panhandle) pursuant to the terms of a Commission approved settlement in Docket No. RP83-5-000; and

(4) A Transportation Fuel Charge Adjustment.

Columbia states that the instant filing is an annual PGA filed in compliance with Section 154.305 of the Commission's regulations. Accordingly, Columbia has reflected 12-month Unrecovered Purchased Gas Cost credit surcharges of $.075 per Dth applicable to the Demand-1 rate, 2.68¢ per Dth applicable to the Demand-2 rate, and a 12-month Unrecovered Purchased Gas Cost surcharge of 22.10¢ per Dth applicable to the Commodity rate to be effective May 1, 1989. Columbia further states that the filing reflects an annual surcharge of .53¢ per Dth to be effective May 1, 1989 to recover carrying charges related to the recoupable portion of take-or-pay payments made to Panhandle under a settlement in Docket No RP83-5-000.

Copies of the filing were served upon the Company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 27, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 89-5481 Filed 3-8-89; 8:45 am]

BILLING CODE 6717-01-M

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**Docket No. FA89-1-34-000]**

**Florida Gas Transmission Co.; Proposed Changes in FERC Gas Tariff**

March 6, 1989.

Take notice that on February 28, 1989, Florida Gas Transmission Company (FGT) tendered for filing the following tariff sheets to its FERC Gas Tariff, to be effective May 1, 1989.

*FERC Gas Tariff, First Revised Volume No. 1*

Third Revised 37th Revised Sheet No. 8

*FERC Gas Tariff, Original Volume No. 2*

Third Revised 59th Revised Sheet No. 128

FGT states that as required by Sect. 15 of its FERC Gas Tariff Rev. Volume No. 1 and the Commission's Order Nos. 483 and 483-A, the above referenced tariff sheets reflect FGT's first annual PGA filing under the Commission's revised regulations. FGT states that the proposed tariff sheets reflect a decrease in the average cost of gas purchased from that reflected in its Quarterly PGA filing, Docket No. TQ89-3-34-000, effective February 1, 1989.

FGT states that the effect of the purchased gas cost reduction being filed represents an decrease of 3.571 cents/therm for Rate Schedules G and I and 1.02 cents/Mcf for Rate Schedule T-3 as measured against FGT's Quarterly PGA filing in Docket No. TQ89-3-34-000 effective February 1, 1989.

FGT further states that the instant filing includes a surcharge adjustment to amortize amounts accumulated in the current deferral balance during the period January 1—December 31, 1989 over the twelve month period commencing May 1, 1989. The effect of the Surcharge Adjustment is (.660¢)/therm for Rate Schedules G and I and (0.73¢) Mcf for Rate Schedule T-3.

In addition, FGT states that it has satisfied the Commission's assesement of past performance as set forth in § 154.306 of the Commission's Regulations.

FGT also states that it has filed certain schedules in accordance with FERC Form No. 542-PGA (Revised). FGT has submitted a nine-track magnetic tape containing such schedules.

FGT states that copy of its filing has been served on all customers receiving gas under its FERC Gas Tariff, First Revised Volume No. 1, Original Volume No. 2 and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with § 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 27, 1989.

Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 89-5482 Filed 3-8-89; 8:45 am]

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**[Docket No. RP89-49-002]**

**National Fuel Gas Supply Corp.; Compliance Filing**

March 6, 1989

Take notice that on February 28, 1989, National Fuel Gas Supply Corporation ("National") tendered for filing as part of its FERC Gas Tariff, First Revised Volume Nos. 1 and 2, the following tariff sheets:

*First Revised Volume No. 1:*

Substitute Fifth Revised Sheet No. 1
Substitute Second Revised Sheet No. 1-A

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Substitute Eighteenth Revised Sheet No. 4
Nineteenth Revised Sheet No. 4
Twentieth Revised Sheet No. 4
Substitute Second Revised Sheet No. 9
Substitute Fourth Revised Sheet No. 28
Substitute First Revised Sheet Nos. 31–33
Substitute Original Sheet No. 33–A
Substitute Original Sheet No. 33–B
Substitute Original Sheet No. 33–C
Substitute First Revised Sheet No. 112
Substitute First Revised Sheet No. 113
Substitute Original Sheet Nos. 114–118

*First Revised Volume No. 2:*

Substitute Second Revised Sheet No. 67
Substitute Fifth Revised Sheet No. 281
Substitute Seventh Revised Sheet No. 302
Substitute Original Sheet No. 302–A
Substitute Fifth Revised Sheet No. 321
Substitute Fifth Revised Sheet No. 341
Substitute Fourth Revised Sheet No. 536
Substitute Second Revised Sheet No. 558
Substitute Original Sheet No. 558–A
Substitute First Revised Sheet No. 640
Substitute First Revised Sheet No. 667
Substitute Second Revised Sheet No. 690

National states that the purpose of this compliance filing is to reflect National's rate change filed on December 30, 1988, in this proceeding, which became effective by operation of law on January 30, 1989.

National states that its compliance filing reflects the level of purchased gas costs that has been made effective by various Commission orders issued after December 30, 1988. First, National states that by order issued December 30, 1988, at Docket Nos. TA89–1–16–000 and TA89–1–16–001, the Commission accepted national's regularly-scheduled annual PGA. In addition, on December 30, 1988, National filed, at Docket No. TF89–1–16–000, an interim purchased gas cost adjustment which became effective on January 1, 1989. Substitute Eighteenth Revised Sheet No. 4 reflects, therefore, those adjustments to National's rates.

National further states that on January 30, 1989, National filed, at Docket No. TF89–2–16–000, an interim purchased gas cost adjustment which became effective on February 1, 1989. That adjustment to National's rates is reflected on Nineteenth Revised Sheet No. 4.

Finally, National States that on February 27, 1989, National filed, at Docket No. TF89–3–16–000, an interim purchased gas cost adjustment to be effective on March 1, 1989. That adjustment to National's rates is reflected on Twentieth Revised Sheet No. 4.

Copies of National's filing were served on National's jurisdictional customers and on the interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC, 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 89–5483 Filed 3–8–89; 8:45 am]

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**[Docket No. TA89–1–27–000]**

### North Penn Gas Co; Proposed Changes in FERC Gas Tariff

March 6, 1989.

Take notice that North Penn Gas Company (North Penn) on February 28, 1989, pursuant to Section 4 of the Natural Gas Act, Part 154 of the Commission's regulations (18 CFR Part 154) and section 14 of the General Terms and Conditions of North Penn's tariff, filed the following revised tariff sheet to First Revised Volume No. 1 of its FERC Gas Tariff:

*Ninety-Second Revised Sheet No. PGA–1*

Copies of the filing were served upon North Penn's sales customers as well as interested state commissions.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street NW., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211). All motions or protests should be filed on or before March 27, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 89–5484 Filed 3–8–89; 8:45 am]

BILLING CODE 6717–01–M

## FEDERAL COMMUNICATIONS COMMISSION

### Public Information Collection Requirement Submitted to the Office of Management and Budget for Review

March 2, 1989.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. 3507.

Copies of this submission may be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street NW., Suite 140, Washington, DC 20037, or telephone (202) 857–3815. Persons wishing to comment on an information collection should contact Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, telephone (202) 395–3785. Copies of these comments should also be sent to the Commission. For further information contact Doris Benz, Federal Communications Commission, telephone (202) 632–7513.

*OMB No.:* 3060–0059.

*Title:* Statement Regarding the Importation of Radio Frequency Devices Capable of Causing Harmful Interference.

*Form No.:* FCC 740.

*Type of Review:* Extension. The Office of Management and Budget has set a common review period for all known Federal agency information collections used to obtain information necessary for the importation of merchandise into the United States. The purpose of the review is to plan for the elimination of the collection of duplicate information elements required from the importing public.

*Respondents:* Individuals, State or local governments, Business (including small business), and Non-profit institutions.

*Frequency of Response:* On occasion.

*Estimated Annual Burden:* 420,000 Responses, five minutes each.

*Needs and Uses:* Filing is required for each radio frequency device or subassembly which is imported into customs territory of the U.S. The data is used by the FCC Laboratory to ascertain whether equipment authorization is required, and if so, whether it has been granted. If not, FCC notifies the U.S. Customs Service.

Federal Communications Commission.

**Donna R. Searcy,**

*Secretary.*

[FR Doc. 89–5472 Filed 3–8–89; 8:45 am]

BILLING CODE 6712–01–M



### Advisory Committee on Advanced Television Service; Schedule of Meetings

March 1, 1989.

The following schedule is based on information available as of 10:00 a.m. Tuesday, February 28, 1989. Meetings of Advisory Groups and Working Parties may be changed without advance public notice. Interested parties should contact the appropriate Chairmen or Vice Chairmen if additional information is desired. (New meetings are highlighted.) The schedule of meetings also is available on the FCC Laboratory Public Access Link (PAL). PAL can be accessed at (301) 725–1072 at either 300 or 1200 baud for five minute intervals, 8:00 a.m.–8:00 p.m. (EST) and fifteen minute intervals, 8:00 p.m.–8:00 a.m. (EST). After connection, PAL is accessed by striking one or more "carriage returns." The schedule of meetings is accessed through item 6 (Public Notices) of the user menu, which is displayed after proper connection with PAL has been completed.

**SS/WP1 ATS Systems Analysis**

Monday, March 6/9:30 a.m.
Bellcore, 2101 L Street NW., Suite 600, Sixth Floor, Rooms B1 and B2, Washington, DC
Chairman Birney Dayton (916) 478–3262

**SS/WP2 ATS Evaluation and Testing**

Tuesday, March 7/10:00 a.m.
NCTA, 1724 Massachusetts Avenue NW., Washington, DC
Chairman Ben Crutchfield (703) 739–3850

**PS/WP3 ATS Spectrum Utilization and Alternatives**

Thursday, March 23/10:00 a.m.
NAB, 1771 N Street, NW., McCollough Room, Washington, DC
Chairman Dale Hatfield (303) 442–5395

**Advisory Committee on Advanced Television Service**

Monday, April 17/2:00 p.m.
Federal Communications Commission, Commission Meeting Room, Room 856, 1919 M Street NW., Washington, DC
Chairman Richard Wiley (202) 429–7010

*Note From SS/WP1 ATS Systems Analysis:* Requests for copies of proponents' systems can be obtained by contacting the International Transcription Services, Inc. at (202) 857–3800.

To include a meeting announcement in this weekly meeting notice, contact Rita McDonald at (202) 632–5414, or David Siddall at (202) 632–6460. The deadline is 10:00 a.m. each Tuesday for release the next day.

Federal Communications Commission.

**Donna R. Searcy,**

*Secretary.*

[FR Doc. 89–5472 Filed 3–8–89; 8:45 am]

BILLING CODE 6712–01–M

### New Tender Requirement for FM Broadcast Applications

**AGENCY:** Federal Communications Commission.

**ACTION:** New tender requirement for FM broadcast applications.

**SUMMARY:** The Commission has adopted a new tender requirement for FM broadcast applications processed pursuant to the new rule adopted in MM Docket 87–121. This new tender requirement will enable the staff to immediately identify the appropriate protection to be afforded proposed facilities and thus ensure that applications processed under the new rule will not receive more protection than they are entitled to.

**EFFECTIVE DATE:** April 14, 1989, or upon OMB approval of amendments to FCC Forms 301 and 340.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Lilo Cunningham, Mass Media Bureau (202) 632–6485.

### Processing of FM Applications Pursuant to MM Docket 87–121 New Tenderability Requirement

February 21, 1989

In the *Report and Order* in MM Docket 87–121, adopted December 12, 1988 (Amendment of Part 73 of the Commission's Rules to Permit short-spaced FM Station Assignments by Using Directional Antennas), the Commission adopted new rules by which FM broadcast station applicants are afforded additional flexibility in site selection. These rules allow FM broadcast station transmitters to be located at sites that do not meet one or more of the minimum distance separation requirements set forth in 47 CFR 73.207, provided that contour protection is demonstrated with the pertinent short-spaced assignments, applications and/or allotments.

Applications for stations that request authorization pursuant to the new rule (47 CFR 73.215) adopted in MM Docket No. 87–121 are entitled only to protection of the facilities proposed. Therefore, applicants for such stations must expressly request processing pursuant to the new rule and must include an appropriate exhibit demonstrating compliance. This will allow immediate identification of the appropriate protection to be afforded proposed facilities. Failure to provide this information would afford an application that is to be processed under the new rule more protection that it is entitled to and thus unnecessarily restrict other applicants. Therefore, omission of the appropriate exhibit will result in return of the application as not substantially complete at tender. This requirement for an exhibit has been added to the list of tender criteria established in MM Docket 84–750, 50 FR 19936, 19945 (1985) (Appendix D) and utilized in evaluating the substantial completeness of applications under the FM "hard look" processing procedures. A list of those tender criteria adopted in MM Docket 84–750 and reproduced in *Public Notice*, Mimeo No. 4580, May 16, 1985, is attached hereto as Attachment A.

In order to integrate this new tender criteria into the tender review process, the Commission has authorized the addition of a question to section V–B of FCC Forms 301 (Application for Authority to Construct or make Changes in a Commercial Broadcast Station) and 340 (Application for Authority to Construct or Make Changes in a Noncommercial Educational Broadcast Station). This question will require an engineering study to establish the lack of prohibited overlap of the protected and interfering contours of facilities separated by less than the minimum distance separation requirements set forth in 47 CFR 73.207. However, the revised Forms 301 and 340 will not be available immediately. Therefore, upon the effective date of the new rules and until the revised forms are available, applicants requesting authorization pursuant to the new rules adopted in MM Docket 87–121 must include, as a supplement to the Old Form 301 or 340, a copy of Attachment B hereto and the exhibit(s) required therein. (Attachment B also appears as Appendix C to the *Report and Order* in MM Docket 87–121). Failure of any applicant requesting authorization pursuant to the new rules adopted in MM Docket 87–121 to submit Attachment B and the exhibit(s)

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required therein with their application form will result in return of the application as not substantially complete at tender.

For further information, please contact Lilo Cunningham at 632-6485.

Federal Communications Commission.

**Donna R. Searcy,**

*Secretary.*

**Attachment A**

"Statement of New Policy Regarding Commercial FM Applications That Are Not Substantially Complete or Are Otherwise Defective." See 50 FR 19936 (May 13, 1985) (Appendix D).

**Attachment B**

Applicants requesting processing pursuant to 47 CFR 73.215 must submit this page and the required exhibits with FCC Form 301 ("Application for Authority to Construct or Make Changes in a Commercial Broadcast Station"), or FCC Form 340 ("Application for Authority to Construct or Make Changes in a Noncommercial Educational Broadcast Station"), as appropriate.

*Authorization Pursuant to 47 CFR 73.215*

If authorization pursuant to 47 CFR 73.215 is requested, attach as an Exhibit a complete engineering study to establish the lack of prohibited overlap of contours involving affected stations. The engineering study must include the following:

Exhibit No. —

(a) Protected and interfering contours, in all directions (360°), for the proposed operation.

(b) Protected and interfering contours, over pertinent arcs, of all short-spaced assignments, applications and allotments, including a plot showing each transmitter location, with identifying call letters or file numbers, and indication of whether facility is operating or proposed. For vacant allotments, use the reference coordinates as transmitter location.

(c) When necessary to show more detail, an additional allocation study utilizing a map with a larger scale to clearly show prohibited overlap will not occur.

(d) A scale of kilometers and properly labeled longitude and latitude lines, shown across the entire exhibit(s). Sufficient lines should be shown so that the location of the sites may be verified.

(e) The official title(s) of the map(s) used in the exhibit(s).

**Note:** Applicants not requesting processing pursuant to 47 CFR 73.215 do not need to submit this page with their application.

[FR Doc. 89-5471 Filed 3-8-89; 8:45 am]

BILLING CODE 6712-01-M

**Application for Consolidated Hearing**

1. The Commission has before it the following application for a new TV station:

| Applicant, city and state | File No. | MM Docket No. |
|---|---|---|
| Denny Workman d/b/a Morton Broadcasting, Morton, WA | BPCT-870331LQ | 89-529 |

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above application has been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986.

*ISSUE HEADING*

MISREPRESENTATION
FINANCIAL QUALIFICATIONS
AIR HAZARD
ULTIMATE

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037 (Telephone No. (202) 857-3800).

**Roy J. Stewart,**

*Chief, Video Services Division, Mass Media Bureau.*

[FR Doc. 89-5473 Filed 3-8-89; 8:45 am]

BILLING CODE 6712-01-M

## FEDERAL MARITIME COMMISSION

**Agreement(s) Filed**

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

*Agreement No.:* 224-200017-004.

*Title:* Philadelphia Port Corporation Terminal Agreement.

*Parties:*

Philadelphia Port Corporation
Delaware River Stevedores, Inc.

*Synopsis:* The Agreement extends the basic operating agreement for the Packer Avenue Container Terminal through March 31, 1989.

By Order of the Federal Maritime Commission.

**Joseph C. Polking,**

*Secretary.*

Dated: March 6, 1989.

[FR Doc. 89-5496 Filed 3-8-89; 8:45 am]

BILLING CODE 6730-01-M

**Agreement(s) Filed**

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

*Agreement No.:* 213-011213-005.

*Title:* Spain-Italy/Puerto Rico Island Pool Agreement.

*Parties:*

Compania Trasatlantica Espanola, S.A.

Nordana Line AS

Sea-Land Service, Inc.

*Synopsis:* The proposed modification would clarify "Pool Freight" with respect to revenues from heavy lift cargoes and surcharges.



By Order of the Federal Maritime Commission.

**Joseph C. Polking,**

*Secretary.*

Dated: March 3, 1989.

[FR Doc. 89-5452 Filed 3-8-89; 8:45 am]

BILLING CODE 6730-01-M

**Security for the Protection of the Public to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Issuance of Certificate (Casualty)**

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passenger or Other Persons on Voyages pursuant to the provisions of section 2, Pub. L. 89-777 (80 Stat. 1356, 1357) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540): Ocean Quest International/Ocean Spirit Shipping, Ltd., 512 South Peters St., Suite 202, New Orleans, Louisiana 70130-1629.

*Vessel:* OCEAN SPIRIT.

Date: March 6, 1989.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 89-5499 Filed 3-8-89; 8:45 am]

BILLING CODE 6730-01-M

**Section 18 Study Advisory Committee; Meeting**

**AGENCY:** Federal Maritime Commission ("Commission" or "FMC").

**ACTION:** Notice of meeting of section 18 Study Advisory Committee.

**SUMMARY:** The Commission hereby announces the second meeting of the section 18 Study Advisory Committee. The Advisory Committee was formed to make continuing recommendations on the conduct of a study to evaluate the impact of the Shipping Act of 1984. The Committee is comprised of representatives of interests affected by the Shipping Act of 1984, including representatives of conferences, ocean common carriers, non-vessel-operating common carriers, ocean freight forwarders, customs brokers, shippers, shippers' associations, ports, non-port marine terminal operators, and other transportation service firms. This notice also announces the time and place of the Advisory Committee meeting, which will be open to the public.

**DATE:** The meeting of the Advisory Committee will begin at 10:00 a.m. on April 6, 1989.

**ADDRESS:** The meeting of the Advisory Committee will be held in Hearing Room No. 1 at 1100 L Street NW., Washington, DC 20573.

**FOR FURTHER INFORMATION CONTACT:**

Committee Chairperson, Commissioner Edward J. Philbin, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573, (202) 523-5715.

Committee Executive Secretary, John Robert Ewers, Director, Bureau of Administration, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573, (202) 523-5866.

**SUPPLEMENTARY INFORMATION:** The Federal Maritime Commission's Section 18 Study Advisory Committee will meet at 10:00 a.m. on April 6, 1989 in Hearing Room No. 1 at the Commission Headquarters Building, 1100 L Street NW., Washington, DC.

The Advisory Committee was established in December 1987 (52 FR 25632) to review, comment on, and give appropriate advice concerning all aspects of the five-year study that the Commission is conducting under the mandate of section 18 of the Shipping Act of 1984, 46 U.S.C. App. 1701 *et seq.* The Committee consists of 32 members which comprise a balanced representation of various segments of the shipping industry affected by the Shipping Act of 1984.

At the first meeting of the Advisory Committee, held March 24, 1988, Committee members were briefed on the progress of the Section 18 Study. Surveys which are being sent to various segments of the industry were reviewed and the Committee recommended several revisions. Other matters discussed included a possible third symposium on the impact of the 1984 Act and additional areas where the Committee believed the Commission should conduct research.

The agenda for the second Section 18 Study Advisory Committee is as follows:

1. Welcome of New Members
2. Administrative Matters
3. Briefing on the Status of the Section 18 Study, Including Result of 1988 Surveys
4. Discussion of Actions Taken on Committee Recommendations at First Meeting
5. Status Report on Other Matters Discussed at First Meeting
6. Briefing on Shipping Legislation and Other Development in Foreign Countries
7. Policy Discussion Roundtable—Discussion by Committee Members of Views about the 1984 Act and Any Revisions Deemed Appropriate
8. Any Other Business

The meeting will be open to public observation. A period will be set aside for oral comments or questions by the public, with a limit of ten minutes per person. More extensive questions or comments should be submitted in writing before April 3, 1989. Other public statements regarding Committee affairs may be submitted any time before or after the meeting. Approximately 35 seats will be available for the public (including five seats reserved for media representatives) on a first-come, first-served basis.

Copies of the summaries of the minutes will be available upon written request 30 days after the meeting. Requests should be addressed to the Secretary of the FMC and should be submitted by April 27, 1989.

Inquiries may be addressed to the Committee Executive Secretary, Mr. John Robert Ewers, Director, Bureau of Administration, Federal Maritime Commission, Room 12211, 1100 L Street NW., Washington, DC 20573.

By the Commission.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 89-5497 Filed 3-8-89; 8:45 am]

BILLING CODE 6730-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

**Centers for Disease Control**

**Revision of Requirements for Content of AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions in Centers for Disease Control Assistance Programs**

On September 20, 1988, the Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1989 [Pub. L. 100-436] at 102 Stat. 1692, was signed by the President. This Act contained the following provision:

Notwithstanding any other provision of this Act, AIDS education programs funded by the Centers for Disease Control and other education curricula funded under this Act dealing with sexual activity—(1) shall not be designed to promote or encourage, directly, intravenous drug abuse or sexual activity, homosexual or heterosexual, and (2) in addition, with regard to AIDS education programs and curricula—(A) shall be designed to reduce exposure to and transmission of the etiologic agent for acquired immune deficiency syndrome by providing accurate information, and (B) shall provide information on the health risks of

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promiscuous sexual activity and intravenous drug abuse.

Pursuant to this provision, CDC has revised the document titled "Content of AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions." Accordingly, all AIDS education programs and education curricula funded by CDC from the 1989 appropriations must comply with the revised document which appears below. This revision has previously been published in the Program Announcement for Cooperative Agreements for Minority and Other Community-Based Human Immunodeficiency Virus (HIV) Prevention Projects No. 908, January 9, 1989 (54 FR 663). In complying with the Program Review Panel requirements contained in the document, recipients are encouraged to use an existing Program Review Panel such as one created by a health department's AIDS/HIV Prevention Program.

**Content of AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions in Centers for Disease Control Assistance Programs October 1988**

Controlling the spread of HIV infection and AIDS requires the promotion of individual behaviors that eliminate or reduce the risk of acquiring and spreading the virus. Messages must be provided to the public that emphasize the ways by which individuals can fully protect themselves from acquiring the virus. They include abstinence from the illegal use of IV drugs and from sexual intercourse except in a mutually monogamous relationship. For those individuals who do not eliminate risky behavior, methods of reducing their risk of acquiring or spreading the virus must also be communicated. Such messages can be controversial. This document is intended to provide guidance for the development of educational materials, and to require the establishment of local review panels to consider the appropriateness of messages designed to communicate with various population groups.

*1. Basic Principles*

a. Language used in written materials (i.e., pamphlets, brochures, fliers), audiovisual materials (i.e., motion pictures and video tapes), and pictorials (i.e., posters and similar educational materials using photographs, slides, drawings, or paintings) to describe dangerous behaviors and explain less risky practices concerning AIDS should use terms or descriptors necessary for the target audience to understand the messages.

b. Such terms or descriptors used should be those which a reasonable person would conclude should be understood by a broad cross-section of educated adults in society, or which when used to communicate with a specific group, such as homosexual men, about high risk sexual practices, would be judged by a reasonable person to be inoffensive to most educated adults beyond that group.

c. The language of items in questionnaires or survey instruments which will be administered in any fashion to any persons should use terms to communicate the information needed which would be understood by a broad cross-section of educated adults in society but which a reasonable person would not judge to be offensive to such people.

d. Educational sessions should not include activities in which attendees participate in sexually suggestive physical contact or actual sexual practices.

e. Messages provided to young people in schools and in other settings should be guided by the principles contained in "Guidelines for Effective School Health Education to Prevent the Spread of AIDS" (MMWR 1988;37 [suppl. no. S–2]).

f. AIDS education programs and education curricula funded by CDC from the 1989 appropriations must be consistent with language contained in the Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1989 (Pub. L. 100–436) at 102 stat. 1662. This language is as follows:

> Notwithstanding any other provision of this Act, AIDS education programs funded by the Centers for Disease Control and other education curricula funded under this Act dealing with sexual activity—(1) shall not be designed to promote or encourage, directly, intravenous drug abuse or sexual activity, homosexual or heterosexual, and (2) in addition, with regard to AIDS education programs and curricula—(A) shall be designed to reduce exposure to and transmission of the etiologic agent for acquired immune deficiency syndrome by providing accurate information, and (B) shall provide information on the health risks of promiscuous sexual activity and intravenous drug abuse.

The Surgeon General's Report on Acquired Immune Deficiency Syndrome (October 1986) contains messages which are consistent with the provisions of this legislation. (Pub. L. 100–436).

*2. Program Review Panel*

a. Recipients will be required to establish a program review panel whether the applicant plans to conduct the total program activities or plans to have part of them conducted through subvention to nongovernmental organization(s). This panel, guided by the CDC Basic Principles (in the previous section) in conjunction with prevailing community standards, will review and approve all written materials, pictorials, audiovisuals, questionnaires or survey instruments, and proposed educational group session activities to be used under the project plan. This panel is intended to review materials only and should not be empowered either to evaluate the proposal as a whole or to replace any other internal review panel or procedure of the local governmental jurisdiction. Specifically, applicants for cooperative agreements/grants will be required to include in the application the following:

(1) Identification of a panel of no less than five persons representing a reasonable cross-section of the general community [1] but which is not drawn predominantly from the target population or groups to whom the written materials, pictorials, audiovisuals, questionnaires, survey instruments, or educational groups sessions are directed; and

(2) A letter or memorandum from the proposed project director, countersigned by a responsible business official, which includes:

(a) Concurrence with this guidance and assurance that its provisions will be observed;

(b) The identity of proposed members of the Program Review Panel, including their names, occupations, and any organizational affiliations that were considered in their selection for the Panel;

b. When a cooperative agreement/grant is awarded, the recipient will: (1) Convene the Program Review Panel and present for its assessment copies of written materials, pictorials, and audiovisuals proposed to be used;

(2) Provide for assessment by the Program Review Panel text, scripts, or detailed descriptions for written materials, pictorials, or audiovisuals proposed to be used;

(3) Prior to expenditure of funds related to the ultimate program use of these materials, assure that their project files are documented with a statement(s) signed by the Program Review Panel specifying the vote for approval or disapproval for each proposed item submitted to them that is subject to this guidance.

(4) Provide to CDC in regular progress reports signed statement(s) of the chairperson of the program review panel specifying the vote for approval or disapproval for each proposed item which is subject to this guidance.

Dated: March 3, 1989.

**Robert L. Foster,**

*Acting Director, Office of Program Support, Centers for Disease Control.*

[FR Doc. 89–5451 Filed 3–8–89; 8:45 am]

BILLING CODE 4160–18–M

[1] Panels which review materials for use with school age populations should include representatives of such groups as teachers, school administrators, parents, and students.



## National Institutes of Health

### National Institute of Diabetes and Digestive and Kidney Diseases, National Kidney and Urologic Diseases Advisory Board; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Kidney and Urologic Diseases Advisory Board and representatives of relevant professional and voluntary organizations on March 30 and 31, 1989. The Board will receive input from the organizations regarding the development of the long-range plan to combat kidney and urologic diseases and then meet April 1, 1989, to discuss the Board's activities and its long-range plan. The meeting is being held at the Lincolnshire Marriott, 1 Marriott Drive, Lincolnshire, Illinois 60015, and is scheduled from 8:30 a.m. until approximately 5:30 p.m. each day. Although the meeting is open to the public, attendance by the public will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

Dr. Ralph Bain, Executive Director, National Kidney and Urologic Diseases Advisory Board, 1801 Rockville Pike, Suite 500, Rockville, Maryland 20852, (301) 496–6045, will provide on request an agenda and roster of the members. Summaries of the meeting may also be obtained by contacting his office.

Dated: March 3, 1989.

**Betty J. Beveridge,**

*NIH Committee Management Officer.*

[FR Doc. 89–5500 Filed 3–8–89; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of Administration

**[Docket No. N–89–1951]**

### Submission of Proposed Information Collection to OMB

**AGENCY:** Office of Administration, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**ADDRESS:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

**Authority:** Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: February 17, 1989.

**John T. Murphy,**

*Director, Information Policy and Management Division.*

### Notice of Submission of Proposed Information Collection to OMB

*Proposal:* Indian Community Development Block Grant (CDBG) Program.

*Office:* Community Planning and Development.

*Description of the Need for the Information and Its Proposed Use:* HUD will use the information collection requirement of the Indian CDBG Program to select the best projects for funding during annual competitions. In addition, these requirements are essential to monitor grants to assure that grantees are using Federal dollars properly.

*Form Number:* SF–424, HUD–4011, HUD–4121, HUD–4122, HUD–4123, HUD–4125, and HUD–4126.

*Respondents:* State or Local Governments.

*Frequency of Submission:* On Occasion.

*Reporting Burden:*

| | Number of respondents | × | Frequency of response | × | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|---|
| Application (SF–424, HUD–4121, 4122, 4123) | 260 | | 1 | | 60 | | 15,600 |
| Preaward Requirements (HUD–4123, 4125, 4126) | 120 | | 1 | | 20 | | 2,400 |
| Force Account Approval | 40 | | 1 | | 5 | | 200 |
| Certification of Completion (HUD–4011) | 120 | | 1 | | 5 | | 600 |
| Supporting Documentation | 10 | | 1 | | 20 | | 200 |
| Status Reports (Monitoring and Annual) | 120 | | 1 | | 10 | | 1,200 |

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*Total Estimated Burden Hours:* 20,000.
*Status:* Extension.
*Contact:* Gene Hix, HUD, (202) 755–6002, John Allison, OMB, (202) 395–6880.

Date: February 17, 1989.

[FR Doc.89–5453 Filed 3–8–89; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. N–89–1962]

## Submission of Proposed Information Collection to OMB

**AGENCY:** Office of Administration, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**ADDRESS:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

**Authority:** Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: February 27, 1989.

**John T. Murphy,**
*Director, Information Policy and Management Division.*

## Notice of Submission of Proposed Information Collection to OMB

*Proposal:* Information Collection and Recordkeeping Requirements for Loan Servicing—Section 223(f) and 221(d) Coinsurance Programs.

*Office:* Housing.

*Description of the Need for the Information and Its Proposed Use:* The information collection includes items which coinsuring lenders collect from mortgagors to monitor project performance and management as well as items which HUD collects from coinsuring lenders to monitor their servicing activities to ensure effective servicing of sections 223(f) and 221(d) coinsured loans.

*Form Number:* None.

*Respondents:* Businesses of Other For-Profit

*Frequency of Submission:* Recordkeeping, On Occasion, and Annually

*Reporting Burden:*

| | Number of respondents | × | Frequency of response | × | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|---|
| Recordkeeping | 5 | | 1 | | 1 | | 5 |
| Inventory Reports | 30 | | 1 | | 3 | | 90 |
| Financial Statement | 1300 | | 1 | | 85 | | 110,500 |
| Occasional Reports | 868 | | 1 | | 2.1 | | 1,830 |

*Total Estimated Burden Hours:* 112,425.
*Status:* Reinstatement.
*Contact:* Matthew C. Andrea, (202)755–7270 John Allison, OMB, (202) 395–6880.

Date: February 27, 1989.

[FR Doc. 89–5454 Filed 3–8–89; 8:45 am]

BILLING CODE 4210–01–M

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Issuance of Permit for Marine Mammals

On October 13, 1988, a notice was published in the **Federal Register** (Vol. 53, No. 198) that an application had been filed with the Fish and Wildlife Service by The New York Zoological Society (PRT 731847) for a permit to import one captive-born polar bear (*Ursus maritimus*) from Ruhr Zoo, Gelsenkirchen, West Germany for the purpose of public display.

Notice is hereby given that on February 10, 1989, as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Endangered Species Act of 1972 (16 U.S.C. 1539), the Fish and Wildlife Service issued a permit subject to certain conditions set forth therein.

The permit is available for public inspection during normal business hours at the Office of Management Authority, Room 400, 1375 K Street, NW., Washington, DC.

Dated: March 3, 1989.

**R.K. Robinson,**
*Chief, Branch of Permits, Office of Management Authority.*

[FR Doc. 89–5537 Filed 3–8–89; 8:45 am]

BILLING CODE 4310–55–M

## Receipt of Application for Permit

The public is invited to comment on the following application for permits to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*, the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*) and the regulations governing marine mammals and endangered species (50 CFR Parts 17 and 18).

### Applicant

*Name:* Charles Monnett, PRT–716436.
*Address:* University of Minnesota, 109 Zoology Boulevard, Minneapolis, Minnesota 55455.
*Type of Permit:* Scientific Research.
*Name and Number of Animals:* 150 Alaska sea otter (*Enhydra lutris lutris*).
*Summary of Activity to be Authorized:* The applicant proposes to amend his current permit to increase the number of otters he is authorized to capture. Most will be tagged, weighed, have one premolar extracted, blood sampled, and lip tattooed. Ten male and ten female adults will be surgically implanted with radio-transmitters for tracking.
*Source of Marine Mammals for Display:* Prince William Sound and the Gulf of Alaska, AK.
*Period of Activity:* March 1989–May 1990.

Concurrent with the publication of this notice in the **Federal Register**, the Office of Management Authority is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Written data or comments, requests for copies of the complete application or requests for a public hearing on this application should be submitted to the Director, Office of Management Authority (OMA), P.O. Box 27329, Washington, DC 20038–7329, within 30 days of the publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such hearing is at the discretion of the Director.

Documents submitted in connections with the above application is available for review during normal business hours (7:45 a.m. to 4:15 p.m.) at 1375 K Street NW., Room 400, Washington, DC.

Dated: March 3, 1989.

**R.K. Robinson,**
*Chief, Branch of Permit, Office of Management Authority.*

[FR Doc. 89–5538 Filed 3–8–89; 8:45 am]

BILLING CODE 4310–55–M

## Bureau of Land Management

**[AK–967–4213–15; AA–8447–A2; AA–8447–B]**

### Alaska Native Claims Selection; Eyak Corp.

In accordance with Departmental regulation 32 CFR 2650.7(d), notice is hereby given that the Decision to Issue Conveyance (DIC) to The Eyak Corporation, notice of which was published in the **Federal Register** on February 2, 1989, Vol. 54, No. 21, is modified by changes of easements EIN 156 D9, and EIN 171c E, and clarification of The Eyak Corporation's entitlement pursuant to section 12(a) and 12(b) of ANCSA.

A notice of the modified DIC will be published once a week, for four (4) consecutive weeks, in the *Cordova Times*. Copies of the modified DIC may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599.

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government, or regional corporation, shall have until April 10, 1989, to file an appeal on the issue in the modified DIC. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements in 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Except as modified, the decision, notice of which was given February 2, 1989, is final.

**Terry R. Hassett,**
*Chief, Branch of KCS Adjudication.*

[FR Doc. 89–5464 Filed 3–8–89; 8:45 am]

BILLING CODE 4310–JA–M

**[WY–920–09–4111–15; WYW94760]**

### Proposed Reinstatement of Terminated Oil and Gas Lease; Wyoming

Pursuant to the provisions of Pub. L. 97–451, 96 Stat. 2462–2466, and Regulation 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW94760 for lands in Weston County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW94760 effective June 1, 1988, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

**David A. Pomerinke,**
*Acting Chief, Leasing Section.*

[FR Doc. 89–5506 Filed 3–8–89; 8:45 am]

BILLING CODE 4310–83–M

### Proposed Lease Under Section 302 of FLPMA (CA 20171); California

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The proposed action is a Notice of Realty Action for a five-year lease, renewable, intended to resolve a long-standing unauthorized occupancy (CA 20771), to bring occupancy under terms of section 302 of the Federal Land Policy and Management Act (FLPMA) of 1976, and 43 CFR 2920. The legal description of the site is:

Mount Diablo Meridian, T. 33 N., R. 9 W., Section 5, Lot 10, S½; Lot 31, N½, Aggregating 2.85 acres.

**DATES:** For a period of 45 days from the date of publication in the **Federal Register**, interested parties may submit comments to the Area Manager, Bureau of Land Management, 355 Hemsted Drive, Redding, California 96002. Any adverse comments will be evaluated by the State Director, who may vacate or modify this Realty Action and issue a final determination. In the absence of any action taken by the State Director, this Realty Action will become the final determination of the Department of the Interior.

**FOR FURTHER INFORMATION CONTACT:** Mark Morse, Area Manager, at (916) 246–5325, or write to 355 Hemsted Drive, Redding, California 96002.

**SUPPLEMENTARY INFORMATION:** An appraisal for the proposed lease area has been made, and the lessee will be required to make yearly rental payments in the amount of $3,300.00. Lessee shall reimburse the United States of reasonable administrative costs incurred, estimated to be $300.00. Reimbursement of costs shall be in accordance with the provisions of 43 CFR 2920.6.

The only application that will be accepted will be from Alma Korntved. The application must include reference to this notice, include the case file

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number (CA 20171), and have a complete description of the facilities involved. This can be accomplished by providing details of the proposed use and activities; a description of all facilities; a map of sufficient scale to be legible; a legal description of the project location; and any other information that may aid in evaluating the proposal.

Stipulations to be included with the lease are as follows: (1) Subject improvements must be quitclaimed to the United States; (2) Subject improvements must remain lessee's sole place of residence; (2) Lease may not be transferred, assigned or inherited; (3) Upon termination of lease, all improvements must be removed from lease area within six months, and the site returned to a natural condition.

**Mark T. Morse,**

*Area Manager.*

[FR Doc. 89-5531 Filed 3-8-89; 8:45 am]

BILLING CODE 4310-GG-M

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**[ID-060-09-4830-10-8751; I-20669]**

### Realty Action: Private Exchange Involving Public Lands in Blaine County, ID

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of realty action, I-20669: exchange of public and private lands in Blaine County, Idaho.

**SUMMARY:** The following described lands have been determined to be suitable for exchange through the development of land use decisions based upon public input, and resource and use evaluation. They are suitable for exchange under section 206 of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1716.

Boise Meridian, Blaine County, Idaho. T. 4 N., R. 18 E. Section 18: Lot 7 of Block 39 in Ketchum Townsite, Lots 6, 7, and 8 of Block 40 in Ketchum Townsite containing 0.52 acres.

In exchange for these lands, the United States will acquire the following described land from the American Public Land Exchange Co., Inc.

Boise Meridian, Blaine County, Idaho. T. 4 N., R. 17 E. Section 12: Lots 19 and 20, Resubdivision, Northwood P.U.D., Subdivision Lot 4. (Located within E2SE4) containing 1.72 acres.

The purpose of this exchange is to help enable the U.S. Forest Service to consolidate land holdings for construction of a new administrative and warehouse complex.

The values of the lands to be exchanged will be equalized through cash payments or provided services. Cash payments may not exceed twenty-five percent (25%) of the values of the Federal lands.

When issued, the patent will contain the following reservation to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890, (26 Stat. 391; 43 U.S.C. 945).

Publication of this notice segregates the public lands from the operation of the public land laws, including the mining laws, for a period of two years from date of publication in the **Federal Register**, or until patent is issued.

Detailed information concerning the exchange is available from the Shoshone District Office of the Bureau of Land Management, 400 West F Street, Shoshone, ID 83352.

For a period of 45 days from the date of first publication, interested parties may submit comments to Bureau of Land Management, Shoshone District Office, P.O. Box 2-B, Shoshone, ID 83352.

**K. Lynn Bennett,**

*District Manager.*

[FR Doc. 89-5489 Filed 3-8-89; 8:45 am]

BILLING CODE 4310-GG-M

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**[NM-030-09-4212; NM NM 67560]**

### An Exchange of Public Land with the Nature Conservancy in Dona Ana County, NM

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of realty action.

**SUMMARY:** The following described lands and interests therein have been determined to be suitable for disposal by exchange under Section 206 of the Act of October 21, 1976 (43 U.S.C. 1716):

T. 23 S., R. 1W., NMPM
Sec. 27, W½ SE¼ SE¼
containing 20 acres, more or less

This 20-acre tract will be added to the Bureau of Land Management/The Nature Conservancy Exchange Pool. The land exchange pool is used whenever practical to facilitate land exchange and reduce unit costs.

**DATES:** Comments must be submitted on or before April 30, 1989.

**ADDRESSES:** Comments should be sent to District Manager, Bureau of Land Management, Las Cruces District Office, 1800 Marquess Street, Las Cruces, New Mexico 88005.

**FOR FURTHER INFORMATION CONTACT:** Marvin M. James at the address above or at (505) 525-8228 (FTS 571-8312).

**SUPPLEMENTARY INFORMATION:** The purpose of this exchange is to dispose of an isolated tract of public land in the Las Cruces West Mesa Industrial Park while consolidating ownership of other public land. This disposal by exchange is supported by a management decision in the Southern Rio Grande Management Framework Plan (February 1982).

The exchange will be subject to:

1. A reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States in accordance with 43 U.S.C. 945.

2. All valid existing rights and reservation of record including the following: Highway rights-of-way NM05204, NM014029, NM0566656, NM61192, NM77520; Telephone cable rights-of-way, NM38200, NM66376; Water pipeline rights-of-way NM032249, NM52926, NM77539.

Publication of this Notice will segregate the public land from all appropriations under the public land laws, including the mining laws but not mineral leasing laws. This segregation will terminate upon the issuance of a patent or 2 years from the date of publication of this Notice in the **Federal Register** or upon publication of a Notice of Termination.

Any adverse comments will be evaluated by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of Interior.

**H. James Fox,**

*District Manager.*

March 1, 1989.

[FR Doc. 89-5462 Filed 3-8-89; 8:45 am]

BILLING CODE 4310-FB-M

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**[WY-030-09-4212-13; WYW-113734]**

### Realty Action; Private Exchange Involving Public Lands in Albany and Laramie Counties, WY

**AGENCY:** Bureau of Land Management Interior.

**ACTION:** Private exchange involving public lands in Albany and Laramie Counties, Wyoming.

The surface and mineral estates of the following described public land is being considered for disposal by exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2756, 43 U.S.C. 1716):

Sixth Principal Meridian, Wyoming
T. 14 N., R. 70 W.;



Sec. 2, lots 1 & 2, SE¼NE¼, SW¼, E½ SE¼, SW¼SE¼;
Sec. 4, S½;
Sec. 6, lots 1-4, 6 & 7, N½SE¼;
Sec. 8, N½NE¼, NE¼NW¼;
Sec. 10, N½N½;
Sec. 12, NW¼;
T. 15 N., R. 70 W.;
Sec. 20, N½N½, SW¼SW¼, SE¼SE¼;
Sec. 22, S½SW¼; SE¼;
Sec. 28, N½, SW¼;
Sec. 30, lot 1, NE¼NW¼;
Sec. 32, all;
Sec. 34, all;
Containing 3677 acres, more or less

The publication of this notice in the **Federal Register** will segregate the public lands described above to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. The segregative effect will terminate upon issuance of patent or upon expiration of two years from the effective date, or by publication of a Notice of Termination by the Authorized Officer, whichever comes first.

Private lands to be acquired by the United States are under negotiation but are generally located within T. 14 & 15 N., R. 70 W., Sixth Principal Meridian, Wyoming. A supplementary Notice with detailed information on lands to be exchanged will be published in the **Federal Register** when an agreement with the private landowner is reached.

**FOR FURTHER INFORMATION CONTACT:** Walter George, Rawlins District Office, P.O. Box 670, Rawlins, WY 82301, (307) 324-7171.

**Bud Holbrook,**

*Area Manager.*

[FR Doc. 89-5490 Filed 3-8-89; 8:45 am]

BILLING CODE 4310-22-M

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**[ID-943-09-4212-10; I-26701]**

### Proposed Withdrawal and Opportunity for Public Meeting; Idaho.

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The U.S. Forest Service has filed an application to withdraw and acquire the jurisdiction of 10 acres of public land for protection of the Clearwater Seed Orchard near Orofino, Idaho and adjacent to the Clearwater River. This notice closes the land for up to two years from surface entry and mining. The land will remain open to mineral leasing.

**DATE:** Comments and meeting requests should be sent to the Idaho State Director, BLM, 3380 Americana Terrace, Boise 83706.

**FOR FURTHER INFORMATION CONTACT:** Larry R. Lievsay, BLM, Idaho State Office, 208-334-1735.

**SUPPLEMENTARY INFORMATION:** On February 21, 1989, the U.S. Forest Service filed an application to withdraw the following-described public land from settlement, sale, location, or entry under general land laws, including the mining laws, subject to valid existing rights:

Boise Meridian, Idaho
T. 37 N., R. 1 W.,
sec. 32, N½S½NW¼SW¼.

The area described contains 10 acres in Nez Perce County.

The purpose of the proposed withdrawal is to protect the seed orchard.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Idaho State Director at the above address.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Idaho State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

For a period of two years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or cancelled or the withdrawal is approved prior to that date. No temporary uses will be allowed during the segregative period.

The temporary segregation of the land in connection with this withdrawal application shall not affect administrative jurisdiction over the land, and the segregation shall not have the affect of authorizing any use of the land by the Forest Service.

**William E. Ireland,**

*Chief, Realty Operations Section.*

Dated: March 1, 1989.

[FR Doc. 89-5533 Filed 3-8-89; 8:45 am]

BILLING CODE 4310-GG-M

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**[NM-040-09-4214-10; NM NM 77967]**

### Notice of Proposed Withdrawal and Opportunity for Public Meeting; New Mexico

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The Bureau of Land Management proposes to withdraw 200 acres of public land in Socorro County, to protect the archeological values at the Arroyo del Tajo Pictograph Site. This notice closes the land for up to 2 years from surface entry and mining. The land will remain open to mineral leasing.

**DATE:** Comments and requests for a public meeting must be received by June 7, 1989.

**ADDRESS:** Comments and requests should be sent to: New Mexico State Director, BLM, P.O. Box 1449, Santa Fe, New Mexico 87504-1449.

**FOR FURTHER INFORMATION CONTACT:** Clarence F. Hougland, BLM, New Mexico State Office, 505-988-6545.

**SUPPLEMENTARY INFORMATION:** On February 8, 1989, a petition was approved allowing the Bureau of Land Management to file an application to

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**[ES-940-09-4520-13; ES-039974, Group 136]**

### Filing of Plat of Dependent Resurvey and Subdivision of Section 18; Wisconsin

February 28, 1989.

1. The plat of the dependent resurvey of a portion of the exterior boundaries, a portion of the subdivisional lines, and the survey of the subdivision of section 18, Township 40 North, Range 6 East, Fourth Principal Meridian, Wisconsin, will be officially filed in the Eastern States Office, Alexandria, Virginia at 7:30 a.m., on April 14, 1989.

2. The dependent resurvey was made at the request of the Bureau of Indian Affairs.

3. All inquiries or protests concerning the technical aspects of the dependent resurvey must be sent to the Deputy State Director for Cadastral Survey, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304, prior to 7:30 a.m., April 14, 1989.

4. Copies of the plat will be made available upon request and prepayment of the reproduction fee of $4.00 per copy.

**Joseph W. Beaudin,**

*Acting Deputy State Director for Cadastral Survey and Support Services.*

[FR Doc. 89-5532 Filed 3-8-89; 8:45 am]

BILLING CODE 4310-GJ-M

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withdraw the following described public land from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights:

**New Mexico Principal Meridian**

T. 3 S., R. 1 E., sec. 14, SW¼, N½SW¼SE¼, SW¼SW¼SE¼, NW¼SE¼SE¼.

The area described contains approximately 200 acres in Socorro County.

The purpose of the proposed withdrawal is to protect the archeological values at the Arroyo del Tajo Pictograph Site from deterioration, for research purposes, and for interpretation.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the undersigned officer within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period are grazing, nonvehicular recreational and educational use, and other discretionary surface uses, provided they will not significantly impact the values to be protected by the withdrawal.

**Gilbert O. Lockwood,**

*Acting State Director.*

Dated: February 28, 1989.

[FR Doc. 89-5461 Filed 3-8-89; 8:45 am]

BILLING CODE 4310-FB-M

## INTERSTATE COMMERCE COMMISSION

**[Finance Docket No. 31393]**

**Brandywine Valley Railroad Co.; Purchase; CSX Transportation, Inc., Lines in Florida**

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of decision accepting application for consideration.

**SUMMARY:** The Commission is accepting for consideration the application, filed February 10, 1989, by Brandywine Valley Railroad Company (BVRC) to purchase from CSX Transportation, Inc. (CSXT), 102.52 miles of rail line in Florida between: (1) Sebring (milepost AVC-873.94) and Palmdale (milepost AVC-918.6); (2) Palmdale (milepost AVD-918.58) and Lake Harbor (milepost AVD-957.99); and (3) Keela (milepost AVF-953.69) and Cane (milepost AVF-972.14). Pursuant to 49 CFR Part 1180, the Commission finds this a minor transaction.

**DATES:** Written comments must be filed with the Interstate Commerce Commission no later than April 10, 1989. Comments from the Secretary of Transportation and Attorney General of the United States must be filed by April 24, 1989. Applicants' reply is due by May 15, 1989.

**FOR FURTHER INFORMATION CONTACT:** Joseph H. Dettmar, (202) 275-7245. [TDD for hearing impaired: (202) 275-1721].

**ADDRESSES:** An original and 10 copies of all documents must be sent to: Office of the Secretary, Case Control Branch, Att'n: Finance Docket No. 31393, Interstate Commerce Commission, Washington, DC 20423.

In addition, one copy of all documents filed must be sent to each of applicants' representatives:

Lawrence H. Richmond, 100 North Charles Street, Baltimore, MD 21201.
Jeffrey S. Berlin, Suite 625, 2300 N Street, NW., Washington, DC 20037.

**SUPPLEMENTARY INFORMATION:** By application filed February 10, 1989, BVRC and CSXT (applicants) seek approval under 49 U.S.C. 11343, *et seq.*, for BVRC to acquire 102.52 miles of CSXT lines in Florida. BVRC will purchase CSXT's lines between: (1) Sebring (milepost AVC-873.94) and Palmdale (milepost AVC-918.6); (2) Palmdale (milepost AVD-918.58) and Lake Harbor (milepost AVD-957.99); and (3) Keela (milepost AVF-953.69), an intermediate point on the Palmdale-Lake Harbor segment, and Cane (milepost AVF-972.14). Applicants contend that this is a minor transaction under 49 CFR 1180.2(c), and they submitted a conforming application in accordance with the railroad consolidation procedures in 49 CFR Part 1180.

BVRC is a Class III common carrier controlled by a noncarrier, Lukins Steel Company, which in turn is controlled by Sponsors' Plan Asset Management, Inc., a subsidiary of Lukins, Inc. CSXT is a Class I common carrier and a unit of CSX Corporation. BVRC now operates a 4-mile line of railroad between Coatesville and Modena, PA. This 4-mile line will not connect with the lines being acquired. The lines being acquired connect at Lake Harbor with a line of the Florida East Coast Railway Company and at Clewiston, an intermediate point on the Palmdale-Lake Harbor segment, with a private line of railroad operated by the United States Sugar Corporation.

Approximately 15 shippers are using the lines. In 1987, CSXT moved approximately 25,000 carloads of sugar cane from local cane fields to an on-line processing plant, and 9,800 carloads of other originating or terminating traffic. During the first half of 1988, CSXT handled approximately 5,700 carloads of non-sugar traffic. Because of the seasonal nature of the sugar cane movements, applicants state that total 1988 carload data for this traffic were not available at the time the application was filed.

Applicants assert that the transaction will result in operating economies and improved service, and that this will enhance their financial viability. Specifically, the proposal will enable BVRC to enter a new market and spread its administrative, insurance, and operating costs over a larger base. Allegedly this will result in operating efficiencies that will allow BVRC to offer better service at more competitive rates. CSXT, on the other hand, will no longer be required to maintain what is for it a marginally profitable operation. Applicants assert that the transaction will improve service because, as a small, local carrier, BVRC will be better able to accommodate shipper needs.

Because BVRC will merely replace CSXT, applicants contend that the transaction will not result in a monopoly or reduce competition. Rather, they submit that the transaction will enhance competition by allowing BVRC to compete more effectively with other modes of transportation. They assert that there is a significant potential to divert traffic from water and motor carriers serving the area.

BVRC intends to operate the lines with its own employees. As a result, CSXT's work force would be reduced by 24 positions. No positions with BVRC would be eliminated. BVRC expects to hire additional employees to operate the acquired lines and states that it will first offer these positions to former CSXT employees.

CSXT states that it will negotiate employee protection agreements with affected employees pursuant to the conditions in *New York Dock Ry.—Control—Brooklyn East. Dist.*, 360 I.C.C. 60 (1979). These conditions are appropriate for employees affected by the acquisition.

Under § 1180.4(b)(2) of our consolidation regulations, we must determine initially whether a transaction is major, significant, or minor. The proposed transaction involves a Class I and a Class III railroad. It has no regional or national significance and will neither result in a major market extension nor reduce the present level of competition. Accordingly, we find the proposal a minor transaction under § 1180.2(c). Because the application complies with our regulations governing minor transactions, we are accepting it for consideration.

The application and exhibits are available for inspection in the Public Docket Room at the Offices of the Interstate Commerce Commission in Washington, DC. In addition, they may be obtained upon request from applicants' representatives named above.

Any interested persons, including government entities, may participate in this proceeding by submitting written comments. Comments must be filed no later than April 10, 1989. The United States Secretary of Transportation and the Attorney General of the United States must file their comments no later than April 24, 1989. Applicants' reply is due May 15, 1989. An original and 10 copies of all pleadings must be filed with the Secretary, Interstate Commerce Commission, Washington, DC 20423.

Written comments must be served concurrently by first-class mail on the Secretary of Transportation, the Attorney General and applicants' representatives. Written comments must also be served on all parties of record within 10 days of service of the service list by the Commission. We plan to issue the service list by May 15, 1989. Any person who files timely written comments shall be considered a party of record if the person's comments so request. In this event, no petition for leave to intervene need be filed. Consistent with 49 CFR 1180.4(d)(i)(iii), written comments must contain:

(a) The docket number and title of the proceeding;

(b) The name, address, and telephone number of the commenting party and its representative upon whom service shall be made;

(c) The commenting party's position, *i.e.*, whether it supports or opposes the proposed transaction;

(d) A statement of whether the commenting party intends to participate formally in the proceeding or merely comment upon the proposal;

(e) If desired, a request for an oral hearing with reasons supporting this request; the request must indicate the disputed material facts that can only be resolved at a hearing; and

(f) A list of all information sought to be discovered from applicant carriers.

Because we have determined that the proposal in this processing constitutes a minor transaction, no responsive applications will be permitted. The time limits for processing a minor transaction are set forth at 49 U.S.C. 11345(d).

Discovery may begin immediately. We admonish the parties to resolve all discovery matters expeditiously and amicably.

This action will not significantly affect either the quality of the human environment or energy conservation.

*It is ordered:*

1. This proposal is found to be a minor transaction under 49 CFR 180.2(c).

2. The application in Finance Docket No. 31393 is accepted for consideration.

3. The parties shall comply with all provisions as stated above.

4. This decision is effective on the date of service.

Decided: March 2, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips.

**Noreta R. McGee,**

*Secretary.*

[FR Doc. 89-5431 Filed 3-8-89; 8:45 am]

BILLING CODE 7035-01-M

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on January 16, 1989, Smithkline Chemicals, Division Smithkline Beckman C., 900 River Road, Conshohocken, Pennsylvania 19428, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basis classes of controlled substances listed below:

| Drug | Schedule |
|---|---|
| 4-methoxyamphetamine (7411) | I |
| Amphetamine, its salts, optical isomers and salts of its optical isomers (1100) | II |
| Phenylacetone (8501) | II |

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deupty Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than April 10, 1989.

**Gene R. Haislip,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

Dated: February 28, 1989.

[FR Doc. 89-5501 Filed 3-8-89; 8:45 am]

BILLING CODE 4410-09-M

### Importation of Controlled Substances; Application; Stepan Chemical Co.

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(h)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on January 24, 1989, Stepan Chemical Company, Natural Products Department, 100 W. Hunter Avenue, Maywood, New Jersey 07607, made application to the Drug Enforcement Administration to be registered as an importer of coca leaves (9040), a basic class of controlled substance in Schedule II.

Any manufacturer holding, or applying for, registration as a bulk

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manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street NW., Washington, DC 20537, Attention: DEA Federal Representative (Room 1112), and must be filed no later than April 10, 1989.

This procedure is to be conducted simulaneously with and independent of the procedures described in 21 CFR 1311.42(b), (c), (d), (e) and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator of the Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42(a), (b), (c), (d), (e) and (f) are satisfied.

**Gene R. Haislip,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

Dated: February 28, 1989.

[FR Doc. 89-5502 Filed 3-8-89; 8:45 am]

BILLING CODE 4410-09-M

### Manufacturer of Controlled Substances; Application; Stepan Chemical Co.

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on January 24, 1989, Stepan Chemical Company, Natural Products Department, 100 West Hunter Avenue, Maywood, New Jersey 07607, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

| Drug | Schedule |
|---|---|
| Cocaine (9041) | II |
| Benzoylecgonine (9180) | II |
| Coca Leaves (9040) | II |

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than April 10, 1989.

**Gene R. Haislip,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

Dated: February 28, 1989.

[FR Doc. 89-5503 Filed 3-8-89; 8:45 am]

BILLING CODE 4410-09-M

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; Alco Power Inc., et al.

Petitions have been filed with the Secretary of Labor under section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than March 20, 1989.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assitance, at the address shown below, not later than March 20, 1989.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Adminsitration, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213.

Signed at Washington, DC this 21st day of February 1989.

**Marvin M. Fooks,**

*Director, Office of Trade Adjustment Assistance.*

| Petitioner (Union/Workers/Firm) | Location | Date Received | Date of Petition | Petition Number | Articles Produced |
|---|---|---|---|---|---|
| Alcos Power Inc. (Workers) | Auburn, NY | 2/21/89 | 1/31/89 | 22,466 | Diesel Engines |
| American Biltrite (IUE) | Garfield, NJ | 2/21/89 | 1/30/89 | 22,467 | Insulating Tape |
| Andrew Harris, Inc. (ILGWU) | Philadelphia, PA | 2/12/89 | 1/30/89 | 22,468 | Coats & Jackets |
| Athens Mfg. Corp. (Workers) | Athens, TN | 2/21/89 | 2/6/89 | 22,469 | Children's Sportswear |
| Bridge Oil (USA), Inc. (Company) | San Antonio, TX | 2/21/89 | 1/25/89 | 22,470 | Oil & Gas |
| Brown & Root U.S.A. (Workers) | Longview, TX | 2/21/89 | 1/30/89 | 22,471 | Construction Contractors |
| Cal Bohannan Drilling (Workers) | Tulsa, OK | 2/21/89 | 2/1/89 | 22,472 | Oil & Gas |
| Cyclone Drilling (Workers) | Gillette, WY | 2/21/89 | 1/1/89 | 22,473 | Oil & Gas |
| Dana Corporation, Convel Plant (Workers) | Harrisonville, MO | 2/21/89 | 2/6/89 | 22,474 | Universal Joints |
| Ericsson, Inc. (CWA) | Harrisonville, MO | 2/21/89 | 1/30/89 | 22,475 | Telecommunication |
| Everco Industries, Inc. (Workers) | Ottumwa, IA | 2/24/89 | 1/24/89 | 22,476 | Power Steering Equipment |
| Exeter Drilling Co. (Workers) | Gillette, WY | 2/21/89 | 1/18/89 | 22,477 | Oil & Gas |
| Fina Oil & Chemical Co. (Company) | Windsor, NJ | 2/21/89 | 1/19/89 | 22,478 | Polystyrene Resins |
| Forest Oil Corp. (Workers) | Corpus Christi, TX | 2/21/89 | 1/31/89 | 22,479 | Oil & Gas |
| Freeman Shoe (ACTWU) | Beloit, WI | 2/21/89 | 1/15/89 | 22,480 | Men's Shoes |
| G.M. Service Parts Operation (Workers) | St. Louis, MO | 2/21/89 | 1/24/89 | 22,481 | Trucks & Auto Parts |



| Petitioner (Union/Workers/Firm) | Location | Date Received | Date of Petition | Petition Number | Articles Produced |
|---|---|---|---|---|---|
| GTE Products Corp. (UAW) | Winchester, KY | 2/21/89 | 1/23/89 | 22,482 | Lamps |
| General Electric Corp. Gov't Communications Systems. | Camden, NJ | 2/21/89 | 2/2/89 | 22,483 | Electronic Communication |
| H&B Drilling Co (Workers) | Bossier City, LA | 2/21/89 | 2/1/89 | 22,484 | |
| Halliburton Logging Services (Workers) | Hays, KS | 2/21/89 | 1/31/89 | 22,485 | Oilfield Equipment |
| Jenifer Dale, Inc. (ILGWU) | Ozone Park, NY | 2/21/89 | 2/7/89 | 22,486 | Ladies & Girls Sleepwear |
| Jersico Knitting Corp. (Workers) | Neenah, WI | 2/21/89 | 2/5/89 | 22,487 | Sweaters |
| Jumping Jacks Shoes (Company) | Ponce, Puerto Rico | 2/21/89 | 1/31/89 | 22,488 | Boy's & Girl's Shoes |
| Kennedy Valve (UER/MW) | Elmira, NY | 2/21/89 | 2/1/89 | 22,489 | Hydrants, Valves, Pipe |
| Kollsman Avionics (Company) | Englewood, NJ | 2/21/89 | 1/27/89 | 22,490 | Aircraft Instrument Repair |
| Malouf Co. (Workers) | Daingerfield, TX | 2/21/89 | 1/16/89 | 22,491 | Ladies Dresses |
| Mark D. Knitting Co. (PSJDC) | Philadelphia, PA | 2/21/89 | 1/30/89 | 22,492 | Sweaters |
| Maverick Tube Corp. (USWA) | Union, MO | 2/21/89 | 2/2/89 | 22,493 | Oil & Gas |
| Metal Removal Tooling Co (Workers) | Chicago, IL | 2/21/89 | 1/19/89 | 22,494 | Carbide Cutting Tools |
| Nisteen Clearinghouse (Workers) | El Paso, TX | 2/21/89 | 1/30/89 | 22,495 | Paper Processing |
| Mighty-Mac, Inc. (ACTWU) | Gloucester, MA | 2/21/89 | 1/24/89 | 22,496 | Outerwear Samples |
| Pacific Enterprises Oil Co (Workers) | Midland, TX | 2/21/89 | 2/2/89 | 22,497 | Oil & Gas |
| Pantcraft, Inc. (Workers) | New York, NY | 2/21/89 | 2/6/89 | 22,498 | Children's Sportswear |
| Pathfinder Mines (Workers) | Riverton, WY | 2/21/89 | 1/27/89 | 22,499 | Uranium Mining |
| Pathfinder Mines (Workers) | St. George, WY | 2/21/89 | 1/27/89 | 22,500 | Uranium Mining |
| Polychrome Chemical Corp. (Workers) | Bloomfield, NY | 2/21/89 | 2/1/89 | 22,501 | Resins for Paint Industry |
| Post Mfg. Co., Inc. (Workers) | New York, NY | 2/21/89 | 2/3/89 | 22,502 | Jackets |
| Preay Please (Workers) | Glen Cove NY | 2/21/89 | 2/6/89 | 22,503 | Children's Sportswear |
| RBS Services, Inc. (Workers) | Bay City, TX | 2/21/89 | 1/27/89 | 22,504 | Oil & Gas |
| Richard Drilling Co. (Workers) | Bay City, TX | 2/21/89 | 1/27/89 | 22,505 | Oil & Gas |
| Spielberg Mfg (LGPNW) | Antonia, MO | 2/6/89 | 1/4/89 | 22,506 | Handbags |
| Texas Meridian (Workers) | Houston, TX | 2/21/89 | 2/6/89 | 22,507 | Oil & Gas |
| U.S. Auto Radiator Manufacturing Corp. (UAW) | Highland Park MI | 2/21/89 | 1/24/89 | 22,508 | Heaters |
| Unifilte Inc./Murray Chris Craft Cruisers | Bellingham, WA | 2/21/89 | 1/20/89 | 22,509 | Pleasure Boats |
| Uniroyal Goodrich (URW) | Eau Claire, | 2/21/89 | 2/4/89 | 22,510 | Auto Tires |
| Venerable Managing General Agency (Workers) | Midland, TX | 2/21/89 | 1/27/89 | 22,511 | Insurance Policies |
| Village Shoe & Boot Repairs (Workers) | Fort Collins, Co. | 2/21/89 | 1/19/89 | 22,512 | Sole & heel Replacement |
| Weaver Proctor Silex (USWU) | Alloona, PA | 2/21/89 | 1/26/89 | 22,513 | Toaster Ovens |
| Wee-Tex Drilling Corp. (Workers) | Abilene, TX | 2/21/89 | 1/23/89 | 22,514 | Oil & Gas |

[FR Doc. 89-5445 Filed 3-8-89; 8:45 am]

BILLING CODE 4510-30-M

### [TA-W-21,245]

### Automotive Products Division of United Technologies Automotive, Inc., Dearborn, MI; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Automotive Products Division of United Technologies Automotive, Inc., Dearborn, Michigan. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-20,245; Automotive Products Division of United Technologies Automotive, Inc., Dearborn, Michigan

February 22, 1989

Signed at Washington, DC this 24th day of February 1989.

**Marvin M. Fooks,**

*Director, Office of Trade Adjustment Assistance.*

[FR Doc. 89-5446 Filed 3-8-89; 8:45 am]

BILLING CODE 4510-30-M

### [TA-W-21,570]

### KRW Energy Systems, Inc., Madison, PA; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at KRW Energy Systems, Inc., Madison, Pennsylvania. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-20,570: KRW Energy Systems, Inc., Madison, Pennsylvania

February 22, 1989

Signed at Washington, DC this 24th day of February 1989.

**Marvin M. Fooks,**

*Director, Office of Trade Adjustment Assistance.*

[FR Doc. 89-5447 Filed 3-8-89; 8:45 am]

BILLING CODE 4510-30-M

### Employment Standards Administration, Wage and Hour Division

### Child Labor Advisory Committee; Subcommittee Meeting on Hazardous Occupations Order No. 11

The Child Labor Advisory Subcommittee on Hazardous Occupations Order No. 11, will convene at the Department of Labor, Frances Perkins Building, Room S-3504, 200 Constitution Avenue, NW., Washington, DC 20210, from 9:00 a.m.–5:00 p.m., on April 17 and 18, 1989. The discussion will focus on whether a recommendation is necessary with respect to the generic types of bakery product machines presently included in the scope of this Order, whether certain types of machines should be removed from prohibition under the Order, and whether certain types of machines should be added as being prohibited under the Order.

Members of the public are invited to attend the meeting. Individuals wishing to submit written data, views, or arguments pertaining to the business before the Subcommittee should submit them to Ms. Nila Stovall, Chief, Branch of Child Labor Programs, prior to the meeting date. Twenty-six copies are

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needed for distribution to the members and for inclusion in the Subcommittee report.

Telephone inquiries and communications concerning this meeting should be directed to Ms. Stovall, Room S–3510, Frances Perkins Building, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 523–7640.

Signed at Washington, DC, this 27th day of February 1989.

**Paula V. Smith,**

*Administrator.*

[FR Doc. 89–5448 Filed 3–8–89; 8:45 am]

BILLING CODE 4510–27–M

**Child Labor Advisory Committee; Subcommittee on Hazardous Occupations Order No. 12**

A meeting of the Child Labor Advisory Committee, Subcommittee on Hazardous Occupations Order No. 12 (HO 12), will be held on April 4, 1989, from 9:00 a.m. to 5:00 p.m. This meeting will be held in Room S–4215C, Frances Perkins Building, Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

The Subcommittee will consider whether changes in design and technology have increased/decreased the hazards of prohibited machinery; whether the machinery should be subject to the prohibitions of HO 12 regardless of the type of material being processed; and whether the paper shredder should be included in the prohibitions of this HO.

Members of the public are invited to attend these proceedings; however, since these are work sessions, seating is limited. Written data, reviews or arguments pertaining to the business before the Subcommittee must be received by Ms. Nila Stovall, Chief, Branch of Child Labor Programs, on or before March 21, 1989. Twenty-six copies are needed for distribution to the members and for inclusion in the Subcommittee Report. Telephone inquiries and communications concerning this meeting should be directed to Ms. Stovall, Room S–3510, Frances Perkins Building, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 523–7640.

Signed at Washington, DC, this 27th day of February 1989.

**Paula V. Smith,**

*Administrator.*

[FR Doc. 89–5449 Filed 3–8–89; 8:45 am]

BILLING CODE 4510–27–M

## NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

**Agency Information Collection Under OMB Review**

**AGENCY:** National Endowment for the Humanities.

**ACTION:** Notice.

**SUMMARY:** The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

**DATES:** Comments on this information collection must be submitted on or before April 10, 1989.

**ADDRESSES:** Send comments to Ms. Ingrid Reyes, Management Assistant, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, (202–786–0233) and Mr. Jim Houser, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Room 3208, Washington, DC 20503 (202–395–7316).

**SUPPLEMENTARY INFORMATION:** All of the entries are grouped into new forms, revisions, or extensions. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what form will be used for; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to fill out the form. None of these entries is subject to 44 U.S.C. 3504(h).

**FOR FURTHER INFORMATION CONTACT:** Ms. Ingrid Reyes, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (202) 786–0233 from whom copies of forms and supporting documents are available.

*Category:* Revision.

*Title:* Panelist's Review Comments.

*Form Number:* 3136–0064.

*Frequency of Collection:* 1 per year from each respondent for each proposal.

*Respondents:* Panelists who evaluate proposals.

*Use:* To collect information that reflects a panelist's evaluation and rating of a proposal. The information is used to determine which grants should receive funding, and is provided (without names or other identifying information) to rejected applicants upon written request.

*Estimated Number of Respondents:* 56 per year.

*Frequency of Response:* Annually.

*Estimated Hours for Respondents to Provide Information:* 1 hour per proposal: includes time spent reading the proposal and writing evaluation on the "Panelist's Review Comments" Form.

*Estimated Total Annual Reporting and Recording Burden:* 1400.

**Susan Metts,**

*Assistant Chairman for Administration.*

[FR Doc. 89–5516 Filed 3–8–89; 8:45 am]

BILLING CODE 7536–01–M

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 72–3 (50–261)]**

**Environmental Assessment and Finding of No Significant Impact Related to Amendment of Materials License SNM–2502; Carolina Power and Light Co.**

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 4 to Materials License No. SNM–2502 held by the Carolina Power and Light Company (CP&L) for the receipt and storage of spent fuel at the H. B. Robinson Independent Spent Fuel Storage Installation (ISFSI) located on the H. B. Robinson Steam Electric Plant Unit No. 2 site, Darlington County, South Carolina. The amendment is effective as of the date of issuance.

The amendment revises the Technical Specifications concerning the removable beta and gamma contamination limit on the storage canister and associated surveillance requirements to assure that the limit is not exceeded.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended, and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of the amendment was published in the **Federal Register** on November 2, 1988 (53 FR 44262).



**Environmental Assessment**

Identification of Proposed Action: By letter, dated August 11, 1988, and revised on September 9, 1988, CP&L requested an amendment to its Materials License No. SNM–2502 for the H. B. Robinson ISFSI. The amendment increases the limit in Technical Specification (TS) 2.4 for beta and gamma contamination on the surface of the Dry Shielded Canister (DSC) from the current limit to 220,000 disintegrations per minute per 100 square centimeters (dis/min/100 $cm^2$); a factor of ten increase. Corresponding changes in TS 4.5.1, Surveillance Requirements, are also made to provide assurance that the contamination limit is not exceeded.

*The Need for the Proposed Action*

The need for the increase in the removable beta and gamma contamination limit for the surface of the DSC was discovered as a result of preoperational tests conducted by CP&L, before loading spent fuel into the ISFSI. During preoperational heat transfer tests, contamination surveys of the IF300 shipping cask, used to transfer the DSC to the ISFSI, indicated that the internal surfaces of the drain line exceeded the previous limit for beta and gamma contamination on the surface of the DSC. The residual contamination in the shipping cask drain line was a result of previous spent fuel shipments conducted in accordance with 10 CFR Part 71. CP&L has taken measures to decontaminate the interior of the IF300 shipping cask and to remove and replace portions of the contaminated drain line to reduce the potential for the amount of contamination available for transfer to the outer surface of the DSC. Although the preoperational tests indicated that heat induced leaching of this contamination did not transfer to the DSC surface in levels that would exceed the previous limit, considering the potential for greater transfer of contamination than was previously anticipated, and increasing the beta and gamma contamination limit to account for this potential, is prudent and provides greater operational flexibility.

*Environmental Impacts of the Proposed Action*

The NRC staff has previously assessed the environmental impacts of the H. B. Robinson ISFSI in the "Environmental Assessment Related to the Construction and Operation of the H. B. Robinson Independent Spent Fuel Storage Installation," March 1986, and published a Finding of No Significant Impact in the **Federal Register** on April 8, 1986 (51 FR 12006). For this amendment, the NRC Staff evaluated the potential consequences from the release of radioactive material as a result of higher beta and gamma contamination levels on the outer surface of the DSC and found that the resultant inhalation dose at the site boundary, due to the release from all eight DSCs stored at the ISFSI, to be about $4\times10^{-6}$ Rem effective dose equivalent. The inhalation dose to the nearest resident would be about $3\times10^{-6}$ mrem. The effective dose equivalent from all airborne pathways is expected to be about 0.007 mrem. This dose is a small fraction of the 0.4 mrem/yr dose to the nearest resident estimated for ISFSI operations in the original EA cited above. Because the allowable contamination on the surface of the DSC is contained inside the IF300 shipping cask during the transfer to the ISFSI storage modules, no additional worker exposure is anticipated.

*Conclusion*

Based on the foregoing assessment, the NRC staff concludes that this revision of the Technical Specifications does not involve any changes in the scope or type of operations presently authorized and that the change in beta and gamma contamination limit (1) does not result in a significant offsite release of radioactive material, (2) does not result in any significant increase in individual or occupational exposure, and (3) does not result in a significant increase in the potential for or consequences from radiological accidents. Therefore, the staff concludes that the proposed action will not result in any significant environmental impacts.

*Alternative to the Proposed Action*

The principal alternative to the proposed action is that of no action. In view of the foregoing conclusion that the proposed action will not result in any significant impact, the preference of this alternative over the proposed action is not justified.

*Alternative Use of Resources*

Because the proposed action does not involve any changes in the scope or type of operations presently authorized, there are no alternative uses of resources other than those previously assessed.

*Agencies and Persons Contacted*

The Commission's staff did not contact any other agencies or individuals in connection with the preparation of this EA.

**Finding of No Significant Impact**

Based on the foregoing Environmental Assessment, the Commission has determined not to prepare an Environmental Impact Statement and has determined that a Finding of No Significant Impact is appropriate.

The August 11, 1988, application and the September 9, 1988, revision related to the proposed action along with the "Environmental Assessment Related to the Construction and Operation of the H. B. Robinson Independent Spent Fuel Storage Installation," March 1986, are available for public inspection and copying at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555.

Dated at Rockville, Maryland, this 2nd day of March 1989.

For the Nuclear Regulatory Commission.

**John P. Roberts,**

*Acting Chief, Fuel Cycle Safety Branch, Division of Industrial and Medical Nuclear Safety, NMSS.*

[FR Doc. 89–5510 Filed 3–8–89; 8:45 am]

BILLING CODE 7590–01–M

**Nuclear Fuel Cycle Licensee Workshop**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of workshop meeting with fuel cycle facility licensees.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) will sponsor a nuclear fuel cycle licensee workshop to bring together NRC officials and fuel cycle licensee representatives to discuss various NRC programs and policies and to aid in the management and implementation of radiological safety programs at fuel cycle facilities.

**DATES:** Workshop will be sponsored on May 3, 1989, from 8 a.m. to 5 p.m. and on May 4, 1989, from 8 a.m. to 2 p.m.

**ADDRESS:** Holiday Inn, 8120 Wisconsin Avenue, Bethesda, Maryland.

**FOR FURTHER INFORMATION CONTACT:** Edwin Flack, Office of Nuclear Material Safety and Safeguards, (301) 492–0405 or George Bidinger, Office of Nuclear Material Safety and Safeguards, (301) 492–0683.

**SUPPLEMENTARY INFORMATION:** The workshop is designed to provide information on NRC policy and procedures applicable to fuel cycle licensees, develop an understanding of NRC program objectives, and provide an update on certain pending issues and policy matters. The workshop agenda will include such topics as critically specialist training, new Part 20

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implementation, new Branch Technical Positions, decommissioning rule/financial planning, and the Team Assessment Program.

Dated at Rockville, Maryland, this 28th day of February 1989.

For the Nuclear Regulatory Commission.

Leland C. Rouse,

*Chief, Fuel Cycle Safety Branch, Division of Industrial and Medical Nuclear Safety, NMSS.*

[FR Doc. 89-5512 Filed 3-8-89; 8:45 am]

BILLING CODE 7590-01-M

**Advisory Committee on Nuclear Waste; Meeting**

The Advisory Committee on Nuclear Waste (ACNW) will hold a meeting on March 23-23, 1989, Room P-110, 7920 Norfolk Avenue, Bethesda, MD. Portions of this meeting will be closed to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy 5 U.S.C. 552b(c)(6). Notice of this meeting was published in the **Federal Register** on February 22, 1989 (54 FR 7620).

**Wednesday and Thursday, March 22-23, 1989—8:30 a.m.–5:00 p.m.**

1. Licensing Support System—Briefing on the development of the Licensing Support System for the High-Level Waste Repository (Open)

2. An update on the issue of mixed waste. Discussion of the issues involved in the disposal of wastes that contain both hazardous and radioactive constituents. (Open)

3. Discussion of a Division of High-Level Waste Management and Office of Nuclear Regulatory Research memorandum of understanding concerning performance assessment and status of activities. (Open)

4. An Administrative-Executive Session to discuss future schedules, ACNW discussions of critical issues related to the high-level waste repository, preparation of ACNW reports, new members, and other administrative matters. (Open/Closed)

5. The Committee will hear a discussion on the Center for Nuclear Waste Regulatory Analysis (CNWRA) related to the status of technical studies being conducted. (Open)

6. An update on the Site Characterization Plan including discussion of concerns regarding time limitations on data gathering. (Open)

7. Briefing by DOE on Site Characterization Study Plans. (Open)

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on June 6, 1988 (53 FR 20699). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. The Office of the ACRS is providing Staff support for the ACNW. Persons desiring to make oral statements should notify the Executive Director of the Office of the ACRS as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the Executive Director of the Office of the ACRS, Mr. Raymond F. Fraley (telephone) 301/492-4516), prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

Dated: March 6, 1989.

John C. Hoyle,

*Advisory Committee Management Officer.*

[FR Doc. 89-5511 Filed 3-8-89; 8:45 am]

BILLING CODE 7590-01-M

**Docket No. 030-19788, License No. 12-21101-01, EA 88-290]**

**American Testing and Inspection, Inc.; Order To show Cause Why License Should not be Revoked and Order Suspending License (Effective Immediately)**

I

American Testing and Inspection, Inc. (ATI) Joliet, Illinois (the licensee) was the holder of Byproduct Material License No. 12-21101-01 which was issued by the Nuclear Regulatory Commission (NRC or Commission) on September 12, 1982, and which authorized ATI to possess and use licensed byproduct material to perform industrial radiography at field locations. The licensee continued to operate under NRC jurisdiction until June 1, 1987 at which time Illinois became an Agreement State and assumed regulatory jurisdiction over ATI for all work performed in the State of Illinois. In accordance with 10 CFR 150.20, ATI is authorized to possess and use licensed byproduct material to perform industrial radiography in non-agreement states. ATI's Illinois license, IL-01065-01, issued on January 6, 1988, is due to expire on August 31, 1992, at which time its authorization under the Commission's regulations would also terminate.

II

On March 24, 1987, the NRC Region III Office received several allegations of violations of NRC regultaory requirements during radiographic field operations at ATI. The allegers met with members of the technical staff in the NRC Region III office on March 25, 1987 and stated that ATI was willfully operating in violation of NRC license conditions. The NRC conducted an inspection of the ATI radiography program during the period March 25 through July 28, 1987 in response to the allegations. The inspection substantiated the allegations and concluded that ATI used unqualified radiographers, failed to complete and maintain utilization logs, and failed to perform quarterly field audits of radiographic operations. Since it was alleged that the violations were willful, the matter was referred to the NRC Region III Office of Investigations (OI) on April 21, 1987.

An investigation was conducted and in its report, dated August 31, 1988, OI sustantiated the allegations. It was concluded that ATI willfully used unqualified radiographers in violation of 10 CFR 34.31 on at least three occasions, as follows: An ATI employee who had not completed the required radiographer's training performed radiography on July 1, 1986, at the direction of the President (who is also the Radiation Safety Officer (RSO)) of ATI, and another ATI employee who was not trained as a radiographer performed radiography on February 3 and March 13, 1987. Further evidence revealed that the RSO of ATI was aware that this employee had performed radiography on these occasions even though the employee was not qualified as a radiographer.

The allegation that employees willfully failed to complete and maintain current utilization logs in violation of 10 CFR 34.27 was also substantiated. ATI also violated the record keeping requirements of 10 CFR 34.28, 34.33, and 34.43 which could have been satsified by properly completed utilization logs. evidence revealed that, contrary to 10 CFR 34.27, some NRC-required utilization logs were not completed until months after the jobs were completed. Further evidence revealed that the RSO personally failed to complete utilization logs between January 1986 and March 1987, even though he had regularly performed radiography during that time. It was determined that when utilization logs were completed late, employees fabricated lost information in the backfitted logs.

It was substantiated that the ATI RSO willfully failed to perform documented quarterly field audits for two employees, as required by License Condition No. 16 of ATI's NRC license. It was determined that one ATI employee had not been field audited for the fourth quarter of 1986, and another employee had not been field audited for the third and fourth quarters of 1986. The RSO stated that the latter employee had not been audited because he was not working as a radiographer the third and fourth quarters of 1986. This was subsequently determined to be a false statement as evidence revealed the individual had performed radiography in those two quarters. It was also determined that on August 27, 1986 the RSO willfully falsified documentation of a field audit for an ATI radiographer. Evidence revealed that the radiographer was not at the job site on the date that the RSO had documented the field audit.

On January 5, 1989, the State of Illinois performed an inspection at ATI. An NRC inspertor accompanied the State of Illinois inspector. During the inspection, the NRC inspector identified that on 55 occasions from January 13 to December 20, 1988, ATI violated the provisions of reciprocity as stated in 10 CFR 150.20(b)(1). Specifically, ATI failed to notify the Regional Administrator of USNRC Region III, either by telephone or by filing copies of Form-241 at least 3 days before engaging in licensed activities, requesting authorization to conduct such activities. ATI thus denied the NRC an opportunity to inspect the licensee's activities in Indiana, a non-Agreement state.

In Summary, evidence revealed that the RSO of ATI knowingly and willfully violated NRC regulatory requirements or knowingly and willfully permitted them to be violated. Additionally, the RSO made material false statements to the NRC by denying he was responsible for sending unqualified radiographers to perform radiography for ATI. The RSO made additional false statements to the NRC by stating that a field audit was not completed because the radiographer was not employed during two quarters, when the radiographer had, in fact, performed radiography during both quarters. The RSO made additional false statements by falsifying an NRC-required radiographer field audit.

Finally, ATI has violated the NRC's requirements under a general license granted pursuant to 10 CFR 150.20.

III

ATI is now licensed by Illinois, an Agreement State. 10 CFR 150.20 provides that any person holding a specific license from an Agreement State where the licensee maintains an office for directing the licensed activity is granted a general license to conduct the same activity in non-Agreement States, provided that the specific license does not limit authorized activities to specified installations or locations, the licensee complies with certain regulations specified including 10 CFR Parts 19 and 20 and Subpart B of 10 CFR Part 34, and that, at least 3 days before engaging in licensed activities in a non-Agreement state, the licensee either files copies of Form-241, or notifies by telephone the Regional Administrator of the NRC region in which the Agreement State that issued the license is located. Due to the nature of the violations and ATI's apparent liability or unwillingness to comply with regulatory requirements, the NRC lacks reasonable assurance that, in the future, ATI will conduct industrial radiography in accordance with regulatory requirements whenever it performs licensed activities in states which are under NRC jurisdiction (non-Agreement States). Accordingly, I have determined that ATI must show cause why its authorization (10 CFR 150.20) to possess and use byproduct material for industrial radiography in non-Agreement States under a general license should not be revoked.

Furthermore, I find that ATI willfully committed the violations stated in section II of this Order. On this basis, and because I find the public health, safety, and interest so requires, pursuant to 10 CFR 2.202(f), this order is effective immediately pending further order.

IV

Accordingly, in view of the foregoing and pursuant to sections 81, 161b, 161c, 161o, 161i, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and Parts 30 and 150, It is hereby ordered, Effective Immediately, That:

A. The general license granted to American, Testing and Inspection, Inc. by 10 CFR 150.20 is suspended.

B. American Testing and Inspection Company, Inc. of Joliet, Illinois shall show cause, in a manner hereinafter provided, why its general license under the provisions of 10 CFR 150.20 should not be revoked and why ATI should not be prohibited from conducting industrial radiography in non-Agreement States.

V

Pursuant to 10 CFR 2.202(b), the licensee may show cause why its general license should not be revoked by filing a written answer under oath or affirmation within 20 days of the date of issuance of this Order, setting forth the matters of fact and law on which the licensee relies to demonstrate that revocation of the license is not warranted. The licensee may answer, as provided in 10 CFR 2.202(d), by consenting to the entry of an order in substantially the form proposed in this Order, in which case the license will be revoked as stated in section IV. If the licensee fails to file an answer within the specified time, the Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support may issue, without further notice, an Order as described above.

VI

The licensee or any other person adversely affected by this Order may request a hearing within 20 days of this Order. Any answer to this Order and any request for a hearing shall be submitted to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies shall also be sent to the Assistant General Counsel for Enforcement, Office of the General Counsel, at the same address, and to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region III, 799 Roosevelt Road, Glen Ellyn, Illinois 60137. If a person other than the licensee requests a hearing, that person shall set forth with particularity the manner in which the petitioner's interest is adversely affected by this Order and should address the criteria set forth in 10 CFR 2.714(d). An answer to this order or a request for hearing shall not stay the immediate effectiveness of this order.

If a hearing is requested by the licensee or a person whose interest is adversely affected, the Commission shall issue on Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at the hearing shall be whether this Order should be sustained.

For the Nuclear Regulatory Commission.

**Hugh L. Thompson, Jr.,**

*Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support.*

Dated at Rockville, Maryland, this 27th day of February 1989.

[FR Doc. 89-5513 Filed 3-8-89; 8:45 am]

BILLING CODE 7590-01-M

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[Docket Nos. 50-369 and the 50-370]

**Duke Power Co.; Issuance of Amendments to Facility Operating Licenses**

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 93 to Facility Operating License No. NPF-9, and Amendment No. 74 to Facility Operating License No. NPF-17 issued to Duke Power Company, (the licensee) which revised the Technical Specifications (TS) for operation of the McGuire Nuclear Station, Units 1 and 2, (the facility) located in Mecklenburg County, North Carolina. The amendments were effective as of the date of issuance.

The amendments change TS 3/4 7.13, "Groundwater Level" to eliminate inconsistencies between the TS and the capabilities of the groundwater monitoring system as installed.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments.

Notice of Consideration of Issuance of Amendments and Opportunity for Hearing in connection with this action was published in the **Federal Register** on April 21, 1988 (53 FR 18206). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has concluded that an environmental impact statement is not warranted and that the issuance of these amendments will not have a significant adverse effect on the quality of the human environment. (54 FR 8850)

For further details with respect to the action see (1) the application for amendments dated January 27, 1988, as supplemented April 28, June 21, and August 25, 1988, (2) Amendment No. 93 to License No. NPF-9 and Amendment No. 74 to License No. NPF-17 and (3) the Commission's related Safety Evaluation and Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects I/II.

Dated at Rockville, Maryland, this 2nd day of March 1989.

For the Nuclear Regulatory Commission.

**Darl S. Hood,**

*Project Manager, Project Directorate II-3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 89-5514 Filed 3-8-89; 8:45 am]

BILLING CODE 7590-01-M

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[Docket No. 50-412]

**Duquesne Light Co. et. al.; Beaver Valley Power Station, Unit No. 2; Withdrawal of Amendment to Facility Operating License**

In the matter of Duquesne Light Co., Ohio Edison Co., the Cleveland Electric Illuminating Company, the Toledo Edison Company.

The U.S. Nuclear Regulatory Commission (the Commission) has denied a request by Duquesne Light Company, (licensee) for an amendment to Facility Operating License No. NPF-73, issued to the licensee for operation of the Beaver Valley Power Station, Unit No. 2, located in Beaver County, Pennsylvania. Notice of Consideration of Issuance of this amendment was published in the **Federal Register** on January 25, 1988 (53 FR 1998).

The purpose of the licensee's amendment request was to revise the Technical Specifications (TS) to reduce the number of incore instrument thimbles required operable during the first fuel cycle.

Subsequently the licensee informed the staff that all such thimbles were repaired and were therefore operable. The requested amendment was no longer needed, and is considered withdrawn by the licensee.

For further details with respect to this action, see (1) the application for amendment dated January 13, 1988, and (2) the staff's letter dated March 1, 1989.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington DC and at the B.F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, PA 15001.

Dated at Rockville, Maryland, this 1st day of March, 1989.

For the Nuclear Regulatory Commission.

**Peter S. Tam,**

*Senior Project Manager, Project Directorate I-4, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 89-5515 Filed 3-8-89; 8:45 am]

BILLING CODE 7590-01-M

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**SECURITIES AND EXCHANGE COMMISSION**

**Forms Under Review by the Office of Management and Budget**

*Agency Clearance Officer:* Kenneth A. Fogash, (202) 272-2142.

*Upon Written Request Copy Available From:* Securities and Exchange Commission, Office of Consumer Affairs, 450 Fifth Street NW., Washington, DC 20549.

**Extension**

Rule 15c2-11
No. 270-196

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval rule 15c2-11 (17 CFR 240.15c2-11) under the Securities Exchange Act of 1934 (15 U.S.C. 78 et seq.) which regulates the initiation or resumption of quotations in a quotation medium by a broker-dealer for over-the-counter securities. Brokers and dealers incur an estimated average burden of eight hundred hours in order to comply with this rule.

The estimated average burden hours are made solely for purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even representative summary or study of the cost of SEC rules and forms.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with SEC rules and forms to Kenneth A. Fogash, Deputy Executive Director, 450 Fifth Street NW., Washington, DC 20549-6004, and Gary Waxman, Clearance Officer, Office of Management and Budget, Paperwork Reduction Act Project (3235-0196) Room 3208 New Executive Office Building, Washington, DC 20543.

**Jonathan G. Katz,**

*Secretary.*

March 1, 1989.

[FR Doc. 89-5479 Filed 3-7-89; 8:45 am]

BILLING CODE 8010-01-M

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[File 500-1]

**Acrotech, Inc. et al.; Order of Suspension of Trading**

March 6, 1989.

It appears to the Securities and Exchange Commission that there is a lack of adequate current information concerning the securities of Acrotech, Inc., Advanced Technical Systems, Inc., Ameritex, Inc., Ayin Corporation, Centre Laboratories, Inc., Iosotonix Inc., OmniSource, Inc., and Primeritexx, Inc., and that questions have been raised about the adequacy and accuracy of publicly disseminated information concerning, among other things, the companies' business, operations, products, and claims for exemptions from the registration provisions of the Securities Act of 1933 pursuant to which their securities are trading. The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that trading in the above-listed companies, over-the-counter or otherwise, is suspended for the period from 9:00 a.m. (e.s.t.), March 7, 1989 through 11:59 p.m. (e.s.t.), on March 16, 1989.

By the Commission.

**Shirley E. Hollis,**

*Assistant Secretary.*

[FR Doc. 89-5520 Filed 3-8-89; 8:45am]

BILLING CODE 8010-01-M

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[File No. 500-1]

**U.S.A. Medical Corp.; Order of Suspension of Trading**

March 6, 1989.

It appears to the Securities and Exchange Commission that there is a lack of adequate and accurate current information concerning the securities of USA Medical Inc., and that questions have been raised about recent market activity in USA Medical, and about the adequacy and accuracy of publicly disseminated information concerning, among other things, the financial condition of the company, the identities of its shareholders, and the beneficial ownership and control of the company's shares. The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that trading in the above-listed company, over-the-counter or otherwise, is suspended for the period from 9:30 a.m. EST, March 6, 1989 through 11:59 p.m. EST, on March 15, 1989.

By the Commission.

**Shirley E. Hollis,**

*Assistant Secretary.*

[FR Doc. 89-5480 Filed 3-8-89; 8:45 am]

BILLING CODE 8010-01-M



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**DEPARTMENT OF TRANSPORTATION**

**Federal Highway Administration**

**Environmental Impact Statement; Maricopa County, AZ**

**AGENCY:** Federal Highway Administration, (FHWA), DOT.

**ACTION:** Notice of intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Maricopa County, Arizona.

**FOR FURTHER INFORMATION CONTACT:** Kenneth H. Davis, District Engineer, Federal Highway Administration, 234 North Central Avenue, Suite 330, Phoenix, AZ 85004. Telephone: (602) 261-3648.

**SUPPLEMENTARY INFORMATION:** The FHWA, in connection with the Arizona Department of Transportation, will prepare an environmental impact statement (EIS) on a proposal to improve State Route 87 in Maricopa County, Arizona. The proposed improvement would widen the existing two-lane highway to four traffic lanes (including some sections where the roadways would be split) for a distance of approximately 25 miles. An additional two traffic lanes are needed to meet current, as well as future, traffic demand. In addition, the existing highway was constructed in 1953 and does not meet current standards in terms of geometrics and safety.

Several location alternatives are being considered, including the "no action" alternative. The "build" alternatives include design variations of grade and alignment, as well as a variety of environmental issues.

Letters describing the proposed action and soliciting comments have been sent to appropriate Federal, State, and local agencies and to private interest groups. Two public information meetings were held in early 1988. Upon completion of the draft EIS, one or more public hearings will be held. A formal scoping meeting was held on February 7, 1989.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments are invited from all interested parties. Comments or questions concerning this proposed action and EIS should be directed to the Federal Highway Administration at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal Programs and activities apply to this program.)

Issued on: March 3, 1989.

**Kenneth H. Davis,**

*District Engineer, Phoenix, Arizona.*

[FR Doc. 89-5534 Filed 3-8-89; 8:45 am]

BILLING CODE 4910-22-M

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**Environmental Impact Statement; Mecklenburg County, NC**

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Rescind notice of intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that an environmental impact statement will not be prepared for a proposed highway project in Mecklenburg County, North Carolina.

**FOR FURTHER INFORMATION CONTACT:** Mr. J. Max Tate, District Engineer, Federal Highway Administration, 4505 Falls of the Neuse Road, P.O. Box 26806, Raleigh, North Carolina 27611, Telephone (919) 790-2852.

**SUPPLEMENTARY INFORMATION:** A Notice of Intent to prepare an Environmental Impact Statement (EIS) for a proposed highway project to improve U.S. 521 in Mecklenburg County, North Carolina, was issued on January 6, 1989 and published in the January 13, 1989 **Federal Register.** The FHWA, in cooperation with the North Carolina Department of Transportation, has since determined that preparation of an EIS is not necessary for this proposed highway project and hereby rescinds the previous Notice of Intent. (Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: February 28, 1989

**J. Max Tate,**

*District Engineer, Raleigh, North Carolina.*

[FR Doc. 89-5463 Filed 3-8-89; 8:45 am]

BILLING CODE 4910-22-M

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**OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE**

**Advisory Committee for Trade Policy and Negotiations Services Policy Advisory Committee; Meetings and Determination of Closing of Meetings**

The meetings of the Advisory Committee for Trade Policy and Negotiations to be held March 14, 1989 from 1:30 p.m. to 4:30 p.m., in Washington, DC, and the Services Policy Advisory Committee to be held March 15, 1989 from 9:00 a.m. to 1:00 p.m., in Washington, DC, will include the development, review and discussion of current issues which influence the trade policy of the United States. Pursuant to section 2155(f)(2) of Title 19 of the United States Code, I have determined that these meetings will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions.

More detailed information can be obtained by contacting Barbara W. North, Director, Office of Private Sector Liaison, Office of the United States Trade Representative, Executive Office of the President, Washington, DC 20506.

**Carla A. Hills,**

*United States Trade Representative.*

[FR Doc. 89-5443 Filed 3-8-89; 8:45 am]

BILLING CODE 3190-01-M



# Sunshine Act Meetings

**Federal Register**
Vol. 54, No. 45
Thursday, March 9, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**U.S. COMMISSION ON CIVIL RIGHTS**

March 7, 1989.

**PLACE:** 1121 Vermont Avenue, NW., Room 516, Washington, DC 20425.

**DATE AND TIME:** Friday, March 17, 1989, 9:00 a.m.–5:30 p.m.

**STATUS OF MEETING:** Portion open to the public and portion closed.

**MATTERS TO BE CONSIDERED:**

**Agenda**

I. Approval of Agenda
II. Approval of Minutes of January Retreat and February Meeting
III. SAC Reports and SAC Recharters
*Minority and Women's Business Enterprise Programs in Alaska*
*Handicap Protection for AIDS Victims in Washington, DC*
*Civil Rights Issues In Maine* (submitted in February)
*Implementation in New Mexico of the Immigration Reform and Control Act: A Preliminary Review*
*Implementation in Rhode Island of the Immigration Reform and Control Act: A Preliminary Review*
District of Columbia SAC Recharter
Arkansas SAC Interim Appointment
Iowa SAC Interim Appointment
IV. Staff Director's Report
A. Discussion of *New Perspectives*
B. Discussion of Memorandum on Press Coverage
C. Commission Reauthorization Process
D. Civil Rights Enforcement Monitoring
V. Subcommittee Reports
VI. Future Agenda Items
VII. Commissioner Destro's Inquiry about Chairman Allen's Visit to White Mountain Reservation
VIII. Executive Session closed to the public at end of morning session to discuss personnel matters

**PERSON TO CONTACT FOR FURTHER INFORMATION:** John Eastman, Press and Communications Division, (202) 376–8312.

**Melvin L. Jenkins**

*Acting Staff Director.*

[FR Doc. 89-5573 Filed 3-7-89; 2:19 p.m.]

BILLING CODE 6335-01-M

**U.S. COMMISSION ON CIVIL RIGHTS**

March 7, 1989.

**PLACE:** 1121 Vermont Avenue, NW., Room 516, Washington, DC 20425.

**DATE AND TIME:** Friday, March 17, 1989, 1:30 p.m.–5:30 p.m.

**STATUS OF MEETING:** Open to the public

**MATTERS TO BE CONSIDERED:**

**Agenda**

Immigration Briefing

**PERSON TO CONTACT FOR FURTHER INFORMATION:** John Eastman, Press and Communications Division, (202) 376–8312.

**Melvin L. Jenkins,**

*Acting Staff Director.*

[FR Doc. 89-5574 Filed 3-7-89; 2:19 pm]

BILLING CODE 6335-01-M

**FEDERAL DEPOSIT INSURANCE CORPORATION**

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5. U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Tuesday, March 14, 1989, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 47,283
Knoxville Consolidated Office, Knoxville, Tennessee

Memorandum re: Delegations of Authority relating to certain Corporation activities.

Reports of action approved by the standing committees of the Corporation and by officers of the Corporation pursuant to authority delegated by the Board of Directors.

Discussion Agenda:

Memorandum and resolution re: Final amendments to Part 303 of the Corporation's rules and regulations, entitled "Applications, Requests, Submittals, Delegations of Authority, and Notices of Acquisition of Control," and Part 346 of the Corporation's rules and regulations, entitled "Foreign Banks," which amendments affect the deposit insurance requirement, the capital equivalency requirement, the country exposure provision, the pledge of assets requirement, and the delegations of authority concerning it, as well as miscellaneous provisions throughout the regulation.

Memorandum and resolution re: Final Statement of Policy on Risk-Based Capital which: (1) Establishes a risk-based capital framework that is more sensitive than the current leverage ratios to risk factors, including off-balance sheet exposures; (2) encourages international banks to strengthen their capital positions; and (3) mitigates a source of competitive inequity arising from different supervisory capital requirements across countries.

Memorandum and resolution regarding the Corporation's budget for 1989.

Preliminary review of the Corporation's unaudited 1988 financial position.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550-17th Street NW., Washington, DC.

Requested for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–3813.

Dated: March 6, 1989.

**Federal Deposit Insurance Corporation.**

**Hoyle L. Robinson,**

*Executive Secretary.*

[FR Doc. 89-5540 Filed 3-7-89; 10:15 am]

BILLING CODE 6714-01-M

**FEDERAL DEPOSIT INSURANCE CORPORATION**

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Tuesday, March 14, 1989, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors

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requests that an item be moved to the discussion agenda.

Application for Federal deposit insurance:

1st San Diego Thrift and Loan Company, a proposed new industrial bank to be located at 3755 Sixth Avenue, San Diego, California

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), and (c)(9)(A)(ii).

Note: Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Memorandum relating to a request for financial assistance pursuant to section 13(c) of the Federal Deposit Insurance Act

Reports of the Director, Office of Corporate Audits and Internal Investigations:

Audit Report re: Crossroads Bank Assistance Agreement, (Memo dated January 27, 1989)

Audit Report re: San Jose Consolidated Office, Cost Center-604, (Memo dated January 18, 1989)

Audit Report re: Bossier City Consolidated Office, Cost Center-105, (Memo dated February 17, 1989)

Audit Report re: Orlando Consolidated Office, Cost Center—104, (Memo dated February 17, 1989)

Discussion Agenda:

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2) and (c)(6)).

Matters relating to the possible closing of certain insured banks:

Names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550–17th Street, N.W., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–3813.

Dated: March 6, 1989.

Federal Deposit Insurance Corporation.

**Hoyle L. Robinson,**

*Executive Secretary.*

[FR Doc. 89–5541 Filed 3–7–89 10:15 am]

BILLING CODE 6714–01–M

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**FEDERAL ELECTION COMMISSION**

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**"FEDERAL REGISTER" NO. 89–4077.**

**PREVIOUSLY ANNOUNCED DATE AND TIME:** Tuesday, March 7, 1989, 2:00 p.m.

By direction of the Federal Election Commission, the Closed Meeting scheduled to convene at 2:00 p.m. on Tuesday, March 7, 1989, will convene at 10:00 a.m.

**DATE AND TIME:** Tuesday, March 14, 1989, 10:00 a.m.

**PLACE:** 999 E Street, NW., Washington, DC.

**STATUS:** This meeting will be closed to the public.

**ITEMS TO BE DISCUSSED:**

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

**DATE AND TIME:** Thursday, March 16, 1989, 10:00 a.m.

**PLACE:** 999 E Street, NW., Washington, DC (Ninth Floor).

**STATUS:** This meeting will be open to the public.

**MATTERS TO BE CONSIDERED:**

Setting of Dates for Future Meetings.

Correction and Approval of Minutes.

Certification for Payment of 1988 Primary Matching Funds.

Draft AO 1988–1—Ron Haskins, Congressional Employee

Inspector General—Proposed Classification Administrative Matters

**PERSON TO CONTACT FOR INFORMATION:** Mr. Fred Eiland, Information Officer, Telephone: 202–376–3155.

**Marjorie W. Emmons,**

*Secretary of the Commission.*

[FR Doc. 89–5588 Filed 3–7–89; 3:18 pm]

BILLING CODE 6715–01–M

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**FEDERAL RETIREMENT THRIFT INVESTMENT BOARD**

**TIME AND PLACE:** 9:00 a.m. March 20, 1989.

**PLACE:** 5th Floor, Conference Room, 805 Fifteenth Street, NW., Washington, DC.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:**

1. Approval of minutes to last meeting.
2. Thrift Savings Plan activities report by Executive Director.
3. Proposed legislation on expanded investment options and restoration of lost earnings.

**CONTACT PERSON FOR MORE INFORMATION:** Tom Trabucco, Director, Office of External Affairs, (202) 523–5660.

Dated: March 6, 1989.

**Francis X. Cavanaugh,**

*Executive Director, Federal Retirement Thrift Investment Board.*

[FR Doc. 89–5570 Filed 3–7–89; 11:59 am]

BILLING CODE 6760–01–M

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**POSTAL RATE COMMISSION**

**TIME AND PLACE:** 9:30 a.m. Tuesday, March 14, 1989.

**PLACE:** Commission Hearing Room, 1333 H Street, NW., Suite 300, Washington, DC. 20268–0001

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** Discussion of a Notice of Proposed Rulemaking for Express Mail rate cases, docket No. RM88–2.

**CONTACT PERSON FOR MORE INFORMATION:** Charles L. Clapp, Secretary, Postal Rate Commission, Room 300, 1333 H Street, NW., Washington, DC 20268–0001, Telephone (202) 789–6840.

**Charles L. Clapp,**

*Secretary.*

[FR Doc. 89–5577 Filed 3–7–89; 2:20 pm]

BILLING CODE 7715–01–M

federal register

Thursday
March 9, 1989

Part II

# State Department

**Gifts to Federal Employees From Foreign Governments Reported to Employing Agencies in Calendar Year 1988; Notice**

VOL 54 ISS 45 MR 9 1989 UMI



**DEPARTMENT OF STATE**

**Office of Protocol**

**[Public Notice 1099]**

**Gifts to Federal Employees From Foreign Governments Reported to Employing Agencies in Calendar Year 1988**

The Department of State submits the following comprehensive listing of the statements which, as required by law, Federal employees filed with their employing agencies during calendar year 1988 concerning gifts received from foreign government sources. The compilation includes reports of both tangible gifts and gifts of travel or travel expenses of more than minimal value, as defined by statute.

Publication of this listing in the **Federal Register** is required by section 7342(f) of Title 5, United States Code, as added by section 515(a)(1) of the Foreign Relations Authorization Act, Fiscal Year 1978 (Pub. L. 95-105, August 17, 1977, 91 Stat. 865).

Date: February 24, 1989.

**Ronald I. Spiers,**

*Under Secretary for Management.*

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT

Report of Tangible Gifts

| Name and title of person accepting gift on behalf of the U.S. Government | Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location | Identity of foreign donor and government | Circumstances justifying acceptance |
|---|---|---|---|
| President and First Lady | Artwork: Black lacquered box with centered floral design and bordered floral motif with a hinged lid; 7⅛" square. Archives. Received: December 23, 1988. Est. Value: $375. | His Excellency Yuri V. Dubinin, Ambassador of the Union of Soviet Socialist Republics. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President and First Lady | Photograph: Leather-bound album of 36 black and white photographs of the President and Mrs. Reagan with officials during their visit to Finland, May 1988; album bears royal crest. Archives. Received: December 21, 1988. Est. Value: $391. | His Excellency and Mrs. Harri Holkeri, Prime Minister of Finland. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President and First Lady | Wine: Twelve bottles of German wine, vintages 1976 through 1985. Perishable. Received: January 13, 1989. Est. Value: $360. | His Excellency Dr. Helmut Kohl, Chancellor of the Federal Republic of Germany | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President and First Lady | Flowers: A large arrangement of rubrum lilies, snapdragons, tulips, etc., in a birdsnest basket ($250); Residence; For Official Use/Display Consumables: A large wicker basket of gourmet food delicacies, including a Waterford crystal humidor with a silver-plated top ($590). Archives. Received: March 4, 1988. Est. Value: $840. | His Majesty Hassan II, King of Morocco | Non-acceptance would cause embarrassment to donor and U.S Government. |
| President and First Lady | Household: Pair of sterling silver candlesticks with brushed black columns and bases, bearing the royal Swedish crown and monogram (CGS), 7" high; and a sterling silver bowl, by Yars Fleming, signed, 6" in diameter; both pieces by Borgila silver and housed in blue cases bearing the royal Swedish insignia ($290); Archives. Artwork: Porcelain plaque etched with the tall ship, "Calmare Nyckel," painted in solid silver and bearing the emblem of Carl XVI Gustaf; limited edition No. 2; commemorates the 350th anniversary of the first landing of Swedish immigrants in Wilmington, Delaware; by Royal Gustafsberg; 8⅛" x 13¼" ($150); Archives. Photograph: Color photograph of Their Royal Highnesses Carl XVI Gustaf and Queen Silvia, autographed; displayed in navy blue leather frame with royal crown at top; 11" x 14" ($75). Archives. Received: April 11, 1988. Est. Value: $515. | His Majesty Carl XVI Gustaf, King of Sweden. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President and First Lady | Household: An Orrefors crystal corona bowl, 9" in diameter; engraved on base "To the President and Mrs. Reagan with respect and admiration from the Diplomatic Corps, Washington, D.C." Archives. Received: January 17, 1989. Est. Value: $450. | His Excellency Count Wilhelm Wachtmeister, Dean of the Diplomatic Corps and Ambassador of Sweden. | Non-acceptance would cause embarrassment to donor and U.S. Government. |



AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT—Continued

Report of Tangible Gifts

| Name and title of person accepting gift on behalf of the U.S. Government | Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location | Identity of foreign donor and government | Circumstances justifying acceptance |
|---|---|---|---|
| President and First Lady | Household: A sterling silver box, wood-lined, depicting two elephants and a filigreed border design on lid; 4¼" x 8¼" x 2" deep. Archives. Received: May 9, 1988. Est. Value: $225. | Lieutenant General Saiwaeng Theerasawat, Deputy Director General, The Royal Thai Police Department, Thailand. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President and First Lady | Consumables: Box of Russian chocolates. Perishable. Received: May 29, 1988. Est. Value: $25. | His Excellency Mikhail Gorbachev, General Secretary of the Central Committee of the Communist Party of the Soviet Union. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | Artwork: Wood and ivory plaque, outlining country of Angola, with elephant and gazelle motif, inscription attached; 21⅛" x 27" ($200); Archives. Household: A revolving stand with four circular compartments with lids and a center finial depicting flags of Angola and the United States; ivory and wood; 19" high, 15" in diameter ($250). Archives. Received: June 30, 1988. Est. Value: $450. | Dr. Jonas Savimbi, President, National Union for the Total Independence of Angola. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | Artwork: A carved wooden book, "Friedensbuch" (Peace Book), crafted by Mr. Wilhelm Gonner and signed by Mayor Steinbichler; 12" x 17" x 3"; displayed on a velvet pillow. Archives. Received: August 8, 1988. Est. Value: Indeterminable. | The Honorable Fritz Steinbichler, Mayor of Enns, Austria. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | Artwork: Embroidered tapestry of a village scene of Bangladesh; individually handcrafted and signed by an artisan; serial no. 18 of 250; wood framed, 30" x 42¼". Archives. Received: November 18, 1988. Est. Value: $125. | His Excellency Hussain Muhammad Ershad, President of the People's Republic of Bangladesh. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | Household: A crystal bowl with cobalt blue design on a square pedestal base bearing the royal crown, made by Val St. Lambert; 12½" in diameter, 10¼" tall. Archives. Received: March 1, 1988. Est. Value: $5000. | His Majesty Baudouin I, King of the Belgians. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | Award: Meritorious Diploma and Award (a parchment certificate and a medal on ribbon). Archives. Received: October 28, 1988. Est. Value: Indeterminable. | The Honorable Marcilio Marques Botti, Municipal Mayor of Lamberi, Brazil. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | Artwork: Color print of the caricatures of the eight participants in the 1988 Economic Summit in Toronto; limited edition by artist Philip Mallette; matted under glass in aluminum frame; 7" and 15" print; 11½" x 19" overall. Archives. Received: December 6, 1988. Est. Value: Indeterminable. | The Honorable Monte Kwinter, Minister of Industry, Trade and Technology, Canada. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | Artwork: Green stone carving, "Fish and Bird," by Qaunaq Mikidgak, 1987, Cape Dorset; 9" x 7". Archives. Received: June 19, 1988. Est. Value: $750. | The Right Honorable Brian Mulroney, P.C., M.P., Prime Minister of Canada. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | Photograph: Leather album of 22 color photographs of President Reagan and the other participants in the 1988 Economic Summit in Canada, and other photographs; each photograph is 8" x 10". Archives. Received: June 19, 1988. Est. Value: $321. | The Government of Canada | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | Household: Cinnebar vase with relief design of flowers and a pastoral scene; 12" high. Archives. Received: May 10, 1988. Est. Value: $250. | His Excellency Jiyun Tian, Vice Premier of the State Council of the People's Republic of China. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | Historic Artifacts: Wine jug of bichrome ware, 5th Century B.C.; 8" tall, 5" in diameter at center. Archives. Received: July 29, 1988. Est. Value: Indeterminable. | His Excellency George Vassiliou, President of the Republic of Cyprus. | Non-acceptance would cause embarrassment to donor and U.S. Government. |

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AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT—Continued

Report of Tangible Gifts

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|---|---|---|---|
| President | Photograph: Color photograph of President Balaguer, inscribed; displayed in ivory frame with engraved brass presentation plaque; 12¾" x 10⅛" overall ($600); Archives. Medallions: A 5-oz. gold (900) coin and a 5-oz. silver (.999 proof) coin commemorating the 500th anniversary of the discovery of America (1492–1992); displayed in a wood chest with engraved brass presentation plaque ($300). Archives. Received: March 25, 1988. Est. Value: $800. | His Excellency Joaquin Balaguer, President of the Dominican Republic. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | Artwork: Three watercolor portraits of the President and Mrs. Reagan (one of them together and two separate renderings) on papyrus, mounted and framed in gold-painted wood frames with presentation plaques; one measures 22" × 30" and two measure 19¼" × 23¼". Archives. Received: January 11, 1988. Est. Value: $915. | His Excellency Field Marshall Mohamed Abd El Halim Abu Ghazala, Deputy Prime Minister and Minister of Defense & Military Production of the Arab Republic of Egypt. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | Household: An acrylic Carpet depicting President and Mrs. Reagan's portraits in rust, brown, and black tones; approximately 7 feet, 10 inches by 9 feet, 11 inches ($2,000); Archives. Household: An Egyptian Kilim wool rug depicting a charming scene of a town with relaxe style people and animal figures; 6 feet, 2 inches by 7 feet, 3 inches ($200). Archives. Received: January 28, 1988. Est. Value: $2200. | His Excellency Mohammed Hosni Mubarak, President of the Arab Republic of Egypt. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | Household: Sterling silver plate, engraved "Presented to President Reagan on the occasion of his visit to Great Britain 2 June 1988 by the Rt. Hon. Margaret Thatcher M.P." (a replica of original plate from a service crafted for Queen Elizabeth I from silver taken from the Spanish Armada); 10" in diameter. Archives. Received: June 3, 1988. Est. Value: $600. | The Right Honorable Margaret Thatcher, M.P., Prime Minister, England. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | Artwork: Bronze sculpture, "Arab Mare and Stallion," by Pierre Jules Mene, signed (undated); 21" long × 13" tall × 8" wide; mounted on oval wood base; 22" long × 14" tall × 9" wide overall. Archives. Received: September 29, 1988. Est. Value: $5500. | His Excellency Francois Mitterrand, President of the French Republic. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | Artwork: Figurine of a white glazed porcelain horse, by Nymphenburg; 7" tall. Archives. Received: November 15, 1988. Est. Value: $500. | His Excellency Dr. Helmut Kohl, Chancellor of the Federal Republic of Germany. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | Artwork: Glazed porcelain figurine, 18th Century rider on white stallion with two hunting dogs; marked 1066; 7⅛" × 8⅛" × 3¼". Archives. Received: July 28, 1988. Est. Value: $1000. | His Excellency Dr. Franz Josef Strauss, Minister President of Bavaria, Federal Republic of Germany. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | Artwork: Ivory statuette of a man from Guinea, dressed in a leaf design costume and headdress, signed Y. Siome(?), 22" tall; mounted on a circular ebony base; 26⅛" tall overall. Archives. Received: October 25, 1988. Est. Value: $1500. | His Excellency Brig. General Lansana Conte, President of the Republic of Guinea. | Non-acceptance would cause embarrassment to donor and U.S. Government. |



AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT—Continued

Report of Tangible Gifts

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|---|---|---|---|
| President | Riding Paraphernalia: A black leather harness with brass hardware, a black leather whip, and a black felt riding hat ($250); Archives. Household: Octagonal porcelain vase, handpainted floral and butterfly designs overall on white background, by Herend Hungary, no. 8473 on underside; 21" high, 5" across open mouth, 10" across center top; included is an engraved brass presentation plaque with chain ($6000). Archives. Received: July 27, 1988. Est. Value: $6250. | His Excellency Karoly Grosz, President of the Council of Ministers of the Hungarian People's Republic. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | Household: A Waterford crystal pedestal style bowl with scalloped edge bearing an etched inscription panel, 10" in diameter, 10" tall; and a set of six gold-plated coins each depicting a noted Irish author, "The Shefil Collection," in a leather case with brass fittings ($3110); Archives. Sword: A replica of a Viking sword, commemorating the 1000th anniversary of Dublin, with a simulated ivory handle and an intricately patterned gold-plated design on the blade; mounted on a wood plaque; the sword measures 37" in length ($500). Archives. Received: March 17, 1988. Est. Value: $3610. | His Excellency Padraic N. MacKernan, Ambassador of Ireland. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | Artwork: Bronze (brase-colored) sculpture, "Dove of Peace," by Gila J. Stein, A.P., 1966, signed; 7⅛" long x 4" high x 2⅛" deep; mounted on black wood plaque with presentation plate. Archives. Received: June 28, 1988. Est. Value: $900. | His Excellency Yitzhak Rabin, Minister of Defense of Israel. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | Artwork: An etched brass map depicting Jerusalem as the center of the world, reproduced from an original late 16th Century German map (first published in 1581 by Heinrich Bunting) and displayed in a veneered olivewood frame with presentation plaque; 11½" x 16" map; 17½" x 21" overall. Archives. Received: November 16, 1988. Est. Value: $750. | The Honorable Teddy Kollek, Mayor of Jerusalem. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | Jewelry: Pair of gold and lapis lazuli cuff links by Federico Buccellati. Archives. Received: June 14, 1988. Est. Value: $200. | His Excellency Ciriaco De Mita, President of the Council of Ministers of the Italian Republic. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | Household: A two-part lacquerware rice bowl in flaked arabesque design, 7¾" in diameter and a color photograph of Prime Minister Takeshita, inscribed in Japanese calligraphy, in a sterling silver frame with Japanese seal at top, 8" x 10" ($550); Archives. Artwork: A computer-produced photographic portrait of the President and Mrs. Reagan on fabric, in a gold-colored wood frame. 42½" x 46" overall ($800). Archives. Received: January 13, 1988. Est. Value: $1,350. | His Excellency Noboru Takeshita, Prime Minister of Japan. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | Flowers: Two arrangements—one large display of gerber daisies, dutch iris, bird-of-paradise, and orchids and a small display of mixed spring flowers in a flag vase. Residence; For Official/Use Display. Received: February 5, 1988. Est. Value: $190. | His Majesty Hussein I, King of the Hashemite Kingdom of Jordan. | Non-acceptance would cause embarrassment to donor and U.S. Government. |

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AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT—Continued

Report of Tangible Gifts

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| President | Artifact: An Olympic torch, originally manufactured for the 1988 Games of the XXIVth Olympiad in Seoul; brass on brass and marble base; 21⅛" long overall; displayed in a velvet-covered case. Archives. Received: October 20, 1988. Est. Value: Indeterminable. | His Excellency Roh Tae Woo, President of the Republic of Korea. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | Artwork: A sterling silver model of a Kuwaiti dhow (traditional maritime ship), displayed on black base with silver inscription plaque; 14" x 11" x 4" overall; housed in a double-door case. Archives. Received: July 12, 1988. Est. Value: $1,500. | His Highness Shaikh Saad Al Abdullah Al Salem, Prime Minister and Crown Prince of the State of Kuwait. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | Household: Pedestal cup or container, dark brown wood (mahogany?) centered with carved animal and forest scene; 11⅛" high, 7⅛" in diameter; contained in wood chest. Archives. Received: December 16, 1988. Est. Value: $200. | His Excellency Dr. H. Kamuzu Banda, Life President of the Republic of Malawi. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | Artwork: Two "Clowns" masks (two figures of gazelles) handcarved of ebony on stands with inscribed plaques; each 20" tall; enclosed in a brown leather carrying case with outline of Mali on cover; case is 16¾" x 22¾" x 6¾". Archives. Received: October 6, 1988. Est. Value: $600. | His Excellency General Moussa Traore, President of the Republic of Mali. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | Artwork: A sterling silver plaque reproducing a section from the American Liberty Bell, in dark wood frame with engraved presentation plate; 10½" x 13" housed in a cherrywood presentation case with engraved plaque on lid. Archives. Received: July 13, 1988. Est. Value: $500. | The Honorable Dr. Edward Fenech Adami, Prime Minister of the Republic of Malta. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | Artwork: A bronze sculpture entitled "Caballos Peleando" (Fighting Horses) by Hermilo Ramirez, signed, 1987; no. 1798; mounted on an oval marble base; 12" x 14" x 13" overall ($950); Archives.<br>Book: A photographic compilation entitled "Mexico Lindo" (Beautiful Mexico) by Jose Pablo Fernandez Cueto, published by Presidencia de la Republica, 1987 ($30); Archives. Photograph: Leather album of 84 8x10 inch color photographs of the President and President de la Madrid on the occasion of President Reagan's visit to Mazatlan ($940). Archives. Received: February 12, 1988. Est. Value: $1920. | His Excellency Miguel de la Madrid Hurtado, President of the United Mexican States. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | Athletic Equipment: A handtooled leather saddle with the initials "RR" incorporated into the tooled and stitched decorations. Archives. Received: February 12, 1988. Est. Value: $400. | His Excellency Francisco Labastida Ochoa, Governor of the State Sinaloa, Mexico. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | Household: A basket containing a Waterford crystal quartz clock (3" in diameter), candy jar (6¼" in diameter), diamond-shaped paperweight (3" in diameter), and photograph frame (7¾" x 6") as well as a Lalique crystal horse figurine (3¼" x 4"); and a selection of gourmet food delicacies ($1050); Archives. Flowers: A large floral arrangement ($250). Residence: For Official Use/Display. Received: February 8, 1988. Est. Value: $1300. | His Majesty Hassan II, King of Morocco | Non-acceptance would cause embarrassment to donor and U.S. Government. |



AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT—Continued

Report of Tangible Gifts

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|---|---|---|---|
| President | Household: A crystal wine decanter with an etched floral design and an attached silver hinged top and handle, made by Atlantis; 13½" tall ($500); Archives. Photograph: An autographed color photograph of Prime Minister and Mrs. Silva, framed in a plain silver frame with wooden easel back; 7¾" x 9¾" overall ($65). Archives. Received: February 24, 1988. Est. Value: $565. | His Excellency Anibal Cavaco Silva, Prime Minister of Portugal. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | Clothing: A basque wood walking stick, "Makhila," with sterling silver hand and tip, engraved with donor's name, etc.; handle unscrews to reveal a spike; leather strap attached; 36½" long. Archives. Received: March 22, 1988. Est. Value: $250. | The Honorable Jose Antonio Ardanza, President of the Basque Autonomous Region of Spain. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | Household: A set of sterling silver pieces used for crushing and storing betel nuts; the lid of the largest piece is inscribed to President Reagan; displayed in a fitted case. Archives. Received: April 28, 1988. Est. Value: $400. | His Excellency Air Chief Marshall Siddhi Savetsila, Minister of Foreign Affairs of the Kingdom of Thailand. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | Sword: "Dab Nam Bhee" (sacred sword), mother-of-pearl and silvered handle and sheath; displayed on a wood carved stand with presentation plaque; 35½" long. Archives. Received: November 16, 1988. Est. Value: $350. | Lieutenant General Saiseng Theerasawat, Deputy Director General, The Royal Thai Police Department, Thailand. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | Household: A silk hand-knotted carpet depicting geometric motifs, in blue, brown, black, champagne, etc., on beige background; fringed on two ends; 38" x 67". Archives. Received: December 15, 1988. Est. Value: $2075. | His Excellency Turgut Ozal, Prime Minister of the Republic of Turkey. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | Artwork: a panorama bronze casting scale model of the Kremlin by A. N. Lyesnikov, 1:1000, measuring 14" x 15"; displayed in a a slide-out wood box ($200); Archives. Household: A porcelain vase, "Peace to the Earth Vase," limited edition of one; white with blue and gold trim, centered with Soviet and American flag design; 27⅛" tall; displayed in a vinyl case ($150). Archives. Received: May 29, 1988. Est. Value: $350. | His Excellency Mikhail Gorbachev, General Secretary of the Central Committee of the Communist Party of the Soviet Union. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | Artwork: A porcelain figurine of a peace dove with a Soviet and American flag on each wing, mounted on a floral configuration base; 17" tall ($125); Archives..<br>Consumables: Five 4-ounce jars of Russian caviar and three bottles of vodka ($540). Perishable. Received: December 15, 1988. Est. Value: $665. | His Excellency Mikhail Gorbachev, Chairman of the Presidium of the Supreme Soviet of the Union of Soviet Socialist Republics. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | Household: A handpainted Russian lacquer box, containing a 5-oz. silver medallion with Russian lettering and depicting a woman holding a child; box is 7" × 5" × 2". Archives. Received: September 23, 1988. Est. value: $400. | His Excellency Eduard A. Shevardnadze, Minister of Foreign Affairs of the Union of Soviet Socialist Republics. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | Artwork: Oil painting of two women and a child by Mivingau(?), 1977, in simple black wood frame; 32½" × 40¼" ($850); Archives. Artwork: Brass figure of a man in kneeling position by Joneur de Maracasse I Liyolo, 1986, Zaire; 14" tall ($800). Archives. Received: June 9, 1988. Est. Value: $1650. | Marshall, Sese Seko Mobutu, President of the Republic of Zaire. | Non-Acceptance would cause embarrassment to donor and U.S. Government. |

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AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT—Continued

Report of Tangible Gifts

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|---|---|---|---|
| First Lady | Clothing: Silk brocade sari, gold-threaded with blue, red, and green colors; 20¼ feet long, 43 inches wide. Archives. Received: November 18, 1988. Est. Value: $350. | His Excellency Hussain Muhammad Ershad, President of the People's Republic of Bangladesh. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| First Lady | Clothing: One buttoned 3/4-length jacket and a matching skirt, rayon/acetate, size 6, by Alfred Sung, Canada ($746); Archives. Consumables: One fluid ounce bottle of "Sung" perfume by Alfred Sung ($180). Perishable. Received: April 27, 1988. Est. Value: $926. | Mrs. Mila Mulroney, Wife of the Prime Minister of Canada. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| First Lady | Household: A porcelain-glazed metal punch bowl multicolored mediamistic design on beige background by Kayo O'Young, signed, 1988; 12" in diameter, 6¼" tall ($150); Archives. Clothing: A hand-dyed and hand-woven charcoal gray silk shawl by Diana Sanderson; fringed at two ends; 7 feet long by 34 inches wide ($200); Archives. Hair Care Products: One bottle each of hairshaping spray, hair remoisturizer, shampoo, and gel mist hair structurizer, all by Lacoupe, 8 oz. each; and an 8 oz. jar of creme regenerative hair repair cream ($50). Perishable. Received: June 19, 1988. Est. Value: $400. | Mrs. Mila Mulroney, Wife of the Prime Minister of Canada. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| First Lady | Award: Medals on ribbons, "Republica de Colombia Orden del Comreso, Grado Gran Cruz Extraordinaria," contained in leather case with Seal of Colombia, and, a certificate awarding same, contained in a vinyl tube. Archives. Received: October 20, 1988. Est. Value: Indeterminable. | Government of Colombia | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| First Lady | Household: Tablecloth, white voile type fabric with deep blue embroidered tree design in center and around edges, 68" square; and six matching napkins with one tree motif, 20" square each. Archives. Received: September 29, 1988. Est. Value: $450. | His Excellency Francois Mitterrand, President of the French Republic. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| First Lady | Household: "Trumpeter Flower Vase" by Hochst; 8" tall, 6½" diameter across mouth. Archives. Received: November 15, 1988. Est. Value: $205. | His Excellency Dr. Helmut Kohl, Chancellor of the Federal Republic of Germany. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| First Lady | Clothing: Evening bag, black faux crocodile with black cord strap by Fendi, 6½" × 8½". Archives. Received: June 14, 1988. Est. Value: $595. | His Excellency Ciriaco De Mita, President of the Council of Ministers of the Italian Republic. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| First Lady | Award: "Woman of Peace Award for 1988" as represented by a silver globe of the earth on pedestal, engraved; 9" high × 6" × 6"; displayed in a red case ($750). Archives. Award: A gold-framed certificate conferring on Nancy Reagan the "Woman for Peace Award," 17" × 22½" overall ($65). Archives. Received: June 1, 1988. Est. Value: $815. | Mrs. Mariapia Fanfani, President, Together for Peace Foundation of Italy. | Non-acceptance would cause embarrassment to donor and U.S. Government. |



AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT—Continued

Report of Tangible Gifts

| Name and title of person accepting gift on behalf of the U.S. Government | Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location | Identity of foreign donor and government | Circumstances justifying acceptance |
|---|---|---|---|
| First Lady | Household: A 9" × 12" lacquerware stationery box with flaked arabesque flowering plant design on lid and a doll dressed in traditional brocade costume, 8½" tall ($450). Archives. Household: A two-piece hinged pillow screen in openwork design made from cedar trees that laid buried in volcanic ash for 2,600 years, crafted by Toshikazu Ohashi; 28" × 34" in size when closed ($1,500). Archives. Received: January 13, 1988. Est. Value: $1,950. | Mrs. Naoko Takeshita, Wife of the Prime Minister of Japan. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| First Lady | Household: Sterling silver and cloisonne jewelry box, octagonal shape with key lock; 11⅛" long, 7" deep, 5⅛" high; housed in a velvet-covered chest with key. Archives. Received: October 20, 1988. Est. Value: $650. | Mrs. Roh Tae Woo, Wife of the President of the Republic of Korea. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| First Lady | Jewelry: A double strand of Kuwaiti natural pearls with 18 kt. gold clasp; housed in a miniature traditional Kuwaiti wood chest with applied gold designs; chest measures 6" × 4½". Archives. Received: July 12, 1988. Est. Value: $3,500. | His Highness Sheikh Saad Al Abdullah Al Sabah, Prime Minister and Crown Prince of the State of Kuwait. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| First Lady | Household: A bone china demitasse coffee set for six with ballet motifs on white background, made in Leningrad. Archives. Received: May 29, 1988. Est. Value: $150. | His Excellency Mikhail Gorbachev, General Secretary of the Central Committee of the Communist Party of the Soviet Union. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| First Lady | Photograph: Leather-bound album of 22 color photographs of the Reagans, the Gorbachevs, et al., on occasion of the Washington Summit. Archives. Received: February 22, 1988. Est. Value: $565. | Mrs. Raisa Gorbachev, Wife of the General Secretary of the Central Committee of the Communist Party of the Soviet Union. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Howard H. Baker, Jr., Chief of Staff to the President. | Household: A round cloisonne bowl in elaborate floral design with blue and white geometric border; approximately 12" in diameter, 2½" deep. GSA. Received: January 13, 1988. Est. Value: $350. | His Excellency Noboru Takeshita, Prime Minister of Japan. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Howard H. Baker, Jr., Chief of Staff to the President. | Household: A lacquered oval plaque with hand-painted scene of two carts with four riders and three horses each, against a rural setting; 16½" long x 11½" high; signed by "Pedocluno, 1984." GSA. Received: June 14, 1988. Est. Value: $625. | His Excellency Mikhail Gorbachev, General Secretary of the Central Committee of the Communist Party of the Soviet Union. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Marlin Fitzwater, Assistant to the President for Press Relations. | Household: A handpainted lacquer box depicting the Kremlin; 7½" x 10" 2¾" deep ($2060); GSA. Book: Color photograph anthology entitled "Moscow" ($40). GSA. Received: May 31, 1988. Est. Value: $2940. | His Excellency Mikhail Gorbachev, General Secretary of the Central Committee of the Communist Party of the Soviet Union. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| William R. Graham, Science Advisor to the President. | Household: A 50" x 70" Bokhara design Pakistani carpet in shades of rust, beige, and brown. GSA. Received: October 8, 1988. Est. Value: $500. | His Excellency Chaudry Ali Nisar, Minister of Science and Technology of Pakistan. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Nelson C. Ledsky, Special Assistant to the President for National Security Affairs. | Household: A handpainted lacquer box depicting the Kremlin; 7½" x 10" x 2¾" deep. GSA. Received: May 31, 1988. Est. Value: $2000. | His Excellency Mikhail Gorbachev, General Secretary of the Central Committee of the Communist Party of the Soviet Union. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Colin L. Powell, Assistant to the President for National Security Affairs. | Coins: Four commemorative Kuwaiti gold coins; one-half ounce of gold in each. GSA. Received: July 21, 1988. Est. Value: $840. | His Excellency Saad Al Abdullah Al Salim Al Sabah, Prime Minister and Crown Prince of the State of Kuwait. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Colin L. Powell, Assistant to the President for National Security Affairs. | Historic Artifact: A Roman glass tear bottle, mounted and encased in lucite presentation case; 4" square, 7" tall. GSA. Received: June 27, 1988. Est. Value: Indeterminable. | His Excellency Yitzhak Rabin, Minister of Defense of Israel. | Non-acceptance would cause embarrassment to donor and U.S. Government. |

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AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT—Continued

Report of Tangible Gifts

| Name and title of person accepting gift on behalf of the U.S. Government | Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location | Identity of foreign donor and government | Circumstances justifying acceptance |
|---|---|---|---|
| Colin L. Powell, Assistant to the President for National Security Affairs. | Household: An ornately patterned sterling silver frame inscribed "CLP". GSA. Received: March 8, 1988. Est. Value: $360. | His Excellency Saoud Mohammad Al-Cassimi, Minister of State for Foreign Affairs for the State of Kuwait. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Colin L. Powell, Assistant to the President for National Security Affairs. | Weapon: A gold and silver inlaid Russian Baikal over and under 12 gauge shotgun, serial number Y00275. GSA. Received: June 1, 1988. Est. Value: $1200. | His Excellency Mikhail Gorbachev, General Secretary of the Central Committee of the Communist Party of the Soviet Union. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Robert H. Tuttle, Assistant to the President for Presidential Personnel. | Jewelry: A Chopard gold wristwatch and a pair of cuff links. GSA. Received: April 18, 1988. Est. Value: $4700. | His Highness Shaikh Isa Bin Sulman Al-Khalifa, Amir of the State of Bahrain. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Robert H. Tuttle, Assistant to the President for Presidential Personnel. | Jewelry: Two strands of graduated cultured pearls. GSA. Received: April 18, 1988. Est. Value: $600. | His Highness Shaikh Isa Bin Sulman Al-Khalifa, Amir of the State of Bahrain. | Non-acceptance would cause embarrassment to donor and U.S. Government. |

AGENCY: VICE PRESIDENT AND MRS. GEORGE BUSH

Report of Tangible Gifts

| Name and title of person accepting gift on behalf of the U.S. Government | Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location | Identity of foreign donor & government | Circumstances justifying acceptance |
|---|---|---|---|
| Vice President and Mrs. George Bush | 8 bottles vodka and 4 tins of caviar 3/30/88; $430; Used for official functions. | Eduard Shevardnadze, USSR | Non-acceptance would have caused embarrassment to donor & U.S. Government |
| Vice President and Mrs. George Bush | 3 bottles vodka, 3 bottles wine, 4 tins caviar; 12/28/88; $340; used for official functions. | Eduard Shevardnadze, USSR | Non-acceptance would have caused embarrassment to donor & U.S. Government |
| Vice President George Bush | Sterling Silver framed picture and an Imari bowl; 1/20/88; $450; Accepted for display at Vice President's Residence. | Prime Minister Takeshita, Japan | Non-acceptance would have caused embarrassment to donor & U.S. Government |
| Timothy McBride, Aide to Vice President George Bush. | 50 dinar gold commemorative coin; 7/25/88; $240; GSA. | Crown Prince Saad, Kuwait | Non-acceptance would have caused embarrassment to donor & U.S. Government |
| Donald P. Gregg, Assistant to the Vice President for National Security Affairs. | Silver triangle in gold wash with 3 Kuwaiti coins; 7/25/88; $300; GSA. | Crown Prince Saad, Kuwait | Non-acceptance would have caused embarrassment to donor & U.S. Government |
| Vice President George Bush | Ivory Carving of Egyptian boat and 3/30/88; $750; display at Vice President's Residence. | Mohamed Abdel Halim Abu Ghazala, Egypt. | Non-acceptance would have caused embarrassment to donor & U.S. Government |
| Vice President George Bush | Samovar; 12/15/88; $200, display at Vice President's Residence. | H.E. Prince Sadruddin Aga Khan, Switzerland. | Non-acceptance would have caused embarrassment to donor & U.S. Government |
| Vice President George Bush | Pair of Herend Candlesabra; 7/27/88; $400; accepted for display at Vice President's residence. | Prime Minister Karolyi Grosz, Hungary | Non-acceptance would have caused embarrassment to donor & U.S. Government |
| Vice President George Bush | Gold Commemorative Coin; 1/4/88; $525. | Fernando Gutierrez-Barrios, Mexico | Non-acceptance would have caused embarrassment to donor & U.S. Government |
| Vice President and Mrs. George Bush | Sterling Silver Model of a Hooded Arabian Falcon; box of wood inlaid with silver; strand of natural pearls 7/19/88; $3500; GSA. | Crown Prince Saad, Kuwait | Non-acceptance would have caused embarrassment to donor & U.S. Government |
| Vice President George Bush | Ivory & Brass Candlesabra; 6/30/88; $350; GSA. | Crown Prince Saad, Kuwait | Non-acceptance would have caused embarrassment to donor & U.S. Government |



AGENCY: UNITED STATES SENATE

Report of Tangible Gifts

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|---|---|---|---|
| Bill Bradley, U.S. Senator | Copper Enamel Painting by Zurab Tzeretell. Recd.—January 19, 1988. Est. Value—$300. Deposited with the Secretary of the Senate for transmittal to the Commission on Arts and Antiquities of the U.S. Senate. Title transferred to St. Peters Interparish school 6/4/88, and painting transferred 9/16/88. | Government of the Soviet Union | Refusal would likely cause offense or embarrassment. |
| | 3 paintings: Raised metallic painting and 2 paintings by Tbilisi. Recd.—January 19, 1988. Est. Value—in excess of $100 for each item. Deposited with USIA. | | |
| | Metallic plate—Kremlin scene. Recd.—January 19, 1988. Est. Value—in excess of $100. Deposited with USIA. | | |
| | Heavy metal and silver Azerbaijan belt. Recd.—January 19, 1988. Est. Value—over $150. Deposited with the Secretary of the Senate for transmittal to the Commission on Arts and Antiquities of the U.S. Senate. | | |
| | Silver ring with filigree design. Recd.—January 19, 1988. Est. Value—over $100. Deposited with the Secretary of the Senate for transmittal to the Commission on Arts and Antiquities of the U.S. Senate. | | |
| Bill Bradley, U.S. Senator | Bracelet with silver leaf. Recd.—January 19, 1988. Est. Value—over $100. Deposited with the Secretary of the Senate for transmittal to the Commission on Arts and Antiquities of the U.S. Senate. | Government of the Soviet Union | Refusal would likely cause offense or embarrassment |
| Robert C. Byrd, U.S. Senator | Ko Imari porcelain plate. Recd.—January 12, 1988 Est. Value—$500–$1,000. Deposited with the Secretary of the Senate for transmittal to the Commission on Arts and Antiquities of the U.S. Senate. | His Excellency, Noboru Takeshita, Prime Minister of Japan/Japanese Government. | Refusal would likely cause offense or embarrassment |
| Terry Sanford, U.S. Senator | Gold and pearl cufflinks. Recd.—April 27, 1988. Est. Value—$300. Deposited with the Secretary of the Senate for transmittal to the Commission on Arts and Antiquities of the U.S. Senate. | Congressman Kabun Moto of Japan | Refusal would likely cause offense or embarrassment |

AGENCY: UNITED STATES SENATE

Report of Travel or Expenses of Travel

| Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government | Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States | Identity of foreign donor and government | Circumstances justifying acceptance |
|---|---|---|---|
| James T. Bruce III, Senior Counsel, Committee on Energy and Natural Resources. | Food, lodging, and ground transportation in Japan. February 8–15, 1988. | Japan National Oil Corp., Government of Japan. | Refusal would likely cause offense or embarrassment. |
| Daniel M. Crane, Legislative Director for Senator Daniel P. Moynihan. | Round trip air fare, Washington, D.C. to Frankfurt, and West Berlin including lodging and meals. November 27–December 3, 1988. | Konrad-Adenauer-Stiftung Foundation, Federal Republic of Germany. | Refusal would likely cause offense or embarrassment. |
| Richard B. Doyle, Senior Analyst for Defense, Senate Committee on the Budget. | Round trip air transportation, Washington, D.C. to Iraq and Saudi Arabia, including lodging and meals and local transportation. November 9–22, 1988. | Council of Saudi Arabia Chamber of Commerce and Industry. | Refusal would likely cause offense or embarrassment. |
| Senator and Mrs. Mark O. Hatfield, U.S. Senator. | Round trip air transportation, Portland, Oregon, to Taipei, Taiwan, including local transportation, lodging, and meals. July 18–22, 1988. | Chinese Cultural University, Taipei, Republic of China. | Refusal would likely cause offense or embarrassment. |
| Howell T. Heflin, U.S. Senator | Local transportation in New Zealand and Australia. January 12–17, 1988. | New Zealand and Australian Governments. | Refusal would likely cause offense or embarrassment. |

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AGENCY: UNITED STATES SENATE—Continued

Report of Travel or Expenses of Travel

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|---|---|---|---|
| Robert F. Hurley, Chief of Staff for Senator John Chafee. | Local transportation in Luxor, Egypt and Baghdad, Iraq, December 2–12, 1988. | Military Command, Government of Egypt and Ministry of Foreign Affairs, Government of Iraq. | Refusal would likely cause offense or embarrassment. |
| Barbara Mills Larkin, Legislative Assistant to Senator Terry Sanford. | Round trip air fare, Washington, D.C. to Soviet Union, including local transportation, lodging, and meals. June 15–19, 1987. | Committee of Youth Organizations of the USSR. | Refusal would likely cause offense or embarrassment. |
| Barbara Mills Larkin, Legislative Assistant to Senator Terry Sanford. | Round trip air fare from Washington, D.C. to South Korea, including food, lodging, and local transportation. August 20–29, 1987. | Ilsae Institute of Seoul and Government of South Korea. | Refusal would likely cause offense or embarrassment. |
| Susan Aheron Magill, Administrative Assistant to Senator John Warner. | Local transportation, lodging, and meals in the People's Republic of China. October 15–31, 1987. | All China Youth Federation of the People's Republic of China. | Refusal would likely cause offense or embarrassment. |
| Edmund J. Mihalski, Chief of Staff, Committee on Finance. | Local transportation in Luxor, Egypt and Baghdad, Iraq, December 6–10, 1988. | Military Command, Government of Egypt and Ministry of Foreign Affairs, Government of Iraq. | Refusal would likely cause offense or embarrassment. |
| John H. Moseman, Administrative Assistant to Senator Frank Murkowski. | Local transportation in Luxor, Egypt and Baghdad, Iraq, December 6–10, 1988. | Military Command, Government of Egypt and Ministry of Foreign Affairs, Government of Iraq. | Refusal would likely cause offense or embarrassment. |
| Greg Schnacke, Legislative Assistant to Senator Robert Dole. | Round trip air fare, Washington, D.C. to Taiwan, including lodging and meals. July 17–27, 1988. | Tunghai University of Taichung, Taiwan | Refusal would likely cause offense or embarrassment. |
| Cynthia S. Sheats, Legislative Assistant to Senator Bennett Johnston. | Round trip air fare, Washington, D.C. to China, including local transportation, lodging, and meals. October 4–18, 1988. | Chinese Ministry of Forestry, People's Republic of China. | Refusal would likely cause offense or embarrassment. |

AGENCY: U.S. HOUSE OF REPRESENTATIVES

Report of Tangible Gifts

| Name and title of person accepting gift on behalf of the U.S. Government | Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location | Identity of foreign donor and government | Circumstances justifying acceptance |
|---|---|---|---|
| Alan B. Mollohan, Member of Congress | 6 x 10 rug. Recd. April 1988. Est. Value—$200. Approved for official display. | Mohammad bin Rashid bin Saïd Al Maktoum, Minister of Defense, United Arab Emirates. | Non-acceptance would have caused embarrassment to donor. |
| Bernard J. Dwyer | 3 x 5 rug. Recd. August 1987/approved for official display 1988. Est. Value—$400. | General Mohammad Zia-Ul-Haq, Pakistan. | Non-acceptance would have caused embarrassment to donor. |

AGENCY: U.S. HOUSE OF REPRESENTATIVES

Report of Travel or Expenses of Travel

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|---|---|---|---|
| Doug Bereuter, Member of Congress | Lodging/Meals at Interhotel Potsdam for 3 days/3 nights. Est. Value—$400. | German Democratic Republic | Conference on East-West security. |
| Rod Chandler, Member of Congress | Helicopter tour of Hong Kong | Hong Kong Economic and Trade Office, British Embassy. | Non-acceptance would have caused embarrassment to donor. |
| Thomas J. Downey, Member of Congress. | Air transportation from Carrswestad, New Zealand to Wellington, New Zealand and from Wellington to Auckland, New Zealand, plus two nights' lodging in Wellington. | Ministry of Foreign Affairs, New Zealand. | MC accompanied Right Honorable David Lange, Prime Minister of New Zealand. |
| Marvyn M. Dymally, Member of Congress. | Transportation Nice to Brussels to Kinshasa, Zaire, plus hotel accommodations in Nice and Kinshasa. | Government of Zaire | In conjunction with meeting with President Mobutu. |
| Bill Frenzel, Member of Congress | Air transportation between Taipei, ROC and Hong Kong, plus 2 nights' lodging. Est. Value—$674. | Government of Hong Kong | Meeting with trade and political officials of Government of Hong Kong. |
| Jerry Huckaby, Member of Congress | Travel within Australia and New Zealand. | Australian Livestock & Meat Board/ New Zealand Livestock and Dairy Board (Quasi-govern. agencies). | Fact-finding tour. |



AGENCY: U.S. HOUSE OF REPRESENTATIVES—Continued

Report of Travel or Expenses of Travel

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|---|---|---|---|
| Michael G. Oxley, Member of Congress | Air transportation from Taipei to Hong Kong, plus hotel accommodations. Est. Value—$578. | Government of Hong Kong | Meeting with trade officials in conjunction with official duties. |
| J. Roy Rowland, Member of Congress | Travel within Australia and New Zealand. | Australian Livestock & Meat Board/ New Zealand Livestock and Dairy Board (Quasi-govern. agencies). | Fact-finding tour. |
| Debra A. Buettner, Office of Hon. Joel Hefley. | Food and lodging and bus transportation in India. | Four Indian political parties | Participation in foreign exchange sponsored by American Council of Young Political Leaders to India. |
| Daniel B. Waggoner, Subcomm. on Livestock, Dairy, and Poultry. | Travel within Australia and New Zealand, plus hotel and food. | Australian Livestock & Meat Board/ New Zealand Livestock and Dairy Board (Quasi-govern. agencies). | Fact-finding tour. |
| John R. Kasich, Member of Congress | One night's lodging and two meals in Costa Rica. | Costa Rican Government and Costa Rican Legislative Assembly. | Fact-finding tour. |

AGENCY: AFRICAN DEVELOPMENT FOUNDATION

Report of Tangible Gifts

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|---|---|---|---|
| Leonard H. Robinson, Jr., President | Nigerien camel saddle made of wood, leather, and silver. Rec'd.—Feb. 25, 1988. Est. Value—$850. Approved for official use. | Hamid Algabid, Prime Minister of Niger | Non-acceptance would have caused embarrassment to donor and U.S. Government. |

AGENCY: CENTRAL INTELLIGENCE AGENCY

Report of Travel or Expenses of Travel

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|---|---|---|---|
| Agency Employee | Cartier style "Pasha DeCartier" gift and enameled fountain pen. Recd. 19 February 1988. Est. Value—$250.00. To be reported to GSA for disposition. | Public Law 95–105 A(F)(4) | Nonacceptance would have caused embarrassment to donor. |
| Robert M. Gates, Deputy Director, CIA | Flexible yellow gold bracelet en suite with preceding. Recd.—30 September 1988. Est. Value—$200.00. To be reported to GSA for disposition. | Public Law 95–105 A(F)(4) | Nonacceptance would have caused embarrassment to donor. |
| Robert M. Gates, Deputy Director, CIA | Middle Eastern yellow gold ensemble, consisting of necklace, bracelet, and pair pendent earrings. Recd. 30 September 1988. Est. Value—$350.00. To be reported to GSA for disposition. | Public Law 95–105 A(F)(4) | Nonacceptance would have caused embarrassment to donor. |
| Robert M. Gates, Deputy Director, CIA | Pair tent hangings. 5.3x10. Red ground with vertical design with sequins. Recd. 30 September 1988. Est. Value—$600.00. To be reported to GSA for disposition. | Public Law 95–105 A(F)(4) | Nonacceptance would have caused embarrassment to donor. |

AGENCY: CENTRAL INTELLIGENCE AGENCY

Report of Tangible Gifts

| Name and title of person accepting gift on behalf of the U.S. Government | Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location | Identity of foreign donor and government | Circumstances justifying acceptance |
|---|---|---|---|
| Robert M. Gates Deputy Director, CIA | Dagger with gold pommel and sheath. L: overall 10¾. Recd. 30 September 1988. Est. Value—$250.00. To be reported to GSA for disposition. | Public Law 95–105 A(F)(4) | Nonacceptance would have caused embarrassment to donor. |

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AGENCY: CENTRAL INTELLIGENCE AGENCY—Continued

Report of Tangible Gifts

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|---|---|---|---|
| Robert M. Gates Deputy Director, CIA | Heiwan chromed 9mm auto pistol, with extra clip and cleaning kit, encased. Recd. 30 September 1988. Est. Value—$450.00. To be retained for official display. | Public Law 95-105 A(F)(4) | Nonacceptance would have caused embarrassment to donor. |
| William H. Webster, Director, CIA | Middle Eastern "Kilim" runner, approximately 13' × 3'. Striped field with fringe ends. Recd. 31 May 1988. Est. Value—$200.000. To be reported to GSA for disposition. | Public Law 95-105 A(F)(4) | Nonacceptance would have caused embarrassment to donor. |
| William H. Webster, Director, CIA | Pair Continental silver cricket-type candlesticks inscribed. H: 10¼; Wt. 78oz. Recd. 11 April 1988. Est. Value—$808.00. To be reported to GSA for disposition. | Public Law 95-105 A(F)(4) | Nonacceptance would have caused embarrassment to donor. |
| William H. Webster, Director, CIA | Serpentine hardstonefigure group of dragon and phoenix bird centering a pearl on lacquered wood base, Hill. Recd. 16 November 1988. Est. Value—$250.00. To be reported to GSA for disposition. | Public Law 95-105 A(F)(4) | Nonacceptance would have caused embarrassment to donor. |
| William H. Webster, Director, CIA | Heiwan chromed 9mm auto pistol, with extra clip and cleaning kit, encased. Recd. 30 September 1988. Est. Value—$450.00. To be retained for official display. | Public Law 95-105 A(F)(4) | Nonacceptance would have caused embarrassment to donor. |
| William H. Webster, Director, CIA | Malachite table decoration. Consisting of ashtray-form tray, and an egg. Irregular tray: L:10. Recd. 19 February 1988. Est. Value—$250.00. Retain for official display. | Public Law 95-105 A(F)(4) | Nonacceptance would have caused embarrassment to donor. |
| William H. Webster, Director, CIA | Cartier quartz date desk clock. Serial number 7531/67488. Enameled and brass case. Recd. 17 February 1988. Est. Value—$360.08. Retain for official display. | Public Law 95-105 A(F)(4) | Nonacceptance would have caused embarrassment to donor. |
| William H. Webster, Director, CIA | Middle Eastern bridal mirror studded with gilt tacks. With two hinged doors concealing a looking glass. H: 51. Recd. 31 May 1988. Est. Value—$225.00 To be reported to GSA for disposition. | Public Law 95-105 A(F)(4) | Nonacceptance would have caused embarrassment to donor. |
| William H. Webster, Director, CIA | Bokhara rug, 6×4.2. Red ground with three rows of eighteen gule alternating with cruciforms. Recd. 16 October 1988. Est. Value—$350.00. Retain for official display. | Public Law 95-105 A(F)(4) | Nonacceptance would have caused embarrassment to donor. |
| William H. Webster, Director, CIA | Indo-tephahan garden rug. 5.4×3.7. Navy blue ground with flowering tree, animals, birds, and duck field. Complementary guard border on green/gray ground. Recd. 16 October 1988. Est. Value—$450.00. Retain for official display. | Public Law 95-105 A(F)(4) | Nonacceptance would have caused embarrassment to donor |
| William H. Webster, Director, CIA | Carved Wood four-fold screen. H:72. Recd. 16 October 1988. Est. Value—$400.00. To be reported to GSA for disposition. | Public Law 95-105 A(F)(4) | Nonacceptance would have caused embarrassment to donor |
| William H. Webster, Director, CIA | Indo-tephahan garden rug. 5.4×3.7. Navy blue ground with flowering tree, animals, birds, and duck field. Complementary guard border on green/gray ground. Recd. 16 October 1988. Est. Value—$450.00. Retain for official display. | Public Law 95-105 A(F)(4) | Nonacceptance would have caused embarrassment to donor |



AGENCY: U.S. DEPARTMENT OF COMMERCE

Report of Travel or Expenses of Travel

| Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government | Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States | Identity of foreign donor and government | Circumstances justifying acceptance |
|---|---|---|---|
| C. William Verity, Secretary | Herand Vase with engraved silver plaque. Recd.—June 10, 1988. Est. Value—$402. | Jozsef Marjai, Deputy Prime Minister, Ministry of Trade, Hungary. | Non-acceptance would have caused embarrassment to the donor and the U.S. Government. |
| C. William Verity, Secretary | Herrand Vase. Recd.—July 2, 1988. Est. Value—$241. Approved for Official Use. | Karoly Grosz, Chairman of the Council of Minister, Hungary. | Non-acceptance would have caused embarrassment to the donor and the U.S. Government. |
| C. William Verity, Secretary | Crystal Dolphin. Recd.—December 8, 1988. Est. Value—$350.00. Approved for Official Use. | S.F. Voenushkin, Minister of Building Materials Industry, Soviet Union. | Non-acceptance would have caused embarrassment to the donor and the U.S. Government. |

AGENCY: DEPARTMENT OF DEFENSE

Report of Tangible Gifts

| Name and title of person accepting gift on behalf of the U.S. Government | Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location | Identity of foreign donor and government | Circumstances justifying acceptance |
|---|---|---|---|
| Richard L. Armitage, Assistant Secretary of Defense (International Security Affairs). | Men's Baume & Mercier watch, 18K gold and stainless steel, with matching cuff links. Recd.—January 1988. Est. Value—$1,900. Delivered to GSA August 11, 1988. | Isa bin Sulman Al Khalifa, The Amir of the State of Bahrain. | Nonacceptance would have caused embarrassment to donor and U.S. Government. |
| Richard L. Armitage, Assistant Secretary of Defense (International Security Affairs). | Strand of cultured pearls, approx. 19". Recd.—January 1988. Est. Value—$800. Delivered to GSA August 11, 1988. | Isa bin Salman Al Khalifa, The Amir of the State of Bahrain. | Nonacceptance would have caused embarrassment to donor and U.S. Government. |
| Richard L. Armitage, Assistant Secretary of Defense (International Security Affairs). | Octagonal wooden table, with white intaid design, approx. 24" in diameter. Recd.—April 1988. Est. Value—$200. Delivered to GSA June 8, 1988. | General Mohammed Zia-ul-Haq, President of Pakistan. | Nonacceptance would have caused embarrassment to donor and U.S. Government. |
| Richard L. Armitage, Assistant Secretary of Defense (International Security Affairs). | Large brass lamp, with cutout design. Recd.—April 1988. Est. Value—$150. Delivered to GSA June 8, 1988. | General Mohammed Zia-ul-Haq, President of Pakistan. | Nonacceptance would have caused embarrassment to donor and U.S. Government. |
| Richard L. Armitage, Assistant Secretary of Defense (International Security Affairs). | Rug, approx. 3'×5½', mauve and cream. Recd.—April 1988. Est. Value—$1,400. Approved for official display. | General Mohammed Zia-ul-Haq, President of Pakistan. | Nonacceptance would have caused embarrassment to donor and U.S. Government. |
| Richard L. Armitage, Assistant Secretary of Defense (International Security Affairs). | Pakistani rug, approx. 4'×6', blue, cranberry, cream and black. Recd.—December 1988. Est. Value—$2,000. Approved for official display. | Mr. Ghulam Isheq Khan, President of Pakistan. | Nonacceptance would have caused embarrassment to donor and U.S. Government. |
| Richard L. Armitage, Assistant Secretary of Defense (International Security Affairs). | Set of 4 wooden stack end tables, with carved floral design and 3 drawers. Recd.—December 1988. Est. Value—$250. Reported to GSA February 3, 1989; pending transfer to GSA. | Admiral Iftikhar Ahmed Sirohey, Chairman, Joint Chiefs of Staff Committee, Pakistan. | Nonacceptance would have caused embarrassment to donor and U.S. Government. |
| Richard L. Armitage, Assistant Secretary of Defense (International Security Affairs). | Men's Corum quartz watch, 18K gold with Roman numerals engraved on gold around the face, with brown alligator straps, in red leather case. Recd.—December 7, 1988. Est. Value—$3,000. Reported to GSA January 5, 1989; pending transfer to GSA. | Nawwaf Al-Jabir Al-Sabah, Minister of Defense of Kuwait. | Nonacceptance would have caused embarrassment to donor and U.S. Government. |
| Mrs. Melba Boling, Confidential Assistant to the Secretary of Defense. | Ladies' Baume and Mercier watch, 18K gold and stainless steel. Recd.—January 1988. Est. Value—$1,250. Transferred to IRS September 20, 1988, per GSA. | Isa bin Sulman Al Khalifa, The Amir of the State of Bahrain. | Nonacceptance would have caused embarrassment to donor and U.S. Government. |
| LTG Charles W. Brown, USA Director, Defense Security Assistance Agency. | Wooden coffee table, approx. 17¾"×35¼"; and two wooden end tables, approx. 11¼"×17¼". Recd.—January 14, 1988. Est. Value—$180. Delivered to GSA June 8, 1988. | General Mohammed Zia-ul-Haq, President of Pakistan. | Nonacceptance would have caused embarrassment to donor and U.S. Government. |
| LTG Charles W. Brown, USA Director, Defense Security Assistance Agency. | Bedspread, approx. 94"×108", with two pillow shams, gray with design of red and gold thread. Recd.—January 14, 1988. Est. Value—$180. Delivered to GSA June 8, 1988. | General Mohammed Zia-ul-Haq, President of Pakistan. | Nonacceptance would have caused embarrassment to donor and U.S. Government. |

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AGENCY: DEPARTMENT OF DEFENSE—Continued

Report of Tangible Gifts

| Name and title of person accepting gift on behalf of the U.S. Government | Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location | Identity of foreign donor and government | Circumstances justifying acceptance |
|---|---|---|---|
| LTG Charles W. Brown, USA Director, Defense Security Assistance Agency. | Round wooden table, with white inlaid design, approx. 36" in diameter. Recd.—April 7, 1988. Est. Value—$250. Approved for official display in residence at Fort Myer, Virginia. | General Mohammed Zia-ul-Haq, President of Pakistan. | Nonacceptance would have caused embarrassment to donor and U.S. Government. |
| LTG Charles W. Brown, USA Director, Defense Security Assistance Agency. | Wooden chest, approx. 18"×16¼"×12¼". Recd.—April 7, 1988. Est. Value—$150. Approved for official display in residence at Fort Myer, Virginia. | General Mohammed Zia-ul-Haq, President of Pakistan. | Nonacceptance would have caused embarrassment to donor and U.S. Government. |
| LTG Charles W. Brown, USA Director, Defense Security Assistance Agency. | Two small wooden tables, with brass inlaid design, 12" in diameter, on stands 11¾" tall. Recd.—June 6, 1988. Est. Value—$300. Delivered to GSA August 11, 1988. | Syed Ijlal Haider Zaidi, Secretary of Defense, Pakistan. | Nonacceptance would have caused embarrassment to donor and U.S. Government. |
| LTG Charles W. Brown, USA Director, Defense Security Assistance Agency. | Black cordless telephone with mother-of-pearl, Oriental design. Recd.—June 8, 1988. Est. Value—$180. Delivered to GSA August 11, 1988. | Major General Lee Change Koo, 2nd Assistant Minister of National Defense, Republic of Korea. | Nonacceptance would have caused embarrassment to donor and U.S. Government. |
| LTG Charles W. Brown, USA Director, Defense Security Assistance Agency. | Black lacquered jewelry box with mother-of-pearl, Oriental design. Recd.—June 8, 1988. Est. Value—$150. Delivered to GSA August 11, 1988. | Major General Lee Change Koo, 2nd Assistant Minister of National Defense, Republic of Korea. | Nonacceptance would have caused embarrassment to donor and U.S. Government. |
| LTG Charles W. Brown, USA Director, Defense Security Assistance Agency. | Two Pakistani rugs, 25"×36". Recd.—June 11, 1988. Est. Value—$360. Approved for official display. | Pakistani Secretary of Defense Production Division, Pakistan. | Nonacceptance would have caused embarrassment to donor and U.S. Government. |
| LTG Charles W. Brown, USA Director, Defense Security Assistance Agency. | Vase, 12" tall, on stand ($150); Men's Gold Glory Watch, Quartz ($150); Ladies' Gold Glory Watch, Quartz ($100); Red necktie with Taiwanese AF emblem ($30); and tablecloth, 68"×90", and ten napkins ($150). Recd.—September 23, 1988. Est. Value—$580. Reported to GSA November 28, 1988; pending transfer to GSA. | Gen. and Mrs. Chen Hsing-Ling, Commander in Chief, Republic of China Air Force. | Nonacceptance would have caused embarrassment to donor and U.S. Government. |
| LTG Charles W. Brown, USA Director, Defense Security Assistance Agency. | Leather purse, fur-covered, 4¼"×10" ($60); Leather wallet, fur-covered, 4"×5¼" ($60); small leather box, with top portion of an iguana on lid, 4¼"×6"×2" ($65); and snakeskin handbag, 10"×7½" ($150). Recd.—October 19, 1988. Est. Value—$365. Reported to GSA November 30, 1988; pending transfer to GSA. | MGen Latif, Principal Staff Officer to the President of Bangladesh. | Nonacceptance would have caused embarrassment to donor and U.S. Government. |
| LTG Charles W. Brown, USA Director, Defense Security Assistance Agency. | Painting of Algerian man, on tiled porcelain with gilded border, 11¾"×15½", in large blue box ($225); book in Arabic with photographs, 104 pages, 11¾"×12" ($20); banner, triangular with Algerian emblem, 6"×10½" ($1); and key chain with Algerian emblem ($5). Recd.—October 1988. Est. Value—$251. Reported to GSA November 29, 1988; pending transfer to GSA. | General-Major Abdellah Belhouchet, Vice Minister of National Defense, Algeria. | Nonacceptance would have caused embarrassment to donor and U.S. Government. |
| LTG Charles W. Brown, USA Director, Defense Security Assistance Agency. | Carved wooden box, 10"×5½" ($50), containing an ornamental silver dagger, 9" ($460). Recd.—October 1988. Est. Value—$500. Reported to GSA November 29, 1988; pending transfer to GSA. | General Mustapha Chaloufi, Member of the Central Committee, and Secretary General of the Ministry of National Defense, Algeria. | Nonacceptance would have caused embarrassment to donor and U.S. Government. |
| Frank C. Carlucci, Secretary of Defense. | Wall hanging or small carpet, with scene of countryside, approx. 5'2½"×3'10½", green, gray, black and red. Recd.—January 27, 1988. Delivered to GSA August 11, 1988. | Mohammed Hosni Mubarak, President, Arab Republic of Egypt. | Nonacceptance would have caused embarrassment to donor and U.S. Government |
| Frank C. Carlucci, Secretary of Defense. | Replica of a Dhow (boat), silver trimmed with gold. Recd.—January 1988. Est. Value—$350. Approved for official display. | Shaikh Ali Khalifa Al-Sabah, Minister of Petroleum of Kuwait. | Nonacceptance would have caused embarrassment to donor and U.S. Government. |
| Frank C. Carlucci, Secretary of Defense. | Four gold coins of the Central Bank of Kuwait. Recd.—January 1988. Est. Value—$940. Approved for official display. | Saad Al Abdullah Al Salim Al Sabah, Crown Prince and Prime Minister of Kuwait. | Nonacceptance would have caused embarrassment to donor and U.S. Government. |



AGENCY: DEPARTMENT OF DEFENSE—Continued

Report of Tangible Gifts

| Name and title of person accepting gift on behalf of the U.S. Government | Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location | Identity of foreign donor and government | Circumstances justifying acceptance |
|---|---|---|---|
| Frank C. Carlucci, Secretary of Defense. | Knife with 22K gold handle and gold sheaf with ornate engraving on one side and felt on bottom side. Recd.—January 1988. Est. Value—$3,000. Approved for official display. | Crown Prince of Bahrain | Nonacceptance would have caused embarrassment to donor and U.S. Government. |
| Frank C. Carlucci, Secretary of Defense. | Men's Chopard watch, 18K gold and stainless steel, with matching cuff links. Recd.—January 1988. Est. Value—$6,400. Transferred to IRS September 20, 1988, per GSA. | Isa bin Sulman Al Khalifa, The Amir of the State of Bahrain. | Nonacceptance would have caused embarrassment to donor and U.S. Government. |
| Frank C. Carlucci, Secretary of Defense. | Double strand cultured pearls, approx. 17½". Recd.—January 1988. Est. Value—$1,100. Transferred to IRS September 20, 1988, per GSA. | Isa bin Sulman Al Khalifa, The Amir of the State of Bahrain. | Nonacceptance would have caused embarrassment to donor and U.S. Government. |
| Frank C. Carlucci, Secretary of Defense. | Sterling silver disc on base, by Cartier. Recd.—January 1988. Est. Value—$200. Approved for official display. | Khalifa bin Ahmad Al Khalifa, Minister of Defense of Bahrain. | Nonacceptance would have caused embarrassment to donor and U.S. Government. |
| Frank C. Carlucci, Secretary of Defense. | Automatic rifle in green case. Recd.—January 1988. Est. Value—$1,500. Delivered to GSA August 11, 1988. | His Royal Highness, Prince Sultan bin 'Abd al-'Aziz Al Sa'ud, Minister of Defense and Aviation of Saudi Arabia. | Nonacceptance would have caused embarrassment to donor and U.S. Government. |
| Frank C. Carlucci, Secretary of Defense. | Brass incense burner with tongs. Recd.—January 1988. Est. Value—$175. Approved for official display. | His Royal Highness, Prince Sultan bin 'Abd al-'Aziz Al Sa'ud, Minister of Defense and Aviation of Saudi Arabia. | Nonacceptance would have caused embarrassment to donor and U.S. Government. |
| Frank C. Carlucci, Secretary of Defense. | Sword with gold and bone handle, encased in gold and leather case, with diamonds and rubies (simulated). Recd.—January 1988. Est. Value—$750. Approved for official display. | His Royal Highness, Prince Mohammad Bin Fahd Bin Abdul Aziz, Eastern Province Governor of Saudi Arabia. | Nonacceptance would have caused embarrassment to donor and U.S. Government. |
| Frank C. Carlucci, Secretary of Defense. | Sunglasses, gold frame, by Must de Cartier. Recd.—February 16, 1988. Est. Value—$250. Delivered to GSA August 11, 1988. | Shaikh Khalifa bin Mubarak Al-Khalifa, brother of Foreign Minister of Bahrain. | Nonacceptance would have caused embarrassment to donor and U.S. Government. |
| Frank C. Carlucci, Secretary of Defense. | Silver teapot, hand-carved. Recd.—February 1988. Est. Value—$300. Approved for official display. | Mutasim bin Hamad al-Busaidi, Minister of State for Defense, Sultanate of Oman. | Nonacceptance would have caused embarrassment to donor and U.S. Government. |
| Frank C. Carlucci, Secretary of Defense. | White porcelain figurine of lion, Nymphenburg "Royal Crown", Porzellanmanufaktur. Recd.—February 1988. Est. Value—$300. Approved for official display. | President Strauss, Minister of Bavaria, Germany. | Nonacceptance would have caused embarrassment to donor and U.S. Government. |
| Frank C. Carlucci, Secretary of Defense. | Miniature wooden screen, four-sectioned, with painted pictures on each side. Recd.—March 7, 1988. Est. Value—$250. Approved for official display. | Wu Xueqian, State Councillor and Minister of Foreign Affairs, People's Republic of China. | Nonacceptance would have caused embarrassment to donor and U.S. Government. |
| Frank C. Carlucci, Secretary of Defense. | Zenith Neuchatel clock. Recd.—March, 1988. Est. Value—$1,800. Approved for official display. | Arnold Koller, Minister of Defense, Switzerland. | Nonacceptance would have caused embarrassment to donor and U.S. Government. |
| Frank C. Carlucci, Secretary of Defense. | Blue and white porcelain samovar and matching teapot set. Recd.—March 1988. Est. Value—$550. Approved for official display. | Dmitriy Yazov, Minister of Defense of the Soviet Union. | Nonacceptance would have caused embarrassment to donor and U.S. Government. |
| Mrs. Frank C. Carlucci, wife of the Secretary of Defense. | Small lacquered box, small lacquered wall hanging, and perfume. Recd.—March 1988. Est. Value—$480. Box and wall hanging were approved for official display; perfume was delivered to GSA August 11, 1988. | Mrs. Dmitriy Yazov, wife of the Minister of Defense of the Soviet Union. | Nonacceptance would have caused embarrassment to donor and U.S. Government. |
| Frank C. Carlucci, Secretary of Defense. | Small ivory statue of King Tut. Recd.—March 23, 1988. Est. Value—$200. Approved for official display. | Field Marshal Mohamed Abdel Halim Abu Ghazala, Deputy Prime Minister and Minister of Defence and Military Production of Egypt. | Nonacceptance would have caused embarrassment to donor and U.S. Government. |
| Frank C. Carlucci, Secretary of Defense. | Automatic rifle, 9mm., in green case. Recd.—April 8, 1988. Est. Value—$1,800. Delivered to GSA August 11, 1988. | General Akhtar Abdul Rahman Khan, of Pakistan. | Nonacceptance would have caused embarrassment to donor and U.S. Government. |
| Frank C. Carlucci, Secretary of Defense. | Antique, flintlock pistol, 14" long, in green case. Recd.—April 1988. Est. Value—$600. Delivered to GSA August 11, 1988. | Zine El Abidine Ben Ali, President of Tunisia. | Nonacceptance would have caused embarrassment to donor and U.S. Government. |
| Frank C. Carlucci, Secretary of Defense. | Wool carpet, grey, beige and tan, with white fringes, approx. 12'×8'. Recd.—April 1988. Est. Value—$750. Reported to GSA May 25, 1988; pending transfer to GSA. | General Mohammad Zia ul-Haq, President of Pakistan. | Nonacceptance would have caused embarrassment to donor and U.S. Government. |

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AGENCY: DEPARTMENT OF DEFENSE—Continued

Report of Tangible Gifts

| Name and title of person accepting gift on behalf of the U.S. Government | Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location | Identity of foreign donor and government | Circumstances justifying acceptance |
|---|---|---|---|
| Frank C. Carlucci, Secretary of Defense | Large round brass tray, engraved, with stand. Recd.—April 1988. Est. Value—$300. Delivered to GSA August 11, 1988. | General Mohammad Zia ul-Haq, President of Pakistan. | Nonacceptance would have caused embarrassment to donor and U.S. Government. |
| Mrs. Frank C. Carlucci, wife of the Secretary of Defense. | Pakistani carpet, brown, maroon and grey, 7'3" × 4'9", rolled in dark green satin cover. Recd.—April 1988. Est. Value—$1,200. Approved for official display. | Miss Kanwez Fiza Junejo, daughter of the Prime Minister of Pakistan. | Nonacceptance would have caused embarrassment to donor and U.S. Government. |
| Frank C. Carlucci, Secretary of Defense | Pakistani carpet, royal blue with Persian design, 7' × 4'4", rolled in light green cover with tassels. Recd.—April 1988. Est. Value—$1,000. Approved for official display. | General A. A. Rahman, CJCSC of Pakistan. | Nonacceptance would have caused embarrassment to donor and U.S. Government. |
| Frank C. Carlucci, Secretary of Defense | Oblong wooden table, Pakistani design on top with small white inserts (with legs separate), approx. 50" × 29¼". Recd.—April 1988. Est. Value—$550. Reported to GSA December 30, 1988; pending transfer to GSA. | Muhammad Khan Junejo, Prime Minister of Pakistan. | Nonacceptance would have caused embarrassment to donor and U.S. Government. |
| Frank C. Carlucci, Secretary of Defense | Large oblong painting, wooden frame, made with tiles (mosaic), of buildings, trees, and birds. Recd.—April 1988. Est. Value—$800. Delivered to GSA August 11, 1988. | MOD Slaheddine Baly of Tunisia | Nonacceptance would have caused embarrassment to donor and U.S. Government. |
| Frank C. Carlucci, Secretary of Defense | Large wooden folding screen, latticework design with brass inlaid, 5' × 18" panels. Recd.—April 1988. Est. Value—$600. Approved for official display. | General Mohammad Zia ul-Haq, President of Pakistan. | Nonacceptance would have caused embarrassment to donor and U.S. Government. |
| Frank C. Carlucci, Secretary of Defense | Oblong painting, wooden frame, with scene of buildings and horse grazing, approx. 23⅛" × 53¼". Recd.—April 1988. Est. Value—$360. Approved for official display. | General Mohammad Zia-ul-Haq, President of Pakistan. | Nonacceptance would have caused embarrassment to donor and U.S. Government. |
| Frank C. Carlucci, Secretary of Defense | Briefcase, tan snakeskin, approx. 19" × 14". Recd.—Value—$500. Delivered to GSA May 13, 1988. | King Hassan II of Morocco | Nonacceptance would have caused embarrassment to donor and U.S. Government. |
| Frank C. Carlucci, Secretary of Defense | Pakistani carpet, dark brown, rust and blue, rolled in dark green cloth cover, approx. 8'4" × 5'2". Recd.—April 1988. Est. Value—$1,056. Approved for official display in office of Director, Administration and Management. | Rana Naseem Mahmud Khan, Minister of State for Defence, Pakistan. | Nonacceptance would have caused embarrassment to donor and U.S. Government. |
| Frank C. Carlucci, Secretary of Defense | Two paintings in black lacquered frames: one of a large rose; and one of a small bird. Recd.—April 1988. Est. Value—$450. Approved for official display. | Komeito Chairman Yano of Japan | Nonacceptance would have caused embarrassment to donor and U.S. Government. |
| Frank C. Carlucci, Secretary of Defense | Miniature wooden screen, four-sectioned, with painted pictures on each side. Recd.—May 1988. Est. Value—$250. Approved for official display. | Tian Jiyun, Vice Premier of the State Council, People's Republic of China. | Nonacceptance would have caused embarrassment to donor and U.S. Government. |
| Frank C. Carlucci, Secretary of Defense | Scrimshaw, painting on ivory. Recd.—May 1988. Est. Value—$400. Approved for official display. | LTG Mikhail Alekseandrovice Moleyev, General Officer at Kheberovsk, Soviet Union. | Nonacceptance would have caused embarrassment to donor and U.S. Government. |
| Frank C. Carlucci, Secretary of Defense | Large wooden display box containing two cups, powder horn, hatchet and knife, engraved brass and gold. Recd.—May 1988. Est. Value—$1,200. Reported to GSA November 22, 1988 pending transfer to GSA. | Mikhail Gorbachev, General Secretary of the Central Committee of the Communist Party of the Soviet Union. | Nonacceptance would have caused embarrassment to donor and U.S. Government. |
| Frank C. Carlucci, Secretary of Defense | Large wooden box, decorated with walnut shells (Art of Nature Mirot, brown and black. Recd.—June 1988. Est. Value—$700. Approved for official display. | Oh Ja Bok, Minister of National Defense of Korea. | Nonacceptance would have caused embarrassment to donor and U.S. Government. |
| Frank C. Carlucci, Secretary of Defense | Two large Japanese dolls, male and female, in glass case. Recd.—June 1988. Est. Value—$600. Reported to GSA November 7, 1988; pending transfer to GSA. | Junji Nishima, Governor of Okinawa Prefecture, Japan. | Nonacceptance would have caused embarrassment to donor and U.S Government. |



AGENCY: DEPARTMENT OF DEFENSE—Continued

Report of Tangible Gifts

| Name and title of person accepting gift on behalf of the U.S. Government | Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location | Identity of foreign donor and government | Circumstances justifying acceptance |
|---|---|---|---|
| Frank C. Carlucci, Secretary of Defense | Set of wooden bookends made of Xanthorrhoea (blackboys or grass trees) of Australia. Recd.—June 29, 1988. Est. Value—$250. Reported to GSA November 7, 1988; pending transfer to GSA. | Kim Beazley, Minister for Defense of Australia. | Nonacceptance would have caused embarrassment to donor and U.S. Government. |
| Frank C. Carlucci, Secretary of Defense | Replica of gun used by the Angolan Freedom Fighters, made of wood and ivory. Recd.—June 27, 1988. Est. Value—$800. Approved for official display. | Jonas Savimbi, Insurgent Chief of Angola. | Nonacceptance would have caused embarrassment to donor and U.S. Government. |
| Frank C. Carlucci, Secretary of Defense | Collection of 8 gold and silver coins (dinars): 4 gold coins (91.67%), and 4 silver coins (92.5%); in display box. Recd.—July 1988. Est. Value—$1,554. Reported to GSA October 6, 1988; pending transfer to GSA. | Saad Al Abdullah Al Salim Al Sabah, Crown Prince and Prime Minister of the State of Kuwait. | Nonacceptance would have caused embarrassment to donor and U.S. Government. |
| Mrs. Frank C. Carlucci, wife of the Secretary of Defense. | Small light blue porcelain tea set. Recd.—August 1988. Est. Value—$150. Reported to GSA February 6, 1989; pending transfer to GSA. | Mrs. Dmitriy Yazov, Wife of the Minister of Defense of the Soviet Union. | Nonacceptance would have caused embarrassment to donor and U.S. Government. |
| Frank C. Carlucci, Secretary of Defense, and Mrs. Carlucci. | Set of 2 porcelain wine decanters in shape of ladies, white, red and gold ($95); and 2 books on Moscow: one entitled MOSCOW; the other on art galleries in Moscow, with photographs and descriptions of artworks ($50). Recd.—August 1988. Est. Value—$145. Reported to GSA February 6, 1989; pending transfer to GSA. | Dmitriy Yazov, Minister of Defense of the Soviet Union. | Nonacceptance would have caused embarrassment to donor and U.S. Government. |
| Frank C. Carlucci, Secretary of Defense | Sword (pointer not cutting sword) encased in cloisonne cover with cloisonne handle (white and gold) ($250); and pink marble plaque with emblem. Recd.—September 1988. Est. Value—$250. Approved for official display. | General Qin Jiwei, Minister of Defense of China. | Nonacceptance would have caused embarrassment to donor and U.S. Government. |
| Mrs. Frank C. Carlucci, wife of the Secretary of Defense. | Small wooden chest, rosewood with brass and white jade inlay. Recd.—September 1988. Est. Value—$175. Aproved for official display. | Mrs. Qin Jiwei, (Tang Xianmei), wife of the Minister of Defense of China. | Nonacceptance would have caused embarrassment to donor and U.S. Government. |
| Frank C. Carlucci, Secretary of Defense | Knife with silver and gold inlaid sheath. Recd.—September 1988. Est. Value—$350. Reported to GSA February 6, 1989; pending transfer to GSA. | Minister of Defense, Juanarena of Argentina. | Nonacceptance would have caused embarrassment to donor and U.S. Government. |
| Frank C. Carlucci, Secretary of Defense | Large ornate wall clock, brass. Recd.—October 1988. Est. Value—$250. Reported to GSA February 6, 1989; pending transfer to GSA. | Minister of Defense, Bolkenstein of the Netherlands. | Nonacceptance would have caused embarrassment to donor and U.S. Government. |
| Frank C. Carlucci, Secretary of Defense, and Mrs. Carlucci. | Silver-plated tea set, with platter and porcelain cups trimmed with silver-plate. Recd.—November 1988. Est. Value—$500. Reported to GSA February 6, 1989; pending transfer to GSA. | Field Marshal Mohamed Abdel Halem Abu Ghazala, Minister of Defense and Military Production Egypt. | Nonacceptance would have caused embarrassment to donor and U.S. Government. |
| Frank C. Carlucci, Secretary of Defense | Flintlock pistol with cleaning brush, in a case. Recd.—November 1988. Est. Value—$259. Reported to GSA February 6, 1989; pending transfer to GSA. | Field Marshal Mohamed Abdel Halem Abu Ghazala, Minister of Defense and Military Production Egypt. | Nonacceptance would have caused embarrassment to donor and U.S. Government. |
| Mrs. Frank C. Carlucci, wife of the Secretary of Defense. | Black crepe evening dress with sequins. Recd.—November 1988. Est. Value—$80. Reported to GSA February 6, 1989; pending transfer to GSA. | Field Marshal Mohamed Abdel Halem Abu Ghazala, Minister of Defense and Military Production Egypt. | Nonacceptance would have caused embarrassment to donor and U.S. Government. |
| Frank C. Carlucci, Secretary of Defense | Sterling silver cigarette box. Recd.—November 1988. Est. Value—$300. Reported to GSA February 6, 1989; pending transfer to GSA. | Field Marshal Mohamed Abdel Halem Abu Ghazala, Minister of Defense and Military Production Egypt. | Nonacceptance would have caused embarrassment to donor and U.S. Government. |
| Frank C. Carlucci, Secretary of Defense | Volumes 1–8 of 300 masterpieces of paintings in the Palace Museum, in Beijing, China. Recd.—November 1988. Est. Value—$344.80. Reported to GSA February 6, 1989; pending transfer to GSA. | Cheng Wei-Yuan, Minister of Defense of China. | Nonacceptance would have caused embarrassment to donor and U.S. Government. |

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AGENCY: DEPARTMENT OF DEFENSE—Continued

Report of Tangible Gifts

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|---|---|---|---|
| Frank C. Carlucci, Secretary of Defense, and Mrs. Carlucci. | Two large pictures with scenes of the shore, fishing boats, etc., in black frames with white borders. Recd.—November 1988. Est. Value—$360. Reported to GSA February 6, 1989; pending transfer to GSA. | Mutasim bin Hamud al-Busaidi, Minister of State for Defense, Sultanate of Oman, and Mrs. Mutasim. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| Mrs. Frank C. Carlucci, wife of the Secretary of Defense. | Sterling silver incense burner with handle. Recd.—November 1988. Est. Value—$800. Reported to GSA February 6, 1989; pending transfer to GSA. | Mrs. Mutasim, wife of the Minister of State for Defense, Sultanate of Oman. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| Frank C. Carlucci, Secretary of Defense. | Sterling silver and gold-lined incense burner mounted on tray, with inlaid stones. Recd.—November 1988. Est. Value—$3,000. Reported to GSA February 6, 1989; pending transfer to GSA. | Mutasim bin Hamud al-Busaidi, Minister of State for Defense, Sultanate of Oman. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| Frank C. Carlucci, Secretary of Defense. | Fountain pen, Silent Black, gold and brass. Recd.—November 1988. Est. Value—$750. Reported to GSA February 6, 1989; pending transfer to GSA. | Sultanate of Oman. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| Frank C. Carlucci, Secretary of Defense. | Large sterling silver tea service. Includes: coffeepot, teapot, cream pitcher, sugar bowl and large tray. Recd.—December 1988. Est. Value—$7,500. Reported to GSA February 6, 1989; pending transfer to GSA. | Saad Al Abdullah Al Salem, Crown Prince and Prime Minister of Kuwait. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| Frank C. Carlucci, Secretary of Defense. | Ceremonial sword in 22K gold-plated sheath. Recd.—December 1988. Est. Value—$2,500. Approved for official display. | His Excellency, Nawaf Al-Ahmad al-Jaber Al-Sabah, Minister of Defense of Kuwait. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| Frank C. Carlucci, Secretary of Defense. | Samsonite canyon luggage, Silhouette 4000, with Weepack, approx. 21", with combination lock, gray. Recd.—December 1988. Est. Value—$140. Reported to GSA February 6, 1989; pending transfer to GSA. | His Excellency, Nawaf al-Ahmad al-Jaber Al-Sabah, Minister of Defense of Kuwait. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| Mrs. Frank C. Carlucci, wife of the Secretary of Defense. | Samsonite attache case, Accord ST, approx. 15½", with combination lock, brown. Recd.—December 1988. Est. Value—$120. Reported to GSA February 6, 1989; pending transfer to GSA. | His Excellency, Nawaf al-Ahmad al-Jaber Al-Sabah, Minister of Defense of Kuwait. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| Colonel James F. Carney, Jr., USAF, Office of the Assistant Secretary of Defense (International Security Affairs). | Men's Baume and Mercier watch, 18K gold and stainless steel. Recd.—January 1988. Est. Value—$1,700. Delivered to GSA August 11, 1988. | Isa bin Sulman Al Khalifa, The Amir of the State of Bahrain. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| ADM William J. Crowe, Jr., USN, Chairman, Joint Chiefs of Staff. | Replica of the "First Lagalo—Whitehead Torpedo—1868," of the original exhibit at the Austrian Museum of Military History. Recd.—April 28, 1988. Est. Value—Undetermined. Approved for official display at the Navy Museum, Washington Navy Yard, Washington, DC. | General Offiziar Traunfeldz, General Teaop Inspector, Austria. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| ADM William J. Crowe, Jr., USN, Chairman, Joint Chiefs of Staff. | "Essa Town Gate" Europa Quartz Clock, brass, 9⅝" x 10¼". Recd.—May 3, 1988. Est. Value—$500. Delivered to GSA August 11, 1988. | Isa bin Sulman Al Khalifa, The Amir of the State of Bahrain. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| Mrs. William J. Crowe, Jr., wife of the Chairman, Joint Chiefs of Staff. | 16K gold necklace, with large gold beads, seed pearls, turquoise and red stones, approx. 34¼" in length; with two matching bracelets. Recd.—May 3, 1988. Est. Value—$6,000. Delivered to GSA August 11, 1988. | Isa bin Sulman Al Khalifa, The Amir of the State of Bahrain. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| Mrs. Donna J. Halsaver, Secretary to the Assistant Secretary of Defense (International Security Affairs). | Ladies' Baume and Mercier watch, 18K gold and stainless steel. Recd.—January 1988. Est. Value—$1,250. Transferred to IRS September 20, 1988, per GSA. | Isa bin Sulman Al Khalifa, The Amir of the State of Bahrain. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| J. Daniel Howard, Assistant Secretary of Defense (Public Affairs). | Men's Baume and Mercier watch, 18K gold and stainless steel, with matching cuff links. Recd.—January 1988. Est. Value—$1,900. Delivered to GSA August 11, 1988. | Isa bin Sulman Al Khalifa, The Amir of the State of Bahrain. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |



AGENCY: DEPARTMENT OF DEFENSE—Continued

Report of Tangible Gifts

| Name and title of person accepting gift on behalf of the U.S. Government | Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location | Identity of foreign donor and government | Circumstances justifying acceptance |
|---|---|---|---|
| J. Daniel Howard, Assistant Secretary of Defense (Public Affairs). | Strand of cultured pearls, approx. 19". Recd.—January 1988. Est. Value—$800. Delivered to GSA August 11, 1988. | Isa bin Sulman Al Khalifa, The Amir of the State of Bahrain. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| J. Daniel Howard, Assistant Secretary of Defense (Public Affairs). | Sterling silver tray, approx. 9" in diameter, with engraved design. Recd.—December 1988. Est. Value—$500. Reported to GSA January 4, 1989; pending transfer to GSA. | Mutasim bin Hamud al-Busaidi, Minister of State for Defense, Sultanate of Oman. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| Lt. Col. Stephen J. Labadie, USMC, Aide to the Chairman, Joint Chiefs of Staff. | Men's Omega quartz "Seamaster" watch, gold and stainless steel. Recd.—May 1988. Est. Value—$500. Delivered to GSA August 11, 1988. | Isa bin Sulman Al Khalifa, The Amir of the State of Bahrain. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| Milton L. Lohr, Deputy Under Secretary of Defense for Acquisition. | Inscribed ornamental pewter wine vessel, with handle, approx. 23" high. Recd.—October 14, 1988. Est. Value—$650. Approved for official display. | IGA Victor Marcais, of Direction des Recherches Etudes et Techniques (DRET), France. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| Captain Teresa Mason, USAF, M.D., Flight Surgeon, Air Force Clinic, Pentagon. | Men's Baume and Mercier watch, 18K gold and stainless steel. Recd.—January 1988. Est. Value—$1,700. Delivered to GSA August 11, 1988. | Isa bin Sulman Al Khalifa, The Amir of the State of Bahrain. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| E.O. Joseph McMillan, Pakistan Country Director, Defense Security Assistance Agency. | Onyx lamp, approx. 19½" tall. Recd.—January 14, 1988. Est. Value—$250. Delivered to GSA August 11, 1988. | General Mohammad Zia-ul-Haq, President of Pakistan. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| Brig. Gen. David C. Meade, USA, Assistant Deputy Director for Politico-Military Affairs, J-5, Organization of the Joint Chiefs of Staff. | Men's Garrard watch, Quartz, gold with black leather straps. Recd.—December 16, 1988. Est. Value—$800. Reported to GSA January 10, 1989; pending transfer to GSA. | MG Mazyed Abdul Raman Al-Same, Chief of the General Staff, Kuwait Armed Forces, Kuwait. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| CDR William A. Miner, USN, Country Director, NESA, Office of the Assistant Secretary of Defense (International Security Affairs). | Men's Baume and Mercier watch, 18K gold and stainless steel. Recd.—January 1988. Est. Value—$1,700. Delivered to GSA August 11, 1988; pending transfer to GSA. | Isa bin Sulman Al Khalifa, The Amir of the State of Bahrain. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| Lt. Col. Edward J. Robeson, USMC, J-5, Organization of the Joint Chiefs of Staff. | Men's Tissot watch, with Bahrain Defense Force Crest, PR 100, gold and stainless steel. Recd.—January 20, 1988. Est. Value—$400. Delivered to GSA August 11, 1988. | MG Khalifa Al Khalifa, Chief of Staff, Bahrain Defence Force, Bahrain. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| Glenn A. Rudd, Deputy Director, Defense Security Assistance Agency. | Ladies' quartz gold watch ($100); tablecloth, 86" x 58", and 10 napkins ($150). Recd.—September 22, 1988. Est. Value—$250. Reported to GSA November 28, 1988; pending transfer to GSA. | General and Mrs. Chen Hsing-Ling, Commander In Chief, Republic of China Air Force. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| Glenn A. Rudd, Deputy Director, Defense Security Assistance Agency. | Decorative wooden table, approx. 22½" in diameter and 22½" high. Recd.—November 30, 1988. Est. Value—$350. Approved for official display. | Syed Ijlal Haider Zaidi, Secretary of Defence of Pakistan. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| RADM Joseph C. Strasser, USN, Executive Assistant to the Chairman, Joint Chiefs of Staff. | Chopard gold mantel clock, 6" x 3". Recd.—May 4, 1988. Est. Value—$500. Reported to GSA February 6, 1989; pending transfer to GSA. | Isa bin Sulman Al Khalifa, The Amir of the State of Bahrain. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| RADM Joseph C. Strasser, USN, Executive Assistant to the Chairman, Joint Chiefs of Staff. | Men's Chopard watch, 18K gold and stainless steel, Monte Carlo. Recd.—May 4, 1988. Est. Value—$2,500. Reported to GSA February 6, 1989; pending transfer to GSA. | Isa bin Sulman Al Khalifa, The Amir of the State of Bahrain. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |

AGENCY: DEPARTMENT OF DEFENSE

Report of Travel or Expenses of Travel

| Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government | Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States | Identity of foreign donor and government | Circumstances justifying acceptance |
|---|---|---|---|
| NEGATIVE | | | |

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AGENCY: FEDERAL COMMUNICATIONS COMMISSION

Report of Travel or Expenses of Travel

| Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government | Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States | Identity of foreign donor and government | Circumstances justifying acceptance |
|---|---|---|---|
| James D. Schlichting, Legal Advisor to the Chairman. | Lodging, meals and in-country transportation expenses provided for participants in international seminar celebrating 25th anniversary of the Costa Rican Institute of Electricity (ICE). Estimated value of expenses: $316. Time of acceptance: May 25 & 26, 1988. | Antonio F. Canas, Executive President, Costa Rican Institute of Electricity, Government of Costa Rica. | Mr. Schlichting was invited by Costa Rica to participate in the seminar; accommodations were furnished and to have refused acceptance would have caused embarrassment to both parties. |

AGENCY: DEPARTMENT OF HEALTH AND HUMAN SERVICES

Report of Tangible Gifts

| Name and title of person accepting gift on behalf of the U.S. Government | Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location | Identity of foreign donor and government | Circumstances justifying acceptance |
|---|---|---|---|
| Dr. Carl C. Peck, Director, Center for Drug Evaluation and Research, Food and Drug Administration. | 50,000 yen. Received—May 17, 1988. Estimated value—$368.00. Deposited with U.S. Treasury, June 16, 1988. | Dr. Yoshiyama, Deputy Director, National Institute of Hygienic Sciences, Ministry of Health and Welfare, Japan. | Attempts to decline acceptance were rebuffed; further effort would have caused embarrassment to donor. |

AGENCY: AGENCY FOR INTERNATIONAL DEVELOPMENT

Report of Tangible Gifts

| Name and Title of person accepting gift on behalf of the U.S. Government | Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location | Identity of foreign donor and government | Circumstances justifying acceptance |
|---|---|---|---|
| John P. Hunman, Director, USAID/Botswana. | Hotel room and meals July 5–8, 1988 while attending the National Conference on Strategies for Private Sector Development held in Francistown, Botswana. The conference was attended by four participants. Total costs—$909.80 at a cost of $295.80 per individual. | Mr. H.C. Von Spreeuk, Resident Representative, UNDP. | Non-acceptance would have caused an embarrassment to the U.S. Government, UNDP and other donors. |
| William Elliott, Project Development Officer, USAID/Botswana. | Attended above conference | | Same. |
| Cameron Smith, AID Consultant, USAID/Botswana. | Attended above conference | | Same. |
| Bontle Modhibaphiri, FSN Secretary, USAID/Botswana. | Attended above conference | | Same. |
| Joseph C. Wheeler, Chairman, Development Assistance Committee, Paris, France. | Meeting of the Africa Committee of International Fertilizer Development Center (IFDC), from January 6–8, 1988 in Lome, Togo. IFDC paid for tickets, hotel and meals. Total cost—$2,480. | IFDC Lome, Togo | Non-acceptance would have caused an embarrassment to the U.S. Government and IFDC. |
| Joseph C. Wheeler, Chairman, Development Assistance Committee, Paris, France. | Annual tidewater meeting in Jukkasjarvi, Sweden, July 1–8, 1988. Hotel room and meals for two nights and two days total estimated costs—$200. | Swedish Government | It was determined to be in the best interest of the OECD to attend this meeting. |
| Joseph C. Wheeler, Chairman, Development Assistance Committee, Paris, France. | Symposium on the Crisis of the Global System in Vienna, Austria, September 29–October 1, 1988. Hotel room for two days, two nights and breakfast total estimated costs—$240.00. | Vienna Institute for Development and Cooperation, Vienna, Austria. | It was determined to be in the best interest of the OECD to attend this meeting. |



AGENCY: DEPARTMENT OF JUSTICE

Report of Tangible Gifts

| Name and title of person accepting gift on behalf of the U.S. Government | Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location | Identity of foreign donor and government | Circumstances justifying acceptance |
|---|---|---|---|
| William S. Sessions, Director, Federal Bureau of Investigation. | Rifle, Winchester 94, with gold-plated receiver Recd.—May 20, 1988 Est. Value—$450 Retained for official display in the Director's office. | Norman Inkster, Commissioner, Royal Canadian Mounted Police, Canada. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| William S. Sessions, Director, Federal Bureau of Investigation. | Korean Edition Paper Knife Set Recd.—October 15, 1988 Est. Value—$250 Retain for official display in the Director's office. | Bae Myung Ho, Director, Agency for National Security Planning, Republic of Korea. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| William S. Sessions, Director, Federal Bureau of Investigation. | Coin Collection, Olympic commemorative set Recd.—March 21, 1988 Est. Value—$600 Retained for official display in the Director's office. | Ahm Moo Yhuk, Olympic Representative, Republic of Korea. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| William S. Sessions, Director, Federal Bureau of Investigation. | Oil Vase, blown glass, amber, Recd.—October 27, 1988 Est. Value—$300 Retained for official display in the Director's office. | Gerhart Boedan, President, BFV Federal Republic of Germany. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| Dick Thornburgh, Attorney General of the United States. | Scroll Painting, depicting two birds, 2' × 5' Recd.—October 6, 1988 Est. Value—$200 Retained for official display in the Office of the Attorney General. | Cai Chang, Minister of Justice, Peoples Republic of China. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| Dick Thornburgh, Attorney General of the United States. | Pewter Bowl, with handles Recd.—December 1, 1988 Est. Value—$190 Retained for official display in the Office of the Attorney General. | Walter H. Diggelmann, Executive Director Swiss-American Chamber of Commerce, Switzerland. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |

AGENCY: DEPARTMENT OF JUSTICE

Report of Travel or Expenses of Travel

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|---|---|---|---|
| Edwin Meese III, Attorney General of the United States. | Lodging and air travel expenses while on official visit from August 12 through 19, 1987 Lodging Est. Value—$2,000 Air travel from Beijing-Xian-Beijing Est. Value—$700. | Zou Yu, Minister of Justice Peoples Republic of China. | Non-acceptance would have caused embarrassment to donor and United States Government. |
| Edwin Meese III, Attorney General of the United States. | Lodging while on official visit from June 1 through 4, 1988 Est. Value—$350 | Frederick Zimmerman, Minister of the Interior, Federal Republic of Germany. | Non-acceptance would have caused embarrassment to donor and United States Government. |

AGENCY: NATIONAL ENDOWMENT FOR THE ARTS

Report of Travel or Expenses of Travel

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|---|---|---|---|
| Jeanne Rhinelander Special Assistant to Chairman John Rhinelander (husband). | $100 rubles ($165 per day) per diem hotel owned by USSR Academy of Sciences; assumed hotel costs. September 4–8, 1988. | USSR Academy of Sciences | Husband participated in conference co-sponsored by American Academy of Arts and Sciences and USSR Academy of Sciences, Moscow |

AGENCY: NATIONAL ENDOWMENT FOR THE HUMANITIES

Report of Tangible Gifts

| Name and title of person accepting gift on behalf of the U.S. Government | Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location | Identity of foreign donor and government | Circumstances justifying acceptance |
|---|---|---|---|
| Lynne V. Cheney, Chairman | Blue and white, rectangular, ceramic bud vase approximately 10" high Recd.—May 2, 1988. Est. Value—$350. Approved for official use. | Dr. Chung Han Mo, Korean Minister of Culture and Information | Non-acceptance would have caused embarrassment to donor |

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AGENCY: DEPARTMENT OF THE NAVY

Report of Tangible Gifts

| Name and title of person accepting gift on behalf of the U.S. Government | Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location | Identity of foreign donor and government | Circumstances justifying acceptance |
|---|---|---|---|
| Captain G. W. Bretschi, USN, U.S. Naval Supply Depot, Yokosuka. | Oriental design porcelain vase. Recd.—August 28, 1987. Est. Value—$185. Approved for official display. | Captain M. Kurata, Commanding Officer, Yokosuka Supply Depot, Japan Maritime Self Defense Force. | Nonacceptance would have caused embarrassment to donor and U.S. Government. |
| General George B Crist, USMC, Commander in Chief, U.S. Central Command. | Heckler and Koch MP5 submachine gun. Recd.—May 28, 1988. Est. Value—$1,000. Approved for official display. | General Mohammed Zia Al Haq, President of Pakistan. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| General George B Crist, USMC, Commander in Chief, U.S. Central Command. | Rosewood table, 4 × 2½'. Recd.—May 28, 1988. Est. Value—$500. Approved for official display. | General Mohammed Zia Al Haq, President of Pakistan. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| Lieutenant James B. Fitzpatrick, USN, Naval Hospital, Bethesda. | Commemorative 24th Anniversary gold coin, 16.966 grams in weight, 22k gold, 91.67% fine gold. Recd.—July 14, 1988. Est. Value—$190. Being held in Chief of Naval Operations (OP–09B33) pending transfer to GSA for disposition. | His Excellency Saad Al Abdullah Al Sabah, Crown Prince and Prime Minister of Kuwait. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| Captain David G. Kemp, USN, Commanding Officer, Naval Hospital, Bethesda, MD. | Commemorative 25th Anniversary gold coin, 16.966 grams in weight, 22k gold, 91.67% fine gold. Recd.—July 14, 1988. Est. Value—$190. Being held in Chief of Naval Operations (OP–09B33) pending transfer to GSA for disposition. | His Excellency Saad Al Abdullah Al Sabah, Crown Prince and Prime Minister of Kuwait. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| Rear Admiral Anthony A. Less, USN, Commander, Joint Task Force, Middle East. | Rolex wristwatch (Oyster Perpetual). Recd.—August 24, 1988. Est. Value—$7,089. Being held in Chief of Naval Operations (OP–09B33) pending transfer to GSA for disposition. | Sheik Isa Bin Sulman Al Khalifa, Emir of Bahrain. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| Mrs. Leanne C. Less, wife of Rear Admiral Anthony A. Less, USN, Commander, Joint Task Force, Middle East. | Multi-color 4' × 6' persian rug. Recd.—April 6, 1988. Est. Value—$900. Approved for official display. | Sheika Jawaher Mohammed Alqassemi, wife of Sheik Dr. Sultan Bin Mohammed Alqassemi, Ruler of Sharjah, United Arab Emirates. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| Mrs. Leanne C. Less, wife of Rear Admiral Anthony A. Less, USN, Commander, Joint Task Force, Middle East. | Rolex wristwatch (Oyster Perpetual). Recd.—August 24, 1988. Est. Value—$5,279. Being held in Chief of Naval Operations (OP–09B33) pending transfer to GSA for disposition. | Sheika Isa Bin Sulman Al Khalifa, Emir of Bahrain. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| Theresa C. Less, daughter of Rear Admiral Anthony A. Less, USN, Commander, Joint Task Force, Middle East. | Rolex wristwatch (Oyster Perpetual). Recd.—August 24, 1988. Est. Value—$1,819. Being held in Chief of Naval Operations (OP–09B33) pending transfer to GSA for disposition. | Sheik Isa Bin Sulman Al Khalifa, Emir of Bahrain. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| Commander Lee K. Mandel, USN Naval Hospital, Bethesda, MD. | Commemorative 25th Anniversary gold coin, 16.966 grams in weight, 22k gold, 91.67% fine gold. Recd.—July 14, 1988. Est. Value—$190. Being held in Chief of Naval Operations (OP–09B33) pending transfer to GSA for disposition. | His Excellency Saad Al Abdullah Al Sabah, Crown Prince and Prime Minister of Kuwait. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| Lieutenant Peter F. O'Connor, USN, Naval Hospital, Bethesda, MD. | Commemorative 25th Anniversary gold coin, 16.966 grams in weight, 22k gold, 91.67% fine gold. Recd.—July 14, 1988. Est. Value—$190. Being held in Chief of Naval Operations (OP–09B33) pending transfer to GSA for disposition. | His Excellency Saad Al Abdullah Al Sabah, Crown Prince and Prime Minister of Kuwait. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| Major General Ross S. Plasterer, USMC, Commanding General, 1st Marine Aircraft Wing. | Brass ceremonial head-dress with jade attachments and glass case measuring 12" × 13" × 26". Recd.—March 25, 1988. Est. Value—$400. Approved for official display. | Mayor, Ye Chun, American Town, Yechon, South Korea. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |



AGENCY: DEPARTMENT OF THE NAVY

Report of Travel or Expenses of Travel

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|---|---|---|---|
| Negative. | | | |

AGENCY: DEPARTMENT OF THE NAVY

Report of Tangible Gifts

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|---|---|---|---|
| Captain Harry T. Rittenhour, USN, Commanding Officer, U.S.S. *Lasalle* (AGF 3). | Engraved Omega Stainless Steel wristwatch. Recd—February 18, 1988. Est. Value—$290. Being held in Chief of Naval Operations (OP–09B33) pending transfer to GAS for disposition. | H.H. Shaikh Isa Bin Sulman Al Khalifa, The Amir of the State of Bahrain. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| Vice Admiral James B. Wilkinson, USN, Commander, Naval Air Systems Command. | 27" pink coral necklace. Recd—April 19, 1988. Est. Value—$190. Being held in Chief of Naval Operations (OP–09B33) pending transfer to GSA for disposition. | Mr. Change Ming-Yao, Representative of the Coordination Council on North American Affairs. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |

AGENCY: DEPARTMENT OF STATE

Report of Tangible Gifts

| Name and title of person accepting gift on behalf of the U.S. Government | Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location | Identity of foreign donor and government | Circumstances justifying acceptance |
|---|---|---|---|
| Samuel Castleman, Protocol Officer | 18K man's wrist watch with leather brown strap; Saudi insigns on round face. Recd.—February 15, 1985. Est. Value—$1800. Delivered to GSA September 8, 1988. | HRH Fahd Ibn Abdi al-Aziz Al Saud, King of Saudi Arabia. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| Dale Dean, First Secretary U.S. Embassy Saudi Arabia. | Stainless steel and brass man's wrist watch with numerical day and with insigns on face in beige felt-covered presentation box. Recd.—Fall, 1985. Est. Value—$200. Delivered to GSA September 8, 1988. | Prince Muhemad bi. Turkal-Fariken, Consultant, Ministry of Foreign Affairs Saudi Arabia. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| Dale Dean, Bureau of African Affairs | Seychelles Coco de Mer (a rare coconut-like object grown only in the Seychelles). approximately 10" x 9"×4½". Recd.—February 1988. Est. Value—$300. Appraised for official use. | Mr. Marc Marenge, Charge d'Affaires, a.i, Republic of the Seychelles. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| April Glaspie, Country Director, NEA/ARN. | German Bavarian cut crystal decanter—13" tall with stopper. Recd.—May 1988. Est. Value—$200. Delivered to GSA September 8, 1988. | H.E. Amine Gemayel, President of the Republic of Lebanon. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| Michael Gfoeller, Economic Officer American Embassy Bahrain. | Rolex: man's time and date stainless steel and gold wrist watch in presentation box with green leather passport case. Recd.—September 29, 1988. Est. Value—$1000. Reported to GSA November 29, 1988; being held in the Office of Protocol pending delivery to GSA. | Amiri Court of the State of Bahrain | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| Tatina Gfoeller-Volkoff, Political Officer, American Embassy, Bahrain. | (a) Rolex: ladie's time and date stainless steel and gold wrist watch in presentation case. (b) Four gold round bracelets with design; approximately 2¼" in diameter. Recd.—September 29, 1988. Est. Value—(a) $1000. (b) $500. Reported to GSA November 29, 1988; being held in the Office of Protocol pending delivery to GSA. | Amiri Court of the State of Bahrain | Non-acceptance would have caused embarrassment to donor and U.S. Government. |

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AGENCY: DEPARTMENT OF STATE—Continued

Report of Tangible Gifts

| Name and title of person accepting gift on behalf of the U.S. Government | Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location | Identity of foreign donor and government | Circumstances justifying acceptance |
|---|---|---|---|
| David M. Hale, Political Officer, U.S. Embassy Bahrain | (a) Woman's Rolex gold time and date watch; gold band. In red leather presentation box with red leather woman's wallet and tan hankerchief. (b) Two strand graduated pearl necklace with gold clasp; approx. 17" long one strand and 18" long one strand. (c) Men's gold Rolex time and date watch; gold band. In brown leather presentation case with brown leather note book and pads, and tan hankerchief. (d) Four gold round bracelets with design; approx. 2⅛" in diameter. Recd.—July 1, 1988. Est. Value—$18,037.14. Delivered to GSA September 8, 1988. | Sheikh Isa bin Sulman Al-Khalifa, Amir of the State of Bahrain. | Non-acceptance would have caused embarrassment to donor and U.S. Government |
| W. Nathaniel Howell, U.S. Ambassador to Kuwait. | Andemars Piguet man's wrist watch with black alligator band. Recd.—December 7, 1988. Est. Value—$200. In the Office of Protocol pending delivery to GSA. | Minister of Defense, Kuwait | Non-acceptance would have caused embarrassment to donor and U.S. Government |
| Lowell C. Kilday, U.S. Ambassador to Dominican Republic. | Coin set issued to commemorate 500th anniversary of Columbus' arrival in the New World. The set includes one 500 peso gold coin, one 100 peso silver coin, and one 1 peso copper clad coin. There is also a commemorative stamps and envelope involved. Recd.—January 30, 1989. Est. Value: $700. Being held in the Office of Protocol pending delivery to GSA. | Roberto Saladin, Governor of Central Bank of Dominican Republic. | Non-acceptance would have caused embarrassment to donor and U.S. Government |
| David A. Korn U.S. Ambassador to Togo. | "Republique Togolaise, Album Philatelique Souvenir, Offert par son Excellence le Gen Gnassingbe Eyadema, President Fondateur du R.P.T. President de la Republique Togolaise" in black leather binder containing approximately 124 pages of stamps in various denominations, sizes, and shapes commemorating various events. Binder approximately 13" x 10½". Recd.—April 4, 1988. Est. Value—$300. Reported to GSA October 17, 1988; being held in the Office of Protocol pending delivery to GSA. | H.E. Gnassingbe Eyadema, President of the Republic of Togo | Non-acceptance would have caused embarrassment to donor and U.S. Government |
| Richard W. Murphy, Assistant Secretary of State for Near Eastern and South Asian Affairs. | Four 22K gold Kuwait coins in presentation box. Recd.—July 14, 1988. Est. Value—$820. Delivered to GSA September 8, 1988. | H.R.H. Sheikh Saad Alabdullah Alsalim Alsabah of the State of Kuwait. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| Richard Murphy, Assistant Secretary of State for Near Eastern and South Asian Affairs. | One gold coin. Recd.—October 3, 1988. Est. Value—$300. In the Office of Protocol pending delivery to GSA. | Sheikh Al-Sabah, Deputy Prime Minister and Minister of Foreign Affairs, Kuwait. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| Mrs. David G. Newton, Spouse of U.S. Ambassador to Iraq. | Omega de Ville gold-plated ladies watch. Recd.—July 7, 1988. Est. Value—$375. Delivered to GSA September 8, 1988. | Abbas Abdul Aziz, Senior Member of the Ruling Baath Party. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| David G. Newton, U.S. Ambassador to Iraq. | Sterling silver model palm tree with small bunches of dates in gold; 13" high in acrylic presentation case. Recd.—July 11, 1988. Est. Value—$1500. Approved for official use. | Abbas Abdul Aziz, Senior Member of the ruling Baath Party. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| Rozanne L. Ridgeway, Assistant Secretary of State for European and Canadian Affairs. | Necklace (3 large amber stones), bracelet (4 large amber stones), brooch (1 large amber stone), earrings (1 small and 1 medium amber stones). Recd.—June 1988. Est. Value—$300. Delivered to GAS September 8, 1988. | HE Mikhail Gorbachev, General Secretary of the Central Committee of the Communist Party of the Soviet Union. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| Rozanne L. Ridgeway, Assistant Secretary of State for European and Canadian Affairs. | Six crystal dessert bowls. Recd.—December 1988. Est. Value—$180. In the Office of Protocol pending delivery to GSA. | HE Miroslav Houstecy, Ambassador to the U.S. of the Czechoslovak Socialist Republic. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |



AGENCY: DEPARTMENT OF STATE—Continued

Report of Tangible Gifts

| Name and title of person accepting gift on behalf of the U.S. Government | Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location | Identity of foreign donor and government | Circumstances justifying acceptance |
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| Rozanne L. Ridgeway, Assistant Secretary of State for European and Canadian Affairs. | Amber necklace 4" long. Recd.—December 1988. Est. Value—$180. In the Office of Protocol pending delivery to GSA. | HE Jan Kinast, Ambassador to the U.S. of the Polish People's Republic. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| Rozanne L. Ridgeway, Assistant Secretary of State for European and Canadian Affairs. | Ceramic "merry-go-around" table lamp blue and white with 8 figurines; 11" high; 10" in diameter. Recd.—December 1987. Est. Value—$180. Approved for official use. | HE Mikhail Gorbachev, General Secretary of the Central Committee of the Communist Party of the Soviet Union. | Non-acceptance would have caused embarrassment to donor and U.S. Government |
| Selwa Roosevelt, Chief of Protocol | Framed painting of an Egyptian Queen in colors of gold and turquoise with black background; frame ornate gold; approx. 22½" x 18½" Recd.—February 1, 1988. Est. Value—$185. Approved for official use. | H.E. Mohamed Hosni Mubarak, President of the Arab Republic of Egypt. | Non-acceptance would have caused embarrassment to donor & U.S. Government. |
| Selwa Roosevelt, Chief of Protocol | Necklace 18" long, slightly baroque/barrel shape pearls, 3mm–7.5mm, with white gold clasp. Recd.—August 3, 1988. Est. Value—$700. Delivered to GSA September 8, 1988. | HE Sheikh Saud Nasir Al-Sabah, Ambassador of the State of Kuwait. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| The Secretary of State and Mrs. George P. Shultz. | (a) Round hand mirror with ⅛ sterling silver border, floral etching and solid sterling silver back worked in ornate floral design with raised partridge for handle; approx. 6¼" across.) (b) Hand-woven rug with village scene in predominantly gold and green with multicolored building and brown birds and animals; approx. 41½" x 64¾". Recd.—January 26, 1988. Est. Value—(a) $100 (b) $150. Delivered to GSA September 8, 1988. | H.E. the President of the Arab Republic of Egypt and Mrs. Murbarak. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| George P. Shultz, Secretary of State | Octagonal porcelain dish by Vista Alegre of Portugal; approx. 12" across; floral design on white, trimmed in gold and blue; flower colors are cinnamon, peach, white, gold and navy blue. Recd.—February 23, 1988. Est. Value—$200. Approved for official use. | H.E. Anibal Antonio Cavaco Silva, Prime Minister of Portugal. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| The Secretary of State and Mrs. George P. Shultz. | Etching print (Acquaforte) dated 1692 by G. Wautiers entitled "Prospetto del Palazzo Pontificio nel Quirinale detto Monte Cavallo" approx. 7¾" x 35¼"; wood frame with glass. Recd.—April 1, 1988. Est. Value—$250. Delivered to GSA September 8, 1988. | H.E. Francesco Cossiga, President of the Italian Republic. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| The Secretary of State and Mrs. George P. Shultz. | Gold and lapis lazuli cross pendant, approx. 1¼" x ¼" in Maroon suede cause labeled "Matassei Rome" Recd.—April 1, 1988. Est. Value—$320. Delivered to GSA September 8, 1988. | H.E. Francesco Cossiga, President of the Italian Republic | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| The Secretary of State and Mrs. George P. Shultz. | Book titled "Le Due Nuove Campane Del Campidoglio" dated 1806; beige leather, approx. 5¼" x 11¼". Recd—April 1, 1988. Est. Value: $400. Delivered to GSA September 8, 1988. | H.E. Giulio Andreotti, Minister of Foreign Affairs of the Italian Republic. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| The Secretary of State and Mrs. George P. Shultz. | Genori porcelain demitasse set of tray, 2 cups, 2 saucers, cream pitcher, sugar bowl with lid, and small coffee pot with lid; white with flowers and woman's torso in bas-relief. Recd.—April 1, 1988. Est. Value—$75. Delivered to GSA September 8, 1988. | H.E. Giulio Andreotti, Minister of Foreign Affairs of the Italian Republic. | Non-acceptance would have caused embarrassment to donor and U.S Government. |
| The Secretary of State and Mrs. George P. Shultz. | Reproduction of the Statue of Liberty; approx 26¼' high, black cast iron body with frock of silver and gold-tone metal on lucite base; sculpted by G. Visentin. (Photograph of sculptor attached.) Recd.—April 1, 1988. Est. Value—$200. Delivered to GSA September 8, 1988. | H.E. Giulio Andreotti, Minister of Foreign Affairs of the Italian Republic. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |

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AGENCY: DEPARTMENT OF STATE—Continued

Report of Tangible Gifts

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| George P. Shultz, The Secretary of State. | Original drawing used to strike the medal commemorating His Holiness' Third Pontifical Year, framed and matted; artist Pericle Fazzini. Approx. 29¾" x 20¾". Recd.—April 2, 1988. Est. Value—$4,000. Delivered to GSA June 23, 1988. | His Holiness John Paul II | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| George P. Shultz, The Secretary of State. | "Worry beads" of gold and lapis lazuli, approx. 10" long; eleven gold balls and two smaller gold separators amid twenty-two lapis tassel balls on gold chain ending in three small gold chains with gold tassel end balls. Recd.—April 7, 1988. Est. Value—$200. Delivered to GSA September 8, 1988. | H.E. Zaid Rifai, Prime Minister of the Hashemite Kingdom of Jordan. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| George P. Shultz, The Secretary of State. | Octagonal Orrefors crystal vase engraved on front with insigna of the King of Sweden; approx. 7⅝" x 9". Recd.—April 11, 1988 Est. Value—$500. Delivered to GSA September 8, 1988. | His Majesty Carl XVI Gustaf, King of Sweden. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| George P. Shultz, The Secretary of State. | Two stag horns each embellished with silver at each end. Silver contains a decoration of enamel and semi-precious stones in a floral design; approx. 31½" and to end with approx. 27" silver chain connecting between them. Recd.—April 24, 1988. Est. Value—$100 each. Delivered to GSA September 8, 1988. | H.E. Otar E. Chanturia, Chairman of the Council of the Ministers of the Georgian Soviet Socialist Republic. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| George P. Shultz, The Secretary of State. | Black leather briefcase approx. 14¼" x 12" x 2", black leather handle with brass fittings and lock with manufacturer's name "Loewe" and crest. Brass key on leather thong with initials GSP on inside flap. Presented in soft cloth cover. Recd.—June 9, 1988. Est. Value—$500. Delivered to GSA September 8, 1988. | H.E. Francisco Fernandez Ordonez, Minister of Foreign Affairs of Spain. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| The Secretary of State and Mrs. George P. Shultz. | (a) Gold tie bar approx. 2⅛" x ⅝" with indented silver bar running the length of tie bar. Clip on back is silver with gold chain 2¼" long attached to gold button loop ⅝" long. Presented in leather and velvet case.<br>(b) Black leather clutch purse by Fendi; approx. 12" x 9¼" x 2"; pleated front pocket; 1⅝" faux alligator band on each side of purse. Presented in soft cloth bag with "F". Recd.—June 15, 1988. Est. Value—(a) $100, (b) $150. Delivered to GSA September 8, 1988. | H.E. Ciriaco De Mita, President of the Council of the Ministers of the Italian Republic and Mrs. De Mita. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| George P. Shultz, The Secretary of State. | Antique bronze curved dagger blade approx. 6½" high from Middle Bronze II Period 1730–1550 BC E. In acrylic presentation box approx. 9" x 3¾" x 3¾". Brass plaque on front inscribed "To the Honorable George P. Shultz, Secretary of State with friendship Yitzhak Rabin Minister of Defense Israel June 1988". With certificate of authenticity. Recd.—June 27, 1988. Est. Value—$300. Delivered to GSA September 8, 1988. | H.E. Yitzhak Rabin, Minister of Defense of Israel. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| The Secretary of State and Mrs. George P. Shultz. | (a) Silver cigarette box, wooden interior. Artistic scroll design over entire outside, bottom plate with exotic; approx. 6¾" x 4¼" x 1⅝". | H.E. Dr. A Esmat Abdel Meguid, Minister of Foreign Affairs of the Arab Republic of Egypt and Mrs. Abdel Meguid. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |



AGENCY: DEPARTMENT OF STATE—Continued

Report of Tangible Gifts

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| | (b) Matching set silver scarab bracelet and scarab pendant and chain; scarabs each approx. 2" long x 1¾"; chain is rope design; bracelet is hinged with "peg-in-hole" closure. Recd.—June 27, 1988. Est. Value—(a) $200, (b) $200 each. Delivered to GSA September 8, 1988.. | | |
| George P. Shultz, Secretary of State | Casio miniature color LCD television 400 model B and AC adapter. Recd.—July 25, 1988. Est. Value—$200. Approved for official use. | H.E. Takujiro Hamada Parliamentary Vice Minister for Foreign Affairs, Japan. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| George P. Shultz, Secretary of State | Handpainted Herend china vase, approx. 6-½" tall and 4" wide; square shaped with four gold and green feet on square block; butterfly and flower motif on all four sides embellished in gold. Recd—July 27, 1988 Est. Value—$200. Approved for official use. | H.E. Karoly Grosz, Chairman, Council of Ministers, Hungarian People's Republic. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| George P. Shultz Secretary of State | Framed and matted pen and ink drawing of a large glass door with rounded window above; approximately 23-½" × 22-½" overall; inner and outer frames are silver. Artist "Medlve". Recd—August 4, 1988 Est. Value—$400. Reported to GSA October 17, 1988; being held in the Office of Protocol pending delivery to GSA. | H.E. Enrique Ingleslas Minister of Foreign Affairs, Uruguay. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| The Secretary of State and Mrs. George P. Shultz. | (a) Lacquered box, approximately 4-½" × 6", red inside, black outside on five sides and winter scene on top of gold-domes churches with a few houses, trees, and people. In Cyrillic on box: "Fedoskino 88" and "Casper C".<br>(b) Framed oil painting, approximately 35" × 43½", of birch trees, entitled "The Last Days of Autumn" by Domashnikov Boris Recd.—May 30, 1988. Est. Value—(a) $300, (b) $2000. | | |
| George P. Shultz, Secretary of State | (a) Reported to GSA October 17, 1988; being held in the Office of Protocol pending delivery to GSA. (b) Approved for official use. | H.E. Mikhail Gorbachev, General Secretary of the Central Committee of the Communist Party of the Soviet Union and Mrs. Gorbachev. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| George P. Shultz, Secretary of State | (a) Statute of rearing horse: gold-plated with enamel saddle, stirrups, and decoration on neck and back; approximately 10-½" high, 12" wide; horse standing on animal-horn base; presented in silk-covered box of light blue-gray with gold, pink and purple flowers.<br>(b) Lacquer tray: black with cherry blossom decoration in center; 14" × 5" × ⅝".<br>(c) Three cassettes (I, II, IV) of Musique de Norodom Sihanouk. One cassette "N. Sihanouk's Singing".<br>(d) Three books: "Nokor Khmer"; Norodom Sihanouk Photos-Souvenirs de Mon Cambodge"; "Norodom Sihanouk En Zone Libre Du Cambodge"..<br>Recd—October 12, 1988 Est. Value: (a) $200, (b) $25, (c) $40, (d) $15. Reported to GSA October 17, 1988; being held in the Office of Protocol pending delivery to GSA. | HRH Prince Norodom, Sihanouk of Cambodia. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| Roscoe S. Suddarth, U.S. Ambassador to the Hashemite Kingdom of Jordan. | Bible in mother of pearl casing. Recd.—June 15, 1988 Est. Value—$600. Approved for official use. | HRH Hassan bin Talal, Crown Prince of Jordan. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |

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AGENCY: DEPARTMENT OF STATE—Continued

Report of Tangible Gifts

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| Vernon A. Walters, US Permanent Representative to the United Nations. | Ivory tusk statute of a figure of an African male, approx. 18" tall and 6" at base of pedestal. Recd.—May 11, 1988. Est. Value—$1000. Approved for official use. | H.E. Felix Houphouet-Boigny, President of the Republic of Cote d'Ivoire. | Non-acceptance would have caused embarrassment to donor and U.S. Government |
| Vernon A. Walters, US Permanent Representative to the United Nations. | Cannon 8mm video camera and recorder with accessory kit and carrying case. Recd.—May 26, 1988. Est. Value—$1099. Approved for official use. | H.E. Hassan Diab, Minister of Foreign Affairs of the State of Qatar. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| Vernon A. Walters, US Permanent Representative to the United Nations. | Chopard (Geneva) man's wrist watch—silver and gold quartz—with 24 diamonds around face and 11 diamonds on face representing numerals with space for date. Recd.—May 26, 1988. Est. Value—$8350. Delivered to GSA September 8, 1988. | H.E. Hassan Diab, Minister of Foreign Affairs of the State of Qatar. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| John C. Whitehead, Deputy Secretary of State. | Four 22K gold Kuwait coins and four silver, Kuwait coins in presentation box. Recd.—July 14, 1988. Est. Value—$800. Delivered to GSA September 8, 1988. | H.R.H. Shaikh Saud, Alsabaddullah Alsalim Alsabah, Crown Prince of the State of Kuwait. | Non-acceptance would, have caused embarrassment to donor and U.S. Government. |
| John C. Whitehead, Deputy Secretary of State. | Casio miniature color LCD Televisice TV 4000 Model B. Recd.—July 11, 1988. Est. Value—$200. Approved for official use. | Takujiro Hamada, Parliamentary Vice Minister for Foreign Affairs, Japan. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |

AGENCY: DEPARTMENT OF TRANSPORTATION

Report of Travel or Expenses of Travel

| Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government | Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occuring outside the United States | Identity of foreign donor and government | Circumstances justifying acceptance |
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| T. Allan McArtor, Administrator, Federal Aviation Administration. | Round-trip air transportation on French Government aircraft from London, England to Toulouse, France; meal; and lodging. September 1988. Estimated cost: Airfare—$288. Meal—$36. Lodging—$75. | Daniel Tenenbaum, Directeur General de l'Aviation Civile, France. | Non-acceptance would have caused embarrassment to donor and U.S. |
| Petty Officer Mark A. DuTour, Petty Officer John M. Powers, Petty Officer Michael A. Kendall, Enlisted members of U.S. Coast Guard. | Round-trip air transportation from Windsor, Canada to Ottawa, Canada; hotel accommodations; meals; and local transportation. June 1988. Airfares—$813.12 ($271.04×3). Lodging and meals—$420.00 ($140×3). Bus Fares—$27 ($9×3). | J. Cousineau, Chief of Events, Office of Governor General, Canada. | Non-acceptance would have caused embarrassment to donor and U.S. |
| Albert A. DelliBovi, Administrator, Urban Mass Transportation Administration. | Hotel and meals for January 3–8, 1988, in Moscow. Estimated total Value is $762.00. | Soviet Committee of Youth Organization U.S.S.R. | Non-acceptance would have caused embarrassment to donor and U.S. |

AGENCY: DEPARTMENT OF TRANSPORTATION

Report of Tangible Gifts

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| E. Hawkins, Employee, Maritime Administration. | 4×6 rug with commemorative plate; approximate value of $500; on display at U.S. Merchant Marine Academy. | Superior Institute of Maritime Training, Morocco. | Non-acceptance would have caused embarrassment to donor and U.S. |



AGENCY: TREASURY/DEPARTMENTAL OFFICES

Report of Tangible Gifts

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|---|---|---|---|
| James A. Baker, Secretary of the Treasury. | Set of Olympic Coins,* Recd—February 26, 1988. Est. Value—$1,250.00. | Sakong Il, Finance Minister, Republic of Korea. | Embarrassment to return. |
| James A. Baker, Secretary of the Treasury. | Set of Olympic Coins,* Recd—March 22, 1988. Est. Value—$1,475.60. | Chung Se Yung, Chairman, Hyundai Business Group. | Embarrassment to return. |
| James A. Baker, Secretary of the Treasury. | Crystal Moose,* Recd—April 12, 1988. Est. Value—$1,100.00. | Feldt Kjell-Olof, Minister of Economy, Sweden. | Embarrassment to return. |
| James A. Baker, Secretary of the Treasury. | Ivory and Gold Paperweight,* Recd—June 1, 1988. Est. Value—$600.00. | Blogny Houphouet, President, Cote D'Ivoire. | Embarrassment to return. |
| James A. Baker, Secretary of the Treasury. | Carved Ivory Tusk,* Recd—June 1, 1988. Est. Value—$1,500.00. | Boigny Houphouet, President, Cote D'Ivoire. | Embarrassment to return. |
| Susan Baker, Spouse of the Secretary of the Treasury. | Gold Filigree Necklace and Bracelet,* Recd—June 1, 1988. Est. Value—$2,400.00. | Blogny Houphouet, President, Cote D'Ivoire. | Embarrassment to return. |
| Susan, Baker, Spouse of the Secretary of the Treasury. | Carved Ivory Canister,* Recd—June 29, 1988. Est. Value—$575.00. | Gomis Charles, Ambassador, Embassy of Cote D'Ivoire. | Embarrassment to return. |

* All of the above gifts are in custody at the U.S. Treasury Department, 1500 Pennsylvania Ave., NW, Washington, DC 20220.

AGENCY: UNITED STATES INFORMATION AGENCY

Report of Tangible Gifts

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|---|---|---|---|
| Charles Z. Wick, Director, U.S. Information Agency. | Stone Plaque and book received after Summit Meeting in Moscow in May 31, 1988. Valued at $375. | General Secretary, Mikail Gorbachev, U.S.S.R. | Non-acceptance would have caused embarrassment to the donor and the U.S. Government. |

AGENCY: UNITED STATES INFORMATION AGENCY

Report of Travel or Expenses of Travel

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| John F. Coppola, Chief, Bureau of International Expos, Exhibits Service, Bureau of Programs. | Travel/two nights accommodations—Washington, D.C./Spain and return. Received December 11, 1988. Estimated value: $1,000. | Emilio Cassinello, Ambassador of Spain (President, Expo '92). | Non-acceptance would have caused embarrassment to the donor and the U.S. Government. |
| William K. Jones, Director, Exhibits Service, Bureau of Programs. | Travel/two nights accommodations—Washington, D.C./Spain and return. Received December 11, 1988. Estimated value: $1,000. | Emilio Cassinello, Ambassador of Spain (President, Expo '92). | Non-acceptance would have caused embarrassment to the donor and the U.S. Government. |

AGENCY: VETERANS ADMINISTRATION

Report of Travel or Expenses of Travel

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|---|---|---|---|
| Bethesaida Feliciano, R.N., Operating Room Patient Coodinator. | Recd.—September 25, 1988. Est. Value—$2,406. Expended for airfare, hotel, meals and ground transportation. | Pan American Health Organization, World Health Organization, Ethicon—Johnson & Johnson, Santiago, Chile. | To provide temporary advisory services for project AM/CHI/CDS/020/DR/88-58/11. |
| James D. Niebel, M.D., Staff Urologist | Recd.—September 19, 1988. Est. Value—$882. Expended for lodging and meals. | Yichang Medical School, Yichang, Peoples Republic of China. | Provided lectures, consultations and surgical teaching at Yichang Medical School. |
| J. Donald Ostrow, M.D. | Recd. August 8, 1988. Est. Value $2,700. Expended for airfare, hotel, meals, and ground transportation. | University of Buenos Aires, Argentina | To lecture on liver diseases, and participate in workshops at the International Congress of Internal Medicine. |

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AGENCY: VETERANS ADMINISTRATION—Continued

Report of Travel or Expenses of Travel

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|---|---|---|---|
| Andrew V. Schally, Ph.D., Senior Medical Investigator and Chief, Endocrine, Polypeptide and Cancer Institute. | Recd.—May 27, 1988. Est. Value—$3,000. Expended for hotels, meals and transportation. | College of Physicians, Madrid, Spain, and Debiopharm, Lausanne, Switzerland. | Nobel Laureate; invited to lecture at the Cancer Congress in Madrid, and to organize next year's Congress. Also invited to receive an Honorary Degree in Paris and lecture at the annual meeting of European oncologists. |
| Jerome Yesavage, M.D., Staff Physician. | Recd. (1) June 17, 1988. (2) November 5, 1988. Est. Value—(1) $2,400. (2) $5,975. Expended for hotel, meals and travel. | (1) Cardiostim Organization of France. (2) Brazilian Gerontological Society, Sao Paulo, Brazil. | (1) To participate in a conference at Monaco. (2) To present a course in geriatrics. |

[FR Doc. 89-5177 Filed 3-8-89; 8:45 am]

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federal register

Thursday
March 9, 1989

Part III

## Department of Labor

Employment and Training Administration

Federal-State Unemployment Compensation Program; Unemployment Insurance Program Letters Interpreting the Federal Unemployment Insurance Law

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**DEPARTMENT OF LABOR**

**Employment and Training Administration**

**Federal-State Unemployment Compensation Program; Unemployment Insurance Program Letters Interpreting the Federal Unemployment Insurance Law**

The Employment and Training Administration (ETA) interprets Federal law pertaining to unemployment insurance as part of the fulfillment of its role in administration of the Federal-State unemployment insurance system. These interpretations are issued in Unemployment Insurance Program Letters (UIPLs) to State Employment Security Agencies (SESAs). The Three UIPLs described below are published in the **Federal Register** in order to inform the public.

**Unemployment Insurance Program Letter No. 13-87 and Change 1**

This directive transmits a revised interpretation of section 3304(a)(14) of the Federal Unemployment Tax Act (FUTA) relating to the wages for services of aliens which may be used for computing monetary entitlement to benefits. This interpretation permits States to pay benefits based on wages from otherwise covered services performed on or after November 6, 1986, by aliens granted lawful temporary resident status under section 210(a)(1) or section 245A(a) of the Immigration and Nationality Act (INA).

**Unemployment Insurance Program Letter No. 6-89**

This directive advises SESAs of section 902 of the Foreign Relations Authorization Act (Pub. L. 100-204) establishing another class of aliens eligible for temporary resident status under section 210(a) and section 245(A) of the INA. This class includes certain nationals of Poland, Ethiopia, Afghanistan, and Uganda. States may pay benefits based on wages from otherwise covered services performed on or after December 22, 1987, by aliens granted lawful temporary resident status under section 902, FRAA.

**Unemployment Insurance Program Letter No. 11-89**

This directive advises SESAs of amendments made by the Family Support Act of 1988, Pub. L. 100-485, and the Stewart B. McKinney Homeless Assistance Amendments Act of 1988, Pub. L. 100-628, to the Social Security Act affecting the disclosure of wage and unemployment insurance (UI) claim information. The Family Support Act requires SESAs to take such actions as may be necessary to enable the Secretary of Health and Human Services (HHS) to obtain prompt access to any wage and UI claim information available to the SESA for the purpose of assisting the Federal Parent Locator Service (FPLS) in carrying out the child support enforcement program. It also requires the Secretary of Labor to enter into an agreement with HHS to give the FPLS access to this information. The McKinney Act Amendments require SESAs to disclose wage and UI claim information to the Department of Housing and Urban Development and public housing agencies under certain circumstances.

Dated: March 1, 1989.

**Roberts T. Jones,**

*Assistant Secretary of Labor.*

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DIRECTIVE: UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 12-87

TO: ALL STATE EMPLOYMENT SECURITY AGENCIES

FROM: DONALD J. KULICK
Administrator
for Regional Management

SUBJECT: Amendments Made by the Tax Reform Act of 1986 (P.L. 99-514), the Alien Farmworker Act (P.L. 99-595), and the Immigration Reform and Control Act of 1986 (P.L. 99-603), Which Affect the Federal-State Unemployment Compensation Program

1. Purpose. To advise State agencies of recent amendments to Federal law affecting the Federal-State Unemployment Compensation (UC) program.

2. References. The Tax Reform Act of 1986, the Alien Farmworker Act, the Immigration Reform and Control Act of 1986.

3. Background. In late 1986, the President signed into law three bills containing provisions affecting the UC program. These are the: a) Tax Reform Act of 1986 (P.L. 99-514), signed into law on October 22, 1986; b) Alien Farmworker Act (P.L. 99-595), signed into law on October 31, 1986; and, c) Immigration Reform and Control Act of 1986 (P.L. 99-603), signed into law on November 6, 1986.

a. The Tax Reform Act of 1986 provides that all unemployment benefits will become taxable income with respect to benefits received after December 31, 1986. Currently, unemployment insurance (UI) is taxable only if the combination of taxable income and UI payments exceeds $18,000 for joint returns or $12,000 for single returns.

The Act also provides a two-year extension of the exclusion from the definition of wages of employer-financed educational assistance and group legal service plans (Sections 3306(b)(12) and (13) of the Federal

| RESCISSIONS | EXPIRATION DATE<br>March 31, 1988 |
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Unemployment Tax Act (FUTA)); makes technical changes to Sections 3302(c)(2), 3302(f)(8), and 3306(o) of the FUTA; amends the Internal Revenue Code of 1954 concerning exclusions from the definition of "gross income" of certain prizes and awards; and temporarily excludes from the FUTA coverage services performed for certain Indian tribal governments.

b. The Alien Farmworker Act extends for five years, through December 31, 1992, the exemption from "employment" under Section 3306(c)(1)(B), FUTA, of agricultural labor performed by certain nonimmigrant farmworkers admitted to work temporarily under specific provisions of the Immigration and Nationality Act.

c. The Immigration Reform and Control Act of 1986 contains provisions relating to a system to verify alien eligibility for unemployment benefits.

These amendments made several technical and significant changes affecting the Federal-State UC program which may require changes in State law or procedures. However, only the alien verification provisions of the Immigration Reform and Control Act of 1986 may require changes in State laws for compliance with Section 303(f) of the Social Security Act (SSA). The amendments are explained in attachments to this UIPL.

4. Action Required. SESAs are requested to notify appropriate staff of these amendments and take necessary action to implement required changes in State laws or procedures.

5. Inquiries. Inquiries should be directed to your Regional Office.

6. Attachments. Text, explanation and interpretation of UC amendments.

TEXT. EXPLANATION AND INTERPRETATION OF UC AMENDMENTS
Made by Public Law 99-514, The Tax Reform Act of 1986

I. Section 121. Taxation of Unemployment Compensation.

A. Text of Amendment.
1. Amendment to Section 85 of the Internal Revenue Code (IRC) of 1986:

SEC. 85. UNEMPLOYMENT COMPENSATION.

(a) GENERAL RULE--In the case of an individual, gross income includes unemployment compensation.

(b) UNEMPLOYMENT COMPENSATION DEFINED.--For purposes of this section, the term "unemployment compensation" means any amount received under a law of the United States or of a State which is in the nature of unemployment compensation.

2. Effective Date:

SECTION 151. EFFECTIVE DATES.

(b) UNEMPLOYMENT COMPENSATION.--The amendment made by section 121 shall apply to amounts received after December 31, 1986, in taxable years ending after such date.

B. Discussion. The Revenue Act of 1978 designated specific income levels at which unemployment benefits were taxable ($25,000 for joint returns or $20,000 for single returns). The Tax Equity and Fiscal Responsibility Act of 1982 lowered the applicable income levels to $18,000 for joint returns or $12,000 for single returns. Section 121 of the Tax Reform Act of 1986 amends the law to provide that gross income shall include all unemployment benefits.

C. Implementation. Each claimant should be informed of this change in income tax law. Notices should be furnished to each claimant currently filing, and to new and reopening claimants as claims are filed. Informational pamphlets should be revised when reprinted. A brief supplemental form can be issued in the interim.

II. Section 122. Exclusion From the Definition of "Gross Income" Certain Prizes and Awards

A. General. Section 122 of the Tax Reform Act of 1986 amends Section 74 of the Internal Revenue Code of 1954 concerning exclusions from the definition of "gross income" of certain prizes and awards. The amendment specifies conditions which must be met to allow such exclusions. Determination of FUTA tax liability will be based upon such definition of gross income.

B. Effective Date. The amendments made by Section 122 apply to prizes and awards granted after December 31, 1986 (Section 151(c)).

C. Implementation. Since the Internal Revenue Service has the primary authority for administering the FUTA tax provisions, it will be responsible for interpreting and applying this provision.

III. Section 1162. 2-YEAR EXTENSION OF EXCLUSIONS FOR EDUCATIONAL ASSISTANCE PROGRAMS AND GROUP LEGAL PLANS.

A. Text of Amendments to Sections 120 and 127 of the IRC of 1986.

(a) EDUCATIONAL ASSISTANCE PROGRAMS.--

(1) EXTENSION.--Subsection (d) of section 127 (relating to termination of exclusion for amounts received under educational assistance programs) is amended by striking out "1985" and inserting in lieu thereof "1987".

(2) INCREASE IN AMOUNTS.--Paragraph (2) of section 127(a) is amended by striking out "$5,000" each place it appears in the text and the heading thereof and inserting in lieu thereof "$5,250".

(b) GROUP LEGAL PLANS.--Subsection (e) of section 120 (relating to termination of exclusion for amounts received under qualified group legal services plans) is amended by striking out "1985" and inserting in lieu thereof "1987".

(c) EFFECTIVE DATES.--

(1) SUBSECTION (a).--The amendments made by subsection (a) shall apply to taxable years beginning after December 31, 1985.

(2) SUBSECTION (b).--The amendment made by subsection (b) shall apply to years ending after December 31, 1985.

(3) CAFETERIA PLAN WITH GROUP LEGAL BENEFITS.--If, within 60 days after the enactment of this Act, an employee elects under a cafeteria plan under Section 125 of the Internal Revenue Code of 1986 coverage for group legal benefits to which Section 120 of such Code applies, such election may, at the election of the taxpayer, apply to all legal services provided during 1986. The preceding sentence shall not apply to any plan which on August 16, 1986, offered such group legal benefits under such plan.

B. Discussion. Section 1162 of the Tax Reform Act of 1986 provides a two-year extension of the exclusion from the definition of wages under the FUTA of employer-financed educational assistance and group legal service plans (through December 31, 1987).

C. Implementation. Since the Internal Revenue Service (IRS) has the primary authority for administering the FUTA tax provisions, it will be responsible for interpreting and applying this provision.

IV. Section 1705. APPLICABILITY OF UNEMPLOYMENT COMPENSATION TAX TO CERTAIN SERVICES PERFORMED FOR CERTAIN INDIAN TRIBAL GOVERNMENTS (This provision does not amend the FUTA).

A. Text of Section 1705 of the Tax Reform Act of 1986:

(a) IN GENERAL.--For purposes of the Federal Unemployment Tax Act, service performed in the employ of a qualified Indian tribal government shall not be treated as employment (within the meaning of section 3306 of such Act) if it is service--

(1) which is performed--

(A) before, on, or after the date of the enactment of this Act, but before January 1, 1988, and



(B) during a period in which the Indian tribal government is not covered by a State unemployment compensation program, and

(2) with respect to which the tax imposed under the Federal Unemployment Tax Act has not been paid.

(b) DEFINITION.--For purposes of this section, the term "qualified Indian tribal government" means an Indian tribal government the service for which is not covered by a State unemployment compensation program on June 11, 1986.

B. Discussion. Section 1705 of the Tax Reform Act of 1986 excludes from the definition of employment for Federal unemployment tax purposes services performed for a qualified Indian tribal government during the period prior to January 1, 1988 if the service was not covered by a State law on June 11, 1986. Presently, the only Indian tribal government we are aware of that meets this requirement is the Ute tribe in Colorado.

C. Implementation. Since the IRS has the primary authority for administering the FUTA tax collections, it will be responsible for interpreting and applying this provision.

V. Section 1706 of the Tax Reform Act of 1986. Treatment of Certain Technical Personnel.

A. Text of Amendment.

(a) IN GENERAL.--Section 530 of the Revenue Act of 1978 is amended by adding at the end thereof the following new subsection:

"(d) EXCEPTION.--This section shall not apply in the case of an individual who, pursuant to an arrangement between the taxpayer and another person, provides services for such other person as an engineer, designer, drafter, computer programmer, systems analyst, or other similarly skilled worker engaged in a similar line of work."

(b) EFFECTIVE DATE.--The amendment made by this section shall apply to remuneration paid and services rendered after December 31, 1986.

B. Discussion. Section 530 of the Revenue Act of 1978 (P.L. 95-600) provides that taxpayers who in the past had a reasonable basis, under specified criteria, for not treating workers as employees may continue such treatment without incurring employment tax liability. Section 1706 of the Tax Reform Act of 1986 amends Section 530 to limit its applicability by providing that the section shall not apply to firms engaging the services of such person as an engineer, designer, drafter, computer programmer, systems analyst, or other similarly skilled worker engaged in a similar line of work. This means that the IRS will apply common-law rules to these firms in determining liability for employment taxes, including the FUTA tax.

C. Implementation. Since the IRS has the primary authority for administering the FUTA tax provisions, it will be responsible for interpreting and applying this provision.

VI. Section 1884 of the Tax Reform Act of 1986. Technical Corrections in Federal Unemployment Tax Act.

A. Text of Amendment:

The Federal Unemployment Tax Act is amended as follows:

(1) Subparagraph (B) of section 3302(c)(2) (relating to a limit on the credit against the unemployment tax) is amended--

(A) By striking out "determination" the second place it appears in the material preceding clause (i) and inserting in lieu thereof "denominator", and

(B) in clause (i)--

(i) by striking out "percent" immediately preceding the comma at the end thereof, and

(ii) by inserting "percent" after "2.7".

(2) Subparagraph (A) of section 3302(f)(8) (relating to a partial limitation on the reduction of the credit against the unemployment tax) is amended by striking out "1987" and inserting in lieu thereof "1986".



TEXT, EXPLANATION AND INTERPRETATION OF UC AMENDMENTS Made by Public Law 99-595, the Alien Farmworker Act, to Extend the Exclusion From Unemployment Tax of Wages Paid to Certain Alien Farmworkers.

A. Amendment. Section 3306(c)(1)(B), of the FUTA is amended to read as follows:

(B) such labor is not agricultural labor performed before January 1, 1993, by an individual who is an alien admitted to the United States to perform agricultural labor pursuant to sections 214(c) and 101(a)(15)(H) of the Immigration and Nationality Act;

B. Discussion. This provision amends Section 3306(c)(1)(B), FUTA, by extending for five years, until December 31, 1992, the FUTA exemption from coverage of farmworkers who are aliens temporarily admitted to the United States to work in agricultural employment pursuant to Sections 214(c) and 101(a)(15)(H) of the Immigration and Nationality Act.

Prior to the amendments made by Section 4 of P.L. 96-84, effective January 1, 1980, service performed by an alien referred to in Section 3306(c)(1)(B), FUTA, was not required to be covered or taken into account in determining the size of a firm under Section 3306(c)(1)(A)(i) and (ii), FUTA. Subsequent amendments by Congress extended until December 31, 1985, the exemption from coverage of agricultural work under Section 3306(c)(1)(B), FUTA, but required consideration of such service in determining the size of a firm. P.L. 99-595 further extends the exemption from coverage of the same type of agricultural services through December 31, 1992, and continues the required consideration of such service in determining the size of the firm.

C. Implementation. Since the IRS has the primary authority for administering the FUTA tax provisions, it will be responsible for interpreting and applying this provision. While States have the option of providing a similar exclusion in State law, it is not a Federal requirement for conformity.

EXPLANATION AND INTERPRETATION
of the Immigration Reform and Control Act of 1986
(Public Law 99-603) Relating to the Federal and
Federal-State Unemployment Compensation Programs

I. Section 121. Provisions for Determining and Verifying Alien Status for Entitlement to Unemployment Compensation.

A. General. Section 121 of the Immigration Reform and Control Act of 1986, P.L. 99-603, contains three provisions affecting the Federal and Federal-State UC programs. Section 121(a)(1) amends Part A of Title XI of the SSA by adding new subsections (d) and (e) to Section 1137 - "Income and Eligibility Verification System." These new subsections establish immigration status verification procedures for UC programs. Section 121(b)(3) of the Act amends Section 302(a) of the SSA to provide for reimbursement to State agencies of 100 percent of the reasonable costs of implementing and operating the immigration status verification system. Section 121(c) of the Act establishes effective dates, and includes provisions for waiver of verification system requirements and certain reports to Congress. Section 121(d) also requires certain General Accounting Office reports, which involve the Department of Labor and the State agencies. Following is an explanation of these new provisions. Detailed instructions for implementing these provisions will be issued at a later date.

The purpose of these provisions is to require States who do not receive a waiver to verify through Immigration and Naturalization Service (INS) records the legal status of all aliens applying for benefits under certain Federally-assisted and Federally-funded programs beginning October 1, 1988. The UC program is included through an amendment to the existing provisions for the income and eligibility verification system in Section 1137 of the SSA. Existing Section 303(f) of the SSA requires State UC agencies to participate in the income and eligibility verification system as described in Section 1137.

Under these new requirements, States who do not qualify for a waiver under conditions spelled out in the law must determine, as a condition of an individual's eligibility for benefits, that an individual is either a United States citizen or in a "satisfactory immigration status" and verify through INS records the authenticity of any immigration document submitted by the individual. However, prior to denying benefits because of immigration status, the State agency must follow certain minimum procedural safeguards. The requirement for a State agency to participate in the immigration status verification system may be waived by the Secretary of Labor if specified conditions are met. To the extent these new requirements apply to the States for the purposes of the Federal-State UC program, they will also apply to Federal unemployment benefit and allowance programs administered by the States under agreements with the Secretary of Labor.

B. Effective Dates. Section 121(c) of the Immigration Reform and Control Act of 1986 contains several effective dates which impact State employment security agencies.

1. All States must begin complying with the requirements for immigration status determination and verification on October 1, 1988, unless participation is waived by the Secretary of Labor.

2. The INS is required to implement a system for verifying immigration status and make the system available to all States not later than October 1, 1987.

3. An amendment to Section 302(a) of the SSA providing for funding the costs of implementing and operating the immigration status verification system is effective October 1, 1987.

4. The Secretary of Labor is required to submit a report by April 1, 1988 to the House Ways and Means Committee and to the Senate Finance Committee on implementation of the new requirements for the UC programs. The Comptroller General is required to submit a report to Congress and to the Commissioner of INS by October 1, 1987, on the effectiveness of current pilot projects relating to the INS System for Alien Verification of Eligibility (SAVE). In addition, the Comptroller General must submit a report to the Congress and to the Secretary of Labor by April 1, 1989, on implementation of the new immigration status verification system requirements.

C. Declaration of Citizenship or Satisfactory Immigration Status. Section 1137(d)(1) specifies that the State shall require, as a condition of eligibility, that each individual sign a declaration under penalty of perjury stating:

1. whether the individual is a citizen or national of the United States, and

2. If not, whether the individual is in a "satisfactory immigration status."

D. Satisfactory Immigration Status. Section 1137(d)(1)(B)(ii)(III) defines "satisfactory immigration status" as an immigration status that does not make the individual ineligible for unemployment benefits.

1. Section 3304(a)(14)(A), FUTA, prescribes the conditions under which benefits may be paid based on services performed by an alien. Specifically, the FUTA requires that compensation shall not be payable on the basis of services performed by an alien unless:

a. the alien was lawfully admitted for permanent residence at the time the services were performed,

b. the alien was lawfully present for the purposes of performing the services, or

c. the alien was permanently residing in the United States under color of law at the time the services were performed.

2. In addition, an alien must be legally authorized to work at the time benefits are claimed to be considered "available for work."

A complete explanation of the Federal requirements relating to alien eligibility for unemployment benefits is found in UIPL 1-86, issued October 29, 1985.

E. Provisions Relating to Determining Alien Status. The Act contains provisions requiring State action to verify that an alien is in "satisfactory immigration status." However, in making any determination of eligibility based on immigration status, the State agency must provide an individual with certain procedural safeguards.

1. Verification of Status. If on the declaration of citizenship statement an individual indicates that he or she is in a satisfactory immigration status, the individual must present documentary evidence. Section 1137(d)(2), SSA, specifies that the individual must present either:

a. an alien registration document or other proof of immigration registration from INS that contains the individual's alien admission number or alien file number (or numbers if the individual has more than one number), or,



b. such other documents as the State determines constitute reasonable evidence indicating a satisfactory immigration status.

In addition, Section 3304(a)(14)(B), FUTA, requires that the same information be uniformly required of all claimants. Section 1137(d)(3), SSA, further requires the State agency to verify documentation referred to in (a) above with the INS through an automated system or other system designated by the INS. Under subsection (3)(B), this system must protect "the individual's privacy to the maximum degree possible." The State agency must use the individual's alien file number or alien admission number as the basis for verifying alien status. If instead of an alien number the State agency has other documents which the State determines constitute reasonable evidence of satisfactory immigration status, Section 1137(d)(4)(B), SSA, requires the State agency to submit a photocopy of the documents to INS for verification.

2. Procedural Safeguards. The Act contains specific requirements relating to procedures for fact-finding, promptness of payment, and a right to a hearing. A summary and explanation of these requirements follow.

a. The State agency must provide the individual with a reasonable opportunity to submit documentation indicating satisfactory immigration status if such documentation is not presented at the time of filing for UC. The State must also provide the individual reasonable opportunity to submit evidence of satisfactory immigration status if the documentation presented is not verified by the INS. Time periods under State law for providing information needed to determine eligibility for benefits will meet the requirement for "reasonable opportunity." Attachment 1 to UIPL 15-78, issued January 24, 1978, contains guidance in handling cases where the claimant declines to provide information with respect to immigration status. This guidance is still applicable.

b. Under Section 1137(d)(4)(A)(ii), SSA, a State agency may not delay, deny, reduce or terminate an individual's eligibility for benefits on the basis of immigration status until a reasonable opportunity has been provided for the individual to present required documentation. If the alien does present such documentation, pending its verification, a State may not delay, deny, reduce, or terminate the individual's eligibility for benefits on the basis of the individual's status. Section 1137(d)(4)(B)(ii), SSA. However, under Section 1137(d)(4)(B)(iii), SSA, the State shall not be liable for the consequences of INS action, delay or failure to conduct such verification.

c. Section 1137(d)(5) provides if a State determines that an individual is not in a satisfactory immigration status, the individual must be given the opportunity for a fair hearing. This is already a requirement of Section 303(a)(3), SSA, and thus adds nothing to existing Federal requirements.

In addition, Section 3304(a)(14)(C), FUTA, requires an evidentiary burden to be met that is not present in Section 1137(d), SSA. Thus, Section 3304(a)(14)(C) requires that no determination denying benefits based on alien status shall be made except on the preponderance of the evidence. Attachment 1 to UIPL 15-78 contains guidance on what constitutes preponderance of evidence.

F. Limitations on Federal Agency Action. Under Section 1137(e), the Department of Labor may not take any compliance, disallowance, penalty or other regulatory action against the State agency because of an error in a determination holding an individual eligible for benefits based on citizenship or immigration status:

1. if the determination was based on verification provided by the INS;

2. because the State was required under Section 1137(d)(4)(A) or (B), to pay benefits to the individual during the period required to provide the individual with reasonable opportunity to submit documentation or pending official verification of immigration status by the INS;

3. as a result of the outcome of the determination and hearing process afforded the individual under State law.

G. Title III Funding. Section 121(b)(3) amends Section 302(a) of the SSA to permit the use of Title III funds for "100 percent of so much of the reasonable expenditures of the State as are attributable to the costs of the implementation and operation of the immigration status verification system described in section 1137(d)." Section 302(a) of the SSA authorizes the Secretary of Labor to provide payment to the States for the costs of administering the employment security program.

H. Waiver of Requirements. Under Section 121(c)(4)(B), the Secretary of Labor may waive the requirements of the Act on his own initiative or upon an application by a State and based on information the Secretary deems persuasive, provided certain conditions are met.



1. In order to waive the requirements with respect to a State, the Secretary must determine that:

a. the State agency is using an alternative system which is as effective and timely as the INS immigration status verification system and which provides for hearing and appeal rights at least to the extent required under Section 1137(d)(5), or

b. the costs of administering the immigration status verification system exceed the estimated savings.

2. Section 121(c)(4)(C) contains the following criteria by the Secretary of Labor to be used in determining cost effectiveness:

a. the proportion of aliens claiming unemployment benefits to the total number of individuals claiming unemployment benefits,

b. any savings in benefit outlays resulting from implementation of the verification system,

c. the labor and nonlabor costs of administering the verification system,

d. the degree to which the INS is capable of providing timely and reliable information to the State agency, and

e. such other factors as the Secretary of Labor deems relevant.

A letter will be sent to each State early in 1987 requesting the information the Secretary needs to determine whether a waiver will apply.

I. Reports to Congress. The Act requires reports by the applicable Secretary and Comptroller General on the immigration status verification system.

1. Report by the Secretary. Under Section 121(c)(4)(A), the Secretary of Labor must report to the House Ways and Means Committee and the Senate Finance Committee by April 1, 1988, whether (and the extent to which) application of the SAVE program in the UC program is cost-effective and appropriate to the program and whether there should be a waiver of the application of the SAVE program under Section 121(c)(4)(B).

2. Reports by the Comptroller General. By October 1, 1987, the Comptroller General is required by Section 121(d) to report to Congress and to the Commissioner of INS on current pilot projects using the INS System for Alien Verification of Eligibility (SAVE). The report must examine the effectiveness of the projects and any problems with implementation. In addition, the Comptroller General is directed to monitor and analyze implementation of the new system. By April 1, 1989, the Comptroller General must report to Congress and the appropriate Secretaries on implementation of the immigration status verification system, including recommendations for change, as appropriate.

II. Provisions for Legalization of Status Relating to Entitlement to Unemployment Compensation.

A. General. Section 201(a) of the Immigration Reform and Control Act of 1986, P.L. 99-603, amends the Immigration and Nationality Act to add a new Section 245A to authorize the adjustment of status of certain aliens who entered the United States before January 1, 1982, to that of "lawfully admitted for temporary residence." Section 245A(a) establishes a new category of "lawfully admitted for temporary residence" and specifies the requirements that must be met to obtain an adjustment of status. Section 245A(b) provides for termination of temporary resident status and otherwise specifies the terms and conditions of temporary resident status. This section also prescribes the conditions for subsequent adjustment of status from "lawfully admitted for temporary residence" to that of "lawfully admitted for permanent residence." Section 245A(e) provides for the temporary stay of deportation and work authorization for certain applicants.

Following is an explanation of these new provisions as they affect the UC program.

B. Temporary Resident Status. Section 245A(a) establishes a new category of "lawfully admitted for temporary residence."

1. This new category allows for the adjustment of status of an alien with no documentation of legal entry to that of an alien lawfully admitted for temporary residence if the alien:

a. Makes a timely application as specified in Section 245A(a)(1); that is, files a proper application within



a 12-month period beginning on a date (not later than 180 days after the date of enactment) designated by the Attorney General;

b. Had continuous unlawful residence beginning with entry into the United States before January 1, 1982;

c. Has been continuously present in the United States, with the exception of brief, casual, and innocent absences, since November 5, 1986;

d. Is admissible as an immigrant under Section 245A(a)(4).

2. After 18 months of temporary resident status, an alien has one year to apply for an adjustment of status to that of lawfully admitted for permanent residence. To be eligible for adjustment of status, the alien must meet the four conditions specified in Section 245A(b)(1).

3. Section 245A(b)(2) specifies the conditions under which the Attorney General shall provide for termination of temporary resident status; and

4. Section 245A(b)(3) provides that an alien with temporary resident status shall be granted "authorization to engage in employment in the United States and be provided with an 'employment authorized' endorsement or other appropriate work permit." Paragraph (3) also spells out the conditions on authorization to travel abroad.

C. Temporary Stay of Deportation and Work Authorization for Certain Applicants. Section 245A(e) provides for a hold on deportation and the furnishing of work authorization to an alien who presents a prima facie case or application for change of status before or during the application period.

1. Before Application Period. An alien may not be deported and must be granted employment authorization if the alien is apprehended before the beginning of the application period and can establish a prima facie case of eligibility for an adjustment of status to temporary residence. The alien must then apply for adjustment within the first 30 days of the application period as provided in Section 245A(e)(1).

2. During Application Period. An alien may not be deported and must be granted employment authorization, pending a final determination of alien status, if the alien can establish prima facie application for adjustment of status to temporary resident.

D. Impact on Federal Requirements. For the UC program there are two separate aspects to alien eligibility: non-monetary eligibility during the benefit year, and monetary eligibility during the base period.

1. Availability for Work. When an individual is granted work authorization under these new provisions, the individual becomes legally available for work. The individual must have some dated documentation from INS substantiating the work authorization issued under Section 245A. An alien with INS issued work authorization is eligible, if also able to work, unemployed, and otherwise entitled to benefits under the State law.

2. Section 3304(a)(14), FUTA. Even though an individual has work authorization, the requirements of Section 3304(a)(14), FUTA, still apply. The State must determine monetary eligibility during the base period. The FUTA prescribes the conditions under which benefits may be paid based on services performed by an alien who was in a proper status "at the time services were performed." Benefits based on services performed while an alien is lawfully admitted for temporary residence, or is granted work authorization pending a ruling on his/her application, is payable because the work authorization grants an alien the status of being lawfully present for purposes of performing services. The status of temporary residence or granting of work authorization does not, however, confer retroactive lawful presence for purposes of monetary eligibility.

Further, an alien whose status is adjusted to "lawfully admitted for permanent residence" is, from the date such status is granted, "permanently residing in the United States under color of law" within the meaning of that phrase as used in Section 3304(a)(14)(A), FUTA, and further consideration is being given to whether an alien in such status falls under the first category of Section 3304(a)(14)(A), FUTA, as "lawfully admitted for permanent residence."

III. Admission of Temporary Agricultural (H-2A) Workers and Their Entitlement To Unemployment Compensation.

A. General. Title III of the Immigration Reform and Control Act of 1986, P.L. 99-603, provides for the reform of legal immigration. Section 301 of the Act establishes a new "H-2A" nonimmigrant classification for temporary agricultural worker. Section 301(a) and (b) amends Sections 101(a)(15)(H)



and 214(c) of the Immigration and Nationality Act to provide for this new classification. Following is an explanation of these new provisions as they effect the UC programs.

B. New "H-2A" Workers. Section 301(a) provides a new "H-2A" nonimmigrant classification for temporary agricultural labor by amending Section 101(a)(15)(H) of the Immigration and Nationality Act. Section 301(c) added a new Section 216 to the Immigration and Nationality Act which allows for the admission of "H-2A" workers to perform agricultural labor or services "of a temporary or seasonal nature" as defined by the Secretary of Labor.

C. Impact on States. The services performed by the new "H-2A" workers are excludable from coverage on the same basis as those performed by "H-2" workers. Section 3306(c)(1)(B), FUTA, exempts from coverage services performed by aliens in agricultural labor, including the new "H-2A" workers through calendar year 1992. However, it requires consideration of such service in determining the size of a firm under Section 3306(c)(1)(A), FUTA.

IV. Provisions for Lawful Residence of Certain Special Agricultural Workers and Their Entitlement to Unemployment Compensation.

A. General. Title III of the Immigration Reform and Control Act of 1986, P.L. 99-603, provides for the lawful residence of certain agricultural workers. Section 302(a)(1) of Title III adds a new Section 210 to the Immigration and Nationality Act that allows for the adjustment of status of special agricultural workers to that of an alien lawfully admitted for temporary residence, and further adjustment of such lawful temporary residents' status to permanent resident.

B. Lawful Residence. The new Section 210 creates a new category of special agricultural worker.

1. This new category allows for the adjustment of status to an alien lawfully admitted for temporary residence if the following requirements are met:

a. The alien must apply for the adjustment during the period specified in Section 210(a)(1)(A), and

b. The alien must establish residence in the United States, and have performed seasonal agricultural services in the United States for at least "90 man-days" during the period specified in Section 210(a)(1)(B).



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c. Except as provided in subsection (c)(2) of Section 210, the alien must establish that he/she is admissible to the United States as an immigrant.

2. Once granted the status of lawful temporary resident under Section 210(a)(1), an alien "shall be granted authorization to engage in employment in the United States and shall be provided an 'employment authorized' endorsement or other appropriate work permit, in the same manner as for aliens lawfully admitted for permanent residence." (Section 210(a)(4)).

3. In accordance with the specific dates listed in Section 210(a)(2), the Attorney General shall adjust the status of any alien with temporary resident status under Section 210(a)(1) to that of an alien lawfully admitted for permanent residence.

4. Section 210(a)(3) provides for the termination of "temporary resident status" by the Attorney General only upon a determination that the alien is deportable.

C. Temporary Stay of Exclusion or Deportation and Work Authorization for Certain Applicants. New Section 210(d) allows for a stay of exclusion or deportation and work authorization for certain aliens.

1. Before Application Period. An alien may not be excluded or deported and must be granted employment authorization if apprehended before the beginning of the application period and can establish a nonfrivolous case of eligibility to have an adjustment of status. The alien must then apply for adjustment within the first 30 days of the application period as provided in Section 245A(e)(1).

2. During Application Period. An alien may not be excluded or deported and must be granted employment authorization if the alien can present a nonfrivolous application for adjustment of status, and until a final determination of the application has been made.

3. In both cases the alien must be granted work authorization and provided documentation of work authorization.

D. Impact on States. For the UC program, there are two separate aspects to alien eligibility: non-monetary eligibility during the benefit year, and monetary eligibility during the base period.



1. Availability for Work. When an individual is granted work authorization under these new provisions, the individual becomes legally available for work. The individual must have some dated documentation from INS substantiating the work authorization.

2. Section 3304(a)(14)(A), FUTA. Even though an individual has work authorization, the requirements of Section 3304(a)(14), FUTA, still apply. The State must determine monetary eligibility during the base period. The FUTA prescribes the conditions under which benefits may be paid based on the status of the alien "at the time services were performed." It is possible that an agricultural worker's base period wage credits may meet the criteria under 3304(a)(14), FUTA. For example, if all the wage credits were performed as an H-2 worker, then the worker "was lawfully present for purposes of performing such services. . . ." Benefits based on services performed while an alien is lawfully admitted for temporary residence are payable under the FUTA because the work authorization grants the alien the status "lawfully present for purposes of performing services." The status of "temporary resident" does not, however, confer retroactive lawful presence for purposes of monetary eligibility under the FUTA. An alien granted the status of "lawfully admitted for permanent residence" is at least a third category of "permanently residing in the United States under color of law" under Section 3304(a)(14)(A), and consideration is being given to whether such alien also falls into the first category of "lawfully admitted for permanent residence."

| U.S. Department of Labor<br>Employment and Training Administration<br>Washington, D.C. 20210 | CLASSIFICATION<br>UI |
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| | CORRESPONDENCE SYMBOL<br>TEURL |
| | DATE<br>September 28, 1988 |

DIRECTIVE : UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 12-87, CHANGE 1

TO : ALL STATE EMPLOYMENT SECURITY AGENCIES

FROM : DONALD J. KULICK
Administrator
for Regional Management

SUBJECT : Revised Interpretation of Section 3304(a)(14) of the Federal Unemployment Tax Act Relating to the Adjustment of Status of Certain Aliens to Lawfully Admitted for Temporary Residence

1. Purpose. To advise State agencies of a revised interpretation of Section 3304(a)(14) of the Federal Unemployment Tax Act (FUTA) relating to the wages for services of aliens which may be used for computing monetary entitlement to unemployment benefits. This revised interpretation permits States to pay benefits based on wages from otherwise covered services performed on or after November 6, 1986, by aliens granted lawful temporary resident status under Section 210(a)(1) or Section 245A(a) of the Immigration and Nationality Act (INA).

2. References. UIPL 1-86; UIPL 12-87; Section 3304(a)(14), FUTA; Section 210 and Section 245A, INA.

3. Background. Section II of Attachment III to UIPL 12-87 transmitted information to the States concerning implementation of Section 245A of the INA. Section 245A(a), INA, authorizes the adjustment of status of certain aliens who entered the United States before January 1, 1982, to that of lawfully admitted for temporary residence. Section 245A(e) provides for the temporary stay of deportation and the granting of work authorization for certain aliens before and during the application period for adjustment of status. Section 245A(b)(3) provides for work authorization while the alien is in lawful temporary resident status.

| RESCISSION | EXPIRATION DATE<br>October 31, 1989 |
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Section IV of Attachment III to UIPL 12-87 transmitted information concerning implementation of Section 210 of the INA. Section 210(a)(1) sets forth the conditions for the adjustment of status of special agricultural workers to that of lawfully admitted for temporary residence. Section 210(d) provides for temporary stay of deportation and the granting of work authorization for certain aliens before and during the application period for adjustment of status. Section 210(a)(4), INA, provides, among other things, that during the period an alien is in lawful temporary resident status under Section 210(a), the alien "shall be granted authorization to engage in employment in the United States and shall be provided an 'employment authorized' endorsement or other appropriate work permit, in the same manner as for aliens lawfully admitted for permanent residence."

For aliens to receive unemployment benefits, they must satisfy two eligibility requirements: non-monetary eligibility during the benefit year, and monetary eligibility during the base period. With respect to the first requirement, when an alien's status is adjusted to lawfully admitted for temporary residence or when the alien is granted work authorization under Section 245A or Section 210 of the INA, the alien becomes legally available for work. Such an alien is eligible for unemployment benefits if the alien is also unemployed, able and available for work, and otherwise satisfies the State's eligibility requirements for receiving benefits.

With respect to the second requirement, monetary eligibility during the base period, the requirements of Section 3304(a)(14), FUTA, apply. The second category under Section 3304(a)(14) specifies that services performed while an alien was "lawfully present for purposes of performing such services" may be used for computing monetary eligibility if the State law includes the second category and the State construes the State law provision as including such aliens. Therefore, benefits based on wages for otherwise covered services performed while an alien is lawfully admitted for temporary residence under Section 245A(a) or Section 210(a)(1), or after the alien is granted work authorization under Section 245A or Section 210, may be paid (if the State law so provides and the alien is otherwise eligible) because the services were performed while the alien was lawfully present for purposes of performing services.

However, Section II.D.2 and Section IV.D.2 of Attachment III to UIPL 12-87 state that the status of lawful temporary resident or the granting of work authorization does not confer retroactive lawful presence for purposes of monetary entitlement. This means that an alien's services may only be used for establishing monetary entitlement from the date INS grants lawful temporary resident status or work authorization. This interpretation is now partially revised as set forth below.

4. Revised Interpretation. Although Section 210 and Section 245A were effective November 6, 1986, INS did not start accepting applications for lawful temporary resident status until May 5, 1987. INS could have accepted applications for, and granted lawful temporary resident status, as early as November 6, 1986, if it had been able to set up its application process by that date. ETA, therefore, has modified its interpretation of Section 3304(a)(14) to permit States, if State law so allows, to pay benefits based on wages from otherwise covered services performed on or after November 6, 1986, by aliens granted lawful temporary resident status under Section 245A(a) or Section 210(a)(1), INA. This is optional for each State and not a requirement for conformity. The retroactive use of an alien's wages to November 6, 1986, is permitted only if the alien is granted lawful temporary resident status. However, to use such retroactive wages in computing monetary entitlement, the alien must present the agency with documentation of the lawful temporary resident status, i.e., temporary resident card (INS Form I-688).

A distinction exists between INS Form I-688, which is issued to an alien granted lawful temporary resident status and includes work authorization, and INS Form I-688A which is the work authorization issued to an applicant for legalization along with the application fee receipt. The work authorization on INS Form I-688A is effective on the date stated on the form itself, and may never be given retroactive effect for any purpose. The retroactive use of an alien's wages for computing monetary entitlement, as discussed above, only occurs in connection with the granting of lawful temporary resident status and the issuance of INS Form I-688.



When an alien is granted lawful temporary resident status under Section 245A(a) or Section 210(a), INA, the alien falls within the second category of Section 3304(a)(14), FUTA -- lawfully present for purposes of performing such services -- and each State, at its option, may treat such status as retroactive as far back as November 6, 1986, for the purpose of computing monetary eligibility. Therefore, if the State law includes the second category, and the State construes the State law provision as including such an alien, then wages paid to the alien for otherwise covered services performed on or after November 6, 1986, or such later date as the State construes its law, may be used to compute monetary eligibility. If a State decides to use such wages in computing monetary eligibility, it must first examine its State law to determine if such retroactive use of an alien's wages is permissible.

5. Action Required. State Administrators are requested to provide this information to appropriate staff.

6. Inquiries. Questions should be directed to the appropriate Regional Office.

7. Attachments. Attachment I of this UIPL should be substituted for the last sentence of the first paragraph of Section II.D.2, page 9, Attachment III to UIPL 12-87, which reads as follows:

> The status of temporary residence or granting of work authorization does not, however, confer retroactive lawful presence for purposes of monetary eligibility.

Attachment II of this UIPL should be substituted for the following sentence contained in Section IV.D.2, page 12, Attachment III to UIPL 12-87:

> The status of temporary residence or granting of work authorization does not, however, confer retroactive lawful presence for purposes of monetary eligibility under the FUTA.

Although Section 245A of the INA was effective November 6, 1986, INS will not start accepting applications for lawful temporary resident status until May 5, 1987. INS could have accepted applications for and granted lawful temporary resident status as early as November 6, 1986, if it had been able to set up its application process by that date. ETA, therefore, has modified its interpretation of Section 3304(a)(14) to permit States, at each State's option, and if State law so allows, to pay benefits based on wages from otherwise covered services performed on or after November 6, 1986 (i.e., as far back as that date) by aliens granted lawful temporary resident status under Section 245A(a), INA. This is optional for each State and not a requirement for conformity. For the purpose of conformity, however, the use of an alien's wages for services retroactive to November 6, 1986, is permitted only after the alien is granted lawful temporary resident status. To justify the use of such wages in computing monetary entitlement, the alien must present the agency with documentation of the lawful temporary resident status, i.e., temporary resident card (INS Form I-688).

A distinction exists between INS Form I-688, which is issued to an alien granted lawful temporary resident status and includes work authorization, and INS Form I-688A which is the work authorization issued to an applicant for legalization along with the application fee receipt. The work authorization on INS Form I-688A is effective on the date stated on the form itself, and may never be given retroactive effect for any purpose. The retroactive use of an alien's wages for computing monetary entitlement, as discussed above, occurs only in connection with the granting of lawful temporary resident status and the issuance of INS Form I-688.



For the same reason given on page 9, item II.D.2 of this Attachment, a State may, if State law so allows, pay benefits based on wages from otherwise covered services performed on or after November 6, 1986, by aliens granted lawful temporary resident status under Section 210(a)(1), INA. This is optional for each State and not a requirement for conformity. For the purpose of conformity, however, the use of an alien's wages for services retroactive as far back as November 6, 1986, is permitted only if the alien is granted lawful temporary resident status. To justify the use of such services in computing monetary entitlement, the alien must present the agency with documentation of the lawful temporary resident status, i.e., temporary resident card (INS Form I-688).

A distinction exists between INS Form I-688, which is issued to an alien granted lawful temporary resident status and includes work authorization, and INS Form I-688A which is the work authorization issued to an applicant for legalization along with the application fee receipt. The work authorization on INS Form I-688A is effective on the date stated on the form itself, and may never be given retroactive effect for any purpose. The retroactive use of an alien's wages for computing monetary entitlement, as discussed above, only occurs in connection with the granting of lawful temporary resident status and the issuance of INS Form I-688.

| U.S. Department of Labor<br>Employment and Training Administration<br>Washington, D.C. 20210 | CLASSIFICATION<br>UI |
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| | CORRESPONDENCE SYMBOL<br>TEUPL |
| | DATE<br>December 2, 1988 |

DIRECTIVE: UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 6-89

TO: ALL STATE EMPLOYMENT SECURITY AGENCIES

FROM: DONALD J. KULICK
Administrator
for Regional Management

SUBJECT: Provisions of the Foreign Relations Authorization Act (P.L. 100-204), Which Affect the Federal-State Unemployment Compensation Program

1. Purpose. To advise State agencies of Section 902 of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989, which establishes another class of aliens eligible for temporary resident status.

2. References. Section 902 of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (P.L. 100-204); Section 245A of the Immigration and Nationality Act; and UIPLs 1-86, 12-87, 12-87, Change 1 and 11-88.

3. Background. On December 22, 1987, the President signed into law the Foreign Relations Authorization Act (FRAA) which contains provisions affecting the unemployment compensation (UC) program. Section 902, FRAA, establishes another class of aliens who are eligible to apply for temporary residence status as provided by the Immigration and Nationality Act (INA). The Immigration Reform and Control Act of 1986 (IRCA) added a new Section 245A to the INA to authorize the adjustment of status of certain aliens. Section 245A established a new category, that of "lawfully admitted for temporary residence." Section 902, FRAA, does not amend IRCA or INA, but does add a new class of aliens eligible for the lawfully admitted for temporary residence status to the classes of aliens authorized by Section 245A. FRAA also makes specific provisions of Section 245A applicable to the Section 902 class.

This new class of aliens includes any alien who is a national of a foreign country whose nationals were provided (or allowed to continue in) "extended voluntary departure" (EVD) by the Attorney General on the basis of a nationality

| RESCISSIONS | EXPIRATION DATE<br>November 30, 1989 |
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group determination at any time during the 5-year period ending on November 1, 1987. In this 5-year period EVD was provided to the nationals of Poland, Ethiopia, Afghanistan, and Uganda.

FRAA extends most of the same benefits, conditions and responsibilities to qualifying applicants as to those applicants qualifying under Section 245A, INA. However, the eligibility requirements and application period under FRAA differ from those under Section 245A, INA.

4. Adjustment of Status. Section 902(a), FRAA, establishes the criteria for eligibility for adjustment of status. The Section applies to any alien who is a national of a foreign country whose nationals were provided (or allowed to continue in) "extended voluntary departure" by the Attorney General on the basis of a nationality group determination at any time during the 5-year period ending on November 1, 1987. The status of an alien shall be adjusted to lawfully admitted for temporary residence if the alien:

a. applies for such adjustment within two years of the date of the enactment of FRAA (that is, by December 22, 1989);

b. establishes that the alien entered the United States before July 21, 1984, and has resided continuously in the United States since that date, and through December 22, 1987;

c. establishes continuous physical presence in the United States (other than brief, casual, and innocent absences) since December 22, 1987;

d. in the case of an alien who entered the United States as a nonimmigrant before July 21, 1984, establishes that the alien's period of authorized stay as a nonimmigrant expired not later than six months after such date through the passage of time or the alien applied for asylum before July 21, 1984; and

e. meets the requirements of Section 245A(a)(4), INA.

5. Applicable Subsections of Section 245A of INA.

Section 902(b), FRAA, provides that subsections (b), (c)(6), (d), (f), (g), (h), and (i) of Section 245A, INA, apply to the aliens whose status is adjusted under

Section 902(a). These subsections apply in the same manner as they apply to aliens provided lawful temporary resident status under Section 245A(a), INA.

Subsection 245A(b), INA, specifies certain terms and conditions of temporary resident status and prescribes the conditions for subsequent adjustment to "lawfully admitted for permanent residence." It allows an alien, after 18 months of temporary resident status, one year to apply for an adjustment of status to that of lawfully admitted for permanent residence. Paragraph (1) of subsection 245A(b) lists the conditions an alien must meet to be eligible for subsequent adjustment to that of an alien admitted for permanent residence. Paragraph (2) of subsection 245A(b) specifies the conditions under which the Attorney General shall provide for termination of temporary resident status.

Paragraph (3) of subsection 245A(b) provides that an alien with temporary resident status shall be granted "authorization to engage in employment in the United States and be provided with an 'employment authorized' endorsement or other appropriate work permit." Paragraph (3) also lists the conditions for authorization to travel abroad.

Paragraph (1) of subsection 245(g) requires the Attorney General to publish regulations necessary to carry out Section 245A. An interim rule implementing Section 902, FRAA, was published and became effective March 21, 1988, at 53 FR 9274. This interim rule created a new regulatory Section 245a.4 of 8 CFR Part 245a entitled "Adjustment to Lawful Resident Status of Certain Nationals of Countries for Which Extended Voluntary Departure has been made Available." Section 245a.4(b)(14) of this Part lists the provisions regarding employment and travel authorization for aliens applying for adjustment of status to lawfully admitted for temporary residence status as well as those granted such status under Section 902, FRAA. Form I-688A, Employment Authorization, is issued to applicants. Form I-688, Temporary Resident Card, is issued to an alien granted temporary resident status.

6. Impact on Federal UC Requirements. For the UC program there are two separate aspects to alien eligibility: (A) non-monetary eligibility during the benefit year and (B) monetary eligibility during the base period.

A. Availability for Work. When an individual is granted work authorization under these new provisions the individual is lawfully present for purposes of performing services and may be considered legally available for work.



The individual must have dated documentation (I-688A or I-688) from INS substantiating the work authorization. An alien with INS issued work authorization may be eligible for unemployment compensation under the State law if the alien is also able to work, is otherwise available for work, is unemployed, and is otherwise entitled to benefits under the State law, including monetary entitlement.

B. Section 3304(a)(14), FUTA. Even though an individual has work authorization, the requirements of Section 3304(a)(14), FUTA, still apply. The State must determine if an alien has established monetary eligibility during the base period. FUTA prescribes the conditions under which benefits may be paid based on services performed by an alien who is in proper status "at the time services were performed." Benefits based on services performed while an alien is lawfully admitted for temporary residence or is granted work authorization pending a ruling on his/her application, may be paid because the work authorization grants an alien the status of being lawfully present for purposes of performing services.

Although Section 902 was effective December 22, 1987, INS did not start accepting applications for lawful temporary resident status until March 21, 1988. INS could have accepted applications for, and granted lawful temporary resident status, as early as December 22, 1987, if it had been able to set up its application process by that date. Therefore, States may, if State law so allows, pay benefits based on wages from otherwise covered services performed on or after December 22, 1987, by aliens granted lawful temporary resident status under Section 902. This is optional for each State and not a requirement for conformity. The retroactive use of an alien's wages to December 22, 1987, is permitted only if the alien is granted lawful temporary resident status. However, to use such retroactive wages in computing monetary entitlement, the alien must present the agency with documentation of the lawful temporary resident status, i.e., temporary resident card (INS Form I-688).

A distinction exists between INS Form I-688, which is issued to an alien granted lawful temporary resident status and includes work authorization, and INS Form I-688A which is the work authorization issued to an applicant for legalization along with the application

fee receipt. The work authorization on INS Form I-688A is effective on the date stated on the form itself, and may never be given retroactive effect for any purpose. The retroactive use of an alien's wages for computing monetary entitlement, as discussed above, is permitted only in connection with the granting of lawful temporary resident status and the issuance of INS Form I-688.

When an alien is granted lawful temporary resident status under Section 902, the alien falls within the second category of Section 3304(a)(14), FUTA -- lawfully present for purposes of performing such services -- and each State, at its option, may treat such status as retroactive as far back as December 22, 1987, for the purpose of computing monetary eligibility. Therefore, if the State law includes the second category, and the State construes the State law provision as including such an alien, then wages paid to the alien for otherwise covered services performed on or after December 22, 1987, or such later date as the State construes its law may be used to compute monetary eligibility. If a State decides to use such wages in computing monetary eligibility, it must first examine its State law to determine if such retroactive use of an alien's wages is permissible.

7. Action Required. SESAs should notify the appropriate staff of the provisions of P.L. 100-204 which affect the UC program and this program letter.

8. Inquiries. Inquiries should be directed to your Regional Office.

9. Attachments.

I. Text of Section 902 of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (P.L. 100-204).

II. Section 245A of the Immigration and Nationality Act.

III. Copy of INS Interim Final Rule, 8 CFR 245a.4.

Note: These attachments are not published in the Federal Register.

| U.S. Department of Labor<br>Employment and Training Administration<br>Washington, D.C. 20210 | CLASSIFICATION<br>UI |
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| | CORRESPONDENCE SYMBOL<br>TEU |
| | DATE<br>January 5, 1989 |

DIRECTIVE : UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 11-89

TO : ALL STATE EMPLOYMENT SECURITY AGENCIES

FROM : DONALD J. KULICK
Administrator
for Regional Management

SUBJECT : Amendments Made by the Family Support Act of 1988, P.L. 100-485, and the Stewart B. McKinney Homeless Assistance Amendments Act of 1988, P.L. 100-628, Which Affect the Federal-State Unemployment Compensation Program.

1. Purpose. To advise State employment security agencies (SESAs) of amendments to the Social Security Act (SSA) affecting the Federal-State Unemployment Compensation (UC) Program.

2. References. Section 124 of P.L. 100-485; Section 904 of P.L. 100-628; Sections 303(h), 303(i), 304(a)(2), and 453, SSA.

3. Background. In late 1988, the President signed into law two bills containing provisions affecting the UC program. These bills are the Family Support Act of 1988, P.L. 100-485, signed into law on October 13, 1988; and the Stewart B. McKinney Homeless Assistance Amendments Act of 1988, P.L. 100-628, signed into law on November 7, 1988.

The pertinent provisions of the Family Support Act require SESAs to take such actions as may be necessary to enable the Secretary of Health and Human Services to obtain prompt access to any wage and UC claims information available to the SESA for purposes of assisting the Federal Parent Locator Service in carrying out the child support enforcement program under Title IV, SSA. This requirement is effective January 1, 1990.

In addition, the provisions of the Family Support Act require the Secretary of Labor to enter into an agreement with the Secretary of Health and Human Services to give the FPLS prompt access to the above wage and UC information. This agreement will govern the specific details of implementation. Further details regarding this agreement will be issued at a later date.

| RESCISSIONS | EXPIRATION DATE<br>January 31, 1991 |
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The relevant provisions of the Stewart B. McKinney Homeless Assistance Amendments Act require SESAs to disclose wage and UC claims information to the Department of Housing and Urban Development and public housing agencies under certain circumstances. This requirement is effective for most States beginning September 30, 1989, and ceases to be effective beginning October 1, 1994. The amendments make provision for optional early implementation by States as well as for a grace period for individual States under described circumstances. The text, explanations and interpretations of each of these amendments are provided in the attachments to this UIPL.

The provisions of the McKinney Act Amendments also require the Secretary of Labor to prescribe regulations governing how often and in what form information may be disclosed, and to provide for safeguards on disclosed information. The Department is currently working on these regulations which will be published for comment in the Federal Register.

Finally, the McKinney Act Amendments contain provisions creating the "Jobs for Employable Dependent Individuals Act." Although these provisions do not place any new requirements on SESAs, SESAs may receive requests from State agencies administering these provisions for certain wage information. The Employment and Training Administration is currently working on the implementation of these amendments. A separate UIPL will be issued discussing disclosure made under these new provisions.

4. Action Required. SESAs are requested to notify appropriate staff of these amendments.

5. Inquiries. Inquiries should be directed to the appropriate Regional Office.

6. Attachments.

Attachment I, Text, Explanation and Interpretation of Amendments made to the Social Security Act by Section 124 of P.L. 100-485, the Family Support Act of 1988.

Attachment II, Text, Explanation and Interpretation of Amendments made to the Social Security Act by Section 904(c)(1) of P.L. 100-628, the Stewart B. McKinney Homeless Assistance Amendments Act of 1988.

Attachment III, Text of Sections 904(c)(2) and (3) of P.L. 100-628, the Stewart B. McKinney Homeless Assistance Amendments Act of 1988.



TEXT, EXPLANATION AND INTERPRETATION OF AMENDMENTS MADE TO THE SOCIAL SECURITY ACT BY SECTION 124 OF P.L. 100-485, THE FAMILY SUPPORT ACT OF 1988

1. Text of Amendments to the Social Security Act Made by Section 124 of P.L. 100-485.

a. Amendment to Section 453(e), SSA. Section 124(a), P.L. 100-485, amended Section 453(e), SSA, by adding at the end the following new paragraph:

> (3) The Secretary of Labor shall enter into an agreement with the Secretary [of Health and Human Services] to provide prompt access for the Secretary (in accordance with this subsection) to the wage and unemployment compensation claims information and data maintained by or for the Department of Labor or State employment security agencies.

b. Amendment to Section 303, SSA. Section 124(b)(1) of P.L. 100-485 amended Section 303, SSA, by adding at the end the following new subsection:

> (h)(1) The State agency charged with the administration of the State law shall take such actions (in such manner as may be provided in the agreement between the Secretary of Health and Human Services and the Secretary of Labor under section 453(e)(3)) as may be necessary to enable the Secretary of Health and Human Services to obtain prompt access to any wage and unemployment compensation claims information (including any information that might be useful in locating an absent parent or such parent's employer) for use by the Secretary of Health and Human Services, for purposes of section 453, in carrying out the child support enforcement program under Title IV.
>
> (2) Whenever the Secretary of Labor, after reasonable notice and opportunity for hearing to the State agency charged with the administration of the State law, finds that there is a failure to comply substantially with the requirement of paragraph (1), the Secretary of Labor shall notify such State agency that further payments will not be made to the State until such Secretary is satisfied that there is no longer any such failure. Until the Secretary of Labor is so satisfied, such Secretary shall make no further certification to the Secretary of the Treasury with respect to such State.

c. Companion Amendment to Section 304(a)(2), SSA. Section 124(b)(2) amended Section 304(a)(2), SSA, by striking

"or (e)" and inserting in lieu thereof "(e), or (h)".

2. Discussion.

a. In General. Section 453, SSA, requires the Secretary of Health and Human Services to establish and conduct a Federal Parent Locator Service (FPLS). The mission of the FPLS is to obtain and transmit to any authorized person (as defined under Section 453(c)) information as to the whereabouts of any absent parent. This information is to be used to locate the parent for the purpose of enforcing child support obligations.

Section 124(a) of P.L. 100-485, added new paragraph (3) to Section 453(e). This new paragraph requires the Secretary of Labor to enter into an agreement with the Secretary of Health and Human Services. Under this agreement, the FPLS will be given prompt access to wage and unemployment compensation claims information and data maintained by or for the Department of Labor or SESAs. Under Section 124(c)(2), the Secretaries of Labor and Health and Human Services must enter into this agreement within 90 days following the date of the enactment of P.L. 100-485.

Section 124(b)(1) of P.L. 100-485 added new subsection (h)(1) to Section 303, SSA, to require the State agency charged with the administration of the State UC law (i.e., the SESA) to give the FPLS prompt access to wage and UC claims information useful in locating an absent parent or the parent's employer for purposes of administering the child support enforcement provisions of Title IV, SSA. Under this provision, the actions the SESAs are required to take may be provided for in the agreement between the Secretaries of Labor and Health and Human Services.

The information covered by Section 303(h)(1) includes any wage and UC claims information that might be useful in locating an absent parent or the parent's employer for purposes of carrying out the child support enforcement program under Title IV, SSA. Under the agreement required by Section 453(e)(3), a SESA will be required to grant access to information that it has or that is maintained for it by another agency. SESAs are not, however, required to obtain additional information for the use of the FPLS.



Granted funds under Title III may not be used to pay any costs of administration of Section 303(h). As noted in the Conference Report (H.R. Rep. No. 998, 100th Cong., 2d Sess. 103), "[c]urrent law provides for the Department of HHS to reimburse the costs incurred by States and Federal agencies in providing information to the Federal Parent Locator Service." Therefore, any administrative costs incurred by SESAs that are associated with Sections 303(h) and 453(e) will be borne by the Department of Health and Human Services.

Further details regarding the agreement between the Secretaries of Labor and Health and Human Services, the implementation of Section 303(h), and the method of billing and reimbursing costs of administration will be issued at a later date.

Subsection 124(b)(1) also added new Section 303(h)(2), SSA, requiring denial of administrative grants to any State upon the finding of the Secretary, after reasonable notice and opportunity for hearing to the SESA, that there is a failure to comply substantially with the requirements of new Section 303(h)(1). Finally, Section 124(b)(2) of P.L. 100-485 amended Section 304(a)(2), SSA, to provide for judicial review whenever the Secretary makes an adverse finding under Section 303(h)(2).

b. Safeguards on Granting Access. Section 303(a)(1), SSA, has been interpreted to require that sufficient safeguards exist to ensure that any disclosed wage and UC claim information be used only for the purposes for which it is disclosed. Section 303(h) requires disclosure only for purposes of "carrying out the child support enforcement program under title IV." Therefore, the Department interprets Sections 303(a)(1) and 303(h)(1) as requiring the States to establish sufficient safeguards, including such safeguards as the Department of Labor may require, to assure that access to the information is restricted to the FPLS and that the information given the FPLS is used only for the purposes specified under Section 303(h)(1).

c. Amendments to State Law. Most State laws now permit information in the SESA's records to be disclosed to public officials in the performance of their public duties. In addition, Section 303(f), SSA, requires SESAs to provide information for purposes of the income and eligibility verification system created by Section 1137, SSA. SESAs will need to

review State laws to determine whether existing provisions provide sufficient authority to grant access to the FPLS or whether an amendment to State law is needed. If an amendment is necessary, State law should be amended by the effective date discussed in Section 3 of this attachment.

3. Effective Date. New Section 303(h)(2) requires that SESAs must substantially comply with the requirements of Section 303(h)(1) as a condition for receiving administrative grants under Section 302(a) of the SSA. Section 124(c)(1) of P.L. 100-485 specifies that the amendments made to Section 303(h):

> . . . shall become effective on the first day of the first calendar quarter which begins one year or more after the date of the enactment of this Act.

Since P.L. 100-485 was enacted on October 13, 1988, the requirements of Section 303(h)(1) become a condition for receiving administrative grants on January 1, 1990. This means the State law must provide for granting the FPLS prompt access to wage and UC claims information as provided by any agreement between the Secretaries of Labor and Health and Human Services by January 1, 1990.



TEXT, EXPLANATION AND INTERPRETATION OF AMENDMENTS MADE TO THE SOCIAL SECURITY ACT BY SECTION 904(c) OF P.L. 100-628, THE STEWART B. McKINNEY HOMELESS ASSISTANCE AMENDMENTS ACT OF 1988

1. Text of Amendments to the Social Security Act Made by Section 904(c) of P.L. 100-628.

a. Amendment to Section 303, SSA. Section 904(c)(1)(A) of P.L. 100-628 amended Section 303, SSA, by adding the following new subsection:

> (i)(1) The State agency charged with the administration of the State law--
>
> (A) shall disclose, upon request and on a reimbursable basis, only to officers and employees of the Department of Housing and Urban Development and to representatives of a public housing agency, any of the following information contained in the records of such State agency with respect to individuals applying for or participating in any housing assistance program administered by the Department who have signed an appropriate consent form approved by the Secretary of Housing and Urban Development--
>
> (i) wage information, and
>
> (ii) whether an individual is receiving, has received, or has made application for, unemployment compensation, and the amount of any such compensation being received (or to be received) by such individual, and
>
> (B) shall establish such safeguards as are necessary (as determined by the Secretary of Labor in regulations) to ensure that information disclosed under subparagraph (A) is used only for purposes of determining an individual's eligibility for benefits, or the amount of benefits, under a housing assistance program of the Department of Housing and Urban Development.
>
> (2) The Secretary of Labor shall prescribe regulations governing how often and in what form information may be disclosed under paragraph (1)(A).
>
> (3) Whenever the Secretary of Labor, after reasonable notice and opportunity for hearing to the State agency charged with the administration of the State law, finds that there is a failure to comply substantially with the requirements of paragraph (1), the Secretary of Labor shall notify such State agency that further payments will not be made to the State until he or she is satisfied

that there is no longer any such failure. Until the Secretary of Labor is so satisfied, he or she shall make no future certification to the Secretary of the Treasury with respect to such State.

(4) For purposes of this subsection, the term 'public housing agency' means any agency described in section 3(b)(6) of the United States Housing Act of 1937.

(5) The provisions of this subsection shall cease to be effective beginning on October 1, 1994.

b. Companion Amendment to Section 304(a)(2), SSA. Section 904(c)(1)(B) of P.L. 100-628 amended Section 304(a)(2), SSA, by striking "(e), or (h)" and inserting "(e), (h), or (i)".

2. Discussion.

a. In General. The Department of Housing and Urban Development (HUD) administers various housing assistance programs for low-income families. Section 904 of P.L. 100-628 creates requirements to assist in preventing fraud and abuse in HUD programs, including a requirement that program applicants and participants consent to permit HUD or a public housing agency to request certain information from State Employment Security Agencies (SESAs). The amendments made by Section 904(c)(1) require the SESA to provide these entities such information.

Specifically, Section 904(c)(1)(A) of P.L. 100-628 added new subsection (i)(1) to Section 303, SSA, to require the State agency charged with the administration of the State UC law (i.e., the SESA) to disclose, under certain conditions, to officers and employees of HUD and to representatives of a public housing agency certain information contained in the SESA's records.

"Public housing agency" is defined in new Section 303(i)(4) as "any agency described in Section 3(b)(6) of the United States Housing Act of 1937." Section 3(b)(6), 42 U.S.C. 1437a(b)(6), defines "public housing agency" as:

> . . . any State, county, municipality, or other governmental entity or public body (or agency or instrumentality thereof) which is authorized to engage in or assist in the development or operation of low-income housing.

SESAs are required to disclose information to HUD and other public housing agencies only upon request and only with



respect to individuals applying for or participating in any housing assistance program administered by HUD. In certain instances, private owners of residences are responsible for determining eligibility for or level of benefits. The requirements of Section 303(i)(1) do not require disclosure to such owners. Indeed, as stated in the Conference Report (H.R. Rep. No. 1089, 100th Cong., 2d Sess. 91), "[t]he wage and UI information may not be released to private owners." In addition, before a SESA may release any information under Section 303(i) regarding an individual who is applying for or participating in a HUD housing assistance program, the individual must sign a consent form, approved by the Secretary of HUD, which permits the release of such information.

Under Section 303(i)(1)(A), the SESA is required only to disclose "information contained in the records of" the SESA. Because a SESA is required only to disclose information in its records, it is not required to obtain additional information for the use of HUD or other public housing agencies.

Under Section 303(i)(1)(A)(i), the information to be disclosed from SESA records includes "wage information." "Wage information" is not defined in Section 303(h). For purposes of the income and eligibility verification system required under Section 303(f), SSA, the Department has defined "wage information" contained in SESA records at 20 CFR 603.2(b):

> "Wage information" means information about wages as defined in the State's unemployment compensation law and includes the Social Security Number (or number, if more than one) and quarterly wages of an employee, and the name, address, State, and (when known) Federal employer identification number of an employer reporting wages under a State unemployment compensation law . . . .[1]

The Department adopts this definition of "wage information" for purposes of Section 303(i)(1). However, if HUD or any public housing agency does not require any of this wage information to verify entitlement for HUD-assisted housing

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[1] The remainder of 20 CFR 603.2(b) addresses States where wage information is not required to be reported to the SESA. It is not applicable to Section 303(i)(1)(A) which only requires disclosure of information contained in the SESA's records.

programs, then the SESA should limit disclosure to the information required. In addition, a SESA is required under Section 303(i)(1)(A)(ii) to provide information in its records as to whether an individual is receiving, has received, or has made application for, unemployment compensation, and the amount of any compensation being received, or to be received, by the individual.

Granted funds under Title III may not be used to pay any costs of administration of Section 303(i). Section 303(i)(1)(A) specifically requires that SESAs shall disclose information upon "a reimbursable basis." Because granted funds may not be used for this purpose, the Department interprets Section 303(i), SSA, as requiring the SESAs to collect from HUD and any other requesting public housing agency all costs incurred in administering Section 303(i). These costs include start-up and continuing costs.

A written agreement between the SESA and HUD and any other requesting public housing agency is needed and should include specific terms regarding the information supplied by the SESA, the costs covered and charges to be made for all information, billing and payment arrangements (including advance payment), handling of errors, and adjustment of prices. SESAs may undertake activities under Section 303(i)(1) only after agreements for reimbursement of all costs have been made.

Section 904(c)(1)(A) also added new Section 303(i)(2) requiring the Secretary of Labor to prescribe regulations governing how often and in what form information may disclosed under Section 303(i)(1)(A). Further information on the required agreements and the proposed regulations will be issued at a later date.

Section 904(c)(1)(A) also added new Section 303(i)(3), SSA, requiring the denial of administrative grants to any State upon the finding of the Secretary, after reasonable notice and opportunity for hearing, that the State agency failed to comply substantially with the requirements of new Section 303(i)(1). New Section 303(i)(5) specifies that the provisions of Section 303(i) cease to be effective beginning on October 1, 1994. Section 904(c)(1)(B) of P.L. 100-628 amended Section 304(a)(2), SSA, to provide for judicial review whenever the Secretary makes an adverse finding under Section 303(i)(3).

Finally, Section 904(c)(2) created new provisions, not amending any existing law, which provide protections for the



subjects of the disclosed information by limiting the use of this information by requiring verification before action is taken against these individuals and by imposing penalties for improperly requesting, obtaining, or disclosing this information. (See Section 2.b of this attachment and Attachment III.)

b. Safeguards on Disclosing Information. New Section 303(i)(1)(B), SSA, requires the SESA to establish necessary safeguards to ensure that information disclosed is used only for purposes of determining the individual's eligibility for benefits, or the amount of benefits, under a HUD housing assistance program. The Secretary of Labor is to prescribe regulations on such safeguards as are necessary. Until such regulations are issued, SESAs will assure compliance with Section 303(i)(1)(B) by following the confidentiality protection provisions of 20 CFR 603.7 pertaining to the income eligibility and verification program. In addition, until such regulations are issued, as a condition of disclosure, HUD and other requesting public housing agencies must agree to comply with provisions of 20 CFR 603.7 (with a more stringent requirement noted below) pertaining to requesting agencies.

Section 904(c)(2) of P.L. 100-628 provides for limitations on the use of data obtained by the requesting agencies. Section 904(c)(3) provides for penalties for improper use of information. Although SESAs will not be actively involved in the administration of these sections, SESAs should be aware of the limitations on use of wage and UC information. These limitations should be included in any agreement between the SESA and HUD or other requesting public housing agencies.

Information received under Section 303(i)(1)(A) from SESAs may be redisclosed only under the limited conditions associated with administration of Section 303(i)(1)(a) and Section 904(c) of P.L. 100-628. Under 20 CFR 603.7(b)(3), agencies requesting information under the income and eligibility verification system may redisclose information to other requesting agencies as defined in 20 CFR 603.2(d). However, HUD and other public housing agencies may only redisclose information to public officials whose duties fall within the scope of Section 904(c). In this regard, SESAs should be aware that, under Section 904(c)(2)(A)(ii), the private owners responsible for verifying the individual's eligibility for or level of benefits under a HUD housing assistance program may only be informed by the recipient of the disclosed information

that the individual's eligibility for or level of benefits is uncertain and that the owner should independently verify the individual's income information.

Repeated violations of the statutory, regulatory or other reasonable safeguards required under Section 303(i) and Section 904(c) will constitute cause for the SESA to terminate any agreements. SESAs should report suspected violations of Section 904(c) to the appropriate authorities.

The text of Sections 904(c)(2) and (3) is contained in Attachment III.

c. Amendments to State Law. Most State laws now permit information in the SESA's records to be disclosed to public officials in the performance of their duties. In addition, Section 303(f), SSA, requires SESAs to provide information for purposes of the income and eligibility verification system created by Section 1137, SSA. SESAs will need to review State laws to determine whether existing provisions provide sufficient authority to disclose information to HUD or other public housing agencies, or whether an amendment to State law is needed. If an amendment is necessary, State law should be amended by the effective date discussed in Section 3 of this attachment.

3. Effective Date. New Section 303(i)(3), SSA, requires that SESAs must comply substantially with the requirements of Section 303(i)(1) as a condition for receiving administrative grants under Section 302(a), SSA. Section 904(d)(1) of P.L. 100-628 specifies that the provisions of Section 904, including new Section 303(i), "shall take effect on September 30, 1989." States are, therefore, expected to have provisions of State law permitting the disclosure required by Section 303(i)(1), SSA, by September 30, 1989. However, Section 904(d)(3) provides for a grace period for certain States:

> (3) REQUIREMENTS FOR STATE AGENCIES.--In the case of any State the legislature of which has not been in session for at least 30 calendar days (whether or not consecutive) between the date of the enactment of this Act and September 30, 1989, the amendments made by subsection (c)(1) shall take effect 30 calendar days after the first day on which such legislature is in session on or after September 30, 1989.

If the "State . . . legislature . . . has not been in session for at least 30 calendar days (whether or not consecutive)"



between the date of enactment, which is November 7, 1988, and September 30, 1989, then the State qualifies for a grace period. "Session" is not defined; however, the language "whether or not consecutive" indicates that the term means legislative days on which the legislative body assembles for the purpose of transacting business. Therefore, for purposes of Section 904(d)(3), "session" is interpreted as meaning a legislative day as recorded in the legislative record of the State legislature. These "sessions" include legislative days in regular, budgetary, special and any other sessions of the State legislature. If the State legislature has not met in such a "session" 30 times between the effective date of P.L. 100-628, which is November 7, 1988, and September 30, 1989, then the State qualifies for a grace period.

This grace period expires 30 calendar days "after the first day on which the legislature is in session on or after September 30, 1989." The same definition of "session" applies for determining the first day on which the legislature is in session after September 30, 1989. Therefore, the grace period will expire 30 calendar days after the first legislative day the legislature assembles after September 30, 1989.

For example, if the legislature does not meet in 30 sessions between the date of enactment of P.L. 100-628, which is November 7, 1988, and September 30, 1989, then the requirements of Section 303(i)(1) are effective 30 days after the first day the legislature meets in session after September 30, 1989. In another example, if a State legislature has not met in 30 sessions between November 7, 1988, and September 30, 1989, but does meet in a "session" October 1, 1989, then the grace period expires 30 days after this date, or October 31, 1989.

Based on information available to the Department, it is anticipated that only the Commonwealth of Kentucky will qualify for this grace period. This is because all other States will likely have legislatures which meet in session for at least 30 calendar days (whether or not consecutive) between the date of enactment of P.L. 100-628, which is November 7, 1988, and September 30, 1989.

Under certain circumstances, States may, at their option, implement the disclosure requirements of Section 303(i)(1) prior to September 30, 1989. Section 904(d)(2) provides for this optional early implementation:

(3) OPTIONAL EARLY IMPLEMENTATION.--At the initiative of a State or an agency of the State, and with the approval of the Secretary of Labor, the amendments made by subsection (c)(1) may be made effective in such State on any date before September 30, 1989, which is more than 90 days after the date of the enactment of this section.

Under Section 904(d)(2), early implementation is permitted only on a date which is "more than 90 days after the date of the enactment" of P.L. 100-628. As the date of enactment of P.L. 100-628 is November 7, 1988, States may implement the requirements of Section 303(i)(1) no earlier than February 6, 1989. Early implementation may be made only with the approval of the Secretary of Labor.



TEXT OF SECTIONS 904(c)(2) AND (3) OF P.L. 100-628, THE STEWART B. McKINNEY HOMELESS ASSISTANCE AMENDMENTS ACT OF 1988

(2) APPLICANT AND PARTICIPANT PROTECTIONS.--(A) In order to protect applicants for, and recipients of, benefits under the programs of the Department of Housing and Urban Development from the improper use of information obtained pursuant to the requirements of section 303(i) of the Social Security Act from the State agency charged with the administration of the State unemployment compensation law, officers and employees of the Department of Housing and Urban Development and representatives of public housing agencies may only use such information--

(i) to verify an applicant's or participant's eligibility for or level of benefits; or

(ii) in the case of an owner responsible for determining eligibility for or level of benefits, to inform such owner that an applicant's or participant's eligibility for or level of benefits is uncertain and to request such owner to verify such applicant's or participant's income information.

(B) No Federal, State, or local agency, or public housing agency, or owner responsible for determining eligibility for or level of benefits receiving such information may terminate, deny, suspend, or reduce any benefits of an applicant or participant until such agency or owner has taken appropriate steps to independently verify information relating to--

(i) the amount of the wages or unemployment compensation involved,

(ii) whether such applicant or participant actually has (or had) access to such wages or benefits for his or her own use, and

(iii) the period or periods when, or with respect to which, the applicant or participant actually received such wages or benefits.

(C) Such applicant or participant shall be informed by the agency or owner of the findings made by the agency or owner on the basis of such verified information, and shall be given an opportunity to contest such findings, in the same manner as applies to other information and findings relating to eligibility factors under the program.

(3) PENALTY.--(A) Any person who knowingly and willfully requests or obtains any information concerning an applicant or participant pursuant to the authority contained in section 303(i) of the Social Security Act

under false pretenses, or any person who knowingly and willfully discloses any such information in any manner to any individual not entitled under any law to receive it, shall be guilty of a misdemeanor and fined not more than $5,000. The term "person" as used in this paragraph shall include an officer or employee of the Department of Housing and Urban Development, an officer or employee of any public housing agency, and any owner responsible for determining eligibility for or level of benefits (or employee thereof).

(B) Any applicant or participant affected by (i) a negligent or knowing disclosure of information referred to in this section or in section 303(i) of the Social Security Act about such person by an officer or employee of any public housing agency or owner (or employee thereof), which disclosure is not authorized by this section, such section 303(i), or any regulation implementing this section or such section 303(i), or (ii) any other negligent or knowing action that is inconsistent with this section, such section 303(i), or any such implementing regulation may bring a civil action for damages and such other relief as may be appropriate against any officer or employee of any public housing agency or owner (or employee thereof) responsible for any such unauthorized action. The district court of the United States in the district in which the affected applicant or participant resides, in which such unauthorized action occurred, or in which the applicant or participant alleged to be responsible for any such unauthorized action resides, shall have jurisdiction in such matters. Appropriate relief that may be ordered by such district courts shall include reasonable attorney's fees and other litigation costs.

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Part IV

# Department of Labor

## Employment and Training Administration

## Federal-State Unemployment Compensation Program; Procedures for Release of Benefits Quality Control Data; Notice

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**DEPARTMENT OF LABOR**

**Federal-State Unemployment Compensation Program; Procedures for Release of Benefits Quality Control Data**

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Notice of Procedures for Release of Benefits Quality Control Data for Unemployment Insurance Program.

**SUMMARY:** On May 17, 1988, a notice was published in the **Federal Register** at 53 FR 17515 inviting comments on proposed procedures and format to release benefits Quality Control (QC) data for the Unemployment Insurance (UI) program. Based on the comments received, the Department has revised the proposed procedures and format. This notice announces the final procedures and format to be used.

**EFFECTIVE DATE:** March 9, 1989.

**FOR FURTHER INFORMATION CONTACT:** Charles L. Atkinson, Director, Office of Quality Control, Employment and Training Administration, Unemployment Insurance Service, U.S. Department of Labor, Room S-4015, Frances Perkins Building, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone (202) 535-0220 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**Background**

The benefits QC program is based on a statistical sample of weeks compensated by State Employment Security Agencies (SESAs). From the information gathered by in-depth reviews of these samples, the performance of a State's UI benefits system is evaluated in terms of weeks and dollars that were properly or improperly paid.

The regulation to establish the QC program for the Federal-State UI system was published in the **Federal Register** at 52 FR 33520 on September 3, 1987, with an effective date of October 5, 1987. Section 602.21(g) of the regulation provides that each State shall:

> Release the results of the QC program at the same time each year, providing calendar year results using a standardized format to present the data as prescribed by the Department; States will have the opportunity to release this information prior to any release by the Department.

On September 4, 1987, the Department published a notice in the **Federal Register** at 52 FR 33784 which requested public comment on issues relating to the format, method, and timing of the release. Based upon responses received from interested parties, the Department published another notice in the **Federal Register** at 53 FR 17515 on May 17, 1988, proposing procedures and format for displaying QC data and inviting comments on them.

**Discussion of Responses**

The Department received comments from 36 organizations and interested parties. The majority of comments were from SESA's. Comments were also received from public interest groups and the Department's Regional Offices. All comments were given careful consideration in developing the final procedures and format. The comments about the publication of data in general fell into six major areas. Following are a summary of the comments and the Department's responses:

*1. General Comments Concerning the Release of QC Data*

Twelve respondents said that the QC data should not be published in the **Federal Register**. To release UI QC data en masse in a standard format would invite comparisons among States. It was suggested that data be made available State-by-State, upon request. The Department has considered these comments and has modified the approach in response to them. The Federal release of QC data will be through established channels, with an announcement published in the **Federal Register** that these UI performance data are available. SESAs will release the required data through normal SESA public release mechanisms and announce to the public that the data are available upon request. The Department recognizes that State-by-State comparisons would be inappropriate. The Federal report containing the data will be introduced with a description of how the data should be used and provide a caution against State-by-State comparisons. Presentation will be in alphabetical order and will show rates of proper payments, overpayments, and underpayments.

Thirteen respondents said that the statistical and report generating software is unable to produce analyses that are accurate to the degree required by the proposed format. The Department agrees that the QC software was inadequate and required revisions. Changes have been made to overcome the technical problems, in most instances.

Six respondents said that at the proposed level of detail there would be several instances where it will be impossible to make reliable estimates due to the low number of cases that fall into the category. The Department concurs and has revised the format to eliminate categories from the report for which rates would not have been determined with sufficient precision. There should be sufficient data to make accurate estimates for the remaining categories in most instances; however, if not, it will be apparent from the confidence intervals.

Five respondents said that the Department should not release the data unless a State fails to release the data. The Department's position is that there are compelling reasons for compiling the data for Departmental uses and public consumption. This will be accomplished by publication of a digest of States' QC results which will be disseminated through normal channels (Department and SESAs). An announcement of the availability of the data will be published in the **Federal Register**, and as required by law, the data will be made available to other parties upon request.

Thirteen respondents objected to the States having only five working days to verify the Department's figures. Recognizing the legitimacy of this concern, the Department has increased the response time to 21 calendar days.

*2. Total Dollar Amount of Benefits Paid*

Three respondents said that the amount of benefits paid should be identified by type along with an explanation as to the claimants who receive the different types of payments. Two respondents felt that it would be more appropriate to indicate the amount of benefits paid for the cases sampled and indicate the percentage that this represents of the total UI dollars paid. Another respondent said that there needs to be additional information about the number of claims paid, the number of claims investigated during the report period, and the number of claims properly or improperly paid. The Department will encourage SESAs to include this information in their release if they wish to do so. The composite Federal report will not go into the level of detail.

*3. Proper Payment Rates*

There were three comments concerning the capability of the existing software to calculate the proper payment rates in terms of dollars paid when both overpayments and underpayments are coded for the same case and the inability of the software to net out the total. The Department has recognized this and decided not to net overpayments and underpayments. The software will estimate overpayments and underpayments separately.

One respondent stated that it was unfair to allow States that issued formal warnings in lieu of disqualifications to count these cases as proper. The Department recognizes that formal warnings create a special problem for calculating rates. Cases in which there are formal warnings will be included in the calculations for proper payments; however, footnotes will explain that in these States proper payment rates would have been lower had formal warnings not be included in the calculations.



*4. Improper Payment Rates*

Three respondents objected to including cases that were technically correct due to finality rules. The Department has included payments that were coded "technically proper due to finality rules" as improper payments because they were improper when made and, had they been so identified earlier, would have been corrected and would not be "technically proper".

Two respondents stated that the improper payment rates could not be accurately calculated for those cases having more than one error. Changes in the QC software released by the Department in November 1988 take into account the effects of cases with more than one improper payment issue. For a small percentage of cases, the exact impact of multiple error issues cannot be determined with the existing data elements. However, the Department has concluded that this effect on overall dollar improper payment rates is not significant.

One respondent said that a simpler report structure should be implemented to aid interested parties in correctly interpreting improper payment rates. The Department concurs and has revised the format accordingly.

One respondent said that if it can be calculated properly, the percentages of dollars overpaid and underpaid should be included in the report. The Department concurs; these rates will be included.

One respondent said that rates of cases containing errors should be reported, in addition to rates for dollars paid in error. The Department's position is that this would provide misleading information because many payments coded as improper have minor errors that represent only a fraction of the payments.

One respondent stated that the number of dollars paid should not be projected to the total population. The Department disagrees as this is the reason for investigating a statistically valid sample.

*5. Percentage of Dollars Improperly Paid—by Responsibility*

Ten respondents stated that this section would double count errors where there are multiple responsibility errors. Seven respondents said that the combined headings were confusing and should be lumped into one "shared responsibility" category. Four respondents said that the software would be unable to calculate multiple responsibility accurately. Two respondents felt the shared responsibility definitions were confusing. One respondent said that the proposed format did not discuss how the amount of dollars that should have been paid would be calculated. The Department concurs and has removed this section from the report.

*6. Percentage of Dollars Improperly Paid—by Cause*

There were ten separate comments concerning aspects of the reporting of dollars improperly paid by cause with suggestions for revision. As with dollars improperly paid by responsibility, this section has also been dropped.

*Policy Decisions*

Based upon the comments discussed above and upon discussions held within the Department, the procedures and format for releasing benefits QC data have been modified. The applications for SESAs and the Department follow:

*1. State Release of Data*

Each State will release the required data annually through established channels for disseminating State performance data. An announcement must be made to the general public that the data is available. In accordance with established State procedures, the data must be provided to those who normally receive performance/evaluation data and to anyone else who requests it.

The publication of data must include, at a minimun, the total dollars paid in benefits by the SESA in the calendar year (the population), the number of cases completed for QC investigations (the sample size), and rates with the bounds of the confidence interval for proper payments, overpayments, and underpayments. For purposes of the annual report, these categories are defined as:

a. *Total Dollars Paid in the Population.* The amount of benefits paid during weeks which end in the calendar year for the programs included in QC (UK, UCFE, UCX). These payments form the universe from which samples are selected.

b. *Sample Size.* The number of completed QC cases from batches with week ending dates in the calendar year.

c. *Proper Payment Rates.* The estimated total of dollars paid properly is shown as a percentage of total dollars paid in the population. These include amounts of payments coded as proper as defined in section 3d(1) of the Error Classification chapter in ET Handbook No. 395. It also includes from section 3d(2) those dollars paid properly, part of which were from claims paid improperly; e.g., $120 payment with $10 overpayment = $110 paid properly.

Additionally, the following payments classified as improper in section 3d(2) are included in the proper payment rate:

—Subsection (a)14: Pertains to issuance of "formal warning" to claimant, rather than denial of payment.

—Subsections (a)16 and (b)23: Pertain to overpayments and underpayments established as a result of the QC investigations which, upon appeal, were officially modified by a higher SESA authority, but the QC unit disagrees with this modification.

d. *Overpayment Rates.* The percentage of dollars overpaid is obtained from those payments coded under section 3d(2)(a) of the Error Classification chapter, but excludes codes 14 and 16.

3. *Underpayment Rates.* The percentage of dollars underpaid is obtained from those payments coded under section 3d(2)(b) of the Error Classification chapter, but excludes code 23.

Because the QC system accepts coding for up to three errors per case, in cases with multiple errors, the total dollars affected (for up to three errors per case) will be used in the computations of overpayments, as long as the amount originally paid is not exceeded. (For example, assume a weekly payment of $120 was found to have two errors. The first was a missed separation issue that should have disqualified the claimant; this amounts to an overpayment of $120. The second was unreported earnings during the key week resulting in an overpayment of $30. The total dollars used in computing the improper payment would be limited to $120.) If both an overpayment and an underpayment occur in a single case, the dollar amount overpaid will be used, up to the amount originaly paid, and the total dollars underpaid will be used to estimate the underpayment rate, which will be expressed as a percentage of total dollars paid in the population.

The upper and lower bounds of the ninety-five percent confidence intervals will be shown for each rate as plus or

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minus a dollar amount. The State may include additional data, narrative explanations, and plans for program improvement.

If a State fails to release data in accordance with the above-stated procedures, the Department, in its annual review of State QC operations as specified in 20 CFR, Part 602, § 602.31, will take appropriate action which could lead to the application of proceedings as specified in 20 CFR, Part 602, §602.42.

*2. Federal Release of Data*

The Department will publish a report in digest form of States' Quality Control data. The report will be transmitted through normal channels to components of the Department and to the SESAs. Concurrently, the Department will announce the availability of this data through a notice published in the **Federal Register** and make all the data available to anyone who requests it. The report published by the Department will display the total dollars paid in the population, the number of cases sampled, and rates for proper payments, overpayments, and underpayments for each State. The upper and lower bounds of the ninety-five percent confidence interval will be shown together with each rate. Footnotes will designate those States whose proper payment rates would be lower were it not for application of "formal warning" provisions. Footnotes will also designate those States that had minor data deficiencies. Major deficiencies will result in an entry in the report identifying the deficiency in the data.

The report will contain an introduction with explanations of how the data should be interpreted and caution about inappropriate comparisons of data among States. The data will be presented alphabetically by State in order to discourage rankings and comparisons.

The rates will be calculated by the Department and transmitted to the States for review prior to publication. States will be given a minimum of 21 calendar days to inform the Department if they disagree with the calculations. States may also submit optional narratives for inclusion in the report during this specified period of time. The Department will issue more detailed instructions through official directives.

Signed at Washington, DC, this 28th day of February 1989.

Robert T. Jones,

*Assistant Secretary of Labor.*

**Appendix—Format for QC Data Release by Department**

| | | |
|---|---|---|
| Total Dollars Paid in Population | | |
| Sample Size | | |
| | Percentage of Dollars | Confidence Interval |
| Proper Payments | | |
| Overpayments | | |
| Total | 100.0% | |
| | | |
| Underpayments | | |
| | | |
| Footnotes | | |

Narrative Comments

[FR Doc. 89-5444 Filed 3-8-89; 8:45 am]
BILLING CODE 4510-89-M

federal register

Thursday
March 9, 1989

Part V

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 15, 42, and 52
Federal Acquisition Regulation (FAR); Indirect Cost Rate Proposals; Proposed Rule

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**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 15, 42, and 52**

**Federal Acquisition Regulation (FAR); Indirect Cost Rate Proposals**

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Proposed rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering changes to Federal Acquisition Regulation (FAR) 15.804–4(i), 42.705–1, 42.705–2, and the clause at 52.216–13 to emphasize responsibilities regarding certification of final indirect cost rate proposals.

**DATE:** Comments should be submitted to the FAR Secretariat at the address shown below on or before May 8, 1989, to be considered in the formulation of a final rule.

**ADDRESS:** Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., Room 4041, Washington, DC 20405.

Please cite FAR Case 89–14 in all correspondence related to this issue.

**FOR FURTHER INFORMATION CONTACT:** Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 523–4755.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

The proposed rule will add submission of final, indirect cost-rate proposals as an example of a situation when the authority to require certification in accordance with the Truth in Negotiations Act should be exercised. This example was not incorporated into the Federal Acquisition Regulation because it was thought to be redundant. However, to eliminate questions that have arisen because of elimination of the example and to acknowledge that it is now and always has been authorized, it is now being specifically emphasized.

A review of the coverage of final, indirect rate settlements at FAR 42.705 indentified ambiguities with regard to the need for contractor certification of data.

Proposed coverage revises FAR 15.804–4(i) to clarify that certification of final indirect rate proposals is required. Revised coverage is also proposed to FAR 42.705–1 and –2 to reference 15.804–4. The clause at 52.216–13 has been amended to make it consistent with a similar clause at 52.216–7.

**B. Regulatory Flexibility Act**

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because most contracts awarded as a result of negotiations are awarded to large businesses. Furthermore, the proposed revisions merely illustrate the nature of records Government auditors have access to and do not change existing requirements. An initial regulatory flexibility analysis has therefore not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected FAR Subpart will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite FAR Case 88–610 in correspondence.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act (Pub. L. 96–511) does not apply because the proposed rule changes no recordkeeping or information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, et seq.

**List of Subjects in 48 CFR Parts 15, 42, and 52**

Government procurement.

Dated: February 27, 1989.

**Harry S. Rosinski,**

*Acting Director, Office of Federal Acquisition and Regulatory Policy.*

Therefore, 48 CFR Parts 15, 42, and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 15, 42, and 52 continues to read as follows:

**Authority:** 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

**PART 15—CONTRACT BY NEGOTIATION**

2. Section 15.804–4 is amended by adding paragraph (i) to read as follows:

**15.804–4 Certification of Current Cost or Pricing Data.**

* * * * *

(i) The data in support of a contractor's final indirect rate submission are cost or pricing data which must be certified.

**PART 42—CONTRACT ADMINISTRATION**

3. Section 42.705–1 is amended by redesignating existing paragraphs (b)(5)(ii) through (iv) as (b)(5)(iii) through (v); and by adding new paragraph (b)(5)(ii) to read as follows:

**42.705–1 Contracting officer determination procedure.**

* * * * *

(b) * * *

(5) * * *

(ii) Obtain from the contractor a Certificate of Current Cost or Pricing Data, as required by 15.804–4(i);

* * * * *

4. Section 42.705–2 is amended by revising paragraph (b)(2)(ii) to read as follows:

**42.705–2 Auditor determination procedure.**

* * * * *

(b) * * *

(2) * * *

(ii) Obtain from the contractor a Certificate of Current Cost or Pricing Data, as required by 15.804–4(i);

* * * * *

**PART 52—SOLICIATION PROVISIONS AND CONTRACT CLAUSES**

**52.216–13 [Amended]**

5. Section 52.216–13 is amended by removing the fourth sentence from paragraph (c)(2) of the clause.

[FR Doc. 89–5460 Filed 3–8–89; 8:45 am]

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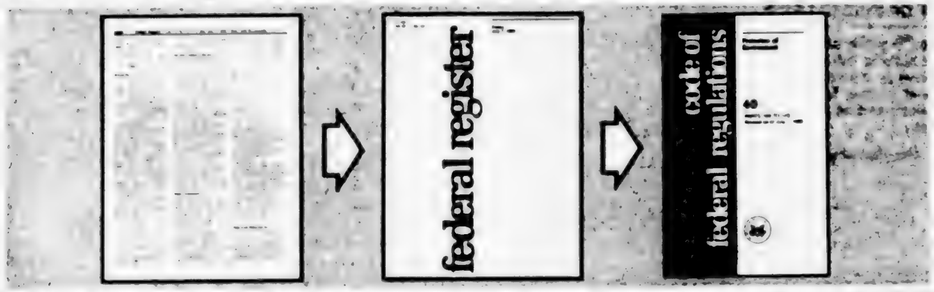
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**WHAT:** Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

**WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

**PHILADELPHIA, PA**

**WHEN:** March 30, at 1:00 p.m.
**WHERE:** 841 Chesnut Street, Room 706, Philadelphia, Pa
**RESERVATIONS:** Call the Philadelphia Federal Information Center
Philadelphia: 215–597–1799
New Jersey: 800–366–4499

**WASHINGTON, DC**

**WHEN:** April 11, at 9:00 a.m.
**WHERE:** Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC
**RESERVATIONS:** 202–523–5240

**SALT LAKE CITY, UT**

**WHEN:** April 12, at 9:00 a.m.
**WHERE:** State Office Building Auditorium, Capitol Hill, Salt Lake City, UT
**RESERVATIONS:** Call the Utah Department of Administrative Services, 801–538–3010



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# Rules and Regulations

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Friday, March 10, 1989

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 831

### Retirement; Alternative Forms of Annuity

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rules.

**SUMMARY:** The Office of Personnel Management (OPM) is adopting as final its interim rules to implement section 204 of the Federal Employees Retirement System Act of 1986, which requires OPM to offer alternative forms of annuity to employees retiring under the Civil Service Retirement System, and section 6001 of Pub. L. 100–203 (enacted December 22, 1987), which affects the manner of payment to certain annuitants who elect an alternative form of annuity. These rules specify what types of benefits will be offered, and how OPM will administer them.

**EFFECTIVE DATE:** April 10, 1989.

**FOR FURTHER INFORMATION CONTACT:** Robert Rosenblatt, (202) 632–4682.

**SUPPLEMENTARY INFORMATION:** OPM published interim rules to implement the alternative annuity provisions on November 28, 1986 (51 FR 42987), and amended interim rules to implement Pub. L. 100–203 on April 8, 1988 (53 FR 11633). Thirteen timely responses to our requests for comments were received.

Eight commenters objected to the prescribed method of determining the reduction in annuity rate for those who elect an alternative form of annuity. They felt that the method was unfair because it results in a greater reduction for older employees, and those whose retirement contributions are greater. Those objections arise from a misunderstanding of the intent of the law.

Congress did not intend the alternative annuity provisions to increase, in the long term, the overall level of benefits paid by the retirement system. For that reason, the law requires that the alternative benefit payable, including the lump-sum payment, be "actuarially equivalent" to the annuity that would have been paid had the alternative benefit not been elected.

Simply stated, the law requires the Civil Service Retirement System to recoup the lump-sum payment during the annuitant's expected lifetime, by reducing the rate of annuity payable, based on mortality tables and assumptions about interest and inflation rates.

Four commenters felt that the assumptions about interest rates and inflation that partly determine present values, were inappropriate because they do not reflect recent conditions. However, economic assumptions that are reasonably predictive of actuarial costs and liabilities must be based not only on recent economic conditions, but on long term historical data.

One commenter objected to § 831.2205(b) on the grounds that a 30-day comment period was inadequate after notice of proposed adjustments in present value factors. The commenter believed that such a notice should be in the form of a proposed rulemaking with a 60-day comment period. OPM believes that a 30-day notice is sufficient when changes in present value factors result only from changes in the data affecting them—interest and inflation rates, and changes in mortality rates. Of course, a proposed rulemaking would be appropriate if OPM were to change the basic formula, defined in § 831.2202, that determines present value factors.

One commenter stated that OPM's method of determining present value was unfair because it differed from the IRS actuarial tables used in computing the nontaxable portion of an annuity. There is no legal basis for equating the alternative annuity factors with IRS's actuarial tables. As noted above, the law (5 U.S.C. 8343a) expressly requires actuarial equivalence of the alternative annuity with the annuity that would otherwise have been paid to civil service annuitants. The data used to determine present values is, therefore, specific to the class of civil service annuitants affected by the alternative annuity provision (i.e. nondisabled annuitants).

One commenter felt that revised § 831.2204 incorrectly interpreted the statute by prohibiting an application for disability retirement following an election of an alternative form of annuity. The commenter believes that an annuitant should be able to apply for disability retirement within one year after retiring, and be allowed to repay the lump-sum credit when disability retirement is approved. However, 5 U.S.C. 8343a precludes such an arrangement. That provision requires that an annuitant who elects an alternative form of annuity elects that benefit "instead of any other benefits" under the retirement system.

Based on two of the comments, a definition of "lump-sum credit" has been added to § 831.2202 to clarify that the term has the same meaning as in 5 U.S.C. 8331(8).

Section 831.2204 has been revised to correct a reference.

Section 831.2206 has been revised to make clear that a deemed deposit or redeposit includes any interest owed by the employee under 5 U.S.C. 8334.

Section 831.2208 has been added to clarify the entitlements of annuitants who, after reemployment, become entitled to a redetermined annuity, and who then elect an alternative form of annuity. The added section provides that the reduction in the redetermined annuity is the sum of (1) the reduction, if any, that was made at the time of the annuitant's fist retirement, indexed for COLA's, plus (2) a reduction based on the additional lump-sum credit accumulated during the reemployment, using the appropriate present value factor for the annuitant's age when the redetermined annuity begins. If the annuitant did not elect an alternative form of annuity at the time of his or her first retirement, the redetermined annuity would be reduced in the same manner as for a new retiree. However, any lump-sum credit attributable to service performed before the annuitant's first retirement would be diminished by any annuity payments received between retirement and reemployment. Consistent with section 8344(a)(B) of title 5, United States Code, the lump-sum credit would not be diminished *during* reemployment (except reemployment, such as a period of nonduty under an intermittent appointment, during which

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the Retirement Fund is not reimbursed by the employing agency in accordance with section 8344(a)).

Section 831.2208 also affirms that any reduction of annuity because of an alternative annuity election is permanent, even if the annuitant does not elect, or is not eligible to elect, an alternative form of annuity after qualifying for a redetermined annuity. For example, an employee who retires, elects an alternative annuity and, after reemployment, retires for disability would not be eligible to elect an alternative form of annuity (§ 831.2203(a)); however, the redetermined annuity would still be reduced by the prior alternative annuity reduction, increased by COLA's.

**E.O. 12291, Federal Regulation**

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

**Regulatory Flexibility Act**

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect Federal agencies and retirement payments to retired Government employees.

**List of Subjects in 5 CFR Part 831**

Administrative practice and procedure, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Retirement.

U.S. Office of Personnel Management
**Constance Horner,**
*Director.*

Accordingly, OPM is adopting its interim rules published at 51 FR 42987 on November 28, 1986, and 53 FR 11633 on April 8, 1988, as final rules with the following changes:

**PART 831—RETIREMENT**

**Subpart V—Alternative Forms of Annuities**

1. The authority citation for Subpart V of Part 831 continues to read as follows:

**Authority:** 5 U.S.C. 8343a.

2. In § 831.2202, a new definition is added in alphabetical order to read as follows:

**§ 831.2202 Definitions.**

* * * * *

"Lump-sum credit" has the same meaning as in 5 U.S.C. 8331(8).

* * * * *

**§ 831.2204 [Amended]**

3. In § 831.2204(a), the reference "§ 831.2206" is removed and the reference "§ 831.2205" is added in its place.

4. Section 831.2206 is revised to read as follows:

**§ 831.2206 Election to pay deposit or redeposit for civilian service.**

(a) If an employee or Member who elects an alternative form of annuity owes a deposit or redeposit for civilian service, and elects to pay that deposit or redeposit before the date of final adjudication, OPM will compute the annuity as if the deposit or redeposit had been made and will deem that deposit or redeposit to be included in the lump-sum credit for the purpose of computing the reduction in annuity under § 831.2205.

(b) The amount of a deposit or redeposit deemed paid under paragraph (a) of this section will include any interest owed by the employee or Member under 5 U.S.C. 8334.

5. Section 831.2208 is added to Subpart V to read as follows:

**§ 831.2208 Redetermined annuity after reemployment.**

(a) For purposes of this section, "lump-sum credit" does not include—

(1) The amount by which the lump-sum credit attributable to service performed before the annuitant's first retirement was reduced by annuity payments that were not reimbursed by the employing agency under section 8344(a) of title 5, United States Code, or

(2) Any part of the lump-sum credit attributable to service performed before the annuitant's first retirement that has already been paid to the annuitant pursuant to an election or an alternative form of annuity.

(b) An annuitant who meets the requirements for a redetermined annuity under Subpart H, and who meets all requirements of § 831.2203, may elect an alternative form of annuity.

(c) To compute the beginning rate of the redetermined annuity payable to an annuitant who elects an alternative form of annuity, OPM will first compute the monthly rate payable under subchapter III of chapter 83 of title 5, United States Code, including all reductions provided under the subchapter other than those in section 8343a. That monthly rate is then reduced by the sum of—

(1)(i) Any reduction that was computed under § 831.2205 at the time of the annuitant's prior retirement, increased by—

(ii) All cost-of-living adjustments under section 8340 of title 5, United States Code that applied to the annuitant before the commencing date of the redetermined annuity, and

(2) An amount equal to the annuitant's lump-sum credit, divided by the present value factor for the annuitant's attained age on the date the redetermined annuity commences.

(d) The beginning rate of a redetermined annuity payable to an annuitant who does not elect, or is not eligible to elect, an alternative form of annuity will be reduced in accordance with paragraph (c)(1) of this section.

[FR Doc. 89-5617 Filed 3-9-89; 8:45 am]
BILLING CODE 6325-01-M

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**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 907**

**[Navel Orange Reg. 691]**

**Navel Oranges Grown in Arizona and Designated Part of California; Limitation of Handling**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** Regulation 691 establishes the quantity of California-Arizona navel oranges that may be shipped to market during the period March 10 through March 16, 1989. Such action is needed to balance the supply of fresh navel oranges with the demand for such oranges during the period specified due to the marketing situation confronting the orange industry.

**DATES:** Regulation 691 (§ 907.991) is effective for the period March 10, 1989, through March 16, 1989.

**FOR FURTHER INFORMATION CONTACT:** Jacquelyn R. Schlatter, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2528-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-5120.

**SUPPLEMENTARY INFORMATION:** This final rule is issued under Marketing Order 907 (7 CFR Part 907), as amended, regulating the handling of navel oranges grown in Arizona and designated part of California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.



Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of the use of volume regulations on small entities as well as larger ones.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small business will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 125 handlers of California-Arizona navel oranges subject to regulation under the navel orange marketing order, and approximately 4,065 producers in California and Arizona. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona navel oranges may be classified as small entities.

This action is consistent with the marketing policy for 1988-89 adopted by the Navel Orange Administrative Committee (Committee). The Committee met publicly on March 7, 1989, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended by a nine to two vote a quantity of navel oranges deemed advisable to be handled during the specified week. The Committee reports that the market for navel oranges has slightly improved.

Based on consideration of supply and market conditions, and the evaluation of alternatives to the implementation of prorate regulations, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. To effectuate the declared purposes of the Act, it is necessary to make this regulatory provision effective as specified, and handlers have been apprised of such provision and the effective time.

**List of Subjects in 7 CFR Part 907**

Arizona, California, Marketing agreements and orders, Navel, Oranges.

For the reasons set forth in the preamble, 7 CFR Part 907 is amended as follows:

**PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA**

1. The authority citation for 7 CFR Part 907 continues to read as follows:

**Authority:** Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 907.991 is added to read as follows:

**Note:** This section will not appear in the Code of Federal Regulations.

**§ 907.991 Navel Orange Regulation 691.**

The quantity of navel oranges grown in California and Arizona which may be handled during the period March 10, 1989, through March 16, 1989, is established as follows:

(a) District 1: 1,452,000 cartons;
(b) District 2: 196,000 cartons;
(c) District 3: unlimited cartons;
(d) District 4: unlimited cartons.

Dated: March 8, 1989.

**Robert C. Keeney,**
*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 89-5709 Filed 3-9-89; 8:45 am]
BILLING CODE 3410-02-M

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**7 CFR Part 910**

**[Lemon Reg. 656]**

**Lemons Grown in California and Arizona; Limitation of Handling**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** Regulation 656 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 340,000 cartons during the period March 12 through March 18, 1989. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

**DATES:** Regulation 656 (§ 910.956) is effective for the period March 12 through March 18, 1989.

**FOR FURTHER INFORMATION CONTACT:** Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-5697.

**SUPPLEMENTARY INFORMATION:** This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 85 handlers of lemons grown in California and Arizona subject to regulation under the lemon marketing order and approximately 2500 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona lemons may be classified as small entities.

This regulation is issued under Marketing Order No. 910, as amended [7 CFR Part 910] regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601-674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee (Committee) and upon other available information. It is found that

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this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1988–89. The Committee met publicly on March 7, 1989, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and, by a 7 to 4 vote, recommended a quantity of lemons deemed advisable to be handled during the specified week. The Committee reports that demand for lemons is good.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

**List of subjects in 7 CFR Part 910**

Marketing agreements and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

**PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA**

1. The authority citation for 7 CFR Part 910 continues to read as follows:

**Authority:** Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 910.956 is added to read as follows:

**Note:** This section will not appear in the Code of Federal Regulations.

**§ 910.956 Lemon Regulation 658.**

The quantity of lemons grown in California and Arizona which may be handled during the period March 12, 1989, through March 18, 1989, is established at 340,000 cartons.

Dated: March 8, 1989.

**Robert C. Keeney,**

*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 89–5708 Filed 3–9–89; 8:45 am]

BILLING CODE 3410–02–M

## NUCLEAR REGULATORY COMMISSION

**10 CFR Part 9**

**Freedom of Information Act; Appeal Authority for Deputy Executive Director**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Nuclear Regulatory Commission is amending its regulations to reflect the recent reorganization within the Office of the Executive Director for Operations. This amendment will permit a Deputy Executive Director to respond to appeals in lieu of the Executive Director for Operations.

**EFFECTIVE DATE:** March 10, 1989.

**FOR FURTHER INFORMATION CONTACT:** Donnie H. Grimsley, Director, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Telephone: (301) 492-7211.

**SUPPLEMENTARY INFORMATION:** On January 9, 1989, the Nuclear Regulatory Commission (NRC) announced organizational changes within the Office of the Executive Director for Operations. In the reorganization, the Commission appointed a second Deputy Executive Director and assigned specific areas of responsibility to the two deputies. Both Deputy Executive Directors report to the Executive Director for Operations. The NRC is amending portions of its regulations to specify that in lieu of the Executive Director for Operations, a Deputy Executive Director is authorized to respond to an appeal of a denial of a Freedom of Information Act request.

Because these are amendments dealing with agency practice and procedure, the notice and comment provisions of the Administrative Procedure Act do not apply pursuant to 5 U.S.C. 553(b)(A). The amendments are effective upon publication in the **Federal Register**. Good cause exists to dispense with the usual 30-day delay in the effective date, because these amendments are of a minor and administrative nature, dealing with the agency's reorganization.

**Environmental Impact: Categorical Exclusion**

The NRC had determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

**Paperwork Reduction Act Statement**

This final rule contains no information collection requirements and therefore is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

**List of Subjects in 10 CFR Part 9**

Freedom of Information, Penalty, Privacy, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is adopting the following amendments to 10 CFR Part 9.

**PART 9—PUBLIC RECORDS**

1. The authority citation for Part 9 continues to read as follows:

**Authority:** Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 68 Stat. 1242, as amended (42 U.S.C. 5841).

2. In § 9.29, the introductory text of paragraph (c)(1), paragraphs (c)(2), (c)(3) and (d) are revised to read as follows:

**§ 9.29 Appeal from initial determinations.**

* * * * *

(c)(1) If the appeal of the denial of the request for agency records is upheld in whole or in part, the Executive Director for Operations, or a Deputy Executive Director, or the Secretary of the Commission shall notify the requester of the denial, specifying—

* * * * *

(2) If, on appeal, the denial of a request for waiver or reduction of fees for locating and reproducing agency records is upheld in whole or in part, the Executive Director for Operations or a Deputy Executive Director shall notify the person making the request of his decision to sustain the denial, including a statement explaining why the request does not meet the requirements of § 9.41.

(3) The Executive Director for Operations, or a Deputy Executive Director, or the Secretary of the Commission shall inform the requester that the denial is a final agency action and that judicial review is available in a district court of the United States in the district in which the requester resides or has a principal place of business, in which the agency records are situated, or in the District of Columbia.

(d) The Executive Director for Operations, or a Deputy Executive Director, or the Secretary of the Commission shall furnish copies of all



appeals and written determination on appeals to the Director, Division of Freedom of Information and Publications Services.

* * * * *

Dated at Rockville, Maryland, this 27th day of February 1989.

For the Nuclear Regulatory Commission.

**Victor Stello, Jr.,**

*Executive Director for Operations.*

[FR Doc. 89–5579 Filed 3–9–89; 8:45 am]

BILLING CODE 7590–01–M

## FEDERAL RESERVE SYSTEM

**12 CFR Part 265**

**[Docket No. R–0662]**

**Rules Regarding Delegation of Authority**

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Final rule.

**SUMMARY:** The Board is adding a new paragraph to its Rules Regarding Delegation of Authority to delegate to each Federal Reserve Bank, after consultation with the Board's General Counsel, the authority to decide not to disapprove requests for director interlocks pursuant to section 205(8) of the Depository Institution Management Interlocks Act (12 U.S.C. 3204(8)) for diversified savings and loan holding companies.

**EFFECTIVE DATE:** March 10, 1989.

**FOR FURTHER INFORMATION CONTACT:** J. Virgil Mattingly, General Counsel (202) 452–3430, or Thomas M. Corsi, Attorney, Legal Division (202) 452–3275. For the hearing impaired *only*, Telecommunications Device for the Deaf (TDD), Earnestine Hill or Dorothea Thompson, (202) 452–3544, Board of Governors of the Federal Reserve System, Washington, DC 20551.

**SUPPLEMENTARY INFORMATION:**

**Regulatory Flexibility Act Analysis**

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601 *et seq.*), the Board certifies that the proposed amendment will not have a significant economic impact on a substantial number of small entities. The proposed amendment does not have particular effect on small entities.

**Public Comment**

The provisions of section 553 of Title 5, United States Code, relating to notice, public participation, and deferred effective date have not been followed in connection with the adoption of this amendment because the change to be effected is procedural in nature and does not constitute a substantive rule subject to the requirements of that section. The Board's expanded rule making procedures have not been followed for the same reason.

**List of Subjects in 12 CFR Part 265**

Authority, Delegations (Government agencies), Banks, Banking, Federal Reserve System.

For the reasons set forth above, 12 CFR Part 265 is amended as follows:

**PART 265—RULES REGARDING DELEGATION OF AUTHORITY**

1. The authority citation for Part 265 continues to read as follows:

**Authority:** Section 11(k), 38 Stat. 261 and 80 Stat. 1314; 12 U.S.C. 248(k).

2. A new paragraph (f)(49) is added to § 265.2 to read as follows:

**§ 265.2 Specific functions delegated to Board employees and to Federal Reserve Banks.**

* * * * *

(f) * * *

(49) Under the provisions of § 205(8) of the Depository Institution Management Interlocks Act (12 U.S.C. 3204(8)), after consultation with the General Counsel of the Board, to decide not to disapprove notices to establish director interlocks with diversified savings and loan holding companies.

By order of the Board of Governors of the Federal Reserve System, March 6, 1989.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 89–5553 Filed 3–9–89; 8:45 am]

BILLING CODE 6210–01–M

## DEPARTMENT OF TRANSPORTATION

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. 88–CE–02–AD; Amendment 39–6153]**

**Airworthiness Directives; Fairchild Aircraft Corporation Models SA26–T, SA26–AT, SA226–T, SA226–T(B), SA226–AT, SA226–TC, SA227–TT, SA227–AT, and SA227–AC Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new Airworthiness Directive (AD) applicable to Fairchild (previously Swearingen) Models SA26–T, SA26–AT, SA226–T, SA226–T(B), SA226–AT, SA226–TC, SA227–TT, SA227–AT, and SA227–AC airplanes which supersedes AD 88–22–04, Amendment 39–6048. AD 88–22–04 required the inspection of acrylic windows for cracks and the replacement of cracked windows on SA26, SA226, and SA227 series airplanes. This new AD is needed to extend the inspections to cabin windows on two additional models, and to clarify the crack limits, compliance instructions, and serial number effectivity.

**EFFECTIVE DATE:** April 10, 1989.

Compliance: As prescribed in the body of the AD.

**ADDRESSES:** Fairchild Aircraft Corporation Service Bulletin Nos. 26–68, dated April 28, 1989; 26–56–10–038, revised October 29, 1984; 26–56–20–042, dated November 28, 1988; 226–56–001 and 227–56–001, both revised January 5, 1984; 226–56–002, revised July 29, 1983; 227–56–002, issued January 5, 1984; and 226–56–003 and 227–56–003, both dated September 13, 1984, applicable to this ADO, may be obtained from the Fairchild Aircraft Corporation, P.O. Box 790490, San Antonio, Texas 78279–0490. This information may also be examined at the Rules Docket, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

**FOR FURTHER INFORMATION CONTACT:** Michele M. Owsley, Airplane Certification Branch, ASW–150, DOT/FAA, Southwest Region, Fort Worth, Texas 76193–0150; Telephone (817) 624–5161.

**SUPPLEMENTARY INFORMATION:** AD 88–22–04, Amendment 39–6048, requires inspection of acrylic windows for cracks and replacement of cracked windows in certain Fairchild SA26, SA226, and SA227 series airplanes. At the time AD 88–22–04 was issued, no service information existed for inspecting the Model SA26–T and SA26–AT cabin windows. Fairchild has recently issued Service Bulletin (SB) 26–56–20–042 to provide these instructions. In addition, the instructions in AD 88–22–04 appear to conflict with the referenced service bulletins when cracks do not exceed 0.30 inches. The FAA has determined that it is acceptable to operate within the service bulletin criteria for these small cracks. In addition, after the issuance of AD 88–22–04, Fairchild revised the Airframe Airworthiness Limitations Manual, ST–UN–M001, SA227 Series, Reissue B, dated December 6, 1988, to include the requirements of this AD. This new AD formally identifies this document revision as part of the airworthiness requirements for those airplanes.

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Since the FAA has determined that the unsafe condition described herein is likely to exist or develop in other airplanes of the same type design, a new AD is being issued, superseding AD 88–22–04, which requires initial and repetitive inspections of the cockpit and cabin windows in all Fairchild SA26, SA226, and SA227 series airplanes. If cracks are found which exceed the service bulletin limits but which do not exceed the limits specified in the AD, the airplane may continue to operate unpressurized provided the cracked window is reinspected periodically and the crack limits are not exceeded. Because an emergency condition exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not major under section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the Rules Docket under the caption "**ADDRESSES**" at the location identified.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the FAA amends § 39.13 of Part 39 of the FAR as follows:

**PART 39—[AMENDED]**

1. The authority citation for Part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. By superseding AD 88–22–04, Amendment 39–6048, with the following new AD:

**Fairchild Aircraft Corporation:** Applies to Models SA26–T, SA26–AT, SA226–T, SA226–T(B), SA226–AT, SA226–TC, SA227–AT, and SA227–AC airplanes (all serial numbers) certificated in any category.

Compliance: Required as indicated unless already accomplished per the requirements of AD 88–22–04.

To prevent failure of the cockpit and cabin windows, accomplish the following:

(a) Within the next 50 hours' time-in-service (TIS) after the effective date of this AD, unless accomplished within the previous 2500 hours TIS, and thereafter at intervals not to exceed 2500 hours TIS from the last inspection, visually inspect all cockpit acrylic windows in accordance with applicable Fairchild Aircraft Corporation Service Bulletins 26–68, dated April 28, 1969; 26–56–10–036, revised October 29, 1984; 226–56–003 or 227–56–003, both dated September 13, 1984, as applicable; and visually inspect all cabin windows in accordance with Fairchild Aircraft Corporation Service Bulletins 26–56–20–042 (SA26–T and SA26–AT) dated November 28, 1988; 226–56–001 (SA226–T and SA226–T(B)), revised January 5, 1984; 227–56–001 (SA227–TT), revised January 5, 1984; 226–56–002 (SA226–AT and SA226–TC), revised July 29, 1983; 227–56–002 (SA227–AT and SA227–AC), dated January 5, 1984.

**Note 1.**—The compliance times for the SA227 Series airplanes are also shown in the Airframe Airworthiness Limitations Manual, ST–UN–M001, Reissue B, dated December 6, 1988.

(1) If cracks are found in any given window which exceed 4.3 inches in combined total length, prior to further flight, replace the window with a serviceable window.

**Note 2.**—The FAA recommends, but does not require, that the cabin window modification be accomplished when the cabin windows are replaced.

(2) If cracks are found in any given window which exceed the applicable service bulletin limits but do not exceed 4.3 inches in combined total length and replacement parts are not available, the airplane may continue to operate provided:

(A) The cracked window is reinspected for crack growth thereafter at intervals not to exceed every 250 hours TIS. If the combined total length of the cracks exceeds 4.3 inches, prior to further flight replace the window with a serviceable window.

(B) Fabricate and install on the instrument panel, as near as possible to the pressurization controls and in clear view of the pilot, the following placard using letters of 0.10 inch minimum height: "AIRPLANE MUST BE OPERATED UNPRESSURIZED", and operate the airplane in accordance with this limitation.

(C) Place a copy of this AD in the limitations section of the Pilots Operating Handbook or the FAA Approved Airplane Flight Manual and observe the specified limitation.

(b) The placard, the 250 hour TIS reinspections, and the limitations specified in paragraphs (a)(2)(A), (a)(2)(B), and (a)(2)(C) above, may be removed and the airplane pressurized in the normal manner when all of the cracked windows have been replaced.

(c) The intervals between the inspections required by this AD may be adjusted up to 10 percent of the specified interval to allow accomplishing these inspections concurrent with other scheduled maintenance on the airplane.

(d) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(e) An equivalent means of compliance with this AD may be used if approved by the Manager, Airplane Certification Branch, DOT/FAA, Southwest Region, Fort Worth, Texas 76193–0150; Telephone (817) 624–5150. All persons affected by this directive may obtain copies of the documents referred to herein upon request to the Fairchild Aircraft Corporation, P.O. Box 790490, San Antonio, Texas 78279–0490; or may examine these documents at the FAA, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64105.

This amendment supersedes AD 88–22–04, Amendment 39–6048.

This amendment becomes effective on April 10, 1989.

Issued in Kansas City, Missouri, February 28, 1989.

**Barry D. Clements,**

*Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 89–5547 Filed 3–9–89; 8:45 am]

BILLING CODE 4910–13–M

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**14 CFR Part 71**

**[Airspace Docket No. 88–AWP–22]**

**Revision of Vacaville, CA, Transition Area**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action revises the transition area at Vacaville, CA. This will provide controlled airspace for aircraft executing instrument procedures to the Nut Tree Airport.

**EFFECTIVE DATE:** 0901 u.t.c. May 8, 1989.

**FOR FURTHER INFORMATION CONTACT:** Daniel K. Martin, Airspace and Procedures Specialist, Airspace and Procedures Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (213) 297–0166.



**SUPPLEMENTARY INFORMATION:**

**History**

On December 28, 1988, the FAA proposed in amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revise the transition area at Vacaville, CA (53 FR 52427). This action will provide controlled airspace for aircraft executing instrument approach procedures at the Nut Tree Airport. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

**The Rule**

This amendment to Part 71 of the Federal Aviation Regulations revises the Vacaville, CA, transition area to provide controlled airspace for aircraft executing instrument approach procedures to the Nut Tree Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Aviation safety, Transition areas.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

**PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS**

1. The authority citation for Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49, U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

2. Section 71.181 is amended as follows:

**Vacaville, CA [Revised]**

That airspace extending upward from 700 feet above the surface within a 3-mile radius of Nut Tree Airport, CA, (lat. 38°22'16" N., long. 121°57'33" W.), and within 2.5 miles each side of the Sacramento VORTAC 259° radial, extending from the 3-mile radius area to 13 miles W of the VORTAC and within 3 miles each side of the 017° bearing (001°T) of the Nut Tree Airport extending from the 3-mile radius area to 10 miles north northeast of the airport.

Issued in Los Angeles, California, on February 21, 1989.

**Jacqueline L. Smith,**

*Manager, Air Traffic Division, Western-Pacific Region.*

[FR Doc. 89–5542 Filed 3–9–89; 8:45 am]

BILLING CODE 4910–13–M

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**DEPARTMENT OF THE INTERIOR**

**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Part 934**

**North Dakota; Permanent Regulatory Program**

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

**ACTION:** Final rule; approval of amendment.

**SUMMARY:** OSMRE is announcing the approval, with certain exceptions, of proposed modifications submitted by the State of North Dakota as an amendment (Amendment X) to its permanent regulatory program (hereinafter referred to as the North Dakota program) approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of a policy document entitled "Standards for Evaluation of Revegetation Success and Recommended Procedures for Pre- and Postmining Vegetation Assessments" (hereinafter referred to as the policy document or the guidelines). SMCRA requires consistency of State and Federal standards. This final rule will allow the State to bring its program into conformance with the Federal standards.

**EFFECTIVE DATE:** March 10, 1989.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jerry R. Ennis, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 100 East B Street, Room 2128, Casper, Wyoming 82601–1918; Telephone: (307) 261–5776.

**SUPPLEMENTARY INFORMATION:**

I. Background on the North Dakota Program.
II. Submission of Amendment.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision.
VI. Procedural Determinations.

**I. Background on the North Dakota Program**

On December 15, 1980, the Secretary of the Interior conditionally approved the North Dakota program. Information pertinent to the general background of the State program approval process and the North Dakota program submission, including the Secretary's findings, disposition of comments and conditional approval, can be found in the December 15, 1980, **Federal Register** (45 FR 82214). Subsequent actions concerning the conditions of approval and proposed program amendments are identified at 30 CFR 934.12, 934.15 and 934.16.

**II. Submission of Amendment**

On June 1, 1988, North Dakota submitted proposed Amendment X (Administrative Record No. ND–F–01), which clarifies and expands the permanent program requirements concerning revegetation. The July 12, 1988, **Federal Register** (53 FR 26280) announced receipt of the proposed amendment and invited public comment on its adequacy. Since no one requested a public hearing, none was held. The public comment period closed on August 13, 1988. No substantive comments were received.

**III. Director's Findings**

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning proposed Amendment X.

*1. General*

The Federal regulations at 30 CFR 816.116(a)(1) require that each regulatory authority select revegetation success standards and statistically valid techniques for determining revegetation success and include them in its approved regulatory program. North Dakota developed this policy document to satisfy this requirement. The document does not replace or change any existing State rules; rather, it supplements and clarifies these rules.

As required by 30 CFR 816.116(a)(2), the success standards prescribed by the document include criteria representative of unmined lands in the area being reclaimed, using parameters relevant to

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the approved postmining land use. The standards, criteria and parameters also reflect the cover, species composition and soil stabilization requirements of 30 CFR 816.111, as required by 30 CFR 816.116(a). Standards must be included in all permit applications. Permittees and permit applicants may propose standards other than those contained in this policy document, but any such alternatives must first undergo review and approval via the program amendment process, as specified in both the policy document and the preamble to 30 CFR 816.116(a)(1) (48 FR 40150, September 2, 1983).

As required by 30 CFR 816.116(a)(1), the policy document also specifies the procedures to be used for sampling, measuring and analyzing vegetation parameters. Use of these procedures will ensure consistent, objective collection and analysis of vegetation data. The document allows the use of alternative sampling and analysis procedures if prior approval is obtained from the State. The Director notes that under 30 CFR 816.116(a)(1), as explained in the preamble cited in the preceding paragraph, such approval must occur via the program amendment process.

For the reasons set forth above, the Director finds that, except as discussed in the following findings, the standards and procedures contained in the policy document satisfy the requirements of 30 CFR 816.116(a) and are no less effective than the revegetation success requirements of 30 CFR 816.111 and 816.116.

*2. Countable Trees and Shrubs*

Chapter II, Section F of the policy document establishes revegetation success standards for land devoted to woody plants. In determining the success of such plantings, the document and the underlying State rules at NDAC 69-05.2-22-07.4(d) and NDAC 69-05.2-22-08.2(b) allow the counting of all trees and shrubs in place two or more years. While the corresponding Federal regulation at 30 CFR 816.116(b)(3)(ii) likewise requires that, at the time of final bond release, all countable trees and shrubs have been in place no less than two growing seasons, it also requires that at least 80 percent of the trees and shrubs counted to determine revegetation success have been in place for 60 percent of the revegetation responsibility period. Since, in North Dakota, the minimum responsibility period is 10 years, the Federal rule requires that 80 percent of all countable trees and shrubs have been in place at least 6 years.

Therefore, the Director finds that the policy document and the State rules are less effective than the Federal regulations to the extent that they allow trees and shrubs counted for purposes of determining revegetation success to be in place fewer than six years. He is requiring that North Dakota revise all pertinent program documents to specify that at least 80 percent of the trees and shrubs counted in determining the revegetation success of woody plants be in place for at least 60 percent of the 10-year period of revegetation responsibility. By letter dated November 10, 1988, North Dakota agreed to do so.

*3. Ground Cover*

Section F of Chapter II of the policy document requires that comparisons of actual ground cover measurements from the reclaimed area with the corresponding success standard be valid at the 80 percent statistical confidence level. This conflicts with both North Dakota rule NDAC 69-05.2-22-07.4(d)(2) and the Federal regulation at 30 CFR 816.116(a)(2), which require that such comparisons be valid at the 90 percent statistical confidence level. Therefore, the Director finds that the policy document is less effective than the Federal regulations and he is requiring that the minimum acceptable confidence level for ground cover comparisons be increased from 80 percent to 90 percent, using a one-tailed test. By letter dated November 10, 1988, North Dakota agreed to make the change, noting that the difference resulted from a typographical error. In the interim, since policy statements cannot supersede regulations, the State will use the confidence level prescribed in its rules rather than the one specified in the policy document.

*4. Woody Plant Stocking*

The State rules at NDAC 69-05.2-22-07.4(d)(1) and Sections F and G of Chapter II of the policy document require that evaluations of the success of woody plant stocking be valid at the 80 percent statistical confidence level. This conflicts with the Federal regulations at 30 CFR 816.116(a)(2), which require use of the 90 percent statistical confidence level.

Therefore, the Director finds that the guidelines and the State rules are less effective than the Federal regulations, and he is requiring that North Dakota revise the policy document and NDAC 69-05.2-22-07.4(d)(1) to raise the minimum required statistical confidence level from 80 percent to 90 percent. By letter dated November 10, 1988, North Dakota agreed to make this change.

*5. Revegetation Success Measurement Period*

Sections F and G of Chapter II of the policy document establish revegetation success standards and related requirements for woodlands and fish and wildlife habitat. For final bond release on woodland areas, natural woodland replacement or simulation areas, shelterbelts and fish and wildlife habitat, these sections, like the underlying State rule at NDAC 69-05.2-22-07.4(d), only require that the success standards be met for the last year of the 10-year revegetation responsibility period. The corresponding Federal regulation at 30 CFR 816.116(c)(3) requires that all success standards be met for at least the last two consecutive years of the 10-year revegetation responsibility period. Therefore, the Director finds that the policy document and State rules are less effective than the Federal regulation and he is requiring that the State revise NDAC 69-05.2-22.07.4(d) and the policy document to require that the revegetation success standards be met for at least the last two consecutive years of the 10-year revegetation responsibility period. By letter dated November 10, 1988, North Dakota agreed to do so.

*6. Revegetation Success Standards for Shelterbelts*

Chapter II, Section F of the policy document does not include standards for woody plant stocking or vegetative ground cover for non-replacement shelterbelts, although it does establish standards for replacement shelterbelts. The underlying State rules at NDAC 69-05.2-22-02, 69-05.2-22-07 and 69-05.2-22-08 also do not include stocking or ground cover standards for shelterbelts. Since the Federal regulations at 30 CFR 816.116 (a)(1) and (b)(3) require that the regulatory authority establish tree and shrub stocking and vegetative ground cover success standards for shelterbelts, the Director finds that the policy document and State rules are less effective than the Federal regulations; he is requiring that North Dakota revise them accordingly. By letter dated November 10, 1988, the State agreed to do so. North Dakota will also need to specify that woody plants used to determine the success of shelterbelts must meet time-in-place requirements no less effective than those contained in 30 CFR 816.116(b)(3)(ii).

*7. Revegetation Success Standards for Fish and Wildlife Habitat*

(a) *Ground cover.* Section G of Chapter II of the policy document, like the State rule at NDAC 69-05.2-22-07.4(d)(2), requires the ground cover of fish and wildlife habitat to be 70 percent of the approved success standard. However, the Federal regulation at 30 CFR 816.116(a)(2) requires that the measured cover be at least 90 percent of the approved standard to be judged successful. Therefore, the Director finds that the North Dakota policy document and rules are less effective than the Federal regulations, and he is requiring that the State amend its program to require that permittees establish ground cover equal to at least 90 percent of the approved success standard. By letter dated November 10, 1988, North Dakota agreed to do so.

(b) *Use of annual grains.* The policy document recognizes four types of fish and wildlife habitat (woodlands, grasslands, wetlands and annual grain croplands) and establishes separate revegetation requirements and success standards for each. Neither the underlying State rule (NDAC 69-05.2-22-07.4(d)) nor the corresponding Federal rule (30 CFR 816.116(b)(3)) specifically recognizes the use of annual grain crops on lands approved for use as fish and wildlife habitat. However, the Federal rule at 30 CFR 701.5 defines "fish and wildlife habitat" as "land dedicated wholly or partially to the production, protection *or management* of species of fish and wildlife" (emphasis added). The State definition of the same term at NDAC 69-05.2-01-02.34 is virtually identical. As North Dakota documents in this amendment submission, lands actively managed for wildlife habitat frequently include annual grain food plots, especially where waterfowl and upland game birds are target species. Therefore, the Director finds that addition of annual grain cropland as a fish and wildlife land use subcategory is not inconsistent with Federal or State regulations.

However, prior to approving a reclamation plan proposing an annual grain cropland component for a fish and wildlife habitat postmining land use, the regulatory authority would have to find that active management was likely to continue past bond release and that the cropland component was therefore an appropriate postmining land use consistent with the State definition. Furthermore, under NDAC 69-05.2-22-02.6, the applicant for a fish and wildlife habitat postmining land use must consult with State wildlife and land management agencies and must arrange and distribute plantings in accordance with their recommendations. Also, the policy document requires a demonstration that the tracts selected for annual grains are capable of supporting crops and that such crops are capable of controlling erosion. These restrictions should prevent both the excessive use of annual grain croplands and their development on inappropriate sites.

For final bond release on these tracts, the policy document requires data demonstrating that the standing grain crop or residual cover is at least 10 inches high and that it is adequate to control erosion. The height requirement conforms to U.S. Soil Conservation Service recommendations for wildlife plantings. State bond release inspections must be conducted during late fall or early winter to verify this data. Since there are no generally accepted productivity standards for wildlife food plots and since North Dakota requires that the residual cover of such plots be of sufficient height to provide shelter to wildlife and adequate in extent to control erosion, the Director finds that the annual grain crop success standards contained in the policy document are consistent with 30 CFR 816.97(g) (1) and (2) and 816.116(b)(3). The cited Federal rules require that plant species be selected on the basis of their nutritional and cover values, that State wildlife agencies be involved in determining planting arrangements and that vegetative ground cover not be less than that required to achieve the postmining land use. North Dakota's rules and policy document meet these requirements.

The Federal rule at 30 CFR 816.97(g)(3) also requires that plant species be selected on the basis of their ability to support and enhance fish and wildlife habitat after the release of performance bonds. As previously discussed, where the approved postmining land use involves active management for fish and wildlife habitat, wildlife food plots are a recognized part of that management and would be expected to continue after bond release. Therefore, the Director finds that North Dakota's provisions are also consistent with 30 CFR 816.97(g)(3).

*8. Consultation and Approval by State Forestry and Wildlife Agencies*

The Federal regulations at 30 CFR 816.116(b)(3) require that revegetation success on lands reclaimed to fish and wildlife habitat, recreation, shelterbelt or forest uses be determined on the basis of tree and shrub stocking and vegetative ground cover. Subparagraph (b)(3)(i) requires that revegetation success standards for these types of land uses be specified by the regulatory authority on the basis of local and regional conditions after consultation with, and approval by, the State agencies responsible for the administration of forestry and wildlife programs. Consultation and approval may occur on either a program-wide or a permit-specific basis.

North Dakota has consulted with State forestry and wildlife agencies in developing the standards and procedures contained in this document; however, it has not obtained their approval, nor does the State program provide for permit-specific consultation and approval.

Therefore, the policy document and State rules do not meet the requirements of, and are less effective than, the cited Federal regulations. Accordingly, the Director is requiring that North Dakota either obtain the concurrence of State forestry and wildlife agencies in the standards established in its rules and this policy document or amend its program to require that such concurrence be obtained on a permit-specific basis for lands with a fish and wildlife habitat, recreation, shelterbelt or woodland postmining land use. By letter dated November 10, 1988, North Dakota agreed to do so.

*9. Augmentation and Normal Conservation Practices*

(a) *Augmentation practices.* Appendix A of the policy document defines the revegetation responsibility period and specifies what management practices are acceptable during this period. Both the policy document and the corresponding Federal rule at 30 CFR 816.116(c)(4) distinguish between augmentation practices, which start or restart the liability period, and normal conservation practices, which may be accomplished without restarting the liability period. However, the policy document further defines augmentation practices as those practices that reestablish or replace vegetation or make temporary improvements to obtain bond release. This definition is less effective than the Federal rules at 30 CFR 800.40 and 816.116(c)(4) in that the Federal rules do not allow bond release based on temporary improvements nor do they limit augmentation practices to those which reestablish or replace vegetation. Under 30 CFR 816.116(c)(4), as explained in the preamble, a practice must be considered augmentative if it exceeds "the usual or expected state, form, amount or degree of management performed habitually or customarily to prevent exploitation, destruction or neglect of the resource and maintain a prescribed level of use or productivity on similar unmined lands" in the surrounding area (53 FR 34641, September 7, 1988). Therefore, the Director is requiring that North Dakota

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amend its definition of augmentation practices to be consistent with the Federal rule.

(b) *Normal conservation practices.* Appendix A lists the following activities as normal conservation practices: (1) Pest management and repair of pest damage; (2) repair and management of minor erosion features affecting only small areas; (3) fertilization and irrigation of cropland and hayland, if fertilization and irrigation are part of a long-term management plan to be continued following bond release; (4) irrigation during the first year following seeding or planting to assist in establishment of vegetation; (5) use of green manure, strip-cropping or minimum tillage on croplands, including plowing hayland every 4–5 years to reestablish the stand; (6) burning, mowing and grazing native grasslands and tame pasturelands; (7) when necessary, fertilizing or applying herbicides to grasslands or pasturelands to manipulate cool season/warm season grass ratios; (8) occasional haying or burning of fish and wildlife habitat; and (9) controlling weeds, watering, delaying understory vegetation establishment, pruning, thinning and limited replacement of dead trees and shrubs in woodlands and shelterbelts. Appendix A further states that, because the distinction between normal conservation practices and augmentation practices is not always clear, the State will review management practices on a site-specific basis to determine if they are normal conservation practices that do not affect the liability period.

The Federal regulations at 30 CFR 816.116(c)(4) allow States to approve selective husbandry practices on reclaimed lands without extending the liability period if the practices meet certain criteria and are approved by the Director of OSMRE through the State program amendment process. These practices cannot include augmented seeding, fertilization or irrigation. In addition, they must be expected to continue as part of the postmining land use or, if discontinued after the liability period expires, must not reduce the probability of permanent revegetation success. Also, the practice must be a normal husbandry practice in the region for that type of land use.

Using the explanation and documentation contained in the North Dakota submission and other reference materials, OSMRE's technical review found that the activities listed in Appendix A are standard management practices on unmined lands in North Dakota and that they therefore qualify as normal husbandry practices under the Federal rule. Irrigation during the first year of the liability period is acceptable since North Dakota does not allow measurements taken during that year or the following year to be used in final determinations of revegetation success and it is unlikely that future years will show any carryover effect. Appendix A does not limit the extent to which the replanting of woody plants may be considered a normal conservation practice; however, the Director finds that adoption of time-in-place requirements for woody plants, as required in Findings 2 and 6, will adequately circumscribe this practice.

Appendix A and the corresponding State rule at NDAC 69-05.2-22-07.2 fail to specify the point at which the seeding of cropland or the fertilization or irrigation of any land ceases to be normal husbandry and becomes augmentation. However, Section 38-14.1-24(17) of the North Dakota Century Code requires that revegetation success on disturbed lands be evaluated by comparison with similar unmined lands in the surrounding area having equivalent historical management practices. By implication, therefore, the North Dakota statute, like the Federal rule at 30 CFR 816.116(c)(4), limits the type, frequency, extent and intensity of all management practices used on reclaimed lands during the responsibility period to that historically used on similar unmined lands in the surrounding area with the same use. Also, to ensure the validity of comparisons, management practices used on reclaimed areas must be equivalent to those used on reference or control areas. For example, permittees would not be allowed to fertilize reclaimed lands at rates in excess of those used on similar unmined lands under similar management without restarting the liability period, even if soil tests indicate that the mined land requires a higher rate of fertilization to achieve yields comparable to those of the unmined land.

### IV. Summary and Disposition of Comments

The Director solicited public comment on the proposed amendment in the July 12, 1988, **Federal Register** (53 FR 26280). No comments were received. Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(11)(i), comments were also solicited from various Federal agencies. No substantive comments were received.

### V. Director's Decision

The Director, based on the above findings, is approving proposed Amendment X as submitted by North Dakota on June 1, 1988. The Federal regulations at 30 CFR Part 934 are being amended to implement this decision. This final rule is being made effective immediately to encourage States to bring their programs into performance with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

The Director also is requiring that North Dakota further amend its program to:

(1) As discussed in Finding 2, require that at least 80 percent of trees and shrubs counted to determine revegetation success on reclaimed lands have been in place for at least 60 percent of the 10-year revegetation responsibility period.

(2) As discussed in Findings 3 and 4, require that evaluations of revegetation success be valid at the 90 percent confidence level.

(3) As discussed in Finding 5, require that revegetation success standards be met for at least the last two consecutive years of the 10-year revegetation responsibility period.

(4) As discussed in Finding 6, include tree and shrub stocking and vegetative ground cover success standards for all types of shelterbelts and clarify that the trees and shrubs used must meet time-in-place requirements.

(5) As discussed in Finding 7(a), require that ground cover on lands reclaimed to fish and wildlife habitat equal at least 90 percent of the approved success standard.

(6) As discussed in Finding 8, obtain or require the concurrence of the appropriate State forestry and wildlife agencies with the revegetation success standards for land reclaimed for fish and wildlife habitat, recreation, shelterbelt or woodland uses.

(7) As discussed in Finding 9(a), revise the definition of augmentation practices to be consistent with the Federal rule.

### VI. Procedural Determinations

*Compliance With the National Environmental Policy Act*

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

*Compliance With Executive Order 12291 and the Regulatory Flexibility Act*

On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for



actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a regulatory impact analysis and regulatory review by OMB.

The Department of the Interior has determined that, for purposes of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), this rule will not have a significant economic effect on a substantial number of small entities. This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal regulations will be met by the State.

*Paperwork Reduction Act*

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

**List of Subjects in 30 CFR Part 934**

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Date: March 3, 1989.

**Robert H. Gentile,**

*Director, Office of Surface Mining Reclamation and Enforcement.*

For the reasons set forth in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

## PART 934—NORTH DAKOTA

1. The authority citation for Part 934 continues to read as follows:

**Authority:** 30 U.S.C. 1201 *et seq.*

2. Section 934.15 is amended by adding a new paragraph (k) to read as follows:

**§ 934.15 Approval of regulatory program amendments.**

* * * * *

(k) The following amendment to the North Dakota regulatory program, as submitted to OSMRE on June 1, 1988, is approved effective March 10, 1989, provided North Dakota adopts the amendment in a form identical to that submitted to and reviewed by OSMRE: Amendment X, which consists of a policy document entitled "Standards for Evaluation of Revegetation Success and Recommended Procedures for Pre- and Post-mining Vegetation Assessments." This document specifies the standards and procedures to be used by mine operators and the regulatory authority in determinations of revegetation success for bond release purposes.

3. Section 934.16 is amended by designating the existing text as paragraph (a) and by adding paragraphs (b) through (i) to read as follows:

**§ 934.16 Required regulatory program amendments.**

* * * * *

(b) By June 8, 1989, North Dakota shall submit proposed revisions to NDAC 69-05.2-22-07.4(d), NDAC 69-05.2-22-08.2(b) and the policy document entitled "Standards for Evaluation of Revegetation Success and Recommended Procedures for Pre- and Post-mining Vegetation Assessments" or otherwise propose to amend its program to require that at least 80 percent of the trees and shrubs counted to determine revegetation success have been in place for at least 60 percent of the 10-year period of revegetation responsibility.

(c) By June 8, 1989, North Dakota shall revise the policy document entitled "Standards for Evaluation of Revegetation Success and Recommended Procedures for Pre- and Post-mining Vegetation Assessments" to require that evaluations of ground cover success be valid at the 90 percent confidence level.

(d) By June 8, 1989, North Dakota shall submit proposed revisions to NDAC 69-05.2-22-07.4(d)(2) and the policy document entitled "Standards for Evaluation of Revegetation Success and Recommended Procedures for Pre- and Post-mining Vegetation Assessments" or otherwise propose to amend its program to require that evaluations of the success of woody plant stocking be valid at the 90 percent confidence level.

(e) By June 8, 1989, North Dakota shall submit proposed revisions to NDAC 69-05.22-07.4(d) and the policy document entitled "Standards for Evaluation of Revegetation Success and Recommended Procedures for Pre- and Post-mining Vegetation Assessments" or otherwise propose to amend its program to require that revegetation success standards be met for at least the last two consecutive years of the revegetation responsibility period.

(f) By June 8, 1989, North Dakota shall submit proposed revisions to NDAC 69-05.2-22-02, 69-05.2-22-07 and 69-05.2-22-08 and the policy document entitled "Standards for Evaluation of Revegetation Success and Recommended Procedures for Pre- and Post-mining Vegetation Assessments" or otherwise propose to amend its program to include tree and shrub stocking and vegetative ground cover success standards for all types of shelterbelts and clarify that trees and shrubs must meet time-in-place requirements no less effective than those established in 30 CFR 816.116(b)(3)(ii).

(g) By June 8, 1989, North Dakota shall submit proposed revisions to NDAC 69-05.2-22-07.4(d)(2) and the policy document entitled "Standards for Evaluation of Revegetation Success and Recommended Procedures for Pre- and Post-mining Vegetation Assessments" or otherwise propose to amend its program to require that vegetative ground cover on lands reclaimed to fish and wildlife habitat equal at least 90 percent of the success standard.

(h) By June 8, 1989, North Dakota shall submit documentation that it has obtained the concurrence of the appropriate State forestry and wildlife agencies with the revegetation success standards for lands reclaimed to fish and wildlife habitat, recreation, shelterbelt or woodland uses, or shall submit proposed revisions to NDAC 69-05.2-22-07 and the policy document entitled "Standards for Evaluation of Revegetation Success and Recommended Procedures for Pre- and Post-mining Vegetation Assessments" or otherwise propose to amend its program to require such concurrence on a permit-specific basis.

(i) By June 8, 1989, North Dakota shall submit proposed revisions to the policy document entitled "Standards for Evaluation of Revegetation Success and Recommended Procedures for Pre- and Post-mining Vegetation Assessments" to alter the definition of augmentation practices to be consistent with 30 CFR 816.116(c)(4).

[FR Doc. 89-5475 Filed 3-9-89; 8:45 am]
BILLING CODE 4310-05-M

## ENVIRONMENTAL PROTECTION AGENCY

**40 CFR Part 52**

**[A-1-FRL-3529-3]**

### Approval and Promulgation of Air Quality Implementation Plans; Rhode Island; Reasonably Available Control Technology for Tech Industries

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is approving a State Implementation Plan (SIP) revision submitted by the State of RI. This revision defines and imposes reasonably available control technology (RACT) on Tech Industries located in Woonsocket, Rhode Island. This revision is necessary to limit volatile organic compound (VOC) emissions from this source. The

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effect of this action is to approve a source-specific RACT determination made by the State in accordance with commitments specified in its Ozone Attainment Plan approved by EPA on July 6, 1983 (48 FR 31026).

This action is being taken in accordance with Section 110 of the Clean Air Act.

**EFFECTIVE DATE:** This rule will become effective on April 10, 1989.

**ADDRESSES:** Copies of the documents relevant to this action are available for public inspection during normal business hours at the Environmental Protection Agency, Region I, JFK Federal Building, Rm. 2311, Boston, MA 02203; Division of Air and Hazardous Materials, 211 Promenade Street, Providence, RI 02908; Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and the office of the Federal Register, 1100 L Street, NW., Room 8301, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Robert C. Judge, (617) 565-3248; FTS 835-3248.

**SUPPLEMENTARY INFORMATION:** On July 14, 1988 (53 FR 26609), EPA published a Notice of Proposed Rulemaking (NPR) to approve an administrative consent agreement between the Rhode Island Department of Environmental Management (DEM) and Tech Industries (Tech). The consent agreement establishes and imposes RACT to control VOC emissions from Tech. RACT must be defined for Tech under Rhode Island SIP Regulation No. 15, subsection 15.8, "Miscellaneous Facilities Emitting 100 tons/year or more."

On May 25, 1988, EPA called for revisions to the Rhode Island Ozone Attainment Plan because of persistent violations of the ozone National Ambient Air Quality Standard (NAAQS) in Rhode Island. As such, the State is required to begin the planning process and revise its demonstration of attainment. However, this revision will not affect Rhode Island's ability to demonstrate attainment in the future since the revision strengthens the State's federally-approved SIP. This revision simply makes an emission limit for an unregulated VOC emitting source part of Rhode Island's federally enforceable SIP, as required by the State's 1982 Ozone Attainment Plan.

The version of the consent agreement originally submitted to EPA on May 6, 1987, contained language which could have allowed Tech to bubble to meet the RACT emission limit. As discussed in the NPR, the DEM's request for parallel processing stated that language which could allow Tech to bubble would not be included in the final consent agreement submitted as a formal SIP revision request. On January 4, 1988, the DEM submitted an addendum to the consent agreement which removed the language which could have been used by Tech to meet RACT on a facility-wide daily basis. The consent agreement we are approving requires that Tech meet its RACT emission limit on each line on a continuous basis.

The revision and the rationale for EPA's action were explained in the NPR and will not be restated here. No public comments were received on the NPR.

### Final Action

EPA is approving the consent agreement submitted by the DEM as a SIP revision request for Tech in Woonsocket, RI. The consent agreement requires Tech to meet a RACT emission limit of 3.5 pounds VOC/gallon of coating (minus water) on a solids applied basis.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 9, 1989. This action may not be challenged later in proceedings to enforce requirements. (See section 307(b)(2).)

### List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Incorporation by reference.

**Note:** Incorporation by reference of the State Implementation Plan for the State of Rhode Island was approved by the Director of the Federal Register on July 1, 1982.

Date: February 21, 1989.

**William K. Reilly,**

*Administrator.*

Part 52 of Chapter I, Title 40 of the Code of Federal Register is amended as follows:

## PART 52—[AMENDED]

### Subpart OO—Rhode Island

1. The authority citation for Part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401–7642.

2. Section 52.2070 is amended by adding paragraph (c)(32) to read as follows:

**§ 52.2070 Identification of plan.**

* * * * *

(c) * * *

(32) Revisions submitted on May 6, 1987, October 15, 1987, and January 4, 1988 by the Rhode Island Department of Environmental Management consisting of an administrative consent agreement which defines and imposes RACT to control volatile organic compound emissions from Tech Industries in Woonsocket, Rhode Island.

(i) Incorporation by reference

(A) An administrative consent agreement (86–12–AP), except for Provisions 7 and 8, between the Rhode Island Department of Environmental Management and Tech Industries effective June 12, 1986.

(B) An addendum to the administrative consent agreement (86–12–AP) between the Rhode Island Department of Environmental Management and Tech Industries. The addendum was effective November 24, 1987.

(C) Letters dated May 6, 1987; October 15, 1987; and January 4, 1988 submitted to the Environmental Protection Agency by the Rhode Island Department of Environmental Management.

3. In § 52.2081, the Table 52.2081 is amended by adding the following entry to the end of No. 15. The date approved by EPA and the **Federal Register** citation will be the publication date and citation of today's document.



**§ 52.2081 EPA approved Rhode Island State Regulations.**

TABLE 52.2081—EPA—APPROVED RULES AND REGULATIONS

| State Citation | Title/Subject | Date adopted by state | Date approved by EPA | Federal Register Cit | 52.2070 | Comments/unapproved sections |
|---|---|---|---|---|---|---|
| No. 15 | Control of Organic Solvent Emissions. | 11/24/87 | 3/10/89 | 53 FR | (c)(32) | Consent Agreement imposing RACT on Tech Industries under 15.5 (Provisions 7 and 8 not approved). |

[FR Doc. 89-4449 Filed 3-9-89; 8:45 am]

BILLING CODE 6560-50-M

## 40 CFR Part 52

**[A-1-FRL-3527-8]**

### Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Miscellaneous Amendments to the SIP

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is approving parts and is taking no action on other parts of State Implementation Plan (SIP) revisions submitted by the Commonwealth of Massachusetts. These revision involve regulatory amendments and additions to SIP regulations for new source review, gasoline marketing, monitoring and reporting, and surface coating. EPA is approving those parts of the revisions relating to new source review, gasoline marketing facilities, and monitoring and reporting regulations. EPA is taking no action at this time on those parts of the revisions concerning the surface coating regulations.

These revisions are administrative and/or procedural in nature, and do not effect air quality or the ability of the Commonwealth of Massachusetts to attain and maintain the National Ambient Air Quality Standards (NAAQS). The intended effect of this action is to approve revisions made by the Commonwealth of Massachusetts in accordance with section 110 of the Clean Air Act.

**EFFECTIVE DATE:** This rule will become effective on April 10, 1989.

**ADDRESSES:** Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Room 2313, Boston, MA 02203; the Department of Environmental Quality Engineering, Division of Air Quality Control, One Winter Street, 8th Floor, Boston, MA 02108; and Public Information Reference Unit, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Lorenzo Thantu (617) 565-3250; FTS 835-3250.

**SUPPLEMENTARY INFORMATION:** On July 22, 1988 (53 FR 27716), EPA published a Notice of Proposed Rulemaking (NPR) for revisions to the Commonwealth of Massachusetts SIP. The NPR proposed to approve the SIP revisions for regulatory amendments to new source review regulations 310 CMR 7.02(2)(b) 4, 5, and 6; gasoline marketing facilities regulations 310 CMR 7.02(12)(b)(3) and 7.02(12)(d); and monitoring and reporting regulation 310 CMR 7.14. The NPR also proposed to approve the amendments to surface coating regulation 310 CMR 7.18 with the understanding that the Commonwealth of Massachusetts would further amend the regulations in accordance with requirements outlined in that NPR. The NPR stated that those requirements had to be incorporated and adopted by the Commonwealth before EPA could promulgate final approval of the revisions to 310 CMR 7.18.

However, EPA is taking no action on the DEQE's amendments to the surface coating regulation 310 CMR 7.18 at this time. The DEQE intends to further amend 310 CMR 7.18 at a later date as part of its Phase I commitments of the Post '87 Ozone Nonattainment requirements. Phase I commitments include correcting deficiencies and inconsistencies in the existing federally approved VOC regulations in response to EPA's May 25, 1988 call for revisions to Massachusetts' Ozone Attainment Plan. The surface coating amendments being discussed here fall under the Phase I commitments.

Therefore, EPA is approving the DEQE's amendments to regulations 310 CMR 7.02(2)(b) 4, 5, and 6; 310 CMR 7.02(12)(b)(3) and 7.02(12)(d); and 310 CMR 7.14; and is taking no action on the DEQE's amendments on regulation 310 CMR 7.18 at this time. A more detailed description of these revisions and EPA's rationale for approving them were provided in the NPR and will not be restated here.

### Public Comment

A comment letter was received on the DEQE's amendment of the surface coating regulations for automobiles and miscellaneous metal parts and products. EPA will respond to this comment at the time it takes action on the relevant revisions.

### Final Action

EPA is approving the Commonwealth of Massachusetts State Implementation plan revisions for regulatory amendments to Regulations 310 CMR 7.02(2)(b) 4, 5, 6; 7.02(12)(d); and 7.14.

EPA is taking no action on the amendments to Regulation 310 CMR 7.18 at this time with the understanding that the Commonwealth of Massachusetts intends to further amend this regulation and EPA will take action on the amendments in a separate rulemaking at a latter date.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Under section 307(b)(1) of the act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from date of publication). This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2).

### List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

**Note.—Incorporation by reference of the State Implementation Plan for the Commonwealth of Massachusetts was approved by the Director of the Federal Register on July 1, 1982.**

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Date: February 17, 1989.

**William K. Reilly,**

*Administrator.*

Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

**PART 52—[AMENDED]**

**Subpart W—Massachusetts**

1. The authority citation for Part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401–7642.

2. Section 52.1120 is amended by adding paragraph (c)(72) to read as follows:

**§ 52.1120 Identification of plan.**

* * * * *

(c) * * *

(72) Revisions involving regulations 310 CMR 7.02(2)(b) 4, 5, and 6; 7.02(12)(b)3; 7.02(12)(d); and 7.14 were submitted on November 21, 1988 and January 15, 1987, by the Department of Environmental Quality Engineering (DEQE).

(i) Incorporation by reference. (A) Regulation 310 CMR 7.02(2)(b) 4, 5, and 6 are amended and became effective on February 6, 1987.

(B) Regulation 310 CMR 7.02(12)(b)3 is deleted and became effective on February 6, 1987.

(C) Regulation 310 CMR 7.02(12)(d) is amended and became effective on February 6, 1987.

(D) Regulations 310 CMR 7.14 (2) and (3) are added and became effective on February 6, 1987.

(E) The Commonwealth of Massachusetts Regulation Filing document dated January 15, 1987 is provided and states that these regulatory changes became effective on February 6, 1987.

(ii) Additional materials. The nonregulatory portions of the state submittals.

**§ 52.1167 [Amended]**

3. Table 52.1167 in § 52.1167 is amended by adding the following entries to the table to read as follows:

TABLE 52.1167.—EPA-APPROVED RULES AND REGULATIONS

| State citation | Title/subject | Date submitted by State | Date approved by EPA | Federal Register citation | Section 52.1120 (c) | Comments/unapproved sections |
|---|---|---|---|---|---|---|
| 310 CMR 7.02 | Plans and approval and emission limitation. | | | | | |
| | | 11/21/86 1/15/87 | 3/10/89 | 54 FR | 72 | 7.02(2)(b) 4, 5 and 6-new source review. |
| 310 CMR 7.02(12)(b)3 | Stage I vapor recovery | 11/21/86 1/15/87 | 3/10/89 | 54 FR | 72 | 7.02(12)(b)3 is deleted. |
| 310 CMR 7.02(12)(d) | Test Methods applicable to 310 CMR 7.02(12). | 11/21/86 1/15/87 | 3/10/89 | 54 FR | 72 | Requires EPA approved test methods or EPA approved alternatives. |
| 310 CMR 7.14(2) | Continuous Emissions Monitoring | 11/21/86 1/15/86 | 3/10/89 | 54 FR | 72 | References 40 CFR Part 51 Appendix P |
| 310 CMR 7.14(3) | Continuous Emissions Monitoring | 11/21/86 1/15/87 | 3/10/89 | 54 FR | 72 | Establishes compliance date for meeting the requirements of 7.14(2) |

[FR Doc. 89-4300 Filed 3-9-89; 8:45 am]

BILLING CODE 6560-50-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

**Office of Child Support and Enforcement**

**45 CFR Part 306**

**Medical Support Enforcement**

**AGENCY:** Family Support Administration, Office of Child Support Enforcement (OCSE).

Program: OCSE—Medical Support Enforcement.

**ACTION:** Rule-related notice to the public of approved provisions.

**SUMMARY:** Final rule for medical support enforcement was effective when published in the **Federal Register** on September 16, 1988 (53 FR 36014), except for the information collection requirements in § 306.51 (b)(3) and (b)(5) which were pending OMB approval. OMB approved these information collection requirements on December 20, 1988 under OMB control number 0970–0070. This notice informs the public that the provisions of § 306.51 (b)(3) and (b)(5) are now in effect.

**EFFECTIVE DATE:** March 10, 1989.

**FOR FURTHER INFORMATION CONTACT:** Andrew J. Hagen, Policy Branch, OCSE, (202) 252–5375.

**SUPPLEMENTARY INFORMATION:** The medical support enforcement final rule, published on September 16, 1988 (53 FR 36014), included information collection requirements in § 306.51 (b)(3) and (b)(5). The final rule document specified that the effective date for the final rule was the September 16, 1988 publication date, except for the provisions of § 306.51 (b)(3) and (b)(5), which were pending OMB approval.

The final rule at 45 CFR 306.51 (b)(3) requires all State IV–D agencies to develop written criteria to identify cases not included under paragraphs (b)(1) and (b)(2) with a high potential for obtaining medical support based on evidence that health insurance may be available to the absent parent at a reasonable cost and facts, as defined by State law, regulation, procedure or other directive, which are sufficient to warrant modification of the existing support order to include health insurance coverage for a dependent child(ren).

The final rule at 45 CFR 306.51(b)(5) requires IV–D agencies to provide the custodial parent with health insurance policy information when the absent parent secures coverage for the dependent child(ren). This includes any information available to the IV–D agency about the health insurance policy which would permit a claim to be filed or, in the case of HMO's and PPO's, services to be provided.



OMB approved the information collection requirements in § 306.51 (b)(3) and (b)(5) on December 20, 1988. The OMB control number is 0970–0070. We are informing the public that the provisions of § 306.51 (b)(3) and (b)(5) are now in effect.

Dated: February 28, 1989.

**Wayne A. Stanton,**

*Director, Office of Child Support Enforcement.*

[FR Doc. 89-5282 Filed 3-9-89; 8:45 am]

BILLING CODE 4150-04-M

## GENERAL SERVICES ADMINISTRATION

**48 CFR Parts 505 and 553**

**[APD 2800.12 CHGE 83]**

**General Services Administration Acquisition Regulation; Congressional Notification of Contract Awards**

**AGENCY:** Office of Acquisition Policy, GSA.

**ACTION:** Final rule.

**SUMMARY:** The General Services Administration Acquisition Regulation (GSAR), Chapter 5 (APD 2800.12), is amended to delete §§ 505.301 and 505.302 that unnecessarily repeat the Federal Acquisition Regulation (FAR); to revise §§ 505.303 and 505.403 to update office titles and symbols; to revise § 505.303–70 to modify the reporting requirements and procedures for notifying Congress of proposed substantial awards; and to delete § 553.370–2932 that illustrated the GSA Form 2932, Proposed Substantial Contract Awards. The GSA Form 2932 has been canceled.

**EFFECTIVE DATE:** March 27, 1989.

**FOR FURTHER INFORMATION CONTACT:** Ms. Ida Ustad, Office of GSA Acquisition Policy and Regulations (VP), (202) 566–1224.

**SUPPLEMENTARY INFORMATION:**

**Background**

This rule was not published in the **Federal Register** for public comment because it provides internal operating procedures for GSA contracting activities and has no impact on contractors or offerors.

Impact: The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this rule. The rule simply amends the GSAR to provide internal operating procedures. Therefore, no regulatory flexibility analysis has been prepared. The rule does not contain any information collection requirements that require OMB approval under the Paperwork Reduction Act.

**List of Subjects in 48 CFR Parts 505 and 553**

Government procurement.

1. The authority citation for 48 CFR Parts 505 and 553 continues to read as follows:

**Authority:** 40 U.S.C. 486(c).

**PART 505—PUBLICIZING CONTRACT ACTIONS**

**505.301 [Removed]**

2. Section 505.301 is removed.

**505.302 [Removed]**

3. Section 505.302 is removed.

4. Section 505.303 is revised to read as follows:

**505.303 Announcement of contract awards.**

By complying with 505.303–70 contracting officers automatically fulfill the reporting requirements of FAR 5.303(a).

5. Section 505.303–70 is revised to read as follows:

**505.303–70 Notification of proposed substantial awards and awards involving Congressional interest.**

(a) *Applicability.* The notification procedures in paragraph (b) of this section, apply only to proposed awards involving:

(1) A contract with the Small Business Administration (the 8(a) program).

(2) A supply contract exceeding or estimated to exceed $500,000 (except for (i) motor vehicles, (ii) products whose points of origin are not readily identifiable or (iii) products involving foreign production points).

(3) A design (Architect/Engineer) contract or construction contract exceeding or estimated to exceed $500,000.

(4) Any other contract, or class of contracts, in excess of $25,000 for which a Member of Congress has specifically requested notification of award.

(b) *Notification procedures.* (1) The Office of Congressional Affairs (S) will notify the heads of contracting activities in writing with the names of Members of Congress who wish to be notified of any or all contract awards in excess of $25,000 to contractors located within their district or State, as applicable. Upon such notification, the contracting activities will facsimile or hand deliver applicable notices of award to S. A copy of the submittal should be provided to the regional Congressional liaison office.

(2) Except for submittals hand delivered to S, the submittal must be made by facsimile transmission and, in the case of proposed 8(a) awards, on GSA Form 2677, Minority Contract Fact Sheet. Except for contracts awarded under unusual and compelling urgency, notification to S must be made 48 hours in advance of award. Notification to S of awards made under unusual and compelling urgency must be made at the same time notification is made to the contractor. If the 48 hour timeframe for advance notification to S cannot be met, the Contracting Director must notify S by telephone.

(3) The notification to S must contain:

(i) Identification of the type of contract and contractor using the following codes:

(A) *DQ* for definite quantity contract.

(B) *SC* for schedule contract.

(C) *TC* for indefinite delivery contract other than schedule.

(D) *S* for small business concern.

(E) *SD* for small disadvantaged business concern.

(F) *O* for other than a small business concern.

(G) *NLS* for not labor surplus area.

(H) *LS* for labor surplus area.

(ii) The company name and address (including county and Congressional district) and the dollar value for each production point. When there are multiple production points and specific items, and their points of production are not shown, or when the number of production points exceed 10, write "multiple" and indicate immediately after, in parentheses, the total number of production points.

(iii) The quantity and unit, in parentheses, for definite quantity awards by production point. Indicate the name of the receiving agency next to the applicable quantity and identify the requirement or portion thereof for overseas use.

(iv) A point-of-contact name (where available) and telephone number for each award recipient and each point of production.

(v) A statement when Congressional Interest is involved.

Congressional interest: *(Name of Congressman/Senator)*
*(Indicate State/District)*
*(Describe interest)*

(vi) The contracing officer's name and telephone number for each award.

(4) The notification to S will contain sensitive preaward information and should be labeled accordingly. S and regional Congressional liaison offices

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will be responsible for the security of such information and will establish procedures governing the release of such information before official notification of award. Unless otherwise authorized by the contracting officer, the release of such information prior to award shall be limited to Members of Congress and their staff.

(c) *Release of awards.* (1) Release of notifications which require priority processing as determined by the Associate Administrator for Congressional Affairs will be accomplished at the time and date specified.

(2) Unless notified to the contrary, contracting activities may release awards of the type described in paragraphs (a) and (b) of this section, or information pertinent thereto, upon the expiration of two full workdays (48 hours) after the time and date of notification to S established either by the facsimile transmission or hand delivery.

6. Section 505.403 is revised to read as follows:

**505.403 Requests from Members of Congress.**

When responding to a Congressional inquiry would result in disclosure of classified material, confidential business information, or information prejudicial to a competitive acquisition, the contracting officials shall consult with assigned legal counsel, refer the proposed reply to the head of the contracting activity (HCA), and inform the Office of Congressional Affairs of the action taken.

**PART 553—FORMS**

**553.370-2832 [Removed]**

7. Section 553.370-2832 is removed.

Dated: March 1, 1989.

**Richard H. Hopf III,**

*Associate Administrator for Acquisition Policy.*

[FR Doc. 89-5599 Filed 3-9-89; 8:45 am]

BILLING CODE 6820-61-M

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**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

**Endangered and Threatened Wildlife and Plants; Endangered Status for Sarracenia rubra ssp. alabamensis**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** The Service determines a plant, *Sarracenia rubra* ssp. *alabamensis* (Alabama canebrake pitcher-plant), to be an endangered species under the authority contained in the Endangered Species Act (Act) of 1973, as amended. *Sarracenia rubra* ssp. *alabamensis* is currently known from only 12 sites in 3 central Alabama counties. However, only four of these are of significant size and two sites are imminently threatened. Over 50 percent of this species' populations have been lost through habitat destruction, succession (due to fire exclusion), over-collecting, and adverse land use practices. Extant populations continue to be degraded by these factors. This action will extend the Act's protection to *Sarracenia rubra* ssp. *alabamensis*.

**EFFECTIVE DATE:** April 10, 1989.

**ADDRESSES:** The complete file for this rule is available for public inspection, by appointment, during normal business hours at the Jackson Field Office, U.S. Fish and Wildlife Service, Jackson Mall Office Center, Suite 316, 300 Woodrow Wilson Avenue, Jackson, Mississippi 39213.

**FOR FURTHER INFORMATION CONTACT:** Ms. Cary Norquist at the above address (601/965-4900 or FTS 490-4900).

**SUPPLEMENTARY INFORMATION:**

## Background

*Sarracenia rubra* ssp. *alabamensis*, a member of the pitcher-plant family, is a carnivorous herb arising from a rhizome. This species produces two types of pitchers (hollow leaves) and occasional phyllodia (flattened leaves) each season. Spring pitchers, appearing with flowers, are 20–50 centimeters (cm) (7.87–19.7 inches) in length and recurved; the summer pitchers are larger (20–70 cm (7.87–27.6 inches)) and erect. Flowers are maroon in color and borne singly on scapes up to 60 cm (2 feet) tall. The fruit is a capsule. Flowering occurs from late April through early June (Case and Case 1974 and 1976; Kral 1983; McDaniel 1986; McDaniel and Troup 1982).

*Sarracenia rubra* ssp. *alabamensis* is endemic to a three county area in central Alabama. The first collections of this species were made during the early 1900's by Pollard and Maxon (McDaniel and Troup 1982) and Harper (1918, 1922). However, Case and Case (1974) were the first to formally recognize these plants as a distinct taxon.

There has been considerable disagreement regarding the proper taxonomic disposition of this taxon and the *Sarracenia rubra* complex in general. The taxonomic history of *Sarracenia rubra* ssp. *alabamensis* has been discussed in detail by various authors (Case and Case 1976, McDaniel 1986, McDaniel and Troup 1982). *Sarracenia rubra* ssp. *alabamensis* was given no recognition within *Sarracenia rubra* by Bell (1949). In other studies it has been referred to as a regional variant (McDaniel 1986, 1971), a subspecies (Schnell 1977, 1979), and a species (Case and Case 1974, 1976; McDaniel 1986). According to Case and Case (1976) and McDaniel (1986), confusion regarding its taxonomic validity stems from the presence of alleged "intermediates" which are actually ecologically induced variants or introgressed hybrids. Hybridization has been well documented in *Sarracenia* species (Bell 1952, Bell and Case 1956, McDaniel 1971).

Detailed comparisons of *Sarracenia rubra* ssp. *alabamensis* with other members of the *Sarracenia rubra* complex (*Sarracenia rubra* ssp. *jonesii*, *Sarracenia rubra* ssp. *wherryi*, *Sarracenia rubra* ssp. *gulfensis*, *Sarracenia rubra* ssp. *rubra*) are given by Case and Case (1976), Schnell (1977), and McDaniel (1986). Leaf shape is accepted as the most significant diagnostic character in *Sarracenia* (Bell 1949; Case and Case 1976; McDaniel 1971, 1986; Schnell 1977). Authors agree that *Sarracenia rubra* ssp. *alabamensis*' distinctiveness is best displayed in its large summer pitchers which are distinctively shaped, puberulent, yellow-green in color and inconspicuously veined and aerolate in the upper portion (Case and Case 1974, 1976; McDaniel 1986; Schnell 1977). *Sarracenia rubra* ssp. *alabamensis* and other members of the *Sarracenia rubra* complex maintain their morphological distinction when grown under standardized conditions (Case and Case 1976, Schnell 1977).

*Sarracenia rubra* ssp. *alabamensis* occurs in sandhill seeps, swamps, and bogs along the fall-line of central Alabama. Soils are acidic, highly saturated, deep peaty sands or clays. Historically, *Sarracenia rubra* ssp. *alabamensis* occurred in open boggy areas with little woody competition (Case and Case 1974, Harper 1922). However, due to fire exclusion, much of this habitat has become invaded by woody vegetation. Populations which have survived in these areas are weak and declining due to increased competition and shading. Other remaining habitat has been adversely modified by changes in land use, particularly increased agricultural usage, and are now located in pastures or on rights-of-way.

This pitcher-plant grows in full sun or light shade in association with cinnamon fern (*Osmunda cinnamomea*),



pipeworts (*Eriocaulon* sp.), orchids (*Calopogon, Cleistes, Pogonia*), yellow-eyed grasses (*Xyris* sp.), beak rushes (*Rhynchospora* sp.), sundews (*Drosera* sp.), and butterworts (*Pinguicula* sp.). Woody associates may include cane (*Arundinaria tecta*), bamboo-vine (*Smilax laurifolia*), sweet bay (*Magnolia virginiana*), alder (*Alnus* sp.), red maple (*Acer rubrum*), poison sumac (*Rhus vernix*), and wax myrtle (*Myrica* sp.).

*Sarracenia rubra* ssp. *alabamensis* has been reported from 28 sites in central Alabama; however, 16 of these populations have been destroyed through habitat destruction, herbicide application, over-collecting, and/or succession (due to fire exclusion). Extensive searches of suitable habitat for additional populations have been conducted for over 20 years by F. Case (personal communication 1987), McDaniel and Troup (1982) and many others. Currently, *Sarracenia rubra* ssp. *alabamensis* is known to exist at only 12 sites in central Alabama including 5 populations in Autauga County, 5 in Chilton County, and 2 in Elmore County. Only 4 populations are of significant size, having from 70 to 300 plants. Of the remaining sites, 2 have limited populations (25–50 individuals) and 6 have poor populations (2–20 individuals). As previously discussed, most populations occur in impacted areas, resulting in individuals often being lost due to adverse land use practices. All sites are on privately-owned lands.

Federal actions involving *Sarracenia rubra* ssp. *alabamensis* began with section 12 of the Endangered Species Act of 1973, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94-51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the report of the Smithsonian Institution as a petition within the context of section 4(c)(2), now Section 4(b)(3)(a), of the Act and of its intention thereby to review the status of those plants. On June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act. *Sarracenia ruba* ssp. *alabamensis* was included in the Smithsonian petition and the 1976 proposal. General comments received in relation to the 1976 proposal were summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909).

The Endangered Species Act Amendments of 1978 required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. In the December 10, 1979, **Federal Register** (44 FR 70796), the Service published a notice of withdrawal of the June 16, 1976, proposal, along with four other proposals that had expired. *Sarracenia rubra* ssp. *alabamensis* was included as a category 1 species in a revised list of plants under review for threatened or endangered classification published in the December 15, 1980, **Federal Register** (45 FR 82480). Category 1 comprises taxa for which the Service presently has sufficient biological information to support their being proposed to be listed as endangered or threatened species.

On November 28, 1983, the Service published a supplement to the notice of review for native plants in the **Federal Register** (48 FR 53640); the plant notice was again revised September 27, 1985 (50 FR 39526). *Sarracenia rubra* ssp. *alabamensis* was included as a category 2 species in the 1983 supplement and the 1985 revised notice. Category 2 species are those for which listing as endangered or threatened species may be warranted but for which substantial data on biological vulnerability and threats are not currently known or on file to support a proposed rule. Data obtained over the last few years now support its reelevation to category 1 and listing as endangered. The data demonstrate a limited distribution and continuing threats to the species.

Section 4(b)(3) of the Endangered Species Act, as amended in 1982, requires the Secretary to make certain findings on pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 Amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Sarracenia rubra* ssp. *alabamensis* because of the acceptance of the 1975 Smithsonian report as a petition. In October of 1983, 1984, 1985, 1986, and 1987, the Service found that the petitioned listing of *Sarracenia rubra* ssp. *alabamensis* was warranted, but that listing this species was precluded due to other higher priority listing actions. On April 21, 1988, the Service published in the **Federal Register** (53 FR 13230), a proposal to list *Sarracenia rubra* ssp. *alabamensis* as an endangered species. The Service now determines *Sarracenia rubra* ssp. *alabamensis* to be an endangered species with the publication of this final rule.

## Summary of Comments and Recommendations

In the April 21, 1988, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice inviting public comment was published in the "Montgomery Advertiser" (Montgomery, Alabama) on May 9, 1988.

Two comments were received and both were supportive of the listing, including one from a conservation organization and one from a private individual. The conservation organization noted that this species receives some legal protection under the Convention on International Trade in Endangered Species of Wild Fauna and Flora which had not been addressed under "Summary of Factors * * *," Factor D. The individual supplied additional distributional and threat information, which has been incorporated into the appropriate sections of the rule. In addition, he expressed his discontent with its listing as a subspecies, instead of as a full species. There is disagreement regarding the exact taxonomic rank of this species (see "Background"). In the most recent peer-reviewed journal, this species was presented as *Sarracenia rubra* ssp. *alabamensis*. If formally redescribed as a full species, as recommended by McDaniel (1986), an editorial change will be made to the List of Endangered and Threatened Wildlife and Plants, to reflect this nomenclatural change.

## Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Sarracenia rubra* ssp. *alabamensis* should be classified as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Sarracenia rubra* Walt. ssp. *alabamensis* (Case and Case)

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Schnell (Alabama canebrake pitcher-plant) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* *Sarracenia rubra* ssp. *alabamensis* occurs in small, localized colonies at only 12 sites in central Alabama (see "Background" for more detailed distributional information). Most of the species' habitat has been destroyed or adversely modified through clearing and drainage for agricultural usage (e.g., pastureland, row crops). The intensive pressure from agricultural utilization of the habitat is evident in the fact that half of the extant populations occur in converted pastureland. Use of habitat as unimproved pasture may benefit plants by eliminating competing vegetagion (Folkerts 1976), as long as the drainage is unaffected and the area is not overgrazed. However, with overgrazing, the soils become highly compacted and the plants are more likely to be trampled by cattle. One site supporting a vigorous population is imminently threatened by attempts to drain the area and convert it to pastureland. Many of the hillside bogs have served as sites for the construction of farm ponds. One of the largest populations known for *Sarracenia rubra* ssp. *alabamensis* has declined from several hundred plants to less than 20 individuals due to direct destruction and soil moisture alterations associated with the construction of one such farm pond (Gibson *in litt.*). All populations in agricultural sites have been degraded and several have lost individuals from such agricultural practices as outlined above.

Gravel mining poses a threat to this species and its habitat due to the gravel subsurface of many of the bogs. One area containing *Sarracenia rubra* ssp. *alabamensis* is presently an active mining site, and one of the four largest extant populations is imminently threatened by plans for such an operation.

A number of populations were once located near railroad rights-of-way in Elmore and Autauga Counties, Alabama. Herbicide spraying along the rights-of-way contributed to the loss of many of these populations (R. Troup personal communication 1987) and poses a threat to extant populations on rights-of-way.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Like many carnivorous plants, *Sarracenia rubra* ssp. *alabamensis* is vulnerable to over-collection by commercial plant dealers and hobbyists. Taking is a well-documented threat to this species (F. Case personal communication 1987, Folkerts 1976, Gibson *in litt.*, Kral 1983, McDaniel and Troup 1982, Troup personal communication 1987) and has contributed to the destruction of several historical populations and significantly degraded many existing populations. In 1975, a collector ran an advertisement in a local newspaper offering a $20 reward for locational information and additional fees for collecting specimens.

C. *Disease or predation.* Although cattle have been known to feed on pitcher plants (Folkerts 1976), predation is not considered to be a significant threat to this species. *Sarracenia rubra* ssp. *alabamensis* is not known to be threatened by disease.

D. *The inadequacy of existing regulation mechanisms.* A measure of protection is provided for this species due to its inclusion in Appendix I of CITES. Such legislation restricts international trade of wild-collected plants, unless such would specifically contribute to its survival in the wild. There are no other State or Federal laws protecting this species or its habitat. The Act would provide protection (see "Available Conservation Measures" below) and encourage active management for this species.

E. *Other natural or manmade factors affecting its continued existence.* This species occurs in a specialized habitat type which evolved under the influence of periodic fires. Suppression of these naturally occurring fires from this habitat has resulted in succession and eventual elimination of plants through shading and overcrowding. As discussed in the "Background" section, much of this species' habitat has been degraded through succession. The loss of as many as five populations has been attributed to this factor (F. Case personal communciation 1987, McDaniel and Troup 1982, R. Troup personal communication 1987) and many existing populations face a similar fate. Plants in sites which have been without fire for a period are weak and rarely flowering. Conservation of this species will require active site management through prescribed fire and hand-clearing. The water table is believed to have been significantly lowered in this species' general range, thereby reducing the number of seeps which are suitable habitat for this species. In addition, this lowered water table permits the encroachment of competitors in those seeps which support populations (Case personal communication). The relatively recent invasion of Japanese honeysuckle (*Lonicera japonica*) into this species' habitat (Case and Case 1974, Folkerts 1976, Kral 1983) is considered to be a significant threat.

This pitcher plant is vulnerable due to its restricted range and limited amount of suitable habitat. Local extinction through natural causes is possible at those sites supporting few individuals.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the prefered action is to list *Sarracenia rubra* ssp. *alabamensis* as an endangered species. Over 50 percent of the species' populations have been destroyed and remaining populations are imminently threatened, including two of the four remaining sites that support large, vigorous populations. No sites are protected. *Sarracenia rubra* ssp. *alabamensis* is in danger of extinction throughout all or significant portions of its range, and is thus an endangered species as defined by the Act. Critical habitat is not being designated for the reasons discussed below.

### Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for the species at this time. As discussed under Factor B in the "Summary of Factors Affecting the Species," *Sarracenia rubra* ssp. *alabamensis* is threatened by taking. Publication of critical habitat descriptions would make this species even more vulnerable, as violations of the protective regulations are difficult to enforce against. Confidentiality of locations is considered a key factor in its protection. The major landowners have been contacted and informed of the locations and importance of protecting this species and its habitat. Protection of this species' habitat will be addressed through the recovery process and through the section 7 jeopardy standard. Therefore, it would not be prudent to determine critical habitat for this species at this time.

### Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried our for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may adversely affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

All presently known populations of this pitcher plant are on private land. Currently, no activities to be authorized, funded, or carried out by Federal agencies are known that would affect this species.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export any endangered plant, transport it in interstate or foreign commerce in the course of a commercial activity, sell or offer it for sale in interstate or foreign commerce, or remove it from areas under Federal jurisdiction and reduce it to possession. In addition, for listed plants the 1988 amendments (Pub. L. 100-478) to the Act prohibit their malicious damage or destruction on Federal lands, and their removal, cutting, digging up, or damaging or destroying in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, P.O. Box 27329, Central Station, Washington, DC 20038-7329 (202/343-4955).

On June 6, 1981, *Sarracenia rubra* ssp. *alabamensis* was included in Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The effect of this listing is that both export and import permits are required before international shipment may occur. Such shipment is strictly regulated by CITES member nations to prevent it from being detrimental to the survival of the species, and cannot be allowed if it is for primarily commercial purposes. If plants are certified as artificially propagated, however, international shipment requires only export documents under CITES, and commercial shipments may be allowed.

### National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

### References Cited


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### Author

The primary author of this final rule is Cary Norquist (see ADDRESSES section (601/965-4900 or FTS 490-4900).

### List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

### Regulation Promulgation

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

## PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

**Authority:** Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411; Pub. L. 100–478, 102 Stat. 2306; Pub. L. 100–653, 102 Stat. 3825 (16 U.S.C. 1531 *et seq.*); Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order under Sarraceniaceae, to the List of Endangered and Threatened Plants:

**§ 17.12 Endangered and threatened plants.**

* * * * *

(h) * * *

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| Species | | Historic range | Status | When listed | Critical habitat | Special rules |
|---|---|---|---|---|---|---|
| Scientific name | Common name | | | | | |
| Sarraceniaceae—Pitcher plant family: | | | | | | |
| • | • | • | • | • | • | |
| *Sarracenia rubra* ssp. *alabamensis* (=*S. alabamensis* ssp. *alabamensis*). | Alabama canebrake pitcher-plant | U.S.A. (AL) | E | 346 | NA | NA |
| • | • | • | • | • | • | |

Dated: January 30, 1989.

Becky Norton Dunlop,

*Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 89-5595 Filed 3-9-89; 8:45 am]

BILLING CODE 4310-55-M



# Proposed Rules

Federal Register
Vol. 54, No. 46
Friday, March 10, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 928

[Docket No. FV-89-006]

### Papayas Grown in Hawaii; Proposal to Reapportion Membership on the Papaya Administrative Committee and Establish Public Member Nomination Procedures

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would reapportion the membership on the Papaya Administrative Committee (PAC) to bring grower and handler membership into more appropriate balance. The proposal would reduce the number of grower members representing District 2 from two to one to reflect reduced production in that district. In addition, the proposal would add a public member to the committee and establish eligibility requirements and nomination procedures for that member in order to add public input to committee deliberations. The proposal would also restrict any one grower organization from having more than two members and alternates on the committee in an effort to provide a wider range of viewpoints on the committee. This proposal was unanimously recommended by the PAC established under Marketing Order 928.

**DATE:** Comments must be received by April 10, 1989.

**ADDRESS:** Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456. Comments should reference the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Patrick Packnett, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, D.C. 20090-6456; telephone 202-475-3862.

**SUPPLEMENTARY INFORMATION:** This rule is proposed under Marketing Order No. 928 [7 CFR Part 928; 53 FR 863, January 14, 1988], regulating the handling of papayas grown in Hawaii. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601-674], hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulations 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 122 handlers of papayas regulated under this marketing order, and approximately 344 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the papaya handlers and producers in Hawaii may be classified as small entities.

Pursuant to § 928.20 of the order, the PAC currently consists of 13 members. Each member has an alternate. Ten of the members are growers, and three are handlers. Seven grower members represent District 1, two grower members represent District 2, and one grower member represents District 3. Each grower organization is permitted to have up to three members on the committee. The three handler members are nominated from the production area at large.

Section 928.20 also allows the number of grower and handler members and alternate members on the committee and the composition of the committee between growers and handlers to be changed as provided in paragraph (o) of § 928.31. This section also provides that the committee may be increased by one public member and alternate member, to be nominated by the committee and selected by the Secretary. In addition, the committee, with the approval of the Secretary, may prescribe the qualifications of, and the nominating procedure for, the public member and alternate. Paragraph (o) of § 928.31 also authorizes the committee, with the approval of the Secretary, to redefine the districts into which the production area is divided, and reapportion membership on the committee. Any such changes are required to reflect, insofar as practicable, structural changes within the industry and shifts in papaya production within the production area.

Originally, the marketing order provided for a committee on 13 members which were allocated among four districts. In 1985, a rule was put into effect to redesignate the area into three districts [50 FR 1439]. Committee membership was also reapportioned to provide for the current allocation. In 1988, the marketing order was amended to reflect these changes, to authorize and provide for the appointment of a public member and alternate, and to authorize changes to be made in the composition and size of the committee [53 FR 863].

The first proposed change would revise § 928.120 to reallocate three of the seven grower member positions in District 1 as handler positions. This would increase the number of handler positions on the committee from three to six. The six handler members would be nominated from the production area at large. The committee indicated that more marketing expertise is needed in committee deliberations and that the current handler membership is inadequate to meet these needs. The unanimous recommendation indicates that District 1 growers believe that they will be adequately represented with four

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members. Furthermore, the six major handlers in the industry are actually six packinghouses which to a considerable extent, represent the interests of various grower groups which utilize the packing facilities.

The second proposed change would amend § 928.120 to reduce from two to one the number of grower members representing District 2 which is comprised of the county of Kauai which consists of the islands of Kauai and Niihau; the county of Maui which consists of the islands of Maui, Molokai, Lanai, and Kahoolawe; and Kalawao County. Total production of papayas in this area in 1988 was 67,500,000 pounds. Production in District 2 has declined from 6.7 million pounds in 1984 to 1.8 million pounds in 1988 as a result of weather and disease problems and the abandonment of substantial papaya plantings on the island of Maui. Production in Districts 1 and 3 has remained relatively stable during this period of time. Further district 2 currently only accounts for approximately 2.7 percent of the total production in this area. Therefore, rather than increase the represenation of Districts 1 and 3, the committee has proposed to reduce the representation of District 2.

The third proposed change which would occur if this proposal is adopted is the addition of a public member and alternate to the committee. This change was recommended by the committee in order to provide valuable consumer input in committee deliberations. The qualifications and nomination procedures for the public member would be prescribed in a new § 928.122.

The public member and alternate member would be nominated by the PAC and should serve a two-year term to coincide with the term of office of the grower and handler members of the committee. To qualify to be nominated, public member and alternate member candidates would be expected to certify that they would be able to devote sufficient time to attend committee activities regularly and to familiarize themselves with the background and economics of the papaya industry. The public member and alternate member would be residents of the production area and not represent any agricultural interest. The public member and alternate would not be allowed to have a financial interest in, or be associated with, the production, processing, financing, or marketing of papayas. These proposed requirements are intended to ensure that a public member from the production area is nominated who would have sufficient time to devote to committee activities, would fairly represent consumer interests, and would not be influenced by any factions within the industry.

The fourth and final proposed change would reduce the number of grower and alternate members any one grower organization is permitted to have on the committee from three to two. This would allow more grower organizations to become involved in committee decision-making and provide a wider range of viewpoints on the committee. Representation from many grower segments is desirable to assure that there will be full discussion on all matters and that all views are expressed before decisions are made.

Based on this proposal, the PAC would consist of six grower members, six handler members, and one public member and their respective alternates. With the reduction of one grower position in District 2, the committee size would remain at 13 members.

This proposed action is intended to provide for additional handler and public input and equitable and balanced representation on the committee. This proposed action would not impose any additional costs on producers or handlers. Furthermore, this action would increase the effectiveness of the committee and benefit growers and handlers.

The additional information collection requirements resulting from the proposed addition of a public member to the committee will be submitted to the Office of Mangement and Budget for approval under the Paperwork Reduction Act of 1980, 44 U.S.C., Chapter 35, upon receipt of the public member questionnaire from the committee.

Based on the above, the Administrator of AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

**Lists of Subjects in 7 CFR Part 928**

Marketing agreements and orders, papayas, Hawaii.

For the reasons set forth in the preamble, 7 CFR Part 928 is proposed to be amended as follows:

**PART 928—PAPAYAS GROWN IN HAWAII**

1. The authority citation for 7 CFR Part 928 continues to read follows:

**Authority:** Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 928.120 is revised to read as follows:

**§ 928.120 Committee reapportionment.**

The Papaya Administrative Committee shall consist of 13 member and alternate members. Six of the members shall represent growers, and six shall represent handlers. Four grower members and their alternates shall represent District 1, one grower member and alternate shall represent District 2, and one grower member and alternate shall represent District 3. No grower organization shall have more than two members on the committee. The six handler members shall be nominated from the production area at large. One voting public member and alternate shall also be included on the committee. The eligibility requirements and nomination procedures for the public member and alternate are specified in § 928.122.

3. A new § 928.122 is added to read as follows:

**§ 928.122 Public member eligibility requirements and nomination procedures.**

(a) The public member and alternate member shall be nominated by the Papaya Administrative Committee and shall serve a two-year term which coincides with the term of the grower and handler members of the committee.

(b) Public member and alternate member candidates should be able to devote sufficient time to attend committee activities regularly and to familiarize themselves with the background and economics of the payaya industry.

(c) The public member and alternate member shall be residents of the production area.

(d) Public member and alternate member candidates shall not represent an agricultural interest and shall not have a financial interest in, or be associated with, the production, processing, financing, or marketing of papayas.

Dated: March 7, 1989.

**William J. Doyle,**

*Acting Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 89–5608 Filed 3–9–89; 8:45 am]

BILLING CODE 3410–02–M

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**7 CFR Part 946**

**[Docket No. FV–89–027]**

**Washington Potatoes; Expenses and Assessment Rate**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.



**SUMMARY:** This proposed rule would authorize expenditures and establish an assessment rate under Marketing Order 946 for the 1989–90 fiscal year. Authorization of this budget will allow the State of Washington Potato Committee to incur expenses reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

**DATE:** Comments must be received by March 20, 1989.

**ADDRESS:** Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456. Comments should reference the docket number and the date and page number of this issue of the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Todd A. Delello, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone 202–475–5610.

**SUPPLEMENTARY INFORMATION:**

This rule is proposed under Marketing Agreement No. 113 and Marketing Order No. 946 (7 CFR Part 946) regulating the handling of potatoes grown in the State of Washington. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 50 handlers of Washington potatoes under this marketing order, and approximately 490 Washington potato producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agriculture service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the handlers and producers may be classified as small entities.

The marketing order requires that the assessment rate for a particular fiscal year apply to all assessable potatoes handled from the beginning of such year. An annual budget of expenses is prepared by the committee and submitted to the Department of Agriculture for approval. The members of the committee are handlers and producers of potatoes. They are familiar with the committee's needs and with the costs for goods, services and personnel in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the committee is derived by dividing anticipated expenses by expected shipments of potatoes. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses. A recommended budget and rate of assessment is usually acted upon by the committee before the season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approval must be expedited so that the committee will have funds to pay its expenses.

The State of Washington Potato Committee met on February 17, 1989, and unanimously recommended a budget for the 1989–90 fiscal period of $35,000 and an assessment rate of $.004 per hundredweight of potatoes. The proposed budget is $2,000 more than last year's, reflecting increases of $1,000 for salaries, $100 for the committee's financial audit, and $900 for compliance audits. All other budget categories remain the same.

The 1989–90 recommended assessment rate of $.004 per hundredweight of potatoes is the same as the rate of the previous fiscal period. Anticipated fresh market shipments of 7 million hundredweight would yield $28,000 in assessment income. This, along with $7,000 from the reserve, would be adequate to cover budgeted expenses. Reserves are expected to amount to $10,000 at the end of the 1989–90 fiscal period and would be carried over into the next fiscal period.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed onto producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is found and determined that a comment period of less than 30 days is appropriate because the budget and assessment rate approval for this program needs to be expedited. The committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis.

**List of Subjects in 7 CFR Part 946**

Marketing agreements and orders, potatoes (Washington).

For the reasons set forth in the preamble, it is proposed that § 946.242 be added as follows:

**PART 946—POTATOES GROWN IN STATE OF WASHINGTON**

1. The authority citation for 7 CFR Part 946 continues to read as follows:

**Authority:** Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. A new § 946.242 is added to read as follows:

**§ 946.242 Expenses and assessment rate.**

Expenses of $35,000 by the State of Washington Potato Committee are authorized, and an assessment rate of $.004 per hundredweight of assessable potatoes is established for the fiscal period ending June 30, 1990. Unexpended funds may be carried over as a reserve.

Dated: March 7, 1989.

**William J. Doyle,**

*Associate Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 89–5609 Filed 3–9–89; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 989

[FV-89-016PR]

## Raisins Produced From Grapes Grown in California; Proposed Suspension of a Provision Regarding Desirable Carryout Levels and Establishment of a Formula to Calculate Desirable Carryout Levels Under the California Raisin Marketing Order's Rules and Regulations

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule invites comments on suspending, for an indefinite period, an order provision relating to desirable carryout levels for certain varietal types of raisins regulated under the marketing order for raisins produced from grapes grown in California. This rule also invites comments on the establishment of a formula to calculate new desirable carryout levels to become part of the order's administrative rules and regulations. The suspension of the desirable carryout level would allow the Raisin Administrative Committee (Committee), the agency responsible for local administration of the order, to adopt a formula to calculate the desirable carryout levels used in the Committee's annual marketing policy deliberations for all varietal types of raisins.

**DATE:** Comments must be received by April 10, 1989.

**ADDRESS:** Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456. Three copies of the written material shall be submitted, and they will be made available for public inspection in the Office of the Docket Clerk during regular business hours. The comments should reference the docket number and the date and page number of this issue of the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Patricia A. Petrella, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5120.

**SUPPLEMENTARY INFORMATION:**

This proposed rule is issued under Marketing Agreement and Order No. 989 [7 CFR Part 989], both as amended, regulating the handling of raisins produced from grapes grown in California and the provisions of the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act. The agreement and order are effective under the Act.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation No. 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 23 handlers of raisins who are subject to regulation under the raisin marketing order, and approximately 5,000 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California raisins may be classified as small entities.

This action would not have a significant economic impact on small producers or handlers. The suspension of the desirable carryout levels and establishment of a formula to calculate new desirable carryout levels should allow greater flexibility in marketing consistent with recent market trends. Also, when the desirable carryout levels are increased, the free tonnage percentage would correspondingly increase, allowing more raisins to be available for immediate sale. Producers are usually paid at the time of delivery to handlers for the free tonnage portion of the crop. The reserve portion of the crop must be held by handlers for the account of the Committee to be sold in specified outlets throughout the crop year. Payments to equity holders (producers) from reserve sales are made periodically throughout the crop year. Therefore, an increase in the desirable carryout levels would provide returns to producers earlier in the season on more free tonnage raisins.

This proposed rule invites comments on the suspension of the desirable carryout levels specified in § 989.54(a) of the order and the establishment of a formula to calculate new desirable carryout levels as part of the order's administrative rules and regulations. These actions were unanimously recommended by the Committee at its December 7, 1988, meeting.

Section 989.54(a) of the order currently specifies the desirable carryout levels for certain varietal types of raisins. The desirable carryout level is the amount of tonnage from the prior crop year that is considered necessary for the industry to have available during the first part of each crop year to meet market needs, while waiting for the next crop to be harvested. Under current order provisions, the desirable carryout level for Natural (sun-dried) Seedless raisins is 60,000 tons. In 1984, the order was amended to increase the desirable carryout level by 5,000 tons each crop year from 45,000 tons, until it reached 60,000 tons (49 FR 48194, December 11, 1984). The Committee reached the 60,000 ton ceiling last season. The desirable carryout levels for Dipped Seedless and Oleate and Related Seedless raisins are also specified in § 989.54(a), at 1,500 tons.

The Committee has determined that the current desirable carryout levels for Natural (sun-dried) Seedless and Dipped Seedless raisins specified in the order are too low and that higher levels would be more appropriate because they would allow handlers to have adequate inventory to meet shipment needs during the early months of the crop year. The Committee has also determined that the desirable carryout level for the Oleate and Related Seedless varietal type is too high and the specified tonnage in § 989.54(a) should be suspended regarding this varietal type since the specified tonnage no longer reflects the actual tonnage needed during the beginning of the season. Thus, the Committee has recommended that the two sentences in § 989.54(a) relating to desirable carryout levels for these varietal types of raisins be suspended indefinitely.

In addition, the Committee recommended that a formula to calculate desirable carryout levels be established in the order's rules and regulations. The Committee has recommended that total shipments for these raisin varietal types from August, September, and October (the first three months of the crop year) of the prior crop year be used to establish the desirable carryout levels each season. If prior shipments in a particular crop year are limited due to adverse crop conditions, the Committee may select the shipments during the August through October period of one of the three years preceding the prior crop year. The Committee has indicated that this formula method would be an appropriate procedure for determining desirable carryout levels, since it would better reflect changes in each season's marketing conditions.



The Committee has indicated that shipment levels during the beginning of the crop year (the three-month period of August, September, and October) have increased from 57,266 tons in 1982 to 95,323 tons in 1988 for Natural (sun-dried) Seedless raisins. The Natural (sun-dried) Seedless raisin variety comprises about 90 percent of the industry's annual raisin crop. If the new formula were in effect for the current season, the desirable carryout level would be increased by 35,323 tons for Natural (sun-dried) Seedless raisins, to 95,323 tons. The proposed formula would also be likely to result in an increase in carryout levels for the Dipped Seedless varietal type because shipments of this varietal type during the first three months of the crop year have increased in recent years. Shipments of the Natural (sun-dried) Seedless variety during the first three months of the crop year totaled 63,410 tons in 1986; 67,668 tons in 1987; and 95,323 tons in 1988.

Shipment levels of the Oleate and Related Seedless varietal type, on the other hand, have been below the 1,500 ton level specified in the order. Shipments of this variety during the first three months of the crop year totaled 840 tons in 1986; 922 tons in 1987; and 114 tons in 1988. Therefore, the proposed formula to calculate the desirable carryout levels for this varietal type would result in a desirable carryout figure that would more closely reflect the shipments during the August through October period.

The Committee also intends to use this formula to calculate desirable carryout levels for all varietal types listed under § 989.110 of the rules and regulations. The desirable carryout levels of the varietal types that are not currently specified under § 989.54(a) (Golden Seedless, Muscats, Sultanas, Zante Currants, Monukka, and Other Seedless raisins) are determined by the Committee each crop year based on the marketing conditions from the prior year and anticipated marketing conditions for the upcoming year. The Committee has determined that the formula method would be more appropriate in determining the desirable carryout levels for these varietal types.

Based on the above, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

**List of Subjects in 7 CFR Part 989**

California, Grapes, Marketing agreements and orders, Raisins.

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 989 be amended as follows:

### PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 989 continues to read as follows:

**Authority:** Secs. 1–19, 48 Stat. 31, as amended, 7 U.S.C. 601–674.

2. Section 989.54 is amended in paragraph (a) to read as follows:

**§ 989.54 Marketing policy.**

In § 989.54(a) the sentences, "The desirable carryout shall be increased from 45,000 to 60,000 tons for Natural (sun-dried) Seedless raisins at a rate of 5,000 tons per year for the three crop years following the effective date of this amended subpart. The desirable carryout for Dipped Seedless raisins shall be 1,500 tons, and for Oleate and Related Seedless raisins 1,500 tons.", are suspended indefinitely.

### Subpart—Administrative Rules and Regulations

3. A new § 989.154 is added to read as follows:

**§ 989.154 Desirable carryout levels.**

The desirable carryout levels to be used in computing and announcing a crop year's marketing policy shall be equal to the shipments of free tonnage to all outlets for each varietal type during the period August through October of the prior crop year, converted to a natural condition basis: *Provided*, That if the prior year's shipments were limited because of crop conditions, the Committee may select the shipments during the August through October period of one of the three years preceding the prior crop year.

Dated: March 7, 1989.

**J. Patrick Boyle,**

*Administrator.*

[FR Doc. 89–5610 Filed 3–9–89; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 1137

[DA–89–012]

## Milk in the Eastern Colorado Marketing Area; Notice of Proposed Suspension of Certain Provisions of the Order

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed suspension of rule.

**SUMMARY:** This notice invites written comments on a proposal to suspend for the months of March through August 1989 provisions of the Eastern Colorado Federal milk order. Provisions proposed to be suspended relate to the amount of milk not needed for fluid (bottling) use that may be moved directly from farms to nonpool manufacturing plants and still be priced under the order. Suspension of the provisions was requested by a cooperative association representing producers supplying the market in order to prevent uneconomic movements of milk.

**DATE:** Comments are due on or before March 17, 1989.

**ADDRESS:** Comments (two copies) should be filed with the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456.

**FOR FURTHER INFORMATION CONTACT:** Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–7183.

**SUPPLEMENTARY INFORMATION:** The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This proposed rule has been reviewed under Executive Order 12291 and Department Regulation 1512–1 and has been determined to be a "non-major" rule under the criteria contained therein.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), the suspension of the following provisions

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of the order regulating the handling of milk in the Eastern Colorado marketing area is begin considered for the months of March through August 1989:

In the second sentence of § 1137.12(a)(1), the words "30 percent in the months of March, April, May, June, July, and December and 20 percent in other months of" and "distributing".

All persons who want to send written data, views or arguments about the proposed suspension should send two copies of them to the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, by the 7th day after publication of this notice in the **Federal Register**. The period for filing comments is limited to 7 days because a longer period would not provide the time needed to complete the required procedures and include March 1989 in the suspension period.

The comments that are sent will be made available for public inspection in the Dairy Division office during normal business hours (7 CFR 1.27(b)).

**Statement of Consideration**

Mid-America Dairymen, Inc. (Mid-Am), an association of producers that supplies some of the market's fluid milk needs and handles some of the market's reserve milk supplies, rquested the suspension. The suspension would relax for the months of March through August 1989 the limit on the amount of producer milk that a cooperative association may divert from pool plants to nonpool plants.

The order provides that a cooperative may divert a quantity of milk not in excess of 30 percent of the cooperative association's member milk received at pool distributing plants during the months of March, April, May, June, July and December, and up to 20 percent in other months. Suspension of the requested language would allow up to 80 percent of a cooperative's member milk supply to be diverted to nonpool plants and remain eligible to share in the marketwide pool.

Mid-Am states that the volume of producer milk pooled on the Eastern Colorado order in 1988 was 5.8 percent higher than in 1987, while producer milk used in Class I rose only 1.9 percent over the same period. As a result, according to Mid-Am, there are ample supplies of locally produced milk to meet the fluid requirements of Eastern Colorado distributing plants.

Mid-Am states that member producer milk produced in Kansas and Nebraska would have to be shipped to Eastern Colorado pool distributing plants each month in order to qualify Mid-Am producers historically associated with the Eastern Colorado market for continued pool status. Such movements, according to Mid-Am, would require uneconomic and inefficient hauling of producer milk. Without the requested suspension, the cooperative expects to incur substantial unnecessary costs for the movement of its milk solely for the purpose of pooling the milk of its members currently associated with the Eastern Colorado market.

**List of Subjects in 7 CFR Part 1137**

Milk marketing orders, Milk, Dairy products.

The authority citation for 7 CFR Part 1137 continues to read as follows:

Authority: (Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.)

Signed at Washington, DC, on: March 7, 1989.

J. Patrick Boyle,

*Administrator.*

[FR Doc. 89-5607 Filed 3-9-89; 8:45 am]

BILLING CODE 3410-02-M

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Parts 21 and 23**

**[Docket No. 064CE, Notice No. SC-23-ACE-48]**

**Special Conditions; Caproni Model C22J Series Airplane**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed special conditions.

**SUMMARY:** This notice proposes special conditions for the Caproni Vizzola Costruzioni Aeronautiche, S.p.A. Model C22J Series Airplane. The Caproni Model C22J airplane will have novel or unusual design features when compared to the state of technology envisaged in the airworthiness standards for normal, utility, acrobatic, and commuter category airplanes. These novel and unusual design features include the use of advanced composite materials, pressurized fuel tanks, and electronic engine control system protection from lightning and high energy radio frequency, for which the regulations do not contain adequate or appropriate airworthiness standards. This notice contains the additional safety standards which the Administrator considers necessary to establish a level of safety equivalent to that provided by the current airworthiness standards.

**DATE:** Comments must be received on or before July 10, 1989.

**ADDRESS:** Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Regional Counsel, ACE-7, Attention: Rules Docket Clerk, Docket No. 064CE, Room No. 1558, 601 East 12th Street, Kansas City, Missouri 64106. All comments must be marked: Docket No. 064CE. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

**FOR FURTHER INFORMATION CONTACT:** Ervin Dvorak, Aerospace Engineer, Standards Office (ACE-110), Small Airplane Directorate, Aircraft Certification Service, Central Region, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 426-5688.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to participate in the making of these special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking further rulemaking action on this proposal. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 064CE. The postcard will be date stamped and returned to the commenter. The proposals contained in this notice may be changed in light of the comments received. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested parties. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Type Certification Basis**

The type certification basis for the Caproni Model C22J airplane is as follows: Part 21 of the Federal Aviation Regulations (FAR), § 21.29; Part 23 of the FAR, effective February 1, 1965, including amendments 23-1 through 23-33; Part 36 of the FAR, effective December 1, 1969, as amended by amendments 36-1 through the amendment effective on the date of type certification; SFAR 27 effective February 1, 1974, as amended by amendments 27-2 through 27-5; exemptions, if any; and the special conditions that may result from this proposal.



**Background**

On July 8, 1983, Caproni Vizzola Costruzioni Aeronautiche, S.p.A. Vizzola Ticino (Varese), Italy, filed an application to the FAA Brussel's Office for U.S. type certification for its Model C22J airplane. They made a new application for U.S. type certificate on October 29, 1986. The Caproni Model C22J airplane is a small, two-place, twin-engine jet airplane with a maximum takeoff weight (with tip tanks) of 2,767 pounds. Two Microturbo TRS-18 turbojet engines are installed side-by-side in the fuselage aft of the cockpit. The airplane is fully aerobatic and has a maximum operating altitude of 25,000 feet.

**Discussion**

Special conditions may be issued and amended, as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.17(a)(1) do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane. Special conditions, as appropriate, are issued in accordance with § 11.49, after public notice as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and will become part of the type certification basis, as provided by § 21.17(a)(2).

The proposed type design of the Caproni Model C22J airplane contains a number of novel or unusual design features not envisaged by the applicable Part 23 airworthiness standards. Special conditions are considered necessary because the airworthiness standards of Part 23 do not contain adequate or appropriate safety standards for the novel or unusual design features of the Model C22J airplane.

**Landing Gear**

The Model C22J airplane landing gear and forward fuselage are made of composite material. This material and its assembly is completely different from the typical material in landing gear and airframe structure that have been predominant since the early 1940's. Composite materials of the type used on the Model C22J airplane are generally not susceptible to initiation of fatigue cracks by the application of repetitive loads, but are susceptible to damage in the form of cracks, breaks, and delaminations from intrinsic and discrete sources growing under application of repetitive loads. Because of this and other factors, the FAA has determined that the fatigue requirements of Part 23 are inadequate to assure that composite material structure can withstand the repeated loads of variable magnitude expected in service.

The use of composite materials and extensive bonding of these materials in landing gear and airframe structure is a novel and unusual design feature with respect to the type of airplane construction envisaged by the existing airworthiness standards of Part 23. Because the requirements of Part 23 do not require the level of substantiation necessary for composite material structure, a special condition is proposed to include the necessary airworthiness standards as a part of the type certification basis for the Model C22J airplane. This special condition is proposed to ensure that a level of safety exists for airplanes made from bonded composite materials equivalent to those existing Part 23 airplanes.

The proposed special conditions will require composite structural components critical to safe flight be evaluated by damage tolerance criteria. When damage tolerance is shown to be impractical, the proposed special conditions are worded to permit approval, based on safe-life testing. The damage tolerance consideration includes principle structural elements, such as the forward fuselage, since failure of this structure could have catastrophic results. Metal detail designs may continue to be evaluated to the fatigue requirements of § 23.572.

Damage tolerance criteria for composite structure, in combination with the existing material requirements of Part 23, such as §§ 23.603 and 23.613, will provide a level of safety for the composite material airframe structure used in the Model C22J airplane equivalent to that required by the airworthiness standards of Part 23.

The lack of adequate service experience with composite material structures in airplanes type certificated to the airworthiness standards of Part 23, the unusual mechanical properties characteristics, and the experience with composite material structural bonding, to date, necessitate proposing special conditions to assure an appropriate level of safety for the Model C22J landing gear structure. These proposed special conditions are intended to require: (1) Accounting for environmental effects, i.e., temperature and humidity on material mechanical properties in all structural substantiation analyses and tests; (2) limit load residual strength with impact damage from discrete sources; (3) ability to carry ultimate load with realistic intrinsic and discrete impact damage at the threshold of detectability; and (4) design features to prevent disbonds greater than the disbonds for which limit load capability has been shown. Proof testing of each production component to limit load and reliance on manufacturing quality control procedures between limit and ultimate load may be used in lieu of design features provided each bonded joint is subjected to its critical design limit load during the proof testing. Acceptable non-destructive testing techniques do not yet exist in state-of-the-art composite technology to reliably identify weak bonds. However, proof testing of each production article may be discontinued if such tests are developed and accepted by the FAA.

Because the composite material and bonding may require preventive maintenance and inspection procedures different from those commonly utilized for existing landing gear structure, the proposed special conditions require that instructions for continued airworthiness be established in addition to those required by § 23.1529.

**Lightning Protection**

The regulations incorporated by reference include standards for protection from damage to the structure of the airplane by lightning (§ 23.867) and from ignition of fuel vapor (§ 23.954). These standards do not provide the level of safety for the electronic system that is inherently provided by traditional designs which utilize mechanical means to connect the engine to the flight deck. Electronic systems need additional protection when installed in composite airframe structure, which provides less shielding. For airplanes employing the use of composite materials, the lightning produced voltages and currents could increase substantially and additional protecting design features should be installed.

The Model C22J airplane with the Microturbo TRS-18 turbojet engines is being designed with the propulsion systems using only electrical interfaces for critical functions such as crew inputs to engines. These systems can be susceptible to disruption to both the command/response signals and the operational mode as a result of direct lightning strike attachment or electrical and magnetic interference. To ensure that a level of safety is achieved equivalent to that of existing aircraft, a special condition is being proposed which requires that these components be designed and installed to preclude component damage and interruption of function due to both direct and indirect effects of lightning.

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**Protection From Unwanted Effect of High Energy Radio Frequency (RF) Fields**

Airplane designs which utilize metal skins and mechanical command and control means have traditionally been less susceptible to the effects of RF energy from ground-based transmitters. There is a trend toward increased use of composite structures that do not provide the RF shielding normally provided by metal skins and electrical and electronic command systems to perform critical airplane functions such as engine control. Therefore, the effective measures against the effects of high energy radio frequency fields must be provided for by the design and installation of these systems. The primary factors that have contributed to this increased concern are: (1) The increasing use of sensitive electronics that perform critical and essential functions; (2) the reduced electromagnetic shielding afforded airplane systems by advanced technology airframe materials; (3) the adverse service experience of military airplanes which use these technologies; and (4) the number and power of radio frequency emitters increases and expected future increases.

In showing compliance with the regulations for protection against hazards caused by the exposure to high energy radio frequency fields, electrical and electronics systems which perform critical and essential functions must be considered. The hazards addressed include those which would result in a catastrophic failure condition to the airplane. Failures that would be a hazard to the airplane, but not catastrophic, are considered under § 23.1309. To prevent this occurrence, airplane systems which perform critical functions must be designed and installed to ensure that the operation and operational capabilities of these critical functions are not adversely affected when the airplane is exposed to high energy radio fields. Airplane systems which perform essential functions must be protected to ensure that essential functions can be recovered after the airplane has been exposed to the high energy radio frequency fields. Manual mode reversion is considered an acceptable method of retaining the essential functions. Reliance on redundancy as a means of protection against the effects of external RF fields is generally insufficient since all elements of a redundant system are likely to be exposed to the fields concurrently.

No universally accepted guidance to define the maximum energy level in which civilian airplane system installations must be capable of operating safely has been established. At this time, the FAA and other airworthiness authorities are working to establish an agreed level of RF energy level representative of that to which the airplane will be exposed in service. These special conditions require that the airplane be evaluated under an interim standard for the protection of the electronic system and its associated wiring harness.

**Electronic Engine Control System**

The applicable airworthiness requirements for the engine installation do not contain adequate standards by which to determine an acceptable level of safety for an electronic engine control system installed on a Part 23 airplane. Therefore, special conditions are required to establish that the overall electronic engine control system exhibits an acceptable level of system integrity and reliability equivalent to a hydromechanical system meeting current airworthiness standards.

**Pressurized Fuel Tanks**

The applicable airworthiness requirements for the pressurized fuel tanks installations do not contain adequate standards by which to determine an acceptable level of safety on a Part 23 airplane. Therefore, special conditions are required which are based on § 25.965(d) pressurized fuel tanks requirements.

**Federalism Implications**

The regulations proposed herein would not have substantiated direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

**Conclusion**

In view of the design features discussed above, the following special conditions are proposed under the provisions of § 21.16 to provide a level of safety equivalent to that intended by the regulations incorporated by reference. This action is not a rule of general applicability and affects only the model/series of airplane identified in these special conditions.

**List of Subjects in 14 CFR Parts 21 and 23**

Aircraft, Air transportation, Aviation safety, Safety.

The authority citation for these special conditions is as follows:

**Authority:** Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958; as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 21.16 and 21.17; and 14 CFR 11.28 and 11.49.

**The Proposed Special Conditions**

Accordingly, the Federal Aviation Administration proposes the following special conditions as a part of the type certification basis for the Caproni Model C22J airplanes:

*1. Evaluation of Composite Structures (Forward Fuselage and Landing Gear)*

In lieu of complying with § 23.572, and in addition to the requirements of §§ 23.603, 23.613, and 23.723, the landing gear and forward fuselage composite structure must be evaluated to damage tolerance criteria prescribed in paragraphs (a) through (h) of this special condition, unless shown to be impractical. In cases shown to be impractical, the aforementioned structure must be evaluated in accordance with criteria of paragraphs (a) and (i) of this special condition. Where bonded joints are used, the structure must also be evaluated in accordance with the residual strength criteria in paragraph (g) of this special condition.

(a) It must be demonstrated by tests, or by analysis supported by tests, that the structure is capable of carrying ultimate load with impact damage. The level of impact damage considered need not be more than the established threshold of detectability considering the inspection Procedures employed.

(b) The growth rate of damage that may occur from fatigue, corrosion, intrinsic effects, manufacturing defects; e.g., bond defects, or damage from discrete sources under repeated loads expected in service; i.e., between the time at which damage becomes initially detectable and the time at which the extent of damage reaches the value selected by the applicant for residual strength demonstration, must be established by tests or by analysis supported by tests.

(c) The damage growth, between initial detectability and the value selected for residual strength demonstrations, factored to obtain inspection intervals, must permit development of an inspection program suitable for application by operation and maintenance personnel.

(d) Instructions for continued airworthiness for the structure must be established consistent with the results of the damage tolerance evaluations. Inspection intervals must be set so that after the damage initially becomes detectable by the inspection method specified, the damage will be detected before it exceeds the extent of damage for which residual strength is demonstrated.



(e) Loads spectra, load truncation, and the locations and types of damage considered in the damage tolerance evaluations must be documented in test proposals.

(f) The structure must be shown by residual strength tests, or analysis supported by residual strength tests, to be able to withstand critical limit flight and landing loads considered as ultimate loads, with the extent of damage consistent with the results of the damage tolerance evaluations.

(g) In lieu of a non-destructive inspection technique which assures ultimate strength of each bonded joint, the limit load capacity of each bonded joint critical to safe flight must be substantiated by either of the following methods used singly or in combination:

(1) The maximum disbonds of each bonded joint consistent with the capability to withstand the loads in paragraph (f) of this special condition must be determined by analysis, tests, or both. Disbonds of each bonded joint greater than this must be prevented by design features.

(2) Proof testing must be conducted on each production article which will apply the critical bonded joint.

(h) The effects of material variability and environmental conditions must be accounted for in the damage tolerance evaluations and in the residual strength tests; e.g., exposure to temperature, humidity, erosion, ultraviolet radiation, and/or chemicals, on the strength and durability properties of the composite materials must be accounted for in the damage tolerance evaluations and in the residual strength tests.

(i) For those structures where damage tolerance method is shown to be impractical, the strength of such landing gear must be demonstrated by tests, or analysis supported by tests, to be able to withstand the repeated loads of variable magnitude expected in service. Impact damage in composite material components which may occur must be considered in the demonstration. The impact damage level considered must be consistent with detectability by the inspection procedures employed.

*2. Protection of Systems from Lightning and High Energy Radio Frequency (RF) Fields*

(a) Each system which performs critical functions must be designed and installed to ensure that the operation and operational capabilities of these critical functions are not adversely affected when the airplane is exposed to: (1) lightning and (2) high energy radio frequency fields external to the airplane.

(b) Each essential function of the system must be protected to ensure that the essential function can be recovered after the airplane has been exposed to: (1) lightning and (2) high energy radio frequency fields external to the airplane.

(c) For the purposes of the above, the following definitions apply:

(1) Critical Functions. Functions whose failure would contribute to or cause a failure condition which would prevent the continued safe flight and landing of the airplane.

(2) Essential Functions. Functions whose failure would contribute to or would cause a hazardous failure condition which would significantly impact the safety of the airplane or the ability of the flight crew to cope with adverse operating conditions.

*3. Electronic Engine Controls*

In addition to the requirements of §§ 23.901(b) and 23.903(c), the components of the electronic engine control system for each engine, both airframe and engine furnished, that affect thrust in either the forward or reverse direction and are required for continued safe operation, must have the level of integrity and reliability of a hydromechanical system meeting current airworthiness standards.

*4. Pressurized Fuel Tanks*

In addition to the requirements of § 23.965, it must be shown by analysis or tests that the pressurized fuel tanks can withstand the maximum pressure likely to occur on the ground or in flight.

Issued in Kansas City, Missouri, on February 22, 1989.

**Barry D. Clements,**

*Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 89-5545 Filed 3-9-89; 8:45 am]

BILLING CODE 4910-13-M

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**14 CFR Parts 21 and 25**

**[Docket No. NM-36, Notice No. SC-89-1-NM]**

**Special Conditions: Airbus Industrie Model A320 Series Airplane**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed special conditions.

**SUMMARY:** This notice proposes a special condition for the Airbus Industrie Model A320 series airplane. This airplane will have non-traditional computerized Airplane Flight Manual (AFM) performance presentation features when compared to the manner in which AFM performance is now presented in chart form in compliance with the transport category airplane airworthiness standards of the Federal Aviation Regulations (FAR). This notice contains the additional standards which the Administrator considers necessary to establish a level of AFM preparation and usage equivalent to that established by the FAR.

**DATE:** Comments must be received on or before April 10, 1989.

**ADDRESSES:** Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, Attention: Rules Docket (ANM-7), Docket No. NM-36, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168; or delivered in duplicate to the Office of the Assistant Chief Counsel at the above address. Comments must be marked: Docket No. NM-36. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

**FOR FURTHER INFORMATION CONTACT:** Bill Boxwell, Flight Test and Systems Branch, ANM-111, Transport Airplane Directorate, Aircraft Certification Service, FAA, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168; telephone (206) 431-2111.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to participate in the making of this special condition by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator before further rulemaking action on this proposal is taken. The proposal contained in this notice may be changed in light of the comments received. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested parties. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM-36." The postcard will be date/time stamped and returned to the commenter.

**Background**

On December 15, 1988, the FAA issued Type Certificate A28NM to Airbus Industrie, I Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for type certification of their Model A320-111 and Model A320-211 series airplanes. Subsequently, Airbus requested a change to the A320 type design to include non-traditional computerized Airplane Flight Manual (AFM) performance presentation features.

The Model A320 series airplane is a short to medium-range, twinturbofan, transport category airplane with a seating capacity of 120 to 179 passengers, a maximum takeoff weight

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of 158,730 pounds, and a maximum operating altitude of 39,000 feet.

The manufacturer proposes to eliminate the traditional AFM takeoff performance charts and replace them with reference to a computer program, or programs, and corresponding data files which would yield the same information. The computer program proposal is ground-based and not related to onboard processing or uplinking. If the proposal is adopted, existing relevant regulations, e.g., § 25.1587(b) of the FAR, would not provide adequate standards, since the required takeoff performance information would not be in a directly usable form in the AFM itself.

Under the provisions of § 21.101 of the FAR, Airbus Industrie must show that the Model A320, as modified to incorporate the computer program, continues to meet the applicable provisions of the regulations incorporated by reference in Type Certificate A28NM, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The certification basis for the A320 consists of Part 25 of the FAR, as amended by Amendments 25–1 through 25–58, and Special Conditions 25–ANM–23.

If the Administrator finds that the applicable airworthiness regulations (i.e., Part 25 as amended) do not contain adequate or appropriate standards for the Model A320 because of a novel or unusual AFM feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of AFM preparation and usage equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.17(a)(2).

**Novel or Unusual AFM Presentation Features**

The Model A320 series airplane will incorporate the following novel or unusual AFM features:

Even though operators of large transport category airplanes have used performance analyses programs to determine regulatory compliant performance, the approved AFM charts have been available to represent the official minimum certified performance level of the airplane, as required by regulation. The current process includes engineering review and approval of the charts themselves as part of the type certification process. The availability of the charts to airplane operators and FAA operations personnel for establishing the acceptability of alternate ground-based computer performance analyses has apparently been a satisfactory means of providing information concerning the minimum performance level of the airplane.

Airbus Industrie proposes elimination of the takeoff performance charts within the AFM, and instead proposes to show compliance with the intent of the applicable requirements of Part 25 concerning the AFM by cross-referencing (in the AFM) to equivalent results via certified performance computer programs and data files. Airbus Industrie states that, in fact, the results would be the exact digital images of the otherwise-provided AFM chart. The operators could generate equivalent "AFM charts" with appropriate interpolation/reading programs, in addition to running analysis or gross weight optimization programs.

Airbus Industrie intends at this time to still provide traditional enroute climb (driftdown) and landing performance charts in the AFM.

**Discussion**

In current operational practice, neither flightcrews nor dispatchers use the AFM on a day-to-day basis for determining limiting takeoff weights, field lengths, and speeds. Airline operations departments routinely reformat AFM source data into more usable schemes for specific airports, runways, etc. AFM charts are reviewed for accuracy and completeness, as part of the normal type certification process, prior to TC issuance. These data form the master source of performance data which are used by all parties to validate other data presentations. Federal Aviation Administration AFM master book libraries have been available to the public and other government agencies, such as NTSB and airport operators; therefore, the equivalent of current operational practice must continue if charts are to be removed from the A320 AFM.

Applicants who plan to implement computer programs and data files as a replacement for the performance charts in the AFM are expected to obtain approval from the FAA using the following process:

a. All initial-release, individual takeoff performance entities (for a particular airplane/engine combination) must be produced for the FAA in hard copy chart form (or table if appropriate) and included in a report. The report must be FAA approved prior to or concurrent with the AFM initial release in question, and will be filed as part of the FAA AFM master book for the public record. Tabular presentations should be limited to simple relationships, and graphical presentations should be used when relationships, trends, or important variations in parameters need to be visualized. Subsequent performance changes (e.g. same engine, but new rating) need not be produced in chart form, but the FAA certification office must have the capability to read and list the computerized performance modules referenced as AFM performance.

b. The report with hard-copy performance must have organization and identifiers to clearly relate specific charts to the performance determination process.

c. The report should present performance data with the same completeness, clarity, and legibility as typical AFM charts.

d. The applicant is responsible for ensuring that the FAA certification office is provided with the equipment specification to use the computer files and any required initial instruction on use of these files.

e. The applicant's total performance presentation to the air carrier must be such to allow that carrier to comply with §§ 91.183(a)(5) and 121.141.

*Conclusion:* This action affects only certain novel or unusual AFM features on one model series of airplanes. It is not a rule of general applicability, and it affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

**List of Subjects in 14 CFR Parts 21 and 25**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Special Conditions**

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the Airbus Industrie Model A320 series airplane.

**PARTS 21 and 25—[AMENDED]**

1. The authority citation for these special conditions is as follows:

**Authority:** 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2); 42 U.S.C. 1857f–10, 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g) (Rev. Pub. L. 97–449, January 12, 1983).

2. Replacement of Airplane Flight Manual Takeoff Performance Charts with Reference to Equivalent Computer Programs and Data Files. In lieu of the AFM performance charts provided to comply with § 25.1587(b) of the FAR, the following special conditions apply:

a. The system must provide performance information, complying with the applicable requirements of Part 25 of the FAR concerning AFM regulations.

b. Interpolation, reading intervals, or round-off conditions must not result in any more significant variation than for current chart reading.

c. Two-way performance interrogation (ability to switch independent and dependent variables) must be provided as appropriate.

d. All notes and associated conditions must be consistently applied in performance calculations and clearly labeled on data file/analysis printouts.

e. Approved data must be clearly marked and segregated from unapproved (e.g., advisory) data.

f. Improper extrapolations or solutions outside of certified performance bounds must be precluded.

g. Program performance output must be compatible with Configuration Deviation List (CDL) or Master Minimum Equipment List (MMEL) applications.

h. Suitable program usage documentation must be available to all users, including FAA certification and operations personnel.

i. Special performance charts such as thrust setting, stall speeds, stabilizer trim setting, and position error corrections must not be included in the computer-for-chart replacement process.

j. The program must be protected from inadvertent alteration, or deliberate alteration outside of an FAA-approved revision process.

k. All computerized performance software programs must be properly identified by a reference number which must be revised for each change in the data.

l. The program documentation must also identify the computer operating system for which the software is intended.

Issued in Seattle, Washington, on February 27, 1989.

**Steven B. Wallace,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 5546 Filed 3-9-89; 8:45 am]

BILLING CODE 4910-13-M



**14 CFR Part 39**

**[Docket No. 89–ANE–04]**

**Airworthiness Directives: GQ Parachutes Ltd, Type 350 Parachute Assemblies (P/Ns MRI GQ 1277, MRI GQ 1304 and MRI GQ 1325), 850 Parachute Assemblies (P/Ns MRI GQ 1284, MRI GQ 1315 and MRI GQ 1330) and 4.8m SAC Parachutes (P/Ns MRI GQ 1308 and MRI GQ D 22918/2)**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice proposes to adopt an airworthiness directive (AD) that would require inspection, cleaning and strength testing as required of each net mesh panel on certain GQ parachute assemblies. The proposed AD is needed to detect the presence and removal if necessary, of acid contamination in the canopy mesh panels. The presence acid could result in weakening of the canopy fabric and subsequent failure of the canopy during use.

**DATE:** Comments must be received on or before April 4, 1989.

**ADDRESSES:** Comments on the proposal may be mailed in duplicate to: Federal Aviation Administration, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 89–ANE–04, 12 New England Executive Park, Burlington, Massachusetts 01803; or delivered in duplicate to Room 311 at the above address.

Comments delivered must be marked: Docket No. 89–ANE–04.

Comments may be inspected at the New England Region, Office of the Assistant Chief Counsel, Room 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

The applicable service bulletin may be obtained from GQ Parachutes Ltd, Portugal Road, Woking, Surrey, GU21 5JE England.

A copy of the service bulletin is contained in Rules Docket No. 89–ANE–04, at the Federal Aviation Administration, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts 01803.

**FOR FURTHER INFORMATION CONTACT:** Terry Fahr, Boston Aircraft Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273–7103.

**SUPPLEMENTARY INFORMATION:** Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the FAA before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket at the address given above, for examination by interested persons. A report summarizing each FAA-public contract, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 89–ANE–04." The postcard will be date/time stamped and returned to the commenter.

The FAA has determined that certain GQ Parachutes Ltd parachutes may contain mesh panels that have been improperly treated with a chemical finish, which could result in weakening of the adjacent canopy material and subsequent failure of the parachute during operation. Since this condition is likely to exist or develop on other GQ Parachutes Ltd parachutes of the same type design, the proposed AD would require inspection, cleaning and strength testing as required of each net mesh panel in GQ Parachutes Ltd Type 350 Parachute Assemblies (P/Ns MRI GQ 1277, MRI GQ 1304 and MRI GQ 1325), 850 Parachute Assemblies (P/Ns MRI GQ 1284, MRI GQ 1315 and MRI GQ 1330) and 4.8m SAC Parachutes (P/Ns MRI GQ 1308 and MRI GQ D 22918/2) in accordance with GQ Parachutes Ltd Service Bulletin No. 25–01, dated January 18, 1989.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the

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various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

**Conclusion**

The FAA has determined that this proposed regulation involves approximately 50 parachute assemblies, with the inspection, cleaning and testing to be done by GQ Parachutes Ltd. at no cost to the owner. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 39**

Aviation safety, Incorporation by reference.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the FAA proposes to amend Part 39 of the Federal Aviation Regulations (FAR) as follows:

**PART 39—[AMENDED]**

1. The authority citation for Part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding to § 39.13 the following new AD:

**GQ Parachutes Ltd:** Applies to Type 350 Parachute Assemblies (P/Ns MRI GQ 1277, MRI GQ 1304 and MRI GQ 1325), 850 Parachute Assemblies (MRI GQ 1294, MRI GQ 1314 and MRI GQ 1330) and 4.8m SAC Parachutes (P/Ns MRI GQ 1308 and MRI GQ D 22918/2).

Compliance is required as indicated unless already accomplished.

To prevent the use of FAA approved canopies which may contain understrength material, accomplish the following prior to next use after the effective date of this AD:

(a) Perform an acid test on each net mesh panel, in accordance with page 11 of GQ Parachutes Ltd Service Bulletin (SB) No. 25-01, dated January 18, 1989. Those canopies found to be free of acid contamination may be approved for return to service.

(b) For those canopies found to have acid contamination, perform the acid neutralization, pH test and tensile test, in accordance with pages 5 and 6 of GQ Parachutes Ltd, (SB) No. 25-01, dated January 18, 1989. Those canopies having a pH value greater than 5.5 and a minimum tensile strength of 180 N/25mm (40.5 lbs/in.) may be approved for return to service. For those canopies found to have a pH value of 5.5 or less and/or a tensile strength less than 180 N/25mm (40.5 lbs/in.), remove or obliterate the TSO-C23c marking.

(c) In lieu of compliance with paragraphs (a) and (b) above, the TSO-C23c markings may be removed or obliterated and the parachute must not be used as an approved parachute.

(d) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, the Manager, Boston Aircraft Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803, may adjust the compliance times specified in this AD or approve an equivalent means of compliance with this AD.

The FAA will request the approval of the Federal Register to incorporate by reference the manufacturer's service bulletin identified and described in this document.

Issued in Burlington, Massachusetts, on February 13, 1989.

**Jack A. Sain,**

*Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 89-5551 Filed 3-9-89; 8:45 am]

BILLING CODE 4910-13-M

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**14 CFR Part 71**

**[Airspace Docket No. 89-ASO-2]**

**Proposed Amendment to Control Zones, Huntsville, AL; Savannah, GA; Lexington, KY; and Knoxville, TN**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to amend the effective hours of the Huntsville, AL; Savannah, GA; Lexington, KY; and Knoxville, TN, control zones from full-time to part-time. The National Weather Service (NWS) is reducing operating hours at each of these locations; hence, around-the-clock hourly and special weather observations will no longer be available. Generally, the NWS offices will be closed between 10 p.m. and 6 a.m. local time; however, the hours will vary according to location and date. Since designation of the control zones is dependent on the availability of weather observations, actual dates/times of operation of the control zones will be announced in advance by Notice to Airmen (NOTAM) and thereafter as published in the airport/facility directory.

**DATES:** Comments must be received on or before: April 28, 1989.

**ADDRESSES:** Send comments on the proposal in triplicate to: Federal Aviation Administration, ASO-530, Manager, Airspace and Procedures Branch, Docket No. 89-ASO-2, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763-7646.

**FOR FURTHER INFORMATION CONTACT:** James G. Walters, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89-ASO-2." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRM's**

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal



Aviation Administration, Manager, Airspace and Procedures Branch (ASO-530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

**The Proposal**

The FAA is considering an amendment to § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to change the designation of the Huntsville, AL; Savannah, GA; Lexington, KY; and Knoxville, TN, control zones from full-time to part-time. This action is necessary due to reduction of operating hours by the National Weather Service Offices at these locations. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in FAA Order 7400.6D dated January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Aviation safety, Control zone.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

**PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS**

1. The authority citation for Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

**§ 71.171 [Amended]**

2. Section § 71.171 is amended as follows:

**Huntsville, AL [Amended]**

**Savannah, GA [Amended]**

**Lexington, KY [Amended]**

**Knoxville, TN [Amended]**

Add the following sentences to the existing descriptions: "This control zone is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the airport/facility directory."

Issued in East Point, Georgia, on February 23, 1989.

**William D. Wood,**

*Acting Manager, Air Traffic Division, Southern Region.*

[FR Doc. 89-5544 Filed 3-9-89; 8:45 am]

BILLING CODE 4910-13-M

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**14 CFR Parts 71 and 73**

**[Airspace Docket No. 88-ASW-60]**

**Proposed Establishment of Restricted Areas R-6316 Eagle Pass, TX; R-6317 El Sauz, TX; R-6318 Marfa, TX; and Proposed Alteration of VOR Federal Airway V-13; TX**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to establish Restricted Areas R-6316 located near Eagle Pass, TX; R-6317 located near El Sauz, TX; and R-6318 located near Marfa, TX; and to alter the description of Federal Airway V-13 located in the vicinity of El Sauz, TX. This action would provide for the deployment of a tethered aerostat-borne radar-system at each restricted area at the request of the United States Customs Service. This action would allow the Customs Service to provide surveillance of airspace from ground level to an altitude of 15,000 feet mean sea level and detect low altitude suspect aircraft attempting to penetrate the airspace.

**DATE:** Comments must be received on or before April 24, 1989.

**ADDRESSES:** Send comments on the proposal in triplicate to: Director, FAA, Southwest Region, Attention: Manager, Air Traffic Division, Docket No. 88-ASW-60, Federal Aviation Administration, Fort Worth, TX 76193-0530.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

**FOR FURTHER INFORMATION CONTACT:** Jesse B. Bogan Jr., Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9255.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposals. Comments are specifically invited on the overall regulatory, aeronautical, economic and energy aspects of the proposals. Send comments on environmental and land use aspects to: Department of Treasury, U.S. Customs Service, Mr. Robert O. Holliday, Director, Research and Development Division, 1301 Constitution Avenue, NW., Washington, DC 20229; (202) 566-5371. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88-ASW-60." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA

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personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRM's**

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

**The Proposals**

The FAA is considering amendments to Parts 71 and 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) to establish Restricted Areas R–6316 located near Eagle Pass, TX; R–6317 located near El Saux, TX; and R–6318 located near Marfa, TX; and to alter VOR Federal Airway V–13 located in the vicinity of El Saux, TX. The U.S. Customs Service would deploy a tethered aerostat-borne radar system at each location with the capability of detecting low altitude suspect aircraft attempting to penetrate the airspace. The system would increase the probability of the interception and interdiction of suspect aircraft and provide low altitude radar coverage for the Customs Service. In order to achieve the aim of the Customs Service, it would be necessary to restrict airspace from the surface to 15,000 feet MSL, within a 3-statute-mile radius of a point on the Laughlin VORTAC 156°T(146°M) radial, 64 miles from the VORTAC, for R–6316; from the surface to 15,000 feet MSL, within a 3-statute-mile radius of a point on the McAllen VOR 307°T(296°M) radial, 39 miles from the VOR, for R–6317; and from the surface to 15,000 feet MSL, within a 2-statute-mile radius of a point on the Marfa VOR 292°T(281°M) radial, 21 miles from the VOR, for R–6318. R–6316, R–6317, and R–6318 would also be added to the Continental Control Area. Sections 71.123, 71.151 and 73.63 of Parts 71 and 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) were republished in Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Parts 71 and 73**

Aviation safety, Continental control area, Restricted areas, VOR Federal airways.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Parts 71 and 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) as follows:

**PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS**

1. The authority citation for Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

**§ 71.123 [Amended]**

2. Section 71.123 is amended as follows:

**V–13 [Amended]**

By removing the words "From Laredo, TX, via INT Laredo 156° and McAllen, TX, 306° radials; McAllen;" and by substituting the words "From McAllen, TX, via"

**§ 71.151 [Amended]**

3. Section 71.151 is amended as follows:

**R–6316 Eagle Pass, TX [New]**

**R–6317 El Saux, TX [New]**

**R–6318 Marfa, TX [New]**

**PART 73—SPECIAL USE AIRSPACE**

4. The authority citation for Part 73 continues to read as follows:

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

**§ 73.63 [Amended]**

5. Section 73.63 is amended as follows:

**R–6316 Eagle Pass, TX [New]**

Boundaries. A 3-mile radius centered at lat. 28°23'08" N., long. 100°17'10" W.
Designated altitudes. Surface to 15,000 feet MSL.
Time of designation. Continuous.
Controlling agency. FAA, Houston ARTCC.
Using agency. United States Customs Service.

**R–6317 El Saux, TX [New]**

Boundaries. A 3-mile radius centered at lat. 26°34'12" N., long. 99°49'08" W.
Designated altitudes. Surface to 15,000 feet MSL.
Time of designation. Continuous.
Controlling agency. FAA, Houston ARTCC.
Using agency. United States Customs Service.

**R–6318 Marfa, TX [New]**

Boundaries. A 2-mile radius centered at lat. 30°26'00" N., long. 104°20'00" W.
Designated altitudes. Surface to 15,000 feet MSL.
Time of designation. Continuous.
Controlling agency. FAA, Albuquerque ARTCC.
Using agency. United States Customs Service.

Issued in Washington, DC, on February 28, 1989.

Harold W. Becker,
*Manager, Airspace-Rules and Aeronautical Information Division.*

[FR Doc. 89–5550 Filed 3–9–89; 8:45 am]
BILLING CODE 4910–13–M

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**Maritime Administration**

**46 CFR Part 221**

**[Docket No. R–124]**

**RIN 2133–AA73**

**Approval of Vessel Charters to Noncitizens**

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Maritime Administration (MARAD) is proposing to amend its regulations governing required approval for certain transactions involving the transfer to a noncitizen of U.S.-documented vessels owned by citizens of the United States. This rulemaking would grant general approval for a type of vessel charter involving drilling contracts for the employment of mobile offshore drilling units (MODUs). Such general approval would be granted to drilling contracts (a form of transfer), for a period not to exceed two years, where the MODU owner is a citizen of the United States and the other party is a noncitizen affiliate of the owner or the person making the vessel available for charter.

**DATES:** MARAD will consider all written comments by interested persons received on or before April 24, 1989. Those submitting comments that wish to receive acknowledgment that MARAD has received the comments should include a stamped, self-addressed postcard.

**ADDRESS:** Send comments (the original plus five copies are requested but not required) to the Secretary, Maritime Administration, Room 7300, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. All comments will be made available during normal business hours in Room 7300.

**FOR FURTHER INFORMATION CONTACT:** Jessie Fernanders, Vessel Transfer and Disposal Officer, Maritime Administration, 400 Seventh Street, SW., Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:** Section 9 of the Shipping Act, 1916, (46 App. U.S.C. 808) makes it unlawful, without the approval of the Maritime Administrator, to sell, mortgage, lease, charter, deliver, or in any manner transfer to a noncitizen, any interest in or control of a documented vessel owned by a citizen of the United States, or place a documented vessel under foreign registry or operate that vessel under the authority of a foreign country. As amended by Pub. L. 100–710, section 9 contains exceptions to the requirements for approval of all transfers to noncitizens of interests in documented vessels with respect to vessels operated only as a fishing vessel, fish processing vessel, fish tender vessel or a vessel operated only for pleasure (46 CFR 221.15(b)). By its regulations at 46 CFR Part 221, MARAD has granted administrative general approval for charters of documented vessels by citizens to noncitizens for a period not to exceed six months. This general approval is specifically inapplicable to all bareboat charters or subcharters, other than with respect to vessel types that are exempt from transfer approval under § 221.15(b). A bareboat charter is one where the charterer takes possession of the vessel and exercises direct control over the actual operation of the vessel.

In response to a petition for rulemaking submitted by the International Association of Drilling Contractors (IADC), MARAD issued an Advance Notice of Proposed Rulemaking (ANPRM) on November 2, 1988 (53 FR 44208). The ANPRM solicited comments, due by January 3, 1989, on the IADC proposal that MARAD grant general approval for bareboat charters and subchapters of mobile offshore drilling units (MODUs) by citizens of the United States to affiliates which are noncitizens. The IADC represents offshore and onshore drilling and well-servicing companies that it claims are responsible for producing over 90 percent of all onshore and offshore wells drilled around the world since March 31, 1987. IADC membership includes drilling and well-servicing contractors, oil and gas producing firms, and associate member companies.

Petitioner alleged that amendment to MARAD's regulations should provide approval for intra-company charters and subcharters, irrespective of duration, to ensure that American offshore drilling companies obtain their fair share of overseas drilling contracts. Petitioner stated that MARAD general approval of intra-company charters to noncitizen affiliates is needed because such charters are an integral part of doing business abroad in the offshore drilling industry, and much of the new offshore drilling activity now occurs outside of the United States and its contiguous waters. It projected that future opportunities will continue to be concentrated in foreign countries. Petitioner stated that while MARAD has routinely approved applications for intra-company charters of MODUs, approval can take at least several weeks and as much as one month. A necessary response time on solicitations for foreign drilling contracts is often very short, typically 14 days. Offerors that must wait for MARAD approval to execute a charter or drilling contract are at a disadvantage in competing with foreign competitors that do not need to get approval. Petitioner stated that many drilling contracts and related bareboat charters are of short duration and require the shortest response time.

The IADC proposed amendment also would require the vessel owner or owner's representative to file a copy of the charter with MARAD not later than 20 days after the beginning of the charter period.

The proposed amendments in the ANPRM were to the regulations at 46 CFR Part 221 that existed prior to MARAD's publication of an interim final rule, on February 2, 1989, (54 FR 5382). MARAD issued that rulemaking to conform its regulations to reflect significant changes in the law contained in Pub. L. 100–170, which became effective on January 1, 1989. The IADC proposed amendment provided for MARAD general approval of charters of a documented MODU by a citizen to a noncitizen affiliate, as defined, without time limitation.

MARAD received five comments in response to the ANPRM. Generally favorable comments were received from two offshore drilling operators, a trade association representing offshore drilling operators and other maritime interests, and a law firm representing an offshore drilling operator. Another law firm representing an operator of ocean-going tug barges in the coastwise trade opposed the "generic extension of this approval authority" by MARAD. That commenter submitted that it is important to examine vessel transfers subject to section 9 under rigorous case-by-case review to learn whether the transfer would be compatible with national interests, including national defense. It stated that there is not a demonstrated need for such an amendment of the MARAD regulations governing transfers of documented vessels to noncitizens. In proposing these amendments, MARAD has determined that the vessel transfers that are contemplated are compatible with national interests.

One offshore drilling operator suggested a further amendment to require that a MARAD general approval be granted for a period not to exceed two years, and only for drilling contracts that assure that the U.S. citizen owner retains control of the marine operations, noting that the majority of drilling contracts give the operator the right to take over drilling operations. Those provisions are incorporated in this NPRM. The same commenter also would eliminate the requirement in the ANPRM that the vessel owner or owner's representative file with MARAD a copy of the charter within twenty days after the beginning of a charter period, and would substitute the requirement for filing a written notice of the charter and its expected commencement and termination dates. Another offshore drilling operator opposed the requirement for submitting a copy of the charter as being unnecessary paperwork. A similar requirement is now applicable to charters, not to exceed six months, pursuant to provision of § 221.17(c). There have been no protests from those now subject to this requirement, which has existed since 1986. Consistent with that provision, a time period of thirty days is now being proposed, rather than the twenty days provided for in the ANPRM.

The law firm representing an offshore drilling operator noted that under Pub. L. 100–710, transfers to noncitizens of a documented vessel do not requite MARAD approval if the owner is not a citizen of the United States. That



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commenter would require that the noncitizen affiliate be related to either the owner or the entity making the vessel available for charter, and that provision is being incorporated in this NPRM.

**Analysis of Regulatory Impact**

This rulemaking has been reviewed under Executive Order 12291, and it has been determined that this is not a major rule. It will not result in an annual effect on the economy of $100 million or more. There will be no increase in production costs or prices for consumers, individual industries, Federal, State or local governments, agencies, or geographic regions. Furthermore, it will not adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rulemaking does not involve any change in important Departmental policies and is considered nonsignificant under Department of Transportation Regulatory policies and procedures (DOT Order 2100.5). The economic impact should be minimal, and further regulatory evaluation is not necessary. Moreover, the Maritime Administrator certifies that this amendment will not have a significant economic impact on a substantial number of small entities.

This rulemaking does not significantly affect the environment. An environmental impact statement is not required under the National Environmental Policy Act of 1969. It has also been reviewed under Executive Order 12612, Federalism, and it has been determined that it does not have sufficient implications for federalism to warrant preparation of a Federalism Assessment.

Finally, this rulemaking contains a reporting requirement that has been previously approved by the Office of Management and Budget (Approval No. 2133–0006).

MARAD has reviewed the comments received in response to the ANPRM, with recognition of the changes in the regulations at 46 CFR Part 221 that has been effected by the interim final rule published on February 2, 1989, in implementation of Pub. L. 100–710. This notice of proposed rulemaking would add a new paragraph "(f) *Drilling Contracts*" to § 221.17, which would give MARAD general approval for drilling contracts relating to any documented MODU, not to exceed two years in duration, where the MODU owner is a citizen of the United States and the other contracting partner (charterer) is a noncitizen.

**List of Subjects in 46 CFR Part 221**

Maritime Administration, maritime carriers.

Accordingly, it is proposed to amend the regulations at 46 CFR Part 221 as follows:

**PART 221—[AMENDED]**

1. The authority citation for 46 CFR Part 221 continues to read as follows:

Authority: Secs. 2, 9, 37, 41 and 43, Shipping Act 1916, as amended and sec. 204(b) and 708, Merchant Marine Act 1936 as amended (46 App. U.S.C. 802, 803, 808, 835, 839, 841a, 1114(b), 1195); 49 CFR 1.66.

2. Section 221.17 is amended to add a new paragraph (f) to read as follows:

**§ 221.17 [Amended]**

* * * * *

(f) *Drilling Contracts.* The Maritime Administrator hereby approves drilling contracts relating to any documented mobile offshore drilling unit (MODU), for a period not to exceed two years, where the owner of the MODU is a citizen of the United States and the other party to the drilling contract is noncitizen affiliate of the owner or the person making the vessel available for charter.

(1) "Drilling contract," for purposes of this paragraph, means a contract for the drilling of oil or gas wells, by the terms of which the owner of the MODU or its affiliate maintains control of the marine operations of the MODU at all times during the contract period.

(2) "Affiliate," for purposes of this paragraph means a corporation, partnership, or other legal entity that owns or controls, is owned or controlled by, or is under common ownership or control with the owner or entity making the vessel available for charter.

(3) "Control," for purposes of this paragraph only, means the possession, direct or indirect, or the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise. Assertion of control in a drilling contract shall be accepted as *prima facie* evidence of control.

By Order of the Maritime Administrator.

Date: March 6, 1989.

**James E. Saari,**

*Secretary, Maritime Administration.*

[FR Doc. 89–5586 Filed 3–9–89; 8:45 am]

BILLING CODE 4910–81–M

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 73**

**[MM Docket No. 89–48, RM–6502]**

**Radio Broadcasting Services; Gray, GA**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition by Donald W. Earnhart seeking the allotment of Channel 243A to Gray, Georgia, as the community's first local FM service. Channel 243A can be allotted to Gray in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for this allotment are North Latitude 33–00–36 and West Longitude 83–32–06.

**DATES:** Comments must be filed on or before April 27, 1989, and reply comments on or before May 12, 1989.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Donald W. Earnhart, P.O. Box 3878, Jackson, GA 30233 (Petitioner) and Larry G. Fuss, P.O. Box 4010, Opelika, AL 36803 (Consultant to petitioner).

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–48 , adopted February 14, 1989, and released March 6, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW. Suite 140, Washington, DC. 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission

**Karl A. Kensinger,**

*Chief, Allocations Branch, Policy and Rules Division/Mass Media Bureau.*

[FR Doc. 89–5587 Filed 3–9–89; 8:45 am]

BILLING CODE 6712–01–M

**47 CFR Part 73**

**[MM Docket No. 89–49, RM–6541]**

**Radio Broadcasting Services; Baton Rouge, LA**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition by Vetter Communications Company, Inc., proposing the substitution of Channel 264C for Channel 264C1 at Baton Rouge, Louisiana, and modification of its license accordingly. A site restriction of 16.3 kilometers (10.1 miles) southwest of the city has been proposed, at coordinates 30–19–35 and 91–16–36.

**DATES:** Comments must be filed on or before April 27, 1989, and reply comments on or before May 12, 1989.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Michelle K. Rusk, Esquire, Peter H. Doyle, Esquire, Dow, Lohnes & Albertson, 1255 Twenty-third Street, NW., Suite 500, Washington, DC 20037 (Counsels for petitioner).

**FOR FURTHER INFORMATION CONTACT:** Patricia Rawlings, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–49, adopted February 14, 1989, and released March 6, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission

**Karl Kensinger,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 89–5588 Filed 3–9–89; 8:45 am]

BILLING CODE 6712–01–M

**47 CFR Part 73**

**[MM Docket No. 89–52, RM–6513]**

**Radio Broadcasting Services; Marlow, OK**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition by Austin Broadcast Services, Inc. proposing the substitution of Channel 221C1 for Channel 221C2 at Marlow, Oklahoma, and the modification of its license for Station KFXI(FM) accordingly. Channel 221C1 can be allotted to Marlow in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for this allotment are North Latitude 34–38–54 and West Longitude 97–57–30. In accordance with § 1.420(g) of the Commission's Rules, competing expressions of interest in use of the channel at Marlow will not be considered.

**DATES:** Comments must be filed on or before April 27 , 1989, and reply comments on or before May 12, 1989.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Jeffrey D. Southmayd, Esq., Southmayd, Powell & Taylor, 1764 Church Street, NW., Washington, DC 20036 (Counsel to petitioner).

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–52, adopted February 14, 1989, and released March 6, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission

**Karl A. Kensinger,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 89–5590 Filed 3–9–89; 8:45 am]

BILLING CODE 6712–01–M

**47 CFR Part 73**

**[MM Docket No. 89–51, RM–6576, RM–6644]**

**Radio Broadcasting Services; Port Matilda and Petersburg, PA**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on two mutually exclusive petitions for rule making. P.A.C. Communications, Inc. proposes the allotment of Channel 300A to Port Matilda, Pennsylvania, and Victor A. Michael proposes the allotment of Channel 300A to Petersburg, Pennsylvania. The channel could provide either community with its first local FM service. Channel 300A can be

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allotted to Port Matilda in compliance with the Commission's minimum distance separation requirements with a site restriction of 2.2 kilometers (1.4 miles) southwest to avoid a short-spacing to Station WGBR, Williamsport, Pennsylvania. Channel 300A can be allotted to Petersburg in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. Canadian concurrence is required since both communities are located within 320 kilometers of the U.S.-Canadian border.

**DATES:** Comments must be filed on or before April 27, 1989, and reply comments on or before May 12, 1989.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Allan G. Moskowitz, Esq., Kaye, Scholer, Fierman, Hays & Handler, The McPherson Building, 901 15th Street, NW., Suite 1100, Washington, DC 20005 (Counsel to P.A.C. Communications); Victor A. Michael, R.D. #1, Box 59, Benton, Pennsylvania 17814 (Petitioner for Petersburg).

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-51, adopted February 14, 1989, and released March 6, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission

**Karl A. Kensinger,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 89-5591 Filed 3-9-89; 8:45 am]

BILLING CODE 6712-01-M

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**47 CFR Part 73**

**[MM Docket No. 89-60; RM-6615]**

## Radio Broadcasting Services; Walhalla, SC

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition by Appalachian Broadcasting Company proposing the allotment of Channel 242A to Walhalla, South Carolina, as the community's first local FM service. Channel 242A can be allotted to Walhalla in compliance with the Commission's minimum distance separation requirements with a site restriction of 11.2 kilometers (7.0 miles) northeast to avoid a short-spacing to Stations WKLS, Channel 241C, Atlanta, Georgia, and WRXR-FM, Channel 242C2, Aiken, South Carolina.

**DATES:** Comments must be filed on or before April 27, 1989, and reply comments on or before May 12, 1989.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Ron McKay, Associated Radio Resources, 3 Broad Street, Charleston, South Carolina 29401 (Consultant to petitioner).

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-50, adopted February 14, 1989, and released March 6, 1989. The full complete text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Karl A. Kensinger,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 89-5592 Filed 3-9-89; 8:45 am]

BILLING CODE 6712-01-M

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**47 CFR Part 73**

**[MM Docket No. 89-53, RM-6614]**

## Radio Broadcasting Services; Salem and Sioux Falls, SD

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition by Rayfield Crume requesting the substitution of Channel 283C1 for Channel 283C2 at Salem, South Dakota, and the modification of its permit accordingly. In addition, petitioner requests the substitution of Channel 252A for Channel 281A at Sioux Falls, South Dakota, and the modification of Station KCFS' construction permit to specify the alternate Class A channel. Both channels can be allotted in compliance with the Commission's minimum distance separation requirements and can be used at the transmitter sites specified their respective construction permits. The coordinates for Channel 283C1 at Salem are North Latitude 43-29-18 and West Longitude 97-26-34. The coordinates for Channel 252A at Sioux Falls are North Latitude 34-31-57 and West Longitude 96-44-20.

**DATES:** Comments must be filed on or before April 27, 1989, and reply comments on or before May 12, 1989.

**ADDRESS:** Federal Communications Commission, Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Richard J. Hayes, Jr., Esq., 1359 Black Mountain Road, Greenwood Plantation, Spotsylvania, Virginia 22553 (Counsel to petitioner).

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making and Order to Show Cause, MM Docket No. 89-53, adopted February 15, 1989, and released March 6, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission

**Karl A. Kensinger,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 89-5593 Filed 3-9-89; 8:45 am]

BILLING CODE 6712-01-M

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# Notices

Federal Register
Vol. 54, No. 46
Friday, March 10, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Forest Service

### West Moyie Timber Sales; Environmental Impact Statement

**ACTION:** Notice of intent to prepare an environmental impact statement.

**SUMMARY:** The notice is hereby given that the Forest Service is gathering information in order to prepare an Environmental Impact Statement (EIS) for a proposal to harvest timber and build roads in the west slopes of the Moyie River drainage. The drainage is located approximately 12 air miles northeast of Bonners Ferry, Idaho. Part of the proposed timber harvest and road construction are proposed within the Hellroaring Roadless Area (No. 01128). These management activities would be administered by the Bonners Ferry Ranger District of the Idaho Panhandle National Forests in Boundary County, Idaho.

This EIS will tier to the Forest Plan (September 1987) which provides the overall guidance (Goals, Objectives, Standards and Guidelines, and Management Area direction) in achieving the desired future condition for this area. The purpose and goal for the proposed action is to help satisfy short-term demands for timber and maintain a continuous supply of timber in the future, and to provide for increased big game winter range.

The Forest Service also serves notice that the agency is seeking information and comments from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. This input will be used in preparing the Draft EIS. This process will include:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Identification of additional reasonable alternatives.
5. Identification of potential environmental effects of the alternatives.
6. Determination of potential cooperating agencies and task assignments.

The agency invites written comments and suggestions on the issues and management opportunities in the area being analyzed.

**DATE:** Comments concerning the scope of the analysis must be received by April 15, 1989.

**ADDRESSES:** Send written comments to District Ranger, Bonners Ferry Ranger District, Route 4, Box 4860, Bonners Ferry, ID 83805.

**FOR FURTHER INFORMATION CONTACT:** Questions about the proposed action and environmental impact statement should be directed to Allen Chrisman, Timber Management Assistant, Bonners Ferry Ranger District, Idaho Panhandle National Forests, Route 4, Box 4860, Bonners Ferry, ID 83805. Phone: (208) 267-5561.

**SUPPLEMENTARY INFORMATION:** Management activities under consideration would occur in an area encompassing approximately 18,600 acres of National Forest lands on the Bonners Ferry Ranger District. Included in the area of analysis are all or portions of the following: sections 2-4, 9-11, and 14-16, T63N, R2E; sections 2-11, 14-18, 20-23, 26-29, and 32-35, T64N, R2E; sections 1, 12, and 13, T64N, R1E; and sections 21 and 27-35, T65N, R2E, BM, Boundary County, State of Idaho. The Forest Plan provides the overall guidance for management activities in the potentially affected area through its Goals, Objectives, Standards and Guidelines, and Management Area direction. The potentially affected area is within the following Management Areas:

**Management Area 1**

Consists of lands designated for timber production. The management goal is to manage those lands suitable for timber production for the long-term growth and production of commercially valuable wood products, as well as provide for soil and water protection, wildlife habitat, dispersed recreation opportunities, and visual quality.

**Management Area 9**

Consists of non-forest lands or lands not capable of timber production. Management goals are to maintain and protect existing improvements and resource productive potentials. No timber harvest will occur, but roads constructed to access harvest areas in the other management areas may cross portions of this management area.

**Management Area 4**

Consists of lands designated for timber production within big game winter range. The goal is to manage big game winter range to provide forage to support projected big game habitat needs through scheduled timber harvest and permanent forage areas.

**Management Area 18**

Consists of lands that are comprised of an aquatic ecosystem and adjacent upland areas that have direct relationships with the aquatic system. Management goals are to manage riparian areas to feature riparian-dependent resources while producing other resource outputs at levels compatible with the objectives for dependent resources. Timber harvesting may occur, and roads constructed to access harvest areas in the other management areas may cross portions of this management area.

A range of alternatives will be considered. One of these will be the "no-action" alternative, in which the roadless character of the Hellroaring Roadless Area would be maintained and timber harvest and associated road building would be deferred. Other alternatives will examine timber harvest and road construction in different locations and varied cutting methods and timber management intensities to achieve management area goals.

The Forest Service will analyze and document the direct, indirect, and cumulative environmental effects of the alternatives. This will include an analysis of the effects of the alternatives on the roadless character of the area affected. In addition, the EIS will contain an analysis of site-specific mitigation measures.

Public participation will be important during the analysis. People may visit with Forest Service officials at any time during the analysis and prior to the decision; however, two periods of time



are identified for the receipt of comments on the analysis. The two public comment periods are during the scoping process (now until April 15, 1989) and during the review of the Draft EIS (September 1989).

The Fish and Wildlife Service, Department of the Interior, will be informally consulted throughout the analysis. To meet the requirements of the Endangered Species Act, the Fish and Wildlife Service will review the EIS and biological evaluation and, if necessary, render a formal Biological Opinion of the effects on the Threatened and Endangered Species, including the grizzly bear.

The Draft Environmental Impact Statement (DEIS) is expected to be available for public review in September 1989. After a 45-day public comment period, the comments received will be analyzed and considered by the Forest Service in preparing the Final Environmental Impact Statement (FEIS). The FEIS is scheduled to be completed by June 1990. The Forest Service will respond to the comments received in the FEIS. The District Ranger, who is the responsible official for this EIS, will make a decision regarding this proposal, considering the comments and responses, environmental consequences discussed in the FEIS, and applicable laws, regulations, and policies. The decision and reasons for the decision will be documented in a Record of Decision.

Charles Prausa, District Ranger for the Bonners Ferry Ranger District, is the responsible official.

Dated: March 3, 1989.

**Charles Prausa,**

*District Ranger, Bonners Ferry Ranger District, Idaho Panhandle National Forests.*

[FR Doc. 89-5598 Filed 3-9-89; 8:45 am]

BILLING CODE 3410-11-M

### Rock Creek Watershed Environmental Impact Statement

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare an environmental impact statement.

**SUMMARY:** The Department of Agriculture, Forest Service will prepare an environmental impact statement (EIS) for a proposal to implement commercial timber sales within portions of the Rock Creek watershed on the Ukonom Ranger District.

**DATE:** Comments concerning the scope of the analysis should be received by May 1, 1989.

**ADDRESSES:** Send written comments and suggestions concerning the scope of the analysis to Alice R. Forbes, District Ranger, Ukonom Ranger District, P.O. Drawer 410, Orleans, CA 95556.

**FOR FURTHER INFORMATION CONTACT:** Questions about the proposed action and environmental impact statement should be directed to Penny Eckert, TMO, Ukonom Ranger District, phone (916) 627-3291.

**SUPPLEMENTARY INFORMATION:** A range of alternatives for this area will be considered. One of these will be no road construction or timber harvest. Other alternatives will consider an array of resource management strategies.

Federal, State, and local agencies, and other individuals or organizations who may be interested in or affected by the decision are hereby invited to participate in the scoping process. This process will include:

1. Identification of potential issues.
2. Identification of issues to be analyzed in dept.
3. Elimination of insignificant issues or those which have been covered by a previous environmental review.
4. Determination of potential cooperating agencies and assignment of responsibilities.

The U.S. Fish and Wildlife Service, Department of the Interior, will be invited to participate as a cooperating agency to evaluate potential impacts on threatened and endangered species habitat if any such species are found to exist in the watershed.

The District Ranger will host a public meeting in the back conference room of the Ukonom Ranger Station, Orleans, California at 7:00 p.m. on Monday, March 27, 1989.

The analysis is expected to take about 10 months.

The draft environmental impact statement (DEIS) is to be filed with the Environmental Protection Agency (EPA) and to be available for public review by January 1990.

The comment period on the draft environmental impact statement (DEIS) will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the **Federal Register.** It is very important that those interested in the management of the Rock Creek Watershed EIS participate at that time. To be the most helpful, comments on the DEIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of DEIS' must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions. *Vermont Yankee Nuclear Power Corp. v. NRDC,* 435 U.S. 519, 553 (1978), and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement (FEIS). *Wisconsin Heritages, Inc. V. Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the FEIS.

After the comment period ends on the draft EIS, the comments will be analyzed and considered by the Forest Service in preparing the final environmental impact statement (FEIS). The FEIS is scheduled to be completed by May 1990. The Forest Service is required to respond in the FEIS to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, disclosure of environmental consequences, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and rationale in the Record of Decision. That decision will be subject to appeal under 36 CFR Part 217.

Date: March 1, 1989.

**Robert L. Rice,**

*Forest Supervisor.*

[FR Doc. 89-5597 Filed 3-9-89; 8:45 am]

BILLING CODE 3410-11-M

## DEPARTMENT OF COMMERCE

### Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* Bureau of the Census
*Title:* Aluminum Ingot and Mill Products—Current Industrial Reports
*Form Number:* M33D (formerly ITA 978)
*Type of Request:* New
*Burden:* 1,800 hours
*Number of Respondents:* 300
*Avg Hours Per Response:* 30 minutes
*Needs and Uses:* This survey provides a key measure of aluminum receipts and shipments on a national basis. Government agencies, business firms.

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trade associations, and private research and consulting organizations use these data.

*Affected Public:* Businesses or other for-profit

*Frequency:* Monthly/Annual

*Respondent's Obligation:* Monthly/Voluntary; Annual/Mandatory

*OMB Desk Officer:* Francine Picoult 395-7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: February 28, 1989.

Edward Michals,

*Departmental Clearance Officer, Office of Management and Organization.*

[FR Doc. 89-5585 Filed 3-9-89; 8:45 am]

BILLING CODE 3510-CW-M

## Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* Bureau of the Census.

*Title:* The 1990 Census of Puerto Rico.

*Form Number:* D-1APR(E)/(S), D-2APR(E)/(S), D-1PR(S), D-3PR(S), D-14PR(S), D-20APR(E)/(S), D-20BPR(E)/(S), D-21PR, D-23PR, D-25PR(E)/(S), D-31(PR).

*Type of Request:* New.

*Burden:* 349,200 hours.

*Number of Respondents:* 1,100,000.

*Average Hours Per Response:* 19 minutes.

*Needs and Uses:* Data collected in this decennial census, mandated by Article 1, Section 2 of the U.S. Constitution, will be used to draw legislative district boundaries, allocate Commonwealth and Federal funds, and in private sector decision-making.

*Affected Public:* Individuals or households.

*Frequency:* One time.

*Respondent's Obligation:* Mandatory.

*OMB Desk Officer:* Francine Picoult, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: March 1, 1989.

Edward Michals,

*Departmental Clearance Officer, Office of Management and Organization.*

[FR Doc. 89-5584 Filed 3-9-89; 8:45 am]

BILLING CODE 3510-CW-M

## National Oceanic and Atmospheric Administration

### Caribbean Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service, NOAA, Commerce.

The Caribbean Fishery Management Council's Administrative Committee will meet on March 17, 1989, at 9 a.m., at the Caribbean Council's office (address below). The Committee will discuss issues related to its regular administrative operations and discuss development of fishery management plans. The meeting is open to the public.

For further information contact the Caribbean Fishery Management Council, Banco de Ponce Building, Suite 1108, Hato Rey, PR 00918-2577; (809) 766-5926.

Date: March 7, 1989.

Richard H. Schaefer,

*Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 89-5619 Filed 3-9-89; 8:45 am]

BILLING CODE 3510-22-M

## COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

### Procurement List 1989; Additions and Deletion

**AGENCY:** Committee for Purchase from the Blind and Other Severely Handicapped.

**ACTION:** Additions to and deletion from procurement list.

**SUMMARY:** This action adds to and deletes from Procurement List 1989 commodities and a military resale commodity to be produced by workshops for the blind or other severely handicapped.

**EFFECTIVE DATE:** April 10, 1989.

**ADDRESS:** Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

**FOR FURTHER INFORMATION CONTACT:** Beverly Milkman (703) 557-1145.

**SUPPLEMENTARY INFORMATION:** On November 18 and December 9, 1988, January 6 and January 13, 1989, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (53 FR 46845 and 49730, 54 FR 457 and 1408) of proposed additions to and deletion from Procurement List 1989, which was published on November 15, 1988 (53 FR 46018).

### Additions

No comments were received concerning the proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of qualified workshops to produce the commodities and military resale commodity at a fair market price and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and military resale commodity listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities and military resale commodity listed.

c. The actions will result in authorizing small entities to produce the commodities and military resale commodity procured by the Government.

Accordingly, the following commodities and military resale commodity are hereby added to Procurement List 1989:

**Commodities**

Towel, Paper
7920-00-823-9772
(Requirements for GSA Regions 2, 8, 9 and 10)

Buckle, Belt
8315-01-075-1818



**Military Resale Item No. and Name**

No. 908 Broom, Push, 18", Indoor/Outdoor

### Deletion

After consideration of the relevant matter presented, the Committee has determined that the commodity listed below is no longer suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6.

Accordingly, the following commodity is hereby deleted from Procurement List 1989:

Pencil, Mechanical
7520-00-285-5818

Beverly L. Milkman,

*Executive Director.*

[FR Doc. 89-5582 Filed 3-9-89; 8:45 am]

BILLING CODE 6820-33-M

## Procurement List 1989; Proposed Additions

**AGENCY:** Committee for Purchase from the Blind and Other Severely Handicapped.

**ACTION:** Proposed additions to procurement list.

**SUMMARY:** The Committee has received a proposal to add to Procurement List 1989 commodities to be produced and services to be provided by workshops for the blind and other severely handicapped.

*Comments must be received on or before:* April 10, 1989.

**ADDRESS:** Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

**FOR FURTHER INFORMATION CONTACT:** Beverly Milkman (703) 557-1145.

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and services to Procurement List 1989, which was published on November 15, 1988 (53 FR 46018):

**Commodities**

Folder, File, Kraft
7530-00-985-7097

Sweatpants
8415-01-234-4409
8415-01-234-4410
8415-01-234-4411
8415-01-234-4412
8415-01-234-4413

Sweatshirt
8415-01-234-4420
8415-01-234-4421
8415-01-234-4422
8415-01-234-4423
8415-01-234-4424

**Services**

Janitorial/Custodial, Federal Building and U.S. Courthouse, 15 Henry Street, Binghamton, New York

Janitorial/Custodial, Marine Corps Combat Development Command, Building 1019, Quantico, Virginia

Janitorial/Elevator Operation Service, Navy Yard Annex, Buildings 74, 158, 167, 191, 197 & 202, Washington, DC

Beverly L. Milkman,

*Executive Director.*

[FR Doc. 89-5583 Filed 3-9-89; 8:45 am]

BILLING CODE 6820-33-M

## DEPARTMENT OF DEFENSE

### Corps of Engineers, Department of the Army,

### Notice of Tentative Sponsor Selection and Request for Additional Proposals; Proposed Norfolk Dam Unit Number 3

**AGENCY:** Department of the Army, U.S. Army Corps of Engineers, Little Rock, District.

**ACTION:** Notice of Tentative Selection of the City of Conway, Arkansas, as the Financial Sponsor and Preference Customer relating to the Proposed Norfolk Dam Unit 3 Hydroelectric Power Project in Arkansas and Request for Additional Proposals. This announcement is being made to fulfill the selection criteria as agreed upon by the Corps of Engineers and Southwestern Power Administration on November 9, 1988.

**SUMMARY:** The Norfolk Dam is located near Norfolk, Arkansas, on the North Fork River, a major north bank tributary of the White River. The U.S. Army Corps of Engineers (Corps) constructed the project and is responsible for its operation. The project was authorized for flood control by the Flood Control Act approved June 28, 1938 (Public Law 761, 75th Congress, 3rd session) and modified to provide facilities for generation of power by the Flood Control Act of August 18, 1941 (Public Law 228, 77th Congress, 1st session). Norfolk Lake is also a major center for recreation and releases from the project support a "put-and-take" trout fishery downstream on the North Fork and White Rivers.

Provisions were made during design and construction of the project for four hydroelectric power generating units. One unit began generation in June 1944 with a second unit placed in operation in February 1950. Units 3 and 4 have not been installed at the project. Each of the two existing units have an installed capacity of 40,275 kilowatts (kW) for a total installed capacity at the project of 80,550 kW. The units generate an average of 184,000,000 kilowatt-hours (kWh) of energy annually. The hydroelectric power and energy generated at Norfolk Dam is marketed by the Southwestern Power Administration (SWPA).

The proposed addition of one hydroelectric power generating unit (Unit 3) is generally described as Plan 1 in the Corps' Little Rock District document entitled "Norfolk Lake Additional Hydroelectric Power Units 3 and 4" dated March 1983 and is authorized through the provisions of the original project authorizations. The proposed unit would have a capacity of approximately 42,500 kW and generate additional energy averaging about 5,900,000 kWh. The estimated cost of construction is $46,000,000 (based on October 1987 price levels).

The City of Conway, Arkansas (City), an incorporated city which owns a municipal electric utility system, has proposed to provide financing to the Federal government for the design and construction of Unit 3 and Norfolk Dam during the period of design and construction. Upon completion of constructon, the City proposes to pay its own debt service and a pro rata share of SWPA's hydroelectric power system's annual operation, maintenance, and replacement (OM&R) and marketing costs. The project would be designed, constructed, owned, and operated by the Corps. The power and energy would be marketed by SWPA.

The sponsor will have two years from the date the final sponsor selection notice is published in the Federal Register to enter into agreements with

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the Corps and SWPA for construction of the project. Additional time to enter into the agreements may be provided upon the sponsor's request and approval by the Corps and SWPA. If agreements cannot be negotiated within the specified time frame, the sponsorship will be cancelled automatically and new proposals for potential project sponsors will be considered.

In exchange for financing the design and construction of the project and making the required payments for OM&R and marketing costs, the City requests an allocation of approximately 36,000 kW of firm capacity with associated 1200 hours per year of firm energy from the SWPA's Interconnected System, which includes the Norfork Dam project. If the City is selected and successfully sponsors the project, it would receive the above requested allocation in accordance with Section II, Part A, paragraph 2 of SWPA's Power Allocation Policy as published in the **Federal Register** (52 FR 29881) dated August 12, 1987. The proposed arrangement between the City and SWPA would extend for 50 years after Norfolk Unit 3 is declared in commercial operation. SWPA has determined that the City qualifies for preference, in accordance with Section 5 of the Flood Control Act of 1944, as amended, to receive firm power and energy in accordance with the aforesaid terms, provided the City is the successful sponsor and can make satisfactory wheeling arrangements. Jointly, the Corps and SWPA have tentatively selected the City to be the non-Federal sponsor to provide financing for the proposed Unit 3 at Norfolk Dam.

**DATES:** Questions, comments, and/or proposals received prior to April 10, 1989 will be considered in the final selection process.

For further information about the proposed project financing, contact: Colonel Anthony V. Nida, District Engineer, Little Rock District, Corps of Engineers, P.O. Box 867, Little Rock, AR 72203.

For further information about the proposed marketing of power and energy from the project, contact: Francis R. Gajan, Director, Power Marketing, Southwestern Power Administration, P.O. Box 1619, Tulsa, OK 74101.

Issued at Little Rock, Arkansas, on 22 February 1989.

**Anthony V. Nida,**

*Colonel, Corps of Engineers District Engineer.*

[FR Doc. 89-5749 Filed 3-9-89; 8:45 am]

BILLING CODE 3710-47-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket Nos. ER89-253-000, et al.]**

### Alabama Power Co. et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

March 6, 1989.

Take notice that the following filings have been made with the Commission:

**1. Alabama Power Company**

[Docket No. ER89-253-000]

Take notice that on February 21, 1989, Alabama Power Company (Alabama Power) tendered for filing a Transmission Service Delivery Point Agreement to an existing delivery point covered by the Agreement between Alabama Power and Alabama Electric Cooperative, Inc. (AEC) for transmission Service to Distribution Cooperative Members of AEC which is dated August 28, 1989 (Agreement). Alabama Power states that this Agreement has been designated Rate schedule FERC No. 147. Alabama Power further states that the purpose of this agreement is to indicate revisions in maximum capacity requirement for the Turkey Hill delivery Point of Baldwin County EMC under the Agreement.

Alabama Power requests an effective date of December 14, 1988, and therefore requests waiver of the Commission's notice requirements.

*Comment date:* March 21, 1989, in accordance with Standard Paragraph E at the end of this notice.

**2. Arizona Public Service Company**

[Docket No. ER89-255-000]

Take notice that on February 27, 1989, Arizona Public Service Company (APS or Company) tendered for filing: (1) Amendment No. 2 to the Wholesale Power Agreement (Amendment No. 1), (2) a Transmission Service Agreement, and (3) Revision No. 1 to Exhibit B of the Wholesale Power Agreement (Revisions) all between APS and the Town of Wickenburg, Arizona (Wickenburg).

The Transmission Service Agreement is intended to supersede an Interim Letter Agreement (APS FERC Rate Schedule No. 148). Amendment No. 1 implements the terms of the Rate Settlement Agreement in FERC Docket No. ER84-450-000. The revision reduces Wickenburg's Maximum Demand under its Wholesale Power Agreement pursuant to the conditions specified in Amendment No. 1.

No changes from the currently effective Wholesale Power or Transmission (Wheeling) rate levels are proposed herein. The changes proposed herein result in a reduction in revenues of approximately ($427,000). No new facilities nor modifications to existing facilities are required to provide the aforementioned services.

A copy of this filing has been served upon Wickenburg, and the Arizona Corporation Commission.

*Comment date:* March 21, 1989, in accordance with Standard Paragraph E at the end of this document.

**3. Niagara Mohawk Power Corporation**

[Docket No. ER89-254-000]

Take notice that Niagara Mohawk Power Corporation (Niagara Mohawk), on February 27, 1989, tendered for filing an agreement between Niagara Mohawk and New England Power Company (NEP) dated November 1, 1988.

The November 1, 1988 agreement is to provide for the sale by Niagara Mohawk Power Corporation of firm capacity and related energy of New England Power Company. The terms of this agreement and the period during which the purchase of Capacity and Energy can occur shall commence on November 1, 1988 and shall continue until April 30, 1989.

Copies of this filing were served upon NEP and the New York State Public Service Commission.

*Comment date:* March 21, 1989, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraphs**

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practices and Procedure (18 CFR 385.211 and 284.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 89-5559 Filed 3-9-89; 8:45 am]

BILLING CODE 6717-01-M



**[Project No. 8375-001 Utah]**

### Blacksmith Fork; Availability of Environmental Assessment

March 7, 1989.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR, Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a major license for the proposed Blacksmith Fork project, located on the Blacksmith Fork River in Cache County, near Hyrum, Utah, and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff analyzed the potential environmental impacts of the proposed project and concluded that approval of the proposed project, with appropriate mitigative measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's offices at 825 North Capitol Street NE., Washington, DC 20426.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 89-5558 Filed 3-9-89; 8:45 am]

BILLING CODE 6716-01-M

**[Docket Nos. CP89-923-000 et al.]**

### Paiute Pipeline Co. et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission.

**1. Paiute Pipeline Company**

[Docket No. CP89-923-000]

March 3, 1989.

Take notice that on March 1, 1989, Paiute Pipeline Company (Paiute), P.O. Box 94197, Las Vegas, Nevada 89193-4197, filed in Docket No. CP89-923-000 a request pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to provide an interruptible transportation service for Southwest Gas Corporation-Northern California (Southwest Gas-Northern California), a local distribution company, under Paiute's blanket certificate issued in Docket No. CP87-309-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Paiute states that pursuant to a transportation agreement dated November 14, 1988, under its Rate Schedule IT-1, it proposes to transport up to 10,316 MMBtu equivalent of natural gas on a peak day, approximately 2,035 MMBtu equivalent of natural gas on an average day and approximately 741,900 MMBtu equivalent of natural gas on an annual basis. Paiute states that no new facilities will need to be constructed to transport the subject gas through its transmission system from the existing interconnection between the facilities of Paiute and Northwest Pipeline Corporation at the Idaho-Nevada border, and to redeliver the gas to Southwest Gas-Northern California at the North Lake Tahoe City Gate, Washoe County, Nevada. It is stated that Paiute's understanding is that Southwest Gas-Northern California will receive deliveries of the gas directly from Paiute and that the gas will be utilized by Southwest Gas-Northern California as system supply for its local distribution system in its northern California service area. Paiute advises that transportation service under § 284.223(a) commenced December 21, 1988, as reported in Docket No. ST89-1812.

*Comment date:* April 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

**2. Paiute Pipeline Company**

[Docket No. CP89-924-000]

March 3, 1989.

Take notice that on March 1, 1989, Paiute Pipeline Company (Paiute),[1] P.O. Box 94197, Las Vegas, Nevada 89193-4197, filed in Docket No. CP89-924-000 a request pursuant to § 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 284.223) for authority to provide interruptible transportation service for Southwest Gas Corporation-Northern Nevada (Northern Nevada), a local distribution company, under Paiute's blanket transportation certificate authority issued August 31, 1988, in Docket No. CP87-309-000, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Paiute states it will receive the gas at the existing interconnection of its facilities and Northwest Pipeline Corporation (Northwest) at the Idaho-Nevada border in Elko County, Nevada and deliver the gas to Northern Nevada at various points on Paiute's system in Nevada. Paiute will transport the gas pursuant to its Rate Schedule IT-1 for a primary term up to October 31, 1991.

Paiute proposes to transport up to 61,651 MMBtu of gas per peak day and approximately 40,800 MMBtu and 14,884,000 MMBtu of gas per average day and annually, respectively. Paiute states that the transportation service commenced under the 120-day automatic authorization of § 284.223(a) of the Commission's Regulations on December 21, 1988, pursuant to a transportation agreement dated November 14, 1988. Paiute notified the Commission of the commencement of the transportation service in Docket No. ST89-1811-000, on January 20, 1989.

*Comment date:* April 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

**3. Northern Natural Gas Company, Division of Enron Corp.**

[Docket No. CP89-927-000]

March 3, 1989.

Take notice that on March 1, 1989, Northern Natural Gas Company (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP89-927-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Energy Dynamics, Inc., a marketer, under the blanket certificate issued in Docket No. CP86-435-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northern states that pursuant to a transportation agreement dated January 24, 1989, under its Rate Schedule IT-1, it proposes to transport up to 15,000 MMBtu per day equivalent of natural gas for Energy Dynamics, Inc. Northern states that it would transport the gas from multiple receipt points as shown in Appendix "A" of the transportation agreement and would deliver the gas to multiple delivery points also shown in Appendix "A" of the agreement.

Northern advises that service under § 284.223(a) commenced January 24, 1989, as reported in Docket No. ST89-2220 (filed February 14, 1989). Northern further advises that it would transport 11,250 MMBtu on an average day and 5,475,000 MMBtu annually.

*Comment date:* April 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

[1] A wholly owned subsidiary of Southwest Gas Corporation.

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**4. Northern Natural Gas Company, Division of Enron Corp.**

[Docket No. CP89-925-000

March 3, 1989.

Take notice that on March 1, 1989, Northern Natural Gas Company (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP89-926-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Enron Gas Marketing, Inc., a marketer, under the blanket certificate issued in Docket No. CP86-435-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northern states that pursuant to a transportation agreement dated January 31, 1989, under its Rate Schedule IT-1, it proposes to transport up to 200,000 MMBtu per day equivalent of natural gas for Enron Gas Marketing, Inc. Northern states that it would transport the gas from multiple receipt points as shown in Appendix "A" of the transportation agreement and would deliver the gas to multiple delivery points also shown in Appendix "A" of the agreement.

Northern advises that service under § 284.223(a) commenced January 31, 1989, as reported in Docket No. ST89-2217 (filed February 14, 1989). Northern further advises that it would transport 150,000 MMBtu on an average day and 73,000,000 MMBtu annually.

*Comment date:* April 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

**5. El Paso Natural Gas Company**

[Docket No. CP89-907-000]

March 3, 1989.

Take notice that on February 24, 1989, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, field in Docket No. CP89-907-000 a request pursuant to §§ 157.205 and 284.223 (18 CFR 157.205 and 284.223) of the Commission's Regulations under the Natural Gas Act for authority to continue the interruptible transportation service for Petrus Oil Company L.P. (Petrus) a shipper of natural gas, under El Paso's blanket transportation certificate authorization which was issued by Commission order on November 2, 1988, in Docket No. CP88-433-000, all as more fully set forth in the application and open to public inspection.

El Paso indicates that it will continue to transport the gas from various receipt points and deliver the gas for the account of Petrus to various points on El Paso's system all in Moore County, Texas.

El Paso proposes to transport up to 52,750 MMBtu of gas per peak day and approximately 21,100 MMBtu of gas and 7,701,500 MMBtu of gas on an average day and annually, respectively. El Paso states that the interruptible transportation service commenced on January 28, 1988, pursuant to Part 284 Subpart B of the Commission's Regulations under the terms of a transportation agreement dated November 16, 1987, as amended December 19, 1988. El Paso notified the Commission of the commencement of the transportation service in Docket No. ST88-2341-000 on February 19, 1988.

*Comment date:* April 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

**6. Colorado Interstate Gas Company**

[Docket No. CP89-916-000]

March 3, 1989.

Take notice that on February 27, 1989, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP89-916-000, a request pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas, on an interruptible basis, for Exxon Corporation (Exxon), a producer, under its blanket certificate issued in Docket No. CP80-589-000, et al. pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

CIG states that it would transport up to 70,000 Mcf per day, for Exxon, pursuant to a Transportation Service Agreement dated November 1, 1988, between CIG and Exxon. CIG further states that it would receive the natural gas from various existing points of receipt on its system in Wyoming and would redeliver the natural gas, less fuel gas and lost and unaccounted-for gas, for the account of Exxon, in Kearny County, Kansas. CIG indicates that the estimated average daily and annual quantities would be 10,000 Mcf and 3,650,000 Mcf, respectively.

CIG states that it commenced the transportation of natural gas for Exxon on January 21, 1989, as reported in Docket No. ST89-2188-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations (18 CFR 284.223(a)).

*Comment date:* April 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

**7. Tennessee Gas Pipeline Company**

[Docket No. CP89-918-000]

March 3, 1989.

Take notice that on February 28, 1989, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89-918-000 a request pursuant to § 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service for BHP Petroleum Company, Inc. (BHP), a producer of natural gas, under its blanket certificate issued in Docket No. CP89-115-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Tennessee states that the maximum daily, average daily and annual quantities that it would transport for BHP would be 45,000 dt equivalent of natural gas, 45,000 dt equivalent of natural gas and 16,425,000 dt equivalent of natural gas, respectively.

Tennessee indicates that in Docket No. ST89-2027, filed with the Commission on January 30, 1989, it reported that transportation service for BHP had begun under the 120-day automatic authorization provisions of § 284.223(a).

*Comment date:* April 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

**8. Northern Natural Gas Company, Division of Enron Corp**

[Docket No. CP89-928-000]

March 3, 1989.

Take notice that on March 1, 1989, Northern Natural Gas Company (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed on Docket No. CP89-928-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Centran Corporation (Centran), a marketer, under the blanket certificate issued in Docket No. CP86-435-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northern states that pursuant to a transportation agreement dated February 1, 1989, under its Rate Schedule IT-1, it proposes to transport up to 10,000 MMBtu per day equivalent of natural gas for Centran. Northern states that it would transport the gas from multiple receipt points as shown in Appendix "A" of the transportation agreement and would deliver the gas to multiple delivery points also shown in Appendix "A" of the agreement. Northern further states that the proposed service may involve the compression of gas at its Fort Buford Compressor Station for delivery to Northern Border Pipeline Company.

Northern advises that service under § 284.223(a) commenced February 1, 1989, as reported in Docket No. ST89-2221 (filed February 14, 1989). Northern further advises that it would transport 7,500 MMBtu on an average day and 3,650,000 MMBtu annually.

*Comment date:* April 17, 1989, in accordance with Standard Paragraph G at the end of this notice.



**9. William Natural Gas Company**

[Docket No. CP89-901-000]

March 6, 1989.

Take notice that on February 24, 1989, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89-901-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act for authorization to provide a firm transportation service for Conoco, Inc. (Conoco), a producer of natural gas, under its blanket certificate issued in Docket No. CP86-631-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Williams states that it proposes to transport natural gas for Conoco from various points of receipt in Oklahoma and Texas to various points of delivery on Williams' system in Kansas.

Williams further states that the maximum daily, average daily and annual quantities that it would transport for Conoco would be 800 MMBtu equivalent, 320 MMBtu equivalent and 116,800 MMBtu equivalent of natural gas, respectively.

Williams states that transportation service for Conoco began on January 13, 1989 under the 120-day automatic authorization provisions of § 284.223(a) as reported in Docket No. ST89-2223-000 filed with the Commission.

*Comment date:* April 20, 1989, in accordance with Standard Paragraph G at the end of this notice.

**10. United Gas Pipe Line Company**

[Docket No. CP89-908-000]

March 6, 1989.

Take notice that on February 27, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-908-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation on behalf of MidCon Marketing Corp. (MidCon), under United's blanket certificate issued in Docket No. CP88-6-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United requests authorization to transport, on an interruptible basis, up to a maximum of 412,000 MMBtu of natural gas per day for MidCon from receipt points located in Louisiana, offshore Louisiana and Mississippi to delivery points located in Mississippi. United anticipates transporting, on an average day 412,000 MMBtu and an annual volume of 150,380,000 MMBtu.

United states that the transportation of natural gas from commenced February 1, 1989, as reported in Docket No. ST89-2270-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to United in Docket No. CP88-6-000.

*Comment date:* April 20, 1989, in accordance with Standard Paragraph G at the end of this notice.

**11. Williams Natural Gas Company**

[Docket No. CP89-902-000]

March 6, 1989.

Take notice that on February 24, 1989, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89-902-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Mountain Iron & Supply Company (Mountain Iron), a marketer of natural gas, under WNG's blanket certificate issued in Docket No. CP86-631-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

WNG proposes to transport, on an interruptible basis, up to 10,000 MMBtu equivalent of natural gas on a peak day, 7,500 MMBtu equivalent on an average day and 2,737,500 MMBtu equivalent on an annual basis for Mountain Iron. It is stated that WNG would receive the gas for Mountain Iron's account at various receipt points on WNG's system in Kansas, Oklahoma and Wyoming and would deliver equivalent volumes at various points on WNG's system in Kansas and Missouri. It is asserted that the transportation service would use existing facilities and would not require the construction of additional facilities.

It is explained that the transportation service commenced January 1, 1989, under the self-implementing authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89-2181.

*Comment date:* April 20, 1989, in accordance with Standard Paragraph G at the end of this notice.

**12. United Gas Pipe Line Company**

[Docket No. CP89-910-000]

March 6, 1989.

Take notice that on February 24, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-910-000 a request pursuant to §§ 157.205 and 284.223(2)(b) of the Commission's Regulations under the Natural Gas Act for authorization to provide transportation service on behalf of MidCon Marketing Corporation (MidCon), a marketer of natural gas under United's blanket certificate issued in Docket No. CP88-6-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United requests authorization to transport, on an interruptible basis, up to a maximum of 206,000 MMBtu of natural gas per day for MidCon Gas from a receipt point near Agua Dulce, Nueces County, Texas to various delivery points in Louisiana. The receipt point and redelivery points are listed in Exhibits A and B of the December 28, 1988 transportation agreement which provides for this service. United states that the daily volume of natural gas to be transported would be 206,000 MMBtu and the annual volume would be 75,190,000 MMBtu.

It is stated that United commenced transportation of natural gas for MidCon on January 4, 1989, as reported in Docket No. ST89-2265 filed on February 16, 1989.

*Comment date:* April 20, 1989, in accordance with Standard Paragraph G at the end of this notice.

**13. United Gas Pipe Line Company**

[Docket No. CP89-911-000]

March 6, 1989.

Take notice that on February 27, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas, 77251-1478, filed in Docket No. CP89-911-000, a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP88-6-000, pursuant to

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section 7 of the Natural Gas Act, for MidCon Marketing Corp., (MidCon), a marketer, all as more fully set forth in the request on file with the Commission and open to public inspection.

United proposes to transport up to a maximum of 309,000 MMBtu of natural gas per day for MidCon from specific existing receipt points in Mississippi and Louisiana to specific delivery points in Attala County, Mississippi. United anticipates transporting up to 309,000 MMBtu on a peak day and average day, and 112,785,000 MMBtu annually for MidCon. United explains that service commenced February 1, 1989, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-2269.

*Comment date:* April 20, 1989, in accordance with Standard Paragraph G at the end of this notice.

**14. Tennessee Gas Pipeline Company**

[Docket No. CP89-914-000]

March 6, 1989.

Take notice that on February 27, 1989, Tennessee Gas Pipeline Company (Tennessee) filed in Docket No. CP89-914-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to provide interruptible transportation services for Brooklyn Union Exploration Company, Inc. (Brooklyn), a producer, under its blanket certificate issued in Docket No. CP87-115-000 under section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Tennessee proposes to transport natural gas for Brooklyn on an interruptible basis under Tennessee's Rate Schedule IT. Tennessee states that it would transport up to 51,400 dt equivalent of natural gas on a peak day, 51,400 dt equivalent of natural gas on an average day, and 18,761,000 dt equivalent of natural gas on an annual basis. Tennessee asserts that no new facilities are required to implement the proposed transportation service. Tennessee states that it commenced the transportation service pursuant to the 120-day self-implementing provision of § 284.223(a)(1) of the Commission's Regulations as reported in Docket No. ST89-2295.

*Comment date:* April 20, 1989, in accordance with Standard Paragraph G at the end of this notice.

**15. United Gas Pipe Line Company**

[Docket No. CP89-912-000]

March 6, 1989.

Take notice that on February 27, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-912-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of Louisiana State Gas Corporation (Louisiana State), an intrastate pipeline company, under United's blanket certificate issued in Docket No. CP88-6-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United requests authorization to transport, on an interruptible basis, up to a maximum of 309,000 MMBtu of natural gas per day for Louisiana State from receipt points located in Louisiana, Texas and Mississippi to delivery points located in Louisiana, Florida, Alabama and Mississippi. United anticipates transporting an annual volume of 112,785,000 MMBtu.

United states that the transportation of natural gas for Louisiana State commenced November 18, 1988, as reported in Docket No. ST89-1742-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to United in Docket No. CP86-6-000.

*Comment date:* April 20, 1989, in accordance with Standard Paragraph G at the end of this notice.

**16. Interstate Power Company**

[Docket No. CP86-679-011]

March 6, 1989.

Take notice that on February 24, 1989, Interstate Power Company (IPC), 1000 Main Street, Dubuque, Iowa 52001, filed in Docket No. CP86-679-011 a petition to further amend the order issued October 7, 1986, in Docket No. CP86-679-000, as amended by orders issued October 7, 1987, and October 5, 1988, so as to increase the volume of natural gas IPC is authorized to transport for Hawkeye Chemical Company (Hawkeye), all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

IPC proposes to increase the authorized firm transportation volumes for Hawkeye from 22,000 million Btu per day to 23,000 million Btu per day as provided by a February 17, 1989, amendment to the September 27, 1987, transportation agreement. No other changes to the authorized transportation service is proposed.

*Comment date:* March 27, 1989, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

**17. Southern Natural Gas Company**

[Docket No. CP89-915-00]

March 6, 1989.

Take notice that on February 27, 1989, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP89-915-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to transport gas on an interruptible basis for Sonat Marketing Company (Marketing) under Southern's blanket certificate issued in Docket No. CP88-316-000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Southern would perform the proposed transportation service for Marketing, a marketer, pursuant to a service agreement dated December 12, 1988, under Southern's Rate Schedule IT. The service agreement is for a primary term of one month with successive terms of one month thereafter unless cancelled by either party. The service agreement provides for a maximum quantity of 120,000 MMBtu of gas on a peak day but Marketing anticipates requesting 54,794 MMBtu of gas on an average day, and accordingly, 20,000,000 MMBtu of gas on an annual basis. Southern proposes to receive the gas at various receipt points in offshore Texas and offshore Louisiana for delivery to points in offshore Louisiana and Refugio County, Texas. Southern asserts that no new facilities are required to implement the proposed service.

Southern advises that service under § 284.223(a) commenced on December 30, 1988, as reported in Docket No. ST89-1788-000 (filed January 17, 1989).

*Comment date:* April 20, 1989, in accordance with Standard Paragraph G at the end of this notice.

**18. United Gas Pipe Line Company**

[Docket No. CP89-906-000]

March 6, 1989.

Take notice that on February 24, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-906-000, a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) and the Natural Gas Policy Act (18 CFR 284.223) for authorization to provide a transportation service for EnTrade Corporation (EnTrade), a marketer of natural gas, under United's blanket certificate issued in Docket No. CP86-6-000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United proposes to transport, on an interruptible basis, up to 103,000 MMBtu of natural gas equivalent per day pursuant to a transportation agreement dated January 9, 1989, between United and EnTrade. United would receive natural gas at various receipt points in Texas, Louisiana and Mississippi and redeliver equivalent volumes of gas, less fuel and company used gas, at various delivery points in Louisiana, Mississippi and Alabama.

United further states that the estimated average daily and annual quantities would be 103,000 MMBtu and 37,595,000 MMBtu, respectively. Service under § 284.223(a) commenced January 18, 1989, as reported in Docket No. ST89-2264-000, it is stated.

*Comment date:* April 20, 1989, in accordance with Standard Paragraph G at the end of this notice.

**19. Transcontinental Gas Pipe Line Corporation**

[Docket No. CP89-889-000]

March 6, 1989.

Take notice that on February 23, 1989, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP89-889-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon certain facilities, all as more fully set forth in the application on file with the Commission and open to public inspection.

It is stated that Transco proposes to abandon its Austral-Lake Arthur Metering and Regulating Station and appurtenant facilities, and the 730-horsepower Compressor Station No. 46 in Lake Arthur Field, Jefferson Davis Parish, Louisiana (Lake Arthur Field). Transco also states that these facilities are no longer necessary and maintenance costs are prohibitive.

Tranco states that in December 1957, it entered into certain producer contracts to purchase gas for the Transco system. Transco further states that it was subsequently authorized to construct Station No. 46 in order to raise the pressure of the production of gas from wellhead pressure to pipeline pressure. Transco states that in 1982, it notified the respective producers that (1) the compression facilities were inadequate to provide sufficient compression for the gas produced to be delivered into Transco's facilities and the addition of another compressor was uneconomical, (2) Transco had entered into a transportation agreement with Texas Gas Transmission Corporation (Texas Gas) for the gas Transco was purchasing and Transco was requesting the producers to provide the necessary compression facilities at their own wells, with Transco paying the attributable compressor fuel costs, and (3) the point of delivery and gas ownership would be changed to reflect the delivery point at Texas Gas' Eunice Gas Processing Plant and existing measuring station. Transco states that since compression at the Lake Arthur Field was not longer needed, it advised Superior Oil Company on October 21, 1983 and December 16, 1983, of cancellation of its existing operation and maintenance agreement for the Austral-Lake Arthur Metering and Regulating Station and Station No. 46. It is stated that such facilities have not been utilized since that time.

*Comment date:* March 27, 1989, in accordance with Standard Paragraph F at the end of this notice.

**20. Panhandle Eastern Pipe Line Company**

[Docket No. CP89-904-000]

March 6, 1989.

Take notice that on February 24, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP89-904-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon part of its sales service provided to Ohio Gas Company (Ohio Gas), an existing jurisdictional sales customer, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Panhandle states that pursuant to § 284.10 of the Commission's Regulations, Ohio Gas has elected to convert a portion of their firm sales entitlements to firm transportation. Panhandle further states that they have entered into sales agreements with Ohio Gas dated October 1, 1988 and February 1, 1989 and requests partial abandonment be effective on October 1, 1989 and February 1, 1989. Panhandle proposes to reduce Ohio Gas' annual total contract demand from 14,303,625 Mcf to 11,021,180 Mcf under Rate Schedule G-1.

*Comment date:* March 27, 1989 in accordance with Standard Paragraph F at the end of the notice.

**Standard Paragraphs**

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regualtory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be dully given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 89-5560 Filed 3-9-89; 8:45 am]

BILLING CODE 6717-01-M

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[Project No. 10061-001]

**City of Atlanta, GA; Surrender of Preliminary Permit**

March 3, 1989.

Take notice that the City of Atlanta, Georgia, permittee for the Lake Lanier Reregulation Project located on the Chattahoochee River in Buford, Gwinnett, and Forsyth Counties, Georgia has requested that its preliminary permit be terminated. The preliminary permit was issued on February 11, 1987, and would have expired on January 31, 1990. The permittee states that analysis of the project did not indicate feasibility for development.

The permittee filed the request on January 27, 1989, and the preliminary permit for Project No. 10061 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.20007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,

*Secretary.*

[FR Doc. 89-5561 Filed 3-9-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF89-156-000]

**Robbins Resource Recovery Co.; Application for Commission Certification of Qualifying Status of a Small Power Production Facility**

March 6, 1989.

On February 23, 1989, Robbins Resource Recovery Company (Applicant), of 1101 Market Street, Suite 2500, Philadelphia, Pennsylvania submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Cook County, Illinois. The facility will consist of two circulating fluidized bed boilers and a condensing turbine generator unit. The net electric power production capacity will be approximately 40.6 megawatts. The primary energy source will be biomass in the form of municipal solid waste. Approximately 6.2 percent of the total annual energy input to the facility will be from oil, which will be used for start up, testing, flame stabilization and control purposes.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

*Secretary.*

[FR Doc. 89-5557 Filed 3-9-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TQ89-2-000; RP88-141-002, TA89-1-3-002]

**East Tennessee Natural Gas Co.; Rate Filing Pursuant to Tariff Rate Adjustment Provisions**

March 6, 1989.

Take notice that on March 1, 1989, East Tennessee Natural Gas Company (East Tennessee) is filing ten copies of the following revised tariff sheets to Original Volume No. 1 its FERC Gas Tariff.

Forty-Ninth Revised Sheet No. 4
Substitute Third Revised Sheet No. 123
Substitute Third Revised Sheet No. 123A
Substitute Sixth Revised Sheet No. 124

East Tennessee states that the revisions to Forty-Ninth Rev. Sheet No. 4 are to reflect a Purchased Gas Adjustment (PGA) to East Tennessee's Rates for the quarterly period of April 1989 through June 1989 pursuant to section 22.2 of the General Terms and Conditions of East Tennessee's Tariff. Sheet Nos. 123–124 have been revised to eliminate a typographical error and clarify that the jurisdictional portion of supplier refunds will be determined at the time the amounts are recorded in the Refund Subaccount. These sheets are substitutes for those previously filed in Docket No. RP88–141.

East Tennessee states that it also files a petition for waiver of certain requirements of § 154.310 of the Commission's Regulations. This petition is in response to the Commission's Order on December 30, 1988 in Docket No. TA89–1–2.

East Tennessee states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 14, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene; provided, however, that any person who had previously filed a motion to intervene in this proceeding is not required to file a further motion. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

*Secretary.*

[FR Doc. 89-5562 Filed 3-9-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2510 Oregon]

**City of Eugene, OR; Intent To File an Application for a New License**

March 3, 1989.

Take notice that on December 23, 1988, the City of Eugene (Eugene Water & Electric Board), the existing licensee for the Walterville Hydroelectric Project No. 2510, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Public Law 99–495. The original license for Project No. 2510 was issued effective January 1, 1949, and will expire December 31, 1993.

The project is located on the McKenzie River in Lane County, Oregon. The principal works of the Walterville Project include the Walterville Canal, 4 miles long and 2,575 cfs capacity, with a gated headworks and plant forebay termination; a pumped storage pond of 65 acres at the right bank of the canal three miles below the headworks; a gated forebay, siphon bypass, and 130-foot-long penstock; a powerhouse with an installed capacity of 8,000 KW; a 12/66–kV substation with two taps to the Leaburg-Currin line; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87–7–000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street NE., Washington, DC 20426. The above information as described in the rule is now available from the licensee at 500 East Fourth Avenue, Eugene, OR 97401, Attn: Mr. Gale Banry, telephone (503) 484–2411.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Lois D. Cashell,

*Secretary.*

[FR Doc. 89-5563 Filed 3-9-89; 8:45 am]

BILLING CODE 6717-01-M



[Docket No. SA89-4-000]

**Marathon Oil Co.; Petition for Adjustment and Stay of Refund Obligation**

March 3, 1989.

Take notice that on February 17, 1989 Marathon Oil Company (Marathon), filed a petition for waiver or adjustment under section 502(c) of the Natural Gas Policy Act of 1978 (NGPA). Marathon seeks relief from the refund requirement of an order issued by the Director Office of Pipeline and Producer Regulations (Director) on October 28, 1988 in Docket Nos. CI88–452–000, *et al.* The Director ordered refunds consistent with *Tenneco Oil Company*, 34 FERC ¶ 61,143 (1986). *Tenneco* prohibits a successor-in-interest that files its application for a successor certificate more than one year after acquiring property from retaining monthly escalations until it files its application for a certificate. Marathon also requests a stay of the refund requirement. Marathon's request for a stay of its refund obligation is granted pending final Commission action on this petition.

Marathon states that on June 20, 1984 it informed the Commission of its May 31, 1984 acquisition of Husky Oil Company (Husky), and of Marathon's intention to continue Husky's small producer sales under Husky's existing contracts. Marathon states that in 1984 and prior to February 5, 1988, there was no deadline for the filing of applications for successor-in-interest certificates. Marathon states that although it filed its application for successor certificates on June 10, 1988, it was not issued certificates until October 26, 1988. Furthermore, Marathon states that most of the refund obligation imposed on Marathon by the Director's order is attributable to uncollectible royalty payments to the Minerals Management Service of the United States Department of the Interior. Marathon states that if these royalty payments are not waived its total refund will exceed escalations received from all revenues between March 31, 1984 and June 10, 1988. Marathon states that if its refund obligation is not waived it will suffer an inequity and an unfair distribution of burdens.

The procedures applicable to the conduct of this proceeding are set forth in Rules 1101–1117 (Subpart K) of the Commission's rules of practice and procedure. Any person desiring to participate in this proceeding must file a motion to intervene in accordance with Rule 1105. All motions to intervene must be filed within 15 days after publications of this notice in the Federal Register.

Lois D. Cashell,

*Secretary.*

[FR Doc. 89-5564 Filed 3-9-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-3-38-000]

**Ringwood Gathering Co.; Proposed Changes in FERC Gas Tariff**

March 6, 1989.

Take notice that on March 1, 1989, Ringwood Gathering Company (Ringwood), 4828 Loop Central Drive, Loop Central Three, Suite 850, Houston, Texas 77081, filed Substitute Forty-Ninth Revised Sheet No. PGA–1 to its FERC Gas Tariff reflecting its current quarterly pursuant to 18 CFR 154.304 and 154.308.

Copies of the filing were served upon Ringwood's jurisdictional customers and interested state agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before March 14, 1989. Protests will be considered by the Commission in determining the appropriate action to the taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

*Secretary.*

[FR Doc. 89-5565 Filed 3-9-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-2-6-000]

**Sea Robin Pipeline Co.; Filing of Revised Tariff Sheet**

March 6, 1989.

Take notice that on March 1, 1989, Sea Robin Pipeline Company (Sea Robin) tendered for filing the following tariff sheet:

Original Volume No. 1

Fifty-Sixth Revised Sheet No. 4

Sea Robin states that the proposed date of the referenced tariff sheet in this docket is April 1, 1989. The above referenced tariff sheet is being filed pursuant to §§ 154.304 and 154.308 of the Commission's regulations to reflect the changes in the purchased gas cost adjustment provisions contained in sections 1 and 4 of Sea Robin's FERC Gar Tariff, Original Volume No. 1.

Sea Robin states that the tariff sheet is filed to reflect a decrease in gas cost of $.0108 under Rate Schedules X–1 and X–2. This produces a current effective commodity charge of $3.2418. Sea Robin states that there is no change in gas cost under Rate Schedules X–7 and X–8.

Sea Robin states that the revised tariff sheet and supporting data are being mailed to its jurisdictional sales customers and to interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's regulations. All such motions or protests should be filed on or before March 14, 1989.

Protests will be considered by the Commission in determining appropriate action to be taken but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file

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with the Commission and are available for public inspection.

Lois D. Cashell,

*Secretary.*

[FR Doc. 89-5566 Filed 3-9-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-2-11-000]

**United Gas Pipe Line Co.; Filing of Revised Tariff Sheets**

March 6, 1989.

Take notice that on March 1, 1989, United Gas Pipe Line Company (United) tendered for filing to its FERC Gas Tariff First Revised Volume No. 1, the following tariff sheets:

*To Be Effective January 1, 1989*

Third Revised Sheet No. 4-G

*To Be Effective April 1, 1989*

Eighty-Fifth Revised Sheet No. 4
Fourth Revised Sheet No. 4.1
Fourth Revised Sheet No. 4-G

United states that these tariff sheets are filed pursuant to §§ 154.304, 154.305 and 154.308 of the Commission's regulations to reflect the changes in the purchased gas cost adjustment provisions contained in Section 19 of United's FERC Gas Tariff, First Revised Volume No. 1.

United states that these tariff sheets reflect a Current Adjustment to the commodity gas rate of $(.0159) per Mcf and a Cumulative Adjustment to the commodity gas rate of $(.4956) per Mcf. This produces a current effective commodity rate of $2.6939.

United states that the revised tariff sheets and supporting data are being mailed to its jurisdictional sales customers and to interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 N. Capitol Street NE., Washington, DC 20426, in such accordance with §§ 285.214 and 385.211 of the Commission's regulations. All such motions or protests should be filed on or before March 14, 1989.

Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

*Secretary.*

[FR Doc. 89-5568 Filed 3-9-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-2-35-000]

**West Texas Gas, Inc.; Filing**

March 6, 1989.

Take notice that on February 28, 1989, West Texas Gas, Inc. (WTG) filed Fourteenth Revised Sheet No. 3a to its FERC Gas Tariff, Original Volume No. 1, proposed to be effective April 1, 1989. This tariff sheet was filed by WTG in accordance with the Commission's purchased gas adjustment regulations.

Copies of the filing were served upon WTG's customers and interested state commissions.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214 (1987)). All such motions or protests should be filed on or before March 14, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

*Secretary.*

[FR Doc. 89-5569 Filed 3-9-89; 8:45 am]

BILLING CODE 6717-01-M

## ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3533-9]

**Environmental Impact Statements; Availability**

*Responsible Agency:* Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

Availability of Environmental Impact Statements Filed February 27, 1989 Through March 3, 1989. Pursuant to 40 CFR 1506.9.

EIS No. 890044, Final, OSM, WY, Dry Fork Surface Coal Mine, Mining Plan Approval, Campbell County, WY, Due: April 10, 1989, Contact: Floyd McMullen (303) 844-3104.

EIS No. 890045, Final AFS, CA, OR, NV, Pacific Southwest Region Vegetation Management, National Forests Reforestation Plan, Implementation, CA, OR and NV, Due: April 10, 1989, Contact: Michael Srago (415) 556-5514.

EIS No. 890046, Draft, AFS, AK, Big Islands Management Area, Resource Management Plan, Implementation, Hawkins, Hinchinbrook, Montague, Green, Little Green and Wooded Islands and The Needle, Prince Williams Sound, AK, Due: April 24, 1989, Contact: Cecil R. Kuhn (907) 271-2558.

EIS No. 890047, Draft, AFS, ID, Idaho Panhandle National Forests, Weed Pest Management Plan, Implementation, Benewah, Bonner, Boundary, Kooteani and Shoshone Counties, ID, Due: April 24, 1989, Contact: Patricia Jackman (202) 447-4710.

EIS No. 890048, Draft, SCS, NY, Virgil Creek Watershed Flood Prevention Plan, Funding and Implementation, Town of Dryden, Town of Harford and Village of Dryden, Tompkins and Cortland Counties, NY, Due: April 24, 1989, Contact: Charles Terrell (202) 447-4925.

**Amended Notices**

EIS No. 880374, Draft, AFS, PA, Allegheny Wild and Scenic River Study, Allegheny River, Kinzua Dam to East Brady, Wild and Scenic River Designation, Armstrong, Butler, Clarion, Forest, Venango and Warren Counties, PA, Due: May 15, 1989, Contact: David J. Wright (814) 723-5150.

Published FR 11-10-88—Review period extended.

EIS No. 890035, Final, BLM, OR, Western Oregon Program, Management of Competing Vegetation, Implementation, OR, Due: April 18, 1989, Contact: Renee McCray (202) 653-8830.

Published FR 02-17-89—Review period extended.

EIS No. 890038, Draft, BOP, CO, Florence Federal Correctional Institution Complex, Construction and Operation, Fremont County, CO, Due: April 10, 1989, Contact: William Patrick (202) 272-6535.

Published FR 2-24-89—Incorrect phone number.

Dated: March 7, 1989.

William D. Dickerson,

*Deputy Director, Office of Federal Activities.*

[FR Doc. 89-5614 Filed 3-9-89; 8:45 am]

BILLING CODE 6560-50-M

## FEDERAL COMMUNICATIONS COMMISSION

**Common Carrier Public Mobile Services Information; Mobile Services Division Licensees Need No Longer Annually File FCC Form 430**

March 6, 1989.

On November 16, 1988, the Commission released a *Report and Order*, CC Docket No. 88-161, FCC 88-339 (*Report and Order*), which, among other things, revised § 22.11(a) of the Rules to require that Part 22 licensees need no longer annually file FCC Form 430 except that they must continue to file FCC Form 430 in response to line 18 of FCC Form 490.

The *Report and Order* stated that a public notice would be issued announcing the effective date of the new rules, at para. 31. Effective immediately, Part 22 licensees need not file annually FCC Form 430. This rule change is approved by the Office of Management and Budget under control number 3060-0420. Applicants for assignments and transfers of control must comply with § 22.11(a) as set forth below:

Miscellaneous forms shared by all domestic public radio services

(a) Licensee qualifications. FCC Form 430 ("Common Carrier and Satellite Radio Licensee Qualifications Report") shall be filed by Mobile Service licensees only as required by Form FCC 490 (Application for Assignment or Transfer of Control Under Part 22).

This public notice does not apply to the effective date of any other rule section.

Federal Communications Commission

Donna R. Searcy,

*Secretary.*

[FR Doc. 89-5594 Filed 3-9-89; 8:45 am]

BILLING CODE 6712-01-M



## FEDERAL DEPOSIT INSURANCE CORPORATION

**Information Collection Submitted to OMB for Review**

**AGENCY:** Federal Deposit Insurance Corporation.

**ACTION:** Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act.

**SUMMARY:** The submission is summarized as follows:

*Type of Review:* Renewal without any change.

*Title:* Application for Assistance to Operating Insured Banks which are in Danger of Failing.

*Form Number:* None (letter application).

*OMB Number:* 3064-0071.

*Expiration Date of Current OMB Clearance:* April 30, 1989.

*Frequency of Response:* On occasion.

*Respondents:* Insured banks in danger of failing or companies which control or will control insured banks in danger of failing applying for financial assistance from the FDIC to prevent the closing of the banks.

*Number of Respondents:* 100.

*Number of Responses per Respondent:* 1.

*Total Annual Responses:* 100.

*Average Number of Hours per Response:* 40.

*Total Annual Burden Hours:* 4,000.

*OMB Reviewer:* Gary Waxman, (202) 395-7340, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

*FDIC Contact:* John Keiper, (202) 898-3810, Assistant Executive Secretary, Room 6096, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

*Comments:* Comments on this collection of information are welcome and should be submitted on or before May 9, 1989.

**ADDRESSES:** A copy of the submission may be obtained by calling or writing the FDIC contact listed. Comments regarding the submission should be addressed to the OMB reviewer listed. The FDIC would be interested in receiving a copy of the comments.

**SUPLEMENTARY INFORMATION:** The FDIC is requesting OMB approval to extend the clearance of the information collection pertaining to the application for financial assistance under 12 U.S.C. 1823(c) to prevent the closing of an insured bank which is in danger of failing. The applicant provides, in letter form, information about the amount, terms and conditions of the assistance requested from the FDIC and evidence that the bank will have the managerial and financial resources to be a viable institution in the future. The applicant's proposal must also meet the guidelines set forth in the FDIC's Statement of Policy regarding the criteria on assistance to operating insured banks.

Dated: March 6, 1989.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

*Executive Secretary.*

[FR Doc. 89-5585 Filed 3-9-89; 8:45 am]

BILLING CODE 6714-01-M

## FEDERAL HOME LOAN BANK BOARD

[No. 89-538]

**Delegation of Authority To Appoint Conservator for Insolvent FSLIC Insured Institutions**

Date: March 7, 1989.

**AGENCY:** Federal Home Loan Bank Board.

**ACTION:** Notice.

**SUMMARY:** The Board is amending the conditions for the exercise of the delegated authority which the Board

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authorized by Resolution No. 89-194 to provide that such authority may be exercised by the Executive Directors of the FSLIC and ORA, with the concurrence of the General Counsel, and to indicate more specifically the extent of such delegated authority.

**EFFECTIVE DATE:** March 7, 1989.

**FOR FURTHER INFORMATION CONTACT:** Lawrence W. Hayes, Deputy General Counsel for FSLIC, (202) 906-6428; David N. Wall, Assistant General Counsel for FSLIC, (202) 906-7397; or Vicki L. Hawkins, Attorney, Office of General Counsel, (202) 906-7034, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

**SUPPLEMENTARY INFORMATION:** By Resolution No. 89-194, dated February 14, 1989, the Federal Home Loan Bank Board ("Board") authorized the performance of the Board's function of appointing the Federal Savings and Loan Insurance Corporation ("FSLIC") as conservator for Federally-chartered and other insured institutions, not for the purpose of liquidation, by the Executive Director of the FSLIC, the Executive Director of the Office of Regulatory Activities ("ORA") and the General Counsel of the Bank Board, jointly, upon certain conditions and in accordance with specified procedures. The delegated authority may not be exercised in cases where it is determined that a significant issue of law or policy is involved.

The Board has adopted the following resolution:

*Resolved*, That, pursuant to section 17(a) of the Federal Home Loan Bank Act, 12 U.S.C. 1437(a) (1982), the Federal Home Loan Bank Board ("Board") hereby authorizes the performance of the Board's function of appointing the Federal Savings and Loan Insurance Corporation ("FSLIC") as conservator of federally chartered and other insured institutions, not for the purpose of liquidation, in certain conditions, as follows:

1. The Executive Director of the FSLIC and the Executive Director of the Office of Regulatory Activities, with the concurrence of the General Counsel of the Board (each an "Executive Director" and collectively, "Executive Directors") may jointly exercise the authority of the Board to appoint the FSLIC as conservator of a Federal association, not for the purpose of liquidation, pursuant to section 5(d)(6)(A) and (B) of the Home Owners' Loan Act of 1933, as amended ("HOLA"), 12 U.S.C. 1464(d)(6)(A) or (B), or as conservator of an insured institution other than a Federal association, not for the purpose of liquidation, pursuant to section 406(c)(1)(B) or (2) of the National Housing Act, as amended ("NHA"), 12 U.S.C. 1729(c)(1)(B) or (2) (1982), *Provided, however*, That such authority shall not be exercised if any Executive Director determines that a significant issue of law or policy is involved in the appointment, the determination of a ground for the appointment, or the issuance of an order or resolution concerning the terms of the appointment. The authority granted by this resolution includes the authority to appoint or replace a conservator, not for the purpose of liquidation, to determine or opine that a ground for such appointment exists, and to issue orders and resolutions, each in the form of an order or resolution previously issued by the Board in appointing a conservator, or in substantially similar form, that effect and implement such appointment or replacement, including, but not limited to, orders and resolutions providing for the notification of State officials, the exercise of powers by a conservator, and the indemnification of persons acting on behalf of the FSLIC as conservator. The authority granted by this resolution also includes the authority to modify the powers of conservators who have been appointed by the Executive Directors pursuant to delegated authority: *Provided, however*, That the authority to mdify the powers of such conservators shall not be exercised if any Executive Director determines that a significant issue of law or policy is involved;

2. Each Executive Director may further designate no more than two subordinate officers, each of whom may exercise the authority conferred upon such Executive Director by this resolution. An Executive Director shall file with the Secretary or an Assistant Secretary to the Board the name of any subordinate designated pursuant to the previous sentence and the revocation of any such designation by such Executive Director; and such designation or revocation shall be effective only upon such filing;

3. An Executive Director who determines that a significant issue of law or policy would be involved in the appointment of the FSLIC as conservator for a Federal association or an insured institution shall file with the Secretary or an Assistant Secretary a statement setting forth such determination;

4. Any Board resolution issued pursuant to this resolution shall state in such resolution, but above its first paragraph, "Issued Under Delegated Authority;" and a resolution appointing the FSLIC as conservator or a group of resolutions issued on the same date to appoint the FSLIC as conservator and implement such appointment shall be preceded by a statement signed by or on behalf of the Executive Directors that the resolution is or the resolutions are issued under the authority of this resolution;

5. Each member of the Board, or an Assistant designated by a Board member to act on his or her behalf, shall be informed of any proposed exercise of joint authority under this resolution to appoint a conservator for a Federal association or an insured institution prior to the exercise of such authority; and

6. The Board reserves the power to appoint a conservator for a Federal association or an insured institution in any instance in which the Board determines to exercise such power directly and not through this resolution; and

*Resolved further*, That this Resolution shall be effective immediately upon its adoption by the Board; and

*Resolved further*, That this Resolution supersedes Board Resolution No. 89-194, dated February 14, 1989.

*Resolved further*, That the Secretary to the Board shall immediately forward this notice for publication in the **Federal Register**.

By the Federal Home Loan Bank Board.

**Nadine Y. Washington,**

*Assistant Secretary.*

[FR Doc. 89-5667 Filed 3-9-89; 8:45 am]

BILLING CODE 6720-01-M

## FEDERAL TRADE COMMISSION

### Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:



TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 022089 AND 030389

| Name of Acquiring Person, Name of Acquired Person, Name of Acquired Entity | PMN No. | Date terminated |
|---|---|---|
| The Equitable Life Assurance Society of the US, Maryland Mall Limited Partnership, Maryland Mall Limited Partnership | 89-0958 | 02/21/89 |
| Edward J. DeBartolo, Maryland Mall Limited Partnership, Maryland Mall Limited Partnership | 89-0959 | 02/21/89 |
| The Equitable Life Assurance Society of the US, Cumberland Mall Limited Partnership, Cumberland Mall Limited Partnership | 89-0960 | 02/21/89 |
| Edward J. DeBartolo, Cumberland Mall Limited Partnership, Cumberland Mall Limited Partnership | 89-0961 | 02/21/89 |
| The Equitable Life Assurance Society of the US, Frederick Towne Mall Limited Partnership, Frederick Towne Mall Limited Partnership | 89-0962 | 02/21/89 |
| Edward J. DeBartolo, Frederick Towne Mall Limited Partnership, Frederick Towne Mall Limited Partnership | 89-0963 | 02/21/89 |
| Value Equity Associates I, L.P., Sensormatic Electronics Corporation, Sensormatic Electronics Corporation | 89-0981 | 02/21/89 |
| Hartmarx Corporation, Interco Incorporated, The Biltwell Company, Inc | 89-1013 | 02/21/89 |
| Baloise-Holding, PW Investors Inc., PW Investors Inc | 89-1038 | 02/21/89 |
| Inoco Plc, Gulf Resources & Chemical Corporation, Gulf Resources & Chemical Corporation | 89-1056 | 02/21/89 |
| Naamloze Vennootschap DSM, Polymer Acquisition Corporation, Polymer Acquisition Corporation | 89-0936 | 02/22/89 |
| The Community Hospital Association, Adventist Health System/NEMA, Inc., Memorial Hospital Boulder | 89-1019 | 02/22/89 |
| Bilzerian Partners Limited Partnership 1, SSMC, Inc., SSMC, Inc | 89-1022 | 02/22/89 |
| O. Gene Bicknell, Skipper's, Inc., Skipper's, Inc | 89-1046 | 02/22/89 |
| Siebe plc, Paragon Electric Company, Inc., Paragon Electric Company, Inc | 89-0983 | 02/23/89 |
| Rauma Repola Oy, Industries et Resources, S.A., Nordberg International Holding S.A. and Bengston N.V | 89-1006 | 02/23/89 |
| Columbus Holdings Limited, The Henley Group, Inc., Jetway Systems Division | 89-1035 | 02/23/89 |
| Columbus Holdings Limited, Wasserstein Perella Group, Inc., Jetway Systems Division | 89-1036 | 02/23/89 |
| Goldome, Harold Summerford, United Piece Dye Works, Inc | 89-1076 | 02/23/89 |
| Lockheed Corporation, Personal CAD Systems, Inc., Personal CAD Systems, Inc | 89-0976 | 02/24/89 |
| David B. McKane, c/o McKane, Robbins & Co., Keteo Investment Associates III, L.P., Riverside Furniture Corp. Riverside of Arkansas Corp | 89-0990 | 02/24/89 |
| Peter G. Robbins, c/o McKane, Robbins & Co., Keteo Investment Associates III, L.P., Riverside Furniture Corp. Riverside of Arkansas Corp | 89-0991 | 02/24/89 |
| John V. Holten, Jeremy M. & Margaret Jacobs, APCOA, Inc | 89-1002 | 02/24/89 |
| Capricorn Investors, L.P., Combustion Engineering, Inc., National Tank Company | 89-1029 | 02/24/89 |
| Corpus Christi Exploration Company, Houston Industries Incorporated, Primary Fuels, Inc | 89-1047 | 02/24/89 |
| Maxwell Foundation, The Dun & Bradstreet Corporation, Thomas Cook Travel Inc | 89-1050 | 02/24/89 |
| Capricorn Investores, L.P., Cummings Point Industries, Inc., Cummings Point Industries, Inc | 89-1055 | 02/24/89 |
| The Beer Steams Companies, Inc., The Sitarz Family Trust, Prospect Foundry, Inc | 89-0996 | 02/27/89 |
| Honda Motor Co., Ltd., Jefferson Industries Corporation, Jefferson Industries Corporation | 89-1052 | 02/27/89 |
| Cyprus Minerals Company, Imperial Pacific Investments, Inc., Hawks Nest Mining Company | 89-1063 | 02/27/89 |
| Embassy Pacific Partners Limited Partnership, General Electric Company, General Electric Company | 89-1073 | 02/27/89 |
| First Reserve Secured Energy Assets Fund, B.C., Pacific Capital Corporation, OMSCO Industries, Inc | 89-1081 | 02/27/89 |
| LIVE Entertainment Inc., Morris Levy, The BeckZack Corporation | 89-1087 | 02/27/89 |
| Nationale-Nederlanden, N.V., American Brands, Inc., Southland Life Insurance Company | 89-1094 | 02/27/89 |
| Chemical Banking Corporation, The Union Corporation, The Union Corporation | 89-1103 | 02/27/89 |
| Chemical Banking Corporation, The Union Corporation, Gichner Systems Group | 89-1104 | 02/27/89 |
| Altamira Capital Corp., Van L. McNeel, Polymer International Corp | 89-1106 | 02/27/89 |
| The Hallwood Group Incorporated, Coated Sales, Inc. (Debtor-In-Possession), Coated Sales, Inc. (Debtor-In-Possession) | 89-1115 | 02/27/89 |
| Lucas Industries plc, Computer & Communications Technology Corp., Zeta Laboratories, Inc | 89-1009 | 02/28/89 |
| Rock Capital Partners, L.P., TF Investments, Inc., TF Investments, Inc | 89-1044 | 02/28/89 |
| Thomas F. Frist, Jr., TF Investments, Inc., TF Investments, Inc | 89-1049 | 02/28/89 |
| Richard E. Rainwater, TF Investments, Inc., TF Investments, Inc | 89-1053 | 02/28/89 |
| Broad Street Investment Fund I, L.P., TF Investments, Inc., TF Investments, Inc | 89-1057 | 02/28/89 |
| Intergraph Corporation, Cadence Design Systems, Inc., Cadence Design Systems, Inc | 89-1064 | 02/28/89 |
| Warburg, Pincus Capital Company, L.P., BMA Corporation, Camellia City Telecasters, Inc | 89-1100 | 02/28/89 |
| Metallgesellschaft AG, ESOP, Cooper Range Company, First American Bank-Detroit, Cooper Range Company | 89-1116 | 02/28/89 |
| Civic Communications Corporation II, Buford Holding Corporation, Buford Television, Inc. of Tyler, Texas and Buford | 89-1130 | 02/28/89 |
| Amerada Hess Corporation, SB Special Investments Holding Company, SB Special Investments Holding Company | 98-0990 | 02/29/99 |
| Bain Venture Capital, New Vision Associates Limited Partnership, New Vision Associates Limited Partnership | 89-1018 | 03/01/89 |
| Source Perrier, Sylvester & Marie Feichtinger, Dall Products International, Inc | 89-1086 | 03/01/89 |
| Cox Enterprises, Inc., Cable Educational Network, Inc., Cable Educational Network, Inc | 89-1156 | 03/01/89 |
| S.I. Newhouse, Jr., Cable Educational Network, Inc., Cable Educational Network, Inc | 89-1157 | 03/01/89 |
| Donald E. Newhouse, Cable Educational Network, Inc., Cable Educational Network, Inc | 89-1158 | 03/01/89 |
| Cox Enterprises, Inc., Cable Educational Network, Inc., Cable Educational Network, Inc | 89-1161 | 03/01/89 |
| S.I. Newhouse, Jr., Cable Educational Network, Inc., Cable Educational Network, Inc | 89-1162 | 03/01/89 |
| Donald E. Newhouse, Cable Educational Network, Inc., Cable Educational Network, Inc | 89-1163 | 03/01/89 |
| Ford Motor Company, Kia Motors Corporation, Kia Motors Corporation | 89-1014 | 03/02/89 |
| Spring Industries, Inc., CMC Management Partnership, Carey-McFall Corporation | 89-1042 | 03/02/89 |
| Atlantic Richfield Company, Lyondell Petrochemical Company, Lyondell Petrochemical Company | 89-1065 | 03/02/89 |
| William H. Binnie, Poly-Tech, Inc., Poly-Tech, Inc | 89-1102 | 03/02/89 |
| Sara Lee Corporation, Hanson PLC, Hygrade Food Products Corporation | 89-1043 | 03/03/89 |
| Foodarama Supermarkets, Inc., Hilltop Supermarkets, Inc., Hilltop Supermarkets, Inc | 89-1071 | 03/03/89 |
| Jordan Voting Trust, Craig O. McCaw, McCaw Cellular Communications, Inc | 89-1119 | 03/03/89 |
| Taylor Voting Trust, Craig O. McCaw, McCaw Cellular Communications, Inc | 89-1120 | 03/03/89 |
| Kemper Corporation, ISFA Holding Company, Ltd., ISFA Holding Company, Ltd | 89-1126 | 03/03/89 |
| Mitsui Real Estate Development Co., Ltd., Crow-Otay Mesa #1 Limited Partnership, Crow-Otay Partners, a California general partnership | 89-1142 | 03/03/89 |
| Mitsui Real Estate Development Co., Ltd., The Great-West Life Assurance Company, Crow-Otay Partners, a California general partnership | 89-1143 | 03/03/89 |
| Source Perrier, S.A., Merrill Lynch Capital Appreciation Partnership XI, L.P. Hickman, Coward & Wattles Div. of Peter J. Schmitt Co | 89-1160 | 03/03/89 |
| American Retirement Villas Properties II, Avon Products, Inc., Retirement Inns of America, Inc | 89-1185 | 03/03/89 |

**FOR FURTHER INFORMATION CONTACT:** Sandra M. Peay, Contact Representative, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, DC 20580, (202) 326-3100.

BEST COPY AVAILABLE

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By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 89-5571 Filed 3-9-89; 8:45 am]

BILLING CODE 6750-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Family Support Administration

### Forms Submitted to the Office of Management and Budget for Clearance

The Family Support Administration (FSA) will publish on Fridays information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). Since the last scheduled publication for February 24, 1989, the following package was submitted to OMB: (For a copy of the package below, call the FSA, Reports Clearance Officer on 202 252-5587.) Evaluation of the 1984 Child Support Enforcement Amendments. This information request is needed to obtain information about Child Support Enforcement Program operations and costs in order to: 1) Evaluate the program; 2) determine the degree to which the 1984 Child Support Amendments strengthened the program, and 3) identify problems in the program that may limit program efficiency. Respondents will be Child Support Enforcement Program officers and staff.

*Number of Respondents:* 307.

*Frequency of Response:* 1.

*Average Burden per response:* 2.02.

*Estimated Annual Burden:* 620 hours.

*OMB Desk Clearance Officer:* Justin Kopca.

Written comments and recommendations for the proposed information collection should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3201, 1725 17th Street, NW., Washington, DC 20503.

Date: February 22, 1989.

**Naomi B. Marr,**

*Associate Administrator, Office of Information and Management Systems, FSA.*

[FR Doc. 89-4583 Filed 3-9-89; 8:45 am]

BILLING CODE 4150-04-M

### Public Health Service

### Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on March 3, 1989.

(Call Reports Clearance Officer on 202-245-2100 for copies of package)

1. Importer's Entry Notice, Form FDA Set 700—0910-0046—Type of Review: Extension. The Office of Management and Budget has set a common review period for all known Federal agency information collections used to obtain information necessary for the importation of merchandise into the United States. The purpose of the review is to plan for the elimination of the collection of duplicate information elements required from the importing public. The Food and Drug Administration (FDA) has the responsibility of assuring the admissibility of foods, drugs, medical devices, and cosmetics offered for import into the United States. Each sample taken requires certain documents which notify FDA of arrival of each shipment. ORO selects representative items for sampling and analysis. Respondents: Businesses or other for-profit; Number of Respondents: 60,000; Number of Responses per Respondent: 20; Average Burden per Response: .05 hours; Estimated Annual Burden: 60,000 hours.

2. Regulations Under the Federal Import Milk Act—0910-0212—Type of Review: Extension. The Office of Management and Budget has set a common review period for all known Federal agency information collections used to obtain information necessary for the implementation of merchandise into the United States. The purpose of the review is to plan for the elimination of the collection of duplicate information elements required from the importing public. The Import Milk Act prohibits the exportation of milk and cream to this country unless the shipper of such products holds a valid import permit from FDA. The Act requires documentation that all cows are healthy, dairy farms/plants are in good sanitary condition. Respondents: State or local governments, farms, businesses or other for-profit.

| | Number of respondents | Number of hours per response | Number of responses per respondent |
|---|---|---|---|
| Application for Permit to Ship/Transport Milk/Cres, Form FDA 1993 | 2 | .5 | 1 |
| Certificate/Transmittal for an Application Form FDA 1815 * | 2 | .25 | 1.5 |
| Sanitary Inspection of Dairy Farms, Form FDA 1996 | 2 | 1.5 | 126.5 |
| Sanitary Inspection of Milk Plants, Form FDA 1997 | 2 | 2 | 1.5 |
| Time and Temperature Recordings Recordkeeping | 2 | .05 | 126.5 |

Estimated Annual Burden: 400 Hours

* Submitted in lieu of Forms FDA 1994 and 1995, Report of Tuberculin Test of Physical Examination of Cows

3. Tea Chop List and Appellant's Application for Review of Examiner's Return—NEW—The Office of Management and Budget has set a common review period for all known Federal agency information collections used to obtain information necessary for the importation of merchandise into the United States. The purpose of the review is to plan for the elimination of the collection of duplicate information elements required from the importing public. This previously unidentified information collection will be part of this review. Importers of tea or merchandise described as tea are required by the Board of Tea Experts to submit samples for examination to determine compliance with prescribed standards of purity, quality, and fitness for consumption before being allowed entry into the U.S. Tea samples which have been rejected are reviewed upon request by the appellant. Respondents: Businesses or other for-profit. Number of Respondents: 4,500; Number of Responses per Respondent: 1; Average Burden per Response: .25 hour; Estimated Annual Burden: 1,125 hours.

4. Application for Authorization to Relabel or to Perform Other Actions—NEW—The Office of Management and Budget has set a common review period for all known Federal agency information collections used to obtain information necessary for the importation of merchandise into the United States. The purpose of the review is to plan for the elimination of the collection of duplicate information elements required from the importing public. This previously unidentified information collection will be part of this review. The information provided is necessary for agency review to determine authorization to relabel or recondition adulterated or misbranded imported articles. The importer supplies this information to FDA at the port of entry for the adulterated or misbranded article. If the information is not provided, the article is refused admission and must be exported within 90 days or destroyed. Respondents: Businesses or other for-profit, small businesses or organizations; Number of Respondents: 15,000; Number of Responses per Respondent: 1; Average Burden per Response: .25 hour; Estimated Annual Burden: 3,750 hours.

5. Established Populations for Epidemiologic Studies of the Elderly (EPESE) Seventh Follow-up—0925-0271—Little is known about the relationship between changes in health status and subsequent changes in driving practices, pedestrian needs, and mobility in general. This seventh follow-up will include questions about driving and pedestrian practices in relation to health status. Over 2,000 of the participants in the Iowa and New Haven EPESE sites are licensed to drive and will be asked questions about their driving practices. Respondents: Individuals or households; Number of Respondents: 4,650; Number of Responses per Respondent: 1; Average Burden per Response: .213 hour; Estimated Annual Burden: 990 hours.

Written comments and recommendations for the proposed information collections should be sent directly to the OMB Desk Officer designated above at the following address:

OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Date: March 6, 1989.

**Steven A. Grossman,**

*Deputy Assistant Secretary for Health, (Planning and Evaluation).*

[FR Doc. 89-5572 Filed 3-9-89; 8:45 am]

BILLING CODE 4160-17-M

### Social Security Administration

### Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Pub. L. 96-511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the **Federal Register** on February 24, 1989.

**Social Security Administration**

(Call Reports Clearance Officer on (301) 965-4149 for copies of package)

1. Time Report of Personnel Services for Disability Programs—0960-0408—The information collected on the form SSA-4514 is used by the Social Security Administration (SSA) for budgeting and accounting for the funds used by State agencies for personnel involved in making disability determinations for SSA. The respondents are State agencies which make those determinations.

*Number of Respondents:* 54.

*Frequency of Response:* 4.

*Average Burden Per Response:* 30 minutes.

*Estimated Annual Burden:* 108 hours.

2. Response to Notice of Revised Determination—0960-0347—The information collected on the form SSA-765 is used by the Social Security Administration to determine if a disability claimant or beneficiary wishes to submit additional evidence, or request a hearing before a favorable determination is revised to an unfavorable one. The respondents are claimants under titles II and XVI of the Social Security Act who wish to file for a hearing in response to a notice of a revised determination.

*Number of Respondents:* 3,202.

*Frequency of Response:* 1.

*Average Burden Per Response:* 30 minutes.

*Estimated Annual Burden:* 1,601 hours.

*OMB Desk Officer:* Justin Kopca.

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Date: March 3, 1989.

**Ron Compston,**

*Social Security Administration Reports Clearance Officer.*

[FR Doc. 89-5478 Filed 3-9-89; 8:45 am]

BILLING CODE 4160-11-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[WY-940-09-4730-12]**

### Filing of Plats of Survey

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Filing of Plats of Survey.

**SUMMARY:** The plat of survey of the following described lands is scheduled to be officially filed in the Wyoming State Office, Bureau of Land Management, Cheyenne, Wyoming, forty-five (45) calendar days from the date of this publication.

Sixth Principal Meridian

T. 44 N., R. 118 W.

The plat representing the metes and bounds survey of Tract 37, situated in unsurveyed sections 11, 12, 13 and 14, containing 289.42 acres, more or less, T. 44 N., R. 118 W., Sixth Principal Meridian, Wyoming, Group No. 516, was accepted March 3, 1989.

This survey was executed to meet certain administrative needs of the U.S. Forest Service.

**ADDRESS:** All inquiries or protests concerning the technical aspects of the survey must be sent to the State Director, Bureau of Land Management, P.O. Box 1828, 2515 Warren Avenue, Cheyenne, Wyoming 82003.

Dated: March 3, 1989.

**Richard L. Oakes,**

*Chief, Branch of Cadastral Survey.*

[FR Doc. 89-5556 Filed 3-9-89; 8:45 am]

BILLING CODE 4310-22-M

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**Office of Surface Mining Reclamation and Enforcement**

**Availability of the Final Environmental Impact Statement on the Proposed Dry Fork Mine, Campbell County, Wyoming (Federal Coal Leases W-0271199, W-0271200, and W-0271201)**

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Notice of availability of a final environmental impact statement (OSMRE–EIS–24).

**SUMMARY:** The Office of Surface Mining Reclamation and Enforcement (OSMRE) is making available a final environmental impact statement (EIS) on the proposed Dry Fork mine. The EIS has been prepared to assist the Department of the Interior in making a decision on the mining plan submitted by Phillips Petroleum Company (PPC) for its proposed surface coal mine, located approximately 5 miles north and east of Gillette, Wyoming.

**ADDRESSES:** Copies of the EIS may be obtained for a limited time from Raymond L. Lowrie, Assistant Director, Office of Surface Mining Reclamation and Enforcement, Western Field Operations, Brooks Towers, Second Floor, 1020—15th Street, Denver, Colorado 80202, Attention: Floyd McMullen.

**FOR FURTHER INFORMATION CONTACT:** Floyd McMullen, Dry Fork EIS Project Leader (telephone: 303–844–3104) at the Denver, Colorado, location given under "ADDRESSES."

**SUPPLEMENTARY INFORMATION:** PPC's proposed Dry Fork mine would be a new surface coal mine located in Campbell County, Wyoming, 5 miles north and east of the city of Gillette. The EIS analyzes the probable impacts that would result should the Secretary of the Interior approve the mining plan for, and PPC subsequently develop, the proposed mine. The EIS also analyzes the probable cumulative impacts that would result from surface coal mining operations, not only at the proposed Dry Fork mine but at the other proposed mine and the six existing mines located nearby, north and east of Gillette.

The life-of-mine (permit) area for the proposed Dry Fork mine, comprising 3,798.49 acres, is currently used for ranching and wildlife habitat. By mining the proposed life-of-mine area, PPC would extract 226.4 million tons of low-sulphur subbituminous coal over a 34-year period and, in the process, would disturb 2,905.0 acres. The peak annual production rate from the mine would be 15 million tons.

Altogether, the life-of-mine areas for the proposed Dry Fork mine and the other proposed and existing mines north and east of Gillette comprise 30,424 acres. Upon completion of mining and related activities, these eight mines would have disturbed about 21,744 acres and produced about 2.1 billion tons of coal.

Three alternatives are evaluated in the EIS. These include (1) approval of the proposed mining plan with conditions; (2) approval of the proposed mining plan with additional mitigation measures over and above the conditions of approval imposed under the first alternative; and (3) disapproval of the proposed mining plan. OSMRE has identified "approval of the proposed mining plan with conditions" as the preferred alternative.

**Brent Wahlquist,**

*Assistant Director, Program Policy.*

Date: March 1, 1989.

[FR Doc. 89–5227 Filed 3–9–89; 8:45am]

BILLING CODE 4310–05–M

## INTERNATIONAL TRADE COMMISSION

**Reprimand for Breach of Commission Protective Order**

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Reprimands for Breach of Commission protective order.

**SUMMARY:** Notice is hereby given of the public reprimand by the U.S. International Trade Commission ("Commission") of Stephen L. Gibson, Esq., and Alan L. Madian, for the failure of each to report a known violation of a Commission protective order for nearly two months. Mr. Gibson, who assumed responsibility for reporting the violation to the Commission, has further been barred from access to confidential information in all Commission matters for a period of three months. The person who was directly responsible for the unauthorized disclosure, which was inadvertent, has been privately reprimanded.

**FOR FURTHER INFORMATION CONTACT:** Calvin Cobb, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E St., SW., Washington, DC 20436, Room 707–L. Telephone: 202–252–1103. Hearing impaired individuals are advised that information in this matter can be obtained by contacting the Commission's TDD terminal at 202–252–1810.

**SUPPLEMENTARY INFORMATION:** In connection with a Commission investigation, in May, 1988, Stephen L. Gibson, Esq., and Alan L. Madian filed with the Commission applications for administrative protective orders (APOs). In the applications each swore: (i) Not to disclose without written permission any of the information obtained under the APO except to certain enumerated categories of approved persons, and (ii) to promptly report any breach of the APO to the Secretary. Both also acknowledged in the APO that violation of the APO may subject each, and their firms, to debarment from practice before the Commission, referral to the U.S. Attorney or appropriate professional association, or "such other administrative sanctions determined to be appropriate * * *". The Commission granted each of the applications.

On the morning of June 22, Mr. Madian and Mr. Gibson had a telephone conversation in which a client referred to confidential business information (CBI) that he was not authorized to receive. Through this reference, Mr. Gibson and Mr. Madian learned that CBI had been inadvertently disclosed to the client (by a person who has been privately reprimanded by the Commission). Mr. Gibson immediately instructed the client to destroy the offending document, and not to discuss the CBI with anyone else. Mr. Gibson then telephoned the receptionist at the client's U.S. office and instructed her to return an express mail package containing CBI, unopened, which was done.

The CBI was part of an exhibit labeled "confidential", that contained a table submitted by domestic producers summarizing quarterly fabrication prices of a certain product under investigation. It was reviewed by a client not eligible for a protective order, who clearly read and understood the confidential data.

On August 15, 1988, nearly two months after the unauthorized disclosure of CBI, Mr. Gibson requested a meeting with the Secretary of the Commission. On August 16, 1988, Mr. Gibson and Mr. Madian came to the Commission and reported the disclosure. Pursuant to the Commission staff's inquiry, affidavits describing the sequence of events have been submitted by all the parties involved.

Stephen L. Gibson is reprimanded for failing promptly to report a known breach of a Commission APO, in direct contravention of the conditions of the APO. Mr. Gibson is further reprimanded for undertaking to report the violation to the Commission, which deterred Mr. Madian from performing his independent duty promptly to report the APO violation. For this misconduct, Mr. Gibson is barred from access to confidential business information in all Commission matters for a period of three months, running from March 6, 1989. Mr. Gibson has no record of prior misconduct before the Commission.

Alan L. Madian is reprimanded for failing to promptly report a known breach of a Commission APO, in direct contravention of the conditions of the APO. Mr. Madian apparently deferred to Mr. Gibson, who undertook to make the report to the Commission, in derogation of Mr. Madian's independent duty to report the APO violation. The Commission considers APO conditions to be independent duties undertaken by each individual covered thereby. In the future, the Commission may not consider an attempted delegation of an independent duty under an APO as mitigation for failure to conform to that duty. Mr. Madian has no record of prior misconduct before the Commission.

The person directly responsible for the disclosure has been issued a private letter of reprimand, for inadvertently failing to prevent the unauthorized disclosure of CBI. There is no record of prior misconduct before the Commission with respect to this person. This person apparently was not aware of the unauthorized disclosure until shortly before it was reported to the Commission, and has therefore not been held accountable for the knowing delay in reporting the APO violation.

By Order of the Commission.

**Kenneth R. Mason,**

*Secretary.*

Issued: March 6, 1989.

[FR Doc. 89–5532 Filed 3–9–89; 8:45 am]

BILLING CODE 720–02–M



## INTERSTATE COMMERCE COMMISSION

**Forms under review by Office of Management and Budget**

The following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) is being submitted to the Office of Management and Budget for review and approval. Copies of the forms and supporting documents may be obtained from the Agency Clearance Officer, Ray Houser (202) 275–6723. Comments regarding this information collection should be addressed to Ray Houser, Interstate Commerce Commission, Room 1319, 12th and Constitution Ave., NW., Washington, DC 20423 and to Gary Waxman, Office of Management and Budget, Room 3228 NEOB, Washington, DC 20503, (202) 395–7340.

*Type of Clearance:*—Extension.
*Bureau/Office:*—Bureau of Accounts.
*Title of Form:*—Classification Index Survey Form for Railroads that do not file an annual report with the Interstate Commerce Commission.
*OMB Form No.:*—3120–0077.
*Agency Form No.:*—RCS.
*Frequency:*—Annually.
*Respondents:*—Railroads.
*No. of Respondents:*—479.
*Total Burden Hrs.:*—44 (5.5 minutes average per response).
*Brief Description of the need & proposed use:*—The purpose of establishing a classification Index Survey form is to reclassify the Railroads based on carrier operating revenues.

**Noreta R. McGee,**

*Secretary.*

[FR Doc. 89–5538 Filed 3–9–89; 8:45 am]

BILLING CODE 7035–01–M

**Notice of Intent To Engage in Compensated Intercorporate Hauling Operations**

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

(A) Parent corporation and address of principle office:
Philip Morris Companies Inc. (a Virginia corporation), 120 Park Avenue, New York, NY 10017

(1) Primary contact relative to CIH services:
Private Truck Operations, General Foods USA, 250 North Street, NC–2, White Plains, NY 10625

2. Wholly owned subsidiaries which will participate in the operations, and states of incorporation:

(1) Abdulla of Bond Street, Ltd. (Delaware).
(2) Aliso Viejo Company (California).
(3) American Fruit & Produce Company, Inc (Minnesota).
(4) Anderson Clayton/Humko Products, Inc. (Delaware).
(5) B. Muratti Sons & Company Inc. (New York).
(6) Birds Eye de Mexico, S.A. de C.V. (Mexico).
(7) Birds Eye, Inc. (Delaware).
(8) Boboli Co. (Delaware).
(9) Brisk Brokerage, Inc. (Delaware).
(10) Brisk Transportation Inc. (Delaware).
(11) Charles Freihofer Baking Co., Inc. (New York).
(12) Cheese Analog Corp. (Delaware).
(13) Chiffon Corp. (Delaware)
(14) Churny Company, Inc. (Delaware)
(15) Colonial Heights Packaging, Inc. (Delaware).
(16) Continental Equity Investments Inc. (California).
(17) Craig Distributing Company (Missouri).
(18) Crescent Distributing Company (Louisiana)
(19) Don's Prize, Inc. (Ohio).
(20) Eastern Projects, Inc. (California).
(21) Entenmann's Frozen Foods, Inc. (Florida).
(22) Entenmann's, Inc. (Delaware).
(23) Filter Materials Ltd (Delaware).
(24) Fort Packaging Co., Inc. (Wisconsin)
(25) Franklin Baker Co. of the Philippines (Philippines)
(26) Frostex Foods, Inc. (Texas).
(27) Gardners Good Foods, Inc. (New Jersey).
(28) General Foods Bakery Companics, Inc. (Delaware).
(29) General Foods Capital Corporation (Delaware)
(30) General Foods Caribbean Manufacturing Corp. (Delaware).
(31) General Foods Corporation (Delaware).
(32) General Foods Credit Corporation (Delaware).
(33) General Foods Credit Investors No.1 Corporation (Delaware)
(34) General Foods Credit Investors No.2 Corporation (Delaware).
(35) General Foods Credit Investors No.3 Corporation (Delaware).
(36) General Foods Foreign Sales Corporation (US Virgin Is).
(37) General Foods Holding Inc. (Delaware).
(38) General Foods Inc. (Canada)
(39) General Foods, Inc. (Puerto Rico).
(40) General Foods Manufacturing Corp. (Delaware).
(41) General Foods Manufacturing Corporation of Mexico (Delaware).
(42) General Foods Trading Company (Delaware).
(43) Grant Holdings, Inc. (Pennsylvania)
(44) HAG GF Vertriebs & Marketing Corporation (Delaware).
(45) H.F. Behrhorst & Son, Inc. (Delaware).
(46) HNB Investment Corp. (Delaware)
(47) Highland Mutual Water Company (Colorado)
(48) Highlands Ranch Decorator Center, Inc. (Colorado).
(49) Highlands Ranch Development Corp. (Colorado).
(50) Highlands Ranch Escrow Company, Inc. (Colorado).
(51) Highlands Ranch Estates, Inc. (Colorado).

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(52) Highlands Ranch Financial Corporation (Colorado).
(53) Highlands Ranch Mortgage Company, Inc. (Colorado).
(54) Highlands Ranch Real Estate Corporation (Colorado).
(55) Highlands Ranch Village, Inc. (Colorado).
(56) Holleb & Company (Illinois).
(57) Hudson Commercial Corporation (Delaware)
(58) I. Feldman & Company Inc. (Delaware).
(59) International Tobacco Co. Inc., New York (Delaware).
(60) Italsalumi, Inc. (Illinois)
(61) Jack G. Raub Company (California)
(62) Jacob Leinenkugel Brewing Co., Inc. (Wisconsin).
(63) Kohrs Packing Company (Illinois).
(64) Kraft Food Ingredients Corp. (Dist of Columbia) (Wisconsin).
(65) Kraft, Inc. (Delaware).
(66) MVC Escrow Company (California).
(67) MVC Financial Corporation (California).
(68) Manextab Inc. (Delaware).
(69) Matilda Bay Wines, Ltd. (Georgia).
(70) Maxwell House, Inc. (Delaware).
(71) Miller Brands of Oklahoma, Inc. (Oklahoma).
(72) Miller Branda, Inc. (Florida) (Florida).
(73) Miller Brands, Inc. (Oregon) (Oregon).
(74) Miller Brands, Inc. (Washington) (Washington).
(75) Miller Brewing International, Inc. (Delaware).
(76) Miller Brewing Company (Wisconsin).
(77) Miller Distributing of Oklahoma, Inc. (Oklahoma).
(78) Mission Viejo Business Properties Inc. (California).
(79) Mission Viejo Company (California).
(80) Mission Viejo Realty Group Inc. (California).
(81) New Cow, Inc. (Delaware).
(82) New Town of Highlands Ranch, Inc. (Colorado).
(83) Oscar Mayer & Co. Inc. (Delaware).
(84) Oscar Mayer Foods Corporation (Delaware).
(85) PMCC Leasing Corporation (Delaware).
(86) Packaged Food & Beverage Co., c. (Delaware).
(87) Park Avenue Export Corporation (Delaware).
(88) Park Export Corporation (US Virgin Is).
(89) Philip Morris (1974) Limed (Delaware).
(90) Philip Morris Asia (Services) Incorporated (Delaware).
(91) Philip Morris Asia Incorporated (Delaware).
(92) Philip Morris Credit Capital N.V. (Netherlands A.).
(93) Philip Morris Credit Corporation (Delaware).
(94) Philip Morris Duty Free Inc. (Delaware).
(95) Philip Morris Europe S.A. (Delaware)
(96) Philip Morris Export Corporation (Delaware).
(97) Philip Morris Incorporated (Virginia).
(98) Philip Morris International Capital N.V. (Netherlands A.).
(99) Philip Morris Marketing S.A. (Delaware).
(100) Philip Morris International Inc. (Delaware).
(101) Philip Morris International Finance Corp. (Delaware).
(102) Philip Morris Latin America Sales Corp. (Delaware).
(103) Philip Morris Limited (Delaware)
(104) Philip Morris Management Corp. (New York)
(105) Philip Morris Products Inc. (Delaware).
(106) Philip Morris Sales Inc. (Dalaware).
(107) Philip Morris Service Inc. (Delaware).
(108) Pollio Dairy Products Corp. (New York).
(109) Professional Marketing Overseas Corp. (Delaware).
(110) Quality Industrial Plastics Co., Inc. (Delaware).
(111) Ronzoni Foods Corporation (New York).
(112) Sand Creek Cattle Company (Colorado).
(113) Shop-N Ride, Inc. (Colorado).
(114) Taylor Group, Inc. (Missouri).
(115) The All American Gourmet Company (Delaware)
(116) Thomas Garraway, Ltd. (Delaware)
(117) Tombstone Pizza Corp. (Delaware)
(118) Vict. Th. Engwall & Co., Inc. (Delaware)
(119) Waterloo Malting Company, Inc. (Wisconsin)

(B) 1. Name and address of parent corporation or organization:
Warner Communications Inc., 75 Rockefeller Plaza, New York, NY 10019

2. Wholely-owned subsidiaries which will participate in the operations, and the states of their incorporation:
Allied Record Company—California.
Atari Holdings, Inc.—Delaware.
Atlantic Recording Corporation—Delaware.
Cafe Americana Inc.—Delaware.
Cosmos Soccer Club, Inc.—New York.
DC Comics, Inc.—New York.
E.C. Creations, Inc.—New York.
E.C. Publications, Inc.—New York.
Houston Cable TV, Inc.—Texas.
Intersong U.S.A. Inc.—Delaware.
Ivy Hill Corporation—Delaware.
NJT Inc.—Delaware.
L.D.C.A.—Maryland.
Licensing Corporation of America—Delaware.
New Chappell Inc.—Delaware.
Rightsong Music Inc.—Delaware.
Tri-Chappell Inc.—Delaware.
Unichappell Music Inc.—Delaware.
Warner Books, Inc.—New York.
Warner Bros. Distributing Corporation—New York.
Warner Bros. Inc.—Delaware.
Warner Bros. Publications Inc.—New York.
Warner Bros. Records Inc.—Delaware.
Warner Bros. Television Distribution, Inc.—Delaware.
Warner Cable Communications Inc.—Delaware.
Warner/Chappell Music, Inc.—Delaware.
Warner-Elektra-Atlantic Corporation—New York.
Warner Home Video Inc.—Delaware.
Warner Leisure Inc.—Florida.
Warner Publisher Services Inc.—New York.
Warner Publishing, Inc.—Delaware.
Warner Special Products Inc.—Delaware.
Warner Tamerlane Publishing Corp.—California.
Warner Theatre Productions Inc.—Delaware.
WB Music Corp.—Delaware.
WBR/Sire Ventures Inc.—Delaware.
WEA International Inc.—Delaware.
WEA Manufacturing Inc.—Delaware.

Noreta R. McGee,
*Secretary.*

[FR Doc. 89-5529 Filed 3-9-89; 8:45 am]
BILLING CODE 7035-01-M

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[Finance Docket No. 31388]

## Decision Accepting Application of R.J. Corman Railroad Co./Memphis Line; Acquisition of CSX Transportation, Inc. Line Between Warwick and Uhrichsville, OH

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of decision accepting application for consideration.

**SUMMARY:** The Commission is accepting for consideration the application, filed February 8, 1989, by R.J. Corman Railroad Company/Memphis Line to acquire CSX Transportation, Inc.'s 48.9-mile line of railroad between Warwick and Uhrichsville, OH. Pursuant to 49 CFR Part 1180, the Commission finds this to be a minor transaction.

**DATES:** Written comments must be filed with the Interstate Commerce Commission no later than April 10, 1989. Written comments from the Secretary of Transportation and Attorney General of the United States must be filed by April 24, 1989. Applicants' reply is due May 15, 1989.

**FOR FURTHER INFORMATION CONTACT:** Joseph H. Dettmar, (202) 275-7245.
[TDD for hearing impaired: (202) 275-1721]

**ADDRESSES:** An original and 10 copies of all documents must be sent to:
Office of the Secretary, Case Control Branch, Attn: Finance Docket No. 31388, Interstate Commerce Commission, Washington, DC 20423.
In addition, one copy of all documents in this proceeding must be sent to each of applicants' representatives:
Lawrence H. Richmond, CSX Transportation, Inc., 100 North Charles Street, Baltimore, MD 21201.
Kevin M. Sheys, Weiner, McCaffrey, Brodsky & Kaplan, P.C., 1350 New York Avenue NW., Washington, DC 20005-4797.

**SUPPLEMENTAL INFORMATION:** On August 30, 1988, R.J. Corman Railroad Company/Memphis Line (RJCM) and CSX Transportation, Inc. (CSXT), collectively referred to as applicants, filed an application seeking Commission approval and authorization, pursuant to 49 U.S.C. 11343, et seq., of RJCM's acquisition of a 48.9-mile CSXT line between Warwick and Uhrichsville, OH. Applicants contend that the subject acquisition transaction is a minor transaction under 49 CFR 1180.2(c) and submit an application containing information in accordance with the railroad consolidation regulations at 49 CFR Part 1180 for minor transactions.

RJCM is a Class III common carrier, and is controlled by Richard J. Corman, an individual. CSXT is a Class I common carrier, and is a unit of CSX Corporation. RJCM currently has 62 miles of line, with its main line extending between South Union, KY, and Zinc, TN. RJCM's existing line handles no overhead traffic and does not connect with the line to be acquired from CSXT. The line to be acquired connects with Consolidated Rail Corporation at Uhrichsville and Massillon, OH, with CSXT at Warwick, OH, and with a Norfolk Southern Corporation line at Massillon, OH.

Applicants state that the proposed transaction will relieve CSXT of the inherent inefficiencies of a branch line operation while expanding RJCM's existing operations, thereby spreading RJCM's operating costs over a larger revenue base. As a result, they allege that both carriers will realize operating efficiencies. Presently, all of the patrons located on the line are served directly only by CSXT and not by any other railroad, and CSXT and RJCM do not compete for originating and terminating freight traffic on the line. Consequently, applicants contend that, unlike a railroad consolidation, the proposed transaction will not result in the loss of competitive rail service to patrons served by the carriers involved in this transaction, but rather the transaction will dilute CSXT's market power in the area. Applicants further state that CSXT's patrons presently enjoy substantial intermodal competition and that the proposed transaction should enable the rail mode to compete more effectively with other modes of surface transportation by providing all of the rail patrons between Warwick and Uhrichsville with more responsive and efficient rail service specifically tailored to local needs. RJCM plans to integrate the line into its existing operations, so the proposed transaction should have no adverse effect on RJCM employees. CSXT has commenced negotiation of appropriate agreements with its employees who may be adversely affected by this transaction, pursuant to the provisions set forth in *New York Dock Railway—Control—Brooklyn Eastern District Terminal*, 360 I.C.C. 60, *aff'd sub nom. New York Dock Railway v. United States*, 609 F.2d 83 (2d Cir. 1979). RJCM states that when it requires additional employees for the acquired line, it will offer employment on a preferential basis to CSXT employees who worked on the line.

Under the consolidation regulations we must initially determine whether a proposal is major, significant, minor, or exempt. The proposed transaction involves a Class I and Class III railroad. It has no regional or national significance and will neither result in any major market extension nor reduce the present level of competition. Accordingly, we find that the proposal is a minor transaction under 49 CFR 1180.2(c) and, because the application complies with the applicable regulations, we are accepting it for consideration.

The application and exhibits are available for inspection in the Public Docket Room at the Offices of the Interstate Commerce Commission in Washington, DC. In addition, they may be obtained upon request from applicants' representatives named above.

Any interested persons, including government parties, may participate in this proceeding by submitting written comments regarding the application. Comments must be filed no later than April 10, 1989. The Secretary of Transportation and Attorney General of the United States must file their comments no later than April 24, 1989. An original and 10 copies must be filed with the Secretary, Interstate Commerce Commission, Washington, DC 20423.

Written comments must be concurrently served by first-class mail on the United States Secretary of Transportation, the Attorney General of the United States, and the applicants' representatives. Written comments must also be served on all parties of record within 10 days of service of the service list by the Commission. We plan to issue the service list by April 24, 1989. Any person who files timely written comments shall be considered a party of record if the person's comments so request. In this event, no petition for leave to intervene need be filed. Consistent with 49 CFR 1180.4(d)(1)(iii), written comments must contain:

(A) The docket number and title of the proceeding;

(B) The name, address, and telephone number of the commenting party and its representative upon whom service shall be made;

(C) The commenting party's position, i.e., whether it supports or opposes the proposed transaction;

(D) A statement of whether the commenting party intends to participate formally in the proceeding or merely comment upon the proposal;

(E) If desired, a request for an oral hearing with reasons supporting this request; the request must indicate the disputed material facts that can only be resolved at a hearing; and

(F) A list of all information sought to be discovered from applicant carriers.

Because we have determined that the proposal in this proceeding constitutes a minor transaction, no responsive applications will be permitted. The time limits for processing a minor transaction are set forth at 49 U.S.C. 11345(d).

Discovery may begin immediately. We admonish the parties to resolve all discovery matters amicably.

This action will not significantly affect either the quality of the human environment or energy conservation.

*It is ordered:*

1. This proposal is found to be a minor transaction under 49 CFR 1180.2(c).

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2. The application in Finance Docket No. 31388 is accepted for consideration.

3. The parties shall comply with all provisions as stated above.

4. This decision is effective on the date of service.

Decided: March 3, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips.

**Noreta R. McGee,**

*Secretary.*

[FR Doc. 89-5570 Filed 3-9-89; 8:45 am]

BILLING CODE 7035-01-M

## DEPARTMENT OF JUSTICE

### Lodging of Partial Consent Decree; William J. O'Hara, et al.

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on February 24, 1989 a proposed partial consent decree in *United States of America v. William J. O'Hara, Betty B. O'Hara, William J. O'Hara, Inc., Smithkline Beckman Corporation, Ahumax Inc., Congoleum Corporation, Sandvik, In., Scott Paper Company and Childers Products Company*, Civil Action No. 89-1393 was lodged with the United States District Court for the Eastern District of Pennsylvania.

The proposed partial consent decree concerns a judicial enforcement action brought by the United States against the Defendants under the Comprehensive Environmental Response, Compensation, and Liability Act. The complaint filed by the United States alleges that the defendants are jointly and severally liable for response costs incurred and to be incurred by the United States in response to the release or threatened release of hazardous substances at the Henderson Road Injection Well Operable Unit at 372 South Henderson Road, Upper Merion Township, Montgomery County, Pennsylvania. The Complaint also seeks injunctive relief to address an actual and/or threatened imminent and substantial endangerment to the public health and the environment, as well as performance of a remedial design/remedial action ("RD/RA") at the Site pursuant to section 106 of CERCLA. The Site contains thirty-six chemicals of concern including high concentrations of the carcinogenic chemicals vinyl chloride, 1-1 trichloroethane and tetrachloroethene. At least 600,000 gallons of hazardous waste materials may have been disposed into a well on the Site in the late 1970s. These wastes have contaminated ground waters at and in the vicinity of the site that are a source for a major public drinking water supply, the Upper Merion Reservoir ("UMR"), and an off-site industrial well, the McIlvain well.

The proposed partial consent decree requires Defendants to, among other things, pay $188,054.77 in past EPA response costs, initiate and complete a $5.5—7.5 million remedy of the contaminated groundwater at the Site, and pay EPA's oversight costs for the work performed under the Partial Consent Decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. William J. O'Hara, et. al.* D.J. Ref. 90-11-2-301.

The proposed consent decree may be examined at the office of the United States Attorney, Eastern District of Pennsylvania, 3310 U.S. Courthouse, 601 Market Street, Independence Mall West, U.S. Courthouse, Philadelphia, Pennsylvania 19106 and at the Region III office of the Environmental Protection Agency, Office of Regional Counsel, 841 Chestnut Street, Philadelphia, Pennsylvania 19107. A copy of the proposed consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1521, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land & Natural Resources Division, Department of Justice. In requesting a copy, please enclose a check in the amount of $6.00 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

**Donald A. Carr,**

*Acting Assistant Attorney General, Land and Natural Resources Division, U.S. Department of Justice.*

[FR Doc. 89-5601 Filed 3-9-89; 8:45 am]

BILLING CODE 4410-01-M

### Lodging of Consent Decree; Rutgers, the State University of New Jersey

In accordance with Departmental policy, 28 CFR 50.7, section 122(d)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9622(d) (2), and section 7003 (d) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6973(d), notice is hereby given that on February 28, 1989 a proposed consent decree in *United v. Rutgers the State University of New Jersey*, Civil Action No. 89-0123, was lodged with the United States District Court for the District of Rhode Island. The proposed consent decree involves claims by the United States for recovery of clean-up costs incurred and to be incurred at the Picillo Farm Superfund Site in Coventry, Rhode Island. These claims were brought against defendant Rutgers pursuant to CERCLA.

The proposed consent decree requires the defendants to pay $50,000 to the State of Rhode Island and the United States Environmental Protection Agency ("EPA") for past costs expended at the Site. In return, the defendant is given a release from all civil claims for costs or injunctive relief related to the Site pursuant to the provisions of section 122(f) and (g) of CERCLA, 42 U.S.C. 9622(f) and (g). The defendant is also given a release for natural resource damage claims.

The Department of Justice will receive for a period of thirty (30) days from the date of publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Land and natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Rutgers, the State University of New Jersey*, D.J. Ref. No. 90-11-2-131.

The proposed consent decree may be examined at the Office of the United States' Attorney for the District of Rhode Island, 223 Federal Building and Courthouse, Kennedy Plaza, Providence, Rhode Island 02903 and at the Region I Office of the United States Environmental Protection Agency, John F. Kennedy Federal Building, Room 2203, Boston, Massachusetts 02203. Copies may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.30 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

**Donald A. Carr,**

*Acting Assistant Attorney General, Land and Natural Resources Division.*

[FR Doc. 89-5602 Filed 3-9-89; 8:45 am]

BILLING CODE 4410-01-M



## Antitrust Division

### National Cooperative Research Act of 1984; B.F. Goodrich Co. and European Vinyls Corporation Joint Venture

Notice is hereby given that, on February 3, 1989, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 et seq. ("the Act"), a joint venture formed by B.F. Goodrich Company, Geon Vinyl Division, and European Vinyls Corporation (Holdings) B.V. filed written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the venture, and its general areas of planned activity, are given below.

The parties to the venture are the following entities:

The B.F. Goodrich Company, Geon Vinyl Division, 6100 Oak Tree Blvd., Cleveland, Ohio 44131, U.S.A., and European Vinyls Corporation (Holdings) B.V., Strawinskylaan 1041, Tower C, NL-1077 XX Amsterdam, The Netherlands.

The objectives of the joint venture are to conduct basic research on processes and products that employ vinyl chloride monomer (VCM) and polyvinyl chloride resins (PVC), and to demonstrate the technical feasibility of such new processes or products.

**Joseph H. Widmar,**

*Director of Operations, Antitrust Division.*

[FR Doc. 89-5603 Filed 3-9-89; 8:45 am]

BILLING CODE 4410-01-M

## Office of the Attorney General

### Joint Newspaper Operating Agreement; Manteca News and Manteca Bulletin, CA

Notice is hereby given that the Attorney General, by Order of March 1, 1989, has extended the period for public comment on the application for a Joint Operating Agreement between the Manteca *News* and Manteca *Bulletin*, filed pursuant to the Newspaper Preservation Act, 15 U.S.C. 1801 et seq. The period for public comment has been extended until April 3, 1989. The period in which persons may reply in writing to the report of the Antitrust Division and to other comments is extended until May 3, 1989. Comments should be filed by mailing or delivering five copies to the Assistant Attorney General, Justice Management Division, Department of Justice, Washington, DC 20530.

Date: March 3, 1989.

**Harry H. Flickinger,**

*Assistant Attorney General for Administration.*

[FR Doc. 89-5600 Filed 3-9-89; 8:45 am]

BILLING CODE 4410-01-M

## DEPARTMENT OF LABOR

### Employment Standards Administration, Wage and Hour Division

### Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, DC 20210.

### Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

*Volume I:*

New Jersey NJ89-2 (Jan. 6, 1989) .. p.617

*Volume II:*

Missouri MO89-6 (Jan. 6, 1989) ..... p.676

Nebraska:

NE89-5(Jan. 6, 1989) ..... p.730

NE89-11 (Jan. 6, 1989) ..... p.742

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Texas:
TX89-27 (Jan. 6, 1989)..... pp.1050-1051
TX89-28 (Jan. 6, 1989)..... pp.1054-1055
TX89-34 (Jan. 6, 1989)..... pp.1078-1079
TX89-41 (Jan. 6, 1989)..... pp.1102-1103
TX89-45 (Jan. 6, 1989)..... pp.1118-1119

*Volume III:*
California CA89-1 (Jan. 6, 1989)..... p.34
Utah UT89-3 (Jan. 6, 1989)..... p.355

**General Wage Determination Publication**

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from:

Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 3rd day of March 1989.

**Robert V. Setera,**

*Acting Director, Division of Wage Determinations.*

[FR Doc. 89-5430 Filed 3-9-89; 8:45 am]

BILLING CODE 4510-27-M

## LEGAL SERVICES CORPORATION

**Request for Comments on a Grant Award to the Fort Apache Legal Aid Society, Inc.**

**AGENCY:** Legal Services Corporation.

**ACTION:** The Legal Services Corporation (LSC) announces its intention to award a one-time, non-recurring grant of $81,963 in calendar year 1989 to the Fort Apache Legal Aid Society, Inc. The purpose for making this grant is to provide legal services to the eligible client population of the White Mountain Tribe/Fort Apache Indian Reservation (Arizona).

**DATE:** All comments and recommendations must be received by the Office of Field Services of LSC on or before April 9, 1989.

**FOR FURTHER INFORMATION CONTACT:** Legal Services Corporation, Office of Field Services, Victoria O'Brien, Counsel to the Director, 400 Virginia Avenue SW., Washington, DC 20024-2751, (202) 863-1837.

**SUPPLEMENTARY INFORMATION:**

The Legal Services Corporation is the national independent organization charged with implementing the federally funded system of legal services for low-income people. It hereby announces its intention to award a grant in the amount of $81,963 to Fort Apache Legal Aid Society, Inc. for the provision of legal services to the eligible client population of the White Mountain Apache Tribe/Fort Apache Indian Reservation (Arizona).

It is anticipated that the nine month term of this grant will extend from April 1, 1989 to December 31, 1989. The annualized level of LSC Native American funding for the service area is approximately $109,284 for calendar year 1989.

Interested persons are invited to submit written comments and/or recommendations concerning the above action to Victoria O'Brien.

Dated: March 7, 1989.

**Mary C. Higgins,**

*Director, Office of Field Services.*

[FR Doc. 89-5616 Filed 3-9-89; 8:45 am]

BILLING CODE 7050-01-M

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50-498]**

**Houston Lighting & Power Co.; Environmental Assessment and Finding of No Significant Impact**

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-76, issued to Houston Lighting & Power Company, (the licensee), for operation of the South Texas Project, Unit 1, located in Matagorda County, Texas.

**Environmental Assessment**

*Identification of Proposed Action*

The proposed amendment would revise the provisions in the Technical Specifications (TS) relating to the toxic gas monitoring system.

The proposed action is in accordance with the licensee's application for amendment dated March 8, 1988.

*The Need for the Proposed Action*

The proposed change to the TS is required in order to improve the operational reliability of the toxic gas monitoring system as well as reduce the number of unnecessary engineered safety feature (ESF) control room heating, ventilation, and air conditioning (HVAC) recirculation actuations.

*Environmental Impacts of the Proposed Action*

The Commission has completed its evaluation of the proposed revision to the Technical Specifications. The proposed revision would allow the licensee to: (1) revise the toxic gas monitor ESF actuation logic to provide an actuation signal on a two-out-of-two logic for monitor failure instead of a one-out-of-two logic as exists in the present design (the high toxic gas actuation of one-out-of-two is retained); (2) provide separate power supplies from non-Class 1E uninterruptable sources to each monitor; (3) provide a separate control room annuciator for "High Toxic Gas Concentration" and "Monitor Trouble"; (4) relocate the sample intake duct nearer the building entrance to reduce the volume of toxic gas which would enter the control room before the isolation dampers close; (5) delete hydrazine from the FSAR and TS as a monitored/isolated actuation chemical because control room habitability calculations demonstrate that the control room operators will not be incapacitated by a postulated hydrazine spill; (6) increase the setpoint for the ammonia channel in the FSAR and TS to 25 parts per million (ppm) because the revised calculations utilizing techniques in NUREG/CR-1741 demonstrate the operators would have adequate time to don breathing apparatus after a toxic gas release before becoming incapacitated; (7) revise the TS response time from 25 seconds to 5 seconds for isolation upon a high toxic gas signal (a total of 80 seconds is allowed to isolate the control room when setpoint concentrations are reached at the monitor sample point in the duct); and (8) revise the FSAR to add acetaldehyde as a monitored chemical.

Therefore, the proposed changes do not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed change to the TS involves systems located within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the Federal Register on September 12, 1988 (53 FR 35245). No request for hearing or petition for leave to intervene was filed following this notice.

*Alternative to the Proposed Action*

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

*Alternative Use of Resources*

This action involves no use of resources not previously considered in the Final Environmental Statement (NUREG-1171) for the South Texas Project, Units 1 and 2.

*Agencies and Persons Consulted*

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

**Finding of No Significant Impact**

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated March 8, 1988 which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the Wharton Junior College Library, J.M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488 and at the Austin Public Library, 810 Guadalupe Street, Austin, Texas 78701.

Dated at Rockville, Maryland this 1st day of March 1989.



For The Nuclear Regulatory Commission.

**Jose A. Calvo,**

*Director, Project Directorate—IV, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.*

[FR Doc. 89-5580 Filed 3-9-89; 8:45 am]

BILLING CODE 7590-01-M

**[Docket No. 50-424]**

**Georgia Power Co. et al.; Withdrawal of Application for Amendment to Facility Operating License**

In the matter of: Georgia Power Co., Oglethorpe Power Corp., Municipal Electric Authority of Georgia, City of Dalton, GA.

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, and City of Dalton, Georgia (the licensee) to withdraw its August 28, 1987, application of the Vogtle Electric Generating Plant, Unit 1, located in Burke County, Georgia. The proposed amendment would have modified the alarm/trip setpoint limit for the chlorine detection systems which initiated operation of the Control Room Emergency Filtration System in the isolation mode. The Commission issued a Notice of Consideration of Issuance of the Amendment in the Federal Register on November 4, 1987 (52 FR 42360). The application for the proposed amendment was withdrawn because Amendment No. 17 dated February 9, 1989 to Facility Operating License NPF-68 deleted the Applicable Technical Specification and made the proposed August 28, 1987, application unnecessary.

For further details with respect to this action, see (1) the application for amendment dated August 28, 1987, (2) Amendment No. 17 to Facility Operating License NPF-68, and (3) our letter dated February 25, 1989. All of the above documents are available for public inspection at the Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia 30830 and at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555.

Dated at Rockville, Maryland, this February 25, 1989.

For the Nuclear Regulatory Commission.

**Jon B. Hopkins,**

*Project Manager, Project Directorate II-3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 89-5581 Filed 3-9-89; 8:45 am]

BILLING CODE 7590-01-M

## OFFICE OF PERSONNEL MANAGEMENT

**Proposed Extension of OPM Forms 1203 and 1280, Submitted to OMB for Clearance**

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), this notice announces the proposed extension to forms which collect information from the public. OPM Form 1203 (Occupational Supplement series—Form B) and OPM Form 1280 (Applicant Data Sheet) are optical scan and key entry documents, respectively. These forms are used by our automated processing center to create basic applicant records for an automated examining system. We will be using these forms to carry out our responsibility for open competitive examining for admission to the competitive service in accordance with section 3304, 5 U.S.C. Approximately 564,000 forms are completed each year with an average completion time of 25 minutes per form, for a total of 235,000 hours. For copies of this proposal, call Lawrence Dambrose (632-0199) or Grace Butler (632-0259).

**DATE:** Comments on this proposal should be received within 10 working days from date of this publication.

**ADDRESSES:** Send or deliver comments to—

C. Ronald Trueworthy, Agency Clearance Officer, U.S. Office of Personnel Management, Room 6410, 1900 E Street NW., Washington, DC 20415 and

Joseph Lackey, Information Desk Officer, U.S. Office, of Information and Regulatory Affairs, Office of Management and Budget, Room 3002, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Armond A. Grant, (202) 653-8076, U.S. Office of Personnel Management.

**Constance Horner,**

*Director.*

[FR Doc. 89-5450 Filed 3-9-89; 8:45 am]

BILLING CODE 6325-01-M

**Personnel Management Demonstration Project; Department of Transportation/Federal Aviation Administration Demonstration Project**

**AGENCY:** Office of Personnel Management.

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**ACTION:** Final project plan.

**SUMMARY:** Title V of the Civil Service Reform Act authorizes the Office of Personnel Management (OPM) to conduct demonstration projects which experiment with new and different personnel management concepts to determine whether a specified change in personnel management policies or procedures would result in improved Federal personnel management. This notice meets the legal requirement that OPM publish a final project plan before implementing a demonstration project.

**DATE:** Implementation. This project will be implemented effective with the pay period beginning June 18, 1989.

**FOR FURTHER INFORMATION CONTACT:** Edward V. Curran, AHR–4 Federal Aviation Administration, 800 Independence Avenue, SW., Room 523, Washington DC 20591, (202) 267–7912 or Demaris Miller, U.S. Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415, (202) 632–6164.

**SUPPLEMENTARY INFORMATION:** The Department of Transportation (DOT) has submitted a proposed demonstration project for consideration under chapter 47 of title 5, U.S. Code entitled, "The Department of Transportation/Federal Aviation Administration Demonstration Project."

The purpose of the demonstration project is to enhance the ability of the Federal Aviation Administration (FAA) to recruit and retain experienced, qualified employees in designated occupations in certain hard-to-staff facilities.

To accomplish this purpose, this demonstration project provides for payment of a retention allowance to employees occupying safety-related positions at selected hard-to-staff facilities in the Chicago, New York, Los Angeles and Oakland, California areas. The allowance may be as much as 20 percent of an employee's rate of basic pay. The retention allowance is not considered part of an employee's rate of basic pay for any purpose. However, the retention allowance is considered to be part of "total remuneration" for the purpose of computing overtime pay under the Fair Labor Standards Act (FLSA).

The demonstration project covers approximately 2,000 employees at participating facilities who occupy safety-related positions, such as air traffic controllers, aviation safety inspectors, and airway facilities maintenance technicians. The demonstration will run for 5 years from the date of implementation.

The tentatively approved project plan was published in the **Federal Register** on November 2, 1988, Volume 53, Number 212. A public hearing was held by OPM at FAA Great Lakes Region Headquarters in Des Plaines, Illinois, on December 14, 1988, during which interested persons or organizations presented their written or oral views on the proposed project. All persons who requested to testify or present written statements were permitted to do so. The hearing record was left open after the conclusion of the hearing to receive additional written data, views and arguments from hearing participants. The record was closed on January 3, 1989. In addition to the public hearing, interested parties were given from the date of publication until January 3, 1989, to express their views on the project. Comments received after January 3, 1989, were also considered.

**Summary of Comments**

Letters or testimony were received from the following sources:

| Source | Number |
|---|---|
| Members of Congress | 35 |
| Labor Unions | 2 |
| Other organizations | 1 |
| FAA workforce | (933 signers) 125 |
| Total | 163 |

All but six comments expressed approval of the project. However, the overwhelming majority urged that the project be expanded to include additional facilities and occupations.

*Addition of Other Air Traffic, Airway Facilities, and Aviation Standards Facilities*

Most commentors said that additional facilities, perceived as "hard to staff", should be covered. Specifically, they recommended expanding the project to include additional FAA facilities in the following locations:
Atlanta, Georgia.
Boston, Massachusetts.
Chicago, Illinois metropolitan area.
Detroit, Michigan.
Hawthorne, California.
Indianapolis, Indiana.
Lancaster, California.
Los Angeles, California metropolitan area.
Minneapolis, Minnesota.
New York City metropolitan area.
Oakland, California.
Ontario, California.
Palmdale, California.
Pittsburgh, Pennsylvania.
San Francisco, California.
Santa Barbara, California.
South Bend, Indiana.

Based upon the many comments received, a further review of the selection process and the covered facilities and occupations was conducted by the Department of Transportation (DOT) and FAA. This review showed, as did the initial review, that there were other facilities which experience staffing difficulties. One of these facilities, the Bay TRACON (Terminal Radar Approach Control) in Oakland, California, was determined by FAA to have the most severe and chronic staffing difficulties of the hard-to-staff facilities which were suggested by respondents. After carefully considering all of the comments and other factors involved, and using the same principles and criteria as in the initial selection process, DOT and FAA recommended and OPM agreed to expand the project to include the Bay TRACON.

The staffing situation at Bay TRACON is extremely critical because of the pending implementation of the San Jose Airport Radar Service Area (ARSA), which has been delayed due to the critical staffing situation at Bay TRACON. The TRACON has an authorization of 75 controllers, but currently has only 40 full-performance-level controllers and 15 developmental controllers.

Recruitment efforts for the Bay TRACON have been extensive, including continuously-open vacancy announcements, mailings and visits to other facilities, and other comprehensive outreach programs to attract experienced controllers. Ideally, candidates for complex TRACON facilities such as Bay TRACON would have previous radar experience, but because of these recruiting difficulties, many selectees are from non-radar facilities or the FAA Academy. The facilities initially included in the project are located in the New York, Chicago, and Los Angeles areas. Addition of a facility in the Oakland area expands the geographic coverage of the project, and includes another facility with major impact on the national aviation system.

The decision was also made that expansion to other hard-to-staff facilities, other than the Bay TRACON, was not appropriate. Although some of the facilities proposed for inclusion by respondents also experience staffing difficulties, none were found to have problems to the same extent as the covered facilities. Non-covered facilities are distinguished from covered facilities by one or more of the following factors:



- The staffing situation is not as chronic or as severe as at those facilities which have been included in the project. Some of the facilities respondents recommended for inclusion are currently at or above authorized staffing levels.
- The facility is generally less complex than the Level V air traffic facilities included in the project, is therefore able to recruit well-qualified employees from a larger number of same-level or lower-level facilities, and can more easily accommodate developmental controllers, from the FAA academy or other facilities, who do not have extensive radar experience and are not in such short supply. Many of these facilities serve as the main sources of candidates for more complex Level V facilities.
- The facility does not have the same high level of impact on the national aviation system as the covered facilities.

*Cost of Living*

Many of the respondents recommended that certain facilities be included because of the high cost-of-living in the localities in which the facilities were located. However, the demonstration project is not providing a cost-of-living allowance. It is strictly designed to test whether pay incentives will improve the FAA's ability to recruit and retain fully qualified employees at hard-to-staff facilities.

*Addition of Other Occupations*

Supervisory and Managerial Positions

Two of the three labor unions representing employees covered by the pay demonstration project questioned the inclusion of supervisory and managerial personnel at the covered facilities. The National Air Traffic Controllers Association (NATCA) stated that it has yet to see any FAA facilities that cannot be adequately staffed with supervisors and managers. The Professional Airway Systems Specialists (PASS) stated that there is no shortage of supervisors and managers; however, PASS supports the inclusion of supervisors who are directly and daily engaged in safety-related functions. The third union, the American Federation of Government Employees, did not state a position regarding supervisors and managers.

Inclusion of facility supervisors and managers of subordinate employees covered by this project, as proposed by the DOT/FAA, is proper and warranted by the operational nature of the national aviation system, and reflects sound management principles. These positions are an integral part of the aviation system and provide career progression opportunities to employees. In addition, some facilities experience problems recruiting for supervisory and managerial positions, and have difficulty attracting experienced personnel to apply for these positions. The vital nature of these positions was recognized by Congress when it enacted the Air Traffic Control Revitalization Act of 1982, and there has been no change in circumstances that would warrant exclusion of these positions from the project. In addition, failure to include supervisory and managerial positions would result in the pay of these jobs falling below that of some of the supervised employees.

Entry-Level Airway Facilities Positions

The initial determination made prior to issuance of the proposed regulations was that airway facilities positions below the GS–9 level would be excluded from the demonstration project. The primary reason for this determination was concern over creating unfair competition with other agencies who recruit employees in the same occupations. The occupations involved include entry-level engineers, electronics technicians, and computer operators. Approximately 14 employees in these positions are now employed at the covered facilities. Based on input received from the public hearing and during the comment period, this issue was reexamined.

Upon reconsideration, it is apparent that these positions are indeed unique to the FAA. The duties and responsibilities of these positions are significantly different than positions in the same occupations in other agencies, and the specific knowledge, experience, and other qualifications would not typically be comparable. The electronic technicians, engineers, and computer operators of FAA are system-oriented. Knowledge of the National Airspace System (NAS) is essential to properly perform these technical positions. Although the types of equipment with which these employees work may be similar to the equipment of other agencies, the ability to work with this equipment within the NAS system environment is an integral component of these positions.

Therefore, employees occupying airway facilities positions at the GS–5 through GS–8 level at covered facilities will be included in the demonstration project.

Other Occupations

Some respondents recommended that other occupations be covered, including air traffic assistants and administrative and support personnel. These occupations are not being included in the project. The project is designed to test whether pay incentives will improve recruitment and retention of employees in those safety-related occupations where the FAA experiences the most critical staffing problems. It is not intended to cover other occupations (some of which we have covered in special pay rate authorizations) where the FAA may not have similar difficulties in recruiting and retaining employees and which are common to other Federal agencies. To do so would give the FAA an unfair competitive advantage over other local agencies drawing from the same labor pool.

U.S. Office of Personnel Management.
**Constance Horner,**
*Director.*

The Demonstration project plan as approved by the Office of Personnel Management reads as follows:

**Department of Transportation/Federal Aviation Administration Demonstration Project**

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**I. Executive Summary**

Purpose

The purpose of the demonstration project is to test the effectiveness of a quarterly retention allowance in recruiting and retaining experienced, qualified employees in selected occupations at hard-to-staff Federal

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Aviation Administration (FAA) facilities.

Participating Facilities

The following facilities have been selected for participation in the demonstration project:

Farmingdale Flight Standards District Office, Farmingdale, New York (includes Manufacturing Inspection District Office).

New York Air Route Traffic Control Center, Ronkonkoma, New York.

New York Terminal Radar Approach Control, Westbury, New York.

New York Flight Standards District Office, Valley Stream, New York.

Teterboro Flight Standards District Office, Teterboro, New Jersey (includes Manufacturing Inspection District Office).

Chicago Air Route Traffic Control Center, Aurora, Illinois.

Chicago O'Hare International Airport, Chicago, Illinois (includes Air Traffic Control Tower, Terminal Radar Approach Control, and Chicago Airway Facilities Sector).

Coast Terminal Radar Approach Control, Santa Ana, California.

Los Angeles Flight Standards District Office, Los Angeles, California.

Los Angeles International Airport, Los Angeles, California (includes Air Traffic Control Tower and Terminal Radar Approach Control).

Oakland Bay Terminal Radar Approach Control, Oakland, California.

Participating Employees

The demonstration project will cover employees assigned to the participating facilities who occupy safety-related positions, such as air traffic controllers, aviation safety inspectors, and airway facilities maintenance technicians. The employees include approximately 1,749 General Schedule employees (GS) and approximately 365 Performance Management and Recognition System employees (GM) for a total of approximately 2,114 employees as of January 1989.

Labor Participation

Employees covered by this project are represented by three unions: the National Air Traffic Controllers Association (NATCA) representing approximately 55.4 percent of covered employees, the Professional Airway Systems Specialists (PASS), representing approximately 16.1 percent of covered employees, and the American Federation of Government Employees (AFGE), Local 2791 representing approximately 3.0 percent of covered employees.

Personnel System Change

The intervention consists of a quarterly retention allowance not to exceed 20% of annual base pay.

*Implementation and Training.* Briefings on the demonstration project have been conducted for management officials in FAA headquarters and regional offices. On-site briefings for employees have been done at each of the participating facilities and included detailed orientation on the background and purpose of the project, implementation and administrative procedures, and anticipated results. Appropriate human resource management and accounting/payroll organizations will receive detailed orientation and training prior to implementation.

Evaluation Plan

A methodically rigorous evaluation plan has been designed to assess project outcomes and to evaluate their system-wide impacts on the organization's mission and their applicability to other Federal organizations. The design is "quasi-experimental" and includes pre- and post-demonstration comparisons.

The evaluation model postulates significant increases in the desired outcome measures in facilities covered by the demonstration project. Attempts will be made to establish cause-and-effect relationships. In order to assure a thorough assessment of the demonstration, the evaulation will cover three distinct phases: (1) An evaluation of the implementation phase to determine that the project is implemented as designed and that the stated processes are operational; (2) periodic assessments of the 5-year experimental phase; and (3) a summative evaluation of the project's overall impact on the organization.

The plan provides for collection of historical data for three years (Fiscal Years 1986, 1987, and 1988) preceding the start of the demonstration project. This baseline data will cover measures relating to staffing levels, turnover rates, employees' experience levels, overtime and sick leave use, morale, and productivity.

Costs

The estimated costs for the demonstration project for the first year are approximately $20.1 million for the identified facilities, based on current pay rates. The estimated cost of the allowance is expected to rise to approximately $24.4 million, based on current pay rates, by the fifth year of the project for these facilities.

Benefits of Project

The anticipated benefits of the demonstration project include full and stable employment at the selected facilities; more experienced employees occupying safety-related positions; higher levels of full-performance-level employees; and reduced use of overtime.

II. Introduction

A. Purpose

The purpose of the demonstration project is to determine whether pay incentives will enhance the ability of the FAA to recruit and retain experienced, qualified employees in designated occupations at certain hard-to-staff locations. Staffing levels are expected to improve at these locations.

To accomplish this purpose, this demonstration project provides for payment of a retention allowance to employees occupying safety-related positions at selected hard-to-staff facilities. The allowance may be as much as 20 percent of an employee's base pay. The retention allowance is not part of an employee's rate of basic pay. However, the retention allowance is considered to be part of "total remuneration" for the purpose of computing overtime pay entitlements under the Fair Labor Standards Act (FLSA).

B. Problems With the Present System

Adequate staffing of FAA facilities with experienced personnel is vital to ensure a continuing high level of public safety. As part of its safety responsibilities, FAA is currently engaged in a full-scale effort to support and improve its safety-related work force. Comprehensive changes are being made to the recruitment, pre-employment processing, and the technical training programs and processes. A study of the existing pay system for air traffic controllers has identified numerous problems with the inflexibility of current methods for classifying and compensating these employees.

Staffing of certain facilities is a problem that has plagued DOT and FAA for many years. Problems associated with staffing include difficulty in attracting adequate numbers of employees, high turnover rates, a low percentage of employees at the full performance level, and high overtime usage. These problems also contribute to difficulty in granting employees' requests to move to other facilities, difficulty in approving annual leave requests, and low morale.



The agency has tried many approaches at hard-to-staff facilities, within the limitations of existing laws and regulations, in an effort to solve these problems, with only limited success. For example, FAA has given additional credit for promotion consideration to employees who have experience at a variety of facilities; developed a "farm team" system of progression where surrounding facilities feed personnel into larger facilities; reorganized facilities and job junctions; developed revised classification standards and re-evaluated positions; conducted nationwide recruiting campaigns; developed a cross-option recruitment program for air traffic control specialists; guaranteed employees who are not successful at the most complex facilities the opportunity to return to their former facility; and guaranteed employees a choice of duty assignment after a specified length of service and attainment of full performance level. Yet, in spite of these efforts, staffing difficulties continue to plague certain facilities.

The covered facilities are characterized by some combination of the following conditions:

- Recruitment difficulties. Some facilities have a chronic problem in attracting adequate numbers of fully-qualified employees to fill vacant positions.
- High turnover rates. Some facilities have chronic problems retaining employees and consequently have high turnover rates.
- Low experience levels. Some facilities have a large percentage of employees who are not fully qualified or who otherwise do not have extensive experience.
- High overtime use. Some facilities have a high level of overtime use, with employees in some cases working an average of four hours of overtime per week.

FAA's staffing problems have captured the attention of numerous public and private sector organizations and individuals, including members of Congress, the General Accounting Office (GAO), the news media, and the Aviation Safety Commission.

In its report dated October 8, 1987, the Senate Appropriations Committee directed the administration to develop proposals to eliminate the constraints found under current personnel law and regulations that prohibit FAA from providing incentives to compensate for cost-of-living or similar factors in order to provide the needed staff at certain hard-to-staff facilities. Additionally, H.R. 4650 and S. 1600, bills introduced during the 1988 congressional session, provided for the FAA to develop compensation systems tailored to "* * * facilitate the use of flexibilities in assigning rates of basic pay in order to better recruit, motivate and retain a well-qualified work force" (S. 1600); and to "* * * establish a pay rate and grade system * * * designed to * * * recruit and retain a well-qualified workforce * * *." (H.R. 4650).

C. Personnel System Change

Many researchers have shown that pay is one of the most important and influential incentives an employer can offer in an attempt to alter employee behavior. Offering a pay allowance at hard-to-staff facilities could influence potential employees to accept or overlook the negative factors associated with a particular facility or geographic area. It is expected that more employees will be motivated to apply for positions at the participating facilities, and to remain in those facilities for longer periods of time. The demonstration project will test whether a retention allowance of up to 20 percent of base pay will help to attract and retain experienced employees at the hard-to-staff facilities selected for the project.

The demonstration project provides for payment of a retention allowance to employees occupying safety-related positions at the covered hard-to-staff facilities. The retention allowances will be paid quarterly on the last payday of each calendar quarter. Except as explained below, the quarterly retention allowance will be computed as a specified percentage (not to exceed 20 percent on an annual basis) of the employee's rate of basic pay in effect for each pay period during the quarterly allowance period.

In the case of an employee who is initially employed in or reassigned to a covered position after the beginning of the quarterly allowance period, the amount will be prorated on the basis of the number of full weeks of employment in a covered position during the period. In the case of a part-time employee, the quarterly retention allowance will be prorated on the basis of the employee's scheduled tour of duty during each pay period of the quarterly allowance period.

Employees who voluntarily leave covered positions during a quarterly allowance period will not receive an allowance for that period. Employees who are suspended during a quarterly allowance period will not receive an allowance for that period. Employees who are in a leave-without-pay status or who are absent-without-leave will be eligible for a prorated allowance which will be reduced by the number of hours in a non-pay status. All covered employees will be told at the time the project is implemented (or upon initial employment in or reassignment to a covered position) what the percentage of the allowance will be, and eligible employees will receive the full allowance proffered them. Employees will also be notified in advance of changes in the percentage of the allowance.

The retention allowance is not considered part of the employee's rate of basic pay for any purpose. However, the retention allowance is considered to be part of "total remuneration" for the purpose of computing overtime pay entitlements under FLSA. Additional FLSA overtime pay entitlements deriving from the payment of a quarterly retention allowance will be paid at the same time the allowance is paid.

The allowance may be as much as 20 percent of an employee's base pay. All eligible employees will receive the maximum allowance percentage for the first full year of the project. However, the Director of the Office of Personnel Management (OPM) and the Secretary of Transportation will periodically assess the progress made toward the project's objectives. The Secretary, in consultation with the Director of OPM, may cap allowances below 20% or may discontinue the allowances altogether. The Secretary's decisions may apply uniformly to all covered positions or may differentiate among sites, occupations or grade levels. Furthermore, the Secretary may authorize the Administrator of FAA to set allowances, for all or for certain categories of covered positions, on an individual, case-by-case basis. The percentage of the allowance in effect at the time an employee moves into a covered position will not be reduced or discontinued for that employee for at least one year, unless a lower percentage applicable to that employee is determined to be appropriate because of the implementation of special salary rates or legislation which would offset the lower percentage.

Although it does not require waiver of laws or regulations, this personnel system change is being conducted as a demonstation project because it involves a modification of the current pay system and provides retention allowances as an alternative to other pay adjustments.

D. Project Goals

The demonstration retention allowance is intended to achieve two primary goals: (1) to attract a sufficient number of experienced, qualified

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employees to apply for positions at the selected hard-to-staff facilities; and (2) to retain experienced, qualified employees at these facilities.

E. Participating Facilities

Numerous factors were considered when determining which hard-to-staff facilities could be included in the project. Primary consideration was given to the facility's staffing difficulties, as characterized by staffing levels, turnover, experience levels of employees, and overtime. The facilities selected have chronic difficulty in attracting and retaining experienced employees. They are also among the facilities with the most significant impact on the national aviation system.

The following facilities have been selected to participate in the demonstration project:

Farmingdale Flight Standards District Office, Farmingdale, New York (includes Manufacturing Inspection District Office).

New York Air Route Traffic Control Center, Ronkonkoma, New York.

New York Terminal Radar Approach Control, Westbury, New York.

New York Flight Standards District Office, Valley Stream, New York.

Teterboro Flight Standards District Office, Teterboro, New Jersey (includes Manufacturing Inspection District Office).

Chicago Air Route Traffic Control Center, Aurora, Illinois.

Chicago O'Hare International Airport, Chicago, Illinois (includes Air Traffic Control Tower, Terminal Radar Approach Control, and Chicago Airway Facilities Sector).

Coast Terminal Radar Approach Control, Santa Ana, California.

Los Angeles Flight Standards District Office, Los Angeles, California.

Los Angeles International Airport, Los Angeles, California (includes Air Traffic Control Tower and Terminal Radar Approach Control).

Oakland Bay Terminal Radar Approach Control, Oakland California.

Other facilities may be added to the project during the course of the 5-year demonstration period. The process for adding facilities will be the Secretary's recommendation, the OPM Director's approval and the publication of a notice in the **Federal Register** at least 30 days in advance of the start of the first quarter of eligibility.

F. Participating Employees

For all of the facilities except the Flight Standards District Offices and Manufacturing Inspection District Offices, all employees officially assigned to covered facilities and occupying the following positions will be covered by the demonstration project:

| Position Title | Pay Plan, Series, and Grade |
|---|---|
| Airway Facilities Sector Manager | GM-301-15 |
| Assistant Sector Manager | GM-301-13/14 |
| Supervisory Computer Operator | GS-332-10 |
| Computer Operator | GS-332-5/9 |
| Supervisory General Engineer | GM-801-14 |
| General Engineer | GS-801-5/13 |
| Supervisory Engineering Technician. | GS-802-11/12 |
| Engineering Technician | GS-802-5/12 |
| Mechanical Engineer | GS-830-5/13 |
| Supervisory Electronics Engineer | GM-855-13/14 |
| Electronics Engineer | GS-855-5/13 |
| Supervisory Electronics Technician. | GM-856-13/15 |
| Electronics Technician | GS-856-5/13 |
| Supervisory Air Traffic Control Specialist (Center and Terminal options only). | GM-2152-14/15 |
| Air Traffic Control Specialist (Center and Terminal options only). | GS-2152-4/14 |
| For the Flight Standards District Offices and Manufacturing Inspection District Offices, all employees officially assigned to covered facilities and occupying the following positions will be covered: | |
| Aviation Cabin Safety Specialist. | GS-1801-5/14 |
| Supervisory Aviation Safety Inspector. | GS-1825-14/15 |
| Aviation Safety Inspector | GS-1825-5/14 |

Other positions may be added during the course of the porject. The process for adding positions will be the same as that for adding facilities. The addition of new facilities and positions may not cause the number of covered employees to exceed 5,000. Total current employment in these positions at the participating facilities is approximately 2,114. Current employment statistics for the selected facilities, itemized by series and grade, are provided in Appendix A.

G. Labor Participation

The employees covered by this project are in exclusive bargaining units represented by the National Air Traffic Controllers Association (NATCA), representing approximately 55.4 percent of covered employees, the Professional Airway Systems Specialists (PASS) representing approximately 16.1 percent of covered employees, and the American Federation of Government Employees (AFGE) Local 2791 representing approximately 3.0 percent of covered employees. Meetings to brief all three organizations on the details of the project were held in late September and early October, 1988. Further consultations and negotiations with NATCA and PASS took place during the comment period for this project, and memoranda of understanding have been completed with both unions. AFGE and FAA have consulted on the project. Approximately 25.5 percent of covered employees are not represented by bargaining units.

III. Methodology

A. Project Design

The purpose of a demonstration project is to test changes under controlled conditions before making commitments to put them into effect for a wider population of Federal employees. The project is a simple before/after design and much of the analysis will rely on pre/post measures. However, efforts will be made to make comparisons between this treatment and alternative treatments for comparable staffing problems at other Federal agencies. Validation of the project intervention will also be done through comparison with system-wide information.

B. Selection of Demonstration Sites

The facilities which have been selected are part of a larger group of FAA facilities which have experienced staffing problems. However, in order to remedy intractable staffing shortages and to encourage movement of experienced employees to covered facilities, the project must be limited to those situations where the need is most critical. Among the factors considered in selecting facilities were staffing levels, turnover, experience levels, and overtime use. The facilities included in the project have chronic difficulties in attracting and retaining experienced employees and are recognized as having a major impact on the operation of the nation's aviation system.

C. Project Implementation and Training

While the project does not affect training directly, it is expected to result in decreased training requirements because the overall experience level is expected to rise. There will be more fully qualified employees and fewer trainees.

D. Project Duration

The demonstration project will begin no sooner than 90 days after the date of this final notice. After implementation, the project will be conducted for a period of up to five years. During this period, the staffing situation at each facility participating in the project will be closely monitored and analyzed. After the five-year active stage of the project, the overall results will be analyzed to determine the success of the project in fulfilling the stated objectives and goals.



IV. Evaluation Plan

A comprehensive and methodologically rigorous evaluation will be implemented. The results will be reviewed by an external consultant to assess the merits of this experiment.

A. Evaluation Phases

The demonstration project will be evaluated in three phases: (1) implementation evaluation, (2) experimental evaluation, and (3) summative evaluation.

*Implementation Evaluation.* Once the project has begun, the monitoring of the implementation phase will begin. This is needed to ensure that the project is being implemented in a standardized fashion and that the stated processes are in fact operational. Following the project implementation phase, a report will be issued by the evaluation team detailing all aspects of the implementation and offering suggestions on how to improve the implementation. Any changes made to the design during the implementation will be carefully documented and the design revised accordingly. The report will be submitted to project officials, the Office of the Secretary of Transportation, and the Office of Personnel Management.

*Experimental Evaluation.* The evaluation of the experimental phase will begin as soon as the project is determined to be operational and stable. Data collection initiated prior to implementation will continue on a quarterly basis as outlined in the evaluation model. Reports analyzing the effects of the project will be issued by the evaluator on at least an annual basis. These reports will be submitted to the Office of the Secretary of Transportation and the Office of Personnel Management.

*Summative Evaluation.* Upon conclusion of the experimental phase of the project, an overall assessment of the combined effects of the demonstration project will be made. Impacts of overall system changes will be discussed at this point.

Cause-and-effect relationships will be established to the extent possible, using pre- and post-demonstration data. The effectiveness of the project in meeting the stated objectives will be assessed. Efforts will be made to include an assessment of unanticipated positive as well as negative effects. A final project report will be issued by the evaluation team and made available to the Office of the Secretary of Transportation, the demonstration project sites, and the Office of Personnel Management.

B. Evaluation Design

*Overview and Rationale.* The demonstration project is intended to improve staffing levels, experience levels, and retention in safety-related occupations in hard-to-staff facilities. Turnover rates and overtime usage are expected to drop. These improvements are expected to result from the payment of a retention allowance of up to 20 percent of base pay to employees in the covered occupations and sites.

FAA's Office of the Associate Administrator for Human Resource Management (AHR), Office of Management Systems (AMS), the Civil Aeromedical Institute (CAMI), and OPM worked together to design an evaluation plan to measure the effects of the project. The evaluation will measure the extent to which retention, recruitment, staffing levels, experience levels, turnover, and overtime usage are improved during the demonstration.

Three years' baseline data (for Fiscal Years 1986, 1987, and 1988) is being collected for the facilities involved in the test. This data will include measures of all the indices used to assess the impact of the demonstration project.

Table 1 summarizes the effects expected from the project, the measures that will be used to assess those effects, and the data sources for the measures. Additions and adjustments to this model may be made during the evaluation phase as required.

TABLE 1.—EVALUATION MODEL

| Expected Effects | Measures | Data Sources |
|---|---|---|
| Increased staffing levels. | Percent of goal | [1] CPMIS |
| | Number of vacant positions. | Regions |
| Increased experience levels. | Average tenure | CPMIS |
| | Percent of FPL's/fully qualified employees. | CPMIS |
| Reduced turnover. | Turnover rate | CPMIS |
| Reduced overtime. | Average hours per week per employee. | [2] CUPS |
| Reduced sick leave. | Average hours per week per employee. | CUPS |
| Improved morale | Job satisfaction | [3] Survey |
| Improved productivity. | Operations per employee. | CUPS/CPMIS |

[1] Consolidated Personnel Management Information System
[2] Consolidated Uniform Payroll System
[3] Survey Feedback Action Program

*Methods, Measures, and Data Sources.* The primary method of analysis will be an Hotelling's T test of the differences between the before and after measures. The multivariate version of the T test considers the interrelationships among the outcome measures. For example, improving staffing levels could affect the turnover rate, sick leave usage, and morale. The experimental hypothesis states that after the implementation of the allowance, the measures will show comparatively better staffing, experience levels, turnover, overtime usage, sick leave usage, morale, and productivity. As data are collected annually, time series tests will be performed to gauge the effects of the allowance over time. Separate analyses will be performed for each occupational group (e.g., Air Traffic, Airway Facilities, Flight Standards) to determine if the project has different effects for one group than for another. Similar information will also be obtained on a system-wide basis for comparison with the covered facilities, in order to assess the impact of external factors not associated with the demonstration project. It is recognized that selection of extreme cases for the experimental groups lends itself to the problem of regression to the mean. This will be considered when results are analyzed.

*Data Collection and Analysis Plan.* The data collection instruments/data bases, major areas covered by each instrument/data base, schedule for data collection, and source for each instrument/data base are summarized in Table 2.

Each of the analyses described below will assess changes occurring at each test site and system-wide during the demonstration as compared to the baseline period (i.e., pre-demonstration period).

TABLE 2.—DATA COLLECTION AND ANALYSIS PLAN

| Database | Collector | Schedule | Source |
|---|---|---|---|
| CPMIS | AHR | Baseline | Automated records system. |
| Staffing, Turnover, Experience. | | Quarterly during demonstration. | |
| CUPS | AMS | Baseline | Automated records system. |
| Overtime, Sick leave. | | Quarterly during demonstration. | |
| Survey | CAMI | Biennial | Survey database. |

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TABLE 2.—DATA COLLECTION AND ANALYSIS PLAN—Continued

| Database | Collector | Schedule | Source |
|---|---|---|---|
| Operations/employee. | AHR | Baseline.... | Existing automated and manual records systems. |
| | | Quarterly during demonstration. | |

*V. Costs*

The estimated costs for the demonstration project for the first year are approximately $20.1 million for the covered facilities, based on current pay rates. The estimated cost of the allowance will vary over the duration of the project but in no case should exceed $24.4 million for the identified facilities, based on current pay rates. This estimate assumes little change in job market conditions and an increase in employment levels at the participating facilities. Detailed cost estimates by facility are included in Appendix B. These costs will be offset somewhat by the anticipated reduction in overtime and savings associated with reduced turnover, such as reduced permanent-change-of-station travel. The demonstration project also avoids costs that would be incurred by alternative solutions.

*VI. Benefits*

The retention allowances are expected to result in the following benefits for the FAA:

- Full and stable employment at the selected facilities. The agency should be able to attract a larger number of experienced employees to the participating facilities. Once they are on board at the facilities, employees should be more likely to remain there for a longer period of time, and turnover will therefore be reduced.
- More experienced employees occupying safety-related positions/higher numbers of full-performance-level (FPL) employees. The allowance should enable the agency to attract a larger number of fully-trained employees from other facilities. These employees will need less training to become fully qualified than new employees hired from outside the agency. Reduced turnover among employees will also increase experience levels.
- Reduced overtime. Higher staffing levels, reduction in turnover, higher experience levels, and more full-performance-level employees should result in a reduction in overtime use. These benefits in turn should help to ensure a continued high level of safety. All of these benefits may not be experienced at all of the participating facilities, since the staffing problems and their causes vary among the facilities.

*VII. Responsibilities*

The Office of Personnel Management has overall responsibility for designing and implementing the valuation plan (5 U.S.C. section 4703(1)(H)) and for monitoring the evaluation. FAA's Office of the Associate Administrator for Human Resource Management (AHR) will have responsibility for conducting and coordinating the evaluation to ensure that it is accomplished as planned. Responsibility for data collection will be shared by the particpating facilities, regional offices, the organizations responsible for agency databases, FAA's Office of Management Systems (AMS), and OPM. Analysis of data will be the responsibility of AHR and AMS, with additional support to be provided by contractor organizations. Data will also be supplied to OPM on request.

Reports will be provided by AHR to the FAA Administrator, the Secretary of Transportation, and the Office of Personnel Management, as well as to the air traffic facilities, airway facilities, and aviation standards organizations in FAA. The reports will be provided in a summary manner on an annual basis. At the end of the demonstration project, a final report will be prepared which provides an analysis of the overall results of the demonstration project and recommendations for action.

**Appendix A.—Employees Covered by Demonstration Project**

On-board figures as of January, 1989:

AIRWAY FACILITIES

| | N.Y. Center | N.Y. TRACON | Chicago Center | Chicago Sector | Coast TRACON | L.A. Int'l. | Bay TRACON | Total |
|---|---|---|---|---|---|---|---|---|
| GM-301-15 | 1 | 0 | 2 | 1 | 0 | 1 | 0 | 5 |
| GM-301-14 | 1 | 0 | 0 | 3 | 0 | 3 | 0 | 7 |
| GM-301-13 | 0 | 0 | 1 | 1 | 0 | 0 | 0 | 2 |
| GS-332-10 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 1 |
| GS-332-9 | 7 | 0 | 7 | 0 | 0 | 0 | 0 | 14 |
| GS-332-8 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 1 |
| GS-332-5 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 1 |
| GM-801-14 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 2 |
| GS-801-13 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 1 |
| GS-801-12 | 1 | 0 | 1 | 1 | 0 | 0 | 0 | 3 |
| GS-802-12 | 1 | 0 | 1 | 1 | 0 | 3 | 0 | 6 |
| GS-802-11 | 5 | 6 | 7 | 5 | 0 | 2 | 2 | 27 |
| GS-802-10 | 0 | 0 | 2 | 0 | 0 | 0 | 0 | 2 |
| GS-802-9 | 2 | 0 | 1 | 0 | 0 | 3 | 0 | 6 |
| GS-830-12 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 1 |
| GM-855-14 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 1 |
| GM-855-13 | 0 | 1 | 0 | 0 | 0 | 1 | 2 | 4 |
| GS-855-13 | 0 | 0 | 2 | 0 | 0 | 0 | 0 | 2 |
| GS-856-12 | 0 | 1 | 1 | 2 | 0 | 0 | 0 | 4 |
| GS-855-7 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 1 |
| GM-856-15 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 1 |
| GM-856-14 | 7 | 7 | 6 | 0 | 0 | 0 | 0 | 20 |
| GM-856-13 | 10 | 10 | 4 | 13 | 1 | 5 | 0 | 43 |
| GS-856-13 | 3 | 0 | 10 | 0 | 0 | 0 | 0 | 13 |
| GS-856-12 | 43 | 23 | 37 | 44 | 6 | 23 | 24 | 200 |
| GS-856-11 | 4 | 5 | 2 | 3 | 0 | 8 | 0 | 22 |
| GS-856-9 | 2 | 1 | 2 | 3 | 4 | 13 | 0 | 25 |
| GS-856-7 | 1 | 1 | 0 | 1 | 0 | 1 | 0 | 4 |



AIRWAY FACILITIES—Continued

| | N.Y. Center | N.Y. TRACON | Chicago Center | Chicago Sector | Coast TRACON | L.A. Int'l. | Bay TRACON | Total |
|---|---|---|---|---|---|---|---|---|
| GS-856-5 | 1 | 0 | 0 | 5 | 0 | 1 | 0 | 7 |
| Subtotal | 94 | 56 | 89 | 84 | 11 | 64 | 28 | 426 |

AIR TRAFFIC

| | N.Y. Center | N.Y. TRACON | Chicago Center | Chicago Sector | Coast TRACON | L.A. Int'l. | Bay TRACON | Total |
|---|---|---|---|---|---|---|---|---|
| GM-2152-15 | 53 | 43 | 80 | 26 | 14 | 21 | 15 | 234 |
| GS-2152-14 | 201 | 126 | 219 | 97 | 39 | 62 | 58 | 802 |
| GS-2152-13 | 4 | 14 | 32 | 19 | 7 | 20 | 2 | 98 |
| GS-2152-12 | 16 | 13 | 30 | 2 | 7 | 7 | 2 | 77 |
| GS-2152-11 | 38 | 4 | 62 | 2 | 2 | 8 | 6 | 122 |
| GS-2152-9 | 53 | 26 | 112 | 1 | 6 | 1 | 2 | 203 |
| GS-2152-5 | 9 | 0 | 0 | 0 | 0 | 0 | 0 | 9 |
| Subtotal | 374 | 228 | 515 | 149 | 75 | 119 | 85 | 1,545 |

FLIGHT STANDARDS

| | Farm. FSDO | N.Y. FSDO | Tet. FSDO | L.A. FSDO | Total |
|---|---|---|---|---|---|
| GS-1801-12 | 0 | 0 | 0 | 1 | 1 |
| GM-1825-15 | 1 | 6 | 4 | 3 | 14 |
| GM-1825-14 | 2 | 5 | 2 | 5 | 14 |
| GM-1825-13 | 2 | 7 | 4 | 5 | 18 |
| GS-1825-13 | 10 | 17 | 14 | 12 | 53 |
| GS-1825-12 | 3 | 8 | 6 | 16 | 33 |
| GS-1825-11 | 1 | 3 | 1 | 3 | 8 |
| GS-1825-9 | 0 | 0 | 0 | 1 | 1 |
| GS-1825-5 | 0 | 0 | 0 | 1 | 1 |
| Subtotal | 19 | 46 | 31 | 47 | 143 |

Total number of employees covered: 2,114

**Appendix B—Cost Estimates**

| Facility | Current employment | 1st-year costs | 5th-year employment goal | 5th-year costs |
|---|---|---|---|---|
| *Eastern Region:* | | | | |
| Farmingdale FSDO | 19 | $174,975 | 29 | $267,067 |
| New York Center | | | | |
| Air Traffic | 374 | 3,627,632 | 453 | 4,394,139 |
| Airway Facilities | 94 | 719,806 | 121 | 926,556 |
| New York FSDO | 46 | 437,433 | 63 | 599,093 |
| New York TRACON | | | | |
| Air Traffic | 228 | 2,416,160 | 277 | 2,935,434 |
| Airway Facilities | 56 | 449,224 | 57 | 457,246 |
| Teterboro FSDO | 31 | 293,090 | 44 | 415,999 |
| *Great Lakes Region:* | | | | |
| Chicago Center | | | | |
| Air Traffic | 515 | 4,712,380 | 630 | 5,764,670 |
| Airway Facilities | 89 | 696,813 | 97 | 758,448 |
| Chicago O'Hare | | | | |
| Air Traffic | 149 | 1,757,153 | 174 | 2,052,009 |
| Airway Facilities | 84 | 632,986 | 101 | 761,093 |
| *Western-Pacific Region:* | | | | |
| Coast TRACON | | | | |
| Air Traffic | 75 | 780,513 | 81 | 853,754 |
| Airway Facilities | 11 | 77,247 | 14 | 98,314 |
| Los Angeles FSDO | 47 | 410,274 | 84 | 733,255 |
| Los Angeles Int'l | | | | |
| Air Traffic | 119 | 1,297,480 | 140 | 1,528,634 |
| Airway Facilities | 64 | 456,750 | 70 | 501,757 |
| Oakland Bay TRACON | | | | |
| Air Traffic | 85 | 921,684 | 102 | 1,106,020 |
| Airway Facilities | 28 | 213,376 | 32 | 243,856 |
| Totals | 2,114 | $20,067,176 | 2,569 | $24,398,350 |

(The cost estimates for the first year are computed using the annual base salary for the representative rate (step 4) of each GS grade level. Fifth-year cost estimates were computed based on the average cost per employee during the first year, multiplied by the 5th-year demonstration project employment goal. Employment goals are approximate and subject to adjustment over the course of the project because of operational requirements.)

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## RAILROAD RETIREMENT BOARD

### Agency Forms Submitted for OMB Review

**AGENCY:** Railroad Retirement Board.

**ACTION:** In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

**Summary of proposal(s)**

(1) *Collection title:* Claim for Credit for Military Service (RUI Act).
(2) *Form(s) submitted:* UI-44.
(3) *OMB Number:* 3220-0072.
(4) *Expiration date of current OMB clearance:* Three years from date of OMB approval.
(5) *Type of request:* Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.
(6) *Frequency of response:* On occasion.
(7) *Respondents:* Individuals or households.
(8) *Estimated annual number of respondents:* 300.
(9) *Total annual responses:* 300.
(10) *Average time per response:* .083 minutes.
(11) *Total annual reporting hours:* 25.
(12) *Collection description:* Military service can be used under certain conditions for entitlement to an extended or accelerated unemployment or sickness benefit provided for under section 2(c) of the Railroad Unemployment Insurance Act. The form will obtain information about the applicant's claimed military service.

**ADDITIONAL INFORMATION OR COMMENTS**

Copies of the proposed forms and supporting documents can be obtained from Pauline Lohens, the agency clearance officer (312-751-4692). Comments regarding the information collection should be addressed to Pauline Lohens, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Justin Kopca (202-395-7316), Office of Management and Budget, Room 3002, New Executive Office Building, Washington, DC 20503.

**Pauline Lohens,**
*Director of Information Resources Management.*

[FR Doc. 89-5604 Filed 3-9-89; 8:45 am]
BILLING CODE 7905-01-M

## SECURITIES AND EXCHANGE COMMISSION

**[Rel. No. IC-16846; (812-7261)]**

### The OTC-100 Fund Inc.; Application and Temporary Order

March 3, 1989.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for a pemanent order and grant of a temporary order under the Investment Company Act of 1940.

*Applicant:* The OTC-100 Fund, Inc. ("Applicant").

*Relevant 1940 Act Section:* Permanent order requested, and temporary order granted under section 22(e)(3).

*Summary of Application and Order:* Applicant seeks a permanent order pursuant to sections 6(c) and 22(e)(3) of the 1940 Act permitting the Applicant to suspend the right of redemption through March 22, 1989, to enable the Applicant to take such actions as may be necessary to effect an orderly sale of assets and distribution of proceeds to security holders of the Applicant in comtemplation of the liquidation and dissolution of the Applicant. The Commission is issuing a temporary order granting this request under section 22(e)(3) until March 15, 1989.

*Filing Date:* The Application was filed on March 2, 1989.

*Hearing or Notification of Hearing:* If no hearing is ordered, the application will be granted, and a permanent order will issue permitting Applicant to suspend the right of redemption and payment for shares already submitted for redemption through March 22, 1989. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on March 13, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for attorney, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

**ADDRESS:** Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549; Applicant, c/o Thomas R. Smith, Jr., Brown & Wood, One World Trade Center, New York, New York 10048.

**FOR FURTHER INFORMATION CONTACT:** Karen L. Skidmore, Branch Chief (202) 272-3023 or Cathey Baker, Staff Attorney (202) 272-3033 (Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

**Applicant's Representations**

1. The Applicant is a no-load, diversified, open-end investment company, organized under Maryland law on November 13, 1984. The investment objective of the Applicant is to obtain a long-term total return that reflects the performance of the 100 largest industrial common stocks listed on the NASDAQ National Market System meeting the Applicant's eligibility requirements as described in the Applicant's current prospectus.

2. The Applicant's investment adviser is Astrop Funds Advisor, Inc. ("AFA"), a wholly-owned subsidiary of Astrop Advisory Corporation, a Georgia corporation ("Astrop Advisory"). The Applicant's principal underwriter is Astrop Fund Distributor, Inc. ("Astrop Distributor"), which is also a wholly-owned subsidiary of Astrop Advisory. As of February 23, 1989, Astrop Advisory underwent a change of control due to the "assignment," as defined by the 1940 Act, of a controlling block of its outstanding voting securities. As a result, AFA also underwent a change of control, which had the effect of terminating the Applicant's then existing management and distribution arrangements. The Applicant's Board of Directors called a special meeting of shareholders of the Applicant to consider approval of new management and distribution arrangements for an interim period. The Applicant's shareholders approved such new arrangements at a special meeting held on February 23, 1989.

3. On March 1, 1989, the Applicant received redemption requests relating to two separate shareholder accounts controlled by CIBA-GEIGY Corporation, a New York corporation (the "CIBA-GEIGY accounts"), which constitute approximately 80% of the outstanding shares of the Applicant. Processing these redemption requests within the seven-day period required by section 22(e) of the 1940 Act could cause the net asset value of the Applicant's remaining outstanding shares to be significantly lower than the net asset value per share would be otherwise, thereby harming the remaining shareholders of the Applicant. The Applicant's Board of



Directors held a series of meetings to consider the ramifications of processing the redemption requests and what action the Applicant should take to protect the interests of all shareholders of the Applicant. CIBA-GEIGY Corporation, as fiduciary for CIBA-GEICY accounts, has agreed to rescind the two redemption requests to enable the Applicant to raise redemption proceeds in an orderly manner not detrimental to the interests of the Applicant's other shareholders. Their agreement is conditioned on CIBA-GEIGY receiving assurances that the Applicant will seek to liquidate its assets prior to the end of March 1989 and that actions are taken to assure that none of such other shareholders are permitted to redeem shares before the CIBA-GEICY accounts.

4. On March 1, 1989, Applicant's Directors, including a majority who are not interested persons, determined: to cease sales of shares of the Applicant effective March 1, 1989; to approve a plan of complete liquidation and dissolution; to call a meeting of shareholders on March 21, 1989 to consider approval of a plan of complete liquidation and dissolution of the Applicant' to authorize the filing of proxy materials; to terimate the Applicant's management agreement with AFA effective March 22, 1989; and to seek the relief requested.

5. The Applicant will use its best efforts to obtain shareholder approval of the Applicant's liquidation before the end of March 1989. Under Maryland law, the affirmative vote of two-thirds of the outstanding shares is needed to approve the liquidation of a corporation; CIBA-GEICY Corporation has advised the Applicant's Directors that its shares will be voted in favor of liquidation.

**Applicant's Legal Analysis**

The Applicant submits that granting the requested relief is for the protection of the Applicant's shareholders, as provided in section 22(e)(3) of the 1940 Act, and consistent with the purposes fairly intended by the policy and provisions of the 1940 Act, as provided in section 6(c) of such Act. The Applicant asserts that the actions taken by the Directors are intended to ensure that each of the Applicant's shareholders will be treated equally in view of the otherwise detrimental effect on minority shareholders of processing the CIBA-GEICY accounts' redemption requests. The Directors' actions will result in the orderly liquidation of the Applicant and, together with the relief requested herein, will cause all shareholders to receive the same net asset value per share. As a result, the relief requested is necessary in order to protect all shareholders of the Applicant and to ensure that each shareholder receives the highest possible price per share under the circumstances.

**Temporary Order**

Based on the foregoing, the Commission has considered the matter and finds, under the standards of section 22(e)(3), that a temporary under authorizing the suspension of redemptions through March 15, 1989 is appropriate for the protection of security holders of the Applicant.

Accordingly, *It is ordered*, under section 22(e)(3) of the 1940 Act, subject to the condition that Applicant cease sales of its shares except pursuant to reinvestment of dividends under any previously existing shareholders requests, that the Applicant be and is hereby permitted (1) to suspend the right of redemption of its outstanding redeemable securities, effective at the opening of business on this date and (2) to suspend payment for shares already submitted for redemption for which payment has not been made prior to this date, both suspensions to continue through March 15, 1989.

By the Commission.

**Jonathan G. Katz,**
*Secretary.*

[FR Doc. 89-5575 Filed 3-9-89; 8:45 am]
BILLING CODE 8010-01-M

## DEPARTMENT OF STATE

**[Public Notice CM-8/1270]**

### Shipping Coordinating Committee; Meeting

The U.S. Shipping Coordinating Committee (SHC) will conduct an open meeting at 0930 on Thursday, 30 March 1989 in Room 6332 of the Department of Transportation Building, 400 Seventh Street SW., Washington, DC. The purpose of this special meeting is to continue development of U.S. positions for:

1. The upcoming International Maritime Organization (IMO) Diplomatic Conference on the Draft Salvage Convention scheduled to meet in London from 17-28 April 1989; and

2. The ongoing consideration by the IMO Legal Committee of the question of liability and compensation related to maritime carriage of hazardous and noxious substances (HNS).

The initial SHC public meeting in preparation for the Diplomatic Conference on Salvage was held in Washington, DC on 29 November 1988; a second meeting on this subject was held on 24 January 1989. The third and final meeting prior to the Conference will be that scheduled for 30 March 1989.

In preparing for the Salvage Conference, four draft convention issues were identified from the outset as particularly important from the U.S. perspective:

1. The system established in Articles 10 and 11 ("Criteria for Assessing the Reward" and "Special Compensation," respectively) for sharing the cost of a new environmental incentive for salvors between shipowners and cargo interests;

2. The jurisdiction provisions in Article 21;

3. The present scope of the provision for exception by reservation in Article 24, the effect of which would be to require application of the convention to many offshore hydrocarbon exploration and production facilities; and

4. The absence of any exclusion from the convention for government-owned, non-commercial cargoes carried in other than government-owned vessels.

After preparations for the Salvage Conference were underway, a fifth issue—possible application of the new convention to shipwreck (including treasure) salvage—was identified as a matter of concern to certain domestic interests and subsequently was discussed briefly at the 24 January 1989 SHC meeting. Applicability of the convention to shipwreck salvage is not addressed in the draft convention.

The foregoing five issues, along with any other issues raised by the published Salvage Conference papers or by participants, will be discussed at this special SHC meeting. The views of the public, and particularly those of affected maritime and environmental interests, are requested.

With respect to HNS liability and compensation, the IMO Legal Committee has resumed work on this subject in an effort to develop an international HNS regime which will prove more acceptable than that which was considered but not adopted at the 1984 Diplomatic Conference on Liability and Compensation for Damage in Connection with the Carriage of Certain Substances by Sea. It should be noted that development and implementation of an international HNS regime would have significant impacts on a wide range of U.S. interests related to the maritime and chemical industries, government and the environment.

The United Kingdom has indicated tentative plans to host intergovernmental talks on this subject in London immediately following the Salvage Diplomatic Conference. Specific

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comments are solicited with respect to each of the basic HNS options and related drafts in order to be prepared to consider which proposals merit further work by interested nations for submission to the next Legal Committee session.

Members of the public are invited to attend the 30 March 1989 SHC meeting, up to the seating capacity of the room.

For further information pertaining to the issues to be discussed at the Shipping Coordinating Committee meeting or to submit views concerning the proposed Salvage Convention or the ongoing HNS negotiations, contact either Captain Frederick F. Burgess, Jr. or Lieutenant Commander Frederick M. Rose, Jr., U.S. Coast Guard (G-LMI), 2100 Second Street SW., Washington, DC 20593, telephone (202) 267-1527, telefax (202) 267-4163.

Dated: March 2, 1989.

**Thomas J. Wajda,**

*Chairman, Shipping Coordinating Committee.*

[FR Doc. 89-5605 Filed 3-9-89; 8:45 am]

BILLING CODE 4710-07-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Certification Basis for the McDonnell Douglas Model MD-11 Airplane

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Amended Type Certification Basis.

**SUMMARY:** This non-rulemaking document establishes the amended type certification basis for the new McDonnell Douglas Model MD-11 airplane. It is published in the interest of keeping the public informed and to advise all interested person of the airworthiness standards applicable to the MD-11.

**ADDRESS:** Details of the FAA disposition of the comments may be obtained by writing to the Federal Aviation Administration, Los Angeles Aircraft Certification Office, ANM-100L, Attention: MD-11 Certification Basis Docket, 3229 East Spring Street, Long Beach, California 90806.

**FOR FURTHER INFORMATION CONTACT:** Mr. Kyle L. Olsen, MD-11 Program Manager, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806, telephone (213) 988-5227.

**SUPPLEMENTARY INFORMATION:**

**Background**

McDonnell Douglas applied on October 9, 1985, for a change to Type Certificate No. A22WE to include the new Model MD-11. The Model MD-11 is a long range derivative of the currently certificated DC-10 that will be able to operate at higher maximum gross weights. It will incorporate three high-bypass ratio turbofan engines, such as Pratt & Whitney PW4000 Series or General Electric CF6-80C2, with digital electronically-controlled engine and thrust management systems. The Model MD-11 will incorporate simplified and automated cockpit controls, and electronic cockpit displays to facilitate operation by two flight crewmembers.

**Discussion**

A notice which invited public comments on the proposed certification basis of the MD-11 was published in the **Federal Register**, on May 24, 1988 (53 FR 18646). Two organizations responded to the invitation and commented on the proposed certification basis.

Comments were submitted on the following topics:

1. Engine and Flight Control System
2. Corrosion Protection
3. Fatigue Life
4. Digital Electronic System
5. Accelerate-stop Distance
6. Emergency Evacuation
7. Instructions for Continued Airworthiness

The commenters provided constructive comments on the proposed certification basis with special concern expressed for the topics listed above. Each comment was reviewed in detail and considered in the development of the certification basis for the MD-11.

The FAA has prepared a response to each of the topics. A disposition of comments which contains these responses is filled in the MD-11 Certification Basis Docket.

While conducting a final review of the proposed certification basis, the FAA concluded that the proposed regulatory provisions do not provide adequate standards for airplane flutter and divergence which were provided by Amendments 25-23 and 25-46. The development of operational speed restrictions, overspeed warning systems and advances in system failure concepts in the 1980's rendered the flutter speed substantiation margins prior to Amendment 25-23 inadequate since they were based on likely overspeeds beyond the design dive speed up to $1.2V_d$. Regardless of the likelihood of overspeed, modern, high-speed flexible transports operating in the transonic speed regime require a substantial margin for analytical reliability purposes. Amendments 25-23 and 25-46 were developed to make the flutter substantiation margins and flutter stability failure concepts consistent with the MD-11 class of transport and with the system failure concepts already being applied by other rules in the proposed certification basis. After considerable review and discussion, the FAA has revised the MD-11 certification basis regarding § 25.629 to include the requirements of these later amendments.

**Type Certification Basis**

Based on the date of application and pursuant to the provisions of § 21.101, the type certification basis of the McDonnell Douglas MD-11 is: Part 25 of the Federal Aviation Regulations (FAR), effective February 1, 1965, as amended by Amendments 25-1 through 25-61 except as noted below:

| Section No. | Title | Thru Amendment 25- |
|---|---|---|
| | PERFORMANCE | |
| 25.109 | Accelerate-stop distance | 41 |
| | CONTROLLABILITY AND MANEUVERABILITY | |
| 25.143 | Control & Maneuver: General | 41 |
| 25.149 | Minimum control speed | 41 |
| | MISCELLANEOUS FLIGHT REQUIREMENTS | |
| 25.251(d) | Vibration and buffeting | 22 |
| | STRUCTURE—GENERAL | |
| 25.305 | Strength and deformation | 53 |
| | FLIGHT MANEUVER AND GUST CONDITIONS | |
| 25.331 | Flight maneuver & gust conditions, General | 45 |
| 25.345(c) | High Lift Devices | 45 |
| | DESIGN AND CONSTRUCTION—GENERAL | |
| 25.607 | Fasteners | 22 |
| 25.631 | Bird strike damage | [1] 22 |
| | CONTROL SYSTEMS | |
| 25.701 (a) & (d). | Flap interconnection | 22 |
| | PERSONNEL AND CARGO ACCOMMODATIONS | |
| 25.772 | Pilot compartment doors | [2] (NA) |
| 25.783 | Doors | 53 |
| | EMERGENCY PROVISIONS | |
| 25.803(d) | Emergency evacuation | 45 |
| 25.812 | Emergency lighting | [4] 57 |
| | VENTILATION AND HEATING | |
| 25.832 | Cabin ozone concentration. | [5] [6] (NA) |
| | FIRE PROTECTION | |
| 25.858(a) | Cargo compartment fire detection systems. | [3] (NA) |
| | EQUIPMENT—GENERAL | |
| 25.1309 | Equipment, systems, and installations. | [3] 22 |



| Section No. | Title | Thru Amendment 25- |
|---|---|---|
| | LIGHTS | |
| 25.1401(b) | Anticollision light system | 40 |
| 25.1401(f) | | 26 |
| | OPERATING LIMITATIONS AND INFORMATION | |
| 25.1529 | Instructions for continued airworthiness. | 53 |

[1] New structure will comply with § 25.631 as amended by later relevant amendments up to and including Amendment 25-61.

[2] New systems, and systems with major changes, their installation and equipment will comply with § 25.1309 as amended by later relevant amendments up to and including Amendment 25-61.

[3] Not applicable. Since the original certification basis, which did not include this section, has been determined to be adequate, the requirements of this section do not apply to this type design.

[4] Compliance with a later amendment to this section is required for Part 121 operators.

Part 36 of the FAR, as amended by Amendments 36-1 through 36-16, and any later amendments in existence at the time of certification. McDonnell Douglas has elected to comply with the Stage 3 noise level requirements.

Special Federal Aviation Regulation (SFAR) 27, as amended by Amendments 27-1 through 27-6, and any later amendments in existence at the time of certification.

The following special conditions and exemptions are part of the DC-10 certification basis and will also be part of the MD-11 certification basis (Ref.: Type Certificate Date Sheet No. A22WE):

1. Special Conditions No. 25-18-WE-7, dated January 7, 1970, and Special Conditions No. 25-18-WE-7, Amendment No. 1, dated July 9, 1971.

2. Special Condition No. 25-46-WE-14 dated October 26, 1972.

**Exemptions From FAR Part 25**

1. Number 1573 issued April 28, 1972—exemption from § 25.807(c)(5) to permit evacuation with a seating capacity of 80 for a pair of oversize Type I exits.

2. Number 2453 issued September 26, 1977—exemption from § 25.807(c)(1) to permit evacuation of passengers with either of the following exit-seat configurations: (a) One oversize Type I emergency exit meeting the conditions specified in Exemption No. 1573 on each side of the fuselage and a passenger seating capacity of 50; or (b) one Type A emergency exit on each side of the fuselage and a passenger seating capacity of 70.

The following optional requirements are part of the DC-10 certification basis and will apply to the MD-11:

Ditching Provisions—§ 25.801.

Ice Protection Provisions—§ 25.1419.

**Additional Exemptions**

As of the date of this notice, McDonnell Douglas has not petitioned the FAA for any exemptions relative to the type certification of the Model MD-11 airplane.

**Additional Special Conditions**

At this time, the FAA has identified several additional novel design features that may require the promulgation of special conditions in order to provide appropriate safety standards. The McDonnell Douglas Model MD-11 will have several digital electronic systems controlling essential and critical functions. Under the provisions of §§ 21.101(b)(2) and 21.16, the FAA is proposing to draft special conditions concerning the following items:

1. Functional reliability of digital electronic systems.

2. Lightning protection of digital electronic systems.

3. Protection from the effects of unwanted radio frequency (RF) energy.

These special conditions, and any others deemed necessary, will be proposed in a subsequent notice(s) of proposed special conditions pursuant to § 11.28 of Part 11 and all public comments received on that notice(s) will be considered before the special conditions are issued.

**Additional Design Review**

In addition to meeting the provisions of the applicable airworthiness, noise, and engine emission regulations and special conditions, it must be shown that no feature or characteristic makes the airplane unsafe, under the provisions of § 21.21(b)(2). The MD-11 design and operational characteristics will be reviewed accordingly.

**Post Certification Activity**

Finally, design evaluation does not end with the issuance of the type certificate. Regulations require aircraft owners and operators to submit various reports and data on the aircraft's service experience. The FAA continues to monitor the safety performance of the design after the type design is approved and the product is introduced into service. This is accomplished through the various reports and data the FAA receives daily, as well as through post certification design reviews. The airworthiness standards, such as Part 25, as well as the operational standards, such as Parts 91, 121, and 125, are amended from time-to-time to consider new technologies and to upgrade the existing level of safety. If, during an evaluation, an unsafe condition is found as a result of service experience and that condition is likely to exist or develop in other products of the same type, the FAA issues an Airworthiness Directive (AD) under Part 39 to require a change to the type design or to define special inspection or operational limitations. In effect, these are also retroactive applications of required type design changes.

Issued in Seattle, Washington, on February 24, 1989.

**Leroy A. Keith,**

*Manager, Transport Airplane Directorate Aircraft Certification Service.*

[FR Doc. 89-5548 Filed 3-9-89; 8:45 am]

BILLING CODE 4910-13-M

### Radio Technical Commission for Aeronautics (RTCA); Special Committee 165—Minimum Operational Performance Standards for Aeronautical Mobile Satellite Services; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given for the second meeting of RTCA Special Committee 165 on Minimum Operational Performance Standards for Aeronautical Mobile Satellite Services to be held March 20-22, 1989, in the RTCA Conference Room, One McPherson Square, 1425 K Street NW., Suite 500, Washington, D.C. 20005, commencing at 1:00 p.m.

The agenda for this meeting is as follows: (1) Chairman's remarks; (2) approval of the first meeting's minutes, RTCA Paper No. 24-89/SC165-8; (3) technical presentations; (4) Working Group Reports on Operation and Implementation Working Group Report, Equipment Standards Working Group Report, and Service Performance Criteria Working Group Report; (5) review of overall draft progress; (6) Working Group sessions; (7) assignment of tasks; (8) other business; and (9) date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

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Issued in Washington, DC., on February 27, 1989.

**Geoffrey R. McIntyre,**

*Acting Designated Officer.*

[FR Doc. 89-5552 Filed 3-9-89; 8:45 am]

BILLING CODE 4910-13-M

**Flight Standards District Office at Van Nuys, California; Relocation**

Notice is hereby given that on or about February 27, 1989, the Flight Standards District Office at 7120 Hayvenhurst Avenue, Suite 310, Van Nuys, California 91406 will be relocating to 16501 Sherman Way, Suite 330, Van Nuys, California 91406. Services to the general public will continue to be provided by this office without interruption. This information will be reflected in the FAA Organization Statement the next time it is reissued. (Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354.)

**Jerold M. Chavkin,**

*Regional Administrator, Western-Pacific Region.*

Issued in Hawthorne, CA, on February 21, 1989.

[FR Doc. 89-5549 Filed 3-9-89; 8:45 am]

BILLING CODE 4910-13-M



# Sunshine Act Meetings

Federal Register
Vol. 54, No. 46
Friday, March 10, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS**

**TIME AND DATE:** 10:00 a.m., Wednesday, March 15, 1989.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:**

1. Proposed May-December 1989 fee schedules for Federal Reserve check return services.
2. Any items carried forward from a previously announced meeting.

**Note:** This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board, (202) 452-3204.

Dated: March 8, 1989.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 89-5653 Filed 3-8-89; 8:46 am]

BILLING CODE 6210-01-M

**FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS**

**TIME AND DATE:** Approximately 10:30 a.m., Wednesday, March 15, 1989, following a recess at the conclusion of the open meeting.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Proposed purchase of computers within the Federal Reserve System.
2. Review of the Board's compensation project and related personnel matters. (This item was originally announced for a closed meeting on February 27, 1989.)
3. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
4. Any items carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: March 8, 1989.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 89-5654 Filed 3-8-89; 10:46 am]

BILLING CODE 6210-01-M

**NATIONAL CREDIT UNION ADMINISTRATION**

Notice of Meeting

**TIME AND DATE:** 9:00 a.m., Friday, March 17, 1989.

**PLACE:** The Red Lion, Canyon I and II, 255 South West Temple, Salt Lake City, Utah 84101, (801) 328-2000.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:**

1. Approval of Minutes of Previous Open Meeting.
2. Economic Commentary.
3. Central Liquidity Facility Report and Review of CLF Lending Rate.
4. Insurance Fund Report.
5. Proposed Interpretive Ruling and Policy Statement on Chartering the Field of Membership.
6. Appeal of the Denial of a Field of Membership Amendment by Arkla FCU, Little Rock, Arkansas.
7. Appeal of the Denial of a Name Change by American 1 FCU, Jackson, Michigan.
8. Legislative Update.

**FOR MORE INFORMATION CONTRACT:** Becky Baker, Secretary of the Board, Telephone (202) 682-9600.

**Becky Baker,**

*Secretary of the Board.*

[FR Doc. 89-5681 Filed 3-8-89; 12:26 pm]

BILLING CODE 7535-01-M

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# Corrections

Federal Register
Vol. 54, No. 46
Friday, March 10, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 1040

[Docket No. AO-225-A39; DA-88-047]

### Milk in the Southern Michigan Marketing Area; Recommended Decision and Opportunity to File Written Exceptions on Proposed Amendments to Tentative Marketing Agreement and to Order

*Correction*

In proposed rule document 89-4353 beginning on page 7936 in the issue of Friday, February 24, 1989, make the following corrections:

**§ 1040.52 [Corrected]**

1. On page 7948, in the first column, in amendatory instruction 3, in the second line, "once cent" should read "one cent".

**§ 1040.74 [Corrected]**

2. On the same page, in the same column, in amendatory instruction 5, in the first line, "§ 1040.74" should read "§ 1040.75".

BILLING CODE 1505-01-D

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[FRL-3526-1; KY-036]

### Approval and Promulgation of Implementation Plans; Jefferson County, KY; SOCMI Air Fugitive Emissions

*Correction*

In rule document 89-4299 beginning on page 7930 in the issue of Friday, February 24, 1989, make the following correction:

**§ 52.920 [Corrected]**

On page 7931, in the first column, in § 52.920, paragraph (c)(57) is correctly designated paragraph (c)(58).

BILLING CODE 1505-01-D

## DEPARTMENT OF THE TREASURY

### Customs Service

### 19 CFR Part 132

### Proposed Customs Regulations Regarding Filling Absolute Quotas

*Correction*

In proposed rule document 89-4184 beginning on page 7781 in the issue of Thursday, February 23, 1989, make the following corrections:

1. On page 7782, in the first column, in the last paragraph, in the seventh line, "and" should read "an".

2. On the same page, in the same paragraph, in the 16th line, "or" should read "of".

3. On the same page, in the third column, in the first paragraph, in the seventh line, "consumption" was misspelled.

4. On the same page, in the same column, in the fourth paragraph, in the sixth line, "consumption" was misspelled.

BILLING CODE 1505-01-D

federal register

Friday
March 10, 1989

Part II

# Department of the Interior

### Bureau of Indian Affairs

### List of Lands Affected by White Earth Reservation Land Settlement Act of 1985; Notice

VOL 54 ISS 46 MR 10 1989 UMI



## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

### List of Lands Affected by White Earth Reservation Land Settlement Act of 1985

February 21, 1989.

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice lists all allotments or interests therein on the White Earth Chippewa Reservation in Minnesota which have been determined to fall within the scope of section 4(a), 4(b), or 5(c) of the White Earth Reservation Land Settlement Act of 1985, Pub. L. 99–264 (100 Stat. 61), as amended by Pub. L. 100–153 (101 Stat. 886), and Pub. L. 100–212 (101 Stat. 1433). This notice is required by section 7(c) of the Act as amended.

**FOR FURTHER INFORMATION CONTACT:** Project Director, Branch of WELSA, Bureau of Indian Affairs, Route 3, Box 112, Cass Lake, Minnesota 56633, Telephone: (218) 335–2174.

**SUPPLEMENTARY INFORMATION:** The White Earth Reservation Land Settlement Act of 1985, Pub. L. 99–264, as amended by Pub. L. 100–153, and Pub. L. 100–212, provides for alternative methods of resolving disputes relative to the title to certain allotments for which trust patents were issued to White Earth Chippewa Indians. Sections 4(a) and 4(b) of the Act define circumstances by which the title to an allotment may have been lost through a questionable tax forfeiture, sale, mortgage, or other taking or transfer during the trust period. The Act authorizes the Secretary of the Interior to: (1) Identify the allotments or interests therein which were lost under such circumstances, (2) determine the individuals entitled to compensation for the loss of such allotments or interests therein, and (3) ascertain the amount of compensation to which each such individual is entitled. In addition, section 5(c) of the Act provides that the White Earth Band of Chippewa Indians shall be compensated for allotments which were granted to individuals who had died prior to the selection dates of their respective allotments.

Under section 8(a) of the Act, the compensation for the loss of the allotment or interest is to be based on the fair market value of the allotment or interest therein as of the date of the taking or transfer less any compensation actually received at the time. The compensation to be paid under the Act shall include interest, compounded annually at five percent from the date of the questionable taking or transfer, until March 24, 1986, and at the general rate of interest earned by Department of the Interior funds thereafter. The Secretary is authorized to issue written notices of compensation determination to the allottees or heirs entitled thereto. Such notice shall describe the basis for the Secretary's determination, the process whereby such compensation shall be distributed, and the applicable time limits for judicial review of the determination. Any individual who has already elected to file suit in the Federal District Court for the District of Minnesota to seek the recovery of title to an allotment or interest therein, or damages, is barred from receiving any compensation under the Act pursuant to section 8(c).

The Secretary was directed to publish a first list of allotments or interests that fall within the provisions of section 4(a), 4(b), or 5(c) of the Act. The first list of allotments and interests affected by the Act was published in the **Federal Register** at Vol. 51, No. 182, on September 19, 1986. The Secretary is also authorized, pursuant to section 7(c) of the Act, to publish a second list of allotments and interests affected by the Act. The amendment contained in Pub. L. 100–212 authorizes the Secretary to publish corrections or additions to the first list as well. This list is the second list of allotments and interests therein which have been determined by the Department of the Interior to fall within the provisions of section 4(a), 4(b), or 5(c) of the Act. This list does not contain certain tracts and interests that have been removed or corrected from the first list that have been found to be outside the scope of section 4(a), 4(b), or 5(c) of the Act.

The inclusion or exclusion of a particular allotment or interest therein on this list may be judicially reviewed pursuant to the provisions of the Administrative Procedure Act, 5 U.S.C. 701 *et seq.* Any such action must be filed in Federal District Court for the District of Minnesota and shall be barred unless it is filed within 90 calendar days of this publication.

This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

W.P. Ragsdale,

*Acting Assistant Secretary—Indian Affairs.*

### Instruction Sheet

Each questionable taking or transfer has been assigned a ten, eleven, or twelve character Issue Number. In every instance, the first six characters, FS3408 are identical and denote the Minneapolis Area Office, Minnesota Agency, and White Earth Indian Reservation. The last four, five, or six characters identify the specific taking or transfer.

Two separate lists have been prepared so that information about any specific taking or transfer can be located by reference to the Issue Number, name(s) of the allottee, legal description of the tract which was involved in the taking or transfer, and in some instances, the name(s) of the heir(s) when the taking or transfer applies to an inherited interest. The page numbers referred to below are located at the top center of each page and are not the five digit **Federal Register** page numbers located on the upper right or left corners of each page. The two lists appear under the following headings and page numbers: MASTER LIST (pages 1–23), and PARTIAL INTERESTS LIST (pages 24–36). The two lists are arranged sequentially by Issue Number which provide cross referencing between the two lists.

The MASTER LIST contains information regarding all allotments and inherited interests affected by the Act, including the following subheadings:

ISSUE NO.: The ten, eleven, or twelve character number, explained above, which identifies the Area Office, Agency, Reservation, and specific taking or transfer affected by the Act. Where there are multiple tracts of land, there has occasionally been the need to add one or more letters to the Issue Number in order to distinguish among such tracts. Also, where a tract of land has been the subject of multiple takings or transfer by interest holders, letters have been added to the Issue Number to distinguish between such takings and transfers.

ALLOT. NO.: The number assigned, at the time of the allotment selection, to the allotment comprising the tract of land which was involved in the taking or transfer. Many White Earth allottees, after receiving an original allotment, were also granted an additional allotment, with different numbers assigned to each. To distinguish between the two allotments, the allotment numbers are preceded by the letter O (Original Allotment) or A (Additional Allotment).

CO.: The County in which the tract involved in the taking or transfer is located. These are identified as either Becker (B), Clearwater (C), or Mahnomen (M) County.

LEGAL SUBDIV., SEC., TWP., and RNG.: The legal description of the tract which is involved with the taking or transfer by Legal Subdivision, and Section (SEC), Township (TWP), and Range (RNG) numbers. Where a metes and bounds description is required for the legal subdivision, it is described as MB (Metes and Bounds). Further information concerning such tracts can be obtained from the Branch of WELSA office in Cass Lake, Minnesota.

ENGLISH NAME: All known English names of the allottee, including given name, middle initial, middle name, maiden name, married name, and other English names which have been identified for the allottee.

OJIBWAY NAME: The name of the allottee in Ojibway, the native language of the White Earth Band of Chippewa Indians. The names are shown with phonetic spellings.

Tracts which fall within the provisions of section 5(c) of the Act where the claimant is the White Earth Band, appear only on the MASTER LIST with the White Earth Band listed under the sub-heading of English name.

The PARTIAL INTERESTS LIST is limited to include only the Issue Numbers, Names of any Inherited Interest Holder, and their respective inherited interests for the takings or transfers which resulted in the loss of less than full title to the subject tracts. The Issue Number can be cross referenced to the MASTER LIST which will indicate the name of the allottee, and the legal description of the tract involved in the takings or transfers. ISSUE NO. and ALLOT. NO. are the same as explained above.

NAME OF INTEREST HOLDER: The name of the individual who held an inherited interest, less than full interest, in the tract at a time preceding the taking or transfer, or at the time of the taking or transfer.

INTEREST: The fractionated interest, or inherited share, held in trust by the interest holder as of either a time preceding the taking or transfer, or held as the date of the transfer or taking. The fractionated interest is indicated by numerator and denominator.

If you wish further information about allotments or interests therein which are contained in this list, call or write the Branch of WELSA office. The address and telephone number are indicated in the "FOR FURTHER INFORMATION CONTACT" section of this document. Be sure to include the complete Issue Number in any correspondence with the Bureau of Indian Affairs.

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WHITE EARTH RESERVATION LAND SETTLEMENT ACT CLAIMS

MASTER LIST

| ISSUE NO. | ALLOT NO. | C O | LEGAL SUBDIV. | S E C | T W P | R G | ENGLISH NAME | OJIBWAY NAME |
|---|---|---|---|---|---|---|---|---|
| F534080001 | O-5175 | B | LOT 6 | 26 | 142 | 40 | CLARA MOKOMANIC MOSSMAN | |
| | | | SWSE | 05 | 142 | 39 | | |
| F534080002A | O-5020 | C | NENW | 16 | 145 | 38 | TOM HILL | AN ME KAY BEE |
| F534080002B | A-2951 | C | SWNW | 01 | 145 | 38 | TOM HILL | AN ME KAY BEE |
| F534080002C | O-5020 | M | W2NENW | 26 | 146 | 39 | TOM HILL | AN ME KAY BEE |
| F534080002D | O-5020 | M | E2E2NENE | 20 | 146 | 39 | TOM HILL | AN ME KAY BEE |
| F534080003 | O-0819 | B | E2SW | 01 | 141 | 42 | PETER PARKER | |
| F534080004 | O-4267 | M | LOT 7 & NESE | 11 | 143 | 39 | | AN ZHOW AN CUMIG ISH KUNG |
| F534080005 | O-5149 | B | SWNW | 05 | 142 | 39 | MRS. DAVID LITTLEWOLF | AIN DUS E GWON AY BE QUAY |
| | | | SENW | 14 | 142 | 39 | | |
| F534080006 | O-2296 | M | W2NE | 18 | 144 | 40 | | SHAY NAH ME NAH |
| F534080006A | A-1677 | M | E2SE | 09 | 144 | 40 | | SHAY NAH ME NAH |
| F534080007 | A-1382 | C | SWSW | 22 | 143 | 38 | GEORGE PERCIVAL ANDREW | |
| F534080008 | A-2174 | B | S2SE | 11 | 142 | 39 | MARY MITCHELL | TE BE JEENCE |
| F534080009 | A-1273 | C | N2NW | 10 | 143 | 38 | | AY DAH WAH NUN IGO QUAY |
| F534080012 | A-0367 | B | SWNE & NWSE | 20 | 142 | 39 | JANE EUGENIA BISSON | |
| F534080013 | O-1049 | B | E2NW | 11 | 141 | 38 | | KE ME WOUB E QUAY |
| F534080015C | O-4757 | M | LOT 5 | 33 | 146 | 41 | | WAY JE CHAN GOAB E QUAY |
| F534080016 | O-0212 | B | LOT 1 | 05 | 141 | 40 | FELIA DOUCETTE | |
| F534080016A | A-0142 | B | N2NE | 35 | 142 | 38 | FELIA DOUCETTE | |
| F534080017 | A-0907 | C | SESE | 02 | 143 | 38 | GRACIE FAIRBANKS | |
| F534080017A | A-0907 | B | E2E2SWSW | 12 | 142 | 38 | GRACIE FAIRBANKS | |
| F534080017B | A-0907 | C | NESE | 02 | 143 | 38 | GRACIE FAIRBANKS | |
| F534080018A | O-4290 | M | N2NW | 12 | 143 | 39 | NANCY SOO | PE NAY |
| F534080019 | O-2534 | B | S2SE | 21 | 142 | 39 | | KE SIS O QUAY |
| F534080020 | A-3029 | C | W2NE | 33 | 145 | 38 | | AY ME WAH SUNG |
| F534080021 | A-2162 | C | N2NW | 28 | 146 | 38 | CHARLES H. ANYWAUSH | KE DISH KE GAH BOW |
| F534080023 | A-1029 | B | SESW | 12 | 142 | 38 | MELINDA LACHAPELLE HOLMES | |
| F534080026 | O-5119 | M | NWNW | 25 | 144 | 39 | AGGIE NORRIS | ISH QUAY AUSH E BIK O QUAY |
| F534080026A | O-5119 | C | LOT 1 | 30 | 144 | 38 | AGGIE NORRIS | ISH QUAY AUSH E BIK O QUAY |
| F534080025 | O-5155 | B | SENE & LOT 4 | 02 | 142 | 37 | JAME B. JONES | |
| F534080026 | A-2664 | M | N2N2SESE | 03 | 143 | 40 | JOHN WANDENAH | KAH BID AIN |
| F534080027 | O-4956 | C | E2SW | 19 | 144 | 38 | | NO DIN |
| F534080029 | A-3005 | C | NWNE | 32 | 145 | 38 | MRS. JOE AH GE MAUSH | KE WAY AUSH E QUAY |
| F534080030 | A-1580 | B | LOT 4 | 05 | 142 | 39 | MRS. JOE BEAUPRE | KE ME TAH O NUB O QUAY |
| | | | LOT 1 | 06 | 142 | 39 | | |
| F534080031 | O-4975 | C | SENE & SWSE | 33 | 145 | 38 | | NAH JE AUSH E QUAY |
| F534080032 | O-0703 | B | NENW & NWNE | 12 | 142 | 41 | | NAH NISH O BE QUAY |
| F534080032A | A-0548 | B | SENW & W2SWNW | 03 | 142 | 40 | | NAH NISH O BE QUAY |
| F534080032B | A-0548 | B | E2SWNW | 03 | 142 | 40 | | NAH NISH O BE QUAY |
| F534080033 | A-0095 | C | SWNW | 27 | 143 | 38 | ANGELINE MANYPENNY BRUNETTE | |
| F534080033B | A-0095 | C | NWNW | 27 | 143 | 38 | ANGELINE MANYPENNY BRUNETTE | |
| F534080034 | O-4637 | M | LOT 1 & NESE | 11 | 145 | 40 | MRS. PETER ROY | PAH KE NAY |
| F534080034A | A-2248 | M | E2NE | 11 | 145 | 40 | MRS. PETER ROY | PAH KE NAY |
| F534080035 | A-0087 | C | E2SE | 07 | 144 | 38 | JENNIE WARREN | |
| F534080036 | A-1260 | C | E2SW | 33 | 143 | 38 | | KAY DAH GE GWON AY YAUSH |
| F534080037 | A-2797 | M | NESE | 35 | 146 | 40 | MRS. JOE MORGAN | KE NEEG |
| F534080037A | A-2797 | M | NWSE | 35 | 146 | 40 | MRS. JOE MORGAN | KE NEEG |
| F534080039 | O-2244 | B | SWNW | 22 | 142 | 38 | MRS. SUCKER FINEDAY | MIN DE MON IEN |
| F534080039A | O-2244 | B | NWNW | 22 | 142 | 38 | MRS. SUCKER FINEDAY | MIN DE MON IEN |
| F534080040 | A-3160 | B | LOT 7 | 13 | 141 | 41 | OLIVE GLASS MORSE | |
| F534080040B | O-3008 | M | SWSE | 25 | 146 | 42 | OLIVE GLASS MORSE | |
| | | | NWNE | 36 | 146 | 42 | | |
| F534080042 | A-2625 | C | S2SW | 08 | 144 | 38 | LOUISA SLOAN MUNCH | |
| F534080043 | O-4171 | C | LOT 1 & NENW | 07 | 145 | 38 | | ME ZHAW KE GAH BO |
| F534080044 | A-1377 | B | SENE | 09 | 142 | 39 | DICK TAYLOR | NAY TAH WAUSH |
| F534080044A | A-1377 | B | SWNW | 10 | 142 | 39 | DICK TAYLOR | NAY TAH WAUSH |
| F534080045 | A-1444 | B | LOT 6 | 13 | 141 | 41 | | NAY TAH WAY WAY AUSH |
| F534080046 | A-1474 | C | LOT 1 | 16 | 143 | 38 | MRS. JOHN FRANK | NAY TUM AH MUN GE WAY QUAY |
| F534080046A | A-1474 | C | LOT 2 | 16 | 143 | 38 | MRS. JOHN FRANK | NAY TUM AH MUN GE WAY QUAY |
| F534080047 | A-1545 | B | E2NE | 22 | 142 | 38 | SUSAN BELLANGER | ME BIN AY GE SHIG |
| F534080048 | O-1813 | B | W2NE | 07 | 141 | 39 | MAGGIE ROCK | MEEZETTE |
| F534080049 | A-0928 | B | NESE | 12 | 142 | 40 | D. B. KNICKERBOCKER | MU SHE KAY ME GAH BOW |
| F534080050 | O-4501 | B | W2SW | 03 | 142 | 40 | | OBE ZAUN |
| F534080052 | A-2683 | B | NENW & NWNE | 08 | 142 | 39 | | O MIN AUN AN QUOD O QUAY |
| F534080053 | A-3155 | C | SWSW | 21 | 144 | 38 | THOMAS SHINGOBE | KAH GE GAY AUSH EENCE |
| F534080054 | O-4803 | C | SESE | 31 | 143 | 38 | CHARLES DAY | PAH NAH JOHN |
| F534080054A | A-2483 | C | SWSE | 31 | 143 | 38 | CHARLES DAY | PAH NAH JOHN |
| F534080055 | A-1679 | M | NENE | 27 | 144 | 40 | MRS. WILLIAM BRUNETTE | TE BISH KO GAH BOW E QUAY |
| F534080055B | A-1679 | M | NENW | 33 | 143 | 40 | MARY WEISE BRUNETTE | TE BISH KO GAH BOW E QUAY |
| F534080056 | O-1906 | B | S2SE | 30 | 141 | 37 | MRS. JOHN RABBITT | NOW WAH KE GAH BOW E QUAY |
| F534080056A | A-1405 | B | S2NW | 01 | 142 | 39 | MRS. JOHN RABBITT | NOW WAH KE GAH BOW E QUAY |
| F534080057 | O-3573 | M | N2SE | 10 | 145 | 40 | | MAY DWAY AUN GAY |
| F534080060 | O-4007 | M | LOT 7 | 18 | 143 | 39 | SAM WANDENAH | PE DAUN AN QUOD |
| | | | NENE | 19 | 143 | 39 | | |



(2)

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| F534080061 | O-1698 | B | E2SW | 24 | 141 | 37 | | PIN DE GAY O SAY QUAY |
| F534080063 | A-1343 | B | N2NW | 34 | 142 | 38 | HENRY FINEDAY | AN BOW E GE SHIG |
| F534080064 | O-2077 | B | N2SW | 36 | 141 | 38 | | WAH BE SISHE |
| F534080064A | O-2077 | B | N2SW | 36 | 141 | 38 | | WAH BE SISHE |
| F534080065 | O-4924 | C | S2SE | 20 | 144 | 38 | | BE SHEW AINCE |
| F534080066 | O-4923 | M | S2NE | 14 | 146 | 40 | NANCY PINE | AN GWAY DAUSH EE |
| F534080066A | O-4923 | M | S2NE | 14 | 146 | 40 | NANCY PINE | AN GWAY DAUSH EE |
| F534080067 | A-1013 | B | E2NE | 22 | 141 | 40 | JANE BLAIR | |
| F534080069 | A-1960 | C | N2SE | 32 | 146 | 38 | LOUISA BUNKER | |
| F534080070 | O-4058 | B | SWSE | 08 | 142 | 39 | ELLEN AITKIN | SHA GO JE |
| F534080070A | A-2681 | C | SENE | 20 | 143 | 38 | ELLEN AITKIN | SHA GO JE |
| F534080071 | A-2365 | B | S2SE | 23 | 142 | 37 | MABEL SMETSINGER LODE | |
| F534080072 | O-1700 | B | W2SE | 24 | 141 | 37 | | KAY BAY GWON |
| F534080073 | O-2293 | M | N2NW | 10 | 144 | 40 | | MAY SHA KE BE WAIS |
| F534080075 | A-2588 | M | LOT 4 | 23 | 143 | 39 | | ME WAN BO GEAG |
| F534080076 | A-3159 | M | LOT 3 | 11 | 143 | 39 | OLIVER GLASS | |
| F534080077 | A-0485 | B | W2NE | 15 | 142 | 37 | WILLIAM SMITH | |
| F534080078A | O-1020 | M | W2SW | 16 | 145 | 42 | JOSEPHINE VILLEBRUN KARNIK | |
| F534080079 | A-3158 | M | SWSW | 32 | 143 | 40 | LENORA GLASS WADDICK | |
| F534080079A | O-3007 | M | SESW | 02 | 144 | 41 | LEONORA GLASS WADDICK | |
| | | | NENW | 11 | 144 | 41 | | |
| F534080079B | A-3158 | C | SENW | 09 | 144 | 38 | LEONORA GLASS WADDICK | |
| F534080080 | A-2455 | B | LOT 5 | 21 | 142 | 40 | WALTER WAKEFIELD | |
| F534080080A | A-2455 | B | LOT 10 | 06 | 142 | 40 | WALTER WAKEFIELD | |
| F534080080B | A-2455 | C | S2SESE & NWSESE | 18 | 144 | 38 | WALTER WAKEFIELD | |
| F534080081 | A-2588 | M | LOT 7 | 14 | 143 | 40 | | WAH BO GE AG |
| | | | LOT 11 | 24 | 143 | 40 | | |
| F534080083 | O-0142 | C | SENW | 29 | 143 | 38 | JESSIE WARREN | |
| F534080085 | A-1683 | C | NESE | 17 | 144 | 38 | CATHERINE QUINN | WAUS AN WE GUN |
| F534080086 | O-0236 | B | LOT 3 | 31 | 142 | 40 | JOSEPH CARROLL WEBSTER | QUE WE ZAINCE |
| F534080086A | A-0155 | M | S2NE | 31 | 143 | 39 | JOSEPH CARROLL WEBSTER | QUE WE ZAINCE |
| F534080086B | O-0236 | B | NENW | 31 | 142 | 40 | JOSEPH CARROLL WEBSTER | QUE WE ZAINCE |
| F534080087 | O-1746 | B | W2NW | 21 | 142 | 37 | | NAUZ AN CUMIG OKE |
| F534080087A | A-1296 | B | E2SW | 36 | 142 | 38 | | NAUZ AN CUMIG OKE |
| F534080088 | A-2538 | C | S2NW | 08 | 143 | 38 | HENRY KEEZER | QUE WE ZAINCE |
| F534080088E | O-3880 | B | W2SW | 23 | 141 | 37 | HENRY KEEZER | QUE WE ZAINCE |
| F534080089A | A-2372 | M | LOT 3 | 13 | 143 | 40 | | WAH YAH QUAH KE SHIG |
| F534080089B | A-2372 | C | LOT 6, NESE | 06 | 144 | 38 | | WAY YAY QUAH KE SHIG |
| F534080090 | O-4350 | M | E2NE | 33 | 144 | 41 | | O MIS QUAH WE KE SHIG O QUAY |
| F534080091 | A-2843 | M | E2SE | 11 | 143 | 40 | WILLIAM MITCHELL | QUE WE ZAINCE |
| F534080091A | O-4917 | C | W2NE | 34 | 146 | 38 | WILLIAM MITCHELL | QUE WE ZAINCE |
| F534080092 | O-5044 | M | W2NW | 13 | 146 | 40 | JOHN MOONDAY | NAH WAH QUAY GE SHIG |
| F534080093A | O-0998 | M | SWNE & NWSE | 32 | 146 | 39 | CHRISTINA FAIRBANKS BEAULIEU | |
| F534080097 | O-0056 | B | S2SE | 24 | 141 | 42 | NINA E MCARTHUR | |
| F534080098 | O-0108 | B | LOT 3 & SENW | 06 | 142 | 41 | GERTIE C. DUNNELL MCLEAN | |
| F534080098A | A-0077 | B | LOT 5 | 06 | 142 | 41 | GERTIE C. DUNNELL MCCLEAN | |
| | | | SENE | 01 | 142 | 42 | | |
| F534080099 | O-4893 | M | N2SE | 09 | 143 | 39 | | O MAN DWAY AUSH E QUAY |
| F534080102 | O-0055 | B | SENW | 24 | 141 | 42 | JESSIE G MCARTHUR DAWLEY | |
| F534080102A | O-0055 | B | NESW | 24 | 141 | 42 | JESSIE GERTRUDE MCARTHUR | |
| F534080103 | A-3154 | M | LOTS 1 & 2 | 24 | 143 | 39 | CLARA MOKOMANIC MOSSMAN | |
| F534080104 | A-1088 | M | N2SE | 16 | 145 | 42 | PEARL IRENE FUNK | |
| F534080106 | O-4954 | C | S2S2SWNE | 01 | 146 | 38 | MRS. TOM SKINAWAY | O GAH BAY BAH KAH CO NAH MO QUAY |
| F534080106A | O-4954 | C | S2S2SENW | 01 | 146 | 38 | MRS. TOM SKINAWAY | O GAH BAY BAH KAH CO NAH MO QUAY |
| F534080106B | O-4954 | C | LOT 2 | 05 | 144 | 38 | MRS. TOM SKINAWAY | O GAH BAY BAH KAH CO NAH MO QUAY |
| F534080106E | O-4954 | M | S2NENE | 35 | 146 | 39 | MRS. TOM SKINAWAY | O GAH BAY BAH KAH CO NAH MO QUAY |
| F534080109 | A-2644 | M | NENE | 23 | 143 | 40 | FRANCES STRAND | KE ME WUN E BE WAIS EKE |
| F534080109A | A-2644 | M | LOT 11 | 13 | 143 | 40 | FRANCES STAND | KE ME WUN E BE WAIS EKE |
| F534080111 | O-1862 | B | S2NW | 23 | 141 | 38 | | I EEN DAH CUMIG O QUAY |
| F534080112A | A-2947 | M | E2NE | 24 | 145 | 39 | JOHN MUTCHINSON | |
| F534080115 | O-5060 | M | SENE | 34 | 146 | 40 | BAZIL | WAH PAH GAIS |
| | | | NWSW | 35 | 146 | 40 | | |
| F534080115A | A-3031 | M | SWSE | 28 | 145 | 42 | BAZIL | WAH PAH GAIS |
| F534080115B | A-3031 | M | SWNW | 25 | 145 | 42 | BAZIL | WAH PAH GAIS |
| F534080116 | O-0069 | M | NWSE | 02 | 144 | 41 | MABEL DARCO EGAN | |
| F534080116A | O-0069 | M | SWSW | 03 | 144 | 41 | MABEL DARCO EGAN | |
| F534080116B | A-0041 | M | N2SW | 11 | 144 | 39 | MABEL DARCO EGAN | |
| F534080118 | A-1802 | M | LOT 3 & W2NWSE | 12 | 146 | 39 | MAGGIE MORRISON BLAIR | |
| F534080118A | O-2477 | M | NESW & NWSE | 19 | 145 | 40 | MAGGIE MORRISON BLAIR | |
| F534080119QA | A-2494 | M | LOTS 1 & 2 | 03 | 145 | 40 | MRS. HAMLIN CURTIS | PEENG GWAY |
| F534080120 | O-0113 | M | E2SW | 04 | 143 | 41 | | AN JE JAUK E QUAY |
| F534080121 | O-3362 | B | SENE & NESW | 28 | 142 | 42 | | SHE BAH KE SHIG O QUAY |
| F534080122 | A-2958 | C | S2NW | 05 | 144 | 38 | LUCY SUTTON | ME ZNAH KE WE GAH BOW E QUAY |
| F534080123 | O-0389 | M | LOTS 5,6 & NWSW | 26 | 143 | 40 | | O GICK AUNCE |
| F534080123E | A-0297 | M | LOTS 2,4 & SWNW | 16 | 143 | 40 | | O GICK AUNCE |
| F534080123I | A-0297 | M | LOTS 2,4 & SWNW | 26 | 143 | 40 | | O GICK AUNCE |
| F534080125 | O-3331 | M | W2NW | 14 | 144 | 39 | | AN ZHE TAY KE SHIG O QUAY |
| F534080126 | O-2295 | M | LOTS 6 & 7 | 07 | 144 | 40 | | MAY WIS QUON O WAY |
| F534080126A | A-1678 | M | S2NWNW | 25 | 145 | 42 | | MAY WIS QUON O WAY |

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|---|---|---|---|---|---|---|---|
| F534080127 | 0-2764 | B | S2NE | 23 | 141 | 38 | NO ME GWON AY BE QUAY |
| F534080128 | 0-2044 | B | LOTS 3 & 4 | 01 | 141 | 38 | WAH ME YAY GE SHIG |
| F534080128A | A-1490 | C | LOTS 2,4,6 | 15 | 143 | 38 | WAH ME YAY GE SHIG |
| F534080128B | A-1490 | C | LOTS 2,4,6 | 15 | 143 | 38 | WHITE EARTH BAND |
| F534080130 | A-0798 | C | SWNE | 36 | 144 | 38 | WILLIAM WILLIAMS NAH JE GE SHIG |
| F534080130A | A-0798 | C | SESE | 36 | 144 | 38 | WILLIAM WILLIAMS NAH JE GE SHIG |
| F534080130B | A-0798 | C | E2NENW | 23 | 144 | 38 | WILLIAM WILLIAMS NAH JE GE SHIG |
| F534080135 | 0-0613 | B | LOT 1 & SENE | 23 | 142 | 41 | KE WAY GAH BOW E QUAY |
| F534080136 | A-1883 | M | NWSW | 26 | 144 | 39 | ANNA DOOR WEISE ME ZHO KE SHIG O QUAY |
| F534080136A | A-1883 | M | NWSE | 13 | 144 | 39 | ANNA DOOR WEISE ME ZHO KE SHIG O QUAY |
| F534080137 | 0-3358 | M | LOT 2 & SESW | 16 | 143 | 40 | NAY TAH WUB E QUAY |
| F534080137A | 0-3358 | M | LOT 2 & SESW | 16 | 143 | 40 | NAY TAH WUB E QUAY |
| F534080137B | A-1864 | B | LOT 5 & N2 LOT 6 | 30 | 142 | 39 | NAY TAH WUB EQUAH |
| | | | N2S2 LOT 6 | 30 | 142 | 39 | |
| F534080139 | 0-0053 | B | NENE | 25 | 142 | 42 | MARY JANE MCDONALD |
| | | | NWSW | 16 | 142 | 41 | |
| F534080139A | A-0032 | B | SWSW | 01 | 142 | 39 | MARY JANE MCDONALD |
| | | | NWNW | 12 | 142 | 39 | |
| F534080142B | 0-2149 | B | S2SE | 10 | 142 | 38 | KAH WE TAH O NUB EAK |
| F534080146 | 0-0190 | B | SENE | 23 | 141 | 41 | EVA A. BRUNETTE MANYPENNY |
| F534080146A | 0-0190 | B | SWNE | 26 | 141 | 42 | EVA A. BRUNETTE MANYPENNY |
| F534080146B | A-0129 | B | NESE | 23 | 141 | 41 | EVA A. BRUNETTE MANYPENNY |
| | | | NWSW | 24 | 141 | 41 | |
| F534080150 | 0-0360 | B | N2SW | 15 | 141 | 42 | HAZEL RUTH PERRY |
| F534080150A | A-0268 | B | SWSW | 11 | 142 | 39 | HAZEL RUTH PERRY |
| | | | NENE | 15 | 141 | 42 | |
| F534080151 | A-1507 | B | E2SW | 33 | 141 | 38 | WAY WAY ZHE O QUAY |
| F534080153 | 0-0511 | M | SWSW | 02 | 146 | 41 | MARY BEAULIEU RUE |
| | | | NENE | 11 | 146 | 41 | |
| F534080154 | 0-2516 | B | LOT 2 | 02 | 142 | 40 | MAGGIE SAGATOSE TE BISH CO YAUSH EAKE |
| F534080154A | 0-2516 | M | SWSE | 35 | 143 | 40 | MAGGIE SAGATOSE TE BISH CO YAUSH EAKE |
| F534080154B | A-1831 | M | N2SW | 16 | 145 | 41 | MAGGIE SAGATOSE TE BISH CO YAUSH EAKE |
| F534080155 | 0-2054 | B | W2SW | 33 | 141 | 38 | AH BE TAH WISH CUD |
| F534080155A | 0-2054 | B | W2SW | 33 | 141 | 38 | AH BE TAH WISH CUD |
| F534080155B | A-1493 | B | SWNE & SENW | 04 | 142 | 38 | AH BE TAH WISH CUD |
| F534080155C | A-1493 | B | SWNE & SENW | 04 | 142 | 38 | AH BE TAH WISH CUD |
| F534080155D | A-1493 | B | SWNE & SENW | 04 | 142 | 38 | AH BE TAH WISH CUD |
| F534080157 | 0-0350 | M | S2NE | 20 | 145 | 42 | GLADYS WOODBURY |
| F534080160 | 0-0312 | B | SESW & SWSE | 21 | 141 | 42 | CLARA BELLEFEUILLE LAJOIE |
| F534080160A | A-0227 | B | N2NE | 16 | 141 | 42 | CLARA BELLEFEVILLE LAJOIE |
| F534080161M | 0-3457 | M | LOT 3 & 4 | 28 | 144 | 39 | HENRIETTA MARTIN KAY ZHE BAW YAUSH E QUAY |
| F534080161R | 0-3457 | M | NWSE | 28 | 144 | 39 | HENRIETTA MARTIN KAY ZHE BAW YAUSH E QUAY |
| F534080161S | 0-3457 | M | NE OF NWSE | 28 | 144 | 39 | HENRIETTA MARTIN KAY ZHE BAW YAUSH E QUAY |
| F534080161Y | 0-3457 | M | NE OF NWSE | 28 | 144 | 39 | HENRIETTA MARTIN KAY ZHE BAW YAUSH E QUAY |
| F534080171 | 0-3477 | M | S2NE | 06 | 145 | 41 | EMMA HILL NAH KAH TAY GWAH |
| F534080171A | A-1950 | C | SWNW & NWSW | 02 | 145 | 38 | EMMA HILL NAH KAH TAY GWAH |
| F534080172 | 0-1799 | M | W2SE | 21 | 144 | 39 | NIS CO BE NAIS |
| F534080172A | 0-1799 | M | W2SE | 21 | 144 | 39 | PETER REDBIRD NIS CO BE NAIS |
| F534080174D | 0-0001 | B | NENW | 26 | 142 | 41 | JOSEPH WRIGHT WAH BAH AH QUOD |
| F534080174M | 0-0001 | B | SWSE | 25 | 142 | 41 | JOSEPH WRIGHT WAH BAH AH QUOD |
| F534080175 | 0-3865 | M | LOT 1 & NWSE | 33 | 143 | 39 | PAY NIS KIS |
| F534080175A | A-2506 | M | NWSW & SWNW | 28 | 143 | 39 | PAY NIS KIS |
| F534080176 | 0-2827 | B | LOT 5 | 19 | 141 | 37 | PE ZHE KEE |
| | | | LOT 9 | 30 | 141 | 37 | |
| F534080176B | 0-2827 | B | LOT 3 | 19 | 141 | 37 | PE ZHE KEE |
| F534080176D | 0-2827 | B | LOT 1 | 30 | 141 | 37 | PE ZHE KEE |
| F534080178A | 0-3488 | M | LOT 4 | 05 | 143 | 39 | WAH ZUSHK |
| | | | SESE | 06 | 143 | 39 | |
| F534080179 | 0-0325 | B | LOT 3 | 34 | 141 | 42 | SARAH BISSON WELTZIN |
| | | | LOT 2 & NESE | 27 | 141 | 42 | |
| F534080179A | A-0237 | B | NESW | 09 | 141 | 42 | SARAH BISSON WELTZIN |
| F534080189A | 0-3342 | M | NESE | 18 | 146 | 42 | IRENE DOUGLASS HARRIS |
| | | | NWSW | 17 | 146 | 42 | |
| F534080208B | A-2052 | B | LOT 2 & SWNE | 01 | 141 | 37 | JANE TAYLOR BUDEESE |
| F534080226 | 0-5175 | M | LOT 2 | 23 | 143 | 39 | CLARA MOKOMANIC MOSSMAN |
| F534080230 | A-2531 | M | W2SW | 25 | 143 | 42 | HAZEL AGNES QUINN |
| F534080232 | 0-1551 | M | S2SE | 29 | 143 | 41 | FLORENCE EMMA CHRISTENSON ROY |
| F534080233A | 0-0441 | M | LOTS 1 & 2 | 03 | 146 | 39 | MARY JANE ROY MCCLOSKEY |
| F534080235 | A-0704 | B | NENE | 07 | 141 | 39 | JOSEPH F. PEAKE SONG WAY WAY |
| F534080235A | A-0704 | B | NWNW | 08 | 141 | 39 | JOSEPH F. PEAKE SONG WAY WAY |
| F534080236 | 0-3576 | M | S2NW | 15 | 145 | 40 | JOSETTE STEVENS ROSS ZO ZAY |
| F534080238A | 0-0944 | M | W2SE | 02 | 146 | 39 | WHITE EARTH BAND |
| F534080239 | 0-4828 | M | NESE | 27 | 146 | 40 | OLIVE INGA SNETZINGER TYNKA |
| F534080239A | 0-4828 | M | NWSW | 26 | 146 | 40 | OLIVE INGA SNETZINGER |
| F534080242 | 0-0042 | M | LOT 2 | 02 | 145 | 42 | GRACIE SARAH PERSON |
| | | | SWSE | 35 | 146 | 42 | |
| F534080245A | 0-3340 | M | NWNW | 17 | 146 | 42 | RUTH DOUGLASS SHEALLY COUTNAN |
| | | | NENE | 18 | 146 | 42 | |
| F534080252A | 0-3237 | M | SESE | 13 | 144 | 42 | WHITE EARTH BAND |
| | | | WENE | 24 | 144 | 42 | |
| F534080259 | A-2146 | C | SENE | 21 | 143 | 38 | GEORGIANNA SCOVILLE |
| F534080267 | A-1388 | B | W2SW | 14 | 142 | 37 | WILLIAM EDWIN ANDREWS |
| F534080268A | A-2786 | M | W2NW | 20 | 144 | 40 | EDNA M. WRIGHT TONNESON |



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|---|---|---|---|---|---|---|---|
| F534080271 | 0-0666 | B | LOT 2 & SENE | 33 | 141 | 38 | NE ZHO DAIN |
| F534080271A | A-0519 | B | LOTS 1 & 2 | 02 | 141 | 38 | NE ZHO DAIN |
| F534080278 | 0-2622 | B | N2NW | 09 | 141 | 38 | MINNIE FINEDAY ROCK MOSH KIN AY GAH BOW E QUAY |
| F534080279 | 0-4517 | M | W2NE | 27 | 146 | 39 | MAGGIE FISHER MAH KOONCE or KAY BAY BE TUNG |
| F534080280A | A-0025 | M | LOT 2 & NWNW | 25 | 144 | 40 | PAUL G. PERSON |
| F534080281 | A-2196 | M | NWNE | 23 | 144 | 39 | MARY RICHARDSON |
| F534080284C | 0-2051 | B | | | | | KE WE ZAW WAUN DE BAY |
| F534080286 | 0-0191 | B | W2NE | 33 | 142 | 42 | SOPHIA BRUNETTE |
| F534080286A | A-0130 | B | E2NW | 20 | 142 | 38 | SOPHIA BRUNETTE |
| F534080287 | 0-0039 | M | NWNE | 36 | 145 | 41 | LIZZIE BEAULIEU PERSON |
| F534080288 | 0-0311 | B | NESW & NWSE | 21 | 141 | 42 | AGNES BELLEFEUILLE |
| F534080289 | 0-0543 | M | E2SE | 27 | 145 | 41 | CLARA ROY MATTISON |
| F534080289A | A-0406 | M | S2NW | 03 | 146 | 39 | CLARA ROY MATTISON |
| F534080292 | 0-0116 | M | W2SW | 33 | 143 | 41 | EVA ROY WADENAM E QUAY ZAINCE |
| F534080293 | A-0443 | M | SESW | 06 | 146 | 41 | GRACE GENEVIEVE BEAULIEU COX |
| F534080294 | 0-0345 | B | SENE | 35 | 141 | 41 | CATHERINE MCDOUGALL |
| F534080294A | 0-0345 | B | SWSW | 34 | 141 | 41 | CATHERINE MCDOUGALL |
| F534080294B | A-0247 | B | LOT 3 & SWSE | 26 | 141 | 41 | CATHERINE MCDOUGALL |
| | | | LOT 1 | 35 | 141 | 41 | |
| F534080295 | 0-0115 | M | S2SW | 33 | 143 | 41 | O ZOW WUN E ME KEE |
| F534080296 | 0-0040 | M | W2SW | 21 | 145 | 41 | MARIA ELLEN PERSON |
| | | | E2SE | 20 | 145 | 41 | |
| F534080297A | 0-0334 | B | W2SW | 22 | 141 | 42 | OLIVE BELLEFEUILLE TUCKER |
| F534080299 | 0-0519 | B | E2SE | 23 | 142 | 41 | MATILDA LOUZON LEGO |
| F534080299A | A-0382 | B | N2NW | 34 | 142 | 40 | MATILDA LOUZON LEGO |
| F534080300 | 0-0231 | M | W2NE | 24 | 143 | 41 | DANIEL HAMLIN |
| F534080301 | A-2016 | M | LOT 7 & SWNE | 19 | 146 | 39 | AISH E GAH BOW |
| | | | LOT 5 | 20 | 146 | 39 | |
| F534080302 | A-0096 | C | SENE | 22 | 143 | 38 | BENJAMIN MANYPENNY |
| F534080303 | 0-2512 | B | LOT 4 | 02 | 142 | 40 | PED WAY WAY GAH BOW EAK |
| | | | SWSW | 35 | 143 | 40 | |
| F534080304 | A-2859 | M | SWSW | 15 | 143 | 39 | O GIT UB |
| | | | SESE | 16 | 143 | 39 | |
| F534080305 | 0-4696 | B | SWNE | 02 | 142 | 37 | WAH DE NAH |
| F534080305A | 0-4696 | B | LOT 7 | 08 | 142 | 37 | WAH DE NAH |
| F534080308 | A-1803 | M | E2SW | 13 | 146 | 39 | MARIE ROY SHIN GOOB |
| F534080308A | A-1803 | M | E2SW | 13 | 146 | 39 | MARIE ROY SHIN GOOB |
| F534080308C | A-1803 | C | S2S2SENE | 05 | 143 | 38 | MARIA ROY SHIN GOOB |
| F534080309 | 0-4247 | B | S2NW | 15 | 141 | 42 | ANGELINE TROTOCHAND LECLAIRE |
| F534080309A | A-0956 | C | S2NE | 28 | 143 | 38 | ANGELINE TROTOCHAND LECLAIRE |
| F534080311B | 0-0573 | B | E2NE | 08 | 141 | 41 | EVA VAN WERT SWEET |
| F534080312 | A-0354 | M | S2NW | 10 | 145 | 42 | EUGENIE DORA BISSON |
| F534080313A | A-0466 | B | W2NE | 27 | 142 | 40 | JANE WILSON NAY ZHUE E AUSH E QUAY |
| F534080314B | A-2983 | C | LOT 6 & SWNE | 30 | 143 | 38 | TOM DORR SHAH BAUSH KUNG |
| F534080314C | A-2983 | C | LOT 6 & SWNE | 30 | 143 | 38 | TOM DORR SHAH BAUSH KUNG |
| F534080314D | A-2983 | C | LOT 6 & SWNE | 30 | 143 | 38 | TOM DORR SHAH BAUSH KUNG |
| F534080314G | A-2983 | C | SWNE | 30 | 143 | 38 | TOM DORR SHAH BAUSH KUNG |
| F534080314N | A-2983 | C | SWNE | 30 | 143 | 38 | TOM DORR SHAH BAUSH KUNG |
| F534080314I | A-2983 | C | SWNE | 30 | 143 | 38 | TOM DORR SHAH BAUSH KUNG |
| F534080314L | A-2983 | M | SENE & NESE | 26 | 143 | 39 | TOM DORR SHAH BAUSH KUNG |
| F534080314M | A-2983 | M | SENE & NESE | 26 | 143 | 39 | TOM DORR SHAH BAUSH KUNG |
| F534080314N | A-2983 | M | SENE & NESE | 26 | 143 | 39 | TOM DORR SHAH BAUSH KUNG |
| F534080314Q | A-2983 | M | LOT 3 | 05 | 143 | 39 | TOM DORR SHAH BAUSH KUNG |
| F534080314R | A-2983 | M | LOT 3 | 05 | 143 | 39 | TOM DORR SHAH BAUSH KUNG |
| F534080314S | A-2983 | M | LOT 3 | 05 | 143 | 39 | TOM DORR SHAH BAUSH KUNG |
| F534080315 | 0-3649 | M | N2SE | 17 | 145 | 41 | ELLEN BUNKER ANTILL |
| F534080316 | 0-0278 | M | S2NW | 15 | 143 | 41 | JANE SAICE |
| F534080316A | 0-0278 | M | S2NW | 15 | 143 | 41 | JANE SAICE |
| F534080317 | 0-0071 | M | LOT 1 & SWNE | 02 | 145 | 41 | CHARLOTTE MORRISON CARLSON |
| F534080317A | A-1738 | M | W2SW | 28 | 146 | 39 | CHARLOTTE MORRISON CARLSON |
| F534080318 | 0-4892 | C | S2NW | 16 | 144 | 38 | SHAH GO BAY QUAY |
| F534080318A | A-2825 | M | SWNW & NWSW | 10 | 143 | 39 | SHAH GO BAY QUAY |
| F534080319 | A-1662 | C | N2SW | 29 | 144 | 38 | NAY TUMISH KUNG |
| F534080320 | A-2373 | B | SWNE & NWSE | 02 | 142 | 40 | BE SNEW |
| F534080321 | 0-1018 | M | S2SW | 08 | 145 | 42 | ANGELINE VILLEBRUN WILSTAD |
| F534080321A | A-0789 | C | E2SE | 12 | 143 | 38 | ANGELINE VILLEBRUN WILSTAD |
| F534080322 | A-1487 | C | SWSW | 09 | 143 | 38 | NE ZHE CAY WE GAH BOW |
| F534080322A | A-1487 | C | NWNW | 16 | 143 | 38 | NE ZHE CAY WE GAH BOW |
| F534080323 | 0-2042 | B | E2NE | 08 | 142 | 38 | SAH GUTCH E WAY E QUAY |
| F534080323A | A-1488 | C | NWSW | 09 | 143 | 38 | SAH GUTCH E WAY BE QUAY |
| | | | S2S2SESE | 06 | 143 | 38 | |
| F534080323B | A-1488 | C | LOT 1 | 09 | 143 | 38 | SAH GUTCH E WAY BE QUAY |
| F534080324 | A-0547 | B | LOT 8 | 07 | 142 | 40 | MAUD AUSH |
| F534080325 | 0-0441 | M | LOTS 1 & 2 | 03 | 146 | 39 | MARY JANE ROY MCCLOSKEY |
| F534080325A | A-0336 | M | LOT 3 | 33 | 146 | 41 | MARY JANE ROY MCCLOSKEY |
| F534080326 | 0-0261 | M | LOT 5 & NESW | 10 | 146 | 41 | JOSEPHINE GAGNON |
| F534080326A | A-0176 | B | W2NW | 22 | 141 | 40 | JOSEPHINE GAGNON |
| | | | LOT 2 | 23 | 142 | 40 | |
| F534080327 | 0-0396 | M | SWNE & NWSE | 12 | 144 | 40 | JOSEPHINE MADISON |
| F534080327A | A-0302 | M | SENE & NESE | 12 | 144 | 40 | JOSEPHINE MADISON |
| F534080328 | 0-0373 | M | NESE | 25 | 144 | 41 | EVANGELINE CASWELL |
| F534080329 | 0-0142 | M | E2SE | 21 | 144 | 39 | JESSIE WARREN |
| | | | SWNE | 28 | 144 | 39 | |

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|---|---|---|---|---|---|---|---|---|
| F534080330 | O-0522 | M | NENE | 19 | 146 | 40 | CLARA VEZINA | |
| | | | NWNW | 20 | 146 | 40 | | |
| F534080330A | A-0388 | M | LOTS 3 & 7 | 04 | 145 | 39 | CLARA VEZINA | |
| F534080331 | O-2277 | C | N2NW | 12 | 144 | 38 | | SAN GAN GE WAY BE QUAY |
| F534080332A | O-0436 | B | LOT 1 & NENE | 31 | 141 | 37 | CHARLES | PO GO WAY CUNIG WABE |
| F534080333 | O-0074 | B | NWSW | 27 | 142 | 40 | IDA HOWARD | O MY AH O SAY QUAY |
| | | | NESE | 28 | 142 | 40 | | |
| F534080334 | O-0615 | B | LOT 3 | 24 | 142 | 41 | W. K. BROWN | BAY BAH AH TAY GAY |
| | | | LOT 11 | 13 | 142 | 41 | | |
| F534080335A | A-0235 | B | N2NW | 09 | 141 | 42 | ROSE BISSON | |
| F534080336 | O-0675 | B | NESE | 29 | 142 | 42 | ALICE NORTANCE MEE | |
| | | | NWSW | 28 | 142 | 42 | | |
| F534080336A | A-0525 | B | LOTS 10 & 11 | 31 | 142 | 42 | ALICE NORTANCE MEE | |
| F534080337 | O-1754 | B | E2NE | 29 | 141 | 37 | | E ME NEE |
| F534080338 | A-0022 | C | E2SE | 13 | 145 | 38 | IDA BEAULIEU REAM | |
| F534080339 | O-1914 | B | S2NE | 21 | 142 | 37 | | PUN NE ZHO NUB EAK |
| F534080339A | A-1408 | C | S2NE | 15 | 143 | 38 | | PUN NE ZHO NUB EAK |
| F534080340 | O-0283 | B | LOT 1 & SENE | 05 | 142 | 41 | CLARA THOMAS | |
| F534080340A | A-0194 | B | NWSE & SWNE | 14 | 141 | 40 | CLARA THOMAS | |
| F534080342I | O-0465 | B | N2SW, SWSE, SESW | 34 | 142 | 41 | MARGARET BISSON | |
| F534080343A | O-0640 | B | SESE | 09 | 141 | 41 | NANCY CAMPBELL | |
| | | | LOT 1 | 16 | 141 | 41 | | |
| F534080344W | O-0544 | B | S2NW | 34 | 142 | 41 | MARGARET BISSON | |
| F534080346 | O-0299 | B | W2NE | 35 | 141 | 41 | BETSY MCDOUGALL | |
| F534080347 | O-0197 | B | S2SE | 32 | 141 | 40 | ISABELLE RONCHAMP | |
| F534080347A | A-0134 | B | N2NW | 11 | 141 | 42 | ISABELLE RONCHAMP | |
| F534080348A | A-0189 | C | LOT 3 & SENW | 07 | 143 | 38 | MAGGIE FAIRBANKS | |
| F534080351 | O-2049 | B | SWNW | 22 | 141 | 39 | | KAN GE GAY WUN A QUOD O QUAY |
| | | | SENE | 21 | 141 | 39 | | |
| F534080351A | O-2049 | B | SWNW | 22 | 141 | 39 | WHITE EARTH BAND | |
| | | | SENE | 21 | 141 | 39 | | |
| F534080352 | A-2929 | B | W2SESW | 11 | 141 | 40 | | KE WAY GE SHIG O QUAY |
| F534080353 | O-4842 | M | SESE | 34 | 145 | 39 | EVA CARRIE BELL | |
| F534080353A | A-2581 | M | S2NE | 34 | 145 | 39 | EVA CARRIE BELL | |
| F534080353B | O-4842 | M | NESE | 34 | 145 | 39 | CARRIE EVA BELL | |
| F534080354 | O-1241 | B | SESW & SWSE | 14 | 141 | 42 | MARY TROTOCHAUD | |
| F534080354A | O-0972 | M | E2NE | 36 | 145 | 40 | MARY TROTOCHAUD | |
| F534080355 | O-0252 | B | SWSE & SESW | 12 | 141 | 41 | JOSEPH FOSTER | |
| F534080356 | O-1701 | B | W2NW | 25 | 141 | 37 | JOHN JONES | KAY ME TAH WAY WID UNG |
| F534080356A | A-1268 | B | E2SE | 14 | 142 | 37 | JOHN JONES | KAY ME TAH WAY WID UNG |
| F534080358A | O-0598 | M | E2NE | 31 | 143 | 41 | | MIN DE MON IEN |
| F534080359 | A-1961 | C | S2SE | 32 | 146 | 38 | BERTIE BUNKER | |
| F534080360 | O-0472 | B | E2SE | 35 | 142 | 42 | RACHAEL BISSON VEZINA | |
| F534080360A | A-0365 | B | S2SW | 36 | 142 | 42 | RACHAEL BISSON VEZINA | |
| F534080361 | A-0076 | M | E2SW | 25 | 143 | 42 | LEOBA DUNNELL LACHAPELLE | |
| F534080362 | O-0542 | M | E2NE | 27 | 145 | 41 | BERTHA ROY ST. CLAIR | |
| F534080362A | A-0405 | M | S2NE | 03 | 146 | 39 | BERTHA ROY ST. CLAIR | |
| F534080363 | O-0038 | M | E2SW | 35 | 146 | 42 | SARAH BEAULIEU | |
| F534080363A | A-0023 | C | E2NE | 24 | 145 | 38 | SARAH BEAULIEU | |
| F534080366 | O-0648 | B | NWSW | 22 | 142 | 42 | ANNIE BELLANGER CHASE | |
| F534080366A | O-0648 | B | SENW | 16 | 141 | 39 | ANNIE BELLANGER CHASE | |
| F534080364B | A-0506 | B | LOTS 1 & 2 | 01 | 141 | 41 | ANNIE BELLANGER CHASE | |
| | | | LOT 5 | 06 | 141 | 40 | | |
| F534080365 | O-0632 | M | S2SE | 03 | 145 | 41 | JOHN N. FAIRBANKS | |
| F534080366 | O-0489 | B | N2NW | 28 | 141 | 42 | OLIVE E. BISSON | |
| F534080366A | A-0368 | M | E2SE | 14 | 143 | 42 | OLIVE E. BISSON | |
| F534080367A | O-0608 | M | N2NW | 26 | 144 | 39 | WHITE EARTH BAND | |
| F534080368 | O-0773 | B | SENE | 17 | 141 | 42 | IDA SARAH FAIRBANKS | |
| | | | SENE | 15 | 141 | 41 | | |
| F534080368A | A-0598 | M | LOTS 1 & 6 | 31 | 145 | 42 | IDA SARAH FAIRBANKS | |
| F534080369 | O-0771 | B | S2SW | 34 | 142 | 42 | SOPHIA C. FAIRBANKS | |
| F534080369A | A-0596 | M | LOTS 3 & 4 | 31 | 145 | 42 | SOPHIA C. FAIRBANKS | |
| F534080370 | O-0143 | M | E2NE | 19 | 145 | 42 | IZOLA WARREN EARTH | |
| F534080370A | A-0085 | C | LOTS 3 & 4 | 04 | 143 | 38 | IZOLA WARREN EARTH | |
| F534080371 | A-0267 | C | W2NW | 25 | 144 | 38 | LILLIE MCDOUGALL | |
| F534080372 | O-0173 | M | SWSE | 35 | 144 | 41 | EMMA J. BRANCHAUD VIZENOR | |
| F534080373 | O-0586 | B | S2NW | 21 | 141 | 37 | MARY ASPINWALL | |
| F534080373A | A-0457 | C | W2NE | 33 | 144 | 38 | MARY ASPINWALL | |
| F534080374 | O-4620 | M | E2NE | 36 | 146 | 40 | | AH ZHOW AUS IN O QUAY |
| F534080374A | A-2231 | C | W2NW | 20 | 146 | 38 | MRS. BILLY MILL | AH ZHOW AUS IN O QUAY |
| F534080376 | A-0339 | M | W2SWSW | 08 | 144 | 40 | CATHERINE ROY FINN | |
| F534080376A | O-0449 | M | LOTS 3 & 4 | 02 | 144 | 39 | CATHERINE ROY FINN LYONS | |
| F534080376B | O-0449 | M | LOTS 4 & 5 | 06 | 146 | 41 | CATHERINE ROY FINN LYONS | |
| F534080377 | A-0209 | B | NWSW | 33 | 141 | 40 | ETHEL RICE | |
| F534080377A | A-0209 | B | NWSE | 07 | 141 | 41 | ETHEL RICE | |
| F534080378 | O-0492 | B | LOT 1 & NWNW | 31 | 141 | 42 | MARY BISSON FREDRICKSON | |
| F534080378A | A-0371 | C | SWSW | 17 | 141 | 38 | MARY BISSON FREDRICKSON | |
| | | | W2S2SWNE | 09 | 141 | 41 | | |
| F534080378B | A-0371 | B | LOT 1 | 03 | 142 | 37 | MARY BISSON FREDRICKSON | |
| F534080379 | O-0681 | M | LOT 4 & NWSW | 03 | 145 | 41 | CATHERINE L. FAIRBANKS | |
| F534080379A | A-0531 | M | NWNE & NENW | 10 | 145 | 39 | CATHERINE L. FAIRBANKS | |
| F534080380 | O-0521 | M | E2NW | 20 | 146 | 40 | MARY VEZINA HAMLIN THAYER | |
| F534080380A | A-0387 | C | N2NESE | 33 | 145 | 38 | MARY VEZINA HAMLIN THAYER | |
| | | | LOT 7 | 14 | 145 | 40 | | |
| | | | LOT 4 | 04 | 145 | 39 | | |



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|---|---|---|---|---|---|---|---|---|
| F534080381 | O-0676 | B | W2SW | 29 | 142 | 42 | CAROLINE ELEANOR MEE | |
| F534080382 | O-0534 | M | LOTS 2 & 3 | 05 | 146 | 41 | NANCY ROY | |
| F534080382A | A-0395 | C | W2SW | 16 | 146 | 38 | NANCY ROY | |
| F534080383 | O-2677 | M | NWSW | 02 | 146 | 40 | SUSIE BONGA | |
| | | | NESE | 03 | 146 | 40 | | |
| F534080385 | O-1421 | B | SESE | 21 | 142 | 42 | MARIA E. BISSON AITKINS | |
| | | | NENE | 28 | 142 | 42 | | |
| F534080385A | A-1185 | B | S2SE | 11 | 141 | 42 | MARIA E. BISSON AITKINS | |
| F534080387 | A-0400 | C | SESW | 33 | 145 | 38 | FRANK D. ROY | |
| F534080388 | O-0089 | M | NENW | 09 | 143 | 42 | LILLY BELLECOURT | |
| | | | SESW | 04 | 143 | 42 | | |
| F534080388A | A-0058 | M | E2SW | 05 | 143 | 40 | LILLY BELLECOURT | |
| F534080389A | A-1854 | B | W2SE | 16 | 142 | 39 | | PIN DE GAY GE SHIG |
| F534080389B | A-1854 | B | W2SE | 16 | 142 | 39 | | PIN DE GAY GE SHIG |
| F534080390 | A-1856 | C | S2SW | 34 | 145 | 38 | | CO EEN GUN |
| F534080391 | O-0112 | B | E2SE | 20 | 142 | 42 | MARIA LACHAPELLE | |
| F534080393 | O-3683 | C | W2SW | 04 | 145 | 38 | JULIAN LAPRAIRIE | |
| F534080400 | O-0599 | B | W2NE | 13 | 142 | 40 | SOPHIA BROWN | |
| F534080401 | A-0482 | B | N2NW | 13 | 141 | 40 | JENNIE KING | KE ZHE BAUNCE |
| F534080402 | O-0482 | B | E2SE | 32 | 142 | 40 | LAURA BISSON PAQUIN | |
| F534080403 | A-1555 | B | N2NE | 18 | 142 | 38 | | BAY BAH DAUN GAY AUSH |
| F534080404 | A-2964 | M | SWSE | 11 | 143 | 40 | | SWIN WAUK |
| | | | NWNE | 23 | 143 | 40 | | |
| F534080404B | A-2964 | M | SWSE | 11 | 143 | 40 | WHITE EARTH BAND | |
| | | | NWNE | 23 | 143 | 40 | | |
| F534080404C | O-5024 | M | SENE | 01 | 143 | 40 | WHITE EARTH BAND | |
| | | | SENW | 33 | 143 | 40 | | |
| F534080405C | O-2739 | M | W2SE | 35 | 145 | 40 | | BE WAW BE KE GO ZHE QUAY |
| F534080406 | O-0337 | B | N2NW | 32 | 141 | 41 | ELLA LEONA BELLEFEUILLE | |
| F534080406A | A-0256 | M | SESE | 18 | 143 | 41 | ELLA LEONA BELLEFEUILLE | |
| | | | SWSW | 17 | 143 | 41 | | |
| F534080407 | O-0800 | M | NWNE & NENW | 08 | 143 | 40 | FLORE LEITH | |
| F534080409 | O-0408 | M | W2SW | 29 | 146 | 40 | JOHN DUPRE | |
| F534080409A | O-0408 | M | W2SW | 29 | 146 | 40 | JOHN DUPRE | |
| F534080410 | O-5018 | M | SESE | 24 | 146 | 39 | LUCY SUTTON | ME SHAN KE WE GAN BOW E QUAY |
| | | | NESW | 36 | 146 | 39 | | |
| F534080411 | O-0843 | M | W2SW | 17 | 143 | 40 | LUCY SANTVIER | |
| F534080413 | O-0280 | M | LOT 2 & SENW | 05 | 143 | 42 | MARY SAICE WANOSS | |
| F534080414 | O-0099 | M | W2NE | 09 | 143 | 42 | JULIA BELLECOURT | |
| F534080414A | A-0065 | M | W2SE | 29 | 143 | 42 | JULIA BELLECOURT | |
| F534080415 | O-0081 | M | S2NW | 03 | 143 | 42 | PRISTILLA BELLECOURT | |
| F534080415A | A-0052 | B | S2NW | 23 | 141 | 40 | PRISTILLA BELLECOURT | |
| F534080416 | A-0059 | M | W2SW | 15 | 143 | 42 | MARY BELLECOURT RICHARDSON | |
| F534080416A | O-0087 | M | SENW & NESW | 10 | 143 | 42 | MARY BELLECOURT RICHARDSON | |
| F534080417 | O-0088 | M | N2NW | 20 | 146 | 42 | GERTIE BELLECOURT | |
| F534080418 | A-0057 | M | W2SE | 03 | 143 | 40 | GERTIE BELLECOURT | |
| F534080419 | O-0688 | M | E2SE | 20 | 143 | 41 | LILLIAN KING JACKSON | TAH BUS E KE SNIG |
| F534080419A | A-0536 | B | LOT 2 & SWNE | 03 | 142 | 40 | LILLIAN KING JACKSON | TAH BUS E KE SNIG |
| F534080420 | O-0888 | M | NWNW | 34 | 143 | 41 | JULIA WILLIAMS PHILIPS | |
| F534080420A | O-0888 | M | NWNE | 27 | 143 | 41 | JULIA WILLIAMS PHILIPS | |
| F534080420B | A-0689 | M | E2NE | 27 | 143 | 41 | JULIA WILLIAMS PHILIPS | |
| F534080421 | O-0583 | B | E2SW | 25 | 142 | 42 | CARRIE BROWN | |
| F534080421A | A-0454 | M | E2NE | 31 | 145 | 42 | CARRIE BROWN | |
| F534080423B | A-0690 | M | SESW | 34 | 143 | 41 | MINNIE C. WILLIAMS WOODS LABELLE | |
| F534080423C | O-0889 | M | SENW | 27 | 143 | 41 | MINNIE C. WILLIAMS WOODS LABELLE | |
| F534080424 | O-0687 | M | W2SW | 29 | 143 | 41 | CARRIE (MRS. ERNEST BROWN) KING | AYN DUS |
| F534080425 | O-1108 | B | LOTS 1 & 2 | 04 | 142 | 39 | MRS. JANE POTTER | KAY BAY GE SHIG O QUAY |
| F534080426 | O-2022 | B | S2SW | 23 | 141 | 38 | | KAH ME TAH YAUSH E QUAY |
| F534080427G | A-0497 | B | SWSW | 01 | 142 | 37 | HENRY BELLANGER | |
| | | | NWNW | 12 | 142 | 37 | | |
| F534080428 | O-0922 | B | S2NW | 22 | 141 | 37 | ANGELIQUE NORCROSS BONGA | |
| F534080429 | O-0929 | M | W2SW | 23 | 146 | 42 | HENRY ASPINWALL | |
| F534080429A | A-0715 | M | W2SE | 25 | 145 | 39 | HENRY ASPINWALL | |
| F534080429B | A-0715 | M | W2SE | 25 | 145 | 39 | HENRY ASPINWALL | |
| F534080430 | O-0899 | B | SESE | 06 | 142 | 41 | ALICE CATHERINE WEISLER CLARK | |
| | | | SWSW | 05 | 142 | 41 | | |
| F534080430A | A-0694 | B | SWNE & SENW | 01 | 142 | 42 | ALICE CATHERINE WEISLER CLARK | |
| F534080431 | O-4673 | M | LOT 10 & NWSE | 31 | 143 | 42 | SUSAN BOSWELL | E QUAY ZAINCE |
| F534080431A | A-2285 | M | LOT 5 | 22 | 143 | 39 | SUSAN BOSWELL | E QUAY ZAINCE |
| F534080431B | A-2285 | B | LOTS 1 & 2 | 19 | 142 | 37 | SUSAN BOSWELL | E QUAY ZAINCE |
| F534080432 | O-0809 | M | S2SW | 01 | 143 | 42 | LEOBA PARISIEN | |
| F534080432A | A-0628 | M | W2SE | 25 | 143 | 42 | LEOBA PARISIEN | |
| F534080433 | A-0669 | M | LOT 3 | 19 | 143 | 42 | MARTHA C. ROGERS | |
| F534080433A | A-0669 | M | SENW | 23 | 143 | 42 | MARTHA C. ROGERS | |
| F534080434 | A-0728 | M | SWSW | 02 | 143 | 40 | MELENA BELLECOURT DYLKOWSKI | |
| | | | S2N2SESE&S2SESE | 03 | 143 | 40 | | |
| F534080435 | A-0178 | B | SESE | 16 | 141 | 40 | JULIA IRENE GAGNON STARKEY | |
| | | | SWSW | 15 | 141 | 40 | | |
| F534080435A | O-0263 | M | E2NW | 23 | 143 | 41 | JULIA IRENE GAGNON STARKEY | |
| F534080437 | O-0940 | B | S2SE | 02 | 141 | 40 | MARTHA LEECY | |

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|---|---|---|---|---|---|---|---|
| F534080438 | A-0735 | M | NWNE & NENW | 12 | 145 | 42 | RUTH LEECY |
| F534080441 | O-0976 | M | E2SE | 30 | 143 | 42 | MABEL BERRY |
| F534080441A | A-0760 | M | W2SW | 29 | 143 | 42 | MABEL BERRY |
| F534080442 | O-0963 | B | LOT 4 & SESW | 18 | 141 | 40 | LIZZIE BRUNETTE |
| F534080442A | A-0769 | B | LOT 1 | 19 | 141 | 40 | LIZZIE BRUNETTE |
| F534080442B | A-0769 | B | NENW | 19 | 141 | 40 | LIZZIE BRUNETTE |
| F534080443 | O-0950 | M | SWSW | 11 | 143 | 41 | SOPHIA BELLECOURT |
| | | | NWNW | 14 | 143 | 41 | |
| F534080443A | A-0726 | M | W2SE | 01 | 143 | 42 | SOPHIA BELLECOURT |
| F534080444A | O-0985 | M | S2NE | 19 | 146 | 41 | WHITE EARTH BAND |
| F534080445 | O-0770 | B | E2SE | 17 | 141 | 42 | EMMA LINDA FAIRBANKS |
| F534080445A | A-0595 | M | LOTS 8 & 9 | 31 | 145 | 42 | EMMA LINDA FAIRBANKS |
| F534080446 | O-0776 | B | E2SE | 15 | 141 | 41 | JANE ST. CLAIR GREEN |
| F534080446A | A-0601 | B | W2NE | 30 | 142 | 41 | JANE ST. CLAIR GREEN |
| F534080447 | O-3466 | M | S2SE | 21 | 146 | 41 | LOUISA DEGAN |
| F534080450 | O-0680 | M | LOT 3 & SENW | 03 | 145 | 41 | MARY SARAH FAIRBANKS |
| F534080450A | A-0530 | B | W2SE | 18 | 141 | 40 | MARY SARAH FAIRBANKS |
| F534080451 | O-0796 | B | S2NW | 20 | 142 | 42 | MADELINE VANOSS |
| F534080452 | O-0831 | B | E2NE | 10 | 141 | 40 | MARY PARKER |
| F534080452A | A-0648 | B | LOT 3 & NWSW | 02 | 141 | 39 | MARY PARKER |
| F534080453 | A-0207 | M | W2SW | 29 | 145 | 42 | MARY RICE |
| F534080454 | O-0569 | B | SWNE | 27 | 142 | 41 | MAGGIE VAN WERT |
| | | | SESE | 26 | 142 | 41 | |
| F534080454A | A-0433 | B | NWNE & NENW | 28 | 142 | 40 | MAGGIE VAN WERT |
| F534080466 | O-4724 | M | S2NE | 13 | 145 | 42 | MARY (MAGGIE) WILSON |
| F534080466A | A-2334 | M | S2SE | 27 | 143 | 39 | MARY (MAGGIE) WILSON |
| F534080467 | O-0634 | B | LOTS 5,6 & NESE | 14 | 141 | 41 | MAGGIE FAIRBANKS |
| F534080467A | O-0634 | B | LOTS 5,6 & NESE | 14 | 141 | 41 | MAGGIE FAIRBANKS |
| F534080468A | O-2237 | C | NWSE | 02 | 144 | 38 | |
| F534080471 | A-2853 | C | SESE | 11 | 143 | 38 | |
| | | | SESW | 18 | 143 | 38 | |
| F534080473 | A-0584 | B | NENESE | 09 | 142 | 39 | FLORENCE M. MORRISON |
| F534080475 | O-0777 | B | E2NW | 22 | 141 | 40 | SARAH ST. CLAIR |
| F534080475A | A-0603 | B | E2SW | 30 | 142 | 39 | SARAH ST. CLAIR |
| F534080476 | O-0844 | M | SWNE & NWSE | 36 | 143 | 41 | LEO SANTWIER |
| F534080476A | O-0844 | M | SWNE & NWSE | 36 | 143 | 41 | LEO SANTWIER |
| F534080477 | O-0836 | M | S2NW | 20 | 143 | 40 | WILLIAM SANTWIER |
| F534080477A | O-0836 | M | S2NW | 20 | 143 | 40 | WILLIAM SANTWIER |
| F534080478 | O-0901 | B | NESE & SENE | 06 | 142 | 41 | ALICE PARKER |
| F534080478A | A-0679 | B | LOT 1 | 06 | 142 | 41 | ALICE PARKER |
| F534080478B | A-0679 | M | SWSE | 34 | 143 | 41 | ALICE PARKER JOHNSON |
| F534080479 | A-3105 | M | LOT 5 | 02 | 146 | 40 | SUSAN MASON |
| F534080479A | A-3105 | M | LOT 5 | 02 | 146 | 40 | SUSAN MASON |
| F534080480 | O-0789 | B | W2SE | 03 | 141 | 41 | WILLIAM ST. CLAIR |
| F534080481 | O-2142 | B | SWNE & SENW | 08 | 142 | 38 | |
| F534080481A | A-1556 | B | S2NE | 18 | 142 | 38 | |
| F534080481B | O-2142 | B | SWNE & SENW | 08 | 142 | 38 | |
| F534080481C | A-1556 | B | S2NE | 18 | 142 | 38 | |
| F534080482 | A-1279 | B | W2NW | 27 | 141 | 38 | JIM JONES |
| F534080482A | A-1279 | B | W2NW | 27 | 141 | 36 | JIM JONES |
| F534080483 | O-2865 | B | SENW & SWSW | 28 | 141 | 38 | |
| F534080486 | O-0865 | M | SESE | 08 | 143 | 42 | MARIA SANTWIER TURPIN |
| | | | SWSW | 09 | 143 | 42 | |
| F534080489 | A-0591 | M | S2SE | 33 | 143 | 41 | BETSY SMITH JACKSON |
| F534080489A | A-0591 | M | LOT 4 & SWNW | 02 | 143 | 40 | BETSY SMITH JACKSON |
| F534080490 | O-0471 | B | E2NE | 32 | 142 | 41 | ROSE ALMA BISSON |
| F534080490A | A-0348 | M | W2NW | 11 | 145 | 42 | ROSE ALMA BISSON |
| F534080491 | O-0324 | B | LOT 2 & SENW | 34 | 141 | 42 | EMMA BISSON |
| F534080491A | A-0236 | B | S2NW | 09 | 141 | 42 | EMMA BISSON |
| F534080493 | O-0649 | B | SWNE & NWSE | 22 | 142 | 42 | SOPHIA BELLANGER |
| F534080493A | A-0507 | B | E2SW | 16 | 141 | 39 | SOPHIA BELLANGER BENAIS |
| F534080494A | A-2322 | C | S2NE | 33 | 143 | 38 | |
| F534080495 | A-2320 | C | S2SE | 28 | 143 | 38 | |
| F534080500 | O-0745 | B | LOTS 3 & 4 | 04 | 141 | 41 | LOUISA MASON |
| F534080500A | A-0572 | B | W2NE | 13 | 141 | 40 | LOUISA MASON |
| F534080501 | O-2119 | M | NWNE | 35 | 143 | 41 | ROSE BELLANGER |
| F534080501A | O-2119 | M | SWSE | 26 | 143 | 41 | ROSE BELLANGER |
| F534080501B | A-1535 | M | S2NE | 11 | 144 | 39 | ROSE BELLANGER |
| F534080503 | A-1904 | M | W2NW | 29 | 145 | 39 | ROSA PEMBERTON |
| F534080504 | A-1012 | B | W2NW | 27 | 141 | 40 | EDWARD BLAIR |
| F534080504A | A-1012 | B | W2NW | 27 | 141 | 40 | EDWARD BLAIR |
| F534080505 | A-2969 | M | NWNW | 13 | 144 | 39 | |
| F534080505A | A-2969 | M | NENE | 14 | 144 | 39 | |
| F534080506 | A-2826 | C | N2SW | 16 | 144 | 38 | |
| F534080507 | O-1021 | M | W2NE | 19 | 145 | 42 | MARY ROSE VIVIER |
| F534080508 | O-1019 | M | W2SE | 19 | 145 | 42 | JULIA VIVIER |
| F534080509 | O-1013 | M | W2SE | 18 | 145 | 42 | MADELINE VILLEBRUN |
| F534080510 | A-0778 | C | SWNE | 19 | 144 | 38 | SUSAN ST. CLAIR |
| F534080510A | O-1004 | B | LOTS 4 & 5 | 19 | 141 | 40 | SUSAN ST. CLAIR HOGAN |
| F534080510B | A-0778 | C | E2NENW & E2W2NENW | 19 | 144 | 38 | SUSAN ST. CLAIR HOGAN |
| F534080511 | O-0575 | B | NENW | 16 | 141 | 40 | GERTRUDE SWEET ST. CLAIR LERCHE |
| F534080511A | O-0575 | B | SWNW | 09 | 141 | 41 | GERTRUDE SWEET ST. CLAIR LERCHE |



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|---|---|---|---|---|---|---|---|
| F534080511B | A-0427 | B | SENW & NWSE | 03 | 142 | 42 | GERTRUDE SWEET ST. CLAIR LERCHE |
| F534080512B | O-0955 | B | | | | | ANGELINE BRUNETTE |
| F534080513 | O-0954 | B | NESW & NWSE | 22 | 141 | 41 | LOUIS BRUNETTE |
| F534080515 | O-3421 | M | NENW & NWNE | 30 | 145 | 40 | HARRY PEMBERTON |
| F534080516 | O-0657 | B | SWSE & SESW | 18 | 141 | 41 | MARGARET MCARTHUR |
| | | | NENW | 19 | 141 | 41 | |
| F534080517 | A-1703 | C | SWNE & NWSE | 36 | 145 | 38 | MRS. JOHN SMITH |
| F534080518A | O-2301 | M | LOT 1 | 29 | 146 | 39 | MRS. JOHN HUDSON BROWN |
| F534080518B | A-1960 | M | LOTS 1 & 2 | 19 | 144 | 39 | MRS. JOHN HUDSON BROWN |
| F534080520 | O-3550 | M | S2NE | 15 | 145 | 40 | |
| F534080521T | O-4836 | M | E2SE | 27 | 143 | 42 | SOPHRONIA LUCIER |
| F534080521A | A-2528 | M | S2SW | 27 | 143 | 39 | SOPHRONIA LUCIER |
| F534080522 | O-1483 | M | E2NW | 13 | 143 | 41 | ELIZABETH HOLSTEIN |
| F534080522A | O-1483 | M | E2NW | 14 | 143 | 41 | ELIZABETH HOLSTEIN |
| F534080524 | O-0908 | M | NENW | 21 | 145 | 41 | DANIEL DARCO |
| | | | NENE | 20 | 145 | 41 | |
| F534080524A | A-0043 | C | NESW | 13 | 143 | 38 | DANIEL DARCO |
| | | | SENE | 14 | 143 | 38 | |
| F534080525 | A-2961 | M | N2NW | 23 | 144 | 39 | FRANK PIKE |
| F534080526 | O-4261 | M | W2NE | 32 | 145 | 41 | |
| F534080526B | O-4981 | M | W2NE | 32 | 145 | 41 | |
| F534080527 | A-1676 | M | NWSE & SESW | 10 | 144 | 40 | JOHN PE DAUS E GAY |
| F534080528 | O-1197 | B | LOTS 1 & 2 | 18 | 142 | 42 | LIZZIE KNICKERBOCKER |
| F534080530 | O-3217 | M | SESE | 24 | 144 | 42 | MARGARET AUGUSTIN GRAVES |
| | | | NWSW | 01 | 144 | 42 | |
| F534080531 | A-0359 | C | E2NW | 09 | 146 | 38 | LOUISA CORA BISSON |
| F534080533 | O-3423 | M | S2SW | 22 | 146 | 41 | ROSA PEMBERTON ALM |
| F534080534 | O-2566 | M | SENW & SWNE | 22 | 146 | 42 | PAULINE BONGA |
| F534080537 | A-2381 | C | NWSW | 15 | 144 | 38 | MRS. JENNIE MORGAN |
| | | | NESE | 16 | 144 | 38 | |
| F534080538 | O-0868 | M | SWSE & SESW | 08 | 143 | 42 | PETER LOUIS TURPIN |
| F534080538A | A-0671 | C | SESE | 16 | 144 | 38 | PETER LOUIS TURPIN |
| F534080538B | A-0671 | C | NENE | 21 | 144 | 38 | PETER LOUIS TURPIN |
| F534080539 | A-0955 | C | N2NE | 28 | 143 | 38 | JULIA TROTOCHAUD MAYRAND DOUCETTE |
| F534080540 | O-4998 | M | E2NW | 34 | 143 | 42 | MRS. PETER MOOSE |
| F534080540A | A-2926 | B | W2NE | 18 | 141 | 39 | MRS. PETER MOOSE |
| F534080542 | A-0283 | C | NESE | 09 | 144 | 38 | EAGLE CASWELL |
| | | | NENE | 18 | 144 | 38 | |
| F534080542A | A-0283 | C | N. 10 ACRES NESE | 09 | 144 | 38 | EAGLE CASWELL |
| F534080542B | A-0283 | C | S. 30 ACRES NESE | 09 | 144 | 38 | EAGLE CASWELL |
| F534080542C | A-0283 | C | NENE | 18 | 144 | 38 | EAGLE CASWELL |
| F534080543 | A-2972 | C | SWNE | 32 | 143 | 38 | PETER MOOSE |
| F534080543A | A-2972 | C | SWSE | 29 | 144 | 38 | PETER MOOSE |
| F534080544 | O-4530 | M | N2NE | 34 | 144 | 42 | AGNES PERRAULT |
| F534080545 | O-2529 | M | W2NW | 16 | 145 | 42 | ANDREW HENRY VILLEBRUN |
| F534080546 | O-0806 | M | S2NE | 02 | 143 | 42 | CATHERINE PARISIEN |
| F534080547 | A-0756 | C | SWSE | 02 | 143 | 38 | MATTIE BERRY FAIRBANKS |
| F534080547A | A-0756 | B | NESW | 26 | 142 | 39 | MATTIE BERRY FAIRBANKS |
| F534080547B | O-0972 | M | LOTS 5 & 8 | 30 | 143 | 42 | MATTIE BERRY FAIRBANKS |
| F534080548 | O-0966 | B | SENW | 07 | 141 | 41 | SADIE BRUNETTE |
| F534080548A | A-0752 | C | N2SE | 07 | 143 | 38 | SADIE BRUNETTE |
| F534080548B | O-0966 | B | NENW | 07 | 141 | 41 | SADIE BRUNETTE |
| F534080549 | O-0995 | M | W2SW | 22 | 145 | 41 | MARY FAIRBANKS |
| F534080550 | O-0694 | B | S2SE | 15 | 142 | 40 | MRS. D. O. ROOT |
| F534080551 | O-5023 | C | E2SE | 14 | 146 | 38 | LOUISA PIKE |
| F534080552 | O-1107 | B | LOTS 4 & 5 | 03 | 142 | 39 | CLEM POTTER |
| F534080553 | O-3571 | M | LOTS 1 & 2 | 10 | 145 | 40 | LUCY HILL |
| | | | LOT 9 | 11 | 145 | 40 | |
| F534080554 | O-1362 | M | W2SW | 16 | 143 | 42 | AGNES BRISBOIS |
| F534080554A | A-1065 | C | LOT 1 | 06 | 143 | 38 | AGNES BRISBOIS |
| F534080554B | A-1065 | B | NESE | 25 | 142 | 41 | AGNES BRISBOIS |
| F534080555 | O-1451 | M | SESE | 30 | 146 | 41 | LOUISA MATTIE HODDER FRENCH |
| | | | SWSW | 29 | 146 | 41 | |
| F534080555A | A-1139 | M | SWNW | 15 | 145 | 41 | LOUISA MATTIE HODDER FRENCH |
| | | | SESW | 21 | 145 | 41 | |
| F534080557 | O-1511 | M | SESE | 27 | 144 | 40 | SARAH CHARETTE WRIGHT |
| | | | NENW | 34 | 144 | 40 | |
| F534080557A | A-1179 | M | NESW | 26 | 144 | 40 | SARAH CHARETTE WRIGHT |
| | | | SWSW | 27 | 144 | 40 | |
| F534080558 | A-0982 | B | S2SE | 02 | 142 | 42 | ANGELINE TREPP SPRY |
| F534080559 | O-3147 | M | LOT 2 & SWNE | 05 | 144 | 42 | CELINA AGNES THOMAS DONNELL |
| F534080561 | O-1272 | M | LOTS 3 & 4 | 04 | 146 | 40 | ANGELINE BLAIR |
| F534080562 | O-2743 | B | LOT 1 & SENE | 06 | 141 | 37 | MRS. PETER TAYLOR |
| F534080564 | A-0721 | B | N2SW | 34 | 142 | 38 | CARRIE FAIRBANKS |
| F534080565C | O-0986 | M | N2SE | 19 | 146 | 41 | ANNIE ANDERSON |
| F534080566 | O-4451 | M | NWNW | 08 | 144 | 40 | CHARLOTTE BELLANGER |
| F534080566A | O-4451 | M | LOT 5 | 07 | 144 | 40 | CHARLOTTE BELLANGER |
| F534080566B | A-1323 | M | N2SW | 11 | 144 | 40 | CHARLOTTE BELLANGER |
| F534080567 | A-0829 | B | N2SW | 02 | 141 | 42 | SUSAN M. LACY BARBOUR |
| F534080570 | O-0912 | M | E2NW | 31 | 144 | 40 | MARY ROBERTS JOHNSON |
| F534080570A | A-0701 | C | E2SE | 24 | 143 | 38 | MARY ROBERTS JOHNSON |

TAY DAH TAH BUN GAY
AN BID AUS IN O QUAY
I EEN DUB E QUAY
I EEN DUB E QUAY
SHO BO KE SHIG
CHE JAINCE
CHE JAINCE
MOSN KIN AY AUSH
O ZAN WISH KO BE NAY
O ZAN WISH KE BE NAY
AN BID WAY ME DUNG
KAY BAY AUN DO WAY QUAY
NAY NAH COW EENCE
NAY NAH COW EENCE
ME GE ZEENCE
ME GE ZEENCE
ME GE ZEENCE
ME GE ZEENCE
PEEN JE SIN
PEEN JE SIN
ONT ON
KE CHE NO DIN
O DISH QUAY GE SHIG
QUAY AH QUAN SIN O QUAY
CHEENG WAN CUMIG UB EAK
EQUAY
ISH QUAY JAN GUN

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|---|---|---|---|---|---|---|---|---|
| F534080571 | O-1131 | B | S2SW | 23 | 142 | 42 | JOSEPHINE SMITH | |
| F534080571A | A-0885 | M | SESW & SWSE | 18 | 143 | 40 | JOSEPHINE SMITH | |
| F534080572 | O-4621 | M | S2SW | 11 | 145 | 42 | HATTIE HILL | AYN DAH SO GWON AY BE QUAY |
| F534080573 | O-3572 | M | SWSE & SESW | 15 | 145 | 40 | ELIZA ROSS MORGAN | PAISH E GE GAH BOW |
| F534080575E | O-0135 | M | S2SW | 03 | 145 | 39 | WILLIAM VINCENT WARREN | |
| F534080575F | O-0135 | M | S2SW | 03 | 145 | 39 | WILLIAM VINCENT WARREN | |
| F534080575G | O-0135 | M | | | | | WILLIAM VINCENT WARREN | |
| F534080576 | O-1270 | M | LOT 3 & NESW | 01 | 145 | 41 | ALEXANDER BLAIR | |
| F534080576A | O-1270 | M | LOT 3 & NESW | 01 | 145 | 41 | ALEXANDER BLAIR | |
| F534080576B | A-0998 | C | SWSW & W2SESW W2E2SESW | 28 | 146 | 38 | ALEXANDER BLAIR | |
| F534080576J | A-0998 | C | SWSW & W2SESW W2E2SESW | 28 | 146 | 38 | ALEXANDER BLAIR | |
| F534080577 | A-1312 | B | SENW & NESW | 23 | 142 | 38 | JOSEPHINE KAY KE WAY AUSH NORCROSS | |
| F534080578A | A-1128 | M | E2SW | 20 | 146 | 41 | ISABELLE CHURCH JOHNSON | |
| F534080580 | O-1605 | M | N2SW | 34 | 143 | 41 | FRANCES LUFKIN SMITH | |
| F534080580A | A-0589 | M | S2NE | 02 | 143 | 40 | FRANCES LUFKIN SMITH | |
| F534080581 | O-1424 | B | SESE | 09 | 141 | 40 | IDA ROSE VIZNOR | |
| | | | NENE | 16 | 141 | 40 | | |
| F534080581A | A-0848 | B | NWSW | 05 | 142 | 39 | IDA ROSE VIZNOR | |
| | | | SESE | 06 | 142 | 39 | | |
| F534080582 | A-1188 | M | E2SW | 16 | 145 | 42 | NELLIE ROGERS STUCKIE | |
| F534080584 | O-1109 | M | W2SW | 29 | 145 | 41 | | PE DAH BUN O QUAY |
| F534080584A | A-0874 | M | S2SW | 22 | 145 | 40 | | PE DAH BUN O QUAY |
| F534080584D | O-1109 | M | W2SW | 29 | 145 | 41 | | PE DAH BUN O QUAY |
| F534080585 | O-1171 | M | LOTS 10 & 11 | 19 | 143 | 42 | MAGGIE LAURA MCARTHUR | |
| F534080585A | A-0912 | B | SENW & NESW | 14 | 141 | 40 | MAGGIE LAURA MCARTHUR | |
| F534080586 | O-1261 | B | N2SE | 34 | 141 | 40 | AMELIA SPRY WILSON | |
| F534080586A | A-0990 | B | SWNE | 17 | 141 | 40 | AMELIA SPRY WILSON | |
| | | | SESE | 15 | 141 | 40 | | |
| F534080587 | O-1262 | B | S2SW | 27 | 141 | 40 | MARY BISSON SPRY | |
| F534080587A | A-0991 | B | N2SE | 35 | 141 | 40 | MARY BISSON SPRY | |
| F534080588 | O-1378 | B | SENW & NESW | 12 | 141 | 42 | STELLA WARREN | |
| F534080588A | A-1082 | B | E2NE | 12 | 142 | 40 | STELLA WARREN METSLER | |
| F534080590 | O-1382 | M | NWSE & SWNE | 34 | 146 | 42 | ALFRED WARREN | |
| F534080591 | O-1074 | B | NWSE | 16 | 141 | 41 | SARAH VIZENOR DALVE | |
| F534080592 | O-1006 | B | E2NE | 21 | 141 | 40 | LOUISA ST. CLAIR DASKOM | |
| F534080592A | A-0780 | M | N2SW | 35 | 144 | 39 | LOUISA ST.CLAIR DASKOM | |
| F534080593 | O-2021 | M | E2NW | 18 | 144 | 40 | MARGARET BELLANGER | |
| F534080593A | A-1327 | M | S2SW | 11 | 144 | 40 | MARGARET BELLANGER | |
| F534080594 | O-1205 | B | W2NW | 28 | 142 | 42 | CHARLOTTE JOHNSON FAIRBANKS | |
| F534080594A | O-1205 | B | SWSW | 01 | 141 | 39 | CHARLOTTE JOHNSON FAIRBANKS | |
| | | | SESE | 02 | 141 | 39 | | |
| F534080595 | O-1433 | B | E2SW | 16 | 141 | 42 | JULIA PELLAND BRUNETTE | |
| F534080596 | O-1449 | M | W2NE | 31 | 146 | 41 | GRACIE FRENCH MCCAULEY | |
| F534080596A | A-1137 | M | SWSW | 08 | 145 | 41 | GRACIE FRENCH MCCAULEY | |
| | | | NWNE | 17 | 145 | 41 | | |
| F534080597 | O-1447 | M | E2NE | 31 | 146 | 41 | MARY FRENCH BRUNELLE | |
| F534080597A | A-1136 | B | E2SE | 12 | 142 | 42 | MARY FRENCH BRUNELLE | |
| F534080598 | O-1413 | B | NESW & SENW | 05 | 141 | 41 | IDA WARREN JOERNI | |
| F534080598A | A-1111 | B | NENE | 16 | 142 | 39 | IDA WARREN JOERNI | |
| | | | SESE | 04 | 142 | 39 | | |
| F534080599 | O-1441 | B | S2NW | 25 | 142 | 42 | ISABELLA VIZNOR TROTTERCHAUD | |
| F534080599A | A-1133 | B | W2SE | 24 | 141 | 40 | ISABELLE VIZNOR TROTTERCHAUD | |
| F534080600 | O-1450 | M | W2SE | 31 | 146 | 41 | DORA FRENCH | |
| F534080600A | A-1138 | M | NWSE | 20 | 145 | 41 | DORA FRENCH | |
| | | | NWNW | 21 | 145 | 41 | | |
| F534080602 | A-1047 | B | LOT 5 EXCEPT ° | 18 | 141 | 38 | EDWARD BLAIR | |
| F534080603 | A-0514 | B | NWSE & NESW | 24 | 141 | 41 | IVER MCARTHUR CLEVELAND SPRY | |
| F534080604 | A-1100 | M | N2NW | 23 | 144 | 40 | LOUISA BELLECOURT BEAULIEU | |
| F534080605 | A-1084 | B | SENW & NESW | 27 | 142 | 40 | JAMES BENJAMIN WARREN | |
| F534080606E | O-3836 | B | LOT 1 & SENE | 03 | 142 | 40 | | SHAH BOONCE |
| F534080606F | O-3836 | B | LOT 1 & SENE | 03 | 142 | 40 | | SHAH BOONCE |
| F534080606K | A-2413 | M | SESE | 07 | 143 | 40 | | SHAH BOONCE |
| | | | LOT 4 | 18 | 143 | 40 | | |
| F534080606L | A-2413 | M | SESE | 07 | 143 | 40 | | SHAH BOONCE |
| | | | LOT 4 | 18 | 143 | 40 | | |
| F534080607 | O-1336 | B | S2SW | 26 | 141 | 41 | MARY CORRER | |
| F534080608 | A-0858 | M | W2NE | 31 | 143 | 42 | EMMA BELLEFEUILLE DOUCETTE | |
| F534080609 | O-1217 | B | S2NW | 15 | 142 | 41 | MARY SMITH | |
| F534080609A | A-1510 | M | S2NW | 08 | 145 | 41 | MARY SMITH | |
| F534080610 | O-1207 | B | SESW & SWSE | 21 | 142 | 42 | JOSEPHINE JOHNSON BEAUDREAU | |
| F534080610A | A-0942 | B | LOT 4 & SWNW | 03 | 141 | 39 | JOSEPHINE JOHNSON BEAUDREAU | |
| F534080611 | O-1611 | B | E2SE | 01 | 141 | 37 | MARY CAMPBELL BONNESS FORD | |
| F534080611A | A-1233 | C | W2SE | 10 | 143 | 38 | MARY CAMPBELL BONNESS | |
| F534080612 | O-1368 | M | W2NW | 10 | 143 | 41 | SUSAN JACKSON BELLAND | |
| F534080613 | A-1064 | B | N2SESE & NESE N2S2SESE | 17 | 142 | 39 | ISABELLE BRISBOIS GREEN | |
| | | | | 17 | 142 | 39 | | |
| F534080614 | O-6177 | B | N2SE | 27 | 142 | 41 | AUGUSTINE BELLANGER | |
| F534080614A | O-6177 | B | N2SE | 27 | 142 | 41 | AUGUSTINE BELLANGER | |
| F534080616 | O-1073 | B | NESE | 09 | 141 | 40 | ANGELINE VEZINA HANSON | |
| F534080616A | O-1073 | B | SWNE | 10 | 141 | 41 | ANGELINE VEZINA HANSON | |



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|---|---|---|---|---|---|---|---|---|
| F534080617 | O-1071 | B | W2SE | 09 | 141 | 40 | SOPHIA VEZINA FAIRBANKS | |
| F534080618 | O-1772 | B | N2SW | 14 | 141 | 37 | | WAY WAUS UNG |
| F534080621 | O-1161 | B | W2SE | 04 | 141 | 40 | ANNIE FAIRBANKS GRAVELLE WILLIAMS | |
| F534080623 | O-1608 | B | NESW & NWSE | 05 | 142 | 41 | ROBERT CAMPBELL | |
| F534080625 | O-1274 | M | LOT 4 SESW | 01 36 | 145 146 | 41 41 | AMELIA BLAIR BELLEFEUILLE | |
| F534080625H | O-1274 | M | LOT 4 SESW | 01 36 | 145 146 | 41 41 | AMELIA BLAIR BELLEFEUILLE | |
| F534080626 | O-1285 | M | E2SE | 18 | 143 | 42 | VIRGINIA LADOUX | |
| F534080627 | O-1271 | M | LOT 2 & NWNE | 36 | 146 | 41 | MARY BLAIR | |
| F534080627A | O-1271 | M | LOT 2 & NWNE | 36 | 146 | 41 | MARY BLAIR | |
| F534080628 | A-0527 | M | W2NE | 26 | 146 | 42 | JOHN GEORGE FAIRBANKS | |
| F534080629 | O-1798 | M | SENE | 11 | 144 | 41 | NEZETTE BELLANGER LADUKE PEARSON | |
| F534080630 | O-1797 | M | SWNE | 11 | 144 | 41 | ALICE BELLANGER GARVIE | WAY WAH CAH WAH BE KE |
| F534080631 | O-2985 | M | LOT 10 NWSW | 07 08 | 144 144 | 40 40 | CHARLOTTE DUFAULT | |
| F534080633 | O-1676 | B | NWSW | 27 | 141 | 40 | MILDRED B. HAZELTON | |
| F534080634 | O-1684 | B | S2SW | 15 | 142 | 42 | MAUD ASENEATH SWEET LA CHAPELLE | |
| F534080634A | A-0430 | B | N2NW | 32 | 142 | 39 | MAUD ASENEATH SWEET LA CHAPELLE | |
| F534080636 | O-1538 | M | SWNE & NWSE | 11 | 143 | 41 | JULIA BRANCHAUD VANOSS | |
| F534080636A | A-1195 | B | LOTS 5 & 6 | 18 | 142 | 37 | JULIA BRANCHAUD VANOSS | |
| F534080637 | A-1200 | B | LOT 1 SESW | 31 30 | 141 141 | 38 38 | MARY ROY FAIRBANKS BRANCHAUD | |
| F534080638A | A-1232 | C | E2NE | 12 | 143 | 38 | HENRIETTA CAMPBELL DOUCETTE | |
| F534080639 | O-1526 | B | SENE & NESE | 16 | 142 | 42 | SOPHIA ELIZABETH BISSON ROGERS | |
| F534080639A | A-1187 | B | W2SW | 11 | 141 | 42 | SOPHIA BISSON ROGERS | |
| F534080640 | O-1444 | M | N2NW | 32 | 146 | 41 | ROSE BEAULIEU FRENCH | |
| F534080642AA | O-1808 | B | MB OF W2NE | 33 | 141 | 37 | JOHN SLOAN ROCK | AH SIN W WAH CUMIG |
| F534080642B | O-1808 | B | MB OF W2NE | 33 | 141 | 37 | JOHN SLOAN ROCK | AH SIN W WAH CUMIG |
| F534080642BB | O-1808 | B | MB OF W2NE | 33 | 141 | 37 | JOHN SLOAN ROCK | AH SIN W WAH CUMIG |
| F534080642C | O-1808 | B | MB OF W2NE | 33 | 141 | 37 | JOHN SLOAN ROCK | AH SIN W WAH CUMIG |
| F534080642D | O-1808 | B | MB OF W2NE | 33 | 141 | 37 | JOHN SLOAN ROCK | AH SIN W WAH CUMIG |
| F534080642DD | O-1808 | B | MB OF W2NE | 33 | 141 | 37 | JOHN SLOAN ROCK | AH SIN W WAH CUMIG |
| F534080642E | O-1808 | B | MB OF W2NE | 33 | 141 | 37 | JOHN SLOAN ROCK | AH SIN W WAH CUMIG |
| F534080642EE | O-1808 | B | MB OF W2NE | 33 | 141 | 37 | JOHN SLOAN ROCK | AH SIN W WAH CUMIG |
| F534080642F | O-1808 | B | MB OF W2NE | 33 | 141 | 37 | JOHN SLOAN ROCK | AH SIN W WAH CUMIG |
| F534080642FF | O-1808 | B | MB OF W2NE | 33 | 141 | 37 | JOHN SLOAN ROCK | AH SIN W WAH CUMIG |
| F534080642G | O-1808 | B | MB OF W2NE | 33 | 141 | 37 | JOHN SLOAN ROCK | AH SIN W WAH CUMIG |
| F534080642GG | O-1808 | B | MB OF W2NE | 33 | 141 | 37 | JOHN SLOAN ROCK | AH SIN W WAH CUMIG |
| F534080642H | O-1808 | B | MB OF W2NE | 33 | 141 | 37 | JOHN SLOAN ROCK | AH SIN W WAH CUMIG |
| F534080642HH | O-1808 | B | MB OF W2NE | 33 | 141 | 37 | JOHN SLOAN ROCK | AH SIN W WAH CUMIG |
| F534080642I | O-1808 | B | MB OF W2NE | 33 | 141 | 37 | JOHN SLOAN ROCK | AH SIN W WAH CUMIG |
| F534080642J | O-1808 | B | MB OF W2NE | 33 | 141 | 37 | JOHN SLOAN ROCK | AH SIN W WAH CUMIG |
| F534080642JJ | O-1808 | B | MB OF W2NE | 33 | 141 | 37 | JOHN SLOAN ROCK | AH SIN W WAH CUMIG |
| F534080642K | O-1808 | B | MB OF W2NE | 33 | 141 | 37 | JOHN SLOAN ROCK | AH SIN W WAH CUMIG |
| F534080642KK | O-1808 | B | MB OF W2NE | 33 | 141 | 37 | JOHN SLOAN ROCK | AH SIN W WAH CUMIG |
| F534080642L | O-1808 | B | MB OF W2NE | 33 | 141 | 37 | JOHN SLOAN ROCK | AH SIN W WAH CUMIG |
| F534080642M | O-1808 | B | MB OF W2NE | 33 | 141 | 37 | JOHN SLOAN ROCK | AH SIN W WAH CUMIG |
| F534080642MM | O-1808 | B | MB OF W2NE | 33 | 141 | 37 | JOHN SLOAN ROCK | AH SIN W WAH CUMIG |
| F534080642N | O-1808 | B | MB OF W2NE | 33 | 141 | 37 | JOHN SLOAN ROCK | AH SIN W WAH CUMIG |
| F534080642O | O-1808 | B | MB OF W2NE | 33 | 141 | 37 | JOHN SLOAN ROCK | AH SIN W WAH CUMIG |
| F534080642OO | O-1808 | B | MB OF W2NE | 33 | 141 | 37 | JOHN SLOAN ROCK | AH SIN W WAH CUMIG |
| F534080642P | O-1808 | B | MB OF W2NE | 33 | 141 | 37 | JOHN SLOAN ROCK | AH SIN W WAH CUMIG |
| F534080642Q | O-1808 | B | MB OF W2NE | 33 | 141 | 37 | JOHN SLOAN ROCK | AH SIN W WAH CUMIG |
| F534080642QQ | O-1808 | B | MB OF W2NE | 33 | 141 | 37 | JOHN SLOAN ROCK | AH SIN W WAH CUMIG |
| F534080642RR | O-1808 | B | MB OF W2NE | 33 | 141 | 37 | JOHN SLOAN ROCK | AH SIN W WAH CUMIG |
| F534080642S | O-1808 | B | MB OF W2NE | 33 | 141 | 37 | JOHN SLOAN ROCK | AH SIN W WAH CUMIG |
| F534080642T | O-1808 | B | MB OF W2NE | 33 | 141 | 37 | JOHN SLOAN ROCK | AH SIN W WAH CUMIG |
| F534080642U | O-1808 | B | MB OF W2NE | 33 | 141 | 37 | JOHN SLOAN ROCK | AH SIN W WAH CUMIG |
| F534080642V | O-1808 | B | MB OF W2NE | 33 | 141 | 37 | JOHN SLOAN ROCK | AH SIN W WAH CUMIG |
| F534080642W | O-1808 | B | MB OF W2NE | 33 | 141 | 37 | JOHN SLOAN ROCK | AH SIN W WAH CUMIG |
| F534080642X | O-1808 | B | MB OF W2NE | 33 | 141 | 37 | JOHN SLOAN ROCK | AH SIN W WAH CUMIG |
| F534080642Y | O-1808 | B | MB OF W2NE | 33 | 141 | 37 | JOHN SLOAN ROCK | AH SIN W WAH CUMIG |
| F534080644 | O-4885 | M | E2NW | 12 | 146 | 40 | | AH ZHOW |
| F534080644B | A-2813 | M | E2SW | 12 | 146 | 40 | | AH ZHOW |
| F534080646B | A-1849 | M | LOT 4 SENE | 05 27 | 144 145 | 41 39 | CARRIE BROWN | |
| F534080647 | A-0953 | C | W2SW | 33 | 144 | 38 | MOSES TROTOCHAUD | |
| F534080650 | O-4927 | C | NWNE | 30 | 143 | 38 | | MAH NOW O GAH BOW |
| F534080650A | A-3004 | C | S2SE | 19 | 143 | 38 | | MAH NOW O GAH BOW |
| F534080650B | O-4927 | C | LOT 5 | 30 | 143 | 38 | | MAH NOW O GAH BOW |
| F534080651 | O-3441 | M | NESW & SENW | 24 | 146 | 42 | ELIZA PEMBERTON BLANCHARD | JAH YAUNCE |
| F534080652 | O-3117 | M | SESW & NWSW | 04 | 144 | 42 | MARGARET SAICE THOMPSON | |
| F534080653A | A-3057 | M | LOTS 6 & 7 | 06 | 145 | 42 | LENA DOUCETTE | |
| F534080654 | O-2987 | M | SENE SWNW | 03 02 | 146 146 | 42 42 | JOSETTE LAROCK RICHARDSON | |
| F534080656 | O-2040 | B | W2SE | 22 | 141 | 38 | | QUOD O QUAY |
| F534080657 | O-2039 | B | E2SE | 22 | 141 | 38 | | SHO BON DAY GE WOUN OKE |
| F534080658 | O-1366 | M | LOT 5 & SESW | 25 | 143 | 41 | | WAY WE GWAINCE |

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|---|---|---|---|---|---|---|---|
| F534080658A | O-1366 | M | LOT 5 & SESW | 25 | 143 | 41 | |
| F534080659 | A-0921 | B | SWSW | 32 | 142 | 39 | EVA MUTCHER BREIT |
| | | | NWSW | 33 | 142 | 39 | |
| F534080661 | O-1078 | B | E2NW | 22 | 142 | 40 | |
| F534080661A | O-1078 | B | E2NW | 22 | 142 | 40 | |
| F534080662 | O-1490 | B | LOTS 2 & 3 | 19 | 142 | 40 | MARY HOLSTEIN COLONOWASKI |
| F534080662A | A-1165 | M | E2SW | 35 | 143 | 39 | MARY HOLSTEIN COLONOWASKI |
| | | | N2N2SESW | 15 | 143 | 39 | |
| F534080663 | O-1495 | B | LOT 4 & SESW | 18 | 142 | 41 | MAGGIE MONROE HAMLIN |
| F534080669 | O-1851 | B | W2SW | 27 | 141 | 39 | SUSAN PEAKE BROWN |
| F534080669A | A-1365 | B | W2SW | 11 | 141 | 39 | SUSAN PEAKE BROWN |
| F534080670 | A-1315 | B | E2NW | 15 | 142 | 38 | JULIA FAIRBANKS PEAKE |
| F534080672 | O-0494 | M | LOT 5 | 01 | 146 | 41 | B.N. BEAULIEU |
| | | | LOT 4 | 12 | 146 | 41 | |
| F534080674 | A-0545 | C | N2N2NESE | 20 | 143 | 38 | |
| F534080675 | O-4161 | B | NENW & NWNE | 20 | 141 | 42 | RITA DIXON WOODMAN |
| F534080675A | A-0138 | M | S2NW | 13 | 146 | 42 | RITA DIXON WOODMAN |
| F534080676 | A-0174 | M | LOT 1 | 10 | 146 | 41 | MAGGIE GAGNON ARNOLD WARREN |
| F534080677 | O-1202 | B | N2NE | 08 | 141 | 40 | CHARLOTTE JOHNSON |
| F534080677F | O-1202 | B | N2NE | 08 | 141 | 40 | CHARLOTTE JOHNSON |
| F534080678 | O-1299 | B | W2SW | 24 | 142 | 40 | MARGARET JORDAN BEAUDREAU |
| F534080679 | A-1058 | B | LOT 4 & SWSE | 24 | 141 | 41 | WILLIAM H. VIZNOR |
| F534080682 | O-1525 | B | SWNW & NWSW | 15 | 142 | 42 | MARY CATHERINE ROGERS |
| F534080682A | A-1186 | B | S2NW | 11 | 141 | 42 | MARY CATHERINE ROGERS |
| F534080685 | A-1378 | B | W2SW | 21 | 142 | 39 | |
| F534080688 | A-0050 | M | NWNW & SWNE | 23 | 143 | 42 | LEO CHARBONNEAU |
| F534080689 | O-0114 | M | S2SE | 34 | 143 | 40 | |
| F534080690 | A-0481 | B | S2NW | 13 | 141 | 40 | ANNIE KING SULLIVAN MORAN |
| F534080691 | O-0826 | B | LOTS 6 & 10 | 08 | 141 | 40 | MARY BELLANGER PARKER |
| F534080692 | A-0987 | B | SWNE & NWSE | 23 | 141 | 40 | MATILDA BELLEFEUILLE OTREMBA |
| F534080693 | O-1570 | M | W2NE | 11 | 145 | 41 | JOHN BRUNETTE |
| F534080693A | A-0320 | C | S2SW | 01 | 146 | 38 | JOHN BRUNETTE |
| F534080695 | O-1909 | B | S2SW | 20 | 141 | 37 | RACHEL RABIT MONROE |
| F534080695A | A-1406 | B | LOTS 3 & 4 | 01 | 142 | 39 | RACHEL RABIT MONROE |
| F534080696 | O-1974 | B | W2SW | 29 | 141 | 38 | |
| F534080696A | A-1455 | B | E2NE | 19 | 142 | 37 | |
| F534080697 | O-1975 | B | E2SW | 29 | 141 | 38 | |
| F534080697A | A-1456 | B | SENE & NESE | 26 | 142 | 37 | |
| F534080698 | O-2521 | B | LOT 11 | 07 | 142 | 40 | |
| | | | LOT 3 | 18 | 142 | 40 | |
| F534080699 | O-4465 | B | N2NE | 36 | 142 | 37 | MARY JUGG GRAVELLE WEAVER |
| F534080699A | A-1457 | B | LOTS 4 & 7 | 27 | 142 | 37 | MARY JUGG GRAVELLE WEAVER |
| F534080700 | O-4551 | B | S2S2NWSE | 19 | 141 | 40 | LIZZIE FAIRBANKS |
| | | | NESENE | 12 | 142 | 42 | |
| | | | SENW | 03 | 145 | 39 | |
| F534080700A | O-4551 | B | LOT 4 | 35 | 141 | 40 | LIZZIE FAIRBANKS |
| F534080700B | A-2037 | M | N2NE | 13 | 146 | 39 | LIZZIE FAIRBANKS ARTEN |
| F534080701 | O-0078 | M | SENW & SWNE | 15 | 143 | 42 | NAMIE CHARBONNEAU |
| F534080701A | A-0049 | M | LOT 1 & SESE | 04 | 143 | 40 | NAMIE CHARBONNEAU |
| F534080705 | O-1596 | B | S2NW | 03 | 141 | 42 | ISABEL ST.CLAIR BRUNETTE |
| F534080705A | A-0602 | M | E2NE | 33 | 145 | 42 | ISABEL ST.CLAIR BRUNETTE |
| F534080706 | O-3525 | M | E2NE EXCEPT 105'* | 12 | 146 | 39 | MARY PORTER |
| F534080708A | A-1296 | M | N2SW | 24 | 144 | 39 | |
| F534080708B | A-1296 | M | N2SW | 24 | 144 | 39 | |
| F534080711 | O-1979 | B | N2NW | 26 | 141 | 38 | |
| F534080713 | O-1757 | B | S2SE | 08 | 141 | 39 | |
| F534080713A | A-3051 | M | NENW & N2NWNW | 25 | 145 | 42 | |
| | | | S2NWNW | 24 | 145 | 42 | |
| F534080716 | O-1724 | B | S2SE | 34 | 141 | 38 | |
| F534080716A | O-1724 | B | S2SE | 34 | 141 | 38 | |
| F534080717 | A-0319 | C | N2SW | 01 | 146 | 38 | CHARLOTTE BRUNETTE HATMAKER |
| F534080718 | O-1696 | B | NWSW | 23 | 142 | 38 | SARAH SUMNERS |
| | | | NWNE | 26 | 142 | 38 | |
| F534080718A | A-1265 | B | S2NW | 34 | 142 | 38 | SARAH SUMNERS |
| F534080719A | A-0876 | C | W2NW | 23 | 144 | 38 | MARY BONGA |
| F534080720 | A-2479 | C | NWSE & SWSE | 24 | 146 | 38 | GEORGE LIBBY |
| F534080721 | O-1971 | B | LOT 4 | 03 | 142 | 37 | MRS. LOUISE RILEY |
| | | | LOT 1 | 04 | 142 | 37 | |
| F534080721A | A-1448 | B | N2SW | 09 | 142 | 38 | MRS. LOUISE RILEY |
| F534080722 | A-1464 | B | LOT 6 & SWNE | 29 | 141 | 39 | JAMES MOUNTAIN |
| F534080722A | A-1464 | B | LOT 6 & SWNE | 29 | 141 | 39 | JAMES MOUNTAIN |
| F534080723 | O-4348 | M | N2SE | 33 | 143 | 41 | ELIZA ARMSTRONG KEEZER |
| F534080723A | A-2980 | M | NWSE | 10 | 146 | 40 | ELIZA ARMSTRONG KEEZER |
| F534080723B | A-2980 | M | NWSE | 10 | 146 | 40 | ELIZA ARMSTRONG KEEZER |
| F534080725 | O-1566 | M | LOTS 4 & 5 | 12 | 145 | 41 | JOSEPH BRUNETTE |
| F534080725A | O-1566 | M | SESW | 11 | 145 | 41 | JOSEPH BRUNETTE |
| F534080725D | O-1566 | M | LOT 2 | 11 | 145 | 41 | JOSEPH BRUNETTE |
| F534080725E | O-1566 | M | SWSE | 11 | 145 | 41 | JOSEPH BRUNETTE |
| F534080725F | O-1566 | M | MB OF SWSE | 11 | 145 | 41 | JOSEPH BRUNETTE |
| F534080726 | O-1837 | B | N2SE | 25 | 142 | 40 | ISABEL |
| F534080727 | O-1838 | B | LOT 2 & SESW | 24 | 142 | 40 | EMILY BROWN |
| F534080728 | O-2213 | B | LOT 3 & NESW | 30 | 142 | 37 | EMILY FIMEDAY BUDREAU |
| F534080728A | A-1609 | B | SWNW | 05 | 142 | 37 | EMILY FIMEDAY BUDREAU |
| | | | LOT 3 | 02 | 142 | 37 | |

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| F534080829 | O-2102 | B | S2SE | 22 | 141 | 40 | CLARA QUINLAN BELLEFEUILLE |
| F534080829A | A-0995 | B | E2SE | 12 | 141 | 40 | CLARA QUINLAN BELLEFEUILLE |
| F534080830A | O-2454 | M | N2SE | 18 | 145 | 40 | WHITE EARTH BAND |
| F534080831 | O-0549 | B | E2SE | 19 | 142 | 42 | ALICE WILHEMINA LEDEBOER UTECHT |
| F534080831A | A-0408 | B | E2SW | 06 | 142 | 37 | ALICE WILHEMINA LEDEBOER UTECHT |
| F534080833 | O-2558 | B | E2SW | 03 | 141 | 37 | |
| F534080834 | O-2593 | M | SESW | 06 | 145 | 40 | EMMA BONGA RAISH STATELY |
| | | | NENE | 08 | 145 | 40 | |
| F534080835 | O-5092 | C | LOT 2 & SENW | 31 | 144 | 38 | WILLIAM NICKABOINE |
| F534080835A | A-2944 | C | W2NE | 31 | 144 | 38 | WILLIAM NICKABOINE |
| F534080837 | O-2302 | M | E2NE | 18 | 144 | 40 | |
| F534080837A | A-1694 | M | LOT 1 & NENW | 18 | 144 | 39 | |
| F534080838 | O-2308 | M | E2SW | 09 | 145 | 39 | |
| F534080840 | O-2316 | C | LOT 3 & SENW | 05 | 146 | 38 | MARY BEAULIEU NADEAU |
| F534080840A | A-1697 | C | SWSE & W2E2SESE | 19 | 146 | 38 | MARY BEAULIEU NADEAU |
| | | | W2SESE | 19 | 146 | 38 | |
| F534080842 | A-1744 | C | W2SE | 13 | 145 | 38 | SOPHIA BEAULIEU |
| F534080843 | A-1696 | C | S2SE | 20 | 146 | 38 | MAGGIE BEAULIEU SELKIRK |
| F534080843A | O-2315 | M | N2SE | 36 | 146 | 39 | MAGGIE BEAULIEU SELKIRK |
| F534080844 | O-2330 | M | N2NW | 09 | 144 | 40 | MARY BELLANGER BELLECOURT |
| F534080844A | A-1788 | M | S2NW | 09 | 144 | 40 | MARY BELLANGER BELLECOURT |
| F534080845 | O-2032 | B | E2NW | 20 | 141 | 38 | LUCY TEJOHN CASSAWAY |
| F534080845A | A-1484 | B | NWSE | 22 | 142 | 37 | LUCY TEJOHN CASSAWAY |
| | | | NWSW | 23 | 142 | 37 | |
| F534080847 | O-1096 | C | LOT 2 | 09 | 143 | 38 | |
| | | | LOTS 1 & 2 | 10 | 143 | 38 | |
| F534080848 | O-0397 | B | E2NE | 11 | 141 | 41 | PAUL H. BEAULIEU |
| | | | SWNW & NWSW | 12 | 141 | 41 | |
| F534080848A | O-0397 | B | E2NE | 11 | 141 | 41 | PAUL H. BEAULIEU |
| | | | SWNW & NWSW | 12 | 141 | 41 | |
| F534080848B | O-0397 | B | E2NE | 11 | 141 | 41 | PAUL H. BEAULIEU |
| F534080848C | O-0397 | B | E2NE | 11 | 141 | 41 | PAUL H. BEAULIEU |
| F534080849 | O-2651 | B | S2NW | 22 | 142 | 42 | ANGELINE BELLANGER |
| F534080850 | O-2668 | B | LOT 8 & NWSW | 23 | 142 | 40 | |
| F534080851 | O-2755 | C | W2SE | 14 | 146 | 38 | |
| F534080852 | O-2760 | M | W2SE | 24 | 143 | 41 | MARY BRUNETTE |
| F534080853 | O-2766 | M | LOTS 1 & 4 | 07 | 143 | 41 | MRS. WILLIAM THOMPSON |
| F534080854 | O-2783 | B | W2SE | 05 | 141 | 37 | MRS. JOHN COLEMAN |
| F534080855 | O-2854 | B | LOTS 5 & 11 | 06 | 142 | 42 | MARY NELLIE FAIRBANKS |
| F534080856 | O-2868 | B | E2NE | 36 | 142 | 42 | IDA SHERER CAMPBELL |
| F534080857 | O-3051 | M | E2SE | 16 | 144 | 42 | MARGARETTE PERRAULT |
| F534080858 | A-0858 | M | NWSW | 09 | 144 | 42 | SERAPHINE K. PERRAULT |
| | | | SWSW | 13 | 144 | 42 | |
| F534080859 | O-3056 | M | LOT 1 & SENE | 04 | 144 | 42 | MARY PERRAULT PRINTER |
| F534080861 | O-4208 | B | SESE | 10 | 142 | 40 | CARRIE FAIRBANKS BRUNETTE |
| | | | NENE | 15 | 142 | 40 | |
| F534080861A | A-0315 | B | W2SE | 02 | 141 | 42 | CARRIE FAIRBANKS BRUNETTE |
| F534080862 | O-4229 | B | W2NE | 12 | 141 | 37 | |
| F534080863 | O-4238 | M | SENE & NESE | 09 | 143 | 42 | ANGELINE BELLECOURT RICHARDSON |
| F534080863A | A-0066 | M | E2NE | 12 | 143 | 42 | ANGELINE BELLECOURT RICHARDSON |
| F534080867A | A-1512 | B | NWNE & NENW | 31 | 142 | 39 | MRS. WILLIAM PAUL |
| F534080868 | O-2096 | M | SESE | 19 | 143 | 40 | FRANCIS BELLANGER |
| | | | SWSW | 20 | 143 | 40 | |
| F534080869 | O-2146 | B | SENE | 04 | 142 | 38 | CATHERINE J. FAIRBANKS DOUCETTE |
| F534080869A | A-1558 | M | NENW & NWNE | 09 | 145 | 42 | CATHERINE J. FAIRBANKS DOUCETTE |
| F534080869B | O-2146 | B | SWNW | 03 | 142 | 38 | CATHERINE J. FAIRBANKS DOUCETTE |
| F534080870 | O-2147 | B | E2SE | 04 | 142 | 38 | SARAH FAIRBANKS ERION |
| F534080870A | A-1559 | B | W2NE | 18 | 141 | 40 | SARAH FAIRBANKS ERION |
| F534080872 | O-2217 | B | E2NW | 07 | 141 | 37 | MRS. MARTIN |
| F534080872A | A-1612 | B | W2SE | 20 | 142 | 38 | MRS. MARTIN |
| F534080874 | A-1646 | B | S2SW | 13 | 142 | 37 | MARY ANNIE BROKER HOFFMAN |
| F534080875 | O-2437 | M | W2SE | 29 | 145 | 40 | |
| F534080877 | O-2556 | B | E2SE | 03 | 141 | 37 | GEORGE AITKINS |
| F534080879 | O-2618 | B | S2SE | 09 | 141 | 38 | MRS. JOHN FINEDAY |
| F534080879A | O-2618 | B | S2SE | 09 | 141 | 38 | MRS. JOHN FINEDAY |
| F534080881 | O-4236 | M | E2NE | 29 | 146 | 40 | ELIZABETH BEAULIEU MASSELTON |
| F534080882 | O-4407 | M | W2SE | 19 | 143 | 41 | ALICE GERALDINE PRICE |
| F534080882A | A-0476 | M | S2NE | 28 | 143 | 41 | ALICE GERALDINE PRICE |
| F534080884 | O-4227 | M | LOT 4 & SWNW | 05 | 146 | 42 | EMILY SARGENT PEABODY |
| F534080886 | O-2462 | M | W2NE | 14 | 144 | 40 | |
| F534080886A | A-1793 | M | SWSE | 08 | 145 | 39 | |
| | | | NWNE | 17 | 145 | 39 | |
| F534080886B | A-1793 | M | SWSE | 08 | 145 | 39 | |
| | | | NWNE | 17 | 145 | 39 | |
| F534080886C | A-1793 | M | SWSE | 08 | 145 | 39 | |
| | | | NWNE | 17 | 145 | 39 | |
| F534080886E | O-2462 | M | W2NE | 14 | 144 | 40 | |
| F534080886F | O-2462 | M | W2NE | 14 | 144 | 40 | |

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| F534080946 | 0-4222 M | SWSW | 23 | 144 | 41 | JOSIE GRAVELLE | |
| | | LOT 5 | 26 | 144 | 41 | | |
| F534080950 | 0-3099 M | E2SE | 04 | 144 | 42 | MADELINE JOURDAIN | |
| F534080951 | 0-3298 M | S2SW | 25 | 144 | 42 | NORA BRISBOIS | |
| F534080952 | 0-2864 B | W2NE | 12 | 141 | 38 | | SHOW WAH AUSH E QUAY |
| F534080953 | 0-3300 M | N2SW | 25 | 144 | 42 | ORA BRISBOIS | |
| F534080954 | 0-3125 M | LOT 9 & NWSE | 06 | 144 | 42 | LENORA LAFRENIERE | |
| F534080955 | 0-2415 M | N2NE | 21 | 146 | 41 | FRANCIS LEADER | |
| F534080957 | 0-2522 M | SENW & SWNE | 09 | 146 | 40 | JULIA KETCHUM MULLANEY | |
| F534080957A | A-1621 M | N2SW | 17 | 145 | 39 | JULIA KETCHUM MULLANEY | |
| F534080958A | 0-2114 M | E2SW | 27 | 146 | 42 | SIMON BELLANGER | |
| F534080959 | 0-3018 M | LOT 1 & NENW | 30 | 144 | 40 | CHARLOTTE LEGOS BELLANGER | |
| F534080960 | 0-2555 M | SWNW & SWNE | 27 | 145 | 41 | FLORENCE BONGA RED WING | |
| F534080962 | 0-2877 M | W2SE | 18 | 146 | 42 | MARY OMEDAY MAXWELL | |
| F534080963 | 0-2408 B | NENE | 26 | 142 | 41 | JOSEPH BELLANGER | CO GOG |
| F534080963A | 0-2408 B | NWNE EXC. FOR M/B | 26 | 142 | 41 | JOSEPH BELLANGER | CO GOG |
| F534080963B | 0-2408 B | NWNE EXC. FOR M/B | 26 | 142 | 41 | JOSEPH BELLANGER | CO GOG |
| F534080964 | 0-2643 B | E2SW | 29 | 141 | 37 | | NUB UN AY CUNIG ISH KUNG |
| F534080964A | 0-2643 B | E2SW | 29 | 141 | 37 | | NUB UN AY CUNIG ISH KUNG |
| F534080965 | 0-0779 B | LOT 2 & SWNE | 03 | 141 | 42 | SOPHIA ST. CLAIR | |
| F534080965A | A-0605 M | E2SE | 33 | 145 | 42 | SOPHIA ST. CLAIR | |
| F534080966 | 0-4546 C | NESW & NWSE | 06 | 145 | 38 | JOSIE DURANT ST. JOHN | |
| F534080966A | A-1985 C | S2NW | 33 | 146 | 38 | JOSIE DURANT ST. JOHN | |
| F534080969 | A-2490 M | SWNE & NWSE | 26 | 143 | 39 | EDITH LIBBY | |
| F534080970 | A-1397 M | S2NW | 22 | 146 | 39 | JOSEPHINE MASON STAPLES | SHAH BONDE |
| F534080971 | 0-4376 B | LOTS 1,2 & NENE | 32 | 141 | 40 | GABRIELLA DIXON | |
| F534080971A | A-0137 M | NENW & E2NWNW | 13 | 146 | 42 | GABRIELLA DIXON | |
| | | E2W2NWNW | 13 | 146 | 42 | | |
| F534080972A | A-3059 M | LOTS 8 & 11 | 31 | 146 | 42 | LOUISE MAY DOUCETTE MCDONALD | |
| F534080973 | 0-4916 C | E2NE | 36 | 146 | 38 | JOSIE MITCHELL | WAH WAUSH KAISH EENCE |
| F534080973A | A-2842 C | E2SE | 36 | 146 | 38 | JOSIE MITCHELL | WAH WAUSH KAISH EENCE |
| F534080974 | A-3021 B | NENE | 13 | 141 | 40 | MINNIE MURPHY | |
| F534080976 | 0-4809 M | NWSE | 27 | 143 | 42 | LILLIE MURPHY DECHON | |
| F534080976A | A-2484 B | SENW | 33 | 142 | 41 | LILLY MURPHY DECHON | |
| | | SWNW | 20 | 142 | 41 | | |
| F534080978 | 0-5052 M | S2SW | 20 | 146 | 42 | MARY WALDROP | |
| F534080978A | A-2997 M | NWSE & NESW | 21 | 146 | 42 | MARY WALDROP | |
| F534080979 | 0-5066 C | SESE | 22 | 144 | 38 | MARY GRASSHOPPER | WAY JE CHAUG O GE SHIG |
| F534080984 | 0-2978 M | S2NE | 34 | 144 | 40 | JOHN COBY | MAY DWAY AH JE WON |
| F534080985 | 0-2979 M | E2SW | 15 | 145 | 41 | SUSAN COBY | |
| F534080986A | 0-2996 M | N2NE | 17 | 144 | 41 | MATTIE ODONNEL | |
| F534080988 | 0-3084 M | E2SE | 14 | 144 | 42 | MARY SAICE EICHSTADT | |
| F534080989 | 0-3341 M | S2NE | 18 | 146 | 42 | CATHERINE DOUGLASS PELERIN | |
| F534080992 | 0-3420 M | E2SW | 27 | 146 | 41 | LIZZIE PEMBERTON BEAUPRE | MO KAH AH MO QUAINCE |
| F534080992A | A-1905 M | S2NW | 29 | 145 | 39 | LIZZIE PEMBERTON BEAUPRE | MO KAH AH MO QUAINCE |
| F534080993 | A-1914 M | N2SE | 30 | 145 | 39 | JOHN L. PEMBERTON | |
| F534080994 | 0-3445 M | S2NE | 24 | 146 | 42 | VIOLA MAY PEMBERTON BERGERSON | |
| F534080994A | A-1915 M | LOTS 1 & 2 | 19 | 146 | 41 | VIOLA MAY PEMBERTON BERGERSON | |
| F534080996 | 0-3462 C | LOTS 3 & 4 | 31 | 146 | 38 | NANCY ROWLEY PORTER | |
| F534080996A | A-1938 M | S2NW & W2SWNE | 01 | 145 | 39 | NANCY PORTER | |
| F534080997 | 0-3485 M | S2SE | 28 | 144 | 41 | GEORGE MURRAY | |
| F534080997A | A-1942 C | LOTS 2,3 & 4 | 21 | 146 | 38 | GEORGE MURRAY | |
| F534080998C | 0-3553 M | NWNW | 21 | 145 | 40 | | MAH JE KE SHIG O QUAY |
| | | SWSW | 16 | 145 | 40 | | |
| F534080998D | 0-3553 M | NWNW | 21 | 145 | 40 | | MAH JE KE SHIG O QUAY |
| | | SWSW | 16 | 145 | 40 | | |
| F534081000 | 0-4388 B | SWSW | 28 | 142 | 42 | EVA BRAY BLONDHEIM MITCHELL | |
| | | NWNW | 33 | 142 | 42 | | |
| F534081002 | 0-4381 M | E2SE | 20 | 143 | 40 | ROWENA ANNIE GAGNON | |
| F534081003 | 0-4384 B | SESW | 34 | 141 | 42 | HEDWIDGE BISSON | |
| F534081003A | 0-4384 C | NESE | 32 | 143 | 38 | HEDWIDGE BISSON | |
| F534081003B | A-2384 B | W2SE | 09 | 141 | 42 | HEDWIDGE BISSON | |
| F534081004A | A-0389 M | LOTS 2 & 8 | 04 | 145 | 39 | JOSEPHINE VEZINA LADUKE | |
| F534081004C | A-0389 M | N2N2NWSE | 09 | 145 | 39 | JOSEPHINE VEZINA | |
| F534081005 | 0-4397 B | E2NE | 29 | 142 | 40 | ANNIE E. CHARETTE | |
| F534081005A | A-0451 B | W2NE | 29 | 142 | 40 | ANNIE E. CHARETTE | |
| F534081006 | 0-4398 B | SWNW & NWSW | 32 | 142 | 39 | JOSETTE ASPINWALL BROKER | |
| F534081006A | A-0459 B | SENE & NESE | 31 | 142 | 39 | JOSETTE ASPINWALL BROKER | |
| F534081008 | A-1644 B | W2NE | 27 | 142 | 39 | CHARLOTTE BRUNETTE | |
| F534081009 | 0-4486 M | S2SE | 15 | 146 | 42 | VITALINE BLAIR | |
| F534081010 | 0-4487 M | LOTS 3 & 4 | 31 | 146 | 42 | ELLEN VILLEBRUN | |
| F534081010A | A-1480 M | LOTS 7 & 12 | 07 | 145 | 42 | ELLEN VILLEBRUN | |
| F534081013 | 0-4498 B | LOT 4 | 30 | 141 | 37 | | AH BE JE GE SHIG O QUAY |
| | | LOTS 1 & 2 | 32 | 141 | 37 | | |
| F534081015 | 0-4500 B | SESW & SWSE | 09 | 142 | 37 | JOSEPH SHOOTER | |
| F534081016 | 0-4563 M | LOT 4 & SWNW | 04 | 143 | 40 | DOLLY BRANCHAUD | |
| F534081016A | A-2149 M | LOT 1 & SENE | 05 | 143 | 40 | DOLLY BRANCHAUD | |
| F534081017 | A-2180 C | E2SW | 27 | 146 | 38 | LOTTIE KELLY | O GISH |
| F534081018A | A-2189 M | LOT 1 & S2NWSW | 14 | 145 | 39 | LONG LIZZIE MCDONNELL | KAH GE GAY QUAY |
| | | LOT 2 | 15 | 145 | 39 | | |
| F534081019 | 0-4607 M | E2SE | 14 | 145 | 42 | JANE GOODMAN GOLDSMITH | |
| F534081020 | A-2818 B | NENE | 10 | 142 | 42 | BILLY BEDAUSKY | BE DAUW AH QUOD |
| F534081022 | A-2309 C | W2SW | 12 | 145 | 38 | | MAH JE AUN AH QUOD |



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|---|---|---|---|---|---|---|---|
| F534081022E | 0-4692 M | E2SW | 24 | 145 | 40 | | MAH JE AUN AH QUOD |
| F534081023 | A-2310 C | W2NW | 13 | 145 | 38 | | CHE BO BE QUAY |
| F534081023B | 0-4693 M | S2SE | 24 | 145 | 40 | | CHE BO BE QUAY |
| F534081025 | 0-4775 M | SWNW & NWSW | 22 | 146 | 42 | MARY SEELYE | |
| F534081025A | A-2451 C | SWNW & NWSW | 29 | 146 | 38 | MARY SEELYE | |
| F534081026 | 0-4779 M | E2SE | 30 | 143 | 41 | LULU M. WAKEFIELD | |
| F534081026A | A-2456 M | W2SW | 34 | 144 | 39 | LULU M. WAKEFIELD | |
| F534081027 | A-2470 C | SWSE | 17 | 143 | 38 | IDA E. WAKEFIELD | |
| F534081027A | 0-4794 M | S2NW | 32 | 143 | 42 | IDA E. WAKEFIELD | |
| F534081027B | A-2470 M | NESW | 32 | 143 | 42 | IDA E. WAKEFIELD | |
| F534081028 | 0-4795 M | S2NE | 32 | 143 | 42 | RUTH WAKEFIELD | |
| F534081028A | A-2471 M | N2SE | 32 | 143 | 42 | RUTH WAKEFIELD | |
| F534081033 | 0-4813 M | N2SE | 26 | 143 | 42 | ROSIE LIBBY LEITH | |
| F534081034 | 0-4814 M | N2SE | 35 | 143 | 42 | LAURA LIBBY ANDERSON | |
| F534081034A | A-2488 M | N2SW | 27 | 143 | 39 | LAURA LIBBY ANDERSON | |
| F534081038 | A-2493 C | E2SW | 13 | 144 | 38 | KATHERINE M. DURANT | NOW AH CUNIG O QUAY |
| F534081038A | 0-4819 M | W2NE | 16 | 146 | 42 | KATHERINE M. DURANT | NOW AH CUNIG O QUAY |
| F534081039 | 0-5057 M | N2NE | 26 | 145 | 40 | QUAN DOSN JOURDAIN | QUAN DOSN JOURDAIN |
| F534081040 | 0-5072 M | NESE | 01 | 143 | 40 | MARGARET BARNEY BENSON | |
| | | NESW | 03 | 143 | 40 | | |
| F534081040A | A-3122 C | LOT 3 & SENW | 03 | 144 | 38 | MARGARET BENSON | WAY ZOW E GWON AY BE QUAY |
| F534081044 | 0-3000 M | LOT 4 & NWNW | 16 | 144 | 41 | NELLIE RADLEY ODONNELL | |
| F534081049 | 0-3216 M | W2NW | 11 | 144 | 42 | WILLIAM AUGUSTINE | |
| F534081049A | 0-3216 M | W2NW | 11 | 144 | 42 | WILLIAM AUGUSTIN | |
| F534081050 | A-1420 B | E2SE | 04 | 141 | 38 | NANCY JONES RILEY A. BAD BOY | NAUZN AH KEENCE |
| F534081050A | 0-4460 B | W2SW | 15 | 142 | 37 | NANCY BAD BOY | NAUZN AH KEENCE |
| F534081051 | 0-4470 B | N2NE | 31 | 142 | 37 | CHARLES BELLANGER TROTWOOD | |
| F534081051A | A-1548 B | NWSE & NESW | 19 | 142 | 38 | CHARLES BELLANGER | |
| F534081052 | A-1717 B | S2SE | 17 | 141 | 40 | NANCY MARTIN KETTLE | PE WAH BICK O QUAY |
| F534081054 | A-2208 M | E2NW | 12 | 145 | 40 | MRS. GEORGE OJIBWAY | TAN BUS AUSH E QUAY |
| F534081055 | 0-4681 M | LOT 2 & SWNE | 01 | 145 | 40 | CLARA PEMBERTON FOX | |
| F534081055A | A-2296 M | E2SE | 12 | 145 | 40 | CLARA PEMBERTON FOX | |
| F534081056 | 0-4823 M | W2NE | 29 | 143 | 40 | ESTHER WAKEFIELD MCINTOSH | |
| F534081057 | 0-4826 M | E2SE | 20 | 143 | 42 | EMMA SMITH | ZAY ZAH |
| F534081058 | A-2515 C | N2NW | 20 | 144 | 38 | EDDIE MCGILLIS | |
| F534081059 | 0-4494 B | LOT 7 | 30 | 141 | 38 | | NAY TAH O SAY |
| F534081059D | 0-4494 B | NWSE | 29 | 141 | 38 | | NAY TAH O SAY |
| F534081059E | 0-4494 B | NWSE | 29 | 141 | 38 | | NAY TAH O SAY |
| F534081061 | A-3121 C | W2NE | 15 | 146 | 38 | JANE (JESSIE) LAPRAIRIE | OGE MAH WAH TAY BE QUAY |
| F534081061A | 0-5070 M | NENW & NWNE | 13 | 143 | 40 | JESSIE (JANE) LA PRAIRIE | OGE MAH WAH TAY BE QUAY |
| F534081062 | 0-5082 B | E2NW | 15 | 142 | 39 | ALICE FOSTER MOORS | |
| F534081062A | A-2694 M | E2SE | 28 | 145 | 42 | ALICE FOSTER MOORS | |
| F534081070A | 0-3130 M | SENE & NESE | 17 | 144 | 42 | LOUIS VIVIER, JR. | |
| F534081070D | 0-3130 M | SENE & NESE | 17 | 144 | 42 | LOUIS VIVIER, JR. | |
| F534081070E | 0-3130 M | SENE & NESE | 17 | 144 | 42 | LOUIS VIVIER, JR. | |
| F534081070F | 0-3130 M | SENE & NESE | 17 | 144 | 42 | LOUIS VIVIER, JR. | |
| F534081071 | 0-3609 M | W2NW | 09 | 144 | 41 | CHARLEY GARDEN | |
| F534081071E | 0-3609 M | W2NW | 09 | 144 | 41 | CHARLEY GARDEN | |
| F534081072B | A-2047 M | SENW NESW | 22 | 144 | 40 | THOMAS GARDEN | |
| F534081073 | 0-3668 M | E2NW | 22 | 145 | 41 | LIZZIE GOODWIN SHEPPARD | |
| F534081074 | 0-3669 M | E2SW | 22 | 145 | 41 | MAUD ABBIE GOODWIN GARDNER | |
| F534081074A | A-2079 M | S2SE | 13 | 146 | 39 | MAUD ABBIE GOODWIN GARDNER | |
| F534081075 | A-2139 C | SWNW & NWSW | 08 | 145 | 38 | JOSEPH RICHARDS | |
| F534081075A | 0-3724 M | S2NW | 05 | 146 | 41 | JOSEPH RICHARDS | |
| F534081076 | 0-3734 M | NWSW & NWSE | 33 | 146 | 41 | VITALINE ISABELLE CAJUNE | |
| F534081077 | A-2522 M | N2SW | 20 | 144 | 40 | NELLIE MADISON GALLAGHER | |
| F534081079 | 0-4214 B | LOT 2 | 07 | 141 | 41 | EURENE WARREN TOBIN MOORE | |
| F534081082A | A-2542 C | S2NE | 07 | 143 | 38 | MARGARET KEEZER | |
| F534081083 | A-2566 M | LOTS 3 & 4 | 03 | 143 | 40 | CECELIA VORNWALD WALDORF | |
| F534081083A | 0-4841 M | E2SE | 36 | 144 | 41 | CECILIA VORNWALD WALDORF | |
| F534081084 | 0-4845 B | E2SE | 34 | 142 | 42 | MARY E. BEAN HUSEMAN | |
| F534081085A | A-2887 B | NESW | 36 | 141 | 38 | ELLA MARTINEAU POKEZWINSKI | |
| F534081085C | A-2887 M | NWSW | 12 | 145 | 42 | ELLA MARTINEAU POKEZWINSKI | |
| F534081086 | 0-4986 M | LOTS 5 & 8 | 07 | 146 | 42 | MARY THOMPSON | NAH WAH CUNIG O QUAY |
| F534081086A | A-2894 M | LOTS 4 & 9 | 07 | 146 | 42 | MARY THOMPSON | NAH WAH CUNIG O QUAY |
| F534081087 | 0-5003 C | S2NW | 29 | 145 | 38 | | PE WAY (AY SE BUN) |
| F534081088 | 0-5090 B | SENE | 02 | 141 | 42 | MAMMIE BARNESS RICHARDSON | |
| | | SWSE | 34 | 142 | 42 | | |
| F534081088A | A-3079 B | NENE | 31 | 141 | 42 | MAMMIE BARNESS RICHARDSON | |
| F534081089 | 0-1880 B | E2SE | 26 | 142 | 38 | | E QUAY ZAINCE |
| F534081090 | A-1391 C | E2SW | 24 | 143 | 38 | JENNIE | KAH CHE YAINCE |
| F534081091 | A-2106 B | SESE | 36 | 141 | 40 | PETER DOUCETTE | |
| F534081092 | A-2152 M | E2NE | 23 | 144 | 40 | ELLEN DAIGLE | |
| F534081093 | 0-3860 B | S2SW | 04 | 141 | 42 | CORA BELLE LUCIER HOOVER | |
| F534081094 | A-2481 C | LOT 3 | 07 | 144 | 38 | JACK AHGENAUSH | NO DIN ISH KUNG |
| F534081095 | 0-4925 M | SENW | 09 | 143 | 39 | | O GE MAH WE GAH BOW E QUAY |
| F534081095A | A-3012 M | N2NE | 14 | 143 | 39 | | O GE MAH WE GAH BOW EQUAY |
| F534081095B | 0-4925 M | SENE | 09 | 143 | 39 | | O GE MAH WE GAH BOW E QUAY |
| F534081096 | 0-4983 C | NWSW | 33 | 143 | 38 | CHARLES MODIN KEG | |
| F534081097 | A-1356 C | SENE & NESE | 25 | 144 | 38 | | EQUAY MUCK |
| F534081097B | 0-1857 M | SENE & LOT 1 | 01 | 146 | 42 | MRS. T. GOURNEAU | E QUAY MUCK |
| F534081098 | A-1393 C | NESE & SWSE | 21 | 146 | 38 | PAUL JOHNSON | PAUL TO BE WAIS |
| F534081099 | A-2002 M | S2SE | 05 | 146 | 39 | SARAH VAN NETT | E QUAY AUN E COBE |

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|---|---|---|---|---|---|---|---|---|
| F534081100 | O-3589 | M | LOT 3 & NESW | 13 | 145 | 40 | | O QUAY GUN |
| F534081100A | O-3589 | M | LOT 3 & NESW | 13 | 145 | 40 | | O QUAY GUN |
| F534081100B | O-3589 | M | LOT 3 & NESW | 13 | 145 | 40 | | O QUAY GUN |
| F534081102 | A-2049 | M | E2SW | 18 | 144 | 40 | AGNES S. GARDEN | |
| F534081103 | O-3621 | M | SWNW & LOT 4 | 04 | 145 | 40 | MARY HUTCHINSON | |
| F534081103A | A-2040 | M | NWNE | 11 | 146 | 40 | MARY HUTCHINSON | |
| F534081103B | A-2040 | M | SWSW | 10 | 144 | 40 | MARY HUTCHINSON | |
| F534081104 | O-3641 | M | S2NW | 14 | 146 | 41 | ADA PEAVY BLOOMER | |
| F534081105 | A-1936 | C | S2NW | 05 | 145 | 38 | SUSAN BOWLEY | |
| F534081105A | O-3657 | M | S2NE | 05 | 145 | 41 | SUSAN BOWLEY | |
| F534081106 | O-3726 | M | NWSE & SWNE | 06 | 146 | 39 | ELIZA RICHARDS BLAIS GOODIN | |
| F534081106A | A-2125 | C | SENE & NESE | 07 | 145 | 38 | ELIZA RICHARDS BLAIS GOODIN | |
| F534081108 | A-2975 | C | LOT 1 | 02 | 143 | 38 | | O QUAY UK AH BIK O QUAY |
| | | | SESE | 35 | 144 | 38 | | |
| F534081108A | A-2975 | C | LOT 1 | 02 | 143 | 38 | | O QUAY UK AH BIK O QUAY |
| | | | SESE | 35 | 144 | 38 | | |
| F534081109 | A-2444 | M | E2SW | 10 | 145 | 42 | MALO BONNESS WARREN | |
| F534081110 | A-2476 | C | E2SW | 33 | 143 | 38 | CATHERINE BEAVY BRADY | E QUAY ZAINCE |
| F534081111 | A-2477 | C | NWSE & NESW | 32 | 143 | 38 | ESTHER BEAVEY | |
| F534081111A | O-4799 | M | N2NE | 28 | 143 | 42 | ESTHER BEAVEY | |
| F534081113 | O-5061 | M | LOT 8 | 03 | 143 | 39 | | KE WE TAH GWON ABE |
| | | | LOT 5 | 09 | 143 | 40 | | |
| | | | LOT 8 | 13 | 143 | 40 | | |
| F534081114 | O-5080 | B | LOTS 5 & 7 | 02 | 142 | 38 | SUSAN JOSEPH | KE CHE GAH DAY QUAY ZAINCE |
| F534081114A | A-3041 | B | LOT 2 | 30 | 141 | 40 | SUSAN JOSEPH | KE CHE GAH DAY QUAY ZAINCE |
| F534081114B | A-3041 | B | LOT 9 | 11 | 142 | 38 | SUSAN JOSEPH | KE CHE GAH DAH QUAY ZAINCE |
| F534081114C | A-3041 | M | S2 OF LOT 6 | 36 | 146 | 41 | SUSAN JOSEPH | KE CHE GAH DAH QUAY ZAINCE |
| F534081114D | A-3041 | C | S2NESE & S2N2NESE | 05 | 144 | 38 | SUSAN JOSEPH | KE CHE GAH DAH QUAY ZAINCE |
| F534081114E | O-5080 | M | N2 OF LOT 6 | 36 | 146 | 41 | SUSAN JOSEPH | KE CHE GAH DAH QUAY ZAINCE |
| F534081118 | O-4574 | M | LOT 3 & NESW | 18 | 146 | 40 | SUSAN KELLY | |
| F534081118A | A-2181 | C | W2SE | 27 | 146 | 38 | SUSAN KELLEY | CHING WAH CUNIG O QUAY |
| F534081119 | O-4913 | C | W2SW | 36 | 146 | 38 | MARY SWIBOODE | MOSH KIN AY AWSH E QUAY |
| F534081120 | A-2294 | M | N2SW | 10 | 146 | 40 | JAMES PEMBERTON | |
| F534081124 | O-3876 | B | LOT 2 & SENW | 19 | 142 | 41 | WHITE EARTH BAND | |
| F534081127 | O-4064 | M | W2SW | 05 | 144 | 41 | MARY SLOAN MEECH | |
| F534081128 | O-4083 | M | W2SE | 15 | 146 | 41 | LORA FOLSTRUM SHOENBORN | |
| F534081129 | O-4086 | M | NWSW & NWNW | 14 | 146 | 41 | VIOLA FOLSTRUM FOSTER | |
| F534081129A | A-2709 | M | SESW | 19 | 146 | 39 | VIOLA FOLSTRUM FOSTER | |
| | | | NENW | 30 | 146 | 39 | | |
| F534081131 | O-4545 | C | SENW & SWNE | 06 | 145 | 38 | LOUISA BURANT SKUNK | |
| F534081131A | A-1984 | C | S2NE | 33 | 146 | 38 | LOUISA BURANT SKUNK | |
| F534081134 | O-4901 | M | SWNW | 27 | 143 | 39 | | TAH WUB |
| | | | SENE | 28 | 143 | 39 | | |
| F534081134A | O-4901 | M | SWNW | 27 | 143 | 39 | | TAH WUB |
| | | | SENE | 28 | 143 | 39 | | |
| F534081135 | A-2917 | C | W2NE | 36 | 146 | 38 | | KO BE QUAH KO JEENCE |
| F534081135A | A-2917 | C | W2NE | 36 | 146 | 38 | | KO BE QUAH KO JEENCE |
| F534081137 | O-3324 | M | NWSE & NESW | 23 | 144 | 39 | | KAY DAH KE GWON |
| F534081138 | A-1975 | C | NENW | 13 | 143 | 38 | JAMES BEAR | |
| F534081138A | A-1975 | C | NESE | 14 | 143 | 38 | JAMES BEAR | |
| F534081139 | O-3535 | M | E2SE | 04 | 145 | 40 | | ME ZHO AH SE GAY OURT |
| F534081140 | O-3567 | M | SWSW | 02 | 144 | 41 | LUCY PERRAULT ROSSETER | |
| | | | LOT 1 | 11 | 144 | 41 | | |
| F534081140A | A-2010 | M | W2NW | 29 | 146 | 42 | LUCY PERRAULT | |
| F534081161 | O-3608 | M | SWNE & SENW | 05 | 144 | 41 | NANCY GARDEN | |
| F534081161E | O-3608 | M | SWNE & SENW | 05 | 144 | 41 | NANCY GARDEN | |
| F534081142 | A-1939 | C | W2NW | 32 | 146 | 38 | EMMA ROWLEY SULLIVAN | PE SHEW WAINCE |
| F534081142A | O-3654 | M | S2NW | 04 | 145 | 41 | EMMA ROWLEY SULLIVAN | PE SHEW WAINCE |
| F534081143 | O-3672 | M | W2NE | 32 | 146 | 40 | BESSY GOODWIN LEGO | |
| F534081144 | O-3673 | M | S2SW | 28 | 146 | 40 | FANNY GOODWIN BABON | |
| F534081144A | A-2078 | M | SESW | 19 | 146 | 40 | FANNY GOODWIN BABON | |
| F534081144B | A-2078 | M | LOT 4 | 19 | 146 | 40 | FANNY GOODWIN BABON | |
| F534081145 | O-3775 | M | W2NW | 21 | 143 | 41 | ELIZABETH EUREAU SHETSIMER | WAY E NUB E QUAY |
| F534081145A | A-2362 | B | SWSW | 24 | 142 | 37 | ELIZABETH EUREAU SHETSIMER | WAY E NUB E QUAY |
| | | | SENW | 22 | 142 | 37 | | |
| F534081146A | A-2537 | C | N2NW | 08 | 143 | 38 | MRS. NELLIE KEEZER | KE ZHE BAUNCE |
| F534081146D | O-3878 | B | E2SW | 23 | 141 | 37 | MRS. KEEZER | KE ZHE BAUNCE |
| F534081146E | O-3878 | B | E2SW | 23 | 141 | 37 | MRS. KEEZER | KE ZHE BAUNCE |
| F534081148 | A-2221 | C | N2SW | 13 | 146 | 38 | MARY GOODMAN STIGER | |
| F534081150 | O-4755 | M | S2NW | 36 | 146 | 40 | ELIZABETH ANTELL RICE | |
| F534081150A | A-2432 | M | NWNE & NWSE | 16 | 145 | 39 | ELIZABETH ANTELL RICE | |
| F534081152B | A-3162 | C | LOT 7 | 30 | 143 | 38 | FRANK GLASS | |
| F534081153B | O-3684 | M | SWNE & NWSE | 15 | 145 | 41 | JENNIE LAPRAIRIE | QUOD O QUAY |
| F534081155 | O-2491 | B | W2NW | 27 | 141 | 39 | ARTHUR GRAY | MUNZE TOG WAY WAY AUN AN QUOD |
| F534081155A | A-1816 | C | S2NE | 27 | 143 | 38 | ARTHUR GRAY | MUNZE TOG WAY WAY AUN AN QUOD |
| F534081160 | O-3902 | M | NWSE & NESW | 14 | 144 | 41 | LIZZIE ROY BUCK CHENEY | O DAB CA NAUN |
| F534081160A | A-2559 | M | N2NW | 23 | 145 | 40 | LIZZIE ROY BUCK CHENEY | ODAB CA NAUN |
| F534081161A | A-2557 | M | S2NE | 22 | 145 | 40 | SUSAN ROY SCHOENBORN | |
| F534081162 | O-4581 | M | S2SW | 03 | 145 | 42 | MARY MCDONNELL | KAY TAH KE WE GAH BOW EKE |
| F534081162A | A-2188 | M | S2NW | 14 | 145 | 39 | MARY MCDONNELL | KAY TAH KE WE GAH BOW EKE |
| F534081163 | O-4597 | M | E2SW | 26 | 145 | 42 | CHARLOTTE LAGARD | |
| F534081163A | A-2205 | M | NESE & SENE | 22 | 144 | 40 | CHARLOTTE LAGARD | |
| F534081164 | A-2209 | C | NESW | 18 | 143 | 38 | ANNIE LUFKINS | PIN BE GAY AUSH E QUAY |
| | | | NWNE | 19 | 143 | 38 | | |



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|---|---|---|---|---|---|---|---|---|
| F534081167 | A-2541 | C | N2NE | 07 | 143 | 38 | FRED KEEZER | |
| F534081167A | O-4838 | B | S2NE | 02 | 142 | 42 | FRED KEEZER | |
| F534081168 | A-2586 | C | NESW & NWSE | 18 | 144 | 38 | RAYMOND BEAN | |
| F534081169 | O-4863 | M | E2SW | 05 | 146 | 42 | HAZEL E. STILLWELL | |
| F534081169A | A-2735 | M | S2NE | 04 | 145 | 42 | HAZEL E. STILLWELL | |
| F534081170A | | | E2SE | 06 | 146 | 42 | ELLEN STILLWELL ALBERTSON | |
| F534081172A | A-2792 | M | S2NE | 10 | 143 | 40 | MARIE REECH | |
| F534081173A | A-2807 | M | W2SE | 12 | 144 | 39 | MRS. JACK DUNKLEY | KE WAY DIN O QUAY |
| F534081175 | A-2863 | C | N2N2SENE | 17 | 146 | 38 | ANNIE ANNAWAUSH CLAISE | MAH JE CUNIG O QUAY |
| F534081175A | A-2863 | M | LOT 3 | 31 | 146 | 40 | ANNIE ANNAWAUSH CLAISE | MAH JE CUNIG O QUAY |
| F534081175B | A-2863 | M | SWNW | 35 | 146 | 40 | ANNIE ANNAWAUSH CLAISE | MAH JE CUNIG O QUAY |
| F534081175C | O-4942 | M | NENW | 35 | 146 | 40 | ANNIE ANNAWAUSH CLAISE | MAH JE CUNIG O QUAY |
| | | | NWNW | 36 | 146 | 40 | | |
| F534081176 | O-4995 | C | SESW | 20 | 143 | 38 | | MAH KO DAY |
| | | | NENW | 29 | 143 | 38 | | |
| F534081176A | A-2918 | C | N2SE | 32 | 144 | 38 | | MAH KO DAY |
| F534081177 | O-5171 | M | N2NE | 15 | 143 | 39 | ELIZABETH ESTES BORST | |
| F534081177A | A-3150 | M | S2NE | 15 | 143 | 39 | ELIZABETH ESTES BORST | |
| F534081179 | O-3748 | M | E2NE | 15 | 143 | 41 | | WAH JAY |
| F534081180 | O-3918 | M | E2NW | 30 | 146 | 41 | RUTH BELL | |
| F534081180A | A-2578 | C | N2NE | 08 | 146 | 39 | RUTH BELL | |
| F534081181 | A-2579 | M | N2SE | 05 | 146 | 39 | MABEL BELL | |
| F534081183 | A-2596 | M | LOT 1 & NENW | 19 | 145 | 41 | ANNIE SLOAN | |
| F534081183A | O-3927 | M | E2E2SESE | 31 | 145 | 41 | ANNIE SLOAN | |
| F534081186 | O-4097 | B | SENW | 09 | 141 | 40 | MARY HELEN OTTO GROUETTE | |
| F534081186A | A-2720 | B | S2NE | 30 | 142 | 41 | MARY HELEN OTTO GROUETTE | |
| F534081186B | O-4097 | B | NWSE | 32 | 142 | 41 | MARY HELEN OTTO GROUETTE | |
| F534081187 | A-2226 | M | SWNW & NWSW | 04 | 143 | 41 | | |
| F534081188 | O-4316 | M | LOT 2 &SWNE | 05 | 143 | 41 | | ME KE BAUN E QUAY |
| F534081188A | O-4316 | M | LOT 2 & SWNE | 05 | 143 | 41 | | TAY BUS E GE SHIG |
| F534081190 | A-2494 | M | LOT 1 | 14 | 145 | 40 | MRS. HAMLINE CURTIS | TAY BUS E KE SHIG |
| F534081190A | A-2494 | M | LOTS 1 & 2 | 03 | 145 | 40 | HAMLIN CURTIS | |
| F534081191 | A-2855 | C | NWNW | 25 | 145 | 38 | MRS. JOHN SKINAWAY | PEENG GWAY |
| F534081192 | A-2883 | C | NENE | 15 | 144 | 38 | | WAUSH EENCE |
| F534081193 | A-2901 | C | SENE & NESE | 15 | 144 | 38 | CHARLES MOOSE | SMAH BWAY WAY GE SHIG |
| F534081194 | O-2900 | M | SESE | 19 | 145 | 41 | | BE SAUN E GE SHIG |
| F534081194A | O-2900 | M | SWSW | 20 | 145 | 41 | | KE CHE UN NUNG |
| F534081195 | O-3495 | M | W2SE | 08 | 144 | 39 | | KE CHE UN NUNG |
| F534081199A | O-3912 | B | SWNW | 09 | 142 | 42 | | O ZAH WUN NUN MEE QUAY |
| | | | LOTS 1 & 3 | 09 | 142 | 42 | | MAY DWAY BIN |
| F534081200 | O-3913 | B | LOT 4 | 09 | 142 | 42 | GEORGE WEAVER | QUAY SE GOOD |
| | | | NWSW | 10 | 142 | 42 | | |
| F534081201 | O-3914 | B | NWSW | 17 | 142 | 39 | | CHE OGE MAH |
| F534081201A | O-3914 | B | NWSW | 17 | 142 | 39 | | CHE O GE MAH |
| F534081201C | O-3914 | B | LOT 5 | 19 | 142 | 39 | | CHE O GE MAH |
| F534081201D | O-3914 | B | LOT 5 | 19 | 142 | 39 | | CHE O GE MAH |
| F534081202 | O-3932 | M | S2SW | 24 | 143 | 41 | NORA BRUNETTE | |
| F534081202A | A-2590 | M | S2SE | 02 | 146 | 42 | NORA BRUNETTE | |
| F534081204 | A-2688 | M | LOT 4 & SWNW | 01 | 143 | 40 | CARRIE COOPER MOORE | |
| F534081205 | A-2689 | M | W2SW | 01 | 143 | 40 | LILY COOPER | |
| F534081206 | A-2690 | M | E2SW | 01 | 143 | 40 | CLAUDE COOPER | |
| F534081207 | O-4078 | M | W2SE | 21 | 145 | 41 | KATHERINE MAYDEN REED STONE | |
| F534081207A | A-2699 | B | E2NE | 15 | 141 | 38 | KATHERINE MAYDEN REED | |
| F534081208 | O-4110 | M | W2SW | 17 | 144 | 41 | NAPOLEON ROY | |
| F534081210 | O-4477 | M | N2NW | 16 | 146 | 39 | | KAY CHE WE GE GAH BOW |
| F534081210A | A-1692 | M | LOT 2 & SENW | 18 | 144 | 39 | | KAY CHE WE GE GAH BOW |
| F534081211 | A-2897 | M | W2SW | 36 | 146 | 42 | LIZZIE M. KEG | AH KAH WAUN JIG |
| F534081212 | O-5010 | C | LOT 4 & SESW | 30 | 143 | 38 | SAM CLARK | NE O GAH BOW |
| F534081212A | A-2949 | M | S2NW | 24 | 145 | 39 | SAM CLARK | NE O GAH BOW |
| F534081212B | A-2949 | M | S2NW | 24 | 145 | 39 | | NE O GAH BOW |
| F534081213 | O-5017 | C | SESE | 12 | 146 | 38 | MRS. HENRY SUTTON | MO QUAY WE DUM O QUAY |
| | | | NENE | 13 | 146 | 38 | | |
| F534081214 | O-4159 | M | E2NW | 20 | 144 | 41 | MABEL WRIGHT | |
| F534081217B | O-1577 | M | LOT 3 & NWSE | 13 | 145 | 41 | T.B. BEAULIEU | A GUNG GOUS |
| F534081217C | O-1577 | M | LOT 3 & NWSE | 13 | 145 | 41 | T.B. BEAULIEU | A GUNG GOUS |
| F534081218 | A-1874 | M | E2SE | 23 | 145 | 39 | CATHERINE ST. JOHN DUNKLEY | KAH DEEN |
| F534081221 | O-2587 | B | W2SW | 12 | 141 | 38 | CHIEF | NOW E GE SHIG |
| F534081222 | O-2687 | B | N2SW | 26 | 141 | 38 | | MAY MIS CO NO WAY |
| F534081223 | O-2945 | M | LOTS 3 & 9 | 30 | 143 | 42 | JACK PAPIO | IN DE BAINCE |
| F534081224 | O-2946 | C | LOT 5 & SESW | 06 | 145 | 38 | | AH WAUS E QUAY |
| F534081224A | O-2946 | C | LOT 5 & SESW | 06 | 145 | 38 | | AH WAUS E QUAY |
| F534081224B | O-2946 | C | LOT 5 & SESW | 06 | 145 | 38 | | AH WAUSE QUAY |
| F534081224C | O-2946 | C | LOT 5 & SESW | 06 | 145 | 38 | | AH WAUSE QUAY |
| F534081225A | O-3372 | M | N2NW | 10 | 145 | 40 | | O ZHE NE QUAY |
| F534081225B | O-3372 | M | N2NW | 10 | 145 | 40 | | O ZHE NE QUAY |
| F534081225C | O-3372 | M | N2NW | 10 | 145 | 40 | | O ZHE NE QUAY |
| F534081225E | O-3372 | M | N2NW | 10 | 145 | 40 | WHITE EARTH BAND | |
| F534081226 | A-1880 | C | W2SW | 28 | 144 | 38 | ANNA WHITEFOX | KE WE TAH CUMIG O QUAY |
| F534081230 | O-3989 | B | SESE | 14 | 142 | 42 | MAMIE SLOAN HUGHES | |
| | | | SWSW | 13 | 142 | 42 | | |
| F534081230A | A-2630 | B | LOT 7 & SWNE | 18 | 141 | 42 | MAMIE SLOAN HUGHES | |
| F534081232 | O-3996 | B | W2SW | 14 | 142 | 42 | LOUISA BRANLEY | |
| F534081233 | O-4044 | M | N2NE | 20 | 145 | 39 | ALFRED WARREN | MO SANCE |

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|---|---|---|---|---|---|---|---|
| F534081235A | A-2534 | B | LOTS 3 & 4 | 23 | 142 | 40 | ROSA BADBOY |
| F534081236 | O-4715 | M | W2SW | 28 | 145 | 42 | GRACE E. SCHRAM LEWIS |
| F534081236A | A-2328 | M | SWNW & NWSW | 22 | 145 | 42 | GRACE E. SCHRAM LEWIS |
| F534081237 | O-4730 | B | SWSE | 20 | 142 | 39 | |
| F534081239 | O-5139 | M | W2SW | 36 | 143 | 39 | MRS. ANDREW DAILEY DEEM |
| F534081239A | A-3110 | M | LOT 2 | 02 | 142 | 39 | MRS. ANDREW DAILEY DEEM |
| F534081239D | A-3110 | M | E2E2NESW | 11 | 142 | 39 | MRS. ANDREW DAILEY DEEM |
| F534081239M | A-3110 | B | E2E2NESW | 11 | 142 | 39 | MRS. ANDREW DAILEY DEEM |
| F534081240 | O-0619 | B | S2SE | 19 | 141 | 39 | JOHN SMITH |
| F534081241 | O-1978 | B | LOT 8 & NESW | 25 | 141 | 38 | THOMAS MARTIN MOUNTAIN |
| F534081242 | O-2691 | B | E2NW | 21 | 142 | 38 | WILLIE ARTHUR |
| F534081243A | A-1870 | C | E2SW | 07 | 144 | 38 | |
| F534081244 | O-3389 | M | W2NE | 09 | 146 | 42 | EVA FOX SUCKER DAYDODGE |
| F534081244A | A-1881 | M | LOT 4 & SESW | 19 | 146 | 41 | EVA FOX SUCKER DAYDODGE |
| F534081246 | O-4479 | C | W2NE | 30 | 145 | 38 | ANTOINE SMITH |
| F534081249 | A-2711 | C | SENE | 20 | 146 | 38 | CATHERINE E. BARRETTE JOHNSON |
| F534081250A | A-2793 | M | W2NE | 10 | 143 | 40 | ANNA MEECH JANSSEN |
| F534081251 | O-4900 | M | W2SW | 24 | 146 | 40 | MAGGIE ARMSTRONG SAM |
| F534081251A | A-2834 | M | E2SW | 24 | 146 | 40 | MAGGIE ARMSTRONG SAM |
| F534081255 | A-1320 | C | LOTS 4 & 5 | 07 | 144 | 38 | |
| F534081257G | O-3934 | M | W2NE | 33 | 145 | 41 | MARY |
| F534081258 | A-2685 | C | E2SW | 13 | 145 | 38 | JULIA BEAULIEU SLOAN |
| F534081259 | O-4105 | M | SWSW | 14 | 146 | 41 | LENA FOLSTRUM DESIZLETS |
| | | | NWNW | 23 | 146 | 41 | |
| F534081260 | A-2752 | M | LOT 3 & SENW | 05 | 143 | 41 | HAZEL HOLDEN |
| F534081262 | O-4137 | M | LOT 4 & SWNW | 04 | 144 | 41 | CLARA J. ESTEY NEWBERT |
| F534081262A | A-2766 | M | S2NW | 03 | 146 | 40 | CLARA J. ESTEY NEWBERT |
| F534081263 | O-4139 | M | E2NE | 18 | 144 | 41 | ROSE ESTEY KLABOE |
| F534081264 | O-4144 | M | W2NW | 29 | 146 | 41 | ABBIE KING |
| F534081265 | O-4145 | M | W2SW | 20 | 146 | 41 | MARGARET KING MEYERS |
| F534081266 | O-4148 | C | LOTS 1 & 2 | 02 | 145 | 38 | CLARA PEARL BAKER |
| F534081266A | A-2790 | B | LOT 5 | 25 | 142 | 40 | CLARA PEARL BAKER |
| F534081266B | A-2790 | C | S2NW | 03 | 145 | 38 | CLARA PEARL BAKER |
| F534081267A | O-4521 | M | W2NW | 34 | 146 | 40 | |
| F534081268A | A-2876 | C | LOT 2 | 05 | 145 | 38 | |
| F534081269 | O-4971 | M | SESW | 04 | 143 | 39 | |
| | | | NWSW | 32 | 143 | 39 | |
| F534081270 | O-4978 | M | NWSE | 25 | 143 | 39 | |
| | | | SENE | 34 | 143 | 39 | |
| F534081270A | A-2907 | M | N2SW | 25 | 143 | 39 | |
| F534081271 | A-3111 | B | SESW | 03 | 142 | 39 | LAURA DAILY |
| | | | NWNE | 10 | 142 | 39 | |
| F534081273 | A-1736 | M | NWNE & NENW | 32 | 146 | 39 | JOSETTE MORRISON EMERSON |
| F534081274A | A-3125 | M | SENW & SENE | 13 | 143 | 39 | ANNIE TANNER |
| F534081277 | A-2631 | C | SWNW & NWSW | 24 | 144 | 38 | MARY STEAD |
| F534081278B | O-4102 | M | SESW & SWSE | 11 | 146 | 41 | NANCY FOLSTRUM |
| F534081280 | O-4721 | M | N2SW | 13 | 145 | 42 | MRS. ROBERT RAIN |
| F534081285 | O-3999 | B | LOT 7 & NESW | 20 | 142 | 40 | MARY IRENE BRAMLEY |
| F534081285A | A-2641 | B | E2SE | 15 | 142 | 37 | MARY IRENE BRAMLEY |
| F534081287 | O-4731 | M | LOTS 1 & 2 | 30 | 146 | 42 | EMMA GARDEN BOSWELL |
| F534081288 | O-0211 | B | SWNW & NWSW | 25 | 141 | 41 | IDA BLUE MCDOUGALL FARLEY LAURIDSEN (MOECKEL) |
| F534081288A | A-0145 | B | W2NE | 25 | 141 | 40 | IDA BLUE MCDOUGALL FARLEY LAURIDSEN (MOECKEL) |
| F534081289A | A-1518 | M | LOT 3 & SENW | 02 | 145 | 39 | MARY LEQUIER STARKEY GENUNG |
| F534081291 | O-2822 | M | LOT 2 & NESW | 33 | 143 | 39 | |
| F534081296B | O-1660 | B | NESW & NWSE | 08 | 141 | 41 | ELIZA V. SWEET |
| F534081299 | A-1988 | M | SWSE | 19 | 146 | 39 | ISABELLE CHESLEY |
| | | | NWNE | 30 | 146 | 39 | |
| F534081301 | O-3758 | M | LOT 4 & SESW | 19 | 143 | 40 | HETTIE THOMPSON MARTINSON BENSON |
| F534081302 | O-1654 | B | SWNE & NENW | 30 | 141 | 41 | ROSINA BARRELL COGGER |
| F534081302A | A-1141 | B | E2SW | 32 | 141 | 38 | ROSINA BARREL COGGER |
| F534081303 | O-2832 | B | S2SE EXC. 20X50 PR | 10 | 141 | 37 | |
| F534081303A | O-2832 | B | .02 OF S2SE | 10 | 141 | 37 | |
| F534081304B | O-2757 | M | E2SW | 02 | 146 | 39 | ROBERT GWINN |
| F534081307 | O-2175 | M | NESE & SENE | 06 | 143 | 39 | |
| F534081307C | O-2175 | M | NESE & SENE | 06 | 143 | 39 | |
| F534081307F | O-2175 | M | NESE & SENE | 06 | 143 | 39 | |
| F534081308 | O-5178 | C | SENW | 14 | 144 | 38 | JOHN CHARLES ESTES |
| | | | NWSE | 33 | 144 | 38 | |
| F534081786 | O-5138 | M | W2NE | 14 | 144 | 39 | MARY DAY |
| F534081787 | A-2270 | C | S2NE | 03 | 146 | 38 | THOMAS TURNER |
| F534081788 | O-4670 | B | N2NE | 08 | 142 | 42 | AMANDA HOLMES |
| F534081788A | A-2282 | M | W2NE | 20 | 143 | 39 | AMANDA HOLMES |
| F534081790 | O-4655 | B | S2SW | 05 | 142 | 42 | MARGARET MOOSE GOODWIN |
| F534081792A | O-1665 | M | W2NE | 08 | 143 | 41 | BENJAMIN ROY |
| F534081792B | O-1665 | M | W2NE | 08 | 143 | 41 | BENJAMIN ROY |
| F534081794 | O-3840 | M | S2SW | 36 | 145 | 41 | MARY E. GALBREATH CHAPMAN |
| F534081795 | O-3776 | M | SWNW & NWSW | 21 | 143 | 41 | MARY SMETSINGER |
| F534081798 | O-3536 | M | N2NW | 15 | 145 | 40 | LIZZIE STEVENS MITCHELL |
| F534081801 | A-1997 | M | W2SE | 03 | 146 | 39 | HENRY STAPLES |
| F534081803 | O-3266 | M | N2SW | 36 | 144 | 42 | DANIEL HAMLINE |

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|---|
| KE WE TAH AUN AH BE QUAY |
| KAH BOW E QUAY |
| KAH BOW E QUAY |
| ME GAUN E BE NAIS |
| OKE ZHE AUN AH QUOD O QUAY |
| OKE ZHE AUN AH QUOD O QUAY |
| OKE ZHE AUN AH QUOD O QUAY |
| OKE ZHE AUN AH QUOD O QUAY |
| AH SUN AN GE WABE |
| KAH GE GAY AH NAH QUOT |
| AH NAH ME AUNICE |
| ME ZHEEK E CUMIG O QUAY |
| ME ZHEEK E CUMIG O QUAY |
| PAY SAY GAUSH |
| AH ZHOW E GAH BOW E QUAY |
| ANZHOW E GAH BOW E QUAY |
| MAY ZWUC E YAUSH E QUAY |
| E QUAY ZAINCE ISH |
| O MAH KE ZEENCE |
| WAH DE NAH |
| ME SHO BE QUAY |
| QUOD AINCE |
| QUOD AINCE |
| O MY AH ME GE SHIG O QUAY |
| ME TIG WUB |
| BAY BAUM E GE SHIG O QUAY |
| O ZHIN ON ME GE SHIG O QUAY |
| ME ZAH BAIN |
| O GEE ZEE |
| AH ME KO YAUSH |
| OGAH |
| MAH GEED |



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|---|---|---|---|---|---|---|---|
| F534081803J | O-3266 | M | N2SW | 36 | 144 | 42 | DANIEL HAMLINE |
| F534081804 | O-3311 | M | S2NW | 26 | 144 | 42 | MARY MONTREUIL LADOUX |
| F534081805A | O-2084 | M | SENE | 20 | 143 | 41 | |
| F534081807 | O-3446 | M | LOTS 2 & 3 | 05 | 144 | 41 | MRS. LINDSAY |
| F534081807A | O-3446 | M | LOTS 2 & 3 | 05 | 144 | 41 | LINDSAY MRS. |
| F534081808 | O-1498 | B | W2NE | 13 | 142 | 42 | JULIA MONROE BEAULIEU |
| F534081810 | O-1576 | M | S2SW | 08 | 144 | 41 | BEN B. ROY |
| F534081811J | O-3414 | M | S2SE | 03 | 146 | 42 | |
| F534081811K | O-3414 | M | S2SE | 03 | 146 | 42 | |
| F534081813 | O-4781 | M | NWNW | 34 | 143 | 40 | ANGELINE JORDAN |
| | | | SWNE | 36 | 143 | 40 | |
| F534081816A | O-5121 | C | SESE | 11 | 145 | 39 | |
| F534081820 | O-5118 | C | E2SE | 31 | 144 | 38 | |
| F534081826 | O-4339 | M | W2SW | 27 | 144 | 41 | |
| F534081826A | O-4339 | M | W2SW | 27 | 144 | 41 | |
| F534081826B | O-4339 | M | W2SW | 27 | 144 | 41 | |
| F534081828 | O-2815 | B | N2NW | 24 | 141 | 37 | DELIA HOWARD BELLANGER |
| F534081832 | O-2880 | C | S2SE | 30 | 146 | 38 | |
| F534081832A | O-2880 | C | S2SE | 30 | 146 | 38 | |
| F534081832B | O-2880 | C | S2SE | 30 | 146 | 38 | |
| F534081834 | O-3735 | M | S2SE | 36 | 146 | 42 | JESSIE BREIDEL WILLIAMS |
| F534081835 | O-5094 | M | LOTS 1 & 2 | 01 | 143 | 39 | ELIZABETH BRISBOIS |
| F534081836A | A-3069 | M | NESE | 36 | 144 | 39 | ELIZABETH BRISBOIS |
| F534081836B | A-3069 | C | LOT 3 | 31 | 144 | 38 | ELIZABETH BRISBOIS |
| F534081841 | A-2267 | C | W2SE | 10 | 146 | 38 | MARGARET MOOSE |
| F534081843 | A-2409 | M | SESE | 23 | 144 | 40 | MARY E. GALBREATH CHAPMAN |
| | | C | SWNE | 28 | 144 | 38 | |
| F534081844 | A-2403 | B | S2SE | 21 | 141 | 37 | JOSEPH SOLDIER |
| F534081845 | A-2899 | M | LOTS 1 & 2 | 04 | 143 | 39 | LIZZIE STEVENS MITCHELL |
| | | | LOT 8 | 26 | 143 | 40 | |
| F534081847 | A-2457 | M | SENW & SWNE | 36 | 143 | 40 | JORDAN ANGELINE |
| F534081859 | O-4257 | M | W2NW | 33 | 144 | 41 | |
| F534081860 | A-2361 | C | SESW & NWSW | 13 | 143 | 38 | MARY SMETZINGER |
| F534081861 | O-1856 | B | LOT 1 & NENW | 19 | 141 | 38 | CHARLOTTE WAY JON E ME GWON |
| F534081869 | O-2110 | B | E2NW | 25 | 141 | 37 | WHITE EARTH BAND |
| F534081870 | A-0969 | B | W2SE | 25 | 145 | 40 | LIZZIE TROTOCHAUD |
| F534081871 | O-5042 | M | SESE | 23 | 143 | 39 | |
| F534081871A | A-2970 | M | N2SE | 23 | 143 | 39 | |
| F534081872 | O-1445 | M | S2NW | 32 | 146 | 41 | SARAH FRENCH HAMLIN VOGT |
| F534081873 | O-3239 | M | SESE | 03 | 144 | 42 | SOPHIA WALKER |
| F534081874 | O-0051 | B | NESW & NWSE | 24 | 142 | 42 | WHITE EARTH BAND |
| F534081875 | O-4237 | B | W2SE | 09 | 142 | 41 | WHITE EARTH BAND |
| F534081876 | O-4447 | B | LOTS 8 & 9 | 30 | 142 | 40 | WHITE EARTH BAND |
| | | | LOT 1 | 31 | 142 | 40 | |
| F534081877 | O-4442 | B | LOT 2 & SWNE | 01 | 141 | 42 | WHITE EARTH BAND |
| F534081878 | O-0086 | M | E2SE | 03 | 143 | 42 | WHITE EARTH BAND |
| F534081879 | O-4049 | B | NESE | 18 | 142 | 40 | WHITE EARTH BAND |
| | | | NWSW | 17 | 142 | 40 | |
| F534081880 | O-3559 | M | W2SE | 16 | 145 | 40 | WHITE EARTH BAND |
| F534081881 | O-3415 | M | N2SW | 14 | 145 | 40 | WHITE EARTH BAND |
| F534081882 | A-1594 | B | W2NE | 09 | 141 | 39 | WHITE EARTH BAND |
| F534081883 | O-2253 | M | S2SE | 04 | 145 | 41 | WHITE EARTH BAND |
| F534081884 | O-2122 | M | LOTS 5 & 6 | 02 | 143 | 41 | WHITE EARTH BAND |
| F534081885 | O-2075 | B | E2NE | 32 | 141 | 38 | WHITE EARTH BAND |
| F534081886 | O-1922 | B | W2NW | 23 | 141 | 38 | WHITE EARTH BAND |
| F534081887 | O-1783 | B | S2NE | 01 | 141 | 38 | WHITE EARTH BAND |
| F534081888 | O-1765 | B | LOT 8 | 15 | 141 | 39 | WHITE EARTH BAND |
| | | | LOT 6 | 14 | 141 | 39 | |
| F534081889 | O-1763 | B | NWNW | 14 | 141 | 39 | WHITE EARTH BAND |
| | | | SWSW | 11 | 141 | 39 | |
| F534081890 | O-1728 | B | S2NW | 34 | 141 | 38 | WHITE EARTH BAND |
| F534081891 | O-1598 | M | S2NE | 36 | 145 | 39 | WHITE EARTH BAND |
| F534081892 | O-2492 | M | SWSW | 05 | 145 | 39 | MRS. PETER GWINN |
| F534081893 | O-2492 | M | SESE | 06 | 145 | 39 | MRS. PETER GWINN |
| F534081894 | A-1010 | C | E2SE | 33 | 143 | 38 | ELVINA LABOUX CHILTON |
| F534081894A | O-1292 | M | MB OF N2SW | 13 | 143 | 42 | ELVINA LA DOUX CHILTON |
| F534081894B | O-1292 | M | N2SW LESS MB | 13 | 143 | 42 | ELVINA LA DOUX CHILTON |
| F534081895 | A-1289 | B | S2SE | 26 | 141 | 39 | GEORGE YELLOWHEAD |
| F534081895A | A-1289 | B | S2SE | 26 | 141 | 39 | GEORGE YELLOWHEAD |
| F534081897 | O-4514 | B | N2NE | 12 | 142 | 42 | WHITE EARTH BAND |
| F534081898 | O-2004 | B | S2SE | 30 | 141 | 38 | WHITE EARTH BAND |
| F534081899 | O-4230 | B | W2SE | 01 | 141 | 37 | WHITE EARTH BAND |
| F534081900 | O-1194 | B | W2SE | 25 | 142 | 42 | WHITE EARTH BAND |
| F534081901 | O-2131 | M | N2SE | 01 | 143 | 41 | WHITE EARTH BAND |
| F534081902 | O-2364 | M | SWSE & LOT 3 | 16 | 143 | 41 | WHITE EARTH BAND |
| F534081903 | O-3172 | M | W2NE | 23 | 144 | 42 | WHITE EARTH BAND |
| F534081904 | O-2653 | B | W2SE | 13 | 141 | 37 | WHITE EARTH BAND |
| F534081905 | O-2603 | B | N2NW | 13 | 142 | 42 | WHITE EARTH BAND |
| F534081906 | O-2371 | M | NWSE | 02 | 145 | 41 | WHITE EARTH BAND |
| | | | LOT 5 | 29 | 145 | 40 | |
| F534081907 | O-2573 | B | SWSE | 36 | 142 | 37 | WHITE EARTH BAND |
| | | | LOT 1 | 01 | 141 | 37 | |
| F534081908 | O-2725 | M | N2NE | 17 | 146 | 42 | WHITE EARTH BAND |

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|---|
| AH BE TAH WUSH KUD OONCE |
| ME ZHAW KEKE SHIG E QUAY |
| ME ZHAW KEKE SHIG E QUAY |
| NO YAIN MINDE NO YAIN |
| NO YAIN MINDE NO YAIN |
| AH WUN E GE SHIG O QUAY |
| KE WE TAH CUMIG O QUAY |
| ISH PENING |
| KAY CHE PAY SHAW CUMIG |
| KAY CHE PAY SHAW CUMIG |
| KAY CHE PAY SHAW CUMIG |
| KAY BAY WAY QUAY |
| KAY BAY WAY QUAY |
| KAY BAY WAY QUAY |
| SIG IN UNG WAY MINDEMAYIEN |
| SIG IN UNG WAY MINDEMAYIEN |
| SIG IN UNG WAY MINDEMAYIEN |
| WAH GEED |
| WAH GAH NE GWON AY AUSH |
| AH ZHE GAH BOW |
| AH WUNE GE SHIG O QUAY |
| ME ZHO BE NAY SEE QUAY |
| SAH GOSH KO DAY WAY EQUAY |
| CHARLOTTE WAY JON E ME GWON |
| AYSH PUN (AISH PUN) |
| AYSH PUN |
| O ME ZHAH QUOD OKE |
| WAUS AH WE GUN |
| WAUS AH WE GUN |
| SNAY SNAY WAY KE SNICK |
| SNAY SNAY WAY KE SNICK |

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|---|---|---|---|---|---|---|---|---|
| F5340819O9 | O-2750 | M | E2SE | 23 | 143 | 41 | WHITE EARTH BAND | |
| F5340819I0 | O-2890 | B | NENW & LOT 1 | 31 | 142 | 41 | WHITE EARTH BAND | |
| F5340819I1 | O-4441 | B | SENE & NESE | 16 | 141 | 40 | WHITE EARTH BAND | |
| F5340819I2 | O-2960 | M | NWSE & SESW | 18 | 146 | 40 | WHITE EARTH BAND | |
| F5340819I3 | O-2448 | M | SESW & SWSE | 07 | 145 | 40 | WHITE EARTH BAND | |
| F5340819I4 | O-2513 | M | LOTS 1 & 7 | 22 | 143 | 40 | WHITE EARTH BAND | |
| | | | LOT 2 | 21 | 143 | 40 | | |
| F5340819I5 | A-1830 | M | W2SE | 16 | 145 | 41 | WHITE EARTH BAND | |
| F5340819I5A | O-2515 | B | LOT 3 | 02 | 142 | 40 | WHITE EARTH BAND | |
| | | M | SESW | 35 | 143 | 40 | | |
| F5340819I5B | A-1830 | M | W2SE | 16 | 145 | 41 | PETER | |
| F5340819I5C | O-2515 | B | SESW | 35 | 143 | 40 | PETER | |
| | | M | LOT 3 | 02 | 142 | 40 | | |
| F5340819I6 | O-2488 | C | N2NE | 24 | 146 | 38 | WHITE EARTH BAND | |
| F5340819I7 | O-1578 | M | W2NW | 17 | 143 | 41 | WHITE EARTH BAND | |
| F5340819I8 | O-0941 | M | NWSW | 20 | 143 | 40 | WHITE EARTH BAND | |
| | | | NESE | 19 | 143 | 40 | | |
| F5340819I9 | O-0316 | B | E2SE | 26 | 141 | 42 | WHITE EARTH BAND | |
| F5340819J0 | O-1063 | B | N2NW | 11 | 142 | 40 | WHITE EARTH BAND | |
| F5340819J1 | O-1098 | B | S2NE | 25 | 141 | 37 | WHITE EARTH BAND | |
| F5340819J2 | O-1114 | M | W2SE | 29 | 145 | 41 | WHITE EARTH BAND | |
| F5340819J3 | A-1595 | B | LOT 2 | 04 | 141 | 39 | MRS. BIRD | PE NAIS E QUAY |
| F5340819J4 | O-2190 | B | LOT 1 | 07 | 141 | 38 | MRS. MAGGIE HANKS | MAY TUM AH E QUAY |
| | | | LOT 2 | 12 | 141 | 39 | | |
| F5340819J5 | O-0432 | B | S2NE | 31 | 141 | 37 | | AH ZHE NE CAN ZOOD |
| F5340819J5A | O-0432 | B | S2NE | 31 | 141 | 37 | | AH ZHE NE CAN ZOOD |
| F5340819J6 | O-1818 | B | S2SW | 28 | 141 | 37 | ANN FINEDAY | SHINGOOB |
| F5340819J7 | O-1868 | B | LOTS 3,4 & 5 | 13 | 141 | 39 | JOHN BROWN | WAU JON E ME QWON |
| F5340819J7A | A-1362 | B | LOTS 5 & 6 | 09 | 141 | 39 | | WAU JON E ME QWON |
| F5340819J8 | O-0601 | M | W2NW | 32 | 143 | 41 | WHITE EARTH BAND | |
| F5340819J9 | A-1505 | B | N2NW | 11 | 142 | 39 | JOHN MOOSE | AH BWAY GWON |
| F5340819K0 | O-1854 | B | LOT 6 & NESW | 30 | 141 | 38 | | MAY TAN O SAY QUAY |
| F5340819K1 | O-1669 | B | E2NW | 21 | 141 | 39 | FRANK ROY | |
| F5340819K2 | O-2700 | B | LOTS 5 & 6 | 27 | 142 | 37 | | MOO UNG DONCE |
| F5340819K3 | O-2048 | B | E2SW | 13 | 141 | 38 | | TAY BUS O BEAK |
| F5340819K4 | O-1959 | B | W2NE | 17 | 142 | 37 | WHITE EARTH BAND | |
| F5340819K5 | O-1775 | B | LOT 5 & SWSW | 16 | 142 | 37 | WHITE EARTH BAND | |
| F5340819K6 | O-2370 | M | N2SE | 07 | 145 | 40 | WHITE EARTH BAND | |
| F5340819K7 | O-3396 | M | W2SW | 03 | 146 | 42 | WHITE EARTH BAND | |
| F5340819K8 | O-3874 | B | W2SE | 26 | 142 | 39 | WHITE EARTH BAND | |
| F5340819K9 | O-1853 | B | LOT 9 | 19 | 141 | 38 | WHITE EARTH BAND | |
| | | | LOT 2 | 25 | 141 | 39 | | |
| F5340819L0 | O-1029 | B | NENW | 14 | 142 | 41 | WHITE EARTH BAND | |
| | | | LOT 1 | 13 | 142 | 41 | | |
| F5340819L1 | O-2638 | M | E2NW | 20 | 144 | 39 | WHITE EARTH BAND | |
| F5340819L2 | O-3562 | M | SWNW & NWSW | 21 | 145 | 40 | WHITE EARTH BAND | |
| F5340819L3 | O-0232 | B | NWNE | 21 | 142 | 41 | WHITE EARTH BAND | |
| | | | SESW | 16 | 142 | 41 | | |
| F5340819L4 | O-3712 | B | S2SE | 25 | 141 | 40 | WHITE EARTH BAND | |
| F5340819L5 | O-1898 | M | LOT 2 | 29 | 146 | 39 | WHITE EARTH BAND | |
| F5340819L6 | O-2133 | M | SENW & LOT 5 | 06 | 143 | 40 | WHITE EARTH BAND | |
| F5340819L7 | O-3613 | M | N2SE | 22 | 143 | 40 | WHITE EARTH BAND | |
| F5340819L8 | O-3537 | M | E2SE | 16 | 145 | 40 | WHITE EARTH BAND | |
| F5340819L9 | O-3375 | M | SWNW | 04 | 144 | 39 | WHITE EARTH BAND | |
| | | | SENE | 05 | 144 | 39 | | |
| F5340819M0 | A-1436 | C | SWNE & NWSE | 16 | 143 | 38 | MRS. WARREN | AH BE TAH WUSH KUD DONCE |
| F5340819M1 | A-1437 | C | S2NW | 04 | 143 | 38 | ISABELLE BUCKANGA | |
| F5340819M2 | A-1693 | M | E2SW | 18 | 144 | 39 | | MAY TUN ISH KUNG |
| F5340819M3 | A-1814 | C | N2NE | 24 | 146 | 38 | | AY DOW AH CUNIG O QUAY |
| F5340819M4 | A-2669 | M | SENE & NESE | 27 | 143 | 39 | ED MADENA | BE DAH MAH QUOD |
| | | | LOT 1 | 27 | 143 | 39 | | |
| F5340819M5 | O-4783 | M | NESW & NWSE | 35 | 143 | 40 | ESTHER BELLANGER JORDAN | PE NIS QUAH AH QUAD O QUAY |
| F5340819M5A | A-2459 | M | S2SW | 36 | 143 | 40 | ESTHER BELLANGER JORDAN | PE NIS QUAH AH QUAD O QUAY |
| F5340819M6 | O-3083 | M | NWNE | 29 | 144 | 42 | FRANK SAICE | |
| F5340819M7 | A-1503 | M | N2NE | 24 | 144 | 39 | MARY ROCK CRAWFORD | |
| F5340819M8 | A-3058 | M | LOTS 5 & 6 | 31 | 146 | 42 | ALMA DOUCETTE | |
| F5340819M9 | A-1582 | C | SWNE | 24 | 146 | 38 | JOE NAU ZHE | TAY CUN AH GE WABE |
| F5340819M9A | A-1582 | M | NWSE | 14 | 145 | 40 | JOE NAU ZHE | TAY CUN AH GE WABE |
| F5340819N0 | O-1719 | B | N2SE | 27 | 142 | 40 | ELIZA BROWN | MUD WAY COZHE |
| F5340819N1 | O-3071 | M | LOTS 11 & 12 | 18 | 144 | 42 | ELIZABETH STARKEY | |
| F5340819N2 | O-3192 | M | S2NE | 35 | 144 | 42 | CHARLES QUINN | |
| F5340819N3A | O-5158 | M | LOT 4 | 36 | 146 | 41 | ANNA MORGAN | MAY ZHE WAY QUAY |
| F5340819N4 | O-4476 | M | LOT 1 & NWSE | 26 | 144 | 40 | GEORGE JOSEPH NICHOLAS | WAY ZOW UB E TUNG |
| F5340819N4A | A-1670 | M | NWSW | 36 | 144 | 40 | GEORGE JOSEPH NICHOLAS | WAY ZOW UB E TUNG |
| F5340819N4B | A-1760 | M | NWSW | 35 | 144 | 40 | GEORGE JOSEPH NICHOLAS | WAY ZOW UB E TUNG |
| F5340819N5 | O-0223 | B | LOT 5 & SESW | 15 | 141 | 39 | MAGGIE WEBSTER | KAY GWAY DO SAY QUAY |
| F5340819N6 | A-1502 | M | E2SE | 24 | 144 | 39 | EMMA BROKER ROCK | AY ME WAN E GE SNIG O QUAY |
| F5340819N6A | O-2068 | M | SENW & SWNE | 14 | 144 | 42 | EMMA BROKER ROCK | AY ME WAN E GE SNIG O QUAY |
| F5340819N7 | A-3049 | C | LOTS 3 & 4 | 18 | 146 | 38 | SUSAN BARNEY | MO SAY - GOON E WAB E QUAY |
| F5340819N7A | O-5073 | M | LOT 2 | 10 | 145 | 41 | SUSAN BARNEY | MO SAY - GOON E WAB E QUAY |
| F5340819N8 | A-0314 | B | NENW & NENE | 22 | 142 | 39 | JULIA NORTON FAIRBANKS | |
| F5340819N8A | A-0314 | B | NENW & NENE | 22 | 142 | 39 | JULIA NORTON FAIRBANKS | |
| F5340819N8B | O-0411 | B | W2NW | 12 | 141 | 42 | JULIA FAIRBANKS NORTON | |



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| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| F5340819N8C | O-0411 | B | W2NW | 12 | 141 | 42 | JULIA FAIRBANKS NORTON | |
| F5340819N9 | O-0493 | B | E2NE | 29 | 141 | 42 | ARTHUR BISSON | |
| F5340819O0 | O-0485 | B | SWNE & SENW | 31 | 141 | 42 | WILLIE BISSON | |
| F5340819O1 | A-0188 | C | SESW & SWSE | 12 | 143 | 38 | CLARA LIZZIE PEMBERTON FAIRBANKS | |
| F5340819O1A | O-0276 | M | W2NE | 28 | 146 | 41 | LIZZIE CLARA FAIRBANKS | |
| F5340819O2 | O-0335 | B | W2NW | 22 | 141 | 42 | JOHN BELLEFEUILLE | |
| F5340819O3 | O-0292 | B | W2NW | 35 | 141 | 41 | ROBERT MCDOUGALL | |
| F5340819O4 | O-2905 | C | LOT 4 & SESW | 30 | 146 | 38 | PAUL DEJORDAN | |
| F5340819O5 | O-5073 | C | LOT 2 | 03 | 144 | 38 | SUSAN QUESNELLE BARNEY | MO SAY GOON E WAB E QUAY |
| F5340819O5A | O-5073 | M | LOT 4 | 25 | 144 | 40 | SUSAN BARNEY QUESNELLE | MO SAY - GOON E WAB E QUAY |
| F5340819O6 | O-0854 | M | S2NE | 08 | 143 | 42 | ANTOINE BEMENT | |
| F5340819O6A | O-0854 | M | SENW | 08 | 143 | 42 | ANTOINE BEMENT | |
| F5340819O7 | O-0564 | M | E2SE | 11 | 146 | 41 | ARTHUR VAN WERT | |
| F5340819O8A | O-2878 | C | LOT 1 & NENW | 30 | 146 | 38 | BUD EESE DEJOURDAINE | |
| F5340819O8B | O-2878 | C | LOT 1 & NENW | 30 | 146 | 38 | BUD EESE DEJOURDAINE | |
| F5340819O9 | O-0541 | M | NWNE | 18 | 146 | 39 | GRACIE MCINTOSH | |
| F5340819O9A | O-0541 | M | LOT 2 | 05 | 146 | 39 | GRACIE MCINTOSH | |
| F5340819P0 | O-0790 | B | LOTS 1 & 2 | 11 | 141 | 41 | ZOE FAIRBANKS | |
| F5340819P1 | O-1604 | M | W2NW | 34 | 144 | 40 | MARY LAROQUE LUFKIN | |
| F5340819P1A | A-0588 | M | LOTS 1 & 2 | 02 | 143 | 40 | MAGGIE LUFKIN LAROQUE | |
| F5340819P2 | O-4911 | C | E2NW | 21 | 144 | 38 | SAM DAVIS | WE NAUN GAY |
| F5340819P3 | A-2261 | C | LOT 4 | 02 | 146 | 38 | JOHN TURNER | O MAH KAH KEE |
| F5340819P3A | A-2261 | C | SWNW | 02 | 146 | 38 | JOHN TURNER | O MAH KAH KEE |
| F5340819P4A | O-3671 | M | N2NW | 33 | 146 | 40 | MATILDA GOODWIN BLANCHARD | |
| F5340819P5 | O-4299 | C | S2NW | 11 | 145 | 38 | | SAUSE GAH |
| F5340819P6 | A-1640 | C | E2SW | 03 | 143 | 38 | | AH BE JE GAW BOW E QUAY |
| F5340819P7 | O-3806 | M | SENW & NESW | 27 | 143 | 40 | JOHN CHESLEY | MAY GOW NAH BEENCE |
| F5340819P8 | O-1918 | B | W2NE | 28 | 142 | 37 | MRS. JACK ROCK | MU MAY ME QUAY |
| F5340819P9 | O-0725 | M | LOTS 2 & 3 | 20 | 144 | 39 | | MAISE CO MO GOONCE |
| F5340819P9A | O-0725 | M | LOTS 2 & 3 | 20 | 144 | 39 | | MAISE CO MO GOONCE |
| F5340819P9E | A-0560 | M | LOTS 1,2 & 3 | 24 | 145 | 39 | | MAISE CO MO GOONCE |
| F5340819P9F | A-0560 | M | LOTS 1,2 & 3 | 24 | 145 | 39 | | MAISE CO MO GOONCE |
| F5340819Q0 | A-0894 | B | SENW | 11 | 142 | 37 | MARGARET BELLAND | |
| | | | SENE | 12 | 142 | 37 | | |
| F5340819Q0A | O-1148 | M | SWNE & NWSE | 18 | 143 | 40 | MARGARET BELLAND | |
| F5340819Q1 | O-4011 | M | LOT 10 & SWSW | 24 | 143 | 40 | JOHN ROCK | MAY WAN CAH WAUN AH QUOD |
| F5340819Q2 | A-1394 | M | N2SE | 13 | 143 | 39 | MAGGIE TO BENAIS | |
| F5340819Q3 | O-4584 | M | LOT 4 & SWNW | 01 | 145 | 40 | | QUAY SIND |
| F5340819Q4 | O-1867 | B | S2SE | 14 | 141 | 38 | THOMAS MARTIN | MAUZH A CUMIG ISH KUNG |
| F5340819Q4A | O-1867 | B | S2SE | 14 | 141 | 38 | THOMAS MARTIN | MAUZH A CUMIG ISH KUNG |
| F5340819Q5 | A-0827 | B | N2NESE | 34 | 142 | 40 | | NAH WAH QUAY O SAY |
| F5340819Q5A | A-0827 | B | S2NE | 36 | 142 | 37 | | NAH WAH QUAY O SAY |
| F5340819Q6 | O-0618 | B | W2NE | 08 | 141 | 37 | GEORGE SMITH | |
| F5340819Q6A | O-0618 | B | W2NE | 08 | 141 | 37 | GEORGE SMITH | |
| F5340819Q7 | O-4263 | M | W2NE | 19 | 144 | 41 | | AIN DUS GAH BOW EQUAY |
| F5340819Q7A | O-4263 | M | W2NE | 19 | 144 | 41 | | AIN DUS GAH BOW EQUAY |
| F5340819Q8 | O-4511 | B | N2NW | 25 | 141 | 39 | TOM STONE | MAY ZHAN KE GAH BOW |
| F5340819Q9 | O-2381 | M | N2NW | 23 | 146 | 42 | WILLIAM ASPINWALL | |
| F5340819Q9A | O-2381 | M | N2NW | 23 | 146 | 42 | WILLIAM ASPINWALL | |
| F5340820O0 | O-2751 | M | SENW & LOT 2 | 30 | 143 | 40 | MARY JACKSON | |
| F5340820O1 | A-1385 | B | S2NW | 34 | 142 | 40 | FRANK C. NODDER | |
| F5340820O2 | O-1182 | B | W2SE | 28 | 141 | 40 | AUGUSTE MUTCHLER | |
| F5340820O3 | O-1871 | B | SWNE & NWSE | 17 | 141 | 38 | JOSETTE | |
| F5340820O4 | O-4889 | C | NWSW | 21 | 144 | 38 | GEORGE SULLIVAN | |
| F5340820O5 | O-1173 | B | NENE & NWNE | 24 | 141 | 40 | FLORENCE MCARTHUR | |
| F5340820O5A | O-1173 | M | LOTS 9 & 12 | 19 | 143 | 42 | FLORENCE MCARTHUR PEDERSON | |
| F5340820O6 | O-2279 | M | S2SE | 11 | 144 | 41 | | O BIN WAY WAY GE SNIG O QUAY |
| F5340820O7 | O-4284 | M | LOT 2 | 02 | 143 | 39 | | PE DAUN AH QUOD |
| F5340820O8 | O-1637 | B | W2SW | 17 | 142 | 38 | ROBERT MORGAN | |
| F5340820O9 | O-2904 | B | S2NE | 02 | 141 | 38 | | KO KO KOOJ |
| F5340820P0 | O-4752 | M | NENW | 20 | 145 | 39 | JAMES ROBERT AUTELL | |
| F5340820P0A | O-4752 | M | SWSW | 17 | 145 | 39 | JAMES ROBERT AUTELL | |
| F5340820P1 | O-4235 | M | SWSW | 05 | 144 | 42 | GILBERT KIPLIN | |
| F5340820P1A | O-4235 | M | SWSW | 05 | 144 | 42 | GILBERT KIPLIN | |
| F5340820P1G | O-4235 | M | SESE | 06 | 144 | 42 | GILBERT KIPLIN | |
| F5340820P1H | O-4235 | M | SESE | 06 | 144 | 42 | GILBERT KIPLIN | |
| F5340820P1I | O-4235 | M | SESE | 06 | 144 | 42 | GILBERT KIPLIN | |
| F5340820P2 | O-0762 | B | SWSW | 32 | 141 | 42 | OTTO MORRISON | |
| | | | SESE | 31 | 141 | 42 | | |
| F5340820P2A | A-0585 | B | SWSW | 13 | 142 | 38 | OTTO MORRISON | |
| | | | NWNE | 23 | 142 | 37 | | |
| F5340820P3 | O-5147 | C | LOT 3 | 31 | 145 | 38 | JOE SHANGOBAY | WAY YAH WE NIND |
| F5340820P4 | A-0135 | B | S2SW | 02 | 141 | 42 | JENNIE MONCHAMP KLEIN | |
| F5340820P4A | O-0198 | B | NESE | 19 | 141 | 40 | JENNIE MONCHAMP | |
| F5340820P4B | O-0198 | B | NESW | 36 | 141 | 41 | JENNIE MONCHAMP | |
| F5340820P5 | A-0856 | B | LOTS 8 & 9 | 07 | 142 | 42 | LENA BELLEFEUILLE MONCHAMP | |
| F5340820P6 | A-0856 | B | E2NE | 09 | 141 | 42 | LILLIE MORDGULEN RICE | |
| F5340820P6A | A-0856 | B | S2NW | 27 | 141 | 42 | LILLIE MORDGULEN RICE | |
| F5340820P7 | O-3842 | M | E2NE | 20 | 146 | 40 | | O MAH DWAY AH JE WUN OKE |
| F5340820P7A | O-3842 | M | E2NE | 20 | 146 | 40 | | O MAH DWAY AH JE WUN OKE |
| F5340820P7B | O-3842 | M | E2NE | 20 | 146 | 40 | | O MAH DWAY AH JE WUN OKE |
| F5340820P7C | A-2410 | M | S2SE | 03 | 145 | 39 | | O MAH DWAY AH JE WUN OKE |

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|---|---|---|---|---|---|---|---|---|
| F5340820170 | A-2610 | M | E2SE | 03 | 165 | 39 | | O MAN DUAY AN JE WUN OKE |
| F5340820178 | A-2610 | M | E2SE | 03 | 165 | 39 | | O MAN DUAY AN JE WUN OKE |
| F534082018 | A-1379 | C | W2NE | 13 | 143 | 38 | SOLOMON TAYLOR SAILOR | QUAY YAH QUAY SUNG |
| F534082019 | O-1855 | B | SESW & SWSE | 18 | 141 | 38 | | OSH KIN O WAY |
| F534082020 | O-4322 | M | W2SE | 34 | 144 | 41 | | E QUAY ZAINCE |
| F534082021 | O-2387 | M | LOT 5 & SWSE | 13 | 145 | 41 | STAPLES MARY BEAULIEU | |
| F534082021A | O-2387 | M | E2NW | 13 | 145 | 38 | STAPLES MARY BEAULIEU | |
| F534082022 | O-1124 | M | NWSE & SWNE | 07 | 146 | 40 | BLAIR MAGGIE BLANCHARD | |
| F534082023 | O-3250 | M | LOT 3 & SENW | 03 | 144 | 42 | | MAY YAH WE GWON AY SEKEE |
| F534082024 | O-1870 | B | E2SE | 17 | 141 | 38 | BENJAMIN | |
| F534082025 | O-1833 | B | SWSW | 25 | 141 | 39 | GRAY | E QUAY ZAINCE |
| | | | SWSW | 36 | 141 | 39 | | |
| F534082026 | O-1834 | B | NWSW | 36 | 141 | 39 | GRAY | MAY YAH WE GAH BOW |
| | | | SWNE | 28 | 141 | 39 | | |
| F534082027 | O-1112 | B | LOT 6 & NESW | 05 | 141 | 40 | GEORGE POTTER | |
| F534082027D | O-1112 | B | LOT 10 | 06 | 141 | 40 | GEORGE POTTER | |
| F534082028 | O-1061 | B | SENW & NESW | 02 | 142 | 40 | FRED JACKSON | OSH KIN O WE |
| F534082029 | O-0043 | M | NESW LESS M & B | 21 | 145 | 41 | JOHN CHARLES PERSON | |
| F534082030 | A-1366 | B | W2SWSW & W2E2SWSW | 04 | 141 | 39 | | KAY BUG E GWON AY AUSH |
| F534082030B | A-1366 | B | SESE | 05 | 141 | 39 | | KAY BUG E GWON AY AUSH |
| F534082031 | O-0948 | M | NENW & NWNE | 16 | 143 | 42 | PETER PAUL, SR. BELLECOURT | |
| F534082032 | A-3044 | M | E2SE | 12 | 146 | 42 | FRANK MIS QUAN DAIS | MAY WAH JE GE SHIG |
| F534082032A | O-5068 | M | E2NW | 14 | 146 | 42 | FRANK MIS QUAN DAIS | MAY WAH JE GE SHIG |
| F534082033 | O-4260 | M | E2SE | 33 | 144 | 41 | | KE CHE BE MAY |
| F534082034 | A-0839 | B | LOT 9 & SESE | 22 | 142 | 40 | | KE BEU AINCE |
| F534082034A | A-0839 | B | LOT 9 & SESE | 22 | 142 | 40 | | KE BEU AINCE |
| F534082035 | O-3934 | M | E2SE | 21 | 146 | 39 | MAY FAIRBANKS | BRAW GAU WAH SHE QUAY |
| F534082036 | O-4747 | M | N2SW | 36 | 146 | 40 | | AYSH QUAY CUNIG WAIB |
| F534082037 | O-1127 | M | E2NE | 07 | 146 | 40 | WILLIE BLANCHARD | |
| F534082038 | O-0597 | B | E2NE | 13 | 142 | 40 | ANGELINE BROWN | WAH ZHE MAY QUAY |
| F534082039 | O-0606 | M | S2NW | 26 | 144 | 39 | EDWARD WILSON | O BUB WAY WAY GE SHIG |
| F534082040 | O-0643 | B | W2SE | 27 | 142 | 42 | SYLVIA BELLANGER SYVERSON | |
| F534082041 | O-4491 | B | NWNE | 27 | 142 | 37 | JENNIE BELLANGER MARTIN | NEESH WUB E QUAY |
| | | | SWSE | 22 | 142 | 37 | | |
| F534082042 | O-4150 | M | SWNE & LOT 2 | 05 | 146 | 42 | FRANCES MCGILLIS BEAULIEU | |
| F534082043 | O-0505 | M | LOTS 1 & 2 | 02 | 146 | 41 | LEONIE BEAULIEU KILLIAN | |
| F534082044 | A-1815 | M | W2NE | 33 | 144 | 40 | | WAH WOW E GE SHIG |
| F534082045 | O-2060 | B | N2SE | 02 | 141 | 38 | | KE ME TAH GAH BOW |
| F534082046 | O-2814 | B | S2NW | 24 | 141 | 37 | JAME HOWARD | |
| F534082047 | A-0394 | M | W2NW | 36 | 146 | 39 | ELIZABETH RAY BOWLEY | |
| F534082048 | A-1584 | B | NESW & NWSE | 17 | 142 | 39 | | O BE GWOOD |
| F534082048A | A-1584 | B | NESW & NWSE | 17 | 142 | 39 | | O BE GWOOD |
| F534082049 | O-2933 | M | LOTS 2 & 3 | 11 | 146 | 39 | JOHN FAIRBANKS | BUDEESE |
| F534082050 | A-3130 | M | LOT 7 | 29 | 146 | 42 | MADELINE GIARD DAIGLE | |
| F534082051 | O-4279 | M | W2SE | 33 | 144 | 41 | | NO KAY |
| F534082052 | A-1868 | M | N2NE | 07 | 144 | 39 | FLORA BROWN | |
| F534082054 | A-0918 | B | NESE & SWSE | 29 | 142 | 39 | JOHN ROBERT MCINTOSH | |
| F534082055 | O-4218 | M | E2SW | 17 | 144 | 41 | PEARL STILLWELL HALVERSON | |
| F534082056 | A-0889 | B | LOTS 3 & 4 | 02 | 141 | 42 | MARY LACY LARSEN | |
| F534082057 | A-2443 | M | E2SE | 10 | 145 | 42 | JOHNNY BOINEESS | |
| F534082058 | O-3307 | M | E2SE | 15 | 144 | 42 | ALMA MCMARTIN FARRELL | |
| F534082059 | O-2655 | B | LOT 1 & NENW | 31 | 142 | 37 | | MAUN GOOSE |
| F534082060 | O-2575 | B | W2SW | 29 | 142 | 37 | | MAH BE SESH E QUAY |



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WHITE EARTH LAND SETTLEMENT ACT CLAIMS
PARTIAL INTERESTS LIST

| ISSUE NO. | ALLOT NO. | NAME OF INTEREST HOLDER | ALIAS NAME | INTEREST | |
|---|---|---|---|---|---|
| F534080001 | O-5175 | CLARA MEYER | | 7 | 56 |
| F534080001 | O-5175 | ETHEL CARNO MOSSMAN | CARNO, ETHEL | 7 | 56 |
| F534080001 | O-5175 | ELIZABETH EMMA MOSSMAN HOLLAND | MOSSMAN, ELIZABETH | 7 | 56 |
| F534080001 | O-5175 | MABEL ALICE MOSSMAN ST. SURE | MOSSMAN, MABEL | 7 | 56 |
| F534080001 | O-5175 | ISABEL PALMER MOSSMAN LOCKE | MOSSMAN, ISABEL | 7 | 56 |
| F534080001 | O-5175 | KATE OTANTUG MOSSMAN | OTANTUG, KATE | 7 | 56 |
| F534080001 | O-5175 | EVANGELINE K. MOSSMAN BROWN | MOSSMAN, EVANGELINE K. | 1 | 56 |
| F534080001 | O-5175 | CHRISTIAN MOSSMAN | | 1 | 56 |
| F534080001 | O-5175 | MURIEL HARRIET LEILEHUA MOSSMAN | LEILEHUA, MURIEL | 1 | 56 |
| F534080001 | O-5175 | HENRY CLARENCE MOSSMAN | | 1 | 56 |
| F534080001 | O-5175 | MARGIE GERTRUDE LEILANI MOSSMAN | LEILANI, MARGIE | 1 | 56 |
| F534080001 | O-5175 | WOODROW EDWARD MOSSMAN | | 1 | 56 |
| F534080001 | O-5175 | CHARLOTTE MOSSMAN | | 1 | 56 |
| F534080016 | O-0212 | LEOPOLD J. DOUCETTE | | 2 | 15 |
| F534080016 | O-0212 | LENA E. MCGIVNEY | | 2 | 15 |
| F534080016 | O-0212 | ALMA T. DOUCETTE | | 2 | 15 |
| F534080016 | O-0212 | LOUISE M. DOUCETTE | | 2 | 15 |
| F534080016 | O-0212 | IRENE S. DOUCETTE | DOUCETTE, ANNA | 2 | 15 |
| F534080016A | A-0142 | LEOPOLD J. DOUCETTE | | 2 | 15 |
| F534080016A | A-0142 | LENA E. MCGIVNEY | | 2 | 15 |
| F534080016A | A-0142 | ALMA T. DOUCETTE | | 2 | 15 |
| F534080016A | A-0142 | LOUISE M. DOUCETTE | | 2 | 15 |
| F534080016A | A-0142 | IRENE S. DOUCETTE | DOUCETTE, ANNA | 2 | 15 |
| F534080020 | A-3029 | JOE AUGINAUSH | | 1 | 9 |
| F534080020 | A-3029 | NORMAN AUGINAUSH | | 1 | 9 |
| F534080020 | A-3029 | DOROTHY AUGINAUSH | | 1 | 9 |
| F534080020 | A-3029 | GEORGE AUGINAUSH | | 1 | 9 |
| F534080020 | A-3029 | ISABELLE AUGINAUSH | | 1 | 9 |
| F534080032 | O-0703 | TAY CUM E GE SHIG | | 1 | 2 |
| F534080043 | O-4171 | WAH BISH E EKE SHIG | THOMPSON, MAGGIE | 1 | 3 |
| F534080043 | O-4171 | MARY TAYLOR | | 1 | 3 |
| F534080054A | A-2483 | TOM DAY | | 2 | 3 |
| F534080055B | A-1679 | AMBROSE WEISE | AMBROSE WEISS | 1 | 8 |
| F534080055B | A-1679 | DOROTHY WEISE | DOROTHY WEISS HART | 1 | 8 |
| F534080055B | A-1679 | MELVIN WEISE | MELVIN WEISS | 1 | 8 |
| F534080055B | A-1679 | RICHARD WEISE | ESTATE OF RICHARD WEISS | 1 | 8 |
| F534080061 | O-1698 | KAY WE TAH WAY WE DUNG | JONES, JOHN HENRY | 1 | 4 |
| F534080061 | O-1698 | O BAH BAUN | BRUNETTE, SUSAN | 1 | 4 |
| F534080061 | O-1698 | QUE WE ZAINCE | JONES, SAM | 1 | 20 |
| F534080061 | O-1698 | WAY AUN AH QUOD | JONES, GEORGE | 1 | 2 |
| F534080061 | O-1698 | WAUZN AH KEENCE | RILEY, MRS. FRANK | 1 | 20 |
| F534080061 | O-1698 | JANE BESSIE JONES | | 1 | 20 |
| F534080061 | O-1698 | PAY BIM WAY WE DUNG | JONES, REBERT | 1 | 20 |
| F534080064 | O-2077 | KAH GE GAY GE SHIG O QUAY | DOROTHY DAYDODGE | 1 | 9 |
| F534080064A | O-2077 | E QUAY ZAINCE | BRUNETTE, BESSIE | 1 | 15 |
| F534080064B | O-2077 | ALLEN ROBERTS | | 2 | 45 |
| F534080066 | O-4923 | WAH WAH QUAY GE SHIG | NOONDAY, JOHN | 1 | 6 |
| F534080066 | O-4923 | AH ZHOW AH BIK O QUAY | | 1 | 8 |
| F534080066A | O-4923 | NOW AH CUMIG OKE | KEG, MRS. MAUDE | 2 | 3 |
| F534080067 | A-1013 | MARIE LOUISE FOX | | 1 | 36 |
| F534080088E | O-3880 | MAGGIE KEEZER | | 1 | 21 |
| F534080088E | O-3880 | WALLACE KEEZER | | 1 | 21 |
| F534080088E | O-3880 | HARRY KEEZER | HENRY | 1 | 21 |
| F534080088E | O-3880 | HAZEL JACKSON | | 1 | 21 |
| F534080090 | O-4350 | PE WAY | | 1 | 4 |
| F534080090 | O-4350 | WAN SE | NANCY | 1 | 4 |
| F534080090 | O-4350 | WAH SE JE WUN O QUAY | | 1 | 12 |
| F534080090 | O-4350 | KAY SHE AUSH EENCE | | 1 | 12 |
| F534080090 | O-4350 | WAH JE O SAY QUAY | | 1 | 12 |
| F534080090 | O-4350 | CME GO WISH | SUTTON, MRS. PETER | 1 | 18 |
| F534080090 | O-4350 | KE CHE O DAH NUN | | 1 | 18 |
| F534080090 | O-4350 | MUN UD AY AUSH | | 1 | 18 |
| F534080103 | A-3154 | CLARA MEYER | | 7 | 56 |
| F534080103 | A-3154 | ETHEL CARNO MOSSMAN | | 7 | 56 |
| F534080103 | A-3154 | ELIZABETH EMMA MOSSMAN HOLLAND | MOSSMAN, ELIZABETH EMMA | 7 | 56 |
| F534080103 | A-3154 | MABEL ALICE MOSSMAN ST. SURE | MOSSMAN, MABEL ALICE | 7 | 56 |
| F534080103 | A-3154 | ISABEL PALMER MOSSMAN LOCKE | MOSSMAN, ISABEL | 7 | 56 |
| F534080103 | A-3154 | KATE OTANTUG MOSSMAN | OTANTUG, KATE | 7 | 56 |
| F534080103 | A-3154 | EVANGELINE K. MOSSMAN BROWN | MOSSMAN, EVANGELINE | 1 | 56 |
| F534080103 | A-3154 | CHRISTIAN MOSSMAN | | 1 | 56 |
| F534080103 | A-3154 | MURIEL HARRIET LEILEHUA MOSSMAN | LEILEHUA, MURIEL | 1 | 56 |
| F534080103 | A-3154 | HENRY CLARENCE MOSSMAN | | 1 | 56 |
| F534080103 | A-3154 | MARGIE GERTRUDE LEILANI MOSSMAN | LEILANI, MARGIE | 1 | 56 |
| F534080103 | A-3154 | WOODROW EDWARD MOSSMAN | | 1 | 56 |

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| F5340801O3 | A-3154 | CHARLOTTE MOSSMAN | | 1 | 56 |
| F5340801I1 | O-1862 | WAH BE ZHANCE | ANDREW MARTIN | 7 | 15 |
| F5340801I2A | A-2947 | MARY HUTCHINSON | | 1 | 3 |
| F5340801I2A | A-2947 | SHAW BO GAUN AY BE QUAY | | 1 | 3 |
| F5340801I20 | O-0113 | EVA ROY WADENA | | 2 | 3 |
| F5340801I21 | O-3362 | BE SHEW | | 1 | 4 |
| F5340801I23 | O-0589 | W.J. BRYAN | | 1 | 6 |
| F5340801I23E | A-0297 | MARY KING | MARTHA KING | 1 | 21 |
| F5340801I23I | A-0297 | TOU AH YOUNCE | | 1 | 3 |
| F5340801I25 | O-3331 | MAGGIE BROWN | | 1 | 4 |
| F5340801I27 | O-2764 | WILLIAM MARTIN | | 1 | 3 |
| F5340801I30 | A-0798 | LOUIS LEQUIER | | 1 | 9 |
| F5340801I30 | A-0798 | CHARLES LEQUIER | | 1 | 9 |
| F5340801I30A | A-0798 | LOUIS LEQUIER | | 1 | 9 |
| F5340801I30A | A-0798 | CHARLES LEQUIER | | 1 | 9 |
| F5340801I35 | O-0613 | JOHN A. BROWN | | 1 | 18 |
| F5340801I35 | O-0613 | DANIEL G. BROWN | | 1 | 18 |
| F5340801I35A | O-0613 | LOUISE KING JACKSON | KING, LOUISE | 1 | 18 |
| F5340801I37 | O-3358 | ANNA T. ROY | YELLOWHEAD, ANNIE | 1 | 6 |
| F5340801I37A | O-3358 | WAY WE AY CUNIG OKE | KETTLE, MRS. MIKE | 1 | 6 |
| F5340801I42B | O-2149 | ROY CONKLIN | | 2 | 9 |
| F5340801I51 | A-1507 | LEROY CONKLIN | | 1 | 4 |
| F5340801I53 | O-0511 | ERCEL ROUGE | | 2 | 3 |
| F5340801I55 | O-2054 | CHE GUS/GUE WE ZAINCE | HELENA E. RUE<br>HARDY, CHESTER | 1 | 4 |
| F5340801I55A | O-2054 | WAH WE GI SHIG O QUAY | | 1 | 4 |
| F5340801I55A | O-2054 | MARY MUSH KOU | MARCHAND, MRS. MARY | 1 | 6 |
| F5340801I55A | O-2054 | MAY ZHUC EAH WONG | CASSAWAY, CHARLES | 1 | 4 |
| F5340801I55B | A-1493 | WILLIAM BADBOY | | 1 | 12 |
| F5340801I55C | A-1493 | MAY ZHUC EAK WONG | CASSAWAY, CHARLES | 1 | 4 |
| F5340801I55D | A-1493 | CHE GUS/GUE WE ZAINCE | HARDY, CHESTER | 1 | 4 |
| F5340801I55D | A-1493 | MAY MAUSH KOU | MARCHANT, MRS. MARY | 1 | 6 |
| F5340801I61M | O-3457 | JEREMIAH PEMBERTON | | 1 | 9 |
| F5340801I61R | O-3457 | JEREMIAH PEMBERTON | | 1 | 9 |
| F5340801I61S | O-3457 | LILLY MAY PEAVY | LILLY PEAVY LE MAY | 2 | 135 |
| F5340801I61S | O-3457 | MAGGIE MURRAY | MAGGIE PEAVY | 2 | 135 |
| F5340801I61S | O-3457 | ADA BLOKER | ADA PEAVY | 2 | 135 |
| F5340801I61S | O-3457 | HENRY PEAVY | HENRY ORIN PEAVY | 2 | 135 |
| F5340801I61S | O-3457 | ELMER PEAVEY | | 2 | 135 |
| F5340801I61Y | O-3457 | MARY JO VORNWALD | | 1 | 9 |
| F534080172 | O-1799 | JACOB REDBIRD | | 19 | 90 |
| F534080172A | O-1799 | ANNIE REDBIRD | | 19 | 90 |
| F534080174D | O-0001 | MRS. WILLIAM WRIGHT | | 1 | 18 |
| F534080174D | O-0001 | SUSAN SELKINK HALLETE | | 7 | 723 |
| F534080174D | O-0001 | LILLIE SELKINK ANDERSON | | 7 | 72 |
| F534080174D | O-0001 | CHARLOTTE VAN WENT | | 1 | 18 |
| F534080174D | O-0001 | CHARLES WRIGHT | | 2 | 9 |
| F534080174H | O-0001 | SUSAN SELKINK HALLETT | | 7 | 72 |
| F534080174H | O-0001 | LILLIE SELKINK ANDERSON | | 7 | 72 |
| F534080174H | O-0001 | CHARLOTTE VAN WENT | | 1 | 18 |
| F534080174H | O-0001 | CHARLES WRIGHT | | 2 | 9 |
| F534080174H | O-0001 | ELIZABETH MCDONALD ANDERSON | SUSANNA | 1 | 18 |
| F534080175 | O-3845 | KE ZHE BAUNCE | KEEZER, NELLIE | 1 | 8 |
| F534080175A | A-2504 | KE ZHE BAUNCE | KEEZER, NELLIE | 1 | 8 |
| F534080176 | O-2827 | WOW E GE SHIG O QUAY | | 2 | 3 |
| F534080176B | O-2827 | WOW E GE SHIG O QUAY | | 2 | 3 |
| F534080176D | O-2827 | WOW E GE SHIG O QUAY | | 2 | 3 |
| F534080178A | O-3488 | MARY BELLECOURT | | 1 | 3 |
| F534080208B | A-2052 | PETER SAILOR | | 2 | 3 |
| F534080279 | O-4517 | CHARLES GEORGE MEADBIRD | WAH KAH DAY WE BE TUNG | 1 | 3 |
| F534080279 | O-4517 | AMY MEADBIRD CONKLIN | MRS. LEROY CONKLIN | 2 | 3 |
| F534080284C | O-2051 | GEORGE R. ELLIS | | 1 | 12 |
| F534080284C | O-2051 | JEROME ELLIS | | 1 | 12 |
| F534080284C | O-2051 | NAOMI ELLIS | | 1 | 12 |
| F534080308A | A-1803 | ELIZABETH M. ROY | | 1 | 3 |
| F534080308A | A-1803 | LEONA J. ROY | | 1 | 3 |
| F534080308C | A-1803 | ELIZABETH M. ROY DOUVILLE | | 1 | 3 |
| F534080308C | A-1803 | LEONA J. ROY | MRS. BENJAMIN MURRAY | 1 | 3 |
| F5340803111B | O-0573 | BLANCHE SWEET | | 2 | 15 |
| F5340803111B | O-0573 | GERTRUDE SWEET | | 2 | 15 |
| F5340803111B | O-0573 | JAMES SWEET | | 2 | 15 |
| F5340803111B | O-0573 | LIZZIE SWEET | | 2 | 15 |
| F5340803111B | O-0573 | LLOYD SWEET | | 2 | 15 |
| F534080314 | A-2983 | | | 0 | 0 |
| F5340803148 | A-2983 | JOHN DORR | | 1 | 6 |
| F5340803148 | A-2983 | MUSH COW UB E QUAY | | 1 | 6 |
| F5340803140 | A-2983 | EQUAY | MRS. BILLY BEDAUSKY | 1 | 6 |
| F5340803146 | A-2983 | JOHN DORR | JOHN DOOR | 1 | 6 |
| F5340803146 | A-2983 | | MRS. JOHN MINK | 1 | 6 |
| F534080314I | A-2983 | | MRS. BILLY BEDAUSKY | 1 | 6 |
| F534080314L | A-2983 | | MRS. JOHN MINK | 1 | 6 |
| F534080314M | A-2983 | JOHN DORR | JOHN DOOR | 1 | 6 |
| F534080314N | A-2983 | | MRS. BILLY BEDAUSKY | 1 | 6 |
| F5340803140 | A-2983 | MUSH COW UB E QUAY | | 1 | 6 |
| F534080314R | A-2983 | JOHN DORR | | 1 | 6 |



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|---|---|---|---|---|---|
| F534080316S | A-2983 | EQUAY | | 1 | 6 |
| F534080316 | O-0278 | SOPHIA SAICE | | 1 | 4 |
| F534080316A | O-0278 | GERTIE SAICE | | 1 | 4 |
| F534080322 | A-1487 | MAY TUM AH MUH JE WAY | MRS. JOHN FRANK | 1 | 2 |
| F534080322 | A-1487 | KAY PAH GAH NAH QUOD | JOSEPH P. MARTIN | 1 | 4 |
| F534080322 | A-1487 | CECELIA JOYCE MARTIN HILSTAD | | 1 | 8 |
| F534080322 | A-1487 | DANIEL LEE MARTIN | | 1 | 8 |
| F534080322A | A-1487 | KAY PAH GAH NAH QUOD | JOSPEH P. MARTIN | 1 | 4 |
| F534080322A | A-1487 | CECELIA JOYCE MARTIN HILSTAD | | 1 | 8 |
| F534080322A | A-1487 | DANIEL LEE MARTIN | | 1 | 8 |
| F534080322A | A-1487 | ANNIE FINEDAY FRANKS | | 1 | 2 |
| F534080323 | O-2042 | MAY TUM AH MAH JE WAY QUAY | | 1 | 2 |
| F534080332A | O-0436 | THOMAS HENRY MOULTON | MOSH KIN AY AUSH | 2 | 9 |
| F534080339 | O-1914 | CHARLES BUCKANAGA | | 1 | 6 |
| F534080339 | O-1914 | JOE JOHNSON | | 1 | 6 |
| F534080339A | A-1408 | CHARLES BUCKANAGA | | 1 | 6 |
| F534080339A | A-1408 | JOE JOHNSON | | 1 | 6 |
| F534080342I | O-0465 | LEOPOLD J. DOUCETTE | JOSEPH L. DOUCETTE | 2 | 135 |
| F534080342I | O-0465 | LENA DOUCETTE | LENA E. MCGIVNEY | 2 | 135 |
| F534080342I | O-0465 | ALMA T. DOUCETTE | | 2 | 135 |
| F534080342I | O-0465 | LOUISE M. DOUCETTE | | 2 | 135 |
| F534080342I | O-0465 | IRENE S. DOUCETTE | ANNIE DOUCETTE | 2 | 135 |
| F534080343A | O-0640 | EARL CAMPBELL | | 2 | 3 |
| F534080344N | O-0544 | LEOPOLD J. DOUCETTE | JOSEPH L. DOUCETTE | 2 | 405 |
| F534080344N | O-0544 | LENA DOUCETTE | LENA E. MCGIVNEY | 2 | 405 |
| F534080344N | O-0544 | ALMA T. DOUCETTE | | 2 | 405 |
| F534080344N | O-0544 | LOUISE M. DOUCETTE | | 2 | 405 |
| F534080344N | O-0544 | IRENE S. DOUCETTE | ANNIE DOUCETTE | 2 | 405 |
| F534080355 | O-0252 | CHARLES FOSTER, JR. | | 1 | 3 |
| F534080358A | O-0598 | JOSEPH BELLANGER | | 5 | 12 |
| F534080358A | O-0598 | MAGGIE BELLANGER | | 5 | 12 |
| F534080365 | O-0632 | SARAH FAIRBANKS | | 1 | 4 |
| F534080373 | O-0586 | MATTIE ASPINWALL | | 1 | 3 |
| F534080374 | O-4620 | MATTIE NASON | | 1 | 6 |
| F534080374 | O-4620 | MARY CARLSON | | 1 | 6 |
| F534080374 | O-4620 | SUSAN HILL | | 1 | 6 |
| F534080374 | O-4620 | NATTIE GIBWAY | | 1 | 12 |
| F534080374 | O-4620 | GEORGIANA GIBWAY | | 1 | 12 |
| F5340803898A | A-1854 | ANDREW SHAWN BUSH KUNG | | 1 | 6 |
| F5340803898B | A-1854 | O PAH KE DUB E TUNG | BUSH, SR., JOE | 1 | 6 |
| F5340803898B | A-1854 | FANNY BAD BOY MORGAN KENEEG | MRS. JOE MORGAN | 2 | 6 |
| F534080393 | O-3683 | SCOTT LA PRAIRIE | | 1 | 3 |
| F534080393 | O-3683 | SARAH LA PRPAIRIE | | 1 | 6 |
| F534080400 | O-0599 | MAGGIE BELLANGER | | 1 | 3 |
| F534080404 | A-2964 | MIS CO GE SHIG | PINE, GEORGE | 2 | 9 |
| F534080404 | A-2964 | BE BE AINCE | WADENA, HANNAH | 2 | 9 |
| F534080405C | O-2739 | ME GAH ME GAH BOW E QAUY | MARY MARTIN STATELER | 1 | 3 |
| F534080409 | O-0408 | MAMIE DUPREE | | 1 | 6 |
| F534080409 | O-0408 | ANGELINE DUPREE | | 1 | 6 |
| F534080409A | O-0408 | MAXIME DUPREE | | 1 | 6 |
| F534080409A | O-0408 | MAGGIE DUPREE | | 1 | 6 |
| F534080411 | O-0843 | PHILLIP SANTWIER | | 1 | 6 |
| F534080425 | O-1108 | THOMAS POTTER | | 1 | 2 |
| F534080427G | A-0497 | EARL CAMPBELL | | 2 | 21 |
| F534080428 | O-0922 | JULIA NORCROSS | | 2 | 3 |
| F534080429 | O-0929 | FRANCES ASPINWALL | | 1 | 9 |
| F534080429 | O-0929 | LOUISA ASPINWALL | | 1 | 9 |
| F534080429 | O-0929 | GUS ASPINWALL | | 1 | 9 |
| F534080429A | A-0715 | FRANCIS ASPINWALL | | 1 | 9 |
| F534080429A | A-0715 | GUS ASPINWALL | | 1 | 9 |
| F534080429B | A-0715 | FRANCIS ASPINWALL | | 1 | 45 |
| F534080429B | A-0715 | GUS ASPINWALL | | 1 | 45 |
| F534080431 | O-4673 | GEORGE BOSWELL | | 2 | 9 |
| F534080431 | O-4673 | THOMAS BOSWELL | | 2 | 9 |
| F534080431 | O-4673 | MAYSUM BOSWELL | | 2 | 9 |
| F534080431B | A-2285 | GEORGE BOSWELL | | 2 | 9 |
| F534080467 | O-0634 | SARAH FAIRBANKS ERION | FAIRBANKS, SARAH | 1 | 4 |
| F534080467A | O-0634 | WILLIS H. FAIRBANKS | | 1 | 4 |
| F534080471 | A-2853 | SHAH GO BAY QUAY | | 1 | 6 |
| F534080471 | A-2853 | WAY NAH UB EQUAY | PORTER, MARY | 1 | 12 |
| F534080471 | A-2853 | O MY OWE | SHINGOOB, ESTHER | 1 | 12 |
| F534080476 | O-0844 | PHILLIP SANTWIER | | 2 | 9 |
| F534080476A | O-0844 | MAGGIE SANTWIER | | 2 | 9 |
| F534080477 | O-0836 | PHILLIP SANTWIER | | 2 | 9 |
| F534080477A | O-0836 | MAGGIE SANTWIER BEAUPRE | SANTWIER, MAGGIE | 2 | 9 |
| F534080480 | O-0789 | WILLIE ST. CLAIR | | 2 | 21 |
| F534080480 | O-0789 | ALICE ST. CLAIR | | 2 | 21 |
| F534080480 | O-0789 | LOUIS ST. CLAIR | | 2 | 21 |
| F534080480 | O-0789 | JOHN ST. CLAIR | | 2 | 21 |
| F534080481 | O-2142 | JOHN DAYDODGE | | 2 | 9 |
| F534080481A | A-1556 | JOHN DAYDODGE | | 2 | 9 |
| F534080481B | O-2142 | BAY DAH DAUNG AY AUSH | | 1 | 3 |
| F534080481C | A-1556 | BAY BAH DAUNG AY AUSH | | 1 | 3 |
| F534080482 | A-1279 | PAY BIM WAY WE DUNG | JONES, ROBERT | 2 | 15 |

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| F5340804B2A | A-1279 | JANE BESSIE JONES | | 2 | 15 |
| F5340804B6 | O-0865 | PETER TURPIN | | 2 | 3 |
| F534080504 | A-1012 | MARIE LOUISE FOX | | 1 | 36 |
| F534080504A | A-1012 | JOSEPH COGGER | | 1 | 18 |
| F534080504A | A-1012 | DAVID COGGER | | 1 | 18 |
| F534080512B | O-0955 | LIZZIE BRUNETTE | | 2 | 27 |
| F534080513 | O-0954 | WALTER BRUNETTE | | 1 | 27 |
| F534080513 | O-0954 | IDA BRUNETTE | | 1 | 27 |
| F534080513 | O-0954 | RAYMOND BRUNETTE | | 1 | 27 |
| F534080516 | O-0657 | CLARENCE MCARTHUR | | 2 | 15 |
| F534080518A | O-2301 | HENRIETTA BEAULIEU | | 1 | 12 |
| F534080520 | O-3550 | PUH KE MAY | ROY, MRS. PETER | 1 | 3 |
| F534080522 | O-1483 | CHARLES HOLSTEIN | | 2 | 21 |
| F534080522 | O-1483 | FABIAN HOLSTEIN | | 2 | 21 |
| F534080522 | O-1483 | JAMES HOLSTEIN | | 2 | 21 |
| F534080522A | O-1483 | MARY HOLSTEIN | | 2 | 21 |
| F534080525 | A-2961 | LOUISA PIKE | | 1 | 9 |
| F534080525 | A-2961 | CHARLEY PIKE | | 1 | 9 |
| F534080525 | A-2961 | FRANK PIKE | | 1 | 9 |
| F534080525 | A-2961 | AY NAH CUMIG O QUAY | | 1 | 9 |
| F534080525 | A-2961 | TOM PIKE | | 1 | 9 |
| F534080526 | O-4261 | MAGGIE SITTING | | 1 | 4 |
| F534080526B | O-4981 | OKE SHE GE WON O QUAY | | 1 | 4 |
| F534080537 | A-2381 | ANNIE MORGAN | | 1 | 6 |
| F534080542 | A-0283 | MARY MAY ST. CLAIR | | 1 | 45 |
| F534080542 | A-0283 | CHRISTINA ST. CLAIR | | 1 | 45 |
| F534080542 | A-0283 | OLIVIA LEOBA ST. CLAIR | | 1 | 45 |
| F534080542A | A-0283 | STEPHEN CASWELL | | 1 | 5 |
| F534080542A | A-0283 | LEWIS CASWELL | | 1 | 5 |
| F534080542A | A-0283 | BENJAMIN CASWELL | | 1 | 5 |
| F534080542A | A-0283 | JANE CASWELL WALTERS | CASWELL, JANE | 1 | 5 |
| F534080542A | A-0283 | LIZZIE MCDONALD CLOGGER | MCDONALD, LIZZIE | 1 | 10 |
| F534080542A | A-0283 | ALLEN ST. CLAIR | | 1 | 30 |
| F534080542B | A-0283 | STEPHEN CASWELL | | 1 | 5 |
| F534080542B | A-0283 | LEWIS CASWELL | | 1 | 5 |
| F534080542B | A-0283 | BENJAMIN CASWELL | | 1 | 5 |
| F534080542B | A-0283 | JANE CASWELL CLOGGER | CASWELL, JANE | 1 | 5 |
| F534080542B | A-0283 | LIZZIE MCDONALD CLOGGER | MCDONALD, LIZZIE | 1 | 10 |
| F534080542B | A-0283 | ALLEN ST. CLAIR | | 1 | 30 |
| F534080542C | A-0283 | STEPHEN CASWELL | | 1 | 5 |
| F534080542C | A-0283 | LEWIS CASWELL | | 1 | 5 |
| F534080542C | A-0283 | BENJAMIN CASWELL | | 1 | 5 |
| F534080542C | A-0283 | JANE CASWELL WALTERS | CASWELL, JANE | 1 | 5 |
| F534080542C | A-0283 | LIZZIE MCDONALD CLOGGER | MCDONALD, LIZZIE | 1 | 10 |
| F534080542C | A-0283 | ALLEN ST. CLAIR | | 1 | 30 |
| F534080550 | O-0694 | NAY GOW UD JEENCE | | 2 | 90 |
| F534080550 | O-0694 | MO CO MON EQUAY | | 2 | 90 |
| F534080550 | O-0694 | NAH GUAN E GUAN ABE | BLAKELY, ROBERT | 2 | 90 |
| F534080550 | O-0694 | NAY GAH WAH JEEK QUAY | GRACE BLAKELY | 2 | 90 |
| F534080550 | O-0694 | WE ZHE DAIN | JULIA BELLANGER | 2 | 90 |
| F534080550 | O-0694 | NAH JE CUMIG WABE | JAMES BLAKELY | 2 | 90 |
| F534080550 | O-0694 | WAH BISH KE GUAN AY QUAY | LUCY BLAKELY | 2 | 90 |
| F534080550 | O-0694 | AUN JE KEW NIEW | FRANK BLAKELY | 2 | 90 |
| F534080550 | O-0694 | CATHERINE BLAKELY | | 1 | 90 |
| F534080550 | O-0694 | SIMON BLAKELY | | 1 | 90 |
| F534080550 | O-0694 | AH NAH WE AY GAH BOU EAK | FANNY | 2 | 90 |
| F534080552 | O-1107 | KAY BAY GE SHIG O QUAY | POTTER, JANE | 1 | 2 |
| F534080561 | O-1272 | WILLIAM ALEXANDER BRUNETTE | | 2 | 3 |
| F534080562 | O-2743 | LOUISE TAYLOR | | 1 | 9 |
| F534080565C | O-0986 | SUSAN ANDERSON | | 1 | 4 |
| F534080575A | O-0135 | SHAW BO GAUN AY BE QUAY | | 1 | 3 |
| F534080575E | O-0135 | MADELINE E. WARREN SONDAY | | 2 | 27 |
| F534080575F | O-0135 | SADIE WARREN | SADIE WARREN ROOT | 1 | 27 |
| F534080575F | O-0135 | JAMES BENJAMIN WARREN | | 1 | 27 |
| F534080575F | O-0135 | IMA ETHEL WARREN DINNEEN | | 1 | 27 |
| F534080575G | O-0135 | LIZZIE WARREN | | 1 | 9 |
| F534080576 | O-1270 | ALEXANDER BRUNETTE | | 1 | 9 |
| F534080576A | O-1270 | PETER BLAIR | | 1 | 9 |
| F534080576B | A-0998 | WILLIAM ALEXANDER BRUNETTE | ALEXANDER BRUNETTE | 1 | 9 |
| F534080576J | A-0998 | PETER BLAIR | | 1 | 9 |
| F534080584 | O-1109 | O GAH BAY GWON A BE QUAY | SARAH NAU ZHEE | 1 | 3 |
| F534080584A | A-0874 | O GAH BAY GWON A BE QUAY | SARAH NAU ZHEE | 1 | 3 |
| F534080584B | A-0874 | TAY CUM AH GE WABE | | 1 | 3 |
| F534080584D | O-1109 | TAY CUM AH GE WABE | | 1 | 3 |
| F534080590 | O-1382 | IMA ETHEL WARREN | | 1 | 3 |
| F534080606E | O-3836 | PETER PARKER | | 1 | 4 |
| F534080606F | O-3836 | JOHN PARKER | | 1 | 24 |
| F534080606F | O-3836 | MARY PARKER | | 1 | 24 |
| F534080606K | A-2613 | PETER PARKER | | 1 | 4 |
| F534080606L | A-2613 | JOHN PARKER | | 1 | 24 |
| F534080606L | A-2613 | MARY PARKER | | 1 | 24 |
| F534080607 | O-1336 | DAVID COGGER | | 1 | 9 |
| F534080607 | O-1336 | SARAH COGGER | | 1 | 9 |
| F534080614 | O-4177 | NAH GE AISH E QUAY | | 1 | 3 |



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|---|---|---|---|---|---|
| F534080614 | O-4177 | PETER BELLANGER | | 1 | 9 |
| F534080614 | O-4177 | PAISH AH QUOD O QUAY | | 1 | 9 |
| F534080614 | O-4177 | ROBERT BEAULIEU | | 1 | 9 |
| F534080614 | O-4177 | CHARLOTTE BELLANGER | | 1 | 9 |
| F534080614 | O-4177 | JOHN MORRISON | | 1 | 18 |
| F534080614 | O-4177 | CATHERINE BELLANGER | | 1 | 18 |
| F534080614 | O-4177 | MELINE BELLANGER | | 1 | 27 |
| F534080614 | O-4177 | JOSEPH BELLANGER | | 2 | 189 |
| F534080614 | O-4177 | WILLIAM BELLANGER | | 2 | 189 |
| F534080614 | O-4177 | EARL CAMPBELL | | 2 | 189 |
| F534080614A | O-4177 | SOPHIA BELLANGER | | 2 | 189 |
| F534080618 | O-1772 | KAH GE WAY AUSH | LIGHTENING, GEORGE | 5 | 24 |
| F534080625 | O-1274 | ALEXANDER BRUNETTE | | 1 | 9 |
| F534080625H | O-1274 | PETER BLAIR | | 1 | 9 |
| F534080627 | O-1271 | ALEXANDER BRUNETTE | | 1 | 9 |
| F534080627A | O-1271 | PETER BLAIR | | 1 | 9 |
| F534080628 | A-0527 | ELIC J. FAIRBANKS | | 1 | 6 |
| F534080628 | A-0527 | MARY S. FAIRBANKS | | 1 | 6 |
| F534080628 | A-0527 | KATE M. FAIRBANKS | | 1 | 6 |
| F534080628 | A-0527 | EMMA A. FAIRBANKS | | 1 | 6 |
| F534080642AA | O-1808 | HEIRS OF MINNIE BUNKER | | 2 | 27 |
| F534080642AA | O-1808 | HEIRS OF VIOLA ROCK SAILOR | | 17 | 108 |
| F534080642AA | O-1808 | HEIRS OF ELIZABETH R. KING | | 17 | 108 |
| F534080642AA | O-1808 | HEIRS OF JAMES ROCK | | 2 | 27 |
| F534080642AA | O-1808 | HEIRS OF JACOB ROCK | | 2 | 27 |
| F534080642AA | O-1808 | SAMUEL ROCK | | 17 | 108 |
| F534080642AA | O-1808 | REUBEN ROCK | | 17 | 108 |
| F534080642AA | O-1808 | DAISEY JUGG BUTCHER | | 2 | 27 |
| F534080642AA | O-1808 | GEORGE R., JR. ELLIS | | 2 | 81 |
| F534080642AA | O-1808 | JEROME ELLIS | | 2 | 81 |
| F534080642AA | O-1808 | HEIRS OF NAOMI ELLIS | | 2 | 81 |
| F534080642D | O-1808 | HEIRS OF MINNIE BUNKER | | 2 | 27 |
| F534080642D | O-1808 | HEIRS OF VIOLA ROCK SAILOR | | 17 | 108 |
| F534080642D | O-1808 | HEIRS OF ELIZABETH KING | | 17 | 108 |
| F534080642D | O-1808 | HEIRS OF JAMES ROCK | | 2 | 27 |
| F534080642D | O-1808 | HEIRS OF JACOB ROCK | | 2 | 27 |
| F534080642D | O-1808 | SAMUEL ROCK | | 17 | 108 |
| F534080642D | O-1808 | REUBEN ROCK | | 17 | 108 |
| F534080642D | O-1808 | DAISY JUGG BUTCHER | | 2 | 27 |
| F534080642D | O-1808 | GEORGE R., JR. ELLIS | | 2 | 81 |
| F534080642D | O-1808 | JEROME ELLIS | | 2 | 81 |
| F534080642D | O-1808 | HEIRS OF NAOMI ELLIS | | 2 | 81 |
| F534080642EE | O-1808 | HEIRS OF MINNIE BUNKER | | 2 | 27 |
| F534080642EE | O-1808 | HEIRS OF VIOLA ROCK SAILOR | | 17 | 108 |
| F534080642EE | O-1808 | HEIRS OF ELIZABETH R. KING | | 17 | 108 |
| F534080642EE | O-1808 | HEIRS OF JAMES ROCK | | 2 | 27 |
| F534080642EE | O-1808 | HEIRS OF JACOB ROCK | | 2 | 27 |
| F534080642EE | O-1808 | SAMUEL ROCK | | 17 | 108 |
| F534080642EE | O-1808 | REUBEN ROCK | | 17 | 108 |
| F534080642EE | O-1808 | DAISEY JUGG BUTCHER | | 2 | 27 |
| F534080642EE | O-1808 | GEORGE R., JR. ELLIS | | 2 | 81 |
| F534080642EE | O-1808 | JEROME ELLIS | | 2 | 81 |
| F534080642EE | O-1808 | HEIRS OF NAOMI ELLIS | | 2 | 81 |
| F534080642JJ | O-1808 | HEIRS OF MINNIE BUNKER | | 2 | 27 |
| F534080642JJ | O-1808 | HEIRS OF VIOLA ROCK SAILOR | | 17 | 108 |
| F534080642JJ | O-1808 | HEIRS OF ELIZABETH R. KING | | 17 | 108 |
| F534080642JJ | O-1808 | HEIRS OF JAMES ROCK | | 2 | 27 |
| F534080642JJ | O-1808 | HEIRS OF JACOB ROCK | | 2 | 27 |
| F534080642JJ | O-1808 | SAMUEL ROCK | | 17 | 108 |
| F534080642JJ | O-1808 | REUBEN ROCK | | 17 | 108 |
| F534080642JJ | O-1808 | DAISEY JUGG BUTCHER | | 2 | 27 |
| F534080642JJ | O-1808 | ROSE ELLIS ROCK | | 2 | 27 |
| F534080642KK | O-1808 | HEIRS OF MINNIE BUNKER | | 2 | 27 |
| F534080642KK | O-1808 | HEIRS OF VIOLA ROCK SAILOR | | 17 | 108 |
| F534080642KK | O-1808 | HEIRS OF ELIZABETH R. KING | | 17 | 108 |
| F534080642KK | O-1808 | HEIRS OF JAMES ROCK | | 2 | 27 |
| F534080642KK | O-1808 | HEIRS OF JACOB ROCK | | 2 | 27 |
| F534080642KK | O-1808 | SAMUEL ROCK | | 17 | 108 |
| F534080642KK | O-1808 | REUBEN ROCK | | 17 | 108 |
| F534080642KK | O-1808 | DAISEY JUGG BUTCHER | | 2 | 27 |
| F534080642KK | O-1808 | GEORGE R., JR. ELLIS | | 2 | 81 |
| F534080642KK | O-1808 | JEROME ELLIS | | 2 | 81 |
| F534080642KK | O-1808 | HEIRS OF NAOMI ELLIS | | 2 | 81 |
| F534080642QQ | O-1808 | ROSE ELLIS | | 2 | 27 |
| F534080642P | O-1808 | HEIRS OF MINNIE BUNKER | | 2 | 27 |
| F534080642P | O-1808 | HEIRS OF VIOLA ROCK SAILOR | | 17 | 108 |
| F534080642P | O-1808 | HEIRS OF ELIZABETH R. KING | | 17 | 108 |
| F534080642P | O-1808 | HEIRS OF JAMES ROCK | | 2 | 27 |
| F534080642P | O-1808 | HEIRS OF JACOB ROCK | | 2 | 27 |
| F534080642P | O-1808 | SAMUEL ROCK | | 17 | 108 |
| F534080642P | O-1808 | REUBEN ROCK | | 17 | 108 |
| F534080642P | O-1808 | DAISEY JUGG BUTCHER | | 2 | 27 |
| F534080642P | O-1808 | GEORGE R., JR. ELLIS | | 2 | 81 |
| F534080642P | O-1808 | JEROME ELLIS | | 2 | 81 |

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|---|---|---|---|---|---|
| F534080642P | O-1808 | HEIRS OF NAOMI ELLIS | | 2 | 81 |
| F534080642QQ | O-1808 | HEIRS OF MINNIE BUNKER | | 2 | 27 |
| F534080642QQ | O-1808 | HEIRS OF VIOLET SAILOR | | 17 | 108 |
| F534080642QQ | O-1808 | HEIRS OF ELIZABETH R. KING | | 17 | 108 |
| F534080642QQ | O-1808 | HEIRS OF JAMES ROCK | | 2 | 27 |
| F534080642QQ | O-1808 | HEIRS OF JACOB ROCK | | 2 | 27 |
| F534080642QQ | O-1808 | SAMUEL ROCK | | 17 | 108 |
| F534080642QQ | O-1808 | REUBEN ROCK | | 17 | 108 |
| F534080642QQ | O-1808 | DAISEY JUGG BUTCHER | | 2 | 27 |
| F534080642QQ | O-1808 | GEORGE R., JR. ELLIS | | 2 | 81 |
| F534080642QQ | O-1808 | JEROME ELLIS | | 2 | 81 |
| F534080642QQ | O-1808 | HEIRS OF NAOMI ELLIS | | 2 | 81 |
| F534080642T | O-1808 | MINNIE BUNKER | | 2 | 27 |
| F534080642T | O-1808 | HEIRS OF ELIZABETH R. KING | | 17 | 108 |
| F534080642T | O-1808 | HEIRS OF JAMES ROCK | | 2 | 27 |
| F534080642T | O-1808 | JACOB ROCK | | 2 | 27 |
| F534080642T | O-1808 | SAMUEL ROCK | | 17 | 108 |
| F534080642T | O-1808 | REUBEN ROCK | | 17 | 108 |
| F534080642T | O-1808 | DAISEY JUGG BUTCHER | | 2 | 27 |
| F534080642T | O-1808 | GEORGE R., JR. ELLIS | | 2 | 81 |
| F534080642T | O-1808 | JEROME ELLIS | | 2 | 81 |
| F534080642T | O-1808 | NAOMI ELLIS | | 2 | 81 |
| F534080642V | O-1808 | HEIRS OF MINNIE BUNKER | | 2 | 27 |
| F534080642V | O-1808 | HEIRS OF VIOLA ROCK SAILOR | | 17 | 108 |
| F534080642V | O-1808 | HEIRS OF ELIZABETH R. KING | | 17 | 108 |
| F534080642V | O-1808 | HEIRS OF JAMES ROCK | | 2 | 27 |
| F534080642V | O-1808 | HEIRS OF JACOB ROCK | | 2 | 27 |
| F534080642V | O-1808 | SAMUEL ROCK | | 17 | 108 |
| F534080642V | O-1808 | REUBEN ROCK | | 17 | 108 |
| F534080642V | O-1808 | DAISEY JUGG BUTCHER | | 2 | 27 |
| F534080642V | O-1808 | GEORGE R., JR. ELLIS | | 2 | 81 |
| F534080642V | O-1808 | JEROME ELLIS | | 2 | 81 |
| F534080642V | O-1808 | HEIRS OF NAOMI ELLIS | | 2 | 81 |
| F534080644 | O-4885 | KAY KISH AUN AH QUOD | | 1 | 2 |
| F534080644B | A-2813 | KAM KISH AUN AH QUOD | | 1 | 2 |
| F534080658 | O-1366 | WAH WE AY CUMIG O QUAY | MRS. MIKE KETTLE | 1 | 18 |
| F534080658A | O-1366 | ANNA ROY | | 1 | 18 |
| F534080661 | O-1078 | O BE QUOD | SMITH, SUSAN ROY | 1 | 3 |
| F534080661A | O-1078 | NAY TUN AUN E QUAY | MARKS, MAGGIE | 1 | 3 |
| F534080669 | O-1851 | MARY PEAK | | 2 | 3 |
| F534080669A | A-1365 | JOSEPH PEAKE | | 1 | 3 |
| F534080677 | O-1202 | ME GONE JE SHIG O QUAY | | 9 | 81 |
| F534080677I | O-1202 | JAMES JOHNSON | | 16 | 162 |
| F534080677I | O-1202 | EDWARD TANNER | | 1 | 54 |
| F534080677I | O-1202 | CARRIE FAIRBANKS | | 4 | 135 |
| F534080677I | O-1202 | SUSAN JOHNSON WILLIAMS | | 3 | 54 |
| F534080677I | O-1202 | WILLIAM NORTON | | 4 | 135 |
| F534080677I | O-1202 | LUCILLE BRUNETTE | | 4 | 135 |
| F534080677I | O-1202 | ANNIE BRUNETTE | | 4 | 135 |
| F534080677I | O-1202 | EDWINA NORTON | | 4 | 135 |
| F534080689 | O-0114 | EVA ROY WADENA | ROY, EVA | 2 | 3 |
| F534080696A | A-1455 | ALBERT JUGG | | 1 | 3 |
| F534080697 | O-1975 | KO ME WUB E QUAY | JUG, MRS. JIM | 1 | 2 |
| F534080697A | A-1456 | KO ME WUB E QUAY | JUG, MRS. JIM | 1 | 2 |
| F534080706 | O-3525 | NELSON POTTER | | 1 | 9 |
| F534080706 | O-3525 | ELIZABETH MARLOW | | 1 | 54 |
| F534080708A | A-1296 | WAH BE SESH EQUAY | | 1 | 6 |
| F534080708B | A-1296 | TAY BUS O BEAK | | 1 | 3 |
| F534080713A | A-3051 | PAH NEISH WUB E QUAY | MRS. J. CROWD | 1 | 5 |
| F534080713A | A-3051 | HAZEL BELLANGER | | 1 | 30 |
| F534080716 | O-1724 | NOW WAH KE GAH BOW E QUAY | | 2 | 8 |
| F534080716A | O-1724 | PANGONDWAYGWONBEQUAY | RILEY, FLORENCE | 1 | 8 |
| F534080720 | A-2479 | SUSAN GRIESBACK TEISSEN | | 1 | 7 |
| F534080720 | A-2479 | NELLIE WAKEFIELD | | 1 | 7 |
| F534080720 | A-2479 | JOSEPH LIBBY | | 1 | 7 |
| F534080720 | A-2479 | ROSE LEITH | | 1 | 7 |
| F534080720 | A-2479 | LAURA LIBBY ANDERSON | | 1 | 7 |
| F534080720 | A-2479 | EDITH LIBBY | | 1 | 7 |
| F534080720 | A-2479 | ARCHIE LIBBY | | 1 | 7 |
| F534080722 | A-1464 | PANOOMBANCUMIGOOUAY | MOUNTAIN, MARY | 1 | 3 |
| F534080722A | A-1464 | DAVID MOUNTAIN | | 2 | 3 |
| F534080726 | O-1837 | MAGGIE BELLANGER | | 1 | 3 |
| F534080727 | O-1838 | MAGGIE BALLANGER | | 1 | 3 |
| F534080729 | O-1826 | JACK ROCK | | 1 | 3 |
| F534080729 | O-1826 | MRS. GEORGE BOSWELL | | 2 | 15 |
| F534080729 | O-1826 | ALLEN ROBERTS | | 6 | 45 |
| F534080732 | O-2205 | BENA BISHOP | | 2 | 27 |
| F534080732A | O-2205 | ERNESTINE BISHOP | | 2 | 27 |
| F534080732A | O-2205 | CHARLES BISHOP | | 2 | 27 |
| F534080732A | O-2205 | WILLIE BISHOP | | 2 | 27 |
| F534080732A | O-2205 | SIMON BISHOP | | 2 | 27 |
| F534080732A | O-2205 | EFFIE BISHOP | | 2 | 27 |
| F534080736 | O-2216 | | HEIRS OF DAVID NORCROSS | 1 | 21 |
| F534080736 | O-2216 | GEORGE NORCROSS | | 1 | 42 |



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| | | | | | |
|---|---|---|---|---|---|
| F534080736 | O-2216 | ANNIE NORCROSS | | 1 | 42 |
| F534080736 | O-2216 | | HEIRS OF EMILY NORCROSS | 1 | 42 |
| F534080745 | O-2081 | JOHN W. ROCK | | 1 | 24 |
| F534080745 | O-2081 | JOHN SLOAN ROCK | | 1 | 24 |
| F534080745 | O-2081 | JACK SKIP IN THE DAY | | 1 | 18 |
| F534080745 | O-2081 | KAH CHE JE GE SHIG | | 1 | 18 |
| F534080745 | O-2081 | BO ZHO | | 1 | 18 |
| F534080745 | O-2081 | WE ZHE KAY WE GAH BOW | | 1 | 18 |
| F534080745 | O-2081 | NAY TUM AH MAN JE WAY | | 1 | 18 |
| F534080745 | O-2081 | GEORGE MARTIN | | 1 | 36 |
| F534080745 | O-2081 | BE SHEW A QUAY | | 1 | 18 |
| F534080745 | O-2081 | SHAH BO GAH BOW EAK | | 1 | 45 |
| F534080745 | O-2081 | ISH QUAY GAK BOW E QUAY | | 1 | 45 |
| F534080745 | O-2081 | JOHN DAYDODGE | | 1 | 24 |
| F534080745 | O-2081 | WILLIE FAIRBANKS | | 1 | 24 |
| F534080745 | O-2081 | CHARLIE DAYDODGE | | 1 | 24 |
| F534080745 | O-2081 | JOSEPH MARTIN | | 1 | 72 |
| F534080746 | O-2052 | ROSE ROCK | | 1 | 6 |
| F534080757 | O-2097 | JOHN MUNNELL | | 1 | 3 |
| F534080764A | O-4174 | JOSETTE NOW | | 1 | 3 |
| F534080764D | O-4174 | JOSETTE NOW | | 1 | 3 |
| F534080764N | O-4174 | JOSETTE NOW | | 1 | 3 |
| F534080764M | O-4174 | JOSETTE NOW | | 1 | 3 |
| F534080789A | O-4677 | CLARA PEMBERTON FOX | | 1 | 3 |
| F534080794 | O-1188 | HANNAH WADENA | | 1 | 9 |
| F534080794 | O-1188 | MIS CO GE SHIG | PINE, GEORGE | 1 | 9 |
| F534080794 | O-1188 | NOW E GE SHIG OKE | MARY PINE | 1 | 9 |
| F534080798B | O-2175 | ISABELLE BELLANGER MURRAY | | 1 | 3 |
| F534080838 | O-2089 | MAY ZHUCK E AH WONG | CHARLES CASSAWAY | 1 | 3 |
| F534080804 | O-2143 | SARAH FAIRBANKS | | 1 | 3 |
| F534080804A | O-2143 | WILLIS H. FAIRBANKS | | 1 | 3 |
| F534080805 | O-2139 | KE WE TAN O NUB EQUAY | BEAUPRE, MRS. MARY | 1 | 2 |
| F534080805A | O-2139 | MARY ONE DAY | | 1 | 6 |
| F534080805B | O-2139 | VIRGINIA ONE DAY | | 1 | 3 |
| F534080807 | O-2608 | TAY BUS SAUN AH QUOD OKE | HART, SUSAN | 2 | 3 |
| F534080808 | O-2645 | KAY WAY BIN O QUAY | KEWAYDINOQUAY | 1 | 3 |
| F534080808A | O-2645 | KE ZHE BAN GIN EW | | 2 | 9 |
| F534080808A | O-2645 | QUAYQUAYKEZHEWANOQUOD | | 2 | 9 |
| F534080808A | O-2645 | BE DAH ZHE QUAY. | | 2 | 9 |
| F534080809 | O-2046 | KAH GE GAY GE SHIG O QUAY | | 22 | 2079 |
| F534080809 | O-2046 | AH ME WO.NE GE SHIG | DAYDODGE, WILLIAM | 187 | 8316 |
| F534080810 | O-2613 | TAY BUS SAUN AH QUOD OKE | HART, SUSAN | 2 | 3 |
| F534080813 | O-2136 | JAMES JOHNSON | | 1 | 3 |
| F534080813B | O-2136 | DAVID BELLANGER | | 2 | 9 |
| F534080813C | O-2136 | DAVID BELLANGER | | 1 | 9 |
| F534080814 | O-2056 | JOHN CASSAWAY | | 1 | 4 |
| F534080814A | O-2056 | WILLIAM BAD BOY | | 2 | 27 |
| F534080814B | O-2056 | QUE WE ZAINCE | CHESTER NANDY | 1 | 4 |
| F534080814B | O-2056 | RAY MUSH KOW ANCUMIG OQUAY | | 1 | 4 |
| F534080815 | O-2135 | JENNIE BELLANGER MARTIN | NEESH WUB E QUAY | 8 | 9 |
| F534080815A | O-2135 | JOSEPH JOHNSON | | 1 | 81 |
| F534080815A | O-2135 | CECILIA BLAKELY BURNETT | | 19 | 243 |
| F534080815A | O-2135 | JOHN GILBERT | | 1 | 243 |
| F534080815A | O-2135 | CATHERINE GILBERT BROWN | | 1 | 243 |
| F534080815A | O-2135 | LILLIAN GILBERT CAMPBELL | | 1 | 243 |
| F534080815A | O-2135 | ROSE JOHNSON JAMES | | 1 | 243 |
| F534080815A | O-2135 | MARIAN JOHNSON NORTON | | 1 | 243 |
| F534080816 | O-1927 | NAUSH AH KEENCE | RILEY, MRS. | 2 | 15 |
| F534080816 | O-1927 | JANE BESSIE JONES | | 2 | 15 |
| F534080833 | O-2558 | ANNA AITKINS BARBANKS | AITKINS, ANNA | 2 | 3 |
| F534080835 | O-5092 | E QUAY WE DOUK | | 1 | 3 |
| F534080836 | O-5092 | O BAH KITCH | | 1 | 12 |
| F534080835 | O-5092 | NO QUAY WE DOM O QUAY | SUTTON, MRS. HENRY | 1 | 12 |
| F534080835 | O-5092 | WE ZHO GAH BOW E QUAY | WAH DE NAH, JENNIE | 1 | 12 |
| F534080835 | O-5092 | NAY GWON AY BE JE KEIN | JACKSON, JOHN | 1 | 36 |
| F534080835 | O-5092 | WAH GE DAH CUMIG | | 1 | 36 |
| F534080835 | O-5092 | AH NWAH TIN AH BE QUAY. | | 1 | 36 |
| F534080835 | O-5092 | AH ZHO WAUSH | BENTON, CHARLES | 1 | 36 |
| F534080835 | O-5092 | OLIVE BENTON | | 1 | 72 |
| F534080835 | O-5092 | JULIA BENTON | | 1 | 72 |
| F534080838 | O-5092 | HENRY BENTON | | 1 | 72 |
| F534080835 | O-5092 | SARAH BENTON | | 1 | 72 |
| F534080835A | A-2944 | E QUAY WE DOUK | | 1 | 3 |
| F534080835A | A-2944 | O BAH KITCH | | 1 | 12 |
| F534080835A | A-2944 | NO QUAY WE DOM O QUAY | SUTTON, MRS. HENRY | 1 | 12 |
| F534080835A | A-2944 | WE ZHO GAH BOW EQUAY | WAH DE NAH, JENNIE | 1 | 12 |
| F534080835A | A-2944 | NAY GWON AY BE JE KEIN | JACKSON, JOE | 1 | 36 |
| F534080835A | A-2944 | WAH GE DAH CUMIG | | 1 | 36 |
| F534080835A | A-2944 | AH NWAH TIN AH BE QUAY | | 1 | 36 |
| F534080835A | A-2944 | AH ZHOW WUSH | BENTON, CHARLES | 1 | 36 |
| F534080835A | A-2944 | OLIVE BENTON | | 1 | 72 |
| F534080835A | A-2944 | HENRY BENTON | | 1 | 72 |
| F534080835A | A-2944 | SARAH BENTON | | 1 | 72 |
| F534080835A | A-2944 | JULIA BENTON | | 1 | 72 |

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| F5340808J8 | O-2308 | MAH JE BENAIS | JUMBO JOHNSON | 2 | 9 |
| F5340808A7 | O-1096 | KAY BAY GE SHIG O QUAY | POTTER, JANE | 1 | 12 |
| F5340808A8 | O-0397 | ALICE BEAULIEU | | 1 | 40 |
| F5340808A8A | O-0397 | SARAH BEAULIEU | | 1 | 5 |
| F5340808A8A | O-0397 | GRACE BEAULIEU | | 1 | 5 |
| F5340808A8B | O-0397 | REBECCA CAMPBELL BEAULIEU | IRNE REBECCA CAMPBELL | 1 | 40 |
| F5340808A8C | O-0397 | CLEMENT BEAULIEU | | 1 | 5 |
| F5340808S0 | O-2668 | MAH CHE KE SHIG | WILLIAMS, JOHN | 1 | 3 |
| F5340808S1 | O-2755 | ALAICE GWINN | LEGO, ALAICE | 1 | 3 |
| F5340808S3 | O-2766 | EDDIE THOMPSON | | 2 | 3 |
| F5340808S4 | O-2783 | JOE COLEMAN | | 1 | 3 |
| F5340808S2 | O-4229 | LIGHTING GEORGE | | 1 | 2 |
| F5340808S7 | O-2886 | WILLIAM PAUL | | 1 | 3 |
| F5340808S7A | A-1512 | CHI GO GE SHIG | PAUL, WILLIAM | 1 | 3 |
| F5340808S8 | O-2096 | JOSEPH BELLANGER | | 1 | 18 |
| F5340808S8 | O-2096 | PETER BELLANGER | | 1 | 18 |
| F5340808S8 | O-2096 | MARGARET VANOSS | | 1 | 18 |
| F5340808S8 | O-2096 | CHARLOTTE CASWELL | | 1 | 18 |
| F5340808S8 | O-2096 | NECED BELLANGER | | 1 | 18 |
| F5340808S8 | O-2096 | SIMON BELLANGER | | 1 | 18 |
| F5340808S8 | O-2096 | NANCY PARKER | | 1 | 9 |
| F5340808S8 | O-2096 | GEORGE BELLANGER | | 1 | 9 |
| F5340808S8 | O-2096 | HENRY BELLANGER | | 1 | 9 |
| F5340808S5 | O-2437 | WILLIAM MCDONALD | | 1 | 9 |
| F5340808S7 | O-2556 | ANNA AITKINS | | 1 | 3 |
| F5340808S9 | O-2618 | KAUSH KE DAI | | 1 | 6 |
| F5340808S9A | O-2618 | MAS KIN AY GAH BOW EQUAY | MINNIE ROCK FALLSFEATHER | 1 | 6 |
| F5340809O1 | O-4525 | MARY FRANCIS COFFEY | | 1 | 4 |
| F5340809O1A | O-4525 | GRACE COFFEY | | 1 | 4 |
| F5340809O1B | O-4525 | SARAH JANE COFFEY WILSON | | 1 | 4 |
| F5340809O1C | O-4525 | AGNES COFFEY | | 1 | 4 |
| F5340809O3 | A-1481 | KAY GE GAY E QUAY | FINEDAY, ANNIE | 1 | 2 |
| F5340809O3B | O-4213 | ANNIE FINEDAY | KAH GE GAY E QUAY | 1 | 2 |
| F5340809I7B | O-4356 | AISH EGAH BOW | MAGGIE CLARK | 1 | 4 |
| F5340809Z3B | A-1820 | MADELINE FOLSTRUM | | 1 | 8 |
| F5340809Z3O | A-1820 | SIMON FOLSTRUM | | 1 | 8 |
| F5340809Z3E | O-2498 | SIMON FOLSTRUM | | 1 | 8 |
| F5340809Z3F | O-2498 | MADELINE FOLSTRUM | | 1 | 8 |
| F5340809Z4 | O-2953 | JOHN DUBE | | 1 | 2 |
| F5340809Z8 | O-4466 | AH KEE WENZE | AH KE WENZIE | 1 | 2 |
| F5340809Z8C | A-1470 | AH KE WENZIE | | 1 | 2 |
| F5340809S0 | O-2391 | ANGELINE BEAULIEU | MARY ANGELINE BEAULIEU | 2 | 15 |
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| F5340809S9B | O-3042 | SUSANNA ROSETTA MEADEAU | | 2 | 2187 |
| F5340809S9B | O-3042 | ANDREW JOHN MEADEAU | | 2 | 2187 |
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| F5340809Z4B | A-1722 | ISAAC WILLIAMS | | 1 | 3 |
| F5340809S1 | O-3298 | FELIX BRISBOIS | | 1 | 6 |
| F5340809S1 | O-3298 | ORA BRISBOIS | | 1 | 6 |
| F5340809S1 | O-3298 | ANGELINE BRISBOIS | | 1 | 6 |
| F5340809S1 | O-3298 | GABRIEL BRISBOIS | | 1 | 6 |
| F5340809S1 | O-3298 | LEO BRISBOIS | | 1 | 6 |
| F5340809S1 | O-3298 | WILLIAM BRISBOIS | | 1 | 6 |
| F5340809S8A | O-2114 | ISABELLA BELLANGER MURRAY | | 1 | 3 |
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| F5340809S6A | O-2996 | WILLIAM WALTER O'DONNELL | | 1 | 9 |
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| F5340809S6A | O-2996 | JOHN O'DONNELL | | 1 | 9 |
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| F5340809I9D | O-3553 | RACHAEL VAN NETT | | 1 | 36 |
| F5340809I9D | O-3553 | ROBERT VAN NETT | | 1 | 36 |
| F5340809I9D | O-3553 | EDWARD VAN NETT | | 1 | 36 |
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| F534081022 | A-2309 | KAY TAH KE WUN E QUAY | ANNIE MOOSE | 18 | 810 |
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| F5340810222E | O-4692 | EQUAY ZAINCE | ALICE NORTHRUP | 2 | 27 |
| F5340810222E | O-4692 | CORA M. LAROSE | | 2 | 27 |
| F5340810222E | O-4692 | EDWARD LASROSE | | 2 | 27 |
| F534081023 | A-2310 | CORA M. LAROSE | | 1 | 3 |
| F534081023 | A-2310 | EDWARD LAROSE | | 1 | 3 |
| F5340810238 | O-4693 | EDWARD LA ROSE | | 1 | 3 |
| F5340810238 | O-4693 | CONA LA ROSE | | 1 | 3 |
| F534081039 | O-5057 | MUCK UN DAY WE NE NEE | | 1 | 3 |
| F534081049 | O-3216 | ALEXANDER PAUL AUGUSTIN | | 1 | 4 |
| F534081049A | O-3216 | MARGARET AUGUSTIN GRAVES | | 1 | 4 |
| F5340810590 | O-4496 | MOSH KIN AH GAH BOW E QUAY | MINNIE ROCK | 1 | 8 |
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| F534081070A | O-3130 | LOUIS VIVIER | | 1 | 9 |
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| F534081071 | O-3609 | RICHARD GARDEN | | 2 | 21 |
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| F5340810728 | A-2047 | LOUISE GARDEN SHEPARD | | 1 | 21 |
| F5340810728 | A-2047 | FRANK GARDEN | | 1 | 21 |
| F5340810728 | A-2047 | ISABELLE ELSIE GARDEN | | 1 | 21 |
| F5340810728 | A-2047 | AGNES GARDEN | | 1 | 21 |
| F5340810728 | A-2047 | | HEIRS OF JAMES GARDEN | 1 | 21 |
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| F534081097 | A-1356 | | O ZOW WUN WUN NEE QUAY | 1 | 4 |
| F5340810978 | O-1857 | | O ZOW NAH NE EQUAY | 1 | 4 |
| F534081100 | O-3589 | PE TWO AH NAH QUOD O QUAY | | 1 | 4 |
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| F534081100B | O-3589 | O ZOW O KOONCE | | 1 | 4 |
| F534081100D | | SHAW WUN E BENAIS | | 1 | 5 |
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| F534081114 | O-5080 | HENRY MARTIN | HARRY | 1 | 6 |
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| F534081114A | A-3041 | HENRY MARTIN | | 1 | 6 |
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| F534081114A | A-3041 | CATHERINE MARTIN LITTLEWOLF | MARTIN, CATHERINE | 1 | 6 |
| F534081114B | A-3041 | FRANK JOHNS | | 3 | 6 |
| F534081114B | A-3041 | HENRY MARTIN | | 1 | 6 |
| F534081114B | A-3041 | CECELIA RABBIT | MARTIN, CECELIA | 1 | 6 |
| F534081114B | A-3041 | CATHERINE LITTLEWOLF | MARTIN, CATHERINE | 1 | 6 |
| F534081114C | A-3041 | FRANK JOHNS | | 1 | 2 |
| F534081114C | A-3041 | HENRY MARTIN | | 1 | 6 |
| F534081114C | A-3041 | CECELIA M. RABBIT | | 1 | 6 |
| F534081114C | A-3041 | CATHERINE M. LITTLEWOLF | | 1 | 6 |
| F534081114D | A-3041 | FRANKS JOHNS | | 1 | 2 |
| F534081114D | A-3041 | HENRY MARTIN | | 1 | 6 |
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| F5340811144E | O-5080 | HENRY MARTIN | | | 1 | 6 |
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| F534081118A | A-2181 | JAMES KELLY | | | 2 | 9 |
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| F534081135A | A-2917 | AH MAH CUMIG EMUNG | GE TAH GI WAB EQUAY | | 1 | 36 |
| F534081135A | A-2917 | KAY TAH KE WAB EQUAY | BILLY HENRY | | 1 | 2 |
| F534081137 | O-3324 | IAH ZHE TUNG | ANNIE SAM SHINGOBE | | 1 | 2 |
| F534081137 | O-3324 | WAY WAUSH KAISH EENCE | | | 1 | 3 |
| F534081138 | A-1975 | CYNTHIA ARCHIQUETTE | | | 2 | 3 |
| F534081138 | A-1975 | JAMES E. BEAR | | | 1 | 3 |
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| F534081146E | O-3878 | EDNA JACKSON | | | 1 | 3 |
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| F534081224A | O-2946 | SUSAN STARR | | | 1 | 6 |
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| F534081224B | O-2946 | SARAH BAPIO | | | 1 | 12 |



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|---|---|---|---|---|---|
| F5340812248 | O-2946 | SOPHIA BAPIO | | 1 | 12 |
| F534081224C | O-2946 | SOPHIA BAPIO | | 1 | 6 |
| F534081225A | O-3372 | CHARLES ANYWASH | | 1 | 9 |
| F534081225B | O-3372 | MAY TAH WAH CUMIG | | 1 | 9 |
| F534081225C | O-3372 | JOSIE GWINN | | 2 | 9 |
| F534081232 | O-3996 | MARY IRENE BRAWLEY | | 2 | 9 |
| F534081233 | O-4044 | MADELINE E. WARREN SONDAY | | 2 | 3 |
| F534081237 | O-4730 | EMMA HILL | | 1 | 4 |
| F534081237 | O-4730 | JOHN JACKSON | | 1 | 4 |
| F534081237 | O-4730 | NEZNEKAYWECESHIGOQUAY | | 1 | 2 |
| F534081239 | O-5139 | WILLIAM NICKABOINE | | 1 | 96 |
| F534081239 | O-5139 | MAGGIE NICKABOINE SKINAWAY | | 1 | 96 |
| F534081239 | O-5139 | ELIZABETH NICKABOINE | | 1 | 96 |
| F534081239 | O-5139 | VIOLA NICKABOINE | | 1 | 96 |
| F534081239 | O-5139 | ELSIE NICKABOINE | | 1 | 96 |
| F534081239 | O-5139 | JOSEPH NICKABOINE | | 1 | 96 |
| F534081239 | O-5139 | WILLIAM DALEY | | 1 | 96 |
| F534081239 | O-5139 | PAUL LEGO | | 1 | 48 |
| F534081239 | O-5139 | PRISCILLA LEGO | | 1 | 96 |
| F534081239 | O-5139 | DELIA LEGO | | 1 | 96 |
| F534081239 | O-5139 | GENEVIEVE LEGO | | 1 | 96 |
| F534081239 | O-5139 | ALVIN LEGO | | 1 | 96 |
| F534081239 | O-5139 | SOPHIA DAILEY WARREN | | 5 | 30 |
| F534081239 | O-5139 | LETITIA DAILEY DENNING | | 2 | 30 |
| F534081239 | O-5139 | ALICE MAY DAILEY | | 2 | 30 |
| F534081239 | O-5139 | JOHN MARKHAM DAILEY | | 2 | 30 |
| F534081239 | O-5139 | ELIZABETH A. DAILEY | | 2 | 30 |
| F534081239 | O-5139 | ROBERT W. DAILEY | | 2 | 30 |
| F534081239A | A-3110 | HEIRS OF KE TAH CUMIG OQUA | | 1 | 3 |
| F534081239A | A-3110 | SOPHIA DAILEY WARREN | | 5 | 45 |
| F534081239A | A-3110 | LETITIA DAILEY DENNING | | 2 | 45 |
| F534081239A | A-3110 | ALICE MAY DAILEY | | 2 | 45 |
| F534081239A | A-3110 | JOHN MARKHAM DAILEY | | 2 | 45 |
| F534081239A | A-3110 | ELIZABETH A. DAILEY | | 2 | 45 |
| F534081239A | A-3110 | ROBERT W. DAILEY | | 2 | 45 |
| F534081239D | A-3110 | SOPHIA DAILEY WARREN | | 5 | 30 |
| F534081239D | A-3110 | LETITIA DAILEY DENNING | | 2 | 30 |
| F534081239D | A-3110 | ALICE MAY DAILEY | | 2 | 30 |
| F534081239D | A-3110 | JOHN MARKHAM DAILEY | | 2 | 30 |
| F534081239D | A-3110 | ELIZABETH A. DAILEY | | 2 | 30 |
| F534081239D | A-3110 | ROBERT W. DAILEY | | 2 | 30 |
| F534081239H | A-3110 | WILLIAM NICKABOINE | | 1 | 16 |
| F534081239H | A-3110 | MAGGIE NICKABOINE SKINAWAY | | 1 | 16 |
| F534081239H | A-3110 | ELIZABETH NICKABOINE | | 1 | 16 |
| F534081239H | A-3110 | VIOLA NICKABOINE | | 1 | 16 |
| F534081239H | A-3110 | ELSIE NICKABOINE | | 1 | 16 |
| F534081239H | A-3110 | JOSEPH NICKABOINE | | 1 | 16 |
| F534081239H | A-3110 | WILLIAM DALEY | | 1 | 16 |
| F534081239H | A-3110 | PAUL LEGO | | 1 | 48 |
| F534081239H | A-3110 | PRISCILLA LEGO | | 1 | 96 |
| F534081239H | A-3110 | DELIA LEGO | | 1 | 96 |
| F534081239H | A-3110 | GENEVIEVE LEGO | | 1 | 96 |
| F534081239H | A-3110 | ALVIN LEGO | | 1 | 96 |
| F534081242 | O-2691 | EDNA ARTHUR TAYLOR | E QUAY ZAINCE | 2 | 3 |
| F534081257G | O-3934 | GRACE MAE MEECH | | 1 | 45 |
| F534081257G | O-3934 | MAMIE LOUISE MEECH | | 1 | 45 |
| F534081257G | O-3934 | ANNA MEECH | | 1 | 45 |
| F534081267A | O-4521 | CORA BAPTISTE | | 2 | 3 |
| F534081268A | A-2876 | MAYN WAY WAY AUSH | YOUNG KEGG | 1 | 2 |
| F534081268A | A-2876 | KE CHE QUAY ZAINCE | MRS. YOUNG KEGG | 1 | 2 |
| F534081271 | A-3111 | ANDREW DAILEY | AIN DAH SO GE SHIG | 1 | 2 |
| F534081271 | A-3111 | OGE ZHE AUN AH QUOD OKE | | 1 | 2 |
| F534081274A | A-3125 | THEODORE B. BEAULIEU | | 3 | 9 |
| F534081274A | A-3125 | EDWARD W. BEAULIEU | | 2 | 9 |
| F534081274A | A-3125 | ELIZABETH BEAULIEU | | 2 | 9 |
| F534081274A | A-3125 | MARY BEAULIEU | | 2 | 9 |
| F534081278B | O-4102 | MARGARET A. MEYERS | MARGARET KING | 1 | 25 |
| F534081296B | O-1660 | JENNIE O. PARKER | | 1 | 7 |
| F534081296B | O-1660 | GERTRUDE RABBI ST. CLAIRE | | 1 | 7 |
| F534081296B | O-1660 | RALPH HUGHS | | 1 | 7 |
| F534081296B | O-1660 | BLANCH PARKER VAN ETTEN | | 1 | 35 |
| F534081296B | O-1660 | BURLEIGH WOOD | | 1 | 35 |
| F534081296B | O-1660 | KITTIE VAN ETTEN | | 1 | 35 |
| F534081296B | O-1660 | MERLIN VAN ETTEN | | 1 | 35 |
| F534081296B | O-1660 | HUGHS VAN ETTEN | | 1 | 35 |
| F534081296B | O-1660 | FANNIE WILLIAMS BIN WAY | | 1 | 28 |
| F534081296B | O-1660 | LUCILE MCABEES | | 1 | 28 |
| F534081296B | O-1660 | PERCY SAVAGE | | 1 | 28 |
| F534081296B | O-1660 | EUGENE SAVAGE | | 1 | 28 |
| F534081299 | A-1988 | EQUAY AUN E COBU | MRS. HENRY NETT | 1 | 6 |
| F534081304B | O-2757 | ALICE GWINN WIND | ELLEN WIND | 1 | 3 |
| F534081307 | O-2175 | WILLIAM SAYERS | | 9 | 45 |
| F534081307A | O-2175 | MAGGIE SNOW | | 9 | 45 |
| F534081307B | O-2175 | WINFIELD SAYERS | | 9 | 45 |

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| F534081307E | O-2175 | FREDERICK BEAULIEU WEIS | | 2 | 45 |
| F534081307F | O-2175 | GEORGE BEAULIEU | | 2 | 45 |
| F534081307F | O-2175 | JULIA BEAULIEU | | 2 | 45 |
| F534081744N | | MRS. WILLIAM WRIGHT | | 1 | 18 |
| F534081792A | O-1665 | JOSEPH ROY | | 1 | 3 |
| F534081792B | O-1665 | LEO ROY | | 1 | 3 |
| F534081803 | O-3266 | PHILOMEN CHARBONA | | 2 | 27 |
| F534081803J | O-3266 | ORA BRISBOIS | | 1 | 81 |
| F534081805A | O-2084 | MARY SMITH | | 2 | 3 |
| F534081807 | O-3446 | LUCY PERRAULT | | 2 | 21 |
| F534081807A | O-3446 | GEORGE ARMSTRONG | | 2 | 21 |
| F534081807A | O-3446 | JOHN MERRILL | | 2 | 21 |
| F534081811J | O-3414 | WAH BOZE | MRS. JOHN DORR | 1 | 24 |
| F534081811K | O-3414 | THEODORE R. BEAULIEU | | 1 | 54 |
| F534081811K | O-3414 | ELIZABETH BEAULIEU | ELIZABETH THOMPSON MORGAN | 1 | 81 |
| F534081811K | O-3414 | MARY BEAULIEU ROUSE | | 1 | 81 |
| F534081816A | O-5121 | MARGARET H. BRYAN | | 1 | 6 |
| F534081816A | O-5121 | ANNIE BASSWOOD | | 1 | 6 |
| F534081826 | O-4339 | KAH KISH AUN AH QUOD | CHARLES GARBOU | 1 | 3 |
| F534081826A | O-4339 | AH KO GWON | | 1 | 2 |
| F534081826B | O-4339 | O PAN KE DUB E TUNG | JOE BUSH | 1 | 6 |
| F534081832 | O-2880 | AH KE WEIZE | | 1 | 7 |
| F534081832 | O-2880 | MAH GEED FAIRBANKS | | 1 | 7 |
| F534081832 | O-2880 | JAMES FISHER | | 1 | 7 |
| F534081832A | O-2880 | O JIB WAINCE | | 1 | 7 |
| F534081832B | O-2880 | PAUL DEJORDAN | | 1 | 7 |
| F534081832B | O-2880 | MARGARET BEAULIEU | | 1 | 3 |
| F534081895 | A-1289 | MARY YELLOWHEAD | KAY BAY O GE MAH | 2 | 9 |
| F534081895A | A-1289 | ROBERT BAY BAUM | DE BISH CO GE NIEW | 2 | 9 |
| F534081895A | A-1289 | MAY GAH BIN AIS EQUAY | ANNE | 1 | 3 |
| F534081925 | O-0432 | IDA PEMBERTON | | 1 | 3 |
| F534081925A | O-0432 | THOS MOULTON | | 1 | 45 |
| F534081953 | A-1814 | MARY MAY ST. CLAIRE | | 1 | 45 |
| F534081953 | A-1814 | CHRISTINA ST. CLAIRE | | 1 | 45 |
| F534081953 | A-1814 | OLIVIA LEOBA ST. CLAIRE | | 1 | 6 |
| F534081957 | A-1503 | DOROTHY DAY DODGE | | 1 | 6 |
| F534081957 | A-1503 | AYNE WOME GESHIG | | 1 | 3 |
| F534081962 | O-3192 | ALICE QUINN | MRS. LEVI WIND | 1 | 3 |
| F534081963A | O-5158 | KAH WE TAH YAUSH | | 1 | 3 |
| F534081963A | O-5158 | JOSEPH MORGAN | | 1 | 3 |
| F534081965 | O-0223 | JOHN WEBSTER | | 1 | 5 |
| F534081968 | A-0314 | WILLIE NORTON | | 1 | 5 |
| F534081968 | A-0314 | LUCILLE BRUNETTE | | 1 | 5 |
| F534081968 | A-0314 | ANNIE BRUNETTE | | 1 | 5 |
| F534081968 | A-0314 | EDWINA BRUNETTE | JANE | 1 | 5 |
| F534081968A | A-0314 | CARRIE FAIRBANKS | | 1 | 5 |
| F534081968B | O-0411 | CARRIE FAIRBANKS | | 1 | 5 |
| F534081968C | O-0411 | ANNIE BRUNETTE | | 1 | 5 |
| F534081968C | O-0411 | EDWINA NORTON | | 1 | 3 |
| F534081974 | O-2905 | PAY SHE GEE BIN AIS EK | | 1 | 5 |
| F534081978A | O-2878 | AH KE WEENCE | | 1 | 5 |
| F534081978A | O-2878 | JAMES FISHER | | 1 | 5 |
| F534081978A | O-2878 | MA GEED FAIRBANKS | | 1 | 5 |
| F534081978B | O-2878 | O GE BOINER | | 1 | 2 |
| F534081985 | O-4299 | MAGGIE REYNOLDS STAPLES | | 1 | 7 |
| F534081987 | O-3806 | MARY HILDRETH SMITH | | 1 | 7 |
| F534081987 | O-3806 | LOGAN CHESLEY | | 1 | 7 |
| F534081987 | O-3806 | PAULINE JACKSON | | 1 | 7 |
| F534081987 | O-3806 | JULIA CHESLEY | | 1 | 7 |
| F534081987 | O-3806 | RICHARD CHESLEY | | 1 | 7 |
| F534081987 | O-3806 | THOMAS CHESLEY | | 1 | 7 |
| F534081987 | O-3806 | LLOYD CHESLEY | | 1 | 7 |
| F534081989 | O-0725 | JOE MASON | ME GE ZEENCE | 5 | 27 |
| F534081989A | O-0725 | EDWARD JOHNSON | | 5 | 27 |
| F534081989E | A-0560 | JOE MASON | ME GE ZEENCE | 2 | 27 |
| F534081989F | A-0560 | EDWARD JOHNSON | | 2 | 27 |
| F534081993 | O-4584 | TOM MAH SHAH AUSH | TOM RICE | 2 | 9 |
| F534081996 | O-1867 | JENNIE ENGLISH | | 1 | 3 |
| F534081996A | O-1867 | JOSEPH PEAKE | | 1 | 9 |
| F534081996A | O-1867 | CATHERINE PEAKE | | 2 | 9 |
| F534081996A | O-1867 | ISK WA GWANAB | | 1 | 3 |
| F534081996 | O-0618 | SARAH WEBSTER DAVIS | | 2 | 9 |
| F534081997 | O-4263 | MO CO WUNG EQUAY | MAGGIE SITTING | 1 | 4 |
| F534081997A | O-4263 | KE CNE JE WAUN E QUAY | EMMA MITCHELL | 1 | 4 |
| F534081998 | O-4511 | PAH BOM BAH CUMIG OKE | MARY STONE | 1 | 2 |
| F534081999 | O-2381 | FRANCES ASPINWALL | | 1 | 9 |
| F534081999 | O-2381 | LOUISE ASPINWALL | | 1 | 9 |
| F534081999 | O-2381 | GUS ASPINWALL | | 1 | 9 |
| F534081999A | O-2381 | JULIA ASPINWALL | | 1 | 9 |
| F534082003 | O-1871 | PETER REESE | MAH GO WAUSH | 7 | 27 |
| F534082006 | O-2279 | PHILLIP NICHOLS | ME GUON AH QUOD | 1 | 4 |
| F534082007 | O-4284 | QUOD AINCE | | 1 | 3 |



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|---|---|---|---|---|---|
| F534082007 | O-4284 | MO MAH QUAY GE SHIG | | 2 | 3 |
| F534082008 | O-1637 | LUCILLE COSTELLO MORGAN | | 1 | 2 |
| F534082009 | O-2904 | KAY WE TAH WE QUNG | | 1 | 3 |
| F534082009 | O-2904 | BE ZNE GO QUAY | | 1 | 3 |
| F534082011 | O-4235 | ANTOINE KIPLIN | | 1 | 9 |
| F534082011A | O-4235 | MARY KIPLIN JEROME | | 1 | 9 |
| F534082011G | O-4235 | ANTOINE KIPLIN | | 1 | 9 |
| F534082011H | O-4235 | MARGARET KIPLIN | MAGGIE | 1 | 9 |
| F534082011I | O-4235 | MARY KIPLIN JEROME | | 1 | 9 |
| F534082017 | O-3842 | MAGGIE MUSH KE GWON | MAGGIE PLATT LOSH | 2 | 9 |
| F534082017A | O-3842 | JOSEPH PLATT | | 2 | 9 |
| F534082017B | O-3842 | GEORGE PLATT | | 3 | 9 |
| F534082017B | O-3842 | LIZZIE LOSH TIBBETTS | | 2 | 9 |
| F534082017C | A-2610 | MAGGIE MUSH KE GWON | MAGGIE PLATT | 2 | 9 |
| F534082017D | A-2610 | JOSEPH PLATT | | 2 | 9 |
| F534082017E | A-2610 | GEORGE PLATT | | 3 | 9 |
| F534082017E | A-2610 | LIZZIE LASH TIBBETTS | | 2 | 9 |
| F534082020 | O-4322 | ANTOINE CROUD | ANTOINE CLOUD | 1 | 2 |
| F534082022 | O-1124 | GEORGE BELLECOURT | | 1 | 9 |
| F534082023 | O-3250 | JULIA MIS CO BENAIS | PHILOMENA REDBIRD | 1 | 3 |
| F534082024 | O-1870 | PETER REESE | | 1 | 3 |
| F534082025 | O-1833 | MAGGIE GRAY | | 2 | 3 |
| F534082026 | O-1834 | MAGGIE GRAY | | 1 | 3 |
| F534082027 | O-1112 | KAY BAY GE SHIG O QUAY | JANE POTTER | 1 | 2 |
| F534082027D | O-1112 | KAY BAY GE SHIG O QUAY | JANE POTTER | 1 | 2 |
| F534082029 | O-0043 | GRACE SARAH PERSON | | 1 | 6 |
| F534082029 | O-0043 | ELIZABETH PERSON SHAMBON | | 1 | 6 |
| F534082029 | O-0043 | GLADYS PERSON JENSEN | | 1 | 6 |
| F534082029 | O-0043 | CHARLES MERLE PERSON | | 1 | 36 |
| F534082029 | O-0043 | WAYNE PAUL PERSON | | 1 | 36 |
| F534082029 | O-0043 | ELZADA ELIZABETH PERSON | | 1 | 36 |
| F534082029 | O-0043 | CAROL JEAN PERSON | | 1 | 36 |
| F534082029 | O-0043 | BEVERLY ANN PERSON | | 1 | 36 |
| F534082029 | O-0043 | OPAL CATHERINE PERSON WARREN | | 1 | 36 |
| F534082029 | O-0043 | SANDRA PERSON RICHMOND | | 1 | 6 |
| F534082030 | A-1364 | JOHN BROWN | | 1 | 2 |
| F534082030B | A-1364 | JOHN BROWN | | 1 | 2 |
| F534082033 | O-4260 | MO KAY GE SHIG O QUAY | | 1 | 2 |
| F534082034 | A-0839 | MAGGIE HANKS | | 1 | 4 |
| F534082034A | A-0839 | SUSAN SMITH | O BE QUOD | 1 | 4 |
| F534082036 | O-4747 | AYSH PAN | SAM YANKEE | 1 | 2 |
| F534082038 | O-0597 | MAGGIE BELLANGER | | 1 | 2 |
| F534082039 | O-0606 | SUSAN ROY | | 1 | 3 |
| F534082043 | O-0505 | VIRGIL KILLIAM | | 1 | 3 |
| F534082044 | A-1815 | MARY MAY ST. CLAIRE | | 1 | 45 |
| F534082044 | A-1815 | CHRISTINE ST. CLAIRE | | 1 | 45 |
| F534082044 | A-1815 | OLIVIA BEABA ST. CLAIRE | | 1 | 45 |
| F534082045 | O-2060 | MOW E GE SHIG O QUAY | | 1 | 4 |
| F534082046 | O-2814 | DELIA HOWARD BELLANGER | | 1 | 6 |
| F534082048 | A-1584 | HEIRS OF WILLIAM FEATHER | KAH GE GAY GE NEW | 1 | 5 |
| F534082048 | A-1584 | SHAH AH CUMIG | JOHN CROUD | 1 | 15 |
| F534082048 | A-1584 | O BE GWOOD | JOHN CROUD | 2 | 45 |
| F534082048 | A-1584 | GROVER CROUD | | 2 | 45 |
| F534082048 | A-1584 | HEIRS OF CATHERINE CROUD | | 2 | 45 |
| F534082048 | A-1584 | PADDY SAH | | 1 | 15 |
| F534082048 | A-1584 | MARY CARLSON | | 1 | 15 |
| F534082048 | A-1584 | HEIRS OF ANNA YELLOWEAD | | 1 | 15 |
| F534082048 | A-1584 | JOSEPH SULLIVAN | | 1 | 180 |
| F534082048 | A-1584 | PEARL JANE SULLIVAN BRAHMER | | 1 | 180 |
| F534082048 | A-1584 | JANE A. SULLIVAN | | 1 | 180 |
| F534082048 | A-1584 | RUTH SULLIVAN | | 1 | 72 |
| F534082048 | A-1584 | EVA SULLIVAN | | 1 | 72 |
| F534082048 | A-1584 | JAMES CADUE | | 1 | 540 |
| F534082048 | A-1584 | ALPHONSE WEASEL | | 1 | 810 |
| F534082048 | A-1584 | PHILOMENE CADUE | | 1 | 810 |
| F534082048 | A-1584 | MARTHA ANN CADUE | | 1 | 810 |
| F534082048A | A-1584 | MAGGIE BROWN HANKS | MAY TUN AUN E QUAY | 1 | 20 |
| F534082048A | A-1584 | SUSAN BROWN SMITH | O BE QUOD | 1 | 20 |
| F534082051 | O-4279 | O GA BAY AH DO QUAY | MARY COURTWAY | 12 | 24 |
| F534082051 | O-4279 | ME ZHE | SOPHIA WHITE | 3 | 24 |
| F534082051 | O-4279 | O GE MAH QUAINCE | JULIA JACKO | 3 | 24 |
| F534082051 | O-4279 | FRANK GISHKOK | | 1 | 24 |
| F534082051 | O-4279 | JOE GISHKOK | | 2 | 24 |
| F534082051 | O-4279 | O ZHAH WUSH KE BUN AISE | | 3 | 24 |
| F534082060 | O-2575 | PE SHE KEE WAH CNU | | 1 | 3 |

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Friday
March 10, 1989

Part III

# Department of Labor

Mine Safety and Health Administration

30 CFR Parts 56 and 57
Metal and Nonmetal Mines; Public Hearings on Proposed Rule

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**DEPARTMENT OF LABOR**

**Mine Safety and Health Administration**

**30 CFR Parts 56 and 57**

**Metal and Nonmetal Mines; Public Hearings**

**AGENCY:** Mine Safety and Health Administration, Labor.

**ACTION:** Notice of public hearings.

**SUMMARY:** The Mine Safety and Health Administration (MSHA) will hold public hearings on its proposal to revise existing safety standards for explosives at metal and nonmetal mines. The hearings will be held in Pittsburgh, Pennsylvania; Salt Lake City, Utah; and Irving, Texas. These hearings are in response to requests received from the public. Each hearing will cover the major issues raised by commenters in response to the proposed rule.

**DATES:** All requests to make oral presentations for the record should be submitted at least five days prior to each hearing date. However, immediately before each hearing begins, any unallotted time will be made available to persons making late requests.

The public hearings will be held at the following locations on the dates indicated, beginning at 9:00 a.m.

*Date and city*

April 6, 1989—Pittsburgh, PA
April 11, 1989—Salt Lake City, UT
April 13, 1989—Irving, TX

**ADDRESSES:** The hearings will be held at the following locations:

Holiday Inn—Pittsburgh Airport,1406 Beers School Road (See Hotel Locator for Room), Coraopolis, PA 15108

Salt Palace Center, Spruce Room—North Lobby Entrance, Between Second West & West Temple Streets, Salt Lake City, UT 84101

Holiday Inn D.F.W. Airport South, 4440 West Airport Freeway, Ballroom B, Irving, TX 75061

Send requests to make oral presentations to: Mine Safety and Health Administration, Office of Standards, Regulations and Variances, Room 631, 4015 Wilson Boulevard, Arlington, Virginia 22203.

**FOR FURTHER INFORMATION CONTACT:** Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, phone (703) 235-1910.

**SUPPLEMENTARY INFORMATION:** On November 10, 1988, MSHA published proposed revisions to its existing safety standards in 30 CFR Parts 56 and 57 for explosives at metal and nonmetal mines (53 FR 45487). The comment period for the proposed rule closed on February 10, 1989. In the comments filed to the proposed rule, MSHA received requests to hold public hearings.

The purpose of the public hearings is to receive relevant comment and to answer questions concerning the proposal. The hearings will be conducted in an informal manner by a panel of MSHA officials. Although formal rules of evidence will not appty, the presiding official may exercise discretion in excluding irrelevant or unduly repetitious material and questions.

Each hearing will begin with an opening statement from MSHA. The public will then be given an opportunity to make oral presentations. During these presentations, the hearing panel will be available to answer relevant questions. At the discretion of the presiding official, speakers may be limited to a maximum of 20 minutes for their presentations. Time will be made available at the end of each hearing for rebuttal statements. A verbatim transcript of each proceeding will be taken and made a part of the rulemaking record. Copies of the hearing transcript will be available for review by the public.

MSHA will also accept additional written comments and other appropriate data from any interested party, including those not presenting oral statements. Written comments and data submitted to MSHA will be included in the rulemaking record. To allow for the submission of any post-hearing comments, the record will remain open until May 31, 1989.

**Issues**

Commenters requested clarification or revision of specific provisions of the proposed rule, some of which received extensive comment. Several major issues are outlined in this notice. MSHA specifically solicits additional comment on them, in addition to any other aspects of the proposal.

**Storage—Surface and Underground**

*Areas around storage facilities*

Proposed § 56/57.6101 addresses the combustion hazards that can exist near a magazine from either the natural growth of vegetation or the accumulation of other materials which would support combustion.

MSHA received several comments on this standard. One commenter suggested modifying the standard to require establishing systematic procedures to minimize the accumulation of rubbish, brush or dry grass, rather than prohibiting their accumulation. The commenter suggested a revision that would not restrict the presence of materials used for the storage, transportation or hauling of explosives, such as pallets, magazine boxes or shipping boxes, all of which are "combustible."

Several commenters addressed the provision relating to the containment of combustible liquids in the event of leakage. One commenter stated that it should be permissible to totally dike the area surrounding the magazine. Others suggested that there is no need to slope drainage away from explosive storage facilities to prevent combustible liquid from entering the storage facility. One commenter stated that facilities containing combustible liquids are already addressed in MSHA's fire prevention and control standards in Subpart C of 30 CFR Parts 56 and 57.

Another commenter suggested that MSHA consider adding a minimum separation distance between combustible liquid storage tanks and explosive material storage areas consistent with MSHA's proposed table of distances.

*Location of storage facilities*

Proposed § 56/57.6131 addresses the location of surface magazines.

Many comments centered on the appropriateness of MSHA's table of distances for locating storage facilities away from dams, electric substations and mine openings. One commenter suggested that storage facilities be located in accordance with the Bureau of Alcohol, Tobacco and Firearm's minimum requirements. Another commenter felt that without additional data, it is incorrect for MSHA to say that the MSHA table is derived from the American Table of Distances (ATD) since the ATD was developed "to provide safe distances for storage of explosive materials from inhabited buildings, highways, passenger railways and between explosive materials magazines." MSHA specifically solicits further comment on this issue including information on the number of facilities that would be affected by changes in the proposed rule.

*Magazine requirements*

Proposed § 56/57.6132 addresses construction and housekeeping criteria for surface magazines. One commenter suggested the deletion of paragraphs (b), (d), (e), and (f) of the proposed standard. The commenter would replace these sections with a requirement that the magazines be "constructed to the specifications of 27 CFR Part 55"



construction requirements of the Bureau of Alcohol, Tobacco and Firearms. In general, these paragraphs require that magazines be noncombustible; equipped with electrical bonding connections; made of nonsparking materials on the inside; and ventilated to control dampness and excessive heating. The commenter also stated that MSHA has not produced data to justify paragraph (d) which requires bonding and grounding of magazines. The commenter stated that grounding systems require constant maintenance and that inadquately maintained systems present a greater danger than ungrounded magazines. MSHA requests additional data on the subject of bonding and grounding of magazines, particularly related to safety benefits and cost impact.

*Auxiliary Facilities*

Proposed § 57.6161 addresses facilities used to store explosive material near work places underground and establishes a new category of storage facilities, "auxiliary facilities." Several commenters believed the new category was inappropriate and suggested that MSHA's proposal be modified to accommodate the various storage practices currently in use that are dictated by the diversity of mining conditions. One commenter stated that a limit of one-week's supply of explosives in an auxiliary facility is overly restrictive. Another commenter stated that MSHA's approach to controlling access to the facilities should be performance-oriented and directed at controlling access to the mine rather than specifically requiring locking or attending the facilities. MSHA specifically requests additional comment concerning the appropriateness of this standard and, in particular, the one-week limitation on supplies.

**Transportation**

*Separation of explosive material*

Proposed § 56/57.6201 distinguishes between Class A and Class C detonators and specifies the transportation requirements for each. Under the proposal, Class A detonators, and Class C detonators in quantities of more than 1000, shall not be transported in a vehicle or conveyance with explosives or blasting agents unless the detonators are maintained in the original packaging. The proposal would permit Class C detonators to be transported in quantities up to 1000 with explosives or blasting agents if such detonators are in closed containers and separated from the explosives or blasting agents.

One commenter stated that the proposed standard does not cover all detonators on a mine property and that MSHA's proposed regulation is confusing. Another commenter recommended that MSHA retain the existing standard and stated that the proposed regulation would create additional hazards for miners by necessitating increased handling of explosive material.

*Vehicles*

Proposed § 56/57.6202 addresses the hazard of detonation of explosive materials during transportation on a mine vehicle.

One commenter stated that there are no known instances of detonation resulting from the build-up of heat and moisture in a delivery vehicle and suggested the deletion of paragraph (a)(5) which requires that vehicles be vented except when transporting in bulk. The commenter also stated that paragraph (a)(8), requiring that the vehicle be attended except when parked at the blast site and when loading is in progress, is impractical and unworkable. Another commenter recommended that MSHA modify the standard to have only one multipurpose dry-chemical fire extinguisher or a fire suppression system. Another stated that requiring the engine of a "shot fire buggy" to be turned off during placement of primers into drill holes slows the loading cycle and does not increase safety. The Agency solicits specific information quantifying any productivity loss resulting from this requirement.

**Use—Surface and Underground**

*Loading and blasting*

Proposed § 56/57.6306 deals with precautions during loading and blasting and would add several new provisions. Paragraph (b) requires that once loading begins, only activity directly related to the blasting operation be permitted within the blasting site. Some commenters stated that this provision is unnecessarily restrictive. They suggested that MSHA either modify the definition of "blast site" or modify the standard to allow work not related to blasting to continue within the blast site. MSHA solicits further comment on this proposed standard.

*Fuel oil requirements for ANFO*

Proposed § 56/57.6309 prohibits liquid hydrocarbon fuels with flash points lower than that of No. 2 diesel oil (125 degrees Fahrenheit) from being used to prepare ammonium nitrate-fuel oil (ANFO).

Several commenters, operating primarily in subarctic conditions, opposed this proposed limitation. One commenter suggested the standard be revised to allow the use of No. 1 diesel oil when weather temperatures are below 50 degrees Fahrenheit. The Agency is aware that the Institute of Makers of Explosives (IME) is meeting in May for a thorough discussion regarding the mixing of all explosive formulations. The Agency anticipates that, in accordance with the request of the IME, the record in this rulemaking can remain open for a sufficient time to allow the IME to submit further comment on this issue.

*Firing devices*

Proposed § 56/57.6405 deals with power sources and control of firing devices. MSHA continues to seek comments on the various parameters and costs associated with testing, repairing, and maintaining of blasting machines.

**Nonelectric Blasting—Surface and Underground**

*Nonelectric systems*

Proposed § 56/57.6501 addresses misfire hazards encountered in detonating cord blasting. A new provision in paragraph (a) requires the use of double trunklines or loop systems to help prevent misfires when blasting with any nonelectric system. Paragraphs (b) and (d) are also new provisions dealing with shock tube and gas tube blasting systems.

Several comments were received regarding this proposed standard. Some commenters supported the requirement for double trunklines. However, because of changing technology, several commenters felt MSHA should reconsider its proposal. One commenter suggested that the standard should only require the operator to follow the manufacturer's instructions.

Commenters also stated that it is common practice in underground mines to attach trunklines after loading each section of the face and before moving to load other portions of the round. Further, they stated that changing this practice would require additional loading equipment. MSHA requests specific information on the additional equipment required.

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Extraneous Electricity—Surface and Underground

*Precautions during storms*

Proposed § 56/57.6604 broadens the scope of the existing surface blasting standard to require that when an electrical storm is approaching, all personnel be withdrawn from surface blast areas and from underground operations capable of being initiated by lightning. MSHA is also considering requiring withdrawal when a storm is within five miles of the site, as determined by the use of specialized lightning detectors, when there is a likely hazard to employees working with explosive materials. MSHA seeks further discussion of this issue.

Date: March 7, 1989.

David C. O'Neal,

*Assistant Secretary for Mine Safety and Health.*

[FR Doc. 89-5506 Filed 3-9-89; 8:45 am]

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Part IV

## The President

Proclamation 5941—Federal Employees Recognition Week, 1989

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# Presidential Documents

Title 3—

The President

## Proclamation 5941 of March 8, 1989

## Federal Employees Recognition Week, 1989

By the President of the United States of America

A Proclamation

Nineteen hundred and eighty-nine marks the two hundredth year of uninterrupted governance under the Constitution of the United States. It is a fitting occasion to honor those of our fellow citizens who are pledged by solemn oath to "support and defend" that Constitution. As capable and dedicated Federal employees, these men and women have contributed to the success of free, democratic government both here and around the world.

Federal employees speed our mail, guard our borders, and care for our ailing veterans. They conduct medical research that will lead to cures for devastating illnesses, they man the spacecraft that probe the boundaries of the universe, and they help the men and women of the Armed Forces maintain our national security. In countless ways, Federal employees serve our country with skill and dedication, seeing to it that the will of the American people is carried out effectively.

Federal employees show us the meaning of public service off the job as well. Thousands of churches, fraternal lodges, voluntary associations, and community groups across the country have come to count on the generosity and active involvement of Federal employees.

Those individuals dedicated to serving our country as employees of the Federal Government deserve our respect, gratitude, and recognition. Accordingly, by House Joint Resolution 22, the Congress has designated the week beginning March 6, 1989, as "Federal Employees Recognition Week" and authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the week beginning March 6, 1989, as Federal Employees Recognition Week. I call upon the people of the United States to observe this occasion with appropriate ceremonies and activities, in recognition of the skillful and loyal service provided the Republic by employees of the Federal Government.

IN WITNESS WHEREOF, I have hereunto set my hand this eighth day of March, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and thirteenth.

George Bush

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Part V

## ACTION

MiniGrants; Availability of Funds; Notice

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**ACTION**

**MiniGrants; Availability of Funds**

**AGENCY:** ACTION.

**ACTION:** Notice of availability of funds.

**SUMMARY:** This notice announces the availability of funds for Fiscal Year 1989 under the ACTION MiniGrant Program authorized by the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93-113, Title I, Part C, 42 U.S.C. 4993).

The ACTION MiniGrant Program is intended to initiate, strengthen and/or supplement volunteer efforts and to encourage broad-based volunteer citizen participation which will develop and enhance community self-reliance. MiniGrants should be considered and used as a means to establish or strengthen activities and programs which demonstrate a solid potential for long-term effect.

Pursuant to MiniGrant Guidelines published in the **Federal Register** on October 12, 1984, (49 FR 40083), ACTION has established the MiniGrant funding priorities for Fiscal Year 1989. The project areas for which MiniGrants will be considered are as follows:

(1) Projects that focus on illicit drug use prevention and education activities for youth. These applications should:
—Focus on prevention rather than intervention or treatment;
—Emphasize strengthening the family;
—Provide positive alternatives to drug use;
—Create or enhance community coalitions against drug use; and
—Mobilize local resources to continue the project.

Applications incorporating "responsible use" of illicit drug methodologies will not be considered.

(2) Projects that focus on providing literacy training for:
—Individuals in need who reside in low-income communities or other underserved areas with a high concentration of illiteracy;
—Individuals who failed to complete elementary or secondary school and read at the zero to fourth grade levels;
—Parents of children between the ages of two and eight who themselves have minimal reading skills;
—People with limited proficiency in English, such as the English as a Second Language population, with a high need for functional proficiency in order to participate fully in American life, e.g. school and employment.

(3) Projects which provide services to children and families which may include:
—Meeting nutritional, physical, medical and mental health needs of infants and toddlers;
—Offering training for child care workers and practical education for parents;
—Providing early identification of developmental problems;
—Expanding services to infants and toddlers with physical and mental disabilities;
—Providing affordable quality child care to meet local needs;
—Expanding prenatal and postnatal health care for all women and children, especially the working poor and their dependents;
—Enhancing the ability of protective services to respond to child abuse and neglect; and
—Providing a broad range of family support activity.

(4) Projects which provide services to the homeless which may include:
—Basic survival services—such as food, shelter, and clothing;
—Stabilization services, dealing with a range of concerns, e.g., transportation, laundry, medical and mental health care, recreation, referral and advocacy;
—Growth services, e.g., counseling, job training, education programs, job search assistance, housing locator, etc.;
—Preventive services, e.g., mortgage and low-income energy assistance, and after care (post shelter) visits.

Subject to the availability of Fiscal Year 1989 funding, up to $150,000 will be available for grants not to exceed $8,400 each. Grant funding will be provided on a one-time, non-renewable basis for a budget period not to exceed one year. All grants of $3,500 or more in ACTION Federal funds require a minimum matching share of 10% (cash or in-kind) of the total grant cost, and a greater match is encouraged.

*Eligibility:* Public and private non-profit organizations which utilize, or will utilize volunteers as an integral part of their provision of services may apply for grants.

*Awards:* Publication of this announcement does not obligate ACTION to award any specific number of grants, or to obligate the entire amounts of funds available, or any part thereof.

*Deadlines:* One signed original and two copies of all completed applications will be submitted to the appropriate ACTION State Office, no later than 5:00 p.m. local standard time on April 21, 1989. Only those applications received at the appropriate office by the deadline will be eligible. Addresses of the State Offices will be included in the application package. In addition to the address list, the application package will contain an application form, a copy of the MiniGrant guidelines which were published in the **Federal Register**, October 12, 1984, and a guide to help individuals complete the application.

*Application Review:* ACTION's Program Demonstration and Development Division will review and evaluate all eligible applications submitted under this announcement. ACTION's Associate Director for Domestic and Anti-Poverty Operations will make the final selection.

To receive an application package, please contact your ACTION State Office. Following is an address list of ACTION Regional Offices, along with the addresses of ACTION State Offices under their jurisdiction.

**Region I**

—Mr. John F. Torain, ACTION Regional Director, 10 Causeway Street, Rm. 473, Boston, MA 02222-1039, (617) 565-7000.
—Mr. Romero A. Cherry, ACTION State Program Director, Abraham Ribicoff Federal Bldg., 450 Main Street, Rm. 524, Hartford, CT 06103-3002, (203) 240-3237.
—Mr. Thomas E. Endres, ACTION State Program Director, Federal Bldg., Rm. 305, 76 Pearl Street, Portland, ME 04101-4188, (207) 780-3414.
—Mr. Malcolm Coles, ACTION State Program Director, 10 Causeway Street, Room 473, Boston, MA 02222-1038, (617) 565-7015.
—Mr. Peter Bender, ACTION State Program Director, Federal Post Ofc. & Courthouse, 55 Pleasant Street, Room 316, Concord, NH 03301-3939, (603) 225-1450.
—Mr. Vincent Marzullo, ACTION State Program Director, John O. Pastore Fed. Bldg., Rm. 232, Two Exchange Terrace, Providence, RI 02903-1758, (401) 528-5424.

**Region II**

—Mr. Herbert W. Stupp, ACTION Regional Director, 6 World Trade Center, Rm. 758, New York, NY 10048-0206, (518) 472-3664.
—Mr. Stanley Gorland, ACTION State Program Director, 402 East State Street, District III—Room 422, Trenton, NJ 08608-1507, (609) 989-2243.
—Mr. Bernard A. Conte, ACTION State Program Director, 6 World Trade Center, Room 758, New York, NY 10048-0206, (212) 466-4471.
—Mr. Ruben Nazario, ACTION State Program Director, Federico DeGetau Federal Ofc. Bldg., Carlos Chardon Avenue, Suite G-49, Hato Rey, PR 00918-2241, (809) 766-5314 or 766-5188.



**Region III**

Ms. Maryann Urban, ACTION Regional Director, U.S. Customs House, Rm. 108, 2nd and Chestnut Street, Philadelphia, PA 19106-2912, (215) 597-9972.
Betsy Irvin Wells, ACTION State Program Director, Federal Building, Room 372-D, 600 Federal Place, Louisville, KY 40202-2230, (502) 582-6384.
Mr. Paul Schrader, ACTION State Program Director, Federal Bldg., Room 500, 85 Marconi Blvd., Columbus, OH 43215-2888, (614) 469-7441.
Ms. Jean Taylor-Brown, ACTION State Program Director, 603 Morris Street, 2nd Floor, Charleston, WVA 25301-1409, (304) 347-5246.
Ms Gloria Sokolowski, Acting ACTION State Program Director, U.S. Customs House, Room 108, 2nd and Chestnut Streets, Philadelphia, PA 19106-2998, (215) 597-3543.
Mr. Lindsay B. Scott, ACTION State Program Director, 400 North 8th Street, P.O. Box 10066, Richmond, VA 23240-1832, (804) 771-2197.
Mr. Jerry E. Yates, ACTION State Program Director, Federal Bldg., Box 257, 31 Hopkins Plaza, Room 1125, Baltimore, MD 21201-2814, (301) 962-4443.

**Region IV**

Evelyn Morrison, Acting ACTION Regional Director, 101 Marietta Street, NW., Suite 1003, Atlanta, GA 30323-2301, (404) 331-2859.
John D. Timmons, ACTION State Program Director, Beacon Ridge Tower, Room 770, 600 Beacon Parkway West, Birmingham, AL 35209-3120, (205) 254-1908.
Mr. Henry Jibaja, ACTION State Program Director, 930 Woodcock Road, Suite 221, Orlando, FL 32803-3750, (305) 648-6117.
Mr. David A. Dammann, ACTION State Program Director, 75 Piedmont Ave., NE., Suite 412, Atlanta, GA 30303-2587, (404) 331-4646.
Mr. Alfred E. Johnson, ACTION State Program Director, 265 Cumberland Bend Drive, Nashville, TN 37228-3889, (615) 251-5561.
Mr. Robert L. Winston, ACTION State Program Director, Federal Bldg., P.O. Century Station, Room 131, 300 Fayetteville Street Mall, Raleigh, NC 27601-1739, (919) 856-4731.
Mr. Arthur E. Brown, III, ACTION State Program Director, Federal Bldg., Room 1005-A, 100 West Capitol Street, Jackson, MS 39269-1092, (601) 965-4462.
Mr. Jerome J. Davis, ACTION State Program Director, Federal Building, Room 872, 1835 Assembly Street, Columbia, SC 29201-2430, (803) 765-5771.

**Region V**

Cynthia Rudmann, Acting ACTION Regional Director, 10 West Jackson Blvd., 6th Floor, Chicago, IL 60604-3964, (312) 353-5107.
Mr. James E. Braxton, ACTION State Program Director, 10 West Jackson Blvd., 6th Floor, Chicago, IL 60604-3964, (312) 353-8283.
Mr. Thomas L. Haskett, ACTION State Program Director, 46 East Ohio Street, Room 457, Indianapolis, IN 46204-1922, (317) 269-6724.
Mr. Joel H. Weinstein, ACTION State Program Director, Federal Building, Room 722, 210 Walnut St., Des Moines, IA 50309-2195, (515) 284-4816.
Mr. Stanley M. Stewart, ACTION State Program Director, Federal Bldg., Room 658, 231 West Lafayette Blvd., Detroit, MI 48226-2799, (313) 226-7848.
Mr. Peter A Marks, ACTION State Program Director, Old Federal Bldg., Room 126, 212 Third Avenue South, Minneapolis, MN 55401-2596, (612) 334-4063.
Mr. Michael P. Murphy, ACTION State Program Director, 517 East Wisconsin Avenue, Room 601, Milwaukee, WI 53202-4507, (414) 291-1118.

**Region VI**

Ms. Paulette E. Standefer, ACTION Regional Director, 1100 Commerce Street, Room 6B11, Dallas, TX 75242-0696, (215) 767-9494.
Mr. John J. McDonald, ACTION State Program Director, Federal Office Bldg., 911 Walnut, Room 1701, Kansas City, MO 64106-2009, (816) 426-5258.
Mr. Jerry G. Thompson, ACTION State Program Director, 611 East Sixth St., Suite 107, Austin, TX 78701-3747, (512) 482-5671.
Mr. Robert J. Torvestad, ACTION State Program Director, Federal Bldg., Room 2506, 700 West Capitol Street, Little Rock, AR 72201-3291, (501) 378-5234.
Mr. James M. Byrnes, ACTION State Program Director, Federal Bldg., Room 248, 444 SE. Quincy, Topeka, KS 66603-3501, (913) 295-2540.
Mr. Willard L. Labrie, ACTION State Program Director, 628 Main Street, Suite 102, Baton Rouge, LA 70801-1910, (504) 389-0471.
Mr. Ernesto Ramos, ACTION State Program Director, Old Federal Bldg., Cathedral Place, Room 129, Sante Fe, NM 87501-2026, (505) 988-6577.
Mr. Zeke Rodriquez, ACTION State Program Director, 200 NW. 5th Street, Suite 912, Oklahoma City, OK 73102-6093, (405) 231-5201.

**Region VIII**

Ms. Naomi L. Bradford, ACTION, Regional Director, Executive Tower Bldg., 1405 Curtis Street, Suite 2930, Denver, CO 80202-2349, (303) 844-2671.
Mr. Ben Knopp, ACTION State Program Director, Columbine Bldg., Room 301, 1845 Sherman Street, Denver, CO 80203-1167, (303) 866-1070.
Mr. Ben Knopp, ACTION State Program Director, Federal Bldg., Room 8036, 2120 Capitol Avenue, Cheyenne, WY 82001-3649, (303) 866-1070.
Mr. Joe R. Lovelady, ACTION State Program Director, Federal Office Bldg. Drawer 10051, 301 South Park, Room 192, Helena, MT 59626-0101, (406) 449-5404.
Ms. Anne C. Johnson, ACTION State Program Director, Federal Bldg., Room 293, 100 Centennial Mall North, Lincoln, NE 68508-3896, (402) 471-5493.
Mr. John C. Pohlman, ACTION State Program Director, Federal Bldg., Room 213, 225 S. Pierre Street, Pierre, SD 57501-2452, (605) 224-5996.
Mr. Gary S. O'Neal, ACTION State Program Director, U.S. Post Office & Courthouse, 350 South Main Street, Room 484, Salt Lake City, UT 84101-2198, (801) 524-5411.

**Region IX**

Ms. Teresa Keeshan, ACTION Regional Director, 211 Main Street, Room 350, San Francisco, CA 94105-1914, (415) 974-0673.
Mr. Ricardo Gerakos, ACTION State Program Director, Federal Bldg., Room 14218, 11000 Wilshire Blvd., Los Angeles, CA 90024-3671, (213) 209-7421.
Mr. Michael J. Gale, ACTION State Program Director, Federal Bldg., P.O. Box 50024, Honolulu, HI 96850-0001 (800) 541-2832.
Mr. Steven P. Gordon, ACTION State Program Director, 4600 Kietzke Lane, Suite E-141, Reno, NV 89502-5033, (702) 784-5314.
Mr. Jess A. Sixkiller, ACTION State Program Director, 522 North Central, Room 205-A, Phoenix, AZ 85004-2190, (602) 261-4825.

**Region X**

Mr. John Keller, ACTION Regional Director, Suite 3039, Federal Office Bldg., 909 First Avenue, Seattle, WA 98174-1103, (206) 442-1558.
Mr. Stephen Neal Stivers, ACTION State Program Director, Federal Bldg., Room 647, 511 NW Broadway, Portland, OR 97209-3416, (503) 221-2281.

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Mr. Jack R. Nunn, ACTION State Program Director, Suite 3039, Federal Office Bldg., 909 First Street Avenue, Seattle, WA 98174–1103, (206) 442–4075.

Mr. Wilford E. Overgaard, ACTION State Program Director, The Alaska Center, Suite 340, 1020 Main Street, Boise, ID 83702–5745, (208) 334–1707.

Mr. John A. Miller, ACTION State Program Director, Suite 3039, Federal Ofc. Bldg., 909 First Avenue, Seattle, WA 98174–1103, (206) 442–4075.

Donna M. Alvarado,

*Director, ACTION.*

[FR Doc. 89–5762 Filed 3–9–89; 11:10 am]

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Federal Register
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# Presidential Documents

Title 3—

The President

## Executive Order 12670 of March 9, 1989

## Nuclear Cooperation With EURATOM

By the authority vested in me as President by the Constitution and laws of the United States of America, including Section 126a(2) of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2155(a)(2)), and having determined that, upon the expiration of the period specified in the first proviso to Section 126a(2) of such Act and extended for 12-month periods by Executive Orders Nos. 12193, 12295, 12351, 12409, 12463, 12506, 12554, 12587, and 12629, failure to continue peaceful nuclear cooperation with the European Atomic Energy Community would be seriously prejudicial to the achievement of U.S. non-proliferation objectives and would otherwise jeopardize the common defense and security of the United States, and having notified the Congress of this determination, I hereby extend the duration of that period to March 10, 1990.

THE WHITE HOUSE,
*March 9, 1989.*

[FR Doc. 89-5930
Filed 3-10-89; 10:24 am]
Billing code 3195-01-M

**Editorial note:** For the text of the President's letters to the Speaker of the House of Representatives and the President of the Senate, dated Mar. 10, on nuclear cooperation with EURATOM, see the *Weekly Compilation of Presidential Documents* (vol. 24, no. 10).

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# Rules and Regulations

Federal Register
Vol. 54, No. 47
Monday, March 13, 1989

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

**DEPARTMENT OF AGRICULTURE**

**Farmers Home Administration**

**7 CFR Part 1951**

**Servicing and Collections**

**AGENCY:** Farmers Home Administration, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Farmers Home Administration (FmHA) amends its account servicing regulations to provide for the consolidation of the annual statement of loan accounts and the loan summary statements required by the Food Security Act of 1985. The intended effect is to consolidate the year end work load of the Agency and eliminate the cost of providing two annual statements to FmHA field offices for borrowers with loans made or insured under the Consolidated Farm and Rural Development Act. Other revisions are made to reflect changes in internal processing of account information.

**EFFECTIVE DATE:** March 13, 1989.

**FOR FURTHER INFORMATION CONTACT:** John E. Distler, Chief, Accounting Systems Planning and Design Branch I, Accounting Systems Planning Division, USDA, 1520 Market Street, St. Louis, MO 63103, Telephone (314) 425-4458.

**SUPPLEMENTARY INFORMATION:** This final action has been reviewed under USDA procedures established in Departmental Regulation 1512-1 which implements Executive Order 12291 and has been determined to be exempt from those requirements because it involves only internal agency management.

A loan summary statement is required for the loan programs listed in the Catalog of Federal Domestic Assistance under titles and numbers as follows: Farm Ownership Loans, 10.407; Farm Operating Loans, 10.406; Emergency Loans, 10.404; Soil and Water Loans, 10.416; Water and Waste Disposal Systems for Rural Communities, 10.418; and Community Facilities Loans, 10.423.

The first three of these listed programs are not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials.

This final action has been reviewed in accordance with FmHA Instruction 1940-G, "Environmental Program." FmHA has determined that this final action does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

The Food Security Act of 1985 (Pub. L. 99-198) requires that FmHA furnish to a borrower, upon their request, a loan summary statement for any loan made or insured under the Consolidated Farm and Rural Development Act. The Form FmHA 389-777, Loan Summary Statement, provides FmHA field offices with a detailed status of each loan for the loan summary period. Farmers Home Administration also produces a Form FmHA 450-14, Annual Statement of Loan Account, which is currently sent to the field offices and to all borrowers with loans made or insured by FmHA. Form FmHA 450-14 is being merged with the loan summary statement to provide a detailed summary of all loan activity to all borrowers.

The statement will reflect the detail of each loan for the reporting period, including the interest rate, outstanding principle due at the beginning of the period, amount of payments made during the period, amount due at the end of the period, allocation of payments, total amount due on all loans at the end of the period, and any delinquency. As of December 31 of each year, a hard-copy report will be produced and forwarded to each borrower, a copy will be retained in the borrower's file in the field office. In addition, at the end of each calendar quarter, a cumulative report will be produced on microfiche and retained in the Finance Office. Form FmHA 1951-9 will be created by the Agency's automated accounting system. The reporting period will begin on January 1, or the date of loan closing and end on December 31.

Since all field offices are now equipped with multifunction work stations and have the capability of retrieving current borrower information from the automated accounting system, the reference as to how the field offices will inquire about borrower information is being altered.

Also, the regulations are revised to reflect that a notice of the availability of loan summary statements is posted in FmHA offices and to contain a sample of this notice.

These changes in regulations are being made to advise FmHA field offices of the changes in the procedures to be followed when a borrower requests a loan summary statement and to formalize what already is being done regarding the posting of the notice of availability of loan summary statements in FmHA offices. This is internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rule making and the opportunity for comment are not required; this rule may be made effective less than 30 days after publication in the Federal Register.

**List of Subjects in 7 CFR Part 1951**

Account servicing, Credit, Loan programs—agriculture, Loan programs—housing and community development, Low and moderate income housing loans—servicing requirements, Reporting requirements, Rural areas.

Therefore, Chapter XVIII, Title 7, of the Code of Federal Regulations is amended as follows:

## PART 1951—SERVICING AND COLLECTIONS

1. The authority citation for Part 1951 is revised to read as follows:

**Authority:** 7 U.S.C. 1989, 42 U.S.C. 1480, 5 U.S.C. 301, 7 CFR 2.23, and 7 CFR 2.70

### Subpart A—Account Servicing Policies

2. § 1951.7 is amended by redesignating paragraph (g) as paragraph (h) and by adding a new paragraph (g) and revising paragraph (h) to read as follows:

**§ 1951.7 Accounts of borrowers.**

* * * * *

(g) *Inquiry for other than Multiple Family Housing (MFH) loans.* Inquiry for these loan programs will be made through field terminals using procedures

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in the "Automated Discrepancy Processing System (ADPS)" manuals.

(h) *Loan Summary Statements.* Upon request of a borrower, FmHA issues a loan summary statement that shows the account activity for each loan made or insured under the Consolidated Farm and Rural Development Act. The field office will post on the bulletin board a notice informing the borrower of the availability of the loan summary statement. See Exhibit A for a sample of the required notice.

(1) The loan summary statement period is from January 1 through December 31. The Finance Office forwards a copy of Form FmHA 1951–9, "Annual Statement of Loan Account," to field offices to be retained in borrower files as a permanent record of borrower activity for the year.

(2) Quarterly Forms FmHA 1951–9 are retained in the Finance Office on microfiche. These quarterly statements reflect cumulative data from the beginning of the current year through the end of the most recent quarter. If a borrower requests a loan summary statement with data through the most recent quarter, county supervisors may request copies of these quarterly or annual statements by sending Form FmHA 1951–57, "Request for Loan Summary Statement," to the Finance Office.

(3) When a loan summary statement is requested by the borrower, the field office will copy the applicable annual or quarterly Forms FmHA 1951–9. A copy(ies) of Form FmHA 1951–9; a copy of Form FmHA 1951–58, "Basis for Loan Account Payment Application for Farmer Program Loans;" and a copy of the promissory note showing borrower installments will constitute the loan summary statement provided to the borrower.

3. Subpart A of Part 1951 is amended by adding Exhibit A to read as follows:

**Exhibit A—Notice to FmHA Borrowers**

FmHA borrowers with farmer program and community program loan types made under the Consolidated Farm and Rural Development Act may request a loan summary statement which shows the calendar year account activity for each loan. Interested borrowers may request these statements through their local FmHA office.

**Subpart E—Servicing of Community Program Loans and Grants**

4. § 1951.207, paragraph (l) is revised to read as follows:

**§ 1951.207 General servicing actions.**

* * * * *

(l) *Loan Summary Statements.* Upon request of a borrower, FmHA issues a loan summary statement that shows the account activity for each loan made or insured under the Consolidated Farm and Rural Development Act. The field office will post on the bulletin board a notice informing the borrower of the availability of the loan summary statement. See Exhibit A of Subpart A of this part for a sample of the required notice.

(1) The loan summary statement period is from January 1 through December 31. The Finance Office forwards a copy of Form FmHA 1951–9, "Annual Statement of Loan Account," to be retained in borrower files as a permanent record of borrower account activity for the year.

(2) Quarterly Forms FmHA 1951–9 are retained in the Finance Office on microfiche. These quarterly statements reflect cumulative data from the beginning of the current year through the end of the most recent quarter. Servicing offices may request copies of these quarterly or annual statements by sending Form FmHA 1951–57, "Request for Loan Summary Statement," to the Finance Office.

(3) When a loan summary statement is requested by the borrower, the servicing office copies the applicable Forms FmHA 1951–9. A copy(ies) of Form FmHA 1951–9 and a printout from the multifunction work stations which reflects all future installments owed by the borrower will constitute the loan summary statement to be provided to the borrower.

Date: May 23, 1988.

**Vance L. Clark,**

*Administrator, Farmers Home Administration.*

[FR Doc. 89–5666 Filed 3–10–89; 8:45 am]

BILLING CODE 3410–07–M

## FEDERAL RESERVE SYSTEM

**12 CFR Part 201**

**[Regulation A]**

**Extensions of Credit by Federal Reserve Banks; Change in Discount Rates**

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Final rule.

**SUMMARY:** The Board of Governors has amended its Regulation A, "Extensions of Credit by Federal Reserve Banks," for the purpose of increasing discount rates.

The Board took this action in light of inflationary pressures on the economy.

The Board acted on requests submitted by the Boards of Directors of the twelve Federal Reserve Banks. The discount rate is the interest rate that is charged depository institutions when they borrow from their district Federal Reserve Bank.

**EFFECTIVE DATE:** This rule is effective on March 6, 1989. The discount rate changes were effective on the dates specified below.

**FOR FURTHER INFORMATION CONTACT:** William W. Wiles, Secretary of the Board (202/452–3257); for the hearing impaired *only*, Telecommunications Device for the Deaf (TTD) (202/452–3544), Earnestine Hill or Dorothea Thompson, Board of Governors of the Federal Reserve System, Washington, DC 20551.

**SUPPLEMENTARY INFORMATION:** Pursuant to the authority of sections 10(b), 13, 14, 19, *et al.*, of the Federal Reserve Act, the Board has amended its Regulation A to incorporate changes in discount rates on Reserve Bank extensions of credit. Further, under the authority of 5 U.S.C. 553(b)(3) (B) and (d)(3), these amendments are being published without prior general notice of proposed rulemaking, public participation, or deferred effective date. The Board has for good cause found that current economic and financial considerations require that these amendments be adopted immediately.

**List of Subjects in 12 CFR Part 201**

Banks, Banking, Credit, Federal Reserve System.

For the reasons outlined above, the Board of Governors amends 12 CFR Part 201 as set forth below:

**PART 201—[AMENDED]**

1. The authority citation for 12 CFR Part 201 continues to read as follows:

Authority: Secs. 10(a), 10(b), 13, 13a, 14(d) and 19 of the Federal Reserve Act (12 U.S.C. 347a, 347b, 343 *et seq.*, 347c, 348 *et seq.*, 357, 374, 374a and 461); and sec. 7(b) of the International Banking Act of 1978 (12 U.S.C. 347d).

2. Section 201.51 is revised to read as follows:

**§ 201.51 Short-term adjustment credit for depository institutions.**

The rates for short-term adjustment credit provided to depository institutions under § 201.3(a) of Regulation A are:

| Federal Reserve Bank | Rate | Effective |
|---|---|---|
| Boston | 7.0 | Feb. 24, 1989. |
| New York | 7.0 | Do. |
| Philadelphia | 7.0 | Do. |
| Cleveland | 7.0 | Do. |
| Richmond | 7.0 | Do. |
| Atlanta | 7.0 | Do. |
| Chicago | 7.0 | Do. |
| St. Louis | 7.0 | Do. |



| Federal Reserve Bank | Rate | Effective |
|---|---|---|
| Minneapolis | 7.0 | Do. |
| Kansas City | 7.0 | Do. |
| Dallas | 7.0 | Feb. 27, 1989. |
| San Francisco | 7.0 | Feb. 24, 1989. |

3. Section 201.52 is revised to read as follows:

**§ 201.52 Extended credit for depository institutions.**

(a) *Seasonal credit.* The rates for seasonal credit extended to depository institutions under § 201.3(b)(1) of Regulation A are:

| Federal Reserve Bank | Rate | Effective |
|---|---|---|
| Boston | 7.0 | Feb. 24, 1989. |
| New York | 7.0 | Do. |
| Philadelphia | 7.0 | Do. |
| Cleveland | 7.0 | Do. |
| Richmond | 7.0 | Do. |
| Atlanta | 7.0 | Do. |
| Chicago | 7.0 | Do. |
| St. Louis | 7.0 | Do. |
| Minneapolis | 7.0 | Do. |
| Kansas City | 7.0 | Do. |
| Dallas | 7.0 | Feb. 27, 1989. |
| San Francisco | 7.0 | Feb. 24, 1989. |

(b) *Other extended credit.* The rates for other extended credit provided to depository institutions under sustained liquidity pressures or where there are exceptional circumstances or practices involving a particular institution under § 201.3(b)(2) of Regulation A are:

| Federal Reserve Bank | Rate | Effective |
|---|---|---|
| Boston | 7.0 | Feb. 24, 1989. |
| New York | 7.0 | Do. |
| Philadelphia | 7.0 | Do. |
| Cleveland | 7.0 | Do. |
| Richmond | 7.0 | Do. |
| Atlanta | 7.0 | Do. |
| Chicago | 7.0 | Do. |
| St. Louis | 7.0 | Do. |
| Minneapolis | 7.0 | Do. |
| Kansas City | 7.0 | Do. |
| Dallas | 7.0 | Feb. 27, 1989. |
| San Francisco | 7.0 | Feb. 24, 1989. |

These rates apply for the first 30 days of borrowing. For credit outstanding for more than 30 days, a flexible rate will be charged which takes into account rates on market sources of funds, but in no case will the rate charged be less than the basic discount rate plus one-half percentage point. Where credit provided to a particular depository institution is anticipated to be outstanding for an unusually prolonged period and in relatively large amounts, the 30-day time period may be lengthened or shortened.

By order of the Board of Governors of the Federal Reserve System, March 6, 1989.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 89–5623 Filed 3–10–89; 8:45 am]

BILLING CODE 6210–01–M

## SMALL BUSINESS ADMINISTRATION

**13 CFR Part 124**

**Protest and Appeals Procedures Concerning Determinations of Social and Economic Disadvantaged Status as a Condition of Eligibility**

**AGENCY:** Small Business Administration.

**ACTION:** Final rule.

**SUMMARY:** The Small Business Administration (SBA) has established procedures to govern protests of social and economic disadvantaged status of certain small businesses and appeals of SBA's determinations of such status. These procedures apply to certifications of disadvantaged status for purposes of the Defense Department's (DoD's) Small Disadvantaged Business Set-Asides and Small Disadvantaged Business Evaluation Preferences, authorized under section 1207 of Pub. L. 99–661, the Subcontracting Program authorized by section 8(d) of the Small Business Act (15 U.S.C. 636(d)) and for any other Federal procurement program, excluding SBA's section 8(a) program, which requires SBA to determine social and economic disadvantage as a condition of eligibility.

**EFFECTIVE DATE:** March 13, 1989.

**FOR FURTHER INFORMATION CONTACT:** Jane Palagrove Butler, Deputy Director, Office of Program Eligibility, (202) 653–6813.

**SUPPLEMENTARY INFORMATION:** On June 8, 1988, SBA published a proposed rule establishing procedures to govern protests of social and economic disadvantaged status of certain small businesses and appeals of SBA's determination of such status. 53 FR 21482 (1988). These procedures apply to certifications of disadvantaged status for purposes of DoD's Small Disadvantaged Business Set-Asides and Small Disadvantaged Business Evaluation Preferences, authorized under section 1207 of Pub. L. 99–661, the Subcontracting Program authorized by section 8(d) of the Small Business Act and for any other Federal procurement program where disadvantaged status is a criterion of eligibility. The procedures, however, are not intended to apply to SBA's section 8(a) program, which requires SBA to determine social and economic disadvantage as a condition of eligibility. The reasons for the rule may be found in the preamble to the proposed rule at 53 FR 21482 (June 1988).

SBA has made five changes to the rule. First, SBA has amended § 124.605(b)(1)(iv) to clarify that protests brought by contracting officers must state their reasons for initiating a protest and may not be initiated merely by forwarding the protest of a third party. This amendment is made in response to the growing practice of some contracting officers who deliberately or unwittingly aid unsuccessful offerors in circumventing the SDB protest timeliness requirements by forwarding late protests without adopting the grounds for such protests as their own or further elaborating on such grounds.

In adopting this amendment, SBA considered the alternative of permitting contracting officers and SBA to initiate protests only until the date of contract award. This alternative was rejected, however, because it would limit the ability of the contracting officer to question the disadvantaged status of successful SDB offerors, even when the contracting officer was presented with persuasive evidence to the contrary. It is important that the benefits of the SDB program accrue only to small disadvantaged businesses. In negotiated procurements, especially, it is possible that the date of award might coincide with the date the unsuccessful offerors are notified. In such cases, any avenue or protest would be closed if contracting officers and SBA were precluded from initiating a protest after the date of award.

In order to prevent this undesirable result and to address the problem of circumvention of protest timeliness requirements, SBA has amended § 124.605 specifically to preclude such action on the part of contracting officers.

In § 124.608(c), the last sentence has been reworded to clarify that materials requested from the protested concern are late if they are not received by SBA's Director of the Office of Program Eligibility (for the Office of Minority Small Business and Capital Ownership Development) within ten days from the date the notification of the protest was received by the protested concern. Late submissions will not be considered in deciding the protest. SBA believes the expeditious operation of the procurement system and fairness to other eligible SDB concerns justify a strict timeliness requirement.

SBA has amended § 124.608(b)(2) to specify that SBA may allow an affidavit

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for a current 8(a) program participant in lieu of other documentation, and to limit such submission to 8(a) concerns for which SBA has conducted an annual review within the 12 month period preceding the date on which SBA receives the protest, and then only if proceedings to suspend, terminate or graduate the concern from the 8(a) program are not pending. If an annual review has not been conducted, or if suspension or removal proceedings are pending, an affidavit may not be allowed. These changes were made to more clearly reflect that the submission of an affidavit from the firm is at SBA's discretion, and to clearly indicate that the firm's 8(a) participation must be in good standing with SBA at the time of the submission of the affidavit.

SBA has amended § 124.608 to delete paragraph (3) which allowed a non-8(a) firm which has been found to be an eligible SDB within the past six months to submit an affidavit in lieu of other documentation. The affidavit procedure with respect to non-8(a) concerns was deleted because SBA determined that the administration of the affidavit system would be unduly burdensome on the Agency. In addition, the Agency believes that requiring complete documentation each time a protest is made would not place an undue hardship on the protested firm since the firm can merely update the documentation which it previously provided to SBA.

Finally, SBA has amended § 124.602 to include definitions for termination proceedings, graduation proceedings, suspension proceedings and annual review.

SBA provided a 30-day public comment period following publication of the proposed rule. SBA received two comments in response to the proposed rule.

One comment addressed the application of the ten percent evaluation preference for SDBs but did not comment on the proposed rule at all. SBA has forwarded the comment to the Department of Defense for its consideration.

The other commenter objected to limiting the potential protesters of disadvantaged status to SBA, the contracting officer and those who have submitted a bid on the requirement at issue. SBA has considered this comment and has decided not to adopt it in this final rule. Given the limited resources SBA has available to devote to SDB protests, the limitation on potential protesters is appropriate. Moreover, the regulation permits non-bidders to submit to the contracting officer or to SBA the information supporting their view that the disadvantaged status of the apparent low SDB bidder should be challenged.

SBA certifies that this rule is not a major rule for purposes of Executive Order 12291. The rule sets forth agency procedures for determining disadvantaged status. Utilization of and compliance with such procedures should not entail significant costs and will not approach an economic impact of $100 million.

SBA further certifies that this rule is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* Section 603 of that Act requires an agency to prepare a regulatory flexibility analysis whenever the agency is required by section 553 of the Administrative Procedure Act (5 U.S.C. 553) to publish a notice of proposed rulemaking. This rule is exempted from such requirements by 5 U.S.C. 553(b)(A) as it establishes agency procedures for challenging disadvantaged status.

This rule also will not impose any new reporting or recordkeeping requirements for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. Chapter 35. SBA Forms 1010A, 1010B, and 413, appearing in § 124.608, have been approved by the Office of Management and Budget under control numbers 3245-0015, 3245-0015, and 3245-0188, respectively.

**List of Subjects in 13 CFR Part 124**

Administrative practice and procedure, Government procurement, Minority business, Reporting and recordkeeping requirements, Technical assistance.

Accordingly, pursuant to sections 5(b)(6), 8(a) and 8(d) of the Small Business Act (15 U.S.C. 634(b)(6), 636(a) and 636(d)), Part 124 of title 13 CFR is amended as follows:

## PART 124—[AMENDED]

1. The authority citation is revised to read:

Authority: 15 U.S.C. 634(b)(6) 637(a), 637(d); Pub. L. 99-661 (sec. 1207).

2. The title of Part 124 is revised to read "Minority Small Business and Capital Ownership Development/Small Disadvantaged Business Status Protest and Appeal Procedures."

3. Sections 124.1 through 124.508 are designated as Subpart A, entitled "Section 8(a) and Section 7(j) Programs".

4. New Subpart B (consisting of §§ 124.601 through 124.610), entitled "Disadvantaged Business Status Protest and Appeal Procedures," is added as follows:

**Subpart B—Disadvantaged Business Status Protest and Appeal Procedures**

Sec.


124.601 Introduction.
124.602 General definitions.
124.603 Who may protest the disadvantaged status of a concern.
124.604 Who makes disadvantaged status determinations.
124.605 Protest procedures.
124.606 Grounds of protest.
124.607 Form and specificity of protest.
124.608 Notification of protest.
124.609 Making the disadvantaged status determination.
124.610 Appeals of disadvantaged status determinations.


**Subpart B—Disadvantaged Business Status Protest and Appeal Procedures**

**§ 124.601 Introduction.**

(a) This subpart sets forth the procedures to be used whenever the SBA is asked to make a determination as to whether a particular concern is "disadvantaged" for purposes of Department of Defense's (DoD's) Small Disadvantaged Business (SDB) set-aside contracts and SDB evaluation preferences, authorized by section 1207 of the National Defense Authorization Act for Fiscal Year 1987, Pub. L. 99-661, SBA's section 8(d) subcontracting program, and any other Federal procurement program requiring SBA to determine social and economic disadvantage as a condition for eligibility. These procedures are separate and distinct from those governing size protests and appeals.

(b) In determining the disadvantaged status of a protested concern, the SBA shall utilize the definitions of social and economic disadvantage and other eligibility requirements established in Subpart A of Part 124 of this title, including the requirements placed on ownership and control. In addition, for purposes of SDB set-asides and SDB evaluation preferences only, there is the additional requirement that the majority of the earnings of the concern directly accrue to the disadvantaged individual who owns and controls it. SBA shall apply these definitions in accordance with the presumption contained in section 8(d) of the Small Business Act (15 U.S.C. 636(d)).

(c) All protests relating to whether a concern is a "small" business for purposes of any Federal program requiring such a condition for eligibility, including SDB set-asides and SDB evaluation preferences, are to be filed pursuant to the procedures set forth in § 121.9 of these regulations. The rules contained in Part 121 apply to all such size determinations. For purposes of



SDB set-asides, SDB evaluation preferences and the section 8(a) subcontracting program, the size standard contained in the solicitation is the applicable size standard for the requirement. An appeal of such a size determination may be made pursuant to § 121.11 of these regulations.

**§ 124.602 General definitions.**

(a) *Annual Review.* SBA's annual review and evaluation of financial statements, eligibility certifications submitted by the 8(a) concern, and such other submissions as may be required of Program Participants to ascertain continued eligibility of a concern for participation in the 8(a) program.

(b) *Appeal.* A request for re-examination of the initial SBA determination regarding a protest.

(c) *Associate Administrator for Minority Small Business and Capital Ownership Development (AA/MSB&COD).* The SBA official who is responsible for deciding appeals of disadvantaged status.

(d) *Control.* See § 124.104, Title 13, CFR.

(e) *Current Section 8(a) Program Participant.* Any business concern which is approved for participation in the section 8(a) program as of the date on which SBA receives the protest on the solicitation at issue.

(f) *Director, Office of Program Eligibility.* For purposes of this section, the term Director shall include the head of the Office of Program Eligibility or any individual which he/she designates.

(g) *Office of Program Eligibility (OPE).* The SBA office within the Office of Minority Small Business and Capital Ownership Development which is responsible for making determinations regarding protests of disadvantaged status.

(h) *Economic Disadvantage.* See § 124.106, Title 13, CFR.

(i) *Graduation Proceeding.* See § 124.110(k), Title 13, CFR.

(j) *Ownership.* See § 124.103, Title 13, CFR.

(k) *Protest.* An initial challenge of the disadvantaged status of a business concern.

(l) *Small Disadvantaged Business (SDB) Concern.* A business concern, including mass media:

(1) Which is small as defined pursuant to section (3) of the Small Business Act and implementing regulations at 13 CFR Part 121;

(2) Which is at least 51 per centum owned by one or more socially and economically disadvantaged individuals as defined by §§ 124.105 and 124.106, Title 13, CFR; or in the case of any publicly owned business, at least 51 per centum of the stock of which is owned by one or more socially and economically disadvantaged individuals;

(3) Which has the majority of its earnings accruing directly to such individuals; and

(4) Whose management and daily business operations are controlled by one or more of such individuals.

(m) *Social Disadvantage.* See § 124.105, Title 13, CFR.

(n) *Suspension Proceeding.* See § 124.113, Title 13, CFR.

(o) *Termination Proceeding.* See § 124.112, Title 13, CFR.

**§ 124.603 Who may protest the disadvantaged status of a concern.**

(a) In connection with a specific SDB set-aside requirement or a requirement for which the apparent low bidder is an SDB which has invoked its SDB evaluation preference, the following entities may protest the disadvantaged status of a concern which is the apparent low responsible offeror:

(1) Any other concern which submitted an offer for that requirement;

(2) The procuring agency contracting officer; and

(3) The Small Business Administration.

(b) In connection with an 8(d) subcontract, the procuring agency contracting officer or SBA may protest the disadvantaged status of a proposed subcontractor. Other small business subcontractors and the prime contractor may submit information to the contracting officer in an effort to persuade the contracting officer to initiate a protest.

(c) Protests of disadvantaged status relating to other Federal procurement programs, excluding SBA's section 8(a) program, which require SBA to determine social and economic disadvantage as a condition of eligibility, may be filed by the Federal agency official responsible for determining program eligibility, and any other interested party.

**§ 124.604 Who makes disadvantaged status determinations.**

In response to a protest challenging the disadvantaged status of a concern, the SBA's Director of the Office of Program Eligibility (OPE), or such person as the Director shall designate, in the Office of Minority Small Business and Capital Ownership Development (MSB&COD) shall determine whether the concern is disadvantaged.

**§ 124.605 Protest procedures.**

(a) *Filing.* (1) Except in cases where the contracting officer or SBA initiates a protest, all protests shall be directed to the procuring agency contracting officer responsible for the particular requirement.

(2) In cases where the contracting officer initiates a protest, he/she shall file the protest with SBA in accordance with paragraph (c) of this section and shall provide notification in accordance with § 124.608 of this part.

(3) In cases where SBA initiates a protest, the protest shall be referred to the Office of Program Eligibility within the Office of MSB&COD and notification shall be provided in accordance with § 124.608 of this part.

(b) *Timeliness of Protest.*—(1) *SDB Set-Aside and SDB Evaluation of Preference Protest*—(i) *Written SDB Set-Aside Protest.* In order for a written protest submitted by a business concern in connection with a specific SDB set-aside requirement to be considered timely, it must be received by the contracting officer prior to the close of business on the fifth day, exclusive of Saturdays, Sundays and legal holidays, after the bid opening date for sealed bids, or after the receipt from the contracting officer of notification of the identity of the prospective awardee in negotiated acquisitions.

(ii) *Written SDB Evaluation Preference Protest.* In order for a protest by a business concern to be timely when challenging the SDB status of an apparent low bidder to which an SDB evaluation preference has been applied, it must be received by the contracting officer prior to the close of business on the fifth day, exclusive of Saturdays, Sundays and legal holidays, after the receipt from the contracting officer of notification of the prospective awardee.

(iii) *Oral Protests.* A protest for SDB set-asides or SDB evaluation preferences shall also be considered timely if made orally to the contracting officer within the allotted 5-day period, and the contracting officer thereafter receives a confirming letter postmarked no later than one calendar day after the date of such telephone protest.

(iv) A protest by the contracting officer or SBA shall be timely for the purpose of the SDB acquisition in question whether filed before or after award. However, when a protest is brought by the contracting officer, it must be brought on his or her own behalf stating the grounds for such protest. The contracting officer may not initiate a protest merely by forwarding to SBA the protest of a third party.

(v) A protest received after the time limits set forth above shall not be considered.

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(2) *Section 8(d) Protests.* (i) In order for a protest in connection with an 8(d) subcontract to be considered timely, it must be received by the contracting officer prior to the completion of performance by the intended 8(d) subcontractor.

(ii) A protest received after subcontract performance by the intended 8(d) subcontractor shall not be considered.

(3) Protests, in connection with any procurement, which are filed by any person before bid opening or notification of intended award, whichever applies, shall be considered premature and shall not be forwarded to SBA, but shall be returned to the protestor without action.

(c) *Referral to SBA.* (1) Any contracting officer who receives a timely protest shall promptly forward such protest to the SBA's Director of the Office of Program Eligibility, Office of Minority Small Business and Capital Ownership Development, 1441 L Street, NW., Washington, DC 20416.

(2) When a contracting officer receives a protest and refers it to the SBA, such referral shall contain the following:

(i) The protest and any accompanying materials;

(ii) The date on which the protest was received and a determination as to timeliness;

(iii) A copy of the protested concern's self-certification as to disadvantaged status; and

(iv) The date of bid opening or the date on which notification of the apparent successful offeror was sent to all unsuccessful offerors, as applicable.

(3) A protest by a Federal agency in connection with a procurement program requiring SBA to determine social and economic disadvantage as a condition of eligibility shall be accompanied by any materials in the possession of the agency which cause it to question the disadvantaged status of the concern.

**§ 124.606 Grounds of protest.**

(a) Protests challenging the social disadvantage of the protested concern must demonstrate that the protested concern is not owned and controlled by one or more socially disadvantaged individuals as defined by Subpart A of this part. A protest could challenge the social disadvantage of the protested concern by submitting evidence that:

(1) The individuals who own and control the protested concern have not been subjected to, or have overcome racial or ethnic prejudice or cultural bias, or

(2) The individuals associated with the protested concern who could be considered socially disadvantaged do not actually own and control the protested concern.

(b) Protests challenging the economic disadvantage of the protested concern must demonstrate that the protested concern is not owned and controlled by one or more economically disadvantaged individuals as defined in Subpart A of this part.

**§ 124.607 Form and specificity of protest.**

(a) No specific form is required for a protest under this subpart.

(b) A protest must be sufficiently specific to provide reasonable notice as to the ground(s) upon which the protested concern's disadvantaged status is challenged and to call into question the disadvantaged status of the protested concern. A protest merely alleging that the protested concern is not disadvantaged, without setting forth any basis for the allegation, will not be deemed to specify adequate grounds for the protest. Some basis for the belief stated in the protest must be given. However, the contracting officer shall forward all protests received to SBA for a decision on whether to pursue the determination of disadvantaged status.

(c) Protests which do not contain sufficient specificity may be dismissed by the SBA.

(d) A dismissal by the Director of OPE of a protest for lack of specificity may be appealed to SBA's AA/MSB&COD pursuant to § 124.609 of these regulations.

**§ 124.608 Notification of protest.**

(a) Upon receipt of a protest challenging the disadvantaged status of a concern, the Director of OPE shall immediately notify the protestor and the contracting officer of the date such protest was received and whether it will be processed or dismissed for lack of specificity.

(b) In cases where the protest is sufficiently specific, the Director of OPE shall also immediately advise the protested concern of the receipt of the protest and forward to the protested concern a copy of the protest.

(1) In such cases, the Director of OPE is authorized to ask the protested concern to provide any or all of the following information and documentation: a completed SBA Form 1010A, "Statement of Personal Eligibility" for each individual claiming disadvantaged status; a completed SBA Form 1010B, "Statement of Business Eligibility;" a completed SBA Form 413, "Personal Financial Statement," no older than 60 days, for each individual claiming disadvantaged status; whether the protested concern, or any of its owner(s), officers or directors have applied for admission to or participated in the SBA's section 8(a) program and if so, the name of the company which applied for 8(a) participation and the date of the application; business tax returns for the last two completed fiscal years; personal tax returns for the last two completed fiscal years; personal tax returns for the last two years for all officers, directors and for any individual owning at least 5% of the business entity; business financial statements for the last two completed fiscal years, and current business financial statements no older than 60 days; articles of incorporation, corporate by-laws, or partnership agreements, as appropriate; and any other information which the Director of OPE deems necessary to permit a determination as to the social and/or economic disadvantaged status of the protested concern.

(2) Unless the protest presents specific information which would call into question the veracity of the application documents filed by a current participant in SBA's section 8(a) program, SBA may allow such a concern to submit, in lieu of the information specified in paragraph (b)(1) of this section, a sworn affidavit by its owner, managing partner, President or Chief Executive Officer that the 8(a) application and any amendments thereto remain accurate, and that circumstances concerning the ownership and control of the business and the disadvantaged status of its principal(s) have not changed since the most recent annual review. If the ownership and/or control of the business have changed since the date of the most recent annual review, the protested concern must comply with paragraph (b)(1) of this section. An affidavit may be allowed only if SBA has conducted an annual review of the 8(a) participant firm during the 12-month period preceding the date on which SBA receives the protest; and if proceedings to suspend, terminate or graduate the concern from the 8(a) program are not pending.

(3) Notwithstanding the exceptions in paragraph (b)(2) of this section, the Director of OPE is authorized to request any document which he/she deems necessary to determine disadvantaged status.

(c) Within 10 working days of the date that notification of the protest was received from the Director of OPE, the protested concern must deliver to the Director of OPE by hand or by mail the information and documentation requested pursuant to paragraph (b)(1) of this section or the affidavit permitted by paragraph (b)(2) of this section.



Materials submitted by mail must be received by the close of business on the 10th working day. Materials, including affidavits, not received by close of business on the 10th working day shall not be considered in deciding the protest.

**§ 124.609 Making the disadvantaged status determination.**

(a) *General.* The Director of OPE shall make a disadvantaged status determination within 15 working days after receipt of a protest challenging such status, or as soon thereafter as possible. If, in connection with an SDB acquisition or other procurement requirement, the SBA cannot make such a determination within 15 working days, the Director of OPE shall inform the contracting officer responsible for the particular requirement when a determination is expected to be made.

(b) *Time Limits for Response.* If the information and documentation requested by SBA under § 124.608(b) is not received by the Director of OPE within the 10-day period as required by § 124.608(c), SBA may determine the protested concern to be non-disadvantaged.

(c) *Withdrawal of Protest.* Once properly instituted by the filing of a specific disadvantaged status protest, the determination may be completed by the SBA even if the protest is withdrawn or the SDB acquisition or other procurement requirement in question is cancelled or awarded. The continuation of the disadvantaged status determination is discretionary with the SBA.

(d) *Basis for Determination.* (1) Except with respect to a concern which is a current participant in SBA's section 8(a) program or a concern authorized by § 124.609(b) of this part to submit an affidavit concerning its disadvantaged status, the disadvantaged status determination shall be based on the protest record as supplied by the protestor, protested concern, SBA or others.

(2) If deemed necessary or appropriate, the SBA may make a part of the protest record information in its files and information submitted in response to requests to the protestor, the protested concern, the contracting officer, or other persons for additional specific information.

(3) In determining disadvantaged status, SBA shall review ownership and control of each protested firm as well as social and economic disadvantage regardless of the grounds specified in the protest.

(e) *Disadvantaged Status Determination.* The SBA shall base its disadvantaged status determination upon the record, including reasonable inferences therefrom. SBA shall render a written determination including the basis for its findings and conclusions.

(f) *Summary Determination for Current 8(a) Participant.* The SBA may summarily determine that a concern is socially and economically disadvantaged if that concern is a current participant in the SBA's section 8(a) program so long as SBA has completed an annual review of the concern within the previous 12 month period unless the protested concern cannot submit or fails to submit an affidavit authorized by § 124.608(b) of these regulations. This summary determination shall not apply if suspension, termination, or graduation proceedings are pending against the concern.

(g) *Notification of Determination.* After making its disadvantaged status determination, the SBA shall immediately notify the contracting officer, the protestor, and the protested concern of its determination. No later than one business day thereafter, SBA shall provide by certified mail, return receipt requested, a copy of its written determination to the protested concern and, consistent with the Privacy Act (5 U.S.C. 552a) and Freedom of Information Act (5 U.S.C. 552), to all other parties to the proceeding.

(h) *Results of an SBA Disadvantaged Status Determination.* (1) A disadvantaged status determination becomes effective immediately and remains in full force and effect unless and until reversed upon appeal by SBA's AA/MSB&COD pursuant to § 124.610 of this part.

(2) A concern which was determined to be non-disadvantaged may certify itself as a disadvantaged business for purposes of future SDB evaluation preferences, future SDB acquisitions, 8(d) subcontracts, and other Federal procurement programs requiring disadvantaged status as a condition for eligibility provided that it has a good faith belief that it has changed the conditions upon which the determination of non-disadvantaged status was based. At the time of such certification, the concern shall notify the contracting officer that it was previously determined to be non-disadvantaged. However, if such concern is the lowest responsive offeror for an SDB acquisition, or for any requirement by involving its SDB evaluation preference, or is otherwise deemed eligible for a Federal procurement program requiring disadvantaged status as a condition for eligibility, the contracting officer shall treat such certification as a protest of the concern's disadvantaged status and shall forward it to SBA pursuant to § 124.605(c) of this part. SBA shall process a protest based on such certification in accordance with the provisions of this part.

(3) If a current 8(a) participant is found to be non-disadvantaged as a result of failure to submit the affidavit permitted by § 124.608(b)(ii) of this part, or for other cause, the concern will be subject to the same certification and notice requirements specified in paragraph (i)(2) of this section. However, a determination of non-disadvantaged status will not automatically terminate the concern's 8(a) program participation. A hearing before an administrative law judge is required before a firm can be terminated from the 8(a) program, *see* § 124.112 of this part.

(i) *Misrepresentation of Disadvantaged Status.* (1) A concern which was determined to be non-disadvantaged and which has not overcome or changed the circumstances which caused this determination cannot certify itself to be disadvantaged for future SDB acquisitions, 8(d) subcontracts, and other Federal procurement programs requiring disadvantaged status as a condition for eligibility. A certification of disadvantaged status by such a firm may be deemed a misrepresentation of disadvantaged status.

(2) A concern which was previously determined to be non-disadvantaged and certifies, in good faith, that it is a disadvantaged business for a subsequent SDB acquisition, SDB evaluation preference, 8(d) subcontract, or other Federal procurement program requiring disadvantaged status as a condition for eligibility, must nevertheless inform the contracting officer that it previously had been determined by the SBA to be non-disadvantaged. Failure to advise the contracting officer of such a non-disadvantaged status determination by the SBA may be deemed a misrepresentation of disadvantaged status.

**§ 124.610 Appeals of disadvantaged status determinations.**

(a) Appeals to re-examine disadvantaged status determinations may be filed with the SBA's AA/MSB&COD by any of the following:

(1) The concern whose disadvantaged status was determined by the Director of OPE;

(2) The original protestor; and

(3) The procuring agency contracting officer responsible for the SDB

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acquisition or other procurement requirement in question.

(b) Notice of an appeal must be provided to the protested concern, the original protestor, and the procuring agency contracting officer responsible for the SDB acquisition or other procurement requirement in question.

(c)(1) An appeal must be in writing and must be received by the Associate Administrator for Minority Small Business and Capital Ownership Development, U.S. Small Business Administration, 1441 L Street, NW., Washington, DC 20416, no later than 5 working days after the date of receipt of such determination.

(2) An untimely appeal shall be dismissed.

(d) *Grounds for Appeal.* The SBA will re-examine a disadvantaged status determination only if there was a clear and significant administrative error in the processing of such decision, or if the Director of OPE completely failed to consider a significant fact contained within the materials supplied by the protestor or the protested concern. Disadvantaged status determinations shall not be re-examined based on additional information or changed circumstances which were not disclosed to the Director of OPE at the time of his/her decision.

(e) No specific form is required for the appeal. However, the appeal must identify the disadvantaged status determination for which a re-examination is sought, set forth a full and specific statement of the reasons as to why the disadvantaged status determination is alleged to be erroneous pursuant to paragraph (d) of this section, and present arguments in support of such allegations.

(f) An appeal may proceed to completion even though an award of the SDB acquisition or other procurement requirement which prompted the initial protest has been made. In such a case, however, a reversal by the AA/MSB&COD shall not apply to the awarded SDB acquisition or other awarded procurement requirement and shall have future effect only.

(g) The appeal will be decided by the AA/MSB&COD within 5 working days of its receipt, if practicable.

(h) The appeal decision shall be based on all the information and documentation in the record. A copy of the decision shall be provided to the protested concern by certified mail, return receipt requested. To the extent consistent with the Privacy Act and the Freedom of Information Act, all parties to the proceeding shall be notified of SBA's final decision.

(i) The decision of the AA/MSB&COD is the final decision of the Small Business Administration.

Date: January 24, 1989.

**James Abdnor,**

*Administrator.*

[FR Doc. 89-5121 Filed 3-10-89; 8:45 am]

BILLING CODE 8025-01-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 88-NM-09-AD; Amdt. 39-6164]**

### Airworthiness Directives; Boeing Model 747 Series Airplanes Equipped With General Electric CF6-45/50 Series Engines or Rolls Royce RB211-524 Engines; McDonnell Douglas Model DC-9 Series Airplanes, Including Model DC-9-80 Series Airplanes, Model MD-88 Airplanes, and C-9 (Military) Airplanes; McDonnell Douglas Model DC-10 Series Airplanes and KC-10 (Military) Airplanes; Airbus Industrie Model A300 Series Airplanes, Model A300-600 Series Airplanes Equipped With General Electric CF6-80C2 Engines, and Model A310 Series Airplanes Equipped with Pratt & Whitney (P&W) 4000 Series Engines

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain transport category airplanes identified above, which requires inspection and replacement, if necessary, of certain main fuel supply and vapor recovery hoses. This amendment is prompted by reports of premature degradation of the hoses, which has resulted in fuel leakage. This condition, if not corrected, could result in a fire in the airplane engine compartments.

**EFFECTIVE DATE:** March 30, 1989.

**ADDRESSES:** The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124; McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1-L00 (54-60); or Airbus Industrie, Product Support Division, Avenue Didier Daurat, 31700 Blagnac Cedex, France. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the FAA, Central Region, Chicago Aircraft Certification Office, 2300 East Devon Avenue, Room 232, Des Plaines, Illinois.

**FOR FURTHER INFORMATION CONTACT:** Mr. Les Taylor, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Central Region, 2300 East Devon Avenue, Room 232, Des Plaines, Illinois 60018; telephone (312) 694-7126.

**SUPPLEMENTARY INFORMATION:** The FAA has received several reports of failure of certain main fuel supply and vapor recovery hoses on various transport category airplanes, and consequent fuel leakage. The suspect hoses were manufactured using a material that has subsequently been found to be understrength in that it degrades prematurely under certain heat conditions. This hose material was manufactured by Aeroquip Corporation and the suspect hoses are installed in 601-type hose assemblies. The suspect fuel supply hoses bear cure date codes of 3Q84 through 2Q87; the suspect vapor recovery hoses bear cure date codes of 2Q84 through 3Q87. The suspect bulk 601 hose has a CAGE code of 50656 (regardless of cure date code).

Failure of the main fuel supply or vapor recovery hose could result in a fire in the airplane engine compartments.

The FAA has reviewed and approved the following service bulletins, which describe procedures for inspection of the main fuel supply and vapor recovery hoses on the various affected airplanes, and replacement of the hoses, if necessary:

| Airplane | Manufacturer | Service Bulletin | Date |
|---|---|---|---|
| B-747 series with CF6-45/50 engines | Boeing | 747-73A3046 | June 9, 1988. |
| B-747 series with RB211-524 engines | Boeing | 747-73A2049 | December 8, 1988. |
| DC-9 series, DC-9-80 series, Model MD-88 | McDonnell Douglas | A73-10, Rev. 1 | June 22, 1988. |
| DC-10 series | McDonnell Douglas | A73-21 | June 23, 1988. |



Additionally, Airbus Industrie has issued the following service bulletins which describe similar procedures:

| Airplane | Manufacturer | Service Bulletin | Date |
|---|---|---|---|
| A300 | Airbus Industrie | A300-73-009 | September 30, 1988. |
| A300-600 | Airbus Industrie | A300-73-6009 | October 11, 1988. |
| A310 | Airbus Industrie | A310-73-2011 Rev. 1 | September 27, 1988. |

Airbus Industrie Model A300, A300-600, and A310 series airplanes are manufactured in France and type certificated in the United States under the provisions of section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this situation is likely to exist or develop on other airplanes of the same type designs, this AD requires inspection of the main fuel supply and vapor recovery hoses and, if fuel leakage is detected, replacement of the hoses prior to futher flight, in accordance with the applicable service bulletin previously described. If fuel leakage is not detected, the suspect hoses must be repetitively inspected until replaced with serviceable hoses. Such replacement constitutes terminating action for the repetitive inspections. This section also prohibits the installation of bulk 601 hose with CAGE code of 50656.

The Direction Générale de L'Aviation Civile (DGAC), which is the airworthiness authority of France, has issued a similar airworthiness directive addressing this subject.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required).

### List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

### PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

### § 39.13 [Amended]

2. By adding the following new airworthiness directive:

**Boeing, McDonnell Douglas, and Airbus:** Applies to Boeing Model 747 series airplanes equipped with General Electric CF6-45/50 series engines, as listed in Boeing Alert Service Bulletin 747-73A2048, dated June 9, 1988; Boeing Model 747 series airplanes equipped with Rolls Royce RB211-524 engines, as listed in Boeing Alert Service Bulletin 747-73A2049, dated December 8, 1988; McDonnell Douglas Model DC-9 series airplanes, including Model DC-9-80 series airplanes, Model MD-88 airplanes, and C-9 (Military) airplanes, as listed in McDonnell Douglas Service Bulletin A73-10, Revision 1, dated June 22, 1988; McDonnell Douglas Model DC-10 series airplanes and KC-10 (Military) airplanes, as listed in McDonnell Douglas Alert Service Bulletin A73-21, dated June 23, 1988; Airbus Industrie Model A300 series airplanes, as listed in Airbus Industrie Service Bulletin A300-73-009, dated September 30, 1988; Airbus Model A300-600 series airplanes equipped with General Electric CF6-80C2 engines, as listed in Airbus Industrie A300-73-6009, dated October 11, 1988; and Airbus Model A310 series airplanes equipped with Pratt & Whitney (P&W) 4000 series engines, as listed in Airbus Industrie Service Bulletin A310-73-2011, Revision 1, dated September 27, 1988; certificated in any category.

Compliance is required as indicated, unless previously accomplished.

To prevent engine compartment fires due to fuel leakage from degraded hose assemblies, accomplish the following:

A. Within 30 days after the effective date of this amendment, inspect the main fuel and vapor recovery hose assembly for fuel leakage and determine the cure date code contained on both the main fuel supply hose and the vapor recovery hose, in accordance with Boeing Alert Service Bulletin 747-73A2048, dated June 9, 1988 (for Model 747 series airplanes equipped with General Electric CF6-45/50 series engines); Boeing Alert Service Bulletin 747-73A2049, dated December 8, 1988 (for Boeing Model 747 series airplanes equipped with Rolls Royce RB211-524 engines); McDonnell Douglas Service Bulletin A73-10, Revision 1, dated June 22, 1988 (for Model DC-9 and DC-9-80 series airplanes, and Model MD-88 airplanes); McDonnell Douglas Service Bulletin A73-21, dated June 23, 1988 (for Model DC-10 series airplanes); Airbus Industrie Service Bulletin A300-73-009, dated September 30, 1988 (for Model A300 series airplanes); Airbus Industrie A300-73-6009, dated October 11, 1988 (for Model A300-600 series airplanes); or Airbus Industrie Service Bulletin A310-73-2011, Revision 1, dated

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September 27, 1988 (for Model A310 series airplanes). The affected hose assemblies are Aeroquip Part Numbers (P/N):

| | |
|---|---|
| AE10008444H0140 | AE704313-1. |
| AE703400-3 | AE704312-2. |
| AE703402-2 | AE704314-1. |
| AE10001004H0072 | AE706348-1. |
| AE703530-1 | AE700084-2. |
| AE703861-1 | AE703402-2 or RBSL0010-503. |
| 801000-8-0304 | AE704312-5. |
| AE703860-1 | AE704312-7 or 221D4020-501. |
| AE703862-1 | AE704312-4 or 221D0041-*. |
| AE703863-1 | |
| 1AE10008444H0144 | |

The affected main fuel supply hoses contain cure date codes of 3Q84 through 2Q87. The affected vapor recovery hoses contain cure date codes of 2Q84 through 3Q87. The affected bulk 801 hose contains a CAGE code of 50656 (regardless of cure date code).

1. If fuel leakage is detected, prior to further flight, replace the hose(s) with a serviceable hose not containing the cure date codes or CAGE code specified above, in accordance with the applicable service bulletin identified above.

2. If the affected hoses are installed, but fuel leakage is not detected, repetitively inspect the hoses for evidence of fuel leakage in accordance with the schedule specified in the applicable service bulletin.

B. After the effective date of this amendment, bulk 801 hose with CAGE code or 50656 shall not be installed on any airplane.

C. Replacement of main fuel supply and vapor recovery hoses with serviceable hoses that do not contain the cure date codes or CAGE code specified in paragraph A., above, constitutes terminating action for the requirements of this AD.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Chicago Aircraft Certification Office, FAA, Central Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Chicago Aircraft Certification Office.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124; McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1-L00 (54-60); or Airbus Industrie, Product Support Division, Avenue Didier Daurat, 31700 Blagnac Cedex, France. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the FAA, Central Region, Chicago Aircraft Certification Office, 2300 East Devon Avenue, Room 232, Des Plaines, Illinois.

This amendment becomes effective March 30, 1989.

Issued in Seattle, Washington, on March 3, 1989.

**Leroy A. Keith,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 89-5630 Filed 3-10-89; 8:45 am]

BILLING CODE 4910-13-M

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**14 CFR Part 95**

**[Docket No. 25814; Amdt. No. 349]**

## IFR Altitudes; Miscellaneous Amendments

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts miscellaneous amendments to the required IFR (instrument flight rule) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. These regulatory actions are needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

**EFFECTIVE DATE:** April 6, 1989.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Best, Flight Procedures Standards Branch (AFS-420), Air Transportation Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-8277.

**SUPPLEMENTARY INFORMATION:** This amendment to Part 95 of the Federal Aviation Regulations (14 CFR Part 95) prescribes new, amended, suspended, or revoked IFR altitudes governing the operation of all aircraft in IFR flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in Part 95. The specified IFR altitutes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances which create the need for this amendment involve matters of flight safety, operational efficiency in the National Airspace System, and are related to published aeronautical charts that are essential to the user and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment is unnecessary, impracticable, and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 95**

Aircraft, Airspace.

Issued in Washington, DC on March 2, 1989.

**Robert L. Goodrich,**

*Acting Director, Flight Standards Service.*

**Adoption of the Amendment**

Accordingly and pursuant to the authority delegated to me by the Administrator, Part 95 of the Federal Aviation Regulations (14 CFR Part 95) is amended as follows effective at 0901 g.m.t.:

**PART 95—[AMENDED]**

1. The authority citation for Part 95 continues to read as follows:

**Authority:** 49 U.S.C. 1348, 1354 and 1510; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 95 is amended to read as follows:

BILLING CODE 4910-13-M

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## REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES & CHANGEOVER POINTS

**AMENDMENT 349 EFFECTIVE DATE, APRIL 6, 1989**

| FROM | TO | MEA |
|---|---|---|
| **§95.6002 VOR FEDERAL AIRWAY 2 IS AMENDED TO READ IN PART** | | |
| MULLAN PASS, ID VOR/DME | ALTON, MT FIX | 9600 |
| GARRI, MT FIX | HELENA, MT VORTAC | 9800 |
| **§95.6004 VOR FEDERAL AIRWAY 4 IS AMENDED TO READ IN PART** | | |
| HILL CITY, KS VORTAC | WESAL, KS FIX | *5500 |
| *4000 - MOCA | | |
| WESAL, KS FIX | SALINA, KS VORTAC | *4000 |
| *2900 - MOCA | | |
| SADEN, MO FIX | ST LOUIS, MO VORTAC | 2400 |
| **§95.6007 VOR FEDERAL AIRWAY 7 IS AMENDED TO READ IN PART** | | |
| MENOMINEE, MI VOR/DME | *GERLA, MI FIX | 3600 |
| *8000 - MRA | | |
| GERLA, MI FIX | MARQUETTE, MI VOR/DME | 3600 |
| **§95.6008 VOR FEDERAL AIRWAY 8 IS AMENDED TO READ IN PART** | | |
| TRIDE, IL FIX | JOLIET, IL VORTAC | 2600 |
| **§95.6010 VOR FEDERAL AIRWAY 10 IS AMENDED TO READ IN PART** | | |
| LAMAR, CO VORTAC | ADEER, KS FIX | *5600 |
| *5000 - MOCA | | |
| **§95.6019 VOR FEDERAL AIRWAY 19 IS AMENDED TO READ IN PART** | | |
| KRONA, MT FIX | BILLINGS, MT VORTAC | |
| | SE BND | 8000 |
| | NW BND | 6200 |
| BILLINGS, MT VORTAC | *SHELA, MT FIX | |
| | SE BND | 6100 |
| | NW BND | 7700 |
| *8500 - MRA | | |
| LEWISTOWN MT VORTAC | SHONK, MT FIX | 7700 |
| **§95.6021 VOR FEDERAL AIRWAY 21 IS AMENDED TO READ IN PART** | | |
| IDAHO FALLS, ID VOR/DME | *DUBOIS, ID VORTAC | 7600 |
| *8600 - MCA DUBOIS VORTAC, N BND | | |

| FROM | TO | MEA |
|---|---|---|
| **§95.6021 VOR FEDERAL AIRWAY 21—Continued** | | |
| DILLON, MT VORTAC | *WHITEHALL, MT VORTAC | **10000 |
| *9300 - MCA WHITEHALL VORTAC, N BND | | |
| **9000 - MOCA | | |
| CUT BANK, MT VORTAC | U.S. CANADIAN BORDER | 6200 |
| **§95.6083 VOR FEDERAL AIRWAY 83 IS AMENDED TO READ IN PART** | | |
| ALAMOSA, CO VORTAC | BLOKE, CO FIX | |
| | NE BND | *14000 |
| | SW BND | *10400 |
| *10100 - MOCA | | |
| BLOKE, CO FIX | *GOSIP, CO FIX | 14000 |
| *13500 - MCA GOSIP FIX, SW BND | | |
| **§95.6086 VOR FEDERAL AIRWAY 86 IS AMENDED TO READ IN PART** | | |
| BILLINGS, MT VORTAC | KRONA, MT FIX | |
| | NW BND | 6200 |
| | SE BND | 8000 |
| **§95.6101 VOR FEDERAL AIRWAY 101 IS AMENDED TO READ IN PART** | | |
| MALTT, ID FIX | *BURLEY, ID VORTAC | |
| | NW BND | **8000 |
| | SE BND | **11400 |
| *9300 - MCA BURLEY VORTAC, SE BND | | |
| **7400 - MOCA | | |
| **§95.6113 VOR FEDERAL AIRWAY 113 IS AMENDED TO READ IN PART** | | |
| RENOL, ID FIX | *BOISE, ID VORTAC | 6000 |
| *8200 - MCA BOISE VORTAC, NE BND | | |
| BOISE, ID VORTAC | PLUTO, ID FIX | |
| | SW BND | 9700 |
| | NE BND | 12500 |
| SLIPP, MT FIX | *COPPERTOWN, MT VORTAC | |
| | SW BND | 13000 |
| | NE BND | 11000 |
| *10200 - MCA COPPERTOWN VORTAC, SW BND | | |
| **§95.6120 VOR FEDERAL AIRWAY 120 IS AMENDED TO READ IN PART** | | |
| CHARL, MT FIX | SHIMY, MT FIX | *13000 |
| *11800 - MOCA | | |

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| FROM | TO | MEA |
|---|---|---|
| **§95.6120 VOR FEDERAL AIRWAY 120—Continued** | | |
| SHIMY, MT FIX | GREAT FALLS, MT VORTAC | |
| | E BND | 6800 |
| | W BND | 9500 |
| **§95.6133 VOR FEDERAL AIRWAY 133** | | |
| **IS AMENDED TO READ IN PART** | | |
| MARQUETTE, MI VOR/DME | *BRIDE, MI FIX | **3600 |
| *6000 - MRA | | |
| **3000 - MOCA | | |
| BRIDE, MI FIX | HOUGHTON, MI VORTAC | *3600 |
| *3000 - MOCA | | |
| **§95.6148 VOR FEDERAL AIRWAY 148** | | |
| **IS AMENDED TO READ IN PART** | | |
| THURMAN, CO VORTAC | MCJEF, NE FIX | *7000 |
| *6500 - MOCA | | |
| **§95.6210 VOR FEDERAL AIRWAY 210** | | |
| **IS AMENDED TO READ IN PART** | | |
| PEACH SPRINGS, AZ VORTAC | *GRAND CANYON, AZ VOR/DME | 10000 |
| *14500 - MCA GRAND CANYON VOR/DME, E BND | | |
| GRAND CANYON, AZ VOR/DME | *TUBA CITY, AZ VORTAC | **14500 |
| *14500 - MCA TUBA CITY VORTAC, W BND | | |
| **9600 - MOCA | | |
| ALAMOSA, CO VORTAC | BLOKE, CO FIX | |
| | NE BND | *14000 |
| | SW BND | *10400 |
| *10100 - MOCA | | |
| BLOKE, CO FIX | *GOSIP, CO FIX | 14000 |
| *13500 - MCA GOSIP FIX, SW BND | | |
| GOSIP, CO FIX | *RADIO, CO FIX | **12000 |
| *10900 - MCA RADIO FIX, SW BND | | |
| **8500 - MOCA | | |
| RADIO, CO FIX | BLOOM, CO FIX | *9400 |
| *8000 - MOCA | | |
| **§95.6228 VOR FEDERAL AIRWAY 228** | | |
| **IS AMENDED TO READ IN PART** | | |
| MADISON, WI VORTAC | *DEBOW, WI FIX | 10000 |
| *10000 - MRA | | |
| DEBOW, WI FIX | BESIE, IL FIX | 10000 |
| **§95.6244 VOR FEDERAL AIRWAY 244** | | |
| **IS AMENDED TO READ IN PART** | | |
| GLIDE, KS FIX | SALINA, KS VORTAC | *3600 |
| *2900 - MOCA | | |

| FROM | TO | MEA |
|---|---|---|
| **§95.6253 VOR FEDERAL AIRWAY 253** | | |
| **IS AMENDED TO READ IN PART** | | |
| *BOISE, ID VORTAC | BANGS, ID FIX | 9000 |
| *7400 - MCA BOISE VORTAC, N BND | | |
| **§95.6257 VOR FEDERAL AIRWAY 257** | | |
| **IS AMENDED TO READ IN PART** | | |
| BISOP, AZ FIX | *GRAND CANYON, AZ VOR/DME | 10000 |
| *14500 - MCA GRAND CANYON VOR/DME, N BND | | |
| GRAND CANYON, AZ VOR/DME | *DOZIT, AZ FIX | **14500 |
| *14500 - MCA DOZIT FIX, S BND | | |
| **11200 - MOCA | | |
| DOZIT, AZ FIX | KACIR, AZ FIX | *13000 |
| *11200 - MOCA | | |
| GARRI, MT FIX | SCAAT, MT FIX | 9800 |
| **§95.6293 VOR FEDERAL AIRWAY 293** | | |
| **IS AMENDED TO READ IN PART** | | |
| *GRAND CANYON, AZ VOR/DME | **KLIFF, AZ FIX | ***14500 |
| *14500 - MCA GRAND CANYON VOR/DME, N BND | | |
| **14500 - MCA KLIFF FIX, S BND | | |
| ***10900 - MOCA | | |
| KLIFF, AZ FIX | PAGE, AZ VOR/DME | 8700 |
| **IS AMENDED TO DELETE** | | |
| ABASI, AZ FIX | PAGE, AZ VOR/DME | 8500 |
| **§95.6298 VOR FEDERAL AIRWAY 298** | | |
| **IS AMENDED TO READ IN PART** | | |
| MC CALL, ID VORTAC | *DUBOIS, ID VORTAC | #**16000 |
| *9800 - MCA DUBOIS VORTAC, W BND | | |
| **13600 - MOCA | | |
| #MEA IS ESTABLISHED WITH A GAP IN NAVIGATION SIGNAL COVERAGE. | | |
| DUBOIS, ID VORTAC | *SABAT, ID FIX | |
| | W BND | **9000 |
| | E BND | **13000 |
| *11100 - MCA SABAT FIX, E BND | | |
| **8300 - MOCA | | |
| SABAT, ID FIX | LAMON, ID FIX | |
| | W BND | *9000 |
| | E BND | *13000 |
| *7700 - MOCA | | |





| FROM | TO | MEA |
|---|---|---|
| **§95.6307 VOR FEDERAL AIRWAY 307** | | |
| **IS AMENDED TO READ IN PART** | | |
| HARRISON, AR VOR/DME | NEOSHO, MO VORTAC | *3400 |
| *2800 - MOCA | | |
| **§95.6361 VOR FEDERAL AIRWAY 361** | | |
| **IS AMENDED TO READ IN PART** | | |
| MARKE, CO FIX | UNLAP, CO FIX | |
| | N BND | *16200 |
| | S BND | *11000 |
| *10400 - MOCA | | |
| SCRUB, CO FIX | LYZZA, CO FIX | |
| | S BND | *16200 |
| | N BND | *13000 |
| *12300 - MOCA | | |
| **§95.6365 VOR FEDERAL AIRWAY 365** | | |
| **IS AMENDED TO READ IN PART** | | |
| IDAHO FALLS, ID VOR/DME | RIGBY, ID FIX | 7600 |
| MENAR, MT FIX | VESTS, MT FIX | *9700 |
| *9100 - MOCA | | |
| WOKEN, MT FIX | SHIMY, MT FIX | *9500 |
| *7500 - MOCA | | |
| CHOTE, MT FIX | CUT BANK, MT VORTAC | *7000 |
| *6400 - MOCA | | |
| **§95.6430 VOR FEDERAL AIRWAY 430** | | |
| **IS AMENDED TO READ IN PART** | | |
| GLASGOW, MT VOR/DME | WILLISTON, ND VORTAC | *6000 |
| *5000 - MOCA | | |
| **§95.6444 VOR FEDERAL AIRWAY 444** | | |
| **IS AMENDED TO READ IN PART** | | |
| DERSO, ID FIX | AROWS, ID FIX | *11500 |
| *9700 - MOCA | | |
| **§95.6484 VOR FEDERAL AIRWAY 484** | | |
| **IS AMENDED TO READ IN PART** | | |
| WODEN, ID FIX | *DRYAD, ID FIX | **12000 |
| *13000 - MCA DRYAD FIX, SE BND | | |
| **9500 - MOCA | | |
| **§95.6500 VOR FEDERAL AIRWAY 500** | | |
| **IS AMENDED TO READ IN PART** | | |
| AROWS, ID FIX | DERSO, ID FIX | *11500 |
| *9700 - MOCA | | |
| SOLDE, ID FIX | *REAPS, ID FIX | **12500 |
| *9500 - MCA REAPS FIX, W BND | | |
| **8000 - MOCA | | |

| FROM | TO | MEA |
|---|---|---|
| **§95.6500 VOR FEDERAL AIRWAY 500—Continued** | | |
| REAPS, ID FIX | BETRE, ID FIX | *9500 |
| *6700 - MOCA | | |
| **§95.6508 VOR FEDERAL AIRWAY 508** | | |
| **IS AMENDED TO READ IN PART** | | |
| GLIDE, KS FIX | SALINA, KS VORTAC | *3600 |
| *2900 - MOCA | | |
| ESTRE, KS FIX | DESOT, KS FIX | 2700 |
| **§95.6520 VOR FEDERAL AIRWAY 520** | | |
| **IS AMENDED TO READ IN PART** | | |
| LEWISTON, ID VOR/DME | FERDI, ID FIX | |
| | W BND | *6700 |
| | E BND | *12000 |
| *6600 - MOCA | | |
| DUBOIS, ID VORTAC | *JACKSON, WY VOR/DME | **15000 |
| *14300 - MCA JACKSON VOR/DME, W BND | | |
| **10200 - MOCA | | |
| **§95.6536 VOR FEDERAL AIRWAY 536** | | |
| **IS AMENDED TO READ IN PART** | | |
| MULLAN PASS, ID VOR/DME | CELIR, MT FIX | *10500 |
| *9400 - MOCA | | |
| PIKUN, MT FIX | *CHOTE, MT FIX | |
| | W BND | **10000 |
| | E BND | **9000 |
| *9200 - MCA CHOTE FIX, W BND | | |
| **6900 - MOCA | | |
| **§95.6551 VOR FEDERAL AIRWAY 551** | | |
| **IS AMENDED TO READ IN PART** | | |
| SALINA, KS VORTAC | MANKATO, KS VORTAC | 4500 |
| **§95.6553 VOR FEDERAL AIRWAY 553** | | |
| **IS AMENDED TO READ IN PART** | | |
| SALINA, KS VORTAC | PAWNEE CITY, NE VORTAC | 3400 |
| **§95.6583 VOR FEDERAL AIRWAY 583** | | |
| **IS AMENDED BY ADDING** | | |
| AUSTIN, TX VORTAC | COLLEGE STATION, TX VORTAC | 2000 |
| COLLEGE STATION, TX VORTAC | LEONA, TX VORTAC | 2000 |

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| FROM | TO | MEA | MAA |
|---|---|---|---|
| **§95.7060 JET ROUTE NO. 60** | | | |
| | IS AMENDED TO READ IN PART | | |
| EAST TEXAS, PA VORTAC | SPARTA, NJ VORTAC | 18000 | 32000 |
| **§95.7065 JET ROUTE NO. 65** | | | |
| | IS AMENDED BY ADDING | | |
| SAN ANTONIO, TX VORTAC | ABILENE, TX VORTAC | 18000 | 45000 |
| **§95.7070 JET ROUTE NO. 70** | | | |
| | IS AMENDED TO READ IN PART | | |
| STILLWATER, NJ VOR/DME | LA GUARDIA, NY VOR/DME | 18000 | 24000 |
| **§95.7077 JET ROUTE NO. 77** | | | |
| | IS AMENDED TO READ IN PART | | |
| SPARTA, NJ VORTAC | BARNES, MA VORTAC | 18000 | 31000 |
| **§95.7080 JET ROUTE NO. 80** | | | |
| | IS AMENDED TO READ IN PART | | |
| BELLAIRE, OH VORTAC | KIPPI, PA FIX | 18000 | 45000 |
| KIPPI, PA FIX | EAST TEXAS, PA VORTAC | 18000 | 38000 |
| EAST TEXAS, PA VORTAC | SPARTA, NJ VORTAC | 18000 | 32000 |
| SPARTA, NJ VORTAC | BARNES, MA VORTAC | 18000 | 31000 |
| **§95.7106 JET ROUTE NO. 106** | | | |
| | IS AMENDED TO READ IN PART | | |
| STILLWATER, NJ VOR/DME | LA GUARDIA, NY VOR/DME | 18000 | 24000 |



## §95.8003 VOR FEDERAL AIRWAYS CHANGEOVER POINTS

| AIRWAY SEGMENT | | CHANGEOVER POINTS | |
|---|---|---|---|
| FROM | TO | DISTANCE | FROM |
| | V-532 | | |
| | IS AMENDED TO READ IN PART | | |
| SALINA, KS VORTAC | LINCOLN, NE VORTAC | 51 | SALINA |

[FR Doc. 89-6028 Filed 3-10-89; 8:45 am]
BILLING CODE 4910-13-C

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14 CFR Part 97

[Docket No. 25813; Amdt. No. 1366]

## Standard Instrument Approach Procedures; Miscellaneous Amendments

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**EFFECTIVE DATE:** An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the **Federal Register** on December 31, 1980, and reapproved as of January 1, 1982.

**ADDRESSES:** Availability of matters incorporated by reference in the amendment is as follows:

*For Examination—*

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

*For Purchase—*

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

*By Subscription—*

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Best, Flight Procedures Standards Branch (AFS-420), Air Transportation Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8277.

**SUPPLEMENTARY INFORMATION:** This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP continued in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPs criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 97**

Approaches, Standard instrument, Incorporation by reference.

Issued in Washington, DC on March 3, 1989.

**Robert L. Goodrich,**

*Acting Director, Flight Standards Service.*

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 g.m.t. on the dates specified, as follows:

**PART 97—[AMENDED]**

1. The authority citation for Part 97 continues to read as follows:

**Authority:** 49 U.S.C. 1348, 1354(a), 1421, and 1510; 49 U.S.C. 106(g) (revised, Pub. L. 97-449, January 12, 1983; and 14 CFR 11.49(b)(2)).

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; §97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:



*. . . Effective June 1, 1989*

Boise, ID—Boise Air Terminal (Gowen Field), VOR/DME or TACAN RWY 28L, Amdt. 1
Boise, ID—Boise Air Terminal (Gowen Field), LOC/DME BC RWY 28L, Amdt. 5
Muscatine, IA—Muscatine Muni, VOR RWY 5, Amdt. 4, CANCELLED
Muscatine, IA—Muscatine Muni, VOR RWY 23, Amdt. 5
Muscatine, IA—Muscatine Muni, VOR RWY 30, Amdt. 4, CANCELLED
Muscatine, IA—Muscatine Muni, VOR/DME RWY 12, Amdt. 4, CANCELLED
Muscatine, IA—Muscatine Muni, NDB RWY 5, Amdt. 11
Muscatine, IA—Muscatine Muni, RNAV RWY 23, Orig.

*. . . Effective May 4, 1989*

Colusa, CA—Colusa County, VOR-A, Amdt. 4
Santa Rosa, CA—Sonoma County, VOR/DME RWY 14, Amdt. 1
Atlanta, GA—The William B. Hartsfield Atlanta Intl, RADAR-1, Amdt. 31
Calhoun, GA—Tom B. David Fld, LOC RWY 35, Amdt. 1
Calhoun, GA—Tom B. David Fld, NDB RWY 35, Amdt. 1
DeKalb, IL—DeKalb Taylor Muni, VOR/DME RWY 27, Amdt. 3
DeKalb, IL—DeKalb Taylor Muni, NDB RWY 27, Amdt. 1
Marion, IN—Marion Muni, VOR RWY 4, Amdt. 11
Marion, IN—Marion Muni, VOR RWY 15, Amdt. 8
Marion, IN—Marion Muni, VOR RWY 22, Amdt. 14
Marion, IN—Marion Muni, ILS RWY 4, Amdt. 5
Cherokee, IA—Cherokee Muni, NDB RWY 36, Amdt. 3
New Bedford, MA—New Bedford Muni, LOC (BC) RWY 23, Amdt. 6
New Bedford, MA—New Bedford Muni, NDB RWY 5, Amdt. 10
New Bedford, MA—New Bedford Muni, ILS RWY 5, Amdt. 23
Romeo, MI—Romeo, VOR/DME-A, Amdt. 5
Columbus, OH—Port Columbus Intl, NDB RWY 10L, Amdt. 6
Columbus, OH—Port Columbus Intl, NDB RWY 10R, Amdt. 6
Columbus, OH—Port Columbus Intl, ILS RWY 10L, Amdt. 14
Columbus, OH—Port Columbus Intl, ILS RWY 10R, Amdt. 5
Georgetown, SC—Georgetown County, NDB RWY 05, Amdt. 4
Arlington, TN—Arlington Muni, NDB RWY 15, Amdt. 6
Arlington, TN—Arlington Muni, NDB RWY 33, Amdt. 6
Jacksboro, TN—Campbell County, NDB RWY 23, Amdt. 3
Jacksboro, TN—Campbell County, RNAV-A, Amdt. 3
Waukesha, WI—Waukesha County, VOR-A, Amdt. 14
Waukesha, WI—Waukesha County, LOC RWY 10, Amdt. 3
Waukesha, WI—Waukesha County, NDB RWY 28, Amdt. 2

*. . . Effective April 6, 1989*

Wiscasset, ME—Wiscasset, NDB RWY 25, Amdt. 4
Grand Island, NE—Central Nebraska Regional, LOC/DME BC RWY 17, Amdt. 8
Grand Island, NE—Central Nebraska Regional, ILS RWY 35, Amdt. 8
Kenosha WI—Kenosha Muni, NDB RWY 6L, Orig.
Kenosha WI—Kenosha Muni, ILS RWY 6L, Orig.

*. . . Effective March 1, 1989*

Atlanta, GA—Fulton County Airport-Brown Field, ILS RWY 8, Amdt. 14

*. . . Effective February 28, 1989*

Mesquite, TX—Phil L. Hudson Muni, LOC RWY 17, Amdt. 1
Mesquite, TX—Phil L. Hudson Muni, NDB RWY 17, Amdt. 2

*. . . Effective February 21, 1989*

Bangor, ME—Bangor Intl, VOR/DME RWY 33, Amdt. 6

*. . . Effective February 16, 1989*

Hyannis, MA—Barnstable Muni-Boardman/Polando Field, VOR RWY 6, Amdt. 4

[FR Doc. 89-5629 Filed 3-10-89; 8:45 am]

BILLING CODE 6510-13-M

## FEDERAL TRADE COMMISSION

16 CFR Part 456

## Trade Regulation Rule; Ophthalmic Practice Rules

**AGENCY:** Federal Trade Commission.

**ACTION:** Final Trade Regulation Rule.

**SUMMARY:** The Federal Trade Commission issues a final rule that removes restraints imposed by state law on certain specified forms of commercial ophthalmic practice. The Commission has concluded that these restrictions are unfair acts or practices within the meaning of Section 5 of the Federal Trade Commission Act and are appropriately remedied by the Trade Regulation Rule promulgated today. The rule bars four types of state restrictions on commercial practice: (1) Prohibitions on certain forms of lay association with or control over optometric practices; (2) limitations on the number of branch offices which optometrists may own or operate; (3) prohibitions on the practice of optometry in commercial locations; and (4) prohibitions on the practice of optometry under a nondeceptive trade name. The rule also incorporates, with minor technical changes, the prescription release requirement originally promulgated as part of the Trade Regulation Rule on Advertising of Ophthalmic Goods and Services.

Published here are the Rule's Statement of Basis and Purpose, which incorporates a Regulatory Analysis, and the text of the final rule.

**EFFECTIVE DATE:** September 1, 1989.

**ADDRESS:** Requests for copies of the Rule and the Statement of Basis and Purpose should be sent to the Public Reference Branch, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** Richard Kelly, Renee Kinscheck, or Patricia Brennan, Division of Service Industry Practices, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580 (202) 326-3304, (202) 326-3287, or (202) 326-3274.

**SUPPLEMENTARY INFORMATION:**

**List of Subjects in 16 CFR Part 456**

Eyeglasses, Ophthalmic practice, Trade rules.

By direction of the Commission, Chairman Oliver dissenting.

**Donald S. Clark,**

*Secretary.*

**Statement of Basis and Purpose**

*I. Introduction*

A. Overview of the Rule

1. *Commercial Practice Restrictions.* Some state-imposed restrictions on the commercial practice [1] of optometry cause significant injury to consumers. While justified as necessary to protect consumers, these restrictions actually work to deprive consumers of necessary eye care, restrict consumer choice, and impede innovation in the eye care industry.

The monetary cost—likely to be millions of dollars annually—is great. Over half of all Americans and more than 90 percent of elderly consumers use corrective eyewear, and over eight billion dollars was spent on eye exams and eyewear in 1983.[2] A significant

[1] Optometric practices range across a continuum from what can be characterized as strictly traditional (e.g., solo practitioner operating in an office building under own name) to highly commercial (e.g., large chain optometric firm, with offices in many states). For purposes of this proceeding, an optometrist is considered to be in "commercial practice" if he or she is associated with or employed by a nonoptometrist, uses a trade name, operates more than a single office, or practices at a mercantile location.

[2] NAOO, H-78, at 7 (figure derived from the annual National Consumer Eyewear study conducted by the Optical Manufacturers Association). The NAOO anticipated that 1985 sales would exceed nine billion dollars.

All documents on the rulemaking record have been given alphanumeric designations based upon the system established by the Presiding Officer. A full explanation of these designations is given at the beginning of Bureau of Consumer Protection.

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proportion of these costs can be attributed to the inefficiencies of an industry protected from competition by state regulation. A study done by the FTC's Bureau of Economics shows that prices for eye care are 18 percent higher in markets where chain firms are totally restricted than in markets where chain firms operate freely.

State restrictions on commercial practice are pervasive. Some restrictions are statutory. Others are found in regulations promulgated by state boards of optometry.[5] This rule declares unfair four specific types of state restrictions on competition among optometrists and other vision care providers:

(1) *Restrictions on Affiliations With Nonoptometrists.* Most states have one or more restrictions on lay affiliations. Such restrictions take many forms, including restrictions on employment of optometrists by business corporations or nonoptometrists, on the forming of partnerships between optometrists and nonoptometrists, on the splitting of optometrists' professional fees with nonoptometrists (which, in effect, can prohibit joint-ownership or equity-participation agreements), and on the forming of franchise agreements and landlord-tenant agreements between optometrists and nonoptometrists, including agreements under which rental payments are based on a percentage of gross revenue.[6] Some states also prohibit such corporate affiliations by prohibiting nonoptometrists from exercising any control over the business aspects of an optometric practice.[6]

(2) *Restrictions on practice in mercantile locations.*[6] Over twenty states impose one or more bans that appear to explicitly prohibit the practice of optometry in mercantile locations. The most common ban explicitly prohibits optometrists from practicing in or leasing space from a retail establishment, such as a department store or optical store. Most states that prohibit optometrists from practicing in a retail establishment permit optometrists to locate in or next to that business only if there is a separate entrance to a public street or hallway, in what is known as a "two-door" or "side-by-side" arrangement. In addition, several states appear to restrict practice in shopping malls.[7]

(3) *Restrictions on branch offices.* Many states restrict the number of offices that an optometrist may own or operate. Some impose flat limitations on the number of offices that an optometrist may open,[8] while others indirectly impose limits by requiring an optometrist to be present a certain percentage of the time a branch office is open.[9]

(4) *Restrictions on the use of trade names.*[10] Trade name restrictions generally take one of three forms. First, some states explicitly ban any use of trade names by optometrists.[11] Second, some states specify that trade names must include certain words.[12] Third, several states require that the names of all optometrists practicing under a trade name or at any advertised location must be disclosed in all advertisements that use the trade name.[13]

As of 1985, at least 44 states had one or more of these four types of restrictions.[14] Thirty-nine states prohibited employer-employee or other business affiliations between optometrists and persons who are not optometrists, including partnerships, joint-ownership or equity-participation agreements, franchise agreements, landlord-tenant agreements, and other similar affiliations. At least 19 states limited the number of branch offices which may be owned or operated by optometrists, often limiting optometrists to one or two branch offices. Thirty states restricted optometrists from practicing in mercantile locations such as shopping malls, department stores, and other retail establishments. At least 32 states prohibited the use of nondeceptive trade names by optometrists. Each of these restrictions prevents or restricts the development of alternatives to the traditional solo practice.

Evidence gathered during a lengthy investigation and an extensive rulemaking proceeding includes two Commission-sponsored surveys, additional survey evidence, and expert economic, testimonial, and documentary evidence. That substantial body of evidence demonstrates that these restrictions raise prices to consumers and, by reducing the frequency with which consumers obtain vision care, decrease the overall quality of care provided in the market. The rulemaking record establishes that the presence of commercial optometric firms lowers the cost of eye care to patients of both commercial and noncommercial optometrists. The evidence also indicates that these restrictions do not provide offsetting quality-related benefits to consumers.

The Commission has concluded that these restrictions are unfair acts or practices within the meaning of section 5 of the Federal Trade Commission Act and are appropriately remedied by the Trade Regulation Rule promulgated today.

2. *Prescription Release.* The rule continues to require that optometrists and ophthalmologists release eyeglass lens prescriptions to their patients upon completion of an eye examination. The Commission considered a staff proposal

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Federal Trade Commission, Ophthalmic Practice Rules: State Restrictions on Commercial Practice, (1988), L-1 (hereinafter referred to as "Final Staff Report"). For example, documents in the H category are written comments filed by providers or sellers of ophthalmic goods or services and by ophthalmic organizations. Documents in the J category are written witness statements, transcripts of the hearings and hearing exhibits. Hearing transcripts, which appear on the rulemaking record as J-71, are cited by page number (e.g., "Tr. 998").

[5] In still other cases, attorney general opinions, judicial interpretations, and board interpretations may reveal restrictions not apparent from the face of the statute or regulation.

[6] The sharing of profits or of gross revenues is an integral part of many of these business relationships. For example, partnership agreements involve distribution of income on a percentage basis. An essential element of franchise agreements is payment of a percentage of gross revenues by the franchisee to the franchiser, often referred to as a "royalty."

[6] Some degree of lay control over the business aspects of a practice is an essential element of these relationships.

[6] As used herein, "mercantile location" refers to shopping malls and to retail establishments such as department stores and optical outlets.

[7] Two states, Rhode Island and Alaska, apparently prohibit shopping mall practices altogether. While Rhode Island's prohibition does not mention shopping malls explicitly, it does bar optometrists from practicing in a building where over 50% of the remaining space is rented under percentage leases. Since such leases are almost universally used in shopping centers, J. Solish, Counsel, R.H. Teagle Corp., Tr. 1271; C. Calleon, NAOO, Tr. 283, the effect of this provision is to inhibit optometric practice in shopping centers. In Alaska, no such ban appears in statute or regulation. However, there is evidence that the Board of Optometry enforces such a restriction. J. Ingalls, President, Western States Optical, J-84, at 3-4.

[8] See, e.g., Ky. Rev. Stat. section 320.310(3) (1988).

[9] See, e.g., Or. Admin. R. section 853-10-080(6) (1984).

[10] The Supreme Court's decision in *Friedman v. Rogers*, 440 U.S. 1 (1979), that a Texas statute prohibiting the use of trade names did not violate the First Amendment, does not preclude a Commission finding of unfairness regarding trade name bans. The Commission applies a different standard for purposes of an unfairness analysis under section 5 of the FTCA.

[11] See, e.g., Fla. Stat. section 463.014(1)(e); Ind. Admin. R.1-4-1(a).

[12] For example, California requires that all trade names contain the word "optometrist" or "optometric." Cal. Bus. & Prof. Code sections 5123 (b) and (c).

[13] See, e.g., Md. Rev. Stat. section 388.200.

[14] See charts in Final Staff Report, L-1, at 33-46, for a detailed breakdown of state regulation of the practice of optometry. The statistics on commercial practice restrictions cited here and elsewhere in the Statement are based on an analysis of state regulatory practice as of 1988. A sampling of state statutes and regulations as of October 1988, confirmed that one or more of the restraints at issue here continue to exist in a majority of the states.



to modify this provision to require that prescriptions be released only upon request. After weighing the evidence, we conclude that there is a continuing need for the "automatic release" component of the requirement. However, technical changes have been made in the rule language in order to make clear that this provision is directed only at prescriptions for eyeglass lenses and creates no obligation concerning the release of prescriptions for contact lenses.

B. History of the Proceeding.

This proceeding grew out of an investigation begun in 1975 into state and private restraints on advertising of ophthalmic goods and services. The first phase of the investigation culminated with the promulgation in 1978 of the Trade Regulation Rule on the Advertising of Ophthalmic Goods and Services.[15] As the investigation progressed, the staff began to accumulate evidence that restrictions on advertising were not the only public restraints that appeared to limit competition, increase prices, and reduce the quality of eye care provided to the public. The second phase of this inquiry focused on the commercial practice restrictions described above.

To obtain further evidence on these issues, staff conducted two comprehensive studies. The first, published in 1980 by the Bureau of Economics, compared the price and quality of optometric services in restrictive and nonrestrictive markets.[16] The second study, published in 1982 by the Bureaus of Consumer Protection and Economics, compared the price and quality of cosmetic contact lens fitting services of commercial optometrists and other provider groups.[17] At the same time, the staff conducted a study measuring compliance with the prescription release requirement of the Eyeglasses Rule.[18]

In July 1980 staff published the results of its investigation on commercial practice restrictions in an initial staff report.[19] Based on this report and other evidence gathered, the Commission published an Advance Notice of Proposed Rulemaking ("ANPR") in December 1980, that requested comments on the issues presented by the investigation and on what action, if any, the Commission should take.[20]

Based on the survey evidence, the initial staff report, and the comments received in response to the ANPR, the Commission published on January 4, 1985, a Notice of Proposed Rulemaking initiating this rulemaking proceeding ("Eyeglasses II").[21] During the proceeding, 243 written comments were received: 12 from consumers and consumer groups; 159 from optometrists, sellers of ophthalmic goods, and their professional associations; 69 from federal, state, and local government officials; and 3 from members of the academic community. Ninety-four persons testified during three weeks of public hearings.[22] Twenty-four rebuttal comments were filed in response to that testimony.

The staff reviewed the entire record and published its final report in October 1986.[23] The report recommended the promulgation of a rule that would eliminate the four types of commercial practice restrictions described above and modify the prescription release provisions in the Eyeglasses Rule. The Presiding Officer's Report, released in December 1986,[24] recommended against adopting a rule that would proscribe commercial practice restrictions, and also recommended against modifying the prescription release requirements of the Eyeglasses Rule. After review of these comments, the staff submitted its final recommendations to the Commission in July 1987.[25]

On November 5, 1987, the Commission heard oral presentations from several rulemaking participants who had asked to present their views directly to the Commission as provided in § 1.13(i) of the Commission's Rule.[26] The Commission met on February 10, 1988, and voted to promulgate a rule that prohibits four specified types of state bans on commercial practice and retains the prescription release requirement from the original Eyeglasses Rule.

*II. Factual Basis for the Rulemaking*

A. Evidentiary Standards for an Unfairness Rulemaking [27]

The Commission requires that a preponderance of the evidence support the factual propositions underlying a determination that an existing act or practice is legally unfair. Before promulgating an unfairness rule the Commission requires answers to the following questions: (1) Is the act or practice prevalent? (2) Does the act or practice injure consumers? (3) Is the proposed rule likely to reduce that injury? (4) Is the injury to consumers outweighed by countervailing benefits that flow from the act or practice at issue? and (5) Can consumers reasonably avoid the injury? [28]

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[15] 16 CFR Part 456 (hereinafter cited as "Eyeglasses Rule"). The Commission found public and private bans on nondeceptive advertising by vision care providers and the providers' failure to release eyeglass lens prescriptions to be unfair acts or practices in violation of section 5 of the FTC Act. The rule prohibited bans on nondeceptive advertising and required vision care providers to furnish copies of prescriptions to consumers after eye examinations. Subsequently, the U.S. Court of Appeals for the District of Columbia in *American Optometric Association v. FTC*, 626 F.2d 896 (D.C. Cir. 1980), upheld the prescription release requirement but remanded the advertising portions of the Eyeglasses Rule for further consideration in light of the Supreme Court decision in *Bates v. State Bar of Arizona*, 433 U.S. 350 (1977). After further consideration, the Commission has addressed the few remaining advertising restrictions through administrative litigation rather than rulemaking.

[16] Bureau of Economics, Federal Trade Commission, Restrictions on Advertising and Commercial Practice in the Professions: The Case of Optometry (1980), B-2-31 (hereinafter cited as "BE Study"). That study showed that commercial practice restrictions resulted in higher prices for eyeglasses and eye examinations, but did not increase their quality.

[17] Bureaus of Consumer Protection and Economics, Federal Trade Commission, A Comparative Analysis of Cosmetic Lens Fitting by Ophthalmologists, Optometrists, and Opticians (1983), B-5-1 (hereinafter cited as "Contact Lens Study"). That study showed that commercial optometrists charged significantly lower prices for fitting cosmetic contact lenses and fitted such lenses at least as well as other fitters of contact lenses.

[18] Market Facts Public Sector Research Group, FTC Eyeglasses Study: An Evaluation of the Prescription Release Requirement (1981) (hereinafter cited as "Market Facts Study").

[19] Bureau of Consumer Protection, Federal Trade Commission, State Restrictions on Vision Care Providers: The Effect on Consumers (1980), B-3-1 (hereinafter cited as "1980 Staff Report").

[20] 45 FR 79,823 (1980). During the 60-day comment period, 247 comments were received.

[21] 50 FR 596 (1985).

[22] Some organizations sponsored several witnesses; 74 organizations or individuals presented testimony.

[23] Final Staff Report, *supra* note 2.

[24] James P. Greenan, Presiding Officer, Report of the Presiding Officer on Proposed Trade Regulation Rule of Ophthalmic Practice Rules (1988), L-2 (hereinafter cited as "Presiding Officer's Report").

[25] Bureau of Consumer Protection, Federal Trade Commission, Ophthalmic Practice Rulemaking: Final Recommendations (July 31, 1987), C-1(b) (hereinafter cited as "Staff's Final Recommendations").

[26] The participants were: The American Optometric Association (hereinafter cited as the "AOA"); The California Optometric Association (hereinafter cited as the "COA"); The National Association of Optometrists and Opticians (hereinafter cited as the "NAOO"); The Opticians Association of America; The American Association of Retired Persons; U.S.A. Lens, Inc.; and 20/20 Optical.

[27] See infra section III. A. for a discussion of the statutory basis and evolution of the Commission's unfairness authority.

[28] *American Financial Services Ass'n v. Federal Trade Commission*, 767 F.2d 957, 971 (1985); Rule on Sale of Used Motor Vehicles, Statement of Basis and Purpose, 49 FR 45692, 45703 (1984); Credit Practices Rule, Statement of Basis and Purpose, 49 FR 7740, 7742 (1984); Letter from Federal Trade Commission to Senators Wendell H. Ford and John C. Danforth (Dec. 17, 1980) (hereinafter cited as "Unfairness Statement"). In issuing the Credit Practices Rule, the Commission acknowledged that the evidence necessary to answer these questions will vary depending on the circumstances of each rulemaking and the characteristics of the industry involved. 49 FR 7740, 7742 n. 4.

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As a matter of policy, the Commission has set an even higher standard for promulgation of a rule that directly challenges state law. Out of deference to the principles of federalism, the Commission will take such action as a remedy of last resort, appropriate only if substantial consumer injury is clearly shown; the benefits of the state laws are minimal or absent; and the states are not acting on their own to change the laws.[59]

In this proceeding, the record clearly supports affirmative answers to each of the above-mentioned questions. First, at least 44 states have one or more of the four types of restrictions at issue here. Second, comprehensive and reliable evidence shows that the restrictions cause significant harm to consumers by increasing prices and reducing the frequency with which consumers obtain care. Third, by declaring that such restrictions are unfair, the rule removes such restrictions and thereby eliminates the harm to consumers. Fourth, comprehensive and reliable evidence indicates that the restrictions do not provide consumer benefits since they fail to increase the quality of care received by consumers. Fifth, consumers cannot avoid the adverse effect of these state-imposed and state-enforced restrictions.[60]

The Commission has a responsibility to see that the best evidence reasonably available is included on a rulemaking record before promulgating a rule.[61] The best evidence will often be surveys or other methodologically sound quantitative analyses. The Commission may also consider other reliable evidence and expert testimony.

The quantity and quality of evidence in this proceeding supports promulgation of the rule under standards set by the Commission and the courts. The need for the rule is demonstrated by the BE and Contact Lens Studies.[62] The rule is further supported by additional studies, by documentary and testimonial evidence, and by the absence of any substantial or persuasive contrary evidence. The cumulative impact of this evidence persuades us that the rule is necessary and will provide substantial benefits to consumers.

[59] Letter from Federal Trade Commission to Senator Robert Packwood, Chairman, Committee on Commerce, Science and Transportation, United States Senate (March 5, 1982).

[60] See infra section VI.A.

[61] Trade Regulation Rule on Sale of Used Motor Vehicles, Statement of Basis and Purpose, 49 FR 45692, 45708 (1984); Credit Practices Rule, Statement of Basis and Purpose, 49 FR 7740, 7742 (1984).

[62] See infra section II.D. for a detailed discussion of the methodology used in these studies.

B. Evidence Regarding Harm to Consumers Caused by Commercial Practice Restrictions.

1. *Higher Prices.* The evidence on the record demonstrates that commercial practice restrictions raise prices for eye care goods and services.[63] By impeding competition from commercial firms, the restrictions result in higher average prices for both commercial and traditional practitioners and at all levels of quality. This conclusion is supported by a preponderance of the evidence, which shows: (1) That average prices for eye exams and eyeglasses are lower in markets with chain firms than in markets without chain firms; (2) that chain firms and other large-volume providers charge significantly lower prices than noncommercial providers; and (3) that each of the restrictions imposes unnecessary costs on commercial practice that impede its development and raise prices to consumers. No reliable evidence contradicts these conclusions.[64]

The BE Study found that prices for eye exams and eyeglasses were 18% higher in markets without chain firms than in markets with chain firms. In markets with chain firms, both traditional and commercial optometrists charged lower prices, and prices were lower at all levels of quality.[65] An earlier study by Professors Lee and Alexandra Benham also concluded that prices of eyeglasses were substantially higher in states with restrictions than in states without restrictions.[66]

Additional evidence demonstrating that commercial firms—generally chain firms or other large-volume providers—charge significantly lower prices for equivalent quality goods and services than noncommercial optometrists includes: (1) The Contact Lens Study, which found that commercial optometrists charged significantly less for cosmetic contact lens fitting than noncommercial optometrists; [67] (2) a survey submitted by the California Optometric Association, which found that chain optometric firms charged less for eye exams than private optometrists; [68] and (3) extensive documentary and other evidence demonstrating that large-volume providers frequently take advantage of economies of scale to charge lower prices for equivalent goods and services.[69]

Finally, as summarized below, the record demonstrates that each of the specific restrictions at issue here imposes unnecessary costs on optometric providers and hinders the development of high-volume practices, resulting in fewer such firms in the market, higher prices to consumers, and decreased access to eye care.

While the studies on the record do not separately describe the effects of each particular commercial practice restriction, the record contains an abundance of other evidence that supports a Commission finding that each of the four types of restrictions inhibits or restricts the formation and expansion of high-volume optometric practices.[70] In addition, the record establishes how the restrictions decrease efficiency and increase prices for volume practitioners that manage to enter the market in spite of the restrictions.

(1) Restrictions on lay associations prohibit optometrists from obtaining capital from nonoptometrists by entering into partnerships, joint ownership agreements or other associations with such persons or entities, a constraint which inhibits capital development. This, in turn, impedes the development of large-scale practices that can take advantage of volume purchase discounts and other economies of scale.[71] These

[63] See Final Staff Report, L-1, at 157-178.

[64] Id. at 168-178.

[65] Id. at 101-107.

[66] Benham and Benham, *Regulating Through the Professions: A Perspective on Information Control*, 18 J. L. & Econ. 421 (1975), B-3-39. See Final Staff Report, L-1, at 104 for a further discussion of the Benhams' study. In the 1980 Staff Report and the Final Staff Report, staff acknowledged several potential methodological shortcomings with the Benham data which indicate that the study, standing alone, would not be sufficient to support this rulemaking. Final Staff Report, L-1, at 105; 1980 Staff Report, B-2-1, at 46, 86-89. Despite these potential shortcomings, the record indicates that the Benham data provides useful information to corroborate the findings of the BE Study. Final Staff Report, L-1, at 104-105. See also 1980 Staff Report, B-3-1, at 56-59.

[67] The results showed that commercial optometrists charged prices that were on average 20% lower than noncommercial optometrists and over 30% lower than ophthalmologists.

[68] Consumer Study of Optometric Practices in Metro-Atlanta Area, J-87(a) (Attachment to Statement of California Optometric Ass'n) (hereinafter cited as "Atlanta Survey"). The survey was conducted by John H. Thomas and Associates, Atlanta, Georgia. See Final Staff Report, L-1, at 161-163 for a further description of this survey.

[69] For example, in 1982, the California Department of Consumer Affairs estimated that the cost differences attributable to economies of scale during the first 10 years of practice between an independent solo practitioner and a corporation could range from $12 to $13 per customer. Department of Consumer Affairs, State of California, Commercial Practices Restrictions in Optometry 8-11, 13 (1982), J-24(b). See also Final Staff Report, L-1, at 59-67, 177-178.

[70] See Final Staff Report, L-1, at 49-100.

[71] The record indicates that the use of volume discounts by high-volume practices can reduce significantly the costs of equipment, material, and supplies. For example, the NAOO stated that through the use of volume discounts, an office could

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restrictions contribute to higher prices by excluding or deterring volume practitioners from entering the market and by preventing practitioners in the market from operating at the most efficient level.[72]

(2) Restrictions on practicing in mercantile locations, such as department or drug stores, also raise prices to consumers by inhibiting the formation of high-volume commercial practices. Mercantile locations, which are generally more convenient to consumers, generate a high volume of consumer traffic. Restrictions on practicing in mercantile locations may also impose unnecessary space, construction, or personnel costs that must be passed on to consumers.[73] These burdens fall both on optometric chain firms and on individual practitioners.

(3) Restrictions on branch offices create barriers to expansion both by individual optometrists and by lay optometric firms. These restrictions reduce the total volume of patients that a practice might otherwise be able to serve. This reduced volume of patients prevents optometrists from taking advantage of economies of scale that arise from volume purchasing discounts and reduced per office advertising costs. Also lost are the potential savings that multi-branch practices may achieve through more efficient management techniques.[74]

(4) Bans on trade name practice and advertising deprive consumers of valuable information and increase consumer search costs. Trade names are of value to consumers because, over time, the names come to reflect the cumulative experience that consumers have had with a particular firm. As a result, trade names are a valuable asset to firms, and restrictions on their use hinder the growth and development of optometric firms. Trade name bans also make it difficult for high-volume operators to advertise multiple outlets and to allocate advertising expenses over those outlets.[75]

The record also establishes [76] that state laws which require that all trade name advertisements include the names of all optometrists practicing at a given advertised location or practicing under the advertised trade name effectively ban much nondeceptive trade name advertising. Thus these restrictions have a similar detrimental effect on consumers as outright bans on trade name usage and advertising.

Many states have enacted more than one of these restrictions.[77] While each of these restrictions may impede the growth and efficiency of chain firms or volume practices, a combination of restrictions may completely bar their entry.

The Presiding Officer also found that the record demonstrated that prices for optometric goods and services are significantly lower in nonrestrictive markets than in restrictive markets.[78] Commenters did not seriously dispute the evidence that large-volume practitioners can achieve economies of scale unavailable to smaller practitioners,[79] nor did they submit any reliable studies that contradicted the price findings of the BE and Contact Lens Studies.[80]

2. *Less Care.* Commercial practice restrictions harm consumers not only by raising prices but also by decreasing the overall quality of care received by consumers. The record evidence indicates that, as a result of the higher prices in restrictive markets, consumers obtain eye care less frequently than they otherwise would.[81] Some consumers

be equipped for about two-thirds of the standard retail price. Moreover, materials such as frames and lenses can be discounted as much as 25% when purchased in volume. See Final Staff Report, L-1, at 60-61.

[72] Id. at 57-67.

[73] For example, in those states that mandate a two-door or side-by-side arrangement, optometrists typically must maintain an office that is separate from the optical dispensary and that also has a separate entrance to a public street, corridor, or hallway. This results in higher construction costs, requires more space and thus more rent, and increases frontage costs.

The NAOO estimates that the cost of constructing, equipping, and fixturing a side-by-side office is 15-20% higher than for an equivalent one-door office. NAOO, H-78, at 35. This cost, which typically might amount to $10,000 per office, includes duplicating the heating, cooling, bathroom, waiting room, and other facilities. See also Final Staff Report, L-1, at 84-88.

[74] For example, branch office restrictions may prevent optometric firms from employing or entering into other business relationships with optometrists at more than the permitted number of locations. NAOO, H-78, at 60. Each office that the optometrist is scheduled to work in is considered a branch for purposes of these restrictions, so that firms cannot schedule an optometrist to practice in more than the permitted number of locations. This may prevent these firms from efficiently distributing their optometrists to best meet the needs of the firms' various offices. See Final Staff Report, L-1, at 74-77.

[75] See Final Staff Report, L-1, at 95-97.

[76] The evidence shows that the cost of disclosing the names of all optometrists practicing under a trade name is so burdensome as to preclude the effective use of trade names under many circumstances. Similarly, the cost of disclosing the names of all optometrists at particularly advertised locations effectively prevents nondeceptive trade name usage in such advertisements under some circumstances. See NAOO, H-78, at 84-87. G. Black, Arkansas Retail Merchants Ass'n, D-1 at 2; P. Zeidman, Counsel, International Franchise Ass'n, Tr. 617-620; NAOO Panel, Tr. 538; and Final Staff Report, L-1, at 86.

[77] At least 26 states have at least three of these restrictions. *See* charts in Final Staff Report, L-1, at 33-46.

[78] Presiding Officer's Report, L-2, at 182-196.

[79] Some commenters pointed to limited instances in which smaller-volume practitioners may achieve economies of scale. *See* e.g., Reponse of the COA to Dept. of Consumer Affairs Report, K-12, at 6 (attachment to Rebuttal of the COA) and Post-record comment of AOA, M-176, at 454. However, even if small discounts are available to small-scale practitioners, that does not contradict the fact that larger discounts may be available to high-volume practitioners.

[80] See Final Staff Report, L-1, at 165-171. Some survey evidence was presented by the COA and the AOA that ostensibly showed that commercial firms do not charge less and may even charge more than noncommercial optometrists. For instance, the COA claimed that the Atlanta Survey's findings on "mark-ups" showed that "alleged corporate efficiencies (*e.g.*, savings through volume discounts) were not being passed on to consumers" because all the provider groups had equivalent "mark-ups" on materials. However, this "mark-up" data provided no useful insight into the relative prices charged by the different provider groups because of considerable variation in the wholesale costs of the frames and lenses purchased for the survey. *Id* at 165-66. The AOA also attempted to rely on some data from a *20/20* magazine survey showing that average billings were higher for optometric practices with annual sales greater than $200,000 a year than for practices with lower annual sales. However, this survey fails to provide meaningful data about differences between chain and nonchain firms. *Id.* at 168-170. It also fails to provide meaningful data about differences between low-volume practices and high-volume practices, as that term has been used in this proceeding—*i.e.*, multi-optometrist, multi-office practice. See Rebuttal Statement of R. Bond, FTC economist, L-16, at 15 n. 6. As explained by the author of the *20/20* article, each group (both over $200,000 and under $200,000) most probably includes both chain and independent operations. It is unclear whether the reported gross sales volume refers to per-office volume or per-company volume. If the data is *per-office* gross sales, the data cannot be used to distinguish low-volume firms from those with a significantly larger volume since large chains may have per-office volume above or below $200,000, while private practitioners may also be in either category. (This data was calculated based upon figures in Rebuttal Statement of NAOO, H-78a, at 11 and in Ophthalmic Practice Rulemaking Statement and Exhibits—Robert R. Nathan Associates, Inc., J-66(A), at Vol. II, Ex. 1, Appendix E at E-3 (hereinafter referred to as "Nathan Study"). If the data is *per company*, $200,000 is too low a figure to provide a meaningful distinction between high and low volume. Many solo practitioners have this volume, but some chain firms have annual sales in the billions. Further, the *20/20* article noted that in this sample, more smaller practices advertised than larger ones; only 40 percent of larger practices advertised. "One probable reason would be the infrequent advertising of many large ophthalmological and optometric practices which still deem advertising to be unprofessional." *20/20* Article; Nathan Study, J-66(a) at Vol. II, Ex. II, Appendix E, at E-2, E-6. This indicates that many traditional private practitioners and small group practices were included in the "over-$200,000" group.

[81] Professors James Begun and Lee Benham stressed the importance of frequency of eye care as an aspect of quality and stated that there can be little doubt that the restrictions result in reduced frequency of vision care purchases. *See* J. Begun, Professor, Virginia Commonwealth University, K-1,

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forego eye care entirely, while others delay the purchase of eyeglasses and eye exams.

Evidence of the rulemaking record shows that some consumers are not obtaining adequate vision care because of financial circumstances. Testifying in favor of Medicare coverage for eye care, the AOA told a Congressional committee in 1976 that many elderly persons go without adequate vision care because of its cost.[53] In that Congressional testimony, the AOA also provided evidence that uncorrected vision problems can lead to serious injury to older consumers. According to the AOA, 65 percent of all serious injuries sustained by persons 65 and older are caused by falls; 25 percent of these relate directly to uncorrected vision problems.

Survey evidence also demonstrates that higher prices result in reduced purchases of eye care. Based on the results of an extensive nationwide survey, Professors Lee and Alexandra Benham found that significantly fewer individuals purchased eyeglasses in a given year in states with higher prices than in states with lower prices.[54] In 1979, a survey of 1,234 families sponsored by General Mills found that families had cut back on annual medical checkups, new eyeglasses, dental treatment, and various preventive health care services because of inflation.[55]

Finally, Public Health Service data indicate that annual purchase and repair of eyeglasses increases with family income.[56] This evidence indicates that economic considerations influence vision care expenditures, and that people are likely to cut back such expenditures as prices rise.

Very few proponents of the restrictions addressed the question of the frequency of eye care purchases. While some pointed to alleged shortcomings of the survey data discussed above, none of the alleged shortcomings prevent the Commission from concluding that commercial practice restrictions, which raise the price of eye care, lead to reduced purchases of eye care.[57]

A few commenters did state that no one is going without eye care since special assistance is available for the indigent.[57] However, no evidence was presented by these commenters to indicate how extensive such programs are or under what circumstances they would apply. Moreover, these commenters did not address the point that consumers not eligible for such assistance programs may be delaying or rationing purchases because of higher prices. On the other hand, we find persuasive the testimony of consumer groups that all but the poorest consumers must pay for vision care out of their own pocket without reimbursement by public assistance or private insurance.[58] A study by the Optical Manufacturers Association demonstrated that only 10–20 percent of all expenditures for eye examinations, eyeglasses, and contact lenses is paid for by insurers or other third-party payors. The remaining 80–90 percent is paid directly by the patient.[59]

Commercial practice restrictions also affect consumers' access to vision care by restricting the places where an optometrist may locate. The record indicates that commercial optometrists may be more conveniently located [60] and may be more frequently available on weekends and evenings.[61] These are additional reasons why restrictions on such firms tend to reduce accessibility and the frequency of purchase of vision care.

### C. Countervailing Benefits of Commercial Practice Restrictions

The stated justification for commercial practice restrictions is that they are necessary to maintain high-quality vision care.[62] If this assertion were true, one would expect to find higher quality care in those markets where commercial practice is prohibited or limited. But the record is quite clear on this central issue: There is no difference in the average quality of care available to consumers in restrictive and nonrestrictive markets.[63] Our conclusion that commercial practice restrictions do not increase the average quality of care provided [64] is based primarily on the results of the BE Study, and is also supported by the Contact Lens Study and by the absence of any substantial and reliable contrary evidence.

The BE Study compared eye care quality in markets with and without chain firms and found that the overall level of quality of eye care was not lower in markets where chain firms were allowed to operate.[65] The study provides reliable evidence covering major areas of eye care provided by optometrists, including the accuracy of prescriptions, the accuracy and workmanship of eyeglasses, the extent of unnecessary prescribing, and the ability to detect eye problems and pathologies.[66] The study found that there was no significant difference in any of these aspects of quality between markets with chain firms and those without chain firms.[67]

The BE Study did find significant variation in the extensiveness of eye examinations provided by optometrists in both restrictive and nonrestrictive markets. The evidence shows that an equal percentage of optometrists provide more extensive exams and less extensive exams in both types of markets.[68] In nonrestrictive markets, commercial optometrists, on average, provide more of the less extensive exams than noncommercial optometrists. In restrictive markets, where all optometrists are by definition noncommercial optometrists, an equal percentage of optometrists provide less extensive exams. These optometrists, like the commercial optometrists, provide less costly and less extensive exams, although their prices are significantly higher than those of the commercial optometrists in nonrestrictive markets.

These findings demonstrate that commercial practice restrictions do not affect the distribution of quality within a given market. Other factors such as the forces of supply and demand are most likely responsible for this distribution. At most, the evidence suggests that there is a group of optometrists in both types of markets that will meet the demand for lower-cost, less-extensive exams. Where commercial practice is restricted, noncommercial optometrists meet that demand, but charge higher prices than commercial practitioners in nonrestrictive markets. Even though commercial firms may, on average, provide less extensive exams than those provided by noncommercial optometrists in nonrestrictive markets, the overall quality of care is no lower in those markets.[69]

The findings of the BE Study on quality of care are supplemented by the Contact Lens Study's conclusion that, on average, commercial optometrists fitted cosmetic contact lenses at least as well as noncommercial optometrists.[70]

Proponents of the restrictions offered no evidence on differences in quality between restrictive and nonrestrictive markets, but instead attempted to show that commercial optometrists provide lower quality of care than noncommercial optometrists.[71] Much of this evidence was anecdotal and was often countered by other anecdotal testimony concerning poor quality of care provided by noncommercial optometrists.[72]

Moreover, the survey evidence that was presented by proponents of the restrictions was unreliable. The Nathan Study, commissioned by the AOA, was offered as evidence of quality differences between commercial and noncommercial optometrists in one market.[73] However, that study failed to employ generally accepted and recommended survey techniques in order to guard against bias. The record indicates that the procedures used created a significant potential that the bias of AOA representatives who were substantially involved in the survey could have affected the results. This renders the survey unreliable.[74] Furthermore, by focusing on only one market, the Nathan Study fails to address the central issue of whether there is a difference in overall quality between restrictive and nonrestrictive markets. Even if we were to assume that the evidence on quality presented by proponents of the restrictions were reliable or convincing, it would not contradict the findings of the BE Study that there is no difference in the quality of care between restrictive and nonrestrictive markets.[75]

### D. Methodology of the BE and Contact Lens Studies.[76]

The findings of the BE and Contact Lens Studies are central to the Commission's conclusions that these restrictions injure consumers and diminish overall quality of care by limiting access to care. The studies drew a great deal of comment, both supportive and critical.[77] In discussing the significance of the comment on the studies, we will first describe the key components of each study, summarize the major points raised by commenters, and explain why we believe these studies provide the best evidence reasonably available on the quality of care and a sufficiently reliable and comprehensive evidentiary basis for this rule.

1. *The BE Study.* The BE Study was designed to measure the effects on consumers of commercial practice restrictions. The study was conceived and conducted by the Bureau of

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Exhibit 12 (Attachment to Rebuttal Statement of NAOO); Rebuttal Statement of Lee Benham, Professor, Washington University, R–17, at 2; A. Benham-Hutto, Professor, University of Virginia, at A–7 (Appendix A to Rebuttal Statement of NAOO). Consumers Union stated that removal of the restrictions will allow more frequent eye exams and improve patient health because more consumers will be able to afford the vision care and eyeglasses they need. H. Snyder, West Coast Director, Consumers Union, J–34(a) at 2, citing, State of California, Department of Consumer Affairs, Commercial Practice Restrictions in Optometry (1982), J–34(a), at Exh. A at iii (Attachment to Statement of Consumers Union).

[53] Medical Appliances for the Elderly: Needs and Costs, Hearings Before the Subcomm. on Health and Long-term Care of the House Select Comm. on Aging, 94th Cong., 2d Sess. 185 (1976) (Statement of the AOA), B–3–36.

[54] Benham and Benham, *Regulating Through the Professions: A Perspective on Information Control*, 18 J.L. & Econ. 421, 436 (1975), B–2–28. This survey consisted of interviews with 15,000 individuals in 1970. The sample was drawn to overrepresent elderly individuals and individuals living in inner cities and in rural areas. Id. at 428.

[55] Forty-eight percent of families said that they had cut back on such expenditures as a result of inflation; 59% of low-income families, 60% of minorities and 72% of single parents made this statement. M. Karsen, *U.S. Health Profile*, Washington Post, Apr. 30, 1979, B–8–87, at C–1, col. 4.

[56] Data for 1977 indicated that there was a 25% increase in the number of persons who purchased or repaired eyeglasses in that year as family income increased from less than $12,000 to $25,000 or more per year. Public Health Service, U.S. Dept. of Health and Human Services, National Health Care Expenditures Study, Eyeglasses and Contact Lenses: Purchases, Expenditures, and Sources of Payment 4 (1979), C–14.

[57] For example, some commenters criticized the methodology of the Benhams' survey and claimed that some of the surveys showed that commercial practice restrictions caused reduced eye care purchases. See Post-record comment of AOA, M–178, at 422–38. See also Nathan Study, J–88(a), Vol. I, Exh. 1, at 89 n. 1. However, we are not persuaded that the alleged flaws in the Benhams' survey undercut the findings that, in general, higher prices of eye care lead to reduced consumer purchases. *See* Staff's final Recommendations, 0–1(b), at 13–14. While the AOA acknowledged that the surveys showed that inflation, recession, and available income affect consumer decision-making, it claimed that the surveys did not show that commercial practice restrictions, in particular, result in reduced purchases of eye care. However, because these surveys show that, in general, higher prices of eye care lead to reduced consumer purchases and because other evidence on the record shows that commercial practice restrictions lead to higher prices in the market, we can conclude that commercial practice restrictions result in reduced purchases of eye care.

[58] See, e.g., Nathan Study, J–88(a), Vol. I, Ex. 1 at 109–110; J. Moye, Mississippi Optometrist, Tr. 428–29; J. Robinson, Secretary, North Carolina Board of Optometry, Tr. 3001.

[59] See, e.g., H. Snyder, West Coast Director, Consumers Union, J–34(a), at 2 and Tr. 1088–93; J. Deming, President-elect, American Ass'n of Retired Persons, Tr. 68; E. Eggen, Director, American Ass'n of Retired Persons, J–87(a), at 6. Medicare does not, in general, cover vision care.

[60] Optical Manufacturers Association, National Consumer Eyewear Study III (1984), cited in NAOO, H–78, at 2.

[60] See NAOO, H–78, at 4.

[61] Id. at 2; NAOO Panel, Tr. 383–84.

[62] We note that the majority of states where commercial practices exist did not testify in this proceeding. Many of these states submitted written comments, but did not allege abuses by commercial firms. See, e.g., C. Owen, Speaker of Michigan House of Representatives, E–3; L. Clarke, Executive Secretary, New York State Board of Optometry, E–6; B. Rimmiler, Executive Director, Missouri State Board of Optometry, E–8; B. Nichols, Secretary, Wisconsin Department of Regulation and Licensing, E–37. Some of these commenters supported promulgation of the proposed rule.

There is no apparent a priori reason why one would expect these restrictions on business practices to affect the quality of professional care. Both commercial and noncommercial optometrists have similar educational qualifications and must pass the same licensing examinations in order to practice. Commercial optometrists face the same incentives as noncommercial optometrists to satisfy consumer demand and provide an acceptable level of quality eye care. Private optometrists, like commercial firms, must earn a profit in order to stay in business and both types of practitioners seek to generate profits by selling eyewear. Practitioners in both groups must maintain a good reputation in order to attract and hold the loyalty of patients.

[63] See Final Staff Report, L–1, at 103–173 (discussion of BE Study) and 199–206 (discussion of other quality evidence).

[64] In fact, as discussed *supra* at section II.B.2, the restrictions have some adverse effect on quality of care because the higher prices associated with restrictions cause consumers to seek eye care less frequently.

[65] The BE Study is discussed in detail in the Final Staff Report, L–1, at 101–122. See also infra section II.D.1 for a description of the study's methodology.

[66] See infra at section at II.D.1.

[67] See discussion of BE Study in Final Staff Report, L–1, at 112–113.

[68] Id. at 112.

[69] Moreover, the evidence shows that an increasing number of commercial firms are stressing high quality exams. *See* Final Staff Report, L–1, at 202–206. The evidence indicates that some commercial firms, just as some private optometrists, provide very thorough exams and treat a full range of patients, including those with complex problems.

[70] See infra section II.D.2. for a fuller discussion of the methodology of this study.

[71] See citations in Final Staff Report, L–1, at 199–96, 199–201. See also Post-record comment on AOA, M–178, at 490; Post-record comment of COA, M–178, at 5–6; and Presiding Officer's Report, L–2, at 174, 182.

[72] See Final Staff Report, L–1, at 199–206.

[73] In this survey, test subjects with a variety of eye conditions obtained eye examinations from a sample of commercial and noncommercial optometrists in New York City. The purpose of the survey was to determine whether commercial and noncommercial practitioners differed in their ability to detect the eye conditions of the subjects. Nathan reported that 92 percent of the commercial optometrists and 60 percent of the private optometrists detected the eye conditions. According to Nathan, these results showed that eye examinations in New York City given in commercial practice environment tended to be less comprehensive and lower in quality than those given in private practice settings. Nathan Study, J–88(A), Vol. I, Ex. 3, p. 5.

[74] See Final Staff Report, L–1, at 145–56 and Appendix C.

[75] No evidence presented by proponents of the restrictions compared quality of care provided in the two types of markets.

[76] A comprehensive analysis of comments devoted to methodological issues in this proceeding is found in Appendixes A and B of the Final Staff Report, L–1, and in Staff's Final Recommendations, 0–1(b), at 21–48.

[77] The most lengthy and technical of the comments about the studies was submitted by Robert R. Nathan and Associates, a firm of consulting economists hired by the AOA for the proceeding. Nathan's three-volume submission contains both comments on specific aspects of the BE and Contact Lens Studies and the results of a survey Nathan conducted of New York City optometrists in an effort to rebut the quality findings of the BE Study. See supra notes 71, 72. Appendix C of the Final Staff Report, L–1, contains a detailed description of, and expert comments on, the Nathan survey's methodology.

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Economics with the expert advice of optometrists on the faculties of two major colleges of optometry (the College of Optometry of the State University of New York and the Pennsylvania College of Optometry) and the Director of the Optometric Service of the Veterans Administration. In the study, nineteen trained survey researchers [78] posed as consumers and purchased over 400 eye exams and over 230 pairs of eyeglasses from optometrists in twelve different metropolitan areas across the country.[79]

The twelve markets represented a range of competitive and regulatory environments. Cities were classified as markets where advertising was present if there was advertising of eyeglasses or eye exams in the newspapers or "Yellow Pages." Cities were classified as markets with commercial practice if eye examinations were available from large optical chain firms.[80]

Based on the data obtained by the survey subjects, the BE Study's authors calculated the average prices charged for an eye exam and eyeglasses [81] by each type of practitioner in each type of market (*e.g.*, chain firms in nonrestrictive markets, nonadvertisers in nonrestrictive markets). Then, using data regarding the number of optometrists of each type in a particular market, the study's authors calculated market-wide average prices for markets with both advertising and chain firms and for markets with neither.[82]

Subsequent to the study's publication, its principal author calculated market-wide average prices for markets with chain firms and markets without chain firms.[83] These calculations showed that the average prices charged by optometrists for eye exams and eyeglasses were 18% higher in markets without chain firms than in markets with chain firms.[84]

BE staff used multivariate regression analysis to analyze the data for: (1) Differences among markets in the advertising environment,[85] (2) differences among markets in the supply of optometrists; (3) differences among markets in the demand for optometric services; and (4) differences among subjects in prescriptive needs. Each of these factors might affect price, independent of the presence of chain firms. The price data were also adjusted for differences in the cost-of-living among cities.[86]

In order to measure any differences in quality between markets with chain firms and markets without chain firms, the study compared: (1) The accuracy of the eyeglass prescriptions; (2) the accuracy and workmanship of the eyeglasses; (3) the extent of unnecessary prescribing; and (4) the ability of the optometrist to detect eye problems and pathologies. Elaborate procedures were established to guarantee an accurate and unbiased assessment of these factors.[87]

On the first three dimensions of quality the study directly examined the optometrist's product or service or "output." For example, the optometrists who acted as consultants for the study performed eye examinations on each survey subject before the subjects went into the field. After examinations, prescriptions, and eyeglasses were obtained by the subjects, the consultants compared those prescriptions and eyeglasses to the prescriptions they had written. The consultants also assessed the eyeglasses for the quality of workmanship—e.g., scratches and imperfections on lenses, the quality of the edging and mounting of lenses, and the quality of materials used.

On the fourth aspect of quality, output was not directly examined. That is, the study did not directly examine whether or not optometrists detected eye pathologies since the study did not use subjects with such pathologies. Instead, the study used a "process" test that indirectly measured the likelihood that an optometrist would detect such pathologies by examining whether the optometrist performed the tests and procedures that are designed to detect complex eye problems and pathologies.

This process test was highly sophisticated and did detect meaningful differences in quality between optometrists. For example, the thoroughness index used in the BE Study included over twenty test procedures as well as other aspects of the examination.[88]

The evidence establishes that the use of this process test provided reliable information about differences in quality of care for two reasons. First, there is a close correlation between the use of a correct process and a correct outcome. During the rulemaking hearings, noncommercial optometrists were virtually unanimous in their assessment that more procedures and more time spent during an eye examination is indicative of a higher quality exam.[89] In fact, some of the same optometrists who criticized the BE Study's use of a process test, nevertheless used the results of that test to demonstrate the alleged differences in quality of care

[78] With two exceptions, the survey subjects had relatively routine visual problems. Some commenters and the Presiding Officer questioned the study's validity because subjects with more complex problems and pathologies were not included. See Post-record comment of AOA, M–178, at 5–7, 227–230, 263–64; Post-record comment of COA, M–178, at 9, 9–14; and Presiding Officer's Report, L–2, at 176–177.

[79] BE defined the relevant geographical markets as Standard Metropolitan Statistical Areas (SMSA's). The 12 SMSA's were: Little Rock, Arkansas; Knoxville, Tennessee; Providence, Rhode Island; Columbia, South Carolina; Winston-Salem, North Carolina; Milwaukee, Wisconsin; Columbus, Ohio; Portland, Oregon; Baltimore, Maryland; Minneapolis-St. Paul, Minnesota; Seattle, Washington; and Washington, DC.

[80] The "least restrictive" markets in the study had neither advertising nor chain firms; in addition restrictive laws such as those at issue in this proceeding existed in these markets. Cities were classified as "least restrictive" if advertising and chain firms were present. In the least restrictive cities there was price advertising of eyeglasses and at least nonprice advertising of eye exams.

[81] This amount included any dispensing fees, as well as charges for glaucoma tests or any other exam procedures that were priced separately. In order to minimize variations in the eyeglasses frames, subjects were instructed to purchase a particular unisex metal frame, if possible. BE Study, B–3–21, at 68.

[82] BE Study, B–3–21, at 5.

[83] Rebuttal Statement of R. Bond, FTC economist, K–18, at Table A–8.

[84] See Final Staff Report, L–1, at 108.

[85] Some commenters noted that the BE Study did not discuss the independent effects of advertising and chain firms. See, e.g., Nathan Study, J–69(a) at 32, 36–39, 47; AOA, H–81, at 26. However, the BE Study did report that neither advertising nor chain firms had any effect upon quality in a market. Also, while the BE Study did not discuss the independent effects of chain firms and advertising upon price, the study was designed to examine these effects separately. R. Bond, FTC economist, Tr. 669; Rebuttal Statement of R. Bond, K–18, at 5. The separate effects of chain firms were derived by performing a simple calculation on the BE Study's underlying data. See Letter from R. Bond, FTC economist, to J. Greenan, Presiding Officer (May 30, 1986), J–79; Rebuttal Statement of R. Bond, FTC economist, at 5 and Appendix A. See also R. Bond, Tr. 668; J. Kwoka, Professor, George Washington Univ., Tr. 800–01. Dr. Kowka, a coauthor of the BE Study, stated his agreement with Dr. Bond's conclusions and methods of analysis. J. Kwoka, J–12(a), at 9 and Tr. 800–01.

[86] Be Study, B–3–21, at 46–55, 91–93.

[87] See Final Staff Report, L–1, at 109–112.

[88] Thus, we reject the assessment that the process test measured only a very simple and basic process. See Presiding Officer's Report, L–2, at 175; Post-record comment of AOA, M–178, at 227–49; Post-record comment of COA, M–178, at 9, 13. See also discussion in Staff's Final Recommendations, O–1(b), at 34–35.

[89] See, e.g., AOA Comment, H–81, at 42; B. Barresi, Professor, Center for Vision Care Policy, SUNY, J–13(a), at 10; COA Comment, J–67(a), at 4; J. Easton, President-elect, AOA, J–4, at 20; H. Glazier, President, Maryland Board of Optometry, J–21, at 2, Tr. 808, 816; J. Izydorek, optometrist, H–130, at 1; J. Kennedy, optometrist, J–38, at 1; D. Kuwabara, Chairman, Hawaii Board of Optometry, J–34, at 2; Nathan Study, J–69(a), Vol. I, Ex. 2 at 39–40 and Ex. 3 at 17–18; W. Scholl, optometrist, H–134, at 1; J. Scholles, optometrist, AOA trustee, J–21, at 7–8; Southern California College of Optometry, J–41(a), at 1; L. Strakowitz, member, New Jersey Board of Optometry, J–1, at 2; D. Sullins, optometrist, AOA trustee, J–36, at 11;



offered by optometrists in nonrestrictive markets.[90]

Second, the evidence shows that the use of a process test creates no bias in favor of chain firms.[91] Such a bias would exist only if commercial optometrists perform equivalent procedures less competently than other optometrists. In other words, it would have to be shown that any differences in quality were due to differences in competence rather than to differences in time spent and procedures performed. The evidence shows, however, that any differences in quality, if they exist, are likely due to time spent or procedures performed and not due to commercial optometrists performing given test procedures less competently than other optometrists.[92]

The Presiding Officer rejected the quality results of the BE Study. He apparently believed that only an outcome test, using subjects with a wide range of pathologies, would provide reliable evidence. We disagree with this conclusion for two reasons. First, it ignores the BE data discussed above, which permits conclusions about more complex eye problems, and it does not take into account the practical problems presented in conducting a methodologically sound outcome study. Individuals with pathologies in need of immediate treatment could not ethically be used in a lengthy series of field examinations. Finding a large enough sample of individuals who would be suitable survey subjects and who had pathologies not in need of immediate treatment would be prohibitively time-consuming and expensive. Second, there is a significant likelihood that the pathological conditions would change while the survey was being conducted, which would make it impossible to make valid comparisons among the optometrists examining the survey subjects. These obstacles cast serious doubt on the feasibility of conducting an outcome test on this aspect of quality.

The Commission also considered and rejected the assertion that the BE Study would have found that quality was lower in nonrestrictive markets than restrictive markets if its authors had calculated average quality based on the total number of exams given, rather than on number of practitioners. Dr. Kenneth Myers, Director of Optometry Services at the Veterans Administration and a former consultant to the FTC on the BE Study, asserted that the method for calculating average thoroughness of examinations on a market-wide basis was flawed. The BE Study calculated averages by simply averaging the thoroughness scores of all optometrists. Because some optometrists see more patients than others, Dr. Myers believed that the averages should have been weighted to account for the different number of exams performed by individual optometrists. He assumed that such a calculation would lead to a finding of lower average quality in markets with chain firms than the finding reported in the BE Study. However, if one uses Dr. Myers' methodology and his estimate that the typical commercial practitioner performs twice as many exams as the typical noncommercial practitioner, average quality scores for both restrictive and nonrestrictive markets would be lower, but the average score for nonrestrictive markets would still be about the same as that for restrictive markets.[93]

We find that the process test used in the BE Study to evaluate comparative examination thoroughness provides meaningful information about quality of care. Moreover, that test was only one of four factors used to evaluate quality of care. Our conclusions on the quality of care are based on the record as a whole, and not just individual components of any one study.

2. *The Contact Lens Study.* In this study, the eyes of over 500 cosmetic contact lens wearers in 16 urban areas across the country were examined for the presence of seven potentially pathological eye conditions commonly associated with improper contact lens fitting.[94] Each of the survey subjects had been fitted with contact lenses within the preceding three years and was still wearing contact lenses at the time the examinations were performed. The examination procedures were chosen after consultations with representatives of the major eye care professional organizations—the American Academy of Ophthalmology, the American Optometric Association, and the Opticians Association of America.[95] Those organizations also nominated the expert examiners who performed the eye examinations. Three examiners—an ophthalmologist, an optometrist, and an optician—examined each subject.

The examiners were instructed to determine which of the five illustrations of each potentially pathological condition in a grading manual most closely resembled the actual appearance of the subject's eyes. The grading manual, which had been designed by the group representatives, was used to minimize inconsistencies in grading by the several dozen examiners. The examiner then recorded a grade of 0, 1, 2, 3, or 4 for each condition. A grade of 0 meant that the condition was absent; a grade of 4 signified that the condition was present to an extreme degree. The number grades for each of the seven conditions for each eye were combined using a weighing formula to create a "summary quality score" for each subject, which would indicate the overall condition of the subject's eyes.[96]

In addition to analyzing the summary quality scores, the study also examined the relative presence of each of the seven eye conditions individually. A "higher quality" score was assigned if the examination revealed that a particular condition was totally absent (i.e., the grade was 0); a "lower quality" score was assigned if the examination revealed that a particular condition was present to any degree (i.e., the grade was 1, 2, 3, or 4).

In order to compare quality among the different providers, differences in the summary and individual quality scores were computed for commercial optometrists, noncommercial optometrists, opthalmologists, and opticians. Multiple regression estimation techniques were used in order to control

[90] See e.g., Southern California College of Optometry Panel, J–41(a), at 18; AOA Comment, H–81, at 26; Final Staff Report, L–1, Appendix A at 9 n. 21.

[91] Those commenters who alleged bias in the process test provided no persuasive explanation for that assertion. See AOA Comment, H–81, at 27; Nathan Study, J–69(1), Vol. I, Ex. 1, at 79.

[92] The regression analysis that BE Staff performed on the Nathan survey data indicates that there is no such bias. The analysis found that the commercial firms in the Nathan survey did not exhibit a statistically significant lower pass rate than the private firms, holding constant the time spent on an exam and whether or not a case history was taken. This tends to show that commercial firms perform as well as noncommercial optometrists when they both spend equal time and perform equivalent procedures. See Final Staff Report, L–1, Appendix A at 5–6.

[93] See Staff's Final Recommendations, Addendum to Appendix A, O–1(b), at 8.

[94] These included epithelial and microcystic edema (intercellular accumulation of fluids which causes the cornea to swell); corneal staining (abrasions or lesions on the cornea); corneal neovascularisation (impingement of blood vessels into the normally avascular cornea); corneal striae (ridges or furrows on the cornea); injection ("bloodshot" eyes); and corneal distortion or warpage (irregularity in the curvatures of the cornea). The subjects were also tested for visual acuity to determine whether their prescriptions were adequate. Contact Lens Study, B–5–1, at 20–21. Also, subjects' lenses were examined to determine their physical condition and cleanliness.

[95] There is evidence on the record that representatives of all three organizations reached a consensus on the methodology to be used in the study. See Final Staff Report, L–1, at 194 n. 290.

[96] Since all of the seven conditions are not necessarily equally serious, they were assigned different weights based on the relative severity of that condition.

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for the effects of a number of factors other than fitter competence that could have affected the relative health of the study subjects' eyes. These additional factors included the wearers' age, sex, and wearing habits, and the physical condition of the lenses.

The survey subjects were also asked how much they paid for their lenses, the eye exam, follow-up care, and the initial lens care kit.[97] The final package price figures were then adjusted for cost-of-living differences in the 18 cities in the sample and to account for the fact that the subjects purchased their lenses in different years.

Two additional tests were later conducted by BE staff on the Contact Lens Study data which demonstrated that these price differences were, in fact, associated with the presence of commercial practice and were not due to the effects of advertising or other market forces that could also affect prices. These tests corroborated the general findings of the study that commercial optometrists charged less than noncommercial optometrists.[98]

The major concerns raised by some commenters about the methodology of the Contact Lens Study were that (1) former contact lens wearers (or "dropouts") were not examined; [99] (2) possible changes in the "k-readings" [100] of the subjects were not evaluated; [101] and (3) study subjects were not required to wear their lenses for at least four hours prior to the examination.[102]

In most instances, the failure to include the specified procedure was unavoidable. For example, consultants and staff wanted to evaluate the care given to former contact lens wearers and to evaluate changes in the k-readings. However, in both instances, the expert consultants could suggest no practical and meaningful way to do so.[103] The testimony of some witnesses suggests that some transient and less significant eye problems might have been more frequently apparent if subjects had been required to wear their lenses for at least four hours before they were examined.[104] But other more serious and long-term conditions do not disappear overnight and would still have been apparent even if a subject had inserted his or her lenses only an hour or two before being examined.

The Presiding Officer and some commenters appear to have concluded that the study's findings must be entirely rejected because of these alleged methodological shortcomings. Although the Contact Lens Study may fail to provide information on some types of patients, or some types of contact lenses, there is no evidence on the record indicating that the study results would have been different had this additional data been included, or that the absence of that data created a bias in favor of commercial optometrists that affected the overall results of the survey.

The BE and Contact Lens Studies provide reliable information about the relative cost and quality of eye care available in the marketplace. We conclude that the evidence provided by the studies—along with other evidence on the record—meets or exceeds the applicable legal standards. In seeking evidence on the need for a rule, the Commission must balance the benefits and costs of obtaining information that answers all questions with certainty.[105] In this proceeding, the studies were subjected to intense scrutiny, but none of the studies' critics offered evidence that materially discredited the studies' key findings. Our confidence in the soundness of the studies is buttressed by consideration of the record as a whole, which contains substantial testimony and economic analysis that support the conclusions of the authors of the BE and Contact Lens Studies.

## III. Legal Issues

### A. Introduction

A major issue in this proceeding is the extent of the FTC's authority to declare state laws to be unfair acts or practices. After careful consideration of the legal issues discussed below, we have concluded that the FTC can, in appropriate instances, proceed directly against unfair state restraints.

### B. Unfairness

This rule declares certain state-imposed restrictions on commercial practice by optometrists to be unfair acts or practices. The Commission has authority under section 18 of the Federal Trade Commission Act to prescribe:

> [R]ules which define with specificity acts or practices which are unfair or deceptive acts or practices in or affecting commerce [within the meaning of * * * section 5(a)(1)].[106]

[97] Some commenters noted that the price data collected is based on consumers' recall of the prices that they paid, at times several years in the past. Nathan Study, I–86(a), Vol. 1, Exh. 2, at 14, 15, and 27. No bias is alleged, however, and there appears to be no reason why consumers would systematically recall paying lower prices at commercial firms than at noncommercial firms. Thus, even if there is some random error in the price data for both commercial and noncommercial optometrists, it would not affect the price differences which were found.

[98] See J. Mulholland, FTC economist, I–19(a), at 7–8, which explains in detail the additional tests which BE staff performed to control for the effect of other variables which could have affected price. See also J. Mulholland, Tr. 794–96.

[99] Presiding Officer's Report, L–2, at 177; Post-record comment of AOA, M–178, at 333–34; Post-record comment of COA, M–178, at 11. This criticism is discussed in the Final Staff Report, L–1, at 135–37.

[100] K-readings, taken with the use of a keratometer, measure the steepest and flattest curvatures of the corneal surface. Contact Lens Study, B–8–1, at 9, 22–23.

[101] Presiding Officer's Report, L–2, at 178; Post-record comment of AOA, M–178, at 315–24. This criticism is discussed in Staff's Final Recommendations, O–1(b), at 44–48.

[102] Presiding Officer's Report, L–2, at 179–180; Post-record comment of AOA, M–178, at 346–359. This criticism is discussed in the Final Staff Report, L–1, at 127–140.

Commenters also listed other alleged problems with the Study, which are discussed in the Final Staff Report, L–1, at 123–44 and in Appendix B. Some commenters stated that the study did not include a representative sample and distribution of difficult contact lens patients and fitting problems and that no difficult cases were included. See, e.g., Post-record comment of AOA, M–178, at 298–300, 302; Post-record comment of COA, M–178, at 14. The fact that the study may not contain a representative distribution of difficult cases does not, however, invalidate the data which the study does provide. While some difficult cases were undoubtedly included in the study, the study did not include an assessment of the relative ability of optometrists to fit more difficult lenses such as therapeutic lenses and the more recently available extended wear lenses, toric lenses, or bifocal lenses. See AOA Post-record comment, M–178, at 102. Also, by excluding patients who had previously worn or attempted to wear contact lenses within three years of the survey date, the study excluded many patients with more difficult eye problems who may have experienced prior problems with their lenses. See Contact Lens Study, B–8–1, at A–1. (Excluding these patients also significantly reduced the possibility of bias which could develop if patients who knew they had difficult eye problems tended to select one group of optometrists over another.) Staff determined that it was impractical to include therapeutic lenses, and other more complex lenses could not be included because they were not available at the time the study was conducted. See Final Staff Report, L–1, at 142–43. However, the failure to study these more difficult cases does not detract from the validity of the data which the study does provide on the relative ability of optometrists to fit the less-difficult cosmetic contact lens patient.

[103] See Staff's Final Recommendations, O–1(b), at 43–48.

[104] Id. at 47 n.186.

[105] Credit Practices Rule, Statement of Bias and Purpose, 49 FR 7740, 7742 (1984). In upholding the Credit Practices Rule, the court recognized the danger in insisting that all of the Commission's conclusions be based on rigorous, quantitative economic analysis, and quoted language from the legislative history of Magnuson-Moss indicating that the Commission is not required to undertake a full scale economic investigation prior to promulgation of a rule. "To do so would inordinately delay FTC proceedings and deny relief to the consuming public while indefinite questions of economic prediction were resolved by the Commission." *American Financial Services v. FTC*, 767 F.2d 957, 986–87, citing H.R. Rep. No. 1107, 93rd Cong. 2d Sess. 47 (1974). The court quoted language from the legislative history indicating that the Commission should rely on "its best estimate" of the impact of the rule. Id. at 986–87 citing H.R. Rep. No. 1107, 93rd Cong. 2d Sess. 47 (1974), *U.S. Code Cong. & Admin. News* (1974) at 7728.

[106] 15 U.S.C. 57(a)(1)(B).



When Congress created the FTC in 1914 it gave the Commission power to determine and prevent "unfair methods of competition." From the beginning Congress intended this power to be interpreted very broadly.[107] Congress necessarily recognized that it would be impossible to define or even to predict the infinite ways in which the goals of the statute might be thwarted. Consequently, Congress gave the Commission the tools to deal with problems as they developed. Although the original language focused on competition, it was generally understood that the Act "gave the Commission considerable discretion in identifying unfair consumer practices."[108]

The Wheeler-Lea amendments of 1938[109] clarified the FTC's authority to reach acts and practices that injure the public as well as competitors. Those amendments added language to section 5 of the FTC Act to prohibit not only "unfair methods of competition," but also "unfair or deceptive acts or practices."[110] In passing that amendment Congress contemplated that the concept of unfairness would be a flexible doctrine, responsive to changing conditions in the marketplace. The courts have repeatedly recognized the breadth of this delegation and have given the Commission significant latitude in defining unfairness.[111] In its 1980 Unfairness Statement [112] the Commission set out the principles that currently guide the Commission in determining whether acts or practices are unfair.

Those principles were accepted by the D.C. Circuit in upholding the Credit Practices Rule.[113] The court's opinion noted that the consumer injury test described in the Commission's Unfairness Statement was "the most precise definition of unfairness articulated by either the Commission or Congress."[114]

The Unfairness Statement sets out three criteria that must be met in order to find consumer injury: (1) The injury must be substantial; (2) the injury must not be outweighed by offsetting consumer or competitive benefits; and (3) the injury must be one that consumers cannot reasonably avoid.[115] The rulemaking record demonstrates that the injury flowing from state restrictions on the commercial practice of optometry clearly meet these criteria.[116] As summarized *supra* in sections II. B. and C., these restrictions injure consumers by substantially raising the price of eye care, by limiting its accessibility, and by reducing the frequency with which consumers receive it. Further, no demonstrable benefits have been shown to flow from these restrictions, nor can consumers reasonably escape their injurious effect.

Like other rules promulgated under the Commission's unfairness authority, this rule seeks to halt practices that unreasonably create or take advantage of an obstacle to the free exercise of consumer decisionmaking and, in turn, to a well-functioning market.[117] Here, however, the obstacles are created by state governments rather than by private actors. This compels us to consider whether the actions of state governments can be unfair acts or practices.

Through the Magnuson-Moss amendments of 1975 Congress sought to bolster the Commission's existing authority to find acts or practices to be unfair.[118] During consideration of the rulemaking provisions, Congress repeatedly acknowledged that Commission rules would preempt inconsistent state law.[119] The legislative history of Magnuson-Moss reveals that both the sponsors and opponents of the bill recognized the potentially broad reach of the proposed rulemaking authority and contemplated that this power could be used to challenge existing laws directly.[120] A conclusion that harmful state restrictions could not be deemed "unfair" would be inconsistent with this Congressional understanding. Since the passage of the Magnuson-Moss amendments, Congress' attention has been drawn repeatedly to Commission rulemakings that would reach state laws. Each time the issue has arisen during debates over amendments to the FTC Act, Congress has declined to limit the reach of our unfairness authority under section 18. In fact, in 1985 both the House and Senate expressly stated their understanding that the Commission's unfairness authority extends to prohibiting state restraints through rules such as the proposed Eyeglasses II rule.[121] Against this legislative background, we believe that the Commission's unfairness authority is broad enough to encompass state laws.

### C. Preemption

Although the language of the FTC Act does not expressly address the preemptive effect of Commission rules, it is clear that Section 18 trade regulation rules preempt inconsistent state law. Under the Supremacy Clause of the U.S. Constitution (Art. VI, section 2), federal law supersedes inconsistent state law. Validly enacted regulations of federal agencies have the same preemptive effect on inconsistent state

[107] Realizing that it would be impossible to define with specificity all unfair practices, Congress considered and chose not to enact a statutory definition of the term "unfair method of competition." See S. Rep. No. 596, 63d Cong. 2d Sess. 13 (1914) and H.R. Conf. Rep. No. 1142, 63d Cong., 2d Sess. 19 (1940), *cited in American Financial Services* v. *FTC*, 767 F.2d 957 (1985).

[108] See Averitt, *The Meaning of "Unfair Acts or Practices" in section 5 of the Federal Trade Commission Act*, 70 Geo L.J. 225, 230–231, 235.

[109] 52 Stat. 111 (1938) (15 U.S.C. 45(a)(1)).

[110] Id.

[111] See, e.g., *Atlantic Refining Co. v. FTC*, 381 U.S. 357, 367 (1965); *FTC v. R.F. Keppel & Bros.*, 291 U.S. 304, 310 (1934); *FTC v. Raladam Co.*, 283 U.S. 643, 648 (1931).

[112] See Unfairness Statement, supra note 25.

[113] *American Financial Services v. FTC*, 767 F.2d 957 (D.C. Cir. 1985). The court found that the Commission had not exceeded its authority in promulgating the rule, given that the Commission's articulated rationale comported fully with the criteria set out in the Commission's Statement. Id. at 982.

[114] Id. at 972. The court noted further that Congress had reviewed the Statement and "ha[d] not seen fit to enact any more particularized definition of unfairness to limit the Commission's discretion." Id. at 982.

[115] Unfairness Statement, supra note 28 at 5–6.

[116] See Final Staff Report, L–1, at 306–26.

[117] Unfairness Statement, supra note 28, at 7–8. *See also American Financial Services, Inc. v. FTC*, 767 F.2d 957, 98, (DC Cir. 1985).

[118] Magnuson-Moss Warranty—Federal Trade Commission Improvement Act, 88 Stat. 2183 (1975) (15 U.S.C. 57(a)). The amendments extended the FTC's unfairness jurisdiction by adding the "affecting" commerce language to section 5 of the FTCA and by granting rulemaking power through section 18.

Some commenters argued that nothing in the Wheeler-Lea amendments authorized the Commission to find state laws to be unfair, and nothing in the Magnuson-Moss Act broadened the preexisting definition of unfairness. *See* Post-record comment of AOA, M–178, at 25–27 and Post-record comment of COA, M–178, at 22–29. We read the legislative history of Wheeler-Lea as confirmation of the principle that the unfairness standard must be a broad one. That interpretation is then brought to the legislative history of Magnuson-Moss where Congress did express its understanding that Section 18 rules would preempt state laws.

[119] See Final Staff Report, L–1, at 330–37.

[120] 117 Cong. Rec. 39640 (1971). See also discussion in Final Staff Report, L–1, at 339–40.

[121] 126 Cong. Rec. 2069, 2076–77 (1980). H.R. Rep. No. 99–162, 99th Cong., 1st Sess., 9–10 (1985) and S. Rep. No. 99–81, 1st Sess., 4–5 (1985). The bills accompanying these reports went to conference committee, but were never voted out. Earlier, in 1980, the Senate expressly rejected an amendment sponsored by Senators McClure and Melcher designed to stop the Commission from challenging the kind of state laws at issue in the Eyeglasses Rule and in the Eyeglasses II proceeding. 126 Cong. Rec. 2066 (1980). In defeating the McClure-Melcher amendment, opponents argued that state regulation of professionals was an entirely appropriate subject of FTC trade regulation rulemaking. 126 Cong. Rec. 2069 (1980) (statement of Sen. Metzenbaum); 126 Cong. Rec. 2076–77 (1980) (statement of Sen. Javits); 126 Cong. Rec. 2077 (1980) (statement of Sen. Inouye).

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laws as federal statutes, even in the absence of any explicit Congressional statement of intent to preempt.[125] Where there is irreconcilable conflict between federal and state regulation and no express language about preemption.[126] Here that presumption is statute or in the legislative history, the customary Presumption is in favor of preeption.[128] Here that presumption is bolstered by the legislative history of the Magnuson-Moss Act and by subsequent court interpretations of Commission rulemaking power.

Those commenters who have insisted that the Commission cannot preempt state laws absent a clear indication of Congressional intent have misunderstood the nature of the rulemaking authority delegated to the Commission by Congress in the Magnuson-Moss Act.[124] A showing of express Congressional intention to preempt is necessary only where Congress directs an agency to "occupy a field" of regulation.[125] In enacting the FTC Act and Title II of the Magnuson-Moss Act Congress did not intend that the Commission "occupy the field" of Consumer protection [126] or antitrust regulation. In fact, in proposed legislation preceding passage of the Magnuson-Moss amendments, Congress sought to clarify the preemptive effect of Commission rules promulgated under Magnuson Moss by stating that the FTC Act would not occupy the field and that only inconsistent state laws would be preempted.[127] Throughout the period when rulemaking legislation was being considered, the record shows that Congress was aware of the preemption issue, invariably assumed that Commission rules would preempt inconsistent state law, and took no action to limit that preemptive effect.[128]

Courts that have considered and ruled on the issue have also recognized that FTC rules preempt inconsistent state laws, relying both on general Supremacy Clause principles and on Congressional intent in enacting the Magnuson-Moss Act.[129]

D. State Action

The state action doctrine of *Parker v. Brown* [130] does not limit the Commission's power under section 18 rules.[131] In *Parker*, the Supreme Court refused to construe the Sherman Act as applying to the anticompetitive conduct of a state acting through its legislature.[132] The doctrine has never been applied to the Commission's unfairness jurisdiction generally nor to our rulemaking authority in particular. Moreover, in enacting the Magnuson-Moss amendments, Congress considered the preemption issue and concluded that Commission rules should have broad preemptive effect. To apply the *Parker* doctrine to section 18 rulemaking would frustrate Congressional intent.[133]

Important differences between the Sherman and FTC Acts demonstrate that the policy reasons that led the Court to limit the reach of the Sherman Act do not apply to our rulemaking authority under section 18 of the FTC Act. In construing the Sherman Act, the Court recognized that, if the Act were to be applied to certain state actions, widespread and indiscriminate disruption of long-standing state economic legislation would occur. Well-established state economic regulation could be dismantled at the behest of private litigants with no consideration given to important state interests. Implicit in the Court's holding was the realization that if the Sherman Act were to apply to state action, private parties and state officials would be subject retroactively to treble damages and criminal sanctions for obeying otherwise valid state laws.[134] Given Congressional silence on the effect of the Sherman Act on state law, the *Parker* court concluded that Congress could not have intended such sweeping and possibly chaotic results.

Application of section 18 rulemaking to state legislation would not produce such dire consequences. First, challenges to state laws under section 18 can be initiated only by the FTC, a federal agency with a mandate to protect the public interest and subject to Congressional oversight. In contrast, private parties seeking to protect private rights or enrich private pockets may use the Sherman Act to challenge state laws. Second, FTC rules apply prospectively, eliminating the danger of imposing retrospective penalties, such as those available under the Sherman Act,[135] against state officials or against private parties who have acted in good faith reliance on otherwise valid state laws.[136] Third, rulemaking is a more appropriate vehicle for examining whether federal or state interests are served by regulatory schemes than adjudicative actions under the Sherman Act. Unlike a private action brought under the Sherman Act, rulemaking allows for participation by all interested parties (including state officials) and for development of a record that reflects a broader perspective than could be achieved in private litigation. Because it more closely resembles the legislative than the adjudicative model, rulemaking is more conducive to the formation of public consensus and compromise. Finally, the application of the unfairness criteria in a section 18 rulemaking requires the Commission to consider the prevalence of the acts or practices, the nature of the injury, and any countervailing benefits. Thus, a section 18 rulemaking permits a review of state law that is both more flexible and potentially more protective of important state interests [137] than is an action under the Sherman Act, where the focus is exclusively on competition issues. Thus, any disruption of long-standing state economic legislation will not occur unless careful review of the evidence shows that minimal or no benefits flow from that legislation.[138]

Moreover, to the extent that *Parker* is a doctrine based on statutory construction, the clear differences in the legislative histories of the Sherman and Magnuson-Moss Acts support our view that Congress did not intend that *Parker* apply to section 18 rulemaking. While the legislative history of the Sherman Act is devoid of indications that Congress gave any consideration to the effect the Sherman Act would have on state law,[139] the legislative history of Magnuson-Moss is replete with evidence that Congress considered the relationship between the Commission's section 18 authority and state law.[140]

E. State as a "Person"

In order to declare state laws to be unfair acts or practices, we must be able to conclude that a state or its officials are "persons" within the meaning of the Federal Trade Commission Act.

While no federal court has determined this issue within the context of the FTC Act,[141] the Supreme Court has found state entities to be persons for the purpose of the Robinson-Patman Act [142] and the Sherman and Clayton Acts.[143] The Supreme Court has also found states to be persons under selected provisions of the IRS Code.[144]

In determining whether states meet the statutory definition of "person," the Supreme Court has generally looked to the legislative environment of the statute, including such factors as the subject matter, content, legislative history, and executive interpretation of the statute.[145] In addition, the Court has also considered whether exclusion of states from the statutory class of persons would frustrate the purpose of the statute.[146]

We have weighed these factors and believe that to exclude states from the reach of the Commission's unfairness authority would defeat the purpose of the FTC Act. The legislative history of the FTC Act indicates that Congress intended an expansive meaning to be given to the word "person." [147] Furthermore, the finding that states are persons within the meaning of section 5 for the purposes of this rulemaking is consistent with recent Commission decisions [148] and our reading of the entire FTC Act and its amendments, including the broad scope of the Commission's unfairness authority, as discussed supra at section III.B.[149]

*IV. Federalism Concerns*

As discussed above in section III., we are persuaded that the Commission has the legal authority to prohibit the state restraints at issue in this proceeding. Judicious exercise of that power, however, prompts us to consider whether we should act in this instance. We are keenly aware that this proceeding raises important questions about the proper allocation of power between the states and the federal government. However, after careful consideration, we are convinced that this rule is a proper exercise of federal power and is consonant with the principles of federalism.

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[125] See, e.g., Fidelity Federal Savings and Loan Ass'n v. De La Cuesta, 458 U.S. 141, 153–54 (1982). See also discussion in Final Staff Report, L–4, at 327–28.

[126] See, e.g., *Paul v. United States*, 371 U.S. 245 (1963); *Free v. Bland*, 369 U.S. 663 (1962).

[127] For example, both the AOA and the CDA claimed that neither the language nor the legislative history of Magnuson-Moss show a clear manifestation of Congressional intent to grant FTC rules preemptive power. See Post-record comment of AOA, M–178, at 10–25 and Post-record comment of COA, M–178, at 23–25. They go on to note that Title I of Magnuson-Moss (i.e., warranty provisions) contains an express grant of preemptive power while Title II (i.e., section 18 rulemaking) contains no such express grant. However, in Title I Congress intended to occupy a portion of the field of warranty regulation and therefore needed to express the preemptive effect. Title II envisions only conflict preemption. The case law cited by these commenters unequivocally establishes that conflict preemption flows automatically from the Supremacy Clause, regardless of any express Congressional intent to preempt. See, e.g., *Fidelity Federal Savings and Loan Ass'n v. De La Cuesta*, 458 U.S. 141, 153–54 (1982); *Michigan Canners and Freezers Ass'n v. Agricultural Marketing and Bargaining Board*, 467 U.S. 461, 469–70 (1984); *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142–43 (1966).

[128] In these instances any state regulation on the same subject as the federal regulation is preempted even if the state regulation does not conflict with the federal requirements. See, e.g., *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218 (1947). In contrast, this rule displaces only four specified types of state restraints on the commercial practice of optometry. States continue to have broad authority to regulate the practice of optometry in order to safeguard the health of consumers. See discussion infra, section IV.

[129] The House Committee Report accompanying Magnuson-Moss noted that the FTC "should not intrude where cases of consumer fraud of a local nature are being effectively dealt with by State or local government." H.R. Rep. No. 93–1107, 93d Cong., 2d Sess. 45 (1974).

[130] S. 3201, 91st Cong., 2d Sess. 103 (1970). See S. Rep. No. 96–1124, 91st Cong., 2d Sess. 23 (1970).

[131] The Magnuson-Moss amendments were passed during the 93d Congress. However, similar measures had been introduced in the two previous Congresses. Language regarding preemption appeared in some, but not all, of the proposed bills and accompanying reports. As a consequence, arguments regarding Congress' ultimate purpose have been raised by a number of commenters. See Brief of the American Optometric Association, *AOA v. FTC*, H–61, App. A at 28–29 (Attachment to AOA comment). Our consideration of all of the evidence leads to the conclusion that Congress understood the traditional preemptive effect of federal rules and the presence or absence of statements in the various bills and reports reflects only Congressional efforts to clarify the scope of the existing preemptive authority. See Final Staff Report, L–1, at 330–37.

[132] In upholding the Credit Practices Rule, the Court of Appeals in *American Financial Services v. FTC* concluded that Congress intended FTC rules to have "that preemptive effect which flows naturally from a repugnancy between the Commission's valid enactments and state laws." 767 F. 2d 957, 989–90. The Court in *Katharine Gibbs School v. FTC*, 612 F.2d 658 (2d Cir. 1979), relied on similar reasoning on treating the preemption issue as settled. Although the Court remanded the rule in that case because the Commission had not defined with specificity the unfair acts and practices targeted by the rule, the court indicated that "questions of preemption could be answered with relatively little difficulty." If the Commission identified clearly the acts and practices encompassed by a rule. 612 F. 2d at 66. In the instant rulemaking, we have striven to define the unfair acts or practices with as much specificity as possible.

[133] 317 U.S. 341 (1942).

[134] Both the AOA and COA have contended that the state action doctrine applies to the federal antitrust laws generally, and therefore must apply to the FTCA. See Post-record comment of the AOA, M–178, at 29 and Post-record comment of the COA, M–178, at 29–30.

[135] 317 U.S. 341 (1942).

[136] The Commission has recognized that the *Parker* doctrine applies to adjudications brought under its unfair methods of competition authority, but only to the extent that the unfair methods of competition challenged consist of traditional Sherman Act violations. See *Massachusetts Furniture & Piano Movers Ass'n v. FTC*, 773 F.2d 391 (1st Cir. 1985); *Indiana Federation of Dentists*, 101 F.T.C. 57, 180 n. 36 (1983). In 1987, both the House and Senate passed versions of FTC authorizing legislation that would codify the Commission's application of the state action doctrine to its unfair methods of competition jurisdiction. In drafting this legislation, however, it is clear that Congress intended that the Commission's authority over unfair acts or practices not be limited by the state action doctrine. H.R. Rep. 271, 100th Cong. 1st Sess., 20 (1987).

[137] See Verkuil, *Preemption of State Law by the Federal Trade Commission*, 1979 Duke L.J. 225, 231; Note, *The State Action Exemption and Antitrust Enforcement Under the Federal Trade Commission Act*, 89 Harv. Law Rev. 715, 734–736 (1976).

[138] The retrospective penalties provided for under the Sherman Act are treble damages and criminal sanctions. Courts have considered the nature of the remedy and whether the suit is brought by a private litigant or by the federal government to be relevant factors in determining whether Congress intended particular statutory provisions to apply to the states. See *Employees of the Department v. Department of Public Health and Welfare*, 411 U.S. 279 (1973). *Cf. Lafayette v. Louisiana Power & Light Co.*, 435 U.S. 389 (1977); *New Mexico v. American Petrofina, Inc.*, 501 F.2d 363, 367 (9th Cir. 1974).

In *Employees*, the Court was construing the Fair Labor Standards Act, which clearly covered both private parties and state governments. The only question in that case was whether the various redress provisions of the statute were intended by Congress to apply to state governments. The Court concluded that Congress did not intend to allow private parties to seek penalties from state governments although Congress did intend to allow the federal government to sue state governments for violations of this act. In reaching this conclusion the court was influenced by the fact that the penalty provisions "may saddle the states with 'enormous fiscal burdens,' and that 'Congress, acting responsibly, would not be presumed to take such action silently.'" *Employees of the Department v. Department of Public Health and Welfare*, 411 U.S. 279, 304 (Brennan, J., dissenting, quoting majority opinion at 284, 286).

[139] The imposition of penalties under the FTC Act is guided by FTC discretion, which is informed by the public interest. In § 456.4(b) of this rule, the Commission has stated that it will not seek the imposition of civil penalties against states, state agencies or state officials for violation of this rule.

[140] See discussion *infra* at section IV.

[141] In a subsequent case, the Court stated that the legislative history actually contains some statements expressing a Congressional intention not to invade the legislative authority of the states. *Southern Motor Carriers Rate Conference v. United States*, 471 U.S. 48, 58 n. 19 (1985).

[142] See discussion of unfairness *supra* at Section III. B. There is also evidence to suggest that, at the time it amended the FTC Act in 1975, Congress was aware that the Commission might use its rulemaking power to challenge state-imposed restrictions on drug price advertising. See 120 Cong. Rec. 36150–52 (1974) (statement of Commissioner Thompson).

[143] But see, *California ex rel. Christensen v. FTC*, 1974–2 Trade Cas. (CCH) ¶75,328 (N.D. Cal. 1974), vacated and remanded, 549 F.2d 1321 (9th Cir.), cert. denied sub nom. *California Milk Producers Advisory Board v. FTC*, 434 U.S. 876 (1977).

[144] *Jefferson Co. Pharm. Ass'n v. Abbott Labs.* 460 U.S. 150, 155–56 (9183).

[145] *Lafayette v. Louisiana Power & Light Co.*, 435 U.S. 389, 394–97 (1978).

[146] See, e.g., *Sims v. United States*, 359 U.S. 108, 112 (1958); *Ohio v. Helvering*, 292 U.S. 360 (1934).

[147] Letter from Federal Trade Commission to Senator Robert Packwood, Chairman, Committee on Commerce, Science and Transportation, United States Senate, March 5, 1982.

[148] See discussion *infra* at section IV.

[149] In a subsequent case, the Court stated that the legislative history actually contains some statements expressing a Congressional intention not to invade the legislative authority of the states. *Southern Motor Carriers Rate Conference v. United States*, 471 U.S. 48, 58 n. 19 (1985).

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[152] *Jefferson Co. Pharm. Ass'n v. Abbott Labs.* 460 U.S. 150, 155–56 (9183).

[153] *Lafayette v. Louisiana Power & Light Co.*, 435 U.S. 389, 394–97 (1978).

[154] See, e.g., *Sims v. United States*, 359 U.S. 108, 112 (1958); *Ohio v. Helvering*, 292 U.S. 360 (1934).

[155] Sims, 359 U.S. at 112 and *United States v. Cooper Corp.*, 312 U.S. 600, 605 (1941).

[156] See, e.g., *Plumbers' Local 298 v. County of Door*, 359 U.S. 354 (1959); *Union Pacific R.R. Co. v. United States*, 313 U.S. 450 (1941); *United States v. California*, 297 U.S. 175 (1936).

[157] See 51 Cong. Rec. 14,928 (1914); H.R. Rep. No. 553, 63d Cong. 2d Sess. (1914); H.R. Rep. No. 1142, 63d Cong. 2d Sess. (1914). See also Final Staff Report, L–1, at 363–64.

[158] See *Massachusetts Board of Registration in Optometry*, Docket No. 9195 (Final Order, June 13, 1988) and *Indiana Federation of Dentists*, 93 F.T.C. 321 n. 1 (1979) (interlocutory order).

[159] The Commission took the same position when it promulgated the Eyeglasses Rule. Statement of Basis and Purpose for the Trade Regulation Rule on Advertising of Ophthalmic Goods and Services, 43 FR 23992, 24004 (1978). On appeal of that rule, the court reserved judgment on the issue of whether the Commission could exercise jurisdiction over the states. *American Optometric Ass'n v. FTC*, 626 F.2d 896 (D.C. Cir. 1980).

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Because we are dealing with state law, we have proceeded with extreme caution at each step of this rulemaking. Procedural safeguards are built into section 18 rulemakings to ensure that all interested parties have ample notice so that they have an opportunity both to present their views and evidence and to challenge the evidence and views submitted by other parties.[180] In deference to the significant state interests at stake, we solicited the views of state officials as well as industry members and consumers. We gave every consideration to claims that quality of care concerns justify these restrictions and would have deferred to any credible showing of countervailing benefits. In fact, when state laws are the subject of a section 18 rulemaking, the Commission has required that there be an even more rigorous showing of consumer injury and absence of countervailing benefits than is required under the Commission's unfairness standard.[181]

Nonetheless, as discussed above in section II.C., the record contains no persuasive evidence that commercial practice restrictions have any positive effect on the quality of care consumers receive or that they promote any other legitimate state interest. On the other hand, the record shows that state-imposed restraints on the commercial practice of optometry seriously hinder the provision of eye care to consumers. These restraints impose substantial costs on consumers. The primary effect of this regulation is to protect one category of providers, primarily solo practitioners, from competition from high-volume chain firms—at an annual cost to consumers of millions of dollars. This stifling of competition not only leads to higher prices and less eye care for consumers today, but delays the development of more innovative and cost-effective ways of providing services tomorrow.[182]

While we are convinced of the injury that these restrictions cause, we are also mindful of the states' traditional role in protecting the health and welfare of their citizens. Therefore, we have drafted this rule narrowly so as not to intrude gratuitously on the legitimate exercise of the police powers of the state.[183] The extent of our "intrusion" is carefully limited to those regulations that have been shown to be unfair, and should not interfere with the states' ability to protect their citizens from deceptive or abusive practices by optometrists or to ensure that high-quality optometric care is provided.

What the rule does challenge is state regulation that, in effect, insulates local optometrists from competition from large, price-competitive chain firms, most of which operate interstate.[184] Thus, this rule intrudes on no traditional state interest. Rather, it represents an appropriate exercise of the Commission's responsibility, grounded in the Commerce Clause, to protect markets from unfair or deceptive acts or practices.

By empowering the federal government to regulate commerce, the framers clearly sought to limit the extent to which states could restrict the development of interstate markets. Such limits were originally seen as necessary to protect the nascent national economy from the protectionist actions of the states, which the framers feared would lead to a destructive cycle of discrimination against out-of-state goods and the retaliation that would inevitably result.[185] That some policy of limiting state authority over interstate markets, underlying the Commerce Clause, favors Commission action here to prevent states from denying interstate ophthalmic providers access to local markets when the evidence demonstrates that the states' asserted basis for such actions—to protect citizens from poor-quality ophthalmic care—has no substantial basis in fact.[186]

In providing the Commission with Section 18 rulemaking authority, Congress has made a limited delegation to the FTC of its legislative authority to protect consumers from acts or practices that unreasonably interfere with the efficient functioning of interstate markets. We find that the existing restrictions on commercial practice are designed to and do impede the efficient flow of interstate commerce, and that they impose significant costs on consumers without providing any countervailing benefits. Thus, they constitute the kind of unfair acts or practices that Congress authorized the FTC to challenge in section 18 rulemaking.

We also believe that promulgation of this rule is consistent with a recent Executive Order on federalism.[187] That Order sets out certain policymaking criteria to guide executive agencies in the formulation of federal policy. In particular, the Order directs executive departments and agencies to act in strict adherence to constitutional principles and limit the policymaking discretion of states only where there is clear and certain constitutional authority and only where there is a problem not merely common to the states, but national in scope. In addition, the Order directs that any regulatory preemption of state law be limited to the minimum level necessary to achieve the objectives of the statute.

While the FTC is not bound by the requirements of this Order, we believe this rule conforms to the policymaking criteria outlined in the Order. We have proceeded under the clear and enumerated power of Congress to protect interstate commerce. The legislative history of the Magnuson-Moss amendments and subsequent Congressional action provide clear authority for this rule. We have identified a serious problem amenable to solution only at the national level; we have carefully examined the proffered claims of state interest; and we have fashioned a narrowly drawn deregulatory response that does not intrude on the legitimate interests states have in protecting the health and safety of their citizens.

[180] The Magnuson-Moss amendments impose additional safeguards beyond those mandated by the Administrative Procedure Act. These include additional hearing requirements and expanded scope of review by the courts. 15 U.S.C. 57a. See also Verkuil, *Preemption of State Law by the Federal Trade Commission*, 1976 Duke L.J. at 245-43; Note, *The State Action Exemption and Antitrust Enforcement under the Federal Trade Commission Act*, 89 Harv. L. Rev. 713, 745-50 (1976).

[181] Letter from Federal Trade Commission to Senator Robert Packwood, Chairman, Committee on Commerce, Science and Transportation, United States Senate, March 5, 1982. Our decision to forego remedies normally available for violations of the FTC Act is a further indication of our recognition that the actions of states and their officials, as opposed to actions by private citizens, merit special consideration in an enforcement proceeding. See discussion of Commission's enforcement policy *infra* in section V.

[182] For over thirty years scholars have written at length of the various ways in which excessive state economic regulation—such as these restrictions on the commercial practice of optometry—distorts the operation of markets and harm consumers. See, e.g., P. Verkuil, *State Action, Due Process and Antitrust: Reflections on Parker v. Brown*, 75 Col. Law Rev. 328 (1975); G. Stigler, *The Theory of Economic Regulation*, 2 Bell J. Econ. & Mgmt. Sc. 3 (1971); W. Gellhorn, *Individual Freedom and Governmental Restraints* (1956).

[183] In response to the cautionary message of the Court of Appeals in the Eyeglasses Rule, we have drafted this rule to focus narrowly on four specific areas of commercial practice. In remanding the advertising portions of the rule, the Court stated that the Commission had preempted the whole field of ophthalmic advertising, and so had "at least approached the outer boundaries of its authority." 626 F.2d 865, 870. The Court went on to state that answers to questions regarding preemption and state action "may depend . . . on the extent to which a federal regulation gratuitously intrudes on the exercise of police powers of the states." Id.

[184] While on their face these restrictions do not discriminate against out-of-state providers, they, in fact, have a disproportionately harmful effect on high-volume practices that operate interstate.

[185] Under the Articles of Confederation, some states engaged in protectionist activities that threatened to effect the development of a vital interstate economy. For example, New York imposed port fees and tonnage duties on vessels from Connecticut and New Jersey, increasing the cost of farm products coming from those two states. In retaliation, New Jersey taxed the property for the lighthouse at Sandy Hook that New York had built, while Connecticut merchants suspended commercial dealings with New York for one year and imposed fines on those who disregarded the boycott. A. Ciesecka, *American Commercial Legislation Before 1789*, 126-135 (1910). See also C. P. Nettels, *The Emergence of a National Economy, 1775-1815*, 73-73 (1977).

[186] We take no position on whether the commercial practice restraints that are the subject of this rulemaking could be challenged successfully by private parties using a Commerce Clause theory and the evidence on this record.

[187] Exec. Order No. 12,612, 52 FR 41685 (1987).



*V. Section-by-Section Analysis*

The following section-by-section analysis explains the intended scope and meaning of each of the rule provisions adopted by the Commission.

Section 456.1: Definitions

This section defines certain terms used in the rule. Many of these terms are contained in the Eyeglasses Rule and relate to the prescription release requirement. The rule makes some modifications to terms used in the Eyeglasses Rule and includes some new definitions.

*Paragraph (a):* The term "patient" has been substituted for the term "buyer" to conform more closely to industry usage. The term covers anyone who has undergone an eye examination.

*Paragraphs (b), (c), and (d)* remain unchanged from the original rule definitions.

*Paragraphs (e) and (f)* replace § 456.1(h) of the Eyeglasses Rule. The specific terms "ophthalmologist" and "optometrist" in paragraphs (e) and (f) have been substituted for the general word "refractionist" used in § 456.1(h) of the Eyeglasses Rule to define those categories of providers—Doctors of Medicine, Osteopathy and Optometry—who are qualified under state law to perform eye examinations. This change was made for two reasons. First, the use of the term "refractionist" in the Eyeglasses Rule has caused confusion because it is not generally used by consumers or by industry members. Second, the provisions of the Eyeglasses II Rule relating to commercial practice apply to optometrists, not ophthalmologists. The term "refractionist" has been deleted so that this distinction is clear.

*Paragraph (g):* The definition of the term "person" has been changed. This term was originally used in § 456.6 of the Eyeglasses Rule. That rule provision is no longer in effect, so the original definition of the term is no longer relevant. The term "person" is now used only in the rule provisions concerning commercial practice. The definition has been changed to make it clear that the term covers any individual, partnership, corporation or other entity, whether or not the FTC has jurisdiction over the "person."

*Paragraph (h):* The term "prescription" is defined as those specifications necessary to obtain lenses for eyeglasses. Thus, under the rule, the prescription that is released to the patient need only contain the data on the refractive status of the patient's eyes and any information, such as the date or signature of the examining optometrist or ophthalmologist, that state law requires in a legally fillable eyeglass prescription. The definition deletes all references to contact lenses. This change is intended to end the confusion generated by the definition in the Eyeglasses Rule concerning the obligation of optometrists and ophthalmologists to place the phrase "OK for contact lenses" (or similar words) on eyeglass prescriptions. No such obligation exists under the rule. This change will also clarify the fact that the prescription release requirement does not affect state laws regulating who is legally permitted to fit contact lenses. This change does not affect the requirement that optometrists and ophthalmologists offer prescriptions for lenses for eyeglasses to all patients whose eyes they examine, including those patients who wear or intend to purchase contact lenses.

*Paragraph (i):* The definition of "optometric services" is new. It is intended to cover the full range of services which may be provided by an optometrist under state law. The precise meaning of the term may vary slightly from state to state since states define the practice of optometry differently. The term only includes services provided by an optometrist, not by other professionals such as ophthalmologists who may also be licensed under state law to provide such services.

The new term is needed because the terms in the rule as originally proposed did not cover the full range of services which may be provided by optometrists. The term "ophthalmic services," as defined in § 456.1(d), covers only the measuring and fitting of eyeglasses or contact lenses subsequent to the eye exam. The term "eye examination," as defined in § 456.1(b), covers tests and procedures to determine the refractive status of the eyes. Optometrists are licensed to perform other services, however. For example, optometrists may prescribe eye exercises to deal with eye muscle problems or, in many states, prescribe topically applied prescription drugs to treat certain forms of eye disease. All such activities are included under the term "optometric services."

Section 456.2: Separation of Examination and Dispensing

This section requires that optometrists and ophthalmologists give prescriptions for eyeglass lenses to their patients immediately after completing an eye examination. Except for minor changes in terminology, this section is identical to the prescription release requirement contained in the Eyeglasses Rule (originally § 456.7).

*Paragraph (d)* addresses the use of waivers or disclaimers of liability. As the Commission makes clear in its declaration of intent (§ 456.5(c)), the rule does not impose liability on an ophthalmologist or optometrist for the ophthalmic goods and services dispensed by another individual pursuant to the ophthalmologist's or optometrist's prescription. By its terms, the rule proscribes only "waivers or disclaimers" of the physician's or optometrist's own responsibility. The Commission has interpreted this portion of the rule to permit nondeceptive affirmative statements concerning responsibility. For example, a written statement that "the person who dispenses your eyeglasses is responsible for their accuracy" would not violate § 456.2(d). However, such an affirmative statement cannot be coupled with a waiver or disclaimer of the optometrist's or ophthalmologists's own liability.[188]

Section 456.3: Federal or State Employees

This section (originally § 456.8 of Eyeglasses Rule) deletes references to the remanded portions of the Eyeglasses Rule and clarifies the intended effect of this section. This section exempts practitioners who work for any federal, state, or local government agency from the rule's prescription release requirements. If practitioners work only part-time for the government, the exemption only applies when they are engaged in their governmental duties.

Section 456.4: State Bans on Commercial Practice [189]

*Paragraph (a)(1): Lay Association.* The purpose of this section is to

[188] 43 FR 46286-46287 (1978).

[189] State bans may arise from a variety of sources: statutes, regulations, attorney general opinions, court opinions, and enforcement policy decisions by state boards and other state agencies. Regardless of the method used or the state entity involved, the rule prohibits such bans.

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invalidate state prohibitions on optometrists' entering into certain designated business associations with nonoptometrists that make it possible to provide optometric services and ophthalmic goods and services to consumers in more efficient ways.

As originally proposed, § 456.4(a)(1) proscribed state prohibitions on "employer-employee or other business relationships" between optometrists and nonoptometrists. However, we realized that this language would leave some uncertainty in the minds of lawmakers and practitioners as to the scope of the rule.[100] We have narrowed the language of § 456.4(a)(1) to make it an unfair act or practice for states to prohibit those specific types of associations that the record demonstrates are critical to the development of commercial practice: (1) The employment of optometrists by lay persons or corporations to provide optometric services; (2) partnership agreements, joint-ownership or equity-participation agreements, profit-sharing agreements, or franchise agreements [101] between optometrists and nonoptometrists (including those that involve the sharing of revenues between optometrists and nonoptometrists) for the purpose of providing optometric services or ophthalmic goods or services; or (3) the leasing of office space by optometrists from nonoptometrists, including the payment of rentals on such leases based on a percentage of the optometrist's revenues.

The record also demonstrates that lay control over the business aspects of an optometric practice is an integral element of commercial practice. Subsection (v) invalidates those state regulations that prevent lay persons or corporations from controlling those business aspects of a practice that the record demonstrates have no effect on quality of care—e.g., setting of fees, salaries, or minimum office hours; location of the practice; choice of suppliers of material, equipment, services, and laboratory work; establishing minimum quantities of materials in stock and minimum equipment;[102] advertising, promotion, and marketing practices; accounting and financial practices; office design, decor, and maintenance; and other activities that involve business judgments to a similar degree.[103] As discussed more completely herein, this provision of the rule does not prevent states from passing regulations concerning these business aspects of optometry. It simply prevents the states from mandating that optometrists alone, and not lay persons or corporations, must make these decisions.

Finally, the language of this provision makes clear that the only affiliations covered by § 456.4(a)(1) are affiliations for the purpose of "providing optometric services" or "forming entities whose business, in whole or part, is providing optometric services or ophthalmic goods and services to the public." The inclusion of this language makes clear that affiliations for anything other than this stated purpose are not covered by the rule.[104]

The rule does not interfere with a state's ability to adopt or enforce any law or regulation that addresses specific harmful practices arising from lay association. For example, the rule does not interfere with a state's ability to prohibit improper lay control of the practice of optometry or the professional judgment of an optometrist, where the terms "practice of optometry" or "professional judgment" do not encompass those business aspects of a practice described in subsection (v).

The rule does not affect the ability of the states to prohibit the use of certain compensation schemes. For example, states could, if they were so inclined, prohibit employers of optometrists from setting quotas for the number of examinations that optometrists must perform. States could also choose to ban the payment of commission based on the number of examinations given or prescriptions written by optometrists. The evidence in this record does not establish that commission payments provide clear consumer benefits or that they result in no consumer injury.[105]

States may also establish minimum standards of competence or honesty and discipline those optometrists, commercial or not, who fail to meet those standards. In short, under the rule, states retain broad authority to regulate the commercial and traditional practice of optometry in order to protect the health and safety of their citizens and to prevent abuse of consumers.

*Paragraph (a)(2): Branch Offices.* The rule allows optometrists to own, operate, or practice in any number of offices. Corporations or other entities which offer optometric services through affiliations between optometrists and lay persons, as allowed by § 456.4(a)(1) of the rule, would also be permitted to own or operate any number of offices.

The rule also prohibits states from requiring optometrists to remain in personal attendance at each branch office for a specific percentage of the time the branch is open. Such a requirement effectively limits the number of branch offices that an optometrist may own and therefore is prohibited by the rule.

However, as § 456.5(a) makes clear, the states retain broad authority to regulate health and safety and to

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[100] For example, some commenters argued that the original language was broad enough to encompass regulations banning "capping and steering" and referral arrangements. While in some instances such regulations may be unconstitutional restraints on commercial speech, the rule language makes clear that the rule does not cover such prohibitions.

[101] Typically, under an optometric franchising arrangement, the optometrist pays the franchiser for a specified set of goods or services, which might include the use of the franchiser's trade name and trademarks, the benefits of its goodwill, proven method of doing business, volume discounts on equipment and inventory, financing available through the franchiser, and participation in the franchiser's advertising program. The franchiser retains control over many aspects of the franchisee's business organization, such as office design, items stocked, and minimum quality standards. J. Solish, Attorney, R.H. Teagle Corp., Tr. 1388–72; cf. P. Zeldman, Attorney, National Franchise Association, Tr. 981 (describing attributes of franchising agreements generally).

[102] Obviously, these minimum standards would have to accord with any state-imposed standards for optometric practice. Furthermore, under the rule, states could require that optometrists be permitted to have equipment and inventory above the minimum level established by the lay person or corporation.

[103] The record establishes that corporations which associate with optometrists—for example, by employing optometrists or entering into franchise agreements—where currently permitted, commonly control these aspects of the business. See, e.g., NAOO, H–78a, at 39–40 and Appendices J, K, L, and M. Other evidence on the record, see supra section II.C., demonstrates that associations between optometrists and lay persons have no adverse impact on the quality of care available in the market.

[104] For example, the rule was never intended to address commercial practices by ophthalmologists. The record evidence centers on commercial optometric practice; there is little evidence concerning commercial practice by opthalmologists. Under this provision, ophthalmologists also may enter into affiliations with optometrists for the purpose of providing optometric services or ophthalmic goods and services to the public.

The term "sellers" also appeared in the proposed language of § 456.4(a)(1). Sellers was defined to include opticians. As a result, the rule as originally proposed would have prohibited state restraints on lay persons employing (or otherwise affiliating with) "sellers." The record shows that the law of only one state prohibits such affiliations, and no evidence or comments were submitted about this restriction. Consequently we decline to extend the rule to such a restriction.

[105] In contrast to an franchise or leasing arrangement, for example, where an optometrist pays a percentage of his gross revenue to the franchiser or lessor, commission payments entail a payment to an optometrist which varies depending upon the number of eyeglasses sold or revenue generated by the optometrist. The former creates no incentive for the optometrist to overprescribe while the latter arguably does.



prevent consumer abuses. For example, states could require that optometric services or ophthalmic goods or services provided at each office be supplied only by a person qualified to do so. As another example, states could regulate the services provided at each office by requiring minimum eye examination procedures, minimum office equipment, or a specific level of sanitation.

*Paragraph (a)(3): Mercantile locations.* This provision allows optometrists to locate their practices inside retail optical stores, department stores, or other mercantile establishments. Optometrists can also locate in shopping malls or adjacent to optical retailers. Under the rule corporations and other entities that offer optometric services by employing optometrists or otherwise affiliating with optometrists, pursuant to § 456.4(a)(1) of the rule, can also locate in mercantile locations.

Consequently, the rule also eliminates so-called "two-door" or "side-by-side" requirements, which are frequently used to prohibit optometrists from locating directly inside mercantile establishments. These requirements mandate separate offices for the optometrist and the optician, including, in some instances, separate doors and duplicate facilities and partitions between the two offices. Under the rule, states could not require separate offices, separate entrances, duplicate facilities, or partitions.

Finally, as § 456.5(a) makes clear, the rule is not intended to interfere with the state's ability to enforce general zoning laws or any law, rule, or regulation which prohibits the location of an optometric practice in an area which would create a public health or safety hazard.

*Paragraph (a)(4): Trade Names.*[106] The rule invalidates state prohibitions on optometrists' practicing under any nondeceptive trade name. Thus, for example, optometrists employed by a chain firm could practice under the name of the chain firm as long as the name was not deceptive. Optometrists working for other optometrists could practice under the name used by their employer. Optometric franchisees could practice under the franchise name. Solo practitioners could adopt any nondeceptive trade name. Corporations and other entities which offer optometric services through affiliations with optometrists, pursuant to § 456.4(a)(1) of the rule, could also practice under any nondeceptive trade name.

Some states, for example, require that any trade name include the name of one or more of the optometrists practicing under the trade name.[107] Such requirements would violate the rule since they prohibit use of a wide variety of nondeceptive trade names, including some that are well-established in other states. Other states require that all trade names used by optometrists include the word "optometric" or "optometrist."[108] Trade names which do not include these terms, such as "Smith Optical Center," are not in general, deceptive. Such a requirement would also be prohibited under the rule, since it would prohibit the use of all other nondeceptive trade names.[109]

The rule also allows optometrists to advertise under a trade name in a nondeceptive manner. For example, optometrists could display their trade names on signs and use the trade name in media advertising. Similarly, chain firms offering eye exams could advertise optometric services under the trade name.

The rule also prohibits states from mandating that any trade name advertisement disclose the names of all optometrists practicing at a given advertised location or practicing under the advertised trade name.

However, as § 456.5(a) (3) and (4) make clear, the rule does not infringe on the state's ability to enforce any law, rule, or regulation which requires that the identity of an optometrist be disclosed to a patient before, during, or after the time optometric services are provided or ophthalmic goods are dispensed or from enforcing any state law, rule, or regulation that is reasonably necessary to prevent the deceptive use of trade names in advertising. Also, the rule would not prevent states from imposing reasonable disclosure requirements on any trade name advertising.

Sections 456.4(b) and 456.5(b): Enforcement Policy

The Commission expects that the states will comply voluntarily with the rule. If, however, a state or local governmental agency or official attempts to enforce a state law or regulation that conflicts with the rule, § 456.5(b), while not creating a private right of action, recognizes that individuals can interpose the rule as a defense in any proceeding brought by the state. In such a situation, a person could correctly assert that the rule preempts the state law or regulation and therefore there is no basis on which any enforcement action could be brought. Because the Commission expects the states to comply voluntarily with the rule, it does not anticipate bringing any law enforcement actions against state or local governmental agencies or officials. Section 456.4(b) of the rule also provides that no state or local governmental agency or official is liable for civil penalties, consumer redress, or other monetary relief that would ordinarily be available under the FTC Act for violations of this rule.

Section 456.5: Declaration of Commission Intent

*Paragraph (a):* Section 456.5(a) is intended to make clear that the rule does not affect any state regulation as long as the state does not engage in the specific practices enumerated in § 456.4(a) (1)–(4). Thus, the rule does not interfere with a broad range of state regulation that safeguards the health and safety of eye care consumers, or prevents unfair or deceptive practices or anticompetitive conduct by eye care providers, including commercial practitioners. For example, many states specify that particular procedures must be performed each time an optometrist performs an eye examination or that every optometrist's office must have particular equipment. Many states require that optometrists refer cases of suspected pathology to ophthalmologists, or require that optometrists verify the accuracy of lenses prepared according to their prescriptions. All states prohibit fraud and deception in the practice of optometry and virtually all require that optometrists practice "competently."[110] The rule does not interfere with a state's ability to regulate optometry, including commercial practice, through such regulations.

We also acknowledge that a state or local government can enact regulation that may have an incidential impact on the ability of optometrists to engage in the specific practices covered by the rule, as long as the regulation does not distinguish between commercial and

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[106] Section 456.1(j) of the rule as originally proposed defined the term "trade name ban." The rule incorporates the substance of this definition in this section, which bars states from prohibiting the use of trade names. Thus, a separate definition is unnecessary.

[107] See, e.g., La. Rev. Stat. Ann. section 1112 (West 1982); Mo. Admin. Code Tit. 4, CSR 210–2.060(4)(E) (1984); Or. Admin. R. section 853–300–010 (1984).

[108] See, e.g., Minn. R. 6500.0360, Subp. 3 (1987).

[109] In fact, use of the term "optometric" in the trade names of large chain firms could well be confusing to consumers since the term may imply that optometric services are available at all the chain's retail locations when, in fact, this may not be the case.

[110] See Final Staff Report, I–1, at 65–66.

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noncommercial optometrists or optometric firms. Thus, the rule does not invalidate state labor laws, antitrust laws, zoning laws, or other state or local regulation that may have an incidental impact on the ability of optometrists to engage in the conduct protected by the rule.

*Paragraph (b):* See analysis of § 456.4(b) for a discussion of the Commission's views regarding the ways in which the Commission intends the rule to be enforced.

*Paragraph (c):* See analysis of waivers and disclaimers of liability in § 456.2(d).

*VI. Alternatives Considered*

During the course of this proceeding the Commission carefully considered alternative approaches to the promulgation of a rule. We also considered adopting a broader prohibition on commercial practice restraints—one that would reach indirect as well as direct bans—and considered various proposed modifications to the existing prescription release provisions. Each of these alternatives is discussed below.

A. Alternatives to Promulgation of a Rule

1. *Take no action; defer to the states.* The Commission could leave to the states the decision whether or not to eliminate these restrictions. The Commission could continue to make its staff studies and other evidence available to state legislatures and regulatory agencies, or could develop a model state law, in the hope that states would take corrective action in this area. However, the prospects for significant change are dim. The BE Study has been available since 1980, and staff has testified or submitted comments in support of deregulation of commercial practice in a significant number of states.[171] Nevertheless, the record indicates that such restrictions are still widespread.[172] Based on this record we have no reason to expect that more than a few states will voluntarily repeal commercial practice restrictions in the foreseeable future.

2. *Case-by-case approach.* A second alternative would be to issue complaints and proceed on a case-by-case basis against particular states or state regulatory boards.[173] Rulemaking appears to be the more appropriate vehicle for a number of reasons, especially since nearly all of the states would be affected. Rulemaking procedures permit all affected and interested parties, including all potentially affected states, to participate in a full and open discussion of the issues and to present evidence for and against the proposal. In a rulemaking proceeding, the Commission can assess the implications of the proposal on a nationwide basis more readily than in a case against one state. In addition, promulgation of a rule would provide more complete protection for consumers. Even if an order were issued against a particular state or state regulatory board, that order would not extend to other states with similar restrictions. Thus, significant numbers of consumers would be left without relief in other states. Case-by-case adjudication against a number of states would be more time-consuming and costly than rulemaking.

B. Alternative Rule Provisions

1. *Commercial Practice—Direct and Indirect Bans.* The rule as proposed at the start of this proceeding covered state restraints that directly or indirectly prohibited commercial practice.[174] Such a formulation would have given the Commission the greatest flexibility in reaching indirect attempts to prohibit commercial practice. At the same time, the Commission was mindful that such an approach arguably would invalidate many laws and regulations not specifically enumerated in the rule. We chose to promulgate a more limited rule that defines the invalidated restrictions very clearly in order to eliminate any uncertainty regarding which laws or regulations are affected by this rule. The rule sets out four types of state laws that act as direct restraints on the commercial practice of optometry: (1) Bans on lay association; (2) limitations on branch offices; (3) bans on mercantile locations; and (4) bans on trade names.

Additionally, we have clearly identified and incorporated into the rule four other types of restraints that interfere with activities essential to the functioning of commercial practice: (1) Bans on the sharing of profits (§ 456.4 (a)(1) (i)); (2) bans on lay control over the business aspects of a practice (§ 456.4 (a)(1) (v)); (3) requirements that specify that owners of branch offices remain in personal attendance at each branch for a specific percentage of the time that the branch is open (§ 456.4 (a)(2)); and (4) requirements that mandate the disclosure in advertising of the names of all optometrists practicing at a given advertised location or practicing under a trade name (§ 456.4 (a)(4)).

The rule is now much narrower. It proscribes only those specified types of state laws and regulations that the record demonstrates create serious barriers to the formation and operation of commercial optometric firms and thereby cause significant consumer injury.

2. *Prescription Release.* On June 2, 1978, the Commission promulgated the Eyeglasses Rule.[175] That rule, in pertinent part, requires optometrists and ophthalmologists to release to their patients copies of their eyeglass prescriptions immediately following eye examinations regardless of whether or not the patient requests the prescription.[176]

The Commission found that many consumers were being deterred from comparison shopping for eyeglasses because optometrists and ophthalmologists refused to release eyeglass prescriptions even when requested to do so, or charged an additional fee for release of the prescription.[177] The Commission promulgated an automatic release requirement based on a finding of "consumers' lack of awareness that the purchase of eyeglasses need not be a unitary process"—i.e., that purchasing eyeglasses can be separated from the process of obtaining an eye exam.[178] The automatic release provision was thus imposed as a remedial measure.

In this proceeding the Commission considered whether or not the prescription release requirement should be modified or extended. The major modification considered was amendment of the rule to require that prescriptions be provided only upon request of the patient. In addition, the Commission asked for comment on five

[171] Comments regarding restrictions on the commercial practice of optometry have been submitted to at least nine states, including California, Delaware, Kansas, Mississippi, New Jersey, North Dakota, Oregon, Texas, and Virginia.

[172] See Final Staff Report, L-1, at 36–46.

[173] Proceeding against private associations would not be effective since it would do nothing to remove the state-imposed restraints at issue in this proceeding.

[174] See 50 FR 986 (1985). This intention was specifically stated in proposed §§ 456.5 (b) and (c).

[175] 43 FR 23,992 (1978) (codified at 16 CFR 456).

[176] The rule also prohibits optometrists and ophthalmologists from charging additional fees for the prescriptions, from conditioning the availability of eye examinations on the purchase of ophthalmic goods, or from including waivers of liability on the prescription. These provisions were upheld by the U.S. Court of Appeals in 1980. *American Optometric Assoc. v. FTC*, 626 F.2d 896 (DC Cir. 1980).

[177] In addition, some practitioners refused to conduct an examination unless the patient agreed to purchase eyeglasses from the practitioner or included potentially intimidating disclaimers of liability on the prescription itself. 43 FR 23992, 23998 (June 2, 1978).

[178] See Final Staff Report, L-1, at 251–52.



other possible changes in the rule.[179] The Commission considered the record evidence on each of these proposals and chose not to adopt any of them for the reasons outlined below.

a. *Automatic Release.* The Commission decided to retain the remedial aspect of the prescription release requirement after consideration of two surveys[180] placed on the rulemaking record, as well as numerous comments and testimony offered by optometrists, opticians, professional associations, state boards, and consumer groups.

Our reading of the record reveals that there is significant non-compliance with the automatic release requirement[181] and that there continues to be a lack of consumer awareness about prescription rights. Given that the record does not contain sufficient evidence to conclude that the remedial aspects of the rule are no longer needed, we decline to modify or repeal the rule.[182]

b. *Contact Lens Prescription Release.* The NPR requested comment on whether significant numbers of consumers were refused copies of their contact lens prescriptions, whether consumers could reasonably avoid these refusals, and what are the costs and benefits of extending the prescription release rule to contact lenses.[183] While the record suggests that it is not uncommon for practitioners to refuse to give patients copies of their contact lens prescriptions,[184] and that the resulting costs to consumers could be significant,[185] we do not believe that the record contains sufficient reliable evidence to permit a conclusion that the practice is prevalent.

Moreover, even if the evidence on prevalence of refusal to release contact lens prescriptions and resulting injury to consumers were satisfactorily documented, we would have to consider if any countervailing benefits justified the refusal. Some commenters suggested that refusal to release is necessary to permit the fitter to verify the fit of the lens[186] on the eye because there is some danger that lenses may not conform to the eye as expected.[187] According to these commenters, it would be inappropriate to require them to release contact lens specifications to their patients, since patients could then obtain replacement lenses from dispensers that do not verify the fit.[188]

Because the record evidence is insufficient to evaluate this claim fully, the Commission cannot conclude that a refusal to release a contact lens prescription is an unfair act or practice.

c. *Other Prescription Release Matters.* The Commission received no substantial evidence showing that practitioners refuse to release duplicate copies of prescriptions to patients who lose or misplace their original copies, or that eyeglass dispensers refuse to return prescriptions to patients after filling the prescription.[189] Because we do not have sufficient evidence to show that either of these practices is prevalent, rulemaking in these areas would be inappropriate.

*VII. Other Matters*

A. Cost-Benefit Analysis

Before the Commission determines that an act or practice is legally unfair, we analyze the act or practice in terms of the scope and nature of the injury it causes and in light of any offsetting benefits it provides. In sections II. B. and C., we set out a detailed summary of the injury imposed by commercial practice restrictions and the absence of any countervailing benefits that might justify the restrictions. However, we also must consider the projected benefits and effects of the rule that we are promulgating.[190]

1. *Effect on Consumers.* The primary benefit to consumers from the removal of commercial practice restrictions is that they will be able to purchase vision care goods and services at lower prices without any compromise in quality of care. The record evidence indicates that (1) Prices are significantly lower in markets where commercial practice is not restricted; (2) commercial optometrists charge lower prices than noncommercial optometrists; (3) noncommercial optometrists who operate in markets where commercial practice is permitted charge less than their counterparts in markets where commercial practice is prohibited; and (4) overall quality of care is no lower in nonrestrictive than in restrictive markets. As restrictions on commercial practice are removed, competition among optometrists should increase. Lower prices should then result from this increased competition and from economies of scale achieved by larger optometric providers. Lower prices will also increase the availability of ophthalmic goods and services to consumers who before could afford such services infrequently, or in some instances, not at all.

Implementation of the rule will have no adverse effect on consumers. They will be able to obtain the same overall quality of care, but at lower prices. Finally consumers will benefit from their ability to choose, if they wish, the convenience of one-stop service (eye examinations plus eyeglass or contact lens dispensing) from optometrists or retail optical firms who employ optometrists.

2. *Effect on Industry Members.* The rule will directly affect all opthalmologists and optometrists who perform eye examinations and all optometrists, opticians, and others who desire to engage in commercial ophthalmic practice. In 1982, there were approximately 12,000 ophthalmologists, 22,000 optometrists, and 26,000 opticians in active practice in the United States. Most ophthalmologists and optometrists are self-employed. The majority of

[179] (1) Should the rule require optometrists and ophthalmologists only to offer, rather than give, eyeglass prescriptions to their patients? (2) Should the requirement be repealed altogether? (3) Should the rule be extended to require the release of contact lens prescriptions to patients? (4) Should the rule be extended to require optometrists and ophthalmologists to release duplicate copies of prescriptions to patients who lose or misplace their original copies? and (5) Should the rule require dispensers of eyeglasses to return the eyeglass prescription to patients after filling the prescription? 50 FR 802–03 (1985).

[180] The Market Facts Study, supra note 18, developed by staff in conjunction with the Market Facts Public Sector Research Group, was designed to measure eye doctors' compliance with the prescription release requirement and consumer knowledge and experience with prescriptions. The American Association of Retired Persons also submitted a survey conducted in 1985. That survey polled older consumers to determine their familiarity with eyeglass prescriptions. AARP Survey, J–37(b) (Attachment to Statement of E. Eggan, Director, American Ass'n. of Retired Persons).

[181] The Market Facts Study concludes that 44% of refractionists are not in compliance with the rule and that an additional 19% are only in partial compliance. See also Presiding Officer's Report, L–2, at 24–25, which concludes that noncompliance remains a problem and recommends that the rule not be modified.

[182] Little evidence was presented in response to the Commission's question regarding an "offer" requirement. Comments from parties on opposing sides of the release upon request or repeal issues generally opposed the use of an offer in lieu of their favored position.

[183] 50 FR 803 (1985).

[184] See Final Staff Report, L–1, at 283–87.

[185] Id. at 286–89.

[186] This need varies somewhat between hard and soft contact lenses. Hard lenses are ordered according to the fitter's specifications and, in many cases, are then modified or finished by the fitter on a custom basis.

[187] E. McCrary, Vice President, Maryland Optometric Ass'n, Tr. 182; G. Easton, President-elect, American Optometric Ass'n, Tr. 154; H. Haneln, Pennsylvania Optometrist, Tr. 2316–18; T. Vail, Illinois Optometrist, H–115, at 9.

[188] Some optometrists expressed fear that they could be held responsible for damage caused by lenses dispensed by others pursuant to their prescriptions and specifications. R. Seul, Florida Optometrist, H–93, at 3–4; A. Gossan, Michigan Optometrist, H–1.

[189] See Final Staff Report, L–1, at 297–99.

[190] Federal Trade Commission, Rules of Practice, § 1.14(2)(iii).

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opticians are self-employed or employed in "independent" retail optical establishments.

The rule will give members of the optometric industry greater freedom to provide goods and services in the most cost-effective manner. They will be able to enter into business affiliations with nonoptometrists, own and operate several branch offices, use a trade name for their practice, and locate their practices in retail or mercantile settings. In a less-restrictive regulatory environment, they will have greater opportunity to develop innovative ways of offering services and goods to consumers. Corporations or other business entities presently selling opthalmic goods would be able to hire, lease space to, or associate with optometrists in order to offer one-stop shopping to consumers.

No direct costs would be imposed on optometrists, ophthalmologists, or opticians by the removal of state bans on commercial forms of practice. The rule would only permit, not require, providers to operate branch offices, maintain offices in mercantile locations, use trade names, or affiliate with lay corporations and individuals.

The only "costs" borne by industry members would be those created by doing business in a market where greater consumer choice stimulates more competition. The indirect effects of the rule on various industry members cannot be determined with any degree of precision, and will depend at least in part on how individual providers respond to the changing market conditions. For example, some noncommercial optometrists may be forced to adopt more cost-effective business practices or lower their prices in order to meet increased competition. In markets where commercial practice is now prohibited, it can be anticipated that commercial firms will enter.

3. *Effect on Small Entities.* The primary impact of the rule on small entities will stem from the increased competition in the vision care industry which can be anticipated as a result of the rule's deregulatory effects. The economic impact on individual small entities from increased competition in the vision care industry, although difficult to determine, could be substantial. However, the provisions of the rule that remove certain governmental restraints on commercial ophthalmic practice would permit small entities (i.e., optometrists and opticians) to engage in alternate modes of practice, including commercial practice, or to expand, should they desire to do so.

The rule could hurt some small entities and benefit others, depending on how they respond to a more competitive market. In states that currently restrict commercial practice, for example, the market will become more flexible and capable of responding to consumer demand. Those small entities that have been denied the opportunity to engage in more efficient business practices will now be able to do so.

Data from studies of the ophthalmic market indicate that this market is price elastic: that is, as prices of eye examinations and eyeglasses decline, there is a proportionately greater increase in consumption. Thus, we anticipate an increase in total expenditures for vision care products and services. However, the market will be a more competitive one. Some less efficient providers will undoubtedly lose business.

4. *Effect on Government Entities.* The rule invalidates state statutes and regulations that ban commercial forms of practice. Thus, state and local regulatory agencies would not have to bear the costs of enforcing these bans. However, other indirect costs might arise should state or local officials decide to enact new regulations in areas not covered by the rule. In addition to the costs involved in enacting such regulations, the regulatory agencies might incur additional enforcement costs.

B. Final Regulatory Analysis

The final regulatory analysis [101] of the rule has been integrated into the Statement of Basis and Purpose, as allowed by statute. [102]

Accordingly, Title 16, Part 456 of the Code of Federal Regulations is revised to read as follows:

## PART 456—OPHTHALMIC PRACTICE RULES

Sec.

456.1 Definitions.
456.2 Separation of examination and dispensing.
456.3 Federal or State employees.
456.4 State bans on commercial practice.
456.5 Declaration of Commission intent.

Authority: Section 18(a), 88 Stat. 2193, as amended 92 Stat. 98, (15 U.S.C. 57a); 80 Stat. 383; 81 Stat. 54; 89 Stat. 1561–1564; 90 Stat. 1247 (5 U.S.C. 552).

[101] The statute requires that the analysis contain (1) A statement of the need for and objectives of the rule; (2) a summary of the issues raised by public comments, a summary of the agency's assessment of such issues, and a statement of changes made in the rule as a result of those comments; and (3) a description of the significant alternatives to the rule considered and reasons for rejecting each alternative. 5 U.S.C. 604.

[102] 5 U.S.C. 553(c).

### § 456.1 Definitions.

(a) A "patient" is any person who has had an eye examination.

(b) An "eye examination" is the process of determining the refractive condition of a person's eyes or the presence of any visual anomaly by the use of objective or subjective tests.

(c) "Ophthalmic goods" are eyeglasses, or any component of eyeglasses, and contact lenses.

(d) "Ophthalmic services" are the measuring, fitting, and adjusting of ophthalmic goods subsequent to an eye examination.

(e) An "ophthalmologist" is any Doctor of Medicine or Osteopathy who performs eye examinations.

(f) An "optometrist" is any Doctor of Optometry.

(g) A "person" is any individual, partnership, corporation, association or other entity.

(h) A "prescription" is the written specifications for lenses for eyeglasses which are derived from an eye examination, including all of the information specified by state law, if any, necessary to obtain lenses for eyeglasses.

(i) "Optometric services" are any acts or practices which are included within the definition of the practice of optometry under state law.

### § 456.2 Separation of examination and dispensing.

It is an unfair act or practice for an ophthalmologist or optometrist to:

(a) Fail to provide to the patient one copy of the patient's prescription immediately after the eye examination is completed. Provided: An ophthalmologist or optometrist may refuse to give the patient a copy of the patient's prescription until the patient has paid for the eye examination, but only if that ophthalmologist or optometrist would have required immediate payment from that patient had the examination revealed that no ophthalmic goods were required;

(b) Condition the availability of an eye examination to any person on a requirement that the patient agree to purchase any ophthalmic goods from the ophthalmologist or optometrist;

(c) Charge the patient any fee in addition to the ophthalmologist's or optometrist's examination fee as a condition to releasing the prescription to the patient. Provided: An ophthalmologist or optometrist may charge an additional fee for verifying ophthalmic goods dispensed by another seller when the additional fee is imposed at the time the verification is performed; or



(d) Place on the prescription, or require the patient to sign, or deliver to the patient a form or notice waiving or disclaiming the liability or responsibility of the ophthalmologist or optometrist for the accuracy of the eye examination or the accuracy of the ophthalmic goods and services dispensed by another seller.

### § 456.3 Federal or State employees.

This rule does not apply to ophthalmologists or optometrists employed by any federal, state or local governmental entity.

### § 456.4 State bans on commercial practice.

(a) It is an unfair act or practice for any state or local governmental entity to:

(1) Prevent or restrict optometrists from entering into associations with lay persons or corporations by:

(i) Prohibiting persons other than optometrists from employing optometrists to provide optometric services to the public;

(ii) Prohibiting optometrists and persons other than optometrists from entering into partnership agreements, joint-ownership or equity-participation agreements, or profit-sharing agreements for the purpose of forming entities to provide optometric services or ophthalmic goods and services to the public;

(iii) Prohibiting optometrists and persons other than optometrists from entering into franchise agreements (including those that provide for the sharing of revenues) for the purpose of forming entities to provide optometric services or ophthalmic goods and services to the public;

(iv) Prohibiting optometrists from leasing space from persons other than optometrists to provide optometric services to the public or prohibiting optometrists from entering into leases for such space where rental payments under such leases are based on a percentage of revenues; or

(v) Prohibiting lay control over the business aspects of an optometric practice or an entity formed to provide optometric services or ophthalmic goods and services to the public;

(2) Limit the number of offices that may be owned or operated by optometrists or by entities formed by any of the agreements covered by § 456.4(a)(1) of the rule; or require that an owner of branch offices remain in personal attendance at each branch office for a specific percentage of time;

(3) Prohibit optometrists, or any entities formed by any of the agreements covered by § 456.4(a)(1) of the rule, from practicing in a pharmacy, department store, shopping center, retail optical dispensary or other mercantile location;

(4) Prohibit optometrists, or any entities formed by any of the agreements covered by § 456.4(a)(1) of the rule, from practicing or holding themselves out to the public, by advertising or otherwise, under any nondeceptive trade name, including a name other than the name shown on their licenses or certificates of registration; or require the disclosure in advertising of the names of all optometrists practicing at a given advertised location or practicing under a trade name.

(b) If any state or local governmental entity or officer violates any of the provisions of § 456.4(a)(1)–(4), that person will not be subject to civil penalty, redress, or other monetary liability under any section of the Federal Trade Commission Act.

### § 456.5 Declaration of Commission intent.

(a) The provisions of § 456.4(a)(1)–(4) are not intended to interfere with the exercise of state or local governmental authority to protect the health and welfare of the public. In exercising its authority to safeguard the health and safety of eye care consumers or to protect the public from unfair or deceptive practices or anticompetitive conduct, a state or local government can enact regulation that has the incidental effect of preventing an individual optometrist or optometric firm from engaging in a specific agreement or activity covered by § 456.4(a)(1)–(4), as long as such regulation does not distinguish between optometrists or optometric firms that engage in any of the agreements or activities enumerated in § 456.4(a)(1)–(4) and optometrists or optometric firms that do not engage in such agreements or activities. For example, the rule does not prevent states or local governments from prohibiting the location of an optometric practice in an area that could create a public health or safety hazard, or from enforcing a general zoning regulation, even though such prohibition or regulation had the incidental effect of preventing an optometrist from locating in some specific commercial location. While the rule affects state or local regulation of the business aspects of the practice of optometry, it is not intended to interfere with the authority of a state or local government to:

(1) Prohibit improper lay interference in the ophthalmic care provided a patient by an optometrist;

(2) Require that the optometric services provided at a branch office be supplied by a person qualified to do so under state or local law;

(3) Require that the identity of an optometrist be disclosed to a patient before, after, or at the time optometric services are performed;

(4) Prevent the deceptive use of trade names or prevent trade name infringement; or

(5) Establish and maintain minimum quality standards for ophthalmic goods or services.

(b) The Commission intends that this rule may be used as a defense to any proceeding of any kind that may be brought against any optometrist, or any entity formed by any agreement covered by § 456.4(a)(1) of the rule, for using a trade name, working for or affiliating with a person who is not an optometrist, operating branch offices or practicing in a mercantile location.

(c) In prohibiting the use of waivers and disclaimers of liability in § 456.2(d), it is not the Commission's intent to impose liability on an ophthalmologist or optometrist for the ophthalmic goods and services dispensed by another seller pursuant to the ophthalmologist's or optometrist's prescription.

(d) The rule, each subpart, and the Declaration of Commission Intent and their application are separate and severable.

### Separate Statement of Chairman Daniel Oliver, Ophthalmic Practice Rule Statement of Basis and Purpose

When the Commission voted to promulgate the Ophthalmic Practice Rule, I questioned the use of the Federal Trade Commission rulemaking authority to strike down state laws that restrict competition in the eye care market. Based on principles of federalism, I voted against the proposed rule.

The restraints at issue are clearly anticompetitive and adversely impact consumers. They illustrate what I have said a thousand times: it is government that is the primary source of restraints on competition.

Nevertheless, I continue to believe that this harmful effect on consumers does not allow us to strike down anticompetitive state activities that are protected by the "state action" doctrine. I reiterate my conclusion that the Commission lacks the authority to promulgate the Ophthalmic Practice Rule.

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**SECURITIES AND EXCHANGE COMMISSION**

**17 CFR Parts 210, 240, 249, 270, and 274**

**[Release Nos. 33-6823; 34-26589; IC-16549; FR-36; File No. S7-6-88]**

**Reporting Requirements for Issuer's Change of Fiscal Year; Financial Reporting Changes; Period To Be Covered by First Quarterly Report After Effective Date of Initial Registration Statement**

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rules.

**SUMMARY:** The Securities and Exchange Commission ("Commission") today announced the adoption of amendments to Regulations 13A and 15D under the Securities Exchange Act of 1934 that revise the reporting and filing requirements when a domestic or foreign private issuer changes its fiscal year end or a successor issuer has a different fiscal year than its predecessor. The Commission also is adopting amendments to Form 8–K to require reporting of a change in fiscal year. New Rule 30b1–3 under the Investment Company Act of 1940 is being adopted to govern the reporting requirements for investment companies that change their fiscal year end. In addition, a new accounting Rule 3–06 and other amendments to the accounting and proxy rules relating to financial reporting are being adopted. Finally, the Commission is adopting amendments to the quarterly reporting rules that modify the period to be covered in a new registrant's first quarterly report.

**EFFECTIVE DATE:** April 12, 1989. The amendments to Exchange Act Rules 12b–25, 13a–10, and 15d–10, Forms 8–K, 10–K, 10–Q, 20–F, 12b–25, and N–SAR, and new Investment Company Act Rule 30b1–3 are effective for an issuer's decision to change a fiscal year and made on or after April 12, 1989. All other amendments are effective for filings made on or after April 12, 1989.

**FOR FURTHER INFORMATION CONTACT:** Howard P. Hodges or Joseph S. Aleknavage, (202) 272–2553, Office of the Chief Accountant of the Division of Corporation Finance, or Barbara J. Green, (202) 272–2589, Office of Disclosure Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. After the effective date, contact Joseph S. Aleknavage, (202) 272–2553, Office of the Chief Accountant of the Division of Corporation Finance, or Emanuel D. Strauss or Mark W. Green, (202) 272–2573, Office of Chief Counsel, Division of Corporation Finance. With respect to investment companies, contact Lawrence A. Friend, (202) 272–2108, Office of Disclosure, Division of Investment Management.

**SUPPLEMENTARY INFORMATION:** The Commission today announced the adoption of amendments to Rules 12b–25,[1] 13a–10,[2] 13a–13,[3] 14a–3,[4] 15d–10,[5] and 15d–13 [6] under the Securities Exchange Act of 1934 ("Exchange Act"),[7] as well as revisions to Forms 8–K,[8] 10–K,[9] 10–Q,[10] 20–F,[11] and 12b–25.[12] The Commission also is adopting a new accounting Rule 3–06 and amendments to Rule 3–12 [13] of Regulation S–X.[14] With respect to investment companies, new Rule 30b1–3 and amendments to Rules 6b–16 [15] and 30b1–2 [16] and Form N–SAR [17] under the Investment Company Act of 1940 ("Investment Company Act") [18] are being adopted.

## I. Executive Summary

### A. The Proposals

On June 2, 1988 the Commission issued a release proposing amendments to Exchange Act Rules 13a–10 and 15d–10, which set forth reporting requirements applicable when an issuer changes its fiscal year end.[19] The proposals were designed to update the rules, integrate them with other current periodic reporting requirements, codify staff rule interpretations, and clarify issuers' quarterly reporting obligations in change of fiscal year circumstances. The Commission also proposed a new item to Form 8–K to require reporting of a change in fiscal year and a new Investment Company Act rule to govern the reporting requirements for investment companies that change their fiscal year end. In addition, to codify staff practices, amendments were proposed to the proxy and accounting rules regarding financial reporting. Proposals also were made to amend the quarterly reporting rules to eliminate a reporting gap by modifying the period for which a new registrant's first quarter report must be filed.

A majority of the commentators on the Proposing Release were accounting firms and an accounting association.[20] All but one of the commentators expressed general support for the proposals, in whole or in part.[21] While commentators generally approved of the revision of issuers' reporting obligations in change of fiscal year circumstances, or codification of staff practices, most also had suggestions on specific aspects of the proposals.

The Commission is adopting the amendments substantially as proposed. The changes from the proposals are mainly in response to commentators' suggestions. All substantive changes from the proposals are noted and explained in the detailed discussion of the amendments in Part II below.

### B. The Amendments

Prior to the amendments, Rules 13a–10 and 15d–10 required an issuer changing its fiscal year end to file an "interim report" with the Commission containing financial and other information about the "interim period" from the end of the most recently concluded fiscal year to the opening date of the new fiscal year if that period covered three or more months. Such reports were required to be filed on the form used for the issuer's annual report.

To avoid confusion with other reports, such as quarterly reports, which commonly are referred to as interim reports, under the amendments, interim reports are referred to as "transition reports" and interim periods called "transition periods." The amendments also include the following substantive revisions:

(1) Transition Reporting on Forms 10–Q and 10–K

Separate transition reports are required for all transition periods, except those of one month or less. Issuers will continue to file a transition report on the annual reporting form, usually Form 10–K, including audited financial statements, for transition periods of six or more months. For a transition period shorter than six months, issuers are given an option to file a transition report on either Form 10–Q, including unaudited financial statements, or Form 10–K, including audited financial statements. Information for a transition period of one month or less may be included in the issuer's report on Form 10–Q for the first quarter of the newly adopted fiscal year that ends after the date on which the issuer determined to change its fiscal year, if separate audited statements of income and cash flows covering the transition period are filed with the first annual report for the newly adopted fiscal year. If the issuer's next report is the first annual report for the newly adopted fiscal year, instead of a quarterly report, a transition period of one month or less may be covered in that annual report.

(2) Conforming the Filing Requirements of Transition Reports to the Current Requirements for Forms 10–Q and 10–K

To conform to the current filing periods for reports on Forms 10–K and 10–Q, the filing period for transition reports on Form 10–K is 90 days after the close of the transition period or the date of the determination to change the fiscal year, whichever is later, and for transition reports on Form 10–Q 45 days after the later of these two events.

(3) Codification of Staff Rule Interpretations of the Quarterly Reporting Requirements When an Issuer Changes Its Fiscal Year End

Consistent with staff practice, issuers will continue to have the option of filing quarterly reports for the transition period on the basis of either the old or new fiscal year. Also, consistent with staff rule interpretations, issuers, in most cases, will continue to be required to file a quarterly report for any quarter of the old fiscal year that ended before the date of the issuer's determination to change its year end. The amendments specify that the requirement to file quarterly reports on the new basis begins with the first quarter in the new fiscal year that ends after the issuer determined to change its year end.

(4) Clarification of Transition Reporting for Successor Issuers

Amendments to Rules 13a–10 and 15d–10 require transition reporting for all successor issuers, but only where they have a different fiscal year end from that of the predecessor. Successor issuers are required to file a transition report concerning the predecessor for any transition period between the close of the fiscal year covered by the last annual report of the predecessor and the date of succession. For a transition period of six or more months, the successor issuer must file the transition report on Form 10–K, including audited financial statements. For a transition period of less than six months, the successor issuer may opt instead to file the transition report on Form 10–Q, including unaudited financial statements. Just as for changes in fiscal year, where the transition period is one month or less, the successor issuer need not file a separate transition report, provided that the required information for the transition period is contained in a subsequent quarterly report, or if the next report is an annual report, in that annual report.

(5) Separate Transition Reporting Rules for Foreign Private Issuers

Separate provisions require a foreign private issuer with a transition period longer than six months to file a Form 20–F containing responses to all items required when the Form is used as an annual report, and including audited financial statements. For a transition period of six or fewer months, a foreign private issuer may opt instead to file a transition report on Form 20–F that includes responses to only a limited number of specified items and unaudited financial statements. Where the transition period is one month or less, a foreign private issuer is not required to file a separate transition report if the first annual report for the newly adopted fiscal year covers the transition period as well as the fiscal year.

(6) Reporting a Change in Fiscal Year on Form 8–K

New Item 6 of Form 8–K requires an issuer to report its new fiscal year end, the Form (10–K or 10–Q) on which the report covering the transition period will be filed, and the date of the determination to change its fiscal year end. The Form 8–K must be filed within 15 days after that date.

(7) Specific Provisions Regarding Filing Fees and Extensions of Time

No filing fee is required for transition reports. Amended Rule 12b–25 and amended Form 12b–25 add transition reports to those reports for which an extension of time for filing is available.

(8) Separate Rule for Transition Reporting of Investment Companies

New Investment Company Act Rule 30b1–3 provides transition reporting requirements specifically tailored to the semi-annual and annual reporting obligations of investment companies. The new Rule codifies the staff practice of requiring investment companies that change their fiscal year end to file a report on Form N–SAR within 60 days of either the close of the resulting transition period or the date of the determination to change the fiscal year end, whichever is later.

(9) Codification of Staff Practice of Permitting Reliance on Nine Months Statements

New accounting Rule 3–06 and a parallel note to Rule 14a–3(b)(1) [22] of the proxy rules codify the staff practice of accepting, under specified circumstances such as a change in fiscal year, financial statements covering a 9 to 12 month period in satisfaction of a requirement for financial statements for either one year or one year of a multiple year period.

(10) Codification of Staff Practice on Age of Audited Financial Statements in A *First-Time Registrant's Registration Statement*

To assure that timely financial statements for first-time registrants are available, amended accounting Rule 3–12 codifies the staff practice of requiring that the most recent audited financial statements in a registration statement under the Securities Act of 1933 ("Securities Act") [23] or on Form 10 [24] filed by a non-reporting company be no more than 1 year and 45 days old.

(11) Period to be Covered by First Report on Form 10–Q for First-Time Registrants

To avoid reporting gaps, amended Rules 13a–13 and 15d–13 governing quarterly reporting require a new registrant to file its first report on Form 10–Q for the first fiscal quarter following the most recent fiscal year or full quarter for which financial statements were included in its registration statement.

Examples illustrating the application of the amendments to typical reporting situations are contained in the Appendix in Part V of this Release. The examples have been modified where appropriate to reflect changes from the proposals.

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[1] 17 CFR 240.12b–25.
[2] 17 CFR 240.13a–10.
[3] 17 CFR 240.13a–13.
[4] 17 CFR 240.14a–3.
[5] 17 CFR 240.15d–10.
[6] 17 CFR 240.15d–13.
[7] 15 U.S.C. 78a *et seq.*
[8] 17 CFR 249.308.
[9] 17 CFR 249.310.
[10] 17 CFR 249.308a.
[11] 17 CFR 249.220f.
[12] 17 CFR 249.322.
[13] 17 CFR 210.3–12.
[14] 17 CFR 210.1–01–1–13–20.
[15] 17 CFR 270.6b–16.
[16] 17 CFR 270.30b1–2.
[17] 17 CFR 274.101.
[18] 15 U.S.C. 80a–1 *et seq.*
[19] Release No. 33–6779 (June 2, 1988) (53 FR 23870) ("Proposing Release"). Attention is directed to the Proposing Release for a detailed discussion of the proposals and their objectives.

[20] The nine comment letters received are available for public inspection and copying at the Commission's Public Reference Room (File No. S7–6–88). The commentators included five accounting firms, one accounting association, one bar association, one law firm, and one public utility holding company.

[21] The other commentator made recommendations on specific parts of the proposals but expressed neither general support nor opposition to the proposals.

[22] 17 CFR 240.14a–3(b)(1).
[23] 15 U.S.C. 77a *et seq.*
[24] 17 CFR 249.210.

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II. Discussion

*A. Reporting Fiscal Year Changes*

1. Transition Reporting on Forms 10–Q and 10–K

The Commission is adopting amendments to Rules 13a–10 and 15d–10 [45] requiring an issuer to file separate transition reports for all transition periods, except those of one month or less. Under the prior rules, a separate transition report was not required for a transition period shorter than three months. In the Proposing Release, the Commission solicited comment on a proposed requirement of separate transition reports for all transition periods, including transition periods shorter than three months. Three commentators criticized the proposed requirement as not useful, necessary or justified by the costs, and recommended that information on such shorter transition periods be included in the issuer's next report on Form 10–Q.

The Commission has decided not to require a separate transition report for transition periods of one month or less. Where the transition period is one month or less, the Commission believes that the cost associated with filing a separate report for such a short time span outweigh the limited benefit of such reports to investors.[46] The amendments instead permit information about a transition period of one month or less to be included in the issuer's report on Form 10–Q for the first quarter of the newly adopted fiscal year that ends after the date on which the determination was made to change the fiscal year.[47] If the issuer's next report is the first annual report for the newly adopted fiscal year, the transition period may be covered in that annual report.

Separate transition reports are required for all transition periods longer than one month. As the transition period becomes longer, the investor's interest in the prompt disclosure of financial information about the transition period increases. The Commission believes that requiring transition reports for all transition periods longer than one month strikes the appropriate balance between the investment community's need for disclosure and the desire of issuers to minimize the costs of compliance.

Under the amendments, as under the prior rules, use of Form 10–K will continue to be required for transition reports for transition periods of six or more months.[48] For transition periods shorter than six months, amended Rules 13a–10 and 15d–10 give issuers the option to file transition reports on either Form 10–Q, including unaudited financial statements, or Form 10–K, including audited financial statements.[49] All information requested in the textual items of the reporting forms, as well as the required financial information, must be provided. Technical changes are being adopted, as proposed, to make the descriptions and cover sheets of and General Instructions to Forms 10–K and 10–Q consistent with the amendments.

In the Proposing Release, comment was invited on the six month cutoff. The three commentators addressing the six month cutoff favored it.[50] While the proposals would have required use of Form 10–Q for transition periods shorter than six months, two commentators favored affording issuers an option to file on either Form 10–Q or Form 10–K for such shorter transition periods so that issuers could furnish audited financial statements in the first instance. The Commission has adopted this suggested option, enabling issuers that opt to use Form 10–K to avoid the possibility of later revisions of previously published unaudited financial statements for the transition period.

Because the amendments afford issuers the option to use Form 10–K or 10–Q, the Commission has added a requirement, not contained in the proposals, that an issuer state in its Form 8–K reporting the change in fiscal year the Form (Form 10–Q or 10–K) on which the report covering the transition period will be filed.[51] This requirement will enable investors and the Commission staff to determine when information on the transition period will be available.

2. Filing Requirements for Transition Reports

To parallel the current filing requirements for Form 10–K, the amendments change the time for filing a transition report on Form 10–K from 120 to 90 days after the close of the transition period or the date of the determination to change the fiscal year, whichever is later.[52] The 90 day filing period applies to all transition reports filed on Form 10–K, regardless of the length of the transition period, and should give issuers sufficient time to have audited financial statements prepared covering transition periods of any length. To parallel the current filing requirements for Form 10–Q, an issuer that chooses to file a separate transition report on Form 10–Q must file that report within 45 days after the later of the close of the transition period or the date of the determination to change the fiscal year.[53]

3. Requirements for Changing a Fiscal Year After the Year End

Amended Rules 13a–10(a) and 15d–10(a) codify current staff rule interpretations by requiring an issuer to file an annual report for any fiscal year that ended before the date on which the issuer determined to change its fiscal year end. An issuer is required to report this date in the Form 8–K reporting its change in fiscal year.[54] In most cases, the date would be evidenced by minutes of the issuer's board of directors or an authorized committee thereof.[55] The amendments also codify the staff interpretive position that a transition report can be used only for periods of less than 12 months. Transition reports are not permitted for periods longer than 12 months because of the difficulties of constructing data for comparable periods that would be useful in understanding trends in a business.

[45] Rule 13A–10 applies to issuers with securities registered pursuant to section 12 of the Exchange Act (15 U.S.C. 78*l*). Rule 15d–10 applies to issuers with securities registered under the Securities Act and filing Exchange Act reports pursuant to section 15(d) of the Exchange Act (15 U.S.C. 80o(d)).

[46] A change from a fiscal year ending as of the last day of the month to a 52–53 week fiscal year commencing within seven days of the month end (or from a 52–53 week to a month end) is not deemed a change in fiscal year for purposes of reporting subject to Rule 13a–10 or 15d–10 if the new fiscal year commences with the end of the old fiscal year. In such cases, a transition report would not be required. Either the old or new fiscal year could, therefore, be as short as 360 days, or as long as 371 days (372 is a leap year).

[47] *See* Part II.A.4., *infra*, amended Rules 13a–10(d) and 15d–10(d), and Appendix Examples 1.a. & 1.e.

[48] *See* amended Rules 13a–10(b) and 15d–10(b) and Appendix Examples 1.d., 1.g., & 1.h.

[49] *See* amended Rules 13a–10(c) and 15d–10(c) and Appendix Examples 1.b., 1.c., & 1.f.

[50] With a six month cutoff, the amendments allow 17 months between filing audited financial statements in the case where an issuer changes its fiscal year end with a resulting transition period of five months. For example, an issuer with a December 31 year end that changes its fiscal year in 1990 to May 31, 1990 will be permitted to file a Form 10–Q, including unaudited financial statements, covering the transition period from January 1, 1990 through May 31, 1990. The issuer will not be required to file audited financial statements until August 29, 1991, the due date for its next annual report covering the newly adopted fiscal year from June 1, 1990 through May 31, 1991. Compliance with the requirements for financial statements under the transition reporting rules will be deemed to satisfy the updating obligations under section 10(a)(3) of the Securities Act [15 U.S.C. 77j(a)(3)].

[51] For a discussion of new Item 8 of Form 8–K, *see* II.A.3., *infra*.

[52] *See* amended Rules 13a–10(b) and 15d–10(b).

[53] *See* amended Rules 13a–10(c) and 15d–10(c).

[54] *See* discussion of new Item 8 of Form 8–K at II.A.3., *infra*.

[55] Other evidence of the date could include a contemporaneous public announcement or press release.



4. Financial Reporting Requirements for Transition Periods

Under the amendments, financial statements in transition reports on Form 10–K must be audited. In contrast, unaudited financial statements are permitted in transition reports on Form 10–Q.

Under the amendments, a transition report on Form 10–K must include either financial statements, which may be unaudited, for the comparable period of the prior year, or a footnote, which may be unaudited, giving specified information for the comparable period of the prior year.[56] The prior year footnote information must state, at a minimum, revenues, gross profits, income taxes, income or loss from continuing operations before extraordinary items and cumulative effect of a change in accounting principles, and net income or loss. The effects of any discontinued operations and/or extraordinary items as classified under the provisions of generally accepted accounting principles also must be shown, if applicable. Per share data based upon such income or loss and net income or loss is required to be presented in conformity with applicable accounting standards.[57]

One commentator recommended that the amendments address whether the financial statements or footnote information for the comparable period of the prior year must be included in subsequent filings. The amendments as adopted have been changed to specify that, where called for by the time span covered, subsequent filings must include such statements or information.

Consistent with existing requirements for Form 10–Q, a transition report on Form 10–Q also is required to include financial information about the comparable period of the prior year.[58] As suggested by one commentator, the amendments as adopted state that schedules need not be filed in transition reports on Form 10–Q.[59] When an issuer files a transition report on Form 10–Q, separate audited statements of income and cash flows covering the transition period are required to be filed as part of the first annual report for the newly adopted fiscal year.[60] The annual report also must contain a separate audited balance sheet for a transition period of less than six months, if an audited balance sheet as of the end of the prior fiscal year is not filed. Further, the amendments specify that notes to the financial statements for the transition period included in the annual report may be integrated with the notes for the full fiscal period.

As discussed above, pursuant to amended Rule 13a–10(d) or 15d–10(d), in specified circumstances, an issuer may include information about a transition period of one month or less in its first quarterly report on Form 10–Q for the newly adopted fiscal year after the date of determination to change its year end, rather than in a separate transition report. If this is done, the financial statements required by Part I, which may be unaudited, must be furnished separately for the transition period as part of the Form 10–Q.[61] In addition, the issuer must file with the first annual report of the newly adopted fiscal year separate audited statements of income and cash flows covering the transition period. If the issuer's next report is a Form 10–K rather than a Form 10–Q, all of the required information for the transition period must be included in the Form 10–K.

Commentators asked for clarification of the application of the requirements of Item 303, "Management's Discussion and Analysis of Financial Condition and Results of Operations," [62] of Regulation S–K [63] to transition periods. Consistent with new Rule 3–06 of Regulation S–X, as discussed below,[64] for a transition period of nine or more months, the information for full fiscal years set forth in Item 303(a) [65] will be required. For transition periods shorter than nine months, the information for interim periods set forth in Item 303(b) [66] will be required.

Similarly, when responding to Item 301 of Regulation S–K, "Selected Financial Data," [67] a transition period of nine or more months will be deemed to meet the requirement for one year of selected financial data if the data for all other periods covers the full time span required to be reported. Transition periods of less than nine months may be shown in the table of selected financial data for the last five fiscal years of the issuer (or for the life of the issuer if less) or may be shown in a footnote. The table of selected financial data should report on all periods within the time span for which information is required to be furnished, including any transition periods.

5. Quarterly Reporting When an Issuer Changes Its Fiscal Year

The amendments to Rules 13a–10 and 15d–10 are intended to clarify the requirements for filing quarterly reports in change of fiscal year circumstances.[68] The amendments codify the current staff practice of requiring issuers to file quarterly reports during the transition period. Under the amendments, companies continue to have the option of filing such quarterly reports based on the quarters of either the old or newly adopted fiscal year.[69] Under either option, an issuer still is required to file a quarterly report for any quarter of the old fiscal year that ended before the date on which the issuer determined to change its fiscal year end, except where the last day of the quarter also is the last day of the transition period.[70]

[56] *See* amended Rules 13a–10(b) and 15d–10(b).

[57] The prior year footnote information tracks Rule 1–02(aa)] of Regulation S–X [17 CFR 210.1–02(aa), except that disclosure of income taxes is required under the amendments because such information is pertinent to understanding the fluctuations in earnings and earnings trends.

[58] *See* II.A.5., "Quarterly Reporting When an Issuer Changes Its Fiscal Year," *infra*, for a discussion of the new Note to paragraphs (c) and (e) of Rules 13a–10 and 15d–10 that addresses difficulties in providing comparable period financial information.

[59] However, schedules for such transition periods are required to be filed in subsequent annual reports on Form 10–K pursuant to Rules 5–04 (17 CFR 210.5–04), 7–05 (17 CFR 210.7–05), and 9–07 (17 CFR 210.9–07) of Regulation S–X where the income statements covering the transition period are required to be audited.

[60] *See* amended Rules 13a–10(c) and 15d–10(c).

[61] The information covering the transition period required by Part II and Item 2 of Part I, "Management's Discussion and Analysis of Financial Condition and Results of Operations," may be combined with the information regarding the quarter.

[62] 17 CFR 229.303.

[63] 17 CFR 229.10–.802.

[64] *See* "Amendments to the Accounting and Proxy Rules to Permit Reliance on Nine Month Statements," Part II.B.1., *infra*.

[65] 17 CFR 229.303(a).

[66] 17 CFR 229.303(b).

[67] 17 CFR 229.301.

[68] *See* amended Rules 13a–10(e) and 15d–10(e).

[69] *See* amended Rules 13a–10(e)(2) and 15d–10(e)(2). Thus, an issuer with a December 31 year end that decides on February 1, 1990 to change its year end to October 31, 1990 has the option of filing quarterly reports either for the quarters of the old fiscal year ending March 31, June 30, and September 30, 1990 or for the periods coinciding with quarters of the new fiscal year ending January 31, April 30, and July 31, 1990. If the same issuer had decided on June 1, 1990 to change its year end to October 31, 1990, the issuer already would have filed a quarterly report for the quarter ending March 31, 1990 but still would have the option to file the quarterly reports either for the quarters of the old fiscal year ending June 30 and September 30, 1990 or for the period coinciding with the quarter of the new fiscal year ending July 31, 1990.

[70] *See* amended Rules 13a–10(e)(1) and 15d–10(e)(1). For example, an issuer with a December 31 year end that decides on October 15, 1990 to change its year end to November 30, 1990 is required to file by November 14, 1990 a quarterly report on Form 10–Q for the quarter ending September 30, 1990 of the old fiscal year. If the same issuer decided on October 15, 1990 to change its year end to September 30, 1990, the issuer is not required to file a quarterly report on Form 10–Q for the quarterly period ending September 30, 1990 of the old fiscal year, because the last day of the quarter would be the same as the last day of the transition period. In

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The amendments also specify the time by which an issuer must begin filing quarterly reports on the basis of the newly adopted fiscal year. An issuer is required to begin filing quarterly reports on the new basis with the quarterly report for the first quarter of the new fiscal year ending after the issuer determined to change its fiscal year end.[51] With respect to quarterly periods ending before the issuer's determination to change its year end, no reporting on the new basis is required.

The switch in quarterly reporting from the old to the new fiscal year may result in a period of less than three months that is not covered by a separate report on Form 10–Q. The Proposing Release stated that such a period would be covered on a cumulative basis in the next report on either Form 10–Q, Form 10–K or in a transition report, depending on when the switch occurred. One commentator noted that, under the proposals, the disclosure of some non-financial information about such a period might not be required in the next Form 10–Q and thus might be delayed, and further that it might be difficult for investors to derive financial information about such a period from cumulative financial information disclosed in the next Form 10–Q or other later reports.

The amendments as adopted have been modified to specify that, unless such a period of less than three months is or will be covered in the issuer's transition report or in the first annual report on Form 10–K for the newly adopted fiscal year, information (*e.g.*, legal proceedings, changes in securities) about such period must be included in the issuer's initial report on Form 10–Q for the newly adopted fiscal year.[52] Separate financial statements covering such period, which may be unaudited, must be furnished therewith.[53] These modifications do not require any additional reports, only that the financial information also be set out separately, and not just cumulatively.

The amendments also specify when recasting of prior year quarterly financial information is not required for an issuer that changes to a new fiscal year end that does not coincide with the end of a quarter of the previous fiscal year. A new Note to paragraphs (c) and (e) of Rules 13a–10 and 15d–10 permits an issuer to file quarterly reports for the quarters of the new fiscal year without recasting data for the prior fiscal year, where recasting either is not practicable or cannot be cost-justified, if the issuer furnishes (1) financial statements for the quarters of the preceding fiscal year most nearly comparable to the quarters in the newly adopted fiscal year; (2) an adequate discussion of seasonal and other factors that could affect the comparability of information or trends reflected; (3) an assessment of the comparability of the data; and (4) a representation as to the reason the recasting has not been undertaken. The Note also applies to prior year information in transition reports on Form 10–Q.[54]

6. Transition Reporting for Successor Issuers

Amended Rules 13a–10(f) and 15d–10(f) specify transition reporting requirements for successor issuers with a different fiscal year end from that of the predecessor. No transition report is required where the successor issuer and the predecessor have the same fiscal year end. Under such circumstances, the successor issuer continues to report on the same reporting schedule as that of the predecessor.[55]

While former Rule 13a–10 specified reporting requirements only for successor issuers with securities registered on Form 8–B,[56] the amendments cover all successor issuers.[57] Although former Rule 15d–10 had no provision covering transition reporting for successor issuers, the amendments add such a provision to cover companies with reporting obligations pursuant to section 15(d).[58]

Under the amendments, the transition reporting requirements for successor issuers correspond generally to the transition reporting rules applicable when other issuers change their fiscal year. The principal difference is the period to be covered in the transition report. The period to be reported on by a successor issuer ends on the date of the succession, rather than on the day prior to the beginning of the newly adopted year, in order to reflect the predecessor's operations separately from those of the successor.[59]

For a transition period of six or more months, the amendments require a successor issuer to file a transition report on Form 10–K, including audited financial statements, within 90 days after the date of the succession.[60] For a transition period shorter than six months, the successor issuer has the option to file the transition report on either Form 10–K, including audited financial statements, within 90 days after the date of the succession, or Form 10–Q, including unaudited financial statements, within 45 days after the date of the succession.[61] If the transition report is filed on Form 10–Q, the next annual report of the successor issuer must include audited statements of income and cash flows for the transition period. For a transition period of one month or less, no separate transition report is required, provided that information on the transition period is included in the successor issuer's report on Form 10–Q for the first quarter that ends after the date of the succession, or if the successor issuer's next report is an annual report, in that annual report.

These amendments, which give an issuer the option to use either Form 10–K or Form 10–Q for transition periods shorter than six months, differ from the proposals, which would have required a successor issuer to file a transition report on Form 10–Q for such shorter transition periods. Like the option afforded other issuers that change their fiscal year, the option is available to successor issuers so that they may furnish audited financial statements covering the transition period in the first instance, and avoid the possibility of revision in a later audit of previously released unaudited financial information about the transition period.[62]

7. Transition Reporting for Foreign Private Issuers

The Commission is adopting separate transition reporting provisions for foreign private issuers. The separate provisions provide specific guidelines for foreign private issuers in change of fiscal year circumstances and are consistent with other separate reporting requirements and separate reporting forms for such issuers. In addition, given the varied reporting requirements and practices in foreign jurisdictions, in appropriate cases, the Commission staff will consider requests to modify the transition reporting requirements for foreign private issuers to take account of varying domicile country reporting requirements and practices.

Under amended Rules 13a–10(g) and 15d–10(g), a foreign private issuer is required to file a Form 20–F to report on all transition periods, except those of one month or less. Where the transition period is longer than six months, such issuer is required to file a transition report on Form 20–F that contains responses to all items required when the form is used as an annual report and includes audited financial statements.[63] For transition periods of six or fewer months, the amendments give a foreign private issuer an option similar to that given domestic issuers. The foreign private issuer may file its transition report on Form 20–F, either with responses to all items required when Form 20–F is used as an annual reporting form and including audited financial statements, or, in the alternative, with responses to a limited number of specified items and including unaudited financial statements.[64] The Commission has determined not to require a foreign private issuer to file a separate transition report for a transition period of one month or less if the first annual report for the newly adopted fiscal year covers the transition period as well as the fiscal year. As with domestic issuers, the costs associated with filing separate transition reports for such limited periods of one month or less are not justified by the minimal benefit to investors.

In the Proposing Release, the Commission proposed the same cutoff for foreign private issuers as domestic issuers. The Commission, however, has determined to adopt for foreign private issuers a different cutoff from that used for domestic issuers. While domestic issuers have the option to file transition reports on Form 10–Q with unaudited financial statements only for transition periods shorter than six months, foreign private issuers have the option of filing an abbreviated Form 20–F with unaudited financial statements for transition periods of six or fewer months. The different cutoff for foreign private issuers is adopted to be consistent with the reporting practices of some foreign private issuers, which develop interim financial statements that cover semi-annual periods pursuant to the laws or practices of their domicile country or rules of exchanges upon which their securities are traded.[65]

Under the amendments, a transition report on Form 20–F with responses to only the selected items and unaudited financial statements is required to be filed within three months after the close of the transition period or the date of the determination to change the fiscal year, whichever is later. A transition report on Form 20–F with responses to all items required when the form is used as an annual report and including audited financial statements must be filed within six months after the later of these two events. This six-month filing period parallels the filing period for annual reports on Form 20–F.

In the Proposing Release, the Commission solicited comment on whether foreign private issuers should be excused from providing unaudited financial statements in transition reports if they are not required to develop such statements under the laws or practices of their domicile country, or any exchange upon which their securities trade. While two commentators agreed with the exception, the Commission is not adopting the exception as part of Rules 13a–10(g) and 15d–10(g). Because the financial reporting practices of foreign private issuers vary, the Commission had determined that requests for such an exception will be considered by the staff in appropriate circumstances, particularly where an issuer can demonstrate that developing such financial data would not be practicable or cost-justified.[66]

8. Reporting Fiscal Year Changes on Form 8–K

The Commission also is adopting amendments to require an issuer to report on a Form 8–K its decision to adopt a new fiscal year in response to a new Item 8. Formal notice of a change in reporting periods should eliminate confusion and misapprehension as to the reasons for issuer's financial reports not being filed and provide an orderly and reliable mechanism for getting news of the change to investors.

Under the amendments, the issuer must report both the date of its determination to change its fiscal year end and the date of its new fiscal year end.[67] In addition, to accommodate the option to file either a Form 10–K or Form 10–Q covering a transition period shorter than six months,[68] the amendments as adopted are modified to require the issuer to state in its Form 8–K the particular Form on which the report covering the transition period will be filed. This information should be available at the time of filing the Form 8–K because of the planning required for an audit.[69] The report on Form 8–K must

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the event, a transition report on Form 10–K is required to be filed within 90 days after October 15, 1990 to cover the transition period from January 1, 1990 through September 30, 1990.

[51] See amended Rules 13a–10(e)(3) and 15d–10(e)(3). In the first example in footnote 50, a Form 10–Q is required for the first quarter (ending February 28, 1991) of the new fiscal year.

[52] The information covering the transition period required by Part II and Item 2 of Part I, "Management's Discussion and Analysis of Financial Condition and Results of Operations," may be combined with the information regarding the quarter.

[53] See amended Rules 13a–10(e)(4) and 15d–10(e)(4) and Appendix Example 1.e. For example, an issuer with a December 31 year end decides on June 1, 1990 to change its year end to October 31, 1990 and begins filing quarterly reports based on the quarters of the new fiscal year with the quarterly report for the quarter ending July 31, 1990. Under the amendments, the period from April 1 through April 30, 1990 would not be covered by a separate report on Form 10–Q. That period would be required to be covered in the quarterly report filed for the quarter ending July 31, 1990, and separate financial statements covering April 1 through April 30, 1990 would be required to be filed with that quarterly report.

[54] The amendments do not require an issuer that decides to change its year end after having filed quarterly reports based on the old fiscal year to file new Form 10–Qs for those quarters of the new fiscal year already concluded. However, pursuant to Item 302(a)(5) of Regulation S–K [17 CFR 229.302(a)(5)], specified issuers must provide selected financial data for each full quarter of the two most recent fiscal years in their annual reports on Form 10–K. Accordingly, the first annual report on Form 10–K of such an issuer after a fiscal year change would be required to contain historical quarterly information on the basis of the new fiscal year.

[55] See Rules 12g–3 [17 CFR 240.12g–3] and 15d–5 [17 CFR 240.15d–5].

[56] 17 CFR 249.209b. Form 8–B is a registration form principally used for the securities of an issuer that has no registered securities but has succeeded to an issuer with registered securities.

[57] Thus, successions reported on Form 8–K, as well as on Form 8–B, are covered. See Release No. 34–9077 (February 10, 1971) [36 FR 3804]. Rule 12b–2 [17 CFR 240.12b–2] defines succession and, correlatively, successor.

[58] See amended Rule 15d–10(f).

[59] Where the successor issuer and the predecessor have a different fiscal year end and the succession is solely for the purpose of forming a holding company or changing the state of incorporation, the succession will be viewed as any change in fiscal year and not subject to the provisions of amended Rules 13a–10(f) and 15d–10(f).

[60] See amended Rules 13a–10(f) and 15d–10(f) and Appendix Example 2.b.

[61] See amended Rules 13a–10(f) and 15d–10(f) and Appendix Example 2.a.

[62] Other current reporting requirements for successor issuers and the Division's current interpretive positions respecting disclosures by successor issuers are not affected. As noted in the Proposing Release, when there is a change in accounting basis between the successor and predecessor, the quarterly or annual report for the period in which the succession occurs is required to present separately the statements of income and cash flows to reflect the periods prior and subsequent to the succession.

[63] Form 20–F generally is used by foreign private issuers as a registration statement, as well as an annual report. General Instruction G(b) of Form 20–F specifies that an annual report on Form 20–F shall include the information specified in Parts I, III and IV of the Form.

[64] The items, which cover most of the subjects covered in a Form 10–Q, are: Item 3, "Legal Proceedings;" Item 9, "Management's Discussion and Analysis of Financial Condition and Results of Operations;" Item 15, "Defaults Upon Senior Securities;" Item 16, "Changes in Securities and Changes in Security for Registered Securities;" and either Item 17 or 18, "Financial Statements."

[65] *Cf.* Release No. 34–24634 (June 23, 1987) (52 FR 24230) in which the Commission approved proposed rule changes by the American and New York Stock Exchanges permitting the exchanges to waive or modify specified listing standards for foreign securities. The Commission noted that the proposals would permit some foreign companies to report interim earnings on a semi-annual rather than quarterly basis.

[66] See Rule 3–13 of Regulation S–X (17 CFR 210.3–13), which allows the Commission to waive the filing of financial statements upon informal written request of an issuer and where consistent with the protection of investors.

[67] See discussion of the provisions of changing a fiscal year after the end of that particular year at II.A.3., *supra*.

[68] See discussion at II.A.1., "Transition Reporting on Forms 10–Q and 10–K," *supra*.

[69] If the issuer decides later to file the report covering the transition period on a form different from the form specified in its Form 8–K reporting the change in fiscal year, the issuer should file an amended Form 8–K stating the change.

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be filed within 15 days after the date of the issuer's determination to change its fiscal year end.

9. Filing Fees and Extensions of Time

Amendments to Rules 13a–10 and 15d–10 make it explicit that no filing fee is required for a transition report.[70] Amendments to Rule 12b–25, Form 12b–25, and the description of the Form also are being adopted that add transition reports to those reports for which an extension of time for filing is available.[71] Consistent with the extension periods for Forms 10–K and 10–Q, the extension for a transition report on Form 10–K or 20–F is 15 calendar days after the due date and extension for a transition report on Form 10–Q is five calendar days after the due date.

10. Transition Reporting for Investment Companies

Instead of filing annual and quarterly reports on Forms 10–K and 10–Q, registered management investment companies file semi-annual reports on Form N–SAR, while unit investment trusts file only annual reports on Form N–SAR.[72] Therefore, the Commission is (1) exempting registered investment companies from Rules 13a–10 and 15d–10,[73] and (2) adopting a new Rule under the Investment Company Act specifying their transition reporting obligations.[74] The new Rule requires investment companies that change their fiscal year end to file a report on Form N–SAR within 60 days after either the close of the resulting transition period or the date of the determination to change the fiscal year end, whichever is later.[75]

Under the amendments, the transition report filed by a management investment company must cover a period no longer than six months, which is the period ordinarily covered by a report on Form N–SAR.[76] The new Rule does not specify the period the transition report must cover and, in certain circumstances, an investment company has a choice between two periods.[77] Like the amendments to Rules 13a–10 and 15d–10, new rule 30b1–3 specifies that no filing fee is required for a transition report.[78]

*B. Other Financial Reporting Changes*

1. Amendments to the Accounting and Proxy Rules to Permit Reliance on Nine Month Statements

The Commission is adopting new Rule 3–06 of Regulation S–X, which provides that, where the issuer has changed its fiscal year, the filing of financial statements covering a period of nine to 12 months will be deemed to satisfy a requirement for one year of financial statements.[79] The new Rule also provides that, where there is a requirement for filing financial statements for a multiple year period that does not exceed three consecutive years,[80] the filing of financial statements that include one period of nine to 12 months will be deemed to satisfy a filing requirement of one year, if for all other years in the time period financial statements covering the full years are provided.[81] The new Rule applies to financial statements in proxy and information statements, registration statements and Exchange Act reports. A parallel provisions is added to the proxy rules in the form of a new Note 2 to Rule 14a–3(b)(1).[82] The note, which tracks the language of new Rule 3–06,[83] provides that separate audited financial statements covering two years and one period of nine to twelve months fulfill the requirement for statements of income and cash flows for the three most recent fiscal years.[84] Registered investment companies, however, are not covered by the proposed new Rule and Note because they are subject to different reporting requirements.[85]

2. Amendment to Rule 3–12

To assure more timely financial statements of first-time issuers, the Commission is adopting an amendment to Rule 3–12 of Regulation S–X.[86] The amendment, which codifies staff practice, specifies that the registrant's most recent audited financial statements in a registration statement filed under the Securities Act or on Form 10 under the Exchange Act that relates to the securities of a non-reporting issuer may not be more than one year and 45 days old at the date of effectiveness of the registration statement.[87] Prior to the amendments, by changing its fiscal year end, an issuer that was not a reporting company before filing a registration statement could have attempted to file and have declared effective a registration statement with financial statements up to 18 and one-half months old.[88]

The amendment applies only to companies not yet in the Exchange Act reporting system because their financial and business history is not available to investors and the marketplace. As noted in the Proposing Release, the one year and 45 day cutoff for the age of non-reporting company financial statements is consistent with those requirements of Rule 3–01 of Regulation S–X that limit the age of the financial statements in a registration statement of a company that previously has not been reporting pursuant to the requirements of the Exchange Act.[89]

C. Quarterly Reporting: First Report to be Filed on Form 10–Q

Finally, the Commission is adopting amendments to Rules 13a–13 and 15d–13 to eliminate any gap in the reporting period between the financial information included in a registration statement and the first report on Form 10–Q.[90] Under the amendments, the requirement to file quarterly reports commences with the first fiscal quarter following the most recent fiscal year or full quarter for which financial statements were included in the registration statement.[91] A first-time registrant is required to file its first Form 10–Q the later of 45 days after the effectiveness of the registration statement, or the date on which such report would have been required to be filed if the issuer had been a reporting company as of its last fiscal quarter. Prior to the amendments, an issuer's first report on Form 10–Q was required to be filed commencing with the first quarter ending after the effective date of its first registration statement.[92]

As is currently the case, first-time registrants generally will continue to be required to commence filing quarterly reports at the time specified, regardless of whether they have operations during this period.[93]

**III. Cost-Benefit Analysis**

In the Proposing Release, the Commission requested commentators to provide views and data as to the costs and benefits associated with the proposed amendments to Exchange Act Rules 12b–25, 13a–10, 14a–3, and 15d–10, Forms 8–K, 10–K, 10–Q, 20–F, and 12b–25, proposed new Investment Company Act Rule 30b1–3, the proposed amendments to Investment Company Act Rules 8b–16 and 30b1–2 and Form N–SAR, proposed new Rule 3–06 and the proposed amendment to Rule 3–12 of Regulation S–X.

Four commentators expressed views specifically on the costs and benefits associated with the reporting requirements for transition periods shorter than three months. One commentator believed that the requirement of separate transition reports for such shorter transition periods would not be cost beneficial as data concerning such periods would not be accompanied by similar disclosure for comparable historical periods. Another commentator that found the requirement unnecessary stated that the additional costs of such reports would not be substantial, but that the benefits would decrease as the transition period becomes shorter. As noted above in Part II.A.1., the amendments as adopted do not require a separate transition report for transition periods of one month or less.

Two other commentators expressed concerns that the costs of presenting audited financial statements covering shorter transition periods of less than three months in the first annual report of the newly adopted fiscal year would outweigh the benefits because of the short period covered and because such audited financial statements would be over one year old when presented. The amendments have not modified substantially the former rules in this regard.

The Commission also requested views and data as to the costs and benefits associated with amending Rules 13a–13 and 15d–13 to require a new registrant to file its first report on Form 10–Q for the first quarterly period other than the fourth quarter ending after the annual or quarterly period covered by the most recent financial statements included in its effective registration statement. The Commission noted that this revision should benefit investors by providing more timely and complete financial information about a first-time registrant for the period following the latest financial information in an effective registration statement. No comments were received on the costs and benefits associated with these amendments.

**IV. Final Regulatory Flexibility Analysis**

A Final Regulatory Flexibility Analysis in accordance with 5 U.S.C. 604 has been prepared concerning the proposed amendments to Exchange Act Rules 12b–25, 13a–10, 13a–13, 14a–3, 15d–10, and 15d–13, Forms 8–K, 10–K, 10–Q, 20–F, and 12b–25, proposed new Investment Company Act Rule 30b1–3 and the proposed amendments to Investment Company Act Rules 8b–16 and 30b1–2 and Form N–SAR, proposed new Rule 3–06 and the proposed amendment to Rule 3–12 of Regulation S–X. Members of the public who wish to obtain a copy of the Final Regulatory Flexibility Analysis should contact Barbara J. Green, (202) 272–2589, Office of Disclosure Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. A summary of the corresponding Initial Regulatory Flexibility Analysis appears at 53 FR 21670 (Release No. 33–6778).

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[70] *See* amended Rules 13a–10(f) and 15d–10(f).

[71] *See* amended Rule 12b–25(a) and (b)(2)(ii).

[72] *See* Rules 30a–1 and 30b1–1 under the Investment Company Act (17 CFR 270.30a–1 and 270.30b1–1). Form N–SAR is filed under both the Exchange Act and the Investment Company Act.

[73] *See* amended Rules 13a–10(h) and 15d–10(h).

[74] *See* new Investment Company Act Rule 30b1–3. Investment companies electing to be regulated as business development companies must comply with the Exchange Act periodic reporting requirements applicable to entities other than investment companies, including the filing of Forms 10–K and 10–Q. Accordingly, such companies are subject to the provisions of Exchange Act Rules 13a–10 and 15d–10 rather than new Investment Company Act Rule 30b1–3.

[75] Investment companies filing Form N–SAR must do so within 60 days of the end of the reporting period. *See* Rule 30b1–1.

[76] The rule does not provide for a transition report for unit investment trusts which, regardless of their fiscal year ends, are required to file Form N–SAR for a 12-month period ending December 31.

[77] A management investment company making a determination on January 15 to change its fiscal year end from December 31 to February 28 cannot file a report for the period from July 1 to February 28 because the period would be longer than six months. Rather, the investment company must file a report, no later than 60 days after January 15, either (1) covering the transition period beginning July 1 and ending August 31 or (2) covering the period from July 1 to December 31, and then file, no later than 60 days after February 28, a report for the transition period from January 1 to February 28.

[78] Form N–SAR is amended to provide an instruction for transition reporting. In addition, the Commission is adopting technical amendments to Rules 8b–16 and 30b1–2 and Form N–SAR under the Investment Company Act to correct erroneous references to Rule 30b1–5. The references are changed to Rule 30b1–1 which, until 1988, was designated as Rule 30b1–2. *See* Release No. 33–6621 (July 1, 1985) [50 FR 27960].

[79] See Rule 3–03(b) of Regulation S–X [17 CFR 210.3–03(b)] and Rule 14a–3(b)(1) of the proxy rules. Rule 3–03(b) is referred to in Form S–K under the Exchange Act and applicable to the Securities Act registration statement forms (except Form S–18 [17 CFR 239.28] and those forms filed by investment companies).

[80] See Rules 3–02(a) [17 CFR 210.3–02(a)] and 3–03(b) of Regulation S–X, Rule 14a–3(b)(1) of the proxy rules, and Item 21(d) of Form S–18. The Securities Act registration statement forms (except Form S–18) and Exchange Act Forms S–K, 10, and 10–K all require financial statements prepared in accordance with Regulation S–X.

[81] Where there has been a significant acquisition by the issuer, new Rule 3–06 also permits the filing of financial statements of the company being acquired covering a period of nine to 12 months in satisfaction of a requirement for one year of financial statements, if the required financial statements for all other periods cover the full time span. In addition, under the amendments, the filing of financial statements covering a period of nine to 12 months satisfies a requirement for one year of financial statements where the Commission so permits pursuant to Rule 3–13 of Regulation S–X.

[82] This provision also applies to information statements. *See* Rule 14c–3(a)(1) [17 CFR 240.14c–3(a)(1)], which requires that the information specified in Rules 14a–3(b)(1) through (b)(11) [17 CFR 240.14a–3(b)(1)—(11)] also be given to shareholders who receive information statements.

[83] The wording of the amendment has been changed from the proposals to parallel new Rule 3–06 more closely.

[84] Three commentators raised the issue of restatement of prior period financial statements. As in the past, the staff will continue to accept in annual reports on Form 10–K and annual reports to shareholders the restatement of prior period financial statements to conform with an issuer's newly adopted fiscal year, although such restatement will not be required.

[85] See Rule 3–14 of Regulation S–X [17 CFR 210.3–14].

[86] *See* new paragraph (d); former paragraphs (d) and (e) have been redesignated.

[87] The wording of the amendment has been modified to clarify that the one year and 45 day rule does not apply to financial statements other than those of the registrant.

[88] Rule 3–01(b) of Regulation S–X [17 CFR 210.3–01(b)] has permitted specified registrants to use unaudited financial statements that are at least as current as the third fiscal quarter of the most recently completed fiscal year if their registration statement is filed within 45 days after the end of the most recent fiscal year. Thus, under the former rules, a first-time registrant under the Securities Act with a December 31, 1986 year end that changed its year end in 1987 to May 31, 1987 could have filed unaudited financial statements covering the transition period from January 1, 1987 through May 31, 1987 and unaudited financial statements covering the subsequent nine months ending February 29, 1988 in a registration statement and attempted to have that registration statement declared effective on July 14, 1988. The most recently audited financial statements in the registration statement would have covered the year ending December 31, 1986.

[89] Rule 3–01(b) provides that the audited financial statements of the prior fiscal year may not be used more than 45 days after the end of the current fiscal year, unless the specified circumstances in Rule 3–01(c) [17 CFR 210.3–01(c)] exist, which include the requirement that the registrant be filing reports pursuant to Section 13 (15 U.S.C. 78m) or 15(d). In addition, Rule 3–01(a) [17 CFR 210.3–01(a)] requires a registrant that has been in existence for less than one fiscal year to file audited financial statements within 135 days of the date of filing the registration statement.

[90] *Cf.* Rule 15d–2 [17 CFR 240.15d–2], which eliminates a similar reporting gap by requiring an issuer whose registration statement becomes effective after a fiscal year end without audited financial statements as of such fiscal year end in the prospectus to file a special report within 90 days of effectiveness on the form appropriate for annual reports of the registrant. The special report must include audited financial statements for the last full fiscal year.

[91] *See* amended Rules 13a–13(a) and 15d–13(a).

[92] For example, under the amendments, a registrant with a December 31 year end whose registration statement became effective on April 14, 1990 including financial statements as of December 31 of the prior year, is required to file a quarterly report for the quarter ending March 31, 1990. The quarterly report is not due until 45 days after April 14, 1990, the date of effectiveness. Under the former rules, the same registrant would not have been required to file a quarterly report for the quarter ending on March 31, 1990. The former rules only would have required its first quarterly report for the quarter ending June 30, 1990.

[93] Generally, the staff has taken the position that registrants under the Securities Act whose registration statements are declared effective shortly before the end of their fiscal year, thereby creating Exchange Act reporting requirements pursuant to section 15(d), are required to file annual and quarterly reports even where the registrant has not commenced operations; for example, where the registrant is in the process of a best efforts offering and has not yet met the minimum, or where an acquisition by the registrant has not yet been completed pending regulatory approval.

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V. Appendix

*1. Examples of Reporting Under the Amendments for a Domestic Issuer with a Dec. 31 Year End that Files Periodic Reports Pursuant to Section 13 or 15(d) of the Exchange Act*

a. Decision made early in year to change year end to date already past with resulting transition period of one month or less:

On March 1, 1990 the issuer decides to change year end to Jan. 31, 1990
—15 days after March 1, 1990 files an 8–K
—90 days after Dec. 31, 1989 files a 10–K covering full year from Jan. 1, 1989 through Dec. 31, 1989
—At the option of the issuer, it may file a separate transition report on Form 10–Q 45 days after March 1, 1990 covering the transition period from Jan. 1, 1990 through Jan. 31, 1990
—At the option of the issuer, it may file a separate transition report on Form 10–K 90 days after March 1, 1990 covering the transition period from Jan. 1, 1990 through Jan. 31, 1990
—45 days after April 30, 1990 files a 10–Q covering the first quarter ending April 30, 1990 of the new fiscal year; if the issuer has not opted to file a separate transition report on either Form 10–Q or 10–K, the 10–Q for the quarter ending April 30, 1990 must cover the transition period from Jan. 1, 1990 through Jan. 31, 1990 and include separate financial statements, which may be unaudited, for the transition period from Jan. 1, 1990 through Jan. 31, 1990
—45 days after July 31, 1990 and Oct. 31, 1990 files 10–Qs covering the quarters ending July 31, 1990 and Oct. 31, 1990 of the new fiscal year, respectively
—90 days after Jan. 31, 1991 files a 10–K covering the full year from Feb. 1, 1990 through Jan. 31, 1991, with regular timing of quarterly and annual reporting continuing thereafter; if the issuer filed a separate transition report on Form 10–Q or the transition period information was included in 10–Q for the quarter ending April 30, 1990, the 10–K must include separate audited financial statements covering the transition period from Jan. 1, 1990 through Jan. 31, 1990

b. Decision made early in year to change year end to date already past with resulting transition period shorter than six months but longer than one month:

On March 1, 1990 the issuer decides to change year end to Feb. 28, 1990
—15 days after March 1, 1990 files an 8–K
—90 days after Dec. 31, 1989 files a 10–K covering full year from Jan. 1, 1989 through Dec. 31, 1989
—Either 45 days after March 1, 1990 files a transition report on Form 10–Q or 90 days after March 1, 1990 files a transition report on Form 10–K covering the transition period from Jan. 1, 1990 through Feb. 28, 1990
—45 days after May 31, 1990 files a 10–Q covering the first quarter ending May 31, 1990 of the new fiscal year, with regular timing of quarterly and annual reporting continuing thereafter; if the transition report was filed on Form 10–Q, the 10–K covering the full year from March 1, 1990 through Feb. 28, 1991 must include separate audited financial statements covering the transition period from Jan. 1, 1990 through Feb. 28, 1990

c. Decision made early in year to change year end to future date with resulting transition period shorter than six months but longer than one month:

On Feb. 1, 1990 the issuer decides to change year end to May 31, 1990
—15 days after Feb. 1, 1990 files an 8–K
—90 days after Dec. 31, 1989 files a 10–K covering full year from Jan. 1, 1989 through Dec. 31, 1989
—Either 45 days after Feb. 28, 1990 files a 10–Q covering the period ending Feb. 28, 1990 coinciding with a quarter of the new fiscal year or 45 days after March 31, 1990 files a 10–Q covering the quarter ending March 31, 1990 of the old fiscal year
—Either 45 days after May 31, 1990 files a transition report on Form 10–Q or 90 days after May 31, 1990 files a transition report on Form 10–K covering the transition period from Jan. 1, 1990 through May 31, 1990
—45 days after Aug. 31, 1990 files a 10–Q covering the first quarter ending Aug. 31, 1990 of the new fiscal year, with regular timing of quarterly and annual reporting continuing thereafter; if the transition report was filed on Form 10–Q, the 10–K covering the full year from June 1, 1990 through May 31, 1991 would include separate audited financial statements covering the transition period from Jan. 1, 1990 through May 31, 1990

d. Decision made early in year to change year end to future date with resulting transition period six months or longer:

On Feb. 1, 1990 the issuer decides to change year end to Sept. 30, 1990
—15 days after Feb. 1, 1990 files an 8–K
—90 days after Dec. 31, 1989 files a 10–K covering full year from Jan. 1, 1989 through Dec. 31, 1989
—45 days after March 31, 1990 and June 30, 1990 files 10–Qs covering the quarters ending March 31, 1990 and June 30, 1990, respectively
—90 days after Sept. 30, 1990 files a transition report on Form 10–K covering the transition period from Jan. 1, 1990 through Sept. 30, 1990
—45 days after Dec. 31, 1990 files a 10–Q covering the first quarter ending Dec. 31, 1990 of the new fiscal year, with regular timing of quarterly and annual reporting continuing thereafter

e. Decision made late in year to change year end to date already past with resulting transition period of one month or less:

On Sept. 1, 1990 the issuer decides to change year end to Jan. 31, 1990
—15 days after Sept. 1, 1990 files an 8–K
—At the option of the issuer, it may file a separate transition report on Form 10–Q 45 days after Sept. 1, 1990 covering the transition period from Jan. 1, 1990 through Jan. 31, 1990
—At the option of the issuer, it may file a separate transition report on Form 10–K 90 days after Sept. 1, 1990 covering the transition period from Jan. 1, 1990 through Jan. 31, 1990
—45 days after Oct. 31, 1990 files a 10–Q covering the quarter ending Oct. 31, 1990 of the new fiscal year; if the issuer has not opted to file a separate transition report on either Form 10–Q or 10–K, the 10–Q for the quarter ending Oct. 31, 1990 must cover the transition period from Jan. 1, 1990 through Jan. 31, 1990 and include separate financial statements, which may be unaudited, covering the transition period from Jan. 1, 1990 through Jan. 31, 1990; the 10–Q for the quarter ending Oct. 31, 1990 also must cover and include separate financial statements for the period from July 1, 1990 through July 31, 1990
—90 days after Jan. 31, 1991 files a 10–K covering the full year from Feb. 1, 1990 through Jan. 31, 1991, with regular timing of quarterly and annual reporting continuing thereafter; if the issuer filed a separate transition report on Form 10–Q or the transition period information was included in the 10–Q for the quarter ending Oct. 31, 1990, the 10–K must include audited financial statements covering the transition period from Jan. 1, 1990 through Jan. 31, 1990

f. Decision made late in year to change year end to date already past with resulting transition period shorter than six months but longer than one month:

On Nov. 1, 1990 the issuer decides to change year end to Feb. 28, 1990
—45 days after Sept. 30, 1990 files an 10–Q covering the quarter ending Sept. 30, 1990 of the old fiscal year
—15 days after Nov. 1, 1990 files an 8–K
—Either 45 days after Nov. 1, 1990 files a transition report on Form 10–Q or 90 days after Nov. 1, 1990 files a transition report on Form 10–K covering the transition period from Jan. 1, 1990 through Feb. 28, 1990
—45 days after Nov. 30, 1990 files a 10–Q covering the quarter ending Nov. 30, 1990 of the new fiscal year
—90 days after Feb. 28, 1991 files a 10–K covering full year from March 1, through Feb. 28, 1991, with regular timing of quarterly and annual reporting continuing thereafter; if the transition report was filed on Form 10–Q, the 10–K must include separate audited financial statements covering the transition period from Jan. 1, 1990 through Feb. 28, 1990

g. Decision made late in year to change year end to date already past with resulting transition period six months or longer:

On Nov. 1, 1990 the issuer decides to change year end to Sept. 30, 1990
—15 days after Nov. 1, 1990 files an 8–K
—90 days after Nov. 1, 1990 files a transition report on Form 10–K covering the transition period from Jan. 1, 1990 through Sept. 30, 1990
—45 days after Dec. 31, 1990 files an 10–Q covering the first quarter ending Dec. 31, 1990 of the new fiscal year, with regular timing of quarterly and annual reporting continuing thereafter

h. Decision made late in year to change year end to date already past with resulting transition period six months or longer where fiscal quarters of newly adopted year do not coincide with those of old fiscal year:

On Nov. 20, 1990 the issuer decides to change year end to Aug. 31, 1990
—15 days after Nov. 20, 1990 files an 8–K
—45 days after Nov. 30, 1990 files a 10–Q covering the first quarter ending Nov. 30, 1990 of the new fiscal year
—90 days after Nov. 20, 1990 files a transition report on Form 10–K covering the transition period from Jan. 1, 1990 through Aug. 31, 1990 with regular timing of quarterly and annual reporting continuing thereafter

*2. Examples of Reporting Under the Amendments for a Successor Issuer that has a Fiscal Year Different from the December 31 Year End of the Predecessor*

a. Succession with resulting transition period shorter than six months but longer than one month:

The date of succession is April 30, 1990
—15 days after April 30, 1990 files an 8–K
—Either 45 days after April 30, 1990 files a transition report regarding the predecessor on Form 10–Q or 90 days after April 30, 1990 files a transition report regarding the predecessor on Form 10–K covering the transition period from Jan. 1, 1990 through April 30, 1990
—If the transition report was filed on Form 10–Q, the next annual report of the successor issuer must include audited statements of income and cash flows for the transition period

b. Succession with resulting transition period six months or longer:

The date of succession is July 31, 1990
—15 days after July 31, 1990 files an 8–K
—90 days after July 31, 1990 files a transition report regarding the predecessor on Form 10–K covering the transition period from Jan. 1, 1990 through July 31, 1990

*3. Examples of Reporting Under the Amendments for a Management Investment Company Issuer With a December 31 Year End that Changes its Fiscal Year*

a. On Feb. 1, 1990 decides to change the year end to April 30
—60 days after April 30 files Form N–SAR covering the period from Jan. 1 to April 30

b. On Feb. 1, 1990 decides to change the year end to Sept. 30
—60 days after March 31 files Form N–SAR covering the period from Jan. 1 to March 31

c. On April 1, 1990 decides to change the year end to Jan. 31
—60 days after April 1 files Form N–SAR covering the period from Jan. 1 to Jan. 31

d. On Oct. 1, 1990 decides to change the year end to Nov. 30
—60 days after Nov. 30 files Form N–SAR covering the period from July 1 to Nov. 30

e. On Nov. 1, 1990 decides to change the year end to Jan. 31
—60 days after Nov. 1 files Form N–SAR covering the period from July 1 to July 31

f. On Nov. 1, 1990 decides to change the year end to Sept. 30
—60 days after Nov. 1 files Form N–SAR covering the period from July 1 to Sept. 30

VI. Codification Update

The "Codification of Financial Reporting Policies" announced in Financial Reporting Release No. 1 (April 15, 1982) (47 FR 21028) is updated to:

1. Add a new § 102.05, "Issuer's Change of Fiscal Year."

2. Include in § 102.05 the text in Part I.B. of this Release, "The Amendments," and the examples set forth in Part V. "Appendix," which are cross-referenced to that text.

The Codification is a separate publication of the Commission. It will not be published in the Federal Register/Code of Federal Regulations Systems.

VII. Statutory Basis

The amendments are being adopted by the Commission pursuant to sections 7 and 19(a) of the Securities Act of 1933, sections 13, 14, 15(d), and 23(a) of the Securities Exchange Act of 1934, and sections 8, 30, and 38 of the Investment Company Act of 1940.

List of Subjects in CFR Parts 210, 240, 249, 270, and 274

Reporting and recordkeeping requirements, Securities.

VIII. Text of Amendments

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

## PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

1. The authority citation for Part 210 continues to read, in part, as follows:

Authority: Secs. 6, 7, 8, 10, 19 and Schedule A of the Securities Act of 1933 (15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77aa(25) (26)) * * *

2. By adding new § 210.3–06 to read as follows:

**§ 210.3–06 Financial statements covering a period of nine to twelve months.**

Except with respect to registered investment companies, the filing of financial statements covering a period of 9 to 12 months shall be deemed to satisfy a requirement for filing financial statements for a period of 1 year where:

(a) The issuer has changed its fiscal year;

(b) The issuer has made a significant business acquisition for which financial statements are required under § 210.3–05 of this chapter and the financial statements covering the interim period pertain to the business being acquired; or

(c) The Commission so permits pursuant to § 210.3–13 of this chapter.

Where there is a requirement for filing financial statements for a time period exceeding one year but not exceeding three consecutive years (with not more than 12 months included in any period reported upon), the filing of financial

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statements covering a period of nine to 12 months shall satisfy a filing requirement of financial statements for one year of that time period only if the conditions described in either paragraph (a), (b), or (c) of this section exist and financial statements are filed that cover the full fiscal year or years for all other years in the time period.

3. By amending § 210.3–12 by redesignating current paragraphs (d) and (e) as paragraphs (e) and (f), respectively, and adding new paragraph (d) to read as follows:

**§ 210.3–12 Age of financial statements at effective date of registration statement or at mailing date of proxy statement.**

* * * * *

(d) The age of the registrant's most recent audited financial statements included in a registration statement filed under the Securities Act of 1933 or filed on Form 10 (17 CFR 249.210) under the Securities Exchange Act of 1934 shall not be more than one year and 45 days old at the date the registration statement becomes effective if the registration statement relates to the security of an issuer that was not subject, immediately prior to the time of filing the registration statement, to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934.

* * * * *

## PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read, in part, as follows:

Authority: Sec. 23, 48 Stat. 901, as amended (15 U.S.C. 78w) * * *

2. By amending § 240.12b–25 by revising paragraphs (a) and (b)(2)(ii) to read as follows:

**§ 240.12b–25 Notification of inability to timely file all or any required portion of a Form 10–K, 20–F, 11–K, N–SAR or 10–Q.**

(a) If all or any required portion of an annual or transition report on Form 10–K, 20–F, 11–K or a quarterly or transition report on Form 10–Q required to be filed pursuant to section 13 or 15(d) of the Act and the rules thereunder or if all or any portion of a semi-annual, annual or transition report on Form N–SAR required to be filed pursuant to section 30 of the Investment Company Act of 1940 and the rules thereunder is not filed within the time period prescribed for such report, the registrant, no later than one business day after the due date for such report, shall file a Form 12b–25 (17 CFR 249.322) with the Commission which shall contain disclosure of its inability to file the report timely and the reasons therefor in reasonable detail.

(b) * * *

(2) * * *

(ii) Either the subject annual report, semi-annual report or transition report on Form 10–K, 20–F, 11–K or N–SAR, or portion thereof, will be filed no later than the fifteenth calendar day following the prescribed due date or the subject quarterly report or transition report on Form 10–Q, or portion thereof, will be filed no later than the fifth calendar day following the prescribed due date; and

* * * * *

3. By revising § 240.13a–10 to read as follows:

**§ 240.13a–10 Transition reports.**

(a) Every issuer that changes its fiscal closing date shall file a report covering the resulting transition period between the closing date of its most recent fiscal year and the opening date of its new fiscal year; *Provided, however,* that an issuer shall file an annual report for any fiscal year that ended before the date on which the issuer determined to change its fiscal year end. In no event shall the transition report cover a period of 12 or more months.

(b) The report pursuant to this section shall be filed for the transition period not more than 90 days after either the close of the transition period or the date of the determination to change the fiscal closing date, whichever is later. The report shall be filed on the form appropriate for annual reports of the issuer, shall cover the period from the close of the last fiscal year end and shall indicate clearly the period covered. The financial statements for the transition period filed therewith shall be audited. Financial statements, which may be unaudited, shall be filed for the comparable period of the prior year, or a footnote, which may be unaudited, shall state for the comparable period of the prior year, revenues, gross profits, income taxes, income or loss from continuing operations before extraordinary items and cumulative effect of a change in accounting principles and net income or loss. The effects of any discontinued operations and/or extraordinary items as classified under the provisions of generally accepted accounting principles also shall be shown, if applicable. Per share data based upon such income or loss and net income or loss shall be presented in conformity with applicable accounting standards. Where called for by the time span to be covered, the comparable period financial statements or footnote shall be included in subsequent filings.

(c) If the transition period covers a period of less than six months, in lieu of the report required by paragraph (b) of this section, a report may be filed for the transition period on Form 10–Q (§ 249.308a of this chapter) not more than 45 days after either the close of the transition period or the date of the determination to change the fiscal closing date, whichever is later. The report on Form 10–Q shall cover the period from the close of the last fiscal year end and shall indicate clearly the period covered. The financial statements filed therewith need not be audited but, if they are not audited, the issuer shall file with the first annual report for the newly adopted fiscal year separate audited statements of income and cash flows covering the transition period. The notes to financial statements for the transition period included in such first annual report may be integrated with the notes to financial statements for the full fiscal period. A separate audited balance sheet as of the end of the transition period shall be filed in the annual report only if the audited balance sheet as of the end of the fiscal year prior to the transition period is not filed. Schedules need not be filed in transition reports on Form 10–Q.

(d) Notwithstanding the foregoing in paragraphs (a), (b), and (c) of this section, if the transition period covers a period of one month or less, the issuer need not file a separate transition report if either:

(1) The first report required to be filed by the issuer for the newly adopted fiscal year after the date of the determination to change the fiscal year end is an annual report, and that report covers the transition period as well as the fiscal year; or

(2)(i) The issuer files with the first annual report for the newly adopted fiscal year separate audited statements of income and cash flows covering the transition period; and

(ii) The first report required to be filed by the issuer for the newly adopted fiscal year after the date of the determination to change the fiscal year end is a quarterly report on Form 10–Q; and

(iii) Information on the transition period is included in the issuer's quarterly report on Form 10–Q for the first quarterly period (except the fourth quarter) of the newly adopted fiscal year that ends after the date of the determination to change the fiscal year. The information covering the transition period required by Part II and Item 2 of Part I may be combined with the information regarding the quarter. However, the financial statements



required by Part I, which may be unaudited, shall be furnished separately for the transition period.

(e) Every issuer required to file quarterly reports on Form 10–Q pursuant to § 240.13a–13 of this chapter that changes its fiscal year end shall:

(1) File a quarterly report on Form 10–Q within the time period specified in General Instruction A.1. to that form for any quarterly period (except the fourth quarter) of the old fiscal year that ends before the date on which the issuer determined to change its fiscal year end, except that the issuer need not file such quarterly report if the date on which the quarterly period ends also is the date on which the transition period ends;

(2) File a quarterly report on Form 10–Q within the time specified in General Instruction A.1. to that form for each quarterly period of the old fiscal year within the transition period. In lieu of a quarterly report for any quarter of the old fiscal year within the transition period, the issuer may file a quarterly report on Form 10–Q for any period of three months within the transition period that coincides with a quarter of the newly adopted fiscal year if the quarterly report is filed within 45 days after the end of such three month period, provided the issuer thereafter continues filing quarterly reports on the basis of the quarters of the newly adopted fiscal year;

(3) Commence filing quarterly reports for the quarters of the new fiscal year no later than the quarterly report for the first quarter of the new fiscal year that ends after the date on which the issuer determined to change the fiscal year end; and

(4) Unless such information is or will be included in the transition report, or the first annual report on Form 10–K for the newly adopted fiscal year, include in the initial quarterly report on Form 10–Q for the newly adopted fiscal year information on any period beginning on the first day subsequent to the period covered by the issuer's final quarterly report on Form 10–Q or annual report on Form 10–K for the old fiscal year. The information covering such period required by Part II and Item 2 of Part I may be combined with the information regarding the quarter. However, the financial statements required by Part I, which may be unaudited, shall be furnished separately for such period.

Note to paragraphs (c) and (e): If it is not practicable or cannot be cost-justified to furnish in a transition report on Form 10–Q or a quarterly report for the newly adopted fiscal year financial statements for corresponding periods of the prior year where required, financial statements may be furnished for the quarters of the preceding fiscal year that most nearly are comparable if the issuer furnishes an adequate discussion of seasonal and other factors that could affect the comparability of information or trends reflected, an assessment of the comparability of the data, and a representation as to the reason recasting has not been undertaken.

(f) Every successor issuer with securities registered under Section 12 of this Act that has a different fiscal year from that of its predecessor(s) shall file a transition report pursuant to this section, containing the required information about each predecessor, for the transition period, if any, between the close of the fiscal year covered by the last annual report of each predecessor and the date of succession. The report shall be filed for the transition period on the form appropriate for annual reports of the issuer not more than 90 days after the date of the succession, with financial statements in conformity with the requirements set forth in paragraph (b) of this section. If the transition period covers a period of less than six months, in lieu of a transition report on the form appropriate for the issuer's annual reports, the report may be filed for the transition period on Form 10–Q not more than 45 days after the date of the succession, with financial statements in conformity with the requirements set forth in paragraph (c) of this section. Notwithstanding the foregoing, if the transition period covers a period of one month or less, the successor issuer need not file a separate transition report if the information is reported by the successor issuer in conformity with the requirements set forth in paragraph (d) of this section.

(g)(1) Paragraphs (a) through (f) of this section shall not apply to foreign private issuers authorized to use Form 20–F (§ 249.220f of this chapter) for annual reports required by Rule 13a–1 (§ 240.13a–1 of this chapter).

(2) Every foreign private issuer that changes its fiscal closing date shall file a report covering the resulting transition period between the closing date of its most recent fiscal year and the opening date of its new fiscal year. In no event shall a transition report cover a period longer than 12 months.

(3) The report for the transition period shall be filed on Form 20–F responding to all items to which such issuer is required to respond when Form 20–F is used as an annual report. Such report shall be filed within six months after either the close of the transition period or the date on which the issuer made the determination to change the fiscal closing date, whichever is later. The financial statements for the transition period filed therewith shall be audited.

(4) If the transition period covers a period of six or fewer months, in lieu of the report required by paragraph (g)(3) of this section, a report for the transition period may be filed on Form 20–F responding to Items 3, 9, 15, 16, and 17 or 18 within three months after either the close of the transition period or the date on which the issuer made the determination to change the fiscal closing date, whichever is later. The financial statements required by either Item 17 or Item 18 shall be furnished for the transition period. Such financial statements may be unaudited and condensed as permitted in Article 10 of Regulation S–X (§ 210.10–01 of this chapter), but if the financial statements are unaudited and condensed, the issuer shall file with the first annual report for the newly adopted fiscal year separate audited statements of income and cash flows covering the transition period.

(5) Notwithstanding the foregoing in paragraphs (g)(2), (g)(3), and (g)(4) of this section, if the transition period covers a period of one month or less, a foreign private issuer need not file a separate transition report if the first annual report for the newly adopted fiscal year covers the transition period as well as the fiscal year.

(h) The provisions of this rule shall not apply to investment companies required to file reports pursuant to Rule 30b1–1 (§ 270.30b1–1 of this chapter) under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*).

(i) No filing fee shall be required for a transition report filed pursuant to this section.

Note.—In addition to the report or reports required to be filed pursuant to this section, every issuer, except a foreign private issuer authorized to use Form 20–F for annual reports required by Rule 13a–1 or an investment company required to file reports pursuant to Rule 30b1–1 under the Investment Company Act of 1940, that changes its fiscal closing date is required to file a report on Form 8–K responding to Item 8 thereof within the period specified in General Instruction B.1. to that form.

4. By amending § 240.13a–13 by revising paragraph (a) to read as follows:

**§ 240.13a–13 Quarterly reports on Form 10–Q (§ 249.308a of this chapter).**

(a) Except as provided in paragraphs (b) and (c) of this section, every issuer that has securities registered pursuant to section 12 of the Act and is required to file annual reports pursuant to section 13 of the Act on Form 10–K (§ 249.310 of this chapter) or U5S (§ 259.5s of this chapter) shall file a quarterly report on Form 10–Q (§ 249.308a of this chapter)

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within the period specified in General Instruction A.1. to that form for each of the first three quarters of each fiscal year of the issuer, commencing with the first fiscal quarter following the most recent fiscal year for which full financial statements were included in the registration statement, or, if the registration statement included financial statements for an interim period subsequent to the most recent fiscal year end meeting the requirements of Article 10 of Regulation S–X, for the first fiscal quarter subsequent to the quarter reported upon in the registration statement. The first quarterly report of the issuer shall be filed either within 45 days after the effective date of the registration statement or on or before the date on which such report would have been required to be filed if the issuer has been required to file reports on Form 10–Q as of its last fiscal quarter, whichever is later.

* * * * *

5. By amending § 240.14a–3 by redesignating the Note to paragraph (b)(1) as Note 1 and adding Note 2 to paragraph (b)(1) to read as follows:

**§ 240.14a–3 Information to be furnished to security holders.**

(b) * * *

(1) * * *

**Note 2.**—For purposes of complying with § 240.14a–3, if the registrant, other than a registered investment company, has changed its fiscal closing date, financial statements covering two years and one period of 9 to 12 months shall be deemed to satisfy the requirements for statements of income and cash flows for the three most recent fiscal years.

* * * * *

6. By revising § 240.15d–10 to read as follows:

**§ 240.15d–10 Transition reports.**

(a) Every issuer that changes its fiscal closing date shall file a report covering the resulting transition period between the closing date of its most recent fiscal year and the opening date of its new fiscal year: *Provided, however,* that an issuer shall file an annual report for any fiscal year that ended before the date on which the issuer determined to change its fiscal year end. In no event shall the transition report cover a period of 12 or more months.

(b) The report pursuant to this section shall be filed for the transition period not more than 90 days after either the close of the transition period or the date of the determination to change the fiscal closing date, whichever is later. The report shall be filed on the form appropriate for annual reports of the issuer, shall cover the period from the close of the last fiscal year end and shall indicate clearly the period covered. The financial statements for the transition period filed therewith shall be audited. Financial statements, which may be unaudited, shall be filed for the comparable period of the prior year, or a footnote, which may be unaudited, shall state for the comparable period of the prior year, revenues, gross profits, income taxes, income or loss from continuing operations before extraordinary items and cumulative effect of a change in accounting principles and net income or loss. The effects of any discontinued operations and/or extraordinary items as classified under the provisions of generally accepted accounting principles also shall be shown, if applicable. Per share data based upon such income or loss and net income or loss shall be presented in conformity with applicable accounting standards. Where called for by the time span to be covered, the comparable period financial statements or footnote shall be included in subsequent filings.

(c) If the transition period covers a period of less than six months, in lieu of the report required by paragraph (b) of this section, a report may be filed for the transition period on Form 10–Q (§ 249.308a of this chapter) not more than 45 days after either the close of the transition period or the date of the determination to change the fiscal closing date, whichever is later. The report of Form 10–Q shall cover the period from the close of the last fiscal year end and shall indicate clearly the period covered. The financial statements filed therewith need not be audited but, if they are not audited, the issuer shall file with the first annual report for the newly adopted fiscal year separate audited statements of income and cash flows covering the transition period. The notes to financial statements for the transition period included in such first annual report may be integrated with the notes to financial statements for the full fiscal period. A separate audited balance sheet as of the end of the transition period shall be filed in the annual report only if the audited balance sheet as of the end of the fiscal year prior to the transition period is not filed. Schedules need not be filed in transition reports on Form 10–Q.

(d) Notwithstanding the foregoing in paragraphs (a), (b), and (c) of this section, if the transition period covers a period of one month or less, the issuer need not file a separate transition report if either:

(1) the first report required to be filed by the issuer for the newly adopted fiscal year after the date of the determination to change the fiscal year end is an annual report, and that report covers the transition period as well as the fiscal year; or

(2)(i) the issuer files with the first annual report for the newly adopted fiscal year separate audited statements of income and cash flows covering the transition period; and

(ii) the first report required to be filed by the issuer for the newly adopted fiscal year after the date of the determination to change the fiscal year end is a quarterly report on Form 10–Q and

(iii) Information on the transition period is included in the issuer's quarterly report on Form 10–Q for the first quarterly period (except the fourth quarter) of the newly adopted fiscal year that ends after the date of the determination to change the fiscal year. The information covering the transition period required by Part II and Item 2 of Part I may be combined with the information regarding the quarter. However, the financial statements required by Part I, which may be unaudited, shall be furnished separately for the transition period.

(e) Every issuer required to file quarterly reports on Form 10–Q pursuant to § 240.15d–13 of this chapter that changes its fiscal year end shall:

(1) File a quarterly report on Form 10–Q within the time period specified in General Instruction A.1. to that form for any quarterly period (except the fourth quarter) of the old fiscal year that ends before the date on which the issuer determined to change its fiscal year end, except that the issuer need not file such quarterly report if the date on which the quarterly period ends also is the date on which the transition period ends;

(2) File a quarterly report on Form 10–Q within the time specified in General Instruction A.1. to that form for each quarterly period of the old fiscal year within the transition period. In lieu of a quarterly report for any quarter of the old fiscal year within the transition period, the issuer may file a quarterly report on Form 10–Q for any period of three months within the transition period that coincides with a quarter of the newly adopted fiscal year if the quarterly report is filed within 45 days after the end of such three month period, provided the issuer thereafter continues filing quarterly reports on the basis of the quarters of the newly adopted fiscal year;

(3) Commence filing quarterly reports for the quarters of the new fiscal year no later than the quarterly report for the first quarter of the new fiscal year that ends after the date on which the issuer determined to change the fiscal year end; and

(4) Unless such information is or will be included in the transition report, or the first annual report on Form 10–K for the newly adopted fiscal year, include in the initial quarterly report on Form 10–Q for the newly adopted fiscal year information on any period beginning on the first day subsequent to the period covered by the issuer's final quarterly report on Form 10–Q or annual report on Form 10–K for the old fiscal year. The information covering such period required by Part II and Item 2 of Part I may be combined with the information regarding the quarter. However, the financial statements required by Part I, which may be unaudited, shall be furnished separately for such period.

**Note to paragraphs (c) and (e):** If it is not practicable or cannot be cost-justified to furnish in a transition report on Form 10–Q or a quarterly report for the newly adopted fiscal year financial statements for corresponding periods of the prior year where required, financial statements may be furnished for the quarters of the preceding fiscal year that most nearly are comparable if the issuer furnishes an adequate discussion of seasonal and other factors that could affect the comparability of information or trends reflected, an assessment of the comparability of the data, and a representation as to the reason recasting has not been undertaken.

(f) Every successor issuer that has a different fiscal year from that of its predecessor(s) shall file a transition report pursuant to this section, containing the required information about each predecessor, for the transition period, if any, between the close of the fiscal year covered by the last annual report of each predecessor and the date of succession. The report shall be filed for the transition period on the form appropriate for annual reports of the issuer not more than 90 days after the date of the succession, with financial statements in conformity with the requirements set forth in paragraph (b) of this section. If the transition period covers a period of less than six months, in lieu of a transition report on the form appropriate for the issuer's annual reports, the report may be filed for the transition period on Form 10–Q not more than 45 days after the date of the succession, with financial statements in conformity with the requirements set forth in paragraph (c) of this section. Notwithstanding the foregoing, if the transition period covers a period of one month or less, the successor issuer need not file a separate transition report if the information is reported by the successor issuer in conformity with the requirements set forth in paragraph (d) of this section.

(g)(1) Paragraphs (a) through (f) of this section shall not apply to foreign private issuers authorized to use Form 20–F (§ 249.220f of this chapter) for annual reports required by Rule 15d–1 (§ 240.15d–1 of this chapter).

(2) Every foreign private issuer that changes its fiscal closing date shall file a report covering the resulting transition period between the closing date of its most recent year and the opening date of its new fiscal year. In no event shall a transition report cover a period longer than 12 months.

(3) The report for the transition period shall be filed on Form 20–F responding to all items to which such issuer is required to respond when Form 20–F is used as an annual report. Such report shall be filed within six months after either the close of the transition period or the date on which the issuer made the determination to change the fiscal closing date, whichever is later. The financial statements for the transition period filed therewith shall be audited.

(4) If the transition period covers a period of six or fewer months, in lieu of the report required by paragraph (g)(3) of this section, a report for the transition period may be filed on Form 20–F responding to Items, 3, 9, 15, 16, and 17 or 18 within three months after either the close of the transition period or the date on which the issuer made the determination to change the fiscal closing date, whichever is later. The financial statements required by either Item 17 or Item 18 shall be furnished for the transition period. Such financial statements may be unaudited and condensed as permitted in Article 10 of Regulation S–X (§ 210.10–01 of this chapter), but if the financial statements are unaudited and condensed, the issuer shall file with the first annual report for the newly adopted fiscal year separate audited statements of income and cash flows covering the transition period.

(5) Notwithstanding the foregoing in paragraphs (g)(2), (g)(3), and (g)(4) of this section, if the transition period covers a period of one month or less, a foreign private issuer need not file a separate transition report if the first annual report for the newly adopted fiscal year covers the transition period as well as the fiscal year.

(h) The provisions of this rule shall not apply to investment companies required to file reports pursuant to Rule 30b1–1 (§ 270.30b1–1 of this chapter) under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*).

(i) No filing fee shall be required for a transition report filed pursuant to this section.



**Note:**—In addition to the report or reports required to be filed pursuant to this section, every issuer, except a foreign private issuer authorized to use Form 20–F for annual reports required by Rule 15d–1 or an investment company required to file reports pursuant to Rule 30b1–1 under the Investment Company Act of 1940, that changes its fiscal closing date is required to file a report on Form 8–K responding to Item 8 thereof within the period specified in General Instruction B.1. to that form.

7. By amending § 240.15d–13 by revising paragraph (a) to read as follows:

**§ 240.15d–13 Quarterly reports on Form 10–Q (§ 249.308a of this chapter).**

(a) Except as provided in paragraphs (b) and (c) of this section, every issuer that has securities registered pursuant to the Securities Act of 1933 and is required to file annual reports pursuant to section 15(d) of the Securities Exchange Act of 1934 on Form 10–K (§ 249.310 of this chapter) or U5S (§ 259.5s of this chapter) shall file a quarterly report on Form 10–Q (§ 249.308a of this chapter) within the period specified in General Instruction A.1. to that form for each of the first three quarters of each fiscal year of the issuer, commencing with the first fiscal quarter following the most recent fiscal year for which full financial statements were included in the registration statement, or, if the registration statement included financial statements for an interim period subsequent to the most recent fiscal year end meeting the requirements of Article 10 of Regulation S–X, for the first fiscal quarter subsequent to the quarter reported upon in the registration statement. The first quarterly report of the issuer shall be filed either within 45 days after the effective date of the registration statement or on or before the date on which such report would have been required to be filed if the issuer had been required to file reports on Form 10–Q as of its last fiscal quarter, whichever is later.

* * * * *

## PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 249 continues to read, in part, as follows:

**Authority:** The Securities Exchange Act of 1934, 15 U.S.C. 78a, *et seq.* * * *

2. By amending § 249.220f by revising the section heading and paragraphs (a) and (b), and adding a new paragraph (d) as set forth below.

Form 20–F is amended by revising the cover sheet above the line beginning with the words "Commission file

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number" and revising paragraphs (a) and (b) of, and adding a new paragraph (d) to General Instruction A as set forth below.

Note.—The text of Form 20–F does not appear in the Code of Federal Regulations.

**§ 249.220f Form 20–F, registration of securities of foreign private issuers pursuant to section 12(b) or (g) and annual and transition reports pursuant to sections 13 and 15(d).**

(a) Any non-Canadian foreign private issuer may use this form as a registration statement under section 12 of the Securities Exchange Act (the "Exchange Act"), or as an annual or transition report filed under section 13(a) or 15(d) of the Exchange Act.

(b) A Canadian foreign private issuer may use this form as a registration statement under section 12(g) of the Exchange Act or as an annual or transition report under section 13(a) for a class of securities registered under section 12(g) only if such issuer does not have or has not had during the 12 months prior to the filing of the registration statement or annual or transition report any class of securities registered under section 12(b) of the Exchange Act or a reporting obligation (suspended or active) under section 15(d) of the Exchange Act and if such issuer has not issued its securities in a transaction to acquire by merger, consolidation, exchange of securities or acquisition of assets another issuer that filed or was required to file an annual report on Form 10–K (§ 249.310 of this chapter).

* * * * *

(d) A transition report on this form shall be filed in accordance with the requirements set forth in § 240.13a–10 or § 240.15d–10 applicable when the issuer changes its fiscal year end.

United States
Securities and Exchange Commission
Washington, DC 20549
Form 20–F
(Mark One)
[ ] Registration statement pursuant to section 12(b) or (g) of the Securities Exchange Act of 1934 [*Fee Required*] or
[ ] Annual report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 [*Fee Required*]
For the fiscal year ended _____ or
[ ] Transition report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 [*No Fee Required*]
For the transition period from _____ to _____

* * * * *

General Instructions

A. Rule as to Use of Form 20–F.

(a) Any non-Canadian foreign private issuer may use this form as a registration statement under section 12 of the Securities Exchange Act of 1934 (the "Exchange Act") or as an annual or transition report filed under section 13(a) or 15(d) of the Exchange Act.

(b) A Canadian foreign private issuer may use this form as a registration statement under section 12(g) of the Exchange Act and as an annual or transition report under section 13(a) for a class securities registered under section 12(g) only if such issuer does not have or has not had during the 12 months prior to the filing of the registration statement or annual or transition report any class of securities registered under section 12(b) of the Exchange Act or a reporting obligation (suspended or active) under section 15(d) of the Exchange Act and if such issuer has not issued its securities in a transaction to acquire by merger, consolidation, exchange of securities or acquisition of assets another issuer that filed or was required to file an annual report on Form 10–K (§ 249.310 of this chapter).

* * * * *

(d) A transition report on this form shall be filed in accordance with the requirements set forth in § 240.13a–10 or § 240.15d–10 applicable when the issuer changes its fiscal year end.

* * * * *

3. By amending Form 8–K (§ 249.308) by adding a sentence to the end of General Instruction B.1. and adding new Item 8 as set forth below.

Note.—The text of Form 8–K does not appear in the Code of Federal Regulations.

**§ 249.308 Form 8–K, for current reports.**

* * * * *

United States
Securities and Exchange Commission
Washington, DC 20549
Form 8–K

* * * * *

General Instructions

* * * * *

B. Events to be Reported and Time for Filing of Reports

1. * * * A report on this form pursuant to Item 8 is required to be filed within 15 calendar days after the date on which the registrant makes the determination to use a fiscal year end different from that used in its most recent filing with the Commission.

* * * * *

Item 8. Change in Fiscal Year

If the registrant determines to change the fiscal year from that used in its most recent filing with the Commission, state the date of such determination, the date of the new fiscal year end, and the Form (e.g., Form 10–K or Form 10–Q) on which the report covering the transition period will be filed.

* * * * *

4. By amending § 249.308a by revising the section heading, the second sentence, and adding two new sentences after the second sentence as set forth below.

Form 10–Q is amended by revising General Instructions A.1. and A.2. and revising the cover sheet above the line beginning with the words "Commission file number" as set forth below.

Note.—The text of Form 10–Q does not appear in the Code of Federal Regulations.

**§ 249.308a Form 10–Q, for quarterly and transition reports under section 13 or 15(d) of the Securities Exchange Act of 1934.**

* * * A quarterly report on this form pursuant to § 240.13a–13 or § 240.15d–13 of this chapter shall be filed within 45 days after the end of the first three fiscal quarters of each fiscal year, but no quarterly report need be filed for the fourth quarter of any fiscal year. Form 10–Q also shall be used for transition and quarterly reports filed pursuant to § 240.13a–10 or § 240.15d–10 of this chapter. Such transition or quarterly reports shall be filed in accordance with the requirements set forth in § 240.13a–10 or § 240.15d–10 applicable when the registrant changes its fiscal year end.

United States
Securities and Exchange Commission
Washington, DC 20549
Form 10–Q

General Instructions

A. Rule as to Use of Form 10–Q.

1. Form 10–Q shall be used for quarterly reports under Section 13 or 15(d) of the Securities Exchange Act of 1934, filed pursuant to Rule 13a–13 (17 CFR 240.13a–13) or Rule 15d–13 (17 CFR 240.15d–13). A quarterly report on this form pursuant to Rule 13a–13 or Rule 15d–13 shall be filed within 45 days after the end of each of the first three fiscal quarters of each fiscal year. No report need be filed for the fourth quarter of any fiscal year.

2. Form 10–Q also shall be used for transition and quarterly reports under section 13 or 15(d) of the Securities Exchange Act of 1934, filed pursuant to Rule 13a–10 (17 CFR 240.13a–10) or Rule 15d–10 (17 CFR 240.15d–10). Such transition or quarterly reports shall be filed in accordance with the requirements set forth in Rule 13a–10 or Rule 15d–10 applicable when the registrant changes its fiscal year end.

* * * * *

United States
Securities and Exchange Commission
Washington, DC 20549
Form 10–Q
(Mark One)
[ ] Quarterly report pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934
For the quarterly period ended _____ or
[ ] Transition report pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934
For the Transition period from _____ to _____

* * * * *

5. By amending § 249.310 by revising the section heading and the text of the section, except for the first and last sentences as set forth below.



Form 10–K is amended by revising General Instruction A, except for the first and last sentences, and the cover sheet above the line designated for the "Exact name of the registrant as specified in its charter" as set forth below.

Note.—The text of Form 10–K does not appear in the Code of Federal Regulations.

**§ 249.310 Form 10–K, for annual and transition reports pursuant to sections 13 or 15(d) of the Securities Exchange Act of 1934.**

* * * This form also shall be used for transition reports filed pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934. Annual reports on this form shall be filed within 90 days after the end of the fiscal year covered by the report. Transition reports on this form shall be filed in accordance with the requirements set forth in § 240.13a–10 or § 240.15d–10 applicable when the registrant changes its fiscal year end. However, all schedules required by Article 12 of Regulation S–X may, at the option of the registrant, be filed as an amendment to the annual report not later than 120 days after the end of the fiscal year covered by the report or, in the case of a transition report, not later than 30 days after the due date of the report. * * *

United States
Securities and Exchange Commission
Washington, DC 20549
Form 10–K

General Instructions

A. Rule as to Use of Form 10–K.

* * * This Form also shall be used for transition reports filed pursuant to section 13 or 15(d) of this Act. Annual reports on this form shall be filed within 90 days after the end of the fiscal year covered by the report. Transition reports on this form shall be filed in accordance with the requirements set forth in § 240.13a–10 and § 240.15d–10 applicable when the registrant changes its fiscal year end. However, all schedules required by Article 12 of Regulation S–X may, at the option of the registrant, be filed as an amendment to the annual report not later than 120 days after the end of the fiscal year covered by the report or, in the case of a transition report, not later than 30 days after the due date of the report. * * *

* * * * *

United States
Securities and Exchange Commission
Washington, DC 20549
Form 10–K
(Mark One)
[ ] Annual report pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934 [*Fee Required*]
For the fiscal year ended _____ or
[ ] Transition report pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934 [*No Fee Required*]
For the transition period from _____ to _____
Commission file number _____

* * * * *

6. By amending § 249.322 by revising the first sentence as set forth below.

Form 12b–25 is amended by revising the cover sheet above the line reading "Read Instructions (on back page) Before Preparing Form. Please Print or Type," paragraph (b) of Part II, and the first sentence of Part III as set forth below.

Note.—The text of Form 12b–25 does not appear in the Code of Federal Regulations.

**§ 249.322 Form 12b–25, notification of late filing.**

This form shall be filed pursuant to § 240.12b–25 of this chapter by issuers who are unable to file timely all or any required portion of an annual or transition report on Form 10–K, 20–F, or 11–K or a quarterly or transition report on Form 10–Q pursuant to section 13 or 15(d) of the Act or a semi-annual, annual or transition report on Form N–SAR pursuant to section 30 of the Investment Company Act of 1940. * * *

United States
Securities and Exchange Commission
Washington, DC 20549
Form 12b–25
Notification of Late Filing (Check One).
[ ] Form 10–K, —Form 20–F, —Form 11–K, —Form 10–Q, —Form N–SAR
For Period Ended:_____
[ ] Transition Report on Form 10–K
[ ] Transition Report on Form 20–F
[ ] Transition Report on Form 11–K
[ ] Transition Report on Form 10–Q
[ ] Transition Report on Form N–SAR
For the Transition Period Ended: _____

* * * * *

Part II—Rules 12b–25(b) and (c)

* * * * *

(a) * * *

(b) The subject annual report, semi-annual report, transition report on Form 10–K, Form 20–F, 11–K or Form N–SAR, or portion thereof will be filed on or before the fifteenth calendar day following the prescribed due date; or the subject quarterly report or transition report on Form 10–Q, or portion thereof will be filed on or before the fifth calendar day following the prescribed due date; and

* * * * *

Part III—Narrative

State below in reasonable detail the reasons why Forms 10–K, 20–F, 11–K, 10–Q, N–SAR, or the transition report or portion thereof could not be filed within the prescribed time period.

* * * * *

## PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The authority citation for Part 270 continues to read, in part, as follows:

**Authority:** Secs. 38, 40, 54 Stat. 841, 842; 15 U.S.C. 80a–37, 80c–80; the Investment Company Act of 1940, as amended, 15 U.S.C. 80a–1, *et seq.* * * *

2. By revising § 270.8b–16 to read as follows:

**§ 270.8b–16 Amendments to registration statement.**

Every registered management investment company which is required to file a semi-annual report on Form N–SAR, as prescribed by rule 30b1–1 (17 CFR 270.30b1–1), shall amend the registration statement required pursuant to Section 8(b) by filing, not more than 120 days after the close of each fiscal year ending on or after the date upon which such registration statement was filed, the appropriate form prescribed for such amendments.

3. By revising § 270.30b1–2 to read as follows:

**§ 270.30b1–2 Semi-annual report for totally-owned registered management investment company subsidiary of registered management investment company.**

Notwithstanding the provisions of rules 30a–1 and 30b1–1, a registered investment company that is a totally-owned subsidiary of a registered management investment company need not file a semi-annual report on Form N–SAR if financial information with respect to that subsidiary is reported in the parent's semi-annual report on Form N–SAR.

4. By adding § 270.30b1–3 to read as follows:

**§ 270.30b1–3 Transition reports.**

Every registered management investment company filing reports on Form N–SAR that changes its fiscal year end shall file a report on Form N–SAR not more than 60 calendar days after the later of either the close of the transition period or the date of the determination to change the fiscal year end which report shall not cover a period longer than six months. No filing fee shall be required for a transition report filed pursuant to this rule.

## PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

1. The authority citation for Part 274 continues to read, in part, as follows:

**Authority:** The Investment Company Act of 1940, 15 U.S.C. 80a–1 *et seq.* * * *

2. By amending § 274.101 by revising the text of the section as set forth below.

Form N–SAR is amended by revising page 1 above the line indicating whether the filing is in an amendment, and

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General instructions A, C (except the last two paragraphs which will remain the same), and F(2).

Note.—The text of Form N-SAR does not appear in the Code of Federal Regulations.

**§ 271.101 Form N-SAR, semi-annual report of registered investment companies.**

This form shall be used by registered investment companies for semi-annual or annual reports to be filed pursuant to rule 30a-1 (17 CFR 270.30a-1) or 30b1-1 (17 CFR 270.30b1-1) in satisfaction of the requirement of section 30(a) of the Investment Company Act of 1940 that every registered investment company must file annually with the Commission such information, documents and reports as investment companies having securities registered on a national securities exchange are required to file annually pursuant to section 13(a) of the Securities Exchange Act of 1934 and the rules and regulations thereunder (same as § 249.330 of this chapter).

Form N-SAR

Semi-Annual Report for registered investment companies

Report for six month period ending: ____ / ____ / ____ (a); or fiscal year ending: ____ / ____ / ____ (b).

Report for the transition period ending: ____ / ____ / ____ (c).

[If transition report also complete (a) or (b) above.]

* * * * *

General Instructions

A. Use of Form N-SAR

Form N-SAR is a combined reporting form that is to be used for semi-annual and annual reports by all investment companies which have filed a registration statement which has become effective pursuant to the Securities Act of 1933 ("1933 Act") with the exception of face amount certificate companies. Face amount certificate companies file periodic reports pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934 ("1934 Act"). Form N-SAR is also used for transition reports pursuant to Rule 30b1-4 under the Investment Company Act of 1940 (the "Act"). The form is divided into four sections and only certain investment companies are to complete each section.

* * * * *

Unit Investment Trusts:

* * * * *

Under section 30(b) of the Act, sections 13 and 15(d) of the 1934 Act, and the rules and regulations thereunder, the Commission is authorized to solicit the information required by Form N-SAR from registered investment companies. Disclosure of the information specified by Form N-SAR is mandatory. Information supplied on Form N-SAR will be included routinely in the public files of the Commission and will be available for inspection by any interested persons.

* * * * *

C. Filing the Report

The report shall be filed with the Commission no later than the sixtieth day after the end of the fiscal period for which the report is being prepared. All registered management investment companies shall file the form semi-annually. All registered UITs shall file the form annually. An extension of time of up to 15 days for filing the form may be obtained by following the procedures specified in Rule 12b-25 under the 1934 Act.

All transition reports shall be filed no later than the sixtieth day after the later of either the close of the transition period or the date of the determination to change the fiscal year. However, the transition report may not cover a period longer than six months.

Rule 30b1-1 under the Act requires a $125 fee to be paid to the Commission at the time of filing each semi-annual report by open- and closed-end management investment companies and a $125 fee to be paid at the time of filing each annual report by a UIT. No fee is required for a transition report.

* * * * *

F. Preparation of the Report by Electronic users

* * * * *

(2) Electronic filers may use the lockbox procedure as described in paragraph 220 of the Edgar User Manual to pay the filing fee required by Rule 30b1-1.

By the Commission.

**Jonathan G. Katz,**

*Secretary.*

March 2, 1989.

[FR Doc. 89-5576 Filed 3-10-89; 8:45 am]

BILLING CODE 8010-01-M

## DEPARTMENT OF THE TREASURY

### Customs Service

### 19 CFR Parts 10, 24 and 148

### United States-Canada Free Trade Agreement; Extension of Time for Comments

March 8, 1989.

**AGENCY:** U.S. Customs Service, Treasury.

**ACTION:** Extension of time for comments.

**SUMMARY:** This notice extends the period of time within which interested members of the public may submit comments concerning the interim regulations on the United States-Canada Free Trade Agreement (CFTA). A notice inviting the public to comment on the CFTA was published in the **Federal Register** on December 23, 1988 (53 FR 51762), and comments were to have been received before February 21, 1989. A request has been received to extend the period of time for comments for an additional 30 days. In view of the complexity of issues and subjects involved, the request is granted.

This extension of time to file comments will not affect procedures and practices related to the implementation of duty preferences under the CFTA, since interim regulations governing these areas are currently in effect.

**DATES:** The time for comments is extended through March 23, 1989.

**ADDRESS:** Comments (preferably in triplicate) should be submitted to and may be inspected at the Regulations and Disclosure Law Branch, U.S. Customs Service, Room 2119, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229.

**FOR FURTHER INFORMATION CONTACT:** Joseph J. DeSanctis, Regulations and Disclosure Law Branch (202-566-8237).

Dated: March 6, 1989.

**Harvey B. Fox,**

*Director, Office of Regulations and Rulings.*

[FR Doc. 89-5579 Filed 3-10-89; 8:45 am]

BILLING CODE 4820-02-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[FRL-3513-8]

### Approval and Promulgation of Implementation Plans; State of Missouri

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is approving revised Missouri regulations for the control of volatile organic compound (VOC) emissions in the Kansas City area. These regulations were submitted in response to Part D of the Clean Air Act which requires state implementation plan (SIP) revisions for areas that have not attained the National Ambient Air Quality Standards. Today's action provides federal enforceability for these regulations which assures continued progress toward attainment and maintenance of the ozone air quality standard in Kansas City.

**EFFECTIVE DATE:** This action is effective April 12, 1989.

**ADDRESSES:** The state submittal and EPA's technical support document are available for inspection during normal business hours at the following locations: Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101; Missouri Department of Natural Resources, Air Pollution Control Program, Jefferson State Office Building, 205 Jefferson Street, Jefferson City, Missouri 65101; Environmental Protection Agency, Public Information Reference Unit, Room 2922, 401 M Street SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Larry A. Hacker at (913) 236-2893 (FTS 757-2893).

**SUPPLEMENTARY INFORMATION:** On June 30, 1988, EPA proposed approval of a revised Missouri SIP for attainment of the ozone air quality standard in the Kansas City area (53 FR 24736). Essentially, the plan consists of an attainment demonstration and revised regulations for the control of VOC emissions. For a complete discussion of the state submittal, the reader is directed to the above referenced **Federal Register** notice.

Today's notice takes final action to approve the state's revised Kansas City VOC rules except for the rule pertaining to industrial surface coating. The state adopted further revisions to this rule subsequent to EPA's June 30 proposed rulemaking. Therefore, action on the industrial surface coating rule will be reproposed in a separate **Federal Register** notice.

In addition, EPA is currently reviewing its proposed action on the attainment demonstration portion of the SIP. However, EPA believes that final action on the VOC rules should not be delayed pending the outcome of its review of the attainment demonstration. Expeditious final approval of the revised VOC rules is necessary to provide federal enforceability which will assure continued progress toward attainment and maintenance of the ozone standard. No public comments were received on the June 30 proposed rulemaking insofar as the rules approved herein are concerned.

### EPA Action

In today's notice, EPA takes final action to approve Missouri's revised VOC rules for the Kansas City area, which were included in state submittals of May 21, 1986, and December 18, 1987.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 12, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)



### List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone.

Note: Incorporation by reference of the State Implementation Plan for the state of Missouri was approved by the Director of the Federal Register on July 1, 1982.

Date: January 27, 1989.

**John A. Moore,**

*Acting Administrator.*

40 CFR Part 52, Subpart AA, is amended as follows:

## PART 52—[AMENDED]

### Subpart AA—Missouri

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

**§ 52.1320 [Amended]**

2. Section 52.1320 is amended by adding paragraph (c)(65) to read as follows:

* * * * *

(c) * * *

(65) Revised regulations for the control of volatile organic compound emissions in the Kansas City area were submitted by the Missouri Department of Natural Resources on May 21, 1986, and December 18, 1987. The May 21, 1986, submittal also included an ozone attainment demonstration for Kansas City, which will be addressed in a future action. Rule 10 CSR 10-2.290 provides for alternative compliance plans whereby compliance can be determined by a daily weighted average of emissions from a combination of source operations. EPA approves this rule with the understanding that any such alternative compliance plans must be submitted and approved by EPA as individual SIP revisions. In the absence of such approval, the enforceable requirements of the SIP would be the emission limits or reduction requirements stated in the rule.

(i) *Incorporation by reference.* (A) Revision to rule 10 CSR 10-2.260, Control of Emissions from Petroleum Liquid Storage, Loading, and Transfer, effective May 29, 1986, with amendments effective December 24, 1987.

(B) New rule 10 CSR 10-2.300, Control of Emissions from the Manufacturing of Paints, Varnishes, Lacquers, Enamels, and Other Allied Surface Coating Products, effective September 28, 1986, with amendments effective December 12, 1987.

(C) New rules 10 CSR 10-2.310, Control of Emissions from the Application of Automotive Underbody Deadeners, and 10 CSR 10-2.320, Control of Emissions from Production of Pesticides and Herbicides, effective November 23, 1987.

(D) Rescinded rules 10 CSR 10-2.240, Control of Emissions of Volatile Organic Compounds from Petroleum Refinery Equipment, and 10 CSR 10-2.250, Control of Volatile Leaks from Petroleum Refinery Equipment, effective November 23, 1987.

(E) Revision to rule 10 CSR 10-6.030, Sampling Methods for Air Pollution Sources, effective November 23, 1987, with amendments effective December 24, 1987.

(F) Revision to rule 10 CSR 10-2.210, Control of Emissions from Solvent Metal Cleaning, effective December 12, 1987.

(G) Revisions to rules 10 CSR 10-2.290, Control of Emissions from Rotogravure and Flexographic Printing Facilities, and 10 CSR 10-6.020, Definitions, effective December 24, 1987.

[FR Doc. 89-2420 Filed 3-10-89; 8:45 am]

BILLING CODE 6560-50-M

### 40 CFR Part 52

[FRL-3535-1]

### Approval and Promulgation of Implementation Plans; Ohio

**AGENCY:** Environmental Protection Agency (USEPA).

**ACTION:** Final rule.

**SUMMARY:** USEPA is approving a declaration by Ohio that recent revisions to USEPA's stack height regulations do not necessitate revisions to the State Implementation Plans (SIPs) for the Goodyear Tire and Rubber Company, Plant 2 in Akron, Ohio.

Under section 406 of the Clean Air Act, each State was required to review its SIP for consistency with the stack height regulations within 9 months of final promulgation. An intended effect of this action is to document formally that Ohio has satisfied this obligation for this source.

**DATES:** This action will be effective May 12, 1989 unless notice is received by April 12, 1989.

**ADDRESSES:** Copies of the State submittal and other materials related to this rulemaking are available for inspection during normal business hours at the following addresses: (It is recommended that you telephone Maggie Greene, at (312) 886-6088, before visiting the Region V office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch

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(5AR–26), 230 South Dearborn Street, Chicago, Illinois 60604.
Ohio Environmental Protection Agency, Office of Air Pollution Control, 1800 WaterMark Drive, P.O. Box 1049, Columbus, Ohio 42366–0149.

Comments on this rule should be addressed to: (Please submit an original and three copies if possible). Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

**FOR FURTHER INFORMATION CONTACT:** Maggie Greene, (312) 886–6066.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

*Recent History of Stack Height Rules*

On February 8, 1982 (47 FR 5864), USEPA promulgated final regulations limiting stack height credits and other dispersion techniques as required by section 123 of the Clean Air Act (the Act). These regulations were challenged in the U.S. Court of Appeals for the District of Columbia Circuit by the Sierra Club Legal Defense Fund, Inc., the Natural Resources Defense Council, Inc., and the Commonwealth of Pennsylvania in *Sierra Club v. USEPA*, 719 F.2d 436 (D.C. Cir. 1983). On October 11, 1983, the court issued its decision ordering USEPA to reconsider portions of the stack height regulations, reversing certain portions and upholding other portions.

On February 28, 1984, the electric power industry filed a petition for a *writ of certiorari* with the U.S. Supreme Court. On July 2, 1984, the Supreme Court denied the petition (104 S.Ct. 3571), and on July 18, 1984, the Court of Appeals' mandate was formally issued, implementing the court's decision and requiring USEPA to promulgate revisions to the stack height regulations within 6 months. The promulgation deadline was ultimately extended to June 27, 1985.

Revisions to the stack height regulations were proposed on November 9, 1984 (49 FR 44878), and finalized on July 8, 1985 (50 FR 27892). The revisions redefine a number of specific terms including "excessive concentrations," "dispersion techniques," "nearby," and other important concepts, and modified some of the bases for determining good engineering practice (GEP) stack height.

The regulations were challenged by environmental groups, affected industries and States (*NRDC vs. Thomas No. 85–1465*). On January 22, 1988, the D.C. Circuit issued its decision which affirmed the regulations in large part. Three provisions, however, were remanded to USEPA for reconsideration. These are:

1. Credit for sources with originally designed and constructed merged stacks (40 CFR 51.100(hh)(2)(ii)(A));
2. Grandfathering of pre-1979 formula GEP stack heights from demonstrations (40 CFR 51.100(ii)(2)); and
3. Grandfathering pre-1983 within formula stack height increases from demonstration requirements (40 CFR 51.100(kk)(2).)

Pursuant to section 406(d)(2) of the Act, all States were required to (1) review and revise, as necessary, their SIPs to include provisions that limit stack height credits and dispersion techniques in accordance with the revised regulations, and (2) review all existing emission limitations to determine whether any of these limitations have been affected by stack height credits above GEP or any other dispersion techniques. For any limitations so affected, States were to prepare revised limitations consistent with their revised SIPs. All SIP revisions and revised emission limits were to be submitted to USEPA within 9 months of promulgation, as required by section 406. Subsequently, USEPA issued detailed guidance on the performance of the required reviews.

*Goodyear Tire and Rubber*

This notice evaluates the review performed by Ohio for one source, the Goodyear Tire and Rubber Company, Plant 2 in Akron, Ohio. Reviews for other sources in Ohio and States in Region V will be addressed in separate **Federal Register** notices. This particular source is being singled out for expedited treatment to help settle outstanding litigation in the United States Court of Appeals for the Sixth Circuit, *Goodyear Tire and Rubber Company v. USEPA*, Case Nos. 76–231, 77–1362, 80–3077. Today's action is not affected by the January 22, 1988, court decision. Ohio's review of the Goodyear Tire and Rubber source was submitted on July 21, 1986. Additional information was submitted on September 16, 1986, and July 7, 1987.

**II. Review of Emission Limitations**

Prior to 1982, Boilers A and B at Goodyear Tire and Rubber's Plant 2 were vented to Stack No. 3 and Boiler C was vented to Stack No. 1. Due to structural deterioration of Stack #1, Goodyear vented the exhaust gas from Boiler C to Stack No. 3 in 1982 and eventually (in 1985) completely removed Stack No. 1. (Note, because of advanced structural decay of Stack No. 1, which was built in 1915, it was necessary to remove 15 feet off the top of this stack twice during its later years.)

The current SIP emission limit for Boilers A–C is based on the merged stack configuration. Ohio reviewed the physical stack height (76.2 meters) and stack parameters used in the dispersion modeling used to set the emission limit for Goodyear.

A. *Physical Stack Height*—(Stack No. 1). Boiler A and Boiler B (Stack No. 3) were installed in 1952, and Boiler C was installed in 1943. The Stack Height Regulations do not apply to stacks (or sources) in existence before December 31, 1970. (Note, in 1970, Stack Nos. 1 and 3 were both 77.4 meters high.) Thus, the use of the actual, grandfathered height is acceptable.

B. *Merged Stacks*—According to the Stack Height Rules, merged stacks are generally regarded as a prohibited dispersion technique. Credit may be granted for mergings implemented before July 8, 1985 (such as Goodyear), if either (a) such merging was part of a change in operation at the facility that included the installation of emissions control equipment (and there was no increase in emissions), (b) such merging was carried out for sound economic or engineering reasons (and there was no increase in emissions), or (c) the source owners or operators demonstrate that a merging was not significantly motivated by an intent to gain emissions credit for greater dispersion.

USEPA issued guidance to prepare and review justifications for merging gas streams in a memorandum entitled, "Implementation of Stack Height Regulations—Exceptions from Restrictions on Credit for Merged Stacks" (October 28, 1985). The Ohio and Goodyear justification was reviewed in accordance with this guidance.

1. *Record of Intent*—A review of USEPA's files uncovered no information showing that merging was conducted specifically to increase final exhaust gas plume rise.

2. *Reason to Replace Stacks*—As stated in Goodyear's July 18, 1986, letter and accompanying documents, Stack No. 1 (which was built in 1915) had structurally deteriorated such that it had reached the end of its useful life. This necessitated the venting of the exhaust gas from Boiler C either to a new stack or an existing stack (e.g., Stack No. 3).

3. *Increase in Emissions*—According to USEPA's October 10, 1985, guidance memorandum ("Questions and Answers on Implementing the Revised Stack Height Regulation"), in cases with no pre-merging allowable emission limitation, such as Goodyear, the post-merging allowable limit cannot exceed the pre-merging actual emission level.



The current post-merging allowable short-term $SO_2$ emission limitation for Goodyear is 4.84 pounds per million British thermal units (lbs/MMBTU). The maximum actual lbs/MMBTU emissions during the 2-year period prior to merging (pre-merging actual) were greater than this value (i.e., annual average on the order of 3.5–4.0 lbs/MMBTU, with maximum short-term values in the 5–6 lbs/MMBTU range). Thus, the merging has not resulted in an increase in emissions.

4. *Affirmative Demonstration* [1]—The October 26, 1985, "Merged Stack" memorandum provides an opportunity to affirmatively demonstrate that merged stacks were not significantly motivated by an intent to obtain emissions credit for increased dispersion. Evidence to support such demonstrations should include construction permits, relevant correspondence, facility records, engineering reports, and/or affidavits.

Goodyear's affirmative demonstration consists of:

(a) In-house memoranda which discuss technical and contractual issues associated with tying Boiler C into Stack No. 3, including a June 20, 1979, memorandum which indicated that Goodyear believed that the merging would not increase plume rise at the plant.

(b) Correspondence between USEPA and Goodyear, including a June 27, 1979, letter from USEPA in which USEPA stated that the merging "has been found to be based on good engineering practice" and a June 18, 1979, letter from Goodyear citing the structural deterioration of Stack No. 1 (necessitating its removal) and the improved aesthetics after Stack No. 1's removal.

(c) Affidavit from a Goodyear environmental engineer which stated the following: (1) that he believed that the effect of merging would make negligible difference in predicted impact from Stack No. 3; (2) it was not his objective or intent to provide any plume rise enhancement; and (3) plume rise enhancement was not a factor in Goodyear's decision to merge gas streams.

USEPA has reviewed and accepts the affirmative demonstration for the Goodyear Tire and Rubber Company. Thus, it is approving granting merged stack credit for Goodyear.

[1] The other two exemption criteria (sound economic or engineering reasons, and installation of pollution control equipment) do not apply to Goodyear.

**III. Conclusion**

The State of Ohio has reviewed the emission limitation for Goodyear's Plant 2, and has found that no revision to the SIP is necessary. As justification for its finding, Ohio (and Goodyear) provided copies of memoranda, letters, and an affidavit. USEPA has reviewed this information with respect to its implementation policy for the Stack Height Regulation. USEPA has determined that Ohio's negative declaration meets all of USEPA's requirements. Therefore, USEPA is approving the declaration by Ohio that the revisions to USEPA's stack height regulations do not necessitate revisions to the SIP for the Goodyear Tire and Rubber Company, Plant 2 in Akron, Ohio.

Because USEPA considers today's action noncontroversial and routine, we are approving it today without prior proposal. The action will become effective on May 12, 1989. However, if we receive notice by April 12, 1989 that someone wishes to submit critical comments, then USEPA will publish: (1) A notice that withdraws the action, and (2) a notice that begins a new rulemaking by proposing the action and establishing a comment period.

Under 5 U.S.C. section 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 12, 1989. This action may not be challenged later in proceedings to enforce its requirements (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Air pollution control, Intergovernmental relations, Sulfur dioxide.

**Authority:** 42 U.S.C. 7401–7642.

Dated: February 28, 1989.

**Valdas V. Adamkus,**

*Regional Administrator.*

[FR Doc. 89–5804 Filed 3–10–89; 8:45 am]

BILLING CODE 6560–50–M

**40 CFR Part 370**

**[FRL–3536–5]**

**Emergency and Hazardous Chemical Inventory Forms and Community Right-to-Know Reporting Requirements; Clarification of Reporting Dates for Newly Covered Facilities in the Construction Industry**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of reporting dates.

**SUMMARY:** On October 15, 1987, EPA published a final rule for reporting under sections 311 and 312 of the Superfund Amendments and Reauthorization Act of 1986 (SARA). Under sections 311 and 312, facilities required to prepare or have available a material safety data sheet (MSDS) for hazardous chemicals under the Occupational Safety and Health Act and its implementing regulations must submit the MSDS (or a list of the hazardous chemicals) and inventory forms to the State Emergency Response Commission (SERC), Local Emergency Planning Committee (LEPC) and the local fire department. On August 4, 1988, EPA published a notice which clarifies the reporting dates for facilities in the non-manufacturing sector which were covered by the Occupational Safety and Health Administration's (OSHA) Hazard Communication Standard as of June 24, 1988. This notice clarifies the reporting dates for facilities in the construction industry which were covered by the Occupational Safety and Health Administration's (OSHA) Hazard Communication Standard as of January 30, 1989.

**DATES:** 1. Initial submission of MSDSs or alternative list: April 30, 1989.

2. Initial submission of the inventory form containing Tier I information: March 1, 1990.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Brody, Program Analyst, Preparedness Staff, Office of Solid Waste and Emergency Response, OS–120, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC, or the Emergency Planning and Community Right-To-Know Information Line at 1–(800) 535–0202 or in Washington, DC at (202) 479–2449.

**SUPPLEMENTARY INFORMATION:** On August 24, 1987 (52 FR 31852), OSHA revised its Hazard Communication Standard (HCS) to expand the scope of the industries covered by the rule from the manufacturing sector to all industries where employees are exposed to hazardous chemicals. For all

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establishments except those in the construction industry. OSHA's August 1987 revised HCS rule became effective on June 24, 1988. On that same date, the United States Court of Appeals for the Third Circuit stayed the application of the revised HCS rule to the construction industry at the request of construction industry representatives. After considering the merits of the construction industry challenge to the revised HCS rule, however, the Third Circuit vacated the stay. This ruling became fully effective on January 30, 1989. In a recently published **Federal Register** notice (54 FR 6888, Feb. 15, 1989), OSHA announced that all provisions of the revised HCS rule were in effect in all segments of industry as of January 30, 1989.

Sections 311 and 312 of Title III of SARA apply to the owner or operator of any facility which is required to prepare or have available a material safety data sheet (MSDS) for a hazardous chemical under the OSHA HCS. Section 311 of Title III requires that owners and operators submit an MSDS for each hazardous chemical at or above threshold amounts at the facility or a list of such chemicals to the SERC, LEPC and local fire department. Section 311(d)(1)(B) of Title III requires that the initial MSDS or list submission be made three months after the owner or operator of a facility is required to prepare or have available an MSDS for the chemical under the OSHA HCS. Therefore, EPA is today clarifying that the date established for section 311 compliance for the construction industry, newly subject to the HCS as of January 30, 1989, is April 30, 1989. Section 312 requires that the same facilities subject to section 311 submit an inventory form containing Tier I information annually on March 1 to the SERC, LEPC and local fire department. Thus, EPA is today clarifying that employers in the construction industry must submit their first Tier I inventory reports to these state and local entities by March 1, 1990.

Regulations for compliance with sections 311 and 312 of Title III were promulgated on October 15, 1987 (52 FR 38344) and codified at 40 CFR Part 370. This final regulation established the minimum threshold quantities applicable to the reporting requirements of all facilities subject to OSHA's MSDS requirements under sections 311 and 312, including facilities newly subject to the requirements at a future date.

The threshold for the first two years of reporting was set in the Agency's October 1987 regulation at 10,000 pounds, except for extremely hazardous substances (EHS). EHS must be reported if present in quantities at or above their chemical-specific threshold planning quantities or 500 pounds, whichever is less. EPA plans to propose a third-year and permanent threshold for reporting under sections 311 and 312 in the near future.

**List of Subjects in 40 CFR Part 370**

Community Right-to-Know, Superfund Amendments and Reauthorization Act, Hazard communication, Material safety data sheets.

Dated: March 1, 1989.

**Jonathan Z. Cannon,**

*Acting Assistant Administrator, Office of Solid Waste and Emergency Response.*

[FR Doc. 89-5686 Filed 3-10-89; 8:45 am]

BILLING CODE 6560-50-M

## FEDERAL COMMUNICATIONS COMMISSION

**47 CFR Parts 1, 21, 22, 74, and 94**

**[General Docket 82-343; FCC 89-45]**

### Service and Technical Rules for Government and Non-Government Fixed Service Usage of the Frequency Bands 932–935 MHz and 941–944 MHz

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This action amends the Commission's Rules to specify service and technical rules for Government and non-Government fixed service usage of the 932–935/941–944 MHz bands. Five megahertz of the allocation is being designated for point-to-point use, with one megahertz designated for point-to-multipoint use. Licenses will be granted to qualified applicants on a first-come, first-served basis after an initial one-week filing period. In the event of mutually exclusive applications being filed during the initial filing period, or on the same day thereafter, lotteries will be used to grant licenses. The objective of this action is to satisfy Government and non-Government demand for a fixed service below one gigahertz.

**EFFECTIVE DATE:** April 1, 1989.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Rodney Small, telephone (202) 653-8116.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Final Rule in General Docket 82-243, FCC 89-45, Adopted February 9, 1989, and Released February 28, 1989.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington DC 20037.

**Summary of Final Rule**

1. In the *First Report and Order* adopted on November 21, 1984 in this proceeding (50 FR 4650; February 1, 1985), the Commission allocated the 932–935/941–944 MHz bands for Government and non-Government fixed service usage on a co-primary basis. A *Third Notice of Proposed Rule Making* in the proceeding adopted on November 25, 1986 (52 FR 11519; April 9, 1987), proposed procedures and rules to be followed in sharing the bands.

2. Specifically, the *Third Notice of Proposed Rule Making* proposed two alternative application processing procedures to provide equitable access to the new fixed bands to both Government and non-Government entities. Under the first alternative, the essential features of the current Government and non-Government procedures would be retained. Under the second alternative, the usual 30-day non-Government filing window would be reduced to a single day, consistent with the procedure employed by the National Telecommunications and Information Administration for Government applications. This modification would allow consideration of mutually exclusive Government and non-Government applications only when filed on the same day. All other aspects of the procedure would be the same as under the first alternative.

3. No point-to-multipoint use of the new fixed bands was proposed. However, it was noted that paired private multiple address frequencies at 928–929/952–953 MHz are becoming saturated in some areas; therefore, comments were requested on whether there is a need for point-to-multipoint use which should be satisfied in this allocation.

4. We also proposed a channeling plan and technical standards in an attempt to guide efficient use of the new fixed bands. The interference protection criteria proposed for new fixed users, as well as existing grandfathered broadcast auxiliary stations that utilize the 942–944 MHz band, was that specified in § 94.63 of the Rules.



5. All commenting parties that addressed the area of permitted services supported a designation of some frequencies for point-to-multipoint use, citing the rapid growth which has occurred and the shortage of frequencies which presently exists in that service. However, since there are also substantial non-Government point-to-point needs and since the Government advocates using the entire 900 MHz fixed allocation in point-to-point applications, we believe that a designation of five megahertz of spectrum for point-to-point use and one megahertz of spectrum for point-to-multipoint use is appropriate.

6. Our proposed channeling plan contemplated point-to-point use only. Thus, there is a need to change the proposed plan to permit point-to-multipoint use as well. We believe that a mix of 25 kHz, 50 kHz, 100 kHz, and 200 kHz channels is appropriate for point-to-point use, since there is a wide variation in information transmission requirements for this type of use. We are establishing 12.5 kHz channels for point-to-multipoint use since it appears that most requirements for this type of use can be accommodated in a 12.5 kHz channel. Applicants will be permitted to combine channels upon a showing that there is a need and sufficient frequencies are available to permit this. Applicants may split channels if they choose to do so.

7. We are adopting the proposed technical standards except for the point-to-multipoint channels. For these channels, we are adopting a 1.5 parts per million frequency tolerance and Part 90 emission roll-off standards. For the point-to-point channels, we are adopting the proposed frequency tolerance of 2.5 parts per million and the proposed emission limitations and antenna standards.

8. Disagreement was expressed concerning the proper length of the filing window. We have concluded that an initial one-week filing period, followed by a daily first-come, first-served procedure, is desirable for both point-to-point and point-to-multipoint applicants. Public notice of the initial filing period shall be given by the Commission, and notice shall also be published in the **Federal Register** at least thirty days prior to the beginning of the filing period. In the event of mutually exclusive applications being filed during the initial filing period, or on the same day thereafter, lotteries shall be used to grant licenses.

9. The rule amendments contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose no new or modified information collection requirement on the public.

**Ordering Clauses**

10. Authority for this Rule Making is contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and section 553 of the Administrative Procedure Act, 5 U.S.C. section 553.

11. Accordingly, *it is ordered*, That Parts 1, 21, 22, 74, and 94 of the Commission's Rules and Regulations are amended as specified below, effective April 1, 1989.

12. *It is further ordered* That this proceeding is terminated.

**List of Subjects**

*47 CFR Part 1*

Practice and procedure.

*47 CFR Part 21*

Domestic public fixed radio services.

*47 CFR Part 22*

Public mobile service.

*47 CFR Part 74*

Aural broadcast auxiliary stations.

*47 CFR Part 94*

Private operational-fixed microwave service.

13. Part 1 of Title 47 of the Code of Federal Regulations is amended as follows:

**PART 1—PRACTICE AND PROCEDURE**

14. The authority citation for Part 1 continues to read as follows:

**Authority:** Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303; Implement, 5 U.S.C. 552, unless otherwise noted.

15. In § 1.962, paragraph (a)(1) is revised to read as follows, and paragraph (i) is added as follows:

**§ 1.962 Public notice of acceptance for filing; petitions to deny applications of specified categories.**

(a) * * *

(1) Fixed point-to-point and point-to-multipoint stations using frequencies above 890 MHz (exclusive of control, relay, and repeater stations used as integral parts of mobile radio systems).

(i) Notwithstanding other provisions of this section, applications for frequencies in the 932–935/941–944 MHz bands shall be filed initially during a one-week period to be announced by public notice. After these applications have been processed, the Commission shall announce by public notice a filing date for remaining frequencies. From this filing date forward, applications shall be processed on a daily first-come, first-served basis. Applications will be considered to be mutually exclusive only if filed for the same frequency in the same geographic location during the initial filing period or, thereafter, on the same day.

16. Part 21 of Title 47 of the Code of Federal Regulations is amended as follows:

**PART 21—DOMESTIC PUBLIC FIXED RADIO SERVICES**

17. The authority citation for Part 21 continues to read as follows:

**Authority:** Secs. 4, 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303.

18. In § 21.27, paragraph (d) is added as follows:

**§ 21.27 Public notice period.**

* * * * *

(d) Applications for frequencies in the 932.5–935/941.5–944 MHz bands shall be filed initially during a one-week period to be announced by public notice. After these applications have been processed, the Commission shall announce by public notice a filing date for remaining frequencies. From this filing date forward, applications shall be processed on a daily first-come, first-served basis. Applications will be considered to be mutually exclusive only if filed for the same frequency in the same geographic location during the initial filing period or, thereafter, on the same day.

19. In § 21.31, paragraph (f) is added as follows:

**§ 21.31 Mutually exclusive applications.**

(f) Notwithstanding other provisions of this section, applications for frequencies in the 932.5–935/941.5–944 MHz bands will be considered to be mutually exclusive only if filed for the same frequency in the same geographic location during the initial filing period or, thereafter, on the same day.

20. In § 21.101, the table in paragraph (a) is amended by adding the following frequency ranges in numeric order.

**§ 21.101 Frequency tolerance.**

(a) * * *

| Frequency range (MHz) | Frequency tolerance (percent) | | |
|---|---|---|---|
| | All fixed and base stations | Mobile stations over 3 watts | Mobile stations 3 watts or less |
| 512 to 932 * | 0.0005 | 0.0005 | 0.0005 |
| 932.5 to 935 * | 0.00025 | | |
| 941.5 to 944 | 0.00025 | | |
| 944 to 1,000 | 0.0005 | 0.0005 | 0.0005 |

21. In § 21.107, the table in paragraph (b) is amended by adding a footnote reference to the 512 to 2,110 MHz band and revising the footnote to read as follows:

**§ 21.107 Transmitter power.**

(b) * * *

| Frequency Band | Maximum allowable transmitter power | | Maximum allowable EIRP | |
|---|---|---|---|---|
| | Fixed (W) | Mobile (W) | Fixed (dBW) | Mobile (dBW) |
| * | * | * | * | * |
| 512 to 2,110 | 20.0 | 30.0 | (*) | |
| * | * | * | * | * |

[*] The EIRP of stations in the 932.5–935 MHz, 941.5–944 MHz, and 10,600–10,680 MHz bands must not exceed +40 dBW.

22. In § 21.106, the list of frequency bands in paragraph (c) is amended by adding the following new bands in numeric order.

**§ 21.106 Directional antennas.**

(c) * * *

| Frequency (MHz) | Category | Maximum beamwidth to 3 dB points (included angle in degrees) | Minimum antenna gain (dBi) | Minimum radiation suppression to angle in degrees from centerline of main beam in decibels | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | | 5° to 10° | 10° to 15° | 15° to 20° | 20° to 30° | 30° to 100° | 100° to 140° | 140° to 180° |
| 932.5 to 935 and 941.5 to 944 | A | 14.0 | n/a | | 8 | 11 | 14 | 17 | 20 | 24 |
| | B | 20.0 | n/a | | | 8 | 10 | 13 | 15 | 20 |

23. In § 21.701, the list of frequency bands in paragraph (a) is amended by adding the following new bands and footnotes in numeric order; paragraphs (c) through (f) are redesignated as (d) through (g); and paragraph (c) is added as follows:

**§ 21.701 Frequencies.**

(a) * * *

932.5–935 MHz [17]
941.5–944 MHz [17] [18]

* * * * *

(c) *932.5–935 MHz and 941.5–944 MHz.* 200 kHz maximum authorized bandwidth, 9 MHz separation:

(1) 25 kHz bandwidth channels:

| Transmit (receive) (MHz) | Receive (transmit) (MHz) |
|---|---|
| 932.5125 | 941.5125 |
| 932.5375 | 941.5375 |
| 932.5625 | 941.5625 |
| 932.5875 | 941.5875 |
| 932.6125 | 941.6125 |
| 932.6375 | 941.6375 |
| 932.6625 | 941.6625 |
| 934.6375 | 941.6375 |
| 934.6625 | 943.6625 |
| 934.6875 | 943.6875 |
| 934.9125 | 943.9125 |
| 934.9375 | 943.9375 |
| 934.9625 | 943.9625 |
| 934.9875 | 943.9875 |

(2) 50 kHz channels:

| Transmit (receive) (MHz) | Receive (transmit) (MHz) |
|---|---|
| 932.7000 | 941.7000 |
| 932.7500 | 941.7500 |
| 934.8000 | 943.8000 |

(3) 100 kHz channels:

| Transmit (receive) (MHz) | Receive (transmit) (MHz) |
|---|---|
| 932.8250 | 941.8250 |
| 932.8250 | 941.8250 |
| 933.0250 | 942.0250 |
| 934.5250 | 943.5250 |
| 934.6250 | 943.6250 |
| 934.7250 | 943.7250 |

(4) 200 kHz channels:

| Transmit (receive) (MHz) | Receive (transmit) (MHz) |
|---|---|
| 933.1750 | 942.1750 |
| 933.3750 | 942.3750 |
| 933.5750 | 942.5750 |
| 933.7750 | 942.7750 |
| 933.9750 | 942.9750 |
| 934.1750 | 943.1750 |
| 934.3750 | 943.3750 |

* * * * *

24. In § 21.703, the table in paragraph (a) is amended by adding the following bands in numeric order.

**§ 21.703 Bandwidth and emission limitations.**

(a) * * *

| Frequency band (MHz) | Maximum authorized bandwidth (MHz) |
|---|---|
| 932.5 to 935 | 0.2 |
| 941.5 to 944 | 0.2 |

* * * * *

25. Part 22 of Title 47 of the Code of Federal Regulations is amended as follows:

## PART 22—PUBLIC MOBILE SERVICE

26. The authority citation for Part 22 continues to read as follows:

**Authority:** Secs. 4, 303, 48 Stat. 1066, 1082, as amended (47 U.S.C. 154, 303), sec. 553 of the Administrative Procedure Act (5 U.S.C.), unless otherwise noted.

27. In § 22.27, paragraph (b) is redesignated as paragraph (b)(1) and paragraph (b)(2) is added as follows:

**§ 22.27 Public notice period.**

* * * * *

(b) * * *

(2) Applications for frequencies in the 932–932.5/941.5 MHz bands shall be filed initially during a one-week period to be announced by public notice. After these applications have been processed, the Commission shall announce by public notice a filing date for remaining frequencies. From this filing date forward, applications shall be processed on a daily first-come, first-served basis.

* * * * *

28. In § 22.31, paragraph (g) is added as follows:

**§ 22.31 Mutually exclusive applications.**

* * * * *



(g) Notwithstanding other provisions of this section, applications for frequencies in the 932–932.5/941–941.5 MHz bands will be considered to be mutually exclusive only if filed for the same frequency in the same geographic location during the initial filing period or, therefore, on the same day.

29. In § 22.101, the table in paragraph (a) is amended by adding the following frequency ranges in numeric order.

**§ 22.101 Frequency tolerance.**

(a) * * *

| Frequency range (MHz) | Frequency tolerance (percent) | | |
|---|---|---|---|
| | All fixed and base stations | Mobile stations over 3 watts | Mobile stations 3 watts or less |
| * | * | * | * |
| 932 to 932.5 | 0.00015 | | |
| 941 to 941.5 | 0.00015 | | |

* * * * *

30. In § 22.501, paragraph (g)(1) is revised, and a new paragraph (g)(5) is added as follows:

**§ 22.501 Frequencies.**

* * * * *

(g)(1) The frequencies listed in this paragraph are available to one-way signaling stations utilized within a multiple address system which requires the use of at least four simultaneously operated base stations operated on the same frequency assignments. These frequencies will be assigned only when there are four or more remote sites listed on the application for license. The 928/959 MHz frequencies may be used in paired or unpaired configurations; the 932/941 MHz frequencies are for paired use only. When paired, the higher frequency will be used by the control and the lower by the base station.

| 928–960 MHz Band [18] | |
|---|---|
| 928.8625 | 959.8625 |
| 928.8875 | 959.8875 |
| 928.9125 | 959.9125 |
| 928.9375 | 959.9375 |
| 928.9625 | 959.9625 |
| 928.9875 | 959.9875 |
| 932.00625 | 941.00625 |
| 932.01875 | 941.01875 |
| 932.03125 | 941.03125 |
| 932.04375 | 941.04375 |
| 932.05625 | 941.05625 |
| 932.06875 | 941.06875 |
| 932.08125 | 941.08125 |
| 932.09375 | 941.09375 |
| 932.10625 | 941.10625 |
| 932.11875 | 941.11875 |
| 932.13125 | 941.13125 |
| 932.14375 | 941.14375 |
| 932.15625 | 941.15625 |
| 932.16875 | 941.16875 |
| 932.18125 | 941.18125 |
| 932.19375 | 941.19375 |
| 932.20625 | 941.20625 |
| 932.21875 | 941.21875 |
| 932.23125 | 941.23125 |
| 932.24375 | 941.24375 |
| 932.25625 | 941.25625 |
| 932.26875 | 941.26875 |
| 932.28125 | 941.28125 |
| 932.29375 | 941.29375 |
| 932.30625 | 941.30625 |
| 932.31875 | 941.31875 |
| 932.33125 | 941.33125 |
| 932.34375 | 941.34375 |
| 932.35625 | 941.35625 |
| 932.36875 | 941.36875 |
| 932.38125 | 941.38125 |
| 932.39375 | 941.39375 |
| 932.40625 | 941.40625 |
| 932.41875 | 941.41875 |
| 932.43125 | 941.43125 |
| 932.44375 | 941.44375 |
| 932.45625 | 941.45625 |
| 932.46875 | 941.46875 |
| 932.48125 | 941.48125 |
| 932.49375 | 941.49375 |

[18] Except as indicated above, new control and repeater stations will not be authorized in the 890–940 MHz band. However, stations which were authorized to operate on such frequencies on April 18, 1958, may be granted renewed licenses subject to the following conditions:

Operations shall not be protected against any interference received from the emission of industrial, scientific and medical equipment operating on 915 MHz or from the emission of radiolocation stations in the 890–942 MHz band.

No harmful interference shall be caused to stations operating in the radiolocation service in the 890–942 MHz band.

[19] The paired frequencies between 932–932.5 and 941–941.5 are shared with Government fixed stations and stations in the Private Operational-Fixed Microwave Service (Part 94).

* * * * *

(5) Stations in multiple address systems on the 941–941.5 MHz channels will not be authorized to use transmitter power exceeding 100 watts nor effective isotropic radiated power exceeding +30 dBW. Stations in multiple address systems on the 932–932.5 MHz channels will not be authorized to use transmitter power exceeding 5 watts nor effective isotropic radiated power exceeding +17 dBW.

* * * * *

31. Part 74 of Title 47 of the Code of Federal Regulations is amended as follows:

## PART 74—EXPERIMENTAL, AUXILIARY, AND SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

32. The authority citation for Part 74 continues to read as follows:

**Authority:** Secs. 4, 303, 48 Stat. 1066, as amended, 1082 as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083 as amended; 47 U.S.C. 301, 303, 307.

33. In § 74.502, paragraphs (a) through (d) are redesignated as paragraphs (b) through (e). In newly redesignated paragraph (e), change the internal reference to read "paragraph (b) of this section".

**§ 74.502 Frequency assignment.**

(a) Except as provided in W.S.C. 302, broadcast auxiliary stations licensed as of November 21, 1984, to operate in the band 942–944 MHz may continue to operate on a co-equal primary basis to other stations and services operating in the band in accordance with the Table of Frequency Allocations. These stations will be protected from possible interference caused by new users of the band by the technical standards specified in § 94.63(d)(3).

* * * * *

34. Part 94 of Title 47 of the Code of Federal Regulations is amended as follows:

## PART 94—PRIVATE OPERATIONAL-FIXED MICROWAVE SERVICE

35. The authority citation for Part 94 continues to read as follows:

**Authority:** Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303, unless otherwise noted.

36. In § 94.61, the table in paragraph (b) is amended by adding the following frequency bands and footnotes in numeric order:

**§ 94.61 Applicability.**

* * * * *

(b) * * *

| | |
|---|---|
| 932 to 932.5 | (32) |
| 932.5 to 935 | (33) |
| 941 to 941.5 | (32) |
| 941.5 to 944 | (33)(34) |

* * * * *

(32) Frequencies in the 932 to 932.5 MHz and 941 to 941.5 MHz bands are shared with Government fixed point-to-multipoint stations and point-to-multipoint stations in the Public Land Mobile Service (Part 22). Frequencies in these bands are paired with one another and are available for point-to-multipoint transmission of the licensee's products and information services, excluding video entertainment material, to the licensee's customers.

(33) Frequencies in the 932.5 to 935 MHz and 941.5 to 944 MHz bands are shared with Government fixed point-to-point stations and stations in the Point-to-Point Microwave Radio Service (Part 21). Frequencies in these bands are paired with one another.

(34) Frequencies in the 942 to 944 MHz band are also shared with broadcast auxiliary stations (Part 74).

* * * * *

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37. Section 94.65 is amended by redesignating paragraph (a)(1)(iv) as paragraph (a)(1)(v); adding a new paragraph (a)(1)(iv); redesignating paragraphs (a)(2)(i) through (a)(2)(iii) as paragraph (a)(2)(ii) through (a)(2)(iv) and by adding a new paragraph (a)(2)(i) and additional frequency bands in paragraphs (a)(2)(ii), (a)(2)(iii), and (a)(2)(iv); and revising the headings of the tables in these paragraphs to read as follows:

**§ 94.65 Frequencies.**

* * * * *

(a) * * *

(1) * * *

(iii) * * *

(iv) Frequencies listed in this paragraph are shared with stations in the Public Land Mobile Service (Part 22).

TABLE 7—PAIRED FREQUENCIES

[12.5 kHz bandwidth]

| Remote transmit | Master transmit |
|---|---|
| 932.00625 | 941.00825 |
| 932.01875 | 941.01875 |
| 932.03125 | 941.03125 |
| 932.04375 | 941.04375 |
| 932.05625 | 941.05625 |
| 932.06875 | 941.06875 |
| 932.08125 | 941.08125 |
| 932.09375 | 941.08375 |
| 932.10625 | 941.10825 |
| 932.11875 | 941.11875 |
| 932.13125 | 941.13125 |
| 932.14375 | 941.14375 |
| 932.15625 | 941.15825 |
| 932.16875 | 941.16875 |
| 932.18125 | 941.18125 |
| 932.19375 | 941.19375 |
| 932.20625 | 941.20825 |
| 932.21875 | 941.21875 |
| 932.23125 | 941.23125 |
| 932.24375 | 941.24375 |
| 932.25625 | 941.25825 |
| 932.26875 | 941.26875 |
| 932.28125 | 941.28125 |
| 932.29375 | 941.29375 |
| 932.30825 | 941.30825 |
| 932.31875 | 941.31875 |
| 932.33125 | 941.33125 |
| 932.34375 | 941.34375 |
| 932.35625 | 941.35825 |
| 932.36875 | 941.36875 |
| 932.38125 | 941.38125 |
| 932.39375 | 941.39375 |
| 932.40625 | 941.40625 |
| 932.41875 | 941.41875 |
| 932.43125 | 941.43125 |
| 932.44375 | 941.44375 |
| 932.45625 | 941.45825 |
| 932.46875 | 941.46875 |
| 932.48125 | 941.48125 |
| 932.49375 | 941.49375 |

* * * * *

(2) * * *

(i)

TABLE 8—PAIRED FREQUENCIES

[25 kHz bandwidth]

| Transmit (or receive) | Receive (or transmit) |
|---|---|
| 932.5125 | 941.5125 |
| 932.5375 | 941.5375 |
| 932.5625 | 941.5625 |
| 932.5875 | 941.5875 |
| 932.6125 | 941.6125 |
| 932.6375 | 941.6375 |
| 932.6625 | 941.6626 |
| 934.8375 | 943.8375 |
| 934.8625 | 943.8625 |
| 934.8875 | 943.8875 |
| 934.9125 | 943.9125 |
| 934.9375 | 943.9375 |
| 934.9625 | 943.9625 |
| 934.9875 | 943.9875 |

(ii)

TABLE 9—PAIRED FREQUENCIES

[50 kHz bandwidth]

| Transmit (receive) (MHz) | Receive (transmit) (MHz) |
|---|---|
| 932.7000 | 941.7000 |
| 932.7500 | 941.7500 |
| 934.8000 | 943.8000 |

* * * * *

(iii)

TABLE 10—PAIRED FREQUENCIES

[100 kHz bandwidth]

| Transmit (receive) (MHz) | Receive (transmit) (MHz) |
|---|---|
| 932.8250 | 941.8250 |
| 932.9250 | 941.9250 |
| 933.0250 | 942.0250 |
| 934.5250 | 943.5250 |
| 934.6250 | 943.6250 |
| 934.7250 | 943.7250 |

* * * * *

(iv)

TABLE 11—PAIRED FREQUENCIES

[200 kHz bandwidth]

| Transmit (receive) (MHz) | Receive (transmit) (MHz) |
|---|---|
| 933.1750 | 943.1750 |
| 933.3750 | 943.3750 |
| 933.5750 | 943.5750 |
| 933.7750 | 943.7750 |
| 933.9750 | 943.9750 |
| 934.1750 | 943.1750 |
| 934.3750 | 943.3750 |

* * * * *

38. In § 94.67, the table is amended by revising the first two frequencies as follows:

**§ 94.67 Frequency tolerance.**

* * * * *

| Frequency band (MHz) | Tolerance as percentage of assigned frequency |
|---|---|
| 928–929, 932–932.5, 941–941.5 | 0.0005(9) |
| 932.5–935, 941.5–944, 952–960 | (1)(5) |

* * * * *

39. In § 94.71, the table in paragraph (b) is amended by adding the following frequency ranges in numeric order:

**§ 94.71 Emission and bandwidth limitations.**

* * * * *

(b) * * *

| Frequency band (MHz) | Maximum authorized bandwidth |
|---|---|
| 932–932.5, 941–941.5 | 12.5 kHz [1] |
| 932.5–935, 941.5–944 | 25, 50, 100, 200 kHz [1] |

* * * * *

40. In § 94.73, the table is amended by adding the following frequency ranges in numeric order.

**§ 94.73 Power limitations.**

* * * * *

(a) * * *

| Frequency band (MHz) | Maximum allowable transmitter power | | Maximum allowable EIRP [2] | |
|---|---|---|---|---|
| | Fixed (W) | Mobile (W) | Fixed (dBW) | Mobile (dBW) |
| 932–932.5 | 5.0 | | +17 | |
| 932.5–935 | 20.0 | | +40 | |
| 941–941.5 | 100.0 | | +30 | |
| 941.5–944 | 20.0 | | +40 | |

* * * * *

41. In § 94.75, the table in paragraph (b) is amended by adding the following frequency ranges in numeric order.

**§ 94.75 Antenna limitations.**

* * * * *

(b) * * *



| Frequency (MHz) | Category | Maximum beamwidth to 3 dB points (included angle in degrees) | Minimum antenna gain (dBi) | Minimum radiation suppression to angle in degrees from centerline of main beam in decibels | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | | 5° to 10° | 10° to 15° | 15° to 20° | 20° to 30° | 30° to 100° | 100° to 140° | 140° to 180° |
| 932.5 to 935 and 941.5 to 944 | A | 14.0 | n/a | | 6 | 11 | 14 | 17 | 20 | 24 |
| | B | 20.0 | n/a | | | 6 | 10 | 13 | 15 | 20 |

* * * * *

Federal Communications Commission.

**Donna R. Searcy,**

*Secretary.*

[FR Doc. 89-5124 Filed 3-10-89; 8:45 am]

BILLING CODE 6712-01-M

## NATIONAL TRANSPORTATION SAFETY BOARD

### 49 CFR Part 800

### Organization and Functions of the Board and Delegations of Authority

**AGENCY:** National Transportation Safety Board.

**ACTION:** Final rule.

**SUMMARY:** This amendment revises Part 800 to reflect the current delegations of authority to the Directors of the Bureau of Accident Investigation and the Bureau of Field Operations.

**EFFECTIVE DATE:** March 13, 1989.

**FOR FURTHER INFORMATION CONTACT:** John M. Stuhldreher, General Counsel, National Transportation Safety Board, 800 Independence Avenue SW., Washington, DC 20594; Telephone: 202–382–6540.

**SUPPLEMENTARY INFORMATION:** The National Transportation Safety Board is amending Part 800 to reflect the current delegations of authority to the Directors of the Bureau of Accident Investigation and the Bureau of Field Operations to determine the probable cause(s) of accidents reported in the "Brief of Accident" format. The delegations currently reserve the determination of cause in any such accident investigations to the Board when (a) requested by a single Board Member or (b) it appears to the Bureau Director that, because of significant public interest, a policy issue, or a safety issue or other matter, the determination of the probable cause(s) should be made by the Board. The Board is adding a third instance where the determination of cause is reserved by the Board: (c) when the accident investigation will be used to support findings in a safety study.

Since this regulatory amendment is not a substantive rule but a rule of agency organization and procedure, notice and public procedure are not necessary and the amendment may be made effective immediately.

**Regulatory Flexibility**

Under the criteria of the Regulatory Flexibility Act, these amendments to Part 800 will not impose any kind of regulatory burden on any entity. These amendments are intended to clarify the Board's procedures in respect to accident/incident investigations, hearings, and reports.

**Paperwork Reduction**

The amendments that are adopted herein will not in any way impose paperwork requirements.

**List of Subjects in 49 CFR Part 800**

Organizations and functions, Authority delegations (government agencies).

Accordingly, Part 800 of the Board's Rules (49 CFR Part 800) is revised to read as follows:

**PART 800—[AMENDED]**

1. The authority citation continues to read as follows:

**Authority:** Independent Safety Board Act of 1974, Pub. L. 93–633, 88 Stat. 2166 (49 U.S.C. 1901 et seq.)

2. Section 800.25 is amended by revising paragraph (c) as follows:

**§ 800.25 Delegation to the Director, Bureau of Accident Investigation.**

* * * * *

(c) Determine the probable cause(s) of accidents in which the determination is issued in the "Brief of Accident" format, except that the Bureau Director will submit the findings of the accident investigation to the Board for determination of the probable cause(s) when (1) any Board Member so requests, (2) it appears to the Bureau Director that, because of significant public interest, a policy issue, or a safety issue or other matter, the determination of the probable cause(s) should be made by the Board, or (3) the accident investigation will be used to support findings in a safety study. Provided, that a petition for reconsideration or modification of a determination of the probable cause(s) made under § 845.41 of the Board's regulations (49 CFR 845.41) shall be acted on by the Board.

3. Section 800.28 is amended by revising paragraph (c) as follows:

**§ 800.28 Delegation to the Director, Bureau of Field Operations.**

* * * * *

(c) Determine the probable cause(s) of accidents in which the determination is issued in the "Brief of Accident" format, except that the Bureau Director will submit the findings of the accident investigation to the Board for determination of the probable cause(s) when (1) any Board Member so requests, (2) it appears to the Bureau Director that, because of significant public interest, a policy issue, or a safety issue or other matter, the determination of the probable cause(s) should be made by the Board, or (3) the accident investigation will be used to support findings in a safety study. Provided, that a petition for reconsideration or modification of a determination of the probable cause(s) made under § 845.41 of the Board's regulations (49 CFR 845.41) shall be acted on by the Board.

Signed in Washington, DC on March 6, 1989.

**James L. Kolstad,**

*Acting Chairman.*

[FR Doc. 89-5701 Filed 3-10-89; 8:45 am]

BILLING CODE 7533-01-M

### 49 CFR Part 805

### Employee Responsibilities and Conduct

**AGENCY:** National Transportation Safety Board.

**ACTION:** Final rule.

**SUMMARY:** This amendment revises § 805.735–2 to alphabetize all definitions.

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**EFFECTIVE DATE:** March 13, 1989.

**FOR FURTHER INFORMATION CONTACT:** John M. Stuhldreher, General Counsel, National Transportation Safety Board, 800 Independence Avenue, SW., Washington, DC 20594; Telephone: 202–382–6540.

**SUPPLEMENTARY INFORMATION:** This amendment is to alphabetize all definitions in this section, so that in the future, if a definition needs to be added, it can be added alphabetically.

**List of Subjects in 49 CFR Part 805**

Administrative practice and procedure.

Accordingly, Part 805 of the Board's Rules (49 CFR Part 805) is amended to read as follows:

**PART 805—[AMENDED]**

1. The authority citation reads as follows:

**Authority:** E.O. 11222 of May 8, 1965, 30 FR 6469, 3 CFR 1965 Supp.; 5 CFR 735.101 *et seq.*, and 5 CFR 735.404.

1. Section 805.735–2 is revised and reads as follows:

**§ 805.735–2 Definitions.**

As used in this part.

"Executive order" means Executive Order 11222 of May 8, 1965 (30 FR 6469).

"Members and employees" means the Board Members and employees of the National Transportation Safety Board (Board) and active duty officers or enlisted members of the Armed Forces detailed to the Board, but does not include special Government employees.

"Person" means an individual, a corporation, a company, an association, a firm, a partnership, a society, a joint stock company, or any other organization or institution.

"Special Government employee" means an employee of the Board who is retained, designated, appointed, or employed to perform temporary duties, with or without compensation, for a period not to exceed 120 days during any period of 365 consecutive days, on either a full-time or intermittent basis.

**James L. Kolstad,**

*Acting Chairman.*

Signed in Washington, DC, on March 8, 1989.

[FR Doc. 89–5702 Filed 3–10–89; 8:45 am]

BILLING CODE 7533–01–M

**49 CFR Part 826**

**Equal Access to Justice Act; Implementation**

**AGENCY:** National Transportation Safety Board.

**ACTION:** Final rule.

**SUMMARY:** This amendment revises Part 826 to change the authority citation and to change one of the conditions that an applicant must meet to be eligible for an award of attorney fees and other expenses under the Equal Access to Justice Act of 1980, as restored.

**EFFECTIVE DATE:** March 13, 1989.

**FOR FURTHER INFORMATION CONTACT:** John M. Stuhldreher, General Counsel, National Transportation Safety Board, 800 Independence Avenue, SW. Washington, DC 20594; Telephone: 202–382–6540.

**SUPPLEMENTARY INFORMATION:** By Pub. L. 99–80, adopted August 5, 1985 (99 Stat. 186), effective October 1, 1984, Congress restored Section 504 of Title 5 and repealed Pub. L. 96–481. In doing so, Congress made certain changes to section 504. This amendment revises Part 826 to reflect the change in statutory authority and to reflect the change to section 504 in respect to one item of eligibility, i.e., individual net worth has been revised to $2 million and corporate net worth has been raised to $7 million.

Since this regulatory amendment is mandated by statute, notice and public procedure are not necessary and the amendment can be made effective immediately.

**List of Subjects in 49 CFR Part 826**

Administrative practice and procedure.

Accordingly, Part 826 of the Board's Rules (49 CFR Part 826) is amended as follows:

**PART 826—[AMENDED]**

1. The authority citation is revised to read as follows:

**Authority:** Section 203(a)(1) Pub. L. 99–80, 99 Stat. 186 (5 U.S.C. 504)

2. Section 826.4 is amended by revising paragraphs (b) (1), (2), and (5) as follows:

**§ 826.4 Eligibility of applicants.**

* * * * *

(b) * * *

(1) An individual with a net worth of not more than $2 million;

(2) The sole owner of an unincorporated business who has a net worth of not more than $7 million, including both personal and business interests, and not more than 500 employees;

* * * * *

(5) Any other partnership, corporation, association, or public or private organization with a net worth of not more than $7 million and not more than 500 employees.

* * * * *

Signed in Washington, DC on March 8, 1989.

**James L. Kolstad,**

*Acting Chairman.*

[FR Doc. 89–5703 Filed 3–10–89; 8:45 am]

BILLING CODE 7533–01–M



# Proposed Rules

Federal Register
Vol. 54, No. 47
Monday, March 13, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 52**

**[FV–88–203]**

**Standards for Grades of Canned Pineapple**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The purpose of this proposed rule is to revise the current voluntary U.S. Standards for Grades of Canned Pineapple. The proposed rule was developed by the U.S. Department of Agriculture (USDA) at the request of major segments of the canned pineapple industry. It is intended to improve the standards and reflect current processing techniques and marketing practices by: (1) Eliminating reference to the sub-styles "small tidbits," "large tidbits," and "symmetrical chunks"; (2) including packing media designations of "extra light sirup" and "artificially sweetened"; (3) changing drained weight values to accommodate the extra densities of the new packing media; (4) modifying the procedure for determining the drained weight and acceptance criteria to reflect other U.S. grade standards and with the Food and Drug Administration (FDA) drained weight procedure and acceptance criteria; (5) eliminating the recommended count and size designations for slices and half slices styles; (6) replacing dual grade nomenclature with single letter designations; (7) adding the new style "whole"; and (8) providing a uniform format consistent with recent revisions of other U.S. grade standards. This proposed rule also includes conforming and miscellaneous nonsubstantive changes for clarity.

**DATE:** Comments must be received on or before May 12, 1989.

**ADDRESS:** Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in duplicate to the Office of the Docket Clerk, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Room 2085, South Building, Washington, DC 20090–6456. Comments should reference the date and page number of this issue of the Federal Register and will be made available for public inspection in the office of the Docket Clerk during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** D. Todd Dulaney, Processed Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Room 0713, South Building, Washington, DC 20090–6456, Telephone (202) 447–6247.

**SUPPLEMENTARY INFORMATION:** This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been designated as a "nonmajor" rule. It will not result in an annual effect on the economy of $100 million or more. There will be no major increase in cost or prices to consumers; individual industries; Federal, State, or local government agencies; or geographic regions. It will not result in significant effects on competition, employment, investments, productivity, innovations, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Agencies are required to periodically review existing regulations. An objective of the regulatory review is to ensure that the grade standards are serving their intended purpose, the language is clear, and the standards are consistent with AMS policy and authority.

The Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act, Pub. L. 96–354 (5 U.S.C. 601). The proposed changes reflect current marketing practices.

In addition, these standards are voluntary. A small entity may avoid incurring any additional economic impact by not employing them.

Modern pineapple processing techniques have brought about changes in the procedures used to determine quality grades of canned pineapple since the current grade standards became effective in March 1957.

The Pineapple Growers Association of Hawaii (PGAH), an association representing the majority of the canned pineapple industry in the United States, has requested the U.S. Department of Agriculture to revise the U.S. Standards for Grades of Canned Pineapple and align the grading procedures with current processing techniques and marketing practices. The current U.S. grade standards for canned pineapple provide for the sub-styles, "small tidbits" and "large tidbits" under the style of "tidbits." Also, under the style of "chunks," reference is made to the sub-style "symmetrical chunks." The Food and Drug Administration (FDA) does not include these sub-styles as part of the Canned Pineapple Standard of Identity (21 CFR 145.180(a)(2d)).

In order to simplify the standards and maintain consistency between the definitions of the USDA grade standards and the FDA pineapple standard, this proposal would eliminate all reference to the terms "large tidbits," "small tidbits," and "symmetrical chunks" under the respective styles in the U.S. grade standards. In addition, the definitions for all styles of canned pineapple in the U.S. grade standards would be changed to reflect the style definitions in the current FDA standard of identity.

The canned pineapple industry has begun using packing media with sirup designations in addition to those described in the current U.S. grade standards. The current FDA canned pineapple standard provides for and defines these additional packing media designations (21 CFR 145.180(a)(3) and 145.181). This proposal would align the U.S. grade standards with the FDA standard by providing for two additional sirup designations.

They are described as "extra light sirup," with sirup densities of ten degrees Brix or more but less than 14 degrees Brix, and "artificially sweetened" not defined with sirup density since the packing media contains no additional sucrose. To further clarify usage of the U.S. grade standards, terminology describing existing packing media designations would also be changed to reflect corresponding definitions in the FDA

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canned pineapple standard (21 CFR 145(a)(3).

To accommodate the new values for the proposed additional sirup densities, drained weight values for common container sizes for sirup densities less than 14 degrees Brix are provided in the proposed new U.S. grade standard. The new drained weight values and present values would be adjusted to the nearest tenth of an ounce to reflect current manufacturing practices and the accuracy of modern weighing equipment used for drained weight determination. The current U.S. grade standards provide a method for determining drained weights of crushed style canned pineapple by transferring adequately drained pineapple material from the drain screen to a clean dry pan that has previously been weighed. After determining the combined weight of the pineapple material and pan, the weight of the pan is then subtracted from the total weight to reveal the weight of the crushed pineapple material.

This method is cumbersome since the dry pan "tare weight," along with the drain screen "tare weight," can be automatically subtracted from the total weight, without transferring the pineapple material, using scales designed for this purpose. This proposal provides a procedure that streamlines drained weight determinations for crushed style canned pineapple by eliminating the extra steps involved in physically removing the pineapple material from the drain screen and subtracting the predetermined "tare weight" of the pan. The proposed method reflects FDA procedures and acceptance criteria for determining drained weights (21 CFR 145.3) and reflects procedures described in other styles of canned pineapple and other U.S. grade standards.

The coring, cutting, and slicing procedures in modern pineapple processing plants enable processors to uniformly size units for the two styles, "slices" and "half slices" with a controlled degree of accuracy. Uniform counts of units for these two styles are placed in containers as a result. According to the PGAH, the majority of the pineapple processors believe that the section for recommended unit size and count designations for filled containers, as described in the current U.S. grade standards, is redundant and should be removed. This proposal would delete the section, "Recommended Counts and Sizes of Slices and Half Slices," from the U.S. grade standards, as unnecessary.

Consistent with recent or proposed changes to other U.S. grade standards, this proposal also would replace dual grade nomenclature with single letter grade designations. Under the proposal, "U.S. Grade A" or ("U.S. Fancy"), "U.S. Grade B" or ("U.S. Choice") and "U.S. Grade C" or ("U.S. Standard") would simply become "U.S. Grade A," "U.S. Grade B," and "U. S. Grade C."

The proposal would also include the new style "whole", a solid cored and peeled whole fruit, cut into a symmetrical cylinder.

The proposed changes would also provide a uniform format consistent with recent revisions of other U.S. grade standards. The proposed format is designed to provide industry personnel and Agricultural Commodity Graders with simpler and more comprehensive standards. Definitions of terms and easy-to-read tables would replace the textual descriptions in existing grade standards. The changes would be expected to promote better understanding of the grade standards. Other sections would be modified to conform with these changes.

**List of Subjects in 7 CFR Part 52**

Fruits, Vegetables, Food grades and standards.

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 52 is amended as follows:

## PART 52—PROCESSED FRUITS AND VEGETABLES, PROCESSED PRODUCTS THEREOF, AND CERTAIN OTHER PROCESSED FOOD PRODUCTS

1. The authority citation for Part 52 continues to read as follows:

Authority: Agricultural Marketing Act of 1946, Secs. 203, 205, 60 stat. 1087, as amended, 1090, as amended; (7 U.S.C. 1622, 1624).

2. The Subpart—United States Standards for Grades of Canned Pineapple, is revised to read as follows:

**Subpart—United States Standards for Grades of Canned Pineapple**

Sec.


52.1711 Product description.
52.1712 Styles.
52.1713 Definition of terms.
52.1714 Recommended sample unit sizes.
52.1715 Brix measurements.
52.1716 Fill of container of crushed style canned pineapple.
52.1717 Minimum drained weights for canned crushed pineapple.
52.1718 Recommended minimum drained weights for canned pineapple other than crushed style canned pineapple.
52.1719 Grades.
52.1720 Factors of quality and analysis.
52.1721 Requirements for grades.
52.1722 Sample size.
52.1723 Lot quality and analysis requirements.


**Subpart—United States Standards for Grades of Canned Pineapple**

**§ 52.1711 Product description.**

Canned pineapple is the product represented as defined in the Standards of Identity, Quality, and Fill of Container for Canned Pineapple (21 CFR 145.180 and 145.181) issued under the Federal Food, Drug, and Cosmetic Act.

**§ 52.1712 Styles.**

(a) *Whole* consists of whole fruit peeled and cored into reasonably symmetrical pineapple cylinders with both ends cut perpendicular to the cylinder axis.

(b) *Slices* consist of uniformly cut circular slices or rings cut across the axis of the peeled, cored pineapple cylinders.

(c) *Half slices* consist of uniformly cut, approximately semi-circular halves of slices.

(d) *Broken slices* consist of arc-shaped portions which are not required to be uniform in size and/or shape.

(e) *Spears* consist of predominantly 65 mm (2.5 in), or longer, slender sectors cut radially and lengthwise from peeled cored pineapple cylinders.

(f) *Tidbits* consist of predominantly 8 mm (0.31 in) to 13 mm (0.51 in), reasonably uniform wedge-shaped sectors cut from slices or portions thereof.

(g) *Chunks* consist of short, thick units cut from slices and/or from peeled, cored pineapple, are predominantly more than 13 mm (0.51 in) in both thickness and width, and less than 38 mm (1.5 in) in length.

(h) *Cubes* consist of reasonably uniform, cube-shaped units, predominantly 14 mm (0.55 in) or less in the longest edge dimension.

(i) *Crushed* consists of finely cut, finely shredded or grated, or small diced pieces of canned pineapple.

**§ 52.1713 Definition of terms.**

In these U.S. standards, unless otherwise required by the context, the following terms shall be construed, respectively, to mean:

(a) *Acid* means the grams of anhydrous citric acid in 100 mL of the liquid drained from the product 15 days or more after the pineapple is canned, or the blended homogenized slurry of the comminuted entire contents of the container when measured less than 15 days after canning.

(b) *Blemish* means surface areas and spots which contrast strongly in color or texture with the normal pineapple tissue, and are in excess of 2 mm (0.08 in) in the longest dimension of the exposed surface of the unit. Blemishes include deep fruit eyes, fragments of shell, brown spots, bruised portions and other abnormalities that are possible to detect in good commercial practice before sealing in the containers. In crushed pineapple the term applies to each fragment of crushed pineapple that bears a blemish. *Serious blemish* means that the blemish seriously affects the appearance or edibility of the unit.

(c) *Brix measurement* means the total soluble solids content of the product corresponding to a pure sucrose solution of the same specific gravity. It is measured 15 days or more after canning (natural equalization) or less than 15 days after canning on the blended homogenized slurry of the comminuted entire contents of the container (simulated equalization).

(d) *Broken unit* means that the whole slice is definitely severed from the core hole to the outer circumference.

(e) *Character* refers to the degree of ripeness and maturity, the texture of the fruit, and the degree of freedom from core material.

(1) *Good character* (applies to all styles) means the units are of practically uniform ripeness, are reasonably firm with fruitlets appearing as a compact structure, are reasonably free from porosity and there is not more than 11 g (0.4 oz) of core material contained in one pound of drained fruit. Half slices or broken slices that fall within this classification shall not be graded above U.S. Grade C, regardless of the total score for the product.

(2) *Reasonably good character* (applies to all styles) means the units are of reasonably uniform ripeness, the fruitlets are reasonably compact in structure, are fairly free from porosity, and there is not more than 31 g (1.1 oz) of core material contained in one pound of drained fruit. Except for half slices or broken slices styles, canned pineapple that falls within the classification defined as "reasonably good character" shall not be graded above U.S. Grade B, regardless of the total score for the product. Half slices or broken slices styles that fall within this classification shall not be graded above U.S. Grade C, regardless of the total score for the product.

(3) *Fairly good character* (applies only to half slices or broken slices styles) means the units are of fairly uniform ripeness, the fruitlets are fairly compact in structure, the units are fairly free from porosity, and there is not more than 31 g (1.1 oz) of core material contained in one pound of drained fruit. Half slices or broken slices that fall within this classification shall not be graded above U.S. Grade C, regardless of the total score for the product.

(4) *Poor character* means product that fails to meet the requirements of "reasonably good" or "fairly good character" as applicable for the style. Canned pineapple that falls within this classification shall not be graded above Substandard, regardless of the total score for the product.

(f) *Chip* means any unit in cubes style that is less than 8 mm (0.31 in) in the greatest dimension.

(g) *Color* refers to the predominant varietal characteristic color of properly ripened and properly processed pineapple.

(1) *Good color* (applies to all styles) means that the color of the canned pineapple units or mass is bright and is characteristic of properly ripened and properly processed pineapple of similar varieties; and that there may be slight variations in shades of such characteristic color in the units, within each unit or within the mass, and that white radiating streaks may be present: *Provided*, that such variations do not materially affect the appearance or edibility of the product. Half slices or broken slices styles that fall within this classification shall not be graded above U.S. Grade C, regardless of the total score for the product.

(2) *Reasonably good color* (applies to all styles) means that the color of the canned pineapple units or mass may be no more than slightly dull but is characteristic of properly ripened and properly processed pineapple of similar varieties; and that there may be marked variations in shades of such characteristic color in the units, within each unit, or within the mass, and that white radiating streaks may be present: *Provided* that such variations do not seriously affect the appearance or edibility of the product. Canned pineapple that falls within this classification shall not be graded above U.S. Grade B, regardless of the total score for the product, except half slices or broken slices styles which shall not be graded above U.S. Grade C, regardless of the total score for the product.

(3) *Fairly good color* (applies only to half slices or broken slices styles) means that the color of the canned pineapple units or mass may be dull, but is characteristic of properly ripened and properly processed pineapple of similar varieties; and, that there may be marked variations in shades of such characteristic color in the units, within each unit, or within the mass, and that white radiating streaks may be present which may seriously affect the appearance or edibility of the product.



Half slices or broken slices styles of canned pineapple that fall within this classification shall not be graded above U.S. Grade C, regardless of the total score of the product.

(4) *Poor color* (applies to all styles) means product that fails to meet the requirements of "reasonably good color" or "fairly good color," as applicable for the style. Product that falls within this classification shall not be graded above Substandard, regardless of the total score for the product.

(h) *Core material* means the pineapple portion which is identified as definitely hard and characteristic of the center structure of pineapple, normally removed during processing.

(i) *Defect* refers to the degree of freedom, for the applicable style, from trimmed units, blemished units, mashed units and from any other defects, including specks in crushed style, that cannot be weighed which detract from the appearance or edibility of the product.

(1) *Practically free from defects* (applies to all styles) means that the canned pineapple is practically free from any defects including defects not specifically mentioned. Practically free from defects means, for the respective styles:

(i) *Whole.* Not more than 10 percent, by count, of the fruit units (cylinders) may be slightly trimmed, based on the average of all containers in the sample; not more than 10 percent by count of the fruit units (cylinders) may have an area greater than 7 percent of the total surface area which is mashed; however, a sample having less than 10 containers in permitted to have one slightly trimmed unit and one unit with more than 7 percent of the suface area mashed. Not more than 2 blemishes and serious blemishes per fruit unit (cylinder) is permitted.

(ii) *Slices.* Not more than a reasonable amount of units may be insignificantly or slightly trimmed, and no slices may be excessively trimmed. Not more than a total of 5 percent, by count, of the units may be blemished and seriously blemished; or one unit in a container is permitted to be blemished and seriously blemished if such unit exceeds the allowance of 5 percent, by count: *Provided* that in all containers comprising the sample, such blemished units and seriously blemished units do not exceed an average of 5 percent of the total number of units. Not more than one unit in containers of more than 25 units, may be mashed.

(iii) *Tidbits.* Not more than 5 percent of the drained weight may consist of units that are excessively trimmed. Not

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more than a total of 5 percent, by count, of the units may be blemished and seriously blemished: *Provided* that not more than 2⅙ percent, by count, may be seriously blemished. Not more than 3 of the units in containers of less than 150 units, or not more than 2 percent of the units in containers of 150 or more, may be mashed.

(iv) *Chunks.* Not more than a total of 5 percent, by count, of the units may be blemished and seriously blemished: *Provided,* that not more than 2⅙ percent, by count, may be seriously blemished. Not more than 3 of the units in containers of less than 70 units, or not more than 5 percent of the units in containers of 70 units or more, may be mashed.

(v) *Cubes.* Not more than a total of 3 percent of the drained weight may be blemished and seriously blemished: *Provided,* that not more than 1 percent of the drained weight may be seriously blemished.

(vi) *Spears.* Not more than a reasonable amount of units may be insignificantly or slightly trimmed, but none may be excessively trimmed. Not more than a total of 5 percent, by count, of the units may be blemished and seriously blemished, or one unit in a container is permitted to be blemished or seriously blemished if such unit exceeds the allowance of 5 percent, by count: *Provided,* that in all containers comprising the sample, such blemished and seriously blemished units do not exceed an average of 5 percent of the total number of units. Not more than one unit per container may be mashed.

(vii) *Crushed.* Not more that ⅓ percent of the drained weight may consist of fragments bearing blemishes, including blemished and seriously blemished fragments. Defects also include dark specks that cannot be weighed, yet affect the appearance or edibility of the product.

(viii) *Half slices.* Not more than a reasonable amount of units may be insignificantly or slightly trimmed, but none may be excessively trimmed. Not more than a total of 5 percent, by count, of the units may be blemished and seriously blemished, or one unit in a container is permitted to be blemished or seriously blemished if such unit exceeds the allowance of 5 percent, by count: *Provided,* that in all containers comprising the sample, such blemished and seriously blemished units do not exceed an average of 5 percent of the total number of units. Not more than one unit in containers of 25 units or less, and not more than 3 units in containers of more than 25 units, may be mashed. Product that falls into this classification, shall not be graded above U.S. Grade C, regardless of the total score for the product.

(ix) *Broken slices.* Not more than 5 percent, by count, of the units may be excessively trimmed. Not more than a total of 5 percent, by count, of the units may be blemished and seriously blemished. Not more than 5 percent of the units, by count, may be mashed. Product that falls into this classification, shall not be graded above U.S. Grade C, regardless of the total score for the product.

(2) *Reasonably free from defects* (applies to all styles) means that the canned pineapple is reasonably free from any defects, including defects not specifically mentioned. Except for half slices and broken slices styles, product that falls into this classification, shall not be graded above U.S. Grade B, regardless of the total score for the product. Reasonably free from defects means, for the respective styles:

(i) *Whole.* Not more than 10 percent, by count, of the fruit units (cylinders) may be excessively trimmed, based on the average of all containers in the sample; not more than 10 percent, by count, of the fruit units (cylinders) may have an area greater than 10 percent of the total surface area which is mashed; however, a sample having less than 10 containers is permitted to have one excessively trimmed unit and one unit with more than 10 percent of the surface area mashed. Not more than 3 blemishes and serious blemishes per fruit unit (cylinder) is permitted.

(ii) *Slices.* Not more than a total of 20 percent, by count, of the units may be slightly and excessively trimmed: *Provided,* that not more than 7⅓ percent, by count, of the units may be excessively trimmed; but in any container having not more than 10 units, one unit may be excessively trimmed; and in any container having more that 10 units, but not more than 27 units, two units may be excessively trimmed. Not more than a total of 12⅓ percent, by count, of the units may be blemished and seriously blemished; but in any container having not more than 5 units, one unit may be blemished or seriously blemished; in containers having more that 5 units, but not more than 10 units, two units may be blemished or seriously blemished; and in containers having more than 10 units, but not more than 32 units, four units may be blemished and seriously blemished. Not more than one unit in containers of 25 units or less, and not more than 3 units in containers of more than 25 units, may be mashed.

(iii) *Tidbits.* Not more than 15 percent of the drained weight may consist of units that are excessively trimmed. Not more than a total of 12⅓ percent, by count, of the units may be blemished and seriously blemished: *Provided,* that not more than 6¼ percent, by count, may be seriously blemished. Not more than 3 of the units in containers of less than 150 units, or not more than 2 percent of the units in containers of 150 units or more, may be mashed.

(iv) *Chunks.* Not more than a total of 12⅓ percent, by count, may be blemished and seriously blemished: *Provided,* that not more than 6¼ percent, by count, may be seriously blemished. Not more than 3 of the units in containers of less than 70 units, or not more than 5 percent of the units in containers of 70 units or more, may be mashed.

(v) *Cubes.* Not more than a total of 12⅓ percent, by count, of the units may be blemished and seriously blemished: *Provided,* that not more than 6¼ percent, by count, may be seriously blemished.

(vi) *Spears.* Not more than a total of 20 percent, by count, of the units may be insignificantly, slightly, and excessively trimmed: *Provided,* that not more than 15 percent, by count, of the units may be excessively trimmed. Not more than 12⅓ percent, by count, of the units may be blemished and seriously blemished; in containers having more than 5 units, but not more than 10 units, two units may be blemished and seriously blemished; and in containers having more than 10 units, but not more than 32 units, four units may be blemished and seriously blemished. Not more than one unit per container may be mashed.

(vii) *Crushed.* Not more than 1¼ percent of the drained weight may consist of blemished and seriously blemished fragments.

(viii) *Half slices.* Not more than a total of 20 percent, by count, of the units may be slightly and excessively trimmed: *Provided,* that not more than 7⅓ percent, by count, of the units may be excessively trimmed; but in any container having not more than 10 units, one unit may be excessively trimmed; and in any container having more than 10 units but not more than 27 units, two units may be excessively trimmed. Not more than a total of 8 percent, by count, of the units may be blemished and seriously blemished; or one unit in a container is permitted to be blemished or seriously blemished if such unit exceeds the allowance of 8 percent, by count: *Provided,* that in all containers comprising the sample such blemished and seriously blemished units do not exceed an average of 8 percent of the total number of units. Not more than one unit in containers of 25 units or less, and not more than 3 units in containers or



more than 25 units, may be mashed. Product that falls within this classification, shall not be graded above U.S. Grade C, regardless of the total score for the product.

(ix) *Broken slices.* Not more than 10 percent, by count, of the units may be excessively trimmed. Not more than 8 percent, by count, of the units may be blemished or seriously blemished. Not more than 5 percent, by count, of the units may be mashed. Product that falls into this classification, shall not be graded above U.S. Grade C, regardless of the total score for the product.

(3) *Fairly free from defect* (applies only to half slices or broken slices styles) means that the canned pineapple is "fairly free from defects," including defects not specifically mentioned. Half slices or broken slices styles that fall into this classification, shall not be graded above U.S. Grade C, regardless of the total score for the product, and, in addition, has the following meanings with respect to the following styles of canned pineapple:

(i) *Half slices.* Not more than 7⅓ percent, by count, of the units may be excessively trimmed; but in any container having not more than 10 units, one unit may be excessively trimmed; and in any container having more than 10 units, but not more than 27 units, two units may be excessively trimmed. Not more than 12⅓ percent, by count, of the units may be blemished and seriously blemished, but in any container having not more than 5 units, one unit may be blemished or seriously blemished; in containers having more than 5 units, but not more than 10 units, two units may be blemished and seriously blemished; and in containers having more than 10 units, but not more than 32 units, four units may be blemished and seriously blemished. Not more than one unit in containers of 25 units or less, and not more than 3 units in containers of more than 25 units, may be mashed.

(ii) *Broken slices.* Not more than 15 percent, by count, of the units may be excessively trimmed. Not more than 12⅓ percent, by count, of the units may be blemished and seriously blemished; but in any container having more than 10 units, but not more than 32 units, four units may be blemished and seriously blemished. Not more than 5 percent, by count, of the units may be mashed.

(4) *Excessive defects* means canned pineapple which fails to meet either "reasonably free from defects" or "fairly free from defects," as applicable for the style. Product that falls into this classification shall not be graded above Substandard, regardless of the total score for the product.

(j) *Eye* means the blossom cup of the pineapple that is normally removed during processing (see blemish).

(k) *Extraneous vegetable material* (EVM) means any objectionable vegetable material regardless of size, from other than the pineapple fruit, which is harmless.

(l) *Flavor and odor*—(1) *Good flavor and odor* means that the flavor and odor is normal for canned pineapple and is free from objectionable flavors and odors of any kind.

(2) *Fairly good flavor and odor* means that the flavor and odor may be lacking in good flavor and odor, but is free from objectionable flavors and odors of any kind.

(m) *Mashed* (in styles other than cube or crushed) means a unit that has lost its normal shape as evidenced by marks of mechanical injury. A unit that has lost its normal shape because of ripeness and which bears no mark of mechanical injury shall not be considered as "mashed."

(n) *Porosity* means the degree of freedom from air spaces in the pineapple unit that gives a spongy texture.

(o) *Sample unit size* means the amount of product specified to be used for grading.

(p) *Shell* means all the outer layer of the fruit that is normally removed during processing (see blemish).

(q) *Tartness* means the taste sensation that is biting, sharp, and sour which is characteristic of the pineapple fruit.

(1) *Excessively tart* means that more than 1.35 g of acid is present in 100 mL of the drained liquid.

(2) *Not excessively tart* means that not more than 1.35 g of acid is present in 100 mL of the drained liquid.

(r) *Trim* means the degree of impairment of the pineapple units from the paring, coring, cutting, or trimming process.

(1) *Insignificantly trimmed* means any trimming that is noticeable but of lesser degree than slightly trimmed.

(2) *Slightly trimmed* (applies only to whole, slices, or half slices styles) means that the portion trimmed away approximates 3 percent to not more than 5 percent of the apparent physical bulk of the perfectly formed unit and if such trimming materially affects the normal circular shape of the outer or inner edge of the unit.

(3) *Excessively trimmed* in whole, slices, or half slices styles means that the portion trimmed away exceeds 5 percent of the apparent physical bulk of the perfectly formed unit and if such trimming destroys the normal circular shape of the outer or inner edge of the unit. In broken slices, spears, or tidbits styles means that the normal shape of the unit is destroyed by trimming.

(s) *Uniformity of size and shape* is not scored for crushed style. The other three factors (color, defects, and character) are scored and the total is multiplied by 100 and divided by 80, dropping any fractions to determine the total score for crushed style canned pineapple. For broken slices style, this quality factor may be scored no higher than 15 points. The four factors (color, uniformity of size and shape, defects, and character) are scored and the total is multiplied by 100 and divided by 95, dropping any fractions to determine the score.

(1) *Radial axis* in whole, slices, and half slices styles, means the measurement along the radius from the inside arc to the outside arc.

(2) *Length.* (i) In tidbits and chunks styles, means the measurement along the radius from the inside arc to the outside arc.

(ii) In spears style, means the longitudinal measurement of the spear.

(3) *No. 8 Sieve* means the meshes of a sieve designated in the American Society for Testing and Materials (ASTM) Standard E-11, Standards for Specifications for Wire Cloth Sieves for Testing Purposes.

(4) *Practically uniform in size and shape* means for the following styles:

(i) *Whole.* The maximum radial axis of the cylinder does not exceed the minimum radial axis of the cylinder by more than 6 mm (0.25 in). The cylinder may be cracked but not broken into separate pieces.

(ii) *Slices.* The diameter of the largest slice does not exceed the diameter of the smallest slice by more than 2 mm (0.08 in). The thickest slice does not exceed the thinnest slice by more than 2 mm (0.08 in) in thickness. The maximum radial axis of any slice does not exceed the minimum radial axis of the same slice by more than 3 mm (0.12 in). The drained weight of the largest slice is not more than 1.4 times the drained weight of the smallest slice.

(iii) *Tidbits.* Not more than 7⅓ percent of the drained weight may consist of units each of which weighs less than three-fourths as much as the average weight of all the untrimmed tidbits.

(iv) *Chunks.* None of the units may have a longest dimension (along any edge) greater than 38 mm (1.5 in). Not more than 10 percent of the drained weight consists of pieces weighing less than 5 g (0.18 oz) each.

(v) *Cubes.* Not more than a aggregate of 10 percent of the drained weight may consist of units of such size that they pass through the meshes of a sieve with

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(5/16 in) square openings, and pieces weighing more than 3 g (0.11 oz) each.

(vi) *Spears.* The units are of substantially equal length. Not more than 10 percent, by count, of the units or not more than one unit in a container of less than 10 units, may be less than 19 mm (0.75 in) or more than 45 mm (1.75 in) in the longest edge dimension other than the longitudinal measurement of the spear. The drained weight of the largest spear is not more than 1.4 times the weight of the smallest spear.

(vii) *Half slices.* The diameter of the largest half slice does not exceed the diameter of the smallest half slice by more than 2 mm (0.08 in). The drained weight of the largest half slice is not more than 1.75 times the drained weight of the smallest half slice (except for an occasional broken piece due to splitting or an occasional whole slice not quite completely cut through).

(5) *Reasonably uniform in size and shape* (applies to all styles except broken and crushed styles). Except for half slices style, the applicable styles of canned pineapple that fall into this classification, shall not be graded above U.S. Grade B, regardless of the total score for the product. Reasonably uniform in size and shape has the following meanings with respect to style:

(i) *Whole.* The maximum radial axis of the cylinder does not exceed the minimum radial axis of the cylinder by more than 10 mm (0.31 in). The cylinder may be cracked but not broken into separate pieces.

(ii) *Slices.* The diameter of the largest slice does not exceed the diameter of the smallest slice by more than 3 mm (0.12 in). The thickest slice does not exceed the thinnest slice by more than 3 mm (0.12 in) in thickness. The maximum radial axis of any slice does not exceed the minimum radial axis of the same slice by more than 6 mm (0.25 in). The drained weight of the largest slice is not more than 1.4 times the drained weight of the smallest slice.

(iii) *Tidbits.* Not more than 15 percent of the drained weight may consist of units each of which weighs less than three-fourths as much as the average weight of all the untrimmed tidbits.

(iv) *Chunks.* None of the units may have a longest dimension (along any edge) greater than 38 mm (1.5 in). Not more than 15 percent of the drained weight consists of pieces weighing less than 5 g (0.18 oz) each.

(v) *Cubes.* Not more than 10 percent of the drained weight may consist of units of such size that they pass through the meshes of a sieve with 6 mm (0.31 in) square openings. Not more than 15 percent of the drained weight may consist of pieces weighing more than 3 g (0.11 oz) each.

(vi) *Spears.* The units are of reasonably uniform length. Not more than 20 percent, by count, of the units or not more than one unit in a container of less than 5 units, may be less than 19 mm (0.75 in) or more than 45 mm (1.75 in) in the longest edge dimension other than the longitudinal measurement of the spear. The drained weight of the largest spear is not more than 1.4 times the weight of the smallest spear.

(vii) *Half slices.* The diameter of the largest half slice does not exceed the diameter of the smallest half slice by more than 3 mm (0.12 in). The thickest half slice does not exceed the thinnest half slice by more than 3 mm (0.12 in) in thickness. The drained weight of the largest half slice is not more than 1.75 times the drained weight of the smallest half slice (except for an occasional broken piece due to splitting or an occasional whole slice not quite completely cut through). Product that falls within this classification shall not be graded above U.S. Grade C, regardless of the total score for the product.

(6) *Fairly uniform in size and shape* (applies only to the style of half slices) means that the units fail to meet the requirements of "reasonably uniform in size and shape" and shall not be graded above U.S. Grade C, regardless of the total score for the product. The drained weight of the largest half slice is not more than 1.75 times the weight of the smallest half slice (except for an occasional broken piece due to splitting or an occasional whole slice not quite completely cut through).

(7) *Not uniform in size and shape* (applies only to broken slices style) means:

(i) Not more than 10 percent of the drained weight may consist of pieces having an arc of less than 90 degrees.

(ii) Not more than 5 percent of the drained weight may consist of pieces that measure in thickness less than 6 mm (0.31 in) or more than 25 mm (1 in); or pieces that measure less than 19 mm (0.75 in) in width as measured from the outer edge to the inner edge; and

(iii) Not more than 5 percent of the drained weight may consist of broken slices having an outside diameter differing by as much as 10 mm (0.39 in) from those present in the greatest proportion by weight.

(8) *Poor uniformity of size and shape* (applies to all styles except crushed style) means canned pineapple which fails to meet in some respect; "reasonably uniform in size and shape," "fairly uniform in size and shape, or "not uniform in size and shape," as applicable for the style. Products that fall into this classification, shall not be graded above Substandard, regardless of the total score for the product.

(t) *Unit* means one whole cylinder, slice, half slice, broken slice, spear tidbit, chunk, cube or a specified weight of crushed pineapple.

**§ 52.1714 Recommended sample unit size.**

The requirements for all factors of quality and analysis are based on the following:

(a) The entire contents of a container;

(b) A representative portion of the contents of a container;

(c) A combination of the contents of two or more containers of the same item; or

(d) A representative portion of processed product stored or held in bulk containers.

**§ 52.1715 Brix measurements.**

Cut-out requirements for liquid packing media in canned pineapple are not incorporated in the grades of the finished product since syrup or any other liquid medium, as such, is not a factor of quality for the purposes of these grades. The "cut-out" Brix measurements, as applicable to the respective designations, are as follows:

TABLE I—PACKING MEDIA DESIGNATIONS

| Designations | Brix measurement |
|---|---|
| "Extra heavy syrup"; "extra heavily sweetened pineapple juice and water"; or "extra heavily sweetened pineapple juice." | 22° or more, but not more than 35° |
| "Heavy syrup"; "heavily sweetened pineapple juice and water"; or "heavily sweetened pineapple juice." | 18° or more, but less than 22° |
| "Light syrup"; "lightly sweetened pineapple juice and water"; or "lightly sweetened pineapple juice." | 14° or more, but less than 18° |
| "Slightly sweetened water"; "extra light syrup"; "slightly sweetened pineapple juice and water"; or "slightly sweetened pineapple juice." | 10° or more, but less than 14° |
| "In water" (except crushed style) | Not applicable |
| "In pineapple juice." | Not applicable |
| "In pineapple juice and water." | Not applicable |
| "In clarified pineapple juice." | Not applicable |
| "Artificially sweetened." | Not applicable |

**§ 52.1716 Fill of container for crushed style canned pineapple.**

(a) The standard of fill of container for canned crushed pineapple is a fill of not less than 90 percent of the total water capacity of the container. Crushed style canned pineapple that does not meet this requirement is "Below Standard in Fill."

(b) The recommended fill of container for canned pineapple, other than crushed style canned pineapple, is not incorporated in the grades of the finished product since fill of container, as such, is not a factor of quality for the purposes of these grades. It is recommended that each container of canned pineapple of all styles except crushed style canned pineapple be as full as practicable without impairment of quality and that the product and packing medium occupy not less than 90 percent of the volume of the container.

**§ 52.1717 Minimum drained weights for canned crushed pineapple.**

(a) *General.* The minimum drained weights for crushed style canned pineapple are not incorporated in the grades of the finished product since drained weight is not a factor of quality for the purpose of these grades; however, minimum drained weights for crushed style canned pineapple other than "heavy pack" or "solid pack" are standards of quality, and minimum drained weights for crushed style "heavy pack" and "solid pack" canned pineapple are standards of identity under the Federal Food, Drug, and Cosmetic Act. Crushed style canned pineapple, other than "heavy pack" or "solid pack", which is less than 63 percent of the net weight of the contents of the container is:

(1) Below standard in quality, good food—not high grade; or

(2) Below standard in quality, contains excess liquid.

(b) The minimum drained weights for crushed canned pineapple are shown in Table II of this section.



TABLE II—MINIMUM DRAINED WEIGHTS FOR CRUSHED STYLE CANNED PINEAPPLE

| Container | Other than "heavy pack" or "solid pack" crushed. | "Heavy pack" crushed. | "Solid pack" crushed. |
|---|---|---|---|
| Any Container Size | Drained fruit: not less than 63 percent, by weight, of net contents. | Drained fruit: not less than 73 percent but less than 78 percent, by weight, of net contents. | Drained fruit: not less than 78 percent of net contents. |

**§ 52.1718 Recommended minimum drained weights for canned pineapple other than crushed style pineapple.**

(a) There are no recommended drained weight minimums for whole style canned pineapple since fill for this style is based on volume.

(b) *General.* The recommended minimum drained weights for canned pineapple in styles other than crushed and whole are based on equalization of the product 15 days or more after the product has been canned. The recommended minimum drained weights for canned pineapple in styles other than crushed and whole are not incorporated in the grades of the finished product, since drained weight is not a factor of quality for the purposes of these grades.

(c) *Method for ascertaining drained weight in canned pineapple (including canned crushed pineapple).* The drained weight is determined by emptying the contents of a container upon a United States Standard No. 8 circular sieve of proper diameter so as to distribute the product evenly, inclining the sieve slightly to facilitate drainage, and allowing to drain for two minutes. The drained weight is the weight of the sieve and pineapple less the weight of the dry sieve. A sieve 8 inches in diameter is used for the equivalence of No. 3 size cans (404 X 414) and smaller, and a sieve 12 inches in diameter is used for containers larger than the equivalent of the No. 3 size can.

(d) Recommended minimum drained weights of canned pineapple in styles other than crushed style are shown in Table III of this section.

TABLE III—RECOMMENDED MINIMUM DRAINED WEIGHTS FOR STYLES OF CANNED PINEAPPLE OTHER THAN CRUSHED OR WHOLE STYLE

| Container Designation | Container Dimension | Style | With syrup density 14° Brix or more | With syrup density less than 14° Brix |
|---|---|---|---|---|
| | (inches) | | (ounces) | (ounces) |
| No. 1 Flat | 307 x 203 | All styles | 4.9 | 4.7 |
| 8 oz Tall | 211 x 304 | All styles | 5.0 | 4.8 |
| 211 Cyl | 211 x 414 | All styles | 7.7 | 7.4 |
| No. 1¼ | 401 x 297.5 | All styles | 8.7 | 8.2 |
| No. 1½ | 307 x 309 | All styles | 9.4 | 8.9 |
| No. 2 | 307 x 409 | All styles | 12.3 | 11.7 |
| No. 2½ | 401 x 411 | All styles | 17.8 | 17.0 |
| No. 10 | 603 x 700 | Chunks, Tidbits | 65.7 | 63.6 |
| No. 10 | 603 x 700 | Slices | 61.5 | 59.5 |
| No. 10 | 603 x 700 | Half slices and Broken slices | 62.5 | 60.5 |
| No. 10 | 603 x 700 | Cubes | 67.4 | 64.1 |

(e) Conformance with the recommended minimum drained weights for canned pineapple other than crushed style is determined by averaging the drained weights from all the containers which are representative of a specific lot and such lot is considered as meeting the minimum drain weight recommendations if the following criteria are met:

(1) The average of the drained weights from all of the containers in the sample meets the recommended drained weight;

(2) One-half or more of the containers meet the recommended drained weight;

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(3) The drained weights from the containers which do not meet the recommended minimum drained weights are within the range of variability for good commerical practice.

**§ 52.1719 Grades.**

(a) U.S Grade A is the quality of canned pineapple that meets the applicable requirements of Tables IV and VII.

(b) U.S. Grade B is the quality of canned pineapple that meets the applicable requirements of Tables IV and VII.

(c) U.S. Grade C is the quality of canned pineapple that meets the applicable requirements of Tables V and VI.

(d) Substandard is the quality of canned pineapple that fails to meet the requirements for "U.S. Grade B" or "U.S. C," as applicable for the style.

**§ 52.1720 Factors of quality and analysis.**

(a) The grade of a lot of canned pineapple is based on evaluation and analysis of the product for the following scoreable quality, and non-scoreable quality and analytical factors:

(1) Color;

(2) Uniformity of size and shape (except crushed style);

(3) Defects;

(4) Character;

(5) Flavor and odor; and

(6) Tartness.

(b) The relative importance of each scoreable quality factor is expressed numerically on the scale of 0 to 100. The maximum number of points that may be given each factor is:

| Quality Factors | Points |
|---|---|
| Color | 30 |
| Uniformity of size and shape | 20 |
| Defects | 20 |
| Character | 30 |
| Total Score | 100 |

(c) The essential variations within each scoreable quality factor are so described that the value may be determined for each factor and expressed numerically. The numerical range for the rating of each factor is inclusive (for example, 24 to 26 points means 24, 25, or 26 points) and the score points shall be prorated relative to the degree of excellence for each scoreable quality factor.

**§ 52.1721 Requirements for Grades**

TABLE IV—CANNED PINEAPPLE—WHOLE, SLICES, SPEARS, TIDBITS, CHUNKS, CUBES

| Quality Factors | Factor Description | Grade | Score Point Range |
|---|---|---|---|
| Color | Good | (A) | 27–30 |
| | Reasonably Good | (B) | 24–26 [1] |
| | Poor | (SSTD) | 0–23 [2] |
| Uniformity of Size and Shape | Practically Uniform | (A) | 18–20 |
| | Reasonably Uniform | (B) | 16–17 [1] |
| | Poor Uniformity | (SSTD) | 0–15 [2] |
| Defects | Practically Free | (A) | 18–20 |
| | Reasonably Free | (B) | 16–17 [1] |
| | Excessive | (SSTD) | 0–15 [2] |
| Character | Good | (A) | 27–30 |
| | Reasonably Good | (B) | 24–26 |
| | Poor | (SSTD) | 0–23 [2] |
| Total Score (Range) | | (A) | 90–100 points |
| | | (B) | 80–89 points |
| | | (SSTD) | 0–79 points |
| Flavor and Odor | | (A) | Good |
| | | (B) | Fairly Good |
| | | (SSTD) | Off Flavor |
| Tartness | | (A) | Not Excessively Tart |
| | | (B) | Not Excessively Tart |
| | | (SSTD) | Excessively Tart |

[1] Cannot be graded above U.S. Grade B, regardless of the total score for the product.
[2] Cannot be graded above Substandard, regardless of the total score for the product.

TABLE V—CANNED PINEAPPLE—BROKEN SLICES

| Quality Factors | Factor Description | Grade | Score Point Range |
|---|---|---|---|
| Color | Good | | 27–30 [1] |
| | Reasonably Good | (C) | 24–26 [1] |
| | Fairly Good | | 21–23 [1] |
| | Poor | (SSTD) | 0–20 [2] |
| Uniformity Of Size and Shape | Not Uniform | (C) | 14–15 [1] |
| | Poor Uniformity | (SSTD) | 0–13 [2] |
| Defects | Practically Free | | 18–20 [1] |
| | Reasonably Free | (C) | 16–17 [1] |
| | Fairly Free | | 14–15 [1] |
| | Excessive | (SSTD) | 0–13 [2] |
| Character | Good | | 27–30 [1] |
| | Reasonably Good | (C) | 24–26 [1] |
| | Fairly Good | | 21–23 [1] |
| | Poor | (SSTD) | 0–20 [2] |
| Total Score (Range) [3] | | (A) | 90–100 points |
| | | (B) | 80–89 points |
| | | (SSTD) | 0–79 points |
| Flavor and Odor | | (A) | Good |
| | | (B) | Fairly Good |
| | | (SSTD) | Off Flavor |
| Tartness | | (A) | Not Excessively Tart |
| | | (B) | |
| | | (SSTD) | Excessively Tart |

[1] Cannot be graded above U.S. Grade C, regardless of the total score for the product.
[2] Cannot be graded above Substandard, regardless of the total score for the product.
[3] To determine the total score, the four factors (Color, Uniformity, Defects, and Character) are scored and the total is multiplied by 100 and divided by 95, dropping any fractions.



TABLE VI—CANNED PINEAPPLE—HALF SLICES

| Quality factors | Factor description | Grade | Score point range |
|---|---|---|---|
| Color | Good | | 27–30 [1] |
| | Reasonably Good | (C) | 24–26 [1] |
| | Fairly Good | | 21–23 [1] |
| | Poor | (SSTD) | 0–20 [2] |
| Uniformity Of Size and Shape | Practically Uniform | | 18–20 [1] |
| | Reasonably Uniform | (C) | 16–17 [1] |
| | Fairly Uniform | | 14–15 [1] |
| | Poor Uniformity | (SSTD) | 0–20 [2] |
| Defects | Practically Free | | 18–20 [1] |
| | Reasonably Free | (C) | 16–17 [1] |
| | Fairly Free | | 14–15 [1] |
| | Excessive | (SSTD) | 0–13 [2] |
| Character | Good | | 27–30 [1] |
| | Reasonably Good | (C) | 24–26 [1] |
| | Fairly Good | | 21–23 [1] |
| | Poor | (SSTD) | 0–20 [2] |
| Total Score (Range) | | (C) | 70–100 points |
| | | (SSTD) | 0–69 points |
| Flavor and Odor | | (C) | Good or Fairly Good |
| | | (SSTD) | Off Flavor |
| Tartness | | (C) | Not Excessively Tart |
| | | (SSTD) | Excessively Tart |

[1] Cannot be graded above U.S. Grade C, regardless of the total score for the product.
[2] Cannot be graded above Substandard, regardless of the total score for the product.

TABLE VII.—CANNED PINEAPPLE—CRUSHED

| Quality factors | Factor description | Grade | Score point range |
|---|---|---|---|
| Color | Good | (A) | 27–30 |
| | Reasonably good | (B) | 24–26 [1] |
| | Poor | (SSTD) | 0–23 [2] |
| Defects | Practically free | (A) | 18–20 |
| | Reasonably free | (B) | 16–17 [1] |
| | Excessive | (SSTD) | 0–15 [2] |
| Character | Good | (A) | 27–30 |
| | Reasonably good | (B) | 24–26 [1] |
| | Poor | (SSTD) | 0–23 [2] |
| Total Score (Range) [3] | | (A) | 90–100 points |
| | | (B) | 80–89 points |
| | | (SSTD) | 0–79 points |
| Flavor and Odor | | (A) | Good |
| | | (B) | Fairly Good |
| | | (SSTD) | Off Flavor |
| Tartness | | (A) | Not Excessively Tart |
| | | (B) | Not Excessively Tart |
| | | (SSTD) | Excessively Tart |

[1] Cannot be graded above U.S. Grade B, regardless of the total score for the product.
[2] Cannot be graded above Substandard, regardless of the total score for the product.
[3] To determine the total score, the other three factors (Color, Defects, and Character) are scored and the total is multiplied by 100 and divided by 80, dropping any fractions.

**§ 52.1722 Sample size.**

The sample size used to determine whether canned pineapple meets the requirements of these standards shall be as specified in the sampling plans and procedures in the "Regulations Governing Inspection and Certification of Processed Fruits and Vegetables, Processed Products Thereof, and Certain Other Processed Food Products" (7 CFR 52.1 through 52.83).

**§ 52.1723 Lot quality and analytical requirements.**

A lot of canned pineapple is considered as meeting the quality and analytical requirements if:

(a) The requirements specified in Tables IV through VII, as applicable, are met; and

(b) The sampling plans and procedures in 7 CFR 52.1 through 52.83 are met.

Dated: March 7, 1989.

**J. Patrick Boyle,**

*Administrator.*

[FR Doc. 89–5606 Filed 3–10–89; 8:45 am]

BILLING CODE 3410–02–M

**7 CFR Part 933**

**[Docket No. AO F&V 87–1; AMS–FV–88–104]**

## Strawberries Grown in Florida; Termination of Proceedings to Formulate a Marketing Agreement and Order

**AGENCY:** Agricultural Marketing Service USDA.

**ACTION:** Termination of proceedings and withdrawal of proposed rule.

**SUMMARY:** This notice announces termination of proceedings to promulgate a proposed marketing agreement and order program for strawberries grown in Florida. Termination is based on results of a referendum of strawberry producers conducted by USDA from August 17–31, 1988.

**DATE:** Termination of proceedings to promulgate the proposed marketing agreement and order is effective March 13, 1989.

**FOR FURTHER INFORMATION CONTACT:** John Toth or William Pimental, Fruit and Vegetable Division, USDA/AMS, P.O. Box 2276, Winter Haven, Florida 33883, telephone (813) 299–4770; or Tom Tichenor, Marketing Order Administration Branch, Room 2531–S, P.O. Box 96456, Washington, DC 20090–6456, telephone (202) 475–3930.

**SUPPLEMENTARY INFORMATION:** Prior documents in this proceeding include the following: The Notice of Hearing was issued May 6, 1987, and published in the **Federal Register** (52 FR 17581) on May 11, 1987. An Extension of Time for Filing Briefs was issued July 13, 1987, and published in the **Federal Register** (52 FR 28369) on July 21, 1987. A Recommended Decision and Opportunity to File Written Exceptions to the Proposed Marketing Agreement and Order was issued March 1, 1988 and published in the **Federal Register** (53 FR 7194) on March 7, 1988. A Decision and

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Referendum Order on Proposed Marketing Agreement and Order was issued July 25, 1988, and published in the **Federal Register** (53 FR 28642) on July 29, 1988.

This administrative action is governed by the provisions of Section 556 and 557 of Title 5 of the United States Code and therefore is not subject to the requirements of Executive Order 12291 and Departmental Regulation 1512–1.

**Preliminary Statement**

This action is issued under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674 *et seq.*], hereinafter referred to as the "Act," and the applicable rules of practice and procedure governing formulation of marketing agreements and orders [7 CFR Part 900]. The proposed marketing agreement and order, hereinafter referred to collectively as the "Order," were formulated on the record of a public hearing held May 27–28, 1987, in Valrico, Florida to consider the proposed Marketing Order No. 933 [proposed 7 CFR Part 933] regulating the handling of strawberries grown in Florida. The Notice of Hearing contained the proposed order submitted by the Florida Strawberry Growers Association.

Upon the basis of evidence introduced at the hearing and the record thereof, the Administrator of the Agricultural Marketing Service (AMS), on March 1, 1988, filed with the Hearing Clerk, U.S. Department of Agriculture, and Recommended Decision containing a notice of opportunity to file written exceptions thereto by April 6, 1988. Three exceptions were filed.

The Decision and Referendum Order was issued July 25, 1988, directing that a referendum among Florida strawberry producers be conducted during the period August 17–31, 1988. The referendum was conducted by the Fruit and Vegetable Division's Southeast Regional Marketing Field Office in Winter Haven, Florida, in accordance with 7 CFR Part 900.401–.407 governing procedures for conducting referenda concerning marketing orders. The Act requires that a proposed marketing order must be approved by either at least two-thirds of the producers voting in a referendum, or, by producers of at least two-thirds of the volume of the commodity represented in the referendum.

**Findings and Conclusions**

The proposed order did not receive a two-thirds favorable vote of all those voting. A total of 142 valid ballots were cast in the referendum. Of these, 75 ballots, or 54 percent, favored the proposed order while 66 ballots, or 46 percent, opposed the order.

The proposed order also did not receive the required two-thirds favorable vote of the volume of strawberries produced by those voting. A total production volume of strawberries produced by those voting. At total production volume of 6,511,202 flats was represented by those voting. Of this volume, 3,701,846 flats, or 57 percent of the total volume, was produced by those favoring the order and 2,809,355 flats or 43 percent of the total volume, was produced by those opposed to the order.

Testimony presented at the hearing indicated that there are estimated to be between 130 and 160 Florida strawberry producers. A total of 142 completed ballots indicates a large percentage of producers took part in the referendum.

Therefore, based on the results of the referendum, the proceedings to promulgate the proposed Marketing Order No. 933 regulating the handling of strawberries grown in Florida and hereby terminated, and the proposed rule is withdrawn.

**List of Subjects in 7 CFR Part 933**

Marketing agreement and order, Strawberries, Florida.

Dated: March 6, 1989.

**Robert Melland,**

*Deputy Assistant Secretary Marketing and Inspection Services.*

[FR Doc. 89-5884 Filed 3-10-89; 8:45 am]

BILLING CODE 3410-02-M

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**Farmers Home Administration**

**7 CFR Parts 1901, 1955, and 1980**

**Nonprofit National Corporations Loan and Grant Program**

**AGENCY:** Farmers Home Administration, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Farmers Home Administration (FmHA) is proposing to amend the Agency's policies and procedures governing the Nonprofit National Corporations Loan and Grant Program. The intended effect of this action is to reorganize and supplement the existing interim regulation for better understanding by both FmHA and the public and then to publish the rule as a final rule, also to clarify wording, correct inconsistencies, and where applicable, to delete obsolete material and update references in other program regulations.

**DATE:** Comments must be received on or before April 12, 1989.

**ADDRESSES:** Submit written comments, in duplicate, to the Office of the Chief, Directives and Forms Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6348, South Agriculture Building, 14th and Independence Avenue SW., Washington, DC 20250. All written comments made pursuant to this notice will be available for public inspection during regular work hours at the above address. The collection of information requirements contained in this rule have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Submit any comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Farmers Home Administration, Washington, DC 22053.

**FOR FURTHER INFORMATION CONTACT:** Susan G. Wieferich, Senior Loan Officer, Program Management Branch, Community Facilities Division, Farmers Home Administration, U.S. Department of Agriculture, Room 6320, South Agriculture Building, 14th and Independence Avenue SW., Washington, DC 20250; telephone (202) 382–1490.

**SUPPLEMENTARY INFORMATION:**

**Classification**

This proposed action has been reviewed under USDA procedures established in Department Regulation 1512–1, which implements Executive Order 12291, and has been determined to be nonmajor. The proposed action is not likely to result in any of the following: (a) An annual effect on the economy of $100 million or more, (b) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions, or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

**Environmental Impact**

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." FmHA has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.



**Intergovernmental Review**

This program is listed in the catalog of Federal Domestic Assistance under No. 10.434 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials [7 CFR 3015, Subpart V, 48 FR 29112, June 24, 1983].

**Regulatory Flexibility Act**

FmHA has determined that this action will not have a significant economic impact on a substantial number of small entities, because the action will not affect a significant number of small entities as defined by the Regulatory Flexibility Act [5 U.S.C. 601].

**Background**

Section 1323 of the Food Security Act of 1985 (Pub. L. 99–198) established a program whereby guaranteed loans and grants are made available to nonprofit national corporations (NNC's) which in turn provide financial and technical assistance to rural businesses for the improvement of business, industry and employment in rural areas.

A first interim rule was published in the **Federal Register** (51 FR 34928) on September 30, 1986, and invited comments for 30 days ending October 30, 1986. Nine comments were received. As a result of these comments and of a statute (H.J. 738—Continuing Resolution), which amended the enabling legislation, a second interim rule was published in the **Federal Register** (52 FR 25586) on July 8, 1987, and invited comments for 30 days ending August 7, 1987. No comments were received and the program was subsequently implemented, although a final rule was never published.

The second interim rule could be published as a final rule with minor modifications. However, the majority of the changes which are necessary if the program is to function effectively and efficiently can only be included in the instruction by means of a proposed rule. With the advice of the Office of General Counsel (OGC), FmHA has decided to proceed with a proposed rule.

This proposed rule will reorganize and supplement the instruction for better understanding by both FmHA and the public, clarify wording, correct inconsistencies and, where applicable, delete obsolete material and update references in other program regulations. The changes will result in more efficient service to the public, while continuing to protect the Government's interest.

A summary of the proposed major changes are as follows:

(1) Subpart E of Part 1901 will be amended to reference Subpart G of Part 1980 of this chapter.

(2) Subpart A of Part 1955 will be amended to reference Subpart G of Part 1980 of this chapter.

(3) Subpart G of Part 1980 includes the following proposed revisions:

(a) Section 1980.605 includes definitions for affiliate, recipient, project, loan agreement, operating agreement, technical and financial assistance.

(b) Section 1980.606 redefines eligibility requirements for an NNC.

(c) Section 1980.612 clarifies equal opportunity and nondiscrimination requirements.

(d) Section 1980.614 clarifies the eligible purposes for which financial assistance can be used.

(e) Section 1980.615 expands and clarifies the ineligible purposes for which financial assistance cannot be used including a new restriction on refinancing of recipient creditors.

(f) Section 1980.628 includes the grant agreement requirement that if a guaranteed loan is not closed within 180 days of receipt of a grant, then FmHA may, at its option, demand repayment of the original principal amount of the grant with interest.

(g) Section 1980.641 includes a filing deadline for loan guarantee and grant applications.

(h) Section 1980.642 redefines the priorities that will be used in selecting the applicants who will receive guaranteed loans and grants.

(i) Section 1980.643 redefines the items which constitute a complete application package.

(j) Section 1980.645 clarifies FmHA actions in reviewing the application package.

(k) Section 1980.646 clarifies the loan guarantee and grant approval/fund obligation process.

(l) Section 1980.647 redefines the items which are necessary for the preguarantee review, including specific items which must be covered by the loan agreement.

(m) Section 1980.648 redefines the items which are necessary to close a loan guarantee and grant.

(n) Section 1980.654 clarifies the process for disbursement of loan guarantee/grant funds.

(o) Section 1980.656 consolidates reporting requirements for the loan guarantee.

(p) Section 1980.658 clarifies field visit requirements for the loan guarantee.

(q) Section 1980.670 clarifies servicing requirements for defaults.

(r) Section 1980.671 clarifies servicing requirements for liquidations.

(s) Section 1980.672 clarifies servicing requirements for protective advances.

(t) Section 1980.697 clarifies servicing requirements for bankruptcies.

(u) Section 1980.698 includes the loan guarantee/grant program under the appeals process contained in Subpart B of Part 1900.

**List of Subjects**

*7 CFR Part 1901*

Civil rights, Compliance reviews, Fair housing, Minority groups.

*7 CFR Part 1955*

Liquidation of loans, Acquisition, Foreclosure, Government acquired property.

*7 CFR Part 1980*

Loan programs—Nonprofit corporations, Grant programs—Nonprofit corporations.

Accordingly, FmHA proposes to amend Chapter XVIII, Title 7, Code of Federal Regulations, as follows:

**PART 1901—PROGRAM-RELATED INSTRUCTIONS**

1. The authority citation for Part 1901 continues to read as follows:

**Authority:** 7 U.S.C. 1989; 42 U.S.C. 1480; 40 U.S.C. 442; 5 U.S.C. 301; 42 U.S.C. 2942; 7 CFR 2.23; 7 CFR 2.70.

**Subpart E—Civil Rights Compliance Requirements "C"**

2. In § 1901.204, paragraph (a)(22) is added and paragraphs (d)(1), (d)(3)(iv), (d)(5), (e)(2)(ii), and (f) are revised to read as follows:

**§ 1901.204 Compliance reviews.**

(a) * * *

(22) Nonprofit National Corporations grants.

* * * * * *

(d) * * *

(1) *Designation of Compliance Review Officer.* The State Director, except for Technical Assistance and Training grants (Pub. L. 99–198) and Nonprofit National Corporations grants, will designate the Compliance Review Officer for recipient organization. County Supervisors may be designated only if they have received approved compliance review training. Otherwise, the Compliance Review Officer must be a member of the State staff. For Technical Assistance and Training grants and Nonprofit National Corporations grants, the Assistant Administrator for Community and Business Programs will designate the

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Compliance Review Officer for recipient organizations.

* * * * *

(3) * * *

(iv) Technical Assistance and Training grants (Pub. L. 99-198) and Nonprofit National Corporations grants. The Compliance Review Officer will record in the running record information obtained during the compliance review and the determination of recipient's compliance or noncompliance. A report will be prepared and sent to the Assistant Administrator, Community and Business Programs, for each recipient.

* * * * *

(5) *Forwarding noncompliance report.* The State Director will see that the reports are complete. If the recipient was found in noncompliance, the State Director will immediately send a copy of the report to the Administrator, Attention: Equal Opportunity Officer, with action proposed to bring the recipient into compliance. For Technical Assistance and Training grants and Nonprofit National Corporations grants, the Assistant Administrator, Community and Business Programs, will send a copy of the report to the Equal Opportunity Officer.

* * * * *

(e) * * *

(2) * * *

(ii) Technical Assistance grants, Technical Assistance and Training grants (Pub. L. 99-198) and Nonprofit National Corporations grants. The initial compliance review will be conducted before the grant is closed.

* * * * *

(f) State Office summary reports. The State Director will keep a list of all compliance reviews conducted during the reporting year so as to schedule each year's reviews. The State Director will submit a copy of this list to the Administrator, Attention: Equal Opportunity Office, no later than July 31 of each year. Recipients found in noncompliance will also be listed on the summary report. Exhibit B is a sample report. For Technical Assistance and Training grants and Nonprofit National Corporations grants, the Assistant Administrator, Community and Business Programs, will submit a summary report, using Exhibit B of this subpart as a guide, to the Equal Opportunity Officer by July 31 of each year.

## PART 1955—PROPERTY MANAGEMENT

3. The authority citation for Part 1955 continues to read as follows:

**Authority:** 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.2222; 7 CFR 2.70.

### Subpart A—Liquidation of Loans Secured by Real Estate and Acquisition of Real and Chattel Property.

4. Section 1955.1 is revised to read as follows:

**§ 1955.1 Purpose.**

This subpart delegates authority and prescribes procedures for the liquidation of Farmers Home Administration (FmHA) loans identified in § 1955.3 of this subpart and acquisition of property by voluntary conveyance to the Government, by foreclosure of security instruments, by exercise of the Government's redemption rights, and certain other actions which result in acquisition of property by the Government. When FmHA elects to liquidate a guaranteed loan other than Business and Industrial (B&I) and Nonprofit National Corporations (NNC) under the contract of guarantee, the liquidation will be completed according to this subpart. Liquidations of guaranteed B&I and NNC loans will be effected upon direction from the Assistant Administrator, Community and Business Programs. For Community Programs and insured B&I and NNC actions involving loans secured by other than real or chattel property, such loans will be handled in accordance with the provisions of this subpart which do not deal specifically with real or chattel property. Prior to liquidation these cases will be submitted to the National Office for prior review and guidance. Community Program loans sold without insurance by the FmHA to the private sector will be serviced in the private sector and will not be serviced under this subpart. The provisions of this subpart are not applicable to such loans. Future changes to this subpart will not be made applicable to such loans.

## PART 1980—GENERAL

5. The authority citation for Part 1980 continues to read as follows:

**Authority:** 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

6. Subpart G is amended by revising §§ 1980.601 through 1980.7800, removing and reserving Appendix B, and adding Appendix D to read as follows:

### Subpart G—Nonprofit National Corporations Loan and Grant Program

**§ 1980.601 Purpose.**

This subpart prescribes the policies and procedures for processing and servicing guaranteed loans and grants made by the Farmers Home Administration (FmHA) to nonprofit national corporations (NNC).

**§ 1980.602 Objective.**

The objective of this program is to improve business, industry and employment, specifically the direct retention and/or creation of jobs in rural areas. This program is expected to stimulate and encourage loan guarantees and/or grants made by public or private organizations to NNCs, which will affiliate with State rural development and finance organizations to deliver a program of financial and/or technical assistance to local businesses (recipients). The funds generated by this program are intended to stimulate innovative business and entrepreneurial practices and to assist in the diversification of the economy in rural areas. It is anticipated that businesses assisted through this program will, to the maximum extent practicable, provide services to the farm community, provide opportunities for employment for displaced farm families, and supplement farm family income through the use of farm labor and products.

**§ 1980.603 Program administration.**

The Administrator for FmHA is responsible for the administration of the program and may redelegate duties and responsibilities as authorized in this subpart to appropriate FmHA employees. The Assistant Administrator, Community and Business Programs, is the contact person for processing and servicing activities.

**§ 1980.604 Administrative provisions.**

Certain sections of this subpart contain a reference to Appendix A—Administration Provisions. Appendix A of this subpart provides FmHA personnel with directions on how to process and administer loan guarantee and grant program. This information is not considered as material the public needs to know in order to obtain the benefit of program assistance. Appendix A is not published in the **Federal Register** nor is it contained in the Code of Federal Regulations (CFR).

(Refer to Appendix A to Subpart G—Administrative Provisions.)

**§ 1980.605 Definitions**

(a) *Affiliate.* A state rural development and finance organization, profit or nonprofit, which has the authority to do business in part of all of one or more states. Although the affiliate is a separate and distinct legal entity from the NNC, the affiliate is not precluded from being a legally organized subsidiary to the NNC. An affiliate may also be a lender as defined in paragraph (c) of this section.

(b) *Application.* A reference to Form FmHA 1980-60, "Application for Loan Guarantee" and supporting documentation. The NNC applicant uses this form to apply for both the loan guarantee and the grant. Part A is completed by the NNC applicant. Part B is completed by the proposed lender.

(c) *Financial assistance.* A loan to a recipient. The recipient loan funds are derived in part from the loan guarantee and/or grant funds made available by FmHA to the NNC.

(d) *Lender.* The lender is the public agency or private organization (including financial institutions such as insurance companies) which is to process and service the loan to the NNC, guaranteed by FmHA under the provisions of this subpart. The lender is the legal entity which along with the NNC applicant requests the loan guarantee from FmHA.

(e) *Loan agreement.* An agreement which defines the working relationship between the NNC and an FmHA approved lender, including the conditions under which the lender will make and service the FmHA guaranteed loan to the NNC. The loan agreement is subject to FmHA review and concurrence.

(f) *Nonprofit National Corporation* (NNC). The legal entity which receives FmHA guaranteed loan and grant funds for the purpose of improving business, industry, and employment opportunities in rural areas.

(g) *Operating agreement.* An agreement which defines the working relationship between the NNC and its affiliates. The agreement is subject to FmHA review and concurrence. An affiliate may execute an operating agreement with more than one NNC. Likewise, an NNC may execute an agreement with more than one affiliate per State. As a result, part or all of a particular State may be served by one or more affiliates and/or NNCs.

(h) *Principals.* An officer, director, stockholder, other owner or individual (including immediate family members) and/or any parent, subsidiary or affiliate which is directly involved in the operation and management of that legal entity.

(i) *Project.* The specific proposal for which the recipient (local business) seeks financial and/or technical assistance from the NNC.

(j) *Recipient.* The legal entity (local business), profit or nonprofit, receiving financial and/or technical assistance through the efforts of the NNC, under the provisions of this subpart.



(k) *Rural area.* All areas of a State that are not included within any city having a population of twenty thousand or more as determined by the Secretary of Agriculture according to the latest decennial census of the United States.

(l) *State.* Any of the fifty States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Somoa, and the Commonwealth of the Northern Mariana Islands.

(m) *Technical assistance.* A problem solving *activity* performed for the benefit of the recipient by the NNC and/or others (including the affiliate). Technical assistance is paid for with grant funds, made available by FmHA to the NNC . FmHA will determine whether a specific activity qualifies as technical assistance.

**§ 1980.606 NNC eligibility.**

To be eligible for this program, an applicant must fulfill the following criteria:

(a) Be a nonprofit corporation in good standing and legally authorized to conduct business in at least three States.

(b) The general purpose of the corporation, as stated in its organizational documents (e.g., articles of incorporation), must include the stimulation of business, industry, and employment opportunities in rural areas.

(c) Be legally authorized to borrow and to lend money in at least three States, as well as to give and to accept security for said monies.

(d) Have written approval by the governors of at least three States in which the NNC intends to administer a loan program.

(e) Possess a recent audit, conducted by an independent public accountant, which demonstrates that the NNC has the financial solvency and resources necessary to carry out the intent of this program.

**§ 1980.607 Citizenship requirements.**

(a) *NNC.* At least 51 percent of the membership of any NNC or 51 percent of the outstanding interest in any NNC must be owned by those who are either citizens of the United States or reside in the United States after being legally admitted for permanent residence.

(b) *Recipient.* At least 51 percent of the membership of any recipient or 51 percent of the outstanding interest in any recipient must be owned by those who are either citizens of the United States or reside in the United States after being legally admitted for permanent residence.

**§ 1980.608 Case and identification (ID) numbers.**

(a) *FmHA case number.* The case number will be the NNC's Internal Revenue Service (IRS) tax number preceded by the FmHA State and County Code Numbers. The case number will be used on all FmHA forms.

(b) *ID number of lender.* The lender's IRS tax number will be used as its ID number in correspondence and on FmHA forms relating to the loan guarantee.

**§ 1980.609 Use of forms.**

FmHA forms will be used as indicated by this subpart. Otherwise, lenders and NNC's should use their own forms, mortgages, security instruments and other agreements, provided such documents do not contain any provisions that are in conflict or are inconsistent with the provisions of this subpart. All forms and legal documents executed by the NNC should carry the NNC's corporate seal.

**§ 1980.610 Intergovernmental review.**

The NNC's recipients are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. The intergovernmental review process is further described in Subpart J of Part 1940 of this chapter, available in any FmHA office.

(a) *NNC applicant.* The approval of Form FmHA 1980-60 is not subject to intergovernmental consultation.

(b) *Recipient.* Unless the State point of contact for intergovernmental consultation elects to limit or to eliminate the intergovernmental review in writing, the point of contact must be notified of each technical assistance activity and each loan to be received by each recipient under this subpart within that State. Notification can be initiated by the NNC, by the affiliate or by the recipient. The NNC will submit to the FmHA State Office copies of the notification to, and the comments from, the State point of contact. The FmHA State Office will determine if compliance with Executive Order 12372 has been demonstrated and, if so, will then forward an appropriate notification to the FmHA National Office. The National Office must receive State Office clearance on the intergovernmental review process before it authorizes the NNC and/or the lender to advance funds to that recipient. In those instances where FmHA determines that comments from the point of contact cannot be accommodated, the FmHA State Office will provide the point of contact with a

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timely explanation of the basis for its decision. FmHA will not implement its decision for 15 days after the point of contact receives the explanation, unless unusual circumstances make the 15-day waiting period unreasonable. The explanation will be in writing and may be supplemented by telephone, meeting or other telecommunication.

**§ 1980.611 Environmental requirements.**

(a) *General.* Unless specifically modified by this section, the requirements of Subpart G of Part 1940 of this chapter apply to this subpart. Although the purpose of the program established by this subpart is to improve business, industry and employment in rural areas, this purpose is to be achieved, to the extent practicable, without adversely affecting important farmlands and forest lands, prime rangelands, wetlands and floodplains. Therefore, prospective lenders, NNCs and recipients must consider the potential environmental impacts of their applications at the earliest planning stages and develop plans and projects that minimize the potential to adversely impact the environment.

(b) *NNC applicant.* As part of Form FmHA 1980–60 and when required by Subpart G of Part 1940 of this chapter, the NNC applicant must provide a completed Form FmHA 1940–20, "Request for Environmental Information, for each recipient for which the applicant's plan proposes financial assistance, as defined in § 1980.605(c) of this subpart. FmHA will review the complete application and initiate a Class II environmental assessment. This assessment will focus on the potential cumulative impacts of the projects as well as any environmental concerns or problems that are associated with individual projects that can be identified at this time from the information submitted. Because neither the completion of the Class II environmental assessment nor the approval of the application is an FmHA commitment to the use of funds for a specific project and because such funds can eventually be used in several States, no public notification requirements for a Class II assessment will apply to the application. The affected public has not been sufficiently identified at this stage of the FmHA review. Should an application be approved, each recipient to be assisted would undergo the applicable environmental review and public notification requirements in Subpart G of Part 1940 of this chapter prior to FmHA's consent to financial assistance for that recipient. FmHA will prepare an Environmental Impact Statement for any application where financial assistance is a major Federal action determined to have a significant effect on the quality of the human environment. Technical assistance is considered a categorical exclusion under FmHA's environmental review process. However, as further specified in Subpart G of Part 1940 of this chapter, the NNC, in the process of providing technical assistance, must consider the potential environmental impacts of the recommendations provided to the recipient.

(c) *Recipient.* Once the loan guarantee has been closed and/or the grant agreement executed, the NNC will submit to the FmHA State Office, when required by Subpart G of Part 1940 of this chapter, a properly completed Form FmHA 1940–20, executed by each recipient for which the NNC intends to provide financial assistance as defined by § 1980.605(c) of this subpart. The FmHA State Office will complete, for each recipient, the environmental review required by Subpart G of Part 1940 of this chapter. Appropriate notification will then be transmitted to the FmHA National Office. The National Office must receive State Office clearance on the environmental review process before it can authorize a commitment of financial assistance to the recipient by the NNC and/or the lender.

**§ 1980.612 Equal opportunity and nondiscrimination requirements.**

(a) The Federal Equal Credit Opportunity Act, prohibits creditors (e.g., the lender, the NNC, and the FmHA) from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age and physical or mental handicap (provided that the credit applicant has the capacity to enter into a binding contract).

(b) Executive Order 11246 provides for equal employment opporunity without regard to race, color, religion, sex, or national origin and the elimination of all facilities segregated on the basis of race, color, religion, or national origin on construction work financed by FmHA involving a construction contract of more than $10,000. To comply with Executive Order 11246, the NNC applicant will be required to execute Form FmHA 400–1, "Equal Opportunity Agreement," prior to receipt of a loan guarantee and/or grant. The recipient, as defined by § 1980.605(j) of this subpart, will be required to execute Form FmHA 400–1 prior to receipt of financial assistance, as defined by § 1980.605(c) of this subpart.

(c) Title VI of the Civil Rights Act of 1964 states that no person in the United States shall on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. In compliance with this Act, the NNC applicant will be required to execute Form FmHA 400–4, "Assurance Agreement," prior to receipt of a loan guarantee and/or grant. The recipient, as defined by § 1980.605(j) of this subpart will be required to execute Form FmHA 400–4 prior to receipt of financial assistance, as defined by § 1980.605(c) of this subpart.

(d) For complete details on equal opportunity and discrimination requirements, including the conduct of compliance reviews (grant only), refer to Subpart E of Part 1901 of this chapter.

(Refer to Appendix A to Subpart G—Administrative Provisions)

**§ 1980.613 Technical assistance.**

Technical assistance, as defined by § 1980.605(m) of this subpart, is a problem solving activity performed for the benefit of the recipient by the NNC and/or others (e.g. the affiliate). Grant funds may be used to pay for the actual cost of providing a specific technical service to a recipient. Market research, product testing, financial feasibility, and management development are considered examples of problem solving activities, as opposed to such activities as the acquisition of physical assets, debt repayment, the provision of working capital, and loan closing expenses. FmHA will determine whether a specific activitiy qualifies as technical assistance. It is expected that technical assistance will be provided only when necessary to ensure project success. However, the actual provision of technical assistance does not necessarily mean that a loan to the recipient will follow.

**§ 1980.614 Financial assistance—eligible purposes.**

Financial assistance, as defined by § 1980.605(c) of this subpart, must be used by the NNC to assist recipients in projects which will improve business, industry and employment in rural areas, and meet the objectives of this program as stated in § 1980.602 of this subpart. Financial assistance to the recipients may be used for, but is not limited to:

(a) Business and industrial acquisitions, construction, conversion, enlargement, repair, modernization, or development cost.

(b) Purchasing and development of land, easements, rights-of-way, building, facilities, leases, or materials.



(c) Purchasing of equipment, leasehold improvements, machinery or supplies.

(d) Pollution control and abatement.

(e) Transportation services incidental to industrial development.

(f) Startup operating costs and working capital.

(g) Sites for housing development provided the community demonstrates a need for additional housing to prevent a loss of jobs in the area, or to house families moving to the area as a result of new employment opportunities.

(h) Assistance, other than for working capital or debt refinancing, for meat processing facilities and integrated meat and poultry operations. Assistance may not be for agricultural production as defined in § 1980.615(g) of this subpart. However, recipients which are in the business of processing, marketing, or packaging of agricultural products, as well as agricultural production, may be eligible for assistance for that portion of the business other than agricultural production, provided the agricultural production aspect is separate from the rest of the business; e.g., the production aspects are handled through separate legal business entities or through maintenance of the accounting system in such manner as to clearly identify the use of and future accounting of the assistance proceeds and operation of the business.

(i) Aquaculture including conservation, development, and utilization of water for aquaculture. Aquaculture means the culture or husbandry of aquatic animals or plants by private industry for commercial purposes including the culture and growing of fish by private industry for the purpose of granting or augmenting publicly-owned or regulated stock of fish.

(j) The growing of mushrooms or hydroponics.

(k) Commercial nurseries primarily engaged in the production of ornamental plants and trees and other nursery products such as bulbs, florists' greens, flowers, shrubbery, flower and vegetable seeds, sod, the growing of vegetables from seed to the transplant stage.

(l) Project forestry which includes establishments primarily engaged in the operation of timber tracts, tree farms, forest nurseries, and related activities such as reforestation.

(m) For the recipient only, interest (including interest on interim financing) during the period before the first principal payment becomes due or the facility becomes income producing, whichever occurs first.

(n) Industrial sites or parks, provided there exists current and firm written commitments from businesses to locate in the park, which will adequately and directly retain and/or create jobs.

(o) Feasibility studies.

(p) Reasonable fees and charges to the recipient *only* as specifically listed in this paragraph. Authorized fees include loan packaging fees and loan closing costs, environmental data collection fees, and other professional fees rendered by professionals generally licensed by individual State or accreditation associations, such as Engineers, Architects, Lawyers, Accountants, and Appraisers. The amount of fee will be what is reasonable and customary in the community or region where the recipient is located. For example, Architects and Engineers customarily charge fees based on a percentage of estimated project costs. Lawyers, Accountants, and Appraisers customarily charge for services on an hourly basis. Any fees for professional or expert services are to be fully documented and justified on Form FmHA 1980–60. The fees and charges referred to in this paragraph may be funded only from loan proceeds and are subject to review and concurrence by FmHA.

(q) Subject to the limitations defined in § 1980.615 (e) and (f), of this subpart refinancing recipient creditors may be allowed in connection with viable projects, when it is determined that refinancing is necessary to create and/or retain jobs or when it is necessary to convert short-term debt into longer term debt to allow the recipient to improve its cash flow position in such a manner that the recipient can expand to provide additional employment opportunities.

**§ 1980.615 Financial assistance—ineligible purposes.**

Financial assistance, as defined by § 1980.605(c) of this subpart, may not be used by the NNC for the following:

(a) To pay the NNC's own salaries for office or clerical assistance, NNC administrative, transportation, or publication costs and expenses.

(b) For distribution or payment to the owners, partners, shareholders, or beneficiaries of the recipient or members of their families when such persons will retain any portion of their equity in the project.

(c) For assistance to government employees, military personnel, or principals or employees of the NNC who are directors, officers or have ownership or hold stock in the business.

(d) For the transfer of ownership of the recipient unless the loan will keep the business from closing, or prevent the loss of employment opportunities in the area, or provide expanded job opportunities.

(e) To refinance creditors in excess of the market value of the collateral.

(f) To refinance a recipient creditor if the recipient creditor is the affiliate, a lender, or the NNC as defined in § 1980.605 (a), (d), and (f) of this subpart, or if the recipient creditor is an agency of the Federal Government.

(g) For agricultural production, which means the cultivation, production (growing), and harvesting, either directly or through integrated operations of agricultural products (crops, animals, birds and marine life either for fiber or food for consumption), and the disposal or marketing thereof; and the raising, housing, feeding (including commercial, custom feedlots), breeding, hatching, control and/or management of farm and domestic animals.

(h) For any legitimate business activity when more than 10 percent of the annual gross revenue is derived from legalized gambling activity.

(i) For any illegal project activity.

(j) For hotels, motels, tourist homes or convention centers.

(k) For any tourist, recreation or amusement facility, including ski areas and scenic gondolas.

(l) For financing community antenna television services or related facilities.

(m) Charitable and educational institutions, churches, organizations affiliated with or sponsored by churches, and fraternal organizations.

(n) For any project in a city or town with a population in excess of twenty thousand as determined by the latest decennial census.

(o) For any otherwise eligible project that is in violation of either a Federal, State or local environmental protection law or regulation or an enforceable land use restriction unless the financial assistance required will result in curing or removing the violation.

**§§ 1980.616 through 1980.620 [Reserved]**

**§ 1980.621 Availability of other credit.**

The inability to obtain credit from other sources is not a requirement for assistance under this subpart.

**§ 1980.622 Limitations on FmHA assistance.**

(a) FmHA guaranteed loan and/or grant funds will not be used to finance more than 75 percent of the total cost of a recipient's project. The total combined outstanding FmHA assistance from all programs may not exceed $500,000 to any one recipient. The difference between the total project cost and the funds provided by FmHA must come from other sources of financing and/or

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NNC or recipient contributions. In no event, will grant and/or guaranteed loan funds from the NNC program exceed $500,000 to any one recipient during that recipient's lifetime.

(b) Normally, the percentage of guarantee will be 80 percent or less, but never more than 90 percent.

(c) Once FmHA has released grant funds or has authorized the release of guaranteed loan funds, in amounts equal to the grant or loan(s) guaranteed by FmHA, as applicable, the requirements imposed on the NNC under this subpart shall not be applicable to any new projects thereafter financed by the NNC. Such new projects shall not be considered as being derived from Federal funds.

**§ 1980.623 The guaranteed loan.**

(a) *Documentation.* The interest rate and term of the guaranteed loan must be specifically documented and justified on Form FmHA 1980–60 or on an addendum to the form at the time the application is submitted to FmHA. Interest rate and term will be subject to FmHA approval.

(b) *Interest rate.* Interest rates, fixed, variable or a combination of the two, will be negotiated between the lender and the NNC applicant. Interest rates will be those rates reasonably and customarily charged loan recipients in similar circumstances in the ordinary course of business.

(c) *Interest rate changes.*

(1) Any change in the interest rate between the date of issuance of the commitment for guarantee and the date of issuance of the loan guarantee must be fully justified in writing and is subject to FmHA review and approval.

(2) A variable interest rate must be a rate that is tied to a base rate published periodicially in a recognized national or regional financial publication specifically agreed to by the lender and the NNC applicant on Form FmHA 1980–60. The interest rate must rise and fall with the selected base rate. Changes in the rate cannot be retroactive and can be made no more often than quarterly. Floors and ceilings on variable interest rates will be allowed at the option of the NNC.

(3) The NNC and the lender may effect a permanent reduction in the interest rate of the FmHA guaranteed loan at any time during the life of the loan upon written agreement between the two parties. FmHA must be notified by the lender, in writing, within ten calendar days of the change.

(i) A fixed rate cannot be changed to a variable rate unless the variable rate has a ceiling which is less than the original fixed rate.

(ii) A variable rate can be changed to a reduced fixed rate.

(4) No increases in interest rates will be permitted under the FmHA loan guarantee except the normal fluctuations in FmHA approved variable interest rate loans.

(d) *Term.* The maximum time allowable for final maturity for an FmHA guaranteed loan is ten years.

(e) *Promissory note.* (1) The lender must incorporate within the variable rate promissory note, a provision for adjustment of payment installments coincident with an interest rate adjustment. This will assure that the outstanding principal balance is properly amortized within the prescribed loan maturity to eliminate the possibility of a balloon payment at the end of the loan. Balloon payments are not permissible for any financial assistance provided to either an NNC or a recipient under this program.

(2) The lender is responsible for the legal documentation of interest changes by an allonge attached to the promissory note(s) or any other legally effective amendment of the rate(s); however, no new note may be issued.

(3) In a final loss settlement, when qualifying rate changes were made in accordance with paragraph (c)(3) of this section, the interest will be calculated for the periods the given rates were in effect, except that interest claimed on a loan which originated at a variable rate can never exceed the amount which would have been eligible for claim had the variable interest remained in force. The lesser cost to the Government will always prevail. The lender must maintain records which adequately document the accrued interest claimed.

(4) FmHA will not guarantee any loan in which the promissory note or any other document provides for the payment of interest upon interest.

(5) Ordinarily, monthly payments of principal and interest are expected. However, the first repayment of principal may be scheduled for payment after the NNC has begun to generate income from projects financed with FmHA funds, but no later than three years from the date of the promissory note and at least annually thereafter. Payments on interest will not be deferred and will be due at least annually from the date of the note.

(Refer to Appendix A to Subpart C—Administrative Provisions)

**§ 1980.624 Full faith and credit.**

The loan guarantee constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which the lender has actual knowledge at the time it becomes such lender or which lender participates in or condones. A note which provides for payment of interest on interest is void. The loan guarantee will be unenforceable by the lender to the extent any loss is occasioned by violation of usury laws, negligent servicing or failure to obtain the required security regardless of the time at which FmHA acquires knowledge of the foregoing. Any losses occasioned will be unenforceable to the extent that loan funds are used for purposes other than those specifically approved by FmHA in its Form FmHA 1980–61, "Commitment for Guarantee." Negligent servicing is defined as the failure to perform those services which a reasonable, prudent lender would perform in servicing its own portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act but also not acting in a timely manner or acting in a manner contrary to the manner in which a reasonable, prudent lender would act up to the time of loan maturity or until a final loss is paid.

**§§ 1980.625 through 1980.627 [Reserved]**

**§ 1980.628 The grant—general.**

(a) A grant may be made to complement a loan guarantee to an NNC, subject to the terms and conditions of this subpart.

(b) A grant may be used for technical assistance purposes as defined by § 1980.613 of this subpart and/or for financial assistance purposes as defined by § 1980.614 of this subpart.

(c) Grants will be awarded only from appropriated funds specifically allocated for this program.

(d) Before assistance in the form of an FmHA grant will be considered, one or more of the following criteria must be present and evidence thereof included as supporting documentation for Form FmHA 1980–60:

(1) A critical employment situation exists as measured by unemployment, underemployment, and low family income levels.

(2) Significant financial support from public agencies and/or private organizations exists as evidenced by the applicant's plan.

(3) Use of loan funds and funds from other sources alone will not make the applicant's plan economically feasible.

(e) Once Form FmHA 1940–1, "Request for Obligation of Funds," has been executed by FmHA and the NNC, the NNC has 180 calendar days to close the guaranteed loan. If the loan is not closed within this time period, FmHA may, at its option, demand repayment of the original principal amount of the grant with interest.



**§ 1980.629 Lenders—general.**

(a) As supporting documentation for Part B of FmHA Form 1980–60, each proposed lender must provide FmHA with:

(1) Evidence of lender's organizational structure, including evidence of which agency or authority, if any, supervises the lender, and

(2) A copy of the lender's most recent annual report or audit, conducted by an independent public accountant, which demonstrates that the lender has the necessary financial solvency and resources to carry out its responsibilities under this program.

(b) A lender may use agents, correspondents, branches, financial experts or other institutions or persons to provide expertise and assistance in performing its responsibilities under this program.

(c) If there is more than one lender, the lenders in conjunction with the NNC, may select one to be the lead lender, whose responsibility it will be to coordinate part or all of the loan processing and servicing functions between the NNC, FmHA and the other lenders.

**§ 1980.630 Security.**

(a) It is the responsibility of the lender to obtain and to maintain in existence and of record, adequate security to protect the interests of the lender and FmHA.

(b) Security must be of a nature that repayment of the loan is reasonably assured when considered in conjunction with the integrity and ability of NNC management, the fiscal solvency of the NNC and the NNC's prospective earnings.

(c) Security may include, but is not limited to: land, buildings, machinery, equipment, furniture, fixtures, inventory, accounts receivable, cash or special cash security accounts, marketable securities, and cash surrender value of life insurance. Security may also include assignments of leases or leasehold interest, revenues, patents, and copyrights. However, lease assignments taken as security will not be guaranteed by FmHA under this program.

(d) All security must secure the entire loan. The lender will not take separate security to secure only that portion of the loan or loss not covered by the guarantee. The lender will not require compensating balances or certificates of deposit as a means of eliminating the lenders exposure on the guaranteed portion of the loan. However, compensating balances as used in the ordinary course of business may be used.

(e) Normally acceptable security for FmHA guaranteed loans would consist of an assignment of notes and related security instruments securing the financial assistance from the NNC to the recipients, as well as a security interest in cash held by the NNC and its affiliates stemming from FmHA-related funds, cash from the repayments of recipient loans, and any other security as required by the lender.

**§ 1980.631 Conflict of interest.**

When Form FmHA 1980–60 is submitted to FmHA, FmHA requires written disclosure of any legal ownership or financial interest, and any existing financial transactions between the NNC applicant and the proposed lender or between principals of these two legal entities. FmHA shall determine whether such ownership or financial transaction is sufficient to create a potential conflict of interest. In the event FmHA determines there is a conflict of interest, the FmHA assistance to the NNC applicant will not be approved until such conflict is eliminated. If a conflict of interest is discovered after a commitment for guarantee has been issued but before the loan guarantee has been issued, the conflict of interest must be eliminated or the loan will not be guaranteed.

**§ 1980.632 Fees and charges.**

All fees and charges between the lender, the NNC, the affiliate, and the recipient, must be specifically documented and justified on Form FmHA 1980–60, or on an addendum to the application at the time the application is submitted to FmHA for processing. All fees and charges are subject to FmHA review and concurrence.

(a) *Recipient.* Fees and charges to the recipient may be made only as specifically listed in § 1980.614(p) of this subpart.

(b) *NNC.* Fees and charges to the NNC will be those reasonably and customarily charged loan recipients in similar circumstances in the ordinary course of business and may be paid with loan funds at the time the FmHA guaranteed loan is closed.

(c) *Late payment charges.* Under no circumstances will late payment charges and any interest accruing to such charges be covered by the FmHA loan guarantee or be added to the principal and interest due under any guaranteed note. However, these conditions do not preclude there being a charge for late payment provided:

(1) Late payment charges are routinely made by the lender/NNC in all types of loan transactions.

(2) Payment has not been received within the customary timeframe allowed by the lender/NNC. The term "payment received" means that the payment in cash or by check money order, or similar medium has been received by the lender/NNC at its main Office, branch Office, or other designated place of payment.

(3) The parties involved agree in writing that the rate or method of calculating the late payment charges will not be changed to increase charges while the loan guarantee is in effect.

(d) *Packaging fee.* The NNC may contract with the lender or another party, including the affiliate, to assist in the preparation and submission of the NNC's application to FmHA, Form FmHA 1980–60. A fee for this packaging service may be charged to the NNC and paid with loan funds at the time the FmHA guaranteed loan is closed. The maximum allowable packaging fee is 2 percent of the total principal amount of the loan as reflected by the commitment(s) for guarantee issued by FmHA.

**§ 1980.633 The NNC plan and scope of work.**

FmHA requires that technical and financial assistance to recipients be administered in accordance with a plan, developed by the NNC applicant and approved by FmHA. The NNC plan must define specific objectives (refer to § 1980.602 of this subpart) and operating procedures, including standards and selection criteria for technical and/or financial assistance. The plan will be submitted to FmHA as part of Form FmHA 1980–60. The proposed lender will be provided with a copy of the plan and will attach its written evaluation of the plan to Part B of Form FmHA 1980–60. At a minimum, the plan must cover the following items:

(a) Demonstrate a need for guaranteed loan and grant funds. At a minimum, the applicant must identify a sufficient number of recipients requiring assistance equal to the amount of assistance requested from FmHA.

(b) Demonstrate the applicant's ability to administer a national rural development loan program in accordance with the provisions of this subpart. The applicant must provide a complete listing of all personnel responsible for administering this program along with a statement of their qualifications and experience. The personnel may be either members or

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employees of the applicant's organization or contract personnel hired for this purpose. If the personnel are contracted for, the contract between the applicant and the entity providing such service will be submitted for FmHA's review.

(c) Demonstrate to FmHA's satisfaction that the applicant is affiliated with or has a working relationship with State rural development and finance organizations (affiliates) in three or more States.

(d) Provide evidence to FmHA's satisfaction that the applicant has a successful record of obtaining and managing private and/or philanthropic funds.

(e) Demonstrate the applicant's ability to commit financial resources under the control or the applicant to assist in the establishment of a rural development and finance program. This should include a statement of the source(s) of funding for the guaranteed loan(s) and source(s) of non-FmHA funds for administration of the applicant's operations, as well as financial and technical assistance for projects.

(f) Demonstrate to FmHA's satisfaction that the applicant has secured commitments of significant financial support from public agencies and/or private organizations for the establishment of a rural development and finance program.

(g) Include a proposal for providing adequate security for the FmHA guaranteed loan. The proposal should specifically address those items of security outlined in § 1980.630 of this subpart.

(h) Include a detailed statement of the proposed use of FmHA grant funds. Grant funds will be advanced in reasonable proportion to the use of loan guarantee funds. Therefore, an outline is required describing what will constitute project eligibility for grant related financial and technical assistance as a complement to the FmHA guaranteed loan funds the applicant will make available to recipients (refer to § 1980.628(d) of this subpart for other criteria which must be addressed).

(i) Identify what activities will constitute technical assistance to projects it assists (refer to § 1980.613 of this subpart for further details).

(j) Include a list of proposed fees and other charges it will assess the recipients it funds (refer to §§ 1980.614(p) and 1980.632 of this subpart for further details).

(k) The applicant's plan for relending the grant and/or guaranteed loan funds must be of sufficient detail to provide FmHA with a complete understanding of what the applicant will accomplish by lending the funds to the recipient. A scope of work, prepared by the applicant, will provide the complete mechanics of how the funds will get from the applicant to the recipient. The eligibility criteria, the application process, method of disposition of the funds to the recipient, monitoring of the recipient's accomplishments and reporting requirements by the recipient's management are examples of the items that must be addressed. The scope of work must require all recipients to provide a certification similar to that provided in §1980.643(p).

**§§ 1980.634 through 1980.640 [Reserved]**

**§ 1980.641 Filing application deadline.**

Subject to the availability of funds, applicants and lenders desiring FmHA assistance as provided in this subpart should file applications with the FmHA National Office, Assistant Administrator, Community and Business Programs, Washington, DC 20250 between January 1 and March 31 each fiscal year.

**§ 1980.642 Priority.**

The application and supporting documentation will be used to determine the applicant's priority for available funds. The following specific criteria will be considered in the competitive selection of loan guarantee and/or grant recipients:

(a) The proposal will improve business, industry and employment, specifically the direct retention and/or creation of jobs in rural areas.

(b) The proposal will provide financial and technical assistance to projects that wil provide services to the farm community, provide opportunities for employment for displaced farm families, and supplement farm family income through the use of farm labor and products.

(c) The proposal will stimulate and involve financial and technical assistance from public or private organizations in the development of projects under this program.

(d) The applicant has a proven record of successfully assisting rural business and industry. Such proof will normally consist of:

(1) The number of past and present loans the applicant has made and serviced that are similar in nature to the purpose of this program.

(2) The delinquency rate on the loans in the applicant's portfolio.

(3) The background and expertise of the applicant's staff that will be making and servicing the portfolio.

(4) The capitalization of the NNC applicant for making such loans.

(e) The proposal will be cost effective, including but not limited to: the ratio of projects to total cost of the proposal and the ratio of total jobs directly retained and/or created to the total cost of the proposal.

**§ 1980.643 Developing the application.**

A complete application will consist of the following:

(a) Form FmHA 1980–60, Part A completed by the NNC applicant and Part B completed by the lender with lender's evaluation and recommendations.

(b) Form FmHA 1940–20, as defined by § 1980.611 of this subpart and by Subpart G of Part 1940 of this chapter.

(c) Projected balance sheets, cash flow and earnings statements for at least 3 years supported by a list of assumptions showing the basis for the projections.

(d) Financial statements for the past 3 years or since the inception of the organization, and a recent audit prepared by an independent public accountant which demonstrates the applicant has financial solvency and resources necessary to carry out the intent of this program.

(e) A certificate of indebtedness detailing outstanding debt by name and address of creditor, account number, original principal amount, rate, term, installment amount and frequency, outstanding principal and interest, security, and current status.

(f) NNC applicant's plan and scope of work as defined by § 1980.633 of this subpart.

(g) Certified copies of the applicant's organizational documents (i.e., articles of incorporation and bylaws) and a certificate of good standing from the State in which the applicant is incorporated. The organizational documents must reflect that the applicant is authorized to carry out the provisions of the NNC program; which includes the authorization to borrow and to lend money, as well as to give and accept security for said monies.

(h) List of all members of the governing body including officers and term of office.

(i) Resolution of members authorizing appropriate officials to apply for FmHA assistance and to execute the necessary documents to obtain such assistance.

(j) Certificates of authority to do business in three or more States.

(k) Written approval to administer a loan program, as provided for in this subpart, by the Governor of each State in which the applicant intends to operate.



(l) A list of recent creditors (by name, address and account number) with whom FmHA may check to verify credit history.

(m) Preliminary opinion of lender's legal counsel relative to applicant's organizational structure and legal authority necessary to become involved with a loan guarantee.

(n) Preliminary opinion of applicant's legal counsel relative to applicant's organizational structure and legal authority necessary to become involved with a loan guarantee and/or grant.

(o) For the proposed affiliate(s), evidence of organizational structure (e.g. articles of incorporation) and documentation relative to that organization's goals and accomplishments.

(p) Applicant will certify that it is not presently suspended, debarred, proposed for debarment, declared ineligible or voluntarily excluded from any Federal program, has not had a Federal program terminated for cause or does not presently have an officer, major shareholder, partner or owner under indictment or conviction for fraud or criminal offense in connection with any Federal program in accordance with Executive Order 12549 and USDA Uniform Assistance Regulation Part 3017. Federal program includes activities involving Federal financial and nonfinancial assistance and benefits. If such a certification cannot be provided, the applicant will submit a written explanation.

(q) Any additional information requested by FmHA.

**§ 1980.644 [Reserved]**

**§ 1980.645 FmHA review of application.**

The "Lists of Parties Excluded from Federal Procurement or Nonprocurement Programs" will be reviewed in connection with all NNC applications.

(a) All loan guarantee and/or grant applications will be approved or rejected, and both the NNC applicant and the proposed lender (when appropriate) will be notified in writing by FmHA, normally within 45 calendar days after March 31 of each year.

(b) If an application is not complete, the NNC applicant and the proposed lender (when appropriate) will be notified in writing of the specific items missing from the application, not later than 20 calendar days after the receipt of the application by FmHA.

(c) NNC applicants who are eligible, but do not have the priority necessary for further consideration will be notified with a letter which includes the following statements:

(1) "Your proposal cannot be funded within the available funds."

(2) "You are advised against incurring obligations which cannot be fulfilled without FmHA funds."

(d) NNC applicants that are eligible for funding within the available funds will be provided with further processing instructions.

(e) If an application is rejected, the NNC applicant and the proposed lender (when appropriate) will be notified in writing of the specific reasons for the rejection. The notification will state that a review of this decision by FmHA may be requested in accordance with § 1980.698 of this subpart and Subpart B of Part 1900 of this chapter.

(Refer to Appendix A to Subpart G—Administrative Provisions)

**§ 1980.646 Loan guarantee and/or grant approval and fund obligation.**

(a) *Commitment for guarantee.* (1) If an application for a loan guarantee is approved, FmHA will issue Form FmHA 1980–61 along with an attachment containing any additional requirements of the commitment, including, but not limited to: percent guarantee, repayment terms, security, guarantee fee, loan agreement, use of loan proceeds, loan servicing, inspections, lender's certification, limitations on sale of guarantee, intergovernmental reviews, environmental reviews, and conditions for issuance of Forms FmHA 1980–62 "Loan Guarantee," and FmHA 1980–63 "Nonprofit Lender's Agreement." The attachment to Form FmHA 1980–61 will include a requirement that the NNC obtain the lender's and FmHA's concurrence in the proposed use of loan funds, *prior* to making a commitment to a specific recipient (refer to § 1980.654 of this subpart for further details).

(2) The applicant and the lender must review Form FmHA 1980–61 along with any additional requirements issued by FmHA. To accept the commitment and its requirements, the lender completes that portion of Form FmHA 1980–61 entitled "Acceptance of Conditions," and returns a dated and signed copy to FmHA. If certain conditions cannot be met, the applicant and the lender may propose alternative conditions to FmHA.

(3) It is the intent of FmHA that once Form FmHA 1980–61 is issued and accepted by the lender, the application may not be modified as to the scope of the project, overall work plan concept, project purpose, use of proceeds or terms and conditions. All changes require the prior concurrence of FmHA. Only minor changes will be considered, unless otherwise provided for in this subpart. Changes in the organizational structure and/or membership of the NNC applicant (legal entity) will not be approved. If such changes within the NNC applicant do take place, FmHA will not issue a loan guarantee to the lender who holds Form FmHA 1980–61 for that applicant.

(4) If the lender accepts Form 1980–61 and subsequently decides that it no longer wants a loan guarantee, the lender will immediately advise both the NNC applicant and FmHA in writing.

(b) *Grant.* (1) If an application for a grant is approved, the revised scope of work, and Forms FmHA 400–1, FmHA 400–4, and FmHA 1940–1 will be forwarded to the applicant for execution and return to FmHA.

(2) As with the loan guarantee, FmHA will require that the NNC obtain FmHA's concurrence in the proposed use of grant funds, prior to making a commitment to a specific recipient (refer to § 1980.654 of this subpart for further details).

(c) *Fund obligation.* Once the conditions set forth in paragraphs (a) or (a) and (b) of this section have been complied with, notice of approval of a loan guarantee and/or grant will be accomplished by sending the NNC applicant and the lender (if a guarantee is involved) copies of Form FmHA 1940–1, executed by FmHA on the obligation date.

(Refer to Appendix A to Subpart G—Administrative Provisions)

**§ 1980.647 Preguarantee review.**

Prior to loan closing and to issuance of the loan guarantee, the applicant and/or the lender will provide information for a preguarantee review by FmHA. Upon receipt of the documents listed below, FmHA will forward appropriate copies to the Office of the General Counsel (OGC) with a request for closing instructions. If the OGC requires additional information or revisions to proposed documents before issuing closing instructions, FmHA will notify the applicant and the lender (when appropriate). The advice and counsel of OGC is for the benefit of FmHA only and does not relieve the lender, NNC, or recipient from their respective responsibilities under FmHA regulations or agreements. The information for the preguarantee review will include, but is not limited to:

(a) Final draft of the loan agreement, which must include, but is not limited to:

(1) A description of loan amortization, including as an exhibit the proposed form of the promissory note (or other evidence of debt) and the structure of repayments, the interest rate, term, and conditions of the loan.

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(2) A detailed description of all fees and charges to the NNC applicant.

(3) The lender's plan for servicing the loan and providing management assistance to the NNC applicant (including on-site visits to the NNC applicant as defined in § 1980.656 of this subpart).

(4) All requirements set forth by FmHA in Form FmHA 1980–61.

(5) The requirement for quarterly financial statements prepared by management and an annual audit in accordance with § 1980.656 of this subpart.

(6) General record and book-keeping requirements, including a requirement that the records be made available to the lender and/or FmHA upon request.

(7) Limitations on purchase or sale of equipment and fixed assets.

(8) Limitations on compensation of officers and members.

(9) Prohibition against the NNC applicant assuming the liabilities of any other person or entity.

(b) Final draft of operating agreements with affiliates.

(c) Proposed copy of note, mortgage, financing statement, security agreement, assignment, resolution, and any other documents which the lender expects the applicant to sign on the day of loan closing.

(d) Evidence that the lender has met or will meet all requirements attached to the Form FmHA 1980–61.

(e) Draft copy of Form FmHA 1980–63.

(f) Proposed final opinion of lender's legal counsel to include counsel's review of security instruments and closing documents.

(g) Proposed final opinion of applicant's legal counsel to include counsel's review of security instruments and closing documents.

(h) Draft copy of Form FmHA 1980–10, "Guaranteed Loan Closing Report."

(i) A proposed timetable for visits to the NNC by the lender as defined in § 1980.658 of this subpart.

(j) Evidence of fidelity bond coverage for the positions of person entrusted with the receipt and disbursement of its funds and the custody of valuable property. The amount of the bond will be at least equal to the maximum amount of money that the applicant will have on hand at any one time, exclusive of funds deposited in a bank account where the withdrawal of funds is contingent upon the countersignature of a person outside the applicant organization. A certified power of attorney, with effective date, will be attached to each bond.

(Refer to Appendix A to Subpart G—Administrative Provisions)

**§ 1980.648 Loan guarantee and/or grant closing.**

(a) *Loan guarantee.* Once loan closing instructions have been received from OCG, FmHA will work with the applicant and the lender to complete loan closing plans and to establish a mutually acceptable closing date.

(1) At loan closing, the following items will be executed and appropriate copies provided to FmHA.

(i) Forms FmHA 400–1 and FmHA 400–4 unless previously executed by the applicant.

(ii) Lender's certification to the following:

(A) No major changes have been made in the lender's loan conditions and requirements since the issuance of the commitment for guarantee except those approved in the interim by FmHA in writing.

(B) Truth in lending requirements have been met.

(C) All equal employment opportunity and nondiscrimination requirements have been or will be met at the appropriate time.

(D) The loan has been properly closed, and the required security instruments have been obtained, or will be obtained on any after acquired property that cannot be covered initially under State law.

(E) All other requirements of the commitment for guarantee have been met.

(F) Lien priorities are consistent with requirements of the commitment for guarantee.

(G) The loan proceeds have been, or will be, disbursed for purposes and in amounts consistent with this subpart, the commitment for guarantee, and Form FmHA 1980–60. A copy of a detailed loan settlement statement of the lender will be attached to support this certification.

(H) There has been no material adverse change(s) in the NNC's financial condition nor any other adverse change in the NNC during the period of time from FmHA's issuance of the commitment for guarantee to issuance of the loan guarantee. The lender's certification must address all adverse changes of the NNC and be supported by financial statements of the NNC not more than 60 days old at the time of certification. For purposes of this paragraph, the term "NNC" includes additionally any parent, affiliate, or subsidiary of the NNC. A copy of the financial statements must be submitted to FmHA.

(iii) Final loan agreement.

(iv) Note, mortgage, financing statement, security agreement, assignment, resolution, and all other documents required by the lender.

(v) Final opinion of lender's legal counsel.

(vi) Final opinion of applicant's legal counsel.

(vii) Any additional items required by FmHA.

(2) If FmHA determines that all closing requirements have been met, FmHA will:

(i) Execute Form FmHA 1980–63. FmHA will retain the original and a signed duplicate original will be retained by the lender. A Form FmHA 1980–63 must be executed for all loans guaranteed by FmHA.

(ii) Execute Form FmHA 1980–62. The original of Form FmHA 1980–62 will be attached to the original note and delivered to the lender, who will concurrently deliver the guarantee fee. A conformed copy of the form with a copy of the note attached will be retained by FmHA.

(iii) Execute Form FmHA 1980–19 which will be sent to the FmHA Finance Office with the guarantee fee. The fee will be one percent (1%) of the principal loan amount multiplied by the percent of guarantee, paid one time only at the time the loan guarantee is issued. The fee will be paid to FmHA by the lender and is nonrefundable. The fee may be passed on to the NNC.

(b) *Grant.* (1) Grants will be closed in accordance with this subpart, applicable parts of Subpart G of Part 1942 of this chapter, and any closing instructions from the Regional Attorney, OGC.

(2) Grants will be considered closed when Form FmHA 1940–1 is executed by the NNC and by FMHA.

(Refer to Appendix A to Subpart G—Administrative Provisions)

**§ 1980.649 FmHA refusal to execute loan guarantee or grant.**

If FmHA determines that it cannot execute the loan guarantee or grant because all requirements have not been met, it will promptly inform the lender or NNC applicant, as appropriate, of the reason(s) for the refusal in writing. FmHA will give the lender or NNC applicant a reasonable period within which to satisfy FmHA objections. If the lender or NNC applicant writes FmHA within the period allowed requesting additional time to satisfy the objections, FmHA may, in writing, allow such additional time as it considers necessary and reasonable under the circumstances. If the objections are satisfied within the time allowed, the guarantee or grant, as appropriate, may be executed.



**§§ 1980.650 through 1980.653 [Reserved]**

**§ 1980.654 Disbursement of FmHA loan guarantee and/or grant funds.**

(a) *General.* FmHA grant funds will be disbursed by FmHA in accordance with the provisions of USDA Uniform Federal Assistance Regulation Part 3015. FmHA guaranteed loan funds will be disbursed by the lender to the NNC upon completion of all or part of the project(s). Funds will be disbursed to the NNC in amounts corresponding to the proportionate quantity of work completed and in accordance with the loan agreement. For each project, a final written certification from the NNC to the lender is required, stating that the acquisition of property, plant, and equipment in an amount equal to the guaranteed loan funds disbursed to the NNC by the lender has been completed.

(b) *Release of technical assistance funds.* (1) The NNC is responsible for providing the FmHA State Office with a project description (refer to Appendix D of this subpart) and intergovernmental review data as defined in § 1980.610 of this subpart.

(2) Once the National Office has received intergovernmental review clearance from the State Office, the NNC may request grant funds from the National Office by submission of Standard Form (SF) 270 "Request for Advance or Reimbursement." An SF–270 should be submitted not more than once a month. Ordinarily, payment will be made within 30 days after receipt of proper request for reimbursement. When the NNC submits an SF–270, it will also submit, simultaneously, a statement identifying the recipients to be assisted and the type of assistance they are to receive.

(c) *Release of financial assistance funds.* (1) The NNC is responsible for providing the FmHA State Office with a project description (Appendix D of this subpart), intergovernmental review data (as defined by § 1980.610 of this subpart), environmental data (as defined by § 1980.611 of this subpart) and the following:

(i) A lender certification (only if guaranteed loan funds are involved). For each recipient, the lender must require and certify to each of the following:

(A) Security will be adequate in accordance with § 1980.630 of this subpart.

(B) No claim or liens of laborers, materialmen, contractors, subcontractors, suppliers of machinery and equipments or other parties are against the collateral of the NNC, and that no suits are pending or threatened that would adversely affect the collateral of the NNC when the security instruments are filed.

(C) Hazard insurance with a standard mortgage clause naming the NNC as beneficiary will be required on every recipient in an amount that is at least the lesser of the depreciated replacement value of the property being insured or the amount of the loan. Hazard insurance includes fire, windstorm, lightning, hail, business interruption, explosion, riot, civil commotion, aircraft, vehicle, maring, smoke, builder's risk, public liability, property damage, flood or mudslide, or any other hazard insurance that may be required to protect the collateral. The NNC's interest in the insurance will be assigned to the lender.

(D) Ordinarily, life insurance, which may be decreasing term insurance, is required for the principals and key employees of the recipient and will be assigned or pledged to the NNC and subsequently to the lender. A schedule of life insurance available for the benefit of the loan will be included as part of the recipient's application.

(E) Workmen's compensation insurance on projects is required in accordance with State law.

(F) If other financing is involved with the FmHA-related assistance to the NNC or the recipient, then the FmHA assistance will be secured with a lien position superior to or on a parity basis with that of the other source of financing.

(G) Provide concurrence in the project to be funded.

(ii) An NNC certification (if guaranteed loan and/or grant funds are involved). For each recipient, the NNC will be required to certify to the following, plus the requirements in paragraphs (c)(1)(i) (A) through (G) of this section.

(A) Recipient's project is located in an eligible area.

(B) At least 51 percent of the outstanding interest in the recipient has membership or is owned by those who are either citizens of the United States or reside in the United States after being legally admitted for permanent residence.

(C) FmHA grant/guaranteed loan funds will not exceed 75 percent of total project cost.

(D) Recipient does not have a total combined outstanding amount of FmHA assistance (grant and/or guaranteed loan) in excess of $500,000.

(E) Funds will be used for eligible purposes as defined by § 1980.614 of this subpart.

(F) Recipient meets objective and purpose of program.

(G) Recipient has other public and/or private investment funds.

(H) Recipient will, to the maximum extent possible, use local labor and resources (agricultural, if possible).

(I) Recipient will, to the maximum extent possible, be innovative in providing services and/or products to the public.

(J) Recipient will, whenever possible, involve the maximum use of agricultural or agricultural-related producs and services.

(K) Forms FmHA 400–1 and FmHA 400–4 will be executed by the recipient organization at project loan closing.

(2) Once the National Office has received clearance from the State Office regarding intergovernmental review, environmental assessment, NNC and, when applicable, lender certifications, the NNC may request authorization from the National Office to close the recipient loan and, if applicable, may request grant funds for that purpose by use of SF–270.

**§ 1980.655 FmHA's access to records.**

(1) *Lender records.* Upon request by FmHA, the lender will permit authorized representatives of FmHA to inspect and make copies of any of the records of the lender pertaining to FmHA guaranteed loans. Such inspection and copying may be made during regular office hours of the lender, or any other time the lender and FmHA find convenient.

(b) *NNC records.* The FmHA and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the NNC which are pertinent to the loan guarantee and/or grant program for the purpose of making an audit, examination, excerpts and transcripts.

**§ 1980.656 Loan guarantee reporting requirements.**

(a) The NNC is required to furnish quarterly financial statements during the first year after loan closing and organization-wide audited financial statements each year. Submission dates to FmHA and the lender are twenty (20) days after the end of each of the first three quarters and 90 days following the year-end.

(b) The lender will furnish FmHA with its analysis of the NNC's operations and financial statement within 30 days of receipt of such statement. FmHA in turn will evaluate the lender's analysis and follows up with the lender on servicing action(s) required or negative observations not detected through the lender's analysis.

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(c) All audits are to be performed in accordance with USDA Uniform Assistance Regulation Part 3015 and with generally accepted government auditing standards (GAGAS), using the publication, "Standards for Audit of Governmental Organizations, Programs, Activities and Functions," developed by the Comptroller General of the United States in 1981, and any subsequent revisions.

**§ 1980.657 Grant reporting requirements.**

(a) A grantee (the NNC) must maintain financial management systems and retain financial records in accordance with the USDA Uniform Assistance Regulation Part 3015.

(b) Grantee records must include an accurate accounting and documentation of how these funds are used.

(c) SF-269, "Financial Status Report" and a project performance activity report will be required of all grantees on a quarterly basis. A final project performance report will be required with the last SF-269. Grantees shall constantly monitor performance to ensure that time schedules are being met, projected work by time periods is being accomplished, and other performance objectives are being achieved. Grantees should submit an original and one copy of each report to the FmHA National Office, Assistant Administrator, Community and Business Programs, Washington, DC 20250. The project performance reports shall include but need not be limited to the following:

(1) A comparison of actual accomplishments to the objectives established for that period. This should be based on The FmHA approved plan and scope-of-work;

(2) Reasons why established objectives were not met;

(3) Problems, delays, or adverse conditions which will materially affect attainment of planned project objectives, prevent the meeting of time schedules or objectives, or preclude the attainment of project work elements during established time periods. This disclosure shall be accompanied by a statement of the action taken or contemplated to resolve the situation;

(4) Objectives established for the next reporting period; and

(5) Status of compliance with any special conditions on the use of grant funds.

(d) Grantee must report and remit interest earned on advances of grant funds deposited in interest accounts to FmHA on a quarterly basis in accordance with the USDA Uniform Assistance Regulation Part 3015.

(e) The grantee will be required to submit an audit report prepared in accordance with the USDA Uniform Assistance Regulation Part 3015.

**§ 1980.658 Loan guarantee servicing.**

The lender is responsible for servicing the guaranteed loan in accordance with the terms of Forms FmHA 1980-62 and FmHA 1980-63.

(a) *Field visits.* (1) The lender will visit the NNC quarterly during the first year after loan closing and annually each year thereafter unless problems develop. Problem and/or delinquent NNCs will be visited as frequently as need demands. The lender will also make visits upon special written request of FmHA.

(2) The lender will notify FmHA of any scheduled visits or field inspections of the NNC's operations, which may include projects after issuance of the loan guarantee. To the extent possible, FmHA will attend such inspections.

(3) Any inspections or reviews conducted by FmHA, including those with the lender, are for the benefit of FmHA only and not for other parties of interest. FmHA inspections do not relieve any parties of interest of their responsibilities to conduct necessary inspections, nor can these parties rely on FmHA's inspections in any manner whatsoever.

(b) *Annual lender/FmHA meeting.* FmHA may conduct an annual meeting with each lender or its agent with whom a loan guarantee is outstanding. The meeting may be scheduled at the time FmHA makes a periodic field inspection to the NNC's place of business. At the meeting, a review will be made of the lender's performance in loan servicing, including enforcement of conditions and covenants in the loan agreement. The observations and results of the meeting will be documented on Form FmHA 449-39, "Field Visit Review (Business and Industrial Loans)," or in similar format. Servicing exceptions on the part of the lender which are noted by FmHA will be confirmed by letter to the lender.

(Refer to Appendix A to Subpart G—Administrative Provisions and to Appendix C to Subpart G—Form FmHA 1980-63.)

**§ 1980.659 Grant servicing.**

Grants will be serviced in accordance with Subpart E of Part 1951 of this chapter.

**§ 1980.660 Transfer between lenders.**

(a) *Prior to issuance of the loan guarantee.* FmHA may approve the transfer of an outstanding commitment for guarantee from the present lender to a new eligible lender, provided there are:

(1) No changes in ownership or control of the NNC applicant,

(2) No changes in the NNC applicant's written plan or scope of work, and

(3) The new lender agrees in writing to accept all original loan conditions and agreements.

(i) To effect such a transfer, the present lender will provide FmHA with a letter stating the reasons for withdrawal from the program. The new proposed lender will execute and submit a new Part B of Form FmHA 1980-60.

(ii) If the transfer is approved, FmHA will issue a letter amending the original Form FmHA 1980-61. The new lender will acknowledge acceptance of the amendment in writing.

(b) *Subsequent to issuance of the loan guarantee.* FmHA may approve the transfer of an outstanding loan guarantee from the present lender to a new eligible lender, provided the new lender agrees to assume all original loan requirements including liabilities, servicing responsibilities, and acquiring legal title to the unguaranteed portion of the loan. Such approval will be granted only in extreme circumstances (e.g., when a lender discontinues lending operations).

(Refer to Appendix A to Subpart G—Administrative Provisions)

**§ 1980.661 Transfer between NNC's.**

The guaranteed loan and/or grant to the NNC cannot be transferred to or assumed by another NNC.

**§ 1980.662 Sale of loan guarantee.**

(a) The loan guarantee with the full faith and credit of the United States cannot be sold by the lender into the secondary market.

(b) Sale of participation interests in the guaranteed loan are acceptable, subject to the following:

(1) The lender retains the note and legal title thereto, all security for the note, and all responsibility for servicing and liquidation, and

(2) The FmHA guarantee extends only to the lender and not to participants, and

(3) Participation cannot be sold to an NNC or to a principal of an NNC, and

(4) The lender must retain in its own portfolio a minimum of five percent of the total guaranteed loan and this amount must be from the unguaranteed portion of the loan.

**§§ 1980.663 through 1980.669 [Reserved]**

**§ 1980.670 Defaults by NNC.**

(a) The lender will notify FmHA when an NNC is thirty (30) days past due on a payment or if the NNC has not met its responsibilities of providing the required financial statements to the lender or is otherwise in default. The lender will notify FmHA of the status of an NNC's default on Form FmHA 1980-44, "Guaranteed Loan Borrower Default Status."

(b) In case of any monetary or material non-monetary default under the loan agreement, the lender is responsible for arranging a meeting with FmHA and the NNC to resolve the problem. A memorandum of the meeting, individuals who attend, and a summary of the problem and proposed solutions will be prepared by the FmHA representative and retained in the loan file. The lender and the NNC will be notified in writing of any decision reached by FmHA.

(c) In considering servicing options, the prospects for providing a permanent cure without adversely affecting the risks of FmHA and the lender must become the paramount objective. Temporary curative actions such as payment deferments, moratoriums on payments or collateral subordination, if approved, must strengthen the loan and be in the best interests of the lender and FmHA.

(d) Consultant services may be used to assist FmHA and the lender in determining which servicing action is appropriate. Any servicing actions taken by the lender must have the prior written concurrence of FmHA and will be paid for by the lender.

(e) The National Office may, at its option, assume the servicing responsibility on individual cases.

(Refer to Appendix A to Subpart G—Administrative provisions and to Appendix C to Subpart G—Form FmHA 1980-63.)

**§ 1980.671 Liquidation.**

(a) If the lender concludes that liquidation of a guaranteed loan account is necessary because of one or more defaults or third party actions that the NNC cannot or will not cure or eliminate within a reasonable period of time, a meeting will be arranged by the lender with FmHA. When FmHA concurs with the lender's conclusion or at any time concludes independently that liquidation is necessary, it will notify the lender and the matter will be handled in accordance with Form FmHA 1980-63.

(b) If a lender acquires title to property either through voluntary conveyance or foreclosure proceeding, FmHA may elect to permit the lender the option to calculate the final loss settlement using the net proceeds received at the time of ultimate disposition of such property. The lender must submit its written request for this option to FmHA, and FmHA must agree, prior to the lender submitting any request for estimated loss payment.

(Refer to Appendix A to Subpart G—Administrative Provisions and Appendix C to Subpart G—Form FmHA 1980-63.)

**§ 1980.672 Protective advances.**

Protective advances are advances made by the lender for the purpose of preserving and protecting the collateral where the NNC has failed to and will not or cannot meet its obligations. Generally, protective advances are made only when liquidation is under consideration or in process. Protective advances must constitute an indebtedness of the NNC to the lender and be secured by the security instrument(s). Written authorization by FmHA is required on all protective advances which exceed a total cumulative advance of $500 to the same NNC. Protective advances include, but are not limited to, advances made for taxes, annual assessments, ground rent, hazard or flood insurance premiums affecting the collateral, and other expenses necessary to preserve or protect the security. Attorney fees are not a protective advance. Protective advances will not be made in lieu of additional loans, in particular, working capital loans.

(Refer to Appendix C—Form FmHA 1980-63.)

**§§ 1980.673 through 1980.696 [Reserved]**

**§ 1980.697 Bankruptcy.**

(a) It is the lender's responsibility to protect the guaranteed loan debt and all the collateral securing it in bankruptcy proceedings. These responsibilities include but are not limited to the following:

(1) When the potential for bankruptcy becomes apparent, the lender will promptly inform FmHA and will keep FmHA adequately and regularly informed in writing of all aspects of any backruptcy proceedings.

(2) The lender will file a proof of claim where necessary and all the necessary papers and pleadings concerning the case.

(3) The lender will attend and where necessary participate in meetings of the creditors and all court proceedings.

(4) The lender, whose collateral is subject to being used by the trustee in bankruptcy, will immediately seek adequate protection of the collateral.

(5) Where appropriate, the lender should seek involuntary conversion to a liquidating proceeding or seek dismissal of the proceedings.

(b) In a Chapter 11 reorganization, if an independent appraisal is necessary in FmHA opinion, FmHA and the lender will share such appraisal fee equally.

(c) Expenses on Chapter 11 reorganization cases are not to be deducted from the collateral proceeds. Reasonable and customary liquidation expenses may be deducted from the collateral proceeds in liquidation cases under Chapter 7 or section 1123(b)(4) *liquidations* provided the lender presents a written justification for each expense, secures FmHA's written concurrence prior to incurring the expense, and the lender conducts the liquidation.

(d) An estimated loss payment may be filed by the lender at the initiation of a Chapter 7 proceeding or after a Chapter 11 proceeding becomes a liquidation proceeding. On loans in bankruptcy, any loss payment must be handled in accordance with the Form FmHA 1980-63 and be approved by the Administrator.

(e) The Administrator or designee, with the assistance of the Regional Attorney for the area in which the NNC is located, will perform the required functions necessary to protect the interest of the Government for the grant only.

(Refer to Appendix A to Subpart G—Administrative Provisions.)

**§ 1980.698 Appeals.**

Any adverse decision made by FmHA relative to the loan guarantee and/or grant may be appealed by the NNC or lender under Subpart B of Part 1900 of this chapter.

(Refer to Appendix A to Subpart G—Administrative Provisions.)

**§ 1980.699 Exception authority.**

The Administrator may, in individual cases, make an exception to any requirement or provision of this subpart which is not inconsistent with the authorizing statute, an applicable law or decision of the Comptroller General, if the Administrator determines that application of the requirement or provision would adversely affect the Government's interest. The basis for this exception will be fully documented. The documentation will identify the particular requirement involved, explain the adverse effect on the Government's interest and show how the adverse impact will be eliminated or minimized if the exception is made.

**§ 1980.700 OMB Control Number.**

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and assigned OMB Control Number 0575-0121.

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**Appendix D to Subpart G—Project Description**

1. Name of recipient.
2. Address (provide address for both recipient and project if they differ).
3. Contact person and telephone number for recipient.
4. Funding source/amount.

(a) FmHA:
Technical assistance grant ..... $ _____
Loan (from grant funds) ..... $ _____
Loan guarantee ..... $ _____
(b) _____: Non-NNC loan ..... $ _____
(Name)
(c) _____: Other source ..... $ _____
(Name)
(d) Total: ..... $ _____

5. Purpose of Loan (detailed description of proposal).
6. Business—new or existing and for how long.
7. Number of jobs created, saved or benefited by assistance.

Dated: February 14, 1989.

**Neal Sox Johnson,**

*Acting Administrator.*

[FR Doc. 89-5304 Filed 3-10-89; 8:45 am]

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**Animal and Plant Health Inspection Service**

**9 CFR Part 92**

**[Docket No. 88-162]**

## Importation of Horses From Argentina

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend the regulations by removing the requirment that horses imported into the United States from Argentina be quarantined for not less than seven days. This quarantine period is needed to determine if the horses are infected with Venezuelan equine encephalomyelitis (VEE). We are proposing to remove this particular quarantine requirement because we have determined that VEE does not exist in Argentina. The adoption of this proposal would allow horses imported into the United States from Argentina that meet all the requirements for importation, in most cases, to qualify for a shortened quarantine period (usually three days) upon importation into the United States.

**DATE:** Consideration will be given only to comments postmarked or received on or before April 12, 1989.

**ADDRESSES:** Send an original and two copies of written comments to Helen R. Wright, Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 88-162. Comments received may be inspected at USDA, Room 1141, South Building, 14th and Independence Ave. SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** Dr. Harvey A. Kryder, Senior Staff Veterinarian, Import-Export Products Staff, VS, APHIS, USDA, Room 753, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-7885.

**SUPPLEMENTARY INFORMATION:**

### Background

Regulations of the Animal and Plant Health Inspection Service (APHIS) on animal importations in 9 CFR Part 92 (referred to below as the regulations) prohibit or restrict the importation of horses that could introduce various diseases, including Venezuelan equine encephalomyelitis (VEE), into the United States. VEE, a viral disease of the central nervous system, progresses rapidly in horses and is frequently fatal. The last outbreak of VEE in the United States was eradicated in 1972.

Section 92.11(d)(1)(i) of the regulations requires that horses imported into the United States from the Western Hemisphere, except those from Canada and Mexico, be quarantined at designated ports of entry for not less than seven days. The purpose of this requirement is to prevent the introduction into the United States of horses infected with VEE; the quarantine period of not less than seven days was instituted because symptoms of VEE in infected horses become apparent within seven days of infection.

Horses from Canada and Mexico are not subject to this quarantine period because VEE does not exist in these countries. Recently, veterinary officials of the Argentine government have provided APHIS with survey results and animal testing data [1] demonstrating that VEE does not exist in Argentina. Therefore, we are proposing to remove the requirement that horses imported into the United States from Argentina undergo a quarantine of not less than seven days to prevent the introduction of VEE into the United States. Horses from Argentina would continue, however, to be subject to the other applicable import requirements of 9 CFR Part 92, including the requirement in (92.8 concerning inspection of horses at the port of entry and the requirements in ( 92.11(d) concerning the testing of imported horses, the quarantine of horses until test results are obtained, and the certification by a port veterinarian that horses are free from clinical evidence of disease.

[1] Copies of this material may be obtained by writing to the Administrator, c/o Import-Export Products Staff, VS, APHIS, Room 753, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

### Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Our proposal would generally reduce the time that horses imported from Argentina must spend in quarantine at the port of arrival, and would, therefore, reduce the cost to importers of expenses related to this quarantine. The number of horses imported from Argentina annually is small compared with the total number of horses imported annually. In 1987, of 21,500 imported horses, approximately 600 were imported from Argentina. These importations involved several hundred individuals importing one or a few horses, with no importations of large groups of horses. Because horses imported from Argentina under this proposed rule would usually be quarantined for no more than three days while test results are obtained, the main economic effect of this rule would be to save importers the costs of quarantining their horses for four days, a savings of approximately $237 per horse.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

### Paperwork Reduction Act

The regulations in this proposal contain no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*),



**Executive Order 12372**

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

**List of Subjects in 9 CFR Part 92**

Animal diseases, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

Accordingly, we are proposing to amend 9 CFR Part 92 as follows:

## PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation would continue to read as follows:

**Authority:** 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102-105, 111, 134a, 134b, 134c, 134d, 134f, and 135; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

**§ 92.11 [Amended]**

2. In § 92.11(d)(1)(i) the words "and except with respect to horses from Argentina," would be added immediately following the word "Mexico,".

Done in Washington, DC, this 8th day of March 1989.

**James W. Glosser,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 89-5736 Filed 3-10-89; 8:45 am]

BILLING CODE 3410-34-M

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**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**14 CFR Part 1259**

**National Space Grant College and Fellowship Program**

**AGENCY:** National Aeronautics and Space Administration (NASA).

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule establishes NASA policies, responsibilities, and procedures relative to the National Space Grant College and Fellowship Program established by Title II of the National Aeronautics and Space Administration Authorization Act of 1988. This program, through the designation of Space Grant colleges/consortia and the establishment of Space Grant programs and fellowships, is designed to broaden the base of universities and individuals contributing to and benefiting from aerospace science and technology and ultimately contribute to the development and utilization of space resources.

**DATE:** Comments must be submitted on or before April 12, 1989.

**ADDRESS:** Educational Affairs Division, Code XE, NASA Headquarters, Washington, DC 20546. Comments may be inspected in FB6, Room 6127, between 8:00 a.m. and 4:30 p.m.

**FOR FURTHER INFORMATION CONTACT:** Elaine T. Schwartz, 202/453-8344.

**SUPPLEMENTARY INFORMATION:** The National Aeronautics and Space Administration has determined that this proposed rule does not constitute a major rule for the purposes of Executive Order 12291 and it will not have a significant economic impact on a substantial number of small business entities under the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 1259**

Aerospace, Consortium, Fellowship Program, Higher Education, Space, Grant College.

Part 1259 is added to Title 14, Chapter V, to read as follows:

## PART 1259—NATIONAL SPACE GRANT COLLEGE AND FELLOWSHIP PROGRAM

**Subpart 1—Basic Policy**

Sec.
1259.100 Scope of part.
1259.101 Definitions.
1259.102 General policy.
1259.103 Special authorities—gift acceptance and other Federal funding.

**Subpart 2—Space Grant Program and Project Awards**

1259.200 Description.
1259.201 Types of Space Grant program and project awards—regular and special.
1259.202 Application procedures.
1259.203 Limitations.

**Subpart 3—National Needs Grants**

1259.300 Description.
1259.301 Identification of national needs.
1259.302 Application procedures.
1259.303 Limitations.

**Subpart 4—Space Grant College and Consortium Designation**

1259.400 Description.
1259.401 Responsibilities.
1259.402 Basic criteria and application procedures.
1259.403 Limitations.
1259.404 Suspension or termination of designation.

**Subpart 5—Space Grant Fellowships**

1259.500 Description.
1259.501 Responsibilities.
1259.502 Application procedures.
1259.503 Limitations.

**Subpart 6—Space Grant Review Panel**

1259.600 Panel description.
1259.601 Establishment and composition.
1259.602 Conflict of interest.
1259.603 Responsibilities.

Authority: Pub. L. 100-147, 101 Stat. 869-875, 42 U.S.C. 2486; 42 U.S.C. 2452.

**Subpart 1—Basic Policy**

**§ 1259.100 Scope of part.**

(a) This Part 1259 establishes the policies, responsibilities, and procedures relative to the National Space Grant College and Fellowship Program established by Title II of the National Aeronautics and Space Administration Authorization Act of 1988. (Pub. L. 100-147, Oct. 30, 1987, 101 Stat. 869-875, 42 U.S.C. 2486). This statute authorizes the Administrator of the National Aeronautics and Space Administration (NASA), in order to carry out the purposes of the National Space Grant College and Fellowship Act (the Act), to accept conditional or unconditional gifts and donations, to accept and use funds from other Federal departments, agencies and instrumentalities, to make awards with respect to such needs or problems and to designate Space Grant colleges. It further directs the Administrator to establish a graduate fellowship program to provide educational assistance to qualified individuals in fields related to space, and to establish an independent committee known as the Space Grant Review Panel to review and advise the Administrator with respect to Space Grant programs.

(b) The regulations of this part do not apply to awards made by NASA under any other authority.

**§ 1259.101 Definitions.**

For the purposes of this part, the following definitions shall apply:

(a) "Field related to space" means any academic discipline or field of study (including the physical, natural and biological sciences, and engineering, space technology, education, economics, sociology, communications, planning, law, international affairs and public administration) which is concerned with or likely to improve the understanding, assessment, development, and utilization of space.

(b) "Institution of higher education" means any college or university in any State which:

(1) Admits as regular students only individuals who have a certificate of

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graduation or equivalent from a secondary school;

(2) Is legally authorized within such State to provide a program of education beyond secondary education;

(3) Provides an educational program for which a bachelor's degree or other higher degree is awarded;

(4) Is a public or other nonprofit institution; and

(5) Is accredited by a nationally recognized accrediting agency or association.

(c) "National of the United States" means a citizen of the United States or a native resident of a possession of the United States. It does not refer to or include a citizen of another country who has applied for United States citizenship.

(d) "Panel" means the Space Grant Review Panel established pursuant to section 210 of the Act.

(e) "Person" means any individual, public or private corporation, partnership or other association or entity (including any Space Grant college, Space Grant consortium, institution of higher education, institute, or laboratory), or any State, political subdivision thereof, or agency or officer of a State or political subdivision thereof.

(f) "Space" means "aeronautical and space activities" which has the meaning given to such term in section 103(1) of the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2452).

(g) "Space Grant college" means any public or private institution of higher education which is designated as such by the Administrator or designee pursuant to section 208 of the Act.

(h) "Space Grant regional consortium" means any association or other alliance which is designated as such by the Administrator or designee pursuant to section 208 of the Act.

(i) "Space Grant program" means any program which:

(1) Is administered by any Space Grant college, Space Grant regional consortium, institution of higher education, institute, laboratory or State or local agency; and

(2) Includes two or more projects involving education and one or more of the following activities in the fields related to space:

(i) Research;

(ii) Training; or

(iii) Advisory services.

(j) "Space Grant program award" means any award contemplated under section 208(a) of the Act.

(k) "Special Space Grant program award" means any award extended under section 208(b) of the Act.

(l) "Specific national need grant" means any award extended under section 207 of the Act.

(m) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States.

(n) "State Space Grant cooperating institution" means any institution of higher education in a State which does not have a designated Space Grant college that is named by the Administrator or designee to provide selected Space Grant program functions within that State.

### § 1259.102 General policy.

(a) In accordance with subsections 103(a)(2) and (3) of the National Aeronautics and Space Act of 1958, as amended, (42 U.S.C. 2457(a)(3)), it is NASA's policy, through various educational programs, to provide direct support for and encouragement to teachers, students, and prospective students in fields related to space.

(b) In compliance with the National Space Grant College and Fellowship Act (42 U.S.C. 2486), it shall be NASA's purpose to:

(1) Increase the understanding, assessment, development, and utilization of space resources by promoting a strong educational base, responsive research and training activities, and broad and prompt dissemination of knowledge and techniques;

(2) Utilize the abilities and talents of the universities of the Nation to support and contribute to the exploration and development of the resources and opportunities afforded by the space environment;

(3) Encourage and support the existence of interdisciplinary and multidisciplinary programs of space research, to engage in activities of training (including teacher education), research and public service and to have cooperative programs with industry;

(4) Encourage and support the existence of consortia, composed of university and industry members, to advance the exploration and development of space resources in cases in which national objectives can be better fulfilled than through the programs of single universities;

(5) Encourage and support Federal funding for graduate fellowships in fields related to space;

(6) Support activities in colleges and universities generally for the purpose of creating and operating a network of institutional programs that will enhance achievements resulting from efforts under this Act; and

(7) Encourage cooperation and coordination among Federal agencies and Federal programs concerned with space issues.

(c) It shall be NASA's policy to designate Space Grant colleges, State Space Grant cooperating institutions and Space Grant regional consortia and award fellowships, grants, contracts, and other transactions competitively in a merit-based review process.

(d) It shall be NASA's policy to designate and make awards without discriminating on the basis of sex, race, color, religion, national origin, or handicap.

### § 1259.103 Special authorities—gift acceptance and other Federal funding.

(a) *Acceptance of gifts.* (1) In order to carry out the provisions of the Act, the Administrator is authorized to accept conditional or unconditional gifts or donations of services, money or property, real, personal or mixed, tangible or intangible. This authority is delegated to the Director, Educational Affairs Division.

(2) The Administrator or designee may decline any gift or donation that the Administrator determines is not in accord with the purposes of the program. Also, conditional gifts or donations that are not in compliance with the Act or the implementing regulations shall be declined. NASA may use a reasonable amount from a gift or donation to cover any administrative costs associated with such gift or donation.

(b) *Acceptance and use of funds from other Federal agencies.* (1) To carry out the provisions of the Act, the Administrator is authorized to accept and use funds from other Federal departments, agencies, and instrumentalities to pay for awards under this program. This authority is delegated to the Director, Educational Affairs Division.

(2) The Administrator or designee may decline any such funds when the Administrator determines acceptance would not be in accord with the purposes of the program. NASA may use a reasonable amount from transferred Federal funds to cover any administrative costs associated with such transfers.

## Subpart 2—Space Grant Program and Project Awards

### § 1259.200 Description.

Awards are authorized to establish any Space Grant and/or fellowship program or project if such program or project will further the purposes of the Act.



### § 1259.201 Types of Space Grant program and project awards—regular and special.

(a) A regular Space Grant program or project award shall:

(1) Be funded by NASA up to 66 percent of the total cost of the Space Grant award and/or fellowship program involved; or

(2) Be funded up to 100 percent of its cost if funded by another Federal entity.

(b) A special Space Grant program or project award may be funded up to 100 percent of the total cost of the special project if the Administrator or designee, the Director, Educational Affairs Division, finds that:

(1) No reasonable means is available through which the applicant can meet the matching requirements for a regular Space Grant award under paragraph (a) of this section;

(2) The probable benefit of such project outweighs the public interest in such matching requirement; and

(3) The same or equivalent benefit cannot be obtained through the award of a regular Space Grant program or project award under paragraph (a) of this section or the award of a specific national need grant under section 207 of the Act.

### § 1259.202 Application procedures.

(a) The opportunity to apply shall be announced by the Director, Educational Affairs Division.

(b) The application procedures and evaluation guidelines for awards under this section will be included in the announcements of such programs.

(c) The applications will be reviewed by a peer review merit selection panel appointed by the Director, Educational Affairs Division.

### § 1259.203 Limitations.

Public Law 100-147, section 206(d) (2) and (3), states that:

(a) Funds for awards made under this section may not be used to:

(1) Purchase land;

(2) Purchase, construct, preserve, or repair any building; or

(3) Purchase or construct any launch facility or launch vehicle.

(b) Funds may be used to lease any of the items listed in paragraph (a) of this section as long as prior written approval is obtained from the Administrator or designee.

## Subpart 3—National Needs Grants

### § 1259.300 Description.

National needs awards may be awarded by the Administrator or designee to meet such needs or problems relating to aerospace identified by the Space Grant Review Panel, by NASA officials or by any person. Such awards may be up to 100 percent of the total cost of the program or project.

### § 1259.301 Identification of national needs.

National needs shall be identified by the Administrator who shall consider specific national needs and problems relating to space proposed by the space Grant Review Panel, any NASA official or any person.

### § 1259.302 Application procedures.

(a) The Administrator or designee has the authority to make awards to meet identified national needs.

(b) The Director, Educational Affairs Division, shall establish a competitive, merit-based review process to examine unsolicited national needs proposals.

### § 1259.303 Limitations.

The same limitations shall apply as are stated in § 1259.203.

## Subpart 4—Space Grant College and Consortium Designation

### § 1259.400 Description.

(a) The Administrator may designate Space Grant colleges, Space Grant college consortia, and Space Grant regional consortia in order to establish Federal/university partnerships to promote a strong educational base in the space and aeronautical sciences. These designated colleges and consortia will provide leadership for a network of American colleges and universities, industry, and State and local governments in space-related fields. The Administrator hereby delegates this authority to the Director, Educational Affairs Division.

(b) Designation of Space Grant colleges, Space Grant college consortia, and Space Grant regional consortia shall be for 5 years. Designation of Space Grant colleges and consortia may be continued based on a merit review at the beginning of the fifth year.

(c) Each designated Space Grant college or consortium will receive:

(1) A Space Grant award that requires a 100 percent match; and

(2) Funds for fellowships.

(d) Each Space Grant college or consortium will be funded annually.

### § 1259.401 Responsibilities.

Each designated Space Grant college or consortium shall:

(a) Designate a Space Grant Program Director;

(b) Establish a Space Grant Office;

(c) Administer a fellowship program;

(d) Develop and implement programs of public service, interdisciplinary space-related programs, advisory activities, and cooperation with industry, research laboratories, State and local governments, and other colleges and universities, particularly institutions in their State and/or region with significantly large enrollments of racial minorities who are under-represented in science and technology; and

(e) Provide nonfederal matching funds (exclusive of in-kind contributions) for the Space Grant program equal to that provided by NASA.

### § 1259.402 Basic criteria and application procedures.

(a) Any institution of higher education may be designated a Space Grant college if the Administrator or designee finds that it has a balanced program of research, education, training and advisory services in fields related to space, as further defined in the program announcement.

(b) Any association or other alliance of two or more persons may be designated a Space Grant regional consortium, if the Administrator or designee finds that such association or alliance:

(1) Is established for the purpose of sharing expertise, research, educational or training facilities, and other capabilities in order to facilitate research, education, training, and advisory services, in any field related to space; and

(2) Will encourage and follow a regional approach to solving problems or meeting needs relating to space, in cooperation with other institutions of higher education, Space Grant program grantees, and other persons in the region.

(c) The opportunity to apply for designation shall be announced by the Director, Educational Affairs Division. The application procedures and evaluation guidelines for designation shall be included in the designation announcement.

(d) Designation will be decided by a competitive merit review of the program proposal measured against the purposes of the Act and including, but not limited to, proposed linkages with other colleges and universities (particularly institutions with significant enrollments of under-represented minority groups), public service, and collaboration with space-related industry.

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**§ 1258.403 Limitations.**

The same limitations shall apply as are stated in § 1259.203.

**§ 1258.404 Suspension or termination of designation.**

The Administrator or designee, the Director, Educational Affairs Division, may, for cause, and after an opportunity for a hearing before an Administrative Judge appointed by the Deputy Administrator, suspend or terminate the Space Grant designation of any institution or consortium.

**Subpart 5—Space Grant Fellowships**

**§ 1258.500 Description.**

The Space Grant fellowship program will provide educational and training assistance to qualified individuals at the graduate level in fields related to space. Awards will be made to institutions of higher education for fellowships. The student recipients shall be known as NASA Space Grant Fellows.

**§ 1258.501 Responsibilities.**

(a) All institutions which receive Space Grant fellowships will be expected to use the awards to increase the pool of graduate students in fields related to space.

(b) The overall fellowship program shall be cognizant of institutional diversity and geographical distribution.

**§ 1258.502 Application procedures.**

(a) All applicants for designation as Space Grant colleges and consortia must apply for Space Grant fellowships.

(b) Applicants for Space Grant program or project grants (under 1258.200) and for national needs grants (under 1258.300) may also apply for Space Grant fellowships.

(c) There will be a merit review selection of Space Grant fellowship awards.

**§ 1258.503 Limitations.**

(a) Fellowships shall be awarded only to Nationals of the United States.

(b) Any students supported under this fellowship program shall not be funded for more than 4 years unless the Director, Educational Affairs Division, makes an exception.

**Subpart 6—Space Grant Review Panel**

**§ 1258.600 Panel description.**

An independent committee, the Space Grant Review Panel, which is not subject to the Federal Advisory Committee Act, shall be established to advise the Administrator with respect to Space Grant program and project awards, the Space Grant fellowship program, and the designation and operation Space Grant colleges and consortia. A majority of the voting members shall be individuals who, by reason of knowledge, experience, or training are especially qualified in one or more of the fields related to space. The other voting members shall be individuals who, by reason of knowledge, experience or training, are especially qualified in, or representative of, education, extension services, State government, industry, economics, planning, or any other activity related to the purposes of the Space Grant program.

**§ 1258.601 Establishment and composition.**

(a) The Panel, to be located at NASA Headquarters in Washington, DC, will be composed of ten voting members who are not current NASA employees.

(b) It shall include four from Federal departments, agencies or entities that have an interest in space programs or science and education, and six nonfederal representatives.

(c) The nonfederal representatives shall include two persons who are directly involved with the Space Grant program at a Space Grant college or consortium, one person involved with the Space Grant program at a university that is not a designated Space Grant college, a university president or chancellor, one representative of a space-related industry, and the last person to be from whatever field the Administrator determines to be of greatest concern.

(d) The Panel members shall be appointed by the Administrator or designee.

(e) The relevant organizations and associations in aerospace and science education fields will be asked to provide three names for each position on the panel. The Administrator shall consider them, but not be limited to them, in the selection process.

(f) The Administrator or designee shall select a Chair and a Vice Chair. The Vice Chair shall act as Chair in the absence or incapacity of the Chair.

(g) The Administrator or designee may select NASA officials to serve as ex officio, nonvoting members of the panel.

**§ 1258.602 Conflict of interest.**

Any member of the Panel who has a personal or financial interest in an issue before the Panel shall abstain from voting on such issue.

**§ 1258.603 Responsibilities.**

(a) The Panel shall advise the Administrator and the Director, Educational Affairs Division, with respect to:

(1) Applications or proposals for, and performance under, awards made pursuant to sections 206 and 207 of Title II of the Act;

(2) The Space Grant fellowship program;

(3) The designation and operation of Space Grant colleges and Space Grant regional consortia, and the operation of Space Grant and fellowship programs;

(4) The formulation and application of the planning guidelines and priorities pursuant to section 205(a) and (b)(1) of Title II of the Act; and

(5) Such other matters as the Administrator refers to the Panel for review and advice.

(b) The Panel shall meet biannually and at any other time at the call of the Chair or upon a request from a majority of the voting members or at the call of the Administrator.

(c) The Panel may exercise such powers as are reasonably necessary in order to carry out the duties enumerated in paragraph (a) of this section.

(d) The Director, Educational Affairs Division, shall appoint an Executive Secretary who shall perform administrative duties for the Panel.

(e) Federal members of the Panel will have their agencies reimbursed by NASA for any travel costs and per diem expenses required to attend Panel meetings.

(f) Nonfederal members of the Panel will be reimbursed by NASA for travel costs and per diem expenses required to attend Panel meetings.

March 1, 1989.

**Dale D. Myers,**

*Deputy Administrator.*

[FR Doc. 89-5457 Filed 3-10-89; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

**17 CFR Part 240**

**[Rel. No. 34-26590; File No. S7-6-89]**

### Disclosure of Equity Participants in Control Transactions

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Securities and Exchange Commission ("Commission") today is publishing for comment proposals to revise the instructions to certain schedules filed in connection with control transactions. The proposals are intended to provide shareholders with material information concerning significant equity participants in limited partnerships, closely-held corporations, and similar entities engaged in control transactions.



**DATE:** Comments should be received on or before May 12, 1989.

**ADDRESS:** Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Comment letters should refer to File No. S7-6-89. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549.

**FOR FURTHER INFORMATION CONTACT:** David A. Sirignano or Richard E. Baltz at (202) 272-3097, Office of Tender Offers, Division of Corporation Finance.

**SUPPLEMENTARY INFORMATION:** The Commission is proposing for comments amendments to Schedule 13D,[1] 14D-1,[2] 14B [3] and 13E-3.[4]

### I. Executive Summary

The Commission is proposing to amend the instructions to certain schedules required to be filed in connection with major acquisitions of securities, tender offers, proxy contests, and going private transactions to require disclosure of information concerning the identity and background of limited partners and other participants holding significant investments in limited partnerships or other closely-held entities or groups of such entities engaged in these transactions. The Commission is concerned that the current instructions, which require a demonstration of control before disclosure concerning an equity participant is mandated, do not adequately provide shareholders and the marketplace with material information about the identity and background of significant participants in the transaction. Accordingly, the Commission proposes to amend Instruction C to Schedules 13D, 14D-1 and 13E-3 and Instruction 2 to Schedule 14B. The revised instructions would require responses to specified items of the schedules relating to the identity, background, funding, and purposes of the filing person with respect to each person who (i) contributes more than 10 percent of the equity capital or (ii) has the right to receive, in the aggregate, more than 10 percent of the profits or assets upon liquidation or dissolution of the filing person. If the filing person is a group, for the purposes of the instructions, only the group would be considered the filing person. The disclosure would be required concerning persons contributing 10 percent or more of the group's capital or entitled to 10 percent or more of the profits or assets of the group upon liquidation or dissolution. The revised instructions would not apply if the filing person has a class of equity securities registered under section 12 of the Securities Exchange Act of 1934 ("Exchange Act").[5]

### II. Background

The disclosure requirements for persons engaged in corporate control transactions are designed to publicize material facts concerning the nature of the transaction and the participants so that security holders have the opportunity to make informed investment decisions. Disclosure of this information is required primarily by the rules adopted under the Williams Act amendments [6] to the Exchange Act and the proxy rules [7] promulgated under section 14(a) of the Exchange Act.

Section 13(d) of the Exchange Act serves a pivotal role in this disclosure scheme. It requires that a Schedule 13D [8] be filed by any person that acquires beneficial ownership [9] of more than five percent of a class of equity securities.[10] Sections 14(d) and 14(e) of the Exchange Act provide for the regulation of tender offers and the filing of a Schedule 14D-1 by the bidder. Schedule 14D-1 requires that the bidder provide information about its identity and background, past contracts and transactions with the subject company, source and amount of funds, and purposes, plans, or proposals, among other items. A summary of the information contained in the Schedule 14D-1 must be adequately disseminated to security holders.[11] When corporate control is sought through a proxy contest for the election of directors, the proxy rules require that each participant in a contested solicitation to file with the Commission a Schedule 14B containing specified information about the persons conducting the solicitation. Shareholders of the affected issuer must receive a summary of this information.[12] Rule 13e-3[13] prescribes the filing, disclosure and dissemination requirements in connection with a going private transaction by an issuer or an affiliate. The Schedule 13E-3 is the primary disclosure document that must be filed with the Commission. The information presented in the Schedule 13E-3 must be disseminated to security holders.[14]

While the specific requirements of each of these disclosure schemes differ, each serves to provide material information to the marketplace, the shareholders, and to the issuer. This information includes the identity and background of the participants, the purpose of the acquisition or solicitation, any future plans or proposals for the company, the source and the amount of funds, and any borrowing to acquire the securities or engage in the solicitation.

Instruction C to Schedule 13D specifies the persons for whom information must be provided when making a required filing:

If the statment is filed by a general or limited partnership, syndicate, or other group, the information called for by items 2-6 shall be given with respect to (i) each partner of such general partnership; (ii) each partner who is denominated as a general partner or who functions as a general partner of such limited partnership; (iii) each member of such syndicate or group; and (iv) each person controlling such partner or member. If the statement is filed by a corporation or if a person referred to in (i), (ii), (iii) or (iv) of this Instruction is a corporation, the information called for by the above-referenced items shall

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[1] 17 CFR 240.13d-101.
[2] 17 CFR 14d-100.
[3] 17 CFR 240.14a-102.
[4] 17 CFR 240.13e-100.
[5] 15 U.S.C. 78a *et seq.*
[6] Sections 13(d) [15 U.S.C. 78m(d)], 13(e) [15 U.S.C. 78m(e)], 14(d) [15 U.S.C. 78n(e)], 14(e) [15 U.S.C. 78n(e)] and 14(f) [15 U.S.C. 78n(f)] of the Exchange Act.
[7] 17 CFR 240.14a-1 *et seq.*
[8] 17 CFR 240.13d-101.
[9] A beneficial owner of a security is defined in Rule 13d-3 as including any person who, directly or indirectly, through any contract, arrangement, understanding or otherwise has or shares voting power, which includes the power to vote or to direct the voting of such security, and/or investment power, which includes the power to dispose or to direct the disposition of the security. 17 CFR 240.13d-3.
[10] Acquisitions of equity securities that would have been registered under section 12 except for the insurance company exemption in section 12(g)(2)(G) [15 U.S.C. 78l(g)(2)(G)], or are issued by a closed-end investment company registered under the Investment Company Act of 1940 [15 U.S.C. 80a-1 to 80a-52], also are subject to the beneficial ownership reporting requirements. In addition, if a person has the right to acquire beneficial ownership of a subject security within 60 days (A) through the exercise of any warrant, option, or right, (B) through the conversion of a security, (C) pursuant to the power to revoke a trust, discretionary account, or similar arrangement, such person shall be deemed to be the beneficial owner of the subject securities which may be acquired through the exercise or conversion of such security or power. If a security or power specified by (A), (B), or (C) is acquired with the purpose or effect of changing or influencing control, the person is deemed a beneficial owner of the subject security upon acquisition. Rule 13d-3(d)(1)(i) [17 CFR 240.13d-3(d)(1)(i)].
[11] Rules 14d-4 and 14d-6 [17 CFR 240.14d-4 and 14d-6].
[12] Item 8(b), Schedule 14A [17 CFR 240.14a-101].
[13] 17 CFR 240.13e-3.
[14] Rules 13e-3(e) and (f) [17 CFR 240.13e-3(e) and (f)].

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be given with respect to (a) each executive officer and director of such corporation; (b) each person controlling such corporation; and (c) each executive officer and director of any corporation or other person ultimately in control of such corporation.

The language of Instruction C to Schedules 14D–1 and 13E–3 is identical in all relevant respects. Instruction 2 to Schedule 14B specifies that the information shall be given for each partner, officer, and director of a partnership, corporation or other business entity, and each person controlling such entity who is not a participant. Although this instruction does not distinguish between general and limited partners, the instruction has been construed consistently with Instruction C of the other schedules.

### III. Discussion of Proposals

It has become a common practice to use limited partnerships, similar closely-held entities, or groups of such entities [16] to raise the capital to finance and conduct the acquisition of corporate control. Under the current regulatory framework, the acquiring entity is the person required to comply with the applicable disclosure provisions rather than the persons actually financing, benefiting from and, in some instances, structuring the transaction.[16] These persons (collectively, "substantial equity participants") directly or indirectly may contribute significant capital or be entitled to receive a significant interest in the profits or assets, including shares of the acquired entity, upon liquidation or dissolution of the filing entity. The items to the schedules, however, do not require disclosure concerning substantial equity participants, as such, because the current regulations elicit disclosure only from persons acting in an express *or de facto* control relationship with the acquiring entity.

Limited partnerships and similar closely-held entities are often used in hostile takeovers. In fiscal year 1988, approximately 27 percent of the hostile tender offers commenced used limited partnerships as a source of financing for the transaction.[17] In some cases, the bidder or purchaser is a newly formed entity with no operations and whose single purpose is to acquire control of the subject company. The controlling persons of the bidder may be identified as limited partnerships or similar closely-held entities for which information is reported only for the general partners, as is required by current Instruction C to the Schedule 14D–1. In many instances, related limited partnerships or other entities provide financing to the entity identified as the bidder.

Similar issues may arise in proxy contests. The identity and control exercised by the limited partners financing the proxy contest for Gillette Co., Inc., conducted by The Coniston Group,[18] became a central issue in the proxy contest subsequent litigation between the parties. Even after The Coniston Group amended its Schedule 13D to reveal the identify of limited partners of the filing persons, the amendment merely revealed another level of limited partnerships.[19] No information was provided about the limited partners, other than that capital contributions provided a source of funds for the acquisition of securities.

Although absent an actual control relationship additional disclosure may not be required under the current rules, information about significant equity participants and the terms and conditions of their participation may be material to shareholders and the market.[20] In many instances, the mere agreement to provide a significant equity contribution to a transaction may provide a form of implicit control or potential influence that may be difficult to quantify, describe, or define. Moreover, upon liquidation or dissolution of the filing entity or group, equity participants could become beneficial owners of a significant block of the acquired issuer's stock, without any prior disclosure of these persons' identities, backgrounds, or plans and proposals for the issuer. Information concerning equity participants also may be particularly material where the investor is participating in the transaction in another capacity, because without full disclosure of the entire interest of that person, investors may be misled as to the actual nature of that person's interest.[21] The continuing use of limited partnerships and similar entities to shield persons engaging in or otherwise benefiting from control transactions raises questions about the access of shareholders and of the marketplace to this important information.

In light of its experience in administering its disclosure requirements under the Williams Act and the proxy rules, the Commission has concluded that additional disclosure concerning significant equity participants in control transactions may be necessary in order to assure that security holder receive complete information about the persons participating in a control transaction. The proposed revisions to the current form of Instruction C would serve to assure that material information about significant equity participants would be disclosed. In addition, a person whose equity participation in the acquiring entity could provide an indirect form of influence over management, which may be difficult factually to prove, also would be identified.

The Commission proposes amendments to Instruction C of Schedules 13D, 14D–1, and 13E–3. Instruction 2 to the Schedule 14B also would be revised to conform to Instruction C. The proposals would apply a uniform standard of disclosure for schedules filed in connection with

[16] Such entities include, but are not limited to, corporations, trusts or other vehicles that are not subject to the reporting provisions of the Exchange Act.

[17] *See, e.g., City Capital Associates Ltd v. Interco, Inc.*, 860 F.2d 60, 64 (2d Cir. 1988).

[18] *See, e.g.*, Schedules 14D–1 filed during FY 1988 relating to the tender offers for Telex Corp. (10/9/87); Singer Co., (11/13/87); Duratest (11/12/87); Wherehouse Entertainment, Inc. (11/24/87); High Voltage Engineering Corp. (1/0/88); Stop & Shop companies, Inc. (2/1/88); UBG Corp. (2/1/88); J.P. Stevens (9/23/88); Wm. Carter Cos. (4/7/88); Arkansas Best Corp. (8/0/88); MacMillan & Co. (7/12/88); Interco (8/15/88); MacMillan & Co. (8/19/88); Damon Corp. (8/18/88); Polaroid Corp. (9/9/88).

[19] On February 1, 1988, RB Partners, a Bahamian limited partnership, the principal limited partner of which is Coniston Partners, and RB Associates of New Jersey, a New Jersey limited partnership, filed, and thereafter amended on several occasions, a Schedule 13D. The general partner of RB Partners and RB Associates is Colliet, Tierney and Oliver, a New Jersey general partnership. All three partnerships and related entities are known collectively as "The Coniston Groups."

[20] Amendment No. 4 to Schedule 13D filed April 11, 1988.

[20] The concept *of* control is intended to require disclosure regardless of whether the person otherwise falls within one of the enumerated categories in the instructions. Control, however, is a question of fact, difficult to verify absent extensive inquiry. As the Federal Trade Commission ("FTC") found in an analogous context, at the very least, it seems unlikely that an entity would continue to exist if it operated in a way that was adverse to the interests of a significant equity participant. *See* Adopting Release, 52 FR 20800, 20801 (May 29, 1987) (amending § 801.1(b) [16 CFR 801.1(b)] to define 50 percent ownership as "control" with respect to partnerships and other entities that do not have voting securities). The proposed amendments to the Schedules 13D, 14D–1, 14B and 13E–3 differ from the FTC rule because the revisions would not create a presumption of control.

[21] Failure to disclose the full nature of the equity participation of investment banking firms that also provide financial advice and arrange financing has been held to be a material omission. *MAI Basic Four, Inc.* v. *Prime Computer, Inc.*, No. 88–2513–MA (Mass. Dist. Ct. Dec. 29, 1988); *Koppers Co. Inc.* v. *American Express Co.*, 689 F. Supp. 1271 (W.D. Pa. 1988); and *Arkansas Best Corp.* v. *Pearlman*, 688 F. Supp. 976 (D. Del. 1988). *See also Polaroid Corp.* v. *Disney*, No. 88–3978, slip op. at n. 2 (2d Cir. Nov. 23, 1988); *City Capital Associates Limited Partnership* v. *Interco Inc.*, 860 F.2d 60.



change of control transactions. The proposed amendments would require disclosure concerning any person who contributes more than 10 percent of the equity capital of the filing person, or who, directly or indirectly, has a right to receive, through an ownership interest, capital contribution or otherwise, more than 10 percent of the profits or the assets (upon liquidation or dissolution) of the filing person, where the filing person does not have a class of equity securities registered with the Commission under section 12 of the Exchange Act. If the filing person is a group, disclosure would be required from persons contributing 10 percent or more of the group's capital or entitled to receive 10 percent or more in profits or assets upon liquidation or dissolution of the group. The instructions would focus on the assets and profits of the group rather than each individual filing person in order to limit the number of equity participants about whom disclosure would be required.

The instruction would apply to capital contributions to prevent evasion of the disclosure requirements by using special allocations to avoid a 10 percent interest in profits or assets upon liquidation or dissolution. The proposed instructions also would require aggregation of interests to determine whether disclosure is required. Thus, if a person contributes capital through a series of limited partnerships or closely-held entities, no one of which exceeds a 10 percent interest, ownership would be disclosed only on an aggregate basis, if the total interest in profits or assets of the filing person or group (upon liquidation or dissolution) exceeds 10 percent.

The Commission recognizes that application of the instructions to complicated financing schemes will, in many instances, present difficult interpretive issues. The Commission intends that the instructions be interpreted to require disclosure if information about a significant participant in the transaction would otherwise be omitted.

The revised instructions would not require disclosure of substantial participants in filing persons that are reporting entities with a class of equity securities registered under section 12 of the Act. Information concerning substantial equity participants is otherwise required to be disclosed under the beneficial ownership reporting requirements of sections 13(d) and 13(g) [22] of the Exchange Act, as well as in periodic reports and proxy materials filed by the issuer.[23]

The information called for by the revised instructions would be required regardless of whether the entity participant otherwise would be deemed a controlling person of the entity engaged in the control transaction. Controlling persons of a filing entity would continue to be disclosed as under the current instructions. The Commission also is proposing to revise Instruction C to Schedules 13D, 13E–3, 14D–1, and Instruction 2 to Schedule 14B to clarify that the instruction applies to any person who controls a limited partnership or other non-corporate entity. This revision is consistent with the application of the instruction to corporations and staff interpretation.

Commentators should address whether 10 percent is an appropriate level of participation at which to require disclosure, or whether a lower or higher threshold, *e.g.*, 5 percent, 15 percent, or 20 percent, should apply. The Commission also observes that more complex formulations can be used. For example, if there are two 25 percent participants, two 20 percent participants, and a 10 percent participant in a limited partnership, it is unlikely that the 10 percent participant will be able to assert significant equity-like influence in comparison with the influence asserted by the 20 percent participants. In order to focus disclosure requirements on persons most likely to assert direct or indirect influence, the disclosure requirement could be made to apply only to a specified number of the filing entity's largest participants, provided that each holds at least a 10 percent interest. For example, the amended rule could require disclosure from the four largest participants, provided that each has at least a 10 percent interest. The number of participants required to be disclosed by such a formulation can be increased or decreased, and the minimum threshold for disclosure can also be increased (to 15 percent or 20 percent) or decreased (to 7 percent or 5 percent). The Commission requests comment as to whether such more complex threshold reporting requirements are desirable, the appropriate parameters for such requirements, and the costs and benefits of relying on such more intricate threshold reporting criteria.

The Commission also requests comments on whether additional criteria should be considered in imposing a disclosure obligation, such as whether the acquiring entity was formed generally for acquisition purposes or solely for the acquisition of a single issuer. In addition, the Commission requests comments on the additional costs the revised instructions would impose on reporting persons and whether the proposals would result in duplicative or unnecessary disclosure of equity participation in the transaction. Specific cost data should be provided. Conversely, comment is required on whether the proposals, as drafted, would benefit shareholders and the marketplace, and whether the proposals would be subject to evasion.

The proposed revisions would neither subject additional persons to individual reporting requirements, nor amend the existing items of the relevant schedules to broaden the type of disclosure required.[24] Rather, the information required from the reporting person would be increased solely because information would be required concerning additional significant equity participants in the transaction. The information required by these items in most cases will have to be requested by the filing person from its equity participants. The filing person must certify that after reasonable inquiry and to the best of its knowledge and belief, the information provided concerning the equity participants is true, complete and correct.[25]

The information required by Instruction C to the Schedule 13D would apply only to Items 2–6, inclusive, as under the current instruction. Item 2 would require that the identity and background of the significant equity participants be provided. The revision also would require, under Item 3, a description of the terms under which the

[22] 15 U.S.C. 78m(d) and 78m(g).

[23] *See, e.g.*, Form 10–K, Item 12 (17 CFR 249.310) and Schedule 14A, Item 6(d).

[24] The identification of significant equity participants and certain additional information currently may be required under circumstances pursuant to specific items of the schedules. For example, Item 6 to the Schedule 13D requires the filing person to describe "any contracts, arrangements, understandings or relationships (legal or otherwise) among the persons named in Item 2 and between such persons and any person with respect to any securities of the issuer . . . naming the persons with whom such contracts, arrangements, understandings or relationships have been entered into." Item 7 requires that there be filed as an exhibit copies of all written agreements, contracts, arrangements, understandings, plans or proposals relating to the borrowing of funds or the acquisition, liquidation, sale of assets, merger, or change in business or corporate structure of the issuer. This item would require the filing, as an exhibit, of limited partnership agreements and any offering memoranda used to syndicate limited partnership interests in the filing person if the memoranda constitute a plan or proposal relating to these matters. Items 7 and 11, respectively, elicit similar disclosure in the Schedule 14D–1.

[25] *See generally* signature requirements with respect to the affected schedules.

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equity contribution was made, and the terms of any financing arrangements to fund the contributions.[38] In response to Item 4, "Purpose of the Transaction," the filing person would be required to describe the purpose and any plans or proposals of a significant equity investor. Any interest in the securities of the issuer held by any significant equity participant would be described in response to Item 5, and any understandings or relationships with the filing person or other equity participants would be identified in Item 6. Similar responses would be required from the filing person responding to Items 2–7 of the Schedule 14D–1.

The proposed revisions would not necessarily require the disclosure of financial information from a significant equity participant. As under current rules,[37] if the interest and the control exercised by the equity participant were sufficient to render it a bidder,[38] financial information, if material, would be required. Item 9 of Schedule 14D–1 provides that adequate financial information concerning the bidder must be provided, where a bidder is other than a natural person and the bidder's financial condition is material to a decision by a security holder on whether to sell, tender, or hold the securities being sought.[39] In addition, Item 9 provides that entities controlling a bidder formed for the sole purpose of making a tender offer may have to provide adequate financial information.

The required disclosure in the Schedule 14B would be restricted to the information called for by Items 2, 3, 4(b), and 4(c). Those items require disclosure of the person's identity and background, interests in the securities of the issuer, transactions with management and others,[40] and any arrangements or understandings with respect to future employment or future transactions with the issuer or its affiliates. Revised Instruction C to the Schedule 13E–3 would apply only to Items 2, 3, 5, 6, 10 and 11, as under the current instruction. Items 7, 8 and 9, requiring, respectively, a discussion of the purpose, alternatives, reasons and effects of the transaction, a statement of belief as to the fairness of the transaction, and the identification and summary of any reports, opinions, appraisals and certain negotiations, would continue to affect only the issuer or affiliate engaging in the transaction.

## IV. Cost-Benefit Analysis

To evaluate the benefits and costs associated with the proposed revisions to Schedules 13D, 14D–1, 14B and 13E–3, the Commission requests commentators to provide views and data as to the costs and benefits associated with amending the disclosure requirements. The proposed revisions would not subject additional persons to the reporting requirements, but could require that filing persons gather and disclose additional data, and could lead to additional information being disclosed about substantial investors in filing entities. Only the information required by the filer would be increased.

## V. Initial Regulatory Flexibility Analysis

The Initial Regulatory Flexibility Analysis concerns the proposed amendments to Instruction C to Schedules 13D, 14D–1 and 13E–3 and Instruction 2 to Schedule 14B. The analysis has been prepared by the Commission in accordance with 5 U.S.C. 604.

The analysis notes that the proposed amendments would not increase the number of small entities required to file Schedules 13D, 14D–1, 13E–3 and 14B. Although a person otherwise required to file may incur an increased reporting obligation, the Commission does not believe that there will be a significant economic impact on a substantial number of small entities.

A copy of the Initial Regulatory Flexibility Analysis may be obtained by contacting Richard E. Baltz in the Office of Tender Offers, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

## VI. Request for Comments

Any interested persons wishing to submit written comments on the proposals, to suggest additional changes, or to submit comments on other matters that might have an impact on the proposals, are requested to do so. In addition to the specific inquiries made throughout this release, the Commission solicits comments on the usefulness of the proposed revisions to Instruction 2 to Schedule 14B and Instruction C to Schedules 13D, 14D–1, and 13E–3 to reporting persons, registrants and the marketplace at large. The Commission also requests comment on whether the proposed rule, if adopted, would have an adverse effect on competition or would impose a burden on competition that is neither necessary nor appropriate in furthering the purposes of the Exchange Act. Comments on this inquiry will be considered by the Commission in complying with its responsibilities under section 23(a)(2) of the Exchange Act.[41]

The Commission also encourages the submission of written comments with respect to any aspect of the initial regulatory flexibility analysis. Such written comments will be considered in the preparation of the final regulatory flexibility analysis if the proposed rules are adopted.

Persons wishing to submit written comments should file three copies thereof with Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Comment letters should refer to File No. S7–9–89. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549.

## VII. Statutory Basis and Text of Amendments

The amendments are being proposed pursuant to the authority set forth in sections 3(b), 13, 14 and 23 of the Securities Exchange Act of 1934.

### List of Subjects in 17 CFR Part 240

Reporting and Recordkeeping Requirements, Securities.

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[36] Item 3 provides that "If any part of the purchase price is or will be represented by funds or other consideration borrowed or otherwise obtained for the purpose of acquiring, holding, trading or voting the securities, [provide] a description of the transaction and the names of the parties thereto." When capital is furnished by a limited partnership, disclosure of the source of funds often is restricted to stating that funds are derived from the working capital of the partnership. One court, addressing the question of whether the identities of limited partners must be provided in response to Item 3 on Schedule 13D, concluded that the "specific instruction, requiring information only from the general partner in a limited partnership controls over the more general instruction in Item 3 * * *." *HUBCO Inc. v. Rappaport*, 628 F. Supp. 945, 357–58 (D.N.J. 1986). To the extent that the court suggested that Instruction C does not require disclosure of limited partners even if control is demonstrated, the Commission disagrees and is proposing to revise the instruction to eliminate any confusion on that point. *See* Securities Exchange Act Release No. 13787 (July 21, 1987) (43 FR 36348).

[37] *See* Schedule 14D–1, Item 9; Rule 14d–6(e) [17 CFR 14d–6(e)].

[38] *See generally* cases cited *supra* n. 32.

[39] Courts also have required natural persons who are bidders in a transaction to provide financial information. *See, e.g., Riggs National Bank of Washington, D.C. v. Allbritton*, 516 F. Supp. 164 (D.D.C. 1981). *But see Simon v. Culverhouse*, 609 F. Supp. 1080 (D. Fla. 1985) (in order for a natural person to be subject to the financial disclosure requirement of Item 9, special circumstances must be present).

[40] Item 401(a), Regulation S–K [17 CFR 229.401(a)].

[41] 15 U.S.C. 78w(a)(2).



## VIII. Text of Proposals

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

## PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read, in part, as follows:

**Authority:** Sec. 23, 48 Stat. 901, as amended (15 U.S.C. 78w) * * *

2. By amending § 240.13d–101 by revising General Instruction C as follows:

**§ 240.13d–101 Schedule 13D—Information to be included in statements filed pursuant to § 240.13d–1(a) and amendments thereto filed pursuant to § 240.13d–2(a).**

* * * * *

*General Instructions.*

* * * * *

C. If the statement is filed by a general or limited partnership, syndicate, or other group, the information called for by Items 2–6, inclusive, shall be given with respect to: (i) Each partner of such general partnership; (ii) each partner who is denominated as a general partner or who functions as a general partner of such limited partnership; (iii) each member of such syndicate or group; and (iv) each person controlling such general or limited partnership, syndicate or other group or any partner or member thereof. If the statement is filed by a corporation or if a person referred to in (i), (ii), (iii) or (iv) of this Instruction is a corporation, the information called for by the above-referenced items shall be given with respect to (a) each executive officer and director of such corporation; (b) each person controlling such corporation; and (c) each executive officer and director of any corporation or other person ultimately in control of such corporation. If the person filing the statement is other than a natural person and does not have a class of equity securities registered under Section 12 of the Act, or if the statement is filed by a group that includes such entities, in addition to the information required above, information for Items 2–6, inclusive, shall be provided for each person who contributes more than 10 percent of the equity capital, or has a right to receive in the aggregate, directly or indirectly, more than 10 percent of the profits, or upon dissolution or liquidation, 10 percent of the assets of that person or group. Such disclosure shall be required notwithstanding the absence of a control relationship.

* * * * *

3. By amending § 240.13e–100 by revising General Instruction C as follows:

**§ 240.13e–100 Schedule 13E–3 [240.13e–3], Rule 13e–3 transaction statement pursuant to section 13(e) of the Securities Exchange Act of 1934 and rule 13e–3 [240.13e–3] thereunder.**

* * * * *

General Instructions

* * * * *

C. If the statement if filed by a general or limited partnership, syndicate, or other group, the information called for by Items 2, 3, 5, 6, 10, and 11, inclusive, shall be given with respect to: (i) each partner of such general partnership; (ii) each partner who is denominated as a general partner or who functions as a general partner of such limited partnership; (iii) each member of such syndicate or group; and (iv) each person controlling such general or limited partnership, syndicate or other group or any partner or member thereof. If the statement is filed by a corporation or if a person referred to in (i), (ii), (iii), or (iv) of this Instruction is a corporation, the information called for by the above-referenced items shall be given with respect to (a) each executive officer and director of such corporation; (b) each person controlling such corporation; and (c) each executive officer and director of any corporation or other person ultimately in control of such corporation. If the person filing the statement is other than a natural person and does not have a class of equity securities registered under section 12 of the Act, or if the statement is filed by a group that includes such entities, in addition to the information required above, information for Items 2, 3, 5, 6, 10, and 11, inclusive, shall be provided for each person who contributes more than 10 percent of the equity capital, or has a right to receive in the aggregate, directly or indirectly, more than 10 percent of the profits, or upon dissolution or liquidation, 10 percent of the assets of that person or group. Such disclosure shall be required notwithstanding the absence of a control relationship.

* * * * *

4. By amending 240.14a–102 by revising Instruction 2 as follows:

**§ 240.14a–102 Schedule 14B. Information to be included in statements filed by or on behalf of a participant (other than the issuer) pursuant to 240.14a–11(c) (Rule 14a–11(c)).**

*Instructions.* * * *

2. If the participant filing the statement is a general or limited partnership, syndicate, or other group, the information called for by Items 2, 3, and 4(b) and (c), inclusive, shall be given with respect to: (i) each partner of such general partnership; (ii) each partner who is denominated as a general partner or who functions as a general partner of such limited partnership; (iii) each member of such syndicate or group; and (iv) each person controlling such general or limited partnership, syndicate or other group, or any partner or member thereof, who is not a participant. If the participant filing the statement is a corporation or if a person referred to in (i), (ii), (iii), or (iv) of this Instruction is a corporation, the information called for by the above-referenced items shall be given with respect to (a) each executive officer and director of such corporation; (b) each person controlling such corporation; and (c) each executive officer and director of any corporation or other person ultimately in control of such corporation. If the person filing the statement is other than a natural person and does not have a class of equity securities registered under section 12 of the Act, or if the statement is filed by a group that includes such entities, in addition to the information required above, information for Items 2–7, inclusive, shall be provided for each person who contributes more than 10 percent of the equity capital, or has a right to receive in the aggregate, directly or indirectly, more than 10 percent of the profits, or upon dissolution or liquidation, 10 percent of the assets of that person or group. Such disclosure shall be required notwithstanding the absence of a control relationship.

* * * * *

5. By amending § 240.14d–100 by revising General Instruction C as follows:

**§ 240.14d–100 Schedule 14D–1. Tender offer statement pursuant to section 14(d)(1) of the Securities Exchange Act of 1934.**

* * * * *

*General Instruction.* * * *

C. If the statement is filed by a general or limited partnership, syndicate, or other group, the information called for by Items 2–7, inclusive, shall be given with respect to (i) each partner of such general partnership; (ii) each partner who is denominated as a general partner or who functions as a general partner of such limited partnership; (iii) each member of such syndicate or group; and (iv) each person controlling such general or limited partnership, syndicate or other group or any partner or member thereof. If the statement is filed by a corporation or if a person referred to in (i), (ii), (iii), or (iv) of this Instruction is a corporation, the information called for by the above-referenced items shall be given with respect to (a) each executive officer and director of such corporation; (b) each person controlling such corporation; and (c) each executive officer and director of any corporation or other person ultimately in control of such corporation. If the person filing the statement is other than a natural person and does not have a class of equity securities registered under section 12 of the Act, or if the statement is filed by a group that includes such entities, in addition to the information required above, information for Items 2–7, inclusive, shall be provided for each person who contributes more than 10 percent of the equity capital, or has a right to receive in the aggregate, directly or indirectly, more than 10 percent of the profits, or upon dissolution or liquidation, 10 percent of the assets of that person or group. Such disclosure shall be required notwithstanding the absence of a control relationship.

* * * * *

By the Commission

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March 6, 1989.
Jonathan G. Katz,
*Secretary.*
[FR Doc. 89-5672 Filed 3-10-89; 8:45 am]
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## DEPARTMENT OF THE TREASURY

### Fiscal Service

### 31 CFR Parts 235, 240, 245, and 248

### Indorsement and Payment of Checks Drawn on the United States Treasury

**AGENCY:** Financial Management Service, Fiscal Service, Treasury.

**ACTION:** Proposed rule.

**SUMMARY:** The proposed rule invites comments on changes to existing regulations governing the indorsement and payment of checks drawn on the United States Treasury and the processing of claims on Treasury checks. The changes are required by Title X of the Competitive Equality Banking Act of 1987 which (1) provides that Treasury may decline payment on a Treasury check unless it is negotiated within one year, (2) provides for the cancellation of Treasury checks outstanding after one year, and (3) decreases the time limit for claims on Treasury checks to be brought by or against the United States.

**DATE:** Comments must be received no later than May 12, 1989.

**ADDRESSES:** Send comments on the proposed rule to Joan Pesata, Director, Limited Payability Project, Financial Management Service, Room 816–C, Prince Georges Center II Building, 3700 East-West Highway, Hyattsville, Maryland 20782.

**FOR FURTHER INFORMATION CONTACT:** Joan Pesata, Director, Limited Payability Project, Financial Management Service, Room 816–C, Prince Georges Center II Building, 3700 East-West Highway, Hyattsville, Maryland 20782; telephone (301) 436–7172, (FTS) 436–7172.

**SUPPLEMENTARY INFORMATION:** On August 10, 1987, Congress enacted the Competitive Equality Banking Act of 1987 (CEBA), Pub. L. No. 100–86, 101 Stat. 552, 659. Title X of CEBA changes the existing laws with respect to the indorsement and payment of checks drawn on the United States Treasury. At present, Treasury checks may be negotiated at any time after they are issued. Under CEBA, Treasury is not required to pay a Treasury check issued on or after the effective date of the legislation unless it is negotiated to a financial institution within 12 months after the date of issuance of the check. Treasury is not required to pay a Treasury check issued before the effective date of the legislation unless it is negotiated to a financial institution within 12 months after the effective date. The legislation provides for the cancellation of Treasury checks which are outstanding for more than one year.

Title X of CEBA changes the existing laws concerning the filing of claims on account of Treasury checks. Under existing law, a claimant may bring a claim on a Treasury check for 6 years from the date of issuance. Under CEBA, a claim is barred unless presented to the agency that authorized the issuance of the check within one year after the date of issuance of the check. Claims on checks issued before the effective date of the legislation must be filed within one year after the effective date. The new law also reduces the time period during which Treasury may reclaim the amount of a check which has been paid over a forged or unauthorized indorsement.

Congress provided that the amendments contained in Sections 1002, 1003, and 1004 of Title X of CEBA would become effective 6 months after enactment or on such later date as the Secretary of the Treasury may prescribe. On February 8, 1988, Treasury published a Policy statement in the **Federal Register** (53 FR 3584) which extended the effective date of the statute to October 1, 1989. Section 1005 of Title X of CEBA authorizes the Secretary of the Treasury to prescribe rules, regulations and procedures as he deems necessary to implement the amendments made by Sections 1002, 1003 and 1004, including the recertification of Treasury checks which have been cancelled or for which a claim has been asserted or barred. In the proposed rule, Treasury amends the existing regulations concerning the payment of checks and check claims to implement the changes required by the statute. The proposed rule also provides explicit authority for agency recertification of payments. It is anticipated that the Final rule will be effective on October 1, 1989, which is the same date that the statutory provisions become effective.

### Summary of Proposed Rule

*Part 235*

Part 235 governs the issuance of settlement checks for checks drawn on the United States Treasury and drawn on designated depositaries that have been negotiated and paid on a forged or unauthorized indorsement. Title X of CEBA addresses Treasury checks only and is silent on the subject of depositary checks. Therefore, the regulation preserves the existing authority in Part 235 for the issuance of settlement checks for checks drawn on depositaries. The authority to issue replacement checks for forged Treasury checks is found in Part 245 of the proposed rule.

*Part 240*

Part 240 governs the payment and indorsement of Treasury checks. Both § 240.3—*Limitations on payments* and § 240.4—*Cancellation and distribution of the proceeds of checks* are new. The time limitations on the payment of Treasury checks are contained in § 240.3. The regulation requires all Treasury checks issued after October 1, 1989 to bear the legend, "VOID AFTER ONE YEAR." Sections 240.3(c), (d) and (e) restate Treasury's existing rights with respect to Treasury checks: (1) Treasury has the right to examine checks and refuse payment of any check; (2) Treasury checks are deemed paid only after first examination by Treasury has been completed; and (3) If Treasury has notice of a question of law of fact about whether a check is properly payable, Treasury may defer payment until the Comptroller General settles the question.

Section 240.4 provides for the cancellation of checks which have been outstanding more than one year. The proceeds of checks issued on or after October 1, 1989 which are subsequently cancelled shall be returned to the agency which authorized the issuance of the check. The proceeds of checks issued before October 1, 1989 which are subsequently cancelled shall be applied as provided in Title X of CEBA (31 U.S.C. 3334) to eliminate the balances in accounts that represent uncollectible accounts receivable and other costs associated with the payment of checks and check claims by the Department of Treasury on behalf of all payment certifying agencies. Any remaining proceeds shall be deposited to the miscellaneous receipts of the Treasury.

Section 240.6 is renamed *Reclamation of amounts of paid checks* to reflect the usage of the term "reclamation" by Treasury for an action by Treasury to recover from the presenting bank or other endorser the amount of a check that has been paid over a forged or unauthorized endorsement. Section 240.6(d) contains the new time limits on reclamation actions. Treasury may reclaim within one year after the date of payment. The date of payment to the date on which the Federal Reserve Bank gives provisional credit for the item to the member bank or clearing bank. The one year period for reclamations is extended by 180 days if a timely check claim is filed with the agency that authorized the issuance of the check.

The other changes in Part 240 are relatively minor. There are definitions for two additional terms—"Certifying official" and "Commissioner". In addition, several sections in the existing Part 240 have been renumbered to accomodate the new material, but the text of these sections remains unchanged. Sections 240.11 through 240.15 concerning Indorsement of Checks is essentially unchanged from the existing regulation. However, the proposed rule in § 240.11(f) deletes a provision in the existing § 240.10(f) permitting the presentation of Social Security benefit checks to the Treasury Regional Financial Center in certain cases. The provision is being deleted because, after the effective date, all claims on Treasury checks must originate with the agency that authorized the issuance of the check.



*Part 245*

The proposed rule would change Part 245 substantially. The title of the part would become "Claims on Account of Treasury Checks," which more accurately reflects the subject matter of the part.

The central feature of Part 245 is contained in § 245.5—*Recertification of Payment.* Section 1005 of CEBA authorizes the Secretary of Treasury to write regulations implementing the amendments made by sections 1002, 1003 and 1004 of the law, including recertification of Treasury checks which have been cancelled or for which a claim has been asserted or barred. Under existing law, Treasury can, subject to certain conditions, issue substitute checks when the original check is lost, destroyed, mutilated or defaced. 31 U.S.C. 3331. When the original check is forged, Treasury can, under existing law, issue a settlement check. 31 U.S.C. 3343. The Introductory section explains that Part 245 covers the issuance of replacement checks when (a) the original check has been lost, stolen, destroyed, or mutilated, (b) the original check has been negotiated and paid on a forged or unauthorized indorsement, and (c) the original check has been cancelled.

The proposed rule gives Federal agencies broad authority to recertify payments when there is a claim of non-receipt, loss, destruction, mutilation or defacement of a Treasury check. The regulation provides a certifying agency may recertify a new payment at any time after receipt of a claim. Therefore, Treasury will only issue a second check, which is called a "replacement check," pursuant to the recertification of the payment by the certifying agency. After the effective date, Treasury will no longer issue settlement checks or substitute checks.

Section 245.3 contains the basic time limit for filing a claim on a Treasury check. A claim must be filed within one year after the date of issuance of the check. Claims on checks issued before October 1, 1989, must be filed before October 1, 1990. In addition, the regulation states that claims must originate with the agency that authorized the issuance of the check. However, a claim by an indorser may be presented directly to Treasury.

After the effective date, Treasury will maintain checks and check records for 18 months from the date of issuance. During that 18 month period, Treasury will provide both information on the status of the check and a copy of the check to the agency that authorized its issuance. After 18 months, Treasury will transfer custody of the checks and check records to the agency that autorized the issuance of the check for its use in the settlement of any claim for an obligation represented by a check.

*Part 248*

The proposed rule contains minor changes to Part 248. Part 248 preserves the existing authority to issue substitutes for lost, stolen, or destroyed checks drawn on foreign depositary banks. Title X of CEBA does not address depositary checks.

### Executive Order 12291

The Treasury Department has determined that the proposed regulation is not a "major rule" within the meaning of Executive Order 12291 (46 FR 13193, February 19, 1981). It is not likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Therefore, preparation of a Regulatory Impact Analysis is not required.

### Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603 and 604) are not applicable to this proposal because the proposed rule, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities. The proposal will not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The proposal is not expected to have significant secondary or incidental effects on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of Section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this proposed rule, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities.

### Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), the collection of information contained in this proposed rule has been submitted to the Office of Management and Budget for review. Comments on the collection of information should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for the Financial Management Service, with copies to the Financial Management Service at the address previously specified.

The collection of information in this regulation is in 31 CFR 245.4. The proposed rule requires that a person making a claim on a Treasury check provide information concerning the check to the government agency which authorized the issuance of the check. The information will be used by the agency to determine whether the claimant is entitled to a replacement check. The likely respondents are individuals.

The proposed rule imposes no new collection of information requirement nor does it increase the collection of information burden. The reporting burden is attributable to the various agencies that receive the information from check claimants. The estimated total reporting burden for all government agencies is as follows:

Estimated total annual reporting burden: 160,320 hours.

Estimated average annual burden per respondent: .167 hour.

Estimated number of respondents: 960,000.

Estimated annual frequency of responses: On occasion.

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List of Subjects

*31 CFR Part 235*

Banks, Banking, Claims, Forgery.

*31 CFR Part 240*

Banks, Banking, Forgery.

*31 CFR Part 245*

Banks, Banking, Claims.

*31 CFR Part 248*

Banks, Banking, Claims, Foreign banking.

For the reasons set forth in the preamble, Treasury proposes to amend Title 31, Chapter II, Subchapter A of the Code of Federal Regulations as follows:

## PART 235—ISSUANCE OF SETTLEMENT CHECKS FOR FORGED CHECKS DRAWN ON DESIGNATED DEPOSITARIES

1. Part 235 is amended by revising the part heading as set forth above.

2. The authority citation for Part 235 is revised to read as follows:

Authority: 31 U.S.C. 3343

**§ 235.1 [Amended]**

3. Section 235.1 is amended by removing "drawn on the United States Treasury and".

**§ 235.3 [Amended]**

4. Section 235.3 is amended by removing "the Commissioner, Financial Management Service, with respect to a check drawn on the United States Treasury, or".

5. Section 235.6 is revised to read as follows:

**§ 235.6 Implementing instructions.**

Procedural instructions implementing these regulations will be issued by the Commissioner of the Financial Management Service in Volume I, Part 4 of the Treasury Financial Manual.

Parts 240 and 245 are revised to read as follows:

## PART 240—INDORSEMENT AND PAYMENT OF CHECKS DRAWN ON THE UNITED STATES TREASURY

### General Provisions

Sec.


240.1 Scope of regulations.
240.2 Definitions.
240.3 Limitations on payments.
240.4 Cancellation and distribution of proceeds of checks.
240.5 Guaranty of indorsements.
240.6 Reclamation of amount of paid checks.
240.7 Demand and protest.
240.8 Offset.
240.9 Processing of checks.
240.10 Release of original checks.


### Indorsement of Checks


240.11 Indorsement by payees.
240.12 Checks issued to incompetent payees.
240.13 Checks issued to deceased payees.
240.14 Checks issued to minor payees in certain cases.
240.15 Powers of attorney.


### Appendix—Standard Forms for Power of Attorney and Their Application.

Authority: 5 U.S.C. 301; 12 U.S.C. 391; 31 U.S.C. 3328; 31 U.S.C. 3331; 31 U.S.C. 3343, 31 U.S.C. 3711; 31 U.S.C. 3716; 31 U.S.C. 3717; 332 U.S. 234 (1947); 316 U.S. 393 (1943).

### General Provisions

**§ 240.1 Scope of regulations.**

The regulations in this part prescribe the requirements for indorsement and the conditions for payment of checks drawn on the United States Treasury. These regulations also establish procedures for collection of amounts due the United States Treasury because of payments on checks bearing forged or other unauthorized indorsements or other material defects or alterations.

**§ 240.2 Definitions.**

(a) "Certifying agency" means an agency for whom a Treasury disbursing officer or a non-Treasury disbursing officer makes payment in accordance with 31 U.S.C. 3325. The responsibilities of a certifying official are set forth at 31 U.S.C. 3528.

(b) "Check" or "checks" means a check or checks drawn on the United States Treasury.

(c) "Check payment" means the amount paid to a presenting bank in accordance with § 240.9(a)(3) of this part.

(d) "Commissioner" means the Commissioner of the Financial Management Service, Department of the Treasury, 401 14th Street, SW., Washington, DC 20227.

(e) "Days" means calendar days.

(f) "Financial institution" means any bank, savings bank, savings and loan association, Federal or State chartered credit union, or similar institution.

(g) "Item" means a reference in a monthly interest billing statement to a check for the amount of which Treasury has demanded refund from a presenting bank.

(h) "Monthly interest billing statement" means a statement prepared by Treasury and sent to a presenting bank which includes the following information regarding each outstanding demand for refund:

(1) The reclamation date;

(2) The reclamation number;

(3) Check identifying information; and

(4) The balance due, including interest.

(i) "Person" or "persons" means an individual or individuals, or an institution or institutions including all forms of financial institutions.

(j) "Presenting bank" means (1) a financial institution which, either directly or through a correspondent banking relationship, presents checks to and receives provisional credit from a Federal Reserve Bank, or (2) a depositary which is authorized to charge checks directly to the General Account of the United States Treasury and present them to Treasury for payment through a designated Federal Reserve Bank.

(k) "Protest" means a presenting bank's written statement and any supporting documentation tending to prove that it is not liable for refund of the reclamation balance.

(l) "Reclamation" means a demand by Treasury for refund of the amount of a check payment.

(m) "Reclamation date" means the date on which a demand for refund was prepared. Normally, demands are sent to presenting banks within two working days of the reclamation date.

(n) "Treasury" means the United States Treasury.

(o) "U.S. securities" means securities of the United States and securities of Federal agencies and wholly or partially Government-owned corporations for which the Treasury acts as the transfer agent.

(p) "Unauthorized indorsement" means (1) an indorsement made by a person other than the payee, except as authorized by and in accordance with § 204.5 and § 240.11 through § 240.15 of this part, (2) an indorsement by a financial institution under circumstances in which the financial institution breaches the guaranty required of it by 31 CFR 209.9(a) (*see*, 31 CFR 209.8), or (3) a missing indorsement where the depositary bank had no authority to supply the indorsement.

**§ 240.3 Limitations on payment.**

(a) As a general rule,

(1) The Commissioner shall not be required to pay a Treasury check issued on or after October 1, 1989 unless it is negotiated to a financial institution within 12 months after the date on which the check was issued; and

(2) The Commissioner shall not be required to pay a Treasury check issued before October 1, 1989 unless it is negotiated to a financial institution no later than October 1, 1990.

(b) All checks drawn on the United States Treasury and issued on or after October 1, 1989 shall bear a legend, stating "VOID AFTER ONE YEAR". The legend is notice to payees and indorsers of a general limitation on the payment of Treasury checks. The legend, or the



inadvertent lack thereof, does not limit, or otherwise affect, the rights of the Commissioner under the law.

(c) The Treasury shall have the usual right of a drawee to examine checks presented for payment and refuse payment of any checks. The Treasury shall have a reasonable time to make such examination.

(d) Checks shall be deemed to be paid by the United States Treasury only after first examination has been completed.

(e) If the Treasury is on notice of a question of law or fact about whether a Treasury check is properly payable when the check is presented for payment, the Commissioner may defer payment until the Comptroller General settles the question.

**§ 240.4 Cancellation and distribution of proceeds of checks.**

(a) *Checks issued on or after October 1, 1989.* (1) Any check issued on or after October 1, 1989 that has not been paid and remains outstanding for more than 12 months shall be cancelled by the Commissioner.

(2) The proceeds from checks cancelled pursuant to paragraph (a) of this section shall be returned to the agency which authorized the issuance of the check and credited to the appropriation or fund account initially charged for the payment.

(3) Beginning January 1, 1991, and monthly thereafter, the Commission shall provide to each agency that authorizes the issuance of Treasury checks a list of those checks issued for such agency which were cancelled during the preceding month pursuant to paragraph (a) of this section.

(b) *Checks issued before October 1, 1989.* (1) Any check issued before October 1, 1989 that has not been paid and remains outstanding for more than 12 months shall be cancelled by the Commissioner no later than April 1, 1991.

(2) The proceeds from checks cancelled pursuant to paragraph (b) of this section shall be applied as required by 31 U.S.C. 3334.

**§ 240.5 Guaranty of indorsements.**

The presenting bank and the indorsers of a check presented to the Treasury for payment are deemed to guarantee to the Treasury that all prior indorsements are genuine, whether or not an express guaranty is placed on the check. When the first indorsement has been made by one other than the payee personally, the presenting bank and the indorsers are deemed to guarantee to the Treasury, in addition to other warranties, that the person who so indorsed had unqualified capacity and authority to indorse the check on behalf of the payee.

**§ 240.6 Reclamation of amounts of paid checks.**

(a) If, after a check has been paid by Treasury, it is found to:

(1) Bear a forged or unauthorized indorsement, or

(2) Contain any other material defect or alternation which was not discovered upon first examination, then, upon demand by the Treasury in accordance with the procedures specified in § 240.7 of this part, the presenting bank or other indorser shall refund the amount of the check payment.

(b) Interest on any unpaid item shall commence to accrue on the sixty-first day after the reclamation date. Interest shall be calculated at the rate set from time to time for purposes of 31 U.S.C. 323. Interest shall continue to accrue until the amount demanded is paid or the reclamation is abandoned by Treasury.

(c) In addition to its right to recover interest, Treasury shall have the right to recover such other applicable charges (*e.g.*, administrative collection costs, late payment penalties) as may be authorized or required by law.

(d) If the Treasury determines that a check has been paid over a forged or unauthorized indorsement, the Commission may reclaim the amount of the check from the presenting bank or any other indorser that breached its guarantee of indorsement prior to:

(1) The end of the one-year period beginning on the date of payment; or

(2) The expiration of the 180-day period beginning on the close of the period described in paragraph (d)(1) of this section if a timely claim under 31 U.S.C. 3702 is presented to the agency which authorized the issuance of the check.

**§ 240.7 Demand and protest.**

(a) For all reclamations an initial demand for refund of the amount of a check payment will be made by sending a "Request for Refund (Reclamation)," to the presenting bank or any other indorser. This Request shall advise the presenting bank of the amount demanded and the reason for the demand. Treasury will make follow-up demands by including each unpaid item on at least three monthly interest billing statements sent to the presenting bank. Monthly interest billing statements will identify any unpaid reclamation demands and will also show the amount of any accrued interest for each outstanding reclamation. Any discrepancies should be brought to Treasury's attention immediately at the address listed in paragraph (b) of this section. Monthly interest billing statements will contain or be accompanied by notice to the bank:

(1) That Treasury intends to collect the debt through administrative offset if the reclamation is not paid within 120 days of the reclamation date,

(2) That the bank has an opportunity to inspect and copy Treasury's records with respect to the reclamation,

(3) That the bank may, by filing a protest, request Treasury to review its decision that the bank is liable for the reclamation, and

(4) That the bank has an opportunity to enter into a written agreement with Treasury for the repayment of the amount of the reclamation. A request for a payment agreement must be accompanied by proof that satisfies the Treasury that the requesting bank is unable to repay the entire amount owed at the time that it is due.

(b) Requests for an appointment to inspect and copy Treasury's records with respect to a reclamation and requests to enter into repayment agreements should be sent in writing to: Department of the Treasury, Financial Management Service, Operations Division, Reclamation Branch, Room 700–D, 3700 East-West Highway, Hyattsville, MD 20782.

(c)(1) If a presenting bank wishes to contest its liability for the principal amount demanded, it shall send a protest, *i.e.*, a written statement and copies of all documentary evidence (*e.g.*, affidavits, account agreements, signature cards) and other written information raising a question of law or fact which, if resolved in the Bank's favor, would show that the bank is not liable, to: Department of the Treasury, Financial Management Service, Operations Division, Reclamation Branch, Room 700–D, 3700 East-West Highway, Hyattsville, MD 20782. The Director, Operations Division, who has supervisory authority over the Reclamation Branch, or his authorized subordinate, shall consider and decide any protest properly submitted under this paragraph. Neither the Director, Operations Division, nor any of his subordinates, shall have any involvement in the process of making findings or demands under § 240.6(a). In order to be considered, and to be timely, a protest must be received not later than 90 days after the reclamation date. Treasury will refrain from collection in accordance with § 240.8 while a timely protest is being considered. Unresolved protested items will be appropriately annotated on the monthly interest billing statement.

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(2) If Treasury accepts the protest, the presenting bank shall be notified in writing that efforts to collect the item and any accrued interest have been abandoned.

(3) If the evidence sent by the presenting bank does not satisfy Treasury that refund of the amount demanded is not required under § 240.6(a), Treasury will notify the presenting bank in writing of its decision that the bank is liable for the amount demanded and the reasons for its decision. If the presenting bank fails to send the amount demanded within 30 days of the date of Treasury's decision, Treasury shall proceed to collect the amount owed in accordance with § 240.8, provided that no offset shall be taken sooner than 120 days after the reclamation date.

(4) If an item, and/or accrued interest relating to that item remains unpaid for 90 days after the reclamation date and if there is no unresolved protest associated with the item, the monthly interest billing statement will be annotated with a notice that the presenting bank has until the next billing date to make payment on the item or be subject to offset thereon.

**§ 240.8 Offset.**

(a) If an item, and/or accrued interest relating to that item, remains unpaid for 120 days after the reclamation date and the presenting bank has been sent at least one monthly interest billing statement informing it that Treasury intends to collect that item by offset, Treasury may refer the matter to any federal agency and request that agency to offset the indebtedness and other applicable charges against amounts otherwise owed by the federal agency to the presenting bank. Monthly interest billing statements will be annotated to identify those specific items that are to be referred to an agency for offset.

(b) If a bank wishes to make payment on an item referred to an agency for offset, it should contact Treasury at the address listed in § 240.7(b) of this part to reduce the possibility of a double collection. If an agency to which an indebtedness is referred in accordance with this paragraph is unable to effect offset in whole or in part, Treasury may then refer the debt to any other agency and request offset in accordance with this paragraph. Treasury designates each agency acting under this paragraph as its designee for the sole purpose of effecting offset. No such designee shall be liable to any party for any any loss resulting from its action under this paragraph.

(c) If Treasury is unable to collect an amount owed by use of the offset described in paragraph (a), Treasury shall take such action against the presenting bank as may be necessary to protect the interests of the United States, including referral to the Department of Justice.

(d) If Treasury effects offset under this section and it is later determined that the presenting bank paid the amount of the reclamation and accrued interest thereon, or that a presenting bank which had timely filed a protest was not liable for the amount of the reclamation, Treasury shall promptly refund to the presenting bank the amount of its payment.

**§ 240.9 Processing of checks.**

(a) *Federal Reserve Banks.* (1) Federal Reserve Banks shall cash checks for government disbursing officers when such checks are drawn by the disbursing officers to their own order. Payment of such checks shall not be refused except for alteration or counterfeiting of the check, or or forged signature of the drawer.

(2) Federal Reserve Banks shall be expected to cash government checks presented direct to them by the general public.

(3) As a depository of public funds, each Federal Reserve Bank shall: (i) Receive checks from its member banks, nonmember clearing banks, or other depositors, when indorsed by such banks or depositors who guarantee all prior indorsements thereon; (ii) give immediate credit therefor in accordance with their current Time Schedules and charge the amount of the checks cashed or otherwise received to the account of the Treasury, subject to examination and payment by the United States Treasury; (iii) forward payment records and copies of checks to Treasury; and (iv) upon notification from Treasury, release the original checks to a designated Federal Records Center. The Treasury shall return to the forwarding Federal Reserve Bank a photocopy of any check the payment of which is refused upon first examination. Federal Reserve Banks shall give immediate credit therefor in the United States Treasury's account, thereby reversing the previous charge to the account for such check.

(b) *Depositaries outside of the mainland of the United States.* Banks outside of the mainland of the United States designated as depositaries of public money and permitted to charge checks to the General Account of the United States Treasury shall be governed by the operating instructions contained in the letter of authorization to them from Treasury and shall assume the obligations of presenting banks set forth in §§ 240.5 and 240.6. Checks charged to the General Account of the United States Treasury along with the supporting credit voucher shall be shipped to the Federal Reserve Bank of Richmond. The Treasury shall return to the presenting depository bank a photocopy of any check the payment of which is refused. The depositary bank shall give immediate credit therefor in the General Account of the United States Treasury, thereby reversing the previous charge to the Account for such check.

**§ 240.10 Release of original checks.**

An original check may be released to a responsible indorser upon receipt of a properly authorized request showing the reason it is required and that the request is in conformity with all applicable law including the Privacy Act.

## Indorsement of Checks

**§ 240.11 Indorsement by payees.**

(a) *General requirements.* Checks shall be indorsed by the payee or payees named, or by another on behalf of such payees as set forth in this part.

(b) *Checks indorsed by the payee or payees named.* When a check is indorsed by the payee or payees named, the forms of indorsement shall conform to those recognized by general principles of law and commercial usage for negotiation, transfer or collection of negotiable instruments.

(c) *Checks indorsed by another on behalf of the named payee or payees—*(1) *Acceptable indorsement.* The only acceptable indorsement of a check by another on behalf of the named payee or payees (except when a check is indorsed by a financial institution under the payee's or payees' authorization) is one which indicates that the person indorsing is doing so on behalf of the named payee or payees. Such an acceptable indorsement shall include the signature of the indorser and sufficient wording to indicate that the indorser is indorsing on behalf of the named payee or payees, pursuant to authority expressly conferred by or under law or other regulation. An example would be: "John Jones by Mary Jones". This example states the minimum indication acceptable. However, §§ 240.12(a)(1), 240.13(a)(1) and 240.15(d) specify the addition of an indication in specified situations of the actual capacity in which the person other than the named payee is indorsing. Checks indorsed "for collection" or "for deposit only to the credit of the within named payee or payees", are acceptable without any signature. However, in the absence of a signature, the presenting bank will be deemed to guarantee its good title to such checks to all subsequent indorsers and to Treasury.



(2) *Unacceptable indorsement.* The indorsement by another on behalf of the named payee or payees, which consists of the name(s) of the payee(s), whether as purported signature(s) or otherwise, and *not* the signature of the person other than the named payee or payees indorsing the check, regardless of the relationship between the indorser and the named payee or payees, will be rebuttably presumed to be a forgery and is unacceptable. The indorsement by a person who purports to indorse for the named payee(s) with an indorsement consisting of the name(s) of the payee(s), whether as purported signature(s) or otherwise, and the indorsing person's signature and no indication of the indorsing person's representative capacity, will create a rebuttable presumption that the indorsing person was not authorized to indorse for the named payee(s). In these circumstances it is the responsibility of the individual or institution accepting a check from a person other than the named payee(s) to determine that such person is authorized and has the capacity to indorse and negotiate the check. Evidence of the basis for such a determination may be required by the Treasury in the event of a dispute.

(d) *Indorsement of checks by a financial institution under the payee's authorization.* When a check is credited by a financial institution to the payee's account under the payee's or payees' authorization, the financial institution may use an indorsement substantially as follows: "Credit to the account of the within-named payee in accordance with the payee's or payees' instructions. XYZ". A financial institution using this form of indorsement will be deemed to guarantee to all subsequent indorsers and to the Treasury that it is acting as an attorney-in-fact for the payee or payees, under the payee's or payees' authorization, and that this authority is currently in force and has neither lapsed nor been revoked either in fact or by the death or incapacity of the payee or payees.

(e) *Indorsement of checks drawn in favor of financial institutions.* All checks drawn in favor of financial institutions, for credit to the accounts of persons designated payment so to be made, shall be indorsed in the name of the financial institutions as payee in the usual manner. Financial institutions receiving and indorsing such checks shall comply fully with Part 209 of this chapter.

(f) *Social Security benefit checks issued jointly to individuals of the same family.* A social security benefit check issued jointly to 2 or more individuals of the same family shall, upon the death of 1 of the joint payees prior to the negotiation of such check, be returned to the Social Security District Office. Payment of the check to the surviving payee or payees may be authorized by placing on the face of the check a stamped legend signed by an official of the Social Security Administration, redesignating such survivor or survivors as the payee or payees of the check. A check bearing such stamped legend, signed as herein prescribed, may be indorsed and negotiated by the person or persons named as if such check originally had been drawn payable to such person or persons.

**§ 240.12 Checks issued to incompetent payees.**

(a) *Classes of checks which may be indorsed by guardian or fiduciary.* Where the payee of a check of any class listed in § 240.11(a) has been declared incompetent:

(1) If a check is indorsed by a legal guardian or other fiduciary, such legal guardian or fiduciary shall include, as a part of the indorsement, an indication of the capacity in which the legal guardian or fiduciary is indorsing. An example would be: "John Jones by Mary Jones, guardian of John Jones". When a check indorsed in this fashion is presented for payment by a bank, it will be paid by the Treasury without submission to the Treasury of documentary proof of the authority of the guardian or other fiduciary, with the understanding that evidence of such claimed authority to indorse may be required by the Treasury in the event of a dispute.

(2) If a guardian has not been or will not be appointed, and if the check: (i) Was issued in payment of goods and services, tax refunds or redemption of currency, it shall be forwarded for advice to the certifying agency; or

(ii) Was issued in payment of principal or interest on U.S. securities, it shall be forwarded to the Bureau of the Public Debt, Division of Loans and Currency, Washington, DC 20226, with a full explanation of the circumstances.

(b) *Classes of checks which may not be indorsed by guardian or fiduciary.* Where the payee of a check of any other class has been declared incompetent, the check shall not be indorsed by a guardian or other fiduciary. The check shall be returned to the government agency for which issued with information as to the incompetency of the payee and submission of documentary evidence showing the appointment of the guardian or other explanation in order that a replacement check, and others to be issued subsequently, may be drawn in favor of the guardian.

**§ 240.13 Checks issued to deceased payees.**

(a)(1) *Classes of checks which may be indorsed by an executor or administrator.* Checks issued for the classes of payments indicated below, the right to which under law does not terminate with the death of the payee, when indorsed by an executor or administrator, shall include, as part of the indorsement, an indication of the capacity in which the executor or administrator is indorsing. An example would be: "John Jones by Mary Jones, executor of the estate of John Jones". Such checks, when presented for payment by a bank, will be paid by the Treasury without the submission of documentary proof of the authority of the executor or administrator, with the understanding that evidence of such claimed authority to indorse may be required by the Treasury in the event of a dispute. The classes of payments to which this subsection refers are:

(i) Payments for the redemption of currencies or for principal or interest on U.S. securities;

(ii) Payments for tax refunds; and

(iii) Payments for goods and services.

(2) If an executor has not been appointed, persons claiming as owners shall return the checks for appropriate handling to the Government agency that certified the payment. If there is doubt as to whether the proceeds of the check or checks pass to the estate of the deceased payee, the checks shall be handled in accordance with paragraph (b) of this section.

(b) *Classes of checks which may not be indorsed by an executor or administrator.* Checks issued for classes of payment other than those specified in paragraph (a) of this section may not be negotiated after the death of the payee, but must be returned to the Government agency that certified the payment for determination whether, under applicable laws, payment is due and to whom it may be made.

**§ 240.14 Checks issued to minor payees in certain cases.**

Checks issued to minors in payment of principal or interest on U.S. securities may be indorsed by either parent with whom the minor resides, or, if the minor does not reside with either parent, by the person who furnishes his chief support. The parent or other person indorsing in behalf of the minor shall present with the check his signed statement giving the minor's age, stating

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that the payee either resides with the parent or receives his chief support from the person indorsing in his behalf, and that the proceeds of the checks will be used for the minor's benefit.

**§ 240.15 Powers of attorney.**

(a) *Specific powers of attorney.* Any check may be negotiated under a specific power of attorney executed after the issuance of the check and describing it in full.

(b) *General powers of attorney.* Checks issued for the following classes of payments may be negotiated under a general power of attorney in favor of an individual, financial institution or other entity:

(1) Payments for the redemption of currencies or for principal or interest on U.S. securities.

(2) Payments for tax refunds, but subject to the limitations concerning the mailing of internal revenue refund checks contained in 26 CFR 601.506(b).

(3) Payments for goods and services.

(c) *Special powers of attorney.* Under decisions of the Comptroller General of the United States, classes of checks other than those specified in paragraph (b) of this section may be negotiated under a special power of attorney which names a financial institution as attorney-in-fact, and recites that it is not given to carry into effect an assignment of the right to receive payment, either to the attorney-in-fact or to any other person.

(d) *Proof of authority.* Check indorsed by an attorney-in-fact shall include, as part of the indorsement, an indication of the capacity in which the attorney-in-fact is indorsing. An example would be: "John Jones by Paul Smith, attorney-in-fact for John Jones." Such checks when presented for payment by a bank, will be paid by Treasury without the submission of documentary proof of the claimed authority, with the understanding that evidence of such claimed authority to indorse may be required by the Treasury in the event of a dispute.

(e) *Revocation of powers of attorney.* Powers of attorney are revoked by the death of the grantor and may also be revoked by notice from the grantor to the parties known, or reasonably expected, to be acting on the power of attorney. Notice of revocation to the Treasury will not ordinarily serve to revoke the power.

(f) *Acknowledgment of powers of attorney.* Where desirable or where required by foreign, state or local law, powers of attorney shall be acknowledged before a notary public or other officer authorized by law to administer oaths generally.

(g) *Seal or certificate of attesting officers.* Where acknowledgment of powers of attorney is desirable or required pursuant to paragraph (f) of this section, seals of attesting officers shall be impressed or stamped upon the power of attorney form, or the power of attorney shall be accompanied by a certificate from an appropriate official showing that the officer was in commission on the date of acknowledgment.

(h) *Forms.* Power of attorney forms issued under this part are listed in the appendix to this part. They may be obtained from the Financial Management Service, Property and Supply Section, Ardmore East Business Center, 3361–L 75th Avenue, Landover, MD 20785.

**Appendix—Standard Forms For Power of Attorney and Their Application.**

*Standard Form 231.* A general power of attorney on this form may be executed by an individual, firm, or sole owner, for checks drawn on the United States Treasury, in payment: (1) For redemption of currencies or for principal or interest on U.S. securities, (2) for tax refunds, and (3) for goods and services.

*Standard Form 232.* A specific power of attorney on this form, which must be executed after the issuance of the check, describing the check in full, may be used to authorize the indorsement of any class of check drawn on the United States Treasury.

*Standard Form 233.* A special power of attorney on this form naming a financial organization as attorney-in-fact and reciting that it is not given to carry into effect an assignment of the right to receive payment, either to the attorney in fact or to any other person, may be used for classes of payments other than those shown under Standard Form 231.

*Standard Form 234–5.* A general power of attorney may be executed by a corporation for the classes of payment listed under Standard Form 231.

*Standard Form 236–7.* A specific power of attorney may be executed on this form by a corporation to cover a specific check for any class of payment.

## PART 245—CLAIMS ON ACCOUNT OF TREASURY CHECKS

Sec.
245.1 Introductory.
245.2 Definitions.
245.3 Time limit for check claims.
245.4 Advice of nonreceipt or loss.
245.5 Recertification of payment.
245.6 Claim by an indorser.
245.7 Check status inquiry.
245.8 Receipt or recovery of original check.
245.9 Procedural instructions.
245.10 Performance of functions of the Commissioner.

**Authority:** R.S. 3646, as amended; 31 U.S.C. 3328; 31 U.S.C. 3331

**§ 245.1 Introductory.**

This part governs the issuance of replacement checks for checks drawn on the United States Treasury, when

(a) The original check has been lost, stolen, destroyed or mutilated or defaced to such an extent that it is rendered non-negotiable;

(b) The original check has been negotiated and paid on a forged or unauthorized indorsement, and

(c) The original check has been cancelled pursuant to § 240.4

**§ 245.2 Definitions.**

For purposes of this part:

(a) "Agency" means each authority of the United States for which the Treasury of the United States issues checks or for which checks drawn on the Treasury of the United States are issued.

(b) "Check" means a check drawn on the United States Treasury.

(c) "Certifying agency" means an agency for whom a Treasury disbursing officer or a non-Treasury disbursing officer makes payment in accordance with 31 U.S.C. 3325. The responsibilities of a certifying official are set forth at 31 U.S.C. 3528.

(d) "Commissioner" means the Commissioner of the Financial Management Service, Department of the Treasury, 401 14th Street, SW., Washington, DC 20227.

(e) "Person" means an individual, a partnership, a corporation, a labor organization, a government or a subdivision or instrumentality thereof, and any other entity to which a check may be issued.

(f) "Replacement check" means a check issued pursuant to the recertification of payment by a certifying official.

(g) "Secretary" means the Secretary of the Treasury.

**§ 245.3 Time limit for check claims.**

(a) Any claim on account of a Treasury check must be presented to the agency that authorized the issuance of such check within one year after the date of issuance of the check or within one year after October 1, 1989, whichever is later.



(b) Any claim by an indorser under § 245.6 will be considered timely if presented to the Commissioner within one year after the date of issuance of the check or within one year after October 1, 1989, whichever is later.

(c) Nothing in this subsection affects the underlying obligation of the United States, or any agency thereof, for which a Treasury check was issued.

**§ 245.4 Advice of nonreceipt or loss.**

(a) In the event of the nonreceipt, loss or destruction of a check drawn on the United States Treasury, or the mutilation or defacement of such a check to an extent which renders it nonnegotiable, the claimant should immediately notify the agency that authorized the issuance of such check, describing the check, stating the purpose for which it was issued and giving, if possible, its date, amount, Treasury symbol and number.

(b) In cases involving mutilated or defaced checks, the claimant should enclose the mutilated or defaced check with his communication to the agency.

**§ 245.5 Recertification of payment.**

Upon receipt of a claim concerning the nonreceipt, loss, destruction, mutilation or defacement of a check, or the cancellation of a check pursuant to § 240.4, the certifying agency may certify a new payment.

**§ 245.6 Claim by an indorser.**

When one or more Treasury checks are lost, stolen or destroyed in a single incident while in the possession of a person to whom the checks have been negotiated by the payee, and if the checks have not been paid, the Commissioner may issue a replacement check to the person to whom the checks had been negotiated.

**§ 245.7 Check status inquiry.**

(a) For a period not exceeding 18 months from the date of issuance of a Treasury check, the Commissioner will provide the status and a copy of the check, upon request, to the agency which authorized the issuance of the check.

(b) Upon expiration of the 18-month period beginning with the date of issuance of the check custody of the records concerning Treasury checks will be transferred to the agency which authorized the issuance of the check.

**§ 245.8 Receipt or recovery of original check.**

(a) If the original check is received or recovered by the claimant after he has requested the agency to issue a replacement check, but before a replacement check has been received, he should immediately advise the agency and hold such check until receipt of instructions with respect to the negotiability of such check.

(b) If the original check is received or recovered by the claimant after a replacement check has been received by him, the original shall not be cashed, but shall be forwarded immediately to the agency that authorized the issuance of such check. Under no circumstances should both the original and replacement checks be cashed.

**§ 245.9 Procedural instructions.**

The Commissioner of the Financial Management Service may issue procedural instructions, implementing these regulations, in Volume I, Part 4 of the Treasury Financial Manual.

**§ 245.10 Performance of functions of the Commissioner.**

The Commissioner of the Financial Management Service may authorize any officer of the Treasury Department to perform any of his functions under this part and to redelegate such authority within such limits as the Commissioner may prescribe.

## PART 248—ISSUE OF SUBSTITUTES OF LOST, STOLEN, DESTROYED, MUTILATED AND DEFACED CHECKS OF THE UNITED STATES DRAWN ON ACCOUNTS MAINTAINED IN DEPOSITARY BANKS IN FOREIGN COUNTRIES OR UNITED STATES TERRITORIES OR POSSESSIONS

1. The authority citation for Part 248 is revised to read as follows:

**Authority:** 31 U.S.C. 3331.

2. Section 248.1 is revised to read as follows:

**§ 248.1 Introductory.**

This part governs the issuance of substitutes for checks of the United States drawn on United States dollar or foreign currency accounts, maintained with designated depositaries in foreign countries or territories or possessions of the United States. Checks of the United States drawn on such depositaries are hereafter referred to as "depositary checks."

**§ 248.5 [Amended]**

3. Section 248.5 is amended by removing "§ 368.4" and adding in its place § 248.4".

**W. E. Douglas,**

*Commissioner.*

[FR Doc. 89–5584 Filed 3–10–89; 8:45 am]

BILLING CODE 4810–35–M

## DEPARTMENT OF TRANSPORTATION

**Coast Guard**

**33 CFR Part 100**

**[CGD 05–89–06]**

## Special Local Regulations for Marine Events, Approaches to Annapolis Harbor, Spa Creek, and Severn River, Annapolis, MD

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard is proposing to establish permanent special local regulations for the approaches to Annapolis Harbor, Spa Creek, and the Severn River, north to the Route 450 Bridge. This area is the site of several marine events each year, such as the Blue Angels and Insertion/Extraction Demonstrations and the Naval Academy Sailing Squadron Safety-at-Sea Seminar. The proposed regulations would govern vessel activities during these events. Notice of the precise dates and times that the regulations are effective will be published in the Local Notice to Mariners and by Federal Register Notice. The special local regulations are necessary to control vessel traffic due to the confined nature of the waterway and the expected congestion at the time of the events.

**DATES:** Comments should be received on or before April 27, 1989.

**ADDRESSES:** Comments should be mailed or hand delivered to Commander (bb), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004. The comments will be available for inspection and copying at Room 209 of that address. Normal office hours are between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** B.J. Stephenson, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004 (804) 398–6204.

**Drafting Information**

The drafters of this notice are Billy J. Stephenson, project officer, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and Lieutenant Commander Robin K. Kutz, project attorney, Fifth Coast Guard District Legal Staff.

**SUPPLEMENTARY INFORMATION:** Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names

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and addresses, identify this notice (CGD 05–89–08) and the specific section of the proposal to which their comments apply, and give reasons for each comment.

The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on the proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process. The receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed.

**Discussion of Regulation**

The area covered by this proposal is the same as that covered by special local regulations issued for several events in 1988, such as the Blue Angels and Insertion/Extraction Demonstrations. Federal Aviation Administration regulations require, as a prerequisite to issuing permits for such demonstrations, that the waterway over which aircraft will fly be closed to vessel traffic for the duration of the demonstrations. For this reason, the Commander, Fifth Coast Guard District, will close portions of the regulated area to all vessel traffic during all airshows, airshow practice sessions, and helicopter rescue demonstrations. The special local regulations will provide safety for spectator craft during the events.

If adopted, this proposal will apply to the 10th Annual Safety-at-Sea Seminar scheduled from 11:40 a.m. to 12:40 p.m. on April 1, 1989. It also will apply to future Safety-at-Sea Seminars, and an annual notice of the precise dates and times of the seminar would be published in a Local Notice to Mariners and by **Federal Register** Notice.

**Economic Assessment and Certification**

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). Because closure of the waterway is not anticipated for any extended period, commercial marine traffic will be inconvenienced only slightly. The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

**Federalism Assessment**

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment. Although closure of the proposed regulated area during marine events might have some small negative impact on the city of Annapolis, this impact pales when compared to the loss of revenue the local economy would face if these events could not be held due to a lack of regulation.

**Environmental Impact**

This rulemaking has been thoroughly reviewed by the Coast Guard and it has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.c of Commandant Instruction (COMDTINST) M16475.1B. A categorical Exclusion Determination statement has been prepared and has been placed in the rulemaking docket.

**List of Subjects in 33 CFR Part 100**

Marine safety, Navigation (water).

**Proposed Regulations**

In consideration of the foregoing, the Coast Guard proposes to amend Part 100 of Title 33, Code of Federal Regulations as follows:

**PART 100—[AMENDED]**

1. The authority citation for Part 100 continues to read as follows:

**Authority:** 33 U.S.C. 1233; CFR 1.46 and 33 CFR 100.35.

2. A new § 100.511 is added to read as follows:

**§ 100.511 Approaches to Annapolis Harbor, Spa Creek, and Severn River, Annapolis, Maryland.**

(a) *Definitions*—(1) *Regulated Area.* The approaches to Annapolis Harbor, the waters of Spa Creek, and the Severn River, shore to shore, bounded on the south by a line drawn from Carr Point, at latitude 38°58'58.0" North, longitude 76°27'40.0" West, thence to Horn Point Warning Light (LLNR 17935), at 38°58'24.0" North, longitude 76°28'10.0" West, thence to Horn Point, at 38°58'20.0" North, longitude 76°28'27.0" West, and bounded on the north by the State Route 450 Bridge.

(2) *The Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Group Baltimore.

(b) *Special Local Regulations.* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the immediate vicinity of this area shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any commissioned, warrant, or petty officer.

(3) Any spectator vessel may anchor outside of the regulated area specified in paragraph (a) of this section but may not block a navigable channel.

(c) *Effective Period.* The Commander, Fifth Coast Guard District publishes a notice in the **Federal Register** and the Fifth Coast Guard District Local Notice to Mariners that announces the times and dates that the section is in effect.

Dated: February 21, 1989.

**A.D. Breed,**

*Rear Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.*

[FR Doc. 89–5734 Filed 3–10–89; 8:45 am]

BILLING CODE 4910–14–M

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**33 CFR Part 100**

**[CGD 05–89–08]**

**Special Local Regulations; Marine Event; American Diabetes Association, Choptank River Swim, Choptank River Bridge, Cambridge, MD**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard is considering a proposal that would establish permanent regulations for the swim portion of the American Diabetes Association Triathalon, an annual event held in May. Annual notice of the precise name, dates and times of the swim will be published in the Local Notice to Mariners and a **Federal Register** Notice. The special local regulations will restrict general navigation in the regulated area during the event to provide for the safety of the swimmers and accompanying safety personnel.

**DATE:** Comments must be received on or before April 27, 1989.

**ADDRESS:** Comments should be mailed or hand carried to Commander (bb), Fifth Coast Guard District, 431 Crawford Street, Portsmouth Virginia 23704–5004.



The comments will be available for inspection and copying at Room 209 of this address. Normal office hours are between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** Billy J. Stephenson, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004 (804) 398–6204.

**SUPPLEMENTARY INFORMATION:** Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD 05–89–08) and the specific section of the proposal to which their comments apply, and give reasons for each comment. The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on the proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process. The receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed.

**Drafting Information**

The drafters of this notice are Mr. Billy J. Stephenson, project officer, Chief, Boating Affairs Branch, Fifth Coast Guard District, and Lieutenant Commander Robin K. Kutz, project attorney, Fifth Coast Guard District Legal Staff.

**Discussion of Proposed Regulation**

The area covered by this proposal is the same as that covered by the special local regulations for the American Diabetes Association Choptank River Swim (53 FR 16255; May 6, 1988) that was held on May 29, 1988. The swim portion of the triathalon is an annual event consisting of from 300 to 400 swimmers racing across the Choptank River from the north shore in front of the Ferry Boat Restaurant on the Talbot County side thence parallel to and within 200 feet of the Choptank River Bridge and ending at the south shore. It is necessary to close a portion of the Choptank River to all traffic except participants and their accompanying personnel for the safety of those competing in the swim. If adopted, this proposal will apply to the swim portion of the 1989 Reach the Beach Triathalon scheduled from 8:00 a.m. to 9:45 a.m. on May 28, 1989.

**Economic Assessment and Certification**

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). Because closure of the waterway is not anticipated for any extended period, commercial marine traffic will be inconvenienced only slightly. The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. Since the impact of this proposal is expected to be minimal the Coast Guard certifies that if adopted it will not have a significant economic impact on a substantial number of small entities.

**Federalism Assessment**

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

**Environmental Impact**

This proposed rulemaking has been thoroughly reviewed by the Coast Guard and it has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.c of Commandant Instruction (COMDTINST) M16475.1B. A Categorical Exclusion Determination statement has been prepared and has been placed in the rulemaking docket.

**List of Subjects in 33 CFR Part 100**

Marine safety, Navigation (water).

**Proposed Regulations**

In consideration of the foregoing, the Coast Guard proposes to amend Part 100 of Title 33, Code of Federal Regulations as follows:

**PART 100—[AMENDED]**

1. The authority citation for Part 100 continues to read as follows:

**Authority:** 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A new § 100.512 is added to read as follows:

**§ 100.512 American Diabetes Association Reach the Beach Triathalon, Choptank River, Cambridge, MD.**

(a) *Definitions*—(1) *Regulated Area.* The waters of the Choptank River, from shore to shore, between the Choptank River Bridge and a line drawn from the north shore at latitude 38°37'37" North, longitude 76°03'08" West, and the south shore at latitude 38°34'25" North, longitude 76°04'03" West.

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Group Baltimore.

(b) *Special Local Regulations.* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the immediate vicinity of this area shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any commissioned, warrant, or petty officer.

(3) Any spectator vessel may anchor outside of the regulated area specified in paragraph (a) of these regulations but may not block a navigable channel.

(c) *Effective Period.* The Commander, Fifth Coast Guard District publishes a notice in the **Federal Register** and the Fifth Coast Guard District Local Notice to Mariners that announces the times and dates that the section is in effect.

Dated: March 2, 1989.

**A.D. Breed,**

*Rear Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.*

[FR Doc. 89–5733 Filed 3–10–89; 8:45 am]

BILLING CODE 4910–14–M

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**33 CFR Part 100**

**[CGD13–89–02]**

**Marine Parade: Seattle Yacht Club, Opening Day**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of proposed rule making.

**SUMMARY:** The Coast Guard is considering a proposal to close Portage Cut (Montlake Cut) to all vessel traffic during the annual parade of boats which transits this waterway during Seattle Yacht Club's Opening Day. This parade consists of several hundred vessels transiting from west to east, through the cut in a solid stream of vessels, thus restricting any opportunity for non

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participating vessels to transit from east to west. This event is normally held the first weekend in May of each year. Although an inconvenience to non-participating vessels, the duration of this progression of vessels is approximately eight hours. Mass media attention is apparent weeks prior to this event, thus giving the general boating public ample time to plan alternate transit times.

**DATES:** Comments must be received on or before April 12, 1989.

**ADDRESSES:** Comments should be mailed to Commander, Coast Guard Group Seattle, 1519 Alaskan Way South, Seattle, WA 98134–1192. Attn: LTJG Ramsey. The comments and other materials referenced in this notice will be available for inspection and copying at Coast Guard Group Seattle, Operations Division. Normal office hours are between 8:00 a.m. and 3:00 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

**FOR FURTHER INFORMATION CONTACT:** LTJG R.T. Ramsey (206) 286–5412.

**SUPPLEMENTARY INFORMATION:** Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD13 89–02) and the specific section of the proposal to which their comments apply, and give reasons for each comment. A 30-day comment period will be provided in order to meet the time restraints of the upcoming 1989 parade. Only local interest in this event is anticipated. The regulations may be changed in light of comments received. All comments received before the expiration of the 30-day comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

**Drafting Information**

The drafters of this notice are LTJG R.T. Ramsey, project officer, and LT D. Schram, project attorney, Coast Guard District Legal Office.

**Discussion of Proposed Regulations**

Seattle Yacht Club's Opening Day has become a community event which has been in effect for more than thirty years. Public viewing of the event is estimated to exceed 300,000 people. In addition, there are an estimated 1000 vessels which observe the event as non-participants. Prior to the start of the parade a crew race is held through the Portage Cut. The Portage Cut is ideal for crew racing and has historically been used by the University of Washington's crew team. Planning meetings for this event begin 3–4 months prior to the parade. These meetings include but are not limited to the following organizations; U.S. Coast Guard, local military officials, Seattle police, state police, local media, Seattle fire department, Washington State Bridge officials, state and city transportation officials, U.S. Army Corps of Engineers and local commercial marine industry officials.

**Economic Assessment and Certification**

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that full regulatory evaluation is unnecessary. The Portage Cut is generally utilized by pleasure craft. The limited commercial traffic affected by this event are given several months warning via the local media and local Notice to Mariners, to schedule their transits prior to or after the parade. Local businesses welcome the economic benefits of the estimated 300,000 spectators. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant negative economic impact on a substantial number of small entities.

**List of Subjects in 33 CFR Part 100**

Regattas and Marine parades, Safety of life on navigable waters.

**Proposed Regulations**

In consideration of the foregoing, the Coast Guard proposes to amend Part 100 of Title 33, Code of Federal Regulations as follows:

**PART 100—[AMENDED]**

1. The authority citation for Part 100 continues to read as follows:

**Authority:** 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Section 100.1304 is added to read as follows:

**§ 100.1304 Annual Seattle Yacht Club's "Opening Day" Marine Parade.**

(a) *Regulated area.* All of Portage Bay, with the northwestern limit being the University Bridge, through the Portage Cut (Montlake Cut) into and including Union Bay, with the southeastern limit being an imaginary line from Webster Point to the eastern corner of Foster Island.

(b) *Effective period.* This regulation will be in effect from 8:00 a.m. to 3:00 p.m. on the first Saturday of May each year unless otherwise specified in the Thirteenth District Local Notice to Mariners.

(c) *Special Local regulations.* (1) The regulated area shall be closed for the duration of the event to all vessel traffic not participating in the event and authorized by the event sponsor or Coast Guard Patrol Commander.

(2) All persons or vessels not registered with the sponsor as participants or not part of the regatta patrol are considered spectators. Spectator vessels must be at anchor within a designated spectator area or moored to a waterfront facility in a way that will not interfere with the progress of the event. The following are established as spectator areas:

(i) Northwest of the University Bridge.

(ii) North of the log boom which will be placed in Union Bay.

(iii) East of Webster Point so as not to interfere with the participating vessels departing Union Bay.

(3) No spectators shall anchor, block, loiter in, or impede the through transit of participants or official patrol vessels in the regulated area during the effective dates and times unless cleared for such entry by the Patrol Commander.

(4) Due to the large number of craft confined within this small body of water, all vessels, both spectator and participants, will maintain a "NO WAKE" speed. This requirement will be strictly enforced to preserve the safety of both life and property.

(5) A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the Patrol Commander shall serve as a signal to stop. Vessels signaled shall stop and shall comply with the orders of the patrol vessel. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

Dated: March 3, 1989.

**R. E. Kramek,**

*Rear Admiral, U.S. Coast Guard, Commander, Thirteenth Coast Guard District.*

[FR Doc. 89–5657 Filed 3–10–89; 8:45 am]

BILLING CODE 4910-14-M



**33 CFR Part 117**

**[CGD7–89–04]**

**Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, Florida**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Proposed rule.

**SUMMARY:** At the request of Congressman Tom Lewis, the Coast Guard is considering adding regulations governing the PGA and Parker drawbridges at North Palm Beach by permitting the number openings to be limited during certain periods. This proposal is being made because of complaints received from highway users. This action should accommodate the needs of vehicular traffic and still provide for the reasonable need of navigation.

**DATE:** Comments must be received on or before April 27, 1989.

**ADDRESSES:** Comments should be mailed to Commander (oan), Seventh Coast Guard District, 909 SE. 1st Avenue, Miami, Florida 33131–3050. The comments and other materials referenced in this notice will be available for inspection and copying on the 4th Floor, of the Brickell Plaza Federal Building 909 SE. 1st Ave. Miami, Florida. Normal office hours are between 7:30 a.m. and 4 p.m., Monday through Friday, except holidays. Comments also may be hand-delivered to this address.

**FOR FURTHER INFORMATION CONTACT:** Mr. Walt Paskowsky (305) 536–4103.

**SUPPLEMENTARY INFORMATION:** Interested persons are invited to participate in this rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgement that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Seventh Coast Guard District, will evaluate all communications received and determine a final course of action on this proposal. The proposed regulations may be changed in light of comments received.

**Drafting Information**

The drafters of this notice are Mr. Walt Paskowsky, Bridge Administration Specialist, project officer, and Lieutenant Commander S.T. Fuger, Jr., project attorney.

**Discussion of Proposed Regulations**

The PGA and Parker drawbridges presently open on signal, except that, from 7 a.m. to 9 a.m. and 4 p.m. to 7 p.m. Monday through Friday, the PGA opens on the quarter and three quarter-hour while Parker opens on the hour and half-hour. On weekends and federal holidays both bridges open on the hour, 20 minutes after the hour, and 40 minutes after the hour between 8 a.m. and 6 p.m. This change which adds 15-minute scheduled opening from 9 a.m. to 4 p.m., Monday through Friday, during the busy Winter months is intended to space draw openings and virtually eliminate "back to back" opening which can contribute significantly to vehicular traffic delays during these periods.

**Economic Assessment and Certification**

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulations and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the regulations exempt tugs with tows. Since the economic impact of this proposal is expected to be minimal, the Coast Guard Certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

**List of Subjects in 33 CFR Part 117**

Bridges.

**Proposed Regulations**

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, as follows:

**PART 117—DRAWBRIDGE OPERATION REGULATIONS**

1. The authority citation for Part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.261 (s) and (t) is revised to read as follows:

**§ 117.261 Atlantic Intracoastal Waterway from St. Marys River to Key Largo**

* * * * *

(s) *PGA Boulevard bridge, Mile 1012.6.* The draw shall open on signal; except that, from 7 a.m. to 9 a.m. and 4 p.m. to 7 p.m., Monday through Friday except federal holidays, the draw need open only on the quarter and three-quarter-hour. From November 1 through April 30 from 9 a.m. to 4 p.m. Monday through Friday, except federal holidays, the draw need open only on the hour, quarter-hour, half-hour and three quarter-hour. On Saturdays, Sundays, and federal holidays from 8 a.m. to 6 p.m. the draw need open only on the hour, 20 minutes after the hour, and 40 minutes after the hour.

(t) *Parker (US 1) bridge, mile 1013.7.* The draw shall open on signal; except that, from 7 a.m. to 9 a.m. and 4 p.m. to 7 p.m., Monday through Friday except federal holidays, the draw need open only on the hour and half hour. From November 1 through April 30 from 9 a.m. to 4 p.m. Monday through Friday, except federal holidays, the draw need open only on the hour, quarter-hour, half-hour and three quarter-hour. On Saturdays, Sundays, and federal holidays from 8 a.m. to 6 p.m., the draw need open only on the hour, 20 minutes after the hour, and 40 minutes after the hour.

* * * * *

Dated: February 27, 1989.

**Martin H. Daniell,**

*Rear Admiral, U.S. Coast Guard Commander, Seventh Coast Guard District.*

[FR Doc. 89–5658 Filed 3–10–89; 8:45 am]

BILLING CODE 4910-14-M

**VETERANS ADMINISTRATION**

**38 CFR Part 21**

**Dependents Education; Eligibility of Stepchildren**

**AGENCY:** Veterans Administration.

**ACTION:** Proposed Regulation.

**SUMMARY:** The stepchildren of a veteran whose children are eligible for dependents' educational assistance are also eligible for that assistance on the same basis as those children. Occasionally, while such a stepchild is receiving assistance, the veteran will separate from or divorce his or her spouse. The child in question then ceases to be eligible for dependents' educational assistance, because he or she is no longer the veteran's stepchild. This proposal states how the Veterans Administration (VA) will determine when to discontinue the child's assistance.

**DATES:** Comments must be received on or before April 12, 1989. Comments will be available for public inspection until April 24, 1989.

**ADDRESSES:** Send written comments to: Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420. All written comments received

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will be available for public inspection only in the Veterans Services Unit, room 132 of the above address, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays) until April 24, 1989.

**FOR FURTHER INFORMATION CONTACT:** William G. Susling, Jr., Acting Assistant Director for Educational Policy and Program Administration, Vocational Rehabilitation and Education Service, Department of Veterans Benefits, (202) 233-2092.

**SUPPLEMENTARY INFORMATION:** The VA is proposing to amend § 21.3041 to state that when an individual ceases to be the stepchild of a veteran, his or her eligibilty to dependents' educational assistance ends. The proposed amendment to § 21.4135 states when payments will be terminated in this situation.

The VA has determined that these proposed regulations do not contain a major rule as that term is defined by Executive Order 12291, Federal Regulation. The proposed regulations will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator of Veterans Affairs has certified that these proposed regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), the proposed regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the proposed regulations affect only individuals. They will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

The Catalog of Federal Domestic Assistance number for the program affected by these regulations is 64.117.

**List of Subjects in 38 CFR Part 21**

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: February 17, 1989.

**Thomas E. Harvey,**

*Acting Administrator.*

38 CFR Part 21, Vocational Rehabilitation and Education, is proposed to be amended as follows:

**PART 21—[AMENDED]**

1. In § 21.3041, paragraph (d) introductory text is revised and paragraph (d)(9) is added to read as follows:

**§ 21.3041 Periods of eligibility; child.**

* * * * *

(d) *Modified ending date.* When one of the following occurs between ages 18 and 26, the ending date will be the eligible person's 26th birthday or 8 years from the date of happening specified in paragraphs (d)(1) to (7) of this section and 10 years in paragraph (d)(8) of this section; whichever is later. When paragraph (d)(9) of this section is applicable, the ending date will be as stated in paragraph (d)(9) of this section. Where the ending date is subject to modification under more than one of paragraph (d)(3), (4), (5), 6 or (7) of this section, the more favorable date will apply. In no case will the modified ending date extend beyond the eligible person's 31st birthday.

(Authority: 38 U.S.C. 1712)

* * * * *

(9) The child may lose eligibility through ceasing to be the veteran's stepchild either because the veteran and the child's natural parent divorce or because the veteran and the child's natural parent separate and the child is no longer a member of the veteran's household. If this occurs, the ending date of the child's period of eligibility will be determined as follows:

(i) If the child ceases to be the veteran's stepchild while the child is not in training the ending date of the child's eligibility shall be the date on which the child ceases to be the veteran's stepchild.

(ii) If the child ceases to be the veteran's stepchild while the child is in training in a school organized on a semester or quarter basis, the ending date of the child's eligibility will be the last date of the semester or quarter during which the child ceases to be the veteran's stepchild.

(iii) If the child ceases to be the veteran's stepchild while the child is in training in a school not organized on a semester or quarter basis, the ending date of the child's period of eligibility will be the end of the course or 12 weeks from the date on which the child ceases to be the veteran's stepchild, whichever is earlier. See § 21.4135(z).

Authority: 38 U.S.C. 1701.

2. In § 21.4135, paragraph (z) is added to read as follows:

**§ 21.4135 Discontinuance dates.**

* * * * *

(z) *Eligible child ceases to be a stepchild.* When an eligible child loses eligibility because he or she ceases to be the stepchild of the veteran, the VA will discontinue the dependent's educational assistance allowance on the last day of the child's eligibility as determined by § 21.3041(d)(9).

(Authority: 38 U.S.C. 1701)

[FR Doc. 89-5648 Filed 3-10-89; 8:45 am]

BILLING CODE 8320-01-M

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**38 CFR Part 21**

**Due Process in Loss of Dependency Benefits**

**AGENCY:** Veterans Administration.

**ACTION:** Proposed regulatory amendments.

**SUMMARY:** This proposed regulatory amendment sets out procedural protections to be followed when the Veterans Administration (VA) is considering reduction of the veteran's subsistence allowance because the VA has received evidence that the veteran has lost a dependent. This proposal will bring the procedures followed in these cases into agreement with procedural protections of due process when a veteran is receiving disability compensation or pension and the VA receives evidence that the veteran has lost a dependent. The effect of this proposal will be to improve and more clearly define procedural protections afforded the veteran.

**DATES:** Comments must be received on or before April 12, 1989. Comments will be available for public inspection until April 24, 1989. It is proposed to make these amendments effective upon final publication.

**ADDRESSES:** Send written comments to: Administrator of Veterans Affairs, Veterans Administration, 810 Vermont Avenue NW., Washington, DC, 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 132 of the above address, between the hours of 8 a.m. to 4:30 p.m., Monday through Friday (except holidays) until April 24, 1989.

**FOR FURTHER INFORMATION CONTACT:** Morris Triestman, Rehabilitation Consultant, Vocational Rehabilitation and Education Service, Department of Veterans Benefits, (202) 233-2886.



**SUPPLEMENTARY INFORMATION:** The VA recently proposed regulatory amendments to 38 CFR Part 3 in order to provide additional procedural protections of due process for disability compensation and pension claimants and beneficiaries. At that time the VA indicated that its review was ongoing and that it might propose additional amendments to existing regulations in the future.

As a result of this ongoing review, the Agency has decided that when the VA receives evidence that the veteran has lost a dependent, the same procedural protections will be provided a veteran who is receiving subsistence allowance as when that event occurs while a veteran is receiving disability compensation. This proposal will provide these same procedural protections for veterans receiving benefits under the vocational rehabilitation program.

The current rule governing due process under the vocational rehabilitation program is contained in § 21.420. This rule is proposed to be amended to eliminate references to changes in dependency status due to the loss of a dependent. A new rule (§ 21.422) is established to govern due process procedural protections where there is a proposed reduction in the veteran's subsistence allowance because of the loss of a dependent.

These proposed regulatory amendments do not meet the criteria for a major rule as that term is defined by Executive Order 12291, Federal Regulation. These proposed regulatory amendments will not have a $100 million annual effect on the economy, will not cause a major increase in costs or prices and will not have any other significant adverse effects on the economy.

The Administrator of Veterans Affairs certifies that these proposed regulatory amendments, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), the proposed regulatory amendments, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of §§ 603 and 604. This proposal concerns only VA procedural protections followed in making certain adjustments in awards to individual beneficiaries. This certification can be made because the proposed regulatory amendments will have no significant economic impact on small entities, i.e., small business, small private and nonprofit organizations and small governmental jurisdictions.

The Catalog of Federal Domestic Assistance number for the program affected by the proposed regulatory amendments is 64.116.

**List of Subjects in 38 CFR Part 21**

Civil rights, Claims, Educational, Grant programs, Loan programs, Reporting requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: February 21, 1989.

**Thomas E. Harvey**

*Acting Administrator.*

38 CFR Part 21, Vocational Rehabilitation and Education, is proposed to be amended as follows:

**PART 21—[AMENDED]**

1. in § 21.420, paragraph (d) introductory text is revised to read as follows:

**§ 21.420 Informing the veteran.**

* * * * *

(d) *Prior notification of adverse action.* The VA shall give the veteran a period of a least 30 days to indicated his or her disagreement with an adverse action other than one which arises as a consequence of a change in training time or other such alteration in circumstances. If the veteran disagrees, he or she shall be given the opportunity, before appealing the adverse action as provided in § 21.59 of this part, to:

* * * * *

2. Section 21.422 is added to read as follows:

**§ 21.422 Reduction in subsistence allowance following the loss of a dependent.**

(a) *Notice of redution required when a veteran loses a dependent.* (1) Except as provided in paragraph (a)(2) of this section, the VA not reduce an award of subsistence allowance following the veteran's loss of a dependent unless:

(i) The VA has notified the veteran of the adverse action, and

(ii) The VA has provided the veteran with a period of 60 days in which to submit evidence for the purpose of showing that subsistence allowance should not be reduced.

(2) When the reduction is based solely on written, factual, unambiguous information as to dependency provided by the veteran or his or her fiduciary with knowledge or notice that the information would be used to determine the monthly rate of subsistence allowance;

(i) The VA is not required to send a pre-reduction notice as stated in paragraph (a)(1) of this section, but;

(ii) The VA will send notice contemporaneous with the reduction in subsistence allowance.

(Authority: 38 U.S.C. 3012, 3013)

(b) *Pre-reduction notice.* Where a reduction in subsistence allowance is proposed by reason of information concerning dependency received from a source other than the veteran, the VA will: (1) Prepare a proposal for the reduction of subsistence allowance, setting forth material facts and reasons;

(2) Notify the veteran at his or her latest address of record of the proposed action;

(3) Furnish detailed reasons for the proposed reduction;

(4) Inform the veteran that he or she has an opportunity for a predetermination hearing, provided that the VA receives a request for such a hearing within 30 days from the date of the notice; and

(5) Give the veteran 60 days for the presentation of additional evidence to show that the subsistence allowance should be continued at its present level.

(Authority: 38 U.S.C. 3012, 3013)

(c) *Predetermination hearing.* (1) If the VA receives a timely request for a predetermination hearing as indicated in paragraph (b)(4) of this section:

(i) The VA will notify the veteran in writing of the date, time and place for the hearing; and

(ii) Payments of subsistence allowance will continue at the previously established level pending a final determination concerning the proposed reduction.

(2) The hearing will be conducted by a VA employee who:

(i) Did not participate in the preparation of the proposal to reduce the veteran's subsistence allowance, and

(ii) Will bear the decision-making responsibility.

(Authority: 38 U.S.C. 3012, 3013)

(d) *Final action.* The VA will take final action following the predetermination procedures specified in paragraph (c) of this section. (1) If a predetermination hearing was not requested or if the veteran failed to report for a scheduled predetermination hearing, the final action will be based solely upon the evidence of record at the expiration of 60 days. (2) If a predetermination hearing was conducted, the VA will base final action upon:

(i) Evidence presented at the hearing;

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(ii) Evidence contained in the claims file at the time of the hearing; and

(iii) Any additional evidence obtained following the hearing pursuant to necessary development.

(3) Whether or not a predetermination hearing was conducted, a written notice of the final action shall be issued to the veteran setting forth the reasons for the decision, and the evidence upon which it is based. The veteran will be informed of his or her appellate rights and right of representation. (For information concerning the conduct of the hearing see § 3.103 (c) and (d) of this chapter).

(4) When a reduction of subsistence allowance is found to be warranted following consideration of any additional evidence submitted, the effective date of the reduction or discontinuance shall be as specified under the provisions of § 21.324 of this part.

(Authority: 38 U.S.C. 3012, 3013)

[FR Doc. 89-5647 Filed 3-10-89; 8:45 am]

BILLING CODE 8320-01-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[FRL 3534-8]

### Approval and Promulgation of Implementation Plans; Ohio

**AGENCY:** U.S. Environmental Protection Agency, (USEPA).

**ACTION:** Proposed rulemaking.

**SUMMARY:** USEPA is proposing to disapprove a plan submitted purusant to Section 111(d) of the Clear Air Act by the State of Ohio. Section 111(d) requires that each State submit plans to control emissions of designated pollutants These rules are for the control of total reduced sulfur (TRS) from existing Kraft Pulp Mills. USEPA is proposing to disapprove this plan because it does not meet all of USEPA's requirements for an approvable 111(d) plan. Portions of the rule that USEPA proposes action on today are in draft form. Therefore, before USEPA can take final action on the plan, the State would have to submit a final plan.

**DATE:** Comments on this revision and on the proposed USEPA action must be received by April 12, 1989.

**ADDRESSES:** Copies of the SIP revision are available at the following addresses for review: (It is recommended that you telephone Debra Marcantonio, at (312) 886-6066, before visiting the Region V office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604.

Ohio Environmental Protection Agency, Office of Air Pollution Control, 1800 Water Mark Drive, P.O. Box 1049, Columbus, Ohio 43266-0149.

Comments on this proposed rule should be addressed to: (Please submit an original and three copies, if possible.) Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

**FOR FURTHER INFORMATION CONTACT:** Debra Marcantonio, Air and Radiation Branch (5AR-26), Environmental Protection Agency , Region V, Chicago, Illinois 60604, (312) 886-6066.

**SUPPLEMENTARY INFORMATION:** Section 111(d) of the Clear Air Act requires control of existing sources emitting pollutants that are or may be harmful to the public health or welfare, but are not controlled under Sections 108-110 or 112 of the Act. Such pollutants are referred to as "designated pollutants", and existing facilities emitting such pollutants are referred to as "designated facilities." On February 28, 1978, the standards of performance for eight source categories in the Kraft pulp industry were promulgated. The standards include emission limits for particulates and TRS, a designated pollutant. Subpart B of 40 CFR Part 60 requires the States to develop plans for the control of designated pollutants within Federal guidelines. A notice of availability of these Federal guidelines for the control of IRS emissions for existing sources was published on May 22, 1979 (44 FR 29828).

Specifically, 40 CFR 60.23(a)(2) requires that each State shall adopt and submit to USEPA and Plan revisions necessary to meet the requirements of this Subpart, unless no designated facilities exist within the State. Pursuant to this requirement, the State of Ohio submitted to USEPA on December 7, 1984, a plan to conrol emissions of TRS from Mead Paper in Chillicothe, Ohio, the only existing Kraft pulp mill in Ohio. On April 23, 1986, Ohio withdrew the emission test method portion of the submittal (OAC 3745-73-04) and resubmitted a revised draft rule for USEPA's review.

### Review of Proposed Rules

*1. Rule 3745-73-01—Definitions*

—This section conforms with USEPA's guidelines for control of TRS emissions from existing Kraft pulp mills.

*2. Rule 3745-13-02—Certification and Compliance Schedules*

—This section states that compliance schedules shall commence from the effective date of the rules. This is consistent with the requirements of 40 CFR 60.24 for designated facilities.

—This section also requires that all owners or operators of designated facilities certify that they are in compliance with all the requirements of the proposed rules and submit to OEPA an application for an operating permit.

This section is consistent with the requirement of 40 CFR 60.23(b).

—Additionally, this section sets schedules of compliance for all sources emitting TRS that are currently in violation of the proposed emission limitation.

There appears to be a typewritten error in OAC 3745-73-02(C)(4)(d). The compliance schedule shows the source must complete construction within 24 months and achieve final compliance within 20 months. The State should correct or clarify this error.

This section is consistent with the requirements of 40 CFR 60.24.

*3. Rule 3745-73-03—General Emission Limits*

The numerical values of the emission limits are the same as the Federal emission guidelines for TRS in existing Kraft pulp mills. However, the proposed limits are based on a 24-hour averaging time, while the Federal emission guidelines are based on 12-hour averages. For this reason, the proposed emission limits are effectively less stringent than the Federal emission guideline for TRS emissions from Kraft pulp mills. Under 40 CFR 60.24, a State may apply a less stringent requirement if sufficient justification is proven. Such justification may include unreasonable control cost and physical limitation. Because Ohio has not made such a demonstration, the proposed limits are not approvable.

OAC Rule 3745-73-03(C) appears to be a "bubble" alternative control plan. It would allow a 111(d) source to establish an alternative emission limit which is different from the emission limit established in the 111(d) plan, in order to comply with the applicable standard. Because, if approved, the 111(d) plan would be the federally approved standard by which to define compliance, only a revision to the plan (approved by USEPA) could change the terms. Additionally, USEPA does not have a bubble policy applicable to 111(d) plans.

Therefore, before USEPA can approve this plan, Rule 3745-/3-03 (C) must be deleted or revised to include a statement that any changes in the applicable limits would not be effective until they are submitted to and approved by USEPA.

*4. Rule 3745-73-04—Test Methods and Procedures*

The proposed test method references the method described in 40 CFR Part 60, Appendix A. This is consistent with the requirements of 40 CFR 60.24(b)(2) for determining compliance of designated pollutants. USEPA cannot, however, approve this rule independent of the entire plan. Therefore, USEPA also is proposing to disapprove this portion of the plan. Moreover, because this portion of the revision is a draft rule, before USEPA can take final action on the plan, the State must submit a final rule.

*5. Monitoring Requirements*

This plan does not contain monitoring requirements to ensure proper operation and maintenance of the affected facility. The regulations at 40 CFR 60.25(b) requires that the 111(d) plan shall provide for monitoring the status of compliance with the applicable standard. USEPA cannot approve this 111(d) plan without the appropriate monitoring requirements.

### Proposed Action

For the reasons discussed above, USEPA is proposing to disapprove these rules for the control of TRS from existing Kraft pulp mills, pursuant to Section 111(d) of the Clean Air Act.

Under 5 U.S.C. 605(b), this action will not have a significant economic impact on a substantial number of small entities. These rules apply to Mead Paper in Chillicothe, Ohio, the only existing Kraft pulp mill in Ohio.

Under Executive Order 12291, today's action is not "Major". It has been submitted to the Office of Management and Budget (OMR) for review.

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, sulfur oxides.

**Authority:** 42 U.S.C. 7401-7642.

Dated: June 30, 1987.

**Valdas V. Adamkus,**

*Regional Administrator.*

Editorial note: This document was received at the Office of the Federal Register on March 8, 1989.

[FR Doc. 89-5667 Filed 3-10-89; 8:45 am]

BILLING CODE 6560-50-M



### 40 CFR Part 52

[FRL-3534-6]

### Approval and Promulgation of Implementation Plans; Federal Assistance Limitations and Construction Moratorium State of Indiana

**AGENCY:** U.S. Environmental Protection Agency (USEPA).

**ACTION:** Proposed rulemaking.

**SUMMARY:** On November 18, 1988 (53 FR 46608), USEPA disapproved the Ozone State Implementation Plan (SIP) for Lake and Porter Counties, Indiana. Today, USEPA is proposing to also disapprove the enforcement program in the vehicle inspection and maintenance (I/M) portion of Indiana's Ozone plan for Lake and Porter Counties, the I/M enforcement program in Indiana's carbon monoxide (CO) plan for the CO nonattainment area in Lake County, and the overall CO SIP for the nonattainment area in Lake County (USEPA will address the I/M portion of Indiana's Ozone plan for Clark and Floyd Counties in future **Federal Register** notice(s).) It is retaining its July 14, 1987 (52 FR 26404) proposed approval of the remainder of Indiana's I/M program. Based on its proposed disapproval of the enforcement portion of the I/M program, USEPA is proposing to limit certain Federal highway, air quality, and sewage treatment funding assistance for Lake and Porter Counties and to impose in these same Counties under Section 173(4) of the Clean Air Act (Act), a volatile organic compound (VOC) major stationary source construction moratorium for failure to implement the I/M program as part of the 1979 Ozone SIP, and a CO major stationary source construction moratorium in the nonattainment area of Lake County for failure to implement the 1979 CO SIP. In addition, pursuant to Section 110(a)(2)(I) of the Act, USEPA is proposing to impose a ban on the construction of major sources of CO in the Lake County CO nonattainment area. (This construction ban has already been imposed in Lake and Porter Counties for major VOC sources.) USEPA's proposed actions today are based on Indiana's failure to submit an adequate permanent I/M enforcement program as part of its 1982 Ozone and CO SIP (Ozone/CO SIP) submittals for the respective counties.

The funding limitations apply to Federal funds provided under the Clean Air Act (Act) and Title 23 of the United States Code. The USEPA is reproposing to impose Federal funding and construction restrictions pursuant to sections 176(a), 176(b), and 173(4), of the Act. USEPA is also proposing to impose Federal sewage treatment funding restrictions pursuant to section 316(b) of the Act.

**DATES:** The public hearings on the proposed Federal funding restrictions will be held at the locations listed below. The hearing in Lake and Porter Counties, Indiana will be held on April 13, 1989, starting at 10:30 a.m. USEPA is keeping the public comment period open until May 13, 1989, to provide an opportunity for submission of rebuttal information and supplementary information. Written comments must be submitted by: May 15, 1989.

**ADDRESS:** The public hearing on these issues will be held at:

Lake and Porter Counties Public Hearing:

County Commissioners Court Room, Board of Commissiners of Lake County, 2293 North Main Street, Crown Point, Indiana 46307.

Copies of Indiana's SIP revision submittal, USEPA's proposals and rulemakings, and other documents pertinent to today's proposal are available at the following addresses for review: (It is recommended that you telephone Robert B. Miller, at (312) 353-0396, before visiting the Region V office.

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604.

Indiana Department of Environmental Management, 105 South Meridian Street, P.O. Box 6015, Indianapolis, Indiana 64206-6015.

Comments on this proposed rule should be addressed to: (Please submit an original and three copies, if possible.)

Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

**FOR FURTHER INFORMATION CONTACT:** Jay Bortzer, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886-1430.

**SUPPLEMENTARY INFORMATION:** Congress amended the Clean Air Act, 42 U.S.C. 7401 *et seq.*, in 1977 to address the major health problems posed by the failure of certain areas to attain the NAAQS. Congress required States to revise their SIPs to provide for attainment of the standards by December 31, 1982, and to submit the revised plans to USEPA by January 1, 1979. For areas with serious ozone or carbon monoxide (CO)

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problems where the States demonstrated they were unable to attain these standards by the end of 1982, even with the implementation of all reasonably available measures, Congress allowed an extension of the attainment date to December 31, 1987 (section 172(a)(2)).

In return for this extension, the Act requires States to submit additional air pollution control measures in their 1979 ozone/CO SIP revisions (section 172(b)(11)). One such additional measure was a schedule for implementation of an I/M program, which included certification that the State and local governments had the legal authority to implement and enforce the program (sections 110(a)(2)(f), 172(b)(10), and 172(b)(11)(B)).

The State of Indiana requested an extension of the ozone attainment deadline to 1987 for Clark, Floyd, Lake and Porter Counties, and for carbon monoxide for a subportion of Lake County. USEPA approved the request on February 11, 1982 (47 FR 6274). Therefore, the Act requires Indiana to implement an I/M program in these counties.

On January 2, 1981 (46 FR 96), USEPA conditionally approved the revised 1979 Indiana ozone/CO SIP, including the State's commitment to implement I/M. The Indiana SIP included certification that the State had legal authority to implement and enforce an I/M program, and also contained a schedule for the completion of all actions necessary to implement the program by January 1, 1983. However, USEPA required the State, as part of the conditional approval, to submit a detailed description of its enforcement mechanism, including procedures, penalties, letters of commitment from responsible enforcement agencies, and other elements required in USEPA's I/M policy (see January 19, 1981 memorandum from the Deputy Assistant Administrator for Mobile Source Air Pollution Control to the Air and Hazardous Materials Division Directors, Region I–X; September 24, 1980; memorandum from the Assistant Administrator, Office of Air, Noise, and Radiation, to the Regional Administrator, Regions I–X; February 21, 1979; memorandum from the Assistant Administrator for Air, Noise, and Radiation, to the Regional Administrators, I–X; July 17, 1978; memorandum from the Assistant Administrator for Air and Waste Management to the Regional Administrators, Regions I–X; and the January 22, 1981, **Federal Register**, 46 FR 7182).

Indiana submitted its draft 1982 revisions to its ozone/CO SIP on September 2, 1982. If adopted, this plan would have formally withdrawn the 1979 commitment to implement an I/M program. The plan additionally stated that a new I/M program would not be readopted unless attainment would not otherwise occur by December 31, 1987, as indicated by future air quality data.

In a letter dated November 10, 1982, USEPA provided its evaluation of and comments on Indiana's September 2, 1982, submittal. In the letter, USEPA stated that the I/M portion of Indiana's September 2, 1982, plan did not contain the various elements required under USEPA's 1982 SIP policy, in that there were no commitments to implement I/M by December 31, 1982, and no rules and regulations for I/M were included.

On February 3, 1983 (48 FR 5108), USEPA proposed to disapprove the I/M portion of the 1982 Indiana ozone/CO SIP for these same reasons. On March 22, 1983, USEPA notified affected Federal, State, and local agencies, that the USEPA/Department of Transportation (DOT) procedures for imposing funding limitations under section 176(a) were being initiated. This notification started a 30-day consultation period in accordance with these procedures.

To ensure that Federal funds do not further contribute to the already serious air pollution problem and to encourage state cooperation, Congress adopted section 176(a) of the Act. Section 176(a) of the Act requires withholding of certain Federal assistance funds for highway construction and air quality programs, if the USEPA Administrator finds that a State has failed to submit, or to make reasonable efforts to submit, a SIP which considers each of the elements of section 172 of the Act, including the requirement for I/M. On April 10, 1980, after prior notice and public comment, USEPA and the Department of Transportation published their final policies and procedures for imposing funding restrictions under section 176(a) (45 FR 24692).

On August 3, 1983, USEPA proposed air quality funding restrictions and a construction moratorium under sections 176(b) and 173(4) of the Act for the State's failure to implement the approved 1979 Indiana ozone/CO SIP, in particular, the I/M commitment USEPA had approved and incorporated into the State's 1979 SIP (48 FR 35316).

Subsequently, the State of Indiana renewed its commitment to implement an I/M program and adopted Indiana rule 325 IAC 13.1–1, Motor Vehicle Inspection and Maintenance Requirements. A contract was established with Indiana Vocational Technical College to conduct the testing program. The program began inspecting vehicles on May 31, 1984. Throughout the development period, USEPA sought a detailed description of the I/M endorcement mechanism for review prior to the start of testing. The State explored several possible mechanisms, but failed to adopt any of them. Indiana submitted its final 1982 zone/CO SIP on December 2, 1983, and this SIP addressed I/M. However, the SIP lacked the required detailed I/M enforcement description. USEPA documented its concern regarding the I/M program in a memorandum dated January 23, 1984, which was forwarded to the State, as well as in direct correspondence to the State on September 28, 1984, and December 21, 1984. Additionally, USEPA published a revised Notice of Proposed Rulemaking (NPR) in the **Federal Register** on October 9, 1984 (49 FR 39574) addressing this issue. A Technical Support Document dated June 29, 1984, in support of the October 9, 1984, NPR extensively reviewed these issues.

Besides addressing I/M deficiencies, the October 9, 1984, NPR also proposed to approve Indiana's CO SIP for the nonattainment area of Lake County because the State's plan provided for an emissions reduction of over 50% from 1980 to 1987, which would result in NAAQS attainment in the nonattainment area by 1987.

On February 6, 1985, Governor Robert D. Orr proposed to enforce the I/M program by establishing a $100 fine to be shared evenly by the State and the local law enforcement agency issuing the citation. The Governor also proposed a one-time $5 vehicle excise tax credit to the owners of tested vehicles. The State included these two I/M enforcement elements in its February 6, 1985, official response to the October 9, 1984, NPR. The State also indicated its intention to pursue vehicle registration suspension for noncomplying vehicles.

On March 13, 1985, USEPA informed Governor Orr that the proposed July 1986 implementation of the shared fine was unacceptable since it potentially allowed violators to avoid compliance for longer than two years. USEPA indicated that a registration suspension of denial system would be more effective; however, USEPA acknowledged that such a program could not be started before January 1986. Therefore, USEPA informed the Governor that an interim enforcement mechanism was necessary to increase



compliance until the State established a permanent means of enforcement. USEPA subsequently notified the Federal Highway Administration (FHWA) on April 15, 1985, that the 30-day consultation period under Section 176(a) procedures was being reinitiated for the State of Indiana (45 FR 24692).

A meeting was held on May 9, 1985, between USEPA, FHWA, and the State to discuss the Federal highway funding restriction process and any action by the State to satisfactorily resolve the problem. At the conclusion of the meeting USEPA informed FHWA and the State that USEPA must continue its projected schedule to impose restrictions, due to the lack of concrete action by the State to immediately begin enforcement of the I/M program.

Because the State failed to submit a detailed description of an enforcement mechanism, USEPA proposed on January 21, 1986, (see 51 FR 2732) to disapprove the I/M portion of the ozone/CO SIP and to impose Federal funding restrictions on Clark, Floyd, Lake, and Porter Counties, pursuant to section 176(a) of the Act.

On March 7, 1986, Governor Orr signed legislation authorizing suspension of registration of non-complying vehicles. On April 7, 1986, (51 FR 11756), further action to limit Federal funding assistance and to impose the construction moratorium was indefinitely postponed because the State enacted the suspension of registration authorizing legislation.

A letter was sent to Indiana by USEPA on September 24, 1986, informing the State that it was acceptable to begin enforcement of the I/M program against non-compliers beginning with the then-current test cycle, which commenced on March 1, 1986. Accordingly, the Indiana Department of Environmental Management (IDEM) targeted December 15, 1986, as the date to send out the first non-compliance notices. Since then, the two agencies responsible for sending out the warning notices (IDEM) and the suspension notices (the Bureau of Motor Vehicles (BMV)), have fallen increasingly behind the notice schedule.

According to the State's calculations, the overall compliance rate for the second cycle of the program was 67.6%, and the State had only suspended 38 vehicle registrations.

On January 26, 1987, USEPA reproposed to approve Indiana's attainment demonstration for the CO nonattainment area in Lake County based on an estimated 35% emission reduction from 1981 to 1987 provided by the Federal Motor Vehicle Control Program through pollution controls on late-model vehicles. Available monitoring data showed that a CO emission reduction of 10% from 1981 levels was necessary to achieve the NAAQS by 1987. (Because of the deficiencies in the I/M program discussed below, however, USEPA today is reproposing to disapprove the CO SIP for the nonattainment area of Lake County.)

On July 14, 1987, (52 FR 26404), USEPA proposed to disapprove the Indiana 1982 ozone plan as not meeting all the requirements of Part D.[1] This notice included a proposed disapproval of that portion of the I/M program which addresses funding and resources for enforcement, because of a failure by the State to provide funding for program enforcement. USEPA further proposed to approve all other portions of the I/M program because the State's submittal of September 30, 1986, and February 18, 1987, addressed the outstanding issues cited in the October 9, 1984, **Federal Register**. The State had not, however, adequately addressed funding and resources for enforcement.

On August 12, 1987, USEPA notified Indiana Governor Orr that because of the lack of an effective enforcement program, low compliance rate, and lack of program funding, USEPA was beginning the process to impose Federal highway and air quality funding restrictions, to impose a construction moratorium, and to initiate the 30-day consultation period as specified in the previously cited April 10, 1980, **Federal Register**. The 30-day consultation period was initiated in a letter dated August 12, 1987, to the Regional Administrator of the FHWA.

In a letter dated September 8, 1987, Governor Orr indicated that approximately $56,000 in new funds were being provided for the enforcement effort, and that IDEM and BMV had agreed to a new streamlined enforcement process. At Indiana's request, on September 11, 1987, the USEPA met with representatives of IDEM and the FHWA to discuss the reasons why USEPA was pursuing Federal funding and construction restrictions. USEPA representatives explained that, while the State's efforts are important steps towards enforcing the Emission Testing Program, USEPA will proceed to impose Federal highway and air quality funds, as well as a major stationary source construction moratorium, because the State's efforts, by themselves, do not assure that the suspension of registrations for noncomplying vehicles will be routine and expeditious, and that a sufficiently high level of compliance will be achieved and maintained.

In a December 23, 1987, letter to the Regional Administrator, Governor Orr informed USEPA that an additional $258,000 was being made available to enforce the program. In a response dated January 15, 1988, USEPA informed Governor Orr that while additional funding has been provided, the State must demonstrate that enforcement will be routine and expeditious.

Compliance and enforcement statistics from the first two cycles (May 1984 to December 1987) demonstrates that the State has failed to implement an enforcement program. Only 38 registrations have been suspended over the four years and each cycle has had in excess of 100,000 non-compliers. Further, even though significant amounts of additional funds for enforcement have been provided, no other enforcement action of a routine and expeditious nature has occurred.

USEPA believes that the State of Indiana (1) has failed to implement the I/M program approved as part of the 1979 Ozone/CO SIP in Lake and Porter Counties and (2) has also failed to submit an adequate enforcement mechanism as part of the 1982 Ozone/CO SIP. While it appeared that the September 30, 1986, enforcement mechanism was approvable, USEPA has concluded that the enforcement mechanism is not approvable because it has not met USEPA's requirement that violations are cited and prosecuted as routinely and expeditiously as are vehicle registration violations. (See January 19, 1981, policy memoranda from the Deputy Assistant Administrator for Mobile Source Air Pollution Control to Air and Hazardous Materials Division Directors, Regions I–X).

The State had initially pointed to the fact that insufficient resources was the reason registration suspensions did not occur in a routine and expeditious manner. However, even after additional resources were provided suspensions have not occurred. USEPA concludes that the enforcement mechanism established by the State is not workable due to systemic problems particular to the State of Indiana.

Prior to a vehicle's registration being suspended seven distinct steps must take place. The steps include: (1) An initial notice; (2) a determination of noncompliance after notices are returned; (3) IDEM notifies BMV by computer tape of violators; (4) BMV

[1] USEPA disapproved Indiana's overall Part D ozone plan for Lake and Porter Counties on November 18, 1988 (53 FR 46808). It will take action on the Clark and Floyd Counties plan in future **Federal Register** notice(s).

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sends notices of registration suspensions and provides a listing of notices mailed to IDEM; (5) responses to notices of registration suspensions are returned to BMV by citizens; (6) BMV gives notices to IDEM after sorting into two categories; (7) IDEM determines and notifies BMV by computer tape of noncompliance after processing the notices provided by BMV; and, 8) BMV suspends registrations. Additional steps are required if a citizen requests an administrative hearing.

This process has proved to be cumbersome and lengthy and has not resulted in routine and expeditious enforcement. Even with additional enforcement resources, the enforcement process has not became routine and expeditious.

USEPA believes that the Indiana process cannot be routine and expeditious due to the following process characteristics: the large amounts of information that must be transferred between two State agencies; the assignment of comparable priority to the enforcement action by two State agencies; the necessary sorting and processing that each State agency must perform; and the quality control checks to ensure that the State does not inadvertently suspend the registration of a citizen who ultimately came into compliance. Therefore, the State has failed to submit an enforcement mechanism that results in routine and expeditious enforcement. Consequently, the State did not submit an enforcement mechanism that can be approved by USEPA as meeting the Ozone/CO SIP approval criteria.

**Clark and Floyd Counties**

This proposed rulemaking does not apply to Clark and Floyd Counties. Over the past few months local law enforcement officials in Clark and Floyd Counties have initiated a local enforcement program consisting of issuing citations to motorists not displaying a valid windshield sticker. Roadblocks have also been set up to check vehicles for valid windshield stickers. When a citation is issued the violator(s) must appear in court and is subject to a minimum $100.00 fine.

In a March 1988 letter to Governor Orr, the Governor was informed that, "If the State is to avoid the imposition of Federal construction and funding restrictions, State and Local law enforcement agencies need to * * * aggressively issue citations for I/M noncompliance * * *". The Governor was further informed that an interim enforcement mechanism was necessary to increase compliance until the State established a permanent means of enforcement.

Clark and Floyd Counties are not included in this proposal because local law enforcement officials are aggressively pursuing enforcement through an interim enforcement mechanism. However, for Federal funding and construction restrictions to be ultimately avoided by Clark and Floyd Counties, the State must establish a permanent means of enforcement. If the State fails to do this, then Federal restrictions will be imposed in Clark and Floyd Counties in addition to those proposed in Lake and Porter Counties. Were Lake and Porter Counties to initiate a similar sticker enforcement effort, USEPA would continue to view it as an interim measure and would only delay the imposition of sanctions in response to State establishment of a permanent, approvable mechanism. USEPA will rulemake on Indiana's ozone plan, including I/M and any possible sanctions, for Clark and Floyd Counties in future **Federal Register** notice(s).

**Proposed Findings**

On July 14, 1987 (52 FR 26404), USEPA proposed to find that the State of Indiana failed to appropriate adequate resources and funding for enforcement and oversight of the I/M program portion of the 1982 Ozone/CO SIP as required by section 172(b)(7) of the Act. Adequate resources and funding have been provided, but the State continues to experience serious problems with enforcement. The State has only suspended 38 vehicle registrations while tens of thousands of vehicles are not in compliance with program requirements. USEPA is proposing to disapprove Indiana's enforcement program in Lake and Porter Counties because it does not meet USEPA policy requirements that enforcement be as routine and expeditious as are vehicle registration violations. Consequently, USEPA, is:

1. Proposing to find that the State has failed to implement the I/M program approved as part of its 1979 Ozone/CO SIP in Lake and Porter Counties.

2. Re-proposing to impose the construction moratorium under section 173(4) and re-proposing to impose the air quality funding restrictions under 176(b) in Lake and Porter Counties for the State's failure to implement its approved 1979 Ozone/CO SIP.

The construction moratorium is for the construction of major sources of volatile organic compound emissions and the major modification of such existing major sources in Lake and Porter Counties, and the construction of new major sources and the major modification of such CO sources in the nonattainment area of Lake County.

3. Retaining its July 14, 1987, proposed approval of all elements of Indiana's 1982 I/M program, except for the enforcement program.

4. Proposing to find that the State has failed to submit an adequate enforcement program as part of its 1982 Ozone/CO SIP.

5. Proposing to disapprove the CO SIP for the nonattainment area of Lake County for the failure to submit an adequate I/M enforcement progam as part of its 1982 CO SIP.

6. Proposing to impose a construction ban for major new CO sources and major modifications of existing CO sources in the CO nonattainment area in Lake County, as required by section 110(a)(2)(I) of the Act. (This construction ban was imposed on December 18, 1988, in Lake and Porter Counties for major VOC sources. See USEPA's November 18, 1988, ozone plan disapproval notice.)

7. Re-proposing to impose the Federal highway and air quality funding restrictions in Lake and Porter Counties, under Section 176(a), for the State's failure to submit or to make reasonable efforts to submit an adequate 1982 Ozone/CO SIP revision.

8. Proposing to impose the section 316(b) sewage treatment funding restrictions in Lake and Porter Counties for the State's failure to implement the approved 1979 Ozone/CO SIP, and for failure to submit an approvable 1982 Ozone/CO SIP.

During the public comment period, USEPA will consider any comments on this issue. If Indiana fails to remedy this situation before USEPA takes final action, the resulting funding limitations and construction restrictions pursuant to sections 110(a)(2)(I), 176(a), 176(b), 173(4), and 316(b) will become effective 30 days after the final rulemaking is published in the **Federal Register**. Upon the effective date of the final rulemaking, the Secretary of Transportation will not approve any projects nor award any grants in Lake and Porter Counties, under Title 23 of the United States Code, except for safety, mass transit, or transportation improvement projects related to air quality improvement or maintenance.

On August 3, 1983, USEPA discussed the formulas for withholding Clean Air Act Section 105 air pollution control funds if that became necessary for any particular State (48 FR 35312). The formula USEPA proposed as the preferred formula, would add all Clean Air Act funds which would normally be awarded to all levels of government in the State, and would withhold from that



total a percentage which is equal to the percentage of the State's population residing in the nonimplementation I/M urbanized areas. Direct grants made to local government agencies responsible for I/M implementation would be affected first, with any remaining restrictions to be applied against State funds. If the State is the only level of government responsible for I/M implementation, which USEPA believes is the case for Lake and Porter Counties, USEPA would subtract from the amount to be withheld from the State any funds that are granted directly to local government agencies in the urbanized areas, because USEPA believes these local funds are exempt from the funding restrictions. This is the formula which will be used for Indiana. The U.S. Court of Appeals for the Tenth Circuit upheld this approach in *New Mexico Environmental Improvement v. Thomas*, 789 F.2d 825 (10th Cir. 1986).

In the August 11, **Federal Register** (45 FR 53382), USEPA published its policy and procedures for implementing the municipal wastewater treatment works construction grants limitations provided in section 316 of the CAA. Section 316 allows the Administrator of USEPA to withhold, condition or restrict grants for construction of sewage treatment works under the following situation: (1) Where the treatment works will not comply with new source performance standards or with National Emission Standards for Hazardous Air Pollutants; (2) where the State is not carrying out the SIP or there is not an USEPA approved SIP that provides for the increase of each pollutant that is reasonably anticipated to result either directly or indirectly from proposed new sewage treatment construction; (3) where construction of the proposed treatment works will create new sewage treatment capacity that may reasonably be anticipated to cause or contribute to, directly or indirectly, an increase in emissions of any pollutant in excess of the increase provided for under the SIP; (4) where the proposed new sewage treatment capacity will otherwise not be in conformity with the SIP; and, (5) where the increased emissions associated with the proposed new sewage treatment capacity will interfere with, or be inconsistent with the SIP for any other State. The reader should refer to the August 11, 1988, **Federal Register** in conjunction with today's proposal.

It is noted that because of the period of time since the above policy and procedures were first published and because of changes in USEPA's construction grants program, USEPA is giving consideration to revising the policy to update it. Any such revisions will be the subject of a future **Federal Register**. However, the current policy will remain in effect until any new policy is published.

USEPA solicits comments on what action the State would have to take before USEPA should lift these restrictions, if it is the Agency's final decision to impose these restrictions.

**Opportunity for Public Hearing**

USEPA is announcing a public hearing on its proposed actions regarding Federal funding and construction restrictions for Lake and Porter Counties. The hearing will be held on April 13, 1989 at 10:30 am, County Commissioners Courtroom, Board of Commissioners of Lake County, 2293 North Main Street, Crown Point, Indiana 46307.

**Request for Public Comment**

Interested parties are invited to comment on all aspects of the proposed findings including USEPA's proposed action to impose Federal funding and construction restrictions. USEPA will consider all testimony received at the public hearing. Additionally, USEPA will keep the public comment period open until 30 days after the last public hearing date to provide an opportunity for submission or rebuttal information and supplementary information.

**Regulatory Impact**

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. Under 5 U.S.C. 605(6), this requirement may be waived if the Agency certifies that the rule will not have a significant economic effect on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and governmental entities with jurisdiction over populations of less than 50,000.

If USEPA takes final action, a moratorium on construction and modification of major stationary sources of the pollutant for which an attainment extension was granted for a specific area will go into effect. A major stationary source for this purpose is any source which emits, or has the potential to emit, 100 tons per year or more of the relevant pollutant (see 40 CFR 52.24(f)(4) (1988)). The moratorium would also prohibit major modifications, which are physical changes in the operation of a source that would result in a significant net increase of a pollutant. (See 40 CFR 52.24(f)(5) (1986).) Thus, some small entities might be affected by final Agency action.

USEPA has, in the past, made efforts to quantify the impact of the Act rules on the construction and modification of sources, but has been unable to do so. USEPA's lack of success is due, in part, to the need to obtain information on future plans for business growth. This information is difficult to obtain, as businesses are understandably reluctant to make their plans public. Consequently, USEPA is making no quantified assessment of the potential economic impact on small entities from today's proposal.

Although USEPA believes that a final action to impose the construction restrictions might have some impact on small entities, this impact cannot affect the Agency's actions. Under the Clean Air Act, the imposition of the construction moratorium is automatic and mandatory whenever the Agency determines that an approved or promulgated SIP is not being implemented in a nonattainment area.

Final action on today's proposal also could result in withholding of portions of air pollution control funds, provided for under Section 105 of the Act, from certain areas in Indiana. However, since today's proposal does not affect any areas with populations of less than 50,000, the governmental entities affected by any funding limitations do not fall within the definition of "small entities".

If USEPA takes final action and finds that the State has failed to submit, and is not making reasonable efforts to submit, a SIP that considers each of the elements required by Section 172, certain highway construction funds under Title 23 of the United States Code, and air quality planning funds under the Clean Air Act, and certain sewage treatment plant funds will be withheld. Thus, some small entities probably will be affected by final USEPA action.

USEPA cannot predict reliably the impact of Clean Air Act restrictions under Section 176(a) because of the exemptions authorized for highway and air quality planning projects. Careful review and evaluation of each project is necessary to determine whether or not a project is exempt. Consequently, USEPA is making no quantified assessment of the potential economic impact on small entities that may result from today's proposal.

While a final action to impose Federal highway and air quality funding restrictions might have some impact on small entities this impact cannot affect the Agency actions under the Act because the imposition of Section 176(a)

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funding restrictions are automatic and mandatory whenever the Agency determines that a State has failed to submit or made reasonable efforts to submit a SIP which addresses each of the elements of Section 172. Similarly, USEPA can not reliably predict the impact of the Clean Water Act restrictions under Section 316(b), because growth projections specifically related to impact projects are not available. However, the Agency believes that the number of small entities (cities and towns) affected by these restrictions will not be substantial.

Under Executive Order 12291, this action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Ozone.

Authority: 42 U.S.C. 7401–7642.

Dated: December 11, 1987.

Frank M. Covington,

*Acting Regional Administrator.*

Editorial Note: This document was received at the Office of the Federal Register on March 8, 1989.

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40 CFR Part 228

[FRL-3634-1]

## Ocean Dumping; Proposed Designation of Sites

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA today proposes to designate two new dredged material disposal sites located in the Gulf of Mexico offshore of Freeport Harbor, Texas. One site is for the one time disposal of 5.1 million cubic yards (mcy) of construction material; the other site is for the disposal of 2.1 mcy of future maintenance material dredged annually for the expanded and relocated Freeport Harbor Entrance and Jetty Channels. This action is necessary to provide acceptable ocean dumping sites for the disposal of material from the Army Corps of Engineers 45-Foot Project at Freeport Harbor, Texas. This proposed site designation is for an indefinite period of time.

DATE: Comments must be received on or before April 27, 1989.

ADDRESSES: Send comments to: Norm Thomas, Chief, Federal Activities Branch (6E–F), U.S. E.P.A., 1445 Ross Avenue, Dallas, Texas 75202–2733.

Information supporting this proposed designation is available for public inspection at the following locations:

EPA, Region 6 (E–FF), 1445 Ross Avenue, 10th Floor, Dallas, Texas 75202–2733.

Corps of Engineers, Galveston District, 444 Barracuda Avenue, Galveston, Texas 77550.

FOR FURTHER INFORMATION CONTACT: Norm Thomas 214/655–2260 or FTS/255–2260.

SUPPLEMENTARY INFORMATION:

### A. Background

Seciton 102(c) of the Marine Protection, Research, and Sanctuaries Act of of 1972, as amended, 33 U.S.C. 1401 et seq. ("the Act") gives the Administrator of EPA the authority to designate sites where ocean dumping may be permitted. On December 23, 1986, the Administrator delegated the authority to designate ocean dumping sites to the Regional Administrator of the Region in which the site is located. This proposed site designation is being made pursuant to that authority.

The EPA Ocean Dumping Regulations (40 CFR Chapter I, Subchapter H, § 228.4) state that ocean dumping sites will be designated by publication in Part 228. This site designation is being published as proposed rulemaking in accordance with § 228.4(e) of the Ocean Dumping Regulations, which permits the designation of ocean disposal sites for dredged material. Interested persons may participate in this proposed rulemaking by submitting written comments within 45 days of the date of this publication to the EPA Region 6 address given above.

### B. EIS Development

Section 102(2)(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, ("NEPA") requires that Federal agencies prepare Environmental Impact Statements (EISs) on proposals for major Federal actions significantly affecting the quality of the human environment. While NEPA does not apply to EPA activities of this type, EPA has voluntarily committed to prepare EISs in connection with its ocean dumping site designations (30 CFR 16186, May 7, 1974).

EPA has prepared a Draft Environmental Impact Statement entitled "Environmental Impact Statement (EIS) for the Freeport Harbor, Texas (45-Foot Project) Ocean Dredged Material Disposal Site Designation." On February 17, 1989 a notice of availability of the Draft EIS for public review and comment was published in the Federal Register. The public comment period of this Draft EIS closes on April 3, 1989. Limited copies of the Draft EIA are available from the EPA address given above.

The proposed action discussed in the EIS is designation of two ocean disposal sites for dredged material. The purpose of the designation is to provide environmentally acceptable locations for ocean disposal. The appropriateness of ocean disposal is determined on a case-by-case basis.

The EIS discusses the need for the action and examines ocean disposal sites and alternatives to the proposed action. The general alternatives examined were the no-action alternative; upland disposal; and ocean disposal, including a mid-shelf site, a continental slope site, and three near-shore sites, including the existing or historically-used site. The no-action alternative would require the Corps to develop an alternative disposal method (e.g., land based) or modify or cancel the project. The no action alternative was not considered feasible. Upland disposal was determined not practicable because there are not sufficient upland sites available to accomodate both the virgin and maintenance material from the 45-Foot Project and the Corps routine maintenance material.

The mid-shelf and continental slope alternatives were not considered feasible because of safety and economic considerations, limits on monitoring and surveillance, and the lack of any environmental benefits by utilizing sites that far offshore.

Ocean disposal sites were identified by determining a zone of siting feasibility (ZSF) and then screening out those sites which impacted biologically sensitive areas, beaches and recreational areas, the navigation channel, cultural or historical resources, etc.

Evaluation of the historically-used disposal site, which is still utilized by the Corps for disposal of routine maintenance material, showed the site to be located in the biological buffer zone area and that it contained an inappropriate grain-size regime for disposal of the construction material. Because of these reasons the existing, historically-used site is not being proposed for designation.

The preferred ocean disposal site for the virgin material is located in the 55-foot isobath and in the silty-clay regime. The preferred size of the virgin ocean dredged material disposal site (ODMDS) was determined, based on models of the ocean discharge of dredged material, to be 5,280 feet in a direction parallel to the Channel (northwest/southeast) and 11,380 feet in a direction perpendicular to the Channel (northeast/southwest). The maintenance material disposal site is located in a silty-sand regime closer to shore. The preferred size of the maintenance material ODMDS is 4,500 feet parallel to the Channel and 12,500 feet perpendicular to the Channel.

EPA is coordinating with the National Marine Fisheries Service in accordance with the requirements of Section 7 of the Endangered Species Act. EPA is also coordinating, as a part of the NEPA/EIS process, with the State of Texas regarding any requirements under the Coastal Zone Management Act.

### C. Proposed Site Designation

The preferred site for disposal of the virgin material is located about six miles from the coast and occupies an area of 2.64 square nautical miles. The coordinates of the site are as follows:

28°51'22" N, 95°14'25" W; 28°50'28" N, 95°13'30" W; 28°48'58" N, 95°15'24" W; 28°49'55" N, 95°16'19" W.

The preferred site for disposal of the maintenance material is located about three miles from the coast and occupies an area of 1.53 square nautical miles. The coordinates of the site are as follows:

28°54'00" N, 95°15'49" W; 28°53'28" N, 95°15'16" W; 28°52'00" N, 95°16'50" W; 28°52'32" N, 95°17'32" W.

### D. Regulatory Requirements

Five general criteria are used in the selection and approval of ocean disposal sites for continuing use. Sites are selected so as to minimize interference with other marine activities, to keep any temporary perturbations from the dumping from causing impacts outside the disposal site, and to permit effective monitoring to detect any adverse impacts at an early state. Where feasible, locations off the continental shelf are chosen. If disposal operations at a site cause unacceptable adverse impacts, further use of the site may be terminated or limitations placed on the use of the site to reduce the impacts to acceptable levels. The general criteria are given in § 228.5 of the EPA Ocean Dumping Regulations; § 228.6 lists eleven specific factors used in evaluating a proposed disposal site to assure that the general criteria are met. The characteristics of the proposed sites are reviewed below in terms of the eleven factors.



*1. Geographical Position, Depth of Water, Bottom Topography and Distance from Coast (40 CFR 228.6(a)(1).)*

The geographical positions of the sites are given above. The water depth at the site for the construction material is from 54 to 63 feet; the topography is flat; and the site is located about six miles from the coast at its closest point. The water depth at the site for the maintenance material ranges from 31 to 38 feet; the topography is flat; and the site is located about three miles from shore at its closest point.

*2. Location in Relation to Breeding, Spawning, Nursery, Feeding, or Passage Areas of Living Resources in Adult or Juvenile Phases (40 CFR 228.6(a)(2).)*

At the southeast border of the ZSF, there is a white shrimp breeding area, a sport and commercial fishing harvest area, and a reef area. At the northeast border, there is a small collection of coral heads (reefs), providing habitat which improves fishing. This area and the jetties, plus buffer zones are excluded from consideration. Also excluded are lighted platforms and non-submerged shipwrecks which improve fishing.

*3. Location in Relation to Beaches and Other Amenity Areas (40 CFR 228.6(a)(3).)*

The preferred sites for virgin and maintenance material disposal are roughly six miles and three miles, respectively, from beaches or other amenity areas.

*4. Types and Quantities of Wastes Proposed to be Disposed of, and Proposed Methods of Release, Including Methods of Packing the Wastes, If Any (40 CFR 228.6(a)(4).)*

Virgin construction material (5.1 mcy) only will be discharged into the virgin material disposal site. Only maintenance dredged material from the Freeport Harbor Entrance and Jetty Channels will be disposed in the maintenance material disposal site. Historically, an average of one mcy/yr is dredged from the channel at roughly ten-month intervals. This material has historically been transported by hopper dredges but could be transported by pipeline. With the proposed modifications, it is anticipated that future maintenance material will equal 2.1 mcy annually.

*5. Feasibility of Surveillance and Monitoring (40 CFR 228.6(a)(5).)*

The preferred sites are amendable to surveillance and monitoring. The proposed monitoring and surveillance program for the virgin material consists of: 1) a method for recording the location of each discharge; 2) bathymetric surveys; and 3) grain size analysis, sediment chemistry characterization and benthic infaunal analysis at selected stations. For future maintenance material, the program consists of water, sediment and elutriate chemistry; bioassays; bioaccumulation studies; and bethic infaunal analyses.

*6. Dispersal, Horizontal Transport and Vertical Mixing Characteristics of the Area, Including Prevailing Current Direction and Velocity, If Any (40 CFR 228.6(a)(6).)*

Predominant longshore currents, and thus predominant longshore transport, is to the southwest. Long-term mounding has not historically occurred. Therefore, steady longshore transport and occasional storms, including hurricanes, remove the disposed material from the site. Both proposed disposal sites were sized on the basis of modeling of short-term transport.

*7. Existence and Effects of Current and Previous Discharges and Dumping in the Area (Including Cumulative Effects) (40 CFR 228.6(a)(7).)*

The discussion of the results of chemical and bioassay testing of past maintenance material and material from the existing disposal site plus chemical analyses of water from the area concluded that there were no indications of water or sediment quality problems in the ZSF, including the preferred sites. Testing of past maintenance material indicates that it was acceptable for ocean disposal under 40 CFR Part 227. Studies of the benthos at the existing site and nearby areas have not indicated any significant decrease or change in composition of the benthos.

*8. Interference with Shipping, Fishing, Recreation, Mineral Extraction, Desalination, Fish and Shellfish, Culture, Areas of Special Scientific Imporance and Other Legitimate Uses of the Ocean (40 CFR 228.6(a)(8).)*

Legitimate uses of the ocean which are pertinent to the Freeport disposal area are shipping, mineral extraction, commercial and recreational fishing, recreational areas and historic sites. The preferred sites were selected so that their use will not interfere with other legitimate uses of the ocean since the alternative screening process was designed to prevent the selection of sites which would interfere. Disposal operations in the past have not interfered with other uses.

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*9. The Existing Water Quality and Ecology of the Site as Determined by Available Data or by Trend Assessment or Baseline Surveys (40 CFR 228.6(a)(9).)*

Monitoring studies indicated only short-term water column perturbations of turbidity, and perhaps Chemical Oxygen Demand (COD), have resulted from disposal operations. No short-term sediment quality perturbation could be directly related to disposal operations. In general, the water and sediment quality is good throughout the ZSF, including the historically-used disposal site. This indicates that there have been no long-term impacts on water and sediment quality. There also appear to be no long-term impact on the benthos at the existing site.

*10. Potentiality for the Development or Recruitment of Nuisance Species in the Disposal Site (40 CFR 228.6(a)(10).)*

With a disturbance to any benthic community, initial recolonization will be by opportunistic species. However, these species are not nuisance species in the sense that they would interfere with other legitimate uses of the ocean or that they are human pathogens. The disposal of virgin or maintenance material in the past has not, and disposal of the proposed material should not, attract or promote the development or recruitment of nuisance species.

*11. Existence at or in Close Proximity to the Site of Any Significant Natural or Cultural Features of Historical Importance (40 CFR 228.6(a)(11).)*

The nearest site of historical importance to the virgin material preferred site is approximately 0.5 miles away from the edge of this site in a cross-current direction. For the maintenance material site, the nearest site of historical importance is roughly 1.2 miles from the edge of the site in a cross-current direction. Therefore, use of the preferred sites would not adversely impact known sites of historical importance.

**E. Proposed Action**

Based on the Draft EIS, EPA proposes to designate two new Freeport Harbor (45-Foot Project) sites for future use for the ocean disposal of dredged material. The sites are compatible with the five general criteria and eleven specific factors used for site evaluation.

Before ocean dumping of dredged material at the sites may occur, the Corps of Engineers must evaluate the project according to EPA's ocean dumping criteria. EPA has the authority to approve or to disapprove or to propose conditions upon dredged material permits for ocean dumping. While the Corps does not administratively issue itself a permit, the requirements that must be met before dredged material derived from Federal projects can be discharged into ocean waters are the same as where a permit would be required.

**F. Regulatory Assessments**

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. EPA has determined that this action will not have a significant impact on small entities since the site designation will only have the effect of providing a disposal option for dredged material. Consequently, this rule does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action will not result in an annual effect on the economy of $100 million or more or cause any of the other effects which would result in its being classified by the Executive Order as a "major" rule. Consequently, this rule does not necessitate preparation of a Regulatory Impact Analysis.

This Proposed Rule does not contain any information collection requirements subject to the Office of Management and Budget review under the paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

**List of Subjects in 40 CFR Part 228**

Water pollution control.

Date: February 28, 1989.

**Robert E. Layton, Jr.,**

*Regional Administrator of Region 6.*

In consideration of the foregoing, Subchapter H of Chapter I of Title 40 is proposed to be amended as set forth below.

**PART 228—[AMENDED]**

1. The authority citation for Part 228 continues to read as follows:

**Authority:** 33 U.S.C. 1412 and 1418.

2. Section 228.12 is amended by removing the entry for "Freeport Harbor, Texas" from paragraph (a)(3) and by adding paragraphs (b) (76) and (77) to read as follows:

**§ 228.12 Delegation of management authority for interim ocean dumping sites.**

* * * * *

(b) * * *

(76) Freeport Harbor (45-Foot Project), Texas—Region 6

Location: 28°51'22" N, 95°14'25" W; 28°50'28" N, 95°13'30" W; 28°48'58" N, 95°15'24" W; 28°49'55" N, 95°16'19" W.
Size: 2.64 square nautical miles.
Depth: 54 to 63 feet.
Primary Use: Construction (new work) dredged material.
Period of Use: Indefinite period of time.
Restriction: Disposal shall be limited to dredged material from the Freeport Harbor Entrance and Jetty Channels, Texas.

(77) Freeport Harbor (45-Foot Project), Texas—Region 65.

Location: 28°54'00" N, 95°15'49" W; 28°53'28" N, 95°15'16" W; 28°52'00" N, 95°16'59" W; 28°52'32" N, 95°17'32" W.
Size: 1.53 square nautical miles.
Depth: 31 to 38 feet
Primary Use: Maintenance dredged material.
Period of Use: Indefinite period of time.
Restriction: Disposal shall be limited to dredged material from the Freeport Harbor Entrance and Jetty Channels, Texas.

[FR Doc. 89-5609 Filed 3-10-89; 8:45 am]

BILLING CODE 6560-50-M

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**40 CFR Parts 260, 261, 262, 264, 265, 268 and 270**

**[FRL-3534-7]**

**Hazardous Waste Management System; Testing and Monitoring Activities**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of extension of comment period.

**SUMMARY:** The purpose of this notice is to extend the public comment period on a Notice of Proposed Rulemaking (NPRM) published on January 23, 1989 (54 FR 3212). The NPRM proposed to: (1) Incorporate the Third Edition of "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," (SW-846) into the RCRA regulations; (2) update SW-846 with additional methods and information; and (3) mandate minimum Quality Control (QC) procedures for all RCRA testing.

The reason for this extension is to give interested persons additional time to review the many SW-846 analytical methods and the incumbent QC requirements in order to develop meaningful comments. In addition, the Government Printing Office was unable to supply SW-846 subscribers and other interested parties with the proposed update to SW-846 for more than a month following the publication of the NPRM.

Therefore, to ensure that commenters have adequate time to understand the proposed rule, review the proposed update package, and prepare their comments, we are extending the comment period from March 9, 1989 to April 24, 1989.

**DATES:** The deadline for submitting written comments on the January 23, 1989 notice is extended from March 9, 1989 to **April 24, 1989.**

**ADDRESSES:** The public should submit an original and two copies of their comments on this proposed rule to: Docket Number F-89-WTMP-FFFFF, EPA RCRA Docket, OS-305, (Room SE-205), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Please place Docket number on all comments. The collected comments and other information regarding this rulemaking are available for public review in the EPA RCRA docket. The EPA RCRA Docket is located in Room M-2427 at the above address and is open from 9:00 a.m. to 4:00 p.m., Monday through Friday, except Federal holidays. The public must make an appointment to review docket materials by calling (202) 475-9327. The public may copy 100 pages of material from any one regulatory docket at no cost; additional copies cost $0.15 per page.

Copies of the Third Edition of SW-846 of the proposed first update to the Third Edition are available from the Government Printing Office, Superintendent of Documents, Washington, DC 20402, (202) 783-3238. The document number is 955-001-00000-1 and the cost is $110.00 for the four-volume set plus updates. Update packages are being mailed to all subscribers. The proposed first update package may also be ordered from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, (703) 487-4600. The document number is PB89-148-076 and the cost is $61.95 for paper copies and $15.50 for microfiche.

Copies of the Second Edition of SW-846 are also available from NTIS. The document number is PB87-120-291 and the cost is $48.95 for paper copies and $13.50 for microfiche.

**FOR FURTHER INFORMATION CONTACT:** For general information contact the RCRA Hotline at (800) 424-9346 (toll free) or (202) 382-3000. For information on the technical aspects of this proposed rule contact Charles Sellers, Office of Solid Waste, OS-331, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, (202) 382-3282.

**Jonathan Z. Cannon,**

*Acting Assistant Administrator.*

[FR Doc. 89-5608 filed 3-10-89; 8:45 am]

BILLING CODE 6560-50-M

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# Notices

Federal Register
Vol. 54, No. 47
Monday, March 13, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Agricultural Stabilization and Conservation Service

### Feed Grain Donations for the Fort Peck Tribe Indian Reservation in Montana

Pursuant to the authority set forth in section 407 of the Agricultural Act of 1949, as amended (7 U.S.C. 1427) and Executive Order 11336, I have determined that:

1. The chronic economic distress of the needy members of the Fort Peck Tribe Indian Reservation in Montana has been materially increased and become acute because of severe and prolonged drought, thereby creating a serious shortage of feed and causing increased economic distress. This reservation is designated for Indian use and is utilized by members of the Fort Peck Tribe for grazing purposes.

2. The use of feed grain or products thereof made available by the Commodity Credit Corporation (CCC) for livestock feed for such needy members of the Tribe will not displace or interfere with normal marketing of agricultural commodities.

3. Based on the above determinations, I hereby declare the reservation and grazing lands of the Tribe to be acute distress areas and authorize the donation of feed grain owned by the CCC to livestock owners who are determined by the Bureau of Indian Affairs, United States Department of the Interior, to be needy members of the Tribe utilizing such lands. These donations by the CCC may commence upon March 1, 1989, and shall be made available through May 15, 1989, or such other date as may be stated in a notice issued by the USDA.

Signed at Washington, DC on March 7, 1989.

**Milton J. Hertz,**

*Administrator, Agricultural Stabilization and Conservation Service.*

[FR Doc. 89-5665 Filed 3-10-89; 8:45 am]

BILLING CODE 3410-05-M

## DEPARTMENT OF COMMERCE

### Agency Form Under Review by the Office of Management and Budget

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* Bureau of the Census
*Title:* 1990 Decennial Census—Field Coding
*Form Number:* D-374, D-722
*Type of Request:* New collection
*Burden:* 41,974 hours
*Number of Respondents:* 3,228,795
*Avg Hours Per Response:* 45 seconds
*Needs and Uses:* This survey is used by the Bureau of the Census to update U.S. Postal Service and commercial vendor address lists.
*Affected Public:* Individuals or households
*Frequency:* One time only
*Respondent's Obligation:* Mandatory
*OMB Desk Officer:* Francine Picoult, 395-7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: March 8, 1989

**Edward Michals,**

*Department Clearance Officer, Office of Management and Organization.*

[FR Doc. 89-5726 Filed 3-10-89; 8:45 am]

BILLING CODE 3510-07-M

### Agency Form Under Review by the Office of Management and Budget

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* Bureau of the Census
*Title:* 1990 Decennial Census—Special Place Prelist Operation
*Form Number:* D-351, D-351(GQ), D-351(HU)
*Agency Approval Number:* 0607-0621
*Type of Request:* Revision
*Burden:* 198,810 hours
*Number of Respondents:* 265,000
*Avg Hours Per Response:* 45 minutes
*Needs and Uses:* The prelist operation is a coverage improvement procedure used by the Bureau of the Census to obtain a complete and correct list of Special Place names and addresses for the 1990 Decennial Census of Population and Housing.
*Affected Public:* Individuals or households, State or local governments, Farms, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, and Small businesses or organizations
*Frequency:* One time only
*Respondent's Obligation:* Mandatory
*OMB Desk Officer:* Francine Picoult, 395-7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: March 8, 1989.

**Edward Michals,**

*Departmental Clearance Officer, Office of Management and Organization.*

[FR Doc. 89-5727 Filed 3-10-89; 8:45 am]

BILLING CODE 3510-07-M



### Agency Form Under Review by the Office of Management and Budget

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* Bureau of the Census
*Title:* 1990 Decennial Census—Vacant/Delete Check
*Form Number:* D-160
*Type of Request:* New Collection
*Burden:* 144,069 hours
*Number of Respondents:* 8,628,891
*Avg Hours Per Response:* 1 minute
*Needs and Uses:* The Bureau of the Census will use the Vacant/Delete Check to verify that housing units enumerated as 'vacant' or 'delete' during previous census operations were correctly classified.
*Affected Public:* Individuals or households
*Frequency:* One time only
*Respondent's Obligation:* Mandatory
*OMB Desk Officer:* Francine Picoult, 395-7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: March 8, 1989.

**Edward Michals,**

*Department Clearance Officer, Office of Management and Organization.*

[FR Doc. 89-5728 Filed 3-10-89; 8:45 am]

BILLING CODE 3510-07-M

## Foreign-Trade Zones Board

**[Order No. 425]**

### Resolution and Order Approving the Application of the Indianapolis Airport Authority for a Special-Purpose Subzone at the Subaru-Isuzu Plant in Tippecanoe County, IN

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

**Resolution and Order**

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zone Board (the Board) has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Indianapolis Airport Authority, filed with the Foreign-Trade Zone Board (the Board) on November 6, 1987, requesting special-purpose subzone status for the automobile and truck manufacturing plant of Subaru-Isuzu Automotive, Inc., located in Tippecanoe County, Indiana (Lafayette area), the Board, finding that the requirements of the Foreign-Trade Zone Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

**Grant of Authority To Establish a Foreign-Trade Subzone at the Subaru-Isuzu Plant in Tippecanoe County, Indiana**

*Whereas,* by an act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a-81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

*Whereas,* the Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

*Whereas,* the Indianapolis Airport Authority, grantee of Foreign-Trade Zone 72, has made application (filed November 6, 1987, FTZ Docket 31-87, 52 FR 44620), in due and proper form to the Board for authority to establish a special-purpose subzone at the automobile and pickup truck manufacturing plant of Subaru-Isuzu Automotive, Inc. (SIA), located in Tippecanoe County, Indiana (Lafayette area);

*Whereas,* notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and

*Whereas,* the Board has found that the requirements of the Act and the Board's regulations are satisfied;

*Now, Therefore,* in accordance with the application filed November 6, 1987, the Board hereby authorizes the establishment of a subzone at the Subaru-Isuzu plant, designated on the records of the Board as Foreign-Trade Subzone No. 72H at the location mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and regulations, and also to the following express conditions and limitations:

Activation of the subzone shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from federal, state, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and thoughout the foreign-trade subzone in the performance of their official duties.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

*In witness whereof,* the Foreign-Trade Zone Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, DC, this 6th day of March, 1989, pursuant to Order of the Board.

Foreign-Trade Zone Board.

**Jan W. Mares,**

*Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates.*

Attest:

**John J. Da Ponte, Jr.,**

*Executive Secretary.*

[FR Doc. 89-5720 Filed 3-10-89; 8:45 am]

BILLING CODE 3510-DS-M

## International Trade Administration

**[A-401-802]**

### Initiation of Antidumping Duty Investigation; Dry Aluminum Sulfate from Sweden

**AGENCY:** Import Administration, International Trade Administration; Commerce.

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**ACTION:** Notice.

**SUMMARY:** On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating an antidumping duty investigation to determine whether imports of dry aluminum sulfate from Sweden are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of dry aluminum sulfate materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before March 30, 1989. If that determination is affirmative, we will make a preliminary determination on or before July 24, 1989.

**EFFECTIVE DATE:** March 13, 1989.

**FOR FURTHER INFORMATION CONTACT:** Jim Terpstra, or Kathleen Doering, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377–4103 or (202) 377–8498, respectively.

**SUPPLEMENTARY INFORMATION:**

### The Petition

On February 13, 1989, we received a petition filed in proper form by the Delta Chemical Corporation on behalf of the domestic dry aluminum sulfate industry. In compliance with the filing requirements of 19 CFR 353.36, petitioner alleges that imports of dry aluminum sulfate from Sweden are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry.

If any interested party as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act wishes to register support of or opposition to this petition, please file written notification with the Commerce officials cited in the **"FOR FURTHER INFORMATION CONTACT"** section of this notice.

### United States Price and Foreign Market Value

Petitioner's estimate of United States price (USP) is the declared F.A.S value per ton of aluminum sulfate imported from Sweden. This figure is based on IM–145 statistics for November 1988. Petitioner made no adjustments to USP. Petitioner's estimate of foreign market value (FMV) is based on a home market F.O.B. price quote for November 1988. Petitioner made no adjustments to FMV. Based on a comparison of FMV to the USP, petitioner alleges a dumping margin of 60.80 percent.

Petitioner also alleges that "critical circumstances" exist, within the meaning of section 733(e) of the Act, with respect to imports of dry aluminum sulfate from Sweden.

### Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on dry aluminum sulfate from Sweden and found that it meets requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of dry aluminum sulfate from Sweden are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make a preliminary determination by July 24, 1989.

### Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the *Harmonized Tariff Schedule* (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s). The product covered by this investigation is dry aluminum sulfate from Sweden, a dry white granular material used in water purification, waste water treatment, and for industrial uses. Petitioner has specifically excluded liquid aluminum sulfate from the scope of the investigation. The dry aluminum sulfate covered by this investigation has a minimum of 17 percent aluminum oxide content, a maximum of 0.2 percent iron, a maximum of 0.5 percent water insolubles, and a range of from 6 to 200 mesh in particle size. Prior to January 1, 1989, such merchandise was classifiable under item 417.1600 of the *Tariff Schedules of the United States Annotated* (TSUSA). This merchandise is currently classifiable under HTS item 2833.22.00. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

### Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in our files, provided it confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Assistant Secretary for Import Administration.

### Preliminary Determination by ITC

The ITC will determine by March 30, 1989, whether there is a reasonable indication that imports of dry aluminum sulfate from Sweden materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 732(c)(2) of the Act.

March 6, 1989.

**Jan W. Mares,**

*Assistant Secretary for Import Administration.*

[FR Doc. 89–5722 Filed 3–10–89; 8:45 am]

BILLING CODE 3510-DS-M

**[A–401–004]**

## Certain Carton-Closing Staples and Staple Machines From Sweden, Final Results of Antidumping Duty Administrative Review

**AGENCY:** International Trade Administration/Import Administration/ Commerce.

**ACTION:** Notice of final results of antidumping duty administrative review.

**SUMMARY:** On October 25, 1988, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on certain carton-closing staples and staple machines from Sweden. The review covers Josef Kihlberg AB and the period December 1, 1985 through November 30, 1986.

We gave interested parties an opportunity to comment on our preliminary results. We received comments from the respondent. Based on our analysis of comments received, the final results are changed from those presented in the preliminary results of review.



**EFFECTIVE DATE:** March 13, 1989.

**FOR FURTHER INFORMATION CONTACT:** Barbara Victor or Laurie A. Lucksinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–5222/ 5253.

**SUPPLEMENTARY INFORMATION:**

### Background

On October 25, 1988, the Department of Commerce ("the Department") published in the **Federal Register** (53 FR 42991) the preliminary results of its administrative review of the antidumping duty order on certain carton-closing staples and staple machines from Sweden (48 FR 38250, December 20, 1983). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

### Scope of the Review

Imports covered by the review are shipments of certain carton-closing staples in strip form and certain non-automatic carton-closing staple machines. Carton-closing staples are U-shaped wide crown fastening devices used to secure and close the flaps of corrugated paperboard cartons. They are commonly referred to as wide-crown staples and are available in either 50 or 60 piece sticks of 2,000 or 2,500 per box.

Staples are made of steel, most often copper coated or galvanized. Carton-closing wide crown staples differ from office, desk-type, and other industrial staples primarily in the width of the crown and wire dimensions. Carton-closing wide crown staples have crown widths of 1¼ inches or more. The cross-sectional dimensions vary from .037–.040 inches by .074–.092 inches.

Non-automatic wide crown carton-closing staple machines use the wide crown staples described above and divided into two categories, hand-held top closing staple machines and free-standing bottom closing machines.

During the review period, such merchandise was classifiable under items 646.2000 and 662.2065, respectively, of the Tariff Schedules of the United States Annotated. This merchandise is currently classifiable under item numbers 8305.20.00 and 8422.30.90 of the Harmonized Tariff Schedule (HTS). The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers one manufacturer/ exporter of certain carton-closing staples and staple machines from Sweden and the period December 1, 1985 through November 30, 1986.

### Analysis of Comments Received

We invited interested parties to comment on the preliminary results. We received comments from Josef Kihlberg AB ("Kihlberg").

*Comment 1:* Kihlberg maintains that the Department misinterpreted its quantity discount policy. The Department did not compare Kihlberg's U.S. sales to home market sales at comparable quantities and didn't make the correct deduction for discounts.

*Department's Position:* We agree. In the preliminary determination we applied the quantity discount based on quantities shipped. We have revised our calculations applying the discount based on the total quantity ordered and invoiced.

*Comment 2:* Kihlberg argues that the Department erred in deducting export selling expenses in its calculation of exporter's sales price. Kihlberg has documented in the past that none of the indirect selling expenses of Kihlberg's export department in Sweden are incurred "by or for the account of the exporter in the United States".

*Department's Position:* After review of the record in this case, we agree that Kihlberg's export department in Sweden does not incur any expenses in selling to the United States. Therefore, we have not accounted for those expenses in our calculation of exporter's sales price.

*Comment 3:* Kihlberg points out a clerical error made in the credit calculation for five invoices.

*Department's Position:* We agree and have corrected this error in our final determination. We have also corrected two programming errors found after publication of the preliminary determination.

### Final Results of Review

Based on our analysis of comments received, we determine that the following margins exist:

| Manufacturer/ Exporter | Period | Margin (Percent) |
|---|---|---|
| Josef Kihlberg AB | | |
| Staples | 12/01/85–11/30/86 | 0.57 |
| Staple Machines | 12/01/85–11/30/86 | 0.57 |

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, as provided for in section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties of 0.57 percent shall be required. For any future entries of this merchandise from a new exporter, not covered in this or prior administrative reviews, whose first shipments occurred after November 30, 1986, and who is unrelated to Josef Kihlberg AB or any previously reviewed firm, a cash deposit of 0.57 percent shall be required. These deposit requirements are effective for all shipments of Swedish carton-closing staples and staple machines entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

**Jan W. Mares,**

*Assistant Secretary for Import Administration.*

Date: March 6, 1989.

[FR Doc. 89–5724 Filed 3–10–89; 8:45 am]

BILLING CODE 3510-DS-M

**[A–122–804]**

## Preliminary Determination of Sales at Less Than Fair Value: New Steel Rail, Except Light Rail, From Canada

**AGENCY:** Import Administration, International Trade Administration, Commerce.

**ACTION:** Notice.

**SUMMARY:** We preliminarily determine that new steel rail, except light rail, (hereinafter referred to as new steel rail) from Canada is being, or is likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to suspend liquidation of all entries of new steel rail from Canada as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by May 22, 1989.

**EFFECTIVE DATE:** March 13, 1989.

**FOR FURTHER INFORMATION CONTACT:** Kate Johnson or Louis Apple, Office of Antidumping Investigations, Import Administration, International Trade

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Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone: (202) 377-0060 or (202) 377-1760.

SUPPLEMENTARY INFORMATION:

**Preliminary Determination**

We preliminarily determine that new steel rail from Canada is being, or is likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The estimated weighted-average margins are shown in the "Suspension of Liquidation" section of this notice.

**Case History**

Since our notice of initiation (53 FR 41392, October 21, 1988), the following events have occurred. On November 10, 1988, the ITC determined that there is a reasonable indication that imports of new steel rail from Canada are materially injuring a U.S. industry (USITC Pub. No. 2135, November 1988).

On November 4, 1988, a questionnaire was presented to The Algoma Steel Corporation, Ltd. ("Algoma"), which accounts for a substantial portion of exports from Canada to the United States during the period of investigation. We received replies to the questionnaire from Algoma on November 23, 1988 and December 12, 1988. We sent deficiency letters to Algoma on December 2, 1988, January 10, 1989 and February 9, 1989. We received responses to the deficiency letters during the period December 12, 1988 through February 28, 1989.

On January 19, 1989, petitioner requested that the Department initiate a cost of production investigation pursuant to section 773(b) of the Act to determine whether Algoma was selling the subject merchandise at prices below the cost of production. Petitioner supplemented this request on February 3 and February 14, 1989. We have determined from available information that there are reasonable grounds to believe or suspect that sales of new steel rail in Canada were being made at less than the cost of production and we have presented Algoma with a cost of production questionnaire. Analysis of the reply will be taken into account for the final determination.

**Scope of Investigation**

Steel rail, whether of carbon, high carbon, alloy or other quality steel, includes, but is not limited to, standard rails, all main line sections (over 60 pounds per yard), heat-treated or head-hardened (premium) rails, transit rails, contact rail (or "third rail") and crane rails. Rails are used by the railroad industry, by rapid transit lines, by subways, in mines and in industrial applications.

Specifically excluded from this investigation are light rails which are 60 pounds or less per yard. Also excluded are relay rails which are used rails taken up from a primary railroad track and relaid in a railroad yard or on a secondard track.

Prior to January 1, 1989, such merchandise was classifiable under items 610.2010, 610.2025, 610.2100 and 688.4280 of the *Tariff Schedules of the United States Annotated* (TSUSA). This merchandise is currently classifiable under HTS items 7302.10.1020, 7302.10.1040, 7302.10.5000, 8548.00.0000. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

**Period of Investigation**

The period of investigation is April 1, 1988, through September 30, 1988.

**Fair Value Comparisons**

To determine whether sales of new steel rail from Canada to the United States were made at less than fair value, we compared the United States price to the foreign market value.

**United States Price/Purchase Price**

As provided in section 772(b) of the Act, we used the purchase price to represent the United States price for sales of new steel rail where sales were made to unrelated purchasers prior to importation of the product into the United States. We also used the purchase price to represent the United States price for sales of the subject merchandise where sales were made to an indirectly related purchaser, who was the end-user of the product, prior to importation of the product into the United States.

We calculated purchase price based on packed, F.O.B. prices. We made deductions, where appropriate, for inland freight, duty, and brokerage and handling. We made an addition, where appropriate, for duty drawback in accordance with section 772(d)(1)(B) of the Act. We also made an addition, where appropriate, for sales taxes which were not collected because the product was being exported, in accordance with section 772(d)(1)(C) of the Act. The adjustment for taxes was based on the weighted-average tax rate for each category of such or similar merchandise in the home market. The one U.S. sale of industrial rail was not included in our analysis as it represented a small portion of the total value of rail sales during the period of investigation and because no industrial rail was sold in the home market during this period.

**Foreign Market Value**

In accordance with section 773(a) of the Act, we calculated foreign market value based on the packed, delivered or ex-works prices to related and unrelated customers in the home market. For purposes of this preliminary determination, we included sales to related customers, pursuant to 19 CFR 353.22(b), since we preliminarily determine that the prices paid by those customers were comparable to the prices paid by unrelated customers. If we are unable to ascertain at verification that the prices to related and unrelated customers in the home market are comparable, we will use only the sales to unrelated customers in calculating the foreign market value in our final determination.

We made deductions from the home market price, where appropriate, for inland freight. We deducted the home market packing cost from the foreign market value and added all U.S. packing costs. We made circumstance of sale adjustments, where appropriate, for differences in credit terms and sales taxes between the two markets.

Where appropriate, we made further adjustments to the home market price to account for differences in the physical characteristics of the merchandise, in accordance with § 353.16 of the Regulations.

**Currency Conversion**

We made currency conversions in accordance with 19 CFR 353.56(a)(1). All currency conversions were made at the rates certified by the Federal Reserve Bank.

**Verification**

We will verify the information used in making our final determination in accordance with section 776(b) of the Act.

**Suspension of Liquidation**

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of new steel rail from Canada that are entered or withdrawn from warehouse for consumption on or after the date of publication of this notice in the **Federal Register**. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of new steel rails from Canada exceeds the United States price as shown below. This suspension of liquidation will remain in effect until further notice. The weighted-average margins are as follows:

| Manufacturer/Producer/ Exporter | Weighted-average margin percentage |
|---|---|
| Algoma Steel Corporation, Ltd. | 2.72 |
| All others | 2.72 |

This suspension of liquidation covers imports of new steel rail meeting the definition outlined in the "Scope of Investigation" section of this notice.

**ITC Notification**

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

The ITC will determine whether these imports are materially injuring, or threaten material injury to, a U.S. industry before the later of 120 days after the date of this determination, or 45 days after the final determination, if affirmative.

**Public Comment**

In accordance with 19 CFR 353.47, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 9:30 a.m. on April 20, 1989, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Assistant Secretary for Import Administration, Room B-099, at the above address within ten days of the publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed.

In addition, prehearing briefs in at least ten copies must be submitted to the Assistant Secretary by April 13, 1989. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, at the above address, in at least ten copies, not less than 30 days before the date of the final determination, or, if a hearing is held, within seven days after the hearing transcript is available.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

March 6, 1989.

**Jan W. Mares,**

*Assistant Secretary for Import Administration.*

[FR Doc. 89-5725 Filed 3-10-89; 8:45 am]

BILLING CODE 3510-DS-M



[A-475-803]

**Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Italy; Termination of Antidumping Duty Administrative Review**

AGENCY: International Trade Administration/Import Administration/ Commerce.

ACTION: Notice of termination of antidumping duty administrative review.

SUMMARY: On September 27, 1988, the Department of Commerce initiated an administrative review of the antidumping duty order on tapered roller bearings and parts thereof, finished and unfinished, from Italy. The Department has now determined to terminate that review.

*Background:* On September 27, 1988, the Department of Commerce published a notice of initiation of administrative review of the antidumping duty order on tapered roller bearings and parts thereof, finished and unfinished, from Italy (53 FR 37817). That notice stated that we would review RIV-SKF for the period February 1, 1987 through July 31, 1988.

RIV-SKF subsequently withdrew its request for review on November 30, 1988. As a result, the Department has determined to terminate the review.

EFFECTIVE DATE: March 13, 1989.

FOR FURTHER INFORMATION CONTACT: Eugenio Parisi or John R. Kugelman, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202)377-3601.

SUPPLEMENTARY INFORMATION: This notice is in accordance with section 751(a)(1) of the Tariff Act of 1930 (19 U.S.C. 1675(a)(1)) and 19 CFR 353.53a.

**Jan W. Mares,**

*Assistant Secretary for Import Administration.*

Date: February 17, 1989.

[FR Doc. 89-5723 Filed 3-10-89; 8:45 am]

BILLING CODE 3510-DS-M

[C-508-054]

**Fresh Cut Roses From Israel; Preliminary Results of Countervailing Duty Administrative Review**

AGENCY: International Trade Administration/Import Administration; Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on fresh cut roses from Israel. We preliminarily determine the total bounty or grant to be 10.58 percent *ad valorem* for the period October 1, 1985 through September 30, 1986. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: March 13, 1989.

FOR FURTHER INFORMATION CONTACT: Cynthia Sewell or Paul McGarr, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

**Background**

On December 10, 1986, the Department of Commerce ("the Department") published in the **Federal Register** (51 FR 44498) the final results of its last administrative review of the countervailing duty order on fresh cut roses from Israel (45 FR 58516; September 4, 1980). On September 30, 1987, the Government of Israel requested in accordance with section 355.10 of the Commerce Regulations on administrative review of the order. We published the initiation on October 20, 1987 (52 FR 38952). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

**Scope of Review**

The United States, under the auspices of the Customs Cooperation Council, has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule (HTS) as provided for in section 1201 et seq. of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s).

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Imports covered by the review are shipments of Israeli fresh cut roses. During the review period, such merchandise was classified under item numbers 192.1810 and 192.1890 of the Tariff Schedules of the United States Annotated. Such merchandise is currently classifiable under item number 0603.10.60 of the Harmonized Tariff Schedule. The review covers the period October 1, 1985 through September 30, 1986 and twelve programs.

**Analysis of Programs**

*(1) Government-Guaranteed Minimum Price Program*

The Ministry of Agriculture ("MOA") operates this program to guarantee a minimum price to farmers for their crops in case of bad marketing conditions. The MOA determines a national level of production to be covered by the guarantee program, sets a minimum (guaranteed) price based on export market conditions, and pays 50 percent of the difference between the guaranteed price and the actual average market price if the market price is lower than the guaranteed price. Payments are based on claims submitted to the MOA after the close of the growing season.

Because these payments are available only to growers that export, we preliminarily determine that they are countervailable. We calculated the benefit from this program by dividing the total payments received for roses by the total value of rose exports to all markets during the review period. On this basis, we preliminarily determine the benefit from this program to be 0.95 percent *ad valorem*.

*(2) Export Promotion Financing Fund*

The MOA operates the Export Promotion Financing Fund to promote the development of export markets for Israeli agricultural products. Exporters submit proposals to the MOA for promotional expenses, and the MOA determines whether to approve the request based on the development potential for the product and the availability of funds. For proposals that are approved, exporters receive reimbursements for up to 50 percent of actual expenses. We verified that during the review period Agrexco, Bickel and Hillron received funds for the promotion of flowers to all markets.

Because this program provides assistance only to exporters, we preliminarily determine that it is countervailable. To calculate the benefit, we divided total payments received by each company by the value of its total flower exports to all markets during the period of review. We then weight-averaged the resulting benefits by each company's proportion of total rose exports to the United States during the period of review. On this basis, we preliminarily determine the benefit from this program to be 0.14 percent *ad valorem*.

At verification, we found that the Export Promotion Committee had renounced funding of promotional activities for flowers exported to the United States, and that no funds had been budgeted for the 1987/88 growing season for the promotion of flowers in the U.S. market. Therefore, for purposes of cash deposit of estimated countervailing duties, we preliminarily determine the benefit from this program to be zero.

*(3) Insurance From Israel Foreign Trade Risks Insurance Corporation (IFTRIC)*

The Exchange Rate Risks Insurance Scheme ("EIS"), which is operated by IFTRIC, insures exporters against losses occurring when the rate of devaluation of the shekel does not keep pace with the rate of inflation. If the rate of inflation is higher than the rate of devaluation, the exporter is compensated in an amount equal to the difference between the two rates multiplied by the value added by each exporter to the exported merchandise.

In determining whether an export insurance program provides a countervailable benefit, we examine whether the premiums and other charges are adequate to cover the program's long-term operating costs and losses. We determined in the *Final Affirmative Countervailing Duty Determination: Certain Fresh Cut Flowers from Israel* ("Flowers") (52 FR 3316, February 3, 1987) that this program conferred a countervailable benefit on exports of cut flowers from Israel because the EIS operated at a loss in the five years from 1981 through 1985, and that five years is a sufficiently long period to establish that the premiums and other charges are inadequate to cover the long-term operating costs and losses of the program.
Based on this determination, we preliminarily determine that this program is countervailable.

We calculated the benefit from this program by dividing the amount of compensation each company received by the value of its total flower exports to all markets during the period of review. We then weight-averaged the resulting benefits by each company's proportion of total rose exports to the United States during the period of review. On this basis, we preliminarily determine the benefit from this program to be 9.18 percent *ad valorem*.

*(4) Short-Term Fuel Advances to Rose Growers*

In 1982, the Israeli Institute for Farm Research published a survey on the profitability of rose production in the 1980/81 season. This study stated that gross income for rose growers included grants for fuel expenses and interest savings on low-cost credit. In past reviews, we determined on the basis of best information available that these grants conferred a countervailable benefit.

At verification, we found that on December 12, 1980, the MOA had disbursed short-term interest-free loans or advances to four rose growers for the purchase of fuel. Three of the four growers repaid their fuel advances before the current review period. The remaining grower had an outstanding debt balance for fuel advances during the review period. We consider the balance outstanding during the review period to be a short-term interest-free loan. To calculate the benefit, we used as our benchmark the nominal annual short-term commercial interest rate for Israeli shekels, as published in the Bank of Israel Annual Report. We then allocated the total interest savings over total rose production during the review period. On this basis, we preliminarily determine the benefit from this program to be 0.32 percent *ad valorem*.

*(5) Government Funding of Agrexco and Purchase of Agrexco Shares*

In 1978/79 and 1979/80, the MOA provided funds to Agrexco specifically to finance the expansion of Agrexco's air freight terminal at Ben Gurion Airport. In past administrative reviews, we determined on the basis of the best information available that these funds were grants and, therefore, countervailable. In the current administrative review, we verified that these government funds to Agrexco consisted of government purchases of shares in the company.

When Agrexco was established in 1957, the Israeli government purchased 50 percent of the company's founders (voting) shares. From 1957 through 1979, the purchase of all subsequent issues of nonvoting (ordinary) shares was equally split between government and nongovernment entities (*i.e.*, growers and producer organizations). Between 1980 and 1982, the government's percentage of new shares purchased dropped slightly below 50 percent and then substantially declined in 1983 and 1984. All shares issued in 1985 and 1986 were purchased entirely by nongovernment investors. However,



Agrexco remains 50 percent government-controlled because no new voting shares have been issued since Agrexco's founding.

Agrexco is a nonprofit company that acts as a seller, marketer and distributor of all types of Israeli agricultural products. While precluded from making a profit, Agrexco always covers its operating costs. If Agrexco had surplus funds in any one year, the company may redistribute such funds to the growers and producer organizations that are shareholders. Agrexco does not pay dividends to its shareholders, and shares may be sold by individual investors only at the normal share value (original purchase price).

We have consistently held that government equity ownership *per se* does not confer a subsidy. Government ownership confers a subsidy only when it is on terms inconsistent with commercial considerations. When a government and private investors purchase shares in a company at the same price, we normally do not consider such government provision of capital to confer a subsidy. In this case, however, both government and private investors paid the same price for Agrexco shares, but with different prospects.

Producer organizations and growers invest in Agrexco with the expectation of benefiting from the use of Agrexco's export facilities and services. Most growers are too small to export on their own.

The growers' ability to export and the profits from those export sales constitute the "return" on their investment in Agrexco.

The Israeli government, on the other hand, could anticipate no such benefit because it does not use the services of the company (*i.e.*, Agrexco's export facilities). Moreover, the Israeli government could not expect any return on its investment either from dividends or an increase in the value of Agrexco's shares (because the shares can only be sold at their nominal value). In effect, the rate of return for the nonuser investor is always zero. Thus, the purchase of shares in Agrexco by the Israeli government cannot be considered a reasonable commercial investment. We preliminarily determine that the government's purchases of Agrexco shares were inconsistent with commercial considerations and, therefore, countervailable.

For commercially unreasonable equity infusions, we normally apply our "rate of return shortfall" methodology (a comparison of the company's rate of return on equity with the national average rate of return on equity). Such a methodology, however, is inappropriate when applied to a nonprofit company such as Agrexco. Absent the possibility of earning a rate of return, the Israeli government's ownership of shares in Agrexco does not fit the normal characteristics of equity. Because the Israeli government has held these shares, some of them for more than 30 years, without receiving any return or exercising any claim on them, the benefit somewhat resembles a grant. On the other hand, the benefit to Agrexco is not truly a grant because the Israeli government still has a claim on Agrexco and could redeem the shares.

As a practical matter, however, we note that the amount of benefit from any program can be no greater than if the program were an outright grant. Were we to consider this program a grant, our allocation period would be the average useful life of agricultural assets according to the "Asset Guideline Classes" of the U.S. Internal Revenue Service (which is 10 years), and our declining balance grant methodology would yield a benefit of 0.0066 percent *ad valorem*.

Because this maximum possible benefit has an inconsequential effect on the total bounty or grant to Agrexco (because we carry out the countervailing duty rate to only two decimal places), we believe it is unnecessary to determine the methodology that would be more appropriate for calculating the benefit to Agrexco from the Israeli government's ownership of shares in Agrexco. Therefore, for purposes of these preliminary results, our calculation of the total bounty or grant does not include the benefit from this program.

*(6) Government Support of the Flower Board of Israel*

The Flower Board of Israel ("FBI") was established by the Ornamental Plants Production and Marketing Board Law of 1970. The FBI is appointed by the Israeli Cabinet acting through the Ministers of Agriculture and Commerce and Industry.

In the final determination on Flowers, we determined, on the basis of best information available, that the Government of Israel provided financial support to the FBI and that such financial support is countervailable.

At verification, we found that beginning in the 1985/86 growing season, the government no longer funds the FBI. On this basis, we preliminarily determine that this program is not countervailable.

*(7) Rebate of Export Insurance Premiums*

This program, which was administered by IFTRIC, operated to rebate insurance premiums to exporters. At verification, we established that this program was terminated on June 1, 1985, and that no claims for rebates of premiums were accepted after that date. Therefore, we preliminarily determine that there were no countervailable benefits received under this program.

*(8) Long-Term Industrial Development Loans to Agrexco*

Agrexco received four long-term industrial development loans which had outstanding balances during the review period. In the *Final Affirmative Countervailing Duty Determination: Industrial Phosphoric Acid from Israel* (52 FR 25448; July 7, 1987), we determined that long-term industrial development loans are countervailable only to the extent that the applicable interest rates are less than those on loans to companies located in the Central Zone (*i.e.*, the heavily populated and developed zone). Because Agrexco is located in the Central Zone, it paid the highest rate charged for long-term loans at that time. Therefore, we preliminarily determine that these loans to Agrexco are not countervailable.

*(9) Other Programs*

In past reviews, we found that the programs listed below conferred countervailable benefits on the basis of best information available. In the final determination on Flowers (which covered the same period of review and the same companies), we found that these programs were not countervailable. Therefore, we did not reinvestigate the following programs in this review:

1. Encouragement of Capital Investment Law (Agriculture) (ECILA)
   (a) Investment Grants
   (b) Accelerated Depreciation Tax Reductions/Exemptions
   (c) Drawback Grants
   (d) Reduction of Corporate Tax Liability
   (e) Interest Subsidy Payments
2. Preferential Short-term Financing under the Export Credit Funds
   (a) Export Shipments Fund
   (b) Imports-for-Exports Fund
   (c) Export Production Fund
3. Cash Payments to Growers for Greenhouses
4. Cash Payments to Packing Houses

**Preliminary Results of Review**

As a result of the review, we preliminarily determine the total bounty

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or grant to be 10.59 percent *ad valorem* for the period October 1, 1985 through September 30, 1986.

The Department intends to instruct the Customs Service to assess countervailing duties of 10.59 percent of the f.o.b. invoice price on all shipments of this merchandise exported on or after October 1, 1985 and on or before September 30, 1986.

Further, due to the elimination of the Export Promotion Financing Fund, the Department intends to instruct the Customs Service to collect a cash deposit of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, of 10.45 percent of the f.o.b. invoice price on all shipments of Israeli fresh cut roses entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 30 days after the date of publication or the following workday. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.22 of the Commerce Regulations published in the **Federal Register** on December 27, 1988 (53 FR 53206) (to be codified at 19 CFR 355.22).

**Jan W. Mares,**

*Assistant Secretary for Import Administration*

Date: March 6, 1989.

[FR Doc. 89-5721 Filed 3-10-89; 8:45 am]

BILLING CODE 3510-DS-M

## National Oceanic and Atmospheric Administration

### Announcement of Western Washington Outer Coast, Washington as an Active Candidate for National Marine Sanctuary Designation; Intent To Prepare a Draft Environmental Impact Statement and Management Plan; Intent To Hold Public Scoping Meetings.

**AGENCY:** Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

**ACTION:** Notice.

**SUMMARY:** NOAA is naming the Western Washington Outer Coast as an Active Candidate for designation as a National Marine Sanctuary and will proceed with the subsequent steps in the designation process. The study area extends from Duntze Rock (north of Tatoosh Island on the northwestern tip of Washington State), 90 mi (145 km) southward along the coast to Point Grenville. For purposes of gathering information for developing a Draft Environmental Impact Statement (DEIS) and Draft Management Plan, the study area will extend landward to mean high water adjacent to State or federally owned lands, and to mean low water where such boundary is contiguous to the Makah, Quileute, Quinault, Hoh, and Ozette Indian Reservations, and include the waters seaward to the 12 mile limit of the territorial sea. The Western Washington Outer Coast study area encompasses an area of approximately 1,242 square nautical miles (2,432 km$^2$).

Selection of a site as an Active Candidate formally begins the National Environmental Policy Act (NEPA) process; NOAA will prepare an environmental impact statement and management plan to examine the management, boundary, and regulatory alternatives associated with Sanctuary designation. To initiate this process NOAA will hold scoping meetings in Washington State to solicit information and comments on the range of issues related to Sanctuary designation and management. Individuals and representative of interested organizations and government agencies, including tribal governments are invited and encouraged to attend.

Scoping meetings will be held on April 10, 11, 12, and 13, 1989. The first scoping meeting will be held on April 10, 1989 at 7:00 p.m. in Phillips Lecture Hall, Aberdeen High School, 414 North I Street, Aberdeen, Washington. The second scoping meeting will be held on April 11, 1989 at 7:00 p.m. in the Little Theater, Peninsular College, 502 E. Lauridsen Boulevard, Port Angeles, Washington. A third scoping meeting will be held on April 12, 1989 at 7:00 p.m. in the multi-purpose room in Forks Intermediate School, First Avenue and A Street, SE., Forks, Washington. A fourth scoping meeting will be held on April 13, 1989 at 7:00 p.m. in the NOAA Auditorium, Building 9, 7600 Sand Point Way, NE., Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:** Joseph A. Uravitch, Chief, or Franklin Christhilf, Regional Manager, Marine and Estuarine Management Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1825 Connecticut Avenue NW., Suite 714, Washington, DC 20235, (202/673-5128).

**SUPPLEMENTARY INFORMATION**

### Selection Procedures

Title III of the Marine Protection, Research, and Sanctuaries Act of 1972, 16 U.S.C. 1431 *et seq.*, authorizes the Secretary of Commerce to designate discrete areas of the marine environment as National Marine Sanctuaries to protect their special conservation, recreational, ecological, historical, research, educational, or esthetic qualities. The Act is administered by the National Oceanic and Atmospheric Administration (NOAA) through the Office of Ocean and Coastal Resource Management (OCRM), Marine and Estuarine Management Division (MEMD). Selection of a site as an an Active Candidate formally triggers the National Environmental Policy Act (NEPA) environmental impact assessment process.

On November 7, 1988, Pub. L. 100-627 was signed into law. Pub. L. 100-627 reauthorized, with amendments, Title III of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1431 *et seq.*) (the "Act"). Section 205 of Pub. L. 100-627 directs the Secretary of Commerce to designate a Western Washington Outer Coast National Marine Sanctuary not later than June 30, 1990. This notice of Active Candidate status for the Western Washington Outer Coast is the formal initiation of the documentation development phase of the Sanctuary designation process.

Initially, a draft designation document, including terms of the proposed designation, a draft management plan to implement the proposed designation, and any proposed regulations needed to implement the terms of the proposed designation are prepared. Subsequent steps include scoping meetings; public hearings; preparation of a final environmental impact statement, final management plan, and final regulations; preparation of Designation Documentation and Findings; and designation by the Secretary of Commerce. Opportunities for comment exist throughout this process and will be announced in the **Federal Register**, the local media, and other appropriate channels.



In the development of Sanctuary designation materials, NOAA will describe the extent to which designation will fulfill the purposes and policies of the Act, and discuss the degree to which:

(1) The area is of special national significance due to its resource or human-use values;

(2) Existing State and Federal authorities are inadequate to ensure coordinated and comprehensive conservation and management of the area, including resource protection, scientific research, and public education;

(3) Designation of the area as a National Marine Sanctuary will facilitate coordinated and comprehensive conservation and management of the area, including resource protection, scientific research, and public education; and

(4) The area is of a size and nature that will permit comprehensive and coordinated conservation and management. Pursuant to section 303(b) of the Act (16 U.S.C. 1433(b)), NOAA will consider:

(1) The area's natural resource and ecological qualities, including its contribution to biological productivity, maintenance of ecosystem structure, maintenance of ecologically or commercially important or threatened species or species assemblages, and the biographic representation of the site;

(2) The area's historical, cultural, archeological, or paleontological significance;

(3) The present and potential uses of the area that depend on maintenance of the area's resources, including commercial and recreational fishing, subsistence uses, other commercial and recreational activities, and research and education;

(4) The present and potential activities that may adversely affect the factors identified in the # 1-3 listed above;

(5) The existing State and Federal regulatory and management authorities applicable to the area and the adequacy of those authorities to fulfill the purposes and policies of the Act;

(6) The manageability of the area, including such factors as its size, its ability to be identified as a discrete ecological unit with definable boundaries, its accessibility, and its suitability for monitoring and enforcement activities;

(7) The public benefits to be derived from Sancturary status, with emphasis on the benefits of long-term protection of nationally significant resources, vital habitats, and resources which generate tourism;

(8) The negative impacts produced by management restrictions on income-generating activities such as living and non-living resources development; and

(9) The socioeconomic effects of Sanctuary designation. NOAA will also include an assessment of its fiscal capability to manage the area as a National Marine Sanctuary.

In preparing the environmental impact statement and management plan (EIS/MP) to examine the management and regulatory alternatives associated with Sanctuary designation, NOAA will solicit comments from interested persons, groups and organizations, the appropriate congressional committees, heads of interested Federal agencies, the responsible officials of State, local and tribal governments, and the appropriate officials of the affected Regional Fishery Management Council. This will be done during scoping meetings to be held in the State of Washington prior to preparation of the EIS/MP, and during public hearings to receive comments on the draft EIS/MP.

### History

The Western Washington Outer Coast site was first reorganized for its high natural resource potential and human resource values by placement on the National Marine Sanctuaries Program Site Evaluation List (SEL) in August of 1983 (48 FR 35568). In 1988, Congress reauthorized and amended the Act and directed the Secretary, in section 205 of Pub. L. 100-627, to issue a notice of designation with respect to the Western Washington Outer Coast National Marine Sanctuary, as generally described in the **Federal Register** Notice of August 4, 1983, not later than June 30, 1990.

### Natural Resources

*Oceanographic Characteristics*

The Western Washington Outer Coast site is affected by major oceanic currents, and by nearshore currents which are influenced by tide, wind, river discharges, and offshore submarine canyons. The Kuroshio, a principal North Pacific offshore current, splits to form the California current (flowing south) and the Alaska gyre (flowing north). The point of divergence of these two currents migrates north and south seasonally. In the winter months the California current flows south well offshore of the study area and the Davidson current, which originates in southern latitudes, flows north, inshore along the Washington coast. In the summer months, the Davidson current disperses and the California current moves inshore flowing south along the coast. Upwelling, which brings nutrient rich waters to the surface, occurs in the summer months due to prevailing northerly winds.

*Geological Features and Habitat*

Active plate tectonics caused by stresses between the Juan de Fuca, Pacific, Explorer, and American crustal plates provide the geologic setting for the Western Washington Outer Coast study area. Characteristic of the west coast, the continental shelf within the study area is narrow and steep, creating a sharp transition between the continental shelf and the deep abyssal zone. Glacial deposits compose the underlying sediments of the continental shelf. Deposits of sand and gravel, and less significant deposits of gold placers, coal, and gemstones are found along the shoreline and in coastal waters. A number of submarine canyons traverse the shelf at various intervals, although only the Juan de Fuca canyon extends within the boundary of the study area. These submarine canyons enhance upwelling to further enrich the productivity of coastal waters.

The coastline environments include rocky headlands, seastacks and sea arches, exposed beaches, protected bays, and extremely diverse and productive tidepools. Fourteen rivers, which originate in the Olympic Mountains, empty into the study area. The Western Washington Outer Coast is one of the few regions of the U.S. coastline which has remained rustic and undeveloped. The high wave energy and steep rocky cliffs make accessibility difficult, contributing to the lack of development along the shoreline. The abundance of offshore rocks and islands creates an ideal environment for a variety of seabirds and mammal populations.

*Flora and Fauna*

The study area lies within the Columbia biogeographical province. A variety of marine algae contribute significantly to the foodweb which supports the significant fisheries, bird and mammal populations. Lush plankton blooms are characteristic of the northern temperate region and occur periodically in the summer months. Eelgrass beds are important primary producers, serving as a food source and substrate for birds and intertidal species. The tidepools which form around the seastacks and rocky outcrops provide an ideal environment for the extremely complex community of intertidal organisms.

The diverse assemblages of algae and marine invertebrates support commercially and ecologically important

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species of fish. Salmon, halibut, groundfish, and finfish, as well as numerous species of shellfish are abundant in the study area.

Many species of birds migrate through or permanently reside along the coastline of the study area. Tatoosh Island, Destruction Island, Quillayute Needles and Point Grenville serve as nesting and breeding grounds for a number of bird species. The area supports the primary U.S. nesting area and the highest continental population density of the bald eagle, federally listed as endangered under the Endangered Species Act. Other birds which nest and breed in the study area include: auklets, black oystercatchers, glaucous-winged gulls, pigeon guillemonts, sooty shearwaters, three species of cormorants, common murres, petrels, tufted puffins, peregrine falcons (federally listed as endangered and threatened), osprey, scoters, and grebes.

A variety of marine mammals inhabit the offshore rocks and islands of the study area. Tatoosh Island and the islands of the Quillayute Needles are used as a haul-out for northern and California sea lions. Destruction Island, Point Grenville, and areas off Cape Alava house harbor seals and are important habitats for the southern sea otter, federally listed as threatened. Sea otters have been transferred and released at Point Grenville and the population has successfully extended north along the coast. A variety of cetaceans are present off Washington throughout the year. The grey whale, federally listed as threatened, migrates through the region annually.

**Human Uses**

The waters of the study area are used primarily for commercial (Indian and non-Indian) and recreational fishing. Tribal ceremonial and subsistence fisheries, as well as aquaculture are also dependent on the waters of the region. The Olympic National Park borders a large portion of the study area along the coast. Hiking and wilderness camping are permitted along the Park's shoreline. Of the estimated 3.5 million annual visits to the Park, approximately one third are visits to the shoreline. The coastal area is available to the public for marine educational and scientific research opportunities. University researchers use portions of the study area for field research and the gathering of baseline data.

Four Indian Tribal governments, The Makah, Quileute, Hoh, and Quinault, live along the eastern boundary of the study area. These tribes harvest anadromous fish that pass through their usual and accustomed fishing grounds. These tribes also operate a series of salmon hatcheries, some of which are maintained in cooperation with the Washington Department of Fisheries and the U.S. Fish and Wildlife Service. Extensive archaeological work, oriented toward late prehistoric culture, has been conducted within the study area. A major excavation, considered to be one of the most significant in North America, was conducted near Cape Alava. This excavation began in the later 1960's and spanned approximately 10 years. The archaeological dig uncovered a village that had been buried 400 years. Ozette Historic sites are found along the coast of the Olympic Peninsula, and a record exists of shipwrecks in the nearshore. Some historic sites include: Tatoosh Island Lighthouse, remains of WWII Army bunkers at Shi Shi Beach, and evidence of placer mining.

Commercial vessels sail into the Strait of Juan de Fuca to enter ports along the strait and in Puget Sound. Cargo-carrying vessels traverse the western portion of the study area.

Oil and gas exploration in the study area is being considered by the Minerals Management Service (MMS) of the U.S. Department of Interior. In April of 1992, MMS plans to conduct Lease Sale #132 for offshore oil and gas exploration and development in Federal waters off the Washington and Oregon coasts. Proposed Lease Sale #132 includes a portion of the study area. According to present MMS plans members of the oil and gas industry will be requested to individual their level of interest in Lease Sale #132 in November of 1989. If industry representatives indicates sufficient interest, MMS plans to proceed with the lease sale process.

Navigational projects (dredge and spoil disposal) in waters adjacent to the study area are maintained by the U.S. Army Corps of Engineers, Seattle District. The U.S. Navy conducts defense operations in the study area, and while conducting these activities restricts access to certain parts of the study area including the islands of Copalis, Quoats (Sea Lion Rock). Washington Coastal Warning Area, Submarine Test and Trail Areas 3 and 4, and Cape Flattery Warning Area.

*Existing Protection of Marine Resources*

Several agencies operate programs to protect significant resources within the Western Washington Outer Coast study area and to provide recreational and interpretive opportunities. The Olympic National Park, which includes much of the shoreline, rain forests and mountains of the Olympic Peninsula, is managed by the National Park Service. Commercial and recreational fisheries are managed by the State and Federal fisheries agencies. The U.S. Coast Guard is responsible for vessel traffic within the study area.

The Park has been dedicated as a World Heritage Site and as a Biosphere Reserve. Most of the rocky islands within the study area are divided among three National Wildlife Refuges (Quillayute Needles, Flattery, and Copalis Wildlife Refuges) and are managed by the U.S. Fish and Wildlife Service. All three refuges (excluding Destruction Island), Washington Island, the coastal area bordering the Makah Tribe, and some coastal areas within the Quinault reservation are designated as wilderness area.

*The Designation Process*

The management plan to be prepared for the proposed Sanctuary will specify the goals and objectives of Sanctuary designation and describe programs for resource protection, research and interpretation. The various administrative and regulatory alternatives for Sanctuary management will be analyzed in the environmental impact statement.

Opportunities for public participation in NOAA's development of an environmental impact statement and management plan will be provided through scoping meeting, solicitation of comments on the draft environmental impact statement/management plan and proposed regulations, and public hearings.

The April scoping meetings will identify issues regarding the designation of the Western Washington Outer Coast National Marine Sanctuary and generate suggestions for resolving them. The following are examples of discussion topics: (1) Boundary alternatives, (2) management alternatives, (3) resource protection, (4) research opportunities and (5) interpretive opportunities.

Dated: March 8, 1989.

**Thomas J. Maginnis,**

*Assistant Administrator for Ocean Services and Coastal Zone Management.*

[FR Doc. 89-5678 Filed 3-10-89; 8:45 am]

BILLING CODE 3510-08-M

## Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of availability of reports; notice of public meetings and hearings.

**SUMMARY:** The Pacific Fishery Management Council (Council) has begun its annual preseason management process for the 1989 ocean salmon fisheries. As required by the 1984 framework amendment to the Fishery Management Plan for Commercial and Recreational Salmon Fisheries off the Coasts of Washington, Oregon, and California, this notice announces: (1) The availability of Council documents and (2) dates and locations of Council meetings and public hearings which comprise the complete schedule for determining proposed and final ocean salmon management measures for the 1989 fishing season.

**DATES:** See **"SUPPLEMENTARY INFORMATION"** for the dates of the scheduled meetings and public hearings. For the public hearings being held, written comments will be accepted until March 30, 1989, at the Council office. All public hearings begin at 7 p.m. on the dates and at the locations specified below.

**ADDRESS:** Send written comments to Lawrence Six, Executive Director, Pacific Fishery Management Council, Metro Center, Suite 420, 2000 SW. First Avenue, Portland, OR 97201; 503-326-6352.

**FOR FURTHER INFORMATION CONTACT:** Lawrence Six, 503-221-6352.

**SUPPLEMENTARY INFORMATION:** Council meetings are open to the public and public comment on pertinent issues is solicited at specific times during the meetings. Written comments may be addressed to the Council office. Further details of each meeting will be available in Council news releases and the **Federal Register** or by contacting the Council office directly.

The Council's schedule for development of ocean salmon fishery management recommendations for the 1989 season follows:

March 2, 1989—Council reports which summarize the 1988 salmon season and project the expected salmon stock abundance for 1989 are available to the public from the Council office.

March 6-10, 1989—Council and its advisory entities meet at the Clarion Hotel-San Francisco Airport to adopt 1989 regulatory options for public review. On March 6, with assistance from the Salmon Technical Team (STT), the Salmon Advisory Subpanel (SAS) develops coordinated preliminary regulatory options for the 1989 season. On March 7, working from the SAS options and other advisory, tribal, and public input, the Council formulates up to three proposed options for collation by the STT. The STT and staff prepare a draft of the proposed options for Council review and tentative adoption for STT analysis on March 8. On March 10 the Council reviews its advisors analyses and tribal and public comment on the tentative options and adopts final 1989 regulatory options for public hearing.

March 16, 1989—Newsletter describing proposed management options is mailed to the public (includes options and condensed summary of biological and economic impacts).

March 24, 1989—The STT "Preseason Report II, Analysis of Proposed Regulatory Options for 1989 Ocean Salmon Fisheries" will be distributed with the Council briefing book.

March 28-29, 1989—Public hearings are held to receive comments on the proposed 1989 ocean salmon fishery management options adopted by the Council. All public hearings begin at 7 p.m. on the dates and at the locations specified below.

March 28, 1989—Thunderbird Motor Inn, North and South Umpqua Rooms, 1313 North Bayshore Drive, Coos Bay, Oregon

March 28, 1989—Seattle Airport Hilton, 17620 Pacific Highway S., Seattle, Washington

March 28, 1989—Redwood Acres Fairgrounds, Eureka, California

March 29, 1989—Astoria Middle School, 1100 Klaskanine Avenue, Astoria, Oregon

March 29, 1989—California Department of Fish and Game, Resources Building, Room 133, 1416 Ninth Street, Sacramento, California

April 3-7, 1989—Council and its advisory entities meet at the Red Lion Inn—Columbia River, Portland, Oregon, to adopt final 1989 regulatory measures. On April 3, with assistance from the STT, the SAS develops its final recommendations for the 1989 regulatory measures. On April 4, working from the SAS recommendations and other advisory, tribal, and public input, the Council tentatively adopts final 1989 regulatory measures for analysis by the STT and staff economist. On April 6 the Council reviews its advisor analyses and tribal and public comment and adopts the final 1989 regulatory measures.

April 6-7, 1989—The STT completes drafting of "Preseason Report III Analysis of Council Adopted Regulatory Measures for 1989 Ocean Salmon Fisheries."

May 1, 1989—Federal ocean salmon fishery management regulations implemented and "Preseason Report III" available for distribution.

Dated: March 8, 1989.

**Richard H. Schaefer,**

*Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 89-5753 Filed 3-10-89; 8:45 am]

BILLING CODE 3510-22-M



## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Indonesia

March 8, 1989.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs increasing limits.

**EFFECTIVE DATE:** March 15, 1989.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 535-9480. For information on embargoes and quota re-openings, call (202) 377-3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854)

The current limits for Categories 340, 347/348 and 635 are being increased, variously, for swing and carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 53 FR 24477, published on June 29, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist

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only in the implementation of certain of its provisions.

James H. Babb,

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

March 8, 1989.

Commissioner of Customs,
*Department of the Treasury,*
*Washington, DC 20229.*

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on June 24, 1988 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Indonesia and exported during the period which began on July 1, 1988 and extends through June 30, 1989.

Effective on March 15, 1989, the directive of June 24, 1988 is being amended to increase the limits for cotton and man-made fiber in the following categories as provided under the provisions of the current bilateral agreement between the Governments of the United States and Indonesia:

| Category: Levels in Group I— | Adjusted 12-mo limit [1] |
|---|---|
| 340 | 473,804 dozen. |
| 347/348 | 802,071 dozen. |
| 835 | 103,875 dozen. |

[1] The limits have not been adjusted to account for any imports exported after June 30, 1988.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 89-5706 Filed 3-10-89; 8:45 am]

BILLING CODE 3510-DR-M

## Amendment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Macau

March 8, 1989.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs amending limits.

**EFFECTIVE DATE:** March 15, 1989.

**FOR FURTHER INFORMATION CONTACT:** Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343-6495. For information on embargoes and quota re-openings, call (202) 377-3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Based upon the implementation of the Harmonized Commodity Code on January 1, 1989, the Governments of the United States and Macau agreed to amend the current bilateral textile agreement to establish a designated consultation level for Category 631 and to increase the aggregate and Group I limits.

A copy of the agreement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647-1998.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 53 FR 51297, published on December 21, 1988.

James H. Babb,

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

March 8, 1989.

Commissioner of Customs,
*Department of the Treasury,*
*Washington, DC 20229.*

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 16, 1988 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Macau and exported during the period which began on January 1, 1989 and extends through December 31, 1989.

Effective on March 15, 1989, the directive of December 16, 1988 is being amended to increase the limits for the following categories:

| Category: | 12-mo. limit [1] |
|---|---|
| 200-239, 300-369, 400-469, 600-670 and 800-899, as a group. | 76,580,824 square meters equivalent. |
| Group I: 200-239, 300-369, 600-670 and 800-899 as a group. | 73,759,677 square meters equivalent. |
| Sublevel in Group I: 631 | 231,388 dozen pairs. |

[1] The limits have not been adjusted to account for any imports exported after December 31, 1988.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 89-5707 Filed 3-10-89; 8:45 am]

BILLING CODE 3510-DR-M

## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve a revision of a currently approved information collection pertaining to SF 28, Affidavit of Individual Surety.

**ADDRESS:** Send comments to Ms. Eyvette Flynn, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Mr. Edward Loeb, Office of Federal Acquisition and Regulatory Policy, (202) 523-3847.

**SUPPLEMENTARY INFORMATION:**

a. *Purpose:* The Affidavit of Individual Surety (Standard Form (SF) 28) will be used by all executive agencies including the Department of Defense, to obtain information from individuals wishing to serve as sureties of Government bonds. In order to qualify as a surety on a Government bond, the individual must show a net worth not less than the penal amount of the bond on the SF 28. It is an elective decision on the part of the maker to use individual sureties instead of other available sources of surety or sureties for Government bonds. We are not aware if other format exists for the collection of this information. The information on SF 28 will be used to assist the contracting officer in determining the acceptability of individuals proposed as sureties.

b. *Annual reporting burden:* The annual reporting burden is estimated as follows: Respondents, *500*; responses per respondent, *1.43*; hours per response, *.4*; and total burden hours, *286*.

**Obtaining Copies of Proposals**

Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523-4755. Please cite OMB Control No. 9000-0001, SF 28, Affidavit of Individual Surety.

Dated: March 6, 1989.

Margaret A. Willis,

*FAR Secretariat.*

[FR Doc. 89-5638 Filed 3-10-89; 8:45 am]

BILLING CODE 6820-JC-M



## DELAWARE RIVER BASIN COMMISSION

### Meeting and Public Hearings

Notice is hereby given that the Delaware River Basin Commission will conduct a series of hearings on March 20 and March 21, 1989. These hearings concern a proposed amendment to the Comprehensive Plan and Water Code relating to water conservation performance standards for plumbing fixtures and fittings; a possible drought emergency declaration; and applications for project approvals.

The subject of the March 20, 1989 hearing will be as follows:

*Proposed Amendment to Comprehensive Plan and Water Code of the Delaware River Basin Relating to Water Conservation Performance Standards for Plumbing Fixtures and Fittings.* Notice was given in the February 6, 1989 **Federal Register**, Vol. 54, No. 23, page 5638, that the Commission would hold a public hearing on March 20, 1989 to receive comments on proposed amendments to the Comprehensive Plan and Water Code in relation to water conservation performance standards for plumbing fixtures and fittings. The proposed amendment would revise a rule adopted by the Commission on January 13, 1988. That rule, Resolution No. 88-2, established Basinwide water conservation performance standards for plumbing fixtures and fittings installed in new construction and renovation. The regulation required that all water conservation performance standards for plumbing fixtures and fittings adopted by the four Basin States or political subdivisions within the Basin comply with specified minimum standards for sink and lavatory faucets, shower heads, water closets, urinals and associated flushing mechanisms. Compliance dates were specified as were certain specialized fixtures and fittings not covered by the regulation. The regulation also required certification by manufacturers that their plumbing fixtures and fittings comply with the water conservation performance standards. In addition, Pennsylvania political subdivisions or their agencies seeking Commission permit approval or renewal must document that water conservation performance regulations consistent with the adopted standards have been adopted within their area of jurisdiction. Finally, periodic review of the performance standards was also required to allow for incorporation of more stringent water conservation performance standards as technology advances.

Subsection 2.1.5(4) of the regulation required the Executive Director to conduct an initial review of the standard within a year to consider modification of the current standard for water closets (a maximum of 3.5 gallons per flush) to require low consumption water closets (a maximum of 1.6 gallons per flush) effective January 1, 1990. A summary report documenting the results of this review was submitted to the Commission in January 1989. Based upon this review, the Commission is now proposing that the regulation be revised to require low consumption water closets effective January 1, 1991. The proposal would also require that all water conservation performance standards for plumbing fixtures and fittings adopted by the Basin States or political subdivisions within the Basin comply with the low consumption water closet requirement by January 1, 1991. In addition, the proposal would modify the schedule for state or local compliance with the performance standards in the Commonwealth of Pennsylvania which does not yet have statewide performance standards for plumbing fixtures and fittings. The other Basin States already have statewide standards.

Accordingly, the proposal encourages the Commonwealth of Pennsylvania to adopt water conservation performance standards for plumbing fixtures and fittings which comply with the Commission's standards by January 1, 1991. In the absence of Pennsylvania standards, the proposal would require the Commission to notify all municipalities within the Pennsylvania portion of the Basin of the requirement to adopt and enforce local regulations which comply with the Commission standards. Upon such notification by the Commission, municipalities would have one year to adopt local regulations.

The public hearing is scheduled for Monday, March 20, 1989. A presentation on the proposed rule revision will begin at 1:30 p.m. and will be followed at 2:00 p.m. by the first of the day's two hearing sessions. The second and final hearing session will begin at 7:00 p.m. Written comments received or postmarked by April 24, 1989 will be included in the hearing record.

Written comments should be submitted to Susan M. Weisman, Delaware River Basin Commission, P.O. Box 7360, West Trenton, New Jersey 08628.

The public hearing will be held at the Holiday Inn King of Prussia, 260 Goddard Boulevard, King of Prussia, Pennsylvania.

The Commission will also hold a public hearing on Tuesday, March 21, 1989 beginning at 1:30 p.m. at the Holiday Inn, 260 Goddard Boulevard, King of Prussia, Pennsylvania. The hearing will be part of the Commission's regular business meeting which is open to the public.

An informal pre-meeting conference among the Commissioners and staff will be open for public observation at about 11:00 a.m. at the same location. Topics scheduled for discussion at the conference session include status reports on the Upper Delaware Ice Jam Project, the Delaware River Striped Bass Restoration Program and Proposed Amendment of Compact Reservation, section 15.1(b) to Fund F. E. Walter Modifications.

The subjects of the 1:30 p.m. hearing will be as follows:

**Possible Drought Emergency Declaration**

Section 10.4 of the Delaware River Basin Compact provides that in the event of a drought or other condition which may cause an actual and immediate shortage of available water supply within the Basin, or within any part thereof, the Commission may, after

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public hearing, determine and delineate the area of such shortage and declare a water supply emergency therein. For the duration of such emergency, the Commission could limit the extent to which water users may divert or withdraw water for any purpose. The Commission is considering whether current and developing conditions of water supply and demand require the declaration of a water supply emergency.

The purpose of this hearing is to permit the public to comment on these matters and to make suggestions or recommendations concerning possible Commission actions. The Commission will consider possible drought actions following the hearing.

**Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or Section 3.8 of the Compact**

1. *Warwick Township Water & Sewer Authority D–86–80 CP.* An application for approval of a ground water withdrawal project to supply up to 3.72 million gallons (mg)/30 days of water to the applicant's Meyer-Walker Tract from new Well No. 3, and to limit withdrawal from all wells to 8.4 mg/30 days. Well No. 3 is located 1000 feet east southeast of the intersection of Turkey Trot and Land Roads. Well Nos. 2, 5 and 8 will be included in this docket. The project is located in Warwick Township, Bucks County, and is located in the Southeastern Pennsylvania Ground Water Protected Area.

2. *Lehman-Pike Development Corporation D–88–89.* An application to expand a 0.1 million gallon per day (mgd) sewage treatment plant to process a design flow of 0.8 mgd. The plant is located at the Saw Creek/Winona development in southern Lehman Township, Pike County, Pennsylvania. The two-phase project is designed to serve the build-out population of 7,500 people. The existing treatment plant units will be converted to sludge holding tanks. The proposed plant will include six sequencing batch reactor units that are designed for combined carbon oxidation and nitrification. The plant effluent will continue to be discharged to Saw Creek through the existing outfall. The discharge point is less than 0.2 mile upstream from the Delaware Water Gap National Recreation Area, which was included in the Comprehensive Plan by Docket No. D–87–65 CP.

3. *Pinecrest Development Corporation D–89–4.* An application to construct a 0.5 mgd sewage treatment plant to serve the Pinecrest/Locust Lakes Resort located in Tobyhanna Township, Monroe County, Pennsylvania. The plant will be constructed in three phases (Phase I, 0.2 mgd; Phase II, 0.4 mgd; Phase III, 0.5 mgd) to ultimately serve an equivalent population of 5,000 persons. The applicant proposes to construct a sequencing batch reactor process which features carbon oxidation and nitrification. Treatment plant effluent will be discharged to the headwaters of Beaver Creek, which is a tributary of Upper Tunkhannock Creek.

Documents relating to these applications may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact George C. Elias concerning docket-related inquiries.

Persons wishing to testify at the March 20 or March 21, 1989 hearings are requested to register with the Secretary prior to the hearing.

**Susan M. Weisman,**

*Secretary.*

March 6, 1989.

[FR Doc. 89–5748 Filed 3–10–89; 8:45 am]

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## DEPARTMENT OF ENERGY

### Bonneville Power Administration

### Amended Model Conservation Standards Surcharge Policy Extension

**AGENCY:** Bonneville Power Administration (Bonneville), DOE.

**ACTION:** Notice of Bonneville's amended model Conservation Standards (MCS) Surcharge Policy Extension.

**SUMMARY:** Bonneville is releasing its Amended MCS Surcharge Policy Extension (Policy). The Policy is a slightly modified version of Bonneville's Policy Extension adopted November 9, 1988. When the Policy was adopted, Bonneville requested public comment on two proposed amendments to that Policy. One public comment was received. However, it was not related to either of the two proposed amendments. Bonneville is now releasing an amended Policy which contains the two proposed amendments. This amended Policy supersedes all other versions of the Policy.

**DATE:** The Policy is effective immediately.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Procter at 503–230–3961, or call Bonneville's Public Involvement office. Telephone numbers, voice/TTY, for the Public Involvement office are: 503–230–3478 in Portland; toll-free 800–452–8429 for Oregon outside of Portland; 800–547–6048 for Washington, Idaho, Montana, Utah, Nevada, Wyoming, and California. Information may also be obtained from:

Mr. George Gwinnutt, Lower Columbia Area Manager, Room 243, 1500 Plaza Building, 1500 NE. Irving Street, Portland, Oregon 97232, 503–230–4552.

Mr. Robert Rasmussen, Acting Eugene District Manager, Room 206, 211 East Seventh Avenue, Eugene, Oregon 97401, 503–687–6952.

Mr. Wayne R. Lee, Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509–456–2516.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406–329–3060.

Mr. Ronald K. Rodewald, Wenatchee District Manager, Room 307, 301 Yakima Street, Wenatchee, Washington 98801, 509–662–4377.

Mr. Terrence G. Esvelt, Puget Sound Area Manager, 201 Queen Anne Avenue North, Suite 400, Seattle, Washington 98109, 206–442–4130.

Mr. Thomas V. W enhoffer, Snake River Area Manager, 101 West Popular, Walla Walla, Washington 99362, 509–522–6228.

Mr. Robert N. Laffel, Idaho Falls District Manager, 1527 Hollipark Drive, Idaho Falls, Idaho 83401, 208–523–2706.

Mr. Thomas H. Blankenship, Boise District Manager, Room 376, Federal Building, 550 W. Fort Street, Boise, Idaho 83724, 208–34–0137.

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## I. Background of Policy

### A. Introduction

The Surcharge Policy is a response to recommendations made by the Northwest Power Planning Council (Council) in its 1986 Northwest Conservation and Electrical Power Plan (Plan) and its Model Conservation Standards (MCS) for New Residential and Commercial Construction of March 26, 1987 (Plan Amendment). The purpose of this Policy is to encourage utilities to achieve additional electrical savings through improved residential and commercial building construction which can ultimately result in region-wide adoption of the Council's MCS in building codes. There are two additional policy objectives: (1) To identify the criteria that will be used to evaluate a utility's proposed approach to achieving MCS level electrical savings; and (2) to identify the method for calculating and collecting a surcharge.

As the Council states in its Plan Amendment, "By the end of 1989, the Council expects the region to achieve residential sector savings equivalent to at least 85 percent of those that would be achieved with full implementation of the MCS." One long-run goal is to achieve MCS level savings through code adoption.

### B. Statutory Direction

Section 4(e)(3) of the Pacific Northwest Electric Power Planning and Conservation Act (Act) provides for the development of MCS as part of the Council's Plan. The standards, as described in section 4(f)(1) of the Act, are to include standards applicable to new and existing structures and to utility and government conservation programs. Such standards should reflect geographic and climatic differences and produce all power savings that are cost effective for the region and economically feasible for consumers.

Section 4(f)(2) of the Act provides that the Council may recommend to the Bonneville Administrator the imposition of a surcharge on customers of the Administrator for those portions of their loads within the region that are within States or political subdivisions which have not, or on the Administrator's customers which have not, implemented the standards or other conservation measures that the Administrator determines achieve energy savings comparable to the standards. Finally, section 4(e)(3)(G) of the Act mandates that the Council develop a methodology for calculating the surcharge.

## II. Past and Present Surcharge Policy Development Efforts

Part A of this section summarizes past MCS and surcharge actions undertaken by the Council. Part B summarizes Bonneville's past surcharge-related activities. Part C describes the Council's 1987 surcharge recommendation as contained in its Plan Amendment of January 30, 1987.

### A. Council Activities to Date

On April 27, 1983, the Council adopted its first Plan. As required by the Act, the Council's 1983 Plan contained MCS for newly constructed residential and commercial buildings and for conversion of existing residential and commercial buildings to electric space heating and conditioning.

In the 1983 Two-Year Action Plan (chapter 10 of the 1983 Plan), the Council identified tasks to be undertaken by Bonneville, the Council, and other regional entities. That Plan mandated that Bonneville include in its surcharge policy a consistent procedure for certifying compliance with MCS and a procedure for reviewing and evaluating alternative plans.

In accordance with the 1983 Plan, State governments, local governments, or utilities were to adopt and enforce the MCS as building codes or utility service standards by January 1, 1986. Where such standards were not adopted, an alternative plan to achieve comparable savings should have been in place by January 1, 1986. Where neither action had occurred, the Council recommended that the Administrator impose a surcharge.

The Council voted on October 31, 1984, to adopt an amendment which simplified the surcharge calculation. The Council recommended that a 10-percent surcharge be levied on the customer's power bill for that portion of its loads which were not complying with the standard.

On July 26, 1985, the Council proposed to enter rulemaking to amend the MCS. On December 4, 1985, the Council voted to amend that portion of the 1983 Plan dealing with MCS. The amended MCS thermal performance levels for both new residential and new commercial buildings were equivalent to the MCS set forth and amended by the Council in its 1983 Plan. The Council also recommended that Bonneville develop a surcharge policy based on MCS implementation and performance.

In the 1986 Action Plan, the Council identified specific actions that Bonneville should take towards region-wide implementation of the MCS. Bonneville was to: (1) Have utilities submit to Bonneville a plan declaring how they intended to comply with the MCS, (2) design a process to collect utility-specific data on the savings that would be achieved if all buildings were constructed to MCS levels, (3) continue development and implementation of a procedure to measure compliance with the MCS, (4) review alternative plans for achieving compliance with the MCS and (5) develop a new surcharge policy.

On November 20, 1986, the Council proposed to enter further rulemaking to amend part of its 1986 Plan dealing with MCS and the surcharge. After public comment, the Plan amendment was published on January 30, 1987. Notice of the Plan Amendment, which included the Council's 1987 MCS, was published in the **Federal Register** on March 26, 1987 (52 FR 9738).

### B. Bonneville Activities to Date

Bonneville began the development of a surcharge policy in early 1984 through a series of informal meetings with State government, local government, utility, and Council representatives. Bonneville staff informally discussed the various issues that might surround the development of a policy to implement the Council recommendation to impose a surcharge. These informal discussions formed the basis of a **Federal Register** Notice of Intent to Develop a Policy to Implement the Council Recommended Conservation Surcharge. The notice (49 FR 34891, September 4, 1984) was mailed to the public on August 28, 1984.

Bonneville elected to delay publication of a proposed policy until after final Council action on amendment of the surcharge methodology. Public review and comment on the proposed policy took place between March 13, 1985, and May 17, 1985.

Bonneville suspended action on the surcharge policy when the Council entered rulemaking to amend the MCS in the summer of 1985. After the Council amended its MCS recommendation in December 1985, Bonneville developed a revised proposed policy and received public comment on that proposal during July and August 1986.

As part of the Administrator's decision on whether to finalize the revised proposed surcharge policy, Bonneville undertook an analysis of the cost-effectiveness and consumer

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economic feasibility of the MCS contained in the Council's 1986 Plan. Bonneville concluded that some of the recommended measures were not cost effective, and on December 19, 1986, Bonneville's MCS findings were published.

Based in part on that analysis, the Council entered rulemaking to amend its MCS and surcharge recommendations. In turn, Bonneville suspended the development of a final surcharge policy. Following publication of the Council's Plan Amendment on January 30, 1987, Bonneville undertook a second revision of the proposed surcharge policy.

On May 26, 1987, Bonneville released its proposed surcharge policy for public comment. The comment period closed on July 15, 1987. During the comment period there was one public meeting which was held on June 22, 1987. A number of changes were made in the proposed version of that policy, based on the public comment received. That policy, entitled "Model Conservation Standards Surcharge Policy," was Bonneville's response to Council recommendations to develop a surcharge policy.

In response to the 1986 Policy, utilities submitted plans for the residential and commercial sectors within their service areas. Those plans covered calendar year 1988. With the adoption of a Policy extension on November 10, 1988, Bonneville also announced proposed amendments to the Policy to allow for public comment on several issues which arose during comment on the Policy extension. Public comment on the proposed amendments closed on December 16, 1988. While one public comment was received, it did not address the proposed amendments. Bonneville is now publishing an amended Policy which adopts the two proposed amendments.

*C. Council's 1987 Surcharge Recommendation*

The Council's Plan Amendment of January 30, 1987, made several major changes to its 1986 Plan. The most significant change in the surcharge recommendation was a move away from a performance-based surcharge, where utilities could face a surcharge if their performance was poor relative to the performance of other utilities. A summary of the Council's 1987 surcharge recommendation appears below.

1. *Residential Surcharge Recommendation.* The Council recommended that a 10 percent surcharge be imposed on utilities which do not submit, by a deadline set by Bonneville: (1) An initial plan for implementation of the Bonneville/Utility Residential MCS Program; (2) a plan for implementation of an alternative program which is approved by Bonneville as being equivalent; or (3) a declaration, approved by Bonneville, that the MCS for residential buildings will be met by building codes. This surcharge would continue in effect until a utility has filed an initial plan and has obtained the necessary Bonneville approvals.

2. *Commercial Surcharge Recommendation.* The Council recommended that a 10 percent surcharge be imposed on utilities which do not submit, by a date set by Bonneville: (1) An initial plan for implementation of the Bonneville/Utility Commercial MCS Program; (2) a plan for implementation of an alternative program which is approved by Bonneville as equivalent to the Bonneville/utility MCS Program, or (3) a declaration, approved by Bonneville, that the MCS for commercial buildings will be met by building codes at the MCS levels. The Council recommended that the surcharge continue in effect until a utility has filed an initial plan and has obtained the necessary Bonneville approvals.

3. *Conversion Surcharge Recommendation.* The Council's MCS for residential and commercial buildings converting to electric space heating/conditioning stated that State or local governments or utilities should take actions through codes and/or alternative programs to achieve electric power savings from buildings which convert to electric space heating/conditioning. The savings should be comparable to those savings that would be achieved if each building converting to electric space heating/conditioning were upgraded to include all cost-effective electricity conservation measures. The Council recommended this conversion standard, but did not recommend that a surcharge be imposed for failure to adopt the standard.

4. *Combined Commercial/Residential Code.* One provision of the Plan amendment allowed for a combined residential/commercial MCS strategy by a utility. This approach allowed for less than MCS program savings to be achieved in one sector as long as the shortfall is recouped in the other sector. This alternative was to be applicable only to the submission of alternative codes or utility service standards.

5. *Exemptions.* The Council has determined that no exemptions are needed at this time.

6. *Federal Loads and Generic MCS.* The council did not make any surcharge recommendation in these areas.

**III. Surcharge Policy**

*Section 1: Definitions*

A. *Administrator*—Administrator of the Bonneville Power Administration or the Administrator's designated representative.

B. *Alternative Code*—Codes implemented in the residential and commercial sectors which, in aggregate, achieve total electrical savings at least as large as would have been expected had the Council's illustrative MCS been implemented in the residential and commercial sectors. The Council's illustrative MCS are contained in the Council's Plan Amendment (52 FR 9738, March 26, 1987).

C. *Alternative Utility Plan*—Any plan which either partially or wholly relies on an approach to conservation savings discussed in Appendices 2, 4, 5, 6, or 7 of this Policy.

D. *Alternative Utility Program*—For the residential sector, a utility operated MCS support program designed to achieve at least the same level of total expected electrical savings, while complying with the Indoor Air Quality (IAQ) and ventilation goals, of Bonneville's Super GOOD CENTS program. For the commercial sector, a utility MCS support program designed to promote at least the same MCS measures as contained in the Council's commercial MCS of March 26, 1987, and providing comparable design assistance services as contained in the Bonneville/Utility MCS support program as of the effective date of this Policy.

E. *Customer*—For purposes of this policy, a utility existing in the Pacific Northwest region which purchases firm power from Bonneville under a utility Metered or Computed Requirements Contract, or a utility which purchases firm capacity under a pre-Act contract, or a utility which participates in the Residential Purchase and Sales Agreement/Exchange Transmission Credit Agreement, as an active exchanger or deemer.

F. *Equivalent Code*—In either the residential or commercial sectors, a code which is designed to achieve (within 5 percent) the level of total electrical savings that would have been achieved if that jurisdiction had adopted the Council's MCS for that sector.

G. *Jurisdiction*—For purposes of this Policy, any unit of government including Indian Tribes, State and local governments, and municipal corporations.

H. *Region*—The Pacific Northwest Region, region, or regional means the area consisting of Orgeon, Washington, and Idaho, the portion of the State of Montana west of the Continental Divide, and such portions of the States of Nevada, Utah, and Wyoming as are within the Columbia River drainage basin; and any contiguous areas, not in excess of 75 air miles from the area referred to above, which are part of the service area of a rural electric cooperative customer, served by the Administrator on the effective date of the Act, which has a distribution system from which it serves both within and without such region.



I. *Service Area*—The service area of a utility is that portion of its service territory which is both subject to the Surcharge Policy and to which the utility provides electric power service to the residential or commercial sectors.

J. *Total Retail Load*—The number of firm kilowatt hours (kWh's) sold at retail by a customer during the 12-month period prior to the implementation date contained in Appendix 8 or during consecutive billing cycles covering a comparable period of time.

K. *Total Residential Load*—The number of firm kWh's sold at retail by the customer during either the most recent 12-month period prior to implementation data contained in Appendix 8, or during consecutive billing cycles covering a comparable period of time.

L. *Total Commercial Load*—The total number of firm kWh's sold at retail by the customer during the 12-month period prior to the implementation date contained in Appendix 8, or during consecutive billing cycles covering a comparable period of time.

*Section 2: Application of the Surcharge Policy*

For the residential sector, by the plan submission date contained in Appendix 8, customers must submit either: (a) A letter indicating that the approach being used to comply with the Policy in 1988 will be used to comply with the Policy for the plan coverage period indicated in Appendix 8, (b) a plan to implement the Super GOOD CENTS Program, or (c) an alternative utility program, or utility service standard for Bonneville approval, or (d) a plan indicating that jurisdictions within its service area will implement and enforce the MCS via participation in the Northwest Energy Code Program (NEWCP) or adoption of a Bonneville-approved building code. A utility's residential sector plan may contain any combination of these approaches. Except as provided for in section 3(A) of this Policy, the utility's entire service area must be covered by some combination of the conservation strategies described in the appendices to this policy.

A utility's residential sector plan will be evaluated on the basis of the utility's proposed efforts for the residential sector during the plan coverage period indicated in Appendix 8 and its success with the approach(es) currently being used to comply with the Policy.

Customers who do not implement a Bonneville approved residential MCS plan by the plan implementation date indicated in Appendix 8, will be subject to a surcharge as calculated in sector 4 of this Policy. Customers who have been granted a grace period, as provided for either in section 3 or the appendix relevant to the utility's conservation strategy, will not face a surcharge until the end of any such period.

For the commercial sector, by the plan submission date indicated in Appendix 8, customers must submit either (a) a letter indicating that the approach currently being used to comply with the Policy will be used to comply with the Policy for the plan coverage period indicated in Appendix 8, (b) a plan to implement Bonneville's Commercial MCS Program, (c) an alternative utility commercial program or utility service standard in the commercial sector, or (d) a plan indicating that jurisdictions within its service area have met the Council's commercial MCS through codes. A utility's commercial sector plan may contain any combination of these approaches. Except as provided for in section 3(A), the utility's entire service area must be covered by some combination of the conservation strategies described in the appendices to this policy.

Customers who have not implemented a Bonneville-approved commercial MCS plan by the plan implementation date indicated in Appendix 8, are subject to a surcharge, as calculated in section 4 of this Policy. Customers who have been granted a grace period, as provided for in either section 3 or the appendix relevant to the utility's conservation strategy, will not face a surcharge until the end of any such period.

Customers of Bonneville without service areas as defined in this Policy, need only submit evidence of their lack of such a service area by the plan submission data indicated in Appendix 8. This provision exists for those customers who have voluntarily adopted a policy not to serve the residential or commercial sectors, or who are prohibited from serving the residential or commercial sector. If the customer serves one of these two sectors, then this provision will only apply to the one sector not served.

Customers who have neither submitted this information, nor a plan for achieving conservation in these sectors, will be subject to a surcharge after the plan implementation date indicated in Appendix 8 has passed.

Each of the appendices to this Policy represents a different approach to achieve electrical savings from improved construction practices. These appendices contain more specific submission and evaluation criteria for each of the MCS plan options and are part of this Policy. It is very important that customers carefully review this document including the appendices, to understand fully what actions utilities must take to achieve conservation savings in ways which also comply with this Policy.

Once any plan is approved and implemented, Bonneville will assume that the utility and/or jurisdiction(s) within its service areas will carry out that paln in good faith. During the period for which this Policy is in effect, Bonneville reserves the right to revisit any utility's approved plan if Bonneville has reason to believe that the utility has not implemented its plan in good faith. This same provision applies to utilities who rely on jurisdictional adoption and enforcement of codes to comply with this Policy.

With their proposed plan, customers are to submit the following load information to the extent available: (a) Total retail load, and (b) that portion of their total retail load in jurisdictions not covered by one or more of the conservation strategies contained in the appendices to this Policy. If a customer has retail loads in violation of the Policy for both sectors, the portion of their total load not in compliance with the Policy should be reported by sector for each noncomplying jurisdiction.

This Policy is in effect from the date it is signed by the Administrator until it is either amended or rescinded. In future years, Bonneville will announce the submission dates and timeframe which a submittal is to cover.

*Section 3: Evaluation of Alternative Utility Plans*

An alternative utility plan is any plan which relies wholly or in part on an approach to conservation savings presented in Appendix 2, 4, 5, 6, or 7 of this Policy. These plans will be evaluated using three criteria: (1) Expected electrical savings, (2) enforcement, and (3) indoor air quality (IAQ) and ventilation. This section applies to all residential sector alternative plans and those commercial sector alternative plans relying on the adoption of commercial codes or commercial service standards.

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If Bonneville concludes that the utility's proposed alternative plan cannot be accepted because of its failure to comply with any of the evaluation criteria described below, Bonneville will allow a grace period lasting at least as long as Bonneville took to evaluate the utility's initial proposal. Any subsequent grace period(s) may be allowed on a case-by-case basis.

A. *Equivalent Electrical Savings.* For the residential sector, if a utility is proposing to achieve electrical savings by implementing an alternative residential utility program, Bonneville will use the prospective total electrical savings of its Super GOOD CENTS Program to determine whether the utility's proposed approach will at least meet the appropriate residential electrical savings level for the period of time covered by a utility's plan. Part of the equivalence determination procedure for an alternative residential utility program will involve a comparison between the utility's proposed marketing program and the marketing program they would have pursued had they enrolled in the Super GOOD CENTS program for the period of time covered by the utility's plan.

Utilities which rely on jurisdictional adoption of residential building codes, or which impose a residential service standard, to achieve additional energy savings in the residential sector, will have to provide evidence supporting the claim that the code (or service standard) can be judged to be an equivalent code, as equivalence is defined in this Policy.

Utilities which rely on jurisdictional adoption of residential *and* commercial codes (or which impose residential and commercial service standards) to achieve additional savings beyond current practice, may "tradeoff" savings achieved in one sector towards a deficit in the other sector. The utility would have to present evidence supporting its claim that the residential and commercial codes, in aggregate, can be expected to achieve at least the same total level of electrical savings as would have been achieved had the jurisdiction adopted the Council's full illustrative commercial and residential MCS for that climate zone. Such sectoral trade-offs are only allowed using enhanced building codes or service standards.

In addition, a utility may obtain equivalent savings by allocating savings achieved by advanced building codes in a jurisdiction (or jurisdictions) within its service area to its entire service area. Such "jurisdictional trade-offs" are only allowed where the utility shows that the full Council MCS level of savings for both sectors are being attained, in aggregate, within the utility's service area.

Finally, those utilities relying on commercial code adoption by a jurisdiction within or covering their service area, or who will impose a commercial service standard, will have to provide evidence supporting their claim that the expected total electrical savings are at least equivalent to what would have been expected had the jurisdiction implemented the Council's illustrative commercial MCS. The only exception to these requirements is for utilities or jurisdictions who adopt a codified version of the Council's MCS, as discussed in Appendices 4 and 8, respectively.

Submittals in future years may be evaluated using different standards in the event that code advancement occurs and/or the MCS are changed. For the plan coverage period indicated in Appendix 8, Bonneville will analyze residential electrical savings from an alternative plan by assuming that, in the absence of MCS, a residence would have been built to one of the following: (a) In Oregon, 1983 energy code; (b) in Washington, 1983 energy code; or (c) in either Idaho or Montana, HUD Minimum Property Standards. Electrical savings in the commercial sector will be evaluated assuming: (a) 1986 code in Oregon and Washington, (b) National Energy code in Montana, and (c) individual jurisdiction codes in Idaho.

All thermal performance evaluations will rely on accepted engineering practices. Bonneville will be guided by the assumptions, process, and housing prototypes contained in Bonneville's Code Equivalency Determination Procedures.

B. *Enforcement.* A utility will have more discretion in proposing an approach which will meet the second evaluation criterion on enforcement. Bonneville is recommending that any customer contemplating submission of an alternative utility plan refer to Bonneville's Super GOOD CENTS, NWECP and Commercial MCS Program descriptions for guidance. Alternative utility plans, excluding an alternative utility commercial program, must contain a requirement for site inspection consistent with the effective date of the surcharge.

Referring to alternative utility programs, a utility will have to provide evidence adequate to assure Bonneville that the energy savings which are being claimed are attributable to the utility's program. Part of that evidence is some enforcement method to assure that the conservation savings the utility is claiming are attributable to the measures they are promoting and inspecting.

C. *Indoor Air Quality and Ventilation.* For residential construction all alternative plans will be examined to determine if the construction practices being promoted or required, when combined with the comparable monitoring, information, and mitigation strategies, are likely to assure that IAQ and ventilation rates are comparable to what is achieved in homes constructed to Super GOOD CENTS standards, which are designed to at least maintain 1983 levels of IAQ and ventilation.

For the commercial sector, IAQ measures designed to at least maintain 1983 levels of IAQ and ventilation are required. The IAQ requirements contained in the Council's Plan Amendment of March 1987 were designed to maintain those levels of IAQ and ventilation. These same standards are contained in Bonneville's Energy Smart Design Program and the codified versions of the Council's commercial MCS.

*Section 4: Calculating a Surcharge*

A. Not less than 30 days prior to a final decision on the imposition of a residential surcharge, the Administrator shall provide written notice to the customer including determination of the amount of a customer's total retail load in jurisdictions not covered by a Bonneville-approved MCS residential plan. The amount of the total retail load in jurisdictions not covered by a Bonneville-approved MCS residential plan shall be based on information submitted by the utility in accordance with the reporting requirements listed in section 2 of this policy. In the event that a utility has not provided that information, the Administrator may rely on the best information available to Bonneville.

B. Not less than 30 days prior to a final decision on the imposition of a commercial surcharge, the Administrator shall provide written notice to the customer including a determination of the amount of a customer's total retail load in jurisdictions not covered by a Bonneville-approved MCS commercial plan. The amount of the total retail load in jurisdictions not covered by a Bonneville-approved MCS commercial plan shall be based on information submitted by the utility in accordance with the reporting requirements listed in section 2 of this policy. In the event that a utility has not provided that information, the Administrator may rely on the best information available to Bonneville.



C. The fraction of a customer's total retail load in jurisdictions *not* covered by a Bonneville-approved MCS plan will be determined by dividing the customer's total retail load in jurisdictions not covered by a Bonneville-approved MCS plan, as determined in sections 4(A) and 4(B), by the customer's total retail load.

D. The level of the surcharge for failure to implement the necessary Bonneville-approved MCS plans is 10 percent multiplied by the fraction of a customer's total retail load in jurisdictions *not* covered by a Bonneville-approved MCS plan, as determined in section 4(C).

E. At no time will a customer simultaneously be assessed a surcharge for failure of a jurisdiction to comply with the requirements in the residential sector and a surcharge for failure of that same jurisdiction to comply with the requirements in the commercial sector.

F. The customer and other interested parties shall be afforded an opportunity to provide comments regarding the determinations made in sections 4(A) to 4(D). Such comments may be made in writing or orally at a public meeting convened by Bonneville at the request of the customer for this purpose. This public meeting will be held between the time of the written Notice of Intent to Surcharge and the final surcharge decision. Included in the Notice of Intent to Surcharge will be an initial determination of the fraction of a customer's retail load subject to the surcharge, based on sections 4(A) to 4(D). Following the receipt and evaluation of comments, the Administrator shall provide written notice to the customer of the final surcharge decision.

G. Beginning with the effective date of a surcharge, the Administrator shall review the findings made in sections 4(A) to 4(D) after the customer, or a jurisdiction served by the customer, has taken an action that affects those findings. Customers may request such review by providing evidence in accordance with this section that the customer or a jurisdiction served by that customer has taken actions subsequent to the effective date of the surcharge.

*Section 5: Collecting a Surcharge*

A. Those customers receiving a final written notice of a load subject to a surcharge shall be billed for the surcharge beginning with the first full billing period following issuance of such notice.

B. Any power purchases or exchanges made on or after the effective date of the surcharge, but before receipt of final notice finding the load subject to a surcharge, may be retroactively billed to the effective date of the surcharge. Such retroactive billing shall collect the retroactive surcharge over a like number of billing periods as elapsed from the effective date of the surcharge to the receipt of final written notice of a surcharge.

C. The level of surcharge is applied to all power purchases and/or exchanges made by the customer under the applicable rate schedules and/or exchanges pursuant to the residential Purchase and Sales Agreement/ Exchange Transmission Credit Agreement, using the Council's surcharge methodology, and is applied subsequent to any other rate adjustment.

1. For firm requirements customers purchasing firm power under the rate schedules subject to the surcharge, the surcharge shall be applied monthly to the billing charges for all power purchased under these rate schedules during the billing period.

2. For customers participating in the residential exchange program, the surcharge shall be applied to the charges for determining the cost to the purchaser of buying firm power from Bonneville under the terms and conditions of the Residential Purchase and Sale Agreement.

3. For those firm requirements customers that both purchase power from Bonneville and participate in the Residential Purchase and Sales Agreement or Exchange Transmission Credit Agreement, the surcharge shall be applied in the following manner to avoid surcharging the same load twice:

a. All power purchases under a utility's Power Sales Contract at rates subject to the surcharge shall include a surcharge, as calculated in the previous section, added to the billing charges for the billing period; and,

b. The surcharge applied to the utility's total exchange load shall be adjusted by multiplying the surcharge level by the percentage of a utility's exchange load served by a utility's own resources. The percentage of exchange load served by a utility's own resources shall be based on the difference between the utility's total retail load and firm power purchases from Bonneville divided by the total retail load and rounded to the nearest one-tenth of a percent. The adjustment surcharge level shall be applied to the charges for determining the cost to the purchaser of buying firm power from Bonneville under the terms and conditions of the Residential Purchase and Sales Agreement or in conformance with Exhibit E of the Exchange Transmission Credit Agreement.

D. If a customer participating in the Residential Exchange is currently in a deemer status, the surcharge shall be accumulated in the account established for this purpose as specified in the respective agreement and shall be included in the obligation a utility must repay prior to receiving a direct payment from Bonneville. If a customer is not in a deemer status, the surcharge shall be included in the determination of the net payment made by Bonneville.

E. The collection of the surcharge shall continue until the Administrator determines that the surcharge is no longer required under the terms of this Policy.

F. Surcharges collected on purchases for periods in which loads are subsequently found to be in compliance with this Policy shall be credited to the customer in the first full billing period following final written notice of such finding. Surcharges on loads which are subsequently found not to have been in compliance with terms of this Policy for specified periods shall be billed to the customer in the first full billing period following final written notice of such findings.

*Appendix 1: Achieving Electrical Savings by Adopting the Bonneville/ Utility MCS Support Program*

A. *Residential Sector.* Bonneville customers opting for this path are assured that enrollment in and subsequent good faith implementation of the Super GOOD CENTS Program throughout their service areas will result in avoidance of a residential surcharge under the current Surcharge Policy. A customer which is considered a Super GOOD CENTS Program participant, but is only operating that program in a portion of its service area subject to the Policy, will have to take actions to assure that those portions of its service territory not covered by Super GOOD CENTS are covered by some combination of the other conservation strategies presented in these appendices. Those customers which implement the MCS measures contained in the Super GOOD CENTS Program, implement incentives equal to Bonneville's Super GOOD CENTS incentive level, and implement an advertising strategy considered by Bonneville to be consistent with the Super GOOD CENTS licensing and grant requirements will be considered a full participant in the Super GOOD CENTS Program for purposes of Surcharge Policy compliance. A Bonneville-approved advertising strategy must include, but is not limited to, use of the Super GOOD CENTS logo

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and participation in the regionwide Super GOOD CENTS advertising campaign, in a Bonneville-approved manner. Customers which choose to adopt an advertising strategy and/or incentives which Bonneville concludes are not consistent with Super GOOD CENTS requirements for Policy compliance will be treated as filing an alternative plan. Those customers should refer to Appendix 2 for a discussion of that option.

For customers which on average over the last 3 years have had no more than (a) five site-built housing starts, and (b) 2,000 residential accounts will be considered small utilities for purposes of this policy. These utilities will have the option of enrolling in Bonneville's Super GOOD CENTS Program for small utilities, referred to as the Small Utility Program. If a utility believes it qualifies for this option, the utility is encouraged to contact the nearest Bonneville Area or District Office to obtain more information on this program option.

If a customer is currently relying on Super GOOD CENTS participation to comply with the Policy, the utility's submittal for the plan coverage period indicated in Appendix 8 can consist of a letter indicating that the utility plans to continue participation in Super GOOD CENTS for that period of time.

Otherwise, those customers wishing to enroll in Super GOOD CENTS as a way of avoiding a surcharge must indicate this to Bonneville by the plan submission date indicated in Appendix 8. In addition, the utility shall have signed a Super GOOD CENTS grant agreement by the plan implementation date indicated in Appendix 8. Bonneville will consider Super GOOD CENTS Program implementation to have occurred when the utility is engaging in activities, particularly marketing and promotion activities, which can be considered consistent with the utility's agreement.

Bonneville will consider offering a grace period if Bonneville has not completed the customer's Super GOOD CENTS grant award by the plan implementation date indicated in Appendix 8. Any such grace period will be provided in the event that Bonneville has received a plan by the plan submission date indicated in Appendix 8, and the approval delay is due solely to Bonneville internal delay.

Finally, as is indicated in the Super GOOD CENTS Program, participants are to submit the following data:

1. Total number of new homes (all fuels) constructed in the utility's service area during the past calendar year (single-family broken out by site built, modular, and HUD-code homes, and total multifamily units).

2. Total number of new electrically heated homes constructed in the utility's service area during the past calendar year (single-family broken out by site built, modular, and HUD-code homes, and total multifamily units).

3. Total number of new electrically heated homes constructed, in the utility's service area during the past calendar year, to the standard(s) described in the customer's plan (single-family broken out by site built, modular, and HUD-code homes, and total multifamily units).

To comply with the Policy, customers are to collect and provide that data to Bonneville by January 30 of the following year.

B. *Commercial Sector.* Bonneville customers opting for this path are assured that enrollment in, and subsequent good faith implementation of Bonneville's Smart Design Program throughout the utility's service area will result in avoidance of a commercial surcharge under the current Surcharge Policy. All customers wishing to avoid a surcharge under this path must agree to comply with the IAQ and data reporting requirements and other technical specifications of that program, applicable to the customer.

If a customer is currently relying on Smart Design participation to comply with the Policy, the utility's submittal can consist of a letter indicating that the utility plans to continue participation in Smart Design for the plan coverage period indicated in Appendix 8.

Those new customers electing to participate in Smart Design to comply with the Policy must agree by the plan submission date indicated in Appendix 8 to enroll in the commercial program and must have enrolled in the program no later than the plan implementation date indicated in Appendix 8. Bonneville will consider offering a grace period if Bonneville has not completed the customer's grant award, if applicable, by the plan implementation date indicated in Appendix 8. Any such grace period will be provided in the event that Bonneville had received a plan by the plan submission date indicated in Appendix 8 and the approval delay is due solely to Bonneville internal delay.

*Appendix 2: Achieving Electrical Savings by Adopting an Alternative Utility Program*

If a utility is currently relying on an approved alternative plan to comply with the Policy, for either or both the residential and commercial sectors, the utility can submit a letter indicating its intentions to continue to rely on that approach for the plan coverage period indicated in Appendix 8.

A. *Residential.* An Alternative Utility Residential Program is the customer's proposed approach to meeting the standards of Bonneville's Super GOOD CENTS Program. In order for Bonneville to verify that the proposed program will provide equivalent savings, the information listed below must be submitted.

1. The conservation measures that will be promoted.

2. Analysis of the thermal performance of the conservation measures using Bonneville's input assumptions and Bonneville prototypes. These results will be compared to the Super GOOD CENTS illustrative path for that climate zone, using a WATTSUN analysis. If alternative assumptions or prototypes are used, acceptance of those alternative assumptions or prototypes will depend on the general acceptability of the assumptions and whether the prototypes represent typical dwellings certified in the utility's service area.

3. A list of activities to be undertaken to achieve the targeted penetration, such as: promotion and sales, advertising, incentives (type and level), technical assistance, certification, and any other applicable information. In addition, customers will be required to submit quarterly reports listing the activities undertaken and resources utilized in the marketing effort.

4. A plan showing how the utility will collect and provide the following data to Bonneville by January 30 of the following year:

a. Total number of new homes (all fuels) constructed in the utility's service area during the past calendar year (single-family broken out by site built, modular, and HUD-code homes, and total multifamily units).

b. Total number of new electrically heated homes constructed in the utility's service area during the past calendar year (single-family broken out by site built, modular, and HUD-code homes, and total multifamily units).

c. Total number of new electrically heated homes constructed, in the utility's service area during the past calendar year, to the standard(s) described in the customer's plan (single-family broken out by site built, modular, and HUD-code homes, and total multifamily units).

5. Information on how the utility and/or jurisdiction plans to achieve IAQ and ventilation rates at least comparable to those achieved in Super GOOD CENTS homes, which are designed to at least maintain 1983 levels of IAQ and ventilation.

The Alternative Utility Program path is not generally recommended for utilities without prior experience in operating such programs. An established track record with a well-defined package of measures will be extremely helpful, if not essential, in obtaining Bonneville approval for Alternative Utility Programs. Nonetheless, Bonneville staff will work with customers interested in pursuing this path to help explain the data submission requirements and other complexities involved in this approach.

Because of these complexities, utilities intending to use this path for policy compliance should submit their proposals to Bonneville at the earliest possible data after the final adoption of the Surcharge Policy. An approved program shall be implemented by the plan implementation date indicated in Appendix 8, unless a grace period, as provided for in section 3 of the Policy, has been granted.

B. *Commercial.* An alternative Utility Commercial Program is the customer's proposed approach to meeting the standards of the Bonneville/Utility Commercial MCS Program. A proposed alternative program will be evaluated relative to the: (1) Level and type of activities and services to be offered, (2) method of marketing and performing the services, (3) penetration levels expected for the proposed program activities, and (4) proposed inspection method. The types of design assistance offered in Bonneville's program will be used to evaluate the type of design assistance a utility is proposing to offer in its own commercial MCS design assistance program. The types of design assistance which Bonneville's Commercial MCS Program contains are:

—Promotion of services to commercial customers;
—Screening to determine design assistance needs;
—Depending on the size of the utility and the type of commercial construction, provision of building design handbooks, computer energy modeling, clearinghouse referral, or other building design analysis; and
—Designer recognition for specified levels of energy efficiency

To perform the necessary review, Bonneville will require the following information:

1. A list of activities and services the customer intends to offer (e.g., modeling, design assistance, design handbook, information services, and training opportunities) to achieve the targeted penetration;

2. Management and oversight consistent with Bonneville practices;

3. A proposed method to submit to Bonneville quarterly reports listing the activities undertaken and resources used in the marketing effort;

4. A plan showing how the utility will collect and provide the following data to Bonneville by January 30 of the following year:

a. Total number of new commercial buildings, major remodels, and retrofits (all fuels) constructed in the utility's service area during the past calendar year, listed by Bonneville prototype;

b. Total number of electrically heated newly constructed, major remodels, and retrofit commercial buildings in the utility's service area during the past calendar year, listed by Bonneville prototype; and

c. Total number of electrically heated newly constructed commercial buildings, major remodels, and retrofits, in the utility's service area during the past calendar year, to the standard(s) described in the customer's plan, listed by Bonneville prototype.

Those customers intending to use this path for Surcharge Policy compliance shall submit their proposed plan by the plan implementation date indicated in Appendix 8, and shall have implemented the approved program no later than the plan implementation date indicated in Appendix 8, unless a grace period, provided for in section 3 of the policy has been granted.

*Appendix 3: Achieving Electrical Savings by Participating in the Northwest Energy Code Program (NWECP)*

This is a pre-approved path for avoidance of the surcharge if all the jurisdictions within the customer's service area, subject to the Surcharge Policy, are NWECP (formerly Early Adopter Program) participants. Except for the one exception noted below, if there are jurisdictions within a customer's service area which are not NWECP participants, then the customer will be subject to a surcharge unless those jurisdictions have implemented a Bonneville-approved building code or the utility has implemented a Bonneville-approved utility program or a Bonneville-approved service standard.

Customers serving areas containing jurisdictions that have adopted advanced building codes may seek to allocate savings achieved by those jurisdictional codes to portions of their service areas not covered by another approved option. This will be permitted only if the utility shows that the full Council MCS level of savings for both sectors are being attained, in aggregate, within that utility's service areas. In other words, the utility must achieve at least the same level of total electrical savings as would be achieved had the Council's full commercial and residential MCS been implemented throughout the utility's service areas.

The essential feature of the NWECP is the adoption by a jurisdiction of the MCS contained in the NWECP description. Additional program features include specific activities to ensure that no degradation in IAQ results, some form of enforcement method to assure MCS construction, and some data reporting requirements.

A customer currently relying on jurisdictional participation in the NWECP as at least part of its Policy compliance approach, must submit a letter by the plan implementation date shown in Appendix 8 indicating that it wishes to continue to rely on that program participation to comply with the Policy for the plan coverage period indicated in Appendix 8.

A. *Residential.* 1. Customers with jurisdictions within their service area that are currently participating in the NWECP, must submit a letter indicating: (a) The jurisdictions that are NWECP participants, and (b) the award number for each jurisdiction. In addition, customers must indicate what fraction of its retail residential load lies within NWECP jurisdictions. This information shall be submitted to Bonneville by the plan submission date indicated in Appendix 8.

2. Any jurisdiction considering adoption shall adopt and enforce the code by the plan implementation date indicated in Appendix 8, for the utility to avoid a surcharge, if the utility will not be operating an approved utility MCS program or residential service standard at that time.

3. Bonneville will consider offering a grace period if Bonneville has not completed the NWECP grant award process by the plan implementation date indicated in Appendix 8. Any such grace period will be considered in the event that Bonneville has received a plan by the plan submission date indicated in Appendix 8, and the approval delay is due to Bonneville internal delay alone.

4. Finally, the utility shall collect and provide to Bonneville the following data by January 30 of the following year:

a. Total number of new homes (all fuels) constructed in the utility's service area during the past calendar year (single-family broken out by site built, modular, and HUD-code homes, and total multifamily units).

b. Total number of new electrically heated homes constructed in the utility's

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service area during the past calendar year (single-family broken out by site built, modular, and HUD-code homes, and total multifamily units).

c. Total number of new electrically heated homes constructed, in the utility's service area during the past calendar year, to the standard(s) described in the customer's plan (single-family broken out by site built, modular, and HUD-code homes, and total multi-family units).

Customers who are operating a utility program and/or a utility service standard should take all necessary steps in order to avoid double-counting when reporting the above information.

B. *Commercial.* 1. To avoid a surcharge, customers with jurisdictions within their service area considering enrolling in this program shall notify Bonneville by the plan implementation date indicated in Appendix B, of the jurisdiction's intent to enroll in the program. The jurisdiction shall have officially adopted and be able to enforce the MCS by the plan implementation date indicated in Appendix B, if the utility is not operating an approved Commercial MCS Program or commercial service standard.

2. Customers with jurisdictions within their service area that are currently participating in the NWECP, shall provide a copy of Bonneville's letter of approval or grant award number.

3. Finally, the utility shall collect and provide to Bonneville by January 30 of the following year:

a. Total number of new commercial buildings, major remodels, and retrofits (all fuels) constructed in the utility's service area during the past calendar year.

b. Total number of electrically heated newly constructed, major remodels, and retrofits commercial buildings constructed in the utility's service area during the past calendar year.

c. Total number of newly constructed, major remodels, and retrofit commercial buildings in the utility's service area during the past calendar year, to the standard(s) described in the customer's plan, broken out by Bonneville prototype.

Customers who are operating a utility program and/or a utility service standard should take all necessary steps in order to avoid double-counting when reporting the above information.

Those customers wishing to avoid a surcharge under this path shall agree by the plan submission date indicated in Appendix B, to enroll in the commercial program and shall have enrolled in the program no later than the plan implementation date indicated in Appendix B. Bonneville will consider offering a grace period if Bonneville has not completed its NWECP grant award process by the plan implementation date indicated in Appendix B. Any such grace period will be considered in the event that Bonneville has received a plan by the plan submission date indicated in Appendix B, and the approval delay is due to Bonneville internal delay alone.

NWECP application materials can be obtained by contacting your nearest Bonneville Area or District Office.

*Appendix A: Achieving Electrical Savings by Adopting a Codified Version of the MCS*

A. *Residential.* Several codified versions of the MCS have been developed. These are pre-approved codified versions of the Council's illustrative MCS paths. The options discussed in this appendix pertain to jurisdictions considering adopting, or who have adopted a codified version of the MCS, but are not participating in the NWECP.

Under this alternative, the customer must submit the codified version of the MCS which any jurisdiction in its service area is proposing for adoption or which has been adopted. The enforcement methods should be specified.

The statute or ordinance shall have been adopted and enforced by the plan implementation date indicated in Appendix B, unless a grace period, as provided for in section 3 of the Policy, has been granted.

Finally, the utility shall collect and provide to Bonneville by January 30 of the following year:

a. Total number of new homes (all fuels) constructed in the utility's service area during the past calendar year (broken out by site built, modular, and HUD-code homes, and total multifamily units).

b. Total number of new electrically heated homes constructed in the utility's service area during the past calendar year (broken out by site built, modular, and HUD-code homes, and total multifamily units).

c. Total number of new electrically heated buildings constructed in the utility's service area during the past calendar year to the standard(s) described in the customer's plan (broken out by site built, modular, and HUD-code homes, and total multifamily units).

Customers who are operating a utility program and/or utility service standard should take all necessary steps in order to avoid double-counting when reporting the above information.

B. *Commercial.* Under this alternative, the customer must submit the codified version of the MCS which a jurisdiction in its service area is proposing for adoption or which has been adopted. The enforcement methods must be specified. In addition, the customer must indicate what steps the jurisdiction will will take to address IAQ and ventilation requirements of Bonneville's NWECP.

By the plan submission date indicated to Appendix B, the customer must submit the above information to Bonneville. The statute or ordinance must be operative no later than the plan implementation date indicated in Appendix B, unless a grace period, as provided for in Section 3 of the policy, has been granted.

Finally, the utility shall collect and provide the following data to Bonneville by January 30 of the following year:

1. Total number of newly constructed, major remodels, and retrofitted (all fuels) commercial buildings in the utility's service area during the past calendar year.

2. Total number of electrically heated newly constructed, remodeled, and retrofitted commercial buildings in the utility's service area during the past calendar year.

3. Total number of electrically heated new, remodeled, and retrofitted commercial buildings in the utility's service area during the past calendar year, to the standard(s) described in the customer's plan, broken out by Bonneville prototype.

*Appendix B: Achieving Electrical Savings by Adopting Alternative or Equivalent Building Codes*

An alternative code is designed to achieve total electrical savings which, when both sector's savings are combined, are at least as large as the electrical savings expected had the Council's residential and commercial MCS been implemented. A jurisdiction proposing to adopt an alternative code, in which one sectors' total electrical savings is expected to exceed the target electrical savings level for that sector, can use those excess electrical savings to offset electrical savings below the target in the other sector. The alternative code path may be pursued by a jurisdiction only when the sum of each sectors' savings at least equals the aggregate electrical savings target, which itself is based on the sum of the level of savings for the two sectors calculated using the Council's MCS. Section 3 of this policy discusses how the utility should approach the electrical savings equivalency analysis.

As compared to alternative codes, equivalent codes examine each sector individually. They differ from the pre-approved codified versions mentioned earlier, but provide equivalent savings. For a code to be judged equivalent to the MCS, it must meet the definition of equivalence as used in this Policy.

A customer must submit a copy of the alternative or equivalent code which a jurisdiction has proposed. In addition, the customer must indicate how the jurisdiction plans on maintaining IAQ and ventilation at 1983 levels. Bonneville staff will attempt to assist customers and jurisdictions wishing to formulate improved building codes.

If an alternative code path is pursued, customers are encouraged to submit their alternative codes at the earliest possible date, but no later than the plan submission date indicated in Appendix B. Both codes would have to be implemented and enforced by the plan implementation date indicated in Appendix B.

A customer currently relying on jurisdictional participation in the NWECP as at least part of its Policy compliance approach must submit a letter indicating that it intends to continue to rely on that program participation to comply with the Policy for the plan coverage period indicated in Appendix B.

For either the equivalent or alternative code approaches, the customer must submit its residential and commercial plans by the plan submission date indicated in Appendix B. The codes must be implemented and enforced by the plan implementation date indicated in Appendix B, unless a grace period, as provided for in section 3 of the Policy, has been granted. Finally, the utility shall collect and provide to Bonneville by January 30 of the following year:

A. Total new homes (broken out by site built, modular, HUD-code homes, and total multifamily units) and commercial buildings, (new, major remodels, and retrofits) (all fuels) constructed in the utility's service area during the past calendar year.

B. Total new electrically heated homes (broken out by single-family modular, HUD-code homes, site built, and multifamily) and commercial buildings (new construction, retrofits, and remodels) in the utility's service area during the past calendar year.

C. Total new electrically heated homes (broken out by single-family modular, HUD-code homes, site built, and total multifamily) and commercial buildings (broken out by new construction, major remodels, and retrofits by Bonneville prototye by square footage) in the utility's service area during the past calendar year, to the standard(s) described in the customer's plan.

Customers who are operating a utility program and/or a utility service standard should take all necessary steps in order to avoid double-counting when reporting the above information.

For a more complete discussion of the data required to evaluate an alternative or equivalent code, refer to the latest version of Bonneville's MCS Code Equivalency Determination Procedures. A copy of these procedures can be obtained by contacting your nearest Bonneville Area or District Office.

*Appendix B: Achieving Electrical Savings by Adopting a Codified Version of the MCS as a Utility Service Standard*[1]

If a utility is currently relying on a utility service standard as at least part of its Policy compliance appraoch, all the utility need do is submit a letter indicating that it wishes to continue to rely on that approach to comply with the Policy for the plan coverage period indicated in Appendix B.

A. *Residential.* This path essentially involves adoption of a legal enforceable electric utility hook-up standard for new electrically heated residential buildings. The customer would simply decline to serve new electrically heated buildings not built to the standard's specifications. A grace period would be allowed for buildings considered by Bonneville to be "under construction" at the time the standard was adopted. The adoption of a utility service standard may qualify the utility for participation in Bonneville's NWECP.

Customers wishing to avoid a surcharge with this approach shall submit a residential plan by the plan submission date indicated in Appendix B, and the residential service standard shall be adopted and enforced by the plan implementation date indicated in Appendix B. A plan must contain: (1) A copy of the standard to be imposed, (2) how the customer plans on monitoring compliance with the standard, and (3) what IAQ measures and activities will be pursued to at least achieve IAQ and ventilation levels of Super GOOD CENTS construction, which is designed to at least maintain 1983 levels of IAQ and ventilation.

No surcharge will be imposed on any customer relying on such a service requirement which is subsequently enjoined or invalidated by a court. In such an event, the customer will be given a reasonable period of time to chose and implement another option.

Finally, the customer shall submit to Bonneville the following data by January 30 of the following year:

1. Total new homes (all fuels) constructed in the utility's service area during the past calendar year (broken out by single-family modular, HUD-code homes, site built, and multifamily).

2. Total new electrically heated homes constructed in the utility's service area during the past calendar year (broken out by single-family modular, HUD-code homes, site built, and multifamily).

3. Total new electrically heated homes constructed in the utility's service area during the past calendar year to the standard(s) described in the customer's (broken out by single-family modular, HUD-code homes, site built, and multifamily).

B. *Commercial.* This path essentially involves adoption of a legally enforceable electric utility hook-up standard for new electrically heated commercial buildings at least equal to the Council's commercial MCS. The customer would simply decline to serve new electrically heated buildings not built to the standard's specifications. A grace period would be allowed for buildings considered by Bonneville to be "under construction" at the time the standard was adopted.

Customers wishing to avoid a surcharge with this approach shall submit a commercial plan by the plan submission date indicated in Appendix B, and the commercial service standard shall be adopted and enforced by the plan implementation date indicated in Appendix B, unless a grace period, as provided for in section 3 of the policy, has been granted. A plan must: (1) Contain a copy of the standard to be imposed, and (2) indicate how the customer plans on monitoring compliance with the standard.

No surcharge will be imposed on any customer relying on such a service requirements which is subsequently enjoined or invalidated by a court. In such an event, the customer will be given a reasonable period of time to choose and implement another option.

Finally, the customer shall submit to Bonneville the following data by January 30 of the following year:

1. Total new commercial buildings, major remodels, and retrofits (all fuels)

[1] Many customers have questioned whether they have legal authority, under State laws to impose such a service requirement. Bonneville has examined this question under the State laws of Oregon, Washington, Idaho, and Montana and has reached the tenative conclusion that no clear legal impediments exists in these States to conservation-oriented utility service requirements. While Bonneville does not offer legal advice to customers, particularly on questions of State law, Bonneville legal staff are available to discuss these preliminary conclusions with customers and their legal counsel. Any utility considering such a path should obtain independent legal advice on this question.

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constructed in the utility's service area during the past calendar year.

2. Total electrically heated new, remodeled, and retrofitted commercial buildings constructed in the utility's service area during the past calendar year (broken out by Bonneville prototype).

3. Total electrically heated new, remodeled, and retrofitted commercial buildings constructed in the utility's service area during the past calendar year, to the standard(s) described in the customer's plan (broken out by Bonneville prototype).

*Appendix 7: Achieving Electrical Savings by Adopting an Alternative or Equivalent Utility Service Standard*

This path is actually two alternative paths. If an equivalent utility service standard approach is pursued, a customer may choose to adopt a utility service standard which is not one of the codified versions, but which is determined to be equivalent to the Council's MCS, as equivalence is defined in this Policy. Alternatively, the customer may choose to adopt utility service standards for the residential and commercial sectors which when taken together, achieves at least the same level of total electrical savings as would have been achieved had the customer adopted the Council's commercial and residential MCS. This latter option is referred to as an alternative utility service standard.

If a utility is currently relying on a utility service standard as at least part of its Policy compliance approach, all the utility need do is submit a letter indicating that it wishes to continue to rely on that approach to comply with the Policy for the plan coverage period indicated in Appendix 8.

If an alternative or equivalent utility service standard approach is pursued, a customer shall submit to Bonneville: (1) A copy of the proposed service standard(s); (2) a description of the enforcement method(s); (3) a description of the methods used to at least achieve IAQ and ventilation levels of Super GOOD CENTS construction, which is designed to at least maintain 1983 levels of IAQ and ventilation; and (4) a copy of the analysis used to verify that the proposed service standard(s) will achieve the required total electrical savings. This material shall be submitted by the plan submission date indicated in Appendix 8, and both service standards shall be adopted and enforced by the plan implentation date indicated in Appendix 8.

Finally, the customer shall submit to Bonneville the follwing data by January 30 of the following year:

A. Total new homes (broken out by site built, modular, HUD-code homes, and total multifamily units) and commercial buildings (all fuels broken out by new construction, major remodels, and retrofits) in the utility's service area during the past calendar year.

B. Total new electrically heated homes (for single-family, broken out by site built, modular, HUD-code homes, and total multifamily units) and commercial buildings (broken out by new construction, remodel, and retrofits) in the utility's service areas during the past calendar year.

C. Total new electrically heated homes (for single-family, broken out by site built, modular, HUD-code homes, and total multifamily units) and commercial buildings (new construction, remodels, and retrofits) constructed in the utility's service area during the past calendar year, to the standard(s) described in the customer's plan by Bonneville prototype).

For a detailed description of the data required to evaluate an alternative or equivalent code, and the evaluation criteria, the customer and/or jurisdiction is advised to consult the latest version of Bonneville's MCS Code Equivalency Determination Procedures. A copy of these procedures can be obtained by contacting your local Bonneville Area or District Office.

*Appendix 8: Submittal and Implementation Schedule for MCS Surcharge Policy.*

Plan Submission Date: December 16, 1988

Plan Implementation Date: January 16, 1989

Plan Coverage Period: Calendar Year 1989

Issued in Portland, Oregon, on February 28, 1989.

**Steven G. Hickok,**

*Executive Assistant Administrator.*

[FR Doc. 89-5746 Filed 3-8-89; 4:56 pm]

BILLING CODE 6450-01-M

## Federal Energy Regulatory Commission

**[Project No. 10525-001; Washington]**

### White Chuck Water Co.; Surrender of Preliminary Permit

March 9, 1989.

Take notice that the White Chuck Water Company, permittee for the Clear Creek Hydroelectric Project No. 10525, to be located on Clear Creek in Snohomish County, Washington, has requested that its preliminary permit be terminated. The preliminary permit was issued on August 12, 1988, and would have expired on July 31, 1991.

The permittee filed the request on February 1, 1989, and the preliminary permit for Project No. 10525 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday, or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 89-4743 Filed 3-10-89; 8:45 am]

BILLING CODE 6717-01-M

**[Docket No. TQ89-2-1-000]**

### Alabama-Tennessee Natural Gas Co.; Proposed PGA Rate Adjustment

March 8, 1989.

Take notice that on March 1, 1989, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee), Post Office Box 918, Florence, Alabama, 35631, tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet:

Twelfth Revised Sheet No. 4

Alabama-Tennessee states that this tariff sheet is to become effective April 1, 1989. Alabama-Tennessee states that the purpose of this filing is to adjust its rates to conform to the rates of its suppliers.

Alabama-Tennessee has requested any necessary waivers of the Commission's Regulations in order to permit the tariff sheets to become effective as proposed.

Alabama-Tennessee states that copies of the tariff filing have been mailed to all of its jurisdictional customers and affected State Regulatory Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with Rule 211 or Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR §§ 385.211 and 385.214). All such motions or protests should be filed on or before March 15, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party



to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 89-5737 Filed 3-10-89; 8:45 am]

BILLING CODE 6717-01-M

**[Docket No. TA89-1-46-000]**

### ANR Pipeline Co.; Proposed Changes in FERC Gas Tariff

March 7, 1989.

Take notice that ANR Pipeline Company ("ANR"), on February 28, 1989, tendered for filing as part of its F.E.R.C. Gas Tariff, Original Volume No. 1, the following tariff sheet to be effective May 1, 1989.

Twentieth Revised Sheet No. 18

ANR states that the purpose of the instant filing is to implement its Annual PGA rate adjustment pursuant to Section 15 of the General Terms and Conditions of ANR's Tariff.

ANR states that Twentieth Rev. Sheet No. 18 reflects a 32.05¢ per dekatherm (dth) decrease in the gas cost component of the commodity rate of ANR's CD-1/MC-1 Rate Schedules, a decrease of $0.41 in the monthly D-1 demand rate and a reduction of 1.48¢ in the D-2 demand rate applicable to the CD-1/MC-1 Rate Schedules. The instant filing further reflects a decrease in ANR's one-part rate applicable to Rate Schedule SGS-1 of 36.61¢ per dth.

ANR states that copies of the filing were served upon all of its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 27, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Lois D. Cashell,**

*Secretary*

[FR Doc. 89-5711 Filed 3-10-89; 8:45 am]

BILLING CODE 6717-01-M

**[Docket No. ER89-17-000]**

### Cincinnati Gas & Electric Co.; Initiation of Proceeding and Refund Effective Date

March 8, 1989.

Take notice that on March 8, 1989, the Commission issued an order in this proceeding initiating a proceeding under section 206 of the Federal Power Act, as amended by the Regulatory Fairness Act of 1988.

Refund effective date: 60 days from publication of this notice in the **Federal Register.**

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 89 5742 Filed 3-10-89; 8:45 am]

BILLING CODE 6717-01-M

**[Docket No. TA89-1-46-000]**

### Kentucky West Virginia Gas Co.; Proposed Changes in FERC Gas Tariff

March 8, 1989.

Take notice that Kentucky West Virginia Gas Company ("Kentucky West") on March 1, 1989, tendered for filing with the Federal Energy Regulation Commission ("Commission") its annual PGA filing, which includes Eleventh Revised Sheet No. 41 to its FERC Gas Tariff, Second Revised Volume No. 1, to become effective May 1, 1989.

Kentucky West states that Eleventh Revised Sheet No. 41 reflects a deferred gas cost adjustment of $0.0431 and a current adjustment decrease based on an average cost of purchased gas effective May 1, 1989, of $2.0526. This average cost of gas reflects Kentucky West's exercise of contractual provisions, pursuant to its obligations under various gas purchase agreements, so as to provide for a total price of $2.0724 per dth inclusive of all taxes and any other production-related cost add-ons that it would pay under these contracts.

Kentucky West states that, by its filing, or any request or statement made therein, it does not waive any rights to collect amounts, nor the right to collect carrying charges applicable thereto, to which it is entitled pursuant to the mandate of the United States Court of Appeals for the Fifth Circuit issued on March 6, 1986, in *Kentucky West Virginia Gas Co.* v. *FERC*, 780 F.2d 1231 (5th Cir. 1986), or to which it is or becomes entitled pursuant to any other judicial and/or administrative decisions.

Kentucky West states that a copy of its filing has been served upon each of its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in a accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure and 385.214). All such motions or protests should be filed on or before March 28, 1989. Protests will be considered by the commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 89-5738 Filed 3-10-89; 8:45 am]

BILLING CODE 6717-01-M

**[Docket No. TA89-1-47-000]**

### MIGC, Inc.; Proposed Purchased Gas Adjustment Rate Change

March 7, 1989.

Take notice that on February 28, 1989, MIGC, Inc. (MIGC) tendered for filing Fifty-Second Revised Sheet No. 32 to its FERC Gas Tariff Original Volume No. 1. MIGC states that the purpose of this proposed tariff change is to submit its first annual purchased gas cost adjustment (PGA) filing pursuant to the Commission's revised PGA regulations and the revised PGA provisions of MIGC's tariff, as approved in Docket No. RP88-143-000. The revised tariff sheet is proposed to become effective May 1, 1989.

MIGC states that Fifty-Second Revised Sheet No. 32 reflects a PGA increase of $.1141 per MMBtu. MIGC states that the proposed PGA increase of $.1141 reflects a current adjustment of $.0012 per MMBtu to be effective for the three months commencing May 1, 1989, and an annual surcharge adjustment of $.1153 per MMBtu also effective May 1, 1989.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such motions or protests should be filed on or before

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March 27, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for the public.

Lois D. Cashell,

*Secretary.*

[FR Doc. 89-5712 Filed 3-10-89; 8:45 am]

BILLING CODE 6717-01-M

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[Docket Nos. TM89-3-16-000 and TM89-3-16-001]

**National Fuel Gas Supply Corp.; Proposed Changes in FERC Gas Tariff**

March 7, 1989.

Take notice that on February 28, 1989, National Fuel Gas Supply Corporation ("National") tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, to be effective on March 1, 1989.

Fifth Revised Sheet No. 71, page 1 of 2
Third Revised Sheet No. 71-A, page 1 of 2
Third Revised Sheet No. 71-B, page 1 of 2
Second Revised Sheet No. 71-C
Fifth Revised Sheet No. 72, page 1 of 2
Fifth Revised Sheet No. 72, page 2 of 2
Third Revised Sheet No. 72-A, page 1 of 4
Third Revised Sheet No. 72-A, page 2 of 4
Third Revised Sheet No. 72-A, page 3 of 4
Third Revised Sheet No. 72-A, page 4 of 4
Third Revised Sheet No. 72-B, page 1 of 3
Third Revised Sheet No. 72-B, page 2 of 3
Third Revised Sheet No. 72-B, page 3 of 3
Second Revised Sheet No. 72-C

National states that the purpose of this filing is to update the amount of take-or-pay charges approved by the Federal Energy Regulatory Commission to be billed to National by its pipeline-suppliers and to be recovered by National by operation of section 20 of the General Terms and Conditions to National's FERC Gas Tariff, First Revised Volume No. 1. National further states that its pipeline-suppliers which have received approval to bill take-or-pay charges to National are: Columbia Gas Transmission Corporation, CNG Transmission Corporation, Texas Eastern Transmission Corporation, Transcontinental Gas Pipeline Company, and Tennessee Gas Pipeline Company.

In addition, on February 28, 1989, National filed Substitute Fifth Revised Sheet No. 71 to correct the amount of take-or-pay costs incurred by Texas Eastern from Southern and passed-through to National. National states that it also filed Substitute Fifth Revised Sheet No. 72 to reflect the correct computation of its customers' total monthly principal amounts.

Copies of National's filings were served on National's jurisdictional customers and on the interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such motions or protests should be filed on or before March 14, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Louis D. Cashell,

*Secretary.*

[FR Doc. 89-5713 Filed 3-10-89; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. TQ89-2-16-000]

**National Fuel Gas Supply Corp.; Proposed Changes in FERC Gas Tariff**

March 8, 1989.

Take notice that on March 1, 1989, National Fuel Gas Supply Corporation ("National") tendered for filing as part of its FERC Gas Tariff First Revised Volume No. 1, Twenty-First Revised Sheet No. 4, proposed to become effective on April 1, 1989.

National states that the purpose of the proposed revised tariff sheet is to reflect the quarterly Purchased Gas Cost Adjustment ("PGA") required under the Commission's Regulations. National further states that the proposed tariff sheet results in a 26.66 cents per dekatherm (Dth) reduction in its commodity gas costs in comparison with its base tariff rates in Docket No. RP89-49-000, which went into effect on January 30, 1989. The proposed quarterly PGA is said to result in a commodity sales rate under National's Rate Schedules RQ and CD equal to $2.6447 per Dth.

National states that the alternative, it submitted Third Revised Seventeenth Revised Sheet No. 4 to reflect the rates filed by National in Docket No. RP86-136-000, which results in a 26.56 cent per Dth negative current adjustment based on the same projected purchased gas costs over the period April through June 1989. National states that this tariff sheet results in a comodity sales rate of $2.6619 per Dth.

National states that copies of this filing were posted in accordance with the Commission's Regulations and served upon the Company's jurisdictional customers and the Regulatory Commissions of the States of New York, Ohio, Pennsylvania, Delaware and New Jersey.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE. Washington, DC 20426, in accordance with Rules 214 or 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such motions to intervene or protests should be filed on or before March 15, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

*Secretary.*

[FR Doc. 89-5739 Filed 3-10-89; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. TQ89-2-59-000]

**Northern Natural Gas Co., Division of Enron Corp., Proposed Changes in FERC Gas Tariff**

March 8, 1989.

Take notice that Northern Natural Gas Company, Division of Enron Corp. (Northern), on March 1, 1989, tendered for filing changes in its F.E.R.C. Gas Tariff, Third Revised Volume No. 1 (Volume No. 1 Tariff) and Original Volume No. 2 (Volume No. 2 Tariff).

Northern states that the revised tariff sheets adjust its Base Average Gas Purchase Cost in accordance with the Quarterly PGA filing requirements codified by the Commission's Order Nos. 483 and 483-A. The instant filing reflects a Base Average Gas Purchase Cost of $1.7698 per MMBtu to be effective April 1, 1989, through June 30, 1989. Northern further intends to use its flexible PGA, as necessary, to reflect actual market conditions throughout this time period.



Northern states that this filing establishes new D1 and D2 rates in compliance with the above referenced PGA Rulemaking. Such required Northern to adjust its PGA demand rate components on a quarterly versus annual basis. This filing will establish new D1 and D2 rate components of $.860 and $.0369 per MMBtu, respectively, to be effective April 1, 1989, through June 30, 1989.

Copies of the filing were served upon the company's jurisdictional sales customers and interested State commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 15, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

*Secretary.*

[FR Doc. 89-5740 Filed 3-10-89; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. TQ89-3-29-000]

**Transcontinental Gas Pipe Line Corp., Proposed Changes in FERC Gas Tariff**

March 8, 1989.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing on March 1, 1989 the following tariff sheets to its FERC Gas Tariff Second Revised Volume No. 1. Such sheets are proposed to be effective April 1, 1989.

Fifty-Sixth Revised Sheet No. 12
Fifth-Third Revised Sheet No. 15
Twelfth Revised Sheet No. 15-A

Transco states these tariff sheets reflect the elimination of the (0.9 cents) per dt surcharge rate under the CD, G, OG, PS, E, ACQ and S-2 Rate Schedules pursuant to the requirements of § 154.310 of the Commission's regulations.

Transco states that copies of the instant filing are being mailed to its jurisdictional customers and interested State Commissions. In accordance with the provisions of § 154.16 of the Commission's Regulations, copies of this filing are available for public inspection during regular business hours, in a convenient form and place at Transco's main office at 2800 Post Oak Boulevard in Houston, Texas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 15, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

*Secretary.*

[FR Doc. 89-5741 Filed 3-10-89; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. RP89-71-000]

**Pacific Gas Transmission Co., Rate Change**

March 7, 1989.

Take notice that on March 1, 1989, Pacific Gas Transmission Company (PGT) tendered for filing a "Notice of Rate Change to Reflect Increase in the Price of Canadian Gas in Cost of Service Charges and Request for Expedited Consideration."

PGT states that its filing is made in compliance with the Commission's orders in Docket No. RP73-111 which require PGT to make filings pursuant to section 4 of the Natural Gas Act before there is reflected in PGT's cost-of-service charges any increase in the price for gas purchased from Canadian suppliers.

PGT indicates that its filing will only affect increases in rates charged under its PL-1 Rate Schedule for gas sales made by PGT to its only sales customer, Pacific Gas and Electric Company (PG&E).

PGT states that the filed changes in rates will reflect in its cost-of-service charges an increase to $1.90 (U.S.) per MMBtu in the Commodity Rate for gas imported from Canada, commencing April 1, 1989. Under PGT's import arrangements, this new price will remain in effect for eighteen months, through September 30, 1990.

PGT states that the new price is based on competitive conditions in PG&E's market in northern and central California and that PG&E is willing to accept the increase in exchange for the stability of an eighteen-month price which is competitive under current market conditions. PGT presently obtains more than 99% of its gas supply from Canada at the International Boundary.

PGT advises that copies of its filing have been mailed to its customers and to interested state commissions and other interested parties. PGT requests that expedited consideration be given to the instant filing and that the rate change be allowed to become effective, without suspension, on April 1, 1989.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 or 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or protests should be filed on or before March 14, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

*Secretary.*

[FR Doc. 89-5714 Filed 3-10-89; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. ER89-256-000]

**Palisades Generating Co.; Filing**

March 6, 1989.

Take notice that Palisades Generating Company (PGC), on February 27, 1989, tendered for filing with the Federal Energy Regulatory Commission (Commission) as an initial rate schedule the Power Purchase Agreement between Consumers Power Company and PGC. The Power Purchase Agreement provides for long-term sales for resale of available energy from the Palisades Nuclear Generation Station. The Power Purchase Agreement, by its terms, is not

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effective until it is accepted and approved by the Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 29, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

*Secretary.*

[FR Doc. 89-5715 Filed 3-10-89; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. TQ89-3-6-000]

**South Georgia Natural Gas Co.; Proposed Changes to FERC Gas Tariff**

March 7, 1989.

Take notice that on March 1, 1989, South Georgia Natural Gas Company ("South Georgia") tendered for filing Fifty-First Revised Sheet No. 4 to its FERC Gas Tariff, First Revised Volume No. 1. The tariff sheet and supporting information are being filed with a proposed effective date of April 1, 1989, pursuant to the Purchased Gas Cost Adjustments provision set out in section 14 of South Georgia's FERC Gas Tariff.

South Georgia states that Fifty-First Revised Sheet No. 4 reflects a revenue increase of approximately $666,000 in jurisdictional revenues resulting from an increase of $3.081 per MMBtu in the D-1 component of South Georgia's rates, an increase of $.198 per MMBtu in the D-2 component for the G-1/I-1 Rate Schedules, an increase of $.144 per MMBtu in the commodity component, and a decrease in the D-2 component of Rate Schedules G-2/I-2 of $.024 per MMBtu.

South Georgia states that its Current Adjustment reflects an increase in the rates of its primary pipeline supplier, Southern Natural Gas Company, which are proposed to become effective April 1, 1989 in Docket No. TA89-1-7-000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (§§ 385.211, 385.214). All such motions or protests should be filed on or before March 14, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

*Secretary.*

[FR Doc. 89-5716 Filed 3-10-89; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. RP89-70-000]

**Stingray Pipeline Co.; Change in Tariff**

March 7, 1989.

Take notice that on March 1, 1989 Stingray Pipeline Company (Stingray) tendered for filing, pursuant to the provisions of Order Nos. 509 and 509-A and the applicable provisions of the Federal Energy Regulatory Commission's (Commission) Regulations, the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Second Revised Sheet No. 1
Revised Sixteenth Revised Sheet No. 4
Original Tariff Sheet No. 72
through
Original Tariff Sheet No. 146

The proposed effective date of these revised tariff sheets is April 1, 1989.

In accordance with the provisions of the Commission's Regulations, Stingray states that these tariff sheets reflect establishment of Stingray's initial Rate Schedules for transportation service under 18 CFR Part 284, Subpart K of the Commission's Regulations.

Stingray also respectfully requests that the Commission grant such waivers of the applicable requirements of the Natural Gas Act and the Commission's Regulations thereunder, including Sections 154 and 284 as may be necessary, so that the enclosed tariff sheets may be accepted for filing and made effective on April 1, 1989. Grant of such waivers is reasonable given the nature of this filing, the limited scope of its applicability and the desirability of having the proposed tariff sheets become effective April 1, 1989 in response to Commission Orders 509 and 509-A.

Copies of this letter and enclosures are being served on affected jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Regulations. All such motions or protests should be filed on or before March 14, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

*Secretary.*

[FR Doc. 89-5717 Filed 3-10-89; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. TQ89-2-9-000]

**Tennessee Gas Pipeline Co.; Rate Change Under Tariff Rate Adjustment Provisions**

March 7, 1989.

Take notice that on March 1, 1989, Tennessee Gas Pipeline Company (Tennessee) tendered for filing the following tariff sheets to its FERC Gas Tariff to be effective April 1, 1989:

*Second Revised Volume No. 1*

Item A:
Twelfth Revised Sheet No. 20
Ninth Revised Sheet No. 20A
First Revised Sheet No. 20B
Fourteenth Revised Sheet No. 21

*Original Volume No. 2*

Item B:
Thirteenth Revised Sheet No. 5
Twelfth Revised Sheet No. 6

Tennessee states that the revisions listed as Item A reflect PGA current rate adjustments pursuant to Section 2 of Article XXIII of the General Terms and Conditions of Tennessee's Tariff.

Tennessee states that the revisions listed as Item B adjust transportation rate schedules to reflect changes in the cost of gas used for fuel pursuant to section 5 of Article XXIII of the General Terms and Conditions.

Tennessee states that copies of the filing have been mailed to all of its customers and affected state regulatory commissions. Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, Washington DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of



Practice and Procedure. All such motions or protests should be filed on or before March 14, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene; provided, however, that any person who had previously filed a motion to intervene in this proceeding is not required to file a further motion. Copies of this filing are on file with the Commisison and are available for public inspection.

Lois D. Cashell,

*Secretary.*

[FR Doc. 89-5718 Filed 3-10-89; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. TA89-1-43-000 and RP88-39-001]

**Williams Natural Gas Co.; Proposed Changes in FERC Gas Tariff**

March 7, 1989.

Take notice that Williams Natural Gas Company (WNG) on March 1, 1989, tendered for filing Eleventh Revised Sheet No. 6 and Tenth Revised Sheet No. 7 to its FERC Gas Tariff, Original Volume No. 1 WNG states that pursuant to the Purchased Gas Adjustment in Article 21 of its FERC Gas Tariff, it proposes to increase its rates effective May 1, 1989, to reflect:

(1) A $.0033 per Mcf increase in the Cumulative Adjustment due to an increase in WNG's projected gas purchase costs.
(2) A $.5855 per Mcf increase in the Surcharge Adjustment (to a positive $.4496 per Mcf from a negative $1.1359 Mcf) to amortize the Deferred Purchase Gas Cost Subaccount Balance.

WNG states that it is filing First Revised Sheet No. 6A to remove the Standby Charges from its tariff in compliance with Commission Order of Nov. 29, 1988 in Docket No. RP88-39-000.

WNG states that public copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426, in accordance with §§385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before Mar. 28, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

*Secretary.*

[FR Doc. 89-5719 Filed 3-10-89; 8:45 am]

BILLING CODE 6717-01-M

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**Southwestern Power Administration**

**Tentative Sponsor Selection and Request for Additional Proposals; Proposed Norfork Dam Unit Number 3**

**AGENCY:** Southwestern Power Administration, DOE.

**ACTION:** Notice of Tentative Selection of the City of Conway, Arkansas, as the Financial Sponsor and Preference Customer relating to the Proposed Norfork Dam Unit 3 Hydroelectric Power Project in Arkansas and Request for Additional Proposals.

**SUMMARY:** The Norfork Dam is located near Norfork, Arkansas, on the North Fork River, a major north bank tributary of the White River. The U.S. Army Corps of Engineers (Corps) constructed the project and is responsible for its operation. The project was authorized for flood control by the Flood Control Act approved June 28, 1938 (Pub. L. 761, 75th Congress, 3rd session) and modified to provide facilities for generation of power by the Flood Control Act of August 18, 1941 (Pub. L. 228, 77th Congress, 1st session). Norfork Lake is also a major center for recreation and releases from the project support a "put-and-take" trout fishery downstream on the North Fork and White Rivers.

Provisions were made during design and construction of the project for four hydroelectric power generating units. One unit began generation in June 1944 with a second unit placed in operation in February 1950. Units 3 and 4 have not been installed at the project. Each of the two existing units have an installed capacity of 40,275 kilowatts (kW) for a total installed capacity at the project of 80,550 kW. The units can produce an overload capacity of 92,600 kW. The two units generate an average of 184,000,000 kilowatt-hours (kWh) of energy annually. The hydroelectric power and energy generated at Norfork Dam is marketed by the Southwestern Power Administration (SWPA).

The proposed addition of one hydroelectric power generating unit (Unit 3) is generally described as Plan 1 in the Corps' Little Rock District document entitled "Norfork Lake Additional Hydroelectric Power Units 3 and 4" dated March 1983 and is authorized through the provisions of the original project authorizations. The proposed unit would have a capacity of approximately 42,500 kW and generate additional energy averaging about 5,900,000 kWh. The estimated cost of construction is $46,000,000 (based on October 1987 price levels).

The City of Conway, Arkansas (City), an incorporated city which owns a municipal electric utility system, has proposed to provide financing to the Federal government for the design and construction of Unit 3 at Norfork Dam during the period of design and construction. Upon completion of construction, the City proposes to pay its own debt service and a pro rata share of SWPA's hydroelectric power system's annual operation, maintenance, and replacement (OM&R) and marketing costs. The project would be designed, constructed, owned, and operated by the Corps. The power and energy would be marketed by SWPA.

The sponsor will have two years from the date the final sponsor selection notice is published in the Federal Register to enter into agreements with the Corps and SWPA for construction of the project. Additional time to enter into the agreements may be provided upon the sponsor's request and approval by the Corps and SWPA. If agreements cannot be negotiated within the specified time frame, the sponsorship will be cancelled automatically and new proposals for potential project sponsors will be considered.

In exchange for financing the design and construction of the project and making the required payments for OM&R and marketing costs, the City requests an allocation of approximately 36,000 kW of firm capacity with associated 1200 hours per year of firm energy from the SWPA's Interconnected System, which includes the Norfork Dam project. If the City is selected and successfully sponsors the project, it would receive the above requested allocation in accordance with section II, Part A, paragraph 2 of SWPA's Power Allocation Policy as published in the Federal Register (52 FR 29881) dated August 12, 1987. The proposed arrangement between the City and SWPA would extend for 50 years after Norfork Unit 3 is declared in commercial

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operation. SWPA has determined that the City qualifies for preference, in accordance with section 5 of the Flood Control Act of 1944, as amended, to receive firm power and energy in accordance with the aforesaid terms, provided the City is the successful sponsor and can make satisfactory wheeling arrangements. Jointly, the Corps and SWPA have tentatively selected the City to be the non-Federal sponsor to provide financing for the proposed Unit 3 at Norfork Dam.

**DATES:** Questions, comments, and/or proposals received prior to (insert date April 12, 1989) will be considered in the final selection process.

*For Further Information About the Proposed Project Financing, Contact:* Colonel Anthony V. Nida, District Engineer, Little Rock District, Corps of Engineers, P.O. Box 867, Little Rock, AR 72203.

*For Further Information About the Proposed Marketing of Power and Energy From the Project, Contact:* Francis R. Gajan, Director, Power Marketing, Southwestern Power Administration, P.O. Box 1619, Tulsa, OK 74101.

Issued at Tulsa, Oklahoma, on January 27, 1989.

**J. M. Shafer,**

*Administrator, Southwestern Power Administration, U.S. Department of Energy.*

[FR Doc. 89-5747 Filed 3-10-89; 8:45 am]

BILLING CODE 6450-01-M

## ENVIRONMENTAL PROTECTION AGENCY

**[ER-FRL-3536-1]**

### Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared February 20, 1989 through February 24, 1989 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5074.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 22, 1988 (53 FR 13318).

**Draft EISs**

*ERP No.* D-FHW-K40165-CA, Rating EC2, Cloverdale Bypass Construction on US 101 from North of Hiatt Road to Preston Overhead, Funding and Possible 404 Permit, City of Cloverdale, Sonoma County, CA.

*Summary:* EPA expressed environmental concerns due to project impacts to wetland, riparian and instream habitats, and requested that the final EIS discuss alternative project designs to reduce these impacts. EPA also asked that the final EIS discuss conformity with State and local water quality management plans and water quality standards.

**Final EISs**

*ERP No.* F-COE-K35024-CA, Marathon Industrial/Commercial Business Park Development, Section 10 and 404 Permits, City of Hayward, Alameda County, CA.

*Summary:* EPA found that issuance of permits by the Corps for the proposed project would result in unacceptable environmental impacts. These impacts include the direct loss of 61.5 acres of seasonal wetlands and impacts to another 119 acres of other wetland habitats. Due to the direct and cumulative adverse impacts upon wetlands, EPA strongly recommended that the Corps deny the Section 404 permit for the project. EPA noted that it considers the project a possible candidate for referral to the Council on Environmental Quality and for possible administrative action under Sections 404(q) and/or 404(c) of the Clean Water Act. Specifically, concerns were raised about the alternatives analysis, mitigation, and several other aspects of EPA's 404(b)(1).

*ERP No.* F-COE-L32005-WA, Lummi Bay Navigation Channel Improvements and Marina Construction, Implementation, Lummi Indian Reservation, Whatcom County, WA.

*Summary:* EPA raised concerns in the draft EIS about the need for such a large fill given the non-water dependent nature of the associated marine facilities and about the adequacy of the proposed mitigation. After the review of the final EIS, EPA continues to have the same environmental concerns about this project.

*ERP No.* F-FHW-D40211-MD, Calvert Road Closure and Replacement Crossing Construction, Funding and 404 Permit, Prince Georges County, MD.

*Summary:* EPA's issues of concern in the draft supplemental EIS were addressed in this document. EPA also offers assistance in the formation of a wetland mitigation plan.

Dated: March 8, 1989.

**William D. Dickerson,**

*Deputy Director, Office of Federal Activities.*

[FR Doc. 89-5756 Filed 3-10-89; 8:45 am]

BILLING CODE 6560-50-M

**[FRL-3534-4]**

### C.D. Buff Site; Proposed Settlement Agency

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of proposed settlement.

**SUMMARY:** Under section 122h of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), The Environmental protection Agency (EPA) has agreed to settle claims for response costs at the C.D. Buff Site, Una, South Carolina. EPA will consider public comments on the proposed settlement for thirty days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper or inadequate. Copies of the proposed settlement are available from: Ms. Rosalind Brown, Life Scientist, U.S. EPA, Region IV, Investigations and Cost Recovery Unit, Investigation Support Section, Site Investigation Support Branch, Waste Management Division, 345 Courtland Street NE., Atlanta, Georgia 30365, 404/347-5059.

Written comments may be submitted to the person above by April 12, 1989.

Dated: February 15, 1989.

**Lee A. DeHihns,**

*Acting Regional Administrator.*

[FR Doc. 89-5700 Filed 3-10-89; 8:45 am]

BILLING CODE 6560-50-M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA-821-DR]**

### Amendment to Notice of a Major Disaster Declaration; Kentucky

**AGENCY:** Federal Emergency Management Agency.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the Commonwealth of Kentucky (FEMA-821-DR), dated February 24, 1989, and related determinations.

**DATED:** March 6, 1989.

**FOR FURTHER INFORMATION CONTACT:** Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

*Notice:* Notice is hereby given that the incident period for this disaster is closed effective March 8, 1989.



(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

**Grant C. Peterson,**

*Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.*

[FR Doc. 89-5661 Filed 3-10-89; 8:45 am]

BILLING CODE 6718-02-M

**[FEMA-821-DR]**

### Amendment to Notice of a Major Disaster Declaration; Kentucky

**AGENCY:** Federal Emergency Management Agency.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the Commonwealth of Kentucky (FEMA-821-DR), dated February 24, 1989, and related determinations.

**DATE:** March 6, 1989.

**FOR FURTHER INFORMATION CONTACT:** Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3614.

*Notice:* The notice of a major disaster for the Commonwealth of Kentucky, dated February 24, 1989, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of February 24, 1989: The counties of Edmonson, Elliott, Greenup, Hart, Jackson, Knox, McLean, Morgan, Nicholas, and Ohio for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

**Grant C. Peterson,**

*Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.*

[FR Doc. 89-5662 Filed 3-10-89; 8:45 am]

BILLING CODE 6718-02-M

**[FEMA-821-DR]**

### Amendment to Notice of a Major Disaster Declaration; Kentucky

**AGENCY:** Federal Emergency Management Agency.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the Commonwealth of Kentucky (FEMA-821-DR), dated February 24, 1989, and related determinations.

**DATED:** March 3, 1989.

**FOR FURTHER INFORMATION CONTACT:** Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

*Notice:* The notice of a major disaster for the Commonwealth of Kentucky, dated February 24, 1989, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of February 24, 1989: The counties of Bath, Carter, Fayette, Jefferson, Montgomery, Carroll, Clark, Fleming, Madison, and Powell for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

**Grant C. Peterson,**

*Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.*

[FR Doc. 89-5663 Filed 3-10-89; 8:45 am]

BILLING CODE 6718-02-M

### Anti-Arson Program

**AGENCY:** Federal Emergency Management Agency.

**ACTION:** Notice of solicitation for award of cooperative agreement.

Notice of Solicitation is hereby given that the Federal Emergency Management Agency, under the Fire Prevention and Control Act of 1974, will issue a Request for Assistance (RFA) No. EMW-89-S-3052 on or about March 27, 1989, regarding the design and implementation of an anti-arson strategy program. This program is limited to Community-Based Organizations.

The purpose of this assistance is to focus on nationwide efforts to reduce the number of arson related fires that occur every year throughout this country.

Some broad objectives of this program are:

- To encourage neighborhood involvement in reducing arson fires through new and innovative broad spectrum programs.
- To expand the neighborhood involvement to a community-wide participation in fighting arson.
- To make information available to other neighborhoods and communities regarding successful programs.
- To increase the cooperation between neighborhood residents, community groups and public service organizations such as fire, police, building and code departments.
- To build a comprehensive community anti-arson program.

Application for assistance must be requested in writing and addressed as follows: Federal Emergency Management Agency, Office of Acquisition Management, 500 C Street, SW., Room 731, Washington, DC 20472, ATTN: Patricia A. English, Assistance Officer.

Request for Assistance No. EMW-89-S-3052. Please include a self-addressed mailing lable with the request.

Cooperative Agreements are anticipated to be awarded as a result of this request for assistance. It is anticipated that a minimum of five (5) and a maximum of thirty (30) assistance awards will be made. The anticipated funding levels of this program are between $10,000.00 to $15,000.00 based on the criteria that will be outlined in the solicitation package.

**Kenneth J. Brasokas,**

*Director, Office of Acquisition Management.*

March 6, 1989.

[FR Doc. 89-5664 Filed 3-10-89; 8:45 am]

BILLING CODE 6718-01-M

## FEDERAL HOME LOAN BANK BOARD

**[No. 89-536]**

### Application for Permission To Establish a Branch Office or Change of Location of an Office

Date: March 6, 1989.

**AGENCY:** Federal Home Loan Bank Board.

**ACTION:** Notice.

**SUMMARY:** The public is advised that the Federal Home Loan Bank Board ("Board") has submitted, with revision, an information collection request, "Application for Permission to Establish a Branch Office of Change of Location of an Office," to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

This information is required from Federal Savings and Loan Associations and Federal Savings Banks to determine whether the application meets the Board's criteria for approval for permission to establish a Branch Office or for relocation of existing Branch Offices. We estimate it will take approximately 2 hours per respondent to complete the information collection.

**DATE:** Comments on the information collection request are welcome and should be received on or before March 28, 1989.

**ADDRESS:** Comments regarding the paperwork-burden aspects of the request should be directed to: Office of Management and Budget, Office of

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Information and Regulatory Affairs, Washington, DC 20503. *Attention:* Desk Officer of the Federal Home Loan Bank Board.

The Board would appreciate commenters sending copies of their comments to the Board.

Request for copies of the proposed information collection requests and supporting documentation are obtainable at the Board address given below: Director, Information Services Division, Office of Secretariat, Federal Home Loan Bank Board, 801 17th Street, NW, Washington, DC 20552. Phone: 202–653–2751.

**FOR FURTHER INFORMATION CONTACT:** John Wilson, Financial Analyst Office of District Banks, 202–906–7217, Federal Home Loan Bank Board, 1700 G. Street, NW., Washington, DC 20552.

By the Federal Home Loan Bank Board.

**John F. Ghizzoni,**

*Assistant Secretary.*

[FR Doc. 89–5688 Filed 3–10–89; 8:45 am]

BILLING CODE 6725–01–M

### Freedom Savings and Loan Association, Tampa, FL; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A)(i), of the Home Owner's Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A)(i), and 12 U.S.C. 1701c (c)(2)(1982), as amended, the Federal Home Loan Bank Board was duly appointed by the Federal Savings and Loan Insurance Corporation as sole conservator for Freedom Savings and Loan Association, a Federal Savings and Loan Association, Tampa, Florida on February 7, 1989.

Dated: February 14, 1989.

By the Federal Home Loan Bank Board.

**John F. Ghizzoni,**

*Assistant Secretary.*

[FR Doc. 89–5689 Filed 3–10–89; 8:45 am]

BILLING CODE 6725–01–M

### Signal Savings and Loan Association Signal Hill, CA; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 406 (c)(1)(B) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B)(1982), the Federal Savings and Loan Insurance Corporation as sole receiver for Signal Savings and Loan Association, Signal Hill, California, on February 10, 1989.

Dated: February 14, 1989.

By the Federal Home Loan Bank Board.

**John F. Ghizzoni,**

*Assistant Secretary.*

[FR Doc. 89–5690 Filed 3–10–89; 8:45 am]

BILLING CODE 6725–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control

### National Institute for Occupational Safety and Health; Meetings; Endotoxin Detection in Cotton Dust et al.

The following meetings will be convened by the National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control (CDC), and will be open to the public for observation and participation, limited only by the space available:

*Name:* Endotoxin Detection in Cotton Dust.
*Date:* March 15, 1989.
*Place:* Appalachian Laboratory for Occupational Safety and Health, Room 203, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505–2888.
*Time:* 8:30 a.m.–10:30 a.m.
*Purpose:* To review the project entitled "Endotoxin Detection in Cotton Dust."

Additional information and copies of the research protocol may be obtained from: Stephen A. Olenchock, Ph.D., Division of Respiratory Disease Studies, NIOSH, CDC, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505, Telephone: Commercial: (304) 291–4256, FTS: 923–4256.

*Name:* Pulmonary Response to Cotton Dust: Relationship Between Animal Models and the Human Response
*Date:* March 15, 1989.
*Place:* Appalachian Laboratory for Occupational Safety and Health, Room 203, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505–2888.
*Time:* 10:30 a.m.–12:30 p.m.
*Purpose:* To review the project entitled "Pulmonary Response to Cotton Dust: Relationship Between Animal Models and the Human Response."

Additional information and copies of the research protocol may be obtained from: Vincent Castranova, Ph.D., Division of Respiratory Disease Studies, NIOSH, CDC, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505, Telephone: Commercial: (304) 291–4256, FTS: 923–4256.

*Name:* Where's the Endotoxin? — Environmental Sampling For Airborne Endotoxin.
*Date:* March 15, 1989.
*Place:* Appalachian Laboratory for Occupational Safety and Health, Room 203, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505–2888.
*Time:* 2:00 p.m.–4:00 p.m.
*Purpose:* To review the project entitled "Where's the Endotoxin?—Environmental Sampling for Airborne Endotoxin."

Additional information and copies of the research protocol may be obtained from: William Jones, Ph.D., Division of Respiratory Disease Studies, NIOSH, CDC, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505, Telephone: Commercial: (304) 291–4256, FTS: 923–4256.

Viewpoints and suggestions from industry, organized labor, academia, other governmental agencies, and the public are invited.

**Elvia Hilyer,**

*Associate Director for Policy Coordination, Centers for Disease Control.*

[FR Doc. 89–5625 Filed 3–10–89; 8:45 am]

BILLING CODE 4160–19–M

**[Program Announcement No. 913]**

### Grants for Injury Prevention Research Centers; Availability of Funds for Fiscal Year 1989

#### Introduction

The Centers for Disease Control (CDC) announces that grant applications are being accepted for Injury Prevention Research Centers (IPRCs).

#### Authority

This program is authorized under section 301 of the Public Health Service Act (42 U.S.C. 241). Program regulations are set forth in Title 42 of the Code of Federal Regulations, Part 52.

#### Eligible Applicants

Eligible applicants include all nonprofit and for-profit organizations. Thus, universities, colleges, research institutions, hospitals, and other public and private organizations, State and local health departments and small, minority and/or women-owned businesses are eligible for these grants.

#### Availability of Funds

Approximately $4.5 million is available in Fiscal Year 1989 to fund approximately 9 awards. It is expected that the awards will begin on or about August 1, 1989, and are usually made for a 12 month period within a project period of up to 5 years. Funding estimates may vary and are subject to change. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.



#### Background and Definitions

*A. Background*

By nearly every measure, injury ranks as one of the nation's most pressing health problems. Injuries are the country's leading cause of years of potential life lost before age 65. They are the leading cause of death and disability in children and young adults. Older Americans also suffer unduly from the severe consequences of injury. Much of the resources of the nation's health care system is devoted to attending to injury victims, who occupy one of every eight hospital beds.

However, opportunities to understand and prevent injuries and reduce their effects are available. Many of these opportunities are discussed in the National Research Council and Institute of Medicine report, *Injury In America* (National Academy Press—ISBN 0–309–03545–7).

*B. Definitions*

1. *Injury* is defined as physical damage to an individual resulting from acute exposure to physical or chemical agents. The major categories of injury are intentional, unintentional and occupational. Intentional injuries result from interpersonal or self-inflicted violence, and include homicide, assaults, suicide and suicide attempts, child abuse, and rape. Unintentional or unintended injuries include those that result from motor vehicle collisions, falls, fires, poisonings, and drownings. Occupational injuries occur at the worksite and include unintentional trauma (for example, work-related motor-vehicle injuries, drownings, and electrocutions) and intentional injuries in the workplace.

2. *An Injury Prevention Research Centers (IPRCs)* is defined as an organizational unit which would as a general rule be established within an academic institution that works toward the development of an interdisciplinary, comprehensive approach to the injury problem involving physicians, epidemiologists, engineers, behavioral scientists, public health workers, and others, and is organized in such a manner that multiple aspects of the injury problem can be addressed by this unit (for example, research in epidemiology, prevention, biomechanics, treatment, and rehabilitation; information gathering and dissemination); the ongoing provision of training opportunities to students, researchers, and public health agency personnel; and projects relating to the development and evaluation of injury prevention, injury surveillance or injury control programs).

#### Purpose

A. To support injury prevention and control research on priority issues as delineated in *Injury In America*, a 1985 report by the National Academy of Sciences.

B. To integrate aspects of the disciplines of engineering, medicine, public health, criminal justice, behavioral and social sciences, and others in order to prevent and control injuries more effectively.

C. To identify and rigorously evaluate current and new interventions for the prevention and control of injuries.

D. To support IPRCs which will develop an in-depth approach to injury control research and training.

E. To bring the knowledge and expertise of IPRCs to bear on the development of effective public and private sector programs for injury prevention and control.

F. To help make available the expertise of academic institutions for the evaluation and improvement of injury prevention, surveillance and control programs instituted and carried out by Federal, state or local government and private sector organizations.

#### Evaluation Criteria

Applications will be evaluated by a dual review process. The first review will be a peer evaluation of the application. The second review will be by senior Federal staff which will consider the results of the first review together with program need and relevance. Awards will be made based on merit and priority score ranking by the Injury Research Grants Review Committee (IRGRC) and program review by Senior Federal staff, availability of funds, and such other factors deemed necessary and appropriate by the Director, CDC.

*A. Review by the Injury Research Grants Review Committee (IRGRC)*

Peer review of center grant applications will be conducted by IRGRC. Site visits may be a part of this process. Factors to be considered by IRGRC include:

1. The degree to which the applicant possesses the following program requirements:

a. New applications to initially show expertise in at least one of the five areas of injury control (surveillance and epidemiology, prevention and health promotion, biomechanics, acute care, and rehabilitation) and specific, time-framed plans to incorporate all five areas into the center during the second year of the applicant's project period. In the case of currently funded centers seeking continuation, plans for the development and support of all five areas of injury control should have been formulated and progress made toward their incorporation at the time of application.

b. Demonstrated involvement in at least medicine, engineering, behavioral and social sciences and public health, with a specific, time-framed plan to expand to include, health policy development and health care administration.

c. Established curricula and graduate training programs in areas relevant to injury control.

d. Ongoing injury-related projects or activities currently supported by other sources of funding.

e. A director who has specific authority and responsibility to carry out the project.

f. Demonstrated experience in successfully conducting, evaluating, and publishing injury-related research and/or designing, implementing, and evaluating injury control programs.

g. Effective and well-defined working relationships with outside agencies and other entities which will ensure implementation of the proposed activities.

h. Mechanisms for linking the injury control research findings with public health and other intervention efforts to facilitate implementation of programs that take into consideration these research findings.

i. An established relationship, manifest by letters of agreement or periodic reports, with injury prevention and control programs or injury surveillance programs being carried out in the state or region wherein the IPRC is located. Such cooperation may be with governmental or private sector programs.

2. The overall match between the applicant's interdisciplinary, comprehensive approach to research and training objectives and the national program priorities as described in *Injury In America*.

3. The scientific and technical merit of the overall application.

4. The adequacy of the methods for coordinating the overall program and its component parts.

5. The extent to which the evaluation plan will allow for the quantitative measurement of progress toward the achievement of stated objectives.

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6. Qualifications, adequacy, and appropriateness of personnal to accomplish the proposed activities.

7. The degree of commitment measured in terms of injury control personnel, facilities, and activities supported by other funding sources and the likelihood that this commitment will be sustained or expanded in future years.

8. The degree of commitment and cooperation of other interested parties as evidenced by letters detailing the nature and extent of this commitment and cooperation.

9. The reasonableness of the proposed budget to the proposed program.

10. Progress thus far made, if the applicant is submitting a competitive renewal application.

11. Plans to become self-sustaining.

*B. Review by Senior Federal Staff*

Further review will be conducted by Senior Federal staff. Factors to be considered will be:

1. The results of the peer review.

2. The significance of the proposed activities as they relate to the achievement of the objective in *Injury In America*.

3. National needs and geographic balance.

4. Overall distribution of the approaches of competing applications, keeping in mind the special emphasis areas of biomechanics, acute care, rehabilitation; and the overall balance of the program in addressing the control of injury among populations who are at increased risk, including minority groups, the elderly, children, and residents of farms and rural areas; and the major causes of intentional and unintentional injury.

5. Budgetary considerations.

6. Existing Center may be given priority consideration, if applicant has made satisfactory progress.

7. Plans to become self-sustaining.

*C. Continued Funding*

Continuation awards within the project period will be made on the basis of the availability of funds and the following criteria:

1. The accomplishments of the current budget period show that the applicant is meeting its objectives;

2. The objectives for the new budget period are realistic, specific, and measurable;

3. The methods described will clearly lead to achievement of these objectives;

4. The evaluation plan will allow management to monitor whether the methods are effective; and

5. The budget request is clearly explained, adequately justified, reasonable, and consistent with the intended use of grant funds.

**E. O. 12372 Review**

Applications are not subject to the review requirements of Executive Order 12372, entitled Inter-Governmental Review of Federal Programs.

**CFDA Number**

The Catalog of Federal Domestic Assistance Number is 13.136.

**Application Submission And Deadline**

*A. Applications*

Applications should be submitted on Form PHS 5161-1 for State and local governments. Other applicants should use Form PHS-398 and adhere to the ERRATA Instruction Sheet for PHS-398 contained in the Grant Application Kit. The original and two copies of the application must be submitted to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NE., Room 300, Mailstop E-14, Atlanta, Georgia 30305 on or before June 9, 1989.

An applicant organization has the option of having specific salary and fringe benefit amounts for individuals omitted from the copies of the application that are made available to outside reviewing groups. If the applicant's organization elects to exercise this option, use asterisks on the original and two copies of the application to indicate those individuals for whom salaries and fringe benefits are being requested; the subtotals must still be shown. In addition, submit an additional copy of page four of Form PHS-398, completed in full with the asterisks requested by the amount of the salary and fringe benefits.

*B. Deadline*

Applications shall be considered as meeting the deadline above if they are either:

1. Received on or before the deadline date, or

2. Sent on or before the deadline date and received in time for submission to the peer review committee. Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

*C. Late Applications*

Applications which do not meet the criteria in B.1. or B. 2. above are considered late applications and will be returned to the applicant.

**Where to Obtain Additional Information**

A complete program description, information on application procedures and application package may be obtained from Nealean K. Austin, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NE., Room 300, Mailstop E-14, Atlanta, Georgia, 30305, (404) 842-6575 or FTS 236-6575.

Announcement Number 913 entitled "Grants for Injury Prevention Research Centers" must be referenced in all requests for information pertaining to this project.

Technical information may be obtained from James M. Monroe, Grants Manager, Division of Injury Epidemiology and Control, Center for Environmental Health and Injury Control, Centers for Disease Control, 1600 Clifton Road NE., Mailstop F-36, Altanta, Georgia 30333, (404) 488-4690 or FTS 236-4690

Dated: March 7, 1989.

**Robert L. Foster,**

*Acting Director, Office of Program Support, Centers for Disease Control.*

[FR Doc. 89-5621 Filed 3-10-89; 8:45 am]

BILLING CODE 4160-18-M

## Advisory Committee for Elimination of Tuberculosis; Meeting

*Action:* Notice of meeting.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), the Centers for Disease Control (CDC) announces the following committee meeting.

*Name:* Advisory Committee for Elimination of Tuberculosis (ACET).

*Time and Date:* 8:30 a.m.-5:00 p.m.-April 4, 1989; 8:00 a.m.-2:30 p.m.-April 5, 1989.

*Place:* Executive II & III Conference Rooms, Lanier Plaza Conference Center, 418 Armour Drive NE., Atlanta, Georgia 30324.

*Status:* Open.

*Purpose:* This Committee advises and makes recommendations to the Secretary, Department of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding feasible goals for eliminating tuberculosis. Specifically, the Committee makes recommendations regarding policies, strategies, objectives, and priorities, addresses the development of new technologies and their subsequent application, and reviews progress toward elimination.

*Matters to be Discussed:* Tuberculosis control among the foreign-born, tuberculosis and human immunodeficiency virus (HIV) infection, tuberculosis control in nursing homes, and statements on preventive therapy and screening. Agenda items are subject to change as priorities dictate.

*Contact Person for More Information:* Dixie E. Snider, Jr., M.D., Director, Division of Tuberculosis Control, and Executive Secretary, ACET, Center for Prevention Services, CDC, 1600 Clifton Road NE., Mailstop E-10, Atlanta, Georgia 30333, Telephones: FTS: 236-2501; Commercial: 404/639-2501.

Dated: March 7, 1989.

**Elvin Hilyer,**

*Associate Director for Policy Coordination, Centers for Disease Control.*

[FR Doc. 89-5624 Filed 3-10-89; 8:45 am]

BILLING CODE 4160-18-M



## Food and Drug Administration

**[Docket No. 89N-0030]**

## Public Meeting; Seafood Safety as Related to Cooked and Processed Seafood

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA), Southeast Region, is announcing a public meeting with the seafood industry and other interested persons to discuss a number of agency concerns relating to public health aspects of cooked and processed seafood.

**DATES:** The meeting will be held on Tuesday, April 18, 1989, from 8:30 a.m. to 5 p.m. Interested persons who will be unable to attend the meeting may submit written comments on the issues outlined in this notice by May 12, 1989.

**ADDRESSES:** The meeting will be held in a conference room at the Holiday Inn, Tampa International Airport, 4500 West Cypress St., Tampa, FL 33622. Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, referencing the docket number found in the heading of this notice.

**FOR FURTHER INFORMATION CONTACT:** Douglas D. Tolen, Food and Drug Administration (HFR-SE200), 7200 Lake Ellenor Dr., Suite 120, Orlando, FL 32809, 407-855-0900.

**SUPPLEMENTARY INFORMATION:** The meeting is being sponsored by FDA's Southeast Regional Office, in accordance with 21 CFR 10.65(b), to discuss with the seafood industry and other interested persons the agency's concerns, raised by its inspectional and analytical findings, relating to cooked and processed seafood.

Issues to be discussed will include:

1. Microbiological contamination of ready-to-eat or heat-and-serve seafood products.

2. Public health concerns relating to these products.

3. Improved processing practices for these products.

4. Strategies for protecting the consumer from associated health risks.

FDA is inviting all interested persons to participate in this meeting. Interested persons who will be unable to attend the meeting may submit to the Dockets Management Branch (address above) written comments that set forth their views on the issues outlined in this notice.

Dated: March 6, 1989.

**Alan L. Hoeting,**

*Acting Associate Commissioner for Regulatory Affairs.*

[FR Doc. 89-5652 Filed 3-10-89; 8:45 am]

BILLING CODE 4160-01-M

**[FDA 225-89-4001]**

## Memorandum of Understanding on Good Laboratory Practice; the Federal Republic of Germany Federal Minister of Food, Agriculture and Forestry et al.

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is providing notice of a memorandum of understanding (MOU) among FDA, the U.S. Environmental Protection Agency, the Federal Minister of Food, Agriculture and Forestry, the Federal Minister for Youth, Family Affairs, Women and Health, and the Federal Minister for the Environment, Nature Conservation and Nuclear Safety of the Federal Republic of Germany. The MOU provides, under specified conditions, for (a) reciprocal recognition of each country's good laboratory practice program, (b) acceptance of test data collected in either country for evaluation of safety, and (c) implementation of procedures for continuing cooperation between parties.

**DATE:** The agreement became effective December 23, 1988.

**FOR FURTHER INFORMATION CONTACT:** Walter J. Kustka, Intergovernmental and Industry Affairs Staff (HFC-50), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1583.

**SUPPLEMENTARY INFORMATION:** In accordance with 21 CFR 20.108(c), which states that all agreements and memoranda of understanding between FDA and others shall be published in the **Federal Register**, the agency is publishing this memorandum of understanding.

Dated: March 6, 1989.

**John M. Taylor,**

*Associate Commissioner for Regulatory Affairs.*

**I. Purpose**

This Memorandum reflects the concerns of the Food and Drug Administration and the Environmental Protection Agency of the United States of America and the Federal Ministry of Food, Agriculture and Forestry, the Federal Minister for Youth, Family Affairs, Women and Health, and the Federal Ministry of the Environment, Nature Conservation and Nuclear Safety of the Federal Republic of Germany (hereinafter called "the parties") for assuring the quality and integrity of safety evaluation data that support the approval of applications for research and/or marketing permits and licensing or registration or reregistration of all chemicals for agricultural, industrial, pharmaceutical, cosmetic, or food use to the extent encompassed by national law. The parties share the view that health and environmental safety studies which are required to be submitted to a national authority should be conducted in accordance with the principles of Good Laboratory Practice (GLP) that are internationally recognized, and that laboratories conducting such tests should be monitored by effective national inspection programs. Accordingly, this Memorandum provides, under specified conditions, for:

(a) Reciprocal recognition of each country's GLP program,

(b) Acceptance of test data collected in either country for evaluation of safety, and

(c) Implementation of procedures for continuing cooperation between parties.

**II. Background**

Safety evaluation data submited for consideration to one national authority are frequently based on studies conducted by laboratories located in the other country. Therefore, the standards observed by those laboratories that conduct health and environmental safety studies, the results of which are submitted to authorities of the other country, should be conducted in

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accordance with principles of good laboratory practices.

When the safety evaluation data submitted to a national authority originate from a laboratory within the other country, the national authorities of the country of origin should be able to provide the parties in the other country with information that assures that the laboratory is operated in accordance with good laboratory practices.

National programs of inspection should verify the compliance of laboratories with the principles of GLP. These principles and the inspection programs should be in accord with the Decision of the Council of the Organization for Economic Cooperation and Development (OECD) on "The Mutual Acceptance of Data in the Assessment of Chemicals" (May 12, 1981) including Annex 2, "OECD Principles of Good Laboratory Practice." These standards and procedures should be consistent with the July 26, 1983 Recommendation of the OECD Council on "The Mutual Recognition of Compliance with Good Laboratory Practice."

*A. Good Laboratory Practices*

The parties have published comparable standards of good laboratory practice relating to health and environmental studies on safety evaluation experiments.

In evaluating the laboratories and auditing the data from the studies conducted in the United States of America, the inspectors of the Food and Drug Administration (FDA) rely on the regulations relating to Good Laboratory Practice for Nonclinical Laboratory Studies (21 CFR Part 58). The inspectors of the Environmental Protection Agency (EPA) rely on the regulations relating to Pesticide Programs, Good Laboratory Practice Standards (40 CFR Part 160), and Toxic Substances Control Act, Good Laboratory Practice Standards (40 CFR Part 792).

The inspectors of the *länder* of the Federal Republic of Germany rely on the "OCED-Grundsätze der Guten Laborpraxis (GLP)"; [OECD Principles of Good Laboratory Practice (GLP)] published in the *Bundesanzeiger* [Federal Journal] of March 2, 1983 and on the "Durchführung von GLP Inspektionen nach den Grundsätzen der OECD" [Conduct of GLP Inspections under the OECD Principles] adopted May 20, 1987 by the "Arbeitsgemeinschaft der Leitenden Medizinalbeamten des Bundes und der Länder" [Council of the Directors of the Medical Departments of the Federal Government and the *Länder*] in evaluating the laboratories and auditing the data from the studies conducted in the *länder*.

*B. National Inspection Programs*

Inspectional procedures will be mutually consistent among the parties. The parties will assess compliance of a laboratory with the standards of good laboratory practice by having trained government inspectors conduct an inspection approximately once every two years. The inspection programs will permit assessment of current laboratory operations as well as the audit of data from completed studies. Laboratories will generally be notifed in advance. A report of the results of the inspection will be prepared that describe and address laboratory operations and conformity with GLP.

*C. Compliance*

Each of the parties will establish satisfactory procedures to secure the compliance of laboratories with the standards of good laboratory practice. These procedures will include, for example, notifying a laboratory of deficiencies observed, the issuance of corrective and warning notices, and the removal of a laboratory from national GLP compliance programs. These and other actions may lead regulatory authorities to reject specific studies, or to cancel or refuse registration of specific chemicals. In some cases, depending upon the gravity and extent of the violation, more severe penalties may be applied.

**III. Substance of the Understanding**

*A. General Principles*

The parties agree that:

1. Adherence to adequate standards of good laboratory practice is essential to the conduct of high quality safety testing;

2. A national program of periodic inspections conducted by a trained inspectorate is required to monitor adherence to the standards of good laboratory practice;

3. Appropriate compliance procedures are necessary to assure adherence to the standards of good laboratory practice; and

4. Studies conducted in acordance with the respective standards of good laboratory practice promulgated by either country are to be acceptable to the parties in the other country for consideration in the evaluation of safety.

*B. Inspections and Audits: Training and Evaluation*

1. The parties agree that training in inspection and audit techniques shall be conducted for the purpose of promoting consistency of procedures among the parties.

2. The parties agree that such training will begin in the near future.

3. The parties will evaluate each others' inspection and audit procedures periodically.

4. It is expected that all parties will have comparable GLP programs in place by December 31, 1990, in which case the provisions of Article III.C of this Memorandum of Understanding will take full effect at that time.

5. Until the provisions of Article III.C take full effect as provided in Article III.B.4, a party or parties from one country may inspect laboratories or audit studies in the other country, and will duly inform the appropriate party or parties of their intent to inspect a laboratory or audit a study in that country.

*C. Mutual Recognition of GLP Programs*

1. As a routine matter, the parties will carry out inspections of health and environmental testing laboratories and auditing studies in their respective countries. In exceptional situations in which the requesting party of one country can justify a special concern, the requesting party may designate one or more of its scientists to participate in a laboratory inspection or the audit of a study conducted by the authorities in the other country.

2. Each party will inform the other parties of changes in their respective GLP programs.

3. Each party will provide the other parties, regularly, with the names and addresses of health and environmental testing laboratories operating within their country, the dates the laboratories were inspected, and their compliance status.

4. Each party will provide, upon request of one of the other parties, further information regarding whether or not a laboratory or study is in compliance with the GLP.

5. Each party will honor a request by one of the other parties to conduct a GLP inspection or data audit on behalf of the other party at a specified health or environmental laboratory whenever:

(a) There is serious concern about the quality or integrity of the data submitted to a party;

(b) Inspection has not been performed within the last 2 years; or

(c) An approval of an application for a research and/or marketing permit is pending based upon tests performed in a specified laboratory which are important to granting the approval.



6. On occasion, representatives of each party will participate as invited observers in an inspection of a laboratory conducted by another party to maintain a continuing understanding of each country's inspectional procedures. These inspections are to alternate between the two countries.

7. Each party will recognize the need to protect from public disclosure data and information that are exchanged among the parties and that fall within the definition of a trade secret or confidential commercial or financial information. If there is a request from the public for any information obtained from another party, that party will be notified of the request prior to the release of any information and given an opportunity for consultation.

**IV. Participating Parties**

A. Food and Drug Administration, 5600 Fishers Lane, Rockville, Maryland 20857.

B. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

C. Federal Ministry of Food, Agriculture and Forestry (BML), Rochusstr. 1, D–5300 Bonn 1.

D. Federal Ministry for Youth, Family Affairs, Women and Health (BMJFFG), Kennedyallee 105–107, D–5300 Bonn 2.

E. Federal Ministry for the Environment, Nature Conservation and Nuclear Safety (BMU), Kennedyallee 5, D–5300 Bonn 2.

**V. Liaison Officers**

The parties respectively appoint the following officials to serve as liaison officers for all communications regarding matters relative to this Memorandum:

*A. For the United States of America*

Director, Division of Compliance Policy, Office of Regulatory Affairs (HFC–230) (currently: Mr. Ernest L. Brisson), Food and Drug Administration, 5600 Fishers Lane, Rockville, Maryland 20857.

Director, Laboratory Data Integrity Assurance Division, Office of Compliance Monitoring (EN–342) (currently: Mr. John J. Neylan, III), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

*B. For the Federal Republic of Germany*

The Federal Ministry for Food, Agriculture and Forestry, Referat 622 (currently: Regierungsdirektor R. Elsner), Postfach 140270, D–5300 Bonn 1.

The Federal Ministry for Youth, Family Affairs, Women and Health, Referat 355 (currently: Ministerialrat Dr. K. Feiden), Postfach 200220, D–5300 Bonne 2.

The Federal Ministry of Environment, Nature Conservation and Nuclear Safety, Referat IG II 4 (currently: Ministerialrat Dr. U. Schlottman), Postfach 120629, D–5300 Bonn 1.

**VI. Amendment**

This Memorandum may be amended at any time by mutual written agreement of all the parties.

**VII. Duration**

This Memorandum shall become effective on the date of the last signature and shall continue in effect unless terminated by mutual written agreement of all the parties.

**VIII. Withdrawal**

Any party to this Memorandum may withdraw at any time by written notice to the other parties, to take effect not less than ninety (90) days after the date of notification.

**IX. Nature of the Memorandum**

This Memorandum of Understanding states the intent of the parties to cooperate, and shall not be considered a binding international agreement.

Done and signed in Washington DC in the English and German language, both texts being equally authentic.

Approved and Accepted for the Food and Drug Administration.

*By:* Frank E. Young

*Title:* Commissioner of Food and Drugs

*Date:* December 25, 1988.

Approved and Accepted for the Environmental Protection Agency

**By: Lee M. Thomas**

*Title:* The Administrator

*Date:* December 23, 1988.

Approved and Accepted for the parties of the Federal Republic of Germany

By: Karl Th. Paschke

*Title:* Chargé d'Affaires a.i.

*Date:* December 23, 1988.

[FR Doc. 89–5651 Filed 3–10–89; 8:45 am]

BILLING CODE 4160–01–M

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**[FDA 225–89–4000]**

## Memorandum of Understanding on Good Laboratory Practice; the Pharmaceutical Service Ministry of Health, Republic of Italy

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is providing notice of a memorandum of understanding (MOU) between FDA, U.S. Department of Health and Human Services and the Pharmaceutical Service, Ministry of Health Republic of Italy. This MOU describes the mutual goals of the United States of America and the Republic of Italy to conduct studies on assuring the quality and integrity of safety evaluation data that support the approval of applications for research and/or marketing permits for human and animal drugs. Accordingly, this MOU provides for reciprocal recognition of each country's good laboratory practice program, acceptance of test data in either country for evaluation of safety, and implementation of procedures for continuing cooperation between the countries.

**DATE:** The agreement became effective December 19, 1988.

**FOR FURTHER INFORMATION CONTACT:** Walter J. Kustka, Intergovernmental and Industry Affairs Staff (HFC–50), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–12583.

**SUPPLEMENTARY INFORMATION:** In accordance with 21 CFR 20. 108(c), which states that all agreements and memoranda of understanding between FDA and others shall be published in the **Federal Register**, the agency is publishing this memorandum of understanding.

Dated: March 6, 1989.

**John M. Taylor,**

*Associate Commissioner for Regulatory Affairs.*

**I. Purposes**

The participating parties of the Unites States of America and the Republic of Italy have a concern for assuring the quality and integrity of safety evaluation data that support the approval of applications for research and/or marketing permits for human and animal drugs. The parties recognize that nonclinical safety studies should be conducted in accordance with principles of good laboratory practice (GLP) that are internationally recognized, and that laboratories conducting such studies should be monitored by effective national inspection programs. Accordingly, this Memorandum of Understanding (MOU) provides for: (a) reciprocal recognition of each country's good laboratory practice program (b) acceptance of test data collected in either country for evaluation of safety, and (c) implementation of procedures for continuing cooperative between the countries. Inspections of nonclinical laboratories are to be carried out by the respective national authorities.

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**II. Background**

Safety evaluation data submitted for consideration to one national authority are frequently based on studies conducted by laboratories located in another country. Therefore, the standards observed by those laboratories that conduct nonclinical safety studies which are submitted to the authority of the other country should be conducted in accordance with principles of good laboratory practice. When the safety evaluation data submitted to a national authority originate from a laboratory within another country, the national authority of the country of origin should be able to provide the other with information that assures that the laboratory is operated in accordance with good laboratory practices.

Representatives of the parties have met and have agreed to develop standards of good laboratory practice applicable to nonclinical laboratories and to establish national programs of inspection to implement those standards. Authorities in both the Unites States of America and the Republic of Italy have established national programs of inspection to verify the compliance of laboratories with the principles of GLP. These principles and the inspection programs are in accord with the Decision of the Council of the Organization for Economic Cooperation and Development (OECD) on "The Mutual Acceptance of Date in the Assessment of Chemicals" (May 12, 1981) including Annex 2, "OECD Principles of Good Laboratory Practice." These standards and procedures are consistent with the July 26, 1983, recommendation of the OECD Council on the "Mutual Recognition of Compliance with Good Laboratory Practice."

*A. Good Laboratory Practice*

The participating parties of the United States of America and the Republic of Italy have published comparable standards of good laboratory practice relating to nonclinical studies for safety evaluation experiments.

The inspectors of the Food and Drug Administration will rely on regulations relating to Good Laboratory Practice for Nonclinical Laboratory Studies (21 CFR Part 58) in evaluating the laboratories and auditing the data from the studies conducted in the United States of America.

The inspectors of the Ministry of Health will rely on the "Principi Di Buona Practica Di Laboratorio (BPL)" published at *Gazzetta Ufficiale Della Republica Italianato*, August 20, 1986, in evaluating the laboratories and auditing the data from the studies conducted in the Republic of Italy.

*B. National Inspection Programs*

Both of the parties assess compliance of a laboratory with the principles of GLP by having a trained government inspector conduct a laboratory inspection approximately once every two (2) years. The programs permit assessment of current laboratory operations as well as the audit of final reports of completed studies. Laboratories are generally notified in advance and inspection procedures are mutually consistent between the parties. A report of the results of the inspection is prepared that describes laboratory operations and addresses compliance with good laboratory operations and the addrees compliance with good laboratory practice standards.

*C. Compliance*

Both of the parties have established satisfactory procedures to secure the compliance of laboratories with the standards of good laboratory practice. These procedures include, for example, notifying a laboratory of deficiencies observed and requesting corrective action within a specified time frame. Failure to correct deficiencies is dealth with by the Food and Drug Administration in a variety of ways that include the rejection of specific studies or the disqualification of the laboratory. The Ministry of Health rejects specific studies of denies certification of compliance to laboratories that fail to take corrective action when informed of deficiencies.

**III. Substance of Understanding**

A. The parties agree that:

1. Adherence to adequate standards of good laboratory practice is essential to the conduct of high quality safety testing;

2. A national program of periodic inspections conducted by a trained inspectorate is required to monitor adherence to the standards of good laboratory practice;

3. Appropriate compliance procedures are necessary to assure adherence to the standards of good laboratory practice; and

4. Studies conducted in accordance with the respective standards of good laboratory practice promulgated by either country are to be acceptable to both parties for consideration in the evaluation of safety.

B. Each party will:

1. Inform the other party of changes in their good laboratory practice standards and their national inspection program;

2. Provide the other party quarterly, with the names and addresses of nonclinical laboratories operating within their country, the dates, the laboratories where inspected, and their compliance status;

3. Provide upon request of the other party, further information regarding whether or not a specific laboratory or study is in compliance with the GLP standards;

4. Agree to conduct a good laboratory practice inspection or data audit at a specified nonclinical laboratory at the request of the other party, whenever:

(a) There is serious concern about the quality or integrity of the data submitted to either country,

(b) An inspection has not been performed within the last two (2) years, or

(c) An approval of an application for research and/or marketing permit is pending based upon tests performed in a specified testing facility which are important to granting the approval.

In exceptional situations in which the requesting party can justify a special concern, the requesting party may designate one or more of its scientists to participate in the audit of a particular study;

5. Participate as an observer in an inspection of a laboratory conducted by the authorities in the other country each year in order to maintian a continuing understanding of each party's inspection procedures. These inspections are to alternate each year between the United States of America and the Republic of Italy; and

6. Recognize the need to protect from public disclosure, data and information that are exchanged between the parties that fall within the definition of a trade secret, or confidential commercial or financial information. If there is a request from the public for any information obtained from the other party, that party will be notified of the request prior to release of any information and given an opportunity for consultation.

**IV. Participating Parties**

A. Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

B. Ministry of Health, Viale della Civilta Romana, 7, 00144–I Rome, Italy.

**V. Liaison Officers**

The parties respectively appoint the following officials to serve as liaison officers for all communications regarding matters relative to this Memorandum of Understanding.

A. For the Food and Drug Administration: Director, Division of Compliance Policy, Office of Regulatory Affairs, (Currently: Mr. Ernest L. Brisson), 5600 Fishers Lane, Rockville, MD 20857.

B. For the Ministry of Health: Director, Pharmaceutical Serivce, (Currently: Dr. Romano Capasso), Viale della Civilta Romana, 7, 00144–I Rome, Italy.

**VI. Duration of the Memorandum of Understanding**

This MOU shall become effective upon the date of the last signature. It may be terminated at any time by written notice to the other party.

Approved and accepted for the Food and Drug Administration.

By: Frank E. Young, Title: Commissioner of Food and Drugs. Date: December 8, 1988. Place: Rockville, MD, U.S.A.

Approved and accepted for the Ministry of Health.

By: Duilo Poggiolini, Title: General Director, Pharmaceutical Dept., MOH. Date: December 19, 1988. Place: Rome, Italy.

[FR Doc. 89–5650 Filed 3–10–89; 8:45 am]

BILLING CODE 4160–01–M

## Health Resources and Services Administration

### Special Project Grants; Maternal and Child Health Services, Federal Set-Aside Program

**AGENCY:** Health Resources and Services Administration, PHS, DHHS.

**ACTION:** Notice of extension of application due date.

**SUMMARY:** This notice extends the application due date for a separate sub-category of grants under category (5)(c) of the Special Projects Grants—Maternal and Child Health Services, Federal Set-Aside Program, published in the **Federal Register** December 20, 1988 (53 FR 51168). Category (5)(c) relates to child and adolescent health projects under special MCH improvement grants. The separate sub-category of grants has been established to provide funding for a special initiative in preventive health for children at the local community level. The initiative, called "Healthy Tomorrows," would encourage additional support from the private sector and from foundations to form a community based partnership that would coordinate resources to improve the health of pregnant women, infants, children and adults and increase their access to health services. The application due date for this special initiative under category (5)(c) is extended to June 29, 1989. All other aspects of the December 20, 1988 **Federal Register** Notice remain the same.

Dated: March 6, 1989.

**John H. Kelso,**

*Acting Administrator.*

[FR Doc. 89–5649 Filed 3–10–89; 8:45 am]

BILLING CODE 4160–15–M



## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of Administration

**[Docket No. N–89–1953]**

### Submission of Proposed Information Collections to OMB

**AGENCY:** Office of Administration, HUD.

**ACTION:** Notices.

**SUMMARY:** The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

**ADDRESS:** Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposals for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: February 27, 1989.

**John T. Murphy,**

*Director, Information Policy and Management Division.*

*Proposal:* Energy Conservation Requirements Chapter 12 of Handbook H–4305.1, Appendix 1, Energy Conservation

*Office:* Housing

*Description of the Need for the Information and Its Proposed Use:* Information will be collected from multifamily housing owners in order for them to qualify for rent increases in compliance with Section 329c of the Housing and Community Development Amendments of 1981. It will assure that needed cost effective energy conservation improvements are identified and that a plan is in effect to make the improvements.

*Form Number:* Handbook H–4350.1, Chapter 12, Appendix 1

*Respondents:* Businesses or Other For-Profit and Non-Profit Institutions

*Frequency of Submission:* Annually

*Reporting Burden:*

| | Number of Respondents | X | Frequency of Response | X | Hours per Response | = | Burden Hours |
|---|---|---|---|---|---|---|---|
| Survey | 9,000 | | 1 | | 1 | | 9,000 |
| Recordkeeping | 9,000 | | 1 | | .05 | | 450 |

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*Total Estimated Burden Hours:* 9,450
*Status:* Annually
*Contact:* James T. Tahash, HUD, (202) 426–3944. John Allison, OMB, (202) 395–6880

*Dated:* February 27, 1989.

*Proposal:* Section 8 Moderate Rehabilitation—Single Room Occupancy Program
*Office:* Housing
*Description of the Need for the Information and Its Proposed Use:* This program will provide rental assistance for homeless individuals for rehabilitated Single-Room Occupancy (SRO) housing under Section 8 Housing Assistance Payment Program. The information requested will assist the Department in selecting applicants who meet the program requirements and demonstrate the greatest need.
*Form Number:* None
*Respondents:* State or Local Governments and Non-Profit Institutions
*Frequency of Submission:* On Occasion
*Reporting Burden:*

| | Number of Respondents | X | Frequency of Response | X | Hours per Response | = | Burden Hours |
|---|---|---|---|---|---|---|---|
| Information Collection | 100 | | 1 | | 25 | | 2,500 |

*Total Estimated Burden Hours:* 2,500
*Status:* Extension
*Contact:* A.M. Bell, HUD, (202) 755–6650. John Allison, OMB, (202) 395–6880

*Dated:* February 27, 1989.

*Proposal:* Report on Applicants for Multifamily Rental Housing
*Office:* Fair Housing and Equal Opportunity
*Description of the Need for the Information and Its Proposed Use:* The information collected will be used by HUD to assess the results of the initial outreach and marketing activities described in the HUD-approved Affirmative Fair Housing Marketing Plan (HUD–935.2). The plans are prepared by sponsors or developers of subsidized and unsubsidized insured multifamily rental housing projects of five or more units (except low-income public housing).
*Form Number:* HUD–935.2
*Respondents:* Businesses or Other For-Profit
*Frequency of Submission:* On Occasion
*Reporting Burden:*

| | Number of Respondents | X | Frequency of Response | X | Hours per Response | = | Burden Hours |
|---|---|---|---|---|---|---|---|
| HUD-935.2 | 1,000 | | 1 | | 0.25 | | 250 |

*Total Estimated Burden Hours:* 250
*Status:* Extension
*Contact:* Joan Brackett, HUD, (202) 755–6540. John Allison, OMB, (202) 395–6880

Dated: February 27, 1989.

[FR Doc. 89–5668 Filed 3–10–89; 8:45 am]
BILLING CODE 4210–01–M

[Docket No. N–89–1954]

## Submission of Proposed Information Collections to OMB

**AGENCY:** Office of Administration, HUD.

**ACTION:** Notices.

**SUMMARY:** The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

**ADDRESS:** Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposals for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

**Authority:** Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: March 3, 1989.

**John T. Murphy,**

*Director, Information Policy and Management Division.*

*Proposal:* Certificate of Family Participation and Certificate of Family Participation (Spanish Version)
*Office:* Housing
*Description of the Need for the Information and Its Proposed Use:* The Certificate of Family Participation will indicate the family's responsibilities under the Section 8 Existing Housing Program and authorize the family to seek an eligible rental unit.
*Form Number:* HUD–52578 and 52578S
*Respondents:* Individuals or Households and State or Local Governments



*Frequency of Submission:* On Occasion
*Estimated Burden Hours:*

| | Number of Respondents | X | Frequency of Response | X | Hours per Response | = | Burden Hours |
|---|---|---|---|---|---|---|---|
| HUD–53578 and HUD–52578S | 2,000 | | 100 | | 0.05 | | 10,000 |
| Recordkeeping | 2,000 | | 1 | | 5 | | 10,000 |

*Total Estimated Burden Hours:* 20,000
*Status:* Reinstatement
*Contact:* Louise Hunt, HUD, (202) 755–6887; John Allison, OMB, (202) 395–6880

*Dated:* March 3, 1989.

*Proposal:* Application for Indian Housing Authorities (IHAs) for Indian Housing Program
*Office:* Public and Indian Housing
*Description of the Need for the Information and Its Proposed Use:* This reporting is required pursuant to the U.S. Housing Act of 1937, as amended, in order for an entity to obtain HUD financial and technical assistance as well as obtain a preliminary loan to cover the cost of introductory surveys and planning for the proposed project.
*Form Number:* HUD–52730
*Respondents:* Non-Profit Institutions
*Frequency of Submission:* Other
*Estimated Burden Hours:*

| | Number of Respondents | X | Frequency of Response | X | Hours per Response | = | Burden Hours |
|---|---|---|---|---|---|---|---|
| Annual Reporting | 90 | | 1 | | 6 | | 540 |

*Total Estimated Burden Hours:* 540
*Status:* Extension
*Contact:* Pat Arnaudo, HUD, (202) 755–1015; John Allison, OMB, (202) 395–6880

*Date:* March 3, 1989.

*Proposal:* Environment Procedures: Floodplains and Wetlands
*Office:* Community Planning and Development
*Description of the Need for the Information and Its Proposed Use:* An environmental review and decisionmaking procedure is described in proposed 25 CFR 55 regulations. Applicants and grantees must comply with this procedure, including disclosure of floodplain hazard, before HUD assistance can be used or application approved for projects that may affect floodplains and wetlands. Grant recipients must keep records to document the compliance of proposed projects.
*Form Number:* None
*Respondents:* State or Local Governments, Business or Other For-Profits, Non-Profit Institutions, and Small Businesses or Organizations.
*Frequency of Submission:* On Occasion
*Estimated Burden Hours:*

| | Number of Respondents | X | Frequency of Response | X | Hours per Response | = | Burden Hours |
|---|---|---|---|---|---|---|---|
| Annual Reporting | 9,100 | | 6 | | 0.2 | | 10,920 |
| Recordkeeping | 3,200 | | 1 | | .40 | | 1,280 |

*Total Estimated Burden Hours:* 12,200
*Status:* New
*Contact:* Charles Thomsen, HUD, (202) 755–6610; John Allison, OMB, (202) 395–6880

*Dated:* March 3, 1989.

[FR Doc. 89–5669 Filed 3–10–89; 8:45 am]
BILLING CODE 4210–01–M

## Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N–89–1917; FR 2606]

## Unutilized and Underutilized Federal Buildings and Real Property Determined by HUD to Be Suitable for Use for Facilities to Assist the Homeless

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

**ACTION:** Notice.

**SUMMARY:** This Notice identifies unutilized and underutilized Federal property determined by HUD to be suitable for possible use for facilities to assist the homeless.

**DATE:** March 13, 1989.

**ADDRESS:** For further information, contact Morris Bourne, Director, Transitional Housing Development Staff, Room 9140, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 755–9075; TDD number for the hearing- and speech-impaired (202) 426–0015. (These telephone numbers are not toll-free.)

**SUPPLEMENTARY INFORMATION:** In accordance with the December 12, 1988, court order in *National Coalition for the Homeless* v. *Veterans Administration*, D.C.D.C. No. 88–2503–CG, HUD publishes a Notice, on a weekly basis, identifying unutilized and underutilized Federal buildings and real property determined by HUD to be suitable for

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use for facilities to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable this week.

Dated: March 7, 1989.

**James E. Schoenberger,**

*General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.*

[FR Doc. 89-5670 Filed 3-10-89; 8:45 am]

BILLING CODE 4210-27-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

### Preparation of Resource Management Plan Amendments and an Environmental Impact Statement; Northeast Resource Area, et al.

**AGENCY:** Bureau of Land Management (BLM), Department of the Interior.

**ACTION:** Notice of intent to prepare amendments to five Resource Management Plans (RMPs) and an Environmental Impact Statement (EIS) for the Northeast, Kremmling, Little Snake, Glenwood Springs, and San Juan Resource Areas.

**SUMMARY:** The Colorado State Office hereby gives notice of its intent to prepare an EIS and amendments to five RMPs. The five Resource Areas contain approximately five million acres of public lands and public minerals underlying private lands. The primary purpose of the amendments is to incorporate the latest BLM program guidance (BLM Manual section 1624.2) for fluid minerals. This guidance includes the use of a "Reasonably Foreseeable Development" scenario, identification of cumulative impacts, and evaluation of the effectiveness of stipulations.

The proposed planning action will result in a determination as to which public lands and minerals should be made available for oil and gas development through leasing, and what lease stipulations may be necessary to protect other resource values.

The issues anticipated include:

1. Determining if existing lease stipulations are proper and sufficient to protect other resource values.
2. Determining if there is additional federal mineral estate that should be considered for oil and gas leasing.
3. The cumulative impacts of oil and gas development.
4. Clarification of stipulations applied at lease issuance and conditions of approval applied to subsequent development activities.
5. Lease stipulations necessary to protect wildlife, fragile soils, water resources and other resource values.
6. The impact of lease stipulations on oil and gas development.

The proposed planning criteria used to address these issues are summarized below:

1. Consult with appropriate representatives of the oil and gas industry to identify mineral potential.
2. Apply applicable laws and regulations to identify land eligible for leasing.
3. Assess the suitability of the land to incur oil and gas development, and the availability of the resource for development.
4. Compare the public values of oil and gas development with the public values of other alternative uses which may be precluded or impacted.

Alternatives proposed for consideration include:

1. No action defined as a continuation of current management.
2. Standard lease terms only.
3. Preferred alternative—to be defined by management following consultations with staff and the public.

The plan amendments will be prepared using a variety of resource specialists including persons trained in geology, hydrology, soils, air, wildlife, range, recreation, realty, surface protection, and economics.

**DATES:** Public comment on the proposed issues, planning criteria, alternatives and resource disciplines will be accepted for 30 days following publication of this Notice. In addition, public scoping meetings will be scheduled for late March and early April. At least two weeks advance notice of the time and dates of these meetings will be provided. Additional public participation opportunities will be provided through formal public hearings on the draft EIS and requests for written comments.

**ADDRESSES:** Comments should be addressed to Greg Shoop, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215.

**FOR FURTHER INFORMATION CONTACT:** Greg Shoop, CO-922, telephone cml. (303) 236-1787 or FTS 776-1787.

Dated: March 7, 1989.

**Neil F. Morck,**

*State Director, Colorado.*

[FR Doc. 89-5622 Filed 3-10-89; 8:45 am]

BILLING CODE 4310-JB-M

[AZ-920-09-4212-13; A-22782-A]

### Arizona; Exchange of Public and Private Lands in Maricopa and Mohave Counties and Order Providing for Opening of the Reconveyed Land

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Exchange of Land and Opening of Reconveyed Land.

**SUMMARY:** This action informs the public of the completion of an exchange between the United States and Westwing Associates, an Arizona General Partnership. The United States transferred 756.33 acres in Maricopa County and Westwing Associates conveyed 19,435.60 acres in Mohave County. In addition, the reconveyed land will be opened to the public land laws.

**FOR FURTHER INFORMATION CONTACT:** John Gaudio, BLM, Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011, (602) 241-5534.

**SUPPLEMENTARY INFORMATION:** The Bureau of Land Management transferred the following described 756.33 acres of land in Maricopa County by Patent No. 02-88-0037, pursuant to the Federal Land Policy and Management Act of October 21, 1976:

**Gila and Salt River Meridian**

T. 4N., R. 1E.,
Sec. 3, lots 1, 2, 3, 11, 12, 13, 14, 15, 19, and 20, S½NE¼, NE¼SE¼.
T. 5N., R. 1E.,
Sec. 27, NW¼NW¼NW¼, N½SW¼ NW¼NW¼, SW¼SW¼NW¼NW¼, W½W½SW¼NW¼;
Sec. 34, S½N½NE¼NE¼, S½NE¼NE¼, NW¼NE¼, S¼NE¼, E½SE¼SW¼, SE¼.

In exchange the following described 19,435.60 acres of land in Mohave County were conveyed to the United States:

**Gila and Salt River Meridian**

*Parcel 1 (Surface Only):*

T. 19N., R. 15W.,
Sec. 5, lots 1 to 4, incl., S½N½, S½.
T. 20N., R. 15 W.,
Sec. 5, lots 1 and 3, SE¼NW¼, SW¼;
Sec. 7, lots 1 to 4, incl., E½, E½W½, except Hualapai Mtn. Rd.;
Sec. 9, lot 1, E½NE¼, W½NW¼, SW¼, SW¼SE¼;
Sec. 17, all;
Sec. 19, lots 1 to 4, incl., E½, E½W½, except Hualapai Mtn. Rd.;
Sec. 21, N½, N½SW¼, SE¼, except metes and bounds parcel;
Sec. 31, lots 1 to 4, incl., E½, E½W½.
T. 20 N. R. 16 W.,
Sec. 1, lots 1 and 2, S½NE¼, N½SE¼ SW¼, SW¼SE¼SW¼, SE¼, except Hualapai Mtn. Rd. and D.W. Ranch Rd.;



Sec. 12, NE¼NE¼.
T. 21 N., R. 15 W.,
Sec. 19, lots 1 to 4, incl., NE¼, NE¼NW¼, NE¼SE¼, except D.W. Ranch Rd. and Interstate Hwy. 40;
Sec. 20, N½NE¼, SE¼NE¼, NW¼, NE¼SW¼, except D.W. Ranch Rd.;
Sec. 21, all, except Interstate Hwy. 40;
Sec. 22, all, except Interstate Hwy. 40;
Sec. 23, all, except Interstate Hwy. 40;
Sec. 26, S½;
Sec. 27, N½NE¼, SW¼NE¼, NW¼, NW¼SW¼;
Sec. 28, E½E½NW¼, NW¼NE¼NW¼, N½NW¼NW¼, SW¼, SW¼SE¼;
Sec. 29, NE¼NE¼, S½NE¼, SE¼NW¼, NE¼SW¼, S½SW¼, SE¼;
Sec. 31, lots 1 to 4, incl., E½, E½W½;
Sec. 33, all;
Sec. 35, E½NE¼, SW¼NE¼, SW¼NW¼.
T. 21 N., R. 16 W.,
Sec. 13, E½, E½W½, except Interstate Hwy. 40;
Sec. 23, all, except metes and bounds parcel;
Sec. 24, E½SW¼, W½SE¼;
Sec. 25, all;
Sec. 27, E½E½E½;
Sec. 29, NE¼NE¼SW¼, E½NW¼ NE¼SW¼, S½N½SW¼, S½SW¼, SE¼;
Sec. 31, lots 1 to 16, incl., E½;
Sec. 33, NW¼NE¼, S½NE¼, NW¼, S½;
Sec. 34, S½;
Sec. 35, all, except Hualapai Mtn. Rd.

*Parcel 2 (Surface and Minerals):*

T. 20 N., R. 16 W.
Sec. 1, lots 3 and 4, S½NW¼, N½SW¼, SW¼SW¼;
Sec. 2, lots 1 and 2, S½NE¼, SE¼, except Hualapai Mtn. Rd.
T. 21 N., R. 15 W.
Sec. 19, SE¼NW¼, E½SW¼, W½SE¼, SE¼SE¼;
Sec. 20, W½SW¼, SE¼SW¼, SE¼, except D.W. Ranch Rd.;
Sec. 28, N½;
Sec. 27, SE¼NE¼, NE¼SW¼, S½SW¼ SE¼;
Sec. 28, NE¼, N½SE¼, SE¼SE¼;
Sec. 29, NW¼SW¼;
Sec. 30, lots 1 and 2, NE¼, E½NW¼;
Sec. 35, NW¼NE¼, N½NW¼, SE¼NW¼.
T. 21 N., R. 16 W.
Sec. 24, N½, W½SW¼, E½SE¼;
Sec. 25, all;
Sec. 30, lots 1, 2, and lots 5 to 16, incl., N½NE¼, SW¼NE¼, N½SE¼NE¼, N½S½SE¼NE¼, S½N½NE¼SE¼, S½NE¼SE¼, W½SE¼, SE¼SE¼;
Sec. 34, NE¼NE¼, S½N½, except Hualapai Mtn. Rd.

At 9:00 a.m. on March 13, 1989, the land described in Parcels 1 and 2 will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 9:00 a.m. on March 13, 1989, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

The purpose of this notice is to inform the public and interested State and local government officials of this exchange of public and private land, and of the opening of the reconveyed land.

The land conveyed to the United States in this exchange will be administered by the Bureau of Land Management.

**Marsha L. Luke,**

*Acting Chief, Branch of Lands Operations.*

[FR Doc. 89-5667 Filed 3-10-89; 8:45 am]

BILLING CODE 4310-32-M

[CA-940-08-4520-12; Group 1013]

### Plat of Survey; California

February 24, 1989.

1. This plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

**Humboldt Meridian, Del Norte County**

T. 17 N., R. 2 E.

2. This plat representing the metes-and-bounds survey of Tract 38, Township 17 North, Range 2 East, Humboldt Meridian, California, under Group No. 1013 California, was accepted January 6, 1989.

3. This plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the Six Rivers National Forest.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

**Herman J. Lyttge,**

*Chief, Public Information Section.*

[FR Doc. 89-5634 Filed 3-10-89; 8:45 am]

BILLING CODE 4310-40-M

[CA-940-08-4520-12; Group 961]

### Plat of Survey; California

February 24, 1989.

1. This plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

**Mount Diablo Meridian, Kern County**

T. 30 S., R. 37 E.

2. This plat representing the dependent resurvey of a portion of the subdivisional lines, the survey of the subdivision of section 28, and the survey of lot 5, in section 28, Township 30 South, Range 37 East, Mount Diablo Meridian, California under Group No. 961 California, was accepted January 6, 1989.

3. This plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the Bureau of Land Management.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

**Herman J. Lyttge,**

*Chief, Public Information Section.*

[FR Doc. 89-5635 Filed 3-10-89; 8:45 am]

BILLING CODE 4310-40-M

[CA-940-08-4520-12; Group 1007]

### Plat of Survey; California

February 24, 1989.

1. This plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

**Mount Diablo Meridian, San Bernardino County**

T. 29 S., R. 44 E.
T. 30 S., R. 44 E.

2. This plat, (2 sheets) representing the dependent resurvey of the south and west boundaries, and a portion of the subdivisional lines, Township 29 South, Range 44 East, Mount Diablo Meridian, California and the survey of a portion of the subdivisional lines, Township 30 South, Range 44 East, Mount Diablo Meridian, California.

3. This plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the Department of the Navy.

5. All inquiries relating to this land should be sent to the the California State Office, Bureau of Land Management, Federal Office Building,

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2800 Cottage Way, Room E–2841, Sacramento, California 95825.

Herman J. Lyttge,

*Chief, Public Information Section.*

[FR Doc. 89–5636 Filed 3–10–89; 8:45 am]

BILLING CODE 4310–40–M

[CA–940–08–4520–12; Group 735]

**Plat of Survey; California**

February 24, 1989.

1. This plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

Mount Diablo Meridian, Siskiyou County

T. 43 N., R. 10 W.

2. This plat representing the dependent resurvey of a portion of the Hull Gulch Placer Mine (Lot 45), Mineral Survey No. 972, and a portion of the Quartz Valley Placer Mine (Lot 54), Mineral Survey No. 3228, in sec. 13, Township 43 North, Range 10 West, Mount Diablo Meridian, California, under Group No. 735 California, was accepted January 6, 1989.

3. This plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the Bureau of Land Management.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E–2841, Sacramento, California 95825.

Herman J. Lyttge,

*Chief, Public Information Section.*

[FR Doc. 89–5637 Filed 3–10–89; 8:45 am]

BILLING CODE 4310–40–M

[CA–940–08–4520–12; Group 967]

**Plat of Survey; California**

February 24, 1989.

1. This plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

Mount Diablo Meridian, Trinity County

T. 32 N., R. 9 W.

2. This plat, (5 sheets) representing the dependent resurvey of a portion of the south and west boundaries and portions of the subdivisional lines, and the survey of the subdivision of sections 7, 23, 25, 26, 27, 30, 31, 32, 33, and 34, Township 32 North, Range 9 West, Mount Diablo Meridian, California under Group No. 967 California, was accepted January 6, 1989.

3. This plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the Bureau of Land Management.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E–2841, Sacramento, California 95825.

Herman J. Lyttge,

*Chief, Public Information Section.*

[FR Doc. 89–5638 Filed 3–10–89; 8:45 am]

BILLING CODE 4310–40–M

## Minerals Management Service

**Pacific Northwest Outer Continental Shelf (OCS) Task Force; Initial Meeting**

This notice is issued in accordance with the provisions of the Federal Advisory Committee Act, Pub.L. No. 92–463, 5 U.S.C. Appendix 1, and the Office of Management and Budget's Circular No. A–63, Revised. The Pacific Northwest OCS Task Force will hold its initial meeting during the period 8:30 a.m. to 5 p.m., March 27, 1989, at the Inn at the Quay, 100 Columbia Street, Vancouver, Washington (206–694–8341). The meeting is open to the public.

The purpose of the Pacific Northwest OCS Task Force is to advise the Secretary of the Interior and other officers of the Department of the Interior on issues related to potential OCS oil and gas leasing, exploration and development in the Washington and Oregon OCS Planning Area.

Minutes of the meeting will be available for public inspection and copying at the Minerals Management Service, Pacific OCS Region, Suite 244, 1340 West Sixth Street, Los Angeles, California 90017. For more information contact John Smith at (213) 894–4154.

Dated: March 7, 1989.

Carolita Kallaur,

*Deputy Associate Director for Offshore Leasing.*

[FR Doc. 89–5744 Filed 3–10–89; 8:45 am]

BILLING CODE 4310–MR–M

**Development Operations Coordination Document; Texas Producing Inc.**

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

**SUMMARY:** Notice is hereby given that Texaco Producing Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 1953, Block 144, West Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from existing onshore bases located at Cameron and Morgan City, Louisiana.

**DATE:** The subject DOCD was deemed submitted on February 27, 1989. Comments must be received within 15 days of the publication date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

**ADDRESSES:** A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

**FOR FURTHER INFORMATION CONTACT:** Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2867.

**SUPPLEMENTARY INFORMATION:** The purpose of this Notice is to inform the public, pursuant to Sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to Section 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.



Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: February 28, 1989.

J. Rogers Pearcy,

*Regional Director, Gulf of Mexico OCS Region.*

[FR Doc. 89–5639 Filed 3–10–89; 8:45 am]

BILLING CODE 4310–MR–M

## DEPARTMENT OF JUSTICE

**Lodging of Consent Decree; Flexcon Co.**

In accordance with Department Policy, 28 CFR 50.7, 38 FR.19029, notice is hereby given that a proposed Consent Decree in United States v. Flexcon Co., Civil action No. 88–0016–xx (D. Mass.), was lodged with the United States District court for the district of Massachusetts on March 6, 1989. The proposed Decree, if entered, will resolve the liability of the defendant Flexcon in this action pursuant to the Clean Air Act, 42 U.S.C. 7413. The proposed Decree Requires Flexcon to pay $60,000 in penalties as well as to comply with specified emission limitation and reporting requirements under the Clean Air Act.

The Department of Justice will receive for a period of thirty (30) days from the date of publication of this notice, written comments relating to the proposed Decree. Comments should be addressed to the acting Assistant Attorney General, Land and Natural Resources Division, United States Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Flexcon Co.*, D.J. Ref. No. 90–5–2–1–11–49.

The proposed Decree may be examined at the office of the United States Attorney, 1107 J.W. McCormack Post Office and Courthouse, Boston, Massachusetts 02109; at the Region I office of the United States Environmental Protection Agency, John F. Kennedy Federal Building, Room 2203, Boston, Massachusetts 02203; and at the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, at the above address. In requesting a copy, please enclose a check in the amount of $2.10, payable to the Treasurer of the United States, to cover the costs of reproduction.

Donald A. Carr,

*Acting Assistant Attorney General, Land & Natural Resources Division.*

[FR Doc. 89–5683 Filed 3–10–89; 8:45 am]

BILLING CODE 4410–01–M

**Lodging of Consent Decree; City of Ottumwa, IA**

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on February 27, 1989 a proposed Partial Consent Decree in *United States* v. *City of Ottumwa, Iowa, et al.* (S.D. Iowa), Civil Action No. 88–164–E was lodged with the United States District Court for the Southern District of Iowa, Central Division. The Partial Consent Decree concerns violations of the Asbestos National Emission Standards for Hazardous Air Pollutants ("NESHAP"), 40 CFR Part 61.140, *et seq.*, and the Clean Air Act, 42 U.S.C. 7401, *et seq.* The proposed Partial Consent Decree requires defendants Allen Beachy and Daniel Beachy to give proper notification under the asbestos NESHAP, to comply with all aspects of the asbestos NESHAP, and to attend an EPA asbestos training program if they continue to handle asbestos.

The Department of Justice will receive comments relating to the proposed Partial Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *City of Ottumwa, Iowa, et al.*, D.J. No. 90–5–2–1–1143.

The proposed Partial Consent Decree may be examined at the office of the United States Attorney for the Southern District of Iowa, 115 U.S. Courthouse, Des Moines, Iowa 50309 and the U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101. The Decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Partial Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

Donald A. Carr,

*Acting Assistant Attorney General, Land and Natural Resources Division.*

[FR Doc. 89–5643 Filed 3–10–89; 8:45 am]

BILLING CODE 4410–01–M

**Lodging of Consent Decree; Township of Maple Shade, NJ**

In accordance with departmental policy, 28 CFR 50.7, notice is hereby given that on February 14, 1989, a proposed consent decree in *United States of America v. Township of Maple Shade, New Jersey*, Civ. No. 86–689, was lodged with the United States District Court for the District of New Jersey. The proposed consent decree settles the United States' claims against Maple Shade under the Clean Water Act, set forth in a complaint filed on the same date, relating to discharges from two municipal sewage treatment plants in violation of effluent limitations and other applicable permit requirements.

The proposed consent decree requires Maple Shade to upgrade and expand one of its treatment plans to provide advanced wastewater treatment of all of the Township's sewage by December 31, 1991, to convert the second treatment plant into a pumping station, and to cease all discharges from the second treatment plant by December 31, 1991. The decree also requires: (1) Payment of a $75,000 civil penalty to the United States, (2) compliance with interim effluent limitations until the facilities improvements are completed, and (3) various interim operating improvements and repairs to the existing Maple Shade treatment facilities.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Township of Maple Shade*, D.J. Ref. 90–5–1–1–3105.

The proposed consent decree may be examined at the offices of the United States Attorney, Federal Building, 970 Broad Street, Newark, New Jersey 07102, and at the Region II office of the Environmental Protection Agency, 26 Federal Plaza, New York, NY 10278. A copy of the consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1517, Ninth Street and

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Pennsylvania Avenue, NW., Washington, DC 20530. Copies of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $2.10 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

**Donald A. Carr,**

*Acting Assistant Attorney General, Land & Natural Resources Division.*

[FR Doc. 89-5644 Filed 3-10-89; 8:45 am]

BILLING CODE 4410-01-M

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**Antitrust Division**

**[Civil No. C88-4253 (N.D. Ohio)]**

**Proposed Final Judgment; TRW Inc.,**

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(a) and (b), the United States publishes below the comments it received on the Competitive Impact Statement and proposed Final Judgment in the captioned case, filed in the United States District Court for the Northern District of Ohio, together with the response of the United States to these comments.

Copies of the public comments and response are available on request for inspection and copying in Room 3229, Antitrust Division, Department of Justice, Washington, DC, and for inspection at the Office of the Clerk of the United States District Court for the Northern District of Ohio in Cleveland.

**John W. Clark,**

*Deputy Director of Operations Antitrust Division.*

In the matter of United States of America, Plaintiff, vs. TRW Inc., Defendant, filed in the United States District Court for the Northern District of Ohio Eastern Division.

**Response of the United States to Public Comments and Motion of the United States for Entry of Final Judgment**

Pursuant to section 2(b) of the Antitrust Procedures and Penalties Act (15 U.S.C. 16(b)–16(g)) (the "APPA"), the United States of America hereby files its Response to Public Comments and moves for entry of the proposed Final Judgment against TRW Inc. ("TRW") in this civil antitrust proceeding.

*I. Introduction*

This action began on November 17, 1988, when the United States filed a complaint alleging that the proposed acquisition of Chilton Corporation ("Chilton") by TRW would violate section 7 of the Clayton Act, 15 U.S.C. 18. The Complaint alleged that the effect of the acquisition would be substantially to lessen competition in sales of consumer credit reports in sixteen (16) geographic markets. Both companies sell credit reports, either directly through credit bureau offices that they own ("owned offices") or indirectly through affiliated credit bureaus, in each of these markets. The Complaint seeks, among other relief, to enjoin the transaction to prevent its anticompetitive effects in the sixteen relevant markets.

On November 17, 1988, the United States and TRW filed a Stipulation in which they consented to the entry of a proposed Final Judgment designed to eliminate the anticompetitive effects of the acquisition. In accordance with the provisions of the APPA, the United States also filed a Competitive Impact Statement explaining the basis for the Complaint and for the United States' conclusion that entry of the proposed Final Judgment would be in the public interest. The proposed Final Judgment eliminated the anticompetitive effects alleged in the Complaint with respect to the sixteen markets by requiring TRW to consummate contracts to sell copies of the consumer credit files in some markets and to end affiliation agreements with independent credit bureaus in others.

The United States and TRW stipulated that the proposed Final Judgment may be entered after compliance with the APPA, unless the government withdraws its consent. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, and enforce the Final Judgment and to punish violations of the Judgment.

*II. Compliance with the APPA*

Upon publication of this Response in the Federal Register, the procedures required by the APPA will have been completed, and the Court may enter the proposed Final Judgment.

A. Stipulation, Proposed Final Judgment and Competitive Impact Statement

The United States has caused the Stipulation between the parties for entry of the proposed Final Judgment, and the Competitive Impact Statement, in the form prescribed by 15 U.S.C. 16(b), to be filed with the Court and to be published in the **Federal Register** (53 FR 48735, December 2, 1988 and 53 FR 49937, December 12, 1988).[1] It also has furnished copies of these documents to all persons who have requested them.

B. Newspaper Notices

The United States has caused newspaper notices of the proposed Final Judgment and the Competitive Impact Statement to be published in *The Washington Post* and the Cleveland *Plain Dealer* in accordance with the procedures set forth in 15 U.S.C. 16(c).[2]

C. Statements Regarding Communications

As required by 15 U.S.C. 16(g), on November 28, 1988, TRW filed with the Court a description of communications, by or on behalf of the defendant, with officers and employees of the United States concerning the proposed Final Judgment.

D. Waiting Period, Comments, and Publication of Comments and Response

The 60-day period provided by 15 U.S.C. 16(d) for submission of public comments expired on February 10, 1989. The United States received comments from Credit Bureau Services of New Hampshire, a credit bureau wholly-owned by CBC Companies ("CBC"), on January 18 and February 10, 1989; from Rochester Credit Center, Inc. ("Rochester") on January 26, 1989; from Credit Data of Hawaii, Inc. ("Hawaii") on February 9, 1989; from Credit Data of Central Massachusetts, Inc. and Credit Data of Rhode Island, Inc. (together "Central Massachusetts") on February 10, 1989; and from Centroplex Credit Reporting & Collections, Inc. ("CCRC") on February 8, 1989. In addition, on February 9, 1989, the Department received a letter from the Honorable Gordon J. Humphrey, United States Senator from the State of New Hampshire, indicating his concern about the impact of the proposed Final Judgment on CBC and asking us to give careful consideration to its comments.[3] In accordance with the APPA, the United States has evaluated the comments, and responds to them below. As required by 15 U.S.C. 16(b), the comments are being filed with this Response, and the comments and this Response will be published in the **Federal Register**. Counsel for the United States will inform the Court when publication has occurred.

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[1] Copies of the **Federal Register** Notices are attached to this Response as Exhibit A.

[2] Copies of the affidavits of publication are attached to this Response as Exhibit B.

[3] Copies of the comments are attached to the Response as Exhibits C through I.



E. Standards for Review of Consent Decrees

Under the APPA, the primary responsibility for enforcing the antitrust laws and protecting the public interest in competitive markets rests with the Department of Justice.[4] In carrying out its responsibilities, the Department has very broad discretion in prosecuting alleged antitrust violations and determining appropriate relief for the settlement of cases.[5] Before entering a proposed consent decree, the Court must determine that the decree is in the public interest, 15 U.S.C. 16(e),[6] but that test is limited to ensuring that the government has met its public interest responsibilities, that is, determining that the proposed Final Judgment falls within the range of the government's antitrust enforcement discretion. The Ninth Circuit Court of Appeals has explained these respective obligations as follows:

> The balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General * * *. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "within the reaches of the public interests." * * * More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[7]

Indeed, the courts repeatedly have held that the purpose of their review of proposed antitrust consent decrees is not to determine "whether this is the best possible settlement that could have been obtained if, say, the government had bargained a little harder" [8] or whether this is the remedy "the Court might have imposed had the matter been litigated." [9] Rather:

> Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making the public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances. The Court must also give appropriate recognition * * * to the fact that every consent judgment normally embodies a compromise, and that the parties each give up something which they might have won had they proceeded to trial.[10]

In this case, the United States carefully considered the matters that are now being raised in the comments when it formulated its position with respect to this transaction. We concluded, for the reasons discussed below and in the Competitive Impact Statement, that the public would be best served by the remedial action set forth in the proposed Final Judgment. If the Court finds that the United States' action represented a reasonable exercise of its antitrust enforcement responsibility and prosecutorial discretion, it may enter the proposed Final Judgment as soon as compliance with APPA is completed by publication of the comments and Response in the **Federal Register**.[11]

F. The Competitive Analysis of the United States

The Department believes that if the proposed Final Judgment is entered, the transaction will no longer violate Section 7 of the Clayton Act. The proposed Final Judgment will ensure that a new vendor will enter each market in which, absent such relief, the transaction would substantially reduce competition. As a result, credit grantors will have as many potential sources of full file consumer credit reports to choose from as in the past and no credit report seller will be able to gain market power. Thus, the United States concludes that entry of the proposed Final Judgment is in the public interest.

1. *The Product Is "Full File" Consumer Credit Reports.* Consumer credit reports are purchased by grantors of credit such as banks, mortgage companies, department stores, and other businesses to determine whether to grant credit to individual consumers. Credit reports include information on a person's background,[12] debts owed,[13] and public record announcements.[14] Debt obligation information is obtained from computer tapes credit grantors prepare each month on the status of their consumer accounts. Public record information is collected manually from public records by local credit bureaus.[15] A data base of credit reports that contains all the types of information demanded by credit grantors, including five years of historical information, is considered a "full file."

Credit grantors purchase credit reports to reduce the risk of granting credit to consumers with whom they are unfamiliar. Obviously, the more information in a credit report, the lower the risk. Those who purchase credit reports generally believe that a four or five year credit history is necessary for prudent risk assessment. As a result, credit grantors do not consider credit reports that contain less than four or five years of debt obligation information and less than seven years of public record information to be adequate substitutes for reports that contain such information.[16]

2. *The Geographic Market for Consumer Credit Report is Local.* The geographic market for credit reports is local because credit grantors demand as much current credit information as they can get about an individual, and the only vendors likely to possess that information are those credit bureaus in the area in which the individual resides. A credit grantor would not consider a credit bureau that does not have full file information on most individuals in a particular geographic area to be an adequate substitute for a credit bureau that possessed such comprehensive

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[4] *United States* v. *Waste Management, Inc.*, 1985-2 Trade Cas. (CCH) ¶ 66,651 at page 63,045 (D. D.C. 1985).

[5] *United States* v. *Mid-America Dairymen, Inc.*, 1977-1 Trade Cas. (CCH) ¶ 61,508 at page 71,980 (W.D. Mo. 1977), citing *Sam Fox Publishing Co.* v. *United States*, 366 U.S. 683, 689, 81 S. Ct. 1308, 1312-13 (1961) and *Swift & Co.* v. *United States*, 276 U.S. 311, 331-332, 48 S. Ct. 311, 317 (1928).

[6] This determination can be properly made on the basis of the Competitive Impact Statement and this Response. The procedures of 15 U.S.C. 16(f) are discretionary, and a court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the Court in resolving those issues. *See* H.R. Rep. 93-1463, 93d Cong. 2d Sess. 8-9 *reprinted in* [1974] U.S. CODE CONG. & AD. NEWS 6535, 6538.

[7] *United States* v. *Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir. 1981) (citations omitted).

[8] *United States* v. *National Broadcasting Co.*, 449 F. Supp. 1127, 1143 (C.D. Cal. 1978), quoting *United States* v *Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975)

[9] *United States* v. Alcan Aluminum Ltd., 605 F. Supp. 619, 622 (W.D. Ky. 1985).

[10] *United States* v. *Mid-America Dairymen, Inc.*, *supra*, ¶ 61,508 at page 71,980.

[11] United States respectfully requests that the Court enter the proposed Final Judgment promptly. Congress expected federal courts to adopt "the least complicated and least time-consuming means possible" to determine if entry of a proposed final judgment would be in the public interest. *United States* v. *ARA Services, Inc.*, 1978-2 Trade Cas. (CCH) ¶ 62,201 at page 76,988 (E.D. Mo. 1979).

[12] This normally includes the consumer's name, any aliases, age, marital status, number of dependents, social security number, current and two most recent previous addresses, current and two most recent employers and current salary.

[13] Information about debts owed is gathered from individual, regional, and local credit grantors who are willing to give copies of their computerized records to credit bureaus. The data shows a consumer's outstanding credit accounts, credit balance, current balance, whether any amount is past due, and, if so, for how long.

[14] This includes judgments, liens, and bankruptcy information obtained from the records of federal, state, county or municipal authorities.

[15] In some states, public record information may be purchased from public record information collection firms.

[16] Bureaus sometimes sell credit reports while they are in the process of collecting information. Credit reports that are not full files usually sell for substantially less than full files.

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local information. If distant credit bureaus were fully competitive substitutes for local credit bureaus, there would be no variations in local prices based upon the number of local bureaus. In fact, however, prices in particular geographic areas vary widely, depending on the number of credit bureaus offering full file credit reports in that area. That evidence strongly suggests the conclusion that credit bureaus doing business elsewhere are not in the market.

3. *The Structure of the Modern Consumer Credit Reporting Business.* The consumer credit reporting business has changed dramatically in the last twenty years as independent local merchant-owned credit bureaus have been transformed into parts of national computerized networks of consumer credit information. Most credit bureaus were founded by regional or municipal merchants associations. Originally, those bureaus collected information manually. The labor-intensive nature of the business, as well as the fact that most bureaus were owned by their customers, led to a situation where most local bureaus were monopolies. The business changed radically in the late 1960s and early 1970s when five companies (hereinafter referred to as "networks" or "network vendors") (TRW, Chilton, CBI, Trans Union, and ACS) began to store consumer credit files on computers.[17]

Computers greatly reduced the cost of maintaining consumer credit files and allowed firms to enter markets that had previously been monopolized by one firm. Computers also enabled credit bureaus to form regional networks that share information on individual consumers. These networks are of great benefit to credit grantors contemplating extending credit to consumers that reside in other parts of the country or that have recently moved.[18] The increased mobility of many Americans makes it very important that credit grantors be able to obtain information about an individual's credit history throughout the country.

Thus, while credit bureaus once operated as individual entities, they are now pieces of an interlocking network of independent bureaus, known as affiliates, and vendor-owned offices that collect, maintain, and distribute consumer credit information over a large geographic area. Affiliates and owned offices all store their information in a vendor maintained common data base and all of them have access to all the information in the data base. A vendor provides credit bureaus with data processing services and access to all the information in its data base. Affiliates provide vendors with all their data and sell that data to other affiliates and to the vendor (for use in its owned offices).

Affiliates in a network are more partners in the creation, maintenance, and sale of consumer credit data bases than mere customers of data processing services. Indeed, all affiliates and owned offices in a network are usually known to credit grantors by the vendor's tradename, rather than the affiliate's. As a result, affiliates have a big stake in the success or failure of their network vendors. Similarly, vendors rely heavily on the data collection and sales abilities of their affiliates.

In recent years, the importance to credit grantors of a credit bureau's ability to provide information on consumers in other parts of the country has led TRW, Trans Union, and CBI all to announce that they intend to have files on consumers all over the country. These vendors have opened new credit bureau offices or entered into contracts with independent affiliates in many towns previously served by a single, monopoly credit bureau. Indeed, TRW will substantially expand its geographic scope through the acquisition of Chilton. Thus, while the Department concluded that the transaction posed a danger to competition in sixteen local markets, it also recognized that the transaction created the potential for improved consumer credit data bases and thus could be of benefit to credit grantors in many local markets.

In spite of the great incentive for vendors to enter new local markets, development into a full fledged competitor from scratch is a lengthy process that cannot be accomplished in less than three to five years. The principle reason entry takes so long is that a full file must contain substantially the same information as an established firm, *i.e.*, four to five years of debt obligation and seven years of public record information, to be an adequate substitute for credit grantors. Since credit grantors usually save their debt obligation information for approximately one year, it takes several years to collect sufficient debt information data for a full file. Similarly, the collection of public record information is normally a slow process that takes at least two years.

4. *The Effect of the Transaction.* TRW and Chilton sell credit reports in many parts of the United States. There are, however, relatively few areas in which both firms sell full file consumer credit reports. The Department found that, in most of the United States, TRW and Chilton do not compete against one another.[19] Historically, TRW's strength has been on the east and west coasts while Chilton's strength has been in the midwest. The TRW and Chilton networks are direct competitors in sixteen markets where there are few alternative sources of credit reports. In all of those markets, the HHI,[20] measured by units sold, before the acquisition, exceeded 3200 and the acquisition would cause the HHI to increase by more than 700 points.[21] The high level of concentration in those makets, combined with the difficulty of entry into local markets, led the Department to conclude that the acquisition would enable TRW to gain market power, *i.e.*, the power to control price over a substantial period of time, in those markets. Each of these sixteen areas is now served by the TRW and Chilton networks and, at most, one other network.

5. *The Proposed Final Judgment.* Under the terms of the Proposed Final Judgment, TRW was required to take corrective action in each of the sixteen affected markets. TRW would be required either to end its relationship with an affiliate in a market, thereby making the former affiliate available for a network vendor not yet in the market with a full file, or to sell a copy of its data base to another vendor which would compete in the market. The Department concluded that either action would end any threat to competition posed by the acquisition. While we recognized that neither solution would leave any market unchanged, we concluded that either eventually would prevent TRW from maintaining market power in any market.

A firm cannot gain market power when there is either a sufficient number of competitors or it is likely that new firms would enter the market in response to a small, but significant, nontransitory price increase. The two forms of relief employed by the proposed Final Judgment will prevent TRW from exercising market power either by keeping the number of competitors unchanged (by enabling a network not in the market to team up with the former TRW (or Chilton) affiliate) or my making available to an outside vendor a full file of local credit information, the creation of which is the major barrier to entry into local markets. (See page 14, *supra.*) Indeed, the Department's predictions that the proposed relief would result in new entry into these markets has been borne out in fact; companies have already committed themselves to enter those markets through the purchase of copies of data files.

The proposed Final Judgment involves minimal governmental intrusion into the market and permits credit grantors, the consumers affected by this merger, to obtain the benefits of increased national coverge of the TRW data base. The increased coverage increases the likelihood that the data base will have information on an individual who has recently moved. Furthermore, local files will improve in areas where both TRW and Chilton have been developing files, but do not yet have fully mature data bases.[22]

The Department also concluded that the proposed Final Judgment would be the least instrusive means of correcting the competiitive problems posed by the transaction. We were aware that the proposed Final Judgment would affect the interests of the affiliates with whom TRW had agreed not to reaffiliate. However, all consent decrees and, indeed, all mergers affect the interests of third parties. It is quite likely that, even in the absence of the proposed Final Judgment, some, or all, of those affiliates would have been unable to preserve their relationships with TRW. After many mergers, firms end relationships with duplicate suppliers or distributors. Similarly, after consummation of its acquisition of Chilton, TRW would have been likely to end its relationship with affiliates where there were overlapping territories. In any event, the courts repeatedly have recognized that the purpose of the antitrust laws is to protect competition rather than competitors. Preservation of the former, not the latter, was Congress' intent.[23]

G. Response to Comments

With the exception of Senator Humphrey, each of the commenters is an independent credit bureau that is currently affiliated with Chilton or TRW. While the various comments raise a number of concerns and objections to the proposed Final Judgment, they uniformly, with the exception of that of CCRC, reflect the desire of independent credit bureaus to be allowed to renew their contracts with their current vendor. However, each of the commenters appears to acknowledge that the proposed acquisition of Chilton by TRW would reduce competition in the sale of credit reports in its geographic areas. Most of the commenters argue that the United States should seek to prevent the acquisition of Chilton by TRW , *i.e.*, that the United States should not have negotiated any consent decree at all. Some commenters argue alternatively that the decree should require TRW to sell the information that it (or Chilton) owns, in lieu of refusing to extend its (Chilton's) affiliation agreement with the commenter.[24] Of singular import, however, is the fact that not a single credit grantor, the large sophisticated consumers of credit reports, has expressed any concern to the Court or the Department that the proposed Final Judgment would not adequately protect its interests.

Under these circumstances, the single issue presented here is whether the proposed Final Judgment represents a reasonable exercise of the Department of Justice's antitrust enforcement discretion. For the reasons discussed below, the United States has concluded that the proposed Final Judgment submitted to the Court is an appropriate resolution of this litigation. That proposed Final Judgment reflects a careful study of a complex business and is reasonably calculated to prevent the anticompetivie effects alleged in the Complaint. Therefore, the entry of that proposed Final Judgment is in the public interest.

1. *The Importance of Credit Inquiries.* CBC and Rochester argue that having a full file, as defined by the Complaint, is insufficient for a credit bureau to compete in a given market. They suggest that credit grantors always purchase the credit report with more credit inquiries,[25] regardless of price, service, or quality considerations.[26] CBC and Rochester assert that unless the transaction is enjoined, TRW will enhance its share of credit inquiries, thereby gaining the power to limit or exclude competition. These assertions are inaccurate; they are simply inconsistent with observable trends in the industry.

The commenters, current affiliates who will have to align themselves with a new network vendor, will not be disadvantaged in terms of credit inquiry quality by the proposed Final Judgment. That Judgment would not result in TRW increasing its share of credit inquiries in any of the commenters' markets. A credit bureau owns the data for its assigned zip codes in its vendor's computer, including the credit inquiries, and the credit bureau is free, when its contract expires, to transfer its data to another vendor. For example, since CBC owns the New Hampshire information, Chilton cannot duplicate and retain the information for TRW's use. If a credit bureau transfers its data to another vendor, its share of credit inquiries will be unaffected, and a purchaser of its

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[17] There are now four networks. In the comments, the number of vendors is sometimes set at five and sometimes at four. This is a result of the fact that one of the companies that has been providing data processing services, Associated Credit Services, Inc. ("ACS"), is discontinuing its data processing and network activities. On August 1, 1988, ACS entered into an agreement to obtain computer services from The Credit Bureau, Incorporated of Georgia ("CBI"). After ACS discontinues its data processing activities, there will be four vendors of such services: TRW, Chilton, CBI, and Trans Union Credit Information Co. ("Trans Union").

[18] When an individual moves from one area to another, the information on that individual is transferred from the file of the credit bureau of his former residence to the file of the credit bureau at his new one within the data base.

[19] TRW has consumer information in all 32 states in which Chilton does business. However, both companies have full files in all of or portions of 11 of those states.

[20] "HHI" means the Herfindahl-Hirshman Index, a measure of market concentration calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30, 30, 20, and 20 percent, the HHI is 2,600 ($30^2 + 30^2 + 20^2 + 20^2 = 900 + 900 + 400 + 400 = 2,600$). The HHI takes into account the relative size and distribution of the firms in a market. It approaches zero when a market is occupied by a large number of firms of relative equal size and reaches its maximum of 10,000 when a market is controlled by a single firm. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

[21] Hawaii offers its own HHI calculation and concludes that the Department has understated the extent to which the concentration is likely to increase in its state, and presumably, the extent to which competition there will be reduced. The Department provided a range of HHI increases in the affected makets, rather than specific market shares and HHI calcualtions, in order to avoid revealing commerically sensitive information. We believe we adequately established the likelihood of competitive harm through less precise information on concentration. We agree with Hawaii that the threat tocompetition is substantial. However, the exact HHI is irrelevant to the question of whether the remedial action set out in the proposed Final Judgment will be effective.

[22] As we explain below, to enjoin the transaction completely would deny credit grantors the benefits they expect to gain from the transaction.

[23] *Brunswick Corp.* v. *Pueblo Bowl-O-Mat, Inc.*, 429 U.S. 477, 488, 97 S. Ct. 690, 697 (1977).

[24] "[A]t a minimum the proposed Consent Decreee should be modified to allow [CBC] and similarly situated credit bureaus to continue to contract, on a fair and reasonable basis with the successor to the Chilton/TRW operation." CBC Supplementary Comments at 2. "We object to the inclusion in the proposed final judgment of provisions that require the severance of relationships between our clients and TRW." Central Massachusetts Comments at 2.

[25] A credit inquiry is an indication that a credit grantor has purchased a credit report on an individual. Taken together, credit inquiries reveal the extent to which the person has recently sought credit.

[26] CBC Comment at 5 and Rochester Comments at 2–3.



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credit reports the day after it changes affiliations will find all the inquiries it would have found the day before.[37]

The commenters' claims that the credit bureau with the most credit inquiries will always dominate a market is simply inconsistent with the existence of two or three competitors in virtually every metropolitan area in the United States. If credit grantors always chose the credit report with the greatest number of inquiries, there would only be one credit bureau in every geographic market.[38] That, of course, is not the case. Rather, most geographic markets have two or three credit bureaus.[39]

Furthermore, the evidence indicates that many geographic markets are becoming *less* concentrated as TRW, CBI, and Trans Union all enter markets throughout the United States. The opposite would be true if CBC and Rochester were correct. Entry would not be feasible because credit grantors would not purchase the report of the new entrant that would have no credit inquiries. Consequently, CBC's anecdote about its efforts to enter Cleveland actually undermines its position.[40] If credit inquiries were as important as CBC claims, entry in the face of a monopolist would be foolish and futile and CBC would not have attempted to enter the Cleveland market. Given the fact that the established firm held a monopoly position in credit inquiries, CBC must have believed that it could draw market share away from the incumbent firm (after it established a "full file") through price and service competition.[41] In the same vein, if CBC is correct, TRW acted irrationally by choosing to release the dominant firm in the New Hampshire market (CBC) rather than the credit bureau with the small market share or selling a copy of the file there.[42]

In fact, attempts by these firms to enter new markets to challenge the incumbents, who have more credit inquiries in their files, is not folly. While credit inquiries are a factor credit grantors use to assess credit report quality, they are not the *only* factor. We found that credit grantors' primary basis for selecting credit reports is whether the network has a "full file" (as defined in the Complaint) fo the area in which the consumer resides. (Complaint at 6.) Selection between full file alternatives is made on the basis of credit inquiry information, price, readability of reports, computer down time, brand loyalty, and other factors. And new entrants have been able to overcome the initial credit inquiry advantage of established credit bureaus by working hard and providing quality service.

2. *Alternate Vendors Have Incentives to Compete.* CBC, Rochester, and Hawaii also express concern that the other network vendors with whom they may contract are inadequate to meet their needs. CBC argues that it needs a partner that is well established in Boston because the New Hampshire and Boston markets are interrelated.[43]

In large measure, this argument is premised on CBC's view that the firm with the greatest number of credit inquiries automatically possesses sustained market power. For the reasons set forth above, this is not the case. This argument also is premised on the notion that CBI would not be an adequate replacement network vendor for CBC because CBI does not have the incentive or ability to compete in New England.[44] All the evidence we have gathered, however, suggests otherwise. In 1987 CBI entered the Boston market by opening an office in nearby Woburn. With its purchases of Chilton's Boston file pursuant to the proposed Final Judgment, CBI will have much the same New England coverage that Chilton had before the acquisition. CBI spent a substantial sum to purchase the files, a fact indicating its belief that the purchase of those files will greatly facilitate its entry into those areas and provide it with a competitive file offering. Nor is CBI a small company. It is significantly larger than Chilton, and has file coverage throughout most of the United States.[45] Moreover, CBI's interest in obtaining CBC's New Hampshire office as an affiliate does not appear in doubt. CBC's comments indicate that CBC's New Hampshire office will affiliate with CBI.[46] If, as CBC claims, success in one market is contingent on a presence in a neighboring market, a New Hampshire affiliate should greatly facilitate CBI's entry into the Boston market.[47]

Similarly, Hawaii's assertion that it would not be able to survive competitively with a new network vendor is contradicted by the facts. Hawaii asserts that it has only been able to compete with Chilton because of "TRW's west coast file." [48] If it affiliates with another vendor, it claims it will have only its Hawaii files, whereas TRW/Chilton will have both the more mature Chilton files and the strong Chilton/TRW mainland files. According to Hawaii, it will not be able to compete in these circumstances.[49]

Hawaii seems to be arguing that a strong West Coast file is a prerequisite to success in the state. But Chilton, the firm it asserts dominates Hawaii, has no file on the West Coast of any kind. In contrast, CBI and Trans Union have substantial files in California.[50] Consequently, if access to a good West Coast file is a prerequisite to competing in Hawaii, both CBI and Trans Union meet that requirement better than Chilton did for its owned office.[51]

Rochester's suggestion that no other network vendor would affiliate with it because of a lack of name recognition and file quality [52] is difficult to comprehend. With regard to the Rochester area (and the Buffalo metropolitan area sixty miles to the west), the Rochester Credit Center will bring its admittedly high quality files to any network that it joins. Based on their announced expansion plans and their past actions, either Trans Union or CBI would be interested in expanding their presence in upstate New York by affiliating with Rochester Credit Center. In Syracuse, the major metropolitan area to the east, Trans Union already has full files and CBI will gain full files as a result of its purchase of a copy of Chilton's files.

3. *The Importance of Tradenames.* Rochester and Hawaii also suggest that since they worked under the Chilton tradename in the past, credit grantors will fail to realize that it was they, rather than Chilton, who was responsible for their superior local credit information. Because of this alleged ignorance on the part of credit grantors, Rochester and Hawaii contend that they will not prosper even if they affiliate with a new network vendor.[53] This scenario of customer ignorance is highly improbable. On the local level, a credit bureau's success is primarily a function of its own sales efforts and those of the vendor with whom it affiliates. The credit bureaus deal continuously with local credit grantors who grow to know the people as well as their performance. Moreover, Rochester is a merchant-owned credit bureau. When a credit bureau is merchant-owned, it is owned and operated by its customers. In these circumstances, the idea that local credit grantors will be unaware of Rochester's change of affiliations is difficult to accept.

The assertion of customer ignorance is equally implausible on the national and regional credit grantor level. Rochester's and Hawaii's argument suggests that credit grantors purchase credit reports on the basis of the tradename attached rather than the quality of the information in the file. This is simply not the case. Credit grantors purchase credit reports to obtain timely, accurate information on an individual sufficient to evaluate the risks attendant to extending him or her credit. The tradename of the report is irrelevant. Credit grantors demand a report with current information of high quality to reduce their risk of loss from their credit granting activities.

Indeed, our investigation revealed that credit grantors, especially national and regional credit grantors, are very sophisticated in their ability to evaluate credit information quality on a local level. Such companies commonly do business with all four credit reporting networks. They are frequently visited by sales agents of the local credit bureau as well as those of the network vendor. Their purchasing decisions are based upon careful evaluations of file and other product quality considerations, as well as price and service factors. They often ask sales agents to provide file comparisons, comparing the number of trade lines, bits of public record information, credit inquiries, age of information and so forth, to determine which company has the best information in a given area.[54]

Hawaii raises still another concern with respect to the proposed Final Judgment's impact on electronic compilations of information.[55] It notes that most credit grantors now obtain credit reports electronically, via telecommunications lines, on either teletype machines or computer terminals. It claims that, at present, many of these devices can interact with both the Chilton and TRW data bases so that credit grantors can obtain credit reports from either company. Hawaii apparently beleives that successful affiliation with a different network vendor will be hampered by the latter's inability to join such an electronic system. However, each of the four networks has the ability to provide credit reports via teletype or computer terminals, and the computer equipment and/or software necessary to permit electronic transmission of credit reports is readily available. Nor should credit grantors experience significant additional costs. If a credit grantor has been willing to purchase or lease computer equipment that gave it access to TRW and Chilton in the past, then it should be willing to purchase or lease computer equipment that will permit it to access TRW's data base and that of the vendor with which Hawaii affiliates.

4. *The Transaction Should not be Enjoined.* As noted above, CBC, Hawaii, and Rochester all take the view, either explicitly or implicitly, that nothing less than a permanent injunction prohibiting TRW's acquisition of Chilton will provide an adequate remedy for the violation alleged in the Complaint. In effect, they argue that *no* settlement of this litigation should be permitted. Acceptance of that argument would represent an extraordinary restriction on the prosecutorial discretion of the United States. It would require this Court and the Department of Justice to undertake the substantial loss, risks, and delays of litigating to a final conclusion a case of substantial complexity, despite the Department's considered judgment that an adequate remedy can be obtained without imposing such costs on the taxpayers.

We are not aware of an instance in which a court has rejcted a proposed consent decree in its entirety in the course of a public interest review. Such a conclusion should not be reached absent a compelling demonstration of the inadequacy of other forms of relief.

The commenters have not made such a demonstration here.[56] Their

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[37] However, TRW will have a larger share of credit inquiries in markets where it is selling a copy of its files. Consequently, the Department carefully considered the importance of credit inquiries in assessing whether such sales would be adequate to correct competitive problems. We concluded that they would for the reasons discussed, *infra*.

[38] All credit grantors would purchase credit reports from a single source because such purchases from another provider would serve to divide the credit inquiries for that area. Of course, if CBC is seriously suggesting credit reporting markets are natural monopolies, it would argue that there is no competitive problem at all, rather than that the proposed Final Judgment is insufficient.

[39] CBC, therefore, substantially understates its position when it acknowledges that the number of firms competing in a particular geographic market is usually three. CBC Comments at 4. *See also*, Complaint ¶¶ 27 through 30, setting out the number of competitors in various other markets. Similarly, Rochester admits that, under its theory, its local market should be a monopoly. Yet, in the next paragraph it acknowledges that it essentially divides the Rochester market with its TRW competitor. Rochester Comments at 4–5.

[40] In its comments CBC indicates that it has only gained a 10% market share since it entered the Cleveland market in 1982. CBC Comments at 6.

[41] CBC's experience in the Cleveland market is entirely consistent with the Department's position that *de novo* entry is difficult.

[42] TRW owns the New Hampshire file but leases it to an independent credit bureau.

[43] CBC is concerned about what it describes as the "wholesale subscriber." This relates to credit reports relating to individuals living in Boston which it will sell to credit grantors in New Hampshire. In its view, no New Hampshire credit grantor will purchase CBC's partner's reports relating to Boston when TRW has more credit inquiries there. In its supplemental comments CBC indicates that this market constitutes 18 percent of its business. CBC Supplemental Comments at 8.

[44] CBC cannot be arguing that CBI and Trans Union are inadequate networks generically, *i.e.*, wherever they do business. CBC owns offices in the states of Ohio, Indiana, Pennsylvania, New Hampshire, Vermont, Maryland, Michigan, West Virginia, and Florida. Through these various offices, it does business with each of the four networks.

[45] As a result of its agreement with ACB, CBI's file coverage will rival, if not surpass, the combined file coverage of TRW and Chilton. By CBC's calculations, CBI and TRW will be approximately the same size and Trans Union somewhat smaller. CBC Supplemental Comments at 4.

[46] CBC Comments at 8.

[47] CBC's comments indicate that its New Hampshire office will join the CBI system after the acquisition. CBC Comments at 6. It is not clear whether it already has signed a contract to this effect. In either event, CBC knows which network its New Hampshire office will join.

[48] Hawaii Comments at 6.

[49] Hawaii Comments at 10.

[50] Both CBI and Trans Union have mature files and significant market shares in Los Angeles. CBI is well established in San Francisco with a significant portion of the market and, we believe, Trans Union is developing a file there.

[51] Hawaii is concerned that it may not be able to affiliate with another vendor or sell a copy of its file to another vendor. Hawaii Comments at 2 and 5. Its explanation for this position seems to be that CBI and Trans Union might not have an interest. While this is possible, it seems unlikely. CBI and Trans Union have announced plans to have a national file and we can think of no reason why those companies would exclude Hawaii from their expansion plans. Indeed, affiliation with Hawaii should be attractive to them because it would enable them to avoid the substantial costs and extended period of information collection Hawaii acknowledges is necessary in order to sell credit reports there. Trans Union's and CBI's purchases of files pursuant to the proposed Final Judgment demonstrates their interest in expanding into new areas. It is also strong evidence that they have an interest in affiliating with credit bureaus whose contracts will not be renewed under the proposed Final Judgment.

[52] Rochester Comments at 4.

[53] Rochester Comments at 3–4 and Hawaii Comments at 8.

[54] The sophistication of credit grantors in evaluating local file quality is aptly demonstrated by their use of preference lists. Many large credit grantors, all the vendors, and some large credit bureaus (including CBC) have developed lists that identify which vendor has the best file, and which is the best alternative, in a given zip code or state.

[55] Hawaii Comments at 8.

[56] The fact that TRW has raised the price of its Boston credit reports to CBC's Pittsburgh credit bureau from $.75 to $4.00 provides no basis to conclude that TRW will gain market power if the proposed Final Judgment is entered. Rather, it suggests that the Boston office has taken an inopportune time to close a loophole that CBC has been using to its advantage. As noted above, a credit bureau can purchase credit reports from other bureaus or offices on the network at a reduced price, normally about $.75. Credit bureaus not on the network, however, generally pay the retail price, commonly $3 or $4.00. CBC's Pittsburgh bureau is affiliated with TRW and thus would normally be entitled to the wholesale price. It appears, however, that CBC has been purchasing credit reports from TRW's Boston files through Pittsburg for customers of CBC's New Hampshire credit bureau, a Chilton affiliate. The price change, then, is motivated by an effort to close the avenue by which a Chilton bureau obtains TRW credit reports at the wholesale price. The TRW really had market power in the Boston market, it would increase its wholesale prices to other TRW or Chilton bureaus, or retail price to credit grantors. We have no evidence of such price increases.

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explanations of how competitive harm might occur cannot be reconciled with the fact that competition exists and is growing in local markets as the national networks seek to enter new markets. Their explanations are also premised upon their belief that credit grantors cannot be trusted to protect their interests. Since credit grantors tend to be relatively large and financially sophisticated firms, it can be presumed that they would express their concern to the Court of the United Sates if they felt that the proposed Final Judgment would reduce their competitive options in the future. The absence of any expression of concern by these customers of credit reporting services strongly confirms the correctness of the United States' competitive analysis in this case.

5. *Other Relief Options.* CBC and Hawaii argue that the Department did not give adequate consideration to other relief options.[47] They suggest that the options of forcing the outright sale of owned files and of forcing the sale of combined files are superior to that chosen by the Department. Their position, however, is predicated upon their belief that the firm that has the most credit inquiries in its file will, for that reason alone, have enduring market power. As we have shown, this position is contradicted by experience.

CBC changed its position in its supplemental comments. There it argues that the proposed Final Judgment should be modified to require divestiture of bureaus owned by TRW or Chilton rather than requiring the release of independent affiliates. CBC bases this argument on its belief that if it is forced to affiliate with another vendor, its ability to compete will be diminished, and that it is inequitable to place the burden of correcting the competitive problems of the acquisition on a non-party.[48] To avoid this hardship to itself, CBC asks that it be allowed to remain on the TRW-Chilton system and that the TRW affiliate be terminated instead. This request indicates that CBC's true concern is not preservation of competition, but avoiding the expense and inconvenience of changing affiliation. Indeed, CBC's goal might be to *reduce* competition in New Hampshire. If their argument that regional coverage and inquiries are so important is correct, CBC's dominant share of the New Hampshire market combined with TRW's position in Boston would create an even greater competitive problem in New Hampshire than the problem they see created by the relief in the Final Judgment.

In any event, there is no basis to believe that any independent credit bureau's ability to compete will be irreparably diminished. That is not to day that the proposed Final Judgment may not affect the commenters' businesses.[49] Market shares may change; there may be some costs associated with switching affiliations; and perhaps some disruption of day to day routines. However, we can conclude that any burden or cost to independent credit bureaus will not be significant[50] and that their ability to compete will not be threatened. The explanations that have been offered that suggest otherwise simply do not withstand close scrutiny.[51]

6. *The Market for Data Processing Services.* CBC and Hawaii argue that the proposed Final Judgment will not correct all the competitive problems raised by the acquisition. They note that TRW and Chilton are two of only four providers of data processing services to independent credit bureaus. In their view, the combination of TRW and Chilton will substantially lessen competition in the sale of such services to independent credit bureaus.[52] CBC also asserts that the Department's Competitive Impact Statement should have included a comprehensive discussion of concentration, entry barriers, and transaction efficiencies in a national network vendor market.[53]

CBC and Hawaii are asserting that the Court, in deciding whether the proposed Final Judgment is in the public interest, should consider alleged antitrust violations that were not the subject of the government's Complaint. They are mistaken as a matter of law. It is well established that a court's public interest inquiry is limited to an evaluation of the remedy proposed for violations alleged in the government's complaint[54] and that a court cannot base its public interest determination on antitrust concerns other than those alleged in the complaint.[55] The issue in a Tunney Act proceeding is "whether the relief provided for in the Proposed Judgment is adequate to remedy the allegations of antitrust violation as set out in the Complaint."[56] The APPA does not give a court the authority to order the United States to file a broader complaint than the Department of Justice, in the exercise of its prosecutorial discretion, has determined is appropriate.[57] In summary, there is no basis for CBC's assertion that the effects of the transaction on affiliates' access to alternative sources of data processing services is a basis for finding that the judgment is not in the public interest.[58]

[47] CBC Comments at 7 and Hawaii Comments at 9.

[48] CBC Supplemental Comments at 9.

[49] It is not unusual for a consent decree to affect the interests of third parties. *See Texaco Inc., et al.* FTC Complaints and Orders 1983–1987, ¶22,166 (July 10, 1984) (Texaco ordered to divest 1800 associated gasoline stations) (The Complaint and Consent Order are set out *In the Matter of Texaco, Inc.*, 104 F.T.C. 241 (1984)); *United States* v. *Canada Development Corp.*, 454 F. Supp. 1215 (N.D. N.Y. 1978) (Lessee defendant required to assign or sublease movie theater over lessor's objections); *United States* v. *G. Heileman Brewing Co., Inc.*, 1973–1 Trade Cas. (CCH) ¶74,589 (E.D. Mich. 1973) (Brewer required to divest brands of beer and/or production agreements); and *United States* v. *Chicago Title and Trust Co.*, 1988 Trade Cas. (CCH) ¶71,745 (N.D. Ill. 1988) (In Section 7 proceeding, title insurance company required to cancel exclusive contracts with abstractors in Illinois).

[50] Such economic consequences would not be significantly different from those resulting from the termination of duplicate suppliers or the elimination of duplicate marketing systems, actions which are routine consequences of mergers throughout the economy.

It is not at all clear that CBC would escape conversion costs if the proposed Final Judgment was modified as it suggests. If TRW consolidates the Chilton data base into its own, as it is likely to do, CBC will bear the costs of changing from the Chilton network to the TRW network. There is no reason to believe that such costs would be substantially different than the costs of changing to, for example, CBI.

[51] Given the need to allocate exclusive territories to affiliates and offices in this industry, TRW may have intended to eliminate overlapping territories in any event. The primary benefit of the transaction to TRW is the creation of a single national credit information data base.

[52] CBC Comments at 6–8 and Hawaii Comments at 2. CBC states, and we agree, that the typical number of vendors in a given market is three.

[53] CBC Supplemental Comments at 3–8.

[54] *See United States* v. *Waste Management, Inc., supra*, ¶66,861 at pages 63,048.

[55] *United States* v. *BNS, Inc.*, 858 F.2d 456, 462–63 (9th Cir. 1988). Hawaii asserts that this Court must determine whether the decree "is consistent with [the Department's] original prayer for relief" (that is, that the acquisition be enjoined). Hawaii comments at 9. The relief in a consent decree need not be identical to that prayed for in the complaint. Absent the divestiture in the overlapping markets, an injunction would have been appropriate. But the proposed Final Judgment calls for precisely that divestiture. Consequently, this Court need only determine whether the relief in the proposed Final Judgment is a reasonable enforcement means of correcting the competitive harm we have alleged.

[56] *United States* v. *Bechtel Corp.*, 1979–1 Trade Cas. (CCH) ¶62,490 at page 76,995 (N.D. Cal. 1979), *aff'd* 648 F.2d 660, 666, (9th Cir. 1981), *cert. denied*, 454 U.S. 1083, 102 S. Ct. 638 (1982). *See also, United States* v. *National Broadcasting Companies, supra*, 449 F. Supp. at 1146, citing *United States* v. *Automobile Manufacturers Ass'n*, 307 F. Supp. 617, 621 (C.D. Cal. 1969), *aff'd per curiam sub nom. City of New York* v. *United States*, 397 U.S. 248, 90 S. Ct. 1105 (1970).

[57] *United States* v. *Mid-America Dairymen, Inc., supra*, ¶61,508 at page 71,979. If CBC is correct, we would also be obligated to explain our analysis of other markets. Other possible markets, in this case, where both companies are either actual or potential competitors include mortgage reporting, debt collection, check approval, and electronic credit equipment markets.

[58] The Department's conclusion that it should not allege a violation in another market does not

Continued



For the same reasons, CBC's argument that the proper relevant market in this transaction should be the New England region is outside the scope of the Complaint and should be summarily rejected.[59] In any event, such a market definition provides no basis for finding that the proposed Final Judgment is not in the public interest because the Final Judgment corrects the competitive problems that would exist in such a market.[60]

In fact, the Department carefully considered in the course of its investigation whether the merger would produce the anticompetitive effects alleged by CBC and Hawaii. Interviews with numerous independent credit bureaus failed to elicit any significant concern that the elimination of Chilton as a competing network vendor would reduce competition in the provision of network services to such independent bureaus. More importantly, the ultimate consumers of credit reports indicated that a reduction in the number of networks from four to three would be beneficial to them. These consumers felt that they would be able to obtain more comprehensive information as a result of the merger, and that three networks were sufficient to ensure continued vigorous competition in the collection and sale of credit information.

7. *Contractural Disputes.* The CCRC comments do not go to the competitive effects of the proposed Final Judgment, but to TRW's right to sell credit information relating to individuals residing in certain Texas zip codes.[61] CCRC argues that it purchased the files concerning these individuals in 1987, and in support of its claim, it has provided the Department with a copy of its contract with TRW. CCRC asks that the United States withdraw its consent to the judgment as currently written and require that it be modfied to eliminate the requirement that TRW sell these files.

TRW has written the Department reasserting its belief that it owns the files in question. It also has submitted evidence, in the form of contract amendments, to support its position.

The Department is not in a position to resolve the contract dispute between TRW and its affiliate. Nor is the Department willing to eliminate the requirement that TRW sell these files. The requirement was included in the decree because of representations by TRW that these "full files" in its network, a representation that, if true, would result in competitive harm in the affected market.

In the Department's view, the contractural dispute between TRW and CCRC does not provide a basis to withdraw our consent to the proposed Final Judgment, to modify its scope, or for the Court to find that it is not in the public interest. In our view, reliance on TRW's representations was appropriate and TRW should bear the consequences if those representations prove to be inaccurate. Consequently, CCRC's objections should be addressed and resolved by TRW, consistent with the provisions of the proposed Final Judgment as currently drafted, or by the courts in any separate proceeding that CCRC may choose to initiate to resolve its contractural dispute with TRW.[62] If subsequent events should demonstrate that TRW cannot sell the disputed files, the proposed Final Judgment permits the parties to apply to this Court to obtain such other relief as is necessary or appropriate.[63]

*III. Conclusion*

Consequently, for the reasons set forth in the Competitive Impact Statement and this Response, the Court should find, after publication of this Response in the **Federal Register**, that the proposed Final Judgment represents a reasonable exercise of the Department of Justice's antitrust enforcement discretion, is in the public interest and should be entered.

Respectfully submitted,

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Dated: March 6, 1989.

**Exhibits A and B**

Exhibits A and B have been omitted.

**Exhibit C**

January 18, 1989.

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Communications and Finance
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Department of Justice, Judiciary
Center Building, 555 4th Street NW.,
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RE: *United States v. TRW, Inc.*
Consent Decree

Dear Mr. Grossman: These comments are submitted in response to the Notice published in the **Federal Register** by the Justice Department on December 2, 1988, amended December 12, 1988. Put simply, it is the Credit Bureau Services of New Hampshire's position that the proposed Consent Decree in *United States v. TRW,* Case No. C88–4253, now pending in the Northern District of Ohio, is and will be substantially ineffective in preventing the anti-competitive effects which will result from the acquisition of Chilton by TRW. Specifically, it is our assertion that the Competitive Impact Statement filed in this matter is defective in several very serious respects:

(1) it misdefines and misconstrues the relevant product markets and the interactive relationship between various geographic markets;

(2) it misunderstands the mechanics of the credit reporting industry, and as a consequence, errs in its analysis of, *inter alia,* entry barriers and the adverse consequences of concentration of market power; and

prevent CBC from seeking more stringent relief in private litigation. *United States* v. *Associated Milk Producers, Inc.*, 394 F. Supp. 28, 45 (W.D. Mo. 1975). Indeed, CBC's interests would be more appropriately presented in separate litigation than in the determination of the public interest in the matter presently before this Court. *See United States* v. *ARA Services, Inc., supra*, ¶62,891 at page 71,389.

[59] CBC Supplemental Comments at 8. Defining the relevant geographic market is a far more complex process than CBC has undertaken. "The proper question to be asked in this case is not where the parties to the merger do business or even where they compete, but where, within the area of competitive overlap, the effect of the merger on competition will be direct and immediate." *United States* v. *Philadelphia National Bank*, 374 U.S. 321, 357, 83 S. Ct. 1715, 1738 (1963).

[60] Under the proposed Final judgment, TRW will neither release an affiliate or sell a copy of its files in every part of the region where it has full file, *i.e.*, everwhere but Vermont and Maine. The one case CBC cites in its supplemental comments actually undermines its argument for a regional market definition. In that case, an administrative law judge for the Federal Trade Commission found that the appropriate geographic markets for assessing the impact of acquisitions of credit bureaus were specific metropolitan areas. *In the Matter of Retail Credit Company*, 92 F.T.C. 1, 80–102 (1978). His decision was affirmed by the Commission, *Id.* at 131 *et seq.* On appeal, the decision of the Commission was reversed and remanded on the grounds that the Commission's conclusion that credit reports and mortgage reports constituted a single product was unsupported by the evidence. *Equifax, Inc.* v. *F.T.C.*, 168 F.2d 63 (9th Cir. 1980).

[61] CCRC claims its own approximately one-tenth of the zip codes the proposed Final Judgment requires TRW sell to Trans Union. We believe the contract dispute involves a much smaller fraction of the files that must be sold.

[62] In this regard, a contract dispute on the date of termination may exist between Chilton and Rochester. Rochester Comments at 6. Rochester has brought the matter to our attention, but indicates its belief that the matter should not be resolved in the context of this public interest determination. If this dispute should make TRW unable to comply with its obligations under the proposed Final Judgment, the parties will come before this Court for further orders and directions as may be necessary or appropriate. Proposed Final Judgment at ¶X.

[63] Proposed Final Judgment ¶¶VIII and X.

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(3) as a result of the foregoing errors in analysis, its conclusions as to the efficacy of the proposed Consent Decree, and its evaluations of other possible remedies to prevent competitive harm as a result of the merger, are simply wrong.

Accordingly, we urge that the Justice Department withdraw its proposed Consent Decree, and act to prevent consummation of the proposed acquisition until a solution which genuinely addresses the serious anti-competitive effects of the acquisition can be found.

*A. The Competitive Impact Statement Misconstrues the Relevant Markets*

It is plain from a careful reading of the Competitive Impact Statement, and the conclusions reached therein, that the Justice Department has based its analysis on the premise that only one market—"provision of full file consumer credit reports"—will be affected by the acquisition of Chilton by TRW. Unfortunately, this analysis ignores the actual functioning of the credit reporting industry, and consequently provides a faulty foundation for the Department's competitive analysis model.

Initially, it must be understood that the credit reporting industry operates at two inter-dependent, yet highly distinct levels. At the level proximate to credit report customers (i.e., credit grantors) are the credit bureaus. These credit bureaus own all credit information for individuals residing within a particular geographic locale—other credit bureaus own the credit information for individuals residing within other geographic areas. As a consequence, credit bureaus engage in three different sales functions:

(1) *Local Sales.* In these sales of credit reports, a report concerning a resident of the bureau's geographic territory is sold to a customer within that territory. In this situation, the bureau is selling information which it owns.

(2) *Sales of Reports Concerning Non-Resident Individuals.* In this situation, a bureau receives a request for a credit report from a local customer concerning a resident of another bureau's geographic territory. Because the other bureau owns the credit information concerning this individual, the local credit bureau must purchase the credit report from the bureau in whose territory the subject individual resides. The sale of such reports between credit bureaus, generally at a price lower than such reports are sold directly to customers, is known in the industry as "wholesaling." The local credit bureau profits on these sales by adding a surcharge to the "wholesale" price.

(3) *Sales of Reports Concerning Resident Individuals to Other Credit Bureaus.* The flip-side of credit report sales to customers respecting non-resident individuals is the sale of credit reports concerning resident individuals to credit bureaus in other locales. The local credit bureaus profit on these sales by receipt of the "wholesale" price for each report.

Within the credit bureau level there are essentially two types of operations: wholly-owned subsidiary bureaus of corporations such as TRW and Chilton; and independent bureaus, such as the Credit Bureau Services of New Hampshire, which are affiliated by contract with vendors such as TRW and Chilton.

The second tier of the credit bureau industries—i.e., vendors such as TRW and Chilton—perform a variety of functions which are an outgrowth of the types of credit report sales engaged in by credit bureaus. In the context of local sales by credit bureaus, these vendors' role is limited to providing data processing services for the credit bureau. In other words, the vendor, for a fee, is simply storing credit information owned by the credit bureau and printing that information (or transmitting it to a computer terminal) when requested by the bureau.

In a "wholesale" credit report transaction, in which one credit bureau is buying the credit report for resale from another credit agency, the vendor has a broader function. In these transactions, in addition to providing data processing services, the vendor serves as a network for information between various credit bureaus.

The two-tiered structure of the credit report industry is confused by the fact that vendors such as TRW and Chilton also own a number of credit bureaus throughout the country. Thus, at the vendor level, TRW and Chilton compete nationwide (along with several other vendors) for contracts to provide data processing and networking services to independent credit bureaus. On the other hand, at the credit bureau level, Chilton and TRW compete through their wholly-owned bureaus with the bureaus of other vendors and with independent credit agencies, such as Credit Bureau Services of New Hampshire. At the vendor level, the product market is for data processing and networking services, and the customers in this market are independent and wholly-owned credit bureaus. At the credit bureau level, the product market is for credit reports, and the customers in this market are credit grantors.

The Competitive Impact Statement fails in any manner to address this distinction. Rather, the Competitive Impact Statement addresses the market as if there were only one product (the credit reports) and Chilton and TRW competed only in that market. In other words, this analysis, while briefly alluding to the existence of independent credit bureaus such as Credit Bureau of New Hampshire, ignores their existence in evaluating the acquisition solely in terms of competitive harm to credit grantors.

Once the over-simplification of the credit reporting industry contained in the Competitive Impact Statement is understood, the anti-competitive damages of the Chilton acquisition to customers in the upstream market (in particular, to independent credit bureaus) becomes obvious. At the beginnming of 1988, five vendors competed in this upstream market: Chilton, TRW, CBI/Equifax, Transunion and ACS. During 1988, CBI/Equifax entered into a contractual arrangement whereby ACS ceased to provide data processing and networking services. Thus, if the proposed Chilton acquisition is approved, the number of vendors will be reduced to three.

The number of credit bureaus competing in a particular geographic territory is generally three. If the number of vendors is reduced to three, competition in the vendor/credit bureau market, at least in many geographic territories, will be significantly reduced or eliminated. It is the nature of this industry that vendors deal exclusively with one bureau in a given market. Thus, if the proposed acquisition is consummated, and a credit bureau in a particular geographic market, as a result of poor service or price increases, seeks to change vendors, it will have only the potential to affiliate with one of the two vendors not now affiliated with that bureau. At present, such a bureau has a third alternative, the vendor not currently presently in the market, with whom to seek a deal. When a bureau can choose between only the two vendors already in the market, its existing market share will limit such discussions (if any) to vendors who have a relationship with a smaller independent competitor in the market—no vendor is going to discontinue its relationship with a given bureau to enter into one which will offer it a smaller volume of business.

Thus, in effect, in a market with three independent credit bureaus, the smallest bureau (in terms of market share) will have no option but continuation of its existing vendor relationship (or going out of business), the middle bureau will have but one possible alternate vendor, and only the largest bureau will have, in the best possible scenario, two alternatives to its existing vendor rather than three or four (which would have included vendors anxious to enter the market). These options will likely be even further limited by the difficulty of inducing vendors to abandon the security (or requirements) of their existing contractual relationships.

Of course, the foregoing analysis ignores an even more serious limitation upon the ability of an independent credit bureau to effectively switch vendors—the vendor-owned bureau. In the vast majority of geographic territories in which an independent credit bureau competes, one or both of the other credit bureaus are vendor-owned. Obviously, a vendor is not going to abandon its wholly-owned bureau (and the profits earned therefrom) to enter into an affiliation contract with a competing independent credit bureau, unless that independent bureau would offer a substantial increase in market share over what the vendor's wholly-owned bureau has.

The existence of a fourth and fifth vendor in the vendor-bureau market has always served to prevent any particular vendor from using its market power to control the price of services to an independent bureau. Without this protection, these vendors will dramatically increase their power over price and even, by the threat of refusing to do business, be able to seek to force such independent bureaus to sell out to the vendor.

*B. The Competitive Impact Statement Misunderstands The Mechanics Of The Credit Reporting Industry*

The Competitive Impact Statement further errs in its analysis of the entry barriers in the credit reporting industry and in its reliance solely upon the Herfindahl-Hirshman Index in measuring the anti-competitive effects of market concentration in this industry. Specifically, the Competitive Impact Statement ignores the fact that because the number of credit inquiries regarding an individual is an important factor to many credit grantors in determining whether to extend credit, and accordingly, a crucial factor in the value of a credit report, the bureau which receives the largest number of inquiries (and thereby reports those inquiries on its report) is the one perceived as the bureau selling the most useful report.

As the Competitive Impact Statement recognizes, the number of credit inquiries made respecting a particular individual is important information to credit grantors—it is established that the number of inquiries, and therefore credit activity, is an important indicator of the credit worthiness of the particular applicant. Perhaps just as importantly, the number of inquiries is perceived to impact upon the reliability of the credit report. The more frequently inquiries are made, the more often a bureau has had the opportunity to cross-check an individual credit history and thereby identify as relevant information contained in files listing a different address, marital status, or other identifying information. The credit grantors' preference for a bureau receiving the largest volume of inquiries (i.e., the bureau with the largest market share) significantly protects the market share of the dominant bureau. The Herfindahl-Hirshman Index simply does not measure this aspect of market concentration found rather uniquely in the credit reporting industry.

An example of the entrenchment a dominant firm enjoys at the credit bureau level is the experience of our own affiliated bureau in Cleveland, OH. We entered that market in 1982. In that market, our competitor enjoys an approximate 85% market share. We, on the other hand, despite having all tape and public record information (i.e., the type of information the Competitive Impact Statement deems crucial to its entry barrier analysis), have approximately 10% of the market. Our competitor charges $1.56 per report. We have charged as low as $.75, with no charge for inquiries in which no information is found, and yet have made no appreciable penetration into that market.

The Competitive Impact Statement fails to address this entrenchment of market shares in the credit bureau market. The effect of this entrenchment is to make it extremely difficult for any new entrant in a market to hope for market penetration even over the long term of more than 10%–15%. This barrier is obviously a significant disincentive to many potential entrants in this industry. Combined with the limited number of vendors available, if the acquisition is approved, it makes new bureau entries practically an impossibility. Moreover, as discussed below, such entrenchment profoundly limits the usefulness of requiring the sale of copies of bureau files as a vehicle to protect competition.

*C. Of The Possible Remedies To The Anti-Competitive Effects Of The Chilton Acquisition Outlined In The Competitive Impact Statement, The One Chosen Is The Least Efficacious*

The sum of the foregoing discussion is to point out that the Justice Department's proposed remedy to the anti-competitive effects of the Chilton acquisition simply will not prevent serious anti-competitive effects from resulting. The mere selling of copies of files and termination of affiliation agreements will have little impact in diminishing the anti-competitive effect of the acquisition. In our view, only enjoining the acquisition can completely prevent serious and irreparable harm to the vendor/bureau market in the credit reporting industry. At a minimum, the Justice Department should require divestiture of wholly-owned bureaus in those markets in which merger of bureaus will create significant market power in the remaining bureau.

That the Justice Department's current proposal will not remedy the anti-competitive injury which the Chilton acquisition will create is an inevitable conclusion from an informed understanding that the credit reporting industry is not a single market, but rather two distinct markets. The remedy of contract terminations and file sales does *nothing* to protect the more vulnerable market, the vendor-bureau relationship. In fact, in some instances this remedy reenforces the harm to this market that is inherent in the Chilton acquisition. For example, the requirement that TRW terminate its existing contracts with various independent credit bureaus primarily injures each independent bureau by forcing it to seek another, less established vendor. The bias against independent bureaus is plain—while requiring termination of numerous contracts with independent bureaus, the proposed Order does not require TRW to divest itself of a single wholly-owned bureau. Even in circumstances in which the Order requires TRW to sell off a copy of a particular file, it is not required to include the Chilton portion of the file, or to cease using information from either file in credit reports sold by its merged wholly-owned bureau. All TRW is required to do is sell off what will be perceived as a lower quality file of information to buyers who as yet have absolutely no foothold in the relevant markets and no assurance of continuing updated information.

The Competitive Impact Statement's discussion of the Department's rejection of other alternative remedies further reveals the misunderstanding of the workings of this industry. In rejecting the possibilities of requiring TRW to sell even some of its (or Chilton's) wholly-owned bureaus or of prohibiting TRW from keeping the whole merged TRW-Chilton files, the Department has failed to consider the overwhelming entrenching effect a large market share creates in this industry. Likewise, in

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refusing to require TRW to sell new market entrants the combined TRW-Chilton file, the Department ignored the fact that credit grantors will inevitably perceive TRW to have more complete information, and thereby shun any purchaser of the "Chilton information only" file.

The articulated reasons for rejection of injunctive relief to prohibit the proposed acquisition even more blindly ignore the realities of the credit reporting industry. In concluding that the mere termination of vendor contracts and sale of file copies will create viable competition to TRW, the Department ignores the real barriers to entry this acquisition creates. Specifically, in markets in which affiliates are terminated, competition will decrease rather than increase, since existing independent bureaus will be forced into vendor contracts with a vendor new to an area, and likely having a smaller nationwide market share. The sale of file copies to a newcomer in a market in which the merger of Chilton and TRW bureaus has created a single bureau with overwhelming market power cannot be said, in this industry, to guarantee active competition. Rather, it guarantees an entrenched TRW bureau.

The effects of the proposed acquisition on the vendor-bureau market and upon independent bureaus is well illustrated by the acquisition's impact upon Credit Bureau Services of New Hampshire and the New Hampshire and Eastern Massachusetts markets. Credit Bureau Services of New Hampshire now uses Chilton as its vendor. Once the acquisition takes place, CBI/Equifax will take over as vendor. In the interrelated territory of Eastern Massachusetts CBI will have no immediate market (as opposed to Chilton's 40% share). Thus, in the market in which Credit Bureau Services of New Hampshiare does the vast majority of its wholesale business, it will be cut-off because of the elimination of Chilton as a possible vendor to it. Moreover, because the combination of TRW and Chilton will change the Eastern Massachusetts market from one in which their wholly-owned bureaus competed while holding roughly equal (i.e., 45–50%) market shares each into a market with one entrenched dominate (80–85% market share) bureau, Credit Bureau Services of New Hampshire, despite the Department's claims, will permanently lose a significant portion of the wholesale sub-market it now enjoys.

Similarly, other independent bureaus will be permanently harmed by this acquisition. Indeed, in any areas in which an independent bureau is presently affiliated with Chilton, and in which TRW and either Transunion or CBI/Equity do business, the independent bureau will always be confined to the new vendor it finds to contract with—no alternative will remain available. Only blocking the acquisition can prevent this permanent damage to competition.

In closing, we would note that the anti-competitive effects of the proposed acquisition have already reared their head. Credit Bureau Services of New Hampshire has for some years sought to provide its New Hampshire customers with the product they desire. Thus, when our customers have indicated they wish to obtain TRW credit reports for residents of Eastern Massachusetts, we have accommodated our customers. We have done so by obtaining the report through our affiliated bureau in Pittsburgh, Pennsylvania, which has contracted with TRW as a vendor. This practice is entirely permissible within our vendor agreement. Recently, however, and plainly in anticipation of its domination of the Eastern Massachusetts market, the TRW controlled Boston bureau has informed us that the wholesale price of its reports will increase from $.75 to $4.00 (i.e., by 533%). (Please see the attached letter of Pamela J. Lawlor to James McGinnis.) Plainly, this price increase is nothing more than an attempt to use TRW's new-found market power in Boston to leverage an increased market share throughout New England. We believe such abusive conduct is merely the beginning.

In order to supplement and clarify these concerns, we are in the process of obtaining expert economic advice and analysis. With such information, we will be supplementing these comments in the very near future. In the meantime, please do not hesitate to contact us for any clarification of these comments in the very near future. In the meantime, please do not hesitate to contact us for any clarification of these comments you would find helpful.

Very truly yours,

William H. Price,
*President.*

cc: Donald J. Russell, Esq.
George S. Baranko, Esq.
Richard L. Irvine, Esq.
Jonathan M. Rich, Esq.
Katherine M. Jones, Esq.
William E. Swope, Esq.

**Exhibit D**

February 10, 1989.

*Via Certified Mail*

Barry Grossman, Esq., Chief,
Communications and Finance Section, Antitrust Division, U.S. Department of Justice, Judiciary Center Building, 555 4th Street NW., Room 8104, Washington, D.C., 20001

Re: *United States v. TRW, Inc.*
Consent Decree

Dear Mr. Grossman: This letter contains the additional comments of CBC Companies regarding the Notice published in the **Federal Register** on December 2, 1988, as amended December 12, 1988, respecting the proposed Consent Decree in *United States v. TRW*, Case No. C88–4253 now pending in the United States District Court for the Northern District of Ohio. We transmitted CBC Companies' initial written comments to you on January 18, 1989, in the form of a letter from William H. Price, the President of CBC Companies.

We are offering these additional written comments to supplement and expand upon our client's concerns regarding the anticompetitive effects of the TRW acquisition and the proposed Consent Decree. As a concerned citizen and a customer of both TRW and Chilton, our client believes that the Consent Decree does not address the actual anti-competitive effects of the Chilton acquisition.

Our client has asked us to reiterate its grave concern with the harm it and other independent credit bureaus will suffer from the anticompetitive effects of the TRW acquisition of Chilton and the further anticompetitive effects of the proposed Consent Decree. Our client's position is that, at a minimum, the proposed Consent Decree should be modified to allow it and similarly situated credit bureaus to continue to contract, on a fair and reasonable basis with the successor to the Chilton/TRW operation, such as in the New England area. In addition, our client believes that unless the Consent Decree is modified to require the complete divestiture of either the Chilton or TRW credit bureau in Boston and like cities, the acquisition will not only impose severe economic harm on independent credit bureaus, but create an entrenched and dominant credit bureaus in various areas including Boston and large parts of New England.

In general, it is our view that the Consent Decree will not protect competition in at least the following respects:

(1) Although it attempts to deal with real competitive concerns, the Department's proposed Consent Decree is competitively and economically harmful relative to available alternatives and unduly disruptive and burdensome to CBC Companies and others in the industry.

(2) Under the Department's chosen "remedy" for the competitive problems caused by this acquisition, retail level concentration will in some cases rise dramatically and immediately. For example in Boston, the HHI will rise by about 4500 points and a near dominant firm is likely to be created at the credit bureau level.

(3) By reducing the number of vendors of data processing and networking services from four to three, the acquisition greatly increases concentration at the vendor/data processing level of the industry and thereby imposes a substantial risk of harm to competition, consumers, and to CBC Companies, a major purchaser of services from this level of the industry. As shown in our earlier comments, there are already indications of anticompetitive price increases.

(4) The proposed Consent Decree results in a market structure which imposes substantial additional costs on independent credit bureaus. For example, the New Hampshire operation of CBC Companies will be forced under the Consent Decree to obtain credit reports, an essential input, from a lower quality and less efficient supplier while allowing TRW to realize increased product quality and efficiency. Such a venture into "industrial policy making" is inconsistent with the Department's long held view that the free market should be permitted to determine an industry's structure.

(5) Imposing unnecessary cost increases on independent credit bureaus such as Credit Bureau Services of New Hampshire is itself harmful to competition, because it weakens the competitive constraints on the merged firm, which is likely to enjoy a near dominant position in various geographic regions of the United States, such as in parts of New England, including Boston.

Our client urges that the Department withdraw its proposed Consent Decree, and act to prevent consummation of the proposed acquisition until a reasonably equitable and genuine solution to the anticompetitive effects of the acquisition can be found. Our reasons for these concerns are set forth in the January 18th letter of William H. Price and in the following paragraphs.



**I. The Competitive Impact Statement Does Not Fully Reflect the Potential for Competitive Harm.**

As we have indicated in our earlier comments, we disagree with the Department's analysis of relevant markets and of the mechanics of the credit reporting industry. In our view, the Department's conclusions in these areas have apparently led it to underestimate the potential for competitive harm from the acquisition and choose, from legally and practically available remedies, the remedy that is least efficacious.

*A. The Department's Nearly Exclusive Focus on the Credit Bureau or "Retail" Level of the Industry, as Reflected in the Competitive Impact Statement and other Documents in this Matter, Leads to Understatement of the Competitive Dangers from the Acquisition.*

As our earlier comments indicate, the Competitive Impact Statement as well as other papers submitted by the Department in this matter do not reflect the very high (and increasing) market concentration at the vendor level in the credit reporting industry, or the impact to consumers and indepedent credit bureaus, such as those owned by the CBC Companies, of the loss of an independent source of supply and competition.

This vendor level, now occupied by only four firms will become a highly concentrated triopoly if this acquisition is consummated. According to the limited market data available to the CBC Companies, which our client believes provide reasonable approximations to national shares at the vendor level, on a national basis TRW now has about a 30 percent market share, CBI/Equifax has approximately 40 percent, Transunion has 20 percent, and Chilton 10 percent. Based on these figures, the present HHI at the vending level is 3000, far above any of the Department's enforcement thresholds, and TRW's acquisition of Chilton substantially increases this already extremely high concentration by 600 points, to 3600.

As the Department and its economists know, voluminous economic literature clearly indicates the importance of having a significant number of effective competitors in a market, and in general, three is considered to be too few. There is no generally accepted economic literature or legal authority indicating that, absent an acquisition of a failing competitor or creation of substantial efficiencies attainable only by the acquisition in question, such a concentration-increasing merger is likely to be pro-competitive.

An extensive economic analysis considering competitive risks, including the very real danger of collusion and market division at the vendor level in this industry, would be required to establish that such a concentration-increasing merger is not likely to substantially harm competition and consumers. As the Department's own *Merger Guidelines* clearly recognize, an even more extensive analysis would be required to show that purported *vendor-level* efficiencies from the acquisition could justify the real competitive risks. We believe the Department needs to further examine this concentration-swelling deal, the potential efficiencies (if any) due to combination of files and the potential competitive risks versus conceivable economic benefits at the vendor level.

Moreover, as the Department is aware, in 1988 CBI/Equifax contracted with ACS, another vendor, to take over all of its vendor functions, thereby reducing the number of independent vendors from five to four. The effect of this transaction needs to be considered.

The Department may feel that the geographic market-extension effects of both the CBI/Equifax-ACS transaction and TRW's proposed acquisition of Chilton entail significant competitive benefits and efficiencies. If so, we respectfully suggest that the Department has an obligation to discuss this rationale and the evidence on which it is based in the Competitive Impact Statement.

*B. The Competitive Impact Statement Discusses Entry Conditions Only at the Credit Bureau Level, and Should Also Consider Barriers to Entry at the Vendor Level.*

We also believe consideration needs to be given to possible entry barriers or other impediments to competition at the vendor level. We do not believe that the solutions to competitive problems identified in local markets for retail credit reports solved those problems at the vendor level.

It is clear that there are numerous barriers to entry and competition at both levels of the credit reporting industry. Particularly relevant barriers at the vendor level include the time, expertise, and capital involved in setting up computer operations, and credibility and reputation for reliability both with local merchants and financial institutions and national grantors of credit. Although such credit grantors spend substantial amounts on credit reports, the costs of credit information are quite small in

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relation to the risks of, among other things, inaccurate information or inaccessibility due to computer crashes or problems in data transmission. Given these considerations, entry conditions at the vendor level need to be separately analyzed and considered to make any Consent Decree in this matter effective.

The Federal Trade Commission case ordering CBI/Equifax's predecessor firm to divest certain acquired credit bureaus provides support for the proposition that there are substantial entry barriers at both levels of the credit reporting industry *In the Matter of Retail Credit Company*, 92 F.T.C. 1 (1978). After hearing substantial testimony from industry officials, the administrative law judge reached the following finding:

There are substantial barriers to entry into credit reporting. They include the need for support and cooperation of merchants and credit grantors, adequate file information, experience in the credit reporting industry, sufficient capital, ability to offer competitive prices and services and, in certain markets, computer technology.

**Vorys, Sater, Seymour and Pease**

*In the Matter of Retail Credit Company*, Initial Decision, Findings of Fact, par. 119, (February 10, 1976) 92 F.T.C. 1, (1978) (Citations to testimony omitted).

Today, with computerization much more extensive, particularly at the vending level, the entry barriers at that level are undoubtedly higher than they were at the time the FTC considered the *Retail Credit Co.* case.

The only entry barrier the Department identifies in this entire industry is one at the credit bureau level—specifically, the time and cost involved in acquiring files of credit information. Apparently because of this view, the Department believes that requiring the sale of copies of files will alleviate any potential constraint on supply of services to users. The Department also apparently believes that severing certain contracts (such as CBC Companies' contract with Chilton in New Hampshire) and requiring that independent bureaus not deal with the merged firm will provide both demand pressures that will rapidly generate efficient and competitive entry and expansion. However, if access of file copies such as made available under the proposed Consent Decree is not the only barrier, this remedy will not be effective.

*C. The Analytical Focus and Proposed Remedy Are Apparently Based on a Faulty View of the Potential Barriers to Entry into the Retail Level of the Industry.*

The Department has identified one of the key requisites for effective competition at the credit bureau level of the industry: access on competitive terms to files of local credit information. Certainly, the time and cost of assembling a file of such information is a hurdle that any competitor must overcome. However, it is our client's belief, based on long experience in the industry, that such time and cost requirements impose much less of a restraint than they did in the past. As a result, while access to and cost of local files are important determinants of competitive success, such file access is far from the only barrier. The relevant competitive and economic question is not access to the "physical" requisites for producing a report (such as files and computers). Rather, the relevant inquiry is what are the real market requirements for gaining market acceptance.

The computerization of both the credit reporting industry and of many credit grantors has substantially reduced the time and cost investments involved in getting substantial amounts of local credit information. For example, when CBC Companies entered Cleveland in 1982, they were able rapidly to get substantial computerized files of local credit information on tape from banks and others. However, despite heavily discounted pricing, the Cleveland operation has yet to achieve a major market penetration. The reasons relate to the types of barriers cited above and noted in the FTC's *Retail Credit Co.* case, 92 F.T.C. 1 (1978).

Despite having substantial credit information, because the Cleveland operation was new, and CBC's office was small, the files had relatively little recent or current "activity" measured in terms of the number of credit grantor inquiries to the bureau. It is such very recent and ongoing inquiries which provide the cross-checks on file information which give a bureau the best credibility with local credit grantors. The importance of this file inquiry activity, in turn, explains why leading local credit bureaus maintain substantial shares in many areas.

Because credit grantors find file inquiry activity as well as the bureau's scale of local coverage so important, the proposed Consent Decree's requirement for the sale of file copies is unlikely to be of substantial or lasting competitive benefit. Our client's experience, reflecting broader marketplace realities, is that mere access to files as such does not give a firm the ability to compete effectively.

*D. The Department Uses Improper Definitions of Relevant Geographic Markets and Fails To Consider Interrelationships Among Geographic Areas.*

As discussed in our earlier comments, the Department assessed market concentration and the potential for competitive harm as well as the desirable parameters of relief based on analyses of local geographic markets. To be sure, under the standards enunciated in the *Merger Guidelines*, there are numerous localized markets for credit reporting services. However, this does not imply that *only* these localized markets are relevant for assessing the competitive impact of this transaction or of the proposed Consent Decree. Instead, numerous broader areas are highly relevant to the assessments which the Competitive Impact Statement is supposed to provide.

Although local credit bureaus and local information remain essential for many transactions and for many credit grantors, increased population mobility, ever-increasing use of nationwide mail and telephone ordering, and the widening geographic scope of many retail operations have increased the geographic scope of the information that a credit bureau must be able to provide. This both broadens the scope of certain relevant geographic markets and increases the potential importance of vendors covering appropriate geographic areas.

CBC Companies' situation in New Hampshire provides an illuminating example of the competitive importance of this broadening geographic scope of the industry. For many retailing operations, such as Filene's, New Hampshire might be considered, in effect, a "suburb" of Boston. A very substantial proportion of New Hampshire credit transactions are with residents of Boston and other parts of Massachusetts, as well as other states in the area. As a result, Credit Bureau Services of New Hampshire, is very dependent on credit information obtained through its contract with Chilton, through which it obtains all or most of its "Boston" reports from the Chilton bureau in that area.

CBC Companies estimates that about 35 percent of the reports its New Hampshire operations sell are "local reports" or inquiries about New Hampshire residents from credit grantors in that state. Since 15 percent of its reports are "inbound regional" or inquiries about New Hampshire residents from credit grantors in New England but primarily with offices in Boston, only about half of CBC Companies' New Hampshire reports concern local residents, and a substantial proportion of these reports come from outside the area and from grantors served in their own areas by other local bureaus.



A full 18 percent of our client's sales to New Hampshire credit grantors are "outbound regional" reports—inquiries from New Hampshire grantors about residents of other parts of New England, many from Boston. Thus, a substantial portion of CBC Companies' New Hampshire sales are dependent on Boston, and a major portion of the reports provided are based on information now purchased from Chilton. Given this relationship it makes little or no sense to assess competition in New Hampshire, Boston, or New England solely in terms of local concentration.

Such geographic interrelationships show that relevant credit reporting markets are not all local. The market relevant for assessing competition to provide credit reports to many New Hampshire merchants must include the Chilton Bureau serving the Boston area. The same logic shows that the relevant credit report market for many New Hampshire credit transactions must include the TRW Boston area bureau and other bureaus in various parts of New England and the Northeast.

**II. Harm to CBC and Other Independent Credit Bureaus From the Proposed Consent Decree.**

As the Department knows, the Credit Bureau Services of New Hampshire will be deprived of a supplier with whom it has had a long-term and successful relationship by the terms of the Consent Decree. It is our belief that the net effect of this contract termination is to make CBC a less effective competitor, and thereby reduce competition in New Hampshire. By being forced to deal with a new entrant in the Massachusetts credit bureau market, CBC will be able only to offer a less saleable product to its customers. The effect of the Consent Decree in New Hampshire thus will be not to create a more competitive market, but rather to decrease competition, by decreasing Credit Bureau Services of New Hampshire's ability to compete. It is our belief, therefore, that the termination of the Credit Bureau of New Hampshire's contract with Chilton Corporation after the acquisition will lessen the competition by weakening an effective competitor in the market.

Nor is the termination of contract approach, it would appear, consistent with the Department's determination that the sale of a file in a particular market will allow a new entrant sufficient entry into the market to compete effectively. Application of this concept to New Hampshire, it would appear to CBC, would dictate that TRW be required to sell its New Hampshire file, but Credit Bureau of New Hampshire be permitted to continue its contract with Chilton, or, in other words, negotiate with TRW for continuation of the Chilton contract in New Hampshire. After all, CBC is not a participant in the acquisition, and it would seem logical therefore to place the burden of remedying the anticompetitive effects in New Hampshire of the acquisition in New Hampshire by requiring a participant (TRW) to sell off its file. In our view, it is CBC, and not TRW, that is being required to subsidize the entry and expansion of vendors, such as CBI/Equifax, into the New England market. CBC and its customers will have to pay the price for the anticompetitive effect of TRW's acquisition of Chilton, rather than that cost being borne by TRW. Two solutions can correct this problem—requiring TRW to divest itself of the Chilton Bureau in Boston, or requiring TRW to sell a copy of its file in New Hampshire. In CBC's view, either alternative is preferable to making it pay the cost of correcting the anticompetitive effects of this acquisition.

In conclusion, we believe that the historical evidence does not support the effectiveness of selling a file as a remedy to the anticompetitive effects of this acquisition. Even if the Department is convinced, however, that such a sale will remedy the anticompetitive effects of this merger, CBC respectfully suggests that such a remedy could be applied in New Hampshire as well as in Massachusetts. We very much appreciate your attention to these comments.

Very truly yours,

**James P. Kennedy.**

cc: Donald J. Russell, Esq.
George S. Baranko, Esq.
Richard L. Irvine, Esq.
Jonathan M. Rich, Esq.
Catherine M. Jones, Esq.

**Exhibit E**

January 26, 1989.

Barry Grossman, Esq., Chief,
Communications & Finance Section,
Antitrust Division, U.S. Department of Justice, Judiciary Center Building,
555 4th Street NW., Room 8104,
Washington, DC 20001

RE: Proposed Consent Decree in *United States* v. *TRW, Inc.*, Northern District of Ohio (C88-4253)

**Dear Mr. Grossman:** I am submitting these comments on behalf of Rochester Credit Center, Inc. in response to the Notice published in the **Federal Register** by the Justice Department on December 2, 1988, which Notice was amended December 12, 1988. Rochester Credit Center is owned by a not-for-profit trade association, which in turn is owned by the entire credit-granting community, who share equally, through Board representation, their concerns for price, product, services and credit education within the community. The trade association, comprised of over 1,200 area businesses, owns the stock of Rochester Credit Center.

It is the position of Rochester Credit Center that the proposed consent decree in the above action will not prevent the anti-competitive effects that will result from the acquisition of Chilton by TRW. I speak specifically to the situation in Rochester, but I believe that the situation is the same in many other areas of the country referred to by the Justice Department in its complaint. In Rochester, it is clear to me that competition will reduced substantially if the terms of the consent decree are followed.

The Justice Department has concluded in the Competitive Impact Statement that the fact that credit vendors other than TRW and Chilton have "full files" will ensure that the number of competitors in the market will remain the same and that the market shares of various competitors will remain approximately as they were before the merger. For the reasons explained below, the presence of a "full file" is not a sufficient remedy to the ills engendered by this merger.

Rochester Credit Center also believes that with respect to its own situation, the proposed consent decree is inaccurate in one significant respect. It assumes that the termination date of the affiliation agreement between Rochester Credit Center and Chilton is June 1, 1990. As is explained later in this letter, this is not the case.

**Anti-Competitive Effect of Merger**

The Competitive Impact Statement correctly has recognized that the credit-reporting business is a highly concentrated market in which entry is very difficult. Further, in both its complaint and in its Competitive Impact Statement, the Justice Department recognizes that purchasers of consumer credit reports make their decision on which reports to buy primarily on the

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basis of the quality and quantity of information in the reports.

Having recognized that the quality nd quantity of credit report information s critical, the Competitive Impact Statement concludes that so long as a credit vendor has a "full file", this is enough to satisfy the desire of purchasers of credit reports for files containing sufficient quality and quantity of information. In fact, the presence of a "full file", standing alone, does not mean that the credit grantor buying the report will deem that the file has the quality and quantity of information that it wants.

Essentially, the Competitive Impact Statement ignores the fact that while a file may be full, some files will be fuller than others. Moreover, the Competitive Impact Statement ignores the fact that for credit grantors, some names have much greater market recognition than others, and the Competitive Impact Statement also ignores how difficult entry is in the face of this name recognition.

*Quality and Quantity of File, and Name Recognition*

Paragraph "16" of the complaint filed in this action defines the information that constitutes a "full file". Rochester Credit Center does not disagree with this definition, but does disagree with the concept that one "full file" is the same as another. By way of hyperbole, an 11-man football team composed of staff personnel from Rochester Credit Center is a "full football team", but nobody would think that such a football team could compete with the San Francisco 49ers. Obviously, I do not mean to suggest that a vendor that has the "Full File" information referred to in Paragraph "16" of the complaint stands in the same relation to a vendor with a much better "Full File" as an office football team stands in relation to the Superbowl champions. However, I do mean to suggest that to credit grantors, some files are much fuller, and therefore much better, than others.

The competitive impact statement ignores an important element of market concentration, namely that the number of credit inquiries regarding an individual is a vital factor to most credit grantors when they are deciding whether to extend credit. Therefore, the credit bureau that receives the largest number of inquiries, and reports these inquiries on its report, is the bureau selling the most useful report. Its file is better than that of a competitor with a "Full File".

Not only is the number of inquiries, and therefore the credit activity, of a particular applicant an important indicator of the credit worthiness of the applicant, but it is also an important indicator of the reliability of the credit report. Under most circumstances, a credit grantor will prefer a credit bureau receiving the largest number of inquiries, which simply means the credit bureau with the largest market share. This preference among credit grantors will tend to protect the market share of the dominant bureau. In essence, a snowball effect is at work. A credit bureau with a large market share has that share because it has information desirable to credit grantors. They will turn to this bureau, thereby further enhancing the market share of that bureau.

The confidence that the credit grantor has in the name under which the local bureau does business is also an important factor that these credit grantors consider when deciding what bureau or credit vendor will be contacted for credit information. Since 1971, when Rochester Credit Center became an affiliated bureau of Chilton, each and every credit report has carried the name of Chilton within the context of the report. Rochester Credit Center has marketed its reports under the auspices of the Chilton Credimatic system, and substantial good will has been engendered for this name in the Rochester area, as I am sure it has in the other areas of the country. TRW and Chilton have recognized the value of the Chilton name in a letter they have sent to common TRW and Rochester Credit subscribers, advising them that Chilton will not become part of the TRW network in Rochester.

All credit grantors in the Rochester area are familiar with both the TRW and the Chilton reports. This familiarity will be a major advantage to the proposed TRW/Chilton entity in maintaining and attracting a greater market share. This same situation exists in the other areas referred to in the complaint and the Competitive Impact Statement.

Because credit grantors are familiar with the Chilton name, they will perceive it, and in most cases properly so, as being better. In trumpeting the fact that TRW will now have access to the best of both worlds—information from TRW and information from Chilton—TRW is marketing the Chilton name, a name developed in Rochester at great expense by Rochester Credit Center. We have no doubt that customers of Rochester Credit Center identify consumer credit reports by the Chilton name, much as a consumer using a moving van company recognizes it by the national name rather than by the name of a local carrier.

**Reduced Competition as a Result of Merger**

As a result of this proposed merger, markets in which affiliates are terminated, such as Rochester, will suffer a decrease in competition. Independent bureaus like Rochester Credit Center will have to enter into contracts with vendors new to an area, who totally lack the name recognition and the local file that leads credit grantors to certain vendors.

If the merger occurs, Rochester Credit Center's share of the market will drop dramatically. Given the way in which a company becomes entrenched in this market, it will be extremely difficult for Rochester Credit Center, whichever other national vendor it affiliates with, to develop any significant market share.

The Competitive Impact Statement recognizes that consumer credit reporting is subject to considerable economies of scale. Once a company has created a file that has the quantity and quality of information that credit grantors desire *and* the company has gained the confidence of consumers, it has a great cost advantage over a new entrant to the market. Any company considering entry into a market like Rochester must have the quality and quantity of information that goes beyond having a "full file," and must develop consumer acceptance. Consequently, a prior entrant can easily underprice it, and yet charge monopoly prices.

Indeed, the market for consumer credit reporting may be described as a natural monopoly. There are only three ways that another firm can hope to enter this market successfully. One is by use of a new, superior technology that allows it to offer the product demanded at a lower price. We know of no such technology in existence or on the horizon. The second possibility occurs when the market is expanding, the present monopolist is lazy and does not go after new business, and the new entrant can sign up new customers at a sufficiently rapid rate to overcome the costs of entry. This is unlikely to occur as Rochester is a stable community that has not grown much in the past nor is expected to expand much in the future. The third possibility results from the present monopolist giving such poor service that customers are willing to shift their business to a new entrant. We see no reason for this to occur, as we believe that TRW and Chilton provide good service to their customers.

As it happens, the Rochester area has been served primarily by a duopoly—two, roughly equal-sized firms, Chilton and its associated company, Rochester Credit Center, and TRW. They have been in a stable competitive equilibrium, from which users of their services have benefited. The proposed merger of Chilton and TRW will change this situation. TRW, combined with Chilton, will be in a position to drive Rochester Credit Center out of business. The newly-merged firm will have very deep pockets. It can afford to cut its prices and spend considerable sums on sales persuasion to take customers away from Rochester Credit Center. Ironically, Rochester Credit Center made this possibility more likely as a result of its significant and successful efforts over the years to develop market recognition for the Chilton name in this area.

Indeed, as I already mentioned, we have seen information disseminated by TRW heralding the fact that TRW will now have access to the best of both worlds—information from TRW and information from Chilton. As I explained, we have no doubt that customers of Rochester Credit Center identify consumer credit reports by the Chilton name, much as a customer using a moving van company recognizes it by the national name, rather than by the name of the local carrier.

Because of the Chilton name recognition, we expect that a significant number of customers will leave Rochester Credit Center and follow Chilton when it becomes part of TRW. It is reasonable to anticipate that this change will result in a significant shift in the current market concentration, and that TRW then will have a dominant share of the Rochester market.

TRW can take advantage of this dominant position by lowering its prices. Because of TRW's financial reserves, this decrease in prices will not likely cause it any harm. Ultimately, TRW will drive Rochester Credit Center out of business.

Of course, once Rochester Credit Center is out of the market, Rochester-area users of consumer credit reports will be left with a single supplier, TRW—a monopolist. Once it achieves this monopoly position, TRW will be able to raise its prices. At this point, entry by another firm will be very unlikely, unless one of the three REMOTE possibilities outlined above occurs. Credit grantors in the Rochester area then will have no alternative to TRW and will be forced to pay monopoly prices.

**Contractual Rights of Rochester Credit Center**

The Competitive Impact Statement assumes that Rochester Credit Center's contract with Chilton expires June 1, 1990. In fact, there is no such provision in the contract between these companies.

After receiving notice from Chilton that it intended to terminate Rochester Credit Center, I wrote to Van Smith, the President of Chilton, on November 30, 1988, asking him to specify for me the contractual language that gave Chilton the right to terminate Rochester Credit Center. He responded without specifying the contract in issue, and I wrote him again on December 15. At a later meeting with him, he acknowledged that a clarifying sentence had been left out of the Rochester Credit Center agreement, and that the agreement was ambiguous as to when it could be terminated. In fact, the agreement does not contain a specific date for termination, and Rochester Credit Center plans to litigate vigorously the position taken by Chilton and TRW that the Chilton contract with Rochester Credit Center expires on June 1, 1990.

While we recognize that this may not be a significant factor to the Justice Department, and that the Justice Department is far more interested in the competitive impact of the proposed merger, we did want to bring it to your attention.

**CONCLUSION**

We believe that an analysis of the market and a true understanding of the credit-reporting business demonstrates that the proposed merger will have significant anti-competitive effects in the Rochester area, and, we believe, in many other areas similar to Rochester. The alternative proposed in the consent decree does not, for the reasons explained, resolve the difficulty. Therefore, unless the Justice Department can develop some alternative that will permit the merger to go forward, while ensuring that competition will remain in areas such as Rochester, it is the position of Rochester Credit Center that the Justice Department should seek an injunction halting the merger.

We have set up a meeting for February 2, 1989 with officials at the Justice Department to discuss this matter further. At that time, we will be glad to answer any questions that representatives of the Justice Department have and discuss our comments in detail.

Very truly yours,

R. Gregg Helfer.

pc: Donald J. Russell, Esq.
George S. Buranko, Esq.
Richard L. Irvine, Esq.
Jonathan M. Rich, Esq.
Katherine M. Jones, Esq.
William Swope, Esq.
James Sutton, Esq.



**Exhibit F**

February 9, 1989.

Barry Grossman, Esq., Chief,
Communications & Finance Section,
Antitrust Division, U.S. Department of Justice, 555 Fourth Street, NW.,
Washington, DC 20001

Re: *United States v. TRW, Inc.*, Civ. No. C88-4253 U.S. District Court for the Northern District of Ohio, Eastern Division

Dear Mr. Grossman: We are writing on behalf of Credit Data of Hawaii, Inc., a Hawaii corporation ("CDH"). We have been provided with the proposed Final Judgment and Competitive Impact Statement filed in the above-referenced matter.

On November 17, 1988, the United States Department of Justice ("Department") filed a civil antitrust complaint under Section 15 of the Clayton Act (15 U.S.C. § 25) alleging that the proposed acquisition of Chilton Corporation ("Chilton") by TRW, Inc. ("TRW") would violate Section 7 of the Clayton Act (15 U.S.C. § 18).

Simultaneously, the Department and TRW filed a stipulation by which they consented to the entry of a proposed Final Judgment ("Consent Decree"). On that same day, the Department filed its Competitive Impact Statement as required by the Antitrust Procedures and Penalties Act. The proposed Consent Decree approved the acquisition and required TRW to sell a copy of Chilton's consumer credit files in certain geographic areas, to sell a copy of Chilton's consumer credit files in other areas and to terminate contracts relating to the sale of network services for certain specified marketing areas, including Hawaii.

In accordance with the antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b), CDH submits these comments on the Consent Decree.

As stated in the Complaint, the consumer credit reporting industry is already highly concentrated. There are currently four vendors of network services in the United States, including TRW and Chilton. (Complaint ¶ 15.) The merger of the two largest vendors of network services in the United States, leaving a total of three, raises serious questions of the continued viability of competition in the credit reporting industry. CDH, however, will focus these comments on the competitive situation in Hawaii.

The following portion of the proposed Consent Decree is the subject of this comment:

Unless such notice has already been provided, TRW is ordered and directed

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to provide written notice to [Credit Data of Hawaii, Inc., Honolulu, Hawaii] of its intent to terminate contracts relating to the sale of network services for the marketing areas. . . .

It is CDH's position that the proposed final judgment should not be entered as it is not in the public interest. CDH believes it will either be unable to affiliate with or sell its files to another competitor, or if successful will not be able to compete with TRW/Chilton. Either result would be to the severe detriment of CDH. In CDH's view, the aspects of the proposed Consent Decree relating to Hawaii are likely to result in the near elimination of competition in this state. Much has been said about the dangers to competition posed by the increasing dominance of the two major forces in the credit reporting industry. However, the proposed consent judgment does not, at least in Hawaii, adequately deal with those problems.

*2. The Nature of the Credit Reporting Market*

Credit bureaus collect consumer credit information, store it in computers and sell it to credit grantors. Credit grantors use these consumer credit reports to determine whether to grant credit, or how much to grant, to individuals. Credit grantors usually receive consumer credit reports electronically through computer terminals. Vendors operate computer facilities that supply network services to credit bureaus. (Complaint ¶ 15.)

Currently, there are four vendors of network services in the United States, including TRW and Chilton. In 1988, the total United States credit reporting revenues of all vendors from the sale of network services and credit reports was about $410 million. (Complaint ¶ 15.) In 1987, TRW's sales totaled about $140 million and Chilton's totaled about $93 million. (Complaint ¶¶ 13, 14.)

Buyers purchase consumer credit reports primarily on the basis of the quality and quantity of information in the reports. (Complaint ¶ 18.) The Department claims that there is no substitute for consumer credit reports that a significant number of credit grantors would purchase in response to a small, but significant increase in the price of the reports. (Complaint ¶ 18.)

Entry into the business of providing consumer credit reports is difficult, time consuming and expensive. Generally, it takes three to five years to collect sufficient information to provide full file credit reports in a given market. Consequently, new entry by another party could not be accomplished rapidly enough in any relevant geographic area to prevent the anti-competitive results in this transaction.

Only credit bureaus that have comprehensive coverage in the local geographic area in which the consumer about whom a credit report is sought resides are considered sources of credit reports. Thus, the relevant geographic markets for purposes of an antitrust inquiry are local and bounded by the overlapping geographic areas covered by particular competing credit bureaus. (Complaint ¶ 19.) The relevant geographic market for purposes of CDH's concerns is the state of Hawaii.

*3. Background of Credit Reporting in Hawaii*

Prior to 1981, when CDH first entered into a credit-reporting contract with TRW, Chilton was the only national credit-reporting agency in Hawaii. In 1981, Chilton had been in business in Hawaii for a considerable period of time. It had developed a mature credit file. In large part, Chilton's file development and market position were possible because of Chilton's acquisition of the former Credit Bureau of Hawaii in the 1970's.

When CDH began operations, it was able to compete with Chilton only because of its relationship with TRW. Potential customers had no reason to tap the meager Hawaii file of CDH, unless they sought the large mainland file of TRW. Most important, TRW had and has significant files in the west coast. Because so many Californians relocate to Hawaii, credit customers sought access to the CDH/TW files.

After nearly eight years of developing its Hawaii credit information, CDH now has a mature file. Nonetheless, Chilton still maintains a more comprehensive local file.

When customers seek *only* local credit information, Chilton still maintains a competitive edge over CDH. CDH remains able to compete largely because of the strength of the TRW file behind it. The continued affiliation between TRW and CDH has enabled CDH to obtain roughly 30% to 35% of the market.

*4. Effect of the Final Judgment*

The Complaint alleges: "There are *two* credit bureaus that collect information for and sell full file consumer credit reports on individuals who reside in Hawaii. Based on the number of consumer credit reports sold, Chilton's owned office is the largest credit bureau and TRW's affiliate is the second largest." (Complaint, ¶ 24.)

The proposed consent judgment requires TRW to terminate its contract with CDH. According to the economic impact statement:

Termination of the affiliation agreements will ensure that the acquisition will have no effect on competition in the relevant geographic markets where the affiliates operate because affiliates will be free to enter into affiliation agreements with vendors other than TRW or Chilton. The terminated affiliates will have strong financial incentives to enter into new contractual relationships with a credit information data base service not fully represented in the local market. As a result, the number of competitors and their local market positions will remain substantially unchanged.

We respectfully submit that this view is misguided at the least and disingenuous at worst. It displays fundamental misunderstandings as to the nature of the credit reporting system in Hawaii.

First, the competitive impact statement concludes that there will be *no effect on competition* because the affiliates will be free to enter into affiliation agreements with other vendors. The conclusion that there will be no effect on competition presupposes two things: 1) not only will CDH be able to sell its file to or contract with another potential competitor, but also 2) that CDH acting alone or with one of the remaining potential competitors will be able to maintain the same market share that CDH/TRW now enjoys. Neither of these suppositions is well-founded.

While the two remaining potential competitors in Hawaii might be willing to purchase CDH's file, there is no assurance it can be sold. Right now, absent a TRW/Chilton merger, CDH has the right to enter affiliation agreements with any of the four competitors or potential competitors in Hawai. If the consent judgment becomes effective, TRW will have to terminate its agreement with CDH and will be prohibited from entering into an agreement with CDH for a period of 5 years. Chilton will no longer exist. Thus, instead of four competitors or potential competitors in Hawaii with whom CDH could contract, there remain at most two. At least one of the last competitors has a fledgling Hawaii file. It might not be advantageous to affiliate with CDH. Moreover, the remaining potential competitors might not have the interest in purchasing a file unless they are certain that the file can compete with the new TRW/Chilton file.

Even a cursory review of the market forces in Hawaii demonstrate the fallacy in the assumption that CDH will be able to successfully compete with the joint



TRW/Chilton. As set forth above, the success CDH has enjoyed in the recent past is a direct result of its relationship with TRW. CDH's less mature and less complete Hawaii file has been able to complete with Chilton because of TRW's west coast file. Certain customers now choose CDH/TRW because of its mainland files.

If CDH no longer has the TRW files to support it, it will be faced with attempting to compete head-to-head with the more established, more complete Chilton local file. If the TRW/Chilton merger goes through, the result for CDH will be even more devastating. A customer will now have the choice between a more mature Hawaii file (Chilton) coupled with a vast mainland file (TRW) or a young Hawaii file (CDH) possibly coupled with a weaker mainland file. To suggest that CDH once it is cut adrift, will retain the same market share as CDH/TRW, is naive.

To make matters worse, CDH/TRW now markets its services under the name of "TRW." Customers and potential customers are currently faced with the choice between Chilton or TRW. As stated above, credit grantors (or CDH customers) usually receive consumer credit reports electronically through computer terminals. In Hawaii, most credit grantors have been provided with terminals through which they may gain access to the credit bureaus. All new terminals are currently equipped with a number of buttons including one for Chilton and one for TRW. The name "CDH" does not appear on the computer terminals. Nor does it appear on the consumer credit report or the invoice. As far as most customers are concerned, TRW works alone. After the TRW/Chilton merger, many customers will not even know that the entity that was supplying the information under the TRW name is now independent or associated with another company.[1]

The inevitable result is that whatever market share CDH/TRW had will *not* simply shift to CDH with its new affiliate. It is far more likely that TRW will retain its share and add that to the Chilton market share.

*5. HHI*

In its Complaint, the Department stated that in 16 relevant markets (including Hawaii) the proposed acquisition would substantially increase concentration. The HHI, it reports, is currently greater than 3,200 and the acquisition of Chilton would increase the HHI by more than 700 points. (Complaint ¶ 20.)

In fact, based on the allegations in the Complaint, the HHI in Hawaii would be closer to 5,200.[2] CDH takes the position that the HHI is really somewhere in excess of 4,300.[3] Whatever figure is used, the market is considered highly concentrated based on the 1984 Department of Justice Merger Guidelines.

The increase in the HHI could be almost 4,000 if TRW and Chilton merge in Hawaii without limitation. Even with the ordered termination of the affiliation agreement between TRW and CDH, the HHI would undoubtedly rise.

Assuming that TRW/CDH has a market share of 35 percent, Chilton has a 55 percent share and a third competitor has a 10 percent share, the HHI is 4,350. If CDH affiliated with the third competitor and kept its entire market share the HHI would rise by 700 points. What is more likely, CDH might retain only a portion of its market share (*e.g.*, 20 percent) and TRW retain part (*e.g.*, 15 percent). That would leave TRW/Chilton with a 70 percent share and CDH with a 30 percent share. The resulting HHI would be 5,800 or an increase of 1,450. (As set forth above, it is unlikely that CDH would be able to retain a large market share without its TRW affiliation. The smaller CDH's share, the larger the HHI.)

According to the 1984 Merger Guidelines,

The Department is likely to challenge mergers in this region [above 1,800] that produce an increase in the HHI of more than 50 points, unless the Department concludes . . . that the merger is not likely substantially to lessen competition. However, if the increase in the HHI exceeds 100 and the post-merger HHI substantially exceeds 1,800, *only in extraordinary cases will such factors establish that the merger is not likely substantially to lessen competition.*

The merger of TRW and Chilton in Hawaii would result in a post-merger HHI *substantially* in excess of 1,800. The increase in the HHI would in all likelihood far exceed 100.[4] The Department cannot establish that the merger is not likely substantially to lessen competition.

The factors affecting the significance of market shares and concentration do not change the result. For example, this is not a market in which there are changing market conditions, nor is there ease of entry. Accordingly, the Department should have to show what extraordinary circumstances exist in Hawaii to allow competition to remain.

*6. The Consent Decree Should Not Be Approved Until The Department And TRW Demonstrate That CDH Can Remain a Viable Competitor*

To fulfill its obligations under the Antitrust Penalties and Procedures Act, 15 U.S.C. §16(e), the court must consider whether the public interest will be served by sanctioning a merger of the only two competitors in the consumer credit market in Hawaii. In support of the Consent Decree, the Department concluded that by ordering TRW to discontinue its affiliation with CDH, the competitive environment would remain unaltered. As set forth above, that is not the case.

In *United States v. National Broadcasting Co., Inc.*, 449 F. Supp. 1127 (C.D. Cal. 1978), the court, in approving a proposed consent judgment stated, "in evaluating a proposed consent decree, one highly significant factor is the degree to which the proposed decree advances and is consistent with the government's original prayer for relief." *Id.* at 1144. The court concluded that the "relief provided by the judgment is consistent with the government's general theory of liability as manifested in its complaint." *Id* at 1145. As a result, the court held "that the consent judgment, on balance, advances and is in the public interest." *Id.*

In this case, the government's original prayer for relief sought to enjoin the merger in order to protect competition. Thus, the court must determine whether the Consent Decree is consistent with that original prayer for relief. Since the effect of the Consent Decree is likely to substantially lessen competition, it should not be approved.

The Competitive Impact Statement fails to explain why other options were not considered with respect to the Hawaii market. Since CDH, without access to the TRW, files will have difficulty competing with TRW/Chilton, merely requiring TRW to terminate its contract with CDH will not result in continued competition in this state. In certain areas, the Consent Decree requires that TRW sell a copy of either the file it now owns or a copy of the file

[1] CDH will even be prevented from using the name "CDH" once the affiliation contract is terminated.

[2] This assumes that there are only two competitors in Hawaii with the following market shares: TRW—40 percent; Chilton—60 percent.

[3] Assuming TRW/CDH has a 35 percent share; Chilton has 55 percent and one or two others have 10 percent.

[4] Only if there are only two competitors in Hawaii and CDH retains its entire market share would the HHI remain the same.

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it will acquire from Chilton to one of the other companies providing network services. The Competitive Impact Statement states that the Department considered but rejected the option of refusing to allow TRW to retain a copy of the consumer credit files that it must sell. It rejected this option claiming that if TRW can retain a copy of both the Chilton and TRW consumer credit files it can provide consumers with a higher quality product. However, that is basically the reason that competitors such as CDH will be unable to compete in the market.

The Department also considered and rejected requiring TRW to sell copies of the combined TRW/Chilton consumer credit files. The Department rejected this alternative because it believed that a copy of either firm's full file would be sufficient to enable the new firm to compete effectively in the relevant market. The reasons for rejecting this option were not well thought out. The Competitive Impact Statement stated, "The new firm will have all the credit information previously owned by one of the leading competitors in the market." As stated above, in Hawaii, that is not the case. If CDH is coupled with another competitor, CDH will have only the local component of its TRW/CDH files, whereas TRW/Chilton will have both the more mature Chilton files and the strong Chilton/TRW mainland files. CDH or others will remain unable to compete against these joint files.

There were other alternatives which the Department failed to accept. Since the Consent Decree as proposed by TRW and the Department will likely reduce competition in the state of Hawaii, the Consent Decree should not be approved.

If you have any questions about the foregoing or would like to discuss it with CDH, please do not hesitate to contact this office.

Very truly yours,

Margery S. Bronster.

**Exhibit G**

February 10, 1989.

*Deliver*

Barry Grossman, Esq., Chief, Communications and Finance Section, Antitrust Division, U.S. Department of Justice, 555 4th Street NW., Washington, D.C. 20001

Re: Proposed Final Judgment in *United States* v. *TRW, Inc.*

Dear Mr. Grossman: The comments in this letter are being submitted on behalf of Credit Data of Central Massachusetts, Inc. and Credit Data of Rhode Island, Inc. Neither of these firms is a party to the action which you have brought against TRW and neither of these firms has committed any offense under the laws of the United States. Yet, remarkably, they bear the burden of the relief sought by the proposed final judgment. I suggest that there is no precedent in case law or in the practice of the Antitrust Division for this result and it is manifestly unjust.

This matter arises out of the proposed acquisition of Chilton Corporation by TRW. The United States has filed a complaint under section 7 of the Clayton Act contending that the acquisition is unlawful in that it would lessen competition in the sale of consumer credit reports. The Antitrust Division has apparently negotiated a decree with TRW under which the Division would agree that the acquisition may be consummated. Although the decree or proposed final judgment drastically affects our clients, they have never been consulted by representatives of the Government. Indeed, so far as I know, they have never even been contacted.

The proposed final judgment reflects an assumption that there is particular concentration in certain defined geographic markets and that in these markets, TRW must agree to terminate existing affiliates. Credit Data of Central Massachusetts and Credit Data of Rhode Island are two such affiliates and they have been informed by TRW that their agreements will not be extended and will terminate on their respective anniversary dates in May and July of this year. I quote from a letter dated November 14, 1988 from TRW to Credit Data of Central Massachusetts (a copy of the full letter is attached):

"As I am sure you know, TRW is in the process of acquiring Chilton Corporation. Because of the size of the transaction, approval of the Department of Justice was required. As part of that approval process, we will be required to terminate our Computerized Credit Reporting Services Agreement made and entered into as of July 12, 1983 ("Agreement")."

It is just not right for such harm to be visited on an innocent party. We object to the inclusion in the proposed final judgment of provisions that require the severance of relationships between our clients and TRW. These provisions call for the destruction of our clients' existing business relationships and the harm is real and immediate.

Our clients have limited resources. Therefore, we request that you make our comments available to the Court before which this action is pending. We do not believe that a Court would find the proposed final judgment in its present form to be in the public interest.

Very truly yours,

William L. Patton.

**Exhibit G**

November 14, 1988.

Mr. Richard Downing, Sr., Credit Data of Central Massachusetts, Inc., 15 Howard Street, Framingham, Massachusetts 01701

Dear Mr. Downing: As I am sure you know, TRW is in the process of acquiring Chilton Corporation. Because of the size of the transaction, approval of the Department of Justice was required. As part of that approval process, we will be required to terminate our Computerized Credit Reporting Services Agreement made and entered into as of July 12, 1983 ("Agreement").

This letter is to notify you that if the acquisition of Chilton is completed, notice will be given pursuant to Section 11(b) of the Agreement that the Renewal Term will not automatically extend, and the Agreement will terminate on July 10, 1989, unless extended by mutual agreement with approval of the Department of Justice. If, for some reason the acquisition is not completed, we will notify you promptly.

If the Agreement terminates, TRW will use its best efforts to assist in a conversion of your data base to another credit reporting system, and we will work with you to make the transition as smooth as possible under the circumstances. Until that time, we will continue to provide you with the best support and service on the TRW System.

If you have any questions, please contract me directly.

Sincerely,

Edward A. Babiert, Ph.D.

*Vice President & General Manager TRW Credit Data.*

**Exhibit H**

February 8, 1989.

Mr. Barry Grossman Chief, Communications & Finance Section, Antitrust Division, U.S. Department of Justice, 555 4th Street NW., Washington, DC 20001

Dear Mr. Grossman: This firm has been retained by Centroplex Credit Reporting & Collections, Inc. (hereinafter referred to as "CCRC") which has offices in the Central Texas area and its principal place of business being 807 North 2nd Street, Killeen, Texas. This letter is being sent pursuant to the provisions of 15 U.S.C. Sec. 16(d) and is intended to be a comment on the proposed consent judgment submitted in cause no. C88-4253, styled United States of America vs. TRW, Inc. filed in the



District Court for the Northern District of Ohio, Eastern Division.

The substance of this letter is to notify the Justice Department and all parties concerned in the TRW acquisition of Chilton that the consent judgment as presently written contains errors in that it authorizes TRW to sell or transfer to Trans Union Credit Information Co. credit file information contained in the affected zip code areas which TRW does not have authority to sell or transfer. Therefore, CCRC is seeking to have the United States withdraw its consent to the judgment as presently written or in the alternative CCRC is seeking a modification of the consent judgment as presently written to eliminate the problems with the zip code regions affected by the agreement between TRW and CCRC.

**Background Regarding Relationship Between TRW & CCRC**

On July 7, 1987, CCRC and TRW entered into a computerized credit reporting service agreement for an initial term of five years. Pursuant to the terms of the agreement, there were a series of zip codes which were designated to be CCRC's data base. This data base included all of the credit information and records stored in the TRW system, no matter how or by whom collected which had a current address within the CCRC designated zip code area. A copy of those zip codes are attached as Exhibit One. Thiere also may be other zip codes affected by subsequent amendments to the agreement between CCRC and TRW.

By virture of the agreement entered into by CCRC and TRW, the credit information contained in the designated zip code areas became the property of CCRC. The agreement specifically provides that "CCRC's data base shall be the property of CCRC . . .". CCRC essentially bought TRW's corporate files for the affected regions. Since the date of the agreement, CCRC has continually updated and enhanced the credit information contained in the files for those zip code areas. This process has resulted in the expenditure of a great deal of manpower hours and expense on the part of CCRC.

The agreement further provides that TRW may purchase on an inquiry by inquiry basis the credit information contained in CCRC's data base. Likewise, CCRC may purchase on an inquiry by inquiry basis the credit information contained in the TRW data base. By virtue of this provision in the agreement, the parties recognize that each party owns the information contained in the respective data bases as separate and independent property.

The agreement also provides that the relationship between CCRC and TRW created by the agreement is not to be interpreted as a joint venture, partnership, or principal/agent relationship. Neither party has the right or authority to act for, or to assume, create or incur any obligation, liability, or responsibility of any kind, whether expressed or implied, against, in the name of or on behalf of, the other party.

**Effect of Consent Judgment on CCRC**

Paragraph V (A)(1) of the consent judgment provides that TRW has entered into an agreement to sell a copy of the consumer credit files for the geographic areas identified in attachment II of the consent judgment. More specifically, TRW has entered into a credit file sale agreement with Trans Union Credit Information Co. to sell zip code areas which are the subject of this comment letter. Those areas include some of the zip code areas which are designated CCRC data base information in the agreement between CCRC and TRW. A comparison of the zip codes designated as CCRC's data base in the agreement between TRW and CCRC and the zip code areas listed in attachment II of the consent decree reveals that at least the following zip codes are affected:

76626, 76500, 76529, 76531 through 76532, 76555 through 76556, 76575, 76581 through 76620, 76629, 76688, 76700.

There may also be other zip codes which could be affected by virtue of amendments to the agreement entered into between CCRC and TRW.

The competitive impact statement notes that TRW has entered into agreements to sell a copy of the file it *owns* to one of the other companies providing network services. Simply put, TRW has agreed to sell zip codes/data base information to a competitor of CCRC which it has no authority to sell. It has not asked for nor received CCRC's permission to sell such information.

Obviously, the sale of such information to a competitor of CCRC could have a direct and devastating effect on CCRC's operations. As noted throughout the competitive impact statement and consent judgment, the credit information contained in the credit files is extremely important in the day to day business of companies in the credit retrieval information business.

It is CCRC's position that the purpose of the proposed final judgment is to do what is in the public's best interest. Certainly it cannot be said that it is in the public's best interest to permit TRW to transfer property which rightfully belongs to CCRC and sell it to a competitor of CCRC. Once this credit data has been transferred and assimilated into a competitor's file, it may be virtually irretrievable and the damage sustained by CCRC could be devastating.

Therefore, CCRC would request that the United States withdraw its consent to the consent judgment in cause no. C88-4253, United States of America vs. TRW, Inc. or in the alternative, that the United States recommend a modification of the consent decree to eliminate the problems expressed in this comment letter.

CCRC is willing to provide any further information which United States Justice Department feels is necessary to adequately review this consent judgment including, but not limited to, the agreement entered into with TRW. Please feel free to contact me if you have any questions or comments.

Sincerely,

Robert T. Swanton, Jr.

**Exhibit 1—CCRC Area of Coverage**

CCRC's Zip Code Area for consumer credit reports will include the following zip codes:

*Texas*: 76500-76799, 76853, 76877, 78613, 78615, 78617, 78619-21, 78626, 78634, 78640-42, 78666, 78676, 78700-99.

**Exhibit I**

February 9, 1989

Barry Grossman, Esq., U.S. Department of Justice, Washington, DC 20001

Re: *United States v. TRW, Inc.*, Consent Decree

Dear Mr. Grossman: It has been called to my attention that the arrangements called for by the proposed consent decree in the referenced case could have an adverse, anticompetitive effect upon certain independent credit bureaus. In particular, the decree's requirement that Credit Bureau Services of New Hampshire terminate its arrangements for purchasing data processing and network services from Chilton Corporation (which would be acquired by TRW if the acquisition is approved) may unfairly deprive CBS-NH of the capacity to compete effectively.

I am concerned that the consent decree may inadvertently impose unwarranted and ultimately anticompetitive restrictions on CBS-NH. This would be unfair inasmuch as CBS-NH is not engaged in, or about to engage in, any anticompetitive activity or arrangements which are alleged to violate the antitrust laws in the Department's complaint.

As I understand the facts, the decree would hinder independent credit bureaus like CBS-NH from providing

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full-service credit reporting to credit grantors. While the decree bars CBS–NH from access to the data processing and networking services it now obtains from Chilton, other sources of equivalent services are not readily available. As a result, CBS–NH stands to lose a sizeable portion of the wholesale sub-market it now services as an independent bureau.

In proposing arrangements to accommodate TRW's acquisition of Chilton, it seems counterproductive to impose restrictions which curtail the ability of independent credit bureaus like CBS–NH to compete effectively with credit bureaus wholly-owned by TRW and other large vendors.

I hope that the Department will give careful consideration to these concerns, as more fully expressed in the comments filed by CBS–NH in its submission to you dated January 18, 1989.

Sincerely,

Gordon J. Humphrey, USS.

[FR Doc. 89–5682 Filed 3–10–89; 8:45 am]

BILLING CODE 4410–01–M

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**National Cooperative Research Act of 1984, CAD Framework Initiative, Inc.**

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), CAD Framework Initiative, Inc. ("CFI") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to CFI and its general area of planned activity are given below:

The following entities are Corporate Members of CFI:

Advanced Micro Devices, Inc.
Alcatel NV
Apollo Computer, Inc.
AT&T Bell Laboratories
Bull, S.A.
CADENCE Design Systems, Inc.
Control Data Corp.
Daisy Systems Corp.
Digital Equipment Corporation
EDA Systems, Inc.
GE Aerospace
General Motors/Delco Electronics
Harris Semiconductor
Hewlett-Packard Company
Honeywell, Inc.
IMEC, VZW
Intergraph Corp.
International Computers Ltd.
Mentor Graphics Corporation
Microelectronics and Computer Technology Corporation
Motorola, Inc.
NCR Corp.
Nixdorf Computer AG
Objective Design, Inc.
Objectivity, Inc.
Robert Bosch GbmH
SCME Foundation Centers for Micro-Electronics
SGS Thomson Microelectronics
Siemens AG
Sony Corporation
Sun Microsystems
Texas Instruments, Inc.
Valid Logic Systems, Inc.
VIEWLOGIC Systems, Inc.
VLSI Technology
Westinghouse Electric Corp.

The following entities are Associate Members of CFI:

Delft University of Technology
Fraubofer AIS
Gesellschaft Fur Mathematik and Datenverarbeitung mbH (GMD)
Intel Corp.
PTT Research Nekar Laboratories
Semiconductor Research Corporation
Kenneth Bakalar
Bill Harding
David Jakopec
Moe Shahdad
Erwin Warabewsky

The objective of CFI is to develop industry acceptable standards, specifications and guidelines for design automation frameworks which will enable the coexistence and cooperation of a variety of computer hardware and software products used for computer aided design.

Joseph H. Widmar,

*Director of Operations, Antitrust Division.*

[FR Doc. 89–5682 Filed 3–10–89; 8:45 am]

BILLING CODE 4410–01–M

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**National Cooperative Research Act of 1984, Semiconductor Research Corp.**

Notice is hereby given that, on January 30, 1989, pursuant to section 6(a) of the National Cooperative Research Act of 1984, Pub. L. 98–462 ("the Act"), Semiconductor Research Corporation ("SRC") filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing certain changes in the membership of SRC. The changes consist of the deletion of GTE Laboratories, Incorporated, Ikonl Systems Group, Monsanto Company and Unisys from the SRC membership and the addition of SEMATECH, Inc.

SRC filed its notification of these membership changes for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to SRC and SRC's general area of planned activity are given below.

SRC is a joint venture which, with the deletions and additions of the previously identified companies, comprises the following members:

Advanced Micro Devices, Incorporated
Applied Materials, Inc.
AT&T Technology, Incorporated
Control Data Corporation
Digital Equipment Corporation
E.I. du Pont de Nemours & Company
Eastman Kodak Company
Eaton Corporation
E–Systems, Inc.
General Electric Company/RCA
General Motors Corporation
Harris Corporation
Hewlett-Packard Company
Honeywell, Incorporated
IBM Corporation
Intel Corporation
LSI Logic Corporation
Micron Technology, Inc.
Motorola, Incorporated
National Semiconductor Corporation
NCR Corporation
Perkin-Elmer Corporation
Rockwell International Corp.
SEMATECH, Inc.

SEMI Chapter, the members of which are the following:

AG Associates
American Technical Ceramics
ASYST Technologies, Inc.
Coors Ceramics
Emergent Technologies Corporation
FSI Corporation
Genus, Inc.
Hercules Specialty Chemicals Company
Ion Implant Services
Lehighton Electronics, Inc.
Logical Solutions Technology, Inc.
MacDermid, Inc.
Micrion Corporation
Optical Specialties, Inc.
Pacific Western Systems, Inc.
Peak Systems, Inc.
Sage Enterprises, Inc.
The SEMI Group, Inc.
SILVACO Data Systems
SOHIO Engineered Materials Co.
Solid State Equipment Corp.
Technology Modeling Associates, Inc.
Thermco Systems, Inc.
VLSI Standard, Inc.
Silicon Systems, Incorporated
Texas Instruments, Incorporated
Union Carbide Corporation
Varian Associates, Incorporated
Westinghouse Electric Corporation
Xerox Corporation.



SRC's purpose is to plan, promote, coordinate, sponsor, and conduct research supportive of the semiconductor industry and directed toward:

1. Increasing knowledge of semiconductor materials and phenomena, and of related scientific and engineering subjects that are required for the useful application of semiconductors;

2. Developing new and more efficient designs and manufacturing technologies for semiconductor devices;

3. Identifying directions, limits, opportunities, and problems in generic semiconductor technologies;

4. Increasing the number of scientists and engineers proficient in research, development, and manufacture of semiconductor devices;

5. Increasing industry-university ties, establishing university semiconductor research centers with major long-term research thrusts, and developing university semiconductor research activities with more precisely defined, short-term objectives;

6. Developing more relevant graduate school education and a larger supply of graduate students in areas related to semiconductor technology;

7. Increasing the ability of universities to attract and retain competent faculty in the semiconductor field;

8. Decreasing fragmentation and redundancy in United States semiconductor research;

9. Establishing advanced research efforts for critical semiconductor technology areas that are beyond the individual resources of many SRC members; and

10. Promoting efficient communication of research results to SRC members and to the United States semiconductor community as a whole.

On January 7, 1985, SRC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice ("the Department") published a notice in the **Federal Register** pursuant to section 6(b) of the Act on January 30, 1985 (50 FR 4281). SRC filed additional notifications on June 6, 1985, November 4, 1985, February 19, 1986, and September 11, 1987, notice of which the Department published on June 28, 1985 (50 FR 26850), December 24, 1985 (50 FR 52568), March 18, 1986 (51 FR 9287), and October 9, 1987 (52 FR 37849), respectively. SRC also filed additional notifications on December 19, 1988 and January 30, 1987; the Department published notice of both on February 13, 1987 (52 FR 4671). SRC also filed an additional notification on December 13, 1988, notice of which the Department published on January 13, 1989 (54 FR 1454).

Joseph H. Widmar,

*Director of Operations, Antitrust Division.*

FR Doc. 89–5641 Filed 3–10–89; 8:45 am]

BILLING CODE 4410–01–M

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**National Cooperative Research Act of 1984; Wet Welding at Greater Depths; Southwest Research Institute**

Notice is hereby given that, on January 30, 1989, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Southwest Research Institute ("SwRI") filed a written notification simultaneously with the Attorney General and the Federal Trade Commission of a project entitled "Wet Welding at Greater Depths" disclosing (1) the identities of the parties to the project and (2) the nature and objectives of the project. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plantiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the project and its general areas of planned activities are given below.

The parties to the project are Amoco Corporation; ARCO Oil and Gas Company, a division of Atlantic Richfield Company; Chevron Corporation; Columbia Gas System Service Corporation; Exxon Production Research Company; Mobil Research and Development, Offshore Engineering; Shell Development Company, a division of Shell Oil Company; and Sun Exploration and Production Company.

The purpose of the project is to advance the state of the art of wet welding in order to develop the welding processes and consumables to a level where the welds are verifiably suitable for pipelines and critical platform members. The research and development program is designed to analyze the existing information on wet welding; to generate the information necessary to obtain an understanding of the problems of SMAW (Wet Shielded Metal Arc Welding) by experimental testing in a systematic manner; to evaluate the knowledge gained by manipulation of the welding consumables' (SMAW) composition and operating characteristics to overcome the existing shortcomings and fully test these principles; and to apply the knowledge from the SMAW tests to a different welding process (FCAW—Flux Cored Arc Welding) that could ultimately be automated for welding at great depth.

Membership in this group project remains open, and the parties intend to file additional written notification disclosing all changes in membership of this project.

Joseph H. Widmar,

*Director of Operations, Antitrust Division.*

[FR Doc. 89–5640 Filed 3–10–89; 8:45 am]

BILLING CODE 4410–01–M

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## DEPARTMENT OF LABOR

### Office of the Secretary

### Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

**Background**

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

**List of Recordkeeping/Reporting Requirements Under Review**

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

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**Comments and Questions**

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue NW., Room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New

Employment and Training Administration
New
On occasion
State or local governments
33 respondents; 33 total hours; 1 hour per response; no forms

To establish procedures to identify, account for and monitor balances of obligated "Reed Act" funds in State unemployment trust fund accounts. States with unexpended balances of Reed Act obligations are requested to certify by letter the amount of such balances as of 11/30/88 to ETA/UIS. Future obligation amounts must also be certified in a similar manner.

**Extension**

*Occupational Safety and Health Administration*

Designation of Competent Person; Log of Inspection and Tests by Competent Person
1218-0011; OSHA 73 and 74
On occasion
Businesses or other for profit; Small businesses or organizations

| Form No. | Affected public | Respondents | Frequency | Average time per response (minutes) |
|---|---|---|---|---|
| 73 | As listed above | 300 | On occasion | 5 |
| 74 | As listed above | 9,269 | On occasion | 15 |

825 total hours

To ensure that shipyard personnel do not enter confined spaces that contain oxygen deficient, toxic, or flammable atmospheres, qualified personnel must test these spaces and the results of these tests must be available to those who must enter these spaces. Shipyards, barge cleaners, and repair facilities are affected.

*Employment and Training Administration*

Business Confidential Data Request—Oil and Gas Drilling and Exploration Oilfield Services
1205-0272; ETA 9018
On occasion

Businesses or other for-profit; Small businesses or organizations 1,000 respondents; 3,000 total hours; 3 hrs. per response; 1 form Statutory requirements under the Trade Act of 1974 as amended require complete and accurate business confidential data in order to make determinations as to whether imports have contributed to worker separation. The Secretary of Labor's determinations decide if petitioning workers are eligible to apply for worker adjustment assistance.

*Mine Safety and Health Administration*

Certificate of Electrical/Noise Training, MSHA Form 5000-1
1219-0001
On occasion
Businesses and other for profit; small businesses or organizations
10,393 respondents; 1 minute per response; 208 total burden hours

MSHA Form 5000-1, Certificate of Electrical/Noise Training, is required to be used by instructors to report to MSHA for certification those persons who have satisfactorily completed either a coal mine electrical training program or a noise training course.

*Pension and Welfare Benefits Administration*

Prohibited Transaction Class Exemption 82-68
1210-0062
On occasion
Businesses and other for-profit
11,842 respondents; 1940 hours, 5 minutes per response

The class exemption allows the payment of compensation under certain conditions for the provision by an employee benefit plan fiduciary of security lending services to the plan.

*Pension and Welfare Benefits Administration*

Prohibited Transaction Class Exemption 77-8
1210-0063
Other (annually when exemption is used)
Business and other for profit; small business or organizations
8,668 responses; 1445 hours, 10 minutes per response; 0 forms

The class exemption exempts from the prohibited transaction restrictions of ERISA the sale of individual life insurance or annuity contracts by a plan to participants, relatives of participants, employers any of whose employees are covered by the plan, or other employee benefit plans which are parties in interest.

*Occupational Safety and Health Administration*

Cotton Dust Standard
1218-0061
On Occasion
Business or other for-profit, small business or organizations 597 respondents; 209,312 burden hours; 46 hours per response; 0 form

The cotton dust standard requires employers to establish and maintain accurate records of employee exposure to cotton dust, as well as medical surveillance records obtained in compliance with the provisions of the cotton dust standard. These records are used by employees, physicians, employers, and the Government; to determine the presence of byssinosis; and in determining the effectiveness of the employers' compliance efforts.

| | Proposed total burden hours | Estimated average burden hours per task |
|---|---|---|
| (A) Exposure monitoring: | | |
| (1) & (2) Initial Monitoring & Periodic Monitoring | 12,462 | .13 |
| (3) Employee Notification of monitoring results | 39,169 | .4 |
| (B) Methods of Compliance: Compliance Program & Work Practices | 160 | 16 |
| (C) Respirator Program | 81 | 0 |
| (D) Medical Surveillance: | | |
| (1) Initial Examination | | |
| Textile | 77,465 | 2.8 |
| Nontextile | 4,362 | 3.8 |
| (2) Periodic/Retesting Exams | | |
| Textile | 59,808 | 1.1 |
| Nontextile | 486 | 1.1 |
| (3) Information to the Physician | 6,941 | .083 |
| (4) Physician's Written Opinion | 6,941 | .083 |
| (E) Employee education and training | 2,800 | .5 |
| Total | 209,312 | |



*Mine Safety and Health Administration*

Applications for Approval of Sanitary Toilet Facilities (30 CFR 71.500 and 75.1712-6)
1219-0101
On occasion
Businesses and other for profit; small businesses or organizations
2 respondents; 8 hours per response; 16 total hours

Contains procedures by which manufacturers of sanitary toilet facilities may apply for, and have their product approved as permissible for use in coal mines. To gain approval, the manufacturer must submit sufficient information needed to make an effective evaluation of the sanitary features of the facilities.

**Revision**

*U.S. Department of Labor*

Occupational Wage Survey Program
1220-0007

MULTIPLE FORM/COLLECTION

| Form # | Affected public | Respondents | Frequency | Average time per response |
|---|---|---|---|---|
| AWS | | | | |
| 2751A | Private nonfarm employers | 15,000 | Annual | 60 mins. |
| 2752A | do | 15,000 | do | 15 mins. |
| 2752B | do | 15,000 | do | 30 mins. |
| 2753F | do | 15,000 | do | 1 hour and 45 mins. |
| 2753G | do | 15,000 | do | 2 hours |
| 552 | do | — | do | 2 hours |
| 2755B2 | do | 650 | do | 30 mins. |
| 2754F | do | 650 | do | 5 mins. |
| SCA | | | | |
| 2751A | do | 10,000 | do | 45 mins. |
| 2752A | do | 10,000 | do | 15 mins. |
| 2752B | do | 10,000 | do | 15 mins. |
| 2752C | do | 100 | do | 5 mins. |
| 2753F | do | 10,000 | do | 45 mins. |
| 2753G | do | 10,000 | do | 60 mins. |
| IWS | | | | |
| 2751A | do | 12,000 | do | 50 mins. |
| 2752A | do | 12,000 | do | 10 mins. |
| 2753F | do | 6,000 | do | 3 hours and 15 mins. |
| 2753G | do | 6,000 | do | 2 hours and 45 mins. |
| PATC White-Collar | | | | |
| 2751A | do | 10,000 | do | 18 mins. |
| 2752A | do | 10,000 | do | 10 mins. |
| 2753F | do | 5,000 | do | 4 hours and 15 mins. |
| 2753G | do | 5,000 | do | 3 hours and 45 mins. |
| Demo. Form | do | 1,000 | do | 30 mins. |

77,198 total hours

Occupational wage survey data serve a variety of uses, including wage administration, negotiations, mediation, plant location decisions, and general economic analysis. The data are also used in the administration of the Federal Pay Comparability Act of 1970 and the Service Contract Act of 1965.

Signed at Washington, DC, this 7th day of March, 1989.

**Paul E. Larson,**

*Departmental Clearance Officer.*

[FR Doc. 89-5750 Filed 3-10-89; 8:45 am]

BILLING CODE 4510-26-M

**Employment and Training Administration**

**Job Training Partnership Act: Requirements for Acceptable Fixed Unit Price, Performance-Based Contracts**

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Notice.

**SUMMARY:** The Department of Labor is publishing its official interpretation of the requirements for writing acceptable fixed unit price, performance-based contracts which conform to the cost classification provisions of 20 CFR 629.38(e)(2) of the Job Training Partnership Act (JTPA) regulations, and other pertinent sections of JTPA and JTPA regulations.

**EFFECTIVE DATE:** July 1, 1989, to coincide with the start of Federal Program Year 1989.

**FOR FURTHER INFORMATION CONTACT:** Dolores Battle, Administrator, Office of Job Training Programs, Employment and Training Administration, Room N-4469, 200 Constitution Avenue, NW., Washington, DC 20210; or call Robert N. Colombo, Telephone: (202) 535-0577.

**SUPPLEMENTARY INFORMATION:** The Department of Labor (DOL) is publishing the following official policy intepretation of the requirements for JTPA Title II and III agreements to serve adults and youth, which are fixed unit price, performance-based contracts

BEST COPY AVAILABLE

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written under the provisions of 20 CFR 629.38(e)(2) in the current JTPA regulations. This notice follows a year-long public discussion of performance-based contracting in JTPA in a broad spectrum of forums, and in response to DOL's March 11, 1988, publication of an issues/options paper, and the August 9, 1988, publication of a proposed policy interpretation for public comment.

The March paper elicited a strong and noteworthy response from the JTPA system, in over 210 letters and position papers. These were studied and weighed by the Department prior to the August publication, which in turn generated 165 comments. The latest comments offered new points in reaction to the proposed policy interpretation and also made reference to views expressed earlier on performance contracting. The August-October comments have been fully considered by DOL in preparing the final official policy interpretation.

In a September 29, 1988, hearing of the U.S. House of Representatives' Committee on Education and Labor, a series of concerns were expressed by the General Accounting Office (GAO) that, based on results of a two-year study in progress, the JTPA system does not appear to have targeted services, particularly more intensive training, to those eligibles least ready to independently obtain jobs; that there is an important link between the quality of the training intervention provided to participants and their ability to be employed in higher skill jobs; and that on-the-job training contracts were identified which subsidized inappropriately long periods of training for jobs requiring less skilled workers.

At the same hearing, the Office of the Inspector General (OIG) of the Department of Labor provided its own independent assessment of training and accountability issues as a result of three years of its audit work. The OIG expressed concerns regarding the characteristics of participants, the impact of training received under JTPA, and the effect the OIG perceives performance-based contracting is having on program accountability. A more detailed discussion of the OIG's critique and their resultant conclusion regarding performance-based contracting will follow later in this notice.

Since a substantial number of Service Delivery Areas (SDAs) rely on performance-based agreements as their principal method of contracting for services, review of the record of JTPA programs to date in meeting the needs of at-risk individuals and the harder-to-serve portion of the JTPA-eligible population leads directly to questions concerning the impact of this particular contract mode and the impact of service provider procurement practices on overall program performance. During the past year, DOL has discussed this interconnection between performance contracting, whom the program serves, the quality of training intervention, and how Congress, the OIG and other auditors will adjudge the effectiveness of the JTPA system in addressing local and national needs for training and employment.

DOL believes that to an important extent the colloquy of the past year has been successful in developing both an appropriate policy and an understanding of the dynamics of performance contracting, and is proceeding to issue the official policy interpretation on 20 CFR 629.38(e)(2) with minor adjustments which respond to comments on the August proposed interpretation.

Since legislative proposals are now being entertained in the Congress which deal with JTPA administrative issues, including procurement, the JTPA system should be advised that this policy may serve as a interim step. A subsequent proposal for amendments to adjust JTPA in this and other areas may be made as well by the Department.

**Offical Policy Interpretation of the Requirements for Acceptable Fixed Unit Price, Performance-Based Contracts Written Under 20 CFR 629.38(e)(2)**

*Introduction*

This notice presents the Department of Labor's final official interpretation of the requirements for contracts written with JTPA service providers pursuant to 20 CFR 629.38(e)(2). It also identifies a number of policy provisions recommended for adoption by States which are not found within the specific language of 20 CFR 629.38(e)(2) and, therefore, are not required. These recommendations are, however, in the Department's judgment necessary and appropriate for the proper administration of fixed unit price, performance-based contracts given the nature of the JTPA system and of statutory design.

The official policy interpretation will follow the order of the August 9, 1988, publication of the proposed policy (53 FR 29961). The three main areas are:

—The nature of training activities properly chargeable under 20 CFR 629.38(e)(2);
—Issues surrounding current practices in the JTPA system for making payments to contractors; and
—The allowable uses for revenues in excess of costs (or "profits") realized through agreements with public and private non-profit agencies.

The statement of the official policy interpretation will be preceded by a summary of the comments received by the Department in response to the August 9 proposed policy interpretation, and by a listing of the principles which the Department followed in debating and formulating the final policy.

*Background on the Final Policy*

The policy now being issued in final form clarifies and provides greater detail regarding Federal expectations of how fixed unit price performance-based agreements are to be written under this regulation, but leaves the primary implementation of the regulation to States and to SDAs in accordance with State and local requirements and procurement codes. The decision to publish the final policy represents a continued commitment on the part of DOL to a Federal-State-local partnership between business and government to design and direct job training programs, and is consistent with original concepts for JTPA management. Since JTPA is now a mature program, with a track record of both successes and difficulties, DOL points to the general responsibility shared by all partners to address problems, and implement major adjustments and reforms as may be warranted by circumstances at the SDA, State, or national level.

In the final official policy interpretation, a good deal of flexibility has been maintained for non-Federal partners to manage JTPA under varied local structures, and to innovate in planning and operating programs as long as Federal concerns regarding the use of performance-based contracts are addressed, and there is effective compliance with procurement requirements, especially with requirements for competitive award whenever possible. SDAs and other JTPA entities which do not presently have sound procurement codes and systems in place are strongly urged to adopt new codes and modify procedures, after consulting with their State JTPA agency regarding the adequacy of any proposed system, and whether proposed changes are consistent with State policy.

DOL's official policy interpretation maintains the features outlined in the August proposed policy. Both vocationally specific and remedial skills training are authorized under the provisions of 20 CFR 629.38(e)(2) as long as training is designed to lead to placement in an occupational target. Benchmark payments for demonstrated participant attainments prior to participant placement can be the basis



of earned payments for contractors, which should facilitate greater investment in longer-term and more enriched programs for the harder-to-serve portion of the eligible population. Despite some sustained disagreement at the SDA and service provider levels with DOL's proposed policy to limit use of profits earned through performance-based agreements to additional JTPA activities, DOL's final policy defines properly earned revenues in excess of costs accrued by public and private non-profit agencies through JTPA contracts to be program income, which is to be used in accordance with JTPA regulations at 20 CFR 629.32. This will offer agencies who are successful in meeting or surpassing contract goals the incentive of gain through additional earned payments and flexibility in expanding JTPA services, but will preclude a loss in accountability for JTPA resources and possible abuse through the channeling of unrestricted-use profits into activities and enterprises not related to JTPA's statutory purpose.

Other references on performance-based contracting under JTPA include:

1. The March 15, 1983, implementation regulations for JTPA [48 FR 11061], which contained the provisions of 20 CFR 629.38(e)(2) governing the use of fixed unit price, performance contracts.

This section of JTPA regulations established conditions for contracts written for training that were fixed unit price and specified the following performance criteria for full payment:

Participants are to complete training:
—Be placed;
—In the occupation trained for;
—At not less than the wage specified in the agreement.

The source of this regulation was an administrative action on the part of DOL to transfer into JTPA an identical provision from the Comprehensive Employment and Training Act (CETA) regulations. The CETA regulation had been adopted after the enactment of the CETA Amendments of 1978, to give flexibility to certain private sector trainers to bid on a fixed price basis for performance-based training contracts without being required to break out the administrative cost component of their fixed price total.

2. The June 15, 1985 revision to JTPA Regulations (50 FR 24764), to incorporate a provision of section 131(d)(3) of JTPA on training packages for youth.

This revision resulted from section 7 of Carl Perkins Vocational Education Act of 1984, Pub. L. 98-524.

3. Training and Employment Guidance Letter (TEGL) 3-87 of November 18, 1987, entitled "Mounting Concerns Regarding 'Problem Contracts' Written under 20 CFR 629.38(e)(2)."

The TEGL resulted from a 6-month review to examine current practices in the JTPA system regarding administration of fixed unit price, performance-based contracts, and procurement systems in general. In some localities, a vacuum existed which made poor procurements, loosely written agreements not conforming fully to 20 CFR 629.38(e)(2), and questionable administrative arrangements possible. In the TEGL, DOL described a series of problems that had been identified with fixed unit price performance-based agreements, enumerated types of "problem contracts," and asked for the cooperation of States, SDAs and PICs to examine local contracting practices, focusing on compliance with procurement codes.

4. "Policy Considerations in Administering JTPA Regulations on Fixed Unit Price, Performance-Based Contracts," a February 1988 issues/options paper which was published as a Notice for 30-day comment in the **Federal Register** on March 11, 1988 (53 FR 7989).

This paper presented for public review and comment an analysis of the main issues and the Department's options for policy guidance and regulatory interpretation, or new rulemaking. The paper was released to public interest groups and was the basis for a briefing for Congressional staff from House and Senate Committees.

*Comments on the August Publication of the Proposed Policy*

Letters and detailed statements of comment were received from a total of 165 respondents, as follows:

31 States
59 Service Delivery Areas
13 Private Industry Councils
46 Service providers
7 National organizations/public interest groups
3 Members of Congress
2 Private citizens
4 Other

In general, comments were submitted by many of the same parties that had commented extensively on the March 11 Issues/Options paper publication, and commenters whose views on particular points had not changed referred to their earlier statements. Many commenters, especially a number of States, took an overall positive approach to the proposed policy, and their areas of agreement or acceptance of proposed policy were reflected in shorter comment statements. Most commenters noted DOL's evident commitment to consultaiton with its partners in the JTPA system, and DOL's incorporation of commenters' input in developing the proposed policy. There were, however, a substantial number of commenters remaining in disagreement with DOL's proposed policy, or specific portions of the proposed policy. Particularly at the SDA and service provider levels, objections were raised to any DOL policy which would limit local options in contracting under 20 CFR 629.38(e)(2) or in the use of excess revenues/"profits" generated by public and private non-profit agencies through fixed unit price, performance-based agreements.

Since the DOL official policy interpretation is of the existing JTPA regulations at 20 CFR 629.38(e)(2) and not a rewriting of JTPA regulations, a number of commenters raised potential difficulties that could develop during the conduct of audits of JTPA activities by SDAs, States, and by other auditors, should auditors apply the interpretation rather than the JTPA regulation itself in determining whether specific costs incurred under fixed unit price, performance-based contracts were allowable costs.

In the "Basic Principles" section of the Final Official Policy Interpretation, DOL has clarified that the regulation at 20 CFR 629.38(e)(2) and other applicable regulations are the proper basis for audit findings. The JTPA regulations do, however, grant binding status to the guidelines adopted by the Governor "to the extent such as consistent with Act and applicable rules and regulations" (20 CFR 627.1), and establish the authority of State rules and regulations in determining the allowability of costs (20 CFR 629.37(a)). Therefore, recipients and subrecipients operating fixed unit price, performance-based agreements must comply with Federal law and regulations, and State laws, regulations and guidelines for the purpose of audit. Importantly, this includes all State and local procurement codes and requirements in effect at the time of a JTPA procurement.

While the official policy interpretation is not intended to serve as a separate standard for the purpose of conducting financial audits, it is the official interpretation of the Department's regulations and could be brought to bear in an audit. DOL will apply this interpretation nationwide through oversight of State JTPA systems and programs. States are to use this interpretation and related State policy issuances when monitoring SDAs and their subrecipients, and in other State oversight activities.

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Prior to the September 29 Congressional hearing, the Department's OIG commented formally on the August 9 proposed policy, recommending that the JTPA regulation at 20 CFR 629.38(e)(2) be eliminated. The OIG noted its position was based on "the result of a significant amount of audit work in the area of JTPA fixed unit price contracting," and its concerns that the intent of Congress regarding Section 106 of JTPA, "Limitations on certain costs," be met. The Employment and Training Administration respects the OIG's perspective and its concerns for accountability, but has recognized since the summer of 1987 that any regulatory move to eliminate fixed unit price agreements written under 20 CFR 629.38(e)(2) so as to be chargeable 100 percent to the training cost category would be profoundly disruptive to the JTPA system, both philosophically and practically. As indicated in earlier publications, the Department is fully aware of the strong preference on the part of many PICs for a rewards-sanctions, payment for documented performance approach in the procurement of service providers. This philosophy evolved early in the implementation of JTPA, as an extension of the performance standards-driven design of the Act, and pursuant to rules and guidelines for allowability of costs and for procurement issued by States under the Governor's authority.

As a practical matter, it would not appear possible to eliminate the provisions of paragraph (e)(2) of § 629.38, without full consideration of the likely impact on SDAs at this time, nearly 5 years after JTPA was implemented. Small and mid-sized jurisdictions, which chose to become service delivery areas and are now fully institutionalized and have private-sector volunteers committed to locally directed programs, would experience a serious crisis if the flexibility of 20 CFR 629.38(e)(2) were eliminated, and local public or private resources were not available to subsidize overhead. Any decision to return to mandatory allocation of all contract costs, including those written as fixed unit price, performance-based agreements, would, in the Department's view, occur most appropriately at the time of future legislative amendment, when this decision could be made in conjunction with overall considerations of the delivery system structure, the nature of costs, and desired program results.

The OIG further recommended in its comments that, should 20 CFR 629.38(e)(2) be retained, the regulation be amended to incorporate DOL's new clarifying language and standards of accountability directly into the regulation. The Employment and Training Administration (ETA) has openly discussed this possibility with the JTPA community during the dialogue of the past year, and has concluded that Federal efforts to obtain the cooperation of State and local partners to review and as necessary improve contracting practices have been largely successful. The response of the JTPA system, while frequently expressing misgivings about a perceived change in the Federal role, has impressed the Department with the commitment of the commenters to their programs, and the quality of study that has been directed towards the questions of performance contracting and procurement in general. It would appear that on a decentralized basis, States and SDAs have improved practices, initiated new policies, and have begun monitoring compliance with local, legally required procurement systems in a way that substantially addresses the OIG's valid interest in more complete accountability. The Department plans, resultantly, to take the OIG's recommendation for regulatory amendment under advisement, and await developments during the next program year to determine whether States, SDAs, and service providers have complied with the official interpretation of 20 CFR 629.38(e)(2), or whether a revision of the regulation specifying Federal-level definitions and controls is necessary.

**Training Activities Chargeable Under 20 CFR 629.38(e)(2)**

Taken together, commenters expressed strong support for the concept of core training in performance-based contracting, which may be either occupational training or basic skills/remediation training geared to make participants employment competent. In the final policy, DOL has clarified that the "retraining services" enumerated under Section 314(d)(1) of the Economic Dislocation and Worker Adjustment Assistance Act (EDWAA) (Title VI Subtitle D, Pub. L. 100-418, 102 Stat. 1107) will satisfy this *core* training requirement, with the exclusion of out-of-area job search and relocation (Section 314 (d)(1), items (D) and (E)). The final policy also emphasizes that core training must be the primary purpose of contracts written under the 20 CFR 629.38(e)(2) regulation.

A number of commenters, especially at the SDA and service provider levels, argued that it is impractical and prohibitively burdensome for the Department's interpretation to require that each contract separately price each training curriculum to be provided under a contract charged per 20 CFR 629.38(e)(2). Contracts may be written for program-year long training services from a community college, for example, without knowing in advance the specific training needs and, thus, curricula that individual JTPA participants will require to successfully compete for local employment. The Department has decided to accept the rationale offered by several commenters that a tightly drawn proposal for training can be constructed, based on planned types of training to be offered, the duration of each type, and instructional, material and facility costs involved. Such a proposal can specify a proposed fixed unit price for each type of training curriculum, which then can be assessed for price reasonableness during the analysis of proposed costs required by the State/local procurement system, prior to award. The final official policy interpretation has been adjusted accordingly.

The Department reviewed comments on the proposed policy's requirement for specification of the elements of training packages charged under 20 CFR 629.38(e)(2). The Department believes that the training package concept as outlined contains sufficient flexibility for service providers to tailor an individual participant's program, while requiring the level of detail needed for proposers to construct a price and the JTPA procurement officers to determine price reasonableness.

The August 9 proposed policy under "Specifications for acceptable contracts" did not, in the view of many commenters, adequately allow for the realities of on-the-job training (OJT) agreements. As was the case earlier in the development of DOL's performance-based contracting policy, the arguments put forth suggested that DOL rethink its position. DOL has in the past assumed that OJT agreements would most naturally continue to be in the form of cost reimbursable contracts written directly with private employer trainers, or in the form of cost reimbursable general contracts written with one agency, community organization, or for-profit entity which in turn develops and writes specific OJT contracts with interested employers. Having shifted to the performance contracting mode as the preferred method, many SDAs and PICs contract the OJT portion of their overall JTPA system using fixed unit price, performance-based contracts. DOL's proposed policy requiring contract specificity in OJT would apply equally to any general OJT contract written by an SDA, and commenters



pointed out that the policy as proposed would effectively preclude a performance-based general contract enabling small-sized contracts, geographically dispersed with rural employers, and contracts for immediate training positions developed with employers on a short turn around basis.

The Department has strongly encouraged maximal use of OJT in JTPA programs, research under JTPA and previous program legislation having demonstrated that this method of training on the average to be the most effective pathway to placement, retention and long-term wage gain for eligible trainees. Further, DOL understands that a general contractor is frequently used to market OJT, develop contracts, and often provide centralized participant recruitment, counseling services, alternative placement, if needed, and retention followup. Consistent with DOL's present emphasis, a general contractor might be responsible to provide ancillary basic skill remediation which the harder-to-serve portion of the local JTPA-eligible population may require in order to successfully participate in OJT. Given these considerations, the section "Specifications for acceptable contracts" has been revised to include a new discussion on OJT contracts, which lays out guidelines for acceptable general contractor arrangements for OJT written on a fixed unit price basis under 20 CFR 629.38(e)(2).

Most commenters endorsed DOL's recommendation that States establish policies for performance-based agreements to be structured to serve more of the harder-to-serve in the local eligible population, through expanded skill remediation capabilities and adjustments to the unit price to reflect costs and performance risks undertaken in successfully training and placing such persons. Several commenters stated that focus on the harder-to-serve might deflect JTPA away from higher skill job opportunities and the technical training needed to prepare for these jobs. The challenge to prepare the JTPA population for emerging jobs is generally recognized in the employment and training community to be an unavoidable dynamic of the changing labor market, and "creaming" strategies or low-investment training interventions, while possible in the short run, will in the longer run fail both local employers and local JTPA-eligible jobseekers. PICs and SDA managers can use their procurement process, whether through cost reimbursement or fixed price, performance-based contracts, to refocus their JTPA system on longer term interventions. An SDA's proposal solicitation can specify not only increased investment of JTPA funds in training, but also put a premium on outside training, services, and support that a proposer may be able to leverage with JTPA dollars, for a total approach that better enables participants to remain in and benefit from longer skill training.

The August 9 proposed policy's provision regarding umbrella contracts (and contracts termed "blanket" and "comprehensive service") caused a number of SDAs and several States with large rural districts to disagree. The Department believes that it is possible to write broad-based training contracts carefully so that the contracts conform to all of the requirements for acceptable fixed price contracts chargeable to training under 20 CFR 629.38(e)(2), with additional effort in proposal development and in procurement review. If it does not appear possible to conform with these guidelines within a given locality, it is not acceptable to the Department that such agreements be entered into, reflecting a lack of the full specificity regarding deliverables which is required for any contract to be priced during procurement. The Department will not make it easy to contract for undefined services by condoning the use of the administrative cost flexibility under 20 CFR 629.38(e)(2), so that such a contract is chargeable 100 percent to the training cost category. No change has been made, therefore, in this provision for the final policy interpretation.

**Payments to Contractors**

The body of comments on this section of the proposed policy were reviewed to determine what adjustments, in balance, should be made to arrive at a responsible final policy. The Department has made several adjustments.

On the question of the amount of the total contract that should be held back to "ride" on the full performance, placement record of the contractor, a national organization and a number of service providers expressed concern that SDAs and other contracting agencies may establish excessively high holdbacks that could drive service providers without other cash reserves out of the JTPA business. DOL understands the argument that excessively close-fisted policies also can actually drive up unit prices for the same deliverables, as a result of greater payment delay and carrying costs for those contractors willing to bid. Language has been added to the provision on payments withheld to suggest that States and SDAs consider these possible disincentives to community based service providers when establishing or revising their holdback policies.

One commenter raised an important question regarding the need of recipients and subrecipients to maintain records allowing for the proper allocation of costs charged to JTPA should a fixed unit price, performance-based contract be found not to have met the provisions specified at 20 CFR 629.38(e)(2), or should the contract have failed to meet a preestablished performance threshold and not qualify under State/SDA rules to be charged 100 percent to the training cost category.

In considering this comment, DOL has reviewed requirements that have applied to all of JTPA since the inception of programs under the Act. The March 15, 1983 regulations [48 FR 11080-11083] contain a number of important references to the types of records necesary for a subrecipient to collect and maintain in order to demonstrate compliance with the Act and those rules, interpretations and definitions adopted by the State in accordance with the Governor's authority (20 CFR 627.1). At 20 CFR 629.35, in paragraph (a), the Governor is directed to ensure that financial systems within the State provide fiscal control and accounting procedures sufficient to permit the tracing of expenditures to establish that funds have not been used in violation of any restrictions on their use. Paragraphs (e) through (f) of this subsection indicate the State's responsibility to see that all financial, participant and others records and supporting documentation are maintained for a period of three years.

The JTPA regulation at 20 CFR 629.38(a) and (b) provides that allowable costs shall be charged against the training, administration, and participant support cost categories, and properly allocated. Paragraphs (c) and (d) outline the Governor's responsibility to ensure that programs administered at the State level and the SDA level "plan, control, and charge expenditures against the afforementioned cost categories." This same language is repeated at 20 CFR 631.13(a)(1) and (2), in "Additional Title III Administrative Standards and Procedures." Therefore, States have an ongoing responsibility to issue specific cost accounting and recordkeeping requirements to SDAs and statewide programs within the State, so that all JTPA programs, including those contracted for on a fixed unit price, performance basis, can demonstrate expenditures have been controlled against applicable cost limits.

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A related recordkeeping requirement regards the treatment of program income under State rules. Since as discussed elsewhere in this policy interpretation, revenue in excess of cost accrued by public and private non-profit agencies through performance-based agreements has been determined by DOL to be program income, State accounting and recordkeeping requirements established under 20 CFR 629.32, "program income" are to include a method for determining what amount of program income has been accrued by contractors, and a method for maintaining records on the expenditure of such income.

A number of commenters indicated difficulty accommodating themselves to the failed contract concept which was strongly recommended under "Threshold for Contract Performance in Order to Qualify for Provisions at 20 CFR 629.38(e)(2)." Among these commenters were several who make a strong case that "failed contracts" is in fact a front-end, procurement award problem, and noted that improved proposal review should eliminate service providers incapable of placement results. Other stated that contractors who achieve unacceptably low placement records will, under local SDA policies, earn very little payment. The Department introduced the concept in the August 9 publication precisely because it has been seen possible under some payment policies for a contractor to fail to place most participants per a performance contract's goals, but still be substantially reimbursed for costs.

In this circumstance, the Department does not believe the contract to be truly "performance based" and, therefore, concludes that the cost of such a failed contract should be allocated among the regular JTPA cost categories of administration, services, and training. In the proposed policy, the Department did not peg a performance threshold at which "failure" occurs, considering this question one best taken up by States and SDAs in the context of improvements to their procurement systems. Some SDAs with smaller allocations have indicated that the size of their normal 15 percent administrative budget does not allow much leeway should a contract written under 20 CFR 629.38(e)(2) be later deemed to fail, and find unacceptable the fiscal uncertainty that they might inadvertently exceed their administrative allowance and owe the Federal Government for an overexpenditure. After weighing these comments, the Department has adjusted the wording for this provision from "strongly recommends" to "recommends", with the suggestion that jurisdictions not able to incorporate this provision recognize the particular emphasis they must place on proposal review and on sound practices for payments earned prior to full performance.

The Department does not believe it prudent to endorse non-contingent benchmark payments for intake, enrollment, and assessment activities performed by contractors. Local policies can provide for up-front advances to contractors needing funds to cover this portion of their program, and advances can be offset by contractor earnings once measurable benchmarks involving participant attainments in actual training are achieved. On the other hand, the Department having accepted the extensive arguments offered by States, SDAs, and national organizations that benchmark payments for measurable pre-placement attainments could be legitimately earned if payment was made for documented benchmarks, there would appear to be no benefit to now encourage or require States to adopt policies advocated by one commenter which would treat all payments prior to full performance as a form of advance, not earned but contingent on placement.

In response to a number of commenters, the Department still believes that the matter of trainees who drop out prior to completing their training but who self-place in the general occupational field is relevant in determining what a contractor might earn for providing a segment of training before the participant quit the program and, therefore, should logically be reflected in a reduced full payment.

**Revenues in Excess of Costs Accrued by Public and Private Non-Profit Agencies**

The Department believes that the position taken in the August 9 proposed policy interpretation is the right position, and is not dissuaded from its position by comments received from a number of respected sources in the JTPA community. Properly earned revenues in excess of costs realized by public and private non-profit agencies through the provision of JTPA services under performance-based contracts should properly be classified as program income, and administered consistent with the purposes of JTPA and in accordance with State policy. The principle of gain is maintained; an agency earning program income has the flexibility to expand its JTPA activities, initiating additional training or experimenting with new training approaches. The concept of free-use profit, which could be diverted from JTPA purposes to other functions and purposes of an agency, is not acceptable to DOL nor to Congressional commenters, regardless of the worth of many of the intended non-JTPA related uses that have been described. The Department agrees with a number of commenters that the question of excessive profits is a separate and important question, applying equally to contracts with private for-profit service providers as well as private non-profit and public agencies excessive profits are controlled through strong procurement systems, which emphasize competition whenever possible; which require proposals to specify all training, services and other deliverables to be provided; which require contracts to be carefully written to preclude low-option services billed as full price interventions; and which carefully evaluate the reasonableness of proposed costs before contracts are awarded. To preserve the soundness of the JTPA system, it is necessary both to ensure that contractor profits are reasonable, given the risks and costs involved, and that public and private non-profit sector organizations do not divert JTPA's limited resources for other purposes.

**Official Interpretation of the Requirements of 20 CFR 629.38(e)(2)**

Basic Principles of the Department in Establishing an Official Policy Interpretation:

—The Department of Labor's overall objective is to provide operational guidance within the framework of the current 20 CFR 629.38(e)(2) regulation, but proper administration of performance-based contracts calls for the establishment of some new policies, which DOL will recommend for State adoption.

—Since the purpose of the policy interpretation is to provide operational guidance on the application of fixed unit price contracting under the existing JTPA regulation at 20 CFR 629.38(e)(2), it should be clarified that DOL did not prepare the policy interpretation to serve as a standard for conducting financial audits, but as the official interpretation of the Department's regulations, this policy could be brought to bear in an audit. Also, it should be noted that financial audits will continue to be performed based on the requirements of Federal law, the JTPA Act and regulations, and compliance with State law, State/local procurement codes and other applicable State/local policies (including provisions governing competition, sole-source awards,



proposal evaluation, documentation of the reasonableness of proposed costs, etc.). All State regulations and official policies issued pursuant to the Governor's authority to establish within-State requirements for JTPA programs provide an appropriate, legally binding basis for State and Federal financial audits.

—DOL will apply this policy interpretation through its oversight of State JTPA systems and program administration. States are to utilize the DOL policy interpretation and any related State policy issuances in conducting monitoring and State oversight of SDAs and subrecipients. DOL will also apply the policy interpretation in the field through the special review work and in-depth program reviews DOL conducts at the State and substate levels from time to time.

—There is no entitlement on the part of the system to the use of performance-based contracts per 20 CFR 629.38(e)(2). It is available only if DOL and State specifications for these contracts are met.

—Performance-based contracting can enhance the capabilities of the JTPA system only when it is implemented carefully within the structure of good State/SDA procurement systems and policies. Poor procurement systems, or failure to comply fully with systems undermines the validity of the concept. Performance-based agreements should be procured competitively, whenever practicable. It is the Department's expectation that sole-source procurements will be made in an objective manner and fully documented, in accordance with sound State/SDA systems.

—The Department continues to maintain that properly written, performance-based contracts under 20 CFR 629.38(e)(2) are not required to separately report or break out administrative costs for reimbursement or routine accounting purposes. However, as provided under JTPA regulations at 20 CFR 629.35 and subsections 629.38(a) through (d) and 631.13(a), sufficient records must be maintained to allow costs to be properly charged should the contractor fail to meet the provisions of 20 CFR 629.38(e)(2) or applicable State procurement policy.

—In exchange for the advantage offered by the performance contracting mode, the JTPA system must accept that risk is an inherent feature, both for service providers and SDAs.

—DOL is committed to maintaining the opportunity for rewards and incentives for successful operators, but recognizes that public and private non-profit agency excess revenue accruing from contracts must remain within the JTPA system.

—The new policy framework for performance-based contracts should be undertaken within the context of current policy objectives for the JTPA system, namely: increase the level of participation of at-risk populations in the program; increase the quality of the training intervention; expand the amount of basic skills training being provided; and thus improve the quality of placements for JTPA participants.

—The Department has undertaken the establishment of new policy on performance-based contracting collegially, making clear DOL objectives and DOL's rethinking and reformulation of issues, with the goal that the JTPA system fully understand and accept DOL's objectives even if there is not full agreement on all aspects of the Department's interpretation.

—Explicit instruction needs to be provided by both DOL and States on the elements necessary for an acceptable performance-based contract.

—It is clear that technical assistance is needed for procurement in general and specifically for the new performance-based contracting policy. This may include assistance to States in setting rules.

States and SDAs should implement DOL's interpretations and policy guidance regarding 20 CFR 629.38(e)(2) within the framework of the principles stated above.

*Elements of the Department's Interpretation*

I. Training Activities Chargeable

A. Definition of allowable adult and youth training activities for the purposes of 20 CFR 629.38(e)(2):

• Training must consist of a core of either occupational training or basic skills/remediation training, or both. For programs authorized under the EDWAA amendments to JTPA, core training will consist of the activities authorized under JTPA section 314(d)(1), "retraining services", with the exclusion of out-of-area job search and relocation (section 314(d)(1), items (D)(E)). The provision of core training activities must be the primary purpose of contracts written under this regulation governing fixed unit price, performance-based agreements charged 100 percent to the JTPA cost category.

• All training must be geared to make participants employment compentent and must be tied to a specific or a general occupational target. This training need not involve a specific job title, but can encompass a range of jobs with similar entry requirements.

• Placement must be at or above the specific wage in the agreement, and reflect an appropriate entry wage rate for the specific or general occupational target, given the relative skill level of trainees. Again, this can mean a range of jobs. For example, the skills needed for a data entry technician allow entry into jobs with different occupational titles and types of companies.

B. Clarification of the allowability of training packages for the purposes of 20 CFR 629.38(e)(2):

Acceptable elements may include but are not limited to outreach, intake, skill assessment and employability development planning, participant services, basic skills development, counseling, pre-employment/work maturity training, job search assistance, and followup services, provided that a core of basic skills and/or specific occupational training per I.A. above is the primary purpose of the contract. Also, the program must be designed for all participants to receive the core training.

C. Specifications for acceptable fixed unit price, performance-based contracts:

• In general, these contracts are to be written in accordance with sound procurement practices and applicable codes. This includes methods for assuring arm's length negotiation of contracts, proposal review which verifies and documents the reasonableness of proposed costs, and, whenever possible, competition for award.

• Each contract must clearly list and separately price each type of training curriculum to be provided. Curricula are to be priced by type, duration, and other factors governing instructional costs, material costs, or facility costs, and each contract must specify the fixed unit price of each type of planned training.

All elements constituting the training package must be clearly spelled out in the contract. This includes the course schedule for each element, the hours and/or the numbers of weeks of training, the expected number of participants who would require the element, the policy regarding non-completers and the measurable outcome.

• Pursuant to State/SDA policies, the contract must clearly indicate the organization which is providing the training, participant services and administration being charged to the contract. Care is to be given to assuring

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that only those administrative costs attributable to the training are chargeable under the contract. However, DOL is not promulgating a Federal requirement stipulating that performance-based contract document separately list administrative costs, or requiring a separate reporting of actual administrative costs.

• Job Search Assistance (JSA) designs. Services and participant sequences that do *not* involve core training per I.A. above such as JSA-only interventions, are not chargeable under the 20 CFR 629.38(e)(2) regulation.

• On-the-Job Training (OJT). When written as fixed unit price, performance-based contracts rather than as cost-reimbursable agreements, it is recommended that contracts for OJT be written directly with the employer or other service provider whenever possible, particularly in the case of large contracts and those developed in advance. However, in order to facilitate the writing of small OJT agreements, especially contracts for one or small groups of trainees and to facilitate offering OJT through interested employers across large, less populated SDAs, it is also acceptable for OJT agreements to be developed during the program year pursuant to one general contract with a public agency, community based organization, or other JTPA service provider, provided that the general contract specifies the types and duration of OJT to be developed and other services to be performed so that proposed costs can be fairly analyzed, and that the awarding of the general contract is in accordance with State/local procurement requirements. Additionally, a general contract for OJT must identify whatever outreach, recruitment, participant training, counseling, placement, followup or other services the general contractor agrees to provide within its own organization, what will be provided by the employers actually conducting the OJT, and what planned services may be provided with or without cost by the other agencies and subcontractors. The general contractor must be required to ensure the reasonableness of all elements of subcontractor cost, and document its subcontract negotiations.

In addition to clear delineation of deliverables, providers, and costs, a general contract for OJT must be priced using some rational method, for example, based on local historical costs for OJT, and factoring in the cost of any enhancements through outside skill remediation or any new services planned to improve upon local OJT quality and placement retention.

• Further, it is strongly recommended that States establish policies for performance-based contracts to be designed to accommodate and encourage service to more at-risk populations. This might involve an additional adjustment to the unit price to provide increased financial incentive for training and placing a more at-risk population.

D. Allowability of Umbrella Contracts:

All contracts, including umbrella, blanket, or comprehensive service contracts must meet the requirements of elements I.A., B., and C. above in order to qualify for the cost charging provisions under 20 CFR 629.38(e)(2). The costs of fixed unit price, performance-based agreements which do not satisfy these requirements must be allocated among the normal JTPA cost categories of training, participant support, and administration.

E. Clarification Regarding Training Packages for Youth:

Contracts may be written under 20 CFR 629.38(e)(2) for training packages for youth, which stipulate full performance as attainment of one or more PIC-recognized competency skill areas per the list of positive outcomes found in Section 106(b)(2) of JTPA, or if the training results in employment.

**II. Payments to Contractors Under 20 CFR 629.38(e)(2)**

A. Full Payment. Full payment of the full unit price must be contingent upon:

• Completion of training;

• Placement in the occupation trained for or within a general occupational target;

• At not less than the wage rate specified in the agreement.

Also, the Department recommends (but does not require) that States/SDAs set a policy indicating this wage rate should reflect the entry level wage for the occupational target.

• The agreement must provide for a method to reduce payment in cases where individuals do not complete the training but do place successfully in an occupation specified, or complete the training and are placed below the specified wage level. For example, a participant is word processing drops out in the fifth week of a 10-week training program, but obtains a training related job within the general occupational target at or above the specified wage.

Further, the Department recommends (but does not require) that State/SDA policies provide that participants who leave before entering core training per I.A. above either

—Cannot be the basis of any payment earned by the contractor; or

—Are only the basis for earned payments that are apportioned or prorated among the regular JTPA cost categories, and not charged 100 percent to training.

B. Partial earned payments for attainment of performance benchmarks. The Department has determined that in specific circumstances performance short of full peformance/placement can be the basis of earned payments for partial performance when:

• The performance is measureable and documented and include training per I.A. above;

• The payment schedule amount for any intermediate benchmark is not more than the estimated costs of providing that increment of the planned training. However, the subtotal of possible payment schedule amounts for all performance benchmarks prior to full performance/placement must be clearly less than the point at which the contractor's costs are covered, in order to ensure the principle of contractor risk and to stimulate contractor performance to earn full payment.

• Costs associated with intake, enrollment and assessment activities alone without participation in core training can not be the basis of earned benchmark payments chargeable 100 percent to the training cost category per 20 CFR 629.38(e)(2).

C. Advance Payments. All payments made to contractors prior to full performance/placement that do not conform to the above requirements for benchmarks must be considered advances contingent on the full performance/placement record of the contract.

D. Guidance on Payments to be Withheld Prior to Full Performance. Whether payments made to contractors prior to full performance/placement are advance payments or partial earned payments for the attainment of performance benchmarks, in principle a significant portion of the total fixed price should be held back until earned through placement. States and SDAs have latitude to adjust the amount held back to accommodate longer-term and more intensive programs serving at-risk populations, recognizing the operational needs of contractors for funds. As a matter of general guidance, an amount equal to 25 to 30 precent of the total contract cost would appear to be a prudent and significant holdback level, well below reimbursement of total contractor expenses, and insuring that contracts are consistent with the performance-based contracting concept of risk prior to full performance.

Conversely, States and SDAs should recognize the disincentive effect that parsimonious payment policies and holdbacks might have on their potential JTPA service providers. A balance needs to be struck between natural PIC/SDA interests in ensuring contractor performance, and good judgment in administering policies that are amenable to responsible potential deliverers, including community based organizations.

E. Threshold for Contract Performance in Order to Qualify for Provisions at 20 CFR 629.38(e)(2).

In the Department's consideration of payment issues, it was determined that there is a level of contract placement performance below which the contract should be viewed as failed. Failed contracts should not be afforded under State/SDA policies the advantage of assigning all costs to training according to the provisions of 20 CFR 629.38(e)(2). Therefore, the Department recommends (but does not require) that States and SDAs define a threshold level of placement performance below which a performance-based contract written under 20 CFR 629.38(e)(2) would be determined to have failed. States and SDAs should establish procedures for properly charging of all costs of such failed contracts among the regular three JTPA cost categories. This threshold level should be appropriately specified, taking into account greater or lesser contractor risk in terms of length, complexity of training, and the population to be served by a contract.

F. Direct Contracts Versus Tiered Administrative Structures. Contracts which qualify for the cost allocation provisions of 20 CFR 629.38(e)(2) are contracts for the direct provision of training by an agency, institution, or business, and must not, with the exception of OJT as dicussed in section I. of this policy interpretation, involve intermediary administrative entities. Such an entity, if needed, are to be charged to the administrative cost category. This element of DOL's interpretation does not preclude subcontracting on a fee payment or on a cost reimbursement basis by the training contractor of some specialized client services if this is determined to be more effective and efficient, and is authorized by State/SDA policies and the contract document.

**III. Revenues in Excess of Costs, or "Profits"**

Public or private non-profit contractor revenues in excess of costs (which have been properly earned) are to be treated as program income pursuant to 20 CFR 629.32. Accordingly, these funds may be retained by the service provider (or by the SDA or the Governor) to underwrite additional training or training related services pursuant to the project or program which generated them, consistent with the purposes of JTPA. As with other JTPA program income, contractors are to comply with State accounting and recordkeeping requirements, so that the amount of program income accured by the contractor can be determined, and the contractor maintains records which account for the use of these funds, in anticipation of possible audit.

**Conclusion**

The above final official policy interpretation on contracting under the 20 CFR 629.38(e)(2) regulation follows a long consultative process during which the Department, and later other Federal agencies, have presented concerns regarding the acceptability of some of the applications extant in the JTPA system, and have raised larger and related questions about procurement practrices in general, and what training the JTPA system produces for eligible persons needing training and jobs. States, SDAs and private sector volunteers who partner with the Federal Government and make JTPA happen have shared a considerable amount of information with the Department describing the realities of training contracts, and how they believe the flexibility 20 CFR 629.38(e)(2) can be legitimately used. Commenters have touched on nearly all aspects of program operations in their correspondence, given the extent of performance contracting today. The Department appreciates the great amount of thinking that went into the response from the system, and particularly the effort to have performance-based contracting understood in context. DOL believes that States and SDAs have exhibited a willingness to respond not only with discussion, but with changes and improvements that are now completed or in progress. The dialogue has been very educational for DOL, and as the Department developed a better understanding, it has been possible to update the agency's thinking on performance contracting and adopt modified policies without losing sight of Federal concerns for sound and defensible practices. The process of developing the final policy interpretation has been brought to this point without a modification to the present JTPA regulation at 20 CFR 629.38(e)(2), or a change in the basic partnership arrangement for the administration of JTPA which the 1983 regulations established.

Signed at Washington, DC, this 8th day of March 1989.

**Roberts T. Jones,**

*Assistant Secretary for Employment and Training.*

[FR Doc. 89-5757 Filed 3-10-89; 8:45 am]

BILLING CODE 4510-30-M



## Mine Safety and Health Administration

**[Docket No. M-89-16-C]**

### SBM Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

SBM Coal Company, R.D. 2, Box 97A, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment: general) to its M & R Slope (I.D. No. 36-05495) located in Northumberland County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cages, platforms or other devices which are used to transport persons in shafts and slopes be equipped with safety catches or other approved devices that act quickly and effectively in an emergency.

2. Petitioner states that no such safety catch or device is available for the steeply pitching and undulating slopes with numerous curves and knuckles present in the main haulage slopes of this anthracite mine.

3. Petitioner further believes that if "makeshift" safety devices were installed they would be activated on knuckles and curves when no emergency existed and cause a tumbling effect on the conveyance.

4. As an alternate method, petitioner proposes to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope, above the main connecting device. The hoisting ropes would have a factor of safety in excess of the design factor as determined by the formula specified in the American National Standard for Wire Rope for Mines.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office

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of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 12, 1989. Copies of the petition are available for inspection at that address.

Dated: March 2, 1989.

**Patricia W. Silvey,**

*Director, Office of Standards, Regulations and Variances.*

[FR Doc. 89-5751 Filed 3-10-89; 8:45 am]

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[Docket No. M-89-18-C]

**Whitley Gap Mining, Inc.; Petition for Modification of Application of Mandatory Safety Standard**

Whitley Gap Mining, Inc., P.O. Box 120, Gray, Kentucky 40734 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its Mine No. 1 (I.D. No. 15-16210) located in Knox County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on electric tractors used to load coal at the face. The monitor is required to be kept operative and properly maintained and frequently tested.

2. No methane has been detected in the mine.

3. The three-wheel tractors are permissible DC-powered machines, with no hydraulics. The bucket is a drag type, where approximately 30-40% of the coal is hand loaded. Approximately 20% of the time that the tractor is in use, it is used as a man trip and supply vehicle.

4. As an alternate method, petitioner proposes to use hand-held continuous oxygen and methane monitors instead of methane monitors on three-wheel tractors. In further support of this request, petitioner states that:

(a) Each three-wheel tractor would be equipped with a hand-held continuous monitoring methane and oxygen detector and all persons would be trained in the use of the detector;

(b) Prior to allowing the coal loading tractor in the face area, a gas test would be performed to determine the methane concentration in the atmosphere. When the elapsed time between trips does not exceed 20 minutes, the air quality would be monitored continuously after each trip. This would provide continuous monitoring of the mine atmosphere for methane to assure the detection of any methane buildup between trips;

(c) Each monitor would be removed from the mine at the end of the shift, and would be inspected and charged by a qualified person. The monitor would also be calibrated monthly.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 12, 1989.

Copies of the petition are available for inspection at that address.

Date: March 2, 1989.

**Patricia W. Silvey,**

*Director, Office of Standards, Regulations and Variances.*

[FR Doc. 89-5752 Filed 3-10-89; 8:45 am]

BILLING CODE 4510-43-M

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## NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

**Agency Information Collection Activities Under OMB Review**

**AGENCY:** National Endowment for the Arts.

**ACTION:** Notice.

**SUMMARY:** The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

**DATE:** Comments on this information collection must be submitted by April 12, 1989.

**ADDRESSES:** Send comments to Mr. Jim Houser, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Room 3002, Washington, DC 20503; (202-395-7316). In addition, copies of such comments may be sent to Mrs. Anne C. Doyle, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202-682-5401).

**FOR FURTHER INFORMATION CONTACT:** Mrs. Anne C. Doyle, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202-682-5401) from whom copies of the documents are available.

**SUPPLEMENTARY INFORMATION:** The Endowment requests a review of a new collection of information. This entry is issued by the Endowment and contains the following information:

(1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

*Title:* Resource Information/ Accessible Programs.

*Frequency of Collection:* Annually.

*Respondents:* State or local governments.

*Use:* Materials and information compiled will be used to assist Endowment grantees in making their programs more available to special constituencies. Individuals requiring assistance would be referred to a specific program in their state or region and/or sent copies of the information provided.

*Estimated Number of Respondents:* 56.

*Average Burden Hours per Response:* 2.

*Total Estimated Burden:* 112.

**Anne C. Doyle,**

*Administrative Services Division, National Endowment for the Arts.*

[FR Doc. 89-5729 Filed 3-10-89; 8:45 am]

BILLING CODE 7537-01-M

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## NATIONAL SCIENCE FOUNDATION

**Meeting; Engineering Advisory Committee**

The National Science Foundation announces the following meeting:

*Name:* Advisory Committee for Engineering.

*Date and Time:*

March 30-31, 1989

9:30 a.m.-4:45 p.m., March 30, 1989 (open)

8:00 a.m.-9:00 a.m., March 31, 1989 (closed)

9:00 a.m.-12:00 Noon, March 31, 1989 (open)

*Place:* National Science Foundation, 1800 "G" Street, NW., Room 540, Washington, DC 20550.

*Type of Meeting:* Partially Closed.



*Contact Person:* Mrs. Mary Poats, Executive Secretary, Advisory Committee for Engineering, Room 537, National Science Foundation, Washington, DC 20550, Telephone: (202) 357-9571.

*Minutes:* Mrs. Mary Poats at the above address.

*Purpose of Meeting:* To provide advice, recommendations, and counsel on major goals and policies pertaining to Engineering programs and activities.

*Reason for Closing:* The personnel matters being discussed include information of a personal nature where disclosure would constitute unwarranted invasions of personal privacy. These matters are within exemption 6 of U.S.C. 552b(c), Government in the Sunshine Act.

*Authority to Close Meeting:* The determination made on February 22, 1989 by the Director of the National Science Foundation pursuant to the provisions of section 10 (d) of Pub.L. 92-463.

*Agenda:*

*Friday, March 31, 1989, Room 540—8:00 a.m. to 9:00 a.m.—Closed*

Discussion of personnel issues.

*Thursday, March 30, 1989, Room 540—9:30 a.m. to 4:45 p.m., and Friday, March 31, 1989, Room 540—9:00 a.m. to 12:00 Noon—Open*

Discussion on issues, opportunities and future directions for the Engineering Directorate; discussion of Engineering Directorate budget situation as well as other items.

**M. Rebecca Winkler,**

*Committee Management Officer.*

[FR Doc. 89-5676 Filed 3-10-89; 8:45 am]

BILLING CODE 7555-01-M

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**Advisory Panel For Physiological Processes; Meeting**

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92 463, the National Science Foundation announces the following meeting:

*Name:* Advisory Panel for Physiological Processes.

*Date and Time:* April 3-7, 1989 8:30 a.m. to 5:00 p.m.

*Place:* Room 1243, National Science Foundation, 1800 G Street NW., Washington, DC 20550.

*Type of Meeting:* Part Open—

April 4-12:00 p.m.-1:00 p.m. (open)

April 5-12:00 p.m.-1:00 p.m. (open)

April 6-12:00 p.m.-1:00 p.m. (open)

All other times the meeting is closed.

*Contact Person:* Dr. Ernest J. Peck, Program Director, Physiological Processes, Room 321, National Science Foundation, Washington, DC 20550, Telephone (202) 357-7975.

*Purpose of Advisory Panel:* To provide advice and recommendations concerning support for research in Physiological Processes.

*Agenda:*

*Open*—General discussion of the current status and future plans of the Physiological Processes Program.

*Closed*—To review and evaluate research proposals as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

**M. Rebecca Winkler,**

*Committee Management Officer.*

[FR Doc. 89-5677 Filed 3-10-89; 8:45 am]

BILLING CODE 7555-01-M

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## NUCLEAR REGULATORY COMMISSION

**Documents Containing Reporting or Recordkeeping Requirements; Office of Management And Budget Review**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of the Office of Management and Budget review of information collection.

**SUMMARY:** The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission—new, revision, or extension: Extension.

2. The title of the information collection: Reactor Operator and Senior Rector Operator Licensing Training and Requalification Programs.

3. The form number if applicable: N/A.

4. How often the collection is required: Semi-annually and annually.

5. Who will be required to asked to report: All reactor licensees and applicants for an operating license.

6. An estimate of the number of responses: 209 annually.

7. An estimate of the total number of hours needed to complete the requirement or request: 1,099 annually; approximately 7.7 hours per response.

8. Section 3504(h), Pub. L. 96-511 does not apply.

9. Abstract: Requests copies of training and requalification material from reactor licensees/applicants. This training material will be used by appropriate NRC staff to develop operator and senior operator licensing and requalification examinations.

**ADDRESS:** Copies of the submittal will be made available for inspection or copying for a fee at the NRC Public Docment Room, 2120 L Street, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Comments and questions can be directed by mail to the OMB reviewer: Nicolas B. Garcia, Paperwork Reduction Project (3150-0101), Office of Management and Budget, Washington, DC 20503.

Comments can also be communicated by telephone at (202) 395-3084.

NRC Clearance officer is Brenda J. Shelton, (301) 492-8132.

Dated at Bethesda, Maryland, this seventh day of March, 1989.

For the Nuclear Regulatory Commission.

**Joyce A. Amenta,**

*Designated Senior Official for Informatice Resources Management.*

[FR Doc. 89-5704 Filed 3-10-89; 8:45 am]

BILLING CODE 7590-01-M

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[Docket No. 40-8964]

**EXXON Coal and Minerals Co.; Final Finding of No Significant Impact Regarding Termination of the Source and Byproduct Material License for Operation of Highland In-Situ Pilot Test Project, Converse County, WY**

March 2, 1989.

**AGENCY:** U.S. Nuclear Regulatory Commission.

**ACTION:** Notice of final finding of no significant impact.

**1. Proposed Action**

The proposed administrative action is to terminate the source and byproduct material license authorizing Exxon Coal and Minerals Company to operate the Highland In-situ Pilot Test Project facility located in Converse County, Wyoming.

**2. Reasons for Final Finding of No Significant Impact**

The Exxon Highland Pilot Test Project operated from 1978 to 1981. Groundwater restoration activities began in 1981 and continued until 1988. The

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staff's evaluation and approval of restoration activities is documented in a memorandum dated October 19, 1987.

The NRC staff approved a decommissioning plan for the Highland Project on March 18, 1988. Facility decommissioning activities were conducted between July and September 1988. The staff review of the decommissioning activities is documented in a memorandum dated March 2, 1989. Exxon requested that remaining facilities and responsibilities at the site be transferred to Everest Minerals Corporation, holder of Source and Byproduct Material License No. SUA-1511. Everest Minerals Corporation agreed to accept full responsibility for all remaining facilities by letter dated October 20, 1988.

Based on the staff reviews referenced above, the Commission has determined that no significant impact will result from the proposed administrative action. The following statements support the final finding of no significant impact and summarize the conclusions resulting from the environmental evaluations.

A. Ground-water quality at the site has been restored to background levels.

B. Facility decommissioning activities were conducted in accordance with an NRC-approved plan.

C. Remaining facilities and responsibilities at the site were transferred to Everest Minerals Corporation by issuance of an amendment to Source Material License No. SUA-1511 on February 17, 1989.

In accordance with 10 CFR Part 51.33(a), the Director, Uranium Recovery Field Office (URFO), made the determination to issue a final finding of no significant impact in the **Federal Register**. Concurrent with this finding, Source Material License SUA-1084 for the Exxon Highland Pilot Test Project will be terminated.

The environmental evaluations setting forth the basis for the finding are available for public inspection and copying at the Commission's Uranium Recovery Field Office at 730 Simms Street, Golden, Colorado, and at the Commission's Public Document Room at 1717 H Street, Washington, DC.

Dated at Denver, Colorado, this 2d day of March, 1989.

For the Nuclear Regulatory Commission.

**Edward F. Hawkins,**

*Branch Chief, Uranium Recovery Field Office, Region IV.*

[FR Doc. 89-5700 Filed 3-10-89; 8:45 am]

BILLING CODE 7590-01-M

## OFFICE OF MANAGEMENT AND BUDGET

### Circular No. A-76; Amendment

**AGENCY:** Office of Management and Budget.

**ACTION:** Issuance of Transmittal Memorandum No. 8 amending OMB Circular No. A-76, "Performance of Commercial Activities."

**SUMMARY:** This Notice contains Transmittal Memorandum No. 8, dated March 1, 1989, to Circular No. A-76, "Performance of Commercial Activities."

This Transmittal Memorandum updates the federal pay assumptions and updates the inflation factor used for computing non-pay categories (supplies, equipment, etc.) for Fiscal Years 1990 through 1994 to reflect the assumptions contained in the President's FY 1990 Budget.

The inflation factor for non-pay categories for 1994 is new. Figures for 1990 through 1993 remain at the rates specified in Transmittal Memorandum No. 6, dated March 4, 1988.

The revision does not require any agency to (1) create or maintain a duplicative control/monitoring/reporting system or (2) adopt any additional controls, not presently in compliance with the Federal Acquisition Regulations (FAR).

**FOR FURTHER INFORMATION CONTACT:** Linda Mesaros, Office of Federal Procurement Policy, Office of Management and Budget, (202) 395-3300.

**Allan V. Burman,**

*Deputy Administrator and Acting Administrator.*

Dated: February 28, 1989.

[FR Doc. 89-5646 Filed 3-10-89; 8:45 am]

BILLING CODE 3110-01-M

## POSTAL SERVICE

### Privacy Act of 1974; New System of Records

**AGENCY:** Postal Service.

**ACTION:** Notice of new system of records.

**SUMMARY:** The purpose of this document is to publish advance notice of the creation of a new system of records, USPS 040.030, "Customer Programs—Auction Customer Address File." The system will contain names and addresses of persons who wish to be on a mailing list to receive advance notice of Dead Parcel Branch auctions.

**EFFECTIVE DATE:** The proposed action will be effective without further notice on May 12, 1989, unless comments are received which would result in a contrary determination.

**ADDRESS:** Comments may be mailed to the Records Office, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260-5010, or delivered to Room 10670 at the above address between 8:15 a.m. and 4:45 p.m. Comments received also may be inspected during the above hours in Room 10670.

**FOR FURTHER INFORMATION CONTACT:** Betty Sheriff (202) 268-5158.

**SUPPLEMENTARY INFORMATION:** Dead Parcel Branches of the Postal Service must periodically conduct public auctions to dispose of unclaimed merchandise and claim-paid items. The proposed system of records will comprise a list of names and addresses of auction attendees and others who indicate a desire to be notified in advance of future auctions. Advance notice to interested persons performs a customer service while optimizing revenue from auctions conducted to dispose efficiently of dead parcel matter.

Customers desiring this service will enter their name and address on a sheet available at each auction. That information will be transferred onto an automated address file which will be accessible only by Dead Parcel Branch personnel responsible for maintaining the file and making the mailings. The possibility of infringement upon any individual's privacy rights is almost non-existent since the information collected is limited to names and addresses, is password-protected, and is subject to both the disclosure restrictions imposed by the Privacy Act as well as the Postal Reorganization Act (39 U.S.C. 412) which prohibits the Postal Service from releasing lists of postal customers.

A new system report, as required by 5 U.S.C. 552a(o) of the Privacy Act, has been submitted to OMB and Congress, pursuant to paragraph 4b of Appendix I to OMB Circular No. A-130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 1985.

Accordingly, the proposed system description follows:

**USPS 040.030**

**System Name:**

Customer Programs—Auction Customer Address File.

**System Location:**

Post offices having Dead Parcel Branches.



**Categories of Individuals Covered by the System:**

Customers who wish to be on a mailing list to receive notices of future Dead Parcel Branch auctions.

**CATEGORIES OF RECORDS COVERED BY THE SYSTEM:**

Customer names and addresses.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

39 U.S.C 401, 404.

**PURPOSE(S):**

To maintain a list of names and addresses of customers who wish to be on a mailing list to receive notices of future Dead Parcel Branch auctions.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

1. When the Postal Service becomes aware of an indication of a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, or in response to the appropriate agency's request upon a reasonable belief that a violation has occurred, the relevant records may be referred to the appropriate agency, whether Federal, State, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

2. A record from this system may be disclosed to the Department of Justice, to other counsel representing the Postal Service or in a proceeding before a court or adjudicative body before which the Postal Service is authorized to appear, when (a) the Postal Service; or (b) any postal employee in his or her official capacity; or (c) any postal employee in his or her individual capacity whom the Department of Justice has agreed to represent; or (d) the United States when it is determined that the Postal Service is likely to be affected by the litigation, is a party to litigation or has an interest in such litigation, and such records are determined by the Postal Service or its counsel to be arguably relevant to the litigation, provided, however, that in each case, the Postal Service determines that disclosure of the records is a use of the information that is compatible with the purpose for which it was collected.

3. Disclosure may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual

4. Information from this system may be disclosed to an expert consultant, or other person who is under contract to the Postal Service to fulfill an agency function, but only to the extent necessary to fulfill that function. This may include disclosure to any person with whom the Postal Service contracts to reproduce, by typing, photocopy or other means, any record for use by Postal Service officials in connection with their official duties or to any person who performs clerical or stenographic functions relating to the official business of the Postal Service.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Paper records or magnetic disks.

**RETRIEVABILITY:**

Customer name.

**SAFEGUARDS:**

Paper records and disks are kept in locked cabinets; automated data is password protected.

**RETENTION AND DISPOSAL:**

Records are kept for one year after entry and then destroyed by deletion (if automated) or by shredding (if paper).

**SYSTEM MANAGER(S) AND ADDRESS:**

APMG, Rates & Classification Department, Headquarters, Washington, DC 20260-5300.

**NOTIFICATION PROCEDURE:**

Customers wishing to know whether information about them is maintained in this system of records should address inquiries to the manager of the Dead Parcel Branch. Inquiries should contain full name and address.

**RECORD ACCESS PROCEDURE:**

Requests for access should be made in accordance with the Notification Procedure above and the USPS Privacy Act regulations regarding access to records and verification of identity set forth at 39 CFR 266.6.

**CONTESTING RECORD PROCEDURE:**

See Notification and Record Access Procedures above.

**RECORD SOURCE CATEGORIES:**

Attendees of auctions and others who ask to receive notice of future actions.

**Fred Eggleston,**

*Assistant General Counsel Legislative Division.*

[FR Doc. 89-5645 Filed 3-10-89; 8:45 am]

BILLING CODE 7710-12-M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34-26802; File No. SR-NYSE-88-44]**

### Self-Regulatory Organizations; Order Approving Proposed Rule Change by New York Stock Exchange, Inc., Relating to Amended Debt and Equity Listing Fees and the Adoption of an Advance Billing Schedule

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder,[2] the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission") on December 30, 1988, a proposed rule change to amend certain Exchange debt and equity listing fees and listed company billing procedures. In its filing, the NYSE stated that the purpose of the proposed rule change is to offset the increased costs of supplying services provided by the Exchange, including manpower, automation, utilities and other costs associated with providing marketplace facilities and services. These fees are effective commencing January 1, 1989.

Notice of the proposed rule change was provided by the issuance of a Commission release (Securities Exchange Act Release No. 26483, January 23, 1989) and by publication in the **Federal Register** (54 FR 4358, January 30, 1989). The Commission received no comments on the proposed rule change.

For purposes of the initial listing of debt issues on the NYSE, the Exchange calculates bond listing fees (including outstanding unlisted debt) on a sliding scale based on the maturity and total par value of the particular bond issue. There are four maturity ranges for purposes of the initial listing of debt issues on the NYSE: 1-5 years, 6-14 years, 15-25 years and 26 or more years. Likewise, there are four par valuation intervals for purposes of the initial listing of debt issues on the NYSE, with the base rate set at $0-$500 million par value and regressive rates set for the remaining par value increments of $250 million. Utilizing these parameters, the Exchange calculates a debt issue's initial listing fee by multiplying each one million dollars of par value by the appropriate fee assigned to the issue's maturity range.[3] Currently, bond issues

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] To illustrate this, assume that a $1,250,000,000 seven year note is listed on the Exchange. Under the proposed rule change, the issuer would be billed $202,500: the first $500-M par value at $220 per

Continued

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with a maturity of five (5) years or less are charged a rate of $100 per million dollars for the first $0–$500 million par value. Under the proposed rule change, this amount would be increased to $115. All other maturity and par valuation categories would be increased under the proposed rule change in (5) dollar increments in amounts ranging from five (5) to fifteen (15) dollars.

The Exchange is also increasing the initial and continuing fee schedules applied to NYSE-listed company equity issues. For purposes of the initial listing of equity issues on the NYSE (as well as "warrants or similar securities"), the Exchange would increase the base original listing fee for issuers from $34,700 to $36,800. In addition to the base fee, there is a minimum initial listing fee which has been increased from $1,400 to $1,500, and a per share fee, which has been increased in amounts ranging from $100 to $950 per million shares for the applicable share amount. Additionally, the maximum listing fee for stock splits has been reduced from $500,000 to $250,000, the fee charged for reincorporations has been increased from $5,000 to $5,300 and the fee charged for supplements (*i.e.*, minor information changes to previous applications) has been increased from $400 to $430.

The continuing annual fee payable each year for every equity security listed on the Exchange is equal to the greater of the per-share fee calculation or the applicable range minimums. The Exchange is increasing the per-share fee $100 per million shares for the first two million shares and $50 for each million shares in excess of two million. The Exchange is also increasing the minimum ranges in amounts ranging from $630 to $4,100. Moreover, a maximum continuing annual fee of $500,000 has been established.

Finally, the Exchange is adopting an advance billing schedule affecting initial and continuing listing fees for both debt and equity issues. The advanced billing schedule will be phased in for listed companies over a three-year period. In January 1989, all companies will receive a pro-rated bill based upon the number of calendar days from the anniversary date of listing to December 31, 1988, in addition to the fee for the first four months of 1989. In January 1990, all companies will be billed for the eight remaining months of 1989 and the first eight months of 1990. In January 1991, all companies will be billed for the four remaining months of 1990 and the full year, 1991. In January 1992, all companies will be on a twelve month advance billing schedule. All original listings will be converted immediately to the advance billing cycle. These companies will receive a pro-rated bill based upon the number of calendar days from their listing date to December 31 of the listing year.

The Commission believes that the proposed rule change is consistent with section 6(b) of the Act, and the rules and regulations thereunder applicable to a national securities exchange. More specifically, the Commission believes that the proposed rule change is consistent with section 6(b)(4) of the Act, which requires the equitable allocation of reasonable dues, fees, and other charges among Exchange members and other persons using its facilities.[4] The current increases do not appear excessive in relation to previous fees, and the Commission has not received any comments against the new fees. Accordingly, the Commission believes that it is appropriate to approve the proposed rule change.

It is Therefore Ordered, Pursuant to section 19(b)(2) of the Act, that the above mentioned rule change is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Dated: March 6, 1989.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 89-5671 Filed 3-10-89; 8:45 am]

BILLING CODE 8010-01-M

million; the next $200-$04 at $140 per million; and the final $200-$04 at $80 per million. This bill represents a 4.6 percent increase, since the issuer would have been billed $199,700 under the Exchange's 1988 fee structure.

[4] We note that the equity and bond listing fees were last increased January 1, 1988. *See* SR–NYSE–87–42 (Rel. 34–25295, January 28, 1988; 53 FR 3281, February 4, 1988) (accelerated approval of increased equity listing fees), and SR–NYSE–87–50 (Rel. 34–25313, February 4, 1988; 53 FR 4088, February 11, 1988) (approval of increased bond listing fees).

[5] *See* 17 CFR 200.30–3(a)(44).

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### Horizon Air/San Juan Airlines, Inc.; U.S.-Canada Commuter Endorsement Transfer

**AGENCY:** Office of the Secretary, DOT.

**ACTION:** Order 89–3–22, transfer of U.S.-Canada commuter endorsement, order to show cause, undocketed.

**SUMMARY:** By Order 89–3–22, the Department proposes to transfer the U.S.-Canada transborder commuter endorsements for the Seattle-Vancouver, Bellingham-Vancouver, Seattle-Victoria and Port Angeles-Victoria routes from San Juan Airlines, Inc. to Horizon Air Industries, Inc., d/b/a Horizon Air. The Department proposes to make the transfer effective upon Horizon's receipt of the requisite operating authority from the Government of Canada. The endorsements would remain in effect for a period of five years for the Bellingham-Vancouver, Seattle-Victoria and Port Angeles-Victoria routes and for the balance of the five-year endorsement currently held by San Juan for the Seattle-Vancouver route. The Department is tentatively rejecting the request of NPA, Inc., a United Express commuter, for a carrier selection case to select a carrier to serve the routes. The Department tentatively concludes that the transfer request of the carriers is analogous to a certificate route transfer case under section 401(h) of the Federal Aviation Act rather than a route award case and that NPA has presented no compelling reasons for the Department to consider this case any differently.

**DATES:** Objections to the Department's tentative decision are due March 22, 1989; answers are due not later than March 29, 1989.

**ADDRESS:** Objections and comments should be addressed to the Licensing Division, P–45, U.S. Department of Transportation, 400 Seventh Street SW., Room 6412, Washington, DC 20590 and should be served on all parties listed in ordering paragraph 6 of Order 89–3–22.

Dated: March 6, 1989.

Patrick V. Murphy, Jr.,

*Deputy Assistant Secretary for Policy and International Affairs.*

[FR Doc. 89-5732 Filed 3-10-89; 8:45 am]

BILLING CODE 4910-62-M

### Order to Show Cause; Federal Express Corporation and the Flying Tiger Line Inc.; Transfer of Certificate Authority

**AGENCY:** Department of Transportation.

**ACTION:** Tentative approval of a transfer of certificate authority pursuant to section 401(h)—Docket 46025.

**SUMMARY:** Federal Express Corporation and The Flying Tiger Line, on December 20, 1988, jointly filed an application in Docket 46025 seeking approval of the transfer of Flying Tiger's operating authority to Federal Express, pursuant to section 401(h) of the Federal Aviation Act. In Order 89–3–21, issued March 8, 1989, the Department has tentatively decided to approve the transfer of Flying Tiger's operating authority (certificate and exemption) to Federal Express. The Department is inviting interested persons to show cause why this tentative decision should not become final. Those wishing to comment on the tentative conclusions, or having objections to the issuance of an order approving the transfer of certificate authority should file a statement containing evidence and arguments in support of their comments or objections.

**DATES:** Statements containng all evidence and arguments in support of comments or objections in Docket 46025 should be filed by March 22, 1989. Answers to the comments and objections shall be due March 29, 1989. Parties to the docket listed above may obtain a service copy of the order by calling the Documentary Services Division at (202) 366–9329 or by writing to the address below.

**ADDRESSES:** Statements containing all evidence and arguments in support of comments or objections, and answers to the comments or objections should be filed in Docket 46025, addressed to the Documentary Services Divisions, U.S. Department of Transportation, 400 Seventh Street, SW., Room 4107, Washington, DC 20590, and should be served on all parties listed in that docket.

Dated: March 8, 1989.

Patrick V. Murphy,

*Deputy Assistant Secretary for Policy and International Affairs.*

[FR Doc. 89-5731 Filed 3-10-89; 8:45 am]

BILLING CODE 4910-62-M

### Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q during the Week Ended March 3, 1989.

The following application for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No.: 46148

*Date Field:* February 27, 1989.

*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* March 27, 1989.

*Description:* Application of Federal Express Corporation, pursuant to Section 401 of the Act and Subpart Q of the Regulations, requests issuance of an amended certificate of public convenience and necessity for Route 472, so as to authorize foreign air transportation of property and mail between a point or points in the United States, on the one hand, and a point or points in Canada, on the other hand, subject to conditions.

Docket No.: 46149

*Date Field:* February 28, 1989.

*Due Date for Answers, Conforming Applications, or Motions to Modify Scope:* March 28, 1989.

*Description:* Application of American Airlines, Inc., pursuant to Section 401 of the Act and Subpart Q of the Regulations, applies for a certificate of public convenience and necessity to authorize service between a point or points in the United States ad a point or points in New Zealand.

Phyllis T. Kaylor,

*Chief, Documentary Services Division.*

[FR Doc. 89-5730 Filed 3-10-89; 8:45 am]

BILLING CODE 4910-62-M

### Coast Guard

[CGD 89-018]

### Commercial Fishing Industry Vessel Advisory Committee; Meeting

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of public meeting.

**SUMMARY:** Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L. 92–463; U.S.C. App I) notice is hereby given of a meeting of the Commercial Fishing Industry Vessel Advisory Committee. The meeting will begin at 9:30 a.m. on March 29, 1989, at the Department of Transportation, 400 7th Street, SW., Washington, DC, in Room 2230. Any subcommittees formed may agree to meet on March 30th, and rooms will be arranged. The agenda is as follows:

—Introduction.
—Swearing in of members.
—Discussion of Committee purpose and Charter.
—Selection of Chairperson and Vice Chairperson.
—Introduction of USCG programs relating to fishing vessel safety.
—Administrative Procedures Act.
—Committee organizational structure.
—Implementation of the Commercial Fishing Industry Vessel Safety Act.
—Work program and establishment of subcommittees.
—Future meeting dates.
—Adjournment.

The purpose of the Committee is to provide consultation and advice to the Commandant, U.S. Coast Guard, on all areas of commercial fishing vessel safety.

The meeting is open to the public. Members of the public may present written or oral statements at the meeting.

**FOR FURTHER INFORMATION CONTACT:** Mr. Norman W. Lemley, Executive Director, Commercial Fishing Industry Advisory Committee; or LTJG Wes J. Westphal II, Marine Technical and Hazardous Materials Division (G-MTH), Room 1218, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001; or telephone (202) 267–0001.

Dated: March 3, 1989.

J.D. Sipes,

*Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.*

[FR Doc. 89-5680 Filed 3-10-89; 8:45 am]

BILLING CODE 4910-14-M

### Federal Aviation Administration

[Summary Notice No. PE–89–8]

### Petition for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of petitions for exemption received and of dispositions of prior petitions.

**SUMMARY:** Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**DATE:** Comments on petitions received must identify the petition docket number

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involved and must be received on or before: April 3, 1989.

**ADDRESS:** Send Comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

**FOR FURTHER INFORMATION CONTACT:** The petition any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on February 28, 1989.

**Denise Donohue Hall,**

*Manager, Program Management Staff, Office of the Chief Counsel.*

**Petitions for Exemption**

*Docket No.:* 25776.
*Petitioner:* Lynch Flying Service, Inc.
*Regulations Affected:* 14 CFR 43.3(g).
*Description of Relief Sought:* To allow properly certificated and trained petitioner's pilots to remove and replace passenger seats, ambulatory stretchers, and base assemblies in its Cessna 400 aircraft.

*Docket No.:* 24941
*Petitioner:* The Perris Valley Skydiving Center.
*Section of the FAR Affected:* 14 CFR 105.43.
*Description of Relief Sought/ Disposition:* To allow foreign parachutists to participate in the petitioner's parachute jumps without complying with the parachute equipment and packing requirements of § 105.43.
*Denial, February 23, 1989, Exemption No. 5021*

*Docket No.:* 24998.
*Petitioner:* Aeron International Airlines, Inc.
*Regulations Affected:* 14 CFR 121.371(a) and 121.378.
*Description of Relief Sought/ Disposition:* To extend Exemption No. 4742 that permit petitioner to contract with specific foreign repair facilities for the performance of maintenance, preventive maintenance, and alterations on certain Canadair CL-44 aircraft components, accessories, engines, and propellers.
*Grant, January 31, 1989, Exemption No. 4742A*

*Docket No.:* 25484
*Petitioner:* Bohlke International Airways.
*Sections of the FAR Affected:* 14 CFR 43.3(g).
*Description of Relief Sought/ Disposition:* To amend Exemption No. 4911 that allows appropriately trained and certificated pilots employed by the petitioner to remove and install aircraft cabin seats, and certain stretcher and base assemblies in petitioner's Aero Commander 690V and Piper Seneca aircraft. The amendment would add the Cessna 402 Aircraft to the exemption
*Grant, February 21, 1989, Exemption No. 4911A*

[FR Doc. 89-5626 Filed 3-10-89; 8:45 am]
BILLING CODE 4910-13-M

[Summary Notice No. PE-89-6]

**Petition for Exemption; Summary of Petition Received**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of petition for exemption received.

**SUMMARY:** Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of a petition received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of the FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**DATE:** Comments on petitions received must identify the petition docket number involved and must be received on or before April 3, 1989.

**ADDRESS:** Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

**FOR FURTHER INFORMATION CONTACT:** The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB-10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on February 28, 1989.

**Denise Donohue Hall,**

*Manager, Program Management Staff, Office of the Chief Counsel.*

**Petition for Exemption**

*Docket No.* 063CE.
*Petitioner:* Fairchild Aircraft Corporation.
*Regulations Affected:* 14 CFR 23.777(g).
*Description of Relief Sought:* Petition for exemption from § 23.777(g) to allow the landing gear control handle to be located to the right of the throttle center line.

[FR Doc. 89-5627 Filed 3-10-89; 8:45 am]
BILLING CODE 4910-13-M

**Federal Highway Administration**

**Environmental Impact Statement; Raleigh and Summers Counties, West Virginia**

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for the proposed New River Parkway project in Raleigh and Summers Counties, West Virginia.

**FOR FURTHER INFORMATION CONTACT:** Billy R. Higginbotham, Division Administrator, Federal Highway Administration, 550 Eagan Street, Suite 300, Charleston, WV 25301; Telephone: (304) 348-3093.

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with the West Virginia Department of Highways, will prepare an Environmental Impact Statement (EIS) on a proposal to construct the New River Parkway. The New River Parkway, which was included as a demonstration project in the 1987 Surface Transportation and Uniform Relocation Assistance Act (STURAA), proposes construction of a new road from the intersection of Raleigh County Route 26 and West Virginia Route 20 near Hinton, West Virginia to Interstate 64 near its crossing of the New River at the Raleigh-Summers County line. The proposed road will follow the New River Gorge National River for approximately 10 miles and replace approximately 9 miles of existing local access road.



The facility is proposed to be designed as a parkway to provide visitors to the New River Gorge National River access to the river and scenic overlooks. The facility will also provide improved access for local residents to homes in the area.

Alternatives under consideration include: (1) taking no action; and (2) construction of a new two-lane road as a parkway with several alternate schemes being considered which include various alignments both on new location and along the existing local service route.

Letters describing the proposed action and soliciting comments will be sent to appropriate federal, state, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A public meeting followed by a public hearing will be held in the project area after completion of the Draft EIS. Public notice will be given of the time and place of the meeting and hearing. The Draft EIS will be available for public and agency review and comment prior to the public meeting and public hearing. No formal scoping meeting is planned at this time.

To ensure that the full range of issues related to this proposed action is addressed and all significant issues identified, comments and suggestion are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of federal programs and activities apply to this program)

Issued on March 3, 1989.

**Billy R. Higginbotham,**

*Division Administrator.*

[FR Doc. 89-5745 Filed 3-10-89; 8:45 am]
BILLING CODE 4910-22-M

**Maritime Administration**

[Docket S-846]

**Mormac Marine Transport, Inc.; Application for Permission Under Section 805(a) of the Merchant Marine Act, 1936, as Amended**

By letter dated March 9, 1989, Mormac Marine Transport, Inc. (formerly Moore McCormack Bulk Transport, Inc.), (Mormac) has requested pursuant to section 805 of the Merchant Marine Act, 1936, as amended (Act), and Article II-13 of Operating-Differential Subsidy Agreement (ODSA) No. MA/MSB-295, written permission for Mormac to be affiliated with a company that will provide domestic coastwise Great Lakes service and whose officers and directors hold positions with and own a pecuniary interest in Mormac Marine Group, Inc. (Mormac Marine), the parent company of Mormac.

On March 23, 1987, the Maritime Administrator granted written permission for Mr. James R. Barker to own a pecuniary interest in, and to control Interlake Holding Company (Interlake Holding) and Mormac Marine and through them, the Interlake Steamship Company (Interlake), Interlake Leasing II, Inc. (Leasing) and Mormac for the same scope of domestic ownership and operations by Interlake and Leasing as is contained in Article I-11 of Mormac's ODSA. On July 14, 1988, the Maritime Administrator modified that permission in order to permit common ownership and control of the companies by both Mr. Barker and Mr. Paul R. Tregurtha. Mormac is now requesting permission to amend Mormac's section 805(a) permission in order to permit a company owned by Mr. Barker and Mr. Tregurtha to acquire three Great Lakes vessels currently owned and operated by Rouge Steel Company (Rouge).

Pursuant to a Purchase and Sale Agreement to be entered into by and between Rouge and Lakes Shipping Company, Inc., Lakes Shipping Company, Inc. will be purchasing three self-unloading cargo vessels from Rouge, the SS BENSON FORD, the SS WILLIAM CLAY FORD, and the MS HENRY FORD II. These vessels will be used exclusively in service to the Great Lakes in a manner similar to their current service as Rouge-owned vessels. The vessels will be used primarily to carry iron ore, limestone, and coal for Rouge, in accordance with the terms of a ten-year contract of affreightment between Rouge and Lakes Shipping Company, Inc.

Mormac indicates that since the vessels will essentially continue in service as they have been used by Rouge, the acquisition of these vessels by Lakes Shipping Company, Inc. will not result in any change in competitive conditions for U.S.-flag vessels providing service on the Great Lakes. In addition, Lakes Shipping Company, Inc. and Mormac are entirely separate corporate entities that will maintain separate and discrete accounts.

Mormac believes that no U.S.-flag competitor of the Rouge vessels will be subject to unfair competition nor will the operation of these vessels by an affiliate of Mormac be prejudicial to the purposes and policies of the Act.

Mormac is requesting that the scope of domestic operations permitted under ODSA MA/MSB-295 be modified to incorporate the operations of Lakes Shipping Company, Inc. and that Mormac's permission granted on July 14, 1988, with respect to the common ownership of Mormac Marine and Interlake Holding be modified to permit common ownership, officers and directors by and among Interlake Holding, Mormac Marine, and Lakes Shipping Company, Inc.

Any person, firm, or corporation having any interest in the application for section 805(a) permission and desiring to submit comments concerning the application must file written comments in triplicate, to the Secretary, Maritime Administration, Room 7300, Nassif Building, 400 Seventh Street SW., Washington, DC 20590, by the close of business 5:00 p.m. on March 17, 1989. If such comments deal with section 805(a) issues, they should be accompanied by a petition for leave to intervene. The petition should state clearly and concisely the grounds of interest and the alleged facts relied on for relief.

If no petitions for leave to intervene on section 805(a) issues are received within the specified time, or if it is determined that petitions filed do not demonstrate sufficient interest to warrant a hearing, the Maritime Administration will take such action as may be deemed appropriate.

In the event petitions regarding the relevant section 805(a) issues are received from parties with standing to be heard, a hearing will be held, the purpose of which will be to receive evidence under section 805(a) relative to whether the proposed operations (a) could result in unfair competition to any person, firm, or corporation operating exclusively in the coastwise or international service, or (b) would be prejudicial to the objects and policy of the Act relative to domestic operations.

(Catalog of Federal Domestic Assistance Program Nos. 20.804 Operating-Differential Subsidies (ODS))

By Order of the Maritime Administrator.

Date: March 9, 1989.

**James E. Saari,**

*Secretary.*

[FR Doc. 89-5686 Filed 3-10-89; 8:45 am]
BILLING CODE 4910-81-M

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## DEPARTMENT OF THE TREASURY

### Public Information Collection Requirements Submitted to OMB for Review

Date: March 7, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

**Internal Revenue Service**

*OMB Number:* 1545-1045.
*Form Numbers:* None.
*Type of Review:* Revision.
*Title:* Conducting 1989 Focus Group Interviews and Laboratory Test Sessions on Federal Tax Forms.
*Description:* Focus group interview and lab testing sessions are necessary to obtain public input on some major tax forms that have been revised or are new for 1989. The results will be used to further simplify and improve the forms so that taxpayers will more easily understand them.
*Respondents:* Individuals or households, Farms, Businesses or other for-profit.
*Estimated Number of Respondents:* 900.
*Estimated Burden Hours Per Response:* 2 hours.
*Frequency of Response:* One-time interviews/lab test sessions.
*Estimated Total Reporting Burden:* 1,980 hours.
*Clearance Officer:* Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
*OMB Reviewer:* Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**
*Departmental Reports Management Officer.*
[FR Doc. 89-5665 Filed 3-10-89; 8:45 am]
BILLING CODE 4810-25-M

### Public Information Collection Requirements Submitted to OMB for Review

March 7, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

**Internal Revenue Service**

*OMB Number:* 1545-0946
*Form Numbers:* 8554 and 8498
*Type of Review:* Revision
*Title:* Application for Renewal of Enrollment to Practice Before the Internal Revenue Service; Program Sponsor Agreement for Continuing Education for Enrolled Agents.
*Description:* This information relates to the approval of continuing professional education programs and the renewal of enrollment status for those individuals admitted (enrolled) by the Internal Revenue Service.
*Respondents:* Individuals or households.
*Estimated Number of Respondents:* 25,500.
*Estimated Burden Hours Per Response/Recordkeeping:*
Form 8498: 36 minutes
Form 8554: 1 hour 12 minutes.
*Frequency of Response:* One-time filing.
*Estimated Total Recordkeeping/Reporting Burden:* 30,300 hours.
*Clearance Officer:* Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
*OMB Reviewer:* Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**
*Departmental Reports Management Officer.*
[FR Doc. 89-5666 Filed 3-10-89; 8:45 am]
BILLING CODE 4810-25-M

### Customs Service

[T.D. 89-36]

### Tuna Fish; Tariff-Rate Quota for the Calender Year 1989

**AGENCY:** Customs Service, Department of the Treasury.

**ACTION:** Announcement of the quota quantity for tuna for Calendar Year 1989.

**SUMMARY:** Each year the tariff-rate quota for tuna fish described in item 1604.14.20, HTSUS, is based on the United States canned tuna production for the preceding calendar year.

**EFFECTIVE DATES:** The 1989 tariff-rate quota is applicable to tuna fish entered, or withdrawn from warehouse, for consumption during the period January 1 through December 31, 1989.

**FOR FURTHER INFORMATION CONTACT:** Karen L. Cooper, Chief, Quota Branch, Regulatory Trade Programs Division, Office of Trade Operations, Office of Commercial Operations, U.S. Customs Service, Washington, DC 20229, (202/566-8592).

It has now been determined that 34,806,335 kilograms of tuna may be entered for consumption or withdrawn from warehouse for consumption during the Calendar Year 1989, at the rate of 6 percent ad valorem under item 1604.14.20, HTSUS. Any such tuna which is entered, or withdrawn from warehouse, for consumption during the current calendar year in excess of this quota will be dutiable at the rate of 12.5 percent ad valorem under item 1604.14.30 HTSUS.

Dated: February 28, 1989.

**William von Raab,**
*Commissioner of Customs.*
[FR Doc. 89-5660 Filed 3-10-89; 8:45 am]
BILLING CODE 4820-02-M

## VETERANS ADMINISTRATION

### Establishment of Department of Veterans Affairs

**AGENCY:** Veterans Administration.

**ACTION:** Notice.

**SUMMARY:** The Department of Veterans Affairs Act redesignates the Veterans Administration as the Department of Veterans Affairs, an executive department in the executive branch of the Government.

**EFFECTIVE DATE:** March 15, 1989.

**ADDRESS:** The Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.



**FOR FURTHER INFORMATION CONTACT:** Linda M. Combs, Acting Associate Deputy Administrator for Management (004), (202) 233-5438.

**SUPPLEMENTARY INFORMATION:** The Department of Veterans Affairs Act (Pub. L. 100-527) redesignates the Veterans Administration as the Department of Veterans Affairs, an executive department in the executive branch of the Government.

**I. Organization**

The statute provides that the Department of Veterans Affairs be headed by the Secretary of Veterans Affairs. Other principal officials are a Deputy Secretary, a Chief Medical Director, a Chief Benefits Director, a Director of the National Cemetery System, a General Counsel, an Inspector General, and no more than six Assistant Secretaries. Each of these officials will be appointed by the President with the advice and consent of the Senate.

**II. Redesignations**

The Department of Medicine and Surgery of the Veterans Administration shall be redesignated as the Veterans Health Services and Research Administration of the Department of Veterans Affairs; the Department of Veterans Benefits of the Veterans Administration shall be redesignated as the Veterans Benefits Administration of the Department of Veterans Affairs; and the Office of Inspector General of the Veterans Administration, established in accordance with the Inspector General Act of 1978, is redesignated as the Office of Inspector General of the Department of Veterans Affairs.

**III. References**

References in any Federal law, Executive Order, rule, regulation, or delegation of authority, or any document of or pertaining to the Veterans Administration shall be deemed to refer as follows:

(a) The Administrator of Veterans Affairs is the Secretary of Veterans Affairs;

(b) The Veterans Administration is the Department of Veterans Affairs;

(c) The Deputy Administrator of Veterans Affairs is the Deputy Secretary of Veterans Affairs;

(d) The Chief Medical Director of the Veterans Administration is the Chief Medical Director of the Department of Veterans Affairs;

(e) The Department of Medicine and Surgery of the Veterans Administration is the Veterans Health Services and Research Administration of the Department of Veterans Affairs;

(f) The Chief Benefits Director of the Veterans Administration is the Chief Benefits Director of the Department of Veterans Affairs;

(g) The Department of Veterans Benefits of the Veterans Administration is the Veterans Benefits Administration of the Department of Veterans Affairs;

(h) The Chief Memorial Affairs Director of the Veterans Administration is the Director of the National Cemetery System of the Department of Veterans Affairs; and

(i) The Department of Memorial Affairs of the Veterans Administraitos is the National Cemetery System of the Department of Veterans Affairs.

**IV. Continuing Effect of Legal Documents**

All orders, determinations, rules, regulations, permits, grants, contracts, certificates, licenses, and privileges which have been issued, made, granted, or allowed to become effective by the President, by the Administrator of Veterans Affairs, or by a court of competent jurisdiction, in the performance of functions of the Administrator or the Veterans Adminstration and which are in effect on March 15, 1989, continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, the Secretary, or other authorized official, by a court of competent jurisdiction, or by operation of law.

**V. Proceedings Not Affected**

The provisions of the Act shall not affect any proceedings or any application for any benefits, service, license, permit, certificate, or financial assistance pending before the Veterans Administration at the time this Act takes effect, but such proceedings and applications shall continue. Orders shall be issued in such proceeding, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this Act had not been enacted, and orders issued in any such proceedings shall continue in effect, until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law.

**VI. Suits Not Affected**

The Act shall not affect suits commenced before March 15, 1989, and in all such suits, proceedings shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if the Act has not been enacted.

**VII. Nonabatement of Actions**

No suit, action, or other proceeding commenced by or against the Veterans Administration, or by or against any individual in the official capacity of such individual as an officer of the Veterans Administration, shall abate by reason of enactment of the Act.

**VIII. Property and Resources**

The contracts, liabilities, records, property, and other assets and interests of the Veterans Administration shall, after the effective date of this Act, be considered, to be the contracts, liabilities, records, property, and other assets and interests of the Department of Veterans Affairs.

Dated: March 8, 1989.

**Edward J. Derwinski,**
*Administrator.*
[FR Doc. 89-5755 Filed 3-10-89; 8:45 am]
BILLING CODE 8320-01-M

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# Sunshine Act Meetings

Federal Register
Vol. 54, No. 47
Monday, March 13, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**FEDERAL DEPOSIT INSURANCE CORPORATION**

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:06 p.m. on Tuesday, March 7, 1989, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to: (1) The possible closing of certain insured banks; and (2) an assistance agreement pursuant to section 13(c) of the Federal Deposit Insurance Act.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Mr. Robert J. Herrmann, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 500-17th Street, NW., Washington, DC.

Dated: March 8, 1989.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Deputy Executive Secretary.*

[FR Doc. 89-5754 Filed 3-8-89; 4:58 p.m.]

BILLING CODE 6714-01-M

**FEDERAL ENERGY REGULATORY COMMISSION**

March 8, 1989.

The following notice of meeting is published pusuant to section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-409), 5 U.S.C. 552B:

**TIME AND PLACE:** March 15, 1989, 10:00 a.m.

**PLACE:** 825 North Capitol Street, NE., Room 9300, Washington, DC 20426.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** Agenda.

*Note.—Item listed on the agenda may be deleted without further notice.

**CONTACT PERSON FOR MORE INFORMATION:** Lois D. Cashell, Secretary, Telephone (202) 357-8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Public Reference Room.

**Consent Power Agenda, 862nd Meeting—March 15, 1989, Regular Meeting (10:00 a.m.)**

CAP-1.
Project No. 10666-001, Barbara K. Londergan

CAP-2.
Docket No. UL86-30-001, David Zinkie

CAP-3.
Project No. 10631-001, James River Hydro Associates
Project No. 10645-001, City of Richmond, Virginia

CAP-4.
Project No. 2574-007, Merimil Limited Partnership
Project No. 2322-006, Central Maine Power Company
Project No. 2325-003, Central Maine Power Company
Project No. 2552-003, Central Maine Power Company
Project No. 2611-009, Scott Paper Company and UAH-HYdro Kennebec Limited Partnership
Project No. 5073-016, Benton Falls Associates

CAP-5.
Project No. 9280-003, Adirondack Hydro Development Corporation

CAP-6.
Project No. 4282-003, Mountain Water Resources

CAP-7.
Project No. 4270-003, Mountain Rhythum Resources

CAP-8.
Project No. 2680-007, Consumers Power Company and the Detroit Edison Company

CAP-9.
Project Nos. 7802-006 and 10486-000, Natural Energy Resources Company

CAP-10.
Project No. 4435-007, Damnation Peak Power Company

CAP-11.
Project No. 7267-005, Joseph M. Keating

CAP-12.
Project No. 2832-000, and 005, New York Irrigation District, Nampa-Meridian Irrigation District, Boise-Kuna Irrigation District, Wilder Irrigation District, Big Bend Irrigation District

CAP-13.
Project No. 4656-002, Boise-Kuna Irrigation Distirct, New York Irrigation District, Nampa and Meridian Irrigation District, Wilder Irrigation District, and Big Ben Irrigation District

CAP-14.
Docket No. ER89-106-000, Duke Power Company

CAP-15.
Docket No. ER86-302-003, Pacific Gas and Electric Company

CAP-16.
Omitted

CAP-17.
Docket No. ER84-011, American Electric Power Service Corporation

CAP-18.
Docket No. ER89-48-001, Southern Company Services, Inc.

CAP-19.
Docket No. EL87-13-004, City of Holyoke Gas and Electric Department, City of Westfield Gas and Electric Light Department, Marblehead Municipal Light Department, Middleborough Municipal Gas and Electric Department, North Attleboro Electric Department, Peabody Municipal Light Plant, Shrewsbury Electric Light Department, Templeton Municipal Light Plant, Town of Boylston Municipal Light Department, Town of Hudson Light and Power Department, Town of Littleton Municipal Light and Water Department, Town of Wakefield Municipal Light Department and West Boylston Municipal Lighting Plant v. Boston Edison Company

CAP-20.
Docket Nos. ER86-553-000 and EL86-8-000, Allegheny Generating Company

CAP-21.
Docket Nos. QF86-149-004 and 005, Ultrapower Incorporated, Rio Bravo Jasmin
Incorporated Rio Bravo Poso

**Consent Miscellaneous Agenda**

CAM-1.
Docket No. GP88-26-000, Northern Pump Company, Danner No. A-1 Well

CAM-2.
Docket No. GP86-45-002, Placid Oil Company

CAM-3.
Docket No. GP87-001, DeNovo Oil & Gas, Inc.

CAM-4.
Docket No. GP87-76-001, Bettis, Boyle and Stovall

CAM-5.
Docket No. GP80-41-039, United Gas Pipe Line Company

CAM-6.
Docket No. RA85-3-000, Commonwealth Oil Refining Company (DOE Case Number DEE-1022)



CAM-7.
Docket No. RO85-21-000, Hudson Oil Co., Inc. and Hudson Refining Co., Inc.

**Consent Gas Agenda**

CAG-1.
Docket Nos. RP85-122-018 and RP87-30-022, Colorado Interstate Gas Company

CAG-2.
Docket No. RP89-67-000, West Texas Gathering Company

CAG-3.
Docket Nos. RP83-58-015, RP86-63-013, RP86-114-006, RP88-17-021, RP88-96-000, RP88-210-003 and RP88-229-003, Southern Natural Gas Company

CAG-4.
Docket Nos. TA89-1-20-000, 001, TM89-6-20-000 and TA89-1-20-003, Algonquin Gas Transmission Company

CAG-5.
Docket Nos. TQ89-1-46-004, RP86-165-004 and RP86-166-004, Kentucky West Virginia Gas Company

CAG-6.
Docket No. RP89-45-002, ANR Pipeline Company

CAG-7.
Docket No. RP89-40-001, Williams Natural Gas Company

CAG-8.
Docket Nos. RP88-68-006 and 009, Transcontinental Gas Pipe Line Corporation

CAG-9.
Docket Nos. RP89-1-001, 002, 005 and RP89-5-001, Northwest Pipeline Corporation

CAG-10.
Omitted

CAG-11.
Docket Nos. RP88-225-001, 002, 003, 004, TA89-1-45-001, 002 and 003, Inter-City Minnesota Pipelines, Ltd., Inc.

CAG-12.
Docket Nos. RP88-94-000 and 001, Natural Gas Pipeline Company of America

CAG-13.
Docket No. TA82-1-21-029, Columbia Gas Transmission Corporation

CAG-14.
Docket No. RP87-7-043, Transcontinental Gas Pipe Line Corporation

CAG-15.
Docket No. RP89-54-000, Columbia Gas Transmission Corporation and Columbia Gulf Transmission Company

CAG-16.
Docket No. RP88-217-010, CNG Transmission Corporation

CAG-17.
Docket No. RP88-217-011, CNG Transmission Corporation

CAG-18.
Docket Nos. RP88-80-013 and RP88-251-006, Texas Eastern Transmission Corporation

CAG-19.
Docket No. RP88-187-015, Columbia Gas Transmission Corporation

CAG-20.
Docket No. RP88-45-015, Arkla Energy Resources, a division of Arkla, Inc.

CAG-21.
Docket No. RP88-106-002, Northern Natural Gas Company, Division of Enron Corp.

CAG-22.
Docket No. RP89-12-002, Mississippi River Transmission Corporation

CAG-23.
Docket No. RP88-187-013, Columbia Gas Transmission Corporation

CAG-24.
Docket No. RP88-191-006, Tennessee Gas Pipeline Company

CAG-25.
Docket No. RP88-239-006, Trunkline Gas Company

CAG-26.
Docket No. RP88-184-000, El Paso Natural Gas Company

CAG-27.
Docket No. RP87-33-001, Williams Natural Gas Company

CAG-28.
Docket No. RP85-206-042, Northern Natural Gas Company, Division of Enron Corp.

CAG-29.
Docket No. RP89-40-002, Williams Natural Gas Company

CAG-30.
Docket No. RP87-14-005, Algonguin Gas Transmission Company

CAG-31.
Docket Nos. RP88-68-008 and RP87-7-044, Transcontinental Gas Pipe Line Corporation

CAG-32.
Docket Nos. TA84-2-43-002 and TA85-1-43-002, Northwest Central Pipeline Corporation (now "Williams Natural Gas Company")

CAG-33.
Docket Nos. TA85-1-16-008 and TA85-2-16-008, National Fuel Gas Supply Corporation

CAG-34.
Docket Nos. TA81-1-21-029 and RP87-55-008, Columbia Gas Transmission Corporation

CAG-35.
Docket Nos. RP88-94-000, 010, 014 and 015, Natural Gas Pipeline Company of America

CAG-36.
Docket No. RP84-82-004, Tarpon Transmission Company

CAG-37.
Docket No. RP86-67-000, Questar Pipeline Inc. (formerly Mountain Fuel Resources Inc.)

CAG-38.
Docket No. RP86-41-000, Algonquin Gas Transmission Company

CAG-39.
Docket No. RP85-169-000, Consolidated Gas Transmission Corporation CAG-40.
Docket Nos. RP83-58-000, RP86-63-000, RP86-114-000, RP86-96-000, RP88-210-004, RP88-229-004 and RP88-17-020, Southern Natural Gas Company

CAG-41.
Docket No. CP85-711-001, Tennessee Gas Pipeline Company v. Columbia Gas Transmission Corporaion CAG 42.
Docket Nos. RP85-209-020, RP86-93-006, RP86-158-009, RP86-246-003, RP87-34-005, TC88-6-007, RP88-8-007, RP88-27-011, RP88-284-003, RP88-92-009, RP86-263-005, RP88-285-001, RP84-42-005, CP86-6-001, CP88-440-000, CP87-524-000, CP88-329-000, CP88-478-000 and IN86-5-001, United Gas Pipe Line Company

CAG-43.
Docket No. RP88-95-000, Canyon Creek Compression Company

CAG-44.
Docket Nos. RP82-137-000 and RP83-4-000, Texas Gas Transmission Corporation and Columbia Gas Transmission Corporation

CAG-45.
Docket No. RP88-66-000, Pacific Interstate Offshore Company

CAG-46.
Docket No. RP73-83-002, Natural Gas Pipeline Company of America

CAG-47.
Docket Nos. ST80-296-000, ST80-349-000, ST89-350-000, ST88-5802-000 and ST80-194-000, BP Gas Transmission Company

CAG-48.
Docket No. ST88-4224-000, Transco-Louisiana Intrastate Pipeline Company

CAG-49.
Docket Nos. ST88-5599-001, ST88-5761-001, ST88-5762-001, ST88-5763-001, ST88-5764-001, ST88-5765-001, ST88-5766-001, ST88-5767-001, ST88-5768-001, ST88-5769-001 and ST88-5770-001, Gulf South Pipeline Company

CAG-50.
Docket No. C188-473-001, Southland Royalty Company

CAG-51.
Omitted

CAG-52.
Docket No. C188-310-000, Consolidated Oil & Gas, Inc.

CAG-53.
Docket No. C187-891-000, Lowry Exploration, Inc.

CAG-54.
Docket Nos. C186-563-000 and CP86-400-000, Conoco Inc., Oxy USA, Inc., Texaco Producing Inc. and Atlantic Richfield Company

CAG-55.
Omitted

CAG-56.
Docket No. CP88-411-000, Manchester Pipeline Corporation

CAG-57.
Docket No. CP88-307-004, Great Lakes Gas Transmission Company

CAG-58.
Docket No. CP85-437-014, Mojave Pipeline Company
Docket No. CP85-552-003, Kern River Gas Transmission Company
Docket Nos. CP85-625-000 and 001, Northwest Pipeline Corporation
Docket Nos. CP86-197-000, 001, 002 and 003, El Paso Natural Gas Company
Docket No. CP86-212-000, Transwestern Pipeline Company
Docket Nos. CP87-479-011 and CP87-480-008, Wyoming-California Pipeline Company

CAG-59.
Docket No. CP86-286-003, Cascade Natural Gas Corporation v. Northwest Pipeline Corporation, Chevron Chemical Company, Intermountain Gas Company, Hadson Gas System, Inc., Llano, Inc.,

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Corpus Christi Industrial Pipeline Company, and Transco Energy Marketing Company
CAG–60.
Docket No. CP88–136–001, Panhandle Eastern Pipe Line Company
CAG–61.
Docket No. CP88–688–001, Northern Natural Gas Company
CAG–62.
Docket Nos. CP88–6–002 and RP88–8–000, United Gas Pipe Line Company
CAG–63.
Docket No. CP87–474–004, Great Lakes Gas Transmission Company
CAG–64.
Docket Nos. CP87–479–000, 009, 010, CP87–480–005, 006 and 007, Wyoming-California Pipeline Company
CAG–65.
Docket No. CP83–140–005, K N Energy, Inc.
CAG–66.
Docket No. CP88–255–002, Transcontinental Gas Pipe Line Corporation
CAG–67.
Docket Nos. CP88–688–001 and 002, Midwestern Gas Transmission Company
CAG–68.
Docket Nos. CP88–725–001 and 002, United Gas Pipe Line Company and Transline Gas Company
CAG–69.
Docket No. CP84–348–006, Mississippi River Transmission Corporation
CAG–70.
Docket No. CP88–375–000, East Tennessee Natural Gas Company
CAG–71.
Docket No. CP88–154–000, Columbia Gas Transmission Corporation
CAG–72.
Docket No. CP88–137–000, ANR Pipeline Company
CAG–73.
Docket No. CP88–805–000, Great Lakes Gas Transmission Company
CAG–74.
Docket No. CP88–475–000, El Paso Natural Gas Company
CAG–75.
Docket No. CP88–643–000, Colorado Interstate Gas Company
CAG–76.
Docket No. CP88–272–000, United Gas Pipe Line Company
CAG–77.
Docket No. CP84–31–004, Texas Gas Transmission Corporation and CSX NGL Corporation
CAG–78.
Docket No. CP87–107–000, Midwestern Gas Transmission Company
CAG–79.
Docket No. RP88–174–001, *Dynasty Gas Marketing, Inc.* v. *Northern Border Pipeline Company*
Docket No. RP88–195–002, Northern Border Pipeline Company
CAG–80.
Docket No. RP88–14–017, Columbia Gulf Transmission Company
Docket No. RP88–15–017, Columbia Gas Transmission Corporation
CAG–81.
Docket No. TM89–3–28–000, Panhandle Eastern Pipe Line Company

*I. Licensed Project Matters*

P–1.
Project No. 6711–000, Inghams Corporation. Order regarding third-party permit application for existing project not required to be licensed.
P–2.
Project No. 9712–000, Beardslee Corporation. Order regarding third-party permit application for existing project not required to be licensed.

*II. Electric Rate Matters*

ER–1.
Docket Nos. EF87–2011–002, 005, 008, EF87–2021–001 and 004, United States Department of Energy—Bonneville Power Administration. Order concerning 1987 rate filings.
ER–2.
Docket Nos. EC88–2–000 and 003, Utah Power and Light Company, PacifiCorp and PC/UP&L Merging Corporation. Order on rehearing.
ER–3.
Docket No. ER79–97–002, Alamito Company. Order on reasonableness of fuel charges.
ER–4.
Docket Nos. EL88–28–002 and ER87–47–001, *San Diego Gas and Electric Company* v. *Alamito Company*. Opinion and order on initial decisions concerning capital structure and rate of return.

Miscellaneous Agenda

M–1.
Reserved
M–2.
Reserved
M–3.
(A) Docket No. RM87–5–001, Inquiry into Alleged Anticompetitive Practices Related to Marketing Affiliates of Interstate Pipelines. Order on rehearing.
(B) Docket No. RM87–5–002, Inquiry into Alleged Anticompetitive Practices Related to Marketing Affiliates of Interstate Pipelines. Order on clarification of Order No. 497.
M–4.
Docket No. RM88–3–000, Blanket Sales Certificates for First Sellers of Natural Gas Docket No. RM88–28–000, 5-Year Take-or-pay Make-up Provisions in Natural Gas Producer Pipeline Contracts. Notice of proposed rulemaking.

*I. Pipeline Rate Matters*

RP–1.
(A) Docket Nos. CP88–391–000 and RP88–167–000, Transcontinental Gas Pipe Line Corporation. Order concerning certificate application for gas inventory charge, standby service and firm storage authorization.
(B) Docket Nos. CP89–759–000, CP88–391–000 and RP88–167–000, Transcontinental Gas Pipe Line Corporation. Order concerning authorization for interruptible sales service.
RP–2.
Docket Nos. RP85–177–057 and CP88–136–002, Texas Eastern Transmission Corporation. Order on rehearing.
RP–3.
Docket Nos. RP84–84–000 and RP85–60–000, Trailblazer Pipeline Company. Opinion and order on initial decision.

*II. Producer Matters*

CI–1.
Reserved

*III. Pipeline Certificate Matters*

CP–1.
Reserved

Lois D. Cashell,
*Secretary.*
[FR Doc. 89–5802 Filed 3–9–89; 2:47 pm]
BILLING CODE 6717–01–M

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**TENNESSEE VALLEY AUTHORITY**

Meeting No. 1414

**TIME AND DATE:** 10 a.m. (c.s.t.), Wednesday, March 15, 1989.

**PLACE:** Andrew Johnson Theater, Tennessee Performing Arts Center, 505 Deaderick Street, Nashville, Tennessee.

**STATUS:** Open.

AGENDA

Approval of minutes of meeting held on February 15, 1989.

Discussion Item

1. TVA Staff will report on Regional Ozone—A Southern Perspective

Action Items

*New Business*

A—Budget and Financing

A1. Adoption of Supplemental Resolution Authorizing 1989 Series A Power Bonds.
A2. Resolution Authorizing the Chairman and Other Executive Officers to Take Further Action Relating to Issuance and Sale of 1989 Series A Power Bonds.
A3. Retention of Net Power Proceeds and Nonpower Proceeds and Payments to the U.S. Treasury in March 1989, Pursuant to Section 26 of the TVA Act.
A4. Board Adoption of the Tennessee Valley Authority Financial Statements, September 30, 1988.
A5. Modification to Fiscal Year 1989 Power Capital Budget—Wilson, Tennessee, 500-kV Substation to Replace High-Side Coils of 500-kV Spare Transformer.

C—Power Items

C1. Letter Agreement with Tallahatchie Valley EPA for Power Supply to Grenada and Hardy, Mississippi, Areas.
C2. Revision to 5 Percent Interruptible Power Arrangements.

E—Real Property Transactions

E1. Sale of Permanent Easement Affecting 0.73 Acres of Ocoee No. 2 Railroad Right-of-Way in Polk County, Tennessee.
E2. Abandonment of Easement Rights to Polk County Board of Education Affecting 294 Acres of Polk County Board of Education Property Located Near Apalachia Dam in Polk County, Tennessee.
E3. Grant of 30-Year Easement to Bluff City, Tennessee, Affecting Approximately 4 Acres of Boone Reservoir Land in Sullivan County, Tennessee.
E4. Proposed 19-Year Lease Agreement with Tennessee Wildlife Resources Agency Affecting Approximately 13.1 Acres of Norris Reservoir Land and 1.3 Acres of Melton Hill Reservoir Land in Anderson County, Tennessee.
E5. Sale of Term Easement for Marine Repair and Fabrication Facility Affecting Approximately 5.99 Acres of Pickwick Reservoir Land in Tishomingo County, Mississippi.
E6. Deed Modification to the Anderson County Sportsman's Club Affecting Approximately 2.3 Acres of Norris Reservoir Land in Anderson County, Tennessee.
E7. Proposed 30-Year Easement to Colbert County Commission Affecting Approximately 12.13 Acres of Pickwick Reservoir Land in Colbert County, Alabama.
E8. Proposal to Lease TVA Land for the Commercial Operation of Running Water Recreation Area on Nickajack Reservoir in Marion County, Tennessee.

F—Unclassified

F1. Supplement No. 15 to Personal Services Contract No. TV–61664A with Massachusetts Institute of Technology.
F2. Filing of Condemnation Cases.



F3. Supplement No. 12 to Personal Services Contract No. TV–53532A with Hartford Steam Boiler Inspection and Insurance Company.
F4. 1990 Corporate Environmental Agenda.

**CONTACT PERSON FOR MORE INFORMATION:** Alan Carmichael, Manager of Public Affairs, or a member of his staff can respond to requests for information about this meeting. Call (615) 632–8000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 479–4412.

Dated: March 8, 1989.

Edward S. Christenbury,
*General Counsel and Secretary.*
[FR Doc. 89–5781 Filed 3–9–89; 10:52 am]
BILLING CODE 8120–01–M

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**THE UNITED STATES INSTITUTE OF PEACE**

**DATE:** Thursday, March 16, 1989.

**TIME:** Thursday 10:00 a.m. to 5:30 p.m.

**PLACE:** The United States Institute of Peace, 1550 M Street, NW ground floor (conference room).

**STATUS:** Open session—Thursday 10:00 a.m. to 5:30 p.m. (portions may be closed pursuant to subsection (c) of section 552(b) of title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Pub. L. (98–525).

**AGENDA** (Tentative):

Swearing-in ceremony for Dr. Alan Weinstein at 9:00 a.m. in the West Conference Room The United States Supreme Court (Open to the Public).
Meeting of the Board of Directors convened. Chairman's Report. President's Report. Committee Reports. Consideration of the minutes of the Thirtieth meeting. Consideration of grant application matters.

**CONTACT:** Ms. Olympia Diniak. Telephone (202) 457–1700.

Dated: March 8, 1989.

Bernice J. Carney,
*Administrative Officer, The United States Institute of Peace.*
[FR Doc. 89–5887 Filed 3–9–89; 3:24 pm]
BILLING CODE 3155–01–M

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# Corrections

Federal Register
Vol. 54, No. 47
Monday, March 13, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## FEDERAL RESERVE SYSTEM

**12 CFR Part 208**

**[Regulation H; Docket No. R-0660]**

**Membership of State Banking Institutions in the Federal Reserve System; Investment in Stock of Investment Companies**

*Correction*

In rule document 89-3714 beginning on page 7180 in the issue of Friday, February 17, 1989, make the following corrections:

**§ 208.124 [Corrected]**

1. On page 7181, in the 2nd column, in § 208.124(b), in the 23rd line, before "12" remove the parenthesis.

2. On page 7182, in the first column, in § 208.124(c)(6)(ii), in the eighth line, "determined" was misspelled.

3. On the same page, in the second column, in footnote [1], in the last line, "SVC." should read "Svc.".

BILLING CODE 1505-01-D

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

**Food and Drug Administration**

**21 CFR Part 184**

**[Docket No. 78N-0349]**

**Certain Glycerides; Affirmation of Gras Status**

*Correction*

In rule document 89-3935 beginning on page 7401 in the issue of Tuesday, February 21, 1989, make the following correction:

**§ 184.1903 [Corrected]**

On page 7404, in the third column, in § 184.1903(c)(2), in the last line, "§ 170.3(n)(39)" should read "§ 170.3(n)(38)".

BILLING CODE 1505-01-D

## VETERANS ADMINISTRATION

**38 CFR Part 4**

**Systemic Diseases, Temporary Total Evaluations Based on Periods of Hospitalization or Surgery, Regular Scheduler Assignment of a Total Evaluation Based on Total Industrial Impairment**

*Correction*

In rule document 89-2803 beginning on page 4280 in the issue of Monday, January 30, 1989, make the following correction:

On page 4282, in § 4.88a, in the second column, under "6318 Melioidosis", in the fourth line, "military" should read "miliary".

BILLING CODE 1505-01-D

federal register

Monday
March 13, 1989

**Part II**

# Department of Transportation

**Federal Aviation Administration**

**14 CFR Parts 121 and 135**
**Exit Row Seating; Notice of Proposed Rulemaking**

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121 and 135

[Docket No. 25821; Notice No. 89-8]

RIN: 2120-AC75

# Exit Row Seating

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to regulate exit row seating aircraft operated by U.S. air carrier and commercial operators (certificate holders). This is needed to ensure that only persons who are determined by the certificate holder to be able, without assistance, to activate an emergency exit and to take the additional actions needed to ensure safe use of that exit in an emergency are seated in exit rows. This action is intended to further safety for all passengers.

DATE: Comments must be received on or before June 12, 1989.

ADDRESSES: Comments on this notice may be mailed, in triplicate, to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Docket No. 25821, 800 Independence Avenue, SW., Washington, DC 20591. Comments delivered must be marked Docket No. 25821. Comments may be examined in Room 915G weekdays between 8:30 a.m. and 5 p.m., except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Irene H. Mields or Mr. John Walsh, General Legal Services Division (AGC-100), Office of the Chief Counsel, 800 Independence Avenue, SW., Washington, DC 20591. Telephone: (202) 267-3473.

SUPPLEMENTARY INFORMATION:

## Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, or economic effects that might result from adoption of the proposals contained in this notice are invited. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. ." The postcard will be dated and time stamped and returned to the commenter.

All communications received on or before the closing date for comments will be considered by the Administrator before taking action on the proposed rule. The proposal contained in the notice may be changed in light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket.

## Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Requests must identify the notice number of this NPRM. Persons interested in being placed on the mailing list for future NPRM's also should request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

In an effort to make this information available in an accessible format to individuals who are blind or visually impaired and to other individuals who are print handicapped, the FAA will make available for copying a number of audio cassette tapes of the entire NPRM (and the accompanying initial regulatory evaluation) in the FAA Rules Docket, Room 915G, FAA Headquarters, 800 Independence Avenue, SW., Washington, DC. In addition, single cassette tapes will be available in the Public Affairs Offices of the agency's nine regional headquarters; at the Mike Monroney Aeronautical Center, Oklahoma City, Oklahoma; and at the FAA Technical Center, Atlantic City, New Jersey.

## Summary of Proposed Rule

A passenger aircraft crashes. Inside the cabin, there are many survivors. A fire begins. If the passengers are to stay alive, they must get out of the aircraft as soon as they can. Seconds mean the difference between life and death. This is the scenario on which a crashworthiness standard is based. Many other FAA rules attempt to prevent a crash from ever happening. A crashworthiness rule assumes that a survivable crash has happened and then asks what can be done to maximize people's chances of getting out alive.

This proposed rule on exit row seating concerns a crashworthiness standard. Exit doors must be opened quickly and properly if an emergency evacuation is to succeed. Often, crewmembers are not in a position to lead this part of the evacuation. Passengers sitting near the doors must perform the functions on which their lives, and the lives of their fellow passengers, depend.

What are some of these functions? First, a passenger must be able to locate the door and quickly follow the instructions for using it. Door operations and instructions differ from airplane to airplane. A delay in figuring out how to operate the door can cost precious seconds; operating it improperly can injure or result in the deaths of passengers. Second, a passenger must be able physically to open the door. Doors are often heavy and clumsy to manipulate, and not every passenger can open them quickly.

Third, a person must be able to determine when to open the door. This involves being able to respond to shouted or hand-signalled instructions from flight attendants, as well as being able to tell when opening an exit would be too dangerous (e.g., because of fire on the adjacent wing). Fourth, a person must be able to go quickly through the open exit, so as not to cause a traffic jam at the door, and perhaps assist other passengers to leave the danger zone around the aircraft. Fifth, a passenger must devote full attention to his or her emergency task. A passenger who must care for small children, for example, may be unable to do so.

The proposed rule says simply that airlines should seat in exit rows only persons who appear able to perform these and other relevant functions in an emergency evacuation. Persons who cannot perform all the functions may sit in any other seat. Airlines also would have to take new steps to inform passengers sitting in exit rows about what they would have to do in an emergency evacuation. By following the proposed requirements, airlines would minimize the likelihood of passenger-caused evacuation delays that could cost lives.

The rule would result in some persons being seated in seats other than those in exit rows, based on the application of neutral, functional criteria. For example, young children, persons who were too large or too small, persons with some disabilities, and elderly persons who are physically frail would be seated in a location other than an exit row.



## Background

The Air Carrier Access Act of 1986 ("the Act") (Pub. L. 99-435, October 2, 1986) prohibits discrimination in air transportation on the basis of handicap. The Act also requires that measures taken to eliminate such discrimination take into account the safety of all passengers. Specifically, it provides:

> (c) (1) No air carrier may discriminate against any otherwise qualified handicapped individual, by reason of such handicap, in the provision of air transportation.
>
> (2) For the purposes of paragraph (1) of this subsection the term "handicapped individual" means any individual who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.
>
> . . . . .
>
> Sec. 3. Within one hundred and twenty days after the date of enactment of this Act, the Secretary of Transportation shall promulgate regulations to ensure non-discriminatory treatment of qualified handicapped individuals consistent with the safe carriage of all passengers on air carriers.

In order to formulate regulatory proposals implementing the Act, the Secretary of Transportation formed an advisory committee consisting of representatives from groups of persons with disabilities, the Government, and the air transportation industry (52 FR 19861; May 28, 1987). The Committee began meeting on June 3, 1987, under the guidance of the Federal Mediation and Conciliation Service and was scheduled to present its recommendations to the Secretary in December 1987.

The Committee was unable to reach a consensus regarding a recommendation on exit row seating, which had been an issue of some concern to the Committee. Consequently, the Department had the responsibility of proposing for its own provision on this subject, which it did in a notice of proposed rulemaking (NPRM) published June 22, 1988 (53 FR 23674). Concerning exit row seating, that NPRM proposed that carriers be prohibited from excluding persons from any seat on the basis of handicap, except in order to comply with an FAA safety rule. This FAA NPRM, amending 14 CFR Parts 121 and 135, proposes restrictions on exit row seating on the basis of neutral, nondiscriminatory criteria applicable to all passengers. The statutory authority for Part 121 is 49 U.S.C. 1354(a), 1355, 1356, 1357, 1401, 1421-1430, 1472, 1485, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983). The statutory authority for Part 135 is 49 U.S.C. 1354(a), 1355(a), 1421-1431, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

## Previous FAA Rulemaking Activity

Exit row seating has been the subject of FAA rulemaking in the past. In Notice 74-25 (July 2, 1974; 39 FR 24667), the FAA proposed a regulation, § 121.584, which would have provided that a handicapped person capable of traveling alone (e.g., a blind or a deaf person) could not be denied transportation so long as the person could be seated in any seat other than:

> The two seats nearest an exit, and any seat in a row immediately adjacent to an exit with the exception of the farthest seat from the exit in that row.

In other words, the two seats nearest an exit would have been unavailable to all handicapped persons in all cases, and other seats in an exit row would have been unavailable as well, depending on the length of the row, with the exception of the seat farthest from the exit.

That proposal was not adopted. The FAA chose instead to adopt in Amendment 121-133 a rule allowing each certificate holder to develop procedures appropriate to its own operations and aircraft (42 FR 18362; April 7, 1977). The FAA, however, issued an advisory circular (AC 120-31; March 25, 1977, the same date as Amendment 121-133) to assist certificate holders in developing their own procedures, which provided guidance on seating.

Paragraph 9 of the advisory circular states:

> 9. *SEATING HANDICAPPED PASSENGERS.* FAA's Civil Aeromedical Institute has conducted research to determine where handicapped passengers should be seated in an aircraft operated under Parts 121 and 135 so that, in the event of an emergency evacuation, they can leave the aircraft, either unassisted or assisted, by the safest and most expedient route while not slowing the evacuation.
>
> a. Those nonambulatory handicapped passengers should be seated in aisle seats where they would be near the end of lines of passengers being evacuated through floor-level, nonoverwing exits. Tests revealed that due to the narrow aisle width, an accompanying attendant trying to lift the handicapped person would temporarily block the aisle and hinder other passengers attempting to evacuate. Once the mainstream of evacuating passengers has passed, the attendant and the handicapped passenger can normally catch up to the flow since there is a bunching at the exit. Two nonambulatory passengers with attendants should not be seated directly across the aisle from each other because their attendants would interfere with each other while attempting to remove the nonambulatory passengers from their seats.
>
> b. To determine the amount of assistance nonambulatory passengers will require to evacuate the aircraft, an agent should first ask the passengers what their capabilities are. If there is some question as to whether an individual is ambulatory or nonambulatory, the agent may ask him to perform a simple test such as transferring from a wheelchair, unaided, to another seat. Additionally, the passenger may furnish evidence of his capability, such as a driver's license or a statement signed by a qualified professional person (e.g. a physician or physical therapist).
>
> c. Ambulatory handicapped passengers should be seated in areas in which evacuation would normally occur through a floor-level, nonoverwing exit.

The FAA's intent, in issuing this rule and advisory circular, was that carriers would adopt reasonable seating policies consistent with the FAA's advice and consequently, to a significant extent, consistent with other carriers' policies.

The FAA's experience, including a review of a large number of carrier policies carried out in connection with the work of the advisory committee, suggests that FAA's intent has not been realized fully. Some carriers have not established seating policies fully consistent with the advisory circular. Carrier policies appear to be inconsistent with one another in a number of cases. Further, information available to the Committee shows that certificate holder personnel, in excluding persons from those seats, may have done so in the mistaken notion that an existing FAA regulation required it or may have alluded to a non-existent regulation to "settle the argument." This, in turn, has led to increased pressure to remove restrictions on seating handicapped persons in exit rows. Under these circumstances, the FAA has determined that it is necessary to consider regulatory requirements concerning exit row seating.

The need to review and reconsider the FAA position is heightened by the provision of the Air Carrier Access Act NPRM, referred to above. Concerning seat assignments, proposed § 382.31 states:

> Carriers shall not exclude any person from a seat in an exit row or other location or require that a person sit in a particular seat, on the basis of handicap, except in order to comply with the requirements of an FAA safety regulation.

This formulation contemplates consideration of an FAA proposal on this subject. Unless the FAA promulgates a safety regulation on exit row seating, the proposed provision of the rule implementing the Air Carrier Access Act would abolish all air carrier seating policies in effect, and it would prohibit the institution of new ones, regardless of valid safety considerations. For all the foregoing

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reasons, the FAA has determined to reexamine the issue of exit row seating.

**Findings of Civil Aeromedical Institute Studies**

The FAA reviewed in detail the results of research conducted by the FAA's Civil Aeromedical Institute (CAMI) to assess the effects of handicapped passengers aboard an aircraft during an emergency evacuation. CAMI's project was undertaken in response to the Civil Aeronautics Board's (CAB) request for clear safety standards in this area. Basically, the position of the CAB in 1972 was similar to that of the FAA today. It recognized that handicapped persons were encountering inconsistent practices and policies in the provision of air carriage. The CAB recommended that appropriate actions be taken, looking towards the issuance of safety regulations on this pressing problem. "Flight Standards Technical Division Report on Air Transportation of Handicapped Persons," June 1973, p. 3.

As discussed further herein, the FAA elected not to regulate directly, in regard to exit row seating or other issues relating to the carriage of handicapped persons. Instead, it issued § 121.586 of the Federal Aviation Regulations (FAR), "Authority to refuse transportation," which allows air carriers to establish their own procedures for persons who may need assistance in an emergency evacuation.

In light of the FAA's experience under the current regulation, FAA finds that the CAMI research supports restrictions on exit row seating. A CAMI report on the subject states that:

> The average ambulatory handicapped passenger appears to possess adequate mobility for escape. He could be seated anywhere in the cabin except in an exit row or a primary overwing exit route * * * "Emergency Escape of Handicapped Air Travelers," Report FAA-AM 77-11, July 1977, p. 36.

[A copy of this report has been entered in the Regulatory Docket].

This report was prepared for possible publication in scientific journals and, therefore, included certain observations and tests conducted by the researchers that were not contained in the 1973 report by the FAA's Flight Standards Service, "Air Transportation of Handicapped Persons," Project Report No. 73-740-120A. Although both reports are based on the tests conducted in 1973, only the 1973 report, which contains no direct conclusions on exit row seating, was available at the time Amendment 121-133 was adopted.

The research does make a number of findings relevant to the seating of persons with disabilities. The agency simply did not have available the full, considered opinions of the researchers at the time Amendment 121-133 was adopted. Among the research findings are the following:

> In proceeding to exit doors from given seats, handicapped persons exceeded the exit time of unimpaired people by 22 to 1,189 percent.
>
> *Id.*, Tables 1 and 2, at 6, 7.
>
> Persons with disabilities increased the exit time through floor-level exits in all cases, ranging from 3.9 seconds to 49.8 seconds. In the case of window exits, the increases ranged from 3.4 to 42.5 seconds.
>
> *Id.*, Tables 10 and 11, at 31 and 32.
>
> In general, evacuation times increased as the number of handicapped subjects was increased. Researchers found the increase to be most significant in the totally handicapped category, less significant in the lower limb and partial immobility category, and least significant in the upper limb and sensory handicap category. Increases occurred, however, in all categories.
>
> *Id.*, at 29.
>
> Although the time needed to evacuate anthropomorphic dummies was somewhat higher than would have been the case for most human beings, the times required by actual persons with disabilities also were greater than those of the able persons.
>
> *Id.*, at 29.

In regard to evacuation times, § 121.291(a) of the FAR requires all certificate holders to demonstrate that each type and model of airplane with a seating capacity of more than 44 passengers can be evacuated in 90 seconds or less. The evacuations must be conducted in accordance with Appendix D to Part 121 of the FAR, which calls for the tests to be conducted with a representative passenger load of persons in normal health. At least 30 percent must be females; at least 5 percent must be over 60 years of age with a proportionate number of females; at least 5 percent but not more than 10 percent must be children under 12 years of age, prorated through that age group. Three life-size dolls, not included as part of the normal passenger load, must be carried by passengers to simulate live infants 2 years old or younger. Crewmembers, mechanics, and training personnel, who maintain or operate the airplane in the normal course of their duties, may not be used as passengers. Other conditions also must be representative, such as the seating density and arrangements, carry-on baggage, etc., but only 50 percent of the emergency exits can be made available.

Rapid evacuation is necessary, of course, due to the hazards of fire, smoke, explosion, and flooding in the event of an inadvertent water landing. It is vital, therefore, to minimize delays in every possible way. In the CAMI study, the researchers concluded that seating location could be used to minimize the delays. Clearly, it would be neither desirable nor feasible to limit passenger loads to those "in normal health," as in the emergency evacuation demonstrations required for transport category airplane certification. On the other hand, persons with handicaps should not be exposed to injuries that can be avoided nor should they impede the evacuation of other passengers. Instead, they should be seated where these dangers are minimized.

In the CAMI studies, information for the study of seat location was drawn from a variety of tests. These included: (1) An evaluation of individuals with handicaps, where individuals moved from one of three designated seat locations to a specific exit; (2) evaluation of handicapped passengers who required assistance to move to an exit; (3) evaluation of the evacuation of totally incapacitated passengers; (4) evaluation of the evacuation of grouped handicapped passengers; (5) evaluation of mixed group evacuations; (6) evaluation of the effect of exit configuration on evacuation; and (7) a separate evaluation of the evacuation of a paraplegic subject. *Id.*, at 4 through 28.

Subjects were recruited from a variety of sources. Nonhandicapped subjects were FAA employees or were hired through the University of Oklahoma Office of Research Administration. Most handicapped subjects were recruited from participating organizations, such as the Oklahoma Foundation for the Disabled, the Oklahoma League for the Blind, the United Cerebral Palsy Rehabilitation Workshop of Greater Oklahoma City, and The Carver School. *Id.*, at 2.

One hundred sixty-two subjects, ranging in age from 18 to 84 years, participated. Eight had disabilities resulting from cerebral palsy; four from arthritis; three from polio; four from multiple sclerosis; two from muscular dystrophy; and five from birth defects. Eighteen were paraplegics; 2 were quadriplegics; and 15 were hemiplegics. Twelve were classified as elderly, either on the basis of age alone or on their physical condition. Their ages ranged from 55 to 84. Fifteen were blind; one was classified as legally blind; and eight were partially sighted. In addition, 22 normally-sighted persons performed as simulated blind passengers. Two were in casts and seven had fractures, amputations, or breaks that had mended poorly and affected their mobility. Seventeen had mental deficiencies and 7 had mental illnesses (depression or schizophrenia). Two had no handicap and were capable of speed running. Four were obese, and four were deaf. *Id.*, Appendix B.



Especially relevant to this proposed rulemaking are the results of the CAMI tests on group evacuations. The research team found that seating of handicapped passengers in a normal passenger population during normal flight conditions results in, at most, an occasional minor inconvenience to other passengers. They found, however, that under circumstances where the passenger cabin must be speedily evacuated, placement of the handicapped passengers becomes important.

Information for the study of seat location was drawn from three test series: using an actual handicapped passenger in a passenger population of 24; using simulated handicapped passengers in a passenger population of 23; and using simulated handicapped passengers in a passenger population of 50. The simulated passengers were anthropomorphic dummies, to avoid injury to persons with actual disabilities.

Five tests involving the actual handicapped person, who required an assistant to carry him from the plane, showed that better evacuation times generally resulted when the handicapped passenger and his assistant were seated away from the exit. This enabled the assistant to position the handicapped person on his back properly, without delaying passengers behind him and without experiencing difficulties himself, due to crowding and shoving. *Id.*, at 19.

In tests involving subjects simulating total incapacitation, one man assisting a fairly light dummy worked skillfully into the flow of passengers without delay. Evacuation of a 200-pound dummy from a seat near the exit was more difficult, and a delay of about 3 seconds resulted. *Id.*, at 19.

Placing the dummies at the farthest point from the exit, the extreme end of the passenger population, allowed the cabin attendant to establish a good evacuation flow immediately. The total evacuation of 23 live passengers took only 25.04 seconds. There was little delay in this test because most passengers were not detained by the action required to move the dummies and because their assistants had ample time to position them for transport while the forward line of passengers was evacuating. *Id.*, at 23.

When the simulated handicapped persons were placed in forward positions, only 6 passengers (including 2 dummies) exited in the same time (20 seconds) that 17 passengers exited when the dummies were placed at the farthest point from the exit. *Id.*, at 23.

Passengers with upper limb and sensory handicaps had the least delaying effect on passenger flow times once their seatbelts were released. *Id.*, at 34. The tests, however, measured only their capacity to move from their seats to an exit under optimum conditions. To safeguard the subjects, none were asked to use evacuation slides. None were asked to open emergency exits and to perform the other tasks addressed herein, all of which are much more demanding than the relatively simple task of leaving a seat and moving forward to an exit without the dangers of flame, smoke, debris, and panic.

It has been suggested by some persons that there may be little or no relationship between a passenger's rate of movement from a seat to an emergency exit and his or her ability to open the exit and perform the other functions stated in the proposed rule. The FAA requests commenters to provide copies of any studies that support that thesis. The CAMI studies do not point to that conclusion.

Videotapes of the experiments, which are discussed further herein and copies of which have been placed in the docket, show the effect of various disabilities on movement from the seats to the doors. In many cases, it is readily apparent that the cause of slow progress, such as the immobilized arm of a stroke victim, also would affect the person's ability to open a door.

The videotapes also show that some passengers with a fairly good rate of movement down an aisle would have trouble, nevertheless, opening the door. A paraplegic with strong shoulders and arms, for example, could drag himself or herself toward the exit but would not have the stability to stand and remain upright to operate the door or window mechanisms.

The tests revealed that evacuation of the control group (persons with no handicaps) consistently was faster than that of groups with handicaps. Further, the evacuation time increase in all handicapped groups, when the evacuation test involved a window exit rather than a floor-level exit. It is significant that this rather modest increase in complexity, from a floor-level to a window exit test, resulted in increased evacuation times.

It is logical to conclude that additional complexity, such as finding and operating mechanisms, would impose additional burdens on persons with handicaps and cause delays.

Given the results of the tests, the researchers concluded that the average ambulatory handicapped passenger could be seated anywhere in the cabin except in an exit row or an overwing exit route, where he or she might impede the early stages of an evacuation or be injured by the rush of other passengers. This approach, which differs from that originally proposed in Notice 74-25 in 1974, serves as the basis for the present proposal. *Id.*, at 36.

Further, the researchers also found that "if nonambulatory passengers are seated in a group, the group should be seated in the cabin so that they, and their assistants, would be at the end of a line of evacuees so as not to interfere with the evacuation of other passengers and to avoid crowding by other passengers during their preparation for evacuation." *Id.*, at 36. Clearly, this preferred seating position for nonambulatory persons is incompatible with sitting in an exit row, which by nature is at the beginning of a line of evacuees.

It should be noted that seating "at the end of a line of evacuees" does not necessarily mean being seated at the back of the airplane or being the last person to evacuate. The location of the emergency exits determines the end of the line. Between a forward exit door and a window exit, for example, it is likely that two exit flows will develop—one toward the door and one toward the window. The break between the two flows will tend to come at midpoint between the two exits.

While it always is possible that one of the exits will become inoperable in an emergency, thereby changing the anticipated passenger flow, the FAA studies show that the seating proposed results in the expeditious evacuation of the greatest number of passengers.

The question has arisen as to whether certificate holders should ensure that at least one seat is occupied in each emergency exit row. The FAA does not believe that such a requirement is necessary. Nearby passengers who are able to perform the necessary functions could move into an empty row rapidly to perform the necessary functions.

It also has been suggested that the seats in all exit rows be removed or the aisles widened. The FAA does not believe that either approach would remove the need for positioning persons capable of performing the necessary functions near enough to the emergency exits to perform the evacuation functions that may be required.

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**Additional Research**

In addition to reviewing the CAMI documents, FAA staff took part in recurrent flight attendant training during October 1987 to observe and experience first-hand an evacuation drill at a major certificate holder. The information available from this training program was instructive. In the training devices of this certificate holder alone, there were at least 11 types of doors or emergency exits, each of which required varying degrees of strength and agility to open and each of which operated somwhat differently from the others. It is reasonable to conclude that, given the differences in operating instructions and techniques, sight also would play a major role in successfully opening the door or exit in a timely fashion.

In addition, the FAA reviewed scenes from a videotape, made at the time of the 1973 CAMI study, which showed actual, as well as simulated, handicapped persons, in the process of evacuating a simulated transport category airplane fuselage section. While the study's statistics provide ample evidence of the difference between the evacuation times of passengers with and without disabilities, the film provides very graphic evidence of the difficulties of movement associated with certain types of disabilities. These tapes are also made part of the rulemaking docket.

The FAA also reviewed a study completed in October 1970, by the Office of Aviation Medicine of the FAA, entitled, "Survival in Emergency Escape from Passenger Aircraft." (Document No. AM 70-16). This document discusses human factors relating to survival in emergency escapes from passenger aircraft. Data was secured from three actual accidents, with a total of 321 passengers, 105 of whom lost their life.

The accidents involved a United Airlines DC-8, which crashed during a landing at Stapleton Field, Denver; a United Airlines Boeing 727, which crash-landed at Salt Lake City Municipal Airport; and a Trans World Airlines (TWA) Boeing 707-331, which crashed on takeoff from Fiumicino Airport in Rome, Italy. The study, a copy of which has been entered in the Regulatory Docket, deals in detail with the emergency evacuations; the behavior of the passengers; their seat locations, the age, sex, and other characteristics of the passengers; the causes of death or injury, and the effect of the crashes on the emergency exits.

This study concluded that:

> In aircraft accidents in which decelerative forces do not result in massive cabin destruction and overwhelming trauma to passengers, survival is determined largely by the ability of the uninjured passenger to make his way from a seat to an exit *within time limits imposed by the thermotoxic environment.*

(Emphasis added.) *Id.* at 57.

That is, it is crucial that people evacuate quickly before heat, flames, toxic fumes, or an explosion kill or injure them.

In addition, the FAA reviewed a "Protection and Survival Laboratory Memorandum," No. AAM-119-87-6, dated November 5, 1987, based on CAMI "Accident/Incident Bio-Medical Data Reports." This memorandum has been placed in the rulemaking docket. At the time of the November 5, 1987, memorandum, the CAMI Cabin Safety Data Bank contained 3,382 entries. Of these, 132 pertained to problems of persons with handicaps or with characteristics that are likely to affect their ability to activate an emergency exit and to take the additional actions needed to ensure safe use of that exit in an emergency. The memorandum focused on 50 of these entries. While information in such a document is subject to additional evaluation or change on review of the data, conduct of additional testing, or receipt of additional facts, the memorandum lends support to the CAMI conclusions regarding problems encountered by the disabled and others during evacuation. The FAA also reviewed the 50 entries individually. All included problems affecting persons with disabilities, handicaps, the aged, children, the obese, and others having characteristics which could affect the evacuation process.

While the memorandum included some reports of successful, rapid evacuation by persons with disabilities, the reports show rather dramatically that certain factors generally impede rapid evacuation—advanced age or extreme youth; parental responsibilities for minors; physical disabilities; obesity; injury or ill health, etc. Many of the persons impeded by these factors required the assistance of others to escape.

It should be noted that in seven of the above cases, this assistance was provided by certificate holder crewmembers, persons in related occupations, or persons especially trained for emergencies such as fire, police, and military personnel, while assistance by other passengers was observed to only four of the cases. While it is conceivable that there were more instances of such assistance, the figures are in line with data obtained by the FAA in its study of three major aircraft accidents. The FAA found that while still aboard, passengers usually did not attempt to help others unless they were members of their own family. "Survival in Emergency Escape from Passenger Aircraft, AM 70-16, October 1970," at 15 and 88.

In regard to assistance to handicapped passengers, the CAMI researchers found:

> Assisting handicapped passengers in an aircraft cabin is difficult because of space limitations generated by the seat configurations. Fixed armrests, restrictive seat pitch (distance between similar points on seats), and restrictive aisle widths made assistance difficult and interfered with movement. Passenger congestion also interfered with those assisting handicapped subjects. Assistance in operating the seat belt was necessary for most handicapped subjects, especially those who lacked strength or muscular coordination.
>
> Deaf subjects required visual demonstration or written notes describing what they were expected to do * * * It should be noted that although some deaf passengers could read lips, they missed oral announcements unless they knew to expect them.
>
> * * * * *
>
> Assisting passengers with partial or total paralysis * * * a special problem. The aisle did not provide enough space for an assistant to help directly from the side, and leading these subjects from the front only slightly improved movement rates * * * Carrying would have been necessary to move severely afflicted subjects at an acceptable rate in a survival situation * * *
>
> Cerebral palsy victims vary in degree of mobility limitations. Total or partial inability to coordinate muscular movements limits many of them to a slow, unsteady walk * * * Five of the eight cerebral palsy subjects, who normally used wheelchairs, moved less than 1 ft./s (one foot per second), a rate inadequate for emergency aircraft evacuations.

"Emergency Escape of Handicapped Air Travelers," 1977 document, at 14 through 16.

In regard to passengers who had to be carried, their rate of egress depended upon a number of factors, such as the skill with which their assistants positioned them for carrying, obstructions caused by other passengers, but most important, where they had been seated.

As previously discussed herein, five tests with a paraplegic and an assistant showed that better evacuation times (for evacuees as a whole) generally resulted when the handicapped passenger and his assistant were seated far from the exit since the assistant could position the paraplegic without obstruction and then stay with the flow of traffic.

In one test, a paraplegic passenger was allowed to evacuate the cabin without assistance. The study reports:



> He positioned himself in the aisle so that a feet first scoot was possible. Although his movements were quick, he fell behind when traffic really began to move and delayed those behind him about 4 s. The obvious effort to avoid overrunning the paraplegic undoubtedly was a major reason that the total delay was more than 2 s.

*Id.* at 19.

The FAA notes in this connection that 2 seconds can mean the difference between life and death in the aftermath of a crash inasmuch as evacuation might be terminated abruptly by an explosion at any point. *See, e.g.*, "Survival In Emergency Escape From Passenger Aircraft," FAA Report AM 70-16, October 1970, at 35-36.

As a result of the studies and other available data and information, the FAA has concluded that it is more probable than not that persons with handicaps that prevent them from performing certain evacuation functions would be likely to impede emergency evacuation if seated in an exit row. This is especially true in an emergency where an exit row occupant is responsible for opening the exit. The data provide support for the FAA's conclusion that rulemaking is necessary to avoid the establishment or continuation of practices that are in derogation of the safety of all passengers.

**Safety Under the Air Carrier Access Act**

The Air Carrier Access Act protects the civil rights of handicapped persons and clearly mandates continued concern for safety. Further, safety constituted an important theme in the legislative history. The Senate Report focused on this issue at several points. It states that the statute "does not mandate any compromise of existing DOT or Federal Aviation (FAA) safety regulations." Sen. Rept. 99-400, August 13, 1986, p. 4. The FAA's existing rules allowing carriers to establish their own procedures for persons who may need assistance in an emergency evacuation (§ 121.586 of the FAR) does not cover specifically the role of exit row seating in air safety. Consequently, the FAA now must address the issue directly. In drafting this proposed rule to regulate exit row seating, the FAA has remained mindful of both the words of the Act and the expressed congressional intent regarding safety and civil rights.

The FAA notes, for example, that the Senate Report states that it was intended that the certificate holders will not "impose upon handicapped travelers any regulations or restrictions unrelated to safety and unrelated to the nature and extent of any individual's handicap." *Id.* at 4.

In a statement made on the Senate floor, Senator Robert Dole added:

> Our intent * * * is that so long as the procedures of each airline [concerning the transportation of handicapped passengers] are safe as determined by the FAA, there should be no restrictions placed upon air travel by handicapped persons. Any restrictions that the procedures may impose must be only for safety reasons found necessary by the FAA. * * *

Congressional Record, August 15, 1986, at S11785.

This proposed rule follows both the letter and the spirit of the Act and the expressed congressional intent.

It is clear that the principles enunciated by the courts with respect to discrimination under Section 504 of the Rehabilitation Act apply to the Air Carrier Access Act. The legislative history shows that the Congress passed the Air Carrier Access bill specifically to close a gap in the Rehabilitation Act. During consideration of the Senate bill, S. 2703, Senator Dole stated specifically that the purpose of the legislation is to "overturn the recent Supreme Court decision in the case of Paralyzed Veterans of America versus the Department of Transportation. This case, which was handed down by the high court in the closing days of its spring term, held that section 504 of the Rehabilitation Act of 1973 'is not applicable' to U.S. carriers, except for those few small regional carriers who receive direct Federal subsidies." Congressional Record, August 15, 1986, at S11784. Senator Alan Cranston and Senator Howard M. Metzenbaum also addressed this point. *Id.* at S11787.

Similarly, in discussing the House version of the bill, H.R. 5274, Congressman John Paul Hammerschmidt stated:

> Unfortunately, our efforts on behalf of the handicapped were set back by the recent Supreme Court decision in the case of Paralyzed Veterans of America versus DOT. In that case, the Court decided that the Rehabilitation Act, which prohibits discrimination against the handicapped, did not apply to [unsubsidized] air travel * * *

Congressional Record, September 16, 1986, at H7193.

Congressman Gary L. Ackerman expressed similar intent:

> As you know, Mr. Speaker, last summer I introduced similar legislation to amend the Federal Aviation Act immediately following the Supreme Court ruling that major airlines cannot be forced to comply with the Rehabilitation Act because they do not receive direct Federal assistance.

*Id.*, at H7194.

Given this recognition of the interrelationship and the Congressional history of the Air Carrier Access Act, logic requires that the standards set by the Supreme Court in *Southeastern Community College (Davis)* and in *Alexander*, regarding "reasonable accommodation" and "meaningful access," apply to the Air Carrier Access Act as well as to section 504 of the Rehabilitation Act. The seating restriction is narrowly defined, and this proposed regulation would not constitute a barrier to meaningful access to air carrier transportation.

In addition, the proposed rule is in accord with governing judicial decisions. The Supreme Court has held that nondiscrimination on the basis of handicap does not require the imposition of undue financial and administrative burdens, nor does it require modifications that would result in a fundamental alteration of the nature of a program. *Southeastern Community College* v. *Davis*, 442 U.S. 397 (1979); *American Public Transit* v. *Lewis*, 665 F.2d 1272 (D.C. Cir. 1981). Various courts have decided that *either* an undue financial or administrative burden may be used as the basis for refusing to accommodate in a particular manner. *Majors* v. *Housing Authority of DeKalb County*, 652 F.2d 454, 457 (5th Cir. 1981); *Rhode Island Handicapped Action Committee* v. *Rhode Island Public Transit Authority*, 549 F. Supp. 562, 610 (D.R.I. 1982), reversed in part, vacated in part, and remanded on other grounds, 718 F.2d 490, (1st Cir. 1983).

In *Alexander* v. *Choate*, 469 U.S. 287, 105 S.Ct. 712 (1985), the Supreme Court again examined the extent of accommodation required for persons with disabilities, finding that in *Southeastern* a balance was struck between "two powerful but countervailing considerations—the need to give effect to the statutory objectives and the desire to keep section 504 [of the Rehabilitation Act] within manageable bounds." *Alexander*, at 299.

The Supreme Court concluded in *Alexander* that "The balance struck in *Davis* [*Southeastern*] requires that an otherwise qualified handicapped individual must be provided with *meaningful access* to the benefit that the grantee offers * * * to assure meaningful access, *reasonable accommodations* in the grantee's program or benefit may have to be made." (Emphasis supplied.) *Alexander*, at 301.

These principles and section 3 of the Act require carriers to ensure meaningful access to air transportation while considering the potential safety impact of seating policies that are necessary to transporting passengers

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with the maximum degree of safety. Banning all persons with disabilities from particular seats, or requiring all disabled persons to sit in particular seats, would be unlawful discrimination; but the exclusion of persons with certain disabilities from the seats covered by the rule for legitimate safety reasons does not deprive them of "meaningful access" to air carrier transportation. Exit rows provide only a small fraction of the available seating in the air carrier fleet. The FAA does not propose to bar any persons from seating that does not adversely affect their safety or that of other passengers. Furthermore, the rule specifically provides that a person with a disability cannot be denied transportation as a result of the safety restrictions.

**Emergency Evacuations—Exit Row Passenger Functions**

From a safety standpoint, a person who sits in an exit row or, in cases where there is no aisle, in any seat that has direct access to an exit must be able to accomplish a number of tasks under a variety of conditions without assistance. These include:

*Locating the Exit*

In order to be able to locate the exit in an emergency, the passenger in an exit row must be able to comprehend and identify that he/she is in such a row. The primary means of such comprehension and identification is seeing the exit, as well as its placards, and recognizing their significance. Although a person familiar with one or more aircraft seating configurations might be able to recognize that he/she is in an exit row by counting seat rows, that method is not reliable. Seating configurations vary from certificate holder to certificate holder and even from aircraft to aircraft in the same fleet. Further, the ability to remember seating configurations is not something that can be discerned by ordinary means of observation. It would not be practical to expect that a certificate holder assigning seats could identify a person with that ability, or be sure that one who claims such ability actually has it. It has been suggested that special briefings could be given to blind persons to inform them of their exit row occupancy and to familiarize them with the door or window mechanism. During an actual evacuation, however, there is no guarantee that the nearest exit will be operable or should be used. The FAA's study of three major accidents (Report AM–70–18), described previously herein, includes data on this point. In the Denver accident, the left window exits became unusable due to fire on the wing. Debris blocked the main, rear boarding door. Fire destroyed the slide at the aft galley door after about 20 persons used it. Other passengers then had to jump—a situation with special hazards for blind and other handicapped passengers. In the Salt Lake City accident, fire on the left side of the fuselage drove persons away from the window exits there to the right side instead. In the Rome crash, fire spread to the left side of the aircraft, hampering the escape of passengers from that side. Further, the forward galley door was not used due to fire. "Survival in Emergency Escape from Passenger Aircraft," at 11, 12, 22, 31, and 33. Clearly all passengers benefit if the persons seated in an exit row can determine quickly whether its door or window remains operable or conditions outside allow its use.

*Recognizing, Comprehending the Instructions for Use, and Operating the Exit Opening Mechanism*

These tasks call for the ability to locate and identify the mechanism and the range and direction of motion required to use the mechanism effectively. They require the ability to perceive and understand the normally available directions pertaining to use of the mechanism. Ascertaining the complete directions for opening an exit often requires observation of both the exit itself, which may have on it a graphic illustration regarding the direction of motion of the mechanism required to open the exit, and a passenger information card and/or video tape presentation. These contain further graphic illustrations of the complete set of actions required for use of the opening mechanism.

It should be emphasized that these presentations rely on graphic displays as well as on words. Reliable oral interpretation of the graphics for the benefit of a blind person by another passenger depends on the ability of the person attempting to convey the information. There would be no practical way to test this in advance. Similarly, relying on another passenger to translate instructions would be impractical in the case of persons who do not speak the same language. In addition, other passengers have no legal duty to convey such information to a handicapped, non-English speaking, or illiterate passenger, and it would not be feasible to require them to demonstrate such an ability.

Further, many passenger information cards focus on main handles of the exit, on the assumption that passengers will be able to see or read further instructions or find adjunct mechanisms. To illustrate, at the Flight Attendants Recurrent Training Course, the following were noted:

An overwing window exit generally will have a handle marked "Pull" or "Pull Down," but no placard or information concerning the other hand grip which must be located and grasped at the same time as the movable handle. Both must be grasped to enable the person opening the exit window to move it out of the way to prevent blockage of the exit.

Certain operating mechanisms are not integral parts of the exit doors but may be located adjacent to the exit door. Still others have covers, labeled with words indicating they should be removed to allow use of the mechanism in an emergency.

On power-assisted exit doors, in addition to the mechanism for opening it, there often is an arming device located near the opening handle. If activated by mistake, it will prevent the door from opening. Sighted persons can differentiate this handle from the door mechanisms, which are fully labelled. No instructions are provided to passengers in connection with the arming devices because they are intended for crew use only. Yet, their proximity to the opening handles presents a chance that a person, who cannot discern the difference between the two mechanisms, inadvertently could render the exit useless. Once this occurs, it is not reversible without the assistance of trained mechanics.

Several persons have suggested that the locations and types of mechanisms may pose problems for persons other than those with disabilities. They recommend more detailed instructions on both the passenger evacuation cards and near the emergency exits. The FAA invites further comment on this issue.

*Assessing Conditions*

This requirement includes both sensory and cognitive abilities. The primary sense involved is sight. Cognitive abilities include the capacity to judge danger. Young children, for example, may lack the ability to make the required judgments. Opening an exit in an emergency may increase the danger to which all passengers are exposed, if doing so allows an external fire or even its smoke to enter the cabin. Danger to passengers also can be increased if they are encouraged to use an exit which might open onto dangerous conditions, such as jagged metal, ice, water, unexpected distance to the ground or some condition which might be avoided by using another exit.



It has been suggested that a blind person could be advised orally of a sighted person's assessment without derogating the safety of others. The FAA does not agree that this offers a practical alternative to excluding blind people from exit rows. Emergencies are more likely than not to foster confusion. To add a requirement for one person to assess conditions and relay that assessment to another before an emergency exit can be opened, solely to provide that other with the right to sit in an exit row, would be to increase danger unnecessarily.

It also has been suggested that a blind person can assess the danger presented by external fire through the sense of touch. The argument is that a blind person could sense an external fire by feeling the inside of the door. While that may be true in some cases, this argument is not valid in the case of fire that is not yet near enough to the airplane or of sufficient intensity to cause the inside of the door to be warm enough to warn against opening the door. Large, modern aircraft are extremely well-insulated. At 30,000 feet, a passenger cannot feel the intense cold (as low as –70 degrees centigrade) by placing a hand on the fuselage.

In addition, this assertion does not deal with the dangers presented by smoke, jagged metal, and other hazards such as those mentioned above. The certificate holders train crewmembers to "feel" the door while looking out the window to assess conditions, but this action is designed to cause a pause for assessment of viewed conditions before reaching for the exit operating mechanism. It is not considered an independent means of assessment.

In some doors, prism windows now allow visual assessment along the full length of the aircraft all the way to the ground to determine whether fire or obstacles are present. Clearly, blind persons cannot make such an assessment.

Automatic slides fail from time to time. When this happens, the person nearest the exit must recognize that manual deployment will be necessary, find the manual deployment handle, and operate it. If this fails, it may be necessary to find and communicate the need for a totally different means of escape. Sighting flashing door lights, following floor lights, or seeing the hand signals of others may be necessary for effective escape leadership. While this leadership may fall to a passenger outside the exit row, it will do so more rapidly if those in the exit row can quickly and accurately assess the state of that exit.

Finally, it has been suggested that blind persons are better able to function in the dark and actually may be more useful than sighted persons in an emergency evacuation. It is not certain, however, that in any given crash scenario darkness will be so complete as to render sight useless. Crashes involving fire and smoke may lead ultimately to total darkness in the cabin, but data available to the FAA at this time indicate that light cues usually are available. These may come from the fire itself, airport or other lighting, red emergency lights near the doors, and floor track lights. Even in dense smoke, an open door may appear shades lighter than the balance of the surroundings and draw passengers to safety.

*Assessing Whether a Slide Can Be Used Safely*

This includes judging whether the slide has extended, whether it terminates in a safe area, whether the physical integrity of the slide is adequate for its use, and whether passengers are accumulating on the slide in such numbers as to threaten its integrity.

*Stowing or Securing the Exit Door*

The action needed to stow or secure the exit door expeditiously and safely varies widely. On power-assisted doors, no separate action beyond turning the handle may be required. Removal of an exit window, however, will require maneuvering a 40- to 60-pound, approximately 2- x 3-foot window over the adjacent seat back into the row behind the exit or onto seats in the balance of the exit row. This requires strength, sight to ensure that others are out of harm's way of the detached window, and speaking ability to issue the appropriate orders or warnings to passengers in the way.

In stowing doors that swing outward, such as those on some Boeing 727 models, care must be taken to avoid falling out of the airplane. A handle near the door is provided for just this purpose, and its purpose is obvious to a sighted person attempting to open the door. In the passenger information cards of one major certificate holder, this handle is visible in pictures of the door, but its use is not discussed. This makes it unlikely that it would be revealed to a blind person being apprised of the exit operating instructions by a sighted companion. Such communication was suggested by at least one witness appearing before the advisory committee as being all a blind person would need to function as effectively as a sighted person in regard to opening an emergency exit safely and expeditiously. A similar argument could be made with respect to passengers who cannot read the language in which the instructions are presented. It is the FAA's position that such instruction or explanation by another person constitutes an unnecessary delay factor and simply points to the need for placing sighted persons in exit rows.

*Safely Using the Exit*

This includes passing expeditiously through the exit and assessing, selecting, and following a safe path away from the exit. A person leading the way out of an exit in an emergency should have the agility to exit quickly, the strength to assist other passengers, and the ability to avoid hazards such as water, jagged metal, unexpected heights (such as might be caused by failed or damaged slides), and rescue vehicles and associated equipment.

*Following Oral Directions or Hand Signals From a Crewmember*

During an anticipated evacuation, survival may depend on the ability of persons in exit rows to see, hear, and understand the instructions issued by crewmembers. As discussed previously herein, exits may become inoperable or unavailable due to fire, structural damage, or damage to slides. In some situations, opening an exit may exacerbate the danger by allowing flames or smoke to rush into the cabin. The potential for such danger is increased if persons in these exit rows cannot see it or hear and understand shouted directions and warnings from crewmembers.

**Other Options for Exit Row Seating**

In addition to the proposal in this NPRM, the FAA considered a number of other options in regard to exit row seating.

The first of these was the approach originally proposed in Notice 74–25 in 1974. Basically, this would have prohibited handicapped passengers from sitting in all exit row seats except the seat farthest from the exit. The FAA did not select this approach for the following reasons. (1) In the event the remaining seats in the exit row were not assigned, the sole passenger in that row could be a handicapped person; (2) similarly, if the other passengers became incapacitated, the sole passenger in that row could be a handicapped person; and (3) even if the other passengers were able-bodied, a handicapped person in the exit row would be more likely than an able-bodied person to cause some delay in establishing the evacuation

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flow, as demonstrated in the CAMI studies.

The second approach was suggested by a representative of one of the groups of persons with disabilities. This called for only the seat adjacent to a window exit to be reserved for only persons capable of performing the necessary functions. Again, this approach presupposed the survival or undiminished capacity of the able-bodied person during an accident or emergency landing. Further, it would have allowed handicapped persons to sit in floor-level exit rows. This approach is not viable, given the available data on evacuation flow.

The FAA's objective in this proposal is to maximize the likelihood for survival. In order to do so, it is necessary that only persons capable of performing the necessary functions be seated in exit rows, to enhance the ability of all passengers to evacuate safely. Persons in exit rows may have to work as a team. In the window exit rows, for example, the task of removing the window hatch ordinarily would fall to the person next to the window hatch. The window hatches weigh 45 to 80 pounds and must be manuevered either over the back of the seat to the next row or placed on the seat next to the window exit seat. In either case, nearby passengers must have the capacity to recognize the need for moving out of the way rapidly and have the capacity to do so. In addition, the whole row of passengers must be capable of performing the necessary functions because the seat adjacent to the emergency exit may be unoccupied.

The initial evacuees also may have to work as a team on the ground. In a high wind, it may be necessary for several persons to hold down a slide and to catch passengers (especially disabled ones) and assist them away from the slide. The FAA invites comments, however, on the other options considered as well as any other options the agency may not have considered.

**Other Issues**

One issue that has been raised concerning exit row seating is whether there should be restrictions on seating persons who have been consuming alcohol in exit rows or on serving alcohol to persons seated in exit rows. Section 121.575 of the FAR prohibits a certificate holder from boarding, or serving alcohol to, a passenger who appears intoxicated. In any event, this proposed rule would apply to inebriated persons just as it applies to any other person who could not be expected to perform the functions described herein in an emergency exit row during an evacuation. The FAA seeks comment on whether more specific requirements are needed on this subject.

Another concern that has been expressed relates to the questionable need for exit row seating restrictions, in light of the allegedly negligible probability that a crash would occur with a handicapped person sitting in an exit row. The suggestion is that this limited chance should be balanced against the inconvenience to persons who are removed from exit row seats assigned by mistake or inadvertence.

This suggestion overlooks the purpose of crashworthiness rules such as proposed herein. Crashworthiness rules are designed to deal with the post-crash environment by creating the greatest possible chance for survivors to escape the aircraft. Another example of a crashworthiness measure is the use of seatbelts. Very rarly do passengers encounter turbulence that requires fastened seatbelts during flight. It is well-established, however, that a fastened seatbelt may be the difference between saving and losing a life.

The FAA's goal in this matter is safety for the maximum number of people possible. It is clear from the studies discussed herein that any delay in beginning the flow of persons through an exit works to the detriment of all those trying to use the exit. The FAA studies show that persons without handicaps are less likely to cause such delays than are persons with handicaps. The studies also show that a handicapped person, who might cause a substantial delay at the head of an exit queue, can be accommodated once the queue is established and moving without detriment to the flow rate or to his or her own escape through an exit.

The FAA seeks any additional studies or data concerning the issues raised by this rulemaking. For example, FAA has heard references to an evacuation exercise the National Federation of the Blind conducted in conjunction with World Airways in 1985. However, FAA has been unable to obtain tapes or other reports relating to that exercise.

**Requirements for Compliance With the Rule**

In order to comply with the proposed regulations, certificate holders would have to develop procedures and revise their pertinent handbooks, for review and approval by the principal operations inspectors (POI's) at the FAA Flight Standards District Offices that hold their certificates. The procedures would not become effective until final approval is granted by the Director, Flight Standards Service in Washington.

To ensure that the procedures of all certificate holders are consistent with the regulations, explicit criteria for the selection of exit row occupants have been included in the proposed rule. To be approved, a certificate holder's procedures would have to include the criteria and address all of the functions enumerated in the proposed regulations as ones that may fall to a person in an exit row.

The procedures also would have to include provisions by each certificate holder to make available at each airport it serves and at each seat affected by the proposed regulations the information advising the occupying passenger that he or she may be called upon to perform the enumerated functions.

Certificate holders also would have to include provisions for verifying the appropriateness of exit row seating assignments prior to takeoff and for briefing passengers on the need to identify themselves and to move out of the exit row if they cannot meet the criteria or do not wish to be responsible for performing the required functions. For example, a procedure might consist of a flight attendant asking questions to ensure that a person seated in an exit row can hear and understand English. The flight attendant would then instruct the passenger briefly as to the responsibilities of sitting in that seat, and the person would indicate whether he or she felt capable of performing those functions. Any procedure that ensures that the criteria are applied in a non-discriminatory manner would be acceptable. The FAA invites comments on the best way to accomplish this.

Approval will be based solely upon the safety aspects of the certificate holders' procedures. The FAA's approval of procedures will not insulate the certificate holder, therefore, from challenges based upon discrimination or other matters not related to safety.

As with any changes to Part 121 or 135, certificate holders' procedures would have to provide for training, as already required by FAA regulations in 14 CFR Part 121, specifically, §§ 121.415, "Crewmember and dispatcher training requirements"; 121.417, "Crewmember emergency training"; 135.295, "Initial and recurrent flight attendant crewmember testing requirements"; and 135.319, "Crewmember training requirements". Accordingly, proposed §§ 121.585 and 135.127 contain no separate requirement for training.

In developing the foregoing proposed compliance procedures, the FAA considered eliminating the requirement for submission of the procedures to the FAA for approval. The rationale presented for nonsubmission include: (1) The proposed rule is very explicit and could be implemented with minimal written procedures; (2) passengers with complaints based either on safety or discrimination have adequate recourse to the FAA or the Office of the Secretary of Transportation, whether or not written procedures have been submitted for approval; and (3) since the rule could be implemented with minimal written procedures, there would be little to review and approve, and the cost of submission would not be warranted.

On the other hand, the FAA considered the following factors: (1) Representatives of handicapped groups have expressed strong disapproval of the fact that the procedures developed by certificate holders under § 121.586, "Authority to refuse transportation", were submitted solely for review and not for approval by the FAA. A compliance mechanism that eliminates even the submission of the procedures may be considered a step in the wrong direction, regardless of the proposed rule's increased level of detail; (2) if the procedures are not submitted for approval, the FAA will have to rely solely on complaints to determine the compliance of the certificate holders; (3) without ready access to the procedures, the FAA will be in a less informed position, when attempting to resolve a problem informally; and (4) there is no guarantee that each certificate holder will interpret the proposed rule in exactly the same way.

The FAA welcomes comments on this matter.

The requirements would be applicable to all part 135 air taxi operators and commercial operators, as well as to Part 121 domestic, flag, and supplemental air carriers and commercial operators of large aircraft. The FAA considered limiting the applicability of § 135.127, however, to aircraft having a passenger seating configuration of more than 19 passengers.

Many small aircraft do not have complicated assist mechanisms, such as evacuation slides, and have fewer types of doors and fewer passengers to evacuate in an emergency. It is conceivable that these factors may make it less necessary to restrict exit row seating. On the other hand, damage to an aircraft that precludes the use of even one evacuation route may have a greater impact in a small aircraft than in a large one. Further, the limited space for movement actually may increase the need for seating restrictions. The FAA invites comments on the extent to which the proposed rule should apply to Part 135 commuter and on-demand air carriers and commercial operators.



**Compliance Dates**

As previously discussed herein, the Department of Transportation has proposed a rule to implement the Air Carrier Access Act, to which the FAA's proposed exit row rule relates. It is the intention of the Department that both proposed rules, if adopted, become effective simultaneously to the extent possible, to avoid a hiatus between the existing procedures of certificate holders, concerning exit row seating, and the requirements established through amending Parts 121 and 135.

While the Department recognizes that the existing procedures of certificate holders may have many shortcomings, they presently constitute the only available mechanism for monitoring emergency exit row seating from the standpoint of safety. The FAA believes that a hiatus would not be in the best interests of safety and that the present procedures must be used until proposed §§ 121.585 and 135.127, if adopted, become effective.

The Department also recognizes that both the certificate holders and the handicapped groups have concerns regarding the timing of the implementation. The certificate holders' concerns relate to the length of time that it would take to train their personnel before the provisions of both rules become fully effective. The handicapped groups, particularly with respect to Part 382, are concerned that there be no needless delays in the implementation of the provisions. The issue of the timing of the effective dates for both rules will be resolved on the basis of comments received on this proposal.

**Regulatory Evaluation Summary**

*Analysis of Benefits and Costs*

The FAA has estimated the costs and benefits associated with this proposed rule by analyzing it section by section.

This proposal would replace the industry's inconsistent policies and inconstant practices with a uniformly applicable rule. The proposed rule provides a comprehensive set of procedures, based on explicit criteria, that can be carried out with only minimal training cost. Changes to the appropriate parts of the crewmembers' manuals and appropriate segments of airlines' training programs are made periodically as a matter of routine. The provisions of this proposal would be incorporated routinely into those manuals and training programs at little additional cost. Factors such as an accelerated training schedule, if used, could result, however, in some additional training costs. Presently, the FAA does not anticipate this will be necessary.

The requirement for passengers to comply with instructions, or be subject to denial of transportation at the discretion of the certificate holder, would impose no cost because such a requirement is presently industry practice reflecting section 902(j) of the Federal Aviation Act of 1958 (49 U.S.C. 1472(j)).

The requirement that certificate holders make available, at each seat affected, information advising the occupant of the functions he or she might be called upon to perform in an emergency and the requirement that passenger information cards be presented in multiple languages would cost, at maximum, approximately $310,000 for all potentially affected seats under the proposed applicability in both Part 121 and Part 135. The maximum approximate cost per aircraft would range from $20 to $60 for Part 135 commuters with more than 19 seats and airplanes operating under Part 121. The maximum approximate cost per aircraft for Part 135 commuters with 19 or fewer seats and for air taxis would average $5.

The cost of making copies of the criteria available at airports would be negligible. The incremental cost of printing the procedures and making them available at each airport would range from less than $100 to probably no more than $1,000 per year for each Part 121 operator and Part 135 commuter operator, depending on the number of airports each operator serves. Air taxi operators likely would incur only the negligible costs of using a copying machine to copy the criteria.

The requirement for verification of appropriately occupied affected seats prior to closing all passenger entry doors preparatory to taxi or pushback would be accomplished during the currently-required baggage stowage check with no delay of flight or incremental cost.

The required inclusions in the passenger briefings are minimal expansions and would be accomplished at no cost.

Accommodating a passenger being relocated from an exit row seat when non-exit row seats are fully booked would involve no cost. That person would not be denied transportation, nor would any cost result from moving another passenger, who is willing and able to assume the evacuation functions that may be required, into an exit row seat.

The certificate holder's submission of procedures to the FAA would involve a negligible administrative cost for the transaction.

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Since no passenger would be denied transportation, there would be no loss of revenue.

The potential benefits that would be derived from this proposed rule are substantial. The FAA estimates the potential benefits based on a broad body of information which is discussed in detail elsewhere in this NPRM. Of particular import is the information contained in a study completed in October 1970 by the FAA's Office of Aviation Medicine, entitled "Survival in Emergency Escape from Passenger Aircraft" (Report No. AM-70-16), which concluded that in aircraft accidents in which decelerative forces do not result in massive cabin destruction and overwhelming trauma to passengers, survival is determined largely by the ability of the uninjured passenger to make his or her way from a seat to an exit within time limits imposed by the thermotoxic environment. Seconds can mean the difference between life and death in the aftermath of a crash inasmuch as evacuation might be terminated abruptly by an explosion at any point.

The reason for this proposed rulemaking is a concern for potential derogation of safety. Any effort to calculate monetary values for expected saved lives would be speculative, since there is no historical base from which to derive valid estimates. Nevertheless, the FAA estimates that the proposed rules would account for a benefit of substantial numbers of lives saved as contrasted with potential loss of life in the absence of such regulations.

It is obvious that the prevention of only one life lost in an accident would alone more than pay for the cost of this proposed rule. The data clearly indicate that the proposed rule would be justified on a benefit-to-cost basis. Each proposed section in Part 121 and Part 135 is identified and explained in the detailed section-by-section analysis contained in the full Regulatory Evaluation placed in the docket.

*Regulatory Flexibility Determination*

Since there would be only negligible cost associated with this rule for an operator, the FAA has determined that the proposal would not have a significant economic impact, positive or negative, on a substantial number of small entities.

*Trade Impact Statement*

Since this proposed rule would affect only Part 121 and Part 135 certificate holders regarding seating of passengers in exit rows, the FAA has determined that the proposed regulation would not have an impact on international trade.

**Federalism Implications**

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 12612, it is determined that such a regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

**Conclusion**

For the reasons discussed in the preamble and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this proposed regulation is not major under Executive Order 12291 and certifies that this rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This proposal is considered significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). An initial regulatory evaluation of the proposal, including a Regulatory Flexibility Determination and Trade Impact Analysis, has been placed in the regulatory docket. A copy may be obtained by contacting the person identified under "FOR FURTHER INFORMATION CONTACT."

**List of Subjects**

*14 CFR Part 121*

Transportation, Air safety, Safety, Aviation safety, Air transportation, Air carriers, Airplanes, Aircraft, Handicapped.

*14 CFR Part 135*

Transportation, Air safety, Safety, Aviation safety, Air transportation, Air carriers, Airplanes, Aircraft, Handicapped.

**The Proposal**

Accordingly, the FAA proposes to amend Parts 121 and 135 of the Federal Aviation Regulations (14 CFR Parts 121 and 135) as follows:

## PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

1. The authority citation for 14 CFR Part 121 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1355, 1356, 1357, 1401, 1421–1430, 1472, 1485, and 1502; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983).

2. New § 121.585 is added to read as follows:

**§ 121.585 Exit row seating.**

(a) Each certificate holder shall determine, to the extent necessary to perform the applicable functions of paragraph (d) of this section, the suitability of each person it permits to occupy a seat in a row of seats that provides the most direct access to an exit (including all of the seats in the row from the fuselage to the first aisle inboard of the exit or, in cases where there is no aisle, in any seat that has direct access to an exit), in accordance with this section. These determinations shall be made in a non-discriminatory manner consistent with the requirements of this section, by persons designated in the certificate holder's required operations manual.

(b) No certificate holder may seat a person in a seat covered by this section if the certificate holder determines that the person would likely be unable to perform one or more of the applicable functions in paragraph (d) of this section because—

(1) The person lacks sufficient mobility, strength, or dexterity in both arms and hands, and both legs, to reach upward, sideways, and downward to the location of door and exit-slide operating mechanisms; to grasp and push, pull, turn, or otherwise manipulate those mechanisms; to push, shove, pull, or otherwise open doors; to lift out, hold, deposit on nearby seats, or maneuver over the seatbacks to the next row objects the size and weight of over-wing window exit doors; to remove obstructions of similar size and weight; to reach the exit expeditiously; to maintain balance while removing obstructions; to exit expeditiously; to stabilize an escape slide after deployment; and to assist others in getting off an escape slide;

(2) The person lacks sufficient cognitive capacity to perform one or more of those functions without the assistance of an adult companion, parent, or other relative;

(3) The person lacks the ability to read and understand instructions related to emergency evacuation provided by the certificate holder in printed, handwritten, or graphic form;

(4) The person lacks sufficient visual capacity to perform one or more of the applicable functions in paragraph (d) of this section without the assistance of visual aids beyond contact lenses or eyeglasses;

(5) The person lacks sufficient aural capacity to hear and understand instructions shouted by flight attendants, without assistance beyond a hearing aid, and the ability to understand the language spoken by the flight attendants;

(6) The person lacks the ability adequately to impart information orally to other passengers; or

(7) The person has:

(i) A condition or responsibilities, such as caring for small children, that might be likely to prevent the person from performing one or more of the applicable functions listed in paragraph (d) of this section; or

(ii) A condition that might be likely to cause the person harm if he or she performs one or more of the applicable functions or result in harm that would prevent the person from performing one or more of the applicable functions listed in paragraph (d) of this section.

(c) Each passenger shall comply with instructions given by a crewmember or other authorized employee of the certificate holder, implementing exit row seating restrictions established in accordance with this section.

(d) Each certificate holder shall include on passenger information cards, presented in the languages used by the certificate holder for passenger information cards, at each seat affected by this section, the following information: In the event of an emergency in which a crewmember is not available to assist, passengers occupying an exit row seat (or any seat that has direct access to an exit) may be called upon to perform the following functions:

(1) Locate the exit;

(2) Recognize the exit opening mechanism;

(3) Comprehend the instructions for operating the exit;

(4) Operate the exit;

(5) Assess whether opening the exit will increase the hazards to which passengers may be exposed;

(6) Followed oral directions and hand signals given by a crewmember;

(7) Stow or secure the exit door so that it will not impede use of the exit;

(8) Assess the condition of an escape slide, activate the slide, and stabilize the slide after deployment to assist others in getting off the slide;

(9) Pass expeditiously through the exit; and

(10) Assess, select, and follow a safe path away from the exit.

(e) Each certificate holder shall include, on passenger information cards at all seats affected by this section, the criteria set forth in paragraph (b) of this section, presented in the languages used by the certificate holder for passenger information cards.

(f) Each certificate holder shall make available for inspection by the public at all passenger loading gates and ticket counters at each airport where it conducts passenger operations, written procedures established for making determinations in regard to exit row seating.

(g) No certificate holder shall allow all passenger entry doors to be closed in preparation for taxi or pushback unless at least one required crewmember has verified that each occupied seat affected by this section is occupied by a person the crewmember determines is likely to be able to perform the applicable functions in paragraph (d) of this section.

(h) Each certificate holder shall include in its passenger briefings a reference to the passenger information cards, required by paragraphs (d) and (e), the criteria set forth in paragraph (b), and the functions set forth in paragraph (d) of this section.

(i) Each certificate holder shall include in the briefings and in the written criteria a request that a passenger identify himself or herself to allow reseating if he or she—

(1) Cannot meet the criteria set forth in paragraph (b) of this section;

(2) Has a nondiscernible condition that will prevent him or her from performing the applicable functions listed in paragraph (d) of this section;

(3) May suffer bodily harm as the result of performing one or more of those functions; or,

(4) Does not wish to perform those functions. A certificate holder shall not require the passenger to disclose his or her reason for needing reseating.

(j) Each certificate holder shall expeditiously honor a passenger's request to be relocated to a seat not affected by this section.

(k) In the event a certificate holder determines in accordance with this section that a passenger assigned to an exit row seat is not likely to be able to perform the functions described in paragraph (d) of this section, or a passenger requests a non-exit row seat, the certificate holder shall relocate the passenger to a non-exit row seat.

(l) In the event of full booking in the non-exit row seats, the certificate holder shall move a passenger, if necessary to accommodate a passenger being relocated from an exit row seat, who is willing and able to assume the evacuation functions that may be required, to an emergency exit row seat. Persons being moved out of an emergency exit row seat shall not be denied transportation.

(m) A certificate holder may deny transportation or exit row seating to any passenger who refuses to comply with instructions given by a crewmember or other authorized employee of the certificate holder, implementing exit row seating restrictions established in accordance with this section.

(n) In order to comply with this section,

(1) Certificate holders shall develop procedures that:

(i) Include the criteria enumerated in paragraph (b) of this section;

(ii) Address all of the functions enumerated in paragraph (d) of this section;

(iii) Provide for airport information, passenger information cards, crewmember verification of appropriate seating in exit rows, passenger briefings, seat assignments, and denial of transportation as set forth in paragraphs (e) through (i) and (o) of this section;

(2) Certificate holders shall submit their procedures for preliminary review and approval to the principal operations inspectors assigned to them at the FAA Flight Standards District Offices that hold their certificates.

(o) Certicate holders shall:

(1) Deny transportation only on the basis of refusal to comply with instructions as set forth in paragraph (c) of this section; and

(2) Assign seats prior to boarding consistent with the criteria in paragraph (b) and the functions in paragraph (d) of this section, to the maximum extent feasible.

(p) The procedures required by paragraph (m) of this section will not become effective until final approval is granted by the Director, Flight Standards Service, Washington, DC. Approval will be based solely upon the safety aspects of the certificate holders' procedures.

## PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS

3. The authority citation for Part 135 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1355(a), 1421 through 1431, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983)

4. New § 135.127 is added to read as follows:

**§ 135.127 Exit row seating.**

(a) Each certificate holder shall determine, to the extent necessary to perform the applicable functions of paragraph (d) of this section, the suitability of each person it permits to

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occupy a seat in a row of seats that provides the most direct access to an exit (including all of the seats in the row from the fuselage to the first aisle inboard of the exit or, in cases where there is no aisle, in any seat that has direct access to an exit), in accordance with this section. These determinations shall be made in a non-discriminatory manner consistent with the requirements of this section, by persons designated in the certificate holder's required operational manual.

(b) No certificate holder may seat a person in a seat covered by this section if the certificate holder determines that the person would likely be unable to perform one or more of the applicable functions in paragraph (d) of this section because—

(1) The person lacks sufficient mobility, strength, or dexterity in both arms and hands, and both legs, to reach upward, sideways, and downward to the location of door and exit-slide operating mechanisms; to grasp and push, pull, turn, or otherwise manipulate those mechanisms; to push, shove, pull, or otherwise open doors; to lift out, hold, deposit on nearby seats, or maneuver over the seatbacks to the next row objects the size and weight of over-wing window exit doors; to remove obstructions of similar size and weight; to reach the exit expeditiously; to maintain balance while removing obstructions; to exit expeditiously; to stabilize an escape slide after deployment; and to assist others in getting off an escape slide;

(2) The person lacks sufficient cognitive capacity to perform one or more of those functions without the assistance of an adult companion, parent, or other relative;

(3) The person lacks the ability to read and understand instructions related to emergency evacuation provided by the certificate holder in printed, handwritten, or graphic form;

(4) The person lacks sufficient visual capacity to perform one or more of the applicable functions in paragraph (d) of this section without the assistance of visual aids beyond contact lenses or eyeglasses;

(5) The person lacks sufficient aural capacity to hear and understand instructions shouted by flight attendants, without assistance beyond a hearing aid, and the ability to understand the language spoken by the flight attendants;

(6) The person lacks the ability adequately to impart information orally to other passengers; or,

(7) The person has:

(i) A condition or responsibilities, such as caring for small children, that might be likely to prevent the person from performing one or more of the applicable functions listed in paragraph (d) of this section; or

(ii) A condition that might be likely to cause the person harm if he or she performs one or more of the applicable functions or result in harm that would prevent the person from performing one or more of the applicable functions listed in paragraph (d) of this section.

(c) Each passenger shall comply with instructions given by a crewmember or other authorized employee of the certificate holder, implementing exit row seating restrictions established in accordance with this section.

(d) Each certificate holder shall include on passenger information cards, presented in the languages used by the certificate holder for passenger information cards, at each seat affected by this section, the following information: In the event of an emergency in which a crewmember is not available to assist, passengers occupying an exit row seat (or any seat that has direct access to an exit) may be called upon to perform the following functions:

(1) Locate the exit;

(2) Recognize the exit opening mechanism;

(3) Comprehend the instructions for operating the exit;

(4) Operate the exit;

(5) Assess whether opening the exit will increase the hazards to which passengers may be exposed;

(6) Follow oral directions and hand signals given by a crewmember;

(7) Stow or secure the exit door so that it will not impede use of the exit;

(8) Assess the condition of an escape slide, activate the slide, and stabilize the slide after deployment to assist others in getting off the slide;

(9) Pass expeditiously through the exit; and

(10) Assess, select, and follow a safe path away from the exit.

(e) Each certificate holder shall include, on passenger information cards at all seats affected by this section, the criteria set forth in paragraph (b) of this section, presented in the languages used by the certificate holder for passenger information cards.

(f) Each certificate holder shall make available for inspection by the public at all passenger loading gates and ticket counters at each airport where it conducts passenger operations, written procedures established for making determinations in regard to exit row seating.

(g) No certificate holder shall allow all passenger entry doors to be closed in preparation for taxi or pushback unless at least one required crewmember has verified that each occupied seat affected by this section is occupied by a person the crewmember determines is likely to be able to perform the applicable functions in paragraph (d) of this section.

(h) Each certificate holder shall include in its passenger briefings a reference to the passenger information cards required by paragraphs (d) and (e), the criteria set forth in paragraph (b), and the functions set forth in paragraph (d) of this section.

(i) Each certificate holder shall include in the briefings and in the written criteria a request that a passenger identify himself or herself to allow reseating if he or she—

(1) Cannot meet the criteria set forth in paragraph (b) of this section;

(2) Has a nondiscernible condition that will prevent him or her from performing the applicable functions listed in paragraph (d) of this section;

(3) May suffer bodily harm as the result of performing one or more of those functions; or

(4) Does not wish to perform those functions. A certificate holder shall not require the passenger to disclose his or her reason for needing reseating.

(j) Each certificate holder shall expeditiously honor a passenger's request to be relocated to a seat not affected by this section.

(k) In the event a certificate holder determines in accordance with this section that a passenger assigned to an exit row seat is not likely to be able to perform the functions described in paragraph (d) of this section, or a passenger requests a non-exit row seat, the certificate holder shall relocate the passenger to a non-exit row seat.

(l) In the event of full booking in the non-exit row seats, the certificate holder shall move a passenger, if necessary to accommodate a passenger being relocated from an exit row seat, who is willing and able to assume the evacuation functions that may be required, to an emergency exit row seat. Persons being moved out of an emergency exit row seat shall not be denied transportation.

(m) A certificate holder may deny transportation or exit row seating to any passenger who refuses to comply with instructions given by a crewmember or other authorized employee of the certificate holder, implementing exit row seating restrictions established in accordance with this section.

(n) In order to comply with this section,

(1) Certificate holders shall develop procedures that:



(i) Include the criteria enumerated in paragraph (b) of this section;

(ii) Address all of the functions enumerated in paragraph (d) of this section;

(iii) Provide for airport information, passenger information cards, crewmember verification of appropriate seating in exit rows, passenger briefings, seat assignments, and denial of transportation as set forth in paragraphs (e) through (i) and (o) of this section;

(2) Certificate holders shall submit their procedures for preliminary review and approval to the principal operations inspectors assigned to them at the FAA Flight Standards District Offices that hold their certificates.

(o) Certificate holders shall:

(1) Deny transportation only on the basis of refusal to comply with instructions as set forth in paragraph (c) of this section; and

(2) Assign seats prior to boarding consistent with the criteria in paragraph (b) and the functions in paragraph (d) of this section, to the maximum extent feasible.

(p) The procedures required by paragraph (m) of this section will not become effective until final approval is granted by the Director, Flight Standards Service, Washington, DC. Approval will be based solely upon the safety aspects of the certificate holders' procedures.

Issued in Washington, DC, on March 7, 1989.

D.C. Beaudette,

*Acting Director, Flight Standards Service.*

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Part III

# Department of Education

34 CFR Part 250 et al.
Intergovernmental Review of Department of Education Programs and Activities; Notice of Proposed Rulemaking

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**DEPARTMENT OF EDUCATION**

**34 CFR Parts 250, 300, 315, 324, 332, 366, 368, 385, 396, 400, 607, 608, 609, 624, 628, 629, 630, 631, 637, 639, 643, 644, 645, 648, 649, 656, 657, 658, 692, 745, 755, and 773**

**Intergovernmental Review of Department of Education Programs and Activities**

**AGENCY:** Department of Education.

**ACTION:** Notice of Proposed Rulemaking.

**SUMMARY:** The Secretary proposes to issue regulations implementing changes in coverage for Department of Education programs subject to Executive Order 12372 (Intergovernmental Review of Federal Programs). These changes are required in order to comply with an Office of Management and Budget (OMB) memorandum, issued March 14, 1985, amending the criteria for inclusion and exclusion of State review under the Executive Order. This notice is also required in order to provide an opportunity for public comment on proposed revisions to the lists of included and excluded programs, and selection by each State of the programs to be subject to that State's review process.

**DATE:** Comments must be received on or before June 12, 1989.

**ADDRESSES:** All comments concerning these proposed rules should be addressed to F. LeRoy Walser, Office of Intergovernmental and Interagency Affairs, Department of Education, 400 Maryland Avenue, SW. FOB–6, Room 3059, Washington, DC 20202.

**FOR FURTHER INFORMATION CONTACT:** F. LeRoy Walser, Telephone: (202) 732–3669.

**SUPPLEMENTARY INFORMATION:** Executive Order 12372 provides an opportunity for States to review applications for Federal assistance programs which directly affect State and local governments. The Executive Order, signed July 14, 1982, is designed "to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for the State and local government coordination and review of proposed Federal financial assistance and direct Federal development."

On June 24, 1983 (at 48 FR 29158), the Department published regulations at 34 CFR Part 79 implementing the Executive Order. The Department published amendments to these regulations (at 51 FR 20823, June 9, 1986) to implement changes in criteria for program coverage issued in OMB's March 14, 1985, memorandum entitled "Procedural Changes in Agency Implementation of Executive Order 12372."

The Department has reviewed all of its current programs for coverage under the Executive Order according to the revised OMB criteria. Under these criteria, a Federal assistance program or activity is included for State review unless the program or activity does not directly affect State or local governments, is proposed Federal legislation, regulation, or budget formulation, or involves one of the following: (1) National security, (2) procurement, (3) direct payments to individuals, (4) financial transfers for which Federal agencies have no funding discretion or direct authority to approve specific sites or projects (*e.g.*, Chapter 2 of the Education Consolidation and Improvement Act of 1981), (5) research and development that is national in scope, and (6) assistance to federally-recognized Indian tribes).

The Department proposes two new appendices which would supersede those previously published. These appendices would implement the new OMB criteria for coverage and add certain programs that were enacted or amended prior to passage of Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, Pub. L. 100–297. Any changes in coverage or new coverage required by Pub. L. 100–297 will be made in the regulations developed to implement the Act. At Appendix A are programs proposed for inclusion for State review under Executive Order 12372; at Appendix B are programs proposed for exclusion from State review and the justification for the proposed exclusion.

**Executive Order 12291**

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

**Regulatory Flexibility Act Certification**

Since these proposed regulations would implement the opportunity for review of existing programs by State and local governments, would simplify consultation with Department, and would allow State and local governments to establish cost effective consultation procedures, the Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

**Paperwork Reduction Act of 1980**

These proposed regulations have been examined under the Paperwork Reductioin Act of 1980 and have been found to contain no information collection requirements.

**Invitation To Comment**

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 3059, FOB–6, 400 Maryland Avenue, SW., Washington, DC 20202, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week, except Federal holidays.

To assist the Department in complying with specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce regulatory burdens found in these proposed regulations.

**Assessment of Educational Impact**

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

**List of Subjects**

*38 CFR Part 250*

Administrative practice and procedure, Education, Indian education.

*34 CFR Part 300*

Administrative practice and procedure, Education, Education of handicapped, Equal educational opportunity, Privacy, Private schools.

*34 CFR Part 315*

Education, Education of handicapped, Education—research, Government contracts, Student aid, Teachers.

*34 CFR Part 324*

Education, Education of handicapped, Education—research, Local edcational agency, School, State educational agency.

*34 CFR Part 332*

Education, Education of handicapped.

*34 CFR Part 366*

Education, Grant programs—social programs, Vocational rehabilitation.



*34 CFR Part 369*

Education, Grant programs—social programs, Vocational rehabilitation.

*34 CFR Part 385*

Education, Vocational rehabilitation.

*34 CFR Part 386*

Education, Vocational rehabilitation.

*34 CFR Part 400*

Adult education, Education, Education of disadvantaged, Equal educational opportunity, Private schools, Schools, School construction, Vocational education, Women.

*34 CFR Part 607*

Colleges and universities, Education.

*34 CFR Part 608*

Colleges and universities, Education.

*34 CFR Part 609*

Colleges and universities, Education.

*34 CFR Part 624*

Colleges and universities, Education.

*34 CFR Part 628*

Colleges and universities, Education.

*34 CFR Part 629*

Adult education, Colleges and universities, Education, Veterans.

*34 CFR Part 630*

Colleges and universities, Education, Government contracts.

*34 CFR Part 631*

Colleges and universities, Education, Educational research, Employment, Manpower training programs, Student aid.

*34 CFR Part 637*

Colleges and universities, Education, Education of disadvantaged, Educational study programs, Equal educational opportunity, Science and technology.

*34 CFR Part 639*

Colleges and universities, Education, Educational study programs, Law.

*34 CFR Part 643*

Colleges and universities, Education, Education of disadvantaged, Education of handicapped.

*34 CFR Part 644*

Colleges and universities, Education of disadvantaged, Education, Education of handicapped.

*34 CFR Part 645*

Colleges and universities, Education, Education of disadvantaged, Education of handicapped.

*34 CFR Part 648*

Bilingual education, Education, Education of disadvantaged, Education of handicapped, Government contracts.

*34 CFR Part 649*

Colleges and universities, Education, Energy, Mineral resources, Mines, Scholarships and fellowships.

*34 CFR Part 656*

Colleges and universities, Cultural exchange programs, Education, Educational study programs, Foreign languages, Fellowships, Resource center.

*34 CFR Part 657*

Education, Educational study programs, Fellowships.

*34 CFR Part 658*

Colleges and universities, Education, International education.

*34 CFR Part 692*

Education, State-administered-education, Student aid.

*34 CFR Part 745*

Education, Government contracts, Sex discrimination.

*34 CFR Part 755*

Colleges and universities, Education, Local educational agency, State educational agency.

*34 CFR Part 773*

Colleges and universities, Education, Libraries.

Dated: December 19, 1988.

**Lauro F. Cavazos,**

*Secretary of Education.*

The Secretary proposes to amend Parts 250, 300, 324, 332, 366, 368, 385, 396, 400, 607, 608, 609, 624, 628, 629, 630, 631, 637, 639, 643, 644, 645, 648, 649, 656, 657, 658, 692, 706, 745, 755, and 773 of Title 34 of the Code of Federal Regulations as follows:

## PART 250—INDIAN EDUCATION ACT—GENERAL PROVISIONS

1. The authority citation for Part 250 is revised to read as follows:

**Authority:** 20 U.S.C. 241aa–241ff, 1211a, 1221h, 3385, 3385a, unless otherwise noted.

2. Section 250.3 is amended by revising paragraph (e) to read as follows.

**§ 250.3 What regulations apply to these programs?**

* * * * *

(e) 34 CFR Part 79 (Intergovernmental Review of Department of Education programs and Activities), except that applications for assistance submitted by Federally recognized Indian tribes are not subject to review under Part 79, and Part 79 does not apply to 34 CFR Parts 252, 253, and 256.

(Authority: 20 U.S.C. 241aa–241ff, 1211a, 3385, 3385a)

## PART 300—ASSISTANCE TO STATES FOR EDUCATION OF HANDICAPPED CHILDREN

3. The authority citation for Part 300 continues to read as follows:

**Authority:** 20 U.S.C. 1411–1420, unless otherwise noted.

**§ 300.3 [Amended]**

4. Section 300.3(a)(1) is amended by removing "Programs) and Part 77 (Definitions)." and adding, in their place, "Programs) Part 77 (Definitions), Part 78 (Education Appeal Board), and Part 79 (Intergovernmental Review of Department of Education Programs and Activities)."

## PART 315—PROGRAM FOR SEVERELY HANDICAPPED CHILDREN

5. The authority citation for Part 315 continues to read as follows:

**Authority:** 20 U.S.C. 1424, unless otherwise noted.

6–8. In § 315.3, paragraphs (b)(3), and (4) are revised and a new paragraph (b)(5) is added to read as follows:

**§ 315.3 What regulations apply to this program?**

* * * * *

(b) * * *

(3) Part 77 (Definitions that Apply to Department Regulations);

(4) Part 78 (Education Appeal Board); and

(5) Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(Authority: 20 U.S.C. 1424, 20 U.S.C. 3474(a))

## PART 324—RESEARCH IN EDUCATION OF THE HANDICAPPED PROGRAM

9. The authority citation for Part 324 continues to read as follows:

**Authority:** 20 U.S.C. 1441–1444, unless otherwise noted.

10. In § 324.3, paragraphs (b)(3) and (4) are revised and a new paragraph (b)(5) is added to read as follows:

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**§ 324.3 What regulations apply to this program?**

* * * * *

(b) * * *

(3) Part 77 (Definitions that Apply to Department Regulations);

(4) Part 78 (Education Appeal Board); and

(5) Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(Authority: 20 U.S.C. 1441–1444)

**PART 332—EDUCATIONAL MEDIA RESEARCH, PRODUCTION, DISTRIBUTION, AND TRAINING**

11. The authority citation for Part 332 is revised to read as follows:

**Authority:** 20 U.S.C. 1451–1452, unless otherwise noted.

**§ 332.3 [Amended]**

12. Section 332.3 is amended by removing "77 and" and adding, in their place, the words "77, 78, and 79, and".

**PART 366—CENTERS FOR INDEPENDENT LIVING**

13. The authority citation for Part 366 is revised to read as follows:

**Authority:** 29 U.S.C. 711(c) and 796(e), unless otherwise noted.

**§ 366.3 [Amended]**

14. Section 366.3(a) is amended by removing the word "and" each place it appears, and by adding the words "and Part 79 (Intergovernmental Review of Department of Education Programs and Activities)," before the period at the end of the sentence.

**PART 369—VOCATIONAL REHABILITATION SERVICE PROJECTS**

15. The authority citation for Part 369 is revised to read as follows:

**Authority:** 29 U.S.C. 711(c), 732, 750, 775, 777a (a)(1) and (e)(3), 777b, 777f and 796g, unless otherwise noted.

**§ 369.3 [Amended]**

16. Section 369.3(a) is amended by removing the word "and", and by adding "and Part 79 (Intergovernmental Review of Department of Education Programs and Activities), except that Part 79 does not apply to the Handicapped American Indian Vocational Rehabilitation Service Projects (34 CFR Part 371)" before the period at the end of the sentence.

**PART 385—REHABILITATION TRAINING**

17. The authority citation for Part 385 is revised to read as follows:

**Authority:** 29 U.S.C. 711(c), 744, and 776, unless otherwise noted.

**§ 385.3 [Amended]**

18. Section 385.3(a) is amended by removing the word "and", and by adding "and Part 79 (Intergovernmental Review of Department of Education Programs and Activities)," before the period at the end of the sentence.

**PART 396—TRAINING OF INTERPRETERS FOR DEAF INDIVIDUALS**

19. The authority citation for Part 396 is revised to read as follows:

**Authority:** 29 U.S.C. 744(d), unless otherwise noted.

20. In § 396.3, paragraphs (a) (3) and (4) are revised and a new paragraph (b)(5) is added to read as follows:

**§ 396.3 What regulations apply to this program?**

* * * * *

(a) * * *

(3) Part 77 (Definitions that Apply to Department Regulations);

(4) Part 78 (Education Appeal Board); and

(5) Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

* * * * *

(Authority: 29 U.S.C. 774(d))

**PART 400—VOCATIONAL EDUCATION PROGRAMS—GENERAL PROVISIONS**

21. The authority citation for Part 400 continues to read as follows:

**Authority:** 20 U.S.C. *et seq.*, unless otherwise noted.

**§ 400.3 [Amended]**

22. Section 400.3(f) is amended by adding "except that Part 79 does not apply to any applications submitted by an Indian tribal organization that is eligible under 34 CFR 410.2(a)(1) of the Indian and Hawaiian Natives Program (34 CFR Part 410)" before the period at the end of the sentence.

**PART 607—STRENGTHENING INSTITUTIONS PROGRAMS**

23. The authority citation for Part 607 continues to read as follows:

**Authority:** 20 U.S.C. 1057–1059, 1066–1066f, unless otherwise noted.

**§ 607.6 [Amended]**

24. Section 607.6(a) is amended by removing "Regulations; and Part 78 (Education Appeal Board)." and adding in their place "Regulations); Part 78 (Education Appeal Board); and Part 79 (Intergovernmental Review of Department of Education Programs and Activities)."

**PART 608—STRENGTHENING HISTORICALLY BLACK COLLEGES AND UNIVERSITIES PROGRAM**

25. The authority citation for Part 608 continues to read as follows:

**Authority:** 20 U.S.C. 1060 through 1063a, 1063c and 1066c, unless otherwise noted.

**§ 608.3 [Amended]**

26. Section 608.3(a) is amended by removing the word "and", and adding "and 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities)," before the period at the end of the sentence.

**PART 609—STRENGTHENING HISTORICALLY BLACK GRADUATE INSTITUTIONS PROGRAM**

27. The authority citation for Part 609 continues to read as follows:

**Authority:** 20 U.S.C. 1063b and 1066c, unless otherwise noted.

**§ 609.3 [Amended]**

28. Section 609.3(a) is amended by removing the word "and" and adding "and 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities)," before the period at the end of the sentence.

**PART 624—INSTITUTIONAL AID PROGRAMS—GENERAL PROVISIONS**

29. The authority citation for Part 624 continues to read as follows:

**Authority:** 20 U.S.C. 1051–1066c, unless otherwise noted.

**§ 624.5 [Amended]**

30. Section 624.5(a) introductory text is amended by removing "and", and adding in its palce a comma after "(Direct Grant Programs)" and adding "34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities)," after "(Definitions)".

**PART 628—ENDOWMENT CHALLENGE GRANT PROGRAM**

31. The authority citation for Part 628 continues to read as follows:

**Authority:** 20 U.S.C. 1065a, unless otherwise noted.

32. In § 628.5, paragraph (b)(1)(v) is added and paragraph (b)(2) is revised to read as follows:

**§ 628.5 What regulations apply to the Endowment Challenge Grant Program?**

* * * * *

(b)(1) * * *



(v) The regulations in 34 CFR Part 79.

(2) Except as specifically indicated in paragraph (b)(1) of this section, the Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74 through 77 do not apply.

(Authority: 20 U.S.C. 1065a)

**PART 629—VETERANS EDUCATION OUTREACH PROGRAM**

33. The authority citation for Part 629 continues to read as follows:

**Authority:** 20 U.S.C. 1070e–1, unless otherwise noted.

34. In § 629.4, paragraph (a)(5) is added to read as follows:

**§ 629.4 What regulations apply?**

* * * * *

(a) * * *

(5) 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

* * * * *

(Authority: 20 U.S.C. 1070e–1, 1088)

**PART 630—FUND FOR THE IMPROVEMENT OF POSTSECONDARY EDUCATION**

35. The authority citation for Part 630 continues to read as follows:

**Authority:** 20 U.S.C. 1135–1135e–2, 1135e–1135e–1, unless otherwise noted.

**§ 630.4 [Amended]**

36. Section 630.4(a)(1) is amended by removing the word "and" and by adding before the period at the end of the sentence "and Part 79 (Intergovernmental Review of Department of Education Programs and Activities)".

**PART 631—COOPERATIVE EDUCATION PROGRAM—GENERAL**

37. The authority citation for Part 631 continues to read as follows:

**Authority:** 20 U.S.C. 1133–1133b, unless otherwise noted.

**§ 631.4 [Amended]**

38. Section 631.4(a)(1) is amended by removing the word "and", and by adding before the period at the end of the sentence "and 79 (Intergovernmental Review of Department of Education Programs and Activities)".

**PART 637—MINORITY SCIENCE IMPROVEMENT PROGRAM**

39. The authority citation for Part 637 continues to read as follows:

**Authority:** 20 U.S.C. 1135b–1135b–3, 1135d–1135d–6, unless otherwise noted.

**§ 637.3 [Amended]**

40. Section 637.3(a) is amended by removing the word "and", and by adding before the period at the end of the sentence, "and Part 79 (Intergovernmental Review of Department of Education Programs and Activities)".

**PART 639—LAW SCHOOL CLINICAL EXPERIENCE PROGRAM**

41. The authority citation for Part 639 continues to read as follows:

**Authority:** 20 U.S.C. 1134s–1134t, unless otherwise noted.

**§ 639.3 [Amended]**

42. Section 639.3(a) is amended by removing the word "and" after the words "(Direct Grant Programs)" and adding, in its place, a comma, and by removing the word "(Definitions)" and adding, in its place, the words "(Definitions that Apply to Department Regulations), and 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities)".

**PART 643—TALENT SEARCH PROGRAM**

43. The authority citation for Part 643 continues to read as follows:

**Authority:** 20 U.S.C. 1070d–1, unless otherwise noted.

**§ 643.5 [Amended]**

44. Section 643.5(a) is amended by removing the word "and" and adding, in its place, a comma and by adding before the period at the end of the sentence, "and 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities)".

**PART 644—EDUCATIONAL OPPORTUNITY CENTERS PROGRAM**

45. The authority citation for Part 644 continues to read as follows:

**Authority:** 20 U.S.C. 1070d–1c, unless otherwise noted.

**§ 644.5 [Amended]**

46. Section 644.5(a) is amended by removing the word "and" and adding, in its place, a comma, and by adding before the period at the end of the sentence "and 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities)".

**PART 645—UPWARD BOUND PROGRAM**

47. The authority citation for Part 645 continues to read as follows:

**Authority:** 20 U.S.C. 1070d, 1070d–1a, unless otherwise noted.

**§ 645.5 [Amended]**

48. Section 645.5(a) is amended by removing the word "and" and adding, in its place, a comma and by adding before the period at the end of the sentence ", and 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities)".

**PART 646—STUDENT SUPPORT SERVICES PROGRAM**

49. The authority citation for Part 646 continues to read as follows:

**Authority:** 20 U.S.C. 1070d, 1070d–1b, unless otherwise noted.

**§ 646.5 [Amended]**

50. Section 646.5(a) is amended by removing the word "and" and adding, in its place, a comma, and by adding before the period at the end of the sentence ", and 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities)".

**PART 649—PATRICIA ROBERTS HARRIS FELLOWSHIPS PROGRAM**

51. The authority citation for Part 649 continues to read as follows:

**Authority:** 20 U.S.C. 1134d–1134f, unless otherwise noted.

**§ 649.3 [Amended]**

52. Section 649.3(a) is amended by removing the word "and" after the words "Department Regulations)," and by adding after the words "Appeal Board)," "and Part 79 (Intergovernmental Review of Department of Education Programs and Activities),".

**PART 656—NATIONAL RESOURCE CENTERS PROGRAM FOR LANGUAGE AND AREA OR LANGUAGE AND INTERNATIONAL STUDIES**

53. The authority citation for Part 656 is revised to read as follows:

**Authority:** 20 U.S.C. 1122, unless otherwise noted.

**§ 656.6 [Amended]**

54. Section 656.6(c) is amended by removing the word "and" and adding, in its place, a comma, and by adding before the period at the end of the sentence ", and 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities)".

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**PART 657—FOREIGN LANGUAGE AND AREA STUDIES FELLOWSHIPS PROGRAM**

55. The authority citation for Part 657 is revised to read as follows:

**Authority:** 20 U.S.C. 1122, unless otherwise noted.

56. Section 657.4(c) is amended by removing the word "and" and adding, in its place, a comma, and by adding before the period at the end of the sentence ", and 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities)".

**PART 658—UNDERGRADUATE INTERNATIONAL STUDIES AND FOREIGN LANGUAGE PROGRAM**

57. The authority citation for Part 658 is revised to read as follows:

**Authority:** 20 U.S.C. 1124, unless otherwise noted.

**§ 658.3 [Amended]**

58. Section 658.3(c) is amended by removing the word "and" and adding, in its place, a comma, and by adding before the period at the end of the sentence ", and 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities)".

**PART 662—STATE STUDENT INCENTIVE GRANT PROGRAM**

59. The authority citation for Part 629 is revised to read as follows:

**Authority:** 20 U.S.C. 1070c–1070c–4, unless otherwise noted.

**§ 662.3 [Amended]**

60. Section 662.3(b) is amended by removing the word "and", and by adding before the period at the end of the sentence ", and Part 79 (Intergovernmental Review of Department of Education Programs and Activities)".

**PART 745—WOMEN'S EDUCATIONAL EQUITY ACT PROGRAM**

63. The authority citation for Part 745 continues to read as follows:

**Authority:** 20 U.S.C. 3341–3348, unless otherwise noted.

**§ 745.3 [Amended]**

64. Section 745.3(a)(1) is amended by removing the word "and" and adding, in its place, a comma, and by adding before the period at the end of the sentence ", and Part 79 (Intergovernmental Review of Department of Education Programs and Activities)".

**PART 755—SECRETARY'S DISCRETIONARY PROGRAM FOR MATHEMATICS, SCIENCE, COMPUTER LEARNING, AND CRITICAL FOREIGN LANGUAGES**

65. The authority citation for Part 755 is revised to read as follows:

**Authority:** 20 U.S.C. 2992, unless otherwise noted.

**§ 755.3 [Amended]**

66. Section 755.3(a)(1) is amended by removing the word "and" and adding, in its place, a comma, and by adding before the period at the end of the sentence ", and Part 79 (Intergovernmental Review of Department of Education Programs and Activities)".

**PART 773—COLLEGE LIBRARY RESOURCES PROGRAM**

67. The authority citation for Part 773 is revised to read as follows:

**Authority:** 20 U.S.C. 1021 *et seq.*, unless otherwise noted.

**§ 773.4 [Amended]**

68. Section 773.4(a) is amended by removing "and" after "(Direct Grant Programs)" and adding, in its place, a comma, and by removing "(Definitions);" and adding, in its place, "(Definitions that Apply to Department Regulations), and Part 79 (Intergovernmental Review of Department of Education Programs and Activities);".

[Editorial Note: The following Appendices will not appear in the Code of Federal Regulations.]

**Appendix A—Programs Proposed for Inclusion for State Review Under Executive Order 12372**

| Program Name | CFDA # |
|---|---|
| Adult education—state administered program. | 84.002. |
| Bilingual education | 84.003. |
| Desegregation of public education | 84.004. |
| College library resources | 84.008. |
| Supplemental educational opportunity grants. | 84.007. |
| Follow through | 84.014. |
| National resource centers and fellowship program for language and area or language and international studies. | 84.015. |
| Undergraduate international studies and foreign language program. | 84.016. |
| Research in education of the handicapped. | 84.023. |
| Handicapped children's early education program. | 84.024. |
| Services for deaf-blind children and youth. | 84.025N. |
| Handicapped media services and captioned films. | 84.026. |
| Assistance to states for education of handicapped children. | 84.027. |
| Regional resource and federal centers. | 84.028. |
| Training personnel for the education of the handicapped. | 84.029. |
| Clearinghouse for the handicapped program. | 84.030. |
| Strengthening institutions program | 84.031A. |
| Strengthening historically black colleges and universities. | 84.031B. |
| Endowment challenge grant program | 84.031G. |
| Public library services | 84.034. |
| Interlibrary cooperation | 84.035. |
| Library career training-fellowships | 84.036. |
| Library research and demonstration | 84.039. |
| School assistance in federally affected areas—construction. | 84.040. |
| Student support services program | 84.042. |
| Talent search | 84.044. |
| Upward bound | 84.047. |
| Vocational education—basic grants to states. | 84.048. |
| Vocational education—consumer and homemaking education. | 84.049. |
| Vocational education—state advisory councils. | 84.053. |
| Cooperative education | 84.055. |
| *Indian education—formula grants to local education agencies and tribal schools. | 84.060. |
| *Indian education—special programs and projects. | 84.061. |
| *Indian education—adult indian education. | 84.062. |
| Veterans education outreach program. | 84.064. |
| Educational opportunity centers | 84.066. |
| State student incentive grant program. | 84.069. |
| *Indian education—grants to Indian controlled schools. | 84.072. |
| National diffusion network | 84.073. |
| Patricia Roberts Harris program (fellowships for graduate and professional studies program). | 84.075. |
| Bilingual vocational training | 84.077. |
| Postsecondary education programs for handicapped persons. | 84.078. |
| Women's educational equity | 84.083. |
| Program for severely handicapped children. | 84.086. |
| Strengthening research library resources. | 84.091. |
| Graduate and professional study | 84.094. |
| Law school clinical experience | 84.097. |
| Bilingual vocational instructor training | 84.099. |
| Bilingual vocational instructional materials, methods, and techniques. | 84.100. |
| Vocational education Hawaiian native program. | 84.101C. |
| Training program for special program staff and leadership personnel. | 84.103. |
| Fund for the improvement of postsecondary education. | 84.116. |
| Minority science improvement program. | 84.120. |
| Law-related education program | 84.123. |
| Territorial teacher training assistance program. | 84.124. |
| State vocational rehabilitation services program. | 84.126. |
| Rehabilitation service projects | 84.128. |
| Rehabilitation training | 84.129. |
| Centers for independent living | 84.132. |
| Migrant education high school equivalency program. | 84.141. |
| College facilities loan program | 84.142. |
| Migrant education—interstate and intrastate coordination program. | 84.144. |
| Federal real property assistance program. | 84.145. |
| Transition program for refugee children. | 84.146. |



| Program Name | CFDA # |
|---|---|
| College assistance migrant program | 84.149. |
| Neglected or delinquent transition services. | 84.152. |
| Business and international education | 84.153. |
| Library services and construction act—construction. | 84.154. |
| Removal of architectural barriers to the handicapped. | 84.155. |
| Secondary education and transitional services for handicapped youth. | 84.158. |
| Training interpreters for deaf individuals. | 84.160. |
| Client assistance for handicapped individuals. | 84.161. |
| Emergency immigrant education assistance act. | 84.162. |
| Library services and construction act, title IV—basic grants to Indian tribes and Hawaiian native (Indian tribes excluded from coverage). | 84.163B. |
| Strengthening teacher skills and instruction in mathematics and science. | 84.164. |
| Magnet schools assistance | 84.165. |
| Library literacy program | 84.167. |
| Secretary's discretionary program for mathematics, science, computer learning, and critical foreign languages. | 84.166. |
| Construction, reconstruction, and renovation of academic facilities program. | 84.172. |
| Preschool grants for handicapped children program. | 84.173. |
| State assistance for vocational education-support programs by community based organizations. | 84.174. |
| Paul T. Douglas teacher scholarship program. | 84.176. |
| Independent living for older blind adults. | 84.177. |
| Leadership in educational administration development. | 84.178. |
| Technology, media and materials program. | 84.180. |
| Early intervention programs for infants and toddlers with handicaps. | 84.181. |
| Drug-free schools and communities program-training and demonstration grants to institutions of higher education, and federal activities program. | 84.184. |
| Drug-free schools and communities—state and local programs. | 84.186. |
| The state supported employment services program. | 84.187. |
| Drug-free schools and communities—regional centers programs. | 84.188. |
| Adult education for the homeless program. | 84.192. |
| Vocational education-national programs: demonstration centers for the retraining of dislocated workers. | 84.193. |
| Education of the homeless | 84.196. |
| College library technology and cooperation program. | 84.197. |
| Workplace literacy partnerships program. | 84.198. |
| Vocational education-national cooperative demonstration program. | 84.199. |
| School dropout demonstration assistance program. | 84.201. |
| Star schools program | 84.203. |
| State vocational education comprehensive career guidance and counseling program. | No CFDA #. |
| State vocational education industry-education partnerships. | No CFDA #. |
| Vocational education-state equipment pools. | No CFDA #. |
| Vocational education-national programs: model centers for vocational education for older individuals. | No CFDA #. |

*Except applicants that are Federally recognized Indian tribes

**Appendix B.—Programs Proposed For Exclusion From Review Under Executive Order 12372 With Exclusion Justifications**

| Program | CFDA No. |
|---|---|
| Interest subsidy grants for academic facilities loans. | 84.001 |
| Exclusion Justification: Funds under this program were determined by prior action and the government's commitment is for the life of the loan. Since no application to the Federal government is involved, States do not review this program. | |
| Education of handicapped children in State operated schools. | 84.009 |
| Exclusion Justification: Funds under this program are determined by a statutory formula. Therefore, the Department has no discretion in approving specific sites or in determining the amount of allocations. | 84.009 |
| Educationally deprived children: local educational agencies. | 84.010 |
| Exclusion Justification: Funds under this program are determined by a statutory formula and distributed to participating local education agencies. Therefore, the Department has no discretion in approving specific sites or in determining the amount of allocations. | |
| Migrant education: State formula grant program. | 84.011 |
| Exclusion Justification: Funds under this program are determined by a statutory formula and distributed to State education agencies. Therefore, the Department has no discretion in approving specific sites or projects or in determining the amount of allocations. | |
| Educationally deprived children State administration. | 84.012 |
| Exclusion Justification: Funds under this program are determined by a statutory formula and distributed to State education agencies. Therefore, the Department has no discretion in approving specific sites or projects or in determining the amount of allocations. | |
| Neglected and delinquent children | 84.013 |
| Exclusion Justification: Funds under this program are determined by a statutory formula and distributed to State education agencies. Therefore, the Department has no discretion in approving specific sites or projects or in determining the amount of allocations. | |
| International research and studies | 84.017 |

| Program | CFDA No. |
|---|---|
| Exclusion Justification: This program provides assistance for the conduct of research, studies and surveys and the development of instructional materials for modern languages and area and international studies. Research is national in scope and is conducted by individual scholars. | |
| Fulbright-Hays training grants—faculty research abroad. | 84.019 |
| Exclusion Justification: This program supports research projects conducted abroad by individual research scholars in cooperation with bi-national commissions, U.S. embassies, foreign ministries of education, and institutions of higher education abroad. Research is of national and international scope. | |
| Fulbright-Hays training centers—foreign curriculum consultants. | 84.020 |
| Exclusion Justification: This program awards grants to institutions of higher education for the selection of curriculum specialists from abroad to assist U.S. institutions or groups of institutions in the development of programs of research and study in the United States. This program does not affect State or local governments because the recruitment of individual candidates is made by U.S. embassies, Fulbright Commissions abroad, or foreign ministries of education. | |
| Fulbright-Hays training grants, group projects abroad. | 84.021 |
| Exclusion Justification: This program awards grants to individuals through eligible institutions in the United States and abroad in cooperation with Fulbright Commissions, U.S. Embassies, and foreign ministries of education for the purpose of engaging in group projects in research, training, and curriculum development. Projects conducted abroad and at institutions in the United States are national in scope and do not directly affect State or local governments. | 84.021 |
| Fulbright-Hays training grants—doctoral dissertation research abroad. | 84.022 |
| Exclusion Justification: This fellowship program provides payments to individuals who have been advanced to doctoral degree candidacy in foreign languages and area studies. Individual projects are conducted abroad and therefore the research has no impact on States or local governments. | |
| Guaranteed student loan program and plus (auxiliary) loan program. | 84.032 |
| Exclusion Justification: These programs authorize low interest loans available from lenders such as banks and credit unions to help defray costs of education at participating institutions. The loans are provided directly to the student or to parents of the student. | |
| College work-study program | 84.033 |
| Exclusion Justification: This program provides jobs for undergraduate and graduate students. Participating institutions receive direct allocations of Federal funds according to national and State funding formulas. Funds are ultimately paid directly to students. | |

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| Program | CFDA No. |
|---|---|
| Perkins loan program to schools | 84.037 |
| Exclusion Justification: | |
| Funds for this program provide reimbursement for the value of loan cancellations as prescribed by statute. The Department has no discretion in determining the amount of these reimbursements. | |
| Perkins direct student loan program | 84.038 |
| Exclusion Justification: | |
| This program provides low-interest loans to both undergraduate and graduate students. This is a matching funds program with the institution contributing one-ninth of the project award. The annual allocation is distributed to participating institutions according to national and state funding formulas. | |
| School assistance in federally affected areas: Maintenance and operations. | 84.041 |
| Exclusion Justification: | |
| This program makes financial payments to school districts. Funds under this program are distributed to participating local educational agencies that are affected by the presence of Federal activity or property, or by Presidentially-declared disasters. Once eligibility is established, the Department of Education has no discretion in approving sites or projects, or in determining allocation amounts. | |
| National vocational education research program. | 84.051 |
| Exclusion Justification: | |
| This program is designed to provide support to the National Center for Research in Vocational Education for which a location is chosen every five years; six curriculum development and demonstration centers; and several other contractors to engage in research and curriculum development and demonstration. Contracts may only be awarded to projects of national significance in vocational education and to develop and provide information to facilitate national planning and policy development. | |
| Pell grant program | 84.063 |
| Exclusion Justification: | |
| This program is a student financial assistance program based on a formula. Payments are made directly to individual students to pursue college or other postsecondary education goals. | |
| Indian education—grants to Indian controlled schools. | 84.072 |
| Exclusion Justification: | |
| This program is designed to meet the special needs of Indian children. Single Points of Contact may not review applications submitted by Federally recognized Indian tribes. Other applicants under this program must submit applications to Single Points Of Contact for review as required by this Order. | |
| Arts in Education | 84.084 |
| Exclusion Justification: | |
| Legislation for this program identifies the two grantees: The Kennedy Center and the National Committee on Arts for the Handicapped and therefore, the Department has no funding discretion. | |
| Indian education fellowship for Indian students. | 84.087 |
| Exclusion Justification: | |
| This program provides fellowships to individual Indian students to enable them to pursue studies at accredited colleges or institutions of higher education. | |
| Vocational education Indian and Hawaiian Native Program. | 84.101A |
| Exclusion Justification: | |
| This program provides grants and contracts to federally recognized Indian tribal governments that are eligible to contract with the Secretary of the Interior for the administration of programs under the Indian Self-Determination Act or under the Act of April 16, 1934. | |
| Educational research and development. | 84.117 |
| Exclusion Justification: | |
| This program is designed to provide grants and contracts to institutions of higher education, public and private non-profit organizations, and local and State educational agencies to support the conduct of educational research and development that is of national scope. | |
| Handicapped American Indian vocational rehabilitation service projects. | 84.128 |
| Exclusion Justification: | |
| This program is designed to provide vocational rehabilitation services solely to handicapped American Indians who reside on Federal or State reservations in order to prepare for suitable employment. | |
| National Institute on disability and rehabilitation research. | |
| Exclusion Justification: | |
| The Institute provides financial support for research conducted by over 200 organizations throughout the United States and internationally and for scholarly exchange. Research priorities are based on areas of national scope such as spinal cord injury; physical restoration and psycosocial rehabilitation; and telecommunications. Therefore, they do not directly affect local areas or governments. | |
| Allen J. Ellender fellowship program | 84.133 |
| Exclusion Justification: | |
| As directed by Congress, the Close Up Foundation is the recipient of this contract which purpose is to enable economically disadvantaged students and their teachers to participate in a week long government studies program to increase their understanding of the Federal Government. | |
| Consolidation of Federal programs for elementary and secondary education. | 84.151 |
| Funds under this program are distributed as block grants which are determined by a statutory formula and distributed to State educational agencies. The Department has no discretion in approving specific sites or in determining the amount of allocations. | |
| Handicapped special studies—State evaluation studies. | 84.158 |
| This program funds projects for data collection activities and studies; investigations; evaluations (to assess the impact and effectiveness of programs assisted under the Education of the Handicapped Act); and for the development, publication and dissemination of the Annual Report to Congress required under the Act. The projects address issues and research of national scope and the findings are used by national audiences, such as researchers, policy makers and Congress. | |
| Library services and construction act—title IV—basic grants to Indian tribes. | 84.163A |
| Exclusion Justification: | |
| This program provides assistance to Federally recognized Indian tribes. | |
| Jacob Javits fellowship program | 84.170 |
| Exclusion Justification: | |
| This program provides fellowships to students of superior ability selected on the basis of demonstrated achievement and exceptional promise, for study at the doctoral level in selected fields of the arts, humanities, and the social sciences. Individuals apply directly to the Department and the calculated stipend is directly awarded to the fellow through the institution. | |
| Robert C. Byrd honors scholarship program. | 84.185 |
| Exclusion Justification: | |
| This program provides financial assistance to States to award scholarships to individuals who have demonstrated outstanding academic achievement and who show promise of continued academic achievement. Funds are determined by a statutory formula and the Department has no discretion on amount of allocations. | |
| Adult education—national adult education discretionary program. | 84.191 |
| Projects funded under this program will be research based and national in scope. No specific state or region will be targeted. | |
| Drug-free schools and communities—Hawaiian natives. | 84.999c |
| Exclusion Justification: | |
| Funds under this program are awarded only to Hawaiian natives and the Department has no discretion in selecting recipients. | |
| General assistance to the Virgin Islands. | No CFDA No. |
| Exclusion Justification: | |
| This grant is specifically mandated for the Virgin Islands by Section 1524 of PL 95-561. | |
| Inexpensive book distribution | No CFDA No. |
| Exclusion Justification: | |
| Grant recipient is designated in legislation. | |

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Monday
March 13, 1989

Part IV

# Department of Health and Human Services

National Institutes of Health

Recombinant DNA Research; Actions Under Guidelines; Notice

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**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**National Institutes of Health**

**Recombinant DNA Research: Actions Under Guidelines**

**AGENCY:** National Institutes of Health, PHS, DHHS.

**ACTION:** Notice of actions under NIH guidelines for research involving recombinant DNA molecules.

**SUMMARY:** This notice sets forth three actions to be taken by the Director, National Institutes of Health (NIH), under the May 7, 1986, NIH Guidelines for Research Involving Recombinant DNA Molecules (51 FR 16958).

**EFFECTIVE DATE:** March 13, 1989.

**FOR FURTHER INFORMATION CONTACT:** Additional information can be obtained from Ms. Rachel E. Levinson, Office of Recombinant DNA Activities, Office of Science Policy and Legislation, National Institutes of Health, Building 31, Room B1C34, 9000 Rockville Pike, Bethesda, Maryland 20892, (301) 496-9838.

**SUPPLEMENTARY INFORMATION:** Today three actions are being promulgated under the NIH Guidelines for Research Involving Recombinant DNA Molecules. These three proposed actions were published for comment in the **Federal Register** of September 2, 1988 (53 FR 34246), and reviewed and recommended for approval by the NIH Recombinant DNA Advisory Committee (RAC) at its meeting on October 3, 1988. A transcript of that meeting is available from the Office of Recombinant DNA Activities at the address given above.

In accordance with Section IV–C–1–b of the NIH Guidelines, these actions have been found to comply with the NIH Guidelines and to present no significant risk to health or to the environment.

Part I of this announcement provides background information and decisions on the actions under the NIH Guidelines. Part II provides a summary of the actions. Part III provides a correction to a notice published in the **Federal Register** on October 26, 1988 (53 FR 43410).

## I. Background Information and Decisions on Actions Under the NIH Guidelines

### *A. Human Gene Transfer Proposal*

Three National Institutes of Health (NIH) intramural scientists, Dr. W. French Anderson, National Heart, Lung, and Blood Institute, and Drs. R. Michael Blaese and Steven A. Rosenberg, National Cancer Institute, have submitted a proposal involving transfer of a bacterial gene coding for neomycin phosphotransferase into the cells of human patients. The gene is to be used as a marker to trace the path of "tumor infiltrating lymphocytes," or TIL, administered as part of an ongoing experimental cancer treatment.

The proposal was first received in June and July 1988, by a number of internal NIH review committees charged with oversight of the safety of proposed experiments. Concern for safety extends from the patients to the health care personnel and the researchers. The institutional review boards of the two sponsoring institutes and the NIH Institutional Biosafety Committee (IBC) all gave "conditional approval" with certain stipulations. Among these stipulations was a requirement that the Recombinant DNA Advisory Committee (RAC) grant its approval of the same procedure.

On July 29, 1988, the Human Gene Therapy Subcommittee of the Recombinant DNA Advisory Committee met to consider the gene transfer proposal and deferred approval pending receipt of additional data. This public meeting was announced in the **Federal Register** on June 24, 1988 (53 FR 23806). The Subcommittee provided specific questions to be answered by the investigators prior to the October 3, 1988, RAC meeting.

During a telephone conference on September 29, 1988, the Subcommittee members and consultants participating in the conference decided unanimously to defer approval of the proposal because the questions posed at the July 29, 1988, meeting had not yet been answered by the additional data which had been provided.

The October 3, 1988, public meeting of the RAC was announced in the September 2, 1988, **Federal Register** (53 FR 34246). At this meeting, the RAC received and discussed data not made available previously to the Human Gene Therapy Subcommittee. Based on these data, the RAC recommended that NIH approve this protocol by a vote of 16 in favor, 5 opposed, and no abstentions. In addition to the RAC review, I requested that the entire protocol, including data presented at the October 3, 1988, meeting and any additional data obtained since that date, be reviewed by the Subcommittee at its December 9, 1988, public meeting (53 FR 45591).

This request was duly carried out, and the Human Gene Therapy Subcommittee voted unanimously to approve the protocol by a vote of 12 in favor, none opposed, and no abstentions.

Following that meeting, the Office of Recombinant DNA Activities sent a mail ballot to RAC members, including the motion approved by the Subcommittee and the minutes of the December 9, 1988, meeting of the Human Gene Therapy Subcommittee. The results of the ballot were 21 in favor, none opposed, 3 abstentions.

The motion approved by the Subcommittee and the RAC is as follows:

> To approve the human gene transfer proposal submitted by Drs. Anderson, Blaese, and Rosenberg with the following stipulations:
>
> 1. There will be no more than 10 patients in the initial trial;
> 2. The patients selected will have a life expectancy of about 90 days;
> 3. The patients give fully informed consent to participate in the trial; and
> 4. The investigators will provide additional data before expanding the trial by adding patients or by inserting a gene for therapeutic purposes.

Points 1 through 3 of the motion were adopted by the RAC at the October 3, 1988, meeting. Point 4 of the motion was added by the Subcommittee on December 9, 1988, making explicit a policy that had been agreed upon at the October 3, 1988, RAC meeting.

Approval to implement this proposal has now been recommended by: The Clinical Research Subpanels of both sponsoring institutes, the NIH Institutional Biosafety Committee, the NIH Recombinant DNA Advisory Committee (RAC), the Human Gene Therapy Subcommittee of the RAC, and the Food and Drug Administration Vaccines and Related Biologic Products Advisory Committee.

Through data obtained in animal experiments, the investigators have demonstrated to the satisfaction of the above review committees that the use of amphotropically packaged retroviral vectors does not pose a public health risk to patients or to health care personnel, even in the event of accidential exposure to experimental material. Therefore, I have determined that this protocol does not present a risk to public health or to the environment.

After reviewing the relevent records and documentation, I accepted this recommendation, and approval to conduct this experiment has been given to Drs. Anderson, Blaese, and Roseberg.

### *B. Amendment of Section I–C of the NIH Guidelines*

Section I–C of the NIH Guidelines currently reads as follows:

> The Guidelines are applicable to all recombinant DNA research within the United States or its territories which is conducted at or sponsored by an institution that receives any support for recombinant DNA research from the National Institutes of Health (NIH). This includes research performed by the NIH directly.
>
> An individual receiving support for research involving recombinant DNA must be associated with or sponsored by an institution that can and does assume the responsibilities assigned in these Guidelines.
>
> The Guidelines are also applicable to projects done abroad if they are suported by NIH funds. If the host country, however, has established rules for the conduct of recombinant DNA projects, then a certificate of compliance with those rules may be submitted to NIH in lieu of compliance with the NIH Guidelines. The NIH reserves the right to withhold funding if the safety practices to be employed abroad are not reasonably consistent with the NIH Guidelines.

In a letter date January 9, 1987, Mr. Edward Lee Rogers, Counsel for the Foundation on Economic Trends, and Mr. Jeremy Rifkin, Foundation on Economic Trends, Washington, DC, proposed that the following text be inserted after the first sentence of the third paragraph of section I–C:

> For purposes of the preceding sentence, the term 'project' includes any research or development of the recombinant organism or other product or process in question, including all such work that is reasonably foreseeable when the NIH support is received. NIH support includes both money grants and any type of in-kind support, including research conducted directly by NIH, supplies, equipment, the use of facilities, and biological research materials. NIH support has been given where the source of funds or in-kind support is, directly or indirectly, the NIH.

This proposed amendment of section I–C was initially published for comment in the **Federal Register** of March 11, 1987 (52 FR 7525), prior to a scheduled RAC meeting on June 15, 1987. The June 15, 1987, meeting was postponed and rescheduled on September 21, 1987. Accordingly, this proposed amendment was published again for comment in the **Federal Register** of August 11, 1987 (52 FR 29900).

After extensive discussion at its meeting on September 21, 1987, the RAC voted to establish a working group to make recommendations regarding international projects and to report back to the full RAC.

A Working Group on International Projects met at the NIH on February 1, 1988 (53 FR 806). After much discussion, the working group voted seven in favor, none opposed, and no abstentions that the following proposed revision of the last paragraph of Section I–C be published for comment:

> The NIH Guidelines are also applicable: (1) To projects done abroad if they are supported by NIH funds, or (2) to research done abroad if it involves deliberate release into the environment or testing in humans of materials containing recombinant DNA developed with NIH funds and the research is a direct extension of the development process. If the host country, however, has established rules for the conduct of recombinant DNA projects, then a written assurance of compliance with those rules may be submitted to NIH in lieu of compliance with the NIH Guidelines. Alternatively, if the host country does not have such rules, written acceptance by an appropriate government office of the host country is necessary in lieu of compliance with the NIH Guidelines. The NIH reserves the right to withhold funding if the safety practices to be employed abroad are not reasonably consistent with the NIH Guidelines.

After extensive discussion of this proposed amendment of Section I–C and attempts to draft revised language, the RAC recommended that the many issues raised be referred back to the working group for further consideration.

A Working Group on International Projects met at the NIH on August 15, 1988 (53 FR 27670). The working group recommended that the following proposed revision of the last paragraph of Section I–C be published for comment:

> The NIH Guidelines are also applicable to recombinant DNA projects done abroad:
>
> 1. If they are supported by NIH funds; or
> 2. If they involve deliberate release into the environment or testing in humans of materials containing recombinant DNA developed with NIH funds, and if the institution that developed those materials sponsors or participates in those projects. Participation includes research collaboration or contractural agreements, but not mere provison of research materials.
>
> If the host country has established rules for the conduct of recombinant DNA projects, then the project must be in compliance with those rules. If the host country does not have such rules, the proposed project must be reviewed by an NIH-approved IBC or equivalent review body and accepted in writing by an appropriate national governmental authority. The safety practices to be employed abroad must be reasonably consistent with the NIH Guidelines.

The proposed language was published for public comment in the **Federal Register** on September 2, 1988 (53 FR 34246). No comments were received in response to the notice. This language was reviewed at the October 3, 1988, RAC meeting and accepted with one modification. After the word "authority" in the final paragraph, the phrase "of the host country" was added. This motion passed unanimously by a vote of 20 in favor, none opposed, and no abstentions.

I accept these recommendations, and Section I–C has been amended accordingly.

### *C. Proposed Amendment of Section I–B*

RAC member, Dr. Anne Vidaver of the University of Nebraska, proposed that the following paragraph regarding transposons be added to Section I–B, Definition of Recombinant DNA Molecules:

> Unmodified transposons (wild-type) that become inserted into a genome, even if carried by a recombinant vector or plasmid, are not subject to these guidelines. For example, it is common to use vectors that either are naturally unstable (suicide vector) in a desired host or that can be rendered unstable by manipulating physiological conditions. In the process of suicide (inability of the vector to replicate), transposon transfer may occur. This process is not considered recombinant DNA.

Transposable genetic elements or transposons are mobile DNA segments that can insert into a few or several sites in a genome. Such insertions, unlike classical recombination events, do not require DNA sequence homology and are independent of recombination systems. Many transposons have been discovered in microorganisms and other organisms. They may be insertion sequences that do not carry genes related to a phenotype such as drug resistance, lactose or raffinose utilization, arginine biosynthesis, mercury resistance, or enterotoxin production. Transposable elements also include self-replicating elements such as the entire bacteriophage genomes of Mu and Psi.

This proposal appeared in the **Federal Register** on September 2, 1988 (53 FR 34246), for public comment. Two suggestions for modifying the proposed language were received and discussed at the October 3, 1988, RAC meeting.

A substitute motion was developed as follows:

> Genomic DNA of plants and bacteria that has acquired a transposable element, even if the latter was donated from a recombinant vector no longer present, is not subject to these Guidelines unless the transposon itself contains recombinant DNA.

The motion to recommend approval of this modification to Section I–B of the Guidelines was passed by a vote of 18 in favor, none opposed, and no abstentions.

I accept this recommendation, and Section I–B of the Guidelines is amended accordingly.

## II. Summary of Actions

### *A. Human Gene Transfer Proposal*

The following section is added to Appendix D:

> Appendix D–XIII

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Drs. W. French Anderson, R. Michael Blaese, and Steven Rosenberg of the National Institutes of Health, Bethesda, Maryland, can conduct experiments in which a bacterial gene coding for neomycin phosphotransferase will be inserted into a portion of the tumor infiltrating lymphocytes (TIL) of cancer patients using a retroviral vector, N2. The marked TIL then will be combined with unmarked TIL, and reinfused into the patients. This experiment is an addition to an ongoing adoptive immunotherapy protocol in which TIL are isolated from a patient's tumor, grown in culture in the presence of interleukin-2, and reinfused into the patient. The marker gene will be used to detect TIL at various time intervals following reinfusion.

Approval is based on the following four stipulations:

1. There will be no more than 10 patients in the initial trial;
2. The patients selected will have a life expectancy of about 90 days;
3. The patients give fully informed consent to participate in the trial; and
4. The investigators will provide additional data before expanding the trial by adding patients or by inserting a gene for therapeutic purposes.

*B. Amendment of Section I–C of the NIH Guidelines*

Section I–C of the Guidelines is modified to read as follows:

The Guidelines are applicable to all recombinant DNA research within the United States or its territories which is conducted at or sponsored by an institution that receives any support for recombinant DNA research from the National Institutes of Health (NIH). This includes research performed by NIH directly.

An individual receiving support for research involving recombinant DNA must be associated with or sponsored by an institution that can and does assume the responsibilities assigned in these Guidelines.

The NIH Guidelines are also applicable to recombinant DNA projects done abroad:

1. If they are supported by NIH funds; or
2. If they involve deliberate release into the environment or testing in humans of materials containing recombinant DNA developed with NIH funds, and if the institution that developed those materials sponsors or participates in those projects. Participation includes research collaboration or contractual agreements, but not mere provision of research materials.

If the host country has established rules for the conduct of recombinant DNA projects, then the project must be in compliance with those rules. If the host country does not have such rules, the proposed project must be reviewed by an NIH-approved IBC or equivalent review body and accepted in writing by an appropriate national governmental authority of the host country. The safety practices to be employed abroad must be reasonably consistent with the NIH Guidelines.

*C. Proposed Amendment of Section I–B*

Section I–B is modified to read as follows:

In the context of these Guidelines recombinant DNA molecules are defined as either (i) molecules which are constructed outside living cells by joining natural or synthetic DNA segments to DNA molecules that can replicate in a living cell, or (ii) DNA molecules that result from the replication of those described in (i) above.

Synthetic DNA segments likely to yield a potentially harmful polynucleotide or polypeptide (e.g., a toxin or a pharmacologically active agent) shall be considered as equivalent to their natural DNA counterpart. If the synthetic DNA segment is not expressed in vivo as a biologically active polynucleotide or polypeptide product, it is exempt from the Guidelines.

Genomic DNA of plants and bacteria that has acquired a transposable element, even if the latter was donated from a recombinant vector no longer present, is not subject to these Guidelines unless the transposon itself contains recombinant DNA.

**III. Correction to Notice of Actions Published in the Federal Register on October 28, 1988 (53 FR 43418)**

Two phrases were inadvertently dropped from *Part II., D. Revision of Appendix C–IV.* Appendix C–IV should read as follows:

Any asporogenic Bacillus subtilis or asporogenic Bacillus licheniformis strain which does not revert to a sporeformer with a frequency greater than 10, can be used for cloning DNA with the exception of those experiments listed below.

For these exempt laboratory experiments, BL1 physical containment conditions are recommended.

For large-scale (LS) fermentation experiments, the appropriate physical containment conditions need be no greater than those for the host organism unmodified by recombinant DNA techniques; the IBC can specify higher containment if it deems necessary.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements"(45 FR 39592) requires a statement concerning the official government programs contained in the *Catalog of Federal Domestic Assistance.* Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined to be not cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the *Catalog of Federal Domestic Assistance* are affected.

Dated: March 2, 1989.

**James B. Wyngaarden,**

*Director, National Institutes of Health.*

[FR Doc. 89–5674 Filed 3–10–89; 8:45 am]

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Part V

# Environmental Protection Agency

**40 CFR Part 300**

**National Priorities List for Uncontrolled Hazardous Sites; Final Federal Facility Site Update; Final Rule**

VOL 54 ISS 47 MR 13 1989 UMI



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 300**

**[FRL-3533-8]**

**National Priorities List for Uncontrolled Hazardous Waste Sites; Final Federal Facility Site Update**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency ("EPA") is amending the National Oil and Hazardous Substances Contingency Plan ("NCP"), 40 CFR Part 300, which was promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") (amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA")) and Executive Order 12580 (52 FR 2923, January 29, 1987). CERCLA requires that the NCP include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States, and that the list be revised at least annually. The National Priorities List ("NPL"), initially promulgated as Appendix B of the NCP on September 8, 1983 (48 FR 40658), constitutes this list and is being revised today by the addition of eight Federal facility sites to the Federal section of the NPL, the expansion of two Federal facilty sites already on the NPL, and the reclassification of one site already on the NPL to a Federal facility site. EPA has reviewed public comments on the listing of these sites and has decided that they meet the eligibility requirements and listing policies of the NPL. Information supporting these actions is contained in the Superfund Public Dockets. Elsewhere in today's Federal Register is a notice describing the policy under which some of these Federal facility sites are being added to the NPL. This rule results in a final NPL of 799 sites, 41 of them in the Federal section: 370 sites are proposed to the NPL, 22 of them in the Federal section. Final and proposed sites now total 1,169.

**EFFECTIVE DATE:** The effective date for this amendment to the NCP shall be April 12, 1989. CERCLA section 305 provides for a legislative veto of regulations promulgated under CERCLA. Although *INS v. Chadha*, 462 U.S. 919, 103 S. Ct. 2764 (1983), cast the validity of the legislative veto into question, EPA has transmitted a copy of this regulation to the Secretary of the Senate and the Clerk of the House of Representatives. If any action by Congress calls the effective date of this regulation into question, the Agency will publish a notice of clarification in the Federal Register.

**ADDRESSES:** Addresses for the Headquarters and Regional dockets follows. For further details on what these dockets contain, see section I of the "Supplementary Information" portion of this preamble.

Tina Maragousis, Headquarters, U.S. EPA CERCLA Docket Office, Waterside Mall, 401 M Street SW., Washington, DC 20460, 202/382-3046.

Evo Cunha, Region 1, U.S. EPA Waste Management Records Center, HES-CAN 6, J.F. Kennedy Federal Building, Boston, MA 02203, 617/565-3300.

U.S. EPA, Region 2, Document Control Center, Superfund Docket, 26 Federal Plaza, 7th Floor, Room 740, New York, NY 10278, Latchmin Serrano, 212/264-5540, Ophelia Brown, 212/264-1154.

Diane McCreary, Region 3, U.S. EPA Library, 5th Floor, 841 Chestnut Building, 9th & Chestnut Streets, Philadelphia, PA 19107, 215/597-0580.

Gayle Alston, Region 4, U.S. EPA Library, Room G-8, 345 Courtland Street NE., Atlanta, GA 30365, 404/347-4216.

Cathy Freeman, Region 5, U.S. EPA, 5 HS-12, 230 South Dearborn Street, Chicago, IL 60604, 312/886-6214.

Deborah Vaughn-Wright, Region 6, U.S. EPA, 1445 Ross Avenue, Mail Code 6H-MA, Dallas, TX 75202-2733, 214/655-6740.

Connie McKenzie, Region 7, U.S. EPA Library, 726 Minnesota Avenue, Kansas City, KS 66101, 913/236-3826.

Dolores Eddy, Region 8, U.S. EPA Library, 999 18th Street, Suite 500, Denver, CO 80202-2405, 303/293-1444.

Linda Sunnen, Region 9, U.S. EPA Library, 6th Floor, 215 Fremont Street, San Francisco, CA 94105, 415/974-8082.

David Bennett, Region 10, U.S. EPA, 6th Floor, 1200 6th Avenue, Mail Stop HW-093, Seattle, WA 98101, 206/442-2103.

**FOR FURTHER INFORMATION CONTACT:** Joseph Kruger, Hazardous Site Evaluation Division, Office of Emergency and Remedial Response (OS-230), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC, 20460, or the Superfund Hotline, Phone (800) 424-9346 (382-3000 in the Washington, DC, metropolitan area).

**SUPPLEMENTARY INFORMATION:**

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## I. Introduction

*Background*

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. sections 9601-9657 ("CERCLA" or the "Act"), in response to the dangers of uncontrolled or abandoned hazardous waste sites. CERCLA was amended in 1986 by the Superfund Amendments and Reauthorization Act ("SARA"), Pub. L. No. 99-499, stat. 1613 *et seq.* To implement CERCLA, the Environmental Protection Agency ("EPA" or "the Agency") promulgated the revised National Oil and Hazardous Substances Contingency Plan ("NCP"), 40 CFR Part 300, on July 16, 1982 (47 FR 31180) pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP, further revised by EPA on September 16, 1985 (50 FR 37624) and November 20, 1985 (50 FR 47912), sets forth guidelines and procedures needed to respond under CERCLA to releases or threatened releases of hazardous substances, pollutants, or contaminants. On December 21, 1988 (53 FR 51394), EPA proposed revisions to the NCP in response to SARA.

Section 105(a)(8)(A) of CERCLA, as amended by SARA, requires that the NCP include criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable, take into account the potential urgency of such action for the purpose of taking removal action. In response to that mandate, EPA developed a model for assessing the relative risk posed by sites (the "Hazard Ranking System" or "HRS").

Section 105(a)(8)(B) of CERCLA, as amended by SARA, requires that the statutory criteria provided by the HRS be used to prepare a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The list, which is Appendix B of the NCP, is the National Priorities List ("NPL"). Section 105(a)(8)(B) also requires that the NPL be revised at least annually.

An original NPL of 406 sites was promulgated on September 8, 1983 (48 FR 40658). The NPL has been expanded since then, most recently on July 22, 1987 (52 FR 27620). The Agency has also published a number of proposed rulemakings to add sites to the NPL, most recently Update #7 on June 24, 1988 (53 FR 23988). EPA announced on June 10, 1986 (51 FR 21056), that it would list Federal facility sites in a separate section of the NPL, using the same technical criteria that qualify non-Federal sites.

EPA may delete sites from the NPL when no further response is appropriate, as provided in the NCP at 40 CFR 300.66(c)(7). To date, the Agency has deleted 24 sites from the NPL, 8 of them since the June 1988 proposed rule. They are:

- September 1, 1988 (53 FR 33811)
  —Tri-City Oil Conservationist, Inc., Tampa, Florida
  —Varsol Spill (once listed as part of Biscayne aquifer), Miami, Florida
- December 23, 1988 (53 FR 51780)
  —Toftdahl Drums, Brush Prairie, Washington
- January 19, 1989 (54 FR 2124)
  —Matthews Electroplating, Roanoke County, Virginia
- February 13, 1989 (54 FR 6521)
  —Presque Isle, Erie, Pennsylvania
- February 21, 1989 (54 FR 7424)
  —Parramore Surplus, Mount Pleasant, Florida
- February 22, 1989 (54 FR 7548)
  —Cooper Road, Voorhees Township, New Jersey
- February 22, 1989 (54 FR 7549)
  —Krysowaty Farm, Hillsborough, New Jersey.

EPA has also published several notices of intent to delete sites.

This rule adds eight Federal facility sites to the NPL, expands two Federal facility sites, and reclassifies one private site to a Federal facility site. EPA has carefully considered public comments submitted for the sites in today's final rule. This rule results in a final NPL of 799 sites, 41 of them in the Federal section; 370 sites are in proposed status, 22 of them in the Federal section. With these changes, final and proposed sites now total 1,169.

EPA includes on the NPL sites at which there are or have been releases or threatened releases of hazardous substances, pollutants, or contaminants. The discussion below may refer to "releases or threatened releases" simply as "releases", "facilities", or "sites".

*Information Available to the Public*

The Headquarters and Regional public dockets for the NPL (see **ADDRESSES** portion of this notice) contain documents relating to the scoring of sites in this final rule. The dockets are available for viewing "by appointment only" after the appearance of this notice. The hours of operation for the Headquarters dockets are from 9:00 a.m. to 4:00 p.m., Monday through Friday excluding Federal holidays. Please contact individual Regional dockets for hours.

The Headquarters docket contains HRS score sheets for each final site, a Documentation Record for each site describing the information used to compute the score, pertinent information for any site affected by special study waste, information for sites affected by the policy for listing sites subject to the Surface Mining Control and Reclamation Act of 1977 (SMCRA), a list of documents referenced in the Documentation Record, comments received, and the Agency's response to those comments. The Agency's responses are contained in the "Support Document for the Revised National Priorities List—Final Federal Facility Site Update, March 1989."

Each Regional docket includes all information available in the Headquarters docket for sites in that Region, as well as the actual reference documents, which contain the data EPA relied upon in calculating or evaluating the HRS scores for sites in the Region. These reference documents are available only in the Regional dockets. They may be viewed "by appointment only" in the appropriate Regional Docket or Superfund Branch office. Requests for copies may be directed to the appropriate Regional docket or Superfund Branch.

An informal written request, rather than a formal request, should be the ordinary procedure for obtaining copies of any of these documents.

EPA has published a statement describing what background information (resulting from the initial investigation of potential CERCLA sites) the Agency discloses in response to Freedom of Information Act requests (52 FR 5578, February 25, 1987).

## II. Purpose and Implementation of the NPL

*Purpose*

The primary purpose of the NPL is stated in the legislative history of CERCLA (Report of the Committee on Environment and Public Works, Senate Report No. 96-848, 96th Cong., 2d Sess. 60 (1980)):

> The priority lists serve primarily informational purposes, identifying for the States and the public those facilities and sites or other releases which appear to warrant remedial actions. Inclusion of a facility or site on the list does not in itself reflect a judgment of the activities of its owner or operator. It does not require those persons to undertake any action, nor does it assign liability to any person. Subsequent government action in the form of remedial actions or enforcement actions will be necessary in order to do so, and these actions will be attended by all appropriate procedural safeguards.

The purpose of the NPL, therefore, is primarily to serve as an informational and management tool. The initial identification of a site for the NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of the public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. The NPL also serves to notify the public of sites EPA believes warrant further investigation.

Federal facility sites are eligible for the NPL pursuant to the NCP at 40 CFR 300.66(c)(2). However, section 111(e)(3) of CERCLA, as amended by SARA, limits the expenditure of CERCLA monies at Federally-owned facilities. Federal facility sites are also subject to the requirements of CERCLA section 120, added by SARA.

*Placing Sites on the NPL*

There are three mechanisms for placing sites on the NPL. The principal mechanism is the application of the HRS. The HRS serves as a screening device to evaluate the relative potential of uncontrolled hazardous substances to cause human health or safety problems, or ecological or environmental damage. The HRS score is calculated by estimating risks presented in three potential "pathways" of human or environmental exposure: Ground water, surface water, and air. Within each pathway of exposure, the HRS considers three categories of factors "that are designed to encompass most aspects of the likelihood of exposure to a hazardous substance through a release and the magnitude or degree of harm from such exposure": (1) Factors that indicate the presence or likelihood of a release to the environment; (2) factors that indicate the nature and quantity of the substances presenting the potential threat; and (3) factors that indicate the human or environmental "targets" potentially at risk from the site. Factors within each of these three categories are assigned a numerical value according to a set scale. Once numerical values are computed for each factor, the HRS uses mathematical formulas that reflect the relative importance and interrelationships of the various factors to arrive at a final site score on a scale of 0 to 100. The resultant HRS score represents an estimate of the relative "probability and magnitude of harm to

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the human population or sensitive environment from exposure to hazardous substance as a result of the contamination of ground water, surface water, or air" (47 FR 31180, July 16, 1982). Those sites that score 28.50 or greater on the HRS are eligible for the NPL.

Under the second mechanism for adding sites to the NPL, each State may designate a single site as its top priority, regardless of the HRS score. This mechanism is provided by section 105(a)(8)(B) of CERCLA, as amended by SARA, which requires that, to the extent practicable, the NPL include within the 100 highest priorities, one facility designated by each State representing the greatest danger to public health, welfare, or the environment among known facilities in the State.

The third mechanism for listing, included in the NCP at 40 CFR 300.66(b)(4) (50 FR 37624, September 16, 1985), has been used only in rare instances. It allows certain sites with HRS scores below 28.50 to be eligible for the NPL if all of the following occur:

- The Agency for toxic Substances and Disease Registry of the U.S. Department of Health and Human Services has issued a health advisory which recommends dissociation of individuals from the release.
- EPA determines that the release poses a significant threat to public health.
- EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

All sites in this update are being included on the NPL based on HRS scores.

Federal agencies have the primary responsibility under CERCLA section 120(c) for identifying Federal facility sites. In conjunction with EPA Regional Offices, the Federal agencies perform investigations, sampling, monitoring, and scoring of sites. Regional Offices then conduct a quality control review of the candidate sites. EPA Headquarters conducts further quality assurance audits to ensure accuracy and consistency among the various offices participating in the scoring. The Agency then proposes the sites that meet one of the three eligibility criteria for listing (and EPA's listing policies) and solicits public comment on the proposal. Based on these comments and further review by EPA, the Agency determines final HRS scores and lists those sites that still qualify for the final NPL.

In response to CERCLA section 105(c), as amended by SARA, EPA has proposed revisions to the HRS (55 FR 51532, December 23, 1988). EPA intends to issue the revised HRS as soon as possible. However, until the proposed revisions have been subject to public comment and put into effect, EPA will continue to propose and promulgate sites using the current HRS, in accordance with CERCLA section 105(c)(1) and Congressional intent, *see*, e.g., S. Rep. No. 11, 99th Cong., 1st Sess. 41 (1985); 131 *Cong. Rec.* S–11831 (daily ed., Sept. 18, 1985) (statement of Sen. Baucus).

## III. Statutory Requirements and Listing Policies

CERCLA restricts EPA's authority to respond to certain categories of releases of hazardous substances, pollutants, or contaminants by expressly excluding some substances, such as petroleum, from the response program. In addition, CERCLA section 105(a)(8)(B) directs EPA to list priority sites "among" the known releases or threatened releases of hazardous substances, pollutants, or contaminants, and section 105(a)(8)(A) directs EPA to consider certain enumerated and "other appropriate" factors in doing so. Thus, as a matter of policy, EPA has the discretion not to use CERCLA to respond to certain types of releases. For example, EPA has chosen not to list sites that result from contamination associated with facilities licensed by the Nuclear Regulatory Commission (NRC), on the grounds that NRC has the authority and expertise to clean up releases from those facilities (48 FR 40661, September 8, 1983). Where other authorities exist, placing the site on the NPL for possible remedial action under CERCLA may not be appropriate. Therefore, EPA has chosen to defer certain types of sites from the NPL even though CERCLA may provide authority to respond. If, however, the Agency later determines that sites not listed as a matter of policy are not being properly responded to, the Agency may place them on the NPL.

In the proposed revisions to the NCP (53 FR 51394, December 21, 1988), the Agency is considering extending the deferral policy, under certain circumstances, to include other Federal authorities and States that have corrective action authority. The Agency is also considering extending the policy to sites where the potentially responsible parties enter into enforcement agreements for site cleanup under CERCLA. EPA notes that even if another authority is applicable to Federal facilities, the cleanup of such sites will not be deferred, and Federal Facilities will continue to be included in the NPL, consistent with CERCLA section 120(d)(2).

### *Releases from Federal Facility Sites*

On June 10, 1986 (51 FR 21054), the Agency announced a decision on components of a policy for generally deferring from listing those non-Federal sites that are subject to Subtitle C of the Resource Conservation and Recovery Act (RCRA). The policy was intended to reflect RCRA's broadened corrective action authorities as a result of the Hazardous and Solid Waste Amendments of 1984 (HSWA). In announcing the RCRA policy, the Agency reserved for a later date the question of whether this or another policy would be applied to Federal facility sites that include one or more RCRA hazardous waste management units, and thus are subject to RCRA Subtitle C corrective action authorities.

On May 13, 1987 (52 FR 17991), the Agency announced its intent to adopt a policy that would allow Federal facility sites to be placed on the NPL regardless of whether RCRA Subtitle C corrective action authorities are applicable.

Elsewhere in today's Federal Register is a notice describing the policy for placing on the NPL those sites located on Federally-owned or -operated facilities that meet the eligibility criteria (e.g., HRS score of 28.50 or greater) set out in the NCP for listing on the NPL, even if the Federal facility is also subject to the corrective action authorities of RCRA Subtitle C. Thus the June 10, 1986 RCRA deferral policy (51 Fr 21057), applicable to private sites, will not be applied to Federal facility sites.

The Agency believes that placing Federal facility sites with or without RCRA-regulated hazardous waste management units on the NPL is consistent with the intent of section 120 of SARA and will serve the purposes originally intended by the NCP at 40 CFR 300.66(e)(2)—to advise the public of the status of Federal Government cleanup efforts (50 FR 47931, November 20, 1985). In addition, listing will help other Federal agencies set priorities and focus cleanup efforts on those sites presenting the most serious problems.

### *Releases from Special Study Wastes and Mining Sites*

Section 105(g) of CERCLA, as amended by SARA, requires additional information before sites involving RCRA "special study wastes" can be added to the NPL (53 FR 23982, June 24, 1988). One of the sites being expended in this rule (Weldon Spring Quarry/Plant/Pits) involves such wastes. The same site also involves mining wastes, which are addressed under a SMCRA applicability policy also explained on June 24, 1988 (53 FR 23988). A memorandum has been placed in the docket addressing the application of the special study waste and SMCRA policies to this site.

## IV. Disposition of Sites in Today's Final Rule

This final rule adds eight Federal facility sites to the Federal facility section of the NPL (Table I), finalizes the expansion of two Federal facility sites already on the NPL, and reclassifies one site already on the NPL to a Federal facility site.



TABLE I.—NATIONAL PRIORITIES LIST, FEDERAL FACILITY SITES, NEW FINAL (BY GROUP) MARCH 1989

| NPL Gr.[1] | St | Site Name | City/County | Response category [2] | Cleanup status [3] |
|---|---|---|---|---|---|
| 1 | NM | Cal West Metals (USDOE) | Lemitar | D | |
| 4 | AL | Anniston Army Depot (SE Ind Area) | Anniston | R | I |
| 7 | IL | Savanna Army Depot Activity | Savanna | R | |
| 8 | PA | Letterkenny Army Depot (PDO Area) | Franklin County | R | |
| 10 | DE | Dover Air Force Base | Dover | R | I |
| 11 | IL | Joliet Army Ammo Plant (LAP Area) | Joliet | R | |
| 13 | WA | Fairchild Air Force Base (4 Areas) | Spokane County | R | |
| 15 | LA | Louisiana Army Ammunition Plant | Doyline | R | |

Number of New Final Federal Facility Sites: 8.

[1] Sites are placed in groups (Gr) corresponding to groups of 50 on the final NPL.
[2] V—Voluntary or negotiated response; R—Federal and State response; F—Federal enforcement; S—State enforcement; D—Category to be determined.
[3] I—Implementation activity underway, one or more operable units; O—One or more operable units completed; others may be underway; C—Implementation activity completed for all operable units.

### *New Final Sites*

The eight new Federal facility sites in today's final rule are subject to the corrective action authorities of RCRA Subtitle C. EPA is placing these sites on the NPL consistent with the listing policy for Federal facilities, described elsewhere in today's Federal Register. They include six sites reproposed for the NPL on July 22, 1987 (52 FR 27643), and two sites proposed on June 24, 1988 (53 FR 23988). The Agency received comments on two of the sites reproposed on July 22, 1987; no comments were received on the remaining six sites.

The Agency received technical comments on the proposal to list the Letterkenny Army Depot (Property Disposal Office Area), Franklin County, Pennsylvania, and the Anniston Army Depot (Southeast Industrial Area), Anniston, Alabama. EPA's response to these comments is discussed in the "Support Document for the Revised National Priorities List—Final Federal Facility Site Update, March 1989" which is available in the appropriate Superfund Dockets.

### *Site Expansions*

The Agency is finalizing two site expansions in this rule, the expansion of the Rocky Mountain Arsenal (RMA) site in Denver, Colorado, to include Basin F, a 93-acre lagoon on the site, and the expansion of the Weldon Spring Quarry (USDOE/Army) site in St. Charles County, Missouri, to include the Weldon Spring Feed Materials plant and Raffinate Pits.

The approach of expanding a site to include a contiguous area that is contributing to a contamination problem, rather than proposing a second separate site, is within the Agency's authority and is consistent with past practice. For instance, in the first NPL proposal on December 30, 1982 (47 FR 58476), EPA proposed to list a 23-mile stream bed (the "Silver Bow Creek site"), and finalized that site on September 8, 1983 (48 FR 40658). The Agency then proposed on June 10, 1986 (51 FR 21101) to expand the site to include an additional area which EPA determined to be significantly contributing to the contamination; the Silver Bow Creek expansion was finalized on July 22, 1987 (52 FR 27627). EPA has broad authority to address contamination, as reflected in CERCLA section 104(d)(4), which allows the Agency to treat related, noncontiguous facilities as one for the purpose of remedial action, and in CERCLA section 101(9), which defines a "facility" under CERCLA to include any site or area where a hazardous substance has been placed or "come to be located."

The Agency received comments from one party opposing the proposal to expand the RMA site; EPA had proposed this expansion on July 22, 1987 (52 FR 27643) when the RMA site was added to the final NPL. EPA believes that it is appropriate to include Basin F in the RMA listing.

Basin F is located on section 36 of the approximately 40 designated land sections at the RMA property. The RMA/NPL site, as originally listed, includes the bulk of the Arsenal property, and indeed physically surrounds the Basin F area. EPA has identified Basin F as a major source of ground water contamination which mixes with ground water contamination from other sources at the Arsenal, making coordinated response necessary. Basin F also represents a major source of surface contamination, although that situation is being addressed by a CERCLA interim response action at Basin F. The Agency believes that the site definition for RMA should be expanded to include Basin F so that EPA will have the option of seeking a comprehensive remedy under CERCLA for contamination at the contiguous areas of Basin F and the original RMA/NPL site.[1]

Basin F was excluded from the RMA site (as initially proposed and promulgated) because EPA believed that Basin F might be subject to RCRA Subtitle C corrective action authorities, and thus might be appropriate for deferral under the Agency's September 8, 1983 NPL/RCRA policy (48 FR 40662 and further discussed at 49 FR 40323–40324, 40336 (October 15, 1984)). EPA subsequently learned that Basin F should not, in fact, have been deferred to RCRA based on the policy in effect when RMA was proposed for lising.[2]

[1] In the case of the Basin F expansion, a non-contiguous site expansion analysis is not technically required. Information developed during the course of the remedial investigation/feasibility study confirms that contamination extends from the original RMA/NPL site to the Basin F area. This provides an additional basis for including Basin F within the original NPL site at RMA, because the statute provides that a CERCLA "facility" includes the site or area where hazardous substances have "come to be located" (CERCLA section 101(9)). The definition of a "site," reflected by the original HRS listing package, is continually refined as the CERCLA process progresses and more information on the extent of contamination is developed.

[2] Basin F stopped receiving RCRA hazardous wastes prior to July 26, 1982 (the effective date of the land disposal regulations) and did not certify closure prior to January 26, 1983; thus, it was not

Continued

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Rather, it should have been included in the original RMA site under the 1983 policy.

Basin F also qualifies for listing under the current policy. Passage of HSWA in 1984 gave the Agency additional authorities under RCRA to order corrective action at all units at a RCRA facility, including those that were known as "non-regulated" units; thus, on June 10, 1986 (51 FR 21057), the Agency announced a revised NPL/RCRA policy which provided for the deferral from listing of certain RCRA sites where corrective action authorities are available (again, including sites with non-regulated units). However, that revised policy applied only to *non*-Federal facility sites, and thus not to Basin F. Thus, the June 1986 revised policy did not supersede the September 1983 RCRA listing policy *with respect to* Federal facilities. On May 13, 1987 (52 FR 17991–17993), the Agency asked for comment on a policy for listing Federal sites regardless of RCRA applicability, and on July 22, 1987 (52 FR 27645–27649), the Agency discussed that policy with specific application to Basin F. Elsewhere in today's Federal Register, the Agency formally announced its policy of listing Federal facility sites on the NPL, even if they are also subject to RCRA authorities, as generally discussed in the May and July 1987 notices. Thus, Basin F is appropriate for inclusion in the NPL site under current Agency policy.

Further specific comments concerning the expansion of the RMA site are discussed in the Support Document for this rule, which is available in the Superfund docket.

The second Federal facility site being expanded in this rule is the Weldon Spring Quarry (USDOE/Army), St. Charles County, Missouri. It was placed on the final NPL on July 22, 1987 (52 FR 27620). On June 24, 1988, EPA proposed to expand the site to include the Weldon Spring Feed Materials Plant and Raffinate Pits, which are located less than 3 miles from the Quarry and are linked to the contamination at the original site. The site contains mining wastes from uranium ore processing; an addendum discussing special study wastes at the site is included in the Superfund dockets. In addition, the site was abandoned prior to the August 3, 1977 enactment of the Surface Mining Control and Reclamation Act of 1977 ("SMCRA"). Consistent with the policy for listing SMCRA sites on the NPL, a statement covering SMCRA applicability at the site is included in the dockets. No comments were received on the proposed expansion of this site, or on the special study waste and SMCRA addenda. The expanded site is now being placed on the final NPL under the name "Weldon Spring Quarry/Plant/Pits (USDOE/Army)".

*Site Reclassification*

Finally, this rule reclassifies one site—W. R. Grace Co., Inc. (Wayne Plant), Wayne, New Jersey—as a Federal facility site; that site had been proposed for the NPL on September 8, 1983 (48 FR 40674). W.R. Grace Co., Inc., bought the facility in 1957 and owned it until September 18, 1984, when the facility was acquired by the U.S. Department of Energy (USDOE). USDOE changed the name of the site to the Wayne Interim Storage Site (WISS). On September 21, 1984 (49 FR 37070), the site was placed on the final NPL under its original name. The site will now be included in the Federal facility section of the NPL. The site name is being changed to "W. R. Grace & Co., Inc./Wayne Interim Storage Site (USDOE)" to more accurately reflect the ownership and status of the site.

## V. Contents of the NPL

The eight new sites added to the NPL in today's rule (Table 1) and the one reclassified site have been incorporated into the Federal section of the NPL by their group number. Sites on the NPL are arranged according to their HRS scores and presented in groups of 50 sites to emphasize that minor differences in HRS scores do not necessarily represent significantly different levels of risk. EPA considers the sites within a group to have approximately the same priority for response actions. The Federal facility section appears at the end of this final rule, and will be codified as part of Appendix B to the NCP.

Each entry on the NPL contains the name of the facility and the State and city or county in which it is located. For informational purposes, each entry is accompanied by one or more notations reflecting the status of response and cleanup activities at these sites at the time this list was prepared. Because this information may change periodically, these notations may become outdated.

## VI. Regulatory Impact Analysis

The costs of cleanup actions that may be taken at sites are not directly attributable to placement on the NPL, as explained below. Therefore, the Agency has determined that this rulemaking is not a "major" regulation under Executive Order 12291. EPA has conducted a preliminary analysis of economic implications of today's amendment to the NCP. EPA believes that the kinds of economic effects associated with this revision are generally similar to those effects identified in the regulatory impact analysis (RIA) prepared in 1982 for the revisions to the NCP pursuant to section 105 of CERCLA and the economic analysis prepared when amendments to the NCP were proposed (50 FR 5862, February 12, 1985). The Agency believes the anticipated economic effects related to adding eight sites to the NPL can be characterized in terms of the conclusions of the earlier RIA and the most recent economic analysis. This rule was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

*Costs*

EPA has determined that this rulemaking is not a "major" regulation under Executive Order 12291 because inclusion of a site on the NPL does not itself impose any costs. It does not establish that EPA will necessarily undertake remedial action, nor does it require any action by a private party or determine its liability for site response costs. Costs that arise out of site responses result from site-by-site decisions about what actions to take, not directly from the act of listing itself. In addition, all sites in this final rule are Federally-owned or -operated, and CERCLA section 111(e)(3) prohibits use of the Trust Fund for remedial actions at Federal facilities.

*Benefits*

The real benefits associated with today's amendment placing additional sites on the NPL are increased health and environmental protection as a result of increased public awareness of potential hazards.

As a result of the additional CERCLA remedies, there will be lower human exposure to high-risk chemicals, and higher-quality surface water, ground water, soil, and air. These benefits are expected to be significant, although difficult to estimate in advance of the remedial investigation/feasibility study of each site. Associated with the costs are significant potential benefits and cost offsets. The distributional costs of carrying out remedies at sites on the NPL have corresponding "benefits" in that funds expended for a response generate employment, directly or indirectly (through purchased materials).

subject to RCRA corrective action requirements available at that time, and qualified as a "non-regulated unit." It was not appropriate for deferral to RCRA under the September 1983 policy.



## VII. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act of 1980 requires EPA to review the impacts of this action on small entities, or certify that the action will not have a significant impact on a substantial number of small entities. By small entities, the Act refers to small businesses, small government jurisdictions, and nonprofit organizations.

While modifications to the NPL are considered revisions to the NCP, they are not typical regulatory changes since the revisions do not automatically impose costs. The placing of sites on the NPL does not in itself require any action of any party, (e.g., contractors operating government-owned facilities), nor does it determine the liability of any party for the cost of cleanup at the site. Further, because this final rule involves Federally-owned or -operated facilities, the number of small entities that could be affected will be small.

The impacts (from cost recovery) on small governments and nonprofit organizations would be determined on a similar case-by-case basis.

## List of Subjects in 40 CFR Part 300

Air pollution control, Chemicals, Hazardous materials, Intergovernmental relations, Natural resources, Oil pollution, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

Date: March 6, 1989.

**Jonathan Z. Cannon,**

*Acting Assistant Administrator, Office of Solid Waste and Emergency Response.*

40 CFR Part 300 is amended as follows:

## PART 300—[AMENDED]

1. The authority citation for Part 300 is revised to read as follows:

**Authority:** 42 U.S.C. 9605; 42 U.S.C. 9620; 33 U.S.C. 1321 (c)(2); E.O. 11735 (38 FR 21243); E.O. 12580, (52 FR 2923).

2. In Appendix B of Part 300, the Federal Section (by group) table is revised to read as set forth below.

**Appendix B**

* * * * *

NATIONAL PRIORITIES LIST, FEDERAL SECTION (BY GROUP)

March 1989

| NPL Gr [1] | St | Site Name | City/County | Response category [2] | Cleanup status [3] |
|---|---|---|---|---|---|
| 1 | NM | Cal West Metals (USSBA) | Lemitar | D | |
| 1 | MO | Weldon Spring (USDOE/Army) | St. Charles County | R | |
| 2 | CO | Rocky Mountain Arsenal | Adams County | R | O |
| 2 | TN | Milan Army Ammunition Plant | Milan | R | I |
| 2 | CA | McClellan AFB (Ground Water Cont) | Sacramento | R | O |
| 4 | AL | Anniston Army Depot (SE Ind Area) | Anniston | R | I |
| 4 | GA | Robins AFB (Landfill #4/Sludge Lag) | Houston County | R | |
| 4 | NE | Cornhusker Army Ammunition Plant | Hall County | R | O |
| 4 | NJ | Naval Air Engineering Center | Lakehurst | R | |
| 4 | UT | Hill Air Force Base | Ogden | R | I |
| 5 | NJ | W.R. Grace/Wayne Int Stor (USDOE) | Wayne Township | R | O |
| 6 | UT | Ogden Defense Depot | Ogden | R | |
| 6 | CA | Sacramento Army Depot | Sacramento | R | |
| 6 | IL | Sangamo/Crab Orchard NWR (USDOI) | Carterville | R | |
| 6 | ME | Brunswick Naval Air Station | Brunswick | V R | |
| 7 | CA | Lawrence Livermore Lab (USDOE) | Livermore | R | O |
| 7 | CA | Sharpe Army Depot | Lathrop | R | O |
| 7 | OK | Tinker AFB (Soldier Cr/Bldg 3001) | Oklahoma City | R | |
| 7 | WA | McChord AFB (Wash Rack/Treatment) | Tacoma | R | |
| 7 | IL | Savanna Army Depot Activity | Savanna | R | |
| 8 | CA | Norton Air Force Base | San Bernardino | R | |
| 9 | CA | Castle Air Force Base | Merced | R | I |
| 9 | PA | Letterkenny Army Depot (PDO Area) | Franklin County | R | |
| 9 | NJ | Fort Dix (Landfill Site) | Pemberton Township | R | |
| 10 | AL | Alabama Army Ammunition Plant | Childersburg | R | O |
| 10 | DE | Dover Air Force Base | Dover | R | I |
| 11 | IL | Joliet Army Ammu Plant (LAP area) | Joliet | R | |
| 12 | PA | Letterkenny Army Depot (SE Area) | Chambersburg | R | O |
| 12 | NY | Griffiss Air Force Base | Rome | R | |
| 12 | VA | Defense General Supply Center | Chesterfield County | R | O |
| 12 | WA | Fort Lewis (Landfill No. 5) | Tacoma | R | |
| 13 | MN | Twin Cities Air Force (SAR Lndfill) | Minneapolis | R | |
| 13 | MO | Lake City Army Plant (NW Lagoon) | Independence | R | O |
| 13 | IL | Joliet Army Ammu Plant (Mig Area) | Joliet | R | O |
| 13 | WA | Fairchild Air Force Base (4 Areas) | Spokane County | R | |
| 14 | TX | Lone Star Army Ammunition Plant | Texarkana | R | |
| 14 | OR | Umatilla Army Depot (Lagoons) | Hermiston | R | |
| 14 | WA | Bangor Ordnance Disposal | Bremerton | R | |
| 15 | LA | Louisiana Army Ammunition Plant | Doyline | R | |
| 15 | CA | Moffett Naval Air Station | Sunnyvale | R | |
| 15 | CA | Mather AFB (AC&W Disposal Site) | Sacramento | R | |

Number of NPL Federal Facility Sites: 41

[1] Sites are placed in groups (Gr) corresponding to groups of 50 on the final NPL.
[2] V=Voluntary or negotiated response; F=Federal enforcement; D=Category to be determined; R=Federal and State response; S=State enforcement.
[3] I=Implementation activity underway, one or more operable units; O=One or more operable units completed; others may be underway; C=Implementation activity completed for all operable units.

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Part VI

# Environmental Protection Agency

40 CFR Part 300
The National Priorities List for Uncontrolled Hazardous Waste Sites; Listing Policy for Federal Facilities; Notice of Policy Statement

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 300**

**[FRL-3536-8]**

**The National Priorities List for Uncontrolled Hazardous Waste Sites; Listing Policy for Federal Facilities**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of policy statement.

**SUMMARY:** The Environmental Protection Agency ("EPA") is announcing a policy relating to the National Oil and Hazardous Substances Contingency Plan ("NCP"), 40 CFR Part 300, which was promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") (amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA")) and Executive Order 12580 (52 FR 2923, January 29, 1987). CERCLA requires that the NCP include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States, and that the list be revised at least annually. The National Priorities List ("NPL"), initially promulgated as Appendix B of the NCP on September 8, 1983 (48 FR 40658), constitutes this list.

This notice describes a policy for placing on the NPL sites located on Federally-owned or -operated facilities that meet the NPL eligibility criteria set out in the NCP, even if the Federal facility is also subject to the corrective action authorities of Subtitle C of the Resource Conservation and Recovery Act ("RCRA"). EPA had requested public comment on this policy on May 13, 1987 (52 FR 17991); comments received are contained in the Headquarters Superfund Public Docket. Elsewhere in today's **Federal Register** is a rule adding Federal facility sites to the NPL in conformance with this policy.

**EFFECTIVE DATE:** This policy is effective immediately.

**ADDRESSES:** The Headquarters Superfund Public Docket is located at the U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. It is available for viewing "by appointment only" from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Telephone 202/382-3046.

**FOR FURTHER INFORMATION CONTACT:** Joseph Kruger, Hazardous Site Evaluation Division, Office of Emergency and Remedial Response (OS-230), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, or the Superfund Hotline, phone (800) 424-9346 (or 382-3000 in the Washington, DC, metropolitan area.)

**SUPPLEMENTARY INFORMATION:**

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I. Introduction
II. Development of the Policy for Listing Federal Facility Sites
III. Coordination of Response Authorities at Federal Facility Sites on the NPL
IV. Response to Public Comments

## I. Introduction

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. sections 9601-9657 (CERCLA or "the Act"), in response to the dangers of uncontrolled or abandoned hazardous waste sites. CERCLA was amended in 1986 by the Superfund Amendments and Reauthorization Act ("SARA"), Pub. L. No. 99-499, 100 Stat. 1613 *et seq.* To implement CERCLA, the Environmental Protection Agency ("EPA" or "the Agency") promulgated the revised National Oil and Hazardous Substances Contingency Plan ("NCP"), 40 CFR Part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP, further revised by EPA on September 16, 1985 (50 FR 37624) and November 20, 1985 (50 FR 47912), sets forth guidelines and procedures needed to respond under CERCLA to releases and threatened releases of hazardous substances, pollutants, or contaminants. In response to SARA, EPA proposed revisions to the NCP on December 21, 1988 (53 FR 51394).

Section 105(a)(8)(A) of CERCLA, as amended by SARA, requires that the NCP include criteria for "determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable taking into account the potential urgency of such action, for the purpose of taking removal action." Removal action involves cleanup or other actions that are taken in response to releases or threats of releases on a short-term or temporary basis (CERCLA section 101(23)). Remedial action tends to be long-term in nature and involves response actions which are consistent with a permanent remedy for a release (CERCLA section 101(24)). Criteria for determining priorities for possible remedial actions under CERCLA are included in the Hazard Ranking System ("HRS"), which EPA promulgated as Appendix A of the NCP (47 FR 31219, July 16, 1982).[1]

Section 105(a)(8)(B) of CERCLA, as amended by SARA, requires that the statutory criteria provided by the HRS be used to prepare a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The list, which is Appendix B of the NCP, is the National Priorities List ("NPL"). Section 105(a)(8)(B) also requires that the NPL be revised at least annually.

A site can undergo CERCLA-financed remedial action only after it is placed on the final NPL as provided in the NCP at 40 CFR 300.66(c)(2) and 300.68(e). Although Federal facility sites are eligible for the NPL pursuant to the NCP at 40 CFR 300.66(c)(2), section 111(e)(3) of CERCLA, as amended by SARA, limits the expenditure of Superfund monies at Federally-owned facilities. Federal facility sites also are subject to the requirements of CERCLA section 120, added by SARA.

This notice announces the Agency's policy of including on the NPL Federal facility sites that meet the eligibility requirements (e.g., an HRS score of 28.50), even if such facilities are also subject to the corrective action authorities of Subtitle C of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6901-6991(i). Elsewhere in today's **Federal Register** EPA is adding Federal facility sites to the NPL in conformance with this policy.

## II. Development of the Policy for Listing Federal Facility Sites

CERCLA section 105(a)(8)(B) directs EPA to list priority sites "among" the known releases or threatened releases of hazardous substances, pollutants, or contaminants, and section 105(a)(8)(A) directs EPA to consider certain enumerated and "other appropriate" factors in doing so. Thus, as a matter of policy, EPA has the discretion not to use CERCLA to respond to certain types of releases.

When the initial NPL was promulgated (48 FR 40662, September 8, 1983), the Agency announced certain listing policies relating to sites that might qualify for the NPL. One of these policies was that RCRA land disposal units that received hazardous waste after July 26, 1982 (the effective date of the RCRA land disposal regulations) would generally not be included on the NPL. On April 10, 1985 (50 FR 14117), the Agency announced that it was considering revisions to that policy based upon new authorities of the Hazardous and Solid Waste Amendments of 1984 ("HSWA") that allow the Agency to require corrective action at solid waste management units of RCRA facilities in addition to regulated hazardous waste management units.

On June 10, 1986 (51 FR 21057), EPA announced several components of a final policy for placing RCRA-regulated sites on the NPL, but made clear that the policy applied only to non-Federal sites. The Policy stated that the listing of non-Federal sites with releases that can be addressed under the expanded RCRA Subtitle C corrective action authorities generally would be deferred. However, certain RCRA sites at which Subtitle C corrective action authorities are available would generally be listed if they had an HRS score of 28.50 or greater and met at least one of the following criteria:

- Facilities owned by persons who have demonstrated an inability to finance a cleanup as evidenced by their invocation of the bankruptcy laws.
- Facilities that have lost authorization to operate, and for which there are additional indications that the owner or operator will be unwilling to undertake corrective action.
- Sites, analyzed on a case-by-case basis, whose owners or operators have a clear history of unwillingness to undertake corrective action.[2]

On June 10, 1986 (51 FR 21060), EPA stated that it would consider at a later date whether this revised policy for deferring non-Federal RCRA-regulated sites from the NPL should apply to Federal facilities.

On October 17, 1986, SARA took effect, adding a new section 120 to CERCLA devoted exclusively to Federal facilities. Section 120 explains the applicability of CERCLA to the Federal Government, and generally sets out a scheme under which contaminated Federal facility sites should be included in a special docket, evaluated, placed on the NPL (if HRS scores so warrant), and addressed pursuant to an Interagency Agreement with EPA.

As part of its deliberations on a Federal facilities listing policy, EPA considered pertinent sections of SARA and the proposed policy concerning RCRA corrective action at Federal facilities with RCRA-regulated hazardous waste management units (51 FR 7722, March 5, 1986). Specifically, that policy stated that:

- RCRA section 3004(u) subjects Federal facilities to corrective action requirements to the same extent as privately-owned or -operated facilities.
- The definition of a Federal facility boundary is equivalent to the property-wide definition of facility at privately-owned or -operated facilities.

The Agency determined that the great majority of Federal facility sites that could be placed on the NPL have RCRA-regulated hazardous waste management units within the Federal facility property boundaries, subjecting them to RCRA corrective action authorities. Therefore, application to Federal facilities of the March 5, 1986 boundary policy and the June 10, 1986 RCRA deferral policy would result in placing very few Federal facility sites on the NPL. However, CERCLA and its legislative history indicate that Congress clearly intended that Federal facility sites generally be placed on the NPL and addressed under the process set out in CERCLA section 120(e). Thus, EPA concluded that the RCRA deferral policy applicable to private sites might not be appropriate for Federal facilities. On May 13, 1987 (52 FR 17991), the Agency announced that it was considering adopting a policy for listing Federal facility sites that are eligible for the NPL, even if they are also subject to the corrective action authorities of Subtitle C of RCRA; public comment was specifically requested on this approach.

Congress' intent that Federal facility sites should be on the NPL, even if RCRA corrective action authorities apply, is evidenced by the nature of the comprehensive system of site identification and evaluation set up by CERCLA section 120, added by SARA. First, in section 120(c), EPA is required to establish a "Federal Agency Hazardous Waste Compliance Docket," based on information submitted under sections 103 and 120(b) of CERCLA, *and* sections 3016, 3005, and 3010 of RCRA.[3]

Thus, the docket is based heavily on information provided by Federal facilities that are subject to RCRA. If Congress had intended that Federal facilities subject to RCRA authorities should not also be examined under the Federal facility provisions of CERCLA, then the legislators would not have directed EPA to develop a docket of facilities (for evaluation *under CERCLA*) composed largely of Federal facilities subject to RCRA.

Second, the Agency is also directed, in CERCLA section 120(d), to "take steps to assure that a preliminary assessment is conducted *for each facility on the docket*," and where appropriate, to include such facilities on the NPL if the facility meets "the criteria established in accordance with section 105 under the National Contingency Plan for determining priorities among releases." (EPA does apply the CERCLA section 105 criteria—the Hazard Ranking System (HRS)—to Federal, as well as private, sites.) Here again, if Congress had intended that Federal facilities subject to RCRA authorities not be placed on the NPL, then the legislators would not have required EPA to evaluate for the NPL all Federal facilities in the docket—the large majority of which are subject to RCRA authorities.

Third, Congress set up the Interagency Agreement (IAG) process (CERCLA section 120(e) (2)-(4)) to evaluate the need for cleanups of Federal facility sites. If all Federal facility sites subject to RCRA Subtitle C were deferred from listing and attention under CERCLA, few Federal sites would come within the IAG process, contrary to Congressional intent.

Rather, Congress intended that EPA list, and evaluate in the IAG process, all Federal facility sites that are eligible for the NPL, including those facilities subject to RCRA Subtitle C authorities. As Senator Robert T. Stafford stated during the floor debate on section 120 of SARA (subsequently section 120 of CERCLA:

> [T]he amendments require a comprehensive nationwide effort to identify and assess *all* Federal hazardous waste sites that warrant attention. 132 Cong. Rec. S 14902 (daily ed., October 3, 1986) (emphasis added).

EPA has long expressed the view that placing Federal facility sites on the NPL serves an important informational function and helps to set priorities and focus cleanup efforts on those Federal sites that present the most serious problems (50 FR 47931, November 20, 1985).

[1] EPA proposed major revisions to the HRS on December 23, 1988 (53 FR 51962); however, the current HRS applies to the listing of sites on the NPL until the revised HRS is finalized and takes effect. CERCLA section 105(c)(1).

[2] On August 6, 1986 (53 FR 30002/30005), EPA published additional information on Agency policy concerning criteria to determine if an owner or operator is unwilling or unable to undertake corrective action.

[3] Section 3016 of RCRA provides for the inventory of Federal sites where RCRA hazardous waste "is stored, treated, or disposed of or has been disposed of at any time"; section 3005 of RCRA requires the filing of information necessary for the issuance of permits (or the obtaining of interim status) to treat, store, or dispose of hazardous waste under RCRA; and RCRA section 3010 requires notifications that a RCRA hazardous waste is being generated, transported, treated, stored, or disposed of.

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EPA believes that today's decision not to apply the June 1988 NPL/RCRA policy (for non-Federal sites) to Federal facilities is consistent with section 120(a)(2) of CERCLA, which provides that "all guidelines, rules, regulations and criteria which are applicable to * * * inclusion on the National Priorities List, or applicable to remedial actions * * * shall also be applicable to [Federal facilities]." Given Congressional intent that Federal facility sites should be included on the NPL, EPA interprets section 120(a)(2) to mean that the criteria to list sites should not be more exclusionary than the criteria to list non-Federal sites on the NPL. As discussed in the May 13, 1987, notice on the policy (52 FR 17982-3), most Federal facilities include RCRA-regulated hazardous waste management units and thus, almost all waste contamination areas within facility boundaries are subject to RCRA corrective action authorities; in addition, key exclusions in the non-Federal RCRA deferral policy are not applicable to Federal facilities. Thus, if the non-Federal RCRA deferral policy were applied to Federal sites, very few Federal sites would be listed.

The Agency believes that although section 120(a)(2) evidences Congress' intent that the Federal agencies comply with the same baseline of requirements applicable to private sites, the section does not require that all policies and requirements applicable to private and Federal facility sites be identical. Indeed, Congress specifically set out a series of requirements which apply to Federal facilities in a manner different from, or in addition to, those applicable to private sites, e.g., the preparation of a separate Federal Agency Hazardous Waste Compliance Docket (section 120(c)); the notification required before Federal agencies may transfer property (section 120(h)); and the entire process for signing Interagency Agreements at Federal facility sites (section 120(e) (2)-(4)).

Just as Congress recognized that there are unique aspects of Federal facilities requiring additional or special attention in the contexts just named, special attention is also required in deciding what listing/deferral policy should apply to Federal versus private sites. EPA's opinion is that significant differences inherent in the rules to which Federal facility sites and private sites are subject under CERCLA and the NPL dictate that different listing and deferral policies should be crafted for each class of facilities.

For private sites, the only legal significance of NPL listing is that the site becomes eligible for *Fund-financed* remedial action, as provided in the NCP at 40 CFR 300.68(e)(2) and 300.68(e)(1) (removal actions and enforcement actions can be taken at private sites regardless of NPL status). Indeed, EPA recently suggested in the preamble to proposed revisions to the NCP (53 FR 51418, December 21, 1988) that it may be appropriate to view the non-Federal NPL "as a list for informing the public of hazardous waste sites that appear to warrant * * * remedial action through CERCLA funding alone." This relationship between the NPL and the availability of Fund monies (at private sites) is a central factor behind EPA's deferral policies. EPA has concluded that by deferring to other statutes like RCRA, "a maximum number of potentially hazardous waste sites can be addressed and EPA can direct its CERCLA efforts (and Fund monies, if necessary) to those sites where remedial action cannot be achieved by other means" (53 FR 51418, December 21, 1988). However, this goal of maximizing the use of limited Fund monies does not apply to Federal facility sites.

Federal facility sites on the NPL are not eligible for *Fund-financed* remedial actions (except in the very limited cases described in CERCLA section 111(e)(3)), pursuant to the NCP at 40 CFR 300.68(e)(3). Thus, the deferral of Federal facility sites from the NPL would not result in significant economies to the Fund, although it could do harm to the informational and management goals of including Federal facility sites on the NPL, as well as Congressional intent. Although the Agency might have decided to defer Federal facility sites subject to RCRA based on a desire to avoid duplication in remedial actions (another of the purposes behind RCRA deferral for private sites), EPA has concluded that this goal may be accomplished satisfactorily for Federal facilities through the process, set out in CERCLA section 120 (e)(2)–(e)(4), of developing comprehensive IAGs. As discussed in detail below, EPA will attempt to use the IAG process to achieve efficient, comprehensive solutions to site problems, and where appropriate, to divide responsibilities for cleanup among the various applicable authorities.

Finally, the deferral of Federal facility sites to RCRA-authorized States, in lieu of evaluation under the IAG process, may be inconsistent with the intent of CERCLA section 120(g), which provides that "no authority vested in the [EPA] Administrator under this section [120] may be transferred" to any person. 42 U.S.C. 9620(g).

### III. Coordination of Response Authorities at Federal Facility Sites on the NPL

EPA recognizes that when it takes action under CERCLA to address a facility that is also subject to RCRA authorities, there is some risk of overlap or even conflict. Such conflict situations are not a problem where EPA is responsible for carrying out the requirements of both RCRA and CERCLA (since any jurisdictional overlaps can be managed within EPA). However, an overlap of authority may yield disagreements as to how a site should be cleaned up where a State has been authorized to carry out all or part of the RCRA program.[6]

However, this potential overlap between RCRA and CERCLA cleanup authorities is the result of Congressional design, not site listings. EPA neither intends nor believes that site listings themselves create a conflict between CERCLA and RCRA (or State law); rather, any conflict stems from the overlap of the corrective action authorities of the two statutes. The overlap exists whenever EPA takes CERCLA action at a site that has regulated hazardous waste management units subject to a State's RCRA program or other State law. EPA can take such CERCLA actions at sites *not* on the NPL as well as at sites on the NPL.[7] (Such conflicts may also occur at private sites as well as at Federal facility sites.) There may also be cases where the applicability of both RCRA and CERCLA authorities at NPL sites does *not* create a conflict—for example, where the RCRA hazardous waste management units are not included within the area to be addressed under CERCLA, or where the release is exempt from action under RCRA. Thus, conflict between RCRA and CERCLA corrective actions can occur at virtually any point in the process or not at all.

How RCRA authorities are affected (if at all) when CERCLA also applies to a site is a matter that varies greatly, depending upon the facts of the site. In some cases, the NPL site is physically distinct from the RCRA-regulated

[6] EPA recognizes that many States have hazardous waste laws independent of that upon which the State's authorized RCRA program may be based. Although this policy statement focuses primarily on the mechanism for applying RCRA (by EPA or authorized States) to Federal facilities on the NPL, the same analysis would apply to non-RCRA State laws that potentially overlap with CERCLA response authorities.

[7] Removal actions, as well as remedial actions ordered under section 106 of CERCLA, may be taken at non-NPL sites. *See* 40 CFR 300.68(c)(2) and 300.68(e)(1).



hazardous waste management units, and corrective action or closure at the regulated units may proceed under RCRA, while at the same time a cleanup action is proceeding at another area of the property under CERCLA, without the risk of inconsistency or duplication of response action. In other cases, the releases or contaminant plumes may overlap, such that a comprehensive solution under one statute may be the most efficient and desirable solution. The questions of which authority should control, and of how to avoid potential duplication or inconsistency, are often implementation issues, to be resolved in light of the facts of the case and after consultation between EPA and the concerned State.

EPA's belief is that in most situations, it is appropriate to address sites comprehensively under CERCLA, pursuant to an enforceable agreement (i.e., an IAG under CERCLA section 120), signed by the Federal facility, EPA, *and*, where possible, the State. In some circumstances, it may be appropriate under an IAG to divide responsibilities, focusing CERCLA activity only on certain prescribed units, leaving the cleanup of other units under the direct control of RCRA authorities, such as where the RCRA-regulated hazardous waste management unit is physically distinct from the CERCLA contamination and its cleanup would not disrupt CERCLA activities. Alternatively, the IAG can prescribe divisions of responsibility, such as stating that CERCLA will address ground water contamination while RCRA will address the closure of regulated hazardous waste management units. Any disagreements in the implementation of the IAG would be resolved by the signatory parties under the dispute resolution terms of the IAG.

Of course, there may be cases where a RCRA-authorized State declines to join the IAG process, or agreement on the terms of an IAG cannot be achieved. For instance, State officials may decide that the proper closure of a landfill should be accomplished through excavation, while CERCLA officials may determine that the same area should be managed differently as part of a comprehensive CERCLA action at the site. Although EPA will try to resolve any such conflicts and achieve agreement with the State in the IAG process, there may be cases where the conflicting views of EPA and the State concerning corrective action cannot be resolved.

CERCLA section 122(e)(6), entitled "inconsistent response actions," gives specific guidance on this point:

INCONSISTENT RESPONSE ACTION.—When either the President, or a potentially responsible party pursuant to an administrative order or consent decree under this Act, has initiated a remedial investigation and feasibility study [RI/FS] for a particular facility under this Act, no potentially responsible party may undertake any remedial action at the facility unless such remedial action has been authorized by the President.

As the Conference Report on SARA noted, section 122(e)(6) was included in the bill "to clarify that no potentially responsible party [PRP] may undertake any remedial action at a facility unless such remedial action has been authorized by the President" (or his delegate, EPA)[8]. *See* H.R. Rep. 962, 99th Cong., 1st Sess. at 254 (1986). *See also* 132 Cong. Rec. S14919 (daily ed., October 3, 1986) ("This is to avoid situations in which the PRP begins work at a site that prejudices or may be inconsistent with what the final remedy should be or exacerbates the problem.")[9] This authorization requirement applies to any remedial actions taken by a PRP, including those actions ordered by a State, as both types of action could be said to present a potential conflict with a CERCLA-authorized action.[8]

[8] The authority under section 122(e)(6) to authorize a remedial action to continue after the initiation of an RI/FS at an NPL site has been delegated in the EPA Administrator. *See* Executive Order 12580, section 4(d)(1) (52 FR 2923, January 29, 1987). For most non-NPL sites, the general authority for carrying out the requirements of CERCLA section 122 has been delegated to the Federal agencies for sites under their jurisdiction or control; however, the ability of the Federal agencies to authorize sites under section 122(e)(6) is limited by the provisions of section 120(e)(4), as discussed below.

[9] Congress' intent that CERCLA actions should proceed without potential conflict with other remedial action is also suggested by the language in section 7002(b)(2)(B) of RCRA, which states that RCRA citizen suits alleging an imminent and substantial endangerment may not be brought if EPA: has commenced an action under CERCLA section 106 (or RCRA 7003); is engaging in a removal action under CERCLA section 104; or has incurred costs to begin an RI/FS under CERCLA and is diligently proceeding with remedial action; or has obtained a court order (including a consent decree) or issued an administrative order under CERCLA section 106 or RCRA section 7003, and a responsible party is diligently conducting a removal, an RI/FS, or proceeding with remedial action pursuant to that order. Similarly, RCRA section 1006(b) directs the Administrator to "integrate all provisions of [RCRA] for purposes of administration and enforcement and shall avoid duplication to the maximum extent practicable," with appropriate provisions of laws (such as CERCLA) granting regulatory authority to EPA.

[8] "Remedial action" is very broadly defined in section 101(24) of CERCLA as actions consistent with a permanent remedy at a site, including confinement of a release of hazardous substances, cleanup of hazardous substances, etc. EPA believes that remedial actions within the meaning of the term may include those taken under statutes other than CERCLA, including corrective action under RCRA.

CERCLA section 122(e)(6) does not constitute a prohibition on RCRA corrective action at CERCLA sites; rather, it provides a mechanism by which the Agency must approve of remedial actions commenced at sites after an RI/FS has been initiated under CERCLA. Such an approach would help to avoid duplicative and wasteful cleanup actions. This authorization mechanism would not affect normal hazardous waste management requirements under RCRA, such as complying with manifest, 90-day storage, and labeling requirements; any RCRA-regulated hazardous waste management units operating at a CERCLA site must continue to comply with RCRA hazardous waste management requirements, even if a CERCLA response action is underway. The Agency also intends to authorize many State RCRA actions to continue, e.g., where the RCRA action addresses a unit distinct from the CERCLA contamination, and where the RCRA action will not disrupt CERCLA activities.

Even where EPA decides that it is not appropriate to authorize a RCRA or other State action to continue under CERCLA section 122(e)(6) in order to avoid disruption or duplicative actions, CERCLA section 120(f) specifically provides that participation by State officials in remedy selection "shall be provided in accordance with section 121," and CERCLA section 121(d) specifically provides a process for taking account of "applicable or relevant and appropriate requirements" (ARARs) of RCRA (as well as other State and Federal statutes) when a remedy is selected. If any State requirements are waived pursuant to CERCLA section 121(d)(4), the affected State may obtain judicial review of such waiver, and even if unsuccessful, may ensure that those requirements are met by providing the necessary additional funding pursuant to CERCLA section 121(f)(3)(B). As the Agency has noted repeatedly in the past, "it is EPA's expectation that remedies selected and implemented under CERCLA will generally satisfy the RCRA corrective action requirements, and vice versa" (52 FR 17993, May 13, 1987, and 52 FR 27645, July 22, 1987).[9]

The discretion under CERCLA section 122(e)(6) not to authorize a PRP to go forward with a remedial action at a site

[9] To the extent that this policy may be read as inconsistent with the district court's opinion in *State of Colorado v. U.S. Department of the Army*, C.A. No. 88-C-2526 (D. Colo., February 24, 1989), EPA disagrees with that opinion.

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after a CERCLA remedial investigation/feasibility study (RI/FS) has begun—even if that action has been ordered by a State—is generally available at both private and Federal facility sites. However, CERCLA section 120(a)(4) provides that State laws shall apply to remedial actions—including those under CERCLA —at *Federal facility* sites that are *not* on the NPL, thus, acting as a general limitation on the more general section 122(e)(6).[10] Of course, no such limitation applies to Federal facility sites once they are placed on the NPL.

The plain language of section 122(e)(6) makes it clear that it is the RI/FS—not the listing itself—that triggers section 122(e)(6). Indeed, an RI/FS may be commenced prior to, as well as after, NPL listing.[11] This is especially true for Federal facility sites, as the President has delegated his authority to take CERCLA section 104 response actions (including RI/FSs) to the Federal agencies for most non-NPL sites (Executive Order 12580, at section 2(e)(1)).[12] Thus, when a Federal facility is placed on the NPL, an RI/FS will often have been commenced (or completed).

In order to invoke the authorization mechanism of CERCLA section 122(e)(6), EPA must make a threshold determination of whether or not an RI/FS "under this Act [CERCLA]" has been initiated; studies conducted by Federal facilities before a site has been placed on the NPL may or may not constitute an appropriate RI/FS in EPA's opinion.[13] As a matter of policy, the Agency will generally interpret CERCLA-quality RI/FSs to be those that are provided for, or adopted by reference, in an IAG. The Agency believes that such a policy is consistent with CERCLA section 120(e)(1), which directs Federal facilities, "in consultation with EPA," to commence an RI/FS within six months of the facility's listing on the NPL. In addition, the policy will promote consistency in RI/FS's, and will help to ensure that all appropriate information has been collected during the RI/FS, so that EPA may properly evaluate remedial alternatives at Federal facility sites as required under CERCLA section 120(e)(4). Further, by encouraging the development of IAGs at the early RI/FS stage, this policy may help to promote coordination among the parties, and avoid inconsistent actions.

Thus, the IAG will generally commit the Federal facility to complete both an RI/FS and any subsequent remedial action determined by EPA to be necessary.

Once an RI/FS has been commenced under (or incorporated into) an IAG, EPA must decide whether or not to authorize PRPs to continue with any non-CERCLA remedial actions (both voluntary and State-ordered) at the site. This decision will be made on a case-by-case basis, taking into account the status of CERCLA activities at the site, and the potential for disruption of or conflict with that work if the PRP action were authorized.

## IV. Response to Public Comments

On May 13, 1987 (52 FR 17991), EPA solicited public comment on the Agency's intention to adopt a policy for including eligible Federal facility sites on the NPL, even if they are also subject to RCRA corrective action authorities; the Agency received six comments on the policy. EPA considered the comments raised, and responds to them as follows.

Two of the six commenters concur with the policy to include eligible Federal facility sites on the NPL and have no suggested revisions or additional comments.

One commenter "generally supports" the policy, but believes that the criteria used to list Federal facility sites are unclear. The commenter states that "as written, the proposed policy could be interpreted to mean that Federal hazardous facilities would be placed on the NPL regardless of their status under [RCRA] or their degree of actual hazard."

In response, the commenter is correct in concluding that under the policy, Federal facility sites would be placed on the NPL regardless of the facility's status under RCRA. As discussed above, this is consistent with Congressional intent that Federal facility sites should be on the NPL, and that listing criteria should not be applied to Federal sites in a manner that is more exclusionary than for private sites. However, the commenter is incorrect in suggesting that Federal facility sites will be listed regardless of the degree of hazard they present. The Agency intends to use the HRS, the same method used for non-Federal sites, to determine whether a Federal facility site poses an actual or potential threat to health or the environment and, therefore, qualifies for the NPL. (Currently, a site is generally eligible for the NPL if the HRS score is 28.50 or greater.) The application of the HRS to Federal facility sites is consistent with CERCLA section 120(d), which requires EPA to use the HRS in evaluating for the NPL the facilities on the Federal Agency Hazardous Waste Compliance Docket.

One commenter did not comment on the policy, but rather is concerned that no Superfund monies be spent at Federal facilities. The commenter believes that neither pre-remedial work (preliminary assessments and site inspections) nor remedial work should be financed by the Trust Fund.

In response, Executive Order 12580 (52 FR 2923, January 29, 1987), at section 2(e), delegates the responsibility for conducting most pre-remedial work to the Federal agencies. Therefore, the Federal agencies, rather than the Trust Fund, finance these activities, with EPA providing oversight. In addition, section 111(e)(3) of CERCLA, as amended by SARA, strictly limits the use of the Fund for remedial actions at Federally-owned facilities. Although the Administrator does have the discretion to use funds from the Hazardous Substances Superfund to pay for emergency removal actions for releases or threatened releases from Federal facilities, the concerned Executive Agency or department must reimburse the Fund for such costs. Executive Order 12580, section 9(i). The Department of Defense and the Department of Energy also have response authority for emergency removals (Executive Order, section 2(d)).

Another commenter opposes the policy of placing RCRA-regulated Federal facilities on the NPL, arguing that public notification is adequately addressed by other provisions of CERCLA (sections 120 (b), (c), and (d)), and that the policy is inconsistent with section 120(a), which requires that

[10] Section 120(a)(4) states as follows: State laws concerning removal and remedial action, including State laws regarding enforcement, shall apply to removal and remedial action at facilities owned or operated by a department, agency, or instrumentality of the United States when such facilities are not included on the National Priorities List. [Emphasis added.]

Nothing in this section prevents Federal facilities from arguing that the doctrines of laches, estoppel or implied preemption limit the effect of section 120(a)(4).

[11] *See SCA Services of Indiana, Inc. v. Thomas*, 684 F.Supp. 1388, 1391 (W.D. Ind. 1988) ("CERCLA clearly makes the conduct of an RI/FS a removal, not remedial, action, so that the restriction that remedial actions be taken only when the site is on the NPL is simply irrelevant to a RI/FS"); 52 FR 27622 (July 22, 1987) ("an RI/FS can be performed at proposed [NPL] sites pursuant to the Agency's removal authority under CERCLA").

[12] Section 104 authorities were delegated to the Departments of Defense and Energy more generally, although such functions must still be exercised consistent with the requirements of section 120 of CERCLA. Executive Order 12580, section 3(d).

[13] "RI/FS" is a term of art under CERCLA, and applies to a special site study and evaluation pursuant to section 300.68(d) of the NCP. EPA, as the agency entrusted with the development and implementation of the NCP, is the recognized expert on what constitutes an acceptable RI/FS under CERCLA.



Federal facilities comply with CERCLA in the same manner as any nongovernmental entity. The commenter believes that the adoption of the proposed policy is inconsistent with EPA's policy regarding non-Federal facilities.

In response, CERCLA sections 120 (b), (c), and (d) refer to the establishment of the Federal Agency Hazardous Waste Compliance Docket and to the evaluation of facilities on the docket for the NPL.[14] The Agency agrees that this docket will provide the public with some information regarding hazardous waste activities at Federal facilities, as well as information concerning contamination of contiguous or adjacent property. The Agency believes, however, that evaluating sites using the HRS, and placing on the NPL those sites that pose the most serious problems, will serve to inform the public of the relative hazard of these sites. The listing process also affords the public the opportunity to examine HRS documents and references for a particular site, and to comment on a proposed listing. In addition, the NPL provides response categories and cleanup status codes for sites, and deletes sites when no further response is required, adding to the informational benefits of using the NPL. Therefore, EPA believes that listing Federal facility sites will advise the public of the status of Federal government cleanup efforts, as well as help Federal agencies set priorities and focus cleanup efforts on those sites that present the most serious problems, consistent with the NCP (50 FR 47931, November 20, 1985).

As to the comment concerning CERCLA section 120(a), EPA agrees that the section provides that Federally-owned facilities are subject to and must comply with CERCLA to the same extent as any nongovernmental entity. Further, sections 120(a)(2) and 120(d) provide that EPA should use the same rules and criteria to evaluate Federal sites for the NPL as are applied to private sites. However, today's policy is not inconsistent with those sections. As a threshold matter, it is uncontroverted that an HRS score of 28.50 or greater is an eligibility requirement for both Federal and private sites. The question is, should NPL-eligible Federal sites be deferred from listing as a matter of policy. As explained above, the Agency does not believe that CERCLA section 120(a)(2) can be read to require identical treatment of Federal and private sites in all circumstances; the fact that Congress legislated a number of requirements in addition to, or instead of, those applicable to private facilities (e.g., sections 120 (c), (e)(2), (h)), demonstrates the legislators' recognition of the need to address certain unique aspects of Federal facilities differently than for private sites. Rather, EPA interprets CERCLA section 120(a) to mean that the criteria to list Federal facility sites should not be more exclusionary than the criteria to list non-Federal sites. In this case, it is clear that if EPA were to apply the non-Federal RCRA deferred listing policy to Federal facilities, very few Federal sites would be considered for the NPL, counter to the spirit and intent of section 120 (c) and (d) of CERCLA and the statute's legislative history. Moreover, one of the key factors in EPA's decision to adopt a RCRA deferral policy for private sites—the need to manage and conserve Fund resources—does not apply to Federal facilities because the remedies are not Fund-financed. EPA believes that it is appropriate, and consistent with Congressional intent, to take these differences into account, as long as the result is not to treat Federal agencies in a more exclusionary manner than private facilities.

Two commenters expressed concern that listing Federal facility sites might interfere with enforcement activities under RCRA. One commenter stated that the policy is inconsistent with CERCLA section 120(i), which requires that Federal facilities comply with all RCRA requirements.

In response, the Agency's view is that today's policy will facilitate enforcement activities at Federal facility sites, not interfere with them. In effect, by encouraging the drafting of comprehensive IAGs for Federal facilities, this policy will advance the goal of site remediation. In addition, the IAG process allows EPA to take steps to avoid duplication and conflict; the IAG may define areas of a Federal facility that may efficiently be addressed under RCRA (e.g., units that are distinct from, and do not disrupt, CERCLA activities). In addition, States will be encouraged to become signatory parties to IAGs, reducing the likelihood of intergovernmental conflict over jurisdiction and the selection of remedy.

In any event, it is not the act of placing a site on the NPL that creates a potential conflict between CERCLA and RCRA; rather, the corrective action authorities of the two statutes overlap, pursuant to statutory design. Indeed, the alleged interference with RCRA corrective actions by CERCLA cleanups can occur at any point in the process, depending upon the specific facts of the case. In those cases where the relevant statutes do overlap, EPA believes that one of the statutes must sometimes be chosen for practical reasons, and Congress has set out a procedure for resolving such conflicts in CERCLA section 122(e)(6).[15] However, the goal of today's policy is to minimize any such conflicts through the IAG process.

The Agency acknowledges that in the case of Federal facilities, listing does have a significance not present for private sites. For instance, CERCLA section 120(e)(2) provides that for Federal facility sites *on the NPL*, EPA will play a role in selecting remedies, while CERCLA section 120(a)(4) provides that State laws concerning removal and remedial actions shall apply to Federal facilities when such facilities are not on the NPL (the section does not discuss how State laws apply at Federal sites that are on the NPL). However, any difference in EPA or State roles at NPL versus non-NPL Federal facility sites results from the statutory scheme reflected in CERCLA sections 120(a)(4) and 121(d), and not from the act of listing itself. CERCLA directs EPA to list Federal sites on the NPL and then specifies certain statutory consequences.

Further, merely alleging that there may be some effect on State enforcement actions as a result of a policy of including Federal facilities on the NPL is not grounds for rejecting today's policy. The Agency has reviewed both sides of the question, and has determined that it is in the best interest of the public and environmental protection to place Federal facility sites on the NPL and thus to make CERCLA authorities available to achieve comprehensive remedies for contamination at such sites (when appropriate). In addition, the IAG process, as discussed in this policy, will serve to minimize duplication and inconsistency with potential State orders.

[14] Pursuant to section 120(c) of CERCLA, EPA published the Federal Agency Hazardous Waste Compliance Docket on February 12, 1988 (53 FR 4280). The docket was established based on information submitted by Federal agencies to EPA under sections 3005, 3010, and 3016 of RCRA and under section 103 of CERCLA. The docket serves to identify Federal facilities that must be evaluated in accordance with CERCLA section 120(d) to determine if they pose a risk to public health and the environment. Section 120(d) requires EPA to evaluate facilities on the docket using the HRS for possible inclusion on the NPL.

[15] It is important to note that the section 122(e)(6) authorization requirement at Federal facilities is not triggered automatically by NPL listing, but rather takes effect where an RI/FS has been initiated at a listed Federal site; as a matter of policy, this start-up point for the RI/FS will not be recognized in most cases until an enforceable IAG has been signed, which may be well after a site is listed.

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EPA also disagrees with the commenter's suggestion that today's policy is inconsistent with CERCLA section 120(i), which provides that "nothing in this section [120] shall affect or impair the obligation of any department, agency, or instrumentality of the United States to comply with any requirement of the Solid Waste Disposal Act [RCRA] (including corrective action requirements)." EPA interprets that section simply to mean that section 120 does not impair otherwise applicable RCRA requirements; this mandate is met even if an action is conducted under CERCLA, as CERCLA section 121(d)(2) specifically provides that ARARs of RCRA and State law must be achieved with regard to any on-site remedy. Even if a RCRA or State requirement that is an ARAR is waived by EPA (section 121(d)(4)), the State may obtain judicial review of such a waiver, and even if unsuccessful, may require that the remedial action conform to the requirement in question by paying the additional costs of meeting such standard (CERCLA section 121(f)(3)); thus, the intent of section 120(i) is satisfied.

This interpretation of section 120(i) follows directly from the language of the provision itself, which states that "nothing in this section"—as compared to "nothing in this Act"—shall affect RCRA obligations. This leaves in place limitations contained in *other* sections of the statute, such as the permit waiver provision (section 121(e)); the process for selecting and waiving ARARs (sections 121 (d)(2) and (d)(4)); and the ban on remedial actions not approved by the President (section 122(e)(6)).

For all these reasons, the Agency believes that today's Federal facilities listing policy is appropriate, that it reflects Congressional intent, and that it is consistent with CERCLA.

Pursuant to the policy described in this notice, the Agency will place eligible Federal facility sites on the NPL even if the site is also subject to the corrective action authorities of Subtitle C of RCRA.

Date: March 8, 1989.

Jonathan Z. Cannon,

*Acting Assistant Administrator, Office of Solid Waste and Emergency Response.*

[FR Doc. 89-5883 Filed 3-10-89; 8:45 am]
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Part VII

# Securities and Exchange Commission

Forms Under Review of the Office of Management and Budget; Notice

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**SECURITIES AND EXCHANGE COMMISSION**

**[Regulation 13D–G (File No. 270–137) et al.]**

**Forms Under Review of Office of Management and Budget**

*Agency Clearance Officer:* Kenneth A. Fogash (202) 272–2142.

*Upon Written Request Copy Available From:* Securities and Exchange Commission, Office of Consumer Affairs and Information Services, Washington, DC 20549.

**Revision**

In the matter of:

Regulation 13D–G (File No. 270–137)
Regulation 14D (File No. 270–144)
Regulation 14A (File No. 270–56)
Rule 13e–3 (File No. 270–1)

Notice is hereby give that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for OMB approval proposed revisions to Securities Exchange Act beneficial ownership rules and related amendments.

With respect to Regulation 13D–G approximately 6536 respondents are affected and an estimated 15 burden hours are required per response. Approximately 366 respondents are affected by the revisions to Regulation 14D and an estimated 354 burden hours are required per response. With respect to Schedule 13E–3 and Regulation 14A, respectively, 221 and 8733 respondents are affected with an estimated 140 and 105 burden hours required per response. The estimated average burden hours are made solely for purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms.

Direct general comments to Gary Wasman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with SEC rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–6004, and Gary Waxman, Clearance Officer, Office of Management and Budget [Paperwork Reduction Project 3235–0145–Regulation 13D/G; 3235–0102–Regulations 14D and E; 3235–0059–Regulation 14A; and 3235–0007–Rule 13e–3], Room 3228, New Executive Office Building, Washington, DC 20503.

Jonathan G. Katz,
*Secretary.*
March 2, 1989.

[FR Doc. 89–5946 Filed 3–10–89; 11:33 am]
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Part VIII

# Interstate Commerce Commission

49 CFR Parts 1312 and 1314

Electronic Filing of Traffics; Notice of Stay of Final Rules

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**INTERSTATE COMMERCE COMMISSION**

**49 CFR Parts 1312 and 1314**

**[Ex Parte No. 444]**

## Electronic Filing of Tariffs

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of Stay of final rules.

**SUMMARY:** By decision served February 10, 1989, and published in the **Federal Register** at 54 FR 6403 (February 10, 1989) the Commission adopted regulations allowing electronic tariff filing as an alternative to printed tariffs, and established, in lieu of the current detailed tariff regulations, simple tariff standards governing the construction, filing, and maintenance of tariffs. However, the Commission has also required that, during a 1-year transition period, carriers using electronic tariffs continue to file printed paper tariffs with the Commission. *Electronic Filing of Tariffs, 5* I.C.C.2d____, served February 10, 1989, p. 9. National Motor Freight Traffic Association, Inc., Central States Motor Freight Bureau, Inc., Central & Southern Motor Freight Tariff Association, Inc., Eastern Central Motor Carriers Association, Middle Atlantic Conference, Middlewest Motor Freight Bureau, New England Motor Rate Bureau, Inc., Niagara Frontier Tariff Bureau, Inc., Pacific Inland Tariff Bureau, Regular Common Carrier Conference, Rocky Mountain Motor Tariff Bureau, Inc., and Southern Motor Carriers Rate Conference, jointly, have filed a petition to reopen the proceeding[1] and a motion for stay of the effective date. A reply in support of the motion has been filed by the National Small Shipments Traffic Conference, Inc., and Health and Personal Care Drug Conference, Inc. The rules were to become effective March 13, 1989. In the prior decision, we specifically recognized that it is possible that some provisions, that carriers and/or shippers find useful or essential, have been deleted, and that we would consider such matters in connection with future petitions or complaints. The petition to reopen raises such issues. Accordingly, we will stay the effective date of these rules as requested, pending our consideration of the petition to reopen.

**EFFECTIVE DATE:** This stay is effective as of March 10, 1989.

[1] This decision addresses only the motion for stay. The merits of the petition to reopen will be addressed at a later date.

**FOR FURTHER INFORMATION CONTACT:**

Charles E. Langyher, (202) 275–7739 or Lawrence C. Herzig, (202) 275–7356. [TDD for hearing impaired: (202) 275–1721].

**SUPPLEMENTARY INFORMATION:** This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

**List of Subjects in 49 CFR Parts 1312 and 1314**

Freight forwarders, Maritime carriers, Motor carriers, Pipelines, Railroads, Tariffs.

*It is ordered:*

1. The effective date of these rules is stayed pending consideration of the petition to reopen.

Decided: March 9, 1989. By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley and Phillips. Chairman Gradison dissented in part with a separate expression.

**Noreta R. McGee,**

*Secretary.*

[FR Doc. 89–5954 Filed 2–30–89; 12:03 pm]

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# federal register

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# federal register

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# Rules and Regulations

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**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 907**

**[Navel Orange Regulation 690, Amdt 1]**

## Navel Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** Regulation 690, Amendment 1, increases the quantity of California-Arizona navel oranges that may be shipped to market during the period March 3 through March 9, 1989. Such action is needed to balance the supply of fresh navel oranges with the demand for such oranges during the period specified due to the marketing situation confronting the orange industry.

**DATES:** Regulation 690, Amendment 1, (§ 907.990) is effective for the period March 3 through March 9, 1989.

**FOR FURTHER INFORMATION CONTACT:** Jacquelyn R. Schlatter, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2528-S, P.O. Box 96456, Washington, DC 20090-6456. Telephone: (202) 447-5120.

**SUPPLEMENTARY INFORMATION:** This amendment is issued under Marketing Order 907 (7 CFR Part 907), as amended, regulating the handling of navel oranges grown in Arizona and designated part of California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of the use of volume regulations on small entities as well as larger ones.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 125 handlers of California-Arizona navel oranges subject to regulation under the navel orange marketing order, and approximately 4,065 producers in California and Arizona. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona navel oranges may be classified as small entities.

This action is consistent with the marketing policy for 1988-89 adopted by the Navel Orange Administrative Committee (Committee). The Committee conducted a telephone vote on March 8, 1989, to consider the current and prospective conditions of supply and demand and unanimously recommended an increase in the quantity of navel oranges deemed advisable to be handled in District 1 during the specified week. The Committee reports that due to an inadvertent mathematical error by Committee staff, District 1 did not have the correct number of cartons of oranges allotted to it in regulation 690. This amendment corrects that error.

Based on consideration of supply and market conditions, and the evaluation of alternatives to the implementation of prorate regulations, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the Act. To effectuate the declared purposes of the Act, it is necessary to make this regulatory provision effective as specified, and handlers have been apprised of such provision and the effective time.

**List of Subjects in 7 CFR Part 907**

Arizona, California, Marketing agreements and orders, Navel, Oranges.

For the reasons set forth in the preamble, 7 CFR Part 907 is amended as follows:

**PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA**

1. The authority citation for 7 CFR Part 907 continues to read as follows:

**Authority:** Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 907.987 is revised to read as follows:

**Note:** This section will not appear in the Code of Federal Regulations.

**§ 907.987 Navel Orange Regulation 690, Amendment 1.**

The quantity of navel oranges grown in California and Arizona which may be handled during the period March 3, 1989, through March 9, 1989, is established as follows: (a) District 1: 1,276,000 cartons; (b) District 2: 234,000 cartons; (c) District 3: unlimited cartons; (d) District 4: unlimited cartons.

Dated: March 9, 1989.

**Eric M. Forman,**

*Acting Director, Fruit and Vegetable Division.*

[FR Doc. 89-5895 Filed 3-13-89; 8:45 am]

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## DEPARTMENT OF THE TREASURY

### Customs Service

### 19 CFR Part 113

### Customs Regulations Amendments Concerning Access to Customs Security Areas at Airports

**AGENCY:** Customs Service, Department of the Treasury.

**ACTION:** Final rule, correction.

**SUMMARY:** A document was published in the **Federal Register** (53 FR 29228) on August 3, 1988, setting forth amendments to Customs Regulations that provide that employers of persons requiring access to Customs security areas at airports post a bond. Under such bond the employer agrees that both it and its covered employees will comply with the regulations applicable to those areas and that the employer will pay liquidated damages for failure to do so. This document corrects an error that appeared in that document.

**EFFECTIVE DATE:** March 14, 1989.

**FOR FURTHER INFORMATION CONTACT:** Arnold L. Sarasky, Regulations and Disclosure Law Branch, (202) 566-8237.

**SUPPLEMENTARY INFORMATION:**

**Background**

A document was published in the **Federal Register** (53 FR 29228) on August 3, 1988, setting forth amendments to the Customs Regulations regarding employers of persons requiring access to Customs security areas at airports to file a bond assuring compliance with the Customs regulations applicable thereto. For employers already having a bond on file with Customs on Customs Form 301 containing the bond conditions set forth on § 113.62, 113.63 or § 113.64, Customs Regulations (19 CFR 113.62, 113.63, 113.64) relating to importers, brokers, custodians of bonded merchandise, or international carriers, a new bond was not required. For other employers, an Airport Customs Security Area Bond, as set forth in a new Appendix A to Part 113, Customs Regulations (19 CFR Part 113, Appendix A) was required. Due to a typographical error therein, the signature portion of such bond format, which provides for two groups of signatories, identifies each group of signatories as a principal rather than identifying one group as a principal and the other as a surety. This document corrects that error.

**Correction**

As corrected, Appendix A of Part 113, Customs Regulations (19 CFR Part 113, Appendix A), is revised to read as follows:

**Appendix A to Part 113—Airport Customs Security Area Bond**

**Airport Customs Security Area Bond**

(name of principal)

of _____

and _____

(name of surety)

of _____

are held and firmly bound unto the United States of America in the sum of _____ dollars ($____), for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

WITNESS our hands and seals this _____ day of _____, 19____.

WHEREAS, the principal (including the principal's employees, agents, and contractors) desires access to Customs airports security areas located at _____ Airport during the period of one year beginning on the _____ day of _____, 19_____, and ending on the _____ day of _____, 19_____, both dates inclusive;

*Now, Therefore, the Condition of this Obligation is Such That—*

The principal agrees to comply with the Customs Regulations application to Customs security areas at airports.

If the principal defaults on the condition of this obligation, the principal and surety jointly and severally, agree to pay liquidated damages of $1,000 for each default or such other amount as may be authorized by law or regulation.

*Signed, Sealed, and Delivered in the Presence of—*

_____

_____

Name

Address

_____

_____

_____

Name

Address

Principal (SEAL)

_____

_____

Name

Address

_____

_____

Name

Address

_____

_____

_____

Name

Address

Surety (SEAL)

_____

_____

Name

Address

Dated: March 6, 1989.

**Arnold L. Sarasky,**

*Acting Chief, Regulations and Disclosure Law Branch.*

[FR Doc. 89-5783 Filed 3-13-89; 8:45 am]

BILLING CODE 4820-02-M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Assistant Secretary for Housing—Federal Housing Commissioner

### 24 CFR Part 201

**[Docket No. R-89-1439; FR-2621]**

### Technical Amendments to Title I Property Improvement and Manufactured Home Loans Regulations

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

**ACTION:** Technical amendments.

**SUMMARY:** The purpose of this document is to amend typographical and other errors in the Title I regulations as published in Part 201 of Title 24 of the Code of Federal Regulations.

**EFFECTIVE DATE:** March 14, 1989.

**FOR FURTHER INFORMATION CONTACT:** Robert J. Coyle, Director, Title I Insurance Division, Department of Housing and Urban Development, Room 9160, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755-6880. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** A number of typographical and other errors have been discovered in the Title I regulations (24 CFR Part 201), as published in the Code of Federal Regulations. Many (but not all) of these errors occurred when the Title I regulations were published in the **Federal Register** on October 25, 1985 (50 FR 43516). Because these errors were not detected at the time, they were carried over into the 1986 and later editions of the Code of Federal Regulations.

Also, on September 3, 1987 (53 FR 33404), the Department published in the **Federal Register**, an amendment to the Title I regulations. Because of an error in that publication, § 201.11(c) (1), (2), and (3) were omitted from the April 1, 1988 edition of the Code of Federal Regulations. This rule will reinstate those paragraphs, as well as correct the typographical errors found in the CFR.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours at the Office of the Rules Docket Clerk, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities. The number of small entities impacted by the rule is not expected to be substantial. This rule only contains technical changes to the Title I regulations by correcting typographical errors found in the Code of Federal Regulations and reinstating § 201.11(c) (1), (2), and (3) that were omitted from the CFR.

This rule was not listed in the Department's Semiannual Agenda of Regulations published on October 24, 1988 (53 FR 41974) under Executive Order 12291 and the Regulatory Flexibility Act.

**List of Subjects in 24 CFR Part 201**

Health facilities, Historic preservation, Home improvement, Manufactured homes, Manufactured homes and lots, Reporting and recordkeeping requirements.

Accordingly, the Department amends 24 CFR Part 201 as follows:

**PART 201—[AMENDED]**

1. The authority citation for 24 CFR Part 201 continues to read as set forth below:

**Authority:** Sec. 2, National Housing Act (12 U.S.C. 1703); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. In the Table of Contents for Part 201, change the title of § 201.18 to read, "Modification agreement or repayment plan."

3. In the Table of Contents, capitalize the "A" in "Administration' in the title of Subpart E.

**§ 201.3 [Amended]**

4. In § 201.3(a), capitalize the "P" in "Provisions" and insert a comma immediately thereafter.

5. In § 201.3(b), remove the hyphen between "Note" and "Provisions".

6. In § 201.3(c), replace "and" the first time it appears with "of", so that it reads "Subpart D, Insurance of Loans, * * *".

**§ 201.10 [Amended]**

7. In § 201.10(a)(2), replace "uppaid" with "unpaid".

8. In § 201.10(b)(3)(i), hyphenate "HUD-approved".

9. In § 201.10(g), insert "*Minimum loan amount.*" as the paragraph heading.

**§ 201.11 [Amended]**

10. In § 201.11(b), begin paragraph (b)(2) on a new line and capitalize "The" the first time "the" appears.

11. In § 201.11(c), add paragraphs (c) (1), (2) and (3) after the introductory sentence:

* * * * *

(c) * * *

(1) The term of a loan made to refinance a borrower's existing insured property improvement loan or existing insured manufactured home loan shall not exceed the maximum term permitted under paragraph (a) or (b) of this section for the particular type of loan, so long as the final maturity from the date of the original loan does not exceed the following time limits:

(i) 22 years for a manufactured home improvement loan;

(ii) 20 years for a manufactured home lot loan;

(iii) 30 years for a multi-module manufactured home and lot in combination; and

(iv) 25 years for all other property improvement and manufactured home loans.

(2) The term of a loan made to refinance a borrower's existing uninsured manufactured home purchase loan or existing uninsured combination loan shall be based upon the appraisal required under § 201.10(f)(3), but in any case shall not exceed the maximum term permitted under paragraph (b) of this section for the particular type of loan.

(3) Where a borrower's existing uninsured manufactured home lot loan is being refinanced in connection with the purchase of a manufactured home, the term of the combination loan shall not exceed the maximum term permitted under paragraph (b) of this section for that particular type of loan.

**§ 201.12 [Amended]**

12. In the last sentence of § 201.12, replace "of" the second time it appears with "or", so that it reads "partnership or trust".

**§ 201.13 [Amended]**

13. In the third sentence of § 201.13, replace "of" the second time it appears with "for", so that it reads "for the benefit".

**§ 201.18 [Amended]**

14. In § 201.18, change the title to read "Modification agreement or repayment plan.".

**§ 201.22 [Amended]**

15. In § 201.22(a)(5), replace "manufacturer" with "manufactured".

**§ 201.23 [Amended]**

16. In § 201.23(b)(3), hyphenate "traded-in" the first time it appears.

**§ 201.26 [Amended]**

17. In § 201.26(b)(3)(vi), insert a comma after "loan" the first time it appears.

**§ 201.28 [Amended]**

18. In § 201.28(a), insert a comma after "hazards" the first time it appears, and replace "regulation" with "regulations".

**§ 201.32 [Amended]**

19. In the second sentence of § 201.32(a), replace "of" the fourth time it appears with "on", so that it reads "losses on such loans", and insert a comma after "section".

20. In § 201.32(d)(3), insert a comma after "record".

**§ 201.51 [Amended]**

21. In § 201.51(a)(2)(i), insert a comma after "loan".

22. In § 201.51(a)(2)(ii), insert a comma after "property".

23. In § 201.51(a)(2)(iv), replace "§ 201.55(b)" with "§ 201.55(a)".

**§ 201.55 [Amended]**

24. In the second sentence of § 201.55(b)(2), insert commas after "loan" and "default".

Dated: March 9, 1989.

**James E. Schoenberger,**

*General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.*

[FR Doc. 89-5881 Filed 3-13-89; 8:45 am]

BILLING CODE 4210-27-M

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Parts 1 and 602

**[T.D. 8244]**

### Consent Dividends

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Final regulations.

**SUMMARY:** This document contains final Income Tax Regulations relating to the consent dividend provisions of section

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565 of the Internal Revenue Code of 1986. A review of the legislative history of section 565 has prompted certain amendments to the regulations under section 565. These amendments will provide the public with additional guidance to comply with the provisions of section 565.

**EFFECTIVE DATE:** These regulations are effective for tax years ending after December 15, 1987.

**FOR FURTHER INFORMATION CONTACT:** David Bergkuist of the Office of the Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Ave., NW., Washington, DC 20224 (Attention: CC:CORP:T:R (INTL–313–87)) (202–566–6457, not a toll-free call).

**SUPPLEMENTARY INFORMATION:**

**Paperwork Reduction Act**

The collection of information contained in this final regulation has been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1545–0043. The estimated annual burden associated with the collection of information in this final rule is 45 minutes per respondent.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents may require greater or less time, depending on their particular circumstances.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Internal Revenue Service, Attn: IRS Reports Clearance Officer TR:FP, Washington, DC 20224, and to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503.

**Background**

On December 15, 1987, the **Federal Register** published proposed amendments (52 FR 47554) to the Income Tax Regulations (26 CFR Part 1) under section 565 of the Internal Revenue Code of 1986. These amendments to the prior regulations under section 565 shall be applicable for tax years ending after December 15, 1987. Written comments to the notice were received. No public hearing was held. After consideration of all comments regarding the proposed amendments, those amendments are adopted by this Treasury Decision with revisions in response to those comments. The significant comments and revisions are discussed below.

**Explanation of Provisions**

In response to comments, the language of § 1.565–1(a)(2) has been expanded to make it clear that a corporation, 50 percent or more of whose adjusted ordinary gross income is adjusted income from rents, continues to be able to utilize the consent dividend under section 565, as described in section 542(a)(2)(B)(iii), for purposes of avoiding personal holding company status. In addition, certain stylistic and organizational changes were made that were not intended to have substantive effect.

**Special Analyses**

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore a Regulatory Impact Analysis is not required. Although this Treasury Decision was preceded by a notice of proposed rulemaking that solicited public comments, it has been determined that the notice was not required by 5 U.S.C. 553 since the regulations proposed in that notice and adopted by this Treasury Decision will not have a significant impact on a substantial number of small entities. Therefore, a final Regulatory Flexibility Analysis is not required by the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

**Drafting Information**

The principal authors of these regulations are David Bergkuist of the Office of the Associate Chief Counsel (International), within the Office of Chief Counsel, and Susan Thompson Baker of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, other personnel from offices of the Internal Revenue Service and Treasury Department participated in developing the regulations.

**List of Subjects**

*26 CFR Part 1*

Income taxes, Corporations, Tax avoidance, Holding companies.

*26 CFR Part 602*

Reporting and recordkeeping requirements.

**Adoption of Amendments to the Regulations**

Accordingly, 26 CFR Parts 1 and 602 are amended as follows:

**PART 1—[AMENDED]**

**Paragraph 1.** The authority for Part 1 continues to read in part:

**Authority:** Sec. 7805, 68A Stat. 917; 26 U.S.C. 7805, unless otherwise noted. * * *

**§§ 1.565-1T through 1.565-6T [Removed]**

**Par. 2.** Sections 1.565–1T through 1.565–6T are removed.

**Par. 3.** New §§ 1.565–1 through 1.565–3, § 1.565–5, and § 1.565–6 are added at the appropriate place to read as follows:

**§ 1.565–1 General rule.**

(a) *Consent dividends.* The dividends paid deduction, as defined in section 561, includes the consent dividends for the taxable year. A consent dividend is a hypothetical distribution (as distinguished from an actual distribution) made by:

(1) A corporation that has a reasonable basis to believe that it is subject to the accumulated earnings tax imposed in part I of subchapter G, chapter 1 of the Code, or

(2) A corporation described in part II (personal holding companies or a corporation with adjusted income from rents described in section 543(a)(2)(A) which utilizes the consent dividends described in section 543(a)(2)(B)(iii) to avoid personal holding company status) or part III (foreign personal holding companies) of subchapter G or in part I (regulated investment companies) or part II (real estate investment trusts) of subchapter M, chapter 1 of the Code.

A consent dividend may be made by a corporation described in this paragraph to any person who owns consent stock on the last day of the taxable year of such corporation and who agrees to treat the hypothetical distribution as an actual dividend, subject to the limitations in section 565, § 1.565–2, and paragraph (c)(2) of this section, by filing a consent at the time and in the manner specified in paragraph (b) of this section.

(b) *Making and filing of consents.* (1) A consent shall be made on Form 972 in accordance with this section and the instructions on the form issued therewith. It may be made only by or on behalf of a person who was the actual owner on the last day of the corporation's taxable year of any class of consent stock, that is, the person who would have been required to include in gross income any dividends on such stock actually distributed on the last day of such year. Form 972 shall contain or be verified by a written declaration that it is made under the penalties of perjury. In the consent such person must agree to include in gross income for his



taxable year in which or with which the taxable year of the corporation ends a specific amount as a taxable dividend.

(2) See paragraph (c) of this section and § 1.565–2 for the rules as to when all or a portion of the amount so specified will be disregarded for tax purposes.

(3) A consent may be filed at any time not later than the due date of the corporation's income tax return for the taxable year for which the dividends paid deduction is claimed. With such return, and not later than the due date thereof, the corporation must file Forms 972 duly executed by each consenting shareholder, and a return on Form 973 showing by classes the stock outstanding on the first and last days of the taxable year, the dividend rights of such stock, distributions made during the taxable year to shareholders, and giving all the other information required by the form. Form 973 shall contain or be verified by a written declaration that is made under the penalties of perjury.

(c) *Taxability of amounts specified in consents.* (1) The filing of a consent is irrevocable, and except as otherwise provided in section 565(b), § 1.565–2, and paragraph (c)(2) of this section, the full amount specified in a consent filed by a shareholder of a corporation described in paragraph (a) of this section shall be included in the gross income of the shareholder as a taxable dividend. Where the shareholder is taxable on a dividend only if received from sources within the United States, the amount specified in the consent of the shareholder shall be treated as a dividend from sources within the United States in the same manner as if the dividend has been paid in money to the shareholder on the last day of the corporation's taxable year. See paragraph (b) of this section relating to the making and filing of consents, and section 565(e) and § 1.565–5, with respect to the payment requirement in the case of nonresident aliens and foreign corporations.

(2) To the extent that the Commissioner determines that the corporation making a consent dividend is not a corporation described in paragraph (a) of this section, the amount specified in the consent is not a consent dividend and the amount specified in the consent will not be included in the gross income of the shareholder. In addition, where a corporation is described in paragraph (a)(1) but not paragraph (a)(2) of this section, to the extent that the Commissioner determines that the amount specified in a consent is larger than the amount of earnings subject to the accumulated earnings tax imposed by part I of subchapter G, such excess is not a consent dividend under paragraph (a) of this section and will not be included in the gross income of the shareholder.

(3) Except as provided in section 565(b), § 1.565–2 and paragraph (c)(2) of this section, once a shareholder's consent is filed, the full amount specified in such consent must be included in the shareholder's gross income as a taxable dividend, and the ground upon which a deduction for consent dividends is denied the corporation does not affect the taxability of a shareholder whose consent has been filed for the amount specified in the consent. For example, although described in part I, II, or III of subchapter G, or part I or II of subchapter M, chapter 1 of the Code, the corporation's taxable income (as adjusted under section 535(b), 545(b), 556(b), 852(b)(2), or 857(b)(2), as appropriate) may be less than the total of the consent dividends.

(4) A shareholder who is a nonresident alien or a foreign corporation is taxable on the full amount of the consent dividend that otherwise qualifies under this section even though that payment has not been made as required by section 565(e) and § 1.565–5.

(5) Income of a foreign corporation is not subject to the tax on accumulated earnings under part I of subchapter G, chapter 1 of the Code except to the extent of U.S. source income, adjusted as permitted under section 535. See section 535 (b) and (d) and § 1.535–1(b). Therefore, foreign source earnings (other than those distributions subject to resourcing under section 535(d)) of a foreign corporation that is not described in paragraph (a)(2) of this section cannot qualify for consent dividend treatment. Accordingly, a consent dividend made by a foreign corporation described in paragraph (a)(1) of this section shall not be effective with respect to all of the corporation's earnings, but shall relate solely to earnings which would have been, in the absence of the consent dividend, subject to the accumulated earnings tax.

**§ 1.565–2 Limitations.**

(a) *General rule.* Amounts specified in consents filed by shareholders or other beneficial owners of a corporation described in § 1.565–1(a) are not treated as consent dividends to the extent that—

(1) They would constitute a preferential dividend or

(2) They would not constitute a dividend (as defined in section 316), if distributed in money to shareholders on the last day of the taxable year of the corporation. If any portion of any amount specified in a consent filed by a shareholder of a corporation described in the preceding sentence is not treated as a consent dividend under section 565(b) and this section, it is disregarded for all tax purposes. For example, it is not taxable to the consenting shareholder, and paragraph (c) of § 1.565–1 is not applicable to this portion of the amount specified in the consent.

(b) *Preferential Distribution.* (1) A preferential distribution is an actual distribution, or a consent distribution, or a combination of the two, which involves a preference to one or more shares of stock as compared with other shares of the same class or to one class of stock as compared with any other class of stock. See section 562(c) and § 1.562–2.

(2) The application of section 565 (b)(1) and § 1.565–2 (b) may be illustrated by the following examples:

*Example (1).* The X Corporation, a personal holding company, which makes its income tax returns on the calendar year basis, has 200 shares of stock outstanding, owned by A and B in equal amounts. On December 15, 1987, the corporation distributes $800 to B and $100 to A. As a part of the same distribution, A executes a consent to include $500 in his gross income as a taxable dividend although such amount is not distributed to him. The X Corporation, assuming the other requirements of section 565 have been complied with, is entitled to a consent dividends deduction of $500. Although the consent dividend is deemed to have been paid on December 31, 1987, the last day of the taxable year of the corporation, the total amount of all distributions constitutes a single nonpreferential distribution of $1200.

*Example (2).* The Y corporation, a personal holding company, which makes its income tax returns on the calendar year basis, has one class of consent stock outstanding, owned in equal amounts by A, B, and C. If A and B each receive a distribution in cash of $5,000 and C consents to include $3,000 in gross income as a taxable dividend, the combined actual and consent distribution of $13,000 is preferential. See section 562 (c) and § 1.562–2 (a). Similarly, if no one receives a distribution in cash, but A and B each consents to include $5,000 as a taxable dividend in gross income and C agrees to include only $3,000, the entire consent distribution is preferential.

*Example (3).* The Z Corporation, which makes its income tax returns on the calendar year basis and is subject, for the taxable year in question, to the accumulated earnings tax, has only two classes of stock outstanding, each class being consent stock and consisting of 500 shares. Class A, with a par value of $40 per share, is entitled to two-thirds of any distribution of earnings and profits. Class B, with a par value of $20 per share, is entitled to one-third of any distribution of earnings and profits. On December 15, 1987, there is distributed on the class B stock $2 per share,

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or $1,000, and shareholders of the class A stock consent to include in gross income amounts equal to $2 per share, or $1,000. The entire distribution of $2,000 is preferential, inasmuch as the class B stock has received more than its pro rata share of the combined amounts of the actual distributions and the consent distributions.

(c) *Section 316 Limitation.* (1) An additional limitation under section 565 (b) is that the amounts specified in consents which may be treated as consent dividends cannot exceed the amounts which would constitute a dividend (as defined in section 316) if the corporation had distributed the total specified amounts in money to shareholders on the last day of the taxable year of the corporation. If only a portion of such total would constitute a dividend, then only a corresponding portion of each specified amount is treated as a consent dividend.

(2) The application of section 565 (b) (2) and § 1.565–2 (c) may be illustrated by the following example:

*Example.* The X Corporation, a corporation described in § 1.565–(a) (1) or (2), which makes its income tax returns on the calendar year basis, has only one class of stock outstanding, owned in equal amounts by A and B. It makes no distributions during the taxable year 1987. Its earnings and profits for the calendar year 1987 amount to $6,000, there being at the beginning of such year no accumulated earnings or profits. A and B execute proper consents to include $6,000 each in their gross income as a dividend received by them on December 31, 1987. The sum of the amounts specified in the consents executed by A and B is $10,000, but if $10,000 had actually been distributed by the X corporation on December 31, 1987, only $6,000 would have constituted a dividend under section 316 (a). The amount which could be considered as consent dividends in computing the dividends paid deduction for purposes of the accumulated earnings tax is limited to $6,000, or $4,000 of the $6,000 specified in each consent. The remaining $1,000 in each consent is disregarded for all tax purposes. (In the case of a personal holding company, see also the example in § 1.565–3(b).)

**§ 1.565–3 Effect of consent.**

(a) *General Rule.* The amount of the consent dividend that is described in paragraph (a) of § 1.565–1 shall be considered, for all purposes of the Code, as if it were distributed in money by the corporation to the shareholder on the last day of the taxable year of the corporation, received by the shareholder on such day, and immediately contributed by the shareholder as paid-in capital to the corporation on such day. Thus, the amount of the consent dividend will be treated by the shareholder as a dividend. The shareholder will be entitled to the dividends received deduction under section 243 or 245 with respect to such consent dividend. The basis of the shareholder's consent stock in a corporation will be increased by the amount thus treated in his hands as a dividend which he is considered as having contributed to the corporation as paid-in capital. The amount of the current dividend will also be treated as a dividend received from sources within the United States in the same manner as if the dividend had been paid in money to the shareholders. Among other effects of the consent dividend, the earnings and profits of the corporation will be decreased by the amount of the consent dividends. Moreover, if the shareholder is a corporation, its accumulated earnings and profits will be increased by the amount of the consent dividend with respect to which it makes a consent.

(b) *Example.* The application of section 565 (c) may be illustrated by the following example:

*Example.* Corporation A, a personal holding company and a calendar year taxpayer, has one shareholder, individual B, whose consent to include $10,000 in his gross income for the calendar year 1987 has been timely filed. A has $8,000 of earnings and profits at the beginning of 1987. A has $10,000 of undistributed personal holding company income (determined without regard to distributions under section 316(b)(2)) for 1987. B must include $10,000 in his gross income as a taxable income and is treated as having immediately contributed $10,000 to A as paid-in capital. See section 316(b)(2).

**§ 1.565–6 Nonresident aliens and foreign corporations.**

(a) *Withholding.* In the event that a corporation makes a consent dividend, as described in § 1.565–1 (a), to a shareholder that is subject to a withholding tax under section 1441 or 1442 on a distribution of cash or other property, the corporation must remit an amount of tax equal to the withholding tax that would be imposed under section 1441 or 1442 if an actual cash distribution equal to the consent dividend had been paid to the shareholder on the last day of the corporation's taxable year. Such payment must be in one of the following forms:

(1) Cash,

(2) United States postal money order,

(3) Certified check drawn on a domestic bank, provided that the law of the place where the bank is located does not permit the certification to be rescinded prior to presentation,

(4) A cashier's check of a domestic bank, or

(5) A draft on a domestic bank or a foreign bank maintaining a United States agency or branch and payable in United States funds.

The amount of such payment shall be credited against the tax imposed on the shareholder.

**§ 1.565–6 Definitions.**

(a) *Consent stock.* (1) The term "consent stock" includes what is generally known as common stock. It also includes participating preferred stock, the participation rights of which are unlimited.

(2) The definition of consent stock may be illustrated by the following example:

*Example.* If in the case of the X Corporation, a personal holding company, there is only one class of stock outstanding, it would all be consent stock. If, on the other hand, there were two classes of stock, class A and class B, and class A was entitled to 6 percent before any distribution could be made on class B, but class B was entitled to everything distributed after class A had received its 6 percent, only class B stock would be consent stock. Similarly, if class A, after receiving its 6 percent, was to participate equally or in some fixed proportion with class B until it had received a second 6 percent, after which class B alone was entitled to any further distributions, only class B stock would be consent stock. The same result would follow if the order of preferences were class A 6 percent, then class B 6 percent, then class A a second 6 percent, either alone or in conjunction with class B, then class B the remainder. If, however, class A stock is entitled to ultimate participation without limit as to amount, then it, too, may be consent stock. For example, if class A is to receive 3 percent and then share equally or in some fixed proportion with class B in the remainder of the earnings or profits distributed, both class A stock and class B stock are consent stock.

(b) *Preferred dividends.* (1) The term "preferred dividends" includes all fixed amounts (whether determined by percentage of par value, a stated return expressed in a certain number of dollars per share, or otherwise) the distribution of which on any class of stock is a condition precedent to a further distribution of earnings or profits (not including a distribution in partial or complete liquidation). A distribution, though expressed in terms of a fixed amount, is not a preferred dividend, however, unless it is preferred over a subsequent distribution within the taxable year upon some class or classes of stock other than one on which it is payable.

(2) The definition of preferred dividends may be illustrated by the following example:

*Example.* If, in the case of the X Corporation, there are only two classes of stock outstanding, class A and class B, and class A is entitled to a distribution of 6 percent of par, after which the balance of the earnings and profits are distributable on class B exclusively, class A's 6 percent is a preferred dividend. If the order of preferences is class A $6 per share, class B $6 per share, then class A and class B in fixed proportions until class A receives $3 more per share, then class B the remainder, all of class A's $9 per share and $6 per share of the amount distributable on class B are preferred dividends. The amount which class B is entitled to receive in conjunction with the payment to class A of its last $3 per share is not a preferred dividend, because the payment of such amount is preferred over no subsequent distribution except one made on class B itself. Finally, if a distribution must be $6 on class A, $6 on class B, then on class A and class B share and share alike, the distribution on class A of $6 and the distribution on class B of $6 are both preferred dividends.



## PART 602—[AMENDED]

Par. 12. The authority for Part 602 continues to read as follows:

**Authority:** 26 U.S.C. 7805.

**§ 602.101 [Amended]**

Par. 13. Section 602.101(c) is amended by inserting in the appropriate place in the table:

| | |
|---|---|
| § 1.565–1 | 1545–0043. |
| § 1.565–2 | 1545–0043. |
| § 1.565–3 | 1545–0043. |
| § 1.565–5 | 1545–0043. |
| § 1.565–6 | 1545–0043. |

Lawrence B. Gibbs,
*Commissioner of Internal Revenue.*
Approved:
O. Donaldson Chapoton,
*Assistant Secretary of the Treasury.*
January 13, 1989.
[FR Doc. 89–5884 Filed 3–13–89; 8:45 am]
BILLING CODE 4830–01–M

## DEPARTMENT OF DEFENSE

### Department of the Army

### 32 CFR Part 518

[Army Reg. 340–17]

### Release of Information and Records From Army Files; Special Designation of Initial Denial Authority

**AGENCY:** Department of the Army.
**ACTION:** Final rule.

**SUMMARY:** The Department of the Army is designating special Initial Denial Authority for records pertaining to Army Base Closure and Realignment.

**EFFECTIVE DATE:** March 14, 1989.
**FOR FURTHER INFORMATION CONTACT:** Ms. Angela R. Petrarca, Policy and Strategy Directorate, Office of the Director of Information Systems for Command, Control, Communications and Computers, Office of the Secretary of the Army, Washington, DC 20310–0107.

**SUPPLEMENTARY INFORMATION:** This amendment designates special initial denial authority as follows: Director of Management, Office of the Chief of Staff, Army, for Army records pertaining to Closure and Realignment of Military Installations under Title II (section 201) of the Defense Authorization Amendments and Base Closure and Military Realignment Act of 1988.

**Lists of Subjects in 32 CFR Part 518**

Information, Archives and records, Privacy, Freedom of information.

Accordingly, 32 CFR Part 518 is amended as follows:

## PART 518—[AMENDED]

1. The authority citation for Part 518 continues to read as follows:

**Authority:** 5 U.S.C. 552.

2. Section 518.15 is amended by adding paragraph (a)(4)(xviii) to read as follows:

**§ 518.15 Initial determinations.**

* * * * *

(a) * * *

(4) * * *

(viii) The Director of Management, Office of the Chief of Staff, is designated to act on requests for records relating to closure and realignment of military installations under Title II (section 201) of the Defense Authorization Amendments and Base Closure and Military Realignment Act of 1988.

* * * * *

John O. Roach II,
*Army Liaison Officer with the Federal Register.*
[FR Doc. 89–5768 Filed 3–10–89; 2:40 pm]
BILLING CODE 3710–08–M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 117

[CGD7–88–36]

### Drawbridge Operation Regulations; Clearwater Pass, FL

**AGENCY:** Coast Guard, DOT.
**ACTION:** Final rule.

**SUMMARY:** At the request of the City of Clearwater, the Coast Guard is changing the regulations governing the Clearwater Pass (SR 699) drawbridge between Sand Key and Clearwater Beach, Florida by adding one hour to the existing regulated period. This change is being made because of a significant increase in highway traffic on weekends and holidays with slight shift in peak traffic periods. This action will accommodate the current needs of vehicular traffic and still provide for the reasonable needs of navigation.

**EFFECTIVE DATE:** These regulations become effective on April 13, 1989.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ian Mac Cartney, telephone (305) 536–4103.

**SUPPLEMENTARY INFORMATION:** On December 20, 1988, the Coast Guard published proposed rules (53 FR 51125) concerning this amendment. The Commander, Seventh Coast Guard District, also published the proposal as a Public Notice dated January 3, 1989. In each notice, interested persons were given until February 3, 1989, to submit comments.

**Drafting Information**

The drafters of these regulations are Mr. Ian Mac Cartney, project officer, and Lieutenant Commander S.T. Fuger, Jr., project attorney.

**Discussion of Comments**

Four comments were received. One commenter supported the proposal. Two commenters supported the original request for 20 minute openings and the extra hour of regulation. One commenter opposed the extra hour of regulation citing a concern for navigational safety. The Coast Guard has carefully considered these comments, however, no additional information was presented to justify modifying the existing regulation with the exception of adding an extra hour to the regulated period. The final rule remains unchanged from the proposed rule published on December 20, 1988.

**Economic Assessment and Certification**

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the regulations exempt tugs with tows. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant

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economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

## PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46 and 33 CFR 1.05–1(g).

2. Section 117.277(b) is revised to read as follows:

**§ 117.277 Clearwater pass.**

* * * * *

(b) From 11 a.m. to 6 p.m. on Saturdays, Sundays, and federal holidays the draw need open only on the hour, quarter hour, half hour, and three quarter hour. Public vessels of the United States, tugs with tows, and vessels in distress shall be passed at any time.

* * * * *

Dated: February 27, 1989.

Martin H. Daniell,

*Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.*

[FR Doc. 89-5660 Filed 3-13-89; 8:45 am]

BILLING CODE 4910-14-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[PP 8E3589/R1019; FRL 3637-1]

### Pesticide Tolerance for Imazethapyr

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule established a tolerance for residues of the herbicide imazethapyr (2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl]-5-ethyl-3-pyridine-carboxylic acid, as its ammonium salt) in or on soybeans at 0.1 part per million (ppm). The regulation was requested by American Cyanamid Co. and establishes the maximum permissible level for residues of the herbicide in or on soybeans.

EFFECTIVE DATE: March 14, 1989.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Robert J. Taylor, Product Manager (PM) 25, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 245, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)–557–1800.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the Federal Register on February 3, 1988 (53 FR 3075), which announced that the American Cyanamid Co., P.O. Box 400, Princeton, NJ 08540, has submitted pesticide petition (PP) 8F3589 to EPA proposing to amend 40 CFR Part 180 by establishing a tolerance for residues of the herbicide imazethapyr (2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl]-5-ethyl-3-pyridine-carboxylic acid, as its ammonium salt) in or on the raw agricultural commodity soybeans at 0.1 ppm.

There were no comments received in response to the notice of filing.

The data submitted in the petition and other relevant material have been evaluated. The data considered in the petition include: an 18-month feeding/oncogenic study with mice fed dosages of 0, 150, 750, and 1,500 milligrams/kilogram/day (mg/kg/day) with no oncogenic effects observed under the conditions of the study at dose levels up to and including 1,500 mg/kg/day (highest dose tested (HDT)) and a systemic no-observed-effect level (NOEL) of 750 mg/kg/day; a 2-year feeding/oncogenic study in rats fed dosages of 0, 50, 250, and 500 mg/kg/day with no oncogenic effects observed under the conditions of the study at dose levels up to and including 500 mg/kg/day (HDT) and a systemic NOEL of 500 mg/kg/day (HDT); a 1-year feeding study in dogs fed dosage levels of 0, 25, 125, and 250 mg/kg/day with a NOEL of 25 mg/kg/day; a teratology study in rats fed dosage levels of 0, 125, 375, and 1,125 mg/kg/day, with a maternal toxicity NOEL of 375 mg/kg/day and a developmental toxicity NOEL of 1125 mg/kg/day; a teratology study in rabbits fed dosage levels of 0, 100, 300 and 1,000 mg/kg/day with a maternal toxicity NOEL of 300 mg/kg/day and a developmental toxicity NOEL of 1,000 mg/kg/day; a two-generation reproduction study in rats fed dosage levels of 0, 50, 250, and 500 mg/kg/day with a NOEL for systemic and reproductive effects of 500 mg/kg/day; a mutagenic test with *Salmonella typhimurium* (negative); an *in vitro* chromosomal aberration test in Chinese hamster ovary cells (positive without metabolic activation but at dose levels that were toxic to the cells and negative with metabolic activation); an *in vivo* chromosomal aberration test in rat bone marrow cells (negative); an unscheduled DNA synthesis study in rat hepatocytes (negative); and a dominant-lethal study in rats (negative at doses up to and including 2,000 mg/kg).

The provisional acceptable daily intake (PADI) based on the 90-day dog feeding study (NOEL of 250 mg/kg/day) and an uncertainty factor of 1,000 is calculated to be 0.25 mg/kg/day. The theoretical maximum residue contribution (TMRC) for this tolerance is calculated to be 0.000034 mg/kg/day. The current action will occupy 0.014 percent of the ADI. There are no published tolerances for this chemical. The pesticide is useful for the purposes of this tolerance rule.

The rat chronic feeding/oncogenicity study is acceptable as a chronic study but is supplemental as an oncogenicity study. There were no toxic effects observed at the top dose level (500 mg/kg/day), an indication that the maximum tolerated dose (MTD) was not reached. A repeat of this study will not be required for the use of soybeans, however, because (1) 500 mg/kg/day is within 50 percent of the upper limit dose necessary for an adequately conducted oncogenicity study on a chemical of low toxicity; (2) imazethapyr is structurally related to two other pesticides which tested negatively in oncogenicity studies in rats and mice; and (3) there were no positive mutagenicity studies for any of the three herbicides except for imazethapyr which had a positive result in the *in vitro* chromosomal aberration test, but only at dose levels that were toxic to the cells.

The nature of the residue is adequately understood, and adequate analytical methods (gas chromatography with a thermionic nitrogen-phosphorus detector) are available for enforcement purposes.

There are currently no actions pending against the registration of this chemical. No secondary residues are expected to occur in meat, milk, poultry, or eggs from this use.

Based on the above information considered by the Agency, it is concluded that the tolerance established by amending 40 CFR Part 180 will protect the public health, and the tolerance is therefore established as set forth below.

Any person adversely affected by this regulation may, within 30 days after the date of publication in the Federal Register, file written objections with the Hearing Clerk, Environmental Protection Agency, at the address given above. Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this regulation from section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

(Authority: Sec. 408(d)(2), 68 Stat. 512 (21 U.S.C. 346a(d)(2)).)

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: March 7, 1989.

Douglas D. Campt,

*Director, Office of Pesticide Programs.*

Therefore, 40 CFR Part 180 is amended as follows:

## PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. New § 180.447 is added, to read as follows:

**§ 180.447 Imazethapyr, ammonium salt; tolerance for residues.**

A tolerance is established for residues of the herbicide imazethapyr, 2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl]-5-ethyl-3-pyridine-carboxylic acid, as its ammonium salt, in or on the following raw agricultural commodity:

| Commodity | Parts per million |
|---|---|
| Soybeans | 0.1 |

[FR Doc. 89–5913 Filed 3–13–89; 8:45 am]

BILLING CODE 6560–50–M



## GENERAL SERVICES ADMINISTRATION

### 41 CFR Part 101–7

[FPMR Temp. Reg. A–32]

### First Duty Station Allowances for Relocated Presidential Transition Team Personnel Subsequently Appointed to Government Service

AGENCY: Federal Supply Service, GSA.

ACTION: Temporary regulation.

SUMMARY: This regulation implements authority to pay first duty station relocation allowances to eligible members of the Presidential Transition Team who relocate prior to selection for, or appointment to, certain Federal Government positions.

DATES: *Effective date:* This regulation is effective for travel and transportation performed on or after November 9, 1988.

*Expiration date:* This regulation expires November 9, 1989, unless sooner superseded or incorporated into the permanent regulations of GSA.

FOR FURTHER INFORMATION CONTACT: Larry Tucker, Travel and Transportation Regulations Staff (FBR), Washington, DC 20406, telephone FTS 557–1253 or commercial (703) 557–1253.

SUPPLEMENTARY INFORMATION: The General Services Administration (GSA) has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 101–7

Government employees, Travel, Travel allowances, Travel and transportation expenses.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c); Executive Order 11609, July 22, 1971; 5 U.S.C. 5707.

In 41 CFR Chapter 101, the following temporary regulation is added to the appendix at the end of Subchapter A to read as follows:

February 2, 1989.

**Federal Property Management Regulations Temporary Regulation A–32**

*To:* Heads of Federal agencies.

*Subject:* First duty station allowances for relocated Presidential Transition Team personnel subsequently appointed to Government service.

1. *Purpose.* This regulation implements authority to pay limited first duty station relocation allowances to eligible members of the Presidential Transition Team who relocate prior to selection for, or appointment to, certain Federal Government positions.

2. *Effective date.* This regulation is effective for travel and transportation performed on or after November 9, 1988.

3. *Expiration date.* This regulation expires November 9, 1989, unless sooner superseded or incorporated into the permanent regulations of GSA.

4. *Authority.* The provisions of this regulation are authorized by section 6 of the Presidential Transitions Effectiveness Act, Pub. L. 100–398, approved August 17, 1988, and by pertinent legislative history contained in House Report No. 100–532.

5. *Incorporation of pertinent Federal Travel Regulations provisions.* Paragraph 2–1.5f of the Federal Travel Regulations (FTR), insofar as it pertains to new appointees to shortage category positions and the Senior Executive Service, and to certain Presidential appointees, is hereby incorporated in this temporary regulation. The authority, procedures, and limitations contained in that paragraph apply to the individuals covered by this temporary regulation except as provided herein.

6. *Eligible individuals.* This regulation applies to new appointees who are appointed to positions described in 5 U.S.C. 5723 and in the incorporated FTR paragraph 2–1.5f who have performed transition activities under section 3 of the Presidential Transition Act of 1963 (3 U.S.C. 102 note), *Provided* That:

a. The appointment is made in the same fiscal year as the Presidential inauguration that immediately follows their transition activities; and

b. The appointee relocated on or after November 9, 1988 (to perform Presidential transitional activities), but before selection or appointment.

7. *Expenses covered.* An agency may authorize or approve reimbursement to new appointees covered by this regulation for the travel and transportation expenses listed below. However, payment shall be limited to expenses incurred from the appointee's actual place of residence from which he/she relocated on or after November 9, 1988, for the purpose of performing

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Presidential transition activities to the assigned duty station of such appointee.

a. Travel expenses including per diem for the appointee as set forth in FTR paragraph 2–2.1;

b. Transportation expenses (but not per diem) for immediate family of the appointee as set forth in FTR paragraph 2–2.2a;

c. Mileage allowance, if privately owned vehicle is used in travel, as set forth in FTR paragraph 2–2.3;

d. Transportation and temporary storage of household goods as set forth in FTR part 2–8;

e. Nontemporary storage of household goods, if appointed to an isolated location, as set forth in FTR paragraph 2–9.1; and

f. Transportation of mobile homes as set forth in FTR part 2–7.

8. *Alternate origin or destination.* Travel and transportation authorized or approved under this regulation may be from or to any location, but reimbursement for such expenses shall be limited to the constructive cost of those expenses from and to the locations described in paragraph 7.

9. *Service agreement required.* Reimbursement for travel and transportation expenses authorized or approved under this regulation may not be made until the appointee has agreed in writing to remain in Government service for 12 months following the date of appointment.

10. *Effect on other regulations.* The FTR are currently being established as a separate system of regulations to be codified in Title 41 of the Code of Federal Regulations (CFR) (41 CFR 301–304). Prior to expiration, the provisions of this temporary regulation, unless sooner revised or superseded, will be incorporated, as appropriate, in the FTR. Until incorporation and codification of this temporary regulation takes place, the FTR provision cited in paragraph 5 and its corresponding CFR codified version will continue to be part of this temporary regulation by reference.

11. *Comments.* Comments concerning this regulation may be submitted to the General Services Administration, Federal Supply Service (FBR), Washington, DC 20406, not later than March 1, 1989, for consideration and possible incorporation in the permanent regulation.

**Richard G. Austin,**

*Acting Administrator of General Services.*

[FR Doc. 89–5983 Filed 3–13–89; 8:45 am]

BILLING CODE 6820–24–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### 45 CFR Part 233

### Application, Determination of Eligibility and Furnishing Assistance—Public Assistance Programs; Coverage and Conditions of Eligibility in Financial Assistance Programs; Alien Legalization; Correction

**AGENCY:** Family Support Administration, HHS.

**ACTION:** Final rule, correction.

**SUMMARY:** This document makes a correction to Alien Legalization final regulations that appeared in the **Federal Register** on August 12, 1988 (53 FR 30432–30433). In that publication, a revision to paragraph (c) of § 233.50 was omitted even though paragraph (c) was included in the interim final rule published on December 24, 1987 (52 FR 48689). This correction notice adds paragraph (c) to § 233.50.

**FOR FURTHER INFORMATION CONTACT:** Ms. Diann Dawson, Director, Division of Policy, Office of Family Assistance, Family Support Administration, Fifth Floor, 370 L'Enfant Promenade, SW., Washington, DC 20447, telephone (202) 252–5118.

**List of Subjects in 45 CFR Part 233**

Aliens, Grant Programs—social programs, public assistance programs, Reporting and recordkeeping requirements.

Approved: March 8, 1989.

**James E. Lawson,**

*Acting Deputy Assistant Secretary for Information and Resources Management.*

**PART 233—[AMENDED]**

1. The authority citation for Part 233 continues to read as follows:

**Authority:** Sections 1, 402, 406, 407, 1002, 1102, 1402, and 1602 of the Social Security Act (42 U.S.C. 301, 602, 606, 607, 1202, 1302, 1352, and 1382 note), and Section 6 of Pub. L. 96–114, 89 Stat. 579 and Part XXIII of Pub. L. 97–35, 95 Stat. 843, Pub. L. 97–248, 96 Stat. 324, and Pub. L. 99–603.

2. In § 233.50, paragraph (c) is revised to read as follows:

**§ 233.50 Citizenship and alienage.**

* * * * *

(c) An alien granted lawful temporary resident status pursuant to section 201, 302, or 303 of the Immigration Reform and Control Act of 1986 (Pub. L. 99–603) who must be either:

(1) A Cuban and Haitian entrant as defined in paragraph (1) or (2)(A) of section 501(e) of Pub. L. 96–422, as in effect on April 1, 1983, or

(2) An adult assistance applicant for OAA, AB, APTD, or AABD, or

(3) An applicant for AFDC who is not a Cuban and Haitian applicant under paragraph (c)(1) of this section who was adjusted to lawful temporary resident status more than five years prior to application.

All other aliens granted lawful temporary or permanent resident status, pursuant to sections 201, 302, or 303 of the Immigration Reform and Control Act of 1986, are disqualified for five years from the date lawful temporary resident status is granted.

* * * * *

[FR Doc. 89–5976 Filed 3–13–89; 8:45 am]

BILLING CODE 4150–04–M

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 33

### Refuge-specific Fishing Regulations

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** The Fish and Wildlife Service (Service) hereby amends certain regulations in 50 CFR Part 33 that pertain to fishing on individual national wildlife refuges (NWRs). Refuge fishing programs are reviewed annually to determine whether the regulations governing fishing on individual refuges should be modified. Changing environmental conditions, State and Federal regulations and other factors affecting fish populations and habitats may warrant such amendments. The modifications made ensure the continued compatibility of fishing with the purposes for which the individual refuges involved were established, and to the extent practical, make refuge fishing programs consistent with State regulations.

**EFFECTIVE DATE:** April 13, 1989.

**FOR FURTHER INFORMATION CONTACT:** Larry LaRochelle, Division of Refuges, Fish and Wildlife Service, 18th and C Streets NW., Washington, DC 20240; Telephone 202–343–4313.

**SUPPLEMENTARY INFORMATION:** 50 CFR Part 33 contians the provisions that govern fishing on NWRs. Fishing is regulated on refuges to (1) ensure compatibility with refuge purposes, (2) properly manage the fishery resource and (3) protect other refuge values. On many refuges, the Service policy of adopting State fishing regulations is an adequate way of meeting these objectives. On other refuges it is necessary to supplement State regulations with refuge-specific fishing regulations which will ensure that the Service meets its management responsibilities, as outlined under the section entitled "Conformance with Statutory and Regulatory Authorities" in the proposed rule of November 1, 1988, at 53 FR 44043. Refuge-specific fishing regulations are issued only after the final publication of the opening of a wildlife refuge to fishing. These regulations may list the seasons, methods of taking fish, descriptions of open areas and other provisions. The Service has previously issued refuge-specific fishing regulations in 50 CFR Part 33.

This rule amends and supplements certain refuge-specific regulations in 50 CFR Part 33, §§ 33.8 through 33.51, which pertain to fishing on individual refuges in their respective alphabetically listed State.

The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. On November 1, 1988, at 53 FR 44043, the Service published a proposed rulemaking to amend certain regulations in 50 CFR Part 33 and invited the public to comment. No comments were received. Therefore, the proposed refuge-specific fishing regulations are here published, with minor technical corrections, as a final rulemaking.

**Economic Effect**

Executive Order 12291 requires the preparation of regulatory impact analyses for major rules. A major rule is one likely to result in an annual effect on the economy of $100 million or more, a major increase in cost or prices for consumers, individual industries, government agencies or geographic regions, or significant adverse effects on the ability of United States-based enterprises to compete with foreign-based enterprises. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) further requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations or governmental jurisdictions.

These amendments to the codified refuge-specific fishing regulations make relatively minor adjustments to existing fishing programs. The regulations are not expected to have any gross economic effect and will not cause an increase in costs or prices for consumers, individual industries, Federal, State or local governments, agencies or geographic regions. The benefits accruing to the public are expected to exceed the costs of administering this rule. Accordingly, the Department has determined that this rule is not a "major rule" within the meaning of Executive Order 12291 and will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

**Paperwork Reduction Act**

The Service has received approval from the Office of Management and Budget (OMB) for the information collection requirements of these regulations pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). These requirements are presently approved by OMB under #1018–0014 Economic and Public Use Permits. Public reporting burden for these forms is estimated to average .1038 hours or 6.2 minutes per response for a total burden for all forms used of 15,146 hours, including time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. Direct comments on the burden estimate or any other aspect of these forms to Information Collection Office, U.S. Fish and Wildlife Service, Washington, DC 20240; and the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

**Environmental Considerations**

Compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(2)(C)) and the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) is ensured when fishing plans are developed and the determinations required by these Acts are made prior to the addition of refuges to the list of areas open to sport fishing in 50 CFR Part 33. Refuge-specific fishing regulations are subject to a categorical exclusion from the NEPA process if they do not significantly alter the existing use of a particular refuge. The changes made in this rulemaking will not significantly alter the existing uses of the refuges involved.

Information regarding the conditions that apply to individual refuge fishing programs, any restrictions related to public use on the refuge and a map of the refuge are available at refuge headquarters. This information can also be obtained from the Regional Offices of the Service at the addresses listed below.

*Region 1*—California, Hawaii, Idaho, Nevada, Oregon and Washington: Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1692, 500 Multnomah Street, Portland, Oregon 97232; Telephone (503) 231–6214.

*Region 2*—Arizona, New Mexico, Oklahoma and Texas: Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Box 1306, Albuquerque, New Mexico 87103; Telephone (505) 766–1829.

*Region 3*—Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio and Wisconsin: Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111; Telephone (612) 725–3507.

*Region 4*—Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Puerto Rico, Tennessee and the Virgin Islands: Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Richard B. Russell Federal Building, 75 Spring Street SW., Atlanta, Georgia 30303; Telephone (404) 331–3588.

*Region 5*—Connecticut, Delaware, District of Columbia, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia and West Virginia: Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158, Telephone (617) 965–9222.

*Region 6*—Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah and Wyoming: Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Box 25486, Denver Federal Center, Denver, Colorado 80225; Telephone (303) 236–7920.

*Region 7*—Alaska: Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503; Telephone (907) 786–3538.

**Primary Author**

Larry LaRochelle, Division of Refuges, Fish and Wildlife Service, Washington, DC, is the primary author of this rulemaking document.

**List of Subjects in 50 CFR Part 33**

Fishing, National Wildlife Refuge System, Wildlife refuges.

**PART 33—[AMENDED]**

Accordingly, Part 33 of Chapter I of Title 50 of the *Code of Federal*

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*Regulations* is amended as set forth below:

1. The authority citation for Part 33 continues to read as follows:

**Authority:** 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd and 715i.

**Refuge-Specific Fishing**

2. Section 33.8 is amended by redesignating paragraphs (b) through (e) as paragraphs (c) through (f), adding new paragraph (b) and revising newly redesignated paragraph (d) to read as follows:

**§ 33.8 Arkansas.**

* * * * *

(b) *Cache River National Wildlife Refuge.* Fishing is permitted on designated areas of the refuge subject to the following conditions:

(1) Fishing or entry is not permitted in the waterfowl sanctuary areas from November 1 through February 28.

(2) The ends of trotlines must consist of a length of cotton line that extends from the points of attachment into the water.

* * * * *

(d) *Holla Bend National Wildlife Refuge.* Fishing, boating and frogging are permitted subject to the following conditions:

(1) Fishing and boating in all waters from March 1 through October 31 only from one-half hour before sunrise to one-half hour after sunset.

(2) Frogging from April 15 through October 31 only on that part of the old river channel that connects to the Arkansas River channel.

* * * * *

3. Section 33.9 is amended by revising paragraph (i) to read as follows:

**§ 33.9 California.**

* * * * *

(i) *Salton Sea National Wildlife Refuge.* Fishing is permitted only on designated areas of the refuge inundated by the Salton Sea subject to the following conditions:

(1) Fishing is permitted from April 1 through September 30.

(2) Only boat fishing is permitted.

* * * * *

4. Section 33.13 is amended by revising paragraph (g)(1), adding two new sentences to the end of paragraph (g)(2) and revising paragraph (m)(4) as follows:

**§ 33.13 Florida.**

* * * * *

(g) *Lower Suwanee National Wildlife Refuge* * * *

(1) Fishing is permitted in interior creeks, sloughs and ponds from March 1 through October 31 only from sunrise to sunset except that fishing is not permitted in interior creeks, sloughs and ponds during quota big game hunts.

(2) * * * Boats are not permitted in refuge ponds. Boats may not be left on the refuge overnight.

* * * * *

(m) *St. Vincent National Wildlife Refuge* * * *

* * * * *

(4) Fishing seasons and largemouth bass length limits are as posted.

* * * * *

5. Section 33.17 is amended by revising paragraphs (a)(1) through (3), removing paragraph (a)(4); revising the last sentence of paragraph (b)(1), correcting the spelling of the word "Managers" in paragraph (b)(2), adding a last sentence to paragraph (b)(3), adding paragraphs (4) through (6); revising paragraph (c)(1), and removing paragraph (c)(6) as follows:

**§ 33.17 Illinois.**

(a) *Chautauqua National Wildlife Refuge.* * * *

(1) From December 15 through October 15 bank fishing is permitted and all refuge waters are open to fishing. From October 16 through December 14 fishing is permitted in the posted area that extends one-eighth of a mile around the Recreation Area, along Goofy Ridge Ditch, along the cross dike, and in all waters within the Public Hunting Area. Fishing is permitted during daylight hours only.

(2) The use of boats with motors greater than 25 horsepower is prohibited.

(3) Private boats must be removed from refuge waters overnight or moored at Boatyard No. 3.

(b) *Crab Orchard National Wildlife Refuge* * * *

(1) * * * All noncommercial fishing methods are permitted except underwater breathing apparatus is prohibited.

(2) * * * Managers * * *

(3) * * * It is unlawful to take largemouth bass between 12" to 15" in length from these lakes.

(4) Largemouth bass under 15" in length may not be taken from A–41, Bluegill, Blue Heron, Managers and Honkers Ponds.

(5) Largemouth bass under 21" in length may not be taken from Visitors Pond.

(6) It is unlawful to take catfish from their beds by submerging any object except hands under the water.

(c) *Mark Twain National Wildlife Refuge* * * *

(1) Fishing is permitted all year in the Big Timber and Gardner Divisions.

* * * * *

6. Section 33.18 is amended by adding paragraph (a)(6) as follows:

**§ 33.18 Indiana.**

(a) *Muscatatuck National Wildlife Refuge.* * * *

* * * * *

(6) Frogs and turtles may be taken by hook and line during daylight hours from areas open to fishing.

7. Section 33.22 is amended by revising paragraph (f) to read as follows:

**§ 33.22 Louisiana.**

* * * * *

(f) *Sabine National Wildlife Refuge.* Fishing, crabbing, crayfishing, and shrimp cast netting are permitted on designated areas of the refuge subject to the following conditions:

(1) Only fishing with rod and reel or pole and line is permitted. Shrimp may be taken only with a cast net. Crabs and crayfish may be taken only with ring nets up to 18 inches in diameter or hand lines. The use or possession of any other type of fishing, crabbing, crayfishing, and shrimping gear is prohibited except that persons using Hog Gulley, Headquarters, or West Cove Canals may only transport shrimp trawls, butterfly nets, or other nets from the boat ramps to Calcasieu Lake and return with their catch. Permits are required for sport jug fishing and gill netting.

(2) Fishing and public access is permitted from March 1 through October 15 on designated waterways and pools. Only bank fishing along Highway 27 is permitted year round.

(3) Fishing, crabbing, crayfishing, and shrimping is permitted from one hour before sunrise to one hour after sunset.

(4) Fishing in the East Cove unit is permitted year round except during the regular State duck hunting season. A 250-foot zone around Grand Bayou and Lambert Bayou water control structure is closed to public access and use except that boat access is permitted through the Grand Bayou water control structure.

(5) No person may take or possess more than 5 quarts of shrimp per vehicle per day except that the daily shrimp and possession limit is 5 gallons per vehicle during the State open inshore water season. Daily crab and crayfish limit is 100 pounds each per vehicle.

(6) Boats may not be dragged across levees. Outboard motors up to 25 horsepower are permitted in refuge pools. Outboard motors may be operated in designated refuge canals, waterways, and pools. The operation of any type of boat motor in the refuge marshes is prohibited.

* * * * *

8. Section 33.37 is amended by amending paragraph (c)(2) by adding new words to the end of the sentence, revising paragraph (c)(5), adding paragraph (c)(6) and revising paragraph (d)(3) as follows:

**§ 33.37 North Carolina.**

* * * * *

(c) *Mattamuskeet National Wildlife Refuge* * * *

* * * * *

(2) * * * from one-half hour before sunrise to one-half hour after sunset except that the Highway 94 causeway is open to fishing and crabbing 24 hours per day.

* * * * *

(5) Airboats and sailboats are not permitted.

(6) Bank fishing is prohibited along the entrance road from Highway 94 to the Refuge Headquarters.

(d) *Pee Dee National Wildlife Refuge*

* * *

* * * * *

(3) Only nonmotorized boats and boats with electric motors are permitted on Arrowhead Lake, Andrews Pond and Beaver ponds.

* * * * *

9. Section 33.40 is amended by redesignating paragraphs (a) through (e) as paragraphs (b) through (f) and adding new paragraph (a) to read as follows:

**§ 33.40 Oklahoma.**

(a) *Little River National Wildlife Refuge.* Fishing and frogging are permitted on designated areas of the refuge subject to the following conditions:

(1) Fishing is permitted in the area designated on the refuge fishing map brochure.

(2) Access to refuge fishing is limited to designated roads and trails.

* * * * *

10. Section 33.41 is amended by revising paragraph (g)(2), and adding paragraphs (3) through (5) as follows:

**§ 33.41 Oregon.**

* * * * *

(g) *Umatilla National Wildlife Refuge*

* * *

* * * * *

(2) Only non-motorized boats are permitted on refuge impoundments and ponds.

(3) Fishing is permitted only from 5:00 a.m. to 10:00 p.m.

(4) Impoundments and ponds in the Boardman Unit are closed to fishing.

(5) Bowfishing is prohibited.

* * * * *

11. Section 33.46 is amended by revising the second sentence and adding a third sentence to paragraph (e)(7), revising paragraph (e)(1), removing paragraph (e)(3) and adding paragraph (f) as follows:

**§ 33.46 Tennessee.**

(a) *Cross Creeks National Wildlife Refuge.* * * *

* * * * *

(7) * * * Largemouth bass from 12 inches to 15 inches must be immediately released unharmed. Possession of largemouth bass between 12 and 15 inches is prohibited.

* * * * *

(e) *Reelfoot Lake National Wildlife Refuge* * * *

(1) Fishing is permitted on the Long Point Unit (north of Upper Blue Basin) from March 15 through October 15 and on the Grassy Island Unit (south of the Upper Blue Basin) from February 1 through November 15.

* * * * *

(f) *Tennessee National Wildlife Refuge.* Fishing is permitted on designated portions of the refuge subject to the following conditions:

(1) The Duck River Bottoms and Busseltown Unit are closed to boat fishing from November 1 through March 15.

(2) Swamp Creek, Button Ford and Bennett's Creek embayments are closed to fishing from November 1 through March 15.

(3) Boats are restricted to "slow speed/minimum wake" on all refuge impoundments open to fishing.

* * * * *

12. Section 33.47 is amended by adding paragraphs (b) (4) and (5) and revising paragraph (d) as follows:

**§ 33.47 Texas.**

* * * * *

(b) *Arkansas National Wildlife Refuge.* * * *

(4) Fishermen must be off the refuge by dark.

(5) Fishermen must satisfy the Entrance Fee requirement authorized by the Emergency Wetlands Resources Act.

* * * * *

(d) *Hagerman National Wildlife Refuge.* Fishing is permitted on designated areas of the refuge subject to the following conditions:

(1) All refuge waters are open to fishing from April 1 through September 30.

(2) Fishing is restricted to the shoreline of Lake Texoma and Big Mineral Creek from October through March 31. Lines may not be attached to rubber bands, sticks, poles, trees or other fixed objects and are not permitted in refuge ponds or impoundments.

(3) Trotlines may be strung between anchored floats only. Lines may not be attached to rubber bands, sticks, poles, trees or other fixed objects and are not permitted in refuge ponds or impoundments.

(4) Fishing is not permitted from bridges or roadways.

13. Section 33.51 is amended by revising paragraphs (b)(1) through (2) and adding paragraphs (b)(4) through (5) to read as follows:

**§ 33.51 Washington.**

(b) *McNary National Wildlife Refuge.*

* * *

(1) Fishing is permitted on the Hanford Islands and Strawberry Island Divisions from July 1 through September 30.

(2) Fishing is permitted on the McNary Division from February 1 through September 30.

* * * * *

(4) Fishing is permitted only from sunrise to sunset.

(5) Bowfishing is prohibited.

* * * * *

Dated: February 13, 1989.

**Becky Norton Dunlop,**

*Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 89–5620 Filed 3–13–89; 8:45 am]

BILLING CODE 4310–55–M

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 260

**[Docket No. 90131–9031]**

### Inspection and Certification; Fees and Charges

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of 1989 inspection fees.

**SUMMARY:** NOAA announces a change in the established rates for voluntary Department of Commerce fishery product grading and certification services consistent with its intent to provide inspection services at the lowest appropriate cost. The change results from a pay raise of 4.1 percent for Federal employees effective January 1, 1989, and increases in other operating costs such as rent, communications, and

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utilities. The change represents an increase of 4.9 percent in the basic hourly rates.

**EFFECTIVE DATE:** January 1, 1989.

**FOR FURTHER INFORMATION CONTACT:** Richard V. Cano, Division Chief, Inspection Services Division, National Marine Fisheries Service, Silver Spring, MD 20910, Phone 301–427–2355.

**SUPPLEMENTARY INFORMATION:** Regulations at 50 CFR 260.70 authorize the Secretary of Commerce to review and revise annually the rates for voluntary fishery product inspection, grading, and certification services by publishing a notice of fee changes in the **Federal Register**. The revised hourly rates reflect a 4.1 percent salary raise for Federal employees and increases in other operating costs such as rent, communications, and utilities. The basic hourly rates are increased by 4.9 percent. Below is the schedule of fees effective January 1, 1989. The procedure to calculate the Type II hourly fee has been changed by adding 40 percent, rather than 50 percent, to the Type I fee. This change will be reflected in an amendment to the regulations. The fees outlined for the State of Alaska are for services provided by cross-licensed State of Alaska inspectors. Charges for services provided in Alaska by NMFS inspectors will be at the rates as specified, plus cost of living allowances.

(a) Type I—Official establishment and product inspection—contract basis:

| | Per hour |
|---|---|
| Regular (except Alaska) | $28.75 |
| Overtime (except Alaska) | 43.15 |
| Sunday and legal holidays (2 hrs. minimum) (except Alaska) | 57.50 |

(1) The contracting party will be charged at an hourly rate of $28.75 per hour for regular time; (2) $43.15 per hour for overtime in excess of 8 hours per shift per day; and (3) $57.50 per hour for Sunday and national legal holidays for services performed by inspectors at official establishment(s) operating under Federal inspection. In addition to any hourly service charge, a night differential fee equal to 10 percent of the employee's hourly salary will be charged for each hour of service provided after 6:00 p.m. and before 6:00 a.m. The contracting party will be billed monthly for services rendered in accordance with contractual provisions at the rates prescribed in this section. Products designated in a contract will be inspected during processing at the hourly rate for regular time, plus overtime, when appropriate.

(b) Type II—Lot inspection—Official and unofficially drawn samples:

| | Per hour |
|---|---|
| Regular (except Alaska) | $40.25 |
| Overtime (except Alaska) | 60.40 |
| Sunday and legal holidays (2 hrs. minimum) (except Alaska) | 80.50 |
| Minimum fee (except Alaska) | 30.20 |

(1) For lot inspection services performed between the hours of 7:00 a.m. and 5:00 p.m., Monday through Friday—$40.25 per hour.

(2) For lot inspection services performed at times Monday through Friday other than 7:00 a.m. to 5:00 p.m., and on Saturdays (2 hrs. minimum)—$60.40 per hour.

(3) Sunday and national legal holidays (2 hrs. minimum)—$80.50 per hour.

(4) The minimum service fee to be charged and collected for inspection of any lot or lots of products requiring less than 1 hour will be $30.20.

(c) Type III—Miscellaneous inspection and consultative service.

When any inspection or related service such as, but not limited to, initial and final establishment surveys, appeal inspections, sanitation evaluation, Sanitary Inspected Fish Establishment (SIFE) inspections, sampling, product evaluation, and label and product specification review, requires charges to which the foregoing sections are clearly inapplicable, charges will be based on the rates set forth below:

| | Per hour |
|---|---|
| Regular (except Alaska) | $35.95 |
| Overtime (except Alaska) | 53.95 |
| Sunday and legal holidays (2 hrs. minimum) (except Alaska) | 71.90 |
| Minimum fee (except Alaska) | 27.00 |

(1) For miscellaneous inspection and consultative services performed between the hours of 7:00 a.m. and 5:00 p.m., Monday through Friday—$35.95 per hour.

(2) For miscellaneous inspection and consultative services performed Monday through Friday other than 7:00 a.m. to 5:00 p.m., and on Saturdays (2 hrs. minimum)—$53.95 per hour.

(3) For miscellaneous inspection and consultative services performed on Sunday and national legal holidays (2 hrs. minimum)—$71.90 per hour.

(4) The minimum service fee to be charged and collected for miscellaneous inspection and consultative services requiring less than 1 hour will be $27.00.

(d) The hourly rates for the State of Alaska as performed by cross-licensed State of Alaska inspectors are as follows.

Charges for services provided in Alaska by NMFS inspectors will be at the rates stated previously, plus cost of living allowances. For Type I inspection, in addition to any hourly service charge, a night differential fee equal to 10 percent of the employee's hourly salary will be charged for each hour of service provided after 6:00 p.m. and before 6:00 a.m.

STATE OF ALASKA

| | Area | | |
|---|---|---|---|
| | Aleutian chain | South East and South Central; Anchorage, Kenai, Juneau, Ketchikan | Remainder of Alaska; Kodiak, Bristol Bay, Dillingham |
| Type I | (per hour) | (per hour) | (per hour) |
| Regular time | $36.45 | $30.05 | $32.20 |
| Overtime | 50.30 | 41.50 | 44.45 |
| Sunday and legal holidays | 62.70 | 51.70 | 55.40 |
| Type II | | | |
| Regular time | 46.30 | 38.60 | 40.90 |
| Overtime | 63.90 | 55.10 | 58.10 |
| Sunday and legal holidays | 83.80 | 71.00 | 75.25 |
| Minimum | 38.00 | 31.85 | 33.55 |
| Type III | | | |
| Regular time | 40.45 | 33.65 | 35.75 |
| Overtime | 53.80 | 45.10 | 48.30 |
| Sunday and legal holidays | 69.20 | 57.90 | 62.60 |
| Minimum fee | 36.00 | 29.95 | 32.20 |

(e) Analytical services: Applicants requesting specific analyses to be performed in a National Marine Fisheries Service laboratory will be charged at the prevailing rate. Analyses performed in a private laboratory will be charged at the current rate of that laboratory. Charges based on these fees will be in addition to any hourly rates charged for lot, miscellaneous, and consultative inspection service as well as to any hourly rates charged for inspection services provided under a contract at official establishments. A surcharge of 20 percent of the total charges for analytical services will be charged for administrative purposes.

**Classification**

This action is taken under the authority of 50 CFR 260.70 and complies with Executive Order 12291. It is not subject to the requirements of the



Regulatory Flexibility Act. It does not contain any information request as defined in the Paperwork Reduction Act. (16 U.S.C. 742e and U.S.C. 1622, 1624.).

Dated: January 4, 1989.

**James E. Douglas, Jr.,**

*Deputy Assistant to the Administrator for Fisheries, National Marine Fisheries Service.*

[FR Doc. 89–5998 Filed 3–13–89; 8:45 am]

BILLING CODE 3510–22–M

## 50 CFR Part 655

**[Docket No. 81020–9009–2]**

## Atlantic Mackerel, Squid, and Butterfish Fisheries

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of Atlantic mackerel specification increase.

**SUMMARY:** NOAA issues this notice to increase the initial optimum yield (IOY) specification for Atlantic mackerel as required by the regulations governing this fishery. This increase is assigned to the total allowable level of foreign fishing (TALFF) specification. Regulations governing the Atlantic mackerel fishery require publication in the **Federal Register** of any adjustments, accompanied by reasons for such adjustments. This action is intended to foster the goal of the Fishery Management Plan for the Atlantic Mackerel, Squid, and Butterfish Fisheries (FMP) by creating benefits for the U.S. fishing industry.

**DATES:** Effective March 9, 1989. Comments are invited until March 24, 1989.

**FOR FURTHER INFORMATION CONTACT:** Kathi L. Rodrigues, 508–281–3600, ext. 324.

**SUPPLEMENTARY INFORMATION:** The regulations at § 655.21(b)(2)(v) provide that initial annual specifications may be adjusted by the Regional Director, NMFS Northeast Region, after consulting with the Mid-Atlantic Fishery Management Council (Council). The Regional Director may adjust the IOY at any time during the fishing year if new information indicates that the IOY should be increased to produce maximum net benefits to the United States. The determination that maximum benefits will accrue is based upon consideration of factors outlined in the FMP.

Under 50 CFR 655.22, final initial specifications for Atlantic mackerel were published on January 19, 1989, (54 FR 2134) for the fishing year January 1 through December 31, 1989. The IOY for Atlantic mackerel resulted in a TALFF set at 30,000 metric tons (mt) and joint venture processing (JVP) set at 10,000 mt. The domestic mackerel industry, still considered in the stages of development, derives benefits from the purchase requirements associated with TALFF allocations. Specifically, foreign nations are required to purchase 3 mt of JVP and 1 mt of U.S processed product for every 9 mt of TALFF allocated.

To ensure that purchase requirements are met, initial allocations of TALFF were made in increments of 25 percent and JVP in 50 percent increments. Additional allocations were to be released when evidence was provided that these conditions were met.

In February, the Regional Director determined that four foreign nations had successfully met purchase requirements that warranted increases in IOY, domestic annual harvesting (DAH), JVP and TALFF (54 FR 7777, February 23, 1989). Additional purchase conditions have been successfully met by two foreign nations and the Regional Director, after consultation with the Council, has determined that an increase of 10,000 mt to the Atlantic mackerel IOY would benefit the domestic industry by continuing the viability of joint venture operations.

In accordance with § 655.22(f), notice is hereby given that the IOY for Atlantic mackerel of 91,000 mt is increased by 10,000 mt to a total of 101,000 mt. TALFF is increased by 10,000 mt from 41,000 mt to 51,000 mt.

**Classification**

This action is authorized by 50 CFR Part 655 and complies with Executive Order 12291.

Pursuant to 5 U.S.C. 551(d), in view of the need to avoid disruption of the foreign fishery and to maximize benefits to the domestic industry, NOAA has determined for good cause to waive the delay in the effective date of this notice.

**List of Subjects in 50 CFR Part 655**

Fisheries, Reporting and recordkeeping requirements.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: March 9, 1989.

**Alan Dean Parsons,**

*Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 89–5822 Filed 3–9–89; 1:21 pm]

BILLING CODE 3510–22–M

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VOL 54 ISS 48 MR 14 1989 UMI



# Proposed Rules

Federal Register
Vol. 54, No. 48
Tuesday, March 14, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 31

[Docket No. PRM-31-4]

### GENE-TRAK Systems; Withdrawal of Petition For Rulemaking

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Petition for rulemaking; withdrawal.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is withdrawing, at the petitioner's request, a petition for rulemaking filed by GENE-TRAK System (PRM-31-4). The petition for rulemaking requested that the NRC established that 100 microcuries of phosphorus-32 used in GENE-TRAK Salmonella and Lisateria assays by a food laboratory is an exempt quantity under a general license according to 10 CFR 31.11. The petitioner is withdrawing the petition because of the introduction of new products and resulting changes in marketing strategy.

**ADDRESSES:** A copy of the petitioner's letter requesting withdrawal of the petition is available for public inspection or copying for a fee in the NRC Public Document Room, 2120 L Street, NW., lower level of the Gelman Building, Washington, DC 20555. A single copy of the petitioner's leter requesting the withdrawal of the petition may be obtained by writing the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

**FOR FURTHER INFORMATION CONTACT:** Michael T. Lesar, Acting Chief, Rules Review Section, Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301-492-7758 or Toll Free: 800-368-5642.

Dated at Rockville, Maryland, this 9th day of March 1989.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

*Secretary of the Commission.*

[FR Doc. 89-5823 Filed 3-13-89; 8:45 am]

BILLING CODE 7590-01-M

## DEPARTMENT OF COMMERCE

### 15 CFR Part 1150

[Docket No. 80348-8048]

### Marking of Toy, Look-Alike and Imitation Firearms

**AGENCY:** Technology Administration, Commerce.

**ACTION:** Proposed rule.

**SUMMARY:** The Technology Administration of the United States Department of Commerce is today proposing rules to implement section 4 of the Federal Energy Management Improvement Act of 1988 ("Act") (Pub. L. No. 100-615) which prohibits the manufacturing, entering into commerce, shipping, transporting, or receipt of any toy, look-alike, or imitation firearm ("device") unless such device contains, or has affixed to it, a marking approved by the Secretary of Commerce. The proposed rule sets forth the method of marking established by section 4(b)(1) of the Act, an alternative method of marking when a device is not capable of being marked by the method established by section 4(b)(1), and three alternative methods of marking which may be used in all instances. In addition, the rule would waive marking requirements for any toy, look-alike, or imitation firearm that will be used only in the theatrical, movie, or television industries. Comments from the public are invited.

**DATE:** Comments on this proposed rule are invited and will be considered if received in writing no later than April 13, 1989.

**ADDRESSES:** Comments on the proposed rule should be submitted in writing to: The Under Secretary for Technology, Room 4203, Herbert Hoover Building, United States Department of Commerce, Washington, DC 20230. The public record for this rulemaking which will include all comments received is available for inspection and copying in the Department of Commerce's Central Reference and Records Inspection Facility, 14th Street between E Street and Constitution Avenue, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Dr. Stanley I. Warshaw, Associate Director for Industry and Standards, National Institute of Standards and Technology, (301) 975-4000, FAX (301) 926-0647.

**SUPPLEMENTARY INFORMATION:** Section 4(a) of the Federal Energy Management Improvement Act of 1988 provides that "[i]t shall be unlawful for any person to manufacture, enter into commerce, ship, transport, or receive any toy, look-alike, or imitation firearm unless such firearm contains, or has affixed to, a marking approved by the Secretary of Commerce * * *." 15 U.S.C. 5001(a)]. Section 4(b)(1) of the Act establishes as an initial acceptable marking a permanently affixed, blaze orange plug inserted in the barrel of the toy, look-alike, or imitation firearm, recessed no more than 6 millimeters from the muzzle end of the barrel, and made an integral part of the device. 15 U.S.C. 5001(b)(1). Section 4(b)(2) authorizes the Secretary to approve an alternative marking for any toy, look-alike, or imitation firearm not capable of being marked with the requisite blaze orange plug and to waive the marking requirements for any device that will be used only in the theatrical, movie, or television industries. 15 U.S.C. 5001(b)(2). Section 4(b)(3) authorizes the Secretary to adjust or change the marking system established pursuant to sections 4(b) (1) & (2), after consulting with interested persons. 15 U.S.C. 5001(b)(3).

The Technology Administration held a public workshop at the National Institute of Standards and Technology, Gaithersburg, Maryland, on February 9, 1989, on the marking requirements of the Act. (See 53 FR 50987, Dec. 19, 1988). The workshop was attended by forty representatives of trade associations, manufacturers, importers, distributors and Federal agencies. Many attendees brought samples of toy, look-alike, and imitation firearms. Although not requested, written comments were submitted in advance and subsequent to the workshop. All written comments received will be placed in the record of this rulemaking and will be available for public inspection.

Based on the comments received and consultations at the workshop and elsewhere with trade associations, manufacturers, importers, distributors, collectors, retailers, police chiefs, and Federal agencies, this proposed rule would maintian the blaze orange plug marking established by section 4(b)(1) and establish an alternative system of marking for water guns, air-soft guns, light emitting guns or other ejecting toy, look-alike or imitation firearms which, as such, can not be marked with a plug in the muzzle end of the barrel because it would restrict the opening necessary to discharge such things as water, non-metallic projectiles, and light. In such an instance, the required marking would be a blaze orange marking permanently affixed to the exterior surface of the barrel and covering the circumference of the barrel and extending from the muzzle end for a depth of at least 6 millimeters. The proposed rule also would adjust the statutory marking system by permitting three other methods of marking for use in the alternative irrespective of whether the device could be marked with the blaze orange plug or blaze orange muzzle marking. The three alternatives would be to mark the device at manufacture by: (1) Constructing it entirely of transparent or translucent materials which permit unmistakable observation of the device's complete contents; (2) permanently coloring the entire exterior surface of the device bright red, bright orange, bright yellow, bright green, or bright blue, either singly or as the predominant color in combination with other colors in any pattern; or (3) permanently coloring the entire exterior surface of the device predominantly in white in combination with one or more of the colors bright red, bright orange, bright yellow, bright green, or bright blue in any pattern. These alternatives were selected because they represent standard industry practice for most toy, look-alike, and imitation firearms and, in the opinion of those consulted, are sufficient to identify the device as a toy, look-alike, or imitation firearm rather than as a real firearm. Finally, the proposed rule would waive marking requirements for any toy, look-alike, or imitation firearm that only will be used in the theatrical, movie, or television industries.

Section 4(c) of the Act specifically excludes from the Act's marking requirements or any marking requirements established thereunder look-alike, non-firing, collector replicas of antique firearms designed, manufactured, and produced prior to 1898, and traditional B-B, paint-ball, or pellet-firing air guns that expel a projectile through the force of air pressure. 15 U.S.C. 5001(c). However, it is clear from the legislative history of section 4 that it was the intent of the Congress to also exclude from marking requirements traditional B-B, paint-ball, and pellet-firing air guns that expel a projectile through the force of compressed gas or mechanical spring action, or combination thereof. Accordingly, the proposed rule would exclude from marking requirements look-alike, non-firing, collector replicas of antique firearms designed, manufactured, and produced prior to 1898, and traditional B-B, paint-ball, or pellet-firing air guns that expel a projectile through the force of compressed air, compressed gas or mechanical spring action, or any combination thereof.

**Additional Information:**

*Executive Order 12291*

The Under Secretary for Technology has determined that this proposed rule is not a major rule within the meaning of section 1(b) of Executive Order 12291 because it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies or geographic regions; or,

(3) Significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Therefore, preparation of a Regulatory Impact Analysis is not required under Executive Order 12291.

*Executive Order 12612*

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

*Executive Order 12372*

This proposed rule does not involve Federal financial assistance, direct Federal development, or the payment of any matching funds from a state or local government. Accordingly, the requirements of Executive Order 12372 are not applicable to this proposed rule.

*Executive Order 12662*

The Under Secretary for technology has determined that a 75-day comment period otherwise required under Executive Order 12662 would frustrate the achievement of ligitimate domestic objectives within the meaning of section (1)(b)(1) of Executive Order 12662. A 30-day comment period is being allowed.

*Executive Order 12630*

This proposed rule, if adopted, would not pose significant takings implications within the meaning of Executive Order 12630.

*Regulatory Flexibility Act*

The General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities because the alternative markings conform to existing industry practices for most toy, look-alike, and imitation firearms, thus reducing the rule's impact to only where such practices are not followed. Thus, As a result, a Regulatory Flexibility Analysis is not required to be prepared under the Regulatory Flexibility Act.

*Paperwork Reduction Act*

This proposed rule does not contain a collection of information requirement subject to the requirements of the Paperwork Reduction Act.

*National Environmental Policy Act*

This proposed rule, if adopted, will not significantly affect the quality of the human environment. Therefore, an environmental assessment or Environmental Impact Statement is not required to be prepared under the National Environmental Policy Act of 1969.

**List of Subjects in 15 CFR Part 1150**

Commerce, Business and industry, Labeling, Hobbies, Imports, Exports, Shipping, Toys, Transportation, Freight.

Date: March 7, 1989.

**Ernest Ambler,**

*Acting Under Secretary for Technology.*

For the reasons set forth in the preamble, it is proposed that Title 15, Subtitle B of the Code of Federal Regulations be amended by adding a Chapter XI, consisting of Part 1150, to read as follows:

**CHAPTER XI—TECHNOLOGY ADMINISTRATION, DEPARTMENT OF COMMERCE**

**PART 1150—MARKING OF TOY, LOOK-ALIKE AND IMITATION FIREARMS**

Sec.

1150.1 Applicability.
1150.2 Prohibitions.
1150.3 Approved markings.

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Sec.
1150.4 Waiver.
1150.5 Preemption.
Authority: 15 U.S.C. 5001.

**§ 1150.1 Applicability.**

This part applies to toy, look-alike, and imitation firearms ("devices") having the general appearance, shape, and/or configuration of a firearm and produced or manufactured and entered into commerce on or after May 5, 1989 other than look-alike, non-firing, collector replicas of antique firearms modelled on a firearm designed, manufactured, and produced prior to 1898, and traditional B–B, paint-ball, or pellet-firing air guns that expel a projectile through the force of compressed air, compressed gas or mechanical spring action, or any combination thereof, as described in ASTM Standard F 589–85.

**§ 1150.2 Prohibitions.**

No person shall manufacture, enter into commerce, ship, transport, or receive any toy, look-alike, or imitation firearm ("device") covered by this part as set forth in § 1150.1 unless such device contains, or has affixed to it, one of the markings set forth in § 1150.3, or unless this prohibition has been waived by § 1150.4.

**§ 1150.3 Approved markings.**

The following markings are approved by the Secretary of Commerce:

(a) A blaze orange (*Federal Standard 595–A, Jan. 1984, color no. 12197*) solid plug permanently affixed to the muzzle end of the barrel as an integral part of the entire device and recessed no more than 6 millimeters from the muzzle end of the barrel.

(b) For any water gun, air-soft gun, light-emitting gun or other ejecting toy, look-alike, or imitation firearm having a opening in the muzzle end of the barrel to discharge such things as water, non-metallic projectiles, and light, a blaze orange (*Federal Standard 595–A, Jan. 1984, color no. 12197*) marking permanently affixed to the exterior surface of the barrel, covering the circumference of the barrel from the muzzel end for a depth of at least 6 millimeters.

(c) Construction of the device entirely of transparent or translucent materials which permit unmistakable observation of the device's complete contents.

(d) Coloration of the entire exterior surface of the device in bright red, bright orange, bright yellow, bright green, or bright blue, either singly or as the predominant color in combination with other colors in any pattern.

(e) Coloration of the entire exterior surface of the device predominantly in white in combination with one or more of the colors bright red, bright orange, bright yellow, bright green, or bright blue in any pattern.

**§ 1150.4 Waiver.**

The prohibitions set forth in § 1150.2 are waived for any device that only will be used in the theatrical, movie, or television industries.

**§ 1150.5 Preemption.**

In accordance with section 4(g) of the Federal Energy Management Improvement Act of 1988 (15 U.S.C. 5001(g)), the provisions of that Act and of this part supersede any provisions of State or local laws or ordinances which provide for markings or identification inconsistent with the provisions of section 4 of that Act or of this part.

[FR Doc. 89–5675 Filed 3–13–89; 8:45 am]
BILLING CODE 3510–13–M

## SECURITIES AND EXCHANGE COMMISSION

**17 CFR Part 240**

**[Release No. 34–26590; File No. S7–8–89]**

## Reporting of Beneficial Ownership in Publicly-Held Companies

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Securities and Exchange Commission ("Commission") today is publishing for comment proposals to amend the rules relating to the reporting of beneficial ownership in publicly-held companies. The proposals are intended to improve the effectiveness of the beneficial ownership disclosure scheme, while at the same time reducing the reporting obligations of passive investors.

**DATE:** Comments should be received on or before May 15, 1989.

**ADDRESS:** Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comment letters should refer to File No. S7–8–89. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

**FOR FURTHER INFORMATION CONTACT:** David A. Sirignano or Richard E. Baltz at (202) 272–3097, Office of Tender Offers, Division of Corporation Finance.

**SUPPLEMENTARY INFORMATION:** The Commission is proposing for comment amendments to Rules 13d–1,[1] 13d–2,[2] and 13d–7,[3] and Schedules 13D [4] and 13G.[5]

### I. Executive Summary

The beneficial ownership reporting requirements embodied in sections 13(d) [6] and 13(g) [7] of the Securities Exchange Act of 1934 ("Exchange Act") [8] and the regulations adopted thereunder [9] are intended to provide to investors and to the subject issuer information about accumulations of securities that may have the ability to change or influence control of the issuer. The statutory and regulatory framework also establishes a comprehensive reporting system for gathering and disseminating information about the ownership of equity securities.

These provisions require, subject to exceptions, that any person who acquires more than five percent of a class of equity securities registered under section 12 of the Exchange Act [10] and other specified equity securities (collectively, "subject securities") [11] report such acquisition on Schedule 13D within 10 days. Persons holding more than five percent of a class of subject securities at the end of the calendar year, but not required to report on Schedule 13D, must file a short-form Schedule 13G within 45 days after December 31. These Schedule 13G filers include persons exempt from the

[1] 17 CFR 240.13d–1.
[2] 17 CFR 240.13d–2.
[3] 17 CFR 240.13d–7.
[4] 17 CFR 240.13d–101.
[5] 17 CFR 240.13d–102.
[6] 15 U.S.C. 78m(d).
[7] 15 U.S.C. 78m(g).
[8] 15 U.S.C. 78a *et seq.*
[9] Regulation 13D–G, Rule 13d–1 *et seq.* [17 CFR 240.13d–1 *et seq.*]
[10] 15 U.S.C. 78*l*.
[11] Acquisitions of equity securities that would have been registered under Section 12 except for the insurance company exemption in section 12(g)(2)(G) [15 U.S.C. 78*l*(g)(2)(G)], or that are issued by a closed-end investment company registered under the Investment Company Act of 1940 [15 U.S.C. 80a–1 to 80a–52], also are subject to the beneficial ownership reporting requirements. In addition, if a person has the right to acquire beneficial ownership of a subject security within 60 days (A) through the exercise of any warrant, option, or right, (B) through the conversion of a security, (C) pursuant to the power to revoke a trust, discretionary account or similar arrangement, or (D) pursuant to the automatic termination of a trust, discretionary account, or similar arrangement, such person shall be deemed to be the beneficial owner of the subject securities which may be acquired through the exercise or conversion of such security or power. If a security or power specified by (A), (B), (C), or (D) is acquired with the purpose or effect of changing or influencing control or as a participant in a transaction having such a purpose or effect, the person is deemed a beneficial owner of the subject security immediately upon acquisition. Rule 13d–3(d)(1)(i) [17 CFR 240.13d–3(d)(1)(i)].



requirement of Section 13(d) [12] as well as specified institutional investors holding securities in the ordinary course of business and not with a control purpose.[13]

Based upon its experience in administering the beneficial ownership rules, the Commission is proposing changes to improve the meaningfulness to investors of filings on Schedule 13D, while at the same time reducing the reporting obligations of passive non-institutional investors, who would become entitled to use the short-form Schedule 13G instead of the Schedule 13D.[14] The Commission preliminarily believes that Schedule 13G provides adequate information when the filing person has a passive investment purpose—that is, when the acquisition is not for the purpose, and does not have the effect, of changing or influencing the control of the issuer, and the person is not participating in a transaction having such a purpose or effect.

The proposed amendments would alter the present beneficial ownership reporting scheme in a number of ways. In addition to the two current categories of Schedule 13G filers (institutional investors and persons reporting exempt acquisitions), a third category (passive non-institutional investors) would be created, significantly expanding the classes of persons eligible to file on the short-form. An institutional investor would continue to be able to file a short-form report on Schedule 13G 45 days after the year's end, provided that the requirements of current Rule 13d–1(b)(1) are satisfied and the institutional investor's beneficial ownership does not equal or exceed 20 percent of the class at any time. Any other person who acquires or holds, with a passive investment purpose, more than five percent (but not 20 percent or more) of a class of subject securities also would be permitted to file a short-form report on Schedule 13G, rather than the long-form report on Schedule 13D currently required for most investors, within 10 days after the acquisiton. Exempt acquisitions also would be reported on Schedule 13G within a 10-day period but would not be subject to the 20 percent or more limitation.

Both institutional and non-institutional Schedule 13G filers that determined that they could no longer make the passive investment purpose certification would be required to file a Schedule 13D within 10 days of a change in purpose. A non-exempt acquisition causing any person, including an institutional investor, to own beneficially 20 percent or more of a class of subject securities also would disqualify that person from filing on Schedule 13G and trigger a requirement for a Schedule 13D filing within 10 days. An investor required to file a Schedule 13D because it either had changed its investment purpose or acquired 20 percent or more of a class of subject securities would be subject to a waiting period ("cooling-off period") during which such person could not vote or direct the voting of the subject securities, or acquire an additional beneficial ownership interest in any securities either of the issuer or of any person controlling the issuer. An investor required to file a Schedule 13D because it acquired 20 percent or more of a class of subject securities would be subject to a cooling-off period only until the filing of a Schedule 13D. However, an investor that must file a Schedule 13D because of a change in investment purpose would be subject to a cooling-off period from the time of the change in investment intent until the expiration of the tenth day from the date of the filing of a Schedule 13D. The current cooling-off period applicable only to institutional investors [15] would not be retained.

As is required currently, amendments to disclose any other changes in the information reported on Schedule 13G would be required only on an annual basis,[16] so long as beneficial ownership does not exceed 10 percent of the class of subject securities, calculated at the end of the month when that ownership level is reached.[17]

A chart summarizing the current reporting obligations and the effects of the proposed rule amendments appears below in Part III.F.

Finally, the Commission is proposing technical amendments to the beneficial ownership rules. First, the proposed amendments would require that a copy of a Schedule 13D or 13G, or amendments thereto, filed with respect to holdings of a class of securities quoted on the National Association of Securities Dealers Automated Quotation System ("NASDAQ") be provided to the National Association of Securities Dealers, Inc. ("NASD") to parallel the requirements for exchange-traded securities. Second, proposed amendments to Rule 13d–1(c) would delete as no longer necessary the grandfather provisions adopted in 1978. Additional related and clarifying amendments also are proposed.

### II. Background

As part of the Williams Act Amendments of 1968,[18] Congress added section 13(d) to the Exchange Act to require any person (or group of persons) who, as a result of an acquisiton, becomes the beneficial owner of more than five percent of a class of equity securities registered under section 12 of the Exchange Act or other subject securities [19] to send to the issuer of the security and to each exchange on which the security is traded and to file with the Commission a report disclosing the acquistion and other information about the acquiror and its plans or proposals within 10 days after the acquisition. Section 13(d) was intended to provide information to the public and the subject company about accumulations of its equity securities in the hands of persons who then would have the potential to change or influence control of the issuer.[20]

Certain types of acquisitions unrelated to a potential change or influence of control are exempt from

[12] This category consists of persons filing on Schedule 13G because their acquisitions are statutorily or administratively exempt (collectively, "exempt acquisitions") from reporting on Schedule 13D. *See* Part II for a summary of the exempt acquisitions.
[13] Such persons include a broker or dealer registered under section 15(b) of the Exchange Act [15 U.S.C. 78o(b)], a bank as defined in section 3(a)(6) of the Exchange Act [15 U.S.C. 78c(a)(6)], an insurance company as defined in Section 3(a)(9) of the Exchange Act [15 U.S.C. 78c(a)(9)], an investment company registered under Section 8 of the Investment Company Act of 1940 [15 U.S.C. 80a–8], an investment adviser registered under section 203 of the Investment Advisers Act of 1940 [15 U.S.C. 80b–1 *et seq.*], an employee benefit plan or pension fund that is subject to the provisions of Employee Retirement Income Security Act [codified principally in 29 U.S.C. 1001–1461], and related holding companies and groups (collectively, "institutional investors"). Rule 13d–1(b)(1)(ii) [17 CFR 240.13d–1(b)(ii)].
[14] The Commission also has recommended to Congress that the period for filing an initial beneficial ownership report be reduced from ten days to five business days and that the filing person be prohibited from acquiring additional securities until the filing is made with the Commission. In addition, the Commission has endorsed the imposition of civil penalties for violations of section 13(d). *See* Statement of David S. Ruder, Chairman of the Securities and Exchange Commission, Before the House Subcommittee on Telecommunications and Finance, September 17, 1987, and Statement of Charles C. Cox, Acting Chairman of the Securities and Exchange Commission, Before the Senate Committee on Banking, Housing and Urban Affairs, June 23, 1987.
[15] Rule 13d–1(b)(3)(ii) [17 CFR 240.13d–1(b)(3)(ii)].
[16] Rule 13d–2(b) [17 CFR 240.13d–2(b)].
[17] Rule 13d–1(b)(2) [17 CFR 240.13d–1(b)(2)]. Under the proposal, this provision would apply to both institutional and non-institutional investors, but not to persons reporting exempt acquisitions.
[18] Pub. L. 90–439, 82 Stat. 454, 15 U.S.C. 78m(d), 78m(e), 78n(d), 78n(e) and 78n(f).
[19] *See* n. 11 *supra*.
[20] S. Rep. No. 550, 90th Cong., 1st Sess. 7 (1967); H.R. Rep. No. 1711, 90th Cong., 2nd Sess. 8 (1968); and Hearings on S. 510 before the Subcomm. on Securities of the Senate Comm. on Banking and Currency, 90th Cong., 1st Sess. (1967).

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reporting by statute, regulation and Commission interpretation. Thus, persons who acquire not more than two percent of a class of subject sercurities within a 12-month period are exempted by Section 13(d)(6)(B).[31] Section 13(d)(6)(C) [32] exempts from reporting acquisitions by the issuer of its own securities. Section 13(d)(6)(A) [33] exempts from reporting acquisitions of subject securities acquired in a stock-for-stock exchange which is registered under the Securities Act of 1933,[34] because Congress believed at that time that shareholders of the issuer would, through the receipt of a prospectus, receive all material information necessary to make an informed decision whether to hold stock or exchange it for the stock of the company making the exchange offer.[35] Section 13(d)(6)(D) [36] empowers the Commission to exempt other acquisitions or proposed acquisitions not entered into with a purpose or effect of changing or influencing control of the issuer. The Commission has used this authority to permit institutional investors acquiring securities in the ordinary course of business to file a short-form Schedule 13G.[37]

The beneficial ownership reporting provisions apply only to acquisitions of voting securities.[38] Because of the reduction in the reporting threshold, persons who acquire more than five percent, but less than 10 percent, or a subject security before January 1, 1970, also are not required to file a Schedule 13D.[39] In addition, the Commission has expressed the view that section 13(d) does not apply to acquisitions occurring before the securities are registered pursuant to section 12 of the Exchange Act.[40]

[31] 15 U.S.C. 78m(d)(6)(B).

[32] 15 U.S.C. 78m(d)(6)(C).

[33] 15 U.S.C. 78m(d)(6)(A).

[34] 15 U.S.C. 77a *et seq.*

[35] S. Rep. No. 550 at 3; H.R. Rep. No. 1711 at 3.

[36] 15 U.S.C. 78m(d)(6)(D).

[37] Release No. 34–14692 (April 28, 1978) [43 FR 18484].

[38] Rule 13d-1(d) [17 CFR 240.13d-1(d)].

[39] As originally enacted, the Williams Act required reporting by any person or group acquiring more than 10 percent of an equity security. The threshold was reduced to more than five percent in 1970. *See* Pub. L. No. 91–567, §§ 1, 2, 84 Stat. 1497.

[40] Release No. 34–13346 (November 20, 1976) [43 FR 55731, 55742]. Securities acquired before the effective date of the registration statement, however, are included in the calculation of the 2 percent exemption under section 13(d)(6)(B).

In addition, the staff has expressed the view that holdings by non-control persons of more than five percent resulting from a decrease in the outstanding number of shares also are not reportable. Because the person has not taken any action to increase its beneficial ownership, no acquisition has occurred for the purposes of Rule 13d-1(a). Acquisitons of additional securities are subject to the exemption in section 13(d)(6)(B). *See Harold Martin* (available October 4, 1979).

The exemptions created gaps in the beneficial ownership reporting scheme permitting persons to own more than five percent of a class of subject securities without reporting such ownership. In 1977, Congress enacted section 13(g) of the Exchange Act [41] to provide for a comprehensive system of disclosure of ownership interests.[42] Section 13(g) requires any person who is directly or indirectly the beneficial owner or more than five percent of a class of subject securities at the end of the calendar year, except for the issuer of the securities, to send to the issuer and file with the Commission a statement of Schedule 13G. Section 13(g) was intended to improve disclosure to issuers and the marketplace and to "supplement [section 13(d)] by providing legislative authority for certain additional disclosure requirements that in some cases could not be imposed administratively." [43] On the face, section 13(g) woudld require a filing regardless of whether a person was required to report ownership under other sections of the Exchange Act; however, the Commission was directed "to take such steps as are necessary and appropriate in the public interest to achieve centralized reporting of the information, to avoid unnecessary duplicative reporting, and to minimize the compliance burden on persons required to report." [44]

Pursuant to its rulemaking authority under sections 13(d) and 13(g), the Commission adopted a comprehensive system of beneficial ownership reporting. Unless otherwise exempt, all persons acquiring more than five percent of a class of voting subject securities must file a Schedule 13D with the Commission within 10 days of the acquisition disclosing in detail information concerning the purchaser, the purpose of the acquisition and any plans or proposals of the purchaser for the issuer.[45] The Schedule 13D must be amended promptly to disclose any material changes in the information reported.[46]

Pursuant to section 13(g), the Commission adopted a short-term beneficial ownership report. This report must be filed by holders of mroe than five percent of a class of equity securities who are exempt from filing a Schedule 13D.[47] Schedule 13G requires disclosure of such person's identity, residence, citizenship, and the number and description of the shares in which such person has an interest, including the nature of such interest. The Schedule 13G must be filed within 45 days after the close of the calendar year and amended on an annual basis if the percentage of the class of subject securities beneficially owned as of December 31 remains more than five percent.[48]

In addition to persons reporting exempt acquisitions, institutional investors that can represent that the securities were acquired in the ordinary course of business and not with the purpose or effect of changing or influencing control of the issuer also may file a Schedule 13G rather than a Schedule 13D.[49] An institutional investor is permitted to amend on an annual basis, unless its beneficial ownership exceeds 10 percent of the outstanding securities, in which case an amendment must be filed within 10 days after the close of the first month in which the interest exceeds 10 percent, and thereafter within 10 days after the end of the month if a five percent change occurs, computed as of the last day of the month.[50] If such an institutional investor can no longer make the passive investment representation, if must file a Schedule 13D within 10 days and refrain from voting its securities or acquiring additional securities of the same class for 10 days following the filing of the Schedule 13D.[51]

[41] 15 U.S.C. 78m(d), 78n(d).

[42] S. Rep. No. 114, 95th Cong. 1st Sess. 13 (1977).

[43] *Id.*

[44] Rule 13d–1(a) [17 CFR 240.13d-1(a)].

[45] Rule 13d–2(a) [17 CFR 240.13d-2(a)].

[46] The term "promptly" is not defined in Regulation 13D–G. In *In re Cooper Laboratories, Inc.*, Release 34–22171 (June 30, 1985) (Administrative Proceeding File No. 3–6536), the Commission expressed the view that "the promptness of an amendment to a Schedule 13D must be judged in light of all the facts and circumstances of a particular situation and [any] delay beyond the time of the amendment reasonably could have been filed may not be deemed to be prompt under the circumstances presented." The Commission determined that the amendment in that case should have been filed on the day following the change requiring an amendment. The respondent was required to comply with an undertaking to maintain in trust the profits received from the sale of the subject security to satisfy any claims by investors who sold prior to the filing of the amendment.

[47] *See* discussion *supra*, in text at nn. 21–30.

[48] Rule 13d–1(c) [17 CFR 240.13d–1(c)].

[49] *See* n. 13 *supra*. Rule 13d–1(b)(1) [17 CFR 240.13d–1(b)(1)].

[50] Rules 13d–2(b) [17 CFR 240.13d–2(b)] and 13d–1(b)(2) [17 CFR 240.13d–1 (b)(2)].



## III. Discussion of Proposals

The beneficial ownership reporting scheme is intended to inform the marketplace of acquisitions of a company's securities that could affect control. Under the legislative framework, both the occurrence of the acquisition and the purpose for which the acquiror is accumulating securities are deemed material disclosures. However, the current scheme requires most persons to file detailed disclosure reports regardless of investment purpose. As a result, the scheme may place an unnecessary reporting obligation on persons whose acquistions do not involve the concerns of the Williams Act.

The Commission is proposing amendments to Regulations 13D–G to make beneficial ownership disclosure more useful to investors, the marketplace and the Commission and to reduce significantly the requirements that the current reporting scheme imposes on persons with a passive investment purpose. These changes would enhance the comprehensive framework of disclosure contemplated by Congress. Since all non-institutional investors with a passive investment purpose could be the short-form Schedule 13G within 10 days of the triggering event, the mere filing of a Schedule 13D would serve to notify the marketplace of an acquisition by a person with a possible control intent. The reduced number of Schedule 13D filings would allow the marketplace, as well as the staff of the Commission, to focus more quickly on acquisitions involving a potential change in control.[52]

### *A. Expanding the Class of Persons Using Schedule 13G*

The purposes underlying section 13(d) do not require the extensive disclosure currently elicited by Schedule 13D for investors whose acquisitions have a passive investment purpose. However, the vast majority of persons filing on Schedule 13D have such a passive intent, but are not eligible to use the abbreviated disclosure document, Schedule 13G. Data provided by the Commission's Office of Economic Analysis indicate that 74 percent of the Schedule 13D studied reported no intention to change control of the issuer at the time of the initial filing.[53] Further, only 10 percent of these persons amended their original intent disclosure from "investment" to "change in control" over a two-year period following the date of the original filing.

The Commission is proposing that this significant pool of investors having solely a pasive investment purpose with respect to their ownership of more than five percent of a class of subject securities be permitted to file on Schedule 13G instead of Schedule 13D. Under the proposed amendments, Rules 13d–1(a) and 13d–2(a) would continue to require that persons who acquire beneficial ownership of more than five percent of the securities of the issuer file a Schedule 13D within 10 days after crossing the threshold and thereafter promptly amend that statement to disclose changes in ownership levels. Rule 13d–1(b)(1) would continue to permit an institutional investor acquiring subject securities in the ordinary course of its business to file a Schedule 13G within 45 days after the calendar year's end, provided that the conditions of the rule are satisfied. Proposed Rule 13d–(b)(2) also would permit any other investor, institutional or non-institutional, that acquires or holds more than five percent of a class of subject securities with a passive investment purpose to use a Schedule 13G in lieu of a Schedule 13D.[54]

A person with a passive investment purpose filing on Schedule 13G would have to disclose general information about its identity, residence and citizenship, and a description of the nature of the interest in the subject securities. Unlike the Schedule 13D, the Schedule 13G does not require disclosure of the source and amount of funds used or to be used for the acquisition; the purpose for which the acquisition was made; all transactions in the subject securities for the past 60 day; or contracts or arrangements with respect to the subject securities. With the extension of Schedule 13G to non-professional investors, the passive investment purpose certification would be revised to make the "ordinary course of business" requirement inapplicable to such persons.

Persons that cannot certify solely a passive investment purpose because of the current possibility that they may seek to exercise or influence control as an alternative investment purpose would be required to file on a Schedule 13D and would not be eligible to use a Schedule 13G. In essence, the proposed reporting system would divide persons with beneficial ownership of more than five and less than 20 percent of subject securities into two groups—those persons with a passive investment purpose permitted to file on Schedule 13G, and all other persons required to file on Schedule 13D.[55]

The current requirement that an institutional investor must certify that the subject securities were acquired in the ordinary course of business, as well as with a passive investment purpose, would be retained. The Commission requests comment, however, on whether the current form of the certification, requiring that the securities be acquired in the ordinary course of business,[56] as a prerequisite to filing 45 days after the calendar year's end, should be retained, if the institutional investor acquires the subject securities with a passive investment purpose. The proposed amendments would eliminate the requirement that an institutional investor that ceases to satisfy the conditions of current Rule 13d–1(b)(1)(ii) file a Schedule 13D. Like any person with a passive investment purpose, such a person would be permitted to file an initial or amended Schedule 13G within 10 days.

[51] In fiscal year 1988, 2,850 original Schedules 13D and 6,927 amendments were filed with the Commission.

[52] The results of this sample of 100 Schedules 13D filed in calendar year 1985 were comparable to those derived from an earlier study of 200 filings of Schedule 13D from fiscal year 1981.

[53] Individuals controlling eligible institutions are the indirect beneficial owners of securities held by the institutions and thus have an obligation under section 13(d) and Rule 13d–1 to report those holdings. *See in re The Gabelli Group, Inc.*, Release No. 34–26005 (August 17, 1988). The staff has permitted individuals to file Schedules 13G jointly under Rule 13d–1(f) with an institution within their control where the individual owns directly, or indirectly through an ineligible entity, less than one percent of the company's stock and does not intend to change or influence contol of the company. *See Warren E. Buffet and Berkshire Hathaway, Inc.* (available December 5, 1986). To meet this obligation, the individual signs a separate Schedule 13G cover sheet and signs the Schedule in his individual capacity. *See* Schedule 13G, Instruction (1) and Notes for Cover Page and Item 10; 17 CFR 240.13d–102.

While the proposed amendments would remove any obstacle to the individual reporting beneficial ownership on a Schedule 13G with respect to passive investments, because of the timing difference in the filing of the Schedule by individuals and eligible institutions, the staff will continue its no-action position to allow the control person to report indirect beneficial ownership through the controlled entity 45 days after the end of the calendar year, rather than 10 days after the person's indirect beneficial ownership exceeds five percent.

[54] The only exception would be Schedules 13G filed with respect to exempt acquisitions pursuant to current Rule 13d–1(c) (proposed to be retained with some modifications as discussed below). Such schedules would not include a certification of the filer's passive investment purpose.

[55] Item 10, Schedule 13G.

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The Commission requests public comment on whether the use of Schedule 13G for passive investors should be mandatory, rather than voluntary as in the current rule proposal. Specifically, comment is solicited on whether the purposes of the proposed rules adequately would separate persons with a passive investment purpose from those with a possible control intent or whether a sufficient number of persons with a passive intent would choose to forego the lesser burdens of a Schedule 13G filing and file a Schedule 13D. Passive investors may choose to file on Schedule 13D because of the cooling-off period that accompanies the use of Schedule 13G. Use of Schedule 13D by passive investors could undermine the effectiveness of the schedules as a means to delineate between filers with a passive investment purpose and those with the intent to change or influence control. Comment also is requested on whether the currently permissive filing of Schedules 13G under Rule 13d–1(b)(1) by institutional investors acquiring or holding subject securities in the ordinary course of business should be made mandatory.

*B. Ten Day Initial Filing Obligation for Non-institutional Beneficial Owners of More Than Five Percent; Timing for Amendments*

Under the current reporting system, a Schedule 13D must be filed within 10 days after acquiring more than five percent of a subject security. In contrast, a Schedule 13G need not be filed until 45 days after the end of the calendar year in which the filing obligation arose, if beneficial ownership is more than five percent at the year's end. Except for an institutional investor acquiring the subject securities in the ordinary course of its business, the proposed amendments would require that any person filing a Schedule 13G, including a filing reflecting an exempt acquisition, file within 10 days of the triggering event.[47] Thus, the market and shareholders would receive more timely notice of the creation and existence of voting blocks that have the potential of affecting control of the issuer. Obtaining the short-form information more promptly is important even when the investment purpose is passive, because the existence of a large block of securities has control implications, regardless of the intentions of the current holder of the block.

As is currently required for an institutional investor, a non-institutional investor would file a Schedule 13G or amendment thereto within 10 days after the end of the first month in which such person's direct or indirect beneficial ownership exceed 10 percent of the class of subject securities, and thereafter within 10 days after the end of the month in which such person's beneficial ownership increases or decreases by more than five percent since the previous filing. Amendments to disclose any other changes would continue to be required only on an annual basis.

Institutional investors acquiring subject securities in the ordinary course of business would continue to file the Schedule 13G 45 days after the end of the calendar year to report holdings of more than five percent as of December 31. This distinction has been maintained due to the substantial number of positions reported by institutional investors on Schedule 13G.[48] Changes in the beneficial ownership reporting requirements for institutional investors could impose a substantial financial and operational burden.

Although the Commission does not propose to accelerate the filing date of the Schedule 13G for institutional investors, the experience of recent years has made clear that control is affected not only by a beneficial owner's own intentions of directly affecting control of an issuer, but also the use to which the acquiror may lend its voting power, or the intent of a person to whom it may sell the block. The concentration of voting power in a single block and its transferability are material information to the market. Furthermore, recent enforcement actions have provided examples of the use of illegal parking of securities involving market professionals to avoid, among other legal requirements, Schedule 13D disclosures and obligations under the Hart-Scott-Rodino Act.[49]

To obtain disclosure about institutional holdings that could play a role in a control contest, the Commission could require that institutional investors file Schedule 13G on a 10-day, monthly or quarterly basis, and/or require the reporting of all five percent positions, not just those in existence at the end of the relevant period. The Commission requests specific comment on the effect requiring institutional investors to file on a more timely basis would have on block positioning and marketmaking for a particular security. The Commission is concerned about the potential disruptive effect of an accelerated reporting obligation on the legitimate, day-to-day business operations of institutional investors—particularly with respect to market makers—as well as their ability, on a cost-effective basis, to comply with increased reporting requirements. Data are requested on the frequency with which broker-dealers or other market professionals hold more than five percent positions that are not required to be reported at the calendar year's end. The Commission also requests information as to the nature of additional procedures that would be necessary to monitor for these positions and the associated costs of such procedures.

*C. Filing of Schedule 13D and Cooling-Off Period for Changes in Investment Intent*

Under the current rules, institutional investors who have filed a Schedule 13G but who can no longer make ordinary course of business and passive investment representations must file a Schedule 13D "promptly," but no later than 10 days after a change in their investment purpose.[50] After filing the Schedule 13D, the institutional investor is prohibited from acquiring additional securites of the subject class or of a person controlling the issuer of the class, or voting the securities already owned for a period of 10 days.[51]

The proposed rule would extend the concept of a cooling-off period to any passive investor filing on Schedule 13G (except for those with only exempt acquisitions) that determines that it no longer holds the subject securities with a passive investment purpose. As proposed, the cooling-off period for a change in investment purpose would begin to run from the time of the determination of the change in investment intent until the expiration of the tenth day from the date of the filing of a Schedule 13D. A Schedule 13D would be required no later than 10 days after a change in investment purpose. The proposed rule would delete the reference to "promptly" [52] and require the filing of a Schedule 13D within 10 days to parallel the original Schedule 13D filing obligation.

The proposed cooling-off period is necessary and appropriate when the beneficial owner determines that it no longer holds the securities with a passive investment purpose and may seek to influence control The proposed approach would encourage the prompt filing of a Schedule 13D and prevent further acquisitions or the voting of the subject securities until the market and investors have been given time to react to the information in the Schedule 13D filing. The extension of a cooling-off period until ten days from the date of the required filing on Schedule 13D also would serve as a deterrent to the improper use of the Schedule 13G by persons seeking to influence control.

Comment is requested on whether the ten day period is necessary at all, or whether the period should be changed to a shorter period, such as three or five business days, or a longer period, such as fifteen days. Further, the Commission requests comment on whether such a provision would adequately discourage the improper use of a Schedule 13G by persons that may seek to influence control.

*D. Limit on Ownership Interest Reportable on Schedule 13G and Cooling-off Period*

Proposed Rule 13d–1(b)(1) would include a provision restricting the use of Schedule 13G (except for exempt acquisitions) by limiting the aggregate amount of securities that could be reported on that Schedule. The Commission is proposing to use a 20 percent threshold to balance the increased reporting burden and the need to provide detailed information about acquisitions that have significant control implications because of the size of the holdings.[53] As with the case of a change in passive investment purpose, acquisitions causing a person beneficially to own 20 percent or more of the class would require the holder to file a Schedule 13D within 10 days after the acquisition and subject the filer to a cooling-off period. Unlike the comparable cooling-off period for changes in investment intent, the cooling-off period only would run from the time the threshold is reached until the filing of the Schedule 13D.

The Commission requests comment on whether a 20 percent threshold level of stock ownership is the appropriate threshold at which to require persons with a purported passive investment purpose to report on Schedule 13D. At some level, a block of securities has inherent control implications because of its size and its potential for movement. The market and investors should receive notice of the block's existence and the information elicited by Schedule 13D, as well as prompt amendment to that information, including changes in the block's size. Commentators should address whether a 10 percent threshold, paralleling current requirements for amendment of a Schedule 13G and the 10 percent threshold for reporting under section 16,[54] is more appropriate, or whether a higher threshold should be adopted. Finally, the Commission requests comment on the appropriateness and length of the 10 day filing and cooling-off periods in this context. As discussed in Part III.C. above, the Commission also requests comment on when the cooling-off period should begin to run.

*E. Related and Clarifying Amendments*

The Commission also is proposing related amendments to the beneficial ownership reporting requirements. Amendments are proposed to current Rules 13d–1(b), 13d–2, 13d–7 and Schedules 13D and 13G.[55]

Current Regulation 13D–G requires the sending of the Schedule 13D and amendments to each exchange on which the security is traded. Schedules 13G and amendments, on the other hand, are only required to be sent to the principal exchange on which the securities is traded, if any. Since Schedule 13G would become the primary reporting document in many cases, the Commission proposes to require that a copy of each Schedule 13G and amendment be provided to each exchange on which the security is traded. Schedules 13G for exempt acquisitions, however, would continue to be sent only to the issuer at its principal executive offices and filed with the Commission, as provided by current Rule 13d–1(c). Amendments to Schedules 13G relating to exempt acquisitions would be treated similarly and no longer be required to be sent to an exchange, as is currently required by Rule 13d–2(b).

As a related matter, the Commission also proposes to require that a copy of a Schedule 13D, Schedule 13G or amendment filed to report ownership of a class of securities quoted on NASDAQ (except for those reflecting exempt acquisitions), and any amendments, be provided to the NASD.

Proposed amendments to Rule 13d–1(c) would delete as no longer necessary the grandfather provisions adopted in 1978 to facilitate the transition to reporting on Schedule 13G for persons whose holdings previously were not subject to any disclosure requirements. Persons with exempt acquisitions would continue to report beneficial ownership on Schedule 13G pursuant to revised Rule 13d–1(c).

The Commission also is proposing technical and clarifying amendments to Regulation 13D–G. Amendments to Rules 13d–1 and 13d–2 would make clear that a total of six copies (one signed original plus five copies) must be filed with the Commission under the current rules. Rule 13d–7 also would be revised to clarify that a Schedule 13D filed with respect to holdings reported until then on Schedule 13G, and vice versa, do not require an additional fee, if beneficial ownership had not fallen below five percent. In accordance with current staff interpretations, when a reporting person ceases to be eligible for Schedule 13G and must file a Schedule 13D, no new fee will be imposed. Similarly, if a 13D filer subsequently meets the criteria for use of Schedule 13G, no new fee will be imposed.

Technical amendments also are proposed to Schedules 13D and 13G to conform the schedules to the revised rules and amend the filing deadlines and the number of copies in the instructions.

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[47] Proposed Rules 13d–1 (b)(2) and (c).

[48] Approximately 3,700 initial Schedules 13G and 5,900 amendments were filed in fiscal year 1987. Data from Schedules 13G with a reporting date of December 31, 1987 indicate that at least half of the filings were made by a broker or dealer, bank, insurance company, investment company, investment adviser or employee benefit plan.

[49] 15 U.S.C. 18a.

*See e.g., SEC* v. *First City Financial*, 668 F. Supp. 705 (D.D.C. 1988); *SEC* v. *Boyd L. Jefferies, et al.*, Lit. Rel. No. 11370 (March 19, 1987).

[50] Rule 13d–1(b)(3)(ii) [17 CFR 240.13d–1(b)(3)(ii)].

[51] Rule 13d–1(b)(3)(iii) [17 CFR 240.13d–1(b)(3)(iii)]

[52] The deletion of the word "promptly" from current Rule 13d–3 [17 CFR 240 13d–3] should eliminate any possible misperception that "promptly," in the context of a Regulation 13D–G filing, would be satisfied by a 10-day filing. *See* n. 30, *supra*.

[53] The amended rule is not intended to create a presumption that a person beneficially owning 20 percent or more of a class of subject securities has control or an actual control purpose.

[54] 15 U.S.C. 78p.

[55] 17 CFR 240.13d–1(b), 13d–1(b)(1)(iii), 13d–(1)(c), 13d–2(b), 13d–3(d)(3), and 13d–6(b)(2)(i).

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*F. Effects of Proposed Amendments to Regulation 13D–G*

| Issue | Current schedule 13D | Proposed schedule 13D | Current schedule 13G | Proposed schedule 13G |
|---|---|---|---|---|
| Person filing | Any person acquiring more than five percent of an equity security. Rule 13d–1(a). | No change | *Institutional Investors*—Acquiring more than 5% of an equity security. Rule 13d–1(b).<br>*Exempt Acquisitions*—Persons holding more than 5% of an equity security whose acquisitions are exempt from Section 13(d). Rule 13d–1(c). | *Institutional Investor*—No change, except that Schedule may not be used to report holdings of 20% or more.<br>*Non-Institutional Investors*—Any person holding more than 5%, but not 20% or more, of an equity security with a passive investment purpose may file. Proposed Rules 13d–1(b)(2) and 13d–1(b)(4).<br>*Exempt Acquisitions*—No change. |
| Initial filing | Within 10 days after the acquisition. Rule 13d–1(a). | No change | 45 days after end of the calendar year in which the person becomes obligated to file. Rule 13d–1 (b) and (c). | *Institutional Investors*—No change.<br>*Non-Institutional Investors and Exempt Acquisitions*—Within 10 days after the acquisition. Proposed Rule 13d–1(b)(2) and (c). |
| Purpose of acquisition | Disclose under Item 4—Purpose of the transaction. | No change | *Institutional Investors*—Requires certification that the securities were acquired in the ordinary course of business, were not acquired for the purpose of and do not have the effect of changing or influencing control of the issuer, and were not acquired in a transaction having such an effect. Schedule 13G, Item 10. Rule 13d–1(b).<br>*Exempt Acquisitions*—No certification required. | *Institutional Investors*—Same certification.<br>*Non-Institutional Investors*—Same certification as institutional investors *except that* acquisitions need not occur in ordinary course of business ("passive investment purpose"). Schedule 13G, Item 10. Proposed Rule 13d–1(b)(2)<br>*Exempt Acquisitions*—No change. |
| Amendment | An amendment must be filed promptly to reflect any material change, including a change in investment intent. Rule 13d–2(a). | No change | *All filers*—45 days after the end of the calendar year to report any change in the information. Rule 13d–2(b).<br>*Institutional investors only*—Within 10 days after the end of the first month in which such person's ownership exceeds 10 percent of a class of equity securities, and thereafter within 10 days of the end of any month in which such person's beneficial ownership increases or decreases more than 5%, computed as of the end of the month. Rule 13d–1(b)(2). | *Institutional Investors*—No change.<br>*Non-Institutional Investors*—Same as requirement for institutional investors.<br>*Exempt Acquisitions*—No change. |
| Initial schedule 13D following filing on schedule 13G. | *Institutional Investors*—Promptly, but no later than 10 days after it ceases to be an eligible institution or determines that it no longer holds such securities in the ordinary course of business or with passive investment purpose. Rule 13d–1(b)(3).<br>*Exempt Acquisitions*—Not subject to this requirement. | *Institutional and Non-Institutional Investors*—Schedule 13D would be required within 10 days if:<br>(1) Any person's beneficial ownership of a class of security equals or exceeds 20 percent. Proposed Rule 13d–1(b)(4)(i) or<br>Any person determines that it no longer has a passive investment purpose. Proposed 13d–1(b)(4)(ii).<br>*Exempt Acquisitions*—No change. | | |



| Issue | Current schedule 13D | Proposed schedule 13D | Current schedule 13G | Proposed schedule 13G |
|---|---|---|---|---|
| Cooling-off period | *Institutional Investors*—Not required except for the 10–day period after initial 13D following change of intent by an institutional investor reporting on Schedule 13F.<br>*Exempt Acquisitions*—Not subject to this requirement. | *Institutional and Non-Institutional Investors*—From the time beneficial ownership equals or exceeds 20 percent of the class until the date of the required filing. Proposed Rule 13d–1(b)(4)(ii).<br>From the time the person changes its investment purpose until the expiration of ten days from the date of filing. Proposed Rule 13d–1(b)(4)(ii).<br>*Exempt Acquisitions*—No change. | Not applicable | Not applicable. |

## IV. Cost-Benefit Analysis

To evaluate the benefits and costs associated with the proposed amendments to Exchange Act Rules 13d–1, 13d–2, and 13d–7, Schedule 13D, and Schedule 13G, the Commission requests commentators to provide views and data as to the costs and benefits associated with amending the filing requirements for beneficial ownership statements. The ability to file a Schedule 13G instead of a Schedule 13D in specified circumstances should reduce costs for persons meeting the requirements. Persons currently eligible to use a Schedule 13G based on holdings of subject securities at the end of the calendar year may incur increased reporting and monitoring costs because acquisitions that cause a person to hold 20 percent or more of the subject securities would be reported on Schedule 13D.

## V. Initial Regulatory Flexibility Analysis

The Initial Regulatory Flexibility Analysis concerns the proposed amendments to the Commission's beneficial ownership rules and related Schedules 13D and 13G. The analysis has been prepared by the Commission in accordance with 5 U.S.C. 604.

The analysis notes that the principal effect of the revisions will be to reduce the filing obligations and associated costs to a majority of persons required to report beneficial ownership under sections 13(d) and 13(g) of the Exchange Act. Although specified categories of investors may incur an increased reporting or monitoring obligation, the Commission does not believe that there will be a significant economic impact on a substantial number of small entities.

A copy of the Initial Regulatory Flexibility Analysis may be obtained by contacting Richard E. Baltz in the Office of Tender Offers, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

## VI. Request for Comments

Any interested persons wishing to submit written comments on the proposals, to suggest additional changes, or to submit comments on other matters that might have an impact on the proposals, are requested to do so. In addition to the specific inquiries made throughout this release, the Commission solicits comments on the usefulness of the proposed revisions to the Schedule 13D–G reporting scheme to reporting persons, registrants, and the marketplace at large.

The Commission also requests comment on whether the proposed rule, if adopted, would have an adverse effect on competition or would impose a burden on competition that is neither necessary nor appropriate in furthering the purposes of the Exchange Act. Comments on this inquiry will be considered by the Commission in complying with its responsibilities under section 23(a)(2) of the Exchange Act.[56]

The Commission also encourages the submission of written comments with respect to any aspect of the initial regulatory flexibility analysis. Such written comments will be considered in the preparation of the final regulatory flexibility analysis if the proposed rules are adopted.

Persons wishing to submit written comments should file three copies thereof with Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Comment letters should refer to File No. S7–8–89. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549.

[56] 15 U.S.C. 78w(a)(2).

## VII. Statutory Basis and Text of Amendments

The amendments to Rules 13d–1, 13d–2 and 13d–7 and Schedules 13D and 13G are being proposed pursuant to the authority set forth in sections 3(b), 13 and 23 of the Securities Exchange Act of 1934.

### List of Subjects in 17 CFR Part 240

Reporting and Recordkeeping requirements, Securities.

## VIII. Text of Proposals

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

### PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read, in part, as follows:

**Authority:** Sec. 23, 48 Stat. 901, as amended (15 U.S.C. 78w) * * *

2. By amending § 240.13d–1 by revising paragraphs (a) and (b)(1) introductory text, redesignating paragraphs (b)(2), (b)(3), and (b)(4) as (b)(3), (b)(4), and (b)(5), adding a new paragraph (b)(2), revising newly redesignated (b)(3, (b)(4), and (b)(5) and paragraph (c) as follows:

**§ 240.13d–1 Filing of Schedules 13D and 13G.**

(a) Any person who, after acquiring directly or indirectly the beneficial ownership of any equity security of a class which is specified in paragraph (d) of this section, is directly or indirectly the beneficial owner of more than five percent of such class shall, within 10 days after such acquisition, send to the issuer of the security at its principal executive office, by registered or certified mail, and to each exchange or automated inter-dealer quotation system where the security is traded or

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authorized to be quoted, and file with the Commission, a statement containing the information required by Schedule 13D (§ 240.13d–101). A signed original plus five copies of the statement, including all exhibits, shall be filed with the Commission.

(b)(1) A person who would otherwise be obligated under paragraph (a) of this section to file a statement on Schedule 13D and is not directly or indirectly the beneficial owner of 20 percent or more of such class may, in lieu thereof, file with the Commission, within 45 days after the end of the calendar year in which such person became so obligated, a signed original plus five copies, including all exhibits, of a short form statement on Schedule 13G (§ 240.13d–102) and send one copy each of such schedule to the issuer of the security at its principal executive office, by registered or certified mail, and to each national securities exchange or automated inter-dealer quotation system where the security is traded or authorized to be quoted: *Provided*, That it shall not be necessary to file a Schedule 13G unless the percentage of the class of equity security specified in paragraph ( ) of this section beneficially owned as of the end of the calendar year is more than five percent: *And provided further*, That:

* * * * *

(b)(2) A person who would otherwise be obligated under paragraph (a) of this section to file a statement on Schedule 13D, but (i) has not acquired such securities with any purpose, or with the effect of, changing or influencing the control of the issuer, or in connection with or as a participant in any transaction having such purpose or effect, including any transaction subject to Rule 13d–3(b) (§ 240.13d–3(b)); (ii) is not a person specified in paragraph (b)(1) of this section; and (iii) is not directly or indirectly the beneficial owner of 20 percent or more of such class, may, in lieu thereof, file with the Commission, within 10 days after an acquisition described in paragraph (a) of this section, a signed original plus five copies, including all exhibits, of a short form statement on Schedule 13G (§ 240.13d–102) and send one copy each of such schedule to the issuer of the security at its principal executive office, by registered or certified mail, and to each national securities exchange or automated inter-dealer quotation system where the security is traded or authorized to be quoted.

(3) Any person relying on Rules 13d–1(b)(1), 13d–1(b)(2), or 13d–2(b) shall, in addition to filing any statements required thereunder, file a statement on Schedule 13G, or amendment thereto, within 10 days after the end of the first month in which such person's direct or indirect beneficial ownership exceeds 10 percent of a class of equity securities specified in paragraph (d) of this section, computed as of the last day of the month, and thereafter within 10 days after the end of any month in which such person's beneficial ownership of securities of such class, computed as of the last day of the month, increases or decreases by more than five percent of such class of equity securities. A signed original plus five copies of such statement, including all exhibits, shall be filed with the Commission and one copy each sent, by registered or certified mail, to the issuer of the security at its principal executive office and to each national securities exchange or automated inter-dealer quotation system where the security is traded or authorized to be quoted. Once an amendment has been filed reflecting beneficial ownership of five percent or less of the class of securities, no additional filings are required by this paragraph (b)(3) unless the person thereafter becomes the beneficial owner of more than 10 percent of the class.

(4) Notwithstanding paragraphs (b)(1), (b)(2) and (b)(3) of this section and Rule 13d–2(b) (§ 240.13d–2(b)), a person that has reported that it is the beneficial owner of more than five percent of a class of equity securities in a statement on Schedule 13G pursuant to paragraph (b) (1), (2), or (3) of this section or is required to report such acquisition but has not yet filed the schedule, shall immediately become subject to Rules 13d–1(a) and 13d–2(a) and shall file a statement on Schedule 13D within 10 days if:

(i) Such person's beneficial ownership equals or exceeds 20 percent of a class of equity securities specified in Rule 13d–1(d). Form the time such person's beneficial ownership equals or exceeds 20 percent of a class of equity securities specified in Rule 13d–1(d) until the filing of a statement on Schedule 13D pursuant to this paragraph, such person shall not: (1) Vote or direct the voting of the securities described therein; or (2) acquire an additional beneficial ownership interest in any equity securities of the issuer of such securities, nor of any person controlling such issuer; or

(ii) such person (1) determines that it has acquired or hold such securities with a purpose or effect of changing or influencing control of the issuer, or in connection with or as a participant in any transaction having such purpose or effect, including any transaction subject to Rule 13d–3(b) (§ 240.13d–3(b)); and (2) is at that time the beneficial owner of more than five percent of a class of equity securities described in Rule 13d–1(d). From the time such person determines that it has acquired or holds such securities with a purpose or effect of changing or influencing control of the issuer, or in connection with or as a participant in any transaction having such purpose or effect until the expiration of the tenth day from the date of the filing of a Schedule 13D pursuant to this section, such person shall not: (A) Vote or direct the voting of the securities described therein; or (B) acquire an additional beneficial ownership interest in any equity securities of the issuer of such securities, nor for any person controlling such issuer.

(5) Any person who has reported an acquisition of securities in a statement on Schedule 13G pursuant to paragraph (b)(1) or (b)(3) of this section and thereafter ceases to be a person specified in paragraph (b)(1)(ii) of this section shall immediately become subject to Rules 13d–(1) or (b)(2) (if such person satisfies the requirements specified in paragraph (b)(2)) and 13d–2 (a) or (b) and shall file, within 10 days thereafter, a statement on Schedule 13D or amendment to Schedule 13G, as specified, in the event such person is a beneficial owner at that time of more than five percent of the class of equity securities.

(c) Any person who is or becomes directly or indirectly the beneficial owner or more than five percent of any equity security of a class specified in paragraph (d) of this section and who is not required to file a statement under paragraph (a) of this section by virtue of the exemption provided by section 13(d)(6) (A) or (B) of the Act, or because such person otherwise (except for the examption provided by section 13(d)(6)(C) of the Act) is not required to file such a statement, shall within 10 days after becoming the beneficial owner, send to the issuer of the security at its principal executive office, by registered or certified mail, and file with the Commission a statement containing the information required by Schedule 13G (§ 240.13d–102). A signed original plus five copies of the statement, including all exhibits shall be filed with the Commission.

3. By amending § 240.13d–2 by revising paragraph (a), the second sentence of paragraph (b) and the note following paragraph (b) as follows:



**§ 240.13d–2 Filing of amendments to Schedules 13D or 13G.**

(a) Schedule 13D–If any material change occurs in the facts set forth in the statement required by Rule 13d–1(a) (§ 240.13d–1(a)), including, but not limited to, any material increase or decrease in the percentage of the class beneficially owned, the person or persons who were required to file such statement shall promptly file or cause to be filed with the Commission and send or cause to be sent to the issuer at its principal executive office, by registered or certified mail, and to each exchange or inter-dealer quotation system on which the security is traded or authorized to be quoted an amendment disclosing such change. An acquisition or disposition of beneficial ownership of securities in an amount equal to one percent or more of the class of securities shall be deemed "material" for purposes of this rule; acquisitions or dispositions of less than such amounts may be material, depending upon the facts and circumstances. A signed original plus five copies of each such amendment shall be filed with the Commission

(b) * * * A signed original plus five copies of such amendment, including all exhibits, shall be filed with the Commission and one each sent, by registered or certified mail, to the issuer of the security at its principal executive office and (except with respect to persons filing pursuant to 13d–1(c)) to each national securities exchange or inter-dealer quotation system where the security is traded or authorized to be quoted. * * *

Note.—For persons filing a short-form statement pursuant to Rule 13d–1(b) (1) or (2), see also rules 13d–1(b) (3), (4), and (5).

4. By amending § 240.13d–7 by revising the second sentence as follows:

**§ 240.13d–7 Fees for Filing Schedules 13D or 13G**

* * * No fees shall be required with respect to the filing of any amended Schedule 13D or 13G, and no fees shall be required with respect to an inital Schedule 13D or Schedule 13G if the filing person previously has filed a statement reporting beneficial ownership of more than five percent of such class of equity securities and has not subsequently filed an amendment reporting beneficial ownership of five percent or less of such class; *Provided, however*, That once an amendment has been filed reflecting beneficial ownership of five percent or less of such class, an additional fee of $100 shall be paid with the next filing of that person that reflects ownership of more than five percent.

5. By amending § 240.13d–101 by revising the language preceding the first box on the cover page, and revising the note on the cover page as follows:

**§ 240.13d–101 Schedule 13D—Information to be included in statements filed pursuant to § 240.13d–1(a) and amendments thereto filed pursuant to § 240.13d–2(a).**

If the filing has previously filed a statement on Schedule 13G to report the acquisition that is the subject of this Schedule 13D, and is filing this schedule because of Rule 13d–1(b)(4)(i) (A) or (B), check the following box.

* * * * *

Note.—An original plus five copies of this statement, including all exhibits, should be filed with the Commission. See Rule 13d–1(a) for other parties to whom copies are to be sent.

* * * * *

6. By amending § 240.13d–102 by adding a line for the date of the reportable event following "(CUSIP Number)", revising Instruction A, revising Items 3, 4, and 10, and revising the note at the end of the schedule, as follows:

**§ 240.13d–102 Schedule 13G—Information to be included in statements filed pursuant to § 240.13d–1(b) and (c) and amendments thereto filed pursuant to § 240.13d–1(b)(3) or § 240.13d–2(b).**

* * * * *

(Date of Event Which Requires Filing of this Statement)

* * * * *

Instructions. A. Statements filed pursuant to Rule 13d–1(b)(1) containing the information required by this schedule shall be filed not later than February 14 following the calendar year in which the person became obligated to report or within the time specified in Rule 13d–1(b)(3), if applicable. Statements filed pursuant to Rule 13d–1(b) or 13d–1(c) shall be filed not later than 10 days after the event requiring the filing.

* * * * *

*Item 3.* If this statement is filed pursuant to Rule 13d–1(b)(1) or 13d–2(b), check whether the person filing is a:

(a) [ ] Broker or dealer registered under section 15 of the Act.

(b) [ ] Bank as defined in section 3(a)(6) of the Act.

(c) [ ] Insurance company as defined in section 3(a)(19) of the Act.

(d) [ ] Investment company registered under section 8 of the Investment Company Act.

(e) [ ] Investment adviser registered under section 203 of the Investment Advisers Act of 1940.

(f) [ ] Employee benefit plan, pension fund which is subject to the provisions of the Employee Retirement Income Security Act of 1974 or endowment fund; see § 240.13d–1(b)(1)(ii)(F).

(g) [ ] Parent holding company, in accordance with § 240.13d–1(b)(ii)(G).

In this statement is filed pursuant to Rule 13d–1(b)(2), check this box. _____

*Item 4.* Ownership.

Provide the following information regarding the aggregate number and percentage of the class of securities of the issuer identified in Item 1.

(a) Amount beneficially owned: _____.

(b) Percent of class: _____.

(c) Number of shares as to which such person has: _____.

(i) Sole power to vote or to direct the vote _____.

(ii) Shared person to vote or to direct the vote _____.

(iii) Sole power to dispose or to direct the disposition of _____.

(iv) Shared power to dispose or to direct the disposition of _____.

*Instruction.* For computations regarding securities which represent a right to acquire an underlying security *see* Rule 13d–3(d)(1).

* * * * *

*Item 10.* Certification.

(a) The following certification shall be included if the statement is filed pursuant to Rule 13d–1(b)(1): By signing below I certify that, to the best of my knowledge and belief, the securities referred to above were acquired in the ordinary course of business and were not acquired for the purpose of and do not have the effect of changing or influencing the control of the issuer of such securities and were not acquired in connection with or as a participant in any transaction having such purpose or effect.

(b) The following certification shall be included if the statement is filed pursuant to Rule 13d–1(b)(2):

By signing below I certify that, to the best of my knowledge and belief, the securities referred to above were not acquired for the purpose of and do not have the effect of changing or influencing the control of the issuer of such securities and were not acquired in connection with or as a participant in any transaction having such purpose or effect.

* * * * *

Note.—A signed original plus five copies of this statement, including all exhibits, should be filed with the Commission.

* * * * *

By the Commission.

**Jonathan G. Katz,**

*Secretary.*

**March 6, 1989.**

[FR Doc. 89–5673 Filed 3–13–89; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

### 30 CFR Part 931

### New Mexico Permanent Regulatory Program; Public Comment Period and Opportunity for Public Hearing

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

**ACTION:** Proposed rule.

**SUMMARY:** OSMRE is announcing the receipt of a proposed amendment to the New Mexico permanent regulatory programs (hereinafter, the "New Mexico program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment is intended to revise the State program to provide additional safeguards for protection of the hydrologic balance.

This notice sets forth the times and locations that the New Mexico program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will will be followed regarding the public hearing, if one is requested.

**DATES:** Written comments must be received by 4:00 p.m., m.s.t. on April 13, 1989. If requested, a public hearing on the proposed amendment will be held on April 10, 1989. Requests to present oral testimony at the hearing must be received by 4:00 p.m., m.s.t. on March 29, 1989.

**ADDRESSES:** Written comments should be mailed or hand delivered to Mr. Robert H. Hagen at the address listed below.

Copies of the New Mexico program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSMRE's Albuquerque Field Office.

Mr. Robert H. Hagen, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 625 Silver Avenue, SW., Suite 310, Albuquerque, NM 87102, Telephone: (505) 766–1486.

Office of Surface Mining Reclamation and Enforcement, Administrative Record Office, Room 5131, 1100 "L" Street, NW., Washington, DC 20240, Telephone: (202) 343–5492.

New Mexico Energy & Minerals Department, Mining & Minerals Division, 525 Camino de los Marquez, Santa Fe, NM 87501, Telephone: (505) 827–5970.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert H. Hagen, Director, Albuquerque Field Office, at the address or telephone number listed in "ADDRESSES."

**SUPPLEMENTARY INFORMATION:**

#### I. Background on the New Mexico Program

On December 31, 1980, the Secretary of the Interior conditionally approved the New Mexico program. General background information on the New Mexico program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the New Mexico program can be found in the December 31, 1980, **Federal Register** (45 FR 86489). Subsequent actions concerning New Mexico's program and program amendments can be found at 30 CFR 931.12, 931.13, 931.15, 931.16, and 931.30.

#### II. Proposed Amendment

By letter dated February 21, 1989, (Administrative Record No. NM–474), New Mexico submitted a proposed amendment to its program pursuant to SMCRA. New Mexico submitted the proposed amendment at its own initiative. New Mexico proposes to amend CSMC Rule 80–1–20–41(d)(1) that concerns the use of the best technology currently available to minimize impacts to the hydrologic balance.

#### III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSMRE is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the New Mexico program.

#### Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Albuquerque Field Office may not be considered in the final rulemaking or included in the Administrative Record.

#### Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by 4:00 p.m., m.s.t. on March 29, 1989. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

#### Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSMRE representatives to discuss the proposed amendment may request a meeting by contacting the person listed under "FOR FURTHER INFORMATION CONTACT." All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under "ADDRESSES." A written summary of each meeting will be made a part of the Administrative Record.

#### List of Subjects in 30 CFR Part 931

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

**Raymond L. Lowrie**

*Assistant Director, Western Field Operations.*

Date: March 2, 1989.

[FR Doc. 89–5674 Filed 3–13–89; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 117

**[CGD7–88–49]**

### Drawbridge Operation Regulations: Kissimmee River, FL

**AGENCY:** Coast Guard, DOT.

**ACTION:** Proposed rule.



**SUMMARY:** At the request of the Florida Department of Transportation, the Coast Guard is considering a revocation of the regulations governing the State Road 78, 70 and 98 removable span bridges on the Kissimmee River at miles 0.5, 19.5 and 39.0 respectively to provide that the draws need not open. The proposal is being made because no requests have been made to open the draws since 1973. This action should relieve the bridge owner of the burden of responding to the existing requirements and having a person available to open the draws, while still providing for the reasonable needs of navigation.

**DATE:** Comments must be received on or before April 28, 1989.

**ADDRESSES:** Comments should be mailed to Commander (oan), Seventh Coast Guard District, Brickell Plaza Federal Building, 909 SE. 1st Avenue, Miami, Florida 33131–3050. The comments and other materials referenced in this notice will be available for inspection and copying on the 4th Floor of the Brickell Plaza Federal Building, 909 SE. 1st Ave, Miami, Florida. Normal office hours are between 7:30 a.m. and 4 p.m., Monday through Friday, except holidays. Comments also may be hand-delivered to this address.

**FOR FURTHER INFORMATION CONTACT:** Mr. Walt Paskowsky (305) 536–4103.

**SUPPLEMENTARY INFORMATION:** Interested persons are invited to participate in this rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgement that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Seventh Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

#### Drafting Information

The drafters of this notice are Mr. Walt Paskowsky, Bridge Administration Specialist, project officer, and Lieutenant Commander S.T. Fuger, Jr., project attorney.

#### Discussion of Proposed Regulations

There are 3 removable span highway bridges over the Kissimmee River in Okeechobee and Highlands County. The existing rule requires the bridge at Fort Bassinger, mile 39 to be opened upon 96 hours advance notice, while the bridges at Okeechobee at mile 0.5 and 19.5 require a 72 hour advance notification. These rules were enacted in the 1950's to allow for access by dredging equipment when the Kissimmee River was an active federal navigation project. Records do not reveal any reason for the difference in the notification requirements. The river is no longer an active federal navigation project, and none of the bridges have opened in the last 15 years due to lack of demand. Should traffic on the waterway change in the future, the District Commander may consider reinstituting specific opening requirements.

#### Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because of the lack of demand for openings. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

#### List of Subjects in 33 CFR Part 117

Bridges.

#### Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, as follows:

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

**§ 117.295 [Amended]**

2. Section 117.295 is amended by removing paragraphs (a) and (c) and redesignating paragraph (b) to (a).

Dated: March 1, 1989.

**Martin H. Daniell,**

*Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.*

[FR Doc. 89–5735 Filed 3–13–89; 8:45 am]

BILLING CODE 4910–14–M

## POSTAL SERVICE

### 39 CFR Part 111

### Acceptance of Mailpieces Bearing an Incorrect Date in the Meter or Mailer's Precancel Postmark

**AGENCY:** Postal Service.

**ACTION:** Proposed rule.

**SUMMARY:** This proposal would change existing procedures concerning the acceptance of mailings bearing an incorrect date in the meter or mailer's precancel postmark. At present, certain postal regulations imply that mailings with an incorrect meter or precancel postmark date may be accepted only once, and that no additional incorrectly-dated mailings are to be accepted. Other more general postal regulations purport to give the entry post office discretion to accept repeated mailings of incorrectly-dated material. This proposal would provide, in general, that the first time incorrectly-dated mailings are found at the accepting post office the mailer would be notified, a record of the irregularity would be kept, but the mailing may be accepted. Any further incorrectly-dated mailings would be refused and the mailer would have to correct the error before they could be accepted.

Since the dated postmark is used both by the Postal Service and its customers to measure the length of time taken by the Postal Service to deliver a piece of mail, allowing customers to use an incorrect postmark date on their metered or precanceled mail leads to a distorted picture of postal performance. This proposal would, for the most part, remove incorrectly-dated meter or precanceled mail from the mailstream and thus make possible a more accurate representation of postal performance.

In addition, the date of mailing, as evidenced by a correct postmark date, is often used to determine whether a mailer has filed a legal paper or document, such as an income tax return, within the statutory period. A correct postmark date is also very important in other areas, such as in determining priority and eligibility in bidding on contracts, and in making payments within contractual deadlines.

**DATES:** Comments must be received on or before April 14, 1989.

**ADDRESS:** Address all comments to the Director, Office of Classification and Rates Administration, U.S. Postal Service, 475 L'Enfant Plaza West, SW., Washington, DC 20260–5360. Copies of all written comments will be available for inspection between 9 a.m. and 4 p.m.,

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Monday through Friday, in Room 8430, at the above address.

**FOR FURTHER INFORMATION CONTACT:** Leo F. Raymond, (202) 268-5199.

**SUPPLEMENTARY INFORMATION:** Existing postal regulations for First-Class Mail (other than that entered at the full single-piece rate) specify that, under limited circumstances, mailings may be accepted with an incorrect date in the meter or mailer's precancel postmark. By implication, those regulations prohibit acceptance of such mailings thereafter. (See section 374.22, Domestic Mail Manual.)

At the same time, other regulations, which address metered mailings in general, do not impose such a specific limitation. Rather, they direct postmasters to examine metered mailings for proper preparation, advise mailers of errors, including incorrect dates in the meter postmark, accept the mailing, and postmark the mail to show the proper date. After "repeated irregularities" in the date on metered mailpieces, postmasters are told they "may refuse to accept" such mailings, but the direction is neither specific nor mandatory in describing what actions to take. (See sections 144.53 and 144.54, Domestic Mail Manual.)

Mailers authorized to use a postage meter or precancel postmark must comply with the regulations for their use. This includes imprinting the correct date of mailing. Recipients of mail regularly base their opinions of both the sender and the Postal Service on what is represented by the date in the postmark. The acceptance of metered or precanceled mailpieces with incorrect dates removes any incentive for mailers to correct faulty dating practices which mislead the public regarding the actual date of mailing and the timeliness of delivery. Service measurements, both internally by postal personnel and externally by private interests, often rely on the postmark as the indicator of both when the mailpiece entered postal custody and when the clock began to run on meeting established service standards. Clearly, an erroneous date in the postmark skews service measurement and impedes a clear perception of postal performance. An erroneous postmark date may also lead to other adverse statutory or contractual consequences, as spelled out in greater detail in the summary.

In order to limit the circumstances in which incorrectly dated metered or mailer's precancel postmark pieces will be accepted, and do so uniformly for all such mail, the Postal Service proposes revisions to sections 144.53, 144.54 and 374.22, Domestic Mail Manual. The Post Service is also amending 144.471 to cross-reference the proposed new procedure in 144.54 and 374.22, and to remove an erroneous inference that postage on second-class mail may be paid by postage meter. See 462. Also, a new 144.476 is added, which picks up the last sentence of existing 144.471, and specifies where the $.00 meter impression must be placed.

Although exempt from the notice and comment provisions of the Administrative Procedure Act (5 U.S.C. 553 (b), (c) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comments on the following proposed amendments to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR Part 111.

**List of Subjects in 39 CFR Part 111**

Postal Service.

**PART 111—[AMENDED]**

1. The authority citation for Part 111 continues to read as follows:

**Authority:** 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001-3011, 3201-3219, 3403-3406, 3621, 5001.

2. In Part 144, sections 144.471, 144.534, 144.541, 144.542 and 144.543 are revised, and section 144.476 is added.

PART 140—POSTAGE

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PART 144—POSTAGE METERS AND METER STAMPS

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**144.4 Meter Stamps**

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144.47 Date of Mailing

144.471 The date shown in a meter postmark must be the actual date of deposit, except when the mailpiece is deposited after the last scheduled collection of the day; or as provided by 144.54 or 374.22. When deposit is made after the last scheduled collection of the day, mailers are encouraged but not required to use the date of the next scheduled collection.

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144.476 A ".00" postage meter impression used to correct the date of metered mail must be placed on the nonaddress side of envelopes in the upper right hand corner, or adjacent to the postage meter stamp on flats or parcels. The date of the ".00" impression must be the actual date of deposit.

**144.5 Mailings**

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144.53 Handling

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144.534 Examination. a. Presorted Mail. Examine metered mail that is paid at a bulk or presorted rate according to the procedures in Handbook DM-102, *Bulk Mail Acceptance*. Whether detected during acceptance or after clearance for distribution, handle metered bulk or presort rate mail bearing an incorrect date in the postmark as provided by 144.54 or 374.22, as applicable.

b. Nonpresorted Mail. Examine nonpresorted metered mail to determine that it is properly prepared and bears a correct date in the meter postmark. This examination may be made by a selective check of pieces either awaiting or during distribution. Handle nonpresorted metered mail that is improperly prepared or does not bear a correct date in the meter postmark as provided by 144.54.

144.54. Mailing Irregularities

144.541 Presorted Mail with Presort Errors. Handle as directed by Handbook DM-102, *Bulk Mail Acceptance*, and 374.22, as applicable.

144.542 Incorrectly Dated Presorted Mail without Presort Errors. a. First Occurrence. On the first occurrence, the postmaster of the licensing office will use Form 3749, *Irregularities in the Preparation of Mail Matter*, to provide notice to the mailer whose metered mailing bears an incorrect date in the meter postmark. The postmaster may then accept the mailing (if other preparation requirements are met), but a permanent record of the irregularity must be maintained. The postmaster must postmark the mailpieces to apply the correct mailing date.

b. Subsequent Occurrences. If future mailings are improperly prepared or bear an incorrect date in the meter postmark (except as provided by 374.22), the mailing must not be accepted. The mailer must either reenvelope the mailpieces or apply a ".00" meter impression with the correct date before resubmitting the mail.

144.543 Nonpresorted Mail. a. First Occurrence. On the first occurrence, the postmaster of the licensing office will use Form 3749, *Irregularities in the Preparation of Mail Matter*, to provide notice to the mailer whose metered mailing is improperly prepared or bears an incorrect date in the meter postmark. The postmaster may then accept the mailing if other preparation requirements are met, but a permanent record of the irregularity must be maintained. Cancel the incorrectly-dated pieces to show the correct date.

b. Subsequent Occurrences. If future mailings are improperly prepared or bear an incorrect date in the meter postmark (except as provided by 374.22), the mailing must not be accepted. The mailer must either reenvelope the mailpieces or apply a ".00" meter impression with the correct date before resubmitting the mail.

3. In Part 374, sections 374.221, 374.222 and 374.223 are revised.

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PART 370—MAILING

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PART 373—PRESORT VERIFICATION

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**374.2 When a Carrier Route First-Class, Presorted First-Class, Nonpresorted ZIP + 4, ZIP + 4 Presort, or ZIP + 4 Barcoded Rate Mailing is Disqualified**

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374.22 Correction of Dates on Resubmitted Metered and Mailer's Precancel Postmark Mailpieces.

374.221 General. If a mailer elects to correct the presort or preparation problems in a mailing which had resulted in its disqualification when originally presented for acceptance, but is unable to resubmit that mailing on the same day, the date shown in the meter or mailer's precancel postmark must be corrected by reenveloping or applying a ".00" meter impression which includes the correct date of mailing.

374.222 Limited Exception to Correction of Date of Mailing. Subject to the following conditions, the postmaster of the office of mailing may waive the requirements of 374.221 *on a one-time-only basis.*

a. The presorted mailing with an incorrect date in the meter or mailer's precancel postmark is resubmitted on the day immediately following its initial presentation and disqualification; and

b. The mailing meets all other applicable requirements; and

c. (1) The initial presort or other preparation deficiencies resulted from mailing equipment problems beyond the mailer's control; or

(2) It represents the customer's first mailing at the carrier route First-Class, Presorted First-Class, nonpresorted ZIP + 4, ZIP + 4 Presort, or ZIP + 4 Barcoded rate, and the improper presort or preparation resulted from misinformation or misunderstanding of the applicable presort or preparation requirements.

**Note:** Nonpresorted mailings, full-rate mailings, and presorted mailings not being resubmitted after correction of presort or other preparation deficiencies, must be handled as provided by DMM 144.54 if they are improperly prepared or bear the incorrect date in the meter or mailer's precancel postmark.

374.223 Record of Waiver. If the postmaster accepts the mailing under the provisions of 374.222, a permanent record of the waiver must be maintained. Future mailings submitted with an incorrect date in the meter or mailer's precancel postmark cannot be accepted unless the mailer corrects the date by reenveloping or applying a ".00" meter impression which includes the correct date of mailing.

An appropriate amendment to 39 CFR 111.3 will be published if the proposal is adopted.

**Fred Eggleston,**

*Assistant General Counsel, Legislative Division.*

[FR Doc. 89-5825 Filed 3-13-89; 8:45 pm]

BILLING CODE 7710-12-M



## ENVIRONMENTAL PROTECTION AGENCY

**40 CFR Part 52**

**[FRL-3535-6]**

**Approval and Promulgation of Implementation Plans; Illinois**

**AGENCY:** U.S. Environmental Protection Agency (USEPA).

**ACTION:** Proposed rulemaking.

**SUMMARY:** USEPA announces proposed disapproval of several revisions to the Illinois State Implementation Plan (SIP) for Ozone. These proposed SIP revisions would, if approved, provide extended compliance schedules for Getty Synthetic Fuels Incorporated (Getty), All Steel Incorporation (All Steel), St. Charles Manufacturing (St. Charles), National Can Corporation Clearing facility (National Can), American Can Englewood facility (American Can), and United States Can Company (U.S. Can). Getty, National Can, American Can, and U.S. Can are located in Cook County, Illinois. All Steel, and St. Charles are located in Kane County. These Counties are part of the Chicago ozone demonstration area. USEPA is today proposing to disapprove these revisions because the requested compliance date extension is inconsistent with relevant portions of the Clear Air Act and USEPA policy.

**DATE:** Comments on this revision and on the proposed USEPA action must be received by April 13, 1989.

**ADDRESSES:** Copies of the SIP revision are available at the following addresses for review: (It is recommended that you telephone Uylaine E. McMahan, at (312) 886-6031, before visiting the Region V office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR-26), 230 South Dearborn Street, Chicago, Illinois 60604.

Illinois Environmental Protection Agency, Division of Air Pollution Control, 2200 Churchill Road, Springfield, Illinois 62706.

Comments on this proposed rule should be addressed to: (Please submit an original and three copies, if possible.)

Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR-26).

U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

**FOR FURTHER INFORMATION CONTACT:** Uylaine E. McMahan, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886-6031.

**SUPPLEMENTARY INFORMATION:**

Getty

On March 14, 1983, the Illinois Environmental Protection Agency (IEPA) submitted a proposed revision to its Ozone SIP for Getty's methane recovery unit at the C.I.D. landfill in Calumet City, which is located in the Chicago ozone demonstration area. This proposed revision is in the form of a February 10, 1983, Opinion and Order of the Illinois Pollution Control Board (IPCB) 81-171. It grants a variance from the existing SIP requirements until October 1, 1983, and provides a legally enforceable compliance schedule. Under the existing federally approved SIP, this methane recovery unit is subject to the control requirements contained in Rule 205 of Chapter 2 (Air Pollution) of the IPCB Rules and Regulations.[1] Compliance with IPCB Rule 205(f) was required by December 31, 1973, for existing sources and, therefore, compliance was required by Getty upon its start-up in 1981.

**All Steel**

On March 17, 1983, IEPA submitted a proposed revision to its Ozone SIP for

[1] The State has subsequently recodified its environmental regulations into the Illinois Administrative Code (IAC). However, because the IAC rules were never incorporated into the SIP, USEPA is rulemaking on these variances as though they were based on the underlying (i.e., before recodification) VOC regulations which are a part of the SIP.

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several coating lines (1001–1006 and 1009) located in All Steel's Kane County, Illinois facility, which is in the Chicago ozone demonstration area. This proposed revision is in the form of a February 10, 1983, Opinion and Order of the IPCB, Number 82–110. It grants a variance from the existing SIP requirements until December 31, 1983, and provides a legally enforceable compliance schedule.

Under the existing federally approved SIP, each surface coating line is subject to the emission control requirements contained in Rule 205. IPCB 205(n)(1)(G) limits volatile organic compounds (VOC) emission to 3.0 pounds of VOC per gallon of coating, excluding water. Rule 205(j) stipulates that final compliance with Rule 205(n)(1)(G) is required by December 31, 1982.

**St. Charles**

On August 15, 1983, IEPA submitted a proposed revision to its ozone SIP for St. Charles' three spray paint booths and two bake ovens which are located in the Chicago ozone demonstration area. This proposed revision is in the form of a June 16, 1983, Opinion and Order of the IPCB, Number 82–156. It grants a variance from the existing SIP requirement until October 31, 1983.

Under the existing federally approved SIP, each metal coating operation at St. Charles is subject to the emission control requirements contained in Rule 205. IPCB Rule 205(n)(1)(G) limits VOC emissions from metal furniture coating operations to 3.0 pounds per gallon of coating (excluding water). Rule 205(j) stipulates that final compliance is required by December 31, 1982.

**Getty, All Steel, and St. Charles History**

In a March 20, 1984, **Federal Register** notice (49 FR 10277), USEPA proposed to disapprove the Getty, All Steel, and St. Charles proposed SIP revisions because the Illinois ozone SIP lacked an approvable attainment demonstration for the Chicago nonattainment area. The attainment demonstration contained in the State's 1982 ozone SIP was initially proposed for disapproval in the February 3, 1983, **Federal Register** notice (48 FR 5110). Subsequently, on August 15, 1984 (49 FR 5110), USEPA proposed to approve the State's revised 1982 SIP attainment demonstration and on July 14, 1987 (52 FR 26404) proposed to disapprove it again.

In an October 10, 1984, **Federal Register** notice (49 FR 39696), All-Steel was reproposed for approval; in a September 17, 1984, **Federal Register** notice (49 FR 36408), Getty was reproposed for approval; and in a September 17, 1984, **Federal Register** notice (49 FR 36407), St. Charles was reproposed for approval. During these 30-day public comment periods, USEPA received no comments. USEPA is today withdrawing the October 10, 1984, and the two September 17, 1984, proposals as they apply to the All-Steel, Getty, and St. Charles facilities and is reproposing to disapprove these SIP revisions as discussed in the Compliance Date Policy section of this notice.

**National Can**

On November 21, 1983, the IEPA submitted a proposed revision to its ozone SIP for National Can located in the Chicago ozone demonstration area. This proposed revision is in the form of an April 1, 1982, Opinion and Order of the IPCB, Number PCB 81–192. It grants a variance from the existing SIP requirements until December 31, 1983, and provides a legally enforceable compliance schedule.

Under the existing federally approved SIP, each can coating operation at National Can is subject to the emission control requirements contained in IPCB Rule 205(n)(1)(B). IPCB Rule 205(n)(1)(B) requires final compliance with established specific emission limitations for each of the can coating operations by November 31, 1982.

**National Can History**

In a July 5, 1984, **Federal Register** notice (49 FR 27583), USEPA proposed to approve the National Can proposed SIP revision. During the 30-day public comment period, USEPA received no comments. USEPA is today withdrawing the July 5, 1984, proposal as it applies to the National Can Clearing facility and is reproposing to disapprove this SIP revision as discussed in the policy section below.

**American Can**

On November 21, 1983, the IEPA submitted a proposed revision to its ozone SIP for American Can's Englewood facility located in Chicago, Cook County, Illinois. This proposed revision is in the form of a December 4, 1980,

Opinion and Order of the IPCB, Number PCB 80–169. It grants a variance from the existing SIP requirements until December 31, 1984, and provides a legally enforceable compliance schedule.

Under the existing federally approved SIP, each can coating operation at American Can Company is subject to the emission control requirements contained in IPCB Rule 205(n)(1)(B). IPCB Rule 205(n)(1)(B) requires compliance with established specific emission limitations for each of the can coating operations. Final compliance is required by December 31, 1982.

**American Can History**

In a June 15, 1984, **Federal Register** notice (49 FR 10277), USEPA proposed to approve American Can's proposed SIP revision. In this **Federal Register** notice USEPA stated that "USEPA will not take final action on this SIP revision until final rulemaking is completed on the ozone SIP for the Chicago area." During the 30-day public comment period, USEPA received no comments. USEPA is today withdrawing the June 15, 1984, proposal as it applies to the American Can Englewood facility and is reproposing to disapprove this SIP revision as discussed in the policy below.

**U.S. Can**

On January 24, 1985, the IEPA submitted a proposed revision to its ozone SIP for U.S. Can's manufacturing facility located in Elgin, Illinois. This SIP revision is in the form of a September 20, 1984, Opinion and Order of the IPCB, PCB 84–23. It grants U.S. Can a variance from the existing SIP requirements from December 31, 1982, until December 31, 1985, and provides a legally enforceable compliance program.

Under the existing federally approved SIP, each of U.S. Can's interior and exterior sheet coating operations and over varnish operations is subject to the 2.8 pounds of VOC per gallon emission limitation contained in IPCB Rule 205(n)(1)(B)(i) and (ii). Final compliance with this emission limitation is required by December 31, 1982.

The SIP revision for U.S. Can would allow additional time for the source to reformulate its coatings used in manufacturing cans for the general can market. USEPA is proposing to disapprove this revision as discussed below.

**Compliance Date Extension Policy**

USEPA may approve compliance date extensions if the State demonstrates that the compliance date meets the requirements of USEPA's policy on such extensions.

Under this policy any extension which goes beyond 3 years past adoption of the applicable rule should be closely scrutinized for expeditiousness. This should include an examination of the compliance status of other sources nationally in the same VOC category.

On March 10, 1982, USEPA issued guidance on extensions for can-coating operations. USEPA, thus, has provided the national survey for can-coating variances. Based on industry experience, USEPA concluded that expeditiousness may be longer than three years for can coating operations. Expeditiousness is based upon the following guidance in the March 10, 1982, **Federal Register** notice (47 FR 10293). The policy states that USEPA will approve compliance date extensions for control of VOC emissions from can-coating operations in those cases where the extension will facilitate the expeditious conversion to low solvent technology. These extensions may be granted for a period up to December 31, 1985, where an expeditious, legally enforceable compliance program has been developed. The above can-coating extensions meet this requirement.

However, in addition, an approvable compliance date extension must be consistent with the reasonable further progress (RFP) requirements of the Clean Air Act and must not prevent the area from attaining the ozone national ambient air quality standard (NAAQS) by the area's attainment date. Illinois does not have an approved 1982 ozone plan for the Chicago attainment demonstration area. [1] Without an approvable demonstration USEPA cannot determine whether the individual compliance date extensions being proposed today will interfere with timely attainment and maintenance of the ozone standard, or with RFP. USEPA is, therefore, proposing to disapprove the above revisions. A more detailed discussion of the rationale for proposing disapproval of the State submission and of the Clean Air Act and USEPA policy related to compliance date extensions appears in Appendix A of USEPA's proposed rulemaking of November 8, 1988, at 53 FR 45103.

**Summary**

USEPA is reproposing to disapprove Getty, All Steel, St. Charles, National Can, American Can, and proposing to disapprove U.S. Can because (1) the State has failed to demonstrate that this revision will not interfere with attainment and maintenance of the ozone standard and, where relevant, RFP towards timely attainment with these revisions, and, therefore, the proposed revisions do not meet the requirements in the Clean Air Act and USEPA's policy on compliance date extensions and (2) these sources are all located in an area which lacks an approved ozone attainment demonstration.

USEPA is providing a 30-day comment period on this notice of proposed rulemaking. Public comments received on or before April 13, 1989 will be considered in USEPA's final rulemaking. All comments will be available for inspection during normal business hours at the Region V office listed at the front of this notice.

Any comments that were received during the March 20, 1984, public comment period must be resubmitted during the 30-day comment period of today's notice if the commentor still wishes USEPA to consider them. Otherwise, USEPA will not consider comments from the March 20, 1984, proposed rulemaking in its final rulemaking.

Under 5 U.S.C. 605(b), I certify that this SIP disapprovals will not have a significant economic impact on a substantial number of small entities because it only applies to six sources; Getty, All Steel, St. Charles, National Can, American Can and U.S. Can.

**List of Subjects in 40 CFR Part 52**

Air pollution control, Carbon monoxide, Hydrocarbon, Intergovernmental relations, Ozone.

Under Executive Order 12291, this action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review.

**Authority:** 42 U.S.C. 7401–7642.

Dated: June 29, 1987.

**Valdas V. Adamkus,**

*Regional Administrator.*

**Editorial note:** This document was received at the Office of the Federal Register March 9, 1989.

[FR Doc. 89–5869 Filed 3–13–89; 8:45 pm]

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[1] In fact, on July 15, 1987 (52 FR 264.24), USEPA reproposed to disapprove Illinois 1982 ozone SIP for the Chicago attainment demonstration area because, *inter alia*, of the multiple and significant continuing violations of the ozone NAAQS monitored there. On October 17, 1988 (53 FR 40615), USEPA gave final disapproval of the Chicago portion of the SIP. It should also be noted that on May 26, 1988, USEPA notified the Governor of Illinois that the SIP for Chicago area is substantially inadequate to attain and maintain the ozone standard in the Chicago-Gary-Lake County Consolidated Metropolitan Statistical Area (CMSA), and called for a revision of the plan.



## 40 CFR Part 52

**[FRL–3535–8; KY–037]**

## Approval and Promulgation of Implementation Plans Kentucky: Stack Height Review

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a declaration by Kentucky that recent revisions to EPA's stock height regulations do not necessitate source-specific revisions to the State Implementation Plan (SIP) in this State. The State was required to review its SIP for consistency within nine months of final promulgation of the stack height regulations. The intended effect of this action is to formally document that Kentucky has satisfied their obligations under Section 406 of Pub. L. 95–95 to review their SIP with respect to EPA's revised stack height regulations. No emission limitations were affected by stack height credit above GEP or any other dispersion technique with the possible exception of the Ashland Oil, Inc., oil refinery in Catlettsburg. The analysis for this source will be done in a subsequent notice.

**DATES:** Comments must be received on or before April 13, 1989.

**ADDRESSES:** Comments may be mailed to Beverly T. Hudson of EPA Region IV's Air Programs Branch. (See EPA Region IV address below.) Copies of the submission and EPA's evaluation are available for public inspection during normal business hours at the following locations:

Air Programs Branch, Region IV, Environmental Protection Agency, 345 Courtland Street NE., Atlanta, Georgia 30365

Kentucky Department for National Resources and Environmental Protection, 18 Reilly Road, Frankfort Office Park, Frankfort, Kentucky 40601

**FOR FURTHER INFORMATION CONTACT:** Beverly T. Hudson, EPA Region IV Air Programs Branch, at the above listed address, telephone (404) 347–2864 or FTS 257–2864.

**SUPPLEMENTARY INFORMATION:** On February 8, 1982 (47 FR 5864), EPA promulgated final regulations limiting stack height credits and other dispersion techniques as required by section 123 of the Clean Air Act (the Act). These regulations were challenged in the U.S. Court of Appeals for the DC Circuit by the Sierra Club Legal Defense Fund, Inc., the Natural Resources Defense Council, Inc., and the Commonwealth of Pennsylvania in *Sierra Club v. EPA*, 719 F. 2d 436. On October 11, 1983, the court issued its decision ordering EPA to reconsider portions of the stack height regulations, reversing certain portions and upholding other portions.

On February 28, 1984, the electric power industry filed a petition for a writ of certiorari with the U.S. Supreme Court. On July 2, 1984, the Supreme Court denied the petition (104 s. CT. 3571), and on July 18, 1984, the Court of Appeals formally issued a mandate

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implementing its decision and requiring EPA to promulgate revisions to the stack height regulations within six months. The promulgation deadline was ultimately extended to June 27, 1985.

Revisions to the stack height regulations were proposed on November 9, 1984 (49 FR 44878), and finalized on July 8, 1985 (50 FR 27892). The revisions redefine a number of specific terms, including "excessive concentration," "dispersion techniques," "nearby," and other important concepts, and modify some of the bases for determining good engineering practice (GEP) stack height.

Pursuant to section 406(d)(2) of Pub. L. 95–95, all states were required to (1) review and revise, as necessary, their state implementation plans (SIP's) to include provisions that limit stack height credit and dispersion techniques in accordance with the revised regulations and (2) review all existing emission limitations to determine whether any of these limitations have been affected by stack height credit above GEP or any other dispersion techniques. For any limitations so affected, states were to prepare revised limitations consistent with their revised SIP's. All SIP revisions and revised emission limits were to be submitted to EPA within nine months of promulgation, as required by statute.

Subsequently, EPA issued detailed guidance on carrying out the necessary reviews. For the review of emission limitations, state were to prepare inventories of stacks greater than 65 meters (m) in height and sources with emissions of sulfur dioxide ($SO_2$) in excess of 5,000 tons per year. These limits correspond to the *de minimis* GEP stack height and the *de minimis* $SO_2$ emission exemption from prohibited dispersion techniques. Sources were exempted from further review if they fell under the grandfathering clause (in existence before December 31, 1970), or if their actual height was less than the calculated (GEP) stack height. The remaining sources were then to be subjected to detailed review for conformance with the revised regulations. State submissions were to contain an evaluation of each stack and source in the inventory. Kentucky has indicated that the documentation is available for review at the State office (listed above).

A summary of the State's findings is provided below.

**Stack Height**

Kentucky identified fifty-seven (57) stacks examined in the stack height review analysis. Of those stacks, forty-three (43) were greater than 65 meters and fifteen (15) stacks were less than 65 meters. Twenty-two (22) of the forty-three (43) stacks greater than 65 meters were grandfathered. Eleven stacks were reviewed for GEP formula height. The number of actual stacks which exceed GEP is four. Two of these stacks had to be remodeled at GEP. The other two stacks were previously modeled at GEP, and found to have acceptable emissions limits. The modeling techniques used in the demonstration supporting this revision are, for the most part, based on modeling guidance in place at the time that the analysis was performed, i.e., the EPA "Guideline on Air Quality Models" (1978). Since that time, revisions to modeling guidance have been promulgated by EPA (51 FR 32176, September 9, 1986 and 53 FR 392, January 6, 1988). Because the modeling analysis was under way prior to publication of the revised guidance, EPA accepts the analysis. The Ashland Oil Inc., oil refinery in Catlettsburg has eight stacks which have not been completely evaluated. The analysis for this source will be dealt with in a subsequent notice.

**Dispersion Techniques**

Six (6) sources were reviewed for other prohibited dispersion techniques. No sources were found that used a prohibited dispersion technique.

On January 22, 1988, the U.S. Court of appeals for the District of Columbia issued its decision in *NRDC* v. *Thomas*, 838 F.2d 1224 (DC Dir. 1988), regarding the Environmental Protection Agency's (EPA's) stack height regulations (50 FR 27892, July 8, 1985); the court upheld most of the rules, but certain provisions were remanded to the EPA for further consideration. Accordingly, EPA is not acting on two other Kentucky sources (identified in the TSD) because they currently receive credit under one of the remanded provisions. Kentucky and EPA will review these sources for compliance with any revised requirements when EPA completes rulemaking to respond to the NRDC remand.

The modeling review presents the results of Good Engineering Practice (GEP) Modeling for the determination of sulfur dioxide and total suspended particulate emissions from East Kentucky Power Cooperative (EKPC) Spurlock Units 1 and 2. Spurlock Units 1 and 2 were the sources that had to be modelled. This air quality impact assessment study was prepared using GEP stack heights for Units 1 and 2.

The results of this review indicate the modeled (ISCST) $SO_2$ and TSP emissions from Spurlock Units 1 and 2 at GEP stack heights comply with the NAAQS. This is based upon modeling the seven major sources within the 50 kilometer radius utilized in this study. Despite strong impacts influenced by emissions from Stuart Units 1–4, the modelling of the seven combined major sources indicates that $SO_2$ and TSP ambient concentrations comply with National Ambient Air Quality Standards.

Sources located within 50 km of the Spurlock facility and constructed after January 6, 1975, were considered in the Prevention of Significant Deterioration analysis (Spurlock Unit 2 and Killen Power Plant Unit 2 (Wrightsville, Ohio)).

**EPA Review**

EPA has reviewed Kentucky's submittal and concurs with the conclusion that no SIP revisions are necessary as a result of EPA's revised stack height regulations. Kentucky has therefore met its obligations under section 406 of Pub. L. 95–95, with the possible exception of Ashland Oil, Inc. The analysis for this source will be dealt with in a subsequent notice.

Today's action does not certify that Kentucky has complied with obligations under section 406 Pub. L. 95–95, for new sources, as required in 40 CFR 51.164 and 51.118. Those federal provisions contain the stack height requirements for all sources that were or are constructed, reconstructed or modified subsequent to December 31, 1970. EPA is acting on Kentucky's submittals to comply with these requirements in a separate **Federal Register** notice.

EPA's detailed review and approval of the technical support submitted by the State is contained in a Technical Support Document. This document is available for public inspection at the EPA Regional Office listed in the **ADDRESSES** section of this notice. By publishing this proposed approval of the review and soliciting public comment, EPA is ensuring the opportunity for public participation in this process.

**Proposed Action**

EPA approves Kentucky's determination that no emission limitations have to be revised at this time, with the possible exception of Ashland Oil, Inc. Concerning Ashland Oil, Inc., which is not currently subject to the negative declaration and for which a review pursuant to section 406(d)(2) is still required, EPA is providing Kentucky with the following alternative methods to insure compliance with EPA's stack height regulations:

(1) Submittal, within the public comment period associated with this notice, of modeling analyses and other technical support demonstrating compliance within the stack height regulations for the remaining sources; or

(2) Submittal, within the public comment period associated with this notice, of revised emission limitations as necessary to comply with the stack height regulations along with modelling analyses and other technical support; or

(3) Submittal, within the public comment period associated with this notice, of a schedule for final submittal of either (1) or (2) above.

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

**List of Subjects in 40 CFR Part 52**

Air pollution control, Intergovernmental relations.

**Authority:** 42 U.S.C. 7401–7642.

Dated: March 3, 1989.

**Lee A. DeHihns III,**

*Acting Regional Administrator.*

[FR Doc. 89–5887 Filed 3–13–89; 8:45 am]

BILLING CODE 6560-50-M



## LEGAL SERVICES CORPORATION

**45 CFR Part 1632**

**Redistricting**

**AGENCY:** Legal Services Corporation.

**ACTION:** Proposed rule.

**SUMMARY:** The Legal Services Corporation ("LSC" or "Corporation") has as its principal national goal the provision of basic day-to-day legal services to eligible poor individuals. As part of the implementation of this goal, LSC proposes to prohibit any recipient involvement in redistricting activities, as defined in the rule, because redistricting activities are not related to the delivery of basic day-to-day legal services to the poor and are intertwined with impermissible political activity. The proposed rule is intended to ensure that recipients refrain from becoming involved in any redistricting activity, since such activity is not consistent with the Corporation's principal national goal for the provision of legal assistance.

**DATE:** Comments must be submitted on or before April 13, 1989.

**ADDRESS:** Send comments to Timothy B. Shea, General Counsel, Legal Services Corporation, 400 Virginia Avenue SW., Washington, DC 20024–2751.

**FOR FURTHER INFORMATION CONTACT:** Timothy B. Shea, (202) 863–1839.

**SUPPLEMENTARY INFORMATION:** Section 1007(a)(2)(C) of the LSC Act requires the Corporation to establish goals for the provision of legal assistance. 42 U.S.C. 2996f(a)(2)(C). This section mandates that the Corporation ensure that recipients, "consistent with goals established by the Corporation," adopt procedures and implement local priorities for the provision of legal assistance, taking into account the relative needs of the eligible clients in the relevant service area. For the reasons set out here, redistricting activities are not consistent with the Corporation's goal that scarce resources be focused on meeting the basic day-to-day legal needs of eligible poor individuals.

Section 1007(a)(2)(C) of the Act requires that the Corporation ensure that its recipients, consistent with goals established by the Corporation, establish priorities for the provision of legal assistance. In setting such goals, the Congress specifically noted that the Corporation's establishment of national goals was "not intended to detract from the appropriate role of local programs" to consult local client communities. *See* H. Rep. No. 310, 95th Cong., 1st Sess. 11 (1977); *see also* S. Rep. No. 172, 95th Cong., 1st Sess. 13 (1977).

In the past, the Corporation has asserted this authority to establish national goals. *See, e.g.*, LSC Final Decision to Terminate Funding to San Juan Legal Services, Inc. (Apr. 26, 1979) at 3 (citing Recommended Decision of Hearing Examiner, wherein the basis for the termination of funding was in part due to a failure to undertake litigation having a significant impact on eligible clients, in contravention of LSC's then established goals). The purpose of national goals is to provide perimeters to individual recipients, who in turn can set local priorities within those perimeters. Historically, recipients have been accorded substantial discretion in determining the areas to which they will devote resources. *See* 45 CFR Part 1620.

For the following reasons, the Corporation has determined that redistricting activities are not in accord with the Corporation's goal of focusing scarce resources on the basic day-to-day legal needs of eligible poor individuals. First, redistricting cases are not peculiar to the interests of the poor, since the relief sought would affect entire communities, which are composed of poor and non-poor individuals. Second, redistricting cases have not been identified as a priority by LSC recipients. Third, recipient funds can be better used elsewhere, since alternative organizations are available to handle redistricting matters. Fourth, recipients would likely be competing with members of the private bar who handle matters such as these, since redistricting cases usually generate attorneys' fees. Finally, involvement in an activity that risks entanglement with political activities should be assiduously avoided by LSC recipients. The prohibition in this part is similar to that contained in section 6 of S. 2409 (1986), a bill introduced by Senators Hatch and Rudman to reauthorize the Legal Services Corporation. *See* 132 Cong. Rec. S5418 (1986).

*Allocation of Resources.* Redistricting is not peculiar to the interests of the poor because redistricting disputes usually involve entire communities, which include both poor and non-poor citizens. As the legislative history of the Act points out, the Corporation, in the establishment of national goals, is to ensure that the provision of legal assistance is made in the most effective manner and so as to have the greatest effect on the problems of the poor. Since the poor represent a minority, approximately 10 to 15 percent of the United States population, the group of eligible poor in most communities is relatively small. Since most redistricting cases are class actions, the putative plaintiff class often may consist of a majority of non-eligible individuals. Similarly, the relief sought in redistricting cases often would go to the non-poor. Even in redistricting cases involving discrimination issues, the relief sought would not always go primarily to eligible poor individuals, as only part of the protected minority may be eligible. Consequently, the expenditure of recipients' funds on redistricting activities would result in an allocation of resources for the benefit of non-eligible persons.

This rule is consistent with current priorities and practice requirements, since redistricting has not been identified as a priority by any LSC recipient. A compilation of the types of cases handled by LSC recipients in 1987 reveals that approximately 27 percent of the cases involved family matters, 21 percent involved housing matters, 18 percent involved income maintenance issues, and 12 percent were consumer related cases. *See* Legal Services Corporation 1987/1988 Fact Book at 46. However, the need for this rule is supported by the fact that, at other times, LSC recipients have committed substantial resources to redistricting

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issues. As noted below, the Corporation estimates that more than 28,000 hours were devoted to handling redistricting cases from 1978 to 1984, years surrounding the 1980 census.

*Alternative Resources.* Redistricting activities are undertaken by numerous organizations, including the Mexican American Legal Defense Fund, the Southwest Voters Registration Project, Common Cause, the American Civil Liberties Union, the Native American Rights Fund, the NAACP, the Lawyers Committee for Civil Rights, the League of Women Voters, the Democratic National Committee, and the Republican National Committee. Consequently, there are other entities available to help aggrieved parties, poor and non-poor alike, who want to seek redress of any perceived malapportionment. Redistricting cases usually offer incentives to members of the private bar, since under the Voting Rights Act, 42 U.S.C. 1973, and the Civil Rights Attorneys' Fees Award Act of 1976, 42 U.S.C. 1981 and 1988, the right to recover attorneys' fees is specifically provided to prevailing parties.

*Subject to Abuse.* In the past, involvement in redistricting activities by legal services recipients has been subject to abuse because legal services recipients have linked redistricting activities to obtaining favorable Congressional support for their objectives. One LSC recipient's grant proposal addressed the need to become involved in State and local redistricting matters in order to develop powerful allies for their clients in what the recipient viewed as a battle over the direction of legal services programs. Influencing redistricting in State and local legislative bodies clearly affects the political character of those legislative bodies.

In response to the requests made on April 11 and May 10, 1984, by the Senate Committee on Labor and Human Resources, LSC conducted a study of its grantees to determine their involvement in legislative redistricting activities arising out of the 1980 census. As a result of two separate monitorings and 34 responses to an LSC questionnaire that was mailed to all LSC programs, LSC estimates that at least 28,182 hours were spent handling legislative redistricting cases. Specifically, the LSC study found that LSC recipients, in spite of one recipient's assertion that clients rarely come to the office contending they have been "malapportioned", had sought resources for specialized computer equipment and a computer specialist to draw new election district boundaries to the recipients' satisfaction. In addition, recipients hired lobbyists to work on reapportionment issues, yet had no documented request from an eligible client or elected official to undertake this activity. Further, recipients also orchestrated a State-wide effort of legal services programs to ensure elections of specific persons, who would in turn be used as powerful allies in anticipated battles over funding for legal services programs.

The LSC study also revealed that certain LSC recipients requested and received Federal funds from the Corporation to establish a Voting Rights Project center in connection with the 1980 census for the purpose of strengthening Mexican-American political power, yet had no request from an eligible client to do so. In addition, these recipients prepared a voting rights litigation manual that outlined how to select the "right" client for a redistricting battle and how to locate such a client. Since these redistricting activities were obviously conducted by legal services attorneys in pursuit of general policy goals (or even in their own self-interest), rather than in the vindication of individual clients' rights, it is clear that involvement in redistricting activity is subject to abuse and not consistent with the Corporation's principal national goal of providing basic day-to-day legal services to eligible poor individuals.

*Risk of Undue Political Entanglement.* The Legal Services Corporation Act declares that "to preserve its strength, the legal services program must be kept from the influence of or use by it of political pressures." 42 U.S.C. 2996. The LSC Act also specifically prohibits involvement in "any political activity." 42 U.S.C. 2996f(a)(6)(A). Involvement on the part of LSC recipients in redistricting activities is inherently political. The Supreme Court of the United States has held that "[p]olitics and political considerations are inseparable from redistricting and apportionment." *Gaffney* v. *Cummings*, 412 U.S. 735, 753 (1973).

In separate instances, LSC recipients were involved in reapportionment cases with counsel for the Democratic and Republican parties, respectively. *Upham* v. *Seamon*, 456 U.S. 37 (1982); *Thornburg* v. *Gingles*, 478 U.S. 30 (1986). The Corporation makes no finding as to whether LSC recipients have aligned themselves with a particular political party, but believes that any such alignment is impermissible under the Act, since it constitutes political activity.

*Competing Political Theories or Philosophies.* Redistricting activities seek political outcomes that are normally the product of the legislative process. Indeed, the Supreme Court has stated that courts "must defer to legislative judgments on reapportionment as much as possible." *Upham* v. *Seamon*, 456 U.S. 37, 39, *reh'g denied* 456 U.S. 938 (1982). LSC recipient involvement in such redistricting activities generally will cause program funds to be expended in support of one political philosophy, rather than another. In *Baker* v. *Carr*, 369 U.S. 186 (1962), Justice Frankfurter, in his dissent, stated "What is actually asked of the Court in this case is to choose among competing bases of representation—ultimately, really among competing theories of political philosophy—in order to establish an appropriate frame of government." *Id.* at 254.

Consequently, the Corporation finds that redistricting activities, as defined in this rule, are so unrelated to basic day-to-day needs of the eligible poor and so intertwined with impermissible political activity that the Corporation should not permit its recipients to be involved in such activities.

**List of Subjects in 45 CFR Part 1632**

Legal services.

For the reasons set out above, 45 CFR Chapter XVI is proposed to be amended by adding Part 1632 to read as follows:

## PART 1632—REDISTRICTING

Sec.
1632.1 Purpose.
1632.2 Definitions.
1632.3 Prohibition.

**Authority:** 42 U.S.C. 2996f(a)(2)(C); 42 U.S.C. 2996f(a)(3); 42 U.S.C. 2996g(e) of the Legal Services Corporation Act.

### § 1632.1 Purpose.

This part is intended to ensure that funds available to recipients will be utilized to the maximum extent for the delivery of basic day-to-day legal services to eligible poor individuals. Involvement in redistricting activities does not constitute the provision of basic day-to-day legal services and is prohibited by this part.

### § 1632.2 Definitions.

(a) As used in this Part, "redistricting" means any effort, directly or indirectly, to participate in the revision or reapportionment of a legislative, judicial, or elective district at any level of government, including influencing the timing or manner of the taking of a census.

(b) As used in this part, "advocating or opposing any plan" means any effort, whether by request or otherwise, even if



of a neutral nature, to revise a legislative, judicial, or elective district at any level of government.

(c) As used in this part, "recipient" means any grantee or contractor receiving funds made available by the Corporation under sections 1006(a)(1) or 1006(a)(3) of the act. The term "recipient" includes subrecipient and employees of recipients and subrecipients.

### § 1632.3 Prohibition.

Neither the Corporation nor any recipient shall be involved in or contribute or make available any funds, personnel, or equipment for use in advocating or opposing any plan, proposal, or litigation intended to or having the effect of altering any redistricting at any level of government.

Date: March 9, 1989.

**Timothy B. Shea,**

*General Counsel.*

[FR Doc. 89-5827 Filed 3-13-89; 8:45 am]
BILLING CODE 7050-01-M

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# Notices

Federal Register
Vol. 54, No. 48
Tuesday, March 14, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## CHRISTOPHER COLUMBUS QUINCENTENARY JUBILEE COMMISSION

### Meeting

**AGENCY:** Christopher Columbus Quincentenary Jubilee Commission.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice announces a forthcoming meeting of the Christopher Columbus Quincentenary Jubilee Commission, a presidential commission established in 1984 (Pub. L. 98-375). The meeting will be held in Dallas, Texas and will be chaired by Commission Chairman John N. Goudie.

**DATES:** Friday, April 7, 1989 from 2:30 to 5:30 p.m. (Open). Saturday, April 8, 1989 from 8:30 a.m. to 10:00 a.m. (Closed); 10:00 a.m. to 1:00 p.m. (Open).

**ADDRESSES:** On April 7, 1989 from 2:30 to 5:30 p.m. at the Hotel Plaza of the Americas, Ballroom, Dallas, Texas. On April 8, 1989 from 8:30 a.m. to 1:00 p.m. at the Hotel Plaza of the Americas, Ballroom, Dallas, Texas.

**FOR FURTHER INFORMATION CONTACT:** Francisco J. Martinez-Alvarez (202) 632-1992.

**SUPPLEMENTARY INFORMATION:** The Commission will review proposals for endorsement submitted by interested individuals and organizations, hear presentations by the Dallas Quincentenary Committee, Santa Fe Committee, California 1992 Committee, and Colorado Quincentenary Commission.

**Francisco J. Martinez-Alvarez,**
*Acting Director.*

[FR Doc. 89-5819 Filed 3-13-89; 8:45 am]
BILLING CODE 6320-09-M

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[Docket No. 90254-9064]**

### Commercial Information Product User Fees

**AGENCY:** International Trade Administration, Commerce.

**ACTION:** Notice.

**SUMMARY:** The U.S. and Foreign Commercial Service (US&FCS), U.S. Department of Commerce, is establishing user fee rates for its expanded Comparison Shopping Service (CSS).

**EFFECTIVE DATE:** March 14, 1989.

**FOR FURTHER INFORMATION CONTACT:** Raymond S. Yaukey, Marketing Analysis Division, Office of Commercial Information Management, Export Promotion Services, U.S. and Foreign Commercial Service, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230. Telephone (202) 377-8972.

**SUPPLEMENTARY INFORMATION:** The Comparison Shopping Service provides a custom market survey for a U.S. firm's specific product in a selected country market. A CSS survey covers a single product in a single country market and answers basic questions relating to the marketability of the product, key competitors, comparative prices, customary distribution and promotion practices, trade barriers and other factors. The expanded Comparison Shopping Service is to take effect as of date of publication in **Federal Register** and the following new user fee schedule will take effect on this date.

**User Fee Schedule For The Expanded Comparative Shopping Service:**

**[A] $1,350**

| | |
|---|---|
| Canada | Switzerland |
| Germany | Taiwan |
| Korea | United Kingdom |
| Mexico | |

**[B] $1,650**

| | |
|---|---|
| Argentina | Netherlands |
| Australia | New Zealand |
| Austria | Norway |
| Belgium | Singapore |
| Denmark | Spain |
| Finland | Sweden |
| France | United Arab Emirates |
| Greece | Venezuela |
| Italy | |

**[C] $750**

| | |
|---|---|
| Brazil | India |
| Chile | Ireland |
| Colombia | Israel |
| Egypt | Ivory Coast |
| Hungary | Pakistan |

**[D] $500**

| | |
|---|---|
| Dominican Republic | Nigeria |
| Guatemala | Panama |
| Honduras | Peru |
| Indonesia | Philippines |
| Jamaica | Portugal |
| Kenya | Saudi Arabia |
| Kuwait | South Africa |
| Malaysia | Thailand |
| Morocco | Turkey |

Note.—Other countries may be aded to the above list at a later date.

Although the Department of Commerce is not legally required to issue this notice of fees under 15 U.S.C. 1525, this notice is being issued as a matter of general policy.

**Authority:** 15 U.S.C. 175 and 15 U.S.C. 1525.

**Lew W. Cramer,**
*Director General, U.S. and Foreign Commercial Service.*

[FR Doc. 89-5826 Filed 3-13-89; 8:45 am]
BILLING CODE 3510-FP-M

## National Oceanic and Atmospheric Administration

### Coastal Zone Management: Federal Consistency Appeals by Korea Drilling Company, Ltd. (California) and John Bianchi (New York)

**AGENCY:** National Oceanic and Atmospheric Administration, Commerce.

**ACTION:** Announcement of decisions.

On January 19, 1989, the Secretary of Commerce issued a decision in the consistency appeal by Korea Drilling Company, Ltd. (KDC). KDC had applied to the U.S. Environmental Protection Agency (EPA) for a National Pollutant Discharge Elimination System (NPDES) permit for the discharge of drilling muds and associated waste materials from its exploratory drilling vessel, the *Doo Sung*, on certain outer Continental Shelf tracts offshore California. Pursuant to section 307(c)(3)(A) of the Coastal Zone Management Act, as amended (CZMA), 16 U.S.C. 1451 *et seq.*, the California Coastal Commission objected, barring issuance of the permit.



On appeal, the Secretary found that KDC's proposed activity met the regulatory criteria for an override of the Commission's objection on the ground that the activity was consistent with the objectives of the CSMA. EPA may therefore make its NPDES permit for KDC effective. Permit in hand, KDC may then bid for drilling contracts with companies possessing oil and gas leases for the enumerated tracts.

On January 25, 1989, the Acting Secretary of Commerce issued a decision in the consistency appeal by John Bianchi. Mr. Bianchi had applied to the U.S. Army Corps of Engineers for a permit for construction of a pier consisting of a rectangular open-pile deck, a ramp and a float behind his restaurant on the Reynolds Channel in Hempstead, New York. The pier was to serve as both a temporary dock for the boasts of restaurant patrons and an "alternate" waiting area for the patrons. Pursuant to section 307(c)(3)(A) of the CZMA, the New York Department of State (State) objected, barring issuance of the permit. As an alternative consistent with its coastal zone management program, the State recommended a much smaller open-pile dock in a "T"- or "L"-shape.

Mr. Bianchi appealed for an override of the State's objection on the ground that his activity was consistent with the objectives of the CZMA. On appeal, the Acting Secretary found that the proposed alternative was reasonable and available. Under the implementing regulations to the CZMA, such a finding precludes an override of the State's objection.

**FOR ADDITIONAL INFORMATION CONTACT:** Stephanie S. Campbell, Attoney/Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1825 Connecticut Avenue, NW., Suite 603, Washington, DC 20235, (202) 673-5200.

Date: March 7, 1989.

**B. Kent Burton,**
*Assistant Secretary for Oceans and Atmosphere.*

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance)

[FR Doc. 89-5768 Filed 3-13-89; 8:45 am]
BILLING CODE 3510-08-M

### Coastal Zone Management: Federal Consistency Appeal by Claire Pappas from an Objection by the New York Department of State

**AGENCY:** National Oceanic and Atmospheric Administration, Commerce.

**ACTION:** Notice of appeal.

On February 6, 1989, En-Consultants, Inc., on behalf of Claire Pappas (Appellant), filed with the Secretary of Commerce a notice of appeal under section 307(c)(3)(A) of the Coastal Zone Management Act of 1972, 16 U.S.C. 1456(c)(3)(A), and the Department of Commerce's (Department) implementing regulations, 15 CFR Part 930, Subpart H. The appeal arises from an objection by the New York Department of State (State) to the Appellant's consistency certification for a U.S. Army Corps of Engineers (Corps) permit to construct a deck for dining purposes at a seafood restaurant in Freeport, New York. The State's objection precludes the Corps from issuing the permit pending the outcome of the Appellant's appeal.

If the Appellant perfects the appeal by filing the supporting data and information required by the Department's implementing regulations, public comments will be solicited by a notice in the **Federal Register** and a local newspaper.

**FOR ADDITIONAL INFORMATION CONTACT:** Sydney Anne Minnerly, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1825 Connecticut Avenue, NW., Suite 603, Washington, DC 20235, (202) 673-5200.

Date: March 7, 1989.

**B. Kent Burton,**
*Assistant Secretary for Oceans and Atmosphere.*

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance)

[FR Doc. 89-5765 Filed 3-13-89; 8:45 am]
BILLING CODE 3510-08-M

### Intent To Evaluate Performance of the Delaware Coastal Management Program

**AGENCY:** National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management.

**ACTION:** Notice of intent to evaluate.

**SUMMARY:** The National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resources Management (OCRM), announces its intent to evaluate the performance of the Delaware Coastal Management Program (CMP); Florida CMP; Rhode Island CMP; and American Samoa CMP; and New York (Hudson) National Estuarine Research Reserve through June 1989. Evaluation of coastal management programs will be conducted pursuant to section 312 of the Coastal Zone Management Act of 1972, as amended, (CZMA), which requires a continuing review of the performance of coastal states with respect to coastal management, including detailed findings concerning the extent to which the state has implemented and enforced the program approved by the Secretary of Commerce, addressed the coastal management needs identified in section 303(2)(A) through (I) of the CZMA, and adhered to the terms of any grant, loan or cooperative agreement funded under the CZMA. Evaluation of the National Estuarine Research Reserve will be conducted pursuant to section 315(f) of the CZMA, which requires the periodic review of the performance of each reserve with respect to its operation and management. The reviews involve consideration of written submissions, a site visit to the state, and consultation with interested Federal, state and local agencies and members of the public. Public meetings will be held as part of the site visits. The state will issue notice of these meetings. Copies of each state's most recent performance report, as well as the OCRMs notification letter and supplemental information request letter to the state are available upon request from the OCRM. Written comments from all interested parties on each of these programs to the contact listed below are encouraged at this time. OCRM will place subsequent notice in the **Federal Register** announcing the availability of the Final Findings based on each evaluation once these are completed.

**FOR FURTHER INFORMATION CONTACT:** John H. McLeod, Evaluation Officer, Policy Coordination Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, 1825 Connecticut Avenue, NW, Washington DC 20235 (telephone 202/673-51044

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Date: February 27, 1989.

**Thomas J. Maginnis,**
*Assistant Administrator for Ocean Services and Coastal Zone Management.*

[FR Doc. 89-5821 Filed 3-13-89; 8:45 am]
BILLING CODE 3510-08-M

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### National Technical Information Service

#### Intent to Grant Exclusive Patent License; Absorbent Industries, Inc.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Absorbent Industries, Inc., having a place of business in Portland, Oregon, an exclusive license in the United States to practice the invention entitled "Modified Starches as Extenders for Absorbent Polymers" U.S. Patent 4,483,950. The patent rights to this invention have been assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments, and other materials relating to the proposed license must be submitted to Douglas J. Campion, Office of Federal Patent Licensing , NTIS, Box 1423, Springfield, VA 22151.

A copy of the instant patent application may be purchased from the NTIS Sales Desk by telephoning (703) 487–4650 or by writing to the Order Department, NTIS, 5285 Port Royal Road, Springfield, VA 22161.

**Douglas J. Campion,**

*Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.*

[FR Doc. 89–5817 Filed 3–13–89; 8:45 am]

BILLING CODE 3510-04-M

#### Intent To Grant Exclusive Patent License

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Nuclear Associates, a Division of Victoreen, Inc., having a place of business in Carle Place, NY 11514-1593, an exclusive license in the United States and certain foreign countries to practice the invention entitled "Anthropomorphic Cardiac Ultrasound Phantom," U.S. Patent Application Serial Number 7–257,174. The invention consists of (1) an apparatus which simulates part of the human cardiac anatomy and (2) a method which assesses the performance of ultrasound imaging, Doppler ultrasound or color/flow Doppler imaging devices. Another object of the invention is to provide a novel phantom apparatus to simulate human blood circulation for low reverberation ultrasound viewing. Prior to the grant of any license by NTIS, the patent rights in this invention will be assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments, and other materials relating to the proposed license must be submitted to Neil L. Mark, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

A copy the instant patent application may be purchased from the NTIS Sales Desk by telephoning (703) 487–4650 or by writing to the Order Department, NTIS, 5285 Part Royal Road, Springfield, VA 22161

**Douglas J. Campion,**

*Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.*

[FR Doc. 89–5818 Filed 3–13–89; 8:45 am]

BILLING CODE 3510-04-M

## DEPARTMENT OF DEFENSE

### Department of the Army

#### Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

*Name of the Committee:* Army Science Board (ASB).

*Dates of Meeting:* 29–30 March 1989.

*Time:* 0800–1700 hours, daily.

*Place:* Fort Gordon, Georgia.

*Agenda:* The 1989 Army Science Board Summer Study on Maintaining State of the Art in the Army Command and Control System will meet. Topics for the meeting include the CBRS and its application, and fielding and acquisition processes. This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039/7046.

**Richard E. Entlich,**

*Colonel, GS, Executive Secretary.*

[FR Doc. 89–5893 Filed 3–13–89; 8:45 am]

BILLING CODE 3710-08-M

## DEPARTMENT OF EDUCATION

### Proposed Information Collection Requests

**AGENCY:** Department of Education.

**ACTION:** Notice of proposed information collection requests.

**SUMMARY:** The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

**DATES:** Interested persons are invited to submit comments on or before April 13, 1989.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

**FOR FURTHER INFORMATION CONTACT:** Margaret B. Webster, (202) 732–3915.

**SUPPLEMENTARY INFORMATION:** Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission to these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) title; (3) frequency of collection; (4) the affected public; (5) reporting burden; and/or (6) recordkeeping burden; and (7) abstract. OMB invites public comments at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: March 9, 1989.

**George Sotos,**

*Acting Director, for Office of Information, Resources Management.*

Office of Management

*Type of Review:* Extension.

*Title:* Family Education Rights and Privacy Information Collection.

*Frequency:* On occasion.

*Affected Public:* State or Local Government.

*Reporting Burden: Responses:* 28,075 *Burden Hours:* 7,018.75.

*Recordkeeping Burden: Recordkeepers:* 0 *Burden Hours:* 0.

*Abstract:* Regulations require school districts and postsecondary institutions to provide disclosure or notification to parents and students of their rights and to keep a record of parties who have access to the student's records.

[FR Doc. 89–5897 Filed 3–13–89; 8:45 am]

BILLING CODE 4000-01-M



### National Advisory Council on Indian Education, Closed Meeting

**AGENCY:** National Advisory Council on Indian Education.

**ACTION:** Notice of closed meeting.

**SUMMARY:** This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Proposal Review Committee of the National Advisory Council on Indian Education. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

**DATES:** March 27–28, 1989, 8:30 a.m. until conclusion of business each day.

**ADDRESS:** U.S. Department of Education, 400 Maryland Avenue, SW., Room 2177, Washington, DC (202) 732–1887.

**FOR FURTHER INFORMATION CONTACT:** Jo Jo Hunt, Executive Director, National Advisory Council on Indian Education, 330 C Street, SW., Room 4072, Switzer Building, Washington, DC 20202–7556 (202) 732–1353).

**SUPPLEMENTARY INFORMATION:** The National Advisory Council on Indian Education is established under section 5342 of the Indian Education Act of 1988 (25 U.S.C. 2642). The Council is established to, among other things, assist the Secretary of Education in carrying out responsibilities under the Indian Education Act of 1988 (Part C of Title V of Pub. L. 100–297) and to advise Congress and the Secretary of Education with regard to federal education programs benefiting Indian children and adults.

The Proposal Review Committee of the Council will meet in closed session starting at approximately 8:30 a.m. and will end at the conclusion of business each day at approximately 5:00 p.m. The agenda includes reviewing grant applications for assistance under programs authorized by subparts 1, 2, and 3 of the Indian Education Act, including applications for (1) Discretionary Grants to Indian-Controlled Schools; (2) Planning, Pilot, and Demonstration Projects; (3) Educational Personnel Development Projects; (4) Educational Services Projects; (5) Indian Fellowships; and (6) Educational Services for Indian Adults. Under section 5342(b)(2) of subpart 4 of the Indian Education Act, the Council is authorized to review applications for assistance submitted under the Indian Education Act and to make recommendations to the Secretary of Education with respect to their approval.

The reviewing of applicants must be held in the highest confidence until the announcement is released by proper authorities as to which project will be funded. The premature disclosure of information discussed during the review process is likely to significantly frustrate implementation of proposed agency action. Financial information obtained from a person which is privileged or confidential contained in and related to these applications will be discussed at the review session. In addition, discussion will touch upon matters that would disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. Such matters are protected by exemptions (9), (4), and (6) of section 552b(c) of the Government in the Sunshine Act (Pub. L. 94–409; 5 U.S.C. 552b(c)).

The public is being given less than 15 days notice of this meeting because of scheduling requirements to meet the funding target dates of the Office of Indian Education.

A summary of the activities of the closed meeting and related matters which are informative to the public consistent with the policy of Title 5 U.S.C. 552b will be available to the public within 14 days of the meeting.

Dated: March 7, 1989. Signed at Washington, DC.

**Jo Jo Hunt,**

*Executive Director, National Advisory Council on Indian Education.*

[FR Doc. 89–0767 Filed 3–13–89; 8:45 am]

BILLING CODE 4000-01-M

## DEPARTMENT OF ENERGY

### Economic Regulatory Administration

#### Final Consent Order with Thomas P. Reidy, Inc.

**AGENCY:** Economic Regulatory Administration, Department of Energy

**ACTION:** Final action of proposed consent order.

**SUMMARY:** The Department of Energy (DOE) hereby gives the notice required by 10 CFR 205.199J that it has adopted as final the Consent Order with Thomas P. Reidy, Inc. (predecessor to Ramada Oil and Gas Corporation) (Reidy), executed on January 13, 1989, and published for comment in 54 FR 5265 on February 2, 1989.

As required by 10 CFR 205.199J, DOE provided a period of thirty (30) days following publication of the Notice of Proposed Consent Order for the submission of comments. The ERA received no comments in response to this Notice. Accordingly, ERA has determined that the Consent Order should be made final without modification. The Consent Order becomes effective as a Final Order of the DOE on the date of publication of this Notice.

**FOR FURTHER INFORMATION CONTACT:** Dorothy Hamid, Office of Enforcement Litigation, Economic Regulatory Administration, U.S. Department of Energy, Room 3H–017, RG–32, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–1699.

Copies of the Consent Order may be obtained free of charge by written request to "Reidy Consent Order Request" at the above address or by calling Dorothy Hamid at the above telephone number. Copies may also be obtained in person at the same address or at the Freedom of Information Reading Room, Room 1E–90, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

**SUPPLEMENTAL INFORMATION:** On February 2, 1989, DOE published notice in the **Federal Register**, Vol. 54 at page 5265, announcing the execution of a Proposed Consent Order between Reidy and DOE. In compliance with the DOE regulations, that Notice, and a Press

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Release, issued on February 3, 1989, summarized the proposed Consent Order and the relevant facts.

The Consent Order resolves all civil and administrative claims or causes of action regarding Reidy's compliance with the obligations under the Federal petroleum price and allocation regulations. The Consent Order requires Reidy to pay to DOE $5.2 million within thirty (30) days of the effective date of the Consent Order, to assign refunds of approximately $170,000, including accrued interest, which were awarded to Reidy in refund proceedings in *Gulf Oil Corp./Thos. P. Reidy, Inc.* and to waive all other claims for refunds in Subpart V proceedings. ERA will direct that all amounts paid by Reidy pursuant to the Consent Order be deposited into an interest-bearing escrow account for ultimate distribution pursuant to Special Refund Procedures under 10 CFR Part 205, Subpart V, and DOE's Modified Statement of Restitutionary Policy at 51 FR 27899 (August 4, 1986).

As noted, no comments were received in response to the Notice of the Proposed Consent Order. Accordingly, ERA has determined to adopt the Proposed Consent Order without modification as a final Order of the DOE, pursuant to 10 CFR 205.199J. The Consent Order becomes effective upon publication of this Notice.

Issued in Washington, DC, on March 6, 1989.

**Milton C. Lorenz,**

*Chief Counsel for Enforcement Litigation, Economic Regulatory Administration.*

[FR Doc. 89-5804 Filed 3-13-89; 8:45 am]

BILLING CODE 6450-01-M

## Federal Energy Regulatory Commission

**[Docket No. RP89-86-000]**

### ANR Pipeline Co.; Proposed Changes in FERC Gas Tariff

March 8, 1989.

Take notice that ANR Pipeline Company ("ANR") on March 1, 1989 tendered for filing as a part of its FERC Gas Tariff Original Volume No. 1-A, six copies each of First Revised Sheet No. 136B and Original Sheet No. 136C. These sheets set forth a new tariff provision governing the voluntary reallocation of firm capacity for OCS transportation services and is filed in compliance with § 284.305(e) of the Federal Energy Regulatory Commission's (Commission) Regulations. ANR also has notified the Commission that it elects to continue to use its currently effective rates for transportation services on the OCS performed pursuant to individually issued certificates.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene on or before March 15, 1989. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 89-5792 Filed 3-13-89; 8:45 am]

BILLING CODE 6717-01-M

**[Docket No. RP89-75-000]**

### Black Marlin Pipeline Co; Filing

March 8, 1989.

Take notice that on March 1, 1989, Black Marlin Pipeline Company (Black Marlin) tendered for filing to become a part of Black Marlin's FERC Gas Tariff, Original Volume No. 1, the following tariff sheets:

4th Revised Sheet No. 117
4th Revised Sheet No. 118
4th Revised Sheet No. 119
4th Revised Sheet No. 120
4th Revised Sheet No. 121
4th Revised Sheet No. 122
4th Revised Sheet No. 123
4th Revised Sheet No. 124
4th Revised Sheet No. 125
4th Revised Sheet No. 126-199
2nd Revised Sheet No. 215
1st Revised Sheet No. 215A
2nd Revised Sheet No. 300
3rd Revised Sheet No. 301
2nd Revised Sheet No. 302
3rd Revised Sheet No. 303
1st Revised Sheet No. 304

In compliance with Order No. 509 and 18 CFR 284.305(b), Black Marlin states that the above-noted tariff sheets establish the new rate schedules and the rates it will utilize in providing transportation through its OCS facilities. Black Marlin proposes to establish Rate Schedules FTS/OCS and ITS/OCS under which it will provide "open access" transportation on a firm and interruptible basis respectively in accordance with Order No. 509.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice & Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 14, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 89-5803 Filed 3-13-89; 8:45 am]

BILLING CODE 6717-01-M

**[Docket No. RP89-85-000]**

### Chandeleur Pipe Line Co.; Tariff Filing

March 8, 1989.

Take notice that on March 1, 1989, Chandeleur Pipe Line Company (Chandeleur) tendered for filing proposed revised tariff sheets designed to implement changes to its FERC Gas Tariff in compliance with § 284.301 et seq. of the Commission Regulations along with a statement explaining the continued use of Chandeleur's existing rates.

The proposed effective date for the revised tariff sheets is April 1, 1989.

While Chandeleur believes it has complied with all the applicable sections of § 284.301 of the Commission's Regulations, it nevertheless, respectfully requests that waiver be granted of all applicable rules and regulations of the Commission as may be necessary to implement these revised tariff sheets subject to this notice to become effective April 1, 1989.

Chandeleur states that a copy of this filing has been mailed to each of Chandeleur's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with §§ 385.214 and 385.211. All such motions or protests should be filed on or before March 15, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies



of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 89-5788 Filed 3-13-89; 8:45 am]

BILLING CODE 6717-01-M

**[Docket No. RP89-80-000]**

### CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

March 8, 1989.

On March 1, 1989, CNG Transmission Corporation ("CNG") submitted for filing, as part of its FERC Gas Tariff Original Volume No. 1, the following tariff sheet: Original Sheet No. 127-A.

CNG has requested that the Commission permit this filing to become effective as of April 1, 1989. This tariff sheet is being filed in compliance with Commission Order Nos. 509 and 509-A.

CNG states that copies of the filing were served upon all of its Volume No. 1 customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests shall be filed on or before March 15, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 89-5793 Filed 3-13-89; 8:45 am]

BILLING CODE 6717-01-M

**[Docket No. RP89-77-000]**

### Florida Gas Transmission Co.; Filing

March 6, 1989.

Take notice that on March 1, 1989, Florida Gas Transmission Company (FGT) tendered for filing to become a part of FGT's FERC Gas Tariff, First Revised Volume No. 3, the Tariff Sheets listed on Appendix A.

FGT states the listed tariff sheets are filed in compliance with Order No. 509 and 18 CFR 284.305(b) to establish the new rate schedules, Rate Schedules FTS-OCS and ITS-OCS, FGT will utilize in providing firm and interruptible transportation through its facilities located in the Outer Continental Shelf (OCS). FGT proposes an effective date of April 1, 1989 for the above noted tariff sheets. FGT proposes that Rate Schedules FTS-OCS and ITS-OCS would remain in effect only until FGT accepts a blanket transportation certificate pursuant to § 284.221 of the commission Regulation's and Order No. 436 and 500, *et. seq.* FGT has pending at Docket No. CP89-555-000, an application for a blanket transportation certificate which application also seeks to establish generally applicable firm and interruptible Rate Schedules FTS-1 and ITS-1, respectively. Upon the date of FGT's acceptance of such blanket certificate, Rate Schedules FTS-OCS and ITS-OCS would be superseded by Rate Schedules FTS-1 and ITS-1, respectively, and FGT would provide service on its OCS facilities under such generally applicable rate schedules.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice & Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 14, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

Original Sheet No. 1039
Original Sheet No. 1040
Original Sheet No. 1041
Original Sheet No. 1042
Original Sheet No. 1043
Original Sheet No. 1044
Original Sheet No. 1045
Original Sheet No. 1046
Original Sheet No. 1047
Original Sheet No. 1048
Original Sheet No. 1049
Original Sheet No. 1050
Original Sheet No. 1051
Original Sheet No. 1052
Original Sheet No. 1053
Original Sheet No. 1054
Original Sheet No. 1055
Original Sheet No. 1056
Original Sheet No. 1057
Original Sheet No. 1058
Original Sheet No. 1059
Original Sheet No. 1060
Original Sheet No. 1061
Original Sheet No. 1062
Original Sheet No. 1063
Original Sheet No. 1064
Original Sheet No. 1065
Original Sheet No. 1066
Original Sheet No. 1067
Original Sheet No. 1068
Original Sheet No. 1069
Original Sheet No. 1070
Original Sheet No. 1071
Original Sheet No. 1072
Original Sheet No. 1073
Original Sheet No. 1074
Original Sheet No. 1075
Original Sheet No. 1076
Original Sheet No. 1077
Original Sheet No. 1078
Original Sheet No. 1079
Original Sheet No. 1080
Original Sheet No. 1081
Original Sheet No. 1082
Original Sheet No. 1083
Original Sheet No. 1084
Original Sheet No. 1085
Original Sheet No. 1086
Original Sheet No. 1087
Original Sheet No. 1088
Original Sheet No. 1089
Original Sheet No. 1090
Original Sheet No. 1091

[FR Doc. 89-5804 Filed 3-13-89; 8:45 am]

BILLING CODE 6717-01-M

**[Docket No. RP89-69-000]**

### Freeport Interstate Pipeline Co.; Filing

March 7, 1989.

Take notice that on March 1, 1989, Freeport Interstate Pipeline Company (Freeport) filed First Revised Sheet No. 49 to its FERC Gas Tariff, Original Volume No. 1, to be effective April 1, 1989. Freeport states that this filing is in compliance with Commission Order Nos. 509 and 509-A.

Freeport states that its existing transportation service is performed under the authority of section 311(a)(1) of the Natural Gas Policy Act and implementation of Order Nos. 509 and 509-A will not disrupt or discriminate for or against any transportation service performed under section 7(c) of the Natural Gas Act. Freeport states further that it has only one existing shipper and only one known potential shipper, its affiliate, Freeport-McMoRan LP. For this reason, Freeport indicates that its tariff revisions are concise, since it is inconceivable under present circumstances that the reallocation of firm capacity provided in Order Nos. 509 and 509-A would have more than relatively limited import for its operations.

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Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure [18 CFR 385.214, 385.211 (1988)]. All such motions or protests should be filed on or before March 14, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

*Secretary.*

[FR Doc. 89-5806 Filed 3-13-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-82-000]

**High Island Offshore System; Proposed Changes in FERC Gas Tariff**

March 8, 1989.

Take notice that on March 1, 1989, High Island Offshore System ("HIOS") tendered for filing its FERC Gas Tariff, First Revised Volume No. 1.

According to HIOS, an entirely new Volume No. 1 (First Revised Volume No. 1) is being submitted because so many changes in its presently effective Original Volume No. 1 are required in order to comply with the Commission's Order Nos. 509 and 509-A.

HIOS proposes to continue to charge its presently effective rates, which are being collected, subject to refund, in Docket No. RP87-37-000. The principal changes relate to changes being made to comply with Order Nos. 509 and 509-A. In this connection, a new Rate Schedule FT is included which relates to the procedures to be followed in allocating available firm capacity on the HIOS system.

HIOS proposes that the rates contained in the Schedule of Rates (Original Sheet No. 8) become effective on April 1, 1989, subject to refund in Docket No. RP89-37-000. HIOS also proposes that the rest of First Revised Volume No. 1 become effective on April 1, 1989, without suspension.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 or Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 285.214). All such motions or protests should be filed on or before March 15, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

*Secretary.*

[FR Doc. 89-5789 Filed 3-13-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-86-004]

**K N Energy, Inc.; Proposed Changes in FERC Gas Tariff**

March 8, 1989.

Take notice that K N Energy, Inc. ("K N") on March 3, 1989 tendered for filing revised tariff sheets reflecting changes in base rates in compliance with the Commission's February 17, 1989 Order approving offer of settlement subject to modifications. The proposed effective date for these tariff sheets is February 14, 1989.

KN states that tariff sheets have also been filed with restated base rates replacing those submitted with KN's regularly scheduled quarterly PGA filing (submitted) January 27, 1989). The proposed effective date for the PGA is March 1, 1989.

Copies of the filing were served upon K N's jurisdictional customers, and interested public bodies.

Any person desiring to be heard or to make any protest with reference to this filing should, on or before March 15, 1989, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

*Secretary.*

[FR Doc. 89-5794 Filed 3-13-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-87-000]

**Mitco Pipeline Co.; Tariff Filing**

March 8, 1989.

Take notice that on March 1, 1989, Mitco Pipeline Company (Mitco), tendered for filing with the Commission, to be effective April 1, 1989, the following sheets to Mitco's effective FERC Gas Tariff, Original Volume No. 1:

First Revised Sheet No. 2 (Table of Contents)
Original Sheet Nos. 8 through 19 (Sheets reserved for future use)
Original Sheet Nos. 20 through 46, Rate Schedule FT (Firm Transportation)
Original Sheet Nos. 47 through 73, Rate Schedule IT (Interruptible Transportation)

Mitco states that it elects to continue to use its current rate under Rate Schedule T-1 for transportation service provided for Transcontinental Gas Pipe Line Corporation (Transco) after April 1, 1989, pursuant to its existing certificate on file with the Commission, with explanation for such continued use as set forth in the filing. Mitco operates a small 8.5 mile pipeline delivering natural gas from one block on the Outer Continental Shelf to a single interconnection with an intrastate pipeline. Mitco does not anticipate providing any additional services to any other shipper beyond the existing service to its only customer, Transco. Mitco states that it is filing Rate Schedules FT and IT solely to comply with Order Nos. 509 and 509-A, which rate schedule provide, *inter alia*, for an open season for firm and interruptible transportation capacity. The rates proposed for these rate schedules continue to reflect the existing rate upon which the Commission relied when the facilities were certificated.

Mitco requests the Commission grant whatever waivers may be necessary for the Commission to accept the proposed tariff sheets, and for the tariff sheets to become effective on April 1, 1989.

Any persons desiring to be heard or to make any protest with reference to said filing should, on or before March 14, 1989, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any conference or hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

*Secretary.*

[FR Doc. 89-5808 Filed 3-13-89; 8:45 am]

BILLING CODE 6717-01-M



[Docket No. RP89-68-000]

**Natural Gas Pipeline Co., of America Proposed Changes in FERC Gas Tariff**

March 6, 1989.

Take notice that on March 1, 1989 in compliance with Order No. 509, as amended by Order No. 509-A, Docket No. RM88-15-000, National Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1A,

Second Revised Sheet No. 23
Second Revised Sheet No. 24 and
First Revised Sheet No. 25

Natural states these sheets are proposed to be effective April 1, 1989. These sheets contain a revision to section 3(b)(ii) to conform to the requirements of 18 CFR 284.305(e) of the Commission's Regulations.

A copy of this filing was made to each of Natural's jurisdictional and transportation customers and to interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.211 and 385.214. All such motions or protests must be filed on or before March 14, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

*Secretary.*

[FR Doc. 89-5807 Filed 3-13-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2320 New York]

**Niagara Mohawk Power Corp.; Intent To File an Application for a New License**

March 7, 1989.

Take notice that on December 29, 1988, Niagara Mohawk Power Corporation, the existing licensee for the Middle Raquette River Hydroelectric Project No. 2320, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Public Law 99-495. The original license for Project No. 2320 was issued effective November 1, 1949, and expires December 31, 1993.

The project is located on the Raquette River in St. Lawrence County, New York. The principal works of the Middle Rawuette River Project include the following developments, each with concrete gravity dams: Higley, with a reservoir of 700 acres and a 4,480-kW capacity powerhouse; Colton, with a reservoir of 152 acres and a 29,520-kW capacity powerhouse; Hannawa, with a reservoir of 168 acres and a 7,200-kW capacity powerhouse; and Sugar Island, with a reservoir of 29 acres and a 4,800-kW capacity powerhouse. All developments have transmission line connections and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87-7-000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426. The above information as described in the rule is now available from the licensee at 300 Erie Boulevard West, Building A-1, Syracuse, NY 13202, Attn: Barbara J. Raymond, C.R.M., telephone (315) 428-6353.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Lois D. Cashell,

*Secretary.*

[FR Doc. 89-5785 Filed 3-13-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2539; New York]

**Niagara Mohawk Power Corp.; Intent To File an Application for a New License**

March 7, 1989.

Take notice that on December 29, 1988, Niagara Mohawk Power Corporation, the existing licensee for the School Street Hydro-electric Project No. 2539, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99-495. The original license for Project No. 2539 was issued effective April 1, 1962, and expires December 31, 1993.

The project is located on the Mohawk River in Albany and Saratoga Counties, New York. The principal works of the School Street Project include a gravity dam of masonry construction with a concrete cap; a reservoir of 100 acres; and intake into a power canal, a forebay, and penstocks controlled at a gatehouse; a powerhouse with an installed capacity of 38,800 kW; transmission line connections; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87-7-000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426. The above information as described in the rule is now available from the licensee at 300 Erie Boulevard West, Building A-1, Syracuse, NY 13202, Atten: Barbara J. Raymond, C.R.M., telephone (315) 428-6353.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at lease 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Lois D. Cashell,

*Secretary.*

[FR Doc. 89-5784 Filed 3-13-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-72-000]

**Nothern Natural Gas Co.; Filing**

March 6, 1989.

Take notice that on March 1, 1989, Northern Natural Gas Company's Division of Enron Corp., tendered for

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filing to become a part of Northern's FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheet:

Second Revised Sheet No. 52f.3

Northern states that this tariff sheet is filed in compliance with Order No. 509 to set forth that Norther will reallocate firm transportation capacity, voluntarily relinquished pursuant to § 284.304(c) of the Commission's Regulations, on a first-come, first-served basis.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice & Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 14, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 89-5808 Filed 3-13-89; 8:45 am]

BILLING CODE 6717-01-M

**[Docket No. RP88-117-007]**

**Northern Natural Gas Co.; Division of Enron Corp.; Compliance With Order Nos. 483 and 483-A**

March 8, 1989.

Take notice that on February 28, 1989, Northern Natural Gas Company, Division of Enron Corp. (Northern), tendered for filing, as part of Northern's FERC Gas Tariff, Third Revised Volume No. 1 (Volume 1 Tariff) and Original Volume No. 2 (Volume 2 Tariff), the following tariff sheets to become effective January 1, 1989:

*Third Revised Volume No. 1*
Seventh Revised Sheet No. 65
Substitute Fifth Revised Sheet No. 66
Substitute Seventh Revised Sheet No. 67
Substitute Sixth Revised Sheet No. 68
Substitute Ninth Revised Sheet No. 69
Second Substitute First Revised Sheet No. 69a
Substitute Eighth Revised Sheet No. 70
Substitute Fourth Revised Sheet No. 70a
Third Revised Sheet No. 70b
Substitute Fifth Revised Sheet No. 70c
*Original Volume No. 2*
Substitute Fifth Revised Sheet No. 1d
Substitute Fifth Revised Sheet No. 1e
Substitute Sixth Revised Sheet No. 1f
Substitute Eighth Revised Sheet No. 1g
Second Substitute Sixth Revised Sheet No. 1h
Substitute Sixth Revised Sheet No. 1i
Substitute Second Revised Sheet No. 1i.1
Fifth Revised Sheet No. 1i.2
First Substitute Original Sheet No. 1i.2a

Northern states that these tariff sheets are in compliance with the Letter Orders dated September 29, 1988, and November 18, 1988, respectively, in order that Northern's tariff will be in conformance with Order Nos. 483 and 483-A.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 15, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 89-5809 Filed 3-13-89; 8:45 am]

BILLING CODE 6717-01-M

**[Docket No. RP88-88-005]**

**Panhandle Eastern Pipe Line Co.; Tariff Filing**

March 6, 1989.

Take notice that on February 27, 1989 Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing the following revised tariff sheet to its FERC Gas Tariff, Original Volume No. 1:

First Revised Sheet No. 32-BU.1

The proposed effective date of this revised tariff sheet is March 1, 1989.

Panhandle states that this revised tariff sheet is being refiled in accordance with Ordering Paragraph (B) of the Commission's Order Granting Rehearing issued January 31, 1989.

Copies of this letter and enclosure are being served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.211). All such motions or protests must be filed on or before March 14, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 89-5790 Filed 3-13-89; 8:45 am]

BILLING CODE 6717-01-M

**[Docket No. RP88-259-007]**

**Northern Natural Gas Co., Division of Enron Corp.; Proposed Changes in FERC Gas Tariff**

March 6, 1989.

Take notice that Northern Natural Gas Company, Division of Enron Corp., (Northern) on February 27, 1989, tendered for filing revised changes in its FERC Gas Tariff in compliance with the Commission's Order dated January 31, 1989 in this proceeding. Northern states that the filing reflects a further decrease in rates below the reduced rates originally filed by Northern in this proceeding. Northern has requested that the proposed filing is made effective October 27, 1988.

The Company states that copies of the filing have been mailed to each of its customers purchasing gas and receiving transportation and gathering services under its FERC Gas Tariff and to interested State Commissions. Any person desiring to be heard or to protest



said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before March 14, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 89-5810 Filed 3-13-89; 8:45 am]

BILLING CODE 6717-01-M

**[Docket No. RP88-262-002]**

**Panhandle Eastern Pipe Line Co.; Compliance Filing**

March 6, 1989.

Take notice that on February 28, 1989 Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing the revised tariff sheets as listed on Appendices A and B, attached to the filing.

Panhandle states these tariff sheets to be effective April 1, 1989 reflect (1) compliance with Ordering Paragraphs (B), (C), (D), and (E) of the Commission's Order dated October 31, 1988; (2) the application of Ordering Paragraph (B) of the Commission's Order dated September 28, 1988 in Docket No. RP88-241-000; and (3) the regularly scheduled Annual PGA filing to be effective March 1, 1989.

Panhandle states that subsequent to its filing of Sept. 30, 1988, it determined that the fuel percentage for Rate Schedule PT should also reflect the seasonal basis of rates herein to reflect the distribution of these costs among the transportation customers who use the system at flow rates which are not constant from season to season. Accordingly, Panhandle has included seasonally adjusted fuel percentages herein and respectfully requests wavier of the Commission's Regulations to permit an effective date of April 1, 1989. No change in revenues results from this modification. If this request is not granted in total, Panhandle has also included hererin alternate tariff sheets, listed in Appendix C hereto, which do not reflect the seasonally adjusted fuel percentages.

Panhandle states that the filing of these revised tariff sheets which satisfies the requirements of the Commission's Order dated October 31, 1988 in this proceeding is without prejudice to Panhandle's rights on rehearing or in any judicial review proceeding or its position in this proceeding and the Docket No. RP88-241-000 proceeding.

Copies of this letter and enclosures are being served on all jurisdictional customer, interested state commissions and all parties to this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before March 14, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 89-5811 Filed 3-13-89; 8:45 am]

BILLING CODE 6717-01-M

**[Docket No. RP89-73-000]**

**Pelican Interstate Gas System; Proposed Changes in FERC Gas Tariff**

March 6, 1989.

Take notice that on March 1, 1989, in compliance with Order No. 509, as amended by Order No. 509-A, Docket No. RM88-15-000, Pelican Interstate Gas System (Pelican) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Sixth Revised Sheet No. 1, Original Sheets Nos. 1A, 1B, 2B and 35 through 98. Pelican states these proposed sheets are intended to conform to 18 CFR 284.7 and 284.8(d) or 284.9(d), as applicable, to provide nondiscriminatory open access transportation effective April 1, 1989. Pelican further states that the tariff sheets are intended to set in place Rate Schedules FTS and ITS and the General Terms and Conditions under which Pelican would perform firm and interruptible transportation.

Copies of this filing have been served upon Pelican's jurisdictional customers, entities inquiring about service, the Louisiana Public Service Commission and the Department of Natural Resources Office of Conservation of the State of Louisiana.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed on or before March 14, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 89-5812 Filed 3-13-89; 8:45 am]

BILLING CODE 6717-01-M

**[Project No. 2370; Maryland]**

**Pennsylvania Electric Co.; Intent To File an Application for a New License**

March 6, 1989.

Take notice that on December 30, 1988, Pennsylvania Electric Company, the existing licensee for the Deep Creek Hydroelectric Project No. 2370, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99-495. The original license for Project No. 2370 was issued effective May 1, 1965, and will expire December 31, 1993.

The proejct is located on the Deep Creek, a tributary of the Youghiogheny River, in Garrett County, Maryland. The principal works of the Deep Creek Project include an 86-foot-high, 1,300-foot-long earth and rockfill dam with a concrete side channel spillway; a reservoir; a 9-foot-diameter, 7,100-foot-long concrete and steel lined power tunnel leading to a surge tank and two 6-foot-diameter steel penstocks; a powerhouse with an installed capacity of 19,200 kW; a switchyard with transmission line connections; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87-7-000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426. The above information as described in the rule is now available from the licensee at 1001 Broad Street, Johnstown, PA 15907.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license appications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for

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license for this project must be filed by December 31, 1991.

Lois D. Cashell,

*Secretary.*

[FR Doc. 89-5788 Filed 3-13-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-74-000]

**Southern Natural Gas Co.; Compliance Filing**

March 7, 1989.

Take notice that on March 1, 1989, Southern Natural Gas Company (Southern) filed Second Revised Sheet No. 30AA and Original Sheet No. 30AA.1 to its FERC Gas Tariff, Sixth Revised Volume No. 1, to be effective April 1, 1989. Southern states that this filing is made in compliance with Commission Order Nos. 509 and 509-A.

Southern states that on Sheet Nos. 30AA and 30AA.1—New section 6(i) has been added to Rate Schedule FT to provide that if Southern does not have capacity available to serve all or part of a request for service through Outer Continental Shelf (OCS) facilities, it will tender names of existing firm shippers using such capacity within 10 days of receiving the request. Southern further states that if a shipper desires to relinquish capacity on OCS facilities, such capacity shall be reallocated on a first-come, first-served basis to the extent capacity is requested. Southern points out that shippers receiving reallocated capacity from section 7 certificated services must agree to accept the original term of the service unless Southern agrees otherwise. Section 6(h) has been revised to reference new section 6(i).

Southern states that copies of this filing are being mailed to all of its jurisdictional purchasers, shippers, and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214, 385.211 (1988). All such motions or protests should be filed on or before March 14, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

*Secretary.*

[FR Doc. 89-5814 Filed 3-13-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-81-000]

**Tarpon Transmission Co.; Tariff Filing**

March 8, 1989.

Take notice that on March 1, 1989, Tarpon Transmission Company (Tarpon), an interstate natural gas pipeline operating on the Outer Continental Shelf (OCS), tendered for filing with the Commission as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, to be effective April 1, 1989: First Revised Sheet No. 45, Original Sheet No. 45-A, and First Revised Sheet No. 46. Tarpon states that these tariff sheets set forth the method Tarpon will use to reallocate firm transportation capacity in the future, in accordance with Commission Order Nos. 509 and 509-A.

Tarpon further states that it is currently providing "open access" transportation services, and that rates for such services conforming to the requirements of Part 284 of the Commission's Regulations have been effective since December 1, 1987. Tarpon also notifed the Commission, pursuant to revised § 284.305(d)(2), that it will continue using its current rate for non-Part 284 transportation service to Trunkline Gas Company after April 1, 1989, subject to the outcome of the remand proceeding presently pending before the Commission in Docket Nos. RP84-62, *et al.* Tarpon states that the rate charged Trunkline is the same rate as that charged for Part 284 transportation services pursuant to its Rate Schedules ITS and FTS.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Such motions or protests should be filed on or before March 15, 1989. Such motions or protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person desiring to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

*Secretary.*

[FR Doc. 89-5791 Filed 3-13-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-79-000]

**Transcontinental Gas Pipe Line Corp.; Proposed Tariff Sheets**

March 6, 1989.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing on March 1, 1989 the following tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1. Such sheets are proposed to be effective April 1, 1989.

Original Volume No. 1

Second Revised Sheet No. 32
First Revised Sheet No. 32A
First Revised Sheet No. 32B
First Revised Sheet No. 32C

Copies of this filing were served on SOPCO customers.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 14, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

*Secretary.*

[FR Doc. 89-5813 Filed 3-13-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-83-000]

**Superior Offshore Co.; Tariff Filing**

March 6, 1989.

Take notice that on March 1, 1989, Superior Offshore Pipeline Company ("SOPCO"), 12450 Greenspoint Drive, Houston, Texas 77060-1991, filed, pursuant to § 284.304 of the Commission's Regulations promulgated by Order Nos. 509 and 509A, setting forth the method by which SOPCO will allocate available firm and interruptible transportation capacity in the following tariff sheets:



First Revised Sheet No. 196-E
Original Sheet No.196-F

Transco states that it is submitting a tariff sheet which is required by § 284.305(3) of the Commission's Regulations. Section 284.305(e) states: "By March 1, 1989, to be effective no later than April 1, 1989, all OCS pipelines must file tariff provisions setting forth the method by which firm transportation capacity will be reallocated under § 284.304(c) in the event two or more shippers seek to obtain the firm capacity that one or more shippers offer to relinquish." Accordingly, Transco is submitting First Revised Sheet No. 196-E and Original Sheet No.196-F to be included in its FERC Gas Tariff, Second Revised Volume No. 1. Such tariff sheets will be included in Transco's Rate Schedule FT.

Transco states that copies of the instant filing are being mailed to its jurisdictional customers and interested State Commissions. In accordance with the provisions of § 154.16 of the Commission's Regulations, copies of this filing are available for public inspection during regular business hours, in a convenient form and place at Transco's main offices at 2800 Post Oak Boulevard in Houston, Texas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 14, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

*Secretary.*

[FR Doc. 89-5815 Filed 3-13-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-89-000]

**United Gas Pipe Line Co.; Proposed Changes in FERC Gas Tariff**

March 6, 1989.

Take notice that on March 1, 1989, United Pipe Line Company (United), Post Office Box 1478, Houston, Texas 77251-1478, filed pursuant to § 284.305(e) of the Federal Energy Regulatory Commission's (Commission) Regulations, tariff sheets to First Revised Volume No. 1 of its FERC Gas Tariff. The tariff sheets filed by United are:

*To Be Effective April 1, 1989*

Third Revised Sheet No. 48-A
Original Sheet No. 48-A1
Original Sheet No. 48-A2

United states that these tariff sheets are filed, as required by Order No. 509 issued December 9, 1988, as amended by Order No. 509-A issued February 21, 1989, to establish the manner in which firm capacity will be reallocated under § 284.304(c) of the Commission's Regulations in the event that more than one Shipper seeks to obtain the firm capacity relinquished.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, on or before March 15, 1989, and in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person desiring to become a party must petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

*Secretary.*

[FR Doc. 89-5795 Filed 3-13-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2442 New York]

**City of Watertown, New York; Intent To File an Application for a New License**

March 6, 1989.

Take notice that on December 30, 1988, the City of Watertown, New York, the existing licensee for the Watertown Hydroelectric Project No. 2442, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99-495. The original license for Project No. 2442 was issued effective April 1, 1962, and expires December 31, 1993.

The project is located on the Black River in Jefferson County, New York. The principal works of the Watertown Project include a main concrete diversion dam, 13.5 feet high and 650 feet long, and a second similar diversion dam, 200 long; about 225 acres of reservoir; a concrete headgate structure with 25 wood gates and a canal, 20 feet deep, 55 feet wide and 950 feet long; a powerhouse with an installed capacity of 5,400 kW; a transmission line connection; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87-7-000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street, NE, Washington, DC 20426. The above information as described in the rule is now available from the licensee at Room 302, Watertown Municipal Building, 245 Washington Street, Watertown, NY 13601-3380.

Pursuant to section 15(c)(1) of the Act, each applicant for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Lois D. Cashell,

*Secretary.*

[FR Doc. 89-5787 Filed 3-13-89; 8:45 am]

BILLING CODE 6717-01-M

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-3533-7]

**Workshop on Qualitative and Quantitative Comparability of Human and Animal Developmental Neurotoxicity**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice announces a scientific workshop, sponsored by the Environmental Protection Agency's Office of Toxic Substances and Office of Research and Development and the National Institute for Drug Abuse, to critically evaluate the effects of known human developmental neurotoxicants and to compare them with the effects seen in animal studies. The meeting will be held at the Williamsburg Hilton Hotel in Williamsburg, Virginia.

**DATES:** The workshop will be held on April 11, 12, and 13, 1989, beginning on Tuesday, April 11, at 8:30 a.m. and ending Thursday, April 13, at approximately 12:00 noon. There are

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limited spaces available for members of the public to attend either as participants or observers.

**FOR FURTHER INFORMATION CONTACT:** Dr. Cooper Rees, U.S. Environmental Protection Agency, (TS-796), 401 M Street SW., Washington, DC, 20460, Tel. (202) 382-3505 (FTS: 382-3505), for information about the workshop itself and for application as a participant or an observer. Space is limited. Apply by March 13, 1989.

**SUPPLEMENTARY INFORMATION:** Several agents have been identified as developmental neurotoxicants in humans: ethanol, methylmercury, PCBs, lead, x-irradiation, diphenylhydantoin, and several substances of abuse. These agents have been evaluated in a number of animal studies and qualitative comparisons between the human and animal data have been made for some. In the past, several symposia have been held where data have been presented on these chemicals, but there has been no rigorous review of the data, especially a comparison of effects based on dose. This information would be extremely valuable for building an information base for the purposes of risk assessment (e.g., reducing uncertainties regarding interpretation of results) and for use in establishing criteria for selecting agents. An Agency-wide workgroup is developing test guidelines in this area.

The outline of the program includes: (1) On April 11, a full day of presentations by experts summarizing human and animal data on given chemicals or classes of chemicals; (2) on April 12, a full day of small work group discussions to address specific issues (Qualitative Comparisons: Neurobiology, Study Design, Quantitative Comparisons, and Triggers for Testing) and prepare a report; and (3) on April 13, a half-day of summarizing the reports of the workgroups' conclusions. Participants will include speakers and attendees who are being invited because of their specific expertise and a limited number of additional members of the public who express an interest in attending. The proceedings and results of this workshop will be submitted for publication.

Dated: March 1, 1989.

**Erich Bretthauer,**

*Acting Assistant Administrator for Research and Development.*

[FR Doc. 89-6334 Filed 3-7-89; 8:45 am]

BILLING CODE 6560-50-M

## FEDERAL RESERVE SYSTEM

### Agency Forms under Review

March 8, 1989.

**Background**

Notice is hereby given of final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulation on Controlling Paperwork Burdens on the Public).

**FOR FURTHER INFORMATION CONTACT:**

*Federal Reserve Board Clearance Officer*—Frederick J. Schroeder—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3822).

*OMB Desk Officer*—Gary Waxman—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202-395-7340).

**Final approval under OMB delegated authority of the extension, without revision, of the following report**

*Report title:* Notification of Foreign Branch Status.

*Agency form number:* FR 2058.

*OMB Docket number:* 7100-0089.

*Frequency:* Event-generated.

*Reporters:* State member banks, Edge and Agreement Corporations, and bank holding companies.

*Annual reporting hours:* 29.

*Estimated number of respondents:* 118.

*Estimated average hours per response:* 0.25.

Small businesses are affected.

*General description of reports:*

This information collection is mandatory [12 U.S.C. 321, 601, 602, 615, and 1844(c)] and is not given confidential treatment.

This report notifies the Federal Reserve of the opening, closing, or relocation of a foreign branch of state member banks, Edge and Agreement corporations, or bank holding companies. This information enables the Federal Reserve to ensure the safety and soundness of the U.S. banking system.

Board of Governors of the Federal Reserve System, March 8, 1989.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 89-5756 Filed 3-13-89; 8:45 am]

BILLING CODE 6210-01-M

### Bancmidwest Corp.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 31, 1989.

**A. Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

*1. BancMidwest Corporation*, St. Paul, Minnesota; to engage *de novo* in providing data processing services that are financial, banking, or economic in nature pursuant to § 225.25(b)(7) of the Board's Regulation Y. These activities will be conducted in Minnesota and Wisconsin.



Board of Governors of the Federal Reserve System, March 8, 1989.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 89-5758 Filed 3-13-89; 8:45 am]

BILLING CODE 6210-01-M

### Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies; Rudolph E. Farber

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 28, 1989.

**A. Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

*1. Rudolph E. Farber*, Neosho, Missouri; to acquire an additional 0.92 percent of the voting shares of Anderson Bancshares, Inc., Neosho, Missouri, and thereby indirectly acquire Anderson State Bank, Neosho, Missouri.

Board of Governors of the Federal Reserve System, March 8, 1989.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 89-5759 Filed 3-13-89; 8:45 am]

BILLING CODE 6210-01-M

### Louisville Co.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) [and § 225.21(a) of Regulation Y (12 CFR 225.21(a))] to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 30, 1989.

**A. Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

*1. Louisville Company*, Louisville, Nebraska; to retain Home State Insurance Agency, Louisville, Nebraska, and thereby continue to engage in general insurance agency activities pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y in the communities of Louisville, Nebraska, and Cedar Creek, Nebraska.

Board of Governors of the Federal Reserve System, March 8, 1989.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 89-5760 Filed 3-13-89; 8:45 am]

BILLING CODE 6210-01-M

### Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies; James W. Miller et al.

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's holding Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 28, 1989.

**A. Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. James W. Miller & Theodore G. Saltzman, Jr.; to each acquire 2.68 percent of the voting shares of Pioneer Development Company, Sergeant Bluff, Iowa, for a total for each nonficant of 25.82 percent, and thereby indirectly acquire Pioneer Bank, Sergeant Bluff, Iowa.

**B. Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *George A. Walker*, Murriet A. California; to acquire at least 13.03 percent of the voting shares of California City Bancorp, Orange, California, and thereby indirectly California City Bank, N.A., Orange, California.

Board of Governors of the Federal Reserve System, March 8, 1989.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 89-5761 Filed 3-13-89; 8:45 am]

BILLING CODE 6210-01-M

### The National Bancorp of Kentucky et al., Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the

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Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 31, 1989.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

*1. The National Bancorp of Kentucky,* Lexington, Kentucky; to acquire 100 percent of the voting shares of National Bank & Trust Company of Paris, Paris, Kentucky.

B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

*1. CB&T Clarksburg Corp.,* Fairmont, West Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of Community Bank & Trust of Harrison County, Clarksburg, West Virginia.

*2. CB&T Financial Corp.,* Fairmont, West Virginia, and CB&T Clarksburg Corp., Fairmont, West Virginia; to merge with Consolidated Banc Shares, Inc., Clarksburg, West Virginia, and thereby indirectly acquire the Lowndes Bank, Clarksburg, West Virginia.

C. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

*1. Ponte Vedra Banking Company,* Ponte Vedra Beach, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Ponte Vedra National Bank, Ponte Vedra Beach, Florida, a *de novo* bank.

Board of Governors of the Federal Reserve System, March 8, 1989.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 89-5762 Filed 3-13-89; 8:45 am]

BILLING CODE 6210-01-M

**Susquehanna Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies**

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 3, 1989.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

*1. Susquehanna Bancshares, Inc.,* Lititz, Pennsylvania; to acquire 100 percent of the voting shares of Farmers & Merchants Bank of Hagerstown, Hagerstown, Maryland.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

*1. Chemical Financial Corporation,* Midland, Michigan; to acquire 100 percent of the voting shares of Community Financial Corporation, Harbor Beach, Michigan, and thereby indirectly acquire The Cass City State Bank, Cass City, Michigan; The Peoples State Bank of Caro, Michigan, Caro, Michigan, and Huron Community Bank, Harbor Beach, Michigan.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

*1. Illinois One Bancorp, Inc.,* Shawneetown, Illinois; to acquire 100 percent of the voting shares of First State Bank of Elizabethtown, Elizabethtown, Illinois.

D. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

*1. Thompson Insurance, Inc.,* Englewood, Colorado; to become a bank holding company by acquiring 81 percent of the voting shares of Basin State Bank, Stanford, Montana.

E. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grant Avenue, Kansas City, Missouri 64198:

*1. American National Corporation,* Omaha, Nebraska; to acquire 99 percent of the voting shares of American National Bank of Sarpy County, Papillion, Nebraska, in organizaiton, which will engage in the sale of credit-life insurance and discount brokerage activities.

Board of Governors of the Federal Reserve System, March 8, 1989.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 89-5763 Filed 3-13-89; 8:45 am]

BILLING CODE 6210-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Alcohol, Drug Abuse and Mental Health Administration

**Substance Abuse Prevention Technical Assistance Workshops**

**AGENCY:** Office of Substance Abuse Prevention (OSAP).

**ACTION:** Notice of technical assistance workshops.

**SUMMARY:** This notice sets forth the schedule and proposed agenda of the forthcoming six (6) regional technical assistance workshops to assist prospective applicants in responding to the Office for Substance Abuse Prevention's three grant announcements: Drug and Alcohol Abuse Prevention—High Risk Youth Demonstration Grants; Model Projects for Pregnant and Postpartum Women and their Infants; and the Community Youth Activity Program.

*Name:* Office for Substance Abuse Prevention Technical Assistance Workshops.

**Region/Date/Location**

*Western Region*

March 15–16, 1989

Phoenix Hyatt, 122 North Second Street, Phoenix, AZ, (602) 252–1234.

*Southeast Region*

March 28–29, 1989

Sheraton Hotel, 170 Lockwood Dr., Charleston, SC. (803) 723–3000.

*Southwest Region*

March 30–31, 1989

Menger Hotel, 204 Alamo Plaza, San Antonio, TX. 1–800–345–9285.

*Central Region*

April 3–4 1989

Radisson North Hotel, 4900 Sinclair Road, Columbus, OH 43229, 1–800–333–3333.

*Northeast Region*

April 5–6, 1989

Quality Inn Downtown Boston, 275 Tremont Street, Boston, Massachusetts 02116, (617) 426–1400.

*Northwest Region*

April 12, 13, 1989

Red Lion Inn, Jantzen Beach, Portland, OR, (503) 283–4466.

*Time:* Each workshop will begin on Day 1 at 1:00 p.m. and will end on Day 2 at 1:00 p.m.

Agenda Highlights include:

Day 1—Overview of the three Grant Announcements. Grant Submission Review/Award Process. General Principles of Prevention/Early Intervention. Lessons learned on High Risk Youth and Resiliency Factors.

Day 2—Technical/Practical Aspects of Grant Application Process including: completing forms, program narrative, budget justification, approach, method, management, and evaluation.

Status of Workshops: They are open to prospective OSAP grant applicants.

To receive a workshop registration form contact:

National Clearinghouse for Alcohol and Drug Information (NCADI) P.O. Box 2345, Rockville, MD 20852, Telephone: (301) 468–2600.

For more information about the technical assistance workshops contact: OSAP, Division of Demonstrations and Evaluation, Room 13 A 45, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–4564.

Purpose: In collaboration with the State Alcohol and Drug Authorities, the Office for Substance Abuse Prevention, Division of Demonstration/Evaluation and the Division of Prevention Implementation want to provide general assistance to prospective applicants in responding to the OSAP grant announcements.

**Joseph R. Leone,**

*Associate Administrator for Management, Alcohol, Drug Abuse, and Mental Health Administration.*

[FR Doc. 89-5775 Filed 3-13-89; 8:45 am]

BILLING CODE 4160-20-M



## Food and Drug Administration

[Docket No. 89D-0022]

**New Animal Drug Applications; Phased Data Submissions; Policy Guide; Availability**

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a policy guide concerning the phased submission of specific data and information to be used to support approval of a new animal drug application (NADA). FDA's Center for Veterinary Medicine (CVM) has prepared a new section, Guide 1240.3040, to the CVM Policy and Procedures Manual (PPM), providing for the submission of data and information in advance of filing an NADA.

**ADDRESSES:** The new PPM section is available for public examination at the Dockets Management Branch (HFA–305), Food and Drug Administation, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday, except on legal holidays. Copies of PPM Guide 1240.3040 may be obtained from the Industry Information Branch (HFV–11), Center for Veterinary Medicine, Food and Drug Administration, Rm. 7–81, 5600 Fishers Lane, Rockville, MD 20857, by referring to the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Donald A. Gable, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1414.

**SUPPLEMENTARY INFORMATION:** CVM is instituting a policy to provide for the phased submission of specific data and information for review and evaluation by CVM prior to submission of an NADA for filing. This policy is intended to result in a more orderly and uniform system for review and evaluation of completed NADA components and subcomponents submitted to the notice of claimed exemption for an investigational new animal drug (INAD) during animal drug development. The data and information should be identified as a "PHASED DATA SUBMISSION" when submitted to the INAD exemption file. The new policy is detailed in PPM Guide 1240.3040. The program is voluntary.

Dated: March 6, 1989.

**Ronald G. Chesemore,**

*Acting Associate Commissioner for Regulatory Affairs.*

[FR Doc. 89-5779 Filed 3-13-89; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 89F-0065]

**Purina Mills, Inc.; Filing of Food Additive Petition**

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that Purina Mills, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of formic acid as a preservative in animal feeds.

**DATE:** Written comments to be submitted by May 15, 1989.

**ADDRESS:** The environmental assessment prepared by the petitioner may be seen at, and written comments may be sent to, the Dockets Management Branch (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Woodrow M. Knight, Center for Veterinary Medicine (HFV–226), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3390.

**SUPPLEMENTARY INFORMATION:** Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 2211) has been filed by Purina Mills, Inc., P.O. Box 66812, St. Louis, MO 63166–6812, proposing that § 573.480 *Formic acid* (21 CFR 573.480) be amended to provide for the safe use of formic acid as a preservative in animal feeds. The petition would allow for the addition for formic acid to animal feed not in excess of 1.5 percent by weight of the complete animal feed as a preservative.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the rule in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: March 8, 1989.

**Gerald B. Guest,**

*Director, Center for Veterinary Medicine.*

[FR Doc. 89-5778 Filed 3-13-89; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 87N-0034]

**Drug Export Amendments Act of 1986; Biological Product Export Applications**

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing a change of address to which persons should send applications to export an unlicensed human biological product under the Drug Export Amendments Act of 1986. The change of address is a

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result of the reorganization of FDA's Center for Drugs and Biologics into two separate centers, namely, the Center for Biologics Evaluation and Research, and the Center for Drug Evaluation and Research.

**ADDRESS:** Applications (an original and two copies) for exporting human biological products may be mailed to Boyd Fogle, Jr., at the address below or may be delivered in person between 8 a.m. and 4:30 p.m. Monday through Friday, to Boyd Fogle, Jr., Center for Biologics Evaluation and Research, Rm. 217, 7520 Standish Pl., Rockville, MD 20855.

**FOR FURTHER INFORMATION CONTACT:** Boyd Fogle, Jr., Center for Biologics Evaluation and Research (HFB–120), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8191.

**SUPPLEMENTARY INFORMATION:** On November 14, 1986, President Reagan signed into law the Drug Export Amendments Act of 1986 (Pub. L. 99–660). The new law amends both the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 *et seq.*) and the Public Health Service Act (42 U.S.C. 262), to authorize the export from the United States to other countries for commercial marketing of unapproved new human drugs, unlicensed human biologicals, and unapproved new animal drugs. Under previous law, the export of such products for marketing was confined to those that were approved or licensed by FDA for domestic use.

The Drug Export Amendments Act of 1986 establishes three separate tracks for the export of products. Under each track, an application must be submitted to FDA and FDA approval obtained before export is permitted. The tracks vary considerably in terms of drug eligibility criteria, application requirements, and procedures for review and approval of export applications. The first track applies to applications to export unapproved new human drugs, unlicensed human biologicals, and unapproved new animal drugs to any of 21 countries listed in the act. (See section 802(b) through (e) of the act (21 U.S.C. 382(b) through (e)).) The second track applies to applications to export such unapproved and unlicensed products for use in the prevention or treatment of tropical diseases. (See section 802(f) of the act (21 U.S.C. 382(f)).) The third track applies to applications to export partially processed biological products for human use. (See section 351(h)(1)(A) of the Public Health Service Act (42 U.S.C. 262(h)(1)(A)).) A notice was published in the **Federal Register** of April 2, 1987 (52 FR 10633), listing mailing addresses for export applications.

Subsequently, FDA's Center for Drugs and Biologics was reorganized into two separate centers: the Center for Biologics Evaluation and Research (CBER), and the Center for Drug Evaluation and Research (CDER). This notice addresses the application process for exporting unlicensed human biological products under the Drug Export Amendments Act of 1986.

Applications to export unlicensed human biological products (including partially processed biological products) should be mailed to Boyd Fogle, Jr. (address above), or delivered in person between 8 a.m. and 4:30 p.m., Monday through Friday, to Boyd Fogle, Jr., Center for Biologics Evaluation and Research, Rm. 217, 7520 Standish Pl., Rockville, MD 20855.

FDA is considering developing a comprehensive written guidance on the procedures to be followed in submitting export applications and on the content and format of such applications. Pending issuance of this guidance, questions about the content and format of export applications for biological products should be directed to Boyd Fogle, Jr.

This notice supplants the notice published in the **Federal Register** of April 2, 1987 (52 FR 10633), insofar as it applied to unlicensed human biological products. The April 2, 1987, notice remains applicable for mailing addresses for persons who wish to submit export applications for human or veterinary drugs.

Dated: March 6, 1989.

**Ronald G. Chesemore,**

*Acting Associate Commissioner for Regulatory Affairs.*

[FR Doc. 89–5776 Filed 3–13–89; 8:45 am]

BILLING CODE 4160–01–M

**[Docket No. 89N–0081]**

## Drug Export; Hypaque® Meglumine 30% and 60%

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that Sterling Drug Inc., has filed an application requesting approval for the export of the human drug Hypaque® Meglumine 30% and 60% to Canada.

**ADDRESS:** Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

**FOR FURTHER INFORMATION CONTACT:** Rudolf Apodaca, Division of Drug Labeling Compliance (HFD–310), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8063.

**SUPPLEMENTARY INFORMATION:** The Drug Export Amendments Act of 1986 (Pub. L. 99–660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Sterling Drug Inc., 90 Park Ave., New York, NY 10016, has filed an application requesting approval for the export of the drug Hypaque® Meglumine 30% and 60%, to Canada. This product is used as a radiopaque contrast medium. The application was received and filed in the Center for Drug Evaluation and Research on February 24, 1989, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by March 24, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (Sec. 802, Pub. L. 99–660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: March 8, 1989.

**Sammie R. Young,**

*Deputy Director, Office of Compliance, Center for Drug Evaluation and Research.*

[FR Doc. 89–5777 Filed 3–13–89; 8:45 am]

BILLING CODE 4160–01–M



**[Docket No. 89E–0012]**

## Determination of Regulatory Review Period For Purposes of Patent Extension; Cytotec®

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) has determined the regulatory review period for Cytotec® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

**ADDRESS:** Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, Room. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Philip L. Chao, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

**SUPPLEMENTARY INFORMATION:** The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the time was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Cytotec (misoprostol) which is indicated for the prevention of NSAID-(nonsteroidal anti-inflammatory drugs, including aspirin) induced gastric ulcers in patients at high risk of complications from a gastric ulcer; e.g., the elderly and patients with concomitant debilitating disease, as well as patients at high risk of developing gastric ulceration, such as patients with a history of ulcer. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Cytotec® (U.S. Patent No. 3,965,143) from G. D. Searle & Co. and requested FDA's assistance in determining the patent's eligibility for patent term restoration. FDA, in a letter dated January 30, 1989, advised the Patent and Trademark Office that the human drug product had undergone a regulatory review period and that the active ingredient, misoprostol, represented the first permitted commercial marketing or use either alone or in combination with other active ingredients. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Cytotec® is 3,729 days. Of this time, 2,015 days occurred during the testing phase of the regulatory review period, while 1,714 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective:* October 14, 1978. FDA has verified the applicant's claim that the investigational new drug application (IND) for Cytotec® became effective on October 14, 1978.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act:* April 19, 1984. The applicant claims that the new drug application (NDA) for Cytotec® (NDA 19–268) was initially submitted on April 12, 1984. However, FDA records indicate that the application was not received until April 19, 1984.

3. *The date the application was approved:* December 27, 1988. FDA has verified the applicant's claim that NDA 19–268 was approved on December 27, 1988.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 730 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before May 15, 1989, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before September 11, 1989, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, Part 1, 98th Cong., 2d Sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 6, 1989.

**Stuart L. Nightingale,**

*Associate Commissioner for Health Affairs.*

[FR Doc. 89–5878 Filed 3–13–89; 8:45 am]

BILLING CODE 4160–01–M

**[Docket No. 89E–0018]**

## Determination of Regulatory Review Period For Purposes of Patent Extension; Sandostatin®

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) has determined

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the regulatory review period for Sandostatin® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

**ADDRESS:** Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Philip L. Chao, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

**SUPPLEMENTARY INFORMATION:** The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug products and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Sandostatin® (octreotide acetate) which is indicated for: control of symptoms in patients with metastatic carcinoid and vasoactive intestinal peptide-secreting tumors (VIPomas); symptomatic treatment of patients with metastatic carcinoid tumors where it suppresses or inhabits the severe diarrhea and flushing episodes associated with the disease; and treatment of the profuse watery diarrhea associated with VIP-secreting tumors. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Sandostatin® (U.S. Patent No. 4,395,403) from Sandoz, Ltd., and requested FDA's assistance in determining the patent's eligibility for patent term restoration. FDA, in a letter dated January 31, 1989, advised the Patent and Trademark Office that the human drug product had undergone a regulatory review period and that the active ingredient, octreotide acetate, represented the first permitted commercial marketing or use either alone or in combination with other active ingredients. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Sandostatin® is 1,653 days. Of this time, 1,032 days occurred during the testing phase of the regulatory review period, while 621 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective:* April 14, 1984. The applicant claims that the investigational new drug application (IND) for Sandostatin® became effective on March 15, 1984. However, FDA records indicate that the IND became effective on April 14, 1984, 30 days after FDA received the IND application.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act:* February 9, 1987. The applicant claims that the new drug application (NDA) for Sandostatin® (NDA 19–667) was initially submitted February 6, 1987. However, FDA records indicates that FDA did not receive the application until February 9, 1987.

3. *The date the application was approved:* October 21, 1988. FDA has verified the applicant's claim that NDA 19–667 was approved on October 21, 1988.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Offices applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 730 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before May 15, 1989, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before September 11, 1989, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, Part 1, 98th Cong., 2d Sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 6, 1989

**Stuart L. Nightingale,**

*Associate Commissioner for Health Affairs.*

[FR Doc. 89–5679 Filed 3–13–89; 8:45 am]

BILLING CODE 4160–01–M

## Office of Human Development Services

### Federal Council on the Aging; Meeting

*Agency Holding the Meeting:* Federal Council on the Aging

*Time and Date:* Meeting begins at 9:00 A.M. and ends at 5:00 P.M. on Monday, March 20, 1989 and beings at 9:00 A.M. and ends at 5:00 P.M. on Tuesday, March 21, 1988.

*Place:* On Monday, March 20, Boardroom 108, The Capitol Hill Hotel, 200 C Street, SE., from 9:00 a.m. to 5 p.m., and Tuesday, March 21, The Boardroom 108, The Capitol Hill Hotel, from 9:00 a.m..12:00 Noon, and from 2 p.m.–5 p.m., the Grand Hyatt Hotel, Washington, DC

*Status:* Meeting is open to the public.

*Contact Persons:* Pete Conroy, Room 4545, Wilbur Cohen Federal Building, 245–2451.

The Federal Council on the Aging was established by the 1973 Amendments to the Older Americans Act of 1965 (Pub. L. 93–29, 42 U.S.C. 3015) for the purpose of advising the President, the Secretary of Health and Human Services, the Commissioner on Aging and the Congress on matters relating to the special needs of older Americans.



Notice is hereby given pursuant to the Federal Advisory Committee Act (Pub. L. 92–453, 5 U.S.C. App. 1, Sec. 10, 1976) that the Council will hold its March quarterly meeting on March 20 & 21 from 9:00 a.m.–5:00 p.m. and from 9:00 a.m.–5:00 p.m. respectively. On March 20, the morning session will be an Executive Session, and the regular open meeting in the afternoon in the Boardroom 108 of The Capitol Hill Hotel, 200 C Street, SE., Washington, DC 20003. On March 21, the Council will hold its regular meeting and then proceed to meet with the Secretary of Health and Human Services. From 2 p.m.–5 p.m. the Council will particpate in the American Society on Aging Forum on the 1991 White House Conference on Aging at the Grand Hyatt Hotel, Washington, DC.

The agenda for March 20 will include: Introduction of new members; discussion of Current Projects, Committee Reports, Agenda Projects and Budget for 1989–90, the 1988 Annual Report to the President and Recommendations included therein—location of 1989 meetings; Carol Fraser Fisk, Commissioner, Administration on Aging. On March 21 at 2 p.m., is as follows: Discussion of 1991 White House Conference on Aging at the Grand Hyatt Hotel in conjunction with the American Society on Aging Forum.

Dated: March 8, 1989.

**Ingrid Azvedo,**

*Chairperson, Federal Council on the Aging.*

[FR Doc. 89–5675 Filed 3–13–89; 8:45 am]

BILLING CODE 4130–01–M

## National Institutes of Health

### National Cancer Institute; Meeting (Cancer Center Support Review Committee)

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Cancer Center Support Review Committee, National Cancer Institute, National Institute of Health, March 30–31, 1989, Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, Maryland 20852.

This meeting will be open to the public on March 30, from 8:30 a.m. to 9:30 a.m. to review administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on March 30, from approximately 9:30 a.m. to 6:00 p.m. and March 31, from 8:30 a.m. until adjournment for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301–496–5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. John Abrell, Executive Secretary, Cancer Center Support Review Committee, National Cancer Institute, Westwood Building, Room 834, National Institutes of Health, Bethesda, Maryland 20892 (301–496–9767) will furnish substantive program information.

Dated: March 3, 1989.

**Betty J. Beveridge,**

*Committee Management Officer, NIH.*

[FR Doc. 89–5828 Filed 3–13–89; 8:45 am]

BILLING CODE 4140–01–M

### National Heart, Lung, and Blood Institute; Meeting of the Clinical Trials Review Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Clinical Trials Review Committee, National Heart, Lung, and Blood Institute, April 2–4, 1989, at the Raphael Hotel, 386 Geary Street, San Francisco, California 94102.

The Meeting will be open to the public on April 2 from 6:00 p.m. to approximately 7:30 p.m. to discuss administrative details and to hear a report concerning the current status of the National Heart, Lung, and Blood Institute. Attendance by the public is limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C., and section 10(d), of Pub. L. 92–463, the meeting will be closed to the public from approximately 7:30 p.m. on April 2 to adjournment on April 4 for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A–21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meeting and a roster of the Committee members.

Dr. David M. Monsees, Jr., Contracts, Clinical Trials and Training Review Section, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, Westwood Building, Room 550B, Bethesda, Maryland 20892, (301) 496–7361, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.837, Heart and Vascular Diseases Research; 13.838, Lung Diseases Research; 13.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: March 3, 1989.

**Betty J. Beveridge,**

*Committee Management Officer, NIH.*

[FR Doc. 89–5829 Filed 3–13–89; 8:45 am]

BILLING CODE 4140–01–M

### National Institute of Allergy and Infectious Diseases; Meeting of Board of Scientific Counselors

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Allergy and Infectious Diseases, on May 22, 23 and 24, 1989 at the Rocky Mountain Laboratories, Building 6, Conference Room 349, Hamilton, Montana 59840.

The meeting will be open to the public on May 22 from 9 a.m. until 12:30 p.m. and on May 23 from 8 a.m. to 9:30 a.m. During this open session, the permanent staff of the Laboratory of Pathobiology, the Laboratory of Microbial Structure, and the Laboratory of Persistent Viral Diseases will present and discuss their immediate past and present research activities.

In accordance with the provisions set forth in sec. 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting of the Board will be closed to the public on May 22 from 8:30 a.m. to 9 a.m., and from 12:30 p.m. until recess, on May 23 from 9:30 a.m. until recess and on May 24 from 8:30 a.m. until adjournment for review, discussion, and evaluation of individual intramural programs and projects conducted by the Rocky Mountain Laboratories, including consideration of personal qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would

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constitute a clearly unwarranted invasion of personal privacy.

Ms. Patricia Randall, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, Room 7A32, National Institutes of Health, Bethesda, Maryland 20892, telephone (301-496-5717), will provide a summary of the meeting and a roster of the committee members upon request.

Dr. John I. Gallin, Executive Secretary, Board of Scientific Counselors, NIAID, National Institutes of Health, Building 10, Room 11C103, telephone (301-496-3006), will provide substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13-301, National Institutes of Health)

Dated: March 3, 1989.

**Betty J. Beveridge,**

*Committee Management Officer, NIH.*

[FR Doc. 89-5630 Filed 3-13-89; 8:45 am]

BILLING CODE 4140-01-M

## National Library of Medicine; Meeting of the Board of Scientific Counselors

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Library of Medicine, on May 1 and 2, 1989, in the Board Room of the National Library of Medicine, Building 38, 8600 Rockville Pike, Bethesda, Maryland.

The meeting will be open to the public from 8:30 a.m. to 4 p.m. on May 1 and from 8:30 a.m. to approximately 12 noon on May 2 for the review of research and development programs of the Lister Hill National Center for Biomedical Communications. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sec. 552b(c)(6), Title 5, U.S.C., and sec. 10(d) of Pub. L. 92-463, the meeting will be closed to the public on May 1, from approximately 4 to 5 p.m. for the consideration of personnel qualifications and performance of individual investigators and similar items, the disclosure of which would constitute an unwarranted invasion of personal privacy.

The Executive Secretary, Dr. Daniel R. Masys, Director, Lister Hill National Center for Biomedical Communications, National Library of Medicine, 8600 Rockville Pike, Bethesda Maryland 20894, telephone (301) 496-4441, will furnish summaries of the meeting, rosters of committee members, and substantive program information.

Date: March 3, 1989.

**Betty J. Beveridge,**

*NIH Committee Management Officer, NIH.*

[FR Doc. 89-5631 Filed 3-13-89; 8:45 am]

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## Public Health Service

## Availability of Grants for Minority Community Health Coalition Demonstration Projects

**AGENCY:** Office of Minority Health/Office of the Assistant Secretary for Health, PHS, DHHS.

**ACTION:** Notice of availability of funds and request for applications under the Office of Minority Health's Program of Grants for Minority Community Health Coalition Demonstration Projects.

**SUMMARY:** The Office of Minority Health announces the availability of grants to provide support, for a period which will not exceed two years, for projects which demonstrate methods of developing community health coalitions which can effectively promote disease risk factor reduction within minority populations.

**FOR FURTHER INFORMATION CONTACT:** See the names and addresses at item 8 at the end of this notice.

**SUPPLEMENTARY INFORMATION:**

### Background

The Report of the Secretary's Task Force on Black and Minority Health identified six health problems that account for 80 percent of the excess deaths among minorities. Excess deaths are the difference between actual minority deaths and the number of deaths which would been expected if the minority population had the same age- and sex-specific death rates as the white population. Every minority group does not suffer from excess deaths in each category. However, the six health problems became priority issue areas for Task Force study. Listed in alphabetical order, they are:

- Cancer
- Cardiovascular disease and stroke
- Chemical Dependency
- Diabetes
- Homicide, Suicide, and Accidents (unintentional injuries)
- Infant mortality

### HIV Infection

In recognition of the severity of the problem of HIV infection and Acquired Immunodeficiency Syndrome (AIDS) among the minority populations, Congress appropriated funds beginning in Fiscal Year 1988 for the Office of Minority Health to use in ways specifically targeted at HIV infection in minority populations. One mechanism by which the Office of Minority Health targeted this problem was to add HIV infection as a seventh health problem to the above list of topic areas for this demonstration grant program in Fiscal Year 1988. HIV infection continues to be one of the topic areas for this program in Fiscal Year 1989. For applicant organizations that plan to submit HIV infection demonstration applications, it is important to describe existing efforts in HIV infection education and prevention in their local community (e.g., by the local or State health department or community-based organization), and how the applicants' proposed interventions to prevent AIDS or HIV infection would complement those existing efforts. Applicants are encouraged to communicate with their State Departments of Health and Education, as appropriate.

Please note that these Minority Community Health Coalition Demonstration Projects are but one mechanism by which the Office of Minority Health intends to utilize its Fiscal Year 1989 appropriation for HIV infection. For more information on the Office of Minority Health's HIV infection initiative, please call Jacqueline Bowles, M.D., at (202) 245-0020.

The risk factors for these seven priority areas involve behavior or preventable conditions which are potentially modifiable but are in some cases resistant to change. In order to effect health behavior change, an individual must be motivated beyond that typically achieved as the result of health information or media campaigns alone. In addition, conventional health promotion activities are frequently not effective in reaching minority populations. It appears that change can be achieved by community-based information dissemination, awareness, support, and exhortation, particularly if such a community health campaign is carried out using familiar, as well as influential institutions such as churches and schools, and organized by recognized community leaders.

Moreover, in many cases it may be insufficient to simply pressure individuals to change behavior without offering positive alternatives. For example, if teens are being encouraged to avoid use and abuse of drugs and alcohol, it may also be important to organize and offer constructive alternatives such as career-oriented activities in non-traditional settings.

The following is a list of the major health problems with their associated modifiable risk factors, some of which



are implicated in more than one health problem:

*Cancer:* Tobacco, Diet, Alcohol, Environment.

*Cardiovascular Disease and Stroke:* Hypertension, Diet, Tobacco, Sedentary Life Style, Obesity.

*Chemical Dependency:* Direct Behavioral Outcome of Alcohol, and other Drugs of, Abuse.

*Diabetes:* Obesity, Diet.

*Infant Mortality:* Smoking, Alcohol, Drugs, Late or No Prenatal Care, Teen Pregnancy, Nutrition.

*Homicide:* Alcohol, Drugs, Poor Conflict Resolution Skills.

*Suicide:* Alcohol, Drugs, Depression.

*Unintentional Injuries:* Alcohol, Drugs, Environmental Hazards.

*HIV Infection:* Intravenous Drug Use, and High Risk Sexual Practices, (e.g., Unprotected Intercourse, with Multiple Partners).

Many of the above noted risk factors are of interest to, and within the purview of, a number of organizations within communities. In addition, community organizations have different and varying levels of influence over the behavior of individuals.

This announcement is the fourth annual notice for this grant program. In the past Fiscal Year 1988, the Office of Minority Health received 91 applications of which 39 were approved and seven (7) grants awarded for a total of $1.4 million. Fifty-two applications were disapproved because of various deficiencies. Several applications may have been in the approval range with some technical assistance. Others would have required much more work in the pre-application stage. Given the time and resources typically involved in researching, developing, and writing an application, potential applicants should seriously consider whether or not they should apply at this time or wait until they establish stronger linkages with other community organizations and/or develop greater expertise in planning and writing their proposal.

Applicants wishing to improve their chances for approval should pay particular attention to both the Supplemental and General Instructions provided with the grant application to ensure that their applications are responsive to each of the following concerns under the following headings:

*Project Objectives*

1. Clearly describe the goals and objectives of the proposed project, using measurable terms;

2. Identify, describe, and document health problems areas and related risk factors in the target population;

3. Include realistic timetables for accomplishing the objectives;

*Target Population*

4. Define the target population(s) and identify which interventions are proposed for which minority groups;

*Coalition*

5. Provide evidence that a valid community-based coalition exists or that organizations, which have worked together in the past, are now proposing to focus their energies on these disease risk reduction activities, and describe any coordinative or collaborative efforts with other organizations serving the target population;

6. Describe in detail the organization of the coalition and the respective roles of coalition members and other participants;

*Intervention*

7. Describe plans for implementing the intervention(s), presenting in step-by-step fashion the specific efforts to be undertaken by each key component of the coalition, and how these various efforts will address the problems identified;

8. Provide a detailed description of intervention strategies that address the board concept of the application rather than just an analysis of medical records of minority individuals, as in a limited clinical trail;

*Project Management and Staffing*

9. Provide detailed management plans that clearly delineate each coalition member's area of responsibility and how specified key staff of member organizations will be accountable for carrying out their responsibility;

10. Describe the duties and requisite qualifications of current staff, and of any staff and consultant positions to be filled after the grant award; and

11. Identify and provide supporting documentation (e.g., curriculum vitae) for each individual proposed for key staff positions to show appropriate experience and qualifications. Particularly suitable will be experience in community-based programs and/or health promotion programs, as well as related treatment and research experience.

*Evaluation*

12. In the evaluation section, specify the overall evaluation plans and the particular process and outcome objectives, indicating how each of these will be measured, including the results of the interventions.

### Authority

This program is authorized under section 301 of the Public Health Service Act, as amended.

### Program Objectives

The objectives of the program are to fund projects which:

(1) Provide epidemiological evidence of the health problem(s) and risk factor(s) of the minority population(s) which are the targets of the applicant's proposal.

(2) Provide detailed and specific methods for (a) risk factor reduction through the use of a community coalition targeted to a specific minority population and to identified risk factors and (b) measuring the results of the intervention.

(3) Demonstrate a sound organizational scheme for the coalition which assures adequate involvement and representation of both coalition members and community leaders.

(4) Evaluate the process of establishing and operating the coalition and how its activities will impact on the risk factors and health problem areas identified in the target population through the community coalition.

(5) Demonstrate experience of the applicant and some coalition members with community-based projects, either focused on health or other community concerns.

(6) Provide evidence of potential sources of community and other support for the project at the end of the grant period.

### Definitions

For the purpose of this grant program, the following definitions are provided:

(1) *Health problem areas*—one of the seven priority issue areas identified in the Secretary's Task Force report or by the Office of Minority Health. They are: (a) Cancer; (b) cardiovascular disease and stroke; (c) chemical dependency; (d) diabetes; (e) homicide, suicide and unintentional injuries; (f) infant mortality; and (g) HIV infection.

(2) *Risk factors*—The environmental and behavioral influences capable of causing ill health with or without previous predisposition. The term "risk factor" is also used to denote an aspect of personal lifestyles and behavior known, on the basis of epidemiological evidence, to be associated with one or more diseases or health conditions considered important to prevent.

These include use of tobacco, poor dietary habits, obesity, severe emotional stress, depression, poor conflict resolution skills, abuse of alcohol and drugs, intravenous drug use, late or no

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prenatal care, teen pregnancy, high risk sexual practices, (e.g., unprotected intercourse, with multiple partners), environmental hazards, and others.

(3) *Community*—A defined geographical area in which persons live, work, and recreate and is characterized by: a) formal and informal communication channels; b) formal and informal leadership structures for the purpose of maintaining order and improving their conditions; and c) its capacity to serve as a focal point for addressing societal needs including health needs.

(4) *Community coalition*—The coming together of individuals from and representatives of organizations and institutions in a community for the purpose of collaborating on specific community concerns, and seeking resolution of those concerns. For purposes of this grant program, community coalitions are characterized by the six elements listed below.

*A community coalition*

- Assumes a variety of interests converging on an agreed upon mission.
- Requires resource participation. Each coalition member organization brings a certain resource to the coalition to enable the coalition to accomplish its mission.
- Requires that each member organization has a specific role within the coalition. This rule, defined by the individual member, is distinctive among the other members. Use of resources may be one way of defining each role.
- Requires that each member organization establish both a relationship with the coalition as an entity (vertical relationship) and with other members of the coalition (horizontal relationship). Members must be able and willing to work with one another. Formalizing these relationships to make explicit the specified roles may be achieved through development of memoranda of understanding/agreement between each member organization and the coalition, and between members as necessary.
- Requires a long term commitment on the part of each member organization since the problem to be addressed is not usually amenable to short term solutions.
- Must document its activities to ensure a written history of and, thus, a continuity to its work that is not dependent upon the active participation of any single person. Such documentation can include the memoranda of understanding/agreement mentioned above.

(5) *Minority populations*—As defined by the Report of the Secretary's Task Force on Black and Minority Health, they include: Asian/Pacific Islanders, Blacks, Hispanics, and Native Americans/Alaska Natives (which include Native Hawaiians).

**Availability of Funds**

The Office of Minority Health intends to make available approximately $1.4 million under this announcement to be expended by grantees over a two-year project period. The specific amount funded will depend on the overall availability of funds. It is anticipated that seven individual grants of up to $200,000 (total costs including indirect costs) each for the two-year project period will be awarded from these funds. OMH hopes to award at least one of the seven grants in the area of HIV infection, with priority given to applications that target the Black or the Hispanic population. Such award, however, like all award decisions will be based on the types and quality of the applications received.

**Applicant Eligibility**

Eligible applicants are public and private nonprofit organizations and for-profit organizations *except for all current grantees under this program*, since these grantees are considered not eligible. The applicant organization is the lead agency for the coalition and is responsible for management of the Project and will serve as the fiscal agent for the Federal funds awarded.

Federal domonstration grant support is not expected to result in more than one award in any Standard Metropolitan Statistical Area (SMSA) unless an additional project in an SMSA was to be targeted to another of the four major minority groups—Asian/Pacific Islanders, Blacks, Hispanics, and Native Americans/Alaska Natives. Efforts will be made to achieve geographic and ethnic distribution of awards as well as cover the various health problems identified above. There is no lower limit for the size of the population targeted by the applicant, but there must be a reasonable relationship between the level of effort involved in the coalition and the size of the target population and the health problem(s) to be addressed. Similarly, the geographic distribution of the target population must be such that effecting risk factor reduction is feasible.

The target risk factor(s) must be epidemiologically justified on the basis of health problem patterns in the population. It is suggested that applicants limit the number of disease or health problem areas to a primary one with one secondary problem area (with their associated risk factors) on which a coalition plans to focus, as opposed to being all-inclusive, in order to maximally utilize resources to achieve the greatest reduction in the selected risk factor(s).

**Applications**

*1. Copies*

The forms used for applying for grants under this program are either Form PHS 5161–1 for State and local governments or Form PHS 398 for all others. Copies of the application kit may be obtained from the OMH-Coalition Grant Office, 8201 Greensboro Drive, Suite 600, McLean, VA 22102.

*2. Deadlines*

The deadline for receipt of applications is 5:30 p.m. (EST) on May 31, 1989. Applications will be considered as meeting the deadline if they are either:

(1) Received at the above address on or before the deadline date, or

(2) Sent to the above address on or before the deadline date and received in time for orderly processing.

(Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks will not be accepted as proof of timely mailing.)

*3. Late Applications*

Applications which do not meet the criterion in paragraph 2 immediately above will be considered late applications and will be returned to the applicant.

*4. Reviews*

Applications are subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs. Applications for funding will be subject to State review. All comments from a State office must be received by 60 days after the due date by the program grants management office. Applicants should contact State Single Points of Contact (SPOC) early in the application preparation process. A list of addresses of the SPOCs is enclosed with the application material.

*5. Project Budget*

Funds may be used to cover the cost of personnel to coordinate the coalition's activities, for consultants, support services and materials. Funds may not be used for building construction costs or building alterations and renovations. Also, funds may not be used to purchase equipment except as may be acceptably justified in relation to conducting the project.

*6. Cost Participation*

It is expected that a portion of the program's costs will be borne by coalition members or by other non-federal sources such as business, labor, local government, or community funds. Cost participation for those grants awarded in FY 1988 ranged between $40,000 and $289,000, and was either in-kind or direct funds contributions.

*7. Review Criteria*

Applications will be reviewed and evaluated in terms of the evidence presented in the application regarding the ability of the applicant to meet program objectives. Of specific importance will be the following criteria under the listed headings. (An indication of the quantitative weight appears in parentheses after each heading.):

*Project Objectives (50%)*

- The scientific and technical merit of the described proposed project, and the consistency of the project's goals and objectives with those of the Demonstration Grant Program and the Office of Minority Health.
- The justification for the choice of disease(s) and risk factor(s) to be targeted, and their direct relationship to the epidemiologic characterization(s) of the target minority population(s).
- The degree to which the composition of coalition members is a logical choice based on target population, target risk factor(s) and intervention(s) to be demonstrated.
- The degree of commitment of each coalition member to the coalition and to the proposed implementation plan, including the amount or extent of support indicated by coalition members to cover a portion of project needs.
- Coherence, feasibility, and realistic approach of the intervention strategy and of the implementation methods described. The specificity of the methods to address the target risk factor(s) in the target population(s) will be given significant weight in the review of the application.

*Project Management and Staffing (25%)*

Adequacy of qualifications and time allocations of proposed regular staff, both paid and voluntary, and of the proposed program and technical management of the project. Appropriateness of relevant experience and qualifications of the managers of the applicant organization to provide administrative and fiscal management of the grant.

*Evaluation (25%)*

Appropriateness of the process and outcome objectives, and adequacy of the evaluation plan to measure the development of the coalition as well as indicators and trends of outcome changes based on the goals and objectives of the application. Likelihood that the project will demonstrate whether or not community health coalitions can effectively promote risk factor reduction among minority populations. Likelihood that the project will continue beyond the two year funded project period.

*8. Information and Technical Assistance Contacts*

Information on application procedures and copies of application forms may be obtained from the OMH-Coalition Grants Office, 8201 Greensboro Drive, Suite 600, McLean, VA 22102 (phone 703/821–2487).

Technical assistance on the programmatic content of the application may be obtained from Betty Lee Hawks, Office of Minority Health, Room 118–F, HHH Bldg., Washington, DC 20201 (telephone 1–800–444–6472 or 202/245–0020). For additional information on the OMH AIDS Program, please contact Jacqueline Bowles, M.D., at the same address and telephone number.

The Catalog of Federal Domestic Assistance Number for the program is 13.137.

Dated: February 20, 1989.

**Samuel Lin,**

*Acting Director, Office of Minority Health.*

[FR Doc. 89–5710 Filed 3–13–89; 8:45 am]

BILLING CODE 4160-17-M

**Pesticide Monitoring Improvements Act of 1988; Delegations of Authority**

Notice is hereby given that I have delegated to the Assistant Secretary for Health, with authority to redelegate, the authorities vested in the Secretary under sections 4702, 4703, and 4704 of the Pesticide Monitoring Improvements Act of 1988 (21 U.S.C. 1401–1403) relating to pesticide monitoring and enforcement information, foreign pesticide information, and pesticide analytical methods. This delegation excludes the authority to submit reports to Congress.

This delegation became effective upon date of signature.

February 28, 1989.

**Don M. Newman,**

*Acting Secretary.*

[FR Doc. 89–5880 Filed 3–13–89; 8:45 am]

BILLING CODE 4160-01-M



**DEPARTMENT OF INTERIOR**

**Bureau of Land Management**

**[AZ-010-09-4322-02; 1784-010]**

**Arizona Strip District Grazing Advisory Board; Meeting**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** The Arizona Strip District Grazing Advisory Board will meet Thursday, April 6, 1989 at 9 a.m. in the Holiday Inn, 850 South Bluff Street in St George, Utah. Primary topics on the agenda are the Arizona Strip resource management plan and range improvements.

**FOR FURTHER INFORMATION CONTACT:** G. William Lamb, District Manager, Arizona Strip District, 390 North 3050 East, St. George, Utah 84770 (Phone 801/673–3545).

**SUPPLEMENTARY INFORMATION:** The meeting is open to the public. Any person may attend, file a written statement by mail, or appear before the Board at 9:30 a.m.

**G. William Lamb,**

*Arizona Strip District Manager.*

Date: March 6, 1989.

[FR Doc. 89–5709 Filed 3–13–89; 8:45 am]

BILLING CODE 4310-32-M

**[AZ-010-09-4410-08; 178-010]**

**Arizona Strip District Advisory Council; Meeting and Field Tour**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of meeting and field tour.

**SUMMARY:** A meeting and field tour of the Arizona Strip District Advisory Council will occur April 12–13, 1989. The Council will meet at the Wahweap Lodge and Marina, 100 Lake Shore Drive, Page, Arizona at 8 a.m. to discuss the district resource management plan. At 1 p.m. the Council will visit the Ferry Swale area and review management options being considered in the plan. On Thursday the Council will continue its meeting in the Wahweap Lodge.

**FOR FURTHER INFORMATION CONTACT:** G. William Lamb, District Manager, Arizona Strip District, 390 North 3050 East, St. George, Utah 84770 (Phone 801/673–3545).

**SUPPLEMENTAL INFORMATION:** The tour and meeting are open to the public, but the public must provide their own transportation. Interested persons may make oral statements at 8:30 a.m.

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Thursday or file written statements for the Council's consideration.

G. William Lamb,

*Arizona Strip District Manager.*

Date: March 6, 1989.

[FR Doc. 89-5770 Filed 3-13-89; 8:45 am]

BILLING CODE 4132-32-M

## INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31406]

### Carolina Coastal Railway, Inc., Lease and Operation and Acquisition Exemption; Southern Railway Co.

Carolina Coastal Railway, Inc. (CCR) has filed a notice of exemption to lease (with option to purchase) [1] and operate a line of railroad owned by Southern Railway Company. The line extends between Pinetown (milepost BH-0.00) and Belhaven (milepost BH-17.00), in Beaufort County, NC, a distance of 17 miles. The transaction was expected to be consummated February 14, 1989.

CCR must preserve intact all sites and structures more than 50 years old until compliance with the requirements of Section 106 of the National Historic Preservation Act, 16 U.S.C. 470 is achieved. *See Class Exemption—Acq. & Oper. of R. Lines Under 49 U.S.C. 10901,* 4 I.C.C.2d 305 (1988).

Any comments must be filed with the Commission and served on: Kelvin J. Dowd, Slover & Loftus, 1224 Seventeenth Street, NW., Washington, DC 20036.

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: March 8, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

*Secretary.*

[FR Doc. 89-5616 Filed 3-13-89; 8:45 am]

BILLING CODE 7035-01-M

[1] CCR has the option to purchase the line anytime after the end of the second lease year. This notice of exemption extends to the prospective purchase of this line by CCR, thus obviating the need for CCR to file a separate notice of exemption in the future covering that transaction, should CCR exercise its option to purchase.

[Docket No. AB-290 (Sub-No. 56X)]

### Norfolk and Western Railway Co.—Abandonment Exemption—Between Solon and Chagrin Falls, OH

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 6.25-mile line of railroad between milepost CH-1.90 at Solon, OH, and milepost CH-8.15 at Chagrin Falls, OH.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on April 13, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by March 24, 1989.[3]

Petitions for reconsideration and request for public use conditions under 49 CFR 1152.28 must be filed by April 3, 1989, with:

Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative:

Roger A. Petersen, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by March 17, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275-7316. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: February 28, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

*Secretary.*

[FR Doc. 89-5691 Filed 3-13-89; 8:45 am]

BILLING CODE 7035-01-M

[1] A stay will be routinely issued by the Commission in these proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines,* 4 I.C.C.2d 400 (1988). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.,* 4 I.C.C.2d 164 (1987), and final rules published in the Federal Register on December 22, 1987 (52 FR 48440-48446).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Importation of Controlled Substances; Application; McNeilab Inc.

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(h)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on January 24, 1989, McNeilab Inc., DBA First State Chemical Company, Inc., 803 East Fourth Street, Wilmington, Delaware 19801, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

| Drug | Schedule |
|---|---|
| Raw opium (9600) | II |
| Concentrate of poppy straw (9670) | II |

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such forms as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than April 13, 1989.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42(b), (c), (d), (e) and (f). As noted in a previous notice at 40 FR 43745-46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator of the Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e) and (f) are satisfied.

Gene R. Haislip,

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

Dated: March 3, 1989.

[FR Doc. 89-5772 Filed 3-13-89; 8:45 am]

BILLING CODE 4410-09-M

### Manufacturer of Controlled Substances; Application; McNeilab Inc.

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on January 24, 1989, McLeilab Inc., DBA First State Chemical Comany Inc., 803 East Fourth Street, Wilmington, Delaware 19801, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

| Drug | Schedule |
|---|---|
| Codeine (9050) | II |
| Dihydrocodeine (9120) | II |
| Oxycodone (9143) | II |
| Hydrocodone (9193) | II |
| Morphine (9300) | II |
| Thebaine (9333) | II |

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than Apirl 13, 1989.

Gene R. Haislip,

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

Dated: March 3, 1989.

[FR Doc. 89-5773 Filed 3-13-89; 8:45 am]

BILLING CODE 4410-09-M

### Manufacturer of Controlled Substances; Ganes Chemical Inc.

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on January 5, 1989, Ganes Chemicals, Inc., Industrial Park Road, Pennsville, New Jersey 08070, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

| Drug | Schedule |
|---|---|
| Amobarbital (2125) | II |
| Pentobarbital (2270) | II |
| Secobarbital (2315) | II |
| Methadone (9250) | II |
| Methadone-Intermediate 4-cyano-2-dimethylamino-4, 4-diphenyl butane (9254) | II |
| Bulk dextropropoxyphene (non-dosage forms) (9273) | II |

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than April 13, 1989.

Gene R. Haislip,

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

Dated: March 2, 1989.

[FR Doc. 89-5774 Filed 3-13-89; 8:45 am]

BILLING CODE 4410-09-M

## NATIONAL COMMUNICATIONS SYSTEM

### Federal Telecommunications Standards; Inquiry

**AGENCY:** National Communications System, Office of Technology and Standards.

**ACTION:** Notice.

**SUMMARY:** The Federal Telecommunication Standards Committee's (FTSC) Land Mobile Radio (LMR) Subcommittee is currently working toward a new Federal standard (Fed Std 1044) for Government LMR trunked radio systems. The purpose of this notice is to invite interested organizations to propose candidate trunked radio system solutions that will enable the Government to draft a proposed standard providing needed features and capabilities.

**DATE:** Initial proposals should be received by May 15, 1989.

**ADDRESS:** Send comments to the National Communictions System, Attn: Office of Technology and Standards, Washington, DC 20305-2010.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert M. Fenichel, National Communications System, Telephone (202) 692-2124.

**SUPPLEMENTARY INFORMATION:**

1. While proposals may be proprietary, the text of a draft standard (containing all interoperability-related requirements) must be publically disclosed upon solicitation of industry comment on the draft standard. In addition, all patents needed to implement the requirements of the

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standard must be offered for license on a non-exclusive basis at reasonable rates (as is required for American National Standards Institute (ANSI) and International Telegraph and Telephone Consultitive Committee (CCITT) standards).

2. There are presently two public-safety trunked radio system techniques being offered for sale to the Federal Government. Proposed techniques should be capable of sufficient flexibility to include most, if not all, of the features offered by these two systems. Both of the public-safety trunked radio system manufacturers have been unwilling to disclose their techniques and license patents as described above.

3. Some features and performance characteristics felt to be very desirable are:

a. Ability to assign channels to users employing 25 kHz channel analog voice, 12.5 kHz channel analog voice, 25 KHz channel digitized voice or data, 12.5 kHz channel digitized voice or data, and 6.25 kHz digitized voice or data.

b. Ability to support a 20-channel LMR trunked radio system with one 12.5 kHz or less trunked radio system control channel, while providing a range equal to that of 25 kHz channel analog voice.

c. Ability to support a 20-channel system channel-loading in the same range as the two presently offered public-safety trunked radio system techniques, with response time and other requirements specified in APCO Project 16 documents.

d. Ability to operate in a network mode, individual-to-individual mode, and a telephone interconnect mode.

4. While candidate trunked radio systems proposals are desired, other alternative suggestions (e.g. development under Government funding) will be considered.

**Dennis Bodson,**

*Assistant Manager, NCS Technology and Standards.*

[FR Doc. 89-5822 Filed 3-13-89; 8:45 am]

BILLING CODE 3810-05-M

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### National Endowment for the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Museum Advisory Panel (Professional Development Section) to the National Council on the Arts will be held on April 6, 1989, from 9:00 a.m.—5:30 p.m. in room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

March 8, 1989.

**Yvonne M. Sabine,**

*Director, Council and Panel Operations National Endowment for the Arts.*

[FR Doc. 89-5820 Filed 3-13-89; 8:45 am]

BILLING CODE 7537-01-M

## NUCLEAR REGULATORY COMMISSION

### Regional State Liaison Officers' Meeting

On April 11 and 12, 1989, the Nuclear Regulatory Commission (NRC) will sponsor a regional meeting with the Governor-appointed State Liaison Officers from Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island and Vermont and the representative from the District of Columbia. The subjects which will be discussed include State cooperation, power plant licensee performance, decommissioning, radioactive material safety issues, as well as other items of mutual regulatory interest.

The meeting will be conducted at the NRC Region I Office, 475 Allendale Road, King of Prussia, Pennsylvania. The meeting is open to the public for attendance and observation and will take place from 8:30 a.m. until 5:15 p.m. on Tuesday, April 11, and from 8:00 a.m. until 12:00 noon on Wednesday, April 12, 1989.

Questions regarding this meeting should be directed to Marie Miller, at (215) 337-5246.

Dated at King of Prussia, Pennsylvania, this March 8, 1989.

For the Nuclear Regulatory Commission.

**William T. Russell,**

*Regional Administrator.*

[FR Doc. 89-5824 Filed 3-13-89; 8:45 am]

BILLING CODE 7590-01-M

## OFFICE OF MANAGEMENT AND BUDGET

### Small Business Competitiveness Demonstration Program; Policy Directive

**AGENCY:** Office of Federal Procurement Policy (OFPP) Small Business Administration (SBA).

**ACTION:** Interim policy directive amendment.

**SUMMARY:** In the Federal Register of December 29, 1988, (53 FR 52888) OFPP and SBA published an Interim Policy Directive and Test Plan implementing Title VII of the "Business Opportunity Development Reform Act of 1988", which establishes the Small Business Competitiveness Demonstration Program. Paragraph III.A.2.d of the directive stated that non-nuclear ship repair (one of the four industry groups covered by the demonstration program) currently was not individually segmented from the shipbuilding and ship repair industry, but that SBA would segment the industry and an appropriate Federal Procurement Data System (FPDS) service code would be provided for reporting purposes. SBA now has completed the segmentation of the shipbuilding and ship repair industry, and OFPP and SBA are amending the interim policy directive to include appropriate FPDS service codes for non-nuclear ship repair.

**FOR FURTHER INFORMATION CONTACT:** Karen Maris, Deputy Associate Administrator, (202) 395-3300.

1. Paragraph III.A.2.d., is amended to read as follows:

d. Non-nuclear ship repair—Ship repair (including overhauls and conversions) performed on non-nuclear propelled and nonpropelled ships under SIC code 3731, limited to FPDS service codes J998 (repair performed east of the 108th meridian) and J999 (repair performed west of the 108th meridian).

2. Paragraph IV.B.3., is amended to read as follows:

3. Non-nuclear Ship Repair

Non-nuclear ship repair is included within SIC 3731. Since this SIC includes all ship repair as well as shipbuilding, participating agencies shall use the following FPDS service codes to monitor goal attainment for non-nuclear ship repair: J998 (Ship Repair (Including Overhauls and Conversions) Performed on Non-nuclear Propelled and Nonpropelled Ships East of the 108th Meridian) or J999 (Ship Repair (including Overhauls and Conversions) Performed on Non-nuclear Propelled and Nonpropelled Ships West of the 108th Meridian).

3. Attachment B is amended by adding in "IV. Non-nuclear Ship Repair," under the heading "Designated Groups,":

SIC 3731:
PSC J998
PSC J999

**Allan V. Burman,**

*Deputy Administrator and Acting Administrator, Office of Federal Procurement Policy.*

**Monika Edwards Harrison,**

*Associate Administrator for Procurement Assistance, Small Business Administration.*

[FR Doc. 89-5873 Filed 3-13-89; 8:45 am]

BILLING CODE 3110-01-M



## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34-26604; File No. SR-Amex-87-33]**

### Self-Regulatory Organizations; Proposed Rule Change by American Stock Exchange, Inc. Relating to Telephone Access to the Floor

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 16, 1988, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

This filing is Amendment No. 1 to SR-Amex-87-33, a proposed rule change originally filed by the Amex on December 30, 1987, that would allow members to establish direct telephone communications between the Floor and non-members located off the Floor, and to reflect more fully the Amex's existing telephone policy.[1] This amendment would modify Commentary .01 to Amex Rule 220 to provide that the Amex will not permit members to use a portable telephone on the Exchange floor.[2]

The text of the proposed rule change is available at the Office of the Secretary, Amex, and at the Commission.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

(1) Purpose

As noted in the original notice of the proposed Amex rule change, the purpose of the proposal is to codify all current Exchange policies relating to communications with the Trading Floor of the Exchange. Amendment No. 1 reflects a modification to these policies. In the original notice of the proposed rule change published in the Federal Register [3] the Commission noted that, unlike the NYSE rule change,[4] the Amex proposal did not specifically address portable telephones. This amendment to the proposed rule change would add a prohibition against the use of portable telephones or other portable communication devices on the Floor which would permit direct voice communication between members and non-members.

Portable telephones would enable a non-member to communicate directly with a member in the trading crowd, thereby providing the non-member with "live" access to the very point of trade. In Amex's view, not only is such access an essential privilege of membership, but Exchange Rule 3(b) prohibits members from effecting transactions on the Exchange directly with non-members. A portable telephone in the crowd could afford a non-member the actual ability to trade in the crowd.

The use of portable telephones on the Trading Floor may also serve to perpetuate in the public mind doubts about the extent to which small investors are on an equal footing with larger, more active customers.

In addition, non-member telephone access to the booths is predicated on full compliance with recordkeeping and other applicable rules related to maintaining a customer business. These requirements would be difficult to comply with, and to surveil, when portable telephones are used.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The proposed rule change will impose no burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if its finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Amex consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed

[1] The Commission originally published notice of the proposed rule change in Securities Exchange Act Release No. 25267, January 22, 1988, 53 FR 2555.

[2] The Commission approved a similar proposed rule change by the New York Stock Exchange, Inc. ("NYSE") that permits members to have telephones installed in their booths on the NYSE floor to enable them to communicate with non-members located off-floor. The rule also prohibits member from using a portable telephone on the NYSE floor. *See* Securities Exchange Act Release No. 25842, June 23, 1988, 53 FR 24539). The Commission's approval of the NYSE's ban on portable telephones was recently upheld in a January 20, 1989, decision by the United States Court of Appeals for the Second Circuit. *See Higgins v. Securities and Exchange Commission*, Docket No. 88-4115.

[3] *See* note 1, *supra*.

[4] *See* note 2, *supra*.

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rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, at the above address. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR–Amex–87–33 and should be submitted by April 4, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 7, 1989.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 89–5790 Filed 3–13–89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26616; File No. SR-CBOE-89-05]

**Self-Regulatory Organizations; Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Risk Analysis Procedures**

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) ("Act"), notice is hereby given that on February 24, 1989, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

*Rule 15.7 Risk Analysis of Market Maker Accounts*

(a) Each member organization which clears on guarantees the transactions of options market makers pursuant to Exchange Rule 8.5, shall establish and maintain written procedures for assessing and monitoring the potential risks to the member organization's capital over a specified range of possible market movements of positions maintained in such options market maker accounts and such related accounts as the Exchange shall from time to time direct. Current procedures shall be filed and maintained with the Department of Financial Compliance. The procedures shall specify the computations to be made, the frequency of computations, the records to be reviewed and maintained and the positions(s) within the organization responsible for the risk function.

(b) Upon direction by the Department of Financial Compliance, each affected member organization shall provide to the Department such information as the Department may reasonably require with respect to the member organization's risk analysis for any or all of its options market maker accounts.

Interpretations and Policies . . .

.01. Each affected member organization shall at a minimum assess and monitor its own potential risk of loss from options market maker accounts each business day as of the close of business the prior day through use of an Exchange approved computerized risk analysis program. The program shall comply with at least the minimum standards specified below and such other standards as from time to time may be prescribed by the Exchange in written memoranda to all affected member organizations:

(i) The estimated loss to the clearing member organization for each market maker account (potential account deficit) shall be determined given the impact of broad market movements in reasonable intervals over a range from negative 15% to positive 15%.

(ii) The member organization shall calculate volatility using a method approved by the Exchange, with volatility updated at least weekly. The program must have the capability of expanding volatility when projecting losses throughout the range of broad market movements.

(iii) Options prices shall be estimated through use of recognized options pricing models such as, but not limited to, Black-Scholes and Cox-Reubenstein.

(iv) At a minimum, written reports shall be generated which describe for each market scenario: the projected loss per options class by account; the projected total loss per options class for all accounts; the projected deficits per account and in aggregate.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

*(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

As the result of the October, 1987 market break, the Exchange established a task force to review procedures and practices of options market-maker clearing firms. One result of this review was a determination that minimum risk analysis standards should be established to enable all Exchange market maker clearing firms to project their potential losses for all accounts given specific market movements and/or changes in volatility.

This proposed rule would require all Exchange market maker clearing firms to file with the Exchange written procedures for assessing and monitoring the risk to the clearing firm of maintaining positions in its own market maker accounts and those of independent market makers for whom it performs clearance and guarantee functions. These procedures would include, but not be limited to, an Exchange approved computerized risk analysis program, which would, given certain parameters, enable the clearing firm to assess its potential exposure over a specified range of possible market movements.

The rule would require risk analysis to be conducted daily as of the close of business the prior day, and would provide for the submission to the Exchange of certain risk analysis documentation as requested by the Department of Financial Compliance ("Department") on a routine or "as needed" basis.

The Exchange is designated by the Commission as the examining authority for fifteen of the eighteen Exchange member organizations which clear and guarantee the accounts of options market makers. The Exchange believes that the majority of these firms, including those designated to other self-regulatory organizations, would currently be in a position to comply with the proposed rule. However, to allow for all affected members to adequately prepare, the Exchange recommends an effective date four months from the date of approval.

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder; in particular, the proposed rule change is consistent with section 6(b)(5) of the Act because it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with



respect to, and facilitating transactions in securities.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

This proposed rule change will not impose a burden on competition.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

In June, 1988 all options market maker clearing organizations were advised of the decision to require minimum risk analysis procedures and that a pilot program including four (4) clearing firms had been instituted to assist in the development of minimum standards. The draft rule proposal resulting from the pilot program was distributed on November 17, 1988 for review and comment to all Exchange member organizations which clear options market maker accounts. In addition to the four firms which participated in the pilot, the Department reviewed the procedures of two additional clearing firms, which contacted the Department in response to the November circular. No negative comments have been received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and published its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by April 4, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 8, 1989.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 89–5891 Filed 3–13–89; 8:45 am]

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[Release No. 34-26611; File No. SR-NASD-88-53]

**Self-Regulatory Organizations; National Association of Securities Dealers, Inc; Filing Vacancies on District Business Conduct Committees**

The National Association of Securities Dealers, Inc. ("NASD") submitted a proposed rule change on November 29, 1988, and an amendment thereto on February 14, 1989,[1] pursuant to section 19(b) of the Securities Exchange Act of 1934 [2] ("Act") and Rule 19b–4 [3] thereunder to amend Article VIII, section 5 of the NASD By-Laws to provide that vacancies created by the departure of a member of a District Business Conduct Committee ("DBCC") during his or her term [4] may be filled by the remaining DBCC members by the appointment of a new member to serve until the next regularly scheduled election.[5]

Notice of the proposed rule change together with the substance of the terms of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 26407, December 29, 1988) and by publication in the **Federal Register** (54 FR 342, January 5, 1989). No comments were received regarding the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, with the requirements of Section 15A and the rules and regulations thereunder.

*It is therefore ordered,* pursuant to section 19(b)(2) of the Act, that the proposed rule change, SR–NASD–88–53, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Jonathan G. Katz,

*Secretary.*

March 8, 1989.

[FR Doc. 89–5892 Filed 3–13–89; 8:45 am]

BILLING CODE 8010-01-M

[1] On February 14, 1989, the Commission received a letter from the NASD (dated February 10, 1989) providing the results of membership vote pertaining to this rule filing (2,137 members approved, 147 disapproved and 10 members did not vote). This letter constitutes Amendment No. 1 and is available for inspection and copying in the Commission's public reference room.

[2] 15 U.S.C. 78s(b)(1) (1982).

[3] 17 CFR 240.19b–4 (1988).

[4] DBCC members normally serve 3 year terms.

[5] The NASD published the proposed amendment for comment in Notice to Members #88–48 (July 1988), and received three comment letters in response thereto. One commentator favored the proposed amendment because it would result in more efficient operation of the DBCC's. This commentator suggested that previous DBCC members should be considered first in selecting replacements.

Two commentators opposed the proposed amendment. One stated that elections are not too expensive and that the present system affords more members a chance to serve on a DBCC. The NASD's response to this comment was that any additional election is costly, both in terms of money and disruption of the DBCC's affairs. Furthermore, the proposed rule change would allow just as much opportunity, if not more, for different parties to serve on a DBCC. Since any appointment would be effective only until the next regularly scheduled election it is possible that two different persons could serve in the position—one by appointment and one by election.

Another negative comment was that vesting appointment power in sitting DBCC members would result in appointees who are obligated to their committees and not to their districts. The NASD, however, has not encountered this problem, in the past, interim appointees have maintained their independent judgment. The NASD states that the diverse composition of DBCCs makes it unlikely that a standard view will develop to which an appointee must adhere.

One commentator suggested that the Nominating Committee should select a candidate from the list of those originally considered for the position. The membership should then have a chance to file written objections and if many such objections are filed, an election should be held. The NASD, however, believes that this would be just as disruptive to DBCC business because additional elections would have to be held.

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[Release No. 34-26819; File Nos. SR-NYSE-88-39 Amendments Nos. 1 and 2 and SR-NYSE-88-40 Amendment No. 1]

**Self-Regulatory Organizations; New York Stock Exchange, Inc.; Listing Standards for Constituent Securities of Common Stock and Meaning, Administration or Enforcement of Rule 19c-4 with Respect to Constituent Securities of Common Stock such as Unbundled Stock Units**

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 17, 1989 and March 7, 1989, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") amendments to the proposed rule changes as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the amendments to the proposed rule changes from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

On December 9, and December 20, 1988, the NYSE filed proposed rule changes with the Commission to establish listing criteria for new securities consisting of two or more constituent securities which, in the aggregate, are designed to replicate the economic characteristics of shares of a class of outstanding stock (NYSE-88-39) and to provide an exception from paragraph (c)(3) of Rule 19c-4 under the Act regarding the meaning, administration, or enforcement of Rule 19c-4 with respect to constituent securities of common stock, such as Unbundled Stock Units (NYSE-88-40). Amendment No. 1 to NYSE-88-39 revises the proposed listing standards set forth therein to include, among other things, a new minimum holder requirement for units and constituent securities in addition to new minimum total assets and net worth requirements for issuers seeking to list the securities on the NYSE. The amendment provides that in order for the units and their constituent securities to qualify for Exchange listing, there must be at least 250 holders of the units and the issuer must have total assets in excess of $100 million and a net worth that exceeds $18 million dollars.

The second amendment to the filing proposes a new rule, Rule 405A (Suitability Requirements for Transactions in Unbundled Stock Units), which will require NYSE members and member organizations to explain the characteristics of the units and the constituent securities to investors and to determine the suitability of any recommended transactions in the units and constituent securities. In particular, the proposed rule provides that when a NYSE member or member organization recommends a transaction in units or constituent securities to a customer, the member or member firm must make a determination as to the products suitability for such customer and must have a reasonable basis for believing that the customer has sufficient knowledge and experience in financial matters to be reasonably expected to be capable of evaluating the risks and the special characteristics of the recommended transaction and is financially able to bear the risks of any of the constituent securities.

Amendment No. 1 to NYSE-88-40 amends the text of the rule change set forth in the Original Filing, Item I *Text of the Proposed Rule Change.*[1]

In summary, the revised rule replaces the original third subparagraph with language that:

—Reduces the total amount of shares that may be subject to an exchange offer from 25% to 20%.

—Defines insider and control groups and provides further clarification on the determination of whether an exchange offer enhances the standing or voting control of such groups.

The revised rule also sets forth an additional consideration which addresses the collective action problems (discussed in the Release of the SEC that accompanied the adoption of the Rule) contained in the second paragraph of the Exchange's rule.

Finally, definitional language has either been modified or added to address the characteristics of the units and the terms used relating to "person," "officer," and "beneficial ownership" as defined in the Securities Exchange Act of 1934 and SEC rules.

The text of the amended rule with deletions shown in brackets and additions shown in italics is printed in full below:

(a) This proposed rule change consists of a stated policy or interpretation of Rule 19c-4 (the "Rule") under the Securities Exchange Act of 1934 (the "Act") and establishes or changes a standard or guideline with respect to the meaning, administration or enforcement of the Rule. This proposed rule change reads as follows:

Notwithstanding the provisions of Rule 19c-4(c)(3), the Exchange may determine that it will not proceed to delist the equity securities of a company because that company has issued or proposes to issue in an exchange offer for outstanding shares of its common stock units and their constituent securities which have no vote or a lesser vote than its outstanding common stock where the Exchange, after considering all the surrounding circumstances, including other action that may have been taken or is proposed to be taken by the company, determines that the exchange offer does not (or did not) give rise to the collective action problems discussed in the Release of the SEC that accompanied the adoption of Rule 19c-4, is not (or was not) coercive in nature and does not (or did not) have the effect of disenfranchising outstanding common stock holders.

For example, if the Exchange determines that the exchange offer,

- does not depend on a shareholder vote but is available for the individual choice of all outstanding common stock holders in fair and nondiscriminatory manner,
- is accompanied by a prospectus under the Securities Act of 1933 (or a comparable disclosure document) that describes the exchange offer and the securities being offered,
- is not an exchange offer which, either alone or in the aggregate with prior similar exchange offers, is for more than 20% of the outstanding common stock of the company as of the date of the filing of a registration statement (or the mailing of a comparable disclosure document) relating to the first such offer, and on the date immediately prior to the date the registration statement is filed (or the comparable disclosure document is mailed) relating to the exchange offer to be made:

(a) The company does not have knowledge, within the meaning of Item 403(a) of Regulation S-K of the SEC, that any person (except any person who is a bank as defined in Section 3(a)(6) of the Act, an investment adviser registered under Section 203 of the Investment Advisers Act of 1;940, [to the extent such bank or investment adviser holds such securities as a financial intermediary on behalf of customers and not for its own account] or an employee benefit plan, or pension fund which is subject to the provisions of the Employee Retirement Income Security Act of 1974), is the beneficial owner of more than five percent of any class of the company's voting equity securities, and (b) officers and directors of the company, and any employee benefit plan or pension fund of the company, as a group, do not beneficially own more than 10 percent of any class of the company's voting equity securities, unless, on the date shares of common stock are accepted for exchange in the exchange offer and after giving effect thereto, the percentage of the class of voting equity securities beneficiary owned (1) by any person included in clause (a) and (2) by the group included in clause (b), as the case may be, is not increased above the percentage beneficially owned by such person or group immediately prior to the filing of such registration statement (or the mailing of such disclosure statement), and

- does not adversely affect the voting rights of the holders of outstanding common stock that do not accept the exchange, then the exchange may conclude that the exchange offer is not inconsistent with Rule 19c-4.

In addition, the Exchange will also consider all relevant factors, including whether the proposed exchange offer is made in conjunction with, or as one of a series of, transactions the effect of which is to create or enhance the standing of an insider or control group.

The term 'units' as used herein shall mean unbundled stock units or securities with substantially similar characteristics issued by a corporation which consist of, and are separable into, two or more constituent securities, which, in the aggregate, [are designed to replicate the economic characteristics] *provide economic characteristics substantially similar to those* [2] typically associated with ownership of the corporation's common stock and have a term in excess of three years. The term 'constituent securities' as used herein shall mean the two or more constituent securities which together make up the unit.

For the purposes hereof, "person" shall have the meaning set forth in Section 3(a)(9) of the Act and shall include any group as that term is defined in Section 13(d)(3) of the Act; "officer" shall have the same meaning as that term is used in Items 201(b)(2)(iii) and 403(b) of Regulation S-K of the SEC; and "beneficial ownership" of voting equity securities of the company shall be determined in accordance with Rule 13d-3 and Item 403 of Regulation S-K of the SEC.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments it received on the proposed rule changes. The text of these statements may be examined at the place specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes*

(1) Purpose

In recent months, some publicly traded corporations have announced plans to issue a new type of security consisting of two or more constituent securities which, in the aggregate, are designed to replicate the economic characteristics typically associated with ownership of shares of a class of outstanding stock of the corporation. Thus, a corporation might issue a unit consisting of, for example, several constituent securities, each of which is separable from the others and may trade by itself or in combination with one or all of the other constituent securities. This approach may permit investors to separate their securities holdings into distinct trading components representing discrete interests in the income and capital appreciation potential of the securities involved.

The securities may include, but are not limited to, any combination of the following:

- Common stock
- Preferred stock
- Warrants
- Debt securities

Proposed Rule 405A requires members and member organizations to afford an explanation of the unique characteristics of unbundled stock units to investors interested in trading the units and constituent securities. When recommending a transaction to a customer in the units or constituent securities, a member or member organization must make a determination as to its suitability, must have a reasonable basis for believing that the customer has the knowledge and experience in financial matters to be reasonably expected to be capable of evaluating the risks of the recommended transaction and must be financially able to bear the risks of the constituent securities.

In addition, the Exchange reviewed its proposed rule, as set forth in NYSE-88-40, within the context of the public commentary received by the Commission when such rule was published. There was concern expressed about what appeared to be the degree of discretion afforded the Exchange in determining what constituted an insider or control group as well as how it would be determined whether the standing of such insider or control group would be created or enhanced. As a result, the language of the proposed rule has been revised to specify percentage ownership levels that would determine insider and control groups impacted by the rule.

Further, it was felt that the language in the revised rule should eliminate any misunderstanding that, even though the company's proposed exchange offer met the rule's various provisions, the Exchange could still determine that such exchange offer was a violation of Rule 19c-4. This determination would be based upon whether the proposed offer is being made in conjunction with, or as one of a series of, transactions the effect of which is to create or enhance the standing of an insider or control group.

(2) Statutory Basis

The proposed rule change is consistent with section 6(b)(5) of the Act which, among other things, requires Exchange rules to be designed to promote just and equitable principles of trade, and to, in general, protect investors and the public interest.

*(B) Self-Regulatory Organization's Statement on Burden on Competiton*

The proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participant or Others*

The Exchange has neither solicited nor received written comments concerning its proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the proposal. The commission notes that it has received approximately 100 comment letters in response to its previous solicitation of

[1] Minor technical language changes were made to Amendment No. 1 in a letter to Howard Kramer, Division of Market Regulation, SEC, from Vince W. Plaza, Listing & Compliance, NYSE, dated March 9, 1989.

[2] The NYSE also proposes to amend NYSE-88-39 to include identical language in both the proposed listing standard (Paragraph 703.16 of the NYSE Listed Company Manual) and new Rule 405A. *See* letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Sharon Lawson, Branch Chief, Branch of Exchange Regulation, dated March 6, 1989.

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comments on NYSE–88–40. The majority of these letters opposed the exchange of common stock for Unbundled Stock Units (USUs) on the basis that such exchange offer would violate Rule 19c–4 under the Act by disenfranchising existing shareholders, and argued that these exchanges should not be exempted from the prohibition in Rule 19c–4 on exchange offers of securities with unequal voting rights. Accordingly, the Commission is specifically soliciting comment on a variety of issues that the commentators have raised concerning the use of USUs as well as some other issues raised by the NYSE proposal.

First, the Commission solicits comment on whether the aforementioend amendments to NYSE–88–40 adequately address the Rule 19c–4 concerns by ensuring that an exchange offer of common stock for USUs without voting rights would have only a deminimus effect on the voting rights of existing shareholders. In particular, the Commission notes that the amendments would limit any exchange offer of common stock for units to 20% of the company's outstanding stock, rather than 25% as originally proposed, and limit the availability of such an exchange offer to those companies that do not have any person holding 5% or more, and that do not have officers, directors, and any employee benefit plan or pension fund, in the aggregate, holding 10% or more of the company's outstanding stock at the time of the filing of the registration statement of such exchange offer.[9] The commission requests comment on whether the 5% and 10% standards are appropriate to ensure that USUs can not be used to create an insider group or significantly enhance the standing of such group in a company. Commentators may also wish to address the administerability of the NYSE proposal.

Second, several commentators have thus far expressed concern that an exchange offer of USUs for common stock will have the same coercive effect on existing shareholders as the classic dual-class exchange offer of high vote stock for low vote stock with a dividend sweetener which presumptively violates Rule 19c–4.[4] Under this view, the "downside" protection provided by the bond component of the USU and the incremental dividend sweetener to coerce shareholders to exchange voting stock for no or low vote stock in an exchange offer.[5] Accordingly, the Commission solicits comment as to whether the offer to exchange voting common stock for nonvoting USUs would coerce shareholders into tendering their shares even when such action would be contrary to their collective interest. If so, do the amendments to NYSE–88–40 address the concern by increasing the likelihood that a shareholder who chooses not to tender will continue to have meaningful voting rights after the exchange.

The Commission also notes that several commentators have thus far suggested that the economic benefits provided by USUs can be achieved without depriving those shareholders who exchange common stock for USUs of the voting rights which attached to their common stock.[6] Accordingly, the Commission solicits comment on the feasibility and desirability of attaching voting rights in some form to a USU and/or its component parts and if so, what would be the appropriate allocation of votes to the component parts of the USU. In this connection, the Commission notes that attaching voting rights to the bond subunit of the USU may affect the expected tax consequences. Therefore, we solicit comments on whether any voting rights accompanying a USU should be limited to the Incremental Dividend Preferred ("IDP") share subunit, or the Equity Appreciation Certificate ("EAC") subunit and/or the combined Equity Subunit ("ESU"). In this regard, the Commission notes that the relative values of the IDP, EAC and debt portion of a USU may fluctuate substantially during their thirty year life. Commentators should specifically address, therefore, whether fixing voting rights of the IDP and EAC at the time of their issuance might, in effect, result in the creation of super voting shares at any time that the relative value of the IDP or the EAC decreases. To the extent commentators believe that a periodic recalculation of voting rights between the IDP and EAC would be preferable, those commentators are requested to address any burdens imposed on issuers resulting from the creation of shifting voting rights. Comment is also requested as to whether such a recalculation of voting rights in permissible under state corporate law or under the corporate charter provisions of NYSE issuers.[7]

Finally, the Commission is also soliciting specific comments on the amendments to NYSE–88–39, discussed above, that would add certain additional quantitative standards for listing USUs on the NYSE in addition to imposing specific suitability requirements for transactions in USUs. First, we solicit comment on whether the 250 holder requirement and the requirement that issuers of USU's have total assets in excess of $100 million and a net worth in excess of $18 million are adequate to ensure that USU's and the constituent securities traded on the NYSE are of sufficient size and distribution to sustain a fair and orderly market for the product. In particular, we solicit comment on any liquidity concerns raised or answered by these standards and whether a minimum of 250 holders will ensure that USUs and their constituent securities are adequately diversified and not held by too few investors or institutional groups. Second, we solicit comment on the suitability requirements being proposed in Amendment No. 2 for USUs and their constituent securities. In particular, we solicit comment on whether the proposed suitability standards in proposed Rule 405A adequately ensure that investors will be informed about the risks and uncertainties involving trading of USUs and their component parts and, if not, what other standards should be imposed.

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by April 14, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Date: March 9, 1989.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 89–5890 Filed 3–13–89; 8:45 am]

BILLING CODE 8010–01–M

[9] We note that, under the proposed amendments, a company with persons or groups exceeding either the 5% or 10% standard could still issue USUs, so long as the percentage of beneficial ownership for those persons and groups exceeding the standard remains the same before and after the issuance of USUs.

[4] *See* Securities Exchange Act Release No. 34–25891 (July 7, 1988), 53 FR 25878 (July 12, 1988) ("Adopting Release") at 25881.

[5] The bond subunits provide fixed interest payments and payment of a principal value in 30 years, and the preferred subunits provide a fixed liquidation value, so that each unit as a whole provides a minimum return regardless of the market value or dividend pay-out of the issuer over the 30 years from the time of the exchange offer.

[6] *See e.g.* Letters from Bernard S. Black, Associate Professor of Law, Columbia University, to Jonathan G. Katz, Secretary, SEC, dated February 2, 1989; California Public Employees Retirement to David S. Ruder, Chairman, SEC, dated February 3, 1989; and Robert A.G. Monks, President, Institutional Shareholder Services, Inc. to Jonathan G. Katz, Secretary, SEC, dated February 3, 1989.

[7] For example, Shearson Lehman Hutton in a comment letter on SR–NYSE–40 states that fluctuating voting rights for the IDP could create that fluctuating voting rights for the IDP could create significant problems for one of the four USU issuers due to restrictions in its corporate charter. *See*, letter from Ronald E. Gallatin, Managing Director, Shearson Lehman Hutton, to Securities and Exchange Commission, dated February 10, 1989.



**[Release No. 34–26805; File No. SR–NYSE–87–31]**

## Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Reports to Control Persons

### I. Introduction

On September 14, 1987, The New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Commission, pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder,[1] a proposed rule change that would require that a copy of a member organization's compliance report be furnished annually to the member firm's control persons or, if the member firm has no control persons, to the audit committee of its Board of Directors.[2] The compliance report is an annual report member firms are required to prepare that reviews its supervision and compliance efforts during the preceding year. The requirement that members produce a compliance report was part of a package of NYSE rule changes previously approved that are intended to supplement existing internal compliance procedures of members and member organizations by imposing additional trade review, inquiry and reporting requirements.[3]

### II. Description of Proposed Rule

NYSE Rule 342.30 requires that members and member organizations must prepare a report on supervisory and compliance efforts undertaken during the previous year and to submit the report to its chief executive officer or managing partner by April 1, of each year.[4] Proposed Rule 354(a) would require that by April 1 of each year, each member organization must submit a copy of the annual compliance report to its one or more control persons as defined under paragraph (b) of the proposed rule.[5] If the member or member organization has no such control persons, it is required to submit a copy of the report to the audit committee of its Board of Directors or its equivalent committee or group. Where the member organization's control person is an organization ("controlling organization") the proposed rule requires the member organization to submit the report to the general counsel of the controlling organization and to the audit committee of the controlling organization's Board of Directors or its equivalent committee or group.

Proposed Rule 354(b) states that for the purpose of paragraph (a), the term "control person" means a person who controls the member organization within the meaning of NYSE Rule 2[6] otherwise than solely by virtue of being a director, general partner or principal executive officer (or person occupying a similar status or performing similar functions) of the member organization.

### III. Comments on the Proposed Rule Change

The Commission received one comment letter on the proposal. The Securities Industry Association ("SIA") submitted a letter critical of the NYSE proposal and urged the Commission not to approve the proposed rule. The NYSE submitted a letter responding to the SIA's criticisms of its proposal.[7] These comments are summarized below.[8]

In its letter the SIA made five principle points in opposition to the NYSE proposal. First, the SIA argues that the proposed NYSE rule will not accomplish any proper purpose. In this regard the SIA states that the proposed rule would not contribute to the ability of either member organizations or the Exchange to prevent or detect securities law or Exchange rule violations.

Second, the SIA contends that the proposed rule constitutes an

[1] 15 U.S.C. 78s(b) and 17 CFR 240.19b–4 (1988).

[2] The proposed rule change was noticed in Securities Exchange Act Release No. 25402, February 28, 1988, 53 FR 7272. The Commission received one comment letter on the proposal and a response by the NYSE to that comment. *See* discussion at p. 3, *infra*.

[3] The proposed NYSE rule change (File No. SR–NYSE–87–10) was approved by the Commission in Securities Exchange Act Release No. 25763, May 27, 1988, 53 FR 20925.

[4] The report must include a tabulation of customer complaints and internal investigations, identification and analysis of significant compliance issues, and plans for future systems or procedures to prevent and detect future compliance concerns. Further, the report must include a discussion of the preceding year's compliance efforts in the areas of antifraud, investment banking, sales practices, books and records, finance, and operations and supervision. *Id.*

[5] The Commission notes that the NYSE definition of control person is applicable solely to the Exchange's rule and may differ from the concept of control person under the Act.

[6] NYSE Rule 2 defines the term "control" as meaning the power to direct or cause the direction of the management or policies of a person whether through ownership of securities, by contract, or otherwise. A person is presumed, under the definition in Rule 2, to control another person if such person, directly or indirectly: (i) has the right to vote 25% or more of the voting securities; (ii) is entitled to receive 25% or more of the net profits; (iii) or is a director, general partner or principal executive officer (or person occupying a similar status or performing similar functions) of the other person. NYSE Rule 2 provides that any person who does not own voting securities, participate in profits, or function as a director, general partner or principal executive officer of another person shall be presumed not to control such other person. Under NYSE Rule 2 any presumption may be rebutted by evidence, but shall continue until a determination to the contrary has been made by the Exchange. As noted in note 5 *supra*, the NYSE definition of control person is applicable solely to the Exchange's rule and may differ from the concept of control person under the Act.

[7] *See* letters from Dennis H. Greenwald, Chairman, Federal Regulation Committee, SIA, to Jonathan G. Katz, Secretary, Commission, dated May 25, 1988, and from Edward A. Kwalwasser, Senior Vice President, NYSE, to Brandon Becker, Associate Director, Division of Market Regulation, dated August 17, 1988 ("NYSE August 17 letter").

[8] Prior to filing the proposed rule with the Commission, the NYSE received two other comment letters, from Prudential-Bache Securities, Inc. ("Prudential-Bache") and Dean Witter Reynolds, Inc. ("Dean Witter"), that were critical of the proposal. These comments, and the Exchange's response to them, were discussed in the notice of the proposed rule change published in the **Federal Register**. *See* note 2, *supra*.

In brief, Prudential-Bache argued that the proposal would create two classes of member organizations (those with and those without control persons) and that the proposal is discriminatory to those member firms with control persons. (*See* discussion *infra*.) In addition, Prudential-Bache contended that the term "control person," as defined under the proposed rule, would include passive investors without regard to the size of their holdings. Therefore, they argued, submission of reports to control persons may create an obligation not heretofore in existence. Dean Witter stated that it fully agrees with Prudential-Bache's comments. In addition, Dean Witter stated that it was concerned that the proposed rule would negate a control persons' ability to use the good faith exemption from liability under section 20(a) of the Act. *See* discussion *infra*.) *See* letters from Loren Schechter, Senior Vice President, Prudential-Bache, to David Marcus, Executive Vice President, NYSE, dated May 26, 1987, and from Dennis H. Greenwald, Executive Vice President, Dean Witter, to David Marcus, Executive Vice President, NYSE, dated June 3, 1987.

The NYSE denied that the proposal discriminates against member firms with control persons and stated that it does not believe that receipt of the required compliance reports would negate a control person's ability to use the good faith defense under section 20(a) of the Act.

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unwarranted extension of federal regulation to shareholders of a member firm, presumably by placing a supervisory burden on shareholders classified as control persons or a controlling organization, and thereby interferes with matters relating to corporate governance properly left to state law.

Third, the SIA argues that the proposed NYSE rule is unfair and discriminatory. The SIA states that the proposal creates, in effect, two classes of member organizations by requiring only those firms with large stockholders to submit their annual compliance report to persons outside their own organization.

Fourth, the SIA contends that the proposed requirement that member firms submit their annual compliance report to control persons may suggest that a control person assumes the burden to act to correct problems described in the report. The SIA states that such a suggestion makes a basic change in the role of control persons and argues that such obligations should not be created through adoption of a proposed rule change.

Fifth, the SIA believes the proposed rule would make control persons and controlling organizations of member firm broker-dealers more vulnerable to civil actions and deprive them of the protections of section 20(a) of the Act.[9] The SIA states that by tying a control person or a controlling organization into a member broker-dealer's supervisory process, the proposed NYSE rule would make control persons or controlling organizations more vulnerable to unwarranted lawsuits. Moreover, the SIA states that release of a member firm's annual compliance report to its controlling organization's audit committee would increase the possibility that the information in the report would lose its privilege and thus be subject to discovery in a civil action.

In its August 17 letter, the NYSE responded to the SIA's concerns and objections to the proposed rule change. First, the Exchange denies that the proposal would not accomplish a proper purpose. The NYSE states that the proposed rule would require control persons or a controlling organization to be notified of the member firm's supervision and compliance efforts and of any significant problems that may have developed and the steps planned to alleviate those problems. The NYSE believes that by providing the controlling organization with the member firm's annual compliance report, the probability that prompt attention will be given by the member firm to resolving its significant compliance problems will be enhanced.

Second, the Exchange disputes the SIA's contention that the proposed rule represents an unwarranted extension of federal regulation to shareholders of a member firm and interferes with matters relating to corporate governance under state law. The NYSE states that the proposed rule merely requires that certain information be made available to control persons. The Exchange argues that this information is relevant to the control person's investment and enables the control person, if it sees fit, to respond as it deems appropriate to the information provided in the report. The Exchange compares the requirement that the annual compliance report be submitted to control persons or a controlling organization to requirements that a subsidiary periodically report on its financial condition and operations to its parent company. The NYSE believes that the subsidiary's ability to operate in a fashion that permits it to comply with the rules of the Exchange should be of significant interest and importance to the parent.

Third, the NYSE disagrees with the SIA's contention that the proposed rule change creates two classes of member organizations and that it is unfair and discriminatory. The Exchange states that the intention of the proposed rule is to place the annual compliance report into the hands of persons who are in a position to exert influence on the member to take necessary corrective action to remedy problems discussed in the report. The NYSE argues that the report should be sent to these persons irrespective of whether such persons exist outside the member organization, and that there is nothing unfair or discriminatory in this requirement.

Fourth, the NYSE disputes the SIA's contention that the proposed rule places a burden on control persons to correct problems that may be described in the report. The Exchange states that the proposed rule simply assures that control persons will be supplied with the report. The control person remains free to take no steps whatsoever or any steps it may deem appropriate with respect to the contents of the report. The Exchange presumes, however, that the control persons will be as concerned with the member firm's compliance with NYSE rules as they will be about other aspects of the member's firm's operations.

Fifth, the NYSE asserts that the SIA's claim that the proposal will make control persons or controlling organizations more vulnerable to lawsuits is highly speculative. The Exchange also disagrees with the SIA's assertion that receipt of this report by control persons would deprive them of the good faith defense under section 20(a) of the Act of that release of the report to control persons would increase the chance that the report would lose any privilege it may have from being subject to discovery in the course of civil litigation.

The Exchange argues that the proposed rule creates no obligation or responsibility on the part of the control person, but simply provides them with information the NYSE believes they should receive. Moreover, the Exchange contends that the requirement might enable control persons to document that they acted in good faith upon receipt of the report, thus providing insulation from civil liability. For example, if a control person acted to increase their member firm's supervision and compliance areas after receipt of such a report, those actions could demonstrate a control person's good faith efforts. In this way, the NYSE asserts that the proposed rule change could enhance a control person's ability to use the good faith defense under section 20(a) of the Act.

With regard to the possible loss of privilege from discovery of the annual compliance report, the NYSE states that it is unclear that the report would be entitled to any privilege from discovery in civil litigation even if it remained within the member firm. Moreover, the Exchange notes that the report does not need to be prepared in a way that should increase the exposure of the control persons or the member firm to civil liability. The NYSE stated that identification and analysis of compliance problems required in the report only needs to be done in a generic manner and that specific identification of the incident or the parties involved is not necessary unless warranted by the facts.

[9] The concept of controlling persons for purposes of the Act is reflected in section 20(a). Section 20(a) of the Act provides in pertinent part:

Every person who, directly or indirectly, controls any person liable under any provision of this title or of any rule or regulation thereunder shall also be liable jointly and severally with and to the same extent as such controlled person to any person to whom such controlled person is liable, unless the controlling person acted in good faith and did not directly or indirectly induce the act or acts constituting the violation or cause of action.

With regard to civil penalties which the Commission can seek to impose on control persons under the Act, we note that the recently adopted "Insider Trading and Securities Fraud Enforcement Act of 1988" ("ITSFEA"), Pub. L. No. 100-704, 102 Stat. 4677 (1988) added section 21A to the Act which provides the Commission the authority to seek civil penalties from persons who have committed insider trading violations under the Act and their controlling persons (as that term has been applied under the Act). ITSFEA specifically states that section 20(a) does not apply to controlling person liability under section 21A(a). Instead, the section 20(a) "good faith" defenses are replaced by the standard in the new section 21A(b)(1) which provides that no control person shall be subject to a civil penalty under this section unless the Commission establishes that:

(A) Such controlling person knew or recklessly disregarded the fact that such controlled person was likely to engage in the act or acts constituting the violation and failed to take appropriate steps to prevent such act or acts before they occurred; or

(B) Such controlling person knowingly or recklessly failed to establish, maintain, or enforce any policy or procedure required under section 15(f) of [the Act] or section 204A of the Investment Advisers Act of 1940 and such failure substantially contributed to or permitted the occurrence of the act or acts constituting the violation.



## IV. Discussion

The Commission has reviewed closely the proposed NYSE rule change, the comments received by the Commission and the Exchange in opposition to the proposal, and the NYSE's response to those comments. On the basis of this review, the Commission has concluded that the proposed NYSE rule change is consistent with the requirements of the Act and, accordingly, should be approved.

In particular, the Commission believes that the proposed rule is consistent with sections 6(b)(1) and 19(g)(1)(A) of the Act, which require that national securities exchanges must ensure member and member organization compliance with the Act, its rules, and the rules of the exchange. The requirement that a copy of the member firm's annual compliance report be provided to control persons, its controlling organization, or to the audit committee on the member firm's Board of Governors is a proper means to promote the goals of the compliance procedures imposed by SR-NYSE-87-10. The Commission, when approving SR-NYSE-87-10, stated that the annual report requirement in NYSE Rule 342.30 will improve significantly the compliance efforts of member organizations by ensuring that the chief executive officer or managing partner of the member firm focuses sufficient attention on supervisory and compliance obligations. The Commission believes that the requirement that the annual compliance report be provided to a member's control persons or controlling organization is an additional method of providing these persons with the information necessary to evaluate the compliance procedures of the member. While the proposed rule does not, in and of itself, obligate control persons to take any action upon receipt of the report, it does ensure that they will be notified of the supervisory and compliance situation of their member firm.

The Commission recognizes that a control person's obligation to act upon the information contained in its member firm's annual compliance report must be viewed in light of provisions governing control person liability under the Act. As noted previously, control persons are subject to liability under section 20(a) unless they acted in good faith and did not directly or indirectly induce the act or acts constituting the violation or cause of action. In addition, under the new Section 21A the Commission can seek to impose civil penalties on control persons for insider trading violations committed by their controlled person or organization: (1) Where the control person knew or recklessly disregarded the fact that the controlled person was likely to engage in such acts and failed to take steps to prevent such actions; or (2) where the control person knowingly or recklessly failed to establish, maintain, or enforce any policy or procedure required under Section 19(f) of the Act or Section 204A of the Investment Advisers Act of 1940 and such failure substantially contributed to or permitted the occurrence of the act or acts constituting the violation.[10] In view of these standards for control person liability, the Commission believes it is likely that control persons will be and should be as concerned with the member firm's compliance with the requirements of the Act, its rules, and with NYSE rules, as they would be about other aspects of the member firm's operations and that, as a consequence, the probability that prompt attention will be given by the member firm to resolving significant compliance issues will be enhanced. For these reasons, the Commission also believes that the proposed rule change is consistent with section 6(b)(5) of the Act which requires that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest.

Concerning the specific objections to the proposed rule change raised in comment letters received by the Commission and the NYSE, for the reasons set forth below the Commission does not believe these objections warrant instituting proceedings to consider disapproving the proposed rule change. The Commission believes that the intent of the proposed rule, to increase the probability that prompt attention will be provided by member firms to resolving significant compliance issues by providing copies of the firm's annual compliance report to control persons, is plainly a proper purpose under sections 6(b)(1) and 19(g)(1)(A) of the Act.

The proposed rule also does not represent an unwarranted extension of federal regulation interfering with corporate governance areas under state law. Sections 6(b)(1) and 19(g)(1)(A) require that the rules of a national securities exchange must ensure member and member organization compliance with the Act, its rules, and the rules of the exchange. As stated above, the intention of the proposed rule is to increase the probability that NYSE member firms will monitor their compliance procedures. The rule change does not alter, restrict, or impose conditions on the corporate structure of member firms or their control persons. To comply with the rule change, an NYSE member would not have to make any changes to its corporate structure. In addition, the proposed rules does not impose any new obligation on control persons to respond to the report.[11]

Furthermore, the Commission disagrees that the proposed rule is unfair and discriminatory and that it creates two classes of member firms. The proposed rule merely requires that member firms submit copies of their annual compliance report to control persons or a controlling organization where such persons or organization exists. The Commission finds nothing unfair or discriminatory in that requirement. Moreover, the fact that a firm's control person might be a large, outside shareholder does not place any special requirement or burden on that firm. The NYSE believes it has set the share ownership level for control high enough—25%—to capture shareholders with such a substantial stake in the company that they would be in a position to exert influence or direction over the member's operations.[12]

The Commission also can find no basis to sustain commentators' claims that the proposed rule will deprive them of the good faith defense under section 20(a) of the Act or increase the potential that the report would be subject to discovery. A control person who receives a report pursuant to the rule may still assert the defense under section 20(a), where applicable, in a subsequent civil action and attempt to meet the burden of showing good faith

[10] *See* discussion *infra*.

[11] *See* discussion *infra*.

[12] NYSE Rule 2, which defines the term "control" provides that any presumption of control under the rule may be rebutted by evidence, but shall continue until a determination to the contrary has been made by the Exchange. *See* note 5, *supra*.

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and non-inducement of the acts constituting the violation or cause of action. It should be recognized, in this regard, that section 20(a) of the Act does not, and was not intended to, provide a blanket exemption from control persons from civil liability. Rather, on its face, it extends joint and several liability to control persons for the violations of persons that they directly or indirectly control, except where the control person acted in good faith and did not directly or indirectly induce the violation. In the normal case, the mere receipt of a compliance document identifying minor compliance problems and the actions taken to address any compliance weaknesses would in no way eliminate the controlling person's good faith defense. In the extraordinary case, where the report indicates serious problems and an absence of any effective response by the firm, it would appear consistent with the purposes underlying the statute to expect the control person to respond.[15]

Similarly, under the newly adopted section 21A of the Act[16] the Commission may seek to impose civil penalties on control persons based on insider trading violations by their controlled person or organization where the control person knew or recklessly disregarded the fact that the controlled person was likely to engage in the act or acts constituting the violation and failed to take appropriate steps to prevent such acts, or where the control person knowingly or recklessly failed to establish, maintain, or enforce any policy or procedure required under section 15(f) of the Act, or section 204A of the Investment Advisors Act of 1940, and that failure substantially contributed to or permitted the violation.

The proposed NYSE rule change requiring submission of an annual compliance report to a control person (as defined by the NYSE) will not alter a control person's obligations under the Act. The Commission recognizes that the report could be a factor in determining a control person's civil liability under section 20(a), or the imposition of civil penalties by the Commission under section 21A, as a result of violations of the controlled person. In the Commission's view, however, any civil liability for control persons which arises under section 20(a) as a result of the determination that a control person's actions were not in good faith and that they directly or indirectly induced the acts constituting the violation is consistent with the purposes of the Act. Similarly, in any case where the Commission seeks to impose civil penalties on a control person under section 21A based on a determination that the control person knew or recklessly disregarded information that their controlled person was likely to take actions constituting a violation and failed to take steps to prevent them, or where the control person knowingly or recklessly failed to establish, maintain, or enforce procedures and such failure substantially contributed to or permitted the violation, based on the control person's knowledge of information contained in the report, such liability is appropriate and fully consistent with the objectives of ITSFEA to increase management and supervisory efforts to prevent insider trading.

Finally, the Commission believes that submission of the member firm's annual compliance report to control persons would have no impact on the question of whether a member firm's annual compliance report would be eligible for privilege from discovery. Although the SIA comment letter was not specific on this point, we presume that the SIA was referring to discovery conducted under Rule 26 of the Federal Rules of Civil Procedure and to the potential application of the attorney "work product" privilege from such discovery under the Rule. The work product privilege from discovery applies to material generated for use in litigation.[18] The work product privilege does not, however, apply to reports prepared in the regular course of business.[19] Under NYSE Rule 342.30 NYSE member firms are required to prepare an annual compliance report and provide it to their firm's chief executive officer. In addition, members firms are required, upon the Exchange's request, to make the report available to the NYSE.[17] In view of this, the Commission concurs with the NYSE that it is not at all clear that such a report would be eligible for work product privilege from discovery under any circumstances. The Commission does not believe that the additional requirement that the report also be distributed to a member firm's control persons will affect its eligibility for the work product privilege.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 7, 1989.

**Jonathan G. Katz,**

*Secretary.*

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[15] Vicarious liability may also be imposed on control persons under respondeat superior, to which the "good faith" defense of Section 20(a) would not apply. The Second, Fourth, Fifth Sixth and Seventh Circuits have held that control person provisions under the Act and the Securities Act of 1933 are not the exclusive means by which vicarious liability can be imposed and that liability may also be imposed under agency principles—respondeat superior. *See, e.g., Paul F. Newton & Company* v. *Texas Commerce Bank*, 630 F.2d 1111 (5th Cir. 1980); *Marbury Management, Inc.* v. *Kohn*, 629 F.2d, 705 (2nd Cir. 1980); *Holloway* v. *Howerdd*, 536 F.2d 690 (6th Cir. 1976); *Fey* v. *Walston & Co.*, 493 F.2d 1036 (7th Cir. 1974); *Johns Hopkins University* v. *Hutton*, 422 F.2d 1124 (4th Cir. 1970), *cert. denied*, 416 U.S. 910 (1974). The Third and Ninth Circuits have held that a control person's vicarious liability under the Act may only be determined under Section 20(a) and that agency principles—respondeat superior—may not be used. See, e.g., *Roches Brothers* v. *Rhoads*, 537 F.2d 660 (3rd Cir. 1976); *Zweig* v. *Hearst Corp.*, 521 F.2d 1129 (9th Cir.), *cert. denied*, 423 U.S. 1025 (1975).

[16] *See* note 8, *supra*.

[18] *See generally, Hickman* v. *Taylor*, 329 U.S. 495 (1947).

[19] *See, e.g., United States* v. *Gulf Oil Corp.*, 760 F.2d 292, 296–297 (Temp. Emer. Ct. App. 1985); *Penn* v. *Giant Food, Inc.*, 115 FRD 368, 369 (D.D.C. 1987); *Kelly* v. *City of San Jose*, 114 FRD 653, 659 (N.D. Cal. 1987); *State of Colorado* v. *Schmidt-Tiago Construction Co.*, 108 FRD 731, 734 (D. Colo. 1985).

[17] *See* Commission's order approving NYSE Rule 342.30, note 3, *supra*.

[Release No. 34-26997; File No. SR-OCC-89-1]

## Self-Regulatory Organization; The Options Clearing Corporation; Notice of Proposed Rulemaking Regarding Cross-Margining

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on January 23, 1989, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

SR–OCC–89–1 proposes Rules pursuant to which OCC would implement a cross-margining program with the Chicago Mercantile Exchange ("CME"). The program would initially be available only for positions in certain OCC-cleared stock index options and CME-cleared stock index futures and options on stock index futures. In addition, OCC–CME cross-margining would initially be available only for positions that qualify as "proprietary" under the rules of the Commodity Futures Trading Commission ("CFTC") and as "non-customer" under the hypothecation rules of the Commission. However, the proposed rule change has been structured to facilitate expansion of the cross-margining program to other commodity clearing organizations, other types of options, futures and commodity options products, and positions other than those that are "proprietary" within the meaning of the CFTC's rules and "non-customer" within the meaning of the Commission's hypothecation rules.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The purpose of the proposed rule change is to permit OCC to implement a cross-margining program with the CME. OCC and CME have entered into a Cross-Margining Agreement (the "Cross-Margining Agreement" or "Agreement").

The Agreement provides that a firm that is a clearing member of both OCC and CME (a "Joint Clearing Member") would be eligible to elect cross-margining, as would a pair of affiliated firms of which one is a clearing member of OCC and the other is a clearing member of CME (a "pair of Affiliated Clearing Members").

Section 2 of the Agreement provides that Joint Clearing Members and pairs of Affiliated Clearing Members electing cross-margining shall establish cross-margining accounts ("X–M Accounts") at the clearing organizations. Section 2 also provides that each Joint Clearing Member and each pair of Affiliated Clearing Members shall designate either OCC or CME as its "Designated Clearing Organization." The Designated Clearing Organization would provide the Joint Clearing Member or pair of Affiliated Clearing Members with a daily Margin and Settlement Report (described below) and perform settlement functions on behalf of itself and the other clearing organization in connection with the X–M Accounts.

Section 3 of the Agreement provides that a Joint Clearing Member or pair of Affiliated Clearing Members may designate its or their X–M Accounts as "X–M Pledge Accounts" by entering into an "X–M Pledge Account Agreement." Pursuant to an X–M Pledge Account Agreement, the Joint Clearing Member or pair of Affiliated Clearing Members would grant a participating bank (a "Secured Party") a security interest in the positions held in the pair of X–M Pledge Accounts, and all proceeds thereof, as security for loans extended by the Secured Party to the Clearing Member or Clearing Members. The security interest would permit the Joint Clearing Member or pair of Affiliated Clearing Members to borrow against the value of the options positions in the X–M Pledge Accounts to finance payment of variation margin with respect to the futures positions in the X–M Pledge Accounts. (If the futures positions in the account generated variation margin, that variation margin would be used to pay down the outstanding balance of the loans.) The security interest of the Secured Party would be subordinate to that of OCC and CME, but only to the extent of obligations to OCC and CME arising from the X–M Accounts. Thus, if the Joint Clearing Members or pair of Affiliated Clearing Members defaulted on an obligation and the X–M Accounts were liquidated, OCC and CME would first be made whole in respect of all obligations to them arising from the X–M Accounts, but the Secured Party would then be entitled to the remaining proceeds of the positions in the X–M Accounts, up to the amount of the secured obligation.

Section 5 of the Agreement describes the determination by OCC and CME of the initial margin requirement for X–M Accounts. (The term "initial margin" as used in the Agreement refers to options-style margin, held by the clearing organizations, and adjusted on at least a daily basis.) Each clearing organization would utilize its own margin system to calculate a margin amount that it would require on the combined positions in the X–M Accounts. The average of the two amounts would be the "Base Margin Requirement." Either clearing organization could also elect to use as the Base Margin Requirement the margin amount determined by the other clearing organization's system. (OCC and CME have determined that their respective margin systems generate very similar, but not always identical, margin requirements for various combinations of positions.) A "Super Margin" amount would be determined by reference to Exhibit F to the Agreement, and the total initial margin requirement would be determined by adding the Super Margin amount to the Base Margin Requirement.

The Super Margin amount would range between zero and one hundred percent of the Base Margin Requirement, depending upon the size of the Base Margin Requirement—the larger the Base Margin Requirement, the larger the percentage. Clearing Members are accordingly discouraged from maintaining positions in X–M Accounts that would generate large margin requirements. Since large margin requirements are created by unhedged postions, Clearing Members are thereby discouraged from maintaining unhedged positions in the X–M Accounts.

Section 5 also gives each clearing organization the unilateral authority to require additional margin with respect to the obligations in the X–M Accounts and to cause intra-day margin calls to be made.

Section 6 of the Agreement provides that initial margin deposits may be in the form of cash, United States Treasury securities, letters of credit, common stock, or a combination of the foregoing. The Section describes the requirements for, and the methods for holding, each form of margin. The Section also provides that initial margin in the form of cash may be invested overnight by the Designated Clearing Organization, subject to arrangements satisfactory to OCC and CME.

Section 7 of the Agreement describes the daily settlement procedures in respect of X–M Accounts. CME and OCC would exchange reports on positions and settlements early in the morning on each business day. The margin requirement on each pair of X–M Accounts would then be determined as described above. The Designated Clearing Organization for each Joint Clearing Member or pair of Affiliated Clearing Members would then issue a "Margin and Settlement Report" showing the margin requirement and netted settlement obligation in respect of the pair of X–M Accounts. All settlement activity with the Joint Clearing Member or pair of Affiliated Clearing Members would be conducted through a "Joint Settlement Account"—a bank account in the joint names of OCC and CME—and any transfers from that account would require the approval of both CME and OCC.

Section 8 of the Agreement describes close-out of X–M Accounts. The Section provides that positions in X–M Accounts shall be subject to liquidation upon the suspension of the Joint Clearing Member



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or one of the pair of Affiliated Clearing Members by either OCC or CME. The Section provides that OCC and CME may agree, consistent with their respective rules, to delay liquidation of some or all of the positions, and also provides that OCC and CME will coordinate liquidation to try to assure that both legs of any hedge position are closed out simultaneously.

Section 8 also provides that, if the funds in the X–M Accounts are insufficient to close out the positions, OCC and CME will share the shortfall equally, regardless of whether the shortfall was in the X–M Account at CME or in the X–M Account at OCC. The Agreement requires that OCC and CME provide in their respective rules that their respective Clearing Funds may be used for this purpose.

Section 8 provides further that, if there are funds remaining after the X–M Accounts are closed out, OCC and CME will each be entitled to apply half of the surplus against defaults in other obligations of the Joint Clearing Member or pair of Affiliated Clearing Members. Each clearing organization, if it does not need all of its half of such surplus, is required to make the excess of such surplus available to the other clearing organization. Any funds remaining after all obligations to both clearing organizations have been satisfied are to be paid to the Clearing Member or its representative.

Section 9 of the Agreement imposes confidentiality obligations on each clearing organization with respect to information obtained by it in connection with the Agreement or the transactions or activities contemplated by the Agreement.

Section 10 of the Agreement provides that OCC and CME will indemnify each other against claims incurred as the result of any action or failure to act by the indemnitor in connection with the Agreement or the procedures contemplated by the Agreement, if the action or failure to act constitutes a violation of the Agreement or any obligation undertaken in connection with the Agreement or such procedures, any rule of the indemnitor, or any law or governmental regulation applicable to the indemnitor. The Section provides in particular for indemnification against claims incurred as the result of any unauthorized investment of cash margin deposits or any defalcation or theft of margin funds by an employee.

Section 11 of the Agreement sets out warranties and representations of OCC and CME to each other with respect to corporate good standing, corporate authority to enter into the Agreement, compliance with corporate agreements, and the securing of all necessary regulatory approvals.

Section 12 of the Agreement provides that the Agreement may be terminated without cause upon thirty days' notice by either OCC or CME after the Agreement has been in effect for at least a year. The Section also provides that, following a default by one of the parties which is not promptly cured after written notice thereof, the Agreement may be terminated by the nondefaulting party upon five business days' notice. In either case, termination of the Agreement would end the cross-margining arrangement, and positions in each of the former X–M Accounts would thereafter be subject to margin requirements without regard to positions in the other of the former X–M Accounts.

OCC proposes to make changes in its By-Laws and Rules to implement the Cross-Margining Agreement. A new Section in Article VI of OCC's By-Laws would set out OCC's authority to enter into the Cross-Margining Agreement with CME, and would provide that Joint Clearing Members and pairs of Affiliated Clearing Members electing cross-margining must enter into account agreements as described above. Non-substantive changes would be made to Article VI, Section 23 of OCC's By-Laws, which describes OCC's existing cross-margining program with The Intermarket Clearing Corporation, so that the Section would parallel the new cross-margining Section.

Changes are proposed to the By-Laws governing use of OCC's Clearing Fund to make clear, in conformance with Section 8 of the Cross-Margining Agreement, that OCC would have recourse to its Clearing Fund in order to pay an obligation to CME arising under the Cross-Margining Agreement.

As noted above, the Cross-Margining Agreement provides that OCC and CME would each use its own margin system to calculate margin for X–M Accounts. Changes are therefore proposed in OCC's margin rule so that the rule applies to futures as well as options.

A new Chapter VII, containing the Rules applicable to cross-margining under the OCC–CME program, would be added to OCC's Rules. Rule 701 would describe the X–M Accounts and Account Agreements described above and require each Joint Clearing Member or pair of Affiliated Clearing Members to establish a separate bank account for cross-margining settlement. Rule 702 would provide for designation by each Joint Clearing Member or pair of Affiliated Clearing Members of its or their Designated Clearing Organization. Rule 703 would describe the pledge program and the Pledge Agreements described above. Rule 704 would state that the amount of margin required by OCC and CME shall be determined in accordance with the Cross-Margining Agreement, and would set out OCC's authority to require intra-day margin. Rule 705 would describe the acceptable forms of margin. Rule 706 would describe the daily settlement procedures. Rule 707, together with conforming changes in OCC's Rules relating to suspension of Clearing Members, would implement the provisions of the Cross-Margining Agreement with respect to close-out.

OCC believes that the proposed rule change is consistent with the purposes and requirements of Section 17A of the Securities Exchange Act of 1934, as amended because it would implement a cross-margining system which would enhance the safety of the clearing system while providing lower clearing margin costs to Clearing Members.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

OCC does not believe that the proposed rule change would impose any burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

Written comments were not and are not intended to be solicited by OCC with respect to the proposed rule change and none have been received by OCC.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to SR–OCC–89–01 and should be submitted by April 4, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 7, 1989.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 89–5899 Filed 3–13–89; 8:45 am]

BILLING CODE 8010–01–M



**[Release No. 34–26898; File No. SR–PSE–87–20]**

**Self-Regulatory Organizations; Pacific Stock Exchange; Order Approving Proposed Rule Change**

On June 22, 1987, the Pacific Stock Exchange ("PSE") filed with the Commission a proposed rule change (SR–PSE–87–20) under section 19(b) of the Securities Exchange Act of 1934 ("Act"). The proposal would amend certain provisions in PSE's Constitution to reflect the termination of services provided by the Pacific Clearing Corporation ("PCC") and the Pacific Securities Depository Trust Company ("PSDTC"). The Commission published notice of the proposal in the **Federal Register** on January 18, 1989.[1] No comments were received. For reasons discussed below, the Commission is approving the proposal.

Article III, section 2(b) of PSE's Constitution currently provides, among other things, that any officer or director of a member firm of PCC or PSDTC, as well as any officer, director, or general partner of affiliates of such firms, may become a member of PSE's Board of Governors. The proposal removes references to PCC and PSDTC and provides that any officer or director of a member firm of a subsidiary of PSE performing depository or clearing functions or any officer or director of affiliates of such firms may be elected as a member of the Board of Governors. According to PSE, this amendment will not affect the eligibility of any current Governor who is an officer or director of a member firm of PCC or PSDTC.

Article IV, section 4 of PSE's Constitution currently specifies that PSE's Clearing Committee shall consist of PCC's Board of Directors, and the Committee shall recommend to the Board of Governors rules and procedures pertaining to the settlement of PSE contracts. The proposal eliminates specific references to the Committee's composition, delegates to the Board of Governors the appointment of Committee members, and prescribes that the Committee shall perform its duties relating to the settlement of PSE contracts as appropriate.

Article VII, section 4(a) of PSE's Constitution currently states that if a PSE member transfers its membership, the purchase price for such transfer shall be paid to PSE prior to admission of the transferee. The transferor shall be entitled to the purchase price minus, among other things, dues and assessments of the transferor payable to PSE and PCC. The proposal deletes the reference to PCC and provides that the amount of the purchase price to which the transferor is entitled shall not include dues and assessments of the transferor payable to PSE and if applicable, to any entity of PSE performing clearing or depository functions.

Article XV, section 1 of PSE's Constitution currently states that PCC shall provide facilities for: (1) Clearing exchange and other transactions of members; (2) borrowing and transferring securities for members; and (3) rendering accounting and other services for members. The proposal eliminates the reference to PCC and states that PSE or any entity designated by the Board of Governors may provide such services.

PSE believes that the proposal is consistent with the Act in that it will protect investors and the public interest by conforming PSE rules to the decision to terminate PCC and PSDTC. The Commission also believes that the proposal is consistent with the Act, specifically, sections 6 and 17A. In particular, the Commission believes that the proposal is designed to facilitate the termination of PCC and PSDTC by amending PSE's Constitution to reflect such termination.

The Commission notes that approval of this proposal does not constitute Commission-authorized termination of PCC and PSDTC. To effect such termination, PSE must file with the Commission, and the Commission must approve, applications to deregister PCC and PSDTC as clearing agencies.

It is therefore ordered, pursuant to section 19(b) of the Act, that the proposed rule change (SR–PSE–87–20) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

Dated: March 7, 1989.

[FR Doc. 89–5796 Filed 3–13–89; 8:45 am]

BILLING CODE 8010–01–M

[1] *See* Securities Exchange Act Release No. 25647 (January 11, 1988), 54 FR 2023.

**SMALL BUSINESS ADMINISTRATION**

**Interest Rates**

As directed by Pub. L. 100–590 SBA will establish a maximum legal interest rate for any commercial loan which funds any non-SBA portion of a project financed under section 504 of the Small Business Investment Act of 1958 as amended.

This rate will be 4% over the rate for direct loans published quarterly by SBA.

For the remainder of the January–March quarter of 1989, this rate will be thirteen and seven-eights (13⅞%), i.e., the direct rate of 9⅞% plus 4.

**Edward J. Myerson,**

*Deputy Associate Administrator for Finance and Investment.*

[FR Doc. 89–5899 Filed 3–13–89; 8:45 am]

BILLING CODE 8025–01–M

**Region V Advisory Council; Public Meeting**

The U.S. Small Business Administration, Region V Advisory Council, located in the geographical area of Madison, will hold a public meeting at 8:00 a.m. c.s.t. on Friday, May 12, 1989, at The Pfister Hotel, Milwaukee, Wisconsin, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others persent.

For further information, write or call C.A. Charter, District Director, U.S. Small Business Administration, 212 East Washington Avenue, Room 213, Madison, Wisconsin 53703, (608) 264–5205.

March 8, 1989.

**Jean M. Nowak,**

*Director, Office of Advisory Councils.*

FR Doc. 89–5900 Filed 3–13–89; 8:45 am]

BILLING CODE 8025–01–M

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## DEPARTMENT OF TRANSPORTATION

[Docket 46983]

### Robert O. Nay et al.; Prehearing Conference

In the matter of Robert O. Nay, Emerald Tours, Ltd. (Virginia) World Classics, Ltd., and Emerald Tours, Ltd. (Illinois) Enforcement Proceeding.

Notice is hereby given that a prehearing conference in the above-entitled matter is assigned to be held on March 21, 1989, at 10:00 a.m. (local time) in Room 5332, Nassif Building, 400 Seventh Street SW., Washington, DC 20590, before the undersigned administrative law judge, to consider the pending motion and further proceedings.

Dated at Washington, DC, March 8, 1989.

**Ronnie A. Yorler,**

*Administrative Law Judge.*

[FR Doc. 89-5877 Filed 3-13-89; 8:45 am]

BILLING CODE [illegible]

## DEPARTMENT OF THE TREASURY

### Public Information Collection Requirements Submitted to OMB for Review.

Date: March 8, 1989.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

### Internal Revenue Service

*OMB Number:* 1545-1035

*Form Number:* 8611

*Type of Review:* Revision

*Title:* Recapture of Low-Income Housing Credit

*Description:* Internal Revenue Code section 42 permits owners of residential rental projects providing low-income housing to claim a credit against their income tax. If the property is disposed of or it fails to meet certain requirements over a 15-year compliance period, the owner must recapture on Form 8611 part of the credit(s) taken in prior years.

*Respondents:* Individuals or households, Businesses or other for-profit businesses or organizations

*Estimated Number of Respondents:* 1,000.

*Estimated Burden Hours Per Response/Recordkeeping:*

Recordkeeping—3 hours 50 minutes.

Learning about the law or the form—1 hour 5 minutes.

Preparing, copying, assembling, and sending the form to IRS—1 hour 12 minutes.

*Frequency of Response:* On occasion.

*Estimated Total Recordkeeping/Reporting Burden:* 6,120 hours.

*Clearance Officer:* Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

*OMB Reviewer:* Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports, Management Officer.*

[FR Doc. 89-5780 Filed 3-13-89; 8:45 am]

BILLING CODE [illegible]

## Internal Revenue Service

### Art Advisory Panel; Closed Meeting

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Notice of closed meeting of Art Advisory Panel.

**SUMMARY:** Closed meeting of the Art Advisory Panel will be held in Washington, DC.

**DATE:** The meeting will be held April 12, 1989.

**FOR FURTHER INFORMATION CONTACT:** Karen Carolan, CC:AP:AS, 1111 Constitution Avenue, NW., Room 2575, Washington, DC 20224, Telephone No. (202) 566-9259 (not a toll free number).

Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1982), that a closed meeting of the Art Advisory Panel will be held on April 12 in Room 3313 beginning at 9:30 a.m., Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC 20224.

The agenda will consist of the review and evaluation of the acceptability of fair market value appraisals of works of art involved in Federal income, estate, or gift tax returns. This will involve the discussion of material in individual tax returns made confidential by the provisions of section 6103 of Title 26 of the United States Code.

A determination as required by section 10(d) of the Federal Advisory Committee Act has been made that this meeting is concerned with matters listed in section 552b(c) (3), (4), (6), and (7) of Title 5 of the United States Code, and that the meeting will not be open to the public.

The Commissioner of Internal Revenue has determined that this document is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required. Neither does this document constitute a rule subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

**Lawrence B. Gibbs,**

*Commissioner.*

[FR Doc. 89-5885 Filed 3-13-89; 8:45 am]

BILLING CODE [illegible]

[Delegation Order No. 77 (Rev. 24)]

### Delegation of Authority; Tax Examiners et al.

**AGENCY:** Internal Revenue Service.

**ACTION:** Delegation of Authority.

**SUMMARY:** The authority to issue or execute agreement to rescind notices of deficiency is extended to include Tax Examiners (Reviewers) (Grade GS-7 and higher), Quality Review Staff, Examination Division; Revenue Officer Examiners (Grade GS-11 and higher), district Collection functions; Technical Quality Reviewers (Grade GS-12 and higher) and Tax Examiners (Grade GS-6 and higher), Collection Technical Review; and Tax Examiners (Grade GS-6 and higher), district Collection Support function. The text of the delegation order appears below.

**EFFECTIVE DATE:** March 9, 1989.

**FOR FURTHER INFORMATION CONTACT:**

Michael Julianelle, EX:Q:S:A, Room 2116, 1111 Constitution Ave., NW., Washington, DC 20224, telephone 202-566-6466 (not a toll-free telephone number); or

Josephine Mosley, CO:O:CPS, Room 7710, 1111 Constitution Ave., NW., Washington, DC 20224, telephone 202-535-6128 (not a toll-free telephone number).

### Authority to Issue or Execute Agreement to Rescind Notices of Deficiency

1. The authority granted to the Commissioner of Internal Revenue and District Directors, by 26 CFR 301.7701-9, 26 U.S.C. 6212, 26 CFR 301.6212-1, Treasury Order 150-10, and 26 CFR 301.6861-1 to sign and send to the taxpayer by registered or certified mail any notice of deficiency is hereby



delegated to the officials listed below. These same officials are authorized by Treasury Order 150-10, 28 U.S.C. 6212(d) and section 1562 of the Tax Reform Act of 1986 to sign a written form or document rescinding any notice of deficiency.

a. Chief Counsel;

b. Regional Counsel;

c. Chiefs, Assistant Chiefs and Associate Chiefs of Appeals Offices;

d. Appeals Team Chiefs as to their respective cases;

e. Service Center Directors;

f. Assistant Commissioner (International);

g. Reviewers (grade GS-12 and higher) in Employee Plans and Exempt Organizations Divisions;

h. Tax Examiners (Reviewers) (grade GS-7 and higher), Quality Review Staffs; Revenue Agents, and Tax Auditors (reviewers) (grade GS-6 and higher) in the Examination Divisions and the Office of Compliance, Assistant Commissioner (International);

i. Revenue Agents (grade GS-11 and higher) in streamlined districts Examination Sections and/or groups;

j. Chiefs of Correspondence and Processing Sections;

k. Examination Tax Examiners/Revenue Agents (grade GS-6 and higher) in Service Center Compliance Divisions;

l. Revenue Officer Examiners (Grade GS-11 and higher) in district Collection functions;

m. Technical Quality Reviewers (Grade GS-12 and higher) and Tax Examiners (Grade GS-6 and higher) in Collection Technical Review;

n. Tax Examiners (Grade GS-6 and higher) in district Collection Support function;

o. Tax Examiners (grade GS-5 and higher) in Service Center Processing and Tax Accounts Divisions;

p. Tax Examiners (Reviewers) (Grade GS-6 and higher), Quality Assurance and Management Support Division, Service Centers; and

q. Tax Examiners (grade GS-6 and higher) in Service Center Collection Branch.

2. This authority may not be redelegated.

3. To the extent that the authority previously exercised consistent with this order may require ratification, it is hereby approved and ratified.

4. Delegation Order No. 77 (Rev. 23), effective June 16, 1988, is superseded.

Date: February 24, 1989.

Approved:

**Charles H. Brennan,**

*Deputy Commissioner (Operations).*

[FR Doc. 89-5886 Filed 3-13-89; 8:45 am]

BILLING CODE [illegible]

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# Sunshine Act Meetings

Federal Register
Vol. 54, No. 48
Tuesday, March 14, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**FEDERAL COMMUNICATIONS COMMISSION**

March 9, 1989.

*FCC To Hold Open Commission Meeting, Thursday, March 16, 1989*

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, March 16, 1989, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, NW., Washington, DC

*Agenda, Item No., and Subject*

Common Carrier—1—Title: In the Matter of Policy and Rules concerning Rates for Dominant Carriers, CC Docket No. 87-313. Summary: The Commission will consider an item addressing proposed modification to rules and policies regarding the regulation of rates for dominant carriers' interstate basic service offerings (price caps).

Mass Media—1—Title: Review of Section 73.658(c) of the Commission's Rules. Summary: The Commission will consider whether to modify or eliminate the network term of affiliation rule.

Mass Media—2—Title: In re: Transfer of Control of Licensed Non-Stock Entities. Summary: The Commission will consider proposed guidelines for determining when a transfer of control of certain types of licensed non-stock entities is deemed to occur, and on proposed clarifications of the procedures to be followed in seeking Commission consent to such transfer.

Issued: March 9, 1989.

Federal Communications Commission.

Donna R. Searcy,

*Secretary.*

[FR Doc. 89-5981 Filed 3-10-89; 12:32 pm]

BILLING CODE 6712-01-M

**NUCLEAR REGULATORY COMMISSION**

**DATE:** Weeks of March 13, 20, 27, and April 3, 1989.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Open and Closed.

**MATTERS TO BE CONSIDERED:**

**Week of March 13**

*Monday, March 13*

2:00 p.m.
Classified Security Briefing (Closed—Ex. 1)

*Wednesday, March 15*

10:00 a.m.
Briefing on Acceptance by DOE of Greater Than Class C Waste (Public Meeting)

2:00 p.m.
Preliminary Briefing on the Status of NUREG-1150 (Public Meeting)

*Thursday, March 16*

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

**Week of March 20—Tentative**

*Wednesday, March 22*

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

**Week of March 27—Tentative**

*Tuesday, March 28*

2:00 p.m.
Discussion/Possible Vote on Full Power Operating License for South Texas, Unit 2 (Public Meeting)

*Wednesday, March 29*

10:00 a.m.
Briefing on Staff Proposal on Continuity of Government Program (Closed—Ex. 1)

2:00 p.m.
Briefing on Status of West Valley Project (Public Meeting)

*Thursday, March 30*

10:00 a.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

2:00 p.m.
Discussion/Possible Vote on Full Power Operating License for Vogtle, Unit 2 (Public Meeting)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting)

**Week of April 3—Tentative**

*Wednesday, April 5*

2:00 p.m.
Briefing on Certification of Radiographers (Public Meeting)

*Thursday, April 6*

10:00 a.m.
Briefing on Status of Activities with the Center for Nuclear Waste Regulatory Analysis (Public Meeting)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

**ADDITIONAL INFORMATION:** Briefing on Status of Generic Issues (Public Meeting) scheduled for March 6, postponed. By a vote of 4-0 (Commissioner Roberts not present) on March 6, 1989, the Commission determined pursuant to 5 U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that Commission business required that "Affirmation of Reconsideration of Decommissioning Funding Order CLI-88-10 and Commission Ruling on Intervenors' Motion for Directed Certification of Scheduling Issues" (Public Meeting) scheduled for March 6, 1989, be held on less than one week's notice to the public.

**Note:** Affirmation sessions are initially scheduled and announced to the public on a time-reserve basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING)—(301) 492-0292.

**CONTACT PERSON FOR MORE INFORMATION:** William Hill (301) 492-1661.

William M. Hill, Jr.,

*Office of the Secretary.*

March 10, 1989.

[FR Doc. 89-5992 Filed 3-10-89; 2:46 pm]

BILLING CODE 7590-01-M

**SECURITIES AND EXCHANGE COMMISSION**

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** (54 FR 9964 March 8, 1989).

**STATUS:** Open meeting.

**PLACE:** 450 Fifth Street, NW., Washington, DC.

**DATE PREVIOUSLY ANNOUNCED:** Friday, March 3, 1989.

**CHANGES IN THE MEETING:** Additional item.

The following item will be considered at an open meeting for Tuesday, March 14, 1989, at 10:00 a.m.

Consideration of whether to issue a release announcing the adoption of final rules with regard to Regulation D, the limited offering exemptive provisions from the registration requirements of the Securities Act of 1933. An amendment would add to the lists of accredited investors certain governmental employee benefit plans with total assets in excess of $5 million. Other changes address the issue of substantial and good faith compliance with the terms, conditions and requirements of the regulation. For further information, please contact Richard Wulff or William Toomey at (202) 272-2644.



Commissioner Cox, as duty officer, determined that Commission business required the above change.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Pat Daugherty at (202) 272-2200.

Jonathan G. Katz,

*Secretary.*

March 9, 1989.

[FR Doc. 89-5982 Filed 3-10-89; 12:32 pm]

BILLING CODE 8010-01-M

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# Corrections

Federal Register
Vol. 54, No. 48
Tuesday, March 14, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF COMMERCE

### National Institute of Standards and Technology

[Docket No. 90127-9027]

### Announcing Request for Applications Beta Test Sites for NIST POSIX Conformance Test Suite (NIST-PCTS)

*Correction*

In notice document 89-4127, beginning on page 7820, in the issue of Thursday, February 23, 1989, make the following correction:

In the second column, under "DATE", in the third line, the date should read "March 27, 1989".

BILLING CODE 1505-01-D

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. TA89-1-34-000]

### Florida Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

*Correction*

In notice document 89-5482, appearing on page 10045 in the issue of Thursday, March 9, 1989, make the following correction:

The docket number, which appears at the head of the document beginning in the second column, should read as set forth above.

BILLING CODE 1505-01-D

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 147

[FRL 3311-1]

### Underground Injection Control Programs on Indian Lands

*Correction*

In rule document 88-24121, beginning on page 43064, in the issue of Tuesday, October 25, 1988, make the following correction:

On page 43089, in the second column, in § 147.1851(b), in the fourth and fifth lines the date should read "June 25, 1984".

BILLING CODE 1505-01-D

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### 44 CFR Part 352

[Docket No. 352 INT.]

### Commercial Nuclear Power Plants; Emergency Preparedness Planning

*Correction*

1. On the cover page for rule document 89-4635, beginning on page 8512 in the issue of Tuesday, February 28, 1989, in the second line of the subject heading, "Final" should have read "Interim".

2. In rule document 89-4635, on page 8513, in the third column, in the fourth complete paragraph, in the eighth line, "rules" should read "rule".

BILLING CODE 1505-01-D

## DEPARTMENT OF LABOR

### Office of the Assistant Secretary for Veteran's Employment and Training

### Solicitation for Grant Application; Job Training Partnership Act, Title IV, Part C, Program Year 1989

*Correction*

In notice document 89-5024 appearing on page 9095 in the issue of Friday, March 3, 1989, make the following correction:

In the first column, under DATE, in the second line, "not" should read "now".

BILLING CODE 1505-01-D

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 1

[T.D. 8223]

### Income Taxes; Branch Tax; Correction

*Correction*

In rule document 89-21831 appearing on page 37294 in the issue of Monday, September 26, 1988, make the following corrections:

§ 1.884-5T [Corrected]

1. In the second column, the section heading that reads "§ 1.844-5T [Corrected]" should read as set forth above.

2. In the same column, in Par. 3, in the first line, "§ 1.884-5T(b)(2)(i)(B)" should read "§ 1.884-5T(b)(2)(i)(B)".

3. In the same column, in Par. 4, in the first line, "§ 1.844-5T(b)(2)(i)(D)" should read "§ 1.884-5T(b)(2)(i)(D)".

BILLING CODE 1505-01-D

federal register

Tuesday
March 14, 1989

Part II

United States Information Agency

Department of the Treasury
Customs Service

## Findings and Determinations by the Deputy Director Under the Convention on Cultural Property Implementation Act; Notice

## Import Restrictions on Cultural Textile Artifacts From Bolivia; Notice

VOL 54 ISS 48 MR 14 1989 UMI



**UNITED STATES INFORMATION AGENCY**

**Findings and Determinations by the Deputy Director Under the Convention on Cultural Property Implementation Act (Pub. L. 97-446, as amended)**

Pursuant to the authority vested in me under Executive Order 12555, and USIA Delegation Order No. 86-3 of March 18, 1986 (51 FR 10137),

**Findings**

I hereby find:

(1) That Government of Bolivia made a request to the United States Government of the type and in the form required by section 303(a) of the Act, 19 U.S.C. 2602(a), on May 6, 1988, seeking emergency U.S. import restrictions and has supplied information which supports a determination that an emergency condition exists with respect to certain ethnological material from the community of Coroma, which material was identified as comprising a part of Bolivia's cultural patrimony in danger of being dispersed and fragmented in crisis proportions;

(2) That, pursuant to section 303(f)(1), 19 U.S.C. 2602(f)(1), notification of this request was published in the **Federal Register** on May 20, 1988 (53 FR 11544);

(3) That, pursuant to section 303(f)(2), 19 U.S.C. 2602(f)(2), this request was submitted to the Cultural Property Advisory Committee on May 19, 1988 for investigation, review and recommendation;

(4) That on August 4, 1988, the Committee transmitted to me its Report within the statutory ninety (90) day period prescribed in section 304(c)(2), 19 U.S.C. 2603(c)(2);

(5) That the Committee, in accordance with the requirements of section 306(f), 19 U.S.C. 2605(f), has thoroughly considered the request of Bolivia and has investigated the situation described in it;

(6) That the Committee recommends that emergency import restrictions be imposed on certain ethnological material from the community of Coroma;

(7) That the ethnological material which is the subject of the request consists of antique ceremonial textiles from the community of Coroma, situated high in the southern Altiplano region of the Andes, in Quijarro Province, Department of Potosi, which for centuries have been kept in bundles called q'epis that the ayllus of Coroma have passed from generation to generation as the collective inheritance from ancestors who lived near sacred areas;

(8) That the antique ceremonial textiles of Coroma are a part of the remains of a particular culture, the record of which is in jeopardy from dispersal and fragmentation which is, or threatens to be, of crisis proportions;

(9) That the imposition of emergency import restrictions on a temporary basis would, in whole or in part, reduce the incentive for dispersal and fragmentation of this ethnological material from the community of Coroma.

**Determinations**

Now, therefore, in accordance with the aforementioned authority vested in me, I hereby determine:

(1) That, pursuant to section 304(b) of the Act, 19 U.S.C. 2603(b), an emergency condition exists with regard to the antique ceremonial textiles from the community of Coroma;

(2) That the import restrictions set forth in section 307, 19 U.S.C. 2606, be applied to the antique ceremonial textiles of the community of Coroma; and

(3) That in accordance with the provisions of section 304(c)(3), 19 U.S.C. 2603(c)(3), the duration of such restrictions shall extend until May 6, 1993, five years from the date on which the Government of Bolivia's request was made to the United States.

Dated: January 19, 1989.

**Marvin L. Stone,**

*Deputy Director.*

[FR Doc. 89-5871 Filed 3-13-89; 8:45 am]

BILLING CODE 8230-01-M

**Customs Service**

**[T.D. 89-37]**

**Import Restrictions on Cultural Textile Artifacts From Bolivia**

**AGENCY:** U.S. Customs Service, Department of the Treasury.

**ACTION:** Notice of import restrictions.

**SUMMARY:** This document advises the public that, in accordance with a request from the Government of Bolivia, restrictions are being placed on the importation of certain culturally and historically significant textile artifacts from Bolivia. This action, which is being taken pursuant to the Convention on Cultural Property Implementation Act and in accordance with the United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, and in cooperation with the U.S. Information Agency, will assist Bolivia in protecting its cultural property.

**EFFECTIVE DATE:** March 14, 1989.

**FOR FURTHER INFORMATION CONTACT:** Legal Aspects: Samuel Orandle, Commercial Rulings Division (202-566-5765).

Operational Aspects: Phyllis Henry, Trade Operations (202-566-7877). Both are at U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229.

**SUPPLEMENTARY INFORMATION:**

**Background**

The value of cultural property, whether archaeological or ethnological in nature, is immeasurable. Such items often constitute the very essence of a society and convey important information concerning a people's origin, history, and traditional setting. The importance and popularity of such items regrettably makes them targets of theft, encourages clandestine looting of archaeological sites, and accompanying illegal exporting and importing.

There has been growing concern in the U.S. regarding the need for protecting endangered cultural property. The appearance in the U.S. of stolen or illegally exported artifacts from other countries where there has been recent pillaging has, on occasion, strained our foreign and cultural relations. This situation, combined with the concerns of the museum, archaeological, and scholarly communities, was recognized by the President and Congress. It became apparent that it was in the national interest for the U.S. to join with other countries to control illegal trafficking of such articles in international commerce.

The U.S. joined international efforts and actively participated in deliberations resulting in the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (823 U.N.T.S. 231 (1972). U.S. acceptance of the 1970 UNESCO Convention was codified into U.S. law as the "Convention on Cultural Property Implementation Act" (Pub. L. 97-446, 19 U.S.C. 2601 *et seq.*). The spirit of the Convention was enacted into law to promote U.S. leadership in achieving greater international cooperation towards preserving cultural treasures that are of importance not only to the nations whence they originate, but also to greater international understanding of mankind's common heritage. In 1983, the U.S. became the first major art importing country to implement the 1970 Convention.



It was with these goals in mind that Customs issued interim regulations to carry out the policies of the act. The interim regulations, which were set forth in §§ 12.104-12.104; Customs Regulations (19 CFR 12.104), were published in the **Federal Register** as T.D. 85-107 on June 25, 1985 (50 FR 26193), and took effect immediately. After consideration of comments received on the interim regulations, final regulations were issued as T.D. 86-52, published in the **Federal Register** on February 27, 1986 (51 FR 6905), and took effect on March 31, 1986.

**Bolivia**

Under section 303(a)(3) of the Cultural Property Implementation Act (19 U.S.C. 2602(a)(3)), the Government of Bolivia, a State Party to the 1970 UNESCO Convention, requested the U.S. Government to impose emergency import restrictions on certain endangered cultural material to assist Bolivia in protecting its cultural patrimony. Notice of receipt of the request was published by the U.S. Information Agency (USIA) in the **Federal Register** on May 20, 1988 (52 FR 11544).

On May 19, 1988, the request was referred to the Cultural Property Advisory Committee, which conducted a review and investigation, and submitted its report in accordance with the provisions of 19 U.S.C. 2605(f) to the Deputy Director, USIA, on August 4, 1988. The Committee found the situation in Bolivia to be an emergency and recommended that emergency import restrictions be imposed on certain ethnological material from the community of Coroma. The Deputy Director, pursuant to the authority vested in him under Executive Order 12555 and USIA Delegation Order 86-3, considered the Committee's recommendations and made his determination that emergency import restrictions be applied. (See this issue of the **Federal Register**.)

The Commissioner of Customs, in consultation with the Deputy Director of the USIA, has drawn up a list of covered ethnological material from the community of Coroma in Bolivia. The materials on the list are subject to the 1970 UNESCO Convention and § 12.104a, Customs Regulations. As provided in 19 U.S.C. 2601 *et seq.*, and § 12.104a, Customs Regulations, listed material from this area may not be imported into the U.S. unless accompanied by documentation certifying that the material left Bolivia legally and not in violation of the laws of Bolivia.

In the event an importer cannot produce the certificate, documentation, or evidence required in § 12.104c, Customs Regulations, at the time of making entry, § 12.104d provides that the district director shall take custody of the material until the certificate, documentation, or evidence is presented. Section 12.104e provides that if the importer states in writing that he will not attempt to secure the required certificate, documentation, or evidence, or the importer does not present the required certificate, documentation, or evidence to Customs within the time provided, the material shall be seized and summarily forfeited to the U.S. in accordance with the provisions of Part 162, Customs Regulations (19 CFR Part 162).

**Antique Ceremonial Textiles From Coroma, Bolivia**

U.S. import restrictions are applied to the antique ceremonial textiles from the community of Coroma, Bolivia. These are woven garments, dating from before 1500 to approximately 1850 A.D., owned communally by the Native people of this small Andean community. For centuries, they have played an integral role in the lives of the people of Coroma who wear them in special ceremonies. When not worn, they are honored and stored in bundles.

Textiles from this community may be identified by their appearance and texture. They are plain, not ornate, with varying widths of vertical stripes or bands. A few textiles display a checkerboard pattern. In color, the textiles are usually red, blue, or purple, or a shade of yellow, tan or brown. Unlike the more modern textiles from this Andean region, Coroma's ceremonial garments are made from high quality yarn from the wool of vicuna, or llama, and feels very soft to the touch, similar to silk.

Coroma's ceremonial garments consist of:

1. *Tunic/Poncho:* (asku or urku for women; unku or ccahua for men; poncho) A tunic is a woven garment consisting of either one or two pieces of woven cloth with sides stitched together; a poncho is a woven garment resembling a tunic but without the sides stitched together. (Approximate size: women's tunic is 1.2 m. by 90 cm.; Men's tunic is 82 cm. by 78 cm.)

2. *Cape/Shawl:* (llaqota or manta; llixilla or awayo; isqayo) Woven garment worn either on the back, like a cape, worn over the back and arms, like a shawl. (Approximate size: 80 cm. by 79 cm.)

3. *Small Ceremonial Cloth:* (tari or inkuna) Woven square cloth small in size used as a woman's head covering for ceremonial purposes.

4. *Hat/Headdress* (sombrero, pillu) A sombrero is a hat made from vicuna hide; a pillu is a wool headdress made in the shape of a crown with fringe.

Dated: March 7, 1989.

**William von Raab,**

*Commissioner of Customs.*

[FR Doc. 89-5872 Filed 3-13-89; 8:45 am]

BILLING CODE 4820-02-M

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## The United States Government Manual 1988/89

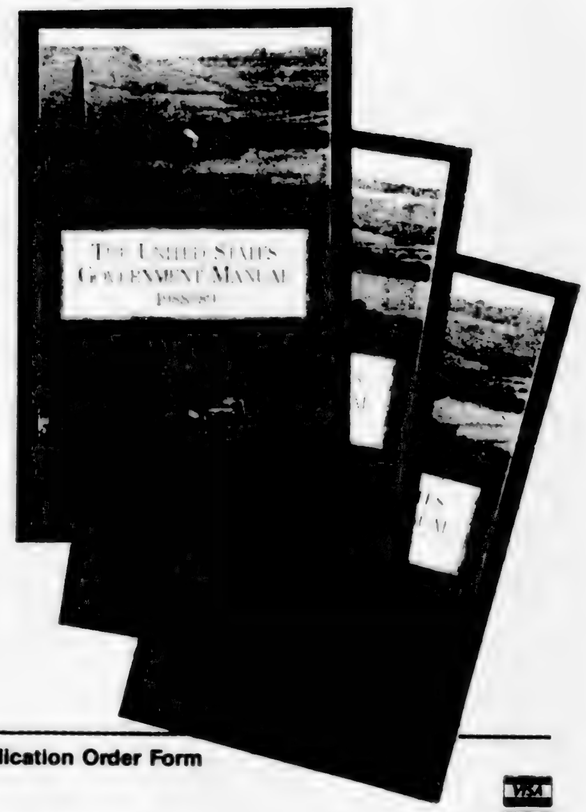
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# federal register

Wednesday
March 15, 1989

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# Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF AGRICULTURE

### Federal Crop Insurance Corporation

### 7 CFR Part 401

**[Docket No. 0636S]**

### Wheat Crop Insurance Endorsement

**AGENCY:** Federal Crop Insurance Corporation, USDA

**ACTION:** Notice clarifying sales period for wheat in certain South Dakota counties.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) herewith publishes this notice for the purpose of clarifying for all interested parties the period for accepting application for crop insurance on wheat in certain counties in South Dakota. The intent of this notice is to provide clear guidelines for insuring winter wheat, and winter wheat with a coverage option and to identify the counties affected.

**FOR FURTHER INFORMATION CONTACT:** Peter F. Cole, Secretary, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

**SUPPLEMENTARY INFORMATION:** The Wheat Crop Insurance Endorsement (7 CFR 401.101, and the Winter Wheat Coverage Option (7 CFR 401.102) are available for the 1989 crop year in certain counties in the western part of South Dakota.

The sales closing date for accepting applications in those counties for the wheat endorsement with the winter wheat coverage option attached was September 30, 1988.

An apparent confusion exists as to whether the wheat crop insurance endorsement, standing alone, is still available in such counties after September 30, 1988. This matter is currently under review for the 1990 crop year policy provisions.

For purposes of clarification, wheat crop insurance under the provisions of the Wheat Crop Insurance Endorsement (7 CFR 401.101), but without the winter wheat coverage option, is available until April 15, 1989, provided an adequate stand exists for fall-seeded wheat on that date. The sales closing date for spring-seeded wheat is April 15, 1989. This clarification pertains only to the following South Dakota Counties:

| | | |
|---|---|---|
| Bennett | Hand | Pennington |
| Brule | Harding | Perkins |
| Buffalo | Hughes | Potter |
| Butte | Hyde | Shannon |
| Charles Mix | Jackson | Stanley |
| Custer | Jones | Sully |
| Dewey | Lawrence | Todd |
| Fall River | Lyman | Tripp |
| Gregory | Meade | Ziebach |
| Haakon | McIntte | |

Done in Washington, DC on March 2, 1989.

**John Marshall,**

*Manager, Federal Crop Insurance Corporation.*

[FR Doc. 89-6025 Filed 3-14-89; 8:45 am]

BILLING CODE 3410-08-M

**[Docket No. 86-023R]**

## Food Safety and Inspection Service

### 9 CFR Parts 327 and 381

### Imported Canadian Product: Provision for "Streamlined" Inspection Procedures; Exemption From Official Mark of Inspection; Reopening of Comment Period

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Interim rule; reopening of comment period.

**SUMMARY:** On January 5, 1989, the Food Safety and Inspection Service (FSIS) published an interim rule that amended the Federal meat and poultry products inspection regulations by providing "streamlined" inspection procedures for the reinspection of Canadian meat and poultry products and by exempting all meat and poultry products imported from Canada from the requirement that such product or containers of product be marked with the official mark of inspection. These actions were a result of the United States-Canada Free-Trade Agreement and the United States-Canada Free-Trade Agreement Implementation Act of 1988, Pub. L. 100-449. The comment period on this interim rule closed on February 6, 1989. FSIS has received requests to reopen the comment period so that additional comments and information could be provided. FSIS is granting these requests and is reopening the comment period for an additional 30 days.

**DATE:** Comments must be received on or before: April 14, 1989.

**ADDRESS:** Comments may be mailed to the Policy Office, ATTN: Linda Carey, FSIS Hearing Clerk, Room 3171, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. Any person desiring an opportunity for oral presentation of views as provided under the Poultry Products Inspection Act must make such a request to Patricia Stolfa at (202) 447-3473 so that arrangements may be made for such views to be presented. A record will be made of all views orally presented. All comments submitted in response to this action will be made available for public inspection in the Policy Office between 9 a.m. and 4 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Patricia Stolfa, Deputy Administrator, International Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-3473.

**SUPPLEMENTARY INFORMATION:** On January 5, 1989, FSIS published an interim rule that amended the Federal meat and poultry products inspection regulations by providing "streamlined" inspection procedures for the reinspection of Canadian meat and poultry products and by exempting all meat and poultry products imported from Canada from the requirement that such product or containers of product be marked with the official mark of inspection. These actions were a result of the United States-Canada Free-Trade Agreement and the United States-Canada Free-Trade Agreement Implementation Act of 1988, Pub. L. 100-499, which President Reagan signed on January 2, 1989. The comment period on this interim rule closed on February 6, 1989. FSIS has received requests to reopen the comment period so that additional comments and information could be provided. FSIS is granting these

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requests and is reopening the comment period for an additional 30 days.

Done at Washington, DC on: March 13, 1989.

**Lester M. Crawford,**

*Administrator, Food Safety and Inspection Service.*

[FR Doc. 89-6104 Filed 3-14-89; 8:45 am]

BILLING CODE 3410-DM-M

## FEDERAL ELECTION COMMISSION

**11 CFR Part 114**

**[Notice 1989—4]**

**Trade Association Solicitation**

**AGENCY:** Federal Election Commission

**ACTION:** Final rule, transmittal of regulation to Congress

**SUMMARY:** The Commission has revised its regulation at 11 CFR 114.8(f), governing the solicitation of parent and subsidiary corporations by a trade association or a trade association's separate segregated fund. Section 114.8 sets forth the rules under which a trade association may solicit the restricted class of its member corporations. The revision clearly states that a trade association or its separate segregated fund may solicit no part of the restricted class of the parent if the parent corporation is not a member of the association although the parent's subsidiary is a member. The revision also specifies in each sentence the categories of persons who constitute the restricted class. Supplementary information, set out below, provides further information on the revision.

**DATES:** Further action, including the announcement of an effective date, will be taken after the regulation has been before Congress for 30 legislative days pursuant to 2 U.S.C. 438(d).

**FOR FURTHER INFORMATION CONTACT:** Ms. Susan E. Propper, Assistant General Counsel, Federal Election Commission, 999 E Street, NW., Washington, DC 20463, (202) 376-5690 or (800) 424-9530.

**SUPPLEMENTARY INFORMATION:** The Commission is publishing today the final text of a revised rule at 11 CFR 114.8(f), governing the solicitation of parent and subsidiary corporations by a trade association or its separate segregated fund.

On September 15, 1988, the Commission issued a Notice of Proposed Rulemaking in which it sought comments on proposed revisions of § 114.8(f) and two other regulations. 53 FR 35827. The Commission received no comments in response to the Notice.

Section 438(d) of Title 2, United States Code, requires that any rule or regulation prescribed by the Commission to carry out the provisions of Title 2 of the United States Code be transmitted to the Speaker of the House of Representatives and to the President of the Senate 30 legislative days before they are finally promulgated. This regulation was transmitted to Congress on March 10, 1989.

**Explanation and Justification**

The Federal Election Campaign Act of 1971, as amended, (the "Act"), 2 U.S.C. 431 *et seq.*, permits trade associations to solicit the executive or administrative personnel, stockholders, and families of such personnel and stockholders (the "restricted class") of the trade association's member corporations, subject to certain conditions. 2 U.S.C. 441b(b)(4)(D). Section 114.8(f) of the Commission's regulations applies this basic rule to situations where a parent corporation is a member of a trade association but its subsidiary is not, or vice versa.

Under the current § 114.8(f), if the parent corporation is a member of a trade association but the subsidiary is not, the trade association or its separate segregated fund may solicit only the restricted class of the parent. To be consistent with the Act, the regulations should further provide that if the subsidiary corporation is a member of a trade association but its parent is not, then the trade association and its separate segregated fund may solicit only the restricted class of the subsidiary; the trade association may not solicit the parent corporation's restricted class. As the Notice of Proposed Rulemaking pointed out, however, current § 114.8(f) states that the trade association is prohibited from soliciting only the "shareholders" of the non-member parent corporation. The revision corrects this language. The Commission notes that this revision does not represent a change in agency policy but rather is a more accurate statement of the current law. It has been the consistent position of the Commission that trade associations may only solicit the restricted class of their member corporations. In addition, unlike the earlier proposed version, the new rule also specifies in each sentence the categories of persons who constitute the relevant restricted class.

**List of Subjects in 11 CFR Part 114**

Business and industry, Elections.

For the reasons set out in the preamble, Subchapter A, Chapter I, Title 11 of the Code of Federal Regulations is amended as follows:

**PART 114—CORPORATE AND LABOR ORGANIZATION ACTIVITY**

1. The authority citations for Part 114 is revised to read as follows:

**Authority:** 2 U.S.C. 431(8)(B), 431(9)(B), 432, 437d(a)(8), 438(a)(8), and 441b.

2. By revising § 114.8(f) to read as follows:

**§ 114.8 Trade associations.**

* * * * *

(f) *Solicitation of a subsidiary corporation.* If a parent corporation is a member of the trade association but its subsidiary is not, the trade association or its separate segregated fund may only solicit the parent's executive or administrative personnel and their families and the parent's stockholders and their families; it may not solicit the subsidiary's executive or administrative personnel or stockholders or their families. If a subsidiary is a member of the trade association but the parent corporation is not, the trade association or its separate segregated fund may only solicit the subsidiary's executive or administrative personnel and their families and the subsidiary's stockholders and their families; it may not solicit the parent's executive or administrative personnel or stockholders or their families. If both parent and subsidiary are members of the trade association, the executive or administrative personnel and their families and the stockholders and their families of each may be solicited.

* * * * *

Dated: March 10, 1989.

**Danny L. McDonald,**

*Chairman, Federal Election Commission.*

[FR Doc. 89-5093 Filed 03-14-89; 8:45 am]

BILLING CODE 6715-01-M

## DEPARTMENT OF TRANSPORTATION

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. 88-NM-126-AD; Amdt. 39-6150]**

**Airworthiness Directives; McDonnell Douglas Model DC-9 Series, Model DC-9-80 Series, Model MD-88, and C-9 (Military) Series Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to all McDonnell Douglas Model DC-9 series, Model DC-9-80 series, Model MD-88, and C-9 (Military) series airplanes, which requires inspection of the rudder actuator for internal hydraulic fluid leakage, and replacement if necessary, to ensure that degraded actuators are removed from service. This amendment is prompted by reports of degraded actuators. This condition, if not corrected, could lead to reduced rudder authority and uncontrollable airplane sideslip, should an engine failure occur at takeoff.

**DATES:** Effective April 12, 1989.

**ADDRESSES:** The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1-L00 (54-88). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 3229 East Spring Street, Long Beach, California.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert M. Stacho, Aerospace Engineer, Systems and Equipment Branch, ANM-136L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806; telephone (213) 988-5336.

**SUPPLEMENTARY INFORMATION:** A proposal to amend Part 39 of the Federal Aviation Regulations to include a new airworthiness directive (AD), applicable to McDonnell Douglas Model DC-9 series, DC-9-80 series, MD-88, and C-9 (Military) series airplanes, which requires inspection of the rudder actuator for internal hydraulic fluid leakage, and replacement, if necessary, to ensure that degraded actuators are removed from service, was published in the **Federal Register** on October 20, 1988 (53 FR 41282).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter requested that the initial inspection of paragraph B. of the proposed AD be changed from 1,000 flight hours to 1,500 flight hours. This commenter operates a large fleet of recently-delivered Model DC-9-80 airplanes, and suggested that the 1,000-hour compliance time unduly penalizes its operation of low-time airplanes. The FAA concurs. In developing an appropriate compliance time for this AD action, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but the practical aspect of incorporating the required inspections into affected operator's maintenance schedules in a timely manner. The FAA has reviewed data submitted by the aircraft manufacturer as to recommended inspections times and parts availability, as well as average aircraft utilization rates of affected operators, and has determined that extending the initial inspection from 1,000 to 1,500 flight hours will provide an acceptable level of safety. The final rule has been revised accordingly.

One commenter requested the repetitive inspection intervals of paragraph C. of the proposed AD, applicable to Model DC-9-80 series airplanes, be extended from 2,500 to 3,000 flight hours so the inspections can be accomplished during the "C" maintenance check. The FAA concurs with this request. In developing the proposed repetitive inspection interval, the FAA had intended that it fall during a time of regular scheduled maintenance for the majority of affected operators. After reviewing the average utilization rates for U.S. operators, the FAA has determined that revising the repetitive inspection intervals to 3,000 flight hours, for all airplanes specified in paragraph B. of the final rule, will provide an acceptable level of safety. The final rule has been revised accordingly.

The FAA has determined that the changes described above will neither impose an additional economic burden on any operator, nor expand the scope of the AD.

One commenter requested that terminating action for the repetitive inspections be included in the AD if the aircraft manufacturer has developed such corrective action. To date, the aircraft manufacturer has not proposed design changes that would preclude the need for these inspections. When such design changes are available, the FAA may consider further rulemaking to provide for terminating action for the inspection requirements of this AD.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described.

There are approximately 1500 Model DC-9 series airplanes in the worldwide fleet. It is estimated that 870 airplanes of U.S. registry will be affected by this AD, that it will take approximately 10 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. (Replacement of the rudder actuator, if necessary, would require 13 manhours to accomplish). Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $348,000.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities, because few, if any, Model DC-9 series airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

**List of Subjects in 14 CFR Part 39**

Aviation safety, Aircraft.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

**PART 39—[AMENDED]**

1. The authority citation for Part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13. [Amended]**

2. By adding the following new airworthiness directive:

**McDonnell Douglas:** Applies to McDonnell Douglas Model DC-9 series, Model DC-9-80 series, Model MD-88, and C-9 (Military) series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent uncontrollable airplane sideslip due to an ineffective rudder actuator, accomplish the following:

A. For Model DC-9-11, -12, -13, -14, -15, -15F, -21, and -87 series airplanes: Within 500 flight hours after the effective date of this airworthiness directive (AD), unless already accomplished within the last 1,000 flight hours, inspect the rudder actuator for internal hydraulic fluid leakage in accordance with McDonnell Douglas Alert Service Bulletin A27-291, Revision 3, dated August 24, 1988.

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B. For Model DC-9-31, -32, -32F, -33, -34, -34F, -41, -51, -61, -62, -63, and MD-88 series airplanes: Within 1,500 flight hours after the effective date of this AD, unless already accomplished within the last 1500 flight hours, inspect the rudder actuator for internal hydraulic fluid leakage, in accordance with McDonnell Douglas Alert Service Bulletin A27-291, Revision 3, dated August 24, 1988.

C. If the rudder actuator internal hydraulic fluid leakage is within the limits established in McDonnell Douglas Alert Service Bulletin A27-291, Revision 3, dated August 24, 1988, repeat the inspection specified in paragraph A. or B., above, as follows:

1. For those airplanes specified in paragraph A., at intervals not to exceed 1500 flight hours.

2. For those airplanes specified in paragraph B., at intervals not to exceed 3000 flight hours.

D. Any rudder actuator which exceeds the internal hydraulic fluid leakage limit specified in McDonnell Douglas Alert Service Bulletin A27-291, Revision 3, dated August 24, 1988, must be replaced, prior to further flight, with a rudder actuator within those limits.

E. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1-L00 (54-60). These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

This amendment becomes effective April 12, 1989.

Issued in Seattle, Washington, on February 21, 1989.

**Darrell M. Pederson,**

*Assistant Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 89-5909 Filed 03-14-89; 8:45 am]

BILLING CODE 4910-13-M

**14 CFR Part 39**

**[Docket No. 88-NM-15-AD; Amdt. 39-6152]**

## Airworthiness Directives; McDonnell Douglas Model DC-9-10 Through -30 Series and C-9 (Military) Airplanes, Equipped with a Non-Ventral Aft Pressure Bulkhead

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive, applicable to certain McDonnell Douglas Model DC-9-10 through -30 series and C-9 (Military) series airplanes equipped with a non-ventral aft pressure bulkhead, which requires both visual and high frequency eddy current inspection of the aft pressure bulkhead from the aft side. This amendment is prompted by a recent report of a crack in the aft pressure bulkhead tee cap. If this condition is not corrected, bulkhead tee cap cracks may develop, which could result in rapid depressurization of the fuselage in flight and cause severe structural damage to the airplane.

**DATES:** Effective March 24, 1989.

**ADDRESSES:** The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1-L00 (54-60). This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 3229 East Spring Street, Long Beach, California.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael N. Asahara, DC9/MD80 Program Manager, Airframe Branch, ANM-122L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5321.

**SUPPLEMENTARY INFORMATION:** On May 31, 1988, the FAA issued AD 88-13-09, Amendment 39-5954 (53 FR 21411; June 8, 1988), to require the structural inspection of the aft pressure bulkhead using low frequency eddy current inspection techniques from the forward side of the bulkhead of all McDonnell Douglas Model DC-9 series airplanes. That AD was prompted by reports of cracks in the aft pressure bulkhead tee cap. This condition, if not corrected, could result in rapid depressurization of the fuselage, causing structural damage and possible loss of adjacent structures, including damage to control cables, with subsequent loss of airplane control.

Since issuance of AD 88-13-09, a DC-9 operator reported finding a 24-inch crack in the non-ventral aft pressure bulkhead tee while performing an unscheduled heavy maintenance inspection. Preliminary analysis of the tee revealed that the cracks initiated at multiple sites on the forward surface of the upstanding leg of the tee as the result of metal fatigue due to bending and preloads. The crack was detected on an airplane having logged 36,079 landings, with 40,336 total hours on the fuselage. Fractrographic analysis revealed that the crack initiated approximately 12,000 landings prior to its discovery. In light of this new report of cracking, the FAA has determined that the initial inspection threshold for compliance with the inspection requirements of AD 88-13-09 must be reduced to 25,000 landings on airplanes equipped with non-ventral aft pressure bulkheads in order to adequately detect cracking in a timely manner.

The FAA canvassed the affected airline operators, through the Air Transport Association (ATA) of America, and McDonnell Douglas, to ascertain their experience with the low frequency eddy current inspection from the forward side of the bulkhead, as an option provided in AD 88-13-09. From information supplied by those groups, the FAA has determined that, due to the complexity and difficulty in performing that type of inspection, the results may not be reliable and, therefore, the inspection may not be effective. The FAA has determined that a high frequency eddy current inspection of the 5910163-91 and -92 attach tee from the aft side of the bulkhead, coupled with an optically aided visual inspection, will more adequately detect cracking in the attach tee area. In addition, the FAA has determined that sealant must be removed from the inspection area prior to inspection. Further, because of the differences in the eddy current inspection equipment sensitivity, the FAA has determined that the interval between inspections of the 5910163-91 and -92 attach tees must be reduced to 500 landings.

The FAA has determined that, due to the multiple-site nature of the reported cracking, continued operation of airplanes with cracks is unacceptable. Accordingly, this action does not permit the interim repair for certain cracks as currently described in paragraph C.2.a. of AD 88-13-09.

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin A57-231, dated February 24, 1989, which describes high frequency eddy current inspection of the attach tee area, and repairs or replacement, if necessary.

Since this unsafe condition may exist or develop on other airplanes of the same type design equipped with a non-ventral aft pressure bulkhead, this AD requires repetitive high frequency eddy current inspection of the 5910163-91 and -92 attach tee, coupled with repetitive optically aided visual inspections of the attach tee from the aft side of the bulkhead, and repair or replacement, if necessary. Subsequent inspections are also required after any repair or replacement. Additionally, affected operators are required to remove sealant from the inspection area prior to inspection.

The requirements of this AD differ from and replace the requirements of AD 88-13-09 for airplanes equipped with non-ventral aft pressure bulkheads by: (1) Deleting the option for low frequency eddy current inspections from the forward side of the bulkhead; (2) lowering the initial inspection threshold called out in AD 88-13-09 to 25,000 landings; (3) eliminating the interim repair provided by that AD; and (4) eliminating the optional inspections from the forward side of the bulkhead.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The FAA is currently preparing a similar action to address revised inspection requirements for Model DC-9 series airplanes equipped with a ventral aft pressure bulkhead. However, the proposed compliance time would not preclude a period for public comment. (Therefore, that action will appear as a Notice of Proposed Rulemaking.)

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required).

**List of Subjects in 14 CFR Part 39**

Aviation safety, Aircraft.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

**PART 39—[AMENDED]**

1. The authority citation for Part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. By adding the following new airworthiness directive:

**McDonnell Douglas:** Applies to Model DC-9-10 through -30 series and C-9 (Military) series airplanes, equipped with a non-ventral aft pressure bulkhead, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent cracks which could result in structural failure of the nonventral aft ventral pressure bulkhead, accomplish the following:

A. Prior to the accumulation of 25,000 landings or within 500 landings after the effective date of this AD, whichever occurs later, inspect the aft pressure bulkhead attach tee section, in accordance with the following procedures.

1. Remove any sealant from inspection area of the tee section that might hinder optically aided and high frequency eddy current inspections. Clean dirt, grease, and all foreign materials from inspection area using lint-free wipers and 1,1,1 trichloroethane solvent or equivalent;

2. Using an optically aided visual inspection technique, inspect the 5910163-89, -93, -94, and -95 attach tees from the aft side of the bulkhead, in accordance with McDonnell Douglas Alert Service Bulletin A53-231, dated February 24, 1989 (hereinafter referred to as ASB53-231). Repeat this inspection thereafter at interval not to exceed 1,500 landings; and

3. Using a high frequency eddy current inspection technique, in accordance with ASB53-231, inspect the 5910163-91 and -92 attach tees from the aft side of the bulkhead. Repeat this inspection thereafter at intervals not to exceed 500 landings.

B. If cracks are found, prior to further flight, replace the cracked tee cap or repair by splicing in a section of tee cap with a new like or improved part, in accordance with McDonnell Douglas Service Rework Drawings SR09530001, Revision C, dated August 18, 1987, and SR09530001, Revision "Advance D", dated October 29, 1987. Prior to the accumulation of 25,000 landings after the repair or replacement, resume the repetitive inspections in accordance with paragraph A., above.

C. Compliance with the requirements of this AD constitutes terminating action for the requirements of AD 88-13-09, Amendment 39-5954, relating to airplanes equipped with non-ventral aft pressure bulkheads.

Note.—The requirements of AD 88-13-09 relating to airplanes with ventral aft pressure bulkheads are not affected by this AD.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments then send it to the Manager, Los Angeles Aircraft Certification Office.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes unpressurized to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1-L00 (54-60). These documents may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 3229 East Spring Street, Long Beach, California.

This amendment becomes effective March 24, 1989.

Issued in Seattle, Washington, on February 24, 1989.

**Darrell M. Pederson,**

*Assistant Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 89-5910 Filed 3-14-89; 8:45 am]

BILLING CODE 4910-13-M

**14 CFR Part 39**

**[Docket No. 88-NM-04-AD; Amdt. 39-6151]**

## Airworthiness Directives; Avions Marcel Dassault-Breguet Aviation (AMD-BA) Model Mystere Falcon 50 and 900 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

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**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Avions Marcel Dassault-Breguet Aviation (AMD–BA) Model Mystere Falcon 50 and 900 series airplanes, which requires repetitive inspections of the main landing gear (MLG) door emergency release mechanism to detect broken or damaged unlocking pins, and replacement of the pins, if necessary. This amendment is prompted by reports of the MLG door emergency unlocking pin breaking due to fatigue failure. This condition, if not corrected, could prevent emergency extension of the MLG.

**EFFECTIVE DATE:** March 24, 1989.

**ADDRESSES:** The applicable service information may be obtained from Falcon Jet Corporation, 777 Terrace Avenue, Hasbrouck Heights, New Jersey 07604. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Adriano Pasion, Standardization Branch, ANM–113; telephone (206) 431–1977. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

**SUPPLEMENTARY INFORMATION:** The Direction Générale de L'Aviation Civile (DGAC), which is the airworthiness authority of France, has notified the FAA of an unsafe condition which may exist on certain Avions Marcel Dassault Breguet Aviation (AMD–BA) Model Mystere Falcon 50 and 900 series airplanes. There have been two reports of the MLG door emergency unlocking pin breaking due to fatigue failure. This condition, if not corrected, could prevent emergency extension of the MLG.

The DGAC has issued French Airworthiness Directive 88–140–006(B)R1, dated December 28, 1988, which contains procedures for repetitive inspection of the main landing gear door emergency release mechanism for a broken or damaged unlocking pin, and replacement of the pins, if necessary.

This airplane model is manufactured in France and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD requires repetitive inspections of the MLG door emergency release mechanism for a broken or damaged unlocking pin, and replacement, if necessary.

Since a condition exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required).

**List of Subjects in 14 CFR Part 39**

Aviation safety, Aircraft.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

**Avions Marcel Dassault Breguet Aviation (AMD–BA):** Applies to Model Mystere Falcon 50 and 900 series airplanes, certificated in any category, equipped with emergency unlocking levers part numbers:

—for Mystere Falcon 50:
F50B793600160 or 160A1 or 161 or 161A1—LH side
F50B793700160 or 160A1 or 161 or 161A1—RH side
—for Mystere Falcon 900:
FGFB793600160 or 160A2 or 161 or 161A2 or F50B793600160A1 or 161 or 161A1—LH side
FGFB793700160 or 160A2 or 161 or 161A2 or F50B793700160A1 or 161 or 161A1—RH side.

Compliance is required as indicated, unless previously accomplished.

To prevent inability to open the main landing gear (MLG) door for MLG emergency extension, accomplish the following:

A. Prior to the accumulation of 1,000 landings on the MLG door emergency unlocking pin, or within 7 days after the effective date of this AD, whichever occurs later, verify the integrity of the MLG door emergency unlocking system by operating the manual opening system, in accordance with the instructions in the AMD–BA Falcon 50 or 900 series (as applicable) Maintenance Manual, Work Card 480.0, paragraph 3.

1. If the unlocking pin is broken or damaged, replace the pin with a serviceable pin of the same part number prior to further flight.

2. If the unlocking pin is not damaged, repeat the inspection prior to accumulation of 2,000 landings. Replace broken or damaged pins in accordance with paragraph A.1., above.

B. Upon the accumulation of 2,000 or more landings on the MLG door emergency unlocking pin, repeat the inspection described in paragraph A., above, at intervals not to exceed 50 landings from last inspection. Replace broken or damaged pins in accordance with paragraph A.1., above.

C. Following the replacement of any unlocking pin with a new pin, repeat the inspection required by paragraphs A. and B., above, at the intervals specified. Replace broken or damage pins in accordance with paragraph A.1., above.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

**Note.**—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM–113.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the inspections required by this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Falcon Jet Corporation, 777 Terrace Avenue, Hasbrouck Height, New Jersey 07604. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective March 24, 1989.

Issued in Seattle, Washington, on February 24, 1989.

**Darrell M. Pederson,**

*Assistant Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 89–5908 Filed 3–14–89; 8:45 am]

BILLING CODE 4910–13–M



## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### 14 CFR Part 1215

### Tracking and Data Relay Satellite System (TDRSS)

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Final rule.

**SUMMARY:** NASA is amending 14 CFR Part 1215, "Tracking and Data Relay Satellite System (TDRSS)," by revising Appendix A to reflect the estimated service rates in 1990 dollars for TDRSS standard services, based on NASA escalation estimates. 14 CFR Part 1215 sets forth the policy governing the Tracking and Data Relay Satellite System (TDRSS) services provided to non-U.S. Government users and the reimbursement for rendering such services. The TDRSS represents a major investment by the U.S. Government with the primary goal of providing improved tracking and data acquisition services to spacecraft in low earth orbit or to terrestrial users.

**EFFECTIVE DATE:** March 15, 1989.

**ADDRESS:** Office of Space Operations, Code T, NASA Headquarters, Washington, DC 20546.

**FOR FURTHER INFORMATION CONTACT:** Eugene Ferrick, 202–453–2030.

**SUPPLEMENTARY INFORMATION:** The existing regulation was published in the **Federal Register** on March 9, 1983 (48 FR 9845). Each year since that time, 14 CFR Part 1215 has been amended by revising Appendix A to reflect the rate changes for the appropriate calendar years (CY). Since this revision of Appendix A to 14 CFR Part 1215 reflects the rate changes for CY 1990 and involves NASA management procedures and decisions, no public comment is required.

The National Aeronautics and Space Administration has determined that this rule is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, since it will not exert a significant economic impact on a substantial number of small entities, and it is not a major rule as defined in Executive Order 12291.

**List of Subjects in 14 CFR Part 1215**

Satellites, Tracking and Data Relay Satellite System, Communications equipment, Government contract.

**PART 1215—TRACKING AND DATA RELAY SATELLITE SYSTEM (TDRSS)**

For reasons set out in the Preamble, 14 CFR Part 1215 is amended as follows:

1. The authority citation for 14 CFR Part 1215 continues to read as follows:

**Authority:** Sec. 203, Pub. L. 85–568, 72 Stat. 429, as amended; 42 U.S.C. 2473.

2. Appendix A is revised to read as follows:

**Appendix A—Estimated Service Rates in 1990 Dollars for TDRSS Standard Services (Based on NASA Escalation Estimate)**

TDRSS user service rates for services rendered in CY–90 based on current projections in 1990 dollars are as follows:

*Single Access Service*—Forward command, return telemetry, or tracking, or any combination of these, the base rate is $164.00 per minute for non-U.S. Government users.

*Multiple Access Forward Service*—Base rate is $36.00 per minute for non-U.S. Government users.

*Multiple Access Return Service*—Base rate is $11.00 per minute for non-U.S. Government users.

**Robert O. Aller,**

*Associate Administrator for Space Operations.*

[FR Doc. 89–5970 Filed 3–14–89; 8:45 am]

BILLING CODE 7510–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 176

**[Docket No. 85F–0400]**

### Indirect Food Additives: Paper and Paperboard Components

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of mono- and di(2-alkenyl)succinyl esters of polyethylene glycol containing not less than 90 percent of the diester product and in which the alkenyl groups are derived from olefins that contain not less than 95 percent of $C_{18}$–$C_{21}$ groups. This action responds to a petition by Chevron Chemical Co.

**DATES:** Effective March 15, 1989; written objections and requests for a hearing by April 14, 1989.

**ADDRESS:** Written objections may be sent to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Julius Smith, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

**SUPPLEMENTARY INFORMATION:** In a notice published in the **Federal Register** of September 19, 1985 (50 FR 38035) FDA announced that a food additive petition (FAP 5B3878) had been filed by Chevron Chemical Co., 575 Market St., P.O. Box 3744, San Francisco, CA 94119, proposing that § 176.180 *Components of paper and paperboard in contact with dry food* (21 CFR 176.180) be amended to provide for the safe use of a mixture of substituted polyethylene glycol succinates in the manufacture of paper and paperboard used in contact with dry food.

FDA, in its evaluation of the safety of this additive, has reviewed the proposed nomenclature for the additive and the safety of both the additive and the starting materials used to manufacture the additive. The agency concludes that a more appropriate name for this additive is mono- and di(2-alkenyl)succinyl esters of polyethylene glycol containing not less than 90 percent of the diester product and in Which the alkenyl groups are derived from olefins that contain not less than 95 percent of $C_{18}$–$C_{21}$ groups. The agency also finds that although the additive has not been found to cause cancer, it may contain minute amounts of ethylene oxide and 1,4-dioxane as impurities carried through the production process. Ethylene oxide and 1,4-dioxane have been shown to cause cancer in test animals. Residual amounts of reactants and impurities in reactants, such as these chemicals, are commonly found as contaminants in chemical products, including food additives.

**I. Determination of Safety**

Under section 409(c)(3)(A) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(c)(3)(A)), the so-called "general safety clause" of the statute, a food additive cannot be approved for a particular use unless a fair evaluation of the data available to FDA establishes that the additive is safe for that use. The concept of safety embodied in the Food Additives Amendment of 1958 is explained in the

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legislative history of the provision: "Safety requires proof of a reasonable certainty that no harm will result from the proposed use of an additive. It does not—and cannot—require proof beyond any possible doubt that no harm will result under any conceivable circumstance." (H. Rept. 2284, 85th Cong., 2d Sess. 4 (1958).) This definition of safety has been incorporated into FDA's food additive regulations (21 CFR 170.3(i)). The anticancer or Delaney clause of the Food Additives Amendment (section 409(c)(3)(A) of the act (21 U.S.C. 348(c)(3)(A)) provides further that no food additive shall be deemed to be safe if it is found to induce cancer when ingested by man or animal.

In the past, FDA has often refused to approve a use of an additive that contained or was suspected of containing even minor amounts of a carcinogenic chemical, even though the additive as a whole had not been shown to cause cancer. The agency now believes, however, that developments in scientific technology and experience with risk assessment procedures make it possible for FDA to establish the safety of additives that contain a carcinogenic chemical but that have not themselves been shown to cause cancer.

In the preamble to the final rule permanently listing D&C Green No. 6, published in the Federal Register of April 2, 1982 (47 FR 14136), FDA explained the basis for approving the use of a color additive that had not been shown to cause cancer, even though it contains a carcinogenic impurity. Since that decision, FDA has approved the use of other color additives and food additives on the same basis.

An additive that has not been shown to cause cancer, but that contains a carcinogenic impurity, may properly be evaluated under the general safety clause of the statute using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the proposed use of the additive.

The agency's position is supported by *Scott v. FDA*, 728 F.2d 322 (6th Cir. 1984). That case involved a challenge to FDA's decision to approve the use of D&C Green No. 5, which contains a carcinogenic chemical but has itself not been shown to cause cancer. Relying heavily on the reasoning in the agency's decision to list this color additive, the U.S. Court of Appeals for the Sixth Circuit rejected the challenge to FDA's action and affirmed the listing regulation.

## II. Safety of Petitioned Use

FDA estimates that the petitioned use in paper and paperboard products that contact dry food of the additive mono- and di(2-alkenyl)succinyl esters of polyethylene glycol containing not less than 90 percent of the diester product and in which the alkenyl groups are derived from olefins that contain not less than 95 percent of $C_{18}$–$C_{21}$ groups will result in levels of exposure to this additive that are quite small. FDA does not ordinarily consider chronic testing to be necessary to determine the safety of an additive whose use will result in such low exposure levels (Refs. 1 and 2), and the agency has not required such testing here. However, the agency has reviewed available acute and subchronic studies in the rat and a mutagenicity test with the additive. No adverse effects were reported in these studies.

As stated above, the additive may Contain 1,4-dioxane and ethylene oxide, substances that have been shown to cause cancer in test animals. These impurities may be present as a result of impurities in reactants used to produce the additive. Because the additive itself has not been shown to cause cancer, however, the anticancer clause does not apply.

FDA has evaluated the safety of this additive under the general safety clause, considering all available data and using risk assessment procedures to estimate the upper bound limit of risk presented by the carcinogenic chemicals, 1,4-dioxane and ethylene oxide, that may be present as impurities in the additive. Based on this evaluation, the agency has concluded that the additive is safe under the proposed conditions of use.

The risk assessment procedures that FDA used in this evaluation are similar to the methods that the agency has used to examine the risk associated with the presence of minor carcinogenic impurities in various other food and color additives that contain carcinogenic impurities (49 FR 13018; April 2, 1984). This risk evaluation of the carcinogenic impurities has two aspects: (1) Assessment of the worst-case exposure to the impurities from the proposed use of the additive; and (2) extrapolation of the risk observed in the animal bioassays to the conditions of probable exposure to humans.

### *A. 1,4-Dioxane*

Based on the fraction of the daily diet that may be in contact with surfaces containing the additive mono- and di(2-alkenyl)succinyl esters of polyethylene glycol containing not less than 90 percent of the diester product and in which the alkenyl groups are derived from olefins that contain not less than 95 percent of $C_{18}$ $C_{21}$ groups, and assuming 100 percent migration of the 1,4-dioxane that could be present in the paper containing the additive, FDA estimated the hypothetical worst-case exposure to 1,4-dioxane to be 4.5 nanograms per person per day (Ref. 5). The agency used data from a carcinogenesis bioassay on 1,4-dioxane conducted for the National Cancer Institute (Ref. 4) to estimate the upper bound level of lifetime human risk from the exposure to this impurity that might result from the proposed use of the additive. The results of the bioassay on 1,4-dioxane demonstrated that the material was carcinogenic for female rats under the conditions of the study. The test material caused significantly increased incidence of squamous cell carcinomas and hepatocellular tumors in female rats.

The Center for Food Safety and Applied Nutrition's Cancer Assessment Committee (the Committee) reviewed this bioassay and other relevant data available in the literature and concluded that the findings of carcinogenicity were supported by this information on 1,4-dioxane. The Committee further concluded that the 1,4-dioxane bioassay provided the appropriate basis on which to calculate an estimate of the upper bound level of lifetime risk from potential exposure to 1,4-dioxane stemming from the proposed use of the additive.

The agency used a quantitative risk assessment procedure ( linear proportional model) to extrapolate from the dose used in the animal experiment to the very low doses encountered under the proposed conditions of use. This procedure is not likely to underestimate the actual risk from very low doses and may, in fact, exaggerate it because the extrapolation models used are designed to estimate the maximum risk consistent with the data. For this reason, the estimate can be used with confidence to determine, to a reasonable certainty, whether any harm will result from the proposed conditions and levels of use of the food additives.

Based on a worst-case exposure of 4.5 nanograms per person per day, FDA estimates that the upper bound limit of individual lifetime risk from the potential exposure to 1,4-dioxane from use of the subject additive is $1.6\times10^{-10}$, or less than 2 in 10 billion (Ref. 6). Because of numerous conservatisms in the exposure estimate, lifetime averaged individual exposure to 1,4-dioxane is expected to be substantially less than the estimated daily intake, and, therefore, the calculated upper bound limit of risk would be less. Thus the agency concludes that there is a reasonable certainty of no harm from the exposure to 1,4-dioxane that might result from the proposed use of the additive.



### *B. Ethylene Oxide*

Based on the fraction of the daily diet that may be in contact with surfaces containing the additive mono- and di(2-alkenyl)succinyl esters of polyethylene glycol containing not less than 90 percent of the diester product and in which the alkenyl groups are derived from olefins that contain not less than 95 percent of $C_{18}$–$C_{21}$ groups (Ref. 5), FDA estimated the hypothetical worst-case exposure to ethylene oxide from the use of the additive to be 4.5 nanograms per person per day. The agency used data from a carcinogenesis bioassay on ethylene oxide conducted by the Institute of Hygiene, University of Mainz, Federal Republic of Germany (Ref. 3), to estimate the upper bound level of lifetime human risk from the exposure to this impurity that might result from the proposed use of the additive. The results of the bioassay on ethylene oxide demonstrated that the material was carcinogenic for female rats under the conditions of the study. The test material caused significantly increased incidence of squamous cell carcinoma of the forestomach and carcinoma in situ of the glandular stomach.

The Committee reviewed this bioassay and other relevant data available in the literature and concluded that the findings of carcinogenicity were supported by this information on ethylene oxide. The Committee further concluded that the ethylene oxide bioassay provided the appropriate basis on which to calculate an estimate of the upper bound level of lifetime risk from potential exposure to ethylene oxide stemming from the proposed use of the additive.

Based on a worst-case exposure of 4.5 nanograms per person per day, FDA estimates that the upper bound limit of individual lifetime risk from the potential exposure to ethylene oxide from the use of the subject additive is $8\times10^{-9}$, or less than 8 in 1 billion (Ref. 6). Because of numerous conservatisms in the exposure estimate, lifetime-averaged individual exposure to ethylene oxide is expected to be substantially less than the estimated daily intake, and, therefore, the calculated upper bound limit of risk would be less. Thus, the agency concludes that there is a reasonable certainty of no harm from the exposure to ethylene oxide that might result from the proposed use of the additive.

## III. Need for Specifications

The agency has also considered whether specifications are necessary to control the amounts of 1,4-dioxane and ethylene oxide in the additive. The agency finds that specifications are not necessary for the following reasons: (1) Because of the low levels at which 1,4-dioxane and ethylene oxide may be expected to remain as impurities following production of the additive, the agency would not expect these impurities to become components of food at other than extremely low levels; and (2) the upper bound limit of lifetime risk from exposure to these impurities, even under worst-case assumptions, is very low, less than 2 in 10 billion for 1,4-dioxane and less than 8 in 1 billion for ethylene oxide.

## IV. Conclusion on Safety

FDA has evaluated the data in the petition and other relevant material and concludes that the proposed use of the additive in paper and paperboard products in contact with dry food is safe, and that § 176.180 (21 CFR 176.180) should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

## V. Objections

Any person who will be adversely affected by this regulation may at any time on or before April 14, 1989 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

## VI. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Carr, G.M., "Carcinogenicity Testing Programs," *in* "Food Safety: Where Are We?" Committee on Agriculture, Nutrition, and Forestry, U.S. Senate, p. 59, July 1979.

2. Kokoski, C.J., "Regulatory Food Additive Toxicology," *in* "Chemical Safety Regulation and Compliance," Edited by F. Homburger and J.K. Marquis, S. Karger, New York, NY, pp. 24–33, 1985.

3. Dunkelberg, H., "Carcinogenicity of Ethylene Oxide and 1,2-Propylene Oxide Upon Intragastric Administration to Rats," *British Journal of Cancer*, 46:924, 1982.

4. "Bioassay of 1,4-Dioxane for Possible Carcinogenicity," National Cancer Institute, NCI–CG–TR–80, 1978.

5. Memorandum dated November 3, 1987, from Food and Color Additives Review Section to Indirect Additives Branch, "FAP 5B3878—Chevron Chemical Co.—Alkenyl Polyethylene Glycol Succinate as an Emulsifier in Paper and Paperboard."

6. Memorandum dated June 21, 1988, from the Quantitative Risk Assessment Committee to the Office of Toxicological Sciences, Ethylene Oxide and 1,4-Dioxane Impurities (FAP 5B3878).

## List of Subjects in 21 CFR Part 176

Food additives, Food packaging, Paper and paperboard.

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Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 176 is amended as follows:

## PART 176—INDIRECT FOOD ADDITIVES: PAPER AND PAPERBOARD COMPONENTS

1. The authority citation for 21 CFR Part 176 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 176.180 is amended in paragraph (b)(2) by alphabetically adding a new entry in the table under the headings "List of substances" and "Limitations" to read as follows:

**§ 176.180 Components of paper and paperboard in contact with dry food.**

* * * * *

(b) * * *

(2) * * *

| List of substances | Limitations |
|---|---|
| * * * * * | * |
| Mono- and di(2-alkenyl)succinyl esters of polyethylene glycol containing not less than 90 percent of the diester product and in which the alkenyl groups are derived from olefins that contain not less than 95 percent of $C_{18}$–$C_{24}$ groups. | For use only as an emulsifier. |
| * * * * * | * |

Dated: March 7, 1989.

**Richard J. Ronk,**

*Acting Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 89–5994 Filed 3–14–89; 8:45 am]

BILLING CODE 4160–01–M

## 21 CFR Part 177

**[Docket No. 87F–0360]**

## Indirect Food Additives: Polymers

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of polyoxyethylene-grafted polydimethylsiloxane as an extrusion aid in the production of olefin polymers for food contact. This action is in response to a petition filed by Union Carbide Corp.

**DATES:** Effective March 15, 1989; written objections and requests for a hearing by April 14, 1989.

**ADDRESS:** Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Hortense S. Macon, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

**SUPPLEMENTARY INFORMATION:** In a notice published in the **Federal Register** of December 15, 1987 (52 FR 47637), FDA announced that a food additive petition (FAP 7B4041) had been filed by Union Carbide Corp., Bound Brook, NJ 08805, proposing that § 177.1520 *Olefin polymers* (21 CFR 177.1520) be amended to provide for the safe use of polyoxyethylene-grafted polydimethylsiloxane as an extrusion aid in the production of olefin polymers for use in contact with food.

FDA, in its evaluation of the safety of this additive, reviewed the safety of both the additive and the starting materials used to manufacture the additive. Although polyoxyethylene-grafted polydimethylsiloxane has not been found to cause cancer, it may contain minute amounts of ethylene oxide and 1,4-dioxane as impurities from its production. These chemicals have been shown to cause cancer in test animals. Residual amounts of reactants and byproducts, such as these chemicals, are commonly found as contaminants in chemical products, including food additives.

### I. Determination of Safety

Under section 409(c)(3)(A) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(c)(3)(A)), the so-called "general safety clause" of the statute, a food additive cannot be approved for a particular use unless a fair evaluation of the data available to FDA establishes that the additive is safe for that use. The concept of safety embodied in the Food Additives Amendment of 1958 is explained in the legislative history of the provision: "Safety requires proof of a reasonable certainty that no harm will result from the proposed use of an additive. It does not—and cannot—require proof beyond any possible doubt that no harm will result under any conceivable circumstance." (H. Rept. No. 2284, 85th Cong., 2d Sess. 4 (1958).) This definition of safety has been incorporated into FDA's food additive regulations (21 CFR 170.3(i)). The anticancer or Delaney clause of the Food Additives Amendment (section 409(c)(3)(A) of the act (21 U.S.C. 348(c)(3)(A))) provides further that no food additive shall be deemed to be safe if it is found to induce cancer when ingested by man or animal.

In the past, FDA has often refused to approve the use of an additive that contained or was suspected of containing even minor amounts of a carcinogenic chemical, even though the additive as a whole had not been shown to cause cancer. The agency now believes, however, that developments in scientific technology and experience with risk assessment procedures make it possible for FDA to establish the safety of additives that contain carcinogenic chemicals but that have not themselves been shown to cause cancer.

In the preamble to the final rule permanently listing D&C Green No. 6, published in the **Federal Register** of April 2, 1982 (47 FR 14138), FDA explained the basis for approving the use of a color additive that had not been shown to cause cancer, even though it contains a carcinogenic impurity. Since that decision, FDA has approved the use of other color additives and food additives on the same basis.

An additive that has not been shown to cause cancer, but that contains a carcinogenic impurity, may properly be evaluated under the general safety clause of the statute using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the proposed use of the additive.

The agency's position is supported by *Scott* v. *FDA*, 728 F. 2d 322 (8th Cir. 1984). That case involved a challenge to FDA's decision to approve the use of D&C Green No. 5, which contains a carcinogenic chemical but has itself not been shown to cause cancer. Relying heavily on the reasoning in the agency's decision to list this color additive, the U.S. Court of Appeals for the Sixth Circuit rejected the challenge to FDA's action and affirmed the listing regulation.

### II. Safety of Petitioned Use

FDA estimates that the petitioned use of polyethylene-grafted polydimethylsiloxane will result in extremely low levels of exposure to this additive. The agency calculated the estimated daily intake of the additive based on considerations such as the migration of the additive under the most severe intended use conditions and the types of food-contact articles that may contain this substance. The agency estimated the daily intake for the additive to be 428 micrograms per person per day.

FDA does not ordinarily consider chronic testing to be necessary to determine the safety of an additive



whose use will result in such low exposure levels (Refs. 1 and 2), and has not required such testing here. However, the agency has reviewed available data from acute studies, subchronic rat and dog studies, and mutagenicity tests with the additive. No adverse effects were observed in these studies, except for marginal histopathology effects at the highest dose level in the subchronic dog study. Based upon the agency's further review of this subchronic dog study, FDA determined that there is an adequate margin of safety for the proposed use of the additive.

Because polyoxyethylene-grafted polydimethylsiloxane has not been shown to cause cancer, the anticancer clause does not apply to it. However, FDA has evaluated the safety of this additive under the general safety clause, considering all available data and using risk assessment procedures to estimate the upper bound limit of risk presented by the carcinogenic chemicals that may be present as impurities in this additive. Based on this evaluation, the agency has concluded that the additive is safe under the proposed conditions of use.

The risk assessment procedures that FDA used in this evaluation are similar to the methods that the agency has used to examine the risk associated with the presence of minor carcinogenic impurities in various other food and color additives that contain carcinogenic impurities (see, e.g., 49 FR 13018 and 13019; April 2, 1984). This risk evaluation of the carcinogenic impurities ethylene dioxide and 1,4-dioxane has two aspects: (1) Assessment of the worst case exposure to the impurities from the proposed use of the additive and (2) extrapolation of the risk observed in the animal bioassays to the conditions of probable exposure to humans.

*A. 1,4-Dioxane*

Based on the fraction of the daily diet that may be in contact with surfaces containing polyoxyethylene-grafted polydimethylsiloxane, and on the level of 1,4-dioxane that may be present in the additive (Ref. 5), FDA estimated the hypothetical worst-case exposure to 1,4-dioxane from the use of this additive to be 0.18 microgram per person per day. The agency used data in a carcinogenesis bioassay on 1,4-dioxane conducted for the National Cancer Institute (Ref. 4) to estimate the upper-bound level of lifetime human risk from exposure to this chemical stemming from the proposed use of the additive. The results of the bioassay on 1,4-dioxane indicated that the material was carcinogenic for female rats under the conditions of the study. The test material caused significantly increased incidence of squamous cell carcinomas and hepatocellular tumors in female rats.

The Center for Food Safety and Applied Nutrition's Cancer Assessment Committee (the committee) reviewed this bioassay and other relevant data available in the literature and concluded that the findings of carcinogenicity were supported by this information on 1,4-dioxane. The committee further concluded that the 1,4-dioxane bioassay provided the appropriate basis on which to calculate an estimate of the upper-bound level of lifetime human cancer risk from potential exposure to 1,4-dioxane stemming from the proposed use of the additive.

The agency used a quantitative risk assessment procedure (linear proportional model) to extrapolate from the dose used in the study with male rats (the most sensitive animals) to the very low doses encountered under the proposed conditions of use. This procedure is not likely to underestimate the actual risk from very low doses and may, in fact, exaggerate it because the extrapolation models used are designed to estimate the maximum risk consistent with the data. For this reason, the estimate can be used with confidence to determine to a reasonable certainty whether any harm will result from the proposed conditions and levels of use of the food additive.

Based on a worst-case exposure of 0.18 microgram per person per day, FDA estimates that the upper-bound limit of individual lifetime risk from potential exposure to 1,4-dioxane from use of the subject additive is $6.3 \times 10^{-9}$ or less than 1 in 158 million. (Ref. 6). Because of numerous conservatisms in the exposure estimate, lifetime-averaged individual exposure to 1,4-dioxane is expected to be substantially less than the estimated daily intake, and therefore, the calculated upper-bound risk would be less. Thus, the agency concludes that there is a reasonable certainty of no harm from the exposure to 1,4-dioxane that might result from the proposed use of the additive.

*B. Ethylene Oxide*

Based on the fraction of the daily diet that may be in contact with surfaces containing polyoxyethylene-grafted polydimethylsiloxane, and on the level of ethylene oxide that may be present in the additive, FDA estimated the hypothetical worst-case exposure to ethylene oxide from the use of this additive to be 0.18 microgram per person per day (Ref. 5). The agency used data from a carcinogenesis bioassay on ethylene oxide conducted by the Institute of Hygiene, University of Mainz, Federal Republic of Germany (Ref. 3), to estimate the upper-bound level of lifetime human risk from exposure to this chemical stemming from the proposed use of this additive. The results of the bioassay on ethylene oxide indicated that this material was carcinogenic for female rats under the conditions of the study. The test material caused significantly increased incidence of squamous cell carcinoma of the forestomach and carcinoma *in situ* of the glandular stomach.

The Center for Food Safety and Applied Nutrition's Cancer Assessment Committee reviewed this bioassay and other relevant data available in the literature and concluded that the finding of carcinogenicity was supported by this information on ethylene oxide. The committee further concluded that the ethylene oxide bioassay provided an appropriate basis on which to estimate an upper-bound level of human risk from potential exposure to ethylene oxide stemming from the proposed use of the additive.

Based on a worst-case exposure of 0.18 microgram per person per day, FDA estimates that the upper bound limit of individual lifetime risk from potential exposure to ethylene oxide from the use of the subject additive is $3.3 \times 10^{-7}$ or less than 1 in 3 million (Ref. 6). Because of numerous conservatisms in the exposure estimate, lifetime-averaged individual exposure to ethylene oxide is expected to be substantially less than the estimated daily intake, and therefore, the calculated upper-bound risk would be less. Thus, the agency concludes that there is a reasonable certainty of no harm from the exposure to ethylene oxide that might result from the proposed use of the additive.

*C. Need for Specifications*

The agency has also considered whether specifications are necessary to control the amount of 1,4-dioxane and ethylene oxide in the food additive. The agency finds that specifications are not necessary for the following reasons: (1) Because of the low levels at which ethylene oxide and 1,4-dioxane may be expected to remain as impurities following production of the additive, the agency would not expect these impurities to become components of food at other than extremely small levels; and (2) the upper-bound limit of lifetime risk from exposure to these impurities, even under worst-case assumptions, is very low, less than 1 in 158 million for 1,4-dioxane and less than 1 in 3 million for ethylene oxide.

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*D. Conclusion on Safety*

FDA has evaluated the available data and other relevant material and concludes that the proposed use of the additive in olefin polymers is safe, and that § 177.1520 should be amended in paragraph (b) as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

**III. References**

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Carr, G. M., "Carcinogenicity Testing Programs" *in* "Food Safety: Where Are We?," Committee on Agriculture, Nutrition, and Forestry, U.S. Senate, p. 59, July 1979.

2. Kokoski, C. J., "Regulatory Food Additive Toxicology," *in* "Chemical Safety Regulations and Compliance," Edited by F. Homburger and J. K. Marquis, S. Karger, New York, NY, pp. 24–33, 1985.

3. Dunkelberg, H., "Carcinogenicity of Ethylene Oxide and 1,2-Propylene Oxide upon Intragastric Administration to Rats," *British Journal of Cancer*, 46:924, 1982.

4. "Bioassay of 1,4-Dioxane for Possible Carcinogenicity," National Cancer Institute, NCI–CG–TR–80, 1978.

5. Memorandum dated August 16, 1988, from Food and Color Additives Review Section to Indirect Additives Branch, "FAP 7B4041—Union Carbide Corp., polyoxyethylene-grated polydimethylsiloxane as an extrusion aid in the production of olefin polymers."

6. Memorandum dated September 14, 1988, from the Quantitative Risk Assessment Committee to the Office of Toxicological Sciences, Ethylene Oxide and 1,4-Dioxane Impurities FAP 7B4041.

**IV. Objections**

Any person who will be adversely affected by this regulation may at any time on or before April 14, 1989, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

**List of Subjects in 21 CFR Part 177**

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 177 is amended as follows:

**PART 177—INDIRECT FOOD ADDITIVES: POLYMERS**

1. The authority citation for 21 CFR Part 177 continues to read as follows:

**Authority:** Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 177.1520 is amended in paragraph (b) by alphabetically adding a new entry in the table under the headings "Substance" and "Limitations" to read as follows:

**§ 177.1520 Olefin polymers.**

* * * * *

(b) * * *

| Substance | Limitations |
|---|---|
| * * * | * * * |
| Polyoxyethylene-grafted polydimethylsiloxane (CAS Reg. No. 68937–54–2). | For use as an extrusion aid in the production of extruded olefin polymers that comply with § 177.1520(c) at levels not to exceed 0.3 percent by weight of the polymer. The finished polymer is used in contact with foods under conditions of use B through H described in Table 2 of § 176.170 of this chapter. |
| * * * | * * * |

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Dated: March 9, 1989.

**Ronald G. Chesemore,**

*Acting Associate Commissioner for Regulatory Affairs.*

[FR Doc. 89–5995 Filed 3–14–89; 8:45 am]

BILLING CODE 4160–01–M

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**DEPARTMENT OF JUSTICE**

**Drug Enforcement Administration**

**21 CFR Part 1308**

**Exempt Chemical Preparations**

**AGENCY:** Drug Enforcement Administration (DEA).

**ACTION:** Interim rule and request for comments.

**SUMMARY:** This interim rule amends § 1308.24 of Title 21 of the Code of Federal Regulations. The below-listed chemical preparations and mixtures which contain controlled substances replace the list of exempt chemical preparations set forth in § 1308.24(i). This action is DEA's periodic review of the exempt chemical preparation list. Preparations included in the list are exempted from the application of specific provisions of the Comprehensive Drug Abuse Prevention and Control Act of 1970, and from certain Drug Enforcement Administration regulations.

**DATES:** Effective date: April 1, 1989. Comments must be submitted on or before April 14, 1989.

**ADDRESS:** Comments should be submitted to the Administrator, Drug Enforcement Administration, 1405 I Street, NW., Washington, DC 20537. Attn: Federal Register Representative.

**FOR FURTHER INFORMATION CONTACT:** Howard McClain, Jr., Chief, Drug Control Section, Telephone: (202) 633–1366.



**SUPPLEMENTARY INFORMATION:** The Controlled Substances Act as amended by the Dangerous Drug Diversion Control Act of 1984 authorizes the Attorney General in accordance with 21 U.S.C. 811(g)(3)(B) to exempt from specific provisions of the Act, a compound, mixture, or preparation which contains any controlled substance, which is not for administration to a human being or animal and which is packaged in such form or concentration, or with adulterants or denaturants, so that as packaged it does not present any significant potential for abuse.

The Deputy Assistant Administrator of the Drug Enforcement Administration's Office of Diversion Control has received applications pursuant to § 1308.23 of Title 21 of the Code of Federal Regulations requesting approval of exempt status provided for in 21 CFR 1308.24. The Deputy Assistant Administrator hereby finds that each of the following preparations and mixtures is intended for laboratory, industrial, educational, or special research purposes, is not intended for general administration to man or animal, and either (a) contains no narcotic controlled substances and is packaged in such a form or concentration that the packaged quantity does not present any significant potential for abuse, (b) contains either a narcotic or non-narcotic controlled substance and one or more adulterating or denaturing agents in such a manner, combination, quantity, proportion, or concentration that the preparation or mixture does not present any potential for abuse, or (c) the formulation of such preparation or mixture incorporates methods of denaturing or other means so that the controlled substance cannot in practice be removed, and therefore the preparation or mixture does not present any significant potential for abuse. The Deputy Assistant Administrator further finds that exemption of the following chemical preparations and mixtures is consistent with the public health and safety as well as the needs of the researchers, chemical analysts, and suppliers of these products.

The Deputy Assistant Administrator for the Office of Diversion Control hereby certifies that these matters will have no significant impact upon small businesses or other entities within the meaning and intent of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. The addition of preparations to the list of exempt chemical preparations has the effect of exempting them from certain sections of the Controlled Substances Act of 1970 and its regulations.

It has been determined that these changes are internal matters which do not require formal OMB review.

**List of Subjects in 21 CFR Part 1308**

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Under the authority vested in the Attorney General by section 202(d) of the Act (21 U.S.C. 811(g)(3)(B)) and delegated to the Administrator of the Drug Enforcement Administration by regulations of the Department of Justice (28 CFR Part 0.100), and redelegated to the Deputy Assistant Administrator of the Drug Enforcement Administration, Office of Diversion Control, pursuant to 47 FR 43370, the Deputy Assistant Administrator of the Office of Diversion Control hereby amends 21 CFR Part 1308 as set forth below.

**PART 1308—SCHEDULE OF CONTROLLED SUBSTANCES**

1. The authority for Part 1308 continues to read:

**Authority:** 21 U.S.C. 811, 812, 871(b).

2. In § 1308.24(i) the table is revised to read as follows:

**§ 1308.24 Exempt chemical preparations.**

(i) * * *

**Gene R. Haislip,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

Dated: February 28, 1989.

EXEMPT CHEMICAL PREPARATIONS

| Supplier | Product | Form of product | Date |
|---|---|---|---|
| **Abbott Laboratories** | | | |
| Abbott Laboratories | 125I Cholylglycyltyrosine Reagent Solution, No. 7816 | Plastic Bottle: 20ml | 04/07/76 |
| Abbott Laboratories | 125I-Thyroxine Reagent Solution | Plastic Bottle: 25ml, 5ml | 04/22/76 |
| Abbott Laboratories | ADx Benzoylecgonine Fluorescein Tracer Solution | Bottle: 3.2 ml | 12/02/86 |
| Abbott Laboratories | ADx Cannabinoids Fluorescein Tracer Solution | Bottle: 3.2ml | 12/02/86 |
| Abbott Laboratories | ADx Cannabinoids Reagent Pack (No. 9671-55) | Reagent Pack: 50 tests | 12/02/86 |
| Abbott Laboratories | ADx Cocaine Metabolite Reagent Pack (No. 9670–55) | Reagent Pack: 50 tests | 12/02/86 |
| Abbott Laboratories | ADx Opiates Fluorescein Tracer Solution | Bottle: 3.2 ml | 12/02/86 |
| Abbott Laboratories | ADx Opiates Reagent Pack (No. 9673–55) | Reagent Pack: 50 tests | 12/02/86 |
| Abbott Laboratories | Amphetamine Bulk Calibrators, B–F | Flask: 2 liter | 10/09/85 |
| Abbott Laboratories | Amphetamine Bulk Controls, L and H | Flask: 2 liter | 12/09/85 |
| Abbott Laboratories | Amphetamine Class QC Primary B–F,L,M,H No. 9667 (B–F,L,M,H) QC. | Carboy: 10L Flask: 4L, 2L, 1L, 500 ml, 250 ml, 200 ml, 100 ml Bottle: 5ml. | 11/22/88 |
| Abbott Laboratories | Amphetamine Stock Standard No. 97072, 97072 A–B | Carboy: 20L, 10L Flask: 4L, 2L, 1L, 500 ml, 250 ml, 200 ml, 100 ml Bottle: 950ml, 500ml, 100ml, 5ml. | 11/22/88 |
| Abbott Laboratories | Amphetamine Stock Standard, No. 97072 | Bottle: 125ml | 09/30/85 |
| Abbott Laboratories | Amphetamine/Metamphetamine QC Primary Bulk Control M, No. 9668–M. | Flasks: 1 liter, 250 ml, and 200 ml | 11/10/87 |
| Abbott Laboratories | Amphetamine/Methamphetamine II Bulk Calibrators B–F Code No. 1A99 (B–F). | 20L, 10L Carboy; 6L, 2L, 1L, 250 ml, 200 ml Flask | 08/26/88 |
| Abbott Laboratories | Amphetamine/Methamphetamine II Bulk Controls (L,M,H) Code No. 1A99 (L,M,H). | 20L, 10L Carboy; 6L, 2L, 1L, 250 ml, 200 ml Flask | 08/26/88 |
| Abbott Laboratories | Amphetamine/Methamphetamine II Calibrators B–F No. 1A99 B–F. | 5 ml Vial | 08/26/88 |
| Abbott Laboratories | Amphetamine/Methamphetamine II Calibrators No. 1A99–01. | Kit: 6 Vials | 08/26/88 |
| Abbott Laboratories | Amphetamine/Methamphetamine II Controls (L,M,H) No. 1A99–L,M,H. | 5 ML Vial | 08/26/88 |
| Abbott Laboratories | Amphetamine/Methamphetamine II Controls No. 1A99–10. | Kit: 3 Vials | 08/26/88 |
| Abbott Laboratories | Amphetamine/Methamphetamine (II) QC Primary B–F,L,M,H No. 1A99 (B–F,L,M,H) QC. | Carboy: 10L Flask: 4L, 2L, 1L, 500 ml, 250 ml, 200 ml, 100 ml Bottle: 5ml. | 11/22/88 |

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EXEMPT CHEMICAL PREPARATIONS—Continued

| Supplier | Product | Form of product | Date |
|---|---|---|---|
| Abbott Laboratories | Amphetamine/Methamphetamine QC Primary B-F,L,M,H No. 9688 (B-F,L,M,H) QC. | Carboy: 10L Flask: 4L, 2L, 1L, 500 ml, 250 ml, 200 ml, 100 ml Bottle: 5ml. | 11/22/88 |
| Abbott Laboratories | Amphetamine/Methamphetamine QC Primary Stand-ard Control M, No. 9688-M. | Bottle: 6 ml | 11/10/87 |
| Abbott Laboratories | Barbital Buffer 0.05 Molar | Plastic Bottle: 25ml, 5ml | 04/22/76 |
| Abbott Laboratories | Barbital Buffer, 0.08 M Reagent Solution No. 7824 | Plastic Bottle: 2.5ml | 04/07/78 |
| Abbott Laboratories | Barbiturates Bulk Calibrator B-F No. 9689 B-F | Carboy: 9.5, 19 L | 07/01/88 |
| Abbott Laboratories | Barbiturates Bulk Control L,H No. 9689 L,H | Carboy: 9.5, 19 L | 07/01/88 |
| Abbott Laboratories | Barbiturates QC Primary B-F,L,M,H No. 9689 (B-F,L,M,H) QC. | Carboy: 10L Flask: 4L, 2L, 1L, 500 ml, 250 ml, 200 ml, 100 ml Bottle: 5 ml. | 11/22/88 |
| Abbott Laboratories | Barbiturates QC Primary Bulk Control M, No. 9689-M. | Flasks: 1 liter, 250 ml, and 200 ml | 11/10/87 |
| Abbott Laboratories | Barbiturates QC Primary Standard Control M, No. 9689-M. | Bottle: 5 ml | 11/10/87 |
| Abbott Laboratories | Benzodiazepine Serum QC Primary B-F,L,M,H No. 9682 (B-F,L,M,H)-QC. | Carboy: 10L Flask: 4L, 2L, 1L, 500 ml, 250 ml, 200 ml, 100 ml Bottle: 5 ml. | 11/22/88 |
| Abbott Laboratories | Benzodiazepines Bulk Calibrator No. 9674 B-F | Carboy: 9.5, 19 L | 07/18/88 |
| Abbott Laboratories | Benzodiazepines Bulk Calibrators, A-F No. 9674 | Flasks: 2 liter | 04/21/86 |
| Abbott Laboratories | Benzodiazepines Bulk Control L,H No. 9674 L,H | Carboy: 9.5, 19 L | 07/18/88 |
| Abbott Laboratories | Benzodiazepines Bulk Controls, L and H No. 9674 | Flasks: 2 liter | 04/21/86 |
| Abbott Laboratories | Benzodiazepines QC Primary Bulk Control M, No. 9674-M. | Flasks: 1 liter, 250 ml, and 200 ml | 11/10/87 |
| Abbott Laboratories | Benzodiazepines QC Primary Bulk Control M, No. 9674-M. | Flasks: 1 liter, 250 ml, and 200 ml | 11/10/87 |
| Abbott Laboratories | Benzodiazepines QC Primary, B-F,L,M,H No. 9674 (B-F,L,M,H) QC. | Carboy: 10L Flask: 4L, 2L, 1L, 500 ml, 250 ml, 200 ml, 100 ml Bottle: 5ml. | 11/22/88 |
| Abbott Laboratories | Benzoylecgonine Stock Standard No. 97162, 97162 A-B. | Carboy: 20L, 10L Flask: 4L, 2L, 1L, 500 ml, 250 ml, 200 ml, 100 ml,Bottle: 950ml, 500ml, 100ml, 5ml. | 11/23/88 |
| Abbott Laboratories | Benzoylecgonine Stock Standard, No. 97162 | Bottle: 125ml | 11/21/85 |
| Abbott Laboratories | CG RIA Diagnostic Kit No. 7815 | Kit: 100 tests | 04/07/78 |
| Abbott Laboratories | Cannabinoids Bulk Calibrators B-F | Flasks: 2 liters | 10/24/86 |
| Abbott Laboratories | Cannabinoids Bulk Calibrators B-F | Flask: 6 liters | 05/19/87 |
| Abbott Laboratories | Cannabinoids Bulk Controls L,M, and H | Flask: 6 liters | 05/19/87 |
| Abbott Laboratories | Cannabinoids Bulk Controls L,M,H | Flasks: 2 liters | 10/24/86 |
| Abbott Laboratories | Cannabinoids Bulk Tracer (No. 94182) | Flasks: 4 liters | 10/27/86 |
| Abbott Laboratories | Cannabinoids Stock Standard (No. 94568) | Bottle: 125 ml | 05/19/87 |
| Abbott Laboratories | Cannabinoids Stock Standard (No. 94193) | Bottle: 125 ml | 10/24/86 |
| Abbott Laboratories | Cannabinoids Stock Tracer (No. 94194) | Flask: 5 ml | 10/27/86 |
| Abbott Laboratories | Cannabinoids-GS Bulk Calibrators B-F No. 3897 B-F | 20 L, 10 L Carboy; 6 L, 2 L, 1 L, 250 ml, 200 ml Flask. | 07/26/88 |
| Abbott Laboratories | Cannabinoids-GS Bulk Controls (L,M,H) Code No. 3897 (L,M,H). | 20 L, 10 L Carboy; 6 L, 2 L, 1 L, 250 ml, 200 ml Flask. | 07/26/88 |
| Abbott Laboratories | Cannabinoids-GS Bulk Tracer Code No. 95826 | 10 L Carboy; 6 L, 2 L Flask | 07/26/88 |
| Abbott Laboratories | Cannabinoids-GS Calibrators B-F No. 3897 B-F | 5 ml Vial | 07/26/88 |
| Abbott Laboratories | Cannabinoids-GS Calibrators No. 3897-01 | Kit: 6 Vials | 07/26/88 |
| Abbott Laboratories | Cannabinoids-GS Controls (L,M,H) No. 3897-L,M,H | 5 ml Vial | 07/26/88 |
| Abbott Laboratories | Cannabinoids-GS Controls No. 3897-10 | Kit: 3 Vials | 07/26/88 |
| Abbott Laboratories | Cannabinoids-GS Reagent Pack 100 Test No. 3897-20. | Kit: 100 Tests | 07/26/88 |
| Abbott Laboratories | Cannabinoids-GS Tracer Code No. 3897-T | 5 ml Vial | 07/26/88 |
| Abbott Laboratories | Cholylglycine Assayzyme (Rabbit) Reagent Solution No. 7817. | Plastic Bottle: 20ml | 04/07/78 |
| Abbott Laboratories | Cocaine Metabolite Bulk Calibrator B-F No. 9670 B-F | Carboy: 9.5, 19 L | 07/07/88 |
| Abbott Laboratories | Cocaine Metabolite Bulk Calibrator, B-F No. 9670 | Flask: 2 liter | 10/28/85 |
| Abbott Laboratories | Cocaine Metabolite Bulk Controls L,H No. 9670-L,H | Carboy: 9.5, 19 L | 07/07/88 |
| Abbott Laboratories | Cocaine Metabolite Bulk Controls, L and H No. 9670 | Flask: 2 liter | 10/28/85 |
| Abbott Laboratories | Cocaine Metabolite Bulk Tracer No. 97075 | Carboy: 10, 20 L | 07/07/88 |
| Abbott Laboratories | Cocaine Metabolite Bulk Tracer, No. 9670 | Flask: 4 liter | 10/28/85 |
| Abbott Laboratories | Cocaine Metabolite QC Primary B-F, L, M, H, No. 9670 (B-F, L, M, H)-QC. | Carboy: 10L Flask: 4L, 2L, 1L, 500 ml, 250 ml, 200 ml, 100 ml, Bottle: 5 ml. | 11/23/88 |
| Abbott Laboratories | Cocaine Metabolite QC Primary Bulk Control M, No. 9670-M. | Flasks: 1 liter, 250 ml, and 200 ml | 11/10/87 |
| Abbott Laboratories | Cocaine Metabolite QC Primary Standard Control M, No. 9670-M. | Bottle: 5 ml | 11/10/87 |
| Abbott Laboratories | Cocaine Metabolite Stock Tracer, No. 9670 | Vial: 5ml | 10/29/85 |
| Abbott Laboratories | Methadone Bulk Calibrators (B-F) Code No. 9676 (B-F). | 20 L, 10 L Carboy; 6 L, 2 L, 1 L, 250 ml, 200 ml Flask. | 09/02/88 |
| Abbott Laboratories | Methadone Bulk Calibrators (L,M,H) Code No. 9676 (L,M,H). | 20 L, 10 L Carboy; 6 L, 2 L, 1 L, 250 ml, 200 ml Flask. | 09/02/88 |
| Abbott Laboratories | Methadone Bulk Stock Standard Code No. 95852 | 10 L Carboy; 6 L, 2 L, 1 L Flask | 09/02/88 |
| Abbott Laboratories | Methadone Calibrators No. 9676-01 | Kit: 6 Vials | 09/02/88 |
| Abbott Laboratories | Methadone Calibrators B-F No. 9676 B-F | 5 ml Vial | 09/02/88 |
| Abbott Laboratories | Methadone Controls L,M,H No. 9676-L,M,H | 5 ml Vial | 09/02/88 |
| Abbott Laboratories | Methadone Controls No. 9676-10 | Kit: 3 Vials | 09/02/88 |
| Abbott Laboratories | Methadone Stock Standard Code No. 95720 | 1 L, 500 ml, 100 ml Bottle | 09/02/88 |
| Abbott Laboratories | Morphine Stock Standard, No. 97291 | Vial: 125ml | 10/16/85 |
| Abbott Laboratories | Morphine Stock Standard, No.97291 A-B | Carboy: 20L, 10L Flask: 4L, 2L, 1L, 500 ml, 250 ml, 200 ml, 100 ml Bottle: 950ml, 500ml, 100ml, 5ml. | 11/22/88 |
| Abbott Laboratories | Multiconstituent Bulk Controls L,M,H (No. 9687-L,M,H). | Flask: 10 liters | 09/03/87 |
| Abbott Laboratories | Nordiazepam Serum Stock Standard No. 94941, 94941 A,B. | Carboy: 20L, 10L Flask: 4L, 2L, 1L, 500 ml, 250 ml, 200 ml, 100 ml Bottle: 950 ml,500 ml,100 ml,5 ml. | 11/22/88 |



EXEMPT CHEMICAL PREPARATIONS—Continued

| Supplier | Product | Form of product | Date |
|---|---|---|---|
| Abbott Laboratories | Nordiazepam Stock Standard No. 97757, 97757 A,B | Carboy: 20L, 10L Flask: 4L, 2L, 1L, 500 ml, 250 ml, 200 ml, 100 ml Bottle: 950ml, 500ml, 100ml, 5ml. | 11/22/88 |
| Abbott Laboratories | Nordiazepam Stock Standard, No. 97757 | Bottle: 125ml | 04/21/86 |
| Abbott Laboratories | Opiate Bulk Calibrators, B-F No. 9673 | Flasks: 2 liter | 05/07/86 |
| Abbott Laboratories | Opiate Bulk Controls, L and H No. 9673 | Flasks: 2 liter | 05/07/86 |
| Abbott Laboratories | Opiates Bulk Tracer, No. 97456 | Flask: 4 liter | 05/07/86 |
| Abbott Laboratories | Opiates QC Primary (B-F,L,M,H) QC No. 9673 (B-F,L,M,H) QC. | Carboy: 10L Flask: 4L, 2L, 1L, 500 ml, 250 ml, 200 ml, 100 ml Bottle: 5ml. | 11/22/88 |
| Abbott Laboratories | Opiates QC Primary Bulk Control M, No. 9673-M | Flasks: 1 liter, 250 ml, and 200 ml | 11/10/87 |
| Abbott Laboratories | Opiates QC Primary Standard Control M, No. 9673-M | Bottle: 5 ml | 11/10/87 |
| Abbott Laboratories | Opiates Stock Tracer, No. 96718 | Bottle: 30ml | 05/07/86 |
| Abbott Laboratories | Phencyclidine Bulk Calibrator, B-F No. 9672 | Flask: 2 liter | 03/21/86 |
| Abbott Laboratories | Phencyclidine Bulk Control M No. 9672 | Flask: 2 Liters | 09/26/86 |
| Abbott Laboratories | Phencyclidine Bulk Controls, L and H No. 9672 | Flask: 2 liter | 03/21/86 |
| Abbott Laboratories | Phencyclidine QC Primary (B-F,L,M,H) QC No. 9672 (B-F,L,M,H) QC. | Carboy: 10L Flask: 4L, 2L, 1L, 500 ml, 250 ml, 200 ml, 100 ml Bottle: 5ml. | 11/22/88 |
| Abbott Laboratories | Phencyclidine Stock Standard, No. 97158, 97158 A-B | Carboy: 20L, 10L Flask: 4L, 2L, 1L, 500 ml, 250 ml, 200 ml, 100 ml Bottle: 950ml, 500ml, 100ml, 5ml. | 11/22/88 |
| Abbott Laboratories | Phencyclidine Stock Standard, No. 97158 | Bottle: 125ml | 11/21/85 |
| Abbott Laboratories | Phenobarbital Enzyme Inhibitor Stock | Vial: 2ml | 01/20/84 |
| Abbott Laboratories | Phenobarbital Stock Solution 1 mg/ml Code No. 94312. | Plastic Bottle: 125 ml | 03/23/87 |
| Abbott Laboratories | Phenobarbital Stock Solution 10 mg/ml Code No. 94313. | Plastic Bottle: 125 ml | 03/23/87 |
| Abbott Laboratories | Phenobarbital Stock Standard Solution | Bottle: 1 liter | 06/12/82 |
| Abbott Laboratories | Polyethylene Glycol 8000, 16% Solution in 0.09 M Barbital Buffer, No 7541. | Plastic Bottle: 300 ml, 150 ml | 09/21/77 |
| Abbott Laboratories | Secobarbital Bulk Calibrator, B-F No. 9669 | Flask: 2 liter | 03/21/86 |
| Abbott Laboratories | Secobarbital Bulk Controls, L and H No. 9669 | Flask: 2 liter | 03/21/86 |
| Abbott Laboratories | Secobarbital Stock Standard No. 97171, 97171 A,B | Carboy: 20L,10L Flask: 4L, 2L, 1L, 500 ml, 250 ml, 200 ml, 100 ml Bottle: 950 ml, 500 ml, 100 ml, 5 ml. | 11/22/88 |
| Abbott Laboratories | Secobarbital Stock Standard, No. 97171 | Bottle: 125ml | 11/21/85 |
| Abbott Laboratories | Spectrum Phenobarbital Calibrator II-VI, Nos. 9755, 9757, 9759, 9761, 9763. | Bottle: 4ml | 10/03/85 |
| Abbott Laboratories | Spectrum Phenobarbital Control, Nos. 9676, 9678, 9680. (L,M,H). | Bottle: 4ml | 10/03/85 |
| Abbott Laboratories | T 4 RIA (PEG) Diagnostic Kit | Kit: 500 tests, 100 tests, 50 tests. | 04/22/76 |
| Abbott Laboratories | TDx Amphetamine/Methamphetamine Calibrator, No. 9568-01. | Bottles: 4ml | 08/23/85 |
| Abbott Laboratories | TDx Amphetamine/Methamphetamine Controls, No. 9568-10. | Bottles: 4ml | 08/23/85 |
| Abbott Laboratories | TDx Barbiturates Calibrators No. 9669 B-F | 5 ml Vial | 07/01/88 |
| Abbott Laboratories | TDx Barbiturates Calibrators No. 9669-01 | Kit: 5 Vials, 5 ml each | 07/01/88 |
| Abbott Laboratories | TDx Barbiturates Calibrators, B-F No. 9669 | Bottle: 4 ml | 10/06/85 |
| Abbott Laboratories | TDx Barbiturates Control L,H No. 9669 L,H | 5 ml Vial | 07/01/88 |
| Abbott Laboratories | TDx Barbiturates Control, L and H No. 9669 | Bottle: 4ml | 10/06/85 |
| Abbott Laboratories | TDx Barbiturates Controls No. 9669-10 | Kit: 2 Vials, 5 ml each | 07/01/88 |
| Abbott Laboratories | TDx Benzodiazepines Calibrator No. 9674 B-F | 5 ml Vial | 07/18/88 |
| Abbott Laboratories | TDx Benzodiazepines Calibrators No. 9674-01 | Kit: 5 Vials, 5 ml each | 07/18/88 |
| Abbott Laboratories | TDx Benzodiazepines Calibrators, No. 9674-01 | Bottles: 4ml | 04/21/86 |
| Abbott Laboratories | TDx Benzodiazepines Controls L,H No. 9674 L,H | 5 ml Vial | 07/18/88 |
| Abbott Laboratories | TDx Benzodiazepines Controls L,H No. 9674-10 | Kit: 2 Vials, 5 ml each | 07/18/88 |
| Abbott Laboratories | TDx Benzodiazepines Controls, No. 9674-10 | Bottles: 4ml | 04/21/86 |
| Abbott Laboratories | TDx Cannabinoids Calibrators B-F (9671-02) | Bottle: 5 ml | 06/19/87 |
| Abbott Laboratories | TDx Cannabinoids Calibrators B-F (No. 9671-01) | Bottles: 5 ml | 10/24/86 |
| Abbott Laboratories | TDx Cannabinoids Controls L,M, and H (9671-11) | Bottle: 5 ml | 06/19/87 |
| Abbott Laboratories | TDx Cannabinoids Controls L,M,H (No. 9671-10) | Bottles: 5 ml | 10/24/86 |
| Abbott Laboratories | TDx Cannabinoids Fluorescein Tracer Solution (No. 9671-T). | Bottle: 5 ml | 10/27/86 |
| Abbott Laboratories | TDx Cannabinoids Reagent Pack (No. 9671-20) | 100 tests | 10/27/86 |
| Abbott Laboratories | TDx Cocaine Metabolite Calibrator B-F No. 9670 B-F | 5 ml Vial | 07/07/88 |
| Abbott Laboratories | TDx Cocaine Metabolite Calibrator, B-F No. 9670 | Bottle: 4ml | 10/02/85 |
| Abbott Laboratories | TDx Cocaine Metabolite Calibrators No. 9670-01 | Kit: 5 Vials, 5 ml each | 07/07/88 |
| Abbott Laboratories | TDx Cocaine Metabolite Control L,H No. 9670 L,H | 5 ml Vial | 07/07/88 |
| Abbott Laboratories | TDx Cocaine Metabolite Control, L and H No. 9669 | Bottle: 4ml | 10/02/85 |
| Abbott Laboratories | TDx Cocaine Metabolite Controls No. 9670-10 | Kit: 2 Vials, 5 ml each | 07/07/88 |
| Abbott Laboratories | TDx Cocaine Metabolite Fluorescein Tracer Solution No. 9670 T0001. | Kit: 100 Vials, 5 ml each | 07/07/88 |
| Abbott Laboratories | TDx Cocaine Metabolite Fluorescein Tracer Solution No. 9670-T. | Box: 5 ml Vial | 07/07/88 |
| Abbott Laboratories | TDx Cocaine Metabolite Reagent Pack | Reagent well: 5ml | 10/02/85 |
| Abbott Laboratories | TDx Cocaine Metabolite Reagent Pack No. 9670-20 | Kit: 100 Tests | 07/07/88 |
| Abbott Laboratories | TDx Multiconstituent Controls L,M,H (No. 9687-L,M,H) | Bottle: 5 ml | 09/03/87 |
| Abbott Laboratories | TDx Opiates Calibrators, B-F No. 9673 | 5 ml Vial | 05/07/86 |
| Abbott Laboratories | TDx Opiates Controls, L and H No. 9673 | Vials: 5ml | 05/07/86 |
| Abbott Laboratories | TDx Opiates Fluorescein Tracer Solution No. 9673 T0001. | Box: 10 Vials, 5 ml each | 07/08/88 |
| Abbott Laboratories | TDx Opiates Reagent, Pack No. 9673-20, 100 tests | Reagent Well: 5ml , 100 tests | 05/07/86 |
| Abbott Laboratories | TDx Phencyclidine Bulk Calibrator B-F No. 9672 B-F | Carboy: 9.5, 19 L | 07/18/88 |

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EXEMPT CHEMICAL PREPARATIONS—Continued

| Supplier | Product | Form of product | Date |
|---|---|---|---|
| Abbott Laboratories | TDx Phencyclidine Bulk Calibrator B-F No. 9672 B-F | 5 ml Vial | 07/18/88 |
| Abbott Laboratories | TDx Phencyclidine Bulk Control L,M,H No. 9672 L,M,H. | Carboy: 9.5, 19 L | 07/18/88 |
| Abbott Laboratories | TDx Phencyclidine Calibrators B-F No. 9672-01 | Kit: 5 Vials, 5 ml each | 07/18/88 |
| Abbott Laboratories | TDx Phencyclidine Calibrators, B-F No. 9672 | Bottle: 4ml | 10/09/85 |
| Abbott Laboratories | TDx Phencyclidine Control M No. 9672 | Bottle: 4ml | 09/26/86 |
| Abbott Laboratories | TDx Phencyclidine Controls L,M,H No. 9672 L,M,H | 5 ml Vial | 07/18/88 |
| Abbott Laboratories | TDx Phencyclidine Controls No. 9672-10 | Kit: 3 Vials, 5 ml each | 07/18/88 |
| Abbott Laboratories | TDx Phencyclidine Controls, L and H No. 9672 | Bottle: 4ml | 10/09/85 |
| Abbott Laboratories | TDx Phenobarbital Bulk Calibrators No. 9500 B-F | Carboy: 19 L, 20 L | 08/15/88 |
| Abbott Laboratories | TDx Phenobarbital Bulk Calibrators No. 9500 L,M,H | Carboy: 10 L, 20 L | 08/15/88 |
| Abbott Laboratories | TDx Phenobarbital Calibrator-0.0, 5.0, 10.0, 20.0, 40.0, and 60.0 mcg/ml. | Kit ctg: 9 vials | 08/31/81 |
| Abbott Laboratories | TDx Phenobarbital Calibrators B-F No. 9500 B-F | 5 ml Vial | 08/15/88 |
| Abbott Laboratories | TDx Phenobarbital Calibrators No. 9500-01 | 5 Vials, 5 ml each | 08/15/88 |
| Abbott Laboratories | TDx Phenobarbital Controls No. 9500 L,M,H | 5 ml Vial | 08/15/88 |
| Abbott Laboratories | TDx Phenobarbital Controls No. 9500-10 | Kit: 3 Vials, 5 ml each | 08/15/88 |
| Abbott Laboratories | TDx Phenobarbital Controls—15.0, 30.0, 50.0 mcg/ml. | Kit ctg: 3 vials | 08/31/81 |
| Abbott Laboratories | TDx Systems Multiconstituent Controls for Abused Drug (No. 9687-10). | Kit: 6 Bottles | 09/03/87 |
| Abbott Laboratories | Thyroxine Antiserum (Sheep, Rabbit, or Goat) | Plastic Bottle: 200ml, 20ml | 04/22/76 |
| Abbott Laboratories | Thyroxine Binding Globulin, Thyroxine I 125 | Glass Bottle: 13ml. Plastic Bottle: 250ml | 04/22/76 |
| Abbott Laboratories | d-Amphetamine (II) Bulk Stock Standard Code No. 95947 | 10 L Carboy; 8 L, 2 L, 1 L Flask | 08/26/88 |
| Abbott Laboratories | d-Amphetamine (II) Stock Standard Code No. 95934 | 1 L, 500 ml, 100 ml Bottle | 08/26/88 |
| Abbott Laboratories | d-Amphetamine (II) Stock Standard No. 95934, 95934 A-B. | Carboy: 20L, 10L Flask: 4L, 2L, 1L, 500 ml, 250 ml, 200 ml, 100 ml Bottle: 950ml, 500ml, 100ml,5ml. | 11/22/88 |
| **Adri/Technem** | | | |
| Adri/Technem | 3-Ortho-Carboxymethyleneephine | Screw Cap Vial | 05/03/73 |
| Adri/Technem | 5-Ethyl-5-(1-Carboxy-n-propyl) Barbituric Acid | Screw Cap Vial | 05/03/73 |
| Adri/Technem | 5-Ethyl-5-(1-Carboxy-n-propyl) Barbituric Acid-Bovine Serum Albumin. | Vaccine Vial: 10ml | 05/03/73 |
| Adri/Technem | 5-Ethyl-5-(1-Carboxy-n-propyl) Barbituric Acid-Rabbit Serum Albumin. | Vaccine Vial: 16ml | 05/03/73 |
| Adri/Technem | Barbiturate Standard | Screw-cap vial: 10ml | 07/17/76 |
| Adri/Technem | Barbituric Acid Sensitized Red Blood Cells | Vaccine Vial: 28ml | 05/03/73 |
| Adri/Technem | Benzoyl Ecgonine | Screw-cap vial: 10ml | 04/18/74 |
| Adri/Technem | Benzoyl Ecgonine Sensitized Red Blood Cells | Vaccine Vial: 90ml | 05/03/73 |
| Adri/Technem | Benzoyl Ecgonine Standard | Screw-cap vial: 10ml | 07/17/76 |
| Adri/Technem | Benzoyl Ecgonine-BSA | Vaccine Vial | 07/21/75 |
| Adri/Technem | Benzoyl Ecgonine-RSA | Vaccine Vial | 07/21/75 |
| Adri/Technem | CMM-BSA and CMM-RSA (Carboxymethylmorphine Bovine Serum Albumin or Carboxymethylmorphine Rabbit Serum Albumin). | Vaccine Vial: 16ml | 05/03/73 |
| Adri/Technem | Cannabuse Cannabidiol Standard | Disks: 25/package | 05/03/85 |
| Adri/Technem | Cannabuse Delta 8 THC Carboxylic Acid Standard | Disks: 25/package | 08/19/84 |
| Adri/Technem | Cannabuse Delta 9 THC Carboxylic Acid Standard | Vial: 6 ml | 08/19/84 |
| Adri/Technem | Cannabuse Delta 9 THC Carboxylic Acid Standard | Vial: 6 ml | 08/19/84 |
| Adri/Technem | Cannabuse Delta 9 THC Carboxylic Acid Standard | Disks: 25/package | 08/19/84 |
| Adri/Technem | Cannabuse Delta 9 THC Standard | Vial: 6 ml | 08/19/84 |
| Adri/Technem | Cannabuse Delta 9 THC Standard | Disks: 25/package | 08/19/84 |
| Adri/Technem | Drug Standards, Acid/ Neutral Mixture A and B | Disks: 25/package | 11/15/85 |
| Adri/Technem | Drug Standards, Basic Mixture A and B | Disks: 25/package | 11/15/85 |
| Adri/Technem | Methadone Standard | Screw-cap vial: 10ml | 07/17/76 |
| Adri/Technem | Morphine Sensitized Red Blood Cells | Vaccine Vial: 50ml | 05/03/73 |
| Adri/Technem | Morphine Standard (in distilled water) | Screw-cap vial: 10ml | 07/17/77 |
| Adri/Technem | Tropinecarboxylic Acid (ecgonine) | Screw-cap Bottle: 10ml | 05/03/73 |
| **American Monitor Corporation** | | | |
| American Monitor Corporation | Quality I | Glass Vial: 10ml | 10/09/75 |
| American Monitor Corporation | Quality II | Glass Vial: 10ml | 10/09/75 |
| **Amersham Corporation** | | | |
| Amersham Corporation | Amerlex T-3 RIA Kit, IM 2000, IM 2001, IM 2004 | Kit: 50 tests, 100 tests, 400 tests | 02/18/80 |
| Amersham Corporation | Amerlex T-4 RIA Kit, IM 2010, IM 2011, IM 2014 | Kit: 50 tests, 100 tests, 400 tests | 02/08/80 |
| Amersham Corporation | Amerlex-M 6-NOG Radioimmunoassay Kit IM 3091,IM 3094. | Kit: 100 tests, 400 tests | 06/19/85 |
| Amersham Corporation | Amerlex-M T3 RIA Kit, IM 3001, IM 3004 | Kit: 100 Tests 400 Tests | 08/27/86 |
| Amersham Corporation | Amerlex-M T4 RIA Kit, IM 3011, IM 3014 | Kit: 100 Tests 400 Tests | 08/27/86 |
| Amersham Corporation | Codeine (N-methyl-C14) Hydrochloride | Custom Preparation | 03/27/72 |
| Amersham Corporation | Morphine (N-methyl-C14) Hydrectoride No. CFA-363 | Vial: 0.32 to 1.89mg | 03/27/72 |
| Amersham Corporation | Pheno [2-14C] barbital Catalog No. CFA 537 | Vial: 0.39 to 5.85mg | 11/05/74 |
| Amersham Corporation | Protactin RIA Kit, IM 1060, 1061 | Kit: 50 tests, 100 tests | 03/25/80 |
| Amersham Corporation | T-9 Uptake (MAA) Kit-IM 1020, IM 1021, IM 1024 | Kit: 50 tests, 100 tests, 400 tests | 02/05/79 |
| Amersham Corporation | [1(N)-3H] Hydromorphone TRQ 4729 | Vial: 47.5-95 micrograms | 07/31/87 |
| Amersham Corporation | [1(n)-3H] Codeine, No. TRK 446 | Ampoule: 0.002mg to 0.015mg | 02/26/74 |
| Amersham Corporation | [1(n)-3H] Morphine, No. TRK-447 | Vial: 0.002 mg to 0.015 mg | 02/26/74 |
| Amersham Corporation | [1,7,8(n)-3H]Dihydromorphine, No. TRK-450 | Vial: 0.0008 mg to 0.008 mg | 02/26/74 |
| Amersham Corporation | [15, 16(m)-3H] Etorphine, Catalog No. TRK 476 | Vial: 3.45 to 6.9 micrograms | 11/19/74 |
| Amersham Corporation | [15,16(m)-3H] Etorphine Catalog No. TRK 475 | Vial: 13.8 to 27.6 micrograms | 02/17/75 |



EXEMPT CHEMICAL PREPARATIONS—Continued

| Supplier | Product | Form of product | Date |
|---|---|---|---|
| Amersham Corporation | [2(n)-3H] Lysergic Acid Diethylamide, No. TRK. 461 | Vial: 0.003mg to 0.04mg | 05/22/74 |
| Amersham Corporation | [2-14C] Diazepam Catalog No. CFA.591 | Multidose Glass Vial: 56mm x 25mm | 09/26/77 |
| Amersham Corporation | [N-methyl-3H] Diazepam Catalog Code: TRK.572 | Multidose Glass Vial: 56mm x 25mm | 09/26/77 |
| **Applied Sciences Laboratories** | | | |
| Applied Sciences Laboratories | Allylisobutylbarbituric Acid | Vial: 1ml | 01/24/73 |
| Applied Sciences Laboratories | Alphaprodine HCL | Vial: 1ml | 04/16/85 |
| Applied Sciences Laboratories | Alphenal | Vial: 1ml | 01/24/73 |
| Applied Sciences Laboratories | Alprazolam | Vial: 1ml | 04/16/85 |
| Applied Sciences Laboratories | Amobarbital | Vial: 1ml | 01/24/73 |
| Applied Sciences Laboratories | Amphetamine HCL | Vial: 1ml | 01/24/73 |
| Applied Sciences Laboratories | Aprobarbital | Vial: 1ml | 01/24/73 |
| Applied Sciences Laboratories | Barbital | Vial: 1ml | 01/24/73 |
| Applied Sciences Laboratories | Barbiturates, Mixture 4 | Vial: 10ml | 10/04/72 |
| Applied Sciences Laboratories | Benzoylecgonine Tetrahydrate | Vial: 1ml | 04/16/85 |
| Applied Sciences Laboratories | Benzphetamine HCL | Vial: 1ml | 04/16/85 |
| Applied Sciences Laboratories | Butabarbital | Vial: 1ml | 01/24/73 |
| Applied Sciences Laboratories | Butethal | Vial: 1ml | 01/24/73 |
| Applied Sciences Laboratories | Chloral Hydrate | Vial: 1ml | 04/16/85 |
| Applied Sciences Laboratories | Chlordiazepoxide HCL | Vial: 1ml | 04/16/85 |
| Applied Sciences Laboratories | Clonazepam | Vial: 1ml | 04/16/85 |
| Applied Sciences Laboratories | Clorazepate Dipotassium | Vial: 1ml | 04/16/85 |
| Applied Sciences Laboratories | Cocaine | Vial: 1ml | 01/24/73 |
| Applied Sciences Laboratories | Codeine | Vial: 1ml | 01/24/73 |
| Applied Sciences Laboratories | Delta-9-Tetrahydrocannabinol | Vial: 1ml | 04/16/85 |
| Applied Sciences Laboratories | Depressants, Mixture 3 | Vial: 10ml | 10/04/72 |
| Applied Sciences Laboratories | Dextropropoxyphene HCL | Vial: 1ml | 04/16/85 |
| Applied Sciences Laboratories | Diacetylmorphine HCL | Vial: 1ml | 04/16/85 |
| Applied Sciences Laboratories | Diallylbarbituric acid | Vial: 1ml | 01/24/73 |
| Applied Sciences Laboratories | Diazepam | Vial: 1ml | 04/16/85 |
| Applied Sciences Laboratories | Diethylpropion HCL | Vial: 1ml | 04/16/85 |
| Applied Sciences Laboratories | Dihydrocodeine | Vial: 1ml | 04/16/85 |
| Applied Sciences Laboratories | Dimethyltryptamine | Vial: 1ml | 04/16/85 |
| Applied Sciences Laboratories | Drug Mix Four | Ampoule: 1 ml | 11/03/86 |
| Applied Sciences Laboratories | Drug Mix One | Ampoule: 1 ml | 10/21/86 |
| Applied Sciences Laboratories | Drug Mix Three | Ampoule: 1 ml | 11/03/86 |
| Applied Sciences Laboratories | Drug Mix Two | Ampoule: 1 ml | 10/21/86 |
| Applied Sciences Laboratories | Ecgonine HCL | Vial: 1ml | 04/16/85 |
| Applied Sciences Laboratories | Ethchlorvynol | Vial: 1ml | 01/24/73 |
| Applied Sciences Laboratories | Ethinamate | Vial: 1ml | 01/24/73 |
| Applied Sciences Laboratories | Ethylmorphine HCL | Vial: 1ml | 01/24/73 |
| Applied Sciences Laboratories | Fenfluramine HCL | Vial: 1ml | 04/16/85 |
| Applied Sciences Laboratories | Fentanyl | Vial: 1ml | 04/16/85 |
| Applied Sciences Laboratories | Flurazepam HCL | Vial: 1ml | 04/16/85 |
| Applied Sciences Laboratories | Glutethimide | Vial: 1ml | 01/24/73 |
| Applied Sciences Laboratories | Halazepam | Vial: 1ml | 04/16/85 |
| Applied Sciences Laboratories | Hexobarbital | Vial: 1ml | 01/24/73 |
| Applied Sciences Laboratories | Hydrocodone Bitartrate | Vial: 1ml | 01/24/73 |
| Applied Sciences Laboratories | Hydromorphone HCL | Vial: 1ml | 04/16/85 |
| Applied Sciences Laboratories | Levorphanol Tartrate | Vial: 1ml | 04/16/85 |
| Applied Sciences Laboratories | Lorazepam | Vial: 1ml | 04/16/85 |
| Applied Sciences Laboratories | Lysergic Acid | Vial: 1ml | 04/16/85 |
| Applied Sciences Laboratories | Lysergic Acid N-(methylpropyl) amide | Vial: 1ml | 04/16/85 |
| Applied Sciences Laboratories | Lysergic Acid diethylamide | Vial: 1ml | 04/16/85 |
| Applied Sciences Laboratories | Meperidine HCL | Vial: 1ml | 01/24/73 |
| Applied Sciences Laboratories | Mephobarbital | Vial: 1ml | 01/24/73 |
| Applied Sciences Laboratories | Meprobamate | Vial: 1ml | 01/24/73 |
| Applied Sciences Laboratories | Mescaline | Vial: 1ml | 01/24/73 |
| Applied Sciences Laboratories | Methadone HCL | Vial: 1ml | 01/24/73 |
| Applied Sciences Laboratories | Methamphetamine HCL | Vial: 1ml | 01/24/73 |
| Applied Sciences Laboratories | Methaqualone HCL | Vial: 1ml | 04/16/85 |
| Applied Sciences Laboratories | Methohexital | Vial: 1ml | 04/16/85 |
| Applied Sciences Laboratories | Methylphenidate | Vial: 1ml | 01/24/73 |
| Applied Sciences Laboratories | Methyprylon | Vial: 1ml | 04/16/85 |
| Applied Sciences Laboratories | Mixture 1-Opiates | Vial: 1ml | 10/04/72 |
| Applied Sciences Laboratories | Mixture 2-Stimulants | Vial: 1ml | 10/04/72 |
| Applied Sciences Laboratories | Mixture 3-Depressants | Vial: 1ml | 10/04/72 |
| Applied Sciences Laboratories | Mixture 4-Barbiturates | Vial: 1ml | 10/04/72 |
| Applied Sciences Laboratories | Mixture 5-Kit of Representatives | Vial: 1ml | 10/04/72 |
| Applied Sciences Laboratories | Morphine | Vial: 1ml | 01/24/73 |
| Applied Sciences Laboratories | Nalorphine | Vial: 1ml | 01/24/73 |
| Applied Sciences Laboratories | Norcodeine HCL | Vial: 1ml | 04/16/85 |
| Applied Sciences Laboratories | Normorphine | Vial: 1ml | 04/16/85 |
| Applied Sciences Laboratories | Opiates, Mixture 1 | Vial: 10ml | 10/04/72 |
| Applied Sciences Laboratories | Oxazepam | Vial: 1ml | 04/16/85 |
| Applied Sciences Laboratories | Oxycodone HCL | Vial: 1ml | 04/16/85 |
| Applied Sciences Laboratories | Oxymorphone HCL | Vial: 1ml | 04/16/85 |
| Applied Sciences Laboratories | Paraldehyde | Vial: 1ml | 04/16/85 |
| Applied Sciences Laboratories | Pemoline | Vial: 1ml | 04/16/85 |
| Applied Sciences Laboratories | Pentazocine | Vial: 1ml | 04/16/85 |

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EXEMPT CHEMICAL PREPARATIONS—Continued

| Supplier | Product | Form of product | Date |
|---|---|---|---|
| Applied Sciences Laboratories | Pentobarbital | Vial: 1ml | 01/24/73 |
| Applied Sciences Laboratories | Phenazocine HBr | Vial: 1ml | 01/24/73 |
| Applied Sciences Laboratories | Phencyclidine HCL | Vial: 1ml | 01/24/73 |
| Applied Sciences Laboratories | Phendimetrazine Bitartrate | Vial: 1ml | 04/16/85 |
| Applied Sciences Laboratories | Phenobarbital | Vial: 1ml | 01/24/73 |
| Applied Sciences Laboratories | Phentermine | Vial: 1ml | 04/16/85 |
| Applied Sciences Laboratories | Prazepam | Vial: 1ml | 04/16/85 |
| Applied Sciences Laboratories | Psilocybin | Vial: 1ml | 04/16/85 |
| Applied Sciences Laboratories | Psilocyn | Vial: 1ml | 11/06/87 |
| Applied Sciences Laboratories | Secobarbital | Vial: 1ml | 01/24/73 |
| Applied Sciences Laboratories | Stimulants, Mixture 2 | Vial: 10ml | 10/04/72 |
| Applied Sciences Laboratories | Temazepam | Vial: 1ml | 04/16/85 |
| Applied Sciences Laboratories | Thebaine | Vial: 1ml | 01/24/73 |
| Applied Sciences Laboratories | Thiamylal | Vial: 1ml | 01/24/73 |
| Applied Sciences Laboratories | Triazolam | Vial: 1ml | 04/16/85 |
| **Armed Forces Institute of Pathology** | | | |
| Armed Forces Institute of Pathology | 11-nor-9-carboxy-delta 8-THC in Ethanol Ampules | Glass Ampule: 1mg/ml, 1ml, 5ml, 10ml | 01/25/82 |
| **Astral Medical Systems** | | | |
| Astral Medical Systems | Barbital Buffer | Plastic bag: 12.2g/bag | 05/01/85 |
| Astral Medical Systems | Barbital Lactate Buffer | Plastic bag: 16g/bag | 05/01/85 |
| Astral Medical Systems | Isoenzyme Buffer | Plastic bag: 14g/bag | 05/01/85 |
| Astral Medical Systems | Tris-Barbital Sodium Barbital Buffer | Plastic bag: 18g/bag | 05/01/85 |
| **BHP Diagnostix, Inc.** | | | |
| BHP Diagnostix, Inc. | Kallestad TDM Multi-Calibrator-Pilot Lot B–G | Kit: 7–3 ml Vials; 3 ml Vial | 08/18/88 |
| BHP Diagnostix, Inc. | Kallestad TDM Multi-Calibrator-Pilot-Lot Phenobarbital | 3ml, 6ml, 10ml, 30ml, 50ml Vial | 08/18/88 |
| BHP Diagnostix, Inc. | Kodak Ektachem-DT Calibrator | Bottle: 6ml | 01/05/85 |
| **Baxter Healthcare Corporation, Dade Division** | | | |
| Baxter Healthcare Corporation, Dade Division. | (125I) Human TSH Tracer (Lyophilized), Catalog No. CA–2691. | Glass Vial: 10 ml | 09/09/86 |
| Baxter Healthcare Corporation, Dade Division. | (125I) Human TSH Tracer, Catalog No. CA–2611 | Glass Vial: 10 ml | 09/09/86 |
| Baxter Healthcare Corporation, Dade Division. | Absorbed Plasma and Serum Reagents Kit (Catalog No. B4233–2). | Kit: 5 Vials | 03/10/87 |
| Baxter Healthcare Corporation, Dade Division. | Absorbed Plasma and Serum Reagents Kit B4233–2 | Glass Vial: 5ml (Lyophilized Material) | 08/16/71 |
| Baxter Healthcare Corporation, Dade Division. | Anticonvulsant Drug Controls, Levels I and II, Catalog No. CA–2419 and CA–2420. | Glass Vial: 3.5 ml | 09/09/86 |
| Baxter Healthcare Corporation, Dade Division. | Bovine Chemistry Control I.X Special Order Request B5107–56XX. | Bottle: 18ml (Lyophilized Material) | 01/29/86 |
| Baxter Healthcare Corporation, Dade Division. | Bovine Chemistry Control II.X Special Order Request B5107–66XX. | Bottle: 18 ml (Lyophilized Material) | 01/29/86 |
| Baxter Healthcare Corporation, Dade Division. | Buffered Thrombin (Bovine) Catalog No. B4233–40 | Bottle: 5ml (Lyophilized Material) | 01/24/86 |
| Baxter Healthcare Corporation, Dade Division. | Clinical Assays GammaCoat (125I) Phenobarbital Radioimmunoassay Kits Catalog No. CA–2545, CA–2565. | Kit: 50 Assays, 500 Assays | 09/09/86 |
| Baxter Healthcare Corporation, Dade Division. | Clinical Assays GammaCoat (125I) Phenytoin Radioimmunoassay Kit Catalog No. CA–2537, CA–2557. | Kit: 50 Assays, 500 Assays | 09/09/86 |
| Baxter Healthcare Corporation, Dade Division. | Clinical Assays GammaCoat (125I) T3 Uptake Radioimmunoassay Kit Catalog No. CA–2539, CA–2539J, CA–2559, CA–2559J. | Kit: 100 Assays, 100 Assays, 500 Assays, 500 Assays | 09/09/86 |
| Baxter Healthcare Corporation, Dade Division. | Clinical Assays GammaDab (125I) HS–HTSH Radioimmunoassay Kit Catalog No. CA–1573. | Kit: 125 Assays | 09/09/86 |
| Baxter Healthcare Corporation, Dade Division. | Clinical Assays GammaDab (125I) HTSH Radioimmunoassay Kit Catalog No. CA–2591J. | Kit: 125 Assays | 09/09/86 |
| Baxter Healthcare Corporation, Dade Division. | Dade Immunoassay Control, Level I–Low | Bottle: 9ml (Lyophilized Material) | 04/25/86 |
| Baxter Healthcare Corporation, Dade Division. | Dade Immunoassay Control, Level II–Intermediate | Bottle: 9ml (Lyophilized Material) | 04/25/86 |
| Baxter Healthcare Corporation, Dade Division. | Dade Immunoassay Control, Level III–High | Bottle: 9ml (Lyophilized Material) | 04/25/86 |
| Baxter Healthcare Corporation, Dade Division. | Dade Tri-Rac R Tri Level Immunoassay Controls | Bottle: 9ml 6 bottles per kit (Lyophilized Material) | 04/11/85 |
| Baxter Healthcare Corporation, Dade Division. | Data-Fi Fibrin Monomer Control Catalog Nos. B4233–30 & B4233–36. | Glass Vial: 5ml (Lyophilized Material) | 01/24/86 |
| Baxter Healthcare Corporation, Dade Division. | Data-Fi Protamine Sulfate Reagents Kit (Catalog No. B4233–30). | Kit: 10 Vials | 03/10/87 |
| Baxter Healthcare Corporation, Dade Division. | Data-Fi Thrombin Reagent | Bottle: 5ml (Lyophilized Material) | 05/18/81 |
| Baxter Healthcare Corporation, Dade Division. | Data-Fi Thrombin Reagent | Bottle: 9 ml (Lyophilized Material) | 07/20/83 |
| Baxter Healthcare Corporation, Dade Division. | HTSH Non-Specific Binding Reagent, Catalog No. CA–2752. | Glass Vial: 3.5 ml | 09/09/86 |



EXEMPT CHEMICAL PREPARATIONS—Continued

| Supplier | Product | Form of product | Date |
|---|---|---|---|
| Baxter Healthcare Corporation, Dade Division. | HTSH Non-Specific Binding Reagent, Catalog No. CA–2760. | Glass Vial: 3.5 ml | 09/09/86 |
| Baxter Healthcare Corporation, Dade Division. | Human TSH Controls Levels I and II, Catalog No. CA–2452 and CA–2453. | Glass Vial: 3.5 ml | 09/09/86 |
| Baxter Healthcare Corporation, Dade Division. | Moni-Trol Level I Chemistry Control, Assayed, Special Order Request. B5103–XXX. | Bottle: 9ml (Lyophilized Material) | 01/20/84 |
| Baxter Healthcare Corporation, Dade Division. | Moni-Trol Level I.X Special Order Request B5106–5X | Bottle: 18ml (Lyophilized Material) | 06/30/83 |
| Baxter Healthcare Corporation, Dade Division. | Moni-Trol Level II Chemistry Control, Assayed, Special Order Request. B5103–XXX, B5113–XXX. | Bottle: 9ml (Lyophilized Material) | 01/20/84 |
| Baxter Healthcare Corporation, Dade Division. | Moni-Trol Level II.X Special Order Request B5106–6X | Bottle: 18ml (Lyophilized Material) | 06/30/83 |
| Baxter Healthcare Corporation, Dade Division. | Moni-Trol. ES Level I Chemistry Control, Assayed. | Bottles: 9ml, 6.7ml (Lyophilized Material) | 07/15/83 |
| Baxter Healthcare Corporation, Dade Division. | Moni-Trol. ES Level I.X Special Order Request Catalog No. B5106–75AAA Catalog No. B5106–1XAAA. | Bottle: 18ml, 9ml (Lyophilized Material) | 06/27/86 |
| Baxter Healthcare Corporation, Dade Division. | Moni-Trol. ES Level II Chemistry Control, Assayed | Bottle: 9ml, 6.7ml (Lyophilized Material) | 07/15/83 |
| Baxter Healthcare Corporation, Dade Division. | Moni-Trol. ES Level II.X Special Order Request Catalog No. B5106–85AAA Catalog No. B5106–2XAAA. | Bottle: 18ml, 9ml (Lyophilized Material) | 06/27/86 |
| Baxter Healthcare Corporation, Dade Division. | Owren's Veronal Buffer | Bottle: 18ml | 06/16/71 |
| Baxter Healthcare Corporation, Dade Division. | Rabbit Anti-Human TSH Serum, Catalog No. CA–2109 | Glass Vial: 20 ml | 09/09/86 |
| Baxter Healthcare Corporation, Dade Division. | Stratus Phenobarbital Calibrators B, C, D, E, & F | Glass Vial: 3ml | 06/27/83 |
| Baxter Healthcare Corporation, Dade Division. | Stratus Phenobarbital Conjugate | Glass Vial: 6ml | 01/25/82 |
| Baxter Healthcare Corporation, Dade Division. | Stratus Phenobarbital Fluorometric Enzyme Immunoassay Kit (Catalog No. B5700–22). | Kit: 120 tests | 03/10/87 |
| Baxter Healthcare Corporation, Dade Division. | Stratus TDM Control Level I-Low B5700–2 | Glass Vial: 9ml (Lyophilized Material) | 01/21/82 |
| Baxter Healthcare Corporation, Dade Division. | Stratus TDM Control Level II-Intermediate B5700–3 | Glass Vial: 9ml (Lyophilized Material) | 01/21/82 |
| Baxter Healthcare Corporation, Dade Division. | Stratus TDM Control Level III-High B5700–4 | Glass Vial: 9ml (Lyophilized Material) | 01/21/82 |
| Baxter Healthcare Corporation, Dade Division. | Stratus Therapeutic Drug Monitoring (TDM) Controls (Catalog No. B5700–1). | Kit: 9 Vials | 03/10/87 |
| Baxter Healthcare Corporation, Dade Division. | Thrombin Reagent (Bovine) | Bottle: 5ml (Lyophilized Material) | 08/16/71 |
| Baxter Healthcare Corporation, Dade Division. | Tri Rac R Immunoassay Control Level II Intermediate | Bottle: 9 ml (Lyophilized Material) | 04/11/85 |
| Baxter Healthcare Corporation, Dade Division. | Tri Rac R Immunoassay Control Level III High | Bottle: 9 ml (Lyophilized Material) | 04/11/85 |
| Baxter Healthcare Corporation, Dade Division. | Tri-Rac R Immunoassay Control, Level I-Low | Bottle: 9ml (Lyophilized Material) | 04/11/85 |
| **Beckman Instruments, Inc.** | | | |
| Beckman Instruments, Inc. | Beckman B–1 Buffer | Plastic Vial: 15 g | 05/22/79 |
| Beckman Instruments, Inc. | Beckman Buffer B–2 | Packet: 18.16 g | 04/24/71 |
| Beckman Instruments, Inc. | Beckman ICS Drug Calibrators A, B, C, D, and E | Vials: 5ml | 10/29/80 |
| Beckman Instruments, Inc. | Beckman ICS Drug Control Sera | Kit containing: 6–1ml bottles | 11/11/80 |
| Beckman Instruments, Inc. | Beckman ICS Phenobarbital Conjugate | Vial: 5ml | 10/29/80 |
| Beckman Instruments, Inc. | Beckman LD Buffer | Bottle: 14.3 grams | 07/31/86 |
| Beckman Instruments, Inc. | Beckman LD Buffer | Bottle: 14.3 grams | 07/31/86 |
| Beckman Instruments, Inc. | Paragon Electrophoresis System: Immunofixation Electrophoresis (IFE) Kit. | Plastic Tray: 3.5ml | 07/31/86 |
| Beckman Instruments, Inc. | Paragon Electrophoresis System: Lactate Dehydrogenase Isoenzyme Electrophoresis (LD) Kit. | Plastic Tray: 3.5ml | 07/31/86 |
| Beckman Instruments, Inc. | Paragon Electrophoresis System: Protein Electrophoresis (SPE–II) Kit. | Plastic Tray: 3.5ml | 07/31/86 |
| **Becton Dickinson & Company** | | | |
| Becton Dickinson & Company | Antibody Coated Tubes | Metallized Plastic Bag: 50 Tubes/Bag | 02/13/78 |
| Becton Dickinson & Company | Barbital Buffer Solution, Catalog No. 246514 | Bottle: 1 ounce | 08/01/84 |
| Becton Dickinson & Company | Euthyroid Reference Standard, Catalog No. 237418 | Vial: 4ml | 09/27/78 |
| Becton Dickinson & Company | Human Thyroid Stimulating Hormone (hTSH) Radioimmunoassay Kit [125I], Catalog No. 262994. | Kit: 200 tubes | 09/04/86 |
| Becton Dickinson & Company | Human Thyroid Stimulating Hormone (hTSH) Radioimmunoassay Kit (125I), Catalog No. 258423. | Kit: 250 tubes | 08/01/84 |
| Becton Dickinson & Company | IQ Immunochemistry System, Thyroid Stimulating Hormone, Catalog No. 3010. | Kit: 25 tests | 06/30/87 |
| Becton Dickinson & Company | Neonatal TSH Antiserum, Catalog No. 244716 | Vial: 50 ml | 08/01/84 |
| Becton Dickinson & Company | Precipitating Antiserum, Catalog No. 247618 | Vial: 50 ml | 08/01/84 |
| Becton Dickinson & Company | Simul Trac Free T4/TSH Antiserum, No. 262641 | Vial: 1 oz | 02/21/86 |
| Becton Dickinson & Company | Simul Trac Free T4[57 Co]/TSH[125I] Radioimmunoassay Kit, No. 262625. | Kit: 200 tubes | 02/21/86 |
| Becton Dickinson & Company | T3 Antibody Coated Tubes, Catalog No. 237213 | Box containing 100 tubes | 09/27/78 |
| Becton Dickinson & Company | T3 Tracer Solution, Catalog No. 237728 | Bottle: 125ml | 09/27/78 |
| Becton Dickinson & Company | T4 Tracer Solution, Catalog No. 232611 | White NALGENE Polypropylene Bottle: 125 ml | 02/13/78 |

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| Supplier | Product | Form of product | Date |
|---|---|---|---|
| Becton Dickinson & Company | TSH (125I) Tracer, Catalog No. 243621 | Vial: 50 ml | 08/01/84 |
| Becton Dickinson & Company | TSH Antiserum, Catalog No. 263001 | Clear Vial: 10ml | 09/04/86 |
| Becton Dickinson & Company | TSH Antiserum, Catalog No. 258431 | Vial: 50 ml | 08/01/84 |
| Becton Dickinson & Company | TSH Standard A, Catalog No. 259829 | Amber Vial: 10ml | 09/04/86 |
| Becton Dickinson & Company | TSH Standard B, Catalog No. 259837 | Amber Vial: 10ml | 09/04/86 |
| Becton Dickinson & Company | TSH Standard C, Catalog No. 259845 | Amber Vial: 10ml | 09/04/86 |
| Becton Dickinson & Company | TSH Standard D, Catalog No. 259853 | Amber Vial: 10ml | 09/04/86 |
| Becton Dickinson & Company | TSH Standard E, Catalog No. 263052 | Amber Vial: 10ml | 09/04/86 |
| Becton Dickinson & Company | TSH Standard F, Catalog No. 263061 | Amber Vial: 10ml | 09/04/86 |
| Becton Dickinson & Company | TSH (125I) Tracer, Catalog No. 259824 | Clear vial: 10ml | 09/04/86 |
| **Behring Diagnostics** | | | |
| Behring Diagnostics | IEP Buffer, 793001 pH 8.2 | Foil Pouch: 6.5 g. | 09/17/79 |
| Behring Diagnostics | Immuno-tec II Agarose Plate, 839013, 850013 | Foil Pouch: "5.35" x "5.25" | 09/17/79 |
| **Bio-Rad Laboratories** | | | |
| Bio-Rad Laboratories | Lyphochek Therapeutic Drug Monitoring Control (TDM), Levels I, II, III. | Vial: 10ml | 08/20/84 |
| Bio-Rad Laboratories | Lypochek Immunoassay Control Levels I, II, III. | Vial: 10 ml | 09/24/87 |
| Bio-Rad Laboratories | Lypochek Quantitative Urine Control Levels I and II | Vial: 20 ml, 50 ml | 09/24/87 |
| Bio-Rad Laboratories | Lypochek Unassayed Chemistry Control (Bovine) Levels I, II. | Vial: 20 ml | 09/24/87 |
| Bio-Rad Laboratories | Lypochek Unassayed Chemistry Control (Human) Levels I, II. | Vial: 20 ml | 09/24/87 |
| Bio-Rad Laboratories | Quantaphase Thyroxine RIA-125I Tracer/Dissociating Reagent. | Plastic bottle: 60ml, 260ml | 05/06/81 |
| Bio-Rad Laboratories | Quantaphase Thyroxine RIA-Thyroxine Immunobeads | Plastic bottle: 60ml, 260ml | 05/06/81 |
| Bio-Rad Laboratories | Quantimune Barbital Buffer | Plastic Bottle: 1000ml, 250ml, 200ml | 05/31/78 |
| Bio-Rad Laboratories | Quantimune Radioimmunoassay T-4 Tracer, Iodine-125. | Vial: 10 ml | 07/21/76 |
| Bio-Rad Laboratories | Quantimune T-3 RIA Barbital Buffer | Bottle: 220ml | 09/24/82 |
| Bio-Rad Laboratories | Quantimune T-3 RIA Test Kit | Kit: 500 tests, 100 tests | 05/31/78 |
| Bio-Rad Laboratories | Quantimune T-4 RIA Kit | Kit: 500 tests | 07/01/77 |
| Bio-Rad Laboratories | Quantimune T-4 RIA Test Kit | Kit: 5000 tests, 100 tests | 05/31/78 |
| Bio-Rad Laboratories | Quantimune Thyroxine Radioimmunoassay Barbital Buffer. | Plastic Bottle with Screw cap: 1 liter | 07/01/77 |
| Bio-Rad Laboratories | Quantimune Thyroxine Radioimmunoassay T-4 125I Tracer/Dissociating Agent. | Glass Serum Vial: 10 ml | 07/01/77 |
| Bio-Rad Laboratories | T-4 Competitive Binding Reagent, Iodine-125 | Bottle: 365 ml | 07/21/76 |
| Bio-Rad Laboratories | Urine Toxicology Control No. C-470-25 | Amber Vial: 50ml | 09/19/79 |
| **Bio-Rad Laboratories, (Chemical Division)** | | | |
| Bio-Rad Laboratories, (Chemical Division). | Barbital Buffer | Vial: 10ml | 07/21/76 |
| Bio-Rad Laboratories, (Chemical Division). | Barbital Buffer Powder | Plastic bottle: 250ml | 07/21/76 |
| Bio-Rad Laboratories, (Chemical Division). | Barbital Buffer Powder | Plastic bottle: 250 ml | 09/09/77 |
| Bio-Rad Laboratories, (Chemical Division). | Barbital Buffer-Dry Pack | Packages: 9.11 g., 18.21 g., 12.14 g. | 05/09/74 |
| Bio-Rad Laboratories, (Chemical Division). | Bio-Rad Electrophoresis Buffer | Bottle: 500ml | 12/14/72 |
| Bio-Rad Laboratories, (Chemical Division). | Electrophoresis Buffer, Dry-Pack | Package: 6.15 g. | 12/14/72 |
| Bio-Rad Laboratories, (Chemical Division). | Immunoelectrophoresis Barbital Buffer I, pH 8.6 | Dry-pack: 25.6 g. | 06/06/75 |
| Bio-Rad Laboratories, (Chemical Division). | Immunoelectrophoresis Barbital Buffer II, pH 8.6 | Dry-pack: 15.61 g. | 06/06/75 |
| Bio-Rad Laboratories, (Chemical Division). | Immunoelectrophoresis Barbital Buffer III, pH 8.6 | Dry-pack: 6.82 g. | 01/22/76 |
| Bio-Rad Laboratories, (Chemical Division). | Immunoelectrophoresis Barbital Buffer III-a, pH 8.6 | Dry-pack: 15.07 g. | 06/06/75 |
| Bio-Rad Laboratories, (Chemical Division). | Reagent No. 3 | Bottle: 165 ml | 12/14/72 |
| **Bio-Rad Laboratories, ECS Division** | | | |
| Bio-Rad Laboratories, ECS Division | LYPHOCHEK Assayed Chemistry Control Serum (Human) Levels I and II. | Vials: 10 ml. each | 04/13/88 |
| Bio-Rad Laboratories, ECS Division | LYPHOCHEK Urine Toxicology Control-Law | Vials: 20 ml. each | 04/13/88 |
| **Biodiagnostic International** | | | |
| Biodiagnostic International | Liqui-Ure Toxic Control | Vial: 5ml | 03/11/85 |
| Biodiagnostic International | Urine - Tox Control | Vial: 5 ml | 04/01/85 |
| **Bioscientific, Corporation** | | | |
| Bioscientific, Corporation | ECA Buffer, Catalog No. ECA 05805 | Plastic Packet: 18.0 g., 10 packets per box | 07/14/77 |
| **California Bionuclear Corporation** | | | |
| California Bionuclear Corporation | Amobarbital-2-C-14, Catalog No. 72077 | Screw Cap Vial: 50 microcuries, 0.1, 0.5, and 1.0 millicuries. | 01/08/75 |



EXEMPT CHEMICAL PREPARATIONS—Continued

| Supplier | Product | Form of product | Date |
|---|---|---|---|
| California Bionuclear Corporation | Cocaine (methoxy-C-14) Catalog No. 72182 | Screw Cap Vial: 50 microcuries, 0.1, 0.5, and 1.0 millicuries. | 01/08/75 |
| California Bionuclear Corporation | D-Amphetamine (propyl-1-C-14) Sulfate, Catalog No. 72078. | Screw Cap Vial: 50 microcuries, 0.1, 0.5, and 1.0 millicuries. | 01/08/75 |
| California Bionuclear Corporation | DL-Amphetamine (propyl-1-C-14) Sulfate, Catalog No. 72079. | Screw Cap Vial: 50 microcuries, 0.1, 0.5, and 1.0 millicuries. | 01/08/75 |
| California Bionuclear Corporation | Meperidine (N-methyl-C-14) Hydrochloride, Catalog No. 72508. | Screw Cap Vial: 50 microcuries, 0.1, 0.5, 1.0 millicuries. | 01/08/75 |
| California Bionuclear Corporation | Mescaline (eminomethylene-C-14) Hydrochloride, Catalog No. 72512. | Screw Cap Vial: 50 microcuries, 0.1, 0.5, 1.0 millicuries. | 01/08/75 |
| California Bionuclear Corporation | Methadone (heptanone-2-C-14) Hydrochloride, Catalog No. 72516. | Screw Cap Vial: 50 microcuries, 0.1, 0.5, 1.0 millicuries. | 01/08/75 |
| California Bionuclear Corporation | Methamphetamine (propyl-1-C-14) Sulfate, Catalog No. 72517. | Screw Cap Vial: 50 microcuries, 0.1, 0.5, 1.0 millicuries. | 01/08/75 |
| California Bionuclear Corporation | Methylphenidate (carbonyl-C-14) Hydrochloride, Catalog No. 72550. | Screw Cap Vial: 50 microcuries, 0.1, 0.5, 1.0 millicuries. | 01/08/75 |
| California Bionuclear Corporation | Morphine (n-methyl-C-14) Hydrochloride, Catalog No. 72560. | Screw Cap Vial: 50 microcuries, 0.1, 0.5, 1.0 millicuries. | 01/08/75 |
| California Bionuclear Corporation | Pentobarbital-2-C-14, Catalog No. 72618 | Screw Cap Vial: 50 microcuries, 0.1, 0.5, 1.0 millicuries. | 01/08/75 |
| California Bionuclear Corporation | Secobarbital-2-C-14, Catalog No. 72675 | Ampule: 50 microcuries, 0.1, 0.5, and 1.0 millicuries | 01/08/75 |
| **Cambridge Medical Diagnostics, Incorporated** | | | |
| Cambridge Medical Diagnostics, Incorporated. | 125I Human Parathyroid Hormone 44-68 | Vial: 5ml | 03/29/85 |
| Cambridge Medical Diagnostics, Incorporated. | 125I-Tetraiodothyronine | Vial: 11ml | 03/29/85 |
| Cambridge Medical Diagnostics, Incorporated. | 125I-Triiodothyronine | Vial: 11ml | 03/29/85 |
| Cambridge Medical Diagnostics, Incorporated. | Donkey Anti Goat Gamma Globulin | Vial: 5ml | 03/29/85 |
| Cambridge Medical Diagnostics, Incorporated. | Parathyroid Hormone (Human 1-84) Standard | 6 Vials: 5ml each | 03/29/85 |
| Cambridge Medical Diagnostics, Incorporated. | Parathyroid Hormone Assay Buffer | Vial: 10ml | 03/29/85 |
| Cambridge Medical Diagnostics, Incorporated. | T3 AntiSerum (Rabbit) | Vial: 11ml | 03/29/85 |
| Cambridge Medical Diagnostics, Incorporated. | T3 Standard | Vial: 1ml | 03/29/85 |
| Cambridge Medical Diagnostics, Incorporated. | T4 Antiserum (Rabbit) | Vial: 11ml | 03/29/85 |
| Cambridge Medical Diagnostics, Incorporated. | T4 Standard | Vial: 1ml | 03/29/85 |
| **Ciba Corning Diagnostics Corp** | | | |
| Ciba Corning Diagnostics Corp | AACC Tox | Glass Vial: 30ml | 01/20/86 |
| Ciba Corning Diagnostics Corp | Gilford Bi-Level Anticonvulsant/Antiasthmatic Control | Kit Contains: 5 Vials each level | 10/22/85 |
| Ciba Corning Diagnostics Corp | Gilford Bi-Level Anticonvulsant/Antiasthmatic Control, Level I & II. | Vials: 10ml | 10/22/85 |
| Ciba Corning Diagnostics Corp | Gilford Bi-Level Toxicology Control | Kit: Contains: 5 Vials each level | 12/16/85 |
| Ciba Corning Diagnostics Corp | Gilford Bi-Level Toxicology Control, Level I & II | Vials: 10ml | 12/16/85 |
| Ciba Corning Diagnostics Corp | Gilford TDM Control Levels I-III | Vial: 6ml | 10/22/85 |
| Ciba Corning Diagnostics Corp | Gilford Tri Level TDM Control | Kit Contains: 5 Vials each level | 10/22/85 |
| Ciba Corning Diagnostics Corp | Gilford Urine Control II | Vial: 30ml | 05/22/85 |
| Ciba Corning Diagnostics Corp | Gilford Urine Toxicology Control | Vial: 30ml | 12/16/85 |
| Ciba Corning Diagnostics Corp | Immophase Ferritin Controls | Glass Vial: 3 ml | 01/19/87 |
| Ciba Corning Diagnostics Corp | Immophase Ferritin Standards | Glass Vial: 5 ml | 09/16/86 |
| Ciba Corning Diagnostics Corp | Magic Ferritin 2000 Standard | Plastic Vial: 1 ml | 01/19/87 |
| Ciba Corning Diagnostics Corp | Magic Ferritin Controls | Plastic Vial: 5 ml | 01/19/87 |
| Ciba Corning Diagnostics Corp | Magic Ferritin Standards | Polypropylene Vial: 3 ml | 09/16/86 |
| Ciba Corning Diagnostics Corp | Magic Ferritin Zero Standard | Plastic Vial: 50 ml | 01/19/87 |
| Ciba Corning Diagnostics Corp | Magic Lite Ferritin Bulk Lite Reagent | Plastic Vial: 50 ml | 02/16/88 |
| Ciba Corning Diagnostics Corp | Magic Lite Ferritin Bulk Solid Phase | Plastic Vial: 200 ml | 02/16/88 |
| Ciba Corning Diagnostics Corp | Magic Lite Ferritin Lite Reagent | Plastic Vial: 10 ml | 02/16/88 |
| Ciba Corning Diagnostics Corp | Magic Lite Ferritin Solid Phase | Plastic Vial: 50 ml | 02/16/88 |
| Ciba Corning Diagnostics Corp | Magic Lite T3 Bulk Solid Phase | Plastic Vial: 200 ml | 02/16/88 |
| Ciba Corning Diagnostics Corp | Magic T4 Antibody | Plastic Vial: 50 ml and 200 ml | 02/16/88 |
| Ciba Corning Diagnostics Corp | Reagent A- Alt 14 | Vial: 15 ml | 03/24/79 |
| Ciba Corning Diagnostics Corp | Reagent A- Alt 7 | Vial: 15 ml | 03/24/79 |
| Ciba Corning Diagnostics Corp | Reagent A-Ammonia 10 | Vial: 10 ml | 03/24/79 |
| Ciba Corning Diagnostics Corp | Special Barbital Buffer Set, Catalog No. 470182 | Vial: 3 per kit | 04/17/79 |
| Ciba Corning Diagnostics Corp | Universal Electrophoresis Film Agarose, Catalog No. 470100. | Plates: 12 per kit | 04/17/79 |
| Ciba Corning Diagnostics Corp | Universal PHAB Buffer Set Catalog No. 470180 | Kit: 3 vials per kit | 09/26/79 |
| **Cone Biotech, Inc.** | | | |
| Cone Biotech, Inc. | QCM-UTI | Vial: 20ml | 03/07/85 |
| Cone Biotech, Inc. | RIATRAC-Three Level Ligand Assay Controls | Vials: 8ml | 02/27/84 |

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| Supplier | Product | Form of product | Date |
|---|---|---|---|
| Cone Biotech, Inc. | UDS9-CAP/AACC Forensic Urine Drug Testing Survey (Initial Phase). | Bottle: 60 ml | 06/31/87 |
| **Diamedix Corporation** | | | |
| Diamedix Corporation | Barbital-Acetate Buffer, Powder 709-317 | Package: 20 envelopes-10.65 g. per envelope | 07/27/72 |
| Diamedix Corporation | CEP Plate-Amebiasis Testing 40 Test No. 730-274 | Plate: 40mm x 80mm x 2.5mm | 06/09/73 |
| Diamedix Corporation | CEP VI No. 708-339 | Plate: 40mm x 80mm x 2.5mm | 08/06/73 |
| Diamedix Corporation | Counterelectrophoresis (CEP) Plates for Trichinosis Testing. | Plastic plates: 40mm x 80mm x 2.5mm | 06/16/75 |
| Diamedix Corporation | EDTA (0.01M)-GVB Buffer, 753-034 | Bottle: 5ml | 06/09/73 |
| Diamedix Corporation | EDTA (0.01M)-GVB Buffer, 753-631 | Bottle: 5ml | 06/06/73 |
| Diamedix Corporation | GVB(3+) Buffer 753-037 | Bottle: 50ml | 06/09/73 |
| Diamedix Corporation | Glucose-GVB 1 Buffer, 753-036 | Bottle: 50ml | 06/06/73 |
| **Duo Research, Inc.** | | | |
| Duo Research, Inc. | Drug Testing Assessment Program Quality Control Samples. | Kit: 25 bottles | 12/26/86 |
| Duo Research, Inc. | Drug Testing Assessment Program-Quality Control Sample. | Bottle: 65ml | 02/27/86 |
| Duo Research, Inc. | Drug Testing Assessment Program-Quality Control Sample Kit. | Kit: 5-65ml bottles | 02/27/86 |
| **E.I. duPont de Nemours & Co., Incorporated** | | | |
| E.I. duPont de Nemours & Co., Incorporated. | (1) PREP Sample Preparation and Analysis Kit | Kit containing following: | 09/25/78 |
| E.I. duPont de Nemours & Co., Incorporated. | (2) PREP Buffer/Internal Standard and Liquid Chromatography Verifier. | Box containing following: | 09/25/78 |
| E.I. duPont de Nemours & Co., Incorporated. | (2a) PREP Liquid Chromatography Verifier | Vial: 10ml (1 vial/box) | 09/25/78 |
| E.I. duPont de Nemours & Co., Incorporated. | (2b) PREP Buffer/Internal Standard | Vial: 100ml (3 vials/box) | 09/25/78 |
| E.I. duPont de Nemours & Co., Incorporated. | (3) PREP Calibrators | Box containing following: | 09/25/78 |
| E.I. duPont de Nemours & Co., Incorporated. | (3a) PREP Calibrator-Level 1 | Vial: 10ml (1 vial/box) | 09/25/78 |
| E.I. duPont de Nemours & Co., Incorporated. | (3b) PREP Calibrator-Level 2 | Vial: 10ml (1 vial/box) | 09/25/78 |
| E.I. duPont de Nemours & Co., Incorporated. | (3c) PREP Calibrator-Level 3 | Vial: 10ml ( 1 vial/box) | 09/25/78 |
| E.I. duPont de Nemours & Co., Incorporated. | (3d) PREP Calibrator-Level 4 | Vial: 10ml (1 vial/box) | 09/25/78 |
| E.I. duPont de Nemours & Co., Incorporated. | (4) PREP Controls | Box containing following: | 09/25/78 |
| E.I. duPont de Nemours & Co., Incorporated. | (4a) PREP Control-Low Level | Vial: 10ml (2 vials/box) | 09/25/78 |
| E.I. duPont de Nemours & Co., Incorporated. | (4b) PREP Control-High Level | Vial: 10ml (2 vials/box) | 09/25/78 |
| E.I. duPont de Nemours & Co., Incorporated. | DuPont Drug Calibrators- Levels 1 through 5 | Vial: 6ml (1 vial and 2 vials/box) | 04/04/86 |
| E.I. duPont de Nemours & Co., Incorporated. | DuPont Phenobarbital Assay | Vial: 6 ml | 10/13/86 |
| E.I. duPont de Nemours & Co., Incorporated. | DuPont U Amp Enzyme Pack Reagent | Bottle: 1 liter | 10/19/87 |
| E.I. duPont de Nemours & Co., Incorporated. | DuPont U Barb Enzyme Pack Reagent | Bottle: 1 liter | 10/19/87 |
| E.I. duPont de Nemours & Co., Incorporated. | DuPont U Benz Enzyme Pack Reagent | Bottle: 1 liter | 10/19/87 |
| E.I. duPont de Nemours & Co., Incorporated. | DuPont U COC Enzyme Pack Reagent | Bottle: 1 liter | 10/19/87 |
| E.I. duPont de Nemours & Co., Incorporated. | DuPont U OPI Enzyme Pack Reagent | Bottle: 1 liter | 08/26/87 |
| E.I. duPont de Nemours & Co., Incorporated. | DuPont Urine Drugs-of-Abuse Calibrator (Levels 0,1,2) | Box: 6 Vials, 6ml Vial | 07/27/87 |
| E.I. duPont de Nemours & Co., Incorporated. | DuPont Urine Drugs-of-Abuse Control | Vial: 6 ml | 08/03/87 |
| E.I. duPont de Nemours & Co., Incorporated. | DuPont aca Barbiturate Screen Analytical Test Pack | Plastic Packs: 25 tests | 12/23/84 |
| E.I. duPont de Nemours & Co., Incorporated. | DuPont aca Barbiturate Screen/Benzodiazepine Screen Calibrator. | 6 Vials: 3ml | 02/23/84 |
| E.I. duPont de Nemours & Co., Incorporated. | DuPont aca Benzodiazepine Screen Analytical Test Pack. | Plastic Packs: 25 tests | 02/23/84 |
| E.I. duPont de Nemours & Co., Incorporated. | Phenobarbital Calibrator- Level 1 | Vial: 6ml (1 vial/box) | 04/02/86 |
| E.I. duPont de Nemours & Co., Incorporated. | Phenobarbital Calibrator- Level 2 | Vial: 6ml (1 vial/box) | 04/02/86 |
| E.I. duPont de Nemours & Co., Incorporated. | Phenobarbital Calibrator- Level 3 | Vial: 6ml (1 vial/box) | 04/02/86 |
| E.I. duPont de Nemours & Co., Incorporated. | Phenobarbital Calibrator- Level 4 | Vial: 6ml (1 vial/box) | 04/02/86 |



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| Supplier | Product | Form of product | Date |
|---|---|---|---|
| E.I. duPont de Nemours & Co., Incorporated. | Phenobarbital Calibrator- Level 5 | Vial: 6ml (1 vial/box) | 04/02/86 |
| E.I. duPont de Nemours & Co., Incorporated. | Theophylline Calibrator Levels 1, 2 and 3 | Vial: 6 ml. Box contains 2 vials each level | 09/21/88 |
| E.I. duPont de Nemours & Co., Incorporated. | Thyroid Rotor | Foil Pouch: 1 Rotor Shelf Carton: 10 Rotors Box: 5 Shelf Cartons (50 Rotors). | 10/25/88 |
| E.I. duPont de Nemours & Co., Incorporated. | Thyronine (TU) Uptake Flex(tm) Reagent Cartridge | Plastic container: 2.3ml (20 tests) | 04/26/86 |
| E.I. duPont de Nemours & Co., Incorporated. | Urine Amphetamine (U Amp) Test Pack | Carton: 50 tests | 08/27/87 |
| E.I. duPont de Nemours & Co., Incorporated. | Urine Barbiturate (U Barb) Test Pack | Carton: 50 tests | 08/27/87 |
| E.I. duPont de Nemours & Co., Incorporated. | Urine Benzodiazepine (U Benz) Test Pack | Carton: 50 tests | 08/27/87 |
| E.I. duPont de Nemours & Co., Incorporated. | Urine Cocaine (U COC) Test Pack | Carton: 50 tests | 08/27/87 |
| E.I. duPont de Nemours & Co., Incorporated. | Urine Opiate (U OPI) Test Pack | Carton: 50 tests | 07/08/87 |
| E.I. duPont de Nemours & Co., Incorporated. | aca PHNO Analytical Test Pack | Carton: 40 tests packs | 06/25/77 |
| E.I. duPont de Nemours & Co., Incorporated. | aca Thryonine Uptake Analytical Test Pack | Plastic Pack: 1 test | 06/25/83 |
| **E.I. duPont de Nemours & Co., Inc., Medical Products** | | | |
| E.I. duPont de Nemours & Co., Inc., Medical Products. | 5-Cyclohexenyl-3,5,-Dimethyl barbituric Acid (3H(G)), Catalog No. NET-426. | Combi-Vial: 250 microcuries, 1 millicurie, and 5 millicuries. | 01/04/77 |
| E.I. duPont de Nemours & Co., Inc., Medical Products. | Acetaldehyde (1,2-14C) as Paraldehyde, Catalog No. NEC-158. | Pyrex Glass Breakseal Tube: 250 microcuries, 1 millicurie. | 01/04/77 |
| E.I. duPont de Nemours & Co., Inc., Medical Products. | Cocaine, Levo-[Benzoyl] [3.4-3H(N)] Catalog No. NET-510. | Combi-Vial: 100 microcuries, 250 microcuries | 01/04/77 |
| E.I. duPont de Nemours & Co., Inc., Medical Products. | Diazepam [Methyl-3H] Catalog No. NET-564 | Combi-Vial: 0.250 millicuries, 1.0 millicurie | 09/06/79 |
| E.I. duPont de Nemours & Co., Inc., Medical Products. | Dihydromorphine [7,8-3H(N)] | Combi-Vial: 250 microcuries, 1 millicurie | 01/04/77 |
| E.I. duPont de Nemours & Co., Inc., Medical Products. | Dihydromorphine[N-Methyl-3H] NET-658 | Combi-Vial: 0.250 millicuries, 1.0 millicurie | 02/29/80 |
| E.I. duPont de Nemours & Co., Inc., Medical Products. | Flunitrazepam [Methyl-3H] NET-567 | Combi-Vial: 0.250 millicuries, 1.0 millicurie | 04/29/87 |
| E.I. duPont de Nemours & Co., Inc., Medical Products. | LSD [N-Methyl-3H] NET-638 | Combi-Vial: 0.250 millicuries, 1.0 millicurie | 11/06/79 |
| E.I. duPont de Nemours & Co., Inc., Medical Products. | Mazindol (4'-3H) Catalog No. NET-816 | Combi-Vial: 0.250 millicuries, 1.0 millicurie | 05/17/84 |
| E.I. duPont de Nemours & Co., Inc., Medical Products. | Methylenedioxymethamphetamine, (+)3,4-[N-methyl-3H] NET-957. | Combi-Vial: 0.0250 millicuries, 0.25 millicuries, 1.0 millicuries. | 08/25/75 |
| E.I. duPont de Nemours & Co., Inc., Medical Products. | Methylphenidate, +/- threo[methyl-3H] NET-857 | Combi-Vial: 0.250 millicuries, 1.0 millicurie | 06/11/84 |
| E.I. duPont de Nemours & Co., Inc., Medical Products. | Morphine [N-methyl-3H] NET-653 | Combi-Vial: 0.250 millicuries, 1.0 millicurie | 02/29/80 |
| E.I. duPont de Nemours & Co., Inc., Medical Products. | N-[1-(2-Thienyl) Cyclohexyl]-3,4-Piperidine (Piperidyl-3,4-3H) NET-886. | Combi-Vial: 0.250 millicuries, 1.0 millicurie | 06/11/84 |
| E.I. duPont de Nemours & Co., Inc., Medical Products. | Phencyclidine [Piperidyl-3,4-3H(N)], Catalog No. NET-830. | Combi-Vial: 0.250 millicuries, 1.0 millicurie | 09/06/79 |
| E.I. duPont de Nemours & Co., Inc., Medical Products. | d-Amphetamine Sulfate (3H(G)), Catalog No. NET-140. | Combi-Vial: 250 microcuries, 1 millicurie, and 5 millicuries. | 01/04/77 |
| **EM Diagnostic Systems, Inc.** | | | |
| EM Diagnostic Systems, Inc. | EMDS Antiepileptic Drug Calibrator Item No. 67630/95. | Box: 3 Vials, 5 ml each | 06/11/86 |
| EM Diagnostic Systems,Inc. | EMDS Test Packs, Phenobarbital (PHENO) Item No. 67677/95. | Carton: 48 Test Packs | 09/09/86 |
| EM Diagnostic Systems, Inc. | Easytest Phenobarbital Assay Item No. 67534/93 | Cuvette: 1.8ml (40 cuvettes /carton) | 06/11/86 |
| **Eastman Kodak Company** | | | |
| Eastman Kodak Company | KODATROL Control I Control and Diluent Set | 1 Set: 2 amber glass vials ea. 6 ml 1 Box: 12 sets | 07/21/88 |
| Eastman Kodak Company | KODATROL Control II Control and Diluent Set | 1 Set: 2 amber glass vials ea. 6 ml 1 Box: 12 sets | 07/21/88 |
| Eastman Kodak Company | Kodak EKTACHEM Specialty Calibrator | Vial: 3ml | 09/13/85 |
| Eastman Kodak Company | Kodak EKTACHEM Specialty Control I | Vial: 3ml | 09/13/85 |
| **Electro-Nucleonics Laboratories, Incorporated** | | | |
| Electro-Nucleonics Laboratories, Incorporated. | VIRGO IPA Immuno-Precipitation Assay for Phenobarbital. | Kit | 11/30/82 |
| **Endocrine Metabolic Center** | | | |
| Endocrine Metabolic Center | 0.1% Lysozyme-Barbital Buffer, 0.05M | Glass Bottle: 2 liter | 05/26/87 |
| Endocrine Metabolic Center | 1% Lysozyme-Barbital Buffer, 0.05M | Glass Bottle: 2 liter | 05/26/87 |
| Endocrine Metabolic Center | Barbital Buffer, 0.05M | Plastic Bottle: 3000 ml | 05/26/87 |
| Endocrine Metabolic Center | Barbital Buffer, 0.1M | Plastic Bottle: 3000 ml | 05/26/87 |
| Endocrine Metabolic Center | Tracer Diluent | Glass Bottle: 1 or 2 liter | 05/26/87 |

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| Supplier | Product | Form of product | Date |
|---|---|---|---|
| **Environmental Diagnostics, Inc.** | | | |
| Environmental Diagnostics, Inc. | EZ-Screen: Cannabinoid Enzyme Conjugate | Ampule: 1 ml | 02/03/87 |
| Environmental Diagnostics, Inc. | EZ-Screen: Cannabinoid Kit Catalog No. 216-2BP | Kit: 1 test | 02/03/87 |
| Environmental Diagnostics, Inc. | EZ-Screen: Cannabinoid Positive Control | Ampule: 1 ml | 02/03/87 |
| **Fisher Scientific** | | | |
| Fisher Scientific | Electrophoretic Buffer No. 1 pH 8.60, Ionic Strength 0.05, Catalog No. E-1. | Packet: 12.14 g | 10/27/72 |
| Fisher Scientific | Electrophoretic Buffer No. 2, pH 8.60, Ionic Strength 0.075, Catalog No. E-2. | Packet: 16.16 g | 10/27/72 |
| Fisher Scientific | Owren's Veronal Buffer, CS1084-34 | Vial: 10 ml | 06/16/86 |
| Fisher Scientific | Owren's Veronal Buffer, CS1084-36 | Vial: 25 ml | 06/16/86 |
| Fisher Scientific | SeraChem Abnormal Clinical Chemistry Control Serum (Human) Unassayed No. 2906. | Vial: 5ml, 10ml | 04/16/82 |
| Fisher Scientific | SeraChem Abnormal Clinical Chemistry Control Serum (Human), Assayed No. 2905. | Vial: 5ml | 04/16/82 |
| Fisher Scientific | SeraChem Clinical Chemistry Control Serum (Bovine), Unassayed Level I No. 3110. | Vial: 5ml, 10ml | 04/16/82 |
| Fisher Scientific | SeraChem Clinical Chemistry Control Serum (Bovine), Unassayed Level II No. 3111. | Vial: 5ml, 10ml | 04/16/82 |
| Fisher Scientific | SeraChem Normal Clinical Chemistry Control Serum (Human), Assayed No. 2907. | Vial: 5ml | 04/16/82 |
| Fisher Scientific | Serachem Normal Clinical Chemistry Control Serum (Human), Unassayed No. 2908. | Vial: 5ml, 10ml | 04/16/82 |
| Fisher Scientific | TDM Cal | Kit: 7 Vials | 11/26/86 |
| Fisher Scientific | TDM Cal (B-F) | Vials: 5 ml | 11/26/86 |
| Fisher Scientific | Thera Chem TDC Therapeutic Drug Controls, Low and High Levels, 2840-58. | Kit: 6 vials | 01/12/84 |
| Fisher Scientific | TheraChem-Plus TDC Therapeutic Drug Controls, Td-Level, No. 2845-84. | Kit: 9 vials | 03/19/86 |
| Fisher Scientific | Therapeutic Drug Control, High Level III, No. 2848-31 | Vial: 5ml | 03/19/86 |
| Fisher Scientific | Therapeutic Drug Control, High Level, 2842-31 | Vial: 5ml | 01/12/84 |
| Fisher Scientific | Therapeutic Drug Control, Low Level I, No. 2846-31 | Vial: 5ml | 03/19/86 |
| Fisher Scientific | Therapeutic Drug Control, Low Level, 2841-31 | Vial: 5ml | 01/12/84 |
| Fisher Scientific | Therapeutic Drug Control, Mid-Range Level II, No. 2847-31. | Vial: 5ml | 03/19/86 |
| Fisher Scientific | Urine Chemistry Control (Human) Level II, No. 2935-80. | Vial: 25ml | 04/06/78 |
| Fisher Scientific | Urine Toxicology Control No. 2950-81 | Vial: 25ml | 04/06/78 |
| **Flow Laboratories** | | | |
| Flow Laboratories | DGV No. 26-010 | Bottle: 125 ml | 04/16/73 |
| Flow Laboratories | Human 'O' DGV (Dextrose Gelatin Veronal Buffer) No. 26-080. | Glass Vial: 100 ml | 10/14/76 |
| **GIBCO Laboratories** | | | |
| GIBCO Laboratories | Complement Fixation Buffer Solution, pH 7.3-7.4, NDC 0118115-0247-1. | Bottle: 1 liter | 01/28/74 |
| GIBCO Laboratories | Complement Fixation Buffer Solution, pH 7.3-7.4, NDC 011815-0247-2. | Bottle: 500 ml | 04/05/77 |
| GIBCO Laboratories | Dextrose-Gelatin-Veronal Buffer Solution NDC No. 815-0566-1 and No. 815-0566-2. | Bottle: 100 and 500 ml | 07/05/73 |
| GIBCO Laboratories | Electrophoresis Buffer Solution, pH 8.6, NDC 011815-0245-1. | Bottle: 1 liter | 01/28/74 |
| GIBCO Laboratories | I.E.P. Buffer Solution pH 8.2 NDC 011815-0248-1 | Bottle: 1 liter | 01/28/74 |
| **Gelman Sciences, Inc.** | | | |
| Gelman Sciences, Inc | Drug Control Set No. 51911 | Set: 3 vials of 50 ml each | 04/06/72 |
| Gelman Sciences, Inc | Drug Standard Set, No. 51910 | Set: 3 vials of 2 ml each | 04/06/72 |
| Gelman Sciences, Inc | Hi-Phore Buffer | Glass Vial: 15 g. | 02/11/82 |
| Gelman Sciences, Inc | High Resolution Buffer-Tris Barbital Buffer No. 51104 | Vial: 10 dr | 12/22/71 |
| **Gumm Chem. Co** | | | |
| Gumm Chem. Co | Niflow Initial Additive | Drums: 5 Gallons | 09/30/85 |
| Gumm Chem. Co | Niflow Maintenace Additive | Drums: 5 Gallons | 09/30/85 |
| **Hach Chemical Co** | | | |
| Hach Chemical Co | pH 8.3 Buffer Powder Pillows. No. 566-99 | Pillow: 1 g. each | 11/30/71 |
| **Helena Laboratories** | | | |
| Helena Laboratories | CK-LD Buffer Catalog No. 5806 | Packet: 18.332 g., 10 packets/box | 03/26/86 |
| Helena Laboratories | Electra B1 Buffer, Catalog No. 5016 | Packet: 12.14 g. 10 packets/box | 12/28/73 |
| Helena Laboratories | Electra B2 Buffer , Catalog No. 5017 | Packet: 18.2 g. 10 packets/box | 12/28/73 |
| Helena Laboratories | Electra HR Buffer, Catalog No. 5805 | Packet: 18.1 g. 10 packets/box | 12/28/73 |
| Helena Laboratories | HDL Electrophoresis Buffer | Packet: 36 g. | 12/18/85 |
| Helena Laboratories | Isoamylase Cathode Buffer | Packet: 9.7 g. | 12/18/85 |
| Helena Laboratories | Isoamylase Kit Catalog No. 5825 | Kit: 2 Packets Cathode Buffer | 01/24/86 |
| Helena Laboratories | Owren's Veronal Buffer Cat. No. 5375 | Plastic Bottle: 125 ml | 09/15/88 |
| Helena Laboratories | REP-HDL-12 Isoenzyme Kit Cat. No. 3187 | Kit: 10 Plates (5.8" X 2.18") | 09/15/88 |
| Helena Laboratories | REP-HDL-30 Isoenzyme Kit Cat. No. 3188 | Kit: 10 Plates (5.8" X 5.5") | 09/15/88 |



EXEMPT CHEMICAL PREPARATIONS—Continued

| Supplier | Product | Form of product | Date |
|---|---|---|---|
| Helena Laboratories | REP-HDL-6 Isoenzyme Kit Cat. No. 3186 | Kit: 10 Plates (5.8" X 1.25") | 09/15/88 |
| Helena Laboratories | REP-Lipo-12 Kit Cat. No. 3181 | Kit: 10 Plates (5.8" X 2.18") | 09/15/88 |
| Helena Laboratories | REP-Lipo-30 Kit Cat. No. 3180 | Kit: 10 Plates (5.8" X 5.5") | 09/15/88 |
| Helena Laboratories | REP-Lipo-6 Kit Cat. No. 3182 | Kit: 10 Plates (5.8" X 1.25") | 09/15/88 |
| Helena Laboratories | REP-SP-12 Isoenzyme Kit Cat. No. 3171 | Kit: 10 Plates (5.8" X 2.18") | 09/15/88 |
| Helena Laboratories | REP-SP-30 Isoenzyme Kit Cat. No. 3170 | Kit: 10 Plates (5.8" X 5.5") | 09/15/88 |
| Helena Laboratories | REP-SP-6 Isoenzyme Kit Cat. No. 3172 | Kit: 10 Plates (5.8" X 1.25") | 09/15/88 |
| Helena Laboratories | Super Z-120/HDL Cholesterol Supply Kit Catalog No. 5470. | Kit: 3 Packages buffer 36 g. | 01/24/86 |
| Helena Laboratories | Titan Gel High Resolution Protein Buffer | Packet: 25.9 g | 04/12/83 |
| Helena Laboratories | Titan Gel High Resolution Protein Kit Catalog No. 3040. | Kit: 10 Plates (90mm X 75mm) , 2 Packages Buffer | 03/03/86 |
| Helena Laboratories | Titan Gel High Resolution Protein Plate | Plate: (90mm X 75mm) | 03/03/86 |
| Helena Laboratories | Titan Gel IFE Buffer | Packet: 25.9 g | 12/18/85 |
| Helena Laboratories | Titan Gel IFE Plate | Plate: (90mm X 75mm) | 03/05/86 |
| Helena Laboratories | Titan Gel Immuno Fix Kit Catalog No. 3046 | Kit: 10 Plates (90mm X 75mm), 2 Packets IFE Buffer | 01/24/86 |
| Helena Laboratories | Titan Gel Iso Dot LDH Buffer | Packet: 19.6 g | 01/07/86 |
| Helena Laboratories | Titan Gel Iso Dot LDH Isoenzyme Plate | Plate: (90mm X 75mm) | 12/18/85 |
| Helena Laboratories | Titan Gel Iso Dot LDH Kit Catalog No. 3062 | Kit: 10 Plates (90mm X 75mm),1 Packet Iso Dot LDH Buffer. | 01/24/86 |
| Helena Laboratories | Titan Gel LD Buffer | Packet: 21.5 g | 11/26/86 |
| Helena Laboratories | Titan Gel LD Isoenzyme Diluent | Bottle: 10 ml | 11/26/86 |
| Helena Laboratories | Titan Gel LDH Isoenzyme Buffer | Packet: 22.7 g | 03/07/83 |
| Helena Laboratories | Titan Gel LDH Isoenzyme Plate | Plate: (90mm X 75mm) | 12/18/85 |
| Helena Laboratories | Titan Gel LDH Isoenzyme Reagent | Vial: 2ml, 10 vials/box | 01/07/86 |
| Helena Laboratories | Titan Gel Lipoprotein Buffer | Packet: 17.3 g | 12/18/85 |
| Helena Laboratories | Titan Gel Lipoprotein Kit Catalog No. 3045 | Kit: 1 Packet Buffer | 01/24/86 |
| Helena Laboratories | Titan Gel Lipoprotein Plate | Plate: (90 x 75 mm) | 01/09/87 |
| Helena Laboratories | Titan Gel Multi-Slot Lipo-17 Kit Catalog No. 3095 | Kit: 10 plates (81 x 143 mm) 1 Packet Buffer (21.6 g) | 01/09/87 |
| Helena Laboratories | Titan Gel Multi-Slot Lipo-17 Plate | Plate: (81 x 143 mm) | 01/09/87 |
| Helena Laboratories | Titan Gel Multi-Slot SP-17 Kit Catalog No. 3091 | Kit: 10 plates (81 x 143 mm) 1 Packet Buffer (29.1 g) | 01/09/87 |
| Helena Laboratories | Titan Gel Multi-Slot SP-17 Plate | Plate: 81 x 143 mm | 01/09/87 |
| Helena Laboratories | Titan Gel Serum Protein Buffer | Packet: 29.1 g. | 04/12/83 |
| Helena Laboratories | Titan Gel Serum Protein Kit Catalog No. 3041 | Kit: 10 Plates (90mm X 75mm), 1 Packet Buffer | 01/24/86 |
| Helena Laboratories | Titan Gel Serum Protein Plate | Plate: (90mm X 75mm) | 12/18/85 |
| Helena Laboratories | Titan Gel Silver Stain Buffer | Packet: 25.9g | 12/18/85 |
| Helena Laboratories | Titan Gel Silver Stain Kit Catalog No. 3035 | Kit: 10 Plates (90mm X 75mm), 2 Packets Buffer | 01/24/86 |
| Helena Laboratories | Titan Gel Silver Stain Plate | Plate: (90mm X 75mm) | 03/03/86 |
| Helena Laboratories | Titan Gel-PC LDH Isoenzyme Kit Catalog No. 3053 | Kit: 10 Plates (90mm X 75mm), 1 Packet LDH Buffer, 1 Box LDH Reagent. | 01/24/86 |
| Helena Laboratories | Titan Gel-PC LDH Isoenzyme Plate | Plate: (90mm X 75mm) | 12/18/85 |
| Helena Laboratories | Titan III Agar Catalog No. 5023 | Packet: 5 g. (5 Packets/box) | 12/26/73 |
| Helena Laboratories | Titan IV IE Plate (large) | Package: plates, 3 by 4 in. | 12/26/73 |
| Helena Laboratories | Titan IV IE Plate (small) | Package: plates, 1 by 3 in. | 12/26/73 |
| Helena Laboratories | Titan IV IE Plate Kit | Kit: 12 small (1 by 3 in.) IE plates,1 box B1 Buffer | 12/26/73 |
| Helena Laboratories | Titan IV IE Plate Kit | Kit: 10 large (3 by 4 in.) IE plates, 1 box B1 Buffer | 12/26/73 |
| **Hycor/ICI Scientific** | | | |
| Hycor/ICL Scientific | Drugs of Abuse Urine Control, CONFIRMATION | Box: 4-100 ml Bottles | 10/21/88 |
| Hycor/ICL Scientific | Drugs of Abuse Urine Control, SCREEN | Box: 4-30 ml Bottles | 10/21/88 |
| **ICL Scientific** | | | |
| ICL Scientific | Therapeutic Drug Control I, TDC I (High Level) | Glass Vial: 10ml | 06/14/85 |
| ICL Scientific | Therapeutic Drug Control I, II, III, Tri-Level TDC Multi-pack. | Glass Vials (12): 10ml | 06/14/85 |
| ICL Scientific | Therapeutic Drug Control II, TDC II (Mid-Level) | Glass Vial: 10ml | 06/14/85 |
| ICL Scientific | Therapeutic Drug Control III, TDC III (Low Level) | Glass Vial: 10ml | 06/14/85 |
| **ICN Micromedic Systems, Inc.** | | | |
| ICN Micromedic Systems, Inc | Immunogen: BZ-A | Plastic Vial: 1.5 ml | 02/29/88 |
| ICN Micromedic Systems, Inc | Immunogen: BZ-B | Plastic Vial: 1.5 ml | 02/29/88 |
| ICN Micromedic Systems, Inc | Immunogen: CD-A | Plastic Vial: 1.5 ml | 02/29/88 |
| ICN Micromedic Systems, Inc | Immunogen: M-A | Plastic Vial: 1.5 ml | 02/29/88 |
| ICN Micromedic Systems, Inc | Immunogen: M-B | Plastic Vial: 1.5 ml | 02/29/88 |
| ICN Micromedic Systems, Inc | Immunogen: TF-A | Plastic Vial: 1.5 ml | 02/29/88 |
| ICN Micromedic Systems, Inc | Micromedic Combostat THC/Cocaine STANDARDS-2, 3, and 4. | Amber Glass Vial: 2 ml Plastic Bottle: 100 ml | 02/24/88 |
| ICN Micromedic Systems, Inc | Micromedic CrackPot 57Co/125I Tracer Solution | Plastic Bottle: 25 ml, 1000 ml | 02/24/88 |
| ICN Micromedic Systems, Inc | Micromedic Morphine 125I Tracer Solution | Bottle: 50 ml, 1000 ml | 02/29/88 |
| ICN Micromedic Systems, Inc | Micromedic Morphine Standards 2, 3 and 4 | Bottle: 5 ml, 100 ml | 02/29/88 |
| **Industrial Analytical Laboratory, Inc.** | | | |
| Industrial Analytical Laboratory, Inc | 11-Nor-Carboxy-Delta-9-Tetrahydrocannabinol | Ampule: 1ml | 09/04/85 |
| Industrial Analytical Laboratory, Inc | 11-hydroxy-delta-9-tetrahydrocannabinol | Ampule: 1 ml | 02/18/87 |
| **Industrial Optical** | | | |
| Industrial Optical | Opti-Kleen | Bottle: 5 gallon | 06/24/81 |

EXEMPT CHEMICAL PREPARATIONS—Continued

| Supplier | Product | Form of product | Date |
|---|---|---|---|
| **Innotron of Oregon, Inc.** | | | |
| Innotron of Oregon, Inc | Innofluor Phenobarbital Calibrators 0.0, 3.0, 8.0, 20.0, 40.0, and 80.0 mcg/ml. | Bottle: 3 ml | 07/09/87 |
| Innotron of Oregon, Inc | Phenobarbital Stock Tracer | Vial: 5 ml | 09/23/87 |
| **Janssen Pharmaceutics, Inc.** | | | |
| Janssen Pharmaceutica,Inc | 3H Alfentanil | Vial: 0.5 ml | 02/01/87 |
| Janssen Pharmaceutica,Inc | 3H Fentanyl | Vial: 0.5 ml | 02/01/87 |
| Janssen Pharmaceutica,Inc | 3H Sufentanil | Vial: 0.5 ml | 02/01/87 |
| Janssen Pharmaceutica,Inc | Alfentanil Radioimmunoassay Kit | Kit: 200 tests | 05/13/85 |
| Janssen Pharmaceutica,Inc | Fentanyl Radioimmunoassay Kit | Kit: 200 tests | 05/13/85 |
| Janssen Pharmaceutica,Inc | Sufentanil Radioimmunoassay Kit | Kit: 500 tests | 05/13/85 |
| **Kallestad Diagnostics** | | | |
| Kallestad Diagnostics | Barbital Buffer 901 | Vial | 05/19/81 |
| Kallestad Diagnostics | IEP Buffer No. 900 | Vial: 7 Dram | 12/26/78 |
| Kallestad Diagnostics | Immunoelectrofilm Catalog No. 910 | 1 Film Sealed in Cardboard Container | 03/11/80 |
| Kallestad Diagnostics | Immunoelectrofilms, Catalog No. 1013 | Styrofoam Container: 25 films | 06/22/87 |
| Kallestad Diagnostics | Immunoelectrophoresis Reagent Kit, Catalog No. 1012. | Kit: 3 Vials | 06/22/87 |
| Kallestad Diagnostics | Quanticoat 125I-T3 Uptake Kit Catalog No. 823 | Kit: 400 Determinations | 12/16/85 |
| Kallestad Diagnostics | Quanticoat 125I-T3 Uptake Kit, Catalog No. 833 | Kit: 100 tests | 06/24/81 |
| Kallestad Diagnostics | Quanticoat 125I-T3 Uptake Reagent Catalog No. 785 | Bottle: 500ml | 12/16/85 |
| Kallestad Diagnostics | Quanticoat 125I-T3 Uptake Reagent No. 834 | 2 Glass Bottles: 110ml | 06/24/81 |
| **LKB Instruments, Inc.** | | | |
| LKB Instruments, Inc | Tris-barbiturate Buffer pH 8.6 | Packet: each 6.786 g. 20 packets/box | 05/15/78 |
| **Lemmon Company** | | | |
| Lemmon Company | Etorphine Standard Solution | Plastic Carboy: 1 Liter | 10/31/83 |
| **MCI Biomedical** | | | |
| MCI Biomedical | IEP Buffer, pH 8.2, 0.04 ionic Strength | Package: 6.510 grams | 08/28/72 |
| **Materials & Technology Systems** | | | |
| Materials & Technology Systems | 5-Ethyl-5-(1-Carboxy-N-Propyl) Barbituric Acid | Screw Cap Vial: 8ml | 05/03/73 |
| Materials & Technology Systems | 5-Ethyl-5-(1-Carboxy-N-Propyl) Barbituric Acid Bovine Serum Albumin or Rabbit Serum Albumin. | Vaccine Vial: 8ml | 05/03/73 |
| Materials & Technology Systems | 5-Ethyl-5-(1-Carboxy-N-Propyl) Barbituric Acid Sensitized RBC. | Vaccine Vial: 8ml | 05/03/73 |
| Materials & Technology Systems | Barbiturate Standard | Screwcap Vial: 10ml | 09/17/76 |
| Materials & Technology Systems | Benzoyl Ecgonine | Screw Cap Vial: 25mg and 100 mg | 04/18/74 |
| Materials & Technology Systems | Benzoylecgonine Standard | Screwcap Vial: 10ml | 09/17/76 |
| Materials & Technology Systems | Carboxymethyl-Morphine | Screw Cap Vial: 8ml | 05/03/73 |
| Materials & Technology Systems | Carboxymethyl-Morphine Bovine Serum Albumin or Rabbit Serum Albumin. | Vaccine Vial: 8ml | 05/03/73 |
| Materials & Technology Systems | Carboxymethylmorphine Sensitized RBC | Vaccine Vial: 50ml | 05/03/73 |
| Materials & Technology Systems | Ecgonine Bovine Serum Albumin or Rabbit Serum Albumin. | Vaccine Vial: 8ml | 05/03/73 |
| Materials & Technology Systems | Ecgonine Sensitized RBC | Vaccine Vial: 50ml | 05/03/73 |
| Materials & Technology Systems | Methadone Standard | Screwcap Vial: 10ml | 09/17/76 |
| Materials & Technology Systems | Morphine Standard | Screw Cap Vial: 10ml | 07/17/73 |
| Materials & Technology Systems | Tropinecarboxylic Acid | Screw Cap Vial: 8ml, 10ml | 05/03/73 |
| **Medi-Chem, Inc.** | | | |
| Medi-Chem, Inc | Barbiturate Test Set (Sodium Secobarbital Standard 10mg % w/v) Catalog No. 250. | Bottle: 120ml | 02/22/74 |
| **Medical Analysis Systems, Inc** | | | |
| Medical Analysis Systems, Inc | ACE II Calibrator for the DuPont aca Level 1 | Glass Vial: 22 X 38mm, 5ml | 08/07/86 |
| Medical Analysis Systems, Inc | ACE II Calibrator for the DuPont aca Level 2 | Glass Vial: 22 X 38mm, 5ml | 08/07/86 |
| Medical Analysis Systems, Inc | ACE II Calibrator for the DuPont aca Level 3 | Glass Vial: 22 X 38mm, 5ml | 08/07/86 |
| Medical Analysis Systems, Inc | ChemTrak Liquid Unassayed | Vial: 15ml | 04/30/85 |
| Medical Analysis Systems, Inc | Chemistry Control Assayed, Level 1, 2, & 3 | Vial: 15ml | 04/30/85 |
| Medical Analysis Systems, Inc | Chemistry Control, Level 1, 2, & 3 | Vial: 15ml | 04/30/85 |
| Medical Analysis Systems, Inc | Liquid Urine Calibrator Level 1 and 2 | Vial: 5 ml | 04/03/87 |
| Medical Analysis Systems, Inc | Liquid Urine Control Level 1 | Vial: 5 ml | 04/03/87 |
| Medical Analysis Systems, Inc | chemTRAK Liquid Unassayed Therapeutic Drug Control Level 2. | Kit: 6 x 5ml Vials | 10/08/86 |
| Medical Analysis Systems, Inc | chemTRAK Liquid Unassayed Therapeutic Drug Control Level 3. | Kit: 6 x 5ml Vials | 10/08/86 |
| Medical Analysis Systems, Inc | chemTRAK Liquid Unassayed Therapeutic Drug Control Level 1. | Kit: 6 x 5ml Vials | 10/08/86 |
| **Meloy Labs, Inc.** | | | |
| Meloy Labs, Inc | Counterelectrophoresis Plates, G-301 | Plates: 10 determinations | 09/05/73 |
| Meloy Labs, Inc | Immunoelectrophoresis Plates, G-201 | Plates: 6 / unit | 09/05/73 |
| **Merck and Co., Inc.** | | | |
| Merck and Co., Inc | Cocaine -d3 HCl Catalog # MD-3677 | Ampule: 2 or 5 ml | 06/13/88 |
| Merck and Co., Inc | Codeine -d3 $H_2O$ (N-methyl-d3) No. MD-3776 | 2 ml, 5ml ampule Carton: 5 ampules | 09/06/88 |
| Merck and Co., Inc | Codeine-d3 Catalog # MD-3676 | Ampule: 2 or 5 ml | 06/13/88 |



EXEMPT CHEMICAL PREPARATIONS—Continued

| Supplier | Product | Form of product | Date |
|---|---|---|---|
| Merck and Co., Inc | DL-1 Phenyl-2-aminopropane 1,1,2,3,3,3,-d6 (Amphetamine-d6) Catalog # MD-3682. | Ampule: 2 or 5 ml | 06/13/88 |
| Merck and Co., Inc | DL-1Phenyl-2-methylam-inopropane-1,1,2,3,3,3-d6 HCl (Methamphetamine d6) Catalog # MD-3683. | Ampule: 2 or 5 ml | 06/13/88 |
| Merck and Co., Inc | DL-1-Phenyl-2-aminopropane-1,1,2,3,3,3-d6 HCL No. MD-3776. | 2 ml, 5 ml amber ampule Carton: 5 ampules | 09/06/88 |
| Merck and Co., Inc | Eogonine -d3 Methyl Ester HCl Catalog # MD-3679 | Ampule: 2 or 5 ml | 06/13/88 |
| Merck and Co., Inc | Morphine -d3 HCl 3H20 (N-methyl-d3) No. MD-3777 | 2 ml, 5 ml ampule Carton: 5 ampules | 09/06/88 |
| Merck and Co., Inc | Morphine -d3 HCl Catalog # MD-3680 | Ampule: 2 or 5 ml | 06/13/88 |
| Merck and Co., Inc | O-Benzoylecgonine-d3 Catalog # MD-3676 | Ampule: 2 or 5 ml | 06/13/88 |
| Merck and Co., Inc | Phen-d5-cyclidine HCl Catalog # MD-3681 | Ampule: 2 or 5 ml | 06/13/88 |
| **Micromedic Systems** | | | |
| Micromedic Systems | Micromedic Neonatal T4 125I Tracer Solution | Nalgene Bottle: 4 oz | 06/25/87 |
| Micromedic Systems | Micromedic Neonatal T4 Elution Solution | Nalgene Bottle: 2 oz | 06/25/87 |
| Micromedic Systems | Neonatal T4 125I Tracer Solution | Vial: 30ml | 05/21/80 |
| Micromedic Systems | Neonatal T4 Buffer Solution | Bottle: 8ounce | 05/21/80 |
| Micromedic Systems | T3 RIA 125I Tracer Solution | Vial: 30ml | 12/14/76 |
| Micromedic Systems | T3 RIA Buffer Solution | High Density Polyethylene Bottle: 8 ounce | 12/14/76 |
| Micromedic Systems | T3 Uptake 125I Tracer Solution | Vial: 30ml | 12/14/76 |
| Micromedic Systems | T3 Uptake Buffer Solution | High Density Polyethylene Bottle: 8 ounce | 12/14/76 |
| Micromedic Systems | T4 RIA 125I Tracer Solution | Vial: 30ml | 12/14/76 |
| Micromedic Systems | T4 RIA Buffer Solution | High Density Polyethylene Bottle: 8 ounce | 12/14/76 |
| **Miles Laboratories, Inc.** | | | |
| Miles Laboratories,Inc. | Ames Phenobarbital Assay, Kit Contains: Phenobarbital Standards; 10, 20, 40, & 60mcg/ml. | 6.1 ml Vials | 03/01/79 |
| Miles Laboratories, Inc | Ames Phenobarbital Controls, 15mcg/ml, 30mcg/ml, 50mcg/ml. | Vial: 6.1ml | 05/21/80 |
| Miles Laboratories, Inc | Cliniria T-3 Uptake Test, Kit Contains: (1)125I T-3 Uptake Reagent & (2) Separating Reagent. | 200ml Bottles | 11/10/78 |
| Miles Laboratories, Inc | Clinistat Calibrator Nos. 1 and 2 | Vial: 1ml | 12/19/80 |
| Miles Laboratories, Inc | Clinistat Control B,C,D,and E | Vial: 1ml | 12/19/80 |
| Miles Laboratories, Inc | Seralute Total T-4 (RIA) 125I Reagent Kit, No.3304, No.3305. | Kit: 20 columns, 100 columns | 03/28/77 |
| Miles Laboratories, Inc | Seralyzer ARIS Drug Assay Control | Vial: 1ml | 01/17/84 |
| Miles Laboratories, Inc | Seralyzer ARIS Drug Assay High Calibrator | Vial: 0.5ml | 01/17/84 |
| Miles Laboratories, Inc | Seralyzer ARIS Drug Assay Low Calibrator | Vial: 0.5ml | 01/17/84 |
| Miles Laboratories, Inc | Seralyzer ARIS Phenytoin Reagent Strips | Bottle Containing 25 and 50 Strips | 05/28/86 |
| Miles Laboratories, Inc | T-4 Buffer | Glass Screwtop Vial: 3/4 ounce | 03/28/77 |
| Miles Laboratories, Inc | TDA Cross-Reactivity Cocktails | Glass Vial: 1ml | 02/01/83 |
| Miles Laboratories, Inc | TEK-CHEK Special Urine Control (supplemental) | Vial: 25ml | 05/01/70 |
| Miles Laboratories, Inc | Tetralute | Bottle: 4.9 g | 07/29/70 |
| Miles Laboratories, Inc | Thyrolute I125, Reagent Kit, No.5250 | Kit: 20 columns | 12/02/74 |
| Miles Laboratories, Inc | Thyrolute I125, Reagent Kit, No.5252 | Kit: 100 columns | 12/02/74 |
| **Monobind, Inc.** | | | |
| Monobind, Inc | Monobind T3 Antibody Reagent | Test Tube w/Cap: 70ml | 11/08/77 |
| Monobind, Inc | Monobind T3 Tracer Reagent | Wheaton Glass Container: 55ml | 11/08/77 |
| Monobind, Inc | Monobind T4 Antibody Reagent | Test Tube w/Cap: 70ml | 11/08/77 |
| Monobind, Inc | Monobind T4 Tracer Reagent | Wheaton Glass Container: 55ml | 11/08/77 |
| Monobind, Inc | Monobind TSH Antibody Reagent | Test Tube w/Cap: 10.5ml | 11/08/77 |
| Monobind, Inc | Monobind TSH Non-Specific Buffer | Wheaton Glass: 1.05ml | 11/08/77 |
| Monobind, Inc | Monobind TSH Precipitating Reagent | Plastic Container w/Cap : 105ml | 11/08/77 |
| Monobind, Inc | Monobind TSH Tracer Reagent | Wheaton Glass Container 10.5ml | 11/08/77 |
| Monobind, Inc | T3 Adsorbent Reagent | Glass Bottle: 110ml, 50ml Plastic Bottle: 260ml | 05/15/78 |
| Monobind, Inc | T3 Uptake Tracer Reagent | Glass Bottle: 55ml, 30ml Plastic Bottle: 125ml | 05/15/78 |
| Monobind, Inc | TSH Radioimmunoassay Test System | Kit: 100 Tests | 11/08/77 |
| Monobind, Inc | Thyroxine Radioimmunoassay Test System | Kit: 100 Tests | 11/08/77 |
| Monobind, Inc | Triiodothyronine Radioimmunoassay Test System | Kit: 100 tests | 11/08/77 |
| **Monoclonal Antibodies, Inc.** | BF | | |
| Monoclonal Antibodies, Inc | Test Kit for Cocaine Metabolites in Urine | Kit: 50 tests | 10/17/86 |
| Monoclonal Antibodies, Inc | Test Kit for Opiates in Urine | Kit: 50 tests | 10/17/86 |
| Monoclonal Antibodies, Inc | Test Kit for Tetrahydrocannabinol (THC) in Urine | Kit: 50 tests | 10/17/86 |
| **Nuclear Diagnostics, Inc.** | | | |
| Nuclear Diagnostics, Inc | SPINSEP-TBG Reagent Catalog No. 17100 | Polypropylene Bottle: 105ml | 12/15/77 |
| Nuclear Diagnostics, Inc | TETRIA P.E.G. Antiserum Catalog No. 16100A | Polypropylene Bottle: 55ml | 03/10/78 |
| Nuclear Diagnostics, Inc | TETRIA P.E.G. Reagent Catalog No. 16100 | Polypropylene Bottle: 105ml | 07/08/77 |
| Nuclear Diagnostics, Inc | TETRIA P.E.G. Reagent Catalog No. 16100R | Polypropylene Bottle: 55ml | 03/10/78 |
| Nuclear Diagnostics, Inc | TRIA-P.E.G. Antiserum Catalog No. 12100A | Polypropylene Bottle: 55ml | 03/10/78 |
| Nuclear Diagnostics, Inc | TRIA-P.E.G. Reagent Catalog No. 12100R | Polypropylene Bottle: 55ml | 03/10/78 |
| **OMI International Corporation** | | | |
| OMI International Corporation | Compound N Solution | Steel Drum: 55 gallon | 10/01/75 |
| **Organon Teknika Corp.** | | | |
| Organon Teknika Corp | ASSURE, Levels I & II | Vial: 10 ml | 06/27/80 |
| Organon Teknika Corp | Bovine QAS Clinical Study | 6 Vials/Kit (10ml/vial) | 04/28/80 |
| Organon Teknika Corp | Liothyronine T3 125I | Boston Round Amber Bottle: 16 ounce | 01/20/76 |

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| Supplier | Product | Form of product | Date |
|---|---|---|---|
| Organon Teknika Corp | Liothyronine T3 125I | Boston Round Amber Bottle: 4 ounce | 02/18/79 |
| Organon Teknika Corp | Midwest/ Illinois/New Jersey Quality Control Program, Level I & II. | Vial: 10 ml, 10 vials/kit | 04/16/81 |
| Organon Teknika Corp | Owren's Veronal Buffer for FIBRIQUIK | Bottle: 37 ml | 05/07/80 |
| Organon Teknika Corp | PACP I & II | Kit: 36 vials/kit | 03/07/80 |
| Organon Teknika Corp | PROFILE Anticonvulsant Levels I & II | Vial: 10 ml | 11/26/80 |
| Organon Teknika Corp | Plastin | Vial: 7.3ml | 03/13/72 |
| Organon Teknika Corp | Plastin Plus Activator | Vial: 7.3ml | 03/13/72 |
| Organon Teknika Corp | Profile General Set | Kit Ctg: 6 vials | 02/22/82 |
| Organon Teknika Corp | Profile General-Levels I & II | Vial: 5 ml | 02/22/82 |
| Organon Teknika Corp | Quality Assurance Serum Level I | Vial: 16.5 ml, 6 vials/kit | 08/17/78 |
| Organon Teknika Corp | Quality Assurance Serum Level II | Vial: 16.5 ml, 6 vials/kit | 08/17/78 |
| Organon Teknika Corp | Russell's Viper Venom Reagent | Vial: 7.3ml containing 48 mg of powder | 07/08/74 |
| Organon Teknika Corp | Simplastin | Vial: 4.7ml, 7.3ml, and 16.5ml | 03/13/72 |
| Organon Teknika Corp | Simplastin-A | Vial: 7.3ml | 03/13/72 |
| Organon Teknika Corp | T-4 125I Reagent | Boston Round Bottle: 2 ounce, amber bottle, 7 dr | 01/20/76 |
| Organon Teknika Corp | T-4 Antiserum (rabbit) | Boston Round Bottle: 4 ounce, clear bottle, 7 dr | 01/20/76 |
| Organon Teknika Corp | TETRA-TAB-RIA T4 Diagnostic Kit | Kit: 40tests, 200tests | 01/20/76 |
| Organon Teknika Corp | TETRA-TUBE RIA T4 Diagnostic Kit | Kit: 100 tests, 500 tests | 06/03/83 |
| Organon Teknika Corp | TGTR Set | Package: 4 Tests per set | 03/13/72 |
| Organon Teknika Corp | TRI-TAB T3 Uptake Diagnostic Kit | Kit: 200 Tests | 01/20/76 |
| Organon Teknika Corp | TRI-TAB T3 Uptake Diagnostic Kit | Kit: 40 tests | 02/18/79 |
| Organon Teknika Corp | Unassayed Chemistry Serum Control, Levels I & II | Vial: 25 ml | 06/27/80 |
| **Ortho Diagnostic Systems, Inc.** | | | |
| Ortho Diagnostic Systems, Inc | Activated ThromboFAX No. 721000 | Bottle: 3.2ml | 09/21/71 |
| Ortho Diagnostic Systems, Inc | Ortho Activated PTT Reagent | Glass Vial: 30 determination size, 100 | 05/23/83 |
| Ortho Diagnostic Systems, Inc | Ortho Plasma Coagulation Control Level I | Glass Vial: 5ml | 10/25/83 |
| Ortho Diagnostic Systems, Inc | Ortho Plasma Coagulation Control Level II | Glass Vial: 5ml | 10/25/83 |
| Othro Diagnostic Systems, Inc | ORTHO Owren's Buffer | Kit: 6-20 ml vials | 08/26/88 |
| **Pacific Hemostasis** | | | |
| Pacific Hemostasis | Barbital Buffered Saline | Vial: 100ml | 05/24/84 |
| Pacific Hemostasis | Barbital Buffered Saline with Heparin | Vial: 90ml | 05/24/84 |
| Pacific Hemostasis | Diluting Fluid | Vial: 20ml | 05/24/84 |
| **Pantex** | | | |
| Pantex | Immuno T3 Kit: (1)L-Triiodothyronine 125I (2)1st Antiserum (3)2nd Antiserum (4)Diluent (5)Standerds. | Kit Containing Bottles: (1)10ml (2)10ml (3)50ml (4)5ml (5)3ml. | 01/04/79 |
| Pantex | Immuno-Digoxin Kit Containing: (1)Digoxin 125I (2)1st Antiserum (3) 2nd Antiserum (4)Diluent. | Kit Containing Bottles: (1)10ml (2)20ml (3)50ml (4)5ml | 01/04/79 |
| Pantex | Immuno-Estriol 125I Kit: 2nd Antiserum | Bottle: 50ml | 01/04/79 |
| Pantex | Immuno-Estriol Kit: (1)Estriol 3H RIA (2)Estriol 3H Recovery (3)1st Antiserum (4)2nd Antiserum (5)Diluent (6)Buffer (7)Standerds. | Kit Containing Bottles: (1)10ml (2)5ml (3)10ml (4)20ml (5)100ml (6)50ml (7)5ml. | 01/04/79 |
| Pantex | Immuno-T4 Kit: (1)Thyroxine 125I (2)1st Antiserum (3)2nd Antiserum (4)Diluent (5)Standerds. | Kit Containing Bottles: (1)100ml,1000ml (2)50ml (3)100ml (4)5ml (5)3ml. | 01/04/79 |
| Pantex | Immuno-Testosterone 125I Kit: (1)Testosterone 125I (2)1st Antiserum (3)2nd Antiserum (4)Diluent (5)Standerds. | Kit Containing Bottles: (1)10ml (2)10ml (3)50ml (4)100ml (5)5ml. | 01/04/79 |
| Pantex | T3 Uptake Kit: L-Triiodothyronine 125I | Bottle: 100ml, 1000ml | 01/04/79 |
| **Perkin-Elmer Corporation** | | | |
| Perkin-Elmer Corporation | Amphetamine Polarization Fluoroimmunoassay Kit | Kit: 100 tests | 12/18/86 |
| Perkin-Elmer Corporation | Barbiturates Polarization Fluoroimmunoassay Kit | Kit: 100 tests | 12/18/86 |
| Perkin-Elmer Corporation | Cocaine Polarization Fluoroimmunoassay Kit | Kit: 100 tests | 12/18/86 |
| Perkin-Elmer Corporation | Methadone Polarization Fluoroimmunoassay Kit | Kit: 100 tests | 12/18/86 |
| Perkin-Elmer Corporation | Morphine Polarization Fluoroimmunoassay Kit | Kit: 100 tests | 12/18/86 |
| Perkin-Elmer Corporation | Opiates Polarization Fluoroimmunoassay Kit | Kit: 100 tests | 12/18/86 |
| **Princeton Separations, Inc.** | | | |
| Princeton Separations, Inc | Panagel 16 | Pouch: 1 slide | 06/29/87 |
| Princeton Separations, Inc | Panagel 8 | Pouch: 1 slide | 06/29/87 |
| Princeton Separations, Inc | Panagel Electrobuffer | Fiber Drum: 25 kg | 06/29/87 |
| Princeton Separations, Inc | Panagel Electrode Buffer | Pouch: 18.3 gms | 06/29/87 |
| Princeton Separations, Inc | Panagel LD Isoenzyme Electrode Buffer | Pouch: 11.85 gms | 06/29/87 |
| Princeton Separations, Inc | Panagel LD Isoenzyme Slide | Pouch: 1 slide | 06/29/87 |
| **Quantimetrix** | | | |
| Quantimetrix | Quantimetrix Anticonvulsant Serum Drug Control, Liquid Level II Control No. 17-0303-2. | Polyethylene Dropper Bottle: 15ml | 04/16/86 |
| Quantimetrix | Quantimetrix Antidepressant Serum Drug Control, Liquid Level I Control No. 17-0303-1. | Polyethylene Dropper Bottle: 15ml | 04/16/86 |
| Quantimetrix | Quantimetrix Antidepressant Serum Drug Control, Liquid Level I Control No. 17-0305-1. | Polyethylene Dropper Bottle: 15ml | 04/16/86 |
| Quantimetrix | Quantimetrix Antidepressant Serum Drug Control, Liquid Level II Control No. 17-0305-2. | Polyethylene Dropper Bottle: 15ml | 04/16/86 |
| Quantimetrix | Urine Drugs of Abuse Control Catalog No. 12-2411-1 | Dropper Bottle: 15 ml | 02/23/87 |



EXEMPT CHEMICAL PREPARATIONS—Continued

| Supplier | Product | Form of product | Date |
|---|---|---|---|
| **Quin-Tec, Inc.** | | | |
| Quin-Tec, Inc | Additive SB-1 | Drum: 55 gals | 05/11/87 |
| Quin-Tec, Inc | Quin-Tec Brightener 402 | Plastic Pail: 5 gallons, Plastic Drum: 55 gallons | 10/13/81 |
| Quin-Tec, Inc | Quin-Tec Brightener 404 | Plastic Pail: 5 gallons, Plastic Drum: 55 gallons | 10/13/81 |
| **Radian Corporation** | | | |
| Radian Corporation | 3, 4-Methylenedioxy-amphetamine-D5 0.1 mg/ml | 2 ml amber ampule | 10/19/88 |
| Radian Corporation | 3, 4-Methylenedioxy-amphetamine-D5 1.0 mg/ml | 2 ml amber ampule | 10/19/88 |
| Radian Corporation | 3, 4-Methylenedioxy-methamphetamine-D5 0.1 mg/ml | 2 ml amber ampule | 10/19/88 |
| Radian Corporation | 3, 4-Methylenedioxy-methamphetamine-D5 1.0 mg/ml | 2 ml amber ampule | 10/19/88 |
| Radian Corporation | Diazepam-D5 0.1 mg/ml | 2 ml amber ampule | 10/19/88 |
| Radian Corporation | Diazepam-D5 1.0 mg/ml | 2 ml amber ampule | 10/19/88 |
| Radian Corporation | Ecgonine Methyl Ester-D3 1.0 mg/ml | 2 ml amber ampule | 10/19/88 |
| Radian Corporation | Ecgonine Methyl Ester-D3 0.1 mg/ml | 2 ml amber ampule | 10/19/88 |
| Radian Corporation | Hydrocodone -D3 0.1 mg/ml | 2 ml amber ampule | 10/19/88 |
| Radian Corporation | Hydrocodone -D3 1.0 mg/ml | 2 ml amber ampule | 10/19/88 |
| Radian Corporation | Hydromorphone -D3 0.1 mg/ml | 2 ml amber ampule | 10/19/88 |
| Radian Corporation | Hydromorphone -D3 1.0 mg/ml | 2 ml amber ampule | 10/19/88 |
| Radian Corporation | Methadone -D5 0.1 mg/ml | 2 ml amber ampule | 10/19/88 |
| Radian Corporation | Methadone -D5 1.0 mg/ml | 2 ml amber ampule | 10/19/88 |
| Radian Corporation | Methaqualone -D4 0.1 mg/ml | 2 ml amber ampule | 10/19/88 |
| Radian Corporation | Methaqualone -D4 1.0 mg/ml | 2 ml amber ampule | 10/19/88 |
| Radian Corporation | Nordiazepam -D5 0.1 mg/ml | 2 ml amber ampule | 10/19/88 |
| Radian Corporation | Nordiazepam -D5 1.0 mg/ml | 2 ml amber ampule | 10/19/88 |
| Radian Corporation | Oxazepam -D5 0.1 mg/ml | 2 ml amber ampule | 10/19/88 |
| Radian Corporation | Oxazepam -D5 1.0 mg/ml | 2 ml amber ampule | 10/19/88 |
| Radian Corporation | Propoxyphene -D5 0.1 mg/ml | 2 ml amber ampule | 10/19/88 |
| Radian Corporation | Propoxyphene -D5 1.0 mg/ml | 2 ml amber ampule | 10/19/88 |
| **Research Triangle Institute** | | | |
| Research Triangle Institute | 11-Nor-9-carboxy-delta-9 THC Blood Standards Kit | Kit Containing: 18-21ml Ampuls; 1-5ml Ampul | 10/26/81 |
| Research Triangle Institute | 11-Nor-9-carboxy-delta-9 THC Plasma Standards Kit | Kit Containing: 18-21ml Ampuls; 1-5ml Ampul | 10/26/81 |
| Research Triangle Institute | Delta-9 THC Blood Standards Kit | Kit Containing: 16-2ml Ampuls; 1-5ml Ampul | 10/26/81 |
| Research Triangle Institute | Delta-9 THC Plasma Standards Kit | Kit Containing: 16-2ml Ampuls; 1-5ml Ampul | 11/02/81 |
| Research Triangle Institute | Iodine Kit for Radioimmunoessay of 11-Nor-9-carboxy-delta-9 THC in Blood. | Kit Containing: 26-1ml Ampuls; 2-20ml Vials; 2-250ml Bottles. | 10/26/81 |
| Research Triangle Institute | Iodine Kit for Radioimmunoassay of 11-Nor-9-carboxy-delta-9 THC in Plasma. | Kit Containing: 24-1ml Ampuls; 2-20ml Vials; 2-250ml Bottles. | 10/26/81 |
| Research Triangle Institute | Iodine Kit for Radioimmunoassay of Delta-9 THC | Kit Containing: 20-1ml Ampules; 2-20ml Vials; 2-250ml Bottles. | 10/20/80 |
| Research Triangle Institute | Iodine Kit for Radioimmunoassay of Delta-9 THC in Blood. | Kit Containing: 22-1ml Ampules; 2-20ml Vials; 2-250ml Bottles. | 07/10/81 |
| Research Triangle Institute | Tritium Kit for Radioimmunoassay of Delta-9 THC | Kit Containing: 20-1ml Ampules; 2-20ml Vials; 2-250ml Bottles. | 06/27/80 |
| **Roche Diagnostic Systems, Inc.** | | | |
| Roche Diagnostic Systems, Inc. | 125I T3 (for T3 Uptake Radioassay) | Vial: 15ml | 07/22/81 |
| Roche Diagnostic Systems, Inc. | Abuscreen 125I Amphetamine Reagent | Vial: 30ml, 500ml | 02/15/83 |
| Roche Diagnostic Systems, Inc. | Abuscreen 125I Benzoylecgonine Reagent | Vial: 30ml, 500ml | 02/15/83 |
| Roche Diagnostic Systems, Inc. | Abuscreen 125I Methaqualone Reagent | Vial: 30ml, 500ml | 02/15/83 |
| Roche Diagnostic Systems, Inc. | Abuscreen 125I Morphine Reagent | Vial: 30ml, 500ml | 02/15/83 |
| Roche Diagnostic Systems, Inc. | Abuscreen 125I Oxazepam Reagent | Vial: 30ml, 500ml | 03/06/87 |
| Roche Diagnostic Systems, Inc. | Abuscreen 125I Phencyclidine Reagent | Vial: 30ml, 500ml | 02/15/83 |
| Roche Diagnostic Systems, Inc. | Abuscreen 125I Secobarbital Reagent | Vial: 30ml, 500ml | 02/15/83 |
| Roche Diagnostic Systems, Inc. | Abuscreen 125I Tetrahydrocannabinol Reagent | Vial: 500ml, 30ml | 08/14/81 |
| Roche Diagnostic Systems, Inc. | Abuscreen 125I-LSD Reagent | Vial: 500ml, 30ml | 01/28/84 |
| Roche Diagnostic Systems, Inc. | Abuscreen EIA Barbiturate Conjugate Reagent | Vial: 30 ml | 10/02/86 |
| Roche Diagnostic Systems, Inc. | Abuscreen EIA Barbiturate Enzyme Immunoassay Test Kit for Barbiturate Metabolites. | Kit: 100 Tests | 10/02/86 |
| Roche Diagnostic Systems, Inc. | Abuscreen EIA Barbiturate Negative Control | Vial: 4 ml | 04/15/87 |
| Roche Diagnostic Systems, Inc. | Abuscreen EIA Barbiturate Positive Calibrator 50-1200 (in increments of 50) ng/ml. | Vial: 4 ml | 10/02/86 |
| Roche Diagnostic Systems, Inc. | Abuscreen EIA Barbiturate Positive Control | Vial: 4 ml | 04/15/87 |
| Roche Diagnostic Systems, Inc. | Abuscreen EIA Cannabinoid Positive Calibrator 50-1200 (in increments of 50) ng of THC derivative/ml. | Vial: 4ml | 08/28/86 |
| Roche Diagnostic Systems, Inc. | Abuscreen EIA Cannabinoid THC Conjugate Reagent | Vial: 30ml | 08/28/86 |
| Roche Diagnostic Systems, Inc. | Abuscreen EIA Cannabinoids Enzyme Immunoassay Test Kit for Cannabinoids. | Kit: 100 Tests | 08/28/86 |
| Roche Diagnostic Systems, Inc. | Abuscreen EIA Cannabinoids Negative Control | Vial: 4 ml | 04/15/87 |
| Roche Diagnostic Systems, Inc. | Abuscreen EIA Cannabinoids Positive Control | Vial: 4 ml | 04/15/87 |
| Roche Diagnostic Systems, Inc. | Abuscreen EIA Cocaine Metabolite Benzoylecgonine Conjugate Reagent. | Vial: 30ml | 05/28/86 |
| Roche Diagnostic Systems, Inc. | Abuscreen EIA Cocaine Metabolite Benzoylecgonine Positive Calibrator 50-1200 (in increments of 50) ng/ml. | Vial: 4ml | 05/28/86 |
| Roche Diagnostic Systems, Inc. | Abuscreen EIA Cocaine Metabolite Enzyme Immunoassay Test Kit for Benzoylecgonine. | Kit: 100 tests | 05/28/86 |
| Roche Diagnostic Systems, Inc. | Abuscreen EIA Cocaine Metabolite Negative Control | Vial: 4 ml | 04/15/87 |
| Roche Diagnostic Systems, Inc. | Abuscreen EIA Cocaine Metabolite Positive Control | Vial: 4 ml | 04/15/87 |
| Roche Diagnostic Systems, Inc. | Abuscreen EIA Morphine Conjugate Reagent | Vial: 30ml | 05/28/86 |

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| Supplier | Product | Form of product | Date |
|---|---|---|---|
| Roche Diagnostic Systems, Inc. | Abuscreen EIA Morphine Enzyme Immunoassay Test Kit for Morphine and Morphine Metabolites. | Kit: 100 tests | 05/28/83 |
| Roche Diagnostic Systems, Inc. | Abuscreen EIA Morphine Negative Control | Vial: 4 ml | 04/15/87 |
| Roche Diagnostic Systems, Inc. | Abuscreen EIA Morphine Positive Calibrator 50-1200 (in increments of 50) ng/ml. | Vial: 4ml | 05/28/86 |
| Roche Diagnostic Systems, Inc. | Abuscreen EIA Morphine Positive Control | Vial: 4 ml | 04/15/87 |
| Roche Diagnostic Systems, Inc. | Abuscreen Positive Ref. Control (Benzodiazepines) 25, 50, 75, 100 ng/ml or 150-1000 (in increments of 50) ng/ml. | Vial: 5ml, 100ml | 03/06/87 |
| Roche Diagnostic Systems, Inc. | Abuscreen Positive Ref. Control(LSD) 0.1, 0.2, 0.25, 0.3, 0.4, 0.5, 0.6, 0.7, 0.75, 0.8, 0.9, 1.0, 1.25, 1.5, 1.75, 2.0, 2.5, 5.0 or 10.0 ng/ml. | Vial: 5ml, 100ml | 01/28/86 |
| Roche Diagnostic Systems, Inc. | Abuscreen Positive Reference Control (Amphetamine) 100, 500, 750, 1000, 1500,or 2000 ng/ml. | Vial: 6.6ml, 100 ml | 02/15/83 |
| Roche Diagnostic Systems, Inc. | Abuscreen Positive Reference Control (Barbiturate) 50, 100, 200, 300, 400, 500, 750, 1000,or 2000 ng/ml. | Vial: 6.6ml, 100 ml | 02/15/83 |
| Roche Diagnostic Systems, Inc. | Abuscreen Positive Reference Control (Benzoylecgonine) 100, 150, 200, 300, 400, 500, 600, 750, 1000, or 2000 ng/ml. | Vial: 6.6ml, 100 ml | 02/15/83 |
| Roche Diagnostic Systems, Inc. | Abuscreen Positive Reference Control (Methaqualone) 100, 300, 500, 750, 1000,or 2000 ng/ml. | Vial: 6.6ml, 100 ml | 02/15/83 |
| Roche Diagnostic Systems, Inc. | Abuscreen Positive Reference Control (Morphine) 40, 50, 100, 150, 200, 300, 500, 600,or 1000 ng/mL. | Vial: 6.6ml, 120ml | 02/15/83 |
| Roche Diagnostic Systems, Inc. | Abuscreen Positive Reference Control (Phencyclidine) 10, 12.5, 25, 50, 75, 100, 200, or 500 ng/ml. | Vial: 6.6ml, 120ml | 02/15/83 |
| Roche Diagnostic Systems, Inc. | Abuscreen Positive Reference Control Cannabinoid 20, 25, 50, 100, 150, 200, 300, 400, or 500 ng/ml. | Vial: 6.6ml, 100 ml | 02/20/84 |
| Roche Diagnostic Systems, Inc. | Abuscreen Positive Reference Controls for Amphetamine (Single Level). | Kit: 2 Vials | 10/12/87 |
| Roche Diagnostic Systems, Inc. | Abuscreen Positive Urine Reference Std. (Oxazepam or Desmethyldiazepam) 25, 50, 75, 100 ng/ml or 150-1000 (in increments of 100) ng/ml. | Vial: 5ml, 100ml | 06/25/86 |
| Roche Diagnostic Systems, Inc. | Abuscreen Positive Urine Reference Std.(LSD) 0.1, 0.2, 0.25, 0.3, 0.4, 0.5, 0.6, 0.7, 0.75, 0.8, 0.9, 1.0, 1.25, 1.5, 1.75, 2.0, 2.5, 5, or 10 ng/ml. | Vial: 5ml, 60 ml, & 100 ml | 01/28/86 |
| Roche Diagnostic Systems, Inc. | Abuscreen Radioimmunoassay for Amphetamine | Kit: 100 tests, 2500 tests | 02/15/83 |
| Roche Diagnostic Systems, Inc. | Abuscreen Radioimmunoassay for Amphetamine High Specificity. | Kit: 100 tests, 2500 tests | 09/13/85 |
| Roche Diagnostic Systems, Inc. | Abuscreen Radioimmunoassay for Barbiturates | Kit: 100 tests, 2500 tests | 02/15/83 |
| Roche Diagnostic Systems, Inc. | Abuscreen Radioimmunoassay for Benzodiazepines | Kit: 100 tests, 2500 tests | 03/06/87 |
| Roche Diagnostic Systems, Inc. | Abuscreen Radioimmunoassay for Cannabinoids | Kit: 100 Tests 2500 Tests | 06/14/81 |
| Roche Diagnostic Systems, Inc. | Abuscreen Radioimmunoassay for Cocaine Metabolite | Kit: 100 Tests, 2500 Tests | 02/15/83 |
| Roche Diagnostic Systems, Inc. | Abuscreen Radioimmunoassay for LSD (Lysergic Acid Diethylamide). | Kit: 100 tests, 2500 tests | 01/28/86 |
| Roche Diagnostic Systems, Inc. | Abuscreen Radioimmunoassay for Methaqualone | Kit: 100 tests, 2500 tests | 02/15/83 |
| Roche Diagnostic Systems, Inc. | Abuscreen Radioimmunoassay for Morphine | Kit: 100 tests, 2500 tests | 02/15/83 |
| Roche Diagnostic Systems, Inc. | Abuscreen Radioimmunoassay for Phencyclidine (PCP). | Kit: 100 tests, 2500 tests | 02/15/83 |
| Roche Diagnostic Systems, Inc. | Abuscreen Reference Controls for Amphetamine (Multi-Level). | Kit: 3 Vials | 10/12/87 |
| Roche Diagnostic Systems, Inc. | Abuscreen Reference Controls for Barbiturate (Multi-Level). | Kit: 3 Vials | 10/12/87 |
| Roche Diagnostic Systems, Inc. | Abuscreen Reference Controls for Barbiturate (Single-Level). | Kit: 2 Vials | 10/12/87 |
| Roche Diagnostic Systems, Inc. | Abuscreen Reference Controls for Benzodiazepines (Single-Level). | Kit: 2 Vials | 10/12/87 |
| Roche Diagnostic Systems, Inc. | Abuscreen Reference Controls for Cannabinoids (Multi-Level). | Kit: 3 Vials | 10/12/87 |
| Roche Diagnostic Systems, Inc. | Abuscreen Reference Controls for Cannabinoids (Single-Level). | Kit: 2 Vials | 10/12/87 |
| Roche Diagnostic Systems, Inc. | Abuscreen Reference Controls for Cocaine Metabolite (Multi-Level). | Kit: 3 Vials | 10/12/87 |
| Roche Diagnostic Systems, Inc. | Abuscreen Reference Controls for Cocaine Metabolite (Single-Level). | Kit: 2 Vials | 10/12/87 |
| Roche Diagnostic Systems, Inc. | Abuscreen Reference Controls for LSD (Lysergic Acid Diethylamide) (Multi-Level). | Kit: 3 Vials | 10/12/87 |
| Roche Diagnostic Systems, Inc. | Abuscreen Reference Controls for LSD (Lysergic Acid Diethylamide) (Single-Level). | Kit: 2 Vials | 10/12/87 |
| Roche Diagnostic Systems, Inc. | Abuscreen Reference Controls for Methaqualone (Single-Level). | Kit: 2 Vials | 10/12/87 |
| Roche Diagnostic Systems, Inc. | Abuscreen Reference Controls for Morphine (Multi-Level). | Kit: 3 Vials | 10/12/87 |
| Roche Diagnostic Systems, Inc. | Abuscreen Reference Controls for Morphine (Single-Level). | Kit: 2 Vials | 10/12/87 |
| Roche Diagnostic Systems, Inc. | Abuscreen Reference Controls for Phencyclidine (PCP) (Multi-Level). | Kit: 3 Vials | 10/12/87 |
| Roche Diagnostic Systems, Inc. | Abuscreen Reference Controls for Phencyclidine (PCP) (Single-Level). | Kit: 2 Vials | 10/12/87 |
| Roche Diagnostic Systems, Inc. | Aggutex Amphetamine Latex Reagent | Vial: 2ml | 06/27/83 |



EXEMPT CHEMICAL PREPARATIONS—Continued

| Supplier | Product | Form of product | Date |
|---|---|---|---|
| Roche Diagnostic Systems, Inc. | Aggutex Amphetamine Positive Human Urine Control | Vial: 5ml | 06/27/83 |
| Roche Diagnostic Systems, Inc. | Aggutex Amphetamine Test Kit | Kit: 20 tests, 100 tests | 02/15/83 |
| Roche Diagnostic Systems, Inc. | Aggutex Barbiturate Latex Reagent | Vial: 2ml | 06/27/83 |
| Roche Diagnostic Systems, Inc. | Aggutex Barbiturate Positive Human Urine Control | Vial: 5ml | 06/27/83 |
| Roche Diagnostic Systems, Inc. | Aggutex Barbiturate Test Kit | Kit: 20 tests, 100 tests | 06/27/83 |
| Roche Diagnostic Systems, Inc. | Aggutex Methaqualone Latex Reagent | Vial: 2ml | 06/27/83 |
| Roche Diagnostic Systems, Inc. | Aggutex Methaqualone Positive Human Urine Control | Vial: 5ml | 06/27/83 |
| Roche Diagnostic Systems, Inc. | Aggutex Methaqualone Test Kit | Kit: 20 tests, 100 tests | 06/27/83 |
| Roche Diagnostic Systems, Inc. | Aggutex Morphine Latex Reagent | Vial: 2ml | 06/27/83 |
| Roche Diagnostic Systems, Inc. | Aggutex Morphine Positive Human Urine Control | Vial: 5ml | 06/27/83 |
| Roche Diagnostic Systems, Inc. | Aggutex Morphine Test Kit | Kit: 20 tests, 100 tests | 06/27/83 |
| Roche Diagnostic Systems, Inc. | Aggutex Phencyclidine (PCP) Test Kit | Kit: 20 tests, 100 tests | 06/27/83 |
| Roche Diagnostic Systems, Inc. | Aggutex Phencyclidine Latex Reagent | Vial: 2ml | 06/27/83 |
| Roche Diagnostic Systems, Inc. | Aggutex Phencyclidine Positive Human Urine Control | Vial: 5ml | 06/27/83 |
| Roche Diagnostic Systems, Inc. | Amerifluor Florescent Immunoassay-Phenobarbital | Kit: 100 tests | 04/30/82 |
| Roche Diagnostic Systems, Inc. | Anti-T3 Reagent 125I T3 (for T3 Radioimmunoassay) | Vial: 15ml | 07/22/81 |
| Roche Diagnostic Systems, Inc. | Anti-T4 Reagent 125I T4 (for T4 Radioimmunoassay) | Vial: 15ml | 07/22/81 |
| Roche Diagnostic Systems, Inc. | COBAS FP Phenobarbital Calibrators | Kit: 6 Vials | 11/13/84 |
| Roche Diagnostic Systems, Inc. | COBAS FP Phenobarbital Calibrators B through F | Vial: 5ml | 11/13/84 |
| Roche Diagnostic Systems, Inc. | COBAS FP Phenobarbital Tracer Reagent | Vial: 5ml | 11/13/84 |
| Roche Diagnostic Systems, Inc. | COBAS FP Reagents for Phenoberbital | Kit: 100 tests | 11/13/84 |
| Roche Diagnostic Systems, Inc. | COBAS FP TDM Controls | Kit: 6 Vials | 11/13/84 |
| Roche Diagnostic Systems, Inc. | Immunizing Preparation No. 1, 2, 3, 4, 5, 6, 7, or 8. | Vial: 10, 20, 50, or 100ml | 01/25/83 |
| Roche Diagnostic Systems, Inc. | Immunizing Preparation No. 9 | Vial: 10ml, 20ml, 50ml, or 100ml | 07/24/84 |
| Roche Diagnostic Systems, Inc. | Immunizing Preparation No. 9A | Vial: 10ml, 20ml, 50ml, or 100ml | 07/24/84 |
| Roche Diagnostic Systems, Inc. | Immunizing Preparation No. 10 | Vial: 10ml, 20ml, 50ml, or 100ml | 04/02/86 |
| Roche Diagnostic Systems, Inc. | Immunizing Preparation No. 10A | Vial: 10ml, 20ml, 50ml, or 100ml | 04/02/86 |
| Roche Diagnostic Systems, Inc. | Immunizing Preparations No. 1A, 2A, 3A, 4A, 5A, 6A, 7A, & 8A. | Vial: 10ml, 20ml, 50ml, or 100ml | 07/12/83 |
| Roche Diagnostic Systems, Inc. | NSB Reagent | Vial: 2ml | 07/22/81 |
| Roche Diagnostic Systems, Inc. | TDM Controls, Levels I through III | Vial: 5ml | 11/13/84 |
| **Rowley Biochemical Institute, Inc.** | | | |
| Rowley Biochemical Institute, Inc. | Aldehyde Fuchsin Solution | Bottle: Pint, Quart, Gallon | 02/02/84 |
| Rowley Biochemical Institute, Inc. | Aldehyde Thionin Solution | Bottle: Pint, Quart, Gallon | 02/02/84 |
| Rowley Biochemical Institute, Inc. | Mayer's Hematoxylin Solution | Bottle: Pint, Quart, Gallon | 02/02/84 |
| **Schering Corp.** | | | |
| Schering Corp. | Hepaquik | Vial: 9 Dram and Plate | 07/16/72 |
| **Serono Diagnostics, Inc.** | | | |
| Serono Diagnostics, Inc. | rT3 Barbital Buffer | Glass Vial: 120ml | 10/26/84 |
| Serono Diagnostics, Inc. | rT3-125I | Glass Vial: 13ml | 10/26/84 |
| Serono Diagnostics, Inc. | rT3-Antiserum | Glass Vial: 13ml | 10/26/84 |
| **Sherwood Medical Company** | | | |
| Sherwood Medical Company | Lancer Fibrinogen Determination, Reagent Kit Catalog No. 8889-007508. | Kit | 04/17/75 |
| **Sigma Chemical Co.** | | | |
| Sigma Chemical Co. | 1-Tetrahydrocannabinol, Product No. T-4764 | Sealed Ampule: 1ml | 06/30/77 |
| Sigma Chemical Co. | 1-Tetrahydrocannabinol, Product No. T-4764 | Vial: 1ml | 05/11/81 |
| Sigma Chemical Co. | 5,5-Diallylbarbituric Acid, Product No. D-6013 | Sealed Ampule: 1ml | 06/30/77 |
| Sigma Chemical Co. | 6-Tetrahydrocannabinol, Product No. T-4889 | Vial: 1ml | 05/11/81 |
| Sigma Chemical Co. | ALT Reagent A, Stock No. 57-10 | Vial: 30ml | 06/27/79 |
| Sigma Chemical Co. | ALT Reagent A, Stock No. 57-2 | Vial: 10ml | 06/27/79 |
| Sigma Chemical Co. | AST Reagent A, Stock No. 56-10 | Vial: 30ml | 06/27/79 |
| Sigma Chemical Co. | AST Reagent A, Stock No. 56-2 | Vial: 10ml | 06/27/79 |
| Sigma Chemical Co. | Acid Hematoxylin Solution, No. 285-2 | Bottle: 25ml, 100ml | 06/06/73 |
| Sigma Chemical Co. | Adenosine Phosphate Substrate, Product No. 675-1 | Bottle: 4 ounce | 07/25/83 |
| Sigma Chemical Co. | Allylcyclopentylbarbituric Acid (A-7787) | Sealed Ampule: 1ml | 04/10/85 |
| Sigma Chemical Co. | Allylisobutylbarbituric Acid (A-1038) | Sealed Ampule: 1ml | 04/10/85 |
| Sigma Chemical Co. | Alphaprodine Hydrochloride (A-1537) | Ampule: 1ml | 06/27/84 |
| Sigma Chemical Co. | Alphenal (A-1163) | Ampule: 1ml | 04/10/85 |
| Sigma Chemical Co. | Ammonia Reagent , Stock No. 170-10 | Vial: 10ml | 02/17/77 |
| Sigma Chemical Co. | Ammonia Reagent Kit: Stock No. 170-10 | Kit: 10 Vials | 02/17/77 |
| Sigma Chemical Co. | Ammonia Reagent Stock No. 170-10 | Vial: 30ml | 12/13/77 |
| Sigma Chemical Co. | Ammonia in Plasma Kit | Kit: 100 tests, 30 tests | 12/13/77 |
| Sigma Chemical Co | Amobarbital, Product No. A-5142 | Sealed Ampule: 1ml | 06/30/77 |
| Sigma Chemical Co | Antibody Sensitized Sheep Erythrocytes (EA7S) | Vials: 2ml and 5X 2ml | 04/02/86 |
| Sigma Chemical Co | Aprobarbital, Product No. A-7023 | Sealed Ampule: 1ml | 06/30/77 |
| Sigma Chemical Co | Barbital Buffer, Product No. B-8632 | Polyethylene Vial: 30ml | 05/11/77 |
| Sigma Chemical Co | Barbital Buffer with Albumin Stock No. 860-3 | Vial: 20ml | 07/11/80 |
| Sigma Chemical Co | Barbital, Product No. B-8632 | Sealed Ampule: 1ml | 06/30/77 |
| Sigma Chemical Co | Benzphetamine Hydrochloride, Product No. B-8765 | Sealed Ampule: 1ml | 06/06/84 |
| Sigma Chemical Co | Bufotenine Monooxalate, Product No. B-8757 | Sealed Ampule: 1ml | 06/30/77 |
| Sigma Chemical Co | Butabarbital, Product No. B-8862 | Sealed Ampule: 1ml | 06/30/77 |
| Sigma Chemical Co | Butalbital, Product No. B-5514 | Sealed Ampule: 1ml | 09/19/83 |
| Sigma Chemical Co | Butethal (B-7516) | Ampule: 1ml | 09/06/85 |
| Sigma Chemical Co | Cannabidiol, Product No. C-6395 | Sealed Ampule: 1ml | 08/29/79 |
| Sigma Chemical Co | Cannabdiol, Product No. C-6395 | Vial: 1ml | 05/11/81 |

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| Supplier | Product | Form of product | Date |
|---|---|---|---|
| Sigma Chemical Co | Cannabinol, Product No. C-6520 | Sealed Ampules: 1ml | 06/29/79 |
| Sigma Chemical Co | Cannabinol, Product No. C-6520 | Vial: 1ml | 05/11/81 |
| Sigma Chemical Co | Chloral Hydrate, Product No. C-6516 | Sealed Ampules: 1ml | 06/30/77 |
| Sigma Chemical Co | Chlorazepam Dipotassium Salt (C-9531) | Ampules: 1ml | 05/24/85 |
| Sigma Chemical Co | Chlordiazepoxide (C-4762) | Ampules: 1ml | 09/05/85 |
| Sigma Chemical Co | Clonazepam, Product No. C-4404 | Sealed Ampules: 1ml | 06/06/84 |
| Sigma Chemical Co | Cocaine Hydrochloride Product No. C-1526 | Sealed Ampules: 1ml | 09/19/83 |
| Sigma Chemical Co | Codeine, Product No. C-1663 | Sealed Ampules: 1ml | 09/19/83 |
| Sigma Chemical Co | D-Amphetamine Sulfate, Product No. A-3278 | Vial: 1ml | 05/11/81 |
| Sigma Chemical Co | DL-Amphetamine HCL, Product No. A-5017 | Sealed Ampules: 1ml | 06/30/77 |
| Sigma Chemical Co | Dextropropoxyphene Hydrochloride (D-8901) | Ampules: 1ml | 09/27/84 |
| Sigma Chemical Co | Diazepam, Product No. D-8900 | Sealed Ampules: 1ml | 06/06/84 |
| Sigma Chemical Co | Diethylpropion Hydrochloride, Product No. D-7274 | Sealed Ampules: 1ml | 09/19/83 |
| Sigma Chemical Co | Diphenoxylate (D-0790) | Ampules: 1ml | 09/05/85 |
| Sigma Chemical Co | Drug Standard Mix 1, D-3155 | Ampules: 2ml | 04/18/86 |
| Sigma Chemical Co | Drug Standard Mix 2, D-3030 | Ampules: 2ml | 04/18/86 |
| Sigma Chemical Co | Ethinamate (E-8506) | Ampules: 1ml | 04/10/85 |
| Sigma Chemical Co | Fenfluramine Hydrochloride, Product No. F-1884 | Sealed Ampules: 1ml | 09/19/83 |
| Sigma Chemical Co | Flunitrazepam No. F-8763 | Vial: 1 ml | 06/30/87 |
| Sigma Chemical Co | Flurazepam Dihydrochloride, Product No. F-9134 | Sealed Ampules: 1ml | 06/06/84 |
| Sigma Chemical Co | Gelatin Veronal Buffer (GVB2+) No. G-6514 | Vial: 50 ml, 250ml | 09/15/86 |
| Sigma Chemical Co | Glutethimide, Product No. G-3134 | Sealed Ampules: 1ml | 06/30/77 |
| Sigma Chemical Co | Glycerophosphate Substrate, Product No. 675-2 | Bottle: 4 ounce | 07/25/83 |
| Sigma Chemical Co | Glycerophosphate Substrate, Product No. 704-1 | Bottle: 4 ounce | 07/25/83 |
| Sigma Chemical Co | Hexobarbital, Product No. H-2007 | Sealed Ampules: 1ml | 06/30/77 |
| Sigma Chemical Co | Hydromorphone Hydrochloride No. H-7141 | Vial: 1 ml | 06/30/87 |
| Sigma Chemical Co | Ibogaine HCL, Product No. I-4630 | Sealed Ampules: 1ml | 06/30/77 |
| Sigma Chemical Co | LDH Electrophoresis Buffer, Stock No. 705-1 | Amber Jar: 30ml | 01/04/77 |
| Sigma Chemical Co | LDH-P Reagent No. 125-10 | Vial: 30ml | 05/29/73 |
| Sigma Chemical Co | LDH-P Reagent No. 125-100 | Vial: 100ml | 05/29/73 |
| Sigma Chemical Co | Lorazepam (L-0140) | Ampules: 1ml | 05/24/85 |
| Sigma Chemical Co | Lysergic Acid, Product No. L-5881 | Sealed Ampules: 1ml | 06/30/77 |
| Sigma Chemical Co | Mayer's Hematoxylin Solution, No. MHS-1 | Bottle: 25ml, 100ml | 08/05/73 |
| Sigma Chemical Co | Mebutamate (M-3772) | Ampules: 1ml | 09/05/85 |
| Sigma Chemical Co | Medazepam (M-7645) | Ampules: 1ml | 05/24/85 |
| Sigma Chemical Co | Mependine Hydrochloride (M-1020) | Ampules: 1ml | 08/27/84 |
| Sigma Chemical Co | Mephobarbital, Product No. M-3514 | Vial: 1ml | 05/11/81 |
| Sigma Chemical Co | Meprobamate (M-0271) | Ampules: 1ml | 05/24/85 |
| Sigma Chemical Co | Mescaline HC1, Product No. M-5153 | Sealed Ampules: 1ml | 06/30/77 |
| Sigma Chemical Co | Methadone Hydrochloride, Product No. M-3268 | Sealed Ampules: 1ml | 09/19/83 |
| Sigma Chemical Co | Methamphetamine HC1, Product No. M-5280 | Sealed Ampules: 1ml | 06/30/77 |
| Sigma Chemical Co | Methaqualone Hydrochloride, Product No. M-3393 | Sealed Ampules: 1ml | 09/19/83 |
| Sigma Chemical Co | Methylphenidate Hydrochloride (M-1145) | Ampules: 1ml | 10/31/84 |
| Sigma Chemical Co | Methyprylon, Product No. M-1769 | Sealed Ampules: 1ml | 06/06/84 |
| Sigma Chemical Co | Morphine-3-B-D Glucuronide, Product No. M-4266 | Ampules: 1ml | 10/21/82 |
| Sigma Chemical Co | N,N-Diethyltryptamine, Product No. D-0392 | Vial: 1ml | 05/11/81 |
| Sigma Chemical Co | N,N-Dimethyltryptamine, Product No. D-6263 | Sealed Ampules: 1ml | 06/30/77 |
| Sigma Chemical Co | Nalorphine Hydrochloride | Ampules: 1ml | 08/27/84 |
| Sigma Chemical Co | Oxazepam, No. O-1755 | Vial: 1 ml | 06/30/87 |
| Sigma Chemical Co | Oxycodone Hydrochloride, Product No. O-2628 | Sealed Ampules: 1ml | 09/19/83 |
| Sigma Chemical Co | Paraldehyde, Product No. D-3778 | Ampules: 1ml | 10/21/82 |
| Sigma Chemical Co | Pemoline, Product No. P-3518 | Sealed Ampules: 1ml | 06/30/77 |
| Sigma Chemical Co | Pentazocine Hydrochloride, Product No. P-7530 | Sealed Ampules: 1ml | 09/19/83 |
| Sigma Chemical Co | Pentobarbital, Product No. P-3393 | Sealed Ampules: 1ml | 06/30/77 |
| Sigma Chemical Co | Phencyclidine, No. P-7043 | Vial: 1 ml | 06/30/87 |
| Sigma Chemical Co | Phendimetrazine, Product No. P-3524 | Vial: 1ml | 05/11/81 |
| Sigma Chemical Co | Phenobarbital Prod. No. P-3643 | Sealed Ampules: 1ml | 06/30/77 |
| Sigma Chemical Co | Phentermine Hydrochloride, Product No. P-7655 | Sealed Ampules: 1ml | 09/19/83 |
| Sigma Chemical Co | Phenylacetone, Product No. P-2024 | Vial: 1ml | 05/11/81 |
| Sigma Chemical Co | Prazepam, No. P-7166 | Vial: 1 ml | 06/30/87 |
| Sigma Chemical Co | SGOT 10 Assay Vial No. 55-10 | Vial: 30ml | 05/29/73 |
| Sigma Chemical Co | SGOT Reagent No. 155-10 | Vial: 30ml | 05/29/73 |
| Sigma Chemical Co | SGOT Reagent No. 155-100 | Vial: 100ml | 05/29/73 |
| Sigma Chemical Co | SGOT Single Assay Vial No. 55-1 | Vial: 3ml | 05/29/73 |
| Sigma Chemical Co | SGOT Single Assay Vial No. 55-5 | Vial: 15ml | 05/29/73 |
| Sigma Chemical Co | SGPT 10 Assay Vial No. 55-10P | Vial: 30ml | 05/29/73 |
| Sigma Chemical Co | SGPT Assay Vial No. 55-5P | Vial: 15ml | 05/29/73 |
| Sigma Chemical Co | SGPT Reagent No. 155-100P | Vial: 100ml | 05/29/73 |
| Sigma Chemical Co | SGPT Reagent No. 155-10P | Vial: 30ml | 05/29/73 |
| Sigma Chemical Co | SGPT Single Assay Vial No. 55-1P | Vial: 3ml | 05/29/73 |
| Sigma Chemical Co | Secobarbital, Product No. S-4006 | Sealed Ampules: 1ml | 06/30/77 |
| Sigma Chemical Co | Temazepam, No. T-4903 | Vial: 1 ml | 06/30/87 |
| Sigma Chemical Co | Thebaine, Product No. T-5270 | Sealed Ampules: 1ml | 09/19/83 |
| Sigma Chemical Co | Thiamylal Sodium, Product No. T-8696 | Sealed Ampules: 1ml | 06/06/84 |
| Sigma Chemical Co | Thiopental (T-1022) | Ampules: 1ml | 08/27/84 |
| Sigma Chemical Co | Trizma-Barbital Buffer, Stock No. 710-1 | Amber Jar: 30ml | 01/04/77 |
| Sigma Chemical Co | Tropacocaine, Product No. T-4516 | Vial: 1ml | 05/11/81 |
| **Smart Chemical Co.** | | | |
| Smart Chemical Co | Regal 180XL | Plastic Drum: 55 gallon | 06/12/86 |



EXEMPT CHEMICAL PREPARATIONS—Continued

| Supplier | Product | Form of product | Date |
|---|---|---|---|
| **Supelco, Inc.** | | | |
| Supelco, Inc | Alk Mix No. 04-9210 | Vial: 1ml | 06/26/73 |
| Supelco, Inc | Amobarbital, No. 04-9170 | Ampules: 1ml | 12/22/72 |
| Supelco, Inc | Amph. Mix Catalog No. 4-9205 | Glass Ampules: 2ml | 06/09/86 |
| Supelco, Inc | Amphetamine No. 04-9185 | Ampules: 1ml | 12/22/72 |
| Supelco, Inc | Anticonvulsant Mixture No.1; No. 04-9202 | Glass Serum Bottle: 50ml | 06/16/77 |
| Supelco, Inc | Antiepileptic Calibration Standard Kit, No. 4-9259 | Kit: 3 Ampules | 05/21/80 |
| Supelco, Inc | Antiepileptic Calibration Standards, Nos.4-9256, 4-9257, 4-9258. | Glass Ampule: 5ml | 05/21/80 |
| Supelco, Inc | Aprobarbital No. 04-9171 | Ampule: 1ml | 12/22/72 |
| Supelco, Inc | Barb. Mix 1, Catalog No. 4-9200 | Glass Ampule: 2ml | 06/09/86 |
| Supelco, Inc | Barb. Mix 2, Catalog No. 4-9201 | Glass Ampule: 2ml | 06/09/86 |
| Supelco, Inc | Barbital, Catalog No. 4-9279 | Glass Ampule: 10ml | 06/09/86 |
| Supelco, Inc | Barbiturates Test Mix Catalog No. 4-9296 | Ampule: 2 ml | 02/25/87 |
| Supelco, Inc | Cannabidiol, No. 04-9221 | Ampules: 1ml | 11/27/74 |
| Supelco, Inc | Cannabinol, No. 04-9235 | Ampules: 1ml | 11/27/74 |
| Supelco, Inc | Cocaine, No. 04-9188 | 1000 mcg /Glass Ampule | 06/05/75 |
| Supelco, Inc | Codeine No. 04-9181 | Ampules: 1ml | 12/22/72 |
| Supelco, Inc | Cyclobarbital No. 04-9175 | Ampules: 1ml | 12/22/72 |
| Supelco, Inc | Delta-1 THC, No. 04-9237 | Ampules: 1ml | 11/27/74 |
| Supelco, Inc | Delta-8 THC, No. 04-9236 | Ampules: 1ml | 11/27/74 |
| Supelco, Inc | Dexbroamphetamine, No. 4-9165 | Glass Ampule: 1ml | 05/21/80 |
| Supelco, Inc | Glutethimide No. 04-9173 | Ampules: 1ml | 12/22/72 |
| Supelco, Inc | Heroin No. 04-9162 | Ampules: 1ml | 12/22/72 |
| Supelco, Inc | Hexobarbital No. 04-9177 | Ampules: 1ml | 12/22/72 |
| Supelco, Inc | Mephobarbital No. 04-9176 | Ampules: 1ml | 12/22/72 |
| Supelco, Inc | Meprobamate, No. 4-9184 | Glass Ampule: 1ml | 05/21/80 |
| Supelco, Inc | Methadone No. 04-9163 | Ampules: 1ml | 12/22/72 |
| Supelco, Inc | Methamphetamine No. 04-9168 | Ampules: 1ml | 12/22/72 |
| Supelco, Inc | Methaqualone, No. 04-9183 | 1000 mcg /Glass Ampule | 06/05/75 |
| Supelco, Inc | Morphine No. 04-9160 | Glass Ampule: 1000mcg | 03/08/78 |
| Supelco, Inc | Pentobarbital No. 04-9179 | Glass Ampule: 1000mcg | 03/08/78 |
| Supelco, Inc | Phenobarbital No. 04-9161 | Glass Ampule: 1000mcg | 03/08/78 |
| Supelco, Inc | Psilocybin, No. 04-9191 | 1000 mcg /Glass Ampule | 06/05/75 |
| Supelco, Inc | Secobarbital No. 04-9180 | Glass Ampule: 1000mcg | 03/08/78 |
| **Syva Co.** | | | |
| Syva Co | AccuLevel Phenobarbital Test Control Stock Solution | Flask: 50ml | 10/31/85 |
| Syva Co | AccuLevel Phenobarbital Test Kit (Catalog No.10C019) Contains: (1)AccuLevel Phenobarbital Control. | (1)Glass Vial: 6ml; (2)Glass Vial: 9ml, 12 Vials per test kit. | 01/24/86 |
| Syva Co | Advance T-3 Uptake Assay | Kit: 100 tests | 05/11/82 |
| Syva Co | Advance Thyroxin Assay | Kit: 100 tests | 05/11/82 |
| Syva Co | Antiepileptic Drug Control | Vial: 10ml , Lyophilized | 08/27/74 |
| Syva Co | Emit 700 Amphetamine Assay Catalog No. 3C919 | Bottle: 180ml | 10/12/84 |
| Syva Co | Emit 700 Barbiturate Assay Catalog No. 3D919 | Bottle: 180ml | 10/12/84 |
| Syva Co | Emit 700 Calibrator A Catalog No. 3A919 | Bottle: 3ml | 10/05/84 |
| Syva Co | Emit 700 Calibrator B Catalog No. 3A969 | Bottle: 3ml | 10/05/84 |
| Syva Co | Emit 700 Cannabinoid (100) Assay Catalog No. 3M919. | Bottle: 180ml | 10/12/84 |
| Syva Co | Emit 700 Cannabinoid (100) Calibrator Catalog No. 3M969. | Bottle: 3ml | 10/09/84 |
| Syva Co | Emit 700 Cannabinoid (20) Assay, Catalog No. 3M959 | Plastic Bottle: 180ml | 09/15/86 |
| Syva Co | Emit 700 Cannabinoid Control Set Catalog No. 3M969 | 2 Bottles: 3ml | 10/09/84 |
| Syva Co | Emit 700 Cocaine Metabolite Assay Catalog No. 3H919. | Bottle: 180ml | 10/12/84 |
| Syva Co | Emit 700 Control Set A Catalog No. 3A939 | 2 Bottles: 3ml | 10/09/84 |
| Syva Co | Emit 700 Control Set B Catalog No. 3A969 | 2 Bottles: 3ml | 10/09/84 |
| Syva Co | Emit 700 Methaqualone Assay Catalog No. 3Q919 | Bottle: 180ml | 10/19/84 |
| Syva Co | Emit 700 Opiate Assay Catalog No. 3B919 | Bottle: 180ml | 10/12/84 |
| Syva Co | Emit 700 Phencyclidine Assay Catalog No. 3J919 | Bottle: 180ml | 10/12/84 |
| Syva Co | Emit AED-No. 1 Calibrator | Vial: 3ml , Lyophilized | 08/27/74 |
| Syva Co | Emit AED-No. 2 Calibrator | Vial: 3ml , Lyophilized | 08/27/74 |
| Syva Co | Emit AED-No. 3 Calibrator | Vial: 3ml , Lyophilized | 08/27/74 |
| Syva Co | Emit AED-No. 4 Calibrator | Vial: 3ml , Lyophilized | 08/27/74 |
| Syva Co | Emit AED-No. 5 Calibrator | Vial: 3ml , Lyophilized | 08/27/74 |
| Syva Co | Emit Convenience Pack: T-Uptake Assay (Thyroid Hormone Binding Ratio). | Kit: 100 Tests Ea. Kit-Plastic Cassette: 16 ml | 05/09/88 |
| Syva Co | Emit HVA Amphetamine Assay Catalog No. 3C619 | Kit: 2500 Assays | 06/30/88 |
| Syva Co | Emit HVA Barbiturate Assay Catalog No. 3D619 | Kit: 2500 Assays | 06/30/88 |
| Syva Co | Emit HVA Calibrator Kit Catalog No. 3A619 | Kit: 500 Tests Each Kit -2 Glass Bottles 100 ml | 05/10/88 |
| Syva Co | Emit HVA Cannabinoid 100 ng Assay Control Kit, Catalog No. 3M739. | Kit: 2 Bottles, 50 ml. ea. | 07/15/88 |
| Syva Co | Emit HVA Cannabinoid 100 ng. Assay Calibrator Kit, Catalog No. 3M729. | Kit: 3 Bottles 50 ml. ea. | 07/15/88 |
| Syva Co | Emit HVA Cannabinoid 100 ng. Assay Kit, Catalog No. 3M719. | Kit: 2500 Assays | 07/15/88 |
| Syva Co | Emit HVA Cocaine Metabolite Assay Catalog No. 3H619. | Bottle: 125 ml | 05/10/88 |
| Syva Co | Emit HVA Control Kit Catalog No. 3A629 | Kit: 500 Tests Each Kit-2 Glass Bottles -100 ml | 05/10/88 |

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| Supplier | Product | Form of product | Date |
|---|---|---|---|
| Syva Co. | Emit HVA Opiate Assay Catalog No. 3B619 | Bottle: 125 ml | 05/10/88 |
| Syva Co. | Emit HVA Phencyclidine Assay Catalog No. 3J619 | Bottle: 125 ml | 05/19/88 |
| Syva Co. | Emit Phenobarbital Enzyme Reagent B | Vial: 6 ml, Lyophilized | 06/27/74 |
| Syva Co. | Emit Qat Phenobarbital Bulk Powder Reagent | Steel Drum: 7 gallon | 06/05/86 |
| Syva Co. | Emit Qat Primidone Assay Catalog No. 6D619 | Glass Vial: 6ml, 50 Vials/Kit | 11/12/85 |
| Syva Co. | Emit Serum Barbiturate-Enzyme Reagent B | Bottle: 3ml | 05/22/79 |
| Syva Co. | Emit Tox Serum Benzodiazepine Assay Kit Containing: Emit Enzyme Reagent B. | Bottle: 3ml | 02/01/79 |
| Syva Co. | Emit d.a.u. Amphetamine Assay Catalog Nos. 3C019, 3C119. | Kit: 100 tests, 1000 tests | 09/27/84 |
| Syva Co. | Emit d.a.u. Benzodiazepine Assay Catalog Nos. 3F019, 3F119. | Kit: 100 tests, 1000 tests | 09/27/84 |
| Syva Co. | Emit d.a.u. Cannabinoid 100 ng Assay, Catalog No. 3M119. | Kit: 1000 tests | 09/12/86 |
| Syva Co. | Emit d.a.u. Cannabinoid 20ng Assay Catalog No. 3M619. | Kit: 100 tests | 02/10/86 |
| Syva Co. | Emit d.a.u. Cannabinoid 20ng Enzyme Reagent B | Vial: 10ml Lyophilized Powder | 02/10/86 |
| Syva Co. | Emit d.a.u. Cannabinoid Assay Catalog No. 3M019 | Kit: 100 tests | 09/24/84 |
| Syva Co. | Emit d.a.u. Cannabinoid Urine Calibrator Set | Kit: 3 Vials, 3ml Each | 01/03/80 |
| Syva Co. | Emit d.a.u. Cocaine Metabolite Assay Catalog Nos. 3H019, 3H119. | Kit: 100 tests, 1000 tests | 09/27/84 |
| Syva Co. | Emit d.a.u. Low Calibrator A | Bottle: 5ml | 07/20/84 |
| Syva Co. | Emit d.a.u. Low Calibrator A, Catalog No. 3C579 | 5 ml vial | 10/06/88 |
| Syva Co. | Emit d.a.u. Medium Calibrator A, Catalog No. 3C569 | 5 ml vial | 10/06/88 |
| Syva Co. | Emit d.a.u. Medium Calibrator B | Bottle: 5ml | 06/03/84 |
| Syva Co. | Emit d.a.u. Methadone Assay Catalog Nos. 3E019, 3E119. | Kit: 100 tests, 1000 tests | 10/05/84 |
| Syva Co. | Emit d.a.u. Monoclonal Amphetamine/Methamphetamine Assay, Catalog No.3C549 100 tests, 3C559 1000 tests. | Kit: 100 tests, 1000 tests | 10/06/88 |
| Syva Co. | Emit d.a.u. Opiate Assay Catalog Nos. 3B019, 3B119 | Kit: 100 tests, 1000 tests | 09/27/84 |
| Syva Co. | Emit d.a.u. Phencyclidine Assay Kit Containing: (1)Emit Phencyclidine Enzyme Reagent B. | Bottle: 6ml | 02/01/79 |
| Syva Co. | Emit d.a.u. Barbiturate Assay Catalog Nos. 3D019, 3D119. | Kit: 100 tests, 1000 tests | 09/27/84 |
| Syva Co. | Emit d.a.u. Low Calibrator B | Bottle: 5ml | 06/03/84 |
| Syva Co. | Emit d.a.u. Medium Calibrator A | Bottle: 5ml | 07/20/84 |
| Syva Co. | Emit-Tox Serum Barbiturate Assay | Kit: 50 tests | 05/22/79 |
| Syva Co. | Emit-Qat Phenobarbital Assay, Catalog Number 6D619. | Kit: 50 vials | 01/18/84 |
| Syva Co. | Emit-Tox Serum Calibrators Low and Medium | Bottle: 3ml | 02/01/79 |
| Syva Co. | Emit-d.a.u. Methaqualone Assay | Kit: 100 tests | 04/27/82 |
| Syva Co. | Emit-et Amphetamine Assay | Vial: 3ml, 80 vials/kit | 10/03/80 |
| Syva Co. | Emit-et Barbiturate Assay | Vial: 3ml, 80 vials/kit | 10/03/80 |
| Syva Co. | Emit-et Benzodiazepine Assay | Vial: 3ml, 80 vials/kit | 10/03/80 |
| Syva Co. | Emit-et Cannabinoid Assay Catalog No. 3M319 | Vial: 6ml, 80 vials/kit | 09/27/84 |
| Syva Co. | Emit-et Cannabinoid Calibrator | Vial: 3ml, 2 vials/kit | 07/10/81 |
| Syva Co. | Emit-et Cannabinoid Controls | Vial: 3ml, 2 vials/kit | 07/10/81 |
| Syva Co. | Emit-et Opiate Assay | Kit: 3ml, 80 vials/kit | 10/03/80 |
| Syva Co. | Emit-et Phencyclidine Assay | Vial: 3ml, 80 vials/kit | 01/07/81 |
| Syva Co. | Emit-et Serum Barbiturate Assay | Vial: 3ml, 80 vials/kit | 02/16/81 |
| Syva Co. | Emit-et Serum Benzodiazepine Assay | Vial: 3ml, 80 vials/kit | 02/16/81 |
| Syva Co. | Emit-et Serum Calibrator | Vial: 3ml | 02/16/81 |
| Syva Co. | Emit-et Serum Controls | Vial: 3ml, 2 vials/kit | 02/16/81 |
| Syva Co. | Emit-et Serum Phencyclidine Assay | Vial: 3ml, 80 vials/kit | 02/16/81 |
| Syva Co. | Emit-et Urine Calibrator A | Vial: 1ml, 3 vials/kit | 10/03/80 |
| Syva Co. | Emit-et Urine Cocaine Metabolite Assay | Vial: 3 ml, 80 vials/kit | 03/16/82 |
| Syva Co. | Emit-et Urine Controls A | Vial: 1ml, 6 vials/kit | 10/03/80 |
| Syva Co. | Emit-et Urine Methadone Assay | Vial: 3ml, 80 vials/kit | 03/22/82 |
| Syva Co. | Emit-et Urine Methaqualone Assay | Kit: 80 vials | 04/27/82 |
| Syva Co. | Emit-et Urine Methaqualone Calibrator | Vial: 3ml | 04/27/82 |
| Syva Co. | Emit-et Urine Methaqualone Controls | Vial: 3ml | 04/27/82 |
| **Technicon** | | | |
| Technicon | Ammonium Sulfate Reagent No. T01-1139 | Glass Bottle: 1 and 4 liters | 01/31/80 |
| Technicon | Set Point RA-1000 Systems T4 Standards Product No. T03-1481-01. | Glass Bottles: 5ml (Standard 1 Fill Volume=5ml) (Standards 2-6 Fill Volume=1.5ml). | 08/02/85 |
| Technicon | T4 Agglutinator Reagent No. T11-1484 | Glass Bottle: 10ml | 08/02/85 |
| Technicon | TQC T.D.M. Calibrator 1, No. T13-1150 | Glass Vial: 15ml | 01/31/80 |
| Technicon | TQC T.D.M. Control A, No. T13-1115 | Glass Vial: 15ml | 01/31/80 |
| **Technicon Instruments Corporation** | | | |
| Technicon Instruments Corporation | Agar Gel Plates No. 8794 | Plate: 25ml | 08/01/72 |
| Technicon Instruments Corporation | Agar Gel Plates, No. 7114 | Plate: 15 ml | 01/15/87 |
| Technicon Instruments Corporation | Buffer No. 3017 | Vial: 250 ml | 08/31/71 |
| Technicon Instruments Corporation | Buffer No. 8793 | Vial: 250ml | 08/01/72 |
| Technicon Instruments Corporation | Diluting Fluid No. 3400 | Vial: 10ml | 08/31/71 |
| Technicon Instruments Corporation | Electrode Buffer, DR07172 | Bulk | 12/26/74 |
| Technicon Instruments Corporation | LD Electrode Buffer, DR07173 | Bulk | 02/12/79 |
| Technicon Instruments Corporation | Ligand Control I-No.4814, II-No.4824, and III-No.4834 | Vials: 5ml | 02/24/81 |



EXEMPT CHEMICAL PREPARATIONS—Continued

| Supplier | Product | Form of product | Date |
|---|---|---|---|
| Technicon Instruments Corporation | Partial Thromboplastin (Dried), No.3491 | Vial: 1ml and 5 ml | 06/31/71 |
| Technicon Instruments Corporation | Therapeutic Drug Monitoring Survey (Z Series) | Vials: 5 ml | 09/24/86 |
| Technicon Instruments Corporation | Therapeutic Monitor Level I No.4881 | Vial: 3ml | 01/20/83 |
| Technicon Instruments Corporation | Therapeutic Monitor Level II No.4882 | Vial: 3ml | 01/20/83 |
| Technicon Instruments Corporation | Therapeutic Monitor Level III No.4883 | Vial: 3ml | 01/20/83 |
| Technicon Instruments Corporation | Toxicology Survey (T Series) | Vials: 20 ml, 50 ml | 09/24/86 |
| Technicon Instruments Corporation | Toxicology Urine Control No. 0841 | Vial: 10ml | 06/11/82 |
| Technicon Instruments Corporation | Toxicology Urine Control No. 0842 | Vial: 3ml | 06/11/82 |
| Technicon Instruments Corporation | Urine Control No. 0277 | Vial: 25ml | 04/14/81 |
| Technicon Instruments Corporation | Urine Toxicology Survey (UT Series) | Vials: 50 ml | 09/24/86 |
| **Tempil Division, Big Three Industries, Inc.** | | | |
| Tempil Division, Big Three Industries, Inc. | Tempilaq Striped Mylar | Plastic Sheet: 6 by 12 in. 50 sheets per envelope | 09/22/76 |
| **The Theta Corp.** | | | |
| The Theta Corp. | Allobarbital No. FP305 | Vial: 2ml | 04/10/73 |
| The Theta Corp. | Amobarbital No. FP313 | Vial: 2ml | 04/10/73 |
| The Theta Corp. | Amphetamine No. FP604 | Vial: 2ml | 04/10/73 |
| The Theta Corp. | Anileridine No. FP208 | Vial: 2ml | 04/10/73 |
| The Theta Corp. | Aprobarbital No. FP306 | Vial: 2ml | 04/10/73 |
| The Theta Corp. | Barbital No. FP314 | Vial: 2ml | 04/10/73 |
| The Theta Corp. | Benzoylecgonine FP-1001 | Vial: 2ml | 01/24/87 |
| The Theta Corp. | Butalbarbital No. FP315 | Vial: 2ml | 04/10/73 |
| The Theta Corp. | Butalbital No. FP307 | Vial: 2ml | 04/10/73 |
| The Theta Corp. | Chloral Betaine No. FP502 | Vial: 2ml | 04/10/73 |
| The Theta Corp. | Chloral Hydrate No. FP501 | Vial: 2ml | 04/10/73 |
| The Theta Corp. | Cocaine No. FP601 | Vial: 2ml | 04/10/73 |
| The Theta Corp. | Codeine No. FP102 | Vial: 2ml | 04/10/73 |
| The Theta Corp. | Cyclobarbital No. FP306 | Vial: 2ml | 04/10/73 |
| The Theta Corp. | Dihydrocodeine No. FP108 | Vial: 2ml | 04/10/73 |
| The Theta Corp. | Diphenoxylate No. FP205 | Vial: 2ml | 04/10/73 |
| The Theta Corp. | Ethchlorvynol No. FP508 | Vial: 2ml | 04/10/73 |
| The Theta Corp. | Ethylmorphine No. FP106 | Vial: 2ml | 04/10/73 |
| The Theta Corp. | FP207 | Vial: 2ml | 09/04/80 |
| The Theta Corp. | FP210 | Vial: 2ml | 05/15/84 |
| The Theta Corp. | FP214 | Vial: 2ml | 04/10/84 |
| The Theta Corp. | FP327 | Vial: 2ml | 04/10/84 |
| The Theta Corp. | FP405 | Vial: 2ml | 03/06/79 |
| The Theta Corp. | FP411 | Vial: 2ml | 05/15/84 |
| The Theta Corp. | FP412 | Vial: 2ml | 05/15/84 |
| The Theta Corp. | FP416 | Vial: 2ml | 05/15/84 |
| The Theta Corp. | FP512 | Vial: 2ml | 03/06/79 |
| The Theta Corp. | FP513 | Vial: 2ml | 03/06/79 |
| The Theta Corp. | FP514 | Vial: 2ml | 05/15/84 |
| The Theta Corp. | FP515 | Vial: 2ml | 03/06/79 |
| The Theta Corp. | FP556 | Vial: 2ml | 04/10/84 |
| The Theta Corp. | FP601A | Vial: 2ml | 05/15/84 |
| The Theta Corp. | FP607 | Vial: 2ml | 05/15/84 |
| The Theta Corp. | FP609 | Vial: 2ml | 05/15/84 |
| The Theta Corp. | Fentanyl No. FP211 | Vial: 2ml | 04/10/73 |
| The Theta Corp. | Glutethimide No. FP404 | Vial: 2ml | 04/10/73 |
| The Theta Corp. | Heptabarbital No. FP309 | Vial: 2ml | 04/10/73 |
| The Theta Corp. | Hexabarbital No. FP303 | Vial: 2ml | 04/10/73 |
| The Theta Corp. | Hydrocodone No. FP107 | Vial: 2ml | 04/10/73 |
| The Theta Corp. | Hydromorphone No. FP103 | Vial: 2ml | 04/10/73 |
| The Theta Corp. | Levorphanol No. FP206 | Vial: 2ml | 04/10/73 |
| The Theta Corp. | Marker Mixture No. FPM-104 | Vial: 2ml | 04/10/73 |
| The Theta Corp. | Marker Mixture No. FPM-201 | Vial: 2ml | 04/10/73 |
| The Theta Corp. | Meperidine No. FP201 | Vial: 2ml | 04/10/73 |
| The Theta Corp. | Mephobarbital No. FP301 | Vial: 2ml | 04/10/73 |
| The Theta Corp. | Meprobamate No. FP402 | Vial: 2ml | 04/10/73 |
| The Theta Corp. | Methadone No. FP208 | Vial: 2ml | 04/10/73 |
| The Theta Corp. | Methamphetamine No. FP603 | Vial: 2ml | 04/10/73 |
| The Theta Corp. | Metharbital No. FP302 | Vial: 2ml | 04/10/73 |
| The Theta Corp. | Methohexital No. FP304 | Vial: 2ml | 04/10/73 |
| The Theta Corp. | Methylphenidate No. FP605 | Vial: 2ml | 04/10/73 |
| The Theta Corp. | Monthly Urine Test No. FPM-103 | Vial: 2ml | 04/10/73 |
| The Theta Corp. | Morphine No. FP101 | Vial: 2ml | 04/10/73 |
| The Theta Corp. | Oxycodone No. FP109 | Vial: 2ml | 04/10/73 |
| The Theta Corp. | Oxymorphone No. FP104 | Vial: 2ml | 04/10/73 |
| The Theta Corp. | Paraldehyde No. FP506 | Vial: 2ml | 04/10/73 |
| The Theta Corp. | Pentobarbital No. FP318 | Vial: 2ml | 04/10/73 |
| The Theta Corp. | Phenazocine No. FP213 | Vial: 2ml | 04/10/73 |
| The Theta Corp. | Phenmetrazine No. FP606 | Vial: 2ml | 04/10/73 |
| The Theta Corp. | Phenobarbital No. FP320 | Vial: 2ml | 04/10/73 |
| The Theta Corp. | Piminodine No. FP202 | Vial: 2ml | 04/10/73 |
| The Theta Corp. | Probarbital No. FP319 | Vial: 2ml | 04/10/73 |
| The Theta Corp. | Secobarbital No. FP310 | Vial: 2ml | 04/10/73 |

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EXEMPT CHEMICAL PREPARATIONS—Continued

| Supplier | Product | Form of product | Date |
|---|---|---|---|
| The Theta Corp. | Talbutal No. FP311 | Vial: 2ml | 04/10/73 |
| The Theta Corp. | Test Mixture SM No. 1 | Vial: 2ml | 06/19/74 |
| The Theta Corp. | Test Mixture SM No. 2 | Vial: 2ml | 06/19/74 |
| The Theta Corp. | Test Mixture SM No. 3 | Vial: 2ml | 06/19/74 |
| The Theta Corp. | Test Mixture SM No. 4 | Vial: 2ml | 06/19/74 |
| The Theta Corp. | Test Mixture SP No. 1 | Vial: 2ml | 06/19/74 |
| The Theta Corp. | Test Mixture SP No. 2 | Vial: 2ml | 06/19/74 |
| The Theta Corp. | Test Mixture SP No. 3 | Vial: 2ml | 06/19/74 |
| The Theta Corp. | Test Mixture SP No. 4 | Vial: 2ml | 06/19/74 |
| The Theta Corp. | Test Mixture TM No. 1 | Vial: 2ml | 06/19/74 |
| The Theta Corp. | Test Mixture TM No. 2 | Vial: 2ml | 06/19/74 |
| The Theta Corp. | Thiamylal No. FP322 | Vial: 2ml | 04/10/73 |
| The Theta Corp. | Thiopental No. FP321 | Vial: 2ml | 04/10/73 |
| The Theta Corp. | Vinbarbital No. FP312 | Vial: 2ml | 04/10/73 |
| The Theta Corp. | Weekly Urine Test (FDA) No. FPM-101 | Vial: 2ml | 04/10/73 |
| The Theta Corp. | Weekly Urine Test (States) No. FPM-102 | Vial: 2ml | 04/10/73 |
| **Toxi-Lab, Inc.** | | | |
| Toxi-Lab, Inc. | Proficiency Sample | Plastic Bottle Containing 40 ml | 06/22/82 |
| Toxi-Lab, Inc. | Special Toxi-Discs | Plastic Vial or Bottle Containing 50 Standard Discs | 03/30/77 |
| Toxi-Lab, Inc. | Supplemental Standard Toxi-Discs No. SD-4 Catalog No. 234. | Plastic Vial Containing 50 Standard Discs | 06/15/88 |
| Toxi-Lab, Inc. | Supplemental Standard Toxi-Discs No. SD-5 Catalog No. 235. | Plastic vial containing 50 standard discs | 06/15/88 |
| Toxi-Lab, Inc. | Supplemental Standard Toxi-Discs No. SD-6 Catalog No. 236. | Plastic vial containing 50 standard discs | 06/15/88 |
| Toxi-Lab, Inc. | Toxi-Control | Plastic Bottle Containing 50 ml | 03/30/77 |
| Toxi-Lab, Inc. | Toxi-Control THC | Plastic Bottle Containing 50 ml | 10/05/83 |
| Toxi-Lab, Inc. | Toxi-Disc A Series | Plastic Vial Containing 50 Standard Discs | 05/06/75 |
| Toxi-Lab, Inc. | Toxi-Disc B Series | Plastic Vial Containing 50 Standard Discs | 05/06/75 |
| Toxi-Lab, Inc. | Toxi-Discs Library II, No. 3 Catalog No. 131C | Plastic vial containing 50 standard discs | 06/15/88 |
| Toxi-Lab, Inc. | Toxi-Discs Library II, No. 1 Catalog No. 131A | Plastic vial containing 50 standard discs | 06/15/88 |
| Toxi-Lab, Inc. | Toxi-Discs Library II, No. 10 Catalog No. 131K | Plastic vial containing 50 standard discs | 06/15/88 |
| Toxi-Lab, Inc. | Toxi-Discs Library II, No. 11, Catalog No. 131L | Plastic vial containing 50 standard discs | 06/15/88 |
| Toxi-Lab, Inc. | Toxi-Discs Library II, No. 12 Catalog No. 131M | plastic vial containing 50 standard discs | 06/15/88 |
| Toxi-Lab, Inc. | Toxi-Discs Library II, No. 2 Catalog No. 131B | Plastic vial containing 50 standard discs | 06/15/88 |
| Toxi-Lab, Inc. | Toxi-Discs Library II, No. 5 Catalog No. 131E | Plastic via containing 50 standard discs | 06/15/88 |
| Toxi-Lab, Inc. | Toxi-Discs Library II, No. 8 Catalog No. 131H | Plastic vial containing 50 standard discs | 06/15/88 |
| Toxi-Lab, Inc. | Toxi-Disce THC | Plastic Vial Containing 50 Standard Discs | 10/05/83 |
| Toxi-Lab, Inc. | Toxi-Grams | Glass Jar Containing 50 or 100 Chromatograms | 09/24/80 |
| Toxi-Lab, Inc. | Toxi-Lab Cannabinoid (THC) Screen | Kit: 50 tests | 10/05/83 |
| **Travenol Labs (Clinical Assays Division)** | | | |
| Travenol Labs (Clinical Assays Division). | (125I) Human TSH Radioimmunoassay kit | Kit: 125 determinations | 11/16/77 |
| Travenol Labs (Clinical Assays Division). | (125I) Human TSH Tracer | Glass Vial: 6ml | 11/16/77 |
| Travenol Labs (Clinical Assays Division). | Anticonvulsant Drug Controls | Kit: 500 determinations, 50 determinations | 11/16/77 |
| Travenol Labs (Clinical Assays Division). | Assay buffer CA-742 | Polypropylene Bottle: 150ml | 03/14/77 |
| Travenol Labs (Clinical Assays Division). | CA-380 Phenobarbital Serum Standard 1:101 dilution of 1.0 ug/ml. | Septem sealed glass vial: 2ml | 11/16/77 |
| Travenol Labs (Clinical Assays Division). | CA-381 Phenobarbital Serum Standard 1:101 dilution of 3.0 ug/ml. | Septem sealed glass vial: 2ml | 11/16/77 |
| Travenol Labs (Clinical Assays Division). | CA-382 Phenobarbital Serum Standard 1:101 dilution of 10 ug/ml. | Septem sealed glass vial: 2ml | 11/16/77 |
| Travenol Labs (Clinical Assays Division). | CA-383 Phenobarbital Serum Standard 1:101 dilution of 30 ug/ml. | Septem sealed glass vial: 2ml | 11/16/77 |
| Travenol Labs (Clinical Assays Division). | CA-384 Phenobarbital 1:101 dilution of 100 ug/ml | Septem sealed glass vial: 2ml | 11/16/77 |
| Travenol Labs (Clinical Assays Division). | CA-419 Anticonvulsant Drug Control, Level I | Septem sealed glass vial: 2ml | 11/16/77 |
| Travenol Labs (Clinical Assays Division). | CA-420 Anticonvulsant Drug Control, Level II | Septem sealed glass vial: 2ml | 11/16/77 |
| Travenol Labs (Clinical Assays Division). | Human TSH standards, 2.0 uIU/ml, 5.0 uIU/ml, 10 uIU/ml, 20 uIU/ml, 50 uIU/ml. | Glass vials: 2ml | 11/16/77 |
| Travenol Labs (Clinical Assays Division). | Rabbit Anti-Human TSH Serum | Glass vial: 20ml | 11/16/77 |
| **Utak Laboratories** | | | |
| Utak Laboratories | Toxicology Control-High Range Anticonvulsants No. 71910. | Bottle: 10ml | 04/14/80 |
| Utak Laboratories | Toxicology Control-High Range Barbiturates No. 71916. | Bottle: 10ml | 04/14/80 |
| Utak Laboratories | Toxicology Control-High Range Hypnotic Plus Acetaminophem, No. 71918. | Bottle: 10ml | 04/14/80 |
| Utak Laboratories | Toxicology Control-High Range Hypnotic Plus Salicylate, No. 71920. | Bottle: 10ml | 04/14/80 |



EXEMPT CHEMICAL PREPARATIONS—Continued

| Supplier | Product | Form of product | Date |
|---|---|---|---|
| Utak Laboratories | Toxicology Control-Mid Range Anticonvulsants No. 71911. | Bottle: 10ml | 04/14/80 |
| Utak Laboratories | Toxicology Control-Mid Range Barbiturates No. 71917. | Bottle: 10ml | 04/14/80 |
| Utak Laboratories | Toxicology Control-Mid Range Hypnotic Plus Acetaminophem, No. 71919. | Bottle: 10ml | 04/14/80 |
| Utak Laboratories | Toxicology Control-Mid Range Hypnotic Plus Salicylate, No. 71921. | Bottle: 10ml | 04/14/80 |
| Utak Laboratories | Toxicology Serum Control Dried # 88112 | Bottle: 10ml | 07/29/82 |
| Utak Laboratories | Toxicology Serum Control Dried #88113 | Bottle: 10ml | 07/29/82 |
| Utak Laboratories | Toxicology Serum Control Dried #88120 | Bottle: 10ml | 07/29/82 |
| Utak Laboratories | Toxicology Serum Control-Dried Catalog Nos. 44610, 44612, 44632, 44635, 44636, 44637, 44642, 44645, 44646, 44647, 44658. | In Bottles | 05/24/76 |
| Utak Laboratories | Toxicology Urine Control Dried #88100 | Bottle: 20ml | 07/29/82 |
| Utak Laboratories | Toxicology Urine Control Dried #88121 | Bottle: 10ml | 07/29/82 |
| Utak Laboratories | Toxicology Urine Control-Dried Catalog Nos. 44650, 44651, 44652, 44653. | Bottle: 1 oz. | 05/24/76 |
| **Wescor, Inc.** | | | |
| Wescor, Inc | Osmocoll | Bottle: 9 ml | 12/05/86 |
| **Wein Laboratories, Inc.** | | | |
| Wien Laboratories, Inc | ANS Buffer pH 8.6 Catalog No. T-5144 | Plastic Bottle: 100ml | 05/14/75 |
| Wien Laboratories, Inc. | Buffer Reagent pH 8.6 Catalog No. T-5065 | Bottle: 4 oz | 12/22/72 |
| Wien Laboratories, Inc | Coated Charcoal Suspension No. T-5077 | Bottle: 4 oz | 12/22/72 |
| Wien Laboratories, Inc | T3 Buffer Reagent Catalog No. T-5156 | Plastic Vial: 20ml | 09/13/78 |
| **Windsor Laboratories, Inc.** | | | |
| Windsor Laboratories, Inc | Calibrators FPR Phenobarbital | Kit: 6 Vials | 10/30/86 |
| Windsor Laboratories, Inc | Phenobarbital Fluorescence Polarization Immunoassay Kit. | Kit: 100 tests | 11/20/86 |

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**Gene R. Haislip,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

Dated: February 28, 1989.

[FR Doc. 89-5615 Filed 3-14-89; 8:45 am]

BILLING CODE 4410-09-M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Assistant Secretary for Public and Indian Housing

### 24 CFR Part 990

**[Docket No. R-89-1400; FR-2437]**

### Revision to the Performance Funding System; Insurance Costs

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Final rule.

**SUMMARY:** Section 118(a) of the Housing and Community Development Act of 1987 amended the United States Housing Act of 1937 to require HUD to act by June 15, 1988 to revise the Performance Funding System (PFS) to accurately reflect the increase in insurance costs incurred by Public Housing Agencies (PHAs), including Indian Housing Authorities (IHAs). In response to this requirement, the Department submitted a draft interim rule to Congress on June 15, 1988 for prepublication review (as required by section 7(o) of the Department of HUD Act) and published the rule on July 5, 1988 (53 FR 25152). That rule revised the PFS by increasing the monthly allowable expense level per unit by $8.45 for PHAs' first fiscal year starting in 1989. This final rule discusses the comments received and adopts as final the provisions of the interim rule.

**EFFECTIVE DATE:** May 1, 1989.

**FOR FURTHER INFORMATION CONTACT:** Theodore R. Daniels, Director, Project Financial Management and Occupancy Division, Office of Public Housing, Room 4208, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755-8145. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:**

#### I. Paperwork Reduction Act Statement

There are no information collection requirements contained in this rule, which would be subject to approval by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520).

#### II. Background

The PFS provides a means of calculating a PHA's eligibility for operating subsidy each year that is based on deducting the Allowable Expense Level (AEL) approved for the previous year, adjusted for changes in circumstances from the previous year and for inflation, from estimated income for the next year. (Throughout this preamble the term "PHA" and "PHAs" includes reference to Indian Housing Authority and Indian Housing Authorities.) Since the increase in insurance costs over the last few years has clearly outpaced what was permitted under the PFS to cover insurance costs, Congress had provided additional funds to be distributed to PHAs to cover these costs. The amounts distributed amounted to $7.94 per unit in 1987 and $4.36 per unit in 1988, but these distributions were not reflected in the rule governing the PFS. In the HCD Act of 1987, Congress directed HUD to take action to permanently adjust the PFS to compensate for these increased costs. Therefore, the interim rule published in 1988 revised the PFS to increase the AEL permanently by $8.45, the amount determined by HUD to be needed to reflect increases in insurance costs over the period. (See the preamble to the interim rule, 53 FR 25152, for an expanded discussion of the history of insurance cost coverage.)

Before issuance of that rule, the Council of Large Public Housing Authorities (CLPHA) had submitted a petition for rulemaking to HUD seeking a change in the way insurance costs are covered under the PFS. CLPHA had advocated establishing a separate

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element of the PFS to cover insurance and risk protection costs only, which would be adjusted at the end of the fiscal year to reflect the actual costs of a PHA. Disputes between HUD and a PHA would be handled under a system of appeals, to be conducted by administrative law judges, under standards providing that an increase to cover actual costs would be denied only if a finding were made that the amount by which the actual costs exceeded the estimated cost for insurance and risk protection was the result of the PHA's unreasonable action, or if there was insufficient operating subsidy funding to cover the increase. This approach was considered during the development of the interim rule and rejected. (See the discussion of an appeals process below, in section III.B. of this preamble.)

**III. Public Comments**

The Department received ten public comments on this rule. Six of the comments were from PHAs, and four were from associations of PHAs or PHA officials. Three of the comments were basically favorable, although one of them stated that provision should be made for future changes in insurance costs. (One of these commenters added that a program not covered by this regulation, the Section 8 Housing Assistance Payments program, is also running into unusual insurance costs that are not covered by the relevant funding mechanism—the administrative fee. That program is outside the scope of this rule.)

The principal criticisms of the rule were that (1) the increase provided is inadequate to compensate PHAs for their increases in insurance costs over the period; (2) an appeals process should be instituted to allow each PHA that had costs higher than the projected increase to seek an additional adjustment, as in CLPHA's petition for rulemaking; and (3) PHAs whose fiscal years started October 1, 1988 missed one year's worth of adjustment for insurance expenses. A few commenters made other suggestions for change in HUD's insurance requirements. One commenter had a question about the adequacy of HUD's prediction of the amount of Federal funding needed for the increase in PFS eligibility made by this rule.

*A. Inadequacy of the Increase*

The criticism of the amount of the increase in the AEL attributable to increased insurance costs was twofold. First, particular PHAs stated that their increases in insurance costs far outpaced the increase permitted. Second, CLPHA and others stated that using the implicit price deflator for State and local government goods and services to determine the increased amount for insurance was improper, because it inadequately reflected PHA insurance costs, and the number of units used by HUD to calculate the estimated need for Fiscal Year 1989 was too low and therefore underestimates the costs.

The method of calculating the PFS eligibility, generally, is based on estimating a PHA's income for the year, estimating its allowable expenses by applying an inflation factor to the previous year's estimated allowable costs (AEL), and subtracting the second result from the first. The system, as authorized by section 9 of the United States Housing Act of 1937, does not pretend to reflect the actual costs of any particular PHA and, consequently, there is not generally any adjustment for actual income or costs.

HUD recognizes that a PHA's actual insurance costs may not match the amount allowed for such costs in the calculation of PFS eligibility. Even though some elements of a PHA's costs may be more than projected under the formula, other elements are likely to be less. The inflation factor used may not predict all these elements equally well; however, the Department has been unable to find another recognized inflation factor that would work better. (Actually, large PHAs are experiencing lower inflation than HUD's figures assumed.) However, even if insurance costs exceed the estimated inflation-adjusted amount, insurance costs comprise an average of only 5 percent of a PHA's total costs, and therefore any shortfall in this element may well be offset by a surplus with respect to another component of a PHA's budget. Rather than complicate the system by applying different factors to different components, the Department confirms its policy of applying one factor—the best it can find—to the composite AEL.

The Department believes that the adjustment built into the PFS by this rule is on average sufficient. Recognizing that significant change is always possible, however, we will continue to monitor the sufficiency of the PFS to cover this element of general PHA costs.

*B. Appeals Process*

An appeals process for adjusting the amount allowed a PHA for insurance costs was first proposed by CLPHA in November 1987 in its petition for rulemaking. CLPHA advocates establishing a separate element of the PFS for risk protection coverage, similar to the Utilities Expense Level, and providing an opportunity for any PHA that experiences risk-related costs that are significantly higher than those estimated by HUD to obtain an increase in its PFS eligibility based on documentation of its costs.

The Performance Funding System is based on providing only the amount of subsidy needed to operate a prototype well-managed PHA. It is based on a formula that uses estimates of income and expenses. For expenses, the formula uses the allowable expenses of the PHA in a base year and makes adjustments to them principally for changes in housing stock and for inflation.

There are only a few exceptions in the PFS to the policy of using estimates. To encourage wise investment of excess funds, there is a year end adjustment to estimated income to reflect a target investment income that is based on the rate of return that was achievable during that year. In recognition of the fact that utility rates, and therefore costs, are not within the control of a PHA but are regulated in the public interest by local utility commissions, utility costs are treated as a separate expense item (the Utilities Expense Level), to which a year end adjustment is permitted. There is also provision for a PHA to receive an adjustment to reflect costs beyond its control, such as changes in law during the year.

The policy of minimizing the use of adjustments to reflect actual experience during a year is intended to give PHAs an incentive for cost control. Creation of a separate element of the PFS for insurance costs and permitting adjustments to reflect actual costs would destroy PHAs' incentive for cost control. The Department believes that insurance costs are a type of expense that should be subject to a cost control incentive, since PHAs do have some control over their potential exposure to claims by exercising risk management and loss control. PHAs also do now have a number of choices in obtaining coverage. Most can choose the type of entity from which they obtain coverage for risk protection, since there are now a number of risk retention pools as well as coverage offered by insurance companies. They also have choices about the size of the deductible that will work best for them. They can also solicit bids based on two options—with the limitation that the PHA's sovereign immunity may not be asserted, or without it. With these choices, the Department believes that PHAs should be encouraged to take responsibility for making decisions about the coverage that is appropriate for them.

Also, it should be noted that the appeals process advocated by CLPHA would only be used to increase the cost of operating subsidies. The proposal would provide an opportunity for a PHA to initiate an adjustment in its PFS eligibility, which a PHA could be expected to exercise only when the PHA believed that an adjustment would be to its advantage. Thus, any PHA whose actual insurance costs were less than the amount provided under the formula would continue to be overcompensated, while those whose costs were greater than the amount provided, would achieve parity between costs and reimbursement.

An appeals process providing for an opportunity for any PHA to appeal its insurance cost coverage would also be costly to the Department in terms of staff time. Accordingly, the Department believes establishing such an appeals process would be administratively infeasible.

For the reasons stated above, the Department again rejects the proposal to establish a separate element of the PFS for risk protection coverage and to permit appeals of the amount included in a PHA's PFS eligibility for that element.

*C. October 1, 1988, Fiscal Years*

One PHA whose FY 1989 began October 1, 1988, wrote to complain that it would miss one year's funding of increased insurance costs as a result of the interim rule's January 1, 1989, effective date. The Department takes issue with that position.

As noted in the preamble to the interim rule, in both HUD Fiscal Years 1987 and 1988, HUD has distributed funds earmarked by Congress for the purpose of covering higher insurance costs. This rule is intended to provide increased funding for PHAs in HUD FY 1989 and beyond and to build that increase into the PFS permanently. The distributions made to PHAs whose fiscal years begin on October 1 have been made from the HUD funds from its fiscal year that ends on September 30. Thus, HUD's FY 1987 distribution to these PHAs was made in their fiscal year that began on October 1, 1987, and HUD's FY 1988 distribution to them was made in their fiscal year that began on October 1, 1988. These same PHAs will first feel the effect of the permanent change in insurance costs in their fiscal year that begins on October 1, 1989, leaving no gap in increased funding for insurance costs.

*D. Other Options*

One method of lowering the cost of insurance coverage that has been used is permitting PHAs to self-insure. This has necessitated a HUD waiver of the requirements of the Annual Contributions Contract ("ACC") for "insurance coverage". Of course, this practice is effective only if there are no significant losses—a risk that most PHAs cannot afford to take. One PHA advocates discontinuing this practice. It also advocates providing additional funding to PHAs to establish contingency loss reserves to cover high deductibles in the event of a major loss.

HUD has discontinued the practice of permitting self-insurance now that coverage is again available and relatively affordable. There are only two PHAs operating without insurance or pooled risk protection coverage now, and they are still self-insured only because they have had great difficulty in obtaining insurance. With respect to contingency loss reserves, HUD recognizes some PHA's need for them and will treat them as distinct from other reserves; however, the Department has limited funds to distribute and has chosen to allocate them under the PFS, without any distinction as to whether the funds are used to pay insurance premiums or to fund a high deductible in the event of a major loss.

One PHA suggested that HUD eliminate its requirement that insurers not be allowed to assert the PHA's sovereign immunity as a defense to a claim, because it believes that insurance premiums would be lower if the insurer had that defense available. HUD does now waive the ACC provision to allow PHAs to solicit bids for insurance with or without the availability of the sovereign immunity defense, to determine if any cost savings can be realized.

One suggestion was that HUD should require insurance companies to allow each PHA to participate in attorney selection and to agree to any settlement. The Department believes that it is impractical to restrict an insurer in these respects, since the insurer bases its premium on its ability to control defense proceedings from the point when a claim is made. On the other side of the question of Federal control, was the comment that PHAs should not be subject to ACC requirements concerning the type and amount of insurance coverage carried. Since HUD has a financial interest in the public housing inventory as well as a policy interest in preserving the affordable housing for lower income families, it needs to protect that interest by assuring (via the ACC requirement) that the housing stock will not be confiscated to satisfy a claim against a PHA.

Risk management was touted as the answer to uncontrolled costs by one commenter, who suggested that HUD provide technical assistance of this sort to PHAs. HUD agrees that PHAs should employ risk management tools to reduce their risk protection costs, but HUD is not in a position to provide the expert assistant.

An Objection was registered against HUD's authority to reduce operating subsidy payments on a prorated basis when appropriations are insufficient to cover full payment to all PHAs. HUD is bound, as are other Federal agencies, by the Antideficiency Act (31 U.S.C. 1511–1519) not to obligate more than has been appropriated. As a result, if HUD has insufficient appropriations to cover full finding under the PFS, it must distribute the available funds on an equitable basis. It has accomplished this by reducing each PHA's funding proportionately.

*E. Understatement of Cost*

CLPHA states that HUD estimates of the total cost of the adjustment provided by this rule understate the need for Federal funds. It points to the fact that the number of units expected to be funded under this rule is 1.2 million, whereas the number of units funded under the FY 1988 distribution was 1.3 million. It is true that the number of units used for these purposes is different. The FY 1988 distribution was made to every PHA, regardless of whether it otherwise receives operating subsidy, whereas the distribution under this rule will be made only to PHAs that receive operating subsidy (1.2 million units). Even if the increase in the AEL effected by this rule causes some PHAs to become eligible for operating subsidy for the first time, the impact on budget requirement would be minimal. If one-third of the PHAs that currently receive no subsidy were to receive an average subsidy of $4.50 per unit as a result of this change to the PFS, the subsidy requirements would increase by $1 million—less than one-tenth of one percent of the total operating subsidy budget.

*F. Miscellaneous*

One commenter suggested that HUD make available to the public the data it used to determine the increase in insurance costs experienced by PHAs since 1986. HUD will provide the data to anyone upon request. (Please contact Mr. Daniels, whose address and telephone number are provided at the beginning of this rule.)

**IV. Findings and Certifications**

*Environmental review.* A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations in 24

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CFR Part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of Regulations, Room 10276, 451 Seventh Street, SW., Washington, DC 20410.

*Economic impact.* This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 (on Federal Regulation) issued by the President on February 17, 1981. Analysis of the rule indicates that it is not likely to have an annual effect on the economy of $100 million or more. The rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions, or have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

*Impact on small entities.* Under the Regulatory Flexibility Act, 5 U.S.C. 605(b), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities, because its effect would be to implement a statutory directive to increase subsidy to PHAs to reflect increases they have experienced in the costs of insurance coverage in a way that will have a similar effect on small and large PHAs. The insurance costs experienced by a PHA are affected more by location and risk factors than by its size. Therefore, the rule provides no differential treatment based on PHA size.

*Executive Order 12612, Federalism.* The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this rule would not have federalism implications and, thus, are not subject to review under the Order. The rule provides for additional financial assistance to PHAs that operate housing under a contract with HUD to serve lower income families. This assistance will not interfere with State or local government functions.

*Executive Order 12606, the Family.* The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this rule does not have potential significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. The rule involves only the provision of additional assistance to agencies that provide assisted housing to lower income families.

*Regulatory agenda.* This rule was listed as sequence number 1073 under the Office of the Assistant Secretary for Public and Indian Housing in the Department's Semiannual Agenda of Regulations published on October 24, 1988 (53 FR 41974, 42013), pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

*Catalog.* The Catalog of Federal Domestic Assistance Program Number is 14.146, Low Income Housing Assistance Program (Public Housing).

**List of Subjects in 24 CFR Part 990**

Grant programs—housing and community development, Low and moderate income housing, Public housing.

Accordingly, the interim rule published on July 5, 1988 at 53 FR 25152 is adopted as final.

**Authority:** Sec. 9, United States Housing Act of 1937 (42 U.S.C. 1437g); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: March 10, 1989.

**Thomas Sherman,**

*Acting General Deputy Assistant Secretary for Public and Indian Housing.*

[FR Doc. 89-6039 Filed 3-14-89; 8:45 am]

BILLING CODE 4210-32-M

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Parts 1 and 601

[T.D. 8217]

### Income Tax; Taxable Years Beginning After December 31, 1953 and OMB Control Numbers Under the Paperwork Reduction Act; Certain Cash or Deferred Arrangements Under Employee Plans; Correction

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Correction to final regulations.

**SUMMARY:** This document contains a correction to Treasury Decision 8217, which was published in the **Federal Register** for Monday, August 8, 1988 (53 FR 29658). The final regulations relate to certain cash or deferred arrangements under employee plans.

**FOR FURTHER INFORMATION CONTACT:** William D. Gibbs, (202) 377-9372 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**Background**

The final regulations that are the subject of this correction provide the public with guidance needed to comply with the law and affect sponsors of plans that contain cash or deferred arrangements and employees who are entitled to make elections under these arrangements. They reflect changes in the applicable tax laws made by the Revenue Act of 1978.

**Need for Correction**

As published, T.D. 8217 contains a typographical error that, if not corrected, might cause confusion to taxpayers and practitioners.

**Correction of Publication**

Accordingly, the publication of the final regulations (T.D. 8217) which was the subject of FR Doc. 88-17720, is corrected as follows:

1. On page 29673, column 1, § 1.401(k)-1(b)(4)(ii), in the next to last line, the language "the ADP test in paragraph (b)(4)(i) of" is removed and the language "the ADP test in paragraph (b)(4)(ii) of" is added in its place.

**Dale D. Goode,**

*Chief, Regulations Unit, Assistant Chief Counsel (Corporate).*

[FR Doc. 89-6000 Filed 3-14-89; 8:45 am]

BILLING CODE 4830-01-M

## PENSION BENEFIT GUARANTY CORPORATION

### 29 CFR Part 2610

### Payment of Premiums; Interest Rates

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Interim rule.

**SUMMARY:** This is an amendment to the Pension Benefit Guaranty Corporation's interim regulation on Payment of Premiums, which was published on June 30, 1988 (53 FR 24908). Appendix B to the interim regulation contains a table setting forth the interest rates that are required by statute to be used in valuing a plan's vested benefits for purposes of determining the amount of the premium due to the PBGC. This amendment adds to that table the interest rate applicable to plan years beginning in March 1989.

**EFFECTIVE DATE:** March 15, 1989.

**FOR FURTHER INFORMATION CONTACT:** Harold J. Ashner, Senior Counsel, Office of the General Counsel (Code 22500), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006; telephone 202-778-8823 (202-778-8859 for TTY and TDD). These are not toll-free numbers.



**SUPPLEMENTARY INFORMATION:** Section 9331 of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100-203, amended section 4006 of the Employee Retirement Income Security Act of 1974 ("ERISA") to establish a two-part premium structure for single-employer plans, *i.e.*, a flat rate per capita assessment and a variable rate assessment based on a plan's unfunded vested benefits, effective for plan years beginning on or after January 1, 1988. Under amended ERISA section 4006(a)(3)(E)(iii)(II), the interest rate used in valuing a plan's vested benefits for purposes of determining the amount of the plan's unfunded vested benefits must equal 80% of the annual yield on 30-year Treasury securities for the month preceding the month in which the plan year begins.

The Pension Benefit Guaranty Corporation's (the "PBGC's") interim regulation on Payment of Premiums (53 FR 24908 (June 30, 1988)) implements these new premium rules. Under § 2610.23(b)(1) of the regulation, the interest rate for valuing vested benefits is determined by reference to the annual yield for 30-year Treasury constant maturities as reported in Fedeal Reserve Statistical Release G.13 and H.15. The required interest rate for a given "premium payment year" (the plan year for which the premium is being paid) is 80% of this rate for the calendar month preceding the calendar month in which the premium payment year begins. As a convenience, the PBGC established an Appendix B to the interim regulation containing a table setting forth the required interest rates for premium payment years beginning in January 1988 and thereafter.

The PBGC is amending Appendix B to add the required interest rate for premium payment years beginning in March 1989. Appendix B to the interim regulation does not prescribe the required interest rates for valuing vested benefits. These rates are prescribed by section 4006(a)(3)(E)(iii)(II) of ERISA and § 2610.23(b)(1) of the regulation. The purpose of Appendix B is merely to collect and to republish these rates in a convenient place. Thus, the interest rates in Appendix B are informational only. Accordingly, the PBGC finds that notice of and public comment on this amendment would be unnecessary and contrary to the public interest. See 5 U.S.C. 553(b). For these same reasons, the PBGC also finds that good cause exists for making these amendments effective immediately. See 5 U.S.C. 553(d)(3).

The PBGC has determined that this amendment is not a "major rule" within the meaning of Executive Order 12291, because it will not have an annual effect on the economy of $100 million or more; nor create a major increase in costs or prices for consumers, individual industries, or geographic regions, nor have significant adverse effects on competition, employment, investment, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

**List of Subjects 29 CFR Part 2610**

Employee Benefit Plans, Pension Insurance, and Pensions.

In consideration of the foregoing, Appendix B to Part 2610 of Chapter XXVI of Title 29, Code of Federal Regulations, is hereby amended as follows:

**PART 2610—PAYMENT OF PREMIUMS**

1. The authority citation for Part 2610 continues to read as follows:

**Authority:** 29 U.S.C. 1302(b)(3), 1306, 1307, as amended by sec. 9331, Pub. L. 100-203, 101 Stat. 1330.

2. Appendix B to Part 2610 is amended by adding to the table of interest rates therein a new entry to read as follows: The explanatory text is republished for the convenience of the reader and remains unchanged.

**Appendix B—Interest Rates for Valuing Vested Benefits**

The following table lists the required interest rates to be used in valuing a plan's vested benefits under § 2610.23(b) and in calculating a plan's adjusted vested benefits under § 2610.23(c)(1):

| For premium payment years beginning in— | Required interest rate [1] |
|---|---|
| • • • • • | |
| March 1989 | 7.21 |

[1] The required interest rate listed above is equal to 80% of the annual yield for 30-year Treasury constant maturities, as reported in Federal Reserve Statistical Release G.13 and H.15, for the calendar month preceding the calendar month in which the premium payment year begins.

Issued in Washington, D.C., on this 9th day of March 1989.

**Kathleen P. Utgoff,**

*Executive Director, Pension Benefit Guaranty Corporation.*

[FR Doc. 89-5942 Filed 3-14-89; 8:45 am]

BILLING CODE 7708-01-M

### 29 CFR Part 2619

### Valuation of Plan Benefits in Single-Employer Plans; Amendment Adopting Additional PBGC Rates

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Final rule.

**SUMMARY:** This amendment to the regulation on Valuation of Plan Benefits in Single-Employer Plans contains the interest rates and factors for the period beginning April 1, 1989. The use of these interest rates and factors to value benefits is mandatory for some terminating single-employer pension plans and optional for others. The Pension Benefit Guaranty Corporation adjusts the interest rates and factors periodically to reflect changes in financial and annuity markets. This amendment adopts the rates and factors applicable to plans that terminate on or after April 1, 1989, and will remain in effect until the PBGC issues new interest rates and factors.

**EFFECTIVE DATE:** April 1, 1989.

**FOR FURTHER INFORMATION CONTACT:** John Foster, Attorney, Office of the General Counsel, Code 22500, Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006, 202-778-8824 (202-778-8859 for TTY and TDD only). These are not toll-free numbers.

**SUPPLEMENTARY INFORMATION:** The Pension Benefit Guaranty Corporation's ("PBGC's") regulation on Valuation of Plan Benefits in Single-Employer Plans (29 CFR Part 2619) sets forth the methods for valuing plan benefits of terminating single-employer plans covered under Title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). The recent amendments to Title IV made by the Pension Protection Act ("PPA"), a part of the Omnibus Budget Reconciliation Act of 1987, increase the amount of plan benefits for which an employer is responsible upon plan termination. These new termination rules apply to plan terminations with respect to which the 60-day advance notice to affected parties (the notice of intent to terminate) is issued after December 17, 1987. (For more detail, see the PBGC's Notice of Revised Termination Rules, 53 FR 1905 (January 22, 1988).) However, the PPA does not change the Title IV valuation rules.

Under amended ERISA section 4041(c), all plans wishing to terminate in a distress termination must value guaranteed benefits and "benefit liabilities", i.e., all benefits provided

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under the plan as of the plan termination date, using the formulas set forth in Part 2619. Plans terminating in a standard termination may, for purposes of the notice given to the PBGC, use these formulas to value benefit liabilities, although this is not required. (Such plans may value benefit liabilities that are payable as annuities on the basis of a qualifying bid obtained from an insurer.)

Plans that terminate on or after January 1, 1986 (the effective date of the Single-Employer Pension Plan Amendments Act of 1986) and issued notices of intent to terminate prior to December 18, 1987, or against which the PBGC instituted involuntary termination proceedings before that date, shall continue to be responsible for benefit commitments under the plan and to value guaranteed benefits and/or benefit commitments.

Appendix B in Part 2619 sets forth the interest rates and factors that are to be used in the formulas contained in the regulation. Because these rates and factors are intended to reflect current conditions in the financial and annuity markets, it is necessary to update the rates and factors periodically.

The rates and factors currently in use have been in effect since Nov. 1, 1988 (53 FR 40222 (Oct 14, 1988)). This amendment adds to Appendix B a new set of interest rates and factors for valuing benefits in plans that terminate on or after April 1, 1989, which set reflects an increase of ¼ percent in the immediate interest rate to 8 percent.

Generally, the interest rates and factors will be in effect for at least one month. However, any published rates and factors will remain in effect until such time as the PBGC publishes another amendment changing them. Any change in the rates normally will be published in the **Federal Register** by the 15th of the month preceding the effective date of the new rates or as close to that date as circumstances permit.

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest rates and factors promptly so that the rates can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation of benefits in plans that will terminate on or after April 1, 1989, and because no adjustment by ongoing plans is required by this amendment, the PBGC finds that good cause exists for making the rates set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this is not a "major rule" under the criteria set forth in Executive Order 12291, because it will not result in an annual effect on the economy of $100 million or more, a major increase in costs for consumers or individual industries, or significant adverse effects on competition, employment, investment, productivity, or innovation.

**List of Subjects in 29 CFR Part 2619**

Employee benefit plans, Pension insurance, and Pensions.

In consideration of the foregoing, Part 2619 of Chapter XXVI, Title 29, Code of Federal Regulations, is hereby amended as follows:

1. The authority citation for Part 2619 is revised to read as follows:

**Authority:** 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362, as amended by secs. 9312–13, Pub. L. 100–203, 101 Stat. 1330.

2. Rate Set 76 of Appendix B is revised and Rate Set 77 of Appendix B is added to read as follows. The introductory text is republished for the convenience of the reader and remains unchanged.

**Appendix B—Interest Rates and Quantities Used to Value Immediate and Deferred Annuities**

In the table that follows, the immediate annuity rate is used to value immediate annuities, to compute the quantity "Gy" for deferred annuities and to value both portions of a refund annuity. An interest rate of 5% shall be used to value death benefits other than the decreasing term insurance portion of a refund annuity. For deferred annuities, $k_1$, $k_2$, $k_3$, $n_1$, and $n_2$ are defined in § 2619.45.

| Rate set | For plans with a valuation date | | Immediate annuity rate (percent) | Deferred annuities | | | | |
|---|---|---|---|---|---|---|---|---|
| | On or after | And before | | $k_1$ | $k_2$ | $k_3$ | $n_1$ | $n_2$ |
| 76 | Nov. 1, 1988 | Apr. 1, 1989 | 7.75 | 1.0700 | 1.0575 | 1.0400 | 7 | 8 |
| 77 | Apr. 1, 1989 | | 8.00 | 1.0725 | 1.0600 | 1.0400 | 7 | 8 |

Kathleen P. Utgoff,
*Executive Director, Pension Benefit Guaranty Corporation.*
[FR Doc. 89–5943 Filed 3–14–89; 8:45 am]
BILLING CODE 7708–01–M

**29 CFR Part 2676**

**Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal—Interest Rates**

**AGENCY:** Pension Benefit Guaranty Corporation.
**ACTION:** Final rule.

**SUMMARY:** This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR Part 2676). The regulation prescribes rules for valuing benefits and certain assets of multiemployer plans under sections 4219(c)(1)(D) and 4281(b) of the Employee Retirement Income Security Act of 1974. Section 2676.15(c) of the regulation contains a table setting forth, for each calendar month, a series of interest rates to be used in any valuation performed as of a valuation date within that calendar month. On or about the fifteenth of each month, the PBGC publishes a new entry in the table for the following month, whether or not the rates are changing. This amendment adds to the table the rate series for the month of April 1989.

**EFFECTIVE DATE:** April 1, 1989.

**FOR FURTHER INFORMATION CONTACT:** Deborah C. Murphy, Attorney, Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington DC 20006; 202–778–8820 (202–778–8859 for TTY and TDD). (These are not toll-free numbers.)

**SUPPLEMENTARY INFORMATION:** The PBGC finds that notice of and public comment on this amendment would be impracticable and contrary to the public interest, and that there is good cause for making this amendment effective immediately. These findings are based on the need to have the interest rates in this amendment reflect market conditions that are as nearly current as possible and the need to issue the interest rates promptly so that they are available to the public before the beginning of the period to which they apply. (*See* 5 U.S.C. 533 (b) and (d).) Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

The PBGC has also determined that this amendment is not a "major rule" within the meaning of Executive Order 12291 because it will not have an annual effect on the economy of $100 million or more; or create a major increase in costs or prices for consumers, individual industries, or geographic regions; or have significant adverse effects on competition, employment, investment, or innovation, or on the ability of United States-based enterprises to complete with foreign-based enterprises in domestic or export markets.

**List of Subjects in 29 CFR Part 2676**

Employee benefit plans, Pensions.

In consideration of the foregoing, Part 2676 of Subchapter H of Chapter XXVI of Title 29, Code of Federal Regulations, is amended as follows:

**PART 2676—VALUATION OF PLAN BENEFITS AND PLAN ASSETS FOLLOWING MASS WITHDRAWAL**

1. The authority citation for Part 2676 continues to read as follows:

**Authority:** 29 U.S.C. 1302(b)(3), 1399(c)(1)(D), and 1441(b)(1).

2. In § 2676.15, paragraph (c) is amended by adding to the end of the table of interest rates therein the following new entry:

**§ 2676.15 Interest.**

* * * * *

(c) *Interest rates.*

| For valuation dates occurring in the month— | The values of $i_t$ are— | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | $i_1$ | $i_2$ | $i_3$ | $i_4$ | $i_5$ | $i_6$ | $i_7$ | $i_8$ | $i_9$ | $i_{10}$ | $i_{11}$ | $i_{12}$ | $i_{13}$ | $i_{14}$ | $i_{15}$ | $i_n$ |
| April 1989 | .09875 | .095 | .09 | .085 | .08 | .07375 | .07375 | .07375 | .07375 | .07375 | .0675 | .0675 | .0675 | .0675 | .0675 | .06 |

Issued at Washington, DC, on this 8th day of March 1989.

Kathleen P. Utgoff,
*Executive Director, Pension Benefit Guaranty Corporation.*
[FR Doc. 89–5941 Filed 3–14–89; 8:45 am]
BILLING CODE 7708–01–M

**DEPARTMENT OF THE INTERIOR**

**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Part 925**

**Approval of Missouri's Abandoned Mine Land Reclamation Plan Amendment**

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.
**ACTION:** Final rule.

**SUMMARY:** OSMRE is announcing the approval of a proposed amendment to the Missouri Abandoned Mine Land Reclamation (AMLR) Plan (hereinafter referred to as the Missouri plan) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment includes a complete revision of the Missouri Plan. Substantive changes were proposed pertaining to the agency organizational structure, the procedures for reclamation project ranking and selection, and the AMLR database. Procedures have been added pertaining to liens, appraisals, and rights of entry on private lands and for land acquisition, management, and disposal. After opportunity for public comment and review of the amendment, the Deputy Director has determined that the Missouri amendment meets the requirements of the Surface Mining Control and Reclamation Act and the Secretary's regulations at 30 CFR Part 884.

**EFFECTIVE DATE:** March 15, 1989.

**ADDRESSES:** Copies of the full text of the amendment are available for review during regular business hours at the following locations:

Office of Surface Mining Reclamation and Enforcement, Kansas City Field Office, 1103 Grand Avenue, Room 502, Kansas City, Missouri 64106, Telephone: (816) 374–6405.
Missouri Department of Natural Resources, Land Reclamation Program, 205 Jefferson Street, P.O. Box 176, Jefferson City, Missouri 65102, Telephone: (314) 751–4041.

**FOR FURTHER INFORMATION CONTACT:** Mr. William J. Kovacic, Director, Kansas City Field Office, (816) 374–6405.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Title IV of SMCRA, Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*, establishes an AMLR program for the purposes of reclaiming and restoring lands and water resources adversely affected by past mining. This program is funded by a reclamation fee imposed upon the production of coal. Lands and waters eligible for reclamation are those that were mined or affected by mining and abandoned or left in an inadequate reclamation status prior to August 3, 1977, and for which there is no continuing reclamation responsibility under State/Tribe or Federal law. Title IV of SMCRA establishes the conditions under which States/Tribes may obtain primary authority to implement this reclamation program.

The Secretary of the Interior approved the Missouri AMLR program on January 29, 1982. Information pertinent to the general background, revisions, and amendments to the initial program submission, as well as the Secretary's findings and the disposition of comments can be found in the January 29, 1982, **Federal Register** (47 FR 4253–4254).

Information concerning the previously approved plan and the proposed amendments may be obtained from the agency offices listed under **"ADDRESSES."**

The Secretary has adopted regulations that specify the content requirements of a State reclamation plan and the criteria for plan approval (30 CFR Part 884). The regulations provide that a State may submit to the OSMRE proposed amendments or revisions to the approved reclamation plan. If the amendments or revisions change the scope or major policies followed by the State in the conduct of its reclamation program, the Deputy Director must follow the procedures set out in 30 CFR 884.14 in approving or disapproving an amendment or revision.

**II. Discussion of Proposed Amendment**

By letter dated August 22, 1988, Missouri submitted a reclamation plan amendment to OSMRE (Administrative Record No. AML–MO 59). The proposed amendment consists of a complete revision to the approved Missouri Plan as provided for by 30 CFR 884.

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Specifically, the following areas of the plan are being revised.

1. Organization (30 CFR 884.13(d)(1) and (2)): Missouri is proposing to update certain portions of its AMLR plan to reflect changes that have occurred in the State agency structure. The State has also submitted additional material incorporating into the plan the staffing policies outlined in the State manual of personnel procedures.

2. Project selection (30 CFR 884.13(c)(2)): Missouri has submitted revised project scoring criteria to ensure that projects involving threats to the public health and safety are addressed before lower priority problems. Missouri is also proposing a project prioritization methodology based upon the OSMRE "Abandoned Mine Land Inventory Update Manual, August 1984".

3. Reclamation on private land (30 CFR 884.13(c)(5)): Missouri has submitted procedures to clarify 10 CSR 40–9.060 regarding liens and appraisals on private lands.

4. Rights of entry (30 CFR 884.13(c)(6)): The State has submitted additional material concerning non-concensual entry requirements as specified in 30 CFR 877.13(c).

5. Coordination of Reclamation Activities (30 CFR 884.13(c)(3)): The State has proposed amending its coordination procedures to eliminate the requirement for a State Reclamation Committee. Missouri has proposed procedures for coordinating with the agencies represented in the original State Reclamation Committee and with other interested agencies on an individual basis, in the development of construction projects.

6. Land Acquisition, Management and Disposal (30 CFR 884.13(c)(4)): Missouri has proposed adding a procedure to allow for acquisition of land through sale, donation or condemnation in accordance with the provisions outlined in 30 CFR 879, 10 CSR 40–9.040 and 10 CSR 40–9.050.

7. Database (30 CFR 884.13(f): Missouri is proposing to amend the database pertaining to eligible lands and waters incorporating approved AML inventory sites.

OSMRE announced receipt of the proposed amendment in the October 27, 1988, **Federal Register** (53 FR 43450–43452), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on its substantive adequacy. No public comments were received by November 28, 1988, the close of the public comment period. Since no one requested an opportunity to testify at a public hearing, the scheduled hearing was cancelled.

Following a thorough review of the Missouri amendment, OSMRE notified the State on December 19, 1988 of the need for several nonsubstantive editorial changes and clarifications. On January 13, 1989, Missouri submitted the necessary clarifications and editorial corrections. The Deputy Director has determined that these corrections are insignificant in nature and accordingly require no further public comment.

Under SMCRA, OSMRE codifies the approved requirements of individual States including decisions on State reclamation plans and amendments under Parts 900 and 950 of 30 CFR Subchapter T. Provisions relating to Missouri are found in 30 CFR Part 925.

## III. Deputy Director's Findings

In accordance with section 405 of SMCRA, the Deputy Director of OSMRE finds that Missouri has submitted an amendment to its Abandoned Mine Land Reclamation Plan and has determined pursuant to 30 CFR 884.15, that:

1. The State provided adequate notice and opportunity for public comment in the development of the amendment and that the record does not reflect major unresolved controversies.

2. Views of other Federal agencies having an interest in the plan have been solicited and considered.

3. The State has the legal authority, policies and administrative structure necessary to implement the amendment.

4. The plan amendment meets all requirements of the OSMRE, AMLR program provisions.

5. The State has an approved Surface Mining Regulatory Program.

6. The proposed amendment is in compliance with all applicable State and Federal laws and regulations.

Under SMCRA, OSMRE codifies the approved requirements of individual States/Tribes, including decisions on State/Tribe reclamation plans and amendments, under 30 CFR Parts 900 to 950. Provisions relating to Missouri are found in 30 CFR Part 925. Based on the findings above, the Deputy Director is amending 30 CFR 925.20 to codify his approval of the Missouri amendment of August 22, 1988.

## IV. Public and Agency Comments

As discussed in the section of this notice entitled "Discussion of Proposed Amendment," OSMRE solicited public comment and provided opportunity for a public hearing on the proposed amendment. Since no one requested an opportunity to testify, the public hearing scheduled for November 21, 1988, was cancelled. No comments were received from the public during the comment period, which closed on November 28, 1988.

Pursuant to 30 CFR 884.14(2), comments were also solicited from various Federal agencies with an actual or potential interest in the Missouri plan. A summary of the comments received and their disposition appears below.

1. The U.S. Fish and Wildlife Service commented that restoration of wetlands should be included as one of the priorities of the Land Reclamation Program, and questioned Missouri's emphasis on restoration of agricultural productivity. In response, the Deputy Director notes that the priorities outlined in the Missouri Plan are identical to those in section 403 of Pub. L. 95–87. Revision of these priorities is not within the scope of this amendment.

2. The U.S. Fish and Wildlife Service commented that the portion of the Missouri Plan enumerating the specific benefits to be considered when selecting reclamation projects should include preservation and/or restoration of wetlands and floodplain values. The Deputy Director finds that this portion of the Missouri Plan has not been revised and that the comment is outside the scope of this amendment.

3. The U.S. Fish and Wildlife Service commented that wetlands should be included in Missouri's project selection criteria. The Deputy Director acknowledges the importance of protecting wetland resources and notes that individual reclamation projects are reviewed prior to approval to ensure that negative impacts to wetlands do not occur.

However, restoration of wetlands is not one of the authorized purposes of the AMLR Fund and is therefore not within the scope of this amendment. The Deputy Director notes that regular coordination between the OSMRE, the U.S. Fish and Wildlife Service and the U.S. Army Corps of Engineers will continue, in order to ensure the protection of wetland resources.

4. The U.S. Fish and Wildlife Service commented that the Rare and Endangered Species list included in the Missouri Plan was out of date and supplied a revised list to the OSMRE. The Deputy Director concurred and required the State to replace the outdated list with the current one.

5. The U.S. Fish and Wildlife Service commented that the maps and legends included in the Missouri Plan reproduced poorly and were hard to read. The Deputy Director notes that the maps are informational only and do not materially affect the implementation of Missouri's AML Program. Original copies of the maps are available from the State of Missouri and from original reference documents.



## V. Deputy Director's Decision

Based upon the findings enumerated above, the Deputy Director is approving the Missouri amendment. A copy of the approved amendment can be obtained by contacting the offices listed under "**ADDRESSES**".

## VI. Procedural Matters

*1. Federal Paperwork Reduction Act*

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507 et seq.

*2. Executive Order No. 12291 and the Regulatory Flexibility Act*

On November 23, 1987, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or disapproval of State/Tribe AMLR reclamation plans and amendments. Therefore, this action is exempt from preparation of a regulatory impact analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). No burden will be imposed upon entities operating in compliance with the Act.

*3. National Environmental Policy Act*

Approval of State/Tribe AMLR plans and amendments is categorically excluded from compliance with the National Environmental Policy Act by the Department of the Interior's Manual; 516 DM 6, Appendix 8, paragraph 8.4B(30).

## Effective Date

The final rule is effective upon date of publication. Under 5 U.S.C. 553(d), a rule may not be made effective less than 30 days after publication, unless, among other things, good cause exists and is published with the rule. Good cause exists to make the final rule effective upon publication because:

(1) Missouri's Department of Natural Resources Land Reclamation Program is fully staffed and currently administering the abandoned mine land reclamation program; and

(2) OSMRE wishes to expedite the implementation of the revised AMLR plan amendment.

## List of Subjects in 30 CFR Part 925

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Accordingly, 30 CFR Part 925 is amended as set forth herein.

Date: March 8, 1989.

**Robert H. Gentile,**

*Director, Office of Surface Mining Reclamation and Enforcement.*

## PART 925—MISSOURI

1. The authority citation for Part 925 is revised to read as follows:

**Authority:** 30 U.S.C. 1201 *et seq.*

2. Section 925.20 is revised to read as follows:

**§ 925.20 Approval of the Missouri Abandoned Mine Land Reclamation Plan.**

The Missouri Abandoned Mine Land Reclamation Plan as submitted on September 11, 1981, is approved.

3. Section 925.25 is revised to read as follows:

**§ 925.25 Approval of AML Plan Amendments.**

(a) The Missouri AMLR plan amendment submitted to OSMRE on June 22, 1987, is approved effective June 16, 1988.

(b) The amendment to the plan submitted on August 22, 1988, is approved effective March 15, 1989.

Copies of the approved amendments are available at the following locations:

Office of Surface Mining Reclamation and Enforcement, Kansas City Field Office, 1103 Grand Avenue, Room 502 Kansas City, Missouri 64106

Missouri Department of Natural Resources, Land Reclamation Program, 205 Jefferson Street, P.O. Box 176, Jefferson City, Missouri 65102.

[FR Doc. 89–5945 Filed 3–14–89; 8:45 am]

BILLING CODE 4310–05–M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 117

**[CGD7–89–03]**

### Temporary Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, Florida

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary rule.

**SUMMARY:** The Coast Guard is temporarily changing the regulations governing the PGA and Parker drawbridges at North Palm Beach, Florida, by extending the hours of the existing regulations to provide draw openings on 15-minute intervals throughout each weekday between the morning and evening closed periods. This temporary change is being made to evaluate the effect on peak season vehicle and waterway traffic and to evaluate the rule as a permanent regulation.

**DATES:** These temporary regulations become effective February 21, 1989 and terminate on April 21, 1989.

**ADDRESSES:** Comments should be mailed to Commander (oan), Seventh Coast Guard District, Brickell Plaza Federal Building, 909 SE. 1st Avenue, Miami, Florida 33131–3050. The comments and other materials referenced in this notice will be available for inspection and copying on the 4th Floor, of the Brickell Plaza Federal Building, 909 SE. 1st Avenue, Miami, Florida. Normal office hours are between 7:30 a.m. and 4 p.m., Monday through Friday, except holidays. Comments also may be hand-delivered to this address.

**FOR FURTHER INFORMATION CONTACT:** Mr. Walt Paskowsky (305) 536–4103.

**SUPPLEMENTARY INFORMATION:** Interested persons are invited to participate in the proposed permanent rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgement that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

Prompt implementation is necessary to synchronize the rules with peak seasonal vehicle traffic. The Commander, Seventh Coast Guard District, will evaluate all communications received, the overall effect of this temporary regulation change, and determine if a permanent regulation change is necessary.

## Drafting Information

The drafters of this notice are Mr. Walt Paskowsky, Bridge Administration Specialist, project officer, and Lieutenant Commander S.T. Fuger, Jr., project attorney.

## Discussion of Temporary Regulations

The PGA and Parker drawbridges presently open on signal, except that, from 7 a.m. to 9 a.m. and 4 p.m. to 7 p.m. Monday through Friday, the PGA opens on the quarter and three quarter-hour

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while Parker opens on the hour and half-hour. On weekends and federal holidays both bridges open on the hour, 20 minutes after the hour, and 40 minutes after the hour between 8 a.m. and 6 p.m.

This change which adds 15-minute scheduled openings from 9 a.m. to 4 p.m., Monday through Friday, is intended to space draw openings and virtually eliminate "back to back" openings which can contribute significantly to vehicular traffic delays during these periods.

**List of Subjects in 33 CFR Part 117**

Bridges.

**Temporary Regulations**

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is temporarily amended as follows:

## PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); 33 CFR 117.43.

2. In § 117.261, paragraphs (s) and (t) are suspended and new paragraphs (rr) and (ss) are added to read as follows for the period February 21, 1989 through April 21, 1989.

**117.261 Atlantic Intracoastal Waterway, St. Marys River to Key Largo**

* * * * *

(rr) PGA Boulevard bridge, mile 1012.6. The draw shall open on signal; except that, from 7 a.m. to 9 a.m. and 4 p.m. to 7 p.m., Monday through Friday except federal holidays, the draw need open only on the quarter and three-quarter-hour. From 9 a.m. to 4 p.m. Monday through Friday, except federal holidays, the draw need open only on the hour, quarter-hour, half-hour and three-quarter-hour. On Saturdays, Sundays, and federal holidays from 8 a.m. to 6 p.m. the draw need open only on the hour, 20 minutes after the hour, and 40 minutes after the hour.

(t) Parker bridge, mile 1013.7. The draw shall open on signal; except that, from 7 a.m. to 9 a.m. and 4 p.m. to 7 p.m., Monday through Friday except federal holidays, the draw need open only on the hour and half hour. From 9 a.m. to 4 p.m. Monday through Friday, except federal holidays, the draw need open only on the hour, quarter-hour, half-hour and three quarter-hour. On Saturdays, Sundays, and federal holidays from 8 a.m. to 6 p.m. the draw need open only on the hour, 20 minutes after the hour, and 40 minutes after the hour.

Dated: February 27, 1989.

**Martin H. Daniell,**

*Rear Admiral, U.S. Coast Guard Commander, Seventh Coast Guard District.*

[FR Doc. 89-5585 Filed 3-14-89; 8:45 am]

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**POSTAL SERVICE**

**39 CFR Part 777**

**Implementation of the Uniform Relocation Act Amendments of 1987**

**AGENCY:** Postal Service.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the Postal Service's relocation regulations to make them consistent with Title IV of Pub. L. 100-17, the Uniform Relocation Act Amendments of 1987, and, to the extent feasible, with the interpretation of the 1987 amendments by the Federal Highway Administration in its recently published final governmentwide rule. The 1987 amendments made moderate increases in benefit levels, most of which were previously put into effect by the Postal Service in January 1988. In addition, the amendments changed the Uniform Relocation Act to cover virtually any organization, even private persons, if they displace persons or businesses pursuant to a Federal or Federally-assisted program or project. The amendments also provide that the computation of certain relocation benefits be done in accordance with the regulations of the Federal Highway Administration, which is the lead agency, rather than pursuant to a statutory formula. It is the latter amendments that this final rule is primarily implementing.

**EFFECTIVE DATE:** April 2, 1989.

**FOR FURTHER INFORMATION CONTACT:** Fred Underwood, (202) 268-3111.

**SUPPLEMENTARY INFORMATION:** On December 17, 1987, the Postal Service published a final rule implementing those parts of the Uniform Relocation Act Amendments of 1987 (principally increases in benefit levels) concerning which the statute apparently intended little discretion or interpretation would be available to agencies (52 FR 48029). It is the discretionary and interpretive parts of the statute that this final rule is implementing, and the governmentwide rule of the Federal Highway Administration (FHWA) that is being generally followed. We are also making several minor, editorial changes in our regulations.

After notice and comment rulemaking, the FHWA's final rule was published in the **Federal Register** on March 2, 1989 and became effective the same date (54 FR 8912). That document contains a comprehensive explanation of the governmentwide rule, its regulatory background, and the intention of Congress in enacting the Uniform Relocation Act Amendments of 1987.

Although exempt by 39 U.S.C. 410(a) from the provisions of the Administrative Procedure Act regarding rulemaking, 5 U.S.C. 553, the Postal Service ordinarily seeks public comment on changes to its regulations perceived to have an effect on the public. In this case, however, the FHWA has already received and considered voluminous public comment on the substance of the very changes we are adopting. Accordingly, the Postal Service finds it unnecessary to seek further public comment. In addition, the Postal Service ordinarily delays for 30 days the effective date of its final regulations, as also provided by the Administrative Procedure Act, 5 U.S.C. 553(d). In this case, however, we find that the purposes of the 30 day delayed effective date (notification of potential parties affected) are satisfied by the publication of FHWA's final rule. Moreover, the Uniform Relocation Act Amendments of 1987 require that implementing regulations under it bear an effective date no later than two years after enactment, which is April 2, 1989. Accordingly, the Postal Service finds good cause, consistent with the action of the rest of the Federal government, to put these regulations into effect within the April 2 deadline, notwithstanding the provisions of the Administrative Procedure Act.

For the reasons explained above, the Postal Service hereby amends 39 CFR as follows:

**List of Subjects in 39 CFR Part 777**

Real property acquisition, Relocation assistance.

## PART 777—RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES

1. The authority citation for Part 777 continues to read as follows:

**Authority:** 39 U.S.C. 401.

**§ 777.13 [Amended]**

2. In § 777.13, paragraph (a) is revised; paragraphs (c)–(q) are redesignated (d)–(r), and new paragraph (c) is added to read as follows:

**§ 777.13 Definitions.**

(a) *The Act.* The Uniform Relocation Assistance and Real Property



Acquisition Policies Act of 1970 (Pub. L. 91-646; 84 Stat. 1894).

* * * * *

(c) *Small business.* A business having at least one but not more than 500 employees working at the location being acquired.

* * * * *

3. In § 777.13, redesignated paragraph (f)(1) introductory text is amended by removing the words "paragraph (e)(2)" and adding, in their place, the words "paragraph (f)(2)"; redesignated paragraph (f)(1)(ii)(B) is amended by removing the words "at the time of the postal contract to acquire such property" and adding, in their place, the words "on the date title to such property transfers to the Postal Service"; redesignated paragraph (f)(1)(ii)(B) is also amended by removing the word "is" and adding, in its place, the word "in"; redesignated paragraph (f)(2) introductory text is amended by removing the words "paragraph (e)(1)" and adding, in their place, the words "paragraph (f)(1)"; redesignated paragraph (f)(2)(iii) is amended by removing the words "paragraphs (e)(1)(ii)(B) and (e)(1)(iii)" and adding, in their place, the words "paragraphs (f)(1)(ii)(B) and (f)(1)(iii)"; redesignated paragraph (o)(3) is amended by removing the words "paragraph (n)(1) or (n)(2)" and adding, in their place, the words "paragraph (o)(1) or (o)(2)".

4. In § 777.21 paragraph (h) is added reading as follows:

**§ 777.21 General procedures.**

* * * * *

(h) *Eviction for cause.* Any person occupying real property and not in unlawful occupancy on the date of initiation of negotiations is presumed to be entitled to relocation payments and other assistance unless the Postal Service determines that:

(1) The person received an eviction notice prior to initiation of negotiations and, as a result of that notice, is later evicted; or

(2) The person is evicted after initiation of negotiations for serious or repeated violation of material terms of the lease or occupancy agreement; and

(3) In either case the eviction is not undertaken for the purpose of evading the obligation to make the relocation payments and other assistance available.

**§ 777.23 [Amended]**

5. In § 777.23, paragraph (e)(3) is redesignated (e)(4); paragraph (l) is redesignated (m); paragraphs (c), (d)(6), (e)(1), (e)(2), and redesignated paragraphs (m)(1), and (m)(3)(i) are revised redesignated paragraph (m)(3)(ix) is deleted; redesignated paragraph (m)(3)(x) is redesignated (m)(3)(ix); and new paragraphs (e)(3), (e)(5), and (1) are added to read as follows:

**§ 777.23 Moving expenses.**

* * * * *

(c) *Fixed payment for moving expenses. residential moves.* Any person displaced from a dewlling or a seasonal residence is entitled to receive an expense and dislocation allowance as an alternative to a payment for actual moving and related expenses. This allowance shall be determined according to the applicable schedule approved by the Federal Highway Administration. This includes a provision that the expense and dislocation allowance to a person with minimal personal possessions who is in occupancy of a dormitory style room shared by two or more other unrelated persons or a person whose residential move is performed by an agency at no cost to the person shall be limited to $50.

(d) * * *

(6) Relettering signs and replacing stationary on hand at the time of displacement that are made obsolete as a result of the move.

* * * * *

(e) * * *

(1) The business owns or rents personal property which must be moved in connection with such displacement and for which an expense would be incurred in such move; and, the business vacates or relocates from its displacement site; and

(2) The business cannot be relocated without a substantial loss of its existing patronage (clientele or net earnings). A business is assumed to meet this test unless the Postal Service determines that it will not suffer a substantial loss of its existing patronage; and

(3) The business is not part of a commercial enterprise having more than three other entities which are not being acquired by the Postal Service, and which are under the same ownership and engaged in the same or similar business activities.

* * * * *

(5) The business is not operated at a displacement dwelling solely for the purpose of renting such dwelling to others.

* * * * *

(1) *Payment for actual reasonable reestablishment expenses, nonresidential moves.* In addition to the payments available as allowable expenses for nonresidential moves, a small business, farm or non-profit organization may be eligible to receive a payment, not to exceed $10,000 for expenses actually incurred in relocating and reestablishing such small business, farm or non-profit organization at a replacement site.

(1) *Allowable expenses.* Reestablishment expenses must be reasonable and necessary, as determined by the Postal Service. They may include the following:

(i) Repairs or improvements to the replacement real property as required by federal, state, local law, code or ordinance.

(ii) Modifications to the replacement property to accommodate the business operation or make replacement structures suitable for occupancy.

(iii) Construction and installation costs not to exceed $1,500 for exterior signing to advertise the business.

(iv) Installation of security or fire protection devices.

(v) Provision of utilities from right-of-way to improvements on the replacement site.

(vi) Redecoration or replacement of soiled or worn surfaces at the replacement site, such as paint, panelling or carpeting.

(vii) Licenses, fees and permits when not paid as part of the moving expenses.

(viii) Feasibility surveys, soil testing and marketing studies.

(ix) Advertisement of replacement location, not to exceed $1,500

(x) Professional services in connection with the purchase or lease of a replacement site.

(xi) Increased costs of operation during the first two years at the replacement site, not to exceed $5,000, for such items as lease or rental charges, personal or real property taxes, insurance premiums, utility charges including impact fees or one time assessments for anticipated heavy utility usage.

(xii) Other items that the Postal Service considers essential to the reestablishment of the business.

(2) *Non-allowable expenses.* Following is a non-exclusive listing of restablishment expenditures not considered to be reasonable, necessary or otherwise allowable.

(i) Purchase of capital assets such as office furniture, filing cabinets, machinery, or trade fixtures.

(ii) Purchase of manufacturing materials, production supplies, product inventory, or other items used in the normal course of the business operation.

(iii) Interior or exterior refurbishment at the replacement site which are for cosmetic purposes only.

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(iv) Interest on money borrowed to make the move or purchase the replacement property.

(v) Payment to a part-time business in the home which does not contribute materially to the household income.

(vi) Payment to a person whose sole business at a replacement dwelling is the rental of such dwelling to others.

(m) * * *

(1) *Self moves.* If the displaced person elects to take full responsibility for all or a part of the move, the Postal Service may approve a payment for the person's moving expenses in an amount not to exceed the lowest of three bids acceptable to the Postal Service. Bids may be obtained by either the displaced person or the Postal Service.

* * * * *

(3) * * *

(i) the cost of moving any structure or other real property improvement.

* * * * *

**§ 777.25 [Amended]**

6. In § 777.25, paragraph (j) is amended by removing "$4,000" and adding, in its place, "$5,250", and by removing "$15,000" and adding, in its place, "$22,500".

**§ 777.28 [Amended]**

7. In § 777.28, paragraph (n) is amended by removing the word "regional" and adding, in its place, the words "Service Center".

**Fred Eggleston,**

*Assistant General Counsel, Legislative Division.*

[FR Doc. 89-5606 Filed 3-14-89; 8:45 am]

BILLING CODE 7710-12-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 372

[OPTS-400027; FRL-3537-6]

### Cyclohexane; Toxic Chemical Release Reporting; Community Right-to-Know

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Denial of petition.

**SUMMARY:** EPA is denying a petition to delist cyclohexane from the list of toxic chemicals under section 313 of Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA). The denial is based on EPA's conclusion that cyclohexane is a high volume volatile organic compound that contributes to the formation of tropospheric ozone and other hazardous air pollutants such as formaldehyde. By contributing to ozone pollution, cyclohexane meets the criteria of section 313(d)(2) for both acute and chronic health effects, as well as for ecotoxicity effects.

**FOR FURTHER INFORMATION CONTACT:**

Robert Israel, Petition Coordinator, Emergency Planning and Community Right-to-Know Information Hotline, Environmental Protection Agency, Mail Stop OS-120, 401 M Street SW., Washington, DC 20460, Toll free: 800-535-0202

In Washington, DC, and Alaska, 202-479-2449.

**SUPPLEMENTARY INFORMATION:**

## I. Introduction

### *A. Statutory Authority*

The response to the petition is issued under section 313(d) and (e)(1) of Title III of SARA (Pub. L. 99-499). Title III of SARA is also referred to as the Emergency Planning and Community Right-to-Know Act of 1986.

### *B. Background*

Section 313 of SARA Title III requires certain facilities manufacturing, processing, and using toxic chemicals to report annually their environmental releases of such chemicals. Section 313 establishes an initial list of toxic chemicals that is composed of more than 300 chemicals and chemical categories. Any person may petition EPA to add chemicals to or delete chemicals from the list.

EPA issued a statement of petition policy and guidance in the **Federal Register** of February 4, 1987 (52 FR 3479), to provide guidance regarding the recommended content and format for submitting petitions. EPA must respond to petitions within 180 days either by initiating a rulemaking or by issuing an explanation of why the petition is denied.

## II. Description of Petition

On September 9, 1988, EPA received a petition from the Chemical Manufacturers Association (CMA) to delete cyclohexane from the section 313 list of toxic chemicals. The petition was based on CMA's contention that cyclohexane is not toxic and does not meet the section 313 criteria for listing.

## III. EPA's Toxicity Concerns for Cyclohexane

Cyclohexane belongs to the category of chemicals known as "volatile organic compounds" (VOCs) which contribute significantly to air pollution problems. In particular, chemical reactions of cyclohexane (and other VOCs) in the atmosphere contribute to the formation of ozone and other air pollutants such as formaldehyde which have a direct and unequivocal negative impact on human health and environmental quality.

Ozone is a severe irritant effecting the mucus membranes of the nose and throat, and impairs the normal functioning of the lungs, especially in sensitive individuals such as asthma or allergy sufferers. Exposure to ozone also leads to impaired functioning of the immune system in animal tests. Available data suggest that ozone exposure may also lead to chronic health effects, including morphological changes to, and impaired functioning of, the lungs.

Ozone also has a severe impact on plant life; agricultural losses alone are estimated at $2 to $3 billion a year due to ozone damage.

## IV. Explanation of Denial

EPA has determined that cyclohexane is a VOC that, due to its high volume of production and releases, contributes significantly enough to air pollution concerns to warrant its continued listing as a toxic chemical under section 313.

Cyclohexane is among the 20 highest volume VOCs in production in the U.S.; annual production is over 2 billion pounds. Emissions of cyclohexane exceed 10 million pounds per year. EPA's concerns center around the contribution cyclohexane emissions make to air pollution problems. Cyclohexane emissions contribute to the formation of tropospheric ozone, one of the most intractable and widespread of the nation's environmental problems. The major component of smog, ozone causes serious respiratory problems, and has been implicated in widespread damage to crops and other vegetation. Cyclohexane emissions also contribute to the formation of formaldehyde and other hazardous air pollutants which present a serious health threat. Formaldehyde is a probable human carcinogen and is listed as a toxic chemical for which reporting is required under section 313.

Because cyclohexane is a high volume chemical with substantial emissions, it makes a significant contribution to VOC-related air pollution concerns. Hence, continued listing under section 313 is justified. It is not EPA's intention to include all VOC chemicals on the section 313 list; only those whose volume of use or emissions is large enough to raise substantial VOC concerns. Most high-volume VOC chemicals are already subject to reporting under section 313.

EPA has carefully considered the rationale for listing cyclohexane under section 313. EPA considers the contribution made by the atmospheric chemical reactions of cyclohexane, which result in the formation of ozone and other hazardous air pollutants, to be of sufficient human health and environmental concern as to justify continuing to list it as a "toxic" chemical for the purposes of section 313 reporting. Specifically, by contributing to ozone pollution, cyclohexane meets the criteria of section 313(d)(2) for both acute and chronic health effects, as well as for ecotoxicity effects.

EPA has also concluded that reporting releases of cyclohexane under section 313 will provide useful information to the public, EPA, and States from the point of view of both ozone and hazardous air pollutant concerns. Specifically, the site-specific type of data collected under section 313 will be valuable for validating and improving current data on VOC emission types, quantities, and sources and will aid in conducting research, and in designing regulations, guidelines, and standards, in the manner envisioned in section 313(h).

While EPA may utilize other statutory mechanisms to obtain emissions data on individual toxic chemicals, VOCs or otherwise, section 313 reporting is an appropriate mechanism for continuing to collect data on cyclohexane as a means of improving the current understanding by EPA, States, and the general public, of the quantities of emissions of these chemicals from manufacturing, processing, and user sources.



**List of Subjects in 40 CFR Parts 372**

Community right-to-know, Environmental protection, Reporting and recordkeeping requirements, Toxic chemicals.

Dated: March 8, 1989.

**Charles L. Elkins,**

*Acting Assistant Administrator, Office of Pesticides and Toxic Substances.*

[FR Doc. 89-5914 Filed 3-14-89; 8:45 am]

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# Proposed Rules

Federal Register
Vol. 54, No. 49
Wednesday, March 15, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF ENERGY

### Office of the Secretary

### 10 CFR Part 600

### Financial Assistance Rules; Revised Policy on Objective Merit Review of Discretionary Financial Assistance Applications

**AGENCY:** Department of Energy.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of Energy today proposes a revision of Subparts A and B of the Financial Assistance Rules, 10 CFR Part 600, to establish standards for program offices to follow in conducting the objective merit review of discretionary financial assistance applications, to provide authority for program assistant secretaries to issue general solicitations covering broad areas of research for which financial assistance is being made available, and to establish a requirement whereby applicants may receive an evaluation of their submission. In addition, this revision will give recipients of financial assistance research awards expanded authority to rebudget among categories and authority to carry over funds from one funding period to the next, to incur preaward costs, and to extend project periods without prior approval under certain circumstances. These changes will maintain the Federal stewardship over the funds being awarded while simultaneously allowing research to be done more efficiently and productively.

**DATES:** Written comments on the proposed rule must be received by April 14, 1989.

**ADDRESS:** Comments should be addressed to: James J. Cavanagh, Director, Business and Financial Policy Division (MA-422), Procurement and Assistance Management, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:**
Edward F. Sharp, Business and Financial Policy Division (MA-422), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-8192.
Christopher Smith, Office of the Assistant General Counsel for Procurement and Finance (GC-34), U.S. Department of Energy, Washington, DC 20585, (202) 586-1526.

**SUPPLEMENTARY INFORMATION:**

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## I. Introduction

The Department of Energy (DOE) is today proposing to amend its Financial Assistance Rules to establish standards for program offices in setting up procedures for the objective merit review of discretionary financial assistance applications and to allow recipients of financial assistance research awards expanded authority without obtaining prior approval from the Contracting Officer to (1) rebudget among categories; (2) carry over funds from one funding period to the next; (3) incur limited preaward costs; and (4) extend project periods without additional funds.

Also, today's proposed rule establishes an outline for a Department-wide process for the review of applications for financial assistance. Requests for financial assistance funds are to be reviewed and evaluated by the DOE based on scientific merit of the project, applicant's qualifications, adequacy of applicant's facilities and resources, project appropriateness to the mission of the DOE, and other appropriate factors established and set forth by the cognizant program office. The DOE review process is to consist of review by DOE personnel for scientific and technical merit and program policy matters and may include external review by Federal (including DOE) and non-federal personnel either as part of a standing committee, ad hoc committee, or field reader review for scientific and technical merit. The Federal/non-federal composition of the review groups may vary, as long as objective review standards are maintained.

There is another provision of this proposed rule which will allow the issuance of general solicitations such that applications which are in the subject area of one of the listed programs may be treated as having been in response to the general solicitation.

Finally, a provision regarding evaluations provides that, upon request, the applicant will receive a written summary of the evaluation.

The DOE has concluded that the other proposed changes regarding prior approvals, carryovers, preaward costs and project extensions (which are the DOE's implementation of recommendations stemming from the Florida Demonstration Project) will provide additional flexibility to financial assistance recipients and reduce the work involved in managing financial assistance awards without adversely affecting appropriate Federal oversight of certain awards.

## II. Proposed Changes to 10 CFR Part 600

Section 600.3 is proposed to be amended by inserting in alphabetical order definitions for "ad hoc committee," "field readers," "objective merit review," "responsible official," and "standing commitee," and changing the definition of "research."

Section 600.9 is proposed to be changed by revising paragraph (a)(1) to provide authority for program assistant secretaries to issue general solicitations. Paragraph (c)(10) is being amended to allow program offices to establish due dates or periods appropriate for the receipt of applications. Multiple receipt dates throughout the year may be established which would permit applications to be "bunched" and reviewed in comparison to each other. Paragraph (c)(12)(vi) is being changed to provide that solicitations must contain specific requirements for non-statutory cost sharing when cost sharing is to be considered in the selection process.

Section 600.16 is proposed to be amended by revising paragraph (a) to establish the responsibility of the program office for setting up an objective merit review system and ensuring its satisfactory functioning. A new paragraph (b) is added to set out basic review requirements, including the goal to normally obtain review by at



least three individuals who have no other responsibilities concerning the financial assistance applications being reviewed. A new paragraph (c) has been added to outline requirements for comparative review. A new paragraph (d) has been added to describe the types of review processes which may be used, which include field readers, standing committees, and ad hoc committees. A new paragraph (e) has been added establishing a requirement for providing the applicant with an evaluation of his/her application. A new paragraph (f) has been added to address situations in which the reviewer has an interest in the application being reviewed. A new paragraph (g) has been added to establish deviation procedures from this part of the rule. Existing paragraphs (b) and (c) have been redesignated paragraphs (h) and (i).

Section 600.103 is proposed to be amended to eliminate all Federal prior approval requirements for a recipient of financial assistance research awards (including those in OMB Circulars A-21 and A-110) except for change in objective or scope, temporary replacement or change of principal investigator, change of key personnel, and change of the institution to which the award is made. It is also proposed to be amended to establish the authority of these recipients to incur preaward costs up to 90 days prior to a new renewal award. The section also provides that, if a recipient takes such an action, the DOE is not obligated to issue an award.

Section 600.106 is proposed to be amended by including a provision allowing recipients of financial assistance research awards to extend the final year of a project period without receiving the prior approval of the DOE. Recipients must take this prior to the originally established expiration date and notify the DOE within ten days of the extension.

Section 600.108 is proposed to be amended to allow recipients of financial assistance research awards to carry over unexpended funds in a continuation award without the prior approval of the DOE.

## III. Review Under Executive Order 12291

Today's proposal was reviewed under Executive Order 12291 (February 17, 1981). The DOE has concluded that the rule is not a "major rule" because its promulgation will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete in domestic or export markets. In accordance with requirements of the Executive Order, this rulemaking has been reviewed by the Office of Management and Budget (OMB).

## IV. Review Under the Regulatory Flexibility Act

These proposed regulations were reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96-354, 94 Stat. 1164, which requires preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities; i.e., small businesses, small organizations, and small governmental jurisdictions. The DOE has concluded that the proposed rule would only affect small entities as they apply for and receive financial assistance and does not create additional economic impact on small entities. The DOE certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

## V. Review Under the Paperwork Reduction Act

No information collection or recordkeeping requirements are imposed upon the public by this proposed rulemaking. Accordingly, no OMB clearance is required under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, *et seq.*, or OMB's implementing regulations at 5 CFR Part 1320.

## VI. Review Under the National Environmental Policy Act

The DOE has concluded that promulgation of these wholly procedural rules clearly would not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, *et seq.* (1976)), the Council on Environmental Quality Regulations (40 CFR Parts 1500-1508), and the DOE guidelines (10 CFR Part 1021) and, therefore, does not require an environmental impact statement pursuant to NEPA.

## VII. Review Under Executive Order 12612

Executive Order 12612 requires that regulations or rules be reviewed for substantial direct effects on States, on the relationship between the national government and the States, or in the distribution of power among various levels of governments. If there are sufficient substantial direct effects, E.O 12612 requires preparation of a federalism assessment to be used in all decisions involved in promulgating or implementing a regulation or rule.

Today's proposed regulatory amendments, when finalized, will have a direct effect of State recipients of financial assistance who receive research awards. The number of awards effected is very small, however, and thus there will be insufficient direct effect to warrant the preparation of a federalism assessment by DOE.

## VIII. Public Comments

Interested persons are invited to participate in this rulemaking by submitting data, views, or arguments with respect to the proposed changes set forth in this notice. Three copies of written comments should be submitted to the address indicated in the "ADDRESS" section of this notice. All comments received will be available for public inspection in the DOE Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, between the hours of 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. All written comments received by April 14, 1989, will be fully considered prior to publication of a final rule resulting from this proposal. Any information you consider to be confidential must be so identified and submitted in writing, one copy only. The DOE reserves the right to determine the confidential status of the information and to treat it according to our determination.

The Department has concluded that this proposed rule does not involve a substantial issue of fact or law and that the proposed rule should not have substantial impact on the nation's economy or a large number of individuals or businesses. Therefore, pursuant to Pub. L. 95-91, the DOE Organization Act, and the Administrative Procedure Act (5 U.S.C. 553), the Department does not plan to hold a public hearing on this proposed rule.

**List of Subjects in 10 CFR Part 600**

Administrative practice and procedure, Cooperative agreements/energy, Copyrights, Debarment and suspension, Educational institutions, Energy, Grants/energy, Hospital, Indian tribal governments, Individuals, Inventions and patents; Nonprofit organizations, Reporting requirements, Small businesses.

In consideration of the foregoing, the DOE hereby proposed to amend Chapter

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II of Title 10 of the Code of Federal Regulations by amending Part 600 as set fort below.

Issued in Washington, DC, March 7, 1989.

**Berton J. Roth,**

*Deputy Assistant Secretary for Procurement and Assistance Management.*

For the reasons set out in the preamble, Part 600 of Chapter II, Title 10 of the Code of Federal Regulations is proposed to be amended as follows:

**PART 600—[AMENDED]**

1. The authority citation for Part 600 continues to read as follows:

**Authority:** Sec. 644 and 646, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254 and 7256); Pub. L. 97–258, 96 Stat. 1003–1008 (31 U.S.C. 6301–6308), unless otherwise noted.

**§ 600.3 [Amended]**

2. Section 600.3 is proposed to be amended by adding new definitions for "Ad hoc committee," "Field readers," and "Objective merit review" in alphabetical order and by revising the definition of "Research" as follows:

"Ad hoc committee" means a temporary committee established to perform a single, specific short-term task, after which the committee disbands.

"Field readers" means persons with expertise to evaluate a specific application or category of applications. Field readers may act as independent individuals or as members of a group with the review generally being done by mail.

"Objective merit review" means a thorough, consistent and independent examination of applications based on pre-established criteria by persons knowledgeable in the field of endeavor for which support is requested. This sort of review is conducted to provide advice to selecting officials based on an evaluation of the scientific or technical merit. The reviewers themselves may be engaged in comparable efforts in institutions or organizations similar to the applicant's or have in the past been directly involved in such activities.

"Responsible official" means the Heads of Departmental Elements/Program Assistant Secretaries. These individuals are responsible for the system of objective merit review of financial assistance applications funded by their program or department element. The functions associated with the objective merit review may be delegated, but only to the level specified in the relevant sections of this part. The responsible official, however, remains ultimately responsible for the execution of these functions.

"Standing committee" means a long-term committee established to review applications and may be used when required by legislation or when significant numbers of applications on specified topics are received periodically.

"Research" means any specific or engineering activity which (1) constitutes a systematic, intensive study directed specifically toward greater knowledge or understanding of the subject studied and contributes to a continuing flow of new knowledge; or (2) is directed toward applying new knowledge to meet a recognized need; and/or (3) applies such knowledge toward the production of useful methods, including design, development and improvement of prototypes and new processes to meet established requirements.

**§ 600.9 [Amended]**

3. Section 600.9 is amended by revising paragraphs (a)(1) and (c)(8), (10), and (12)(vi) as follows:

(a) *General.* * * *

(1) A Program Assistant Secretary may annually issue a program notice describing research areas in which financial assistance is being made available. Such notice shall also state whether the research areas covered by the notice are to be added to those listed in a previously issued program rule. If they are to be included, then applications received as a result of the notice may be treated as having been in response to that previously published program rule. If they are not to be included, then applications received in response to the notice are to be treated as unsolicited proposals. Solicitations, e.g., PONS and PRDAS (other than a program rule which serves to solicit applications), may be issued only by a DOE Contracting Officer.

* * * * *

(c) * * *

(8) The names of the responsible DOE Contracting Officer (or, for program notices, the program office contact) to contact for additional information, and, as appropriate, and address where application forms may be obtained;

* * * * *

(10) Appropriate periods or due dates for submission of applications and a statement describing the consequences of late submission. If programs have established a series of due dates to allow for the comparison of applications against each other, these dates shall be indicated in the solicitation;

* * * * *

(12) * * *

(vi) Sources of financing available to the project. Any expectation concerning cost sharing shall be clearly stated. While cost sharing is encouraged, unless the cost sharing expectation is addressed in the solicitation, it shall not be considered in the evaluation process and shall be considered only at the time the award is negotiated.

**§ 600.16 [Amended]**

4. Section 600.16 is amended by revising paragraph (a), redesignating paragraphs (b) and (c) as (h) and (i), and by adding new paragraphs (b) through (g) as follows:

(a) *General.* (1) Each responsible official must establish and publish in the **Federal Register** the details of the system of objective merit review which covers the financial assistance program administered by each cognizant program office within his or her jurisdiction within 120 days of the issuance of this rule for existing programs and prior to the review of applications for new programs. More than one program may adopt the same system. If a program wants to review an application or group of applications using the criteria and procedure of an already established review system other than its own, it may do so by following the deviation procedures described in paragraph (g) of this section. DOE employees designated by responsible officials by carry out the review process shall ensure that the evaluation of applications is conducted in a fair and objective manner.

(2) Objective merit review of financial assistance applications is intended to be advisory and is not intended to replace the authority of the program official with responsibility for deciding whether an award will be made. It is expected that the cognizant project/program officer (scientific monitor) who normally also reviews the proposal for technical/scientific merit, will, additionally, review it from a program policy perspective. Nevertheless, the ojbective merit review system must set forth the relationship between the reviewing individuals, or the review committees or groups, and the official who has the final decision-making authority. In defining this relationship, the system must set out, as a minimum, the decision-making and documentation processes to be followed by the authorized official responsible for selecting when and adverse recommendation has been received through the objective merit review process.

(3)(i) This section applies to all new and renewal applications (except applications for conferences/symposia and for awards which come under the criteria of paragraph (a)(3)(ii) of this section) in programs which make discretionary financial assistance awards and to any other financial assistance programs in which objective merit review is required by the authorizing legislation.

(ii) For projects in which multiple renewals are probable, an objective merit review need not necessarily be done at each renewal, but instead at appropriate points in the overall project period. A determination that a project need not be reviewed at each renewal shall be made in writing by the project officer at the time the initial award is issued, or at least one year prior to the date a renewal award would be issued, and concurred in by an official at least one level above the official responsible for selecting the application for award. The determination shall also indicate the reports required under the award. The criteria on which the determination that a project need not be reviewed at each renewal is based shall be included in the system of objective merit review to be established by the responsible official in accordance with paragraphs (a)(1) and (2) of this section.

(4) Each responsible official shall ensure consistency among DOE field offices in the implementation of the review system(s) for his/her program area.

(5) Each formal review system must contain the elements listed in paragraphs (b) through (e) of this section.

(b) *Basic review standards.* (1) Each application meeting policy and programmatic considerations shall generally be reviewed by at least three qualified persons in addition to the official responsible for selection.

(2) The reviewers of any particular application may be any mixture of federal or non-federal experts, including individuals from within the cognizant program office, except as indicated otherwise below (see paragraphs (b)(3), (5) and (d)(2)(ii) of this section). The DOE shall select external (non-DOE Federal or non-federal) reviewers on the basis of their professional qualifications and expertise in the field of research.

(3) In selecting persons in accordance with § 600.16(b) (1) and (2) to review applications, such selection of additional reviewers should not include, to the extent possible, anyone who, on behalf of the Federal Government, performed or is likely to perform any of the following duties for any of the applications:

(i) Providing substantive technical assistance to the applicant;

(ii) Approving/disapproving or having any decision-making role regarding the application;

(iii) Serving as the project officer or otherwise monitoring or evaluating the recipient's programmatic performance;

(iv) Serving as the Contracting Officer (CO), or performing business management functions for the project; or

(v) Auditing the recipient or the project.

Anyone who has line authority over a person who is ineligible to serve as a reviewer because of the above limitations is also ineligible to serve as a reviewer.

(4) It may occasionally be necessary, after the fact, to change project officer designation, thereby resulting in an individual who participated in the review of an application being appointed as the project officer. This will not be considered a violation of this policy of objective merit review provided the assignment was not expected when the review was conducted.

(5) Persons outside the cognizant program office must not have been employees of that office, including having line authority over that office, for one year prior to participation as a reviewer in the objective merit review process for that program.

(c) *Comparative review.* (1) In order to enhance the validity of the evaluation and rating process, applications can be evaluated in comparison to each other.

(2) If a program area has established a program notice, the responsible official may implement review procedures which will result in applications being evaluated in comparison to each other. Applications in response to that notice may be assigned to a group of field readers, to a standing committee, or to an ad hoc committee, as discussed below, which is capable of reviewing them, and may be considered along with other applications which were submitted in response to the program notice or which are eligible under the most nearly applicable program announcement. For solicitations, review procedures may also permit comparative evaluation with field readers, a standing committee, or an ad hoc committee being used as appropriate.

(d) *Types of review groups*—(1) *Field Readers.* (i) Objective merit review of applications may be obtained by using field readers to whom applications are sent for review and comment. Field readers may also be used as an adjunct to financial assistance application review committees when, for example, the type of expertise needed or the volume of financial assistance applications to be reviewed requires such auxiliary capacity.

(ii) Safeguards should be instituted to ensure that field readers clearly understand the process, their role, and the criteria upon which the applications are to be evaluated.

(iii) For those situations in which a standing committee is the appropriate review mechanism (see paragraph (d)(2) of this section), but a group of field readers must be used instead, it should function as nearly like a committee as possible; e.g., readers must receive all of the applications to be reviewed even though they are in geographically separate locations and all field readers should be instructed to follow the procedures established for evaluating the applications.

(2) *Standing committees.* (i) Standing committees are normally appropriate when required by legislation or when the following conditions prevail:

(A) A sufficient number of applications on specific topics to justify the use of a standing committee(s) is received by the program on a regular basis in accordance with a predetermined review schedule;

(B) There are a sufficient number of persons with the required expertise who are willing and able to (*1*) accept appointments, (*2*) serve over reasonably protracted periods of time, and (*3*) convene at regularly scheduled intervals or at the call of the chairperson; and

(C) The legislative authority for the particular program(s) involved extends for more than one year.

(ii) Persons outside the cognizant program office shall constitute at least half the reviewers on such committees unless a deviation from this requirement has been approved.

(3) *Ad hoc committees.* (i) Ad hoc review committees may not exceed one year in duration and are appropriately used when use of a standing committee is not feasible or when one of the following conditions prevails:

(A) A small number of applications is received on an intermittent basis;

(B) The program is one of limited duration, usually less than one year;

(C) The applications to be reviewed have been solicited to meet a specific program objective and cannot appropriately be reviewed by a standing committee because of subject matter, time constraints, or other limitations;

(D) The volume of applications received necessitates convening an additional committee(s) of available reviewers; or

(E) It is determined that the applications submitted have special review requirements, e.g., construction



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of a facility, the complexity of subject matter cuts across the areas of expertise of two or more standing committees, or the subject matter is of a special, nonrecurring nature.

(ii) Ad hoc committees may not be used for reviewing financial assistance applications for any program for which a standing committee has been established (except for paragraph (d)(3)(i)(D) of this section) unless a deviation is approved.

(e) *Review summary.* Upon request, applicants are to be provided with a written summary of the evaluation of their application.

(f) *Reviewers with interest in application being reviewed.* Reviewers must comply with the requirements for the avoidance of conflict of interest established in Section 600.17. A committee or group of field readers which includes as objective merit reviewers any individuals who cannot meet these requirements with regard to a particular application being reviewed, e.g., officials mentioned in paragraphs (b)(3) and (5) of this section, shall operate as follows:

(1) These individuals or officials may not review, discuss, and/or make a recommendation on an application(s) in which they have a conflict of interest.

(2) In the case of a review committee, the committee member must absent himself or herself from the committee meeting during the review and discussion of the application(s) in which he/she has a conflict of interest.

(g) *Deviations.* (1) In any instance in which a program's preestablished review system is not to be used to review an application, group of applications, or class of applications, written prior approval for utilization of a different procedure, which itself must, to the extent possible, conform to the provisions of this section pertaining to objective merit review, must be obtained from the responsible official or his or her designee.

(2) If the deviation sought applies to a class of applications and constitutes a deviation from the requirements of this part, approval for deviation must be obtained in accordance with Section 600.4. If such request for deviation is approved, all details of the review procedure utilized and the proceedings and determination must be fully documented.

* * * * *

5. Section 600.31 is amended by revising paragraph (d) to read as follows:

**§ 600.31 Funding.**

* * * * *

(d) *Extensions.* (1) For research awards, recipients' awards may extend the expiration date of the final budget period of the project (thereby extending the project period) if additional time beyond the established expiration date is needed to assure adequate completion of the original scope of work within the funds already made available. A single extension, which shall not exceed twelve (12) months, may be made for this purpose, and must be made prior to the originally established expiration date. The recipient must notify the cognizant DOE Contracting Officer in the awarding office in writing within ten (10) days of the extension.

(2) For any type of financial assistance, the DOE may extend any other budget period without the need for competition or a justification of restricted eligibility if:

(i) In the case of the final budget period of a project period of a non-research award, the additional time necessary is 18 months or less in total, or for all other budget periods of both research and non-research awards, the additional time necessary is 6 months or less in total; and

(ii) The grantee submits a written request for an extension before the expiration date of the budget period in process and includes a justification for the extension along with an expenditure plan for the use of any additional funds requested. An expenditure plan need not be provided when no additional funds are requested, unless the grantee intends to rebudget funds in such a way as to require DOE prior approval or unless the grantee is instructed otherwise by the Contracting Officer.

* * * * *

**§ 600.32 [Amended]**

6. Section 600.32 is amended by revising paragraph (c)(2), removing paragraph (d), and redesignating and revising paragraphs (e) and (f) as (d) and (e) as follows:

* * * * *

(c) *Unobligated balances—(1) Other than research grants.* * * *

(2) *Research grants.* Any unobligated balance of funds which remains at the end of any funding period, except the final funding period of the project period, may be carried over to the next funding period, and may be used to defray costs of the period into which it is carried over. The recipient, in the continuation application, shall advise the DOE of the amount of funds to be carried over, the reason the funds remain, and their anticipated use in the next funding period. After review of the information in the continuation application, the DOE may adjust the amount included in the continuation award. The recipient shall not be entitled to reimbursement if a continuation award is not made. The recipient shall also include in the Financial Status Report the amount of the unobligated balance as of the end of each funding period.

(d) *Added funding not required.* Nothing in paragraph (c) of this section shall in any way require the DOE to increase the total amount obligated for the project.

(e) *Adjustments.* Whenever DOE adjusts the amount of an award under this subpart, it shall also make an appropriate upward or downward adjustment to the amount of required cost sharing in order that the adjusted award maintain any required percentage of DOE and non-Federal participation in the costs of the project.

* * * * *

7. Section 600.103 is amended by revising paragraphs (b)(6) and (g) to read as follows:

**§ 600.103 Cost determinations.**

* * * * *

(b) *Cost principles.* * * *

(6) Before a recipient may make changes in the following areas on research financial assistance awards, the written approval of the cognizant Contracting Officer at the DOE is required: (i) Changes in objectives or scope, (ii) temporary replacement or change of principal investigator or change of key personnel, and (iii) change of the institution to which the award is to be made. All other Federal prior approval requirements, including those in OMB Circulars A-21 and A-110, are waived for research awards. The recipient may maintain such internal prior approval systems as it considers necessary.

* * * * *

(g) *Preaward costs.*—(1) *All awards.* Any preaward expenditures are made at the recipient's risk. Approval of preaward costs by the Contracting Officer or incurrence by the recipient does not impose any obligation on DOE in the absence of appropriations, if an award is not subsequently made, or if an award is made for a lesser amount than the recipient expected.

(2) *Research awards only.* (i) For new or renewal research awards, recipients may incur preaward costs up to ninety (90) days prior to the effective date of the award. Preaward costs for periods preceding 90 days prior to the effective date of the award are allowable only if approved in writing, prior to incurrence, by a DOE Contracting Officer.

(ii) For continuation awards within a multiple year project, prior to recipt of continuation funding, preaward expenditures by recipients are not subject to the limitation or approval requirements of paragraph (g)(2)(i) of this section.

(iii) Preaward costs, as incurred by the recipient, must be necessary for the effective and economical conduct of the proejct, and the costs must be otherwise in accordance with these rules and may not include those specific costs for which agency prior approval is required under the circulars. In any instance in which the circulars permit the agency to grant prior approval to the recipient, it is the Department's intention to do so.

(3) *Other than research awards.* All other financial assistance recipients may incur preaward costs only if the expenditure is approved in writing, prior to incurrence, by the Contracting Officer. In the case of governmental entities, the approval must additionally be reflected on the award notice.

[FR Doc. 89-6014 Filed 3-14-89; 8:45 am]
BILLING CODE 6450-01-M



## SECURITIES AND EXCHANGE COMMISSION

**17 CFR Part 240**

**[Rel. No. 34-26609; File No. S7-11-89]**

## Short and Hedged Tendering In Connection With Partial Tender Offers

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Proposed rulemaking.

**SUMMARY:** The Commission is proposing for comment amendments to Rule 10b-4 under the Securities Exchange Act of 1934, known as the short tendering rule. If adopted, these amendments would redesignate the rule as Rule 14e-4 and would clarify its provision. The amendments are not intended to effect any substantive change in the operation of the current rule. In addition, the Commission is requesting comment on the deregulation of hedged tendering.

**DATE:** Comments should be received on or before May 15, 1989.

**ADDRESS:** Comments shoud be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission 450 Fifth Street, NW., Mail Stop 6-9, Washington, DC 20549. Comment letter should refer to File No. S7-11-89. All submissions will be available for public inspection at the Commission's Public Reference Section, 450 5th Street, NW., Washington, DC 20549.

**FOR FURTHER INFORMATION CONTACT:** M. Blair Corkran or Jodie J. Kelley at (202) 272-2848, Office of Trading Practices, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street NW., Mail Stop 5-1, Washington, DC 20549.

**SUPPLEMENTARY INFORMATION:** The Securities and Exchange Commission is publishing for comment amendments to clarify current Rule 10b-4 ("Rule") [1] under the Securities Exchange Act of 1934 ("Exchange Act") [2] and to redesignate the rule as Rule 14e-4. The Commission is also soliciting comment on the possible deregulation of hedged tendering. The Commission's review of the Rule is prompted by the decision of the Second Circuit in *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Bobker.*[3]

Rule 10b-4 was adopted by the Commission in 1968 [4] for the purpose of prohibiting "short tendering," *i.e.,* tendering more shares than a person owns in order to avoid or reduce the risk of *pro rata* acceptance in tender offers for less than all the outstanding securities of a class or series. The Rule was amended in 1984 [5] to prohibit the practice of "hedged tendering" in connection with partial offers, *i.e.,* tendering and then selling a portion of the tendered shares in the market.

### I. Introduction

#### *A. Background*

In making a tender offer for securities of a subject company, the bidder can tender for all the outstanding securities of the subject company or for a lesser amount. When a tender offer is made for less than all the outstanding equity securities of a class ("partial offer") and when a greater number of securities are tendered than is sought in the offer, the tendered securities must be accepted on a *pro rata* basis from all tendering securityholders.[6]

Partial offers involve a risk to securityholders of the subject company that not all of the securities tendered will be accepted. This risk is referred to as "proration risk." Before the adoption of Rule 10b-4, securityholders occasionally tendered more securities than they owned in order to diminish proration risk. By tendering a greater number of securities than they owned, and by guaranteeing their tenders,[7] market professionals were able to secure acceptance of a disproportionately larger number of the securities owned and tendered by them than could be secured by other persons who tendered only securities that they owned.[8]

The Commission adopted Rule 10b-4 in 1968 for the specific purpose of prohibiting short tendering.[9] The rule currently provides that it is a "manipulative or deceptive device or contrivance" within the meaning of section 10(b) of the Exchange Act for any person, in response to an offer or invitation for tenders of any security, to tender securities that he does not own.[10] Ownership is defined in paragraph (a) of the Rule. The Rule applies to all tender offers, whether made by a third party or by the issuer of the securities sought.[11]

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[1] 17 CFR 240.10b-4.

[2] 15 U.S.C. 78a *et seq.*

[3] 808 F.2d 930 (2d Cir. 1986) (herein cited as *Bobker*).

[4] Securities Exchange Act Release No. 8321 (May 28, 1968), 33 FR 8289 ("Release 34-8321").

[5] Securities Exchange Act Release No. 20799 (March 29, 1984), 49 FR 13867, 13868 ("Release 34-20799").

[6] Section 14(d)(6) of the Exchange Act, 15 U.S.C. 78n(d)(6); Rule 13e-4(f)(3) under the Exchange Act, 17 CFR 240.13e-4(f)(3). When tendered securities are accepted on a *pro rata* basis, the offeror accepts only a percentage of the securities tendered by each securityholder. The percentage is calculated from a fraction whose numerator represents the total number of securities accepted and whose denominator represents the total number of securities tendered.

[7] Broker-dealers are able to tender by a letter of guarantee that promises the required shares will be delivered to the bidder in accordance with the terms of the offer.

[8] *See* Testimony of Chairman Manuel F. Cohen in Hearings on S. 510 Before the Subcommittee on Securities of the Senate Committee on Banking and Currency, 90th Cong., 1st Sess. 198-99 (1967).

[9] Release 34-8321.

[10] Short and hedged tendering may involve a "manipulative or deceptive device or contrivance" since securityholders that are not market professionals generally would not be aware that their proration risk may be substantially increased as a result of the use of short and hedged tendering by market professionals. Rule 10b-4 also furthers the purpose stated in the preamble of the Exchange Act "to prevent inequitable and unfair practices on * * * exchanges and markets," and is consistent with some of the goals of the Williams Act amendments to the Exchange Act, namely, to "assur[e] fair and equal treatment of all holders of the class of securities that is the subject of a tender offer," and "to eliminate discriminatory treatment among security holders who desire to tender their shares." *See* Securities Act Release No. 8653 (July 11, 1986), 51 FR 25873, and sources cited therein. *See also* text accompaning notes 39 and 40 *infra.* Moreover, it is an appropriate exercise of the Commission's general authority to adopt such rules and regulations "as may be necessary or appropriate to implement the provisions of [the Exchange Act]." Section 23(a) of the Exchange Act, 15 U.S.C. 78w(a).

[11] Although tender offers by an issuer are exempt from the provisions of section 14(d) of the Exchange Act, 15 U.S.C. 78n(d), they are subject to the antifraud provisions of section 14(e) of the Exchange Act, 15 U.S.C. 78n(e). In addition, issuer tender offers by issuers with a class of equity

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Following the adoption of Rule 10b–4, it became apparent that requiring a shareholder to tender from a long position did not prevent market professionals from tendering shares they owned and then selling a portion of their shares before the proration deadline to a purchaser who would then also be able to tender the shares. This practice, known as hedged tendering, permitted tendering persons who hedged their tenders to shift proration risk to others who did not hedge.[12] The avoidance of proration risk was similar to that achieved by short tendering. The Advisory Committee on Tender Offers recommended that the Commission prohibit hedged tendering.[13]

In 1984, the Commission adopted amendments to Rule 10b–4 that were designed to prohibit hedged tendering without unduly affecting tendering practices or the structure of the trading markets during tender offers.[14] The amendments required a tendering person to have a net long position [15] to the extent of the tender not only at the time of tendering, but also at the end of the proration period. In 1985, the Commission adopted a further amendment to Rule 10b–4 to prohibit hedged tendering by use of call options. That amendment required that a tendering person's net long position be reduced by the number of shares underlying any in-the-money call options that the tendering person had written.[16]

*B. The Bobker Decision*

Jack Bobker, a customer of Merrill Lynch, Pierce, Fenner & Smith Inc. ("Merrill Lynch"), owned and tendered 4,000 shares of Phillips Petroleum Company ("Phillips") common stock in response to a tender offer by Phillips for approximately 50 percent of its outstanding common stock. Before the proration date of the Phillips offer, Bobker sold 2,000 shares of Phillips common stock short, making arrangements through Merrill Lynch to borrow the necessary shares. Shortly thereafter, Merrill Lynch's compliance department cancelled the short sale, apparently on the basis that Bobker would have been in violation of Rule 10b–4 if he had not covered his short position by the proration date.[17] Bobker commenced an arbitration proceeding claiming that his tender and his short sale were "independent transactions" and seeking $23,000 in profits that he allegedly would have earned if Merrill Lynch had not cancelled his short sale. The arbitrators awarded Bobker $11,500 and Merrill Lynch appealed. The District Court adopted the analysis of Rule 10b–4 set forth in the Commission's brief as *amicus curiae* and vacated the arbitration award, finding that the arbitrators had acted in "manifest disregard of the law" with respect to the application of Rule 10b–4 to Bobker's activities.[18] Bobker appealed.

The Second Circuit reversed and held that the arbitrators did not act in "manifest disregard of the law" in the manner in which they disposed of the arbitration proceeding.[19] In reaching that conclusion, the court's opinion emphasized that the arbitrators' "careful and conscientious analysis" of the application of Rule 10b–4 to the facts of the case resulted in "serious doubts * * * about the rationality and interpretation of the 'net long' proviso and how it serves the Rule's avowed purpose of preventing a stockholder such as Bobker from increasing his *pro rata* share of stock tendered and accepted over the *pro rata* share of that tendered by other stockholders." [20]

The court viewed Bobker as having tendered 4000 shares that he owned and continued on own, and then having separately sold 2000 "additional" shares borrowed from non-tendering shareholders.[21] The opinion stated that the "short sale would not enable Bobker to tender more shares than he actually owned or to dilute the *pro rata* acceptance of shares tendered by other shareholders by causing the same shares to be tendered by two or more shareholders by other shareholders." In supporting its view of Bobker's short sale as an indpendent transaction, the court said that Bobker's short sale "amounted to a separate gamble, inherent in every short sale * * * if the market price of Phillips stock, instead of falling, should rise." [22]

The court also noted that the term "net long" is not defined in the Rule, and that the Commission has stated that the meaning of net long is the same as that employed in interpreting Rule 10a–1 (the

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security registered pursuant to Section 12 of the Exchange Act, 15 U.S.C. 78*l*(g), or which is required to file periodic reports pursuant to Section 15(d) of the Exchange Act, 15 U.S.C. 78o(d), or which is a closed-end investment company registered under the Investment Company Act of 1940, 15 U.S.C 80a–1 *et seq.*, are subject to Rule 13e–4 under the Exchange Act, 17 CFR 240.13e–4.

[12] Market professionals are able to guarantee their tenders and have ready access to borrowable stock. By short tendering or selling in the market after tendering, the professional can significantly reduce its proration risk, while increasing the proration risk of all those who cannot short or engage in a hedged tender, because the short or hedged tendering increases the number of shares that can be tendered. As the number of tendered shares increases, the percentage of shares accepted from each tendering shareholder decreases. *See* n.8 *supra*.

[13] As stated by the Commission Advisory Committee on Tender Offers:

> Notwithstanding contentions that short and hedged tendering operate to increase the efficiency of the market and to reduce the spread between the market price and tender price, thereby benefiting individuals who sell into the market rather than tender, the Committee strongly endorses continuation of Rule 10b–4's prohibition of short tendering and recommends that the rule be strenthened to prohibit specifically hedged tendering. Because short and hedged tendering opportunities are available almost exclusively to market professionals, they appear to provide a substantial, unfair advantage to market professionals. As a result, the Committee found that these techniques created too great a risk of undermining public confidence in the integrity of the markets. Advisory Committee on Tender Offers, Report of Recommendations 47–48 (July 1983) ("Advisory Committee Report") (footnotes omitted).

[14] Release 34–20799.

[15] A person's net long position is determined by offsetting shares owned by any shares sold short. *See* discussion at notes 24 and 25 *infra*.

[16] Securities Exchange Act Release No. 21782 (February 22, 1985), 50 FR 8100. This amendment was also recommended in the Advisory Committee on Tender Offers. Advisory Committee Report 50.

[17] *See* 808 F.2d at 934 n.3. At the time of Bobker's short sale, the transaction did not violate the Rule because paragraph (b)(1) of the Rule requires that a tendering person have a net long position equal to or greater than the amount of shares tendered only at the time of tendering and at the end of the proration period. Had Bobker taken steps to eliminate the short position or reduce his tender by the proration date, no violation would have occurred. Merrill Lynch preempted any such action by Bobker and effectively eliminated Bobker's ability to bring himself into compliance with Rule 10b–4, when it unilaterally cancelled the short sale. However, it seems clear that Bobker did not intend to comply with the net long requirement, because the profits upon which his claim for damages was based would only have accrued if the short position remained open past the proration date.

[18] *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Bobker*, 666 F. Supp. 444 (S.D.N.Y. 1988). "Manifest disregard of the law" by arbitrators is a judicially created ground for vacating an arbitration award. *See Wilko v. Swan*, 346 U.S. 427, 436–437 (1953).

[19] 808 F.2d at 936.

[20] 808 F.2d at 936–37. Two judges joined in the court's opinion. The third judge concurred in the result but disassociated himself from the court's discussion with respect to Rule 10b–4. 808 F.2d at 937–38 (Meskill, J., concurring).

[21] The court viewed the potential tender by the person who bought the Phillips shares from Bobker as substituting for a tender by "non-tendering" persons and thus not affecting the proration pool, apparently assuming that the person from whom Bobker borrowed Phillips shares to complete his short sale would not be able to tender into the offer. Under Rule 10b–4(a)(1), however, a person who would be deemed to own a security but for having lent it is permitted to tender the security. As a practical matter, shareholders who own margin securities held in street name as collateral by broker-dealers are generally not aware when their securities are loaned.

[22] 808 F.2d at 935.



short sale rule) [23] under the Exchange Act.[24] The court cited a 1938 Commission release on Rule 10a–1 explaining that a net long position is determined by offsetting against shares owned any shared sold short by the same person.[25] While specifically declining to decide whether the "net long" requirement of Rule 10b–4 as administered by the Commission is invalid, the court refused to grant deference to the Commission's interpretation of the net long proviso as applied to Bobker's short sale because the court viewed the interpretation as being inconsistent with the purpose of the Rule and as lacking a rational basis.[26]

*C. Analysis of the Bobker Decision*

The Commission believes that Bobker's short sale, assuming it was not covered by the end of the proration period, would have caused Bobker to violate the provisions of Rule 10b–4, which are intended to ensure that all tendering shareholders are subject to equal proration risk. The purpose of the Rule is not to limit the size of the proration pool (although it has that effect), but rather to promote equality of opportunity and of proration risk for all tendering securityholders.[27]

The amendments to Rule 10b–4 adopted by the Commission in 1984 were designed specifically to address the unfairness inherent in transactions such as Bobker's. The release adopting those amendments sets forth an example of hedged tendering that, but for the numbers used, exactly matches Bobker's tender and subsequent sale of shares.[28] Bobker would have participated in the proration pool as an owner of 4000 shares even though his actual net interest in Phillips shares was that of an owner of 2000 shares. His post-tender sale, whether or not structured as a separate transaction,[29] would have enabled him to shift his proration risk to other tendering shareholders.[30] Had Bobker estimated the *pro rata* acceptance rate correctly, he would have had little proration risk, because he would have received the tender offer price or a tender offer-influenced market price for all of his shares. The shares returned by Phillips could be used to cover Bobker's short position. Other tendering shareholders, by contrast, would have had their *pro rata* acceptance reduced to reflect the additional shares tendered by the buyer of Bobker's shares.

II. Proposals

Rule 10b–4 is a complex rule. In light of the Second Circuit's decision in *Bobker*, the Commission believes that it may be appropriate to clarify the Rule's rationale and substantive provisions.[31] Accordingly, the Commission is requesting comment on a proposed redraft of the Rule to clarify its provisions, particularly the net long proviso. The amendments to the Rule are not intended to effect any substantive change in the operation of the Rule.

The Commission also believes that, because the hedged tendering prohibition has been in effect over four years, it is now appropriate to request comment on whether the amendments to the Rule that prohibited hedged tendering have worked as intended and whether the prohibition continues to be appropriate.

*A. Clarifying Amendments*

The proposed amendments are designed to clarify the requirement of the Rule that all tendering securityholders have a net long position in the securities at least equal to the amount tendered, both when tendering and at the end of the proration period.[32]

In order to remove potential misunderstanding or ambiguity concerning the Rule's application to persons responding to a partial tender offer, paragraph (a)(1) would be restructured to define the term "net long position." [33] A person's "net long position" in a security would equal the excess, if any, of his "long position" in that security over his "short position." A person's "long position," as defined in paragraph (a)(1)(i), would include: (1) Securities to which a person or his agent has title or has purchased but has not yet received, (2) securities for which a person has converted, exchanged, or exercised a standardized call option or an equivalent security, and (3) securities that a person is entitled to receive upon conversion, exchange, or exercise of an equivalent security.[34] A person's "short

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[23] 17 CFR 240.10a–1.

[24] *See* Release 34–8321.

[25] 808 F.2d at 934, *citing* Securities Exchange Act Release No. 1671 (February 8, 1936), 11 FR 10968, 10970 (1946). "[I]f a person maintains two accounts and is short 1000 shares of a security in one and long 1000 shares of the same security in another, any sales of such security by such person are short sales and are subject to the provisions of the [short sale rule]." *Id.*

[26] It should be noted that the court's discussion of Rule 10b–4 is dicta and does not constitute a holding in the case. *See* 808 F.2d at 936.

[27] *See* Release 34–20799, 49 FR at 13868. Consistent with this purpose, the Commission has not, for example, attempted to restrict market activities by non-tendering persons, even though short sales by such persons during the tender offer period potentially have the effect of expanding the proration pool. *See* text at n.45 *infra*.

[28] *See* Release 34–20799 n.7, 49 FR at 13868 n.7.

[29] The effect of Bobker's "separate" short sale was the same as if he had tendered 4000 shares by letter of guarantee, sold 2000 of those shares in the market and delivered them, and then borrowed 2000 shares in order to complete delivery to the bidder. Borrowed shares are not considered part of a person's net long position for purposes of Rule 10b–4.

[30] Unlike the typical speculative short seller, Bobker was not attempting to benefit from a post-tender offer decline in the price of Phillips' stock, because any decline that benefitted his short position would be offset by the reduced value of the tendered shares that were not accepted by the bidder.

Bobker probably was able to borrow shares initially to deliver on his short sale through Merrill Lynch only because Rule 10b–4 restricts market professionals from short and hedged tendering. Several commentators on the 1984 amendments stated that, in an environment in which hedged tendering is permitted, non-professionals will not be able to borrow shares in any partial offer in which such borrowing would be advantageous. *See*, e.g., letter from J. E. Buck, Secretary, New York Stock Exchange, to George A. Fitzsimmons, Secretary, SEC (February 2, 1982) ("NYSE Comment Letter"); and letter from Joseph McLaughlin, Chairman, Securities Industry Association, to George A. Fitzsimmons, Secretary, SEC (January 5, 1982) ("SIA Comment Letter"). The letters are contained in File No. S7–903.

[31] The Securities Industry Association ("SIA") has urged the Commission to clarify the uncertainty created by the *Bobker* decision. *See* letter from Dennis H. Greenwald, Chairman, SIA, to Richard Ketchum, Director, Division of Market Regulation, Securities and Exchange Commission (March 11, 1987), contained in File No. S7–11–89.

[32] As used herein, the "proration period" is the time during which acceptance of securities is made on a *pro rata* basis or by lot, including any extensions thereof, whether or not such period is required by statute or rule.

[33] As the *Bobker* court pointed out, the term net long is not defined in the Rule, and the net long proviso of the Rule was derived from another Commission rule. *See* text at n. 23 *supra*.

[34] Equivalent securities, as defined in paragraph (a)(2), are included in a person's long position for purposes of Rule 10b–4 to obviate the hardship of converting, exchanging, or exercising a tendering person's entire equivalent security position where only a small portion of the shares tendered are accepted by a bidder. A significant difference between the tender offer and the short sale context is that ownership of equivalent securities does not establish ownership of the underlying securities for purposes of Rule 3b–3 under the Exchange Act, 17 CFR 240.3b–3, which defines short sales.

Because recent partial tender offers have uniformly required delivery of all shares tendered rather than only those accepted, the Commission requests comment on whether the current ability to tender a subject security based upon mere ownership of an equivalent security is necessary or appropriate. If ownership of equivalent securities did not contribute to a person's long position in the underlying subject security, an equivalent security would have to be converted, exchanged, or exercised prior to tendering such subject securities. This change could be effected by deleting provisions (a)(1)(i)(E), (a)(1)(ii)(C), (a)(2), and (b)(1)(ii), and conforming other provisions in the proposed amendments to the Rule.

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position" would be defined in paragraph (a)(1)(ii) as equivalent to the amount of subject securities that the person (1) has sold, (2) is obligated to return to a lender, (3) is obligated to deliver upon exercise of a non-standardized call option or right pursuant to which the holder may tender, or (4) is obligated to deliver upon exercise of an in-the-money standardized call option sold after a tender offer for the subject security has been announced or otherwise made known by the bidder. These provisions are all drawn from the current Rule.[36]

Paragraph (a)(5) would define a "partial tender offer" as a tender offer for less than all of the outstanding securities subject to the offer where acceptance is by lot or on a *pro rata* basis, or a tender offer for all of the outstanding shares with different offered consideration that involves *pro rata* acceptance. This definition would incorporate current paragraph (c) of the Rule and the staff's interpretive position that Rule 10b–4 applies to any tender offer involving prorationing.[38]

The proposed amendments would reflect the full scope of the Commission's authority to promulgate the Rule by substituting the phrase "it shall be unlawful" in paragraph (b). In addition, the Commission proposes to redesignate the Rule as Rule 14e–4. The redesignation will place the Rule among the provisions specifically relating to tender offers and reflect the primary rationale of the Rule.[37]

In the Williams Act amendments,[38] Congress indicated an intention that each shareholder receive equal treatment based upon the shareholder's interest in the securities that are the subject of a tender offer.[39] The Commission observes that short and hedged tendering require access to borrowed shares, and market professionals have a clear advantage in obtaining access to such shares.[40] A failure to prohibit short or hedged tendering would thus make a shareholder's position in a partial tender offer dependent both on the shareholder's interest in the securities subject to the tender *and* on the shareholder's ability to obtain access to borrowed shares. Was the latter factor a consideration that Congress intended to have influenced the incidence of proration rights?

Paragraph (b) is otherwise unchanged, except to reflect changes made in paragraph (a). Thus, a person may only tender into a partial tender offer if his net long position in the security equals or exceeds the number of securities tendered both at the time of tender and at the end of the proration period of the offer. The Commission requests comment, however, on whether the prohibition of multiple tendering, *i.e.*, tendering to two or more partial offers, set forth in paragraph (b)(3) of the Rule, continues to be appropriate. The Commission has not noted any problem in connection with multiple tendering where it has been permitted, *i.e.*, in offers not subject to the Rule. Moreover, with the elimination of the ten day minimum proration period,[41] the advantages that some tendering persons could obtain by multiple tendering appear to be lessened or eliminated.

Proposed paragraph (c), which permits exemptions, replaces current paragraph (d). Current paragraph (c), which limits the coverage of the rule to certain partial offers, is incorporated in the definition of partial offers in proposed paragraph (a)(5).[42]

Because the proposed amendments are not intended to effect any substantive changes in the current Rule, commentators are invited to address any provisions that might operate differently from those of the current Rule.

*B. Deregulation of Hedged Tendering*

The Commission also is requesting comment on whether it would be desirable to deregulate hedged tendering, while continuing to restrict short tendering. The principal argument in favor of permitting hedged tendering, put forth by several commentators on the 1984 Rule Amendments,[43] is that the practice of hedged tendering ultimately benefits those shareholders who choose not to tender but rather to sell into the market to avoid proration and other risks. According to this view, the ability to reduce the risk of loss on the returned shares enables risk arbitrageurs to increase the volume of their open market purchases of subject securities and thereby raises the market price. In this sense, as Commissioner Cox argued in his dissent from the Commission's 1984 decision to restrict hedged tendering, the hedged tendering prohibition reduces the price to those shareholders choosing to sell into the market in order to improve the prorationing position of shareholders who choose to tender into the offer. Is there any policy reason to prefer the interests of the one shareholder group over the interests of the other?[44]

Commentators are requested to discuss whether the suggested benefits of permitting hedged tendering mitigate or eliminate the potential adverse effects of the application of *pro rata* acceptance to the additional amount of shares that would be tendered, and whether such practices are either consistent or inconsistent with the

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If the Commission retains the concept of equivalent securities, the proposed new forms of index products involving physical delivery, *see e.g.*, Securities Exchange Act Release No. 26369 [December 22, 1988], 53 FR 52801 (index participations), would not be deemed equivalent securities, *i.e.*, they would have to be exercised before a tender could be based on ownership of the underlying securities. Similarly, a person's unexercised short position in these products would not be part of his short position in the subject security.

[36] The definitions of the terms "equivalent security" in paragraph (a)(2), "subject security" in paragraph (a)(3), "tender" in paragraph (a)(4), and "standardized call option" in paragraph (a)(6) are unchanged from the current Rule.

[37] *See* Release 34–20799 n.13, 49 FR at 13869 n.13.

[38] Rule 10b–4 was adopted by the Commission in response to the suggestion by Congress in 1967 that the Commission exercise its authority under existing Exchange Act antifraud provisions to prohibit the "abuse" of short tendering. *See* Securities Exchange Act Release No. 8234 (January 3, 1968), 33 FR 513, citing Sen. Rep. No. 550, 90th Cong. 1st Sess. 5 (1967). Accordingly, the Rule was adopted pursuant to the authority of sections 10(b) and 23(a) of the Exchange Act, 15 U.S.C. 78j(b) and 78w(a). *See* Securities Exchange Act Release No. 8121 (May 28, 1966), 33 FR 8289. Since that time, the Commission has used its additional authority under the Williams Act in adopting amendments to the Rule. *See, e.g.*, Release 34–20799, 49 FR at 13870 (amendments adopted under sections 3(b), 10(a), 10(b), 14(e), 15(b), and 23(a) of the Exchange Act, 15 U.S.C. 78c(b), 78j(a), 78j(b), 78m(e), 78o(b), 78w(a)). *Cf.* Securities Exchange Act Release No. 24485 (May 20, 1987) n.10, 52 FR 19988, 19987 n.10.

Proposed Rule 14d–4, as amended, would be adopted pursuant to Sections 3(b), 10(a), 10(b), 13(e), 14(e), 15(c), and 23(a) of the Exchange Act, 15 U.S.C. 78c(b), 78j(a), 78j(b), 78m(e), 78n(e), 78o(c), and 78w(a). A parallel amendment is proposed for the Commission's exemptive authority in proposed paragraph (c).

[39] *See, e.g.* Exchange Act sections 14(d) (6) and (7), 15 U.S.C. 78n(d)(6) and (7).

[40] "The purpose of [section 14(d)(7)] is to assure . . . equality of treatment among all shareholders who tender their shares." Sen. Rep. No. 550, 90th Cong. 1st Sess. 10 (1967) and House Rep. No. 1711, 90th Cong. 2nd Sess. 11 (1968).

[41] *See* n.30 *supra*.

[42] Rule 14d–8 under the Exchange Act, 17 CFR 240.14d–8, requires bidders to accord pro rata treatment for all shares deposited during the period the offer remains open. *See* Securities Exchange Act Release No. 19336 (December 13, 1982), 47 FR 57679.

[43] The title of the Rule is proposed to be changed to "Prohibited transactions in connection with partial tender offers."

[44] *See* letter from William R. Harman, Principal, Secretary and General Counsel, Morgan Stanley & Co., to George A. Fitzsimmons, Secretary, SEC (December 3, 1981); letter from John A. Williams, Vice President, Merrill Lynch White Weld Capital Markets Group, to George A. Fitzsimmons, Secretary, SEC (November 13, 1981); letter from Sullivan & Cromwell to George A. Fitzsimmons, Secretary, SEC (November 13, 1981); NYSE Comment Letter; and SIA Comment Letter. The letters are contained in File No. S7–903. *See also* Release 34–20799, 49 FR at 13871 (Commissioner Cox, dissenting).

[44] *See* Release 34–20799, Commissioner Cox dissenting.



Congressional intent reflected in the Williams Act. Commentators are also invited to compare the relationship between the market price of securities subject to a partial tender offer and the tender offer price, both before and after the 1984 amendments that prohibited hedged tendering. Finally, commentators are requested to address how deregulation of hedged tendering would affect public confidence in the integrity of the securities markets.

It has also been suggested that the purpose sought by proscribing hedged tendering cannot be achieved effectively without a much more comprehensive regulation, which the Commission does not favor. Rule 10b–4 does not restrict all short sales, because non-tendering persons are not covered by Rule 10b–4. A short sale by a non-tendering person, however, potentially expands the proration pool in the same way as hedged sales by a tendering person, because the purchaser can tender in both cases. The shares that formerly would have been borrowed to effectuate hedged tendering may now be available to facilitate a higher level of short sales by non-tendering persons, and the impact on tendering shareholders can be similar.[45] The Commission requests comment on the extent of such short sales, and also on whether the ability of broker-dealers to participate as principals in the proration pool while profiting by lending shares to facilitate short sales during a partial tender offer is analogous to, or may be distinguished from, the advantage that market professionals may have if hedged tendering is permitted.

If the Commission determines to permit hedged tendering and determines to adopt the revised Rule, it would delete proposed paragraph (a)(1)(ii)(D) and would delete the words "and at the end of the proration period" from proposed paragraph (b). Accordingly, a tendering securityholder would be required to have a net long position only at the time of tendering.

The Commission is not aware of significant industry support for permitting short tendering.[46] However, because hedged tendering and short tendering have the same purpose and effect,[47] commentators favoring the deregulation of hedged tendering are invited to discuss whether short tendering should also be permitted. Specifically, commentators should consider whether the prohibition on short tendering will have any practical effect if hedged tendering were permitted.[48]

## III. Initial Regulatory Flexibility Act Certification and Effects on Competition

Section 603(a)[49] of the Administrative Procedure Act ("APA"),[50] as amended by the Regulatory Flexibility Act ("Flexibility Act"),[51] generally requires the Commission to undertake a regulatory flexibility analysis of all proposed rules, or proposed rule amendments, to determine the impact of such rulemaking on "small entities."[52] Section 605(b) of the Flexibility Act, specifically exempts from this requirement any proposed rule, or proposed rule amendment, which, if adopted, would not "have a significant economic impact on a substantial number of small entities." Because the proposed amendments do not result in substantive changes to the Rule, the Chairman of the Commission has certified that the proposed amendments, if adopted, would not have a significant economic impact on a substantial number of small entities.

Section 23(a) of the Exchange Act[53] requires the Commission to consider the impact any proposed rules would have on competition. While the Commission is not aware of any competitive impact likely to result from the proposal described in this release, commentators are invited to address that issue.

## IV. Text of Proposed Rule Amendments

On the basis of the above discussion and analysis, the Commission is proposing to amend Part 240 of Chapter II of Title 17 of the Code of Federal Regulations as follows:

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[45] For those market professionals who are able to borrow stock, short sales during partial tender offers have always offered an opportunity to profit from an expected post-tender market price decline in the target security.

[46] In 1981, the Commission proposed that short tendering be deregulated. Securities Exchange Act Release No. 18050 (August 21, 1981), 46 FR 43656. In response to nearly unanimous commentary that opposed deregulation of short tendering, the Commission withdrew that proposal. Release 34–207799, 49 FR at 13870.

[47] *See* Release 34–20799, 49 FR at 13869.

[48] *Cf. id.*, 49 FR at 13868 n.7.

[49] 5 U.S.C. 603(a).

[50] 5 U.S.C. 551 *et seq.*

[51] Pub. L. No. 96–354 (September 19, 1980), 94 Stat. 1164 (1980), U.S. Code Cong. & Ad. News 1168.

[52] Although section 605(b) of the Flexibility Act defines the term "small entity," the statute permits agencies to formulate their own definitions. The Commission has adopted definitions of the term small entity for the purposes of Commission rulemaking in accordance with the Regulatory Flexibility Act. These definitions, as relevant to this proposed rulemaking, are set forth in Rule 0–10, 17 CFR 240.0–10. See Securities Exchange Act Release No. 18452 (January 28, 1982), 47 FR 5215.

[53] 15 U.S.C. 78w(a).

## PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 is amended by adding the following citation:

Authority: Sec. 23, 48 stat. 901, as amended (15 U.S.C. 78w), unless otherwise noted. * * * Section 240.14e–4 also issued under the Exchange Act, 15 U.S.C. 78a *et seq.*, and particularly sections 3(b), 10(a), 10(b), 13(e), 14(e), 15(c), and 23(a) of the Exchange Act (15 U.S.C. 78c(b), 78j(a), 78j(b), 78m(e), 78n(e), 78o(c), and 78w(a)).

2. Section 240.10b–4 is proposed to be amended by redesignating it as § 240.14e–4, revising the section heading, and revising paragraphs (a)(1), (a)(5), (b) introductory text, (b)(1), (b)(3), and (c), and removing paragraph (d), as follows: The introductory text of paragraph (a) is republished for the convenience of the reader.

**§ 240.14e–4 Prohibited transactions in connection with partial tender offers.**

(a) *Definitions.* For purposes of this section:

(1) The amount of a person's "net long position" in a subject security shall equal the excess, if any, of:

(i) Such person's "long position," which shall equal the amount of subject securities that such person

(A) Or his agent has title to or would have title to but for having lent such securities, or

(B) Has purchased, or has entered into an unconditional contract, binding on both parties thereto, to purchase but has not yet received, or

(C) Has exercised a standardized call option for, or

(D) Has converted, exchanged, or exercised an equivalent security for, or

(E) Is entitled to receive upon conversion, exchange, or exercise of an equivalent security; over

(ii) Such person's "short position," which shall equal the amount of subject securities or subject securities underlying equivalent securities that such person

(A) Has sold, or has entered into an unconditional contract, binding on both parties thereto, to sell, or

(B) Has borrowed, or

(C) Has written a non-standardized option or granted any other right pursuant to which his shares may be tendered by another person, or

(D) Is obligated to deliver upon exercise of a standardized option sold on or after the date that a tender offer is first publicly announced or otherwise made known by the bidder to holders of the security to be acquired, if the

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exercise price of such option is lower than the highest tender offer price or stated amount of the consideration offered for the subject security. For the purpose of paragraph (a)(1)(ii)(C), if one or more tender offers for the same security are ongoing on such date, the announcement date shall be that of the first announced offer. For the purpose of determining the net long position as of the end of the proration period, securities that have been tendered and not withdrawn are deemed to be part of the person's long position as of the end of the proration period.

* * * * *

(5) The term "partial tender offer" means a tender offer or request or invitation for tenders for less than all of the outstanding securities subject to the offer in which tenders are accepted either by lot or on a *pro rata* basis for a specified period, or a tender offer for all of the outstanding shares that offers a choice of consideration in which tenders for different forms of consideration may be accepted either by lot or on a *pro rata* basis for a specified period.

* * * * *

(b) It shall be unlawful for any person acting alone or in concert with others, directly or indirectly, to tender any subject security in a partial tender offer:

(1) For his own account unless at the time of tender, and at the end of the proration period or period during which securities are accepted by lot (including any extensions thereof), he has a net long position equal to or greater than the amount tendered in—

(i) The subject security and will deliver or cause to be delivered such security for the purpose of tender to the person making the offer within the period specified in the offer, or

(ii) An equivalent security and, upon the acceptance of his tender will acquire the subject security by conversion, exchange, or exercise of such equivalent security to the extent required by the terms of the offer, and will deliver or cause to be delivered the subject security so acquired for the purpose of tender to the person making the offer within the period specified in the offer; or

* * * * *

(3) If the same security has been tendered in response to any other partial tender offer, unless such other tender has been withdrawn.

(c) This rule shall not prohibit any transaction or transactions which the Commission, upon written request or upon its own motion, exempts, either unconditionally or on specified terms and conditions.

By the Commission.

Date: March 8, 1989.

**Jonathan G. Katz,**

*Secretary.*

**Regulatory Flexibility Act Certification**

I, David S. Ruder, Chairman of the Securities and Exchange Commission, hereby certify pursuant to 5 U.S.C. 605(b) that the proposed amendments to Rule 10b–4 set forth in Securities Exchange Act Release No. 25809, if promulgated will not have a significant economic impact on a substantial number of small entities. The reasons for this certification are that the proposed amendments (i) only prohibit certain conduct and do not impose any recordkeeping, data collection, or reporting requirements on entities subject to the Rule, and (ii) do not result in substantive changes to the Rule.

Dated: March 8, 1989.

**David S. Ruder,**

*Chairman.*

[FR Doc. 89–5866 Filed 3–14–89; 8:45 am]

BILLING CODE 8010–01–M

## 17 CFR Part 240

**[Rel. No. 34–26906; File No. S7–10–89]**

## Customer Protection—Reserves and Custody of Securities

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Proposed rule amendment.

**SUMMARY:** The Securities and Exchange Commission ("Commission") is publishing for comment a proposed rule amendment to its customer protection rule. The amendment will expand the categories of instruments that broker-dealers may deliver as collateral to customers from whom they are borrowing government securities. In addition to the instruments currently permitted under the rule, the amendment will allow broker-dealers to deliver as collateral "government securities," as defined in sections 3(a)(42)(A) (*e.g.* securities issued by the Government National Mortgage Association) and 3(a)(42)(B) of the Securities Exchange Act of 1934 ("Exchange Act"), and securities issued or guaranteed by the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Student Loan Marketing Association, or the Financing Corporation. In the interim, the Commission is authorizing the Division of Market Regulation ("Division") to issue a letter to the Public Securities Association stating that the Division will not recommend any action to the Commission if broker-dealers expand, in accordance with the proposed rule amendment, the categories of instruments they deliver as collateral to customers in government securities borrowings.

**DATE:** Comments should be received by May 1, 1989.

**ADDRESSES:** Persons wishing to express their views should submit their comments in triplicate addressed to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, NW., Mail Stop 6–9, Washington, DC 20549. Reference should be made to File No. S7–10–89.

**FOR FURTHER INFORMATION CONTACT:** Michael A. Macchiaroli at (202) 272–2904, Michael P. Jamroz at (202) 272–2372 or Jerry W. Carpenter at (202) 272–3728, Division of Market Regulation, 450 5th Street, NW., Mail Stop 5–1, Washington, DC 20549.

**SUPPLEMENTARY INFORMATION:**

### I. Background

The Commission's customer protection rule, Rule 15c3–3 (17 CFR 240.15c3–3) under the Exchange Act, requires that a broker-dealer, among other things, promptly obtain and thereafter maintain physical possession or control of all fully-paid and excess margin securities carried by it for the account of "customers." [1] Paragraph (b)(3) sets forth certain conditions under which a broker-dealer may borrow for its own use customer fully-paid or excess margin securities without being deemed to be in violation of the rule's possession or control requirement. Paragraph (b)(3)(iii) requires that the broker-dealer and the lender enter into a written agreement that, among other things, specifies that the broker-dealer must provide to the lender collateral consisting exclusively of cash, United States Treasury bills, United States Treasury notes, or an irrevocable letter of credit issued by a bank.

Because the borrowing of government securities plays an important role in the government securities market, the Commission believes that, for purposes of the customer protection rule, the categories of instruments that broker-dealers can provide to customer lenders in government securities borrowings should be expanded. Therefore, the Commission is proposing for comment an amendment to the customer protection rule to allow broker-dealers to provide, in addition to the instruments currently listed in paragraph (b)(3)(iii) of the rule, certain government securities [2] as the collateral in government securities borrowings.

[1] The term "customer" is defined at subparagraph (a)(1) of Rule 15c3–3.

[2] The term "government securities" is defined at Section 3(a)(42) of the Exchange Act.



### II. Proposed Change

Currently, paragraph (b)(3)(iii) of the customer protection rule requires that a broker-dealer borrowing securities from a customer provide to that customer collateral "consisting exclusively of cash or United States Treasury bills and Treasury notes or an irrevocable letter of credit issued by a bank as defined in section 3(a)(6)(A) through (C) of the Securities Exchange Act which fully secures the loan of securities * * *." The proposed amendment will allow a broker-dealer that is borrowing government securities to provide to the lender collateral consisting of either the instruments currently listed in paragraph (b)(3)(iii), government securities as defined at sections 3(a)(42)(A) and 3(a)(42)(B) of the Exchange Act, [3] or securities issued or guaranteed by the Federal Home Loan Mortgage Corporation ("Freddie Mac"), the Federal National Mortgage Association ("Fannie Mae"), the Student Loan Marketing Association ("Sallie Mae"), or the Financing Corporation ("FICO"). The proposed amendment excludes zero coupon bonds and "stripped" securities as instruments that may be pledged as collateral.

In a request that the Commission review the categories of instruments that may be provided as collateral to customers in government securites borrowings, the Public Securities Association ("PSA") [4] stated its belief that the liquidity of the government securities market would be improved by permitting broker-dealers to use the government securities set forth in the proposed rule amendment. An increase in liquidity would result because broker-dealers would be afforded greater flexibility in the types of government securities that could be pledged as collateral in the securities borrowing used to cover their short sales and fails to deliver. [5] The PSA also believes that by expanding the pool of government securities that could be pledged as collateral under the customer protection rule, liquidity would be increased because the financing opportunities available to broker-dealers in connection with their market-making activities would be significantly expanded. [6]

The Commission preliminarily believes that the PSA's request, that the Commission expand the categories of instruments that broker-dealers may deliver as collateral to customers in government securities borrowings, and the basis for that request have merit; therefore, the Commission is publishing for comment the proposed rule amendment. The Commission requests comments on the sources of potential costs and benefits associated with the proposed amendment to the customer protection rule and seeks quantification of any costs or benefits identified.

The Commission also requests comments on the propriety of amending the rule to permit broker-dealers to deliver as collateral to customers in borrowings of equity securities or other debt securities the government securities set forth in the proposed rule amendment. Specifically, the Commission seeks information and evidence indicating whether, from the standpoint of customer protection, a distinction should be made between collateral eligible for loans of government securities and collateral eligible for loans of other securities. If appropriate, would such a distinction be based upon the nature or needs of the customer lenders, upon the nature of the borrowed securities or their markets, or upon some other consideration? The Commission also seeks comments and quantifiable data on such questions as: (1) How widespread is the practice of borrowing equity securities or other debt securities from customers (*e.g.*, to cover short sales, fails to deliver, or other similar situations); and (2) to what degree would customer lenders in such transactions accept collateral other than the collateral now permitted by the rule?

### III. Regulatory Flexibility Act Certification

Section 603(a) [7] of the Administrative Procedure Act, [8] as amended by the Regulatory Flexibility Act, [9] requires the Commission to undertake a regulatory flexibility analysis of all proposed rules or proposed rule amendments to determine the impact of such rulemaking on "small entities." Section 605(b) of the Regulatory Flexibility Act specifically exempts from this requirement any proposed rule amendment which, if adopted, would not "have a significant economic impact on a substantial number of small entities."

Chairman Ruder has certified that this rule amendment, if adopted, will not have a significant economic impact on a substantial number of small entities because most broker-dealers who are involved in the borrowing of government securities from non-broker-dealers do not fall within the meaning of "small business" or "small organization" as defined by 17 CFR 240.0–10.

### IV. Statutory Authority

Pursuant to the Securities Exchange Act of 1934 and particularly sections 15 (c)(3) and 23 thereof, 15 U.S.C. 78o(c)(3) and 78w, the Commission proposes to amend § 240.15c3–3 of Title 17 of the Code of Federal Regulation in the manner set forth below.

**List of Subjects in 17 CFR Part 240**

Reporting and recordkeeping requirements, Securities.

### V. Text of Proposed Amendments

In accordance with the foregoing, it is proposed to amend 17 CFR Part 240 as follows:

## PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read as follows:

**Authority:** Sec. 23, 48 Stat. 901, as amended (15 U.S.C. 78w) * * * § 240.15c3–3 is also issued under Sec. 15(c)(3), 15 U.S.C. 78o(c)(3).

2. By amending § 240.15c3–3 by revising paragraph (b)(3)(iii) as follows:

**§ 240.15c3–3 Customer protection—reserves and custody of securities.**

(b) *Physical possession or control of securities.*

(3) * * *

(iii) Specifies that the broker or dealer (A) must provide to the lender, upon the execution of the agreement or by the close of the business day of the loan if

[3] For a security to fall within the definition of "government securities" found at section 3(a)(42)(B) of the Exchange Act, it must, among other things, be designated an "exempt security" by the Secretary of the Treasury. The current list of designated securities is found at 52 FR 38550 (Oct. 16, 1987).

[4] The PSA represents approximately 300 banks and broker-dealers that underwrite, trade, and distribute U.S. government securities, federal agency securities, certain mortgage-backed securities, and state and local government securities. All primary dealers, designated by the Federal Reserve Bank of New York, in U.S. government securities are members of the PSA.

[5] Since the market for Treasury-issued securities, in particular, depends upon the broker-dealers ability to effectuate short sales without undue expense, flexibility in the government securities which could be used as collateral will increase liquidity.

[6] Currently, a broker-dealer holding government securities that are not allowable collateral under paragraph (b)(3) of the rule must first use those government securities to borrow cash and then pledge the cash as collateral in the securities borrowing.

[7] 5 U.S.C. 603(a).

[8] 5 U.S.C. 551 *et seq.*

[9] Pub. L. No. 96–354, 94 Stat. 1164 (1980).

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the loan occurs subsequent to the execution of the agreement, collateral consisting exclusively of cash, United States Treasury bills, United States Treasury notes, or an irrevocable letter of credit issued by a bank as defined in section 3(a)(6) (A) through (C) of the Securities Exchange Act which fully secures the loan of securities or, when the broker or dealer is borrowing government securities, collateral consisting of, in addition to that previously provided for in this section (but excluding zero coupon bonds and "stripped" securities), "government securities" as defined in section 3(a)(42)(A) or section 3(a)(42)(B) of the Securities Exchange Act, or securities issued or guaranteed by the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Student Loan Marketing Association, or the Financing Corporation and (B) must mark the loan to the market not less than daily and, in the event that the market value of all the outstanding securities loaned at the close of trading at the end of the business day exceeds 100 percent of the collateral then held by the lender, the borrowing broker or dealer must provide additional collateral of the type described in paragraph (b)(3)(iii)(A) of this section to the lender by the close of the next business day as necessary to equal, together with the collateral then held by the lender, not less than 100 percent of the market value of the securities loaned; and

* * * * *

By the Commission.

**Jonathan G. Katz,**

*Secretary.*

March 8, 1989.

### Regulatory Flexibility Act Certification

I, David S. Ruder, Chairman of the Securities and Exchange Commission, hereby certify, pursuant to 5 U.S.C. 605(b), that the proposed amendment to Rule 15c3-3 set forth in Securities Exchange Act Release No. 26608, if adopted, will not have a significant economic impact on a substantial number of small entities. The reason for this Certification is that most broker-dealers who are involved in the borrowing of government securities from non-broker-dealers do not fall within the meaning of "small business" or "small organization" as defined by 17 CFR 240.0-10.

**David S. Ruder,**

*Chairman.*

Dated: February 24, 1989.

FR Doc. 89-5052 Filed 3-14-89; 8:45 am]

BILLING CODE 8010-01-M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### 44 CFR Part 67

**[Docket No. FEMA-6861]**

### Proposed Flood Elevation Determinations; Florida et al.

**AGENCY:** Federal Emergency Management Agency.

**ACTION:** Proposed rule.

**SUMMARY:** Technical information or comments are solicited on the proposed base (100-year) flood elevations and proposed base flood elevation modifications listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

**DATES:** The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

**ADDRESSES:** See table below.

**FOR FURTHER INFORMATION CONTACT:** John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency gives notice of the proposed determinations of base (100-year) flood elevations and modified base flood elevations for selected locations in the nation, in accordance with Section 110 and Section 208 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.4.

These elevations, together with the floodplain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under Section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the floodplain area. The local community voluntarily adopts floodplain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the floodplain and do not prohibit development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

### List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The authority citation for Part 67 continues to read as follows:

**Authority:** 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E. O. 12127.

The proposed base (100-year) flood elevations for selected locations are:

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS

| Source of flooding and location | #Depth in feet above ground. Elevation in feet (NGVD) |
|---|---|
| **FLORIDA** | |
| **Bradford County (unincorporated areas)** | |
| *Santa Fe River:* | |
| At County boundary | *74 |
| At Little Santa Fe Lake Outlet | *144 |
| *Little Santa Fe Lake:* Along shoreline | *144 |
| *Santa Fe Lake:* Along shoreline | *144 |
| Maps available for inspection at the Planning and Zoning Department, County Courthouse, Starke, Florida. | |
| Send comments to The Honorable Lawrence Mosley, Chairman, County Commission, Bradford County, P.O. Box 11-49, Starke, Florida 32091. | |
| **Brooker (city), Bradford county** | |
| *Santa Fe River:* Within community | *59 |
| Maps available for inspection at the City Hall, Brooker, Florida. | |
| Send comments to the Honorable Thomas S. Hamilton, Mayor, Town of Brooker, P.O. Box 127, Brooker, Florida 32622. | |
| **Hampton (city), Bradford County** | |
| *Santa Fe River:* Within community | *140 |
| Maps available for inspection at the City Hall, Hampton, Florida. | |
| Send Comments to The Honorable Lois Williamson, Mayor, City of Hampton, P.O. Drawer 250, Hampton, Florida 32044. | |
| **ILLINOIS** | |
| **Dowell (village), Jackson County** | |
| *South Tributary:* | |
| Just downstream of Roosevelt Street | *395 |
| Just downstream of Illinois Central Gulf Railroad | *397 |
| Just downstream of Town Road | *403 |
| *North Tributary:* | |
| At mouth | *403 |
| Just downstream of Town Road | *406 |
| Maps available for inspection at the Village Hall, Dowell, Illinois. | |
| Send comments to The Honorable Samuel Dickerson, Village President, Village of Dowell, Village Hall, Box 92, Dowell, Illinois 62927. | |
| **Muddy (Village), Saline County** | |
| *Middle Fork Saline River:* Within community | *370 |
| Maps available for inspection at the Village Offices in the Gateway Motel, Muddy, Illinois. | |
| Send comments to The Honorable John Molinarolo, Acting Mayor, Village of Muddy, Village Hall General Delivery, Muddy, Illinois 62965. | |
| **INDIANA** | |
| **Carroll County (unincorporated areas)** | |
| *Tippecanoe River:* | |
| At southern county boundary | *545 |
| Just downstream of Oakdale Dam | *579 |
| Maps available for inspection at the Planning Commission, County Courthouse, Delphi, Indiana. | |
| Send comments to The Honorable William Duff, Chairman, County Commissioners, Carroll County, County Courthouse, Delphi, Indiana 46923. | |
| **MAINE** | |
| **Belfast (city), Waldo County** | |
| *Penobscot Bay:* | |
| U.S. Route 1 at southern corporate limits | *10 |
| Passagassawakeag River upstream of U.S. Route 1 | *12 |
| At Common Street | *16 |
| Shoreline at Patterson Point | *19 |
| Shoreline at Perkins Road (extended) | *24 |
| Area approximately 200 feet southeast of U.S. Route 1 crossing over Little River | #1 |
| Maps available for inspection at the City Hall, 71 Church Street, Belfast, Maine. | |
| Send comments to The Honorable Mary Page Worth, Mayor of the City of Belfast, Waldo County, 71 Church Street, Belfast, Maine 04915. | |
| **Blue Hill (town), Hancock County** | |
| *Mill Stream:* | |
| At confluence with Blue Hill Harbor | *12 |
| Approximately 770 feet upstream of High Street Bridge | *59 |
| *Blue Hill Bay:* | |
| At Hub Island | *12 |
| At Fogg Cove | *17 |
| *McHeard Brook:* | |
| At confluence with McHeard Cove | *12 |
| Approximately 455 feet upstream of State Route 176 | *16 |
| Maps available for inspection at the Town Hall, Blue Hill, Maine. | |
| Send comments to The Honorable Gordon Emerson, Chairman of the Town of Blue Hill Board of Selectmen, Hancock County, P.O. Box 412, Blue Hill, Maine 04614. | |
| **Jay (town), Franklin County** | |
| *Androscoggin River:* | |
| Downstream corporate limits | *331 |
| Approximately 1,300 feet upstream of Riley Dam | *382 |
| *Severmile Stream:* | |
| Confluence with Androscoggin River | *371 |
| Approximately 8,050 feet upstream of Morse Hill Road Bridge | *386 |
| *Meadow Brook:* | |
| At confluence with Severmile Stream | *372 |
| Approximately 4,150 feet upstream of State Route 17 Bridge | *373 |
| Maps available for inspection at the Code Enforcement Officer's Vault, 99 Main Street, Jay, Maine. | |
| Send comments to The Honorable Charles Noonan, Jay Town Manager, Franklin County, 99 Main Street, Town Office, Jay, Maine 04239. | |
| **Jonesport (town), Washington County** | |
| *White Creek:* Approximately 100 feet upstream of Route 187 to confluence of Mansfield Creek | *13 |
| *Mansfield Creek:* Entire length within community | *13 |
| *Southwest Creek:* From confluence with Mansfield Creek to approximately 300 feet upstream of Route 187 | *13 |
| *Mason Bay:* | |
| From Southwest Creek to approximately 3,000 feet east | *13 |
| From approximately 3,000 feet east of Southwest Creek to Dunn Island | *17 |
| *Englishman Bay:* | |
| Shoreline at Shorey Cove on Roque Island | *13 |
| Shoreline near Great Bar | *16 |
| Shoreline near Dunn Island | *17 |
| Shoreline near Great Head on Roque Island | *17 |
| *Chandler Bay:* | |
| South of Squire Point on Roque Island | *13 |
| Shoreline at Patten Cove | *13 |
| Shoreline at Bunker Cove | *13 |
| All shoreline in Roque Island Harbor | *16 |
| Just south of Great Bar | *17 |
| South of Bar Island | *18 |
| Bonney Point on Roque Island | *18 |
| Shoreline at Little Pond Beach | *18 |
| Shoreline at Kelly Point | *16 |
| Nott Point | *24 |
| Shoreline at Rhine Point | *24 |
| Southern shoreline of Little Spruce Island | *24 |
| Eastern shoreline of Great Spruce Island | *24 |
| All small islands northeast of Great Spruce Island | *24 |
| *Sequin Passage:* | |
| Northwest shoreline of Head Harbor Island | *13 |
| Northeast shoreline of Head Harbor Island | *24 |
| Shoreline at Mark Island | *24 |
| *Mistake Harbor:* | |
| All islands in the harbor | *16 |
| Eastern shoreline of Steele Harbor Island | *24 |
| *Moosabec Reach:* | |
| Sawyer Cove | *13 |
| Northern shoreline Hopkins Point | *13 |
| Southern shoreline Hopkins Point | *15 |
| Old House Point | *21 |
| *Sandy River:* | |
| At Route 187 | *13 |
| At confluence of Chandler Bay | *17 |
| *Indian River:* From confluence with Atlantic Ocean to approximately 1.5 mile upstream of confluence with Snare Creek | *13 |
| *Snare Creek:* From confluence of Indian River upstream to Route 187 | *13 |
| *Hay Creek:* Entire length within community | *13 |
| Maps available for inspection at the Town Hall, Jonesport, Maine. | |
| Send comments to The Honorable Keith Church, First Selectman of the Town of Jonesport, Washington County, P.O. Box 301, Jonesport, Maine 04649. | |
| **Millbridge (town), Washington County** | |
| *Sawyers Brook:* | |
| Approximately 60 feet downstream of Wyman Road | *11 |
| Approximately 240 feet upstream of Washington Street | *11 |
| *Sawyers Brook Branch:* | |
| At confluence with Sawyers Brook | *11 |
| Approximately 142 feet upstream of confluence with Sawyers Brook | *12 |
| *Narraguagus River:* | |
| At Fish Point | *11 |
| Approximately 500 feet east of intersection of Bayview Street and U.S. Route 1A | *23 |
| *Narraguagus River (Shallow Flooding Area):* North of Bayview Street and east of Bridge Street (U.S. Route 1A) | #2 |
| *Atlantic Ocean:* | |
| West side of Tom Leighton Point Road | *11 |
| Shoreline of Monhonon Cove | *22 |
| Maps available for inspection at the Town Office, Millbridge, Maine. | |
| Send comments to The Honorable William Treworgy, Manager of the Town of Millbridge, Washington County, P.O. Box 68, Millbridge, Main 04658. | |
| **Robbinston (town), Lincoln County** | |
| *Damariscotta Lake:* Entire shoreline within corporate limits | *58 |
| *Pennaquid Pond:* Entire shoreline within corporate limits | *81 |
| *Duckpuddle Pond:* Entire shoreline within corporate limits | *81 |
| *Salt Bay:* Entire shoreline within corporate limits | *10 |
| Maps available for inspection at the Town Clerk's Office, Route 1, Robbinston, Maine. | |
| Send comments to The Honorable Bob Spear, Chairman of the Town of Robbinston Board of Selectmen, Lincoln County, Town Office, Route 1, Box 188, Robbinston, Maine 04571. | |
| **Owls Head (town), Knox County** | |
| *Atlantic Ocean:* | |
| Western end of Ash Island | *12 |
| Western end of Monroe Island | *12 |
| Northwestern end of Sheep Island | *13 |
| Southwestern end of Sheep Island | *18 |
| Southwestern end of Monroe Island | *18 |
| Maps available for inspection at the Municipal Building, Star Route 32, Owls Head, Maine. | |
| Send comments to The Honorable Jack Rausch, Chairman of the Town of Owls Head Planning Board, Knox County, Star Route 32, Box 176, Owls Head, Maine 04854. | |
| **MICHIGAN** | |
| **Manistee (township), Manistee County** | |
| *Bar Lake Outlet:* | |
| At mouth | *584 |
| Just upstream of U.S. Highway 110 | *585 |
| *Manistee River:* | |
| About 1100 feet downstream of CSX railroad | *584 |
| About 450 feet upstream of State Highway 55 | *584 |
| *Lake Michigan:* Along shoreline | *584 |
| *Bar Lake :* Along shoreline | *585 |
| Maps available for inspection at the Township Hall, 4100 Holden, Manistee, Michigan. | |
| Send comments to The Honorable John W. Anderson, Supervisor, Township of Manistee, Township Hall, 4100 Holden, Manistee, Michigan 49650. | |

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

| Source of flooding and location | #Depth in feet above ground. Elevation in feet (NGVD) |
|---|---|
| **NEW HAMPSHIRE** | |
| **Durham (town), Strafford County** | |
| *Lamprey River:* | |
| At downstream corporate limits | *30 |
| At upstream side of Wiswall Road | 69 |
| *Oyster River:* | |
| At confluence with Little Bay | *7 |
| At confluence with Hamel Brook | *14 |
| *Hamel Brook:* | |
| At confluence with Oyster River | *14 |
| At confluence with Longmarsh Brook | *31 |
| *Longmarsh Brook:* | |
| At confluence with Hamel Brook | *31 |
| Approximately 2,850 feet upstream of Longmarsh Road | *34 |
| *Little Bay: At confluence with Oyster River* | *7 |
| Maps available for inspection at the Town Office Building, 13 Newmarket Road, Durham, New Hampshire. | |
| Send comments to The Honorable Norman Stiles, Chairman of the Town of Durham Board of Selectmen, Strafford County, Town Office, 13 Newmarket Road, Durham, New Hampshire 03824. | |
| **NORTH CAROLINA** | |
| **Moore County (unincorporated areas)** | |
| *Bear Creek:* | |
| About 0.8 mile downstream of State Road 705 | *953 |
| About 2600 feet upstream of Bear Creek Dam | *963 |
| *Crane Creek:* | |
| At mouth | *204 |
| Just downstream of Wood Lake Dam | *214 |
| *Jackson Creek:* | |
| About 1.4 miles downstream of State Road 73 | *392 |
| About 1300 feet upstream of State Road 73 | *414 |
| *Jackson Creek Tributary:* | |
| At mouth | *407 |
| Just downstream of Jackson Creek Tributary Dam | *415 |
| Just upstream of Jackson Creek Tributary Dam | *422 |
| Just downstream of State Road 73 | *450 |
| Just upstream of State Road 73 | *457 |
| About 850 feet upstream of State Road 73 | *457 |
| *Little River:* | |
| About 2.5 miles downstream of Little River Dam | *200 |
| About 1500 feet upstream of Morrison Road | *209 |
| About 3.3 miles downstream of SR 1802 | *263 |
| Just downstream of Thaggards Lake Dam | *285 |
| Just upstream of Thaggards Lake Dam | *292 |
| Just downstream of Farm Road | *325 |
| *Woods Lake: Along shoreline* | *229 |
| *Wade Creek:* | |
| At mouth | *315 |
| About 2300 feet upstream of Wade Creek Farm Road | *326 |
| *Aberdeen Creek:* | |
| At CSX railroad | *294 |
| Just downstream of Loch Dornoch Dam | *341 |
| Just upstream of Loch Dornoch Dam | *348 |
| Just downstream of St. Andrews Drive East | *349 |
| Just upstream of St. Andrews Drive East | *358 |
| Just downstream of Morganton Road | *364 |
| *Aberdeen Creek Tributary:* | |
| About 3100 feet downstream of Aberdeen Tributary Dam | *358 |
| Just downstream of Aberdeen Tributary Dam | *369 |
| Just upstream of Aberdeen Tributary Dam | *366 |
| Just upstream of U.S. Route 15 | *372 |
| Maps available for inspection at the Planning Office, County Courthouse, Carthage, North Carolina. | |
| Send comments to The Honorable David McNeill, Manager, Moore County, County Courthouse, Carthage, North Carolina 28327. | |
| **Pinehurst (village), Moore County** | |
| *Aberdeen Creek:* | |
| Just upstream of Morganton Road | *366 |
| About 560 feet upstream of Morganton Road | *366 |

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

| Source of flooding and location | #Depth in feet above ground. Elevation in feet (NGVD) |
|---|---|
| Maps available for inspection at the Village Hall, Pinehurst, North Carolina. | |
| Send comments to The Honorable Andy Williams, Village Administrator, Village of Pinehurst, P.O. Box 1793, Pinehurst, North Carolina 28374. | |
| **Whispering Pines (village), Moore County** | |
| *Little River:* | |
| About 0.6 mile downstream of SR 1402 | *280 |
| Just downstream of Thaggards Lake Dam | *285 |
| Just upstream of Thaggards Lake Dam | *292 |
| About 0.6 mile downstream of SR 1838 | *301 |
| Maps available for inspection at the Village Hall, Pine Ridge Road, Whispering Pines, North Carolina. | |
| Send comments to The Honorable Jozef Cross, Village Manager, Village of Whispering Pines, Pine Ridge Road, Whispering Pines, North Carolina 28327. | |
| **OHIO** | |
| **Allen County (unincorporated areas)** | |
| *Dug Run:* | |
| About 1050 feet downstream of Pioneer Road | *790 |
| About 4000 feet upstream of Eastown Road | *826 |
| *Dug Run Tributary:* | |
| At mouth | *816 |
| Just downstream of Eastown Road | *824 |
| *Lost Creek:* | |
| Just upstream of Reservoir Road | *985 |
| Just downstream of Drop Structure | *981 |
| Just upstream of Drop Structure | *981 |
| About 3000 feet upstream of Drop Structure | *984 |
| *Little Ottawa River:* | |
| Just upstream of Fort Amanda Road | *827 |
| Just downstream of Shawnee Road | *859 |
| *Priest Ditch:* | |
| Just upstream of McClain Road | *981 |
| Just downstream of Interstate 75 | *989 |
| *Tributary A:* | |
| At mouth | *931 |
| About 2500 feet upstream of mouth | *936 |
| *Tributary B:* | |
| At mouth | *949 |
| About 300 feet upstream of Hall Drive | *946 |
| *Tributary D:* | |
| Just upstream of McClain Road | *981 |
| About 1060 feet downstream of Breese Road | *986 |
| *Riley Creek:* | |
| Just upstream of Pulmam Road | *784 |
| About 1.2 miles upstream of Bentley Road | *815 |
| *Ottawa River:* | |
| Just upstream of Adgate Road | *933 |
| About 2100 feet upstream of Conrail | *940 |
| *Pike Run:* | |
| About 1450 feet downstream of Breese Road | *932 |
| Just downstream of Breese Road | *937 |
| *Lost Creek Tributary:* | |
| About 0.9 mile downstream of 6th Street | *982 |
| Just downstream of 6th Street | *987 |
| Maps available for inspection at the Lima/Allen County Regional Planning Commission, 212 North Elizabeth Street, Lima, Ohio. | |
| Send comments to The Honorable Robert Townsend, President, Board of Commissioners, Allen County, County Courthouse, Lima, Ohio 45801. | |
| **Butler (village), Richland County** | |
| *Clear Fork Mohican River:* | |
| About 0.5 mile downstream of State Route 95 | *1,860 |
| About 0.4 mile upstream of State Route 95 | *1,871 |
| Maps available for inspection at the Village Hall, 33 Elm Street, Butler Ohio. | |
| Send comments to The Honorable Paul E. Bowen, Mayor, Village of Butler, Village Hall, Box 307, 99 Elm Street, Butler, Ohio 44822. | |
| **Paulding County (unincorporated areas)** | |
| *Auglaize River:* | |
| About 1.21 miles downstream of State Route 637 | *702 |

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

| Source of flooding and location | #Depth in feet above ground. Elevation in feet (NGVD) |
|---|---|
| About 1.40 miles upstream of State Route 637 | *704 |
| *Flatrock Creek:* | |
| About 0.95 mile downstream of confluence of Opossum Run | *714 |
| About 0.86 mile upstream of County Route 107 | *723 |
| About 950 feet downstream of Norfolk Southern Railway | *736 |
| About 1.02 mile upstream of State Route 49 | *745 |
| Maps available for inspection at the County Commissioner's Office, County Courthouse, Paulding, Ohio. | |
| Send comments to The Honorable Joseph Vogel, President, County, Commissioners, Paulding County, Courthouse, Paulding, Ohio 45879. | |
| **Sabina (Village), Clinton County** | |
| *Wilson Creek:* | |
| About 1100 feet downstream of Plymouth Pike | *1,032 |
| About 1400 feet upstream of Polk Road | *1,040 |
| *Mary's Fork:* | |
| Just upstream of CSX railroad | *1,043 |
| Just upstream of Howard Street | *1,047 |
| Maps available for inspection at the Municipal Building, 99 North Howard Street, Sabina, Ohio. | |
| Send comments to The Honorable Richard Cama, Mayor, Village of Sabina, Municipal Building, 99 North Howard Street, Sabina, Ohio 45169. | |
| **OKLAHOMA** | |
| **Logan County (unincorporated areas)** | |
| *Cottonwood Creek:* | |
| Confluence with Cimarron River | *926 |
| Upstream side of Industrial Road | *947 |
| Downstream side of State Route 74 | *995 |
| *Bird Creek:* | |
| Confluence with Cottonwood Creek | *929 |
| Approximately .9 mile upstream of Interstate Route 35 | *995 |
| *Deer Creek:* | |
| Confluence with Cottonwood Creek | *991 |
| Downstream of 3rd upstream crossing of County Road | *1,008 |
| *Charlotin Creek:* | |
| Confluence with Cottonwood Creek | *984 |
| Downstream of 4th upstream crossing of County Road | *1,015 |
| Maps available for inspection at the Logan County Courthouse, 301 E. Harrison, Guthrie, Oklahoma. | |
| Send comments to The Honorable James R. Ferrell, Chairman of the Logan County Commission, Logan County Courthouse, 301 E. Harrison, Guthrie, Oklahoma 73044. | |
| **OREGON** | |
| **Lake County (unincorporated areas)** | |
| *North Goose Lake Basin:* | |
| Approximately 26,900 feet downstream of Stock Drive Road | *4,710 |
| Approximately 770 feet upstream of Stock Drive Road | *4,730 |
| Approximately 15,900 feet upstream of State Highway 66 | *4,767 |
| *Chewaucan River:* | |
| Approximately 2,250 feet downstream of State Highway 31 | *4,346 |
| Approximately 1,675 feet upstream of State Highway 31 | *4,375 |
| Approximately 480 feet upstream of Mill Street | *4,401 |
| Maps are available for review at the Lake County Courthouse, 513 Center Street, Lakeview, Oregon. | |
| Send comments to The Honorable Arthur Shaw, Chairperson, Lake County Board of Commissioners, Lake County Courthouse, 513 Center Street, Lakeview, Oregon 97630 | |



PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

| Source of flooding and location | #Depth in feet above ground. Elevation in feet (NGVD) |
|---|---|
| **PENNSYLVANIA** | |
| **Ashville (borough), Cambria County** | |
| *Clearfield Creek:* | |
| At downstream corporate limits | *1,614 |
| Approximately .2 mile upstream of State Route 36 | *1,626 |
| Maps available for inspection at the Borough Building, Hickory Street, Ashville, Pennsylvania. | |
| Send comments to The Honorable Gregg Lidwell, President of the Borough of Ashville Council, Cambria County, P.O. Box 136, Ashville, Pennsylvania 16613. | |
| **Conneaut (township), Erie County** | |
| *East Branch Conneaut Creek:* | |
| At abandoned railroad | *840 |
| At confluence of Crane Creek | *871 |
| *Crane Creek:* | |
| At Confluence with East Branch Conneaut Creek | *871 |
| At corporate limits | *876 |
| *Temple Creek:* | |
| At Confluence with East Branch Conneaut Creek | *861 |
| At corporate limits | *869 |
| Maps available for inspection at the Conneaut Municipal Building, Conneaut, Pennsylvania. | |
| Send comments to The Honorable Carl W. Summerville, Chairman of the Township of Conneaut Board of Supervisors, Erie County, R.D. 1, Albion, Pennsylvania 16401. | |
| **Creekside (borough), Indiana County** | |
| *Crooked Creek:* | |
| At downstream corporate limits | *1,033 |
| At upstream corporate limits | *1,037 |
| *McKee Run:* | |
| At confluence with Crooked Creek | *1,036 |
| At upstream corporate limits | *1,038 |
| Maps available for inspection at Mr. Shaeffer's home, Box 234, Creekside, Pennsylvania. | |
| Send comments to The Honorable Erwin Shaeffer, President of the Creekside Borough Council, Indiana County, Box 234, Creekside, Pennsylvania 15732. | |
| **Green (township), Indiana County** | |
| *North Branch Two Licks Creek:* | |
| Approximately 1,440 feet downstream of confluence with Pompey Run | *1,336 |
| Approximately 0.7 mile upstream of State Route 240 | *1,417 |
| *Dixon Run:* | |
| Downstream corporate limits | *1,261 |
| Upstream corporate limits | *1,322 |
| Maps available for inspection in care of Ms. Ruth Bash, Township Secretary, R.D. 2, Cherry-tree, Pennsylvania. | |
| Send comments to The Honorable Martin Butterbaugh, Chairman of the Township of Green Board of Supervisors, Indiana County, R.D. #2, Box 121, Clymer, Pennsylvania 15724. | |
| **Irvona (borough), Clearfield County** | |
| *Clearfield Creek:* | |
| At downstream corporate limits | *1,370 |
| At upstream corporate limits | *1,376 |
| Maps available for inspection at the Borough Building, Bonsind Street, Irvona, Pennsylvania. | |
| Send comments to The Honorable Randy Dubler, Councilman for the Borough of Irvona, Clearfield County, Box 84, Irvona, Pennsylvania 16656. | |
| **Lower Towamensing (township), Carbon County** | |
| *Aquashicola Creek:* | |
| At downstream corporate limits | *410 |
| Approximately 0.55 mile upstream of S.R. 2009 | *454 |
| *Buckwha Creek:* | |
| At confluence with Aquashicola Creek | *444 |
| Approximately 0.34 mile upstream of Chestnut Ridge Railway | *474 |
| *Mill Creek:* | |
| At confluence with Aquashicola Creek | *410 |
| Approximately 0.36 mile upstream of S.R. 2001 | *614 |
| Maps available for inspection at the Municipal Building, R.D. 32, Box 1211A, Palmerton, Pennsylvania. | |
| Send comments to The Honorable George Robinson, Chairman of the Township of Lower Towamensing Board of Supervisors, Carbon County, P.O. Box 105, Aquashicola, Pennsylvania 18012. | |
| **New Ringgold (Borough), Schuylkill County** | |
| *Little Schuylkill River:* | |
| At downstream corporate limits | *549 |
| At upstream corporate limits | *573 |
| Maps available for inspection at the Borough Hall, New Ringgold, Pennsylvania. | |
| Send comments to The Honorable Edward Gaydos, President of the New Ringgold Borough Council, Schuylkill County, 250 Gerald Avenue, Orwigsburg, Pennsylvania 17961. | |
| **North Manheim (township), Schuylkill County** | |
| *Mahonney Creek:* | |
| At Meadow Drive (I-964) | *469 |
| Approximately 0.45 mile upstream of State Route 443 | *594 |
| *Schuylkill River:* | |
| At downstream corporate limits | *487 |
| Approximately 1.2 miles upstream of State Route 183 | *553 |
| Maps available for inspection at the Township Municipal Building, North Manheim, Pennsylvania. | |
| Send comments to The Honorable Barbara Miller, Mayor of the Township of North Manheim, Schuylkill County, R.D. 4, Box 4499 Pottsville, Pennsylvania 17091. | |
| **Patton (borough), Cambria County** | |
| *Little Chest Creek:* | |
| At confluence with Chest Creek | *1,738 |
| At the confluence with an Unnamed Tributary to Little Chest Creek | *1,795 |
| *Unnamed Tributary at Little Chest Creek:* | |
| At confluence with Little Chest Creek | *1,795 |
| Approximately 50 feet upstream of upstream corporate limits | *1,799 |
| Maps available for inspection at the Borough Building, 4th and Magee Streets, Patton, Pennsylvania. | |
| Send comments to The Honorable Paul J. Short, Borough of Patton Councilman, Cambria County, 4th and Magee Streets, Patton, Pennsylvania 16668. | |
| **Petrolia (borough), Butler County** | |
| *South Branch Bear Creek:* | |
| Downstream corporate limits | *1,152 |
| Upstream corporate limits | *1,178 |
| Maps available for inspection at Mr. Steel's residence, Box 92, Petrolia, Pennsylvania. | |
| Send comments to The Honorable Michael Steel, Sr., Mayor of the Borough of Petrolia, Butler County, Box 92, Petrolia, Pennsylvania 16050. | |
| **Shelocta (borough), Indiana County** | |
| *Crooked Creek:* | |
| Approximately 0.15 mile downstream of State Route 156 | *995 |
| Approximately 0.36 mile upstream of State Route 156 | *1,000 |

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

| Source of flooding and location | #Depth in feet above ground. Elevation in feet (NGVD) |
|---|---|
| Maps available for inspection at the Indiana County Courthouse, Indiana, Pennsylvania. | |
| Send comments to The Honorable Richard Wilson, President of the Shelocta Borough Council, Indiana County, Box 36, Shelocta, Pennsylvania 15774. | |
| **Walker (township), Schuylkill County** | |
| *Little Schuylkill River:* | |
| Approximately .6 mile downstream of confluence with Brushy Run | *636 |
| Approximately 1.5 miles upstream of State Route 443 | *742 |
| Maps available for inspection at the Municipal Building, Walker, Pennsylvania. | |
| Send comments to The Honorable Richard Calmer, Chairman of the Township of Walker Board of Supervisors, Schuylkill County, McArthur Plaza, 3722 Lehigh Street, Whitehall, Pennsylvania 18052-3439. | |
| **Weatherly (borough), Carbon County** | |
| *Hazle Creek:* | |
| Approximately 980 feet upstream of confluence with Black Creek and Quakake Creek | *1,032 |
| Approximately 0.5 mile upstream of Main Street (SR 4010) | *1,153 |
| Maps available for inspection at the Municipal Building, 10 Wilbur Street, Weatherly, Pennsylvania. | |
| Send comments to The Honorable Beverly Knepper, Manager of the Borough of Weatherly Council, Carbon County, 10 Wilbur Street, Weatherly, Pennsylvania 18255. | |
| **TENNESSEE** | |
| **Maury County (unincorporated areas)** | |
| *Rutherford Creek:* | |
| At mouth | *561 |
| About 1.2 miles upstream of Warren Road | *714 |
| *Little Bigby Creek:* | |
| At mouth | *577 |
| Just downstream of Nasty Hollow Road | *671 |
| *Lytle Creek:* | |
| At mouth | *567 |
| Just upstream of Iron Bridge Road | *582 |
| Just downstream of State Route 50 | *626 |
| Just upstream of State Route 50 | *634 |
| Just downstream of CSX railroad | *638 |
| Just upstream of CSX railroad | *643 |
| Just downstream of Mooresville Pike | *651 |
| *Aaron Creek:* | |
| At mouth | *661 |
| About 0.8 mile upstream of Port Royal Road | *691 |
| *Carters Creek:* | |
| At mouth | *595 |
| Just downstream of Carters Creek Pike | *674 |
| *Grassy Branch:* | |
| At mouth | *672 |
| About 500 feet upstream of Port Royal Road | *694 |
| *Greenlick Creek:* | |
| Just upstream of Hicks Lane | *580 |
| At confluence of Greenlick Creek Tributary | *620 |
| *Greenlick Creek Tributary:* | |
| At mouth | *620 |
| About 1.5 miles above mouth | *646 |
| *McCormack Branch:* | |
| At mouth | *686 |
| Just upstream of Beech Grove Road | *739 |
| *McCutcheon Creek:* | |
| At mouth | *659 |
| About 0.3 mile upstream of Duplex Road | *706 |
| *Duck River:* | |
| About 1.6 miles downstream of Industrial Park Drive | *575 |
| At confluence of Bear Creek | *580 |
| *Sugar Fork:* | |
| About 0.85 mile downstream of confluence of Quality Creek | *608 |
| About 0.75 mile downstream of confluence of Quality Creek | *608 |
| *Sugar Creek:* | |
| About 400 feet upstream of confluence of Quality Creek | *619 |

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PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

| Source of flooding and location | #Depth in feet above ground. *Elevation in feet (NGVD) |
|---|---|
| Just upstream of City of Mount Pleasant corporate limits | *654 |
| **Maps available for inspection at the County Courthouse, Columbia, Tennessee.** | |
| Send comments to The Honorable Michael C. Greene, County Executive, Maury County, County Courthouse, Room 101, Columbia, Tennessee 38401 | |
| **TEXAS** | |
| **Austin County, unincorporated areas** | |
| *Allens Creek:* | |
| Approximately 1,740 feet downstream of Mitchville Road | *145 |
| At the City of Sealy downstream corporate limits | *161 |
| *Allens Creek Tributary:* | |
| At confluence with Allens Creek | *149 |
| Approximately 0.50 mile upstream of FM Route 1458 | *154 |
| *Bullinger Creek:* | |
| At the Town of San Felipe upstream corporate limits | *147 |
| Approximately 2.01 miles upstream of State Route 36 | *186 |
| *Brazos River:* | |
| At downstream County boundary | *108 |
| At FM Route 1458 extended | *127 |
| Approximately 79 feet downstream of State Route 159 | *182 |
| At upstream County boundary | *185 |
| **Maps available for inspection at the County Courthouse, 1 East Main Street, Bellville, Texas.** | |
| Send comments to The Honorable LeRoy H. Grove, Austin County Judge, 1 East Main Street, Bellville, Texas 77418. | |
| **Colorado County (unincorporated areas)** | |
| *Colorado River:* | |
| Approximately 2.2 miles downstream of Interstate Route 10 | *191 |
| Approximately 7.8 miles upstream of abandoned Railroad Bridge | *222 |
| **Maps available for inspection at 400 Spring Street, Columbus, Texas.** | |
| Send comments to The Honorable Lester J. Cranek, Colorado County Judge, P.O. Box 236, Columbus, Texas 78934. | |
| **Columbus (City), Colorado County** | |
| *Colorado River:* | |
| At intersection of Interstate Route 10 and State Route 71 | *160 |
| Approximately .5 mile upstream of State Route 71 | *202 |
| **Maps available for inspection at 905 Spring Street, Columbus, Texas.** | |
| Send comments to The Honorable R. Richard Hellbig, Mayor of the City of Columbus, Colorado County, P.O. Box 97, Columbus, Texas 78934. | |
| **Dayton Lakes (City), Liberty County** | |
| *Trinity River:* | |
| Downstream corporate limits | *36 |
| Upstream corporate limits | *38 |
| **Maps available for inspection at the grocery store on Trinity Road and County Engineer's Office, Dayton Lakes, Texas.** | |
| Send comments to The Honorable Charles Folts, Mayor of the City of Dayton Lakes, Liberty County, Rt. 1, Box 724, Dayton Lakes, Texas 77535. | |
| **Gregg County (unincorporated areas)** | |
| *Hawkins Creek:* | |
| Approximately 900 feet upstream of County Route 2275 | *321 |
| Approximately 0.98 mile upstream of Bacel Road | *344 |
| *Elm Branch:* | |
| Upstream side of Amy Street | *364 |
| Approximately 0.50 mile upstream of Amy Street | *392 |
| *Grace Creek:* | |
| At downstream corporate limits | *373 |
| Approximately 50 feet upstream of County Route 1844 | *418 |
| *McCann Creek:* | |
| At downstream corporate limits | *357 |
| Approximately 1.0 mile upstream of corporate limits | *402 |
| *Ray Creek:* | |
| At downstream corporate limits | *342 |
| Upstream side of County Route 1844 | *420 |
| *Oak Branch Creek:* | |
| Approximately 0.54 mile downstream of County Route 2751 | *335 |
| Approximately 660 feet upstream of Sunnybrook Road | *406 |
| *Murrey Creek:* | |
| Approximately 0.80 mile downstream of U.S. Route 259 southbound | *341 |
| Approximately 70 feet upstream of Sunnybrook Road | *421 |
| *Oakland Creek:* | |
| At downstream corporate limits | *360 |
| Approximately 0.63 mile upstream of corporate limits | *407 |
| *Eastman Lake Creek:* | |
| Approximately 400 feet downstream of Hollybrook Drive | *368 |
| Approximately 0.78 mile upstream of Hollybrook Drive | *415 |
| **Maps available for inspection at the Engineer's Office, 101 Madison Street, 1st Floor, County Courthouse, Longview, Texas.** | |
| Send comments to The Honorable Henry Atkinson, Gregg County Judge, P.O. Box 3143, Longview, Texas 75606. | |
| **San Felipe (town), Austin County** | |
| *Bullinger Creek:* | |
| Approximately 1.46 miles downstream of Remmert Road | *129 |
| At upstream corporate limits | *147 |
| **Maps available for inspection at the City Offices, 1483 F.M. 1458 N., San Felipe, Texas.** | |
| Send comments to The Honorable Kenneth Currens, Mayor of the Town of San Felipe, Austin County, P.O. Box 129, San Felipe, Texas 77473. | |
| **Sealy (city), Austin County** | |
| *Allens Creek:* | |
| Approximately 200 feet downstream of the downstream corporate limits | *161 |
| Approximately 1,480 feet upstream of U.S. Route 90 | *180 |
| **Maps available for inspection at the City Hall, 415 Main Street, Sealy, Texas.** | |
| Send comments to The Honorable Betty Pinbeck, Mayor of the City of Sealy, Austin County, P.O. Box 517, Sealy, Texas 77474. | |
| **Sulphur Springs (city), Hopkins County** | |
| *Rock Creek:* | |
| Approximately 0.8 mile downstream of confluence of Vania Creek | *421 |
| Approximately 600 feet upstream of Holiday Drive | *476 |
| *Town Branch:* | |
| Approximately 950 feet downstream of Loop 301 | *443 |
| At downstream side of Putman Street | *464 |
| *Gena Creek:* | |
| At FM 1870 | *446 |
| Approximately 1.2 miles upstream of FM 1870 | *457 |
| *South Town Branch:* | |
| Downstream corporate limits | *466 |
| Approximately 80 feet upstream of Gilmer Street | *491 |
| *Coleman Creek:* | |
| Approximately 0.5 mile downstream of State Route 18 | *436 |
| Approximately 1,200 feet downstream of Interstate Route 30 & U.S. Route 67 | *529 |
| *Turtle Creek:* | |
| At State Route 11 | *481 |
| Approximately 2,400 feet upstream of Loop 313 | *500 |
| **Maps available for inspection at the City Hall, Sulphur Springs, Texas.** | |
| Send comments to The Honorable Margin Latham, Mayor of the City of Sulphur Springs, Hopkins County, 125 South Davis, Sulphur Springs, Texas 75482. | |
| **VIRGINIA** | |
| **Purcellville (town), Loudon County** | |
| *South Fork Catoctin Creek:* | |
| Approximately 375 feet downstream of downstream corporate limits | *466 |
| Approximately 125 feet upstream of upstream corporate | *518 |
| **Maps available for inspection at the Town Office, 141 E. Main Street, Purcellville, Virginia.** | |
| Send comments to The Honorable Jerry M. Schiro, Manager of the Town of Purcellville, Loudon County, P.O. Box 838, Purcellville, Virginia 22132. | |
| **WISCONSIN** | |
| **Amery (city), Polk County** | |
| *Apple River:* | |
| Just upstream of Griffin Street | *1,052 |
| Just downstream of Amery Dam | *1,058 |
| Just upstream of Amery Dam | *1,088 |
| About 1.0 miles upstream of Amery Dam | *1,088 |
| **Maps available for inspection at the city Hall, 118 Center Street, Amery, Wisconsin.** | |
| Send comments to The Honorable Duane R. Riley, Mayor, City of Amery, City Hall, 118 Center Street, Amery, Wisconsin 54001. | |
| **Eleva (village), Trempealeau County** | |
| *Adams Creek:* | |
| At mouth | *855 |
| Just downstream of Eleva Pond Dam | *857 |
| Just upstream of Eleva Pond Dam | *868 |
| Just downstream of Eau Claire Road | *869 |
| Just upstream of Eau Claire Road | *874 |
| *Buffalo River:* | |
| About 850 feet downstream of Main Street | *853 |
| About 525 feet upstream of Chimney Rock Road | *855 |
| **Maps available for inspection at the Village Hall, Eleva, Wisconsin.** | |
| Send comments to The Honorable David A. Everson, Village President, village of Eleva, Village Hall, P.O. Box 208, Eleva, Wisconsin 54738. | |
| **Plum City (village), Pierce County** | |
| *Plum Creek:* | |
| Just downstream of confluence of Rush Coulee | *799 |
| About 700 feet downstream of East Street | *811 |
| *Rush Coulee:* | |
| At mouth | *799 |
| About 2100 feet upstream of Main Street | *827 |
| **Maps available for inspection at the Village Hall, 501 Main Street, Plum City, Wisconsin.** | |
| Send comments to The Honorable James A. Glaus, Village President, Village of Plum City, Village Hall, 501 Main Street, Plum City, Wisconsin 54761. | |



PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

| Source of flooding and location | #Depth in feet above ground. *Elevation in feet (NGVD) |
|---|---|
| **Price County (unincorporated areas)** | |
| *South Fork Flambeau River:* | |
| About 1.6 miles downstream of County Highway F | *1,396 |
| About 700 feet upstream of Balsam Road | *1,442 |
| **Maps available for inspection at the County Zoning Department, Lake Avenue, Phillips, Wisconsin.** | |
| Send comments to The Honorable Edgar Granberg, Chairman, County Board, Price County, Lake Avenue, Phillips, Wisconsin 54555. | |

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

| Source of flooding and location | #Depth in feet above ground. *Elevation in feet (NGVD) |
|---|---|
| Send comments to The Honorable Edgar Granberg, Chairman, County Board, Price County, Lake Avenue, Phillips, Wisconsin 54555. | |
| **Shawano (city), Shawano County** | |
| *Wolf River:* | |
| About 0.8 mile downstream of Lieg Avenue | *797 |
| Just downstream of Shawano Dam | *798 |
| Just upstream of Shawano Dam | *804 |
| At confluence of Shawano Creek | *804 |
| *Shawano Creek: Within community* | *804 |
| *Shawano Lake: Within community* | *804 |

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

| Source of flooding and location | #Depth in feet above ground. *Elevation in feet (NGVD) |
|---|---|
| **Maps available for inspection at the Building Department, City Hall, 213 East Green Bay Street, Shawano, Wisconsin.** | |
| Send comments to The Honorable Lee M. Schrader, Mayor, City of Shawano, City Hall, 213 East Green Bay Street, Shawano, Wisconsin 54166. | |

The proposed modified base (100-year) flood elevations for selected locations are:

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS

| State | City/town/county | Source of flooding | Location | #Depth in feet above ground *Elevation in feet (NGVD) | |
|---|---|---|---|---|---|
| | | | | Existing | Modified |
| Florida | City of Key Colony Beach, Monroe County. | Atlantic Ocean | About 1000 feet north of the intersection of 6th Street and Ocean Drive West. | *9 | *6 |
| | | | Along shoreline | *15 | *13 |
| | | Gulf of Mexico | About 1000 feet north of the intersection of 6th Street and Ocean Drive West. | *9 | *6 |
| | | | At the intersection of the Sadowski Causeway and the Overseas Highway. | *10 | *9 |
| Maps available for inspection at the Building Official's Office, City Hall, Key Colony Beach, Florida. | | | | | |
| Send comments to The Honorable Samuel J. Feiner, Mayor, City of Key Colony Beach, P.O. Box 141, Key Colony Beach, Florida 33051. | | | | | |
| Florida | City of Key West, Monroe County. | Atlantic Ocean | At the intersection of United Street and Simonton Street. | *8 | *6 |
| | | | About 900 feet south of the intersection of Atlantic Boulevard and Bertha Street along the Atlantic coastline. | *12 | *13 |
| | | Gulf of Mexico | At the intersection of Roosevelt Boulevard and Eisenhower Drive. | *8 | *6 |
| | | | Along the Stock Island Gulf coastline | *12 | *13 |
| Maps available for inspection at the Building Department, 604 Simonton Street, Key West, Florida. | | | | | |
| Send comments to The Honorable Richard Widmer, City Manager, City of Key West, P.O. Box 1409, Key West, Florida 33041. | | | | | |
| Florida | City of Layton, Monroe County. | Gulf of Mexico | About 700 feet south of the intersection of South Layton Drive and Sands Lane. | *11 | *7 |
| | | | About 500 feet north of the intersection of Zane Grey Creek Road and Overseas Highway. | *16 | *13 |
| Maps available for inspection at the City Hall, Layton, Florida. | | | | | |
| Send comments to The Honorable Peter Riley, Mayor, City of Layton, P.O. Box 778, Layton, Florida 33001. | | | | | |
| Florida | Unincorporated Areas of Monroe County. | Atlantic Ocean | At the intersection of North Bahama Drive and San Juan Street on Duck Key. | *12 | *6 |
| | | | Along the shoreline of Angelfish Key | *19 | *16 |
| | | Gulf of Mexico | About 10,000 feet upstream of the confluence of of Rookery Branch and North Prong. | None | *4 |
| | | | Along the shoreline | None | *26 |
| | | Biscayne | At the intersection of Old Dixie Highway and State Road 905. | *13 | *8 |
| | | | Along the shoreline at Snapper Point | *12 | *17 |
| | | Florida Bay | At the intersection of Bayview Drive and Palm Drive on Lower Matecumbe Key. | *12 | *6 |
| | | | Along the northwest shoreline of Shell Key | None | *15 |
| Maps available for inspection at the County Building Offices in Stock Island, Plantation Key and Marathon, Florida. | | | | | |
| Send comments to The Honorable Tom Brown, Administrator, Monroe County, P.O. Box 1680, Key West, Florida 33040. | | | | | |
| Michigan | Township of Bridgeton, Newaygo County. | Muskegon River | About 0.6 mile downstream of Warner Avenue | None | *619 |
| | | | About 1.8 miles upstream of Warner Avenue | None | *622 |

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

| State | City/town/county | Source of flooding | Location | #Depth in feet above ground *Elevation in feet (NGVD) | |
|---|---|---|---|---|---|
| | | | | Existing | Modified |
| Maps available for inspection at the Township Hall, 4382 Maple Island Road, Twin Lake, Michigan, 49457. | | | | | |
| Send comments to The Honorable Richard Koolstra, Supervisor, Township of Bridgeton, Township Hall, 4382 Maple Island Road, Twin Lake, Michigan 49457. | | | | | |
| Michigan | Township of Brooks, Newaygo County. | Muskegon River | About 1.0 mile upstream of State Highway 37 | None | *648 |
| | | | About 4.5 miles upstream of State Highway 37 | None | *664 |
| Maps available for inspection at 46 North State Street, Newaygo, Michigan. | | | | | |
| Send comments to The Honorable David Hummel, Supervisor, Township of Brooks, 46 North State Street, Newaygo, Michigan 49337. | | | | | |
| North Carolina | Town of Aberdeen, Moore County. | Aberdeen Creek | About 1,000 feet downstream of U.S. Route 1 | None | *321 |
| | | | About 1,800 feet upstream of Pages Dam | None | *334 |
| Maps available for inspection at the Town Hall, Aberdeen, North Carolina. | | | | | |
| Send comments to The Honorable J. Curtis McInnis, Mayor, Town of Aberdeen, P.O. Box 765, Aberdeen, North Carolina 28315. | | | | | |
| North Carolina | Town of Pinebluff, Moore County. | Aberdeen Creek | About 1,000 feet downstream of SR 1105 | None | *301 |
| | | | About 2,300 feet upstream of SR 1105 | None | *308 |
| Maps available for inspection at the Town Hall, Pinebluff, North Carolina. | | | | | |
| Send comments to The Honorable Donald S. Cunningham, Mayor, Town of Pinebluff, P.O. Box 367, Pinebluff, North Carolina 28373. | | | | | |
| North Carolina | Town of Robbins, Moore County. | Bear Creek | About 700 feet downstream of State Road 705 | None | *358 |
| | | | About 300 feet downstream of Bear Creek Dam. | None | *361 |
| Maps available for inspection at the Town Hall, Robbins, North Carolina. | | | | | |
| Send comments to The Honorable John L. Frye, Jr., Mayor, Town of Robbins, P.O. Box 298, Robbins, North Carolina 27325. | | | | | |
| North Carolina | Town of Southern Pines, Moore County. | Aberdeen Creek Tributary | Just upstream of U.S. Route 15 | None | *372 |
| | | | Just downstream of Pinecrest School Road | None | *375 |
| | | | Just upstream of Pinecrest School Road | None | *386 |
| | | | About 2,450 feet upstream of Pinecrest School Road. | None | *386 |
| | | Aberdeen Creek | Just upstream of Morganton Road | None | *365 |
| | | | About 550 feet upstream of Morganton Road | None | *368 |
| Maps available for inspection at the Town Hall, Southern Pines, North Carolina. | | | | | |
| Send comments to The Honorable Kyle Sonneberg, Town Manager, Town of Southern Pines, P.O. Box 870, Southern Pines, North Carolina 28387. | | | | | |
| Oklahoma | Guthrie, City Logan County. | Cottonwood Creek | Approximately 528 feet downstream of College Avenue | *930 | *931 |
| | | | Approximately 880 feet downstream of confluence of Cottonwood Creek cut-off channel. | *934 | *935 |
| | | Deer Creek | Approximately 1 mile upstream of confluence with Cottonwood Creek. | None | *992 |
| | | | Approximately 1.2 miles upstream of confluence with Cottonwood Creek. | None | *993 |
| | | Chisholm Creek | Approximately 1.2 miles upstream of crossing of county road. | None | *992 |
| | | | Approximately 1.4 miles upstream of crossing of county road. | None | *993 |
| Maps available for inspection at the City Hall, 101 North 2nd, Guthrie, Oklahoma. | | | | | |
| Send comments to the Honorable James Weems, Mayor of the City of Guthrie, Logan County, P.O. Box 908, Guthrie, Oklahoma 73044. | | | | | |
| Oregon | City of Burns Harney County. | Drainage D | Approximately 1,300 feet south and 250 feet west of the intersection of West Pierce Street and South Nevada Avenue. | #1 | None |
| | | | Approximately 100 feet west of a point located 50 feet northeast along Saginaw Avenue from the southern corporate limits. | #1 | None |
| Maps available for inspection at the City Recorder's Office, City Hall, 242 South Broadway, Burns, Oregon. | | | | | |
| Send comments to The Honorable Joe F. Hayes, Mayor, City of Burns, City Hall, 242 South Broadway, Burns, Oregon 97720. | | | | | |
| Oregon | City of Hines Harney County. | Drainage D | Approximately 110 feet downstream of King Avenue Culvert. | #1 | *4195 |
| | | | Approximately 120 feet upstream of King Avenue Culvert. | #1 | *4200 |
| | | | Approximately 640 feet upstream of King Avenue Culvert (At Western Corporate Limits). | #1 | *4206 |



PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

| State | City/town/county | Source of flooding | Location | #Depth in feet above ground *Elevation in feet (NGVD) | |
|---|---|---|---|---|---|
| | | | | Existing | Modified |
| | | | Approximately 300 feet North of the intersection of King Avenue and Tennyson Avenue. | #1 | #1 |
| | | Drainage D Split to King Avenue. | At Saginaw Avenue | #1 | *4181 |
| | | | Approximately 100 feet upstream of Tennyson Avenue. | #1 | *4196 |
| Maps available for inspection at the City Recorder's Office, City Hall, 101 East Barnes, Hines, Oregon. | | | | | |
| Send comments to the Honorable Charles I. Walker, Mayor, City of Hines, City Hall, 101 East Barnes, Hines, Oregon 97738. | | | | | |
| Tennessee | Unincorporated Areas of Williamson County. | Harpeth River | About 1.0 mile downstream of CSX Railroad | *634 | *634 |
| | | | Just downstream of Douglas Street | *645 | *645 |
| | | West Harpeth River | Just downstream of confluence of Liepers Fork | *647 | *647 |
| | | | Just downstream of Interstate 65 | None | *752 |
| | | Rutherford Creek | At county boundary | None | *714 |
| | | | Just downstream of Bethesda Road | None | *783 |
| | | Aenon Creek | At county boundary | None | *691 |
| | | | About 1,300 feet upstream of Duplex road | None | *704 |
| | | Murfrees Fork | At mouth | *657 | *657 |
| | | | Just downstream of Evergreen Road | None | *752 |
| | | Grassy Branch | At county boundary | None | *694 |
| | | | About 0.4 mile upstream of Duplex Road | None | *711 |
| | | Five Mile Creek | At mouth | *648 | *648 |
| | | | About 0.5 mile upstream of Goose Creek Bypass. | None | *679 |
| | | McCutcheon Creek | At county boundary | None | *706 |
| | | | About 1.5 miles upstream of county boundary | None | *743 |
| | | Leipers Fork | At mouth | *647 | *647 |
| | | | Just downstream of Bailey Road | None | *670 |
| Maps available for inspection at the County Courthouse, 1320 West Main Street, Suite 125, Franklin, Tennessee. | | | | | |
| Send comments to The Honorable Robert A. Ring, County Executive, Williamson County, County Courthouse, 1320 West Main Street, Suite 125, Franklin, Tennessee 37064. | | | | | |
| Washington | Clallam County (Unincorporated Areas). | Jimmycome-lately Creek | At the confluence with Sequim Bay | None | *8 |
| | | | Aproximately 3,60 feet upstream of State Highway 101. | None | *60 |
| | | Clallam River | Approximately 1,950 feet upstream of Weel Road. | *21 | *21 |
| | | | Just downstream of State Highway 112 | None | *34 |
| | | | Approximately 1,350 feet upstream of 3rd Crossing of Highway 112. | None | *62 |
| | | Soleduck River | Approximately 6,800 feet downstream of Quillayute Road. | None | *147 |
| | | | Just downstream of Quillayute Road | None | *160 |
| | | Dungeness | Approximately 2,500 feet downstream of Marine Drive. | *12 | *8 |
| | | | Just downstream of Marine Drive | *18 | *19 |
| | | | Approximately 300 feet upstream of Marine Drive. | *23 | *21 |
| | | | Approximately 3,200 feet upstream of the confluence with Matriotti Creek. | *41 | *41 |
| | | | Approximately 50 feet downstream of Woodcock Gaskell Road. | *83 | *82 |
| | | | Just downstream of Old Olympic Highway | *109 | *109 |
| | | | Approximately 60 feet upstream of Old Olympic Highway. | *113 | *112 |
| | | | Approximately 50 feet upstream of Chicago, Milwaukee, St. Paul & Pacific Railroad. | *204 | *205 |
| | | | Approximately 150 feet downstream of the confluence with Bear Creek. | *315 | *312 |
| | | | Approximately 6,400 feet upstream of the confluence with Caraco Creek. | *664 | *665 |
| | | Elwha River | Approximately 7,700 feet downstream from the divergence of Elwha River Overflow. | None | *7 |
| | | | Approximately 5,700 feet downstream from the divergence of Elwha River Overflow. | *13 | *12 |
| | | | Approximately 2,100 feet downstream from the divergence of Elwha River Overflow. | *31 | *24 |
| | | Strait of Juan De Fuca (at Bullman Beach). | Approximately 1,850 feet west along the shoreline from the crossing of Highway 112 over Bullman Creek. | None | *16 |
| | | | Approximately 250 feet north of the crossing of Highway 112 over Bullman Creek. | None | *10 |

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PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

| State | City/town/county | Source of flooding | Location | #Depth in feet above ground *Elevation in feet (NGVD) | |
|---|---|---|---|---|---|
| | | | | Existing | Modified |
| | | | Approximately 1,750 feet east along shoreline from the crossing of Highway 112 over Bullman Creek. | None | *14 |
| | | Strait of Juan De Fuca (at Clallam Bay). | Approximately 1,250 feet north of the intersection of Front Street with Washington Street. | *12 | *16 |
| | | | Approximately 1,450 feet north along shoreline from the intersection of Division Street and Front Street. | *12 | *13 |
| | | | Approximately 250 feet east of the intersection of Front Street with Washington Street. | *12 | *8 |
| | | | Approximately 700 feet south along shoreline from the intersection of Division Street and Front Street. | *12 | *13 |
| | | | Approximately 100 feet north of the crossing of Slip Point Road over Falls Creek. | *12 | *12 |
| | | | Approximately 2,600 feet east along shoreline from crossing of Slip Point Road over Falls Creek. | *12 | *14 |
| | | | Approximately 3,250 feet east along shoreline from crossing of Falls Creek and Slip Point Road. | *12 | *8 |
| | | | Approximately 700 feet north of intersection of Slip Point Road with Bogachiel Street. | *12 | *10 |
| | | | Approximately 250 feet north of the intersection of Salt Air Street with Fisherman Street. | *12 | *12 |
| | | | Approximately 2,000 feet north along shoreline from the intersection of Salt Air Street with Fisherman Street. | *12 | *15 |
| | | Strait of Juan D Fuca (at Crescent Bay). | Approximately 2,800 feet due north of the intersection of ACI Park Access Road and Crescent Beach Road. | None | *12 |
| | | | Approximately 1,400 feet along shoreline north of the intersection of ACI Park Access Road and Crescent Beach Road. | None | *9 |
| | | | Approximately 175 feet north of the intersection of Crescent Beach Road and ACI Park Access Road. | None | *8 |
| | | | Approximately 1,200 feet along shoreline east of the intersection of ACI Park Access Road and Crescent Beach Road. | None | *10 |
| | | | Approximately 600 feet north of the crossing of Crescent Beach Road over Salt Creek. | None | *8 |
| | | | Approximately 1,800 feet north along the shoreline from the crossing of Crescent Beach Road over Salt Creek. | None | *12 |
| | | Strait of Juan De Fuca (at Angeles Point). | On the shoreline approximately 500 feet northwest from the intersection of Place Road and Dan Kelly Road. | *12 | *10 |
| | | | Approximately 2,375 feet north of the intersection of Charles Road and Elwha Road. | *12 | *9 |
| | | | On the shoreline approximately 1,600 feet northeast from the intersection of a private road with Lower Elwha Road. | *12 | *10 |
| | | Strait of Juan D Fuca (at Morse Creek). | Approximately 2,200 feet west of the mouth of Morse Creek. | *12 | *11 |
| | | | At the mouth of Morse Creek | *12 | *9 |
| | | | On the shoreline approximately 2,000 feet east from the mouth of Morse Creek. | *12 | *11 |
| | | Strait of Juan De Fuca (at Dungeness Bay). | Approximately 4,800 feet west along the shoreline from the intersection of Three Crabs Road and Dungeness Road. | *12 | *8 |
| | | | Just east of the intersection of Three Crabs Road with Golden Sands Place. | *12 | *8 |
| | | | Approximately 350 feet east from the intersection of Golden Sands Place with Three Crabs Road. | *12 | *9 |
| | | | At the mouth of Casselery Creek | *12 | *8 |
| | | Strait of Juan De Fuca (at Washington Harbor). | On the shoreline about 2,000 feet north of the entrance to Sequim Bay. | None | *5 |
| | | Strait of Juan De Fuca (at Diamond Point). | Approximately 575 feet north of the intersection of Diamond Point Road with Diamond Point Boulevard. | None | *9 |
| | | | Approximately 500 feet north of the intersection of Diamond Point Road with Diamond Point Boulevard. | None | *8 |



PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

| State | City/town/county | Source of flooding | Location | #Depth in feet above ground *Elevation in feet (NGVD) | |
|---|---|---|---|---|---|
| | | | | Existing | Modified |
| | | | Approximately 1,050 feet southeast of the intersection of Diamond Point Road with Diamond Point Boulevard. | None | *8 |

Maps are available for review at the Clallam County Courthouse, 223 East Fourth Street, Port Angeles, Washington.

Send comments to The Honorable Dorothy Duncan, Chairperson, Clallam County Board of Commissioners, 223 East Fourth Street, Port Angeles, Washington 98362.

Issued: March 8, 1989.

**Harold T. Duryee,**

*Administrator, Federal Insurance Administration.*

[FR Doc. 89-5801 Filed 3-14-89; 8:45 am]

BILLING CODE 6718-03-M

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# Notices

Federal Register
Vol. 54, No. 49
Wednesday, March 15, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## ACTION

### National Volunteer Advisory Council Meeting—Change of Date and Location

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given of a meeting of the National Volunteer Advisory Council, change of date and location as previously noticed, 54 FR 8577, March 1, 1989.

*From:* March 17, 1989, 9:00 a.m., Grand Hyatt Hotel, 1000 H Street NW., Washington, DC.

*To:* March 16, 1989, 9:00 a.m., Omni Shoreham Hotel, 2500 Calvert St., NW., Washington, DC.

*Purpose:* To select nominees for the President's Volunteer Action Awards for 1989 and hold the regular Council meeting.

In accordance with the determination of the Director of ACTION, this meeting will be partially closed to the public from 9:00 a.m. until 1:00 p.m., pursuant to subsection (c)(9)(B) of section 552b of Title 5, United States Code. The determination of the Director of ACTION is available for public inspection at 806 Connecticut Avenue, NW., Washington, DC. 20525, during regular business hours of 8:30 a.m. to 5:30 p.m.

**FOR FURTHER INFORMATION CONTACT:** Alyse Best, Special Assistant to the Director, at (202) 634-9380.

Signed this 10th day of March 1989, in Washington, DC.

**Donna M. Alvarado,**
*Director of ACTION.*

Date: March 10, 1989.

[FR Doc. 89-5983 Filed 3-14-89; 8:45 am]
BILLING CODE 6050-28-M

## DEPARTMENT OF AGRICULTURE

### Forms Under Review by Office of Management and Budget

March 10, 1989.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96-511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, DC 20250, (202) 447-2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

**Reinstatement**

Farmers Home Administration, 7 CFR 1980-D Rural Housing Loans, FmHA 1980-16, -17, -18, -21

Recordkeeping; On occasion

Individuals or households; State or local governments; Businesses or other for-profit; Small businesses or organizations; 20,084 responses; 11,836 hours; not applicable under 3504(h)

Jack Holston (202) 382-9736.

**Donald E. Hulcher,**
*Acting Departmental Clearance Officer.*

[FR Doc. 89-6026 Filed 3-14-89; 8:45 am]
BILLING CODE 3410-01-M

## COMMISSION ON CIVIL RIGHTS

### West Virginia Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a community forum of the West Virginia Advisory Committee to the Commission will convene at 1:30 p.m. and adjourn at 4:30 p.m. on March 21, 1989, at the Governor's Conference Room, State Capitol Building., Charleston, WV 25305. The purpose of the meeting is to hear presentations on the current civil rights laws in West Virginia, their enforcement, and the prospect of new legislation.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Adam R. Kelly (304/652-4141) or John I. Binkley, Director of the Eastern Regional Division of the Commission at (202/523-5264 or TDD 202/276-8117). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Division office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 2, 1989.

**Melvin L. Jenkins,**
*Acting Staff Director.*

[FR Doc. 89-6015 Filed 3-14-89; 8:45 am]
BILLING CODE 6335-01-M

## DEPARTMENT OF COMMERCE

### Bureau of Export Administration

### MCTL Implementation Technical Advisory Committee; Partially Closed Meeting

A meeting of the MCTL Implementation Technical Advisory Committee will be held March 16, 1989, at 10:00 a.m., in the Herbert C. Hoover Building, Room 1617-F, 14th Street and Constitution Avenue NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis in the implementation of the Militarily Critical Technologies List (MCTL) into the Export Administration Regulations as needed. The meeting is called on short notice because of COCOM deliberations which have just recently been scheduled.

**Agenda**

*General Session*

1. Opening Remarks by the Commerce Representative.
2. Introduction of Members and Visitors.
3. Presentation of Papers or Comments by the Public.
4. Election of Committee Chairman.
5. Discussion of Unilateral Technical Data Controls.

*Executive Session*

6. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control programs and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittee thereof, dealing with the classified materials listed in 5 U.S.C. 552(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public. A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes call Ruth D. Fitts, 202-377-4950.

Date: March 8, 1989.

**Betty A. Ferrell,**
*Director, Technical Advisory Committee Unit, Office of Technology and Policy Analyses.*

[FR Doc. 89-6012 Filed 3-14-89; 8:45 am]
BILLING CODE 3510-DT-M



## DEPARTMENT OF COMMERCE

### International Trade Administration

## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

**[Docket No. 80996-8243]**

### Allocation of Duty-Exemptions for Calendar Year 1989 Among Watch Producers Located in the Virgin Islands and Guam

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce; and Office of the Secretary, Department of the Interior.

**ACTION:** Allocation of duty-exemptions for calendar year 1989 among producers located in the Virgin Islands and Guam.

**SUMMARY:** This action allocates 1989 duty-exemptions for watch producers located in the Virgin Islands and Guam pursuant to Pub. L. 97-446.

**FOR FURTHER INFORMATION CONTACT:** Faye Robinson, (202) 377-1660.

**SUPPLEMENTARY INFORMATION:** Pursuant to Pub. L. 97-446, the Departments of the Interior and Commerce (the Departments) share responsibility for the allocation of duty exemptions among watch assembly firms in the U.S. insular possessions and the Northern Mariana Islands. The total quantity of watches and watch movements which may be entered free of duty from the insular possessions and the Northern Mariana Islands is 6,700,000 units. Of this amount, 4,700,000 units may be allocated to Virgin Islands producers, 1,000,000 to Guam producers, 500,000 to American Samoa producers and 500,000 to Northern Mariana Islands producers (53 FR 52678).

The criteria for the calculation of the 1989 duty-exemption allocations among insular producers are set forth in § 303.14 of the regulations (15 CFR Part 303) as amended on December 29, 1988 (53 FR 52678). The amendments to § 303.14 of the regulations dated December 30, 1988 (53 FR 52994) are not included in the criteria because these amendments were effective only with respect to entries made and wages and taxes paid on or after January 1, 1989.

The Departments have verified the data submitted on application form ITA-334P by producers in the territories and inspected the current operations of all producers in accordance with § 303.5 of the regulations.

The verification established that in calendar year 1988 the Virgin Islands watch assembly firms shipped 3,438,149 watches and watch movements into the customs territory of the United States under Pub. L. 97-446. The dollar amount of creditable corporate income taxes paid by Virgin Islands producers during calendar year 1988 plus the creditable wages paid by the industry during calendar year 1988 to residents of the territory totalled $6,825,179.

There is only one producer in Guam. Publication of the Guam data, accordingly, would disclose competitively sensitive information. The calendar year 1989 Virgin Islands and Guam annual allocations set forth below are based on the data verified by the Departments in the Virgin Islands and Guam. The allocations reflect adjustments made in data supplied on the producers' annual application forms (ITA Form-334P) as a result of the Departments' verification; and reallocation of duty-exemptions which have been voluntarily relinquished by some producers pursuant to § 303.6(b)(2) of the regulations.

The duty-exemption allocations for calendar year 1989 in the Virgin Islands are as follows:

| Name of firm | Annual allocation |
|---|---|
| Belair Quartz, Inc. | 500,000 |
| Hampden Watch Co., Inc. | 300,000 |
| Master Time Co., Ltd. | 550,000 |
| Progress Watch Co., Inc. | 700,000 |
| Unitime Industries, Inc. | 770,000 |
| Tropex, Inc. | 500,000 |
| Timex, V.I., Inc. | 750,000 |

The duty-exemption allocation for Guam is as follows:

| Name of Firm | Annual Allocation |
|---|---|
| Timewise Ltd. | 800,000 |

**Timothy N. Bergan,**
*Deputy Assistant Secretary for Import Administration.*

**Timothy W. Glidden,**
*Acting Assistant Secretary, for Territorial and International Affairs.*

[FR Doc. 89-6013 Filed 3-14-89; 8:45 am]
BILLING CODE 3510-DS-M; 4310-93-M

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Issuance of Endangered Species Permit; Archie Carr Center for Sea Turtle Research (P436)

On November 23, 1988, notice was published in the **Federal Register** (53 FR 47568) that an application had been filed by the Archie Carr Center for Sea Turtle Research, Department of Zoology, University of Florida, Bartham Hall, Gainesville, Florida 32611, for a permit to take the following species of sea turtles for scientific research: Green turtle (*Chelonia mydas*), loggerhead turtle (*Caretta caretta*), hawksbill turtle (*Eretmochelys imbricata*), leatherback turtle (*Dermochelys coriacea*), olive ridley turtle (*Lepidochelys olivacea*), and Kemp's ridley turtle (*Lepidochelys kempi*).

Notice is hereby given that on February 21, 1989, as authorized by the provisions of the Endangered Species Act of 1973, the National Marine Fisheries Service issued a Permit for the above taking, subject to certain conditions set forth therein.

Issuance of this Permit, as required by the Endangered Species Act of 1973, is based on the finding that such Permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of the Permit; and (3) will be consistent with the purposes and policies set forth in section 2 of the Act. This Permit was also issued in accordance with and is subject to Parts 220–222 of Title 50 CFR, of the National Marine Fisheries Service regulations governing endangered species permits.

The Permit is available for review in the following offices:

Office of Protected Resources, National Marine Fisheries Service, 1335 East West Hwy., Room 7324, Silver Spring, Maryland 20910; and

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Blvd., St. Petersburg, Florida 33702.

Date: March 9, 1989.

**Nancy Foster,**

*Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.*

[FR Doc. 89-6005 Filed 3-14-89; 8:45 am]

BILLING CODE 3510-22-M

### Issuance of Marine Mammals Permit; Micke Grove Zoo (P416)

On December 1, 1988, notice was published in the **Federal Register** (53 FR 48572) that an application had been filed by the Micke Grove Zoo, 11793 N. Micke Grove Road, Lodi, California 95240, to permanently maintain a beached/stranded harbor seal (*Phoca vitulina*) for public display purposes.

Notice is hereby given that on March 9, 1989, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the National Marine Fisheries Service issued a Permit for the above taking, subject to certain conditions set forth therein.

Issuance of this Permit is based on a finding that the proposed taking is consistent with the purposes and policies of the Marine Mammal Protection Act. The Service has determined that Micke Grove Zoo offers an acceptable program for education or conservation purposes. The Micke Grove Zoo facilities are open to the public on a regularly scheduled basis and access is not limited or restricted other than by an admission fee.

The Permit is available for review in the following offices:

Office of Protected Resources, National Marine Fisheries Service, 1335 East West Hwy., Rm 7324 Silver Spring, Maryland 20910; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Date: March 3, 1989.

**Nancy Foster,**

*Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.*

[FR Doc. 89-6006 Filed 3-14-89; 8:45 am]

BILLING CODE 3510-22-M

**[Modification No. 2 to Permit No. 558]**

### Marine Mammals Permit Modification; Loro Parque (P365)

Notice is hereby given that pursuant to the provisions of § 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), Public Display Permit No. 558 issued to Loro Parque, S.A., 38400 Puerto de la Cruz, Tenerife, Spain, on July 9, 1986 (51 FR 26178) and modified on July 31, 1987 (52 FR 29406) is further modified as follows:

Section B.7 is changed to read

B.7 The authority to capture or otherwise acquire these marine mammals shall extend from the date of issuance through December 31, 1989. The terms and conditions of this Permit (Sections B and C) shall remain in effect as long as one of the marine mammals taken hereunder is maintained in captivity under the authority and responsibility of the Permit Holder.

This modification became effective on January 1, 1989.

Documents pertaining to the Permit and all modifications are available for review in the following Offices:

Office of Protected Resources, National Marine Fisheries Service, 1335 East West Hwy., Room 7324, Silver Spring, Maryland 20910.

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731–7415.

Dated: March 9, 1989.

**Nancy Foster, PH.D.**

*Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.*

[FR Doc. 89-6007 Filed 3-14-89; 8:45 am]

BILLING CODE 3510-22-M

### National Technical Information Service

### Intent To Grant Exclusive Patent License

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Perkin-Elmer Corporation, having a place of business at 761 Main Avenue Norwalk, CT 06859–0181, an exclusive right in the United States and foreign countries to practice the invention embodied in U.S. Patent Application SN 7–212,390 "Process and Apparatus for Direct Ultrasonic Mixing Prior to Analysis." The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments, and other materials relating to the intended license must be submitted to Charles Bevelacqua, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

A copy of the instant patent application may be purchased from the NTIS Order Desk by writing to 5285 Port Royal Road, Springfield, VA 22161 or by telephone at 703–487–4650.

**Douglas J. Campion,**

*Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.*

[FR Doc. 89-5950 Filed 3-14-89; 8:45 am]

BILLING CODE 3510-04-M



## COMMODITY FUTURES TRADING COMMISSION

### Advisory Committee on CFTC-State Cooperation; Meeting

This is to give notice, pursuant to section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. I, section 10(a), that the Commodity Futures Trading Commission's Advisory Committee on CFTC-State Cooperation will conduct a public meeting in the Fifth Floor Hearing Room at the Commission's Washington, DC, headquarters located at Room 532, 2033 K Street, NW., Washington, DC 20581, April 11, 1989, beginning at 10:00 a.m. and lasting until 3:30 p.m. The agenda will consist of:

**Agenda**

1. Opening remarks—Wendy L. Gramm, Chairman, CFTC; Fowler C. West, Commissioner, CFTC and Chairman, Advisory Committee on CFTC-State Cooperation;
2. Report on the activities of the Securities and Commodities Fraud Working Group and the recent formation of regional Securities and Commodities Fraud Task Forces by the Department of Justice;
3. Discussion of methods for developing educational tools about investment fraud for use in consumer education programs in public schools;
4. Presentation of the film, "The Boiler Room", produced by the Arizona Corporation Commission and the Arizona Department of Education;
5. Report by the Industry Council for Tangible Assets on its self-regulatory efforts regarding bank-financed precious metals programs;
6. Discussion of the proposed Commission rule on hybrid and related instruments;
7. Report on the Commission's leverage report to Congress;
8. Status report on the proposed NASAA Model State Commodity Code;
9. Report on the formation of the Florida boiler room task force; and
10. Discussion of other questions of concern to Advisory Committee members.

The Advisory Committee was created by the Commodity Futures Trading Commission for the purpose of receiving advice and recommendations on matters of joint concern to the States and the Commission arising under the Commodity Exchange Act, as amended. The purposes and objectives of the Advisory Committee on CFTC-State Cooperation are more fully set forth in the March 31, 1988 Sixth Renewal Charter of the Advisory Committee.

The meeting is open to the public. The Chairman of the Advisory Committee, Commissioner Fowler C. West, is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Advisory Committee should mail a copy of the statement to the attention of: The Advisory Committee on CFTC-State Cooperation c/o Commissioner Fowler C. West, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, before the meeting. Members of the public who wish to make oral statements should also inform Commissioner West in writing at the foregoing address at least three business days before the meeting.

Reasonable provision will be made, if time permits, for an oral presentation of no more than five minutes each in duration.

Issued by the Commission in Washington, DC, on March 8, 1989.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 89-5980 Filed 3-14-89; 8:45 am]

BILLING CODE 6351-01-M

## DEPARTMENT OF DEFENSE

### Public Information Collection Requirement Submitted to OMB for Review

**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

**SUMMARY:** This collection was previously published in Vol. 53, No. 206, on Thursday, October 27, 1988.

*Title, Applicable Form, and Applicable OMB Control Number:* Wage Rates and Fringe Benefits; No Form; and OMB Control Number 0701–0102.

*Type of Request:* Resubmission.

*Average Burden Hours/Minutes Per Response:* 1 hour.

*Frequency of Response:* On occasion.

*Number of Respondents:* 165.

*Annual Burden Hours:* 165.

*Annual Reponses:* 165.

*Needs and Uses:* The Service Contract Act requires Air Force contractors to pay wages and fringe benefits that are compatible with those prevailing in the local area where the work is to be performed. Section 4(c) of the Act provides that the parties to the contract may request a hearing to establish prevailing rates when negotiated wages and fringe benefits appear to be substantially at variance with local rates. The Air Force needs the Wage Rates and Fringe Benefits survey to determine prevailing local rates and, when necessary, to support its position during formal hearings.

*Affected Public:* State or local governments; Businesses or other for-profit; Non-profit institutions; and Small businesses or organizations.

*Frequency:* Continuing.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* Dr. J. Timothy Sprehe.

Written comments and recommendations on the proposed information collection should be sent to Dr. J. Timothy Sprehe at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

*DOD Clearance Officer:* Ms. Pearl Rascoe-Harrison.

Written request for copies of the information collection proposal should be sent to Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

March 9, 1989.

[FR Doc. 89-5968 Filed 3-14-89; 8:45 am]

BILLING CODE 3810-01-M

## DEPARTMENT OF EDUCATION

**[CFDA No.: 84.128H]**

### Vocational Rehabilitation Service Projects for American Indians with Handicaps Program; Information Collection Requirements

**Applicable Regulations**

On February 8, 1989, a notice was published in the **Federal Register** inviting applications for new awards for fiscal year 1989 under the Vocational Rehabilitation Service Projects for American Indians with Handicaps Program (54 FR 5850. Detailed information concerning this program was included in that notice.

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The purpose of this notice is to provide additional data concerning the information collection requirements contained in the applicable regulations for this program in 34 CFR Parts 369 and 371.

The information collection requirements, including selection criteria, for Parts 369 and 371 are pending approval by the Office of Management and Budget. If any substantive changes are made in the information collection requirements for this program, applicants will be given an opportunity to revise or resubmit their applications.

*For Applications or Information Contact:* Joseph DePhillips, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3324 Switzer Building, Washington, DC 20202–2575. Telephone: (202) 732–1329.

**Program Authority:** 29 U.S.C. 777(b)

Dated: March 10, 1989.

**Madeleine Will,**

*Assistant Secretary, Office of Special Education and Rehabilitative Services.*

[FR Doc. 89–6031 Filed 3–14–89; 8:45 am]

BILLING CODE 4000-01-M

[CFDA 84.060A]

### Notice Inviting Applications for New Awards Under the Indian Education Act of 1988, Subpart 1 (Formerly Part A)—Formula Grant Program for Fiscal Year 1989

*Purpose:* Provides grants to local educational agencies (LEAs) and certain Indian tribes and organizations that received funds under this program in fiscal year 1988, and, if sufficient funds become available, as determined under the Act, to schools operated by the Bureau of Indian Affairs (BIA). Supplementary projects that meet the special educational and culturally related academic needs of Indian children enrolled in the applicant schools are supported.

*Deadline for Transmittal of Applications:* May 1, 1989.

*Deadline for Intergovernmental Review:* June 30, 1989.

*Applications Available:* March 17, 1989.

*Available Funds:* The appropriation for this program for fiscal year 1989 is $49,248,000, of which $46,583,400 will be allocated only to those LEAs and tribal schools that received funds under this program in fiscal year 1988. The remaining $2,665,000 is available for allocation to BIA-operated schools. The following estimates are based on the appropriation for fiscal year 1989 for LEAs and tribal schools that received awards in fiscal year 1988. The Secretary has no basis upon which to provide estimates for range, average size or numbers of awards to BIA-operated schools.

*Estimated Range of Awards:* $1,150 to $1,140,329.

*Estimated Average Size of Awards:* $41,802.

*Estimated Number of Awards* 1,112.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* 12 to 36 months.

*Applicable Regulations:* (a) The Indian Education Program Regulations, 34 CFR Parts 250 and 251; (b) the Education Department General Administrative Regulations, 34 CFR Parts 75, 77, 78, 79, 80 and 85.

**FOR APPLICATIONS OR INFORMATION CONTACT:** Julia Lesceux, U.S. Department of Education, 400 Maryland Avenue, SW., Room 2177, Washington, DC 20202–6335, telephone: (202) 732–5146.

**Program Authority:** 25 U.S.C. 2601–2606, 2651

Dated: March 9, 1989.

**Beryl Dorsett,**

*Assistant Secretary, Office of Elementary and Secondary Education.*

[FR Doc. 89–6032 Filed 3–14–89; 8:45 am]

BILLING CODE 4000-01-M

## DEPARTMENT OF ENERGY

### Intent To Negotiate a Grant With the State of New Mexico; New Mexico Research and Development Institute

**AGENCY:** Department of Energy.

**ACTION:** Intent to negotiate a Grant with the state of New Mexico, New Mexico Research and Development Institute (NMRDI).

**SUMMARY:** "Planning Phase for the New Mexico Improved Oil Recovery Project." The U.S. Department of Energy (DOE), Idaho Operations Office, through the DOE Bartlesville Project Office, intends to negotiate on a noncompetitive basis a cost share grant for approximately $287,000 with NMRDI, Santa Fe, New Mexico. This action is prompted by the consummation of Joint Powers Agreement #1 (JPA#1) to the Memorandum of Understanding between the DOE and the State of New Mexico, which defines the research proposal and the participants, and specifies cost-sharing. The grant will be to develop and validate advanced methods of reservoir characterization for oil recovery processes through interdisciplinary and multi-institutional efforts focused at a field laboratory at a New Mexico reservoir. The goal of the New Mexico Improved Oil Recovery Project (MNIORP) will not be to study specific EOR processes, but rather various injection schemes that will be utilized to aid in reservoir characterization. The field laboratory will be available for use by industry, universities, states, and federal laboratories. As defined in JPA#1, this effort is further broken down into the following tasks: (1) Select a small oil producing field within New Mexico, (2) contract for site operation, (3) establish a project office, (4) select a steering committee, and technical review panel, (5) initiate pressure testing of the reservoir, (6) drill and core a well, (7) analyze initial data, and (8) plan for future activities. The authority and justification for determination of noncompetitive financial assistance (DNCFA) is DOE Financial Assistance Rules 10 CFR Part 600.7(b)(2)(i), (B) and (C). The activities would be conducted by the applicant using its own resources or those donated or provided by third parties; however, DOE support of that activity would enhance the public benefits to be derived and DOE knows of no other entity which is conducting or is planning to conduct such activities. The applicant is a unit of government and the activity to be supported is related to performance of a governmental function within the subject jurisdiction, thereby precluding DOE provision of support to another entity.

The State of New Mexico has entered into a Memorandum of Understanding with the Federal Government and has begun cooperative efforts in the areas of resource characterization, research technology development, and technology transfer in order to successfully make New Mexico fossil energy reserves available to the consumer in a safe, economic, and environmentally acceptable manner. The activities proposed in JPA#1 to the Memorandum of Understanding are in support of a public purpose and are as directed by the Memorandum of Understanding. Public response may be addressed to the contract specialist below.

**FOR FURTHER INFORMATION CONTACT:** U.S. Department of Energy, Idaho Operations Office, 785 DOE Place, Idaho Falls, Idaho 83402, Trudy Thorne, Contract Specialist (208) 526–0519.

Date: March 7, 1989.

**H. Brent Clark,**

*Director, Contracts Management Division*

[FR Doc. 89–6027 Filed 3–14–89; 8:45 am]

BILLING CODE 6450-01-M



### Advisory Committee on Nuclear Facility Safety Notice of Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

*Name:* Advisory Committee on Nuclear Facility Safety.

*Date and Time:* Thursday, March 30, 1989, 8:30 p.m. to 6:00 p.m.; Friday, March 31, 1989, 9:00 a.m. to 1:00 p.m.

*Place:* U.S. Department of Energy, Forrestal Building, Room BE–089, 1000 Independence Avenue, SW., Washington, DC 20585.

*Contact:* Wallace R. Kornack, Executive Director, ACNFS, S–2, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone: 202/586–4400.

*Purpose of the Committee:* The Committee was established to provide the Secretary of Energy with advice and recommendations concerning the safety of the Department's production and utilization facilities, as defined in section 11 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2014).

**Tentative Agenda**

March 30, 1989 Meeting

8:30–5:30 Subcommittee Reports
- Review of Savannah River Plant Issues
- Restart Strategy Status
- Reactor Safety Improvement Program Status
- Water Hammer Report
- Safety Policy
- Committee Business

5:30–6:00 Public Comment

March 31, 1989 Meeting

9:00–12:30 DOE Environmental Cleanup Plans and Issues

12:30–1:00 Public Comment

*Public Participation:* This meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Wallace R. Kornack at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

*Transcripts:* The transcript of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room, IE–190, Forrestal Building, 1000 Independence Ave., S.W., Washington, DC, between 9:00 a.m. and 4:00 p.m. Monday through Friday, except Federal holidays.

Issues at Washington, DC on March 10, 1989.

**J. Robert Franklin,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 89–6028 Filed 3–14–89; 8:45 am]

BILLING CODE 6450-01-M

## Energy Information Administration

### Agency Information Collections Under Review By the Office of Management and Budget

**AGENCY:** Energy Information Administration, DOE.

**ACTION:** Notice of requests submitted for review by the Office of Management and Budget.

**SUMMARY:** The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The listing does not include information collection requirements contained in new or revised regulations which are to be submitted under 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, or extension; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden, and (13) A brief abstract describing the proposed collection and the respondents.

**DATES:** Comments must be filed on or before April 14, 1989.

**ADDRESS:** Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards, at the address below.)

**FOR FURTHER INFORMATION CONTACT:** *For further information and copies of relevant materials contact:* Jay Casselberry, Office of Statistical Standards (EI–70), Energy Information Administration, M.S. lH–023, Forrestal Building, 1000 Independence Ave., SW., Washington, DC 20585, (202) 586–2171.

**SUPPLEMENTARY INFORMATION:** If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this Notice, you should advise the OMB DOE Desk Officer of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the DOE contact listed above.)

The energy information collection submitted to OMB for review was:

1. International Affairs and Energy Emergencies
2. IE–417R
3. 1901–0288
4. Major Electric Power System Emergency Report
5. Extension
6. Annually
7. Mandatory
8. State and local governments, Businesses or other for profit, Federal agencies or employees
9. 40 respondents annually
10. 45 responses annually
11. The estimated average hours per response for each of the respondents is 2.39 burden hours.
12. The estimated total reporting hours are 130.
13. IE–417P will provide the DOE with information regarding the location of where emergency electric power supply situations exist on an electric power system or on a regional electric system. The data also provide DOE with a basis for determining the appropriate Federal action to relieve an electrical energy supply emergency. Respondents are electric utilities.

**Authority:** Sec. 5(a), 5(b), and 13(b), Pub. L. 93–275, Federal Energy Administration Act of 1974, (15 U.S.C. 764(a), 764(b), and 772(b); and Sec. 202(c) and 311 of the Federal Power Act, (16 U.S.C. 82a(c) and 825j.

Issued in Washington, DC, March 9, 1989.

**Yvonne M. Bishop,**

*Director, Statistical Standards, Energy Information Administration.*

[FR Doc. 89–6029 Filed 03–14–89; 8:45 am]

BILLING CODE 6450-01-M

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## FEDERAL ENERGY REGULATORY COMMISSION

[Docket No. ER89-444-000 et al.]

### Iowa Public Service Co. et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

March 8, 1989.

Take notice that the following filings have been made with the Commission:

**1. Iowa Public Service Company**

[Docket No. ER89-444-000]

Take notice that Iowa Public Service Company (IPS) on February 28, 1989, submitted in response to a request from Commission Staff, additional cost and Operational data to support the proposed Full Requirements Wholesale—Service Schedule No. 2 Original Issue Sheets Nos. 5 and 6, and executed Full Requirements Power Agreements filed on May 31, 1988, to permit the following Iowa municipalities to receive services pursuant to the filed rates: Auburn, Denver, Estherville, Hudson, Livermore, Pocahontas, Rockford, and Sergeant Bluff.

IPS requests a waiver of the Commission's regulations and allow the Agreements to become effective as of their respective operative dates. The earliest operative date is May 1, 1987.

These amendments have been served on all the affected municipalities and the Iowa Utilities Board.

Comment date: March 23, 1989, in accordance with Standard Paragraph E at the end of this notice.

**2. Kanawha Valley Power Company**

[Docket No. ER86-499-001]

Take notice that in accordance with the Commission's January 31, 1989 Order in Docket No. ER88-499-001, Kanawha Valley Power Company (Kanawha) submitted its required compliance filing. Kanawha states that its compliance filing sets forth the calculation of the amounts in excess of the Commission-approved settlement rate levels collected by Kanawha from Appalachian Power Company (Appalachian) together with interest computed under the Commission's regulations. According to Kanawha, a refund check in the appropriate amount was forwarded to Appalachian on February 15, 1989.

Kanawha further states that a copy of its compliance filing was either served upon or supplied to all parties of the record, Appalachian Power Company, the Virginia State Corporation Commission and the Public Service Commission of West Virginia.

Comment date: March 23, 1989, in accordance with Standard Paragraph E at the end of this document.

**3. Southwestern Public Service Company**

[Docket No. ER86-477-002]

Take notice that on March 1, 1989, Southwestern Public Service Company (Southwestern) tendered for filing its compliance filing in compliance with the Commission's order issued February 1, 1989.

Comment date: March 23, 1989, in accordance with Standard Paragraph E at the end of this notice.

**4. Idaho Power Company**

[Docket No. EC89-7-000]

Take notice that on February 27, 1989, Idaho Power Company ("Idaho Power" on the "Company"), a Maine corporation, and Idaho power Migrating Corporation ("IPMC"), an Idaho corporation, pursuant to section 203 of the Federal Power Act, filed an application for authorization for Idaho Power to be merged with and into IPMC.

It is stated that IPMC is a wholly owned subsidiary of Idaho Power. Idaho Power provides electric service in the States of Idaho, Oregon, and Nevada.

It is further stated that the principle purposes of the proposed merger are as follows:

(1) Incorporation in Idaho will promote better understanding of the Company by state and local government authorities and by its customers.

(2) After the Migration, the Company's business will be subject only to the corporation laws of the State of Idaho, and other states in which it operates, and the Company will be relieved of miscellaneous expenses incident to compliance with Maine laws. No additional annual taxes will be payable to the State of Idaho as a result of the change.

(3) The issuance of stock, bonds and other long-term debt by the Company is now subject to regulation by the Idaho Public Utilities Commission, the Wyoming Public Service Commission, the Oregon Public Utinty Commission, and the Federal Energy Regulatory Commission. The effect of the Migration will be to exempt the Company from such duplicative regulation by the Federal Energy Regulatory Commission and the expenses attendant thereto. Regulation by the other state regulatory commissions will continue.

(4) The Migration will enable the Company to qualify for an exemption from the Public Utility Holding Company Act of 1935 (the "1935 Act") in the event that its business plans may at some future time contemplate the establishment of subsidiaries to engage in the transmission and/or generation of electric power for resale. Several relevant exemptions from the 1935 would require the Company to be incorporated in one of the states in which it operates. The Company has under study plans to construct a transmission line and certain generating facilities. Determination of whether to place the transmission line and generating facilities in subsidiary companies would depend, among other things, upon the action of various regulatory bodies.

Applicants state that upon the effective date of the merger each outstandng share of Idaho Power Common Stock and Preferred Stock will automatically be converted into one share of IPMC Common Stock and comparable series of IPMC Preferred Stock, respectively. Each outstanding certificate presenting shares of Idaho Power Common Stock and Preferred Stock will continue to represent the same number of shares of Common Stock and Preferred Stock of IPUC, respectively.

Comment date: March 27, 1989, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraphs**

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 89-5019 Filed 3-14-89; 8:45 am]

BILLING CODE 6717-01-M



## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Project No. 9194-000 New Jersey]

### Passaic Valley Water Commission; Availability of Environmental Assessment

March 9, 1989.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for major license, less than 5 megawatts, for the Little Falls Hydroelectric Project located on the Passaic River in Passaic County, near Little Falls, New Jersey, and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project, with appropriate mitigative measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's offices at 825 North Capitol Street NE., Washington, DC 20426.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 89-5922 Filed 3-14-89; 8:45 am]

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[Project Nos. 2392-004, et al.]

### Hydroelectric Applications, Georgia-Pacific Corp.; Applications Filed With the Commission

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1a. Type of Application: New Major License.

b. Project No.: 2392.004.

c. Date Filed: December 27, 1988.

d. Applicant: Georgia-Pacific Corporation.

e. Name of Project: Gilman Project.

f. Location: On the Connecticut River in Essex County, Vermont and Coos County, New Hampshire.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. Applicant Contact: Mr. David G. Blanchette, Georgia-Pacific Corporation, Gilman, VT 05904, (802) 892-5515.

i. FERC Contact: Steven H. Rossi, (202) 376-9814.

j. Comment Date: May 5, 1989.

k. Description of Project: The existing operating project commenced operation in 1941 and was issued an initial license in 1965, which will expire in 1990. The licensee has filed for a new license for the continued operation of the project. The existing project consists of: (1) the Gilman Dam, (a) a concrete gravity structure approximately 170 feet long and 29 feet high, and (b) a rock-filled timber crib dam approximately 108 feet long and 40 feet high, each with a crest elevation of 828.3 feet USGS; (2) 5-foot-high flashboards bringing the normal water surface elevation to 833.3 feet USGS; (3) a hydraulically operated crest gate 18 feet high and 27 feet wide; (4) a reservoir having an area of 130 acres, a storage capacity of 705 acre-feet, and a normal water surface elevation of 833.3 feet USGS; (5) a powerhouse containing four turbine-generator units, one rated at 2,250 kW, one rated a 1,000 kW, and two rated at 800 kW each for a total rated capacity of 4,850 kW; (6) a 200-foot-long transmission line; and (7) appurtenant facilities. The project generates an average of 25,750 MWh annually. The dam is owned by the applicant. The existing project would be subject to Federal takeover under Sections 14 and 15 of the Federal Power Act. The cost of the existing project is $4,848,500.

l. Purpose of Project: Project power would continue to be sold to New England Power Company.

m. This notice also consists of the following standard paragraphs: B, C and Dl.

2a.Type of Application: Transfer of License.

b. Project No.: 5000-014.

c. Date Filed: February 1, 1989.

d. Applicant: Trafalgar Power Inc. and Trafalgar Power Limited Partnership.

e. Name of Project: Kayuta Lake Project.

f. Location: On the Black River in Oneida County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. Applicant Contacts:

Mr. Arthur H. Steckler, President, Trafalgar Power Inc., Smith and Canal Streets, Franklin, NH 03235.

Mr. John M. Cutler, McCarthy, Sweeney & Harkaway, P.C., 1750 Pennsylvania Avenue, NW., Washington, DC 20006, (202) 393-5710.

i. FERC Contact: Steven H. Rossi, (202) 376-9814.

j. Comment Date: April 10, 1989.

k. Description of Transfer: On February 1, 1989, Trafalgar Power Inc. (licensee) and Trafalgar Power Limited Partnership (transferee) filed a joint application for transfer of a minor license for the Kayuta Lake Project No. 5000.

The purpose of the proposed transfer of license is to facilitate the financing of the project.

The proposed transfer would not result in any changes in the operation of the project. All engineering, design, and feasibility studies performed would be transferred to the transferee. The transferee states that it would comply with all the terms and conditions of the license.

l. This notice also consists of the following standard paragraphs: B and C.

3a. Type of Application: Transfer of License.

b. Project No.: 9685-004.

c. Date Filed: February 1, 1989.

d. Applicant: Trafalgar Power, Inc.

e. Name of Project: Cranberry Lake Project.

f. Location: On the Oswegatchie River, in St. Lawrence County, New York.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)—825(r).

h. Applicant Contact: Arthur H. Steckler, President, Trafalgar Power, Inc., Smith and Canal Streets, Franklin, NH 03235, (514) 273-8891.

i. FERC Contact: Mary Nowak (202) 376-9634.

j. Comment Date: April 19, 1989.

k. Description of Project: The Trafalgar Power, Inc. proposes to transfer the license for the Cranberry Lake Project No. 9685 to Trafalgar Power Limited Partnership. The transfer is requested in order to facilitate the financial arrangements of the project. The transferee states that it will comply with all of the terms and conditions of the license.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

4a. Type of Application: Transfer of License.

b. Project No.: 9709-005.

c. Date Filed: February 1, 1989.

d. Applicant: Trafalgar Power Inc. and Trafalgar Power Limited Partnership.

e. Name of Project: Herkimer Project.

f. Location: On the West Canada Creek in Herkimer County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. Applicant Contacts:

Mr. Arthur H. Steckler, President, Trafalgar Power Inc., Smith and Canal Streets, Franklin, NH 03235.

Mr. John M. Cutler, McCarthy, Sweeney & Harkaway, P.C, 1750 Pennsylvania Avenue, NW., Washington, DC 20006, (202) 393-5710.

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i. FERC Contact: Steven H. Rossi, (202) 376–9814.

j. Comment Date: April 10, 1989.

k. Description of Transfer: On February 1, 1989, Trafalgar Power Inc. (licensee) and Trafalgar Power Limited Partnership (transferee) filed a joint application for transfer of a minor license for the Herkimer Project No. 9709.

The purpose of the proposed transfer of license is to facilitate the financing of the project.

The proposed transfer would not result in any changes in the operation of the project. All engineering, design, and feasibility studies performed would be transferred to the transferee. The transferee states that it would comply with all the terms and conditions of the license.

l. This notice also consists of the following standard paragraphs: B and C.

5a. Type of Application: Transfer of License.

b. Project No.: 9821–010.

c. Date Filed: February 1, 1989.

d. Applicant: Trafalgar Power Inc. and Trafalgar Power Limited Partnership.

e. Name of Project: Ogdensburg Project.

f. Location: On the Oswegatchie River in St. Lawrence County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r)

h. Applicant Contacts:

Mr. Arthur H. Steckler, President, Trafalgar Power Inc., Smith and Canal Streets, Franklin, NH 03235.

Mr. John M. Cutler, McCarthy, Sweeney & Harkaway, P.C, 1750 Pennsylvania Avenue, NW., Washington, DC 20006, (202) 393–5710.

i. FERC Contact: Steven H. Rossi, (202) 376–9814.

j. Comment Date: April 10, 1989.

k. Description of Transfer: On February 1, 1989, Trafalgar Power Inc. (licensee) and Trafalgar Power Limited Partnership (transferee) filed a joint application for transfer of a major license for the Ogdensburg Project No. 9821.

The purpose of the proposed transfer of license is to facilitate the financing of the project.

The proposed transfer would not result in any changes in the operation of the project. All engineering, design, and feasibility studies performed would be transferred to the transferee. The transferee states that it would comply with all the terms and conditions of the license.

l. This notice also consists of the following standard paragraphs: B and C.

6a. Type of Application: Surrender of License.

b. Project No.: 9876–005.

c. Date Filed: January 17, 1989.

d. Applicant: Clearwater Hydro Associates.

e. Name of Project: Village Creek.

f. Location: On Village Creek near Birmingham, Jefferson County, Alabama.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. Applicant Contacts: Mr. Charles Gresham, 634 R. Inskip Road, #80, Knoxville, TN 37912.

i. FERC Contact: Michael Dees, (202) 376–9414.

j. Comment Date: April 10, 1989.

k. Description of Project: On February 2, 1988, a license was issued to construct, operate, and maintain the Village Creek Project No. 9876. The project would consist of: (1) an existing gravity dam 550 feet long and 115 feet high; (2) an existing 440 acre reservoir; (3) a proposed intake structure and a penstock six feet in diameter; (4) a proposed reinforced concrete powerhouse 24 feet by 24 feet by 30 feet high housing a 1,100-kW hydropower unit; (5) a proposed 12.47-kV three-phase transmission line 1.3 miles long; and (6) appurtenant facilities.

Licensee states that the project is no longer economically feasible because of the existing buyback rate structure.

l. Anyone desiring to be heard or to make any protest about this action should file a motion to intervene or a protest with the Federal Energy Regulatory Commission in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 or 385.214 (1988). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in section 385.211 for protests. To become a party, or to participate in any hearing that might be held, a person must file a motion to intervene in accordance with the Commission's Rules. The Commission's address is: 825 North Capitol Street NE., Washington, DC 20426.

7a. Type of Application: Preliminary Permit.

b. Project No.: 10718–000.

c. Date filed: January 10, 1989.

d. Applicant: JDJ Energy Company.

e. Name of Project: Pomme de Terre Water Power Project.

f. Location: Pomme de Terre Lake, Pomme de Terre River, near Hermitage, in Hickory County, Missouri.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Doyle W. Jones, P.E., JDJ Energy Company, Rt. 5, Box 463, Malvern, AR 72104, (501) 844–4435.

i. FERC Contact: Mary Nowak—(202) 376–9634.

j. Comment Date: May 1, 1989.

k. Description of Project: The proposed project would utilize the existing Corps of Engineers' dam and would consist of: (1) a proposed 300-foot-long penstock 8 feet in diameter; (2) a proposed powerhouse containing two turbine generating units having a total installed capacity of 4,625 kilowatts; (3) a proposed 13.8-kilovolt transmission line 600 feet long; and (4) appurtenant facilities. The applicant estimates that the average annual generation would be 12,450,000 kilowatthours. The applicant estimates that the cost of the studies under permit would be $30,000.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

8a. Type of Application: Preliminary Permit.

b. Project No.: 10728–000.

c. Date Filed: February 6, 1989.

d. Applicant: City of Marseilles and City of Ottawa.

e. Name of Project: Marseilles Dam.

f. Location: On the Illinois River near Marseilles, La Salle County, Illinois.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Poundstone, Etscheid & Associates, Inc., Michael A. Etscheid P.E., Northpoint Professional Centre, Suite 2, Streator, IL 61364.

i. FERC Contact: Michael Dees (202) 376–9414.

j. Competing Application: 10654–000, filed September 1, 1988.

k. Comment Date: May 5, 1989.

l. Description of Project: The proposed project would utilize the existing Corps of Engineers' Marseilles Lock and Dam and reservoir and would consist of: (1) an existing canal; (2) reconstructuring an existing concrete powerhouse to house four new hydropower units with a combined capacity of 10,800 kW; (3) a reconstructed tailrace; (4) upgrading an existing 400-foot-long transmission line; and (5) appurtenant facilities. The estimated annual energy production is 60 GWh. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $80,000.

m. This notice also consists of the following standard paragraphs: A8, A10, B, and C.

9a. Type of Application: Major License.

b. Project No.: 10228–000.

c. Date Filed: January 2, 1987.

d. Applicant: WV Hydro, Inc.

e. Name of Project: Cannelton.

f. Location: On the Ohio River in Hancock County, Kentucky.



g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: James B. Price, 120 Calumet Ct., Aiken, SC 29801, (803) 642–2749.

i. FERC Contact: Charles T. Raabe (202) 376–9778.

j. Comment Date: May 12, 1989.

k. Description of Project: The proposed project would utilize the existing U.S. Army Corps of Engineers' Cannelton Locks and Dam, and would consist of: (1) A 190-foot-wide, 80-foot-deep intake at the left bank; (2) a 190-foot-wide, 250-foot-long powerhouse containing 3– 26,670–kW bulb-type turbine/generator units, each operated at a 20.8-foot head and at a flow of 17,667cfs each; (3) a 190-foot-wide, 51-foot-long tailrace; (4) a 4.16/161–kV switchyard; (5) a 700-foot-long, 161–kV transmission line; and (6) appurtenant facilities. Applicant estimates that the average annual generation would be 370,000,000 kWh. Project power would be sold to Southern Indiana Gas & Electric Company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

10.a Type of Application: License (less than 5 MW).

b. Project No.: 2610–002.

c. Date filed: December 16, 1988.

d. Applicant: Northern States Power Co.

e. Name of Project: Saxon Falls.

f. Location: On the Montreal River in Iron County, Wisconsin, and Gogebic County, Michigan.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. William J. Madden, Jr., Bishop, Cook, Purcell & Reynolds, 1400 L St. NW., Washington, DL 20005–3502, (202) 371–5715.

i. FERC Contact: Michael Dees (202) 376–9414.

j. Comment Date:

k. Description of Project: The existing Saxon Falls Project consists of: (1) A dam 40 feet high and 510 feet long; (2) a reservoir with a storage capacity of 550 acre-feet and a surface area of 69 acres; (3) a 6-foot diameter steel conduit 1,607 feet long; (4) a steel surge tank 23.5 feet in diameter and 59.50 feet high, (5) two 4.5-foot diameter steel penstocks each 156 feet long; (6) a reinforced concrete powerhouse containing two equally sized generating units for a total installed capacity rated at 1,500 kW; (7) a substation with step-up transformer; (8) a 92.4-kV transmission line 0.25 mile long from powerhouse to substation and a 34.5-kV line for connection with applicant's interconnected transmission system; and (9) appurtenant facilities.

The applicant estimated from historical generation that the average annual energy generation will be 12,283 MWh. The applicant is the sole owner of the existing project facilities and has no plans to modify the existing facilities or operation.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

11a. Type of Application: Surrender of License.

b. Project No.: 10028–001.

c. Date Filed: August 29, 1988.

d. Applicant: Tultex Corporation.

e. Name of Project: Mayo Dam.

f. Location: On the Mayo River in Rockingham County, North Carolina.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: David M. Coombe, 410 Severn Ave., Suite 313, Annapolis, MD 21403, (301) 268–8820.

i. FERC Contact: Charles T. Raabe (202) 376–9778.

j. Comment Date: April 21, 1989.

k. Description of Project: The proposed project would have consisted of: (1) A 560-foot-long stone masonry dam including a 350-foot-long, 15-foot-high uncontrolled spillway with a crest elevation of 585.4 feet MSL; (2) a headgate structure containing five wooden lift gates and trash racks; (3) a 10-acre reservoir with a storage capacity of approximately 85 acre-feet at a normal water surface elevation of 585.4 feet MSL; (4) a levee approximately 30 feet long; (5) a 38.5-foot by 20-foot reinforced concrete open flume powerhouse; (6) a 50-foot-long by 25-foot-wide tailrace excavated in ledge, discharging into the Mayo River at a normal tailwater elevation of 571.4 feet MSL; (7) a control house containing switchgear, project metering, and a programmed controller; (8) a 0.33–MW induction generator; (9) the 480-volt generator leads; (10) a three-phase, 500–kVA, 480/4,160-volt step-up transformer; (11) a 200-foot-long, 4.16–kV overhead transmission line; and (12) appurtenant facilities.

Licensee states that the construction and operation of this project is not economically feasible and that financial strategies have been exhausted. Therefore, licensee has requested that its license be terminated. The license was issued March 9, 1988 and would have expired February 28, 2028. The licensee has not commenced construction of the project.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

12a. Type of Application: Preliminary Permit.

b. Project No.: 10724–000.

c. Date filed: January 30, 1989.

d. Applicant: Blycol, Inc.

e. Name of Project: Oregon Hydropower Project.

f. Location: On the Rock River, near Oregon, in Ogle County, Illinois.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)—825(r).

h. Applicant Contact: Mr. Andrew R. Blystra, 1481 Ring Road, Calumet City, IL 60409, (312) 730–1100.

i. FERC Contact: Mary Nowak (202) 376–9634.

j. Comment Date: May 12, 1989.

k. Competing Application: Project No. 10716; Date Filed: January 3, 1989.

l. Description of Project: The proposed project would consist of the following facilities: (1) An existing 867.5-foot-long timber crib dam approximately 12 feet high; (2) an existing reservoir 900 acres in surface area with a storage capacity of 3,500 acre-feet, and a normal surface elevation of 670.50 feet mean sea level; (3) a rehabilitated powerhouse containing three new generating units for a total installed capacity of 1,200 kilowatts; (4) a proposed 12,000-volt transmission line approximately 600 feet long; and (5) appurtenant facilities. The applicant estimates that the average annual generation is 11,000 kilowatthours. The existing dam is owned by the Illinois Department of Conservation and the City of Oregon. The applicant estimates that the cost of the studies under permit would be $95,000.000.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

13a. Type of Application: Minor License.

b. Project No.: 10624–000.

c. Date Filed: July 11, 1988.

d. Applicant: French Paper Company.

e. Name of Project: French Paper Company Project.

f. Location: On the St. Joseph River in Berrien County, Michigan.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. Applicant Contacts:

Mr. R. Dale Clark, French Paper Company, 100 French Street, Niles, MI 49120, (616) 683–1100

Mr. Michael L. Magliola, P.E., Parsons Brinckerhoff Quade, & Douglas, Inc., 230 West Monroe Street, Chicago, IL 60606, (312) 782–8150

Mr. J. Edward French, French Paper Company, 100 French Street, Niles, MI 49120, (616) 683–1100

Mr. William J. Madden, Jr., Bishop, Cook, Purcell & Reynolds, 1400 L Street, NW., Washington, DC 20005–3502. (202) 371–5700

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l. FERC Contact: Steven H. Rossi, (202) 376–9814.

j. Comment Date: May 12, 1989.

k. Description of Project: The existing project has been operating since 1922 and consists of: (1) Niles Dam, a concrete gravity overflow structure 321 feet long and 13 feet high in the St. Joseph River, topped by 2.3-foot-high flashboards; (2) a headrace 100 feet wide and about 600 feet long, bypassing the northwest end of the dam; (3) a powerhouse 115 feet long, 55 feet wide and 56 feet high, equipped with four turbine-generator units in two open flumes, with a total installed capacity of 1,300 kW; (4) a reservoir on the St. Joseph River of about 80 acres, a storage capacity of about 510 acre-feet with a water surface elevation of 653.75 feet MSL; (5) a 7-foot-long transmission line; and (6) appurtenant facilities. In addition there is a proposed fish passage to be constructed near the northwest abutment of the dam, composed of reinforced concrete, 10 feet wide, about 220 feet long with 18 steps, and with appurtenant water conveyance and attraction facilities. The applicant estimates the average annual generation would be 5,000,000 kWh. The existing dam is owned by the applicant.

l. Purpose of Project: Project power would be used internally by the applicant and sold to Indiana and Michigan Electric Company.

m. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

14a. Type of Application: Preliminary Permit.

b. Project No.: 10726-000.

c. Date Filed: February 2, 1989.

d. Applicant: City and County of San Francisco.

e. Name of Project: Calaveras Reservoir/Dam Power.

f. Location: The project would utilize the Calaveras Reservoir and outlet works and the Upper Alameda Diversion Dam and tunnel, owned by the applicant and located in Alameda and Santa Clara Counties, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. Applicant Contact: Mr. James D. Cooney, San Francisco Water Department, 425 Mason Street, San Francisco, CA 94102, (415) 923–2467.

i. Commission Contact: Mr. James Hunter (202) 376–1943.

j. Comment Date: April 17, 1989.

k. Competing Application: Project No. 10656; Date Filed: September 9, 1988.

l. Description of Project: The proposed project would consist of: (1) The 230-foot-high Calaveras Dam and 31.55 billion-gallon reservoir; (2) a 40-foot-long, 36-inch-diameter penstock; (3) a powerhouse downstream of the reservoir containing one or more generating units; and (4) a second power generation site, the location and capacity of which would be determined during the term of the preliminary permit. Total generating capacity is expected to be less than five megawatts. The estimated cost of permit activities is $50,000.

m. This notice also consists of the following standard paragraphs: A8, A10, B, C, and D2.

**Standard Paragraphs**

*A3. Development application*—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

*A5. Preliminary permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

*A7. Preliminary permit*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

*A8. Preliminary permit*—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit and development applications or notices of intent. Any competing preliminary permit or development application or notice of intent to file a competing preliminary permit or development application must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice. A competing license application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

*A9. Notice of intent*—A notice of intent must specifiy the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

*A10. Proposed scope of studies under permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

*B. Comments, protests, or motions to intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

*C. Filing and service of responsive documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing, the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Dean Shumway, Director, Division of Project Review, Federal Energy Regulatory Commission, Room 203–RB, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.



*D1. Agency comments*—States, agencies established pursuant to federal law that have the authority to prepare a comprehensive plan for improving, developing, and conserving a waterway affected by the project, federal and state agencies exercising administration over fish and wildlife, flood control, navigation, irrigation, recreation, cultural or other relevant resources of the state in which the project is located, and affected Indian tribes are requested to provide comments and recommendations for terms and conditions pursuant to the Federal Power Act as amended by the Electric Consumers Protection Act of 1986, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88–29, and other applicable statutes. Recommended terms and conditions must be based on supporting technical data filed with the Commission along with the recommendations, in order to comply with the requirement in section 313(b) of the Federal Power Act, 16 U.S.C. a8251(b), that Commission findings as to facts must be supported by substantial evidence.

All other federal, state, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the statutes listed above. No other formal requests will be made. Responses should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the applicant. If an agency does not respond to the Commission within the time set for filing, it will be presumed to have no comments., One copy of an agency's response must also be sent to the Applicant's representatives.

*D2. Agency comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: March 10, 1989, Washington, DC.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 89–6024 Filed 3–14–89; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket Nos. CP89–493–000 et al.]**

**CNG Transmission Corporation et al.; Natural Gas Certificate Filings**

Take notice that the following filings have been made with the Commission:

**1. CNG Transmission Corporation**

[Docket No. CP89–493–000]

March 6, 1989.

Take notice that on December 28, 1988, CNG Transmission Corporation (CNG), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP89–493–000 an application pursuant to section 7(c) of the Natural Gas Act, for a certificate of public convenience and necessity authorizing it to render long-term firm transportation service for three industrial cogeneration developers, Albany Cogeneration Associates (ACA), Onondaga Cogeneration Limited Partnership (Onondaga) and Indeck Energy Services, Inc. (Indeck), and to construct and operate related transmission facilities in West Virginia, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

CNG proposes to transport up to 25,634 dekatherms (dt) of natural gas per day on a firm basis, 15,360 dt per day for Onondaga, 6,274 dt per day for ACA, and 4,000 dt per day for Indeck. The ACA and Onondaga quantities would be delivered to Niagara Mohawk Power Corporation and the Indeck quantities to National Fuel Gas Supply Corporation. All quantities would be transported at the rates set forth in Rate Schedule TF of CNG's FERC Gas Tariff, Original Volume No. 1. CNG states that it has reserved the right to interrupt deliveries for up to 65 days and has agreed to waive D–1 Demand charges for each day during which an interruption occurs.

CNG proposes to construct and operate the following facilities in order to render the long-term, firm transportation service; (a) replacement of 45.85 miles of 12-inch pipeline known as TL–263 with 20-inch pipeline; (b) replacement of 125 horsepower with 300 horsepower of compression at CNG's McDonald Station; (c) addition of 880 horsepower of compression at CNG's Oscar Nelson Station; (d) 2,160 horsepower of new compression to be known as Jackson Station to be located near the junction of CNG line No. TL–263 and line H–171 in Kanawha County, West Virginia; (e) 1,200 horsepower of new compression to be known as the Guyan Station to be located between the existing Oscar Nelson and McDonald Stations; (f) replacement of 0.55 miles of 10-inch pipeline known as line No. H–171 with 20-inch pipeline; and (g) construction of two metering and regulation stations which would enable CNG to receive the Appalachian gas purchased by ACA, Onondaga, and Indeck for transportation. The total cost of facilities is estimated to be $30,530,372. CNG proposes to finance this project with funds on has or with funds obtained from its parent company, CNG Natural Gas Company.

*Comment date:* March 27, 1989, in accordance with Standard Paragraph F at the end of this notice.

**2. Colorado Interstate Gas Company**

[Docket No. CP89–922–000]

March 6, 1989.

Take notice that on February 28, 1989, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP89–922–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Union Pacific Resources Company (Union Pacific), a natural gas producer, under its blanket authorization issued in Docket No. CP86–589–000, *et al.*, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

CIG would perform the proposed interruptible transportation service for Union Pacific, pursuant to an interruptible transportation service agreement dated November 1, 1988. The transportation agreement is effective for a primary term of 15 years and year-to-year thereafter subject to termination at the end of the 15th year or any contract year thereafter by 90 days written notice by either party. CIG proposes to transport up to a maximum of 50,000 Mcf of natural gas per day; on an average day up to 45,500 Mcf; and on an annual

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basis 16,425,000 Mcf of natural gas for Union Pacific. CIG proposes to receive the subject gas at various existing points of receipt located in the states of Kansas, Wyoming and Colorado and redeliver the gas, less fuel gas and lost and unaccounted-for gas, for the account of Union Pacific in Texas and Oklahoma. CIG avers that no new facilities are required to provide the proposed service.

It is explained that the proposed service is curreatly being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. CIG commenced such self-implementing service on November 1, 1988, as reported in Docket No. ST 89-842-000.

*Comment date*: April 20, 1989, in accordance with Standard Paragraph G at the end of this notice.

**3. Northwest Pipeline Corporation**

[Docket No. CP89-932-000]

March 7, 1989.

Take notice that on March 1, 1989, Northwest Pipeline Corporation, (Northwest) 295 Chipeta Way, Salt Lake City, Utah 84108 filed in Docket No. CP89-932-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Williams Gas Marketing Company (Williams), under its blanket authorization issued in Docket No. CP86-578-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest would perform the proposed interruptible transportation service for Williams, a marketer of natural gas, pursuant to a transportation agreement dated February 10, 1988, as amended June 10, 1988, October 21, 1988, December 5, 1988, and December 8, 1988, under its Rate Schedule TI-1. The term of the transportation agreement is from the date of execution and shall remain in full force and effect for a term continuing on a month to month basis, subject to termination upon 30 business days written notice by either party. Northwest proposes to transport on a peak day up to 770,000 MMBtu; on an average day up to 10,000 MMBtu; and on an annual basis 3,600,000 MMBtu for Williams. Northwest proposes to transport the subject gas through its transmission system from any transportation receipt to any transportation delivery points. It is stated that the natural gas transported under the transportation agreement may be received on behalf of Williams by any local distribution company or affiliate of Williams which has an appropriate contractual arrangement with Williams. It is alleged that at this time Northwest understands that Williams has arranged for deliveries to the distribution systems of Northwest Natural Gas Company, Washington Natural Gas Company, and Cascade Natural Gas Corporation. Northwest avers that no new facilities are required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. Northwest commenced such self-implementing service on February 16, 1989, as reported in Docket No. ST89-2273-000.

*Comment date*: April 21, 1989, in accordance with Standard Paragraph G at the end of this notice

**4. Tennessee Gas Pipeline Company**

[Docket No. CP89-919-000]

March 7, 1989.

Take notice that on February 28, 1989, Tennessee Gas Pipeline Company (Tennessee), P. O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89-919-000 a request pursuant to § 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP87-115-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Tennessee proposes to transport natural gas on an interruptible basis for Texas-Ohio Gas, Inc. (Texas-Ohio). Tennessee explains that service commenced January 27, 1989 under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-2199. Tennessee further explains that the peak day quantity would be 15,000 dekatherms, the average daily quantity would be 15,000 dekatherms, and that the annual quantity would be 5,475,000 dekatherms. Tennessee explains that it would receive natural gas for the account of Texas-Ohio at points of receipt located Offshore Louisiana and in the states of Pennsylvania and Texas. Tennessee states that the points of delivery are located in the states of Texas, Louisiana and Pennsylvania.

*Comment date*: April 21, 1989, in accordance with Standard Paragraph G at the end of this notice.

**5. Northwest Pipeline Corporation**

[Docket No. CP89-941-000]

March 8, 1989.

Take notice that on March 2, 1989, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89-914-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of CP National Corporation (CP National), under Northwest's blanket certificate issued in Docket No. CP86-578-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northwest requests authorization to transport, on an interruptible basis, up to a maximum of 45,000 MMBtu of natural gas per day for CP National, a local distribution company, from receipt points located in Colorado, Oklahoma, Oregon, Utah, Washington and Wyoming to delivery points located in Colorado, Idaho, New Mexico, Oklahoma, Oregon, Utah, Washington and Wyoming. Northwest anticipates transporting, on an average day 800 MMBtu and an annual volume of 300,000 MMBtu.

Northwest states that the transportation of natural gas for CP National commenced January 27, 1989, as reported in Docket No. ST89-2276-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to Northwest in Docket No. CP86-578-000.

*Comment date:* April 24, 1989 in accordance with Standard Paragraph F at the end of the notice.

**6. Columbia Gas Transmission Corporation**

[Docket No. CP89-939-000]

March 8, 1989.

Take notice that on March 2, 1989, Columbia Gas Transmission Corporation (Applicant), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP89-939-000 a request pursuant to §§ 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act for authorization to abandon approximately 3.9 miles of 3-inch pipeline and appurtenant facilities located in Hardin County, Ohio, under Applicant's blanket certificate issued in Docket No. CP83-76-000 pursuant to section 7 of the Natural Gas Act. In addition, Applicant also requests authority under §§ 157.205 and 157.212 to establish a new point of delivery of Columbia Gas of Ohio, Inc. (COH) at the interconnection of certain new facilities to be constructed by COH, all as more fully set forth in the request on file with the Commission and open to public inspection.

COH would construct approximately 21.6 miles of 10-inch pipeline from the East Liberty area, Logan County, Ohio, to a proposed new point of delivery by Applicant to COH from Applicant's 12- and 16-inch pipelines located in Hardin County, Ohio. It is stated that such facilities would be utilized by COH to serve its existing market area in the Mt. Victory, Ohio area including a new Honda of America plant under construction in East Liberty, Logan County, Ohio. Applicant states that its 3.9 miles of 3-inch pipeline and appurtenant facilities (Mt. Victory System), presently in the area, will no longer be required for service to COH upon completion of COH's new facilities. Accordingly, Applicant further states that it proposes to abandon such facilities and sell the rights-of-way associated therewith to COH for the utilization in the construction and operation of its facilities.

Applicant also states that it does not serve any customers other than COH from the facilities to be sold and thus, the abandonment will not result in the abandonment of service to any natural gas consumer.

The quantities to be provided through the new point of delivery are within Applicant's currently authorized level of service to COH and would not result in revisions to either peak day or seasonal entitlements, it is stated. The sales to be made through the point of delivery would be under Applicant's currently effective service agreement with COH under Rate Schedule CDS, it is further stated.

*Comment date:* April 24, 1989, in accordance with Standard Paragraph G at the end of this notice.

**7. Texas Gas Transmission Corporation**

[Docket No. CP89-936-000]

March 8, 1989.

Take notice that on March 2, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89-936-000 an application pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Energy Marketing Exchange, Inc. (Energy Exchange), a marketer of natural gas, under Texas Gas' blanket certificate issued in Docket No. CP88-686-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Gas proposes to transport, on an interruptible basis up to 100,000 MMBtu per day for Energy Exchange. Texas Gas states that construction of facilities would not be required to provide the proposed service.

Texas Gas further states that the maximum day, average day, and annual transportation volumes would be approximately 100,000 MMBtu, 50,000 MMBtu and 36,500,000 MMBtu respectively.

Texas Gas advises that service under § 284.223(a) commenced January 18, 1989, as reported in Docket No. ST89-1933.

*Comment date:* April 24, 1989, in accordance with Standard Paragraph G at the end of this notice.

**8. Northern Natural Gas Company**

[Docket No. CP89-956-000]

March 9, 1989.

Take notice that on March 6, 1989, Northern Natural Gas Company, Division of Enron Corp., (Northern) 1400 Smith Street, Houston, Texas 77251, filed in Docket No. CP89-956-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas under its blanket authorization issued in Docket No. CP86-435-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern proposes to transport natural gas on an interruptible basis for Chevron U.S.A. Inc. (Chevron). Northern explains that the service commenced under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST-89-2390. Northern proposes to transport on a peak day up to 75,000 MMBtu; on an average day up to 56,250 MMBtu; and on an annual basis up to 27,375,000 MMBtu. Northern proposes to receive and deliver the gas at various points in Texas.

*Comment date:* April 24, 1989 in accordance with Standard Paragaph F at the end of the notice.

**9. Texas Gas Transmission Corporation**

[Docket No. CP89-935-000]

March 9, 1989.

Take notice that on March 2, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89-935-000 a request to §§ 157.205 and 284.223 of the Commission's Regulations (18 CFR 157.205 and 284.223) for authorization to transport natural gas for Sun Operating Limited Partnership (Sun), pursuant to Texas Gas's blanket certificate issued in Docket No. CP88-686-000 and section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Texas Gas requests authority to transport up to 1.2 billion Btu of natural gas per day on an interruptible basis on behalf of Sun pursuant to a transportation agreement dated January 4, 1989. Texas states that the transportation agreement provides for Texas Gas to receive gas from a point in Block 146, South Marsh Island Area, offshore Louisiana, and to redeliver the gas into the facilities of ANR Pipeline Company in Block 146, South Marsh Island Area, Offshore Louisiana.

Texas Gas indicates it would provide the service on a month-to-month basis unless terminated upon thirty days written notice. Texas Gas states that it would charge the rates provided by its Rate Schedule IT.

It is indicated that the estimated maximum daily volume and average daily volume would be 1.2 billion Btu and the estimated annual volume would be 438 billion Btu. Texas Gas states it commenced a 120-day transportation service for Sun on January 21, 1989, as reported in Docket No. ST89-2091. Texas gas indicates that it would render the service through the use of Texas Gas's existing facilities.

*Comment date:* April 24, 1989, in accordance with Standard Paragraph G at the end of this notice.

**10. Tennessee Gas Pipeline Company**

[Docket No. CP89-949-000]

March 9, 1989.

Take notice that on March 6, 1989, Tennessee Gas Pipeline Company (Tennessee), Post Office Box 2511, Houston, Texas 77252, filed in Docket No. CP89-949-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Shell Offshore, Inc. (Shell), a natural gas producer, under its blanket authorization issued in Docket No. CP87-115-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Tennessee would perform the proposed interruptible transportation

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service for Shell, pursuant to an interruptible transportation service agreement dated January 16, 1989. The transportation agreement is effective for a primary term of one month and month-to-month thereafter subject to termination by either party at any time upon at least 30 days written notice by either party. Tennessee proposes to transport 35,000 dekatherms (dth) of natural gas on a peak and average day; and on an annual basis 12,775,000 dth of natural gas for Shell. Tennessee proposes to receive the subject gas at various existing points of receipt located offshore Louisiana and in the state of Louisiana for redelivery to interconnections with Southern Natural Gas, Columbia Gulf Transmission Company and Transcontinental Gas Pipe Line Corporation. Tennessee avers that no new facilities are required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. Tennessee commenced such self-implementing service on February 1, 1989, as reported in Docket No. ST89-2361-000.

*Comment date:* April 24, 1989, in accordance with Standard Paragraph G at the end of this notice.

**11. Northern Natural Gas Company**

[Docket No. CP89-854-000]

March 9, 1989.

Take notice that on March 6, 1989, Northern Natural Gas Company, Division of Enron Corp., (Northern) 1400 Smith Street, Houston, Texas 77251, filed in Docket No. CP89-854-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas under its blanket authorization issued in Docket No. CP86-435-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern proposes to transport natural gas on an interruptible basis for Damson Oil Corporation (Damson). Northern explains that the service commenced under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-2366. Northern proposes to transport on a peak day up to 10,000 MMBtu; on an average day up to 7,500 MMBtu; and on an annual basis up to 3,650,000 MMBtu. Northern proposes to receive and deliver the gas at various points in Texas.

*Comment date:* April 24, 1989, in accordance with Standard Paragraph G at the end of this notice.

**12. United Gas Pipe Line Company**

[Docket No. CP89-836-000]

March 9, 1989.

Take notice that on March 2, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-836-000 a request pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service on behalf of the Polaris Corporation (Polaris), a local distribution company, under its blanket certificate issued in Docket No. CP88-6-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United states that it proposes to transport natural gas on behalf of Polaris from various points of receipt located in Louisiana and Texas to two points of delivery located in Louisiana.

United further states that the maximum daily, average daily and annual quantities that it would transport on behalf of Polaris would be 30,000 MMBtu equivalent, 20,000 MMBtu equivalent, and 2,472,000 MMBtu equivalent of natural gas, respectively.

United indicates that in Docket No. ST89-2184, filed with the Commission on February 8, 1989, it reported that transportation service for Polaris had begun under the 120-day automatic authorization provisions of § 284.223(a).

*Comment date:* April 24, 1989, in accordance with Standard Paragraph G at the end of this notice.

**13. National Fuel Gas Supply Corporation**

[Docket No. CP89-881-000]

March 8, 1989.

Take notice that on February 22, 1989, National Fuel Gas Supply Corporation (National), Ten Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP89-881-000, as supplemented on March 2, 1989, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate sales taps for the delivery of natural gas to three end users to be served by an affiliate, National Fuel Gas Distribution Corporation (Distibution) (§157.211), and to relocate one delivery point for deliveries of gas to Distribution (§ 157.212), under the certification authorization issued in Docket No. CP85-4-000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the application that is on file with the Commission and open to public inspection.

National proposes to construct and operate sales taps and delivery points to provide service to end user customers of Distribution, and to serve Distribution, as listed below. National states that the proposed sales taps/delivery points are not prohibited by any of its existing tariffs and that the additional taps would have no significant impact on National's peak day and annual deliveries. National estimates that the new customers would increase its peak day deliveries by 4,804 Mcf and the relocated delivery point for Distribution would accommodate 13,000 Mcf on a peak day.

| Customer | Location | Estimated volume Mcf/year |
|---|---|---|
| Distribution | Hamburg, NY [1] | 2,180,000 |
| Allegany Particleboard Limited. | McKean Co., PA | 250,800 |
| Charles R. Hester | Jefferson Co., PA | 160 |
| Roger F. Post | Erie Co., PA | 150 |

Comment date: April 24, 1989, in accordance with Standard Paragraph G at the end of this notice.

[1] The location is described as Line T, relocated as proposed in Docket No. CP88-85.

**Standard Paragraph**

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 89-5921 Filed 3-14-89; 8:45 am]

BILLING CODE 6717-01-M



[Docket No. RP89-98-000]

**Colorado Interstate Gas Co.; Proposed Changes in FERC Gas Tariff**

March 9, 1989.

Take notice that Colorado Interstate Gas Company ("CIG"), on March 2, 1989, tendered for filing the following tariff sheets to revise its FERC Gas Tariff, Original Volume No. 1:

Twelfth Revised Sheet No. 2
Original Sheet No. 61G5
Original Sheet No. 61G6
Original Sheet No. 61G7
Original Sheet No. 61G8
Original Sheet No. 61G9
Original Sheet No. 61G10
Original Sheet No. 61G11
Original Sheet No. 61G12

CIG states that the above-referenced tariff sheets are being filed to incorporate a buyout-buydown cost recovery procedure under § 2.104 of the Commission's Regulations. Under the proposed filing, CIG will allocate its buyout-buydown costs between its jurisdictional and nonjurisdictional customers, absorb 50 percent of the jurisdictional portion of the buyout-buydown costs, and recover 50 percent of such costs through fixed surcharges applicable to its jurisdictional firm sales customers. CIG states that the total of the jurisdictional portion of the buyout-buydown costs related to this filing are $23,741,401. Therefore, CIG is proposing to recover $11,870,700 from its affected jurisdictional firm sales customers.

CIG has requested that the Commission accept this filing, to become effective March 3, 1989.

CIG states that copies of the filing were served upon all of its affected firm sales customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 16, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 89-5932 Filed 3-14-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-2-32-000]

**Colorado Interstate Gas Co.; Quarterly Purchased Gas Adjustment**

March 9, 1989.

On March 1, 1989, Colorado Interstate Gas Company ("CIG") filed the following proposed tariff sheets to reflect a quarterly purchased gas adjustment ("PGA"):

Thirty-Eighth Revised Sheet No. 7
Thirty-Eighth Revised Sheet No. 8

CIG requests that these proposed tariff sheets be made effective on April 1, 1989.

CIG states that this filing, *inter alia*, reflects no change in demand, and a 0.22¢ decrease in the commodity rate for the G-1, P-1, SG-1, H-1, F-1, and PS-1 Rate Schedules, compared with rates filed by CIG on February 13, 1989 in Docket No. RP85-122, *et al.* In the event the Commission does not act, or does not act favorably on the compliance filing in Docket No. RP85-122, *et al.*, then CIG requests that the Commission accept effective April 1, 1989, *Alternate* Thirty Eighth Revised Sheet Nos. 7 and 8 which were also submitted for filing.

CIG states that copies of this filing have been served upon CIG's jurisdictional customers and public bodies, and are otherwise available for public inspection at CIG's offices in Colorado Springs, Colorado.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 16, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 89-5937 Filed 3-14-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-92-000]

**El Paso Natural Gas Co.; Tariff Filing**

March 9, 1989.

Take notice that El Paso Natural Gas Company ("El Paso"), on March 3, 1989, tendered for filing pursuant to Part 154 of the Federal Energy Regulatory Commission ("Commission") Regulations Under the Natural Gas Act, in compliance with the Commission's Order No. 509, *et seq.*, Third Revised Sheet Nos. 232 and 233 to its FERC Gas Tariff, Original Volume No. 1-A.

El Paso states that it currently has on file with the Commission Rate Schedule T-3 that conforms to §§ 284.7 and 284.8(d) of the Commission's Regulations for firm transportation service and Rate Schedule T-1 that conforms to §§ 284.7 and 284.9(d) of the Commission's Regulations for interruptible transportation service, both of which are contained in El Paso's FERC Gas Tariff, Original Volume No. 1-A. The offshore transportation rates contained in Rate Schedules T-3 and T-1, from time to time, will be applicable to all OCS transportation service performed by El Paso.

El Paso further states that the tendered tariff sheets add a new paragraph 20.3(b) to section 20, Operating Provisions for Firm Transportation Service, of El Paso's FERC Gas Tariff, Original Volume No. 1-A, which provides that in the event that two or more shippers seek to obtain the firm capacity that one or more shippers offer to relinquish on the OCS during the open season conducted by El Paso such capacity will be reallocated on a pro rata basis. El Paso also states that at the conclusion of open season and thereafter firm capacity on the OCS will be available for contract on a first come/first served basis, as it becomes available and that allocation of contracted firm capacity on the OCS will be on a pro rata basis.

It is also stated that inasmuch as El Paso is already an open access transporter, the requirements for declaring open season for interruptible capacity on the OCS does not apply to El Paso.

El Paso requested that the tendered tariff sheets become effective thirty (30) days after the date of filing.

Copies of the filing were served upon all shippers utilizing the El Paso system and all interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825

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North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 351.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 16, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

*Secretary.*

[FR Doc. 89-5924 Filed 3-14-89; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. TQ89-3-33-000]

**El Paso Natural Gas Co., Proposed Change in Rates**

March 9, 1989.

Take notice that El Paso Natural Gas Company ("El Paso"), on March 1, 1989, tendered for filing pursuant to Part 154 of the Federal Energy Regulatory Commission's ("Commission") Regulations Under the Natural Gas Act, a notice of a Quarterly Adjustment in Rates, effective April 1, 1989, for jurisdictional gas service rendered to sales customers served by El Paso's interstate gas transmission system under rate schedules affected by and subject to section 19, Purchased Gas Cost Adjustment Provision ("PGA"), of the General Terms and Conditions in El Paso's FERC Gas Tariff, First Revised Volume No. 1.

El Paso states that it has tendered certain tariff sheets in compliance with its PGA provisions which reflect a net decrease of $0.2070 per dth below those rates placed in effect on January 1, 1989 at Docket No. TQ89-3-33-000. The decrease of $0.2070 per dth, after elimination of the Current Adjustment reflected in El Paso's Interim PGA effective January 1, 1989, results in a Current Adjustment of $.3134 per dth. Regarding the Surcharge Adjustment, El Paso will continue not collecting such surcharge in accordance with the Commission's September 30, 1988 order accepting and suspending El Paso's Quarterly PGA filing at Docket No. TQ88-1-33-000, *et al.*, effective October 1, 1988.

Copies of the filing were served upon all of El Paso's interstate pipeline system sales customers and all interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with § 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 16, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestant parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

*Secretary.*

[FR Doc. 89-5925 Filed 3-14-89; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. RP89-87-000]

**Northwest Pipeline Corp.; Proposed Change in FERC Gas Tariff**

March 9, 1989.

Take notice that on March 2, 1989, Northwest Pipeline Corporation (Northwest) submitted for filing, to be a part of its FERC Gas Tariff, the following tariff sheets.

First Revised Volume No. 1

Twenty-Sixth Revised Sheet No. 10-A

Original Volume No. 1-A

Fifth Revised Sheet No. 202

Original Volume No. 2

Sixth Revised Sheet No. 2.2

Northwest states the purpose of the filing is to reflect a new Fuel Reimbursement Percentage of 1.56%, to be effective April 1, 1989, pursuant to the provisions contained in Northwest's FERC Gas Tariff, Volumes 1, 1-A, and 2.

Northwest requests an effective date of April 1, 1989 for each of the respective tariff sheets, which date is 30 days from the date of filing.

A copy of this filing has been served on Pacific Interstate Transmission Company, Northwest's jurisdictional customers, and affected state regulatory commissions.

Any persons desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 16, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

*Secretary.*

[FR Doc. 89-5926 Filed 3-14-89; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. RP89-86-000]

**Northwest Pipeline Corp.; Proposed Change in FERC Gas Tariff**

March 9, 1989.

Take notice that on March 2, 1989, Northwest Pipeline Corporation ("Northwest") submitted for filing, to be a part of its FERC Gas Tariff, the following tariff sheets, to be effective April 1, 1989:

First Revised Volume No. 1

Fifth Revised Sheet No. 33
Fourth Revised Sheet No. 41
First Revised Sheet No. 110
Third Revised Sheet No. 117
Second Revised Sheet No. 118
Second Revised Sheet No. 119

Original Volume No. 1-A

Second Revised Sheet No. 417
Third Revised Sheet No. 418
First Revised Sheet No. 418-A
Original Sheet No. 418-B
Fifth Revised Sheet No. 419
First Revised Sheet No. 420
Second Revised Sheet No. 421
Original Sheet No. 421-A

Northwest states that these sheets were filed to incorporate revisions to the nomination, determination of deliveries, imbalances and penalty provisions currently stated in Northwest's tariff.

A copy of this filing is being served on Northwest's jurisdictional sales and transportation customers and affected state commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 16, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

*Secretary.*

[FR Doc. 89-5933 Filed 3-14-89; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. RP88-227-010]

**Paiute Pipeline Co.; Notice of Compliance Filing**

March 9, 1989.

Take notice that on March 3, 1989, Paiute Pipeline Company (Paiute), pursuant to section 4 of the Natural Gas Act and Part 154 of the Commission's Regulations thereunder, tendered for filing certain revised tariff sheets in compliance with the Commission's Order issued on January 31, 1989 in Docket Nos. RP88-227-000 and RP88-227-005.

Paiute states that the Commission's January 31, 1989 Order, among other things, accepted Original Sheet Nos. 77 and 78 to Paiute's Original Volume No. 1 and Original Sheet No. 71 and Sheet Nos. 72-79 of its Original Volume No. 1-A, subject to certain conditions, and directed that Paiute refile, within 30 days of the date of the Order, tariff sheets that conformed to the Commission's Order.

In response to the Commission's Order, Paiute filed revised tariff sheets to conform to the Commission's Order. To accomplish this purpose, Paiute submitted tariff sheets which further define rates and penalties for authorized and unauthorized D-2 and R-2 annual entitlement overruns.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 16, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

*Secretary.*

[FR Doc. 89-5933 Filed 3-14-89; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. RP89-85-000 and RP89-85-001]

**Sea Robin Pipeline Co.; Proposed Changes in FERC Gas Tariff**

March 9, 1989.

Take notice that on March 1, 1989, Sea Robin Pipeline Company (Sea Robin), Post Office Box 1478, Houston, Texas 77251-1478, filed pursuant to § 284.305(e) of the Federal Energy Regulatory Commission's (Commission) Regulations, tariff sheets to Original Volume No. 1 of its FERC Gas Tariff. The tariff sheets filed by Sea Robin are:

To Be Effective April 1, 1989

Second Revised Sheet No. 70
Original Sheet No. 70-A

Sea Robin states that these tariff sheets are filed, as required by Order No. 509 issued December 9, 1988, as amended by Order No. 509-A issued February 21, 1989, to establish the manner in which firm capacity will be reallocated under § 284.304(c) of the Commission's Regulations in the event that more than one Shipper seeks to obtain the firm capacity relinquished.

In Docket No. RP89-85-001, Sea Robin states that it provides notice to the Commission of its intent to continue use, after April 1, 1989, its previously certificated rates for transportation services provided under Rate Schedules X-5, X-11, X-12, and X-13.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, or or before March 16, 1989, and in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385-214).

Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person desiring to become a party must motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

*Secretary.*

[FR Doc. 89-5930 Filed 3-14-89; 8:45 am]

BILLING CODE 6717-01-M

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## DEPARTMENT OF ENERGY

[Docket No. RP89-90-000]

**Superior Offshore Pipeline Co.; Election To Continue Use of Current Transportation Rates**

March 9, 1989

Take notice that on February 28, 1989, Superior Offshore Pipeline Company (SOPCO), pursuant to Commission Order No. 509-A, filed its notification of election to use its current blanket transportation rate of $0.01 per MMBtu for the transportation services provided after April 1, 1989.

Pursuant to § 284.305(d)(2), SOPCO submits that its continued use of its current $0.01 per MMBtu transportation rates would not be unjust and unreasonable for the following reasons:

(1) The current cost-based $0.01 per MMBtu transportation rates were approved by the Commission following a through evaluation of the actual costs incurred in providing the transportation services in Docket No. RP86-101 as an integral part of SOPCO's voluntary election to become an open-access blanket certificate holder under Part 284 of the Commission's Regulations;

(2) The current $0.01 per MMBtu rate is a one-part rate calculated upon a volumetric basis and thus is the sole basis upon which SOPCO recovers its operating costs as well as its return and related taxes as it only provides transportation services and does not purchase and resell any natural gas whatsoever;

(3) The amount of the current $0.01 per MMBtu transportation rate must be viewed as *de minimus* in terms of the overall costs associated with delivering natural gas production onshore to any eligible shipper, and to impose the additional regulatory burden of justifying its $0.01 per MMBtu transportation rate would serve no regulatory purpose whatsoever.

For the foregoing reasons, SOPCO requests that it be permitted to continue to charge its current cost-justified $0.01 per MMBtu transportation for blanket transportation service until such time as it seeks the requested authority pursuant to Section 4 of the Natural Gas Act, to modify its existing rate.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure [18 CFR 385.214, 385.211 (1988)]. All such motions or protests should be filed on or before

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March 16, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 89-5927 Filed 3-14-89; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. RP89-84-000]**

**Tennessee Gas Pipeline Co.; Filing**

March 9, 1989.

Take notice that on March 2, 1989, Tennessee Gas Pipeline Company (Tennessee) submitted for filing (1) Original Tariff Sheet Nos. 208C and 208D in Second Revised Volume No. 1 of its FERC Gas Tariff to be effective April 1, 1989, and (2) notification of its election to continue to use its current rates for certain OCS transportation services after April 1, 1989.

Tennessee states that the purpose for filing Original Sheet Nos. 208C and 208D is to comply with Commission Order Nos. 509 and 509-A. The tariff sheets describe the procedures Tennessee will implement pursuant to the Commission orders. In particular, the sheets set forth the manner in which Tennessee will satisfy requests for firm OCS transportation services at the open season to be conducted for ten days commencing April 1, 1989. At any time after the open season Tennessee states that it will satisfy requests received for firm OCS transportation services from any available capacity on a first-come, first served basis. To the extent a request for a firm transportation service cannot be satisfied from available capacity, Tennessee shall provide the requesting shipper with a list of existing firm shippers within ten (10) days after receiving the request. In the event the requesting shipper finds an existing firm shipper who is willing to relinquish all or a portion of its firm service entitlement, Tennessee shall satisfy the request for firm service by providing a replacement service.

Additionally, Tennessee states that it is providing notification of its election and its justification to continue to use its current rates for certain OCS transportation services after April 1, 1989, rendered pursuant to the following Tennessee Rate Schedules:

A. Firm Transportation Services—T-173, T-174, T-175 and T-176.

B. Interruptible Transportation Services—T-77, T-136, T-144, T-145, T-148, T-165 and T-172.

Although Tennessee does not believe any waivers are necessary for the Commission to accept the filed tariff sheets to be effective April 1, 1989, Tennessee requests the Commission grant any waivers it deems necessary.

Tennessee states that copies of its filings are available for inspection at its principal place of business in the Tenneco Building, Houston, Texas and have been mailed to all affected customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 16, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 89-5934 Filed 3-14-89; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. RP89-85-000]**

**Texas Eastern Transmission Corp.; Compliance Filing in FERC Gas Tariff**

March 9, 1989.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on March 2, 1989, tendered for filing, in compliance with the Commission's Order Nos. 509 and 509A, issued in Docket Nos. RM88-14 and RM88-15, certain tariff sheets.

Texas Eastern is making this instant filing in order to (1) set forth tariff provisions in its Rate Schedules FT-1 and IT-1 which expand the applicability of the Rate Schedules to firm and interruptible transportation on the OCS, and (2) file a statement explaining why Texas Eastern believes that continued use of current rates to perform transportation pursuant to certificates other than Part 284 blanket transportation certificates is not unjust, unreasonable, or unduly discriminatory.

The tariff sheets being filed herewith are proposed to be effective April 1, 1989, the effective date required in order to comply with § 284.305(e) of the Commission's Regulations.

Copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 16, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 89-5935 Filed 3-14-89; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. RP89-79-000]**

**Texas Sea Rim Pipeline Co., Inc.; Tariff Filing**

March 9, 1989.

Take notice that on March 3, 1989, Texas Sea Rim Pipeline Company, Inc. ("Texas Sea Rim"), 12450 Greenspoint Drive, Houston, Texas 77060-1991, filed, pursuant to section 4 of the Natural Gas Act and § 154.63 of the Commission's Regulations, to increase its present transportation rates reflected in the following tariff sheets:

**First Volume No. 1**

Original Sheet No. 2a

**Original Volume No. 2**

First Revised Sheet No. 5

Texas Sea Rim also requests that it be permitted to file under the "minor rate" increase filings provisions of 18 CFR 154.63(b)(1) and 154.63(b)(4).

Copies of the filing were served on Texas Sea Rim's customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or



before March 16, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 89-5931 Filed 3-14-89; 8:45 am]

BILLING CODE 6717-01-M

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## DEPARTMENT OF ENERGY

**[Docket Nos. CP89-852-000, CP89-853-000, CP89-854-000, CP89-855-000, CP89-856-000, CP89-857-000, CP89-858-000, CP89-859-000, CP89-860-000, CP89-862-000, and CP89-863-000]**

**Transcontinental Gas Pipe Line Corp.; Applications**

March 9, 1989.

Take notice that on February 21, 1989, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP89-852-000, *et al.*, applications pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon firm sales entitlement to eleven customers, all as more fully set forth in the applications on file with the Commission and open to public inspection.[1]

Transco states that pursuant to § 284.10 of the Commission's Regulations, the customer, as noted in the Appendix, converted firm sales entitlements under their respective Service Agreements to firm transportation under Transco's Rate Schedule FT. Transco states that it now requests to abandon firm sales entitlements to each customer associated with the reductions in firm sales service to be effective as of the dates noted in the Appendix. Transco states that pursuant to § 284.10(f)(2), the exercise of contract conversion rights by a firm sales customer under § 284.10(d) constitutes consent by the customer to the abandonment of sales service to the extent of the conversion.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 30, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules and Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission and open to public inspection.

[1] See attached appendix for details of each application, including customer name, rate schedule, revised sales entitlement, etc.

Transco states that pursuant to § 284.10 of the Commission's Regulations, the customer, as noted in the Appendix, converted firm sales entitlements under their respective Service Agreements to firm transportation under Transco's Rate Schedule FT. Transco states that it now requests to abandon firm sales entitlements to each customer associated with the reductions in firm sales service to be effective as of the dates noted in the Appendix. Transco states that pursuant to § 284.10(f)(2), the exercise of contract conversion rights by a firm sales customer under § 284.10(d) constitutes consent by the customer to the abandonment of sales service to the extent of the conversion.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 30, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules and Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission and open to public inspection.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 16, 1989. Protests will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in the subject to the jurisdiction confered upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed adandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Transco to appear or be represented at the hearing.

**Lois D. Cashell,**

*Secretary.*

| Docket No. | Filed | Customer | Rate schedule | Firm sales entitlement (Mcf/d) | | | Effective date of reduction |
|---|---|---|---|---|---|---|---|
| | | | | Current | Reduction | Revised | |
| CP89-852-000 | 2/21/89 | Commissioners of Public Works of the City of Greenwood. | CD-2 | 8,600<br>7,310 | 1,290<br>1,290 | 7,310<br>6,020 | 12/9/88<br>1/1/89 |
| CP89-853-000 | 2/21/89 | Public Service Company of North Carolina, Inc | CD-2 | 134,810 | 23,790 | 111,020 | 1/1/89 |
| CP89-854-000 | 2/21/89 | Clinton—Newberry Natural Gas Authority | CD-2 | 7,747 | 1,353 | 6,394 | 1/1/89 |
| CP89-855-000 | 2/21/89 | East Central Alabama Gas District | G-1 | 2,790<br>2,371 | 419<br>418 | 2,371<br>1,953 | 12/20/88<br>1/1/89 |
| CP89-856-000 | 2/21/89 | Eastern Shore Natural Gas Company | CD-3 | 22,900 | 3,435<br>3,435 | 16,030 | 12/19/88<br>1/1/89 |
| CP89-857-000 | 2/21/89 | North Carolina Natural Gas Corporation | CD-2 | 120,710 | 20,290 | 100,420 | 1/1/89 |
| CP89-858-000 | 2/21/89 | Delmarva Power & Light Company | CD-3 | 54,800 | 8,220 | 45,580 | 10/1/88 |
| CP89-859-000 | 2/21/89 | Philadelphia Electric Company | CD-3 | 107,697 | 19,005 | 88,692 | 1/1/89 |
| CP89-860-000 | 2/21/89 | Consolidated | CD-3 | 275,844 | 48,678 | 227,166 | 1/1/89 |
| CP89-862-000 | 2/21/89 | Piedmont Natural Gas Company | CD-2 | 174,420 | 30,780 | 143,640 | 1/1/89 |
| CP89-863-000 | 2/21/89 | Union Gas Company | CD-3 | 10,350 | 3,000 | 7,350 | 1/8/89 |

[FR Doc. 89-5923 Filed 3-14-89; 8:45 am]

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**[Docket No. RP89-38-000]**

**U-T Offshore System; Proposed Changes in FERC Gas Tariff**

March 9, 1989.

Take notice that on March 2, 1989, U-T, Offshore System (U-TOS) tendered for filing its FERC Gas Tariff, First Revised Volume No. 1.

According to U-TOS, an entirely new Volume No. 1 (First Revised Volume No. 1) is being submitted because so many changes in its presently effective Original Volume No. 1 are required in order to comply with the Commission's Order Nos. 509 and 509-A.

U-TOS proposes to continue to charge its presently effective rates, which are being collected, subject to refund, in Docket No. RP89-38-000. The principal changes relate to changes being made to comply with Order Nos. 509 and 509-A. In this connection, a new Rate Schedule FT is included which relates to the procedures to be followed in allocating available firm capacity on the U-TOS system.

U-TOS proposes that the rates contained in the Schedule of Rates

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(Original Sheet No. 5) become effective on April 1, 1989, subject to refund in Docket No. RP89-38-000. U-TOS also proposes that the remainder of first Revised Volume No. 1 become effective on April 1, 1989, without suspension.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulation Commission, 825 North Capitol Street, NE. Washington, DC 20426, in accordance with Rule 211 or Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before March 16, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 89-5936 Filed 3-14-89; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. TQ89-3-42-000]**

### Transwestern Pipeline Co.; Proposed Changes in FERC Gas Tariff

March 9, 1989.

Take notice that on March 2, 1989, Transwestern Pipeline Company (Transwestern) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet:

57th Revised Sheet No. 5

Transwestern states this tariff sheet is filed pursuant to its Purchased Gas Adjustment provision set forth in Article 19.4 of the General Terms and Conditions of Transwestern's FERC Gas Tariff, Second Revised Volume No. 1. The Current Adjustment reflected herein represents an increase of $0.2914/dth as measured against Transwestern's flex PGA filing in Docket No. TF89-8-42, which became effective on March 2, 1989.

The proposed effective date for the tariff sheet listed above is April 1, 1989.

Copies of the filing were served on Transwestern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 16, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are available for public inspection in the Public Reference Room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 89-5926 Filed 3-14-89; 8:45 am]

BILLING CODE 6717-01-M

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## ENVIRONMENTAL PROTECTION AGENCY

**[FRL-3536-9]**

### Agency Information Collection Activities Under OMB Review

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

**FOR FURTHER INFORMATION CONTACT:** Sandy Farmer at EPA, (202 382-2740).

**SUPPLEMENTARY INFORMATION:**

**Office of Solid Waste and Emergency Response**

*Title:* Generator Requirements—Exports of Hazardous Waste (EPA ICR #0820); OMB #2050-0035. This is an extension of a currently approved collection.

*Abstract:* The requirements for generators and transporters of hazardous waste for export include: providing notification of intent to export, obtaining consent from the receiving government, attaching the consent to the manifest, filing an annual report summarizing information on all wastes exported, filing exception reports where applicable, and delivering a copy of the manifest to U.S. Customs. The Agency uses the information as an enforcement tool, and to determine whether the right to export is being abused and if additional controls are necessary or desirable.

*Burden Statement:* The estimated average public burden for this collection of information is about 20 minutes for reporting and 45 minutes for the recordkeeping per respondent, per shipment. This estimate includes all aspects of the information collection including time for reviewing instructions, gathering and maintaining the data needed, and submitting reports.

*Respondents:* Generators or Transporters of Hazardous Waste.

*Estimated No. of Respondents:* 1,300.

*Estimated Total Annual Burden on Respondents:* 5,356 hours.

*Frequency of Collection:* Each Shipment of Hazardous Waste.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223), 401 M Street, SW., Washington, DC 20460,

and

Tim Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 728 Jackson Place, NW., Washington, DC 20503, (Telephone (202) 395-3084).

Date: March 3, 1989.

**Paul Lapsley,**

*Information and Regulatory Systems Division.*

[FR Doc. 89-5972 Filed 3-14-89; 8:45 am]

BILLING CODE 6560-50-M

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**[FRL-3536-8]**

### Agency Information Collection Activities Under OMB Review

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

**FOR FURTHER INFORMATION CONTACT:** Sandy Farmer at EPA, (202 382-2740).

**SUPPLEMENTARY INFORMATION:**

**Office of Solid Waste and Emergency Response**

*Title:* Surface impoundment retrofitting requirements—information request (ICR #1494). This is a new collection.

*Abstract:* This is a model letter directed to owners and operators of surface impoundments, for use by EPA in enforcement of the retrofit requirements of RCRA § 3005(j)(1). The letter requests information from the impoundment facility on: whether it will retrofit or close, anticipated closure date, date of last receipt of waste, measures taken to retrofit, and extent of on-site storage of waste.

*Burden Statement:* The estimated average public reporting burden for this collection of information is 6 hours per respondent, per letter. This estimate includes all aspects of the information collection including time for reviewing instructions, gathering and maintaining the data needed, and preparing and submitting letter.

*Respondents:* Owners and Operators of Surface Impoundments.

*Estimated No. of Respondents:* 143.

*Estimated Total Annual Burden on Respondents:* 858 hours.

*Frequency of Collection:* One time.

Send comments regarding the burden estimate, or any other aspect of these information collections, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223), 401 M Street, SW., Washington, DC 20460,

and

Tim Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place, NW., Washington, DC 20530.

*OMB Responses to Agency PRA Clearance Requests:* EPA ICR #0262.02; RCRA hazardous waste permit application Part A; was approved 02/21/89, OMB #2050-0034; expires 12/31/91.

EPA ICR #0278; Notice of supplemental registration of a distributor; was approved 02/17/89; OMB #2070-00441; expires 02/29/92.

EPA ICR #0261.06; Notification of hazardous waste activity; was approved 02/21/89; OMB #2050-0028; expires 06/30/89.

Date: March 3, 1989.

**Paul Lapsley,**

*Information and Regulatory Systems Division.*

[FR Doc. 89-5973 Filed 3-14-89; 8:45 am]

BILLING CODE 6560-50-M

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**[OPP-180809; FRL-3537-2]**

### Receipt of an Application for a Specific Exemption to Use Avermectin $B_1$; Solicitation of Public Comment

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has received a specific exemption request from the Florida Department of Agriculture and Consumer Services (hereafter referred to as the "Applicant") for use of avermectin $B_1$ (AGRI-MEK 0.15 EC™) to control two-spotted spider mites (*Tetranychus urticae*) on 5,400 acres of strawberries in Florida. Avermectin $B_1$ (CAS 63AB) contains a mixture of avermectins containing > 80% avermectin $B_{1a}$ (5-0-demethyl avermectin $A_{1a}$) and < 20% avermectin $B_{1b}$ (5-0-demethyl-25-de(1-methylpropyl-25-(1-methylethyl)avermectin $A_{1a}$). In accordance with 40 CFR 166.24, EPA is soliciting comment before making the decision whether or not to grant this specific exemption request.

**DATE:** Comments must be received on or before March 30, 1989.

**ADDRESS:** Three copies of written comments, bearing the identification notation "OPP-180809" should be submitted by mail to:

Public Docket and Freedom of Inforamtion Section, Field Operations Division (H750 6C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 246, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information (CBI)." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for inspection in Rm. 246 at the address given above from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** By mail:

Libby Pemberton, Registration Division (H750 5C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any provisions of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue a specific exemption for the use of avermectin $B_1$, manufactured as AGRI-MEK 0.15 EC™, by Merck & Co., Inc., on strawberries in Florida. No tolerances have been established for avermectin $B_1$ on any raw agricultural commodities.

Information in accordance with 40 CFR Part 166 was submitted in part of this request. The Applicant proposes ground applications applied at a rate of 16 ounces of product per acre per application. A maximum of four applications will be made per acre per crop season. Treatment would not be allowed 3 days prior to harvest.

The Applicant indicates that Florida's strawberry industry has dramatically increased acreage of a single variety, the Selva. Unfortunately, Selvas has proven to be extremely susceptible to the two-spotted mites. The Applicant also states that the extremely warm winter seasons allowed the unseasonable increase in mite populations. An additional factor in allowing the increase of this pest was the loss of Plictran, which was the primary miticide used on strawberries. Additionally, currently registered pesticides have failed to control high population levels for a variety of reasons. Lack of efficacy eliminates malathion, diazinon, naled, methyl parathion, and parathion. Fenbutatin-oxide and propargite are limited in their efficacy. Mevinphos and dicofol are limited by resistant populations throughout the area. The product Safer soap has resulted in crop phytotoxicity under Florida crop production conditions.

The Applicant indicates that without adequate control of the spider mites a potential loss of $10 million could occur from this pest.

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This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require that the Agency publish notice in the Federal Register and solicit public comment on an application involving the first food use of pesticide. Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above.

The Agency, accordingly, will review and consider all comments received during the comment period.

Dated: March 3, 1989.

Anne E. Lindsay,

*Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 89-5915 Filed 3-14-89; 8:45 am]

BILLING CODE 6560-50-M

[OPP-180806; FRL-3537-3]

## Receipt of an Application for a Specific Exemption to Use Avermectin $B_1$; Solicitation of Public Comment

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has received a specific exemption request from the California Department of Food and Agriculture (hereafter referred to as the "Applicant") for use of avermectin $B_1$ (AVID 0.15 EC™) to control two-spotted spider mites (*Tetranychus urticae*) and European red mites (*Panonychus ulmi*) on 21,500 acres of pears in California. Avermectin $B_1$ (CAS 63AB) contains a mixture of avermectins containing > 80% avermectin $B_{1a}$ (5-O-demethyl avermectin $A_{1a}$) and < 20% avermectin $B_{1b}$ (5-O-demethyl-25-de(1-methylpropyl-25-(1-methylethyl)avermectin $A_{1a}$). In accordance with 40 CFR 166.24, EPA is soliciting comment before making the decision whether or not to grant this specific exemption request.

**DATE:** Comments must be received on or before March 30, 1989.

**ADDRESS:** Three copies of written comments, bearing the identification notation "OPP-180806" should be submitted by mail to:

Public Docket and Freedom of Information Section, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 246, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information (CBI)." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for inspection in Rm. 246 at the address given above from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** By mail:

Libby Pemberton, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. (703-557-1806).

**SUPPLEMENTARY INFORMATION:** Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any provisions of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue a specific exemption for the use of avermectin $B_1$, manufactured as AVID 0.15 EC™, by Merck & Co., Inc., on pears in California. No tolerances have been established for avermectin $B_1$ on any raw agricultural commodities.

Information in accordance with 40 CFR Part 166 was submitted as part of this request. The Applicant proposes ground applications applied at a rate of 10 to 20 ounces of product per acre per application. A maximum of two applications will be made per crop season. Applications would be made through October 31, 1989.

The Applicant indicates that the percent control with registered alternatives has been steadily decreasing over the past five years. Those products include hexakis, amitraz, dicofol, chinomethionat, foliar spray oil, formetanate, and propargite.

The Applicant indicates that without adequate control of the mites economc losses expected could total over $5 million.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require that the Agency publish notice in the Federal Register and solicit public comment on an application involving the first food use of pesticide. Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above.

The Agency, accordingly, will review and consider all comments received during the comment period.

Dated: February 24, 1989.

Anne E. Lindsay,

*Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 89-5916 Filed 3-14-89; 8:45 am]

BILLING CODE 6560-50-M

[OPP-180807; FRL-3537-4]

## Receipt of an Application for a Specific Exemption to Use Avermectin $B_1$; Solicitation of Public Comment

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has received a specific exemption request from the Oregon Department of Agriculture (hereafter referred to as the "Applicant") for use of avermectin $B_1$ (AGRI-MEK 0.15 EC Miticide/Insecticide ™) to control two-spotted spider mites (*Tetranychus urticae*); yellow spider mites (*Eotetranychus carpini*); and McDaniel spider mites (*Tetranychus mcdanieli*) on 18,000 acres of pears in Oregon. Avermectin $B_1$ (CAS 63AB) contains a mixture of avermectins containing > 80% avermectin $B_{1a}$ (5-O-demethyl avermectin $A_{1a}$) and < 20% avermectin $B_{1b}$ (5-O-demethyl-25-de(1-methylpropyl-25-(1-methylethyl) avermectin $A_{1a}$). In accordance with 40 CFR 166.24, EPA is soliciting comment before making the decision whether or not to grant this specific exemption request.

**DATE:** Comments must be received on or before March 30, 1989.

**ADDRESS:** Three copies of written comments, bearing the identification notation "OPP-180807" should be submitted by mail to: Public Docket and Freedom of Information Section, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm. 246, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information (CBI)." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A Copy of the comment that does contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for inspection in Rm. 246 at the address given above from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** By mail: Libby Pemberton, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-1806).

**SUPPLEMENTARY INFORMATION:** Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any provisions of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue a specific exemption for the use of avermectin $B_1$, manufactured as AGRI-MEK 0.15 EC Miticide/Insecticide ™, by MSD AGVET, a division of Merck & Co., Inc., on pears in Oregon. No tolerances have been established for avermectin $B_1$ on any raw agricultural commodities.

Information in accordance with 40 CFR Part 166 was submitted as part of this request. The Applicant proposes ground applications applied at a rate of 10 to 20 ounces of product per acre per application. A maximum of two applications will be made per crop season. Treatment would not be allowed 7 days prior to harvest. Applications would be made from April 20, 1989 through September 1, 1989.

The Applicant indicates that during the past three years there has been an increasing and alarming mite resistance to registered miticides. Growers have been making four and five applications (either individual or combinations of pesticides using cyhexatin, hexakis, oxamyl, amitraz, dicofol, formetanate, chinomethionat, ethion and/or parathion).

The Applicant indicates that without adequate control of the mites economic losses expected would primarily come in the form of loss of fruit size, set, and quality. Losses in fruit size and lower fruit quality, without the requested acaricide this year, could total over $4.5 million.



This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require that the Agency publish notice in the Federal Register and solicit public comment on an application involving the first food use of a pesticide. Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above.

The Agency, accordingly, will review and consider all comments received during the comment period.

Dated: February 27, 1989.

Anne E. Lindsay,

*Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 89-5917 Filed 3-14-89; 8:45 am]

BILLING CODE 6560-50-M

[PF-509; FRL-3536-3]

## Ciba-Geigy Corp.; Amended and Withdrawn Pesticide Petitions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the filing of an amendment to pesticide petition (PP) 9F3706 and the withdrawal of PP 2F2618 by the Ciba-Geigy Corp.

**ADDRESS:** By mail, submit written comments to:

Public Docket and Freedom of Information Section, Field Operations Division (H-7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm. 246, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in this public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** By mail: Registration Division (TS-767C), Attention: Product Manager (PM) named in petition, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, contact the PM named in each petition at the following office/telephone number:

| Product manager | Office location/ telephone number | Address |
|---|---|---|
| Lois Rossi (PM 21). | Rm. 227, CM #2, 703-557-1900. | 1921 Jefferson Davis Hwy., Arlington, VA. Do. |
| Robert Taylor (PM 25). | Rm. 245, CM #2, 703-557-1800. | |

**SUPPLEMENTARY INFORMATION:** EPA has received from the Ciba-Geigy Corp., Agricultural Division, P.O. Box 18300, Greensboro, NC 27419, an amendment to PP 9F3706, which proposed to amend 40 CFR 180.434 by proposing to establish a regulation to permit the combined residues of the fungicide 1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]methyl)-1H-1,2,4-triazole and its metabolites determined as 2,4-dichlorobenzoic acid, by adding the raw agricultural commodity grass seed screenings at 10 parts per million (ppm). The notice of the petition to amend 40 CFR Part 180 by establishing a regulation for the fungicide was originally published in the Federal Register of February 22, 1989 (54 FR 7597). (PM 21)

EPA also gives notice that the Geigy-Corp. has submitted a request to withdraw without prejudice PP 2F2618 for propazine on sorghum forage and fodder at 1.0 ppm; milk and eggs at 0.02 ppm; meat, fat, and meat byproducts of cattle, goats, hogs, horses, and sheep (excluding liver and kidney) at 0.05 ppm; liver and kidney of cattle, goats, hogs, horses, poultry, and sheep at 0.10 ppm; and sorghum grain and sorghum, sweet at 0.25 ppm. Notice of the petition appeared in the Federal Register of February 24, 1982 (47 FR 8087). Ciba-Geigy has recently voluntarily cancelled all its propazine-containing products. (PM 25).

**Authority:** 21 U.S.C. 346a.

Dated: February 27, 1989.

Anne E. Lindsay,

*Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 89-5832 Filed 3-14-89; 8:45 am]

BILLING CODE 6560-50-M

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[OPP-180604; FRL-3536-4]

**Emergency Exemptions; Cyromazine, etc.**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has granted specific exemptions for the control of various pests to the seven States listed below. Seven crisis exemptions were also initiated, and two by the United States Department of Agriculture/APHIS. These exemptions, issued during the months of October, November, and December, are subject to application and timing restrictions and reporting requirements designed to protect the environment to the maximum extent possible. Information on these restrictions is available from the contact persons in EPA listed below.

**DATES:** See each specific or crisis exemption for its effective dates.

**FOR FURTHER INFORMATION CONTACT:** See each emergency exemption for the name of the contact person. The following information applies to all contact persons: By mail:

Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716, CM#2, 1921 Jefferson Davis Highway, Arlington, VA. (703-557-1806).

**SUPPLEMENTARY INFORMATION:** EPA has granted specific exemptions to the:

1. Arizona Commission of Agriculture and Horticulture for the use of cyromazine on lettuce (head only) with rotation to alfalfa, sudan grass, and wheat to control leafminers; November 23, 1988, to March 31, 1989. (Gene Asbury)

2. California Department of Food and Agriculture for the use of triadimefon on artichokes to control powdery mildew; December 5, 1988, to October 31, 1989. (Libby Pemberton)

3. California Department of Food and Agriculture for the use metalaxyl on strawberries to control *Phytophthora fragariae* (red stele disease); November 23, 1988, to April 30, 1989. (Gene Asbury)

4. California Department of Food and Agriculture for the use of prometryn on parsley to control cheeseweed, burning nettle, and shepherd's purse; December 12, 1988, to May 31, 1989. (Libby Pemberton)

5. Florida Department of Agriculture and Consumer Services for the use of diquat dibromide on green peppers and tomatoes to control nightshade and parthenium; December 28, 1988, to August 31, 1989. (Libby Pemberton)

6. Florida Department of Agriculture and Consumer Services for the use of methyl bromine with chloropicrin on watermelons to control nematodes, fungi, and weeds; November 23, 1988, to April 1, 1989. (Robert Forrest)

7. Illinois Department of Agriculture for the use of sethoxydim on Canola (rape seed) to control volunteer grains and grasses; November 28, 1988, to May 1, 1989. (Jim Tompkins)

8. Montana Department of Agriculture for the use of chlorpyrifos on wheat to control Russian wheat aphid; November 23, 1988, to October 18, 1989. Montana had initiated a crisis exemption for this use. (Robert Forrest)

9. Puerto Rico Department of Agriculture for the use of fenvalerate on pineapples to control *Batrachedra comosae* moths; October 18, 1988, to September 30, 1989. (Gene Asbury)

10. Tennessee Department of Agriculture for the use of chlorothalonil on mushrooms to control dry bubble, stripe blast, and brown spot diseases; November 1, 1988, to October 31, 1989. (Gene Asbury)

Crisis exemptions were initiated by the:

1. California Department of Food and Agriculture on November 4, 1988, for the use of zinc phosphide on sugarbeets to control meadow mice. Since it was anticipated that this program would be needed for more than 15 days, California has requested a specific exemption to continue it. This program will last until April 30, 1989. (Libby Pemberton)

2. Florida Department of Agriculture and Consumer Services on November 22, 1988, for the use of cyromazine on carrots to control leafminers. This program has ended. (Gene Asbury)

3. Florida Department of Agriculture and Consumer Services on December 14, 1988, for the use of iprodione on cabbage to control white mold. Since it was anticipated that this program would be needed for more than 15 days, Florida has requested a specific exemption to continue it. The need for this program is expected to last until April 30, 1989. (Libby Pemberton)

4. Florida Department of Agriculture and Consumer Services on December 29, 1988, for the use of Tilt (propiconazole) on celery to control early blight. Since it was anticipated that this program would be needed for more than 15 days, Florida is expected to request a specific exemption to continue it. The need for this program is expected to last until January 1, 1990. (Jim Tompkins)

5. Oklahoma Department of Agriculture on November 23, 1988, for the use chlorpyrifos on wheat to control greenbugs. This program has ended. (Robert Forrest)

6. Texas Department of Agriculture on December 20, 1988, for the use of (S)-cyano(3-phenoxyphenyl)methyl-(S)-4-chloro-alpha-(1-methylethyl) benzeneacetate on kale, kohlrabi, and mustard greens to control cabbage loopers. Since it was anticipated that this program would be needed for more than 15 days, Texas has requested a specific exemption to continue it. The need for this program is expected to last until November 30, 1989. (Libby Pemberton)

7. Washington Department of Agriculture on October 12, 1988, for the use of chlorpyrifos on wheat to control Russian wheat aphid. This program has ended. (Robert Forrest)

8. United States Department of Agriculture/APHIS on December 22, 1988, for the use of methyl bromide on imported pineapples to control various plant pests. Since it was anticipated that this program would be needed for more than 15 days, USDA/APHIS is expected to request a specific exemption to continue it. The need for this program is expected to last until December 22, 1991. (Libby Pemberton)

9. United States Department of Agriculture/APHIS on November 10, 1988, for the use of ethylene oxide on hemp seed imported as wild bird feed to control plant diseases. This program has ended. (Jim Tompkins)

**Authority:** 7 U.S.C. 136.

**Dated:** March 2, 1989.

**Douglas D. Campt,**

*Director, Office of Pesticide Programs.*

[FR Doc. 89-5634 Filed 3-14-89; 8:45 am]

BILLING CODE 6560-50-M

[OPP-180610; FRL-3537-5]

**Receipt of Application for Specific Exemption to Use Oxyfluorfen; Solicitation of Public Comment**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has received a specific exemption request from the Illinois Department of Agriculture (hereafter referred to as "Applicant") for use of the herbicide oxyfluorfen (goal) to control broadleaf weeds in horseradish in Illinois. EPA is soliciting comment before making the decision whether or not to grant this specific exemption request.

**DATE:** Comments must be received on or before March 30, 1989.



**ADDRESS:** Three copies of written comments, bearing the identification notation "OPP-180610," should be submitted by mail to: Public Docket and Freedom of Information Section, Field Operations Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm. 236, Crystal Mall 2 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for inspection in Rm. 236 at the address given above from 8 a.m. to 4 p.m., Monday through Friday excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** By mail: Gene Asbury, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716C, Crystal Mall 2 1921 Jefferson Davis Highway, Arlington, VA. (703-557-1806).

**SUPPLEMENTARY INFORMATION:** Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any registration provision of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue a specific exemption to permit the use of the herbicide oxyfluorfen (CAS 42874 03 3) available as Goal 1.6E, EPA Reg. No. 707-174, to control broadleaf weeds in horseradish. Information in accordance with 40 CFR Part 166 was submitted as part of this request.

Illinois has requested authorization to apply 2.5 pints of Goal 1.6E herbicide (0.5 pounds active ingredient) per acre as a ground spray application on 1,000 acres of horseradish in Madison, Monroe and St. Clair counties. Goal 1.6E is a selective herbicide recommended for preemergence control of certain broadleaf weeds. Goal 1.6E will be applied in a minimum of 40 gallons of water per acre.

According to the Applicant, weed control in horseradish fields in Illinois is mainly limited to mechanical means. The rising costs of fuel and labor in the past years has made the use of cultivation increasingly impractical. Five to ten cultivations at $13,000/acre/operation costs the grower $65 to $130/season for between row weed control and three hand hoeings at $100/acre for weed control within the row. Net savings could amount to between $317,600 to $382,000 with proper weed control.

Oxyfluorfen was referred to Special Review in January of 1980 because pesticide products containing oxyfluorfen as an active ingredient were shown to be contaminated with perchloroethylene (PCE), a liver carcinogen in B6C3F1 mice. The Special Review process was completed on June 23, 1982, and the decision was made to continue registration of the herbicide subject to certain restrictions (on PCE) pertaining to formulation of the product (47 FR 27118).

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require publication of a notice in the Federal Register of receipt of an application for a specific exemption proposing use of a pesticide which contains an active ingredient which has been the subject of a Special Review and is intended for a use that could pose a risk similar to the risk posed by any use of a pesticide which is or has been the subject of a Special Review (40 CFR 166.24(a)(5)).

Accordingly, interested persons may submit written views on this subject to the Field Operations Division (TS-757C), at the address given above. The Agency will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Illinois Department of Agriculture.

**Dated:** March 3, 1989.

**Anne E. Lindsay,**

*Director Registration Division, Office of Pesticide Programs.*

[FR Doc. 89-5978 Filed 3-14-89; 8:45 am]

BILLING CODE 6560-50

[OPP-240064; FRL-3536-2]

**State Registrations of Pesticides**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has received notices of registration of pesticides to meet special local needs under section 24(c) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, from 30 States. A registration issued under this section of FIFRA shall not be effective for more than 90 days if the Administrator disapproves the registration or finds it to be invalid within that period. If the Administrator disapproves a registration or finds it to be invalid after 90 days, a notice giving that information will be published in the Federal Register.

**DATE:** The last entry for each item is the date the State registration of that product became effective.

**FOR FURTHER INFORMATION CONTACT:** Owen. F. Beeder, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716A, CM #2, 1921 Jefferson Davis Highway, Arlington, VA. 22202 (703)-557-7893.

**SUPPLEMENTARY INFORMATION:** This notice only lists the section 24(c) applications submitted to the Agency. The Agency has 90 days to approve or disapprove each application listed in this notice. Applications that are not approved are returned to the appropriate State for action. Most of the registrations listed below were received by the EPA in September through December of 1988. Receipts of State registrations will be published periodically. Of the following registrations, none involve a changed-use pattern (CUP). The term "changed-use pattern" is defined in 40 CFR 162.3(k) as a significant change from a use pattern approved in connection with the registration of a pesticide product. Examples of significant changes include, but are not limited to, changes from a nonfood to food use, outdoor to indoor use, ground to aerial application, terrestrial to aquatic use, and nondomestic to domestic use.

**Arizona**

EPA SLN No. AZ 88 0024. Sandoz Crop Protection Corp. Registration is for Javelin Biological Insecticide to be used on jojoba to control loopers. September 31, 1988.

EPA SLN No. AZ 88 0025. FMC Corp. Registration is for Capture 2 EC Insecticide/Miticide to be used on jojoba to control armyworms and loopers. October 19, 1988.

EPA SLN No. AZ 88 0027. Gowan Co. Registration is for Gowan Methyl Parathion 7.5 to be used on jojoba to

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control aphids, grasshoppers, leaf miners, and several other pests. October 20, 1988.

EPA SLN No. AZ 88 0028. Mobay Corp. Registration is for DF 75% Dry Flowable Herbicide to be used on alfalfa to treat irrigation furrows. December 3, 1988.

**Arkansas**

EPA SLN No. AR 88 0004. Ciba-Geigy Corp., Agricultural Chemicals Div. Registration is for D-Z-N Diazinon 50 WP to be used on nursery stock to control fire ants. September 26, 1988.

EPA SLN No. AR 88 0005. Ciba-Geigy Agricultural Chemicals Div. Registration is for D-Z-N Diazinon AG 500 to be used on nursery stock to control fire ants. September 26, 1988.

EPA SLN No. AR 88 0006. Ciba-Geigy Agricultural Chemicals Div. Registration is for Triumph 4 E Insecticide to be used on tees, greens, and aprons of golf courses and on sod farms to control various insects. September 26, 1988.

**California**

EPA SLN No. CA 88 0023. Merced County Agricultural Commissioner. Registration is for Pyrenone Space Spray to be used on sweet potatoes in storage facilities to control Drosophila fruit flies. September 21, 1988.

EPA SLN No. CA 88 0024. Sandoz Crop Protection Corp. Registration is for Javelin Biological Insecticide to be used on jojoba to control loopers. October 4, 1988.

EPA SLN No. CA 88 0026. Victoria Island Farms. Registration is for Lorsban 4E Insecticide to be used on asparagus to control asparagus aphids. October 17, 1988.

EPA SLN No. CA 88 0027. Toulumne County Agricultural Commissioner. Registration is for Tennesee Brand Tri-Basic Copper Sulfate to be used on greenhouse-grown cucumbers and tomatoes to control mites. October 20, 1988.

EPA SLN No. CA 88 0028. Santa Barbara County Dept. of Agriculture. Registration is for Weedar E-3 Broadleaf Herbicide to be used on riverbeds (dry) to control willows. October 24, 1988.

EPA SLN No. CA 88 0029. Tuolumne County Dept. of Agriculture. Registration is for Kelthane 35 Agricultural Miticide Wettable Powder to be used on greenhouse-grown cucumbers to control mites. March 26, 1988.

EPA SLN No. CA 88 0030. Modoc County Dept. of Agriculture. Registration is for Ortho Diquat Herbicide H/A to be used on field peas grown for seed for use as a desiccant to allow harvest of seed. November 17, 1988.

EPA SLN No. CA 88 0032. Monrovia Nursery Co. Registration is for Agrimycin 17 to be used on ornamentals not listed on the Federal label. November 29, 1988.

EPA SLN No. CA 88 0034. Rohm and Haas Co. Registration is for Goal 1.6E Herbicide to be used on onions to control canarygrass and several other weeds. December 7, 1988.

EPA SLN No. CA 88 0037. California Seed Association. Registration is for Fumitoxin Tablets to be used on alfalfa seed for export only to control various insects listed on the current Federally registered product. December 27, 1988.

EPA SLN No. CA 88 0038. California Seed Association. Registration is for Fumitoxin Tablets to be used on clover seed for export only to control various insects listed on the current Federally registered product. December 27, 1988.

**Colorado**

EPA SLN No. CO 88 0006. Sandoz Crop Protection Corp. Registration is for Banvel Herbicide to be used on small grains to control various weeds. April 8, 1988.

EPA SLN No. CO 88 0007. Fairfield American Corp. Registration is for Permanone VC 40 to be used on various locations in fields and protected locations in rodent habitat to control rodents. June 7, 1988.

EPA SLN No. CO 88 0008. Fairfield American Corp. Registration is for Permanone Pyrenone Liquid Dust to use at end of bait tubes to control various rodents. June 7, 1988.

EPA SLN No. CO 88 0009. Fairfield American Corp. Registration is for Pyrenone (4–0.05) Permanone 0.5 Dust to be used on insect bait tubes to control various rodents. June 7, 1988.

EPA SLN No. CO 88 0010. FMC Corp. Registration is for Talstar 10 WP to be used on nonedible ornamental plants, flowers, and nonbearing plants to control aphids. July 22, 1988.

EPA SLN No. CO 88 0011. Fairfield American Corp. Registration is for Permanone Tick Repellent to be used as clothing treatment only to control mosquitoes, ticks, and chiggers. November 1, 1988.

EPA SLN No. CO 88 0012. Schall Chemical Co. Registration is for Mer-Cap RTU to be used on potatoes to control various rots and molds. November 1, 1988.

EPA SLN No. CO 88 0013. Drexel Chemical Co. Registration is for Drexel Carbaryl 4L to be used on spruce, fir, and Douglas-fir to control tussock moths. November 1, 1988.

EPA SLN No. CO 88 0014. Fermenta Plant Protection Co. Registration is for Bravo 500 to be used on dry beans to control various plant diseases. November 1, 1988.

EPA SLN No. CO 88 0017. Hopkins Agricultural Chemical Co. Registration is for Ramik Green to be used on levees and ditch banks and around farm buildings to control ground squirrels. November 2, 1988.

EPA SLN No. 88 0019. Rhone-Poulenc AG Co. Registration is for Temik Brand 10G to be used on commercially grown ornamental plants to control certain insects, mites, and nematodes. December 27, 1988.

EPA SLN No. 88 0020. Rhone Poulenc AG Co. Registration is for Rovral Fungicide to be used on dry bulb onions to control botrytis blight and purple blotch. December 27, 1988.

EPA SLN No. CO 88 0021. Fermenta Plant Protection. Registration is for Bravo 720 to be used on dry beans to control rust, downy mildew, and cercospora leafspot. December 27, 1988.

EPA SLN No. CO 88 0021. Fermenta Plan Protection. Registration is for Bravo 720 to be used on dry beans to control rust, downy mildew, and cercospora leafspot. December 27, 1988.

**Connecticut**

EPA SLN No. CT 88 0010. FMC Corp. Registration is for Talstar 10 WP to be used on nonedible ornamental plants, flowers, and nonbearing plants and trees to control aphids, army worms, blackvine weevils and several other pests. October 12, 1988.

**Delaware**

EPA SLN No. DE 88 0002. Delaware Dept. of Agriculture Plant Industry Section. Registration is for Menthol to be used on honeybee hives to control tracheal mites. July 11, 1988.

**Florida**

EPA SLN No. FL 88 0014. FMC Corp. Registration is for Freshgard 71 to be used on citrus for postharvest treatment for control of citrus canker. September 30, 1988.

EPA SLN No. FL 88 0015. FMC Corp. Registration is for Freshgard 70 to be used on citrus for postharvest treatment for control of citrus canker. September 30, 1988.

EPA SLN No. FL 88 0016 Ciba-Geigy Agricultural Div. Registration is for Tilt 3.6 E to be used on sugarcane seed to control pineapple disease. October 3, 1988.

EPA SLN No. FL 88 0017. Custom Control and Pumps. Registration is for Custom-Chlor to be used on citrus postharvest to control citrus canker. October 6, 1988.

EPA SLN No. FL 88 0018. Hopkins Agricultural Chemical Co. Registration is for Ramik Green to be used on ditchbanks of sugarcane fields to control rats. October 6, 1988.

EPA SLN No. FL 88 0019. Chempar, A Division of Lipha Chemicals. Registration is for Rozol Parafinized Pellets for Field Rodent Control to be used on various outdoor locations to control field rodents. October 17, 1988.

EPA SLN No. FL 88 0020. Agri-Chem, Inc. Registration is for Agri-Chlor 10 to be used on citrus for citrus canker quarantine. October 17, 1988.

EPA SLN No. FL 88 0021. Agricultural Division, Ciba-Geigy Corp. Registration is for Triumph 4E Insecticide to be used on tees, greens, and aprons of golf courses and on lawns and sod farms to control various insects. October 17, 1988.

EPA SLN No. FL 88 0022. Mobay Corp. Agricultural Chem. Div. Registration is for Nemacur 3 Turf Nematicide to be used on leather leaf fern to control nematodes. October 17, 1988.

EPA SLN No. FL 88 0023. Thompson-Hayward Chemical Co. Registration is for Sodium Hypochlorite Solution to be used on various citrus for quarantine use for control of citrus canker. November 4, 1988.

EPA SLN No. FL 88 0024. Platte Chemical Co. Registration is for Clean Crop Curbit EC Herbicide to be used on cucumbers, melons, and watermelons for preemergence control of certain annual grasses and broadleaf weeds. November 8, 1988.

EPA SLN No. FL 88 0025. Allied Universal Corp. Registration is for Chlorine Gas to be used on various citrus for quarantine use for control of citrus canker. November 7, 1988.

EPA SLN No. FK 88 0026. Allied Universal Corp. Registration is for Pool Guard Chlorinating Solution to be used on various citrus for quarantine use to control citrus canker. November 8, 1988.

EPA SLN No. FL 88 0027. B & W Quality Growers, Inc. Registration is for Kocide 101 to be used on watercress to control cercospora (leaf spot). November 18, 1988.

EPA SLN No. FL 88 0029. Uncal Chemicals Div., Uncal Corp. Registration is for Enquik to be used on peanuts to control various weeds. December 20, 1988.

**Hawaii**

EPA SLN No. HI 88 0001. Sandoz Crop Protection Corp. Registration is for Thuricide 32B to be used on watercress to control diamondback moths. December 30, 1988.

EPA SLN No. HI 88 0004. Platte Chemical Co. Registration is for Clean Crop Superior 70 Oil to be used on bananas to control black leaf streak. November 30, 1988.

**Idaho**

EPA SLN No. ID 88 0009. Platte Chemical Co. Registration is for Clean Crop Cheat Stop 90 WDG to be used on deep-furrow seeded winter wheat to control cheatgrass (downy brome). October 24, 1988.

EPA SLN No. ID 88 0010. E.I. du Pont de Nemours & Co. Registrations is for Du Pont Benlate 50 DF Fungicide to be used on sweet corn for seed treatment control of seed-borne diseases caused by Penicillium sp. Aspergillus. October 28, 1988.

**Indiana**

EPA SLN No. IN 88 0011. Aceto Agricultural Chemicals Corp. Registration is for Dimethogon 25 PW Dimethoate Insecticide to be used on soybeans to control two-spotted spider mites. August 2, 1988.

EPA SLN No. IN 88 0013. Platte Chemical Co., Inc. Registration is for Clean Crop Diazinon 500–AG to be used on soybeans to control spider mites. August 3, 1988.

EPA SLN No. IN 88 0014. Drexel Chemical Co. Registration is for Drexel Diazinon Insecticide to be used on soybeans to control spider mites. August 4, 1988.

EPA SLN No. IN 88 0015. Agricultural Division, Ciba-Geigy Corp. Registration is for Triumph 4E Insecticide to be used on tees, greens, and aprons of golf courses and on sod farms to control various insects. August 10, 1988.

EPA SLN No. IN 88 0016. Gowan Co. Registration is for Prokil Dimethoate E267 to be used on soybeans to control spider mites. August 11, 1988.

EPA SLN No. IN 88 0017. FMC Corp. Registration is for Talstar 10 WP to be used on ornamental trees, shrubs, plants, and flowers grown in the field to control aphids, armyworms, and several other pests. September 19, 1988.

**Kansas**

EPA SLN No. KS 88 0001. FMC Corp. Ag. Chemical Group. Registration is for Furadan 4 Flowable Insecticide/Nematicide to be used on sorghum to control chinchbugs and greenbugs. April 20, 1988.

EPA SLN No. KS 88 0002. FMC Corp. Ag. Chemical Group. Registration is for Furadan 4 Flowable Insecticide/Nematicide to be used on sorghum to control chinchbugs and greenbugs. April 27, 1988.

EPA SLN No. KS 88 0003. Uniroyal Chemical Co., Inc. Registration is for Comite to be used on corn to control mites. June 17, 1988.

**Louisiana**

EPA SLN No. LA 88 0006. Fermenta Plant Protection Co. Registration is for Bueno 6 to be used on cotton to control postemergence weeds. September 7, 1988.

EPA SLN No. LA 88 0009. Fermenta Plant Protection Co. Registration is for Arsonate Liquid to be used on cotton to control postemergence weeds. September 7, 1988.

EPA SLN No. LA 88 0010. Fermenta Plant Protection Co. Registration is for DSMA Liquid to be used on cotton to control postemergence weeds. September 7, 1988.

EPA SLN No. LA 88 0011. Coopers Animal Health, Inc. Registration is for Saber Insecticide Ear Tags to be used on beef and nonlactating dairy cattle and calves to control horn flies and face flies. September 12, 1988.

**Maine**

EPA SLN No. ME 88 0004. FMC Corp. Registration is for Furadan 4F Insecticide/Nematicide to be used on strawberries to control root weevils. September 22, 1988.

**Michigan**

EPA SLN No. MI 88 0011. Chevron Chemical Co. Registration is for Ortho Diquat H/A Herbicide to be used on potatoes for desiccation of potato plants to facilitate harvest. October 27, 1988.

**Minnesota**

EPA SLN No. MN 88 0001. Metropolitan Mosquito Control District, St. Paul. Registration is for Zoecon Altosid Liquid Larvicide Mosquito Growth Regulator to be used on field sites as larvicide growth regulator for control of mosquitoes. June 30, 1988.

**Missouri**

EPA SLN No. MO 88 0006. FMC Corp., Agricultural Chemical Group. Registration is for Command 4 EC Herbicide to be used on soybeans to control selected weed species applied preemergence. November 28, 1988.

**Montana**

EPA SLN No. MT 88 0002. J.T. Eaton & Co., Inc. Registration is for Eaton's Answer for the Control of Pocket Gophers to be used on rangeland, cropland, forest, and noncrop areas to control pocket gophers. December 28, 1988.

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**Nevada**

EPA SLN No. NV 88 0008. Hopkins Agricultural Chemical Co. Registration is for Ramik Green to be used inside and outside of buildings, loading areas, under granaries, garbage dumps, etc. to control rats. September 16, 1988.

EPA SLN No. NV 88 0009. Fermenta Plant Protection Co. Registration is for Dacthal W-75 to be used on alfalfa grown for seed to control dodder. November 3, 1988.

EPA SLN No. NV 88 0010. J.T. Eaton & Co., Inc. Registration is for Eaton's Answer for the Control of Pocket Gophers to be used on rangeland, cropland, forest, and noncrop areas to control pocket gophers. November 18, 1988.

**New Hampshire**

EPA SLN No. NH 88 0002. FMC Corp. Agricultural Chemical Group. Registration is for Furadan 4 Flowable to be used on alfalfa new-seedling establishments to control alfalfa blotch, leafminers, and potato leafhoppers. November 8, 1988.

**New Jersey**

EPA SLN No. NJ 88 0005. Dow Chemical Co. Agricultural Products Dept. Registration is for Dursban TC to be used on plenum-type structures to control termites. September 16, 1988.

EPA SLN No. NJ 88 0006. Bellemead Develoment Corp. Registration is for Rodeo to be used on meadowlands to control phragmites. October 20, 1988.

EPA SLN No. NJ 88 0007. FMC Corp. Registration is for Furadan 15 Granules to be used on alfalfa to control nematodes, potato leafhoppers, and several other pests. October 28, 1988.

EPA SLN No. NJ 88 0006. FMC Corp. Registration is for Furadan 15 Granules to be used on nonbearing fruit trees to control nematodes. October 28, 1988.

**North Carolina**

EPA SLN No. NC 88 0008. Nor-Am Chemical Co. Registration is for Carzol SP to be used on greenhouse-grown ornamental plants to control thrips. September 15, 1988.

**North Dakota**

EPA SLN No. NC 88 0002. Coopers Animal Health, Inc. Registration is for Sabef Insecticide Ear Tags to be used on beef and nonlactating dairy cattle and calves. October 5, 1988.

**Ohio**

EPA SLN No. OH 88 0010. Ciba-Geigy Agricultural Div. Registration is for Triumph 4E Insecticide to be used on lawns and golf courses and sod farms to control several pests. December 20, 1988.

**South Dakota**

EPA SLN No. SD 88 0002. Chempar, a Div. of Lipha Chemicals. Registration is for Rozol Pocket Gopher Bait to be used on rangelands, pastures, golf courses, rights-of-way and other noncrop areas. October 28, 1988.

**Tennessee**

EPA SLN No. TN 88 0006. Rhone Poulenc Ag Co. Registration is for Temik Brand 15G Aldicarb Pesticide to be used on soybeans to control nematodes. October 4, 1988.

EPA SLN No. TN 88 0007. Rhone Poulenc Ag Co. Registration is for Weedone 2,4-DP to be used on loblolly pine plantations to control certain species of hardwood brush and broadleaf weeds. October 4, 1988.

EPA SLN No. TN 88 0008. Rhone Poulenc Ag Co. Registration is for Weedone 2,4-DP to be used on forest sites in preparation to control oaks, elm, cherry, willow, and other similar species before planting seedlings. October 4, 1988.

EPA SLN No. TN 88 0009. Fairfield American Corp. Registration is for Permanone Tick Repellent to be used on domestic animals to control mosquitoes, ticks, and chiggers. October 28, 1988.

EPA SLN No. TN 88 0010. Beekeepers of Tennessee. Registration is for Menthol (100%) to be used on over-wintering honey bee hives to control tracheal mites. December 21, 1988.

EPA SLN No. TN 88 0011. Ed Heathman and Frank Heathman. Registration is for Menthol Crystals to be used on over-wintering honey bee hives to control tracheal mites. December 21, 1988.

**Texas**

EPA SLN No. TX 88 0001. Ciba-Geigy Corp., Agricultural Div. Registration is for Tilt Fungicide to be used on corn grown for seed to control corn leaf blight. September 15, 1988.

EPA SLN No. TX 88 0002. Wilbur Ellis Co. Registration is for Wilbur-Ellis Lorsban 50 SL to be used on stored planting seed to control various insect pests. September 26, 1988.

EPA SLN No. TX 88 0003. Pennwalt Corp. Registration is for Decco 240 Liquid Chlorine to be used on fruit and vegetable packing houses for sanitation. October 21, 1988.

EPA SLN No. TX 88 0006. E.I. du Pont de Nemours & Co. Registration is for Du Pont Sana XL Insecticide 0.66 EC to be used on cotton to control several pests. December 28, 1988.

EPA SLN No. TX 88 0007. E.I. du Pont de Nemours & Co. Registration is for Du Pont Sana XL Insecticide 0.66 EC to be used on cotton to control several pests. December 28, 1988.

**Utah**

EPA SLN No. UT 88 0004. Fermenta Plant Protection Co. Registration is for Dacthal W-75 to be used on alfalfa grown for seed to control dodder. November 3, 1988.

**Virginia**

EPA SLN No. VA 88 0007. Virginia Department of Agriculture and Consumer Service. Registration is for Methanol 100 to be used on honey bee colonies to control tracheal mites. November 16, 1988.

**Washington**

EPA SLN No. WA 88 0011. Sandoz Crop Protection Corp. Registration is for Spur 22 EW Insecticide to be used on alfalfa grown for seed only to control several pests. July 7, 1988.

EPA SLN No. WA 88 0012. FMC Corp. Agricultural Chemical Group. Registration is for Thiodan 3 EC to be used on seeded alfalfa to control spotted alfalfa aphids. June 21, 1988.

EPA SLN No. WA 88 0022. BASF Corp. Registration is for Poast Herbicide to be used on cabbage, carrots, and red beets for postemergence control of watergrass and other grass weeds. September 20, 1988.

EPA SLN No. WA 88 0023. Fermenta Plant Protection Co. Registration is for Daconil 2787 Flowable Fungicide to be used on nonbearing and flowering ornamental fruit trees. October 6, 1988.

EPA SLN No. WA 88 0024. Aceto Agricultural Chemicals Corp. Registration is for Dimethoate 267 E.C. to be used on wheat to control aphids and mites. October 18, 1988.

EPA SLN No. WA 88 0025. Wilbur-Ellis Co. Registration is for Dimethoate 267 to be used on wheat to control aphids. October 25, 1988.

EPA SLN No. WA 88 0026. American Cyanamid Co. Registration is for Prowl Herbicide to be used on alfalfa grown for seed to control several weeds. December 8, 1988.

**Wyoming**

EPA SLN No. WY 88 0006. Hopkins Agricultural Chemical Co. Registration is for Ramik Green to be used on various locations in the State to control ground squirrels. September 20, 1988.

EPA SLN No. WY 88 0008. Coopers Animal Health, Inc. Registration is for Sabef Insecticide Ear Tags to be used on beef and nonlactating dairy cattle to control horn and face flies. October 17, 1988.

EPA SLN No. WY 88 0009. Gustafson, Inc. Registration is for Gustafson Flo-Pro IMZ Flowable Systemic Fungicide to be used on wheat and barley to control common root rot and barley leaf stripe. September 22, 1988. (Sec. 24, as amended, 92 Stat. 835 (7 U.S.C. 136).)

Dated: February 24, 1989.

**Anne E. Lindsay,**

*Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 5833 Filed 3-14-89; 8:45 am]

BILLING CODE 6560-50-M

## FEDERAL COMMUNICATIONS COMMISSION

**[Report No.1769]**

### Petitions for Reconsideration and Clarification and Applications for Review of Actions in Rule Making Proceedings

March 9, 1989.

Petitions for reconsideration and clarification and applications for review have been filed in the Commission rule making proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, NW., Washington, DC, or may be purchased from the Commission's copy contractor International Transcription Service (202-875-3800). Oppositions to these petitions and applications must be filed within 15 days of the date of public notice of the petitions and applications in the **Federal Register**. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

*Subject:* Amendment of § 73.1206: Broadcast of Telephone Conversations. (MM Docket No. 85-37, RM's 2564, 2571 & 4680) Number of petitions received: 2

*Subject:* Regulatory Policies and International Telecommunications. (CC Docket No. 88-494) Number of petitions received: 1

*Subject:* Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Bastrop, Louisiana) (MM Docket No. 878-242, RM-5604) Number of petitions received: 1

*Subject:* Amendment of Parts 2 and 22 of the Commission's Rules and Permit Liberalization of Technology and Auxiliary Service Offerings in the Domestic Public Cellular Radio Telecommunications Service for Rural Cellular Service. (Gen Docket No. 87-390) Number of petitions received: 1

*Subject:* Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Springdale, Arkansas, Carthage, Aurora and Willard, Missouri. (MM Docket No. 87-474, RM's 5855, 5878 & 5915) Number of petitions received: 2

*Subject:* Amendment of Parts 13 and 80 of the Rules concerning ship radio officer qualifying service endorsements. (Gen Docket No. 88-37) Number of petitions received: 1

*Subject:* Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Evans, Martinez and Warrenton, Georgia) (MM Docket No. 88-51, RM's 6076 & 6265) Number of petitions received: 1

### Applications for Review Filed

*Subject:* Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Ponte Verde Beach, Florida) (MM Docket No. 85-376, RM's 4988 & 5378) Number of applications received: 1

Federal Communications Commission.

**Donna R. Searcy,**

*Secretary.*

[FR Doc. 89-5977 Filed 3-14-89; 8:45 am]

BILLING CODE 6712-01-M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA-821-DR]**

### Amendment to Notice of a Major Disaster Declaration; Kentucky

**AGENCY:** Federal Emergency Management Agency.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the Commonwealth of Kentucky (FEMA-821-DR), dated February 24, 1989, and related determinations.

**DATED:** March 8, 1989.

**FOR FURTHER INFORMATION CONTACT:** Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

**NOTICE:** The notice of a major disaster for the Commonwealth of Kentucky, dated February 24, 1989, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of February 24, 1989:

The counties of Caldwell, Carlisle, Christian, Graves, Marshall, McCracken, and Trigg for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

**Grant C. Peterson,**

*Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.*

[FR Doc. 89-5951 Filed 3-14-89; 8:45 am]

BILLING CODE 6718-02-M

## FEDERAL MARITIME COMMISSION

### Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

*Agreement No.:* 224-200096-003.

*Title:* North Carolina Terminal Agreement.

*Parties:*

North Carolina State Ports Authority
Senator Linie (USA) Inc.

*Synopsis:* The Agreement extends the term of the basic agreement for an additional two year period.

By Order of the Federal Maritime Commission.

**Joseph C. Polking,**

*Secretary.*

Dated: March 10, 1989.

[FR Doc. 89-5902 Filed 3-14-89; 8:45 am]

BILLING CODE 6730-01-M

**[Docket No. 89-07]**

### Inquiry Into Laws, Regulations and Policies of the Government of Ecuador Affecting Shipping in the United States/Ecuador Trade

**AGENCY:** Federal Maritime Commission.

**ACTION:** Notice of inquiry.

**SUMMARY:** The Federal Maritime Commission in response to information received from the Overseas Enterprises, Inc., a U.S.-owned carrier, and the Department of State, regarding the effect

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of laws, regulations and policies of the Government of Ecuador on shipping conditions in the United States/Ecuador trade, is issuing this Notice of Inquiry to provide interested parties an opportunity to submit comments on shipping conditions in that trade. These comments will assist the Commission in determining whether issuance of a countervailing rule pursuant to section 19(1)(b) of the Merchant Marine Act, 1920, is warranted.

**DATE:** Comments due on or before April 14, 1989.

**ADDRESS:** Comments (Original and 15 copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573, (202) 523-5725.

**FOR FURTHER INFORMATION CONTACT:** Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573, (202) 523-5740.

**SUPPLEMENTARY INFORMATION:** On December 22, 1988, the Department of State ("DOS") transmitted to the Federal Maritime Commission ("FMC" or "Commission") a letter from Overseas Enterprises, Inc. ("OEI"), a U.S.-owned company, wherein OEI advises that it has been unable to reestablish a liquid bulk service in the U.S./Ecuador trade ("Trade") because of the Government of Ecuador's ("GOE") requirement that OEI employ U.S.-flag vessels in such a service. OEI contends that such a requirement arises from GOE cargo reservation laws which are applied only in the trade between the United States and Ecuador. OEI concludes that the cargo reservation laws of Ecuador have created conditions unfavorable to shipping in the Trade.

By letter of January 19, 1989, Commission staff requested that DOS advise the Commission of any efforts being made by the U.S. Embassy in Quito to reach a satisfactory resolution to the situation alleged by OEI and any other information that DOS may have regarding OEI's allegations. On February 8, 1989, DOS responded to the Commission's January 19 letter. This response included correspondence from OEI and the GOE's Director General of the Merchant Marine ("DIGMER"), as well as a copy of Resolution No. 012/87, a cargo reservation law. DOS reports that its involvement began in October 1987, when OEI initially requested assistance. DOS advises that the U.S. Embassy in Quito and the Consulate General in Guayaquil have raised the issue of OEI a number of times with GOE authorities in an effort to resolve the situation through diplomatic channels. It reports, however, that no such resolution has been reached and that it continues to seek a satisfactory resolution and will report further to the Commission on its efforts.

DOS states that OEI ceased operations in the Trade in 1983 when GOE laws allegedly made OEI participation impossible. Resolution No. 20/83 of 1983 reserved 50 percent of Ecuadorian imports of solid and liquid bulk cargo for Ecuadorian-flag vessels or foreign-flag vessels chartered by Ecuadorian shipping companies, and 50 percent for vessels flying the flag of the country of origin of the cargo. GOE Resolution No. 012/87 of March 1987, supercedes the 1983 resolution. Resolution No. 012/87 reserves solid and liquid bulk import cargo from the United States to Ecuador for Ecuadorian-flag vessels belonging to Ecuadorian shipping companies, or foreign vessels chartered by Ecuadorian shipping companies, or vessels flying the flag of the United States. The stated rationale in Resolution No. 012/87 for narrowing the application of the cargo reservation law solely to the trade between the United States and Ecuador is that 88 percent of Ecuador's imported bulk cargo originates "in the Gulf of the United States."

DOS and OEI communications indicate that OEI was informed by DIGMER that it could not operate a liquid bulk service in the U.S. Gulf to Ecuador trade unless it operates U.S.-flag vessels. OEI advises that the U.S. merchant marine does not have any vessels of the size and capabilities necessary to offer such a service in the Trade. OEI alleges, therefore, that the GOE has created a situation wherein an Ecuadorian-flag carrier, Maritima Transligra, has been given a monopoly position in the liquid bulk trade. Further, it is reported that OEI continues to receive inquiries from shippers interested in employing OEI services in the Trade, but the OEI has been unable to provide the service requested due to its inability to obtain traffic rights from DIGMER. DOS states that the allegations made by OEI have serious implications for U.S./Ecuador relations as well as for U.S. shipping policy.

OEI's allegations raise possible issues under section 19(1)(b) of the Merchant Marine Act, 1920, 46 U.S.C. app. 876(1)(b) ("Section 19").[1] On its face, Resolution No. 012/87 appears to restrict access of third-flag carriers to the Trade as well as limit the ability of a U.S. company to employ non-U.S.-flag vessels in the Trade. Further, the Resolution appears to restrict the ability of shippers to select the carrier of their choice. In order to assist the Commission in determining whether issuance of a countervailing rule pursuant to section 19 is warranted, interested parties are requested to submit information, comments and data concerning the current status and effects of GOE laws, rules and policies on the operations of carriers currently operating or proposing to operate in the Trade and on the ability of shippers to employ their preferred carriers.

Comments in response to this Notice of Inquiry need not necessarily be limited to the effect of specified GOE laws, rules and policies on solid or liquid bulk services. The Commission is interested in obtaining any and all information relating to any GOE laws and policies which may adversely affect shipping services in the Trade.

By letter the Commission is also requesting that the Department of State inform the Commission of its most recent efforts and prospects for a diplomatic resolution of the situation.

By the Commission.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 89-5907 Filed 3-14-89; 8:45 am]

BILLING CODE 6730-01-M

[1] Section 19(1)(b) authorizes and directs the Federal Maritime Commission to "make rules and regulations affecting shipping in the foreign trade not in conflict with law in order to adjust or meet general or special conditions unfavorable to shipping in the foreign trade, * * * which arise out of or result from foreign laws, rules, or regulations * * *."

## FEDERAL RESERVE SYSTEM

**[Docket No. R-0661]**

### Risk on Automated Clearing House Transactions; Clarification and Extension of Comment Period

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Proposed policy statement; clarification and extension of comment period.

**SUMMARY:** On March 2, 1989, the Board of Governors of the Federal Reserve System ("Board") published for comment several changes in the way that Federal Reserve Banks treat automated clearing house ("ACH") transactions. (54 FR 8822). Comments were due by April 3, 1989. The Board has extended the deadline for comments an additional 60 days, so the new deadline is June 2, 1989. In addition, the proposed policy statement is clarified by specifying that the proposed changes only apply to commercial ACH transfers, not to Treasury payments.

**DATE:** Comments must be received by June 2, 1989.

**ADDRESS:** Comments, which should refer to Docket No. R-0661, may be mailed to the Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551, to the attention of Mr. William W. Wiles, Secretary, or delivered to room B-2223 between 8:45 a.m. and 5:15 p.m. Comments may be inspected in room B-1122 between 9:00 a.m. and 5:00 p.m., except as provided in § 261.8 of the Board's Rules Regarding Availablity of Information, 12 CFR 261.8.

**FOR FURTHER INFORMATION CONTACT:** Florence Young, Adviser, Division of Federal Reserve Bank Operations (202/452-3955); Oliver I. Ireland, Associate General Counsel (202/452-3625), or Elaine M. Boutilier, Senior Attorney, Legal Division (202/452-2418), Board of Governors of the Federal Reserve System, Washington, DC 20551. For the hearing impaired only, Telecommunications Device for the Deaf ("TDD"), Earneatine Hill or Dorothea Thompson (202/452-3544).

**SUPPLEMENTARY INFORMATION:** On March 2, 1989, the Board requested comments on proposals related to reducing risks related to ACH payments. These proposals included specifying the finality for ACH payments and procedures for reversing entries if finality is not to be granted. In response to a request, the Secretary of the Board, acting pursuant to delegated authority, 12 CFR 265.2(a)(6), has extended the comment period for 60 days.

In addition, it is clarified that these proposed changes to the treatment of ACH transactions apply only to commercial ACH transactions; they do not apply to any payments that are made pursuant to regulations of the U.S. Treasury Department, such as direct deposit of Social Security payments.

By order of the Secretary of the Board, acting pursuant to delegated authority, 12 CFR 265.2(a)(6), March 7, 1989.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 89-5903 Filed 3-14-89; 8:45 am]

BILLING CODE 6210-01-M

### First United Corporation et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 5, 1989.

**A. Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *First United Corporation*, Oakland, Maryland; to engage *de novo* through its subsidiary, Oakfirst Life Insurance Corporation, Phoenix, Arizona, in underwriting as reinsurer credit life and credit accident and health insurance issued by Security of America Life Insurance Company in connection with extensions of credit made by Applicant's subsidiary bank, First United National Bank & Trust, Oakland, Maryland, pursuant to § 225.25(b)(8) of the Board's Regulation Y. These activities will be conducted in Garrett and Allegany Counties, Maryland.

**B. Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Farmers Capital Bank Corporation*, Frankfort, Kentucky; to engage *de novo* through its subsidiary, Money One Credit Corporation, Frankfort, Kentucky, in the consumer finance business pursuant to § 225.25(b)(1) of the Board's Regulation Y. These activities will be conducted in the State of Kentucky.

**C. Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *PSB Financial Corporation*, Many, Louisiana; to engage *de novo* in providing individuals, businesses, and nonprofit organizations with tax planning and preparation services pursuant to § 225.25(b)(21) of the Board's Regulation Y. These activities will be conducted in West Louisiana and East Texas. Comments on this application must be received by March 31, 1989.

Board of Governors of the Federal Reserve System, March 8, 1989.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 89-5904 Filed 3-14-89; 8:45 am]

BILLING CODE 6210-01-M



## GENERAL ACCOUNTING OFFICE

### Exemptions of Remote or Inconsequential Financial Interests Under 18 U.S.C. 208(b)

**AGENCY:** General Accounting Office

**ACTION:** Notice of Exemptions Adopted Under 18 U.S.C. 208(b)

Federal government employees are prohibited by 18 U.S.C. 208(b) (1982) from participating in any particular matter affecting their financial interests. Section 208(b) permits the Comptroller General to exempt from the prohibition financial interests which are too remote or too inconsequential to affect the integrity of the services expected of General Accounting Office employees who hold such interests. Section 208(b)(2) requires that exempted financial interests be published in the **Federal Register**.

In accordance with the provisions of section 208(b)(2), the Comptroller General has determined that the following financial interests are too remote or too inconsequential to affect the integrity of GAO employees' services.

a. Securities issued by the United States Government or agencies thereof.

b. Policy holdings in an insurance company.

c. Deposits in a bank, savings and loan association, credit union or similar financial institution.

d. Shares of a widely held, diversified mutual fund and the holding of such fund, provided the employee has no role in investment decisions made by the

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fund. The term mutual fund will be broadly construed to include any publicly traded pooling arrangement used for the purpose of diversification of investments, such as tax exempt bond funds. A fund is widely held if the holdings of an employee, his spouse, minor children, partners and organizations in which he serves as an officer, director, trustee or employee or in which he is negotiating for employment, constitute less than 1 percent of the number of investors and hold less than 1 percent of the assets of the fund. A fund is diversified if no more that 20 percent of its investments are in any single industry.

e. The investment interests of an organization exempt from taxation under 26 U.S.C. 501(c)(3), provided the employee has no role in making investment decisions for that organization. This exemption applies where an employee is an officer, director, trustee or employee of an organization such as a church or university, or arrangement concerning future employment with such an organization.

**FOR FURTHER INFORMATION CONTACT:** Frances McCoy, Management-Employee Relations, GAO Office of Personnel, (202) 275-3889.

James F. Hinchman,
*General Counsel.*

[FR Doc. 89-5044 Filed 3-14-89; 8:45 am]

BILLING CODE 1610-01-M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control

### Program Announcement Number 907; For Development and Initiation of a National Laboratory Training Network for State Laboratories

#### Introduction

The Centers for Disease Control (CDC) announces the availability of funds in Fiscal Year 1989 for a cooperative agreement with the Association of State and Territorial Public Health Laboratory Directors (ASTPHLD) to develop and implement a National Laboratory Training Network for laboratorians within the States.

#### Authority

This project is authorized by section 317(k)(3) of the Public Health Service Act, as amended.

#### Eligible Applicants

Assistance will be provided only to the Association of State and Territorial Public Health Laboratory Directors (ASTPHLD) for this project. ASTPHLD is an organization that represents all the public health laboratory officials of each State and Territory. By working through its own membership, the ASTPHLD Training Committee, other affiliate organizations, and the Public Health Foundation, ASTPHLD has developed a unique knowledge and understanding of the needs and operations of State health laboratory agencies. The members of ASTPHLD have already gained an enormous wealth of experience in information systems and laboratory training and have identified laboratory training programs as a priority need for State health agencies. As an organization, ASTPHLD has direct, familiar, and certain access to its own membership of chief public health laboratory officials, and therefore, has the capacity to meet the objectives of this agreement in a timely, and forthright manner.

#### Availability of Funds

It is expected that up to $1,000,000 will be available during FY 1989 to support this cooperative agreement for a 12-month budget period. Estimated cost of the remaining years of this 5-year project will be $1,000,000 each. Continuation awards within the 5-year project period, will be made on the basis of satisfactory progress in meeting project objectives and is subject to the availability of funds. The funding estimate outlined above may vary and is subject to change.

#### Purpose

The purposed cooperative agreement is intended to address the need to maintain effective laboratory information and management systems and for State health agencies to practice effective laboratory training.

The objective is to establish a National Laboratory Training Network consisting of seven Area Laboratory Training Alliances. Each area resource office will consist of space for staff and an area library to house training products available for continuous use within the area. There will be an area resource director and a CDC training advisor to assist State training coordinators in the delivery, assessment and evaluation of training activities; promote interstate communication; and serve ASTPHLD in training related activities.

The field training efforts will include HIV/retrovirus test procedures. Training may occur at any site within any State in the region. States will work together to conduct area training needs assessments (TNA) to guide the development of training products. After the TNA is conducted, the area resource director will work with the State training coordinator to identify resources and utilize available training services to meet the need in their States.

#### Program Requirements

*1. ASTPHLD Activities*

a. Maintain and provide to the public health laboratory community management and information systems. These systems include, but are not limited to, work measurement standards, standard cost accounting methodology, consolidated annual reports of State and territorial public health laboratory activities, annual laboratory work force profiles, personnel classification guides, and data processing systems.

b. Develop an implementation plan for the National Laboratory Training Network, selecting sites for resource offices and providing oversight through the ASTPHLD.

c. Develop a mechanism for submitting initiatives for the seven area laboratory training alliances (ALTA). Develop guidelines for ALTA resource office operations.

d. Select seven Area Resource Directors who will administer the Area Resource Office and serve as the focus for communication among CDC, States within area alliances, ASTPHLD, and the National Laboratory Training Network Office (ASTPHLD headquarters). These Area Resource Directors will also assist in conducting and analyzing training needs assessments, develop and maintain training resource roster of content specialists and training products, coordinate the area alliance training calendar, promote area development of training products, and maintain a resource library.

e. Maintain a forum for effective exchange of information and methodologies which prove to be effective in promoting the transfer of laboratory technology and the improvement of laboratory services in the U.S.

f. Evaluate the effectiveness of the National Laboratory Training Network in meeting the training needs of the Nation's laboratories.

g. Develop a plan to establish and strengthen new Federal, state and local health partnerships to address high priority laboratory issues and national laboratory objectives.

*2. CDC Activities*

a. Provide a forum for communication, coordination, collaboration and consensus development among the participants in the National Laboratory Training Network as well as a similar forum for a national laboratory partnership.

b. Serve as a collaborator in the design, development, promotion, and evaluation of laboratory training materials.

c. Provide the interface between the educational and technical experts who develop and deliver laboratory training.

d. Compile and maintain national laboratory training resource guides and national training calendars.

e. Collaborate in the development and delivery of train-the-trainer workshops and seminars.

f. Collaborate in the evaluation of the overall effectiveness of the National Laboratory Training Network.

g. Collaborate in establishment of a Federal/State/Private Partnership to promote quality laboratory practice to achieve national health objectives.

#### Review and Evaluation Criteria

The application will be reviewed and evaluated on the following:

A. Extent to which the applicant understands the requirements, problems, objectives, complexities, and interactions required of this cooperative agreement;

B. Degree to which proposed objectives are clearly stated, realistic, measurable, time-phased, and related to the purpose of this project;

C. Degree to which the applicant provides evidence of an ability to carry out the proposed project and the extent to which the applicant institution documents demonstrated capability to achieve objectives similar to those of this project;

D. Extent to which professional personnel involved in this project are qualified, including evidence of past achievements appropriate to this project; and

E. Adequacy of plans for administering the project.

#### Executive Order 12372 Review

The application is not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

#### Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number assigned to this program is 13.282.

#### Application Submission and Deadline

The Association of State and Territorial Public Health Laboratory Directors has been notified of the availability of funds for this project and must submit an original and two copies of application form PHS 5161-1 to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NE., Room 300 (E-14), Atlanta, Georgia 30305 on or before April 15, 1989.

#### Where to Obtain Additional Information

If you are interested in obtaining additional information regarding this project, please refer to Announcement Number 907 and contact the following:

*Business:* Terry Maricle, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 300 (E-14), Atlanta, Georgia 30305, Telephone: (404) 842-6575 or FTS 236-6575.

*Technical:* Carl H. Blank, Division of Training (G-25), Training and Laboratory Program Office, Centers for Disease Control, Atlanta, Georgia 30333, Telephone: (404) 639-3674 or FTS 236-3674.

Dated: March 7, 1989.

Robert L. Foster,
*Acting Director, Office of Program Support, Centers for Disease Control.*

[FR Doc. 89-5007 Filed 3-14-89; 8:45 am]

BILLING CODE 4160-18-M

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## Food and Drug Administration

[Docket No. 88N-0335]

### Frank Veterinary Laboratories et al.; Drugs Containing Sulfamethazine, Sulfaquinoxaline, Sulfamerazine, Sulfathiazole, Sulfapyridine, or Sulfanilamide for Oral, Injectable, Intramammary, or Intrauterine Use in Food-Producing Animals; Refusal to Approve NADA's

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA), Center for Veterinary Medicine (CVM), is issuing a final order refusing to approve certain new animal drug applications (NADA's) for drugs containing sulfamethazine, sulfaquinoxaline, sulfamerazine, sulfathiazole, sulfapyridine, or sulfanilamide for oral, injectable, intramammary, or intrauterine use in food-producing animals. Each of the NADA's in question was listed in a notice of opportunity for a hearing, published in the Federal Register of November 15, 1988 (53 FR 45050), on a proposal by CVM to refuse approval of the NADA's. This action is being taken because the sponsors either did not respond to the notice of opportunity for a hearing by December 15, 1988, as provided by the November 15, 1988, notice, or affirmatively elected not to avail themselves of an opportunity for a hearing on the refusal to approve the applications.

**DATES:** The refusals to approve certain NADA's are effective March 15, 1989; distribution of the products must cease May 15, 1989.

**FOR FURTHER INFORMATION CONTACT:** Philip J. Frappaolo, Center for Veterinary Medicine (HFV-240), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4940.

**SUPPLEMENTARY INFORMATION:**

#### I. Background Information

In the Federal Register of November 15, 1988 (53 FR 46050) (corrected December 12, 1988 (53 FR 49968), and December 23, 1988 (53 FR 51950)), CVM provided a notice of opportunity for a hearing on its proposal to refuse approval of 142 listed pending NADA's sponsored by 11 firms for products covered by § 510.450 (21 CFR 510.450). Section 510.450 provides for interim marketing of drugs that contain sulfamethazine, sulfaquinoxaline, sulfamerazine, sulfathiazole, sulfapyridine, or sulfanilamide for oral, injectable, intramammary, or intrauterine use in food-producing animals and that are the subject of pending applications. The notice of opportunity for a hearing gave sponsors until December 15, 1988, to request a hearing on the proposed refusal.

#### II. List of Firms Having NADA's Subject to This Notice

1. Frank Veterinary Laboratories, 149 East Thompson, West St. Paul, MN 55118.
2. Veterinary Laboratories, Inc., 12340 Santa Fe Dr., Lenexa, KS 66215.
3. Illini Skylab, Inc., 1000 Macomb Rd., Rushville, IL 62681.
4. Salsbury Laboratories, Inc., 2000 Rockford Rd., Charles City, IA 50616-9989.
5. Norden Laboratories, Inc., 601 West Cornhusker Highway, Lincoln, NE 68521.

#### III. Affected NADA's and Grounds for Refusing Approval

All the pending NADA's for the sulfonamide-containing drugs affected by this notice are listed in the tables below, by the same drug groups and in

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the same format used in the November 15, 1988, notice of opportunity for a hearing. The tables list each pending NADA, current sponsor, and product name. The grounds on which CVM provided an opportunity for a hearing on the proposed refusal to approve each listed NADA under section 512(d)(1) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b(d)(1)) and FDA's regulations were provided in detail in the November 15, 1988, notice of opportunity for a hearing, which is being made a part of this notice by reference.

Frank Veterinary Laboratories, Veterinary Laboratories, Inc., and Illini Skylab, Inc., did not respond to the November 15, 1988, notice of opportunity for a hearing and CVM is refusing to approve those firms' NADA's. Salsbury Laboratories, Inc., by a letter dated December 14, 1988, stated that it elected not to request a hearing on the proposal to refuse approval of 11 of its pending NADA's, and CVM is refusing to approve those applications. Norden Laboratories, Inc., by a letter dated December 8, 1988, stated that it elected not to request a hearing on the proposal to refuse approval of two of its pending NADA's, and CVM is refusing to approve those applications. Therefore, under section 512(d)(1) of the act and § 514.200 (21 CFR 514.200), CVM is issuing this refusal to approve the following NADA's for the listed products, effective March 15, 1989. Because the NADA's are no longer pending, the products may no longer be marketed under § 510.450. To facilitate an orderly transition to the use of approved new animal drugs, however, distribution of the products is not required to cease until May 15, 1989.

| NADA number | Sponsor | Product name |
|---|---|---|
| | A. SULFAMETHAZINE ALONE | |
| 099-848 | Salsbury Laboratories, Inc. | Sodium Sulfamethazine, 12.5% Drinking Water Solution |
| 099-904 | Veterinary Laboratories, Inc. | Sulfamethazine Boluses, 15 Grams |
| 099-910 | Veterinary Laboratories, Inc. | Sulfamethazine Sodium Solution 25% |
| 099-998 | Illini Skylab, Inc. | Liquid Vimethazine-25 |
| 100-024 | Veterinary Laboratories, Inc. | Sulfamethazine Solution 25% |
| 100-028 | Illini Skylab, Inc. | Vimethazine |
| 100-071 | Frank Veterinary Laboratories. | Frank Sodium Sulfamethazine Sorbitol Solution |
| 100-126 | Illini Skylab, Inc. | Sulfamethazine Boluses |
| | B. SULFATHIAZOLE ALONE OR IN COMBINATION WITH OTHER SULFA PRODUCTS | |
| 099-857 | Salsbury Laboratories. | Sodium Sulfathiazole Soluble Powder |
| 100-025 | Veterinary Laboratories, Inc. | Tri-Sul 2MT Triple Sulfa Solution 24% Sulfamethazine sodium Sulfathiazole sodium Sulfamerazine sodium |
| 100-099 | Illini Skylab, Inc. | Thiazole-Sodium Sulfathiazole sodium |
| 100-117 | Illini Skylab, Inc. | Thiazole-Sodium Sulfathiazole sodium |
| | C. SULFAQUINOXALINE ALONE OR IN COMBINATION WITH OTHER SULFA PRODUCTS | |
| 099-867 | Salsbury Laboratories, Inc. | Sulquin-40 Medicated Premix Sulfaquinoxaline |
| 100-029 | Illini Skylab, Inc. | 20% Sulfa-Pol Liquid Concentrate Sulfamerazine Sulfamethazine Sulfaquinoxaline |
| | D. SULFAMERAZINE | |
| None. | | |
| | E. SULFAPYRIDINE ALONE OR IN COMBINATION WITH OTHER SULFA PRODUCTS | |
| 099-996 | Norden Laboratories, Inc. | Tri-Sulfa-G Sulfonamide Solution Sulfamethazine Sulfathiazole Sulfapyridine |
| 100-070 | Frank Veterinary Laboratories. | Frank Triple Sulfa Solution (INJ) Sulfamethazine sodium Sulfathiazole sodium Sulfamerazine sodium |
| 100-072 | Frank Veterinary Laboratories. | Frank Triple Sulfa Solution Oral 12% Sulfamethazine sodium Sulfathiazole sodium Sulfapyridine sodium |
| | F. SULFANILAMIDE ALONE OR IN COMBINATION WITH OTHER SULFA PRODUCTS | |
| 099-851 | Salsbury Laboratories, Inc. | Sulfanilamide |
| 099-861 | Salsbury Laboratories, Inc. | Sulfanilamide Boluses |
| 099-880 | Veterinary Laboratories, Inc. | Tri-Methe Bolus Sulfanilamide Sulfathiazole Sulfamethazine |
| 100-123 | Illini Skylab, Inc. | Triple Sulfa Bolus Sulfanilamide Sulfathiazole Sulfamethazine |
| | G. NEW ANIMAL DRUGS CONTAINING SULFONAMIDES IN COMBINATION WITH NUTRIENTS OR OTHER DRUGS | |
| 099-844 | Salsbury Laboratories, Inc. | Hog & Cattle Sulfa Sulfathiazole sodium sesquihydrate Ethylenediamine dihydroiodide Potassium chloride Sodium chloride Sodium carbonate monohydrate |
| 099-856 | Salsbury Laboratories, Inc. | Hog & Cattle Sulfa with Vitamins and Electrolytes Sulfathiazole sodium sesquihydrate Potassium chloride Sodium chloride Sodium carbonate Vitamin A Vitamin $D_3$ |
| 099-862 | Salsbury Laboratories, Inc. | SM-15 and SM-30 Sulfa Boluses with Electrolytes Sulfamethazine Sodium Potassium Calcium Magnesium Chloride |
| 099-863 | Salsbury Laboratories, Inc. | 90-90-60 Sulfa Boluses with Electrolytes Sulfathiazole Sulfanilamide Sulfamethazine Calcium Chloride Magnesium Potassium Sodium |
| 099-864 | Salsbury Laboratories, Inc. | T-M-P 80 Boluses with Electrolytes Sulfathiazole Sulfamethazine Sulfapyridine Calcium Chloride Magnesium Potassium Sodium |
| 099-865 | Salsbury Laboratories, Inc. | Triple Sulfa Boluses with Electrolyte 240 Grains & 480 Grains Sulfathiazole Sulfamethazine Sulfanilamide Calcium Chloride |



| NADA number | Sponsor | Product name |
|---|---|---|
| 099-868 | Veterinary Laboratories, Inc. | Magnesium Potassium Sodium Sulfa-Urea Bolus Urea Sulfanilamide Sulfathiazole |
| 099-907 | Veterinary Laboratories, Inc. | Sulfathiazole Uterine Boluses Sulfathiazole Urea |
| 099-983 | Illini Skylab, Inc. | Triple Sulfa with Electrolytes Sulfamethazine sodium Sulfathiazole sodium Sulfamerazine sodium Sodium Potassium Calcium Magnesium as chloride, carbonate, sulfate, and lactate, plus trace amounts of cobalt, zinc, copper, manganese, and iron |
| 099-988 | Norden Laboratories, Inc. | Sulfamycin-S Powder Sulfamethazine Neomycin sulfate |
| 100-027 | Illini Skylab, Inc. | Sulfa-Pel Plus TA Soluble Concentrate Sulfamethazine sodium Sulfamerazine sodium Sulfaquinoxaline sodium Thiamine hydrochloride Vitamin A palmitate water |
| 100-066 | Illini Skylab, Inc. | Vi-Lite Sodium Sulfathiazole with Electrolytes Sodium sulfathiazole Sodium Potassium Calcium Magnesium Ethylenediamine dihydroiodide Vitamin A Vitamin D Iron occurring as chloride, carbonate, sulfate, phosphate, and lactate plus trace amounts of cobalt, zinc, copper, and manganese |
| 100-116 | Illini Skylab, Inc. | Sulfamethazine Boluses with Electrolytes Sulfamethazine Sodium Potassium Calcium Magnesium Sodium Trace amounts of cobalt, zinc, manganese, copper and iron |
| 100-122 | Illini Skylab, Inc. | Triple Sulfa Boluses with Electrolytes Sulfanilamide Sulfathiazole Sulfamethazine Potassium, calcium, magnesium, sodium, and trace amounts of cobalt, zinc, manganese, copper, and iron. |

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director of the Center for Veterinary Medicine (21 CFR 5.84).

Dated: March 8, 1989.

**Gerald B. Guest,**

*Director, Center for Veterinary Medicine.*

[FR Doc. 89-5998 Filed 3-14-89; 8:45 am]

BILLING CODE 4160-01-M

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**[Docket No. 89F-0042]**

## Pfizer Central Research, Pfizer, Inc.; Filing of Food Additive Petition

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that Pfizer Central Research, Pfizer, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of polydextrose in sweet sauces, toppings, and syrups.

**FOR FURTHER INFORMATION CONTACT:** John W. Gordon, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–426–5487.

**SUPPLEMENTARY INFORMATION:** Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 9A4126) has been filed by Pfizer Central Research, Pfizer, Inc., 235 East 42nd St., New York, NY 10017, proposing that the food additive regulations be amended to provide for the safe use of polydextrose in sweet sauces, toppings, and syrups.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the Federal Register in accordance with 21 CFR 25.40(c).

Dated: March 7, 1989.

**Richard J. Ronk,**

*Acting Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 89-5999 Filed 3-14-89; 8:45 am]

BILLING CODE 4160-01-M

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**[Docket No. 89F-0051]**

## Minnesota Mining and Manufacturing Co.; Filing of Food Additive Petition

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that Minnesota Mining and Manufacturing Co. has filed a petition proposing that the food additive regulations be amended to provide for additional vinylidene fluoride-hexafluoropropene copolymers as adjuvants in the production of olefin polymers.

**FOR FURTHER INFORMATION CONTACT:** Gillian Robert-Baldo, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–472–5880.

**SUPPLEMENTARY INFORMATION:** Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 9B4129) has been filed by Minnesota Mining and Manufacturing Co., 3M Center, St. Paul, MN 55144–1000, proposing that § 177.1520 *Olefin polymers* (21 CFR 177.1520) be amended to provided for additional vinylidene fluoride-hexafluoropropene copolymers as adjuvants in the production of olefin polymers.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the Federal Register in accordance with 21 CFR 25.40(c).

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Dated: February 23, 1989.
**Richard J. Ronk,**
*Acting Director, Center for Food Safety and Applied Nutrition.*
[FR Doc. 89-5940 Filed 3-14-89; 8:45 am]
BILLING CODE 4160-01-M

**[Docket No. 89N-0092]**

## Drug Export; Demerol® Hydrochloride (Meperidine Hydrochloride, USP)

**AGENCY:** Food and Drug Administration.
**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that Sterling Drug Inc. has filed an application requesting approval for the export of the human drug Demerol® Hydrochloride (meperidine hydrochloride, USP) to Canada.

**ADDRESS:** Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

**FOR FURTHER INFORMATION CONTACT:** Rudolf Apodaca, Division of Drug Labeling Compliance (HFD-310), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8063.

**SUPPLEMENTARY INFORMATION:** The Drug Export Amendments Act of 1986 (Pub. L. 99-660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Sterling Drug Inc., 90 Park Ave., New York, NY 10016, has filed an application requesting approval for the export of the drug Demerol® Hydrochloride (meperidine hydrochloride, USP), to Canada. This product is used in the relief of moderate to severe pain in may medical, surgical, obstetrical, and dental situations. The application was received and filed in the Center for Drug Evaluation and Research on February 24, 1989, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by March 27, 1989, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 99-660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: March 6, 1989.
**Daniel L. Michels,**
*Director, Office of Compliance, Center for Drugs Evaluation and Research.*
[FR Doc. 89-5997 Filed 3-14-89; 8:45 am]
BILLING CODE 4160-01-M

**[Docket No. 89N-0093]**

## Drug Export; Hypaque® Meglumine 18%

**AGENCY:** Food and Drug Administration.
**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that Sterling Drug Inc. has filed an application requesting approval for the export of the human drug Hypaque® Meglumine 18% to Canada.

**ADDRESS:** Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any further inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

**FOR FURTHER INFORMATION CONTACT:** Rudolf Apodaca, Division of Drug Labeling Compliance (HFD-310), Center for Drug Evaluation Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8063.

**SUPPLEMENTARY INFORMATION:** The Drug Export Amendments Act of 1986 (Pub. L. 99-660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Sterling Drug Inc., 90 Park Ave., New York, NY 10016, has filed an application requesting approval for the export of the drug Hypaque® Meglumine 18%, to Canada. This product is used as a radiopaque contrast media. The application was received and filed in the Center for Drug Evaluation and Research on February 24, 1989, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by March 27, 1989, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 99-660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).



Dated: March 6, 1989.
**Daniel L. Michels,**
*Director, Office of Compliance, Center for Drug Evaluation and Research.*
[FR Doc. 89-5998 Filed 3-14-89; 8:45 am]
BILLING CODE 4160-01-M

**[Docket No. 89N-0091]**

## Drug Export; Marcaine® (Bupivacaine Hydrochloride Injection, USP) and Marcaine® E (Bupivacaine and Epinephrine Injection, USP)

**AGENCY:** Food and Drug Administration.
**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that Sterling Drug Inc. has filed an application requesting approval for the export of the human drug Marcaine® (bupivacaine hydrochloride injection, USP) and Marcaine® E (bupivacaine and epinephrine injection, USP) to Canada.

**ADDRESS:** Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

**FOR FURTHER INFORMATION CONTACT:** Rudolf Apodaca, Division of Drug Labeling Compliance (HFD-310), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8063.

**SUPPLEMENTARY INFORMATION:** The Drug Export Amendments Act of 1986 (Pub. L. 99-660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Sterling Drug Inc., 90 Park Ave., New York, NY 10016, has filed an application requesting approval for the export of the drug Marcaine® (bupivacaine hydrochloride injection, USP) and Marcaine® E (bupivacaine and epinephrine injection, USP), to Canada. This product is used as a long acting local anesthetic for epidural anesthesia, nerve block, and infiltration. The application was received and filed in the Center for Drug Evaluation and Research on February 24, 1989, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by March 27, 1989, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 99-660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: March 6, 1989.
**Daniel L. Michels,**
*Director, Office of Compliance, Center for Drug Evaluation and Research.*
[FR Doc. 89-5999 Filed 3-14-89; 8:45 am]
BILLING CODE 4160-01-M

**[Docket No. 89N-0073]**

## Public Meeting; Development of Educational Information for Women Considering Implantation of Breast Prostheses

**AGENCY:** Food and Drug Administration.
**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing a 2-day meeting to develop educational materials for women considering surgical implantation of breast prostheses devices. FDA is inviting interested persons, including device manufacturers, health professional organizations, industry and consumer groups, and health educators to attend the meeting. Because of space constraints, attendance can be assured only for those persons who make telephone reservations.

**DATES:** The open meeting will be held on Wednesday, March 22, 1989, 9 a.m. to 5:30 p.m., and Thursday, March 23, 1989, 8 a.m. to 3 p.m. Interested persons, whether or not they are able to attend, may submit written comments on the issues described in this notice by May 15, 1989. Telephone reservations regarding attendance should be made with the contact person listed below by March 20, 1989.

**ADDRESSES:** The meeting will be held at the Days Inn, Congressional Park, 1775 Rockville Pike, Rockville, MD 20852. Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, referencing the docket number found in the heading of this notice.

**FOR FURTHER INFORMATION CONTACT:** Joan M. Rudick, Center for Devices and Radiological Health, (HFZ-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4190.

**SUPPLEMENTARY INFORMATION:** Classification of medical devices in commercial distribution is required by the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301-392). In the **Federal Register** of June 24, 1988 (53 FR 23856), FDA published a final rule classifying 51 general and plastic surgery devices. In that rule, FDA classified the silicone inflatable breast prosthesis (21 CFR 878.3530) and the silicone gel-filled breast prosthesis (21 CFR 878.3540) into class III. The effect of classifying a device into class III is to require each manufacturer of such devices, to submit to FDA a premarket approval application (PMA) that includes information providing reasonable assurance of the safety and effectiveness of the device.

In the **Federal Register** of November 2, 1988 (53 FR 44239), FDA announced a meeting of the agency's General and Plastic Surgery Devices Advisory Committee (the committee) to be held on November 22, 1988. The committee discussed the types of data needed to assess the safety and effectiveness of these breast prostheses devices. As part of that discussion, the committee recommended, and FDA agreed, that the agency should develop an educational program to assure that women considering surgical implantation of breast prostheses devices are fully informed of the benefits and risks associated with the devices before consenting to the surgical procedure.

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In response to the committee's recommendation, FDA developed a plan to convene relevant members of health professional groups, the industry, consumer groups, and health educators to develop educational materials for women regarding breast implants. In the **Federal Register** of December 29, 1988 (53 FR 52790), FDA announced another meeting of the committee to be held on January 26, 1989. At that time the committee agreed with FDA's plans to convene a meeting to develop the educational materials.

Accordingly, FDA is inviting interested persons to attend this meeting. Interested persons who will be unable to attend the meeting may submit written comments to the Dockets Management Branch (address above) that set forth their view on the issues outlined in this notice. Minutes of the meeting will be made available. Submission of written comments is encouraged. The comments will be carefully considered before the educational materials are approved for use.

Dated: March 9, 1989.

**Alan L. Hoeting,**

*Acting Associate Commissioner for Regulatory Affairs.*

[FR Doc. 89-6838 Filed 3-10-89; 10:53 am]

BILLING CODE 4160-01-M

## National Institutes of Health

### National Institute of Dental Research; Meeting for Industry and Research Representatives Regarding the NIDR "Long-Range Plan for the 1990s"

The National Institute of Dental Research (NIDR) has initiated the development of a Long-Range Research Plan for the 1990s. As part of this effort, a set of research recommendations has been proposed be expert panels for each of the following six areas:

(1) Dental Caries, Fluoride Studies, Nutrition, Pulp Biology, and Restorative Materials;

(2) Periodontal Diseases and Dental Implants;

(3) Congenital Craniofacial Malformations, Acquired Craniofacial Defects, Dentofacial Malrelations, and Mineralized Tissue Studies;

(4) AIDS, Salivary Glands and Secretions, and Soft Tissue Diseases;

(5) Orofacial Pain and Oral Sensory-motor Dysfunctions; and

(6) Aging, Epidemiology, Health Promotion/Disease Prevention, Science Transfer, and Psychoneuroimmunology.

The NIDR is inviting representatives of private industry to discuss specific Long-Range Research Plan recommendations which may be appropriate for collaborative efforts. For this purpose, a meeting will be convened on May 16, 1989, in Building 31, Conference Room 10, National Institutes of Health, Bethesda, Maryland, from 9 a.m. to adjournment.

The meeting will be open to the public. Attendance will be limited to space available.

For further information, please contact Dr. James Lipton, Chief, Planning and Evaluation Section, Office of Planning, Evaluation, and Communications, NIDR, NIH, Room 2C-36, Building 31, 9000 Rockville Pike, Bethesda, MD 20892 (telephone 301/496-6705).

Dated: March 8, 1989.

**James B. Wyngaarden,**

*Director, NIH.*

[FR Doc. 89-5978 Filed 3-14-89; 8:45 am]

BILLING CODE 4140-01-M

### Consensus Development Conference on Oral Complications of Cancer Therapies: Diagnosis, Prevention, and Treatment

Notice is hereby given of the NIH Consensus Development Conference on "Oral Complications of Cancer Therapies: Diagnosis, Prevention, and Treatment," sponsored by the National Institute of Dental Research, the National Cancer Institute, the Clinical Center, and the Food and Drug Administration in collaboration with the NIH Office of Medical Applications of Research. The conference will be held on April 17-19, 1989, in the Masur Auditorium of the Warren Grant Magnuson Clinical Center (Building 10) at the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

The oral cavity is a common site of complications resulting from cancer therapies. Surgical, medical (chemotherapeutic), and radiation treatments all have acute and chronic effects on the mouth and oral functions. Oral complications are frequent and serious and contribute to the morbidity and mortality of cancer patients.

Dental and medical professionals debate the usefulness of treating oral complications before beginning cancer therapy. Controversy exists concerning the most effective means of limiting oral complications by pretherapy interventions and the strategies indicated for management of acute and chronic complications arising during cancer therapy.

The conference will bring together dentists and physicians, including specialists in oral medicine, oncology, oral surgery, radiotherapy, surgery and pathology, nurses, other health care professionals, pharmacists, pharmacologists, and representatives of the public. Following two days of presentations by dental and medical experts and discussion by the audience, a consensus panel will weigh the scientific evidence and formulate a draft statement in response to several key questions:

- Is there a role for pretherapy interventions affecting the oral cavity in reducing the incidence of oral complications in the cancer patient?
- Which pretreatment strategies are optimal to prevent or minimize oral complications?
- What are the most effective strategies for management of acute oral complications occurring during cancer therapy?
- What are the indicated strategies for management of chronic oral complications following cancer therapy?
- What are the directions for future research?

On the final day of the meeting, the Consensus Panel chairman will read the draft statement to the conference audience and invite comments and questions.

Information on the program may be obtained from: Kathleen Edmonds, Prospect Associates, 1801 Rockville Pike, Suite 500, Rockville, Maryland (301) 468-6555.

Dated: March 9, 1989.

**James B. Wyngaarden**

*Director, NIH.*

[FR Doc. 89-5979 Filed 3-14-89; 8:45 am]

BILLING CODE 4140-01-M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Assistant Secretary for Public and Indian Housing

**[Docket No. N-89-1896; FR-2529]**

### Policy on Establishment of Ceiling Rents for Indian Housing

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Notice of HUD Policy on Establishment of Ceiling Rents for Indian Housing.

**SUMMARY:** This Notice informs the public that HUD Indian Field Offices will consider applications from Indian Housing Authorities (IHAs) for waiver of the requirements of 24 CFR 913.107 and for permission to adopt rents for projects or dwelling units that will establish a cap on the total tenant payment computed under that section. Where the conditions set out in this Notice are met, HUD will waive the cited regulation to permit IHAs to establish ceiling rents for Indian rental housing projects. Section 102(a) (entitled "Economic Rent") of the Housing and Community Development Act of 1987 (1987 Act) amended section 3(a) of the United States Housing Act of 1937 (1937 Act) to allow IHAs to establish, upon approval by HUD, maximum rents, or "ceiling rents," in Indian housing projects. Until HUD proposes a rule for public comment and adopts a final rule for effect, IHAs may apply to HUD for permission to establish ceiling rents that are not more than a family would pay under the present income-based formula and not less than the average monthly amount of debt service and operating expenses attributed to units of similar size in Indian housing projects owned and operated by the IHA.

**EFFECTIVE DATE:** March 15, 1989.

**FOR FURTHER INFORMATION CONTACT:** Mr. Dominic Nessi, Director, Office of Indian Housing, Department of Housing and Urban Development, Room 4232, 451 Seventh Street SW., Washington, DC 20410; telephone number (202) 755-1015. Hearing- or speech-impaired persons may call HUD's TDD number (202) 426-0015. (These telephone numbers are not toll-free.)

**SUPPLEMENTARY INFORMATION:** The collection of information requirements contained in this Notice have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 and have been assigned OMB control number 2577-0118, which expires February 28, 1990. Public reporting burden for each of these collections of information is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided in this Notice under the heading *Other Matters*. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street SW., Room 10276, Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.



### I. Introduction

Section 102(a) of the 1987 Act amended section 3(a) of the 1937 Act to permit IHAs to establish, upon approval by HUD, ceiling rents in Indian housing projects. Section 3(a) of the 1937 Act (implemented by HUD at 24 CFR 913.107) requires that the tenant's rent be based on the tenant family's income. The Act establishes the tenant's rent as the highest of (1) 30 percent of the family's monthly adjusted income; (2) 10 percent of the family's monthly income; or, (3) if a family receives welfare assistance and the grant is subject to adjustment in accordance with actual housing costs, any portion of that assistance designated for housing costs. (For purposes of this Notice, section 3(a) rent will be referred to as "income-based rent". The term "rent" refers to the total tenant payment that is payable by the tenant, including any utility allowance.)

Section 102(a) amended section 3(a) to allow an IHA to establish, with HUD approval, a maximum rent that would be not more than the present income-based rent and not less than the average monthly amount of debt service and operating expenses attributed to units of similar size in Indian housing projects owned and operated by the IHA. (For purposes of this Notice, section 102(a) rent will be referred to as "ceiling rent".)

Ceiling rents are based on the *dwelling unit*, whereas rents under section 3(a) of the 1937 Act are based on the tenant family's *income*. Section 102(a) authorizes an IHA to establish ceiling rents as an alternative rent, but IHAs are not required to do so. An IHA may establish ceiling rents for particular classes of units, particular projects, or the entire inventory of the IHA.

Tenants do not have a right to ceiling rents if an IHA does not adopt them. However, once ceiling rents have been established by an IHA, each family residing in, and each new tenant of, an affected dwelling unit would be charged the *lower* of the ceiling rent for that unit or the family's income-based rent. There is no limitation on the time period that a family in Indian housing may be eligible for ceiling rents. If a family on ceiling rent experiences a change in financial circumstances such that an income-based rent would be lower than the ceiling rent, the family must be given the benefit of the lower rent.

The IHA may revoke or raise its ceiling rents at any time after giving reasonable notice to the affected tenants. The IHA must revoke or change its ceiling rents if directed by HUD to do so for reasonable cause.

### II. Applicability

This Notice applies only to Indian rental housing projects assisted under the 1937 Act. It does not apply to the Turnkey III and Mutual Help Homeownership programs. (The current regulations already provide a cap on tenant payment for these programs. See 24 CFR 905.416(a)(2) and 24 CFR 904.107(h).) Although section 102(a) of the 1987 Act also authorizes ceiling rents in public housing projects and in lower income housing projects assisted under section 8 that contain more than 2,000 dwelling units, this Notice does not apply to public housing projects or to any section 8 program fitting that description.

### III. Purpose of Ceiling Rent

Since 1982, income-based rent has been the only method available to IHAs for calculating rent. The purpose of ceiling rents is to provide a cap on rents for families whose incomes have increased since moving into Indian housing to a point where an income-based rent exceeds the value of the housing provided.

The legislative history of section 102(a) shows that Congress, in authorizing ceiling rents, was concerned with easing the burden of these increased rents on working families. There is usually very little, if any, alternative rental housing on Indian reservations. In many instances, Indian housing projects provide the only rental housing. Ceiling rents will assure that Indian families are not required to pay more than their housing is worth because they have no other option, other than leaving the reservation.

HUD considers the burden of increased rents on Indian families with no alternative housing sufficiently significant to permit consideration of individual waiver requests from IHAs seeking relief from the requirements of 24 CFR 913.107 for rent based on income until the necessary rule revisions implementing section 102(a) are effective. Therefore, IHAs that choose to establish ceiling rents in Indian housing projects may apply to HUD for approval in accordance with the procedures outlined below. (IHAs should be aware that the terms of approval of ceiling rents may be affected by the final rule on ceiling rents.)

### IV. Determining Ceiling Rent

Section 102(a) provides an IHA with an alternative method for calculating rent. (Section 102(a) has no effect on income-eligibility requirements for admission to Indian housing.) IHAs may establish ceiling rents, with HUD

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approval, at an amount that the IHA determines reflects the value of the unit. However, ceiling rents may not be less than the average monthly amount of debt service and operating expenses attributed to dwelling units of a given size in Indian housing projects owned and operated by the IHA.

An IHA may establish ceiling rents for all dwelling units in a project or for one or more classes of units. A class of units may be based on any reasonable classification so long as the classification is *unit-based* (*e.g.*, number of bedrooms). The classification may *not* be *tenant-based, i.e.*, applicable to particular families because of their personal circumstances, rather than the characteristics of the housig in which they live.

If an IHA establishes ceiling rents in an Indian housing project, with HUD approval, each family living in an affected dwelling unit would pay the lower of a ceiling rent or an income-based rent. In situations where a family's income is so low that the ceiling rent for the unit rented by that family is an amount higher than income-based rent would be, the family would pay the income-based rent. Ceiling rents are intended for families whose incomes have increased to the point that an income-based rent exceeds the value of the housing provided.

Section 102(a) provides that the *minimum* amount that a ceiling rent may be is the sum of the average monthly debt service and the average monthly operating expense attributed to units of similar size owned by the IHA. An example appears as an appendix to this notice showing a method for determining this total average monthly amount ("TAMA").

The average monthly debt service is an amount imputed by HUD based on total development and modernization costs for the IHA. When the legislative provision implemented by this notice was originally drafted in the early 1980s, all development and modernization programs were funded by debt instruments that were tied to specific projects and became liabilities of an IHA. In practice, however, these debt obligations were paid by HUD, and assignment of debt to the IHA was more of an accounting than a substantive transaction. As many of these debts as possible were forgiven, starting with passage of section 3004 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA). (See 53 FR 31274 (Aug. 17, 1988) for HUD's Statement of Policy on loan forgiveness.) Subsequent development and modernization funding was provided in the form of grants rather than loans to IHAs. Certain Federal Financing Bank debt instruments and long-term bonds issued on behalf of IHAs, however, could not be forgiven in the same manner and remain as long-term IHA debt obligations. The net effect is that there is no relationship between the amount of HUD development and modernization funding provided and an IHA's current debt obligations. When two otherwise identical IHAs are examined, one may have no unforgiven debts while the other may have large unforgiven debts.

Both the 1987 Act and its legislative history make it apparent that the operating costs and debt service amounts Congress intended to be used in establishing an "economic rent" were to be based on an *attributed* amount. Therefore, HUD will impute debt service using total grant funding, forgiven debt, and outstanding debt. This conforms to the intent of the legislation and avoids treating an IHA that has had all debt forgiven differently from an otherwise identical IHA with a large outstanding debt obligation because the debt instruments used were not subject to forgiveness.

The average monthly operating expense is one-twelfth of the sum of: (1) All annual operating expenses reported on the Statement of Operating Receipts and Expenditures as of the end of the most recent fiscal year and (2) the aggregate annual utility allowances for all tenant paid utilities; *minus* the sum of (1) excess utility charges and (2) annual costs, if any, associated with units approved for deprogramming.

The sum of the debt service and operating expenses, or TAMA, is to be distributed over all IHA units, except those approved for deprogramming, whether or not ceiling rents are proposed for all units, with an adjustment only for unit size (number of bedrooms), with a larger unit to receive a larger portion of the IHA'S TAMA than a smaller unit.

The distribution by unit size is accomplished using a unit rent relationship based on the rent of a two-bedroom unit (100%). The rent relationships vary from 70% of the two-bedroom rent for an efficiency to 182% of the two-bedroom rent for a six-bedroom unit. The adjustment factors for all units are as follows: zero-bedroom units (efficiencies), 0.70; one-bedroom units, 0.85; two-bedroom units, 1.00; three-bedroom units, 1.25; four-bedroom units, 1.40; five-bedroom units, 1.61; six-bedroom units, 1.82.

HUD believes that the need for ceiling rents in a project can be shown by the IHA demonstrating that there are tenant families paying rents that are excessive for the housing provided. For example, the IHA may show that there are families paying rents that exceed rents for comparable unassisted rental housing in the area, as determined by the IHA in an informal survey of such comparable housing. In comparing Indian housing dwelling units to unassisted rental housing, IHAs should use private rental housing of similar age, condition, amenities, design, and size in the same market area. The IHA may show, if available, that there are families that pay more than the current effective Section 8 Existing Housing Certificate Program's Fair Market Rents (FMRs) for comparable housing in the area.

In the absence of private market units to provide a basis for determining comparable rents or FMRs representative of the Indian area, an IHA may offer other evidence acceptable to HUD that ceiling rents are necessary to ensure that families do not pay more in rent than the fair rental value of the dwelling units.

## V. Requirements for HUD Approval

To gain the necessary waiver of the income-based rent requirement of 24 CFR 913.107 and permission to adopt ceiling rents in an Indian housing project or projects owned and operated by an IHA, the IHA must submit a written request to the appropriate HUD Indian Field Office and must:

(1) Demonstrate the number of families currently residing in units owned and operated by the IHA that are paying rent of an amount calculated as required by 24 CFR 913.107 that exceeds the value of the housing provided, as determined by the IHA through an informal survey of comparable unassisted rental units, the current effective FMRs under the section 8 Existing Housing Certificate Program for that locality, or other method.

(2) State the unit sizes and projects, the ceiling rents proposed in each case, and the number of units to which each ceiling rent will apply;

(3) State the statutory minimum ceiling rent for each unit size for which ceiling rents are proposed (the average monthly amount of debt service and operating expenses attributed to units of similar size in projects owned and operated by the IHA);

(4) Estimate the direct financial impact of the ceiling rents by stating the number of families affected, the average dollar amount of rent reduction per family, and the total cost of the rent reductions.

The HUD Indian Field Office will notify the IHA in writing whether the requirements of 24 CFR 913.107 will be waived and permission granted to adopt ceiling rents as proposed in the IHA's application. HUD's decision will be based upon the need for rent relief in the units for which ceiling rents are proposed as determined by the number of families paying excessive rents.

## VI. Other Matters

The collection of information requirements contained in this notice have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), and approved sections IV and V of this Notice have been determined by the Department to contain collection of information requirements. Information on these requirements is provided as follows:

| Description | Number of Respondents | Responses per Respondent | Total Annual Responses | Hrs per Response | Total Hours |
|---|---|---|---|---|---|
| *Section IV* | | | | | |
| Determining Ceiling Rents | 100 | 1 | 100 | 5 | 500 |
| *Section V* | | | | | |
| Gathering data to submit for approval | 100 | 1 | 100 | 12 | 1,200 |
| Revise, adopt and implement policies and procedures | 100 | 1 | 100 | 2 | 200 |
| Recordkeeping:—create files to retain copies of package submitted for HUD approval—create logs to track interim determination for families who go off and on program due to change in income | 100 | 1 | 100 | 1 | 100 |
| Total estimated annual burden | | | | | 2,000 |

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C 4332. The Finding is available for public inspection during regular business hours at the Office of Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this Notice does not have a potential significant impact on family formation, maintenance, and general well-being and, thus, is not subject to review under the Order. The Notice merely announces an alternative method of setting tenant payments for rent in public housing, which will assist families to afford decent, safe, and sanitary, housing of their choice. The General Counsel has also determined, as the Designated Official for HUD under section 6(a) of Executive Order 12612, *Federalism*, that the policies contained in this Notice do not have federalism implications and, thus, are not subject to review under that Order.

Dated: March 9, 1989.

**Thomas Sherman,**

*Acting General Deputy, Assistant Secretary for Public and Indian Housing.*

## Appendix

*Example for Determining Average Monthly Debt Service and Operating Expenses for Units of Similar Size*

| | | |
|---|---|---|
| 1. Debt Service (total annual debt or imputed debt payments made by or on the behalf of HUD) | | $120,000 |
| 2. Operating Expenses (Line 620 from the Statement of Operating Receipts and Expenditures for the IHA's most recent fiscal year) | | $214,800 |
| 3. Total Costs (not including tenant-paid utilities) (Line 1 plus Line 2) | | $334,800 |
| 4. Total Monthly Cost (Line 3 divided by 12) | | $27,900 |
| 5. Average Monthly Cost (not including tenant-paid utilities) (Line 4 divided by number of units*) | | $372 |
| 6. Total Adjustment Factors: | | |
| 0.70X0 efficiency units | | |
| 0.85X0 1-bedroom units | | |
| 1.00X25 2-bedroom units | 25 | |
| 1.25X25 3-bedroom units | 32 | |
| 1.40X25 4-bedroom units | 38 | |
| 1.61X0 5-bedroom units | | |
| 1.82X0 6-bedroom units | | |
| | | 93 |
| 7. Average 2-bedroom basecost (line 4 divided by line 6) | | $300 |
| 8. Minimum Ceiling Rents (not including tenant-paid utilities): | | |
| 0-bedroom units (0.70XLine 7) | | |
| 1-bedroom units (0.85XLine 7) | | |
| 2-bedroom units (1.00XLine 7) | | $300 |
| 3-bedroom units (1.25XLine 7) | | $375 |
| 4-bedroom units (1.40XLine 7) | | $420 |
| 5-bedroom units (1.61XLine 7) | | |
| 6-bedroom units (1.82XLine 7) | | |

*Whether or not ceiling rent is proposed for these units, and irrespective of the method of financing on any individual project or class of dwelling units.

[FR Doc. 89-5948 Filed 3-14-89; 8:45 am]
BILLING CODE 4210-33-M



**[Docket No. N-89-1913; FR-2597]**

## Policy on Establishment of Ceiling Rents for Public Housing

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Notice of HUD Policy on Establishment of Ceiling Rents for Public Housing.

**SUMMARY:** This Notice informs the public that HUD will consider applications from public housing agencies (PHAs) for waiver of the requirements of 24 CFR 913.107 and for permission to adopt rents for projects or dwelling units that will establish a cap on the total tenant payment computed under that section. Where the conditions set out in this Notice are met, HUD will waive the cited regulation to permit PHAs to establish ceiling rents in public housing projects. Section 102(a) (entitled "Economic Rent") of the Housing and Community Development Act of 1987 (1987 Act) amends section 3(a) of the United States Housing Act of 1937 (1937 Act) to allow PHAs to establish, upon approval by HUD, maximum rents, or "ceiling rents," in public housing

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projects. Until HUD proposes a rule for public comment and adopts a rule for effect, PHAs may apply to HUD for permission to establish ceiling rents that are not more than a family would pay under the present income-based formula and not less than the average monthly amount of debt service and operating expenses attributed to units of similar size in public housing projects owned and operated by the PHA.

**EFFECTIVE DATE:** March 15, 1989.

**FOR FURTHER INFORMATION CONTACT:** Nancy Chisholm, Director, Policy Staff, Office of Public and Indian Housing, Department of Housing and Urban Development, Room 4118, 451 Seventh Street SW., Washington, DC 20410; telephone number (202) 755–6713. Hearing or speech impaired persons may call HUD's TDD number (202) 426–0015. (These telephone numbers are not toll-free.)

**SUPPLEMENTARY INFORMATION:** The collection of information requirements contained in this notice have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 and have been assigned OMB control number 2577 –0117. Public reporting burden for each of these collections of information is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided in this Notice under the heading *Other Matters*. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street SW., Room 10276, Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

## I. Introduction

Section 102(a) of the 1987 Act amends section 3(a) of the 1937 Act to permit PHAs to establish, upon approval by HUD, ceiling rents in public housing projects. Section 3(a) of the 1937 Act (implemented by HUD at 24 CFR 913.107) requires that a tenant's rent be based on the tenant family's income. The Act establishes a tenant's rent as the highest of (1) 30 percent of the family's monthly adjusted income; (2) 10 percent of the family's monthly income; or (3) if the family receives welfare assistance and the grant is subject to adjustment in accordance with actual housing costs, any portion of that assistance designated for housing costs. (For purposes of this Notice, section 3(a) rent will be referred to as "income-based rent." The term "rent" refers to the total tenant payment that is payable by the tenant, including any utility allowance.)

Section 102(a) amends section 3(a) to allow PHAs to establish, with HUD approval, maximum rents that would be not more than the present income-based rent and not less than the average monthly amount of debt service and operating expenses attributed to units of similar size in public housing projects owned and operated by the PHA. (For purposes of this Notice, section 102(a) rent will be referred to as "ceiling rent.") A ceiling rent would be available for any one family residing in public housing for a period of up to 36 months.

Ceiling rents are based on the *dwelling unit*, whereas rents under section 3(a) of the 1937 Act are based on the tenant family's *income*. Section 102(a) authorizes PHAs to establish ceiling rents as an alternative rent, but PHAs are not required to do so. A PHA may establish ceiling rents for particular units, particular projects, or the entire inventory of the PHA.

Tenants do not have a right to ceiling rents if a PHA does not adopt them. However, once ceiling rents have been established by a PHA, each family residing in and each new tenant of an affected dwelling unit would be charged the *lower* of the ceiling rent for that unit or the family's income-based rent. A PHA may revoke or raise its ceiling rents at any time after giving reasonable notice to the affected tenants. A PHA must revoke or change its ceiling rents if directed by HUD to do so for reasonable cause.

## II. Applicability

This Notice applies only to public rental housing projects assisted under the 1937 Act. It does not apply to Indian rental housing projects or Turnkey III programs. (Although section 102(a) of the 1987 Act also authorizes ceiling rents in Indian rental housing projects and in lower income housing projects assisted under section 8 that contain more than 2,000 dwelling units, this Notice does not apply either to Indian housing or to any section 8 program fitting that description. Ceiling rents for Indian housing are the subject of a separate notice. The section 8 provision will be addressed in the Department's proposed rule on ceiling rents.)

## III. Purpose of Ceiling Rent

Since 1982, the income-based rent has been the only method available to PHAs for calculating rent. The purpose of ceiling rents is to provide a cap on rents for families whose incomes have increased since moving into public housing to a point where an income-based rent is unreasonable for the housing provided.

The legislative history of section 102(a) shows that Congress, in authorizing ceiling rents, established a three-year limitation on ceiling rent benefits for a tenant family residing in public housing to encourage higher-income families to seek housing on the private market after a reasonable time. (See H.R. Rep. No. 100–122, 100th Cong., 1st Sess. 12, (1987).) HUD policy has always been that families that were income-eligible at initial occupancy may continue to reside in public housing even though their incomes increase to an amount that would make them ineligible for occupancy were they applying at that time. Therefore, a PHA may not force tenant families paying ceiling rent to move once the 36-month period has expired. However, tenant families for whom the 36-month period expires will no longer be eligible for ceiling rents and must be charged an income-based rent after that time.

HUD believes that tenant families should not pay more in rent for public housing than comparable housing would cost on the private rental market. Therefore, HUD has determined that an equitable ceiling rent would be an amount equal to the current effective Section 8 Existing Housing Certificate Program's Fair Market Rents (FRMs) for the area of, if a PHA finds that the FMRs substantially exceed or understate the fair rental value of some or all of the PHA's units, an amount equal to comparable unassisted rental housing in the area, as determined by the PHA in a survey of such comparable housing. In any event, section 102(a) provides that ceiling rents may not be less than the average monthly amount of debt service and operating expenses attributed to units of similar size in public housing projects owned and operated by the PHA. In comparing public housing dwelling units to unassisted rental housing, PHAs should use private rental housing of similar age, location, condition, amenities, design, and size in the same market area.

HUD considers issues such as the burden of increased rents on working families in public housing projects sufficiently significant to permit consideration of individual waiver requests from PHAs seeking relief from the requirements of 24 CFR 913.107 for rent based on income until the necessary rule revisions implementing section 102(a) are effective. Therefore, PHAs that choose to establish ceiling rents in public housing projects may apply to HUD for approval in accordance with the procedures outlined below. (PHAs should be aware that the terms of approval of ceiling rents under this waiver may be affected by the final rule ceiling rents.)



## IV. Determining Ceiling Rent

Section 102(a) provides a PHA with an alternative method for calculating rent. (Section 102(a) has no effect on income-eligibility requirements for admission to public housing.) PHAs may establish ceiling rents, with HUD approval, that are not less than the average monthly amount of debt service and operating expenses attributed to dwelling units of a given size in public housing projects owned and operated by the PHA.

A PHA may establish ceiling rents for all dwelling units in a project or for one or more classes of units. A class of units may be based on any reasonable classification so long as the classification is *unit-based (e.g.,* number of bedrooms). The classification may *not* be *tenant-based, i.e.,* applicable to particular families because of their personal circumstances, rather than the characteristics of the housing they live in.

HUD believes that the need for ceiling rents in a project can be shown by the PHA's demonstrating that there are tenant families paying rent of an amount greater than the current effective section 8 Existing Housing Certificate Program's Fair Market Rents (FMRs) for the area or, if a PHA finds that the FMRs substantially exceed or understate the fair rental value of some or all of the PHA's units, an amount equal to comparable unassisted rental housing in the area, as determined by the PHA in a survey of such comparable housing. In comparing public housing dwelling units to unassisted rental housing, PHAs should use private rental housing of similar age, condition, amenities, design, and size in the same market area.

If a PHA establishes ceiling rents in a public housing project, with HUD approval, each family living in an affected dwelling unit would pay the lower of a ceiling rent or an income-based rent. In situations where a family's income is so low that the ceiling rent for the unit rented by that family is an amount higher than income-based rent would be, the family would pay the income-based rent. Ceiling rents are intended for families whose incomes have increased to the point that an income-based rent is unreasonable for the housing provided.

Families that are eligible for ceiling rent may benefit from ceiling rent for a cumulative total of 36 months. A family may go on and off a ceiling rent because of changed financial circumstances, and any months during which a family pays an income-based rent will not count toward the 36-month limitation. However, if the family goes back on a ceiling rent, all previous months spent on a ceiling rent will count toward the 36-month limitation.

Section 102(a) provides that the *minimum* amount that a ceiling rent may be is the sum of the average monthly debt service and the average monthly operating expense attributed to units of similar size owned by the PHA. An example appears as an appendix to this Notice showing a method whereby a PHA may determine this total average monthly amount ("TAMA").

The average monthly debt service is an amount imputed by HUD based on total development and modernization costs for the PHA. When the legislative provision implemented by this Notice was originally drafted in the early 1980s, all development and modernization programs were funded by debt instruments that were tied to specific projects and became liabilities of a PHA. In practice, however, these debt obligations were paid by HUD, and assignment of debt to the PHA was more of an accounting than a substantive transaction. As many of these debts as possible were forgiven, starting with passage of section 3004 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA). (See 53 FR 31274 (Aug. 17, 1988) for HUD's Statement of Policy on loan forgiveness.) Subsequent development and modernization funding was provided in the form of grants rather than loans to PHAs. Certain Federal Financing Bank debt instruments and long-term bonds issued on behalf of PHAs, however, could not be forgiven in the same manner and remain as long-term PHA debt obligations. The net effect is that there is no relationship between the amount of HUD development and modernization funding provided and a PHA's current debt obligations. When two otherwise identical PHAs are examined, one may have no unforgiven debts while the other may have large unforgiven debts.

Both the 1987 Act and its legislative history make it apparent that the operating costs and debt service amounts Congress intended to be used in establishing an "economic rent" were to be based on an *attributed* amount. Therefore, HUD will impute debt service using total grant funding, forgiven debt, and outstanding debt. This conforms to the intent of the legislation and avoids treating a PHA that has had all debt forgiven differently from an otherwise identical PHA with a large outstanding debt obligation because the debt instruments used were not subject to forgiveness.

The average monthly operating expense is one-twelfth of the sum of: (1) all annual operating expenses reported on the Statement of Operating Receipts and Expenditures as of the end of the most recent fiscal year and (2) the aggregate annual utility allowances for all tenant paid utilities; *minus* the sum of (1) excess utility charges and (2) annual costs, if any, associated with units approved for deprogramming.

The sum of the debt service and operating expenses, or TAMA, is to be distributed over all PHA units, except those approved for deprogramming, whether or not ceiling rents are proposed for all units, with an adjustment only for unit size (number of bedrooms), with a larger unit to receive a larger portion of the PHA's TAMA than a smaller unit.

The distribution by unit size is accomplished using a unit rent relationship, which is based on the rent of a two-bedroom unit (100%). The rent relationships vary from 70% of the two-bedroom rent for an efficiency to 162% of the two-bedroom rent for a six-bedroom unit. The adjustment factors for all units are as follows: Zero-bedroom units (efficiencies), 0.70; one-bedroom units, 0.85; two-bedroom units, 1.00; three-bedroom units, 1.25; four-bedroom units, 1.40; five-bedroom units, 1.61; six-bedroom units, 1.62.

When calculating the *minimum* amount that ceiling rents in public housing projects may be, *i.e.,* the average monthly debt service and operating expenses attributed to units of similar size owned by the PHA, a PHA may follow the three-step procedure shown in the example in the appendix to this notice. The result of the procedure is the *minimum* that the ceiling rent may be. However, HUD believes that it is fair and in keeping with the purpose of section 102(a) that ceiling rents should be set at an amount equal to the current effective Section 8 FMRs for existing housing in the same area or, if a PHA determines that the FMRs substantially exceed or understate the fair rental value of some or all of the PHA's units, an amount equal to comparable unassisted rental housing in the area, provided such amounts are not less than

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the statutory minimum. FMRs for each fiscal year are published annually by HUD in the **Federal Register**.

**V. Requirements for HUD Approval**

To gain the necessary waiver of the income-based rent requirement of 24 CFR 913.107 and permission to adopt ceiling rents in a public housing project or projects owned and operated by a PHA, the PHA must submit a written request to the appropriate HUD Field Office and must:

(1) State the number of families currently residing in units owned and operated by the PHA that are paying rent of an amount calculated as required by 24 CFR 913.107 that is greater than the current effective Fair Market Rent (FMR) under the Section 8 Existing Housing Certificate Program for that locality or, if the proposed ceiling rents are based on the results of a comparability study conducted by the PHA, greater than rents of projects and/or units used as the basis for the study;

(2) State the unit sizes and projects, the ceiling rents proposed in each case, and the number of units to which each ceiling rent will apply;

(3) State the statutory minimum ceiling rent for each unit size for which ceiling rents are proposed (the average monthly amount of debt service and operating expenses attributed to units of similar size in projects owned and operated by the PHA);

(4) State whether the proposed ceiling rents are Section 8 Existing Fair Market Rents, are based on a comparability survey, or are the statutory minimum ceiling rent. If the proposed ceiling rents are based on a comparability survey, provide information on the survey, identify the rents of unassisted projects and/or units which are generally comparable to the projects and/or units designed for ceiling rents, and show any adjustments made to the private market rents for any differences between the private market units and the public housing units that would affect the rental value, such as amenities, locations, design, age, condition, size, or other characteristics; and

(5) Estimate the direct financial impact of the ceiling rents by stating the number of families affected, the average dollar amount of rent reduction per family, and the total cost of the rent reductions.

The HUD Field Office will notify the PHA in writing whether the requirements of 24 CFR 913.107 will be waived and permission granted to adopt ceiling rents as proposed in the PHA's application. HUD's decision will be based upon the need for rent relief in the units for which ceiling rents are proposed as determined by the number of families paying excessive rents compared to the FMRs for the area or rents for comparable unassisted housing.

**VI. Other Matters**

The collection of information requirements contained in this Notice have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. §§ 3501 et seq.) and approved. Sections IV and V of this Notice has been determined by the Department to contain collection of information requirements. Information on these requirements is provided as follows:

| Description | Number of respondents | Responses per respondent | Total annual responses | Hours per response | Total hours |
|---|---|---|---|---|---|
| Section IV: | | | | | |
| Determining ceiling rents | 775 | 1 | 775 | 5 | 3,875 |
| Section V: | | | | | |
| Gathering data to submit for approval | 775 | 1 | 775 | 12 | 9,300 |
| Revise, adopt and implement policies and procedures | 775 | 1 | 775 | 2 | 1,550 |
| Recordkeeping: | | | | | |
| Create files to retain copies of package submitted for HUD approval | | | | | |
| Create logs to track interim determination for families who go off and on program due to change in income | 775 | 1 | 775 | 1 | 775 |
| Total estimated annual burden | | | | | 15,500 |

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding is available for public inspection during regular business hours at the Office of Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410.

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this Notice does not have a potential significant impact on family formation, maintenance, and general well-being and, thus, is not subject to review under the Order. The Notice merely announces an alternative method of setting tenant payments for rent in public housing, which will assist families to afford decent, safe, and sanitary housing of their choice. The General Counsel has also determined, as the Designated Official for HUD under section 6(a) of Executive Order 12612, *Federalism*, that the policies contained in this Notice do not have federalism implications and, thus, are not subject to review under that Order.

Dated: March 9, 1989.

**Thomas Sherman,**

*Acting General Deputy, Assistant Secretary for Public and Indian Housing.*

**APPENDIX**

*Example for Determining Average Monthly Debt Service and Operating Expenses for Units of Similar Size*

*Step 1*

| | |
|---|---|
| 1. Operating expenses (Line 620) from the Statement of Operating Receipts and Expenditures for the PHA's most recent fiscal year | $190,000 |
| 2. Cost of utility allowances for tenant-paid utilities for the PHA's most recent fiscal year | 30,000 |
| 3. Add line 1 and line 2 | 220,000 |
| 4. Cost of excess utilities (Line 070) from Form HUD–52599 for the PHA's most recent fiscal year | 5,200 |



| | |
|---|---|
| 5. Costs associated with deprogrammed units, if any, for the PHA's most recent fiscal year | 0 |
| 6. Add line 4 and line 5 | 5,200 |
| 7. Subtract line 6 from line 3 | 214,800 |
| 8. Imputed debt service costs based upon total development and modernization costs (this figure will be provided to the PHA by the HUD Field Office upon request) | 120,000 |
| 9. Add lines 7 and 8 | 334,800 |
| 10. Total average monthly amount (line 9 divided by 12) | 27,900 |

*Step 2*

| | |
|---|---|
| Number of units owned by PHA* | |
| Times adjustment factor: | |
| 0-bedroom units 20×0.70 | 14 |
| 1-bedroom units 40×0.85 | 34 |
| 2-bedroom units 20×1.00 | 20 |
| 3-bedroom units 20×1.25 | 25 |
| 4-bedroom units 0×1.40 | 0 |
| 5-bedroom units 0×1.61 | 0 |
| 6-bedroom units 0×1.82 | 0 |
| Total | 93 |

*Whether or not ceiling rent is proposed for these units, and irrespective of the method of financing on any individual project or class of dwelling units.

*Step 3*

| | |
|---|---|
| Calculate the two-bedroom minimum monthly rent: | |
| 1. Enter line 10 from Step 1 | 27,900 |
| 2. Enter Total from Step 2 | 93 |
| 3. Calculate 2-bedroom minimum monthly rent (line 1 divided by line 2 | 300 |
| 4. Calculate the minimum monthly rents for other size units: | |
| a. 0-bedroom (line 3×.70) | 210 |
| b. 1-bedroom (line 3×.85) | 255 |
| c. 3-bedroom (line 3×1.25) | 375 |
| d. 4-bedroom (line 3×1.40) | N/A |
| e. 5-bedroom (line 3×1.61) | N/A |
| f. 6-bedroom (line 3×1.82) | N/A |

[FR Doc. 89–5949 Filed 3–14–89; 8:45 am]

BILLING CODE 4210–33–M

**Office of Public Housing**

**[Docket No. N–89–1955]**

**Submission of Proposed Information Collection to OMB**

**AGENCY:** Office of Public Housing, HUD.

**ACTION:** Notice.

**SUMMARY:** The Proposed information collection requirement below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

**SUPPLEMENTARY INFORMATION:** The Department has submitted the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). It is also requested that OMB complete its review within five days.

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

**Authority:** Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: March 9, 1989.

**Thomas Sherman,**

*Director, Office of Public Housing.*

*Proposal:* Processing of applications for Fiscal Year 1989 Funds for Public Housing Resident Management.

*Office:* Public housing.

*Description of the Need for the Information and Its Proposed Use:* This new information collection is required in connection with the issuance of a Notice of Fund Availability which announces the availability of $2.5 million for the Public Housing Resident Management Program for Fiscal Year 1989. The Program will provide technical assistance funding to promote "formation and development of resident management entities."

*Form number:* None.

*Respondents:* Non-profit institutions.

*Frequency of Submission:* One time only.

*Reporting Burden:*

| | Number of respondents | X | Frequency of responses | X | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|---|
| Application Development | 150 | | 1 | | 16 | | 2,400 |

*Total Estimated Burden Hours:* 2,400.

*Status:* New.

*Contact:* Roger W. Braner, HUD (202) 755–7970; John Allison, OMB, (202) 395–6880.

Date: March 9, 1989.

[FR Doc. 89–6040 Filed 3–14–89; 8:45 am]

BILLING CODE 4210–01–M

**DEPARTMENT OF THE INTERIOR**

**Bureau of Land Management**

**[WO–150–09–4830–11]**

**Meetings; National Public Lands Advisory Council**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of meeting of the National Public Lands Advisory Council.

**SUMMARY:** Notice is hereby given that the National Public Lands Advisory Council will meet April 13 and 14, 1989. The meeting will be held in Room 7000 A&B of the Main Interior Building, 18th and C Streets, NW., Washington, DC. The meeting hours will be 8:00 a.m. to 12:00 p.m. on Thursday, April 13, and 8:00 a.m. to 5:00 p.m. on Friday, April 14. The proposed agenda for the 2-day meeting is:

*Thursday, April 13:* Morning: Election of Council Officers for 1989; Status report on natural resource legislation;

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Discussion and presentation of Council resolutions to Secretary of the Interior; Address by Interior Secretary Manuel Lujan, Jr., Meeting of Council Subcommittees (Energy and Minerals, Lands, and Renewable Resources).

*Friday, April 14:* Morning: Council old and new business, to include setting of agendas for future Council sessions and status report on the wild horse and burro program; Meeting of Council Subcommittees.

Afternoon: Public statement period; Final meetings of Council Subcommittees; Reports from Subcommittees to full Council and consideration of Council resolutions.

All meetings of the Council are open to the public. Opportunity will be given for members of the public to make oral statements to the Council, beginning at 1:00 p.m. on Friday, April 14. Speakers should address national public lands issues and are encouraged to submit a copy of their written comments by April 7 to the Bureau of Land Management's Washington, DC, office of at the address listed below. Depending on the number of people who wish to address the Council, it may be necessary to limit the length of oral presentations.

**DATES:** April 13 and 14—Council Meeting. April 14—Public Statements.

**ADDRESS:** Copies of public statements should be mailed by April 7 to: Director (150), Bureau of Land Management, MS–5558, Department of the Interior, Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** Karen Slater, Washington, DC Office, Bureau of Land Management, telephone (202) 343–5101.

**SUPPLEMENTARY INFORMATION:** The Council advises the Secretary of the Interior through the Director, Bureau of Land Management, regarding policies and programs of a national scope related to public lands and resources under the jurisdiction of BLM.

**Robert F. Burford,**

*Director.*

[FR Doc. 89–6038 Filed 3–14–89; 8:45 am]

BILLING CODE 4310–84–M

## Minerals Management Service

**[DES 89–2]**

### Gulf of Mexico Region; Availability of the Draft Environmental Impact Statement and Intent To Hold Public Hearings Regarding Proposed Central and Western Gulf of Mexico Sales 123 (March 1990) and 125 (August 1990)

**March 10, 1989.**

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Minerals Management Service (MMS) has prepared a draft Environmental Impact Statement (EIS) relating to the proposed 1990 Outer Continental Shelf (OCS) oil and gas lease sales of available unleased blocks in the central and western Gulf of Mexico (GOM). The proposed Central Gulf Sale 123 will offer for lease approximately 32.1 million acres, and the Western Gulf Sale 125 will offer approximately 27.8 million acres. Single copies of the draft EIS can be obtained from the Minerals Management Service, Gulf of Mexico Region, Attention: Public Information Office, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana 70123.

Copies of the draft EIS will be available for review by the public in the following libraries: Austin Public Library, 402 West Ninth Street, Austin, Texas; Houston Public Library, 500 McKinney Street, Houston, Texas; Dallas Public Library, 1513 Young Street, Dallas, Texas; Brazoria County Library, 410 Brazoport Boulevard, Freeport, Texas; LaRatama Library, 506 Mesquite Street, Corpus Christi, Texas; Texas Southmost College Library, 1825 May Street, Brownsville, Texas; Rosenberg Library, 2310 Sealy Street, Galveston, Texas; Texas State Library, 1200 Brazos Street, Austin, Texas; Texas A&M University, Evans Library, Spence and Lubbock Streets, College Station, Texas; University of Texas, Lyndon B. Johnson School of Public Affairs Library, 2313 Red River Street, Austin, Texas; The University of Texas at Dallas Library, 2801 North Floyd Road, Richardson, Texas; Lamar University, Gray Library, Virginia Avenue, Beaumont, Texas; Texas Tech University, Law Library, 1802 Hartford Street, Lubbock, Texas; East Texas State University Library, 2600 Neal Street, Commerce, Texas; Stephen F. Austin State University, Steen Library, Wilson Drive, Nacogdoches, Texas; University of Texas, 21st and Speedway Streets, Austin, Texas; University of Texas Law School, Tarlton Law Library, 727 East 26th Street, Austin, Texas; Baylor University Library, 13125 Third Street, Waco, Texas; University of Texas at Arlington, 701 South Cooper Street, Arlington, Texas; University of Houston-University Park, 4800 Calhoun Boulevard, Houston, Texas; University of Texas at El Paso, Wiggins Road and University Avenue, El Paso, Texas; Abilene Christian University, Margaret and Herman Brown Library, 1600 Campus Court, Abilene, Texas; Texas Tech University Library, 18th and Boston Street, Lubbock, Texas; University of Texas at San Antonio, John Peace Boulevard, San Antonio, Texas; Tulane University, Howard Tilton Memorial Library, 7001 Freret Street, New Orleans, Louisiana; Louisiana Tech University, Prescott Memorial Library, Everet Street, Ruston, Louisiana; New Orleans Public Library, 219 Loyola Avenue, New Orleans, Louisiana; Louisiana State Library, 760 Riverside Road, Baton Rouge, Louisiana; Lafayette Public Library, 301 W. Congress Street, Lafayette, Louisiana; Calcasieu Parish Library, 411 Pujo Street, Lake Charles, Louisiana; McNeese State University, Luther E. Frazar Memorial Library, Ryan Street, Lake Charles, Louisiana; Nicholls State University, Nicholls State Library, Leighton Drive, Thibodaux, Louisiana; University of Southwestern Louisiana, Dupre Library, 302 East St. Mary Boulevard, Lafayette, Louisiana; LUMCOM, Library, Star Route 541, Chauvin, Louisiana; Harrison County Library, 14th and 21st Avenues, Gulfport, Mississippi; Gulf Coast Research Lab., Gunter Library, 703 East Beach Drive, Ocean Springs, Mississippi; Auburn University at Montgomery, Library, Taylor Road, Montgomery, Alabama; University of Alabama Libraries, 809 University Boulevard East, Tuscaloosa, Alabama; Mobile Public Library, 701 Government Street, Mobile, Alabama; Montgomery Public Library, 445 South Lawrence Street, Montgomery, Alabama; Gulf Shores Public Library, Municipal Complex, Route 3, Gulf Shores, Alabama; Dauphin Island Sea Lab, Marine Environmental Science Consortium, Library, Bienville Boulevard, Dauphin Island, Alabama; University of South Alabama, University Boulevard, Mobile, Alabama; University of Florida Libraries, University Avenue, Gainesville, Florida; Florida A&M University, Coleman Memorial Library, Martin Luther King Boulevard, Tallahassee, Florida; Florida Atlantic University, Library, 20th Street, Boca Raton, Florida; University of Miami Library, 4600 Rickenbacker Causeway, Miami, Florida; University of Florida, Holland Law Center Library, Southwest 25th Street and 2nd Avenue, Gainesville, Florida; St. Petersburg Public Library, 3745 Ninth Avenue North, St. Petersburg, Florida; West Florida Regional Library, 200 West Gregory Street, Pensacola, Florida; Florida Northwest Regional Library System, 25 West Government Street, Panama City, Florida; Leon County Public Library, 127 North Monroe Street, Tallahassee, Florida; Lee County Library, 3355 Fowler Street, Fort Myers, Florida; Charlotte-Glades Regional Library System, 2280 NW Aaron Street, Port Charlotte, Florida; Tampa-Hillsborough County Public Library System, 800 North Ashley Street, Tampa, Florida; Key Largo Public Library, 99551 No. 3 Overseas Highway, Key Largo, Florida; Selby Public Library, 1001 Boulevard of the Arts, Sarasota, Florida; Monroe County Public Library, 700 Fleming Street, Key West, Florida.

Two public hearings pertaining to these lease sales will be held at the following locations and times: Minerals Management Service, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, Conference Room 111, New Orleans, Louisiana 70123, April 25, 1989, 9:00 a.m.; Rosenberg Library, 2310 Sealy, Room 125, Galveston, Texas 77550, April 25, 1989, 9:00 a.m. The purpose of these public hearings is to provide the Department of the Interior and MMS with information from individuals, public and private groups, and Government Agencies to further evaluate the potential effects of the proposed lease sales. Pertinent testimony and comments will be addressed in the final EIS for Sales 123 and 125.

Persons who wish to testify at these hearings are requested to contact the Regional Supervisor, by writing the Office of Leasing and Environment (LE–2), Gulf of Mexico Region, 1201 Elmwood Park Boulevard, Room 311, New Orleans, Louisiana 70123, or by telephone (504) 736–2540, no later than 3:30 p.m., April 21, 1989. Unscheduled speakers may have an opportunity to speak following testimony of those who have made arrangements in advance, if time permits. Oral testimony should be limited to 10 minutes. Testimony may be supplemented by a written statement which, if submitted at a hearing, will be considered as part of the hearing record. Those unable to attend the hearing may submit written statements until the close of the comment period, May 9, 1989. Written statements will receive the same degree of consideration in the final EIS as oral testimony presented at the hearing.

Approved:

**Carolita Kallaur,**

*Acting Associate Director for Offshore Minerals Management.*

**John H. Farrell,**

*Acting Director, Office of Environmental Project Review.*

Date: March 10, 1989.

[FR Doc. 89–5947 Filed 3–14–89; 8:45 am]

BILLING CODE 4310–MR–M



### Onshore Oil and Gas Production Accounting, Transfer of Responsibility

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Notice to lease operators to report onshore production data.

**SUMMARY:** On May 9, 1988, the Minerals Management Service (MMS) published a Notice of Final Rulemaking in the **Federal Register** [53 FR 16408] to amend its regulations to provide for lease operators to report onshore production data to MMS, as a result of the transfer of accounting responsibility from the Bureau of Land Management (BLM). As stated in the Final Rule, MMS is following a phased conversion schedule to accomplish the transfer. Phases 1A and 1B conversions have been completed. The purpose of this notice is to inform operators on onshore leases/agreements that phases 2, 3, and 4 will be converted simultaneously. These operators will begin reporting production data to MMS for the August 1989 production month, the report for which is due to MMS by October 15, 1989.

*Conversion Date:* Phases 2, 3, and 4 operators are required to begin reporting onshore production data to MMS for the August 1989 production month, the report for which is due to MMS by October 15, 1989.

**FOR FURTHER INFORMATION CONTACT:** John Russo, Deputy Chief, Production Accounting Division, Royalty Management Program, Minerals Management Service, Denver Federal Center, Building 85, P.O. Box 25165, Mail Stop 657, Denver, Colorado 80225, (303) 231–3520.

**SUPPLEMENTARY INFORMATION:** Phase 1a of the conversion schedule transferred leases/agreements under the jurisdiction of the Rawlins, Wyoming, BLM District Office. Phase 1b converted leases/agreements under the jurisdiction of the Colorado, Montana, and Utah BLM State Offices and the remaining leases/agreements under the jurisdiction of the Wyoming BLM State Office. Phases 2, 3, and 4 convert leases/agreements under the jurisdiction of the Alaska, California, Eastern States, Nevada, and New Mexico (which includes the Tulsa District Office) BLM State Offices.

Prior to the conversion date, MMS will provide affected operators with information regarding various aspects of the conversion. This information will include a listing of all leases, agreements, and well reference data in MMS's data base for purposes of comparison and reconciliation prior to conversion.

Affected operators will be assigned a unique five-digit operator number which is required to be reported on the Monthly Report of Operations, form MMS–3160.

The MMS will also provide operators with reporting instructions and training sessions to facilitate an orderly transfer of production reporting from BLM.

Dated: March 8, 1989.

**Jerry D. Hill,**

*Associate Director for Royalty Management.*

[FR Doc. 89–5906 Filed 3–14–89; 8:45 am]

BILLING CODE 4310–MR–M

## National Park Service

### National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before March 4, 1989. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by March 30, 1989.

**Carol D. Shull,**

*Chief of Registration, National Register.*

**FLORIDA**

**Leon County**

*Tall Timbers Plantation*, Co. Rd. 132, 3 mi. W of US 319, Tallahassee vicinity, 89000240

**Sarasota County**

*Blalock House (Venice MPS)*, 241 S. Harbor Dr., Venice, 89000235

*Levillain—Leton House (Venice MPS)*, 229 S. Harbor Dr., Venice, 89000234

**INDIANA**

**Fountain County**

*Carnegie Library of Covington*, 622 S. Fifth St., Covington, 89000239

**Harrison County**

*Corydon Historic District (Boundary Increase)*, Roughly bounded by Summit, Maple & Walnut Sts., College Ave., Chestnut, Capitol, Poplar, Water, Beaver & Mulberry Sts., Corydon, 89000243

**Marion County**

*Kuhn, Charles, House*, 340 W. Michigan St., Indianapolis, 89000237

**Morgan County**

*Bradford Estate*, 5040 IN 67 North, Martinsville, 89000236

**Vanderburgh County**

*Bernardin—Johnson House*, 17 Johnson Pl., Evansville, 89000238

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MISSOURI

Jackson County

*Unity School of Christianity Historic District*, Jct. US 50 and Colborn Rd., Unity Village, 89000240

NEBRASKA

Lancaster County

*Lancaster Block*, 6201—6305 Havelock Ave., Lincoln, 89000243

*Watkins, Albert, House*, 920 D St., Lincoln, 89000244

NEW JERSEY

Camden County

*Solomon Wesley United Methodist Church*, 291–B Davistown Rd./Asyla Rd., Blackwood, 89000241

NORTH CAROLINA

Buncombe County

*Grove Park Historic District*, Roughly bounded by Evelyn Pl., Macon Ave., Howland Rd., Woodland Rd., Canterbury Ln., Charlotte St., and Murdock Ave., Asheville, 89000247

VERMONT

Washington County

*Davis, Parley, House*, Town Hwy. 3/RR 1, East Montpelier, 89000242

*Montpelier Historic District (Boundary Increase)*, 70—101 E. State St. and 1 West St., Montpelier, 89000248

WISCONSIN

Dane County

*Badger State Shoe Company*, 123 N. Blount St., Madison, 89000232

Jefferson County

*Copeland—Ryder Company*, 411 Wisconsin Dr., Jefferson, 89000233

Waupaca County

*Rural on the Crystal Historic District*, Roughly bounded by Arbor St., Rapley St., Rural Rd., and Cleghorn St., Rural, 89000231

[FR Doc. 89–5801 Filed 3–14–89; 8:45 am]

BILLING CODE 4310–70–M

## INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

### Agency For International Development

### Microenterprise Advisory Committee; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of the A.I.D. Microenterprise Advisory Committee meeting on April 3, 1989 at the Westpark Hotel, 1900 North Fort Myer Drive, Rosslyn, Virginia. The Committee will discuss guidelines for the implementation of the Agency for International Development's microenterprise program in light of the Agency's microenterprise stocktaking exercise and its FY 1989 microenterprise obligations package.

The meeting will begin at 9:00 a.m. and adjourn at 5:00 p.m. on April 3. The meeting is open to the public. Any interested persons may attend, file written statements with the Committee before or after the meeting, or may present oral statements in accordance with procedures established by the Committee and the extent the time available for the meeting permits.

Dr. Michael Farbman, Chief Employment and Enterprise Development Division, Office of Rural and Institutional Development, Bureau for Science and Technology, is designated as the A.I.D. representative at the meeting. Dr. Rose E. Bigelow, of the same Division, may be deputized to act for Dr. Farbman during part or all of this meeting. It is suggested that those who wish more specific information concerning this meeting contact Dr. Bigelow, 1601 N. Kent Street, Arlington, Virginia 22209, call 704–235–8984.

**Michael Farbman,**

*A.I.D. Representative, Microenterprise Advisory Committee.*

Date: March 2, 1989.

[FR Doc. 89–5816 Filed 3–14–89; 8:45 am]

BILLING CODE 8116–01–M

## INTERNATIONAL TRADE COMMISSION

**[Determination in Investigation No. 731–TA–207 (Final–Remand)]**

### Cellular Mobile Telephones and Subassemblies Thereof from Japan

In 1985, the U.S. International Trade Commission determined in Investigation No. 731–TA–207 (Final) that an industry in the United States was materially injured by reason of imports from Japan of Cellular Mobile telephones and subassemblies thereof, provided for in items 685.28 and 685.32 of the Tariff Schedules of the United States, that were found by the Department of Commerce to be sold in the United States at less than fair value (USITC Pub. No. 1766 (1985)). That determination was subsequently appealed to The U.S. Court of International Trade and remanded to the Commission for further consideration (*Mitsubishi Electirc Corporation, et al.*, v. *United States and Motorola, Inc.*, Slip Op. 88–152 (October 31, 1988)). On the basis of its consideration of the record [1] developed in its remand investigation, the Commission has made a unanimous affirmative determination.[2] The views were submitted to the Court in response to the remand.

The views of the Commission are contained in USITC Publication 2155 (February 1989), entitled "Cellular Mobile Telephones and Subassemblies Thereof from Japan: Views on Remand in Investigation No. 731–TA–207 (Final)."

By Order of the Commission.

**Kenneth R. Mason,**

*Secretary.*

Issued: March 10, 1989.

[FR Doc. 89–6034 Filed 3–14–89; 8:45 am]

BILLING CODE 7020–02–M

[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] Commissioner Brunsdale, Cass, and Newquist, not present in the initial case, determined on the basis of consideration of the record as supplemented by the remand investigation, that an industry in the United States was materially injured by reason of imports of cellular mobile telephones and subassemblies thereof from Japan.

**[Investigation No. 337–TA–283]**

### Certain Crystalline Cefadroxil Monohydrate; Investigation

**AGENCY:** International Trade Commission.

**ACTION:** Institution of investigation pursuant to 19 U.S.C. 1337 and provisional acceptance of motion for temporary relief.

**SUMMARY:** Notice is hereby given that a complaint and a motion for temporary relief were filed with the U.S. International Trade Commission on February 1, 1989, under section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), on behalf of Bristol-Myers Company, 345 Park Avenue, New York, New York 10154. The complaint and motion for temporary relief were supplemented on February 24, 1989.

The complaint, as supplemented, alleges violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation by the owner, importer, or consignee, of certain crystalline cefadroxil monohydrate by reason of alleged direct and induced infringement of U.S. Letters Patent 4,504,657; and that there exists an industry in the United States as required by subsection (a)(2) of the section 337. Complainant requests that the Commission institute an



investigation and, after a full investigation, issue a permanent exclusion order and permanent cease and desist orders.

The motion for temporary relief, as supplemented, requests that the Commission issue a temporary exclusion order and temporary cease and desist orders prohibiting the importation into and sale in the United States of infringing crystalline cefadroxil monohydrate.

**ADDRESSES:** The complaint and motion for temporary relief, except for any confidential information contained therein, are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–252–1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

**FOR FURTHER INFORMATION CONTACT:** Cheri M. Taylor, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–252–1568.

**AUTHORITY:** The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in § 210.12 of the Commission's Interim Rules of Practice and Procedure, 53 FR 33034, 33057 (Aug. 29, 1988). The authority for provisional acceptance of the motion for temporary relief is contained in § 210.24(e)(8) of the Commission's Interim Rules of Practice and Procedure, 53 FR 33034, 33061 (Aug. 29, 1988).

**SCOPE OF INVESTIGATION:** Having considered the complaint and motion for temporary relief, the U.S. International Trade Commission, on March 8, 1989, *Ordered That*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation by the owner, importer, or consignee, of certain crystalline cefadroxil monohydrate by reason of alleged direct or induced infringement of the claim of U.S. Letters Patent 4,504,657, and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) Pursuant to § 210.24(e)(8) of the Commission's rules, the motion for temporary relief under subsection (e) of section 337 of the Tariff Act of 1930, which was filed with the complaint, be provisionally accepted for referral to an administrative law judge.

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—

Bristol-Myers Company, 345 Park Avenue, New York, New York 10154.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint and motion for temporary relief are to be served:

Istituto Biochimico, Italiano Industria Giovanni, Lorenzini S.p.A., Via G. Lorenzini 2–4, 20139 Milano, Italy

Kalipharama, Inc., 200 Elmora Avenue, Elizabeth, New Jersey 07207

Purepac Pharmaceutical Co., 200 Elmora Avenue, Elizabeth, New Jersey 07207

Biocraft Laboratories, Inc., 92 Route 46, Elmwood Park, New Jersey 07407

Institut Biochimique, S.A., Via al Ponte 13, 6900 Massagno, Switzerland

Gema S.A., Via Agusta 158, Planta 7, 08006 Barcelona, Spain

(c) Cheri M. Taylor, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street S.W., Room 401J, Washington, DC 20436, shall be the Commission investigative attorney, party to this investigation; and

(4) For the investigation and temporary relief proceedings so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding administrative law judge.

Responses to the complaint, the motion for temporary relief and the notice of investigation must be submitted by the named respondents in accordance with §§ 210.21 and 210.24 of the Commission's Interim Rules of Practice and Procedure, 53 FR 33034, 33059–33063 (Aug. 29, 1988) and 53 FR 49118, 49129–49133 (Dec. 6, 1988). Pursuant to §§ 201.16(d), 210.21(a), and 210.24(e)(9) of the Commission's Rules (19 CFR 201.16(d), 53 FR 33034, 33059 and 53 FR 49118, 49130–49131), such responses will be considered by the Commission if received not later than ten (10) days after the date of service by the Commission of the complaint, the motion for temporary relief and the notice of investigation. Extensions of time for submitting responses to the complaint, the motion for temporary relief and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint, in the motion for temporary relief and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint, the motion for temporary relief, and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint, motion for temporary relief and this notice, and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

By order of the Commission.

**Kenneth R. Mason,**

*Secretary.*

Issued: March 9, 1989.

[FR Doc. 89–6035 Filed 3–14–89; 8:45 am]

BILLING CODE 7020–02–M

**[Investigation No. 337–TA–294]**

### Certain Electric Power Tools Battery Cartridges and Battery chargers; Initial Determination Terminating Respondent on the Basis of Settlement Agreement

**AGENCY:** International Trade Commission.

**ACTION:** Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondent on the basis of a settlement agreement: Robert Bosch Power Tool Corporation.

**SUPPLEMENTARY INFORMATION:** This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on March 7, 1989.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, DC 20436, telephone 202–252–1000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the

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Commission's TDD terminal on 202–252–1810.

*Written Comments:* Interested persons may file written comments with the Commission concerning termination of the aforementioned respondent. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 500 E Street, SW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reason why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

**FOR FURTHER INFORMATION CONTACT:** Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202–252–1805.

By order of the Commission.

**Kenneth R. Mason,**

*Secretary.*

Issued: March 6, 1989.

[FR Doc. 89–6037 Filed 3–14–89; 8:45 am]

BILLING CODE 7020–02–M

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**[Investigation No. 332–271]**

## Lime From Mexico; Investigation and Hearing

**AGENCY:** United States International Trade Commission.

**ACTION:** Institution of investigation and scheduling of public hearing.

**SUMMARY:** Following receipt on February 8, 1989, of a request from the U.S. Trade Representative (USTR), the Commission instituted investigation No. 332–271 under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) (the act). As requested by USTR, the Commission will report to the President on the probable economic effect on an industry in the United States of revocation by the Department of Commerce of the outstanding countervailing duty order on lime from Mexico, provided for in subheadings 2522.10.00, 2522.20.00 and 2522.30.00 of the Harmonized Tariff Schedule of the United States. In accordance with USTR's request, the Commission will submit its report to the President within 150 days of the date of the request, or by July 10, 1989.

**EFFECTIVE DATE:** February 8, 1989.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Haines (202–252–1200), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–252–1000.

### Background and Scope of Investigation

On February 8, 1989, the Commission received a request from the USTR (copy attached) to "conduct an investigation into, and report to the President on whether, the probable economic effect on an industry in the United States of revocation by the Department of Commerce of the outstanding countervailing duty order on lime from Mexico, 49 FR 35672, would be such that (1) an industry in the United States would be materially injured, or would be threatened with material injury, or (2) the establishment of an industry in the United States would be materially retarded." USTR further stated that the terms used in its request are defined at 19 U.S.C. 1677.

### Public Hearing

The Commission will hold a public hearing in connection with this investigation beginning at 9:30 a.m. on May 16, 1989, at the U.S. International Trade Commission Building, 500 E Street SW, Washington, DC. All persons will have the opportunity to appear by counsel or in person, to present information, and to be heard.

Requests to appear at the public hearing should be filed with the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, not later than the close of business (5:15 p.m.) on May 10, 1989. If the number of persons requesting an opportunity to appear by counsel or in person is large, limitation of time for the presentation of oral testimony is in the public interest to ensure that all viewpoints are aired. Accordingly, in scheduling appearances at the hearing, the time to be allotted to witnesses for the presentation of oral testimony will be limited. The Commission will determine appropriate allocations of time based on the number of persons requesting an opportunity to appear. Questioning of witnesses will be limited to members of the Commission and its staff and witnesses should be prepared to provide additional information in response to such questioning.

Any written materials presented at the hearing must be submitted in accordance with the requirements of § 201.8 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.8).

### Written Submissions

Interested persons are invited to submit written statements in the form of one prehearing and/or one posthearing statement (as described below) concerning the investigation, in lieu of, or in addition to, appearances at the public hearing. Commercial or financial information that a submitter desires that the Commission treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6).

A signed original and fourteen (14) copies of each written statement must be submitted to the Commission in accordance with § 201.8(d) of the Commission's rules (19 CFR 201.8(d)). All written submissions, except for confidential business information, will be made available for inspection by the public during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Persons who intend to submit a written statement to the Commission should so inform the Secretary of the Commission no later than the close of business on May 10, 1989. To be assured of consideration by the Commission, a prehearing statement should be submitted not later than the close of business on May 15, 1989. Posthearing statements must be submitted not later than the close of business on May 25, 1989.

The Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who have requested an opportunity to appear at the public hearing or who have indicated an intention to submit a written statement. The service list will be made available to the public on May 11, 1989. The Commission encourages all persons or counsel therefor filing a written statement with the Commission to serve a non-confidential copy of such statement on each person on the service list.

### Release of Data

A public version of the tables prepared for inclusion in the Commission's report will be released to



the persons on the service list on May 5, 1989.

By order of the Commission.

**Kenneth R. Mason,**

*Secretary.*

Issued: March 7, 1989.

[FR Doc. 89–6036 Filed 3–14–89; 8:45 am]

BILLING CODE 7020–02–M

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## DEPARTMENT OF JUSTICE

### Office of Juvenile Justice and Delinquency Prevention

### Missing Children's Assistance Act Final Program Priorities

**AGENCY:** Office of Juvenile Justice and Delinquency Prevention.

**ACTION:** Notice of Final FY 1989 Research, Demonstration, and Service Program Priorities and Merit Selection Criteria under the Missing Children's Assistance Act.

**SUMMARY:** The Office of Juvenile Justice and Delinquency Prevention (OJJDP) is publishing its final program priorities for making grants and contracts under the Missing Children's Assistance Act, title IV, section 405, of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended by the Juvenile Justice and Delinquency Prevention amendments of 1988, subtitle F of title VII of Pub. L. 100–690, November 18, 1988.

**FOR FURTHER INFORMATION CONTACT:** Mary Witten Neal, Director, Missing Children's Program, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue NW., Washington, DC 20531, (202) 724–7655.

**SUPPLEMENTARY INFORMATION:** Responsibility for establishing annual research, demonstration, and service program priorities and criteria for making grants and contracts pursuant to section 405 of the Missing Children's Assistance Act rests with the Administrator of the Office of Juvenile Justice and Delinquency Prevention. For FY 1989, the final funding priorities for section 405 will be the continuation of three programs. The Acting Administrator is hereby announcing these priorities, specifying merit and performance criteria to be applied in their review.

Listed below are programs currently funded under section 405 of the Missing Children's Assistance Act that will be considered for continued funding in FY 1989 under their existing project period grants.

### The Child Victim as Witness Research and Development Program

This program implements and tests new strategies to be used to improve court policies and practices for handling child victim witnesses (405(a)(6)).

### Families of Missing Children: Psychological Consequences and Promising Interventions

The purpose of this project is to increase our knowledge of, and develop effective treatment alternatives for, the psychological consequences to families with missing and exploited children (405(a)(4) (A) and (B)).

### Reunification of Missing Children

The purpose of this development initiative is to identify promising or effective strategies to assist families in adjusting to the return of a missing child (405(a)(7)).

The following criteria, based on merit, will be considered in assessing the three noncompeting continuation applications (a noncompeting continuation grant is made in support of a new budget period within an approved and existing project period):

(1) The results of title IV funding under the recipient's current award justify further program activity;

(2) The recipient has promptly submitted all required reports;

(3) Adequate grantor agency funds are available to support the project;

(4) The recipient has shown satisfactory progress in achieving the objectives of the project and has met all material terms and conditions of the award;

(5) The recipient's management practices have provided adequate stewardship of grantor agency funds; and

(6) Any other reason that would indicate continued funding would be in the best interest of the Government.

Dated: March 9, 1989.

Approved:

**Diane M. Munson,**

*Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.*

[FR Doc. 89–6003 Filed 3–14–89; 8:45 am]

BILLING CODE 4410–18–M

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## DEPARTMENT OF LABOR

### Office of the Secretary

### Commission on Workforce Quality and Labor Market Efficiency; Meeting

The Commission on Workforce Quality and Labor Market Efficiency was established under the provisions of the Federal Advisory Committee Act to increase the excellence of the American workforce.

A public meeting of the Commission on Workforce Quality and Labor Market Efficiency will be held on April 4, 1989, commencing at 1:00 p.m., in room S–2506 of the Department of Labor, 200 Constitution Avenue, NW., Washington, DC.

The purpose of the meeting is to focus on the specific recommendations that the Commissioners wish to consider and refine in subsequent meetings.

**FOR FURTHER INFORMATION CONTACT:** Laurie J. Bassi, Deputy Director, Commission on Workforce Quality and Labor Market Efficiency, U.S. Department of Labor, 200 Constitution Avenue, NW. Room C–2313, Washington, DC 20210, telephone (202) 523–6836.

Individuals or organizations wishing to submit written statements to the Commission on Workforce Quality and Labor Market Efficiency should send 40 copies to the address given above. Papers will be accepted and included in the record of the meeting if received on or before March 28, 1989.

On May 4, 1989 and thereafter, official records of the meeting will be available for public inspection at: Department of Labor, 200 Constitution Avenue, Room C–2313, Washington, DC.

Signed at Washington, DC., this 9th day of March 1989.

**Elizabeth Dole,**

*Secretary of Labor.*

[FR Doc. 89–5956 Filed 3–14–89; 8:45 am]

BILLING CODE 4510–23–M

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### Office of the Assistant Secretary for Veterans' Employment and Training

### Funding for Fiscal Year 1989; Stewart B. McKinney Homeless Assistance Act; Homeless Veterans' Reintegration Projects

**AGENCY:** Office of the Assistant Secretary for Veterans' Employment and Training.

**ACTION:** Notice.

**SUMMARY:** This notice sets forth the Fiscal Year 1989 funding procedures for Homeless Veterans' Reintegration Projects (HVRP) operating under Title VII, Subtitle C, section 738 of the Stewart B. McKinney Homeless Assistance Act. Grantees which were funded under the competitive process held by the U.S. Department of Labor, Office of the Assistant Secretary for Veterans' Employment and Training, in FY 1988 will be given the opportunity to apply for additional funds and for a

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program extension through September 30, 1990. The purpose of these programs is to expedite the reintegration of homeless veterans into the labor force.

**DATE:** During March 1989, application instruction will be sent to the current HVRP grantees which were funded through the FY 1988 competitive process as described below. Applications will be due at least sixty days prior to the expiration date of the FY 1988 HVRP grants, but in all cases must be submitted no later than July 15, 1989. Awards will be made between July 1 and September 30, 1989.

**FOR FURTHER INFORMATION CONTACT:** Ms. Christine Chudd, Office of the Assistant Secretary for Veterans' Employment and Training, 200 Constitution Ave., NW., Rm. S1316, Washington, DC 20210, Telephone (202) 523-9110.

**SUPPLEMENTARY INFORMATION:** The Office of the Assistant Secretary for Veterans' Employment and Training announces the availability of approximately $1.35 million to extend programs operated by FY 1988 HVRP grantees through September 30, 1990. These grantees were funded as a result of a competition held in FY 1988, and the recipients of the funds are State or local public agencies providing services to the following geographic areas: San Diego, California; San Jose, California; Denver, Colorado; Jacksonville, Florida; Atlanta, Georgia; Boston, Massachusetts; Detroit, Michigan; St. Louis, Missouri; New York City, New York; Portland, Oregon; Pittsburgh, Pennsylvania; Nashville, Tennessee; San Antonio, Texas; Olympia, Seattle, and Tacoma, Washington, (one grant); and Milwaukee, Wisconsin.

To determine funding levels for the second year, individual negotiations will be held with each grantee. Factors effecting the funding determination will include current spending rate, program performance to date, the number and needs of homeless veterans in the geographic area, and any adjustments to program design and would enhance the probability of long term job retention.

In all likelihood, those grantees with slow start-up will be funded at less than the first year level since carryover funds will be available for several months into the second year. Those grantees who will have little or no carryover funds will most likely receive an amount equal to or more than the first year depending on the factors noted above. It is anticipated that grantees will be funded at 75% to 125% of the first year level. However, the Office of the Assistant Secretary reserves the right not to fund grantees which are performing extremely poor and which show little promise of improvement in a second year of operation.

Signed at Washington, DC, this 9th day of March, 1989.

**Donald E. Shasteen,**

*Assistant Secretary for Veterans' Employment and Training.*

[FR Doc. 89-5955 Filed 3-14-89; 8:45 am]

BILLING CODE 4510-79-M

## Employment and Training Administration

### Accusonic Systems Corp. et al.; Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than March 27, 1989.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than March 27, 1989.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC this 27th day of February 1989.

**Marvin M. Fooks,**

*Director, Office of Trade Adjustment Assistance.*

APPENDIX

| Petitioner (Union/workers/Firm) | Location | Date received | Date of petition | Petition number | Articles produced |
|---|---|---|---|---|---|
| Accusonic Systems Corp. (Workers) | New Hyde Park, NY | 2/27/89 | 2/14/89 | 22,515 | Transformers, Speakers & Circuit Boards |
| Beth Energy Mines, Mine No. 84 Complex (UMWA). | Coleburg, PA | 2/27/89 | 2/3/89 | 22,516 | Coal |
| Boilermaker Contractor Assoc. (Boilermakers) | Buffalo, NY | 2/27/89 | 2/10/89 | 22,517 | Oil & Gas |
| Brighton Metal Products (AIW) | Caseville, MI | 2/27/89 | 2/9/89 | 22,518 | Sleeper Cabs |
| Chenin Clothing Corp. (ACTWU) | New York, NY | 2/27/89 | 2/8/89 | 22,519 | Men's Sportcoats |
| D'Altrui Industries (OCAW) | Elizabeth, NJ | 2/27/89 | 2/10/89 | 22,520 | Steel Racks |
| Dollinger Corp. (IUE) | Rochester, NY | 2/27/89 | 2/8/89 | 22,521 | Industrial Filtration Systems |
| E F. Hutton (Workers) | New York, NY | 2/27/89 | 2/10/89 | 22,522 | Financial Services |
| E&L Fashions (ILGWU) | Paterson, NJ | 2/27/89 | 2/8/89 | 22,523 | Ladies' Coats |
| Eagle Electric Mfg., Co. (UAW) | Long Island City, NY | 2/27/89 | 2/9/89 | 22,524 | Electrical Devices |
| Eagle Sportogs, Inc. (Company) | Union, NJ | 2/27/89 | 2/8/89 | 22,525 | Silk Screened Clothing |
| Emhart Industries, Inc.-Hardware Div. (Company) | Berlin, CT | 2/27/89 | 2/7/89 | 22,526 | Locks |
| Farah Manufacturing Co. (Workers) | El Paso, TX | 2/27/89 | 2/3/89 | 22,527 | Men's & Boy's Coats & Pants |
| Fiske Inc. (Company) | Midland, TX | 2/27/89 | 1/19/89 | 22,528 | Oilfield Goods |
| George W. Moore, Inc. (Workers) | Waltham, MA | 2/27/89 | 2/3/89 | 22,529 | Set Screws |
| HEFCO (Company) | Eatontown, NJ | 2/27/89 | 2/14/89 | 22,530 | Air Filters |
| Hetleman/Stag Brewery (Workers) | Belleville, IL | 2/27/89 | 2/13/89 | 22,531 | Beer & Ale |



APPENDIX—Continued

| Petitioner (Union/workers/Firm) | Location | Date received | Date of petition | Petition number | Articles produced |
|---|---|---|---|---|---|
| Hocking Oil Co., Inc. (Company) | Mt. Carmel, IL | 2/27/89 | 2/7/89 | 22,532 | Oil & Gas |
| J.M. Manufacturing Inc. (Workers) | Denison, TX | 2/27/89 | 2/6/89 | 22,533 | Pipes |
| Joseph Dorf Assoc. Inc. (Workers) | New York, NY | 2/27/89 | 2/7/89 | 22,534 | Clocks & Blankets |
| Levi Strauss & Co. Mc Arthur Rd Plant (UGWA) | Maryville, TN | 2/27/89 | 2/2/89 | 22,535 | Warehouse Facility |
| Levi Strauss & Co. RC Jackson Ave (UGWA) | Maryville, TN | 2/27/89 | 2/2/89 | 22,536 | Warehouse Facility |
| Maxam, Incorp. (Workers) | Humboldt, KS | 2/27/89 | 1/13/89 | 22,537 | Oil & Gas |
| Mobay Chemical (OCAW) | Haledon, NJ | 2/27/89 | 2/10/89 | 22,538 | Pagments for Paints |
| Momentum Technology (Workers) | Morris Plains, NJ | 2/27/89 | 1/30/89 | 22,539 | Computer Hardware |
| Northwest Mobil Homes, Inc. (Company) | Williston ND | 2/27/89 | 2/3/89 | 22,540 | Mobil Homes |
| Ormed Mfg., Inc. (Company) | Buffalo, NY | 2/27/89 | 2/14/89 | 22,541 | Surgical Sponges |
| Phil LLoyd, inc. (Workers) | Woodward, OK | 2/27/89 | 2/8/89 | 22,542 | Oilfield Services |
| Phil LLoyd, Inc. (Workers) | Canadian, TX | 2/27/89 | 2/8/89 | 22,543 | Oilfield Services |
| Pinkham Lumber-Div. of Great Northern Paper (UPIU). | Nashville, ME | 2/27/89 | 2/10/89 | 22,544 | Lumber & Wood Chips |
| Portage Chip Plant-Div. of Great Northern Paper Co. (UPIU). | Portage, ME | 2/27/89 | 2/10/89 | 22,545 | Woodchips for Paper |
| S.A.I.M.A. America (Workers) | New York City, NY | 2/27/89 | 2/2/89 | 22,546 | Cases |
| Saber Construction & Operation Co. (Workers) | Albion, IL | 2/27/89 | 2/19/89 | 22,547 | Oilfield Services |
| Sherwood Medical Co. (Workers) | Tucson, AZ | 2/27/89 | 2/9/89 | 22,548 | Disposable Medical Products |
| Spectrum Foods (Workers) | New Stanton, PA | 2/27/89 | 2/10/89 | 22,549 | Food Service |
| Stratophyaics Incorp. (Workers) | Midland, TX | 2/27/89 | 2/7/89 | 22,550 | Oil & Gas |
| Tenneco Management (Company) | Houston, TX | 2/27/89 | 2/2/89 | 22,551 | Oil & Gas |
| Tenneco Oil Processing & Marketing | Houston, TX | 2/27/89 | 2/2/89 | 22,552 | Oil & Gas |
| Tenneco Gas Pipeline Group (Company) | Houston, TX | 2/27/89 | 2/2/89 | 22,553 | Oil & Gas |
| Tenneco Realty (Company) | Houston, TX | 2/27/89 | 2/2/89 | 22,554 | Oil & Gas |
| Universal Mfg. (Workers) | Paterson, NJ | 2/27/89 | 8/2/88 | 22,555 | Lighting Ballast |
| Valex Petroleum Inc. (Workers) | Denver, CO | 2/27/89 | 2/12/89 | 22,556 | Oil & Gas |
| W.B. Bow Tie Corp. (Workers) | New York, NY | 2/27/89 | 2/5/89 | 22,557 | Ties |
| Western Kansas Drilling (Workers) | Hays, KS | 2/27/89 | 1/31/89 | 22,558 | Oil & Gas |
| Zanetis Oil Properties, Inc. (Company) | Olney, IL | 2/27/89 | 1/19/89 | 22,559 | Oil Wells |

[FR Doc. 89-5961 Filed 3-14-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-22, 388]

### A.J. Boyd Industries, Inc., Andover, NJ; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on January 30, 1989 in response to a worker petition which was filed on behalf of workers at A.J. Boyd Industries, Incorporated, Andover, New Jersey.

The petitioner has requested that the petition be withdrawn. Consequently further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC this 24th of February 1989.

**Marvin M. Fooks,**

*Director, Office of Trade Adjustment Assistance.*

[FR Doc. 89-5962 Filed 3-14-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-21,603 et al.]

### Cardinal Drilling Co.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 12, 1989, applicable to all workers of Cardinal Drilling Company, Billings, Montana.

The certification notice is amended to include the States where worker separations have occurred at Cardinal Drilling. Worker separations have occurred since October 1985 at Cardinal Drilling in North Dakota, South Dakota, and Nevada.

The intent of the certification is to cover all workers of the Cardinal Drilling Company in all of its locations. The amended notice applicable to TA-W-21,603 is hereby issued as follows:

All workers of Cardinal Drilling Company, Billings, Montana and operating in the States of North Dakota, South Dakota and Nevada who became totally or partially separated on or after October 1, 1985 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

In the matter of Cardinal Drilling Co.; TA-W-21,603 Billings, Montana and operating at various locations in the following States TA-W-21,603A North Dakota, TA-W-21,603B South Dakota; TA-W-21,603C Nevada.

Signed at Washington, DC, this 28th day of February 1989.

**Barbara Ann Farmer,**

*Director, Office of Program Management, UIS.*

[FR Doc. 89-5959 Filed 3-14-89; 8:45 am]

BILLING CODE 4510-30-M

### Dixilyn-Field Drilling Co.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

TA-W-21,713 Houston, TX
TA-W-21,713A Lafayette, LA

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 9, 1989 applicable to all workers of Dixilyn-Field Drilling Company, Houston, Texas.

Based on new information from the company, additional workers were separated from Dixilyn-Field Drilling Company, Lafayette, Louisiana during the period applicable to the petition. The notice, therefore is amended by including the Lafayette, Louisiana location.

The amended notice applicable to TA-W-21,713 is hereby issued as follows:

All workers of Dixilyn-Field Drilling Company, Houston, Texas and Lafayette.

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Louisiana who became totally or partially separated from employment on or after October 1, 1985 and before August 30, 1987 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 23rd day of February 1989.

**Robert O. Deslongchamps,**

*Director, Office of Legislation and Actuarial Services, UIS.*

[FR Doc. 89-5963 Filed 3-14-89; 8:45 am]

BILLING CODE 4510-30-M

**[TA-W-19,671 et. al.]**

### Hobart Corp.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In the matter of Hobart Corporation

TA-W-19,671 Torrence Street, Dayton, Ohio.

TA-W-19,671A Huffman Avenue, Dayton, Ohio.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Revised Determinations on Reconsideration on September 21, 1987 applicable to all workers of the Torrence Street Plant in Dayton, Ohio. The Department's denial for workers of the Huffman Avenue Plant was affirmed. The Notice of Revised Determinations was published in the **Federal Register** on September 30, 1987 (52 FR 36845).

Based on new information from the company, an additional worker was retained a few weeks after the September 1, 1987 termination date set in the revised determination. The worker had his claim under appeal with the State Agency until November 29, 1988. The intent of the Department's certification is to include all workers at the Torrence Street plant.

The amended notice applicable to TA-W-19,671 is hereby issued as follows:

All workers of Hobart Corporation's Torrence Street Plant, Dayton, Ohio who became totally or partially separated from employment on or after March 1, 1987 and before October 1, 1987 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

All workers of Hobart Corporation's Huffman Avenue Plant, Dayton, Ohio are denied.

Signed at Washington, DC, this 27th day of February 1989.

**Barbara Ann Farmer,**

*Director, Office of Program Management, UIS.*

[FR Doc. 89-5958 Filed 3-14-89; 8:45 am]

BILLING CODE 4510-30-M

**[TA-W-21,730]**

### Kirkwood Oil & Gas, Casper, Wyoming; Revised Determination on Reconsideration

On February 15, 1989, the Department issued an Affirmative Determination Regarding Application for Reconsideration for workers and former workers at Kirkwood Oil & Gas, Casper, Wyoming. The affirmed notice regarding application for reconsideration will soon be published in the **Federal Register**.

The company provided additional information claiming that it was substantially involved in geological exploration on oil and gas lease properties through 1988.

On reconsideration, the Department found that Kirkwood Oil & Gas has been historically involved in geological exploration on oil and gas lease properties. Approximately half of Kirkwood's revenues were derived from geological prospecting through 1988. Kirkwood's prospecting revenues decreased in 1988 compared to 1985 and declined to only a minor share of its total revenues in 1988.

The exploration and drilling end of the crude oil and natural gas industry is particularly sensitive to the level of imports and changes in the price of crude oil. The impact of crude oil imports and reduced price levels has resulted in sharply declining U.S. exploration and drilling activity since 1985. The total number of U.S. wells completed dropped in 1985, 1986 and 1987.

The declines in revenues at Kirkwood Oil & Gas and the declines in employment in 1985 and 1986 resulted from a decreased demand for exploration and drilling activities from oil and gas industry clients due to the 32 percent increase in U.S. crude oil imports between 1985 and 1987 and the 66 percent drop in U.S. oil wells drilled between 1984 and 1987.

The preponderance of activities performed by workers of Kirkwood Oil & Gas after 1986 are not related to oil and gas drilling and exploration; therefore, workers of the firm from January 1, 1987 to October 31, 1987 are not eligible for the retroactive provisions of section 1421(a)(1)(B) of the Omnibus Trade and Competitiveness Act of 1988. Workers of Kirkwood Oil and Gas falling under the provisions of the Trade Act prior to the 1988 amendments are outside the scope of the Act since they do not produce an article within the meaning of section 222(3) of the Act. Accordingly, a termination date of January 1, 1987 is set in the revised notice of determination.

**Conclusion**

After careful review of the additional facts obtained on reconsideration, it is concluded that increased imports of articles like or directly competitive with crude oil contributed importantly to the decline in exploration activities and to the total or partial separation of workers at Kirkwood Oil & Gas, Casper, Wyoming. In accordance with the provisions of the Act and the retroactive provisions of section 1421(a)(1)(B) of the Omnibus Trade and Competitiveness Act of 1988, I make the following revised determination:

All workers of Kirkwood Oil & Gas, Casper, Wyoming who became totally or partially separated from employment on or after October 1, 1985 and before January 1, 1987 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 2nd day of March 1989.

**Barbara Ann Farmer,**

*Director, Office of Program Management, UIS.*

[FR Doc. 89-5960 Filed 3-14-89; 8:45 am]

BILLING CODE 4510-30-M

**[TA-W-22,291 et al.]**

### The Lee Apparel Co. Inc.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In the matter of The Lee Apparel Co., Inc.

TA-W-22,291 BROADWAY, VIRGINIA

TA-W-22,324 LENEXA, KANSAS

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued Certifications of Eligibility to Apply for Worker Adjustment Assistance on February 13, 1989 applicable to all workers of The Lee Apparel Company, Incorporated in Broadway, Virginia and Lenexa, Kansas. The Certifications will soon be published in the **Federal Register**.

The Department inadvertently reversed the impact dates for the two worker groups at The Lee Apparel Company. The Broadway petition was dated December 12, 1988 while the Lenexa petition was dated December 1, 1988. The certification notice, therefore is amended by changing the impact date for the Broadway worker group to December 12, 1987 and the Lenexa worker group to December 1, 1987.

The amended notice applicable to TA-W-22,291 and TA-W-22,324 is hereby issued as follows:



All workers of The Lee Apparel Company, Incorporated, Broadway, Virginia who became totally or partially separated from emloyment on or after December 12, 1987 and before November 30, 1988 and all workers of The Lee Apparel Company Incorporated, Lenexa, Kansas who became totally or partially separated from employment on or after December 1, 1987 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 2nd day of March 1989.

**Stephen A. Wandner,**

*Deputy Director, Office of Legislation and Actuarial Services, UIS.*

[FR Doc. 89-5957 Filed 3-14-89; 8:45 am]

BILLING CODE 4510-30-M

**[TA-W-22,331]**

### S & P Manufacturing Andover, MA; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on January 3, 1989 in response to a worker petition received on January 3, 1989 which was filed by the International Ladies' Garment Workers' Union on behalf of workers at S & P Manufacturing, Andover, Massachusetts.

The petitioning group of workers are included in an investigation of Vatco Industries Corporation, Andover, Massachusetts. Vatco Industries Corporation is the subject of an ongoing investigation for which a determination has not yet been issued (TA-W-22,336). Consequently, further investigation is this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 28th day of February 1989.

**Marvin M. Fooks,**

*Director, Office of Trade Adjustment Assistance.*

[FR Doc. 89-5964 Filed 3-14-89; 8:45 am]

BILLING CODE 4510-30-M

### Shelby Drilling Co.; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

TA-W-22,069 Englewood, CO

TA-W-22,069A All Locations in Wyoming

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 12, 1989 applicable to all workers of Shelby Drilling Company, Englewood, Colorado.

Based on new information from the company, additional workers were separated from Shelby Drilling Company, at various locations in the State of Wyoming during the period applicable to the petition. The notice, therefore is amended by including all locations of Shelby Drilling in Wyoming.

The amended notice applicable to TA-W-22,069 is hereby issued as follows:

All workers of Shelby Drilling Company, Englewood, Colorado and all workers of Shelby Drilling Company in the State of Wyoming who became totally or partially separated from employment on or after October 1, 1985 and before January 1, 1989 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 23rd day of February 1989.

**Barbara Ann Farmer,**

*Director, Office of Program Management, UIS.*

[FR Doc. 89-5965 Filed 3-14-89; 8:45 am]

BILLING CODE 4510-30-M

**[TA-W-22,005]**

### Wright Drilling Co., Harriman, TN; Termination of Investigation

Purusant to section 221 of the Trade Act of 1974, an investigation was initiated on November 18, 1988 in response to a petition which was filed on behalf of workers and former workers at Wright Drilling Company, Harriman, Tennessee.

The investigation revealed that the petitioners worked at the Wright Drilling Company, Sunbright, Tennessee facility and not at the Company's Harriman, Tennessee facility. Workers at Wright Drilling Company, Sunbright, Tennessee are already covered under the Wright Drilling Company, Sunbright, Tennessee petition (TA-W-21,153). An active certification covering the petitioning group of workers remains in effect (TA-W-21,153). No new information is evident which would result in a reversal of the Department's previous determination. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC, this 23rd day of February 1989.

**Marvin M. Fooks,**

*Director, Office of Trade Adjustment Assistance.*

[FR Doc. 89-5966 Filed 3-14-89; 8:45 am]

BILLING CODE 4510-30-M

## Pension and Welfare Benefits Administration

**[Prohibited Transaction Exemption 89-13; Exemption Application No. D-6040 et al.]**

### Grant of Individual Exemptions; Coldwell Banker Commercial Group, Inc. (CBCG), et al.

**AGENCY:** Pension and Welfare Benefits Administration, Labor.

**ACTION:** Grant of individual exemptions.

**SUMMARY:** This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing he held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

**Statutory Findings**

In according with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 CFR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

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(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

**Coldwell Banker Commercial Group, Inc. (CBCG) Located in Los Angeles, CA**

[Prohibited Transaction Exemption 89-13; Exemption Application No. D-6040]

*Exemption*

Part I—Exemption for Certain Transactions Involving Investment in a Managed Trust Account

The restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(C)(1) (A) through (D) of the Code shall not apply to employee benefit plan (Participating Plan) investment in a trust account (Managed Trust Account) which is not commingled with the assets of other trust accounts where Coldwell Banker Real Estate Trust Services (the Trust Company) serves as trustee and the Trust Company (or its affiliate) renders investment management services, provided that:

(a) Each investment is authorized in writing by a fiduciary of a Participating Plan who is independent of the Trust Company and any of its affiliates; and

(b) The applicable General Conditions of Part V are met.

Part II—Exemption for Certain Transactions Involving Parties in Interest and Common Trusts

The restrictions of section 406(a)(1)(A) through (D) of the Act an the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to transaction between a party in interest with respect to a Participating Plan and a common or collective trust sponsored and maintained by the Trust Company (Common Trust) if the applicable General Conditions of Part V are met and, at the time of the transaction, the Participating Plan in such Common Trust together with the interests of any other plans maintained by the same employer and/or employee organization in the Common Trust do not exceed 10 percent of the total of all assets in the Common Trust.

Part III—Exemption for Certain Transactions Between Common Trusts for Managed Trust Accounts and the Trust Company or its Affiliates

The restrictions of section 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(E) of the Code, shall not apply to the transaction described below, if the General Conditions of Part V are satisfied:

The payment to the Trust Company of disposition fees (Disposition Fees) under the terms established in the respective Trust Agreement governing the Common Trust or Managed Trust Account (and as described in the summary of facts and representations of the proposed exemption, provided that the payment and terms of such Disposition Fees shall have been approved by an independent fiduciary of the plan at the time the Trust Agreement was entered into and that the total of all fees paid to the Trust Company constitute no more than reasonable compensation.

Part IV—Exemption for Certain Transactions Between Joint Ventures or Partnerships and the Trust Company or Its Affiliates

The restrictions of section 406(b)(3) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1)((F) of the Code, shall not apply to the transaction described below:

The payment of fees or commissions to CBCG or its affiliates by partnerships or joint ventures in which a Common Trust or Managed Trust Account is a partner or joint venturer or by an entity with respect to which a Common Trust or Managed Trust Account has made a loan which is convertible into equity, for Management Services furnished with respect to such partnership or joint venture; provided that the applicable General Conditions of Part V are satisfied and the following conditions are met:

(a) The fees or commissions paid to CBCG or its affiliates are reasonable;

(b) A party which is not affiliated with the Trust Company or its affiliates and which has an equity interest in excess of 10 percent in the partnership, joint venture or the entity to which the loan was made makes the decision to hire the service provider;

(c) Neither the Trust Company nor its affiliates have the power to exercise control over the selection of the service provider (other than through the exercise of a veto for reasonable cause); and

(d) The portion of any fee received by the CBCG or an affiliate from the partnership or joint venture for which the Common Trust or Managed Trust Account is responsible due to its proportionate interest in the partnership or joint venture will be applied as a credit to the Management Fee paid to the Trust Company by the Common Trust or Managed Trust Account.

Part V—General Conditions

(a) All transactions are on terms and conditions that are at least as favorable to the Managed Trust Account(s) and Common Trusts(s) as those in arm's length transactions between unrelated parties would be.

(b) No plan subject to the provisions of Title I of the Act or to section 4975 of the Code may invest in a Common Trust or establish a Managed Trust Account unless the plan has total net assets with a value in excess of $50,000,000 and no such plan may invest more than 5 percent of its assets in any one Common Trust or Managed Trust Account, or more than 10 percent of its assets in Trust Accounts established by the Trust Company or an affiliate.

(c) Prior to making an investment in a Common Trust or Managed Trust Account, a fiduciary for the plan independent of CBCG and its affiliates receives offering materials which disclose all material facts concerning the purpose, structure and operation of such Trust or Trust Account in which it participates.

(d) Each Participating Plan shall receive the following with respect to any Common Trust or Managed Trust Account in which it participates:

(1) Audited Financial Statements, prepared by independent public accountants selected by the Trust Company, not later than 90 days after the end of the Common Trust or Managed Trust Account fiscal year.

(2) Quarterly reports prepared by the Trust Company relating to the overall financial position and operating results of the Common Trust or Managed Trust Account, which will include all fees paid by the common Trust or Managed Trust Account, and by any partnerships or joint ventures in which the Common Trust or Managed Trust Account is invested.

(3) Annual estimates prepared by the Trust Company of the current fair market value of all properties owned by the Common Trust or Managed Trust Account.

(4) Copies of the quarterly reports which the Trust Company is required to file with the California Superintendent of Banks, and an immediate report with regard to any finding by the California Superintendent of Banks involving inappropriate fiduciary behavior with respect to any Managed Trust Account of Common Trust.

(5) In the case of a Common Trust, a list of all of the other investors in the Common Trust.



(e) The Trust Company or its affiliate shall maintain, for a period of six years, the records necessary to enable the persons described in subsection (f) of this Part V to determine whether the conditions of this exemption have been met, except that (I) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the Trust Company of its affiliates, the records are lost or destroyed prior to the end of the six year period, and (ii) no party in interest shall be subject to the civil penalty that may be assessed under Section 503(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by subsection (f) below.

(f) Notwithstanding any provisions of section 504 (a) (2) and (b) of the Act,

The records referred to in subsection (e) of this Part V shall be unconditionally available at their customary location for examination during normal business hours by:

(1) Any duly authorized employee or representative of the Department, the Internal Revenue Service or the California Superintendent of Banks;

(2) Any fiduciary of a Participating Plan or any duly authorized employee or representative of such fiduciary;

(3) Any contributing employer to any Participating plan or any duly authorized employee or representative of such employer; and

(4) Any participant or beneficiary of any Participating Plan, or any duly authorized employee or representative of such participant or beneficiary.

Part VI—Definitions and General Rules.

For the purpose of this exemption:

(a) An "affiliate" of a person includes:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by or under common control with the person;

(2) Any officer, director, employee, relative of, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner or employee.

(b) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(c) the term "Management Services" means:

(1) Services or real estate brokers and finders in connection with the acquisition or disposition of real property or interests therein.

(2) Services of property managers.

(3) Services of leasing agents in connection with obtaining leases on properties owned by the Common Trust or Managed Trust Account.

(d) The term "relative" means a "relative" as that term is defined in section 3(15) of the Act (or a "member of the family" as that term is defined in section 4975(e)(6) of the Code), or a brother, sister, or a spouse of a brother or sister.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transactions which are the subject of this exemption.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on January 9, 1989 at 54 FR 702.

*For Further Information Contact:* David Lurie of the Department, telephone (202) 523-8671. (This is not a toll-free number.)

**General Motors Retirement Program for Salaried Employees; General Motors Hourly-Rate Employees Pension Plan; and the G.M. Special Pension Plan (together, the Plans)**

[Prohibited Transaction Exemption 89-14; Exemption Application Nos. D-7553, D-7555, and D-7555]

*Exemption*

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to: (1) The use of assets form the Plans for long-term mortgage loans to the Trammell Crow Companies and their affiliates (Crow), where the loan proceeds are used to pay off construction loans originated by construction lenders (the Construction Lenders), in situations where such Construction Lenders are parties in interest with respect to the Plans but are not related to, or affiliated with, the General Motors Corporation, the sponsor of the Plans; and (2) the execution and consummation of tri-party buy-sell agreements for such mortgage loans by the Plans with Crow and the Construction Lenders, and the subsequent assignment of mortgage notes by the Construction Lenders to the Plans pursuant to such agreements, provided that:

(a) Aldrich, Eastman & Waltch, Inc. (AEW), an independent manager for and a fiduciary with respect to the Plans, expressly approves each long-term mortgage loan and recommends approval of the loan to the Pension Investment Committee of General Motors Corporation (the PIC), a fiduciary of the Plans which is independent of both Crow and the Construction Lender, which retains final approval authority over any investments proposed by AEW;

(b) The terms of each such transaction are not less favorable to the Plans than the terms generally available in an arm's-length transaction between unrelated parties;

(c) The long-term mortgage loans represent in the aggregate no more than two percent (2%) of the total assets of the Plans as of the date of approval of each such transaction by the PIC; and

(d) No investment management fee, advisory fee, underwriting fee, or similar compensation is paid to the Construction Lender by the Plans with regard to the transaction.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on December 27, 1988 at 53 FR 52257.

*Effective Date:* The effective date of this exemption is May 22, 1987.

*Temporary Nature of Exemption:* This exemption is effective for all long-term mortgage loans and agreements for such loans entered into by the parties described herein since May 22, 1987. However, this exemption will not apply to any loans which are originated after five years from the date on which this exemption is published in the **Federal Register**.

*Written Comments:* The applicant submitted several comments with respect to the Notice of Proposed Exemption (the Notice).

Paragraph 7 of the Notice states that the Plans funded the long-term loan for the "Sherwood Forest Project" in Coral Springs, Florida, on September 1, 1988. However, the applicant states that the long-term loan for the "Sherwood Forest Project" was actually funded on September 27, 1988. In addition, the applicant notes that the Plans funded the long-term loan for the "Vinings II Project" in Boca Raton, Florida, on October 31, 1988.

Paragraph 7 of the Notice also states that with respect to the second mortgage interest in the Property (the Second Note) under the long-term loan, the Plans are entitled to a portion of the gross receipts on the property as "additional interest payments." Paragraph 7 states further that the Plans' receipt of these "additional interest

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payments" will be subject to an interest rate ceiling calculated to yield to the Plans an overall annual interest rate of return of no more than 15 percent on the Second Note. The applicant states that the 15 percent annual internal rate of return ceiling on the "additional interest payments" is actually based on an inflation-adjusted annual internal rate of return of 15 percent. The Department received three additional comments from interested persons opposing the granting of the exemption. However, after consideration of the entire record, the Department has determined to grant the exemption.

*For Further Information Contact:* Mr. E.F. Williams of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

**Spertus College of Judaica Pension Trust (the Plan) Located in Chicago, Illinois**

[Prohibited Transaction Exemption 89–15; Exemption Application No. D–7810]

*Exemption*

The restrictions of sections 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1) (A) through (E) of the Code, shall not apply to the past sale of certain securities (the Bonds) by the Plan to Spertus College of Judaica, a party in interest with respect to the Plan, provided that the Plan received no less than the fair market value of the Bonds on the date of sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on January 9, 1989 at 54 FR 713.

*Effective Date:* January 28, 1987.

*For Further Information Contact:* Alan H. Levitas of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

**Continental Illinois National Bank and Trust Company of Chicago (Continental) Located in Chicago, Illinois**

[Prohibited Transaction Exemption 89–16; Application No. D–7833]

*Exemption*

The restrictions of sections 406 (a), (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed sale (the Sale) of a mortgage loan participation (the Participation) by Continental as trustee for its collective fund, Continental Illinois Investment Trust for Employee Benefit Plans (CIIT), to Continental in its individual capacity, a party in interest with respect to CIIT; provided that the price paid for the Participation is the greater of either the outstanding principal balance of the Participation or the fair market value of the Participation on the date of the Sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption (the Notice) published on December 27, 1988 at 53 FR 52261.

*Written Comments:* The Department received two written comments which did not reference or relate directly to the transaction described in the Notice. Accordingly, after consideration of the entire record, the Department has determined to grant the proposed exemption.

*For Further Information Contact:* Mrs. B.S. Scott of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

**Crane Cams, Inc. Second Amended and Restated Profit Sharing Plan and Trust (the Plan) Located in Hallandale, Florida**

[Prohibited Transaction Exemption 89–17; Exemption Application No. D–7717]

*Exemption*

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (E) of the Code, shall not apply to the cash sale by the Plan of a parcel of unimproved real property located in Daytona Beach, Florida to Crane Cams, Inc., the sponsor of the Plan; provided that all terms of such sale are at least as favorable to the Plan as those which the Plan could obtain in an arm's-length transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on January 19, 1989 at 54 FR 2242.

*For Further Information Contact:* Ronald Willett of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

**Pocono Pines Corporation Defined Benefit Plan and the Pocono Pines Corporation Profit Sharing Plan (Collectively, the Plans) Located in Pocono Pines, Pennsylvania**

[Prohibited Transaction Exemption 89–18; Exemption Application No. D–7726]

*Exemption*

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the Plans' proposed loans of $56,666 each to Pocono Pines Corporation, the Employer, the Plans' sponsor and, as such, a disqualified person with respect to the Plans; provided the terms and conditions are similar to those obtainable by the Plans in an arm's-length transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on January 19, 1989 at 54 FR 2243.

*For Further Information Contact:* Mrs. B.S. Scott of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

**Operating Engineers Local No. 37 Pension Fund (the Plan) Located in Baltimore, MD**

[Prohibited Transaction Exemption 89–19; Exemption Application No. D–7728]

*Exemption*

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed purchase by the Plan of two parcels of improved real property (Parcel Two and Parcel Three), for the total cash consideration of $345,000, from Operating Engineers, Inc., a party in interest with respect to the Plan, provided the amount paid by the Plan for Parcel Two and Parcel Three is not more than fair market value at the time the transaction is consummated.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on January 9, 1989 at 54 FR 715.

*For Further Information Contact:* Ms. Jan D. Broady of the Department, telephone (202) 523–8881. (This is not a toll-free number.)



**Orloff, Lowenbach, Stifelman and Siegel, P.A. Employees' Profit Sharing Plan (the Plan) Located in Roseland, NJ**

[Prohibited Transaction Exemption 89–20; Exemption Application No. D–7740]

*Exemption*

The restrictions of section 406(a), 406 (b)(1), and (b)(2) of the Act and the sanctions resulting from the application of setion 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to: (1) The loan (the New Loan) by the Plan of $350,000 to Orloff, Lowenbach, Stifelman and Siegel, P.C. (the Employer), a party in interest with respect to the Plan; and (2) the guarantee of repayment of the New Loan by the principals of the Employer, provided the terms of the transactions are at least as favorable to the Plan as those obtainable in arm'slength transactions with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on January 9, 1989 at 54 FR 716.

*For Further Information Contact:* Ms. Jan D. Broady of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

**Vascular Surgery, P.C. Money Purchase Pension Plan and Vascular Surgery, P.C. Profit Sharing Plan (Collectively, the Plans) Located in Omaha, Nebraska**

[Prohibited Transaction Exemption 89–21 Exemption Application Nos. D–7783 and D–7784]

*Exemption*

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed cash sale (the Sale) by the Plans of certain collectibles to Dr. and Mrs. John W. Smith, disqualified persons with respect to the Plans; provided that the terms and conditions of the Sale are similar to those which the Plans might obtain in an arm's-length transaction with an unrelated party.

For a more completed statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on January 19, 1989 at 54 FR 2244.

*For Further Information Contact:* Mrs. B.S. Scott of the Department, Telephone (202) 523–8194. (This is not a toll-free number.)

**General Information**

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject to the exemption.

Signed at Washington, DC, this 10th day of March 1989.

**Robert J. Doyle,**

*Director of Regulations and Interpretations, Pension and Welfare Benefits Administration.*

[FR Doc. 89–6009 Filed 3–14–89; 8:45 am]

BILLING CODE 4510–29–M

**[Application No. D–7521 et al.]**

**Proposed Exemptions; Union Bank, et al.**

**AGENCY:** Pension and Welfare Benefits Administration, Labor.

**ACTION:** Notice of proposed exemptions.

**SUMMARY:** This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

**Written Comments and Hearings Requests**

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

**ADDRESS:** All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Regulations and Interpretations, Room N–5671, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue NW., Washington, DC 20210.

**Notice of Interested Persons**

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice pendency of the exemption as published in the **Federal Register** and shall inform interested persons at their right to comment and to request a hearing (where appropriate).

**SUPPLEMENTARY INFORMATION:** The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file

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with the Department for a complete statement of the facts and representations.

**Union Bank (the Bank) Located in Los Angeles, California**

[Application No. D-7521]

*Proposed Exemption*

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to: (1) The proposed use of assets from certain multi-employer pension plans (the Plans), for which the Bank serves as a directed trustee, directed corporate trustee, directed corporate co-trustee, or custodian, for permanent mortgage loans to persons (the Borrowers), who will use the loan proceeds to pay off construction loans originated by the Bank; and (2) the execution and consummation of tri-party buy-sell agreements for such mortgage loans by the Bank with the Borrowers and the Plans, and the subsequent assignment of mortgage notes by the Bank to the Plans pursuant to such agreements, provided that:

A. Each permanent mortgage loan is expressly approved by a fiduciary independent of the Bank who has authority to manage or control those Plan assets being invested;

B. The terms of each such transaction are no less favorable to the Plan than the terms generally available in an arm's-length transaction between unrelated parties; and

C. No investment management, advisory, underwriting or sales commission or similar compensation is paid to the Bank by the Plan with regard to such transaction.

*Temporary Nature of Exemption*

This exemption, if granted, will be effective only for those loans which are originated within five years of the date on which the Final Grant of this proposed exemption is published in the **Federal Register**.

*Summary of Facts and Representations*

1. The Bank serves as a directed trustee, directed corporate trustee, directed corporate co-trustee, or custodian of the Plans. The Plans are 19 multiemployer construction trade Taft-Hartley pension funds with assets of approximately $2.5 billion. The Bank's services to the Plans consist of holding, receiving, handling and disbursing funds as instructed by an independent plan fiduciary. The Bank represents that it has no discretionary authority with respect to the management of assets of the Plans and does not render investment advice with regard to the permanent loans made by the Plans.[1] The Bank states that the only fiduciary relationship it has with the Plans is that of a directed trustee, directed corporate trustee, directed corporate co-trustee, or custodian for such Plans.

2. In the ordinary course of its commercial lending activities, the Bank makes construction loans to the Borrowers, who develop real property for projects such as office buildings, shopping centers, apartment houses, condominium developments, etc. The Bank states that it is one of the leading banks in California in making construction loans and that the borrowers are some of the leading developers in California. The Borrowers, without the assistance of the Bank, normally obtain a commitment for a permanent loan to pay off the Bank's construction loan when the particular project is completed. However, the Bank states that the Plans are precluded from making such permanent loans, as investment for their real estate portfolios, when the Bank is the construction lender for the project. Thus, the Plans must either forego these real estate investment opportunities or remove the Bank as a trustee, corporate trustee, corporate co-trustee, or custodian.

3. The Bank requests an exemption to permit the use of assets of the Plans for permanent loans to the Borrowers, who will use the loan proceeds to pay off the construction loans originated by the Bank. The Plans do not propose to originate any construction loans or to participate in any construction loans originated by the Bank. The Bank states that none of the Borrowers will be parties in interest with respect to the Plans. The Bank also states that no contributing employers of the Plans will participate as contractors or subcontractors on any of the projects which are being financed by the Plans' permanent loans.[2]

4. The Bank represents that no loan origination fees will be paid by the Borrowers to the Bank for permanent financing. The Borrower will obtain commitments for permanent financing either through direct contacts with the Plans or through mortgage bankers. The Banks states that it occasionally acts as a broker, for a fee, in order to find a permanent lender for a project. However, the Bank represents that it has never acted as such a broker for any employee benefit plan for which it acts as a fiduciary and that, in the proposed transaction, the Borrowers will not authorize the Bank to act as an agent for the Borrower to obtain permanent financing for any project.

All of the permanent loans to the Borrowers will be originated by the Plans. Therefore, all loan origination fees will be paid to the Plans. In addition, the Bank states that the Plans will not be required to pay and advisory, investment management, or loan commitment fee to the Bank, although such loans will be treated as assets for the normal directed trustee or custodial administration fees which will be assessed by the Bank. However, the Plans may request the Bank to service the permanent loans, for which the Bank will receive a servicing fee.[3]

5. The Bank represents that in some instances, the Plans and the Borrowers may want the construction loan and the permanent loan to be documented in the same package. In such instances, the parties will enter into a buy/sell arrangement. Such buy/sell arrangements will involve a written tri-party agreement between the Borrower, the Bank (as construction lender), and the Plan (as permanent lender). There will be no tri-party agreements with mortgage bankers. The tri-party agreement will set forth the terms and conditions of both the construction loan and the permanent loans. When the Plan makes a commitment to provide a permanent loan for a project upon completion of its construction, pursuant to a buy-sell arrangement, the tri-party agreement will commit the Borrower to us the proceeds of the permanent loan to repay the Bank's construction loan.

In all cases, the Bank as construction lender will have a lien interest in the property which is the subject of the Plans permanent loan commitment. In the absence of a buy-sell arrangement, the Bank states that when its construction loan is paid off with the proceeds of the Plan's permanent loan, the Bank will convey its lien interest in the property to the Borrower, who will simultaneously convey the lien interest to the Plan. However, in a buy/sell arrangement, the Bank will "sell" or assign the existing lien, including the mortgage note and supporting documents, to the Plan. The Bank states that in no case will it advance funds to the Borrower under the permanent loan.

6. The Bank represents that it will not be involved in the decision by the Plans to invest in any permanent loan on a real estate project. In all cases, independent Plan fiduciaries and investment advisers will review the proposed transactions and will examine the interest rates, financial statements, projected returns, appraisals and other factors relating to the investment before advising the Plan to make a permanent loan. The Bank will be subject to the investment directions of the investment managers and advisers for the Plans.

With respect to the construction loans originated by the Bank, the Bank states that it may require the Borrowers to furnish certain information, such as a list of all material dealers, laborers and subcontractors with whom agreements have been made by either the general contractor or the Borrower regarding the construction for a particular project. The Bank requests such information in order to evaluate the credit worthiness of the transactions. However, the Bank states that because it is not involved in the process by which the Plans decide whether to provide permanent financing for particular projects, it will not be aware of any non-economic factors that may be considered by the Plans' fiduciaries in making the investments, such as a requirement that construction on a particular project be performed by contractors and subcontractors who employ only union construction labor.[4]

7. The Bank states that investments by the Plans in real estate projects as permanent lenders are common in the current real estate financing market. The Bank also asserts that the proposed exemption is appropriate for the transactions described herein because of the absence of potential for abuse by the Bank and because a denial would unduly restrict the Plan's choices of potential Borrowers to those who have not secured a construction loan from the Bank, which is merely a directed trustee, directed corporate trustee, directed corporate co-trustee, or custodian for the Plans. The Bank represents that there will be no scheme or arrangement, other than an arm's-length tri-party agreement, between the Borrowers, the Bank, and the Plans regarding the proposed construction and permanent loan financing.

8. In summary, the Bank represents that the proposed transactions will satsify the statutory criteria of section 408(c) of the Act because: (a) the Bank will have no discretionary authority regarding the management or disposition of the assets of the Plans and will not be an investment adviser for the Plans with respect to the proposed loans; (b) the fiduciaries of the Plans, who are independent of the Bank, will make all investment decisions for the Plans, including all decisions relating to the proposed permanent loans; (c) the terms of the permanent mortgage loans will be no less favorable to the Plan than the terms generally available in arm's-length transactions between unrelated parties; (d) no investment management fee, advisory fee, underwriting fee, sales commission, or other similar compensation will be paid to the Bank by the Plans with respect to such transactions; (e) the Bank will play no role in securing permanent loans from the Plans for the Borrowers; and (f) no permanent loans will be made to persons who are parties in interest with respect to the Plans.

*For Further Information Contact:* Mr. E.F. Williams of the Department, telephone (202) 523-8883. (This is not a toll-free number.)

**American Express Company Located in New York, New York**

[Application Nos. D-7662 and D-7832]

*Proposed Exemption*

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, American Express Company and its affiliates, including IDS Financial and Shearson Lehman Hutton, Inc. (collectively, American Express), except for E.F. Hutton & Company, Inc., (Hutton), shall not be precluded from functioning as a "qualified professional asset manager" pursuant to Prohibited Transaction Exemption 84-14 (PTE 84-14, 49 FR 9494, March 13, 1984) solely because of American Express's failure to satisfy Section I(g) of PTE 84-14 as a result of its affiliation with Hutton.

*Effective Date:* If granted, this exemption will be effective as of the date on which American Express became an affiliate of Hutton.

*Summary of Facts and Representations*

1. Shearson Lehman Hutton Inc. (Shearson), which is incorporated in Delaware, is a wholly-owned subsidiary of Shearson Lehman Brothers Holdings Inc. (Shearson Holdings), which in turn is a majority-owned subsidiary of American Express Company. Both Shearson Holdings and American Express are publicly-owned companies whose stock is traded on the New York Stock Exchange. American Express and its subsidiaries form a diversified financial and travel services company.

On January 13, 1988, over 90 percent of the stock of E.F. Hutton Group Inc. (Hutton Group), the parent company of Hutton, was tendered to SLBP Acquisition Corp. (SLBP), a wholly-owned subsidiary of Shearson Holdings, pursuant to an Agreement and Plan of Merger (Merger Agreement) dated December 2, 1987, as amended on December 28, 1987, entered into among Shearson Holdings, SLBP, and the Hutton Group. On January 21, 1988, as permitted by the terms of the Merger Agreement, SLBP assigned its right to purchase those shares so accepted to Shearson, and Shearson purchased the

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[1] To the extent that, in the ordinary course of business, the Bank or any of its affiliates provides "investment advice" to an employee benefit plan within the meaning of regulation 29 CFR 2510.3-21(c)(1)(ii)(B) and recommends an investment of the plan's assets in a permanent loan where the proceeds will be used to pay off a construction loan originated by the Bank, the presence of an unrelated second fiduciary acting on the Bank's recommendations on behalf of the plan would not be sufficient ot insulate the Bank from fiduciary liability under section 405(b) of the Act. (See Advisory Opinions 84-03A and 84-04A, issued by the Department on January 4, 1984). The Department is unable, as a general matter, to conclude that fiduciary self-dealing of this type (if present) is in the interest or protective of a plan and its participants and beneficiaries. Thus, the Department has limited the exemptive relief for the proposed use of the proceeds of the Plans' permanent loans to section 406(a) violations only.

[2] The Department notes that where the construction on the property which secures a mortgage loan made by the Plan was conducted by a contributing employer, and a principal of such employer exercises fiduciary authority in approving the Plan's investment in the mortgage, a prohibited transaction may occur which would not be covered by this exemption.

[3] The Bank states that all servicing arrangements for the Plans' permanent loan portfolios would comply with section 406(b)(2) of the Act and the regulations thereunder.

[4] The Department notes that section 404(a)(1) of the Act requires, among other things, that a fiduciary of a plan must act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries when making investment decisions on behalf of a plan. In order to act prudently in making investment decisions, the trustees must consider, among other factors, the availability, risks and potential return of alternative investments for the plan. Investing plan assets in loans meeting these criteria would not satisfy section 404(a)(1) if such loans would provide the plan with less return, in comparison to risk, than comparable investments available to the plan or if such loans would involve a greater risk to the security of plan assets than other investments offering a similar return.

Thus, in deciding whether and to what extent to invest in mortgage loans, the trustees must consider only factors relating to the interests of the plan participants and beneficiaries in their retirement incomes. A decision to make a loan may not be influenced by a desire to stimulate business in a particular geographic area or to encourage the use of union labor unless the investment, when judged solely on the basis of its economic value, would be equal to or superior to alternative investments available to the plan.



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shares. As a result of the acquisition of the Hutton Group stock, Shearson controls the Hutton Group and indirectly controls Hutton.

2. On May 2, 1985, Hutton entered a plea of guilty (the Guilty Plea) to an Information filed in the United States District Court for the Middle District of Pennsylvania. The Information charged that Hutton had violated the federal mail and wire fraud statutes in connection with its handling of certain checking accounts it maintained for the deposit of its own funds during the period from July 1, 1980 to February 28, 1982. As a result of the Guilty Plea, Hutton agreed to pay, and has paid, a criminal fine of $2,000,000 plus $750,000 to defray the costs of the government investigation. Hutton further agreed to establish, and has established, a restitution program for the benefit of commercial banks that may have been damaged by its actions. None of the acts alleged in the Information, however, involved funds or securities owned by any investment advisory or brokerage clients of Hutton or any employee benefit plan for which Hutton or any affiliate is a party in interest.

3. On May 16, 1988, Hutton entered a plea of guilty (the Providence Plea) in the United States District Court for the District of Rhode Island on two counts of violating the Bank Secrecy Act and one count of conspiracy to violate that Act. Hutton agreed to pay, and has paid, an aggregate fine of $1,010,000 as a result of the Providence Plea. The Information filed by the government in connection with the Providence Plea alleges that the conduct of the two brokers, formerly employed at Hutton-Providence, was in violation of the Bank Secrecy Act. The Bank Secrecy Act requires the filing of a Currency Transaction Report, under certain circumstances, if more than $10,000 in cash is deposited with a financial institution. The brokers' unlawful conduct occurred primarily in the period from 1982 to 1983, and no such conduct transpired later than October 1984—more than three years before Shearson acquired its majority interest in Hutton.

4. The applicant represents that although none of the unlawful conduct that occurred at Hutton-Providence involved Hutton's investment management activities or any ERISA plans, Hutton's Guilty Pleas preclude Hutton and its affiliates from serving as a "qualified professional asset manager" (QPAM) pursuant to sections I(g) and V(d) of PTE 84–14. Section I(g) of PTE 84–14 precludes a person who otherwise qualifies as a QPAM from serving as a QPAM if such person or an affiliate thereof has within the 10 years immediately preceding the transaction been either convicted or released from imprisonment as a result of certain criminal activity. For purposes of section I(g) of PTE 84–14, an "affiliate" of a person is defined in relevant part as "any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the person * * *" (PTE 84–14, section V(d)). As such, under this definition American Express, Shearson Holdings and all of their majority-owned subsidiaries would be considered affiliates of Hutton as a result of Shearson's acquisition of a controlling interest in the Hutton Group.

5. Neither American Express nor its wholly-owned direct or indirect subsidiaries were affiliates of Hutton at the time the events underlying the Hutton convictions occurred. They are not now controlled by Hutton or by the individuals involved in the transactions which led to the Hutton convictions. There has been no suggestion that the events leading to the Hutton convictions have extended into the period since Hutton became affiliated with American Express. None of those persons responsible for the transactions leading to the Hutton convictions is now employed by American Express or its subsidiaries.

6. The applicant asserts that failure to grant the requested exemption will prohibit such plans for which American Express or its subsidiaries act as investment manager from engaging in transactions with parties in interest that would otherwise be permitted under PTE 84–14 and will cause plans to forego attractive investment opportunities. The applicant and its subsidiaries typically engage in real estate transactions which may be structured in a variety of different ways, including participating mortgages, joint ventures or other partnership interests, or outright fee ownership. In all of these contexts, there is a significant risk that the party with which the plan is dealing will be a party in interest. Given the size of the plans which the applicant and its subsidiaries represent, the large number of service providers (particularly financial institutions) which such plans engage and the breadth of the ERISA definition of "party in interest", it is not uncommon for a proposed transaction in the private real estate market to involve a party in interest.

Thus, the prohibition against serving as a QPAM would deprive the applicant and its subsidiaries of the ability to render investment advisory services to many ERISA clients that must rely on the QPAM Exemption to avoid inadvertent prohibited transactions. In the absence of the relief requested, the applicant and its subsidiaries could be forced to curtail their future operations as they relate to ERISA clients. In this regard, prior to Shearson's acquisition of Hutton, several of the applicant's subsidiaries were charting their course of future business activities in the expectation that they would be able to avail themselves of the QPAM Exemption.

7. Accordingly, the applicant proposes that for the purposes of section V(d) of PTE 84–14 Hutton not be considered an affiliate of American Express in order that American Express and its subsidiaries may continue to avail themselves of the provisions of PTE 84–14, nothwithstanding the acquisition of Hutton by Shearson and the resultant failure to comply with section I(g) of PTE 84–14.

8. The applicant represents that the following safegaurds will be present to assure that the flexibility which PTE 84–14 provides will be utilized by American Express in a manner protective of and beneficial to both ERISA plans and their participants:

(a) PTE 84–14 includes numerous other conditions all of which would continue to apply and to assure that the best interests of ERISA plans are served;

(b) Many of American Express's ERISA plan clients are large plans, and hence have access to the resources and sophistication needed to properly monitor American Express's performance as investment manager;

(c) All of the Hutton criminal activity in question occurred prior to its acquisition by Shearson. Shearson is fully cooperating with all ongoing government investigations, and Shearson is actively working to install various safeguards and procedures designed to protect against such violations in the future; and

(d) As investment advisers registered under the Investment Advisers Act of 1940 (the Advisers Act), several of the subsidiaries of American Express are subject to the jurisdiction of the Securities and Exchange Commission (SEC) and to the substantive requirements of the Advisers Act. Such subsidiaries must make annual filings with the SEC and is subject to unannounced audits by the SEC to assure compliance with the requirements of the Advisers Act.

9. In addition, the applicant represents that Hutton and Shearson have taken a number of steps to ensure that conduct such as that leading to the Guilty Plea and the Providence Plea will not recur. In connection with the Guilty Plea, Hutton acted to recompense its depository banks for any harm that may have been caused by the illegal acts. Hutton offered to make full restitution (including interest to date of payment) to any bank with which it maintained a deposit relationship during the period July 1, 1980 to December 31, 1982 for any net uncompensated interest losses incurred by the bank as a result of Hutton's having drawn on uncollected funds without prior written agreement. Hutton's offer to reimburse its banks included unreimbursed service fees, unreimbursed charges in respect of uses of uncollected funds, and interest on the foregoing amounts.

The applicant represents that Hutton also initiated changes in its organizational structure and management practices as follows:

(a) Nearly all of Hutton's financial operations were realigned and subjected to centralized control.

(b) Hutton also installed a computerized Branch Information Processing System to expedite and improve communications between its New York headquarters and its more than 400 branches, which allows Hutton's headquarters in New York to monitor drawdown activity at the branch and regional levels.

(c) Hutton also held instructional meetings for its employees in 16 cities from coast to coast with respect to the nature of the activities that were found unlawful and/or now are enjoined, and explained the revised internal controls and auditing procedures that Hutton was putting in place with respect to its cash concentration system.

10. Subsequent to the Guilty Plea, Hutton Group retained the Honorable Griffin Bell, former Attorney General of the United States and a one time Judge of the United States Court of Appeals for the Fifth Circuit, to conduct an independent inquiry into the cash management practices to which Hutton pleaded guilty.

Judge Bell found that ultimate management responsibility for the practices in question rested with Thomas P. Lynch, then Executive Vice President and Chief Financial Officer of Hutton, and with Thomas P. Morley, then Senior Vice President and Money Mobilizer of Hutton. Judge Bell determined that the practices were developed and carried out by middle management employees who generally believed they were operating within the law, and that Messrs. Lynch and Morley, though not bearing any criminal responsibility for the practices, should have detected and/or prevented them. Following the release of the Bell Report, both Mr. Lynch and Mr. Morley relinquished their positions.

The Bell Report also recommended substantial monetary and other sanctions against other Hutton employees. All of the culpable Hutton employees involved in the activities which led to the Guilty Plea resigned or were dismissed prior to Shearson's acquisition of Hutton Group. In addition, Judge Bell recommended a number of procedural and structural reforms designed to ensure that the practices in question did not recur.

These changes included:

(a) Restructuring the financing, financial control, operations and general counsel functions;

(b) Establishing a separate audit committee to specifically review Hutton's activities and supplement the existing audit committee of Hutton Group, with full access to the chief executive officer and the board of directors; and

(c) Working in conjunction with the Ethics Resource Center in Washington, DC, to develop a corporate code of ethics, supplemented by educational and monitoring programs.

11. In late December 1987, following the announcement of Shearson's acquisition of Hutton, Shearson retained outside counsel to conduct an internal investigation and provide legal advice concerning compliance by Hutton, prior to its acquisition by Shearson, with the reporting requirements of the Bank Secrecy Act.

The investigation revealed certain unreported currency transactions at Hutton branch offices, prior to Shearson's acquisition of Hutton. A majority of potential non-reporting occurred in two New York retail offices, with isolated instances of possible non-reporting found in seven additional Hutton branch offices in the New York metropolitan area. No such instances were found in the offices reviewed outside the New York area. The persons potentially involved in the possible violations were exclusively branch office personnel. Outside counsel is in the process of evaluating the possible involvement of any individuals in these branches and will provide Shearson with a report as to such involvement. Shearson has advised the United States Attorney for the Southern District of New York of Shearson's internal investigation and is cooperating with the United States Attorney in his inquiry.

12. The applicant states that in connection with Shearson's request for an exemption from the Securities and Exchange Commission from the provisions of section 9(a) of the Investment Company Act of 1940,[5] Shearson at its expense has agreed to retain independent auditors:

(a) To confirm that the Shearson currency reporting procedures are in place, and that the computer software program used in connection with the procedures is operational, with respect to each former Hutton branch office;

(b) To review the procedures (i) to determine whether the procedures are reasonably designed to ensure compliance with the currency transaction reporting provisions of the Bank Secrecy Act, (ii) to detect non-compliance with the procedures, and (iii) to make recommendations, if appropriate, for changes in the procedures and staffing necessary reasonably to ensure compliance with applicable law relating to currency transaction reporting; and

(c) To report to Shearson the results of its review.

Upon completion of the auditor's review, Shearson will submit the report and recommendations, if any, to the Commission, together with a report by Shearson setting forth the action it has taken or proposes to take concerning the implementation of the recommendations.

13. The applicant states that as of February 8, 1988, as part of the consolidation of the Hutton branch offices into the Shearson branch office system, each Hutton branch had been made subject to the same internal procedures for processing currency transactions as those to which Shearson is subject. Shearson's procedures with respect to currency transaction reporting were adopted as a means of avoiding the type of situation that occurred at Hutton-Providence. The procedures prohibit the deposit or payment in currency at any Shearson or Hutton branch office. The procedures also mandate that any Shearson or Hutton employee who is asked by a customer to deposit currency in any account, inform the customer that Shearson and Hutton will only accept a non-cash instrument and will not accept cash. The procedures further protect against the kind of irregularities that occurred at Hutton-Providence by requiring Shearson and Hutton employees to

[5] Section 9(a) of the Investment Company Act of 1940 states, in part, that it shall be unlawful for a person to serve as or act in the capacity of employee, officer, director, member of an advisory board, investment advisor, or depositor of any registered investment company, or principal underwriter for any registered open-end company, registered unit investment trust, or registered face amount certificate company if such person, or an affiliate of such person, has engaged in certain criminal activity [as specified in section 9(a)(1)].

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notify immediately not only their branch manager, but also Shearson's Compliance Department, if any customer, during a limited period of time, deposits a series of cashier's checks, traveler's checks, money orders or checks in bearer form *(i.e.*, checks made payable to cash or endorsed in blank) that are each under $10,000 but collectively exceed $10,000.

The applicant also notes that as an additional safeguard against irregularities in currency transaction reporting, the procedures expressly forbid Shearson and Hutton brokers and all other Shearson and Hutton employees from engaging in any of the following activities:

(a) Taking possession of currency for a customer;

(b) Escorting a customer to a financial institution to convert currency to an acceptable means of payment; and/or

(c) Advising a customer as to how to "structure" his transaction with a financial institution in order to avoid the financial institution's reporting requirements under the Currency Transaction Reporting Act.

Shearson and Hutton employees are also informed that failure to comply with these procedures will subject the offender to internal disciplinary action and possibly to civil and criminal liability for violating Federal law.

14. In summary, the applicant represents that this proposed exemption satisfies the criteria of section 408(a) of the Act because, among other things: (a) American Express and its subsidiaries are operated independently of Hutton; (b) none of American Express's officers is an officer or employee of Hutton; (c) Hutton's criminal activity in every case took place before its acquisition by Shearson; (d) both Hutton and Shearson have undertaken substantial reforms and put in place procedures designed to prevent any recurrence of the criminal activity; (e) the other provisions of PTE 84-14 taken together with Shearson's independent audit procedures established pursuant to its exemption request under section 9(a) of the Investment Company Act of 1940, are sufficient to assure that the best interests of the ERISA plans and their participants are served; and (f) American Express and its subsidiaries will be able to take advantage of a broader variety of attractive investment opportunities on behalf of the participants and beneficiaries of its clients' plans.

**FOR FURTHER INFORMATION CONTACT:** Joseph L. Roberts III of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

**General Information**

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 10th day of March 1989.

**Robert J. Doyle,**

*Director of Regulations and Interpretations, Pension and Welfare Benefits Administration.*

[FR Doc. 89-6008 Filed 3-14-89; 8:45 am]

BILLING CODE 4510-29-M

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice 89-17]**

### NASA Advisory Council (NAC), Aerospace Medicine Advisory Committee (AMAC); Meeting

**AGENCY:** National Aeronautics Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aerospace Medicine Advisory Committee.

**DATE AND TIME:** March 28, 1989, 8:30 a.m. to 5 p.m., March 29, 1989, 9 a.m. to 5 p.m., and March 30, 1989, 9 a.m. to 10:30 a.m.

**ADDRESS:** Capital Gallery East, Room 204, 600 Maryland Avenue SW., Washington, DC 20024.

**FOR FURTHER INFORMATION CONTACT:** Dr. Janis Stokloса, Code EBM, National Aeronautics Space Administration, Washington, DC 20546 (202/453-1525).

**SUPPLEMENTARY INFORMATION:** The Aerospace Medicine Advisory Committee consults with and advises the NASA Office of Space Science and Applications (OSSA) on long-range planning of aerospace medicine research. The Committee will meet to discuss the Life Sciences Strategic Plan, review the Life Sciences Subcommittee activities, receive reports on the NASA Life Support Program, Space Station Construction, Soviet Life Sciences, and other Committee activities. The Committee is chaired by Dr. Harry C. Holloway and is composed of 24 members. The meeting will be open to the public up to the seating capacity of the room (approximately 40 people including members of the Subcommittee).

*Type of Meeting:* Open

*Agenda:*

Tuesday, March 28

8:30 a.m.—Opening Remarks.

9 a.m.—NASA Life Support Program Overview and Discussion.

3:30 p.m.—Office of Aeronautics and Space Technology (OAST) Human Factors Overview and Discussion.

5 p.m.—Adjourn.

Wednesday, March 29

9 a.m.—Radiation Program Overview and Discussion.

11:30 a.m.—Space Station Construction Plans.

1:30 p.m.—Overview of Soviet Life Sciences Data.



2:30 p.m.—Operational Medicine Discipline Working Group Activities.

3 p.m.—Life Sciences Strategic Implementation Plan.

4 p.m.—Life Sciences Subcommittee Activities.

4:30 p.m.—Committee Discussion.

5 p.m.—Adjourn.

Thursday, March 30

9 a.m.—Life Support Management Working Group Activities and Recommendations.

10:30 a.m.—Adjourn.

March 8, 1989.

**Ann Bradley,**

*Advisory Committee Management Officer, National Aeronautics Space Administration.*

[FR Doc. 89-5960 Filed 3-14-89; 8:45 am]

BILLING CODE 7510-01-M

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### Music Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Composers Prescreening Section) to the National Council on the Arts will be held on April 4-5, 1989, from 9:00 a.m.-5:30 p.m. in room M-14 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

**Yvonne M. Sabine,**

*Director, Council and Panel Operations, National Endowment for the Arts.*

[FR Doc. 89-6017 Filed 3-14-89; 8:45 am]

BILLING CODE 7537-01-M

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50-318]**

### Baltimore Gas and Electric Co.; Calvert Cliffs Nuclear Power Plant, Unit No. 2; Environmental Assessment and Finding of No Significant Impact

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of a one-time exemption from the requirements of Sections III.D.2(a) and III.D.3 of 10 CFR Part 50 and a temporary amendment to Unit 2 Technical Specification (TS) 3/4.6.1, "Containment Systems," to Facility Operating License No. DPR-69 issued to the Baltimore Gas and Electric Company (the licensee) for operation of the Calvert Cliffs Nuclear Power Plant, Unit No. 2, located in Calvert County, Maryland. The proposed temporary amendment and one-time exemption, submitted via the applications dated December 14 and 21, 1988, respectively, as supplemented on February 17, 1989, would provide up to a four week (28 days) extension to the maximum permissible retest interval of two years for Types B and C containment local leak rate tests (LLRTs).

**Need for Environmental Impact Statement**

The Commission has found that the proposed exemption and amendment will not result in any additional significant environmental impact and has, therefore, determined not to prepare an environmental impact statement.

**Environmental Assessment**

*Identification of the Proposed Amendment and Exemption*

Currently, Section III.D.2(a) and III.D.3 of Appendix J to 10 CFR Part 50 and TS Surveillance Requirement 4.6.1.2.d require Types B and C LLRTs to be performed at intervals no greater than two years (24 months). The licensee has requested a one-time exemption from Sections III.D.2(a) and III.D.3 of Appendix J and a temporary amendment of TS 4.6.1.2.d to provide a retest schedule extension, for Types B and C LLRTs, of up to four weeks (28 days) beyond the maximum two year interval. The proposed one-time exemption and temporary TS amendment are applicable to Calvert Cliffs Nuclear Power Plant Unit 2 only, and would become effective at 11:59 p.m. on March 16, 1989, and expire at 11:59 p.m. on April 13, 1989.

**Need for the Proposed Actions**

During the previous Unit 2 refueling outage, the LLRT program started at a date apparently too early to support the full Cycle 8 operating cycle, with the first LLRT completed on March 16, 1987.

These actions are requested to permit Calvert Cliffs Unit 2 to complete its full Cycle 8 operating cycle rather than being forced to shutdown early on March 16, 1989, due to coming to the end of its maximum permitted Types B and C LLRT 2-year retest interval. Cycle 8 was the first 24-month operating cycle at Calvert Cliffs Unit 2.

*Alternatives to the Proposed Actions*

Since we have concluded that the environmental effects of the proposed action are negligible, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested action. This would not significantly reduce the environmental impacts of plant operation but would result in a lower burnup of the fuel to be discharged from the Unit 2 core following Cycle 8 resulting in a higher concentration of U-235 in the discharged fuel. Consequently, the radioactive life of the discharged fuel would be longer than if it had been more fully burned, thus necessitating longer storage in a radioactive waste storage facility, and also, less economical use would have been made of the U-235 contained in the discharged fuel which would result in the utilization of additional natural resources to make up for the electrical energy output capacity lost by not burning the fuel more fully.

*Alternative Use of Resources*

This action does not involve the use of resources not previously considered by the Commission in the "Final Environmental Statement Relating to Operation of Calvert Cliffs Nuclear Power Plant, Units 1 and 2" dated April 1973.

*Environmental Impact of the Proposed Actions*

The proposed actions would result in up to a 28 day extension to the 631 day interval allowed between performances of successive LLRTs. The historical performance of the Calvert Cliffs Unit 2 containment structure and a review of all Unit 2 Types B and C LLRT failures indicates that the integrity of the Unit 2 containment would not be significantly affected by this one-time schedular extension of approximately 4% of the allowed surveillance interval. Furthermore, the likelihood of an event

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requiring containment isolation and integrity, principally a loss of coolant accident (LCOA), is very small during this short, one-time surveillance interval extension period.

For any significant increase in radiological environmental impact to result from this retest interval extension, a significant degradation in containment integrity subsequently followed by a LOCA, or another event requiring containment isolation, would both be required to occur during the 28 day interval extension. As the likelihood of each individual occurrence during the extension is not significant, the probability of their happening in series during the interval extension is even smaller. On this basis, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed exemption and TS amendment.

With regard to potential nonradiological impacts, the proposed actions involve features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed exemption or TS amendment.

*Agencies and Persons Consulted*

None.

**Finding of No Significant Impact**

Based on the aforementioned environmental assessment, the Commission has determined that the proposed exemption or amendment will not have a significant effect on the quality of the human environment.

For further details with respect to this action see: (1) The applications for license amendment and exemption dated December 14 and 21, 1988, and (2) the licensee's supplemental letter dated February 17, 1989. These documents are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and at the Calvert County Library, Prince Frederick, Maryland.

Dated at Rockville, Maryland, this 9th day of March, 1989.

For the Nuclear Regulatory Commission.

**Robert A. Capra,**

*Director, Project Directorate I–1, Division of Reactor Projects I/II.*

[FR Doc. 89–5985 Filed 3–14–89; 8:45 am]

BILLING CODE 7590–01–M

**Commonwealth Edison Co.; Issuance of Environmental Assessment and Finding of No Significant Impact**

**[Docket Nos. 50–454 and 50–455]**

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. NPF–37 and NPF–66 issued to Commonwealth Edison Company (the licensee), for operation of Byron Station, Units 1 and 2, located in Ogle County, Illinois.

**Identification of Proposed Action**

The amendment would consist of changes to the Technical Specifications (TS) and would authorize an increase of the storage capacity of the spent fuel pool from 1080 fuel assemblies to 2870 fuel assemblies.

The amendment to the TS is responsive to the licensee's application dated September 3, 1986, as supplemented November 7 and November 24, 1986. The NRC staff has prepared an Environmental Assessment of the Proposed Action, "Environmental Assessment by the Office of Nuclear Reactor Regulation Relating to the Expansion of the Spent Fuel Pool, Facility Operating License Nos. NPF–37 and NPF–66, Commonwealth Edison Company, Byron Station, Units 1 and 2, Docket Nos. 50–454 and 50–455, dated March 9, 1989.

**Summary of Environmental Assessment**

The "Final Generic Environmental Impact Statement (FGEIS) on Handling and Storage of Spent Light Water Power Reactor Fuel" (NUREG–0575), Volumes 1–3, concluded that the environmental impact of interim storage of spent fuel was negligible and the cost of the various alternatives reflect the advantage of continued generation of nuclear power with the accompanying spent fuel storage. Because of the differences in design, the FGEIS recommended evaluating spent fuel pools expansions on a case-by-case basis.

For Byron Station, Units 1 and 2, the expansion of the storage capacity of the spent fuel pool will not create any significant additional radiological effects or non-radiological environmental impacts.

The occupational radiation dose for the proposed operation of the expanded spent fuel pool is estimated to be less than one percent of the total annual occupational radiation exposure for this facility.

**Finding of No Significant Impact**

The staff has reviewed the proposed spent fuel pool expansion to the facility relative to the requirements set forth in 10 CFR Part 51. Based on this assessment, the staff concludes that there are no significant radiological or non-radiological impacts associated with the proposed action and that the issuance of the proposed amendment to the license will have no significant impact on the quality of the human environment. Therefore, pursuant to 10 CFR 51.31, no environmental impact statement needs to be prepared for this action.

For further details with respect to this action, see (1) the application for amendment to the Technical Specifications dated September 3, 1986, as supplemented November 7 and November 24, 1986; and additional information provided by the licensee in letters dated December 11, 1986, March 11 and December 22, 1987, and May 26, June 1 and August 17, 1988; (2) the FGEIS on Handling and Storage of Spent Light Water Power Reactor Fuel (NUREG–0575), (3) the Final Environmental Statement for Byron Station, Units 1 and 2, dated April 1982, and (4) the Environmental Assessment dated March 9, 1989.

These documents are available for public inspection at the Commission's Public Document Room 2120 L Street NW., Washington, DC 20555 and at the Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois 61101.

Dated at Rockville, Maryland, this 9th day of March 1989.

For the Nuclear Regulatory Commission.

**Daniel R. Muller,**

*Director, Project Directorate III–2, Division of Reactor Projects—III, IV, V and Special Projects.*

[FR Doc. 89–5987 Filed 3–14–89; 8:45 am]

BILLING CODE 7590–01–M

**Advisory Committee on Reactor Safeguards; Subcommittee on Mechanical Components; Meeting**

The ACRS Subcommittee on Mechanical Components will hold a meeting on March 29, 1989, Room P–110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to the public attendance.

The agenda for subject meeting shall be as follows:

**Wednesday, March 29, 1989—8:30 a.m. until 12:30 p.m.**

The Subcommittee will continue its review of the NRC Staff's generic letter on MOV reliability.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member identified below as far in advance as practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Elpidio Igne (telephone 301/492–8192) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Date: March 9, 1989.

**Gary Quittschreiber,**

*Chief, Project Review Branch No. 2.*

[FR Doc. 89–5984 Filed 3–14–89; 8:45 am]

BILLING CODE 7590–01–M



**Commonwealth Edison Co.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing**

**[Docket Nos. 50–454, 50–455, 50–456 and 50–457]**

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. NPF–37 and NPF–66, issued to Commonwealth Edison Company, for operation of Byron Station, Units 1 and 2 located in Ogle County, Illinois and Facility Operating License Nos. NPF–72 and NPF–77, issued to the licensee, for operation of Braidwood Station, Units 1 and 2 located in Will County, Illinois.

This amendment requests dated February 17, 1989, are being made in accordance with Generic Letter 88–06 to change the Administrative Control Section, Section 6.0 of Technical Specifications, to include the removal of the organizational figures, a position change from Radiation Chemistry Technical to Radiation Protection Technician, several position title changes, a clarification to the distribution requirements for Onsite Reviews and typographical or editorial changes.

Before issuance of these proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that these amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facilities in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

These proposed Technical Specification (TS) amendments request several changes. The first change involves the removal of organizational Figures 6.2–1and 6.2–2 and the revision of TS 6.2.1 and 6.2.2 in accordance with the guidance provided in Generic Letter 88–06. The second proposed revision involves a position change from Radiation Chemistry Technician to Radiation Protection Technician in TS 6.2.2 and 6.12. The third proposed revision corrects several position titles that changed due to corporate reorganization. The fourth change clarifies the distribution requirements for onsite review documentation discussed in TS 6.5.2. The fifth and last change are typographical corrections.

In accordance with Generic Letter 88–06, these amendments replace the organizational Figures 6.2–1 and 6.2–2 in Technical Specifications with more general organizational requirements. These general requirements capture the essence of those organizational features depicted on the figures that are necessary for ensuring safe operation.

The proposed revisions to the Technical Specifications will require organizational charts to be maintained in the Quality Assurance Manual. In addition, the important organizational features depicted on the organizational figures are also contained in other regulatory controlled documents. Chapter 13 of the Updated Final Safety Analysis Report (UFSAR) contains details of the organizational structure and description of the Conduct of Operations. This information is required by 10 CFR 50.71 to be maintained and updated annually. Also a Quality Assurance (QA) program is required for Byron and Braidwood by 10 CFR 50, Appendix B. In addition to the organizational charts, the Quality Assurance Manual and Topical Report CE–1–A contain descriptions of the functional responsibilities and reporting requirements.

None of the proposed changes are initiating events for an accident, therefore, the probability of an occurrence of an accident is not affected. Even though the organizational figures are being removed, TS 6.2.1a is being revised to require the organizational figures be maintained in the Quality Assurance Manual. In addition, TS 6.2.1 proposed revisions adds general requirements that capture the essence of the organizational features included in the figures. Also, important organizational features are contained in other regulatory controlled documents. Therefore, safe plant operation is not affected and the consequence of any accidents presented in the UFSAR are not impacted by the changes.

The proposed changes do not revise any functional or design parameters used at the station. These changes do not modify any equipment or systems or cause the unit to be operated in a different manner. Therefore, the possibility of a new or different kind of accident is not created.

All the proposed changes are administrative, editorial or typographical and, as such, do not affect any margins of safety. The proposed organization changes do not affect safe operation of the plant. Creation of a Radiation Protection Technican position in lieu of a Radiation Chemistry Technican adequately meets the requirements for Health Physics coverage identified in NUREG 0452. Updating position titles, clarifying documentation distribution requirements and typographical and editorial changes, facilitie plant operations but do not affect safe operations.

For the reasons stated above, the staff believes these proposed amendments involve no significant hazards consideration.

The Commission is seeking public comments on this proposed

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determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of the **Federal Register** notice. Written comments may also be delivered to P-216, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By April 14, 1989, the licensee may file a request for hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary of the designated Atomit Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particulatity the interest of the petitioner in the proceeding, and how that interest may be affected by the results to the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceedings as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Daniel R. Muller: petitioner's name and telephone number; date petition was mailed; plant number; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel—Rockville, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Michael Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.174(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and for Byron Station, the Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois 61101; for Braidwood Station, the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60603.

Dated at Rockville, Maryland, this 9th day of March 1989.

For the Nuclear Regulatory Commission.

**Stephen P. Sands,**

*Project Manager, Project Directorate III-2, Division of Reactor Projects—III, IV, V and Special Projects.*

**Leonard N. Olshan,**

*Project Manager, Project Directorate III-2, Division of Reactor Projects—III, IV, V and Special Projects.*

[FR Doc. 5986 Filed 3-14-89; 8:45 am]

BILLING CODE 7590-01-M



**[Docket Nos. 50-254, 50-265, 50-237 and 50-249]**

**Commonwealth Edison Co.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing**

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Operating License Nos. DPR-29 DRP-30, issued to Commonwealth Edison Company, for operation of Quad Cities Station, Units 1 and 2 located in Rock Island County, Illinois and Provisional Operating License No. DRP-19 and Operating License No. DPR-25, issued to Commonwealth Edison Company, for operation of Dresden Nuclear Power Station, Units 2 and 3 located in Grundy County, Illinois.

These amendment requests dated February 17 and 21, 1989 for Dresden and Quad Cities (respectively), revise the "Administrative Controls" Section (section 6.0) of Technical Specifications (TS) to include: (1) Removal of station and corporate organization charts, (2) Position title changes for Radiation Protection and Chemistry Technicians and Supervisors to reflect a recent division of the Rad/Chem organization into two separate departments, (3) Changes to most of the station and corporate position descriptions, titles, lines of authority, and responsibilities, and (4) Miscellaneous typographical and editorial changes. Commonwealth Edison Company's proposed revision of Section 6 is intended to conform TS with the guidelines of Generic Letter 88-06 and to reflect the changes associated with a major company reorganization.

Before issuance of these proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations. The Commission has made a proposed determination that these amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facilities in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

In accordance with Generic Letter 88-06, these amendments replace organizational Figures 6.1-1 and 6.1-2 in Technical Specifications with more general organizational requirements. These general requirements capture the essence of those organizational features depicted on the figures that are necessary for ensuring safe operation.

The proposed revisions of the Technical Specifications will require organizational charts to be maintained in the Quality Assurance Manual. In addition, the important organizational features depicted on the organizational figures are also contained in other regulatory controlled documents. The Updated Final Safety Analysis Report (UFSAR) contains details of the organizational structure and description of the Conduct of Operations. This information is required, by 10 CFR 50.71, to be maintained and updated annually. In addition to organization charts, the Quality Assurance Manual contains descriptions of functional responsibilities and reporting requirements.

None of the propsed changes are initiating events for an accident, therefore, the probability of an occurrence of an accident is not affected. All important organizational features will still be maintained in regulatory documents. Station and Corporate positions are being reorganized to enhance safe plant operation by improving channels of communication and authority. Therefore, the consequences of any accident presented in the UFSAR are not impacted by these changes to Section 6 of the TS.

The proposed changes do not revise any functional or design parameters used at the station. These changes do not modify any equipment or systems, or cause the unit to be operated in a different manner. Therefore, the possibility of a new or different kind of accident is not created.

All the proposed changes are administrative, editorial, or typographical in nature and, as such, do not affect any margins of safety. The proposed organization changes do not adversely affect safe operation of the plant. Updating position descriptions, titles, lines of authority and responsibilities will facilitate plant operations without affecting safety margins.

For the reasons stated above, the Commission proposes a determination that the requested amendments do not involve significant hazards consideration.

The Commission seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of the **Federal Register** notice. Written comments may also be delivered to P-216, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 2120 L Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By April 14, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary of the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results to the proceeding. The petition should specifically explain the reasons why intervention should be permitted

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with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceedings as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that a failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Daniel R. Muller: petitioner's name and telephone number; date petition was mailed; plant number; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel—Rockville, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Michael Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.174(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and for Quad Cities Station, the Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021; for Dresden Station, the Morris Public Library, 604 Liberty Street, Morris, Illinois 60450.

Dated at Rockville, Maryland, this 9th day of March 1989.

For the Nuclear Regulatory Commission.

**Byron L. Siegel,**

*Project Manager, Project Directorate III-2, Division of Reactor Projects—III, IV, V and Special Projects.*

**Thierry M. Ross,**

*Project Manager, Project Directorate III-2, Division of Reactor Projects—III, IV, V and Special Projects.*

[FR Doc. 89-5966 Filed 3-14-89; 8:45 am]

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**[Docket Nos. 50-373, and 50-374]**

## Commonwealth Edison Co.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Operating License Nos. NPF-11 and NPF-18, issued to Commonwealth Edison Company, for operation of LaSalle County Station, Units 1 and 2 located in LaSalle County, Illinois.

These amendments request dated February 17, 1989, are being made in accordance with Generic Letter 88-06 to change the Administrative Control Section, Section 6.0 of Technical Specifications, to include the removal of the Organizational figures, a position change from Radiation Chemistry Technical to Radiation Protection Technician, several position title changes, a clarification to the distribution requirements for onsite reviews and typographical or editorial changes.

Before issuance of these proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations. The Commission has made a proposed determination that these amendments requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3)



involve a significant reduction in a margin of safety.

The proposed Technical Specification amendment requests several changes. The first change involves the removal of organizational Figures 6.1-1 and 6.1-2 and the revision of Technical Specifications (TS) 6.1.A, 6.1.B, and 6.1.C in accordance with the guidance provided in Generic Letter 88-06. The second proposed revision involves a position change from Radiation Chemistry Technician to Radiation Protection Technician in TS 6.1.C and 6.1.1.1. The third proposed revision corrects several position titles that changed due to corporate reorganization. The fourth change clarifies the distribution requirements for onsite review documentation discussed in TS 6.2. The fifth and last change are to correct typographical errors.

In accordance with Generic Letter 88-06, these amendments replace the Organization Figures 6.1-1 and 6.1-2 in Technical Specifications with more general organizational requirements. These general requirements capture the essence of those organizational features depicted on the figures that are necessary for ensuring safe operation.

The proposed revisions to the Technical Specifications will require organizational charts to be maintained in the Quality Assurance Manual. In addition, the important organizational features depicted on the organizational figures are also contained in other regulatory controlled documents. The Updated Final Safety Analysis Report (UFSAR) contains details of the organizational structure and description of the Conduct of Operations. This information is required by 10 CFR 50.71 to be maintained and updated annually. In addition to the organizational charts, the Quality Assurance Manual contains descriptions of the functional responsibilities and reporting requirements.

None of the proposed changes are initiating events for an accident, therefore, the probability of an occurrence of an accident is not affected. Even though the organizational figures are being removed, TS 6.1 is being revised to require the organizational figures be maintained in the Quality Assurance Manual. In addition, TS 6.1 proposed revision adds general requirements that capture the essence of the organizational features included in the figures. Also, important organizational features are contained in other regulatory controlled documents. Therefore, safe plant operation is not affected and the consequence of any accidents presented in the UFSAR are not impacted by the changes.

The proposed changes do not revise any functional or design parameters used at the station. These changes do not modify any equipment or systems or cause the unit to be operated in a different manner. Therefore, the possibility of a new or different kind of accident is not created.

All the proposed changes are administrative, editorial or typographical and, as such, do not affect any margins of safety. The proposed organization changes do not affect safe operation of the plant. Creation of a Radiation Protection Technician position in lieu of a Radiation Chemistry Technician adequately meets the requirements for Health Physics coverage identified in NUREG 0452. Updating position titles, clarifying documentation distribution requirements and typographical and editorial changes, facilitate plant operations but do not affect safe operations.

For the reasons stated above, the staff believes these proposed amendments involve no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of the **Federal Register** notice. Written comments may also be delivered to P-216, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 2120 L Street, NW, Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By April 14, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary of the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results to the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceedings as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to

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present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Daniel R. Muller: petitioner's name and telephone number; date petition was mailed; plant number; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel—Rockville, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Michael Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or request for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.174(a)(1)(i)–(v) and 2.714(d).

For further details with respects to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and for LaSalle County Station, the Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348.

Dated at Rockville, Maryland, this 9th day of March 1989.

For the Nuclear Regulatory Commission.

**Paul C. Shemanski,**

*Project Manager, Project Directorate III-2, Division of Reactor Projects—III, IV, V and Special Projects.*

[FR Doc. 89-5989 Filed 3-14-89; 8:45 am]

BILLING CODE 7590-01-M

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**[Docket Nos. 50-295, and 50-304]**

## Commonwealth Edison Co.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Operating License Nos. DPR-39 and DPR-48, issued to Commonwealth Edison Company, for operation of Zion Station, Units 1 and 2 located in Lake County, Illinois.

This amendment request dated February 22, 1989, is being made in accordance with Generic Letter 88-06 to change the Administrative Controls section of the Zion Technical Specification, section 6.0, to include several position title changes, a clarification to the distribution requirements for onsite reviews and typographical or editorial changes.

Before issuance of these proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that these amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facilities in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The first proposed revision corrects several position titles that change due to corporate reorganization. The second proposed revision revises TS 6.1 to be in agreement with NRC Generic Letter 88-06. The third revision adds clarification to reporting and responsibility requirements of new corporate officer titles. The fourth and last change involves minor editorial corrections.

In accordance with Generic Letter 88-06, these amendments replace the organizational structure in the Technical Specifications with more general organizational requirements. These general requirements capture the essence of those organizational features that are necessary for ensuring safe operation. The proposed revisions will require organizational charts which had been previously removed, to be maintained in the Quality Assurance Manual. In addition, the important organizational features depicted on the organizational charts are also contained in other regulatory controlled documents. Chapter 12 of the Updated Final Safety Analysis Report (UFSAR) contains details of the organizational structure and description of the Conduct of Operations. This information is required by 10 CFR 50.71 to be maintained and updated annually. In addition to the organizational charts, the Quality Assurance Manual contains descriptions of the functional responsibilities and reporting requirements.

None of the proposed changes are initiating events for an accident, therefore, the probability of an occurrence of an accident is not affected. TS 6.1 is being revised to require the organizational figures be maintained in the Quality Assurance Manual. Also, important organizational features are contained in other regulatory controlled documents. Therefore, safe plant operation is not affected and the consequence of any accidents presented in the UFSAR are not impacted by the changes.



The proposed changes do not revise any functional or design parameters used at the station. These changes do not modify any equipment or systems or cause the unit to be operated in a different manner. Therefore, the possibility of a new or different kind of accident is not created.

All the proposed changes are administrative, editorial or typographical and, as such, do not affect any margins of safety. The proposed organization changes do not affect safe operation of the plant. Creation of a Radiation Protection Technician position in lieu of a Radiation/Chemical Technician adequately meets the requirements for Health Physics coverage identified in NUREG 0452. Updating position titles, clarifying documentation distribution requirements and typographical and editorial changes, facilitate plant operations but do not affect safe operations.

For the reasons stated above, the staff believes these proposed amendments involve no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of the **Federal Register** notice. Written comments may also be delivered to P-216, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 2120 L Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By April 14, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary of the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results to the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceedings as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Daniel R. Muller; petitioner's name and telephone number; date petition was mailed; plant number; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of General Counsel—Rockville, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Michael Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603, attorney for the licensee.

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Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.174(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and for Zion Station, the Waukegan Public Library, 128 N. County Street, Waukegan Illinois 60085.

Dated at Rockville, Maryland, this 9th day of March 1989.

For the Nuclear Regulatory Commission.

**Chandu P. Patel,**

*Project Manager, Project Directorate III–2, Division of Reactor Projects—III, IV, V and Special Projects.*

[FR Doc. 89–6000 Filed 3–14–89; 8:45 am]

BILLING CODE 7590–01–M

**[Docket No. 50–458]**

**Gulf States Utilities Co.; Issuance of Amendment to Facility Operating License**

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 35 to Facility Operating License No. NPF–47, issued to Gulf States Utilities Company, (the licensee), which revised the Technical Specifications for operation of the River Bend Station, Unit 1, located in West Feliciana Parish, Louisiana.

The amendment was effective as of the date of its issuance.

The amendment revised the Technical Specifications to (1) allow performance of a limited number of Type C leak rate tests of liquid filled lines during refueling activities; and (2) increase the decay time required for the irradiated fuel before the vent and drain line pathways can be opened for the purpose of performing the local leak rate tests.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter 1, which are set forth in the license amendments.

The Notice of Consideration of Issuance of Amendment was published in the **Federal Register** on October 24, 1988 (53 FR 41634). No request for a hearing or petition for leave to intervene was filed following the notices.

The Commission has prepared an Environmetnal Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment.

For further details with respect to the action, see: (1) The application for amendment dated September 28, 1988, as supplemented November 30, 1988, and modified February 6, 1989; (2) Amendment No. 35 to Facility Operating License No. NPF–47; and (3) the Commission's related Safety Evaluation and Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555; and at the Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803. A copy of item (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—III, IV, V and Special Projects.

Dated at Rockville Maryland, this 3rd day of March 1989.

For the Nuclear Regulatory Commission.

**Walter A. Paulson,**

*Project Manager, Project Directorate—IV, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.*

[FR Doc. 89–5991 Filed 3–14–89; 8:45 am]

BILLING CODE 7590–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[Rel. No. 34–26818; File No. SR–NYSE–89–03]**

**Self-Regulatory Organization; Proposed Rule Change by New York Stock Exchange, Inc. Relating to Electronic Resolution of Uncompared Exchange Transactions**

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on March 6, 1989, the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The proposed rule change sets forth in detail the operational requirements of the Exchange's electronic system for resolving uncompared ("Questioned") trades known as the "Correction System".

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in item IV below and is set forth in sections (A), (B), and (C) below.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

(1) Purpose

The Exchange has developed and tested a method of resolving uncompared transactions ("Questioned Trades") by an electronic means, and is known as the "Correction System". While the "Correction System" can, and will, if approved by the Commission, operate independently of any other system, the Exchange intends it to eventually become a subsystem of the Overnight Comparison System. (Please refer to File Number SR–NYSE–88–36 for a complete description of the Overnight Comparison System and proposed new Rule 130.)

Since the electronic "Correction System" represents a significant departure from the present paper Form process ("Questioned Trades"), whose operational requirements are contained in Exchange Rule 134.A, the staff is of the opinion that it should be implemented in stages, so that the Exchange community can gradually become familiar with it, and obtain a measure of the benefits of electronic processing now. It is proposed that the operational requirements of the "Correction System" operate in tandem with the operational requirements of the "QT" procedure currently contained in Exchange Rule 134.A, with essentially the same time-frames.

The gradual implementation schedule provides that initially, stocks whose ticker symbols beginning with the letter "A" will be resolved via the "Correction System" rather than the paper Form procedure. As experience is gained and it becomes apparent that no operational problems exist, stocks whose ticker symbols beginning with "B", "C", etc. will be added. The "Correction System" will only be used to resolve "regular way" uncompared transactions in listed stocks, and will not apply to uncompared transactions in listed bonds.

At such time as "overnight" or "next day" comparison, as set forth in proposed new Exchange Rule 130 may become effective, the Exchange will submit an appropriate filing to the Securities and Exchange Commission, proposing the provisions of the "Correction System", containing necessary changes to the time frames contained therein, as an amendment to current Rule 134.A.

(2) Statutory Basis for the Proposed Rule Change

The Exchange believes that electronic processing of uncompared trades as provided by the "Correction System" will streamline and greatly increase the efficiency of Post Trade processing, not only in an environment of "next day" comparison, but in today's environment of resolving uncompared trades on the third business day after the trade date.

Even in today's environment, the electronic processing of the "Correction System", to the extent that it is expanded to stocks other than those whose ticker symbols begin with the letter "A", will eliminate much of the paper Form handling and errors in handwriting and keypunching. This will help protect investors and the public interest, as called for in section 6(b)(5) of the Act. The proposed rule change meets other requirements of section 6(b)(5), in that it will help prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade and foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities. It also meets requirements of section 17A(a)(1) in that it will enhance the prompt and accurate clearance and settlement of securities transactions.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe the proposed rule change will impose any burden on competition not in furtherance of the purposed of the Act.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

The Exchange has not solicited comments on the proposed rule change and no unsolicited comments have been received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

In view of the fact that the electronic "Correction System" has been installed, tested and found to be operationally viable, the Exchange believes that it can assist its clearing members in the rapid and efficient resolution of "Questioned Trades" now, within current time-frames, to the extent that stocks whose ticker symbols beginning with letters of the alphabet other than the letter "A" are added to the system. The Exchange also believes that it will be beneficial to the Exchange community to permit its clearing members to gain as much experience as possible in operating the system before such time as proposed new Rule 130 may become effective. For these reasons, the Exchange requests that the Commission find good cause to grant accelerated approval to the proposed rule change pursuant to section 19(b)(2) of the Securities Exchange Act of 1934, as amended.

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so find or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by April 5, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

Dated: March 9, 1989.

FR Doc. 89–6019 Filed 3–14–89; 8:45 am]

BILLING CODE 8010–01–M

**[Release No. 34–26820; File No. SR–NYSE–89–04]**

**Self-Regulatory Organization; Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange, Inc.**

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on March 6, 1989, the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-Regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The development of the Overnight Comparison System cost the Exchange approximately 5.4 million dollars in software and hardware charges. Annual operating costs are expected to be approximated 800 thousand dollars.

To recover these costs, a pricing program has been developed through an annual access charge, an equipment charge, and a usage fee.

The Exchange has established fees for hardware installation and maintenance and System access and usage for its "Correction System" for the electronic resolution of uncompared Exchange transactions.

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**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in item IV below and is set forth in Sections (A), (B), ad (C) below.

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

(1) Purpose

The Exchange has developed a system that must be used to resolve uncompared ("Questioned",') trades electronically by using a cathode-ray tube terminal, rather than the labor-intensive manual procedures contained in Exchange Rule 134.A. This system is know as the "Correction System", and will become part of its Overnight Comparison System. (Please refer to File Number SR–88–36 for a complete description of the Overnight Comparison System and proposed new Rule 130.)

In brief, the "Correction System" consists of cathode-ray tube terminals installed in the offices of clearing member firms and specialists and/or their spaces in the Questioned Trade Control Center, located on the Exchange premises, which will be used by them to resolve their uncompared ("Questioned") trades. By placing the appropriate response next to each uncompared trade displayed on the screen, clearing members and specialists may accept (OK) or reject (DK) it be pressing a button, rather than using the labor-intensive process of distributing multiple-copy QT Forms to the contra-parties to their uncompared trades. The process of making corrections on the Forms and delivering them to the processor of a Qualified ClearingAgency to be key-punched into its comparison system will be eliminated.

The "Correction System" can be used with the present time-frame requirements of Rule 134.A, which, in the main, requires QTs to be resolved by the third business day after the trade date, or the new time-frames of proposed new Rule 130 for overnight or "next day" comparision. (For a complete description of the "Correction System", please refer to File Number SR–88–03.)

Because of the significant amount of preparation work that must be accomplished before the new System can be operational, the Exchange has already begun to contact specialists and clearing firms to arrange to have the necessary equipment installed. For example, terminal equipment and associated connecting lines with their ancillary equipment must be ordered and installed in their offices by approximately 100 clearing member firms and specialists. In addition, a number of these firms will want to install additional terminal equipment at the Exchange. After the equipment is installed, it must be tested with each firm and their operations personnel must be trained in its use.

However, the Exchanges' clearing member firms and specialists will not incur charges until the "Correction System" has actually begun to process uncompared trades. The fees charged by the Exchange will vary according to the particular method of connecting to the System that is chosen. In general, there is an access fee, and usage fee.

If a member organization elects to use Exchange terminal equipment, there is also a hardware and maintenance fee.

The various methods that can be used are as follows:

- Firms can connect to the System directly by computer-to-computer links. They will purchase and maintain their own terminal equipment. The Exchange will only charge an access and usage fee.
- Firms can purchase and maintain their own terminal equipment or lease it from the Exchange. They will arrange with a communications carrier for a "dedicated" or "private" line connecting that equipment and the "Correction System". The Exchange will charge an access and usage fee. If the Exchange's terminal equipment is used, there will also be a hardware and maintenance fee.
- Firms can use a so-called "dial-up" connection between their offices and the "Correction System". They will be charged a line fee by a communications carrier only for the period of time that they use the line. The Exchange will charge an access and usage fee. If the Exchange's terminal equipment is used, there will also be a hardware and maintenance fee.
- Firms can use a common terminal located on the Exchange's premises. They will be charged an access and usage fee, which will include the Exchange's hardware and maintenance costs of the equipment.
- Firms that have terminal equipment in the Exchange's Questioned Trade Control Center will be required to use equipment designed especially for the Exchange because of the limited amount of available space. The Exchange will charge an access and usage fee, which will include the Exchange's hardware and maintenance costs of the equipment, as well as the Exchange's development costs.

(2) *Basis Under the Act for the Proposed Rule Change*

The basis under the Act for the proposed rule is section 6(b)(4) under the Securities Exchange Act of 1934 requiring that a national securities exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members.

*(B) Self-Regulatory Organizations Statement on Burden on Competition*

The Exchange does not believe the proposed rule change will impose any burden on competition.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

The Exchange has not solicited comments on the proposed rule change and no unsolicited comments have been received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of the Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

**IV. Solicitation of Comments**

Interested persons are invited to submit data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Copies of the submission, all subsequent amendments, all statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549.

Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by April 5, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 9, 1989.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 89–6020 Filed 3–14–89; 8:45 am]

BILLING CODE 8010–01–M



**[Rel. No. 34–26621; File Nos. SR–NYSE–89–01; SR–Amex–89–03; SR–CBOE–89–01]**

**Self-Regulatory Organizations; Proposed Rule Changes by the New York Stock Exchange, Inc., American Stock Exchange, Inc., and Chicago Board Options Exchange, Inc.**

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on February 24, 1989, the New York Stock Exchange, Inc. ("NYSE") filed with the Securities Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organizations.[1] The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The proposed rule amendments will require that member organizations develop and implement specific criteria and standards for approving customer accounts for uncovered short options transactions. The rules will also require that member organizations establish a minimum net equity requirement for approving and maintaining such accounts. If the customer does not meet the member organization's specific criteria/standards, approval of the account may only be made by the member organization's Senior Registered Options Principal or Compliance Registered Options Principal. The reasons for approving any such account must be recorded and the records maintained by the member organization. The rules further require that the member organization develop and implement specific written procedures concerning the member organization's supervisory review of customer accounts with uncovered short option transactions. Additionally, the rules will require that member organizations furnish to customers a written description of the risks involved in selling (writing) uncovered short option transactions, at or prior to the customer's initial uncovered short option transaction. The Council has designed a prototype risk disclosure document (Exhibit B) which may be used to satisfy the requirements of these rules. This written disclosure document is in addition to the Options Disclosure Document required to be provided to customers trading in options pursuant to Exchange Rule 726 (Delivery of Options Disclosure Document and Prospectus).

The amendments were developed by the Options Self-Regulatory Council, consisting of representatives of the American Stock Exchange, Chicago Board Options Exchange, Midwest Stock Exchange, National Association of Securities Dealers, New York Exchange, Philadelphia Stock Exchange and Pacific Stock Exchange. (the "Council"). The Exchange, and the other members of the Options Self-Regulatory Council, believe that these rules will increase the level and degree of member firm supervision with respect to customer transactions in uncovered options.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Items IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below of the most significant aspets of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

(a) *Purpose*—Each of the members of the Options Self-Regulatory Council have determined to adopt and file uniform rules with respect to customer uncovered short option transactions. The proposed rules are intended to increase customer awareness of the risks entailed in selling uncovered short option contracts and to intensify member organization supervision of customer accounts engaged in uncovered short option transactions.

(b) *Statutory Basis*—The proposed rule change is consistent with the requirements of the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange in that it requires both enhanced supervision of customers' uncovered option transactions and increased disclosure of the specific risks of such transactions.

Therefore, the proposed rule change is consistent with Section 6(b)(5) of the Act, which provides, in pertinent part, that the rules of the Exchange be designed to promote just and equitable principles of trade and to protect the investing public.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange believes that the proposal does not impose any burden on competition.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

During the course of the drafting of the proposed rule changes, the members of the Options Self-Regulatory Council solicited comments from a wide representation of the broker-dealer community. Representatives of the compliance and sales departments of a number of brokerage firms attended several meetings where the proposed rule changes were discussed. Although no formal written comments were solicited, the proposed rule changes represent a consensus of the views expressed at those meetings.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

[1] On February 14, 1989, the American Stock Exchange ("Amex") and the Chicago Board Options Exchange ("CBOE") filed with the Commission substantially identical proposed rule changes. *See* File Nos. SR–Amex–89–03; SR–CBOE–89–01. The Amex and CBOE proposals modify Amex Rules 921, 922, and 926 and CBOE Rules 9.7, 9.8, and 9.15, respectively. Hereinafter, the terms "self-regulatory organizations" and "exchange" refer to the NYSE, Amex, and CBOE.

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(B) institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 40549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file numbers in the caption above and should be submitted by [April 5, 1989].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

*Secretary.*

Dated: March 9, 1989.

**Exhibit A—Opening of Accounts**

NYSE Rule 721(a)—(d) [No change.]

Uncovered Short Option Accounts

(e) Each member and member organization transacting business with the public in writing uncovered short option contracts shall develop, implement and maintain specific written procedures governing the conduct of such business which shall include, at least, the following:

1. Specific criteria and standards to be used in evaluating the suitability of a customer for writing uncovered short option transactions;

2. Specific procedures for approval of accounts engaged in writing uncovered short option contracts, including written approval of such accounts by a Registered Options Principal;

3. Designation of the Senior Registered Options Principal or the Compliance Registered Options Principal as the person responsible for approving customer accounts which do not meet the specific criteria and standards for writing uncovered short option transactions and for maintaining written records of the reasons for every account so approved;

4. Establishment of specific minimum net equity requirements for initial approval and maintenance of customer accounts writing uncovered short option transactions; and

5. Requirements that customers approved for writing uncovered short options transactions be provided with a special written description of the risks inherent in writing uncovered short option transactions, at or prior to the initial writing of an uncovered short option transaction [See Rule 725(c)].

* * * Supplementary Material

.10—.30 [No Change.]

.40 For purposes of Rule 721 (Opening of Accounts), Rule 722 (Supervision of Accounts) and Rule 726 (Delivery of Options Disclosure Document and Prospectus), the term writing uncovered short option positions shall include combinations and any other transaction which involve naked writing.

*Supervision of Accounts*

Duty to Supervise: Senior Registered Options Principal Rule 722

(a) [No change in first paragraph]

Every member and member organization shall also develop and implement specific written procedures concerning the manner of supervision of customer accounts maintaining uncovered short (written) option positions and specifically providing for frequent supervisory review of such accounts.

*Delivery of Options Disclosure Document and Prospectus*

NYSE Rule 725(a)—(d) [No Change.]

Uncovered Short Options Risk Disclosure

(c) The written description of risks required by Rule 721 shall be in a format prescribed by the Exchange or in a format developed by the member or member organization, provided it contains substantially similar information as the prescribed Exchange format and has received prior written approval of the Exchange.

**Exhibit B—Rule 726 Risk Description**

Special Statement for *Uncovered* Option Writers

There are special risks associated with uncovered option writing which expose the investor to potentially significant loss. Therefore, this type of strategy may not be suitable for all customers approved for options transactions.

1. The potential loss of uncovered call writing is unlimited. The writer of an uncovered call is in an extremely risky position, and may incur large losses if the value of the underlying instrument increases above the exercise price.

2. The writer of an uncovered put option bears a risk of loss if the value of the underlying instrument declines below the exercise price. Such loss could be substantial if there is a significant decline in the value of the underlying instrument.

3. Uncovered option writing is thus suitable only for the knowledgeable investor who understands the risks, has the financial capacity and willingness to incur potentially large losses, and has sufficient liquid assets to meet applicable margin requirements, and in connection with uncovered put writing, is able to purchase the underlying instrument in the event that the option is exercised.

4. For combination writing, where the investor writes both a put and a call on the same underlying instrument, the potential risk is unlimited.

5. If a secondary market in options were to become unavailable, investors could not engage in closing transactions, and an option writer would remain obligated until expiration or assignment.

Note: It is expected that you will read the booklet entitled CHARACTERISTICS AND RISKS OF STANDARDIZED OPTIONS available from your broker. In particular your attention is directed to the chapter entitled Risks of Buying and Writing Options. This statement is not intended to enumerate all of the risks entailed in writing uncovered options.

[FR Doc. 89-6021 Filed 3-14-89; 8:45 am]

BILLING CODE 8010-01-M

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[Rel. No. 34-26617; File No. SR-PSE-89-02]

**Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by Pacific Stock Exchange, Inc.**

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 16, 1989, the Pacific Stock Exchange Incorporated ("PSE" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The PSE submits this rule filing pursuant to Rule 19b-4 under the Act. The PSE proposes to change its Listing Fee Schedule to include families of funds. This change would provide that families of close-end funds are eligible for the second tier of the PSE's current listing fee schedule.

Currently, under the first tier of the listing fee schedule, original listing fees of common stock are $7,500.00. Under the second tier, original listing fees of secondary issues, i.e. preferred stocks, warrants, bonds, and rights, are $2,500.00. The proposed change would include the second and all subsequent funds in a family of funds in the second tier fee schedule.



**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory orgnization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Propsed Rule Changes*

Currently, the PSE has a two-tiered Listing Fee Schedule. Original listings of common stocks are $7,500.00. Companies that have secondary issues listed are charged original listing fees of $2,500.00 for these secondary issues. Secondary issues include preferred stocks, warrants, bonds, and rights.

The two-tiered original listing fee was established in January 1987 to attract more multiple listings and to reflect that, generally, additional listings cost the PSE significantly less to process than the original listing.[1]

In recent months, there has been a proliferation of closed-end funds managed and sponsored by a number of investment companies. Possibly because of the popularity of baskets of stocks and program trading at the institutional level, the retail firms have offered these new closed-end funds as a similar investment concept.

It is proposed to apply the policy of reduced listing fees to the additional funds of the same family once the first fund is fully listed. Lower listing fees for common stocks of closed-end funds is justified because of the cost savings for secondary issues, and because they offer recognizable economies of scale. It is predicted that the reduced rate will attract groups of new listings. The Exchange believes that the proposal to reduce listing fees of additional securities in a family of closed-end funds underwritten and managed by the same sponsor or investment manger involves the same type of cost savings and economies of scale that were the basis for its decision to adopt a two-tiered listing fee structure. Processing multiple listing applications from the same sponsor simplifies and streamlines the regulatory review. Examinations of these substantially identical, though separate, listing applications of investment companies can be handled more efficiently than multiple applications for common stocks or different companies, even those with parent/subsidiary relationships. Although each fund is a unique registrant, the one sponsor in a multiple fund relationship provides the PSE with all ongong listing related information. Accordingly, the PSE's correspondence and liaison dealings can be handled through that one contact.[2]

The proposed rule filings is consistent with section 6(b)(4) of the Act in that it provides an equitable allocation of reasonable fees among persons using PSE facilities.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

PSE does not believe that the proposed rule filing imposes a burden on competition.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

The PSE has not solicited nor received comments on the proposed fee change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The proposed changes are effective on filing pursuant to section 19(b)(3)(A)(ii) of the Act, and Rule 19b-4(e) thereunder, in that they adopt a due, fee or other charge imposed by the PSE. At any time within 60 days of the date of filing of the proposed rule change the Commission may summarily abrogate the proposed rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC, 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commissison's Public Reference Section, 450 Fifth Street, NW., Washington, DC, 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR-PSE-89-02 and should be submitted by April 5, 1989.

For the Commission, by the Division of Market Regulation, purusant to delegated authority.

Jonathan G. Katz,

*Secretary.*

Dated: March 9, 1989.

[FR Doc. 89-6022 Filed 3-14-89; 8:45 am]

BILLING CODE 8010-01-M

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[Rel. No. 35-24833]

**Filings Under the Public Utility Holding Company Act of 1935 ("Act")**

March 9, 1989.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by April 3, 1989 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the manner. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

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[1] *See* Securities Exchange Act Release No. 24123 (February 20, 1987), 52 FR 6641.

[2] *See* letter dated February 24, 1989, from James C. McKee, Manager, Listings, PSE, to Howard Kramer, Assistant Director, Division of Market Regulation.

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**Mississippi Power Company, et al. (70-7528)**

Mississippi Power Company ("Mississippi Power"), 2992 West Beach, Gulfport, Mississippi 39501, Georgia Power Company ("Georgia Power"), 333 Piedmont Avenue, NE., Atlanta, Georgia 30308, and Gulf Power Company ("Gulf Power"), 500 Bayfront Parkway, Pensacola, Florida 32501, each a wholly owned, electric utility subsidiary companies of The Southern Company ("Southern"), a registered holding company, have filed an application under sections 9(a) and 10 of the Act.

By orders dated May 16, 1978 (HCAR No. 20543), September 18, 1985 (HCAR No. 23833) and February 8, 1980 (HCAR No. 21414), Mississippi Power, Georgia Power and Gulf Power, respectively, have acquired, by purchase or lease, coal hopper railroad cars for use in transporting coal in dedicated unit train service to their respective coal-fired generating plants. Georgia Power currently has approximately 1,300 railcars operating to transport coal to three of its plants. In addition, Mississippi Power has entered into a lease agreement, on behalf of itself and Gulf Power, with respect to 495 railcars for the transportation of coal to Plant Daniel, which is owned by Mississippi Power and Gulf Power as tenants-in-common. Alabama Power Company ("Alabama") and Savannah Electric and Power Company ("Savannah"), also wholly owned, electric utility subsidiary companies of Southern, currently do not own or lease coal hopper railroad cars. The total number of such railcars owned or leased by Southern system companies is the approximately 1,795 railcars that are currently owned or leased by Mississippi Power, Georgia Power and Gulf Power.

It is stated that the approximately 1,795 railcars have been acquired by Mississippi Power, Georgia Power and Gulf Power based upon their anticipated needs for coal. However, due to changes in coal burn forecasts, fuel prices, adjustments to the Southern electric system's economic dispatch procedures and other causes, Mississippi Power, Georgia Power and Gulf Power may, from time-to-time, need fewer than the approximately 1,795 railcars then currently available. Railcars owned or leased by Mississippi Power, Georgia Power and/or Gulf Power may be made available to one or more of the other Southern system operating companies, including Alabama and Savannah, which may have a need for such railcars.

It is further stated that it also may be desirable and economically advantageous to lease or sublease railcars not currently needed by Mississippi Power, Georgia Power and/or Gulf Power to nonaffiliate companies. To the extent that fewer than the approximately 1,795 railcars currently available are needed, Mississippi Power, Georgia Power and Gulf Power seek authorization to lease or sublease such railcars to nonaffiliate companies from time-to-time on or prior to December 31, 1992. In the event that additional railcars are acquired by purchase or lease by Mississippi Power, Georgia Power, Gulf Power, Alabama and/or Savannah, further authorization to lease or sublease such railcars or to nonaffiliate companies will be sought from the Commission.

**Central and South West Corporation, et al. (70-7643)**

Central and South West Corporation ("CSW"), 2121 San Jacinto Street, Suite 2500, Dallas, Texas 75201, a registered holding company, and five of its operating subsidiaries, Central Power and Light Company ("CPL"), P.O. Box 2121, Corpus Christi, Texas 78403, Public Service Company of Oklahoma ("PSO"), P.O. Box 201, Tulsa, Oklahoma 74102, Southwestern Electric Power Company ("SWEPCO"), P.O. Box 21106, Shreveport, Louisiana 71156, West Texas Utilities Company ("WTU"), P.O. Box 841, Abilene, Texas 79604, and Transok, Inc. ("Transok"), P.O. Box 3008, Tulsa, Oklahoma 74101 and CSW's service company subsidiary, Central and South West Services, Inc. ("CSWS"), 2121 San Jacinto Street, Suite 2500, Dallas, Texas 75201, (together, "Subsidiaries") have filed an application-declaration under section 6(a), 7, 9(a), 10, 12(b) and 12(f) of the Act and Rules 43, 45 and 50(a)(5) thereunder.

CSW and its Subsidiaries propose to continue through March 31, 1991 their short-term borrowing program authorized by prior Commission order, dated April 2, 1987 (HCAR No 24363). The borrowing program would be coordinated through the use of the CSW system money pool ("Money Pool"). The program would make funds available to the Subsidiaries for interim financing of their capital expenditure programs and their other working capital needs, and to repay previous borrowings incurred for such purposes. Funds for the Money Pool would be available from surplus funds from the treasuries of CSW and its operating subsidiaries, from proceeds from the sale of commercial paper notes by CSW and bank borrowings by CSW and the Subsidiaries.

The maximum anticipated borrowing levels requested by CSW and its Subsidiaries are as follows: CSW—$800 million, CPL—$200 million, PSO—$100 million, SWEPCO—$150 million, WTU—$50 million, Transok—$80 million, and CSWS—$25 million, with an aggregate principal amount not to exceed $600 million.

To provide funds for the Money Pool, CSW requests authorization to issue and sell commercial paper. The commercial paper would have varying maturities of not more than nine months from the date of issue, and may be issued and sold by CSW from time to time through March 31, 1991. CSW requests that its commercial paper transactions be excepted under Rule 50(a)(5) from the competitive bidding requirements of Rule 50.

CSW and the Subsidiaries also request authorization to borrow money from banks to extent that the surplus funds of CSW and the Subsidiaries are insufficient to meet the Subsidiaries' requests for short-term loans. Such borrowing will not be made unless it would produce a lower cost of money than the issue of CSW's commercial paper, and in any event, they will not bear a rate of interest higher than the effective cost of money for unsecured prime commercial bank loans prevailing on the date of such borrowing. The borrowings would be evidenced by promissory notes, maturing no more than 24 months from the date of issue, and will be prepayable in whole at any time or in part from time to time, without penalty. Compensation arrangements under lines of credit with banks for CSW and its Subsidiaries are on a balance or fee basis. In general, fees are ⅛ of 1% per annum on the average unused portion of the commitment, and balance arrangements require average balances of 5% of the amount of the commitment.

In addition, CSW requests authorization to borrow funds managed by trust departments of banks if such borrowings result in a cost of money equal to or less than that available from the sale of commercial paper or other bank borrowings.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 89-6023 Filed 3-14-89; 8:45 am]

BILLING CODE 8010-01-M



[File No. 270-87]

**Forms Under Review by Office of Management and Budget; Revising; Rule 15c3-3**

*Agency Clearance Officer:* Kenneth A. Fogash, Deputy Executive Director, (202) 272-2142.

*Upon Written Request Copy Available From:* Securities and Exchange Commission, Office of Consumer Affairs, 450 5th Street, NW., Washington, DC 20549.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for OMB approval a revision of Rule 15c3-3 under the Securities Exchange Act of 1934 (15 U.S.C. 78(a) *et seq.*) that would amend the rule to allow broker-dealers to pledge certain "government securities" as collateral in government securities borrowings. One thousand respondents incur an average burden of 110 hours per year to comply with the rule.

The estimated average burden hours are made solely for the purposes of the paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the cost of SEC rules and forms.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with SEC rules and forms to Kenneth A. Fogash, Deputy Executive Director, 450 5th Street, NW., Washington, DC 20549-6004, and Gary Waxman, Clearance Officer, Officer of Management and Budget, Paperwork Reduction Project (3235-0078), Room 3208, New Executive Office Building, Washington, DC 20503.

**Jonathan G. Katz,**

*Secretary.*

March 8, 1989.

[FR Doc. 89-5953 Filed 3-14-89; 8:45 am]

BILLING CODE 8010-01-M

**DEPARTMENT OF TRANSPORTATION**

**Office of the Secretary**

**[Order 89-3-27]**

**Fitness Determination of Helitrans Air Service, Inc.**

**AGENCY:** Department of Transportation.

**ACTION:** Notice of commuter air carrier fitness determination, order to show cause.

**SUMMARY:** The Department of Transportation is proposing to find that Helitrans Air Service, Inc., is fit, willing, and able to provide commuter air service under section 419(c)(2) of the Federal Aviation Act.

**RESPONSES:** All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Air Carrier Fitness Division, Room 6401, Department of Transportation, 400 7th Street, SW., Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than March 27, 1989.

**FOR FURTHER INFORMATION CONTACT:** Janet A. Davis, Air Carrier Fitness Division, Department of Transportation, 400 7th Street, SW., Washington, DC 20590, (202) 366-9721.

Dated: March 10, 1989.

**Patrick V. Murphy, Jr.,**

*Deputy Assistant Secretary for Policy and International Affairs.*

[FR Doc. 89-6010 Filed 3-14-89; 8:45 am]

BILLING CODE 4910-62-M

**[Order 89-3-28]**

**Fitness Determination of Panama Aviation, Inc.**

**AGENCY:** Department of Transportation.

**ACTION:** Notice of commuter air carrier fitness determination, order to show cause.

**SUMMARY:** The Department of Transportation is proposing to find that Panama Aviation, Inc., fit, willing, and able to provide commuter air service under section 219(d)(2) of the Federal Aviation Act.

*Responses:* All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Air Carrier Fitness Division, P-56, Department of Transportation, 400 Seventh Street, SW., Room 6401, Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than March 27, 1989.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Kathy Lusby Cooperstein, Air Carrier Fitness Division (P-56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-9721.

Dated: March 10, 1989.

**Patrick V. Murphy, Jr.,**

*Deputy Assistant Secretary for Policy and International Affairs.*

[FR Doc. 89-6011 Filed 3-14-89; 8:45 am]

BILLING CODE 4910-62-M

**DEPARTMENT OF TRANSPORTATION**

**Federal Railroad Administration**

**Petitions for Exemption or Waiver of Compliance**

In accordance with 49 CFR §§ 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received requests for an exemption from or waiver of compliance with a requirement of its safety standards. The individual petitions are described below, including the party seeking relief, the regulatory provisions involved, and the nature of the relief being requested.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. Any interested parties desiring an opportunity for oral comment, should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number RST-84-21) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Communications received before April 28, 1989, will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.-5 p.m.) in Room 8201, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

The individual petitions seeking an exemption or waiver of compliance are as follows:

**Southern Pacific Transportation Company (Waiver Petition Docket Number RSGM-88-28)**

The Southern Pacific Transportation Company (SP) seeks a permanent waiver of compliance with the Safety Glazing Standards (49 CFR 223.17) for all SP locomotives. This portion of the standards requires each locomotive fully equipped with FRA glazing to be stencilled on an interior wall as follows: "FULLY EQUIPPED FRA PART 223 GLAZING." The petitioner states that all locomotives are in compliance with 49 CFR Part 223; therefore, the presence of the stencil required under § 223.17 is no

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longer useful and has become a burden to maintain.

**Ann Arbor Railroad (Waiver Petition Docket Number RSGM–88–21)**

The Ann Arbor Railroad seeks a permanent waiver of compliance with the provisions of the Safety Glazing Standards (49 CFR Part 223) for one locomotive and three cabooses. The petitioner operates the one locomotive primarily in yard service in the City of Toledo, Ohio. The three cabooses are used for yard moves in Toledo, Ohio and in road service between Toledo, Ohio and Ann Arbor, Michigan, a distance of approximately 45 miles. The Ann Arbor Railroad states that it has have not had any incidents or injuries involving glazing.

**Weber Industries (Waiver Petition Docket Number RSGM–88–22)**

Weber Industries seeks a permanent waiver of compliance with the provisions of the Safety Glazing Standards (49 CFR Part 223) for nine passenger cars used in an excursion/dinner train. The cars will operate over approximately 32.4 miles of the Iowa Interstate Railroad between Council Bluffs and Hillis, Iowa.

**The Laramie Valley Rail Preservation Association (Waiver Petition Docket Number RSGM–88–24)**

The Laramie Valley Rail Preservation Association seeks a permanent waiver of compliance with the provisions of the Safety Glazing Standards (49 CFR Part 223) for one railway postal service passenger car, which will be operated in excursion service over approximately 60 miles of the Wyoming/Colorado Railroad between Laramie and Fox Park, Wyoming. The majority of the operating area is rural, mountainous terrain. The Wyoming/Colorado Railroad indicates no reported acts of vandalism or accidents involving locomotive glazing.

**The Sisseton Southern Railway (Waiver Petition Docket Number RSGM–88–25)**

The Sisseton Southern Railway (SSOR) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for two locomotives. The locomotives operate over aporoximately 38 miles of main line track that extends primarily through a rural area between Millbank and Sisseton, South Dakota. The petitioner states that there have been no incidents of rock throwing or gunfire directed at their locomotives. The petitioner feels that the installation of FRA certified glazing would impose an undue financial burden on the company to protect against situations it does not encounter.

**The Buffalo Southern Railroad, Inc. (Waiver Petition Docket Number RSGM–88–26)**

The Buffalo Southern Railroad, Inc., seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for four locomotives. The locomotives operate on approximately 40 miles of track between Buffalo and Gowanda, New York. The area of operation is through rural, light industrial, and urban regions.

**Connecticut Central Railroad (Waiver Petition Docket Number RSGM–88–27)**

The Connecticut Central Railroad (CCL) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for one caboose. The petitioner uses this caboose on a train that operates once a day Monday through Friday. The train operates over approximately 17.2 miles of track in mostly residential/rural areas near Middletown, Connecticut. The Petitioner states the caboose is used only as a platform for the conductor during pickup moves and that it is not occupied during train movements. The CCL feels that the installation of FRA certified glazing would not enhance railroad employee or public safety.

**West Jersey Railroad (Waiver Petition Docket Number RSGM–88–28)**

The West Jersey Railroad (WJR) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for two locomotives. The petitioner states that the two locomotives will operate over approximately 17.4 miles of track between Salem and Swedesboro, New Jersey. WJR states that the operating area is rural and not prone to vandalism. The petitioner therefore feels that the installation of FRA certified glazing would be an unnecessary financial burden to its operation.

**Herzog Contracting Corporation (Waiver Petition Docket Number RSGM–88–29)**

The Herzog Contracting Corporation seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for its trackmobiles now leased to various railroads. At the present time, 20 trackmobiles are leased. The petitioner states that the trackmobiles are primarily used for maintenance-of-way projects. The company indicates that the required FRA glazing materials are not readily available, are expensive, and would require field installation. The petitioner therefore feels that the installation of certified glazing would present a financial burden to its operation.

**El Dorado Railway Company (Waiver Petition Docket Number RSGM–88–30)**

The El Dorado Railway (EDW) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for three locomotives. These locomotives will be operated over approximately 5.5 miles in a sparsely populated area near El Dorado, Arkansas. The petitioner states that the railroad has not experienced an accident involving locomotive glazing since it began operations in 1905.

**Mount Hood Railway Company (Waiver Petition Docket Number RSGM–88–31)**

The Mount Hood Railway Company (MH) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for one caboose. The caboose will operate at speeds up to 15 mph in mostly rural terrain between Hood River and Dee, Oregon, a distance of approximately 16 miles. There have been no reported acts of vandalism or accidents involving glazing. The carrier therefore feels that the installation of FRA certified glazing would be an unnecessary financial burden to its operation.

**Buffalo and Pittsburgh Railroad, Inc. (Waiver Petition Docket Number RSGM–88–32)**

The Buffalo and Pittsburgh Railroad, Inc. (BPRR) seeks a temporary waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for two locomotives, PS 10 and PS 11. The two locomotives will be operated over approximately 110 miles of track between Punxsutawney, Pennsylvania and Salamanca, New York. The petitioner states that the cost to retrofit these units with FRA certified glazing would present a financial burden since the locomotives are not owned by the railroad and are only in temoorary use.

**Sequatchie Valley Railroad and the Southern Alabama Railroad (Waiver Petition Docket Number RSGM–88–33)**

The Sequatchie Valley Railroad (SQVR) and the Southern Alabama Railroad (SUAB) seek a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for five locomotives. Four locomotives will be operated on the SQVR railroad between Bridgeport, Alabama and Dunlap, Tennessee, a distance of approximately 39.9 miles. One locomotive will be operated on the SUAB railroad between Troy, Alabama and Goshen, Alabama, a distance of approximately 12.2 miles. The petitioners state that windows in all five locomotives are equipped with a shatterproof glass and that application of FRA glazing would be a financial burden.



**St. Lawrence Railroad (SLAW) (Waiver Petition Docket Number RSGM–88–34)**

The St. Lawrence Railroad (SLAW) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for two locomotives. One locomotive will be operated in the train yard at Norfolk, New York and the other locomotive will operate between Ogdensburg and Raymondville, New York, a distance of approximately 30 miles. The railroad seeks the waiver of compliance because of the financial burden.

**Huron and Eastern Railroad Company, Inc. (Waiver Petition Docket Number RSGM–88–35)**

The Huron and Eastern Railroad Company, Inc. (HERS) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for three locomotives and one caboose. The HERS states that it normally operates one train a day over approximately 82.6 miles of track between Huron and Sanilac Counties in Michigan. The petitioner states that it has been in operation over 21 years without experiencing vandalism, shootings, stoning or similar incidents. Therefore, it feels that the added cost of meeting the standards of Part 223 is not justified.

**Ohio Central Railroad, Inc. (Waiver Petition Docket Number RSGM–88–36)**

The Ohio Central Railroad, Inc. (OCRI) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for one locomotive. This locomotive operates between Harmon and Zanesville, Ohio, a distance of approximately 71 miles. The petitioner states that the train passes generally through rural area and at speeds not to exceed 25 mph. Vandalism is not known to be a problem.

**Braswell Sand and Gravel Company, Inc. (Waiver Petition Docket Number RSGM–89–1)**

The Braswell Sand and Gravel Company, Inc. seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for one locomotive. The locomotive is operated once or twice weekly as a switch engine along a siding adjoining the Kansas City Southern Railroad near Wilton, Arkansas. Vandalism is not known to be a problem.

**Springfield Terminal Railway Company (Waiver Petition Docket Numbers RSGM–89–2 and LI–89–1)**

The Springfield Terminal Railway Company seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) and the Locomotive Safety Standards (49 CFR Part 229) for its TM 4500 Trackmobiles. This equipment is being operated on the Medford Running Track, the Wakefield Junction Running Track and the Danvers Running Track in northeast Massachusetts.

**Florida Midland Railroad (Waiver Petition Docket Number RSGM–89–3)**

The Florida Midland Railroad seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for one locomotive. The petitioner plans to operate the locomotive on either its Leesburg Branch or Gordonville Branch, both of which are located in a basically rural area in central Florida. The Leesburg Branch consists of approximately 15 miles of track between Wildwood and Leesburg, Florida. The Gordonville Branch consists of approximately 5.9 miles of track located between Winter Haven and Gordonville, Florida. Operation will be during daylight hours at a maximum speed of 25 mph.

**ARMCO, Inc. (Waiver Petition Docket Number RSGM–89–4)**

The ARMCO, Inc. seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for five switcher locomotives. The locomotives operate over approximately 5 miles of industrial lead track located in Ashland, Kentucky. The area of operation is totally industrial with no known problems of vandalism or stoning of locomotives.

**Carolina Coastal Railway (Waiver Petition Docket Numbers RSGM–89–5 and SA–89–4)**

The Carolina Coastal Railway seeks a permanent waiver with certain provisions of the Safety Glazing Standards (49 CFR Part 223) and the Safety Appliance Standards (49 CFR Part 231) for one locomotive. The petitioner anticipates operating the locomotive as a reserve unit, during daylight hours only, on approximately 17 miles of track between Pinetown and Belhaven, North Carolina. Operating speeds will be restricted to 10 mph. The operating area is rural and serves no major population centers. The petitioner states that the locomotive is equipped with shatterproof glazing which is not FRA certified and that it is not currently feasible to modify the vertical side steps to meet the requirements of Part 231. There are no known incidents of vandalism concerning locomotives in this area.

**Wayne County Chamber of Commerce (Waiver Petition Docket Numbers (RSGM–89–6 and SA–89–5)**

The Wayne County Chamber of Commerce seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) and the Safety Appliance Standards (49 CFR Part 231) for one locomotive. The petitioner plans to operate the locomotive on approximately 25 miles of track owned by the Lackawaxen and Stourbridge Railroad Corporation. The track is located between Honesdale and Lackawaxen, Pennsylvania and is situated in a rural area which includes some small towns. Vandalism is not known to be a problem in this area of operation. The portion of the request pertaining to the Safety Appliance Standards concerns switching steps and uncoupling arrangements.

**Louisville, New Albany, and Corydon Railroad Company (Waiver Petition Docket Number RSGM–89–8)**

The Louisville, New Albany and Corydon Railroad Company (LNAC) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for three passenger coaches. The petitioner plans to operate these coaches as part of a tourist train between Corydon, Indiana and Corydon Junction, Indiana, a distance of approximately 7.7 miles. The track is rated as Class 2 with a timetable speed limit of 20 mph. The area of operation is rural and vandalism is not known to be a problem. Due to the area and speed of operation, the LNAC feels that the installation of FRA certified glazing in these coaches is unnecessary and would create an undue financial hardship in the start up costs.

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Issued in Washington, DC, on March 9, 1989.

J.W. Walsh,
*Associate Administrator for Safety*

[FR Doc. 89-6002 Filed 3-14-89; 8:45 am]

BILLING CODE 4910-60-M

## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration Office of Hazardous Materials Transportation; Applications for Renewal or Modification of Exemptions or Applications To Become a Party to an Exemption

**AGENCY:** Research and Special Programs Administration, DOT.

**ACTION:** List of Applications for Renewal or Modification of Exemptions or Application To Become a Party to an Exemption.

**SUMMARY:** In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Except as otherwise noted, renewal application are for extension of the exemption terms only. Where changes are requested (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) they are described in footnotes to the application number. Application numbers with the suffix "X" denote renewal; application numbers with the suffix "P" denote party to. These applications have been separated from the new applications for exemptions to facilitate processing.

**DATES:** Comment period closes March 28, 1989.

**ADDRESS COMMENTS TO:** Dockets Branch, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

**FOR FURTHER INFORMATION:** Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 Seventh Street SW., Washington, DC.

| Application Number | Applicant | Renewal of Exemption |
|---|---|---|
| 1862-X | Greer Hydraulics, Inc., Cleveland, OH. | 1862 |
| 3600-X | U.S. Department of Defense, Falls Church, VA. | 3600 |
| 4262-X | Schlumberger Well Services, Houston, TX. | 4262 |
| 4453-X | Atlas Powder Company, Dallas, TX. | 4453 |
| 4453-X | Laverty Supply, Inc., Indianola, IA. | 4453 |
| 4453-X | ETI Explosives Technologies International Inc., Wilmington, DE. | 4453 |
| 4453-X | Kentucky Powder Company, Lexington, KY. | 4453 |
| 4453-X | Laurel Explosives, Inc., East Bernstadt, KY. | 4453 |
| 4719-X | Allied-Signal Inc./ Engineered Materials Sector, Morristown, NJ. | 4719 |
| 4884-X | Airco, The BOC Group, Inc., Murray Hill, NJ. | 4884 |
| 5704-X | Aerojet Solid Propulsion Company, Sacramento, CA. | 5704 |
| 6293-X | Hercules Incorporated, Wilmington, DE (See Footnote 1). | 6293 |
| 6484-X | Angus Chemical Company, Northbrook, IL (See Footnote 2). | 6484 |
| 6614-X | Steelcrete Company, Novi, MI. | 6614 |
| 6614-X | Arco Industries, Inc., Milwaukee, WI. | 6614 |
| 6614-X | Hass Chemicals, Inc., Saugus, CA. | 6614 |
| 6614-X | Clearwater Chemical Corporation, Clearwater, FL. | 6614 |
| 6752-X | 3M Transportation Co., St. Paul, MN. | 6752 |
| 6824-X | Bio-Lab, Incorporated, Decatur, GA. | 6824 |
| 7052-X | SAB NIFE A/S, Denmark. | 7052 |
| 7060-X | Airborne Express, Inc., Wilmington, OH. | 7060 |
| 7607-X | Radian Corporation, Herndon, VA. | 7607 |
| 7616-X | Consolidated Rail Corporation (Conrail), Philadelphia, PA. | 7616 |
| 7616-X | Norfolk Southern Corporation, Norfolk, VA. | 7616 |
| 7616-X | Union Pacific Railroad Company, Omaha, NE. | 7616 |
| 7616-X | Burlington Northern Railroad, Overland Park, KS. | 7616 |
| 7616-X | Soo Line Railroad Company, Milwaukee, WI. | 7616 |
| 7616-X | Grand Trunk Western Railroad Company, Pontiac, MI. | 7616 |
| 7730-X | The Western Company of North America, Fort Worth, TX. | 7730 |
| 7735-X | Rheem Container Corporation, Danbury, CT. | 7735 |
| 7835-X | Messer Griesheim Industries, Inc., Valley Forge, PA. | 7835 |
| 7886-X | W.M. Barr & Company, Inc., Memphis, TN. | 7886 |
| 7969-X | Crosby & Overton, Inc., Long Beach, CA. | 7969 |
| 8008-X | Wheaton Aerosols Company, Mays Landing, NJ. | 8008 |
| 8151-X | Ropak West, Inc., La Mirada, CA. | 8151 |
| 8184-X | Austin Powder Company, Cleveland, OH. | 8184 |
| 8198-X | GCS Container Service, SA, Chiasso, Switzerland. | 8198 |
| 8228-X | U.S. Department of Treasury (BATF), Washington, DC. | 8228 |
| 8230-X | G. Frederick Smith Chemical Company, Columbus, OH. | 8230 |
| 8232-X | GCS Container Service, SA, Chiasso, Switzerland. | 8232 |
| 8363-X | IMR Powder Company, Plattsburgh, NY. | 8363 |
| 8363-X | X-Plo, Inc., Plattsburgh, NY. | 8363 |
| 8453-X | Nelson Brothers, Inc., Parrish, AL. | 8453 |
| 8518-X | Crosby & Overton Inc., Long Beach, CA. | 8518 |
| 8518-X | Lomita Gasoline Company, Long Beach, CA. | 8518 |
| 8554-X | Piedmont Explosives, Inc., Statesville, NC. | 8554 |
| 8569-X | Allied-Signal Aerospace Company, Tempe, AZ. | 8569 |



| Application Number | Applicant | Renewal of Exemption |
|---|---|---|
| 8573-X | All Pure Chemical Company, Inc., Tracy, CA. | 8573 |
| 8573-X | Alstar Company, Tracy, CA. | 8573 |
| 8691-X | Aluminum Company of America (ALCOA), Pittsburgh, PA. | 8691 |
| 8706-X | Prairie State Equipment, Inc., Sioux Falls, SD. | 8706 |
| 8757-X | Y-Z Industries, Inc., Snyder, TX. | 8757 |
| 8917-X | Fluor Daniel, Bellaire, TX. | 8917 |
| 8958-X | Track of the Wolf, Inc., Brooklyn Park, MN. | 8958 |
| 8962-X | HTL/Kin-Tech Division/Pacific Scientific Co., Duarte, CA. | 8962 |
| 8978-X | SAB NIFE A/S, Denmark. | 8978 |
| 8978-X | Whittaker-Yardney Power Systems, Pawcatuck, CT. | 8978 |
| 8978-X | Whittaker-Yardney Power Systems, Waltham, MA. | 8978 |
| 8988-X | Western Atlas International, Inc., Houston, TX. | 8988 |
| 8991-X | Lee-Ronal, Inc., Freeport, NY. | 8991 |
| 8998-X | Oil-Air Hydraulic, Inc., Brookshire, TX. | 8998 |
| 9014-X | Hunter Drums Limited, Bramalea Ontario, Canada. | 9014 |
| 9017-X | Mobay Corporation, Pittsburgh, PA. | 9017 |
| 9036-X | The Marison Company, South Elgin, IL. | 9036 |
| 9052-X | Chemical Handling Equipment Company, Inc., Toledo, OH. | 9052 |
| 9108-X | Austin Powder Company, Cleveland, OH. | 9108 |
| 9108-X | Explosives Technologies International (ETI), Wilmington, DE. | 9108 |
| 9108-X | E.I. duPont de Nemours & Company, Inc., Wilmington, DE. | 9108 |
| 9129-X | Weldex Corporation, Grafton, MA. | 9129 |
| 9164-X | Fabricated Metals, Inc., San Leandro, CA (See Footnote 3). | 9164 |
| 9174-X | National Aeronautics and Space Administration, Washington, DC. | 9174 |
| 9275-X | Merrell Dow Pharmaceuticals, Inc., Cincinnati, OH. | 9275 |
| 9275-X | The Upjohn Company, Kalamazoo, MI. | 9275 |
| 9275-X | Fritzsche, Dodge & Olcott, Inc., New York, NY. | 9275 |
| 9275-X | Noxell Corporation, Hunt Valley, MD. | 9275 |
| 9275-X | Ortho Pharmaceutical Corporation, Somerset, NJ. | 9275 |
| 9275-X | A.H. Robins Company, Richmond, VA. | 9275 |
| 9275-X | Shaklee Corporation, Hayward, CA. | 9275 |
| 9275-X | Carter-Wallace, Inc., Cranbury, NJ. | 9275 |
| 9275-X | BIC Corporation, Milford, CT. | 9275 |
| 9275-X | The Procter & Gamble Distributing Company, Cincinnati, OH. | 9275 |
| 9275-X | Firmenich, Incorporated, Princeton, NJ. | 9275 |
| 9275-X | Amway Corporation, Ada, MI. | 9275 |
| 9275-X | Liz Claiborne Cosmetics, North Bergan, NJ. | 9275 |
| 9275-X | Scentura Creations, Atlanta, GA. | 9275 |
| 9275-X | Mary Kay Cosmetics, Dallas, TX. | 9275 |
| 9275-X | Parfums Stern, New York, NY. | 9275 |
| 9275-X | Giorgio of Beverly Hills, Santa Monica, CA. | 9275 |
| 9275-X | Avon Products, Inc., New York, NY. | 9275 |
| 9275-X | Warner-Lambert Company, Morris Plains, NJ. | 9275 |
| 9275-X | DuPont Pharmaceuticals, Inc., Waukegan, IL. | 9275 |
| 9346-X | Pennzoil Company, Houston, TX. | 9346 |
| 9346-X | Pennzoil Company, Houston, TX (See Footnote 4). | 9346 |
| 9386-X | Pacific Scientific, HTL Division, Duarte, CA. | 9386 |
| 9401-X | Arbel-Fauvet-Rail, Paris, France. | 9401 |
| 9401-X | ATOCHEM, Paris, France, In. | 9401 |
| 9401-X | Societe Nationale De Wagons-Reservoirs, Paris, France. | 9401 |
| 9402-X | Arbel-Fauvet-Rail, St. Laurent-Balngy, France. | 9402 |
| 9402-X | Alochem, Paris, France. | 9402 |
| 9402-X | NAACO, S.A., Paris, France. | 9402 |
| 9402-X | ALGECO, Paris, France. | 9402 |
| 9402-X | Exploitation De Services Industriels Et De Forets, Paris, France, NS. | 9402 |
| 9415-X | Sonoco Plastic Drum, Inc., Lockport, IL. | 9415 |
| 9450-X | Marison Company, South Elgin, IL. | 9450 |
| 9617-X | Explosives Technologies International, Wilmington, DE (See Footnote 5). | 9617 |
| 9672-X | Texas Alkyls, Inc., Westport, CT. | 9672 |
| 9673-X | Mauser Packaging, Limited, Litchfield, CT. | 9673 |
| 9689-X | Olin Chemicals Corporation, Stamford, CT. | 9689 |
| 9697-X | E.I. du Pont de Nemours & Company, Inc., Wilmington, DE. | 9697 |
| 9716-X | Comdyne I, Inc., West Liberty, OH. | 9716 |
| 9716-X | Johnson Industries Corporation, West Liberty, OH (See Footnote 6). | 9716 |
| 9719-X | Great Southern Airways, Orlando, FL. | 9719 |
| 9730-X | Air Products and Chemicals, Inc., Allentown, PA. | 9730 |
| 9735-X | Hagag-Lloyd, AG, Hamburg, West Germany. | 9735 |
| 9736-X | Aqua-Tech, Incorporated, Port Washington, WI (See Footnote 7). | 9736 |
| 9748-X | Greif Bros. Corporation, Springfield, NJ. | 9748 |
| 9783-X | Helios Container Systems, Inc., Addison, IL (See Footnote 8). | 9783 |

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| Application Number | Applicant | Renewal of Exemption |
|---|---|---|
| 9789–X | E.I. du Pont Nemours & Company, Inc., Wilmington, DE (See Footnote 9). | 9789 |
| 9924–X | U.S. Department of Energy, Washington, DC. | 9924 |
| 10020–X | Allwaste, Houston, TX (See Footnote 10). | 10020 |
| 10126–X | Moli Energy Limited, Burnaby, B.C., Canada (See Footnote 11). | 10126 |
| 10127–X | Morton Thiokol, Inc., Huntsville, AL (See Footnote 12). | 10127 |

*(1)* To authorize the increase of nitric acid from 13% to 16% contained in spent mixed acid for shipment in cargo tanks.

*(2)* To authorize shipment of the following additional materials classed as flammable liquids: Nitromethane, 31%; Nitroethane, 31%; and 1-Nitropropane, 38% for shipment in cargo tanks.

*(3)* To authorize the addition of other specific products and sludges such as lube oil sludge, anti freeze sludge, cutting oil sludge, lubricating oils, greases and inks, for shipment in cargo tanks.

*(4)* To modify exemption to authorize seventeen (17) coupled tank cars instead of twelve (12) tank cars, for shipment of oil, n.o.s.

*(5)* To authorize cargo vessel as an additional mode of transportation.

*(6)* To authorize a larger size fiber reinforced plastic cylinder for shipment of certain nonflammable and flammable compressed gases.

*(7)* To authorize use of 8-gallon 17c drums and 8-gallon 37A60 drums, for shipment of various hazardous substances.

*(8)* To authorize cargo vessel as additional mode of transportation.

*(9)* To authorize the addition of chromium complex solutions, classed as flammable liquids, corrosive, n.o.s., for shipment in DOT Specification 57 portable tanks.

*(10)* To authorize any Corrosive solid, n.o.s. materials; to be shipped in non-DOT run-on/off containers and to provide for additional containers of ¾ inch steel instead of the current ¼ inch steel.

| Application Number | Applicant | Parties to Exemption |
|---|---|---|
| 4884–P | Matheson Gas Products Secaucus, NJ. | 4884 |
| 6309–P | Preferred Foam Products, Inc. Old Saybrook, CT. | 6309 |
| 6309–P | Eastern Foam Systems Inc. Stratford, CT. | 6309 |
| 7052–P | Honeywell Inc., DASD/San Mateo Facility Albuquerque, NM. | 7052 |
| 7991–P | Norfolk and Western Railway Company Roanoke, VA. | 7991 |
| 7991–P | Southern Railway Company Roanoke, VA. | 7991 |
| 8451–P | Teledyne McCormick Selph Hollister, CA. | 8451 |
| 8554–P | Pacco Inc. South Olympia, WA. | 8554 |
| 8582–P | The Cedar Rapids and Iowa City Railway Company Cedar Rapids, IA. | 8582 |
| 8966–P | Alstar Company Tracy, CA. | 8966 |
| 8966–P | Halliburton Logging Services, Inc. Houston, TX. | 8966 |
| 8966–P | Eastern Foam Systems, Inc. Stratford, CT. | 8966 |
| 9058–P | Halliburton Logging Services, Inc. Houston, TX. | 9058 |
| *9416–P | Hess and Clark, Inc. Ashland, OH. | 9416 |
| 9672–P | Akzo Chemical Inc. Chicago, IL. | 9672 |
| 9785–P | NYK Line chiyoda-ku, Tokyo 100, Japan. | 9785 |
| *9110–P | Kerr-McGee Chemical Corporation, Oklahoma City, OK. | 9110 |
| 9956–P | DX Systems, Inc. Houston, TX. | 9956 |

This notice of receipt of applications for renewal of exemptions and for party to an exemption is published in accordance with Part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on March 9, 1989.

**J. Suzanne Hedgepeth,**

*Chief, Exemptions Branch, Office of Hazardous Materials Transportation.*

[FR Doc. 89–5911 Filed 3–14–89; 8:45 am]

BILLING CODE 4910–60–M

## Research and Special Programs Administration

## Hazardous Materials Transportation; Applications for Exemptions

**AGENCY:** Research and Special Programs Administration, DOT.

**ACTION:** List of Applicants for Exemptions.

**SUMMARY:** In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft.

**DATE:** Comment period closes April 12, 1989.

**ADDRESS COMMENTS TO:** Dockets Branch, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

**FOR FURTHER INFORMATION:** Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street, SW., Washington, DC.



## NEW EXEMPTIONS

| Application Number | Applicant | Regulation(s) Affected | Nature of Exemption Thereof |
|---|---|---|---|
| 10129–N | General Defense Corporation, York, PA. | 49 CFR 173.56 | To authorize shipment of an explosive projectile, Class A explosive in non-DOT specification packaging approved by the US Department of Defense. (modes 1, 2, 3) |
| 10130–N | UF Strainrite, New Haven, CT | 49 CFR Part 173, Subparts E, F, and H. | To authorize the manufacture, marking and sale of a non-DOT specification flexible, disposable woven polypropylene bulk container bag for shipment of corroseive, solids, oxidizers, poison B solids and flammable solids. (modes 1, 2, 3) |
| 10131–N | Fomo Products Inc., Norton, OH | 49 CFR 173.1200(a)(8)(A), (E), 173.306(a)(3)(i), (V), 178.33a–2(b). | To authorize shipment of a nonflammable, nonpoisonous compressed gas, consumer commodity, Class ORM–D, in a non-DOT specification 1-liter aerosol can similar to the DOT Specification container except for capacity. (modes 1, 2, 3) |
| 10132–N | AmeriBrom, Inc., New York, NY | 49 CFR 173.252(a)(4) | To authorize shipment of Bromine, classed as a corrosive material in a non-DOT specification ISO portable tank of 1250 liter capacity. (modes 1, 2, 3) |
| 10133–N | Goex, Inc., Cleburne, TX | 49 CFR 173.68, 173.86, 175.3 | To authorize shipment of Detonating primers, Class A explosive, to be shipped as a Class C explosive, when contained in specially designed packaging. (modes 1, 2, 3, 4, 5) |
| 10134–N | Allied-Signal Aerospace Company, Tempe, AZ. | 49 CFR 173.302, 175.3, 178.44 | To authorize manufacture, marking and sale of a non-DOT specification cylinder similar to the 3HT cylinder for shipment of a gas mixture of 98 percent Argon and 2 percent Helium, compressed gas n.o.s., classed as a nonflammable gas. (modes 1, 2, 3, 4, 5) |
| 10135–N | Ciba-Geigy Corporation, Hawthorne, NY. | 49 CFR 173.168 | To authorize shipment of lithium amide, powdered classed as a flammable solid in DOT specification 56 portable tanks constructed of T–304 stainless steel. (mode 1) |
| 10136–N | Mitsubishi International Corporation, New York, NY. | 49 CFR 173.268 | To authorize a shipment of Nitric Acid (over 40 percent), classed as an oxidizer in a non-DOT 55-gallon steel drum with a polyethylene liner. (modes 1, 3) |
| 10138–N | Betz Laboratories, Inc., Trevose, PA. | 49 CFR 172.326(d) | To authorize use of the generic n.o.s. and ID number rather than specific ID number when portable tanks with materials of the same hazard class but requiring different ID numbers are being transported in closed vehicles. (mode 1) |
| 10139–N | Mitsubishi International Corporation, Portland, OR. | 49 CFR 173.266(c) | To authorize shipment of hydrogen peroxide solution (3 percent hydrogen peroxide by weight), classed as an oxidizer in non-DOT specification 5-liter polyethylene bottles with a minimum wall thickness of 1.4mm overpacked in DOT specification 12A fiberboard boxes containing not over 4 bottles each. (modes 1, 3) |
| 10140–N | AGA Gas, Inc., Cleveland, OH | 49 CFR 173.302 | To authorize transportation of liquid Oxygen, Nitrogen, Argon, Carbon dioxide, and Nitrous oxide, classed as nonflammable gases in a non-DOT specification pressure vessel (pallet tank) at 95 percent filling capacity. (mode 1) |
| 10141–N | General Electric Company, Pleasanton, CA. | 49 CFR 173.421 | To authorize shipment of rhenium metal without marking "Radioactive" on the inner packaging or the exterior packaging and without the required certification. (modes 1, 2, 3, 4) |
| 10142–N | Tuscarora Plastics, Inc., Reston, VA. | 49 CFR 173.119(a)(23), 173.245(a)(18), 178.210. | To authorize manufacture, marking, and sale of a non-DOT specification fiberboard carton comparable to the DOT specification 12A fiberboard carton except for handholds for shipment of flammable liquids, n.o.s., classed as flammable liquids and corrosive liquid n.o.s., classed as corroseive materials. (modes 1, 2, 3, 4) |
| 10143–N | Eurocom Imports, Inc., Dallas, TX | 49 CFR 173.302 | To authorize shipment of non-flammable compressed gas mixtures (Neon—Argo and Helium—Neon) and Neon, classed as non-flammable gas in a non-DOT specification aluminum seamless cylinder similar to the DOT spec 39 cylinder. (modes 1, 2, 3) |

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This notice of receipt of applications for new exemptions is published in accordance with Part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1808; 49 CFR 1.53(e)).

Issued in Washington, DC, on March 9, 1989.

**J. Suzanne Hedgepeth,**

*Chief, Exemptions Branch, Office of Hazardous Materials Transportation.*

[FR Doc. 89-5912 Filed 3-14-89; 8:45 am]

BILLING CODE 4910-60-M

## DEPARTMENT OF THE TREASURY

### Fiscal Service

### Surety Companies Acceptable on Federal Bonds; Amwest Surety Insurance Co.; Revision of Power of Attorney Forms

Federal bond-approving officers are advised that Amwest Surety Insurance Company, a California corporation, has informed the Financial Management Service that it has revised its form of Power of Attorney with respect to all Amwest Surety Insurance Company's bonds issued to all beneficiaries.

As of February 21, 1989, all Amwest Surety Insurance Company's Powers of Attorney not bearing the legend "UN-A1007 (REV. 2/89)" in the lower left hand corner have been revoked.

An Amwest Surety Insurance Company bond executed on or after February 21, 1989, should be accompanied by an executed Power of Attorney on form UN-A1007 (Rev. 2/89). The revised Power of Attorney form can be easily recognized by the heading printed in red on the top of the form:

**"Limited Power of Attorney**

**(Read Carefully)"**

The new Power of Attorney requires that the name of the principal, the penal sum of the bond, and the bond number be entered on the face of the Power of Attorney. All new Powers of Attorney have been witnessed by the Company on or after February 21, 1989.

Questions regarding Amwest Surety Insurance Company's Powers of Attorney should be directed to Amwest Surety Insurance Company, P.O. Box 4500, Woodland Hills, CA 91365-4500, Attention: Underwriting Department; telephone (818) 704-1111.

**Mitchell A. Levine,**

*Assistant Commissioner, Comptroller, Financial Management Service.*

Dated: March 10, 1989.

FR Doc. 89-6001 Filed 3-10-89; 8:45 am]

BILLING CODE 4810-35-M



# Sunshine Act Meetings

Federal Register
Vol. 54, No. 49
Wednesday, March 15, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

### COMMISSION ON CIVIL RIGHTS

Rescheduling of Executive Session Portion of Commission Meeting

The executive session portion of the March 17 Commission meeting covering internal personnel matters, previously announced in 54 FR 10067 (March 9, 1989), has been rescheduled. This closed session will now take place at approximately 8:00 a.m., before the convening of the public portion of the meeting.

**William H. Gillers,**

*Solicitor.*

March 10, 1989.

[FR Doc. 89-6033 Filed 3-10-89; 5:04 pm]

BILLING CODE 6335-01-M

### COMMITTEE ON EMPLOYEE BENEFITS TO THE FEDERAL RESERVE SYSTEM

**TIME AND DATE:** 3:00 p.m., Tuesday, March 21, 1989.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. The Committee's agenda will consist of matters relating to (a) the general administrative policies and procedures of the Retirement Plan, Thrift Plan, Long-Term Disability Income Plan, and Insurance Plan for Employees of the Federal Reserve System; (b) general supervision of the operations of the Plans; (c) the maintenance of proper accounts and accounting procedures in respect to the Plans; (d) the preparation and submission of an annual report on the operations of each of such Plans; (e) the maintenance and staffing of the Office of the Federal Reserve Employee Benefits System; and (f) the arrangement for such legal, actuarial, accounting, administrative, and other services as the Committee deems necessary to carry out the provisions of the Plans.

Specific items include: (A) Issues regarding the Operations Review of the Office of Employee Benefits; and (B) impact of IRS rules on the System Retirement Plans.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Date: March 13, 1989.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 89-6113 Filed 3-14-89; 8:45 am]

BILLING CODE 6210-01-M

### FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

March 10, 1989.

**TIME AND DATE:** 10:00 a.m., Tuesday, March 14, 1989.

**PLACE:** Room 600, 1730 K Street NW., Washington, DC.

**STATUS:** Closed [Pursuant to 5 U.S.C. 552b(c)(10)].

**MATTERS TO BE CONSIDERED:** The Commission will consider and act upon the following:

1. *Birchfield Mining, Inc.*, Docket No. WEVA 87-272. (Issues include consideration of petitions for discretionary review.

It was determined by a unanimous vote of Commissioners that a meeting be held on this item in closed session and that no earlier announcement of the meeting was possible.

**CONTACT PERSON FOR MORE INFORMATION:** Jean Ellen, (202) 653-5629/(202) 566-2673 for TDD Relay.

**Jean H. Ellen,**

*Agenda Clerk.*

[FR Doc. 89-6007 Filed 3-13-89; 12:56 pm]

BILLING CODE 6735-01-M

### FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

March 9, 1989.

**TIME AND DATE:** 10:00 a.m., Thursday, March 16, 1989.

**PLACE:** Room 600, 1730 K Street NW., Washington, DC.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** The Commission will hear oral argument on the following:

1. *BethEnergy Mines, Inc.*, Docket No. PENN 87-94, etc. (Issues include whether BethEnergy violated 30 CFR 75.1704).

Any person intending to attend this hearing who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

**TIME AND DATE:** Immediately following oral argument.

**STATUS:** Closed [Pursuant to 5 U.S.C. 552b(c)(10)].

**MATTERS TO BE CONSIDERED:** The Commission will consider and act upon the following:

1. *BethEnergy Mines, Inc.*, Docket No. PENN 87-94, etc. (See above listing)

**CONTACT PERSON FOR MORE INFORMATION:** Jean Ellen, (202) 653-5629/(202) 566-2673 for TDD Relay.

**Jean H. Ellen,**

*Agenda Clerk.*

[FR Doc. 89-6068 Filed 3-13-89; 12:56 pm]

BILLING CODE 6735-01-M

### FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

**TIME AND DATE:** 11:00 a.m., Monday, March 20, 1989.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street entrance betweeen 20th and 21st Streets, NW., Washington DC, 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Proposals regarding the Board's performance management program.
2. Building proposals regarding the Helena Branch of the Federal Reserve Bank of Minneapolis.
3. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
4. Any items carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: March 10, 1989.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 89-6018 Filed 3-10-89; 4:20 pm]

BILLING CODE 6210-01-M

### TENNESSEE VALLEY AUTHORITY

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** March 13, 1989, 54 FR 10480.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING:** 10 a.m. (gst) Wednesday, March 15, 1989.

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**PREVIOUSLY ANNOUNCED PLACE OF MEETING:** Andrew Johnson Theater, Tennessee Performing Arts Center, 505 Deaderick Street, Nashville, Tennessee.

**CHANGES IN THE MEETING:** Each member of the TVA Board of Directors has approved the addition of the following item to the previously announced agenda:

F—Unclassified

5. TVA Code III Pay, Manager and Specialist.

**CONTACT PERSON FOR MORE INFORMATION:** Alan Carmichael, Manager, Public Affairs, or a member of his staff can respond to requests for information about this meeting. Call 615–632–8000, Knoxville, Tennessee. Information is also available at TVA's Washington Office, 202–479–4412.

**Edward S. Christenbury,**

*General Counsel and Secretary to the Board.*

[FR Doc. 89–6042 Filed 3–14–89; 11:48 am]

BILLING CODE 8120–01–M



# Corrections

Federal Register

Vol. 54, No. 49

Wednesday, March 15, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## ENVIRONMENTAL PROTECTION AGENCY

**[OPP-150003A; FRL-3523-3]**

### Dinoseb Pesticide Products for Submission of Claims for Indemnification and Request for Disposal; Amended and Final Notice

*Correction*

In notice document 89-3817 beginning on page 7372 in the issue of Friday, February 17, 1989, make the following correction:

On page 7377, in the third page-column, in the first table-column, under "Puregro" in the first line, "011202-205" should read "001202-205".

BILLING CODE 1505-01-D

## ENVIRONMENTAL PROTECTION AGENCY

**[OPP-180803; FRL-3519-8]**

### Receipt of an Application for a Specific Exemption To Use Avermectin $B_1$; Solicitation of Public Comment

*Correction*

In notice document 89-3417 beginning on page 6957 in the issue of Wednesday, February 15, 1989, make the following correction:

On page 6957, in the 2nd column, under **SUMMARY**, in the 12th line, remove "□" and insert "<".

BILLING CODE 1505-01-D

## ENVIRONMENTAL PROTECTION AGENCY

**[Opp-3400; FRL 3526-9]**

### Pesticides for Which Registration Standards Have Been Issued

*Correction*

In notice document 89-4131 beginning on page 7740 in the issue of Wednesday, February 22, 1989, make the following correction:

On page 7749, in the third column, at the beginning of the fifth line from the bottom, the numbers should read "2-(2, 4-".

BILLING CODE 1505-01-D

**[OPTS-51726; FRL-3521-1]**

### Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

*Correction*

In notice document 89-3519 beginning on page 6963 in the issue of Wednesday, February 15, 1989, make the following corrections:

1. On page 6963, in the third column, under **P 89-245**, in the third line, "Block" should read "Blocked".

2. On the same page, in the same column, under **P 89-246**, in the third line, "Block" should read "Blocked".

3. On the same page, in the same column, under **P 89-247**, in the third line, "Block" should read "Blocked".

4. On the same page, in the same column, under **P 89-248**, in the third line, "Block" should read "Blocked".

BILLING CODE 1505-01-D

**[OPTS-51727; FRL-35209]**

### Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

*Correction*

In notice document 89-3518 beginning on page 6959 in the issue of Wednesday, February 15, 1989, make the following corrections:

1. On page 6961, in the first column, under **P 89-227**, in the first line, "Vanberbilt" should read "Vanderbilt"; and in the sixth line, "lubricants" was misspelled.

2. On the same page, in the second column, under **P 89-293**, in the fourth line, "neogentyl" should read "neopentyl".

3. On page 6962, in the 3rd column, under **P 89-327**, in the 10th line, "trichlorophyenylsilane" should read trichlorophenylsilane".

BILLING CODE 1505-01-D

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[WY-060-09-4920-10-8335, WYW97410 FD and PT]**

### Proposed Exchange; Schedule for Public Meetings

*Correction*

In notice document 89-4393 beginning on page 8243 in the issue of Monday, February 27, 1989, make the following corrections:

1. On page 8243, in the third column, in **SUPPLEMENTARY INFORMATION**, in the fourth paragraph, in the fifth line, "2,500" should read "2,560".

2. On the same page, in the same column, in the fifth paragraph, in the 14th line, the sentence begining with "The" should read "The specific areas of interest for comments are as follows:".

3. On page 8244, in the first paragraph, in the second line, "neither" should read "either".

BILLING CODE 1505-01-D

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**DEPARTMENT OF THE INTERIOR**

**Office of Hearings and Appeals**

**43 CFR Part 4**

**Special Rules Applicable to Surface Coal Mining Hearings and Appeals**

*Correction*

In proposed rule document 89-5373, beginning on page 9852 in the issue of Wednesday, March 8, 1989, make the following correction:

**§ 4.1366 [Corrected]**

On page 9854, in the first column, in § 4.1366(d)(1), in the sixth line, "application" should read "applicant".

BILLING CODE 1056-01-D

federal register

Wednesday
March 15, 1989

Part II

# National Aeronautics and Space Administration

**48 CFR Parts 1801, 1804, 1805, et al. Acquisition Regulation; Miscellaneous Amendments to NASA FAR Supplement; Final Rule**

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## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**48 CFR Parts 1801, 1804, 1805, 1807, 1815, 1816, 1822, 1823, 1832, 1834, 1835, 1836, 1837, 1842, 1843, 1845, 1846, 1847, 1848, 1852, and 1853**

**[NASA FAR Supplement Directive 85-14]**

### Acquisition Regulation; Miscellaneous Amendments to NASA FAR Supplement

**AGENCY:** Office of Procurement, Procurement Policy Division, NASA.

**ACTION:** Final rule.

**SUMMARY:** This document amends the NASA Federal Acquisition Regulation Supplement (NFS) to reflect a number of miscellaneous changes implementing higher level issuances and other changes dealing with NASA internal or administrative matters.

**EFFECTIVE DATE:** March 20, 1989.

**FOR FURTHER INFORMATION CONTACT:** W. A. Greene, Chief, Regulations Development Branch, Procurement Policy Division (Code HP), Office of Procurement, NASA Headquarters, Washington, DC 10546, Telephone: (202) 453-8823.

**SUPPLEMENTARY INFORMATION:**

**Background**

The major changes involve: (1) Implementation of Federal Acquisition Circular 84-42; (2) pension portability; and (3) the Service Contract Act. Numerous editorial and typographical changes have been made in clauses and provisions to improve readability and to conform with FAR drafting conventions. However, while the clauses and provisions have been redated, substantive meanings have not been altered where such editing has been performed.

The NASA FAR Supplement, of which this rule is a part, is available in its entirety on a subscription basis from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. It is not distributed to the public, either in whole or in part, directly by NASA.

**Impact**

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The regulations herein are in the exempted category. NASA certifies that this regulation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The regulation imposes no burdens on the public within the ambit of the Paper Work Reduction Act, as implemented at 5 CFR Part 1320.

**List of Subjects in 48 CFR Parts 1801, 1804, 1805, 1807, 1815, 1816, 1822, 1823, 1832, 1834, 1835, 1836, 1837, 1842, 1843, 1845, 1846, 1847, 1848, 1852, and 1853**

Government procurement.

**S. J. Evans,**

*Assistant Administrator for Procurement.*

1. The authority citation for 48 CFR Parts 1801, 1804, 1805, 1807, 1815, 1816, 1822, 1823, 1832, 1834, 1835, 1836, 1837, 1842, 1843, 1845, 1846, 1847, 1848, 1852, and 1853 continues to read as follows:

**Authority:** 42 U.S.C. 2473(c)(1).

## PART 1801—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. In Subpart 1801.2, 1801.270-4 is revised to read as follows:

**1801.270-4 Numbering.**

NFSDs and PNs are numbered consecutively, prefixed by the last two digits of the calendar year of issuance of the current edition of the NASA FAR Supplement.

## PART 1804—ADMINISTRATIVE MATTERS

**1804.7102-7 [Amended]**

3. In 1804.7102-7, paragraph (b)(2) is revised to read as follows:

* * * * *

(b) * * *

(2) After the letter contract is definitized, contract modifications shall be numbered beginning with the next sequential number following that of the last modification to the letter contract.

## PART 1805—PUBLICIZING CONTRACT ACTIONS

**1805.303-71 [Amended]**

4. In 1805.303-71, the introductory text to paragraph (b)(1) is revised to read as follows:

* * * * *

*(b) Definitive contracts and supplemental agreements.* (1) This paragraph (b)(1) does not pertain to supplemental agreements covering overruns or incremental funding actions or to contracts or supplemental agreements that require approval of the Assistant Administrator for Procurement pursuant to 1804.7203. It does pertain to contracts, supplemental agreements, and the execution of options that are in an amount of $10,000,000 or over for the Stennis Space Center, Headquarters Contracts and Grants Division, Space Station Procurement Office, and the NASA Resident Office—JPL and $25,000,000 or over for Ames Research Center, Goddard Space Flight Center, Johnson Space Center, Kennedy Space Center, Langley Research Center, Lewis Research Center, and Marshall Space Flight Center. It also pertains to any procurement action that, in the judgment of the contracting officer, has Headquarters public information implications (e.g., the transfer of personnel from one State to another). Such contracts and supplemental agreements shall not be distributed nor shall any source outside NASA be informed that the contractual instrument has been signed by both parties until the procedures in paragraphs (b)(1)(i) and (b)(1)(ii) following are carried out:

* * * * *

## PART 1807—ACQUISITION PLANNING

5. Part 1807 is amended as set forth below:

**1807.103 [Amended]**

a. In 1807.103, introductory paragraph (b)(1) is revised to read as follows:

* * * * *

*(b) Approval of procurement plans.* (1) Whenever the estimated cost of the procurement (including options and/or later phases of the same program/project) meets the thresholds below, procurement plans shall, as a minimum, be reviewed and approved as follows:

b. In 1807.103, paragraph (b)(2) is removed, and paragraph (b)(3) is redesignated as paragraph (b)(2).

c. Section 1807.170-1 is revised to read as follows:

**1807.170-1 Procurement plans requiring approval by NASA Headquarters.**

(a) Procurement plans shall describe the procurement, including options, and later phases contemplated for the same program or project, for example Phase C/D. Approval of the procurement plan does not constitute approval of later phases. In order to consider changes that may occur from an initial procurement, later phases exceeding the thresholds in 1807.103 above, require approval of a separate plan.

(b) Each procurement plan prepared for approval by NASA Headquarters shall be prepared on NASA Forms 1451 and 1452. Form 1451, Request for Procurement Plan Approval, shall be completed as follows:

(1) *Item 1. A descriptive short title.* In this item, include only a descriptive short title of the procurement. A detailed description of the proposed procurement shall be included in subsequent pages as required. The information to be provided consists of—

(i) A clear and concise description, including intended use, of the item or service to be procured;

(ii) The number of units, delivery schedule, and/or period of performance (note: if a schedule of major events will enhance the plan, it should also be included);

(iii) An identification of any option provision, including the periods covered and estimated costs;

(iv) An identification of any later phases if the procurement is to be a phased procurement including the estimated cost thereof; and

(v) A statement as to whether the contractor will be required to comply with detailed specifications, meet performance requirements, perform a mission, or furnish a level of effort.

(2) *Item 2. Name of installation.* Give the name of the installation responsible for the procurement.

(3) *Item 3. Plan prepared by.* Give the name of the individual who prepared the plan.

(4) *Item 4. Date.* Enter the date the plan is prepared.

(5) *Item 5. Responsible technical office.* Identify the office (by title) that will be responsible for technical monitoring of the contract. Include a technical point of contact and telephone number.

(6) *Item 6. Total estimated cost of this procurement.* Provide one figure for the total estimated cost of the proposed procurement, including options. When options are involved, show the cost for each separately on subsequent pages as a breakout from total cost.

(7) *Item 7. Proposed funding by fiscal year and unique project number (UPN).* Identify the funding amounts by appropriation, fiscal year, and UPN for the procurement covered by the plan. When funding is obtained from multiple projects, provide a complete identification of each fund source. Include the following statement: "Obligations may not exceed those authorized in the Headquarters-approved Annual Operating Plan."

(8) *Item 8. Full and open competition.* Check appropriate box to indicate whether full and open competition is provided for or whether other than full and open competition is contemplated.

(9) *Item 9. Type of contract.* State the type of contract recommended for the procurement. On subsequent pages, discuss the contract type and the rationale for its selection. If an incentive contract is proposed, discuss the type or types of incentive considered most suitable for the accomplishment of the procurement objectives.

(10) *Item 10. Facilities and Government-furnished property.* (i) Indicate, by checking the appropriate box, whether the procurement will require providing any existing, new, or modified Government property. When other Government property is to be provided, identify the items and dollar amounts involved. The dollar amounts provided in Item 10 shall not be included in those specified under Items 6 and 7 unless the property or facilities are part of the procurement. If dollar amounts in Item 10 are included under Items 6 and 7, they should be so annotated under this item on the following pages.

(ii) If the proposed contract, exclusive of options, will be for a shorter period than the program useful life of any required facilities (as defined in FAR 45.301) and the facilities cannot be used for any purpose other than the program effort being contracted for, then the procurement plan shall discuss the feasibility of acquiring the right to use the facilities for longer than the proposed contract period as well as the proposed procurement strategy for accomplishing this use. The following shall be considered:

(A) If program uncertainties for continuing beyond the contract period of performance are sufficient, it may be in the Government's best interests to acquire use of the facilities during only that time. This strategy may make the facilities more costly to the Government for the contract period than if a contractual arrangement for longer use were made. However, it should reduce the program risks associated with longer Government facilities obligations; and

(B) If it is in the Government's best interests to acquire the right to use the facilities for longer than the proposed contract period in order to take advantage of economies in long-term facilities investment, then the proposed contractor's obligations, the Government's obligations that will encourage long-term investment, and the contract cost strategy for facilities shall be addressed. There are many alternative long-term investment approaches available for the contracting officer to consider. Some examples of representative strategies include requiring the contractor to—

(1) Enter into a long-term lease of the facilities from a lessor, subject to the lease being canceled if the prime contractor does not continue to perform the requirement throughout the useful life of the facilities (e.g., the contractor is not selected in a subsequent recompetition of the requirement);

(2) Purchase the facilities, with depreciation and cost-of-money accelerated for the contract period of performance, at the conclusion of which the Government has a unilateral option to purchase the facilities at the depreciated value (at or near $-0-) based on the contractor's depreciation schedule. The facilities could then be provided to the successor contractor as Government property; and

(3) Purchase the facilities, with depreciation and cost-of-money over the useful life of the facilities. At the completion of the contract period of performance, either the Government would purchase the facilities at their depreciated value, or the successor contractor would be required to purchase the facilities, also at their depreciated value, and continue the prior contractor's depreciation approach.

(11) *Item 11. Procurement action schedule.* Indicate the date the procurement plan was submitted to Headquarters for review and approval. For all other entries, provide only the number of calendar days required to complete the action (beginning at the time the previous action was scheduled to be completed) in order to meet the program schedule.

(c) *Additional pages*—(1) *General.* Additional pages to the plan should include any information required from the Form 1451 items. Include any comments required by paragraph (a) above not covered elsewhere and any other information needed to amplify or clarify any item. In addition—

(i) Identify any deviations from the FAR or NFS (A separate request for deviation must be submitted. See 1807.103(b)(2) above.);

(ii) Identify any special conditions or clauses required;

(iii) Identify all separate approvals required in support of the proposed procurement;

(iv) Include a copy of any comments by legal counsel for the contracting office (or a statement that counsel has no objection to the plan), and describe actions taken in response to them (counsel's concurrence will satisfy this item); and

(v) Discuss consideration given to participation by small business, including minority business enterprises.

(2) *Competition.* Describe how competition will be sought and promoted. If appropriate, discuss how it will be sustained through the course of the acquisition. If full and open competition is not contemplated, cite the authority in FAR 6.202 or 6.302; identify the source(s); and discuss why it cannot

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be obtained. When effective subcontract competition is both feasible and desirable, describe how such subcontract competition will be sought, promoted, and sustained throughout the course of the competition. Identify any known barriers to increasing subcontract competition and address how to overcome them.

(3) *Relationship to other procurements, relevant data, and studies.* Discuss the relationship of this procurement to any active contracts, including their status of completion. Identify the extent to which their product may affect this procurement. Indicate whether performance under them should be permitted to continue during the competitive phase of this action. Discuss all relevant data and studies, whether obtained under contract or through in-house efforts, and state whether they will be made available to all offerors participating in the competition. If data or studies are available, but it is not planned to make them available to prospective offerors, state why.

## PART 1815—CONTRACTING BY NEGOTIATION

6. Part 1815 is amended as set forth below:

**1815.613-70 [Amended]**

a. In 1815.613-70, the word "may" is removed, and the word "shall" is added in its place.

**1815.613-71 [Amended]**

b. In 1815.613-71, paragraph (a)(4) is revised to read as follows:

(a) * * *

(4) The formal SEB procedures (1870.303, App. I) may be used in other competitively negotiated procurements, if the source selection official determines it desirable to do so.

c. Subpart 1815.10, consisting of 1815.1003, 1815.1003-1, 1815.1003-2, 1815.1003-3, and 1815.1003-4, is revised to read as follows:

**Subpart 1815.10—Preaward, Award, and Postaward Notifications, and Mistakes**

1815.1003 Debriefing of unsuccessful offerors.
1815.1003-1 Scope of subpart.
1815.1003-2 Policy.
1815.1003-3 Designated officials.
1815.1003-4 Procedures.

**Subpart 1815.10—Preaward, Award, and Postaward Notifications, Protests, and Mistakes**

**1815.1003 Debriefing of unsuccessful offerors.**

**1815.1003-1 Scope of subpart.**

This subpart sets forth NASA policy and procedures for debriefing unsuccessful offerors in all competitive negotiated procurements.

**1815.1003-2 Policy.**

(a) NASA shall debrief an unsuccessful competitor in accordance with FAR 15.1003. It is essential that debriefings be conducted in a scrupulously fair, objective, and impartial manner, and that the information given the proposer be absolutely factual and consistent with—

(1) The findings of the Source Evaluation Board (SEB) and the basis on which the Selection Official made the decision; or

(2) The findings of the technical and contracting officers and the basis on which the contracting officer made the decision if SEB procedures were not employed.

(b) Unless authorized by the Assistant Administrator for Procurement, the Source Selection Statement for alternative system design concepts under the Major System Acquisitions process is not to be released to competing offerors or the general public until the release of the Source Selection Statements for full-scale development.

**1815.1003-3 Designated officials.**

Debriefings are to be conducted by senior NASA officials. When the selection has been made by the Administrator, the Administrator will designate an official familiar with the rationale for the selection to conduct the debriefings, with participation by cognizant field installation personnel, if deemed necessary. When the selection has been made by the Field Installation Director or a Headquarters Staff or Program Office head, the Center Director or Official-in-Charge of the Headquarters office shall designate an official and necessary supporting staff to perform the debriefing. When SEB procedures were not applied, the installation Procurement Officer, or designee, shall perform the debriefing.

**1815.1003-4 Procedures.**

(a) The recipient of a written or oral debriefing request shall immediately refer the request to the installation procurement officer.

(b) The procurement officer, upon receipt of a debriefing request, shall inform the designated official and other concerned officials at the installation and, in the case of procurement actions where an Associate Administrator or the Administrator was the Selection Official, the cognizant NASA Headquarters personnel.

(c) If an unsuccessful offeror in a negotiated procurement submits, prior to the award of the contract, a written request for a debriefing, such a debriefing will be provided at the earliest feasible time. This normally shall be after announcement of the selection decision and prior to award of the contract. ("Selection decision" means the final selection of the one successful contractor, or the contractors where more than one contract is to be awarded). If the selection decision involves more than one contractor pursuant to the major System Acquisition process, the debriefing will be limited in such a manner that it does not prematurely disclose innovative concepts, designs, and approaches of the successful contractor(s) that would result in a transfusion of ideas which also could inhibit contractors during the early phase from offering their best and most promising ideas for meeting the mission need. However, when the exigency of the situation will not permit delaying the award in order to debrief unsuccessful offerors, such debriefings may be conducted after award.

(d) A summary of the results of each debriefing, signed by the conducting NASA official, shall be placed in the contract file.

## PART 1816—TYPES OF CONTRACTS

7. Part 1816 is amended as set forth below:

**1816.203-4 [Amended]**

a. In 1816.203-4, paragraph (a) is removed, and paragraphs (b) through (g) are redesignated (a) through (f), respectively.

b. In newly redesignated paragraph (a), the word "also" is removed.

**1816.307-70 [Amended]**

8. In 1816.307-70, paragraph (c), the word "fee" is added between the words "cost-plus-fixed" and "contracts.".

## PART 1822—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

9. Part 1822 is amended as set forth below:

a. Subpart 1822.6 is amended by adding 1822.608-4 to read as follows:



**1822.608-4 Award pending final determination.**

The Procurement Officer shall approve, with the concurrence of the Director, Industrial Relations Office (Code NR), certifications for immediate award in accordance with FAR 22.608-4(b). The contracting officer shall give written notice of the decision to award through Code NR to the DOL.

b. Subpart 1822.10 is revised to read as follows:

**Subpart 1822.10—Service Contract Act of 1965**

1822.1000 General.
1822.1001 Statutory requirements.
1822.1002 Applicability.
1822.1002-1 General.
1822.1002-2 Geographical coverage of the Act.
1822.1002-3 Definitions and types of covered service contracts illustrated.
1822.1002-4 Statutory exemptions.
1822.1002-5 Administrative limitations, variations, tolerances, and exemptions.
1822.1002-6 Remanufacturing of equipment.
1822.1003 Department of Labor regulations.
1822.1004 Contract clauses.
1822.1005 Administration and enforcement.
1822.1005-1 Responsibilities of Department of Labor.
1822.1005-2 Notice of intention to make a service contract.
1822.1005-3 Contract minimum wage determinations and fringe benefits specification.
1822.1005-4 Additional classifications of service employees (conformable rates).
1822.1005-5 Notice of award.
1822.1005-6 Department of Labor form.
1822.1005-7 Inquiries concerning the Act.
1822.1005-8 Contract modifications.
1822.1005-9 Withholding of contract payments and contract termination.
1822.1005-10 Cooperation with the Department of Labor.
1822.1005-11 Role of the Comptroller General.
1822.1005-12 Disputes concerning labor standards.
1822.1005-50 Wage determination and fringe benefits.
1822.1008 Procedures for preparing notice.
1822.1050 Extensions of contract performance period.
1822.1050-1 General.
1822.1050-2 Contract price adjustment.
1822.1051 Hearings.

**Subpart 1822.10—Service Contract Act of 1965**

**1822.1000 General.**

(a) Pending issuance of FAR coverage, the NASA Procurement Regulation (NPR) (48 CFR Chapter 18, Subpart 1812.10) shall continue to govern labor requirements regarding service contracts. This subpart is substantively identical to the NPR, except for 1822.1008. It is reproduced here with current textual citations and updated cross-references for the user's convenience.

(b) This subpart sets forth policies and procedures for carrying out the provisions of the Service Contract Act of 1965, as amended (41 U.S.C. 351 et seq.); the provisions of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201 et seq.), as they pertain to service contracts; the implementing regulations prescribed in 29 CFR Parts 4 and 1925; and instructions issued by the Secretary of Labor.

(c) For NASA, "agency labor advisor" means the Director, Industrial Relations Office, NASA Headquarters (Code NR).

(d) All requests for determinations and exemptions relating to the Service Contract Act shall be submitted in writing, coordinated by appropriate procurement personnel, and forwarded to Code NR.

**1822.1001 Statutory requirements.**

The Service Contract Act of 1965, referred to in this subpart as the "Act," includes the following general requirements with respect to service contracts entered into by Federal agencies:

(a) Regardless of the contract amount, no contractor or subcontractor holding a Federal service contract shall pay any employee engaged in such work less than the minimum wage specified in Section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201 et seq.);

(b) Federal service contracts in excess of $2,500 shall contain the provisions required by the Act with respect to such matters as minimum wages, including fringe benefits, to be paid the various classes of service employees engaged in the performance of the contract, safe and sanitary working conditions, notification to employees of the compensation required under the Act, and wages they would be paid if employed by the Federal Government;

(c) Successor contractors performing on contracts in excess of $2,500 must pay wages and fringe benefits at least equal to those agreed upon for substantially the same services performed in the same locality in any bona fide collective bargaining agreement entered into by the predecessor contractor (unless such wages and fringe benefits are determined to be substantially at variance with those which prevail for services of a similar character in the locality);

(d) Service contractors performing on contracts in excess of $2,500 to which no predecessor contractor's collective bargaining agreement applies, shall pay their employees at least the wages and fringe benefits found by the Department of Labor to prevail in the locality or, in the absence of a wage determination, the minimum wage set forth in the Fair Labor Standards Act; and

(e) See 1822.1002-4 for statutory exemptions and 1822.1002-5 for regulatory exemptions.

**1822.1002 Applicability.**

**1822.1002-1 General.**

Subject to statutory exemptions or administrative exemptions by the Secretary of Labor under Section 4(b) of the Act (41 U.S.C. 353), the Act applies to all Federal contracts the purpose of which is to furnish services in the United States through the use of service employees.

**1822.1002-2 Geographical coverage of the Act.**

(a) The Act is applicable to all service contracts performed within the United States, irrespective of amount.

(b) The Act is not applicable to contracts performed outside the United States. In addition, a contract that is performed essentially outside the United States, with only an incidental portion performed within the United States, is not covered by the Act.

**1822.1002-3 Definitions and types of covered service contract illustrated.**

(a) *Definitions.* For this subpart, unless otherwise indicated, terms used herein are defined as follow:

(1) "Administrator" means the Administrator of the Wage and Hour Division, United Stated Department of Labor, or the Administrator's authorized representative.

(2) "Contract" includes any contract subject wholly or in part to provisions of the Act and any subcontract at any tier thereunder.

(3) "Contractor" includes a subcontractor whose subcontract is subject to provisions of the Act.

(4) "Professional Employee" is not restricted to the traditional professions of law, medicine, and theology. It includes those professions that have a recognized status and that are based on the acquirement of professional knowledge through prolonged study. Title 29, Part 541, Code of Federal Regulations, defines the term "professional employee" and provides a listing of occupations generally considered to be held by professionals.

(5) "Service Employee" means any person employed in connection with a contract entered into by the United States and not exempted under Section 7 of the Act (41 U.S.C. 356), the principal purpose of which is to furnish services

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in the United States (other than any person employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in 29 CFR, Part 541); and shall include all such persons regardless of any contractual relationship that may be alleged to exist between a contractor or subcontractor and such persons.

(6) "United States" includes any State of the United States, the District of Columbia, Puerto Rico, and the Virgin Islands, Outer Continental Shelf Lands, as defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.), American Samoa, Guam, Wake Island, Eniwetok Atoll, Kwajalein Atoll, and Johnston Island, but does not include any other territory under the jurisdiction of the United States or any U.S. base or possession within a foreign country.

(7) "Wage Determination" includes any determination of minimum wage rates or fringe benefits made pursuant to the provisions of Section 2(a) and 4(c) of the Act (41 U.S.C. 351 and 353) for application to the employment in a locality of any class or classes of service employees in the performance of any contract in excess of $2,500 that is subject to the provisions of the Act.

(b) *Types of covered service contracts illustrated.* Types of contracts, the principal purpose of which is to furnish services through the use of service employees, are too numerous and varied to permit an exhaustive listing. The following list is illustrative, however, of the types of services called for by such contracts that have been found to come within the coverage of the Act (see 29 CFR 4.130 for additional examples):

(1) Aerial spraying.
(2) Aerial reconnaissance for fire detection.
(3) Ambulance service.
(4) Cafeteria and food service.
(5) Chemical testing and analysis.
(6) Clothing alteration and repair.
(7) Custodial, janitorial, and housekeeping services.
(8) Drafting and illustrating.
(9) Electronic equipment maintenance and operation and engineering support services.
(10) Film processing.
(11) Fire fighting and protection.
(12) Geographical field surveys and testing.
(13) Grounds maintenance.
(14) Guard and watchman security service.
(15) Landscaping (other than part of construction).
(16) Laundry and dry cleaning.
(17) Linen supply services.
(18) Lodging and/or meals.
(19) Mail hauling.
(20) Mailing and addressing services.
(21) Maintenance and repair of all types of equipment.
(22) Mess attendant services.
(23) Mortuary services.
(24) Motor pool operation.
(25) Packing and crating.
(26) Parking services.
(27) Snow removal.
(28) Stenographic reporting.
(29) Support services at installations.
(30) Taxicab services.
(31) Tire and tube repairs.
(32) Transporting property or personnel (except as explained in 29 CFR 4.118).
(33) Trash and garbage removal.
(34) Tree planting and thinning, clearing timber or brush, etc. (but see 29 CFR 4.116(b) and 4.131(f)).
(35) Warehouse or storage.

**1822.1002-4 Statutory exemptions.**

Each of the following transactions is exempt from the Service Contract Act of 1965, as amended, by its terms:

(a) *Contracts for construction or repair.* Any contract of the United States or District of Columbia for construction, alteration, and/or repair, including painting and decorating of public buildings or public works;

(b) *Work under the Walsh-Healey Public Contracts Act.* Any work required to be done in accordance with the provisions of the Walsh-Healey Public Contracts Act (49 Stat. 2036);

(c) *Contracts for the carriage of freight or personnel.* Any contract for the carriage of freight or personnel by vessel, airplane, bus, truck, express, railway line or oil or gas pipeline where published tariff rates are in effect;

(d) *Contracts for communication services.* Any contract for the furnishing of services by radio, telephone, telegraph, or cable companies, subject to the Communications Act of 1934;

(e) *Contracts for public utility services.* Any contract for public utility services, including electric light and power, water, steam, and gas;

(f) *Employment contracts.* Any employment contract providing for direct services to a Federal agency by an individual or individuals; or

(g) *Operation of postal contract stations.* Any contract with the U.S. Postal Service, the principal purpose of which is the operation of postal contract stations.

**1822.1002-5 Administrative limitations, variations, tolerances, and exemptions.**

(a) The Secretary of Labor may, under the Act, provide such reasonable limitations and may make such rules and regulations allowing reasonable variations, tolerances, and exemptions to and from any or all provisions of the Act (except Section 10) as may be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business (41 U.S.C. 353(b)). Requests for variations, tolerances, and exemptions from the Act shall be submitted in writing through contracting channels to the Industrial Relations Office, NASA Headquarters (Code NR).

(b) Pursuant to the authority cited in paragraph (a) above, the Secretary of Labor has exempted the following types of contracts from all provisions of the Act:

(1) Contracts entered into by the United States with common carriers for the carriage of mail by rail, air (except air star routes), bus, and ocean vessel, where such carriage is performed on regularly scheduled runs of the trains, airplanes, buses, and vessels over regularly established routes and accounts for an insubstantial portion of the revenue therefrom.

(2) Any contract entered into by the U.S. Postal Service with an individual owner-operator for mail service where it is not contemplated at the time the contract is made that such owner-operator will hire any service employee to perform the services under the contract except for short periods of vacation time or for unexpected contingencies or emergency situations such as illness or accident.

(3) Contracts for the carriage of freight or personnel where such carriage is subject to rates covered by Section 10721 of the Interstate Commerce Act.

(4) The following types of equipment are exempt from all provisions of the Act, subject to the restrictions in (b)(4)(ii), (iii), and (iv) below:

(i) Contracts principally for the maintenance, calibration and/or repair of—

(A) Automated data processing equipment and office information/word processing systems;

(B) Scientific equipment and medical apparatus or equipment where the application of microelectronic circuitry or other technology of at least similar sophistication is an essential element (for example, Federal Supply Classification (FSC) Group 65, Class 6515, "Medical Diagnostic Equipment;" Class 6525, "X-Ray Equipment;" FSC Group 66, Class 6630, "Chemical Analysis Instruments;" Class 6665, "Geographical and Astronomical Instruments" are largely composed of the types of equipment exempted hereunder); and

(C) Office/business machines not otherwise exempt pursuant to paragraph (a) above, where such services are performed by the manufacturer or supplier of the equipment.

(ii) The exemptions set forth in this paragraph (b)(4) shall apply only under the following circumstances:

(A) The items of equipment are commercial items which are used regularly for other than Government purposes, and are sold or traded by the contractor in substantial quantities to the general public in the course of normal business operations;

(B) The contract services are furnished at prices which are, or are based on, established catalog or market prices for the maintenance, calibration, and/or repair of such commercial items. An "established catalog price" is a price included in a catalog price list, schedule, or other form that is regularly maintained by the manufacturer or the contractor, is either published or otherwise available for inspection by customers, and states prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public. An "established market price" is a current price, established in the usual course of trade between buyers and sellers free to bargain, which can be substantiated from sources independent of the manufacturer or contractor;

(C) The contractor utilizes the same compensation (wage and fringe benefits) plan for all service employees performing work under the contract as the contractor uses for equivalent employees servicing the same equipment of commercial customers; and

(D) The contractor certifies in the contract to the provisions in this paragraph (b)(4)(ii).

(iii) Determinations of the applicability of this exemption shall be made in the first instance by the contracting officer prior to contract award. In making a judgment that the exemption applies, the contracting officer shall consider all factors and make an affirmative determination that all of the above conditions have been met.

(iv) If the Department of Labor determines after contract award that any of the above requirements for exemption has not been met, the exemption will be deemed inapplicable, and the contract shall become subject to the Service Contract Act, effective as of the date of the Department of Labor determination. If the contracting officer receives such a determination from DOL, guidance shall be obtained from NASA Headquarters (Code H, who will coordinate with Codes NR and G) prior to taking any actions.



**1822.1002-6 Remanufacturing of equipment.**

(a) Contracts principally for remanufacturing of equipment which is so extensive as to be equivalent to manufacturing are subject to the Walsh-Healey Act rather than to the Service Contract Act. Remanufacturing shall be deemed to be manufacturing when the criteria in paragraph (a) (1) or (2) below are met.

(1) Major overhaul of an item, piece of equipment, or material which is degraded or inoperable, and under which all of the following conditions exist:

(i) The item or equipment is required to be completely or substantially torn down into individual component parts;

(ii) Substantially all of the parts are reworked, rehabilitated, altered and/or replaced;

(iii) The parts are reassembled so as to furnish a totally rebuilt item or piece of equipment;

(iv) Manufacturing processes similar to those which were used in the manufacturing of the item or piece of equipment are utilized;

(v) The disassembled components, if usable (except for situations where the number of items or pieces of equipment involved are too few to make it practicable) are commingled with existing inventory and, as such, lose their identification with respect to a particular piece of equipment;

(vi) The items or equipment overhauled are restored to original life expectance, or nearly so; and

(vii) Such work is performed in a facility owned or operated by the contractor.

(2) Major modification of an item, piece of equipment, or material which is wholly or partially obsolete, and under which all of the following conditions exist:

(i) The item or equipment is required to be completely or substantially torn down;

(ii) Outmoded parts are replaced;

(iii) The item or equipment is rebuilt or reassembled;

(iv) The contract work results in the furnishing of a substantially modified item in a usable and serviceable condition; and

(v) The work is performed in a facility owned or operated by the contractor.

(b) Remanufacturing does not include the repair of damaged or broken equipment which does not require a complete teardown, overhaul, and rebuild as described in paragraphs (a) (1) and (2) above, or the periodic and routine maintenance, preservation, care, adjustment, upkeep, or servicing of equipment to keep it in usable, serviceable, working order. Such contracts typically are billed on an hourly rate (labor plus materials and parts) basis. Any contract principally for this type of work is subject to the Service Contract Act. Examples of such work include:

(1) Repair of an automobile, truck, or other vehicle, construction equipment, tractor, crane, aerospace, air conditioning and refrigeration equipment, electric motors, and ground powered industrial or vehicular equipment;

(2) Repair of typewriters and other office equipment (see 1822.1002-5(b)(4));

(3) Repair of appliances, radios, televisions, calculators and other electronic equipment;

(4) Inspecting, testing, calibrating, painting, packaging, lubricating, tuning-up, or replacing internal parts of equipment listed in paragraph (b) (1), (2), and (3) above; and

(5) Reupholstering, reconditioning, repairing, and refinishing furniture.

**1822.1003 Department of Labor regulations.**

Pursuant to the Service Contract Act of 1965, as amended, the Department of Labor has issued Parts 4 and 1925, and Part 6, Title 29, Code of Federal Regulations, providing for the administration and enforcement of the Act. The regulations include coverage of the following matters relating to the requirements of the Act:

(a) Service contract labor standards provisions and procedures (Subpart A, Part 4 (29 CFR));

(b) Wage determination procedures (Subpart B, Part 4 (29 CFR));

(c) Application of the Service Contract Act of 1965, as amended, (rulings and interpretations) (Subpart C, Part 4 (29 CFR));

(d) Compensation standards (Subpart D, Part 4 (29 CFR));

(e) Enforcement (Subpart E, Part 4 (29 CFR));

(f) Safe and sanitary working conditions (Part 1925 of Title 29, CFR); and

(g) Rules of practice for administrative proceedings enforcing service contract labor standards (Part 6 of Title 29, CFR).

**1822.1004 Contract clauses.**

(a) *Clause for Federal service contracts in excess of $2,500.* Procurement offices (except as provided in 1822.1002-4 and 1822.1002-5) shall include the clause at 1852.222-41, Service Contract Act of 1965, As Amended, in all solicitations which may result in contracts in excess of $2,500 and in contracts in excess of $2,500

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(including any transaction for an indefinite amount unless the procurement office has knowledge that it will not exceed $2,500) where the principal purpose of the contract is to furnish services in the United States through the use of service employees.

(b) *Clause for Federal service contracts not in excess of $2,500.* Procurement offices (except as provided in 1822.1002–2, 1822.1002–4 and 1822.1002–5) shall include the clause at 1852.222–40, Service Contract Act of 1965—Contracts of $2,500 or Less (April 1984) in every solicitation and contract not in excess of $2,500, which has as its principal purpose the furnishing of services through the use of service employees.

(c) *Basic Ordering Agreements and Blanket Purchase Agreements.* In the case of a basic ordering agreement or blanket purchase agreement, the amount for purposes of including the clause in paragraph (a) or (b) above shall be the aggregate amount of all orders estimated to be placed for one year after the effective date of the agreement. If a basic ordering agreement continues or is extended, an estimate shall be made annually for each year after the first, and the agreement modified accordingly.

(d) *Price Adjustment Clause.* See 1852.222–43 and 1822.1060–2(b) for the Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multi-year and Option Contracts) (April 1984) clause and instructions for its use.

**1822.1006 Administration and enforcement.**

**1822.1006–1 Responsibilities of Department of Labor.**

The Secretary of Labor is authorized and directed to administer and enforce the provisions of the Act, to make rules and regulations, issue orders, make decisions, and take other appropriate action under the Act.

**1822.1006–2 Notice of intention to make a service contract.**

(a) For any contract exceeding $2,500 which may be subject to the Act, the contracting agency shall file with the Department of Labor its notice of intention to make a service contract. With respect to recurring or known requirements, such notices shall be filed not less than 60 days (nor more than 120 days, except with the approval of the Wage and Hour Division) prior to (1) any invitation for bids, (2) request for proposals, (3) commencement of negotiations, (4) exercise of option or contract extension, (5) annual anniversary date of a multi-year contract subject to annual fiscal appropriations of the Congress, or (6) each biennial anniversary date of a multi-year contract not subject to such annual appropriations, if so authorized by the Wage and Hour Division. Notices with regard to solicitations where such planning is not feasible shall be submitted as soon as possible, but not later than 30 days prior to the above contracting actions. The notice will be filed on SF 98/98a, Notice of Intention To Make a Service Contract and Response To Notice. Any attachments necessary to support or clarify the notice will also be furnished. The notice will be filed with the Wage and Hour Division, Employment Standards Administration, Department of Labor, through the Industrial Relations Office, NASA Headquarters (Code NR). To avoid delays because of a later issuance of wage determinations by the Department of Labor in response to the notice, the contracting office shall make every effort to file it as early as possible; however, the original and four copies of the notice must be filed so as to reach NASA Headquarters (Code NR) at least 70 days (but no more than 120 days, except with prior approval) prior to issuance of any solicitation or the commencement of negotiation. The SF 98/98a and attachments shall be completed pursuant to instructions on the forms and shall also contain the applicable information required by (b) and (c) below. Care must be taken to insure that all required information is provided to avert return without action by the Department of Labor or NASA Headquarters (Code NR). The "Response" portion of the original of the SF 98 will be completed by the Department of Labor and returned directly to the contracting office, advising of any determinations of minimum monetary wage and fringe benefits applicable to the contract. Supplies of SF 98 and 98a are available in all GSA supply depots under stock numbers 7540–926–6972 and 7540–116–1006, respectively.

(b) (See 1822.1006.)

(c) If the service to be furnished under the proposed contract will be substantially the same as services being furnished in the same location by an incumbent contractor whose contract the proposed contract will succeed, and if the incumbent contractor is furnishing such services through the use of service employees whose wages and fringe benefits are the subject of one or more collective bargaining agreements, the contracting officer shall obtain from the contractor two copies of each collective bargaining agreement, together with any related documents specifying the wage rates and fringe benefits currently or prospectively payable under such agreement, and submit them with the SF 98/98a. If the services are being furnished at more than one location and the collectively bargained wage rates and fringe benefits are different at different locations or do not apply to one or more locations, the contracting officer shall identify the locations to which the agreements have application. If the collective bargaining agreement does not apply to all service employees under the contract, the contracting officer shall identify the employees and/or work subject to the collective bargaining agreement. See (h) below for notice to interested parties, which is required at least 30 days prior to issuance of the solicitation. (See 1822.1005–3(c) concerning collective bargaining agreements that are considered not to be entered into as a result of arms-length negotiations or that are at substantial variance with the wages and fringe benefits prevailing in the locality.) (Note that the successorship provisions of the Act do not apply if the contract services are to be performed in a locality different than where performed by the predecessor contractor.)

(d) If exceptional circumstances prevent the filing of the notice of intention by the time required in paragraph (a) above, the notice shall be submitted to the Department of Labor through NASA Headquarters (Code NR) as soon as practicable with a detailed explanation of the special circumstances which prevented timely submission.

(e) Requests to expedite issuance of wage determinations or to check the status of a particular request should be made to NASA Headquarters (Code NR). Director contact with Department of Labor officials for this purpose is not authorized.

(f) *Place of performance unknown.* (1) Where the place of performance of a contract for services subject to the Act is unknown at the time of solicitation, the solicitation need not initially contain a wage determination. The contracting agency shall, upon identification of firms participating in the procurement in response to an initial solicitation, file with the Wage and Hour Division, Employment Standards Administration, Department of Labor, its notice of intention to make a service contract (SF 98/98a). In addition to the requirements contained in paragraph (a) above, such submission shall identify each location where the work may be performed as indicated by participating firms. Subsequent amendments to the solicitation setting forth the wage determinations and any necessary change in the date and time for



submission of final bids shall be made upon receipt of wage determinations. An applicable wage determination must be obtained for each firm participating in the bidding for the location in which it would perform the contract. The appropriate wage determination shall be incorporated in the resultant contract documents and shall be applicable to all work performed thereunder (regardless of whether the successful contractor subsequently changes the place(s) of contract performance).

(2) There may be unusual situations, as determined by the Department of Labor upon consultation with NASA Headquarters (Code NR) where the procedure in paragraph (f)(1) above is not practicable in a particular situation, in which event the Department of Labor may authorize a modified procedure which may result in the subsequent issuance of wage determinations for one or more composite localities.

(g) If any invitation for bids, request for proposals, bid opening, or commencement of negotiations for a proposed contract for which a wage determination was provided in response to a Standard Form 98 has been delayed for whatever reason, more than 60 days from the date of such procurement action as indicated on the submitted Standard Form 98, the contracting office shall contact the Wage and Hour Division through NASA Headquarters (Code NR) for the purpose of determining whether the wage determination issued pursuant to the initial submission is still current. Any revision of a wage determination received by the contracting agency as a result of such communication or upon discovery by the Department of Labor of a delay, shall supersede and replace the earlier response as the wage determination applicable to such procurement, subject to the time frames set forth in 1822.1005–3(a).

(h) Notice to interested parties. If, pursuant to paragraph (n) of the Service Contract Act (SCA) clause or through other means, the contracting officer is aware or has reason to believe that the incumbent contractor or a subcontractor is negotiating or has consummated a collective bargaining agreement with a bargaining agent representing service employees performing on the contract, both the contractor and bargaining agent(s) shall be notified of the pending acquisition at least 30 days prior to all applicable estimated procurement dates, including issuance of bid solicitation, bid opening, date of award, commencement of negotiations, receipt of proposals, or the commencement date of a contract resulting from a negotiation, option, or extension, as the case may be. This notification shall be made by registered letter, return receipt requested, and shall set forth all pertinent dates.

(i) Procedures for computation of the rates required by paragraph (m) of the SCA clause and the note following are as follows:

(1) Wages paid blue collar employees shall be the basic hourly rate for each class. The rate shall be Wage Board pay schedule step two for nonsupervisory service employees and step three for supervisory service employees. Determinations of applicable Wage Board rates are as follows:

(i) Where the place of performance is known, the rates applicable to that location shall be used; or

(ii) Where the place of performance is not known, the rates applicable to the contracting activity's location shall be used.

(2) Wages paid white collar employees shall be an hourly rate for each class. The rate shall be obtained by dividing the general pay schedule step one biweekly rate by 80.

(3) Local civilian personnel offices can assist in determining and providing grade and salary data.

(4) The Department of Labor develops standardized fringe benefits. The approved standard and any subsequent modification shall be furnished by NASA Headquarters (Code NR).

**1822.1005–3 Contract minimum wage determination and fringe benefit specifications.**

(a) *Prior to award.* Solicitations and contracts for more than $2,500 shall contain an attachment (wage determination or appropriate revisions) issued by the Administrator in response to the notice required under 1822.1005–2(a) setting forth the minimum wages and fringe benefits for service employees to be employed thereunder. However, the applicability of wage determinations and revisions thereto is subject to the following:

(1) A wage determination or revision shall not apply if no collective bargaining agreement exists and the wage determination or revision is received by the Federal agency less than 10 days before the opening of bids in formally advertised procurements, unless the contracting officer finds that there is a reasonable time to notify bidders thereof. In the case of procurements entered into pursuant to negotiations (or in the case of the execution of an option or an extension of the initial contract term), wage determinations or revisions received by the agency after award (or execution of an option or extension of term, as the case may be) of the contract shall not be effective, provided that the contract start of performance is within 30 days of such award (or execution of an option or extension of term). If the contract does not specify a start of performance date which is within 30 days from the award, and/or if performance of such procurement does not commence within this 30-day period, the Department of Labor shall be notified through NASA Headquarters (Code NR) and any wage determination or revision received by the agency not less than 10 days before commencement of the contract shall be effective.

(2) A wage determination or revision based on a collective bargaining agreement shall not apply if the contracting agency has received notice of the existence of the collective bargaining agreement less than 10 days before bid opening in formally advertised contracts and the contracting officer determines that there is not reasonable time to incorporate a new wage determination in the solicitation. Similarly, a wage determination or revision based on a collective bargaining agreement shall not apply if notice of the terms of the new or changed collective bargaining agreement is received by the agency after award of a successor contract to be entered into pursuant to negotiations or as a result of the execution of a renewal option or an extension of the initial contract term, provided that the contract start of performance is within 30 days of such award or renewal option or extension. If the contract does not specify a start of performance date which is within 30 days from the award, and/or performance of such procurement does not commence within this 30-day period, any notice of the term of a new or changed collective bargaining agreement received by the agency not less than 10 days before commencement of the contract will be effective for purposes of the successor contract under section 4(c) of the Act.

(3) The limitations in paragraph (a)(2) above apply only if the notices required by 1822.1005–2(a) and 1822.1005–2(h) have been given.

(b) *Subsequent to award.* If a required wage determination is not included in the solicitation or contract (either because the notice required by 1822.1005–2 (a) or (h) is not filed or is not filed in the time provided) and if the contracting officer receives a wage determination from the Department of Labor within 30 days of the late filing of the notice or the discovery by the Department of Labor of the failure to

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include a wage determination required by this part, the contracting officer shall immediately contact NASA Headquarters (Code H) for guidance. If NASA Headquarters so authorizes,

(1) The contracting officer shall attempt to negotiate a bilateral modification to:

(i) Incorporate the appropriate clause(s), if not previously included;

(ii) Incorporate the wage determination which shall be effective as of the date of issuance unless otherwise specified; and

(iii) Equitably adjust the contract price to compensate for any increased cost of performance under the contract caused by the wage determination.

(2) If the contracting officer is unable to negotiate a contract modification incorporating the wage determination, the contract file shall be documented to show the efforts made.

(3) If the contracting officer questions the applicability of the Service Contract Act to the contract, the matter shall be forwarded for resolution to the Industrial Relations Office, NASA Headquarters (Code NR).

(c) *Review of collective bargaining agreements and wage determinations.* (1) If a contracting officer believes that an incumbent contractor's collective bargaining agreement was not entered into as a result of arms-length negotiations, procedures in accordance with (4) below shall be followed.

(2) Immediately upon receipt of a wage determination not predicated upon a collective bargaining agreement, the contracting officer shall examine the wage determination to ascertain whether it is correct and whether it conforms with the wages and fringe benefits prevailing for services of a character similar in the locality. If the wage determination is at substantial variance with the prevailing rates, the contracting officer shall proceed in accordance with (c)(3) below.

(3) A full statement of the facts shall be transmitted immediately to NASA Headquarters (Code NR) for appropriate action.

(4) If wages and fringe benefits provided for in a collective bargaining agreement are substantively at variance with those prevailing for services of a character similar in the locality, the contracting officer shall proceed as follows:

(i) Review immediately the agreement to ascertain if a hearing (1822.1051) is warranted.

(ii) Submit a request for hearing, when warranted, to NASA Headquarters (Code NR). Sufficient payroll data shall accompany this request to support a prima facie showing that the bargained-for rates, in fact, are substantially at variance with those prevailing for services of a character similar in the locality. Except under extraordinary circumstances, as determined by the Administrator, a request for hearing shall not be considered by the Secretary unless received by the Department of Labor more than 10 days before the award of an advertised contract or prior to the commencement of a negotiated contract or contract extension, through option or otherwise.

(d) *Late receipt of wage determinations.* If the SCA wage determination requested in accordance with the filing periods in 1822.1005–2(a) is not received in time, the contracting officer should proceed using the latest wage determination included in the existing contract (but see 1822.1005–3(a)(1) above). The contracting officer shall notify NASA Headquarters (Code NR) in writing of each case when compelled to proceed without a new wage determination due to a delayed response from the Department of Labor.

(e) *Seniority list.* In cases of a contract performed at a Federal facility where employees may be hired/retained by a succeeding contractor, the incumbent prime contractor is required to furnish a certified list of all service employees on the contractor's or subcontractor's payroll during the last month of the contract, together with anniversary dates of employment, to the contracting officer no later than 10 days before contract completion. At the commencement of the succeeding contract, the contracting officer shall provide a copy of the list to the successor contractor. This list will be used for determining employee eligibility for vacation fringe benefits which are based on length of service with predecessor contractors (where such benefit is required by an applicable wage determination), unless an applicable collective bargaining agreement provides otherwise.

**1822.1005–4 Additional classifications of service employees (conformable rates).**

When any classes of service employees which are to be engaged in the performance of the contract are not listed in the wage and fringe benefit determination attached to the contract, the procedures in paragraph (a) of the clause in 1852.222–41 shall be followed. However, the contracting officer's report to the Department of Labor shall be submitted through the Office of Industrial Relations, NASA Headquarters (Code NR).

**1822.1005–5 Notice of award.**

(a) Standard Form 99, Notice of Award of Contracts, shall be used to report the award of any contract in excess of $10,000 but less than the small purchase ceiling subject to the Act to the Department of Labor. No report is required for contracts of $10,000 or less. The report shall be submitted with the initial order under an indefinite delivery type contract or basic ordering agreement, or the initial call under a blanket purchase agreement, when they contain the clause in 1852.222–41. The completed original and one copy with the interleaved carbon shall be forwarded to the Administrator, Wage and Hour Division, Department of Labor, Washington, DC 20210. The form shall be completed as follows:

(1) *Items 1 through 7 and 12 and 13:* Self-explanatory;

(2) *Item 8:* Enter the notation "Service Contract Act";

(3) *Item 9:* Leave blank;

(4) *Item 10:* Enter the notation "Major Category," and indicate beside this entry the general service area into which the contract falls (e.g., food services, custodial-janitorial service, garbage collection, insect and rodent control, laundry and dry cleaning services);

(5) *Item 11:* Enter the dollar amount of the contract, or the estimated dollar value with the notation "estimated" if the exact amount is not known. If neither the exact nor the estimated dollar value is known, enter "indefinite," or "Not to exceed $_____"; and

(6) *Item 14:* Leave blank.

Supplies of Standard Form 99 are available in all GSA supply depots under stock number 7540–634–4049.

(b) Awards of contracts in excess of the small purchase ceiling are reported automatically through the Federal Procurement Data System from information extracted from Individual Procurement Act Reports (NASA Form 507). Therefore, SF 99 is not required for procurements for which NASA Form 507 is prepared.

**1822.1005–6 Department of Labor form.**

The contracting officer shall furnish the contractor with Department of Labor Form WH publication 1313 (poster) at the time of contract award and shall ensure that the form is in the possession of the contractor for appropriate posting prior to performance of the contract. The form advises employees of their benefits under the Act and satisfies the notice requirements in paragraph (f) of the contract clause prescribed in 1852.222–41. Contractors are required to post the



form at a prominent and accessible place at the worksite. Supplies of the form may be obtained from the Wage and Hour Division, Department of Labor, Washington, DC 20210.

**1822.1005–7 Inquiries concerning the Act.**

Contractors or contractor employees who inquire concerning the administration and enforcement of the Act shall be advised that such matters fall within the jurisdiction of the Department of Labor and shall be given the address of the appropriate Regional Director of the Wage and Hour Division of the Department of Labor (see FAR 22.609).

**1822.1005–8 Contract modifications.**

(a) *Bilateral contract modifications.* Generally, a bilateral contract modification affecting the scope of the work is regarded as a new contract for purposes of the Act and the regulations there-under. Therefore, prior to entering into such modification, the contracting officer shall forward Standard Form 98/98a to NASA Headquarters (Code NR) in accordance with the procedure set forth in 1822.1005–2(a), except that:

(1) In the "Estimated Solicitation Date" block, enter the date the information is needed; and

(2) In Block 6, enter "Modification of Existing Contract for_____ [describe type of services] Services."

Bilateral contract modifications that are unrelated to the labor requirements of a contract shall not be deemed to create a new contract for purposes of the Act, nor shall insignificant changes related to labor requirements.

(b) *Extension of contract through exercise of option or otherwise.* A new contract shall be deemed entered into for purposes of the Act when the period of performance of an existing contract is extended pursuant to an option clause or otherwise. Prior to extending the period of performance of the contract, the contracting officer shall forward SF 98/98a as provided in (a) above.

**1822.1005–9 Withholding of contract payments and contract termination.**

(a) *Withholding.* (1) As provided by the Act, any violation of the stipulations required by the clauses (1852.222–40 or 1852.222–41) renders the party responsible liable for a sum equal to the amount of any deductions, rebates, refunds, or underpayment of compensation due to any employee engaged in the performance of the contract. Upon the written request of the Department of Labor at a level no lower than an Assistant Regional Administrator, so much of the accrued payment due on the contract under which the violations occurred shall be withheld as is necessary to pay the employees under that contract or under any other contract between the Government prime contractor and the Federal Government, provided the other contract is not assigned pursuant to 31 U.S.C. 203 or 41 U.S.C. 15. Any withheld sums shall be held in a deposit fund. On order of the Secretary, any compensation which the Head of a Federal agency or the Secretary has found to be due pursuant to the Act shall be paid directly to the underpaid employees from any accrued payments withheld under the Act.

(2) If the accrued payments withheld are insufficient to reimburse all underpaid service employees, the Government may bring an action against the contractor, subcontractor, or any contract sureties to recover the remaining amount of underpayments. Any sums thus recovered shall be held in the deposit fund and shall be paid, on order of the Secretary, directly to the underpaid employees. Any sum not paid to an employee because of inability to do so within three years shall be transferred to the Treasury of the United States as miscellaneous receipts.

(b) *Termination.* In addition, as provided by the Act, any failure to comply with the requirements of any of the provisions of the contract clauses set forth under 1852.222–40, 1852.222–41, and 1852.222–43 may be grounds for termination, by written notice, of the contractor's right to proceed with the contract work. In this event, the Government may enter into other contracts or arrangements for completion of the work, charging the terminated contractor with any additional cost.

**1822.1005–10 Cooperation with the Department of Labor.**

The contracting officer shall cooperate with representatives of the Department of Labor in the examination of records, interviews with service employees, and all other aspects of investigations undertaken by the Department of Labor. When requested, agencies shall furnish to the Administrator, Wage and Hour Division, any available information with respect to contractors, subcontractors, their contracts, and the nature of the contract services. Violations apparent to the contracting agency and complaints received shall be promptly referred to the appropriate regional office of the Department of Labor. In no event, however, shall complaints by employees be disclosed to the employer.

**1822.1005–11 Role of the Comptroller General.**

The Act provides that the Comptroller General shall distribute a list to all Federal agencies, giving the names of persons or firms which have been found to be in violation of the Act. Unless the Secretary of Labor otherwise recommends, no Government contract shall be awarded to any violator so listed or to any firm, corporation, partnership or association in which such violator has a substantial interest until three years have elapsed from the date of publication of the list containing the name of the violator.

**1822.1005–12 Disputes concerning labor standards.**

Disputes arising out of the Service Contract Act labor standards provisions of a contract shall not be subject to the general disputes clause of the contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 4, 6, and 8. Disputes within the meaning of this subsection include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

**1822.1005–50 Wage determination and fringe benefits.**

The regulations of the Department of Labor provide that the Administrator shall determine the minimum monetary wages and specify the fringe benefits to be furnished the various classes of service employees in the appropriate localities in which they are to be employed under contracts subject to determinations under the Act (see 29 CFR 4.3). The regulations further provide that these determinations will be available for public inspection during business hours at the Wage and Hour Division, Employee Standards Administration, U.S. Department of Labor. In addition, copies will be made available on request at regional offices of the Wage and Hour Division.

**1822.1006 Procedures for preparing notice.**

The contracting officer shall supplement the SF 98/98a with the following information (see 1822.1005–2):

(a) *Item 6.* Insert on the far left side of the block one or more of the following codes identifying the type of proposed action:

**Code and Proposed Action**

I New contract (use *only* when services are not presently being performed).

II Recompetition of services.

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III Contract modifications affecting the scope of the work.
IV Extension of contract performance through exercise of an option or otherwise.
V Other. Identify a contract for more than two years and not subject to annual appropriations as "multiple year R&D."

(b) *Item 8.* (1) If the proposed contract will be awarded under Section 8(a) of the Small Business Act, insert both the Small Business Administration and the name of the subcontractor.

(2) If there is an incumbent contractor, include as part of the wage data submitted the incumbent's wage rate ranges and current actual wage rates being paid to the various classes of non-exempt, unrepresented employees.

(3) If there is no incumbent contractor, furnish whatever information is available on wages and fringe benefits currently being paid in the locality.

(4) If no wage determination is available for the particular contract, insert "None" in Item 8.b.

(c) *Item 10.* Add the solicitation number, if known.

(d) *Item 12.* (1) When entering into a new service contract, list all classes of work expected to be performed under the contract under this item, regardless of whether the class of employees is considered professional, executive, administrative, or hourly. However, if submission of the SF 98/98a is in connection with any action other than a new contract (Code I in paragraph (a) above), list only the classes of work that the incumbent indicates are "nonexempt."

(2) When classifications include both categories of employees covered by a collective bargaining agreement and those not represented by a union, mark the classifications that are unionized with an asterisk.

(3) If the classification of work is not known, use the most descriptive job title available for the work to be performed under the contract.

(e) *Item 13.* If the number of employees is not known, the estimated hours required to perform the tasks should be indicated so that staffing estimates can be determined and listed.

(f) *Item 14.* Include in this item the wage rates that would be paid if the employees were subject to 5 U.S.C. 5332 (GS grades).

**1822.1060 Extensions of contract performance period.**

**1822.1060–1 General.**

A number of NASA service contracts are written for a period of one year with an option on the part of the Government to renew the contract for additional one-year periods at the same or other price or rates. Since the exercise of an option results in the performance of services for a new or different period not included in the term for which the contractor is obligated to furnish services, or for which the Government is obligated to pay under the original contract in the absence of such action to extend it, the contract for the option (additional) period is within the contemplation of the Service Contract Act in the same position as a wholly new contract with respect to application of the Act's provisions and the regulations thereunder. (See 29 CFR 4.145.)

**1822.1060–2 Contract price adjustment.**

(a) The following requirements shall apply to firm fixed-price contracts, time and material contracts, and labor-hour contracts which contain the clause in 1852.222.41 (i.e., contracts in excess of $2,500) and which provide for Government option renewal.

(1) For firm fixed-price contracts:

(i) When the scope of work called for in the solicitation for the original contract period and any renewal option period is the same, the offeror shall be required by the solicitation to submit with the offer, and the Schedule of any resulting contract shall contain, a single listing of the classes of service employees subject to the Service Contract Act, and the number of labor hours to be supplied by each class applicable to both the original contract period and to any renewal option period.

(ii) When the scope of work called for in the solicitation for the original contract period and any renewal option period differs, the offeror shall be required by the solicitation to submit with the offer, and any resulting contract shall contain in the Schedule, for the original contract period and any renewal option period, respectively, a separate listing of both classes of the Service Contracts Act service employees and the number of labor hours to be supplied by each class.

(2) For time and material contracts and labor hour contracts. The offeror shall be required by the solicitation to submit with the offer, and the Schedule of any resulting contract shall contain, a listing of the classes of Service Contract Act service employees for the initial contract and any renewal period, and the contract unit price labor rates, in the same format as set forth in the Service Contract Act determination for each class.

(b) The clause at 1852.222–43, Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiyear and Option Contracts), shall be inserted in firm fixed-price contracts, time and material contracts, and labor-hour contracts which contain the clause in 1852.222–41 (i.e., contracts in excess of $2,500) and which contain an option to renew. It should be noted that the adjustments under (c)(2) and (c)(3) of the clause may be applicable to the base period as well as to subsequent periods. (The clause in 1852.222–43 shall not be used in cost-type contracts.)

**1822.1061 Hearings.**

A successor contractor's obligation (see 1822.1001(c)) cannot be avoided unless it is found after a hearing that the bargained for wages and fringe benefits are substantially at variance with those which prevail for services of a character similar in the locality. Hearings may be requested by any interested party, including the contractor, a union, or the contracting agency. Details pertaining to hearings are in 29 CFR 4.10. Any request for a hearing from a NASA contracting office will be coordinated with, and forwarded to, NASA Headquarters (Code NR).

## PART 1823—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

10. Subpart 1823.71 is amended by revising 1823.7102 to read as follows:

**1823.7102 Procedures.**

The contracting officer shall obtain the necessary frequency authorization and other procedural details from the installation's spectrum manager.

## PART 1832—CONTRACT FINANCING

11. Part 1832 is amended as set forth below:

a. In Subpart 1832.7, 1832.705–2 is revised to read as follows:

**1832.705–2 Clauses for limitation of cost or funds.**

As authorized by FAR 52.232–22, the contracting officer shall substitute "Contract Funding clause" for "Schedule," wherever that word appears in the clause at FAR 52.232–22.

**1832.705–270 [Amended]**

b. In 1832.705–270, paragraph (d) is removed.

c. In Subpart 1832.9, 1832.906 is revised to read as follows:

**1832.906 Contract clause.**

When the clause at FAR 52.232–25 is used, it shall be used with its Alternate II as authorized by FAR 32.906(c)), modified by deleting the words "and contract number" from paragraph (c)(4).



The following paragraph shall be inserted in Alternate II as (c)(2)(iv) in lieu of the FAR paragraph at that location:

(iv) The Contractor shall submit a TFS Form 3881 to the installation awarding this contract. If a TFS Form 3881 previously submitted to the installation awarding this contract is still valid, resubmittal is not necessary, unless requested by NASA.

## PART 1834—MAJOR SYSTEM ACQUISITION

12. Part 1834 is amended by adding 1834.005–1 to read as follows:

**1834.005–1 Competition.**

(a) In procurements subject to the provisions of OMB Circular No. A–109, Major Systems Acquisitions, and NASA Management Instruction 7100.14, or other similar phased-type procurements, it is NASA policy to ensure competition in the selection of contractors for award. Phase B usually covers the exploration of design concepts while Phase C/D deals with developing and fabricating equipment in accordance with designs that have proven acceptable. In such procurements, where Phase B is subject to full and open competition and all offerors are made aware that a continuous process of "down-selection" will be used, then the subsequent C/D solicitation and award are considered to be a continuum of the initial competition (Phase B) and the entire process is considered full and open competition. To this end, Phase B should be synopsized in accordance with FAR 5.201 and solicit all known potential sources to explore design concepts. In addition to the other information required by FAR 5.207, the synopsis should state that the subsequent solicitation for Phase C/D will build on the design concepts selected in Phase B and that NASA intends to solicit offers on that procurement only from those firms which were successful in Phase B. The Phase B RFP should also include this statement.

(b) Solicitations must be issued for Phase C/D and a source selection accomplished, unless an appropriate Justification for Other Than Full and Open Competition has been approved; "technical" down-selection from Phase B to Phase C/D without the issuance of a Phase C/D solicitation is not appropriate. Solicitations for Phase C/D should be limited to those firms which successfully completed Phase B or to those which can otherwise demonstrate that they meet the design requirements of Phase B. Procurements for Phase C/D must be properly synopsized, and state that it is the second phase of a phased procurement and that the Phase C/D solicitation is being issued to the offerors who successfully completed the Phase B design requirements, and identify the firms which are being solicited for Phase C/D. The synopsis must also state that any other potential offeror for Phase C/D must meet the Phase B requirement. If a prospective offeror, other than a successful contractor in Phase B, responds to the synopsis, the contracting officer shall allow the offeror to compete, but caution the interested firm that any product offered must satisfy the requirement for an equivalent mature design concept acceptable to NASA delineated in Phase B.

(c) Phased procurements which meet the conditions in (a) and (b) above are considered to be full and open competition. If only one contractor successfully completed Phase B and, after soliciting offers from more than one source, no other potential offeror responded to the solicitation for Phase C/D, the award shall be reported as a "noncompetitive procurement using competitive procedures" (see NFS 1804.671–4(m)).

(d) When the conditions in (a) and (b) above can not be met or where NASA chooses to develop an independent design after Phase B products have been evaluated, the procurement should proceed on the basis of full and open competition unless circumstances justify using one of the exceptions set forth in FAR 6.302 or one of the exclusions under FAR Subpart 6.2. In any event, the synopsis requirements of FAR 5.201 apply. (For this purpose, an "independent design" can be: (1) A synthesis of the Phase B products; (2) a totally new design developed by NASA; or (3) a combination thereof.)

## PART 1835—RESEARCH AND DEVELOPMENT CONTRACTING

**1835.070 [Amended]**

13. In 1835.070, the title is revised to read "NASA contract clauses and solicitation provision."

## PART 1836—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

**1836.609 and 1836.609–70 [Removed]**

14. Sections 1836.609 and 1836.609–70 are removed.

## PART 1837—SERVICE CONTRACTING

15. Subpart 1837.1 is amended as set forth below:

a. Section 1837.101 is added to read as follows:

**1837.101 Definitions.**

"Pension portability" means the recognition and continuation in a successor service contract of the predecessor service contract's pension rights and benefits for contractor employees.

b. Section 1837.110 is revised to read as follows:

**1837.110 Solicitation provisions and contract clauses.**

The contracting officer shall obtain the Assistant Administrator for Procurement's (Code HP) approval before using in a solicitation contract, or negotiated contract modification for additional work any installation-developed clause involving pension portability.

c. Section 1837.170 is added to read as follows:

**1837.170 Pension portability.**

It is NASA's policy not to require pension portability in service contracts. However, if it is in the Government's best interest, NASA may consider the inclusion of pension portability requirements in a service contract under the following conditions:

(a) Only defined contribution plans shall be permitted in portability provisions;

(b) At a minimum, vesting shall be 100 percent at contract completion or termination; and

(c) There must be a clear description of the plan, including coverage regarding service, pay, and benefits, as appropriate, from prior contractors.

## PART 1842—CONTRACT ADMINISTRATION

16. In Subpart 1842.2, 1842.202–71 is revised to read as follows:

**1842.202–71 Delegations to audit offices.**

The following procedures apply when delegations are made to audit offices:

(a) NASA installations shall utilize the services of other Government audit organizations for performance of contract cost audit and other audit functions except when audits will be performed by NASA auditors. The Defense Contract Audit Agency (DCAA) has been designated as the DOD agency responsible for the performance of audit functions for NASA contracts, except those awarded to educational institutions for which other agencies have audit cognizance under OMB Circular No. 88, those with Canadian contractors (see paragraph (d) below), and those for which NASA will perform audits. To ensure that audit services are performed expeditiously, audit

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delegations shall be sent to the appropriate audit office immediately after execution of all cost-reimbursement, labor-hour, and time-and-materials contracts and all fixed-price contracts containing cost-reimbursement or price adjustment clauses. Audit functions include but are not limited to contract cost and price audits, estimating systems surveys, reviews of accounting systems (see also 1815.871(b)), and approval of vouchers for provisional payment.

(b)(1) Delegations shall be sent to cognizant audit offices as listed in the Defense Contract Audit Agency Directory (Headquarters and Field Offices) or in other Government agency directories.

(2) Audit responsibilities for the Department of Health and Human Services (HHS) do not include reviewing and processing vouchers. Consequently, where audit responsibility has been delegated to HHS under OMB Circular No. A–88, contracts shall not designate HHS as the billing office for invoice submission. Instead, contracts should direct invoices to the office administering the contract or as otherwise arranged (see SF 26, Block 10, and SF 33, Block 23).

(c)(1) NASA Form 1433, Letter of Audit Delegation, shall be used to delegate the audit function and to amend previous delegations. Distribute copies of the contract and NASA Form 1433 as follows:

(i) Audit office: One copy of the contract and three NASA Forms 1433.

(ii) Contractor: One NASA Form 1433.

(iii) Cognizant NASA fiscal or financial management office: One NASA Form 1433.

(2) When HHS is designated as the audit office, item 12 on NASA Form 1433 shall be marked "Not applicable."

(d)(1) For contracts with the Canadian Commercial Corporation (CCC), audits are automatically arranged by the Department of Defense Production (Canada) (DDP) in accordance with agreements between NASA and DDP. Audit reports are furnished to DDP. Upon advice from DDP, CCC will certify the invoice and forward it with Standard Form 1034, Public Voucher, to the contracting officer for further processing and transmittal to the fiscal or financial management officer.

(2) For contracts placed directly with Canadian firms, audits are requested by the contracting officer from the Audit Services Branch, Comptroller of the Treasury, Department of Finance, Ottawa, Ontario, Canada. Invoices are approved by the auditor on a provisional basis pending completion of the contract and final audit. These invoices, accompanied by SF 1034, are forwarded to the contracting officer for further processing and transmittal to the fiscal or financial management officer. Periodic advisory audit reports are furnished directly to the contracting officer.

(3) Audits performed by the Audit Services Branch are normally conducted under DDP regulations.

## PART 1843—CONTRACT MODIFICATIONS

17. Subpart 1843.2, consisting of 1843.205, 1843.205–70, and 1843.270, is revised to read as follows:

### 1843.206 Contract clauses.

As permitted by the clause preface, when the clause at FAR 52.243–1, 52.243–2, or 52.243–3 (Changes—Fixed-Price, Changes—Cost-Reimbursement, or Changes—Time-and-Materials or Labor-Hours) is used, the 30-day period within which the contractor must assert its right to an adjustment may be varied not to exceed 60 days.

### 1843.205–70 NASA contract clause.

(a) The contracting officer may use the clause at 1852.243–70, Engineering Change Proposals, in contracts to require the contractor to submit engineering change impact evaluation information, including the maximum equitable adjustment resulting from the change. The term "price" in paragraph (b) of the clause may be changed to suit the specific type of contract. A local format may be substituted for the second reference in clause paragraph (a) to DOD–STD–480A. The basic clause is suitable for fixed-price contracts.

(b) If it is desirable to preclude a large number of small-dollar, contractor-initiated engineering changes and to reduce the administrative cost of reviewing them, the contracting officer shall use the clause with its Alternate I.

(c) If the contract is a cost-reimbursement contract, the contracting officer shall use the clause with its Alternate II.

### 1843.270 Originating engineering change proposals.

Either party to the contract may originate engineering changes. The originator must provide detailed information supporting and documenting the proposed change so that the Government can evaluate the technical, cost, and schedule effects of implementing the change and can price the change in advance, when possible.

## PART 1845—GOVERNMENT PROPERTY

18. Part 1845 is amended as set forth below:

a. In Subpart 1845.1, 1845.106 is revised to read as follows:

### 1845.106 Government property clauses.

In addition to the applicable Government property clauses prescribed in FAR 45.106, the contracting officer shall insert the following clause(s) and provision as appropriate.

### 1845.106–70 [Amended]

b. In 1845.106–70, the title is revised to read "NASA contract clauses and solicitation provision."

c. In Subpart 1845.3, 1845.302–72 is added to read as follows:

### 1845.302–72 Long term facilities use.

For procurements in which (a) the proposed contract, exclusive of options, will be for a shorter period than the useful life, for the program, of any required contractor-owned or leased facilities, and (b) the facilities are unlikely to be needed by the contractor for any purpose other than the program effort being contracted for, see 1807.170–1(i).

## PART 1846—QUALITY ASSURANCE

### 1846.470 [Amended]

19. In 1846.470, a period is placed after the word "contracts", and the remainder of the sentence is removed.

## PART 1847—TRANSPORTATION

### 1847.305–70 [Amended]

20. In 1847.305–70, paragraph (a) is revised to read as follows:

(a) The contracting officer shall insert the clause at 1852.247–70, Returnable Containers, in contracts involving the purchase of gas or other supplies in contractor-furnished returnable, reusable containers, if the contractor retains title to the containers.

## PART 1848—VALUE ENGINEERING

21. Part 1848 is amended by revising Subpart 1848.1, consisting of 1848.102, 1848.103, 1848.104, and 1848.104–2, and Subpart 1848.2, consisting of 1848.201 and 1848.201–70 to read as follows:

### Subpart 1848.1—Policies and Procedures

### 1848.102 Policies.

(a) The exemptions permitted under FAR 48.102(a) are granted on a case-by-case basis, or for specific classes of contracts, by the Assistant Administrator for Procurement.



(b) Profit or fee shall be excluded when calculating instant or future contract savings, except that in calculating instant or future contract savings on firm-fixed-price contracts when the parties have not set out a specific figure for profit, the contracting officer shall use the total contract price as the basis for calculating the savings.

(c) The FAR requires agencies to establish procedures for funding and payment of the contractor's share of collateral savings and future contract savings. Therefore, the contracting officer shall notify the responsible technical official of the potential for awarding the contractor future or collateral savings if the submitted value engineering change proposal (VECP) is accepted. (See 1848.103.) Upon acceptance, the contracting officer shall obtain the concurrence of the program office and amend the instant contract to reflect payment of future or collateral savings.

### 1848.103 Processing value engineering change proposals.

Upon receipt of a VECP, the contracting officer shall promptly forward it to the technical officer responsible for the contract, indicating—

(a) The date the VECP was received;

(b) The date by which the contractor must be informed of the Government's acceptance or rejection of the VECP unless additional time is required for evaluation;

(c) The date by which the contracting officer must know of the technical officer's decision in order to timely accept or reject the VECP;

(d) The need for information required to inform the contractor if the VECP is to be rejected or if additional time is needed for evaluating the VECP;

(e) The potential for awarding concurrent, future, or collateral savings to the contractor if the VECP is accepted;

(f) That if the VECP is accepted, precise information will be needed with regard to the type of savings, Government costs, etc., that can be expected from its acceptance;

(g) The need for a procurement request setting forth the specification changes to be used in any contract modification accepting the VECP in whole or in part; and

(h) The need for additional funds if acceptance of the VECP results in negative instant contract savings.

### 1848.104 Sharing arrangements.

### 1848.104–2 Sharing collateral savings.

The contracting officer may make the determination that the cost of calculating and tracking collateral savings will exceed the benefits to be derived.

### Subpart 1848.2—Contract Clauses

### 1848.201 Clauses for supply or service contracts.

### 1848.201–70 NASA conditions.

(a) *General.* The Assistant Administrator for Procurement may exempt a contract or a class of contracts from the requirements of FAR Part 48.

(b) *Value engineering incentive.* Unless the chief of the contracting activity authorizes its inclusion, the contracting officer shall not include the VE incentive clause in solicitations and contracts that fall under the exemptions at FAR 48.201(a)(1) through (5). With respect to the sixth exception (FAR 48.201(a)(6)), the procurement officer may not authorize inclusion of a VE clause in a contract or class of contracts exempted by the Assistant Administrator for Procurement.

(c) *Value engineering program requirement.* NASA contracting officers shall insert the VE program requirement clause (the clause at FAR 52.248–1 used with its Alternate I or II) in (1) initial production contracts for major systems and (2) major systems R&D contracts for full-scale development, unless the contracting officer determines that its use is inappropriate and documents the file to reflect that determination. The VE program requirement clause (FAR 52.248–1, Value Engineering, used with its Alternate I or II) is appropriate for an R&D major systems contract only if the contract specifications contain detailed requirements that, in the contracting officer's judgment, lend themselves to VE.

(d) *Research and development.* The contracting officer may not insert either the VE incentive clause (FAR 52.248–1, Value Engineering) or the VE program requirement clause (FAR 52.248–1, Value Engineering, used with its Alternate I or II) in an R&D contract where the statement of work is essentially an incorporation by reference of the prospective contractor's proposal. If any other part of the statement of work in such a contract reflects a Government specification that might profit from or be improved by application of VE techniques, the contracting officer shall consider inserting the VE incentive clause (FAR 52.248–1, Value Engineering) or VE program requirement clause (FAR 52.248–1, Value Engineering, used with its Alternate I or II), to refer to that part.

## PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

22. Part 1852 is amended as set forth below:

### 1852.214–71 [Amended]

a. In 1852.214–71, the date "(December 1988)" is revised to read "(March 1989)," and the word "lowest" is removed.

### 1852.216–70 and 1852.216–71 [Removed]

b. Sections 1852.216–70 and 1852.216–71 are removed.

### 1852.216–72 [Amended]

c. In 1852.216–72, the reference "1852.203–4(g)" is revised to read "1852.203–4(f)."

### 1852.216–82 [Amended]

d. In 1852.216–82, paragraph (a) is revised to read as follows:

* * * * *

(a) During the term of the contract, the Contractor is obligated to provide not less than ____ % [insert minimum percentage of direct labor hours] nor more than ____ % [insert maximum percentage of direct labor hours] of the following direct labor hours:

Labor Category
Direct Labor Hours
[Insert applicable labor categories, direct labor hours in each labor category, and total direct labor hours.]

e. Sections 1852.222–40, 1852.222–41, and 1852.222–43 are added to read as follows:

### 1852.222–40 Service Contract Act of 1965—Contracts of $2,500 or Less.

As prescribed in 1822.1004(b), insert the following clause:

**Service Contract Act of 1965—Contracts of $25,000 or Less (April 1984)**

Except to the extent that an exemption, variation, or tolerance would apply if this were a contract in excess of $2,500, the Contractor and any subcontractor hereunder shall pay all employees engaged in performing work on the contract not less than the minimum wage specified under Section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended. Regulations and interpretations of the Service Contract Act of 1965, as amended, are contained in 29 CFR Part 4 and are hereby incorporated by reference in this contract.

(End of clause)

### 1852.222–41 Service Contract Act of 1965, as amended.

As prescribed in 1822.1004(a), insert the following clause:

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**Service Contract Act of 1965, as Amended (April 1984)**

This contract is subject to the Service Contract Act of 1965, as amended (41 U.S.C. 351 et seq., hereafter referred to as the "act"), and is subject to the following provisions and to all other applicable provisions of the Act and regulations of the Secretary of Labor issued thereunder (29 CFR Part 4).

(a) *Compensation.* (1) Each service employee employed in the performance of this contract by the Contractor or any subcontractor shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor or authorized representative, as specified in any wage determination attached to this contract.

(2) If there is such a wage determination attached to this contract, any class of service employee which is not listed therein and which is to be employed under this contract (i.e., the work to be performed is not performed by any classification listed in the wage determination), shall be classified by the Contractor, so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed class of employees shall be paid the monetary wages and furnished the fringe benefits as are determined pursuant to the procedures in this clause.

(3) Such conforming procedure shall be initiated by the Contractor prior to the performance of contract work by such unlisted class of employee. A written report of the proposed conforming action, including information regarding the agreement or disagreement of the authorized representative of the employees involved or, where there is no authorized representative, the employees themselves, shall be submitted by the Contractor to the Contracting Officer no later than 30 days after such unlisted class of employees performs any contract work. The Contracting Officer shall review the proposed action and promptly submit a report of the action, together with the agency's recommendation and all pertinent information, including the position of the Contractor and the employees, through NASA Headquarters (Code NR) to the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, for review. The Wage and Hour Division will approve, modify, or disapprove the action or render a final determination in the event of disagreement within 30 days of receipt or will notify the Contracting Officer within 30 days of receipt that additional time is necessary.

(4) The final determination of the conformance action by the Wage and Hour Division shall be transmitted to the Contracting Officer, who shall promptly notify the Contractor of the action taken. Each affected employee shall be furnished by the Contractor with a written copy of such determination, or it shall be posted as a part of the wage determination.

(5) The process of establishing wage and fringe benefit rates that bear a reasonable relationship to those listed in a wage determination cannot be reduced to any single formula. The approach used may vary from wage determination to wage determination depending on the circumstances. Standard wage and salary administration practices which rank various job classifications by pay grade pursuant to point schemes or other job factors may, for example, be relied upon. Guidance may also be obtained from the way different jobs are rated under Federal pay systems (Federal Wage Board Pay System and the General Schedule) or from other wage determinations issued in the same locality. Basic to the establishment of any conformable wage rate(s) is the concept that a pay relationship should be maintained between job classifications based on the skill required and the duties performed.

(6) In the case of a contract modification, an exercise of an option or extension of an existing contract, or in any other case where a Contractor succeeds a contract under which the classification in question was previously conformed pursuant to this section, a new conformed wage rate and fringe benefits may be assigned to such conformed classification by indexing (i.e., adjusting) the previous conformed rate and fringe benefits by an amount equal to the average (mean) percentage increase (or decrease, where appropriate) between the wages and fringe benefits specified for all classifications to be used on the contract which are listed in the current wage determination, and those specified for the corresponding classifications in the previously applicable wage determination. Where conforming actions are accomplished in accordance with this paragraph prior to the performance of contract work by the unlisted class of employees, the Contractor shall advise the Contracting Officer of the action taken but the other procedures in paragraph (a)(3) of this clause need not be followed.

(7) No employee engaged in performing work on this contract shall in any event be paid less than the currently applicable minimum wage specified under Section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.

(8) The wage rate and fringe benefits finally determined pursuant to paragraphs (a)(2) and (3) of this clause shall be paid to all employees performing in the classification from the first day on which contract work is performed by them in the classification. Failure to pay such unlisted employees the compensation agreed upon by the interested parties and/or finally determined by the Wage and Hour Division retroactive to the date such class of employees commenced contract work shall be a violation of the Act and this contract.

(9) Upon discovery of failure to comply with paragraphs (a)(2) through (8) of this clause, the Wage and Hour Division shall make a final determination of conformed classification, wage rate, and/or fringe benefits which shall be retroactive to the date such class of employees commenced contract work.

(b) *Adjustment of compensation.* If, as authorized pursuant to Section 4(d) of the Act, the term of this contract is more than one year, the minimum monetary wages and fringe benefits required to be paid or furnished thereunder to service employees shall be subject to adjustment after one year and not less often than once every two years, pursuant to wage determinations to be issued by the Wage and Hour Division, Employment Standards Administration, Department of Labor, as provided in the Act.

(c) *Obligation to furnish fringe benefits.* The Contractor or subcontractor can only discharge the obligation to furnish fringe benefits specified in the attachment or conformed thereto by furnishing any equivalent combinations of bona fide fringe benefits, or by making equivalent or differential payments in cash, in accordance with the applicable rules set forth in 29 CFR, Part 4, Subpart D.

(d) *Minimum wage.* In the absence of a minimum wage attachment for this contract, neither the Contractor nor any subcontractor under this contract shall pay any person performing work under the contract (regardless of whether they are service employees) less than the minimum wage specified by Section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended. Nothing in this provision shall relieve the Contractor or any subcontractor of any other obligation under law or contract for the payment of a higher wage to any employee.

(e) *Successorship.* If this contract succeeds a contract subject to the Act, under which substantially the same services were furnished in the same locality and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, in the absence of the minimum wage attachment for this contract setting forth such collectively bargained wage rates and fringe benefits, neither the Contractor nor any subcontractor under this contract shall pay any service employee performing any of the contract work (regardless of whether or not such employee was employed under the predecessor contract), less than the wages and fringe benefits provided for in such collective bargaining agreements, to which such employee would have been entitled if employed under the predecessor contract, including accrued prospective wages and fringe benefits provided for under such agreement. No Contractor or subcontractor under this contract may be relieved of the foregoing obligation unless the limitations of 29 CFR 4.1b(b) apply or unless the Secretary of Labor or the Secretary's authorized representative (i) determines as provided in 29 CFR 4.11 that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arms-length negotiations, or (ii) finds after a hearing as provided in 29 CFR 4.10 that the wages and/or fringe benefits provided for in such agreement are substantially at variance with those which prevail for services of a character similar in the locality. Where it is found in accordance with the review procedures provided in 29 CFR 4.10 and/or 4.11 and Parts 6 and 8 that some or all of the wages and/or fringe benefits contained in a predecessor Contractor's collective bargaining agreement are substantially at variance with those which prevail for services of a character similar in the locality, and/or that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's-length negotiations, the Department will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits. Such determination shall be made part of the contract or subcontract, in accordance with the decision of the Administrator, the Administrative Law Judge, or the Board of Service Contract Appeals, as the case may be, irrespective of whether such issuance occurs prior to or after the award of a contract or subcontract. 53 Comp. Gen. 401 (1973). In the case of a wage determination issued solely as a result of a finding of substantial variance, such determination shall be effective as of the date of the final administrative decision.



(f) *Notification to employees.* The Contractor and any subcontractor under this contract shall notify each service employee commencing work on this contract of the minimum monetary wage and any fringe benefits required to be paid pursuant to this contract, or shall post the wage determination attached to this contract. The poster provided by the Department of Labor (Publication WH 1313) shall be posted in a prominent and accessible place at the worksite. Failure to comply with this requirement is a violation of Section 2(a)(4) of the Act and of this contract.

(g) *Safe and sanitary working conditions.* The Contractor or subcontractor shall not permit any part of the services called for by this contract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the Contractor or subcontractor which are unsanitary or hazardous or dangerous to the health or safety of the service employees engaged to furnish these services, and the Contractor or subcontractor shall comply with the safety and health standards applied under 29 CFR Part 1925.

(h) *Records and employee interview.* (1) The Contractor and each subcontractor performing work subject to the Act shall make and maintain for three years from the completion of the work, records containing the information specified below for each employee subject to the Act and shall make them available for inspection and transcription by authorized representatives of the Wage and Hour Division, Employment Standards Administration of the U.S. Department of Labor.

(i) Name and address and social security number of each employee.

(ii) The correct work classification or classifications, rate or rates of monetary wages paid and fringe benefits provided, rate or rates of fringe benefit payments in lieu thereof, and total daily and weekly compensation of each employee.

(iii) The number of daily and weekly hours so worked by each employee.

(iv) Any deductions, rebates, or refunds from the total daily or weekly compensation of each employee.

(v) A list of monetary wages and fringe benefits for those classes of service employees not included in the wage determination attached to this contract but for which such wage rates or fringe benefits have been determined by the interested parties or by the Administrator or authorized representative, pursuant to the labor standards in paragraph (a) of this clause. A copy of the report required by paragraph (a)(3) of this clause shall be deemed to be such a list.

(vi) Any list of the predecessor Contractor's employees which had been furnished to the Contractor pursuant to paragraph (o) of this clause.

(2) The Contractor shall also make available a copy of this contract for inspection or transcription by authorized representatives of the Wage and Hour Division.

(3) Failure to make and maintain or to make available such records for inspection and transcription shall be a violation of the regulations and this contract, and in the case of failure to produce such records, the Contracting Officer, upon direction of the Department of Labor and notification of the Contractor, shall take action to cause suspension of any further payment or advance of funds until such violation ceases.

(4) The Contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.

(i) *Pay periods.* The Contractor shall unconditionally pay to each employee subject to the Act all wages due free and clear and without subsequent deduction (except as otherwise provided by law or regulations, 29 CFR Part 4), rebate, or kickback on any account. Such payments shall be made no later than one pay period following the end of the regular pay period in which such wages were earned or accrued. A pay period under this Act may not be of any duration longer than semi-monthly.

(j) *Withholding of payment and termination of contract.* The Contracting Officer shall withhold or cause to be withheld from the Government prime Contractor under this or any other Government contract with the prime Contractor such sums as Department of Labor requests or such sums as an appropriate official of the Department of Labor requests or such sums as the Contracting Officer decides may be necessary to pay underpaid employees employed by the Contractor or subcontractor. In the event of failure to pay any employees subject to the Act all or part of the wages or fringe benefits due under the Act, the agency may, after authorization or by direction of the Department of Labor and written notification to the Contractor, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of this clause relating to the Act may be grounds for termination of the right to proceed with the contract work. In such event, the Government may enter into other contracts or arrangements for completion of the work, charging the Contractor in default with any additional cost.

(k) *Subcontractors.* The Contractor agrees to insert this clause in all subcontracts subject to the Act. The term "Contractor" as used in this clause in any subcontract, shall be deemed to refer to the subcontractor, except in the term "Government prime Contractor."

(l) *Service employee.* As used in this clause, the term "service employee" means any person engaged in the performance of this contract other than any person employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in Part 541 of Title 29, Code of Federal Regulations, as of July 30, 1976, and any subsequent revision of those regulations. The term "service employee" includes all such persons regardless of any contractual relationship that may be alleged to exist between a contractor or subcontractor and such persons.

(m) *Federal wage board (blue collar) and general schedule (white collar) wages and fringe benefits applicable to service employee classifications.* The classes of service employees set forth in an attachment to this contract expected to be employed under the contract with the Government would be subject, if employed by the contracting agency, to the provisions of 5 U.S.C. 5341 or 5332 and would, if so employed, be paid not less than the rates of wages and fringe benefits set forth in such attachment. This statement and such attachment are furnished for informational purposes only.

(n) *Collective bargaining agreements applicable to service employees.* If wages to be paid or fringe benefits to be furnished any service employees employed by the Government prime contractor or any subcontractor under the contract are provided for in a collective bargaining agreement that is or will be effective during any period in which the contract is being performed, the Government prime Contractor shall report this fact to the Contracting Officer together with full information as to the application and accrual of such wages and fringe benefits, including any prospective increases, to service employees engaged in work on the contract, and a copy of the collective bargaining agreement. This report shall be made upon commencing performance of the contract, in the case of collective bargaining agreements effective at such time, and, in the case of agreements or provisions or amendments thereof effective at a later time during the period of contract performance, such agreements shall be reported promptly after negotiation thereof.

(o) *Seniority list.* Not less than 10 days prior to completion of any contract being performed at a Federal facility where service employees may be retained in the performance of the succeeding contract and subject to a wage determination which contains vacation or other benefit provisions based upon length of service with a Contractor (predecessor) or successor (§ 4.173 of Regulations, 29 CFR Part 4), the incumbent prime Contractor shall furnish to the Contracting Officer a certified list of the names of all service employees on the Contractor's or subcontractor's payroll during

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the last month of contract performance. Such list shall also contain anniversary dates of employment on the contract either with the current or predecessor Contractors of each such service employee. The Contracting Officer shall turn over such list to the successor Contractor at the commencement of the succeeding contract.

(p) *Regulations incorporated by reference.* Rulings and interpretations of the Act are contained in Regulations, 29 CFR Part 4, and are hereby incorporated by reference in this contract.

(q) *Contractor's certification.* (1) By entering into this contract, the Contractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has substantial interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of the sanctions imposed pursuant to Section 5 of the Act.

(2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract pursuant to Section 5 of the Act.

(3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(r) *Variations, tolerances, and exemptions involving employment.* Notwithstanding any of the provisions in paragraphs (a) through (p) of this clause relating to the Act, the following employees may be employed in accordance with the following variations, tolerances, and exemptions, which the Secretary of Labor, pursuant to Section 4(b) of the Act (prior to its amendment by Pub. L. 92-473), found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business:

(1) Apprentices, student-learners, and workers whose earning capacity is impaired by age, physical or mental deficiency, or injury may be employed at wages lower than the minimum wages otherwise required by Section 2(a)(1) or 2(b)(1) of the Act, without diminishing any fringe benefits or cash payments in lieu thereof required under Section 2(a)(2) of the Act, in accordance with the conditions and procedures prescribed for the employment of apprentices, student-learners, handicapped persons, and handicapped clients of sheltered workshops under Section 14 of the Fair Labor Standards Act of 1938, as amended, and regulations issued by the Administrator (29 CFR Parts 520, 521, 524, and 525).

(2) The Administrator will issue certificates under the Act for the employment of apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, as amended, or subject to different minimum rates of pay under the two acts, authorizing appropriate rates of minimum wages (but without changing requirements concerning fringe benefits or supplementary cash payments in lieu thereof), applying procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act of 1938 (29 CFR Parts 520, 521, 524, and 525).

(3) The Administrator will also withdraw, annul, or cancel such certificates in accordance with the regulations in 29 CFR Parts 525 and 528.

(s) *Apprentices.* Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program registered with a State Apprenticeship Agency which is recognized by the U.S. Department of Labor, or if no such recognized agency exists in a State, under a program registered with the Bureau of Apprenticeship and Training, Employment and Training Administration, U.S. Department of Labor. Any employee who is not registered as an apprentice in an approved program shall be paid the wage rate and fringe benefits contained in the applicable wage determination for the journeyman classification of work actually performed. The wage rates paid apprentices shall not be less than the wage rate for their level of progress set forth in the registered program, expressed as the appropriate percentage of the journeyman's rate contained in the applicable wage determination. The allowable ratio of apprentices to journeymen employed on the contract work in any craft classification shall not be greater than the ratio permitted to the Contractor as to his entire work force under the registered program.

(t) *Tips.* An employee engaged in an occupation in which he or she customarily and regularly receives more than $30 a month in tips may have the amount of tips credited by the employer against the minimum wage required by Section 2(a)(1) or Section 2(b)(1) of the Act, in accordance with Section 3(m) of the Fair Labor Standards Act and regulations, 29 CFR Part 531; provided however, that the amount of such credit may not exceed $1.24 per hour beginning January 1, 1980, and $1.34 per hour after December 31, 1980. To utilize this proviso—

(1) The employer must inform tipped employees about this tip credit allowance before the credit is utilized;

(2) The employees must be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received);

(3) The employer must be able to show by records that the employee receives at least the applicable Service Contract Act minimum wage through the combination of direct wages and tip credit; and

(4) The use of such tip credit must have been permitted under any predecessor collective bargaining agreement applicable by virtue of Section 4(c) of the Act.

(u) *Disputes concerning labor standards.* Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 4, 6, and 8. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(End of clause)

Note: The classes of service employees expected to be employed under the contract that would be subject, if employed by the contracting agency, to the provisions of 5 U.S.C. 5341 or 5332 and the corresponding monetary wages and fringe benefits will be set forth in an attachment to the contract, as required under paragraph (m) of the clause. The attachment will specifically state that such wages and fringe benefits do not represent a minimum wage determination for the contract and are furnished for informational purposes only. (See 1822.1005-2(i).)

**1852.222-43 Fair Labor Standards Act and Service Contract Act— price adjustment (multiyear and option contracts).**

As prescribed in 1822.1050-2(b), insert the following clause:

**Fair Labor Standards Act and Service Contract Act—Price Adjustment (April 1984)**

(a) The Contractor warrants that the prices in this contract do not include any allowance for any contingency to cover increased costs for which adjustment is provided under this clause.

(b) The minimum prevailing wage determination, including fringe benefits, issued pursuant to the Service Contract Act of 1965, as amended (41 U.S.C. 351 et seq.), by the Administrator, Wage and Hour Division, U.S. Department of Labor, current at the beginning of each renewal option period shall apply to any renewal of this contract. When no determination has been made as applied to this contract, then the Federal minimum wage as established by Section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201 et seq.), current at the beginning of each renewal option period, shall apply to any renewal of this contract.

(c) When, as a result of (1) the Department of Labor determination of minimum prevailing wages and fringe benefits applicable at the beginning of the renewal option period, (2) an increased or decreased wage determination otherwise applied to the contract by operation of law, or (3) an amendment to the Fair Labor Standards Act enacted subsequent to award of this contract, affecting minimum wage, which becomes applicable to this contract under law, the Contractor increases to decreases wages or fringe benefits of employees working on this contract to comply therein, the contract price or contract unit price labor rates will be adjusted to reflect such increases or decreases. Any adjustment will be limited to increases or decreases in wages or fringe benefits as described above, and the concomitant increases or decreases in social security and unemployment taxes and workmen's compensation insurance, but shall not include any amount for general and administrative costs, overhead, or profits. In firm fixed-price contracts, the adjustment will be based on labor hours specified in the Schedule for the particular option period. In time and material contracts and labor-hour contracts, the contract unit price set forth in the Schedule will be adjusted.



(d) The Contractor shall notify the Contracting Officer of any increases claimed under this clause within thirty (30) days after the effective date of the wage change, unless this period is extended by the Contracting Officer in writing. In the case of any decrease under this clause, the Contractor shall promptly notify the Contracting Officer of such decrease, but nothing herein shall preclude the Government from asserting a claim within the period permitted by law. The notice shall contain a statement of the amount claimed and any other relevant data in support thereof, which may reasonably be required by the Contracting Officer. Upon agreement of the parties, the contract price or contract unit price labor rates shall be modified in writing. Pending agreement on, or determination of, any such adjustment and its effective date, the Contractor shall continue performance.

(e) The Contracting Officer or an authorized representative shall, until expiration of three (3) years after final payment under the contract, have access to and the right to examine any directly pertinent books, documents, papers and records of the Contractor.

(End of clause)

**1852.232-22 and 1852.232-25 [Removed]**

f. Sections 1852.232-22 and 1852.232-25 are removed.

g. Sections 1852.232-75, 1852.232-77, 1852.232-80, 1852.232-81, and 1852.232-82 are revised to read as follows:

**1852.232-75 Security for advance payments.**

As prescribed in 1832.412, insert the following clause:

**Security for Advance Payments (March 1989)**

During the period of time that advance payments may be made under this contract and so long as they remain unliquidated, the Contractor shall not mortgage, pledge, or otherwise encumber, or permit to be encumbered, any of the Contractor's assets now owned or hereafter acquired, or permit any preexisting mortgages, liens, or other encumbrances to remain on or attach to any assets of the Contractor that are allocated to the performance of this contract and with respect to which the Government has a lien under this contract, without the Contracting Officer's prior written consent.

(End of clause)

**1852.232-77 Limitation of funds (fixed-price contract).**

As prescribed in 1832.705-270(a), insert the following clause. Contracting officers are authorized, in appropriate cases, to revise clause paragraphs (a), (b), and (g) to specify the work required under the contract, in lieu of using contract item numbers. The 60-day period may be varied from 30 to 90 days, and the 75 percent from 75 to 85 percent:

**Limitation of Funds (Fixed-Price Contract) (March 1989)**

(a) Of the total price of items _____ through _____, the sum of $_____ is presently available for payment and allotted to this contract. It is anticipated that from time to time additional funds will be allocated to the contract in accordance with the following schedule, until the total price of said items is allotted:

**Schedule for Allotment of Funds**

Date _____ Amounts _____

(b) The Contractor agrees to perform or have performed work on the items specified in paragraph (a) above up to the point at which, if this contract is terminated pursuant to the Termination for Convenience of the Government clause of this contract, the total amount payable by the Government (including amounts payable for subcontracts and settlement costs) pursuant to paragraphs (f) and (g) of that clause would, in the exercise of reasonable judgment by the Contractor, approximate the total amount at the time allotted to the contract. The Contractor is not obligated to continue performance of the work beyond that point. The Government is not obligated in any event to pay or reimburse the Contractor more than the amount from time to time allotted to the contract, anything to the contrary in the Termination for Convenience of the Government clause notwithstanding.

(c) (1) It is contemplated that funds presently allotted to this contract will cover the work to be performed until _____.

(2) If funds allotted are considered by the Contractor to be inadequate to cover the work to be performed until that date, or an agreed date substituted for it, the Contractor shall notify the Contracting Officer in writing when within the next 60 days the work will reach a point at which, if the contract is terminated pursuant to the Termination for Convenience of the Government clause of this contract, the total amount payable by the Government (including amounts payable for subcontracts and settlement costs) pursuant to paragraphs (f) and (g) of that clause will approximate 75 percent of the total amount then allotted to the contract.

(3) (i) The notice shall state the estimated date when the point referred to in paragraph (c)(2) above will be reached and the estimated amount of additional funds required to continue performance to the date specified in paragraph (c)(1) above, or an agreed date substituted for it.

(ii) The Contractor shall, 60 days in advance of the date specified in paragraph (c)(1) above, or an agreed date substituted for it, advise the Contracting Officer in writing as to the estimated amount of additional funds required for the timely performance of the contract for a further period as may be specified in the contract or otherwise agreed to by the parties.

(4) If, after the notification referred to in subdivision (3)(ii) above, additional funds are not allotted by the date specified in paragraph (c)(1) above, or an agreed date substituted for it, the Contracting Officer shall, upon the Contractor's written request, terminate this contract on that date or on the date set forth in the request, whichever is later, pursuant to the Termination for Convenience of the Government clause.

(d) When additional funds are allotted from time to time for continued performance of the work under this contract, the parties shall agree on the applicable period of contract performance to be covered by these funds. The provisions of paragraphs (b) and (c) above shall apply to these additional allotted funds and the substituted date pertaining to them, and the contract shall be modified accordingly.

(e) If, solely by reason of the Government's failure to allot additional funds in amounts sufficient for the timely performance of this contract, the Contractor incurs additional costs or is delayed in the performance of the work under this contract, and if additional funds are allotted, an equitable adjustment shall be made in the price or prices (including appropriate target, billing, and ceiling prices where applicable) of the items to be delivered, or in the time of delivery, or both.

(f) The Government may at any time before termination, and, with the consent of the Contractor, after notice of termination, allot additional funds for this contract.

(g) The provisions of this clause with respect to termination shall in no way be deemed to limit the rights of the Government under the default clause of this contract. The provisions of this Limitation of Funds clause are limited to the work on and allotment of funds for the items set forth in paragraph (a) above. This clause shall become inoperative upon the allotment of funds for the total price of said work except for rights and obligations then existing under this clause.

(h) Nothing in this clause shall affect the right of the Government to terminate this contract pursuant to the Termination for Convenience of the Government clause of this contract.

(End of clause)

**1852.232-80 Date of incurrence of costs.**

As prescribed in 1832.705-270(b), insert the following clause:

**Date of Incurrence of Costs (March 1989)**

The Contractor shall be entitled to reimbursement for costs incurred on or after _____ in an amount not to exceed $_____ that, if incurred after this contract had been entered into, would have been reimbursable under this contract.

(End of clause)

**1852.232-81 Contract funding.**

As prescribed in 1832.705-270(c), insert the following clause:

**Contract Funding (March 1989)**

(a) For purposes of payment of cost, exclusive of fee, in accordance with the Limitation of Funds clause, the total amount allotted by the Government to this contract is $_____. This allotment is for $_____ and covers the following period of performance: _____.

(b) An additional amount of $_____ is obligated under this contract for payment of fee.

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(End of clause)

**1852.232-82 Submission of requests for progress payments.**

As prescribed in 1832.502-470, insert the following clause:

**Submission of Requests for Progress Payments (March 1989)**

The Contractor shall request progress payments in accordance with the Progress Payments clause by submitting to the Contracting Officer an original and two copies of Standard Form (SF) 1443, Contractor's Request for Progress Payment, and the contractor's invoice (if applicable). The Contracting Officer's office is the designated billing office for progress payments for purposes of the Prompt Payment clause.

(End of clause)

**1852.233-1 [Removed]**

h. Section 1852.233-1 is removed.

i. Sections 1852.235-70, 1852.235-71, and 1852.235-72 are revised to read as follows:

**1852.235-70 Scientific and Technical Information Service.**

As prescribed in 1835.070(a), insert the following clause:

**Scientific and Technical Information Service (March 1989)**

(a) The Contractor should make the fullest practicable use of the services provided by the NASA Scientific and Technical Information Facility (STIF) during the conduct of research under this contract. The Contractor, if not already registered with STIF, is encouraged to register by executing express registration forms that will (1) be provided by STIF and (2) inform the Contractor of the products and services available in support of work under the contract.

(b) NASA reserves the right, if any scientific and technical information requested is unavailable, to so notify the Contractor. NASA's failure to furnish any information requested shall not entitle the Contractor to an equitable adjustment.

(End of clause)

**1852.235-71 Key Personnel and Facilities.**

As prescribed in 1835.070(b), insert the following clause:

**Key Personnel and Facilities (March 1989)**

(a) The personnel and/or facilities listed below (or specified in the contract Schedule) are considered essential to the work being performed under this contract. Before removing, replacing, or diverting any of the listed or specified personnel or facilities, the Contractor shall (1) notify the Contracting Officer reasonably in advance and (2) submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on this contract.

(b) The Contractor shall make no diversion without the Contracting Officer's written consent; *Provided*, That the Contracting Officer may ratify in writing the proposed change, and that ratification shall constitute the Contracting Officer's consent required by this clause.

(c) The list of personnel and/or facilities (shown below or as specified in the contract Schedule) may, with the consent of the contracting parties, be amended from time to time during the course of the contract to add or delete personnel and/or facilities.

[List here the personnel and/or facilities considered essential, unless they are specified in the contract Schedule.]

(End of clause)

**1852.235-72 Plan for new technology reporting.**

As prescribed in 1835.070(c), insert the following provision:

**Plan for New Technology Reporting (March 1989)**

The Offeror shall, in the proposal in response to this solicitation, provide estimates of the cost and manpower requirements to perform the new technology reporting required by the clause at 1852.227-70, New Technology, which is to be included in any resulting contract. In addition, if selected for negotiation, the Offeror will be required to submit for approval before contract execution a detailed plan setting forth the manner in which the Offeror will meet the new technology reporting requirements of the New Technology clause. This plan shall, at a minimum—

(a) Identify the specific areas of technical effort that are considered likely to generate new technology;

(b) Describe the means by which project supervisory and technical personnel will be advised of the responsibilities, details, and benefits of new technology reporting;

(c) Describe the procedures to be established, maintained, and followed for reviewing the effort to be undertaken for the purposes of identification and reporting (disclosure) of new technology within the time periods and in the manner prescribed by the New Technology clause;

(d) Describe the procedure for timely submission of the interim and final new technology reports required by the New Technology clause;

(e) Describe the procedures for (1) selecting either NASA's New Technology clause or another patent rights clause for inclusion in subcontracts having as a purpose the conduct of experimental, developmental, research, design, or engineering work, and (2) providing prompt notification of either the award of such subcontracts or a subcontractor's refusal to accept the clause; and

(f) Identify the individual(s) assigned substantial and specific responsibilities for ensuring compliance with the requirements of the New Technology clause, as well as their qualifications and organizational placement to discharge these responsibilities.

(End of provision)

**1852.236-70 [Removed]**

j. Section 1852.236-70 is removed.

k. Sections 1852.236-71, 1852.236-72, and 1852.242-70 are revised to read as follows:

**1852.236-71 Additive or deductive items.**

As prescribed in 1836.370(a), insert the following provision:

**Additive or Deductive Items (March 1989)**

(a) The low bidder for purposes of award shall be the conforming responsible bidder offering the low aggregate amount for the first or base bid item, plus or minus (in order of priority listed in the Schedule) those additive or deductive bid items providing the most features of the work within the funds determined by the Government to be available before bids are opened. If addition of another bid item in the listed order of priority would make the award exceed those funds for all bidders, it shall be skipped and the next subsequent additive bid item in a lower amount shall be added for each bid if award on it can be made within the funds.

(b) An example for one bid is an amount available of $100,000, a bidder's base bid of $85,000, and four successive additives of $10,000, $6,000, $5,000, and $4,000. In this example, the aggregate amount of the bid for purposes of award would be $96,000 for the base bid plus the first and fourth additives, the second and third additives being skipped because either of them would cause the aggregate bid to exceed $100,000.

(c) All bids shall be evaluated on the basis of the same additive or deductive bid items. The listed order of priority must be followed only for determining the low bidder. After determination of the low bidder, award in the best interests of the Government may be made to that bidder on its base bid and any combination of its additive or deductive bid items for which funds are determined to be available at the time of the award, provided that award of the combination of bid items does not exceed the amount offered by any other conforming responsible bidder for the same combination of bid items.

(End of provision)

**1852.236-72 Bids with unit prices.**

As prescribed in 1836.370(b), insert the following provision:

**Bids With Unit Prices (March 1989)**

(a) All extensions of the unit prices bid will be subject to verification by the Government. If there is variation between the unit price and any extended amounts, the unit price will be considered to be the bid.

(b) If a modification to a bid based on unit prices that provides for a lump-sum adjustment to the total estimated cost is submitted, the application of the lump sum adjustment to each unit price in the bid must be stated. If it is not stated, the lump-sum adjustment shall be applied on a pro rata basis to every unit price in the bid.

(End of provision)

**1852.242-70 Technical direction.**

As prescribed in 1842.7001, insert the following clause:

**Technical Direction (March 1989)**

(a) Performance of the work under this contract is subject to the written technical direction of the Contracting Officer Technical Representative (COTR), who shall be specifically appointed by the Contracting Officer in writing in accordance with NASA FAR Supplement 1842.270. "Technical direction" means a directive to the Contractor that approves approaches, solutions, designs, or refinements; fills in details or otherwise completes the general description of work or documentation items; shifts emphasis among work areas or tasks; or furnishes similar instruction to the Contractor. Technical direction includes requiring studies and pursuit of certain lines of inquiry regarding matters within the general tasks and requirements in Section C of this contract.

(b) The COTR does not have the authority to, and shall not, issue any instruction purporting to be technical direction that—

(1) Constitutes an assignment of additional work outside the statement of work;

(2) Constitutes a change as defined in the changes clause;

(3) In any manner causes an increase or decrease in the total estimated contract cost, the fixed fee (if any), or the time required for contract performance;

(4) Changes any of the expressed terms, conditions, or specifications of the contract; or

(5) Interferes with the contractor's rights to perform the terms and conditions of the contract.

(c) All technical direction shall be issued in writing by the COTR.

(d) The Contractor shall proceed promptly with the performance of technical direction duly issued by the COTR in the manner prescribed by this clause and within the COTR's authority. If, in the Contractor's opinion, any instruction or direction by the COTR falls within any of the categories defined in paragraph (b) above, the Contractor shall not proceed but shall notify the Contracting Officer in writing within 5 working days after receipt of it and shall request the Contracting Officer to take action as described in this clause. Upon receiving this notification, the Contracting Officer shall either issue an appropriate contract modification within a reasonable time or advise the Contractor in writing within 30 days that the instruction or direction is—

(1) Rescinded in its entirety; or

(2) Within the scope of the contract and does not constitute a change under the changes clause of the contract, and that the Contractor should proceed promptly with its performance.

(e) A failure of the contractor and contracting officer to agree that the instruction or direction is both within the scope of the contract and does not constitute a change under the changes clause, or a failure to agree upon the contract action to be taken with respect to the instruction or direction, shall be subject to the Disputes clause of this contract.

(f) Any actions(s) taken by the contractor in response to any direction given by any person other than the Contracting Officer or the COTR shall be at the Contractor's risk.



(End of clause)

**Alternate I (March 1989)**

As prescribed in 1842.7001(b), substitute Alternate I as paragraph (d) of the basic clause.

(d) The Contractor shall proceed promptly with the performance of technical directions duly issued by the COTR in the manner prescribed by this clause and within the COTR's authority. If, in the Contractor's opinion, any instruction or direction by the COTR falls within any of the categories defined in paragraph (b) above, the Contractor shall not implement instruction or the direction but shall notify the Contracting Officer in accordance with the Notification of Changes clause (FAR 52.243-7) of this contract.

**1852.243-1, 1852.243-2, 1852.243-3 [Removed]**

l. Sections 1852.243-1, 1852.243-2, and 1852.243-3 are removed.

m. Sections 1852.243-70, 1852.245-70, 1852.245-71, 1852.245-72, 1852.245-73, 1852.245-75, 1852.245-77, 1852.245-78, 1852.245-79, 1852.245-80, 1852.246-70, 1852.247-70, 1852.247-71, 1852.247-73, 1852.249-72, and 1852.252-70 are revised to read as follows:

**1852.243-70 Engineering change proposals.**

As prescribed in 1843.205-70, insert the following clause with any appropriate alternates:

**Engineering Change Proposals (March 1989)**

(a) The Contracting Officer may, at any time, request in writing that the Contractor prepare and submit an engineering change proposal (ECP), as that term is defined in DOD-STD-480A. Upon receiving this request, the Contractor shall submit to the Contracting Officer the information specified by, and in the format required by, paragraph 4.6 of DOD-STD-480A.

(b) The ECP shall include a "not-to-exceed" price and delivery adjustment, or a "not-less-than" price and delivery adjustment, acceptable to the Contractor if the Government subsequently orders the proposed change. If the change is ordered, the equitable adjustment to the contract shall not be greater than the "not-to-exceed" or less than the "not-less-than" amount. This paragraph (b) does not preclude revision or correction of an ECP in accordance with paragraphs 4.10 and 4.11 of MIL-STD-480A. Concurrent with the submission of any ECP under this contract, the Contractor shall, in accordance with FAR 15.804-6, submit to the Contracting Officer a completed Standard Form 1411, Contract Pricing Proposal Cover Sheet. At the time of agreement upon the price of the ECP, the Contractor shall, in accordance with 15.804-2 and 15.804-4, submit to the Contracting Officer a signed Certificate of Current Cost or Pricing Data.

(End of clause)

**Alternate I (March 1989)**

As prescribed in 1843.205-70(b), add the following paragraph (c) to the basic clause.

(c) If the price adjustment proposed for any Contractor-originated ECP (excluding any Government-requested ECP or value engineering change proposal) is _____ [insert percent of contract price or dollar value.] or less, the change shall be made at no adjustment to the contract price.

**Alternate II (March 1989)**

As prescribed in 1843.205-70(b) substitute the following sentence for the second sentence in paragraph (b) of the basic clause.

Change orders issued in accordance with the changes clause of this contract shall not be considered an authorization to the Contractor to exceed the estimated cost in the contract Schedule, in the absence of a statement in the change order or other contract modification increasing the estimated cost.

**1852.245-70 Acquisition of existing government equipment.**

As prescribed in 1845.106-70(a), insert the following clause:

**Acquisition of Centrally Reportable Equipment (March 1989)**

(a) "Centrally reportable equipment," as used in this clause, means plant equipment, special test equipment (including components), special tooling, and non-flight space property (including ground support equipment) (1) generally commercially available and used either as a separate item or as a component of a system, (2) having an acquisition cost of $1,000 or more (unless a lower threshold is specified elsewhere in this contract), and (3) is identifiable by a manufacturer and model number.

(b)(1) Before acquiring (including acquiring by fabricating) any item of centrally reportable equipment under this contract (unless for incorporation into flight-qualified or flight-monitoring deliverable end items), the Contractor shall provide to the Contracting Officer, at the earliest possible date, a description of the item sufficiently detailed to enable screening of existing Government inventories.

(2) For this purpose, the Contractor shall (i) prepare a separate DD Form 1419, DOD Industrial Plant Equipment Requisition, for each item of centrally reportable equipment to be acquired and (ii) forward it through the Contracting Officer to the NASA Equipment Management System (NEMS) Coordinator at the cognizant NASA installation at least 30 days in advance of the date the Contractor intends to acquire or begin fabricating the item. If a certificate of non-availability is not received within that period, the Contractor may proceed to acquire the item, subject to any other applicable provisions of this contract. Instructions for preparing the DD Form 1419 are contained in NASA FAR Supplement 1845.7103. The same data may be provided in an alternate format when requesting other than Defense Industrial Plant Equipment Center (DIPEC) controlled items.

(3) Upon receiving the item described on the DD Form 1419 (regardless of whether it is Contractor-acquired or Government-furnished), the Contractor shall prepare and

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submit a DD Form 1342 or equivalent data, in accordance with NASA FAR Supplement 1845.505–670.

(End of clause)

**1852.245–71 Installation-provided Government property.**

As prescribed in 1845.106–70(b), insert the following clause:

**Installation-Provided Government Property (March 1989)**

(a) In performance of work under this contract, certain Government property identified in the contract shall be made available to the Contractor on a no-charge-for-use basis by the installation's Supply and Equipment Management Officer. That property shall be utilized in the performance of this contract at the installation that provided the property or at such other installations or locations as may be specified elsewhere in this contract. Under this clause, the Government retains accountability for as well as title to the property, and the Contractor assumes user responsibilities prescribed in the installation property management directives listed elsewhere in this contract.

(b) (1) The official accountable recordkeeping and financial control and reporting of the property subject to this clause shall be retained by the Government and accomplished by the installation's Supply and Equipment Management and Financial Management Officers. However, the Government will provide the Contractor a record of all items of such property, including copies of all transaction documents used to describe changes to this record. The Contractor shall maintain this record and transaction documentation in such a condition that, at any stage of completion of work under this contract, the status of the—property, including location, utilization, consumption rate, and identification, can be readily ascertained.

(2) The Contractor shall also adhere to all other procedures (and be subject to sanctions related to those procedures) prescribed by the installation's director that have been established for the management of installation property. The records and documentation shall be made available, upon request, to the installation's Supply and Equipment Management Officer and any other formally designated representatives of the Contracting Officer.

(c) If the Government fails to provide the Government property specified in this contract and that failure adversely affects the Contractor's ability to perform the contract, the Contracting Officer shall, upon timely written request from the Contractor, (1) make a determination of the effect on the Contractor and (2) equitably adjust the contract in accordance with the procedure provided in the FAR 52.243 changes clause of this contract. Equitable adjustments made pursuant to this paragraph (c), however, shall not include adjustments in fee, unless the property to be provided was described in specific quantities of specific items.

(d) Government property made available under this clause shall in every respect be subject to the provisions of the FAR 52.245 Government property clause of this contract, except as provided in paragraphs (a), (b), and (c) above and as may otherwise be provided in this contract with respect to (1) the Contractor's responsibilities for repair and maintenance of Government property, or (2) the Contractor's liability for any loss of or damage to such property that is attributable to the Contractor's failure to maintain and administer a program for maintenance and repair in accordance with sound industrial practice.

(End of clause)

**Alternate I (March 1989)**

As prescribed in 1845.106–70(b)(3), insert the following as subparagraph (b)(3) of the basic clause:

(3) The contractor shall not utilize the installation's central receiving facility for receipt of Contractor-acquired property. However, the Contractor shall provide listings suitable for establishing accountable records of all such property received, on a quarterly basis, to the Contracting Officer and the Supply and Equipment Management Officer.

**1852.245–72 Liability for Government property furnished for repair and services.**

As prescribed in 1845.106–70(c), insert the following clause:

**Liability for Government Property Furnished for Repair or Other Services (March 1989)**

(a) This clause shall govern with respect to any Government property furnished to the Contractor for repair or other services that is to be returned to the Government. Such property, hereinafter referred to as "Government property furnished for servicing," shall not be subject to any clause of this contract entitled Government-Furnished Property or Government Property.

(b) The official accountable recordkeeping and financial control and reporting of the property subject to this clause shall be retained by the Government. The Contractor shall maintain adequate records and procedures to ensure that the Government property furnished for servicing can be readily accounted for and identified at all times while in its custody or possession or in the custody or possession of any subcontractor.

(c) The Contractor shall be liable for any loss or destruction of or damage to the Government property furnished for servicing (1) caused by the Contractor's failure to exercise such care and diligence as a reasonable prudent owner of similar property would exercise under similar circumstances, or (2) sustained while the property is being worked upon and directly resulting from that work, including, but not limited to, any repairing, adjusting, inspecting, servicing, or maintenance operation. The Contractor shall not be liable for loss or destruction of or damage to Government property furnished for servicing resulting from any other cause except to the extent that the loss, destruction, or damage is covered by insurance (including self-insurance funds or reserves).

(d) In addition to any insurance (including self-insurance funds or reserves) carried by the Contractor and in effect on the date of this contract affording protection in whole or in part against loss or destruction of or damage to such Government property furnished for servicing, the amount and coverage of which the Contractor agrees to maintain, the Contractor further agrees to obtain any additional insurance covering such loss, destruction, or damage that the Contracting Officer may from time to time require. The requirements for this additional insurance shall be effected under the procedures established by the FAR 52.243 changes clause of this contract.

(e) The Contractor shall hold the Government harmless and shall indemnify the Government against all claims for injury to persons or damage to property of the Contractor or others arising from the Contractor's possession or use of the Government property furnished for servicing or arising from the presence of that property on the Contractor's premises or property.

(End of clause)

**1852.245–73 Financial reporting of Government-owned/contractor-held property.**

As prescribed in 1845.106–70(d), insert the following clause (note that when the clause is used with its Alternate I or Alternate II, the word "annually" in paragraph (a) must be replaced by "monthly" or "quarterly," as appropriate):

**Financial Reporting of Government-Owned/Contractor-Held Property (March 1989)**

(a) The Contractor shall prepare and submit annually a NASA Form 1018, Report of Government-Owned/Contractor-Held Property, in accordance with 1845.505–14 and the instructions on the form and in section 1845.7101 of the NASA FAR Supplement, except that the reporting of space hardware shall be required only as directed in clause 1852.245–78, Space Hardware Reporting, of this contract, if applicable.

(b) If administration of this contract has been delegated to the Department of Defense, the original and three copies of NASA Form 1018 shall be submitted through the DOD Property Administrator to the NASA office identified below. If the contract is administered by NASA, the forms shall be submitted directly to the following NASA office:_____[Insert the address and office code of the organization within the cognizant NASA installation responsible for control and distribution of the NF 1018.]

(c) The annual reporting period shall be from July 1 of each year to June 30 of the following year. The report shall be submitted by July 31.

(d) The Contractor agrees to insert this reporting requirement in all first-tier subcontracts, except that the requirement shall provide for the submission of the subcontractors' reports to the Contractor, not to the Government. The Contractor shall require the subcontractors' reports to be submitted in sufficient time to meet the reporting date in paragraph (c) above.

(e) The Contractor's report shall consist of a consolidation of the subcontractors' reports and the Contractor's own report.

(End of clause)

**Alternate I (March 1989)**

As prescribed in 1845.106–70(d), insert the following paragraph (c) for paragraph (c) of the basic clause and modify paragraph (a) accordingly:

(c) The monthly report is due no later than the last day of the month following the month being reported.

**Alternate II (March 1989)**

As prescribed in 1845.106–70(d), insert the following paragraph (c) for paragraph (c) of the basic clause and modify paragraph (a) accordingly:

(c) The quarterly report is due no later than the last day of the month following the quarter being reported.

**1852.245–75 Title to equipment.**

As prescribed in 1845.106–70(f), insert the following clause:

**Title to Equipment (March 1989)**

(a) In accordance with the FAR 52.245 Government property clause of this contract, title to equipment and other tangible personal property acquired by the Contractor with funds provided for conducting research under this contract and having an acquisition cost less than $_____ [Insert a dollar value not less than $5,000] shall vest in the Contractor upon acquisition, provided that the Contractor has complied with the requirements of the FAR 52.245 Government property clause.

(b) Upon completion or termination of this contract, the Contractor shall submit to the Contracting Officer a list of all equipment with an acquisition cost of $_____ [Insert the dollar value specified in paragraph (a)] or more acquired under the contract during the contract period. The list shall include a description, manufacturer and model number, date acquired, cost, and condition information, and shall be submitted within 30 calendar days after completion or termination of the contract, in accordance with Federal Acquisition Regulation subsection 45.606–5.

(c) Title to the property specified in paragraph (b) above vests in the Contractor, but the Government retains the right to direct transfer of title to property specified in paragraph (b) above to the Government or to a third party within 180 calendar days after completion or termination of the contract. Such transfer shall not be the basis for any claim by the Contractor.

(d) Title to all Government-furnished property remains vested with the Government (see the FAR 52.245 Government property clause).

(e) Title to the contractor-acquired property listed below shall vest with the Government.

[List any contractor-acquired property for which vesting of title with the Government is appropriate or insert "None"]

(End of clause)

**1852.245–77 List of installation-provided property and services.**

As prescribed in 1845.106–70(h), insert the following clause:

**List of Installation-Provided Property and Services (March 1989)**

In accordance with the Installation-Provided Government Property clause of this contract, the Contractor is authorized use of the types of property and services listed below, to the extent they are available, while on-site at the NASA installation.

(a) Office space, work area space, and utilities. The Contractor shall use Government telephones for official purposes only. Pay telephone stations are available for the convenience and use of employees in making unofficial calls, both local and long distance.

(b) General- and special-purpose equipment, including office furniture.

(1) Equipment to be made available to the Contractor for use in performance of this contract on-site and at such other locations as approved by the Contracting Officer is listed in Attachment _____ [Insert attachment number or "not applicable" if no equipment is provided]. The Government retains accountability for this property under the Installation-Provided Government Property clause, regardless of its authorized location.

(2) If the Contractor acquires property as a direct cost under this contract, this property also shall become accountable to the Government upon its entry into the NASA Equipment Management System (NEMS) in accordance with the property-reporting requirements of this contract.

(3) The Contractor shall not bring on-site for use under this contract any property owned or leased by the Contractor, or other property that the Contractor is accountable for under any other Government contract, without the Contracting Officer's prior written approval.

(c) Supplies from stores stock.

(d) Publications and blank forms stocked by the installation.

(e) Safety and fire protection for Contractor personnel and facilities.

(f) Installation service facilities: _____ [Insert the name of the facilities or "None"].

(g) Medical treatment of a first-aid nature for Contractor personnel injuries or illnesses sustained during on-site duty.

(h) Cafeteria privileges for Contractor employees during normal operating hours.

(i) Building maintenance for facilities occupied by Contractor personnel.

(j) Moving and hauling for office moves, movement of large equipment, and delivery of supplies. Moving services shall be provided on-site, as approved by the Contracting Officer.

(k) The responsibilities of the Contractor as contemplated by paragraph (a) of the Installation-Provided Government Property clause are defined in the following property management directives and installation supplements to these Directives:

(1) NHB 4200.1, NASA Equipment Management Manual.

(2) NHB 4200.2, NASA Equipment Management System (NEMS) User's Guide for Property Custodians.

(3) NHB 4300.1, NASA Personal Property Disposal Manual.

(4) NHB 4100.1, NASA Materials Inventory Management Manual.

(End of clause)

**1852.245–78 Space hardware reporting.**

As prescribed in 1845.106–70(i), insert the following clause:

**Space Hardware Reporting (March 1989)**

In accordance with the Financial Reporting of Government-Owned/Contractor-Held Property clause of this contract, the reporting of certain specified items of space hardware is required on a NASA Form 1018, Report of Government-Owned/Contractor-Held Property. The reporting of space hardware is in addition to the requirements of other property reporting on the form. At present, the items of space hardware to be reported are the following: _____ [Insert the space hardware to be reported for the particular contract]. The Contracting Officer shall update this list prior to June 1 of each year to be applicable beginning with the next reporting period.

(End of clause)

**1852.245–79 Use of Government-owned property.**

As prescribed in 1845.106–70(j), insert the following provision:

**Use of Government-Owned Property (March 1989)**

(a) The offeror (  ) does, (  ) does not intend to use in performance of any contract awarded as a result of this solicitation existing Government-owned facilities (real property or plant equipment), special test equipment, or special tooling (including any property offered by this solicitation). The offeror shall identify any offered property not intended to be used. If the offeror does intend to use any of the above items, the offeror must furnish the following information required by Federal Acquisition Regulation (FAR) 45.205(b), NASA FAR Supplement (NFS) 1845.102–70, and NFS 1845.104(b):

(1) Identification and quantity of each item. Include the item's acquisition cost if it is not property offered by this solicitation.

(2) For property not offered by this solicitation, identification of the Government contract under which the property is accountable and written permission for its use from the cognizant Contracting Officer.

(3) Amount of rent, calculated in accordance with FAR 45.403 and the clause at FAR 52.245–9, Use and Charges, unless the property has been offered on a rent-free basis by this solicitation.

(4) The dates during which the property will be available for use, and if it is to be used in more than one contract, the amounts of respective uses in sufficient detail to support proration of the rent. This information is not required for property offered by this solicitation.

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(b) The offeror [ ] does, [ ] does not request additional Government-provided property for use in performing any contract awarded as a result of this solicitation. If the offeror requests additional Government-provided property, the offeror must furnish—

(1) Identification of the property, quantity, and estimated acquisition cost of each item; and

(2) The offeror's written statement as prescribed by FAR 45.302–1(a)(4).

(c) If the offeror intends to use any Government property (paragraph (a) or (b) above), the offeror must also furnish the following:

(1) The date of the last Government review of the offeror's property control and accounting system, actions taken to correct any deficiencies found, and the name and telephone number of the cognizant property administrator.

(2) A statement that the offeror has reviewed, understands, and can comply with all property management and accounting procedures in the solicitation, FAR Subpart 45.5, and NFS Subparts 1845.5, 1845.70, and 1845.71.

(3) A statement indicating whether or not the costs associated with subparagraph (2) above, including plant clearance and/or plant reconversion costs, are included in its cost proposal.

(End of provision)

**1852.245–80 Use of Government production and research property on a no-charge basis.**

As prescribed in 1845.106–70(k), insert the following clause:

**Use of Government Production and Research Property on a No-Charge Basis (March 1989)**

In performing this contract, the Contractor is authorized to use on a no-charge, noninterference basis the Government-owned production and research property provided to the Contractor under the contract(s) specified below and identified in the cognizant Contracting Officer's letter approving use of the property. Use is authorized on the basis that it will not interfere with performance of the Government contract(s) under which the property was originally furnished. Use shall be in accordance with the terms and conditions of these contracts and the cognizant Contracting Officer's approval letter.

Contract No(s): [Insert the contract number(s) under which the Government property is accountable].

(End of clause)

**1852.246–70 Space Transportation System (STS) personnel reliability program.**

As prescribed in 1846.270(a), insert the following clause:

**Space Transportation System (STS) Personnel Reliability Program (March 1989)**

(a) In implementation of the STS Personnel Reliability Program, described in NASA Management Instruction (NMI) 8610.13, the Government shall identify personnel positions that are mission critical. Some of the positions as identified may now or in the future be held by employees of the Contractor. Upon notification by the Contracting Officer that a mission-critical position is being or will be filled by one or more of the Contractor's employees, the Contractor shall (1) provide the affected employees with a clear understanding of the investigative and medical requirements and, (2), to the extent permitted by applicable law, assist the Government by furnishing personal data and medical records.

(b) The standard that will be used in certifying individuals for a mission-critical position is that they must be determined to be competent and reliable in the performance of their assigned duties in accordance with the screening requirements of the NMI. If the Government determines that a Contractor employee occupying or nominated to occupy a mission-critical position will not be certified for such duty, the Contracting Officer shall (1) furnish to the employee the specific reasons for its action; (2) advise the employee that he/she may avail himself/herself of the review procedures that are a part of the certification system; and (3) furnish him/her a copy of those procedures upon request.

(c) If a Contractor employee who has been nominated for (but has not yet filled) a mission-critical position is not certified, the Contractor agrees to defer the appointment to the position until the employee has had an opportunity to pursue the referenced procedures. If the employee is an incumbent to the position, the Contractor agrees, upon the request of the Government, to remove him/her from the position temporarily pending an appeal of the action under the review procedures. If any employee not certified elects not to take action under the procedures, or, if having taken action, is not successful in obtaining a reversal of the determination, the Contractor agrees not to appoint the employee to the position, or if already appointed, to promptly remove the employee.

(End of clause)

**1852.247–70 Returnable containers.**

As prescribed in 1847.305–70(a), insert the following clause:

**Returnable Containers (March 1989)**

(a) Containers shall remain the Contractor's property but shall be loaned without charge to the Government for a period of 30 days after their delivery to the f.o.b. point specified in the contract. Beginning with the first day after this loan period expires, to and including the day the containers are delivered to the Contractor (if the original delivery was f.o.b. origin) or are delivered or made available for delivery to the Contractor's designated carrier (if the original delivery was f.o.b. destination), the Government shall pay the Contractor a rental of $____ [Insert dollar amount for container rental.] per container per day, regardless of type or capacity.

(b) This rental charge will be computed separately for containers of each type, size, and capacity, and for each delivery point named in the contract. A credit of 30 container days will accrue to the Government for each container, regardless of type or capacity, delivered by the Contractor. A debit of 1 container day will accrue to the Government for each container for each day after delivery to the f.o.b. point specified in the contract. At the end of the contract, if the debit total exceeds the credit total, rental shall be charged for the difference. If the credit total equals or exceeds the debit total, no rental shall be charged. No rental shall accrue to the Contractor in excess of the replacement value per container specified in paragraph (c) below.

(c) For each container lost or damaged beyond repair while in the Government's possession, the Government shall pay the Contractor the replacement value as follows, less the allocable rental paid for that container:

[Insert the container types, sizes, capacities, and associated replacement values.]

(d) Containers lost or damaged beyond repair and paid for by the Government shall become Government property, subject to the following: If any lost container is located within _____ [Insert number of calendar days.] calendar days after payment by the Government, it may be returned to the Contractor by the Government, and the Contractor shall pay the Government the replacement value, less rental computed in accordance with paragraph (a) above, beginning at the expiration of the loan period specified in paragraph (a) above, and continuing to the date on which the cylinder was delivered to the Contractor.

(End of clause)

**1852.247–71 Protection of the Florida manatee.**

As prescribed in 1847.7001, insert the following clause:

**Protection of the Florida Manatee (March 1989)**

(a) Pursuant to the Endangered Species Act of 1973 (Pub. L. 93–205), as amended, and the Marine Mammals Protection Act of 1972 (Pub. L. 92–522), the Florida Manatee (Trichechus Manatus) has been designated an endangered species, and the Banana and Indian Rivers within and adjacent to NASA's Kennedy Space Center (KSC) have been designated as a critical habitat of the Florida Manatee.

(b) Contractor personnel involved in vessel operations, dockside work, and selected disassembly functions shall be provided training relative to (1) habits and characteristics of the Florida Manatee, (2) provisions of the applicable laws, (3) personal liability of workers under the laws, and (4) operational restrictions imposed by KSC.

(c) All vessel operations shall be conducted within the posted speed restrictions, and vessels shall be operated at minimum controllable speeds in all KSC waters. Shallow-water operations are prohibited.

(d) Training will be conducted by personnel of the U.S. Fish and Wildlife Service (USFWS). The contractor agrees to cooperate with the USFWS by allowing access at reasonable times and places (including shipboard) to USFWS personnel, and by making available such contractor personnel as are required to have the training. Arrangements for training will be made as follows:

(1) For personnel involved in tug, barge, or marine operations, through the Lockheed Space Operations Contractor, Transportation Coordination Center, Kennedy Space Center, Florida, telephone (407) 867–5330.

(2) For all other personnel, through the Systems Training and Employee Development Branch, Code PM–TNG, telephone (407) 867–2737.

(e) The contractor shall incorporate the provisions of this clause in applicable subcontracts (including vendor deliveries).

(End of clause)



**1852.247–73 Shipment by Government bills of lading.**

As prescribed in 1847.305–70(c), insert the following clause:

**Shipment by Government Bills of Lading (March 1989)**

(a) The Contractor shall ship items deliverable under this contract, if the transportation cost per shipment exceeds $100, by Government bills of lading (GBLs). At least 15 days before shipment, the Contractor shall request in writing GBLs from: _____ [Insert name, title, and mailing address of designated transportation officer or other official delegated responsibility for GBLs]. If time is limited, requests may be by telephone: _____ [Insert appropriate telephone number]. Requests for GBLs shall include the following information.

(1) Item identification/description.
(2) Origin and destination.
(3) Individual and total weights.
(4) Dimensions and total cubic footage.
(5) Total number of pieces.
(6) Total dollar value.
(7) Other pertinent data.

(b) The Contractor shall prepay transportation charges of $100 or less per shipment. The Government shall reimburse the contractor for these charges if they are added to the invoice as a separate line item supported by the paid freight receipts. If paid receipts in support of the invoice are not obtainable, a certificate as described below must be completed, signed by an authorized company representative, and attached to the invoice.

"I certify that the shipments identified below have been made, transportation charges have been paid by (company name), and paid freight or comparable receipts are not obtainable.

Contract or Order Number: _____

Destination: _____"

(End of clause)

**1852.249–72 Termination (utilities).**

As prescribed in 1849.505–70, insert the following clause. The period of 30 days may be varied not to exceed 90 days.

**Termination (utilities) (March 1989)**

The Government, at its option, may terminate this contract by giving written notice not less than 30 days in advance of the termination's effective date.

(End of clause)

**1852.252–70 Compliance with NASA FAR Supplement.**

As prescribed in 1852.107–70, insert the following clause:

**Compliance With NASA FAR Supplement (March 1989)**

Any statements in this contract requiring compliance with specific provisions of the Federal Acquisition Regulation (e.g., Subpart 45.5) shall be construed to require compliance also with any corresponding implementing or supplementing provisions in the NASA FAR Supplement in effect on the date of this contract.

(End of clause)

N. Section 1852.245–74 is added to read as follows:

**1852.245–74 Contractor accountable on-site Government property.**

As prescribed in 1845.106–70(e), insert the following clause:

**Contractor Accountable On-Site Government Property (March 1989)**

(a) In performance of work under this contract, certain Government property identified in the contract shall be provided to the Contractor on a no-charge-for-use basis by the installation's Supply and Equipment Management Officer. That property shall be utilized in the performance of this contract at the installation that provided the property or at such other installations or locations as may be specified elsewhere in this contract. The Contractor assumes accountability and user responsibilities for the property.

(b) Government property provided shall in every respect be subject to the provisions of the FAR 52.245 Government property clause of this contract. In addition, the contractor is responsible for managing this property in accordance with the guidelines provided by the installation's Supply and Equipment Management Officer or any other formally designated representatives of the Contracting Officer. The guidelines include but are not limited to requiring the Contractor to—

(1) Use economic order quantity (EOQ) methods for routine stock replenishment;
(2) Utilize the Federal Cataloging System;
(3) Comply with shelf-life requirements;
(4) Provide for accountability and control (using the NASA Equipment Management System (NEMS)) of all equipment costing $1000 and over, plus that equipment designated as "sensitive";
(5) Provide for physical inventory of all controlled equipment at least every 3 years;
(6) Provide for sample inventories of materials plus complete inventories every 5 years;
(7) Conduct walk-through utilization inspections;
(8) Screen NEMS before acquiring any equipment costing $1000 or over, plus equipment designated by the installation as sensitive and costing $500 and over;
(9) Support the Equipment Acquisition Document (EAD) process; and
(10) Use Government sources as the first source of supply.

(c) Data requirements relating to the guidelines in paragraph (b) above are specified under Section F, Deliveries or performance.

(End of clause)

## PART 1853—FORMS

**1853.223 [Removed]**

23. Section 1853.223 is removed.

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Part III

# Department of Agriculture

**Animal and Plant Health Inspection Service**

**9 CFR Parts 1, 2, and 3**
**Animal Welfare; Proposed Rules**

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**DEPARTMENT OF AGRICULTURE**

**Animal and Plant Health Inspection Service**

**9 CFR Part 1**

**[Docket No. 88-013]**

**Animal Welfare—Definition of Terms**

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This is a request for supplemental comments on the narrow issue of the interrelationship between Part 1 of the Animal Welfare Act regulations and our proposal to amend Part 3 of the regulations. We are proposing to amend Part 1 of the regulations concerning animal welfare, in order to update, clarify and expand the list of definitions. These changes are intended to inform the public of the scope of the regulations and to facilitate enforcement of them. These changes, many of which are required by amendments enacted on December 23, 1985, to the Animal Welfare Act (7 U.S.C. 2131, *et seq.*), complement changes we are proposing to make to Part 2 of the regulations concerning animal welfare (Regulations) and to Part 3 of the regulations concerning animal welfare (Standards).

**DATES:** We will consider written comments addressing only the interrelationship of Parts 1 and 2 of the regulations with the proposed standards of Part 3, as explained in greater detail in the Supplementary Information which follows, that are postmarked or received on or before May 15, 1989.

**ADDRESS:** Send an original and three copies of your comments to Helene R. Wright, Chief, Regulatory Analysis and Development Staff, PPD, APHIS, USDA, Room 1000, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 88-013. Comments received may be inspected at the APHIS Public Reading Room, Room 1141, U.S. Department of Agriculture, 14th and Independence Avenue SW., Washington, DC, 8:00 a.m. to 4:30 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** Dr. R.L. Crawford, Director, Animal Care Staff, REAC, APHIS, USDA, Room 268, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7833.

**SUPPLEMENTARY INFORMATION:**

**Background**

This document would amend and expand 9 CFR Part 1, entitled "Definition of Terms" which provides the definitions for the terms used in the regulations in 9 CFR Part 2, and the standards in 9 CFR Part 3 for the humane handling, care, treatment, and transportation of regulated animals used for research or exhibition purposes, sold as pets, or transported in commerce. The Definitions, Regulations, and Standards are established pursuant to the authority in the Animal Welfare Act, as amended (7 U.S.C. 2131, *et seq.*) (the Act). This law requires the Secretary to promulgate regulations and standards governing the humane handling, housing, care, treatment, and transportation of certain animals by dealers, research facilities, exhibitors, operators of auction sales, carriers, and intermediate handlers. The standards and regulations must include minimum requirements with respect to handling, housing, feeding, sanitation, veterinary care, and other matters specified in section 13 of the Act (7 U.S.C. 2143). Upon publication of a final rule, these definitions will provide specific meanings for the most important terms used in the regulations and standards.

In a document published in the **Federal Register** on March 31, 1987 (52 FR 10292-10298), we proposed to amend the Animal Welfare regulations, 9 CFR Parts 1 and 2, "Definition of Terms" and "Regulations," to comply with the 1985 amendments to the Animal Welfare Act, and to expand, clarify, and revise the current regulations.

Comments were solicited concerning both proposals for a 60-day period ending June 1, 1987. This period was twice extended and ended on August 27, 1987. We received a total of 7,857 comments: 1,438 were from the research community; 987 were from dealers and exhibitors; and 5,432 were from members of the public, including humane organizations and animal welfare societies. All of the comments that were timely received were considered. Those raising objections or suggesting changes to the proposed definitions are discussed below. Comments received after the close of the comment period have not been considered.

In response to the numerous comments received, we determined that certain changes to our proposal are necessary. These changes, discussed below, have been incorporated in this revised rule. In addition, many of the comments we received in response to our March 31, 1987 proposal to amend Part 2 suggested that certain additional terms should be defined. We have also determined that certain terms appearing in the proposed rule to amend Part 3 require definition so that the public can understand them. We are therefore adding several definitions, as discussed below, to make the regulations in Parts 2 and 3 easier to understand, thereby increasing compliance and making them more effective.

Each definition addressed below has been given its own heading to assist the reader in locating a particular term. Comments concerning the proposed definitions as a whole are discussed first under the heading, "General."

*Supplemental Request for Comments on Interrelationship of Parts 1, 2, and 3 of the Animal Welfare Regulations*

We received 334 comments (309 from members of the research community and 25 from members of the general public) suggesting that we revise the proposed rules for Parts 1 and 2, "Definition of Terms" and "Regulations," and publish a second proposal in the **Federal Register** for public comment. We also received 445 comments (400 from members of the research community and 45 from members of the general public) suggesting that we revise the proposals for Parts 1 and 2 and publish them along with our proposal for standards for the exercise of dogs and for a physical environment to promote the psychological well-being of nonhuman primates. These specific standards are mandated by the 1985 amendments to the Act.

We have determined to respond to the comments we received addressing the proposed rules, and to publish revised rules for Parts 1 and 2 in the same issue of the **Federal Register** as our proposal to amend Part 3 of the regulations, titled "Standards." The revised rules reflect our consideration of the nearly 8,000 comments received, our experience in administering and enforcing the regulations, and our ongoing consultation with the U.S. Department of Health and Human Services and other interested agencies. It is our present determination that upon their adoption as final rules, the revised provisions of Parts 1 and 2 will conform with the requirements of the Animal Welfare Act, as amended.

Accordingly, we are publishing Parts 1 and 2 at this time, revised from our initial proposal, as explained in detail below, to assist the public in reviewing the proposed standards for Part 3. At the urging of many commenters, we are publishing the revised rules for Parts 1 and 2 as a proposal, for the sole purpose of soliciting comments on the narrow



issue of the interrelationship of the definitions and regulations in Parts 1 and 2 with the standards we are proposing in Part 3. The public is therefore invited to comment exclusively on this issue. We will not consider comments going beyond this issue.

**General**

We received 307 comments (281 from the research community, 25 from members of the general public, and 1 from an exhibitor) generally endorsing the definitions as proposed but suggesting that some require clarification or revision. We received 74 comments (72 from the research community and 2 from dealers) citing the need for reorganization of the proposed regulations as a whole (Parts 1 and 2), and for clarification in general. We have further clarified or revised those definitions as necessary, based upon the comments received.

Sixteen commenters from the research community felt generally that the definitions as proposed are too rigid and specific. We disagree. The proposed definitions must be specific to be meaningful to the persons subject to the Act and to the regulations, and to enable those persons to comply with the regulations. Except as explained below, the provisions of the initial proposed rule for Part 1 continue to be included in this revised rule based on the reasons set forth in that proposal.

**Administrative Unit**

The 1985 amendments to the Act require that each research facility establish an Institutional Animal Committee composed of not fewer than three members (7 U.S.C. 2143(b)(1)). Of the three members, at least one must be a doctor of veterinary medicine and at least one must not be affiliated in any way with the facility, other than as a member of the Committee. Section 13(b)(1)(C) of the Act provides that "in those cases where the Committee consists of more than three members, not more than three members shall be from the same administrative unit of such facility." (7 U.S.C. 2143(b)(1)(C).) In our March 31, 1987, proposal to amend Part 2 of the regulations, we proposed requirements in § 2.35 for the composition of the Committee. As mandated by the Act, proposed § 2.35(a)(6) provided that "[i]f the Committee consists of more than three members, not more than three members shall be from the same administrative unit of such facility; * * *" This provision is included in Part 2, as revised, published elsewhere in this issue of the **Federal Register**. (See companion docket No. 88-014.)

We received 465 comments (440 from the research community and 25 from members of the general public) requesting that the term "administrative unit" be defined. We are therefore including the following definition of that term:

The organizational or management unit at the departmental level of a research facility.

For universities, corporations, and other research facilities, departments such as the Department of Medicine, Department of Research and Development, the Department of Chemistry, the Department of Pharmacology, the Department of Psychology, and the Department of Zoology would each be an administrative unit for purposes of Committee membership.

**Ambient temperature**

Three commenters stated that the proposed definition of the term "ambient temperature" is vague. Except for the addition of the word "air" before "temperature" the proposed definition has been in the regulations since 1970. We have not learned of any problems in understanding and applying this term during the past 18 years. In the absence of any problems arising from the definition of "ambient temperature" the definition remains as initially proposed.

**Animal; Dog; Cat**

We proposed to define the term "animal" as follows:

any live or dead dog, cat, nonhuman primate (monkey, ape), guinea pig, hamster, rabbit, or any other warmblooded animal, which is being used, or is intended for use for research, teaching, testing, experimentation, or exhibition purposes, or as a pet. This term excludes: Birds, rats and mice bred for use in research, and horses and other farm animals, such as, but not limited to livestock or poultry, used or intended for use as food or fiber, or livestock or poultry used or intended for use for improving animal nutrition, breeding, management, or production efficiency, or for improving the quality of food or fiber. With respect to a dog, the term means all dogs including those used for hunting, security, or breeding purposes.

This proposed definition prompted numerous comments, although the only substantive change we proposed to make in the current definition was to delete the phrase "which is domesticated or raised in captivity or which normally can be found in the wild state." This qualifying phrase modifies "any other warmblooded animal" in the current definition. We received 318 comments (293 from the research community and 25 from members of the general public) generally endorsing the proposed definition. More than 1,000 commenters (991 from the general public, 24 from the research community, and 2 dealers) stated that the definition should encompass all warmblooded animals, including rats, mice, birds, and farm animals. We received 322 comments (297 from the research community and 25 from members of the general public) stating their agreement with excluding laboratory rats and mice from the definition.

When first enacted in 1966 the Act defined the term "animal" as meaning "live dogs, cats, monkeys (nonhuman primate mammals), guinea pigs, hamsters, and rabbits." In 1970 the definition was amended to include other warm-blooded animals, and to specifically exclude horses "not used for research purposes" and other farm animals when used for agricultural purposes.

Since the Animal Welfare regulations were amended in 1972 to incorporate the 1970 amendments to the Act, the definition of "animal" has included the six kinds of animals listed above and "any other warmblooded animal, which is domesticated or raised in captivity or which normally can be found in the wild state, and is being used, or is intended for use, for research, testing, experimentation, or exhibition purposes, or as a pet." The definition of "animal" has excluded "birds, rats and mice, and horses and other farm animals, such as, but not limited to livestock or poultry, used or intended for use as food or fiber, or livestock or poultry used or intended for use for improving animal nutrition, breeding, management, or production efficiency, or for improving the quality of food or fiber."

We are not changing our definition of "animal" to include horses not used for biomedical research, and other farm animals when used for agricultural purposes, because the Act does not give us authority to include them (7 U.S.C. 2132(g)). Neither are we changing our definition of "animal" to include birds, rats and mice. We do have the authority to regulate these animals, though except for wild rats and mice, we have never covered them in our regulations. However, in response to the comments we received, we are considering developing regulations and standards for them. Development of new regulations and standards requires detailed analysis of the issues involved, followed by drafting of proposed rules. It is a time-consuming process. We do not believe it would be in the best interests of animal welfare in general if we were to delay promulgating the

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regulations we have proposed. We also do not believe Congress intended that we delay promulgating regulations concerning other animals pending the possible development and drafting of regulations and standards for birds, rats and mice. Therefore, we are not changing our proposed definition of "animal" to include birds, rats and mice in this rule. If we propose regulations and standards governing birds, rats and mice, we will also propose to amend the definition of "animal" to include them. We do want to note that wild rats and mice are covered by our proposed definition, though laboratory-bred rats and mice are not. We are revising the definition of "animal" to clarify this point.

We received 303 comments (278 from the research community and 25 from members of the general public) suggesting that we delete the reference to "all warmblooded animals" in the preamble statement that "[a]ll warmblooded animals are covered by the Act," because it is misleading. Although the preamble to a proposed rule does not have the force of law, we agree that this reference could have been more precise since the Act excludes certain warmblooded animals, such as horses and farm animals, not used for research purposes.

We received 103 comments (102 from the research community and 1 from a member of the general public) stating that the definition of "animal" should not include reference to "dead" animals, and 5 comments from the research community suggesting that when the regulations are meant to include dead animals the term should be so qualified. The Act defines "animal" as both live or dead animals (7 U.S.C. 2132(g)), and accordingly the Animal Welfare regulations have defined "animal" in this manner since 1972. The word "dead" was added to the definition of "animal" as part of the 1970 amendments to the Act, due to the mistreatment of animals obtained for euthanasia and preparation as laboratory specimens. Inclusion of dead animals in the regulations is determined to be necessary based upon our experience in enforcing the regulations, to prevent abuse of these animals. We agree that many of the standards proposed in companion docket number 87-004, Part 3—"Standards," published elsewhere in this issue of the **Federal Register**, would not apply to dead animals, and we have added footnotes to proposed Subparts A and D in Part 3, to make clear that those standards would refer to live animals unless otherwise specified.

We received 50 comments from the research community stating that the definition of "cat" likewise should not include reference to dead cats. We disagree, since the Act defines animal as any "live or dead dog, cat, * * *" and since our experience indicates the necessity to include this protection in the regulations for the reasons explained above. No change is made to the definition of "cat" in this rule.

Thirty-two commenters from the research community stated that the definition of "dog" should not include the word "dead." For the same reasons provided above regarding animals and cats, no change is made in the definition of "dog" in the rule.

We received 2 comments from the research community stating that all rodents, including gerbils and guinea pigs, should be excluded from the regulations. Guinea pigs have been included in the Act since it was first enacted in 1966. At that time the Act covered 6 kinds of animals: Dogs, cats, guinea pigs, hamsters, rabbits, and nonhuman primates. Gerbils became a regulated species when the 1970 amendments to the Act expanded the definition of "animal" to include "such other warm-blooded animal, as the Secretary may determine is being used, or is intended for use for research, testing, * * *." We do not have the authority to remove these animals from the coverage of the regulations. No change is made to the definition of "animal" based upon these comments.

Thirty-one commenters from the research community stated that the definition of "animal" should refer to "nonhuman primates (monkeys and apes)" instead of to "monkey (nonhuman primate mammal)." We agree that use of the term "nonhuman primates" is more precise because all nonhuman primates, not just monkeys and apes, are covered by the regulations. We are revising the definition of "animal" to reflect this change. Except for this revision, the definition of "animal" remains as initially proposed.

*Attending veterinarian; Licensed veterinarian*

The definition of "attending veterinarian" as initially proposed would mean:

> a person who has graduated from a veterinary school accredited by the American Veterinary Medical Association's Council on Education or has a certificate issued by the American Veterinary Medical Association's Education Commission for Foreign Veterinary Graduates, has received training and/or experience in the care and management of the species being attended, and who has direct or delegated responsibility for activities involving animals at a registered or licensed facility. The veterinarian must be accredited by the U.S. Department of Agriculture in accordance with regulations issued under the Animal Welfare Act.

We received 548 comments (519 from the research community, 2 from dealers, 1 from an exhibitor, and 26 from members of the general public) stating that reference to USDA accreditation should be deleted from the definition of "attending veterinarian" and that the requirement to be accredited by USDA be clarified vis-a-vis state licensure requirements. Eleven commenters from the research community suggested that we use a term other than "accredited."

There is no requirement for state licensure in the definition. Our use of the term "accredited" was intended as a means of ensuring that attending veterinarians have training and/or experience in animal welfare, including humane handling, care, and treatment of laboratory animals, in order to provide adequate veterinary care in accordance with the Animal Welfare regulations. We agree that another term, such as "registered," should be substituted for the term, "accredited," to avoid confusion with the Accreditation of Veterinarian regulations in 9 CFR Parts 160, 161, and 162. The Department is in the process of developing standards for "accreditation" (or "registration") under the Animal Welfare regulations, for publication as a proposed rule at a later date. In the interim, we are removing the references to "accreditation" from Parts 1 and 2, as revised.

The proposed definition generated numerous comments expressing concern that otherwise qualified veterinarians would not satisfy the terms of the definition and would not be eligible to serve as attending veterinarians. We received 114 comments from the research community stating that under the proposed definition there would be an inadequate number of qualified or trained veterinarians to satisfy the demand for them. Five commenters expressed particular concern that otherwise qualified veterinarians might not be eligible to be attending veterinarians because they are graduates of foreign schools and do not have a certificate issued by the American Veterinary Medical Association's (AVMA) Education Commission for Foreign Veterinary Graduates. The definition as originally proposed would exclude graduates of European programs who can be licensed to practice in some states which do not require certification by the AVMA Education Commission for Foreign



Veterinary Graduates. These veterinarians would not be allowed to serve as attending veterinarians even within the state of licensure under the terms of the definition.

It was never our intent to disqualify otherwise qualified foreign educated veterinarians. We are revising the definition to include those veterinarians who are determined by the Administrator to have equivalent formal education. We believe that there will be an adequate supply of veterinarians satisfying the revised definition of "attending veterinarian."

Similarly, the definition of "licensed veterinarian" is changed to include those who graduated from an accredited school of veterinary medicine or who have received equivalent formal education, as determined by the Administrator, and are licensed to practice veterinary medicine in some state.

The initially proposed definition of "attending veterinarian" would require training and/or experience in the care and management of the species being attended. We received 407 comments (378 from the research community, 3 from exhibitors, and 26 from members of the general public) stating that this requirement is vague. Five dealers commented that veterinarians should not be required to have experience with the particular species being attended. We disagree since the variation among the different species of animals requires that the attending veterinarian be familiar with the different requirements to promote the animals' welfare. We also believe the terms "care and management" are commonly understood and applied in animal husbandry and are adequate to provide guidance to attending veterinarians. Accordingly, we are retaining this requirement in the revised definition.

Four commenters stated their concern that the proposed definition of "attending veterinarian" would improperly shift responsibility from the Institutional Animal Care and Use Committee (Committee) to the "Attending Veterinarian." Three commenters from the research community stated that we should substitute the word "authority" for "responsibility" in the definition.

The Committee, or IACUC, has defined areas of responsibility and authority under the Act and the regulations, and the definition of "attending veterinarian" does not shift this burden. However, to make this clear, we are incorporating the suggested wording change to alleviate any concern that the "attending veterinarian" would have responsibilities which properly belong to the Committee. Moreover, the facility, in accordance with Part 2 of the regulations, as revised, is responsible for activities involving animals and for establishing and maintaining the Committee.

The definition of "attending veterinarian" would be as follows:

> a person who has graduated from a veterinary school accredited by the American Veterinary Medical Association's Council on Education, or has a certificate issued by the American Veterinary Medical Association's Education Commission for Foreign Veterinary Graduates, or has received equivalent formal education as determined by the Administrator; has received training and/or experience in the care and management of the species being attended; and who has direct or delegated authority for activities involving animals at a registered or licensed facility.

*Business hours*

We received a number of comments regarding the proposed definition of "business hours" as meaning "the hours between 7 a.m. and 7 p.m., Monday through Friday, except for statutory Federal holidays, each week of the year." We received 449 comments (424 from the research community and 25 from members of the general public) stating that the proposed hours are not the normal business hours for licensees and research facilities. We received 394 comments (332 from the research community, 22 from dealers, 9 from exhibitors, and 31 from members of the general public) stating that business hours should de defined as the normal business hours of the regulated entity, and 51 commenters (18 dealers and 33 from the research community) stated that business hours should be an 8-hour period between 7 a.m. and 7 p.m. We agree that some clarification of the definition is necessary to make clear our intent that for some reasonable time during the hours from 7 a.m. to 7 p.m. daily, every facility must make its animal housing facility(ies), animal use areas, and records available for APHIS inspection without an appointment or scheduled inspection being required. The facility would not have to be open during all hours between 7 a.m. and 7 p.m., and could be open fewer than 8 hours. For example, if a facility is open from noon until 7 p.m., it must be available for inspection at all times during those hours.

Accordingly, the definition of "business hours" is revised to be "a reasonable number of hours between 7 a.m. and 7 p.m., Monday through Friday, except for statutory Federal holidays, each week of the year, during which inspections by APHIS may be made."

Under this revised definition, facilities must be available for APHIS inspection every Monday through Friday, and not just on the days they are open for business or trade, since some facilities may be part-time operations or seasonal businesses but maintain animals year-round. The proposed range of hours would help avoid problems we have encountered in the past with some facilities which seem never to be open when APHIS inspectors arrive, or which purport to be open only at "other" times.

*Commerce*

Two commenters from the research community stated that the proposed definition of "commerce" should be clarified. We do not believe that the definition is unclear. We believe that the changes made to the current definition to indicate that intrastate activities are considered to be in commerce for purposes of the Act, and the inclusion of trade, traffic, transportation, or other commerce with any foreign country, will aid understanding of the term. The definition of "commerce" remains as proposed.

*Committee*

We received a number of comments concerning the proposed definition of "Committee." We received 311 comments (286 from the research community and 25 from members of the general public) stating that the Institutional Animal Care and Use Committee should be given the name used in the Act, that is, the Institutional Animal Committee, and 308 commenters (283 from the research community and 25 members of the general public) stated that research facilities should be given flexibility to identify the Committee by whatever name it selects. We received 121 comments from the research community stating that there is no statutory authority for requiring establishment of a Committee. This contention is incorrect. Section 13(b) of the Act authorizes the Secretary to require that each research facility establish at least one Institutional Animal Committee composed of members with sufficient ability "to assess animal care, treatment, and practices in experimental research * * *" (7 U.S.C. 2143(b)). We proposed the name "Institutional Animal Care and Use Committee" because it is descriptive of the areas of concern to the Committee, while the name "Institutional Animal Committee" is general and could lead to concern that the Committee would be involved in areas beyond the scope of the regulations. Our concern is not with the

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name assigned to the Committee by a facility, but that the Committee, regardless of its name, carry out its responsibilities and duties. We proposed this name for purposes of uniformity and ease of reference. The definition of "Committee," including the name "Institutional Animal Care and Use Committee", remains as originally proposed.

*Endangered species*

We received one comment from the research community stating that the proposed definition of "endangered species" should be more specific than "those species defined in the Endangered Species Act (16 U.S.C. 1531, *et seq.*) and as it may be subsequently amended." Another comment from the research community stated that the definition should read any "endangered or threatened species as listed under the Endangered Species Act of 1973 as amended." The Endangered Species Act includes species which are determined to be endangered or threatened because of certain factors set forth in the statute. Accordingly, our proposed definition encompasses the definition suggested by the latter commenter. We believe it is impractical to be more specific in the definition of "endangered species," since the list of species covered by the Endangered Species Act is a changing one, with additions and deletions.

*Euthanasia*

We received 324 comments (299 from the research community and 25 from members of the general public) stating that the definition of "euthanasia" should not refer to "immediate" death and that unconsciousness need only be rapid and not "instantaneous." As stated in the Supplementary Information accompanying the March 31, 1987 proposed rule, we believe our proposal describes humane destruction of an animal. Deletion of the requirement that death be "immediate" and requiring instead that unconsciousness need only be rapid instead of instantaneous could result in use of less humane methods of euthanasia which in turn could result in prolonged suffering by the animals. No changes have been made in the definition.

The Supplementary Information accompanying the definition of "euthanasia" stated that the method used should be consistent with the recommendations of the AVMA's current Panel on Euthanasia. Eight commenters from the research community stated that the definition of "euthanasia" should set forth the specific AVMA recommendations on methods of euthanasia. We received 317 comments (292 from the research community and 25 from members of the general public) stating that all reference to the AVMA Panel on Euthanasia recommendations should be removed from the proposal since the AVMA Panel is an independent body, not subject to APHIS direction. We disagree with these comments for the following reasons. The definition as originally proposed would allow use of any humane method for euthanizing animals and does not refer to the AVMA Panel on Euthanasia recommendations. We believe it is appropriate to allow facilities to determine which humane method they wish to use. If there is a question as to whether a certain method would be considered humane, we will issue a written opinion, upon request. We believe that the recommendations of the AVMA's current Panel on Euthanasia would meet the requirements of the proposed definition. For that reason, we referred to the recommendations in the Supplementary Information to provide further guidelines to facilities in determining what methods will be considered humane. This reference is not part of the regulations.

*Exotic animal*

We received 358 comments (333 from the research community and 25 from members of the general public) stating that the definition of "exotic animal" as proposed would include nonhuman primates, hamsters, and some other rodents, and that these species should be excluded from this term. Five commenters (2 from the research community, 1 exhibitor, 1 dealer, and 1 member of the general public) stated that the proposed definition is confusing in general.

The proposal defined "exotic animal" as:

> any animal not identified in the definition of "animal" provided in this Part that is native to a foreign country or of foreign origin or character, is not native to the United States, or was introduced from abroad. This term specifically includes animals such as, but not limited to, lions, tigers, leopards, elephants, camels, llamas, antelope, anteaters, kangaroos, and water buffalo. Species of foreign domestic cattle, such as, Ankole, Gayal, Yak are included in this group.

We agree that there could be some confusion as a result of the definition, since many animals commonly found in the United States or generally not considered exotic are "not native to the United States, or were introduced from abroad." In fact many species of dogs are not native to the United States. Therefore, we are clarifying the definition to exclude those animals specifically included in the definition of "animal." We are also removing llamas from the definition of "exotic animal" in this revised rule because of the increasing numbers of llamas used on farms for breeding purposes.

*Farm animal*

We received 319 comments (294 from the research community and 25 from members of the general public) stating that the proposed definition of "farm animal" is confusing since it defines farm animals in terms of their use rather than their species. Seven commenters stated that our definition should be consistent with the definition of "animal" as set forth in the Animal Welfare Act. The Act excludes the following animals from the definition of "animal":

> horses not used for research purposes and other farm animals, such as, but not limited to livestock or poultry, used or intended for use as food or fiber, or livestock or poultry used or intended for improving animal nutrition, breeding, management or production efficiency, or for improving the quality of food or fiber.

The proposed definition is consistent with the definition of "animal" provided in the Act, in that it is the use or intended use which excludes farm animals from the Act, not their species. We are expanding the definition to include all the uses listed in the Act, in accordance with the commenters' suggestion, to avoid confusion.

Four commenters stated that the definition should refer to "warmblooded" domestic species to be consistent with the definition of "animal." We believe that this is unnecessary since "animal," as defined in the regulations, is limited to warmblooded species and there is no need to further identify farm animals as warmblooded.

As stated above, we are including llamas in the definition of farm animals when used or intended for use as farm animals, as set forth in the Act.

*Housing facility*

We received 60 comments from the research community objecting to the proposed definition of "housing facility" as "any land, premises, shed, barn building, trailer, or other structure or area housing or intended to house animals." These commenters stated that "housing facility" should be renamed "animal facility" and that these facilities should be distinguished from "animal study area," "acute research study area," "chronic research study area," and "holding facility." We have considered those comments but do not agree with them. We believe there is no reason to distinguish animal study area, acute research study areas, chronic research study areas, and holding facilities for purposes of the standards, since these areas are all included within housing facilities and are subject to inspection and compliance with the regulations regardless of their name or research purpose. Also, the term "housing facility" applies to any facility used by any person subject to the Act to house animals, and is not limited to research facilities. The regulations pertaining to housing facilities contained in Part 2—"Regulations" and the proposed rule for Part 3—"Standards", published elsewhere in this issue of the **Federal Register** (see companion docket nos. 88–014 and 87–004, respectively), are equally applicable to all persons subject to the Act and to all parts of housing facilities. The definition remains as originally proposed.



*Hybrid cross*

Fourteen commenters from the research community objected to the proposed differentiation between domestic and wild hybrid cross animals and stated that all hybrids should be considered wild animals. The general consensus within the Agency remains that hybrid cross animals should be considered to be domesticated animals. For this reason and for the reasons provided in the Supplementary Information accompanying the March 31, 1987 proposed rule, the definition of "hybrid cross" remains as initially proposed.

*Impervious surface*

The proposed definition of "impervious surface" includes the requirement that "[f]luids on such surfaces will bead or run off, * * *". We received 363 comments (338 from research community and 25 from members of the general public) objecting to this portion of the definition because some nonpermeable floor surfaces will not cause fluids to bead up or fun off, but otherwise do meet the definition of "impervious surface." We agree that this can be the case with some impervious surfaces and are modifying this provision in the definition. Our concern is that the surfaces be those that can be readily cleaned and that they not absorb material which could contaminate the surface and cause problems with sanitization. The definition, as revised, includes surfaces on which fluid beads up and runs off and surfaces from which fluids can be removed without their being absorbed into the surface material.

Two dealers and two commenters from the research community stated that some species do not require impervious surfaces and that for some species impervious surfaces may in fact be detrimental to their well-being. We agree, and have addressed these situations in the standards provided in the proposed rule for Part 3—"Standards", published elsewhere in this issue of the **Federal Register** in companion docket no. 87–004. Those proposed standards require impervious surfaces in defined instances.

We received 317 comments (292 from the research community and 25 from members of the general public) stating that the requirements that impervious surfaces not retain odors is inappropriate since odors are a function of cleaning and not the surface. We disagree, since some surfaces absorb disturbing odors regardless of how well they are cleaned. This requirement remains in the definition.

*Indoor housing facility*

We received 352 comments (326 from the research community, 25 from members of the general public, and 1 from an exhibitor) stating that the requirement that an "indoor housing facility" must be capable of maintaining humidity levels of 30 to 70 percent is too rigid and should be deleted from the definition. We disagree, and we believe the required range of a 30 to 70 percent humidity level is a reasonable one. Most species of animals that would be housed in indoor housing facilities require humidity levels within this range for their general health and welfare. This is reflected in the standards provided in the proposed rule for Part 3—"Standards" and published elsewhere in this issue of the **Federal Register** in companion docket no. 87–004. We do not believe compliance with this requirement will prove burdensome. Facilities receiving NIH funds for research currently must provide assurance that they are in compliance with the requirements contained in the NIH Guide for the Care and Use of Laboratory Animals. The Guide provides humidity levels within this same range for dogs, cats, and nonhuman primates. The Guide provides a range of 40 to 70 percent for most other warmblooded animals. Moreover, since 1967, indoor housing facilities have been required under our regulations to have the capability of controlling the environment within the facility. The definition remains as originally proposed.

*Inspector*

In the March 31, 1987 proposal, we proposed to define the term, "Veterinary Services representative," as "any inspector or other person employed by the Department who is responsible for the performance of a function under the Act." (In accordance with a change in internal policy, the term, "Veterinary Services representative," has been replaced with "APHIS official" in the revised rule.) The term "inspector" also appears in Part 2 and 3 of the regulations (see companion docket nos. 88–014 and 87–004, respectively) but was not separately defined in the March 31, 1987 proposal. We believe it would be helpful to the public to define the term "inspector." Because an inspector is an APHIS official, the definition of each term would be the same. Accordingly, the term "inspector" is defined to mean "any person employed by the Department who is authorized to perform a function under the Act and the regulations in 9 CFR Parts 1, 2, and 3."

*Major operative experiment*

We received 74 comments, all from the research community, stating that the definition of "major operative experiment" should be changed from "any surgical intervention that penetrates and exposes a body cavity or that has the potential for producing a permanent disability" to any surgical intervention that both penetrates and exposes a major body cavity and/or is intended to cause physical or physiological impairment. We disagree.

It is necessary to define this term since the 1985 amendments to the Act plainly require standards providing that no animal be used in more than one major operative experiment from which it is allowed to recover, except (1) in cases of scientific necessity, (2) in cases of special circumstances as determined by the Secretary, or (3) when otherwise required by a research protocol (7 U.S.C. 2143(a)(3) (D) and (E)). There is no basis under the Act for requiring that a procedure result in an actual impairment or that it be performed with the established intent of causing physical or physiological impairment for it to be termed a "major operative experiment." The intended effect in performing a procedure cannot be relied upon to determine whether a procedure should be termed "major" or "minor" since that effect may or may not be accomplished. We consider that the potential for disability is sufficient to warrant considering the procedure to be "major." We do not regulate the intent underlying

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experimentation, and intent should not enter into a definition of what is considered to be a "major operative experiment." The definition remains as originally proposed.

*Mobile or traveling housing facility*

Our proposal, published elsewhere in this issue of the **Federal Register** (see companion docket no. 87–004), to revise Part 3, Subparts A and D, would allow dogs, cats, and nonhuman primates to be maintained in four different types of animal housing facilities: indoor, outdoor, sheltered, and mobile or traveling housing facilities. Definitions for indoor, outdoor, and sheltered animal housing facilities were included in our March 31, 1987 proposal to revise Part 1 (see 52 FR 10292–10298). However, no definition of the term "mobile or traveling housing facility" was proposed. Therefore, we are adding a definition of the term as follows:

> a transporting vehicle, such as a truck, trailer, or railway car, used to house animals while traveling for exhibition or public education purposes.

These purposes would include circuses, carnivals, traveling zoos, education exhibits, and traveling animal acts.

*Non-conditioned animals*

One exhibitor commented that the proposed definition of "non-conditioned animal" is vague. The current definition is "animals which have not been subjected to special care and treatment for sufficient time to stabilize and, where necessary, to improve their health to make them more suitable for research purposes." Since 1987 the definition of this term has been substantially as we proposed, except that the definition referred only to animals intended for use in research facilities. The proposed definition deletes the phrase "to make them more suitable for research purposes," making the term applicable to animals used by all persons subject to the Act and the regulations. We believe this change is necessary since it is equally applicable to animals held by dealers and exhibitors and to animals in transport. We inadvertently did not explain this change in the Supplementary Information to the proposed rule. The definition remains as proposed in the March 31, 1987 proposal.

*Outdoor housing facility*

The current definition of "outdoor housing facility" is "any structure or building, housing or intended to house animals, which does not meet the definition of "indoor housing facility"." In the March 31, 1987 proposal and in this rule, we added a definition for another type of housing facility, known as a "sheltered housing facility." Accordingly, we proposed to define the term "outdoor housing facility" as a structure, land, or premise, housing or intended to house animals, which does not meet the definition of an indoor housing facility or a sheltered housing facility and in which temperatures cannot be controlled within set limits." Revising the definition became necessary because a sheltered housing facility is neither an outdoor nor an indoor housing facility. In this document, we are also adding a definition of the term, "mobile or traveling housing facility," which is another type of housing facility that may be used to house animals under the regulations. (Proposed specifications pertaining to sheltered and mobile or traveling animal housing facilities when used to house dogs, cats, and nonhuman primates appear in the proposed rule for Part 3—"Standards," companion docket no. 87–004, published elsewhere in this issue of the **Federal Register**. To avoid having to amend the definition of "outdoor housing facility" each time another type of housing facility is authorized for use under the regulations, we are revising the definition in this rule to mean "a structure, land, or premise, housing or intended to house animals, which does not meet the definition of any other type of housing facility provided in the regulations and in which temperatures cannot be controlled within set limits."

Three commenters (2 from the research community and 1 exhibitor) stated that a more stringent definition of "outdoor housing facility" is necessary. We believe that this is unnecessary and could prove to be too limiting in application. We encourage the design and development of animal facilities which provide animals with natural environments appropriate for the species of animal housed and which allow ready access to runs and similar areas for exercise and social interaction. We believe that providing a more exacting definition could discourage the construction of animal housing facilities of this type.

*Painful procedure*

We received 345 comments (320 from the research community and 25 from members of the general public) stating that the definition of "painful procedure" should be revised to be consistent with the "U.S. Government Principles for the Utilization and Care of Vertebrate Animals Used in Testing, Research, and Training" which appears in the U.S. Public Health Service Policy on Humane Care and Use of Laboratory Animals ("PHS Policy"). All PHS-conducted or supported activities involving animals must comply with the PHS Policy. Principle V provides that "[p]rocedures with animals that may cause more than momentary or slight pain or distress should be performed with appropriate sedation, analgesia, or anesthesia. Surgical or other painful procedures should not be performed on unanesthetized animals paralyzed by chemical agents." We used similar language in the proposed definition of "painful procedure" and, as provided in Principle IV, we proposed using human beings as the reference point for determining whether a procedure is a "painful procedure." Principle IV states that "[u]nless the contrary is established, investigators should consider that procedures that cause pain or distress in human beings may cause pain or distress in other animals." We believe that our proposed definition is consistent with the PHS Policy and with the advice of the commenters, and that no revision is necessary. We received 142 comments from the research community stating that this approach is too anthropomorphic. We believe that using human standards of pain is necessary to properly define when a procedure is to be considered painful and to make the definition meaningful to those persons applying it. The definition remains as originally proposed.

*Paralytic drug*

In accordance with section 13(a)(3)(C)(iv) of the Act, (7 U.S.C. 2143(a)(3)(C)(iv)), § 2.30(e)(9) of the revised rule for Part 2 (see companion docket no. 88–014) provides that each research facility that engages in a painful practice or procedure using an animal must prohibit the use of paralytic drugs without anesthesia. Section 2.30(e)(10), as revised, would require that the research facility establish a written policy to ensure compliance with the prohibition. These provisions were originally proposed in § 2.30(e)(4) at 52 FR 10312.

We received 31 comments from the research community in response to the proposed rule stating that the term "paralytic drug" should be defined. We agree and are adding a definition of the term as follows:

> a drug which causes partial or complete loss of muscle contraction and which has no anesthetic or analgesic properties, so that the animal cannot move, but is completely aware of its surroundings and can feel pain.

This definition is in accordance with the generally accepted usage of the term among professionals and professional



organizations and is consistent with the intent of the Act.

*Pet animal*

We received 5 comments (4 from the research community and 1 from a dealer) stating that the definition of "pet animal" should exclude exotic or wild animals. We agree and intended to exclude them by using the phrase "any animal that has commonly been kept as a pet animal" in the definition. To clarify this point further we are adding examples of common household pets to the definition, such as dogs, cats, guinea pigs, rabbits, and hamsters.

*Positive physical contact*

Our proposal to amend Part 3, Subpart A (see companion docket no. 87–004), would require that individually housed dogs receive positive physical contact with humans. We are adding a definition of the term "positive physical contact" as it is commonly understood by the public, that is, "petting, stroking, or other touching, which is beneficial to the well-being of the animal."

*Primary enclosure*

We did not receive any comments addressing the proposed definition of "primary enclosure." We are replacing the word "chain" in the rule with "tether," however, to include all like devices used to restrict an animal's radius of movement.

*Principal investigator (investigator)*

The revised rule for Part 2 of the regulations (see companion docket no. 88–014) would require that research facilities impose certain duties and responsibilities on the principal investigator in planning and carrying out the animal care and use procedure (ACUP) of a research project. We are adding a definition of the term "principal investigator" as "an employee of a research facility responsible for a proposal to conduct research and for the design and implementation of research involving animals." This is the meaning of the term as it is used in the research community. It is also the meaning of the term as it is used by the U.S. Public Health Service in its "Public Health Service Policy on Humane Care and Use of Laboratory Animals." The Policy provides guidelines, issued by the U.S. Public Health Service under the Health Research Extention Act of 1985, for the proper care and treatment of animals used in biomedical and behavioral research. We are adding the definition to Part 1 of the regulations so that members of the general public will share the same understanding of the term.

*Protocol*

We proposed to define the term "Protocol" as "an investigator's plan for the use of animals in a study of a biomedical problem." We received 409 comments (384 from the research community and 25 from members of the general public) objecting to use of the term "protocol" and to our proposal to require review and approval of protocols by a facility's Institutional Animal Care and Use Committee. We received 342 comments (317 from the research community and 25 from members of the general public) stating that the term is not defined in the Animal Welfare Act and should be deleted from the regulations altogether.

Although the term is not defined in the Act it does appear in section 13 of the Act (7 U.S.C. 2143), which mandates the imposition of certain responsibilities upon research facilities and upon their Committee for carrying out the purposes of the Act. We believe that use of the term "protocol" is therefore proper. We understand from the comments we received that use of this term may imply to some research facilities that APHIS would be involved in the evaluation of the design, outlines, guidelines, and scientific merit of proposed research. That is not our intent. Our concern is with the animal care and use portion of the research, that is, how the research will treat or affect an animal, the condition of an animal, and the circumstances under which an animal is maintained. Accordingly, to clarify our intentions and avoid any misunderstanding, the term "protocol" is changed in this revised rule to "animal care and use procedure" ("ACUP"). The definition is also clarified to include an investigator's plan for the care of animals in addition to a plan for the use of animals.

The comments we received concerning our statutory authority to require review of what is now termed the "animal care and use procedure" are addressed in companion docket number 88–014, Part 2—"Regulations," published elsewhere in this issue of the **Federal Register**.

*Research facility*

Thirty-seven commenters from the research community stated that the word "biomedical" should not appear in the definition of "research facility." In writing our proposed definition of "research facility," we tried to follow the language of the Act as closely as possible. This term appears in the Act's definition of "research facility" (7 U.S.C. 2132(e)).

Nineteen commenters from the research community stated that the definition of "research facility" should exclude government agencies responsible for protection and management of the wildlife resources of a state. Again, in writing our proposed definition of "research facility," we tried to follow the language of the Act as closely as possible, and the Act allows no specific exclusion of government agencies of the type described by the commenters.

After carefully considering these comments, we have decided to adopt the Act's definition of "research facility" and use it in our regulations. We believe this would avoid confusion and ensure that our regulations accomplish the intent of the Act. The only change we are making in the definition is to replace the term "Secretary" with the term "Administrator."

*Retail pet store*

In our proposed definition of "retail pet store," reference to exhibiting nonpet animals was inadvertently omitted, although it was included in the Supplementary Information. We are revising the definition of "retail pet store" from that appearing in the March 31, 1987 proposal to exclude establishments or persons exhibiting or offering to exhibit any wild or exotic or other nonpet species of warmblooded animals (except birds), such as skunks, raccoons, nonhuman primates, squirrels, ocelots, foxes, coyotes, etc., in addition to those selling or offering to sell these nonpet species. These establishments and persons would be required to obtain a license under Part 2 of the regulations.

We are also adding a fifth exclusion for retail pet stores that exhibit animals in a room that is separate from or adjacent to a retail pet store, in an outside area, or anywhere off the pet store premises. If the pet animals are taken off the premises for purposes of exhibition, such as at schools, parades, or shopping malls, or are placed in outside areas or areas adjacent to the pet store for use in a petting zoo-type exhibit, the establishment or person exhibiting the pet animals must obtain a license under Part 2 of the regulations. This exclusion would prevent exhibitors from claiming to be retail pet stores in order to avoid being licensed in accordance with Part 2 of the regulations.

We are deleting mink from the list of pet animals sold by retail pet stores in response to a comment regarding the proposed definition of "wild animal." We are doing so because of their vicious nature. Mink are not regulated animals,

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however, when used or intended for use solely for food or fiber purposes.

*Sanitize*

We received 4 comments from the research community stating that "sanitize" should be redefined so as to require removal of dirt, debris and harmful contamination, instead of requiring removal and destruction, to the maximum degree that is practical, of any agents injurious to health. The definition of "sanitize" has been the same as we proposed since 1966. We do not believe it appropriate to delete the requirement to destroy injurious agents since elimination of these agents results in a more healthful environment for animals that may be exposed to them. The definition remains as proposed.

*Sheltered housing facility*

Three commenters from the general public stated that the definition of "sheltered housing facility" should be deleted as this type of facility could lead to mistreatment of the housed animals. In the proposed rule for Part 3—"Standards" (see companion docket no. 87-004 published elsewhere in this issue of the Federal Register), we have proposed specifications for this type of housing facility which include requirements for heating, cooling, ventilation, cleaning, drainage, and lighting. We believe that a sheltered housing facility which is in compliance with these proposed standards can be effectively used to house animals in a humane manner in accordance with the Act.

*Wild animal*

We proposed to define "wild animal" as:

> any animal which is now or historically has been found in the wild, or in the wild state, within the boundaries of the United States, its territories, or possessions. This term includes, but is not limited to animals such as: Buffalo, deer, skunk, opossum, raccoon, armadillo, coyote, squirrel, fox, wolf.

One dealer and one member of the general public commented in disagreement with our proposed definition. One dealer stated that ferrets and mink should be classified as wild animals, and 9 dealers and 2 exhibitors stated that deer, llama, and buffalo should be classified as domestic animals. As explained above under "Retail pet store," we agree that mink should be considered a "wild animal" due to its vicious nature. The definition of "wild animal" will be changed to include mink. We disagree with the comment with regard to ferrets, however, since they are considered to be easily handled and relatively nondangerous, and are now commonly bred and kept as pet animals. We also disagree with classifying deer as domestic animals. Although some individuals may be raised in captivity and would be considered tame, most deer are found in the wild. However, we do agree with the commenters with regard to buffalo. Buffalo are nearly extinct in the wild. Most now exist in game preserves, where they are displayed in natural settings. Under these circumstances they are not wild animals. Therefore, we are removing them from the definition of "wild animal." We are making no change in the definition of "wild animal" with regard to llamas because llamas were not include as wild animals in our proposed definition of the term. We also want to make it clear that wild rats and mice are included in the definition of wild animal, as distinguished from rats and mice bred in captivity for use in research, and that wild rats and mice are regulated animals under the Act.

We received no comments concerning the remaining definitions and they remain in this rule as originally proposed.

*Miscellaneous*

As a result of a change in internal policy, the term "Veterinary Services" is replaced with "APHIS" wherever it appears and the definition of "Veterinary Services" is not included in this revised rule. We have defined "APHIS" to mean "the Animal and Plant Health Inspection Service, United States Department of Agriculture."

In order to be consistent with this change in policy, the term "Veterinary Services representative," is replaced with "APHIS official." We proposed to define the term, "Veterinary Services representative" to mean "any inspector or other person employed by the Department who is responsible for the performance of a function under the Act." We have added a definition of the term "inspector" in this revised rule, as explained above. For this reason, the definition of "APHIS official" does not specifically refer to inspectors. We are using the word "authorized" in place of "responsible" in the definition of "APHIS official" because the Secretary of Agriculture is responsible for performance under the Act. Department employees are authorized to perform certain functions. We are also clarifying the definition by including the performance of functions under the regulations as well as under the Act, because the regulations are promulgated under the Act. Accordingly, "APHIS official" is defined to mean "any person employed by the Department who is authorized to perform a function under the Act and the regulations in 9 CFR Parts 1, 2, and 3."

We are correcting the following typographical errors which appeared in the March 31, 1987 proposal:

(1) We are correcting two errors in the proposed definition of "Class "B" licensee (dealer)". In the first sentence the reference to "§ 1.1(q)" has been changed to "§ 1.1" since we are not lettering the paragraphs, and in the second sentence "at an auction sale" has been corrected to read "of an auction sale."

(2) We are similarly changing the reference to "§ 1.1(x)" in the definition of "Class "C" licensee (exhibitor)" to "§ 1.1" since we are not lettering the paragraphs.

(3) In the definition of "endangered species," the closing parentheses are placed after the statutory citation instead of the period.

*Statutory authority for this Proposed Rule*

This proposed rule is issued pursuant to the Animal Welfare Act (Act), as amended, 7 U.S.C. 2131-2157. Congress recently added significantly to the Secretary's responsibilities under the Act by amendments in the Food Security Act of 1985, Pub. L. No. 99-198, approved December 23, 1985. The declared policy of the Act is to ensure that animals intended for use in research facilities, as pets, or for exhibition purposes are provided humane care and treatment; to assure the humane treatment of animals during transportation; and to prevent the sale of stolen animals.

The Act mandates that the Secretary of Agriculture promulgate regulations and standards to govern the humane handling, care, treatment, and transportation of animals by dealers, exhibitors, research facilities, carriers, and intermediate handlers. To accomplish this, the Secretary must define certain key words used in the regulations and standards so that persons subject to the Act, regulations, and standards can comply with their requirements.

The Act itself defines some of the terms which appear in this rule. The Act also authorizes the Secretary to promulgate such rules, including additional definitions, as he deems necessary to effectuate the purposes of the Act.



*Executive Order 12291*

On March 31, 1987, the Department published proposed rules to amend Part 1—"Definition of Terms" and Part 2—"Regulations," of the Animal Welfare regulations (52 FR 10292, 10298) in order to implement the 1985 amendments to the Animal Welfare Act, Pub. L. 99-198, the "Food Security Act." The proposed action was reviewed pursuant to Executive Order 12291 and it was determined that it did not constitute a "major rule." We solicited comments with regard to the proposed rules, and have made modifications to those rules as explained in the "Supplementary Information." At this time, we are also publishing a proposal to revise the standards contained in 9 CFR Part 3—"Standards," published elsewhere in this issue of the Federal Register.

In revising Parts 1 and 2, and in preparing the proposed rule for Part 3, we assessed the economic effects of the regulations in accordance with the requirements of Executive Order 12291. We considered alternative approaches to carrying out our statutory mandate, many of which we adopted. A regulatory impact analysis of revised Parts 1 and 2, and the proposal for Part 3 was prepared. Based on that analysis, which included consideration of both quantifiable and nonquantifiable effects of the rules, the Administrator has determined that Parts 1 and 2 would have an impact on the economy in excess of $100 million annually, and would constitute a "major rule."

The following requirements under Parts 1 and 2 represent some of the major costs to the regulated industries: (1) The establishment and responsibilities of the animal care and use committees; (2) aseptic surgical facilities and adequate pre- and post-procedural care; (3) increased responsibilities for attending veterinarians; (4) additional administrative responsibilities; (5) increases in license fees; and (6) identification for dogs and cats less than 16 weeks of age.

The economic impacts of these rules are discussed in more detail in a regulatory impact analysis, which is available for public inspection in Room 1141 of the South Building, U.S. Department of Agriculture between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays (address above). Main findings of this analysis are summarized below.

SUMMARY OF REGULATORY IMPACT ANALYSIS

| Costs | Benefits |
|---|---|
| Direct | Direct |
| Regulated industry | Increased public satisfaction from improved animal welfare*. |
| Capital expenditure: | |
| (all parts) $876 million | Improved research information*. |
| (parts 1-2) $142 million | Productivity gains for regulated industries*. |
| Annual costs: | |
| (all parts) $207 million | |
| (parts 1-2) $126 million | |
| APHIS program costs impact on federal sites* $2 million. | |
| Indirect | Indirect |
| Opportunity costs for users of biomedical research (goods and service), pet industry, and animal exhibits*. | Market effects for suppliers of animal husbandry products*. |
| Increased federal financial support for biomedical community*. | Non-market effects*. |
| Non-market effects*. | |

* Not quantified.

Compliance with more stringent federal regulations on the humane care and treatment of animals used for research, testing, teaching, exhibition, and business ventures would result in major direct and indirect effects imposed on the regulated industries and the general economy. An examination of the estimated cost impacts indicates that the amended regulations constitute a "major rule" based on annual effects in excess of $100 million on the economy and large cost increases on regulated industries for animal uses and maintenance, in particular to the biomedical research community. However, this study could not properly assess the relative significance of these cost increases on the regulated industry or the presence of adverse effects on competition, innovation, and the ability of domestic enterprises to compete with foreign enterprises in international markets.

Regulated persons or establishments will be required to spend approximately $876 million in capital expenditures over the next two or three years. Of this amount approximately 16 percent is attributable to Parts 1 and 2. If Parts 1 and 2 were enforced separately, regulated research facilities will be required to spend approximately $142 million to renovate, equip, replace, or construct aseptic surgical facilities, and provide for adequate per- and post-surgical care. Capital expenditures attributable to Part 3 include costs for renovation, equipment replacement, and new construction of animal housing facility space. Capital expenditures to improve animal housing facilities would result from the new minimum standards for general environmental conditions, space or primary enclosure size requirements, exercise of dogs, and enrichment of nonhuman primate enclosures.

In addition to capital expenditures, total annual operating exenditures estimated at $207 million will also be required. Approximately 60 percent of this total ($126 million) is accounted for by Parts 1 and 2, primarily the requirements for the establishment and operations of the institutional animal care and use committees, additional responsibilities for attending veterinarians, and record-keeping requirements. Annual expenditures attributable to Part 3 would result from the need for additional personnel (animal handlers) to execise dogs, and the daily maintenance of animal housing facilities.

An important result of this regulatory analysis is that policy decisions must consider other direct and indirect effects associated with the promulgation and enforcement of federal rules. Increased federal legislation causes important economic benefits and costs which are unevenly distributed among registrants and licensees. Direct benefits accrue to society by knowing that animals may be better cared for and treated humanely. The value of these social benefits are subject to personal preferences and concerns. Improvements in the well-being of regulated animals may also provide gains in productivity to the industry. On the other hand, increased costs of compliance will be passed from the regulated industry to consumers who purchase their goods and services. For example, the field of biomedical research and education depends heavily on the use of animals to conduct tests and experiments. Increased costs for animal uses have broader economic and health implications for all of us. Study results do not suggest that these regulations would cause establishments to abandon the use of animals since current biomedical research outlays are in excess of $12.8 billion per year. Nonetheless, there could be important effects associated with allocating additional funds or expenditures to comply with the amended animal welfare regulations.

**Regulatory Flexibility Act**

As part of the regulatory impact analysis performed by the Department we have analyzed the potential impact on small entities of Parts 1 and 2, as revised, and the proposal to amend Part

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3 of the Animal Welfare regulations, as required by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Based upon our analysis, we have determined that Parts 1 and 2 of the regulations would affect all regulated small entities, primarily by increases in annual license fees and identification requirements for dogs and cats. However, these economic impacts would not be significant. It is anticipated that the largest impact on small entities would result from Part 3—"Standards", if it is implemented as proposed. Under these circumstances the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

**Executive Order 12372**

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR 3015, Subpart V.)

**Paperwork Reduction Act**

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the information collection provisions that are included in this proposed rule will be submitted for approval to the Office of Management and Budget (OMB). Your written comments will be considered if you submit them to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. You should submit a duplicate copy of your comments to Helene R. Wright, Chief, Regulatory Analysis and Development Staff, PPD, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

**List of Subjects in 9 CFR Part 1**

Animal welfare, Animal housing, Dealers, Exhibitors, Research facilities, Humane animal handling.

Accordingly, we are proposing to amend 9 CFR Part 1 as follows:

## PART 1—DEFINITION OF TERMS

1. The authority citation for Part 1 would be revised to read as follows:

**Authority:** 7 U.S.C. 2133, 2135, 2136, 2140, 2141, 2142, 2143, 2146, 2147, 2151; 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 1.1 would be revised to read as follows:

**§ 1.1 Definitions**

For the purposes of this subchapter, unless the context otherwise requires, the following terms shall have the meanings assigned to them in this section. The singular form shall also signify the plural and the masculine form shall also signify the feminine. Words undefined in the following paragraphs shall have the meaning attributed to them in general usage as reflected by definitions in a standard dictionary.

"Act" means the Act of August 24, 1966 (Pub. L. 89–544), (commonly known as the Laboratory Animal Welfare Act), as amended by the Act of December 24, 1970 (Pub. L. 91–579), (the Animal Welfare Act of 1970), the Act of April 22, 1976 (Pub. L. 94–279), (the Animal Welfare Act of 1976), and the Act of December 23, 1985 (Pub. L. 99–198), (the Food Security Act of 1985), and as it may be subsequently amended.

"Administrative unit" means the organizational or management unit at the departmental level of a research facility.

"Administrator" means the Administrator of the Animal and Plant Health Inspection Service, U.S. Department of Agriculture, or any other official of the Animal and Plant Health Inspection Service to whom authority has been delegated to act in his stead.

"Ambient temperature" means the air temperature surrounding the animal.

"Animal" means any live or dead dog, cat, nonhuman primate, guinea pig, hamster, rabbit, or any other warmblooded animal, which is being used, or is intended for use for research, teaching, testing, experimentation, or exhibition purposes, or as a pet. This term excludes: Birds, rats and mice bred for use in research, and horses and other farm animals, such as, but not limited to livestock or poultry, used or intended for use as food or fiber, or livestock or poultry used or intended for use for improving animal nutrition, breeding, management, or production efficiency, or for improving the quality of food or fiber. With respect to a dog, the term means all dogs including those used for hunting, security, or breeding purposes.

"Animal act" means any performance of animals where such animals are trained to perform some behavior or action or are part of a show, performance, or exhibition.

"Animal care and use procedure" (ACUP) means an investigator's plan for the care and use of animals in a study of a biomedical problem.

"APHIS" means the Animal and Plant Health Inspection Service, United States Department of Agriculture.

"APHIS official" means any person employed by the Department who is authorized to perform a function under the Act and the regulations in 9 CFR Parts 1, 2, and 3.

"Area Veterinarian in Charge" means a veterinarian or his designee, employed by APHIS, who is assigned by the Administrator to supervise and perform the official work of APHIS in a given State or States. As used in Part 2 of this subchapter, the Area Veterinarian in Charge shall be deemed to be the person in charge of the official work of APHIS in the State in which the dealer, exhibitor, research facility, intermediate handler, carrier, or operator of an auction sale has his principal place of business.

"Attending veterinarian" means a person who has graduated from a veterinary school accredited by the American Veterinary Medical Association's Council on Education, or has a certificate issued by the American Veterinary Medical Association's Education Commission for Foreign Veterinary Graduates, or has received equivalent formal education as determined by the Administrator; has received training and/or experience in the care and management of the species being attended; and who has direct or delegated authority for activities involving animals at a facility subject to the jurisdiction of the Secretary.

"Business hours" means a reasonable number of hours between 7 a.m. and 7 p.m., Monday through Friday, except for legal Federal holidays, each week of the year, during which inspections by APHIS may be made.

"Business year" means the 12-month period during which business is conducted, and may be either on a calendar or fiscal-year basis.

"Carrier" means the operator of any airline, railroad, motor carrier, shipping line, or other enterprise which is engaged in the business of transporting any animals for hire.

"Cat" means any live or dead cat (Felis catus) or any cat-hybrid cross.

"Class "A" licensee" (breeder) means a person subject to the licensing requirements under Part 2 and meeting the definition of a "dealer" (§ 1.1), and whose business involving animals consists only of animals that are bred and raised on the premises in a closed or stable colony and those animals acquired for the sole purpose of maintaining or enhancing the breeding colony.

"Class "B" licensee" means a person subject to the licensing requirements under Part 2 and meeting the definition of a "dealer" (§ 1.1), and whose business includes the purchase and/or resale of any animal. This term includes brokers, and operators of an auction sale, as such individuals negotiate or arrange for the purchase, sale, or transport of



animals in commerce. Such individuals do not usually take actual physical possession or control of the animals, and do not usually hold animals in any facilities. A class "B" licensee may also exhibit animals as a minor part of the business.

"Class "C" licensee" (exhibitor) means a person subject to the licensing requirements under Part 2 and meeting the definition of an "exhibitor" (§ 1.1), and whose business involves the showing or displaying of animals to the public. A class "C" licensee may buy and sell animals as a minor part of the business in order to maintain or add to his animal collection.

"Commerce" means trade, traffic, transportation, or other commerce—

(1) Between a place in a State and any place outside of such State, including any foreign country, or between points within the same State but through any place outside thereof, or within any territory, possession, or the District of Columbia; or

(2) Which affects the commerce described in this part.

"Committee" means the Institutional Animal Care and Use Committee established under section 13(b) of the Act. It shall consist of at least three (3) members, one of whom is the attending veterinarian of the research facility and one of whom is not affiliated in any way with the facility other than as a member of the Committee. The research facility shall establish the Committee for the purpose of evaluating the care, treatment, housing, and use of animals, and for certifying compliance with the Act by the research facility.

"Dealer" means any person who, in commerce, for compensation or profit, delivers for transportation, or transports, except as a carrier, buys, or sells, or negotiates the purchase or sale of: Any dog or other animal whether alive or dead (including unborn animals, organs, limbs, blood, serum, or other parts) for research, teaching, testing, experimentation, exhibition, or for use as a pet; or any dog for hunting, security, or breeding purposes. This term does not include: A retail pet store, as defined in this section, unless such store sells any animals to a research facility, an exhibitor, or a dealer (wholesale); or any person who does not sell, or negotiate the purchase or sale of any wild or exotic animal, dog, or cat and who derives no more than $500 gross income from the sale of animals other than wild or exotic animals, dogs, or cats, during any calendar year.

"Department" means the U.S. Department of Agriculture.

"Deputy Administrator" means the Deputy Administrator for Veterinary Services or any other official of Veterinary Services to whom authority has been delegated to act in his stead.

"Dog" means any live or dead dog (Canis familiaris) or any dog-hybrid cross.

"Dwarf hamster" means any species of hamster such as the Chinese and Armenian species whose adult body size is substantially less than that attained by the Syrian or Golden species of hamsters.

"Endangered species" means those species defined in the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and as it may be subsequently amended.

"Euthanasia" means the human destruction of an animal accomplished by a method which produces instantaneous unconsciousness and immediate death without evidence of pain or distress, or a method that utilizes anesthesia produced by an agent which causes painless loss of consciousness and subsequent death.

"Exhibitor" means any person (public or private) exhibiting any animals, which were purchased in commerce or the intended distribution of which affects commerce, or will affect commerce, to the public for compensation, as determined by the Secretary. This term includes carnivals, circuses, animal acts, zoos, and educational exhibits, exhibiting such animals whether operated for profit or not. This term excludes retail pet stores, horse and dog races, organizations sponsoring and all persons participating in State and county fairs, livestock shows, rodeos, field trials, coursing events, purebred dog and cat shows and any other fairs or exhibitions intended to advance agricultural arts and sciences as may be determined by the Secretary.

"Exotic Animal" means any animal not identified in the definition of "animal" provided in this part that is native to a foreign country or of foreign origin or character, is not native to the United States, or was introduced from abroad. This term specifically includes animals such as, but not limited to, lions, tigers, leopards, elephants, camels, antelope, anteaters, kangaroos, and water buffalo, and species of foreign domestic cattle, such as Ankole, Gayal, and Yak.

"Farm animal" means any domestic species of cattle, sheep, swine, goats, llamas, or horses, which are normally and have historically, been kept and raised on farms in the United States, and used or intended for use as food or fiber, or for improving animal nutrition, breeding, management, or production efficiency, or for improving the quality of food or fiber. This term also includes animals such as rabbits, mink, and chinchilla, when they are used solely for purposes of meat or fur, and animals such as horses and llamas when used solely as work and pack animals.

"Federal agency" means an Executive agency as such term is defined in section 105 of Title 5, United States Code, and with respect to any research facility means the agency from which the research facility receives a Federal award for the conduct of research, experimentation, or testing involving the use of animals.

"Federal award" means any mechanism (including a grant, award, loan, contract, or cooperative agreement) under which Federal funds are used to support the conduct of research, experimentation, or testing involving the use of animals. The permit system established under the authorities of the Endangered Species Act, the Marine Mammal Protection Act, and the Migratory Bird Treaty Act, are not considered to be Federal awards under the Animal Welfare Act.

"Federal research facility" means such department, agency, or instrumentality of the United States which uses live animals for research or experimentation.

"Handling" means petting, feeding, watering, cleaning, manipulating, loading, crating, shifting, transferring, immobilizing, restraining, treating, training, working and moving, or any similar activity with respect to any animal.

"Housing facility" means any land, premises, shed, barn, building, trailer, or other structure or area housing or intended to house animals.

"Hybrid cross" means an animal resulting from the crossbreeding between two different species or types of animals. Crosses between wild animal species, such as lions and tigers, are considered to be wild animals. Crosses between wild animal species and domestic animals, such as dogs and wolves or buffalo and domestic cattle, are considered to be domestic animals.

"Impervious surface" means a surface that does not permit the absorption of fluids. Such surfaces are those that can be thoroughly and repeatedly cleaned and disinfected, will not retain odors, and from which fluids bead up and run off or can be removed without their being absorbed into the surface material.

"Indoor housing facility" means any structure or building with environmental controls housing or intended to house animals and meeting the following three requirements:

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(1) It must be capable of controlling the temperature within the building or structure within the limits set forth for that species of animal, of maintaining humidity levels of 30 to 70 percent and of rapidly eliminating odors from within the building; and

(2) It must be an enclosure created by the continuous connection of a roof, floor, and walls (a shed or barn set on top of the ground does not have a continuous connection between the walls and the ground unless a foundation and floor are provided); and

(3) It must have at least one door for entry and exit that can be opened and closed (any windows or openings which provide natural light must be covered with a transparent material such as glass or hard plastic).

"Intermediate handler" means any person, including a department, agency, or instrumentality of the United States or of any State or local government (other than a dealer, research facility, exhibitor, any person excluded from the definition of a dealer, research facility, or exhibitor, an operator of an auction sale, or a carrier), who is engaged in any business in which he receives custody of animals in connection with their transportation in commerce.

"Inspector" means any person employed by the Department who is authorized to perform a function under the Act and the regulations in 9 CFR Parts 1, 2, and 3.

"Isolation" in regard to marine mammals means the physical separation of animals to prevent contact and a separate, noncommon, water circulation and filtration system for the isolated animals.

"Licensed veterinarian" means a person who has graduated from an accredited school of veterinary medicine or has received equivalent formal education as determined by the Administrator, and who has a valid license to practice veterinary medicine in some State.

"Licensee" means any person licensed according to the provisions of the Act and the regulations in Part 2 of this subchapter.

"Major operative experiment" means any surgical intervention that penetrates and exposes a body cavity or that has the potential for producing a permanent disability.

"Minimum horizontal dimension" (MHD) means the diameter of a circular pool of water, or in the case of a square, rectangle, oblong, or other shape pool, the diameter of the largest circle that can be inserted within the confines of such a pool of water.

"Mobile or traveling housing facility" means a transporting vehicle such as a truck, trailer, or railway car, used to house animals while traveling for exhibition or public education purposes.

"Nonconditioned animals" means animals which have not been subjected to special care and treatment for sufficient time to stabilize, and where necessary, to improve their health.

"Nonhuman primate" means any nonhuman member of the highest order of mammals including prosimians, monkeys, and apes.

"Operator of an auction sale" means any person who is engaged in operating an auction at which animals are purchased or sold in commerce.

"Outdoor housing facility" means any structure, building, land, or premise, housing or intended to house animals, which does not meet the definition of any other type of housing facility provided in the regulations and in which temperatures cannot be controlled within set limits.

"Painful procedure" as applied to any animal means any procedure that would reasonably be expected to cause more than slight or momentary pain or distress in a human being to which that procedure was applied, that is, pain in excess of that caused by injections or other minor procedures.

"Paralytic drug" means a drug which causes partial or complete loss of muscle contraction and which has no anesthetic or analgesic properties, so that the animal cannot move, but is completely aware of its surroundings and can feel pain.

"Person" means any individual, partnership, firm, joint stock company, corporation, association, trust, estate, or other legal entity.

"Pet animal" means any animal that has commonly been kept as a pet in family households in the United States, such as dogs, cats, guinea pigs, rabbits, and hamsters. This term excludes exotic animals and wild animals.

"Positive physical contact" means petting, stroking, or other touching which is beneficial to the well-being of the animal.

"Primary conveyance" means the main method of transportation used to convey an animal from origin to destination, such as motor vehicle, plane, ship, or train.

"Primary enclosure" means any structure or devide used to restrict an animal or animals to a limited amount of space, such as a room, pen, run, cage, compartment, pool, hutch, or tether. In the case of animals restrained by a tether (e.g., dogs on chains), it includes the shelter and the area within reach of the tether.

"Principal investigator" means an employee of a research facility responsible for a proposal to conduct research and for the design and implementation of research involving animals.

"Quorum" means a majority of the Committee members.

"Random source" means dogs and cats obtained from animal pounds or shelters, auction sales, or from any person who did not breed and raise them on his or her premises.

"Registrant" means any research facility, carrier, intermediate handler, or exhibitor not required to be licensed under section 3 of the Act, registered pursuant to the provisions of the Act and the regulations in Part 2 of this subchapter.

"Reseach facility" means any school (except an elementary or secondary school), institution, organization, or person that uses or intends to use live animals in research, tests, or experiments, and that (1) purchases or transports live animals in commerce, or (2) receives funds under a grant, award, loan, or contract from a department, agency, or instrumentality of the United States for the purpose of carrying out research, tests, or experiments: *Provided*, That the Administrator may exempt, by regulation, any such school, institution, organization, or person that does not use or intend to use live dogs or cats, except those schools, institutions, organizations, or persons, which use substantial numbers (as determined by the Administrator) of live animals the principal function of which schools, institutions, organizations, or persons, is biomedical research or testing, when in the judgment of the Administrator, any such exemption does not vitiate the purpose of the Act.

"Retail pet store" means any outlet where only the following animals are sold or offered for sale, at retail, for use as pets: Dogs, cats, rabbits, guinea pigs, hamsters, gerbils, rats, mice, gophers, chinchilla, domestic ferrets, domestic farm animals, birds, and coldblooded species. Such definition excludes—

(1) Establishments or persons who deal in dogs used for hunting, security, or breeding purposes;

(2) Establishments or persons exhibiting, selling, or offering to exhibit or sell any wild or exotic or other nonpet species or warmblooded animals (except birds), such as skunks, raccoons, nonhuman primates, squirrels, ocelots, foxes, coyotes, etc.;

(3) Any establishment or person selling warmblooded animals (except birds, and laboratory rats and mice) for research or exhibition purposes; and



(4) Any establishment wholesaling any animals (except birds, rats and mice).

(5) Any establishment exhibiting pet animals in a room that is separate from or adjacent to the retail pet store, or in an outside area, or anywhere off the retail pet store premises.

"Sanitize" means to make physically clean and to remove and destroy, to the maximum degree that is practical, agents injurious to health.

"Secretary" means the Secretary of Agriculture of the United States or his representative who shall be an employee of the Department.

"Sheltered housing facility" means a housing facility which provides the animals with shelter; protection from the elements; and protection from temperature extremes at all times. A sheltered housing facility may consist of runs or pens totally enclosed in a barn or building, or of connecting inside/outside runs or pens with the inside pens in a totally enclosed building.

"Standards" means the requirements with respect to the humane housing, exhibition, handling, care, treatment, temperature, and transportation of animals by dealers, exhibitors, research facilities, carriers, intermediate handlers, and operators of auction sales as set forth in Part 3 of this subchapter.

"State" means a State of the United States, the District of Columbia, Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, or any other territory or possession of the United States.

"Transportation device" means an interim vehicle or device, other than man, used to transport an animal between the primary conveyance and the terminal facility or in and around the terminal facility of a carrier or intermediate handler.

"Transporting vehicle" means any truck, car, trailer, airplane, ship, or railroad car used for transporting animals.

"Weaned" means that an animal has become accustomed to take solid food and has so done, without nursing, for a period of at least 5 days.

"Wild animal" means any animal which is now or historically has been found in the wild, or in the wild state, within the boundaries of the United States its territories, or possessions. This term includes, but is not limited to, animals such as: Deer, skunk, opossum, raccoon, mink, armadillo, coyote, squirrel, fox, wolf.

"Wild state" means living in its original, natural condition; not domesticated.

"Zoo" means any park, building, cage, enclosure, or other structure or premise in which a live animal or animals are kept for public exhibition or viewing, regardless of compensation.

Done at Washington DC, this 7th day of March 1989.

**James W. Glosser,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 89-5611 Filed 3-9-89; 2:09 pm]

BILLING CODE 3410-34-M

## 9 CFR Part 2

**[Docket No. 88-014]**

## Animal Welfare Regulations

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This is a request for supplemental comments on the narrow issue of the interrelationship between Part 2 of the Animal Welfare Act regulations and our proposal to amend Part 3 of the regulations. We are proposing to amend the Animal Welfare regulations, 9 CFR Part 2. As part of our revision, we are proposing to add some new sections and revise others. New sections would provide regulations on Institutional Animal Care and Use Committees, Attending Veterinarians, and Veterinary Care. These amendments are necessary to comply with the amendments to the Animal Welfare Act (7 U.S.C. 2131, *et seq.*) ("Act") contained in Pub. L. 99-198, "The Food Security Act of 1985," enacted December 23, 1985. We are also proposing to add new sections on Holding Facilities and Handling to improve enforcement of the Act. We are proposing to revise other portions of the regulations in content and/or format to aid the public in understanding and using the regulations for the humane care, treatment, handling, and transportation of regulated animals. Rewriting the regulations is intended to make them easier to understand, thereby increasing compliance and making them more effective.

**DATE:** We will consider written comments addressing only the interrelationship of Parts 1 and 2 of the regulations with the proposed standards of Part 3, as explained in greater detail in the supplementary information which follows, that are postmarked or received on or before May 15, 1989.

**ADDRESS:** Send an original and three copies of your comments to Helene R. Wright, Chief, Regulatory Analysis and Development Staff, PPD, APHIS, USDA, Room 1000, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 88-014. Comments received may be inspected at the APHIS Public Reading Room, Room 1141, U.S. Department of Agriculture, 14th and Independence Avenue, SW., Washington, DC, 8:00 a.m. to 4:30 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** Dr. R.L. Crawford, Animal Care Staff, REAC, APHIS, USDA, Room 268, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7833.

**SUPPLEMENTARY INFORMATION:**

### Background

In a document published in the **Federal Register**, on March 31, 1987 (52 FR 10298-10322), we proposed to revise the regulations contained in 9 CFR 2.1 through 2.130. These regulations pertain to licensing of dealers and exhibitors and registration of facilities and common carriers; recordkeeping for and identification of animals; holding periods and facilities; inspections; Institutional Animal Care and Use Committees; adequate veterinary care; and other areas relating to the humane care, handling, treatment, and transportation of animals. These changes have been proposed under the authority of the Animal Welfare Act (the Act), as amended (7 U.S.C. 2131, *et seq.*). They include some specific new requirements mandated by the 1985 amendments to the Act, contained in Pub. L. 99-198, "The Food Security Act of 1985," enacted December 23, 1985. The Act requires the Department to promulgate regulations and standards governing the humane handling, housing, care, treatment and transportation of certain animals by dealers, research facilities, exhibitors, carriers, and intermediate handlers. The standards and regulations must include minimum requirements with respect to handling, housing, feeding, sanitation, veterinary care, the use of pain relieving drugs, exercise for dogs, psychological well-being of nonhuman primates, recordkeeping, and other matters specified in section 13 of the Act, as amended (7 U.S.C. 2143).

We solicited comments concerning the proposal for a 60-day period ending June 1, 1987. The comment period was twice extended and ended on August 27, 1987. We did not consider comments and materials received after the closing date of August 27, 1987. We received a total of 7,857 comments addressing our proposal for Parts 1 and 2: 1,438 were

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from the research community; 967 were from dealers and exhibitors; and 5,432 were from members of the general public. We included comments received from humane societies and groups representing the public in the areas of animal welfare and animal rights with comments received from the general public.

We received 344 comments (319 from the research community and 25 from members of the general public) stating that the Department should accord careful consideration to all of the comments received as required by the Administrative Procedure Act. We wish to assure the commenters, regulating persons, and members of the general public that the Department has carefully considered all of the comments that were received by the end of the comment period, and that we have revised the March 31, 1987 proposal on the basis of those comments where we considered it to be appropriate. These changes, discussed below, have been incorporated in this revised rule. We received much constructive input and appreciate the response.

*Supplemental Request for Comments on the Interrelationship of Parts 1, 2, and 3 of the Animal Welfare Regulations*

We received 334 comments (309 from members of the research community and 25 from members of the general public) suggesting that we revise the proposed rules for Parts 1 and 2, "Definition of Terms" and "Regulations," and publish a second proposal in the **Federal Register** for public comment. We also received 445 comments (400 from members of the research community and 45 from members of the general public) suggesting that we revise the proposals for Parts 1 and 2 and publish them along with our proposal for standards for the exercise of dogs and for a physical environment to promote the psychological well-being of nonhuman primates. These specific standards are mandated by the 1985 amendments to the Act.

We have decided to respond to the comments we received addressing the proposed rules, and to publish revised rules for Parts 1 and 2 in the same issue of the **Federal Register** in which we publish our proposal to amend Part 3 of the regulations, titled "Standards." The revised rules reflect our consideration of the nearly 8,000 comments received, our experience in administering and enforcing the regulations, and our ongoing consultation with the U.S. Department of Health and Human Services and other interested agencies. It is our present determination that upon their adoption as final rules, the revised provisions of Parts 1 and 2 conform with the requirements of the Animal Welfare Act, as amended.

Accordingly, we are publishing Parts 1 and 2 at this time, revised from our initial proposal, as explained in detail below. The revised rule for Part 2 contains specific regulations required by the 1985 amendments to the Act. These include regulations setting forth the responsibilities of Institutional Animal Care and Use Committees (IACUCs); requirements for Committee approval of animal care and use procedures in research involving animals; training by research facilities; use of pain relieving drugs; and inspection of animal use areas by the Committee. We believe that publication of the revised proposal for Part 2 concerning the administrative and institutional responsibilities of persons subject to the Act will assist the public in reviewing the proposed standards in Part 3 by placing the proposed standards in context. Also, many of the terms used in Part 3 are defined in Part 1, and a revised proposed rule containing definitions of those terms will aid the public in understanding the standards. The Department has decided upon this approach in the hope that it will answer many of the issues that would otherwise be raised in considering the standards contained in Part 3.

By way of example, we received 3 comments in response to proposed Part 2 (2 from dealers and 1 from a member of the general public) endorsing exercise for dogs and 13 comments (12 from dealers and 1 from a member of the general public) opposing mandatory exercise for dogs. One member of the general public commented in opposition to allowing dogs to be kept on tethers.

The requirements for exercise of dogs are directed by the Act (7 U.S.C. 2143(a)(2)(B)). They are contained in Subpart A of our proposed revision of Part 3, published elsewhere in this issue. (See companion docket no. 87-004.) We invite public comment in response to the proposed rule to amend Part 3.

At the urging of many commenters, we are publishing the revised rules for Parts 1 and 2 for the sole purpose of soliciting comments on the narrow issue of the interrelationship of the definitions and regulations in Parts 1 and 2 with the standards we are proposing in Part 3. The public is therefore invited to comment exclusively on this issue. We will not consider comments going beyond this issue.

Comments raising objections or suggesting changes to the March 31, 1987 proposal are discussed below in this supplementary information. Due to the length of this document and the scope of the issues addressed, subheadings are provided in the supplementary information to guide the reader through the material. Section numbers are used in the subheadings wherever possible to further assist the reader. We have provided the number of comments received and their source (e.g., research community, members of the general public) pertaining to each section because this information may be of interest to some readers. Except as explained in this supplementary information, the provisions of the March 31, 1987 proposal have been included in this revised rule for the reasons set forth in that proposal.

In our discussion of the comments we received, we refer to both the proposed rule published March 31, 1987 and to this revised proposed rule. In order to assist the reader in distinguishing between these two documents, we use the terms "proposed" or "proposal" when referring to the March 31, 1987 proposed rule. We use the terms "revised" or "revision" when referring to this revised rule.

In the supplementary information to proposed Parts 1 and 2, we stated that, based upon the information available to the Department, the proposed rules were issued in conformance with Executive Order 12291 and Secretary's Memorandum No. 1512-1, and that they had been determined not to be "major rules" (52 FR 10295 and 10307). We also stated that the information collection provisions included in proposed Part 2 had been submitted for approval to the Office of Management and Budget (OMB) (52 FR 10307) and that proposed Part 1 contained no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*). We further stated that the proposed rules would not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act (52 FR 10295 and 10307-10308).

We received 851 comments (825 from the research community, 25 from members of the general public, and 1 from a dealer) stating that the Department should perform the regulatory analyses required for: (1) A "major rule" under Executive Order 12291; (2) determining the impact on small entities in accordance with the Regulatory Flexibility Act; and (3) the Paperwork Reduction Act. Commenters demanded that we consider in our analysis the burden of administrative requirements required of the attending veterinarian and the Institutional



Animal Care and Use Committee under the proposal. We received 861 comments (834 from the research community, 1 from an exhibitor, and 26 from members of the general public) stating their disagreement with our statement that the proposed regulations are not a "major rule" under Executive Order 12291 and that the regulations would not impose significant financial burdens on registrants and licensees.

In conducting the regulatory analyses referenced above, we considered Parts 1 and 2 separately. The determinations we made were preliminary ones. Now, with more information available to us, including the comments we received, we have determined to consider the combined impact of Parts 1, 2, and 3. We have determined that, considered together, the rules for Parts 1, 2, and 3 are a major rule. A discussion of the regulatory analyses performed appears under the headings, "Executive Order 12291," "Regulatory Flexibility Act," and "Paperwork Reduction Act."

*General Comments*

We received 939 comments (910 from members of the general public, 25 from the research community, 3 from exhibitors, and 1 from a dealer) expressing general support for the proposed regulations. We also received 296 comments (295 from members of the general public and 1 from the research community) in support of the proposed regulations and stating that the Department should not lessen them due to pressure from associations for biomedical research. We received 256 comments (189 from members of the general public, 44 from the research community, 16 from dealers, and 1 from an exhibitor) expressing general opposition to stronger regulations. We also received many comments expressing specific objections to the proposed regulations.

We received 1,080 comments (1,034 from the research community and 26 from members of the general public) stating that the proposed rules exceed our statutory authority under the Act and are not consistent with the intent of Congress. We disagree with these comments and believe that ample statutory authority exists for these regulations. In the supplementary information which follows, we respond to those comments challenging our statutory authority for specific provisions of the regulations and our carrying out of congressional intent.

We received 613 comments (588 from the research community and 25 from members of the general public) stating that the Department did not coordinate with the Secretary of Health and Human Services (HHS) in issuing the proposed regulations, as required by the Act. Section 15 of the Act directs that:

> [t]he Secretary shall consult and cooperate with other Federal departments, agencies, or instrumentalities concerned with the welfare of animals used for research, experimentation or exhibition, or administration of statutes regulating the transportation in commerce or handling in connection therewith of any animals when establishing standards pursuant to section 13 and in carrying out the purposes of this Act. The Secretary shall consult with the Secretary of Health and Human Services prior to issuance of regulations. (7 U.S.C. 2146(a)).

The Department did consult extensively with HHS. On numerous occasions before issuing the proposed regulations, we discussed the issues with HHS representatives and provided HHS with copies of each draft of our proposal for review and comment. HHS indicated its concurrence with the proposed regulations. In evaluating the comments received in response to the proposal and in preparing this revised rule, we have consulted extensively and on an ongoing basis with HHS. A representative from The National Institutes of Health was detailed to work with APHIS and to provide the HHS position on all issues affecting the research community that were raised by the commenters. We also convened a meeting with representatives of HHS to discuss and resolve outstanding differences between HHS and the Department. Through this give and take we achieved what we understand to be a mutually satisfactory resolution of many of our outstanding differences. We believe that this revised rule is reasonable and, based upon our ongoing communication with HHS, that it could be readily implemented in the research community.

We received 106 comments (105 from the research community and 1 from a member of the general public) stating that the regulations as proposed would be inconsistent with other federal regulations. We disagree with the import of this characterization. We believe that any remaining differences between Parts 1 and 2 of the Animal Welfare regulations, as revised, and those related regulations of other agencies, particularly those of HHS, are necessitated by requirements contained in the Act. As stated in the preceding paragraph, we have attempted to reconcile differences between HHS and the Department. Our regulations must, however, fulfill the mandate of Congress and must be authorized by the Act, as amended.

We received 1,004 comments (979 from the research community and 25 from members of the general public) objecting to the proposed regulations on the grounds that they would interfere with or impede research. The Department has remained especially sensitive throughout the rule-making process to this issue. Congress stated in the 1985 amendments that "[n]othing in [the] Act (i) except as provided in paragraph (7) of [subsection (a)] shall be construed as authorizing the Secretary to promulgate rules, regulations, or orders with regard to the design, outlines, or guidelines of actual research or experimentation by a research facility as determined by such facility; (ii) except as provided * * * shall be construed as authorizing the Secretary to promulgate rules, regulations, or orders with regard to the performance of actual research or experimentation by a research facility as determined by such research facility; * * *" (7 U.S.C. 2143(a)(6)(A) (i) and (ii)). Paragraph (7) of subsection (a) provides that the Secretary will require each research facility to show upon inspection and to report at least annually that it is in compliance with the Act and that professionally acceptable standards governing the care, treatment, and use of animals are being followed during research or experimentation. It also requires the research facilities to provide information and assurances concerning painful procedures, and an explanation for any deviation from the standards promulgated under section 13(a) of the Act (7 U.S.C. 2143(a)(7)). Nevertheless, the Act imposes new responsibilities upon research facilities, as well as others subject to the Act, which necessarily impact upon the internal workings of research facilities. There are some costs necessarily associated with changes of this kind. Regulated persons who must alter their internal procedures and structure and their lines of reporting and responsibility to accommodate the 1985 amendments to the Act may feel that the regulations impose an undue burden. We believe, however, that the burdens imposed on research facilities are statutorily required and are reasonable in order to effectuate the purposes of the Act and the 1985 amendments to the Act, and that they are the minimum necessary to accomplish those goals.

We received 315 comments (290 from the research community and 25 from members of the general public) stating that APHIS has failed to show a rational connection between the proposed rules and the agency record. We have been charged with the responsibility of administering and enforcing the Animal Welfare Act since it was enacted in 1966. Our experience has revealed areas

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in which more stringent regulations are necessary. The supplementary information contained in the March 31, 1987 proposed rule and in this revised rule highlight areas where additional regulatory efforts have proven necessary. These revised regulations provide mechanisms designed to prevent circumvention of the Act and the regulations and to assist the Department in its enforcement efforts. They are based either on the 1985 amendments to the Act or on the Department's experience in enforcing the regulations. We believe these revisions would better effectuate the intent of Congress to promote animal welfare.

We received 622 comments (507 from the research community and 25 from members of the general public) stating that the proposed regulations improperly enlist Institutional Animal Care and Use Committees and attending veterinarians as enforcement agents of the federal government, and 1 comment from a member of the research community in support of their use as Department agents. The duties of the Committee and the attending veterinarian at research facilities are more fully described in this supplementary information under the discussion of Subparts C and D, "Institutional Animal Care and Use Committee and Other Requirements for Research Facilities" and "Attending Veterinarian and Adequate Veterinary Care." We note that responsibility for compliance with the Act and the regulations and for providing necessary assurances has always rested with the institutions and with the legally responsible institutional officials. Many of their duties can most effectively be carried out through the Committee and the attending veterinarian acting as agents of the facility and its officials, since the Committee and attending veterinarian are usually in the best position to determine whether the research facility is in compliance. For this reason, the Act imposes many oversight and supervisory responsibilities on them. We believe that the reassignment of responsibilities to the research facility from the Committee and attending veterinarian in Subparts C and D of this revised rule clarifies our intent that institutions act through them while remaining ultimately responsible.

We received comments from 105 members of the general public opposing the use of animals for research altogether. We have made no changes based on these comments. It would be beyond our authority to ban the use of animals in research. Our regulations are authorized by the Act, and the Act specifically states that "the use *of* animals is instrumental in certain research and education for advancing knowledge of cures and treatment for diseases and injuries which afflict both humans and animals; * * *" (7 U.S.C. 2131(b)).

Seventy-four commenters (72 from the research community and 2 dealers) stated that the proposed regulations are poorly organized and written, and that clarification is needed. We believe that this supplementary information and the revised proposed rule that follows provides the necessary reorganization and clarification.

Two commenters from the research community stated that APHIS will be unable to enforce the regulations. We disagree with the commenters based upon the Department's enforcement record. Congress has entrusted the Department with enforcement of the Animal Welfare Act and with the promulgation and enforcement of regulations under the Act since the Act's enactment in 1966. We will continue our best efforts to meet this responsibility and to perform in accordance with the mandate of Congress.

*Subpart A—Licensing*

We received 295 comments (270 from the research community and 25 from members of the general public) generally endorsing the proposal regarding Subpart A.

*Section 2.1 Requirements and application*

Proposed § 2.1 sets forth who must obtain a license under the Animal Welfare regulations and provides the application procedure for obtaining a license. It details the information which an applicant must provide and where an applicant must file to become licensed. This section also provides the application fee and renewal application fee. (Annual license fees are provided in proposed § 2.8.) Exemptions from the requirement to be licensed are included in this section along with a provision for obtaining a voluntary license in very limited circumstances. Renewal procedures are provided and grounds for denial, suspension, or revocation of a license are included in this section as well. Grounds for denial of an initial license application are addressed in detail in proposed § 2.11.

Before addressing the comments received concerning proposed § 2.1, we note the following clarifications we are making in this revised rule. First, proposed § 2.1(a)(1) would require that:

> Any person, 18 years of age or older, operating or desiring to operate as a dealer, exhibitor, or operator of an auction sale except persons who are exempted from the licensing requirements under paragraph 3 of this subsection, must have a license.

We are concerned that this provision could be misconstrued as allowing a person under 18 years of age to operate as a dealer, exhibitor, or operator of an auction sale without having to obtain a license. We believe that most readers understand that persons must be at least 18 years of age to be eligible to obtain a license to operate as a dealer, exhibitor, or operator of an auction sale, and that a license is required to operate in those capacities. The intent underlying the minimum age requirement was stated in the supplementary information to the proposed rule. We have revised the final rule to reflect our intent more accurately.

Second, under § 2.5, as revised in this rule, licenses are valid and effective unless they are terminated, suspended, or revoked, or expire at the end of the 1-year term. The proposed rule provided that licenses would be valid and effective for 1 year, and did not distinguish between initial license applications and applications for additional 1-year terms. We have made conforming changes throughout Subpart A to differentiate between new license applications and license renewals. Accordingly, proposed § 2.1(a)(2) is revised to require an applicant for renewal of a license to indicate all premises, facilities, or sites where animals are kept or the licensee operates on the application for renewal. We are also replacing "termination date" with "expiration date," wherever it is used to mean the calendar end of the 1-year license term, as in § 2.1(e).

Section 2.1 of the current regulations provides that persons who are exempt from the licensing requirement under section 3 of the Act do not have to apply for a license to operate as a dealer, exhibitor, or operator of an auction sale where dogs or cats are sold affecting commerce. We proposed to revise § 2.1 by identifying those persons exempt from the licensing requirements under section 2 or section 3 of the Act.

We received 35 comments pertaining to § 2.1, as proposed. Four commenters from the general public stated that proposed § 2.1 would allow too many exemptions from the requirement to obtain a license. Section 2 of the Act (7 U.S.C. 2132(f)) defines the term "dealer" as:

> any person who, in commerce, for compensation or profit, delivers for transportation, or transports, except as a carrier, buys, or sells, or negotiates the purchase or sale of, (1) any dog or other animal whether alive or dead for research, teaching, exhibition, or use as a pet, or (2) any dog for hunting, security, or breeding purposes, except that this term does not include—(i) a retail pet store except such store which sells any animals to a research facility, an exhibitor, or a dealer; or (ii) any person who does not sell, or negotiate the purchase or sale of any wild animal, dog, or cat and who derives no more than $500 gross income from the sale of other animals during any calendar year;



The regulatory exemptions proposed are either statutorily mandated or are in accordance with the intent of the Act, which is to regulate the commercial use of animals, other than their use as food or fiber.

Twelve dealers stated that the proposed exemptions from the licensing requirement for retail pet stores and for persons who maintain three or fewer breeding female dogs or cats and who sell the offspring born and raised on their premises for pets or exhibition would be improper. The Act requires that dealers and exhibitors must be licensed, and specifically provides that "any retail pet store or other person who derives less than a substantial portion of his income (as determined by the Secretary) from the breeding and raising of dogs or cats on his own premises and sells any such dog or cat to a dealer or research facility shall not be required to obtain a license as a dealer or exhibitor under this Act." (7 U.S.C. 2133). As defined in the Act, the term "dealer" does not include retail pet stores, except those which sell any animals to a research facility, exhibitor, or a dealer (7 U.S.C. 2132(f)). Accordingly, the proposed exemptions are statutorily required and will continue to be included in the regulations.

We are making a change in proposed § 2.1(a)(3)(i) to delete mink from the listing of pet-type animals which retail pet stores can sell and still be exempt from the licensing requirement. This change is in accordance with the revised definition of "retail pet store" in the revised rule for Part 1— "Definition of Terms," published elsewhere in this issue. (*See* companion docket no. 88-013.)

We are also correcting proposed § 2.1(a)(3)(iii) to read "Any person who maintains a total of three (3) or fewer breeding female dogs and/or cats * * *." This section is intended to exempt the hobby breeders who derive less than a substantial portion of their income from the breeding and sale of dogs or cats, in accordance with section 3 of the Act (7 U.S.C. 2133). The correction would clarify that a person having a combined total of three or fewer breeding female dogs, or three or fewer breeding female cats, or three or fewer breeding female dogs and cats qualifies for exemption from the licensing requirement, not a person having three or fewer breeding female dogs and three or fewer breeding female cats.

We are similarly correcting proposed § 2.1(a)(3)(iv) to read "Any person who sells fewer than 25 dogs and/or cats per year * * *." This section is intended to exempt persons who derive less than a substantial portion of their income from the breeding and raising of dogs and cats, and we have determined that the sale of a combined total of fewer than 25 of these animals would qualify a person for this exemption. The correction clarifies that a person selling fewer than 25 dogs, or 25 cats, or 25 dogs and cats qualifies for exemption from the licensing requirement, not a person selling fewer than 25 dogs and fewer than 25 cats.

We are making an additional change in proposed § 2.1(a)(3)(iv) to include terms which were inadvertently omitted from the proposal. The words "teaching, or testing" are added between "research" and "purposes" in the revised rule to make clear that the exemption for sales of fewer than 25 dogs and/or cats applies to sales for research, teaching, and testing purposes, in accordance with the purposes of the Act.

Five commenters (2 dealers, 1 exhibitor, and 2 members of the general public) stated that an additional exemption from the requirement to obtain a license for federal, state, and local parks with free roaming herds of animals native to the area which utilize auctions as part of a herd size control program should be added to the regulations. The legislative history of the Act indicates that the term "dealers" as used in the Act is limited to private persons and entities and nonprofit or charitable institutions, and does not include federal agencies or political subdivisions of state or local governments. (*See* Conference Report No. 1848, at p. 9, August 11, 1966.) There is no authority under the Act to license federal, state, and local governments as dealers, and accordingly no exemptions for them have been provided.

One dealer commented that the licensing requirements should be less stringent and should allow more exemptions, such as for brokers and for sales through classified ads and publications. The Act includes brokers in the definition of "dealer" by referring to any person who "negotiates the purchase or sale" of any of the covered animals and we are statutorily required to license these persons. Furthermore, the Act does not provide an exemption from the licensing requirements for sales accomplished through classified ads and publications. These sales are "in commerce" and are subject to the Act and regulations. The medium through which a sale is accomplished is irrelevant so long as it is in commerce. We do not regulate classified ads or publications; however, we can and do use them to find persons who should be licensed in accordance with the regulations.

One commenter from the research community sought clarification of the licensing requirements applicable to research facilities selling animals. Research facilities acting as dealers are subject to the same regulations as any other dealer and must be licensed in accordance with § 2.1, unless they are a department, agency, or instrumentality of the United States, or of a state or local government, in which case they need not obtain a license.

Three dealers commented that the Department should require anyone selling animals at auction sales to obtain a license. We have found that many individuals sell a number of animals at auctions during the course of a year. We believe that the proposed exemptions are consistent with the Act and provide appropriate threshold points for the imposition of the requirement to obtain a license. Moreover, budgetary and personnel restrictions would prevent us from being able to regulate effectively all of these persons.

Similarly, we disagree with the 3 commenters from the general public who stated that the Department should require licensing of all persons who sell or trade animals at flea market operations. The legislative history of the Act makes clear that the licensing requirement was intended to regulate the commercial sale or use of animals as part of a business concern. Some animal sellers at flea markets sell animals as part of a commercial operation, but many others sell them for use as pets or for personal enjoyment. The proposed licensing requirements and exemptions will still require large volume or commercial sellers to obtain a license.

Three commenters from the research community stated that the Department should delete the requirement that persons who sell exotic or wild animals be licensed as dealers. Licensing of these persons is statutorily mandated (7 U.S.C. 2132(f)).

One research facility objected to the imposition of dealer licensing requirements on sellers of small

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quantities of wild animals since research facilities would not be able to purchase small quantities of non-domesticated species from an unlicensed source. The definition of "dealer" in the Act permits an exemption based on dollar amount of sales only for those persons who do not sell wild animals (or dogs or cats) and therefore persons who sell wild animals must be licensed, regardless of the number of animals they sell (7 U.S.C. 2132(f)(ii)). We require research facilities to purchase these animals from licensed sources, in accordance with the Act.

Proposed § 2.1(b) would eliminate voluntary licenses, except for persons who sell fewer than 25 dogs or cats per year for research or teaching purposes. This will prevent people from trying to circumvent certain state and local community laws concerning keeping dangerous animals. We received 2 comments from dealers objecting to the restricted grounds for issuance of voluntary licenses, and suggesting that people who buy only 1 or 2 animals as pets or for breeding purposes would have to buy their animals from a licensed dealer, possibly at higher prices. One commenter from the general public commended us for this provision. We believe the dealers' concern is misplaced. It is not the intent of the Act or of the Department to regulate the acquisition of private pets or animals for personal use and enjoyment

Broader use of voluntary licenses requires greater use of the Agency's limited resources and personnel, which could be utilized more effectively by focusing on animals used in commercial or research operations. The regulation for voluntary licenses remains as proposed, except that reference to the $10 application fee and a provision for annual license fees is included in paragraph (b) for clarification. Reference to the renewal fee for voluntary licenses is also included in § 2.1(e)(1) of the revised rule. Annual license fees are provided in § 2.6 of the regulations for Class "A," Class "B," and Class "C" licensees. However, the proposed regulations inadvertently did not require license fees for voluntary licensees, who, by definition, do not qualify for licensing under any of the Classes. Voluntary licensees operate most like Class "A" licensees, except that they are exempt from the licensing requirements. Accordingly, the annual license fee for a voluntary license would be that of a Class "A" licensee (breeder) under this revised rule.

Five commenters (4 exhibitors and 1 dealer) commented that we should eliminate the $10 application fee for license renewals required by proposed § 2.1(e) and 1 exhibitor suggested having a one-time application fee for the initial license application required by proposed § 2.1(d), instead of the annual $10 application fee. We believe that it is more equitable to charge licensees on a yearly basis to cover annual processing costs, since a one-time fee could overcharge some and undercharge others.

The $10 application fee is also required when a licensee applies for a change in the class of license from that issued to him or her, such as a change from a Class "A" to a Class "B" license. This is necessary because a change in class requires administrative processing that is similar to processing a new application or a renewal application. We have redesignated proposed paragraph (e) as (e)(1) in the revised rule. We have added a new paragraph (e)(2) to the revised rule and revised § 2.6(a) ("Annual licensee fees") to clarify this requirement.

We have revised § 2.1(e)(1) to require licensees to submit a completed application form with their $10 application fee. We believe that it is necessary specifically to require submittal of this form along with the fee since many licensees overlook it.

*Section 2.2 Acknowledgement of regulations and standards*

We are revising § 2.2 so that it applies to applications for license renewals, as well as to initial license applications. This change is necessary to conform with § 2.5, as revised in this rule, which provides that licenses are valid and effective if renewed, unless terminated, suspended, or revoked.

*Section 2.3 Demonstration of compliance with standards and regulations*

For the reasons outlined above under the discussion of § 2.1, we are revising proposed § 2.3 in this rule so that it includes applications for license renewals, as well as initial license applications. Accordingly, we have revised paragraph (a) to require that each applicant for a license or renewal of a license must demonstrate compliance with the regulations and standards in Parts 2 and 3 of Subchapter A. We have removed the words, "before a license will be issued" from the requirement because it applies to both initial licenses and license renewals. We have revised paragraph (b) to clarify that it only applies to initial license applications.

We are revising § 2.3(a) to require each applicant to make his or her animals, premises, facilities, vehicles, equipment, other premises, and records available for inspection by APHIS officials during business hours, and at other times mutually agreeable to the applicant and APHIS, rather than "and/or at other times" as proposed. We believe this revision is necessary to prevent licensees from avoiding inspections by being unable to agree to a time with APHIS officials.

We received three comments (2 from the general public and 1 from the research community) expressing support for this section as proposed. Two dealers commented that we should limit the number of opportunities an applicant has for inspection to demonstrate their compliance with the regulations and standards and 1 also commented that applicants should be required to pay the cost of re-inspection. (Demonstration of compliance is a prerequisite to issuance of a license.) We believe this suggestion has merit and that a limit on inspections should be incorporated in the regulations. This section is revised to impose a limit of three pre-licensing inspections. If the applicant is unable to pass inspection after 3 attempts he or she will forfeit the application fee, to help cover the administrative cost of processing their application and the cost of the inspections, and will be ineligible to reapply for a license for a period of 6 months following their last inspection. As is the case for the prior inspections, the applicant will be advised of deficiencies and the necessary corrective measures that must be taken to comply with the regulations and standards, and accordingly to pass inspection. We believe that allowing an applicant 3 opportunities to pass inspection is reasonable, since it would give the applicant notice of any deficiencies found by an inspector and a second chance to rectify any remaining deficiencies found after re-inspection. We also believe that if an applicant is unable to pass inspection after 3 attempts, 6 months provides sufficient time to enable him or her to take the necessary corrective measures which he or she has been unable to provide between the 3 failed inspections.

We are not incorporating the suggestion that licensees pay the cost of re-inspections. The initial application fees and annual fees are intended to help the federal government defray the cost of program operations. We believe that the fees we have assessed are reasonable and equitable for the nature of the operations being licensed, and have determined at this time that additional fees are not appropriate.



*Section 2.4 Non-interference with APHIS officials*

Under proposed § 2.11(a), APHIS would deny a license to any applicant who "(6) [h]as interfered with, threatened, abused (including verbal abuse), or harassed any [APHIS official] in the course of carrying out his or her duties." As explained below under the subheading, "§ 2.11 Denial of license," and in the supplementary information to the proposal of March 31, 1987, at 52 FR 10300, we explain that we have determined the need to include in the regulations a prohibition against interference with APHIS officials. Also, as explained in greater detail below under that subheading, § 2.11 applies to denial of initial license applications only in this revised rule, and not to renewals. Based on our experience in enforcement efforts, we have determined that it is necessary to require licensees to comply with the prohibition against interference and harassment of APHIS personnel, as well as new applicants. We are therefore removing paragraph (a)(6) from § 2.11 in the final rule and are including its provisions as § 2.4 in the revised rule so that it is applicable to both initial license applicants and licensees.

*Section 2.5 Duration of license and termination of license*

We did not receive any comments regarding this section as proposed. We are revising § 2.5, however, to clarify that licenses are valid and effective if renewed each year and have not been terminated, suspended, or revoked. Similarly, we are revising proposed paragraph (b) to refer to an application for license renewal. These amendments are necessary to avoid any misconception that every license automatically terminates at the end of its 1-year term and that each year an applicant must follow the procedure applicable to obtaining an initial license. For this reason, and as previously stated, we are replacing the word "termination" with "expiration" in § 2.5 and all of Subpart A wherever it refers to the calendar end of the 1-year license term.

We are making one correction to § 2.5(b) to specify that a licensee will be notified by "certified" mail, rather than first class mail, of the expiration date of a license, to ensure that all licensees have notice that they must renew their license or it will automatically terminate because it has expired. Except for nonsubstantive changes made for clarification, the remaining provisions of this section remain as initially proposed.

*Section 2.6 Annual license fees*

We received a number of comments addressing the proposal to increase license fees. Thirty-seven dealers expressed opposition to yearly license fees in general. Charging license fees is statutorily mandated. Section 23 of the Act directs the Secretary to charge and collect reasonable license fees "adjusted on an equitable basis taking into consideration the type and nature of the operations to be licensed * * *" (7 U.S.C. 2153).

Nine commenters from the general public and 6 dealers indicated their general support for the increased license fees. One member of the general public stated that the increases were too low. We received 48 comments (32 dealers, 12 exhibitors, and 4 members of the general public) stating that some fee increase is justified, but that the increases we proposed are too high or too drastic a change from the current fee tables. We received 298 comments (273 from the research community and 25 from members of the general public) stating concern that the fee increases could discourage some small dealers from becoming licensed. We have reconsidered the proposed fee structure in light of those comments and are revising them downward as follows: (For ease of comparison, the proposed fees are indicated in parentheses, and the revised fees are indicated without parentheses.)

TABLE 1.—DEALERS, BROKERS, AND OPERATORS OF AN AUCTION SALE—CLASS "A" AND "B" LICENSES

| Over | But not over | (Fee) | Fee |
|---|---|---|---|
| $0 | $500 | $(50) | $30 |
| 500 | 2,000 | (100) | 60 |
| 2,000 | 10,000 | (200) | 120 |
| 10,000 | 25,000 | (400) | 225 |
| 25,000 | 50,000 | (600) | 350 |
| 50,000 | 100,000 | (800) | 475 |
| 100,000 | | (1,000) | 750 |

TABLE 2.— EXHIBITORS—CLASS "C" LICENSE

| Number of animals | (Fee) | Fee |
|---|---|---|
| 1 to 5 | $(50) | $30 |
| 6 to 25 | (125) | 75 |
| 26 to 50 | (250) | 175 |
| 51 to 500 | (375) | 225 |
| 501 and up | (500) | 300 |

We believe these fees are a reasonable increase over the existing fees, and that they are equitably adjusted for the different classes of licensees and for the ranges in dollar volume of business derived from transactions involving animals.

We have removed proposed paragraph (b)(4) from § 2.6 in the revised rule because it could be construed as implying that a dealer can operate without a license. This is not the case. Only persons exempt from the licensing requirements may operate without a license, as provided in § 2.1(a)(3). Proposed paragraphs (b) (5) and (6) are redesignated as paragraphs (b) (4) and (5) in this revised rule.

We are revising paragraphs (b) (1) through (5) to clarify that paragraphs (b) (1) through (3) are applicable to license renewals, paragraph (b)(4) is applicable to initial licenses, and paragraph (b)(5) is applicable to both initial licenses and license renewals.

We received 8 comments (4 from exhibitors, 3 from members of the general public, and 1 from a dealer) regarding the division of fees between the lessor and lessee of animals, as provided by proposed § 2.6(b), paragraphs (1), (2), and (5), stating that either the lessor or lessee should be responsible for including the revenue from a leased animal in determining their annual fee, but not both. We disagree with these comments since both the lessor and lessee derive income from the leased animals. There are two income streams resulting from use of a leased animal, and both business operations are required to pay a fee which is equitable for the nature and type of operation it is. Also, both the lessor and lessee are licensed, and thereby impose costs on the Department to ensure compliance with the regulations and standards. We believe it is proper to require both the lessor and lessee to include their respective income from an animal in determining their annual fee.

We also received 4 comments from the research community and 2 from members of the public suggesting the need to code animals leased to research facilities as a tracing mechanism to ensure that the animals are not used for more than one major operative procedure from which they are allowed to recover. We consider this requirement to be unwarranted since, to the best of our knowledge, animals are rarely, if ever, leased for research purposes. We are not making any changes in § 2.6 based upon this comment.

We are making one change in paragraph (d) for clarification. Paragraph (d) provides that if a person meets the licensing requirements for more than one class of license, he must pay the fee for his predominant type of

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business, as determined by the Secretary. The clarification will add that in addition to the fee paid, the class of license that person must obtain will be determined by his or her predominant type of business, since a person cannot have more than one license in accordance with § 2.1(c). The words "obtain a license and" are added following "he shall be required to." We are revising the rule to refer to both masculine and feminine genders. Accordingly, "he" is replaced with "he or she" in § 2.6(d) and throughout the revised rule. Similarly, "his" is replaced with "his or her" wherever it appears.

*Section 2.7 Annual report by licensees*

We are revising proposed § 2.7 to clarify that it applies to license renewals only, and not to initial license applications.

Proposed § 2.7(a) would provide as follows:

> Each year, within 30 days prior to the termination date of his/her license, a licensee shall file with the Area Veterinarian in Charge an application for license and annual report upon a form which will be furnished to him upon request to the Area Veterinarian in Charge. When the requirements of §§ 2.1, 2.2, 2.3, and 2.6 have been met, the license will be issued subject to the exceptions in §§ 2.5, 2.10, and 2.11.

We are revising proposed § 2.7(a) to refer only to license renewals and the requirement that licensees submit an annual report in order to renew their license. In this revised rule, we refer to the expiration date of the license and have replaced "license" with "license renewal." We are also removing the last sentence of proposed § 2.7(a) because it refers to requirements applicable to issuance of an initial license, and these are set forth in § 2.1(d).

Three dealers and 1 exhibitor commented that clarification is needed concerning requirements to include statements about young animals in their annual reports and in other reports. The requirement to identify all dogs and cats when obtained or when weaned is set forth in proposed § 2.50. All animals must be identified in the licensee's records at his or her facility when born or obtained from outside the premises, in accordance with proposed §§ 2.75 and 2.77. Proposed § 2.7(d) would require exhibitors (Class "C" licensees) to include in their annual report the number of animals owned, held, or exhibited by the licensee either during the previous year or at the time of signing the annual report, whichever is greater. The figure used must include all animals regardless of age, and is the basis for determining the Class "C" license fee. We do not believe this requirement needs further elaboration in the regulations.

We received 8 comments (4 exhibitors, 3 dealers, 1 from the research community) objecting to the requirement provided in proposed § 2.7(e) for licensees to have the attending veterinarian certify in the licensee's annual report that the attending veterinarian understands the regulations and standards under the Act, and that he or she has visited the premises and carried out the responsibilities indicated in the regulations and in the written program of adequate veterinary care. The commenters stated that the requirement to have a written program of veterinary care as provided in proposed § 2.40 is sufficient. We agree that the attending veterinarian should not be required to sign the licensee's annual report in light of the requirements in proposed § 2.40 that licensees maintain a written program of adequate veterinary care which is subject to inspection at the licensee's facility and is sent to the Area Veterinarian in Charge each year. We have therefore deleted this requirement from the revised rule.

*Section 2.8 Notification of change of name, address, control, or ownership of business*

We have made one correction in this section. The phrase "or by any additional sites" should read "or of any additional sites * * *." We received no comments addressing this section and have made no other substantive changes.

*Section 2.10 Licensees whose licenses have been suspended or revoked*

Two dealers commented in opposition to our proposal to make license revocations permanent. We were urged to allow the facts and circumstances surrounding the offense leading to revocation to be taken into consideration in determining the appropriate amount of time a former licensee must wait before he or she could apply for a new license, instead of being permanently ineligible. We disagree with these comments. Whether a license should be suspended or revoked is determined after notice and a hearing. Testimony as to the facts and circumstances surrounding the offense would be brought out at the hearing. In such an administrative proceeding conducted in accordance with the Department's Rules of Practice, revocation would be ordered for serious offenses which are determined to warrant this sanction, as compared to suspension, which could be ordered for a stated period of time for less serious offenses. We believe that the commenters' concerns that the facts and circumstances be considered would be amply addressed in the required hearing. Accordingly, revocation of a license will remain a permanent sanction. As discussed below under the next subheading, we are adding to § 2.10(a) the provision from proposed § 2.11(b) stating that any person whose license has been suspended may reapply for a license after the period of suspension is ended. We are revising it, however, to provide that any person whose license has been suspended may apply to the Area Veterinarian in Charge, in writing, for reinstatement of his or her license, rather than having to reapply for a new license. No other substantive changes are made in this section.

*Section 2.11 Denial of license*

The comments we received addressing proposed § 2.11 deal principally with existing licenses, convincing us of the need to separate the provisions concerning denial of initial license applications from provisions concerning suspended or revoked licenses. We are discussing those comments in this discussion of "§ 2.11, Denial of license," since readers who are more interested in the substance of proposed § 2.11 than that of § 2.10, and who may have commented specifically with regard to § 2.11, may look to this heading for our response instead of the heading, "§ 2.10 Licensees whose licenses have been suspended or revoked."

Many of the comments we received concerning proposed § 2.11 addressed due process issues which would be raised if we suspended or revoked a license. As should be clear from the supplementary information, paragraph (a) and most of paragraph (b) of this section are concerned with denial of initial license applications, and do not have any bearing on suspension or revocation of existing licenses. We have renamed this section "Denial of initial license applications" to avoid any further confusion.

Paragraphs (b) and (c) refer to both suspended licenses and denials of license applications. For purposes of clarity, we are removing the reference to suspended licenses from § 2.11. Accordingly, paragraphs (b) and (c) will address denial of initial license applications exclusively. The content of proposed § 2.11(b) with regard to suspended licenses has been added to § 2.10(a) in the revised rule, and that of § 2.11(c) is already contained in § 2.10(a) so there is no need for further revision.



We received several comments objecting to the proposed reasons for which we would deny a license application and to this section in general. Thirty-three commenters from the research community stated that a plea of nolo contendere (no contest) under state or local cruelty to animals laws within 1 year of application for a license should not be an automatic basis for denial of a license, since a licensee may elect to enter this plea rather than a plea of not guilty, to avoid the time and expense of a full hearing on the charge. In light of this comment, we are revising the rule to provide that if no penalty is imposed as a result of a plea of nolo contendere, the applicant may reapply immediately without having to wait a year. We believe this will accommodate those persons who exercise their rights to enter this plea, while allowing the Administrator to deny a license to persons involved in violations of the cruelty to animals laws.

We received 366 comments (321 from the research community, 11 from dealers, 7 from exhibitors, and 27 from members of the general public) opposing subparagraph (6) as a basis for denial of a license. A similar prohibition against interfering with, threatening, abusing, or harassing any APHIS official in the course of carrying out his or her duties is provided in § 2.4 in the revised rule. Accordingly, we have added § 2.4 to § 2.11(a)(1) in the revised rule so that it remains a basis for denial of a license. As proposed, subparagraph (6) would provide that a license will not be issued to any applicant who "[h]as interfered with, threatened, abused (including verbal abuse), or harassed any Veterinary Services inspector in the course of carrying out his/her duties." The comments stated that this is too ambiguous and subjective a basis for denying or revoking a license. We are retaining this basis for denial of a license because we have determined a genuine need for it, based upon our experience in enforcing the regulations. First, adequate safeguards against subjective determinations are contained in § 2.11(b) as proposed, which provides that an applicant whose application is denied may request a hearing in accordance with the applicable rules of practice. At a hearing, the Department would have to support its denial of an application in accordance with the rules of practice and would have to show that it is reasonable and not arbitrary and capricious. We believe this is sufficient to avoid subjectivity or arbitrariness from entering into the determination. Second, § 2.11 applies to denial of an application for a license, not suspension or revocation of an issued license. Suspension and revocation procedures include notice and hearing and must satisfy the requirements of due process of law.

We received 318 comments (282 from the research community, 10 dealers, and 26 members of the general public) objecting to proposed paragraph (b) of § 2.11 which provides that the denial of a license would remain in effect until a final legal decision is made following a hearing, on the basis that this could deprive a person of their livelihood for years before they receive the benefit of due process of law.

As explained above, this section applies to initial license applications, not to renewals of existing licenses. Suspension and revocation of an issued license would be in accordance with the requirements of the applicable Departmental rules of practice. Except as previously noted, paragraph (b) remains as initially proposed.

We received 303 comments (278 from the research community and 25 from members of the general public) objecting to proposed § 2.11(c), which provides that a legal entity in which a person whose license application has been [suspended or] denied has a substantial interest, financial or otherwise, will not be licensed within 1 year of the denial [or until completion of the suspension period]. [The bracketed provisions refer to suspended licenses and are contained in § 2.10(a) in the final rule].

One commenter was concerned that the regulation as proposed could prevent a facility from being licensed for a year simply because one of its shareholders had been denied a license. We do not believe this concern is well-founded, as the regulation is limited to legal entities in which a person whose application has been denied has a "substantial" interest. This may or may not apply to a shareholder, depending upon that person's interest. We do not agree with the commenter that the proposed restriction should apply only if that person has a "substantial interest, financial or otherwise, and responsibility for the operation or management of the applicant." Licenses can be issued at the lowest level of legal entity, that is, to individuals. Any person who was engaged in activity serious enough to warrant denial of a license application should not be allowed to continue in operation under the umbrella of another legal entity in which they can exercise *any* measure of control and can influence operations. This is what the proposed regulation is intended to prevent. A similar provision has been included in the regulations since 1970 without problems or objections, and it remains in this revised rule. Except for deletion of references to suspension of licenses which are covered by § 2.10, paragraph (c) remains as initially proposed.

We received 7 comments from the general public stating that the proposed regulations concerning denial and revocation of licenses are too lenient on facilities and on individuals and should be more stringent. We have attempted to strengthen the regulations in areas we believe will enhance our enforcement efforts. We believe that the regulations as proposed and as revised in this rule provide sufficient bases upon which to deny, suspend, or revoke licenses, and will assist us in handling noncompliance and other problematic situations we have encountered in regulating licensees.

Except for the changes described above, Subpart A—Licensing remains in the revised rule as originally proposed.

*Subpart B—Registration*

Proposed § 2.28, "Annual report of research facilities," is redesignated § 2.31 in this revised rule. Comments received addressing proposed § 2.28 are discussed under the heading, "Subpart C—Institutional Animal Care and Use Committee and Other Requirements for Research Facilities," subheading, "Proposed § 2.28 Annual report of research facilities."

*Section 2.25 Requirements and procedures*

We received 299 comments (274 from the research community and 25 from members of the general public) stating that § 2.25 as proposed is generally acceptable. Commenters who addressed the proposed registration requirements and procedures were concerned with the requirement that registrants update their registration form every 3 years. As explained in the supplementary information to the proposed rule, this requirement is new to the Animal Welfare regulations. We received 122 comments from the research community and 1 from a member of the general public stating that renewal of registration should be required every 5 years to coincide with the U.S. Public Health Service current requirement for the submission of assurance statements under the Health Research Extension Act of 1985. Five commenters from the research community stated more generally that the proposed requirements should coincide with those of the PHS. The proposed 3-year time period corresponds with other federal recordkeeping requirements, most

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notably the USDA records retention and disposition policy, making it the most practical interval for us to administer. The PHS requirement for submission of assurances *up to* every 3 years is not inconsistent with the 3-year period we proposed. We have consulted with representatives from HHS specifically on this point, and they have indicated their willingness to abide by the 3-year registration renewal period as proposed. Accordingly, we are retaining the requirement for renewal of registration every 3 years.

We received one comment from a member of the research community requesting clarification regarding the requirement for registration by federal research facilities. We received another comment from a member of the research community requesting clarification of proposed § 2.25, generally. In response to the first comment, we are clarifying the section to state that federal research facilities are not required to register with the Secretary under the regulations. In response to the second comment, we note that except for provisions requiring research facilities to update their registration every 3 years, § 2.25 as proposed is substantially the same as it has been since 1967. We have experienced few problems in applying its requirements since that time, and we do not believe clarification is necessary.

Except for the clarification regarding federal research facilities, no changes are made in § 2.25 in the revised rule.

*Section 2.26 Acknowledgement of regulations and standards*

Proposed § 2.26 provides as follows:

> A copy of the regulations and standards in this Subchapter will be supplied with each registration form. The registrant shall acknowledge receipt of such regulations and standards and agree to comply with them by signing a form provided for such purpose by Veterinary Services. Such form shall be filed with the Area Veterinarian in Charge.

We received 299 comments (274 from the research community and 25 from members of the general public) stating that this section as proposed is generally acceptable. One commenter stated that it should be deleted from the regulations. The required acknowledgement is necessary to ensure that registrants have knowledge of the regulations and standards with which they must comply. A similar provision is contained in Subpart A—"Licensing" for the same reason. We believe that the acknowledgement should remain in the regulations.

One commenter requested general publication and distribution of the Animal Welfare Manual and applicable Veterinary Services Memoranda. These are internal USDA, APHIS documents intended to assist APHIS inspectors. They do not contain "rules of general applicability" and accordingly, there is no need to publish them in the **Federal Register** as part of the regulations.

The proposed section is substantially the same as current § 2.26. It remains as proposed.

*Section 2.27 Notification of change of operation*

Proposed paragraph (a) of § 2.27 requires that:

> [a] registrant shall notify the Area Veterinarian in Charge by certified mail of any change in the name or address, or any change in the operations or business, which would affect its status as a research facility, exhibitor, carrier, or intermediate handler, within 10 days after making such change.

We received 422 comments (397 from the research community and 25 from members of the general public) objecting that proposed § 2.27(a) is too broad. We received 298 comments (270 from the research community and 25 from members of the general public) expressing concern that the supplementary information is inconsistent with the proposed regulation because it is broader than the proposed regulation. The supplementary information accompanying Subpart B "Registration" states that notification is required "of any change in address, operations or management." The commenters expressed concern that the preamble language would encompass personnel or management changes which do not affect the information required by the registration form. Another commenter was concerned that the preamble implied that failure to report minor management or operations changes would be a violation of the regulations, and that clarification to avoid difficulties in interpreting this requirement is necessary. We are in agreement with these comments and are adopting the clarification suggested by a commenter, to read as follows:

> A registrant shall notify the Area Veterinarian in Charge by certified mail of any change in the name, address, or ownership, or other change in operations affecting its status as a research facility, exhibitor, carrier, or intermediate handler. * * *.

This revision should clarify that notification is required for operational changes which affect this registrant's status as a registered entity, in addition to name and address changes. This requirement will assist us in keeping accurate records on current registrants, and avoid wasting Agency resources when a registrant has gone out of business or has changed its operations.

We received 302 comments (277 from the research community and 25 from members of the general public) stating that notification should be required within 30 days instead of the 10 days proposed. The 10-day period is in the current regulations and has been in the regulations since they were first issued. It has caused no problems or difficulties and is a sufficient amount of time within which affected facilities can report. We are therefore retaining it in the regulations.

Except for the change in paragraph (a) set forth above, § 2.27 remains in the revised rule as initially proposed.

*Subpart C—Institutional Animal Care and Use Committee and Other Requirements for Research Facilities*

Introduction

Proposed Subpart C elicited numerous and varied comments addressing the proper role, duties, and authority of Institutional Animal Care and Use Committees ("Committees") and research institutions in promoting animal welfare. Many of the commenters expressed particular concern that the proposed regulations placed responsibilities on the Committee and on the attending veterinarian (Subpart D) that they believed should lie with the institution. There was also concern that APHIS was improperly placing the Committee and the attending veterinarian in the position of whistleblower and enforcer of the Animal Welfare regulations.

Research facilities have been required, through their animal care committee and/or attending veterinarian, to provide guidelines and consultation to their research personnel regarding the use of pain relieving drugs since the regulations were revised in accordance with the 1970 amendments to the Act. They have also been required to have a program of adequate veterinary care established and maintained under the supervision and guidance of a veterinarian. The 1985 amendments to the Act placed special significance on these institutional personnel as a means of assuring animal welfare, and represented a significant departure from the then-existing Act. The clear message from Congress was that additional regulatory efforts are needed to enhance animal welfare, to minimize animal pain and distress in research, and to restrict the multiple use of animals in major operative experiments. For the first time, Congress legislated that all research facilities must have an "Institutional Animal Committee" of a statutorily prescribed



composition with inspection and reporting duties (7 U.S.C. 2143(b)). Similar committees are already in place at research facilities receiving grant monies and awards from the U.S. Public Health Service under the Health Research Extension Act of 1985, Pub. L. 99–158, for research, training, and biological testing activities involving animals. Congress also mandated in the 1985 amendments to the Act that research facilities provide training to scientists, animal technicians, and other personnel involved with animal care and treatment. The Act retained the requirement that the facilities provide assurances they are adhering to the standards promulgated under the Act, and requires that they provide an explanation for any deviation from those standards. The 1985 amendments to the Act continue the Secretary's authority "to promulgate such rules, regulations, and orders as he may deem necessary in order to effectuate the purposes of this Act." (7 U.S.C. 2151).

The legislative history of the 1985 amendments to the Act demonstrates that at least one significant proponent in the Senate was of the view that "[v]eterinary inspectors from the U.S. Department of Agriculture cannot be present on a daily basis. However, their enforcement capability can and should be enhanced by the Institutional Animal Committee * * *." Senate Majority Leader Dole's statement, *Congressional Record*, December 18, 1985, at p. S17943.

As part of our response to the mandate from Congress, we proposed three new sections, §§ 2.30, 2.35, and 2.40, to implement the 1985 amendments to the Act. Section 2.30 sets forth responsibilities and requirements specifically imposed upon research facilities. Section 2.35 details the responsibilities and duties of the Institutional Animal Care and Use Committee which each research facility must establish. Section 2.40 details the requirement imposed upon all registrants and licensees to provide and maintain a program of adequate veterinary care and the requirements imposed upon attending veterinarians. This section consolidates the veterinary care regulations currently contained in each subpart of Part 3 and imposes additional requirements based upon the 1985 amendments to the Act.

Reorganization of §§ 2.30 and 2.35

Many comments we received were critical of the allocation of certain duties and responsibilities to the Committee and attending veterinarian rather than to the facility. Most of the comments we received were from members of the research community, the group most affected by the regulations proposed in Subpart C. Unless otherwise indicated, the comments addressed below were received from members of the research community.

Sixty-one commenters stated that too much authority would be given to the attending veterinarian and the Committee under the proposed regulations. We also received 400 comments (375 from the research community and 25 from members of the general public) objecting that the proposed regulations would place too much responsibility on the attending veterinarian and the Committee. Particular duties and areas of responsibility proposed in the regulations were singled out by the commenters as being improper and inappropriate.

The statutory language and the legislative history of the 1985 amendments to the Act support our proposal to impose various duties and responsibilities on the Committee and on the attending veterinarian. We agree, however, with the commenters that the ultimate responsibility for animal welfare at research facilities rests with the institutions themselves. We have carefully considered the comments we received, and have determined to reorganize and restructure portions of Subpart C in this revised rule to place responsibility on the research facilities, except where it is expressly reserved by the Act to the Committee. Similarly, we have revised portions of Subpart D concerning the requirement for a program of adequate veterinary care at research facilities to reflect that many of its aspects are the responsibility of the research facility, unless otherwise required by the Act.

Those areas of responsibility that are reassigned to the research facilities in the revised rule are described below under subject headings for ease of reference. We address the comments we received concerning the substance of the proposed provisions, as opposed to the allocation of responsibility for them, following this discussion.

The following chart provides the derivation of the paragraphs contained in § 2.30 in the final rule, as an additional aid to the reader. The paragraphs listed under the heading, "Revised rule" were derived from the corresponding paragraphs listed under the heading, "Proposed rule."

DERIVATION TABLE

| Revised rule | Proposed rule |
|---|---|
| § 2.30(a) | § 2.30(a) |
| § 2.30(b) | § 2.30(b) |
| § 2.30(c) | § 2.30(c) |
| § 2.30(d) | § 2.30(d) |
| § 2.30(e)(1) | § 2.35(b)(3)(v)(A), (B) |
| § 2.30(e)(2) | §§ 2.30(e)(1) and 2.35(b)(3)(vi)(A) |
| § 2.30(e)(3) | §§ 2.30(e)(2) and 2.35(b)(3)(iv) |
| § 2.30(e)(4) | §§ 2.35(b)(3)(iv), (vi)(F) |
| § 2.30(e)(5) | § 2.35(b)(3)(vi)(B) |
| § 2.30(e)(6) | §§ 2.30(e)(3) and 2.35(b)(3)(vi)(C) |
| § 2.30(e)(7) | §§ 2.30(e)(3) and 2.35(b)(3)(vi)(D) |
| § 2.30(e)(8) | § 2.30(b)(3)(vi)(D) |
| § 2.30(e)(9) | §§ 2.30(e)(4) and 2.35(b)(3)(vi)(E) |
| § 2.30(e)(10) | § 2.30(e) |
| § 2.30(f) | §§ 2.30(f) and 2.35(b)(3)(vii)(A)–(G) |
| § 2.30(g) | §§ 2.30(g) and 2.35(c) |
| § 2.30(h) | § 2.35(d) |
| § 2.30(i) | § 2.35(f) |
| § 2.30(j) | § 2.35(b)(2)(iii) |
| § 2.30(k) | § 2.35(e) |
| § 2.30(l) | § 2.35(b)(3)(i) |
| § 2.30(m) | §§ 2.35(b)(2)(i), (iv) |

1. *Training.* Section 13(d) of the Act requires the research facility to train personnel involved with animal care and treatment (7 U.S.C. 2143(d)). We had proposed in § 2.35(f) that each research facility provide training for personnel in animal use, care, and treatment and that this training be provided through the Committee and the attending veterinarian. The Committee would review the training and designate those personnel requiring additional training, and the training program would include instruction in certain prescribed areas as well as in other areas the Committee may feel is necessary. We received 487 comments (462 from the research community and 25 from members of the general public) stating that these training requirements should not be included in § 2.35 since they are the facility's responsibility, not the Committee's. We agree that training is ultimately the responsibility of the facility. The Act does not reserve the training requirement to the Committee. Accordingly, in the revised rule we have removed training from § 2.35 and have included it in § 2.30(i) as a requirement for research facilities.

2. *Procedures for personnel to report violations.* Thirty-two commenters from the research community objected to the requirement contained in proposed § 2.35(b)(2)(iii) that the Committee establish procedures for personnel to report violations of the regulations or standards, including problems, deviations, or deficiencies with animal housing, care, or use. As proposed, the

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Committee would also review and investigate reports, if warranted, and file a report. The commenters stated that the duty to establish these procedures should be imposed upon the research institution, and not the Committee. We agree that this requirement is not imposed upon the Committee by the Act and we therefore are including it in § 2.30(j) of the revised rule as the facility's responsibility. We continue to believe, however, that the Committee is the appropriate body to review and investigate any reports received because it is established to assess animal care and use and because it has inspection authority under the Act and the regulations. We are retaining that allocation of authority as proposed. The report prepared as a result of the Committee's review would be filed at the same central location as those prepared as part of the Committee's semiannual inspections.

3. *Response to Agency requests for information.* We received two comments objecting to proposed § 2.35(b)(3)(i) which would require the Committee to respond to requests from the Deputy Administrator [Administrator] to make research protocols [ACUPs] involving animals and assurance statements available to the Agency. The commenters stated that this should be the responsibility of the research facility, not the Committee. We agree that the research facility is ultimately accountable for responding to official Department requests, and we are including responsibility for doing so in § 2.30(i) of the revised rule as an additional requirement for research facilities. As explained in the revised rule for Part 1 published elsewhere in this issue, research protocol is changed to ACUP and Deputy Administrator is changed to Administrator. (*See* companion docket no. 88-013.)

4. *Use of pain relieving drugs.* Similarly, although we did not receive any comments regarding proposed § 2.35(b)(3)(iv), which requires the Committee to ensure that pain relieving drugs are used whenever an animal is involved in a painful procedure, the ultimate responsibility for this assurance lies with the facility and we are therefore including this requirement in § 2.30(e) in the revised rule.

5. *Painful procedures.* Ninety-four commenters from the research community objected to Committee responsibility for requiring certain assurances and conduct when painful procedures will be performed, as proposed in § 2.35(b)(3)(v) through (vii). Paragraph (v) of proposed § 2.35(b)(3) provides that the Committee shall require written assurances from the principal investigator that alternative procedures were considered for a procedure likely to cause pain or distress, that there are no other suitable procedures, and that the experiment is not unnecessarily duplicative. Paragraph (vi) of proposed § 2.35(b)(3) provides that the Committee must require that certain conditions are followed in any practice which could be expected to cause pain to animals. Paragraph (vii) of proposed § 2.35(b)(3) would require the Committee to assure that no animal is used in more than one major operative experiment from which it is allowed to recover, except in certain circumstances. Again, research facilities are ultimately responsible for these assurances and for compliance with the requirements set forth in § 2.35(b)(3)(v) through (vii) as part of its operations. Because the Act does not specifically impose these duties on the Committee, we are placing them in paragraphs (e) and (f) of § 2.30 in the revised rule, as additional requirements for research facilities.

6. *Exceptions.* We did not receive any comments specifically addressing proposed § 2.35(c), which provides that exceptions to compliance with the Animal Welfare regulations and standards shall be made by the Committee only when necessary for the research design and they are specified in the protocol [ACUP]. A similar provision is contained in proposed § 2.30(g) with regard to painful procedures and major operative experiments from which an animal is allowed to recover. Under both sections, the principal investigator would be required to file a report with the Committee explaining any areas of noncompliance. A copy of the report must be kept on file by the facility and made available for Agency inspection or to officials of granting agencies. These provisions are set out in paragraphs (f) and (g) of § 2.30 in the revised rule, as the research facility is ultimately responsible for any exceptions to the Act and regulations, although exceptions must be approved by the Committee.

7. *Written procedures for exercise for dogs and for the psychological well-being of nonhuman primates.* We received 301 comments (276 from the research community and 25 from members of the general public) stating that the responsibility for carrying out the requirements of proposed § 2.35(d) should be imposed on the research facilities, and not the Committee. Thirty-five commenters similarly stated that the responsibility should be imposed on the research facility, which can then delegate authority to the Committee to carry out the requirements.

Proposed § 2.35(d) provides as follows:

> The Committee shall establish, in consultation with the attending veterinarian, written procedures and systems for the exercise of dogs and for the psychological well-being of primates in accordance with the regulations and standards, and a record system indicating that such a procedure or system is being carried out.

Again, the Committee is not required by the Act to establish these procedures, although it is required to inspect for compliance with the Act. Therefore, we are including the substance of proposed § 2.35(d) in § 2.30(h) as a requirement for research facilities in the revised rule.

8. *Federal research facilities.* The requirements contained in proposed § 2.35(e) "Federal research facilities," have also been moved to § 2.30 in the revised rule since they are a responsibility of a research facility, albeit a federal research facility, and not the Committee.

9. *Proposed* § 2.35(g) "Annual report of research facility" requires the Committee Chairman to sign an assurance statement on the Annual Report (VS Form 18-23) certifying that the Committee has carried out the responsibilities and requirements of § 2.35, that the facility is in compliance with the Animal Welfare standards, that the Committee has required a detailed explanation to be provided by the principal investigator when pain relieving drugs are withheld, that all explanations are attached to the annual report, and that the Committee has required that all other exceptions to the standards be required by research protocol [ACUP] and approved by the Committee. We received 49 comments stating that the responsible institutional official with authority to bind the facility should be required to sign the statement, not the Committee Chairman, since the provision of an adequate animal care and use program is the facility's responsibility. Twenty-nine commenters cited the assurance required in § 2.28(b)(9),"Annual report of research facilities," and objected that the additional assurance of the Committee Chairman required in proposed § 2.35(g) is redundant and outside the authority of the Act.

As discussed under the heading "Subpart B—Registration," in this final rule, only the responsible institutional official with authority to bind the facility will be required to sign the annual report. That official may in turn require assurances from the Committee of the kind proposed in § 2.35(g), however, we are not requiring them in the facility's annual report The substance of the assurances that were required of the Committee Chairman in proposed § 2.35(g) will be deleted from that section and required instead in § 2.35(b)(2)(D) of the revised rule, as part of the Committee's report.



Subpart C of the revised rule has been rewritten to reflect that the areas of responsibility described above have been reassigned and are part of the requirements imposed upon research facilities. Comments we received addressing the substance of the proposed provisions of Subpart C, as opposed to comments addressing responsibility for those areas, are discussed below in the order in which those provisions appear in the revised rule. We believe that discussing the comments in this manner will help guide the reader through the substance of the revised rule.

General

We received 301 comments (276 from the research community and 25 from members of the general public) stating that this subpart should include standards which apply only to research facilities. Subpart C as proposed does apply only to research facilities and we do not find any ambiguity in either the heading or in the requirements themselves to cause the commenters to believe otherwise. We received 28 comments from the research community suggesting that we revise or delete the portions of Subpart C which address the formation and regulation of Institutional Animal Care and Use Committees. We partially agree with this comment and, as explained above, have revised §§ 2.30 and 2.35 which comprise Subpart C to reallocate authority and duties between the institution and the Committee so that the Committee will have only those specifically imposed upon it by the Act.

Seventy commenters suggested that the term "protocol" which appears in this section be changed to conform with the U. S. Public Health Service terminology which refers to "animal use procedure." As stated in the supplementary information accompanying the revised rule for Part 1—"Definition of Terms," published elsewhere in this issue (*see* companion docket no. 88-013), under the heading, "Protocol," the term "protocol" is changed to "animal care and use procedure" and is referred to in this document as the ACUP. The comments we received refer to "research protocols" as that term was used in the proposed rule. The term "research protocol" is used in this document when it is necessary to understand the substance of the comment. In those instances, ACUP appears in brackets following the term. In all other instances, we refer to the animal care and use procedure (ACUP).

Certain of the requirements pertaining to research facilities contained in §§ 2.30, 2.35, and 2.40 require that written policies and procedures be established. These include a written policy for any practice which might reasonably be expected to cause pain to an animal (proposed § 2.30(e)), written procedures and systems for the exercise of dogs and for the psychological well-being of nonhuman primates (proposed § 2.35(d)), and a written program of adequate veterinary care (proposed § 2.40(c)). (The requirement for a written program of adequate veterinary care applies to dealers and licensees, as well as to research facilities.) Research facilities that utilize written standard operating procedures (SOP) may satisfy these requirements by including the written policies and procedures in their SOPs.

*Section 2.30 Additional requirements for research facilities*

Section 2.30(a). Thirty commenters suggested that paragraph (a) of § 2.30 should specifically reference research facilities using or holding animals for experimentation, in addition to those using or holding animals for "research, testing, or teaching" as proposed. We did not propose to include separately "experimentation" since it is generally considered to be covered by the term "research." Section 2 of the Act defines "research facility" as one which, among other things, uses live animals in "research, tests, or experiments * * *" (7 U.S.C. 2132). Since the Act enumerates these functions, we agree that the regulations should as well. Section 2.30(a) is therefore revised by adding "experimentation" following "research."

We received 131 comments objecting to the requirement contained in proposed § 2.30(a)(2) that research facilities ensure that adequate veterinary care, including the appropriate use of drugs or euthanasia, is provided for at all times. We disagree with these commenters. We believe this requirement is necessary in order to fulfill the requirement of the Act that adequate veterinary care be provided at all times by research facilities (7 U.S.C. 2143(a)(3)(A). Section 2.30(a)(2) remains in the revised rule as initially proposed.

The requirements for adequate veterinary care are provided in Subpart D-"Attending Veterinarian and Adequate Veterinary Care." We are also adding a new paragraph (a)(3) to § 2.30 to state that research facilities are required to establish and maintain a written program of adequate veterinary care, in accordance with § 2.40. Proposed paragraph (a)(3) is redesignated (a)(4) in the revised rule.

*Section 2.30(b).* We received 322 comments (297 from the research community and 25 from members of the general public) stating that the Institutional Animal Care and Use Committee which § 2.30(b) requires to be established and maintained should be renamed the "Institutional Animal Committee" to be consistent with the Act. For the reasons explained under the heading, "Committee," in the supplementary information to the revised rule for Part 1—"Definition of Terms," published elsewhere in this issue of the Federal Register (*see* companion docket no. 88-013), we have determined that "Institutional Animal Care and Use Committee" is more appropriate since it is descriptive of the areas of concern to the Committee and is consistent with the terminology used by the Public Health Service, National Institutes of Health, which utilizes similar committees. No change is made to the name of the Committee in the revised rule.

*Section 2.30(c).* As proposed, § 2.30(c) would require research facilities to "provide the Committee and the attending veterinarian with the authority to enter all animal areas at any reasonable time in order to carry out their responsibilities." We received 535 comments (510 from the research community and 25 from members of the general public) objecting to this requirement on the grounds that it exceeds our statutory authority, could interfere with research, and could lead to unauthorized release of proprietary information. We believe these concerns are unwarranted.

First, statutory authority exists: the Act directs the Secretary to promulgate standards with respect to animals in research facilities, to include requirements for animal care, treatment, and practices to ensure pain and distress are minimized, for adequate veterinary care with appropriate use of drugs, for consideration of alternatives to any painful procedure, for consultation with a doctor of veterinary medicine in the planning of painful procedures, and for ensuring that an animal is not used in more than one major operative experiment from which it is allowed to recover except if scientifically necessary (7 U.S.C. 2143(a)(3)). The Act specifically authorizes the Committee, of which the

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attending veterinarian is a member, to conduct inspections of research facilities, to review practices involving animals and the condition of animals, and to ensure compliance with the provisions of the Act to minimize pain and distress to animals (7 U.S.C. 2143(b)(3)). Section 21 of the Act authorizes the Secretary to "promulgate such rules, regulations, and orders as he may deem necessary in order to effectuate the purposes of [the] Act." (7 U.S.C. 2151).

Second, concerns that inspections at any time could interfere with ongoing research and with research results by disturbing the animals or upsetting the controlled environment could be allayed by providing guidelines for conducting inspections in the facility's written policies and procedures. In this manner, facility personnel, including Committee members and the attending veterinarian, will be informed of any necessary and reasonable restrictions on the timing of inspections before any are performed under these regulations. The establishment of guidelines would help reassure research personnel that the inspection regulations are implemented in good faith. We caution, however, that they must not be used as a means of preventing inspections during research, surgery, or other procedures.

Third, regarding release of trade secret or proprietary information, the scientific or proprietary portion of ongoing research is not the subject of inspection. Moreover, even if trade secrets or proprietary information were apparent on physical inspection, Section 27 of the Act makes it unlawful for any member of the Committee to release any confidential information of the research facility, including trade secrets, and provides sanctions for violations (7 U.S.C. 2157). This statutory deterrent should alleviate concerns about the unauthorized release of proprietary information.

It is necessary that the Committee be assured free access to all animal areas to perform its responsibilities and duties properly. Access to all animal areas at any reasonable time to conduct inspections as the Committee deems appropriate must be assured in order to effectuate the purposes of the Act and as a means of promoting compliance with the Act and the regulations between Committee inspections. Reports are not a substitute for first-hand observation of animal care to ensure compliance.

We are revising § 2.30(c) in the revised rule to require that each research facility must also provide the attending veterinarian with the authority to enter all animal areas at any time, to ensure compliance with the facility's program of adequate care. As explained in greater detail below under the heading, "Subpart D—Attending Veterinarian and Adequate Veterinary Care," this access is necessary to enable attending veterinarians to perform their duties as intended by the Act. Section 2.30(c) is revised to reflect this change.

*Section 2.30(d).* Proposed § 2.30(d) would require Committee approval only for research protocols [ACUPs] falling under Categories 3 and 4 of the "Categories of Animal Use in Research and Teaching" in proposed § 2.35(b)(3)(ii), which categorize procedures according to the degree of animal pain or distress involved. Procedures that involve "significant but unavoidable pain or distress to the animals" are in Category 3. Procedures that involve "the inflicting of severe pain or distress or chronic, unrelieved pain or distress, or death" are in Category 4. Procedures that involve no pain or minor pain are in Category 1 and 2, respectively.

Nineteen commenters (16 from the general public and 3 from the research community) suggested that the Committee review and approve all research protocols [ACUPs] instead of only those classified in the third and fourth categories of pain. One commenter suggested that the Categories of Animal Use could result in researchers classifying their procedures in Categories 1 and 2 to avoid closer scrutiny.

We initially proposed Committee review of protocols [ACUPs] involving more significant amounts of pain or distress as a means of fulfilling the intent of Congress to minimize animal pain and distress. The Committee would approve of those ACUPs only if they were shown to be justified and scientifically necessary and if alternatives were considered and determined to be unsatisfactory. Closer scrutiny of procedures falling in Categories 3 and 4 was considered appropriate to focus attention on these concerns.

Upon reconsideration of the utility of the "Categories of Animal Use" and the difficulty of designing or selecting a practical and appropriate categorization system, we have decided to adopt the suggestion of these commenters and require approval of all ACUPs by the Committee. This practice is currently required by the U.S. Public Health Service (PHS) and therefore all research facilities receiving grants or awards under the Health Research Extension Act of 1985, Pub. L. 99-158, are already doing so. Accordingly, this requirement should not be a burdensome addition to the requirements already imposed upon research facilities.

For these reasons and as more fully explained below in the discussion of comments addressing proposed § 2.35, we are eliminating the "Categories of Animal Use in Research and Teaching" from the regulations.

We understand that the requirement for Committee review and approval of all ACUPs will impose a greater burden on the Committee's human resources and we have therefore provided a mechanism to enable the Committee to accomplish its tasks. As is more fully explained below in the discussion of § 2.35, approval by a quorum of the Committee will be required for all ACUPs. However, the Committee can assign individual members to review designated ACUPs and to present them to the Committee for approval or disapproval. In this manner, the Committee should not become overburdened or a bottleneck in the research approval process.

We received 596 comments (571 from the research community and 25 from members of the general public) stating that the requirement in proposed § 2.30(d) that the Committee review research protocols [ACUPs] exceeds our statutory authority. We received 382 comments (357 from the research community and 25 from members of the general public) stating that the requirement for protocol [ACUP] review by the Committee should be deleted. The Act provides ample authority for requiring Committee review of "protocols" [ACUPs] and that Committee review is necessary to fulfill the intent of Congress.

Section 13 of the Act (7 U.S.C. 2143) directs the Secretary to promulgate standards to govern the humane handling, care, treatment, and transportation of animals by research facilities and other regulated entities. In addition to the requirements for exercise of dogs and for a physical environment adequate to promote the psychological well-being of nonhuman primates, the Secretary is directed to include requirements for animal care, treatment, and practices in experimental procedures to minimize animal pain and distress; for requiring the principal investigator to consider alternatives to any painful procedure; for requiring consultation with a doctor of veterinary medicine; for use of pain relieving drugs; for pre- and post-surgical care by laboratory workers; and for ensuring that no animal is used in more than one major operative experiment from which it is allowed to recover except in certain circumstances. The Act states that



exception to these standards may be made "only when specified by research protocol and that any such exception shall be detailed and explained in a report outlined under paragraph (7) and filed with the Institutional Animal Committee." (7 U.S.G. 2143(a)(3)(E)).

Paragraph (7) of Section 13 of the Act (7 U.S.C. 2143(a)(7)) directs the Secretary to require each research facility to show upon inspection and through reports that it is complying with the Act and that professionally acceptable standards of care are being followed. In order to do so, each facility must provide information on painful procedures used, assurances that alternatives were considered, assurances that the facility is adhering to the regulations promulgated under section 13 of the Act, and an explanation for any deviation from those regulations (7 U.S.C. 2143(a)(7)).

The Secretary is directed by the Act to require the establishment of a Committee at every research facility, in order to assess animal care, treatment, and practices (7 U.S.C. 2143(b)(1)). The Committee is statutorily directed to:

> Inspect at least semiannually all animal study areas and animal facilities of such research facility and review as part of the inspection—(A) practices involving pain to animals, and (B) the condition of animals to ensure compliance with the provisions of [the] Act to minimize pain and distress to animals. (7 U.S.C. 2143(b)(3)).

The Committee is also directed to file an inspection certification report which includes:

> Reports of any violation of the standards promulgated, or assurances required, by the Secretary, including any deficient conditions of animal care or treatment, any deviations of research practices from originally approved proposals that adversely affect animal welfare, any notification to the facility regarding such conditions, and any corrections made thereafter; * * * (7 U.S.C. 2143(b)(4)).

In order for research facilities to provide the assurances required, they must be cognizant of all procedures at the facility involving animals and they must make a determination that the procedures are in compliance with the Act and the regulations. This can best be accomplished through the Committee. Research facilities will necessarily rely upon Committee inspection reports in order for them to provide the assurances required in their annual report in good faith. The responsible institutional official with authority to bind the facility will need to rely upon the Committee's reports in certifying compliance with the Act and the regulations, as required in § 2.31 of the final rule. Without this mechanism, the assurances and certifications might be successfully challenged as not based on actual knowledge.

We have determined that it is necessary that the Committee review all ACUPs, referred to as "research protocols" in our proposed regulations, in order to fulfill the intent of the Act and to effectuate the express purposes of the Act.

We received 120 comments stating that review of protocols [ACUPs] should be limited to conform with the U.S. Public Health Service policy which requires Committee review of only those components of research protocols related to animal care and use. We believe that much of the resistance to the proposed requirement that the Committee review "research protocols" arises out of a misconception that the Committee would be involved in evaluating the design, outlines, guidelines, and scientific merit of proposed research. As stated in the supplementary information accompanying the revised rule for Part 1—"Definition of Terms," published elsewhere in this issue (see companion docket no. 88-013), this is not the case. The Committee will be involved with reviewing how the research will treat or affect an animal, the condition of an animal, and the circumstances under which an animal will be maintained. It will not be involved in evaluating the design, outlines, guidelines, and scientific merit of proposed research. The requirement that the Committee review what is now termed the ACUP remains in this revised rule as proposed, except that the Committee will review all ACUPs, and not just those involving significant or severe degrees of pain or distress.

Two commenters (1 from the general public and 1 from the research community) wanted Committee meetings and ACUP review to be open to the public. There is nothing in the Act which either requires or prohibits conducting Committee business in public. Local sunshine laws may require state agencies to conduct open meetings. Otherwise, the decision whether to do so is left to the research facilities. It will not be addressed in the regulations.

In considering the provisions of proposed § 2.30(d), 2 commenters stated that regulations should be formulated to protect research facilities' trade secrets. The 1985 amendments to the Act added section 27, which declares it unlawful for any member of a Committee to release any confidential information of the research facility, including any which concerns or relates to trade secrets (7 U.S.C. 2157). Section 27 also specifies the punishment for a violation and clearly provides that any injured person has a private cause of action. It is our belief that this statute and other laws regarding trade secrets provide sufficient protection and that the promulgation of regulations is not needed.

Two commenters stated that, under proposed § 2.30(d), the Committee should review and approve not just painful procedures, but also the species of animals to be used for proposed research, the number to be used, the type of housing to be used, any experimental methods to be employed, and the training of investigators. As stated above, we proposed the requirement for review of the procedures classified in Categories 3 and 4 because the stated intent of Congress in amending the Act was to minimize animal pain and distress, multiple major surgeries, and unnecessary duplication of animal research. The Committee is required and authorized to assess animal care, treatment, and practices in experimental research. There is no indication in the Act or in the the legislative history of the Act that Congress intended the Committee to consider the species and number of animals used, the housing to be used, experimental methods, or training of investigators, other than as they affect animal care, treatment, and procedures. Requirements for training are imposed by the Act upon the facilities (7 U.S.C. 2143(d)). All exceptions to the regulations and standards must be explained and justified by the ACUP and approved by the Committee. Accordingly, we do not agree that additional reference to Committee review of these areas is needed.

Except for the change explained above to require review of all ACUPs by the Committee, § 2.30(d) remains in the revised rule as originally proposed.

*Section 2.30(e).* As described above, areas of responsibility have been reassigned from the Committee to the research facility and accordingly are added to § 2.30. Comments concerning the substance of those provisions will now be addressed in the order in which they appear in the revised rule, beginning with § 2.30(e). We will discuss the material under subject headings. The section designations used in the proposed rule have been changed and are not used. However, we have included the former section designations as they appeared in the proposed rule so that the reader can cross-reference the proposal.

*Painful procedures.* In enacting the 1985 amendments to the Act, Congress

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was particularly and expressly concerned with minimizing animal pain and distress. Toward this end, proposed § 2.30(e) would require research facilities to establish a written policy applicable to any practice which may be painful to an animal. The policy must require various measures to be taken when painful procedures are performed and must be designed to ensure that these measures are adequately followed. Proposed § 2.35 contains similar requirements although it places the responsibility for ensuring compliance with those measures on the Committee. As fully explained above under the heading, "Reorganization of §§ 2.30 and 2.35," we are in agreement with the comments which suggested that responsibility for these matters belongs to the research facilities and not the Committee, and we have revised § 2.30(e) to reflect this reallocation of responsibility.

Section 2.30(e) applies to all painful procedures and to those that might reasonably be expected to be painful. The use of pain relieving drugs, anesthetics, analgesics, and tranquilizers does not mean that a procedure is not painful. This section applies to all procedures that involve pain or that might be expected to involve pain, whether or not the pain is relieved.

Each paragraph of § 2.30(e) is discussed individually below in numbered sections because the section is rather lengthy. Each discussion begins with the requirement of the revised rule and then explains its derivation from the proposal. Comments concerning the different provisions are then addressed. We believe this approach will assist the reader in understanding the requirements and rationale of this revised rule.

1. Section 2.30(e)(1) of the revised rule directs the research facility to require written assurance from the principal investigator to the Committee that alternative procedures were considered but were not suitable, and that the experiment does not unnecessarily duplicate previous experiments. The assurance must be given before a painful procedure can be undertaken. The assurance must also indicate what information sources were consulted, what alternative procedures were considered, and what techniques are planned to minimize pain and discomfort to the animals. This requirement was originally imposed upon the Committee in proposed § 2.35(b)(3)(v) and on the research facility in proposed § 2.30(d).

We received a number of comments concerning this assurance. We received 402 comments (377 from the research community and 25 from members of the general public) objecting to the assurance required of the principal investigator as either duplicative or not authorized by the statute. We have, by reorganizing §§ 2.30 and 2.35, eliminated duplicative assurances. In the revised rule, the assurance is only required of the research facility. The assurance is not only authorized by the statute, but is in fact mandated by it. Section 13(a)(3)(B) of the Act requires that the principal investigator consider alternatives to painful procedures and section 13(a)(7)(B)(i) of the Act requires research facilities to provide an assurance demonstrating that this has been done (7 U.S.C. 2143(a)). The assurance is therefore necessary to enable the research facility to comply with the Act.

We received 138 comments (136 from members of the general public and 2 from the research community) expressing their belief that there is a need for greater proof that alternative methods were sought or considered and that the experiment is not unnecessarily duplicative. One member of the general public commented that the requirement for an assurance that a painful procedure is not unnecessarily duplicative needs clarification.

Our consultation with HHS included consideration of this provision. Representatives from HHS were concerned that the phrase "unnecessarily duplicat[ive]" could be misconstrued. They pointed out that intentional replication of research is often an essential component of research, either for validation of the findings of others or to establish an in-house model of research that was developed elsewhere. They also pointed out that section 13(e) of the Act requires the Secretary to establish an information service at the National Agricultural Library to provide information which "could prevent unintended duplication of animal experimentation * * *" (7 U.S.C. 2143(e)). Section 1(b)(3) of the Act, however, includes a finding of the Congress that "measures which eliminate or minimize the unnecessary duplication of experiments on animals can result in more productive use of Federal funds; * * *" (7 U.S.C. 2131(b)(3)). Deliberate duplication of research can be deemed necessary if approved by the Committee. We do not agree that additional clarification of the regulation is needed.

Eight commenters suggested rewording the assurance required in proposed § 2.35(b)(3)(v)(B) from "[T]he assurance is to indicate what information sources were consulted, * * *" to "[t]he assurance is to indicate to the satisfaction of the Committee * * *." For the following reasons, we do not agree that this change is necessary. The requirements of § 2.30, including the requirement that the Committee approve the ACUP, must be satisfied before a painful procedure can commence. Sections 2.30(d) and (e) of the final rule require the principal investigator to provide a written statement to the Committee stating that alternative procedures were considered and that the procedure is not unnecessarily duplicative, as part of the Committee's ACUP review and approval process. The ACUP would not be approved by the Committee unless it is satisfied with the assurance. Moreover, it is the responsibility of the research facility to require this assurance and they in turn must certify that they have in fact done so as part of their annual report. These provisions taken together should be sufficient to prevent unnecessary duplication of research.

2. Section 2.30(e)(2) of the revised rule provides that the research facility must require the principal investigator to consult with the attending veterinarian in the planning of a painful procedure, and that the principal investigator must consult with the attending veterinarian during the procedure under certain circumstances. The attending veterinarian must be allowed to observe the procedure at any time to ensure compliance with the regulations. In proposed § 2.35(b)(3)(vi)(A), the Committee was directed to require the principal investigator to consult with the attending veterinarian. In proposed § 2.30(e)(1) the research facility was required to establish a written policy ensuring that this consultation is conducted.

We received 148 comments stating that the phrase "and during the procedure" should be deleted from proposed § 2.30(e)(1). The commenters expressed concern that consultation during the conduct of an approved procedure would be prohibitively costly and would place the attending veterinarian in the position of policing the institution for compliance with the Animal Welfare regulations. We had intended that the attending veterinarian must be readily available during the course of a painful procedure to consult in the event of special, unanticipated, or unusual situations, and have therefore rephrased the requirement in the revised rule to make clear our intent. We also believe that the attending veterinarian should be allowed to make random checks of procedures to assure that the regulations and standards are being followed. We have found that on occasion the attending veterinarian has become aware of a noncompliance situation in a classroom or laboratory and has been prevented from remedying it. We have also learned of instances where the attending veterinarian has been prevented from entering an animal area once a procedure has begun. To ensure that these situations do not occur, and that the attending veterinarian is not obstructed in performing his or her duties, the attending veterinarian must have the authority to conduct random oversight inspections of procedures in progress. We have clarified § 2.30(e)(2) in the revised rule to reflect that the attending veterinarian must be available for consultation during a painful procedure as well as during ACUP planning and development. It also requires that the research facility ensure that the attending veterinarian is allowed access to all animal and research areas to observe the procedure at any time during the course of the procedure, in order to fulfill the requirements of paragraph (e)(2).



3. Section 2.30(e)(3) of the revised rule requires research facilities to require the use of pain relieving drugs, anesthetics, analgesics, and tranquilizers to minimize pain unless they are withheld in accordance with the provisions of § 2.30(e)(4), and that they be administered in accordance with the directions and recommendations of the attending veterinarian and in accordance with the accepted or established use of the drugs. Proposed § 2.35(b)(3)(iv) would have required the Committee to ensure that pain relieving drugs are used in any painful procedure unless an exemption is approved by the Committee and the attending veterinarian. Proposed § 2.30(e)(2) would have required the research facility to establish a written policy ensuring the proper use of pain relieving drugs. For the reasons stated above under the heading, "Reorganization of §§ 2.30 and 2.35," in this revised rule the research facility, not the Committee, is responsible for requiring that pain relieving drugs are used unless withholding them is scientifically necessary, fully explained and justified in the ACUP, and approved by the attending veterinarian and the Committee, in accordance with § 2.30(e)(4).

One commenter objected in general to the requirement that pain relieving drugs be used in any procedure that would reasonably be expected to cause pain or distress in a human subject. The commenter stated that this is not always consistent with current veterinary practice. We believe that the exemption provision in § 2.30(e)(4) adequately addresses those instances when use of pain relieving drugs is not consistent with current veterinary practice, and that the presumption should remain in favor of providing pain relieving drugs, in order to carry out the purposes of the 1985 amendments to the Act.

4. Section 2.30(e)(4) of the revised rule provides that research facilities must require that pain relieving drugs, anesthetics, analgesics, and tranquilizers be reduced in amount or withheld only if scientifically necesssary, fully explained in the ACUP, and approved by the attending veterinarian and the Committee. The drugs can then be reduced in amount or withheld only for as long as necessary, as specified in the ACUP. Proposed § 2.30(e)(2) would require each research facility to establish a written policy providing for the proper use of pain relieving drugs. Proposed § 2.35(b)(3)(iv) would place responsibility for ensuring the proper use of pain relieving drugs on the Committee and would provide that pain relieving drugs could only be minimized or withheld if fully explained and justified in the research protocol [ACUP] and agreed to by the Committee and the attending veterinarian. Proposed § 2.35(b)(3)(vi)(F) would place specific responsibility on the Committee for prohibiting the withholding of pain relieving drugs except when scientifically necessary and approved by the Committee and the attending veterinarian.

We received 138 comments (136 from members of the general public and 2 from the research community) stating that stronger regulations requiring pain relieving drug use are necessary. We disagree that stronger regulations are needed. Responsibility for requiring proper use of pain relieving drugs is placed on the research facility in this revised rule in response to the comments suggesting that the facility and not the Committee is ultimately responsible for this assurance. The responsible institutional official will be required to certify in the annual report that the research facility has complied with the regulations concerning use of pain relieving drugs. Accordingly, we believe that additional regulations are not necessary.

One commenter objected to the authority given to the attending veterinarian to overrule in effect the Committee's decision with regard to the grant or denial of an exemption from the requirement to use pain relieving drugs, since the Act only requires consultation. The Act requires that pain and distress be minimized or eliminated. We believe that the attending veterinarian, by virtue of his or her training, duties, and responsibility, is qualified to make this assessment on behalf of the animals. It is the responsibility of the principal investigator to convince the Committee and the attending veterinarian that scientific necessity justifies withholding drugs. If the Committee is convinced of the scientific necessity, it too can attempt to convince the attending veterinarian. We believe that full concurrence by the Committee and the attending veterinarian is necessary in this area, due to the stated intent of Congress.

5. Section 2.30(e)(5) of the final rule directs research facilities to require that the attending veterinarian provide training of laboratory personnel in the proper use of pain relieving drugs so as to minimize pain and distress to animals. Proposed § 2.35(b)(3)(vi)(B) would have required the Committee to require that the principal investigator provide for the proper use of pain relieving drugs in accordance with established or accepted veterinary procedures, and provide for training of laboratory personnel to carry out those procedures. We did not receive any comments addressing the substance of the requirement as proposed. However, as part of the reassignment of responsibilities and the reorganization of §§ 2.30 and 2.35, responsibility for training of laboratory personnel in those procedures is placed on the research facility in the revised rule.

We also believe that the attending veterinarian is in the best position and is most qualified to provide training of laboratory personnel in the proper use of pain relieving drugs because of his or her expertise in medicine and in established or accepted veterinary procedures. Accordingly, while research facilities are ultimately responsible for ensuring that this training is provided, we believe that it is most appropriately carried out through the attending veterinarian.

6. Section 2.30(e)(6) of the revised rule directs research facilities to require that all pre-procedural, procedural, and post-procedural care be provided by laboratory workers or surgical personnel, in accordance with the attending veterinarian's instructions and established veterinary medical and nursing procedures. It also directs research facilities to require that this care and the qualifications of those personnel be evaluated and approved by the attending veterinarian. Proposed

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§ 2.30(e)(3) would have required each research facility to establish a written policy ensuring all pre-surgical, surgical, and post-surgical care by laboratory workers is in accordance with established veterinary medical and nursing procedures, and ensuring that the care, surgical rooms, and qualifications of surgical personnel have been evaluated and approved by the attending veterinarian. Proposed § 2.35(b)(3)(vi)(C) would have required the Committee to require that pre-surgical and post-surgical care be provided by laboratory workers, in accordance with the instructions of the attending veterinarian and established veterinary medical and nursing procedures. In the revised rule, this responsibility is placed on the research facility because, as discussed under the heading, "Reorganization of §§ 2.30 and 2.35," the facility is ultimately responsible for proper care.

Also, because the facility is responsible for the acts of its employees, it is ultimately responsible for ensuring their qualifications. Evaluation of the qualifications of personnel is carried out through the attending veterinarian because he or she is most qualified to evaluate those qualifications.

In the revised rule, the requirements imposed on the research facilities encompass pre-procedural, procedural, and post-procedural care, and are not limited to surgical procedures. This revision is necessary because painful procedures, as defined in the revised rule for Part 1 (*see* companion docket no. 88-013), published elsewhere in this issue, include any procedure that would reasonably be expected to cause more than slight or momentary pain or distress in a human being to which that procedure was applied. Therefore, practices or procedures that might reasonably be expected to be painful procedures, are not limited to surgical procedures. The Act directs the Secretary to promulgate requirements "for animal care, treatment, and practices in experimental procedures to ensure that animal pain and distress are minimized, including adequate veterinary care * * *" (7 U.S.C. 2143(a)(3)(A)). All procedures must be covered by the required program of adequate veterinary care in accordance with the Act. Accordingly, it is necessary to direct that research facilities require that personnel rendering pre-procedural, procedural, and post-procedural care perform in accordance with the instructions of the attending veterinarian, and that the care and the qualifications of personnel be evaluated and approved by the attending veterinarian, in order to ensure adequate veterinary care and to effectuate the mandate of the Act.

Six commenters stated that the word "veterinary" preceding "medical and nursing procedures" should be deleted from proposed § 2.35(b)(3)(vi)(C). We believe that it is more precise to specify veterinary medical and nursing procedures when we are referring to care and procedures involving animals. Therefore, the word "veterinary" is retained in § 2.30(e)(6) in the revised rule.

7. Section 2.30(e)(7) of the revised rule provides that research facilities must require that all survival surgeries be conducted only in facilities intended for that purpose, that they be operated and maintained under aseptic conditions, and that surgical rooms be evaluated and approved by the attending veterinarian. Proposed § 2.30(e)(3) would have required each research facility to establish a written policy ensuring, among other things, that surgical rooms be evaluated and approved by the attending veterinarian. Proposed § 2.35(b)(3)(vi)(D) would have required the Committee to require that all aseptic survival surgeries be conducted in facilities intended for that purpose, that such facilities be operated and maintained under aseptic conditions, and that any surgery be performed or directly supervised by trained, experienced personnel. This responsibility has been placed on the research facility in the revised rule since the facility is ultimately responsible for the proper conduct of surgeries.

We received 12 comments suggesting that we restrict the requirements for "all aseptic survival surgeries" to non-rodent species. The regulations do not apply to laboratory bred rats and mice and therefore no such restriction is necessary.

We also received 387 comments (362 from the research community and 25 from members of the general public) objecting to the requirement that all aseptic survival surgeries be conducted in facilities intended for that purpose as too restrictive. One commenter suggested that we distinguish between major and minor surgical procedures. We disagree with these comments. The suggested major/minor distinction would likely lead to disputes over what should be considered major and what minor. By its terms, the requirements provided in § 2.30(e) are limited to painful procedures. We believe that this is the appropriate distinction upon which to base the requirements contained in paragraph (e)(7). We are therefore retaining the requirements stated above for all survival surgeries which are painful procedures.

8. Section 2.30(e)(8) of the revised rule provides that research facilities must require that any surgery be performed or directly supervised by trained, experienced personnel. Proposed § 2.35(b)(3)(vi)(D) would have required the Committee to require that all aseptic survival surgeries be performed or directly supervised by trained, experienced personnel. For the reasons provided under the heading, "Reorganization of §§ 2.30 and 2.35," and because responsibility for the proper conduct of surgical procedures ultimately belongs to the facility, this responsibility is placed on the research facility in the revised rule.

9. Section 2.30(e)(9) of the revised rule requires research facilities to prohibit the use of paralytic drugs without anesthesia. Proposed § 2.30(e)(4) would require each research facility to establish a written policy prohibiting the use of paralytic drugs without anesthesia and proposed § 2.35(b)(3)(vi)(E) would require the Committee to do so as well. For the reasons provided under the heading, "Reorganization of §§ 2.30 and 2.35," this responsibility is placed on the research facility in the revised rule, since it is ultimately responsible for rendering proper care.

Thirty-one commenters stated that "paralytic drug" should be defined in the regulations. We agree and are including a definition of "paralytic drug" in revised Part 1—"Definition of Terms," published elsewhere in this issue of the **Federal Register** (*See* companion docket no. 88-013.)

One commenter suggested strengthening the proposed regulations by stating the level of surgical anesthesia that should be required in order to use a paralytic drug. We believe that this is a matter that should be left to the research facility's program for providing adequate veterinary care. Also, consultation with the attending veterinarian should include matters such as the proper level of surgical anesthesia.

10. Section 2.30(e)(10) of the revised rule requires research facilities to establish a written policy to ensure compliance with the provisions of §§ 2.30(e) (1) though (9). Proposed § 2.30(e) would have required research facilities to establish a written policy limited to ensuring the various aspects of veterinary care and procedures provided in proposed § 2.30(e). Due to the reassignment of responsibilities in Subpart C, the written policy must be extended to cover additional areas of



animal care and treatment. For this reason, the requirement to establish a written policy is revised to cover the provisions of paragraphs (e) (1) through (9).

We received 123 comments stating that establishing a written policy for the veterinary consultation required by proposed § 2.30(e)(1) (§ 2.30(e)(2) in the revised rule) is unnecessary. Since facilities are responsible for requiring this consultation and for maintaining a program of adequate veterinary care, and must certify that the required care is being provided in accordance with the Animal Welfare regulations and standards, it is necessary that each research facility have a written policy so that the rules all personnel must follow are clear. The written policy must be provided to all principal investigators so that they can comply with its provisions. Distribution of the policy will ensure that all personnel have knowledge of the required consultations and procedures for minimizing and reducing animal pain, and can be held responsible by facilities for compliance with it. A written policy will also reduce any confusion over what is required before a painful procedure can be performed, and will standardize procedures within a research facility. Without a written policy the research facility would not be able to adequately monitor compliance by its personnel and could not assure that the requirements of the law were being followed. We have retained the requirement that a written policy be established requiring veterinary consultation and the other provisions of § 2.30(e) in this revised rule.

*Section 2.30(f) Multiple major operative experiments.* Section 2.30(f)(1) of the revised rule states that research facilities using or holding animals for research, testing, or teaching must establish and follow written procedures which assure that no animal is used in more than one major operative experiment from which it is allowed to recover except under the circumstances provided in the regulation. Proposed § 2.30(f) would have required research facilities to establish procedures which assure that no animal is used in more than one major operative experiment from which it is allowed to recover except as provided in proposed § 2.35. Proposed § 2.35(b)(3)(vii) would have required the Committee to assure that no animal is so used except in certain circumstances provided in proposed § 2.35(b)(3)(vii) (A) through (G) of the section. Because the research facility is ultimately responsible for assuring the proper use of animals, the requirements to assure that no animal is used in more than one major operative experiment from which it is allowed to recover except in certain circumstances and to establish procedures which assure this are placed on the facility. We are requiring, in this revised rule, that the procedures be in writing so that all personnel will have knowledge of them.

We received 39 comments objecting to the limitation on major operative experiments using the same animal. The commenters stated that this would interfere with research involving extensive behavior training or other research.

We understand that this requirement may interfere with some research which involves animals used in multiple surgeries which are unrelated, or which are not part of the same procedure, or which do not fall under any of the exceptions provided in the regulations. This is precisely what the Act intended. Section 13(a)(2)(D) of the Act requires the Secretary to promulgate standards including requirements that "no animal is used in more than one major operative experiment from which it is allowed to recover except in cases of—(i) scientific necessity; or (ii) other special circumstances as determined by the Secretary; * * *" (7 U.S.C. § 2143(a)(2)(D)). The regulations prevent multiple use of animals only when there is no scientific necessity or other special circumstances justifying it. The regulations include a mechanism for obtaining permission from the Secretary if special circumstances exist which are not included in the regulations. We believe that this regulation will not interfere with the justified use of an animal in multiple surgeries.

Four commenters from the general public stated that the regulation provides too many exceptions from the prohibition against multiple surgeries, and that the exceptions are too broad. One commenter stated that the terms "major operative experiment" and "scientific necessity" should be defined and that the exceptions should not apply to animals used in teaching and demonstration exercises. We believe that the exceptions provided in the regulation are all necessary exceptions to the prohibition of the Act. We also believe the exceptions are stated narrowly. The exception for scientific necessity requires approval by the Committee and is not subject to unilateral interpretation by the investigator. The Committee is the appropriate body to evaluate whether or not a proposed procedure is scientifically necessary, and we do not believe it is necessary to define this term. The term "major operative experiment" is defined in Part 1—"Definition of Terms." (*See* companion docket no. 88-013, published elsewhere in this issue.) Whether exceptions should be made for animals used in research, testing, teaching and demonstration exercises is left to the research facilities, however the exceptions granted must still fall within one of the circumstances provided in the regulation in order to use an animal in multiple major operative experiments. No changes have been made based upon this comment.

*Section 2.30(g) Exceptions.* Section 2.30(g) of the revised rule provides the limited circumstances under which exceptions to the Animal Welfare standards and regulations can be made. It also provides the reporting procedure which must be followed if an exception is made by a research facility.

Responsibility for granting exceptions is placed on the research facility in the revised rule, since it is the research facility's responsibility under the Act to certify compliance with the standards and regulations and to explain any deviation from the standards (7 U.S.C. 2143(a)(7)(B)). The Committee must first approve the ACUP since its duty is to assess animal care, treatment, and practices, and since the Act requires that any exceptions to the standards be made only when specified by research protocol and when detailed and explained in a report filed with the Committee (7 U.S.C. 2143(a)(3)(E)). The research facility can grant exceptions to the standards and regulations only when necessary for the accomplishment of the research design, and only if the exception: (1) Is specified in the ACUP; (2) is explained in detail; and (3) is approved by the Committee. The principal investigator must file a report with the Committee before it reviews the ACUP, detailing the areas of noncompliance. The facility must keep a copy of the report on file and make it available to APHIS inspectors and officials of funding Federal agencies. The facility must attach a copy of all reports detailing and explaining exceptions to compliance to its annual report.

As revised, § 2.30(g) consolidates the provisions of proposed §§ 2.30(g) and 2.35(c). Proposed § 2.30(g) would have allowed exceptions to the requirements of proposed § 2.30 (e) and (f) (animal care assurances and procedures assuring against multiple use of animals in major operative experiments, respectively) to be made only when specified by the "research protocol" [ACUP] and approved by the Committee. The principal investigator would be required to detail and explain

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the exception in a written report to be filed with the Committee and attached to the facility's annual report to the Department. It would also provide for withholding of pain relieving drugs when scientifically necessary. (This provision has been included in § 2.30(a)(4) of the revised rule.) Proposed § 2.35(c) would have allowed the Committee to grant exceptions only when necessary for the accomplishment of the research design, specified in the "research protocol" [ACUP], and explained in detail. The principal investigator would be required to file a report with the Committee explaining the exception in detail. A copy of the report would be required to be kept on file by the facility and to be available for inspection by USDA inspectors or officials of granting agencies.

Under the revised rule, only the Committee is authorized to approve exceptions to compliance with the regulations and standards, however it is made clear that the research facility is ultimately responsible for any exceptions granted.

We received 33 comments objecting to the proposed requirement that the principal investigator first file a written report, and suggesting that an oral report to the Committee is sufficient. We cannot make any changes based upon this comment since the Act specifically requires that exceptions to the standards be detailed and explained in a report and filed with the Committee (7 U.S.C. 2143(a)(3)(E)). The Act also requires a written explanation from research facilities for any deviation from the standards. Because of these specific requirements in the Act, we do not have the authority to require only an oral report instead of a written report.

Six commenters stated that the procedure provided in proposed § 2.30(g) for approval of exceptions to the requirements of proposed § 2.30 (e) and (f) should also be available for exceptions from other requirements in the regulations. We believe that the revised rule is broad enough to cover exceptions from any of the Animal Welfare regulations and will allay the commenters concerns that exceptions to regulations other than § 2.30 (e) and (f) be possible.

*Section 2.30(h) Exercise for dogs and psychological well-being of primates.* As stated in the discussion of the reassignment of responsibilities from the Committee to the research facility under the heading, "Reorganization of §§ 2.30 and 2.35," the research facility is responsible in this revised rule for establishing written procedures and systems for the exercise of dogs and for the psychological well-being of primates in accordance with the regulations and standards, and for establishing a record system indicating that such a procedure or system is being carried out. This must be done in consultation with the attending veterinarian. (These procedures may be included in the facility's standard operating procedure, although this is not mandatory.) The proposed standards for exercise of dogs and to promote the psychological well-being of nonhuman primates are provided in a related document published elsewhere in this issue. (*See* companion docket no. 87-004.)

We received 357 comments (332 from the research community and 25 from members of the general public) stating that the requirement for establishing these procedures and systems should be implemented by the attending veterinarian, rather than the Committee as originally proposed, to avoid conflicts between the attending veterinarian and the other Committee members. The reassignment of responsibility for these procedures to the research facility removes the possibility of conflict between the Committee and the attending veterinarian. The Committee will still be responsible for inspecting animal areas to ensure that pain and distress are minimized and it is also required to approve of any ACUPs which deviate from the standards of Part 3. These functions should not conflict with the attending veterinarian's consultative role in developing written procedures and systems. No change is made as a result of these comments.

We received 505 comments (480 from the research community and 25 from members of the general public) objecting to the requirement for a separate record system to document that these procedures are being carried out. The requirements for exercise of dogs and for promoting the psychological well-being of nonhuman primates are two of the primary directives of the 1985 amendments to the Act. We believe that a separate record system provides a vital mechanism to ensure compliance with the regulations and to give our inspectors a means of checking for compliance. This is particularly so with regard to exercise for dogs and promoting the psychological well-being of nonhuman primates. Unlike tangible requirements, such as cage sizes and cleanliness which can be observed at all times, there must be written verification that the procedures concerning exercise for dogs and psychological well-being of nonhuman primates are being followed in order to ensure compliance. We believe that the required recordkeeping is reasonable and will ensure compliance. No change is made in the regulations based upon this comment.

*Section 2.30(i) Training.* The requirement to provide for the training and continuing education of personnel was imposed upon the research facilities in the proposed rule. However, the task of reviewing the status of the training and the qualifications of researchers, and of designating those personnel needing additional training was imposed on the Committee in proposed § 2.35(f). This requirement is also imposed on research facilities in § 2.30(i) of the revised rule, because the Act makes the facilities responsible for training (7 U.S.C. 2143(d)). We have determined, however, that this responsibility should be carried out through the attending veterinarian, since the training will be in areas in which the attending veterinarian has expertise, such as proper drug usage and pre- and post-procedural care. (The proposed rule would require training in proper pre-surgical and post-surgical care of animals. For the reasons set forth in our discussion of § 2.30(e)(8) under the subheading, "Painful procedures," this requirement applies to all procedures in order to ensure adequate veterinary care, and is not limited to surgical procedures.)

Nineteen commenters stated that the proposed training requirements are beyond the scope of the Act. We have considered this comment, but are making no changes based upon it. The training requirements are either specifically stated in the Act or are necessary adjuncts of the areas of animal care in which instruction is required by the Act (7 U.S.C. 2143(d)). For example, the requirement in § 2.30(i)(4)(ix) to provide training in the proper use of pain relieving drugs is a necessary adjunct of "includ[ing] instruction on research or testing methods that minimize or eliminate the use of animals or limit animal pain or distress; * * *" (7 U.S.C. 2143(d)(2)).

We are making some changes in the requirements for annual review of the status and qualifications of personnel who use animals, because other institutional mechanisms exist for discovering deficiencies in the level of training and qualification. We have also eliminated the requirement for training in the area of animal ethics. These modifications are discussed below in this section.

Two commenters noted their support for the proposed training requirements and suggested more stringent training requirements. We believe the training requirements contained in § 2.30(i) are within the scope of the Act and satisfy the intent of the Act. If, after the regulations are in effect, it appears that more stringent regulations are necessary, we will consider proposing additional or revised regulations.



Seventy-nine commenters suggested that training should be made available to individuals based upon the species of animal they use or some other specific need. Proposed § 2.35(f)(2) would have required that the training "be made available annually or as appropriate to the individuals and their responsibilities" and a similar provision is maintained in this revised rule. We are concerned that the proposed language could be misconstrued as requiring that only the frequency and not the substance of training be appropriate to the individuals and their responsibilities. Section 2.30(i)(2) is clarified in the revised rule to reflect that both the substance of the training must be appropriate to the individuals and their responsibilities, as well as the frequency of the training that is made available to them. Under the rule, the research facilities can determine whether training should be based upon the species of animal used, or whether other criteria should be used, in accordance with their determination of what is appropriate, so long as the areas listed in § 2.30(i)(4) are covered.

We received 560 comments (535 from the research community and 25 from members of the general public) objecting to the requirement of proposed § 2.35(f)(3) that the Committee annually review the status of training and qualifications of researchers who use animals. The commenters stated that this would be costly and impractical. Although responsibility for this review is placed on the research facility in this revised rule, we anticipate that the same objection will be raised, as the facility must bear the cost of the review. Representatives of HHS have pointed out that internal mechanisms exist in research facilities, such as performance appraisals, which would highlight the need for additional training, and that facilities should be afforded an opportunity to satisfy the requirements of the Act by developing monitoring procedures which utilize these existing mechanisms. We agree that some facilities may have adequate means of reviewing the status of training and the qualifications of personnel, and we are revising the requirement for annual review at research facilities. Research facilities could avoid a separate annual review as required by § 2.30(i)(3) in the revised rule, if they have a written policy requiring that they annually review their personnel in the areas of training and qualifications.

We received 434 comments (409 from the research community and 25 from members of the general public) suggesting that the areas of instruction required in paragraph (4) be listed in two groups: one for all employees and one for employees involved with animal care, use, and treatment. By its terms, the training required by § 2.30(i) in the revised rule is limited to those persons involved with animal use, care, and treatment. Those persons who do not have this contact with animals would not be required to undergo the requisite training. Accordingly there is no need to divide the areas identified in § 2.30(i)(4) into two parts as the commenters suggested. Training of personnel who are not involved with animal care, use, and treatment is left to the determination of the research facilities, because it is beyond the scope of the Act.

Proposed § 2.35(f)(4)(i) would require instruction in "[h]umane methods of animal maintenance and experimentation and animal ethics; * * *." Eight commenters suggested that the requirement for instruction in animal ethics be deleted and another 37 commenters suggested substituting "research ethics" for "animal ethics." We agree that the term "animal ethics" invites differing philosophical views over what the substance and content of the instruction should be, making regulation difficult. Therefore, we are deleting the reference to "animal ethics." The remaining required areas of instruction fulfill the intent of the Act.

We received 299 comments (274 from the research community and 25 from members of the general public) objecting to paragraph (4)(xi) of proposed § 2.35(f). As proposed, it would have required instruction in "[o]ther training, techniques, or procedures the Committee, or the Secretary, may feel is necessary." Responsibility for this determination is reassigned to the research facility as part of the reorganization of §§ 2.30 and 2.35. The commenters stated that paragraph (xi) is meaningless for compliance purposes and should be deleted. We disagree. The Secretary must have the flexibility to require training in additional areas if it is determined to be necessary. Also, as scientific knowledge evolves, it could become apparent that additional or different training in new technologies is needed, and the Secretary must have the authority under the regulations to require this training in order to fulfill the intent of the Act.

Except for those changes discussed above, the substance of proposed § 2.35(f) remains as originally proposed. However, responsibility for compliance with the requirement to provide training is placed on the research facility in § 2.30(i) of the revised rule.

*Section 2.30(j) Reporting.* Proposed § 2.35(b)(2)(iii) would require the Committee to establish a reporting procedure for personnel or employees to report violations of the Animal Welfare regulations, including problems, deviations, or deficiencies with animal housing, care, or use. The Committee would review and investigate reports of violations and would then prepare and file a report at a central location. It would also protect Committee members and personnel from discrimination or reprisal for reporting violations. The Act requires that the Committee file an inspection certification report, including reports of any violations or deficient conditions of animal care or treatment, any deviations of research practices from originally approved proposals that adversely affect animal welfare, any notification to the facility regarding such conditions, and any corrections made (7 U.S.C. 2143(b)(4)(A)). The Act does not specifically mandate that the Committee devise a reporting procedure for personnel to report violations. Accordingly, this responsibility is reassigned to the research facilities in § 2.30(j) of the revised rule. The Committee, however, is still required to review and investigate reports, under the revised rule. The Committee is in the best position to do so because it is established to assess animal care and use, and has inspection authority under the Act. Research facilities are also required to establish the central location for filing reports under the revised rule. This requirement is set forth in § 2.30(m).

We received 367 comments (342 from the research community and 25 from members of the general public) stating that the proposal to require a reporting procedure to report violations or deficiencies to the Committee exceeds the authority of the Act, as the Act refers to training for these procedures only. Section 13(d) of the Act requires each research facility to provide training including instruction on "methods whereby deficiencies in animal care and treatment should be reported." (7 U.S.C. 2143(d).) This directive presumes the establishment of a reporting procedure. The legislative history of the 1985 amendments to the Act which require this training makes this point eminently clear. In the *Congressional Record* of

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December 18, 1985, at page S17943, Senator Dole stated:

[I]t is intended that all personnel be acquainted with the provisions of this Act and instructed to report deficiencies promptly to ensure that the facility is in compliance at all times. No one should be discriminated against for reporting violations of the Act. Veterinary inspectors from the U.S. Department of Agriculture cannot be present on a daily basis. However, their enforcement capability can and should be enhanced by the Institutional Animal Committee and personnel in laboratories must be protected against any reprisal for reporting mistreatment of animals.

The Conference Report included in the *Congressional Record* of December 17, 1985 at page H12421 states, "[a]ll personnel are intended to be acquainted with the provisions of this Act and instructed to report deficiencies promptly to ensure that the institution is in compliance at all times. No employee shall be discriminated against for reporting violations." We believe the Act intended that a mechanism for reporting violations and deficiencies be implemented at research facilities as a vital means of ensuring compliance with the Act and the regulations. The Secretary is authorized to promulgate regulations deemed necessary to effectuate the purposes of the Act, including the reporting of violations and deficiencies. The requirement for a reporting procedure therefore does not exceed the statutory authority.

Two members of the general public and 1 commenter from the research community stated that the reporting provisions should include protection for the employer as well as for employees and Committee members. The legislative history cited above addresses protection against reprisal or discrimination for employees who report violations. It is silent on employers and facilities that report personnel as being in violation of the Act or regulations. The Act intends that facility personnel function as checks on each other and on the facility as a whole, and relies on the facility to monitor its own house. The facilities have the resources to safeguard themselves and their supervisory officials and we do not believe that regulations providing this protection are warranted.

*Section 2.30(k) Federal research facilities.* Proposed § 2.35(e) would have required federal research facilities to establish an Institutional Animal Care and Use Committee (Committee) having the same duties and functions as nonfederal research facilities except that the Committee would report deficiencies to the head of the federal agency conducting the research instead of to APHIS, and the head of the federal agency would be responsible for all corrective action and for granting of all exceptions to inspection protocol. As stated in the initial paragraphs of the supplementary information to Subpart C, we have determined that it is more appropriate to include this provision in § 2.30 since it is directed to the research entity and not the Committee. It is § 2.30(k) in the revised rule.

We received two comments concerning proposed § 2.35(e) "Federal research facilities," both from members of the research community. The comments stated that "institutional official responsible for animal care and use" should be substituted for "head" of the federal agency, because authority to administer animal care may be delegated to another official in the agency. We disagree and have used the language appearing in the Act. The Department is not involved in a determination by an agency "head" to delegate authority in accordance with agency internal procedure. We cannot by regulation place this authority at a lower level than that legislated by Congress. No change is made in the revised rule.

*Section 2.30(1) Reviews.* Proposed § 2.35(b)(3)(i) would require the Committee to make all research protocols [ACUPs] and assurance statements required by PHS or other funding Federal agencies available for review upon the request of the Administrator, to assure compliance with the Act. Department inspectors would be required to maintain the confidentiality of the requested material. Under the reorganization described above, the responsibility for responding to a Departmental request ultimately rests with the research facility or responsible institutional official acting on behalf of the research facility, and is included in § 2.30 in the revised rule as subsection (1).

We received 529 comments (504 from the research community and 25 from members of the general public) objecting to the requirement to make all protocols [ACUPs] and assurance statements available to APHIS. Some of the concerns focused on public release of the materials. Others were that the requirement exceeds statutory authority. As to the latter concern, the Secretary has authority under the Act to require production of all ACUPs and assurance statements as part of the authority to require each research facility to show, upon inspection, that the provisions of the Act are being followed (7 U.S.C. 2143(a)(7)). Section 16 of the Act authorizes the Secretary to make investigations or inspections as he or she deems necessary to determine whether any provision of the Act or the regulations and standards have been or are being violated (7 U.S.C. 2146(a)). Review of ACUPs and assurance statements would provide important information and would be key indicators as to whether any of the provisions of the Act or regulations are being violated or have been violated.

We understand the research facilities' concern with public release of these documents, particularly before a violation of the Act or the regulations has been established. We agree in part with commenters who stated that this material should not be retained by USDA and possibly subject to release to the public in response to Freedom of Information Act requests to USDA. Section 2.30(1) is revised to reflect that these materials will not be removed from the research facilities' premises unless there has been an alleged violation or the material is needed for an investigation or other enforcement purposes.

Thirty-eight commenters requested clarification as to when the Administrator could request that "protocols" and assurance statements be made available for review by the Department. These documents would be requested whenever there is reason to believe there may be noncompliance with the Act or the regulations, when needed to investigate possible or alleged violations, and when needed for other enforcement purposes.

*Section 2.30(m) Reports.* Proposed § 2.35(b)(2)(iv) would require that any reports required by proposed § 2.35 be kept on file at the research facility for at least 3 years and be made available for inspection and review by APHIS inspectors and any funding Federal agency. We did not receive any comments addressing this proposed requirement. We have revised the requirement in this rule, however, to provide that, upon notification from the Administrator, research facilities must retain records for more than 3 years pending completion of an investigation or proceeding, as required by § 2.81. This is a nonsubstantive change because research facilities are subject to the provisions of § 2.81.

Proposed § 2.35(b)(2)(i) would require that the Committee file its inspection certification report at a central location at the research facility. We are including the requirement that research facilities maintain a central location for filing reports.

The proposed rule referred to inspection and review of reports by APHIS inspectors. We have revised these provisions to provide for inspection and review of reports by APHIS officials as a result of the change in terms used for APHIS personnel, as described in a related document published elsewhere in this issue of the **Federal Register**, docket no. 88-013, Part 1—"Definition of Terms." The term "APHIS official" as defined in Part 1 would include an APHIS inspector.

The research facility is ultimately responsible for retaining the Committee's reports and assurance statements. Accordingly, this provision has been placed in § 2.30 in the revised rule as paragraph (m). We have also revised it to refer to any reports required by Part 2, instead of § 2.35 as originally proposed, due to the reorganization of §§ 2.30 and 2.35.

*Section 2.31 Annual report of research facilities.* Proposed § 2.28 requires each research facility to submit an annual report to the Area Veterinarian in Charge. This was proposed under Subpart B—"Registration." We believe it is more appropriate to include this requirement under Subpart C—"Institutional Animal Care and Use Committees and Other Requirements for Research Facilities," since it applies only to research facilities. Accordingly, it is redesignated as § 2.31 in the revised rule. The comments we received concerning the annual report refer to proposed § 2.28 and we will refer to the proposed section and paragraph designations in addressing the substance of those comments.

*General.* We received numerous comments addressing the annual report required of research facilities, the information we are requiring to be included in the report, and the proposed certifications of the report.

We received 443 comments (417 from the research community and 26 from members of the general public) stating that the proposed regulation exceeds the Department's statutory authority. We believe that the annual report and its contents are not only authorized, but are mandated by the Act. Section 13(a)(7)(A) of the Act states the Secretary "shall require each research facility to show upon inspection, and to report at least annually, that the provisions of this Act are being followed * * *" (7 U.S.C. 2143(a)(7)(A)). The Act goes on to specify information that the research facilities must provide in their report. We believe that the information we are requiring in the report is either specifically required by the Act or is necessary to enable the Department to determine if the facility is in compliance with the Act and the regulations.

We also received 166 comments from the research community objecting that the information required to be provided on the annual report would involve extensive record-keeping and reporting beyond the requirements of the Act. The assurances and information required of research facilities by § 2.28 are required by section 13 of the Act. This information enables the Department to inspect for compliance with the regulations and standards under the Act, and enables the Secretary to submit the comprehensive and detailed annual written report to Congress required by section 25 of the Act (7 U.S.C. 2155).

We received 456 comments (431 from the research community and 25 from members of the general public) requesting that the annual report be revised and simplified. They also stated that § 2.28 as proposed would require redundant assurances. We agree that simplification of the report is desirable, and we have modified the report requirements in the revised rule.

One commenter from the research community stated that the annual report should be revised to include all pertinent information. We are currently reviewing the annual report form, Form VS 18-23. The form will be updated and revised as necessary to include all information that will now be required by the regulations.

Two commenters from the research community suggested that we incorporate the registration update required by § 2.25 in the annual report. These two reporting requirements serve very different purposes. We believe that combining them would create problems rather than simplify matters. The registration update is required of all registrants every 3 years so that the Department can maintain accurate records of the identity and location of registrants. The annual report is, as its name indicates, a yearly report required only from research facilities. Not all registrants are research facilities. If the two different reporting requirements were combined for the research facilities, yet another reporting system would have to be devised for those registrants who are not research facilities, to avoid unnecessary or inapplicable information collection. We believe it prudent to keep these two reporting requirements distinct.

*Proposed § 2.28(a).* As proposed, § 2.28(a) would require the Chief Executive Officer (CEO) of the facility, the attending veterinarian, and the chairman of the Institutional Animal Care and Use Committee (Committee) to sign the annual report. Proposed § 2.28(b)(9) would require a statement by the CEO that the attending veterinarian and the Committee have the authority to enter any animal area to carry out their responsibilities, that the Committee has satisfactorily carried out its responsibilities, and that the facility is in compliance with the Act, regulations, and standards. Section 2.28(c) would require the attending veterinarian and the Committee chairman to certify the annual report, in accordance with §§ 2.40(e)(2)(iii) and 2.35(g) of the proposed rule.

Fifty-five commenters from the research community stated that only the CEO should be required to sign the report. Ninety-six commenters from the research community stated that reference to the "CEO" in proposed § 2.28(b)(9) should be changed to "institutional official" to coincide with the PHS Policy. Four commenters from the research community stated that the report and assurances are the responsibility of the facility and should not require other certification. We agree that the assurances of compliance required in the report are the responsibility of the institution, not the Committee Chairman or the attending veterinarian, because it is the ultimate responsibility of the facility to ensure compliance with the Act and the regulations. Therefore, we are revising the rule to require that the annual report be signed only by the CEO or a "responsible institutional official with authority to bind the facility." This revision means that it needn't be the CEO who signs the report, however the institutional official who does sign the report must be authorized to bind the facility. We originally proposed in § 2.28(a) to require the signature of all three individuals as a means of detecting noncompliance at facilities. For example, if an attending veterinarian refused to sign the report, we would suspect that he or she was, in some way, not satisfied with the facility's administration of the program of veterinary care. In order to satisfy this concern, which we still have, we are also amending proposed § 2.28(a) to include a mechanism for including all dissenting views in the annual report. This is described in greater detail below under the discussion of proposed § 2.28(c).

*Proposed § 2.28(b).* As proposed, § 2.28(b)(1) states that the annual report shall "[s]how that professionally acceptable standards governing the care, treatment, and use of animals, * * * were followed by the research facility; * * *". We received 411 comments (386 from the research community and 25 from members of the

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general public) objecting to use of the word "show" and stating that the report can only state this fact, not show it. We received 166 comments from the research community suggesting that we change "show" to "ensure" or "assure." A number of the commenters pointed out that facilities must show their compliance with the Act and regulations through inspections, as required by section 13 of the Act (7 U.S.C. 2143(a)(7)). We agree with the commenters and have changed "show" to "assure" in § 2.31(b)(1) of the revised rule. We have also revised the rule to require assurance that professionally acceptable standards were followed during pre- and post-procedural care, in place of pre- and post-surgical care, because adequate veterinary care must be provided for all procedures in accordance with the Act.

Proposed § 2.28(b)(2) requires an assurance in the annual report that the principal investigator has considered alternatives to painful procedures. We received 313 comments (288 from the research community and 25 from members of the general public) suggesting that we combine this assurance with proposed paragraph (b)(7) and that we clarify paragraph (b)(2). Proposed paragraph (b)(7) requires the names and numbers of animals upon which painful procedures were conducted and pain relieving drugs were withheld. A detailed statement of explanation as to why drugs were not used must be attached to the annual report. We disagree with the commenters. Section 13 of the Act requires that alternatives be considered for all procedures likely to produce pain or distress (7 U.S.C. 2143(a)(7)(B)(i)). This requirement applies to all painful procedures, whether or not the pain is relieved. Accordingly, paragraph (b)(2) requires assurances that alternatives were considered with respect to all painful procedures, regardless of whether or not pain relieving drugs are used or withheld. Proposed paragraph (b)(2) is far broader than the limited circumstances covered in paragraph (b)(7), which is limited to painful procedures for which pain relieving drugs (anesthetics, analgesics, or tranquilizing drugs) are withheld.

By design, the assurance required in proposed paragraph (b)(2), that alternatives to painful procedures were considered, precedes proposed paragraphs (b) (5) and (6) which concern painful or potentially painful procedures. Proposed paragraph (b)(5) pertains to procedures involving no pain, distress, or use of pain relieving drugs. Proposed paragraph (b)(6) pertains to painful procedures for which pain relieving drugs were administered. The assurance required in § 2.28(b)(2) would apply to the procedures in the succeeding paragraphs. If the requirement for assurance that alternatives to painful procedures have been considered were combined with proposed paragraph (b)(7) it could be construed as pertaining only to those procedures for which pain relieving drugs are withheld, contrary to the requirement of the Act. For this reason, no changes will be made to paragraph proposed (b)(2) in the revised rule, or to its placement within the section.

Although we did not receive any comments concerning the specific provisions of proposed § 2.28(b)(3) which requires assurance that the facility is adhering to the standards and regulations under the Act and that an explanation for any deviation from them be attached to the annual report, we are revising it to include assurance that the facility required that exceptions to the standards and regulations be specified and explained in an ACUP and approved by the Committee. We believe that these changes are consistent with the requirements of section 13(a)(7) of the Act (7 U.S.C. 2143(a)(7)) and with §§ 2.30 and 2.35 of this revised rule.

We received 391 comments (366 from the research community and 25 from members of the general public) objecting to the requirement of proposed paragraph (b)(4) that the annual report state the location of facilities where animals are housed or used in actual research, testing, teaching, or experimentation. One commenter stated a concern that if facilities must provide the specific sites within the facilities where animals are held, the information would be accessible to the public through the Freedom of Information Act and could compromise their security.

It is necessary for APHIS to know the location of animals at research facilities in order to inspect all animal sites, as required by the Act. This information is essential for enforcement purposes, as evidenced by the case of a research facility at a major university which maintained nonhuman primates for years, hidden from APHIS inspectors, by failing to disclose the animal site to APHIS.

We believe the commenters' concerns about revealing the location of animal areas are unwarranted. This information has been required in the annual report since the regulations were revised in 1972 to incorporate the 1970 amendments to the Act, and there is no indication that a facility's security was compromised because third persons learned the whereabouts of laboratory animals through Freedom of Information Act requests. Furthermore, once APHIS has inspected a facility, an inspection form is completed which details the location of animals at each site. This form is filed with the Agency and may potentially be disclosed through Freedom of Information Act requests. Therefore, leaving this information out of the annual report may not prevent third persons from obtaining the information.

We are clarifying proposed paragraph (b)(4) in the revised rule to also require the location of the facility or facilities where animals are held for future use in research, testing, teaching, or experimentation, to avoid any confusion that we are only requiring this information for animals in actual use.

Since deletion of this requirement would not have the effect intended by the commenters, and since the information is necessary for the Department to comply with the Act, paragraph (b)(4) will remain as proposed except for the above clarification.

Thirty-five commenters from the research community stated that facilities should be required to identify animals by their scientific names on the annual report, rather than by their common names, in order to obtain factual information and for accuracy in the collection and utilization of the information. One commenter stated that this information is necessary for the public and the legislators, so that policy regarding the use of animals in research can be appropriately established. Proposed paragraphs (b) (5) through (8) of § 2.28(b) would require facilities to "[s]tate the common names and the numbers of animals" maintained or used for the various purposes described in those paragraphs. The requirement to identify animals by their common names has been part of the annual report since the report was first established under the 1970 amendments to the Act. Common names are likewise used in the Department's annual report to Congress. No problems or difficulties arising from the reporting system for facilities or the use of common names of animals have become apparent to us. Based upon our experience, we do not believe that it is necessary to require use of scientific names on annual reports. We received 92 comments from the research community stating that the requirement of proposed § 2.28(b)(6) to report the number of animals "upon which experiments, teaching, research, surgery, or tests were conducted involving accompanying pain or distress to the animals" with the use of pain relieving drugs, and of proposed § 2.28(b)(7) to report the number of animals similarly used but for which the use of pain relieving drugs would adversely affect the procedures and are withheld, exceeds the Department's statutory authority. Proposed paragraph (b)(7) also provides that "[a] detailed statement on the procedures producing pain or distress in these animals and explaining the reasons such drugs were not used shall be attached to the annual report." Thirty commenters from the research community objected to this requirement as exceeding the statutory authority, and 369 commenters (344 from the research community and 25 members of the general public) objected to this requirement and suggested that we change it to conform with the statutory language which requires "information on procedures likely to produce pain or distress in any animal * * *" (7 U.S.C. 2143(a)(7)(B)).



We disagree with these commenters; we have the statutory authority to require the information in the form proposed.

One of the stated purposes of the Act is to "insure that animals intended for use in research facilities * * * are provided humane care and treatment; * * *" (7 U.S.C. 2131). Another is to provide requirements to "ensure that animal pain and distress are minimized * * * with the appropriate use of anesthetic, analgesic, tranquilizing drugs, or euthanasia; * * *" (7 U.S.C. 2143(a)(3)(A)). Accordingly, section 13(a)(3)(E) of the Act allows "exception to such standards * * * only when specified by research protocol and that any such exception shall be detailed and explained in a report outlined under paragraph (7) and filed with the Institutional Animal Committee" (7 U.S.C. 2143(a)(3)(E)). Paragraph (7)(A) of section 13(a) of the Act mandates that the Secretary "shall require each research facility to show upon inspection, and to report at least annually, that the provisions of this Act are being followed and that professionally acceptable standards governing the care, treatment, and use of animals are being followed by the research facility during actual research or experimentation." (7 U.S.C. 2143(a)(7)(A)). Paragraph (7)(B) of section 13(a) requires research facilities to provide:

(i) Information on procedures likely to produce pain or distress in any animal and assurances demonstrating that the principal investigator considered alternatives to those procedures;

(ii) assurances satisfactory to the Secretary that such facility is adhering to the standards described in this section; and

(iii) an explanation for any deviation from the standards promulgated under this section. (7 U.S.C. 2143(a)(7)(B)).

We believe that these provisions of the Act authorize the Secretary to require the common names and the numbers of all animals upon which painful procedures were conducted. The required information is necessary to enable us to determine, upon inspection and through annual reports of facilities, that the Act is being complied with, and that the intent of Congress—to ensure that research animal pain and distress are minimized—is being advanced. The Agency must be able to make this determination in order to fulfill our annual reporting obligation to Congress, in accordance with section 25 of the Act (7 U.S.C. 2155).

The additional requirement in proposed § 2.28(b)(7) for a detailed statement explaining the reasons why pain relieving drugs, which are required by the Act unless it is scientifically necessary to withhold them, were not used, is mandated by section 13 of the Act, as set forth above. The statement is a necessary component of a facility's assurance that the provisions of the Act are being followed, "that professionally acceptable standards governing the care, treatment, and use of animals are being followed by the research facility during actual research or experimentation," and that the "facility is adhering to the standards * * *" (7 U.S.C. 2143(a)(7) (A) and (B)). Current § 2.28(a)(4) contains a similar requirement for a "brief statement" explaining why pain relieving drugs have been withheld. We believe the proposal to require a detailed statement of reasons for not using pain relieving drugs reflects the intent of Congress in amending the Act and that this requirement is mandated by section 13 of the Act (7 U.S.C. 2143(a)). For these reasons, paragraphs (b) (6) and (7) remain as proposed in § 2.31 of the revised rule.

Six commenters from the research community stated that the requirement of proposed § 2.28(b)(8) to report the number of animals being bred, conditioned or held for use, teaching, testing, experiments, research, or surgery, but not yet used, should be revised to reflect more accurately the number of animals held for use but not used. One commenter expressed concern that the number of unused animals at a facility is highly variable and changes daily so that the annual report would not provide an accurate figure. It would also not be an accurate means of determining the number of animals held by all facilities since animals are transferred between facilities and would be counted multiple times. In addition, some animals may be used in a procedure, and then held for another use, and would be counted at least twice: once as an animal used for teaching, testing, experiments, research, or surgery under paragraphs (b) (5), (6), or (7), and a second time as an animal being bred, conditioned, or held for use, teaching, testing, an experiment, research, or surgery under paragraph (b)(8).

We do not believe that it is necessary to revise paragraph (b)(8). That paragraph requires an accounting of all animals that have not yet been used and are being bred, conditioned, or held for future use by a facility. It is true that a transferred animal would be included in the annual report of each facility in which it is placed since it would be "new" to that facility. It is also true that an animal that was used in a procedure that is completed and is being held for use in another procedure would be included under paragraph (b)(8).

We received 314 comments (289 from the research community and 25 from members of the general public) suggesting that the substance of paragraph (b)(8) should be combined with paragraph (b)(4) so that there is a single requirement for reporting the number of animals at a facility. We disagree. Proposed paragraph (b)(4) of § 2.28 pertains to location of animals at a facility, not the number of animals. These are two distinct reporting requirements which the Department uses separately in the Department's annual report to Congress. Combining these requirements would complicate our reports and would not reduce the effort required of reporting facilities to present this data. Since there would be no beneficial effect gained from adopting the commenters' suggestion, both requirements remain in the revised rule.

Proposed paragraph (b)(9) of § 2.28 would require a statement by the CEO in the annual report stating: (1) That the attending veterinarian and the Committee members have authority to enter any animal area in the facility at any reasonable time to carry out their responsibilities under the regulations; (2) that the Committee has satisfactorily carried out its responsibilities; and (3) that the facility is in compliance with the Act, regulations, and standards. We received 305 comments (280 from the research community and 25 from members of the general public) stating that the statement concerning access by

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the attending veterinarian and the Committee members to animal areas is redundant and unnecessary because it would be included within the assurances of compliance required in proposed paragraphs (b) (1) and (3). The commenters also objected to requiring the CEO's signature. We believe it is appropriate to require a separate statement by the CEO addressing these three concerns. Although paragraphs (b) (1) and (3) of proposed § 2.28 generally address compliance with the standards and regulations, we feel it is important that the CEO or responsible institutional official with authority to bind the facility bear responsibility for assuring that the statements made in the annual report are accurate and that the facility is in compliance. We believe that this accountability is necessary to ensure that the annual reports are meaningful and reliable.

For the reasons provided above in connection with proposed § 2.28(a), either the Chief Executive Officer or the "responsible institutional official with authority to bind the facility" may make the required statement in the annual report, and § 2.31(b)(9) is revised accordingly, in response to the comments received.

Thirty-seven commenters from the research community stated that the term "reasonable time" in proposed § 2.28(b)(9) should be defined, and 344 commenters (319 from the research community and 25 members of the general public) stated that the Committee members should not be allowed unrestricted entry to animal areas at any time if entry would interfere with ongoing research or the protection of proprietary information. Thirty commenters suggested that the Committee members and the attending veterinarian should have "reasonable access" to animal areas instead of "authority to enter any animal area, at any reasonable time" as proposed. The commenters stated that allowing reasonable access would prevent undue disturbance of the animals or controlled environmental conditions, prevent interference with research, and would protect proprietary information. The commenters suggested that "reasonable access" would require consultation with the principal investigator before entry into an animal area if research is being conducted, unless the Committee has reason to believe there is a problem related to animal welfare.

We do not believe that "reasonable time" requires additional clarification in the regulations. Research facilities can clarify what is a reasonable time through their written procedures or through guidelines issued by the CEO or responsible institutional official with authority to bind the facility. As previously explained in the discussion of Subpart C under the subheading, "§ 2.30(c)," it is not our intent to interfere with ongoing research, but we feel strongly that the Committee must have authority to enter all animal and research areas at any reasonable time without having to fulfill formal procedures as a prerequisite, and that the attending veterinarian must have authority to enter all animal or research areas at any time in order to ensure compliance with the program of adequate veterinary care. Section 2.31(b)(9) is revised to reflect this change. We do not intend that the Committee and attending veterinarian make a practice of barging into animal areas, and in this respect we agree that the principal investigator should be consulted as the commenter suggests. We do not believe it is appropriate to include a requirement for this in the regulations, however. Each facility is free to establish guidelines or a policy regarding consultation and to establish its own written procedures. We will retain the requirement that the annual report contain a statement, signed by the CEO or responsible institutional official, certifying that the Committee members have authority to enter any animal or research area at any reasonable time in order to carry out their responsibilities, and that the attending veterinarian is permitted access to all animal or research areas at any time.

*Proposed § 2.28(c).* We proposed in § 2.28(c) that the annual report be certified by the attending veterinarian and the Committee Chairman, in addition to being signed by the CEO under paragraph (a). We also proposed in § 2.28(c) that the annual report indicate the concurrence or nonconcurrence of the nonaffiliated member of the Committee.

Four commenters from the research community stated that the report and its assurances should be the responsibility of the CEO and should not require any other certifications. We received 370 comments (345 from the research community and 25 from members of the general public) stating that the entire paragraph should be deleted since the signature of the CEO required in paragraph (a) would be sufficient. One commenter was concerned that the proposed certification requirements improperly placed the burden of responsibility for the facility's compliance on the attending veterinarian and the Committee Chairman, and that at most they should be required certify to performance of their duties and fulfillment of their responsibilities. Others were concerned with the veto power given the attending veterinarian and the Committee Chairman, and the potential for abuse. One commenter noted that requiring the attending veterinarian to certify the annual report could place members of the Committee at odds with each other by giving one member the power that the Committee as a whole should have, and that this would undermine the ability of the Committee to perform its intended role.

Having considered the comments, we have determined that only the CEO or responsible institutional official with authority to bind the facility need sign and certify the annual report. Therefore, we are deleting the requirement from proposed § 2.28(c) that the attending veterinarian and Committee Chairman certify the annual report. The requirement that the CEO or responsible institutional official sign the annual report is already contained in paragraph (a) of § 2.31 in the revised rule, and we are adding a requirement that this official must also certify the report.

We received 179 comments from the research community stating that the requirement contained in proposed § 2.28(c) that the nonaffiliated member of the Committee indicate concurrence or nonconcurrence with the annual report should be deleted. Three members of the general public and one member of the research community stated that the annual report should reflect all dissenting opinions, and not single out the nonaffiliated member of the Committee. Some of the commenters pointed out that the Act, in Section 13, provides a mechanism for filing a minority view in connection with the inspection certification report prepared by the Committee (7 U.S.C. 2143(b)(4)(A)). The commenters further point out that the Committee report is separate from the annual report of the facility, and that the nonaffiliated member's view would appear to be irrelevant for purposes of submitting the facility's annual report.

Upon reconsideration of the requirement, we agree with the commenters that the emphasis on the concurrence or nonconcurrence of the nonaffiliated member of the Committee should be broadened to provide for the concurrence or nonconcurrence of any member of the Committee. We have revised this requirement to give all members of the Committee an equal opportunity to express a minority or nonconcurring view. To assure that the members are afforded this opportunity, the CEO or responsible institutional official with authority to bind the facility will be required to certify that he or she circulated the report to the Committee members for their review and that each was advised that they could add a minority report or indicate their nonconcurrence. We intend that the report would be circulated to each member with an attached routing slip containing a blank space in which the member could indicate that he or she read the report and concurred or did not concur, and that he or she was attaching a minority report to be included with the annual report. The slip would be replaced with a new blank slip for each Committee member's review. In this manner, confidentiality between the responsible institutional official and between each member of the Committee would be maintained. The annual report must contain a space in which the CEO or responsible institutional official states that all Committee members had an opportunity to indicate nonconcurrence, and to state whether any minority reports are attached. As stated above, the CEO or responsible institutional official would be required to certify these statements.

We believe that this requirement will allow each member an opportunity to express dissent from the annual report and that his or her opinion will be forwarded to the Department. This is particularly important for ensuring that the nonaffiliated member is not excluded from Committee functions. The nonaffiliated member's purpose is to provide representation for general community interests, and this may or may not result in that member being at odds with the other members of the Committee. We are aware of circumstances where the nonaffiliated member of the Committee has been prevented from meaningful participation in Committee functions or shut out of Committee meetings altogether because he or she presents a contrary or unpopular view. This mechanism should alert the Department to the need for further inspections or investigations of the facility. Accordingly, § 2.28(c) is revised to provide for the concurrence or nonconcurrence of all members of the Committee with the annual report.

*Section 2.35 Institutional Animal Care and Use Committee*

The remaining provisions of § 2.35 in the revised rule are those areas either specifically assigned by the Act to the Committee or necessary to implement the provisions of the Act which mandate Committee action. Many of the comments we received concerning § 2.35 as proposed have been addressed under the headings, "Introduction," "General," and "Reorganization of §§ 2.30 and 2.35." The comments we received addressing the remaining provisions are discussed below. Unless otherwise noted, the comments were received from members of the research community.

*General.* We received a number of comments addressing proposed § 2.35 and the role of the Committee in general. Some comments were made concerning use of the Committee as an instrumentality of the facility, both for enforcing the regulations and for performing tasks assigned to the facilities by the Act. The reassignment of responsibilities is fully detailed in a preceding section of this supplementary information, under the heading, "Reorganization of §§ 2.30 and 2.35."

Two commenters from the general public stated that the Committees were not given adequate authority in the proposed regulations. The Act prescribes the areas of authority delegated to the Committee and the revised rule is in accordance with the Act. The research facilities remain free to delegate authority to the Committee to perform additional duties on behalf of the facility. We believe it is best to leave this determination to the research facilities.

Fourteen members of the general public commented that the Department should promulgate national standards, instead of delegating responsibility to the Committees. We are proposing to do so in the proposed rule for Part 3—"Standards," published elsewhere in this issue. (*See* companion docket no. 87–004.) Part 3 provides the standards for the humane handling, care, treatment, and transportation of different animals covered by the Act. The Act requires that the Committees inspect the facilities for compliance with the Act and regulations and assess and report on animal care at the facility. The Committee is necessarily responsible for approving deviations from the standards as part of its duties under the Act; however it does not set the standards. We believe the concern of the commenters has been addressed in proposed Part 3.

We received 168 comments objecting to proposed § 2.35, on the basis that it would require extensive recordkeeping and reporting requirements beyond those required by the Act. We acknowledge that § 2.35 will add new recordkeeping and reporting requirements, however, these are all mandated by the Act and are necessary in order to assure compliance with the Act, regulations, and standards.

*Membership.* We received 2 comments from members of the general public suggesting that the regulations provide protection for Committee members from possible reprisals. Similar committees have existed in accordance with the PHS Policy at institutions receiving grants or awards under the Health Research Extension Act of 1985, without incident, to our knowledge. We do not feel it necessary to include regulations to protect Committee members at this time.

Two commenters stated that having the chief executive officer (CEO) of the research facility select the Committee members, as proposed in § 2.35(a)(2), biases the Committee. Section 13(b)(1) of the Act states that "[e]ach Committee shall be appointed by the chief executive officer of each such facility * * *" (7 U.S.C. 2143(b)(1)). This is not a matter within the Department's discretion and the regulation will necessarily remain as proposed.

We received 465 comments (440 from the research community and 25 from members of the general public) stating that the CEO should be allowed to delegate his or her responsibilities under the Act. Delegation of authority is a matter left to the facilities in accordance with their charter and by-laws. Delegation should only be to an administrative official who is not involved in the actual conduct of research, however, in order to comply with the intent of the Act that the Committee members be selected by a legally responsible official who is in a position to select a suitable Committee as described by the Act. No change is required in the regulations since this is an internal institutional matter.

Paragraph (a)(4) of proposed § 2.35 states that Committee members "shall possess sufficient ability to assess animal care, treatment, and practices in experimental research as determined by the needs of the research facility." One commenter expressed concern that the paragraph seems to state that each individual Committee member must possess "expertise" in animal care, treatment, and practices in experimental research. The commenter recommended that the paragraph be clarified to state that the Committee as a whole must have this expertise, but not each and every single member. We disagree with the commenter. The plain language of paragraph (a)(4) is sufficiently clear and is taken from the Act which provides that Committee members must have sufficient ability to assess animal care, and related matters. Committee members must possess some knowledge of animals, but "expertise" in these

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areas is not required. This ability is required for each of the Committee members, not just for the Committee as a whole. Another commenter stated that "special" ability to assess animal care should not be required. It is not. Paragraph (4) requires "sufficient" ability to assess animal care, not "special" ability. Section 2.35(a)(4) remains as originally proposed.

Paragraph (a)(5)(i) of proposed § 2.35 states that of the Committee members, "At least one shall be a Doctor of Veterinary Medicine who is the attending veterinarian for the research facility and who is accredited by the U.S. Department of Agriculture in accordance with regulations issued by the Secretary under the Animal Welfare Act; * * *." As explained in a related document published elsewhere in this issue of the **Federal Register**, docket no. 88-013, Part 1—"Definition of Terms," we are removing references to "accreditation" from these regulations pending the Department's renaming and development of standards for the Animal Welfare "accreditation" program.

We received 398 comments (373 from the research community and 25 from members of the general public) stating that research facilities should be given the flexibility of assigning another staff veterinarian to the Committee in place of the attending veterinarian. There is nothing in the Act or regulations to prevent research facilities from delegating the duties of the attending veterinarian on the Committee to another veterinarian; however, final responsibility for those duties rests with the attending veterinarian. Section 2.35(a)(5) is revised to clarify that the duties of the attending veterinarian may be delegated to a staff veterinarian.

Proposed paragraph (a)(5)(ii) of proposed § 2.35 would require that of the Committee members, "At least one shall not be affiliated in any way with such facility other than as a member of the Committee and shall not be a member of the immediate family of a person who is affiliated with such facility. The Secretary intends that such person will provide representation for general community interests in the proper care and treatment of animals." The requirement to have a nonaffiliated Committee member is contained in section 13 of the Act (7 U.S.C. 2143(b)(1)(B)). We received many comments concerning the selection of the nonaffiliated member, particularly from the general public. We received 1,518 comments from members of the general public stating that the regulations should ensure that the nonaffiliated member of the Committee is a vigorous and effective community representative and should not be required to possess the medical ability to assess animal care. In other words, any person interested in the humane use of animals could serve on the Committee as the nonaffiliated member. One commenter from the research community suggested that the nonaffiliated member be selected from a list of candidates nominated by recognized humane groups. Under the statute, and as provided in the regulations, the CEO of the research facility appoints the members of the Committee. Other than the criteria provided by the Act and the regulations promulgated under the Act, we do not feel it is appropriate to dictate the manner of selection or to define further the members' attributes. Neither the Act nor the regulations require that the nonaffiliated member be a veterinarian or medically trained.

Nine members of the general public and 1 commenter from the research community stated that there should be more than one nonaffiliated member serving on the Committee. The Act requires that "at least one member—(i) shall not be affiliated in any way with such facility other than as a member of the Committee * * *" (7 U.S.C. 2143(b)(1)(B)(i)). The research facility can determine to have more than one nonaffiliated member but only one is statutorily required. Section 2.35(a)(5)(ii) remains as originally proposed.

Proposed paragraph (a)(6) of § 2.35 would provide that "[i]f the committee consists of more than three members not more than three members shall be from the same administrative unit of such facility; * * *." We received 465 comments (440 from the research community and 25 from members of the general public) requesting that the term "administrative unit" be defined. We have done so in a related document, docket no. 88-013, Part 1—"Definition of Terms," published elsewhere in this issue. The term "administrative unit" would mean the following:

> The organizational or management unit at the departmental level of a research facility.

Paragraph (7) of proposed § 2.35(a) requires that the facility maintain a current list of Committee members containing their names, degrees, positions, qualifications, addresses, and telephone numbers. The attending veterinarian must maintain a copy of the current list and it must be available for inspection by APHIS officials We received 492 comments (467 from the research community and 25 from members of the general public) stating that home addresses and telephone numbers of the Committee members should not be a part of the records accessible to the public and 106 comments stating that only the Committee Chairman's business address should be required rather than the home addresses of all the Committee members. We agree that the list need not contain the home addresses and telephone numbers of the Committee members and that only the Committee Chairman's business address and phone number should be required. Paragraph (7) is revised to reflect this change.

*Duties and responsibilities*—1. *General.* Proposed § 2.35(b) specifies the duties and responsibilities that the Committee must perform in accordance with the Act. A number of the duties that were contained in this proposed section were not imposed on the Committee by the Act, and have been reassigned to the research facility. A more complete explanation of the reassignment of duties and responsibilities, and precise section references are contained under the heading, "Reorganization of §§ 2.30 and 2.35."

2. *Inspections.* In the supplementary information to the proposed rule, we invited comments addressing how inspections could be carried out at research facilities having a large number of animal sites and study areas. We received 289 comments stating that the Committee should be allowed to delegate inspection and/or review responsibilities to a subcommittee or to other personnel, and that their inspection reports could then be evaluated by a quorum of the Committee. We also received 485 comments (460 from the research community and 25 from members of the general public) urging APHIS to consult with officials of the U.S. Public Health Service on requirements for Committee inspection before promulgating a final rule. The commenters felt that this would be both helpful for the research facilities, which would have to comply with both the Animal Welfare regulations and the PHS Policy on Committee inspections if they receive grants or awards under the Health Research Extension Act of 1985, and for APHIS since the Policy provides guidelines for the accomplishment of inspections and evaluations. As pointed out by some commenters, at most facilities the same Committee will be responsible for complying with the Animal Welfare regulations and the PHS Policy.

Representatives from HHS advised the Department that the PHS Policy allows the Committee to determine at its discretion "the specific means to accomplish the semiannual evaluation of institutional programs and facilities, however, the IACUC remains responsible for the accuracy and adequacy of the evaluation and report." Facilities can work within their existing organizational structures to accomplish the requisite inspections and evaluations. Under the PHS Policy, the IACUC can appoint a subcommittee or designate personnel to perform the inspections, as 289 commenters suggested.

Having consulted with HHS and having considered the comments we received, we agree that the Committee should be able to appoint subcommittees composed of at least 2 Committee members to perform inspections. We have revised § 2.35(b) in this rule to allow each Committee at a research facility to designate a subcommittee to perform inspections, however, no Committee member who wishes to participate in an inspection may be excluded from participation in that inspection. The right of each Committee member to participate in any inspection conducted under Subpart C is set forth in § 2.35(b)(1)(v) of the revised rule. Section 13 of the Act requires that all formal actions of the Committee must be performed by a quorum of the Committee, and inspections are specifically included as formal actions (7 U.S.C. 2143(b)(2)). In order to satisfy the Act, § 2.35 is further revised to require the subcommittees to present their findings and recommendations, including inspection certification reports, and Committee recommendations based upon inspections, to a quorum of the Committee for formal action.

One commenter stated that the Committee should have the authority to suspend activities as it does under the PHS Policy. We agree with the commenter that painful procedures that are not in compliance with the Act and regulations should be suspended and that this can be accomplished through the Committee. Under the PHS Policy, the Institutional Animal Care and Use Committee may suspend an activity that it previously approved, if it determines that the activity is not being conducted in accordance with applicable provisions of the Animal Welfare Act, the NIH Guide for the Care and Use of Laboratory Animals, the institution's Assurance, or the requirements of the PHS Policy which must be met in order for a proposed research project or a significant change in a research project to be approved.

We believe that authority to suspend approval of ACUPs is necessary for the Committee to function effectively and to act on behalf of the research facility in monitoring compliance. For this reason, we proposed to include in the assurance statement required from the Committee as part of its inspection report, a statement that all painful procedures are in accordance with the "research protocols" [ACUPs] approved by the Committee and any approved changes to the "research protocols" [ACUPS], and that if the procedures "are not in accordance with the approved 'protocol' [ACUP] that the investigator(s) has been instructed to cease such methods and procedures immediately and to comply with the 'protocols' [ACUPs], procedures, and practices that were approved by the Committee." (Proposed § 2.35(b)(2)(i)(D)). We have added paragraph (iv) to § 2.35(b)(1) in this revised rule to clarify that the Committee has authority to withdraw its approval. The effect of Committee withdrawal of approval is provided in § 2.35(b)(3) in the revised rule.

The research facility is responsible for directing that the research, testing, or teaching cease, otherwise the facility would not be in compliance with the regulations. We are requiring in § 2.35(b)(1)(iv) that the Committee direct the CEO to instruct the principal investigator to cease immediately any research, testing, or teaching involving pain to animals that is not in compliance with the approved ACUP, because it is the research facility's responsibility to direct cessation of activities that are not in accordance with the approved ACUP. In order to ensure that there is no added delay in ordering cessation of such activities, we are requiring that the Committee notify the CEO or responsible institutional official of noncompliance with an approved ACUP involving a painful procedure in its deficiency notification report, as provided in § 2.35(b)(2)(ii).

Forty-four commenters objected to the proposed requirement of § 2.35(b)(1)(i) that the Committee inspect all animal study areas and animal facilities at least twice a year, no more than 6 months apart, stating that it is too specific. Section 13(b)(3) of the Act requires that the Committee conduct inspections "at least semiannually" (7 U.S.C. 2143(b)(3)). We proposed that the inspections be conducted no more than 6 months apart to ensure that the underlying purpose for requiring semiannual inspections is carried out, that is, to ensure that throughout the course of the year each animal area is in compliance with the Act and the regulations. The utility of the inspections is maximized if neither too much nor too little time elapses between inspections. The PHS Policy requires the Institutional Animal Care and Use Committee to inspect the institution's animal facilities at least once every 6 months. This too seems designed to ensure that the twice yearly inspections are effectively spaced out over the course of the year, and is consistent with the proposed rule.

We are revising the requirement for twice yearly inspections to provide that inspections must be performed "at least twice a year, 6 months apart" rather than "no more than 6 months apart" as proposed. We are not requiring that inspections be performed at precise 6-month intervals to the day, but rather that they be performed at some time during the month or 30-day period in which the Committee performs its inspections. We believe that this requirement, as revised, allows facilities sufficient flexibility and time to conduct inspections. We are also revising the regulations to require that at research facilities maintaining multiple animal sites, Committee inspections of all animal sites and animal facilities must be completed within 30 days of commencing the first site inspection so that the Committee can complete and file a comprehensive inspection report. This requirement is necessary for APHIS officials and inspectors to have complete and current inspection reports to review when inspecting research facilities. This requirement is contained in § 2.35(b)(1)(vi) of the revised rule.

We received 307 comments (282 from the research community and 25 from members of the general public) suggesting that first priority for inspections should be given to areas for which exception requests have been submitted in accordance with proposed § 2.35(b)(1)(iii). We appreciate the concern that those animal study areas may require additional attention to ensure that they are in compliance with the Act and the regulations; however, the Act requires at least semiannual inspection of all animal study areas. There is no provision in the Act for assigning priorities to the order of inspections of the different animal study areas—they must all be inspected. The research facility may decide the order of inspections.

3. *Reports.* Under proposed § 2.35(b)(2), the Committee is directed to file an inspection certification report after each inspection which contains the following: (1) The date the inspection was made; (2) the signature of a majority of the Committee members and any minority views of the Committee; (3)



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reports of violations of the regulations, standards, or assurances; (4) deficiencies in animal care or treatment; (5) Committee findings and recommendations; (6) any deviations from originally approved "protocols" [ACUPs] that adversely affect animal welfare; (7) notification to the facility of conditions, deviations, or deficiencies; (8) corrections made by the facility; and (9) any other information pertinent to the activities of the Committee and to the animal facilities. The report must also include an assurance statement by the Committee that its members have reviewed all painful procedures using animals and that the procedures are in accordance with approved ACUPs or approved changes to the ACUPs, and, if the procedures are not in accordance with approved ACUPs, that the investigator has been instructed to cease those practices immediately and to comply with the approved ACUPs.

We have revised the proposed rule to require that all inspection certification reports must be completed and filed by the Committee in a timely fashion. We believe that 10 business days from completion of the site inspections required under § 2.35(b)(1) is a reasonable timeframe to impose on the Committee and that it is necessary to ensure that the required information is on file and is current.

We have also revised the rule to reflect the fact that subcommittees of at least 2 Committee members may perform inspections. This is provided in § 2.35(b)(1)(i) of the revised rule. The subcommittee must present its findings to a quorum of Committee members for formal action, as required under § 2.35(b)(2)(i) of the revised rule.

Under proposed § 2.35(b)(2)(ii), the Committee must notify the research facility of deficiencies found during an inspection. If the deficiencies remain uncorrected 30 days after notification and opportunity for correction, the Committee must notify the Administrator and any funding Federal agency and provide them with a copy of the report and the notification given to the facility. The Committee must also provide any APHIS inspector and any funding Federal agency of the project with a copy of any report showing deficiencies in complying with the regulations and standards which remain uncorrected.

We received 471 comments (446 from the research community and 25 from members of the general public) objecting to the requirement of proposed § 2.35(b)(2)(i) that the Committee's inspection certification reports be available to APHIS officials and to officials of funding Federal agencies for copying. Under section 13 of the Act, the Committee reports must be kept on file for at least 3 years at the facility and must be available for inspection by APHIS and any funding Federal agency (7 U.S.C. 2143(b)(4)(B)). It is necessary for APHIS inspectors to be able to copy reports to obtain documentation of noncompliance and to conduct investigations of possible noncompliance. These are the occasions when inspectors would need to copy the Committee reports. The requirement remains as initially proposed.

We received 307 comments (282 from the research community and 25 from members of the general public) stating that the Committee should not be required to monitor projects on an ongoing basis to assess deviations from originally approved protocols [ACUPs], as required by the assurance statement that is part of the Committee's report under proposed § 2.35(b)(2)(i)(D). This requirement is mandated by section 13(b)(4)(A) of the Act. It requires that the Committee's report include "any deficient conditions of animal care or treatment, any deviations of research practices from originally approved proposals that adversely affect animal welfare, * * *" (7 U.S.C. 2143(b)(4)(A)). Ongoing practices and procedures must necessarily be reviewed in order to comply with this requirement. No change is made in the revised rule based upon this comment.

We received 321 comments (296 from the research community and 25 from members of the general public) objecting to the assurance statement required in proposed § 2.35(b)(2)(i)(D) on the grounds that it is too complicated. We have simplified the assurance by using the term "ACUP" in place of "research protocols, procedures, and practices" as originally proposed, since this term encompasses the areas of concern to the Committee in reviewing painful procedures. Also, as explained above, the instruction to cease using methods and procedures that are not in compliance with the approved ACUP must come from the research facility because the CEO or responsible institutional institutional official must certify compliance with the Act, regulations, and standards on the facility's annual report, and must report any deviations from the regulations. The Committee can be required only to provide assurance regarding matters of which it has first-hand knowledge. Accordingly, paragraph (b)(2)(i)(D)(3) is revised to require assurance that the Committee has notified the CEO or responsible institutional official of the research facility to instruct the investigator to cease using the noncomplying methods and procedures.

We received 527 comments (502 from the research community and 25 from members of the general public) stating that research facilities should be allowed more than 30 days to correct deficiencies found in the course of Committee inspections. We received 149 comments suggesting a means of requesting an extension in the event that a deficiency cannot be corrected within 30 days for justifiable reasons, such as if more time is required to purchase new primary enclosures or to repair the physical plant. We do not agree with the commenters' suggestion that the regulations should provide a formal means of requesting an extension of time to correct deficiencies. Rather, APHIS will continue to consider non-compliance matters on a case-by-case basis, as it has in the past.

Two commenters requested clarification of the requirement contained in proposed § 2.35(b)(2)(ii) for reporting deficiencies to the Deputy Administrator. As previously explained, the reference to the Deputy Administrator is changed to the Administrator. We have revised the notification procedure to reflect the fact that the facility is ultimately responsible for compliance with the Act and regulations, and that the CEO or responsible insitutitional official must certify the facility's compliance in the annual report. Accordingly, § 2.35(b)(2)(ii) is revised to require that the Committee notify the CEO of the research facility or the official responsible for animal care if the CEO has delegated authority to that official, as well as the administrative unit representative, of any deficiencies found, including noncompliance with an approved ACUP involving a painful procedure. This notification must be done, in writing, within one business day of discovery. The Committee must also provide a copy of its inspection certification report citing a deficiency to the CEO or the institutional official responsible for animal care, and to the administrative unit representative. The facility then has 30 days to correct the deficiency. If it remains uncorrected 30 days after notification of the CEO or other responsible institutional official, the Committee must notify the Administrator and any funding Federal agency of the uncorrected deficiency in accordance with section 13(b)(4)(C) of the Act (7 U.S.C. 2143(b)(4)(C)). We are requiring that this must be done within 5 days of completion of the 30-day correction period to avoid further delay. The Committee must provide a copy of its inspection certification report and a copy of its written notification of deficiency to the Administrator. The Committee must also file a copy of its inspection certification report and written notification of deficiencies at the central repository maintained by the facility in accordance with § 2.30(m) for all reports required in this Subchapter so that they are available to APHIS officials and inspector(s), and to any funding Federal agency. The proposed rule erroneously referred to the "administrative representative" and not to the "administrative unit representative" as intended. Section 2.35(b)(2)(ii) of the revised rule reflects these changes.



We did not receive any comments addressing proposed § 2.35(b)(2)(iv), which requires that reports remain on file for at least 3 years at the research facility and be available for inspection and review by APHIS inspectors and any funding Federal agency. This requirement is set forth in § 2.30(m) of this rule, and it is revised to require that, upon notification from the Administrator, research facilities must also retain records pending completion of an investigation or proceeding under the Act, and until their disposition is authorized by the Administrator.

4. *Reviews.* Following the reorganization of §§ 2.30 and 2.35, and the reassignment of duties and responsibilities so that only statutorily mandated duties are imposed on the Committee, and the revisions to Subpart C described above, the remaining reviewing functions of the Committee under the proposed rule would be as follows:

(i) No research, testing, or teaching involving [ACUPs] falling under Categories 3 and 4 in this paragraph performed by a facility's personnel at any location shall commence prior to approval by the Committee [of the ACUP]. Prior to granting approval, the Committee shall ensure that [ACUPs] in any of the categories listed [in the Categories of Animal Use in Research and Testing] contain provisions for acceptable and proper animal care, treatment, practices, methods, and use of pain-relieving drugs. (Proposed § 2.35(b)(3)(ii)).

(ii) The Committee shall approve an [ACUP] only when animal pain, distress, and functional or sensory impairment are minimized; all survival surgery is performed using aseptic procedures; adequate veterinary care is planned for and provided; multiple use of such animal(s) is justified for the purpose of conserving an endangered species or marine mammals or as an essential related component of a particular project or [ACUP]; and the appropriate use of anesthetics, analgesics, tranquilizing drugs, or euthanasia, when necessary, and that the use of such drugs is in accordance with established or accepted veterinary medical procedures and usage. The use of such drugs shall be in accordance with the instructions of the attending veterinarian. (Proposed § 2.35(b)(3)(iii)).

As previously discussed under the heading "§ 2.30(d)," we have determined that the Committee must review and approve all ACUPs before any research, testing, or teaching involving animals can commence, and § 2.35(b)(3)(i) of this revised rule (formerly proposed § 2.35(b)(3)(ii)) is revised accordingly. Requiring review of all ACUPs, not just those involving painful procedures, is consistent with PHS Policy and avoids the need for determining the degree of pain or distress that can reasonably be anticipated to result from a proposed procedure.

We had originally proposed that "no research, testing, or teaching involving protocols falling under Categories 3 and 4 of the Categories of Animal Use in Research and Teaching performed by a facility's personnel at any location shall commence prior to approval by the Committee." (Proposed § 2.35(b)(3)(ii)). Using the "Categories of Animal Use in Research and Testing" was proposed as a means of classifying animal procedures into 4 categories, ranging from those involving little or no pain or distress to those involving severe or unrelieved pain or distress. The Committee would be required to review the ACUPs for procedures falling in the categories involving higher degrees of pain, Categories 3 and 4, to ensure that they contained provisions for acceptable and proper animal care, treatment, practices, methods, and use of pain relieving drugs. Examples of the types of procedures typically falling into the different categories were provided in the proposed Categories of Animal Use.

We received numerous and varied comments regarding the proposed Categories, ranging from general approval and suggestions that the proposed categories be incorporated into the Annual Report (VS Form 18–23) (12 commenters) to disapproval and suggestions that they be deleted because the commenters found them confusing and/or inappropriate (77 commenters). Four commenters recommended that the proposed categories be revised to include additional detail, including further categorization and definition.

It became clear from our review of the comments that a fair number of the commenters were misconstruing the proposed examples as fixed categorizations of procedures into the 4 proposed categories. This was certainly not our intent in providing the examples. As stated in the supplementary information accompanying the proposed rule at 52 FR 10302, "[t]hese [Categories of Animal Use in Research and Teaching] are for the guidance of the investigator in planning the research protocol [ACUP] and for the Committee in determining the level of pain or distress to be allowed and the necessity of such pain or distress when approving the protocol [ACUP] * * *. The list of examples is not all inclusive but is provided as guidance for where a particular protocol [ACUP] might be classified in relation to the pain or distress involved."

Despite this explanation of the examples provided for each category, we received 72 comments objecting to all toxicity studies being classified as Category 3. Toxicity studies were included as an example of the type of procedure which would typically but not necessarily fall under Category 3 as involving "significant but unavoidable pain or distress to the animals." A toxicity study which did not involve this level of pain or distress would not be in Category 3 under the proposed rule.

Other comments addressing the proposed Categories of Animal Use included one from a member of the general public suggesting that a fifth category for "severe pain" be included, and one from a member of the research community generally approving of the proposed categories.

The proposed Categories of Animal Use was selected from among several like categorizations and was developed by the Scientists Center for Animal Welfare. This categorization was the result of many conferences and seminars addressing the issue of how to classify procedures involving differing levels of pain and is currently in use in 20 or more research facilities. As a result of the comments received, we have considered a number of alternatives for addressing the concerns raised by the commenters. One alternative considered was using a different categorization system. It is likely, however, that similar issues would be raised in response to any proposed categorization of types of procedures. We also considered proposing additional examples of the types of procedures that would typically fall into the different categories, in response to the comments requesting additional definition and categorization, however these too could be misconstrued as fixed categorizations rather than as examples provided for guidance. We next considered removing the examples from the rule to avoid any misconception as to whether they were actually fixed categorizations. This would likely raise concerns that the

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regulations did not provide sufficient guidance and would leave facilities subject to challenge if they did not require their Committees to review procedures regarded by the Department as involving significant pain or distress.

Having carefully considered the comments and the various alternatives summarized above, we have determined to remove the Categories of Animal Use in Research and Teaching and to require Committee review and approval of all procedures involving warm-blooded animals covered by the Act. As stated above, we believe that it is necessary that the Committee review all ACUPs to enable research facilities to provide assurance that their facilities are in compliance with the Act, regulations, and standards. Without this review, the CEO or institutional official with responsibility for animal care could not, in good faith, certify the facility's compliance in its annual report. This requirement will avoid subjective determinations as to how to categorize pain or distress and challenges to those determinations after the procedures in question have been undertaken. This approach is consistent with PHS Policy and similar practices already exist at many of the institutions responsible for complying with these regulations. Accordingly, the requirement for Committee review and approval of all ACUPs will not disrupt the practices employed at many research facilities.

We are also revising the rule to relieve the burden this requirement will impose upon the Committee by incorporating, in part, the practice authorized by the PHS Policy for assigning ACUPs to individual members of the Committee for preliminary review, unless a Committee member requests in-depth review by a quorum of the Committee. Under the revised rule, the reviewing member of the Committee is responsible for reviewing an assigned ACUP and for advising the principal investigator if modification is needed in order to obtain the necessary Committee approval. The Committee member must present his or her findings to a quorum of the Committee for formal action and must recommend approval or disapproval of the ACUP. A quorum of the Committee must approve the ACUP before the proposed research, testing, or teaching can proceed. One commenter noted that the PHS Policy allows an individual Committee member to approve a proposed research project. We are requiring Committee approval of ACUPs in accordance with the section 13(b)(2) of the Act which requires a quorum for all formal actions of the Committee (7 U.S.C. 2143(b)(2)).

One member of the general public commented that unanimous approval by the Committee should be required for all protocols [ACUPs]. This is contrary to the Act, which requires a quorum for all formal actions of the Committee (7 U.S.C. 2143(b)(2)). "Quorum" is defined by the Act as a majority of the Committee members (7 U.S.C. 2132(m)). No change is made in the revised rule based upon this comment.

Also, in accordance with PHS Policy, we are providing a mechanism to enable the Committee to require that an approved practice or procedure be suspended, in accordance with proposed and revised § 2.35(b)(2)(i)(D), if it determines that a procedure or practice is not being performed in accordance with the approved ACUP. We are providing that the Committee can do so by withdrawing or suspending its approval of an ACUP. Section 2.30(d) requires Committee approval for all ACUPs before they commence, and section 13(a)(3)(E) of the Act requires that any exceptions to the standards be specified in the ACUP and explained in a report filed with the Committee (7 U.S.C. 2143(a)(3)(E)). Accordingly, once Committee approval is withdrawn, the procedure or practice must cease or the research facility is in violation of the regulations. Section 2.35(b)(3)(i) of the revised rule is changed to provide that no research, testing, or teaching involving warm-blooded animals covered by the Act shall continue if the Committee suspends its approval.

Eight commenters from the general public urged that painful experiments should not be allowed at all. One of the stated purposes of the 1985 amendments to the Act is to minimize animal pain and distress (7 U.S.C. 2143(b)(3)). The Act is clear, however, in its direction that except as provided in section 13(a)(6) of the Act, it does not authorize the Secretary to promulgate regulations "with regard to the design, outlines, or guidelines of actual research or experimentation by a research facility as determined by such facility; * * *" (7 U.S.C. 2143(a)(6)(A)(i)) and the Department therefore does not have the authority to prohibit all painful experiments.

Three commenters from the general public suggested that in determining whether to approve a proposed ACUP, the Committee should compare the public gain which would result from the research versus the pain inflicted on the animal. Although the Act does not direct the Committee to make this judgment, it does direct the Committee to ensure compliance with the Act to "minimize pain and distress to animals" and to inspect research facilities for compliance with the Act, regulations, and standards (7 U.S.C. 2143(b)(3)). One of the stated findings of Congress set forth in the Act is that "measures which eliminate or minimize the unnecessary duplication of experiments on animals can result in more productive use of federal funds" and "measures which help meet the public concern for laboratory animal care and treatment are important in assuring that research will continue to progress." (7 U.S.C. 2131). Proposed § 2.35(b)(3)(iii) provides the bases upon which the Committee will approve or disapprove a proposed ACUP. The bases enumerated include provision for the commenters' concerns. We further believe that the provision for a nonaffiliated member of the Committee who is "intended to provide representation for general community interests in proper care and treatment of animals" (7 U.S.C. 2143(b)(1)(B)(iii)) will bring these considerations to bear in Committee deliberations, and that the Committee as a whole will keep the purposes of the Act in mind in performing its duties. No change is made based upon this comment and it is redesignated as § 2.35(b)(3)(ii) in the revised rule.

Two commenters stated that the language in proposed § 2.35(b)(3)(iii) should be changed from "The Committee shall approve such protocols only when * * *" to "The Committee shall approve procedures only when * * *." We have revised this paragraph by replacing the term "protocol" with "ACUP."

We are also numbering the conditions listed in proposed § 2.35(b)(3)(iii) in the revised rule which must be satisfied for the Committee to approve an ACUP, and are correcting the typographical and grammatical errors that appeared in it.

We received 478 comments from members of the general public in regard to proposed § 2.35(b)(3)(ii) concerning the need for stronger and stricter requirements for reporting painful procedures and use of pain relieving drugs, and for better identifying those procedures not involving pain, procedures involving unrelieved pain, and procedures involving pain relieved with drugs. We have addressed these comments separately from those concerning the proposed Categories of Animal Use because they more properly concern the research facility's annual report, VS Form 18–23 than proposed § 2.35(b)(3)(ii). The annual report requires an accounting of the number of animals utilized in procedures involving no pain, unrelieved pain, and relieved pain. We are aware of instances where



animals are reported under Column 'C', "no pain" because the pain is relieved with drugs. This is improper because the relief of pain does not make the procedure one which does not involve pain. As noted previously, 12 commenters felt that the proposed Categories of Animal Use should be used on VS Form 18–23, instead of the current designations.

We believe that the combination of Committee review of all ACUPs, requiring Committee approval of all proposed ACUPs before they can commence, Committee inspections, and the research facility's responsibility to assure that pain and distress are minimized will result in more accurate reporting of painful procedures. The annual report, VS Form 18–23 will also be clarified to require that painful procedures be reported as such, regardless of whether or not pain is relieved.

We received 40 comments stating that "Committee" should appear in § 2.35(b)(3) of the final rule in place of "attending veterinarian" wherever the phrase "in accordance with the instructions of the attending veterinarian" appears. The phrase appears in proposed § 2.35(b)(3)(iii) only in regard to the use of pain relieving drugs. The requirements in the remaining paragraphs of proposed § 2.35(b)(3) are incorporated in § 2.30 of the revised rule because they are the responsibility of the research facility. Procedures and practices which must be done in accordance with the instructions of the attending veterinarian, as provided in proposed § 2.35(b)(3), are those which pertain to providing proper veterinary care, and providing for animal health and well-being, such as the proper use of drugs and pre- and post-procedural care. As explained previously, adequate veterinary care must be provided in all research procedures and is not limited to those involving surgery. Section 2.35(b)(3) of this rule is revised accordingly. These are areas within the expertise of the attending veterinarian, as opposed to the Committee, and remain subject to the instructions of the attending veterinarian in the revised rule.

Subpart D—Attending Veterinarian and Adequate Veterinary Care Introduction

As explained above under the heading, "Subpart C—Institutional Animal Care and Use Committee and Other Requirements for Research Facilities" and under the subheading, "Reorganization of §§ 2.30 and 2.35," in this revised rule we are reassigning responsibility to the research facilities for certain duties that had been placed upon the attending veterinarian in the proposed rule. These changes are made in response to the concerns raised by 480 commenters (455 from the research community and 25 from members of the general public) who stated that as proposed, § 2.40(e) would place the attending veterinarian in the position of enforcement agent for the Department. These changes should also allay the concerns of the four commenters from the research community who stated that the Committee was improperly given veterinary responsibilities in § 2.35 of the proposed rule.

With this reorganization of §§ 2.30, 2.35, and 2.40, and the reassignment of responsibilities, we believe that the research facility, the Committee, and the attending veterinarian will serve as an effective built-in institutional quality assurance mechanism. The Act requires standards for adequate veterinary care, and consultation with a veterinarian in the planning of any painful procedure. The regulations in this revised rule are intended to ensure proper planning and conduct of research procedures and adequate veterinary care.

Although ultimate responsibility for many of the responsibilities originally placed on the Committee and the attending veterinarian in the proposed rule is placed on the research facility in the revised rule, many of these responsibilities must still be performed under the guidance or supervision of the attending veterinarian or in consultation with the attending veterinarian because they fall within his or her expertise. Accordingly, § 2.30 of this rule has been revised to require each research facility using or holding animals for research, testing, or teaching to establish, maintain, and abide by a written program of adequate veterinary care in accordance with § 2.40. (A research facility may or may not include the written program of adequate veterinary care in its standard operating procedure (SOP) if it employs a full-time attending veterinarian.)

In Subpart D, paragraph (e) of proposed § 2.40, "Research facilities," is most affected by the reassignment of responsibility. For example, proposed § 2.40(e)(2) would have required the attending veterinarian to provide consultation and guidance in areas of veterinary care. In the revised rule, it is the research facility's responsibility to require and ensure that the attending veterinarian performs those functions.

*General.* Proposed § 2.40 would require a written program of adequate veterinary care between a dealer, exhibitor, or research facility, and its attending veterinarian, which includes a program for disease control and prevention, pest and parasite control, pre- and post-procedural or surgical care, nutrition, euthanasia, proper and appropriate use of anesthetics, analgesics, tranquilizers, and any other pain relieving drugs.

We received comments addressing the nature of the program of adequate veterinary care generally, and the frequency of program review by the Area Veterinarian in Charge that should be required when there is a part-time as opposed to a full-time attending veterinarian. These areas of commenters' concern are clarified in the revised rule and are discussed below.

We received 10 comments (8 from the research community and 2 from dealers) generally in favor of strengthening the current regulations concerning veterinary care and 35 comments (27 from dealers and 8 from exhibitors) generally opposed to strengthening the requirements. We have determined, based upon our experience, and for the reasons provided in the supplementary information to the proposed rule, published in the **Federal Register**, March 31, 1987, (*see* 52 FR at 10303), that enhanced requirements for adequate veterinary care are necessary to promote the health and well-being of animals.

We received 329 comments (304 from the research community and 25 from the general public) expressing concern that the tone of proposed Subpart D is negative and will create a confrontational relationship between attending veterinarians and research personnel and/or Committee members, rather than a cooperative relationship. We believe that the reorganization of §§ 2.30, 2.35, and 2.40 in the revised rule should allay this concern, because it resolves any disputes over areas of expertise and responsibility. With the reassignment of the areas of responsibility of the research facilities, Committee members, and attending veterinarians in this revised rule, we believe the regulations will result in a synergistic relationship which fosters animal welfare.

*Attending veterinarian.* Proposed § 2.40(a) would require each licensee or registrant to have an attending veterinarian who is "accredited" by the U.S. Department of Agriculture in accordance with regulations issued by the Secretary under the Act. The attending veterinarian would be responsible for providing adequate veterinary care to the animals in accordance with the written program of adequate veterinary care required in

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proposed paragraphs (b) and (c) of § 2.40.

We received numerous comments from the research community addressing "accreditation" of the attending veterinarian. Forty-six commenters from the research community objected that proposed § 2.40(a) is unacceptable without the details of "accreditation" being included; 507 commenters (482 from the research community and 25 members of the general public) stated a more general concern that the process for "accrediting" veterinarians was not explained in the proposed rule. One hundred commenters from the research community stated that APHIS is not in a position to establish professional qualifications for "accreditation" of attending veterinarians.

As previously explained in this supplementary information, and under the heading, "Attending veterinarian," in a related document, Part 1—"Definition of Terms," published elsewhere in this issue of the **Federal Register**, docket no. 88-013, we are removing references to "accreditation" from the regulations pending the Department's renaming and development of standards for the "accreditation" program. Proposed standards will be published separately at a later date in a proposed rule. We believe that this action will satisfy the commenters' concerns.

*Program of adequate veterinary care.* Proposed § 2.40(b) would require the attending veterinarian to establish, maintain, and supervise programs of disease control and prevention, pest and parasite control, pre- and post-procedural care, nutrition, euthanasia, and adequate veterinary care for all animals on the premises of the dealer, exhibitor, or research facility. The programs must also include the proper and appropriate use of anesthetics, analgesics, tranquilizers, and euthanasia, when indicated. The reader should note that the requirement for a program of pre- and post-procedural care in proposed § 2.40(b) applies to all research procedures and processes involving animals and is not limited to surgical procedures. Accordingly, we have revised all of the provisions of § 2.40 in this rule to refer to pre- and post-procedural care in place of pre- and post-surgical care wherever it appears.

In addition to the comments objecting to the allocation of responsibilities among the facilities, the Committee, and the attending veterinarian, we also received 64 comments from members of the research community stating that the establishment, maintenance, and supervision of a program of adequate veterinary care in research facilities should be the responsibility of the Committee, and not the attending veterinarian. We do not agree that this responsibility should be imposed on the Committee. The Act does not require the Committee to develop a program of adequate veterinary care. Moreover, only one member of the Committee, the attending veterinarian, would be certain to have the requisite expertise to do so. As previously explained under the discussion of Subpart C, we have determined that responsibilities not imposed by the Act on the Committee should be placed on the facility.

Establishment and maintenance of the program of adequate veterinary care is the responsibility of the facility, as provided in § 2.30 of the revised rule. Accordingly, proposed § 2.40(b) is revised to state that responsibility for establishing and maintaining a program for adequate veterinary care is on the dealer, exhibitor, and research facility, instead of the attending veterinarian. The program would remain under the supervision and control of the attending veterinarian, however, because of the attending veterinarian's expertise. We have also clarified paragraph (b), to provide that programs for disease control and prevention, pest and parasite control, pre- and post-procedural care, nutrition, the proper and appropriate use of anesthetics, analgesics, tranquilizers, and euthanasia when indicated, are all elements of a program of adequate veterinary care and must be included by a dealer, exhibitor, and research facility in order to have a comprehensive program as intended by the Act.

Two commenters from the research community stated that the Department should promulgate regulations on what constitutes an adequate program of veterinary care. The elements that must be included in a program of adequate veterinary care are provided in § 2.40(b) of the revised rule. They are programs for disease control and prevention, pest and parasite control, pre- and post-procedural care, nutrition, euthanasia, and the appropriate use of pain relieving drugs. It is the responsibility of the dealer, exhibitor, or research facility to ensure that its program of veterinary care adequately covers those areas. We are also revising § 2.40(c) to require that these areas be included in the written program for adequate veterinary care. In addition, § 2.40(d) of this revised rule requires daily observation of each animal in order to administer properly the program of adequate veterinary care. The clarification of these paragraphs in the revised rule to specify the elements that comprise a program of adequate veterinary care should satisfy the commenters' concern.

Three exhibitors commented that a responsible official of the dealer, exhibitor, and research facility should coordinate with the attending veterinarian in developing a program of adequate veterinary care. We believe that the concerns raised by this comment have been addressed in the revised rule, which requires dealers, exhibitors, and research facilities to establish and maintain the program of veterinary care and requires the program to be under the control and supervision of the attending veterinarian. The suggested coordination will result from this requirement, if properly implemented.

We received 25 comments from members of the research community stating that veterinarians are not trained for the role of determining what anesthesia and analgesics to provide. We believe the attending veterinarian has this expertise and is best suited to provide guidance concerning the proper use of pain relieving drugs and the need for them. One commenter stated that requiring the principal investigator to provide anesthesia and analgesics in accordance with the attending veterinarian's recommendation places the attending veterinarian in the position of deciding critical experimental issues, and this is not the role for which the attending veterinarian is trained. We disagree with the commenters. Under proposed § 2.40(e)(2)(i), the attending veterinarian is required to provide consultation and guidance to the principal investigator and to laboratory personnel during both planning and development of the ACUP and during the performance of the actual research. The principal investigator can consult with the attending veterinarian regarding the special needs and requirements of the research and experimental design, and together they can resolve outstanding matters concerning the use of pain relieving drugs. Additional review of determinations regarding the use of drugs is provided under § 2.35. Under that section, the ACUP must be reviewed and approved by the Committee, and the principal investigator must explain why an exception to the requirement to provide for the use of pain relieving drugs is justified. We do not believe that the attending veterinarian will be in the position of deciding critical experimental issues that are outside the scope of his or her expertise or duties.

We received 10 comments (3 from dealers and 7 from exhibitors) stating that the attending veterinarian should not have to be present for routine health care procedures, such as vaccinations and worming. We agree with the commenters. For this reason, there was no proposed requirement that the attending veterinarian be present at all times for those procedures, nor is there one in the revised rule. The requirement is that the program of adequate veterinary care, including the procedures involved in administering a program of adequate veterinary care, be conducted under the supervision and control of the attending veterinarian. This does not require the attending veterinarian's presence at all times. No change is made in the revised rule based upon this comment.



Proposed § 2.40(c) would require that a written program of adequate veterinary care between the dealer, exhibitor, or research facility and the "Doctor of Veterinary Medicine" be drawn up and reviewed annually by APHIS. It would also require that the program provide for regularly scheduled visits by the veterinarian as appropriate to the facility's needs, if a part-time or consulting veterinarian is the attending veterinarian. Each dealer, exhibitor, and research facility would be required to keep a copy of the program on file on the premises and to provide a copy to the Area Veterinarian in Charge annually. Proposed paragraph (c) would also provide minimum requirements that must be included in the written program of adequate veterinary care, in addition to the areas of care provided in paragraph (b).

Six commenters from the research community stated that the term "attending veterinarian" should appear in place of "Doctor of Veterinary Medicine." We agree and have made this change in the revised rule. We intended specifically that the attending veterinarian, not any "Doctor of Veterinary Medicine," be involved in the development of the program of veterinary care. We have revised paragraph (c) accordingly.

We received 315 comments (290 from members of the research community and 25 members of the general public) stating that the written program of adequate veterinary care required in proposed § 2.40(c) reads like a contract between the facility and a part-time or consulting attending veterinarian and therefore would not be appropriate for full-time or staff attending veterinarians. Representatives of HHS suggested that institutions with a full-time attending veterinarian on staff should not be required to prepare and submit annually for review a separate program document, since they would have a program of adequate veterinary care in place through established positions, lines of authority, and standard operating procedures. We agree in part with the HHS suggestion. We believe that if a dealer, exhibitor, or research facility has established a written program of adequate veterinary care, separately or as part of its standard operating procedure, and has a full-time attending veterinarian on staff, it need not annually prepare and submit to APHIS a separate document for the program of adequate veterinary care. This is because the written program or SOP, coupled with the established lines of authority and responsibility, would address the requirement for maintaining a program of adequate veterinary care. We also agree that if a dealer, exhibitor, or research facility has a written program of adequate veterinary care and a full-time attending veterinarian on staff, it is sufficient if the written program of adequate veterinary care is reviewed by APHIS inspectors in the course of their regular duties, on the premises, rather than requiring the dealer, exhibitor, or research facility to redraft and submit a copy of their program annually to the Area Veterinarian in Charge. Dealers, exhibitors, and research facilities that have a full-time attending veterinarian on staff generally are less likely to change their attending veterinarian than are those with a part-time or consulting attending veterinarian, and therefore changes to the program of adequate veterinary care due to changes in personnel are less likely. Additionally, full-time staff attending veterinarians can make daily personal observations or receive reports on animal conditions and care from employees under their supervision, and are in a position to respond promptly to veterinary care needs with trained personnel. Part-time or consulting attending veterinarians would not have the same opportunity to observe and to act.

We are requiring in the revised rule that if a dealer, exhibitor, or research facility utilizes the services of a part-time or consulting attending veterinarian, it must provide the Area Veterinarian in Charge with its written program of adequate veterinary care, prepared and signed by its attending veterinarian, on an annual basis. We are requiring that a part-time or consulting attending veterinarian prepare and sign the written program of adequate veterinary care annually in order to verify that it is the current program of veterinary care being implemented by the attending veterinarian and the dealer, exhibitor, or research facility. The dealer, exhibitor, or research facility must also keep a copy of the program on file at its premises at all times. We are revising § 2.40(c) in this rule to clarify these differences for dealers, exhibitors, or research facilities that have a full-time attending veterinarian on staff and those that utilize the services of a part-time or consulting attending veterinarian. They appear in paragraphs (c) (1) and (2) of § 2.40 in the revised rule.

Thirty-seven commenters (36 from the research community and 1 exhibitor) stated that the program of veterinary care should be reviewed every 3 years, instead of annually, to coincide with registration renewal. We are retaining the requirement for annual review. The need for adequate veterinary care has nothing to do with registration renewal every 3 years. Rather, it is concerned with the daily health needs of the animals. The commenters do not mention the fact that the requirement for annual review of the program of veterinary care also applies to dealers and exhibitors We believe that annual review is desirable in any event, because of changes in the technology of veterinary care delivery, and changes in accepted procedures.

Four dealers commented that visits by a part-time or consulting attending veterinarian should not be required to be by appointment, but should only be required to be made on a routine basis. Proposed § 2.40(c) requires "regularly scheduled visits appropriate to the facility's needs." There is no requirement for visits by appointment. Our concern is that visits be sufficiently frequent to provide adequate veterinary care, as "appropriate to the facility's needs." No change is made to this provision in the revised rule.

We have made one additional change to proposed paragraph (c). In providing the minimum requirements that must be included in the written program of adequate veterinary care, we omitted reference to the areas of veterinary care that must be included. These are the areas of veterinary care identified in § 2.40(b) of both the proposed and the revised rules. This reference is added as new paragraph (c)(3) and proposed paragraphs (c) (1) through (6) are redesignated as (c)(3) (i), (ii), and (iv) through (vii) in the revised rule. This change also responds to the 2 comments we received from members of the research community who stated that regulations should be provided on what determines adequate veterinary care.

*Observation of animals and care for sick, diseased, injured, lame, or blind*

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*animals.* Proposed § 2.40(d) would require daily observation of animals by the dealer, exhibitor, veterinarian, animal caretaker in charge, or someone under their direct supervision. In drafting proposed § 2.40(d), we inadvertently omitted research facilities from the entities required to observe each animal daily. We believe this subsection was understood to apply to research facilities since the second sentence refers to animals obtained for research purposes. Also, proposed § 2.40(e)(2) imposes requirements on the attending veterinarian of a research facility in addition to those contained in paragraphs (a) through (d). The term "research facility" is added following "exhibitor" in the revised rule. The term "veterinarian" was intended to refer to an attending veterinarian, and is modified in the revised rule accordingly.

We received two comments from the research community stating that provision should also be included for observation of the animals by the principal investigator. We agree with this comment since the investigator is qualified to perform the required observation. The revised rule is changed to include observation by the investigator.

One exhibitor and 1 member of the research community commented that the requirement for daily observation of the animals is excessive. One commenter noted that it is impractical to require the veterinarian of a large facility, such as large exhibition facilities or game farms, to observe each animal daily, and that observation might actually be detrimental to the proper management of some species, such as bears isolated for cubbing. We disagree with the commenter. The requirement for daily observation of most species has been part of the regulations since 1967 without resultant problems. It is also consistent with the NIH Guide for the Care and Use of Laboratory Animals, which states that "[a]nimals should be observed and cared for by qualified personnel every day, including weekends and holidays, * * *" (p. 28). Daily observation is a necessary part of good husbandry practices. It is extremely important that this requirement be retained in order to detect possible problems, including detection of disease and abnormal behavior. Also, it is not necessary that one individual observe all the animals. The proposed regulation would require daily observation by "the dealer, exhibitor, [research facility], [attending] veterinarian, [principal investigator], or animal caretaker in charge, or someone under their direct supervision."

(Bracketed terms are added to the regulation in the revised rule.) We are clarifying this provision in the revised rule to provide that someone under the direct supervision of the attending veterinarian, principal investigator, or animal caretaker in charge would be allowed to perform the required observation if he or she is required to report promptly his or her findings to trained personnel and veterinary care is promptly provided. In this manner, the need to provide necessary veterinary care will be promptly identified and communicated to responsible and trained personnel. We do not believe that objections to the requirement are valid. The requirement is retained in the revised rule.

Proposed § 2.40(d) would also require that "each facility provide veterinary care or humanely dispose of sick, diseased, injured, lame, or blind animals, unless this would be inconsistent with the research purposes for which the animal was obtained and is being held * * *." It would also require compliance with any state or local law requiring holding of animals suspected of being diseased for a specified period of time.

We received 31 comments from the research community proposing that the term "unhealthy" be substituted for "sick, diseased, injured, lame or blind" in proposed § 2.40(d). We disagree with the commenters since an animal can be lame or blind and still be considered "healthy." Substitution of "unhealthy" will not cover all of the conditions listed in the proposed regulation. The substance of the requirement, to provide veterinary care or to humanely dispose of animals that are "sick, diseased, injured, lame, or blind," has been included in the regulations since 1967 and has not presented any problems to our knowledge. Reference to "sick, diseased, injured, lame, or blind," animals will remain in the revised rule. We are revising the provision of the proposed rule requiring "[t]he facility" to provide veterinary care or humanely dispose of sick, diseased, injured, lame, or blind animals. It is revised to clarify that this requirement applies to all research facilities, dealers, and exhibitors.

*Research facilities.* Proposed § 2.40(e) would impose additional requirements on the attending veterinarian of a research facility. It would require the attending veterinarian to be a member of the Institutional Animal Care and Use Committee and provide that he or she has "authority to enter all animal rooms, sites, facilities, and animal use areas, at any time."

The requirements imposed on the attending veterinarian of a research facility in the proposed rule include providing consultation and guidance to principal investigators and laboratory personnel during planning and development of an ACUP, and during actual research, whenever a procedure is likely to produce pain or distress in an animal. Proposed paragraphs (A) through (D) of § 2.40(e)(2)(i) identify specific areas in which the attending veterinarian must provide consultation and guidance. Proposed § 2.40(e)(2)(ii) would require the attending veterinarian to establish a recordkeeping system and a standard operating procedure which indicates and assures the proper use of drugs and proper pre- and post-surgical care on a daily basis. Proposed § 2.40(e)(2)(iii) would require the attending veterinarian to sign an assurance statement on the research facility's annual report, VS Form 18-23, certifying that he or she has authority to enter all animal areas, that he or she has carried out the requirements of § 2.40, and that he or she has read and understands the regulations and standards contained in Parts 2 and 3 of the Animal Welfare regulations.

In the revised rule, § 2.40(e)(1), the research facility is directed to require that the attending veterinarian be a member of the Committee. Similarly, it is the research facility's responsibility, under § 2.40(e)(2)(i), to require the attending veterinarian to provide the requisite consultation and guidance. Also, as discussed in this supplementary information under the heading, "Subpart B—Registration," only the chief executive officer or the institutional official with responsibility for animal care will be required to sign the facility's annual report. This is consistent with the PHS Policy. Accordingly, paragraph (iii) is deleted from § 2.40(e)(2) in the revised rule.

Many of the comments we received addressing proposed § 2.40(e) were from members of the research community. Therefore, unless otherwise indicated, the source of the comments discussed in this section is the research community.

Ten commenters stated that the word "all" should be deleted from paragraphs (e)(1) ("The attending veterinarian shall have * * * authority to enter all animals rooms, sites, facilities, and animal use areas, at any time"), (e)(2)(i)(D) (the attending veterinarian shall provide consultation and guidance in "[e]valuation and approval of all animal surgical areas"), and (e)(2)(iii)(A) (attending veterinarian shall sign an assurance statement on the facility's annual report certifying that he or she has "authority to enter all animal areas"). Proposed § 2.40(e)(2)(iii) is removed from the revised rule since the attending veterinarian is not required to sign the annual report. The other references to "all" remain as proposed, because we believe it is essential that all animal rooms and animal areas be accessible to the attending veterinarian to assure proper and adequate veterinary care and to carry out the intent of the Act. The requirements that the attending veterinarian provide consultation and guidance in the areas of evaluation and approval of all animal surgical areas and qualifications of personnel involved with animal surgery are ultimately the responsibility of the facility and are included in § 2.30 in the revised rule. The facility must assure, however, that evaluation and approval of all animal surgical areas and qualifications of personnel are done in accordance with instructions of the attending veterinarian. Accordingly, § 2.40(e)(2)(i)(D) of the revised rule retains the requirement that the research facility require the attending veterinarian to provide consultation and guidance with respect to evaluation and approval of all animal surgical areas and qualifications of personnel involved with animal surgery.



Fifteen commenters stated that the attending veterinarian should be allowed access to enter animal rooms, sites, facilities, and animal use areas only "at any reasonable time," rather than "at any time" as proposed in § 2.40(e)(1). The commenters expressed concern that entry by the attending veterinarian in an animal study area during a procedure could be disruptive. We have determined that access "at any time" is imperative to prevent obstruction by those principal investigators for whom there is never a "reasonable" time to allow entry by the attending veterinarian. It is desirable that the attending veterinarian consult with the investigator to determine what would be a reasonable time and that the attending veterinarian be able to examine the ACUP in making this determination so as not to disrupt procedures or a controlled research environment. This may be done as part of the consultation and guidance provided during ACUP planning and development, and during actual research. Moreover, as previously discussed in the discussion of § 2.30(b) under the heading, "§ 2.30 Additional requirements for research facilities," research facilities could establish guidelines in the facility's written policies and procedures to help reassure personnel that this right of access would be exercised in good faith. It is important, however, that the attending veterinarian retain the right to have access at any time to ensure compliance with the program of adequate veterinary care, for the benefit of the animal.

Forty-four commenters stated that the requirements imposed on the attending veterinarian in proposed § 2.40(e)(2) properly belong to the Committee. We do not agree. The Act requires that the principal investigator consult with a doctor of veterinary medicine in the planning of any procedure likely to produce pain or distress in an experimental animal (7 U.S.C. 2143(a)(3)(C)). The areas listed in proposed paragraphs (A) through (D) of § 2.40(e)(2)(i) are necessary components of research planning and development and of veterinary care.

Proposed § 2.40(e)(2) states that:

> In addition to the requirements set forth in paragraphs (a) through (d) of this section, the attending veterinarian of a research facility shall:
>
> (i) provide consultation and guidance to principal investigators and other laboratory personnel during protocol [ACUP] planning and development, and during actual research, whenever any procedure is likely to produce pain or distress in an animal. Such consultation and guidance shall include at least the following areas:
>
> (A) the proper use of tranquilizers, analgesics, anesthetics, and euthanasia according to the accepted, or common veterinary practice procedures;
>
> (B) provision for adequate pre-surgical and post-surgical care by laboratory workers in accordance with current established veterinary medical and nursing procedures;
>
> (C) agreement to the withholding of tranquilizers, anesthesia, analgesia, or euthanasia only when scientifically necessary and only for the necessary period of time; and
>
> (D) evaluation and approval of all animal surgical areas and qualifications of personnel involved with animal surgery.
>
> (ii) establish a recordkeeping system and standard operating procedure, which indicates and assures that the proper drugs are being used and that proper pre-surgical and post-surgical care, are being carried out on a daily basis; [1]

Forty-eight commenters stated that the areas provided in proposed paragraph (D) of § 2.40(e)(2)(i) should be the responsibility of the research facility, not the attending veterinarian. We agree that the areas listed in proposed paragraph (D) of subsection (e)(2)(i) (evaluation and approval of all animal surgical areas and qualifications of personnel involved with animal surgery) as well as those listed in proposed paragraphs (e)(2)(i)(A) through (C) are ultimately the responsibility of the research facility. We believe, however, they should be carried out with consultation and guidance from the attending veterinarian and in accordance with his or her instructions, because the attending veterinarian is best qualified to advise in these areas. Evaluation of animal surgical areas and the qualifications of personnel will be accomplished through the attending veterinarian in the revised rule, though they remain the ultimate responsibility of the facility.

We received 506 comments (481 from the research community and 25 from members of the general public) stating that proposed paragraph (e) of § 2.40 implied that the attending veterinarian would be required to be present during all actual research and that this is impractical and unnecessary. It is not our intent that the attending veterinarian must be present at all times during all actual research or during all actual research that might produce pain or distress in an animal. Rather our intent is that the attending veterinarian must be available for consultation and to provide guidance, and must have free access to all animal areas if he or she determines it is necessary to be present during the conduct of research procedures. During our consultations with representatives from HHS, they stated that many institutions interpreted proposed § 2.40(e) as requiring the attending veterinarian's presence. They suggested the following clarifying modification to paragraph (e)(2)(i): "Provide consultation and guidance to principal investigators and other laboratory personnel during [ACUP] planning and development, and if deemed necessary by the IACUC [Committee] during actual research, whenever any procedure is likely to produce pain or distress in an animal." We agree that the attending veterinarian should be present during actual research that is likely to produce pain or distress in animals if requested by the Committee. We also believe the attending veterinarian should be present if requested by the investigator, if complaints from personnel or humane groups are received, or to observe the research for compliance with the approved ACUP, the facility's written policy under § 2.30(e)(10), and the facility's program of adequate veterinary care. The revised rule is modified to clarify that the attending veterinarian's presence during actual research that is likely to produce pain or distress is required only under these circumstances.

[1] Paragraph (iii) is not repeated here since the requirement for the attending veterinarian to sign the annual report is removed from the revised rule.

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One commenter objected to the requirement in proposed § 2.40(e)(2)(i) that the principal investigator consult with and receive guidance from the attending veterinarian during ACUP planning and development and during actual research whenever a procedure would be likely to produce pain or distress. Section 13(a)(3)(C)(i) of the Act specifically mandates this consultation in the planning of "any practice which could cause pain to animals." (7 U.S.C. 2143 (a)(3)(C)(i)). For this reason and for the reasons stated above in our discussion of required consultation and guidance, no change is made in the revised rule based upon this comment.

We received 40 comments stating that the requirement of proposed § 2.40(e)(2)(ii), that the attending veterinarian establish a recordkeeping system to assure proper drug usage and proper pre- and post-surgical care, be deleted. Twenty-nine commenters noted that procedures for proper drug use and pre- and post-surgical care would be provided in the ACUP, making a separate recordkeeping system unwarranted. We agree with the commenters insofar as requiring assurance of proper care is the institution's responsibility. We believe that the research facility should have some means of verifying the elements of proper veterinary care and that their written program of adequate veterinary care should provide for a recording system which indicates compliance with proper veterinary care procedures. We have revised paragraph (ii) in this rule to reflect that research facilities are required to have their attending veterinarian establish, as part of the facility's program of adequate veterinary care, procedures and a recording system in their program of adequate veterinary care which indicate and assure proper drug usage and proper pre- and post-procedural care.

Four commenters stated that only the institutional official responsible for animal care should be required to sign the annual report, Form VS 16–23. We agree for the reasons set forth under the heading, "Subpart B—Registration" and have removed paragraph (iii) from the revised rule.

No other changes are made to § 2.40 in the revised rule.

Subpart E—Identification of Animals, Time and method of identification

In proposed § 2.50, we proposed animal identification requirements intended to strengthen those of the existing regulations. We received 5 comments (2 from dealers and 3 from the general public) generally endorsing the stricter identification requirements and in favor of use of tags, tattoos, or both as the most reliable means of identification. One commenter urged that the type of marking provided in the regulations be by a humane method. Another commenter noted the need for requiring adequate recordkeeping as a means of verification of the animals' identity.

We have reconsidered the proposed requirements in light of the commenters' concern for stricter identification requirements in general. We believe that the requirements contained in proposed § 2.50 will result in more animals held by all classes of dealers and by research facilities being properly identified by tagging or by an approved tattoo. In this regard, we have reconsidered allowing class "A" dealers to identify live dogs or cats on the premises by "an accurate and distinctive description," a tattoo marking, or an official tag, and have determined that all animals on the premises should be identified by tattoo or official tag. We are eliminating the option to identify animals by description from proposed § 2.50(a)(3) since it could result in inaccuracies or improper substitution of animals. With this method of identification removed from the regulations, we believe that the requirements in paragraph (a)(3) can be combined with those of (a)(1). Accordingly, § 2.50(a)(1) is revised to require identification by tag or tattoo, of all live dogs and cats held on the premises, purchased, or otherwise acquired, sold, or otherwise disposed of or removed from the premises.

The commenter noting concern about humane methods of identification was most concerned that the method used not be unreasonably painful or distressful, such as ear tagging could be. The regulations are sufficiently clear in their requirement that tags must be attached "by means of a collar made of material generally considered acceptable to pet owners" and provides guidelines as to what would be considered acceptable and what would be unacceptable. Unacceptable materials are those such as wire, elastic, or sharp metal, that might cause discomfort or injury to the animals. Ear tagging is not an acceptable means of identification. We do not believe that additional regulations concerning the means of tagging are needed at this time.

Although we did not receive any comments addressing proposed § 2.50(b), we wish to clarify that it requires identification of all live dogs or cats under a Class "B" dealer's control, or on his premises, and not just those that are purchased or otherwise acquired. The word, "or," was inadvertently omitted from paragraph (b) in the proposal. To correct any misconception we are revising paragraph (b)(1) to read as follows:

"When live dogs or cats are held, purchased, or otherwise acquired, they shall be immediately identified—

We are making a conforming change in paragraph (c) for the same reason.

We did not receive any other comments concerning the remaining sections of proposed Subpart E, however we have determined that some revision is necessary.

We have clarified proposed § 2.50(e) by revising paragraph (e)(1) to include animals from any exempt source. Proposed paragraph (e)(2) is therefore removed from the revised rule because it is subsumed in paragraph (e)(1). We have revised proposed paragraph (e)(1) by redesignating its provisions as paragraphs (e)(1)(i), (ii), and (e)(2) in the revised rule to make it easier to follow. Paragraph (e)(1) of the proposed rule would provide that all live dogs or cats delivered for transportation, transported, purchased or otherwise acquired, sold, or disposed of by a research facility be identified at the time of delivery, purchase, sale, disposal, or acquisition by either: (1) An official tag or tattoo that was affixed to the animal at the time it was acquired by the research facility, or (2) a tag, tattoo, or collar applied to the dog or cat by the research facility which individually identifies the dog or cat by description or number. The latter alternative is redesignated as paragraph (e)(1)(ii) in the revised rule. We have determined that a tag, tattoo, or collar would identify the dog or cat by number only, and not by description, due to space and other practical limitations. We are removing identification by description from this provision in the revised rule.

*Subpart F—Stolen Animals*

Proposed § 2.60 would provide that "[a]ny person subject to the Act shall not buy, sell, exhibit, use for research, transport, or offer for transportation, any stolen animal." One of the findings of Congress on which the Act is premised is that "regulation of animals and activities as provided in [the] Act is necessary * * * in order (3) to protect the owners of animals from the theft of their animals by preventing the sale or use of animals which have been stolen." (7 U.S.C. 2131(b)). Section 2.60 was proposed in order to prevent the buying and selling of stolen animals and those obtained under questionable circumstances, since the requirements of marking for identification and recordkeeping have proven insufficient to stop these practices.



We received 377 comments (352 from the research community and 25 from members of the general public) stating that proposed § 2.60 should either be deleted from the regulations entirely or that it should be limited to persons "knowingly or willfully" engaging in activities using stolen animals. Fourteen commenters (2 from the research community and 12 from members of the general public) stated that they are in favor of the proposed regulation.

As stated above, we have determined that this section is necessary and it remains in the rule, as revised. We have considered the comments stating that the regulations should prohibit only willful or knowing use of stolen animals and have determined that the resultant regulation would be ineffective and virtually unenforceable. We are concerned that persons seeking to use the animals as provided in the regulation would choose to remain ignorant of the circumstances under which the animal was obtained. We have also considered adding an exception for circumstances in which the person holding the animal has made reasonable, good faith efforts to determine whether the animal was stolen or its origin. We have determined that the proposed regulation would be most effective in preventing theft of animals if the various activities involving stolen animals listed in the regulation constitute a *per se* violation of the regulations. Only in this manner can we be certain that persons subject to the Act will use best efforts in endeavoring to avoid using stolen animals. We are hopeful that the incidence of stolen animals will subside if the market for them is eliminated. Section 2.60 remains in the revised rule as originally proposed.

*Subpart G—Records*

Dealers and exhibitors

We received 5 comments (1 from the research community, 1 from an exhibitor, and 3 from the general public) noting the need for stricter recordkeeping requirements in general. We believe that the additional recordkeeping requirements proposed in Subpart G will assist the Department by enhancing traceability of the animals, which is one of the prime objectives of the recordkeeping requirements, and will be a valuable tool in combatting the sale of animals obtained unlawfully.

We are clarifying § 2.75 in this revised rule to reflect that it applies to dealers other than operators of auction sales and brokers, and to exhibitors. This clarification is necessary because operators of auction sales and brokers are dealers under the Act (7 U.S.C. 2131(f)) and under the definition of "dealer" contained in Part 1—"Definition of Terms" (see companion docket no. 88–013, published elsewhere in this issue), because they negotiate the purchase or sale of animals, in commerce, for compensation or profit. Section 2.77 provides the recordkeeping requirements applicable to operators of auction sales and brokers to whom animals are consigned.

Proposed § 2.75 would impose recordkeeping requirements upon dealers and exhibitors that are substantially similar to those required under current § 2.75, except that dealers and exhibitors would also be required to maintain in their records the vehicle license number and state, and the driver's license number and state of anyone not licensed or registered under the Act from whom a dog or cat is acquired. This requirement was not included in proposed § 2.75(b) and we have determined that it is equally appropriate to include it for animals other than dogs and cats. This requirement was proposed to facilitate tracing the seller and the source of the animals, particularly when the source or origin of the animals is in question. Five commenters from the general public stated their approval of this requirement.

One member of the general public suggested that we require owner release statements which acknowledge ownership of the animals whenever they are acquired or sold, or possession is otherwise transferred. We are concerned that anyone who contrives to sell or transfer stolen animals would likely be willing to provide a fraudulent owner release statement. Secondly, a person subject to the Act might attempt to defend against a charge of violating § 2.60 by pleading good faith reliance on the owner release statement and could argue that it is not reasonable to require a person to go beyond obtaining the statement to satisfy themselves that the animals were not stolen. This would affect the Department's efforts to enforce § 2.60 of the regulations effectively under those circumstances or to prosecute persons charged for activities involving stolen animals. Because of these concerns with the commenter's suggestion, we are not requiring an owner release statement at this time. If we determine that it should be included in some form in the regulations, we will publish a notice of proposed rulemaking and solicit public comments on the proposal.

One exhibitor commented that APHIS, and not licensees, should maintain dealer records, such as the Record of Disposition of Dogs and Cats (VS Form 18–6). The Department is authorized under sections 10 and 12 of the Act to require that dealers and exhibitors maintain records with respect to the purchase, sale, transportation, identification, and previous ownership of animals (7 U.S.C. 2140, 2142). The Department is also authorized under sections 10 and 12 of the Act to inspect and copy those records (7 U.S.C. 2140, 2142). No change is made in the revised rule based upon this comment.

Section 2.75 remains as originally proposed.

Proposed 2.76 would similarly require research facilities to maintain in their records the vehicle license number and state, and the driver's license number and state of the person from whom a dog or cat was purchased or otherwise acquired if that person is not licensed or registered under the Act. Proposed § 2.76 would also require research facilities to maintain in their records the USDA license or registration number of that person if that person is licensed or registered under the Act. Current § 2.76 is more general in its requirement that research facilities maintain a license number if that person is licensed under the Act.

The requirement to maintain the vehicle license number and state, and the driver's license number and state of the person who owned or consigned the animal(s) for sale was omitted from proposed § 2.77(a). We have determined that it is equally appropriate to impose this requirement on dealers who are operators of auction sales and brokers, for the reasons stated above. Accordingly, § 2.77(a) is revised to include this requirement. We are also revising § 2.77(a) in this rule to include the date of birth or approximate age of the animal in the description required, because this requirement was inadvertently omitted from the proposed rule.

We received 303 comments (278 from members of the research community and 25 from members of the general public) stating that the requirement to maintain a record of the USDA license or registration number is not in the Act and that APHIS has failed to demonstrate how requiring it would benefit animal welfare. Section 10 of the Act requires research facilities to make and retain records with respect to the purchase, sale, transportation, identification, and previous ownership of live dogs and cats, as the Secretary may prescribe (7 U.S.C. 2140). Section 12 of the Act

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authorizes the Secretary to promulgate recordkeeping requirements governing the purchase, handling, or sale of animals, in commerce, by research facilities (7 U.S.C. 2142). The requirement for maintaining a record of the USDA license or registration number of the person from whom live dogs or cats are obtained allows the Department to trace the origin of the animals and thereby locate dealers who may be suspected of selling unlawfully obtained animals. Without mechanisms which enable the Department to locate persons selling stolen animals, the Department would be unable to fulfill one of the stated purposes of the Act, "to protect the owners of animals from the theft of their animals by preventing the sale or use of animals which have been stolen." (7 U.S.C. 2131(b)(3)). Congress further authorized the Secretary "to promulgate such rules, regulations, and orders as he may deem necessary in order to effectuate the purposes of [the] Act." (7 U.S.C. 2151). The ability to trace persons selling animals is more important now than ever, because fewer pound animals are being conditioned for research purposes and the demand by the research facilities for experimental animals is increasing. There also appears to be increasing transfer of animals between research facilities, making it necessary to trace the sellers' identity through multiple previous owners. The requirement to obtain the license or registration number of all persons from whom a research facility obtains dogs or cats therefore remains as initially proposed, as it is necessary and reasonable under the circumstances.

Three members of the general public commented that the regulations should be revised to state that research facilities should buy animals from licensed sellers only. We believe that the Act fully covers this issue and that further regulation is not necessary. Section 7 of the Act provides:

> It shall be unlawful for any research facility to purchase any dog or cat from any person except an operator of an auction sale subject to section 12 of this Act or a person holding a valid license as a dealer or exhibitor issued by the Secretary pursuant to this Act unless such person is exempted from obtaining such license under section 3 of this Act. (7 U.S.C. 2137).

Proposed § 2.1 was intended to better identify persons exempt from the licensing requirements of the Act, as discussed in the supplementary information to Subpart A—Licensing, under the heading, "Requirements and application." We do not agree that additional provisions need be included in the regulations at this time No change is made in the revised rule as a result of this comment.

Health certification and identification

Proposed § 2.79 would continue the requirement of current § 2.79 that a health certificate, executed and issued by a licensed veterinarian, must accompany any dog, cat, or nonhuman primate delivered by a dealer, research facility, exhibitor, operator of an auction sale, broker, or department, agency, or instrumentality of the United States or of any State or local government, to an intermediate handler or carrier for transportation in commerce. It further provides that VS Form 18–1 may be used for health certification by a licensed veterinarian. VS Form 18–1 is the "U.S. Interstate and International Certificate of Health Examination for Small Animals."

One commenter from the research community stated that federal institutions that are dealers are not required to sign Form 18–1. Nevertheless, the Act does require any "department, agency, or instrumentality of the United States having laboratory animal facilities," to provide health certificates (7 U.S.C. 2144). Section 14 of the Act requires that they comply with paragraphs (a), (f), (g), and (h) of section 13 (7 U.S.C. 2143), and section 13(f) provides the requirement for a health certificate to accompany dogs, cats, and "additional kinds or classes of animals designated by regulation of the Secretary." (7 U.S.C. 2144.)

We intended to impose these prohibitions on persons who transport animals in commerce themselves, rather than limiting the prohibitions to persons who deliver the animals to carriers or intermediate handlers, but inadvertently did not do so in the proposed rule. Imposing these prohibitions on persons who transport animals in commerce themselves is necessary because increasing numbers of dealers, research facilities, and other persons are transporting animals themselves, rather than using carriers and intermediate handlers to do so. The health and safety concerns underlying the minimum age requirement and health certification requirement apply equally to the animals in transport, regardless of the legal status of the person transporting the animal, and it is inconsistent with these concerns to place the prohibitions on carriers and intermediate handlers only.

Therefore, § 2.79 is revised in this rule by extending its prohibitions to any dealer, research facility, operator of an auction sale, broker, or department, agency, or instrumentality of the United States or of any State or local government transporting any dog, cat, or nonhuman primate in commerce. This would apply to federal agencies as well. We are similarly extending the prohibition of § 2.130 to any person transporting dogs or cats in commerce.

We also note that in our proposal to amend Part 3—"Standards" (see companion docket no. 87–004, published elsewhere in this issue), we are proposing to make the transportation standards included in Subparts A–D applicable to any person subject to the Act who transports the regulated animals in commerce, rather than restricting the standards to carriers and intermediate handlers as in the current regulations.

*Subpart H—Compliance with Standards and Holding Period*

Compliance with standards

Proposed § 2.100(a) would require the following:

> Each dealer, exhibitor, operator of an auction sale and research facility shall comply in all respects with the regulations set forth in Part 2 and the standards set forth in Part 3 of this subchapter for the humane handling, care, treatment, housing, and transportation of animals: Provided, however: That exceptions to the standards in Part 3 may be made for research facilities only when such exceptions are specified in the research protocol; are explained in detail in a report filed with the Institutional Animal Care and Use Committee; and are approved by the Committee.

Seven commenters objected to the wording of proposed § 2.100(a). Four commenters from the research community objected to use of the term "research protocol" in the proposed regulation. Three of those commenters and 2 additional commenters from the research community stated that the statutory language should be used instead. A seventh commenter, also from the research community, stated that the phrase "are explained in detail in a report filed with the Institutional Animal Care and Use Committee; and are approved by the Committee" should be removed from the regulation.

We consider these comments to be unjustified. The proposed language is taken from the statute. Section 13(a)(3)(E) of the Act plainly states "that exception to such standards may be made only when specified by research protocol and that any such exception shall be detailed and explained in a report outlined under paragraph (7) and filed with the Institutional Animal Committee." (7 U.S.C. 2143(a)(3)(E).) The term "research protocol" is taken directly from the statute. However, as explained in Part 1—"Definition of Terms," docket no. 88–013, published elsewhere in this issue of the **Federal Register**, we have replaced it with "animal care and use procedure" (ACUP) everywhere it appears in proposed Parts 1 and 2. This change is to satisfy concerns voiced by members of the research community and HHS that the Department would be interfering in research design. The requirement that exceptions to the standards be detailed and explained in a report to the Committee is also directly from the statute and remains in the revised rule. We are revising § 2.100 to also require that exceptions from the provisions of § 2.131, "Handling," may be made by research facilities when specified in the ACUP, explained in detail in a report filed with the Committee, and are approved by the Committee. This change is necessary because § 2.131 pertains to the humane handling of all animals covered by the Act and is derived from the standards in Part 3. We have included it in Part 2 because all persons subject to the Act must comply with it when handling all animals covered by the Act.

Proposed § 2.100(b) would apply to carriers and intermediate handlers, and would require that they comply with the regulations in Part 2 and the standards in Part 3 pertaining only to the humane transportation of animals in commerce. Proposed § 2.100(a) would apply to dealers, exhibitors, operators of auctions sales, and research facilities, and would require that they comply with the regulations in Parts 2 and 3 in their entirety. We have determined that because intermediate handlers hold animals for several days while awaiting transportation in commerce, they should be required to comply with all of the standards in Part 3 for the humane handling, care, treatment, and housing of animals during these holding periods, and not just those pertaining to transportation. We are therefore revising § 2.100(a) in the final rule to include intermediate handlers and we are removing them from § 2.100(b) in the revised rule.

Except for these three changes, § 2.100 remains as proposed.

Holding period

Proposed § 2.101(a) would require a 5-day holding period for dogs and cats by dealers and exhibitors following their acquisition of the animal. One dealer objected to the 5-day holding period. Section 5 of the Act provides as follows:

> No dealer or exhibitor shall sell or otherwise dispose of any dog or cat within a period of five business days after the acquisition of such animal or within such other period as may be specified by the Secretary * * * (7 U.S.C. 2135).

Five days is considered to be the appropriate holding period under most circumstances We consider that this is a reasonable period of time to allow persons to locate missing animals, and to enable a dealer or exhibitor to determine whether a dog or cat is fit for further transfer. Accordingly, the 5-day holding period remains in the revised rule. We are revising the rule, however, to ensure that animals are held 5 full days. We are concerned that if a dealer or exhibitor obtains an animal late in the day on a Monday, for example, that it could count that Monday as one business day and dispose of the animal early on Friday by counting Friday as one business day as well. This would not allow owners sufficient time to locate their missing animals. This problem would be compounded if the dealer or exhibitor is open for business over the weekend and counts Saturday and Sunday as business days. Using the time of acquisition in the example set forth above, an animal obtained late Thursday night might be disposed of first thing Monday morning, without allowing its owner a reasonable period of time to locate the missing animal. To prevent this occurrence, we are revising § 2.101(a) to provide that, except as otherwise provided in paragraph (a), any live dog or cat acquired by a dealer or exhibitor must be held for 5 full days, not including the day the animal was acquired. We are also providing that the 10-day holding period applicable to live dogs or cats acquired by a dealer or exhibitor from any private or contract pound or shelter excludes the day the animal was acquired.

We intended that all time periods provided in § 2.101 would exclude time in transit. This exclusion was inadvertently omitted from the initial requirement of paragraph (a) that "[a]ny live dog or cat acquired by a dealer [3] or exhibitor shall be held by him, under his supervision and control, for a period of not less than 5 business days after acquisition of such animal." Reference to excluding time in transit has been included in this revised rule, as well.

We proposed certain exceptions to the 5-day holding period in § 2.101(a). The second exception stated in the proposed regulation would allow dealers or exhibitors who obtained dogs or cats obtained from governmentally owned and operated pounds or shelters to hold the animals for only 24 hours, instead of the 5-day period otherwise required, if the animals completed a 5-day holding period at the governmentally owned and operated pound or shelter.

We received 5 comments from members of the general public objecting to the proposed exception for dealers and exhibitors who obtain dogs or cats from governmentally owned and operated pounds or shelters which would excuse them from the 5-day holding period. We agree with the commenters that this exception should be removed from the regulations. Based upon our review of the comments, we have determined that a 1-day holding period would not provide owners with a reasonable period of time to recover lost animals that have been placed in the pound or shelter, and that eliminating the 5-day holding period for dogs and cats obtained from governmentally owned and operated pounds or shelters would not be in the best interests of the animals or their owners and would not be in keeping with the intent of the Act. Therefore, we are retaining the 5-day holding period in the final rule for all dogs and cats obtained by a dealer or exhibitor, except as follows:

(1) In the revised rule we are requiring a 10-day holding period, not including the day of acquisition, for dogs and cats acquired or obtained by a dealer or exhibitor from a private or contract animal shelter or pound. A holding period for animals obtained from a private or contract shelter or pound was not included in the proposal because proposed § 2.132 would have prohibited class "B" dealers from obtaining random source dogs or cats from those sources. Accordingly, it was not necessary to provide a holding period. As explained below under the heading, "§ 2.132 Procurement of random source dogs and cats, dealers," the revised rule provides that class "B" dealers may obtain random source dogs and cats from private or contract pounds or shelters and must comply with the holding period required under §§ 2.101 and 2.132. We believe that a 10-day holding period for dogs and cats obtained from a private or contract pound is appropriate and reasonable because holding periods for these animals are determined by local laws and vary greatly. Holding periods may not even be required under some local laws. Moreover, animals held in private or contract pounds often are from several different towns or counties, depending upon the contract arrangement, and the 10-day period will allow owners additional time to locate lost or stolen animals;

(2) Dogs and cats that have completed a 5-day holding period with another dealer or exhibitor, or a 10-day holding period with another dealer or exhibitor if obtained from a private or contract shelter or pound, may be sold or

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otherwise disposed of by subsequent dealers or exhibitors after a 24-hour holding period;

(3) Any dogs and cats suffering from disease, emaciation, or injury may be destroyed by euthanasia before completing the requisite holding period; and

(4) Any dogs and cats that are 120 days of age or less and that have been obtained from the person that bred and raised the animal may be disposed of by dealers or exhibitors after a 24-hour holding period.

The comments we received expressed concern that lost or stolen animals could be sold to research facilities before their owners are able to locate them. Proposed § 2.101 provides holding periods for dogs and cats that are applicable to dealers and exhibitors. One of the reasons for requiring holding periods is to allow owners of lost or stolen animals a reasonable time to locate their animals before they are sold or otherwise disposed of by the dealer or exhibitor.

We have determined that research facilities obtain dogs and cats from sources other than dealers and exhibitors which must comply with § 2.101, and exempt sources. Some of these dogs and cats may be lost or stolen animals. We believe that an effective way to protect owners of lost or stolen animals would be to impose a similar holding requirement on research facilities that obtain dogs and cats from those other sources.

Accordingly, we are requiring in this revised rule that research facilities that obtain dogs and cats from sources other than dealers, exhibitors, and exempt persons must hold the animals for 5 full days, not including the day of acquisition, after acquiring the animal, excluding time in transit. Research facilities would still be subject to the identification of animals requirements in § 2.50. We believe that this measure is necessary to effectuate the purpose of the Act and that it is authorized under Section 21 of the Act (7 U.S.C. 2151).

We are revising paragraph (b) of § 2.101 to include reference to § 2.131, "Handling," for the reasons set forth above in this supplementary information, under the heading, "Holding period."

Holding facility

We are correcting a typographical error in proposed § 2.102(a)(3). That paragraph incorrectly references § 2.4. We have changed it in the revised rule to refer to § 2.1, as we intended.

*Subpart I—Miscellaneous*

*Section 2.125 Information as to business*

Proposed § 2.125 would require persons subject to the Act to provide to any Veterinary Services representative information concerning any business of theirs which may be requested in connection with enforcement of the Act and the Animal Welfare regulations. The proposal differs from the current regulation only in that carriers and intermediate handlers would also be required to furnish business information upon the request of a Veterinary Services representative. (Reference to "Veterinary Services representative" is changed to "APHIS official" in the revised rule.) The current regulation only applies to dealers, exhibitors, operators of auction sales, and research facilities.

We received 16 comments from the research community stating that the proposal would exceed our authority under the Act and that we have gone beyond the intent of the 1985 amendments to the Act. Another 4 commenters from the research community stated that proposed § 2.125 should be deleted for this reason. We believe these comments are unjustified, because the requirements contained in proposed § 2.125 have been in effect since 1967 with respect to dealers, exhibitors, and research facilities, and have not been subject to challenge. Nor have we encountered difficulty in obtaining compliance from the research community. Section 10 of the Act provides authority for requiring recordkeeping by dealers, exhibitors, and research facilities with respect to the "purchase, sale, transportation, identification, and previous ownership" of animals. Research facilities must make and retain required records with respect to live dogs and cats only. Authority to include carriers and intermediate handlers is specifically provided in Section 10 of the Act which further expressly requires that "[s]uch records shall be made available at all reasonable times for inspection and copying by the Secretary." (7 U.S C 2140.) Section 12 of the Act authorizes the Secretary to promulgate "recordkeeping requirements governing the purchase, handling, or sale of animals, in commerce, by dealers, research facilities, and exhibitors at auction sales and by the operators of such auction sales." (7 U.S.C. 2142.) Section 21 authorizes the Secretary to promulgate regulations in order to effectuate the purposes of the Act (7 U.S.C. 2151). The Department has determined that it is necessary to expand the scope of current § 2.125 to include carriers and intermediate handlers because of their increased involvement in handling animals in commerce. Expanding the scope of this regulation is also necessary to enhance enforcement efforts. We believe that ample authority is provided by the Act for requiring this information.

We received 302 comments (277 from the research community and 25 from members of the general public) objecting to proposed § 2.125 on the basis that the Act states that only those records required by the Act to be kept need to be made available to APHIS. Current and proposed § 2.125 would require the furnishing of any information "concerning the business of the [persons subject to the act] which may be requested by such representative [of APHIS] in connection with the enforcement of the provisions of the Act, the regulations and the standards in this subchapter." In order to carry out the Department's enforcement authority, Congress expressly authorized the Secretary to "promulgate such rules, regulations, and orders as he may deem necessary in order to effectuate the purposes of this Act." (7 U.S.C. 2151.) Authority to require that business information that is pertinent to enforcing the provisions of the Act and the Animal Welfare regulations be provided to the Department upon request is necessary in order to carry out the intent of Congress. This authority must apply equally to all information which may assist efforts to enforce the provisions of the Act and the regulations, but which is not specifically required to be kept by the Act, in order for the Department to be able to effectively enforce the regulations.

We received 48 comments (46 from the research community, 1 from an exhibitor, 1 from a member of the general public) suggesting we define "proprietary and business information" and clarify proposed § 2.125 to indicate that APHIS cannot use it to obtain proprietary information. We do not agree that these modifications are necessary. Current § 2.125 has been part of the Animal Welfare regulations since 1967. There have been no complaints that it has been wrongfully used to obtain proprietary information. The information required to be provided under the regulation is that which pertains to the conduct of business by persons subject to the Act. The information is necessary for the Department to effectively carry out its regulatory and enforcement authority under the Act.

For the above reasons no change is made to proposed § 2.125 in the revised rule.



One commenter from the research community stated that we should clarify the requirements for compliance by federal research facilities under proposed § 2.125. Federal research facilities are not required to be registered under the Act; however, they are directed to comply with "the standards and other requirements promulgated by the Secretary for a research facility under section 13 (a), (f), (g), and (h)." (7 U.S.C. 2144.) Except for the information required in the annual report of research facilities, they would not be required to furnish information to APHIS under § 2.125.

*Section 2.126 Access and inspection of records and property*

Proposed § 2.126 would require dealers, exhibitors, research facilities, intermediate handlers, and carriers to provide access to Department representatives for inspection of their premises, animals, and records, to copy records, and to take photographs to document conditions and/or areas of noncompliance. We received 193 comments from the research community stating that reference to access to records and to taking photographs should either be deleted from the section or that the proposal should be revised to limit access to records and photographing of the premises. We received 139 comments from the research community stating that the entire section should be deleted or revised within the limits of the Department's statutory authority under the Act. One commenter from the research community expressed concern that photographs could become available to the public through loss, theft, or FOIA requests. Statutory authority for Departmental access to conduct inspections of premises and records and to copy records is provided in Sections 10 and 16 of the Act (7 U.S.C. 2140, 2146). Section 10 of the Act requires persons subject to the Act to make and retain records as prescribed by the Secretary and provides that:

> [s]uch records shall be made available at all reasonable times for inspection and copying by the Secretary." (7 U.S.C. 2140).

Section 16 provides that:

> [t]he Secretary shall make such investigations or inspections as he deems necessary to determine whether [any person subject to the Act] has violated or is violating any provision of this Act or any regulation or standards issued thereunder, and for such purposes, the Secretary shall, at all reasonable times, have access to the places of business and the facilities, animals, and those records required to be kept pursuant to section 10 of any such [person]."

It further requires that these inspections be conducted at least once each year and that follow-up inspections be conducted until all deficiencies or deviations are corrected (7 U.S.C. 2146(a)).

The Department's authority to take photographs to document deficiencies has been upheld in an unpublished decision by a United States Court of Appeals following the Department's Judicial Officer's decision in *In re: Donald Stumbo, d.b.a. Stumbo Farms*, 43 Agric. Dec. 1079 (1984).

We believe that § 2.126 as proposed is within the Department's authority under the Act and that no revision is necessary.

Two dealers commented that Department representatives should make appointments before conducting inspections. We disagree with the commenters. The Act provides that the Secretary shall have access "at all reasonable times" (7 U.S.C. 2146(a)) and that persons subject to the Act must make their records available "at all reasonable times for inspection and copying by the Secretary." (7 U.S.C. 2140). We have found that the ability to conduct unannounced inspections enhances our enforcement efforts and is vital to encouraging actual and ongoing compliance with the Act. It is also necessary for determining whether inspection findings are reliable indicators of the actual conduct of business by the inspected entity. We are concerned that setting appointments would allow noncomplying persons to prepare for inspection, while operating at other times in noncompliance, because they feel secure they will not be inspected by the Department without warning. For this reason, no change is made in the revised rule based upon this comment.

We received 6 comments (4 dealers and 2 exhibitors) stating that the property surrounding an animal facility should either not be subject to inspection or that there should be a limit, such as 100 feet, on the surrounding area subject to inspection. Department representatives will continue to inspect surrounding land areas in order to detect problems with pests, odors, drainage, and trash or abandoned material, all of which can affect animal welfare. We agree that at some distance from a regulated person's permises, the condition of the area no longer has any bearing on the welfare of animals on the premises. However, the distance would vary in every situation, depending on the type of housing facility used, the area under the control of the regulated person, and other factors. Because these factors vary so widely and so unpredictably, it is not practical for us to specify a limit in the regulations.

We received 6 comments (5 from members of the research community and 1 dealer) stating that specific criteria should be established for the conduct of inspections by APHIS inspectors. As stated in proposed § 2.126, Department representatives will inspect facilities, property, records, and animals as considered necessary to enforce the provisions of the Act and the regulations and standards contained in Subchapter A—"Animal Welfare." The standards contained in Part 3—"Standards," provide specific site requirements which must be satisfied by persons subject to the Act holding animals. In a related document published elsewhere in this issue we are proposing standards applicable to dogs, cats, guinea pigs, hamsters, rabbits, and nonhuman primates. (*See* companion docket no. 87-004.) We believe that further specification of criteria is not necessary at this time. We encourage comments concerning the proposed standards, because they also contain criteria that will be used in conducting inspections.

One member of the general public commented that the regulations should include inspection of humane societies, animal shelters, pounds, and the like. These types of shelters are subject to regulation and inspection if they sell animals for a regulated purpose, such as to research facilities or to dealers.

Eleven commenters from the research community stated that federal facilities should be subject to inspection by the Department. We do not have authority under the Act to inspect facilities operated by federal agencies; however, they must comply with section 13 (a), (f), (g), and (h) of the Act, and must submit an annual report to APHIS each year. Accordingly, government owned and operated pounds are exempt from inspection by APHIS.

*Section 2.128 Inspection for missing animals*

Proposed § 2.128 would require dealers, exhibitors, research facilities, carriers, and intermediate handlers to allow access by "police or other officers of law enforcement agencies with general law enforcement authority (not those agencies whose duties are limited to enforcement of local animal regulations)" to enter the premises to inspect animals and records for the purpose of locating animals that are missing. Ten commenters from the research community stated that the section should be deleted from the regulations. One commenter stated that it violates the requirements of due

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process of law and the Fourth Amendment protection against unreasonable searches and seizures. The commenter stated that searches for missing animals should be conducted under the existing procedures of local, state, and/or federal law enforcement agencies.

The Department is required by the Act to promulgate rules and regulations requiring persons subject to the Act to allow inspections to search for missing animals. Section 17 of the Act directs the Secretary to "promulgate rules and regulations requiring [persons subject to the Act] to permit inspection of their animals and records at reasonable hours upon request by legally constituted law enforcement agencies in search of lost animals." (7 U.S.C. 2147). Under the proposed rule, the searches must be conducted in accordance with the conditions and limitations provided in paragraphs (a) and (b) of § 2.128. Paragraph (a)(1) would require the law officer to furnish a written description of the missing animal, and the name and address of its owner before making the search. Accordingly, there must be a reasonable basis to believe that the animal is on the premises. We believe that § 2.128 does not violate any Constitutional rights. Cooperation to conduct these searches is required because the person holding a missing or stolen animal may not have any intent to do so and may not be aware that the animal has been stolen due to falsified shipping or purchase records. The regulations have required cooperation in searching for missing animals since 1967 without incident or challenge and remains in the revised rule.

Six commenters from the research community stated that the section should be clarified to include local animal regulations enforcement officers, humane association officers, and APHIS inspectors, and to extend the searches to animals undergoing experimentation or research procedures. We are unwilling to make these changes because the Act and the legislative history are clear that humane association and animal control officers are not authorized to conduct searches for missing animals. The officers conducting the searches must have general law enforcement authority, as required by the Act. Furthermore, both the Act and the legislative history underlying it are clear that Congress did not intend for the Department to interfere with the conduct of actual research (*See* H.R Report No. 1848 (August 11, 1966)). Nor did Congress intend for private persons or groups to use this provision as a means of interfering with research facilities by using it to gain entry.

Concern that APHIS is not authorized to search for missing animals is inappropriate. APHIS inspectors are authorized to inspect animals and animal records in the course of a regular inspection or an inspection to determine if there is a violation of the Act or any of the regulations, including § 2.60. The searches identified in § 2.128 are limited to those conducted by law enforcement agencies and so there is no need for mention of APHIS inspectors.

Accordingly, proposed § 2.128 remains as initially proposed.

*Section 2.129 Confiscation and destruction of animals*

We received 1 comment from the research community objecting to the reference to the International Union for the Conservation of Nature and Natural Resources (IUCN) in proposed § 2.129(c) as inappropriate because the U.S. Department of Interior, Fish and Wildlife Service (FWS) is statutorily authorized to identify and list threatened and endangered species. The commenter also suggested identifying nonhuman primates as an endangered species along with marine mammals. The commenter suggested that the Department should consult with the appropriate government agency having statutory authority regarding importation or use of an endangered species, once a confiscated animal has been identified as an endangered species. Proposed 2.129(c) would direct the Administrator to consult with certain agencies and the IUCN, when possible, before making any decision regarding destruction of a confiscated animal that is designated an endangered species.

Proposed § 2.129(c) concerns internal Agency procedure only and is not directed to any person subject to the Act and the regulations. Accordingly, we are removing it from the revised rule. Before making any decision regarding the destruction of a confiscated animal that is an endangered species, however, the Administrator will, when possible, consult with representatives of FWS, the National Marine Fisheries Service, Department of Commerce, or other appropriate government agencies, and the IUCN.

We did not receive any other comments concerning proposed § 2.129. However, we are revising this section to clarify that any animal confiscated under this section, not just certain ones, may be placed with other licensees or registrants which comply with the standards and regulations, and that the costs for this will be borne by the dealer, exhibitor, intermediate handler, carrier, or research facility from whom the animals were confiscated. In order to make this clear, we are breaking proposed § 2.129(b) into two portions, now designated as (b) and (c), and are making editorial changes to the proposed requirements. We are also removing the separate reference to operators of auction sales from paragraph (a) because they are dealers.

*Section 2.130 Minimum age requirements*

We did not receive any comments concerning proposed § 2.130. Proposed § 2.130 would prohibit any person from delivering a dog or cat to a carrier or intermediate handler for transportation in commerce unless the animal is at least 8 weeks of age and has been weaned. The only exception is for transportation in commerce to a registered research facility. We inadvertently failed to include a prohibition which would prevent any person subject to the Act from transporting a dog or cat in commerce by themselves, that is, without using a carrier or intermediate handler, unless the animal is at least 8 weeks of age and is weaned, except for transport in commerce to a research facility. We have included this prohibition in the revised rule.

*Section 2.131 Handling*

Sections 3.111 and 3.135 of Part 3—"Standards," Subparts E and F provide handling requirements for marine mammals and warmblooded animals other than dogs, cats, rabbits, hamsters, guinea pigs, and nonhuman primates respectively. Section 3.135 was included as part of Part 3, Subpart F, which was added when Congress amended the Act in 1970 to include all warmblooded animals used for research or exhibition purposes, or sold as pets. Section 3.111 was added in 1979 when standards covering marine mammals were added to Part 3. Subparts A through D do not contain comparable provisions. As stated in the supplementary information accompanying the proposed rule for Part 2, published March 31, 1987, 52 FR 10306, our experience has demonstrated the necessity for handling regulations to protect the welfare of all animals covered by the Act, and to enable the Department to better prosecute cases of inhumane handling and treatment. Accordingly, proposed § 2.131 would provide handling regulations applicable to all animals covered by the Act. In this revised rule, §§ 3.111 and 3.135 are removed from Part 3 and replaced with § 2.131.



Proposed § 2.131(a) would require that:

(a)(1) Handling of all animals shall be done as expeditiously and carefully as possible in a manner that does not cause unnecessary discomfort, trauma, overheating, excessive cooling, behavioral stress, or physical harm.

(2) Care shall be exercised to avoid harm to the handlers of such animals and to avoid unnecessary harm to the animals.

(3) Physical abuse or deprivation of food or water shall not be used to train, work, or otherwise handle animals.

Two commenters from the research community stated that proposed § 2.131 should be deleted from the final rule. One of the commenters objected that the requirement to protect animals from "unnecessary discomfort, trauma, overheating, excessive cooling, behavioral stress, or physical harm" is vague and that as proposed, a person subject to the Act would not understand their responsibilities under the regulations. Another 108 commenters from the research community objected to use of the term "behavioral stress" in proposed § 2.131(a)(1).

Proposed § 2.131 contains language, including that which the commenters objected to, that is substantially similar to the provisions of current §§ 3.111 and 3.135. Sections 3.111 and 3.135 have proven effective in enforcement efforts. They provide in part as follows:

(a) Handling of animals shall be done as expeditiously and carefully in a way so as not to cause unnecessary discomfort, behavioral stress, or physical harm to the animal. Care should be exercised also to avoid harm to the handler.

We have not been presented with any legal challenges to this language.

Our experience in enforcing these handling regulations has demonstrated the need for similar regulations for all animals covered by the Act. The Act requires that the Secretary promulgate minimum requirements to govern the humane handling of animals (7 U.S.C. 2143(a)(1)). Section 2.131 therefore remains in the revised rule. It should be noted that in accordance with §§ 2.30(g) and 2.35(b)(3) of the revised rule, exceptions to compliance with this regulation by a research facility in order to accomplish a research design must be explained in detail and justified by the ACUP, and must be approved by the Committee.

We are removing proposed paragraph (a)(2) from the revised rule because APHIS is charged with regulating the care of animals, not handlers, and because the requirement to exercise care to avoid unnecessary harm to the animals is contained in paragraph (a)(1). Accordingly, proposed paragraph (a)(3) is redesignated (a)(2) in this revision of Part 2.

We also received 99 comments (98 from members of the research community and 3 from exhibitors) objecting to proposed paragraph (a)(3) which concerns physical abuse and food and water deprivation, as unnecessarily restrictive and stating that its terms should either be defined and clarified or deleted. One commenter from the research community stated that the institutions should have responsibility for monitoring food or water deprivation. In the course of our consultation with representatives of HHS, they expressed concern that the proposed regulation was contrary to the Act's provision that the Act shall not be construed as "authorizing the Secretary to promulgate rules, regulations, or orders with regard to the design, outlines, or guidelines of actual research or experimentation by a research facility as determined by such facility; * * *" (7 U.S.C. 2143(a)(6)(A)). They stated that the withholding of food and other experimental methods should be addressed by the investigator, reviewed by peers, and reviewed by the Committee.

In response to the commenters, we again note that under §§ 2.30(g) and 2.35(b)(3), exceptions to compliance with this regulation by a research facility in order to accomplish a research design must be explained in detail and justified by the ACUP, and must be approved by the Committee. However, our experience has demonstrated the necessity to maintain this regulation prohibiting physical abuse or deprivation of food or water to train, work, or otherwise handle animals. These have been common methods of training animals in the past, as they are fast and simple and effective. But they can also be cruel and inhumane, and they are often unnecessary as other methods can accomplish the same ends in time. Paragraph (a)(3) therefore remains in the revised rule as proposed, except for one clarifying change. We have added the words "of animals" following "Physical abuse * * *."

Paragraph (b) of proposed § 2.131 would require as follows:

(b)(1) Animals shall be exhibited only for periods of time and under conditions consistent with their good health and well-being.

(2) A responsible and knowledgeable uniformed employee or attendant must be present at all times during periods of public contact.

(3) At a minimum, when dangerous animals such as lions, tigers, wolves, bears, or elephants are allowed to have contact with the public, the animals must be under the direct control and supervision of a knowledgeable and experienced animal handler.

(4) If public feeding of animals is allowed, the food must be provided by the animal facility and shall be appropriate to the type of animal and its nutritional needs and diet.

In addition to a comment from a member of the general public in support of proposed paragraph (b)(2), we received 2 comments (1 from an exhibitor and 1 from a member of the research community) stating that the term "uniformed" should be deleted from the paragraph.

Our intent in requiring a uniformed employee or attendant to be present at all times during periods of public contact was to ensure that the person responsible for the animal and knowledgeable about it was readily identifiable to members of the public. It is necessary that the viewing public be able to visually and readily determine who and where the attendant is at all times, both for the public's safety and for the safety of the animal. As uniforms are not necessarily available, and other means can be used to make an individual identifiable, we have replaced "uniformed" with the term "readily identifiable" in the revised rule in response to the comments.

Paragraph (c) of proposed § 2.131 would require as follows:

(c)(1) During public exhibition, any animal must be handled so there is minimal risk of harm to the animal and to the public, with sufficient distance and/or barriers between the animal and the general viewing public so as to assure safety to the animals and to the public.

(2) Performing animals shall be allowed a rest period between performances at least equal to the time for one performance.

(3) Young or immature animals shall not be exposed to rough or excessive public handling or exhibited for periods of time which would be detrimental to their health or well-being.

(4) Drugs, such as tranquilizers, shall not be used to facilitate, allow, or provide for public handling of the animals.

One member of the general public commented that the rest period that would be required under proposed paragraph (c)(2) should be extended to 3 times the performance time rather than a period of time equal to the performance time. Current §§ 3.111 and 3.135 require a rest period equal to the performance time. Experience with this requirement has demonstrated that it provides an adequate rest period. We are not aware of any negative behavior by performing animals or problems with the animals as a result of this length rest period. No change is made in proposed paragraph (c)(2) in the revised rule.

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One member of the general public commented that dangerous animals should not be allowed contact with the public. The regulations in proposed paragraphs (b) and (c) of § 2.131 do not create a right of exhibitors to allow contact between wild or dangerous animals and the public. Proposed § 2.131(c) would require that in order to publicly exhibit an animal, an exhibitor must handle animals so that there is minimal risk of harm to the public. Proposed § 2.131(b) sets forth the conditions that apply to public exhibition of an animal if, and only if, handling an animal so that there is minimal risk of harm to the public would allow public exhibition. We are reversing the order of proposed paragraphs (b) and (c) in the revised rule in order to make clear that exhibitors do not have a right to allow contact between the public and dangerous animals.

*Section 2.132 Procurement of random source dogs and cats, dealers*

In order to carry out the intent of Congress and to "protect the owners of animals from the theft of their animals by preventing the sale or use of animals which have been stolen" (7 U.S.C. 2131(b)(3)), we proposed to limit the sources from which class "B" dealers can acquire live random source dogs and cats. We proposed to limit those sources to State, county, or city owned and operated pounds or shelters. Under the proposed regulation, class "B" dealers would not be able to obtain random source dogs and cats from nongovernment pounds or shelters or from individuals who did not breed and raise the dogs and cats on their own premises. Nonrandom source dogs and cats could be obtained from persons who bred and raised the dogs and cats on their own premises.

One intended effect of the proposed regulation was to prevent the sale of random source dogs and cats to dealers at flea markets, auctions, and trade-day type sales. Our objective was to prevent the theft of animals for purposes of selling them to dealers who in turn would sell the stolen animals to research facilities.

Another intended effect of the proposed regulation was to eliminate the indiscriminate impoundment of "lost" animals by contract pound operators who are also licensed dealers. In the past several years, we have learned of increasing numbers of complaints and allegations that contract private animal pounds that are also licensed dealers under the Act have been overzealous in impounding dogs and cats. There are allegations that the impounded dogs and cats are not always stray or lost animals. In addition, the Agency has become aware of several instances where licensed dealers obtained stolen dogs and cats, or obtained dogs and cats under false pretenses or misrepresentation.

We proposed in § 2.132, to prohibit dealers from obtaining live random source dogs and cats from private or contract pounds or shelters, or from individuals who did not breed and raise the dogs and cats on their own premises. The proposed regulation would prevent operators of contract or private pounds or shelters from operating as class "B" dealers and selling their animals to research facilities. Our objective again was to prevent pound operators from obtaining dogs and cats from questionable sources, holding them for a short period, and then selling them to research facilities. We also intended to prevent pound operator-dealers from intermingling the animals and selling those dogs and cats that must be held by the pound operator for the requisite holding period pending identification and return to their owner, with those that have completed the requisite holding period and may be sold to research facilities or otherwise disposed of. The proposed regulation would also have the effect of preventing class "B" dealers from obtaining random source dogs and cats from other dealers for resale.

We received 2,865 comments from members of the general public supporting the proposed limitation of sources from which class "B" dealers can obtain random source dogs and cats. We also received 21 comments from members of the research community and 3 comments from dealers expressing support for proposed § 2.132.

We also received 167 comments from members of the research community objecting to the proposed regulation on the grounds that it exceeds our statutory authority, would limit the availability of animals for use by research facilities, and/or would increase the cost of animals to research facilities.

We believe that objections to the proposed regulation stating that it exceeds our statutory authority are incorrect. As expressed above and in the supplementary information to the proposal, preventing the theft of dogs and cats for the purpose of selling them to research facilities was one of the principal concerns prompting enactment of the Animal Welfare Act. To effectuate this purpose, the revised rule provides a number of measures, such as the records required by §§ 2.75 and 2.76 and the prohibition contained in § 2.60 against buying, selling, or using stolen animals, which were designed to prevent the sale of stolen animals and accordingly discourage the practice of stealing animals for sale to research facilities. Section 21 of the Act authorizes the Secretary to "promulgate such rules, regulations, and orders as he may deem necessary in order to effectuate the purposes of [the] Act." (7 U.S.C. 2151). The statutory authority for proposed § 2.132 is clear.

We have considered those comments which stated that preventing the sale of dogs and cats obtained from private or contract pounds or shelters would cut off a legitimate and valuable source of research animals and would drastically increase the cost of available animals. We understand that research facilities need a continuing source of dogs and cats for research. It was not our intent to reduce the available supply of dogs and cats for research purposes, but instead to exert better control over the source of dogs and cats for dealers.

To accommodate the need for a supply of research animals and to ensure that those animals are legally acquired by dealers for sale to research facilities, we are revising § 2.132 as follows: We are removing the prohibition against the purchase and sale of random source dogs and cats by dealers. We will allow dogs and cats from private or contract animal pounds to be obtained and sold by dealers and registrants, but with certain restrictions in order to better ascertain how, where, from whom, and when the dogs and cats were obtained by the pound, and when they were sold to the dealer. Any licensee or registrant who also operates a private or contract pound or shelter must maintain two physically separate and distinct animal facilities, one for the pound or shelter and one for the dealer or registered facility. The dealer or registrant must also maintain separate and accurate records at each facility. Dealers must comply with the 10-day holding period required in § 2.101, regardless of whether the dog or cat was obtained from a contract pound or shelter operated by the dealer or registrant, or from another contract pound or shelter.

Any licensee or registrant under the Act who also operates a private or contract pound or shelter must maintain records in accordance with §§ 2.75 and 2.76 for live nonrandom source dogs and cats. Because the information required by §§ 2.75 and 2.76 is not available for lost or stray animals, the following information is required to be maintained by the pound or shelter for lost or stray dogs and cats: (1) An accurate description of the dog or cat; (2) how, where, from whom, and when the dog or cat was obtained; (3) how long the dog or cat was held by the pound or shelter before being transferred to the dealer operation; and (4) the date the dog or cat was transferred to the dealer operation. The information must be maintained in separate records, at both the pound or shelter and at the licensed or registered operation.

We believe that these restrictions and recordkeeping requirements will result in reducing the ease and temptation of transferring impounded animals to the dealer operation before any required holding period has been completed at the pound or shelter. They should also make it easier to trace the source of an animal in order to locate a missing dog or cat. We also believe that they will assist the Agency in our efforts to protect the owners of lost or stolen animals. These restrictions and recordkeeping requirements will provide us with adequate controls on the sale and movement of dogs and cats and will allow this resource to continue to be utilized as a source of research animals.

We are also revising § 2.132 to clarify that live nonrandom source dogs and cats may be obtained from hobby breeders, because the animals would have been bred and raised on the individual's premises.

We are including an express prohibition against any person subject to the Act obtaining random source dogs or cats by use of false pretenses, misrepresentation, or deception, as an additional safeguard against dealers using their other status as a pound or shelter to obtain dogs and cats and immediately transferring the animal to the dealer operation for sale to a research facility. This is also intended to prevent them from obtaining animals by claiming they will give it a "good home" and then selling it for research purposes.

We received 1 comment from a member of the research community stating that the regulations should allow dogs and cats held in government operated shelters to be available if they have been held for a 7-day period and there is public notice. This was not addressed in the regulations as the holding period at government pounds and the sale of animals held there is governed by local law. No change is made based upon this comment.

**Statutory Authority**

This rule is issued pursuant to the Animal Welfare Act (Act), as amended, 7 U.S.C. 2131–2157. Congress recently added significantly to the Secretary's responsibilities under the Act, particularly with regard to the use of animals by research facilities, in the Food Security Act of 1985, Pub. L. No. 99–198, approved December 23, 1985. The declared policy of the Act is to ensure that animals intended for use in research facilities, as pets, or for exhibition purposes, are provided humane care and treatment; to assure the humane treatment of animals during transportation; and to prevent the sale of stolen animals.

The Act requires that animal dealers and exhibitors obtain a license from the Secretary, and that research facilities, carriers, and intermediate handlers register with the Secretary. The Act directs the Secretary to issue specific regulations concerning, inter alia, recordkeeping, veterinary care, handling, transportation, identification of animals, and holding period requirements. In addition, the 1985 amendments require the Secretary to issue expanded regulations governing the use of animals in research facilities. Section 21 of the Act continues to authorize the Secretary to issue such regulations as he deems necessary to effectuate the purposes of the Act.

The recent amendments mandate that these regulations are to include standards for care, treatment, and practices in experimental procedures which will minimize pain and distress. The Secretary is to require that researchers consider alternatives to painful procedures and that, with regard to painful procedures, researchers must consult a veterinarian; use adequate tranquilizers, anesthetics, and analgesics; and provide for adequate pre- and post-surgical care. Moreover, exceptions to these standards may be made only when specified by research protocol and explained in a report mandated in the Act.

The Act also mandates that the Secretary issue regulations requiring research facilities to show and report that they are complying with the Act and that they are following professionally acceptable standards in the care and treatment of animals during research. The Act directs the Secretary to require each research facility to establish a committee to assess the facility's use and treatment of animals. The Act specifies the composition of the committee, including the requirement that each committee must be composed of at least three members and that each committee must have at least one member who is a veterinarian and at least one who represents the community interest in proper animal care. The Act mandates many of the committee's responsibilities, including that it inspect and report at least semi-annually on the condition and use of animals and report any violations of the standards. The Secretary is also to require each research facility to provide training for all personnel involved in animal care.

This rule contains regulations required by the 1985 amendments as well as modifications to existing regulations based on the Department's experience in administering the Act.

**Executive Order 12291**

On March 31, 1987, the Department published proposed rules to amend Part 1—"Definition of Terms" and Part 2—"Regulations," of the Animal Welfare regulations (52 FR 10292, 10298) in order to implement the 1985 amendments to the Animal Welfare Act, Pub. L. 99–198, the "Food Security Act." The proposed action was reviewed pursuant to Executive Order 12291 and it was determined that it did not constitute a "major rule." We solicited comments with regard to the proposed rules, and have made modifications to those rules as explained in the "Supplementary Information." At this time, we are also publishing a proposal to revise the standards contained in 9 CFR Part 3—"Standards," published elsewhere in this issue of the **Federal Register**.

In revising Parts 1 and 2, and in preparing the proposed rule for Part 3, we assessed the economic effects of the regulations in accordance with the requirements of Executive Order 12291. We considered alternative approaches to carrying out our statutory mandate, many of which we adopted. A regulatory impact analysis of revised Parts 1 and 2, and the proposal for Part 3 was prepared. Based on that analysis, which included consideration of both quantifiable and nonquantifiable effects of the rules, the Administrator has determined that Parts 1 and 2 would have an impact on the economy in excess of $100 million annually, and would constitute a "major rule."

The following requirements under Parts 1 and 2 represent some of the major costs to the regulated industries: (1) The establishment and responsibilities of the animal care and use committees; (2) aseptic surgical facilities and adequate pre- and post-procedural care; (3) increased responsibilities for attending veterinarians; (4) additional administrative responsibilities; (5) increases in license fees; and (6) identification for dogs and cats less than 16 weeks of age.

The economic impacts of these rules are discussed in more detail in a regulatory impact analysis, which is available for public inspection in Room

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1141 of the South Building, U.S. Department of Agriculture between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays (address above). Main findings of this analysis are summarized below.

SUMMARY OF REGULATORY IMPACT ANALYSIS

| Costs | Benefits |
|---|---|
| Direct | Direct |
| Regulated industry | Increased public satisfaction from improved animal welfare* |
| Capital expenditure: | |
| (All parts) $876 million | Improved research information* |
| (Parts 1-2) $142 million | Productivity gains for regulated industries* |
| Annual costs: | |
| (All parts) $207 million | |
| (Parts 1-2) $126 million | |
| APHIS program costs $2 million. | |
| Impact on Federal sites* | |
| Indirect | Indirect |
| Opportunity costs for users of biomedical research (goods and service), pet industry, and animal exhibits*. | Market effects for suppliers of animal husbandry products* |
| Increased Federal financial support for biomedical community* | Non-market effects* |
| Non-market effects* | |

* Not quantified.

Compliance with more stringent federal regulations on the humane care and treatment of animals used for research, testing, teaching, exhibition, and business ventures would result in major direct and indirect effects imposed on the regulated industries and the general economy. An examination of the estimated cost impacts indicates that the amended regulations constitute a "major rule" based on annual effects in excess of $100 million on the economy and large cost increases on regulated industries for animal uses and maintenance, in particular to the biomedical research community. However, this study could not properly assess the relative significance of these cost increases on the regulated industry or the presence of adverse effects on competition innovation, and the ability of domestic enterprises to compete with foreign enterprises in international markets.

Regulated persons or establishments will be required to spend approximately $876 million in capital expenditures over the next two or three years. Of this amount approximately 16 percent is attributable to Parts 1 and 2. If Parts 1 and 2 were enforced separately, regulated research facilities will be required to spend approximately $142 million to renovate, equip, replace, or construct aseptic surgical facilities, and provide for adequate pre- and post-surgical care. Capital expenditures attributable to Part 3 include costs for renovation, equipment replacement, and new construction of animal housing facility space. Capital expenditures to improve animal housing facilities would result from the new minimum standards for general environmental conditions, space or primary enclosure size requirements, exercise of dogs, and enrichment of nonhuman primate enclosures.

In addition to capital expenditures, total annual operating expenditures estimated at $207 million will also be required. Approximately 60 percent of this total ($126 million) is accounted for by Parts 1 and 2, primarily the requirements for the establishment and operations of the institutional animal care and use committees, additional responsibilities for attending veterinarians, and record-keeping requirements. Annual expenditures attributable to Part 3 would result from the need for additional personnel (animal handlers) to exercise dogs, and the daily maintenance of animal housing facilities.

An important result of this regulatory analysis is that policy decisions must consider other direct and indirect effects associated with the promulgation and enforcement of federal rules. Increased federal legislation causes important economic benefits and costs which are unevenly distributed among registrants and licensees. Direct benefits accrue to society by knowing that animals may be better cared for and treated humanely. The value of these social benefits are subject to personal preferences and concerns. Improvements in the well-being of regulated animals may also provide gains in productivity to the industry. On the other hand, increased costs of compliance will be passed from the regulated industry to consumers who purchase their goods and services. For example, the field of biomedical research and education depends heavily on the use of animals to conduct tests and experiments. Increased costs for animal uses have broader economic and health implications for all of us. Study results do not suggest that these regulations would cause establishments to abandon the use of animals since current biomedical research outlays are in excess of $12.8 billion per year. Nonetheless, there could be important effects associated with allocating additional funds or expenditures to comply with the amended animal welfare regulations.

**Regulatory Flexibility Act**

As part of the regulatory impact analysis performed by the Department we have analyzed the potential impact on small entities of Parts 1 and 2, as revised, and the proposal to amend Part 3 of the Animal Welfare regulations, as required by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Based upon our analysis, we have determined that Parts 1 and 2 of the regulations would affect all regulated small entities, primarily by increases in annual license fees and identification requirements for dogs and cats. However, these economic impacts would not be significant. It is anticipated that the largest impact on small entities would result from Part 3—"Standards", if it is implemented as proposed. Under these circumstances the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

**Executive Order 12372**

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR 3015, Subpart V.)

**Paperwork Reduction Act**

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the information collection provisions that are included in this proposed rule will be submitted for approval to the Office of Management and Budget (OMB). Your written comments will be considered if you submit them to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. You should submit a duplicate copy of your comments to Helene R. Wright, Chief, Regulatory Analysis and Development Staff, PPD, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

**List of Subjects**

*9 CFR Part 2*

Licensing, registration, identification of animals, records, Institutional Animal Care and Use Committees and Adequate Veterinary Care, Miscellaneous.

*9 CFR Part 3*

Animal welfare, Humane animal handling, Pets, Transportation.



Accordingly, we are proposing to amend 9 CFR Part 2 as follows:

1. Part 2 is revised to read as follows:

## PART 2—REGULATIONS

**Subpart A—Licensing**

Sec.
2.1 Requirements and application.
2.2 Acknowledgment of regulations and standards.
2.3 Demonstration of compliance with regulations and standards.
2.4 Non-interference with APHIS officials.
2.5 Duration of license and termination of license.
2.6 Annual license fees.
2.7 Annual report by licensees.
2.8 Notification of change of name, address, control, or ownership of business.
2.9 Officers, agents, and employees of licensees whose licenses have been suspended or revoked.
2.10 Licensees whose licenses have been suspended or revoked.
2.11 Denial of initial license application.

**Subpart B—Registration**

2.25 Requirements and procedures.
2.26 Acknowledgment of regulations and standards.
2.27 Notification of change of operation.

**Subpart C—Institutional Animal Care and Use Committee and Other Requirements for Research Facilities**

2.30 Additional requirements for research facilities.
2.31 Annual report of research facilities.
2.35 Institutional Animal Care and Use Committee.

**Subpart D—Attending Veterinarian and Adequate Veterinary Care**

2.40 Attending veterinarian and veterinary care.

**Subpart E—Identification of Animals**

2.50 Time and method of identification.
2.51 Form of official tag.
2.52 How to obtain tags.
2.53 Use of tags.
2.54 Lost tags.
2.55 Removal and disposal of tags.

**Subpart F—Stolen Animals**

2.60 Prohibition on the purchase, sale, or transportation of stolen animals.

**Subpart G—Records**

2.75 Records: Dealers and exhibitors.
2.76 Records: Research facilities.
2.77 Records: Operators of auction sales.
2.78 Records: Carriers and intermediate handlers.
2.79 Health certification and identification.
2.80 C.O.D. shipments.
2.81 Records, disposition.

**Subpart H—Compliance with Standards and Holding Period**

2.100 Compliance with standards.
2.101 Holding period.
2.102 Holding facility.

**Subpart I—Miscellaneous**

2.125 Information as to business: furnishing of by dealers, exhibitors, operators of auction sales, research facilities, intermediate handlers, and carriers.
2.126 Access and inspection of records and property.
2.127 Publication of names of persons subject to the provisions of this part.
2.128 Inspection for missing animals.
2.129 Confiscation and destruction of animals.
2.130 Minimum age requirements.
2.131 Handling of animals.
2.132 Procurement of random source dogs and cats, dealers.

**Authority:** 7 U.S.C. 2133, 2135, 2136, 2140–2144, 2146, 2147, 2151; 7 CFR 2.17, 2.51, and 371.2(d).

**Subpart A—Licensing**

**§ 2.1 Requirements and application.**

(a)(1) Any person operating or desiring to operate as a dealer, exhibitor, or operator of an auction sale, except persons who are exempted from the licensing requirements under paragraph (a)(3) of this section, must have a valid license. A person must be 18 years of age or older to obtain a license. A person seeking a license shall apply on a form which will be furnished by the Area Veterinarian in Charge in the State in which that person operates or intends to operate. The applicant shall provide the information requested on the application form, including a valid mailing address through which the licensee or applicant can be reached at all times, and a valid premises address where animals, animal facilities, equipment, and records may be inspected for compliance. The applicant shall file the completed application form with the Area Veterinarian in Charge.

(2) If an applicant for a license or license renewal operates in more than one State, he or she shall apply in the State in which he or she has his or her principal place of business. All premises, facilities, or sites where such person operates or keeps animals shall be indicated on the application form or on a separate sheet attached to it. The completed application form, along with the application fee indicated in paragraph (d) of this section, and the annual license fee indicated in table 1 or 2 of § 2.6 shall be filed with the Area Veterinarian in Charge.

(3) The following persons are exempt from the licensing requirements under section 2 or section 3 of the Act:

(i) Retail pet stores which sell nondangerous, pet-type animals, such as dogs, cats, birds, rabbits, hamsters, guinea pigs, gophers, domestic ferrets, chinchilla, rats, and mice, for pets, at retail only. *Provided that:* Anyone wholesaling any animals or selling any wild or exotic animals or other nonpet animals retail, or selling any animals for research or exhibition shall have a license;

(ii) Any person who sells or negotiates the sale or purchase of any animal except wild or exotic animals, dogs, or cats, and who derives no more than $500 gross income from the sale of such animals to a research facility, an exhibitor, a dealer, or a pet store during any calendar year and is not otherwise required to obtain a license;

(iii) Any person who maintains a total of three (3) or fewer breeding female dogs and/or cats and who sells the offspring of these dogs or cats, which were born and raised on their premises, for pets or exhibition, and is not otherwise required to obtain a license;

(iv) Any person who sells fewer than 25 dogs and/or cats per year which were born and raised on his or her premises, for research, teaching, or testing purposes or to any research facility and does not otherwise qualify for licensing. The sale of any dog or cat not born and raised on the premises for research purposes requires a license;

(v) Any person who arranges for transportation or transports animals solely for the purpose of breeding, exhibiting in purebred shows, boarding (not in association with commercial transportation), grooming, or medical treatment, and is not otherwise required to obtain a license;

(vi) Any person who buys, sells, transports, or negotiates the sale, purchase, or transportation of any animals used only for the purposes of food or fiber (including fur);

(vii) Any person who breeds and raises domestic pet animals for direct retail sales to others for his or her own use and who buys no animals for resale and who sells no animals to a research facility, an exhibitor, a dealer, or a pet store (e.g., a purebred dog or cat fancier) and does not otherwise qualify for licensing;

(viii) Any person who buys animals solely for his or her own use or enjoyment and does not sell or exhibit animals, or otherwise qualify for licensing.

(b) Any person who sells fewer than 25 dogs or cats per year for research or teaching purposes and who does not otherwise qualify for a license may obtain a voluntary license, provided the animals were born and raised on his or her premises. A voluntary licensee shall comply with the requirements for dealers set forth in this part and the Specifications for the Humane Handling, Care, Treatment, and Transportation of

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Dogs and Cats set forth in Part 3 and shall agree in writing on a form furnished by APHIS to comply with all the requirements of the Act and this subchapter. Voluntary licenses will not be issued to any other persons. To obtain a voluntary license the applicant shall submit to the Area Veterinarian in Charge the application fee of $10 plus an annual license fee. The class of license issued and the fee for a voluntary license shall be that of a Class "A" licensee (breeder). Voluntary licenses will not be issued to any other persons or for any other class of license.

(c) No person shall have more than one license.

(d) A license will be issued to any applicant, except as provided in §§ 2.10 and 2.11, when the applicant:

(1) Has met the requirements of this section and of §§ 2.2 and 2.3; and

(2) Has paid the application fee of $10 and the annual license fee indicated in § 2.6 to the Area Veterinarian in Charge and the payment has cleared normal banking procedures.

(e)(1) On or before the expiration date of the license, a licensee who wishes a renewal shall submit to the Area Veterinarian in Charge a completed application form and the application fee of $10, plus the annual license fee indicated in § 2.6 by certified check, cashier's check, personal check, or money order. A voluntary licensee who wishes a renewal shall also submit the $10 application fee plus an annual license fee. An applicant whose check is returned by the bank will be charged a fee of $15 for each returned check. One returned check will be deemed nonpayment of fees and will result in denial of license. Payment of fees must then be made by certified check, cashier's check, or money order. An applicant will not be licensed until his or her payment has cleared normal banking procedures.

(2) The $10 application fee must also be paid if an applicant is applying for a changed class of license. The applicant may pay such fees by certified check, cashier's check, personal check, or money order. An applicant whose check is returned by a bank will be charged a fee of $15 for each returned check and will be required to pay all subsequent fees by certified check, money order, or cashier's check. A license will not be issued until payment has cleared normal banking procedures.

(f) The failure of any person to comply with any provision of the Act, or any of the provisions of the regulations or standards in this subchapter, shall constitute grounds for denial of a license, or for its suspension or revocation by the Secretary, as provided in the Animal Welfare Act.

**§ 2.2 Acknowledgment of regulations and standards.**

APHIS will supply a copy of the applicable regulations and standards to the applicant with each request for a license application or renewal. The applicant shall acknowledge receipt of the regulations and standards and agree to comply with them by signing the application form before a license will be issued or renewed

**§ 2.3 Demonstration of compliance with regulations and standards.**

(a) Each applicant must demonstrate that his or her premises and any animals, facilities, vehicles, equipment, or other premises used or intended for use in the business comply with the regulations and standards set forth in Parts 2 and 3 of this subchapter. Each applicant for an initial license or license renewal must make his or her animals, premises, facilities, vehicles, equipment, other premises, and records available for inspection during business hours and at other times mutually agreeable to the applicant and APHIS, to ascertain the applicant's compliance with the standards and regulations.

(b) In the case of an application for an initial license, the applicant must demonstrate compliance with the regulations and standards, as required in paragraph (a) of this section, before APHIS will issue a license. If the applicant's animals, premises, facilities, vehicles, equipment, other premises, or records do not meet the requirements of this subchapter, APHIS will advise the applicant of existing deficiencies and the corrective measures that must be completed to come into compliance with the regulations and standards. The applicant will have two more chances to demonstrate his or her compliance with the regulations and standards through re-inspection by APHIS. If the applicant fails the third inspection he or she will forfeit the application fee and cannot re-apply for a license for a period of 6 months following the third inspection. Issuance of the license will be denied until the applicant demonstrates upon inspection that the animals, premises, facilities, vehicles, equipment, other premises and records are in compliance with all regulations and standards in this Subchapter.

**§ 2.4 Non-interference with APHIS officials.**

A licensee or applicant for an initial license shall not interfere with, threaten, abuse (including verbal abuse), or harass any APHIS official in the course of carrying out his or her duties.

**§ 2.5 Duration of license and termination of license.**

(a) A license issued under this part shall be valid and effective unless:

(1) The license has been revoked or suspended pursuant to section 19 of the Act.

(2) The license is voluntarily terminated upon request of the licensee, in writing, to the Veterinarian in Charge.

(3) The license has expired or been terminated under this part.

(4) The applicant has failed to pay the application fee and the annual license fee as required in §§ 2.1 and 2.6. There will be no refund of fees if a license is terminated prior to its expiration date.

(b) Any person who is licensed must file an application for a license renewal and an annual report form (VS Form 18–3) as required by § 2.7, and pay the required fees, on or before the expiration date of the present license or the license shall expire and automatically terminate on its anniversary date. The licensee will be notified by certified mail at least 60 days prior to the expiration date of the license. Failure to comply with the annual reporting requirements, or to pay the required license fees prior to the expiration date of the license, shall result in automatic termination of such license on the anniversary date of the license.

(c) Licensees must accept delivery of registered mail or certified mail notice and provide the Area Veterinarian in charge notice of their address in conformity with the requirements in § 2.1.

(d) Any person who seeks the reinstatement of a license that has been automatically terminated must follow the procedure applicable to licensees set forth in § 2.1.

(e) Licenses are issued to persons for specific premises and do not transfer upon change of ownership, nor are they valid at a different location.

(f) A license which is invalid under this part shall be surrendered to the Area Veterinarian in charge. If the license cannot be found, the licensee shall provide a written statement so stating to the Area Veterinarian in charge.

**§ 2.6 Annual license fees.**

(a) In addition to the application fee of $10 required to be paid upon the application for a license, license renewal, or changed class of license under § 2.1, each licensee shall submit to the Area Veterinarian in Charge the annual license fee prescribed in this section. Paragraph (b) of this section indicates the method used to calculate the appropriate fee. The amount of the fee is determined from Table 1 or 2 of this section.



(b)(1) Class "A" license. The annual license renewal fee for a Class "A" dealer shall be based on 50 percent of the total gross amount, expressed in dollars, derived from the sale of animals to research facilities, dealers, exhibitors, retail pet stores, and persons for use as pets, directly or through an auction sale, by the dealer or applicant during his or her preceding business year (calendar or fiscal) in the case of a person who operated during such a year. If animals are leased, the lessor shall pay a fee based on 50 percent of any compensation received from the leased animals and the lessee shall pay a fee based upon the net compensation received from the leased animals, as indicated for dealers in Table 1 of this section.

(2) Class "B" license. The annual license renewal fee for a Class "B" dealer shall be established by calculating the total amount received from the sale of animals to research facilities, dealers, exhibitors, retail pet stores, and persons for use as pets, directly or through an auction sale, during the preceding business year (calendar or fiscal) less the amount paid for the animals by the dealer or applicant. This net difference, exclusive of other costs, shall be the figure used to determine the license fee of a Class "B" dealer. If animals are leased, the lessor and lessee shall each pay a fee based on the net compensation received from the leased animals calculated from Table 1 of this section.

(3) The annual license renewal fee for a broker or operator of an auction sale shall be that of a class "B" dealer and shall be based on the total gross amount, expressed in dollars, derived from commissions or fees charged for the sale of animals, or for negotiating the sale of animals, by brokers or by the operator of an auction sale, to research facilities, dealers, exhibitors, retail pet stores, and persons for use as pets, during the preceding business year (calendar or fiscal).

(4) In the case of a new applicant for a license as a dealer, broker or operator of an auction sale who did not operate during a preceding business year, the annual license fee will be based on the anticipated yearly dollar amount of business, as provided in paragraphs (b)(1), (2), and (3) of this section, derived from the sale of animals to research facilities, dealers, exhibitors, retail pet stores, and persons for use as pets, directly or through an auction sale.

(5) The amount of the annual fee to be paid upon application for a class "C" license as an exhibitor under this section shall be based on the number of animals which the exhibitor owned, held, or exhibited at the time the application is signed and dated or during the previous year, whichever is greater, and will be the amount listed in Table 2. Animals which are leased shall be included in the number of animals being held by both the lessor and the lessee when calculating the annual fee. An exhibitor shall pay his or her annual license fee on or before the expiration date of the license and the fee shall be based on the number of animals which the exhibitor is holding or has held during the year (both owned and leased).

(c) The license fee shall be computed in accordance with the following tables:

TABLE 1.—DEALERS, BROKERS, AND OPERATORS OF AN AUCTION SALE—CLASS "A" AND "B" LICENSE

| Over | But not over | Fee |
|---|---|---|
| $ 0 | $ 500 | $ 30 |
| 500 | 2,000 | 60 |
| 2,000 | 10,000 | 120 |
| 10,000 | 25,000 | 225 |
| 25,000 | 50,000 | 350 |
| 50,000 | 100,000 | 475 |
| 100,000 | | 750 |

TABLE 2.—EXHIBITORS—CLASS "C" LICENSE

| Number of Animals | Fee |
|---|---|
| 1 to 5 | $ 30 |
| 6 to 25 | 75 |
| 26 to 50 | 175 |
| 51 to 500 | 225 |
| 501 and up | 300 |

(d) If a person meets the licensing requirements for more than one class of license, he shall be required to obtain a license and pay the fee for the type business which is predominant for his operation, as determined by the Secretary.

(e) In any situation in which a licensee shall have demonstrated in writing to the satisfaction of the Secretary that he or she has good reason to believe that the dollar amount of his or her business for the forthcoming business year will be less than the previous business year, then his or her estimated dollar amount of business shall be used for computing the license fee for the forthcoming business year: *Provided, however:* That if the dollar amount upon which the license fee is based for that year does in fact exceed the amount estimated, the difference in amount of the fee paid and that which was due under paragraphs (b) and (c) of this section based upon the actual dollar business upon which the license fee is based, shall be payable in addition to the required annual license fee for the next subsequent year, on the anniversary date of his or her license as prescribed in this section.

**§ 2.7 Annual report by licensees.**

(a) Each year, within 30 days prior to the expiration date of his or her license, a licensee shall file with the Area Veterinarian in Charge an application for license renewal and annual report upon a form which the Area Veterinarian in Charge will furnish to him or her upon request.

(b) A person licensed as a dealer shall set forth in his or her license renewal application and annual report the dollar amount of business, upon which the license fee is based, from the sale of animals, directly or through an auction sale, to research facilities, dealers, exhibitors, retail pet stores, and persons for use as pets, by the licensee during the preceding business year (calendar or fiscal), and any other information as may be required thereon.

(c) A licensed dealer who operates as a broker or an operator of an auction sale shall set forth in his or her license renewal application and annual report the total gross amount, expressed in dollars, derived from commissions or fees charged for the sale of animals by the licensee to research facilities, dealers, exhibitors, retail pet stores, and persons for use as pets, during the preceding business year (calendar or fiscal), and any other information as may be required thereon.

(d) A person licensed as an exhibitor shall set forth in his or her license renewal application and annual report the number of animals owned, held, or exhibited by him or her, including those which are leased, during the previous year or at the time he signs and dates the report, whichever is greater.

**§ 2.8 Notification of change of name, address, control, or ownership of business.**

A licensee shall promptly notify the Area Veterinarian in Charge by certified mail of any change in the name, address, management, or substantial control or ownership of his business or operation, or of any additional sites, within 10 days of any change.

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**§ 2.9 Officers, agents, and employees of licensees whose licenses have been suspended or revoked.**

Any person who has been or is an officer, agent, or employee of a licensee whose license has been suspended or revoked and who was responsible for or participated in the violation upon which the order of suspension or revocation was based will not be licensed within the period during which the order of suspension or revocation is in effect.

**§ 2.10 Licensees whose licenses have been suspended or revoked.**

(a) Any person whose license has been suspended for any reason shall not be licensed in his or her own name or in any other manner within the period during which the order of suspension is in effect. No partnership, firm, corporation, or other legal entity in which any such person has a substantial interest, financial or otherwise, will be licensed during that period. Any person whose license has been suspended for any reason may apply to the Area Veterinarian in Charge, in writing, for reinstatement of his or her license.

(b) Any person whose license has been revoked shall not be licensed in his or her own name or in any other manner; nor will any partnership, firm, corporation, or other legal entity in which any such person has a substantial interest, financial or otherwise, be licensed.

(c) Any person whose license has been suspended or revoked shall not buy, sell, transport, exhibit, or deliver for transportation, any animal during the period of suspension or revocation.

**§ 2.11 Denial of initial license application.**

(a) A license will not be issued to any applicant who:

(1) Has not complied with the requirements of §§ 2.1, 2.2, 2.3, and 2.4 and has not paid the fees indicated in § 2.5;

(2) Is not in compliance with any of the regulations or standards in this subchapter;

(3) Has had a license revoked or whose license is suspended, as set forth in § 2.10;

(4) Has been fined, sentenced to jail, or pled nolo contendere (no contest) under State or local cruelty to animal laws within 1 year of application, except that if no penalty is imposed as a result of the plea of nolo contendere the applicant may reapply immediately; or

(5) Has made any false or fraudulent statements, or provided any false or fraudulent records to the Department.

(b) An applicant whose license application has been denied may request a hearing in accordance with the applicable rules of practice for the purpose of showing why the application for license should not be denied. The license denial shall remain in effect until the final legal decision has been rendered. Should the license denial be upheld, the applicant may again apply for a license 1 year from the date of the final order denying the application.

(c) No partnership, firm, corporation, or other legal entity in which a person whose license application has been denied has a substantial interest, financial or otherwise, will be licensed within 1 year of the license denial.

## Subpart B—Registration

**§ 2.25 Requirements and procedures.**

(a) Each research facility other than a federal research facility, carrier, and intermediate handler, and each exhibitor not required to be licensed under section 3 of the Act and the regulations of this subchapter, shall register with the Secretary by completing and filing a properly executed form which will be furnished, upon request, by the Area Veterinarian in Charge. The registration form shall be filed with the Area Veterinarian in Charge for the State in which the registrant has his or her principal place of business, and shall be updated every 3 years by the completion and filing of a new registration form which will be provided by the Area Veterinarian in Charge. Where a school or department of a university or college uses or intends to use animals for research, tests, experiments, or teaching, the university or college rather than the school or department will be considered the research facility and will be required to register with the Secretary. An official who has the legal authority to bind the parent organization shall sign the registration form.

(b) In any situation in which a school or department of a university or college demonstrates to the Secretary that it is a separate legal entity and its operations and administration are independent of those of the university or college, the school or department will be registered rather than the university or college.

(c) A subsidiary of a business corporation, rather than the parent corporation, will be registered as a research facility or exhibitor unless the subsidiary is under such direct control of the parent corporation that the Secretary determines that it is necessary that the parent corporation be registered to effectuate the purposes of the Act.

**§ 2.26 Acknowledgement of regulations and standards.**

APHIS will supply a copy of the regulations and standards in this subchapter with each registration form. The registrant shall acknowledge receipt of and shall agree to comply with the regulations and standards by signing a form provided for this purpose by APHIS, and by filing it with the Area Veterinarian in Charge.

**§ 2.27 Notification of change of operation.**

(a) A registrant shall notify the Area Veterinarian in Charge by certified mail of any change in the name, address, or ownership, or other change in operations affecting its status as a research facility, exhibitor, carrier, or intermediate handler, within 10 days after making such change.

(b)(1) A registrant which has not used, handled, or transported animals for a period of at least 2 years may be placed in an inactive status by making a written request to the Area Veterinarian in Charge. A registrant shall file an annual report of its status (active or inactive). A registrant shall notify the Area Veterinarian in Charge in writing at least 10 days before using, handling, or transporting animals again after being in an inactive status

(2) A registrant which goes out of business or which ceases to function as a research facility, carrier, intermediate handler, or exhibitor, or which changes its method of operation so that it no longer uses, handles, or transports animals, and which does not plan to use, handle, or transport animals again at any time in the future, may have its registration cancelled by making a written request to the Area Veterinarian in charge. The former registrant is responsible for reregistering and demonstrating its compliance with the Act and regulations should it start using, handling, or transporting animals at any time after its registration is canceled.

## Subpart C—Institutional Animal Care and Use Committee and Other Requirements for Research Facilities

**§ 2.30 Additional requirements for research facilities.**

(a) Each research facility using or holding animals for research, experimentation, testing, or teaching shall ensure:

(1) That animal pain and distress are minimized;

(2) That adequate veterinary care including the appropriate use of anesthetics, analgesics, tranquilizing drugs, or euthanasia, is provided at all times;



(3) That a written program of adequate veterinary care is established and maintained in accordance with § 2.40; and

(4) That animals are housed and cared for according to this subchapter and that any deviations are fully explained by the principal investigator and are approved by the Institutional Animal Care and Use Committee.

(b) Each research facility shall establish and maintain an Institutional Animal Care and Use Committee (Committee).

(c) Each research facility shall provide the Committee with the authority to enter all animal areas at any reasonable time and shall provide the attending veterinarian with the authority to enter all animal areas at any time, in order to carry out their responsibilities.

(d) Each research facility must require that the animal care and use procedure (ACUP) for any procedures and practices involving live warmblooded animals be approved by the Committee, prior to the start of research, testing, or teaching involving an animal; that the principal investigator consider alternatives to any procedure likely to produce pain or distress in an experimental animal; and that the principal investigator document such considerations in a written statement to the Committee as required by § 2.30(e).

(e) Each research facility that engages in any practice or procedure using an animal that might reasonably be expected to be a painful procedure must:

(1) Prior to the beginning of such practice or procedure, require that the principal investigator for each such practice or procedure provide written assurance to the Committee that:

(i) Alternative procedures have been considered and that no other procedures are suitable; and

(ii) The experiment does not unnecessarily duplicate previous experiments. The assurance must indicate what information sources were consulted, what other procedures were considered, and what techniques will be used to minimize pain and discomfort to the animals;

(2) Require that the principal investigator consult with the attending veterinarian during ACUP planning and development and during actual research, and ensure that the attending veterinarian is allowed access to all animal and research areas at any time during actual research:

(i) If deemed necessary by the Committee;

(ii) If requested by the investigator;

(iii) If in response to complaints regarding the research or procedures; or

(iv) If the attending veterinarian is observing the research for compliance with an approved ACUP, the facility's program of adequate veterinary care, or the facility's written policy established in accordance with paragraph (e)(10) of this section;

(3) Require that pain relieving drugs, anesthetics, analgesics, and tranquilizers are used to minimize pain unless they are withheld in accordance with the provisions of paragraph (4), and that they are administered in accordance with the directions and recommendations of the attending veterinarian and in accordance with the accepted or established use of the drugs;

(4) Require that pain relieving drugs, anesthetics, analgesics, and tranquilizers be reduced in amount or withheld only if scientifically necessary, and fully explained and justified in the ACUP and approved by the attending veterinarian and the Committee. The research facility must require that these drugs be reduced in amount or withheld only for as long as necessary as specified in the ACUP and approved by the Committee;

(5) Require that the attending veterinarian provide training of laboratory personnel in the proper use of pain relieving drugs, anesthetics, analgesics, and tranquilizers so as to minimize pain and distress;

(6) Require that all pre-procedural, procedural, and post-procedural care be provided by laboratory workers or surgical personnel in accordance with the instructions of the attending veterinarian and established veterinary medical and nursing procedures, and that this care and the qualifications of the personnel be evaluated and approved by the attending veterinarian;

(7) Require that all survival surgeries be conducted only in facilities intended for that purpose, that the facilities be operated and maintained under aseptic conditions, and that surgical rooms be evaluated and approved by the attending veterinarian;

(8) Require that any surgery be performed or directly supervised by trained, experienced personnel;

(9) Prohibit the use of paralytic drugs without anesthesia; and

(10) Establish a written policy to ensure compliance with paragraphs (e)(1) through (9) of this section.

(f)(1) Each research facility using or holding animals for research, testing or teaching shall establish and follow written procedures which assure that no animal is used in more than one major operative experiment from which it is allowed to recover except:

(i) When scientifically necessary and approved by the Committee;

(ii) When required by or related to other surgical procedures and approved by the Committee;

(iii) When required to reduce or conserve the number of marine mammals or endangered species of animals used and approved by the Committee;

(iv) When required to protect the health and well-being of the animal as determined by the attending veterinarian;

(v) When the procedure is a routine, elective veterinary surgical, or diagnostic procedure; or

(vi) In other special circumstances as determined by the Secretary on an individual basis. Written requests and supporting data should be sent to the Administrator, APHIS, USDA, 6505 Belcrest Road, Federal Building, Room 756, Hyattsville, MD 20782.

(2) Cost savings alone is not adequate reason for performing multiple survival surgical procedures.

(g) Exceptions. Exceptions to compliance with the standards and regulations set forth under Title 9 CFR, Chapter 1, Subchapter A—Animal Welfare, may be made by the research facility only when necessary in order to accomplish the research design, and when specified in the ACUP, explained in detail, and approved by the Committee. The principal investigator must file a report with the Committee prior to ACUP review explaining the areas of noncompliance in detail. A copy of the report must be kept on file by the facility and must be available for inspection by APHIS inspectors or officials of granting agencies. A copy of all written reports detailing and explaining exceptions to compliance with the standards and regulations must be attached to the facility's annual report.

(h) Exercise for dogs and psychological well-being of primates. The research facility shall establish, in consultation with the attending veterinarian, written procedures and systems for the exercise of dogs and for the psychological well-being of primates in accordance with the regulations and standards, and a record system documenting that such a procedure or system is being carried out.

(i) Training. (1) Each research facility shall provide for the training and continuing education of scientists, research technicians, animal technicians, and other personnel involved with animal use, care, and treatment at the facility.

(2) This training shall be reviewed by the Committee and the attending veterinarian, shall be appropriate to the

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individuals and their responsibilities, and shall be made available annually or as appropriate to the individuals and their responsibilities.

(3) The research facility shall review the status of the training and qualifications of researchers to use animals at least once a year, and shall review the list of research personnel and shall designate those who require additional training. The review may be part of another review of personnel as long as the research facility has a written policy ensuring that all personnel are reviewed annually in these areas.

(4) This training shall be available for review by Department inspectors. Training shall include instruction in at least the following areas:

(i) Humane methods of animal maintenance and experimentation;

(ii) Research or testing methods that minimize or eliminate the use of animals or limit animal pain or distress;

(iii) Utilization of the information service at the National Agricultural Library;

(iv) Methods whereby deficiencies in animal care and treatment should be reported;

(v) The basic needs of each species of animal;

(vi) Familiarization with the intent and requirements of the Animal Welfare Act;

(vii) How to handle and care properly for the various species of animals used by the facility;

(viii) Proper pre-procedural and post-procedural care of animals;

(ix) Proper use of anesthetics, analgesics, and tranquilizers in the species of animals used by the facility, including the common or accepted use of these drugs in those species for which the drug is not licensed;

(x) Acceptable aseptic surgical methods and procedures;

(xi) Other training, techniques, or procedures the research facility or the Secretary, may feel is necessary.

(j) *Procedures for personnel to report violations.* The research facility shall establish a reporting procedure whereby laboratory or research facility personnel or employees can report violations of any regulation or standard established under the Act including problems, deviations, or deficiencies with animal housing, care, or use. The Committee shall review and, if warranted, investigate any such reports, in addition to the twice yearly inspections, and shall prepare and file a report at the central location specified in § 2.30(m), indicating the nature of the problem or complaint, the Committee's findings, and any corrective actions taken. No facility employee, Committee member, or laboratory personnel shall be discriminated against or be subject to any reprisal for reporting violations of any regulation or standard under the Act.

(k) *Federal research facilities.* Each federal research facility shall establish an Institutional Animal Care and Use Committee which shall have the same composition, duties, and responsibilities required of nonfederal research facilities by this section and by § 2.35 with the following exceptions:

(1) The Committee shall report deficiencies to the head of the federal agency conducting the research rather than to APHIS;

(2) The head of the federal agency conducting the research shall be responsible for all corrective action to be taken at the facility and for the granting of all exceptions to inspection protocol.

(l) *Reviews.* Upon the request of the Administrator, the research facility shall make available for review all ACUPs involving animals and all assurance statements required by the U.S. Public Health Service (PHS) or any other funding Federal agency. APHIS inspectors will maintain the confidentiality of the information and will not remove the materials from the research facilities' premises unless there has been an alleged violation, or unless they are needed to investigate a possible violation or for other enforcement purposes.

(m) Reports. Any reports required by this part shall remain on file at a central location maintained by the research facility for at least 3 years and shall be available for inspection and review by APHIS officials and inspectors and any funding Federal agency. Upon notification from the Administrator, research facilities must retain specified records for more than 3 years pending completion of an investigation or proceeding under the Act, as required by § 2.81.

**§ 2.31 Annual report of research facilities.**

(a) The reporting facility shall be that segment of the research facility, or that department, agency, or instrumentality of the United States, that uses or intends to use live animals in research, tests, experiments, or for teaching. Each reporting facility shall submit an annual report to the Area Veterinarian in Charge for the State where the facility is located on or before December 1 of each calendar year. The report shall be signed and certified by the CEO or a responsible institutional official with authority to bind the facility, and shall cover the previous federal fiscal year.

(b) Such report shall:

(1) Assure that professionally acceptable standards governing the care, treatment, and use of animals, including appropriate use of anesthetic, analgesic, and tranquilizing drugs, during pre- and post-procedural care, and during actual research, teaching, testing, surgery, or experimentation were followed by the research facility;

(2) Assure that the principal investigator has considered alternatives to painful procedures;

(3) Assure that the facility is adhering to the standards and regulations under the Animal Welfare Act, and that it has required that exceptions to the standards and regulations be specified and explained by the ACUP and approved by the Committee. An explanation for any deviation from the standards and regulations shall be attached to the report;

(4) State the location of the facility or facilities where animals were housed or used in actual research, testing, teaching, or experimentation, or held for these purposes;

(5) State the common names and the numbers of animals upon which teaching, research, experiments, or tests were conducted involving no pain, distress, or use of pain-relieving drugs. Routine procedures (e.g., injections, tattooing, blood sampling) should be reported with this group;

(6) State the common names and the numbers of animals upon which experiments, teaching, research, surgery, or tests were conducted involving accompanying pain or distress to the animals and for which appropriate anesthetic, analgesic, or tranquilizing drugs were used;

(7) State the common names and the numbers of animals upon which teaching, experiments, research, surgery, or tests were conducted involving accompanying pain or distress to the animals and for which the use of appropriate anesthetic, analgesic, or tranquilizing drugs would adversely affect the procedures, results, or interpretation of the teaching, research, experiments, surgery, or tests. A detailed statement on the procedures producing pain or distress in these animals and explaining the reasons such drugs were not used shall be attached to the annual report;

(8) State the common names and the numbers of animals being bred, conditioned or held for use in teaching, testing, experiments, research, or surgery but not yet used for such purposes; and

(9) Include a statement by the CEO or responsible institutional official with



authority to bind the facility that the Institutional Animal Care and Use Committee has authority to enter any animal or research area at any reasonable time, and that the attending veterinarian has authority to enter any animal or research area at any time, in order to carry out their responsibilities as set forth under §§ 2.35 and 2.40; and that the Committee has satisfactorily carried out its responsibilities; and that the facility complies with the Act, regulations, and standards.

(c) The CEO or responsible institutional official with authority to bind the facility shall certify on the annual report that the annual report was circulated to each member of the Committee and that each member of the Committee was given the opportunity to express concurrence or nonconcurrence with the report, and to attach a minority report to the annual report. The certification must indicate whether any member of the Committee indicated nonconcurrence. All minority reports provided to the CEO or responsible institutional official under this paragraph must be attached to the annual report. Each member's concurrence or nonconcurrence will be held confidential by the CEO and responsible institutional official.

**§ 2.35 Institutional Animal Care and Use Committee.**

(a) Membership.

(1) Each research facility shall establish and maintain an Institutional Animal Care and Use Committee (Committee);

(2) The members of each Committee shall be appointed by the Chief Executive Officer of the research facility;

(3) The Committee shall be composed of a Chairman and at least two additional members;

(4) Committee members shall possess sufficient ability to assess animal care, treatment, and practices in experimental research as determined by the needs of the research facility;

(5) Of the members of the Committee:

(i) At least one shall be a Doctor of Veterinary Medicine who is the attending veterinarian for the research facility. The Committee-related duties of the attending veterinarian may be delegated to a staff veterinarian in accordance with the written policy and procedures of the research facility;

(ii) At least one shall not be affiliated in any way with the facility other than as a member of the Committee and shall not be a member of the immediate family of a person who is affiliated with the facility. The Secretary intends that such person will provide representation for general community interests in the proper care and treatment of animals;

(6) If the Committee consists of more than three members, not more than three members shall be from the same administrative unit of the facility;

(7) The research facility shall maintain an up-to-date list of Committee members and shall indicate for each member his or her name, degrees, position, and qualifications. The business address and telephone number of the Chairman must also be included on the list. A copy of the current list of Committee members shall be maintained by the attending veterinarian for the facility and shall be made available for inspection by APHIS officials.

(b) Duties and Responsibilities. (1) Inspections. (i) The Committee or a subcommittee composed of at least 2 Committee members shall inspect at least twice a year, 6 months apart, all animal study areas and animal facilities of the research facility and shall review as part of the inspection:

(A) All practices and procedures involving pain to animals; and

(B) The condition of all animals, in order to ensure compliance with the provisions of the Act to minimize pain and distress to the animals.

(ii) The Committee or subcommittee shall use Title 9, Chapter 1, Subchapter A—Animal Welfare, as a basis of its inspection of animal areas and facilities.

(iii) Exceptions to the requirement of inspection of animal study areas may be made by the Secretary if the animals are studied in their natural environment and the study area prohibits easy access. Requests for such exemption shall be addressed to the Administrator, APHIS, USDA, Room 756, 6505 Belcrest Road, Hyattsville, MD 20782, and shall clearly set forth the reasons why such inspections cannot be made.

(iv) The Committee may suspend or withdraw its approval of ACUPs for research, testing, or teaching involving pain to animals that it previously approved if it determines upon inspection that the practice or procedure is not being conducted in accordance with the previously approved ACUP or is not in accordance with the Animal Welfare Act, regulations, or standards. The Committee must direct the CEO or responsible institutional official to instruct the principal investigator to cease noncomplying activities immediately.

(v) No Committee member wishing to participate in an inspection conducted under this subpart may be excluded from participating in the inspection.

(vi) If the research facility maintains multiple animal sites, the Committee must complete its inspection of all animal study areas or animal facilities within 30 days of commencing the first inspection.

(2) Reports. (i) Committee inspection certification report. After each inspection performed by a subcommittee, the subcommittee must present its findings to a quorum of the Committee for approval and formal action. After each inspection is completed, or upon the approval of the presentation of findings if the inspection is performed by a subcommittee, the Committee must file an inspection certification report at a central location at the research facility established in accordance with § 2.30(m). The Committee must file its inspection certification report within 10 business days of completing its inspection of all animal study areas or animal facilities. The reports shall be available to APHIS officials and to officials of funding Federal agencies for inspection and copying. Inspection certification reports shall contain at least the following:

(A) The date the inspection was made;

(B) The signature of a majority of the Committee members and any minority views of the Committee;

(C) Reports of:

(*1*) Any violations of the regulations, standards, or assurances required by the Secretary, including any deficient conditions of animal care or treatment and any findings and recommendations of the Committee;

(*2*) Any deviations of research practices from originally approved ACUPs that adversely affect animal welfare;

(*3*) Any notification to the facility regarding such conditions, deviations, or deficiencies;

(*4*) Any corrections made by the facility; and

(*5*) Any other information pertinent to the activities of the Committee and the status or condition of the animal facilities; and

(D) An assurance statement by the Committee that its members have reviewed all painful procedures using animals and that the procedures:

(*1*) Are in accordance with the ACUPs approved by the Committee; or

(*2*) Are in accordance with any changes or special procedures approved by the Committee; or

(*3*) Are not in accordance with the approved ACUPs and that the Committee has notified the CEO or institutional official responsible for animal care to instruct the investigator(s) to cease such methods and procedures immediately and to comply with the ACUPs approved by

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the Committee under paragraph (b)(3) of this section.

(ii) Deficiency notification reports.

(A) The Committee shall notify the CEO or institutional official responsible for animal care and the administrative unit representative, in writing, of any deficiencies in compliance with the Act, regulations, or standards found during an inspection, and of any noncompliance with an approved ACUP involving a painful procedure, within 1 business day of discovery of the deficiency. The Committee shall file a copy of the deficiency notification in the central location established at the research facility in accordance with § 2.30(m).

(B) The Committee shall provide the CEO or other institutional official responsible for animal care and the administrative unit representative with a copy of the report required under paragraph (b)(2)(i) of this section.

(C) If 30 days after notification of the deficiency any deficiency remains uncorrected, the Committee shall notify the Administrator and any funding Federal agency of the deficiency, in writing, within 5 business days of the expiration of the 30-day correction period. The Committee shall also provide a copy of its report and its notification of the deficiency to the Administrator and to any funding Federal agency.

(3) Reviews. (i) No research, testing, or teaching involving warm-blooded animals covered by the Act performed by a facility's personnel at any location shall commence prior to approval of the ACUP of the research, testing, or teaching by the Committee, nor shall it continue if the Committee withdraws or suspends its approval. An individual member of the Committee may be assigned to review an ACUP and to suggest needed modification of the ACUP to the principal investigator. The Committee member must present his or her recommendation for approval or disapproval to a quorum of the Committee for formal action. Prior to granting approval, the Committee shall ensure that the ACUP contains provisions for acceptable and proper animal care, treatment, practices, methods, and use of pain-relieving drugs. A quorum of the Committee must review a proposed ACUP upon the request of any member of the Committee.

(ii) The Committee shall approve an ACUP only when:

(A) Animal pain, distress, and functional or sensory impairment are minimized;

(B) All survival surgery is performed using aseptic procedures;

(C) Adequate veterinary care is planned for and provided;

(D) Proposed multiple use of animal(s) which undergo surgery is justified for the purpose of conserving an endangered species or marine mammals or as an essential related component of a particular project or ACUP; and

(E) Provision is made for the appropriate use of anesthetics, analgesics, tranquilizing drugs, or euthanasia when necessary, and that the use of these drugs is in accordance with established or accepted veterinary medical procedures and usage. The use of these drugs shall be in accordance with the instructions of the attending veterinarian.

### Subpart D—Attending Veterinarian and Adequate Veterinary Care

**§ 2.40 Attending veterinarian and veterinary care.**

(a) Each research facility, dealer, or exhibitor shall have an attending veterinarian who shall provide adequate veterinary care to its animals in compliance with this section.

(b) Each research facility, dealer, or exhibitor shall establish and maintain programs of adequate veterinary care, including programs for disease control and prevention, pest and parasite control, pre- and post-procedural care, nutrition, euthanasia, and the proper and appropriate use of anesthetics, analgesics, tranquilizers, and euthanasia when indicated, for all animals on the premises of the dealer, exhibitor, or research facility. These programs shall be under the supervision and control of the attending veterinarian.

(c) Written program of adequate veterinary care. (1) If a part-time or consulting attending veterinarian is utilized, the dealer, exhibitor, or research facility shall submit annually to the Area Veterinarian in Charge a written program of adequate veterinary care, prepared and signed by its attending veterinarian. The program shall include regularly scheduled visits by the attending veterinarian appropriate to the needs of the dealer, exhibitor, or research facility. The dealer, exhibitor, or research facility must keep a copy of the written program on file at the premises.

(2) If a full-time attending veterinarian is utilized, the dealer, exhibitor, or research facility shall have a written program of adequate veterinary care which will be reviewed by APHIS inspectors on the premises during inspections.

(3) The written program of adequate veterinary care shall include at least the following:

(i) The facility's name and address;

(ii) The veterinarian's name and address;

(iii) Provision for programs of disease control and prevention, pest and parasite control, pre- and post-procedural care, nutrition, euthanasia, and the proper and appropriate use of anesthetics, analgesics, and tranquilizers;

(iv) How the programs are to be established and reviewed;

(v) The frequency of visits to be made to the premises by the veterinarian to assure adequate veterinary care and supervision of required programs;

(vi) The method or system of euthanasia to be utilized, by species, and who shall be authorized to perform it; and

(vii) The dated signature of the attending veterinarian and of a legally responsible official of the research facility, dealer, or exhibitor.

(d) Each animal shall be observed daily by the dealer, exhibitor, attending veterinarian, research facility, principal investigator, the animal caretaker in charge, or someone under the direct supervision of the attending veterinarian, principal investigator, or the animal caretaker in charge, who is required to report promptly his or her findings to trained personnel. Any necessary veterinary care shall be promptly provided. All research facilities, dealers, or exhibitors shall provide veterinary care to or humanely dispose of sick, diseased, injured, lame, or blind animals unless such action is inconsistent with the research purposes for which the animal was obtained and is being held: *Provided, however:* That this provision shall not affect compliance with any State or local law requiring the holding, for a specified period, of animals suspected of being diseased.

(e) Research facilities. (1) Each research facility shall require that the attending veterinarian be a member of the Committee and that he or she shall have the authority to enter all animal rooms, sites, facilities, animal use areas, and animal research areas at any time.

(2) In addition to the requirements set forth in paragraphs (a) through (d) of this section, the research facility shall require the attending veterinarian:

(i) To provide consultation and guidance to principal investigators and other laboratory personnel during ACUP planning and development, and during actual research, whenever any procedure is likely to produce pain or distress in an animal, if the attending veterinarian's presence and consultation is deemed necessary by the Committee, is requested by the investigator, is in response to complaints regarding the research or procedures, or if the attending veterinarian is observing the research for compliance with the facility's written policy established in accordance with § 2.30(e)(10), an approved ACUP, or the written program of adequate veterinary care. Such consultation and guidance shall include at least the following:

(A) The proper use of tranquilizers, analgesics, anesthetics, and euthanasia according to the accepted, or common veterinary practice procedures;

(B) Provision for adequate pre- and post-procedural care by laboratory workers in accordance with current established veterinary medical and nursing procedures;

(C) Agreement to the withholding of tranquilizers, anesthesia, analgesia, or euthanasia only when scientifically necessary and only for the necessary period of time; and

(D) Evaluation and approval of all animal surgical areas and qualifications of personnel involved with animal surgery.

(ii) To establish, as part of the program of adequate veterinary care, procedures and a recording system which indicate and assure that the proper drugs are being used and that proper pre- and post-procedural care is being carried out on a daily basis.



### Subpart E—Identification of Animals

**§ 2.50 Time and method of identification.**

(a) A class "A" dealer (breeder) shall identify all live dogs and cats on the premises as follows:

(1) All live dogs and cats held on the premises, purchased, or otherwise acquired, sold or otherwise disposed of, or removed from the premises for delivery to a research facility or exhibitor or to another dealer, or for sale, through an auction sale or to any person for use as a pet, shall be identified by an official tag of the type described in § 2.51 affixed to the animal's neck by means of a collar made of material generally considered acceptable to pet owners as a means of identifying their pet dogs or cats,[1] or shall be identified by a distinctive and legible tattoo marking acceptable to and approved by the Administrator.

(2) Live puppies or kittens, less than 16 weeks of age, shall be identified by:

(i) An official tag as described in § 2.51;

(ii) A distinctive and legible tattoo marking approved by the Administrator; or

(iii) A plastic-type collar acceptable to the Administrator which has legibly placed thereon the information required for an official tag pursuant to § 2.51.

(b) A class "B" dealer shall identify all live dogs and cats under his or her control or on his or her premises as follows:

(1) When live dogs or cats are held, purchased, or otherwise acquired, they shall be immediately identified:

(i) By affixing to the animal's neck an official tag as set forth in § 2.51 by means of a collar made of material generally acceptable to pet owners as a means of identifying their pet dogs or cats [1]; or

(ii) By a distinctive and legible tattoo marking approved by the Administrator.

(2) If any live dog or cat is already identified by an official tag or tattoo which has been applied by another dealer or exhibitor, the dealer or exhibitor who purchases or otherwise acquires the animal may continue identifying the dog or cat by the previous identification number, or may replace the previous tag with his own official tag or approved tattoo. In either case, the class B dealer or class C exhibitor shall correctly list both official tag numbers or tattoos in his or her records of purchase which shall be maintained in accordance with §§ 2.75 and 2.77. Any new official tag or tattoo number shall be used on all records of any subsequent sales by the dealer or exhibitor, of any dog or cat.

(3) Live puppies or kittens, less than 16 weeks of age, shall be identified by:

(i) An official tag as described in § 2.51;

(ii) A distinctive and legible tattoo marking approved by the Administrator; or

(iii) A plastic-type collar acceptable to the Administrator which has legibly placed thereon the information required for an official tag pursuant to § 2.51.

(4) When any dealer has made a reasonable effort to affix an official tag to a cat, as set forth in paragraphs (a) and (b) of this section, and has been unable to do so, or when the cat exhibits serious distress from the attachment of a collar and tag, the dealer shall attach the collar and tag to the door of the primary enclosure containing the cat and take measures adequate to maintain the identity of the cat in relation to the tag. Each primary enclosure shall contain no more than one weaned cat without an affixed collar and official tag, unless the cats are identified by a distinctive and legible tattoo or plastic-type collar approved by the Administrator.

(c) A class "C" exhibitor shall identify all live dogs and cats under his or her control or on his or her premises, whether held, purchased, or otherwise acquired:

(1) As set forth in (b)(1) or (b)(3) of this section, or

(2) By identifying each dog or cat with:

(i) An official USDA sequentially numbered tag that is kept on the door of the animal's cage or run;

(ii) A record book containing each animal's tag number, a written description of each animal, the data required by § 2.75(a), and a clear photograph of each animal; and

(iii) A duplicate tag that accompanies each dog or cat whenever it leaves the compound or premises.

(d) Unweaned puppies or kittens need not be individually identified as required by paragraphs (a) and (b) of this section while they are maintained as a litter with their dam in the same primary enclosure, provided the dam has been individually identified.

(e)(1) All live dogs or cats, including those from any exempt source, delivered for transportation, transported, purchased or otherwise acquired, sold, or disposed of by a research facility, shall be identified at the time of such delivery for transportation, purchase, sale, disposal, or acquisition in one of the following ways:

(i) By the official tag or tattoo which was affixed to the animal at the time it was acquired by the research facility, as required by this section; or

(ii) By a tag, tattoo, or collar, applied to the live dog or cat by the research facility and which individually identifies the dog or cat by number.

(2) Both official tag or tattoo numbers shall be correctly listed in the records of purchase, acquisition, disposal, or sale which shall be maintained in accordance with § 2.76.

(f)(1) All animals, except dogs and cats, delivered for transportation, transported, purchased, sold, or otherwise acquired or disposed of by any dealer or exhibitor shall be identified by the dealer or exhibitor at the time of delivery for transportation, purchase, sale, acquisition or disposal, as provided for in this paragraph and in records maintained as required in §§ 2.75 and 2.77.

[1] In general, well fitted collars made of leather or plastic will be acceptable under this provision. The use of certain types of chains presently used by some dealers may also be deemed acceptable. APHIS will determine the acceptability of a material proposed for usage as collars from the standpoint of humane considerations on an individual basis in consultation with the dealer or exhibitor involved. The use of materials such as wire, elastic, or sharp metal that might cause discomfort or injury to the dogs or cats is not acceptable.

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(2) When one or more animals, other than dogs or cats, are confined in a container, the animal(s) shall be identified by:

(i) A label attached to the container which shall bear a description of the animals in the container, including:

(A) The number of animals;

(B) The species of the animals;

(C) Any distinctive physical features of the animals; and

(D) Any identifying marks, tattoos, or tags attached to the animals;

(ii) Marking the container with a painted or stenciled number which shall be recorded in the records of the dealer or exhibitor together with:

(A) A description of the animal(s);

(B) The species of the animal(s); and

(C) Any distinctive physical features of the animal(s); or

(iii) A tag or tattoo applied to each animal in the container by the dealer or exhibitor which individually identifies each animal by description or number.

(3) When any animal, other than a dog or cat, is not confined in a container, it shall be identified on a record, as required by § 2.75, which shall accompany the animal at the time it is delivered for transportation, transported, purchased, or sold, and shall be kept and maintained by the dealer or exhibitor as part of his or her records.

**§ 2.51 Form of official tag.**

(a) The official tag shall be made of a durable alloy such as brass, bronze, or steel, or of a durable plastic. Aluminum of a sufficient thickness to assure the tag is durable and legible may also be used. The tag shall be one of the following shapes:

(1) Circular in shape and not less than 1¼ inches in diameter, or

(2) Oblong and flat in shape, not less than 2 inches by ⅝ inch and riveted to an acceptable collar.

(b) Each tag shall have the following information embossed or stamped on so that it is easily readable:

(1) The letters "USDA";

(2) Numbers identifying the State and dealer, exhibitor, or research facility (*e.g.*, 39–AB); and

(3) Numbers identifying the animal (*e.g.*, 82488).

(c) Official tags shall be serially numbered. No individual dealer, exhibitor, or research facility shall use any identification tag number more than once within a 5-year period.

**§ 2.52 How to obtain tags.**

Dealers, exhibitors, or research facilities may obtain, at their own expense, official tags from commercial tag manufacturers[a]. At the time the dealer, exhibitor, or research facility is issued a license or is registered, the Department will assign identification letters and numbers and inform them of the identification letters and numbers to be used on the official tags.

**§ 2.53 Use of tags.**

Official tags obtained by a dealer, exhibitor, or research facility, shall be applied to dogs or cats in the manner set forth in § 2.50 and in as close to consecutive numerical order as possible. No tag number shall be used to identify more than one animal. No number shall be repeated within a 5-year period.

**§ 2.54 Lost tags.**

Each research facility, dealer, or exhibitor shall be held accountable for all official tags acquired. In the event an official tag is lost from a dog or cat while in the possession of a research facility, dealer, or exhibitor, the research facility, dealer, or exhibitor shall make a diligent effort to locate and reapply the tag to the proper animal. If the lost tag is not located, the research facility, dealer, or exhibitor shall affix another official tag to the animal in the manner prescribed in § 2.50, and record the tag number on the official records.

**§ 2.55 Removal and disposal of tags.**

(a) When a dog or cat wearing or identified by an official tag arrives at a research facility, the facility may continue to use that tag to identify the dog or cat or the research facility may replace the tag as indicated in § 2.50(e). All tags removed by a research facility shall be retained and disposed of as indicated in this section.

(b) If a dealer, exhibitor, or research facility finds it necessary to euthanize a live dog or cat to which is affixed or which is identified by an official tag, or upon the death of a dog or cat from other causes, the dealer, exhibitor, or research facility shall remove and retain the tag for the required period, as set forth in paragraph (c) of this section.

(c) All official tags removed and retained by a dealer, exhibitor, or research facility shall be held until called for by an APHIS official or for a period of 1 year.

(d) When official tags are removed from animals for disposal, the tags must be disposed of so as to preclude their reuse for animal identification. No animal identification number shall be used within any 5-year period following its previous use.

**Subpart F—Stolen Animals**

**§ 2.60 Prohibition on the purchase, sale, use, or transportation of stolen animals.**

Any person subject to the Act shall not buy, sell, exhibit, use for research, transport, or offer for transportation, any stolen animal.

**Subpart G—Records**

**§ 2.75 Records: Dealers and exhibitors.**

(a)(1) Every dealer other than operators of auction sales and brokers to whom animals are consigned, and exhibitor shall make, keep, and maintain records or forms which fully and correctly disclose the following information concerning each dog or cat purchased or otherwise acquired, owned, held, or otherwise in his or her possession or under his or her control, or which is transported, euthanized, sold, or otherwise disposed of by that dealer or exhibitor. The records shall include any offspring born of any animal while in his or her possession or under his or her control.

(i) The name and address of the person from whom a dog or cat was purchased or otherwise acquired whether or not the person is required to be licensed or registered under the Act;

(ii) The USDA license or registration number of the person if he or she is licensed or registered under the Act;

(iii) The vehicle license number and state, and the driver's license number and state of the person, if he or she is not licensed or registered under the Act;

(iv) The name and address of the person to whom a dog or cat was sold or given and that person's license or registration number if he or she is licensed or registered under the Act;

(v) The date a dog or cat was acquired or disposed of, including by euthanasia;

(vi) The official USDA tag number or tattoo assigned to a dog or cat under §§ 2.50 and 2.54;

(vii) A description of each dog or cat which shall include:

(A) The species and breed or type;

(B) The sex;

(C) The date of birth or approximate age; and

(D) The color and any distinctive markings;

(viii) The method of transportation including the name of the initial carrier or intermediate handler or, if a privately owned vehicle is used to transport a dog or cat, the name of the owner of the privately owned vehicle;

(ix) The date and method of disposition of a dog or cat, e.g., sale, death, euthanasia, or donation.

(2) Record of Dogs and Cats on Hand (VS Form 18–5) and Record of Disposition of Dogs and Cats (VS Form 18–6) are forms which may be used by dealers and exhibitors to make, keep, and maintain the information required by paragraph (a)(1) of this section.

(3) The USDA Interstate and International Certificate of Health Examination for Small Animals (VS Form 18–1) may be used by dealers and exhibitors to make, keep, and maintain the information required by paragraph (a)(1) of this section and § 2.79.

(4) One copy of the record containing the information required by paragraph (a)(1) of this section shall accompany each shipment of any dog or cat purchased or otherwise acquired by a dealer or exhibitor. One copy of the record containing the information required by paragraph (a)(1) of this section shall accompany each shipment of any dog or cat sold or otherwise disposed of by a dealer or exhibitor; *Provided, however:* That information which indicates the source and date of acquisition of a dog or cat need not appear on the copy of the record accompanying the shipment. One copy of the record containing the information required by (a)(1) of this section shall be retained by the dealer or exhibitor.

(b)(1) Every dealer other than operators of auction sales and brokers to whom animals are consigned, and exhibitor shall make, keep, and maintain records or forms which fully and correctly disclose the following information concerning animals other than dogs and cats, purchased or otherwise acquired, owned, held, leased, or otherwise in his or her possession or under his or her control, or which is transported, sold, euthanized, or otherwise disposed of by that dealer or exhibitor. The records shall include any offspring born of any animal while in his or her possession or under his or her control.

(i) The name and address of the person from whom the animals were purchased or otherwise acquired;

(ii) The USDA license or registration number of the person if he or she is licensed or registered under the Act;

(iii) The vehicle license number and state, and the driver's license number and state of the person, if he or she is not licensed or registered under the Act;

(iv) The name and address of the person to whom an animal was sold or given;

(v) The date of purchase, acquisition, sale, or disposal of the animal(s);

(vi) The species of the animal(s); and

(vii) The number of animals in the shipment.

(2) Record of Animals on Hand (other than dogs and cats) (VS Form 18.19) and Record of Acquisition, Disposition, or Transport of Animals (other than dogs and cats) (VS Form 18.20) are forms which may be used by dealers and exhibitors to keep and maintain the information required by paragraph (b)(1) hereof concerning animals other than dogs and cats except as provided in § 2.79.

(3) One copy of the record containing the information required by paragraph (b)(1) of this section shall accompany each shipment of any animal(s) other than a dog or cat purchased or otherwise acquired by a dealer or exhibitor. One copy of the record containing the information required by paragraph (b)(1) of this section shall accompany each shipment of any animal other than a dog or cat sold or otherwise disposed of by a dealer or exhibitor; *Provided, however:* That information which indicates the source and date of acquisition of any animal other than a dog or cat need not appear on the copy of the record accompanying the shipment. The dealer or exhibitor shall retain one copy of the record containing the information required by paragraph (b)(1) of this section.

**§ 2.76 Records: Research facilities.**

(a) Every research facility shall make, keep, and maintain records or forms which fully and correctly disclose the following information concerning each live dog or cat purchased or otherwise acquired, owned, held, or otherwise in their possession or under their control, transported, euthanized, sold, or otherwise disposed of by such research facility. The records shall include any offspring born of any animal while in the research facility's possession or under its control.

(1) The name and address of the person from whom a dog or cat was purchased or otherwise acquired whether or not the person is required to be licensed or registered under the Act;

(2) The USDA license or registration number of the person if he or she is licensed or registered under the Act;

(3) The vehicle license number and state, and the driver's license number and state of the person, if he or she is not licensed or registered under the Act;

(4) The date of acquisition of each dog or cat;

(5) The official USDA tag number or tattoo assigned to each dog or cat under §§ 2.50 and 2.54;

(6) A description of each dog or cat which shall include:

(i) The species and breed or type of animal;

(ii) The sex;

(iii) The date of birth or approximate age; and

(iv) The color and any distinctive markings;

(7) Any identification number or mark assigned to each dog or cat by the research facility.

(b) In addition to the information required to be kept and maintained by every research facility concerning each live dog or cat under paragraph (a) of this section, every research facility transporting, selling, or otherwise disposing of any live dog or cat to another person, shall make and maintain records or forms which fully and correctly disclose the following information:

(1) The name and address of the receiver to whom a live dog or cat is transported, sold, or otherwise disposed of;

(2) The date of transportation, sale, euthanasia, or other disposition of the animal; and

(3) The method of transportation, including the name of the initial carrier or intermediate handler, or if a privately owned vehicle is used to transport the dog or cat, the name of the owner of the privately owned vehicle.

(c)(1) The USDA Interstate and International Certificate of Health Examination for Small Animals (VS Form 18–1) and Record of Dogs and Cats on Hand (VS Form 18–5) are forms which may be used by research facilities to keep and maintain the information required by paragraph (a) of this section.

(2) The USDA Interstate and International Certificate of Health Examination for Small Animals (VS Form 18–1), and Record of Disposition of Dogs and Cats (VS Form 18–6) are forms which may be used by research facilities to keep and maintain the information required by paragraph (b) of this section.

(d) One copy of the record containing the information required by paragraphs (a) and (b) of this section shall accompany each shipment of any live dog or cat sold or otherwise disposed of by a research facility: *Provided, however:* That information which indicates the source and date of acquisition of any dog or cat need not appear on the copy of the record accompanying the shipment. One copy of the record containing the information required by paragraphs (a) and (b) of this section shall be retained by the research facility.

[a] A list of the commercial manufacturers who produce these tags and are known to the Department may be obtained from the Area Veterinarian in Charge. Any manufacturer who desires to be included in the list should notify the Administrator.

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**§ 2.77 Records: Operators of auction sales and brokers.**

(a) Every operator of an auction sale or broker shall make, keep, and maintain records or forms which fully and correctly disclose the following information concerning each animal consigned for auction or sold, whether or not a fee or commission is charged:

(1) The name and address of the person who owned or consigned the animal(s) for sale;

(2) The name and address of the buyer or consignee who received the animal;

(3) The USDA license or registration number of the person(s) selling, consigning, buying, or receiving the animals if he or she is licensed or registered under the Act;

(4) The vehicle license number and state, and the driver's license number and state of the person, if he or she is not licensed or registered under the Act;

(5) The date of the consignment;

(6) The official USDA tag number or tattoo assigned to the animal under §§ 2.50 and 2.54;

(7) A description of the animal which shall include:

(i) The species and breed or type of animal;

(ii) The sex of the animal; and

(iii) The date of birth or approximate age; and

(iv) The color and any distinctive markings;

(8) The auction sales number or records number assigned to the animal.

(b) One copy of the record containing the information required by paragraph (a) of this section shall be given to the consignor of each animal, one copy of the record shall be given to the purchaser of each animal: *Provided, however:* That information which indicates the source and date of consignment of any animal need not appear on the copy of the record given the purchaser of any animal. One copy of the record containing the information required by paragraph (a) of this section shall be retained by the operator of such auction sale, or broker, for each animal sold by the auction sale or broker.

**§ 2.78 Records: Carriers and intermediate handlers.**

(a) In connection with all live animals accepted for shipment on a C.O.D. basis or other arrangement or practice under which the cost of an animal or the transportation of an animal is to be paid and collected upon delivery of the animal to the consignee, the accepting carrier or intermediate handler, if any, shall keep and maintain a copy of the guarantee in writing of the consignor of the shipment for the payment of transportation charged for any animal not claimed as provided in § 2.80, including, where necessary, both the return transportation charges and an amount sufficient to reimburse the carrier for out-of-pocket expenses incurred for the care, feeding, and storage of the animal. The carrier or intermediate handler at destination shall also keep and maintain a copy of the shipping document containing the time, date, and method of each attempted notification and the final notification to the consignee and the name of the person notifying the consignee, as provided in § 2.80.

(b) In connection with all live dogs, cats, or nonhuman primates delivered for transportation, in commerce, to any carrier or intermediate handler, by any dealer, research facility, exhibitor, operator of an auction sale, broker, or department, agency, or instrumentality of the United States or of any State or local government, the accepting carrier or intermediate handler shall keep and maintain a copy of the health certification completed as required by § 2.79, tendered with each live dog, cat, or nonhuman primate.

**§ 2.79 Health certification and identification.**

(a) No dealer, research facility, exhibitor, operator of an auction sale, broker, or department, agency, or instrumentality of the United States or of any State or local government shall deliver to any intermediate handler or carrier for transportation, in commerce, or shall transport in commerce any dog, cat, or nonhuman primate unless the dog, cat, or nonhuman primate is accompanied by a health certificate executed and issued by a licensed veterinarian. The health certificate shall state that:

(1) The licensed veterinarian inspected the dog, cat, or nonhuman primate on a specified date which shall not be more than 10 days prior to the delivery of the dog, cat, or nonhuman primate for transportation; and

(2) When so inspected, the dog, cat, or nonhuman primate appeared to the licensed veterinarian to be free of any infectious disease or physical abnormality which would endanger the animal(s) or other animals or endanger public health.

(b) The Secretary may provide exceptions to the health certification requirement on an individual basis for animals shipped to a research facility for purposes of research, testing, or experimentation when the research facility requires animals not eligible for certification. Requests should be addressed to the Administrator, APHIS, USDA, Room 756, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

(c) No intermediate handler or carrier to whom any live dog, cat, or nonhuman primate is delivered for transportation by any dealer, research facility, exhibitor, broker, operator of an auction sale, or department, agency, or instrumentality of the United States or any State or local government shall receive a live dog, cat, or nonhuman primate for transportation, in commerce, unless and until it is accompanied by a health certificate issued by a licensed veterinarian in accordance with paragraph (a) of this section, or an exemption issued by the Secretary in accordance with paragraph (b) of this section.

(d) The U.S. Interstate and International Certificate of Health Examination for Small Animals (VS Form 16–1) may be used for health certification by a licensed veterinarian as required by this section.

**§ 2.80 C.O.D. shipments.**

(a) No carrier or intermediate handler shall accept any animal for transportation, in commerce, upon any C.O.D. or other basis where the cost of the animal or the cost for any transportation or any other incidental or out-of-pocket expense is to be paid and collected upon delivery of the animal to the consignee, unless the consignor guarantees in writing the payment of all transportation, including any return transportation, if the shipment is unclaimed or the consignee cannot be notified in accordance with paragraphs (b) and (c) of this section, including reimbursing the carrier or intermediate handler for all out-of-pocket expenses incurred for the care, feeding, and storage or housing of the animal.

(b)(1) Any carrier or intermediate handler receiving an animal at a destination on a C.O.D. or other basis where the cost of the animal or the cost for any transportation or other incidental or out-of-pocket expense is to be paid and collected upon delivery of the animal to the consignee shall attempt to notify the consignee at least once every 6 hours for a period of 24 hours after arrival of the animal at the animal holding area of the terminal cargo facility. The carrier or intermediate handler shall record the time, date, and method of each attempted notification and the final notification to the consignee, and the name of the person notifying the consignee, on the shipping document and on the copy of the shipping document accompanying the C.O.D. shipment. If the consignee cannot be notified of the C.O.D. shipment within 24 hours after its arrival, the carrier or intermediate handler shall return the animal to the consignor, or to whomever the consignor has designated, on the next practical available transportation, in accordance with the written agreement required in paragraph (a) of this section and shall notify the consignor. Any carrier or intermediate handler which has notified a consignee of the arrival of a C.O.D. or other shipment of an animal, where the cost of the animal, or the cost for any transportation, or other incidental or out-of-pocket expense is to be paid and collected upon delivery of the animal to the consignee, which is not claimed by the consignee within 48 hours from the time of notification, shall return the animal to the consignee, or to whomever the consignor has designated, on the next practical available transportation, in accordance with the written agreement required in paragraph (a) of this section and shall notify the consignor.

(c) It is the responsibility of any carrier or intermediate handler to provide care, feed, and hold properly any animal accepted for transportation, in commerce, under a C.O.D. or other arrangement where the cost of the animal or the cost of any transportation or other incidental or out-of-pocket expense is to be paid and collected upon delivery of the animal until the consignee accepts shipment at destination or until returned to the consignor or his or her designee should the consignee fail to accept delivery of the animal or if the consignee could not be notified as prescribed in paragraph (b) of this section.

(d) Nothing in this section shall be construed as prohibiting any carrier or intermediate handler from requiring any guarantee in addition to that required in paragraph (a) of this section for the payment of the cost of any transportation or out-of-pocket or other incidental expenses incurred in the transportation of any animal.

**§ 2.81 Records, disposition.**

(a) No dealer, exhibitor, broker, operator of an auction sale, research facility, carrier, or intermediate handler shall, for a period of 1 year, destroy or dispose of, without the consent in writing of the Administrator, any books, records, documents, or other papers required to be kept and maintained under this part.

(b) Unless otherwise specified, the records required to be kept and maintained under this part shall be held for 1 year after an animal is euthanized or disposed of and for any period in excess of one year as necessary to comply with any applicable Federal, State, or local law. Whenever the Administrator notifies a dealer, exhibitor, broker, operator of an auction sale, research facility, carrier, or intermediate handler in writing that specified records shall be retained pending completion of an investigation or proceeding under the Act, the dealer, exhibitor, broker, operator of an auction sale, research facility, carrier, or intermediate handler shall hold those records until their disposition is authorized by the Administrator.



## Subpart H—Compliance With Standards and Holding Period

**§ 2.100 Compliance with standards.**

(a) Each dealer, exhibitor, operator of an auction sale, intermediate handler, and research facility shall comply in all respects with the regulations set forth in Part 2 and the standards set forth in Part 3 of this subchapter for the humane handling, care, treatment, housing, and transportation of animals: *Provided, however:* That exceptions to the standards in Part 3 and the provisions of § 2.131 may be made for research facilities only when such exceptions are specified in the animal care and use procedure (ACUP), are explained in detail in a report filed with the Committee, and are approved by the Committee.

(b) Each carrier shall comply in all respects with the regulations in Part 2 and the standards in Part 3 setting forth the conditions and requirements for the humane transportation of animals in commerce and their handling, care, and treatment in connection therewith.

**§ 2.101 Holding period.**

(a) Any live dog or cat acquired by a dealer [3] or exhibitor shall be held by him or her, under his or her supervision and control, for a period of not less than 5 full days, not including the day of acquisition, after acquiring the animal, excluding time in transit: *Provided, however:*

(1) That any live dog or cat acquired by a dealer or exhibitor from any private or contract animal pound or shelter shall be held by that dealer or exhibitor under his or her supervision and control for a period of not less than 10 full days, not including the day of acquisition, after acquiring the animal, excluding time in transit;

(2) Live dogs or cats which have completed a 5-day holding period with another dealer or exhibitor, or a 10-day holding period with another dealer or exhibitor if obtained from a private or contract shelter or pound, may be sold or otherwise disposed of by subsequent dealers or exhibitors after a minimum holding period of 24 hours by each subsequent dealer or exhibitor, excluding time in transit;

(3) Any dog or cat suffering from disease, emaciation, or injury may be destroyed by euthanasia prior to the completion of the holding period required by this section; and

(4) Any live dog or cat, 120 days of age or less, that was obtained from the person that bred and raised such dog or cat, may be exempted from the 5-day holding requirement and may be disposed of by dealers or exhibitors after a minimum holding period of 24 hours, excluding time in transit. Each subsequent dealer or exhibitor must also hold each such dog or cat for a 24-hour period excluding time in transit.

(b) During the period in which any dog or cat is being held as required by this section, the dog or cat shall be unloaded from any means of conveyance in which it was received, for feed, water, and rest, and shall be handled, cared for, and treated in accordance with the standards set forth in Part 3, Subpart A, of this subchapter and § 2.131 of this part.

(c) Research facilities that obtain dogs and cats from sources other than dealers, exhibitors, and exempt persons shall hold the animals for 5 full days, not including the day of acquisition, after acquiring the animal, excluding time in transit, before they may be used by the facility. Research facilities shall comply with the identification of animals requirements set forth in § 2.50 during this period.

**§ 2.102 Holding facility.**

(a) If any dealer or exhibitor obtains the prior approval of the Area Veterinarian in Charge, he may arrange to have another person hold animals for the required period provided for in paragraph (a) of § 2.101: *Provided that:*

(1) The other person agrees in writing to comply with the regulations in Part 2 and the standards in Part 3 of this subchapter and to allow inspection of his premises by an APHIS official during business hours; and

(2) The animals remain under the total control and responsibility of the dealer or exhibitor.

(3) Approval will not be given for a dealer or exhibitor holding a license as set forth in § 2.1 to have animals held for purposes of this section by another licensed dealer or exhibitor. Veterinary

[3] An operator of an auction sale is not considered to have acquired a dog or cat which is sold through the auction sale.

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Services Form 18.9 shall be used for approval.

(b) If any research facility or intermediate handler obtains prior approval of the Area Veterinarian in Charge, it may arrange to have another person hold animals: *Provided that:*

(1) The other person agrees in writing to comply with the regulations in Part 2 and the standards in Part 3 of this subchapter and to allow inspection of the premises by an APHIS official during business hours;

(2) The animals remain under the total control and responsibility of the research facility or intermediate handler; and

(3) In the case of a research facility, a legally responsible official of the research facility agrees in writing that the other person or premises is a recognized animal site under its research facility registration. Veterinary Services Form 18.9 shall be used for approval.

## Subpart I—Miscellaneous

### § 2.125 Information as to business; furnishing of same by dealers, exhibitors, operators of auction sales, research facilities, intermediate handlers, and carriers.

Each dealer, exhibitor, research facility, intermediate handler, and carrier shall furnish to any APHIS official any information concerning the business of the dealer, exhibitor, operator of an auction sale, research facility, intermediate handler or carrier which the APHIS official may request in connection with the enforcement of the provisions of the Act, the regulations and the standards in this subchapter. The information shall be furnished within a reasonable time and as may be specified in the request for information.

### § 2.126 Access and inspection of records and property.

(a) Each dealer, exhibitor, research facility, intermediate handler, or carrier, shall, during business hours, allow APHIS officials:

(1) To enter its place of business;

(2) To examine records required to be kept by the Act and the regulations in this part;

(3) To make copies of the records;

(4) To inspect the facilities, property and animals, as the APHIS officials consider necessary to enforce the provisions of the Act, the regulations and the standards in this subchapter; and

(5) To take photographs to document conditions and/or areas of noncompliance in the facility.

(b) The use of a room, table, or other facilities necessary for the proper examination of the records and inspection of the property or animals shall be extended to APHIS officials by the dealer, exhibitor, research facility, intermediate handler or carrier, or his agents and employees.

### § 2.127 Publication of names of persons subject to the provisions of this part.

APHIS will publish lists of persons licensed or registered in accordance with the provisions of this part in the **Federal Register**. The lists may be obtained upon request from the Area Veterinarian in Charge.

### § 2.128 Inspection for missing animals.

(a) Each dealer, exhibitor, research facility, intermediate handler and carrier shall, upon request, during business hours, allow, under the following conditions, police or officers of other law enforcement agencies with general law enforcement authority (not those agencies whose duties are limited to enforcement of local animal regulations) to enter his or her place of business to inspect animals and records for the purpose of seeking animals that are missing:

(1) The police or other law officer shall furnish to the dealer, exhibitor, research facility, intermediate handler or carrier a written description of the missing animal and the name and address of its owner before making a search.

(2) The police or other law officer shall abide by all security measures required by the dealer, exhibitor, research facility, intermediate handler or carrier to prevent the spread of disease, including the use of sterile clothing, footwear, and masks where required, or to prevent the escape of an animal.

(b) An inspection for missing animals by law enforcement officers shall not extend to animals that are undergoing actual research or experimentation by a research facility as determined by the research facility.

### § 2.129 Confiscation and destruction of animals.

(a) If an animal being held by a dealer, exhibitor, intermediate handler, carrier, or by a research facility when it is no longer required by the research facility to carry out the research, test, or experiment for which it has been utilized, is found by an APHIS official to be suffering as a result of the failure of the dealer, exhibitor, intermediate handler, carrier, or research facility to comply with any provision of the regulations or the standards set forth in this subchapter, the APHIS official shall make a reasonable effort to notify the dealer, exhibitor, intermediate handler, carrier, or research facility of the condition of the animal(s) and request that the condition be corrected and that adequate care be given when necessary to alleviate the animal's suffering or distress, or that the animal(s) be destroyed by euthanasia. In the event that the dealer, exhibitor, intermediate handler, carrier, or research facility refuses to comply with this request, the APHIS official may confiscate the animal(s) for care, treatment, or disposal as indicated in paragraph (b) of this section, if, in the opinion of the Administrator, the circumstances indicate the animal is in danger of harm.

(b) In the event that the APHIS official is unable to locate or notify the dealer, exhibitor, intermediate handler, carrier, or research facility as required in this section, the APHIS official shall contact a local police or other law officer to accompany him to the premises and shall provide for adequate care when necessary to alleviate the animal's suffering. If in the opinion of the Administrator, the condition of the animal(s) cannot be corrected by this temporary care, the APHIS official shall confiscate the animals.

(c) Confiscated animals may be placed, by sale or donation, with other licensees or registrants which comply with the standards and regulations and can provide proper care, or they may be euthanized. The dealer, exhibitor, intermediate handler, carrier, or research facility from whom the animals were confiscated shall bear all costs incurred in performing the placement or euthanasia activities authorized by this section.

### § 2.130 Minimum age requirements.

No dog or cat shall be delivered by any person to any carrier or intermediate handler for transportation, in commerce, or shall be transported in commerce by any person, except to a registered research facility, unless such dog or cat is at least eight (8) weeks of age and has been weaned.

### § 2.131 Handling.

(a)(1) Handling of all animals shall be done as expeditiously and carefully as possible in a manner that does not cause unnecessary discomfort, trauma, overheating, excessive cooling, behavioral stress, or physical harm.

(2) Physical abuse of animals or deprivation of food or water shall not be used to train, work, or otherwise handle animals.

(b)(1) During public exhibition, any animal must be handled so there is minimal risk of harm to the animal and to the public, with sufficient distance and/or barriers between the animal and the general viewing public so as to assure the safety of animals and the public.

(2) Performing animals shall be allowed a rest period between performances at least equal to the time for one performance.

(3) Young or immature animals shall not be exposed to rough or excessive public handling or exhibited for periods of time which would be detrimental to their health or well-being.

(4) Drugs, such as tranquilizers, shall not be used to facilitate, allow, or provide for public handling of the animals.

(c)(1) Animals shall be exhibited only for periods of time and under conditions consistent with their good health and well-being.

(2) A responsible, knowledgeable, and readily identifiable employee or attendant must be present at all times during periods of public contact.

(3) At a minimum, when dangerous animals such as lions, tigers, wolves, bears, or elephants are allowed to have contact with the public, the animals must be under the direct control and supervision of a knowledgeable and experienced animal handler.

(4) If public feeding of animals is allowed, the food must be provided by the animal facility and shall be appropriate to the type of animal and its nutritional needs and diet.

### § 2.132 Procurement of random source dogs and cats, dealers.

(a) A class "B" dealer may obtain live random source dogs and cats only from:

(1) Other dealers who are licensed under the Animal Welfare Act and in accordance with the regulations in Part 2;

(2) State, county, or city owned and operated animal pounds or shelters; and

(3) A legal entity organized and operated under the laws of the State in which it is located as an animal pound or shelter, such as a humane shelter or contract pound.

(b) A class "B" dealer shall not obtain live random source dogs and cats from individuals who have not bred and raised the dogs and cats on their own premises.

(c) Live nonrandom source dogs and cats may be obtained from persons who have bred and raised the dogs and cats on their own premises, such as hobby breeders.

(d) Any person subject to the Act shall not obtain live random source dogs or cats by use of false pretenses, misrepresentation, or deception.

(e) Any licensee or registrant under the Act who also operates a private or contract animal pound or shelter shall comply with the following:

(1) The animal pound or shelter shall be located on premises that are physically separated from the licensed or registered facility. The animal housing facility of the pound or shelter shall not be adjacent to the licensed or registered facility.

(2) Accurate and complete records shall be separately maintained by the licensee or registrant and by the pound or shelter. The records shall be in accordance with §§ 2.75 and 2.76, unless the animals are lost or stray. If the animals are lost or stray, the pound or shelter records shall provide:

(i) An accurate description of the animal;

(ii) How, where, from whom, and when the dog or cat was obtained;

(iii) How long the dog or cat was held by the pound or shelter before being transferred to the dealer; and

(iv) The date the dog or cat was transferred to the dealer.

(3) Any dealer who obtains or acquires a live random source dog or cat from a private or contract pound or shelter, including a pound or shelter they operate, shall hold the dog or cat for a period of at least 10 full days, not including the day of acquisition, excluding time in transit, after acquiring the animal, and otherwise in accordance with § 2.101.

Done at Washington, D.C., this 7th day of March 1989.

**James W. Glosser,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 89-5612 Filed 3-9-89; 2:10 pm]

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**9 CFR Part 3**

**[Docket No. 87-004]**

## Animal Welfare—Standards

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend the regulations for the humane handling, care, treatment, and transportation of dogs and cats, guinea pigs and hamsters, rabbits, and nonhuman primates. The regulations for dogs, cats, and nonhuman primates would be completely revised and rewritten. The regulations for guinea pigs, hamsters, and rabbits would be amended: to revise the space requirements for primary enclosures; to amend the temperature requirements in cargo spaces in primary conveyances; and to reinstate various transportation requirements. These actions are necessary to update the regulations, to make them more consistent with other Federal regulations concerning the handling, care, treatment, and transportation of these animals, and to comply with the recent amendments to the Animal Welfare Act (7 U.S.C. 2131, *et seq.*), enacted December 23, 1985. Rewriting the regulations is also intended to make them easier to understand, thereby increasing compliance and making them more effective.

**DATES:** We will consider written comments postmarked or received on or before August 14, 1989.

**ADDRESS:** Send an original and three copies of your comments to Helene R. Wright, Chief, Regulatory Analysis and Development Staff, PPD, APHIS, USDA, Room 1000, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 87-004. Comments received may be inspected at the APHIS Public Reading Room, Room 1141, U.S. Department of Agriculture, 14th Street and Independence Avenue, SW., Washington, DC, 8:00 a.m to 4:30 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** Dr. R.L. Crawford, Director, Animal Care Staff, REAC, APHIS, USDA, Room 268, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7833.

**SUPPLEMENTARY INFORMATION:**

### General Background and Statutory Information

Regulations on the humane handling, care, treatment, and transportation of (1) dogs and cats, (2) guinea pigs and hamsters, (3) rabbits, and (4) nonhuman primates, are contained in 9 CFR Part 3. Subpart A contains the regulations concerning dogs and cats; Subpart B contains the regulations concerning guinea pigs and hamsters; Subpart C contains the regulations concerning rabbits; and Subpart D contains the regulations concerning nonhuman primates. The regulations in each of these Subparts include minimum standards for handling, housing, feeding, watering, sanitation, ventilation, shelter, and veterinary care. The regulations are issued and enforced by the Animal and Plant Health Inspection Service (APHIS), of the United States Department of Agriculture (USDA), under authority of the Animal Welfare

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Act, as amended (the Act) (7 U.S.C. 2131, *et seq.*).

On December 23, 1985, extensive amendments to the Act were enacted (see Pub. L. 99–198, "The Food Security Act of 1985.") Among other things, the amendments direct the Secretary of Agriculture to promulgate standards to govern the humane handling, care, treatment, and transportation of animals by dealers, research facilities, and exhibitors, for exercise of dogs, and for a physical environment adequate to promote the psychological well-being of nonhuman primates.

**Previously Proposed Regulations**

In response to the 1985 amendments to the Act, we proposed, on March 31, 1987, to revise 9 CFR Parts 1 and 2. Part 1 includes definitions of terms used throughout our regulations. Part 2 includes general requirements for licensing and registration of facilities; recordkeeping and identification of animals; holding periods and facilities; Institutional Animal Care and Use Committees; adequate veterinary care, and other areas of general concern relevant to the humane care, handling, treatment and transportation of all animals and individuals subject to our regulations. (52 FR 10292–10322).

Documents containing Parts 1 and 2, as revised in accordance with our consideration of the nearly 8,000 comments we received in response to the March 31, 1987 proposal, our ongoing consultation with the U.S. Department of Health and Human Services and other interested agencies, and our experience in enforcing the regulations, appear elsewhere in this issue of the **Federal Register**. The revised rules for Parts 1 and 2 are published for the sole purpose of soliciting comments on the narrow issue of the interrelationship of Parts 1 and 2 with the Part 3 standards we are proposing in this document. All comments on this issue should not be combined with substantive comments on the Part 3 standards and must reference docket nos. 88–013 and 88–014. We will refer to those documents at various points in our discussion of the proposed amendments to Part 3.

The revised rule for Part 2 contains provisions and procedures for allowing exceptions by research facilities in compliance with the Animal Welfare regulations, including the standards proposed in this document, when necessary for the conduct of biomedical research. Exceptions or deviations from the regulations must first be explained, reviewed, and approved in accordance with the procedures set forth in Part 2. We refer the reader to 2.30(g), 2.35(b)(3), and 2.100, published elsewhere in this issue of the **Federal Register** for these provisions.

**Consultation and cooperation with other Federal departments, agencies, or instrumentalities**

The amendments to the Act also direct the Secretary of Agriculture to

> Consult and cooperate with other Federal departments, agencies, or instrumentalities concerned with the welfare of animals used for research, experimentation or exhibition, or administration of statutes regulating the transportation in commerce or handling in connection therewith of any animals when establishing standards pursuant to section 2143 of this title and in carrying out the purposes of this chapter.

(Section 1757, 99 Stat. 1649, Pub. L. 99–198, amending 7 U.S.C. 2145(a))

Accordingly, we consulted with the Department of the Interior, U.S. Fish and Wildlife Service (USFWS), which regulates transportation of wild birds and animals into the United States.

The amendments also specifically direct the Secretary of Agriculture to "consult with the Secretary of Health and Human Services prior to issuance of regulations." (See § 1757, 99 Stat. 1649, Pub. L. 99–198, amending 7 U.S.C. 2145(a).) The Department of Health and Human Services, through the Public Health Service, National Institutes of Health (NIH), currently issues guidelines on the care and use of animals studied in biomedical research. The animals include dogs and cats, guinea pigs and hamsters, rabbits, and nonhuman primates. These NIH guidelines are contained in a document entitled "Guide for the Care and Use of Laboratory Animals" (NIH Guide or Guidelines).[1] The Guide is widely accepted by scientific institutions as a primary reference on animal care and use. Compliance with the NIH Guidelines is not mandatory except to obtain NIH funding, but most research laboratories in the United States do comply. While the Animal Welfare Act and regulations address a broader range of activities and facilities than the NIH Guide, Congress' intent in requiring consultation with the Department of Health and Human Services is to ensure that, whenever possible, the regulations and the NIH Guidelines are consistent:

> The Conferees expect the Secretary of Agriculture to have full responsibility for enforcement of the Animal Welfare Act. However, the Conferees also recognize that a portion of the nation's research facilities fall under regulation from more than one agency. While the legislative mandate of each agency is different, and they may regulate different aspects of animal care, it is hoped that the agencies continue an open communications to avoid conflicting regulations wherever possible or practice. [sic]

(*See* Conference Report, *Congressional Record* of December 17, 1985, at page H12422.)

We consider our mandate to consult with the Department of Health and Human Services to be extremely important. We realize that having harmonious regulations throughout the Federal government on animal welfare matters would eliminate confusion and simplify compliance for the individuals, including research institutions, subject to those regulations. However, our goal in proposing these regulations is to provide for the humane care, handling, treatment, and transportation of various animals. If we adopt regulations identical with those of other Federal Departments, but those regulations are ineffective or inadequate, then we have not met the statutory objective.

We have attempted in these proposed regulations to meet both goals wherever we have determined it is consistent with our responsibility to promote animal welfare. To achieve this, we have consulted extensively with NIH representatives concerning standards for the humane care, handling, treatment, and transportation of dogs and cats, guinea pigs and hamsters, rabbits, and nonhuman primates. We have reviewed our existing regulations and the NIH guidelines. In addition, we have considered comments raised by member agencies of the Interagency Research Animal Committee, which is comprised of federal agencies that conduct research using animals. We have also consulted with experts and professional organizations and have sought their recommendations on appropriate standards to accomplish our goal. After considering all this information, we are proposing extensive revisions to the regulations in 9 CFR Part 3, Subparts A, B, C, and D. In many cases, we are proposing regulations substantially identical to current NIH Guidelines. That is because, in these cases, we believe the NIH Guidelines are appropriate and adequate to provide for the humane care, handling, treatment, and transportation of the animals in question. In other cases, we

[1] The NIH Office for Protection from Research Risks publishes another document called the "Public Health Service Policy on Humane Care and Use of Laboratory Animals," under authority of the Health Research Extension Act of 1985 (Pub. L. 99–158, November 20, 1985). However, the regulations in that document concern mainly the use of tranquilizers and other drugs on animals being used in research, appropriate pre- and post-surgical veterinary care for animals being used in research, and the organization and operation of animal care committees. These subjects are not covered in this proposal, and we therefore do not discuss these NIH requirements in this document.



are proposing to adopt, as our regulations, standards that will provide for the humane handling and care of animals covered by the Act. We will discuss our proposed changes on a subpart-by-subpart basis.

We are proposing to revise Subparts A and D in their entirety in this document so that the regulations are complete and easier to read. However, we are not providing an explanation for nonsubstantive revisions.

**Subpart A—Dogs and Cats**

Regulations for humane handling, care, treatment, and transportation of dogs and cats are contained in 9 CFR Part 3, Subpart A. These regulations include minimum standards for handling, housing, feeding, watering, sanitation, ventilation, shelter from extremes of weather and temperature, veterinary care, and transportation.

It should be noted that the proposed regulations apply only to live dogs and cats, unless indicated otherwise.

We are proposing to revise and rewrite the current regulations based on our experience administering them. We are also proposing to amend our regulations to add requirements for the exercise of dogs. This is specifically required by the 1985 amendments to the Act. (See Section 1752, 99 Stat. 1645, Pub. L. 99–198, amending Section 13 of the Act). We discuss each topic covered in our proposed regulations below.

*Housing Facilities and Operating Standards*

Current §§ 3.1 through 3.3 provide requirements for facilities used to house dogs and cats. Current § 3.1, "Facilities, general," contains regulations pertaining to housing facilities of any kind. It is followed by current § 3.2, "Facilities, indoor," and § 3.3, "Facilities, outdoor." We are proposing to amend these sections to provide for an environment that better promotes the health, comfort, and well-being of dogs and cats. We are also proposing to add sections that provide regulations specifically governing two other types of facilities used to house dogs and cats, sheltered housing facilities, and mobile or traveling housing facilities. The term "sheltered housing facility" is defined in Part 1, published elsewhere in this issue of the **Federal Register**, as "a housing facility which provides the animals with shelter; protection from the elements; and protection from temperature extremes at all times. A sheltered housing facility may consist of pens or runs totally enclosed in a barn or building, or of connecting inside/outside runs or pens with the inside pens in a totally enclosed building." The term "mobile or traveling housing facility" is also included in Part 1, and is defined as "a transporting vehicle such as a truck, trailer, or railway car, used to house animals while traveling for exhibition or public education purposes."

Some of the regulations we are proposing for housing facilities are applicable to housing facilities of any kind. As in the current regulations, these standards of general applicability would be included in one section, proposed § 3.1, that would also include many of the provisions in current § 3.1. Additionally, we are proposing amendments to the current regulations that are specific to particular types of housing facilities, and are including those provisions in separate sections of the proposed regulations. In some cases where the current regulations would be unchanged in substance, we have made wording changes to clarify the intent of the regulations.

*Housing facilities, general*

In proposed § 3.1(b), we are proposing to add the requirements that a dealer's or exhibitor's housing facilities be physically separated from any other business. When more than one dealer maintains facilities on the premises, it can be difficult to determine which dealer is responsible for which animals and for the overall conditions. To avoid this difficulty, we are proposing to require that housing facilities other than those maintained by research facilities and federal research facilities be separated from other businesses. This can be done by using a security fence or by conducting each business in a separate building. For example, if a security fence is used, it would have to be constructed so that it prevents unauthorized humans, and animals the size of dogs, skunks, and raccoons, from going through or under it. We are not imposing this requirement on research facilities because they are often part of a larger sponsoring establishment, such as a university or pharmaceutical company, and responsibility for animal and site conditions rests with that establishment. Therefore, we have not encountered the enforcement difficulties noted above with research facilities.

Proposed § 3.1(b) would also require that housing facilities and areas used for storing animal food and bedding be kept free of any accumulation of trash, weeds, and discarded material, in order to prevent an unsanitary condition and problems with diseases, pests, and odors. The need for orderliness applies particularly to the areas where animals are maintained in the housing facilities. These areas would have to be kept free of clutter, including equipment, furniture, and stored material, and materials not necessary for proper husbandry practices.

We are proposing to include requirements concerning housing facility surfaces that are common to all types of facilities in proposed § 3.1(c). We are proposing to include requirements specific to particular types of facilities in separate sections. In § 3.1(c)(1), we propose to require that the surfaces of housing facilities either be easily cleaned and sanitized, or be removable or replaceable when worn or soiled. These provisions would also apply to houses, dens, and other furniture-type fixtures or objects within the facility.

Proposed § 3.1(c)(1) would also require that any surfaces that come in contact with dogs and cats be free of jagged edges or sharp points that might injure the animals, as well as rust that prevents the required cleaning and sanitization. Because we recognize that as long as water is used to clean animal areas, metal parts will rust, we would allow rust on metal surfaces, as long as it does not reduce structural strength or interfere with proper cleaning and sanitizing.

Section 3.1(c)(2) would require that all surfaces be maintained on a regular basis and that surfaces that cannot be easily cleaned and sanitized be replaced when worn or soiled.

Section 3.1(c)(3) would require that hard surfaces that come in contact with dogs or cats be cleaned daily and sanitized at least every two weeks, and as often as necessary to prevent any accumulation of excreta and disease hazards. Section 3.10(b) provides for various methods of sanitizing primary enclosures and food and water receptacles. Because these methods are effective in general for sanitization of hard surfaces that cats and dogs come in contact with, any of them could be used for the sanitization required by § 3.1(c). Floors made of dirt, sand, gravel, grass, or other similar material would have to be raked and spot-cleaned daily, since sanitization is not practicable, and the flooring material would have to be replaced if raking and spot-cleaning are not sufficient to eliminate odors, diseases, pests, insects, or vermin infestation. All other surfaces would have to be cleaned daily and sanitized when necessary to satisfy generally accepted professional and husbandry practices.

In the current regulations, § 3.1(b) provides regulations for water and electric power. It specifies that reliable and adequate water and electric power must be made available "if required to comply with other provisions of this

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subpart." In this proposed rule, provisions concerning water and electric power are set forth in § 3.1(d). We are proposing there to eliminate the qualifying statement cited above, and to *require* that all facilities have reliable and adequate electric power and mechanically pressurized potable running water for the dogs' and cats' drinking needs, for cleaning, and for carrying out other husbandry requirements. Based on our inspections of dealer, exhibitor, and research facilities, we believe that dog and cat facilities subject to the regulations cannot be properly cleaned and maintained without electric power and potable water under pressure. We would require that a pressurized water system be used to ensure that the water supply is of sufficient quantity and availability to meet the needs of the animals and the facility.

We are proposing in § 3.1(e) to expand the regulations in current § 3.1(c) concerning proper storage of food and bedding supplies. We would retain the requirements that food and bedding be stored so as to protect them from vermin infestation or contamination, and that perishable food be refrigerated. Additionally, we are proposing requirements to ensure further the quality of the food and bedding used by animals, and therefore of the area in which the animals are housed. We would specify that supplies of food and bedding be stored in containers to protect the supplies from spoilage as well as from infestation and contamination. The supplies would have to be stored off the floor and away from the walls, to allow cleaning around and underneath them. All food would have to be stored so as to prevent contamination or deterioration of its nutritive value. Open supplies of food and bedding would have to be stored in leakproof containers with tightly fitting lids. Substances toxic to dogs and cats would not be allowed to be stored in animal areas or in food storage and preparation areas.

Proposed § 3.1(f) would continue to require that housing facilities provide for removal and disposal of animal and food wastes, bedding, dead animals, and debris, as provided in current § 3.1(d). We are proposing to clarify this requirement so that it includes all fluid wastes and to include a provision that arrangements must be made for removal and disposal of wastes at least daily, and more often if necessary. The proposed regulations would also require that trash containers be leakproof and be tightly closed when not in use, and that no forms of animal waste, including dead animals, be kept in food and animal areas.

Requirements for drainage are currently contained in §§ 3.2(e) and 3.3(d), under the sections concerning indoor facilities and outdoor facilities, respectively. Since all types of animal housing facilities, including our proposed categories of sheltered housing facilities, and mobile or traveling housing facilities, must have some way of disposing of waste and liquids, we would consolidate all drainage and waste disposal requirements in proposed § 3.1(f).

Both current §§ 3.2(e) and 3.3(d) require that a suitable method of eliminating excess water be provided. That requirement would be retained and expanded to pertain to sheltered and to mobile or traveling housing facilities as well. Current § 3.2(e) requires that any drains used be properly constructed and kept in good repair to guard against foul odors. Additionally, where closed drainage facilities are used, they must be equipped with traps and be installed so that they prevent any backup of sewage onto the floor. Those requirements would be retained and expanded for indoor facilities, and the proposed expanded provisions would also apply to other types of facilities where such drainage is appropriate. We would require that disposal and drainage systems also minimize vermin and pest infestation, and disease hazards. As part of this safeguard, we would require that any sump or settlement pond, or similar system for drainage and animal waste disposal, be located an adequate distance from the animal area of the housing facility. We would also require that puddles of water in animal areas be promptly mopped up or drained so that the animals stay dry.

The requirement in current § 3.1(e) that washing facilities be available to animal caretakers for their own cleanliness would be retained and would appear in proposed § 3.1(g).

*Categories of Housing Facilities*

The current regulations specify two kinds of housing facilities, "indoor" and "outdoor." These terms are defined in Part 1 of the Animal Welfare regulations, published elsewhere in this issue of the **Federal Register**. (*See* companion docket no. 88-013). Briefly, an indoor housing facility is defined as an enclosed structure or building with environmental controls that is used to house animals. An outdoor housing facility is defined as a structure, building, land, or premises, used to house animals, that cannot be temperature controlled and that does not have a completely enclosed temperature-controlled shelter. We recognize that these two categories of housing facilities do not cover all of the wide variety of facilities used to house dogs and cats. For example, certain facilities, such as those in which animals have access to pens in a building, but also have access from their pens to outside runs, fall somewhere between "indoor" or "outdoor" facilities. Another "grey area" involves traveling animal shows. In order to clarify the intent and applicability of the regulations, we are proposing to add provisions for two additional types of housing facilities that are used to house dogs and cats: "sheltered housing facilities," and "mobile or traveling housing facilities." A sheltered housing facility is defined in Part 1 of the regulations to mean a facility that provides animals with shelter and protection from the elements and temperature extremes at all times, such as a building with a connecting inside/outside run or pen. A mobile or traveling housing facility is defined in Part 1 to mean a transporting vehicle such as a truck, trailer, or railway car, used to house animals while traveling for exhibition or public education purposes. (*See* companion docket no. 88-013, published elsewhere in this issue of the **Federal Register**.)

*Temperatures in Housing Facilities*

Enclosed housing facilities—that is, indoor facilities, the sheltered portion of sheltered housing facilities, and mobile or traveling facilities—would be required to provide heating, cooling, and ventilation for the health, comfort, and well-being of dogs and cats housed there. The heating and cooling requirements would be set forth for each of the above categories in §§ 3.2(a), 3.3(a), and 3.5(a) respectively. The ventilation requirements would be set forth in §§ 3.2(b), 3.3(b), and 3.5(b) respectively.

In establishing minimum temperatures for these facilities, the proposed regulations take into account whether a particular dog or cat housed there is acclimated to relatively low temperatures, and whether for some other reason, either because of breed, age, or condition, a dog or cat should not be subjected to certain low temperatures. In § 3.2(a) of the current regulations for indoor facilities, the minimum temperature allowed is 50 °F for all dogs and cats in those facilities that are not acclimated to lower temperatures. We are proposing that in indoor, sheltered, and mobile or traveling housing facilties, the minimum temperature allowed continue to be 50 °F (10 °C) for dogs or cats not acclimated to lower temperatures. Because some dogs cannot be acclimated to lower temperatures, we would also apply the 50 °F minimum to breeds of dogs or cats that cannot tolerate lower temperature without stress and discomfort (e.g., short-haired breeds such as beagles, greyhounds, and Doberman), and to dogs and cats that are sick, aged, young, or infirm. The minimum temperature for all other dogs and cats would be 35 °F (1.7 °C), except in indoor facilities, where the minimum temperature for all other dogs and cats would be 45 °F (7.2 °C)

In the current regulations, there is no maximum temperature specified for indoor housing facilities, although auxiliary ventilation is required when the temperature rises to or above 85 °F (29.5 °C). In this proposed rule, we establish a maximum temperature of 95 °F (35 °C) for indoor facilities, mobile or traveling facilities, and the sheltered part of sheltered housing facilities, when those facilities contain dogs or cats. For each of those categories of shelters, auxiliary ventilation, such as fans or air conditioning, would have to be used when the temperature rises to or above 85 °F (29.5 °C).

Because outdoor facilities cannot be temperature-controlled, we believe it is necessary to judge a dog's or cat's suitability for outdoor housing on an individual basis. As provided in proposed § 3.4(4)(1), a dog or cat could not be kept in an outdoor facility if (1) it is not acclimated to the temperatures prevalent in the area or region where the facility is located; (2) it is of a breed that cannot tolerate the prevalent temperatures of the area without stress or discomfort (such as short-haired breeds in cold climates); or (3) it is aged, young, sick or infirm. We recognize that in some situations, particularly in the case of dogs or cats obtained from pounds, it will not be known whether animal has been acclimated to prevailing temperatures. Therefore, in proposed § 3.4(a)(2), we provide that if a dog's or cat's acclimation status is unknown, it must not be kept in an outdoor facility in any month in which, during the preceding 5 years, the temperature at the facility has been less than 35 °F (1.7 °C).

*Ventilation of Housing Facilities*

The requirements for ventilation of indoor housing facilities that are set forth in § 3.2(b) of the current regulations would be retained in the proposal, and would be extended to apply to all sheltered portions of sheltered, and mobile or traveling, housing facilities to provide for the health, comfort, and well-being of dogs and cats. Based on our inspections of dealer, exhibitor, and research facilities, we are proposing to add (1) that ventilation must also be provided to minimize ammonia levels in these housing facilities; (2) that ventilation in mobile or traveling facilities must minimize exhaust fumes; and (3) that in indoor housing facilities, the relative humidity must be maintained between 30 and 70 percent. Although the 30–70 percent range would apply to all dogs and cats, we expect generally accepted professional and husbandry practices to be followed in providing humidity levels appropriate to particular breeds of dogs and cats. The 30–70 percent range corresponds to the recommendations contained in the NIH Guide. We are not proposing to require that precise humidity levels be maintained in sheltered housing facilities or mobile or traveling facilities. The configuration of many sheltered facilities makes humidity control impracticable, and mobile or traveling housing facilities may travel into many different parts of the United States, with varying levels of humidity.

*Lighting in Housing Facilities*

The proposed regulations would retain the requirement in § 3.2(c) of the current regulations that indoor housing facilities have ample light to permit routine cleaning and inspection. We are proposing to extend this requirement to all of the enclosed housing facilities included in the proposed regulations. We are also proposing to require in each case that either natural or artificial light be provided for at least 8 hours each day, corresponding to the natural period of daylight. Our experience inspecting licensees' and registrants' facilities has shown us that in the past some licensees and registrants have kept dogs and cats in darkened rooms throughout most of the day. In the case of indoor housing facilities and mobile or traveling housing facilities, we would require that if only artifical light, such as fluorescent light, is used, it must provide full-spectrum illumination. Sheltered facilities, by their nature, allow the animals access to natural light, so the requirement for full-spectrum illumination would not be necessary for those facilities. Also, we would retain the requirement in the current regulations for indoor facilities that primary enclosures be placed so as not to expose to the animals in them to excessive light, and we would extend that requirement to sheltered enclosures. An example of excessive light would be a situation where an animal is housed in the top cage of a stack of cages, near a lighting fixture.

*Specific Provisions for Indoor Housing Facilities*

Section 3.2(d) of the current regulations, regarding the interior surfaces of indoor housing facilities, requires that those surfaces be substantially impervious to moisture and readily sanitized. In § 3.2(d) of the proposed regulations, we would retain the requirement that all surfaces be impervious to moisture, but would make an exception in the case of ceilings that are replaceable. An example of this would be a suspended ceiling with replaceable panels. The proposed requirements concerning interior surfaces are more stringent for indoor housing facilities than for any other type of facility. Only in indoor facilities, for example, would ceilings have to be either impervious to moisture or replaceable. This is because indoor facilities generally operate on one ventilation system, and any disease organisms or excessive odors that occur in the facility might spread throughout the facility, requiring a thorough cleaning or replacement of all interior surfaces.

*Specific Provision for Sheltered Housing Facilities*

In proposed § 3.3(d) regarding sheltered housing facilities, we would require that dogs and cats be provided with adequate shelter and protection from the elements.

In order to maintain sanitary conditions in sheltered housing facilities, we would estabish the following requirements in § 3.3(e). The following areas would have to be impervious to moisture: (1) indoor floor areas in contact with the animals; (2) outdoor floor areas not exposed to the direct sun or made of a hard material such as wire, wood, metal, or concrete, in contact with the animals; and (3) all walls, boxes, houses, dens, and other surfaces in contact with the animals. Outside floor areas in contact with the animals and exposed to the direct sun could consist of compacted earth, sand, gravel, or grass.

*Specific Provisions for Outdoor Housing Facilities*

The intent of § 3.3 of the current regulations is to provide adequate standards for the care of animals housed outdoors. However, our inspections of dealers' and exhibitors' facilities in climates with temperature extremes have indicated that some licensees are not meeting what we believe should be

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minimum standards for the treatment of dogs and cats. Specifically, we believe that the regulations need to be made more stringent regarding the types of dogs and cats that can be kept outdoors, and regarding what shelter is necessary for dogs and cats kept outdoors. Therefore we are proposing to revise the current requirements for outdoor facilities, to make them more clearly defined and more stringent.

We have discussed earlier in this document the categories of dogs and cats that must not be kept in outdoor housing facilities. With regard to the type of shelter required for dogs and cats housed outdoors, we believe that the current regulations should be expanded to specify what is necessary for better and more humane treatment of the dogs and cats. In essence, the current regulations require that dogs and cats be provided with sufficient shade to protect them from the direct rays of the sun, shelter to keep them dry during rain or snow, and shelter when the atmospheric temperature falls below 50 °F. (10 °C). Additionally, bedding or some other protection is required when the ambient temperature falls below that to which the dog or cat is acclimated.

In § 3.4(b) of this proposed rule, we require that all outdoor facilities housing dogs or cats include a shelter structure that is accessible to all animals in the facility, and that is large enough to allow all animals in the structure to sit, stand, and lie in a normal manner, and to turn about freely. As proposed in § 3.4(d), the shelter structure would have to: (1) Provide adequate shelter and protection from the cold and heat; (2) be protected from the direct rays of the sun and the direct effect of wind, rain, or snow; (3) have a wind break and a rain break at its entrance; and (4) contain clean dry, bedding material. We are also proposing in § 3.4(b) that in addition to the shelter structure, there would have to be a separate outside area of shade provided, large enough to contain all the animals at one time and to protect them from the direct rays of the sun. This shaded area would give the animals relief on hot days, when they would be unlikely to seek shelter in an unventilated structure.

In proposed § 3.4(c), we would require that all building surfaces that are in contact with dogs or cats in outdoor housing facilities be impervious to moisture. Metal barrels, old refrigerators or freezers, and the like would not be permitted as shelter structures. The floors of outdoor housing facilities could be of compacted earth, sand, gravel, or grass, but would have to be kept clean.

*Primary Enclosures*

We are proposing to amend current § 3.4, "Primary enclosures." The current section provides general requirements for construction and maintenance of primary enclosures, uniform space requirements for each dog or cat housed in a primary enclosure, and provisions regarding litter and resting surfaces for cats and the tethering of dogs on chains. We are proposing to expand the current general requirements, to add some new requirements, and to clarify the existing requirements in accordance with the intent of the amendments to the Act.

The proposed regulations regarding primary enclosures, contained in proposed § 3.6, would require that all primary enclosures meet certain minimum requirements that we believe are necessary for the safety and well-being of dogs and cats. A primary enclosure is defined in Part 1 as "any structure or device used to restrict an animal to a limited amount of space, such as a room, pen, run, cage, compartment, pool, hutch, or tether." Included among the primary enclosures subject to the regulations would be those used by circuses, carnivals, traveling zoos, educational exhibits, and other traveling animal acts and shows. Proposed § 3.6(a) would continue to require that primary enclosures be structurally sound and maintained in good repair to protect the animals from injury, to contain them, and to keep predators out. We would also require that the primary enclosure keep unauthorized humans out. We would continue to require that the primary enclosures enable the animals to remain dry and clean, that they provide the animals with convenient access to food and water, that they provide sufficient space for the dogs and cats to have normal freedom of movement, and that their floors be constructed in a manner that protects the animals from injury. We would add the requirements that the primary enclosures be constructed without sharp points or edges, and that they provide sufficient shade to the animals in the enclosures and protect them from temperature extremes and other weather conditions that might be uncomfortable or hazardous to the animals. We would also require that the primary enclosures be easily cleaned and sanitized.

However, if the floors of primary enclosures consist of earth, sand, gravel, or grass, we would require that they be replaceable, rather than easily cleaned and sanitized.

*Additional Primary Enclosure Requirements for Cats*

We are proposing to change the space requirements for cats. In general, the proposed regulations would base how much space a cat should have on the animal's weight, and whether it is a nursing mother. The space requirements in §§ 3.4(b) (1) and (3) of the current regulations are uniform for all cats, regardless of size, and require that each cat be given a minimum of 2.5 $ft^2$, with room to turn about freely, and to easily stand, sit, and lie in a confortable normal position. We believe, based on our inspections of research facilities, that the current minimum space requirements should be increased for all cats. Additionally, because the weight of a cat is a good indicator of its overall size, we believe that floor space requirements should distinguish between cats of different weights. Our proposed standards would provide cats with the space we believe is necessary and at the same time make our regulations correspond to the NIH Guide for the Care and Use of Laboratory Animals. In proposed § 3.6(b)(1), we would require that weaned cats weighing 8.8 lbs (4 kg) or less be provided with at least 3.0 $ft^2$ (0.28 $m^2$) of floor space, and that cats weighing over 8.8 lbs (4 kg) be provided with a minimum of 4.0 $ft^2$ (0.37 $m^2$) of floor space. Additionally, we would require that each queen with nursing kitten be provided with an additional amount of floor space, equivalent to at least 5 percent of her minimum required floor space for each nursing kittens in the litter. For example, five nursing kittens would require a 25-percent increase and 10 nursing kittens would require a 50-percent increase. The minimum floor space required would be exclusive of any food, water, or litter pans, and the height of the primary enclosure for cats would have to be at least 24 inches (60.96 cm).

All cats housed in the same primary enclosure would have to be compatible. The requirement in current § 3.4(b)(3) that no more than 12 adult nonconditioned cats be housed in the same primary enclosure would be retained and set forth in proposed § 3.6(b)(2). In addition, the following restrictions would apply: queens in heat could not be housed in the same primary enclosure with sexually mature males, except for breeding; queens with litters and kittens under 4 months of age could not be housed in the same primary enclosure with any other adult cats, except when maintained in a breeding colony; and cats with a vicious or aggressive disposition would have to be housed separately.



In § 3.6(b)(3), we are proposing to retain the current requirement that a receptacle with litter be provided to contain excreta.

The current standards for cats in § 3.4(a)(2)(ii) state that there must be a solid resting surface in each primary enclosure that will comfortably hold all occupants at the same time, and that the resting surface be elevated if the enclosure holds two or more cats. We are proposing to require in § 3.6(b)(4) that all such resting surfaces be elevated, even if only one cat is in the enclosure, and to clarify that the resting surfaces not be counted as part of the minimum floor space. The resting surfaces would have to be impervious to moisture, and would have to be either easily cleaned and sanitized, or easily replaceable when soiled or worn.

We are proposing to provide, in § 3.6(b)(5), that cats in mobile or traveling shows or acts may be kept, while the show or act is traveling from one temporary location to another, in transport containers that comply with all requirements of § 3.14 of this subpart other than the marking requirements in § 3.14(a)(6). When the show or act is not traveling, the cats would have to be placed in primary enclosures that meet the minimum requirements of § 3.6. Mobile or traveling shows and acts normally remain in one location for several days and then move to another location, with the movement taking a day or less. Because the animals are less subject to injury in smaller enclosures while traveling, we would allow the use of transport cages during this time. When not traveling, however, the cats would have to be placed in primary enclosures that comply with the minimum space requirements and other requirements of § 3.6.

*Additional Primary Enclosure Requirements for Dogs*

In proposed § 3.6(c), we would retain the formulas in § 3.4(b)(2) of the current regulations for calculating the floor space for dogs [(length of dog in inches + 6) × (length of dog in inches + 6) = required square inches of floor space; required square inches/144 = required square feet]. Because of the great variation in size and body conformation among the various species of dogs, we believe the present formula for calculating space based on body length is more appropriate than a formula based on the weight of the dog. Space requirements based on weight do not allow for the differences in body conformation among different breeds of dogs, such as bulldogs and whippets or greyhounds. Space requirements based on body length do allow for differences in body conformation and would therefore be retained as a more appropriate method for determining minimum space requirements. We are also proposing the require that the minimum height of a primary enclosure be at least 6 inches above the highest point of the body (normally the ears) of the tallest dog in the enclosure when standing in a normal position.

As with cats, nursing mothers would have to be provided with additional space. In proposed § 3.6(c)(1)(ii), we would require that each bitch with nursing puppies be provided with an additional amount of floor space, equal to 5 percent of her minimum floor space, for each nursing puppy in the litter.

In § 3.4(b)(2)(ii) of the current regulations, requirements are set forth for dog houses with chains used as primary enclosures for dogs kept outdoors. In § 3.6(c)(2) of the proposed regulations, we would expand those regulations and would apply the expanded regulations to apply to dogs that are tethered by any means, and not just by chains. We would retain the current requirement that a dog that is tethered be kept from being entangled, and would add the requirements that the dog not be able to come into physical contact with other dogs in the housing facility, and be able to roam to the full range of the tether. We would retain the current requirement that the tether be of the type commonly used for the size dog involved, and that the tether be attached to the dog by a well-fitted collar. Additionally, we propose to explicitly require that the collar must not cause trauma or injury to the dog. The proposed regulations include the following examples of types of collars that would be prohibited: collars made of wire, flat chains, chains with sharp edges, and chains with rusty or nonuniform links. As in the current regulations, the tether would have to be at least three times the length of the dog as measured from the tip of its nose to the base of its tail. We would require that the tether be attached to the front of the dog's shelter structure or to a post in front of the shelter structure, and that it allow the dog convenient access to the shelter structure and to food and water containers.

We are also proposing that dog housing area where chains or tethers are used must be enclosed by a perimeter fence at least 6 feet in height, so as to protect the dogs, to contain them, and to keep animals that size of dogs, racoons, and skunks from going through or under it.

All dogs housed in the same primary enclosure would have to be compatible. The provision in § 3.4(b)(2) limiting to 12 the number of nonconditioned adult dogs permitted to be housed in the same primary enclosure would be retained in proposed § 3.6(c)(3). Additionally, that proposed paragraph would contain the following provisions: bitches in heat must not be housed in the same primary enclosure with sexually mature males, except for breeding; bitches with litters must not be housed in the same primary enclosure with other adult dogs, and puppies under 4 months of age must not be housed in the same primary enclosure with adult dogs, except when maintained in a breeding colony; and dogs with a vicious or aggressive disposition must be housed separately.

We are also proposing to provide, in § 3.6(c)(4), that dogs in mobile or traveling shows or acts may be kept, while the show or act is being transported from one temporary location to another, in transport containers that comply with all requirements of proposed § 3.14 of this subpart, other than the marking requirements in § 3.14(a)(6). When the show or act is not traveling, the dogs would have to be placed in primary enclosures that meet the minimum requirements of § 3.6. Mobile or traveling shows and acts normally remain in one location for several days and then move to another location, with the movement taking a day or less. Because the animals are less subject to injury in smaller enclosures while traveling, we would allow the use of transport cages during this time. When stopped and not traveling, however, the dogs must be placed in primary enclosures that comply with the minimum space and other requirements of § 3.6. As explained above, we are also proposing similar provisions regarding cats in mobile or traveling shows or acts.

*Variance*

We understand that the proposed minimum space requirements for dogs and cats might require persons subject to the Animal Welfare regulations to rebuild or remodel their facilities and to expend previously unanticipated and unbudgeted monies for new primary enclosures and fixtures. In some instances, major structural modifications might be required to satisfy the proposed space requirements. Until the necessary adjustments were made, many registrants and licensees would not be in compliance with the proposed requirements.

In cases where the effective date of the regulations would not coincide with

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a facility's fiscal year, we are aware that budget planning and funding procedures for the next fiscal year would take some time. Once funds have been appropriated, facilities would require additional time to make the necessary space modifications. To allow facilities sufficient time to conform with the proposed minimum space requirements, we are proposing to include a mechanism for issuing variances to eligible persons. This mechanism would be similar to that already in place for licensees and registrants in Subpart E—"Specifications for the Humane Handling, Care, Treatment and Transportation of Marine Mammals."

A "variance" would be issued, in writing, by the Administrator of APHIS, and would allow an eligible registrant or licensee to continue operating even though not fully in compliance with the minimum space requirements for dogs and cats, including minimum space requirements for the exercise of dogs.

The variance would be limited in scope both as to time and to the primary enclosures covered by it, and would specify the portions of the applicant's facilities to which it applied.

Registrants and licensees maintaining or handling dogs or cats, having dogs or cats on their premises or under their control or supervision, and not complying with the minimum space requirements proposed in § 3.6, could apply for a variance. Facilities that are under construction or that are in the design or preliminary construction stages on the date these regulations become effective would not be eligible for a variance, since they could adapt their construction to comply with them. However, a facility that is so nearly complete that it would require substantial modification at a previously unbudgeted and significant cost to bring it into compliance would be eligible for a variance.

A variance could be granted, at the sole discretion of the Administrator, for up to 2 years. We believe that this would allow sufficient time for a registrant or licensee to raise the necessary funds and to contract for the required work, as well as to purchase whatever fixtures or equipment were necessary for it to comply with the minimum space requirements. One extension of up to 1 year could be granted by the Administrator if he or she determined that it was necessary, based upon the facts presented in the application for extension. The extension would be granted if justified due to unforeseen situations that prevented full compliance during the variance period. As an example, unforeseen circumstances for research facilities could be nonallocation of public funds to make the necessary expenditures.

An application for a variance would be required within 60 days of the effective date of these regulations and would have to be in writing. According to the proposed regulations, it must list, in detail, specific reasons why the variance was being requested, and each of the minimum space requirements the facility cannot meet. It must identify the species and number of dogs and cats that would be affected by the variance, and must state the amount of time necessary for the applicant to come into compliance and the estimated cost of compliance.

We are proposing to require a statement from the attending veterinarian concerning the age and health status of the dogs and cats affected by the variance, and addressing whether granting the variance would be detrimental to the affected dogs and cats.

As is presently the case for marine mammals, the Administrator could require the submission of an outside independent expert report, if the Administrator believes it would assist him or her in determining whether the granting of a variance would be detrimental to the health and well-being of the affected dogs and cats. The applicant would bear the cost of the expert report.

The Administrator would grant an application for a variance if he or she determined it was justified, or would deny it if he or she determined that it was not justified or that granting it would be detrimental to the health and well-being of the dogs and cats affected. The grant or denial would be in writing. The applicant could request that the Administrator reconsider his or her decision to deny an application, in accordance with the requirements of § 3.6(d)(4). Similarly, a request for an extension would be granted by the Administrator if he or she determined that it was justified, or denied if he or she determined that it was not justified or that granting it would be detrimental to the health and well-being of the dogs and cats affected. The grant or denial of the extension would also be in writing. The applicant could request that the Administrator reconsider his or her decision to deny an application for an extension, in accordance with the requirements of § 3.6(d)(5). If the extension were granted upon reconsideration, it would be retroactive to the termination date of the initial variance.

Variances would be revocable for bad faith, such as a false representation in the initial application or in the request for extension. They could also be revoked if the purposes for which they were issued were not being carried out, or if detrimental to the health and well-being of the dogs or cats affected.

*Exercise and Socialization for Dogs*

In accordance with the 1985 amendments to the Act, we have developed standards for the exercise and socialization of dogs and are proposing a new § 3.7, titled "Exercise and socialization for dogs." This section would be divided into four subsections: social contact while being housed, held, or maintained; release for exercise and socialization; methods and period of exercise; and exemptions from exercise.

*Social Contact for Dogs*

Under the provisions for social contact in proposed § 3.7(a), we would require that all dogs housed, held or maintained by any dealer, exhibitor, or research facility be maintained in compatible groups. We are proposing exceptions to this provision however, for certain situations that involve either the provisions of an animal care and use procedure approved by a research facility's Committee, or the health and well-being of the dogs. Because of the social nature of dogs, we are also proposing to require, with similar exceptions, that all dogs be able to see and hear other dogs. If a dog is unable to see and hear other dogs simply because it is the only dog in a facility, we would require that it receive positive physical contact with humans at least once a day. "Positive physical contact" is defined in Part 1 as "petting, stroking, or other touching, which is beneficial to the well-being of the animal." (*See* companion docket no. 88-013, published elsewhere in this issue of the **Federal Register**.) This contact would have to total at least 60 minutes each day and could be given in one or more periods.

*Release for Exercise and Socialization*

Provisions for the release of dogs for exercise and socialization are set forth in proposed § 3.7(b). With certain exceptions that are explained below, we are proposing to require that the following categories of dogs, if housed, held, or maintained by any dealer, exhibitor, or research facility, be released at least once a day for exercise and socialization: (1) Dogs that are kept in individual cages or that are kept individually in pens or runs that provide less than four times the space required for that dog, and that do not allow visual and physical contact with other dogs; and (2) dogs housed, held, or maintained in groups that are not provided with the



greater of 80 sq. ft. of space or 150 percent of the minimum space required for all dogs in the group. In some cases, a dog could be physically restricted from other dogs and still receive what we consider adequate social contact with other dogs. For instance, the required socialization could include a dog's being able to nuzzle another dog through a chain link fence.

However, dogs housed, held, or maintained individually would not have to be released if they are kept in pens or runs that provide at least four times the required space for that dog, and that allow the dogs visual and physical contact with other dogs. Also, in certain cases, the approved animal care and use procedure might prohibit the dogs' release for exercise and socialization. In those cases, the dogs would have to be maintained in pens or runs that provide each dog with at least twice the minimum floor space set forth in § 3.6(c)(1) of the proposed subpart with regard to primary enclosures. The exercise area would have to be at least 80 square feet, except that the area would have to provide each dog with at least twice the minimum floor space required by proposed § 3.6(c)(1).

Dogs housed, held, or maintained in groups would not have to be released for exercise if the dogs are maintained in pens or runs that provide the greater of 80 square feet or 150 percent of the space each dog would require under proposed § 3.6(c)(1) if maintained separately. The exercise area would have to be the greater of 80 square feet or 150 percent of the minimum space requirement in § 3.6(c)(1), as calculated for all dogs in the exercise area. For example, the following calculations might be used in the case of six beagles housed together. A 28-inch beagle would require a minimum floor space of 8 square feet. Therefore, 150 percent of six times the minimum per-beagle requirement of 8 square feet is 72 square feet. Since that is less than 80 square feet, the larger space would be required. We believe that 80 square feet is a generally accepted minimum standard, based on comments we received from interested parties in response to a request for information.

The exercise period for all dogs that are released for exercise would have to be at least 30 minutes each day, and could be provided in one or more release periods. The consensus of APHIS veterinarians with training and experience in the care of dogs is that 30 minutes of daily exercise is a reasonable minimum for maintenance of a dog's health and well-being.

*Methods of Exercise*

Proposed § 3.7(c) provides that the method or type of exercise or release period used may be determined by the attending veterinarian and may consist of one or more methods. Suitable methods would include: walking on a leash; release into a room; release into a run or pen with more than 80 square feet of floor space; or some other similar type of arrangement. While forced exercise methods such as treadmills, carousels, or swimming would not be prohibited, they would not be considered acceptable forms of exercise for the release periods. Congressional intent with regard to the Act was to give dogs an *opportunity* for exercise, not to *force* them to exercise.

*Record of Exercise*

Under proposed § 3.7(d), the licensee or registrant would have to keep a record of each dog's release for exercise. These records would be subject to APHIS inspection.

*Exemptions from Exercise*

We recognize that certain situations will require an immediate response from facility personnel when a dog's welfare requires that it be provided less than the minimum standards for release for exercise. We are therefore including a provision in proposed § 3.7(e) that would authorize an attending veterinarian to exempt or restrict a particular dog from its required exercise and social release period, if he or she determines that it is necessary to do so for the dog's health, condition, or well-being. The exemption would have to be recorded by the attending veterinarian, who would be required to review the grant of exemption at least every 30 days to determine if it is still warranted.

*Feeding*

In proposed § 3.8(a), concerning feeding requirements for dogs and cats, we are proposing to make minor changes to the feeding requirements in current § 3.5(a). In addition to the current provisions, we would require that food given to a dog or cat be appropriate for the animal's age.

We are proposing to make minor additions in § 3.8(b) to clarify that food receptacles must be used for dogs and cats, and must be located so as to minimize contamination by pests as well as by excreta, and so as to be protected from rain or snow. Feeding pans would either have to be made of a durable material that can be easily cleaned and sanitized, or be disposable and discarded after each use. We are proposing to require that food containers that are not discarded be cleaned daily and be sanitized before being used to feed a different dog or cat or social grouping of dogs or cats, and, as currently required, be sanitized at least once every two weeks. Self-feeders for the feeding of dry food would have to be cleaned and sanitized regularly. Measures would have to be taken to prevent molding, deterioration, and caking of the food. Any of the sanitization methods allowed in proposed § 3.10(b)(3) could be used for the sanitization required in proposed § 3.8.

*Watering*

Currently, § 3.6 contains provisions for offering liquids to dogs and cats and for the cleaning and disinfection of watering receptacles. Section 3.9 of the proposed rule would continue to require that potable water be offered at least twice daily, if it is not continually available, and would add the requirement that water receptacles be sanitized before being used to water a different dog or cat or social grouping of dogs or cats.

*Cleaning of Primary Enclosures*

We are proposing to revise and reword the provisions in current § 3.7, and to include them in proposed § 3.10, to clarify the intended requirements for sanitation and other forms of hygiene. The revised section would be titled "Cleaning, Sanitization, Housekeeping, and Pest Control."

Currently, § 3.7(a) requires that excreta must be removed from a primary enclosure "as often as necessary to prevent contamination of the dogs or cats contained therein and to reduce disease hazards and odors." This wording has resulted in differences of opinion between inspectors and regulated persons as to what constitutes "as often as necessary." Therefore, in § 3.10(a), we are proposing to change this wording to require that excreta and food waste be removed from primary enclosures or from under primary enclosures at least daily and as often as necessary. This daily cleaning requirement would apply to all types of housing facilities and to primary enclosures with grill-type floors, and to the ground areas under raised runs with wire or slatted floors. Our experience indicates that daily cleaning is necessary to prevent the accumulation of feces and food waste and to reduce disease hazards, pests, insects, and odors. We are also proposing to require that when a primary enclosure is cleaned by steam or water, any dog or cat in the enclosure be removed during

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the cleaning process, to prevent the animal from being involuntarily wetted or injured.

*Sanitization of Primary Enclosures and Food and Water Receptacles*

The provisions of proposed § 3.10(b) regarding sanitization of primary enclosures and food and water receptacles would be basically the same as those in § 3.7(b) of the current requirements, except that we would allow the option of sanitizing with live steam under pressure. Additionally, we would make minor editorial changes to the current regulations.

*Housekeeping*

In proposed § 3.10(c), we would revise and reword § 3.7(c) of the current regulations regarding housekeeping to clarify that paragraph's intent. The current regulations require that premises be kept free of trash accumulations and be kept clean enough and in good enough repair to protect the animals and facilitate the husbandry practices required by Subpart 3 of the regulations. We would retain the current requirements, but would add language to clarify that one of the aims of the housekeeping provisions is to keep premises rodent-free; additionally, we would specify what we would require as good housekeeping practices. We would specify that premises must be kept free of accumulations of trash, junk, waste products, and discarded matter such as wood, bricks, and abandoned cars. Weeds, grasses, and bushes would have to be controlled so as to facilitate cleaning and pest control, and to protect the dogs' and cats' health and well-being from hazards such as fox tails, burrs, sharp twigs, and fires.

*Pest Control*

The provisions of proposed § 3.10(d) regarding pest control would be basically the same as those in § 3.7(d) of the current requirements. We are proposing some minor revisions to simplify the language used. We are also proposing to clarify that a pest control program is necessary to promote the health and well-being of the dogs and cats at a facility and to reduce contamination by pests in animal areas.

*Employees*

Current § 3.8 requires that there be a sufficient number of employees to maintain the prescribed level of husbandry practices required by Subpart A and that husbandry practices be under the supervision of an animal caretaker with a background in animal husbandry or care. We are proposing minor revisions to this section in proposed § 3.11 to make clear that this requirement is imposed upon every person subject to the regulations and that the burden of verifying and ensuring that the supervisor and other employees are appropriately qualified is on the employer subject to the regulations. We are not proposing to prescribe a specific number of employees for each facility, because the number of employees needed will vary according to the size and configuration of the facility, and according to the number and type of animals housed there. We would require that a facility have enough employees to carry out proper feeding, cleaning, observation, and other generally accepted professional and husbandry practices.

*Social Grouping*

We are proposing to slightly revise current § 3.9 regarding social grouping of dogs and cats in order to reduce the stress suffered by certain dogs and cats. Under proposed § 3.12(d), we would allow dogs and cats to be maintained together in the same primary enclosure, or to be maintained in the same primary enclosure with other species of animals, if they are compatible. The present regulations require that dogs and cats be kept separate from each other, and from other animals, regardless of how well they get along together, or whether they are distressed by separation because they have been raised together and are compatible. If dogs and cats are not compatible with each other or with other animals, keeping them in the same primary enclosure would continue to be prohibited.

*Transportation Standards*

Consignments to Carriers and Intermediate Handlers

The current obligations imposed upon carriers and intermediate handlers (defined in Part 1 of the regulations) would be expanded to ensure the well-being of dogs and cats during transport in commerce. Certain prerequisites must be satisfied before carriers and intermediate handlers may accept dogs and cats for transport in commerce. Additionally, the carriers and intermediate handlers had certain duties to fulfill after the shipment has reached its destination. Various obligations are presently contained in current §§ 3.11 and 3.14. We are proposing to consolidate them in one section, proposed § 3.13, and to add some additional ones that are necessary for the dogs' and cats' welfare.

The reader should note that our proposed regulations do not specifically refer to operators of auction sales, unlike the current regulations. The definition of the term "dealer" was amended in 1976 to include any person who "negotiates the purchase or sale" of animals for research, teaching, exhibition, or use as a pet. Operators of auction sales are therefore dealers. However, we did not remove the reference to them in the 1977 amendments to the regulations. We are proposing to do so now, to clarify the regulations. Accordingly, all references to dealers in the regulations would include operators of auction sales.

We would remove from the regulations the requirements that certifications accompanying shipments of dogs and cats include an "assigned accreditation number" (as provided in current § 3.11(c)(4)), because the program under which accreditation numbers are assigned has not been implemented.

Proposed § 3.13(c) would require that written instructions concerning food and water requirements for each dog and cat in the shipment be securely attached to the outside of the primary enclosure before a carrier or intermediate handler can accept it for transport. This requirement is contained in current § 3.14(d). The instructions would have to be easily noticed and read. Current § 3.14 also requires that adult dogs and cats be given food at least once every 24 hours after acceptance for transportation, and water at least once every 12 hours after acceptance for transportation. It is conceivable under these regulations that a dog or cat could have been fed up to 24 hours before being consigned for transport in commerce and would then not be offered food for another 24-hour period. To avoid this occurrence, we are proposing to add a certification requirement to proposed § 3.13(d) that would require that a carrier or intermediate handler not accept a dog or cat for transport in commerce unless certification by the consignor accompanies the animal and specifies in writing the date and time each dog and cat was last provided food and water before acceptance for transport. Proposed § 3.16 would require that the time periods for feeding and watering the dogs after acceptance for transport begin with the time of the last feeding and watering before acceptance for transport. To avoid situations where the carrier or intermediate handler would have to provide food and water immediately after accepting the animals, we would require that the certification also state that the dogs and cats were provided water within the 4 hours before delivery to the carrier or intermediate handler, and were provided food within 12 hours before delivery to the carrier or intermediate handler.



Carriers and intermediate handlers would not be allowed to accept dogs and cats for transport unless the certification described above is signed and dated by the consignor, and the time of the execution of the certification is included. This certification as well as others required in proposed § 3.13 would have to include the tag number or tattoo assigned to each dog and cat under § 2.50 of the regulations.

The certifications of the consignor regarding the acclimation of a dog or cat to lower temperatures than those prescribed in current §§ 3.16 and 3.17 of the regulations (included in proposed §§ 3.18 and 3.19) would be clarified. Proposed § 3.14(f) would clarify the provisions in § 3.11(c) to require that the temperatures to which a dog or cat is exposed must meet generally accepted temperature ranges for the age, condition, and breed of the animal, even if it is acclimated to temperatures lower than those prescribed in the regulations. A carrier or intermediate handler would not be permitted to expose a dog or cat to temperatures lower than those prescribed by the regulations, unless a veterinarian certifies that the animal is acclimated to such lower temperatures, and unless the veterinarian includes in the certification the minimum temperature to which the animal may be exposed.

Proposed § 3.13(g) would retain the provision in current § 3.11(d) that requires the carrier or intermediate handler to attempt to notify the consignee of the arrival of the animal upon arrival, and every 6 hours after arrival. Proposed § 3.13(g) would also include limitations on how long a dog or cat can be held at a terminal facility while waiting to be picked up by the consignee. The same time limitations are imposed under Part 2 of the regulations, § 2.80, "C.O.D. shipments" (*see* companion docket no. 88-014, published elsewhere in this issue of the **Federal Register**), so that the carrier or intermediate handler must attempt to notify the consignee for 24 hours after arrival, then must return the animal to the consignor or to whomever the consignor designates if the consignee cannot be notified. If the consignee is notified and does not take physical delivery of the dog or cat within 48 hours of notification, the carrier or intermediate handler must likewise return the animal to the consignor or to whomever the consignor designates. Proposed § 3.13(g) would also require that carriers and intermediate handlers continue to maintain dogs and cats in accordance with generally accepted professional and husbandry practices as long as the animals are in their custody and control and until the animals are delivered to the consignee or to the consignor or to whomever the consignor designates. We would require that the carrier or intermediate handler obligate the consignor to pay for expenses incurred by the carrier or intermediate handler in returning the animal to the consignor.

All of these certifications and notification requirements would help minimize and alleviate many of the stresses of travel for dogs and cats and accordingly are necessary for their general welfare and well-being.

*Primary Enclosures Used to Transport Dogs and Cats*

We are proposing to reformat current § 3.12, which concerns primary enclosures used to transport dogs and cats, and to move those provisions to proposed § 3.14. Additionally, we are proposing to revise the contents of several paragraphs in the section, and add requirements for surface transportation. When the transportation standards were rewritten in 1976 to incorporate the 1976 amendments to the Act concerning the commercial transportation of animals, the existing standards for surface transportation were inadvertently omitted. Since that time, the standards have pertained to the commercial transportation by common carrier and only a few subsections have pertained to surface transportation by private vehicle. This omission has caused numerous difficulties in the enforcement of standards regarding surface transportation of dogs and cats, and in the prosecution of persons who have improperly handled and transported dogs and cats by private surface vehicle. We are therefore proposing to reinstate the surface transportation standards that were inadvertently omitted in 1976.

We would require in § 3.14(a) that dogs and cats be shipped in primary enclosures. In addition to the requirements in current § 3.12(a) regarding construction of primary enclosures used for transportation, we are proposing to require in § 3.14(a) that the primary enclosure be constructed so that: (1) The animal being transported is at all times securely contained within the enclosure and cannot put any part of its body outside of the enclosure in a way that could injure the animal or people; (2) any material used in or on the enclosure is nontoxic to the animal; and (3) if a slatted or wire mesh floor is used in the enclosure, it be constructed so that the animal cannot put any part of its body through the spaces between the slats or through the holes in the mesh. Unless the dogs and cats are on raised floors made of wire or other nonsolid material, the primary enclosure would have to contain enough previously unused litter to absorb and cover excreta.

In addition to retaining the cleaning and sanitization requirements that currently appear in § 3.12(e), we would also require in proposed § 3.14(b) that if the dogs or cats being transported are in transit for more than 24 hours, either the enclosures be cleaned and the litter replaced, or other means, such as moving the animals to a different enclosure, be used to prevent the soiling of the dogs or cats by body wastes.

In proposed § 3.14(c), we set forth ventilation requirements more restrictive than those in the current regulations by removing two of the current options for primary enclosure configurations with regard to ventilation. The current regulations allow the primary enclosures to have ventilation openings on either two, three, or four sides. Studies made by the Civil Aeromedical Institute, Federal Aviation Administration, Oklahoma City, OK, indicate that maximized ventilation with regard to transportation crates is beneficial to the well-being of dogs, by allowing them to adjust better to the high temperatures and humidity encountered when shipped in warm weather. These studies also indicate that, within reason and for short periods of time, increased ventilation in transportation crates is not detrimental to dogs during cold weather. Therefore, we are proposing to require that there be ventilation openings on each of the four walls of primary enclosures used to transport dogs and cats, and that the ventilation openings total at least 8 percent of the total surface of each wall, with the total combined surface area of the ventilation openings comprising at least 14 percent of the total combined surface area of all the walls of the primary enclosure.

Section 3.12(h) of the current regulations requires that a primary enclosure that is permanently affixed to a primary conveyance so that the front opening of the enclosure is its only source of ventilation must face either the outside of the conveyance or an unobstructed aisle or passageway. Because primary enclosures that open directly to the outside of the conveyance may expose the animals in the enclosure to the elements, we are proposing in § 3.14(c)(3) to require that enclosures

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with a front opening open only to an unobstructed aisle or passageway. We are also proposing in § 3.14(c)(3) to require that the ventilation openings of primary enclosures permanently affixed to a conveyance be covered with bars, mesh, or smooth expanded metal having air spaces. Under the current regulations, § 3.12(b) requires that live dogs or cats transported in the same primary enclosure be of the same species and be maintained in compatible groups. We are proposing to retain this wording in proposed § 3.14(d), with the added provision that dogs and cats that are private pets, are of comparable size, and are compatible, may be transported together in the same primary enclosure. Based on our observations of shipments of dogs and cats and on information received from pet owners and dealers, we have determined that shipping companion animals individually may cause them more stress than shipping them together.

We are also proposing in § 3.14(d) that: (1) Puppies or kittens 180 days of age of less may not be transported in the same primary enclosure with adult dogs or cats other than their dams; (2) dogs or cats that are aggressive or vicious must be transported individually in a primary enclosure; and (3) female dogs or cats in season (estrus) must not be transported in the same primary enclosure with any male dog or cat.

The requirement in § 3.12(c) that each dog or cat transported in a primary enclosure have sufficent space to turn about freely in a standing position, and to sit, and lie in a natural position would be retained and moved to proposed § 3.14(e)(1).

Transportation by Air

Because certain requirements for primary enclosures used in surface transportation were omitted from the 1976 revisions to the regulations, the provisions in current § 3.12(d) regarding the number of animals that may be transported in a primary enclosure are designed only for air transportation. We are therefore proposing to set forth the provisions of current § 3.12(d), with some amendments, in proposed § 3.14(f), titled "Transportation by air." We are proposing that a maximum of two live dogs or cats, 6 months of age or more, that are comparable in size, may be transported in the same primary enclosure when shipped by air. The present standard allows only one dog or cat, 6 months or more of age, to a container. Although the current regulations were establish to minimize stress on animals being shipped, we have determined from our observations at airports, and from information received from pet owners and dealers, that it is often more stressful for a dog or cat to travel alone than in an enclosure with a companion animal.

We are also proposing that a maximum of two live puppies, 8 weeks to 6 months of age, of comparable size, and weighing over 20 lb (9 kg) each may be transported in the same primary enclosure. Present standards allow only one such puppy per primary enclosure. The present standards also allow only two live puppies and kittens, 8 weeks to 6 months of age, but not weighing over 20 lb (9 kg) each, to be shipped in the same primary enclosure. We are proposing that it be permissible to transport a maximum of three such puppies or kittens in the same primary enclosure. As we noted above, we believe it is appropriate to allow an animal being shipped the opportunity for companionship, and the small size of the animals described by this provision would allow three animals to be shipped comfortably in standard air shipping enclosures. In proposed § 3.14(f)(4), we would retain the provision in current § 3.12(d) that weaned puppies or kittens less than 8 weeks old and of comparable size, or puppies or kittens that are less than 8 weeks old and are littermates accompanied by their dam, may be shipped in the same primary enclosure to research facilities. This provision is limited to research facilities by the Act.

Transportation by Surface Vehicle

We are proposing to add a new § 3.14(g) regarding transportation by surface vehicle. These provisions would reinstate primary enclosure requirements that were inadvertently omitted when the standards for the commercial transportation of dogs and cats were revised in 1976. We are proposing that a maximum of four dogs or cats may be transported in the same primary enclosure when shipped by surface vehicle, provided all other transportation requirements in proposed § 3.14 are complied with. We would allow shipment of more dogs and cats in surface vehicle enclosures than in air shipping enclosures for several reasons. First, standard enclosures for surface transportation are larger than than those customarily used for air transportation. Additionally, when animals are transported by surface vehicle, there is more opportunity for the driver or another person to check on the animals to ensure that their health is being maintained and that the animals are compatible.

Weaned live puppies or kittens less than 8 weeks of age, or puppies or kittens that are less than 8 weeks of age, are littermates, and are accompanied by their dam, would be permitted to be transported in the same primary enclosure when shipped to a research facility, including federal research facilities.

Documents Accompanying Animals

Proposed § 3.14(h) would require that shipping documents accompanying the shipments either be maintained by the operator of the conveyance or be securely attached in a readily accessible manner to the outside of the primary enclosures in a way that allows them to be detached for examination and securely reattached. Instructions for food and water and for administration of druga, medication, and other special care would have to be attached to each primary enclosure in a manner that makes them easy to notice, to detach for examination, and to reattach securely.

Primary Conveyances

To protect the health of dogs and cats during transportation in commerce, the regulations in current §§ 3.16 and 3.17 prohibit animals in transporting devices or holding areas of terminal facilities from being subjected to temperatures above or below a specified range. Temperature is also of concern when animals are being transported in the cargo spaces of primary conveyances. Until 1976, requirements concerning allowable temperatures in primary conveyances were included in § 3.13 of the regulations. However, these requirements were inadvertently omitted from the regulations during the last major revision in 1976.

The intervening years have demonstrated the need to reinstated these requirements for two principal reasons: (1) The current requirements concerning temperatures in primary conveyances are inconsistent, because dogs and cats in transporting devices and in holding areas of terminal facilities must not be exposed to temperature outside a specified range, but dogs and cats in animal cargo spaces of primary conveyance—mainly cars and trucks—are not afforded the the same protection; and (2) as air freight rates have risen dramatically during this time, increasing numbers of animals are being shipped by surface transportation—some for very long distances—with no provision that the animals are not subjected to extremes of temperature.

Under the requirements for air transportation in proposed § 3.15(d), we would specify that during transportation, including time spent on the ground, live dogs and cats must be transported in cargo areas that are



heated or cooled as needed to maintain the required ambient temperature. The cargo areas would also have to be pressurized while the conveyance is in the air. In proposed § 3.15(e), we would require that during surface transportation, auxillary ventilation, such as fans, blowers or air conditioning, be used in animal cargo spaces containing live dogs or cats when the ambient temperature within the animal cargo space is 85 °F (29.5 °C) or higher. Additionally, the ambient temperature would not be permitted to exceed 95 °F (35 °C) at any time; nor to exceed 85 °F (29.5 °C) for a period of more than 4 hours; nor to fall below 45 °F (7.2 °C) for a period of more than 4 hours; nor to fall below 35 °F (1.7 °C) at any time. We are proposing to add requirements in proposed § 3.15(c) that a primary conveyance in a way that provides protection from the elements. Current § 3.13(f) requires that dogs and cats not be transported with any material, substance or device that may reasonably be expected to harm the animals. In proposed § 3.15 (h), we would clarify the intent of that requirement to indicate that the material, substance or device must not accompany the animals only the shipment is conducted "in a such a manner" that might be reasonably be expected to harm the dogs and cats.

Food and Water Requirements

Requirements regarding food and water for dogs and cats being transported, currently contained in § 3.14, would be set forth in proposed § 3.16. We would remove the provision concerning the minimum amount of water that must be offered to dogs or cats under 16 weeks of age. The current regulations require that these dogs and cats be offered at least 60 cc (approximately 2 oz) of potable water within a prescribed time. The minimum amount in the current regulations is so small that we believe the young dogs and cats would be better served by simply falling under the general requirements concerning the offering of potable water.

Current § 3.14(a) requires that dogs and cats be offered water within 12 hours after the start of transportation or acceptance for transportation. Current § 3.14(b) requires that puppies and kittens be provided food at least once every 12 hours, and dogs and cats over 16 weeks of age be provided food at least once every 24 hours. The current regulations specify that these time periods begin at the time the animals are accpeted for transport or the time transport begins, depending on who is carrying out the transport. This method of calculating when the time begins, however, could result in some dogs and cats not being provided water and food for unacceptably lengthy periods of time—in those cases where the animals were provided food and water the maximum time allowed before transport or acceptance for transport, and then not again until the maximum time allowed after transport or acceptance for transport. Therefore, we are proposing in §§ 3.16 (a) and (b) that the time periods for providing food and water to the animals *after* transport or acceptance for transport begin at the time the dog or cat was last provided food and water before initiation of transport or acceptance for transport.

In order to minimize the instances where carriers and intermediate handlers have to provide food and water to the animals immediately after accepting them for transport, consignors subject to the regulations would be required to certify that each dog or cat was provided water within 4 hours before delivery for transportation and that each dog or cat was provided food within 12 hours before delivery for transportation. The proposed regulations would require that the certification include the date and times the food and water was offered.

The provisions in current § 3.14(d), concerning a carrier or intermediate handler's responsibility regarding written feeding and watering instructions, would be set forth in proposed § 3.13(c). We are proposing to add the provision that food and water receptacles must be securely attached inside the primary enclosure and placed so that the receptacles can be filled from outside the enclosure without opening the door. We are proposing this provision based on information from carriers and intermediate handlers, which indicates that when a primary enclosure is opened to provide food or water to the animal inside, there is often a significant risk of the animal escaping from the enclosure.

§ 3.17 *Care in Transit.* The provisions regading care in transit in current § 3.15 would be set forth in proposed § 3.17. We are proposing some minor reformatting for readability, and three additions to the current provisions. The current regulations require that the driver of a surface vehicle check on the dogs or cats he or she is transporting. In proposed § 3.17(a), we would allow this observation to be conducted either by the operator of the conveyance or a person accompanying the operator, but would make it the responsibility of the regulated person transporting the dogs and cats to ensure that this observation is carried out. Additionally, in proposed § 3.17(a), we would use language that specifies that dogs and cats in obvious physical distress be given veterinary care at the closest available veterinary facility. We are proposing to make this change to clarify our intent as to the meaning of "as soon as possible" in the current regulations.

In proposed § 3.17(c), we would add an exception to the current regulations that prohibit transport in commerce of a dog or cat in physical distress, to allow transport for the purposes of obtaining veterinary care for the condition.

We are proposing to add a subsection § 3.17(e), that would specify that these transportation standards remain in effect and must be complied with until the animal reaches its final destination, or the consignee accepts delivery of the animal. We believe this provision is necessary to prevent any gap in care for the dog or cat and in responsibility for its care.

Terminal Facilities

Current § 3.16 imposes duties on carriers and intermediate handlers holding dogs or cats in animal holding areas of terminals to keep the animals away from inanimate cargo, to clean and sanitize the area, to have an effective pest control program, to provide ventilation, and to maintain the ambient temperature within certain prescribed limits. There is currently no similar obligation imposed on other persons who transport these animals. As a result, under the current regulations, animals could be held in animal holding areas under hazardous conditions.

We are proposing to move the provisions regarding terminal facilities to proposed § 3.18, and would require that the same duties be imposed on any person subject to the regulations who transports dogs or cats and who holds them in the animal holding areas. Because the animals require this minimum level of care no matter which regulated persons are moving them, it is illogical to place these duties only on carriers and intermediate handlers. Also, the length of time that dogs and cats can be maintained in terminal facilities upon arrival after transportation would be the same as that proposed in § 3.13(g).

Additionally, we are proposing to add in § 3.18(d) the provision that the ambient temperature in the animal holding area of terminal facilities may not fall below 35° F (1.7° C) at any time live dogs or cats are present. The proposed regulations would specify a procedure for measuring the ambient temperature. In cases where a terminal

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facility contains more than one primary enclosure, it is possible that several temperature readings would have to be made to determine the ambient temperature at each primary enclosure. Also, proposed § 3.18(e) contains those provisions contained in current § 3.17 that require shelter from the elements for dogs and cats, because the current provisions apply to persons holding a dog or cat in an animal holding area of a terminal facility.

Handling

Current § 3.17 also imposes duties on carriers and intermediate handlers for proper handling and movement of dogs and cats. For reasons explained above under "Terminal facilities," proposed § 3.19 would also impose the same duties on any person subject to the regulations when handling a dog or cat at any time during the course of transportation in commerce, so that the animals' health, safety and well-being will be protected at all times during transport. This would include movement from an animal holding area of a terminal facility to a primary conveyance and from a primary conveyance to a terminal facility. This would also include movement of the dog or cat on a transporting device used to transfer the animal from a primary conveyance to an animal holding area and vice versa, movement from one primary conveyance to another, and movement from place to place within the terminal facility.

Proposed § 3.19(b) would require that care be exercised to avoid handling primary enclosures in such a way that dogs or cats in the primary enclosures are caused physical or emotional distress. Because of problems and complaints concerning the handling of dog and cat shipments in baggage areas by airlines, we are proposing that primary enclosures containing dogs or cats must not be placed on unattended conveyor belts or on elevated conveyor ramps such as baggage claim conveyor belts and inclined conveyor ramps leading to baggage claim areas. We would allow primary enclosures to be placed on inclined conveyor ramps that are used to load and unload aircraft, if there is an attendant at each end of the conveyor belt.

**Subparts B and C—Guinea Pigs, Hamsters, and Rabbits**

Regulations on the humane handling, care, treatment, and transportation of guinea pigs, hamsters, and rabbits are contained in 9 CFR Part 3, Subpart B for guinea pigs and hamsters, and Subpart C for rabbits. These regulations include minimum standards for handling, housing, feeding, watering, sanitation, ventilation, shelter from extremes of weather and temperatures, veterinary care, and transportation.

We propose to amend these regulations by revising the space requirements for primary enclosures and by prescribing minimum and maximum temperatures for cargo spaces in primary conveyances. These proposed amendments are discussed in detail below.

*Space Requirements for Guinea Pigs*

Our current requirements concerning space in primary enclosures used to house guinea pigs (contained in § 3.28(b)(2)) are as follows:

| Weight/stage of maturity | Floor area/animal in ² | Interior height in |
|---|---|---|
| Weaning to 350g | 60 | 6.5 |
| > 350g | 90 | 6.5 |
| Breeders | 180 | 6.5 |

In May of 1987, the National Association for Biomedical Research (NABR) petitioned us to delete the requirement for additional space for breeder guinea pigs.

In its petition, the NABR cited a study performed at Charles River Laboratories, a major laboratory animal breeder located in Wilmington, Massachusetts. This study concerned the effect of cage size on reproductivity. As described in a report accompanying the petition, the study used three groups of 60 female guinea pigs each. One group was housed four guinea pigs to a cage of 720 square inches (180 square inches each), as prescribed by Animal and Plant Health Inspection Service (APHIS) regulations. Another group was housed six to a cage of 720 square inches (120 square inches each), and the third group was housed seven to a cage of 720 square inches (102.86 square inches each). The study showed no significant difference in the reproductive performance (gross litter averages, live births, average weaning litter sizes, and total number of pups weaned during the same timeframe) between the breeder guinea pigs housed according to APHIS regulations and the breeder guinea pigs housed in less space. These results indicate that breeder guinea pigs, including nursing females with litters, do not require floor space in excess of that required for nonbreeder guinea pigs.

The NABR also cited a study performed by the Department of Comparative Medicine of the Milton S. Hershey Medical Center at the Pennsylvania State University at Hershey, Pennsylvania. This study was conducted to determine the percent of available floor space used by groups of breeder guinea pigs. The study compared a group of four guinea pigs housed in a cage of 720 square inches (180 square inches each) with a group of seven guinea pigs housed in a cage the same size (102.86 square inches each). The study hypothesized that a decrease in floor area per animal would lead to increased use of the available floor area as animals tried to avoid stress associated with overcrowding. Conversely, the study also hypothesized that if herding or family grouping were important to the well-being of the animals, a decrease in floor space would not lead to an increased use of the available floor area. A computer-coupled video tracking system recorded the movement of the guinea pigs over 12-hour light and dark cycles. The study revealed that both groups of breeder guinea pigs used the periphery of the cage almost to the exclusion of the center floor space. These results provide a basis for changing our regulations concerning space requirements for breeder guinea pigs.

We have carefully reviewed and analysed the material submitted to us. We believe the data is sound and the petition has merit. Therefore, we propose to delete our requirement for additional space for breeder guinea pigs and to require the same minimum floor space for breeder guinea pigs, including nursing females with litters, as for nonbreeder guinea pigs.

We also propose to revise the space requirements in primary enclosures for nonbreeder guinea pigs weighing more than 350 grams.

Our current regulations require a minimum floor space of 90 square inches for nonbreeder guinea pigs weighing more than 350 grams. By comparison, the NIH Guide recommends 101 square inches for each guinea pig weighing over 350 grams, only slightly less than the 102.86 square inches provided each breeder guinea pigs housed in groups of seven in the Charles River and Hershey Medical Center studies.

Based on all the data available to us, we believe that more floor space for nonbreeder guinea pigs weighing over 350 grams would be beneficial, giving them more space for moving about. Therefore, we propose to increase, from 90 square inches to 101 square inches, the minimum floor space we require for guinea pigs weighing over 350 grams.

We also propose to require that primary enclosures used to house guinea pigs have a minimum interior height of 7 inches. This is an increase of ½ inch over our current requirement of 6½ inches. We believe than an extra ½ inch in height would benefit guinea pigs by providing additional space for them to make normal postural adjustments.



*Space Requirements for Hamsters*

Our current requirements concerning space in primary enclosures used to house hamsters (contained in § 3.28(b)(3)) are as follows:

| Age | Floor area/animal | | Interior height | | Maximum population per enclosure |
|---|---|---|---|---|---|
| | Dwarf in ² | Other in ² | Dwarf in ² | Other in ² | |
| Weaning to 5 wks | 5.0 | 10.0 | 5.0 | 5.5 | [illegible] |
| 5 to 10 wks | 7.5 | 12.5 | 5.0 | 5.5 | 16 |
| > 10 wks | 9.0 | 15.0 | 5.0 | 5.5 | 13 |

In addition, § 3.28(b)(3) requires that a nursing female hamster, together with her litter, be housed in a primary enclosure that contains no other hamsters and that provides at least 25 square inches of floor space for dwarf hamsters and at least 121 square inches of floor space for hamsters other than dwarf.

We believe that increasing both floor area and cage height would benefit hamsters by providing additional room for them to move about and make normal postural adjustments. We have carefully considered the space recommendations contained in the NIH Guide. We believe that they are an improvement over our current regulations. Therefore, we are proposing to adopt the same floor area and cage height requirements as are currently in the NIH Guide. Our requirements for females with litters would not be amended.

The NIH Guide contains the following minimum space recommendations for hamsters:

| Weight g | Floor area/animal | | Cage height | |
|---|---|---|---|---|
| | in ² | cm ² | in | cm |
| 60 | 10 | 64.52 | 6 | 15.24 |
| 60 to 80 | 13 | 83.88 | 6 | 15.24 |
| 80 to 100 | 16 | 103.23 | 6 | 15.24 |
| > 100 | 19 | 122.59 | 6 | 15.24 |

The NIH Guide notes that females with litters require additional space and refers readers to our regulations.

We also propose to delete our requirements concerning maximum population per enclosure because we believe that population is not a critical factor affecting the well-being of hamsters, as long as each hamster has at least the minimum amount of floor space that we have proposed.

*Space Requirements for Rabbits*

Our current requirements concerning space in primary enclosures used to house rabbits (contained in (§ 3.53(b)) are as follows:

| Category | Weight/animal | | Floor area/animal | |
|---|---|---|---|---|
| | lbs | (kgs) | in ² | (ft²) |
| Groups | 3–5 | (1.4–2.7) | 144 | (1) |
| | 6–8 | (2.7–4.0) | 288 | (2) |
| | >9 | (>4.0) | 432 | (3) |
| Individual adults | 3–5 | (1.4–2.7) | 180 | (1.25) |
| | 6–8 | (2.7–4.0) | 360 | (2.50) |
| | 9–11 | (4.0–5.4) | 540 | (3.75) |
| | >12 | (>5.4) | 720 | (5.00) |
| Nursing females | 3–5 | (1.4–2.7) | 576 | (4.00) |
| | 6–8 | (2.7–4.0) | 720 | (5.00) |
| | 9–11 | (4.0–5.4) | 864 | (6.00) |
| | >12 | (>5.4) | 1080 | (7.50) |

We believe that rabbits, like guinea pigs and hamsters, would benefit from additional space. Based on all the data available to us, we believe that the current NIH guidelines would provide them with adequate space. These guidelines are different from our current regulations in two ways, which we have carefully considered and believe are improvements over our current regulations: (1) Space recommendations are for individual rabbits only; and (2) there is a minimum interior cage height of 14 inches. Under our proposal, this would mean that rabbits housed in groups would have to be provided the same amount of floor space per rabbit as those housed individually. It would also mean that rabbits would have adequate overhead space to accommodate normal physical posturing.

The NIH Guide contains the following minimum space recommendations for rabbits:

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| Weight kg | Floor area/animal | | Cage height | |
|---|---|---|---|---|
| | ft² | m² | in | cm |
| 2 | 1.5 | 0.14 | 14 | 35.56 |
| 2–4 | 3.0 | 0.28 | 14 | 35.56 |
| 4–5.4 | 4.0 | 0.37 | 14 | 35.56 |
| >5.4 | 5.0 | 0.46 | 14 | 35.56 |

The NIH Guide notes that females with litters require additional space and refers readers to our regulations.

We also propose to revise our space requirements for females with litters to the following:

| | Weight of female rabbit | | Minimum area/female & litters [1] | | Minimum interior hgt | |
|---|---|---|---|---|---|---|
| | lbs | kgs | ft² | m² | in | cm |
| Females with litters | 4.4 | 2 | 4.0 | 0.37 | 14 | 35.56 |
| | 4.4–8.8 | 2–4 | 5.0 | 0.46 | 14 | 35.56 |
| | 8.8–11.9 | 4–5.4 | 6.0 | 0.56 | 14 | 35.56 |
| | >11.9 | >5.4 | 7.5 | 0.70 | 14 | 35.56 |

[1] The minimum floor spaces indicated in the table above are for the nursing female, together with her litter.

The proposed minimum space requirements for females with litters are roughly the same as the current requirements for nursing females. We are proposing new weight categories and a new term for nursing females to make the format of the proposed space requirements for females with litters parallel the format of the proposed space requirements for other rabbits.

*Ambient Temperature Requirements in Primary Conveyances*

To protect the health of guinea pigs, hamsters, and rabbits during transportation in commerce, the regulations in 9 CFR in Part 3, §§ 3.40, 3.41, 3.65, and 3.66, prohibit animals in transporting devices or holding areas of terminal facilities from being subjected to temperatures above or below a specified range.

Temperature is also of concern when animals are being transported in the cargo spaces of primary conveyances. Until 1977, requirements concerning allowable ambient temperatures in primary conveyances were part of the regulations in 9 CFR Part 3, §§ 3.37 and 3.62. However, these requirements were inadvertently omitted from the regulations during the last major revision in 1977.

The intervening years have demonstrated the need to re-adopt these requirements for two principal reasons: (1) The current requirements concerning ambient temperatures are inconsistent, because guineas pigs, hamsters, and rabbits in transporting devices and in holding areas of terminal facilities may not be exposed to temperatures outside a specified range, but guinea pigs, hamsters, and rabbits in animal cargo spaces of primary conveyances—mainly cars and trucks—are not afforded the same protection; and (2) as air freight rates have risen dramatically during this time, increasing numbers of animals are being shipped by surface transportation—some for very long distances—with no provision to ensure that the animals are not subjected to extremes of temperature.

We therefore propose to reinstate requirements concerning ambient temperatures in primary conveyances. The proposed requirements, which would be applicable to all types of primary conveyances (motor vehicle, air, rail, and marine), would require animal cargo spaces in primary conveyances transporting live animals to be mechanically sound and to provide fresh air by means of windows, doors, vents, or air conditioning so as to minimize drafts, odors, and moisture condensation. We also propose to require that auxiliary ventilation be used in any animal cargo space containing live guinea pigs, hamsters, or rabbits if the ambient temperature is 75° F (23.9° C) or higher. Furthermore, we propose to require that the ambient temperature in the animal cargo space be maintained at or below 85° F (29.5° C) but no lower than 45° F (7.2° C), except that temperatures below 45° F (7.2° C) would be allowed for hamsters and rabbits if the animals are accompanied by a certificate of acclimation to lower temperatures. Requirements concerning the certificate of acclimation are contained in § 3.35 of the regulations for hamsters and in § 3.60 of the regulations for rabbits. We do not propose to allow guinea pigs to be transported in cargo spaces where the ambient temperature falls below 45° F (7.2° C) because guinea pigs cannot tolerate such low temperatures.

These proposed requirements concerning fresh air and auxiliary ventilation are necessary to ensure that the animals have adequate ventilation. The maximum and minimum ambient temperatures would help ensure that the animals are not subjected to extremes of temperature during transportation in commerce. We recognize, however, that some hamsters and rabbits may be comfortable at temperatures below the lower limits proposed; the provisions concerning the certificate of acclimation would allow them to be transported at temperatures below 45° F (7.2° C).

*Miscellaneous*

We propose to revise §§ 3.40, 3.41, and 3.66 of the regulations, which contain transportation requirements, to clarify that responsibility for meeting these requirements rests with any person who is subject to the Animal Welfare regulations and who transports live guinea pigs, hamsters, or rabbits. Currently, the regulations place this responsibility only with carriers and intermediate handlers. However, other persons, including dealers, exhibitors, and research facilities, including federal research facilities, hold animals in terminal facilities and move animals in transporting devices, and the same temperature restrictions are necessary for the well-being of the animals.

We propose to revise §§ 3.36 and 3.61 of the regulations, which contain requirements for primary enclosures used to transport live guinea pigs, hamsters, and rabbits, to clarify that the responsibility for meeting these requirements rests with any person who is subject to the Animal Welfare regulations and who offers a live guinea pig, hamster, or rabbit for transportation in commerce.



**Subpart D—Nonhuman Primates**

Regulations on the humane handling, care, treatment, and transportation of nonhuman primates are contained in 9 CFR Part 3, Subpart D. These regulations include minimum standards for handling, housing, social grouping and separation of species, feeding, watering, sanitation, ventilation, shelter from extremes of weather and temperature, veterinary care, and transportation.

We are proposing to revise and rewrite the current regulations based on our experience administering the Act and them. We are also proposing to amend our regulations to add requirements for a physical environment adequate to promote the psychological well-being of nonhuman primates. This is specifically required by the 1985 amendments to section 13 of the Act. (See § 1752, 99 Stat. 1645, Pub. L. 99–198, amending 7 U.S.C. 2143.) We discuss each topic covered in our proposed regulations below.

In preparing to revise and amend Subpart D, we engaged in extensive study of the environmental needs of nonhuman primates that must be met to promote their psychological well-being. We actively sought input from various professional communities that are subject to the regulations. We formed a committee to study the psychological needs of nonhuman primates maintained by the research community and to make specific recommendations to us concerning the various issues presented by the 1985 amendments to the Act. This committee was comprised of APHIS representatives and ten members of the scientific research community. The members were experts recommended by the National Institutes of Health and were appointed by APHIS to formulate recommendations for means of providing an environment to promote the psychological well-being of nonhuman primates. Observers from NIH were also present during committee deliberations, although they were not members of the committee.

We also sought and obtained input from organizations, such as the National Association for Biomedical Research, which represent facilities utilizing nonhuman primates in their research.

We invited animal exhibitors to participate in the development of regulations to promote the psychological well-being of nonhuman primates. The American Association of Zoological Parks and Aquariums, a nonprofit, tax-exempt organization dedicated to the advancement of zoological parks and aquariums for conservation, education, scientific studies and recreation, formed a Primate Study Committee to develop materials concerning space requirements and the various environmental enrichments required by different species of nonhuman primates, based upon their social behavior and species-typical activity, in order to promote their psychological well-being.

The results of these efforts are explained in greater detail below in our discussion of proposed minimum space and environmental requirements.

The regulations we are proposing in this revision of Subpart D are minimum standards to be applied to all species of nonhuman primates. We are continuing to include current footnote 1 of Subpart D in this proposal, although it is revised to reflect the need to promote the psychological well-being of nonhuman primates. Rather than stating that "discretion" must be used due to the variation in species, we are proposing to require that these minimum standards be applied in a manner that is considered appropriate for the relevant species in accordance with customary and generally accepted professional and husbandry practices.

The Act applies to all nonhuman primates, whether living or dead. The standards we are proposing are principally applicable to live nonhuman primates. As stated in proposed footnote 1, the proposed regulations apply only to live nonhuman primates, unless stated otherwise.

*Housing Facilities and Operating Standards*

Current sections 3.75 through 3.77 provide requirements for facilities used to house nonhuman primates. Current § 3.75, "Facilities, general," contains regulations pertaining to housing facilities of any kind. It is followed by current § 3.76, "Facilities, indoor," and § 3.77, "Facilities, outdoor." We are proposing to amend these sections to provide for an environment that better promotes the psychological well-being of nonhuman primates. We are also proposing to add sections that provide regulations specifically governing two other types of housing facilities used to house nonhuman primates, sheltered housing facilities and mobile or traveling housing facilities. The term "sheltered housing facility" is defined in Part 1 (*see* companion docket no. 88–013, published elsewhere in this issue of the **Federal Register**) as "a housing facility which provides the animals with shelter; protection from the elements; and protection from temperature extremes at all times. A sheltered housing facility may consist of runs or pens totally enclosed in a barn or building, or of connecting inside/outside runs or pens with the inside pens in a totally enclosed building." The term "mobile or traveling housing facility", also defined in Part 1, means "a transporting vehicle such as a truck, trailer, or railway car, used to house animals while traveling for exhibition or public education purposes."

Some of the requirements we are proposing for housing facilities are applicable to housing facilities of any kind. As in the current regulations, these standards of general applicability would be included in one section, proposed § 3.75, which would also include many of the provisions in current § 3.75. Additionally, we are proposing amendments to the current regulations that are specific to particular types of housing facilities, and are including those provisions in separate sections of the proposed regulations. In some cases, where the current regulations would be unchanged in substance, we have made wording changes to clarify the intent of the regulations.

*Housing facilities, general*

Because nonhuman primates vary widely in size, weight, and range of activity, the design, composition and structural strength required of housing facilities varies as well. We are proposing to require in proposed § 3.75(a) that the design, composition, and structural strength of a housing facility be appropriate for the particular species housed in it. For example, the actual structural requirements for a housing facility would differ depending upon whether it is used to house marmosets, a small nonhuman primate species, or great apes, a typically large species weighing more than 88 lbs. (40 kg.).

In proposed § 3.75(b), we are proposing to add the requirement that a dealer's or exhibitor's housing facilities be physically separated from any other business. When a housing facility is located on the same premises as any other business there is likely to be increased traffic and activity which is known to be distressful to nonhuman primates. Also when more than one dealer maintains facilities on the premises, it can be difficult to determine which dealer is responsible for which animals and for the conditions of the facility. This has made inspection and enforcement of the regulations difficult. To avoid these difficulties we are proposing to require that housing facilities, other than those maintained by research facilities and federal

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research facilities, be physically separated from other businesses. This can be done by using a security fence or by conducting each business in a separate building. The means of separation used would have to be constructed so that it prevents unauthorized humans, and animals the size of dogs, skunks, and raccoons, from going through it or under it. For example, if a security fence is used, it would have to be at least 6-feet high and constructed in a manner that restricts any unauthorized entry. We are not imposing this requirement upon research facilities because they are often part of a larger sponsoring establishment, such as a university or pharmaceutical company, and responsibility for animal and site conditions rests with that establishment. Therefore, we have not encountered the enforcement difficulties noted above with research facilities.

We are also proposing in subsection (b) that housing facilities and areas used for storing animal food and bedding be kept free of any accumulation of trash, weeds, and discarded material in order to prevent unsanitary conditions, diseases, pests, and odors. The need for orderliness applies particularly to animal areas inside of housing facilities, and we are proposing that they must be kept free of clutter, including equipment, furniture, or stored material, and materials not necessary for proper husbandry practices.

In proposed § 3.75(c) we are proposing to include requirements concerning housing facility surfaces that are common to all types of facilities. The current regulations require that interior surfaces of indoor housing facilities be constructed and maintained so that they are substantially impervious to moisture and may be readily sanitized. They do not specify frequency of sanitization. They also do not provide any requirements for building surfaces used in outdoor housing facilities.

Under our proposal, any surfaces that come in contact with nonhuman primates must be maintained regularly so that they are kept in good condition. Interior surfaces and furniture-type fixtures or objects within the facility, such as perches, swings, and dens, must be made so that they can be readily cleaned and sanitized, or removed or replaced when worn or soiled. We are proposing to add this requirement because we would no longer require impervious surfaces under our proposal in an effort to encourage provision of more natural environments for the animals. Because porous surfaces may not be adequately sanitized, we are requiring instead that they be removed or replaced when worn or soiled. This requirement appears in proposed § 3.75(c)(2). Otherwise, the manner of construction and the materials used must allow for cleaning and sanitization.

Proposed § 3.75(c)(1) would require that surfaces that come in contact with nonhuman primates be free of jagged edges or sharp points that could injure the animals, as well as rust that prevents the required cleaning and sanitization or affects the structural integrity of the surfaces. Because we recognize that as long as water is used to clean animal areas metal parts will rust, we would allow some rust on metal areas, as long as it does not reduce structural strength or interfere with proper cleaning and sanitization because that could present hazards to the animals.

Proposed § 3.75(c)(3) would require that hard surfaces that come in contact with nonhuman primates be cleaned daily and sanitized at least once every two weeks and as often as necessary to prevent any accumulation of excreta or disease hazards, in accordance with generally accepted husbandry practices, unless the nonhuman primates engage in scent marking. Scent marking is an inborn method used by certain species of nonhuman primates in nature (such as species of prosimians, marmosets, tamarins, and callimico) to establish their territory and for identification by other members of the species. Animals can detect that another member of the species has occupied a site by the scent left behind and can locate companions in this manner. It is distressful for these primates to have their scent marks eliminated since they lose their territorial claims and their frame of reference. We are therefore proposing that hard surfaces that come in contact with nonhuman primates that scent mark be spot cleaned daily and that they be sanitized at regular intervals that would be determined in accordance with generally accepted professional and husbandry practices. We invite comments on the length of intervals that should be allowed to pass between regular cleanings for those species engaging in scent marking.

We are proposing to remove the requirement that housing facilities have impervious surfaces because many can simulate more natural environments by providing dirt floors and planted areas that are beneficial to the nonhuman primates' psychological well-being. Proposed § 3.75(c)(3) would provide that outdoor floors could be made of dirt, sand, gravel, grass, or other similar material that can be readily cleaned and is removable.

Proposed § 3.84(b)(3) provides various methods of sanitizing primary enclosures. Because these methods are effective in general for sanitization of hard surfaces that nonhuman primates come in contact with, except for dirt floors and planted areas, any of them could be used for the sanitization required by proposed § 3.75(c)(3). The method of sanitization would be determined by the housing facility operator. Planted enclosures and floors made of dirt, sand, gravel, grass, or other similar material would have to be raked and spot cleaned daily, since sanitization is not practicable. Contaminated flooring material would have to be removed if raking and spot cleaning does not eliminate odors, diseases, insects, pests, or vermin infestation. The material could then be replaced or a different material could be used.

In the current regulations, § 3.75(b) provides requirements for water and electric power. It specifies that reliable and adequate water and electric power must be made available "if required to comply with other provisions of this subpart." In this proposed rule, provisions concerning water and electric power are set forth in § 3.75(d). We are proposing there to eliminate the qualifying statement cited above, and to *require* reliable electric power that is adequate for heating, cooling, ventilation, lighting, and other husbandry requirements, and mechanically pressurized potable running water for the nonhuman primates' drinking needs and adequate for cleaning and for carrying out other husbandry requirements. Based upon our inspections of dealer, exhibitor, and research facilities, we believe that nonhuman primate facilities subject to the Animal Welfare regulations cannot be properly cleaned and maintained without electric power and running potable water under pressure.

We are proposing in § 3.75(e) to expand the regulations in current § 3.75(c) concerning proper storage of food and bedding supplies. We would retain the requirements that food and bedding be stored so as to protect them from vermin infestation or contamination, and that perishable food be refrigerated. We are proposing requirements to ensure further the quality of the physical environment surrounding nonhuman primates. We are proposing to add a requirement that food and bedding be stored in leakproof containers to protect the supplies from spoilage, contamination, and vermin infestation, and that open food and bedding supplies be kept in leakproof



containers with tightly fitting lids to prevent spoilage and contamination. Proposed § 3.75(e) would require that substances that would be toxic to nonhuman primates be stored away from animal areas and food storage and preparation areas. Only the food and bedding in use could be kept in animal areas and we would require that when they are not in use they must be properly stored. In addition, all food would have to be stored so as to prevent contamination or deterioration of its nutritive value. The supplies would have to be stored off the floor and away from the walls, to allow cleaning around and underneath them.

The proposed regulations would continue to require that housing facilities provide for removal and disposal of animal and food wastes, bedding, dead animals, and debris, as provided in current § 3.75(d). We are proposing to clarify this requirement so that it clearly applies to all fluid wastes and to include a requirement that arrangements must be made for prompt daily removal and disposal of wastes. Removal and disposal must be done more than once each day if necessary to avoid problems with odors, pests, insects, and diseases. The proposed regulations would also require that trash containers be leakproof and tightly closed when not in use, and that all forms of animal waste, including dead animals, be kept out of food and animal areas.

Requirements for drainage systems are currently provided in §§ 3.76(e) and 3.77(d) for indoor and outdoor facilities, respectively. Because all types of animal housing facilities, including sheltered housing facilities and mobile or traveling housing facilities, require a proper disposal facility and drainage system, we are proposing to consolidate all drainage and waste disposal requirements in proposed § 3.75(f). The requirements for drainage systems would be expanded to provide that in all types of housing facilities whether open or closed drains, waste sump ponds, or settlement ponds are used they must be properly constructed, installed, and maintained, and they must minimize vermin and pest infestation, insects, odors, and disease hazards. As part of this safeguard, we would require that waste sump ponds and settlement ponds be located an adequate distance from the animal area of the housing facility to prevent problems with vermin, pests, odors, insects, and disease hazards. Drainage systems must also rapidly eliminate animal wastes and water so that the animals can stay dry. This is necessary because it is known to be distressful to nonhuman primates to be involuntarily wetted.

The requirement contained in current § 3.75(e) that washing facilities be available to animal caretakers for their cleanliness would be retained and would appear in proposed § 3.75(g).

*Requirements for different types of housing facilities*

The current regulations specify two kinds of housing facilities, indoor and outdoor. These terms are defined in Part 1 of the regulations. (*See* companion docket no. 88-013, published elsewhere in this issue of the **Federal Register**.) An indoor housing facility is defined as "any structure or building with environmental controls housing or intended to house animals" that is fully enclosed and has a continuous connection between the floor, ground, and ceiling, is capable of being temperature and humidity controlled, and has at least one door for entry and exit. An outdoor housing facility is defined as "any structure, building, land, or premise, housing or intended to house animals, and which does not meet the defintion of an indoor housing facility or a sheltered housing facility and in which temperatures cannot be controlled within set limits. We are proposing to add two additional sections containing requirements for sheltered housing facilities and mobile or traveling housing facilities, previously defined in this document.

*Requirements for enclosed or partially enclosed housing facilities*

Three of the four types of housing facilities that may be used to house nonhuman primates are either enclosed or partially enclosed. They are indoor housing facilities, mobile or traveling housing facilities, and the sheltered portion of sheltered housing facilities. We are proposing to require that all of these enclosed types of housing facilities be required to provide heating, cooling, and ventilation, and to maintain temperatures within the temperature limits provided in current paragraphs (a) and (b) of § 3.76 "Facilities, indoor" as follows:

1. Temperature requirements

Under our proposal, there must be sufficient heat provided to protect nonhuman primates from cold temperatures. The ambient temperature (defined in Part 1 of the regulations as the temperature surrounding the animal) must not fall below 50 °F (10 °C). We would require cooling to protect nonhuman primates from high temperatures. The ambient temperature must not rise above 85 °F (29.5 °C), except that for mobile or traveling housing facilities only, the upper temperature limit is 95 °F (35 °C) when nonhuman primates are present, however auxiliary ventilation such as fans or air conditioning must be provided if the temperature is 85 °F (29.5 °C) or higher. Because the various species of nonhuman primates have different optimal ambient temperatures and different tolerances for higher and lower temperatures, we are proposing to require that the actual ambient temperature maintained be at a level that ensures the health and well-being of the species housed, in accordance with generally accepted professional and husbandry practices.

2. Ventilation

The current requirement in § 3.76(b) for ventilation of indoor housing facilities would be applicable to the three types of enclosed housing facilities to provide for the health, comfort, and well-being of nonhuman primates. For sheltered housing facilities the requirement would only apply to the sheltered portion of the facility since the outdoor portion could not be humidity controlled. We are proposing to add that ventilation must also be provided to minimize ammonia levels in these housing facilities and that mobile or traveling housing facilities must be ventilated to minimize exhaust fumes, to protect the well-being of the nonhuman primates.

3. Relative humidity level

Except in mobile or traveling housing facilities, we would also require that the relative humidity in enclosed facilities be maintained between 30 and 70 percent. The actual relative humdity maintained would depend upon the species housed and must be maintained at a level that ensures the health and well-being of the species housed, in accordance with generally accepted professional and husbandry practices. For example, certain species of nonhuman primates are known to be less tolerant of a wide range of humidity levels and therefore should be maintained at more specific humidity levels. The NIH Guide provides precise humdity levels for certain species. Individuals subject to our regulations can refer to the NIH Guide for these animals because use of the Guide will maintain actual humidity levels within the requirements of these regulations and conforms with generally accepted professional and husbandry practices.

We are not proposing to require that a precise range of humidity levels be maintained in mobile or traveling

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housing facilities since they travel into all parts of the United States which have varying levels of humidity. Typically, the species of nonhuman primates that travel in these facilities are chimpanzees used in circuses and trained animal acts. Chimpanzees can tolerate a wider range of relative humidity levels than most species of nonhuman primates and would not be exposed to an undue health hazard if there is no range of humidity levels specified in the regulations. However, we would require that the relative humidity level be maintained at a level that ensures the health and the well-being of the species housed, in accordance with generally accepted professional and husbandry practices. Operators of mobile or traveling housing facilities as well as all other housing facility operators would still be subject to the general requirement contained in footnote 1 which provides that these regulations must be applied in accordance with customary and generally accepted professional and husbandry practices considered appropriate for each species and accordingly could not expose nonhuman primates to relative humidity levels that are considered hazardous to that species' physical well-being without violating the regulations.

4. Lighting

The proposed regulations would continue the requirement presently imposed upon indoor facilities in current § 3.78(c) to provide adequate light to permit routine inspection and cleaning of the housing facility, and observation of nonhuman primates. This requirement would apply to the three types of enclosed housing facilities included in the proposed regulations. We are proposing in proposed §§ 3.76(c), 3.77(c), and 3.79(d) to require a daily lighting cycle of at least 8 consecutive hours of light and at least 8 consecutive hours of darkness each day in order to maintain a normal lighting cycle for the nonhuman primates' well-being. A diurnal lighting cycle is known to be necessary for nonhuman primates to maintain normal breeding practices and to promote their psychological well-being. We would continue to allow artificial light to be used, but the proposed regulations would specify that it must provide full-spectrum illumination. Safeguards against exposing nonhuman primates to excessive light would be retained and would apply to all enclosed housing facilities

*Requirements for outdoor or partially outdoor housing facilities*

1. Shelter from the elements.

Outdoor housing facilities cannot be temperature controlled. Our proposal would allow only those nonhuman primates that are acclimated to the prevailing seasonal temperature and that can tolerate without stress or discomfort the range of temperatures, humidity, and climactic conditions known to occur at the facility at the time of year they are housed there to be housed in outdoor facilities, in order to protect their physical welfare.

As in current § 3.77(a)–(c) outdoor housing facilities must provide shelter from the elements and protection from various weather conditions, such as sun, wind, rain, cold air, and snow. For example, nonhuman primates must be provided with shade from the sun and protection from precipitation so that they remain dry. This requirement appears in proposed § 3.78(b). We would require that the shelter provided be maintained in good repair, and that it be constructed in a manner and made of material that can be radily cleaned and sanitized in accordance with proposed § 3.75(c). The shelter provided in an outdoor or sheltered housing facility would be required to provide heat to prevent the temperature from falling below 50 °F (10 °C).

The requirement to provide protection from the elements would also be applicable to sheltered housing facilities. We would require that nonhuman primates be provided shelter from the elements at all times. Accordingly, unless the nonhuman primates have continual ready access to the sheltered portion of the facility, some additional form of shelter must be provided that satisfies the requirements contained in paragraphs (a) through (e) of proposed § 3.77.

Proposed §§ 3.77(e) and 3.78(c) would require that the shelters in both sheltered and outdoor housing facilities be large enough to provide protection comfortably to all the nonhuman primate housed in the facility at the same time. Sheltered housing facilities and outdoor housing facilities would be required to have multiple shelters if there are aggressive or dominant animals present that might deter other nonhuman primates from utilizing the shelters when they so desire. We considered multiple shelters necessary under these circumstances in order to prevent the destress that would result if a nonhuman primates was prevented from occupying a shelter because it was intimidated.

2. Perimeter fence.

We are proposing additional requirements for housing facilities having outdoor areas, in order to protect the safety of nonhuman primates and to provide for their well-being. In proposed §§ 3.77(f) and 3.78(d), we would require that unless a natural barrier exists that would restrict the animals to the housing facility and prevent unauthorized humans and animals from having contact with the nonhuman primates, a perimeter fence at least 6 feet in height be placed around the outdoor areas of sheltered housing facilities and outdoor housing facilities, and that it be placed at least 3 feet from the outside wall of the primary enclosure. In certain settings a perimeter fence is not needed because the animals are protected by natural barriers, such as moats or swamps surrounding the facility. The exception for natural boundaries would be subject to the Administrator's approval. The perimeter fence could be slatted, latticed or of other similar design, as long as it is designed and constructed in a manner that restricts unauthorized humans and animals from entering or have contact with the nonhuman primates, including animals capable of digging underneath it, and that prevents small animals the size of dogs, raccoons, and skunks from entering through it. We would require that it be placed at least 3 feet from the outside wall of the primary enclosure because this is considered to be a sufficient safety zone between the nonhuman primates and the public and would allow sufficient room to use cleaning equipment necessary for cleaning the waste and refuse that nonhuman primates throw into it. The fence would not be required if the outside walls of the primary enclosure are high enough and built in a manner that prevents contact with or entry by other animals. To avoid the need for a perimeter fence we would require that the outside walls of the primary enclosure be made of a heavy duty material such as concrete, wood, metal, plastic, or glass, that prevents unauthorized entry by and contact with humans and animals.

*Additional safety requirement*

We are also proposing to add a requirement for facilities that are at least partially outdoors and are accessible to the public in order to protect nonhuman primates from the public and to protect the public from nonhuman primates. Public barriers would be required for sheltered housing facilities under proposed § 3.77(g),



outdoor housing facilities under proposed § 3.78(e), and for mobile or traveling housing facilities under proposed § 3.79(e). The proposed regulations would require barriers preventing unauthorized physical contact between the public and nonhuman primates for fixed public exhibits and traveling animal exhibits, at any time the public is present, both to protect the public and the nonhuman primates. We are also proposing to require that nonhuman primates used in trained animal acts or uncaged public exhibits be under the control and supervision of an experienced handler or trainer whenever the public is present. The proposed regulations would permit trained nonhuman primates used in animal acts and uncaged public exhibits to have physical contact with the public, as allowed under § 2.131, but only if the nonhuman primates are under the direct control and supervision of an experienced handler or trainer at all times during the contact, in order to prevent injury to both the nonhuman primates and the public.

*Primary enclosures*

We are proposing to revise completely current § 3.78, "Primary enclosures." We are doing so in accordance with the 1985 amendments to the Act. Under the amendments, the Secretary of Agriculture is directed to "promulgate standards to govern the humane handling, care, treatment, and transportation of animals by dealers, research facilities, and exhibitors." The standards must include minimum requirements "for a physical environment adequate to promote the psychological well-being of primates." (7 U.S.C. § 2143(a)(2)(B)) Included among the primary enclosures subject to the regulations would be those used by circuses, carnivals, traveling zoos, educational exhibits, and other traveling animal acts and shows. As explained in greater detail below, we are proposing different minimum space and environment requirements for research facilities, dealers, exhibitors, and traveling or mobile animal act exhibitors, in order to promote the psychological well-being of nonhuman primates and to provide for the primates' minimum needs. All primary enclosures would be required to meet the proposed minimum requirements. We consider the proposed requirements to be the minimum necessary for nonhuman primates' health, safety, and psychological well-being.

Our proposal is in contrast to current § 3.78, which provides general requirements for construction and maintenance of primary enclosures and uniform space requirements for every nonhuman primate housed in a primary enclosure.

We are also proposing to add a subsection on social grouping of nonhuman primates within primary enclosures.

General requirements

Primary enclosures are defined in Part 1 of the regulations as "any structure or device used to restrict an animal to a limited amount of space, such as a room, pen, run, cage, compartment, pool, hutch, or tether." Proposed § 3.80(a) would continue to require that primary enclosures be structurally sound and maintained in good repair to protect the animals from injury, to contain them, and to keep predators out, that they enable the animals to remain dry and clean, that they provide the animals with convenient access to clean food and water, that their floors be constructed in a manner that protects the animals from injury, and that they provide sufficient space for the nonhuman primates to make normal postural adjustments with freedom of movement.

We are also proposing in proposed § 3.80(a) to require specifically that the primary enclosures have no sharp points or edges that could injure the animals, that they keep unauthorized people and predators from entering the enclosure or having physical contact with nonhuman primates, that they provide shelter and protection from extreme temperature and weather conditions that can be dangerous to the animals' health and welfare, that they provide sufficient shade to protect all the animals contained in the enclosure at one time, and that they enable all surfaces to be readily cleaned and sanitized or replaced if worn or soiled.

These additional requirements are intended to provide more specific minimum criteria that must be satisfied by regulated persons maintaining nonhuman primates in order to provide for the welfare of the animals.

Social grouping

We are proposing to include a new subsection of proposed § 3.80 "Primary enclosures" to emphasize that nonhuman primates must be grouped in a primary enclosure with compatible members of their species or with other nonhuman primate species, either in pairs, family groups, or other compatible social groupings, whenever possible and consistent with providing for the nonhuman primates' health, safety, and well-being, unless social grouping is prohibited by an animal care and use procedure and approved by the facility's Committee. Compatibility would be based upon generally accepted professional practices and upon observation of the nonhuman primates to determine that they are in fact compatible. We are proposing this requirement based upon scientific evidence and our experience, both of which indicate that nonhuman primates are social beings in nature and require contact with other nonhuman primates for their psychological well-being. The expert committee convened by APHIS also recommended social grouping to promote the psychological well-being of nonhuman primates. Social deprivation is regarded by the scientific community as psychologically debilitating to social animals. Where social grouping is not possible or is determined by the attending veterinarian to be contrary to providing for the nonhuman primates' health, safety, and well-being as explained below, or is prohibited by an animal care and use procedure approved by the research facility's Committee in accordance with Part 2 of the regulations, we are proposing to require that nonhuman primates be at least able to see and hear other nonhuman primates, unless this is also prohibited by an animal care and use procedure approved by the research facility's Committee. In this case, the isolated individually housed nonhuman primates would be required to have positive physical contact or other interaction with their keeper or with another familiar and knowledgeable person for at least one hour each day. We invite comments addressing the different measures that may be taken to satisfy the requirement to provide positive physical contact or other interaction to individually housed nonhuman primates.

*Space and physical environment*

As stated above, we are completely revising the minimum space requirements for nonhuman primates set forth in current paragraphs (1) and (2) of § 3.78(b). The current requirements specify that primary enclosures be "constructed and maintained so as to provide sufficient space to allow each nonhuman primate to make normal postural adjustments with adequate freedom of movement" and provide a minimum floor space equal to an area of at least three times the area occupied by each animal when standing on four feet, regardless of the size or condition of the animal. We are also proposing to add requirements for enhancing the environment of the primary enclosures used for maintaining nonhuman

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primates, in accordance with the 1985 amendments to the Act.

In preparing our proposal of minimum requirements for a physical environment adequate to promote the psychological well-being of nonhuman primates, we utilized the Agency's expertise and experience in regulating the humane handling, care, and treatment of nonhuman primates. Because this is the first occasion the Agency has been charged with responsibility for regulations to promote the psychological well-being of nonhuman primates, we considered it important and instructive to consult with experts and representatives of regulated industries. We requested their advice on the minimum space and other environmental requirements they considered necessary to meet the psychological needs of nonhuman primates.

As stated previously in this Supplementary Information, the National Institutes of Health (NIH), Public Health Service recommended experts to advise us regarding minimum standards for promoting the psychological well-being of nonhuman primates. A group of 10 nonhuman primate experts was selected and was asked to formulate a recommendation for these minimum standards. We also requested the American Association of Zoological Parks and Aquariums (AAZPA) to recommend minimum requirements. Both groups presented us with a comprehensive report consisting of their recommendations for appropriate space requirements, environmental enhancements, social grouping and interaction, and other minimum standards they considered necessary to promote the psychological well-being of nonhuman primates. The consensus of opinion was that nonhuman primates need physical and mental stimulation for their psychological well-being, to enhance their developmental growth, and to make them better socially adjusted. The reports indicated that the need for stimulation could be met by allowing them sufficient space to engage in species-typical behavior, by providing enclosure complexities such as perches and swings, by providing manipulable objects (such as balls and other objects), and by varying the methods of feeding (such as allowing the primates to forage for food). The reports indicated that social interaction and exercise are equally necessary to promote their psychological well-being and that social grouping increases the primates' physical activity. The reports differed, however, in their recommendations of the precise means, or combination of means, considered necessary to promote the primates' psychological needs. Based on these reports and our observation of and experience with nonhuman primates, and considering the differences of opinion among the various professional communities maintaining nonhuman primates, we have determined that nonhuman primates have an acknowledged need for physical and mental stimulation, and that their needs can be met in various ways.

We have considered the environmental conditions under which nonhuman primates are maintained by regulated persons, and are proposing minimum standards for primary enclosures used by research facilities (including federal research facilities), dealers, exhibitors, and traveling or mobile animal act exhibitors. We have proposed four sets of minimum standards because the environment in which a nonhuman primate is maintained may satisfy some of its needs and may require providing other forms of stimulation or environmental enhancements to satisfy other needs. For example, grouping by families and compatible nonhuman primate species would meet the need for social interaction of primates maintained in permanent zoo exhibits, while creating other needs, such as the need of exhibited animals to have privacy from each other and from the public. In other cases, environmental conditions may restrict the opportunity to provide stimulation through otherwise accepted means because it may not be in the best interest of the primates' safety, health, and well-being to do so. For example, dealers may need to individually house newcomers if placing them in an enclosure with an established group would cause aggressive behavior among the other nonhuman primates. The psychological needs of the individually housed primates would have to be met through other means.

Accordingly, as explained in greater detail below, we are proposing that primary enclosures used to maintain nonhuman primates must provide sufficient space, as set forth in our proposal, and that nonhuman primates must have exercise, social interaction (or human interaction), and environmental enrichments, consistent with their safety, health, and well-being. The minimum amount of space that would be required for each nonhuman primate, and the kind and amount of other means of meeting psychological needs that would be required under our proposal would vary among the four sets of minimum standards and would depend upon all the forms and opportunities for physical and mental stimulation presented to nonhumn primates in the environments typically provided by research facilities, dealers, exhibitors, and mobile or traveling animal act exhibitors, respectively. Under our proposal, when an acknowledged means of providing the stimulation considered necessary for the primates' psychological well-being is amply supplied because of the environment in which the primates are maintained, other requirements for providing stimulation may be affected, as long as a sufficient amount and variety of stimulation is provided to meet the animals' psychological needs.

The proposed space requirements are minimum standards that must be provided to *each* nonhuman primate contained in a primary enclosure, unless otherwise specified. Consequently, if two nonhuman primates are housed together in one enclosure maintained by a research facility, the minimum floor area would be the sum of the minimum floor area space requirements that must be provided to each animal. The minimum height for the animal would likewise be increased, up to twice the greatest height required for any of the nonhuman primates contained in the primary enclosure but not to exceed 84 inches in height. This is because taller enclosures would not fit in most rooms and would not be necessary as long as each animal has a sufficient volume of space. Also, the proposed regulations would not allow the size of a primary enclosure to be reduced because it contains a suspended fixture, such as a swing or a perch.

1. Research facilities, federal research facilities

Our observations of nonhuman primates maintained in research facilities and the advice of the expert committee convened by APHIS, indicate that nonhuman primates used in research typically interact regularly with their human caretakers. Studies involving nonhuman primates often require observation by and physical contact with a principal investigator, perhaps several times each day. In fact, it has been shown that even intrusive procedures, such as drawing blood, are not stressful to chimpanzees maintained in research facilities, if performed by a familiar, trusted caretaker. Interaction with human caretakers, if a positive experience, is considered significant in alleviating distress under experimental conditions and helps promote the psychological well-being of nonhuman



primates maintained in research environments.

Although human interaction provides a primary source of stimulation to nonhuman primates maintained by research facilities, we have determined that other forms of physical and mental stimulation must also be provided. The need for environmental enrichments is explained under the heading, "Additional requirements for research facilities." Specific requirements are proposed in § 3.81, "Additional requirements for research facilities."

We have also determined that nonhuman primates need greater space than that required under the current regulations, so that they can engage in species-typical physical activity that is necessary for their psychological well-being. As stated above, the minimum space requirements we are proposing must be provided to *each* nonhuman primate in an enclosure. Accordingly, nonhuman primates maintained in groups will have larger enclosures in which to engage in physical activity. Communally-housed primates engage in increased physical activity, prompted by their interaction. Those housed individually will have to be released into larger primary enclosures (at least three times the minimum area and twice the minimum height up to 84 inches) for exercise unless they are housed in primary enclosures that provide twice the minimum volume required. This release requirement is also explained in greater detail under the heading, "Additional requirements for research facilities."

We are proposing minimum primary enclosures space requirements that we consider sufficient to promote the psychological well-being of nonhuman primates, in light of the social interaction they receive and the additional environmental enhancements that must also be provided. The minimum enclosure sizes proposed are based on the typical weight of the species, except for brachiating species, in accordance with the following table:

| Group | Weight | | Floor Area/Animal | | Height | |
|---|---|---|---|---|---|---|
| | lbs. | (kg.) | ft.² | (m²) | in. | (cm.) |
| 1 | 2.2 | (1) | 1.6 | (0.15) | 20 | (50.8) |
| 2 | 2.2–6.6 | (1–3) | 3.0 | (0.28) | 30 | (76.2) |
| 3 | 6.6–20.0 | (3–10) | 4.3 | (0.40) | 30 | (76.2) |
| 4 | 20.0–33.0 | (10–15) | 6.0 | (0.56) | 32 | (81.28) |
| 5 | 33.0–55.0 | (15–25) | 8.0 | (0.74) | 36 | (91.44) |
| 6 | 55.0–88.0 | (25–40) | 25.1 | (2.33) | 84 | (213.36) |
| 7 | >88.0 | (>40 kg.) | 50.0 | (4.65) | 84 | (213.36) |

The proposed enclosure sizes are similar to those provided in the NIH Guide, except that the NIH Guide categorizes nonhuman primates by weight into six categories, combining Groups 6 and 7 into one category for all nonhuman primate species over 55.0 pounds. We do not believe it would be appropriate to require the same minimum floor area and height for the larger great apes weighing over 88.0 pounds, such as gorillas, as for the smaller great ape species, since the former are substantially larger in size and consequently require more space for their psychological well-being. Our decision to propose seven weight groups for determining minimum space requirements is in accordance with the recommendations we received from the expert committee on nonhuman primates.

The proposed minimum floor area and height that must be provided by research facilities, including federal research facilities, were also recommended by the committee as sufficient to promote the psychological well-being of nonhuman primates.

Nonhuman primates would be categorized into these seven groups by the typical weight of animals of their species, except for infants (up to 6 months of age) and juveniles (6 months to 3 years of age) of various species that may weigh so much less than adults of their species that they are grouped with lighter weight species unless they obviously require greater space to make normal postural adjustments and movements, and except for brachiating species. Brachiating species are those that typically hang or swing by their arms so that they are suspended in the air and fully extended. The following are examples of the types of nonhuman primates that fall into each group:

Group 1—Marmosets, Tamarins, and infants of various species.
Group 2—Capuchins, Squirrel Monkeys and species of similar size, and juveniles of various species.
Group 3—Macaques and African species.
Group 4—Male Macaques and large African species.
Group 5—Baboons and nonbrachiating species larger than 33.0 lbs. (15 kg.).
Group 6—Great Apes up to 88.0 lbs. (40 kg.) and brachiating species.
Group 7—Great Apes greater than 88.0 lbs. (40 kg.).

We determined it appropriate to provide guidelines to research facilities by proposing these seven weight groups. In most instances, the specified dimensions for the various species will be sufficient to promote the primates' psychological well-being, and the table can be used to determine the minimum space requirements for each species. However, if a nonhuman primate is unable to make normal postural adjustments and movements, or cannot do so without difficulty, notwithstanding the table, it must be provided greater space.

We encourage the design and development of pimary enclosures that promote the psychological well-being of nonhuman primates by providing them with sufficient space and unrestricted opportunity for movement and exercise, and by allowing them to interact physically and socially with other nonhuman primates. Accordingly, we are proposing to allow the use of primary enclosures that do not precisely meet the space requirements otherwise required of research facilities upon application to the Administrator for permission. An applicant would be required to demonstrate both in writing and through use of photographic aids that the proposed primary enclosure provides sufficient space and is designed so that the nonhuman primates can express species-typical behavior. The Administrator would grant the application if he or she determines it meets our requirements for promoting the psychological well-being of the nonhuman primates, or would deny it if he or she determines that it is detrimental to the health and psychological well-being of the nonhuman primates proposed to be housed in the enclosure. The nonhuman primates housed in the enclosure would be excused from the required social release period required in proposed

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§ 3.81(a)(3) if the applicant demonstrates that the primary enclosure is designed and constructed in a manner that provides for the nonhuman primates' psychological well-being by allowing them sufficient exercise and social interaction.

Additional requirements are imposed upon research facilities to provide environmental enrichments whenever possible in accordance with the mandate of the Act, as amended, and Part 2 of the Animal Welfare regulations. Since there are unique considerations in many instances because of the necessities of animal care and use procedures, we are proposing to place these additional requirements in a separate section, proposed § 3.81, which follows this discussion of minimum space and environmental requirements. We believe that the space requirements of proposed § 3.80(c)(1) together with the requirements proposed in § 3.81 will promote the psychological well-being of nonhuman primates used in research.

2. Dealers

From our experience in regulating dealers, we have determined that dealers obtain nonhuman primates from various parts of the country and the world. These nonhuman primates are of various species and may have been transported individually or with an established group. In most instances, the time period nonhuman primates are held by dealers is relatively brief. Generally, dealers hold the animals until they are sold, which usually occurs quickly, or until arrangements are made for transferring them to their new owner. Accordingly, nonhuman primates maintained by dealers are typically subject to the stresses of travel and transiency.

Unlike nonhuman primates maintained by research facilities, that have been conditioned so that their health status is stable and known, newly imported are transported nonhuman primates can carry disease organisms requiring quarantine and/or veterinary care. Some may carry disease organisms that do not affect it, but that may affect others primates of the same species from different locales, and other species that may be suspectible. This risk exists even after they have completed a quarantine period. In addition, the stress of shipment makes them more susceptible to disease. Accordingly, health concerns frequently require that nonhuman primates be individually housed, to promote their well-being. These concerns would not impact upon established groups, since all the animals in the group would have been exposed to the same disease hazards and would generally have the same immunities.

Established groups of nonhuman primates are known to have defined social structures, with dominant animals at the head of the pecking order. When new primates of the same or different species are introduced into an established group, aggression among the primates frequently results as they attempt to establish the newcomer's status in the social structure. This aggressive behavior is dangerous for the nonhuman primates and for their caretakers. We believe that the hazards attendant to altering the social composition of an established group for what is generally a brief period may require that individual nonhuman primates obtained by dealers be housed apart from established social groups for the primates' safety, and that they should not be introduced into the group.

Accordingly, we believe that these health and safety concerns justify requiring that nonhuman primates' needs be met through means that do not include physical interaction with other nonhuman primates, in accordance with the determination of the attending veterinarian, unless the primates are part of an established group. Under our proposal, dealers would remain subject to the requirements of paragraph (b), "Social grouping," and must ensure that individually housed nonhuman primates can see and hear other nonhuman primates of their own or compatible species, or have positive physical contact or other interaction with their keeper or other familiar and knowledgeable person for at least one hour a day.

Because social interaction among nonhuman primates maintained by dealers may be restricted for health and safety reasons, we would require that dealers provide multiple enrichments of the physical environment of the primary enclosures that are appropriate for the nonhuman primates' species and age, in order to satisfy the animals' psychological needs. The proposed enrichments are essential for providing sufficient physical and mental stimulation to the nonhuman primates, particularly if they are individually housed. Examples of enrichments we would require include providing perches, swings, mirrors, or other increased cage complexities; providing toys, balls, and objects for the animals to play with or manipulate; and varying the method of feeding to make it more interesting to the primates or to stimulate feeding in nature. We would require multiple enrichments for each animal housed in a primary enclosure.

We are proposing minimum space requirements for individually housed nonhuman primates held by dealers that are twice the minimum floor area and twice the minimum height (up to a maximum of 84 inches) that research facilities would be required to provide. We believe the increase in minimum space requirements over that required of research facilities is necessary to promote physical activity because individually housed nonhuman primates may not be released for exercise and are not as active as those housed in social groups. The reader should note that nonhuman primates maintained in research facilities housed in enclosures providing twice the minimum floor area and twice the minimum height, up to a maximum of 84 inches, are not required to be released for exercise under our proposal. Nonhuman primates held by dealers also have less social interaction with other species than those maintained in research facilities, for reasons cited above, and have less interaction with humans. Increasing the required minimum space will provide an opportunity for greater physical activity and stimulation.

We would require that nonhuman primates housed in pairs, families, or other social groups be provided the same minimum space as research facilities would be required to provide. Unlike the requirements we are proposing for individually housed nonhuman primates, we are not proposing to require twice the minimum space that research facilities must provide to pairs, families, or other social groups, because the nonhuman primates will receive increased physical and mental stimulation through interaction with other group members.

The different species of nonhuman primates would be categorized into the same 7 groups as for research facilities. Because of the increased space provided, the brief time they are held by dealers, and the health and safety reasons cited above, we would not require that the animals be released for exercise or social interaction.

The proposed regulations would allow dealers to provide the same minimum space required of research facilities under certain specifically identified circumstances, when necessary. These purposes are limited to: holding the animal for a required quarantine period, having the animal receive veterinary care as directed by the attending veterinarian, and transporting the animal to or from an auction sale and holding it at the sale. All of these occasions would be brief. Based on our observation of and experience in regulating dealers we believe that it is necessary to restrict the animals' space under these circumstances so that the dealers can properly observe and handle the nonhuman primates. It would also reduce the possibility of injury to both the nonhuman primate and its handler. The requirement to provide environmental enrichments would remain in full force to provide for the animals' psychological needs during these short-term periods.



3. Exhibitors

We believe that many of the psychological needs of nonhuman primates maintained in zoos are satisfied because they are housed in primary enclosures in social groups in more naturalistic environments. Because of their communal housing they have greater opportunity for physical activity and mental stimulation. Perches and climbing structures are often provided to them in their naturalistic environment so that the viewing public can observe their species-typical behavior. However, we have determined, based upon the information available to us, that their environment necessitates environmental enrichments to accommodate other needs in promoting their psychological well-being. For example, some species of nonhuman primates maintained in permanent zoo exhibits may require privacy and refuge from the public, and from each other, as a result of daily public exposure. Also, unlike nonhuman primates maintained by research facilities and dealers, primates maintained in permanent zoo exhibits are encouraged to mate and reproduce. It has been scientifically shown that nonhuman primates in psychological distress do not engage in normal reproductive behavior. Accordingly, their physical environment must be enriched to promote their psychological well-being, so that they may do so.

We are proposing minimum space and environmental enrichment requirements that are similar to this recommendations presented to us by the American Association of Zoological Parks and Aquariums (AAZPA) in its report. This study was compiled at our request and was the result of a collective effort of a committee of AAZPA members. The AAZPA study categorizes nonhuman primates into seven groups based upon the known social behavior of the animals, as opposed to typical weight of the species. Each nonhuman primate species has different needs, based upon its typical social behavior and physical activity that must be satisfied for their psychological well-being in a zoo or exhibition environment.

The minimum space, environmental enrichments, and social grouping required in the proposed regulations for each group of nonhuman primates is based upon our experience in regulating exhibitors and the industry's recommendations after observation of and experience with the animals. We believe they will be appropriate to promote the psychological well-being of each of the species.

The specific minimum space and environmental requirements are set forth in the rule portion of this document at proposed § 3.80(c)(3), and appear in chart form. The chart divides the various species into 7 groups and offers examples of the types of nonhuman primates included in each. For each grouping, the chart specifies the minimum number of nonhuman primates to be housed together in a primary enclosure, the minimum space requirements for that group, whether shelters are required and if so how many and of what size and the furnishings that are required to enrich the environment in the primary enclosure and provide for the animals' psychological well-being. Except for great apes, we are proposing minimum space requirements for groups of nonhuman primates, in accordance with the AAZPA recommendations, and not for individual animals.

4. Mobile or traveling animal act exhibitors

Our proposal for minimum space and environmental requirements applicable to mobile or traveling animal act exhibitors is in two parts. One part pertains to nonhuman primates that participate daily in animal acts, shows, or training periods outside of their primary enclosure. The second pertains to nonhuman primates that are permanently contained in their primary enclosure. We are proposing regulations in accordance with these two classifications because we have determined, based upon observation and our experience in regulating mobile or traveling animal act exhibitors, that animals used in trained animal acts are generally released daily for training or for performances, except during brief layovers between shows, and that untrained animals are used primarily for public exhibition and are not released. We are not aware of any nonhuman primates used in traveling exhibitions that would justify proposing an additional set of requirements.

Trained, performing nonhuman primates receive a great deal of mental and physical stimulation on a daily basis. Their lives are enriched and varied through multiple performances on a daily basis, and training sessions in between. When performing, the primates are in a close, working relationship with their trainer, and with any other animals in the act. Between performances, the nonhuman primates are given training sessions to sharpen their performances and to learn new routines. We believe that these nonhuman primates' psychological needs are met by their interaction and activity. Accordingly, we do not consider it necessary to require additional environmental enrichments in their primary enclosures. We are proposing in § 3.80(c)(4)(i) that mobile or traveling animal act exhibitors provide the minimum space required of research facilities. We believe this space is sufficient to promote the psychological well-being of the nonhuman primates when they are contained in primary enclosures.

Nonhuman primates used in mobile or traveling animal act exhibits that are not trained and are used for static or stationary exhibits do not receive daily interaction with their caretakers, unlike those maintained in research facilities. Often they are solitary exhibits, such as gorillas held for public viewing, and do not interact with other nonhuman primates. Unlike the nonhuman primates held by dealers, the animals are maintained under these circumstances for long periods, without being released, and therefore require more environmental stimuli and opportunities for physical activity to promote their psychological well-being than nonhuman primates maintained by research facilities, dealers, and exhibitors. We are therefore proposing to require multiple environmental enrichments that allow the different species of nonhuman primates to engage in species-typical behavior. The enrichments required would be similar in kind to those that dealers and exhibitors are required to provide, and they too must be appropriate for the species and age of the animal. We are proposing that the minimum space that must be provided to these nonhuman primates be at least three times the floor area and twice the height (up to a maximum height of 84 inches) that research facilities are required to provide. We believe that enclosures providing this minimum space would be appropriate for housing up to three nonhuman primates under these circumstances, since their social interaction will provide greater opportunity for physical stimulation. The minimum space provided would be required to be increased in accordance

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with paragraph (d) of proposed § 3.80 for each additional 1–3 nonhuman primates also housed in the primary enclosure. We believe that the increased minimum space is necessary to encourage and allow greater physical activity and would also be consistent with highway travel restrictions. We believe that if these requirements are met, the psychological needs of these nonhuman primates will be satisfied.

Except where otherwise stated, the minimum space requirements provided in proposed § 3.80(c) are mandatory for each individual nonhuman primate housed in a primary enclosure. Accordingly, the minimum space provided must be increased when nonhuman primates are housed in multiples in a primary enclosure so that each has a sufficient volume of space in which to express species-typical behavior since overcrowding is known to result in nonhuman primates becoming agitated and to cause them to express abnormal behavior. We are proposing to require that primary enclosures be increased in size by the floor area required for each nonhuman primates if it were housed individually and that the minimum height provided by twice that required for the largest nonhuman primate in the enclosure, up to a maximum height of 84 inches. We are not proposing to require that the minimum height provided be increased for each additional animal housed in the primary enclosure since the enlarged area coupled with the doubled height should provide sufficient volume for the nonhuman primates' activity. Also, the maximum height ceiling of 84 inches is a practical limitation since enclosures of greater height would not fit in many rooms.

Based upon the cited authorities and our experience, we believe that these proposed minimum space and environmental enrichment requirements are sufficient to promote the psychological well-being of nonhuman primates maintained by regulated persons.

**Variance**

We understood that the proposed minimum space requirements for nonhuman primates might require persons subject to the Animal Welfare regulations to rebuild or remodel their facialities and to expend previously unanticipated and unbudgeted monies for new primary enclosures and fixtures. In some instances major structural modifications might be required in order to satisfy the proposed space requirements. Until the necessary adjustments were made, many registrants and licensees would not be in compliance with the proposed requirements.

In cases where the effective date of the regulations would not coincide with a facility's fiscal years, we are aware that budget planning and funding procedures for the next fiscal year would take some time. Once funds have been appropriated, facilities would require additional time to make the necessary space modifications. To allow facilities sufficient time to conform with the proposed minimum space requirements, we are proposing to include a mechanism for issuing variances to eligible persons. This mechanism would be similar to that already in place for licensees and registrants in Subpart E—"Specifications for the Humane Handling, Care, Treatment and Transportation of Marine Mammals."

A "variance" would be issued, in writing, by the Administrator of APHIS, and would allow an eligible registrant or licensee to continue operating even though not fully in compliance with the minimum space requirements for nonhuman primates. A variance would be limited to the proposed minimum space requirements. It would not allow noncompliance with the proposed environmental enrichment, social grouping, and release requirements; these requirements would have to be complied with upon the effective date of the regulations. The variance would be limited in scope both as to time and to the primary enclosures covered by it, and would specify the portions of the applicant's facilities to which it applied.

Registrants and licensees maintaining or handling nonhuman primates, having nonhuman primates on their premises or under their control or supervision, and not complying with the minimum space requirements proposed in § 3.80, would have to apply for a variance. Facilities that are under construction or that are in the design or preliminary construction stages on the date these regulations become effective, would not be eligible for a variance since they could adapt their construction to comply with them. However, a facility that was so nearly complete that it would require substantial modification at a previously unbudgeted and significant cost to bring it into compliance would be eligible for a variance.

A variance could be granted, at the sole discretion of the Administrator, for up to 2 years. We believe that this would allow sufficient time for a registrant or licensee to raise the necessary funds and to contract for the required work, as well as to purchase whatever fixtures or equipment were necessary for it to comply with the minimum space requirements. One extension of up to 1 year could be granted by the Administator if he or she determined that it was necessary, based upon the facts presented in the application for an extension. The extension would be granted if justified due to unforeseen situations that prevented full compliance during the variance period. As an example, unforeseen circumstances for research facilities could be nonallocation of public funds to make the necessary expenditures.

An application for a variance would be required within 60 days of the effective date of these regulations and would have to be in writing. According to the proposed regulations it must list, in detail, specific reasons why the variance was being requested, and each of the minimum space requirements the facility cannot meet. It must identify the species and number of nonhuman primates that would be affected by the variance, and must state the amount of time necessary for the applicant to come into compliance and the estimated cost of compliance.

We are proposing to require a statement from the attending veterinarian concerning the age and health status of the nonhuman primates affected by the variance, and addressing whether granting the variance would be detrimental to the affected nonhuman primates.

As is presently the case for marine mammals, the Administrator could require the submission of an outside independent expert report, if the Administrator believes it would assist him or her in determining whether the granting of a variance would be detrimental to the health and psychological well-being of the affected nonhuman primates. The applicant would bear the cost of the expert report.

The Administrator would grant an application for a variance if he or she determined it was justified, or would deny it if he or she determined that it was not justified or that granting it would be detrimental to the health and psychological well-being of the nonhuman primates affected. The grant or denial would be in writing. The applicant could request that the Administrator reconsider his or her decision to deny an application, in accordance with the requirements of § 3.80(e)(4). Similarly, a request for an extension would be granted by the Administrator if he or she determined that it was justified, or denied if he or she determined that it was not justified or that granting it would be detrimental to the health and psychological well-being of the nonhuman primates affected. The grant or denial of the extension would also be in writing. The applicant could request that the Administrator reconsider his or her decision to deny an application for an extension, in accordance with the requirements of § 3.80(e)(5). If the extension were granted upon reconsideration, it would be retroactive to the termination date of the initial variance.

Variances would be revocable for bad faith, such as a false representation on the initial application or in the request for extension. They could also be revoked if the purposes for which they were issued were not being carried out, or if they were detrimental to the health and psychological well-being of the nonhuman primates affected.

**Additional requirements for research facilities**

In proposed § 3.81, "Additional requirements for research facilities," we are proposing environmental enrichments that research facilities would be required to provide, in addition to the minimum space requirements contained in proposed § 3.80(c)(1). We are doing so because the Animal Welfare Act, as amended, and the regulations contained in Part 2 of the Animal Welfare regulations (*see* companion docket no. 88–014, published elsewhere in this issue of the **Federal Register** impose specific duties on research facilities holding animals for research, testing, or teaching that are not imposed upon other regulated persons or industries, and that can affect their determination of the specific means employed to promote the psychological well-being of nonhuman primates. For example, § 2.30(h) requires that research facilities provide for the psychological well-being of nonhuman primates in accordance with the regulations and standards and that they maintain a record system indicating that they are complying with the regulations. Also, under the regulations in Part 2, Subpart C—"Institutional Animal Care and Use Committee and Other Requirements for Research Facilities," each facility's Committee must, among other things, review and approve a proposed animal care and use procedure [ACUP] before research, testing, or teaching can commence, inspect the facility for compliance with these regulations in accordance with § 2.35, and report deficiencies. Research facilities must also establish a written policy ensuring that the attending veterinarian is consulted in ACUP planning and development. Accordingly, in addition to prescribing the environmental enrichments that research facilities would be required to provide, proposed § 3.81 includes reference to the role of the Committee and the attending veterinarian in promoting the psychological well-being of nonhuman primates.

After considering all the information available to us, including the report of the expert committee on nonhuman primates, we are proposing the following minimum requirements to promote the psychological well-being of nonhuman primates in accordance with the Act, as amended. These requirements are in addition to the minimum space requirements set forth in proposed § 3.80(c)(1).

As explained above under the heading, "Space and physical environment," many of the psychological needs of nonhuman primates used in research facilities are met through their regular interaction with their human caretakers. However, we believe that environmental enrichments must also be provided by research facilities so that the primates can engage in species-typical behavior and receive sufficient physical and mental stimulation at all times. Proposed § 3.81(a)(1) provides examples of the kinds of enrichments that would be required under our proposal. These include: (1) Perches, swings, mirrors, and other cage complexities; (2) toys or objects to manipulate; and (3) varied methods of feeding. We would require a combination of environmental enrichments and that at least one form of enrichment from each type listed be provided. Proposed § 3.81 would also require that research facilities house nonhuman primates in social groupings in primary enclosures whenever possible, to increase their physical activity and for their psychological well-being.

We are proposing additional requirements applicable to individually housed nonhuman primates. In order to ensure that these primates have sufficient opportunity for physical activity, we would require that they be released for at least four hours of exercise each week into an area that has at least three times the floor area and twice the height of their primary enclosure. Release would not be required if they are maintained in a primary enclosure with other nonhuman primates, or if they are maintained in a primary enclosure that is at least twice as great as that required for the species, because they would have greater opportunities to engage in physical activity on an ongoing basis. Under our proposal, nonhuman primates may be placed with compatible species during the required release period. This social interaction would promote their psychological well-being and is known to increase their physical activity.

Proposed § 3.81(a)(4) would also require research facilities to provide for the special psychological needs of individually housed nonhuman primates that are infants or juveniles, that are used in research that does not provide for much activity, and those showing signs of psychological distress. We would require that they consult with the attending veterinarian who would instruct the facility as to the additional environmental enrichments that must be provided to provide for the primates' psychological well-being. These three categories of nonhuman primates are specifically identified in the proposed regulations because we concur with the expert committee on nonhuman primates that they require additional consideration of their needs to promote their psychological well-being. Infants and juveniles are in the formative period of their developmental growth and require physical and mental stimulation for normal development. They also require social interaction with other nonhuman primates so that they can function in accordance with the typical social behavior for their species. Similarly, those required to be inactive lack the physical activity and stimulation considered important for their psychological well-being, and their needs must be provided for in different ways. The special needs of those showing signs of psychological distress must also be individually addressed to prevent the development of psychological disorders. Because the needs and circumstances of individually housed nonhuman primates falling under any of these categories will differ on an individual basis, we believe it is appropriate to require that research facilities consult with their attending veterinarian, who has expertise in the care and treatment of the species being attended, and can prescribe the additional measures deemed necessary to satisfy the primates' psychological needs. We would require the attending veterinarian to keep records of these additional instructions, and they would be subject to APHIS inspection under proposed § 3.81(c).

We are proposing to add a prohibition against confining nonhuman primates in chairs, unless required by an animal care and use procedure and approved by the Committee in accordance with Part 2 of the Animal Welfare regulations, and unless the animal is



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released daily for exercise for at least one continuous hour each day during the period of confinement unless continuous restraint in a chair is required by an animal care and use procedure and approved by the Committee. If continuous restraint is approved we are proposing to require that the nonhuman primate be released for exercise for at least one hour before and one hour after the period of restraint. We are proposing to include this prohibition because of the importance of physical activity in promoting the psychological well-being of nonhuman primates.

The proposed regulations would also require that documentation of the release of nonhuman primates and of additional environmental enrichments ordered under paragraph (a)(4) be kept by the attending veterinarian, subject to inspection by APHIS inspectors, and in the case of federal research facilities, to review by officials of any federal funding agency. These records would also be subject to inspection by the Committee in accordance with the regulations in Part 2. (See companion docket no. 88-014, published elsewhere in this issue of the Federal Register.)

We recognize that certain situations will require an immediate response from facility personnel when it is necessary to provide less than the minimum standards to a nonhuman primate, due to the condition of the animal, in order to provide for its welfare. We are proposing to include a provision in proposed § 3.81 that would authorize attending veterinarians to exempt or restrict a particular nonhuman primate from its required exercise and social release period if he or she determines that it is necessary for the nonhuman primate's health, condition, or psychological well-being due to the physical or psychological condition of the animal. The exemption would be for a period of up to 30 days and must be recorded by the attending veterinarian and subject to APHIS inspection and in the case of federal research facilities, to review by officials of any federal funding agency. We would require that the research facility be responsible for having the attending veterinarian review the grant of exemption at least every 30 days to determine if it is still warranted under the circumstances. Exemptions would be required to be included in the research facility's annual report and in the Committee's inspection report under § 2.35(b)(2)(i)(C). (See companion docket no. 88-014, published elsewhere in this issue of the Federal Register.) We believe that this exemption procedure would fill the need to have short-term authorization for deviation from these proposed standards due to unusual or unanticipated circumstances.

*Feeding*

We are proposing to revise the provisions of current § 3.79 "Feeding," to include means of enhancing the psychological well-being of nonhuman primates by varying the types of food and the methods of feeding, such as by using task-oriented feeding or allowing the animals to forage for food as in nature. We believe that requiring variation in the nonhuman primates' feeding on a daily basis is a necessary means of providing necessary mental and physical stimulation.

Proposed § 3.82 would require multiple feeding sites if members of dominant nonhuman primate or other species are fed together with other nonhuman primates and would require observation of the feeding practices of the animals to determine that each receives a sufficient amount of food. We believe that this will also enhance the psychological well-being of nonhuman primates by ensuring that each has access to food and will not be prevented from obtaining food due to the aggressive behavior of others.

We are proposing minor changes to current § 3.79 to provide that the amount of food, type of food, and frequency of feeding must be appropriate for the species, size, age, and condition of the nonhuman primate, and must be in accordance with generally accepted professional and husbandry practices and nutritional standards. In accordance with those practices and standards, consideration would also be given to the conditions under which the animal is kept, such as whether it is maintained in a primary enclosure allowing it frequent vigorous activity or if it is maintained in a primary enclosure that is more limiting, and whether it is maintained outdoors in a cold environment or in a warm environment, since these variables may affect the amount of food that is appropriate for the animal. Also, in accordance with Part 2 of the Animal Welfare regulations, any deviation from these standards due to the necessities of research must be justified by an animal care and use procedure approved by the facility's Committee. (See companion docket no. 88-014, published elsewhere in this issue of the Federal Register.)

Proposed § 3.82 would also require that nonhuman primates be fed at least once each day unless otherwise required to provide adequate veterinary care to the animals.

We would continue to require sanitization of food containers at least once every two weeks and would also require that food containers be sanitized anytime they are used to provide food to a different nonhuman primate or social grouping of nonhuman primates. Approved methods for sanitization would be those methods provided in proposed § 3.84(b) for sanitization of primary enclosures.

*Watering*

We are proposing minor changes to current § 3.80 to require that sufficient potable water be provided to the nonhuman primates. We are retaining the requirement that if water is not available to the nonhuman primates at all times, it must be offered to them at least twice a day and we are proposing to add a requirement that the water be offered for at least one hour each time it is offered. The attending veterinarian could vary these requirements if he or she determines it is necessary to provide adequate veterinary care to the nonhuman primates. The proposed regulation would continue to require sanitization of water containers at least once every two weeks and would also require sanitization when used to provide water to a different nonhuman primate or social grouping of nonhuman primates. Approved methods of sanitization would be those methods provided in proposed § 3.84(b)(3) for sanitization of primary enclosures.

*Cleaning, sanitization, housekeeping, and pest control*

In proposed § 3.84 we are proposing requirements similar to those in current § 3.81 concerning cleaning, sanitization, housekeeping, and pest control, in order to provide for the welfare and well-being of nonhuman primates. The proposed revisions to current § 3.81 include requiring removal of excreta and food waste from primary enclosures and from pans underneath primary enclosures with grill-type floors at least daily and as often as necessary, rather than merely "as often as necessary" as in the current regulations, and requiring removal of the animals from a primary enclosure when a cleaning method using water is performed so that they will not be involuntarily wetted or injured. We are proposing to require that fixtures inside of primary enclosures, such as bars and shelves, must be kept clean and be replaced when worn. In addition to requiring sanitization of planted areas inside of primary enclosures and gravel, sand, and dirt surfaces by removing contaminated material, the proposed regulations would require that they be raked and spot cleaned daily. As explained above under the heading "Facilities, general" if the nonhuman primates engage in scent marking, the primary enclosures must be spot cleaned daily and sanitized at regular intervals established in accordance with generally accepted professional and husbandry practices, so as not to cause those animals psychological distress.

We believe that these additional requirements will enhance the physical environment in which nonhuman primates are maintained through cleanliness and that they are necessary for their general welfare.

We are proposing nonsubstantive changes to current subsections (a)–(d) for purposes of clarity. We believe that these clarifications will make the regulations easier to understand and comply with.

*Employees*

Current § 3.82 requires that there be a sufficient number of employees to maintain the prescribed level of husbandry practices required by Subpart D and the rendering of husbandry practices be under the supervision of an animal caretaker with a background in animal husbandry or care. We are proposing minor revisions to this section in proposed § 3.85 to make clear that this requirement is imposed upon every person subject to the Animal Welfare regulations, and that the burden of making certain that the supervisor is appropriately qualified is on the employer regulated under the Act. We are not proposing to prescribe a specific number of employees for each facility, because the number of employees needed will vary according to the size and configuration of the facility, and according to the number and type of animals housed there. We would require that a facility have enough employees to carry out proper feeding, cleaning, observation, and other generally accepted professional and husbandary practices.

*Social grouping and separation*

We are proposing to revise current § 3.83 concerning social grouping of nonhuman primates in primary enclosures in order to promote their psychological well-being. The current regulations provide that when nonhuman primates are housed together they must be maintained in compatible groups and must not be housed in the same enclosure with animal species other than nonhuman primates. We are proposing to allow nonhuman primates to be housed with other nonhuman primate species and with other animal species as long as they are compatible, do not compete with the other species for food and shelter, and will not be hazardous in any way to the health and well-being of each other.

We are proposing to add the following regulations requiring separation of nonhuman primates in the following circumstances: (1) Nonhuman primates exhibiting vicious or overly aggressive behavior must be housed separately and (2) nonhuman primates under quarantine or treatment for a communicable disease must be housed separately. We believe the requirements to house nonhuman primates separately under these limited circumstances are necessary to allow nonhuman primates to peacefully coexist in primary enclosures, as is required for their psychologial well-being, and to protect their physical health and welfare.

The proposed regulations would include provisions for keeping families together and for keeping compatible groups constant. This is because studies of nonhuman primates have shown that they are socialized in a family-oriented manner in nature and that varying a group's composition may lead to distress or aggressive behavior towards new members of the group. Accordingly, we believe these regulations are necessary to promote the psychological well-being of nonhuman primates.

**Transportation standards**

In preparing our proposal to amend the transportation standards we consulted the "Interagency Primate Steering Committee Guidelines" developed by the United States National Institutes of Health-sponsored Interagency Primate Steering Committee. The Interagency Primate Steering Committee is composed of an inter-agency group of scientists concerned with the care and handling of nonhuman primates. The introduction to the Guidelines states the following:

> Shipment of nonhuman primates by a carrier from one location to another is stressful, even under the best of conditions. The purpose of these guidelines is to minimize the effects of transportation stress on these animals and to have them arrive at their destination in as good a physical condition as possible, with a minimal degree of illness or mortality. Secondly, the guidelines are intended to serve as a reference for adequate care of nonhuman primates for all persons involved with the shipping of these animals.

We also considered the transportation standards proposed by the U.S. Department of the Interior, Fish and Wildlife Service (USFWS) for nonhuman primates imported from abroad.

Based upon our experience enforcing the current regulations, and our consideration of the information available to us, we are proposing the following revisions to the transportation standards in order to safeguard the health, safety, and psychological well-being of nonhuman primates transported in commerce.

As part of this revision, we are proposing to include requirements that were previously part of the Animal Welfare regulations but were inadvertently omitted from the 1977 revision of the regulations. When the transportation standards were rewritten in 1977 to incorporate the 1976 amendments to the Act concerning the commercial transportation of animals, the existing standards for surface transportation were not included in the regulations. Since that time, the standards have pertained to the commercial transportation by common carrier and only a few subsections have pertained to surface transportation by private vehicle. This omission has caused numerous difficulties in the enforcement of standards regarding surface transportation of nonhuman primates and in the prosecution of persons who have improperly handled and transported nonhuman primates by private surface vehicle. The reinstated regulations particularly affect provisions concerning ambient temperature specifications during surface transportation that should result in improved traveling conditions for nonhuman primates. They also impose similar requirements on all persons subject to the Animal Welfare regulations engaged in the transportation of nonhuman primates, so that the animals will be afforded necessary protections whenever they are transported in commerce.

*Consignments to Carriers and Intermediate Handlers for Transportation*

The current obligations imposed upon carriers and intermediate handlers (defined in Part 1 of the regulations and published elsewhere in this issue of the Federal Register) would be expanded to ensure the well-being of nonhuman primates during transport in commerce. Certain prerequisites must be satisfied before carriers and intermediate handlers may accept nonhuman primates for transport in commerce. Additionally, the carriers and intermediate handlers have certain duties to fulfill after the shipment has reached its destination. Various obligations are presently contained in current §§ 3.85 and 3.86. We are proposing to consolidate them in one section, proposed § 3.87, and to add some additional ones that are necessary for the nonhuman primates' welfare.

The reader should note that our proposed regulations do not specifically

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refer to operators of auction sales, unlike the current regulations. The definition of the term "dealer" was amended in 1976 to include any person who "negotiates the purchase or sale" of animals for research, teaching, exhibition, or use as a pet. Operators of auction sales are therefore dealers. However, we did not remove the reference to them in the 1977 amendments to the regulations. We are proposing to do so now, to clarify the regulations. Accordingly, all references to dealers in the regulations would include operators of auction sales.

In sum, the requirements imposed on carriers and intermediate handlers in current § 3.85 are as follows: (1) Current § 3.85(a) requires that carriers and intermediate handlers not accept a live nonhuman primate for shipment from any person subject to the regulations more than 4 hours before the scheduled departure time of the primary conveyance in which the animal will be shipped, except that this time may be extended by agreement to 6 hours if specific prior scheduling of the shipment has been made. (2) Current § 3.85(b) requires that carriers or intermediate handlers accept a nonhuman primate for shipment only if it is in a primary enclosure meeting the requirements of current § 3.85 "Primary enclosures used to transport live nonhuman primates," except that they may accept a nonhuman primate if it is consigned by a person subject to the regulations who provides a certificate stating that the primary enclosure conforms with § 3.85, unless the enclosure is obviously defective. The information required to be in the certificate is stated in the regulation. Current § 3.85(c) states that carriers and intermediate handlers whose facilities do not meet the minimum temperature requirements provided in the regulations may accept a nonhuman primate for transport if the consignor furnishes a certificate executed by a veterinarian accredited by USDA within 10 days before delivery of the animal for transport stating that the nonhuman primate is acclimated to air temperatures lower than those prescribed in current §§ 3.90 and 3.91. The information required to be in the certificate is likewise stated in the regulation. Current § 3.85(d) requires carriers and intermediate handlers to notify the consignee of the animal's arrival at least once every 6 hours following arrival of the nonhuman primate at the animal holding area of a terminal facility and to record the time, date, and method of attempted and final notification on the shipping document.

Current § 3.86 requires the following: (1) § 3.86(a) requires that nonhuman primates be offered potable water within the four hours preceding transport in commerce. Dealers, exhibitors, and research facilities are required to provide water to nonhuman primates transported in their own primary conveyance at least every 12 hours after transportation is begun and carriers and intermediate handlers are required to do so at least every 12 hours after they accept the animal for transport.

(2) Current § 3.86(b) provides requirements concerning the frequency of feeding nonhuman primates and similarly distinguishes between those persons transporting nonhuman primates in their own primary conveyances, and carriers and intermediate handlers.

(3) Current § 3.86(c) requires any dealer, research facility, exhibitor, or operator of an auction sale consigning nonhuman primates for transport to affix written instructions concerning the animals' food and water requirements on the outside of the primary enclosure used for transporting the nonhuman primate.

(4) Current § 3.88(d) states that no carrier or intermediate handler shall accept a nonhuman primate for transport in commerce unless written instructions concerning food and water requirements are affixed to the outside of its primary enclosure.

We are proposing to place the various prerequisites that must be satisfied before carriers and intermediate handlers can accept a nonhuman primate for transport in commerce in proposed § 3.87, and to add some additional ones that are necessary for the nonhuman primates' well-being. We are also proposing nonsubstantive changes to current § 3.85(a) in proposed § 3.87(a).

Proposed § 3.87(c) would contain the requirements of current § 3.88(d) by requiring that written instructions concerning the food and water requirements for each nonhuman primate in the shipment be securely attached to the outside of the primary enclosure before a carrier or intermediate handler may accept it for transport.

As stated above, current § 3.86(a) provides that nonhuman primates must be provided water at least every 12 hours after acceptance by carriers and intermediate handlers for transportation. Current § 3.88(b) provides that nonhuman primates more than 1 year of age be offered food at least once every 24 hours after acceptance by carriers and intermediate handlers for transportation and that nonhuman primates less than 1 year of age be offered food at least once every 12 hours after acceptance for transportation. It is conceivable under these regulations that a nonhuman primate would have been fed up to 24 hours before being consigned for transportation in commerce and would then not be offered food for another 24-hour period. To avoid this occurrence, and to be sure that nonhuman primates are given water as often as required for their well-being, we are proposing to add a certification requirement in proposed § 3.87(d) that would state that each nonhuman primate in a primary enclosure delivered for transport was last offered food during the 12 hours before delivery to a carrier or intermediate handler and was last offered water during the 4 hours before delivery to a carrier or intermediate handler. It must also state the date and time each nonhuman primate in the primary enclosure was last offered food and water. Carriers and intermediate handlers would not be allowed to accept nonhuman primates for transport unless this certification accompanies the animal, is signed and dated by the consignor, and the date and time it was executed is stated. This certification, as well as the others required in proposed § 3.87, would also have to specify the species of nonhuman primate contained in the primary enclosure.

In addition, as provided under proposed § 3.90, "Food and water requirements," the time periods applicable to carriers and intermediate handlers for feeding and watering the nonhuman primates would begin with the time the animal was last offered food and water, in accordance with the certification. The proposed requirement that the consignor certify that the nonhuman primates were provided water within the 4 hours before delivery to the carrier or intermediate handler, and were offered food within 12 hours before delivery to the carrier or intermediate handler accepting the animals, would avoid situations where the carrier or intermediate handler would have to provide food and water immediately upon acceptance. We are adding these requirements so that carriers and intermediate handlers will be better able to provide any needed care and so that the nonhuman primates being transported will not go more than 12 hours without water or 24 hours without being offered food, if they are 1 year of age or more, and will not go more than 12 hours without being offered food, if they are less than 1 year of age. We believe these timeframes are appropriate for the health and well-being of nonhuman primates.



We would clarify the certifications required from the consignor regarding conformance of the primary enclosure with the regulations in Subpart D and acclimation of a nonhuman primate to temperatures lower than those prescribed in the regulations. We would require that the certification of acclimation be signed by a veterinarian, that it specify a minimum temperature that the nonhuman primate can safely be exposed to, and that it specify each of the animals contained in the primary enclosure to which the certification is attached, rather than referring to the shipment of animals as a whole. The contents of the certifications are provided in subsections (e) and (f) of proposed § 3.87, respectively. We would clarify current § 3.85(c) by requiring that the temperatures to which a nonhuman primate is exposed must not be lower than the minimum temperature specified by the veterinarian and must be reasonably within the generally and professionally accepted range for the nonhuman primate as determined by the veterinarian, considering its age, condition, and species of the animal, even if it is acclimated to temperatures lower than those prescribed in the regulations.

We are proposing to add limitations on how a nonhuman primate can be held at a terminal facility while waiting to be picked up by the consignee. We are proposing to adopt the time limitations provided in Part 2, § 2.80, "C.O.D. shipments". (*See* companion docket no. 88-014, published elsewhere in this issue of the **Federal Register**.) Accordingly, the consignor must attempt to notify the consignee upon arrival, and at least once every 6 hours for 24 hours after arrival, and then must return the animal to the consignor or to whomever the consignor designates if the consignee cannot be notified. If the consignee is notified and does not take physical delivery of the nonhuman primate within 48 hours of its arrival, the carrier or intermediate handler must likewise return the animal to the consignor or to whomever the consignor designates.

We are proposing to revise current § 3.85(d) to specifically require that carriers and intermediate handlers continue to maintain nonhuman primates in accordance with generally accepted professional and husbandry practices as long as the animals are in their custody and control and until the animals are delivered to the consignee or returned to the consignor or to whomever the consignor designates. We would require the carrier or intermediate handler to obligate the consignor to reimburse it for the expenses incurred by the carrier or intermediate handler in returning the animal. These requirements appear in proposed § 3.87(g).

All of these certifications and notification requirements would help minimize and alleviate many of the stresses of travel for nonhuman primates and are necessary for their general welfare and psychological well-being during travel.

*Primary Enclosures Used to Transport Nonhuman Primates*

We are proposing to reorganize the provisions of current § 3.86 and to make nonsubstantive changes to this section for clarity. We are proposing the following substantive changes as well.

We are proposing to completely revise the current regulations concerning the number of nonhuman primates that can be transported together in one primary enclosure. The current regulations allow up to ten nonhuman primates to be transported in one primary enclosure. The guidelines issued by the Interagency Primates Steering Committee for the transportation of nonhuman primates state that, as a general principle, nonhuman primates should be transported in individual compartments to avoid transmission of disease except when necessary to minimize social stress. Based upon our experience in regulating the transportation of nonhuman primates and upon consideration of the information available, we have determined that placing this number of nonhuman primates together in a situation that is unusual to and therefore stressful to the animals is dangerous for the animals and to the humans handling them. We are proposing that each nonhuman primate be transported individually in separate primary enclosures that may be connecting, except that the following social groupings may be maintained during transportation: (1) A mother with her nursing infant, (2) an established male-female couple (unless the female is in estrus) or a family group, and (3) a pair of juveniles that have not reached puberty.

The requirements for ventilation openings for primary enclosures that are not permanently affixed to the primary conveyance would be competely revised to provide substantially greater ventilation openings for the nonhuman primates' comfort during travel. The current regulations require that if ventilation openings on two opposite walls of the primary enclosure are present, they comprise at least 16 percent of the surface area of each wall, and if there are ventilation openings on four walls, they comprise at least 8 percent of the surface area of each wall. We are proposing that these requirements be increased to 30 percent and 20 percent, respectively, and that the ventilation openings be located above the midline of the enclosure, since this is safer for the animals and for the humans handling the primary enclosures. The ventilation opening requirements for permanently affixed enclosures that have only one front opening would remain at 90 percent of the surface of the front opening. The proposed revision to the ventilation opening requirements would result in healthier and more comfortable transportation conditions for nonhuman primates, and would therefore promote their psychological well-being.

We are proposing an additional construction requirement that would allow the floor of a primary enclosure to be wire mesh or slatted but it must be designed and constructed so that the nonhuman primate contained inside cannot put any part of its body between the slats or through the mesh in order to prevent injury to the nonhuman primates. Also we would require that primary enclosures be constructed of materials that are nontoxic to the animal and will not otherwise harm their health or well-being.

In proposed § 3.88(f), we are proposing additional marking requirements for the outside of primary enclosures to better ensure that they are handled carefully and in a manner that avoids causing the nonhuman primates additional stress.

We are also proposing that the documents that must accompany the nonhuman primates be held by the operator of the primary conveyance if it is a surface conveyance, or attached to the outside of the primary enclosure. If they are attached to the primary enclosure, they must be placed in a secure but accessible manner so that they can be removed and securely returned, and so that they are easily noticed. We would require that instructions for food and water, and for administration of drugs, medication, and other special care be attached to the primary enclosure. These requirements would help ensure that the animals are treated and handled in accordance with their individual requirements.

*Primary Conveyances*

Prescribed ambient temperature limits in primary conveyances used to transport nonhuman primates were part of the standards before the 1977

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revisions to the regulations, but were inadvertently omitted from those revisions. We are proposing to reinstate them for surface transportation in these proposed regulations in order to prevent nonhuman primates from being transported under intolerable temperature conditions that would be harmful to their health and physical well-being. The current regulations prescribe upper and lower ambient temperature limits for nonhuman primates held in terminal facilities and prescribe lower temperature limits for nonhuman primates placed on transporting devices. It is equally important for the health and well-being of nonhuman primates that these limits be followed while the animals are in transport as well as when they are on either end of their journey. Under our proposed regulations, all persons subject to the Animal Welfare regulations would be required to maintain the temperature inside a primary conveyance between 45 °F (7.2 °C) and 85 °F (30 °C) during surface transportation at all times a nonhuman primate is present. Because it would be impracticable to monitor the ambient air temperature inside the cargo area during air transportation, we would require instead that it be maintained at a level that ensures the health and well-being of the species housed, in accordance with generally accepted professional and husbandry practices, at all times a nonhuman primate is present. We are also proposing to add requirements that a primary enclosure must be positioned in a primary conveyance in a manner that provides protection from the elements, such as rain, wind, snow, and sun, and that is far enough away from animals that are generally considered to be natural predators or enemies of nonhuman primates so that the nonhuman primates cannot reach, see, or smell them. These added precautions would avoid exposing nonhuman primates to known causes of distress and would make traveling less stressful for the animals.

*Food and Water Requirements*

We are proposing to make nonsubstantive changes to the current regulations to make it clear that carriers and intermediate handlers must provide food and water to nonhuman primates being transported within a prescribed number of hours from the time the animals were last offered food and water. We would require consignors subject to the Animal Welfare regulations to certify the date and time the nonhuman primates were last offered food and water. Carriers and intermediate handlers would be required to determine the appropriate time for providing food and water based upon the information in the certification. Everyone else transporting a nonhuman primate must provide food and water within a prescribed number of hours after they last offered the animal food and water. We are proposing this requirement so that nonhuman primates will not go longer than 24 hours without food or longer than 12 hours without water. The prescribed number of hours differs based upon the age of the nonhuman primate and is the same as in the current regulations. We would also require that nonhuman primates must be offered food within 12 hours before being transported in commerce so that carriers and intermediate handlers would not have to provide food and water immediately upon acceptance. Proper food must be provided, in accordance with § 3.82, however we realize that the necessities of travel may require less variation in the types of food offered and in the method of feeding. Accordingly, footnote 6 of proposed § 3.90 has been added to take the exigencies of travel into account. Requirements for design, construction, and placement of food and water containers would be included for the nonhuman primates' safety, comfort, and well-being. The requirement that carriers and intermediate handlers must not accept nonhuman primates for transport unless written instructions concerning food and water requirements are affixed to the outside of the primary enclosure has been incorporated in proposed § 3.87, as previously discussed. Proposed § 3.90 would require consignors subject to the Animal Welfare regulations to attach securely to the primary enclosure all written instructions concerning the nonhuman primates' food and water requirements during transportation.

*Care in Transit*

We would clarify current § 3.80 to expressly require compliance with these regulations by any person subject to the Animal Welfare regulations who is transporting a nonhuman primate in commerce, regardless of whether the nonhuman primate is consigned for transport.

We are proposing nonsubstantive changes to this section for purposes of clarity along with the following substantive changes.

We are proposing to require that during surface transportation, regulated persons subject to the regulations must obtain any veterinary care needed for the nonhuman primate at the closest available veterinary facility. During air transportation, carriers or intermediate handlers must arrange for any veterinary care that is needed for the nonhuman primate as soon as possible.

We are also proposing to add an exemption to the current regulations that prohibit the transportation in commerce of a nonhuman primate in obvious physical distress that would allow transport for the purpose of providing veterinary care for the condition.

When nonhuman primates are initially removed from their primary enclosures after travel they may be unusually active or perhaps agitated. In order to avoid any resultant injury to the animals we are proposing a requirement that would allow only authorized and experienced persons to remove nonhuman primates from their primary enclosures during transport in order to protect both the nonhuman primates, which could injure themselves in frenzied movement, and the people handling them.

We are proposing to add a subsection that would specify that these transportation standards remain in effect and must continue to be complied with until the animal reaches its final destination, or until the consignee takes physical delivery of the animal if the animal has been consigned for transportation. We believe that this provision is necessary to prevent any gap in care for the nonhuman primate and in responsibility for its care.

*Terminal Facilities*

Current § 3.90 imposes duties on carriers and intermediate handlers holding nonhuman primates in animal holding areas of terminals to keep the animals away from inanimate cargo, to clean and sanitize the area, to have an effective pest control program, to provide ventilation, and to maintain the ambient temperature within certain prescribed limits. Under the current regulations, there is no similar obligation imposed upon other persons who transport these animals. As a result, animals could be held in animal holding areas under hazardous conditions.

We are proposing that the same duties currently imposed upon carriers and intermediate handlers be imposed upon any person subject to the Animal Welfare regulations transporting nonhuman primates and holding them in animal holding areas, since the animals require the same minimum level of care regardless of which regulated persons is transporting the animals.

We would add restrictions to prevent regulated persons from holding nonhuman primates within physical and visual reach of other animals and other species of nonhuman primates, since this is upsetting to them. We are also proposing that the length of time regulated persons be allowed to hold nonhuman primates in terminal facilities upon arrival be the same as that allowed for consigned animals under proposed § 3.87(g). We believe that this limitation on holding periods in terminal facilities is necessary to prevent regulated persons from leaving nonhuman primates in terminal facilities for any reason, such as to await additional shipments, and that it will help reduce the stress of travel for nonhuman primates.

Proposed § 3.92 would continue the temperature and ventilation requirements contained in current § 3.90 and would also contain the provisions requiring shelter from the elements for nonhuman primates that are currently in § 3.91 "Handling," because they are applicable to regulated persons holding nonhuman primates in animal holding areas of terminal facilities. The proposed regulations for handling would be limited to the safeguards that must be provided during physical handling and movement of nonhuman primates, as its heading suggests.

*Handling*

Current § 3.91 imposes duties on carriers and intermediate handlers for proper handling and movement of nonhuman primates. For the reasons explained above under "Terminal facilities," we are proposing that these same duties be imposed upon any person subject to the Animal Welfare regulations handling a nonhuman primate at any time during the course of transportation in commerce, so that the animals' health, safety, and well-being will be protected at all times during transport. The proposed regulations would continue to include movement from an animal holding area of a terminal facility to a primary conveyance and from a primary conveyance to a terminal facility. It would also continue to provide requirements for movement of a nonhuman primate on a transporting device. We are proposing to broaden this section to include movement within and between primary conveyances, and movement within and between terminal facilities, because nonhuman primates may travel on several different primary conveyances and be moved around within terminal complexes in the course of their travel.

We are also proposing to require that transporting devices on which nonhuman primates are placed to move them must be covered to protect the nonhuman primates when the outdoor temperature falls below 45 ° (7.2 °C). The current regulations require this protection when the outdoor temperature falls below 50 °(10 °C). We believe that providing this protection becomes necessary at the lower temperature proposed, and that the proposed requirement will protect the health and well-being of nonhuman primates.

Air carriers commonly use conveyor belts and inclined belts for loading and unloading animals into airplane cargo space. These methods of loading can cause psychological distress to the animals. We are proposing to allow nonhuman primates to be placed on inclined conveyor belts used for loading and unloading aircraft only, if an attendant is present at each end of the conveyor belt in case an animal has an extreme adverse reaction. We are proposing to prohibit placing nonhuman primates on unattended conveyor belts or on elevated conveyor belts, such as baggage claim conveyor belts, since these forms of tilted movement cause nonhuman primates extreme distress and alternative means of moving the animals can generally be provided without great inconvenience.

**Statutory Authority for This Proposed Rule**

This proposed rule is issued pursuant to the Animal Welfare Act (Act), as amended, 7 U.S.C. 2131–2157. Congress, in enacting the Food Security Act of 1985, Pub. L. No. 99–198, added significantly to the Secretary's existing responsibilities to promulgate standards for the care and treatment of animals covered under the Act. The declared policy of the Act is to ensure that animals intended for use in research facilities, as pets, or for exhibition purposes, are provided humane care and treatment; to assure the humane treatment of animals during transportation; and to prevent the sale of stolen animals.

The Act requires that the Secretary of Agriculture promulgate standards to govern the humane handling, care, treatment and transportation of animals by dealers, research facilities, and exhibitors. These standards are to include minimum requirements for handling, housing, feeding, watering, sanitation, ventilation, shelter from extremes of weather and temperatures, adequate veterinary care, and separation of species. The 1985 amendments to the Act specifically require the Secretary to promulgate standards for exercise of dogs and for a physical environment adequate to promote the psychological well-being of primates.

The proposed rule includes changes and additions to the standards required by the 1985 amendments as well as modifications based on the Department's experience in administering and enforcing the Act. The Act authorizes these changes specifically in section 13 (7 U.S.C. 2143) and in the grant of rulemaking authority contained in section 21 (7 U.S.C. 2151).

**Executive Order 12291**

This proposed action has been reviewed pursuant to the requirements of Executive Order 12291 and it has been determined that it will have an impact in excess of $100 million annually on the regulated industries and the general economy. The Administrator has therefore determined that it would be a "major rule." Some of the major costs to the regulated industries in complying with the proposed regulations would result from: (1) Renovating, equipping, replacing, or constructing animal housing facilities; (2) the exercise for dog requirements; and (3) the psychological well-being of nonhuman primates.

The economic impacts of this rule are discussed in more detail in a Regulatory Impact Analysis, which is available for public inspection in Room 1141 of the South Building, U.S. Department of Agriculture between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays (address above). Main findings of this analysis are summarized below.

SUMMARY OF REGULATORY IMPACT ANALYSIS

| Costs | Benefits |
|---|---|
| Direct | Direct |
| Regulated industry | Increased public satisfaction from improved animal welfare.* |
| Capital expenses: | |
| (all parts) $876 million | Improved research information.* |
| (parts 1–2) $142 million | Productivity gains for regulated industries.* |
| Annual costs: | |
| (all parts) $207 million | |
| (parts 1–2) $126 million | |
| APHIS program costs impact on federal sites* $2 million. | |
| Indirect | Indirect |
| Opportunity costs for users of biomedical research (goods and service), pet industry, and animal exhibits*. | Market effects for suppliers of animal husbandry products.* |

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SUMMARY OF REGULATORY IMPACT ANALYSIS—Continued

| Costs | Benefits |
|---|---|
| Increased federal financial support for biomedical community.* Non-market effects* | Non-market effects.* |

*Not quantified.

Compliance with more stringent federal regulations on the humane care and treatment of animals used for research, testing, teaching, exhibition, and business ventures would result in major direct and indirect effects imposed on the regulated industry and the general economy. An examination of the estimated cost impacts indicates that the amended regulations constitute a "major rule" based on annual effects in excess of $100 million on the economy and large cost increases on regulated industries for animal uses and maintenance, in particular to the biomedical research community. However, this study could not properly assess the relative significance of these cost increases on the regulated industry or the presence of adverse effects on competition, innovation, and the ability of domestic enterprises to compete with foreign enterprises in international markets.

Regulated persons or establishments will be required to spend approximately $876 million in capital expenditures over the next two or three years. Of this amount approximately 16 percent is attributable to Parts 1 and 2. If Parts 1 and 2 were enforced separately, regulated research facilities will be required to spend approximately $142 million to renovate, equip, replace, or construct aseptic surgical facilities, and provide for adequate pre- and post-surgical care. Capital expenditures attributable to Part 3 include costs for renovation, equipment replacement, and new construction of animal housing facility space. Capital expenditures to improve animal housing facilities would result from the new minimum standards for general environmental conditions, space or primary enclosure size requirements, exercise of dogs, and enrichment of nonhuman primate enclosures.

In addition to capital expenditures, total annual operating expenditures estimated at $207 million will also be required. Approximately 60 percent of this total ($126 million) is accounted for by Parts 1 and 2, primarily the requirements for the establishment and operations of the institutional animal care and use committees, additional responsibilities for attending veterinarians, and record-keeping requirements. Annual expenditures attributable to Part 3 would result from the need for additional personnel (animal handlers) to exercise dogs, and the daily maintenance of animal housing facilities.

An important result of this regulatory analysis is that policy decisions must consider other direct and indirect effects associated with the promulgation and enforcement of federal rules. Increased federal legislation causes important economic benefits and costs which are unevenly distributed among registrants and licensees. Direct benefits accrue to society by knowing that animals may be better cared for and treated humanely. The value of these social benefits are subject to personal preferences and concerns. Improvements in the well-being of regulated animals may also provide gains in productivity to the industry. On the other hand, increased costs of compliance will be passed from the regulated industry to consumers who purchase their goods and services. For example, the field of biomedical research and education depends heavily on the use of animals to conduct tests and experiments. Increased costs for animal uses have broader economic and health implications for all of us. Study results do not suggest that these regulations would cause establishments to abandon the use of animals since current biomedical research outlays are in excess of $12.8 billion per year. Nonetheless, there could be important effects associated with allocating additional funds or expenditures to comply with the amended Animal Welfare regulations.

The Department will collect additional data and refine the analysis with regard to the proposed amendments to Part 3. The results will be available upon publication on the final rulemaking for Part 3. It is not expected that the revised analysis will affect the determination that this rule would have an impact in excess of $100 million annually.

**Regulatory Flexibility Act**

As part of the regulatory impact analysis performed by the Department in amending the Animal Welfare regulations, we have analyzed the potential impact on small entities of the proposed amendments to Part 3, as required by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Based upon this analysis, the Administrator has determined that the proposed amendments to Part 3, if implemented, would have a significant economic impact on a substantial number of small entities.

The economic impacts of this proposed rule on small entities are discussed in greater detail in the Regulatory Flexibility Analysis, which is available for public inspection in Room 1141 of the South Building, U.S. Department of Agriculture between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

The principal findings of the analysis are summarized below.

Study results indicate that APHIS Animal Welfare regulations would place a significant burden on a substantial number of small licensees that breed, deal or exhibit regulated animals. Total capital expenditures required in the next two or three years are estimated to be approximately $93.9 million. These will affect 2,155 small breeders (77 percent of small licensed breeders), 371 small dealers (37 percent of small dealers) and 1,245 small exhibitors (92 percent of small exhibitors). The expected increase in variable operating costs is $6.6 million. Annual operating expenditures are significantly lower than the estimated capital expenditrues, however, these would affect all small licensees. In comparison to reported annual gross income estimates of $6.6 million for all small breeders and $0.8 million for all small dealers, the added expenditures represent significant impacts.

Of the small licensees, breeders will be most affected. Breeders represent about 57 percent of the small licensees and will incur approximately 66 percent of the total capital and variable cost impacts. An important distributional effect of the regulations is that the impact on breeders will be concentrated in the Central region. Eighty-five percent of small breeders, mainly dog breeders, are located in this region.

**Executive Order 12372**

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR 3015, Subpart V.)

**Paperwork Reduction Act**

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the information collection provisions that are included in this proposed rule will be submitted for approval to the Office of Management and Budget (OMB). Your written comments will be considered if you submit them to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. You should submit a duplicate copy of your comments to Helene R. Wright, Chief, Regulatory Analysis and Development Staff, PPD, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.



**List of Subjects in 9 CFR Part 3**

Animal welfare, Humane animal handling, Pets, Transportation.

Accordingly, we propose to amend Part 3 as follows:

## PART 3—STANDARDS

1. The authority citation for Part 3 would be revised to read as follows, and the authority citation following all the sections would be removed.

**Authority:** 7 U.S.C. 2131–2156; 7 CFR 2.17, 2.51, and 371.2(d).

2. The table of contents for Subpart A consisting of §§ 3.1 through 3.19, would be revised to read as follows:

**Subpart A—Specifications for the Humane Handling, Care, Treatment, and Transportation of Dogs and Cats**

**Facilities and Operating Standards**

Sec.
3.1 Housing facilities, general.
3.2 Indoor housing facilities.
3.3 Sheltered housing facilities.
3.4 Outdoor housing facilities.
3.5 Mobile and traveling housing facilities.
3.6 Primary enclosures.

**Animal Health and Husbandry Standards**

3.7 Exercise and socialization for dogs.
3.8 Feeding.
3.9 Watering.
3.10 Cleaning, sanitization, housekeeping, and pest control.
3.11 Employees.
3.12 Social grouping.

**Transportation Standards**

3.13 Consignments to carriers and intermediate handlers.
3.14 Primary enclosures used to transport live dogs and cats.
3.15 Primary conveyance (motor vehicle, rail, air, and marine).
3.16 Food and water requirements.
3.17 Care in transit.
3.18 Terminal facilities.
3.19 Handling.

**Subpart A—Specifications for the Humane Handling, Care, Treatment, and Transportation of Dogs and Cats** [1]

**Facilities and Operating Standards**

**§ 3.1 Housing facilities, general.**

(a) *Structure; construction.* Housing facilities for dogs and cats must be designed and constructed so that they are structurally sound. They must be kept in good repair, and they must protect the animals from injury, contain the animals securely, and restrict other animals and unauthorized humans from entering.

[1] These minimum standards apply only to live dogs and cats, unless stated otherwise.

(b) *Condition and site.* Housing facilities and areas used for storing animal food or bedding must be free of any accumulation of trash, waste material, junk, weeds, and other discarded materials. Animal areas inside of housing facilities must be kept neat and free of clutter, including equipment, furniture, and stored material, but may contain materials actually used and necessary for cleaning the area, such as brooms, mops, mop buckets, trash containers, and fixtures necessary for proper husbandry practices, such as tables, cabinets, and sinks. Housing facilities other than those maintained by research facilities and federal research facilities must be physically separated from any other business. If a housing facility is located on the same premises as another business, it must be physically separated from the other business so that unauthorized humans, and animals the size of dogs, skunks, and raccoons are prevented from entering it.

(c) *Surfaces.*—(1) *General requirements.* The surfaces of housing facilities—including houses, dens, and other furniture-type fixtures and objects within the facility—must be constructed in a manner and made of materials that allow them to be readily cleaned and sanitized, or removed or replaced when worn or soiled. Interior surfaces and any surfaces that come in contact with dogs or cats must:

(i) Be free of rust that prevents the required cleaning and sanitization, or that affects the structural strength of the surface; and

(ii) Be free of jagged edges or sharp points that might injure the animals.

(2) *Maintenance and replacement of surfaces.* All surfaces must be maintained on a regular basis. Surfaces of housing facilities—including houses, dens, and other furniture-type fixtures and objects within the facility—that cannot be readily cleaned and sanitized, must be replaced when worn or soiled.

(3) *Cleaning.* Hard surfaces with which the dogs or cats come in contact must be cleaned daily and sanitized at least once every two weeks, and as often as necessary to prevent any accumulation of excreta and disease hazards. Floors made of dirt, sand, gravel, grass, or other similar material must be raked and spot-cleaned daily, and the contaminated material must be replaced whenever this raking and spot-cleaning is not sufficient to prevent or eliminate odors, diseases, insects, pests, or vermin infestation. All other surfaces of housing facilities must be cleaned daily and sanitized when necessary to satisfy generally accepted husbandry standards and practices. Sanitization may be done using any of the methods provided in § 3.10(b)(3) for primary enclosures.

(d) *Water and electric power.* The housing facility must have reliable electric power adequate for heating, cooling, ventilation, and lighting, and for carrying out other husbandry requirements in accordance with the regulations in this subject. The housing facility must provide adequate mechanically pressurized running potable water for the dogs' and cats' drinking needs, for cleaning, and for carrying out other husbandry requirements.

(e) *Storage.* Supplies of food and bedding must be stored in leakproof containers that protect the supplies from spoilage, contamination, and vermin infestation. The supplies must be stored off the floor and away from the walls, to allow cleaning underneath and around the supplies. Perishable food must be refrigerated, and all food must be stored in a manner that prevents contamination and deterioration of its nutritive value. All open supplies of food and bedding must be kept in leakproof containers with tightly fitting lids to prevent contamination and spoilage. Only food and bedding that is currently being used may be kept in the animal areas. Substances that are toxic to the dogs and cats must not be stored in animal areas or in food storage and preparation areas.

(f) *Drainage and waste disposal.* Housing facility operators must provide daily (or more often as necessary) removal and disposal of animal and food wastes, bedding, debris, garbage, water, other fluids and wastes, and dead animals. Housing facilities must be equipped with disposal facilities and drainage systems that are constructed and operated so that animal waste and water are rapidly eliminated and animals stay dry. Disposal and drainage systems must minimize vermin and pest infestation, insects, odors, and disease hazards. All drains must be properly constructed, installed, and maintained. If closed drainage systems are used, they must be equipped with traps and prevent the backflow of gases and the backup of sewage onto the floor. If the facility uses sump or settlement ponds, or other similar systems for drainage and animal waste disposal, the system must be located far enough away from the animal area of the housing facility to prevent odors, diseases, pests, and vermin infestation. Puddles of water in animal areas must be promptly mopped up or drained so that the animals stay dry. Trash containers in housing facilities and in food storage and food

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preparation areas must be leakproof and must have tightly fitted lids on them at all times. Dead animals, animal parts, and animal waste must not be kept in food storage or food preparation areas, food freezers, food refrigerators, or animal areas.

(g) *Washrooms and sinks.* Washing facilities such as washrooms, basins, sinks, or showers must be provided for animal caretakers and must be readily accessible.

**§ 3.2 Indoor housing facilities.**

(a) *Heating, cooling, and temperature.* Indoor housing facilities for dogs and cats must be sufficiently heated and cooled when necessary to protect the dogs and cats from cold and hot temperatures and to provide for their health, and well-being. When dogs or cats are present, the ambient temperature in the facility must not fall below 50 °F (10 °C) for dogs and cats not acclimated to lower temperatures, for those breeds that cannot tolerate lower temperatures without stress or discomfort (such as short-haired breeds), and for sick, aged, young, or infirm dogs and cats. The ambient temperature must not fall below 45 °F (7.2 °C) at any time, and must not rise above 95 °F (35 °C).

(b) *Ventilation.* Indoor housing facilities for dogs and cats must be sufficiently ventilated at all times when dogs and cats are present to provide for their health, comfort, and well-being, and to minimize odors, drafts, ammonia levels, and moisture condensation. Air, preferably fresh air, must be provided by windows, vents, fans, or air-conditioning. Auxiliary ventilation or air-conditioning must be provided when the ambient temperature is 85 °F (29.5 °C) or higher. The relative humidity must be between 30 and 70 percent.

(c) *Lighting.* Indoor housing facilities for dogs and cats must be lighted well enough to permit routine inspection and cleaning of the facility, and observation of the dogs and cats. Animal areas must be lighted for at least 8 hours a day, by either natural or artificial light, corresponding to the natural period of daylight. If only artificial light, such as fluorescent light, is provided, it must provide full-spectrum illumination. Primary enclosures must be placed so as to protect the dogs and cats from excessive light.

(d) *Interior surfaces.* The floors and walls of indoor housing facilities, and any other surfaces in contact with the animals, must be impervious to moisture. The ceilings of indoor housing facilities must be impervious to moisture, or be replaceable. An example of this would be a suspended ceiling with replaceable panels.

**§ 3.3 Sheltered housing facilities.**

(a) *Heating, cooling, and temperature.* The sheltered part of sheltered housing facilities for dogs and cats must be sufficiently heated and cooled to protect the dogs and cats from cold and hot temperatures and to provide for their health, comfort, and well-being. The ambient temperature in the sheltered part of the facility must not fall below 50 °F (10 °C) for dogs and cats not acclimated to lower temperatures, for those breeds that cannot tolerate lower temperatures without stress and discomfort (such as short-haired breeds), and for sick, aged, young, or infirm dogs or cats. The ambient temperature must not fall below 35 °F (1.7 °C) at any time, and must not rise above 95 °F (35 °C).

(b) *Ventilation.* The enclosed or sheltered part of sheltered housing facilities for dogs and cats must be sufficiently ventilated when dogs or cats are present to provide for their health, comfort, and well-being, and to minimize odors, draft, ammonia levels, and moisture condensation. Air, preferably fresh air, must be provided by windows, doors, vents, fans, or air-conditioning. Auxiliary ventilation, such as exhaust fans or air-conditioning, must be provided when the ambient temperature is 85 °F (29.5 °C) or higher.

(c) *Lighting.* Sheltered housing facilities for dogs and cats must be lighted well enough to permit routine inspection and cleaning of the facility, and observation of the dogs and cats. Animal areas must be lighted for at least 8 hours a day by either natural or artificial light. Primary enclosures must be placed so as to protect the dogs and cats from excessive light.

(d) *Shelter from the elements.* Dogs and cats must be provided with adequate shelter from the elements at all times.

(e) *Surfaces.* (1) The following areas in sheltered housing facilities must be impervious to moisture:

(i) Indoor floor areas in contact with the animals;

(ii) Outdoor floor areas in contact with the animals, when the floor areas are not exposed to the direct sun, or are made of a hard material such as wire, wood, metal, or concrete; and

(iii) All walls, boxes, houses, dens, and other surfaces in contact with the animals.

(2) Outside floor areas in contact with the animals and exposed to the direct sun may consist of compacted earth, sand, gravel, or grass.

**§ 3.4 Outdoor housing facilities.**

(a) *Restrictions.* (1) The following categories of dogs or cats must not be kept in outdoor facilities:

(i) Dogs or cats that are not acclimated to the temperatures prevalent in the area or region where they are maintained;

(ii) Breeds of dogs or cats that cannot tolerate the prevalent temperatures of the area without stress or discomfort (such as short-haired breeds in cold climates); and

(iii) Sick, infirm, aged or young dogs or cats.

(2) When their acclimation status is unknown, dogs and cats must not be kept in outdoor facilities during any month in which, during the preceding 5 years, the temperature at the facility's location has been less than 35 °F (1.7 °C).

(b) *Capacity.* Outdoor facilities for dogs or cats must include a shelter structure that is accessible to all the animals in each outdoor facility, and that is large enough to allow all animals in the shelter structure to sit, stand, and lie in a normal manner, and to turn about freely. In addition to the shelter structure, a separate outside area of shade must be provided, large enough to contain all the animals at one time and protect them from the direct rays of the sun.

(c) *Construction.* Building surfaces in contact with animals in outdoor housing facilities must be impervious to moisture. Metal barrels, old refrigerators or freezers, and the like must not be used as shelter structures. The floors of outdoor housing facilities may be of compacted earth, sand, gravel, or grass, and must be replaced if there are any prevalent odors, diseases, insects, pests, or vermin.

(d) *Shelter from the elements.* Shelters in outdoor facilities for dogs or cats must:

(1) Provide the dogs and cats with adequate protection and shelter from the cold and heat;

(2) Provide the dogs and cats with protection from the direct rays of the sun and the direct effect of wind, rain, or snow;

(3) Be provided with a wind break and rain break at the entrance; and

(4) Contain clean, dry, bedding material.

**§ 3.5 Mobile or traveling housing facilities.**

(a) *Heating, cooling, and temperature.* Mobile or traveling housing facilities for dogs and cats must be sufficiently heated and cooled when necessary to protect the dogs and cats from cold and hot temperatures and to provide for their health, comfort, and well-being. The ambient temperature in the mobile or traveling housing facility must not fall below 50 °F (10 °C) for dogs and cats not acclimated to lower temperatures, for those breeds that cannot tolerate lower temperatures without stress or discomfort (such as short-haired breeds), and for sick, aged, young, or infirm dogs and cats. The ambient temperature must not fall below 35 °F (1.7 °C) at any time, and must not exceed 95 °F (35 °C) for all dogs and cats.

(b) *Ventilation.* Mobile or traveling housing facilities for dogs and cats must be sufficiently ventilated at all times when dogs or cats are present to provide for the health, comfort, and well-being of the animals, and to minimize odors, drafts, ammonia levels, moisture condensation, and exhaust fumes. Air, preferably fresh air, must be provided by means of windows, doors, vents, fans or air-conditioning. Auxiliary ventilation, such as fans, blowers, or air-conditioning, must be provided when the ambient temperature within the animal housing area is 85 °F (29 °C) or higher.

(c) *Lighting.* Mobile or traveling housing facilities for dogs and cats must be lighted well enough to permit proper cleaning and inspection of the facility, and observation of the dogs and cats. Animal areas must be lighted for at least 8 hours each day, corresponding to the natural period of daylight. If only artificial light, such as fluorescent light, is provided, it must provide full-spectrum illumination.

**§ 3.6 Primary enclosures.**

Primary enclosures for dogs and cats must meet the following minimum requirements:

(a) *General requirements.* (1) Primary enclosures must be designed and constructed of suitable materials so that they are structurally sound. The primary enclosures must be kept in good repair.

(2) Primary enclosures must be constructed and maintained so that they:

(i) Have no sharp points or edges that could injure the dogs and cats;

(ii) Protect the dogs and cats from injury;

(iii) Contain the dogs and cats securely;

(iv) Keep predators and unauthorized individuals from entering the enclosure;

(v) Enable the dogs and cats to remain dry and clean;

(vi) Provide shelter and protection from extreme temperatures and weather conditions that may be uncomfortable or hazardous to the dogs and cats;

(vii) Provide sufficient shade to shelter all the dogs and cats housed in the primary enclosure at one time;

(viii) Provide the dogs and cats with easy and convenient access to clean food and water;

(ix) Enable all surfaces in contact with the dogs and cats to be readily cleaned and sanitized in accordance with § 3.10(b) of this subpart, or be replaceable when worn or soiled;

(x) Have floors that are constructed in a manner that protects the dogs' and cats' appendages from injury, and that, if of mesh or slatted construction, do not allow the dogs' and cats' appendages to pass through any openings in the floor; and

(xi) Provide sufficient space to allow each dog and cat to turn about freely, to stand, sit, and lie in a comfortable, normal position, and to walk in a normal manner.

(b) *Additional requirements for cats.*— (1) *Space.* Each cat, including weaned kittens, that is housed in any primary enclosure must be provided minimum vertical space and floor space as follows:

(i) Each primary enclosure housing cats must be at least 24 in. high (60.96 cm);

(ii) Cats up to and including 8.8 lbs (4 kg) must be provided with at least 3.0 $ft^2$ (0.28 $m^2$);

(iii) Cats over 8.8 lbs (4 kg) must be provided with at least 4.0 $ft^2$ (0.37 $m^2$);

(iv) Each queen with nursing kittens must be provided with an additional amount of floor space, equivalent to at least 5 percent of her minimum required floor space for each nursing kitten in the litter (e.g., five nursing kittens require a 25-percent increase and 10 nursing kittens require a 50-percent increase); and

(v) The minimum floor space required by this paragraph is exclusive of any food or water pans.

(2) *Compatibility.* All cats housed in the same primary enclosure must be compatible, as determined by observation. Not more than 12 adult nonconditioned cats may be housed in the same primary enclosure. Queens in heat may not be housed in the same primary enclosure with sexually mature males, except for breeding. Except when maintained in breeding colonies, queens with litters may not be housed in the same primary enclosure with other adult cats, and kittens under 4 months of age may not be housed in the same primary enclosure with adult cats. Cats with a vicious or aggressive disposition must be housed separately.

(3) *Litter.* In all primary enclosures having a solid floor, a receptacle containing sufficient clean litter must be provided to contain excreta and body wastes.

(4) *Resting surfaces.* Each primary enclosure housing cats must contain a solid resting surface or surfaces that, in the aggregate, are large enough to hold all the occupants of the primary enclosure at the same time comfortably. The resting surfaces must be elevated, impervious to moisture, and be able to be easily cleaned and sanitized, or easily replaced when soiled or worn. The resting surfaces are not considered part of the minimum floor space.

(5) *Cats in mobile or traveling shows or acts.* Cats that are part of a mobile or traveling show or act may be kept, while the show or act is traveling from one temporary location to another, in transport containers that comply with all requirements of § 3.14 of this subpart other than the marking requirements in § 3.14(a)(6) of this subpart. When the show or act is not traveling, the cats must be placed in primary enclosures that meet the minimum requirements of this section.

(c) *Additional requirements for dogs.*— (1) *Space.* (i) Each dog housed in a primary enclosure (including weaned puppies) must be provided a minimum amount of floor space calculated as follows: find the mathematical square of the sum of the length of the dog in inches (measured from the tip of its nose to the base of its tail) plus 6 inches; then divide the product by 144. The calculation is: (length of dog in inches + 6) × (length of dog in inches + 6) = required floor space in square inches. Required floor space in inches/144 = required floor space in square feet.

(ii) Each bitch with nursing puppies must be provided with an additional amount of floor space, equivalent to at least 5 percent of her minimum required floor space for each nursing puppy in the litter (e.g., five nursing puppies require a 25-percent increase and 10 nursing puppies require a 50-percent increase).

(iii) The interior height of a primary enclosure must be at least 6 inches higher than the highest point of the body (normally the ears) of the tallest dog in the enclosure when it is in a normal standing position.

(2) *Dogs on tethers.* Dogs may be kept on tethers only in outside housing facilities that meet the requirements of § 3.4 of this subpart, and only when the tether meets the requirements of this paragraph. The tether must be attached to the front of the dog's shelter structure or to a post in front of the shelter structure and must be at least three times the length of the dog, as measured from the tip of its nose to the base of its

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tail. The tether must allow the dog convenient access to the shelter structure and to food and water containers. The tether must be of the type and strength commonly used for the size dog involved and must be attached to the dog by a well-fitted collar that will not cause trauma or injury to the dog. Collars made of materials such as wire, flat chains, chains with sharp edges, or chains with rusty or nonuniform links are prohibited. The tether must be attached so that the dog cannot become entangled with other objects or come into physical contact with other dogs in the outside housing facility, and so the dog can roam to the full range of the tether. Dog housing areas where dogs are on tethers must be enclosed by a perimeter fence that is at least 6 feet high and that protects the dogs from other animals, contains them if they should free themselves of the tether, and prevents dogs, raccoons, skunks, and animals of similar size from going through it or under it.

(3) *Compatibility.* All dogs housed in the same primary enclosure must be compatible, as determined by observation. Not more than 12 adult nonconditioned dogs may be housed in the same primary enclosure. Bitches in heat may not be housed in the same primary enclosure with sexually mature males, except for breeding. Except when maintained in breeding colonies, bitches with litters may not be housed in the same primary enclosure with other adult dogs, and puppies under 4 months of age may not be housed in the same primary enclosure with adult dogs. Dogs with a vicious or aggressive disposition must be housed separately.

(4) *Dogs in mobile or traveling shows or acts.* Dogs that are part of a mobile or traveling show or act may be kept, while the show or act is traveling from one temporary location to another, in transport containers that comply with all requirements of § 3.14 of this subpart other than the marking requirements in § 3.14(a)(6) of this subpart. When the show or act is not traveling, the dogs must be placed in primary enclosures that meet the minimum requirements of this section.

(d) *Variance from minimum space requirements*—(1) *Definition.* For the purposes of this subpart, a "variance" means the written permission from the Administrator that is required to operate as a licensee or registrant under the Animal Welfare Act without fully complying with the minimum space requirements provided in this subpart. A variance may be limited in scope both as to time and to the primary enclosures covered by it, and will specify the portions of a registrant's or licensee's facilities covered by the variance.

(2) *Who may apply; eligibility.* Registrants and licensees that maintain or handle dogs or cats, or that have dogs or cats on the premises or under their control or supervision, and that do not comply with one or more of the minimum space requirements provided in this subpart may apply to the Administrator for a variance. Any housing facilities under construction or in the design and preliminary construction stages on the effective date of these regulations are not eligible for a variance, unless the registrant or licensee demonstrates to the Administrator that construction is no nearly complete that a variance is necessary for the registrant or licensee to comply with the minimum space requirements.

(3) *When to apply.* Eligible registrants and licensees requiring a variance in accordance with paragraph (d)(2) of this section must apply to the Administrator within 60 days of the effective date of these regulations.

(4) *Application.* An application for a variance must be in writing and must list in detail each of the minimum space requirements that cannot be complied with, the amount of time necessary for the applicant to come into compliance with the minimum space requirements, the specific reasons why the variance is being requested, the species and number of dogs and cats that will be affected by the variance, and the estimated cost of compliance. A statement from the attending veterinarian concerning the age and health status of the dogs and cats affected by the variance and addressing whether the granting of a variance would be detrimental to the affected dogs and cats must accompany the application. The Administrator may grant the application if he or she determines that it is justified or deny it if he or she determines that it is not justified under the circumstances, or that granting it would be detrimental to the health and well-being of the dogs and cats affected by the variance. The grant or denial will be in writing. The Administrator may require a report to be submitted by an outside expert to help determine whether a variance would be detrimental to the health and well-being of the dogs and cats affected. The cost of the report must be paid by the applicant. The applicant may request that the Administrator reconsider his or her decision to deny an application by writing to the Administrator within ten (10) days after the applicant has received the denial. The applicant must explain, in writing, why he or she believes the variance should have been granted. The Administrator will notify the applicant in writing of the final decision as promptly as circumstances allow.

(5) *Duration and extension.* An initial variance may be granted, at the sole discretion of the Administrator, for the period of time the Administrator determines is necessary for the applicant to comply with the minimum space requirements, based upon the facts presented in the application, up to a maximum time of 2 years. The Administrator may grant a single extension of up to 1 year upon written request if the Administrator determines that it is justified due to unforeseen situations that prevent the registrant or licensee from fully complying during the initial variance period. A written request for an extension must be received by the Administrator at least 60 days before the expiration date of the initial variance. No more than one extension will be granted. The applicant may request that the Administrator reconsider his or her decision to deny an application for extension by writing to the Administrator within ten (10) days after the applicant has received the denial. The applicant must explain, in writing, why he or she believes the extension should have been granted. The Administrator will notify the applicant in writing of the final decision as promptly as circumstances allow. Until a final determination is made, the extention will not be in effect. If the extension is granted on reconsideration, it will be retroactive to the termination date of the initial variance.

(6) *Revocation.* A variance may be revoked by the Administrator at any time if he or she determines that it was obtained in bad faith, that the purpose for which the variance was granted is not being carried out, or that it is detrimental to the health and well-being of the dogs or cats affected. Revocation of a variance will be in writing and will be effective upon receipt.

**Animal Health and Husbandry Standards**

**§ 3.7 Exercise and socialization for dogs.**

(a) Social contact while being housed, held, or maintained. (1) All dogs housed, held, or maintained by any dealer, exhibitor, or research facility including federal research facilities, must be maintained in compatible groups *unless*:

(i) Housing in compatible groups is not in accordance with an animal care and use procedure, and the animal care and use procedure has been approved by the research facility's Committee;



(ii) In the opinion of the attending veterinarian such housing would adversely affect the health or well-being of the dog(s); or

(iii) Any dog exhibits aggressive or vicious behavior.

(2) All dogs housed, held, or maintained by any dealer, exhibitor, or research facility, including federal research facilities, must be able to hear and see other dogs *unless*:

(i) Such contact is not in accordance with an animal care and use procedure, and the animal care and use procedure has been approved by the research facility's Committee;

(ii) In the opinion of the attending veterinarian, such contact would adversely affect the health or well-being of the dog(s); or

(iii) Only one dog is housed, held, or maintained by the dealer, exhibitor, or research facility. In such instances, the single dog must receive positive physical contact with humans at least once a day. The positive physical contact with humans must total at least 60 minutes each day and may be given in one or more periods.

(b) Release for exercise and socialization—(1) Dogs housed individually. (i) Dogs housed, held, or maintained by any dealer, exhibitor, or research facility, including federal research facilities, must be released at least once a day for exercise and socialization if they are:

(A) Kept individually in cages; or

(B) Kept individually in pens or runs that provide less than four times the floor space required for that dog by § 3.6(c)(1) of this subpart, and that do not allow visual and physical contact with neighboring dogs (for example, concrete block pens and runs).

(ii) The exercise area must be the larger of 80 square feet or twice the minimum floor space required by § 3.6(c)(1) of this subpart. However, dogs whose release for exercise and socialization is prohibited by an animal care and use procedure approved by the Committee are not subject to the 80-square-feet-minimum provision of this paragraph, but must be maintained in pens or runs that provide each dog with at least twice the minimum floor space required by § 3.6(c)(1) of this subpart.

(iii) Dogs housed, held, or maintained by any dealer, exhibitor, or research facility do not need to be released each day for exercise and socialization if they are kept in pens or runs that:

(A) Provide at least four times the required space for that dog; and

(B) Allow visual and physical contact with neighboring dogs.

(2) Dogs housed, held, or maintained in groups by any dealer, exhibitor, or research facility, including a federal research facility, must be released at least once a day for exercise and socialization, unless the dogs are maintained in pens or runs that provide the greater of 60 square feet or 150 percent of the space each dog would require if maintained separately under the minimum floor space requirements of § 3.6(c)(1) of this subpart. If a run or open area is used for exercise for dogs housed in groups, it must be the greater of 80 square feet or 150 percent of the minimum space requirement for each dog in the exercise area. (For example, a 28-inch beagle requires a minimum floor space of 8 square feet. Therefore, for six beagles housed together, 150 percent of six times the minimum per-beagle requirement of 8 square feet is 72 square feet. This is less than 80 square feet. Therefore, the larger floor space, 80 square feet, would be required.)

(3) Exercise periods must total at least 30 minutes each day and may be given in one or more release periods.

(c) Methods of exercise.

(1) The attending veterinarian must determine the type of exercise to be used. The exercise may be provided by:

(i) Walking on a leash;

(ii) Releasing the dog(s) into an open area;

(iii) Providing access to a run; or

(iv) Some other similar arrangement.

(2) Forced exercise methods or devices such as swimming, treadmills, or carousel type device do not meet the exercise requirements of this section.

(d) Documentation of the release of each dog for exercise must be kept by the registrant or licensee, and is subject to APHIS inspection.

(e) Exemptions. The attending veterinarian may exempt a particular dog from the exercise release period required for it under paragraph (b) of this section, or restrict its participation in the period, if he or she determines that it is necessary to do so for the dog's health, condition, or well-being. The exemption or restriction must be recorded by the attending veterinarian. The attending veterinarian must review the grant of exemption or restriction and observe the animal at least every 30 days to determine whether it is still necessary.

**§ 3.8 Feeding.**

(a) Dogs and cats must be fed at least once each day, except as otherwise might be required to provide adequate veterinary care. The food must be uncontaminated, wholesome, palatable, and of sufficient quantity and nutritive value to maintain the normal condition and weight of the animal. It must be appropriate for the individual animal's age.

(b) Food receptacles must be used for dogs and cats, must be readily accessible to all dogs and cats, and must be located so as to minimize contamination by excreta and pests, and be protected from rain and snow. Feeding pans must either be made of durable material that can be easily cleaned and sanitized or be disposable. If the food receptacles are not disposable, they must be cleaned daily and must be sanitized in accordance with § 3.10(b)(3) of this subpart at least every 2 weeks, and before being used to feed a different dog or cat or social grouping of dogs or cats. If the food receptacles are disposable, they must be discarded after one use. Self-feeders may be used for the feeding of dry food. If self-feeders are used, they must be cleaned and sanitized as needed in accordance with § 3.10(b)(3) of this subpart. Measures must be taken to ensure there is no molding, deterioration, and caking of feed.

**§ 3.9 Watering.**

If potable water is not continually available to the dogs and cats, it must be offered to the dogs and cats at least twice daily for periods of not less than 1 hour each time, unless restricted by the attending veterinarian. Water receptacles must be kept clean and must be sanitized in accordance with § 3.10(b)(3) of this subpart at least once every 2 weeks, and before being used to water a different dog or cat or social grouping of dogs or cats.

**§ 3.10 Cleaning, sanitization, housekeeping, and pest control.**

(a) Cleaning of primary enclosures. Excreta and food waste must be removed from primary enclosures, and from under primary enclosures, at least daily, or more frequently if necessary to prevent an excessive accumulation of feces and food waste, to prevent soiling of the dogs or cats contained in the primary enclosures, and to reduce disease hazards, insects, pests and odors. When a primary enclosure is being cleaned by steam or by hosing or flushing with water, any dog or cat in the primary enclosure must be removed to prevent it from being involuntarily wetted or injured. All standing water must be removed from the primary enclosure and animals in other primary enclosures must be protected from being contaminated with water and other wastes during the cleaning. The pans under primary enclosures with grill-type floors and the ground areas under raised runs with wire or slatted floors must be

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cleaned at least daily, and as often as necessary to prevent accumulation of feces and food waste and to reduce disease hazards, pests, insects and odors.

(b) Sanitization of primary enclosures and food and water receptacles.

(1) A used primary enclosure must be cleaned and sanitized in accordance with this section before it can be used to house another dog or cat.

(2) Primary enclosures for dogs or cats must be sanitized at least once every 2 weeks using one of the methods prescribed in paragraph (b)(3) of this section, and more often if necessary to prevent an accumulation of dirt, debris, food waste, excrete, and other disease hazards.

(3) Hard surfaces of primary enclosures and food and water receptacles must be sanitized using one of the following methods:

(i) Live steam under pressure;

(ii) Washing with hot water (at least 180 °F (82.2 °C)) and soap or detergent, as with a mechanical cage washer; or

(iii) Washing all soiled surfaces with a detergent solution so as to remove all organic material and mineral buildup, and by following the washing first with a safe and effective disinfectant rinse, then with a clean water rinse.

(4) Pen, runs and outdoor housing areas using material that cannot be sanitized using the methods provided in paragraph (b)(3) of this section, such as gravel, sand, grass, or earth, must be sanitized by removing the contaminated material as necessary to prevent odors, diseases, pests, insects, and vermin infestation.

(c) Housekeeping for premises. Premises where housing facilities are located, including buildings and surrounding grounds, must be kept clean and in good repair to protect the animals from injury, to facilitate the husbandry practices required in this subpart, and to reduce or eliminate breeding and living areas for rodents and other pests and vermin. Premises must be kept free of accumulations of trash, junk, waste products, and discarded matter. Weeds, grasses, and bushes must be controlled so as to facilitate cleaning of the premises and pest control, and to protect the health and well-being of the animals.

(d) Pest control. An effective program for the control of insects, external parasites affecting dogs and cats, and birds and mammals that are pests, must be established and maintained so as to promote the health and well-being of the animals and reduce contamination by pests in animal areas.

**§ 3.11 Employees.**

Each person subject to the Animal Welfare regulations maintaining dogs and cats must have enough employees to carry out the level of husbandry practices and care required in this subpart. The employees who provide for husbandry and care, or handle animals, must be supervised by an animal caretaker who has the knowledge, background, and experience in proper husbandry and care of dogs and cats to supervise others. The employer must be certain that the supervisor and other employees can perform to these standards.

**§ 3.12 Social grouping.**

Dogs and cats housed in the same primary enclosure must be maintained in compatible groups, with the following restrictions:

(a) Females in heat (estrus) may not be housed in the same primary enclosure with males, except for breeding purposes;

(b) Any dog or cat exhibiting a vicious or overly aggressive disposition must be housed separately;

(c) Puppies or kittens 180 days of age or less may not be housed in the same primary enclosure with adult dogs or cats other than their dams, except when permanently maintained in breeding colonies;

(d) Dogs or cats may not be housed in the same primary enclosure with any other species of animals, unless they are compatible;

(e) Dogs and cats under quarantine or treatment for a communicable disease must be separated from other dogs and cats and other susceptible species of animals to minimize the risk of spread of the disease.

**Transportation Standards**

**§ 3.13 Consignments to carriers and intermediate handlers.**

(a) Carriers and intermediate handlers must not accept a dog or cat for transport in commerce more than 4 hours before the scheduled departure time of the primary conveyance on which the animal is to be transported. However, a carrier or intermediate handler may agree with anyone consigning a dog or cat to extend this time by up to 2 hours.

(b) Carriers and intermediate handlers must not accept a dog or cat for transport in commerce unless they are provided with the name, address, and phone number of the consignee.

(c) Carriers and intermediate handlers must not accept a dog or cat for transport in commerce unless written instructions concerning in-transit food and water requirements for each dog and cat in the shipment are securely attached to the outside of its primary enclosure in a manner that makes them easily noticed and read.

(d) Carriers and intermediate handlers must not accept a dog or cat for transport in commerce unless the consignor certifies in writing to the carrier or intermediate handler that the dog or cat was offered food during the 12 hours and water during the 4 hours before delivery to the carrier or intermediate handler, and specifies the date and time the dog or cat was last offered food and water. A copy of the certification must accompany the dog or cat to its destination and must include the following information for each primary enclosure:

(1) The consignor's name and address;

(2) The tag number or tattoo assigned to each dog or cat under § 2.50 of the regulations;

(3) A statement by the consignor certifying that each dog or cat contained in the primary enclosure was offered food within 12 hours and water within 4 hours before delivery to the carrier or intermediate handler, and the date and time food and water was last offered; and

(4) The consignor's signature and the date and time the certification was signed.

(e) Carriers and intermediate handlers must not accept a dog or cat for transport in commerce in a primary enclosure unless the primary enclosure meets the requirements of § 3.14 of this subpart, or the consignor certifies in writing to the carrier or intermediate handler that the primary enclosure meets the requirements of § 3.14 of this subpart. Even if the consignor provides this certification, a carrier or intermediate handler must not accept a dog or cat for transport if the primary enclosure is obviously defective or damaged and cannot reasonably be expected to safely and comfortably contain the dog or cat without causing suffering or injury. A copy of the certification must accompany the dog or cat to its destination and must include the following information for each primary enclosure:

(1) The consignor's name and address;

(2) The tag number or tattoo assigned to each dog or cat under § 2.50 of the regulations;

(3) A statement by the consignor certifying that each primary enclosure in the shipment meets the standards for primary enclosures in § 3.14 of this subpart; and

(4) The consignor's signature and the date the certification was signed.



(f) Carriers and intermediate handlers must not accept a dog or cat for transport in commerce unless their holding area and cargo facilities meet the minimum temperature requirements provided in §§ 3.18 and 3.19 of this subpart, or unless the consignor provides them with a certificate signed by a veterinarian and dated no more than 10 days before delivery of the animal to the carrier or intermediate handler for transport in commerce, certifying that the animal is acclimated to temperatures lower than those required in §§ 3.18 and 3.19 of this subpart. Even if the carrier or intermediate handler receives this certification, the temperatures the dog or cat is exposed to while in the carrier's or intermediate handler's custody must not be lower than the minimum temperature specified by the veterinarian in accordance with paragraph (f)(3) of this section. A copy of the certification must accompany the dog or cat to its destination and must include the following information:

(1) The consignor's name and address;

(2) The tag number or tattoo assigned to each dog or cat under § 2.50 of the regulations;

(3) A statement by a veterinarian, and dated no more than 10 days before delivery, that to the best of his or her knowledge, each of the dogs or cats contained in the primary enclosure is acclimated to air temperatures lower than 45 °F (7.2 °C), but now lower than a minimum temperature, specified on the certificate, that the veterinarian has determined is based on generally accepted temperature standards for the age, condition, and breed of the animals; and

(4) The signature of the veterinarian and the date the certification was signed.

(g) When a primary enclosure containing a dog or cat has arrived at the animal holding area at a terminal facility after transport, the carrier or intermediate handler must attempt to notify the consignee upon arrival and at least once in every 6-hour period thereafter. The time, date, and method of each attempted notification and the actual notification of the consignee, and the name of the person who notifies or attempts to notify the consignee must be written on the carrier's or intermediate handler's copy of the shipping document and on the copy that accompanies the primary enclosure. If the consignee cannot be notified within 24 hours after the dog or cat has arrived at the terminal facility, the carrier or intermediate handler must return the animal to the consignor or to whomever the consignor designates. If the consignee is notified of the arrival and does not accept delivery of the dog or cat within 48 hours after arrival of the dog or cat, the carrier or intermediate handler must return the animal to the consignor or to whomever the consignor designates. The carrier or intermediate handler must continue to provide proper care, feeding, and housing to the dog or cat, and maintain the dog or cat in accordance with generally accepted professional and husbandry practices until the consignee accepts delivery of the dog or cat or until it is returned to the consignor or to whomever the consignor designates. The carrier or intermediate handler must obligate the consignor to reimburse the carrier or intermediate handler for the cost of return transportation and care.

**§ 3.14 Primary enclosures used to transport live dogs and cats.**

Any person subject to the Animal Welfare regulations must not transport or deliver for transport in commerce a dog or cat unless the following requirements are met:

(a) *Construction of primary enclosures.* The dog or cat must be contained in a primary enclosure such as a compartment, transport cage, carton, or crate. Primary enclosures used to transport dogs and cats must be constructed so that:

(1) The primary enclosure is strong enough to contain the dogs and cats securely and comfortably and to withstand the normal rigors of transportation;

(2) The interior of the primary enclosure has no sharp points or edges and no protrusions that could injure the animal contained in it;

(3) The dog or cat is at all times securely contained within the enclosure and cannot put any part of its body outside the enclosure in a way that could result in injury to itself, to handlers, or to persons or animals nearby;

(4) The dog or cat can be easily and quickly removed from the enclosure in an emergency;

(5) Unless the enclosure is permanently affixed to the conveyance, adequate devices such as handles or handholds are provided on its exterior, and enable the enclosure to be lifted without tilting it, and ensure that anyone handling the enclosure will not come into physical contact with the animal contained inside;

(6) Unless the enclosure is permanently affixed to the conveyance, it is clearly marked on top and on one or more sides with the words "Live Animals," in letters at least 1 inch (2.5 cm.) high, and with arrows or other markings to indicate the correct upright position of the primary enclosure;

(7) Any material, treatment, paint, preservative, or other chemical used in or on the enclosure is nontoxic to the animal and not harmful to the health or well-being of the animal;

(8) Proper ventilation is provided to the animal in accordance with paragraph (c) of this section; and

(9) The primary enclosure has a solid, leak-proof bottom or a removable, leak-proof collection tray under a slatted or wire mesh floor that prevents seepage of waste products, such as excreta and body fluids, outside of the enclosure. If a slatted or wire mesh floor is used in the enclosure, it must be designed and constructed so that the animal cannot put any part of its body between the slats or through the holes in the mesh. Unless the dogs or cats are on raised slatted floors or raised floors made of wire mesh, the primary enclosure must contain enough previously unused litter to absorb and cover excreta. The litter must be of a suitably absorbent material that is safe and nontoxic to the dogs and cats.

(b) *Cleaning of primary enclosures.* A primary enclosure used to hold or transport dogs or cats in commerce must be cleaned and sanitized before each use in accordance with the methods provided in § 3.10(b)(3) of this subpart. If the dogs or cats are in transit for more than 24 hours, the enclosures must be cleaned and any litter replaced, or other methods, such as moving the animals to another enclosure, must be utilized to prevent the soiling of the dogs or cats by body wastes.

(c) *Ventilation.* (1) Unless the primary enclosure is permanently affixed to the conveyance, there must be ventilation openings on all four walls of the primary enclosure. The ventilation openings must total at least 8 percent of the surface area of each wall, and the total surface area of all the ventilation openings must be at least 14 percent of the total surface area of all four walls of the primary enclosure. Additionally, at least one-third of the total minimum area required for ventilation must be located on the upper one-half of the primary enclosure;

(2) Unless the primary enclosure is permanently affixed to the conveyance, projecting rims or similar devices must be located on the exterior of each enclosure wall having a ventilation opening, in order to prevent obstruction of the openings. The projecting rims or similar devices must be large enough to provide a minimum air circulation space of 0.75 in. (1.9 cm) between the primary

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enclosure and anything the enclosure is placed against.

(3) If a primary enclosure is permanently affixed to the primary conveyance so that there is only a front ventilation opening for the enclosure, the primary enclosure must be affixed to the primary conveyance in such a way that the front ventilation opening cannot be blocked, and the front ventilation opening must open directly to an unobstructed aisle or passageway inside the conveyance. The ventilation opening must be at least 90 percent of the total area of the front wall of the enclosure, and must be covered with bars, wire mesh, or smooth expanded metal having air spaces.

(d) *Compatibility.* (1) Live dogs or cats transported in the same primary enclosure must be of the same species and be maintained in compatible groups, except that dogs and cats that are private pets, are of comparable size, and are compatible, may be transported in the same primary enclosure.

(2) Puppies or kittens 180 days of age or less may not be transported in the same primary enclosure with adult dogs or acts other than their dams.

(3) Dogs or cats that are overly aggressive or exhibit a vicious disposition must be transported individually in a primary enclosure.

(4) Any female dog or cat in heat (estrus) may not be transported in the same primary enclosure with any male dog or cat.

(e) *Space and placement.* (1) Primary enclosures used to transport live dogs and cats must be large enough to ensure that each animal contained in the primary enclosure has enough space to turn about normally while standing, to stand and sit erect, and to lie in a natural position.

(2) Primary enclosures used to transport dogs and cats must be positioned in the primary conveyance so as to provide protection from the elements.

(f) *Transportation by air.* (1) No more than two live dogs or cats, 8 months of age or older, that are of comparable size, may be transported in the same primary enclosure when shipped via air carrier, and only if all other requirements in this section are met.

(2) No more than two live puppies, 8 weeks to 6 months of age, that are of comparable size, and weighing over 20 lb (9 kg) each, may be transported in the same primary enclosure when shipped via air carrier, and only if all other requirements in this section are met.

(3) No more than three live puppies or kittens, 8 weeks to 6 months of age, that are of comparable size, and weighing 20 lb (9 kg) or less each, may be transported in the same primary enclosure when shipped via air carrier, and only if all other requirements in this section are met.

(4) Weaned live puppies or kittens less than 8 weeks of age and of comparable size, or puppies or kittens that are less than 8 weeks of age that are littermates and are accompanied by their dam, may be transported in the same primary enclosure when shipped to research facilities, including federal research facilities.

(g) *Transportation by surface vehicle.* (1) No more than four live dogs or cats, 8 weeks of age or older, that are of comparable size, may be transported in the same primary enclosure when shipped by surface vehicle (including ground and water transportation) and only if all other requirements of this section are met.

(2) Weaned live puppies or kittens less than 8 weeks of age and of comparable size, or puppies or kittens that are less than 8 weeks of age that are littermates and are accompanied by their dam, may be transported in the same primary enclosure when shipped to research facilities, including federal research facilities.

(h) *Accompanying documents and records.* Shipping documents that must accompany shipments of dogs and cats may be held by the operator of the primary conveyance, for surface transportation only, or must be securely attached in a readily accessible manner to the outside of any primary enclosure that is part of the shipment, in a manner that allows them to be detached for examination and securely reattached, such as in a pocket or sleeve. Instructions for food and water and for administration of drugs, medication, and other special care must be attached to each primary enclosure in a manner that makes them easy to notice, to detach for examination, and to reattach securely.

**§ 3.15 Primary conveyances (motor vehicle, rail, air, and marine).**

(a) The animal cargo space of primary conveyances used to transport dogs and cats must be designed, constructed, and maintained in a manner that at all times protects the health and well-being of the animals transported in them, ensures their safety and comfort, and prevents the entry of engine exhaust from the primary conveyance during transportation.

(b) The animal cargo space must have a supply of air that is sufficient for the normal breathing of all the animals being transported in it.

(c) Each primary enclosure containing dogs or cats must be positioned in the animal cargo space in a manner that provides protection from the elements and that allows each dog or cat enough air for normal breathing.

(d) During air transportation, including time spent on the ground, dogs and cats must be held or transported in cargo areas that are heated or cooled as necessary to maintain anambient temperature that ensures the health and comfort of the dogs or cats. The cargo areas must be pressurized when the primary conveyance used for air transportation is not on the ground.

(e) During surface transportation, auxiliary ventilation, such as fans, blowers or air conditioning, must be used in any animal cargo space containing live dogs and cats when the ambient temperature within the animal cargo space reaches 85 °F (29.5 °C). Moreover, the ambient temperature may not exceed 95 °F (35 °C) at any time; nor exceed 85 °F (29.5 °C) for a period of more than 4 hours; nor fall below 45 °F (7.2 °C) for a period of more than 4 hours; nor fall below 35 °F (1.7 °F) at any time.

(f) Primary enclosures must be positioned in the primary conveyance in a manner that allows the dogs and cats to be quickly and easily removed from the primary conveyance in an emergency.

(g) The interior of the animal cargo space must be kept clean.

(h) Live dogs and cats may not be transported with any material, substance (e.g., dry ice) or device in a manner that may reasonably be expected to harm the dogs and cats or cause inhumane conditions, unless proper precaution is taken to prevent the injury or inhumane conditions.

**§ 3.16 Food and water requirements.**

(a) Each dog and cat that is 16 weeks of age or more must be offered food at least once every 24 hours. Puppies and kittens less than 16 weeks of age must be offered food at least once every 12 hours. These time periods apply to dealers, exhibitors, research facilities, including federal research facilities, who transport dogs and cats in their own primary conveyance, starting from the time the dog or cat was last offered food before transportation was begun. These time periods apply to carriers and intermediate handlers starting from the date and time stated on the certificate provided under § 3.13(d). Each dog or cat must be offered food within 12 hours before being transported in commerce. Consignors who are subject to the Animal Welfare regulations must certify that each dog and cat was offered food within the 12 hours preceding delivery of the dog or cat to a carrier or intermediate handler for transportation in commerce, and must certify the date and time of the feeding, in accordance with § 3.13(d).

(b) Each dog and cat must be offered potable water during the 4 hours immediately preceding the beginning of its transportation in commerce and at least once every 12 hours thereafter. This time period applies to dealers, exhibitors, and research facilities, including federal research facilities, who transport dogs and cats in their own primary conveyance, starting from the time the dog or cat was last offered potable water before being transported in commerce. This time period applies to carriers and intermediate handlers starting from the date and time stated on the certificate provided under § 3.13(d). Consignors who are subject to the Animal Welfare regulations must certify that each dog and cat was offered potable water within 4 hours before being transported in commerce, and must certify the date and time the water was offered, in accordance with § 3.13(d).

(c) Any dealer, research facility, including a federal research facility, or exhibitor offering any dog or cat to a carrier or intermediate handler for transportation in commerce must securely attach to the outside of the primary enclosure used for transporting the dog or cat, written instructions for the in-transit food and water requirements for the dogs and cats contained in the enclosure. The instructions must be attached in a manner that makes them easily noticed, detached and returned to the enclosure.

(d) Food and water receptacles must be securely attached inside the primary enclosure and placed so that the receptacles can be filled from outside the enclosure without opening the door. Food and water containers must be designed, constructed, and installed so that a dog or cat cannot leave the primary enclosure through the food or water opening.

**§ 3.17 Care in transit.**

(a) Surface transportation (ground and water). Any person subject to the Animal Welfare regulations transporting dogs or cats in commerce must ensure that the operator of the conveyance, or a person accompanying the operator, observes the dogs or cats as often as circumstance allow, but not less than once every 4 hours, to make sure they have sufficient air for normal breathing, that the animal cargo area meets the heating and cooling requirements of § 3.15(e), and that all applicable standards of this subpart are being complied with. The regulated person must ensure that the operator or person accompanying the operator determines whether any of the dogs or cats are in obvious physical distress and obtains any veterinary care needed for the dogs or cats at the closest available veterinary facility.

(b) Air transportation. During air transportation of dogs or cats, it is the responsibility of the carrier to observe the dogs or cats as frequently as circumstance allow, but not less than once every 4 hours if the animal cargo area is accessible during flight. If the animal cargo area is not accessible during flight, the carrier must observe the dogs or cats whenever they are loaded and unloaded and whenever the animal cargo space is otherwise accessible to make sure they have sufficient air for normal breathing, that the animal cargo area meets the heating and cooling requirements of § 3.15(d), and that all other applicable standards of this subpart are being complied with. The carrier must determine whether any of the dogs or cats are in obvious physical distress, and arrange for any needed veterinary care as soon as possible.

(c) If a dog or cat is obviously ill, injured, or in physical distress, it must not be transported in commerce, except to receive veterinary care for the condition.

(d) During transportation in commerce, a dog or cat must not be removed from its primary enclosure unless it is placed in another primary enclosure or facility that meets the requirements of § 3.6 or § 3.14 of this subpart.

(e) The transportation regulations contained in this subpart must be complied with until the dog or cat reaches its final destination, or until the consignee takes physical delivery of the animal if the animal is consigned for transportation.

**§ 3.18 Terminal facilities.**

(a) *Placement.* Any person subject to the Animal Welfare regulations must not commingle shipments of dogs or cats with inanimate cargo in animal holding areas of terminal facilities.

(b) *Cleaning, sanitization, and pest control.* All animal holding areas of terminal facilities must be cleaned and sanitized in a manner prescribed in § 3.10(b)(3) of this subpart, as often as necessary to prevent an accumulation of debris or excreta and to minimize vermin infestation and disease hazards. Terminal facilities must follow an effective program in all animal holding areas for the control of insects, ectoparasites, and birds and mammals that are pests to dogs and cats.

(c) *Ventilation.* Air, preferably fresh air, must be provided in any animal holding area in a terminal facility containing dogs or cats, by means of windows, doors, vents, or air conditioning. The air must be circulated by fans, blowers, or air conditioning so as to minimize drafts, odors, and moisture condensation. Auxiliary ventilation, such as exhaust fans, vents, fans, blowers, or air conditioning must be used in any animal holding area containing dogs and cats, when the ambient temperature is 75° F (23.9° C) or higher.

(d) *Temperature.* The ambient temperature in an animal holding area containing dogs or cats must not fall below 45° F (7.2° C) or rise above 75° F (23.9° C) for more than four consecutive hours at any time dogs or cats are present. The ambient temperature must not fall below 35° F (1.7° C) or rise above 85° F (29.5° C) at any time dogs or cats are present. The ambient temperature must be measured in the animal holding area by the carrier, intermediate handler, or a person transporting dogs or cats who is subject to the Animal Welfare regulations, outside any primary enclosure containing a dog or cat at a point not more than 3 feet (0.91 m) away from an outside wall of the primary enclosure, and approximately midway up the side of the enclosure.

(e) *Shelter.* Any person subject to the Animal Welfare regulations holding a live dog or cat in an animal holding area of a terminal facility must provide the following:

(1) Shelter from sunlight and extreme heat. Shade must be provided that is sufficient to protect the dog or cat from the direct rays of the sun.

(2) Shelter from rain or snow. Sufficient protection must be provided to allow the dogs and cats to remain dry during rain, snow, and other precipitation.

(f) *Duration.* The length of time any person subject to the Animal Welfare regulations can hold dogs and cats in animal holding areas of terminal facilities upon arrival is the same as that provided in § 3.13(g).

**§ 3.19 Handling**

(a) Any person subject to the Animal Welfare regulations who moves (including loading and unloading) dogs or cats within, to, or from the animal holding area of a terminal facility or a primary conveyance must do so as quickly and efficiently as possible and

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must provide the following during movement of the dog or cat:

(1) *Shelter from sunlight and extreme heat.* Sufficient shade must be provided to protect the dog or cat from the direct rays of the sun. The dog or cat must not be exposed to an ambient air temperature above 85° F (29.5° C) for a period of more than 45 minutes while being moved to or from a primary conveyance or a terminal facility. The temperature must be measured in the manner provided in § 3.18(d) of this subpart.

(2) *Shelter from rain and snow.* Sufficient protection must be provided to allow the dog and cat to remain dry during rain, snow, and other precipitation.

(3) *Shelter from cold temperatures.* Transporting devices on which live dogs or cats are placed to move them must be covered to protect the animals when the outdoor temperature falls below 50° F (10° C). The dogs or cats must not be exposed to an ambient temperature below 45° F (7.2° C) for a period of more than 45 minutes, unless they are accompanied by a certificate of acclimation to lower temperatures as provided in § 3.13(f). The temperature must be measured in the manner provided in § 3.18(d) of this subpart.

(b) Any person handling a primary enclosure containing a dog or cat must use care and must avoid causing physical or emotional distress to the dog or cat.

(1) A primary enclosure containing a live dog or cat must not be placed on unattended conveyor belts, or on elevated conveyor belts, such as baggage claim conveyor belts and inclined conveyor ramps that lead to baggage claim areas, at any time; except that a primary enclosure may be placed on inclined conveyor ramps used to load and unload aircraft if an attendant is present at each end of the conveyor belt.

(2) A primary enclosure containing a dog or cat must not be tossed, dropped, or needlessly tilted, and must not be stacked in a manner that may reasonably be expected to result in its falling. They must be handled and positioned in the manner that written instructions and arrows on the outside of the primary enclosure indicate.

(c) The regulations in this section apply to movement of a dog or cat from primary conveyance to primary conveyance, within a primary conveyance or terminal facility, and to or from a terminal facility or a primary conveyance.

3. In § 3.28, paragraph (b)(2) (i) and (ii) and (b)(3) (i) and (iii) would be revised to read as follows:

**§ 3.28 Primary enclosures.**

* * * * *

(b) * * *

(2) * * *

(i) The interior height of any primary enclosure used to confine guinea pigs must be at least 7 inches (17.78 cm).

(ii) Each guinea pig must be provided a minimum amount of floor space in any primary enclosure as follows:

| Weight or stage of maturity | Minimum floor space per hamster | |
|---|---|---|
| | in² | cm² |
| Weaning to 350 grams | 60 | 387.12 |
| >350 grams or nursing females with their litters | 101 | 651.65 |

(3) * * *

(i) The interior height of any primary enclosure used to confine hamsters must be at least 6 inches (15.24 cm).

* * * * *

(iii) Except as provided in paragraph (b)(3)(ii) of this section, each hamster must be provided a minimum amount of floor space in any primary enclosure as follows:

| Weight | | Minimum floor space per hamster | |
|---|---|---|---|
| g | ozs | in² | cm² |
| 60 | 2.1 | 10 | 64.52 |
| 60 to 80 | 2.1–2.8 | 13 | 83.86 |
| 80 to 100 | 2.8–3.5 | 16 | 103.23 |
| > 100 | > 3.5 | 19 | 122.59 |

4. In § 3.36, the introductory text would be revised to read as follows:

**§ 3.36 Primary enclosures used to transport live guinea pigs and hamsters.**

No person subject to the Animal Welfare regulations is allowed to offer for transportation, or transport, in commerce any live guinea pig or hamster in a primary enclosure that does not conform to the following requirements.

* * * * *

5. In § 3.37, a new paragraph (g) would be added to read as follows:

**§ 3.37 Primary conveyances (motor vehicle, rail, air, and marine).**

* * * * *

(g) The animal cargo space of primary conveyances used to transport guinea pigs or hamsters must be mechanically sound and provide fresh air by means of windows, doors, vents, or air conditioning so as to minimize drafts, odors, and moisture condensation. Auxiliary ventilation, such as fans, blowers, or air conditioners, must be used in any cargo space containing live guinea pigs or hamsters when the ambient temperature in the animal cargo space is 75° F (23.9° C) or higher. The ambient temperature within the animal cargo space must not be allowed to exceedd 85° F (29.5° C) or to fall below 45° F (7.2° C), except that the ambient temperature in the cargo space may be below 45° F (7.2° C) for hamsters if the hamsters are accompanied by a certificate of acclimation to lower temperatures, as provided in § 3.35(c) of this part.

6. In § 3.40, the first two sentences would be revised to read as follows:

**§ 3.40 Terminal facilities.**

No person subject to the Animal Welfare regulations is allowed to commingle shipments of live guinea pigs or hamsters with inanimate cargo. All animal holding areas of a terminal facility where shipments of live guinea pigs or hamsters are maintained must be cleaned and sanitized as prescribed in § 3.31 of the standards often enough to prevent an accumulation of debris or excreta, to minimize vermin infestation, and to prevent a disease hazard. * * *

7. In § 3.41 paragraph (a) introductory text would be revised to read as follows:

**§ 3.41 Handling.**

(a) Any person who is subject to the Animal Welfare Regulations and who moves live guinea pigs or hamsters from an animal holding area of a terminal facility to a primary conveyance and vice versa must do so as quickly and efficiently as possible. Any person subject to the Animal Welfare Act and holding any live guinea pig or hamster in an animal holding area of a terminal facility or transporting any live guinea pig or hamster to or from a terminal facility must provide the following:

* * * * *

8. In § 3.53, the table in paragraph (b) would be revised to read as follows:

**§ 3.53 Primary enclosures.**

* * * * *

(b) * * *



| | Individual weights | | Minimum floor space | | Minimum interior height | |
|---|---|---|---|---|---|---|
| | kg | lbs | m² | ft² | cm | in |
| Individual rabbits (weaned) | 2 | 4.4 | 0.14 | 1.5 | 35.56 | 14 |
| | 2–4 | 4.4–8.8 | 0.28 | 3.0 | 35.56 | 14 |
| | 4–5.4 | 8.8–11.9 | 0.37 | 4.0 | 35.56 | 14 |
| | >5.4 | >11.9 | 0.46 | 5.0 | 35.56 | 14 |

| | Weight of nursing female | | Minimum floor space/ female & litter | | Minimum interior height | |
|---|---|---|---|---|---|---|
| | kg | lbs | m² | ft² | cm | in |
| Females with litters | 2 | 4.4 | 0.37 | 4.0 | 35.56 | 14 |
| | 2–4 | 4.4–8.8 | 0.46 | 5.0 | 35.56 | 14 |
| | 4–5.4 | 8.8–11.9 | 0.56 | 6.0 | 35.56 | 14 |
| | >5.4 | >11.9 | 0.70 | 7.0 | 35.56 | 14 |

9. In § 3.61, the introductory paragraph would be revised to read as follows:

**§ 3.61 Primary enclosures used to transport live rabbits.**

No person subject to the Animal Welfare regulations is allowed to offer for transportation or to transport in commerce any live rabbit in a primary enclosure that does not conform to the following requirements.

* * * * *

10. In § 3.62, a new paragraph (g) would be added to read as follows:

**§ 3.62 Primary conveyances (motor vehicle, rail, air, and marine).**

* * * * *

(g) The animal cargo space of primary conveyances used to transport rabbits must be mechanically sound and provide fresh air by means of windows, doors, vents, or air conditioning so as to minimize drafts, odors, and mositure condensation. Auxiliary ventilation, such as fans, blowers, or air conditioners, must be used in any cargo space containing live rabbits when the ambient temperature in the animal cargo space is 75 °F (23.9 °C) or higher. The ambient temperature within the animal cargo space must not be allowed to exceed 85 °F (29.5 °C) or to fall below 45° (7.2 °C), except that the ambient temperature in the cargo space may be below 45°F (7.2 °C) if the rabbits are accompanied by a certificate of acclimation to lower temperatures, as described in § 3.60(c) of this part.

11. In § 3.65 the first two sentences would be revised to read as follows:

**§ 3.65 Terminal facilities.**

No person subject to the Animal Welfare regulations may commingle shipments of live rabbits with inanimate cargo. All animal holding areas of a terminal facility where shipments of rabbits are maintained must be cleaned and sanitized as prescribed in § 3.56 of the standards often enough to prevent an accumulation of debris or excreta, to minimize vermin infestation, and to prevent a disease hazard. * * *

12. In § 3.66, paragraph (a) would be revised to read as follows:

**§ 3.66 Handling.**

(a) Any person who is subject to the Animal Welfare regulations and who moves live rabbits from an animal holding area of a terminal facility to a primary conveyance and vice versa must do so as quickly and efficiently as possible. Any person subject to the Animal Welfare regulations and holding any live rabbit in an animal holding area of a terminal facility or transporting any live rabbit to or from a terminal facility must provide the following:

* * * * *

13. Subpart D, consisting of §§ 3.75 through 3.93, would be revised to read as follows:

**Subpart D—Specifications for the Humane Handling, Care, Treatment, and Transportation of Nonhuman Primates**

**Facilities and Operating Standards**

Sec.

3.75 Housing facilities, general.
3.76 Indoor housing facilities.
3.77 Sheltered housing facilities.
3.78 Outdoor housing facilities.
3.79 Mobile or traveling housing facilities.
3.80 Primary enclosure.
3.81 Additional requirements for research facilities.

**Animal Health and Husbandry Standards**

3.82 Feeding.
3.83 Watering.
3.84 Cleaning, sanitization, housekeeping, and pest control.
3.85 Employees.
3.86 Social grouping and separation.
3.87 Consignments to carriers and intermediate handlers.
3.88 Primary enclosures used to transport nonhuman primates.
3.89 Primary conveyances (motor vehicle, rail, air, and marine).
3.90 Food and water requirements.
3.91 Care in transit.
3.92 Terminal facilities.
3.93 Handling.

**Subpart D—Specifications for the Humane Handling, Care, Treatment, and Transportation of Nonhuman Primates.[1]**

**Facilities and Operating Standards**

**§ 3.75 Housing facilities, general.**

(a) *Structure; construction.* Housing facilities for nonhuman primates must be designed and constructed so that they are structurally sound for the species of nonhuman primates housed in them. They must be kept in good repair, and they must protect the animals from injury, contain the animals securely, and

[1] Nonhuman primates include a great diversity of forms, ranging from the marmoset weighing only a few ounces, to the adult gorilla weighing hundreds of pounds, and including more than 240 species. They come from Asia, Africa, and Central and South America, and they live in different habitats in nature. Some have been transported to the United States from the natural habitats and some have been raised in captivity in the United States. Their nutritional and activity requirements differ, as do their social and environmental requirements. As a result, the conditions appropriate for one species do not necessarily apply to another. Accordingly, these minimum specifications must be applied in accordance with the customary and generally accepted professional and husbandry practices considered appropriate for each species, and necessary to promote their psychological well-being.

These minimum standards apply only to live nonhuman primates, unless stated otherwise.

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restrict other animals and unauthorized humans from entering.

(b) *Condition and site.* Housing facilities and areas used for storing animal food or bedding must be free of any accumulation of trash, waste material, junk, weeds, and other discarded materials. Animal areas inside of housing facilities must be kept neat and free of clutter, including equipment, furniture, or stored material, but may contain materials actually used and necessary for cleaning the area, such as brooms, mops, mop buckets, trash containers, and fixtures necessary for proper husbandry practices, such as tables, cabinets, and sinks. Housing facilities other than those maintained by research facilities and federal research facilities must be physically separated from any other businesses. If a housing facility is located on the same premises as any other businesses, it must be physically separated from the other businesses so that unauthorized humans, and animals the size of dogs, skunks, and raccoons, are prevented from entering it.

(c) *Surfaces.*—(1) *General requirements.* The surfaces of housing facilities—including perches, shelves, swings, boxes, houses, dens, and other furniture-type fixtures or objects within the facility—must be constructed in a manner and made of materials that allow them to be readily cleaned and sanitized, or removed or replaced when worn or soiled. Furniture-type fixtures or objects must be sturdily constructed and must be strong enough to provide for the safe activity and welfare of nonhuman primates. Outdoor floors may be made of dirt, sand, gravel, grass, or other similar material that can be readily cleaned, or can be removed or replaced whenever cleaning does not eliminate odors, diseases, pests, insects, or vermin. Any surfaces that come in contact with nonhuman primates must:

(i) Be free of rust that prevents the required cleaning and sanitization, or that affects the structural strength of the surface; and

(ii) Be free of jagged edges or sharp points that might injure the animals.

(2) *Maintenance and replacement of surfaces.* All surfaces must be maintained on a regular basis. Surfaces of housing facilities—including houses, dens, and other furniture-type fixtures and objects within the facility—that cannot be readily cleaned and sanitized, must be replaced when worn or soiled.

(3) *Cleaning.* Hard surfaces with which nonhuman primates come in contact must be cleaned daily and sanitized at least once every two weeks and as often as necessary to prevent any accumulation of excreta or disease hazards, unless the species housed in the facility engage in scent marking. If the species scent mark, the surfaces must be sanitized at regular intervals determined in accordance with generally accepted professional and husbandry practices and they must be spot cleaned daily. Floors made of dirt, sand, gravel, grass, or other similar material, and planted enclosures must be raked and spot-cleaned daily. Contaminated material must be removed or replaced whenever raking and spot cleaning does not eliminate odors, diseases, insects, pests, or vermin infestation. All other surfaces of housing facilities must be cleaned daily and sanitized when necessary to satisfy generally accepted husbandry standards and practices. Sanitization may be done by any of the methods provided in § 3.84(b)(3) for primary enclosures.

(d) *Water and electric power.* The housing facility must have reliable electric power adequate for heating, cooling, ventilation, and lighting, and for carrying out other husbandry requirements in accordance with the regulations in this subpart. The housing facility must provide mechanically pressurized running potable water for the nonhuman primates' drinking needs. It must be adequate for cleaning and for carrying out other husbandry requirements.

(e) *Storage.* Supplies of food and bedding must be stored in leakproof containers that protect the supplies from spoilage, contamination, and vermin infestation. The supplies must be stored off the floor and away from the walls, to allow cleaning underneath and around the supplies. Perishable food must be refrigerated, and all food must be stored in a manner that prevents contamination and deterioration of its nutritive value. Only the food and bedding currently being used may be kept in animal areas, and when not in actual use, open food and bedding supplies must be kept in leakproof containers with tightly fitting lids to prevent spoilage and contamination. Substances that are toxic to a nonhuman primate must not be stored in animal areas, or in food storage or preparation areas.

(f) *Drainage and waste disposal.* Housing facility operators must provide daily (or more often as necessary) removal and disposal of animal and food wastes, bedding, dead animals, debris, garbage, water, and any other fluids and wastes. Housing facilities must be equipped with disposal facilities and drainage systems that are constructed and operated so that animal wastes and water are rapidly eliminated and the animals stay dry. Disposal and drainage systems must minimize vermin and pest infestation, insects, odors, and disease hazards. All drains must be properly constructed, installed, and maintained. If closed drainage systems are used, they must be equipped with traps and prevent the backflow of gases and the backup of sewage onto the floor. If the facility uses sump ponds, settlement ponds, or other similar systems for drainage and animal waste disposal, the system must be located far enough away from the animal area of the housing facility to prevent odors, diseases, insects, pests, and vermin infestation. If drip or constant flow watering devices are used to provide water to the animals, excess water must be rapidly drained out of the animal areas by gutters or pipes so that the animals stay dry. Puddles of water in animal areas must be promptly mopped up or drained so that the animals stay dry. Trash containers in housing facilities and in food storage and food preparation areas must be leakproof and must have tightly fitted lids on them at all times. Dead animals, animal parts, and animal waste must not be kept in food storage or food preparation areas, food freezers, food refrigerators, and animal areas.

(g) *Washrooms and sinks.* Washing facilities, such as washrooms, basins, sinks, or showers must be provided for animal caretakers and must be readily accessible

**§ 3.76 Indoor housing facilities.**

(a) *Heating, cooling, and temperate.* Indoor housing facilities must be sufficiently heated and cooled when necessary to protect nonhuman primates from cold and hot temperatures and to provide for their health, comfort and well-being. The ambient temperature in the facility must not fall below 50 °F (10 °C) and must not rise above 85 °F (29.5 °C) when nonhuman primates are present. Within this range, the ambient temperature must be maintained at a level that ensures the health and well-being of the species housed, in accordance with generally accepted professional and husbandry practices.

(b) *Ventilation.* Indoor housing facilities must be sufficiently ventilated at all times when nonhuman primates are present to provide for their health, comfort, and well-being and to minimize odors, drafts, ammonia levels, and moisture condensation. Air, preferably fresh air, must be provided by windows, doors, vents, fans, or air conditioning. The relative humidity must be maintained between 30 percent and 70 percent. Within this range, the relative humidity maintained must be at a level that ensures the health and well-being of



the species housed, in accordance with generally accepted professional and husbandry practices.

(c) *Lighting.* Indoor housing facilities must be lighted well enough to permit routine inspection and cleaning of the facility, and observation of the nonhuman primates. A regular daily lighting cycle of at least 8 consecutive hours of light and at least 8 consecutive hours of darkness must be provided, by either natural or artificial light. If only artificial light, such as fluorescent light, is provided, it must provide full-spectrum illumination. Primary enclosures must be placed in the housing facility so as to protect the nonhuman primates from excessive light.

**§ 3.77 Sheltered housing facilities.**

(a) *Heating, cooling, and temperature.* The sheltered part of sheltered housing facilities must be sufficiently heated and cooled when necessary to protect the nonhuman primates from cold and hot temperatures and to provide for their health, comfort and well-being. The ambient temperature in the sheltered part of the facility must not fall below 50 °F (10 °C) and must not rise above 85 °F (29.5 °C). Within this range, the ambient temperature must be maintained at a level that ensures the health and well-being of the species housed, in accordance with generally accepted professional and husbandry practices.

(b) *Ventilation.* The sheltered part of sheltered animal facilities must be sufficiently ventilated at all times to provide for the health, comfort, and well-being of nonhuman primates and to minimize odors, drafts, ammonia levels, and moisture condensation. Air, preferably fresh air, must be provided by windows, doors, vents, fans, or air conditioning. The relative humidity maintained in the sheltered part of the facility must be between 30 percent and 70 percent. Within this range, the relative humidity maintained must be at a level that ensures the health and well-being of the species housed, in accordance with generally accepted professional and husbandry practices.

(c) *Lighting.* The sheltered part of sheltered housing facilities must be lighted well enough to permit routine inspection and cleaning of the facility, and observation of the nonhuman primates. A regular daily lighting cycle of at least 8 consecutive hours of light and at least 8 consecutive hours of darkness must be provided, by either natural or artificial light. If only artificial light, such as fluorescent light, is provided, it must provide full-spectrum illumination. Primary enclosures must be placed in the housing facility so as to protect the nonhuman primates from excessive light.

(d) *Shelter from the elements.* Sheltered housing facilities for nonhuman primates must provide adequate shelter from the elements at all times. It must provide protection from the sun, rain, snow, wind, and cold, and from any weather conditions that may occur.

(e) *Capacity; multiple shelters.* Both the sheltered part of sheltered housing facilities and any other necessary shelter from the elements must be sufficiently large to provide protection comfortably to all the nonhuman primates housed in the facility at the same time. If aggressive or dominant animals are housed in the facility with other animals there must be multiple shelters.

(f) *Perimeter fence.* The outdoor area of a sheltered housing facility must be enclosed by a fence that is at least 6 feet high. The fence must be constructed so that it protects nonhuman primates by preventing unauthorized humans, and animals the size of dogs, skunks, and raccoons, from going through it or under it and having contact with the nonhuman primates. It must be at least 3 feet from the outside wall or fence of the primary enclosure. A perimeter fence is not required if:

(1) the outside walls of the primary enclosure are made of a sturdy, durable material such as concrete, wood, plastic, metal, or glass, and are high enough and constructed in a manner that prevents contact with or entry by humans and animals that are outside the sheltered housing facility; or

(2) the housing facility is surrounded by a natural barrier that restricts the nonhuman primates to the housing facility and protects them from contact with unauthorized humans and animals that are outside the sheltered housing facility, and the Administrator gives written permission.

(g) *Public barriers.* Fixed public exhibits housing nonhuman primates, such as zoos, must have a barrier between the primary enclosure and the public at any time the public is present that prevents physical contact between the public and the nonhuman primates. Nonhuman primates used in trained animal acts or in uncaged public exhibits must be under the direct control and supervision of an experienced handler or trainer at all times when the public is present. Trained nonhuman primates may be permitted physical contact with the public, as allowed under § 2.131, but only if they are under the direct control and supervision of an experienced handler or trainer at all times during the contact.

**§ 3.78 Outdoor housing facilities**

(a) *Acclimation.* Only nonhuman primates that are acclimated to the prevailing temperature and humidity at the outdoor housing facility during the time of year they are at the facility, and that can tolerate the range of temperatures and climatic conditions known to occur at the facility at that time of year without stress or discomfort, may be kept in outdoor facilities.

(b) *Shelter from the elements.* Outdoor housing facilities for nonhuman primates must provide adequate shelter from the elements at all times. It must provide protection from the sun, rain, snow, wind, and cold, and from any weather conditions that may occur. The shelter must provide heat to the primates to prevent the ambient temperature from falling below 50 °F (10 °C).

(c) *Capacity; multiple shelters.* The shelter must be sufficiently large to comfortably provide protection for all the nonhuman primates housed in the facility at the same time. If aggressive or dominant animals are housed in the facility with other animals there must be multiple shelters.

(d) *Perimeter fence.* An outdoor housing facility must be enclosed by a fence that is at least 6 feet high. The fence must be constructed so that it protects nonhuman primates by preventing unauthorized humans, and animals the size of dogs, skunks, and raccons, from going through it or under it and having contact with the nonhuman primates. It must be at least 3 feet from the outside wall or fence of the primary enclosure. A perimeter fence is not required if:

(1) the outside walls of the primary enclosure are made of a sturdy, durable material such as concrete, wood, plastic, metal, or glass, and are high enough and constructed in a manner that prevents contact with or entry by humans and animals that are outside the housing facility; or

(2) the housing facility is surrounded by a natural barrier that restricts the nonhuman primates to the housing facility and protects them from contact with unauthorized humans and animals that are outside the housing facility, and the Administrator gives written permission.

(e) *Public barriers.* Fixed public exhibits housing nonhuman primates, such as zoos, must have a barrier between the primary enclosure and the public at any time the public is present, in order to prevent physical contact between the public and the nonhuman primates. Nonhuman primates used in

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trained animal acts or in uncaged public exhibits must be under the direct control and supervision of an experienced handler or trainer at all times when the public is present. Trained nonhuman primates may be allowed physical contact with the public, but only if they are under the direct control and supervision of an experienced handler or trainer at all times during the contact.

**§ 3.79 Mobile or traveling housing facilities.**

(a) *Heating, cooling, and temperature.* Mobile or traveling housing facilities must be sufficiently heated and cooled when necessary to protect nonhuman primates from cold and hot temperatures and to provide for their health, comfort and well-being. The ambient temperature in the traveling housing facility must not fall below 50 °F (10 °C) and must not rise above 95 °F (35 °C) when nonhuman primates are present. Within this range, the ambient temperature must be maintained at a level that ensures the health and well-being of the species housed, in accordance with generally accepted professional and husbandry practices. Auxiliary ventilation, such as fans, blowers, or air conditioning, must be provided when the ambient temperature in the traveling housing facility is 85 °F (29.5 °C) or higher.

(b) *Ventilation.* Traveling housing facilities must be sufficiently ventilated at all times when nonhuman primates are present to provide for the health, comfort, and well-being of nonhuman primates and to minimize odors, drafts, ammonia levels, moisture condensation, and exhaust fumes. Air, preferably fresh air, must be provided by means of windows, doors, vents, fans, or air conditioning. The relative humidity must be maintained at a level that ensures the health and well-being of the species housed, in accordance with generally accepted professional and husbandry practices.

(c) *Lighting.* Mobile or traveling housing facilities must be lighted well enough to permit routine inspection and cleaning of the facility, and observation of the nonhuman primates. A regular daily lighting cycle of at least 8 consecutive hours of light and at least 8 consecutive hours of darkness must be provided, by either natural or artificial light. If only artificial light, such as fluorescent light, is provided, it must provide full-spectrum illumination. Primary enclosures must be placed in the housing facility so as to protect the nonhuman primates from excessive light.

(d) *Public barriers.* There must be a barrier between a mobile or traveling housing facility and the public at any time the public is present, in order to prevent physical contact between the nonhuman primates and the public. Nonhuman primates used in traveling exhibits, trained animal acts, or in uncaged public exhibits must be under the direct control and supervision of an experienced handler or trainer at all times when the public is present. Trained nonhuman primates may be allowed physical contact with the public, but only if they are under the direct control and supervision of an experienced handler or trainer at all times during the contact.

**§ 3.80 Primary enclosures.**

Primary enclosures for nonhuman primates must meet the following minimum requirements:

(a) *General requirements.* (1) Primary enclosures must be designed and constructed of suitable materials so that they are structurally sound for the species of nonhuman primates contained in them. They must be kept in good repair.

(2) Primary enclosures must be constructed and maintained so that they—

(i) Have no sharp points or edges that could injure the nonhuman primates;

(ii) Protect the nonhuman primates from injury;

(iii) Contain the nonhuman primates securely and prevent accidental opening of the enclosure, including opening by the animal, and unauthorized release of the nonhuman primates;

(iv) Keep predators and unauthorized individuals from entering the enclosure or having physical contact with the nonhuman primates;

(v) Enable the nonhuman primates to remain dry and clean;

(vi) Provide shelter and protection from extreme temperatures and weather conditions that may be uncomfortable or hazardous to the species of nonhuman primate contained;

(vii) Provide sufficient shade to shelter all the nonhuman primates housed in the primary enclosure at one time;

(viii) Provide the nonhuman primates with easy and convenient access to clean food and water;

(ix) Enable all surfaces in contact with nonhuman primates to be readily cleaned and sanitized in accordance with § 3.84(b)(3), or replaced when worn or soiled;

(x) Have floors that are constructed in a manner that protects the nonhuman primates from injuring themselves or from having their appendages caught; and

(xi) Provide sufficient space for the nonhuman primates to make normal postural adjustments with freedom of movement.

(b) *Social grouping.* Nonhuman primates must be housed in primary enclosures with compatible members of the same species or with compatible members of other nonhuman primate species, in pairs, family groups, or other compatible social groupings, unless the attending veterinarian determines that doing so would endanger the health, safety, and well-being of the nonhuman primates. Compatibility of nonhuman primates must be determined in accordance with generally accepted professional practices and actual observation to ensure that the nonhuman primates are in fact compatible. Individually housed nonhuman primates must be able to see and hear nonhuman primates of their own or compatible species, unless the attending veterinarian determines that it would endanger their health, safety, and well-being. If, in accordance with these regulations, this contact is not provided, the isolated individually housed nonhuman primates must have positive physical contact or other interaction with their keeper or other familiar and knowledgeable person for at least one hour each day.



(c) *Minimum space and physical environment requirements.* Primary enclosures must meet the applicable minimum space and physical environment requirements provided in this subpart. These minimum space requirements must be met even if perches, swings, ledges, or other suspended fixtures are placed in the enclosure.

(1) Research facilities; federal research facilities.

(i) The minimum space that must be provided to *each* nonhuman primate, whether housed individually or with other nonhuman primates, is determined by the typical weight of animals of its species, except for brachiating species,[2] in accordance with the following table:[3]

[2] The different species of nonhuman primates are divided into seven weight groups for determining minimum space requirements, except that all brachiating species of any weight are grouped together since they require additional space to engage in species-typical behavior. The grouping provided is based upon the typical weight for various species and not on changes associated with obesity, aging, or pregnancy. These conditions will not be considered in determining a nonhuman primate's weight group unless the animal is obviously unable to make normal postural adjustments and movements within the primary enclosure. Different species of prosimians vary in weight and should be grouped with their appropriate weight group. They have not been included in the weight table since different species typically fall into different weight groups. Infants and juveniles of certain species are substantially lower in weight than adults of those species and require the minimum space requirements of lighter weight species unless the animal is obviously unable to make normal postural adjustments and movements within the primary enclosure.

[3] The following are examples of the kinds of nonhuman primates typically included in each group:

Group 1—marmosets, tamarins, and infants (up to 6 months of age) of various species.

Group 2—capuchins, squirrel monkeys and similar size species, and juveniles (6 months to 3 years of age) of various species.

Group 3—macaques and African species.

Group 4—male macaques and large African species.

Group 5—baboons and nonbrachiating species larger than 33.0 lbs. (15 kg.).

Group 6—great apes up to 88.0 lbs. (40 kg.) and brachiating species.

Group 7—great apes >88.0 lbs. (40 kg.).

| Group | Weight | | Floor Area/Animal | | Height | |
|---|---|---|---|---|---|---|
| | lbs. | (kg.) | ft.² | (m²) | in. | (cm.) |
| 1 | 2.2 | (1) | 1.6 | (0.15) | 20 | (50.8) |
| 2 | 2.2–6.6 | (1–3) | 3.0 | (0.28) | 30 | (76.2) |
| 3 | 6.6–20.0 | (3–10) | 4.3 | (0.40) | 30 | (76.2) |
| 4 | 20.0–33.0 | (10–15) | 6.0 | (0.56) | 32 | (81.28) |
| 5 | 33.0–55.0 | (15–25) | 8.0 | (0.74) | 36 | (91.44) |
| 6 | 55.0–88.0 | (25–40) | 25.1 | (2.33) | 84 | (213.36) |
| 7 | >88.0 | (>40) | 50.0 | (4.65) | 84 | (213.36) |

(ii) Primary enclosures not precisely meeting the floor area and height requirements provided in paragraph (c)(1)(i) of this section but that do provide nonhuman primates with a sufficient volume of space and the opportunity to express species-typical behavior, such as primate pole housing, may be used with written permission from the Administrator. An application for permission must demonstrate in written and photographic detail why the primary enclosure should be allowed. Nonhuman primates housed in these types of primary enclosures that are also designed and constructed in a manner that provides for their psychological well-being by allowing exercise and social interaction may be excused from the release period required in § 3.81(a)(3) if it is sufficiently justified in the application. The Administrator may deny the application if he or she determines that granting it will be detrimental to the health and psychological well-being of the nonhuman primates to be housed in the primary enclosure. The Administrator will advise the research facility of his or her decision in writing.

(iii) Environmental enrichments must be provided in accordance with § 3.81.

(2) *Dealers.* (i) Individual nonhuman primates that are not part of an established pair, family, or other social group may be housed individually if the

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attending veterinarian determines that it is necessary for their health, safety, and well-being. Except as provided in paragraph (c)(2)(v) of this section, the minimum space that must be provided to each nonhuman primate housed individually is twice the minimum floor area and twice the minimum height (up to a maximum height of 84 inches) that research facilities are required to provide in accordance with paragraph (c)(1) of this section.

(ii) Except when nonhuman primates must be individually housed for the purposes set forth in paragraph (c)(2)(v) of this section, established pairs, families, or other social groups of nonhuman primates must be maintained together in a primary enclosure. Primary enclosures used to house nonhuman primates in pairs, families, and other social groups must satisfy the minimum space requirements provided in paragraph (c)(1) of this section, in accordance with the requirements of paragraph (d) of this section for housing more than 1 nonhuman primate in a primary enclosure.

(iii) Dealers must enrich the environment in primary enclosures to promote the psychological well-being of nonhuman primates. This can be done by, among other things:

(A) Providing items such as perches, swings, mirrors, or other cage complexities that enable nonhuman primates to engage in activities typical of their age and species;

(B) Providing playthings and manipulative objects; and

(C) Using foraging or task-oriented feeding methods.

(iv) Multiple enrichments of the environment must be provided for each animal housed in a primary enclosure. The nature of the enrichments provided must be appropriate for the species of nonhuman primates housed in the enclosure.

(v) Dealers may meet the minimum space requirements required of research facilities in paragraph (c)(1) of this section, instead of the space requirements provided in paragraph (c)(2)(i) of this section, in the following instances:

(A) When holding a nonhuman primate for required federal, state, or local quarantine periods;

(B) When a nonhuman primate is receiving veterinary care as directed by the attending veterinarian; or

(C) While transporting a nonhuman primate to or from an auction sale and while holding it at the sale.

(3) *Exhibitors.* Nonhuman primates are grouped by species into the following 7 groups for purposes of determining the minimum space and environment requirements that exhibitors must provides:

| Nonhuman Primate Group | Type | Example |
|---|---|---|
| 1 | Prosimian Primates | Tarsiers, Galagos, Pottos, Lorises, Lemurs, Mouse Lemurs Avahis, Indris, Sifakas, and Aye-ayes |
| 2 | Marmosets and Tamarins | Marmosets, Tamarins, and Callimico |
| 3 | Other New World Monkeys | Howler Monkeys, Owl Monkeys, Spider Monkeys, Woolly Spider Monkeys, Uakaris, Titi Monkeys, Capuchins, Saki Monkeys, Woolly Monkeys, and Squirrel Monkeys |
| 4 | Langurs and Colobines | Proboscis Monkey, Langur, Colobus Monkey |
| 5 | Other Old World Monkeys | Baboons, Drills, Mandrills, Macaques, Guenons, Mangebeys, Talapoins, Patas Monkeys and Swamp Monkeys |
| 6 | Lesser Apes | Gibbons and Siamang |
| 7 | Great Apes | Orangutans, Chimpanzees, Gorillas |

The minimum space and environmental enrichments that must be provided to each grouping of nonhuman primates housed in a primary enclosure must be appropriate for the species housed, as provided in this paragraph, and in accordance with the following chart:

| Nonhuman Primate Group | Species/Type | Minimum No. Primates Per Enclosure | Minimum Primary Enclosure Size (Length, Width, Height) | Shelter Dens/Nest Boxes | Enclosure Furnishings or Equipment |
|---|---|---|---|---|---|
| Prosimians | Tarsiers | Pair | 1m L × 1m W × 2m H (3.28ft) × (3.28ft) × (6.56ft). | 12.7cm L × 12.7 cm W × 12.7cm H (5.0in) × (5.0in) × (5.0in) for each adult in upper half of exhibit. | 1, 2, 3 |
| | Loris & Galago: Smaller species. | Pair or family group | 1.5cm L × 1.5cm W × 1.5cm H (4.92ft) × (4.92ft) × (4.92ft). | 12.7cm L × 12.7cm W × 12.7cm H (5in) × (5in) × (5in) for each adult in upper half of exhibit. | 1, 3 |
| | Larger species | | 3m L × 3m W × 3m H (9.84ft) × (9.84ft) × (9.84ft). | 76.2cm L × 47.2cm W × 47.7cm H (30in) × (18.6in) × (18.6in). | |
| | Lemurs | Pair | 1.52m L × 1.52m W × 1.83m H (4.98ft) × (4.98ft) × (6.0ft). | 0.46m L × 0.46m W × 0.46m H (1.5ft) × (1.5ft) × (1.5ft) for each adult and in upper half of exhibit. | 1, 2 |



| Nonhuman Primate Group | Species/Type | Minimum No. Primates Per Enclosure | Minimum Primary Enclosure Size (Length, Width, Height) | Shelter Dens/Nest Boxes | Enclosure Furnishings or Equipment |
|---|---|---|---|---|---|
| Marmosets, Tamarins, Callimico | Mouse Lemurs | Pair | 1.22m L × 1.22m W × 1.22m H (4.0ft) × (4.0ft) × (4.0ft) | 10..16cm L × 10.16cm W × 10.16cm H. (4.0in) × (4.0in) × (4.0in) for each adult and in upper half of exhibit. | 1 |
| | Indris, Avahis, Sifakas | Pair or family group | 5m L × 5m W × 5m H (167.4ft) × (16.4ft) × (16.4ft). | One shelter for all. | 1, 2, 4 |
| | Aye-Ayes | Pair | 4m L × 3m W × 3m H (13.12ft) × (9.8ft) × (9.8ft) | 76.2cm L × 47.7cm W × 47.7cm H (2.5ft) × (1.5ft) × (1.5ft) for each adult and in upper half of exhibit. | 4, 7 |
| | Smaller < 500g | Pair | 0.91m L × 0.91m W × 1.83m H (3ft) × (3ft) × (6ft) | One shelter for all. | 1, 2, 5 |
| | Larger > 500g | | 1.22m L × 2.44m W × 2.44m H (4ft) × (8ft) × (8ft) | *Note:* Minimum temperature of 70°F. | |
| Other New World Monkeys. | Titis, Owl, & Squirrel | Pair | 2m L × 2m W × 2m H (6.56ft) × (6.56ft) × (6.56ft). | One shelter for all. | 1, 2, 5, 6 |
| | | Up to 6 | 2.5m L × 2.5m W × 2.5m H (8.2ft) × (8.2ft) × (8.2ft). | *Note:* Sakis, Titis, & Owls are Monogamous. | |
| | Capuchin | Pair | 2.5m L × 2m W × 2m H | | |
| | Ukaris | | (8.2ft) × (8.2ft) × (6.2ft) | | |
| | Sakis | Up to 5 | 4m L × 2.5m W × 2.5m H (13.12ft) × (8.2ft) × (8.2ft). | | |
| | Howler | Pair | 3m L × 3m × 3m H | | |
| | Wooly | | (9.84ft) × (9.84ft) × (9.84ft) | | |
| | Spider | Over 2 | 3.5m L × 3.5m W × 3.5m H (11.5ft) × (11.5ft) × (11.5ft). | | |
| Langurs, Colobines. | Proboscis, Langur, Colobus. | Pair or family group | Width, length, and height are to be at least 3 times the length from tip of nose to tip of tail for the largest animal. | Two boxes, each one at least 1½ times the length from tip of nose to tip of tail. *Note:* Temperature range should be 70–85°F.. | 1, 2, 6 |
| Other Old Monkeys (Cercopithecids). | Baboons, Drills, Mandrills, Macaques Guenons, Mangebeys, Talapoins, Patas & Swamp Monkeys. | Pair or family group | Area = 54 times the head and body length of the largest adult. Height = 6ft minimum (2.44m). | Sufficient shelter for all. | 1, 2, 3, 7 |
| Lesser Apes | Gibbons | Pair | 4.27m L × 4.27m W × 3.05m H (14ft) × (14ft) × (10ft). | One shelter for all. | 1, 2, 8 |
| | Siamange | | 4.27m L × 5.48m W × 3.05m H (14ft × (18ft) × (10ft). | *Note:* These species are arboreal brachiators, are monogamous, and are strongly territorial.. | |
| Greater Apes | Pygmy Chimpanzees | Pair | 4.27m L × 4.27m W × 3.05m H (14ft) × (14ft) × (10ft). | Shelter for all by individual or group | 7, 9, 10, 11 |
| | Chimpanzee, Gorilla | One | 4.27m L × 4.27m W × 3.05m H (14ft) × (14ft) × (10ft) | | |
| | Orangutan | Pair | 8.54m L × 8.54m W × 3.05m H (28ft) × (28ft) × (10ft) Space should be divided into separate areas or shift cages be available. | | |

1. Vertical and horizontal branches/poles of suitable size for the species.
2. Elevated perches/resting shelves of sufficient size to hold all primates.
3. Elevated pathways of tree branches/poles/or other material suitable for the species.
4. Multidirectional pathways of branches/poles/or other material of suitable size for the species.
5. Elevated feed and water stations.
6. Visual barriers.
7. Nontoxic hay/straw/leaves/branches/browse for foraging or nesting.
8. Three to four horizontal branches/poles about 2 feet apart throughout exhibit at heights that are greater than the body length of the animal when arms and legs are fully extended.
9. Climbing structures and elevated platforms at least 1 meter (3.28ft) apart and at varying heights.
10. Ropes anchored at each end which are taut enought to prevent being wrapped around an arm or leg.
11. Objects to manipulate such as tires, plastic drums, or "boomer" balls.

(4) *Mobile or traveling animal act exhibitors.* (i) Primary enclosures used to house nonhuman primates that participate daily in acts, shows, or training periods outside of their enclosure must satisfy the minimum space requirements provided in paragraph (c)(1) of this section for research facilities. No enhancements of the primary enclosure environment are required.

(ii) Primary enclosures used to house up to 3 nonhuman primates that are permanently contained in their primary enclosure must provide at least three times the floor space and twice the minimum height (up to a maximum height of 84 inches) required in paragraph (c)(1) of this section for research facilities. The minimum space provided must be increased in accordance with paragraph (d) of this section for each additional 1–3 nonhuman primates housed together in the primary enclosure. The environment in the primary enclosure must be enriched to promote the psychological well-being of the nonhuman primates in a manner that allows them to engage in activities that are typical for their age and species. The environment must be enriched by providing items such as perches, swings, mirrors, or other increased cage complexities; providing playthings or manipulative objects; and by using foraging or task-oriented feeding methods.

(d) Except for nonhuman primates housed by exhibitors in accordance with

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paragraphs (c)(3), and as provided in paragraphs (c)(2)(ii) [dealers] and (c)(4)(ii) [mobile or traveling animal act exhibitor] of this section, when more than one nonhuman primate is housed in a primary enclosure, the minimum space requirement for the enclosure is the sum of the minimum floor area space requirements that must be provided for *each* nonhuman primate housed in the enclosure and double the minimum height requirement for the largest nonhuman primate housed in the enclosure (up to a maximum height of 84 inches).[4]

(e) *Variance from minimum space requirements.*—(1) *Definition.* For the purposes of this subpart, "variance" means the written permission from the Administrator that is required to operate as a licensee or registrant under the Animal Welfare Act without fully complying with the minimum space requirements provided in this subpart. A variance may be limited in scope both as to time and to the primary enclosures covered by it, and will specify the portions of a registrant's or licensee's facilities covered by the variance.

(2) *Who may apply; eligibility.* Registrants and licensees that maintain or handle nonhuman primates, or that have nonhuman primates on the premises or under their control or supervision, and that do not comply with one or more of the minimum space requirements provided in this subpart may apply to the Administrator for a variance. Any housing facilities under construction or in the design and preliminary construction stages on the effective date of these regulations must comply with these standards and are not eligible for a variance, unless the registrant or licensee demonstrates to the Administrator that construction is so nearly complete that a variance is necessary for the registrant or licensee to fully comply with the minimum space requirements.

[4] An example of how to determine the minimum space that must be provided for two nonhuman primates housed together in one primary enclosure would be: Assume a squirrel monkey [Group 2 of paragraph (1)] is housed with a baboon [Group 5 of paragraph (1)]. The minimum floor area required would be the Group 2 minimum floor area (3.0 sq. ft.) plus the Group 5 minimum floor area (8.0 sq. ft.), or 11 square feet. The minimum height required would be double the Group 5 minimum height (36 in. ht. × 2—72 in. ht.), since the minimum height required for the largest nonhuman primate housed in the enclosure is doubled.

Assume a second squirrel monkey is added to the same primary enclosure. An additional Group 2 minimum floor area (3.0 sq. ft.) would be added to determine the total minimum floor area space requirement for that primary enclosure. (11 sq. ft. + 3 sq. ft.—14 sq. ft.) The minimum height would not be increased.

(3) *When to apply.* Eligible registrants and licensees requiring a variance in accordance with paragraph (e)(2) must apply to the Administrator within 60 days of the effective date of these regulations.

(4) *Application.* An application for a variance must be in writing and must list in detail each of the minimum space requirements that cannot be complied with, the amount of time necessary for the applicant to come into compliance with the minimum space requirements, the specific reasons why the variance is being requested, the species and number of nonhuman primates that will be affected by the variance, and the estimated cost of compliance. A statement from the attending veterinarian concerning the age and health status of the nonhuman primates affected by the variance and addressing whether the granting of a variance would be detrimental to the affected nonhuman primates must accompany the application. The Administrator may grant the application if he or she determines that it is justified or deny it if he or she determines that it is not justified under the circumstances, or that granting it would be detrimental to the health and psychological well-being of the nonhuman primates affected by the variance. The grant or denial will be in writing. The Administrator may require a report to be submitted by an outside expert to help determine whether a variance would be detrimental to the health and psychological well-being of the nonhuman primates affected. The cost of the report must be paid by the applicant. The applicant may request that the Administrator reconsider his or her decision to deny an application by writing to the Administrator within ten (10) days after the applicant has received the denial. The applicant must explain, in writing, why he or she believes the variance should have been granted. The Administrator will notify the applicant in writing of the final decision as promptly as circumstances allow.

(5) *Duration and extension.* An initial variance may be granted, at the sole discretion of the Administrator, for the period of time the Administrator determines is necessary for the applicant to comply with the minimum space requirements, based upon the facts presented in the application, up to a maximum time of 2 years. The Administrator may grant a single extension of up to 1 year upon written request, if the Administrator determines that it is justified due to unforeseen situations that prevent the registrant or licensee from fully complying during the initial variance period. A written request for an extension must be received by the Administrator at least 60 days before the expiration date of the initial variance. No more than 1 extension will be granted. The grant or denial of an application for an extension will be in writing. The applicant may request that the Administrator reconsider his or her decision to deny an application for extension by writing to the Administrator within ten (10) days after the applicant has received the denial. The applicant must explain, in writing, why he or she believes the extension should have been granted. The Administrator will notify the applicant in writing of the final decision as promptly as circumstances allow. Until a final determination is made, the extension will not be in effect. If the extension is granted on reconsideration, it will be retroactive to the termination date of the initial variance.

(6) *Revocation.* A variance may be revoked by the Administrator at any time if he or she determines that it was obtained in bad faith, that the purpose for which the variance was granted is not being carried out, or that it is detrimental to the health and psychological well-being of the nonhuman primates affected. Revocation of a variance will be in writing and effective upon receipt.

### § 3.81 Additional requirements for research facilities

(a) Research facilities, including federal research facilities, must comply with the following requirements in order to promote the psychological well-being of nonhuman primates:

(1) The physical environment in primary enclosures must be enriched by providing means of expressing species-typical activities. Examples of environmental enrichments include providing perches, swings, mirrors, and other increased cage complexities; providing toys or objects to manipulate; and using foraging or task-oriented feeding methods.

(2) Nonhuman primates must be housed in social groupings in accordance with § 3.80(b).

(3) An individually housed nonhuman primate must be released for a minimum of four hours of exercise and social interaction per week into an area that is at least three times the area and twice the height (up to a maximum height of 84 inches) required for that species in § 3.80(c)(1). Individually housed nonhuman primates may be placed with compatible species for their exercise periods. Nonhuman primates that are not housed individually and those that are housed individually in a primary enclosure that provides at least twice the volume required for that species in § 3.80(c)(1) do not have to be released for an exercise period.

(4) Research facilities must consult with the attending veterinarian with regard to the following individually housed nonhuman primates and must provide additional environmental enrichments, exercise, and social interaction, in accordance with the instructions of the attending veterinarian:

(i) Infants and juveniles;

(ii) Adults used in research for which the animal care and use procedure does not provide much activity;

(iii) Those that show signs of being in psychological distress through behavior or appearance.

(b) Primate chairs. Nonhuman primates must not be placed in chairs unless it is required by an animal care and use procedure and the Committee approves of it for a particular animal. If the use of chairs is approved for a nonhuman primate, it must be released daily for exercise for at least one continuous hour during the period it is placed in a chair, unless continuous restraint in a chair is required by an animal care and use procedure and approved by the Committee. If continuous restraint is approved for a nonhuman primate it must be released for exercise for at least one hour before it is restrained and for at least one hour after the period of restraint.

(c) Records. Documentation of the release of each nonhuman primate for exercise and social interaction and of additional environmental enrichments that must be provided under paragraph (a)(4) of this section must be kept by the attending veterinarian and is subject to APHIS inspection, and in the case of federal research facilities, to inspection by officials of any federal funding agency.

(d) Exemptions. The attending veterinarian may exempt a particular nonhuman primate from the exercise and social release period required for it under paragraphs (a)(3) and (b) of this section, or restrict its participation in the period, if he or she determines that it is necessary to do so for its health, condition, or psychological well-being due to the physical or psychological condition of the animal. The exemption or restriction must be recorded by the attending veterinarian and the documentation is subject to APHIS inspection, and in the case of federal research facilities, to inspection by officials of any federal funding agency. The attending veterinarian must review the grant of exemption or restriction and observe the animal at least every 30 days to determine whether it is still necessary. All exemptions and restrictions must be included in the Annual Report of the research facility.

**Animal Health and Husbandry Standards**

### § 3.82 Feeding.

(a) The diet for nonhuman primates must be appropriate for the species, size, age, and condition of the animal, and for the conditions in which the nonhuman primate is maintained, according to generally accepted professional and husbandry practices and nutritional standards. The diet must consist of varied food items. The food must be clean, uncontaminated, wholesome, and palatable to the animals. It must be of sufficient quantity and have sufficient nutritive value to maintain the normal condition and weight of the animal and to meet its normal daily nutrition and vitamin requirements.

(b) The method of feeding nonhuman primates must be varied daily in order to promote their psychological well-being, such as by using task-oriented feeding and allowing them to forage for food.

(c) Nonhuman primates must be fed at least once each day except as otherwise might be required to provide adequate veterinary care. Infant and juvenile nonhuman primates must be fed as often as necessary in accordance with generally accepted professional and husbandry practices and nutritional standards, based upon the animals' age and condition.

(d) Food and food receptacles, if used, must be readily accessible to all the nonhuman primates being fed. If members of dominant nonhuman primate or other species are fed together with other nonhuman primates, multiple feeding sites must be provided. The animals must be observed to determine that all receive a sufficient quantity of food.

(e) Food and food receptacles, if used, must be located so as to minimize any risk of contamination by excreta and pests. Food receptacles must be kept clean and must be sanitized in accordance with the procedures listed in § 3.84(b)(3) of this subpart at least once every 2 weeks. Used food receptacles must be sanitized before they can be used to provide food to a different nonhuman primate or social grouping of nonhuman primates. Measures must be taken to ensure there is no molding, deterioration, contamination, and caking or wetting of food placed in self-feeders.

### § 3.83 Watering.

Potable water must be provided in sufficient quantity to every nonhuman primate housed at the facility. If potable water is not continually available to the nonhuman primates, it must be offered to them at least twice daily for periods of not less than 1 hour each time, unless the attending veterinarian requires otherwise in order to provide adequate veterinary care to the animal. Water receptacles must be kept clean and free of waste of any kind, and must be sanitized in accordance with the methods provided in § 3.84(b)(3) of this subpart at least once every 2 weeks. Used water receptacles must be sanitized before they can be used to provide water to a different nonhuman primate or social grouping of nonhuman primates.

### § 3.84 Cleaning, sanitization, housekeeping, and pest control.

(a) Cleaning of primary enclosures. Excreta and food waste must be removed at least daily from inside each primary enclosure and from underneath it, and more frequently if necessary, to prevent accumulation of feces and food waste, to prevent the nonhuman primates from becoming soiled, and to reduce disease hazards, insects, pests, and odors. When a steam, hosing, flushing, or other method involving water is used to clean the primary enclosures, nonhuman primates must be removed during the cleaning to prevent them from being involuntarily wetted or injured. Pans underneath primary enclosures with grill-type floors must also be cleaned at least daily, and as often as necessary to prevent accumulation of feces and food waste, and to reduce disease hazards, pests, insects, and odors. Primary enclosures with hard surfaces must be cleaned every day. Dirt floors and planted areas in primary enclosures must be raked and spot cleaned every day. Perches, bars, and shelves must be kept clean and replaced when worn. If the species of nonhuman primates housed in the primary enclosure engages in scent marking, the primary enclosure must be spot cleaned daily.

(b) Sanitization of primary enclosures and food and water receptacles.

(1) A used primary enclosure must be sanitized in accordance with this section before it can be used to house another nonhuman primate.

(2) Primary enclosures must be sanitized at least once every 2 weeks and as often as necessary to prevent any accumulation of dirt, debris, waste, food waste, excreta, or disease hazard, using one of the methods prescribed in

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paragraph (b)(3) of this section. However, if the species of nonhuman primates housed in the primary enclosure engages in scent marking, the primary enclosure must be sanitized at regular intervals determined in accordance with generally accepted professional and husbandry practices.

(3) Hard surfaces of primary enclosures and food and water receptacles must be sanitized using one of the following methods:

(i) Live steam under pressure;

(ii) Washing with hot water (at least 180 °F (82.2 °C)) and soap or detergent, such as in a mechanical cage washer; or

(iii) Washing all soiled surfaces with a detergent solution to remove all organic material and mineral buildup, followed by a safe and effective disinfectant rinse, and then a clean water rinse.

(4) Primary enclosures containing material that cannot be sanitized using the methods provided in paragraph (b)(3) of this section, such as sand, gravel, dirt, grass, or planted areas, must be sanitized by removing the contaminated materials necessary to prevent odors, diseases, pest, insects,' and vermin infestation.

(c) Housekeeping for premises. Premises where housing facilities are located, including buildings and surrounding grounds, must be kept clean and in good repair in order to protect the nonhuman primates from injury, to facilitate the husbandry practices required in this subpart, and to reduce or eliminate breeding and living areas for rodents, pests, and vermin. Premises must be kept free of accumulations of trash, junk, waste, and discarded matter. Weeds, grass, and bushes must be controlled so as to facilitate cleaning of the premises and pest control.

(d) Pest control. An effective program for control of insects, external parasites affecting nonhuman primates, and birds and mammals that are pests, must be established and maintained so as to promote the health and well-being of the animals and reduce contamination by pests in animal areas.

**§ 3.85 Employees.**

Every person subject to the Animal Welfare regulations maintaining nonhuman primates must have enough employees to carry out the level of husbandry practices and care required in this subpart. The employees who provide husbandry practices and care, or handle animals, must be supervised by an animal caretaker who has the knowledge, background, and experience in proper husbandry and care of nonhuman primates to supervise others. The employer must be certain that the supervisor can perform to these standards.

**§ 3.86 Social grouping and separation.**

(a) Nonhuman primates housed in the same primary enclosure must be grouped with compatible members of the same or other nonhuman primate species, or with other compatible animal species, with the following restrictions:

(1) If a nonhuman primate exhibits vicious or overly aggressive behavior it must be housed separately;

(2) Nonhuman primates under quarantine or treatment for a communicable disease must be housed separately from other nonhuman primates and susceptible species of animals to minimize the risk of spread of the disease; and

(3) Nonhuman primates may not be housed with other species of primates or animals unless they are compatible, do not compete for food and shelter, and are not hazardous to the health and well-being of each other;

(b) Families must be housed together and compatible groups must remain constant.

**Transportation Standards**

**§ 3.87 Consignments to carriers and intermediate handlers.**

(a) Carriers and intermediate handlers must not accept a nonhuman primate for transport in commerce more than 4 hours before the scheduled departure time of the primary conveyance on which the animal is to be transported. However, a carrier or intermediate handler may agree with anyone consigning a nonhuman primate to extend this time by up to 2 hours.

(b) Carriers and intermediate handlers must not accept a nonhuman primate for transport in commerce unless they are provided with the name, address, phone number, and telex number, if applicable, of the consignee.

(c) Carriers and intermediate handlers must not accept a nonhuman primate for transport in commerce unless written instructions concerning in transit food and water requirements for each nonhuman primate in the shipment are securely attached to the outside of its primary enclosure in a manner that makes them easily noticed and read.

(d) Carriers and intermediate handlers must not accept a nonhuman primate for transport in commerce unless the consignor certifies in writing to the carrier or intermediate handler that the nonhuman primate was offered food during the 12 hours and water during the 4 hours before delivery to the carrier or intermediate handler, and specifies the date and time the nonhuman primate was last offered food and water. A copy of the certification must accompany the nonhuman primate to its destination and must include the following information for each nonhuman primate:

(1) The consignor's name and address;

(2) The species of nonhuman primate;

(3) A statement by the consignor certifying that each nonhuman primate continued in the primary enclosure was offered food during the 12 hours and water during the 4 hours before delivery to the carrier or intermediate handler, and the date and time food and water was last offered; and

(4) The consignor's signature and the date and time the certification was signed.

(e) Carriers and intermediate handlers must not accept a nonhuman primate for transport in commerce unless the primary enclosure meets the requirements of § 3.88 of this subpart, or the consignor certifies in writing to the carrier or intermediate handler that the primary enclosure meets the requirements of § 3.88 of this subpart. Even if the consignor provides this certification, a carrier or intermediate handler must not accept a nonhuman primate for transport if the primary enclosure is obviously defective or damaged and cannot reasonably be expected to safely and comfortably contain the nonhuman primate without suffering or injury. A copy of the certification must accompany the nonhuman primate to its destination and must include the following information for each primary enclosure:

(1) The consignor's name and address;

(2) The number of nonhuman primates contained in the primary enclosure;

(3) The species of nonhuman primate contained in the primary enclosure;

(4) A statement by the consignor certifying that each primary enclosure in the shipment meets the USDA standards for primary enclosures contained in § 3.88 of this subpart; and

(5) The consignor's signature and the date the certification was signed.

(f) Carriers and intermediate handlers must not accept a nonhuman primate for transport in commerce unless their holding area and cargo facilities meet the minimum temperature requirements provided in §§ 3.91 and 3.92 of this subpart, or unless the consignor provides them with a certificate signed by a veterinarian and dated no more than 10 days before delivery of the animal to the carrier or intermediate handler for transport in commerce, certifying that the animal is acclimated to temperatures lower than those required in §§ 3.91 and 3.92 of this subpart. Even if the carrier or intermediate handler receives this certification, the temperatures the nonhuman primate is exposed to while in the carrier's or intermediate handler's custody must not be lower than the minimum temperature specified by the veterinarian in accordance with paragraph (f)(3) of this section, and must be reasonably within the generally and professionally accepted temperature range for the nonhuman primate, as determined by the veterinarian, considering its age, condition, and species. A copy of the certification must accompany the nonhuman primate to its destination and must include the following information for each primary enclosure:



(1) The consignor's name and address;

(2) The number of nonhuman primates contained in the primary enclosure;

(3) The species of nonhuman primate contained in the primary enclosure;

(4) A statement by a veterinarian that to the best of his or her knowledge, each of the nonhuman primates contained in the primary enclosure is acclimated to air temperatures lower than 45 °F (7.2 °C), but not lower than a minimum temperature specified on the certificate based on the generally and professionally accepted temperature range for the nonhuman primate considering its age, condition, and species; and

(5) The veterinarian's signature and the date the certification was signed.

(g) When a primary enclosure containing a nonhuman primate has arrived at the animal holding area of a terminal facility after transport, the carrier or intermediate handler must attempt to notify the consignee upon arrival and at least once in every 6-hour period after arrival. The time, date, and method of each attempted notification and the actual notification of the consignee, and the name of the person who notifies or attempts to notify the consignee must be written on the carrier's or intermediate handler's copy of the shipping document and on the copy that accompanies the primary enclosure. If the consignee cannot be notified within 24 hours after the nonhuman primate has arrived at the terminal facility, the carrier or intermediate handler must return the animal to the consignor or to whomever the consigner designates. If the consignee is notified of the arrival and does not take physical delivery of the nonhuman primate within 48 hours after arrival of the nonhuman primate, the carrier or intermediate handler must return the animal to the consignor or to whomever the consignor designates. The carrier or intermediate handler must continue to provide proper care, feeding, and housing to the nonhuman primate, and maintain the nonhuman primate in accordance with generally accepted professional and husbandry practices until the consignee accepts delivery of the nonhuman primate or until it is returned to the consignor or to whomever the consignor designates. The carrier or intermediate handler must obligate the consignor to reimburse the carrier or intermediate handler for the cost of return transportation and care.

**§ 3.88 Primary enclosures used to transport nonhuman primates.**

Any person subject to the Animal Welfare regulations must not transport or deliver for transport in commerce a nonhuman primate unless it is contained in a primary enclosure, such as a compartment, transport cage, carton, or crate, and the following requirements are met:

(a) *Construction of primary enclosures.* Primary enclosures used to transport nonhuman primates may be connected or attached to each other and must be constructed so that:

(1) The primary enclosure is strong enough to contain the nonhuman primate securely and comfortably and to withstand the normal rigors of transportation;

(2) The interior of the enclosure has no sharp points or edges and no protrusions that could injure the animal contained in it;

(3) The nonhuman primate is at all times securely contained within the enclosure and cannot put any part of its body outside the enclosure in a way that could result in injury to the animal, to handlers, or to persons or animals nearby;

(4) The nonhuman primate can be easily and quickly removed from the enclosure in an emergency;

(5) The doors or other closures that provide access into the enclosure are secured with animal-proof devices that prevent accidental opening of the enclosure, including opening by the nonhuman primate;

(6) Unless the enclosure is permanently affixed to the conveyance, adequate devices such as handles or handholds are provided on its exterior, and enable the enclosure to be lifted without tilting it, and ensure that anyone handling the enclosure will not come into physical contact with the animal contained inside;

(7) Any material, treatment, paint, preservative, or other chemical used in or on the enclosure is nontoxic to the animal and not harmful to the health or well-being of the animal;

(8) Proper ventilation is provide to the nonhuman primate in accordance with paragraph (c) of this section;

(9) Ventilation openings are covered with bars, wire mesh, or smooth expanded methal having air spaces; and

(10) The primary enclosure has a solid, leak-proof bottom, or a removable, leak-proof collection tray under a slatted or wire mesh floor that prevents seepage of waste products, such as excreta and body fluids, outside of the enclosure. If a slatted or wire mesh floor is used in the enclosure, it must be designed and constructed so that the animal cannot put any part of its body between the slats or through the holes in the mesh. It must contain enough previously unused litter to absorbe and cover excreta. The litter must be of a suitably absorbent material that is safe and nontoxic to the nonhumane primate and is appropriate for the species transported in the primary enclosure.

(b) *Cleaning of primary enclosures.* A primary enclosure used to hold or transport nonhuman primates in commerce must be cleaned and sanitized before each use in accordance with the methods provided in § 3.84(b)(3) of this subpart.

(c) *Ventilation.* (1) If the primary enclosure is moveable, ventilation openings must be constructed in one of the following ways:

(i) If ventilation openings are located on two opposite walls of the primary enclosure, the openings on each wall must be at least 30 percent of the total surface areas of the wall and be located above the midline of the enclosure; or

(ii) If ventilation openings are located on all four walls of the primary enclosure, the openings of every wall must be at least 20 percent of the total surface area of the wall and be located above the midline of the enclosure.

(2) Unless the primary enclosure is permanently affixed to the conveyance, projecting rims or similar devices must be located on the exterior of each enclosure wall having a ventilation opening, in order to prevent obstruction of the openings. The projecting rims or similar devices must be large enough to provide a minimum air circulation space of 0.75 inches (1.9 centimeters) between the primary enclosure and anything the enclosure is placed against.

(3) If a primary enclosure is permanently affixed to the primary conveyance so that there is only a front ventilation opening for the enclosure, the primary enclosure must be affixed to the primary conveyance in such a way that the front ventilation opening cannot be blocked, and the front ventilation opening must open directly to an unobstructed aisle or passageway inside of the conveyance. The ventilation opening must be at least 90 percent of

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the total area of the front wall of the enclosure, and must be covered with bars, wire mesh, or smooth expanded metal having air spaces.

(d) *Compatibility.* (1) Only one live nonhumane primate can be transported in a primary enclosure, except as follows:

(i) A mother and her nursing infant may be transported together;

(ii) An established male-female pair or family group may be transported together, except that a female in estrus must not be transported with a male nonhuman primate;

(iii) A pair of juveniles of the same species that have not reached puberty may be transported together.

(2) Nonhuman primates of different species must not be transported in adjacent or connecting primary enclosures.

(e) *Space requirements.* Primary enclosures used to transport nonhuman primates must be large enough so that each animal contained in the primary enclosure has enough space to turn around freely in a normal manner and to sit in an upright, hands down position without its head touching the top of the enclosure. However, certain larger species may be restricted in their movements, in accordance with professionally accepted standards of care, when greater freedom of movement would be dangerous to the animal, its handler, or to other persons.

(f) *Marking and labeling.* Primary enclosures, other than those that are permanently affixed to a conveyance, must be clearly marked in English on the top and on one or more sides with the words "Wild Animals" or "Live Animals," "Do Not Tip," and "This Side Up," in letters at least 1 inch (2.5 cm.) high, and with arrows or other markings to indicate the correct upright position of the primary enclosure. Permanently affixed primary enclosures must be clearly marked in English with the words "Wild Animals" or "Live Animals," in the same manner.

(g) *Accompanying documents and records.* Shipping documents that must accompany shipments of nonhuman primates may be held by the operator of the primary conveyance, for surface transportation only, or must be securely attached in a readily accessible manner to the outside of any primary enclosure that is part of the shipment, in a manner that allows them to be detached for examination and securely reattached, such as in a pocket or sleeve. Instructions for food and water and for administration of drugs, medication, and other special care must be attached to each primary enclosure in a manner that makes them easy to notice, to detach for examination, and to reattach securely.

**§ 3.89 Primary conveyances (motor vehicle, rail, air, and marine).**

(a) The animal cargo space of primary conveyances used to transport nonhuman primates must be designed, constructed, and maintained in a manner that at all times protects the health and well-being of the animals transported in it, ensures their safety and comfort, and prevents the entry of engine exhaust from the primary conveyance during transportation.

(b) The animal cargo space must have a supply of air that is sufficient for the normal breathing of all the animals being transported in it.

(c) Each primary enclosure containing nonhuman primates must be positioned in the animal cargo space in a manner that provides protection from the elements and that allow each nonhuman primate enough air for normal breathing.

(d) During air transportation, the ambient temperature inside a primary conveyance used to transport nonhuman primates must be maintained at a level that ensures the heath and well-being of the species housed, in accordance with generally accepted professional and husbandry practices, at all times a nonhuman primate is present.

(e) During surface transportation, the ambient temperature inside a primary conveyance used to transport nonhuman primates must be maintained between 45 °F (7.2 °C) and 85 °F (30 °C) at all times a nonhuman primate is present.

(f) A primary enclosure containing a nonhuman primate must be placed far enough away from animals that are predators or natural enemies of nonhuman primates, whether the other animals are in primary enclosures or not, so that the nonhuman primate cannot touch the other animals, see them or smell them.

(g) Primary enclosures must be positioned in the primary conveyance in a manner that allows the nonhuman primates to be quickly and easily removed from the primary conveyance in an emergency.

(h) The interior of the animal cargo space must be kept clean.

(i) Nonhuman primates must not be transported with any material, substance (e.g., dry ice), or device in a manner that may reasonably be expected to harm the nonhuman primates or cause inhumane conditions, unless proper precaution is taken to prevent the injury or inhumane conditions.

**§ 3.90 Food and water requirements.**

(a) Each nonhuman primate that is 1 year of age or more must be offered food [8] at least once every 24 hours. Each nonhuman primate that is less than 1 year of age must be offered food at least once every 12 hours. These time periods apply to dealers, exhibitors, and research facilities, including federal research facilities, who transport nonhuman primates in their own primary conveyances, starting from the time the nonhuman primate was last offered food before transportation was begun. These time periods apply to carriers and intermediate handlers starting from the date and time stated on the certification provided under § 3.87(d). Each nonhuman primate must be offered food within 12 hours before being transported in commerce. Consignors who are subject to the Animal Welfare regulations must certify that each nonhuman primate was offered food within the 12 hours preceding delivery of the nonhuman primate to a carrier or intermediate handler for transportation in commerce, and must certify the date and time of the feeding, in accordance with § 3.87(d).

(b) Each nonhuman primate must be offered potable water during the 4 hours immediately preceding the beginning of its transportation in commerce, and every 12 hours thereafter. This time period applies to dealers, exhibitors, and research facilities, including federal research facilities, who transport nonhuman primates in their own primary conveyances, starting from the time the nonhuman primate was last offered potable water before being transported in commerce. This time period applies to carriers and intermediate handlers starting from the date and time stated on the certification provided under § 3.87(d). Consignors who are subject to the Animal Welfare regulations must certify that each nonhuman primate was offered potable water within 4 hours before being transported in commerce, and must certify the date and time the water was offered, in accordance with § 3.87(d).

(c) Any dealer, exhibitor, or research facility, including a federal research facility, offering a nonhuman primate to a carrier or intermediate handler for transportation in commerce must securely attach to the outside of the primary enclosure used for transporting the nonhuman primate, written instructions for the in-transit food and water requirements of the nonhuman primate(s) contained in the enclosure. The instructions must be attached in a manner that makes them easily noticed, detached and returned to the enclosure.

(d) Food and water receptacles must be securely attached inside the primary enclosure and placed so that the receptacles can be filled from outside of the enclosure without opening the door. Food and water receptacles must be designed, constructed, and installed so that a nonhuman primate cannot leave the primary enclosure through the food or water opening.

[8] Proper food for purposes of this section is described in § 3.82 of this subpart, with the necessities and circumstances of the mode of travel taken into account.



**§ 3.91 Care in transit.**

*(a) Surface transportation (ground and water).* Any person subject to the Animal Welfare regulations transporting nonhuman primates in commerce must ensure that the operator of the conveyance or a person accompanying the operator of the conveyance observes the nonhuman primates as often as circumstances allow, but not less than once every 4 hours, to make sure that they have sufficient air for normal breathing, that the ambient temperature is within the limits provided in § 3.89(d), and that all other applicable standards of this subpart are being complied with. The regulated person transporting the nonhuman primates must ensure that the operator or the person accompanying the operator determines whether any of the nonhuman primates are in obvious physical distress, and obtains any veterinary care needed for the nonhuman primates at the closest available veterinary facility.

(b) *Air transportation.* During air transportation of nonhuman primates, it is the responsibility of the carrier to observe the nonhuman primates as frequently as circumstances allow, but not less than once every 4 hours if the animal cargo area is accessible during flight. If the animal cargo area is not accessible during flight, the carrier must observe the nonhuman primates whenever they are loaded and unloaded and whenever the animal cargo space is otherwise accessible to make sure that the nonhuman primates have sufficient air for normal breathing, that the ambient temperature is within the limits provided in § 3.89(d), and that all other applicable standards of this subpart are being complied with. The carrier must determine whether any of the nonhuman primates is in obvious physical distress, and arrange for any needed veterinary care for the nonhuman primates as soon as possible.

(c) If a nonhuman primate is obviously ill, injured, or in physical distress, it must not be transported in commerce, except to receive veterinary care for the condition.

(d) During transportation in commerce, a nonhuman primate must not be removed from its primary enclosure unless it is placed in another primary enclosure or a facility that meets the requirements of § 3.80 or § 3.88 of this subpart. Only persons who are experienced and authorized by the shipper, or authorized by the consignor or the consignee upon delivery, if the animal is consigned for transportation, may remove nonhuman primates from their primary enclosure during transportation in commerce.

(e) The transportation regulations contained in this subpart must be complied with until the nonhuman primate reaches its final destination, or until the consignee takes physical delivery of the animal if the animal is consigned for transportation.

**§ 3.92 Terminal facilities.**

(a) *Placement.* Any persons subject to the Animal Welfare regulations must not commingle shipments of nonhuman primates with inanimate cargo or with other animals in animal holding areas of terminal facilities. Nonhuman primates must not be placed near any other animals, including other species of nonhuman primates, and must not be able to touch or see any other animals, including other species of nonhuman primates.

(b) *Cleaning, sanitization, and pest control.* All animal holding areas of terminal facilities must be cleaned and sanitized in a manner prescribed in § 3.84(b)(3) of this subpart, as often as necessary to prevent an accumulation of debris or excreta and to minimize vermin infestation and disease hazards. Terminal facilities must follow an effective program in all animal holding areas for the control of insects, ectoparasites, and birds and mammals that are pests of nonhuman primates.

(c) *Ventilation.* Air, preferably fresh air, must be provided in any animal holding area in a terminal facility containing nonhuman primates by means of windows, doors, vents, or air conditioning. The air must be circulated by fans, blowers, or air conditioning so as to minimize drafts, odors, and moisture condensation. Auxiliary ventilation, such as exhaust fans, vents, fans, blowers, or air conditioning, must be used in any animal holding area containing nonhuman primates when the ambient temperature is 75 °F (23.9 °C) or higher.

(d) *Temperature.* The ambient temperature in an animal holding area containing nonhuman primates must not fall below 45 °F (7.2 °C) or rise above 85 °F (29.5 °C) at any time nonhuman primates are present. The ambient temperature must not rise above 75 °F (23.9 °C) for more than four consecutive hours at any time nonhuman primates are present. The ambient temperature must be measured in the animal holding area by the carrier, intermediate handler, or a person transporting nonhuman primates who is subject to the Animal Welfare regulations, out side any primary enclosure containing a nonhuman primate at a point not more than 3 feet (0.91 m.) away from an outside wall of the primary enclosure, on a level that is even with the enclosure and approximately midway up the side of the enclosure.

(e) *Shelter.* Any person subject to the Animal Welfare regulations holding a nonhuman primate in an animal holding area of a terminal facility must provide the following:

(1) Shelter from sunlight and extreme heat. Shade must be provided that is sufficient to protect the nonhuman primate from the direct rays of the sun.

(2) Shelter from rain or snow. Sufficient protection must be provided to allow nonhuman primates to remain dry during rain, snow, and other precipitation.

(f) *Duration.* The length of time any person subject to the Animal Welfare regulations can hold a nonhuman primate in an animal holding area of a terminal facility upon arrival is the same as that provided in § 3.87(g).

**§ 3.93 Handling.**

(a) Any person subject to the Animal Welfare regulations who moves (including loading and unloading) nonhuman primates within, to, or from the animal holding area of a terminal facility or a primary conveyance must do so as quickly and efficiently as possible, and must provide the following during movement of the nonhuman primate:

(1) *Shelter from sunlight and extreme heat.* Sufficient shade must be provided to protect the nonhuman primates from the direct rays of the sun. A nonhuman primate must not be exposed to an ambient temperature above 85 °F (29.5 °C) for a period of more than 45 minutes while being moved to or from a primary conveyance or a terminal facility. The temperature must be measured in the manner provided in § 3.92(d) of this subpart.

(2) *Shelter from rain or snow.* Suffcient protection must be provided to allow nonhuman primates to remain dry during rain, snow, and other precipitation.

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(3) *Shelter from cold temperatures.* Transporting devices on which nonhuman primates are placed to move them must be covered to protect the animals when the outdoor temperature falls below 45 °F (7.2 °C). A nonhuman primate must not be exposed to an ambient air temperature below 45 °F (7.2 °C) for a period of more than 45 minutes, unless it is accompanied by a certificate of acclimation to lower temperatures as provided in § 3.87(f). The temperature must be measured in the manner provided in § 3.92(d) of this subpart.

(b) Any person handling a primary enclosure containing a nonhuman primate must use care and must avoid causing physical or emotional distress to the nonhuman primate.

(1) A primary enclosure containing a nonhuman primate must not be placed on unattended conveyor belts or on elevated conveyor belts, such as baggage claim conveyor belts and inclined conveyor ramps that lead to baggage claim areas, at any time; except that a primary enclosure may be placed on inclined conveyor ramps used to load and unload aircraft if an attendant is present at each end of the conveyor belt.

(2) A primary enclosure containing a nonhuman primate must not be tossed, dropped, or needlessly tilted, and must not be stacked in a manner that may reasonably be expected to result in its falling. They must be handled and positioned in the manner that written instructions and arrows on the outside of the primary enclosure indicate.

(c) The regulations in this section apply to movement of a nonhuman primate from primary conveyance to primary conveyance, within a primary conveyance or terminal facility, and to or from a terminal facility or a primary conveyance.

Done in Washington, DC, this 7th day of March 1989.

**James W. Glosser,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 89-5613 Filed 3-9-89; 2:09 pm]

BILLING CODE 3410-34-M

federal register

**Wednesday**
**March 15, 1989**

**Part IV**

# Department of Health and Human Services

**National Institutes of Health**

**Recombinant DNA Research and Advisory Committee Meeting; Request for Public Comment and Notice**

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**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**National Institutes of Health**

**Recombinant DNA Advisory Committee Points To Consider Subcommittee; Meeting**

Pursuant to Pub. L. 92-463, notice is hereby given of a meeting of the Recombinant DNA Advisory Committee—Points to Consider Subcommittee at the National Institutes of Health, Building 31, Conference Room 10, Bethesda, Maryland 20892, on March 31, 1989, from approximately 9:00 a.m. to adjournment at approximately 5:00 p.m. to discuss recommendations for updating the "Points to Consider in the Design and Submission of Human Somatic-Cell Gene Therapy Protocols" which was adopted by the Recombinant DNA Advisory Committee on September 29, 1986. This meeting will be open to the public. Attendance by the public will be limited to space available.

Following this notice is a request for public comment on the "Points to Consider in the Design and Submission of Human Somatic-Cell Gene Therapy Protocols."

Further information can be obtained from Ms. Rachel E. Levinson, Executive Secretary, Office of Recombinant DNA Activities, Office of Science Policy and Legislation, National Institutes of Health, Building 31, Room B1C34, Bethesda, Maryland 20892, telephone (301) 496-9838.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined to be not cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

Dated: March 8, 1989.

**Betty J. Beveridge,**

*NIH Committee Management Officer.*

[FR Doc. 89-5799 Filed 3-14-89; 8:45 am]

BILLING CODE 4140-01-M

**Recombinant DNA Research; Request for Public Comment on "Points to Consider in the Design and Submission of Human Somatic-Cell Gene Therapy Protocols"**

**AGENCY:** National Institutes of Health, PHS, DHHS.

**ACTION:** Request for public comment.

**SUMMARY:** This notice publishes for public comment "Points to Consider in the Design and Submission of Human Somatic-Cell Gene Therapy Protocols" which was adopted by the National Institutes of Health (NIH) Recombinant DNA Advisory Committee (RAC) on September 29, 1986.

**DATE:** Comments must be received by March 24, 1989.

**ADDRESS:** Written comments and recommendations should be submitted to the Office of Recombinant DNA Activities, Office of Science Policy and Legislation, National Institutes of Health, Building 31, Room B1C34, Bethesda, Maryland 20892. All comments received in timely response to this notice will be considered and will be available for public inspection in the above office on weekdays between the hours of 8:30 a.m. and 5:00 p.m.

**FOR FURTHER INFORMATION CONTACT:** Further information can be obtained from Ms. Rachel E. Levinson, Executive Secretary, Points to Consider Subcommittee, Office of Recombinant DNA Activities, Office of Science Policy and Legislation, National Institutes of Health, Building 31, Room B1C34, Bethesda, Maryland 20892, telephone (301) 496-9838.

**SUPPLEMENTARY INFORMATION:** The Recombinant DNA Advisory Committee (RAC) adopted the "Points to Consider in the Design and Submission of Human Somatic-Cell Gene Therapy Protocols" on September 29, 1986, which was prepared by the Human Gene Therapy Subcommittee.

At the January 30, 1989, meeting, RAC endorsed a proposal to form a subcommittee to update and report to the Human Gene Therapy Subcommittee and the RAC any recommendations to amend the "Points to Consider." A Points to Consider Subcommittee was formed and will meet on March 31, 1989, at the National Institutes of Health, Building 31, Conference Room 10, Bethesda, Maryland 20892, from approximately 9:00 a.m. to adjournment to discuss recommendations for updating the "Points to Consider." Any comments received by March 24, 1989, will be circulated to the Subcommittee at its meeting on March 31, 1989, and to the Human Gene Therapy Subcommittee and the RAC at its next meeting.

National Institutes of Health—Points to Consider in the Design and Submission of Human Somatic-Cell Gene Therapy Protocols.

Human Gene Therapy Subcommittee
NIH Recombinant DNA Advisory Committee

Outline

Applicability

Introduction

I. Description of Proposal.
A. Objectives and rationale of the proposed research;
B. Research design, anticipated risks and benefits;
1. Structure and characteristics of the biological system;
2. Preclinical studies, including risk assessment studies;
3. Clinical procedures, including patient monitoring;
4. Public-health considerations;
5. Qualifications of investigators, adequacy of laboratory and clinical facilities.
C. Selection of patients.
D. Informed consent.
E. Privacy and confidentiality.
II. Special Issues.
A. Provision of accurate information to the public.
B. Timely communication of research methods and results to investigators and clinicians.
III. Requested Documentation.
A. Original protocol.
B. IRB and IBC minutes and recommendations.
C. One-page abstract of gene therapy protocol.
D. One-page description of proposed experiment in non-technical language.
E. Curricula vitae for professional personnel.
F. Indication of other federal agencies to which the protocol is being submitted.
G. Other pertinent material.
IV. Reporting Requirements.

**NATIONAL INSTITUTES OF HEALTH—POINTS TO CONSIDER IN THE DESIGN AND SUBMISSION OF HUMAN SOMATIC-CELL GENE THERAPY PROTOCOLS**

**Applicability**

These "Points to Consider" apply only to research conducted at or sponsored by an institution that receives any support for recombinant DNA research from the National Institutes of Health (NIH). This includes research performed by NIH directly.



**Introduction**

(1) Experiments in which recombinant DNA (See Footnote 1) is introduced into cells of a human subject with the intent of stably modifying the subject's genome are covered by Section III-A-4 of the NIH Guidelines for Research Involving Recombinant DNA Molecules (49 **Federal Register** 46266). Section III-A-4 requires such experiments to be reviewed by the NIH Recombinant DNA Advisory Committee (RAC) and approved by the NIH. RAC consideration of each proposal will be on a case-by-case basis and will follow publication of a precis of the proposal in the **Federal Register**, an opportunity for public comment, and a review of the proposal by the working group of the RAC. RAC recommendations on each proposal will be forwarded to the NIH Director for a decision which will then be published in the **Federal Register**. In accordance with Section IV-C-1-b of the NIH Guidelines, the NIH Director may approve proposals only if he finds that they present "no significant risk to health or the environment."

(2) In general, it is expected that somatic-cell gene therapy protocols will not present a risk to the environment as the recombinant DNA is expected to be confined to the human subject. Nevertheless, Section I-B-4-b of the "Points to Consider" document asks the researchers to address specifically this point.

(3) This document is intended to provide guidance in preparing proposals for NIH consideration under Section III-A-4 of the NIH Guidelines for Research Involving Recombinant DNA Molecules. Not every point mentioned in the "Points to Consider" document will necessarily require attention in every proposal. The document will be considered for revision as experience in evaluating proposals accumulates and as new scientific developments occur. This review will be carried out at least annually.

(4) A proposal will be considered by the RAC only after the protocol has been approved by the local Institutional Biosafety Committee (IBC) and by the local Institutional Review Board (IRB) in accordance with Department of Health and Human Services (DHHS) Regulations for the Protection of Human Subjects (45 Code of Federal Regulations, Part 46). If a proposal involves children, special attention should be paid to subpart D of these DHHS regulations. The IRB and IBC may, at their discretion, condition their approval on further specific deliberation by the RAC and its working group. Consideration of gene therapy proposals by the RAC may proceed simultaneously with review by any other involved federal agencies (See Footnote 2) provided that the RAC is notified of the simultaneous review. Meetings of the committee will be open to the public except where trade secrets or proprietary information would be disclosed. The committee would prefer that the first proposals submitted for RAC review contain no proprietary information or trade secrets, enabling all aspects of the review to be open to the public. The public review of these protocols will serve to inform the public not only on the technical aspects of the proposals but also on the meaning and significance of the research.

(5) The clinical application of recombinant DNA techniques to human gene therapy raises two general kinds of questions: (1) the questions usually discussed by IRBs in their review of any proposed research involving human subjects; and (2) broader social issues. The first type of question is addressed principally in Part I of this document. Several of the broader social issues surrounding human gene therapy are discussed later in this Introduction and in Part II below.

(6) Following the Introduction, this document is divided into four parts. Part I deals with the short-term risks and benefits of the proposed research to the patient (See Footnote 3) and to other people, as well as with issues of fairness in the selection of patients, informed consent, and privacy and confidentiality. In Part II, investigators are requested to address special issues pertaining to the free flow of information about clinical trials of gene therapy. These issues lie outside the usual purview of IRBs and reflect general public concerns about biomedical research. Part III summarizes other requested documentation that will assist the RAC and its working group in their review of gene therapy proposals. Part IV specifies reporting requirements.

(7) A distinction should be drawn between making genetic changes in somatic cells and in germ line cells. The purpose of somatic cell gene therapy is to treat an individual patient, e.g., by inserting a properly functioning gene into a patient's bone marrow cells in vitro and then reintroducing the cells into the patient's body. In germ line alterations, a specific attempt is made to introduce genetic changes into the germ (reproductive) cells of an individual, with the aim of changing the set of genes passed on to the individual's offspring. The RAC and its working group will not at present entertain proposals for germ line alterations but will consider for approval protocols involving somatic-cell gene therapy.

(8) The acceptability of human somatic-cell gene therapy has been addressed in several recent public documents as well as in numerous academic studies. The November 1982 report of the President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research, Splicing Life, resulted from a two-year process of public deliberations and hearings; upon release of that report, a House subcommittee held three days of public hearings with witnesses from a wide range of fields from the biomedical and social sciences to theology, philosophy, and law. In December 1984, the Office of Technology Assessment released a background paper, Human Gene Therapy, which brought these earlier documents up-to-date. As the latter report concluded:

"Civic, religious, scientific, and medical groups have all accepted, in principle, the appropriateness of gene therapy of somatic cells in humans for specific genetic diseases. Somatic cell gene therapy is seen as an extension of present methods of therapy that might be preferable to other technologies."

(9) Concurring with this judgment, the RAC and its working group are prepared to consider for approval somatic-cell therapy protocols, provided that the design of such experiments offers adequate assurance that their consequences will not go beyond their purpose, which is the same as the traditional purpose of all clinical investigations, namely, to benefit the health and well-being of the individual being treated while at the same time gathering generalizable knowledge.

(10) Two possible undesirable consequences of somatic-cell therapy would be unintentional (1) vertical transmission of genetic changes from an individual to his or her offspring or (2) horizontal transmission of viral infection to other persons with whom the individual comes in contact. Accordingly, this document requests information that will enable the RAC and its working group to assess the likelihood that the proposed somatic-cell gene therapy will inadvertently affect reproductive cells or lead to infection of other people (e.g., treatment personnel or relatives).

(11) In recognition of the social concern that surrounds the general discussion of human gene therapy, the working group will continue to consider the possible long-range effects of applying knowledge gained from these

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and related experiments. While research in molecular biology could lead to the development of techniques for germ line intervention or for the use of genetic means to enhance human capabilities rather than to correct defects in patients, the working group does not believe that these effects will follow immediately or inevitably from experiments with somatic-cell gene therapy. The working group will cooperate with other groups in assessing the possible long-term consequences of somatic-cell gene therapy and related laboratory and animal experiments in order to define appropriate human applications of this emerging technology.

(12) Responses to the questions raised in these "Points to Consider" should be provided in the form of either written answers or references to specific sections of the protocol or its appendices.

**I. Description of Proposal**

*A. Objectives and Rationale of the Proposed Research*

State concisely the overall objectives and rationale of the proposed study. Please provide information on the following specific points:

1. Why is the disease selected for treatment by means of gene therapy a good candidate for such treatment?

2. Describe the natural history and range of expression of the disease selected for treatment. What objective and/or quantitative measures of disease activity are available? In your view, are the usual effects of the disease predictable enough to allow for meaningful assessment of the results of gene therapy?

3. Is the protocol designed to prevent all manifestations of the disease, to halt the progression of the disease after symptoms have begun to appear, or to reverse manifestations of the disease in seriously ill victims?

4. What alternative therapies exist? In what groups of patients are these therapies effective? What are their relative advantages and disadvantages as compared with the proposed gene therapy?

*B. Research Design, Anticipated Risks and Benefits*

1. Structure and Characteristics of the Biological System

Provide a full description of the methods and reagents to be employed for gene delivery and the rationale for their use. The following are specific points to be addressed:

a. What is the structure of the cloned DNA that will be used?

(1) Describe the gene (genomic or cDNA), the bacterial plasmid or phage vector, and the delivery vector (if any). Provide complete nucleotide sequence analysis or a detailed restriction enzyme map of the total construct.

(2) What regulatory elements does the construct contain (e.g., promoters, enhancers, polyadenylation sites, replication origins, etc.)?

(3) Describe the steps used to derive the DNA construct.

b. What is the structure of the material that will be administered to the patient?

(1) Describe the preparation, structure, and composition of the materials that will be given to the patient or used to treat the patient's cells.

(a) If DNA, what is the purity (both in terms of being a single DNA species and in terms of other contaminants)? What tests have been used and what is the sensitivity of the tests?

(b) If a virus, how is it prepared from the DNA construct? In what cell is the virus grown (any special features)? What medium and serum are used? How is the virus purified? What is its structure and purity? What steps are being taken (and assays used with their sensitivity) to detect and eliminate any contaminating materials (for example, VL30 RNA, other nucleic acids, or proteins) or contaminating viruses or other organisms in the cells or serum used for preparation of the virus stock?

(c) If co-cultivation is employed, what kinds of cells are being used for co-cultivation? What steps are being taken (and assays used with their sensitivity) to detect and eliminate any contaminating materials? Specifically, what tests are being done to assess the material to be returned to the patient for the presence of live or killed donor cells or other non-vector materials (for example, VL30 sequences) originating from those cells?

(d) If methods other than those covered by (a)–(c) are used to introduce new genetic information into target cells, what steps are being taken to detect and eliminate any contaminating materials? What are possible sources of contamination? What is the sensitivity of tests used to monitor contamination?

(2) Describe any other material to be used in preparation of the material to be administered to the patient. For example, if a viral vector is proposed, what is the nature of the helper virus or cell line? If carrier particles are to be used, what is the nature of these?

2. Preclinical Studies, Including Risk-Assessment Studies

Describe the experimental basis (derived from tests in cultured cells and animals) for claims about the efficacy and safety of the proposed system for gene delivery.

*a. Laboratory Studies of the Delivery System.* (1) What cells are the intended recipients of gene therapy? If recipient cells are to be treated in vitro and returned to the patient, how will the cells be characterized before and after treatment? What is the theoretical and practical basis for assuming that only the treated cells will act as recipients?

(2) Is the delivery system efficient? What percentage of the target cells contain the added DNA?

(3) How is the structure of the added DNA sequences monitored and what is the sensitivity of the analysis? Is the added DNA extrachromosomal or integrated? Is the added DNA unrearranged?

(4) How many copies are present per cell? How stable is the added DNA both in terms of its continued presence and its structural stability?

*b. Laboratory Studies of Gene Expression.* Is the added gene expressed? To what extent is expression only from the desired gene (and not from the surrounding DNA)? In what percentage of cells does expression from the added DNA occur? Is the product biologically active? What percentage of normal activity results from the inserted gene? Is the gene expressed in cells other than the target cells? If so, to what extent?

c. *Laboratory Studies Pertaining to the Safety of the Delivery/Expression System.* (1) If a retroviral system is used:

(a) What cell types have been infected with the retroviral vector preparation? Which cells, if any, produce infectious particles?

(b) How stable are the retroviral vector and the resulting provirus against loss, rearrangement, recombination, or mutation? What information is available on how much rearrangement or recombination with endogenous or other viral sequences is likely to occur in the patient's cells? What steps have been taken in designing the vector to minimize instability or variation? What laboratory studies have been performed to check for stability, and what is the sensitivity of the analyses?

(c) What laboratory evidence is available concerning potential harmful effects of the treatment, e.g., development of neoplasia, harmful mutations, regeneration of infectious particles, or immune responses? What steps have been taken in designing the vector to minimize pathogenicity? What laboratory studies have been performed to check for pathogenicity, and what is the sensitivity of the analyses?



(d) Is there evidence from animal studies that vector DNA has entered untreated cells, particularly germ line cells? What is the sensitivity of the analyses?

(e) Has a protocol similar to the one proposed for a clinical trial been carried out in non-human primates and/or other animals? What were the results? Specifically, is there any evidence that the retroviral vector has recombined with any endogenous or other viral sequences in the animals?

(2) If a non-retroviral delivery system is used: What animal studies have been done to determine if there are pathological or other undesirable consequences of the protocol (including insertion of DNA into cells other than those treated, particularly germ line cells)? How long have the animals been studied after treatment? What tests have been used and what is their sensitivity?

3. Clinical procedures, including patient monitoring.

Describe the treatment that will be administered to patients and the diagnostic methods that will be used to monitor the success or failure of the treatment. If previous clinical studies using similar methods have been performed by yourself or others, indicate their relevance to the proposed study.

a. Will cells (e.g., bone marrow cells) be removed from patients and treated in vitro in preparation for gene therapy? If so, what kinds of cells will be removed from the patients, how many, how often, and at what intervals?

b. Will patients be treated to eliminate or reduce the number of cells containing malfunctioning genes (e.g., through radiation or chemotherapy) prior to gene therapy?

c. What treated cells (or vector/DNA combination) will be given to patients in the attempt to administer gene therapy? How will the treated cells be administered? What volume of cells will be used? Will there be single or multiple treatments? If so, over what period of time?

d. What are the clinical endpoints of the study? Are there objective and quantitative measurements to assess the natural history of the disease? Will such measurements be used in following your patients? How will patients be monitored to assess specific effects of the treatment on the disease? What is the sensitivity of the analyses? How frequently will follow-up studies be done? How long will patient follow-up continue?

e. What are the major potential beneficial and adverse effects of treatment that you anticipate? What measures will be taken in an attempt to control or reverse these adverse effects if they occur? Compare the probability and magnitude of potential adverse effects on patients with the probability and magnitude of deleterious consequences from the disease if gene therapy is not performed.

f. If a treated patient dies, what special studies will be performed as part of the autopsy?

4. Public-health considerations.

Describe any potential benefits and hazards of the proposed therapy to persons other than the patients being treated. Specifically:

a. On what basis are potential public health benefits or hazards postulated?

b. Is there a significant likelihood that the added DNA will spread from the patient to other persons or to the environment?

c. What precautions will be taken against such spread (e.g., to patients sharing a room, health-care workers, or family members)?

d. What measures will be undertaken to mitigate the risks, if any, to public health?

5. Qualifications of Investigators, Adequacy of Laboratory and Clinical Facilities

Indicate the relevant training and experience of the personnel who will be involved in the preclinical studies and clinical administration of gene therapy. In addition, please describe the laboratory and clinical facilities where the proposed study will be performed.

a. What professional personnel (medical and nonmedical) will be involved in the proposed study? What are their specific qualifications and experience with respect to the disease to be treated and with respect to the techniques employed in molecular biology? Please provide curricula vitae (see Section III–E).

b. At what hospital or clinic will the treatment be given? Which facilities of the hospital or clinic will be especially important for the proposed study? Will patients occupy regular hospital beds or clinical research center beds? Where will patients reside during the follow-up period?

*C. Selection of patients*

Estimate the number of patients to be involved in the proposed study of gene therapy. Describe recruitment procedures and patient eligibility requirements, paying particular attention to whether these procedures and requirements are fair and equitable.

1. How many patients do you plan to involve in the proposed study?

2. How many eligible patients do you anticipate being able to identify each year?

3. What recruitment procedures do you plan to use?

4. What selection criteria do you plan to employ? What are the exclusion and inclusion criteria for the study?

5. How will patients be selected if it is not possible to include all who desire to participate?

*D. Informed consent*

Indicate how patients will be informed about the proposed study and how their consent will be solicited. The consent procedure should adhere to the requirements of DHHS regulations for the protection of human subjects (45 Code of Federal Regulations, Part 46). If the study involves pediatric or mentally handicapped patients, describe procedures for seeking the permission of parents or guardians and, where applicable, the assent of each patient. Areas of special concern highlighted below include potential adverse effects, financial costs, privacy, and long-term follow-up.

1. How will the major points covered in Sections I–A through I–C of this document be disclosed to potential participants in this study and/or parents or guardians in language that is understandable to them?

2. How will the innovative character and the theoretically-possible adverse effects of gene therapy be discussed with patients and/or parents or guardians? How will the potential adverse effects be compared with the consequences of the disease? What will be said to convey that some of these adverse effects, if they occur, could be irreversible?

3. What explanation of the financial costs of gene therapy and any available alternative therapies will be provided to patients and/or parents or guardians?

4. How will patients and/or their parents or guardians be informed that the innovative character of gene therapy may lead to great interest by the media in the research and in treated patients?

5. How will patients and/or their parents or guardians be informed:

a. That some of the procedures performed in the study may be irreversible?

b. That following the performance of such procedures it would not be medically advisable for patients to withdraw from the study?

c. That a willingness to cooperate in long-term follow-up (for at least three to five years) will be a precondition for participation in the study?

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d. That a willingness to permit an autopsy to be performed in the event of a patient's death following treatment is also a precondition for a patient's participation in the study? (This stipulation is included because an accurate determination of the precise cause of a patient's death would be of vital importance to all future gene therapy patients.)

*E. Privacy and Confidentiality*

Indicate what measures will be taken to protect the privacy of gene therapy patients and their families as well as to maintain the confidentiality of research data.

1. What provisions will be made to honor the wishes of individual patients (and the parents or guardians of pediatric or mentally handicapped patients) as to whether, when, or how the identity of patients is publicly disclosed?

2. What provision will be made to maintain the confidentiality of research data, at least in cases where data could be linked to individual patients?

**II. Special Issues**

Although the following issues are beyond the normal purview of local IRBs, the RAC and its working group request that investigators respond to questions A and B below.

A. What steps will be taken, consistent with point I–E above, to ensure that accurate information is made available to the public with respect to such public concerns as may arise from the proposed study?

B. Do you or your funding sources intend to protect under patent or trade secret laws either the products or the procedures developed in the proposed study? If so, what steps will be taken to permit as full communication as possible among investigators and clinicians concerning research methods and results?

**III. Requested Documentation**

In addition to responses to the questions raised in these "Points to Consider," please submit the following materials:

A. Your protocol as approved by your local IRB and IBC. The consent form, which must have IRB approval, should be submitted to the NIH only on request.

B. Local IRB and IBC minutes and recommendations that pertain to your protocol.

C. A one-page scientific abstract of the gene therapy protocol.

D. A one-page description of the proposed experiment in nontechnical language.

E. Curricula vitae for professional personnel.

F. An indication of other Federal agencies to which the protocol is being submitted for review.

G. Any other material which you believe will aid in the review.

**IV. Reporting Requirements**

A. Serious adverse effects of treatment should be reported immediately to both your local IRB and the NIH Office for Protection from Research Risks, and a written report should be filed with both groups. A copy of the report should also be forwarded to the NIH Office of Recombinant DNA Activities (ORDA).

B. Reports regarding the general progress of patients should be filed at six-month intervals with both your local IRB and ORDA. These twice-yearly reports should continue for a sufficient period of time to allow observation of all major effects (at least three to five years). In the event of a patient's death, the autopsy report should be submitted to the IRB and ORDA.

**Footnotes**

1. Section III–A–4 applies both to recombinant DNA and to DNA or RNA derived from recombinant DNA.

2. The Food and Drug Administration (FDA) has jurisdiction over drug products intended for use in clinical trials of human somatic-cell gene therapy. For general information on FDA's policies and regulatory requirements, please see the **Federal Register**, Volume 51, pages 23309–23313, 1986.

3. The term "patient" and its variants are used in the text as a shorthand designation for "patient-subject."

Adopted by Recombinant DNA Advisory Committee, September 29, 1988.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592) requires a statement concerning the official government programs contained in the *Catalog of Federal Domestic Assistance*. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined to be not cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the *Catalog of Federal Domestic Assistance* are affected.

Dated: March 6, 1989.

**Jay Moskowitz,**

*Associate Director for Science Policy and Legislation.*

[FR Doc. 89–5800 Filed 3–14–89; 8:45 am]

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federal register

Wednesday
March 15, 1989

Part V

# Environmental Protection Agency

40 CFR Part 180

**Tolerance Processing Fees; Final Rule**

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 180**

**[OPP-30072F; FRL-3535-7]**

**Tolerance Processing Fees**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This rule increases fees charged for processing tolerance petitions for pesticides under the Federal Food, Drug, and Cosmetic Act (FFDCA). The change in fees reflects a 4.1 percent increase in pay for civilian Federal General Schedule (GS) employees in 1989.

**EFFECTIVE DATE:** April 14, 1989.

**FOR FURTHER INFORMATION CONTACT:**

By mail:

Ken Wetzel, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number:

Rm. 1002-E, CM#2, 1921 Jefferson Davis Highway, Arlington, VA (703-557-1128)

**SUPPLEMENTARY INFORMATION:** The EPA is charged with administration of section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA). Section 408 authorizes the Agency to establish tolerance levels and exemptions from the requirements for tolerances for raw agricultural commodities. Section 408(o) requires that the Agency collect fees as will, in the aggregate, be sufficient to cover the costs of processing petitions for pesticide products, i.e., that the tolerance process be as self-supporting as possible.

The current fee schedule for tolerance petitions (40 CFR 180.33) was published in the **Federal Register** on June 15, 1988 (53 FR 22299) and became effective on July 15, 1988. At that time the fees were increased 2 percent in accordance with a provision in the regulation that provides for automatic annual adjustments to the fees based on annual percentage changes in Federal salaries. The specific language in the regulation is contained in paragraph (o) of § 180.33 and reads in part as follows:

(o) This fee schedule will be changed annually by the same percentage as the percent change in the Federal General Schedule (GS) pay scale * * * When automatic adjustments are made based on the GS pay scale, the new fee schedule will be published in the **Federal Register** as a final rule to become effective thirty days or more after publication, as specified in the rule.

The pay raise in 1989 for Federal General Schedule employees is 4.1 percent; therefore, the tolerance petition fees are being increased 4.1 percent. The entire fee schedule, § 180.33, is presented for the reader's convenience. (All fees have been rounded to the nearest $25.00.)

**List of Subjects in 40 CFR Part 180**

Administrative practice and procedures, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 3, 1989.

**Douglas D. Campt,**

*Acting Assistant Administrator, Office of Pesticides and Toxic Substances.*

Therefore, 40 CFR 180 is amended as follows:

Authority: 21 U.S.C. 346a and 371.

**PART 180—[AMENDED]**

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.33 is revised to read as follows:

**§ 180.33 Fees.**

(a) Each petition or request for the establishment of a new tolerance or a tolerance higher than already established shall be accompanied by a fee of $48,225, plus $1,200 for each raw agricultural commodity more than nine on which the establishment of a tolerance is requested, except as provided in paragraphs (b), (d), and (h) of this section.

(b) Each petition or request for the establishment of a tolerance at a lower numerical level or levels than a tolerance already established for the same pesticide chemical, or for the establishment of a tolerance on additional raw agricultural commodities at the same numerical level as a tolerance already established for the same pesticide chemical, shall be accompanied by a fee of $11,025 plus $775 for each raw agricultural commodity on which a tolerance is requested.

(c) Each petition or request for an exemption from the requirement of a tolerance or repeal of an exemption shall be accompanied by a fee of $8,675.

(d) Each petition or request for a temporary tolerance or a temporary exemption from the requirement of a tolerance shall be accompanied by a fee of $19,250 except as provided in paragraph (e) of this section. A petition or request to renew or extend such temporary tolerance or temporary exemption shall be accompanied by a fee of $2,725.

(e) A petition or request for a temporary tolerance for a pesticide chemical which has a tolerance for other uses at the same numerical level or a higher numerical level shall be accompanied by a fee of $9,625 plus $775 for each raw agricultural commodity on which the temporary tolerance is sought.

(f) Each petition or request for repeal of a tolerance shall be accompanied by a fee of $6,025. Such fee is not required when, in connection with the change sought under this paragraph, a petition or request is filed for the establishment of new tolerances to take the place of those sought to be repealed and a fee is paid as required by paragraph (a) of this section.

(g) If a petition or a request is not accepted for processing because it is technically incomplete, the fee, less $1,200 for handling and initial review, shall be returned. If a petition is withdrawn by the petitioner after initial processing, but before significant Agency scientific review has begun, the fee, less $1,200 for handling and initial review, shall be returned. If an unacceptable or withdrawn petition is resubmitted, it shall be accompanied by the fee that would be required if it were being submitted for the first time.

(h) Each petition or request for a crop group tolerance, regardless of the number of raw agricultural commodities involved, shall be accompanied by a fee equal to the fee required by the analogous category for a single tolerance that is not a crop group tolerance, i.e., paragraphs (a) through (f) of this section, without a charge for each commodity where that would otherwise apply.

(i) Objections under section 408(d)(5) of the Act shall be accompanied by a filing fee of $2,425.

(j)(1) In the event of a referral of a petition or proposal under this section to an advisory committee, the costs shall be borne by the person who requests the referral of the data to the advisory committee.

(2) Costs of the advisory committee shall include compensation for experts as provided in § 180.11(c) and the expenses of the secretariat, including the costs of duplicating petitions and other related material referred to the committee.

(3) An advance deposit shall be made in the amount of $24,050 to cover the costs of the advisory committee. Further advance deposits of $24,050 each shall be made upon request of the Administrator when necessary to prevent arrears in the payment of such costs. Any deposits in excess of actual expenses will be refunded to the depositor.

(k) The person who files a petition for judicial review of an order under section 408(d)(5) or (e) of the Act shall pay the costs of preparing the record on which the order is based unless the person has no financial interest in the petition for judicial review.

(l) No fee under this section will be imposed on the Inter-Regional Research Project Number 4 (IR-4 Program).

(m) The Administrator may waive or refund part or all of any fee imposed by this section if the Administrator determines in his or her sole discretion that such a waiver or refund will promote the public interest or that payment of the fee would work an unreasonable hardship on the person on whom the fee is imposed. A request for waiver or refund of a fee shall be submitted in writing to the Environmental Protection Agency, Office of Pesticide Programs, Registration Division (TS-767C), Washington, DC 20460. A fee of $1,200 shall accompany every request for a waiver or refund, except that the fee under this sentence shall not be imposed on any person who has no financial interest in any action requested by such person under paragraphs (a) through (k) of this section. The fee for requesting a waiver or refund shall be refunded if the request is granted.

(n) All deposits and fees required by the regulations in this part shall be paid by money order, bank draft, or certified check drawn to the order of the Environmental Protection Agency. All deposits and fees shall be forwarded to the Environmental Protection Agency, Headquarters Accounting Operations Branch, Office of Pesticide Programs (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. The payments should be specifically labeled "Tolerance Petition Fees" and should be accompanied only by a copy of the letter or petition requesting the tolerance. The actual letter or petition, along with supporting data, shall be forwarded within 30 days of payment to the Environmental Protection Agency, Office of Pesticide Programs, Registration Division, Washington, DC 20460. A petition will not be accepted for processing until the required fees have been submitted. A petition for which a waiver of fees has been requested will not be accepted for processing until the fee has been waived or, if the waiver has been denied, the proper fee is submitted after notice of denial. A request for waiver or refund will not be accepted after scientific review has begun on a petition.

(o) This fee schedule will be changed annually by the same percentage as the percent change in the Federal General Schedule (GS) pay scale. In addition, processing costs and fees will periodically be reviewed and changes will be made to the schedule as necessary. When automatic adjustments are made based on the GS pay scale, the new fee schedule will be published in the **Federal Register** as a Final Rule to become effective 30 days or more after publication, as specified in the rule. When changes are made based on periodic reviews, the changes will be subject to public comment.

[FR Doc. 89-5866 Filed 3-14-89; 8:45 am]

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Part VI

# Department of Education

34 CFR Part 237

Christa McAuliffe Fellowship Program; Final Rule

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**DEPARTMENT OF EDUCATION**

**34 CFR Part 237**

**Christa McAuliffe Fellowship Program**

**AGENCY:** Department of Education.

**ACTION:** Final regulations.

**SUMMARY:** The Secretary amends the regulations for the Christa McAuliffe Fellowship Program. This program is authorized by Title V, Part D, Subpart 2 of the Higher Education Act of 1965, as amended by the Higher Education Amendments of 1986. These regulations: (1) Establish a minimum fellowship amount; (2) clarify the redistribution method employed by the Department if States do not comply with certain requirements set by the Department or if any unused funds are returned by the States; (3) clarify the terms and conditions that apply to recipients of the fellowship awards; and (4) provide that awards will not be made in States that fail to meet applicable filing deadlines.

**EFFECTIVE DATE:** The regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

**FOR FURTHER INFORMATION CONTACT:** Ramon Ruiz, Acting Division Director, Division of Discretionary Grants, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202. Telephone (202) 732-4059.

**SUPPLEMENTARY INFORMATION:**

On November 15, 1988, the Secretary published a notice of proposed rulemaking for the Christa McAuliffe Fellowship Program in the **Federal Register** (53 FR 46072-46073).

The Christa McAuliffe Fellowship Program is authorized by Title V, Part D, Subpart 2 of the Higher Education Act of 1965. It establishes a national fellowship program for outstanding full-time public and private school teachers. Christa McAuliffe fellows may use awards for projects approved by the Secretary to improve their knowledge or skills and the education of their students, including (1) sabbaticals for study or research directly associated with the objectives of the statute, or their own academic improvement, (2) consultation with or assistance to other school systems, (3) development of special innovative programs, or (4) model teacher programs and staff development.

The statute provides that a fellowship is to be awarded to an eligible teacher in each congressional district in each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, the Northern Mariana Islands, and the Republic of Palau. The eligibility of the individual entities within the former Trust Territory is governed by the 1986 Compact of Free Association.

The maximum amount of a fellowship may not exceed the national average salary of public school teachers in the most recent year for which satisfactory data are available, as determined by the Secretary. If the appropriation for a fiscal year is not sufficient to provide this number of fellowships at the maximum amount, the Secretary publishes an alternative distribution that will permit fellowship awards at the maximum level and that is geographically equitable. The Secretary sends a notice of determinations to each statewide panel that has been established to select recipients.

**Public Comment**

In the NPRM, the Secretary invited comments on the proposed regulations. The Secretary did not receive any comments. Except for minor technical revisions, the Secretary has made no changes in these regulations since publication of the NPRM.

**Executive Order 12291**

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

**Paperwork Reduction Act of 1980**

These regulations have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

**List of Subjects in 34 CFR Part 237**

Education, Elementary and secondary education, Scholarships and fellowships, Teachers.

Dated: February 27, 1989.

**Lauro F. Cavazos,**

*Secretary of Education.*

(Catalog of Federal Domestic Assistance Number 84.190, Christa McAuliffe Fellowship Program)

**PART 237—[AMENDED]**

The Secretary amends Part 237 of Title 34 of the Code of Federal Regulations as follows:

1. The authority citation for Part 237 continues to read as follows:

**Authority:** 20 U.S.C. 1113–1113e, unless otherwise noted.

2. Section 237.3 is amended by revising paragraph (a)(8), adding a new paragraph (c), and revising the authority citation to read as follows:

**§ 237.3 How are awards distributed?**

(a) * * *

(8) The Trust Territory of the Pacific Islands (Republic of Palau).

* * * * * *

(c)(1) If a State fails to meet the applicable filing deadlines for fellowship recommendations established under this program, the Secretary does not make awards in that State.

(2) In redistributing any returned or unused funds from a State, the Secretary takes into consideration, but is not limited to, the following factors:

(i) The amount of funds available for redistribution.

(ii) The number of States that request additional funds.

(iii) The number of States that are willing to match fellowship funds.

(iv) The requirements in § 237.4(b) relating to minimum awards.

(Authority: 20 U.S.C. 1113b(a))

3. Section 237.4 is revised to read as follows:

**§ 237.4 In what amounts are fellowships awarded?**

(a) *Maximum award.* A fellowship awarded under this part may not exceed the national average salary of public school teachers in the most recent year for which satisfactory data are available, as determined by the Secretary. The Secretary urges statewide panels to award fellowships in the maximum amount.

(b) *Minimum award.* Except as provided in paragraph (c) of this section, a fellowship awarded under this part may not be less than half the national average salary of public school teachers in the most recent year for which satisfactory data are available, as determined by the Secretary.

(c) *Partial award.* If, after awarding one or more fellowships that meet the requirements of paragraphs (a) and (b) of this section, a State has insufficient funds for a maximum or minimum award, the State may make one partial award that may be less than the minimum award.

(Authority: 20 U.S.C. 1113b(a)(2))

4. Section 237.33 is revised to read as follows:



**§ 237.33 What is the service requirement for a fellowship?**

(a) Except as provided in paragraph (b) of this section, a fellow must return to a teaching position in the fellow's current LEA, private school, or private school system for at least two years following the completion of the fellowship.

(b) In the case of extenuating circumstances (for example, temporary disability), a fellow has a five-year period in which to fulfill the two-year teaching requirement in paragraph (a) of this section.

(Authority: 20 U.S.C. 1113b(a)(2), 1113d)

[FR Doc. 89-6030 Filed 3-14-89; 8:45 am]
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Part VII

# United States Information Agency

## Culturally Significant Objects Imported for Exhibition; Determination; Notice

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**UNITED STATES INFORMATION AGENCY**

**Culturally Significant Objects Imported for Exhibition; Determination**

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "On the Art of Fixing a Shadow: 150 Years of Photography" (see list [1]) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the National Gallery of Art in Washington, DC, beginning on or about May 7, 1989, to on or about July 30, 1989, at The Art Institute of Chicago in Chicago, Illinois, beginning on or about September 16, 1989, to on or about November 26, 1989, and at the Los Angeles County Museum of Art in Los Angeles, California, beginning on or about December 21, 1989, to on or about February 25, 1990, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register**.

**Richard H. Swan,**

*Acting General Counsel.*

Date: March 13, 1989.

[FR Doc. 89–6237 Filed 3–14–89; 10:45 am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Mr. R. Wallace Stuart of the Office of the General Counsel of USIA. The telephone number is 202–485–7979, and the address is Room 700, U.S. Information Agency, 301 4th Street SW., Washington, DC 20547.



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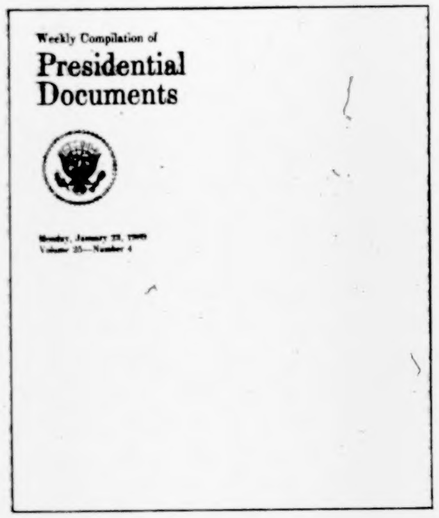
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